START

Title: FEDERAL REGISTER.

Volume: 61

Issues: 97-106
PAGES: 24875-27766

Date: MAY 17 - MAY 31, 1996

UMI Number: 2575.00

Note: REEL NO. 9 OF 11

UMI
300 North Zeeb Road
Ann Arbor, MI 48103

UMI

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

5-17-96
Vol. 61 No. 97

Friday
May 17, 1996

Federal Register

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********3-DIGIT 481
A FR UMI 345U DEC 95 R
UMI
SERIALS ACQUISITIONS
PO BOX 1346
ANN ARBOR MI 48106

5–17–96
Vol. 61 No. 97
Pages 24875–25134

federal register

Friday
May 17, 1996

Briefings on How To Use the Federal Register
For information on briefings in Chicago, IL and Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $494, or $544 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $433. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 61 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806

General online information 202–512–1530

Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803

FEDERAL AGENCIES

Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

CHICAGO, IL

WHEN: June 11, 1996 at 9:00 am
WHERE: Metcalfe Federal Building, Conference Room 328, 77 West Jackson, Chicago, Illinois 60604
RESERVATIONS: 1–800–688–9889

WASHINGTON, DC

[Two Sessions]

WHEN: June 18, 1996 at 9:00 am, and June 25, 1996 at 9:00 am
WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 61, No. 97
Friday, May 17, 1996

Actuaries, Joint Board for Enrollment
See Joint Board for Enrollment of Actuaries

Agricultural Marketing Service
RULES
Onions grown in—
Texas, 24877–24878

Agriculture Department
See Agricultural Marketing Service
See Commodity Credit Corporation
See Forest Service
See Grain Inspection, Packers and Stockyards Administration

Army Department
See Engineers Corps

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Children and Families Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 24940

Coast Guard
RULES
Ports and waterways safety:
Long Beach Harbor, CA; safety zone, 24892–24893

Commerce Department
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 24920–24921

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
China, 24919–24920

Commodity Credit Corporation
NOTICES
Agency information collection activities:
Proposed collection; comment request, 24914
Feed grain donations:
Three Affiliated Tribes of Fort Berthold Indian Reservation, ND, 24914–24915

Corporation for National and Community Service
NOTICES
Hearings, 24919

Customs Service
RULES
Articles conditionally free, subject to a reduced rate, etc.:
Steel products; voluntary restraint arrangements, 24887–24888
Merchandise; special classes:
Prohibited/restricted merchandise; foreign assets control enforcement, 24888–24889

Defense Department
See Engineers Corps

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Ganes Chemicals, Inc., 24957–24959

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 24921–24923

Employment and Training Administration
NOTICES
Adjustment assistance:
Exxon Co., U.S.A., 24961
Whirlpool Corp. et al., 24962
Adjustment assistance and NAFTA transitional adjustment assistance:
EMI Co. et al., 24959–24961
NAFTA transitional adjustment assistance:
Pacific Power, 24962–24963

Energy Department
See Energy Efficiency and Renewable Energy Office
See Energy Information Administration
See Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Foreign research reactor spent nuclear fuel; nuclear weapons nonproliferation policy, 25092–25103
Powerplant and industrial fuel use; new electric powerplant coal capability:
Self-certification filings—
Mid-Georgia Cogen, L.P., 24923

Energy Efficiency and Renewable Energy Office
NOTICES
Grants and cooperative agreements; availability, etc.:
National industrial competitiveness through energy, environment and economics (NICE3) program, 24923–24924

Energy Information Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 24924

Engineers Corps
NOTICES
Base realignment and closure:
Surplus Federal property—
Charles E. Kelly Support Facility, Irwin Support Annex, Manor, PA, 24921

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Allyl isothiocyanate, 24893–24894
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 24894–24895
PROPOSED RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Tau-fluvalinate, 24911–24913
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 24930–24933
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 24933–24934
Weekly receipts, 24933
Grants, State and local assistance:
Grantee performance evaluation reports—
Alabama et al., 24934
Pesticide programs:
Dupont Agricultural Products of Delaware—
Genetically engineered microbial pesticide; small-scale field testing, 24934–24935
Pesticide registration, cancellation, etc.:
Metam-sodium, 24935–24936
Woodstream Corp., 24936–24937

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Farm Credit Administration
PROPOSED RULES
Farm credit system:
Loan policies and operations—
Funding and discount relationship between FCS banks and other financing institutions, 24907–24909

Federal Aviation Administration
RULES
Airworthiness directives:
Jetstream, 24883–24887
New Piper Aircraft, Inc., 24878–24881

Federal Communications Commission
RULES
Common carrier services:
Telecommunications Act of 1996; implementation—
Telecommunications or customer premises equipment standards; dispute resolution, 24897–24904

Federal Emergency Management Agency
NOTICES
Meetings:
Federal Radiological Preparedness Coordinating Committee, 24937–24938
Radiological emergency; State plans:
New York, 24938

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
TRAKYA ELEKTRIK URETIM VE TICARET A.S. et al., 24925–24928
Natural gas certificate filings:
Transcontinental Gas Pipe Line Corp. et al., 24928–24930
Applications, hearings, determinations, etc.:
Granite State Gas Transmission, Inc., 24925
Syracuse Power Co. et al., 24925

Federal Highway Administration
NOTICES
Meetings:
Civil rights programs; efficiency, quality, and effectiveness; roundtable discussions, 25010

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 24938
Formations, acquisitions, and mergers, 24938–24939
Permissible nonbanking activities, 24939
Meetings; Sunshine Act, 24939

Federal Transit Administration
RULES
Capital leases, 25088–25090
NOTICES
Transfer of federally assisted land or facility:
York Road, Dulaney Valley Road, Joppa Road and Allegheny Avenue, Towson, MD, 25011

Food and Drug Administration
PROPOSED RULES
Animal drugs, feeds, and related products:
Extralabel drug use in animals, 25106–25118

Forest Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 24915–24916

Grain Inspection, Packers and Stockyards Administration
NOTICES
Livestock care and handling guidelines; comment request, 24916–24917

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
NOTICES
Organization, functions, and authority delegations:
Health Resources and Services Administration, 24939–24940

Health Care Financing Administration
NOTICES
Medicare and Medicaid:
Organ procurement organizations (OPOs) in designated areas; hospitals requesting waivers; list, 24941–24946

Housing and Urban Development Department
RULES
Community facilities:
Opportunities for youth; Youthbuild program; administrative costs, 25124–25125
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 24946–24947

Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 24947

Interior Department
See Land Management Bureau
See National Park Service

International Trade Commission
NOTICES
Import investigations:
Broom corn brooms, 24952
Engineered process gas turbo-compressor systems from—Japan, 24952–24953
Tomatoes and peppers, fresh or chilled, 24953

Joint Board for Enrollment of Actuaries
NOTICES
Committees; establishment, renewal, termination, etc.:
Actuarial Examinations Advisory Committee, 24953–24954
Meetings:
Actuarial Examinations Advisory Committee, 24954–24955

Justice Department
See Drug Enforcement Administration
See Prisons Bureau
RULES
Bankruptcy Reform Act; internal procedural guidelines establishment, 24889–24892
NOTICES
Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996; Title III provisions; summary, 24955–24957

Labor Department
See Employment and Training Administration

Land Management Bureau
NOTICES
Closure of public lands:
Oregon, 24947
Environmental statements; availability, etc.:
Ward Valley, CA; land transfer to California for low-level radioactive waste disposal facility development, 24951–24952
Meetings:
Resource advisory councils—
Southeastern Oregon, 24947–24948
Opening of public lands:
Oregon, 24948
Public land orders:
Oregon; correction, 24948
Realty actions; sales, leases, etc.:
Colorado, 24948–24949
Recreation management restrictions, etc.:
Colorado public lands; underage possession of alcoholic beverages, handguns, and drug paraphernalia, prohibition; supplementary rules establishment, 24949
Dalton Highway Recreation Area, AK; supplemental rules establishment, 24949
Withdrawal and reservation of lands:
Idaho; correction, 25016

Maritime Administration
RULES
Cargo preference—U.S. flag vessels:
Available U.S. flag commercial vessels, 24895–24897

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 24905–24906
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 24918
Pacific Fishery Management Council, 24918–24919
Permits:
Marine mammals, 24919

National Park Service
NOTICES
Concession contract negotiations:
Sequoia National Park, CA; pack and saddle animal services and facilities, 24950
Native American human remains and associated funerary objects:
Hood Museum of Art, NH; inventory from Lake Winnepesauke, NH, 24950
Peabody Museum of Archaeology and Ethnology, MA; inventory from Straits of Juan de Fuca, WA, 24950–24951

National Science Foundation
NOTICES
Meetings:
Computer and Information Science and Engineering Advisory Committee, 24963
Design, Manufacturing and Industrial Innovation Special Emphasis Panel, 24963
Engineering Education and Centers Special Emphasis Panel, 24963
Human Resource Development Special Emphasis Panel, 24963–24964
Networking and Communications Research and Infrastructure Special Emphasis Panel, 24964
Small Business Industrial Innovation Advisory Committee, 24964

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Georgia Institute of Technology; correction, 25016
Pathfinder Mines Corp., 24964
Rochester Gas & Electric Corp., 24965–24967
Saxton Nuclear Experimental Corp., 24964–24965

Office of United States Trade Representative
See Trade Representative, Office of United States

Personnel Management Office
NOTICES
Senior Executive Service:
Career reserved positions; 1995 list, 25018–25086

Presidential Documents
PROCLAMATIONS
Special observances:
Defense Transportation Day, National, and National Transportation Week (Proc. 6896), 25129–25130
EXECUTIVE ORDERS
Committees; establishment, renewal, termination, etc.:
National Carriers' Conference Committee of the National Railway Labor Conference; labor dispute (EO 13003), 25131–25133

ADMINISTRATIVE ORDERS
Mojave National Preserve; suspension of Subsection 119(a) Department of the Interior and Related Agencies Appropriations Act, 1996 (Memorandum of April 26, 1996), 24875

Prisons Bureau
RULES
Inmate control, custody, care, etc.:
Acts of violence and terrorism prevention, 25120–25121
Drug abuse treatment programs and early release consideration, 25121–25122

Public Health Service
See Food and Drug Administration

Research and Special Programs Administration
RULES
Hazardous materials:
Intrastate shippers and carriers; regulations compliance, 24904–24905

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 24976–24979
Chicago Board Options Exchange, Inc., 24979–24988
Chicago Stock Exchange, Inc., 24988–24989
MBS Clearing Corp., 24989–24990
Municipal Securities Rulemaking Board, 24990–24993
National Securities Clearing Corp., 24993–24995
Options Clearing Corp., 24995–24996
Applications, hearings, determinations, etc.:
Blue Chip Value Fund, Inc., 24967–24968
Emerging Markets Growth Fund, Inc., et al., 24968–24970
John Hancock Mutual Life Insurance Co. et al., 24970–24974
SAFECO Life Insurance Co. et al., 24974–24976

Social Security Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 24996

State Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 24996–24997
Environmental statements; availability, etc.:
Portal Pipe Line Company; pipeline to Canadian border, 24997–24998
Meetings:
Historical Diplomatic Documentation Advisory Committee, 24998
Shrimp trawl fishing; turtle protection guidelines; certification, 24998–24999

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Northwestern Pacific Railroad Authority, 25011–25012
Ormet Railroad Corp., 25012
Owensville Terminal Co., Inc., 25012
Railroad services abandonment:
CSX Transportation, Inc., 25012–25013

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Trade Representative, Office of United States
NOTICES
Intellectual property rights protection, countries denying; policies and practices:
China, 25000–25010
World Trade Organization:
Albania et al.; accessions, 24999–25000

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration
See Maritime Administration
See Research and Special Programs Administration
See Surface Transportation Board
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 25010
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 25010

Treasury Department
See Customs Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 25013–25015

Veterans Affairs Department
PROPOSED RULES
Adjudication, pensions, compensation, dependency, etc.:
Marriage dissolution; birth of child; death of family member; evidence of dependents and age requirements, 24910–24911

Separate Parts In This Issue

Part II
Office of Personnel Management, 25018–25086

Part III
Department of Transportation, Federal Transit Administration, 25088–25090

Part IV
Department of Energy, 25092–25103

Part V
Health and Human Services Department, Food and Drug Administration, 25106–25118

Part VI
Department of Justice, Bureau of Prisons, 25120–25122

Part VII
Housing and Urban Development Department, 25124–25125

Part VIII
The President, 25128–25133

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6896 25129
Executive Orders:
13003 25131
Administrative Orders:
Memorandums:
April 26, 1996 24875

7 CFR
959 24877

12 CFR
Proposed Rules:
614 24907

14 CFR
39 (4 documents) 24878, 24881, 24883, 24884

19 CFR
10 24887
12 24888
145 24888
161 24888

21 CFR
Proposed Rules:
530 25106

24 CFR
585 25124

28 CFR
58 24889
501 25120
550 25120

33 CFR
165 24892

38 CFR
Proposed Rules:
3 24910

40 CFR
180 24893
300 24894
Proposed Rules:
180 24911
186 24911

46 CFR
381 24895

47 CFR
64 24897

49 CFR
171 24904
173 24904
180 24904
639 25088

50 CFR
675 (3 documents) 24905

Federal Register
Vol. 61, No. 97
Friday, May 17, 1996

Presidential Documents

Title 3—

The President

Memorandum of April 26, 1996

Suspension of Subsection 119(a) of the Department of the Interior and Related Agencies Appropriations Act, 1996, ("Act") as set forth in Section 101(c) of Title I of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (H.R. 3019) Regarding the Mojave National Preserve

Memorandum for the Secretary of the Interior

By the authority vested in me by subsection 119(b) of the Department of the Interior and Related Agencies Appropriations Act, 1996, ("Act") as set forth in section 101(c) of title I of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (H.R. 3019), and section 301 of title 3, United States Code, I hereby suspend subsection 119(a) of the Act because I have determined that such suspension is appropriate based upon the public interest in sound environmental management, sustainable resource use, protection of national or locally-affected interests, and protection of cultural, biological, or historic resources.

This suspension shall take effect immediately and shall continue until subsection 119(a) expires.

You are authorized and directed to report this suspension to the Congress and to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, April 26, 1996.

[FR Doc. 96–12571
Filed 5–16–96; 8:45 am]
Billing code 4310–70–M

Rules and Regulations

Federal Register
Vol. 61, No. 97
Friday, May 17, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV95–959–3FR]

Onions Grown in South Texas; Change in Regulatory Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the end of the regulatory period for onions grown in South Texas under Marketing Order 959 from June 15 to June 4 of each year. Terminating the handling regulation on June 4 will relieve restrictions on handlers who ship late season onions and help them become more competitive with handlers from non-marketing order areas without diminishing South Texas marketing order objectives. A corresponding change in the dates for the import regulation also will be made in a second document. This final rule also includes a conforming change recognizing that the onions previously defined as "Extra large" are now defined as "Colossal" under the U.S. grade standards for onions.

EFFECTIVE DATE: June 4, 1996.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Marketing Order Administration Branch, F&V, AMS, USDA, 1313 E. Hackberry, McAllen, TX 78501; telephone: 210–682–2833; FAX 210–682–5942; or Robert F. Matthews, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: 202–690–0464; FAX 202–720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 143 and Marketing Order No. 959 (7 CFR part 959), as amended, regulating the handling of onions grown in South Texas, hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary will rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 35 handlers of South Texas onions who are subject to regulation under the marketing order and 89 producers in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of South Texas onions may be classified as small entities.

At a public meeting on November 8, 1994, the South Texas Onion Committee (committee) unanimously recommended, under the authority of § 959.52(c) of the order, changing the termination date of the regulatory period for all varieties of regulated onions from June 15 to June 4. Currently, order regulations are in effect from March 1 through June 15 each year. The early and mid-season crop is produced in the Lower Rio Grande Valley (District 1), which generally accounts for about 80 percent of the total. The remaining crop, generally 20 percent, is produced in the Laredo-Winter Garden area of South Texas (District 2). These are the last regulated shipments to leave the production area each season.

In April 1994, based on a committee recommendation, the regulatory period was extended from May 20 to June 15 (59 FR 17265; April 12, 1994). At that time, the committee believed that the application of quality control requirements over a longer time was necessary to enhance the South Texas onion industry's market research and promotion efforts, and protect its quality image. The committee also believed that District 2 handlers should pay assessments on more of their shipments for the research and promotion programs that benefit the entire industry.

After one season's experience, District 2 growers and handlers requested the committee to reconsider the regulatory extension. Shipments made from District 2 compete with onions produced in West Texas and other areas of the United States not regulated under Federal marketing orders. Onion prices are usually quite low during this period and unregulated areas have a competitive advantage over District 2 because inspection costs for quality control purposes and administrative assessments are not incurred by shippers from these areas. Ending regulations on June 4, rather than June

15, will relieve restrictions on District 2 shippers and help them become more competitive with shippers from these production areas without diminishing program objectives.

Section 8e provides that whenever certain specified commodities, including onions, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity, subject to concurrence by the United States Trade Representative. The Act further provides that when two or more marketing orders covering the same commodity are concurrently in effect, imports will be subject to the requirements established for the commodity grown in the area with which the imported commodity is in most direct competition. Because this rule changes the regulatory period under the South Texas onion marketing order, corresponding changes will be needed in the onion import regulations. Such changes are addressed in a separate onion import rule.

The proposed rule concerning this action was published in the February 20, 1996, **Federal Register** (61 FR 6328), with a 30-day comment period ending March 21, 1996. One comment was received in opposition to the proposed rule from a packer. The commenter stated that both South Texas and Idaho-Eastern Oregon successfully compete with onion producing areas that are not regulated. He further stated that he believed that the order was necessary to improve quality and thus make the production area a stronger competitor in the onion industry. The committee contends that this competition tends to bring about low prices to the late producing areas, and sometimes the addition of an administrative assessment and inspection fee may leave the shipper of late season South Texas onions at a competitive disadvantage. Thus, the committee believes that removing inspection and assessment requirements for a very short period will help shippers of late onions meet the competition from production areas outside of South Texas without diminishing program objectives.

After thoroughly analyzing the comment received and other available information, the Department has concluded that ending the regulatory period on June 4, rather than June 15, as recommended by the committee will reduce the regulatory burden on late season shippers and help them compete more effectively with shippers from unregulated areas in the United States without adversely affecting the overall objectives of the marketing order. As mentioned earlier, onion prices are usually quite low late in the season and unregulated areas have a competitive advantage over the late season shippers from South Texas because inspection costs for quality control purposes and administrative assessments are not incurred by shippers from many of these areas.

This final rule also changes the name of the largest size classification of onions under the handling regulation (7 CFR 959.322(b)(5)) from "Extra large" to "Colossal" to bring that designation into conformity with the designation used in the U.S. Standards for Grades of Bermuda-Granex-Grano Type Onions (7 CFR 51.3195–51.3209), and the U.S. Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types) (7 CFR 51.2830–51.2854). The standards were revised effective October 10, 1995 (60 FR 46976). One of the revisions was the addition of a new size classification called "Colossal" for onions 3¾ inches or larger in diameter. A conforming change failed to be made in the handling regulations and onions of this size continued to be referred to as "Extra large" in paragraph (b)(5) of section 959.322. Hence, this term should be changed to "Colossal" to bring the handling regulation into conformity with the standards. The committee recommended this minor conforming change.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

Based on the above, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the commenter, committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C 553, it is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This regulation relaxes restrictions on South Texas onion handlers by ending regulations on June 4 of each season rather than June 15 of each season; (2) the shipping season for South Texas onions has already begun and the committee would like this action effective for this season; (3) changing the ending date of the handling regulation was discussed at a public meeting, and all interested persons had an opportunity to provide input; and (4) there are no additional regulatory burdens imposed by this rule which require special preparations of handlers.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is hereby amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 959.322, the introductory text and paragraph (b)(5) are revised to read as follows:

§ 959.322 Handling regulation.

During the period beginning March 1 and ending June 4, no handler shall handle any onions unless they comply with paragraphs (a) through (d), or (e), or (f) of this section. In addition, no handler may package or load onions on Sunday during the period March 1 through May 20.

* * * * *

(b) * * *

(5) "Colossal"—3¾ inches or larger in diameter.

* * * * *

Dated: May 14, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–12434 Filed 5–16–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–CE–62–AD; Amendment 39–9621; AD 96–10–14]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) PA31, PA31P, and PA31T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 88–05–05, which currently requires the following on certain The New Piper Aircraft, Inc. (Piper) PA31, PA31P, and PA31T series airplanes: repetitively inspecting both the left and right main landing gear (MLG) forward sidebrace, and replacing any cracked MLG forward sidebrace. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate or, in certain instances, reduce the number of certain repetitive short-interval inspections when improved parts or modifications are available. This action retains the current repetitive inspection and necessary replacement requirements contained in AD 88–05–05, and requires incorporating both a left and right MLG forward sidebrace of improved design as terminating action for the repetitive inspection requirement. The actions specified in this AD are intended to prevent the MLG from retracting because of a cracked MLG forward side brace, which, if not detected and corrected, could result in gear collapse and loss of control of the airplane during landing operations.

DATES: Effective June 27, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 27, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 90–CE–62–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Events Leading to the AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Piper PA31, PA31P, and PA31T series airplanes was published in the **Federal Register** on December 7, 1995 (60 FR 62776). The action proposed to supersede AD 88–05–05 with a new AD that would (1) retain the requirement of repetitively inspecting both the left and right MLG forward sidebrace for cracks, and replacing any cracked MLG forward sidebrace; and (2) require replacing both the left and right MLG forward sidebrace with a part of improved design, part number (P/N) 85165–02 (left) and 85165–03 (right) or P/N 85166–02 (left) and 85166–03 (right), as applicable, as terminating action for the repetitive inspection requirement. Accomplishment of the proposed inspections would be in accordance with Piper Service Bulletin No. 845A, dated October 9, 1987. The improved MLG forward sidebrace installations would be accomplished in accordance with the applicable maintenance manual.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 2,384 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 8 workhours per airplane to accomplish the required replacement, and that the average labor rate is approximately $60 an hour. Parts cost approximately $1,000 per airplane (2 MLG forward sidebraces per airplane at approximately $500 per sidebrace). Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $3,528,320 or $1,480 per airplane. This figure is based on the assumption that no affected airplane owner/operator has accomplished the required replacement.

Piper has informed the FAA that parts have been distributed to owners/operators to equip 2,123 of the affected airplanes (4,246 MLG forward sidebraces of improved design). Assuming that each set of parts has been installed on an affected airplane, the cost impact of the required replacement upon U.S. owners/operators of the affected airplanes is reduced by $3,142,040 from $3,528,320 to $386,280.

The FAA's Aging Commuter Class Aircraft Policy

This AD is part of the FAA's aging commuter class airplane policy, which briefly states that, when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. The FAA believes that a large number of the remaining 261 affected airplanes (2,384 affected airplanes – 2,123 airplanes with a set of parts distributed) that will be affected by this AD are operated in various types of air transportation. This includes scheduled passenger service, air cargo, and air taxi.

This AD allows 1,200 hours time-in-service (TIS) after the effective date of the AD before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in air transportation is between 25 to 40 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation will have to accomplish the required replacement within 7 to 12 months after the AD becomes effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this allows 6 to 12 years before the required replacement will be mandatory.

The FAA established the 1,200 hours TIS replacement compliance time based on its engineering evaluation of the problem. Among the issues examined during this engineering evaluation were analysis of service difficulty reports, the difficulty level of the inspection, and how critical the situation would be if cracks occurred in the subject area despite accomplishment of the repetitive inspections.

Usually, the FAA establishes the mandatory design modification compliance time on AD's affecting aging commuter-class airplanes upon the accumulation of a certain number of hours TIS on the airplane. For this action, the FAA is mandating the replacement for all operators "within the next 1,200 hours TIS after the effective date of this AD." The total TIS levels of the airplane fleet vary from under 1,000 hours TIS to over 5,000 hours TIS, and annual accumulation rates vary from 50 hours TIS to over 1,000 hours TIS. Establishing a long-term set compliance time of hours TIS accumulated on Piper PA31, PA31P, and PA31T series airplanes (such as 5,000 hours TIS) imposes an undue burden on the manufacturer of having to maintain a supply of replacement parts for the entire fleet when many airplanes in the fleet may never reach this compliance time.

Instead, the FAA believes that Piper should maintain parts for several years; in this case about 12 years to allow low-usage airplanes time to accumulate the 1,200 hours TIS after the effective date of the AD. The FAA has determined that the compliance time of this AD provides the level of safety required for commuter air service while still minimizing the impact on the private airplane owners of Piper PA31, PA31P, and PA31T series airplanes.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 88–05–05, Amendment 39–5861, and by adding a new AD to read as follows:

96–10–14 The New Piper Aircraft, Inc. (formerly Piper Aircraft Corporation): Amendment 39–9621; Docket No. 90–CE–62–AD. Supersedes AD 88–05–05, Amendment 39–5861.

Applicability: The following model and serial number airplanes, certificated in any category, that do not have left and right main landing gear (MLG) forward sidebraces of improved design installed, part numbers (P/N) 85165–02 (left) and 85165–03 (right) or P/N 85166–02 (left) and 85166–03 (right).

Models	Serial Nos.
PA31, PA31–300, and PA31–325.	31–2 through 31–8312019.
PA31–350	31–5001 through 31–8553002.
PA31P	31P–2 through 31P–7730012.
PA31P–350	31P–8414001 through 31P–8414050.
PA31T	31T–7400002 through 31T–8120104.
PA31T1	31T–7804001 through 31T–8304003 and 31T–1104004 through 31T–1104017.
PA31T2	31T–8166001 through 31T–8166076 and 31T–1166001 through 31T–1166008.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent the MLG from retracting because of a cracked MLG forward side brace, which, if not detected and corrected, could result in gear collapse and loss of control of the airplane during landing operations, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (compliance with AD 88–05–05), and thereafter at intervals not to exceed 100 hours TIS until the modification required by paragraph (d) of this AD is incorporated, inspect (using dye penetrant methods) both the left and right MLG sidebraces for cracks. Accomplish the inspections in accordance with the INSTRUCTIONS section of Piper Service Bulletin No. 845A, dated October 9, 1987.

(b) The initial dye penetrant inspection type must be utilized for all future repetitive inspections. Dye penetrant inspection types consist of Type I: fluorescent; Type II: non-fluorescent or visible dye; and Type III: dual sensitivity.

(c) If cracks are found during any of the inspections required in paragraph (a) of this AD, prior to further flight, replace the cracked MLG sidebrace with a part of improved design, P/N 85165–02 (left) or 85165–03 (right) or P/N 85166–02 (left) or 85166–03 (right), as applicable. Accomplish this replacement in accordance with the applicable maintenance manual.

(d) Within the next 1,200 hours TIS after the effective date of this AD, unless already accomplished as required by paragraph (c) of this AD, replace both the left and right MLG side braces with parts of improved design, P/N 85165–02 (left) and 85165–03 (right) or P/N 85166–02 (left) and 85166–03 (right), as applicable. Accomplish these replacements in accordance with the applicable maintenance manual.

(e) Installing both the left and right MLG side braces with parts of improved design, P/N 85165–02 (left) and 85165–03 (right) or P/N 85166–02 (left) and 85166–03 (right), as applicable, as required by paragraph (d) of this AD is considered terminating action for the repetitive inspection requirement of this AD.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Note 3: Alternative methods of compliance approved in accordance with AD 88–05–05 (superseded by this AD) are not considered approved for this AD.

(h) The inspection required by this AD shall be done in accordance with Piper Service Bulletin No. 845A, dated October 9, 1987. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The New Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(i) This amendment (39–9621) supersedes AD 88–05–05, Amendment 39–5861.

(j) This amendment (39–9621) becomes effective on June 27, 1996.

Issued in Kansas City, Missouri, on May 8, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–12390 Filed 5–16–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 90–CE–63–AD; Amendment 39–9622; AD 96–10–15]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) Models PA31, PA31–300, PA31–325, and PA31–350 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 80–14–06, which currently requires the following on The New Piper Aircraft, Inc. (Piper) Models PA31, PA31–300, PA31–325, and PA31–350 airplanes: repetitively inspecting the outboard flap tracks, wing rib flanges, and the rear spar web at Wing Station (WS) 147.5 on each wing, and modifying the area at WS 147.5 on both wings if any cracks are found as terminating action for the repetitive inspection requirement. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate or, in certain instances, reduce the number of certain repetitive short-interval inspections when improved parts or modifications are available. This action retains the repetitive inspection requirement of AD 80–14–06, and requires modifying the area at WS 147.5 on both wings as terminating action for the repetitive inspection requirement. The actions specified in this AD are intended to prevent structural failure under certain load conditions caused by cracked areas at WS 147.5, which, if not detected and corrected, could result in loss of control of the airplane.

DATES: Effective June 27, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 27, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 90–CE–63–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Events Leading to the AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Piper Models PA31, PA31–300, PA31–325, and PA31–350 airplanes was published in the **Federal Register** on December 7, 1995 (60 FR 62779). The action proposed to supersede AD 80–14–06 with a new AD that would (1) retain the requirement of repetitively inspecting the outboard flap track, wing rib flanges, and the rear spar web at WS 147.5 for cracks, and, if any cracks are found, modifying the area at WS 147.5 by incorporating Piper Kit 763 986 as terminating action for the repetitive inspection requirement; and (2) require incorporating Piper Kit 763 986 at a specified hours TIS time-period for airplanes where no cracks were found during the inspections as terminating action for the repetitive inspection requirement. Accomplishment of the modification would be in accordance with the instructions included with Piper Kit 763 986, Revised April 15, 1991, as referenced in Piper SB No. 647A, dated November 24, 1980.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 2,906 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 30 workhours per airplane to accomplish the required modification, and that the average labor rate is approximately $60 an hour. Parts cost approximately $468 per airplane. Based on these figures, the total cost impact of the required modification on U.S. operators is estimated to be $6,590,808 or $2,268 per airplane. This figure is based on the assumption that no affected airplane owner/operator has accomplished the required modification.

Piper has informed the FAA that parts have been distributed to enough owners/operators to equip 234 of the affected airplanes. Assuming that each set of parts has been installed on an affected airplane, the cost impact of this AD upon U.S. owners operators of the affected airplanes is reduced by $530,712 from $6,590,808 to $6,060,096.

The FAA's Aging Commuter Class Aircraft Policy

This AD is part of the FAA's aging commuter class airplane policy, which briefly states that, when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. The FAA believes that a large number of the remaining 2,672 affected airplanes (2,906 airplanes—234 sets of parts distributed) that will be affected by this AD are operated in various types of air transportation. This includes scheduled passenger service, air cargo, and air taxi.

This AD allows 1,000 hours time-in-service (TIS) after the effective date of the AD before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in air transportation is between 25 to 40 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation will have to accomplish the required modification within 6 to 10 months after this AD becomes effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this allows 5 to 10 years before the required modification is mandatory.

The FAA established the 1,000 hours TIS modification compliance time based on its engineering evaluation of the problem. Among the issues examined during this engineering evaluation were analysis of service difficulty reports, the

difficulty level of the inspection, and how critical the situation would be if cracks occurred in the subject area despite accomplishment of the repetitive inspections.

Usually, the FAA establishes the mandatory design modification compliance time on AD's affecting aging commuter-class airplanes upon the accumulation of a certain number of hours TIS on the airplane. For this action, the FAA is mandating the modification for all operators "within the next 1,000 hours TIS after the effective date of this AD." The total TIS levels of the airplane fleet vary from under 1,000 hours TIS to over 5,000 hours TIS, and annual accumulation rates vary from 50 hours TIS to over 1,000 hours TIS. Establishing a long-term set compliance time of hours TIS accumulated on a Piper Model PA31, PA31–300, PA31–325, or PA31–350 airplane (such as 5,000 hours TIS) imposes an undue burden on the manufacturer of having to maintain a supply of replacement parts for the entire fleet when many airplanes in the fleet may never reach this compliance time.

Instead, the FAA believes that Piper should maintain parts for several years; in this case about 10 years to allow low-usage airplanes time to accumulate the "1,000 hours TIS after the effective date of the AD." The FAA has determined that the compliance time of this AD provides the level of safety required for commuter air service while still minimizing the impact on the private airplane owners of Piper Models PA31, PA31–300, PA31–325, and PA31–350 airplanes.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 80–14–06, Amendment 39–3805, and by adding a new AD to read as follows:

96–10–15 The New Piper Aircraft, Inc. (formerly Piper Aircraft Corporation): Amendment 39–9622; Docket No. 90–CE–63–AD. Supersedes AD 80–14–06, Amendment 39–3805.

Applicability: The following model and serial number airplanes, certificated in any category, that do not have Piper Kit 763 986 incorporated in the area of Wing Station (WS) 147.5:

Models	Serial Nos.
PA31 and PA31–300.	31–2 through 31–8012010.
PA31–325	31–7512006 through 31–8012010.
PA31–350	31–5001 through 31–8052025.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent structural failure under certain load conditions caused by cracked areas at WS 147.5, which, if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (compliance with AD 80–14–06), and thereafter at intervals not to exceed 100 hours TIS until the modification required by paragraph (b) or (c) of this AD is incorporated, inspect the outboard flap tracks, wing rib flanges, and the rear spar web on both wings in the area of WS 147.5 by accomplishing the following:

(1) Lower the flaps to 40 degrees.

(2) Inspect the attachment of the flap track rib to the rear spar on the inboard and outboard sides of the flap track using 10-power magnification.

(3) Remove the rectangular access plate from the bottom wing skin. The rectangular access plate is located forward of the wing spar at WS 153.

(4) Inspect the WS 147.5 rib attachment angle using 10-power magnification.

Note 2: The 100-hour TIS repetitive inspection interval was established to coincide with regularly scheduled maintenance.

(b) If cracks are found during any of the inspections required in paragraph (a) of this AD, prior to further flight, incorporate Piper Kit 763 986 in accordance with the instructions included with Piper Kit 763 986, Revised April 15, 1991, as referenced in Piper SB No. 647A, dated November 24, 1980.

(c) Within the next 1,000 hours TIS after the effective date of this AD, unless already accomplished as required by paragraph (b) of this AD, incorporate Piper Kit 763 986 in the area of WS 147.5. Accomplish this action in accordance with the instructions included with Piper Kit 763 986, Revised April 15, 1991, as referenced in Piper SB No. 647A, dated November 24, 1980.

(d) Incorporating Piper Kit 763 986 as required by paragraphs (b) and (c) of this AD is considered terminating action for the repetitive inspection requirement of this AD.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Note 4: Alternative methods of compliance approved in accordance with AD 80–14–06 (superseded by this action) are not considered approved as alternative methods of compliance with this AD.

(g) The modification required by this AD shall be done in accordance with the instructions included with Piper Kit 763 986, Revised April 15, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The New Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment (39–9622) supersedes AD 80–14–06, Amendment 39–3805.

(i) This amendment (39–9622) becomes effective on June 27, 1996.

Issued in Kansas City, Missouri, on May 8, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–12389 Filed 5–16–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–CE–18–AD; Amendment 39–9626; AD 96–11–01]

RIN 2120–AA64

Airworthiness Directives; Jetstream Aircraft Limited; Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Jetstream Aircraft Limited (JAL) Jetstream Models 3101 and 3201 airplanes. This action requires modifying the automatic airframe de-ice system to allow the wing and tail de-ice boots to automatically operate through one cycle. The present system repeats the wing de-ice boot inflation cycle before starting to inflate the tail de-ice boots. Reports of ice accumulating on the tail faster than the automatic tail de-ice boots inflate on the affected airplanes prompted this action. The actions specified by this AD are intended to prevent excessive ice accretion on the tail or wings of the affected airplanes, which could result in loss of control of the airplane.

DATES: Effective July 2, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 2, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from Jetstream Aircraft Limited, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, D.C. 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–18–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Dorenda Baker, Program Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (32 2) 508.2715; facsimile (32 2) 230.6899; or Mr. Jeffrey Morfitt, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64105; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to JAL Jetstream Models 3101 and 3201 airplanes was published in the **Federal Register** on February 21, 1996 (61 FR 6583). The action proposed to require modifying the automatic airframe de-ice system to allow the wing and tail de-ice boot systems to automatically operate through one cycle. Accomplishment of the proposed modification would be in accordance with Jetstream Service Bulletin 30–JK 12033, Revision No. 1, dated October 20, 1995.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

Comment Resolution

The commenter supports the proposal, but recommends that the final rule not become effective until after May 1, 1996. The commenter explains that this is necessary to ensure parts delivery and subsequent scheduling of the modification within the compliance time. The issuance of this AD is well after May 1, 1996, and the subsequent effective date of the final rule gives this commenter ample time to accomplish the modification.

No comments were received regarding the FAA's determination of the cost impact on the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 260 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 5 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $50 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $91,000. This figure is based on the assumption that no owner/operator of the affected airplanes has accomplished the required modification.

Jetstream has informed the FAA that parts have been distributed to owners/operators to equip approximately 22 of the affected airplanes. Assuming that each set of parts is installed on an affected airplane, the cost impact of this AD upon U.S. owners/operators of the affected airplanes is reduced $7,700 from $91,000 to $83,300.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the

Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

96–11–01 Jetstream Aircraft Limited: Amendment 39–9626; Docket No. 95–CE–18–AD.

Applicability: Jetstream Models 3101 and 3201 airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 1,000 hours time- in-service after the effective date of this AD, unless already accomplished.

To prevent excessive ice accretion on the tail or wings of the affected airplanes, which could result in loss of control of the airplane, accomplish the following:

(a) Modify the automatic airframe de-ice system in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Service Bulletin No. 30–JK 12033, Revision No. 1, dated October 20, 1995.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office (ACO), Europe, Africa, Middle East office, FAA, c/o American Embassy, B–1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels ACO.

(d) The inspections required by this AD shall be done in accordance with Jetstream Service Bulletin No. 30–JK 12033, Revision No. 1, dated October 20, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC, 20041–6029. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment (39–9626) becomes effective on July 2, 1996.

Issued in Kansas City, Missouri, on May 10, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–12496 Filed 5–16–96; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 39

[Docket No. 95–CE–79–AD; Amendment 39–9627; AD 96–11–02]

RIN 2120–AA64

Airworthiness Directives; Jetstream Aircraft Limited (Formerly British Aerospace, Regional Airlines Limited) HP137 Mk1, Jetstream Series 200, and Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Jetstream Aircraft Limited (JAL) HP137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplanes. This action requires repetitively inspecting the spigot housing plate for cracks at the wing/fuselage forward attachment sliding joint, replacing any cracked housing plate, repetitively inspecting the spigots and spigot posts for corrosion and installing improved spigots if corrosion is found that exceeds certain limits, and eventually installing improved spigots if corrosion that does not exceed certain limits is found. For certain affected airplanes, this action requires repetitively inspecting the spigot bushes for migration gaps, replacing the bushes with modified bushes if gaps are found that exceed 0.5 inch, and eventually replacing the bushes with modified bushes if migration gaps are not found. Reports of bush migration gaps found on three of the affected airplanes and another report of corrosion and several cracks found on the spigot housing plate on a Jetstream Model 3101 airplane prompted this action. The actions specified by this AD are intended to prevent structural failure of the wing/fuselage area caused by a cracked or corroded spigot housing assembly.

DATES: Effective July 2, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 2, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from Jetstream Aircraft Limited, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, D.C. 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–79–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Dorenda Baker, Program Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (32 2) 508.2715; facsimile (32 2) 230.6899; or Mr. Jeffrey Morfitt, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64105; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to JAL HP137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplanes was published in the **Federal Register** on January 19, 1996 (61 FR

1295). The action proposed to require repetitively inspecting the spigot housing plate for cracks at the wing/fuselage forward attachment sliding joint, replacing any cracked housing plate, repetitively inspecting the spigots and spigot posts for corrosion and installing improved spigots if corrosion is found, and eventually installing improved spigots if corrosion is not found. For certain affected airplanes, the proposed action would require repetitively inspecting the spigot bushes for migration gaps, replacing the bushes with modified bushes if gaps are found that exceed 0.5 inch, and eventually replacing the bushes with modified bushes if migration gaps are not found. Accomplishment of the proposed inspections would be in accordance with BAe Jetstream Alert Service Bulletin (ASB) 57–A–JA 920640, dated February 19, 1993; and Jetstream Service Bulletin (SB) 57–JA 930941, Revision 2, dated November 11, 1994. Accomplishment of the proposed modifications would be in accordance with BAe Jetstream SB 57–JM 5259, dated February 5, 1993, and Erratum No. 1 to SB 57–JM 5259, dated February 8, 1993; and Jetstream SB 57–JM 5326, dated September 3, 1993.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received from two different commenters. One of these commenters supports the proposal as written.

Comment Resolution

JAL states that the corrosion limits specified in paragraphs (b)(1) and (b)(2) of the AD only specify the spigot posts. JAL further states that Jetstream SB 57–JA 930941, Revision No. 2, dated November 11, 1994, also specifies corrosion limits for the spigots. JAL requests that these corrosion limits and applicable service bulletin instructions be added to the final rule. The FAA concurs and has revised the AD accordingly.

JAL also recommends that the repetitive inspection interval be changed to 48 calendar months instead of 12 calendar months to coincide with Jetstream SB 57–JA 93041. The FAA established the initial inspection in the proposal at 12 calendar months and meant to establish the repetitive inspection interval at 48 calendar months, but inadvertently established the repetitive inspection interval at 12 calendar months. The FAA's analysis of data initially submitted by JAL indicates that repetitively inspecting the spigot housing area for cracks and corrosion at 48 calendar month intervals provides the level of safety necessary to correct the unsafe condition. The final rule AD has been revised to reflect this change.

JAL asks whether an owner/operator who found a cracked spigot housing plate could apply for an alternative method of compliance to allow 150 flight hours before installation rather than prior to further flight when a crack is found that is shorter than 0.2 inch. JAL states that this would allow the owner/operator of the affected airplane time to obtain the necessary parts, and also states that fatigue tests have demonstrated slow crack growth. The FAA allows any owner/operator to submit a request for an alternative method of compliance, including an extension of the compliance time. The owner/operator should submit the request with all substantiating data in accordance with the provisions in the AD. The FAA will evaluate each request to determine whether the alternative method of compliance establishes an equivalent level of safety to the actions of the AD, and then will either approve or reject the request accordingly.

No comments were received regarding the FAA's estimate of the cost impact on the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the changes previously discussed and minor editorial corrections. The FAA has determined that these changes and minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Aspects of the Action

The alternative to incorporating new modified spigots and bushes would be to require repetitive inspections. FAA aging commuter-class aircraft policy states that reliance on critical repetitive inspections carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. Therefore, the required spigot and bush replacements is consistent with the FAA's commuter-class aircraft policy.

The compliance times of the repetitive inspections of the spigots and spigot posts for corrosion and subsequent replacement, if necessary, are presented in calendar time instead of hours time-in-service (TIS). Corrosion can occur on airplanes regardless of whether the airplane is in service or in storage. Therefore, to ensure that corrosion is detected and corrected on all airplanes within a reasonable period of time without inadvertently grounding any airplanes, a compliance schedule based upon calendar time instead of hours TIS is utilized.

Cost Impact

The FAA estimates that 143 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 61 workhours per airplane to accomplish the inspections and modifications, and that the average labor rate is approximately $60 an hour. Parts cost approximately $320 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $569,140 or $3,980 per airplane. This figure only takes into account the cost of initial inspections and does not take into account repetitive inspection costs. The FAA has no way of determining the number of repetitive inspections each affected airplane owner/operator will incur over the life of the airplane.

The approximately 61 workhours it will take to accomplish the required actions is based on each inspection and modification being accomplished separately. The FAA anticipates that many owners/operators of the affected airplanes will schedule all of the required actions to be accomplished at the same time, thereby reducing the labor costs associated with accomplishing these actions.

In addition, Jetstream Aircraft Limited has informed the FAA that parts have been distributed to equip approximately 40 airplanes. Assuming that each set of parts is installed on an affected HP137 Mk1, Jetstream series 200, or Jetstream Model 3101 airplane, the cost impact of this AD upon U.S. operators is reduced $159,200 from $569,140 to $409,940.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a

substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

96–11–02 Jetstream Aircraft Limited: Amendment 39–9627; Docket No. 95–CE–79–AD.

Applicability: HP137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplanes (all serial numbers), certificated in any category.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

To prevent structural failure of the wing/fuselage area caused by a cracked spigot housing assembly, accomplish the following:

(a) For all affected airplanes, upon the accumulation of 7,200 hours time-in-service (TIS) or within the next 1,200 hours TIS after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 7,200 hours TIS, accomplish the following:

(1) Inspect the spigot housing plate at the wing/fuselage forward attachment sliding joint for cracks in accordance with Part 1 of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream Service Bulletin (SB) 57–JA 930941, Revision No. 2, dated November 11, 1994.

(2) If a cracked spigot housing plate is found, prior to further flight, replace the cracked spigot housing plate in accordance with Part 3 of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 57–JA 930941, Revision No. 2, dated November 11, 1994.

(3) Replacing the spigot housing plate does not eliminate the 7,200-hour TIS interval repetitive inspection requirement.

(b) For all affected airplanes, within the next 12 calendar months after the effective date of this AD, and thereafter at intervals not to exceed 48 calendar months until Modification No. JM 5326 and Modification No. JM 5259 (as applicable) are incorporated as required by paragraphs (d)(1) and (d)(2) of this AD, inspect the spigots and spigot posts for corrosion in accordance with Part 2 of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 57–JA 930941, Revision No. 2, dated November 11, 1994.

(1) If corrosion damage is found in the spigot post that is 0.06 inch (1.52 mm) or less deep and does not extend to within 0.9 inch (22.9 mm) from either end of the bore, prior to further flight, treat the corrosion in accordance with paragraph (8)(d) of the ACCOMPLISHMENT INSTRUCTIONS section of Jetstream SB 57–JA 930941, Revision No. 2, dated November 11, 1994.

(2) If corrosion damage in the spigot post is found that is more than 0.06 inch (1.52 mm) or extends to within 0.9 inch (22.9 mm) from either end of the bore, prior to further flight, obtain a repair scheme from the manufacturer through the Brussels Aircraft Certification Office (ACO) at the address specified in paragraph (g) of this AD, and incorporate this repair scheme.

(3) If corrosion damage in the spigot is found that penetrates the protective surface of the spigot, within four calendar months after finding the corrosion damage, replace both wing/fuselage spigots with new modified spigots (Modification No. JM 5326) in accordance with Jetstream SB 57–JM 5326, dated September 3, 1993. Modification No. JM 5326 incorporates a new P/N 13781B401 spigot assembly.

(c) For all affected HP137 Mk1 airplanes and all effected Jetstream series 200 airplanes, and Jetstream Model 3101 airplanes with a serial number in the range of 601 through 702 (inclusive), within the next 1,200 hours TIS after the effective date of this AD, inspect the wing/fuselage forward attachment spigot bushes for migration gaps in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of BAe Jetstream Alert SB 57–A–JA 920640, dated February 19, 1993.

(1) If no migration gaps are found, reinspect at intervals not to exceed 4,500 hours TIS until Modification No. JM 5259 is incorporated. If migration gaps are found upon reinspection, install modified bushes as specified in paragraph (c)(2) or (c)(3) of this AD.

(2) If migration gaps are found that are 0.5 inch or less, reinspect at intervals not to exceed 900 hours TIS until Modification No. JM 5259 is incorporated. If migration gaps are found upon reinspection that are larger than .5 inch, accomplish paragraph (c)(3) of this AD, as applicable.

(3) If migration gaps are found that are larger than 0.5 inch, within 150 hours TIS after the last inspection required by paragraph (c)(1) or (c)(2) of this AD, install modified bushes at the wing/fuselage forward attachment spigots (Modification JM 5259) in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of BAe Jetstream SB 57–JM 5259, dated February 5, 1993, and Erratum No. 1 to SB 57–JM 5259, dated February 8, 1993.

(d) Upon accumulating 25,000 hours TIS or within 1,000 hours TIS after the effective date of this AD, whichever occurs later, accomplish the following:

(1) For all affected HP137 Mk1, Jetstream series 200, and Jetstream Model 3101 airplanes, replace both wing/fuselage spigots with new modified spigots (Modification No. JM 5326) in accordance with Jetstream SB 57–JM 5326, dated September 3, 1993; and

(2) For all affected HP137 Mk1 airplanes and all affected Jetstream series 200 airplanes, and Jetstream Model 3101 airplanes with a serial number in the range of 601 through 702 (inclusive), install modified bushes at the wing/fuselage forward attachment spigots (Modification No. JM 5259) in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of BAe Jetstream SB 57–JM 5259, dated February 5, 1993, and Erratum No. 1 to SB 57–JM 5259, dated February 8, 1993.

(3) Incorporating Modification No. JM 5259 eliminates the requirement of repetitively inspecting the wing/fuselage forward attachment spigot bushes for migration gaps as required by all designations of paragraph (c) of this AD.

(e) Incorporating both Modification No. JM 5326 and Modification No. JM 5259 eliminates the repetitive inspections required by all designations of paragraphs (b) and (c) of this AD. This does not eliminate the repetitive inspections of the spigot housing plate as required by paragraph (a) of this AD.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office (ACO), Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels ACO.

(h) The inspections required by this AD shall be done in accordance with BAe Jetstream Alert Service Bulletin 57–A–JA 920640, dated February 19, 1993; and Jetstream Service Bulletin 57–JA 930941, Revision 2, dated November 11, 1994. The modifications required by this AD shall be done in accordance with BAe Jetstream Service Bulletin 57–JM 5259, dated February 5, 1993, and Erratum No. 1 to Service Bulletin 57–JM 5259, dated February 8, 1993; and Jetstream Service Bulletin 57–JM 5326, dated September 3, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC, 20041–6029. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(i) This amendment (39–9627) becomes effective on July 2, 1996.

Issued in Kansas City, Missouri, on May 10, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–12497 Filed 5–16–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 96–41]

RIN 1515–AB04

Removal of Customs Regulations Relating to the Steel Voluntary Restraint Arrangement Program

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: On September 13, 1990, T.D. 90–70 was published in the **Federal Register** (55 FR 37701) to set forth interim amendments to the Customs Regulations regarding the entry requirements applicable to imported steel products which are subject to voluntary restraint arrangements negotiated between the United States and certain steel-exporting countries. This document removes those interim regulations as a consequence of the expiration of the steel voluntary restraint arrangement program.

EFFECTIVE DATE: May 17, 1996.

FOR FURTHER INFORMATION CONTACT: Frank Crowe, Office of Field Operations (202–927–0164).

SUPPLEMENTARY INFORMATION:

Background

On September 13, 1990, Customs published in the **Federal Register** T.D. 90–70, 55 FR 37701, which amended Part 10 of the Customs Regulations (19 CFR Part 10) by setting forth interim regulations concerning entry requirements applicable to imported steel products subject to voluntary restraint arrangements (VRAs) negotiated between the United States and certain steel-exporting countries and enforced under the Steel Import Stabilization Act (title VIII of Public Law 98–573, codified at 19 U.S.C. 2253 note), as amended by the Steel Trade Liberalization Program Implementation Act (Public Law 101–221, 103 Stat. 1886). The interim regulations consisted of new §§ 10.321–10.323 (19 CFR 10.321–10.323) and set forth, in § 10.323, the basic requirement that a valid and properly executed original export certificate or export license, issued by the country of origin of the products, shall be submitted at the time of entry of each shipment of arrangement products. The interim regulations went into effect on the date of publication. On October 22, 1990, Customs published a document in the **Federal Register** at 55 FR 42556 to correct the interim regulations by removing paragraph (d) from new interim section 10.323, with effect from September 13, 1990. No document was ever published in the **Federal Register** adopting the interim regulations as a final rule.

As noted in the background discussion set forth in T.D. 90–70, section 3(a) of the Steel Trade Liberalization Program Implementation Act, cited above, extended the President's authority to enforce the VRAs until March 31, 1992, and it was for this reason that § 10.322(a) of the interim regulations, in defining the term "arrangement" for purposes of § 10.323, referred specifically to a period extending only through that date. Thus, in the absence of a further extension of the President's authority and a consequential amendment to the interim regulations, it was intended that those regulations would by their own terms cease to have effect after March 31, 1992.

Since no action was taken by Congress to extend the President's VRA enforcement authority beyond March 31, 1992, that authority, and thus in effect the VRA program itself, expired on that date and Customs thereafter ceased to enforce the interim regulatory provisions. Accordingly, because those interim regulations no longer have any purpose or effect, Customs believes that it is appropriate to remove them.

Inapplicability of Notice and Delayed Effective Date Requirements

Since this amendment merely conforms the Customs Regulations to current legal requirements and has no substantive effect on the public, pursuant to the provisions of 5 U.S.C. 553(b)(B), it is determined that notice and public procedures thereon are unnecessary. For the same reasons, it is determined under the provisions of 5 U.S.C. 553(d)(3) that good cause exists for dispensing with a delayed effective date.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities because the amendment merely removes regulatory provisions that have already ceased to have legal effect. Accordingly, the amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspections, Imports, Steel products.

Amendments to the Regulations

Accordingly, for the reasons set forth above, Part 10, Customs Regulations (19 CFR Part 10), is amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 continues to read as follows, and the specific authority citation for §§ 10.321 through 10.323 is removed:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

§ 10.321 through 10.323 [Removed]

2. Sections 10.321 through 10.323 and their center heading are removed.

George J. Weise,

Commissioner of Customs.

Approved: April 29, 1996.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 96–12372 Filed 5–16–96; 8:45 am]

BILLING CODE 4820–02–P

---

19 CFR Parts 12, 145, and 161

[T.D. 96–42]

RIN 1515–AB91

Prohibited/Restricted Merchandise; Enforcement of Foreign Assets Control Regulations

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to more clearly provide that Customs enforces the laws and regulations of the Office of Foreign Assets Control (OFAC) of the Department of the Treasury regarding economic sanctions applicable to those countries that have been designated by the President as constituting a threat to the national security, foreign policy, or economy of the United States. Currently, the Customs Regulations refer to OFAC regulations only in the context of merchandise arriving by mail. This document clarifies that Customs enforces the laws and regulations administered by OFAC regardless of how subject merchandise, services, and technology arrive in or depart from the U.S.

EFFECTIVE DATE: May 17, 1996.

FOR FURTHER INFORMATION CONTACT: Louis Alfano, Office of Field Operations, Commercial Enforcement Branch, (202) 927–0005.

SUPPLEMENTARY INFORMATION:

Background

As part of Customs continuing effort to ensure that its regulations are informative and up-to-date, Customs has determined that its regulations do not clearly set forth the fact that Customs enforces the laws and regulations administered by the Office of Foreign Assets Control (OFAC) of the Department of the Treasury (31 CFR Chapter V). These laws include the Trading With the Enemy Act (50 U.S.C. App. 1–44), the National Emergencies Act (50 U.S.C. 1641 *et seq.*), the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), and the International Security and Development Cooperation Act (22 U.S.C. 2349aa8–9); the regulations are found at Chapter V of Title 31 of the Code of Federal Regulations (Money and Finance) (31 CFR Chapter V). These laws and regulations impose prohibitions or restrictions on importations, exportations, and other transactions involving funds, merchandise, services, and technology with and of those countries that have been designated by the President, pursuant to applicable statutory provisions. Currently, the Customs Regulations refer to OFAC regulations only in part 145 of the Customs Regulations (19 CFR Part 145), the provisions of which apply only to merchandise arriving by mail. This document clarifies that Customs enforces the laws and regulations administered by OFAC regardless of how the subject merchandise, services, and technology arrive in or depart from the U.S. by amending three sections in as many parts to provide further notice to the public of Customs enforcement obligations concerning the application of economic sanctions to designated countries.

In reviewing § 145.56 of the Customs Regulations (19 CFR 145.56), which concerns the applicability of OFAC controls on merchandise arriving by mail, Customs has determined that the listing of countries subject to controls administered by OFAC is not up-to-date. (The list of countries in the section has not been updated since the section was promulgated in 1973 and is outdated and inconsistent with OFAC regulations: two of the four countries currently listed are no longer subject to OFAC's controls (North Vietnam (now Vietnam) and Rhodesia (now Zimbabwe)) and other countries that have since been designated by the President as subject to sanctions have not been added to the list). Each time the President sanctions and lifts sanctions on designated countries, OFAC amends its regulations accordingly. Repeating the list of sanctioned countries in the Customs Regulations merely duplicates the efforts of OFAC and, if not done timely, could result in future inconsistencies between OFAC and Customs Regulations. Accordingly, Customs has determined that to avoid the possibility of future inconsistencies between OFAC and Customs Regulations in the listing of sanctioned countries, Customs will no longer set forth such a list in its regulations, but will simply refer readers to the OFAC regulations. Thus, in amending § 145.56, this document retains the procedural provisions, but removes the listing of countries subject to economic sanctions.

This document also clarifies the extent of Customs responsibility in enforcing OFAC controls by adding sections regarding OFAC controls in both Part 12, which concerns regulations of various Federal agencies which Customs enforces and special classes of merchandise, and in Part 161, which concerns general enforcement provisions. A new § 12.150 is added to Part 12, which cross-references OFAC regulations at 31 CFR Chapter V, explains how OFAC regulations work, and provides an address for further information from OFAC. Also, a specific authority citation is added to account for Customs import (19 U.S.C. 1595a(c)) and export (22 U.S.C 401) seizure authority and to account for the terms and conditions for release (19 U.S.C. 1618). Section 161.2 is amended to list OFAC as an agency whose laws are enforced by Customs. Also, the parenthetical legal authority citations at the end of § 161.2 are amended to account for changes in the law since 1972, when the citations were first provided, and are placed under the general authority citation at the beginning of Part 161.

Inapplicability of Public Notice and Comment Requirements, Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Because this amendment merely provides further notice to the public that Customs enforces the laws and regulations administered by the Office of Foreign Assets Control of the Department of the Treasury, pursuant to 5 U.S.C. 553(b)(B), good cause exists for dispensing with notice and public procedure thereon as unnecessary. For the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1) and (d)(3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

List of Subjects

19 CFR Part 12

Customs duties and inspection, Economic sanctions, Imports, Licensing, Prohibited merchandise, Restricted merchandise, Reporting and recordkeeping requirements, Sanctions, Seizure and forfeiture.

19 CFR Part 145

Customs duties and inspection, Imports, Mail, Postal service, Prohibited merchandise, Restricted merchandise, Reporting and recordkeeping requirements, Seizure and forfeiture.

19 CFR Part 161

Customs duties and inspection, Imports, Law enforcement.

Amendments to the Regulations

For the reasons stated above, parts 12, 145, and 161 of the Customs Regulations (19 CFR parts 12, 145, and 161), are amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for Part 12 continues and a specific authority citation for new § 12.150 is added to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Section 12.150 also issued under 19 U.S.C. 1595a and 1618; 22 U.S.C. 401.

2. Part 12 is amended by adding a centerheading and new § 12.150 to read as follows:

Merchandise Subject to Economic Sanctions

§ 12.150 Merchandise prohibited by economic sanctions; detention; seizure or other disposition; blocked property.

(a) *Generally.* Merchandise from certain countries designated by the President as constituting a threat to the national security, foreign policy, or economy of the United States shall be detained until the question of its release, seizure, or other disposition has been determined under law and regulations issued by the Treasury Department's Office of Foreign Assets Control (OFAC) (31 CFR Chapter V).

(b) *Seizure.* When an unlicensed importation of merchandise subject to OFAC's regulations is determined to be prohibited, no entry for any purpose shall be permitted and, unless the immediate reexportation or other disposition of such merchandise under Customs supervision has previously been authorized by OFAC, the merchandise shall be seized.

(c) *Licenses.* OFAC's regulations may authorize OFAC to issue licenses on a case-by-case basis authorizing the importation of otherwise prohibited merchandise under certain conditions. If such a license is issued subsequent to the attempted entry and seizure of the merchandise, importation shall be conditioned upon the importer:

(1) Agreeing in writing to hold the Government harmless, and

(2) Paying any storage and other Customs fees, costs, or expenses, as well as any mitigated forfeiture amount or monetary penalty imposed or assessed by Customs or OFAC, or both.

(d) *Blocked property.* Merchandise which constitutes property in which the government or any national of certain designated countries has an interest may be blocked (frozen) pursuant to OFAC's regulations and may not be transferred, sold, or otherwise disposed of without an OFAC license.

(e) *Additional information.* For further information concerning importing merchandise prohibited under economic sanctions programs currently in effect, the Office of Foreign Assets Control of the Department of the Treasury should be contacted. The address of that office is 1500 Pennsylvania Ave., N.W., Annex 2nd Floor, Washington, D.C. 20220.

PART 145—MAIL IMPORTATIONS

1. The general authority citation for Part 145 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624;

* * * * *

§ 145.56 [Amended]

2. Section 145.56 is amended by removing the words "North Korea, North Vietnam, Cuba, or Rhodesia" and adding, in their place, the words "certain designated countries"; and by adding the parenthetical words "(See also 19 CFR 12.150)" at the end of the section before the period.

PART 161—GENERAL ENFORCEMENT PROVISIONS

1. The general authority citation for Part 161 is revised, and a specific authority citation for section 161.2 is added, to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1600, 1619, 1624, 1646a;

Section 161.2 also issued under 12 U.S.C. 95a; 18 U.S.C. 545; 19 U.S.C. 1595(a); 22 U.S.C. 401, 1934, 2349aa8–9;

42 U.S.C. 1804, 1807; 50 U.S.C. 1641 *et seq.*, 1701 *et seq.*;

50 U.S.C. App. 1–44, 2411.

* * * * *

2. Section 161.2 is amended by adding paragraph (a)(3) and removing the parenthetical authority citations at the end of the section. The revision reads as follows:

§ 161.2 Enforcement for other agencies.

(a) * * *

(1) * * *

(2) * * *

(3) Importations, exportations, and transactions involving identified goods, services, and technology with any of those countries designated as subject to economic sanctions under the laws and regulations administered by the Office of Foreign Assets Control of the Department of the Treasury.

* * * * *

Michael H. Lane,

Acting Commissioner of Customs.

Approved: April 8, 1996.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 96–12373 Filed 5–16–96; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF JUSTICE

28 CFR Part 58

United States Trustees; Guidelines Relating to the Bankruptcy Reform Act of 1994

AGENCY: Department of Justice.

ACTION: Final internal procedural guidelines.

SUMMARY: The Department of Justice is establishing internal procedural guidelines for reviewing applications for compensation and reimbursement of expenses filed by case trustees and professionals under section 330 of Title 11, United States Code. These procedural guidelines are not intended to supersede local rules, but are to be read as complementing the procedures set forth in local rules.

To keep all published rules, regulations, and guidelines pertaining to the United States Trustee Program in one section of the Code of Federal Regulations, the title to 28 CFR 58 will be amended to include the Bankruptcy Reform Act of 1994.

EFFECTIVE DATE: January 30, 1996.

FOR FURTHER INFORMATION CONTACT: Martha L. Davis, General Counsel, or Kathleen Dunivin Schmitt, Attorney, (202) 307–1399. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This action is in response to the Bankruptcy Reform Act of 1994, which amended 28 U.S.C. 586(a)(3)(A) to direct United States Trustees to review applications for compensation and reimbursement of expenses in accordance with procedural guidelines adopted by the Executive Office for United States Trustees. The guidelines are to be applied uniformly by the United States Trustees, except when circumstances warrant different treatment.

Executive Order 12866

These guidelines have been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Director, Executive Office for United States Trustees, has determined that these guidelines are not a "significant regulatory action" under Executive Order 12866 section 3(f), Regulatory Planning and Review. These guidelines pertain to the internal management of the Department and as such are not subject to central Office of Management and Budget review pursuant to section 6 of Executive Order 12866. Accordingly, these guidelines have not been reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

Regulatory Flexibility Act

The Director, Executive Office for United States Trustees, in accordance with the Regulatory Flexibility Act (5 U.S.C. § 605(b)), has reviewed these guidelines and by approving them certifies that these guidelines will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 58

Bankruptcy, Trusts, and Trustees.

For the reasons set forth in the preamble, the Department of Justice proposes to amend 28 CFR part 58 as follows:

PART 58—REGULATIONS RELATING TO THE BANKRUPTCY REFORM ACTS OF 1978 AND 1994

1. The heading of Part 58 is revised to read as set forth above.

2. The authority citation for Part 58 continues to read as follows:

Authority: 28 U.S.C. 509, 510, 586(e), 588(d).

3. Appendix A is added to Part 58 to read as follows:

Appendix A to Part 58—Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. 330

(a) *General Information.* (1) The Bankruptcy Reform Act of 1994 amended the responsibilities of the United States Trustees under 28 U.S.C. 586(a)(3)(A) to provide that, whenever they deem appropriate, United States Trustees will review applications for compensation and reimbursement of expenses under section 330 of the Bankruptcy Code, 11 U.S.C. 101, et seq. ("Code"), in accordance with procedural guidelines ("Guidelines") adopted by the Executive Office for United States Trustees ("Executive Office"). The following Guidelines have been adopted by the Executive Office and are to be uniformly applied by the United States Trustees except when circumstances warrant different treatment.

(2) The United States Trustees shall use these Guidelines in all cases commenced on or after October 22, 1994.

(3) The Guidelines are not intended to supersede local rules of court, but should be read as complementing the procedures set forth in local rules.

(4) Nothing in the Guidelines should be construed:

(i) To limit the United States Trustee's discretion to request additional information necessary for the review of a particular application or type of application or to refer any information provided to the United States Trustee to any investigatory or prosecutorial authority of the United States or a state;

(ii) To limit the United States Trustee's discretion to determine whether to file comments or objections to applications; or

(iii) To create any private right of action on the part of any person enforceable in litigation with the United States Trustee or the United States.

(5) Recognizing that the final authority to award compensation and reimbursement under section 330 of the Code is vested in the Court, the Guidelines focus on the disclosure of information relevant to a proper award under the law. In evaluating fees for professional services, it is relevant to consider various factors including the following: the time spent; the rates charged; whether the services were necessary to the administration of, or beneficial towards the completion of, the case at the time they were rendered; whether services were performed within a reasonable time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and whether compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in non-bankruptcy cases. The Guidelines thus reflect standards and procedures articulated in section 330 of the Code and Rule 2016 of the Federal Rules of Bankruptcy Procedure for awarding compensation to trustees and to professionals employed under section 327 or 1103. Applications that contain the information requested in these Guidelines will facilitate review by the Court, the parties, and the United States Trustee.

(6) Fee applications submitted by trustees are subject to the same standard of review as are applications of other professionals and will be evaluated according to the principles articulated in these Guidelines. Each United States Trustee should establish whether and to what extent trustees can deviate from the format specified in these Guidelines without substantially affecting the ability of the United States Trustee to review and comment on their fee applications in a manner consistent with the requirements of the law.

(b) *Contents of Applications for Compensation and Reimbursement of Expenses.* All applications should include sufficient detail to demonstrate compliance with the standards set forth in 11 U.S.C. § 330. The fee application should also contain sufficient information about the case and the applicant so that the Court, the creditors, and the United States Trustee can review it without searching for relevant information in other documents. The following will facilitate review of the application.

(1) Information about the Applicant and the Application. The following information should be provided in every fee application:

(i) Date the bankruptcy petition was filed, date of the order approving employment, identity of the party represented, date services commenced, and whether the applicant is seeking compensation under a provision of the Bankruptcy Code other than section 330.

(ii) Terms and conditions of employment and compensation, source of compensation, existence and terms controlling use of a retainer, and any budgetary or other limitations on fees.

(iii) Names and hourly rates of all applicant's professionals and paraprofessionals who billed time, explanation of any changes in hourly rates from those previously charged, and statement of whether the compensation is based on the customary compensation charged by comparably skilled practitioners in cases other than cases under title 11.

(iv) Whether the application is interim or final, and the dates of previous orders on interim compensation or reimbursement of expenses along with the amounts requested and the amounts allowed or disallowed, amounts of all previous payments, and amount of any allowed fees and expenses remaining unpaid.

(v) Whether the person on whose behalf the applicant is employed has been given the opportunity to review the application and whether that person has approved the requested amount.

(vi) When an application is filed less than 120 days after the order for relief or after a prior application to the Court, the date and terms of the order allowing leave to file at shortened intervals.

(vii) Time period of the services or expenses covered by the application.

(2) Case Status. The following information should be provided to the extent that it is known to or can be reasonably ascertained by the applicant:

(i) In a chapter 7 case, a summary of the administration of the case including all moneys received and disbursed in the case, when the case is expected to close, and, if applicant is seeking an interim award, whether it is feasible to make an interim distribution to creditors without prejudicing the rights of any creditor holding a claim of equal or higher priority.

(ii) In a chapter 11 case, whether a plan and disclosure statement have been filed and, if not yet filed, when the plan and disclosure statement are expected to be filed; whether all quarterly fees have been paid to the United States Trustee; and whether all monthly operating reports have been filed.

(iii) In every case, the amount of cash on hand or on deposit, the amount and nature of accrued unpaid administrative expenses, and the amount of unencumbered funds in the estate.

(iv) Any material changes in the status of the case that occur after the filing of the fee

application should be raised, orally or in writing, at the hearing on the application or, if a hearing is not required, prior to the expiration of the time period for objection.

(3) Summary Sheet. All applications should contain a summary or cover sheet that provides a synopsis of the following information:

(i) Total compensation and expenses requested and any amount(s) previously requested;

(ii) Total compensation and expenses previously awarded by the court;

(iii) Name and applicable billing rate for each person who billed time during the period, and date of bar admission for each attorney;

(iv) Total hours billed and total amount of billing for each person who billed time during billing period; and

(v) Computation of blended hourly rate for persons who billed time during period, excluding paralegal or other paraprofessional time.

(4) Project Billing Format. (i) To facilitate effective review of the application, all time and service entries should be arranged by project categories. The project categories set forth in Exhibit A should be used to the extent applicable. A separate project category should be used for administrative matters and, if payment is requested, for fee application preparation.

(ii) The United States Trustee has discretion to determine that the project billing format is not necessary in a particular case or in a particular class of cases. Applicants should be encouraged to consult with the United States Trustee if there is a question as to the need for project billing in any particular case.

(iii) Each project category should contain a narrative summary of the following information:

(A) a description of the project, its necessity and benefit to the estate, and the status of the project including all pending litigation for which compensation and reimbursement are requested;

(B) identification of each person providing services on the project; and

(C) a statement of the number of hours spent and the amount of compensation requested for each professional and paraprofessional on the project.

(iv) Time and service entries are to be reported in chronological order under the appropriate project category.

(v) Time entries should be kept contemporaneously with the services rendered in time periods of tenths of an hour. Services should be noted in detail and not combined or "lumped" together, with each service showing a separate time entry; however, tasks performed in a project which total a de minimis amount of time can be combined or lumped together if they do not exceed .5 hours on a daily aggregate. Time entries for telephone calls, letters, and other communications should give sufficient detail to identify the parties to and the nature of the communication. Time entries for court hearings and conferences should identify the subject of the hearing or conference. If more than one professional from the applicant firm attends a hearing or conference, the applicant should explain the need for multiple attendees.

(5) Reimbursement for Actual, Necessary Expenses. Any expense for which reimbursement is sought must be actual and necessary and supported by documentation as appropriate. Factors relevant to a determination that the expense is proper include the following:

(i) Whether the expense is reasonable and economical. For example, first class and other luxurious travel mode or accommodations will normally be objectionable.

(ii) Whether the requested expenses are customarily charged to non-bankruptcy clients of the applicant.

(iii) Whether applicant has provided a detailed itemization of all expenses including the date incurred, description of expense (e.g., type of travel, type of fare, rate, destination), method of computation, and, where relevant, name of the person incurring the expense and purpose of the expense. Itemized expenses should be identified by their nature (e.g., long distance telephone, copy costs, messengers, computer research, airline travel, etc.) and by the month incurred. Unusual items require more detailed explanations and should be allocated, where practicable, to specific projects.

(iv) Whether applicant has prorated expenses where appropriate between the estate and other cases (e.g., travel expenses applicable to more than one case) and has adequately explained the basis for any such proration.

(v) Whether expenses incurred by the applicant to third parties are limited to the actual amounts billed to, or paid by, the applicant on behalf of the estate.

(vi) Whether applicant can demonstrate that the amount requested for expenses incurred in-house reflect the actual cost of such expenses to the applicant. The United States Trustee may establish an objection ceiling for any in-house expenses that are routinely incurred and for which the actual cost cannot easily be determined by most professionals (e.g., photocopies, facsimile charges, and mileage).

(vii) Whether the expenses appear to be in the nature nonreimbursable overhead. Overhead consists of all continuous administrative or general costs incident to the operation of the applicant's office and not particularly attributable to an individual client or case. Overhead includes, but is not limited to, word processing, proofreading, secretarial and other clerical services, rent, utilities, office equipment and furnishings, insurance, taxes, local telephones and monthly car phone charges, lighting, heating and cooling, and library and publication charges.

(viii) Whether applicant has adhered to allowable rates for expenses as fixed by local rule or order of the Court.

Exhibit A—Project Categories

Here is a list of suggested project categories for use in most bankruptcy cases. Only one category should be used for a given activity. Professionals should make their best effort to be consistent in their use of categories, whether within a particular firm or by different firms working on the same case. It would be appropriate for all professionals to discuss the categories in advance and agree generally on how activities will be categorized. This list is not exclusive. The application may contain additional categories as the case requires. They are generally more applicable to attorneys in chapter 7 and chapter 11, but may be used by all professionals as appropriate.

Asset Analysis and Recovery: Identification and review of potential assets including causes of action and non-litigation recoveries.

Asset Disposition: Sales, leases (§ 365 matters), abandonment and related transaction work.

Business Operations: Issues related to debtor-in-possession operating in chapter 11 such as employee, vendor, tenant issues and other similar problems.

Case Administration: Coordination and compliance activities, including preparation of statement of financial affairs; schedules; list of contracts; United States Trustee interim statements and operating reports; contacts with the United States Trustee; general creditor inquiries.

Claims Administration and Objections: Specific claim inquiries; bar date motions; analyses, objections and allowances of claims.

Employee Benefits/Pensions: Review issues such as severance, retention, 401K coverage and continuance of pension plan.

Fee/Employment Applicants: Preparation of employment and fee applications for self or others; motions to establish interim procedures.

Fee/Employment Objections: Review of and objections to the employment and fee applications of others.

Financing: Matters under §§ 361, 363 and 364 including cash collateral and secured claims; loan document analysis.

Litigation: There should be a separate category established for each matter (e.g., XYZ Litigation).

Meetings of Creditors: Preparing for and attending the conference of creditors, the § 341(a) meeting and other creditors' committee meetings.

Plan and Disclosure Statement: Formulation, presentation and confirmation; compliance with the plan confirmation order, related orders and rules; disbursement and case closing activities, except those related to the allowance and objections to allowance of claims.

Relief From Stay Proceedings: Matters relating to termination or continuation of automatic stay under § 362.

The following categories are generally more applicable to accountants and financial advisors, but may be used by all professionals as appropriate.

Accounting/Auditing: Activities related to maintaining and auditing books of account, preparation of financial statements and account analysis.

Business Analysis: Preparation and review of company business plan; development and review of strategies; preparation and review of cash flow forecasts and feasibility studies.

Corporate Finance: Review financial aspects of potential mergers, acquisitions and disposition of company or subsidiaries.

Data Analysis: Management information systems review, installation and analysis, construction, maintenance and reporting of significant case financial data, lease rejection, claims, etc.

Litigation Consulting: Providing consulting and expert witness services relating to various bankruptcy matters such as insolvency, feasibility, avoiding actions, forensic accounting, etc.

Reconstruction Accounting: Reconstructing books and records from past transactions and bringing accounting current.

Tax Issues: Analysis of tax issues and preparation of state and federal tax returns.

Valuation: Appraise or review appraisals of assets.

Dated: April 25, 1996.

Joseph Patchan,

Director.

[FR Doc. 96–11799 Filed 5–16–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach, CA 96–008]

RIN 2115–AA97

Safety Zone; Long Beach Harbor, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule with request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the United States in the vicinity of the South East side of Pier "J" in the Long Beach Outer Harbor, California. The event requiring the establishment of this safety zone is the Pier "J" breakwater construction project. Duration of this project is estimated to be 11 months. A safety zone is necessary to safeguard recreational and commercial craft from the dangers of the construction project and to prevent interference with the vessels engaged in these operations. The safety zone includes all waters within the boundaries defined by the line connecting the following coordinates:

Latitude	*Longitude*
33° 44.5'N.	118° 11.2'W.
33° 44.5'N.	118° 10.9'W.
33° 44.3'N.	118° 10.8'W.
33° 44.0'N.	118° 10.8'W.
33° 44.0'N.	118° 11.1'W.

Entry into, transit through, or anchoring within the safety zone by vessels or persons other than those engaged in the construction project, or vessels servicing the Maersk terminal is prohibited unless authorized by the Captain of the Port.

DATES: Effective Date: This rule is effective at 12:01 a.m. PDT on April, 24, 1996 and will remain in effect until 12:01 a.m. PST on March 31, 1997, unless cancelled earlier by the Captain of the Port Los Angeles-Long Beach, Ca.

Comments: Comments on this regulation must be received by June 17, 1996.

ADDRESSES: Comments should be mailed to Commanding Officer, Coast Guard Marine Safety Office, 165 N. Pico Avenue, Long Beach, Ca 90802. Comments received will be available for inspection and copying within the Port Safety Division at MSO Los Angeles-Long Beach. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Daniel J. Walsh, Port Safety and Security Division, Marine Safety Office Los Angeles-Long Beach, (310) 980–4454.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Following normal rulemaking procedures could not be done in a timely fashion in that the Coast Guard was not approached concerning the necessity for implementation of a safety zone until late in the planning process. The actual stipulations of the safety zone were not finalized until a date fewer than 30 days prior to the start of the project.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under **ADDRESSES** in this preamble. Those providing comments should identify the docket number (COTP Los Angeles-Long Beach, CA; 96–008) for the regulation and also include their name, address, and reason(s) for each comment presented. Persons wanting acknowledge of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

Based upon the comments received, the scope of the regulation may be changed.

Discussion of Regulation

The project to construct a breakwater around the Pier "J" Maersk terminal entrance has already been initiated. A safety zone is necessary to safeguard recreational and commercial craft from the dangers of the construction project and to prevent interference with vessels engaged in these operations. This safety zone will be enforced by U.S. Coast Guard personnel. The Coast Guard Auxiliary and the Long Beach Lifeguards will assist in the enforcement of the safety zone. Persons and vessels are prohibited from entering into, transiting through, or anchoring within the safety zone unless authorized by the Captain of the Port of his designated representative.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary. The safety zone does not extend into the vessel traffic lanes. It will have little or no impact on commercial vessels transiting through the harbor.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632). As discussed in the "Regulatory Evaluation" section, because it expects the impact of this regulation to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*).

Federalism

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2. of Commandant Instruction M16475.1B it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security Measures, Waterways.

Regulation

In consideration of the foregoing, Subpart F of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for 33 CFR part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A new section 165.T11–058 is added to read as follows:

§ 165.T1158 Safety zone: Long Beach Harbor, CA

(a) *Location.* All waters within the boundaries defined by the line connecting the following coordinates are established as a safety zone (Datum: NAD 83):

Latitude	*Longitude*
33° 44.5′ N	118° 11.2′ W.
33° 44.5′ N	118° 10.9′ W.
33° 44.3′ N	118° 10.8′ W.
33° 44.0′ N	118° 10.8′ W.
33° 44.0′ N	118° 11.1′ W.

(b) *Effective Date.* This section is effective at 12:01 a.m. PDT on April 24, 1996. It will remain in effect until 12:01 a.m. PDT on March 31, 1997 unless cancelled earlier by the Captain of the Port.

(c) *Regulations.* The general regulations governing safety zones contained in 33 CFR 165.23 apply. No person or vessel may enter or remain within the designated zones without the permission of the Captain of the Port Los Angeles-Long Beach, California or his representative.

Dated: April 24, 1996.

E.E. Page,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach, California.

[FR Doc. 96–12427 Filed 5–16–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 5F4445/R2235; FRL–5366–4]

Allyl Isothiocyanate as a Component of Food Grade Oil of Mustard; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement for a tolerance for residues of the insecticide and repellent, Allyl isothiocyanate (as a component of food grade Oil of Mustard), in or on all raw agricultural commodities, when applied according to approved labeling. Champon 100% Natural Products, Inc. of Boca Raton, Florida, requested this exemption.

EFFECTIVE DATE: This regulation becomes effective May 17, 1996.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [[PP 5F4445/R2235], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 5F4445/R2235]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Forrest, Product Manager (PM) 14, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703) [305–6600].

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 25, 1995, (60 FR 54689), EPA issued a notice that Champon 100% Natural Products, Inc., had submitted pesticide petition (PP) 5F4445 to EPA proposing to amend 40 CFR part 180 by establishing a regulation pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), "... to establish an exemption from the requirement of a tolerance for allyl isothiocyanate (a component of oil of mustard) in or on all fruits and vegetables, nuts, berries, and grains." There were no public comments received as a result of the publication of the notice of filing.

Allyl isothiocyanate, the subject of this exemption request, is a component of Oil of Mustard. The Agency has registered this active ingredient as a dog or cat repellent since 1962. Then, in 1991, the Agency registered three products as an insecticide and repellent to Champon 100% Natural Products for non-food/non-feed uses. This exemption request expands the use of this active ingredient for food/feed uses.

The Agency has evaluated the data and other relevant material submitted with the petition or obtained from other sources. These data and material show that:

1. Allyl isothiocyanate, as a component of oil of mustard, is on the Food and Drug Administration (FDA) Generally Recognized as Safe (GRAS) list (21 CFR 182.10, 182.20, 582.10 and 582.20).

2. Oil of Mustard, as a component of household Yellow Mustard and Brown Mustard, has been used in a variety of food products [baked goods, oils, meats, processed vegetables, snack foods, soups, nut products, and gravies at concentrations up to 18,344 parts per million (ppm)], for a long time, without any known deleterious health effects.

3. The Acute Oral LD_{50} for Allyl isothiocyanate, in rats, is 339 mg/kg body weight (Toxicity Category II). An end-use formulation, as applied, contains only 0.2% Allyl isothiocyanate, which represents a 500-fold dilution of active ingredient.

4. The Acute Oral LD_{50} for Oil of Mustard, in rats, is 14.8 g/kg body weight (Toxicity Category IV).

The toxicology data and other information provided are sufficient to demonstrate that there are no fpreseeable human health hazards likely to arise from the use of the insecticide, Allyl isothiocyanate (as a component of food grade Oil of Mustard), in or all raw agricultural commodities.

This pesticide/repellent is considered useful for the purpose for which the exemption from tolerance is sought and capable of achieving its physical or technical effect.

Based on the information considered, the Agency concludes that establishment of a tolerance is not necessary to protect the public health. Therefore, the exemption from tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review. In addition, this action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 8, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346A and 371.

2. By adding § 180.1167 to subpart D to read as follows:

§ 180.1167 Allyl isothiocyanate as a component of food grade oil of mustard; exemption from the requirement of a tolerance.

The insecticide and repellent Allyl isothiocyanate is exempt from the requirement of a tolerance for residues when used as a component of food grade oil-of mustard, in or on all raw agricultural commodities, when applied according to approved labeling.

[FR Doc. 96–12351 Filed 5–16–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 300

[FRL–5507–3]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deletion of the A.L. Taylor Superfund Site, Brooks, Kentucky from the National Priorities List.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces the deletion of the A.L. Taylor Superfund Site in Brooks, Kentucky, from the National Priorities List (NPL) (Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP)). EPA and the Commonwealth of Kentucky have determined that all appropriate Fund-financed responses under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, have been implemented and that no further cleanup is appropriate. Moreover, EPA and the Commonwealth of Kentucky determined that response actions conducted at the site to date have been protective of public health, welfare, and the environment. This deletion does not preclude future action under Superfund.

EFFECTIVE DATE: June 1, 1996.

FOR FURTHER INFORMATION CONTACT: Liza Montalvo, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, North Superfund Remedial Branch, 345 Courtland Street NE., Atlanta, GA 30365, (404) 347–7791, extension 2030.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: A.L. Taylor Superfund Site, Brooks, Kentucky.

A Notice of Intent to Delete for this site was published in July, 1988. A Revised Notice of Intent to Delete was published on March 8, 1996 (FRL–5436–8). The closing date for comments on the Revised Notice of Intent to Delete was April 17, 1996. EPA received no comments.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action in the future. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recorkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: May 6, 1996.

A. Stanley Meiburg,

Acting Regional Administrator, USEPA Region 4.

For reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757; 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B to Part 300—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the site A.L. Taylor, Brooks, Kentucky.

[FR Doc. 96–12485 Filed 5–16–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 381

[Docket No. R–165]

RIN 2133–AB25

Cargo Preference—U.S.-Flag Vessels; Available U.S.-Flag Commercial Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: This amendment to the cargo preference regulations of the Maritime Administration (MARAD) provides that during the five year period beginning with the 1996 Great Lakes shipping season when the St. Lawrence Seaway is in use, MARAD will consider the legal requirement for the carriage of bulk agricultural commodity preference cargoes on privately-owned "available" U.S.-flag commercial vessels to have been satisfied where the cargo is initially loaded at a Great Lakes port on one or more U.S.-flag or foreign-flag vessels, transferred to a U.S.-flag commercial vessel at a Canadian transshipment point outside the St. Lawrence Seaway, and carried on that U.S.-flag vessel to a foreign destination. This provision will allow U.S. Great Lakes ports to compete for certain bulk agricultural commodity preference cargoes under agricultural assistance programs administered by the U.S. Department of Agriculture (USDA) and the U.S. Agency for International Development (USAID). This rule will extend that policy for an additional five years, after which the Agency would assess the merits of making the rule permanent. MARAD issued substantially identical rules in 1994 and 1995 related to the Great Lakes Shipping season for each of those years, respectively.

EFFECTIVE DATE: May 17, 1996.

FOR FURTHER INFORMATION CONTACT: John E. Graykowski, Deputy Maritime Administrator for Inland Waterways and Great Lakes, Maritime Administration, Washington, DC, Telephone (202)366–1718.

SUPPLEMENTARY INFORMATION: United States law at sections 901(b) and 901b, Merchant Marine Act, 1936, as amended (the "Act"), 46 App. U.S.C. 1241(b) and 1241f, requires that at least 75 percent of certain agricultural product cargoes "impelled" by Federal programs (preference cargoes), and transported by sea, be carried on privately-owned United States-flag commercial vessels, to the extent that such vessels "are available at fair and reasonable rates for United States-flag commercial vessels, in such manner as will insure a fair and reasonable participation of United States-Flag commercial vessels in such cargoes by geographical areas." The Secretary of Transportation wishes to administer that program so that all ports and port ranges, including U.S. Great Lakes ports, may participate in the carriage of preference cargoes under five programs administered by the United States Department of Agriculture (USDA) and United States Agency for International Development (USAID), pursuant to Titles I, II and III of the Agricultural Trade Development and Assistance Act of 1954, as amended; P.L. 480 (7 U.S.C. 1701–1727); the Agricultural Act of 1949, as amended (7 U.S.C. 2791(c)); and the Food for Progress Act of 1985, as amended (7 U.S.C. 1736).

Prior Rulemakings

On August 18, 1994, MARAD published a final rule on this subject in the **Federal Register** (59 FR 40261). That rule stated that it was intended to allow U.S. Great Lakes ports to participate with ports in other U.S. port ranges in the carriage of bulk agricultural commodity preference cargoes. It stated that dramatic changes in shipping conditions have occurred since 1990, including the disappearance of any all-U.S.-flag commercial ocean-going bulk cargo service to foreign countries from U.S. Great Lakes ports. The static configuration of the St. Lawrence Seaway system and the evolving greater size of commercial vessels contributed to the disappearance of any all-U.S.-flag service.

No bulk grain preference cargo has moved on U.S.-flag vessels out of the Great Lakes since 1989, with the exception of one trial shipment in 1993. Under the Food Security Act of 1985, Public Law 99–198, codified at 46 app. U.S.C. 1241f(c)(2), a certain minimum amount of Government-impelled cargo was required to be allocated to Great Lakes ports during the Great Lakes shipping seasons of 1986, 1987, 1988 and 1989. That "set-aside" expired in 1989, and was not renewed by the Congress. The disappearance of

Government-impelled agricultural cargo flowing from the Great Lakes coincided with the expiration of the Great Lakes "set-aside."

At the time of the opening of the 1994 Great Lakes shipping season on April 5, 1994, the Great Lakes did not have any all-U.S.-flag ocean freight capability for carriage of bulk preference cargo. The absence of any all-U.S.-flag ocean freight capability on the Great Lakes continues to this day. In contrast, the total export nationwide by non-liner vessels of USDA and USAID agricultural assistance program cargoes subject to cargo preference in the 1994–1995 cargo preference year (the latest program year for which figures are available) amounted to 6.2 million metric tons, of which 4.9 million (78 percent) was transported on U.S.-flag vessels.

As predicted by numerous commenters, the timing of the 1994 final rule, published on August 18, 1994, did not allow for a true trial period since it actually extended for less than one-half of the 1994 Great Lakes Shipping season. Because of the long lead time required for arranging shipments of bulk agriculture commodity preference cargoes, there apparently was no real opportunity for U.S.-flag vessel operators to make the necessary arrangements and bid on preference cargoes. Accordingly, MARAD proposed to extend this policy to the 1995 Great Lakes shipping season and issued a final rule that was published in the **Federal Register** on May 9, 1995 (60 FR 24560).

Great Lakes participation in cargo preference shipments under the five programs administered by the USDA and USAID could be significantly improved if foreign-flag feeder vessels were authorized to transport bulk grain commodities from Great Lakes ports to Canadian transshipment points for export on oceangoing U.S.-flag bulk carriers to the final destination port. MARAD issued its 1994 and 1995 final rules to authorize the use of foreign-flag feeder vessels for the transportation of bulk agricultural commodities cargoes from the Great Lakes ports to Canadian transshipment ports outside the St. Lawrence Seaway during the 1994 and 1995 Great Lakes shipping seasons, respectively. Outside the St. Lawrence Seaway, the cargo will be transferred to a U.S.-flag vessel for delivery to its foreign destination.

Subsequently, USDA indicated that section 406(b)(4) of P.L. 480 regulating the payment of freight by USDA for shipments under Title II, Section 416(b) and the Food For Progress Act of 1985, negatively impacted on suppliers that bid on Great Lakes cargoes to be transhipped to Canadian shipping points. USDA indicated that these provisions prevent them from paying for freight on commodities shipped from a Canadian port. The P.L. 480 Title I program is not affected by this provision. As a consequence, the Great Lakes region has been, in effect, prohibited from utilizing the rule and participating during the past two years in the shipment of bulk cargo under Title II of P.L. 480, Section 416 of the Agricultural Act of 1949 and the Food for Progress Act of 1985 programs.

USDA proposed an amendment to Section 406 in the 1996 Farm Bill which would allow USDA to pay the cost of the foreign-flag Great Lakes transit leg and for the transshipment from Canadian ports.

MARAD proposed in a new NPRM to extend its policy stated in the 1994 and 1995 rules for an additional five years, after which it would reassess the merits of making the rule permanent, consistent with the USDA legislative proposal (61 FR 9670; March 11, 1996). The amendment proposed by the USDA is included in the Federal Agriculture Improvement and Reform Act of 1966, Pub. L. 104–127, 110 Stat. 888. It amends Section 406(b)(4) of the Agricultural Trade, Development and Assistance Act of 1954, 7 U.S.C. 1736, to accomplish USDA's proposal, above.

Comments on 1996 NPRM

MARAD received 12 comments on this NPRM from 11 commenters representing business, trade associations, State and local port authorities, and State Transportation Departments. All commenters were in favor of the policy stated in the NPRM, without reservation. One commenter supporting the proposal to establish a five-year trial period stated, "Similar rulemakings in the 1994 and 1995 years provided too limited of a window of opportunity to truly test this concept." That commenter referred to the current common practice in the private sector of exporting bulk agricultural commodities from Great Lakes ports in foreign-flag feeder vessels to transshipment points east of the St. Lawrence Seaway, concluding that "transshipping Government agricultural exports should, on occasion, be cost effective."

Another commenter stated that taxpayers, food aid recipient countries and vessel owners will benefit from this competition. From the perspective of U.S. maritime labor, one commenter stated, "International cargoes are the lifeblood of Great Lakes longshoremen and return of P.L. 480 cargoes to the Great Lakes will generate thousands of manhours for dockworkers in virtually every Great Lakes port." Another commenter was hopeful that the trend of increased international trade "to the Lakes via the Seaway in the past three navigation seasons will continue because of this rulemaking."

One commenter, while acknowledging that the proposed rule offers some possible relief for Great Lakes-originated cargo, requested MARAD to issue a rule which allows shipment of bulk agricultural commodities from Great Lakes ports for the entire voyage from origin to destination on foreign-flag vessels where U.S.-flag vessels are not available for such voyages from Great Lakes ports. Unless U.S.-flag vessels are unavailable from any port range in the United States, MARAD lacks the authority to issue such a rule under the cargo preference laws of the United States.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review)

This rulemaking is not considered to be an economically significant regulatory action under section 3(f) of Executive Order 12866. Also, it is not a major rule under Pub. L. 104–121, 5 U.S.C. 804, or a significant rule under the Department's Regulatory Policies and Procedures. Accordingly, it has not been reviewed by the Office of Management and Budget.

MARAD projects that this rule will allow the annual movement of up to 300,000 metric tons of agricultural commodities from Great Lakes ports, with a reduction in the shipping cost to sponsoring Federal agencies of up to $2 per metric ton ($600,000). MARAD will evaluate the results of this rulemaking over a five-year trial period before determining whether to issue a rule to make this provision permanent.

Since the 1996 Great Lakes shipping season opened on March 29, 1996, a delay in the effective date of this rule for 30 days would be conterproductive to the accomplishment of the purpose of this rule to allow U.S. Great Lakes ports to compete effectively for agricultural commodity preference cargo shipments. Accordingly, pursuant to section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), MARAD finds that good cause exists for the rule to become effective on publication.

Federalism

The Maritime Administration has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Maritime Administration has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains no reporting requirement that is subject to OMB approval under 5 CFR Part 1320, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*)

List of Subjects in 46 CFR Part 381

Freight, Maritime carriers.

Accordingly, MARAD hereby amends 46 CFR Part 381 as follows:

PART 381—[AMENDED]

1. The authority citation for Part 381 continues to read as follows:

Authority: 46 App. U.S.C. 1101, 1114(b), 1122(d) and 1241; 49 CFR 1.66.

2. Section 381.9 is revised to read as follows:

§ 381.9 Available U.S.-flag service.

For purposes of shipping bulk agricultural commodities under programs administered by sponsoring Federal agencies from U.S. Great Lakes ports during the 1996–2000 Great Lakes shipping seasons, if direct all-U.S.-flag service, at fair and reasonable rates, is not available at U.S. Great Lakes ports, a joint service involving a foreign-flag vessel(s) carrying cargo no farther than a Canadian port(s) or other point(s) on the Gulf of St. Lawrence, with transshipment via a U.S.-flag privately-owned commercial vessel to the ultimate foreign destination, will be deemed to comply with the requirement of "available" commercial U.S.-flag service under the Cargo Preference Act of 1954. Shipper agencies considering bids resulting in the lowest landed cost of transportation based on U.S.-flag rates and service shall include within the comparison of U.S.-flag rates and service, for shipments originating in U.S. Great Lakes ports, through rates (if offered) to a Canadian port or other point on the Gulf of St. Lawrence and a U.S.-flag leg for the remainder of the voyage. The "fair and reasonable" rate for this mixed service will be determined by considering the U.S.-flag component under the existing regulations at 46 CFR Part 382 or 383, as appropriate, and incorporating the cost for the foreign-flag component into the U.S.-flag "fair and reasonable" rate in the same way as the cost of foreign-flag vessels used to lighten U.S.-flag vessels in the recipient country's territorial waters. Alternatively, the supplier of the commodity may offer the Cargo FOB Canadian transshipment point, and MARAD will determine fair and reasonable rates accordingly.

Dated: May 10, 1996.

By Order of the Maritime Administrator.

Joel Richard,

Secretary, Maritime Administration.

[FR Doc. 96–12188 Filed 5–16–96; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[GC Docket No. 96–42; FCC 96–205]

Implementation of Section 273(d)(5) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996; Dispute Resolution Regarding Equipment Standards

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In order to implement a new statutory provision of the Telecommunications Act of 1996, the Commission adopts rules establishing a default dispute resolution process to be used when technical disputes arise between a non-accredited standards development organization (NASDO) and any party who funds the activities of the NASDO. Under the new rules, disputes will be resolved by a recommendation of a three-person expert panel, selected by both the disputing party and the NASDO, with the recommendation subject to disapproval by a vote of three-fourths of the other funding parties. As intended by Congress, this procedure ensures that disputes can be resolved in an open, non-discriminatory, and unbiased fashion within 30 days, and it will be used only when all of the parties are unable to agree on a process for resolving their disputes. In addition, persons who willfully refer frivolous disputes will be subject to forfeiture pursuant to section 503(b) of the Communications Act.

EFFECTIVE DATE: June 17, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon B. Kelley, Office of General Counsel, (202) 418–1720.

SUPPLEMENTARY INFORMATION:

Adopted: May 7, 1996.

Released: May 7, 1996.

I. Introduction

1. The Telecommunications Act of 1996,[1] amended the Communications Act by creating new sections 273 (d)(4) and (d)(5), which set forth procedures to be followed by non-accredited standards development organizations (NASDOs),[2] such as Bellcore, when these organizations promulgate industry-wide[3] standards and generic requirements[4] for telecommunications equipment. Typically, as in the case of Bellcore, carriers fund these voluntary standard setting activities in order to assist the carriers in developing standards to guide their subsequent purchases of telecommunications equipment.

2. In this *Report and Order*, the Commission adopts rules to implement new section 273(d)(5), which requires the Commission to prescribe a default dispute resolution process when technical disputes arise between the NASDO and any parties who fund the standards setting activities of the NASDO. In accordance with the statute, this "default" procedure would be used only when all funding parties are unable to reach agreement as to a means for resolving technical disputes. As described below, we have decided that disputes governed by section 273(d)(5) should be resolved in accordance with the recommendation of a three-person

[1] Pub. L. 104–104, 110 Stat. 56 (1996).

[2] As defined in section 273(d)(8)(E), "[t]he term 'accredited standards development organization' means any entity composed of industry members which have been accredited by an institution vested with the responsibility for standards accreditation by the industry." 47 U.S.C. 273(d)(8)(E). Thus, for example, Bell Communications Research, Inc. (Bellcore) would not be an accredited standards development organization and is subject to the section 273 procedures. H.R. Conf. Rep. No. 230, 104th Cong., 2d Sess. 39 (1996).

[3] As defined in section 273(d)(8)(C), "[t]he term 'industry-wide' means activities funded by or performed on behalf of local exchange carriers for use in providing wireline telephone exchange service whose combined total of deployed access lines in the United States constitutes at least 30 percent of all access lines deployed by telecommunications carriers in the United States as of the date of the enactment of the Telecommunications Act of 1996." 47 U.S.C. 273(d)(8)(C).

[4] As defined in section 273(d)(8)(B), "[t]he term 'generic requirement' means a description of acceptable product attributes for use by local exchange carriers in establishing product specification for the purchase of telecommunications equipment, customer premises equipment, and software integral thereto." 47 U.S.C. 273(d)(8)(B).

expert panel, selected by both the disputing party and the NASDO, with the recommendation subject to disapproval by a vote of three-fourths of the other funding parties.

II. Background

3. As detailed in the *Notice of Proposed Rulemaking* (*NPRM*), 61 FR 9966, March 12, 1996, the purpose of this proceeding is to establish dispute resolution procedures in accordance with new section 273(d)(5) of the Act.[5] Section 273(d)(5) was enacted in conjunction with other procedures, set forth in section 273(d)(4), that impose new procedural requirements on voluntary standards setting activities by NASDOs, such as Bellcore, which is owned by the regional Bell operating companies (RBOCs). As indicated above, Bellcore sets voluntary standards to assist in the carriers' purchase of telecommunications equipment. The statutory procedures generally require more openness and fairness in the standards setting process, particularly in light of the potential that, under other provisions of the Telecommunications Act, the BOCs may be permitted to engage in the manufacture of telecommunications equipment.[6]

4. To foster more open procedures, under new section 273(d)(4), a NASDO is required to issue a public invitation to interested industry parties to fund and participate in setting any industry-wide standards or generic requirements. Further, such funding and participation must be allowed "on a reasonable and nondiscriminatory basis, administered in such a manner as not to unreasonably exclude any interested industry party."[7] In the event of disputes on technical issues, the NASDOs and funding parties must also attempt to develop a dispute resolution process.[8] Section 273(d)(5) requires the Commission to prescribe within 90 days of the section's enactment a dispute resolution process to be used if the parties cannot agree to a dispute resolution process.[9]

5. Specifically, section 273(d)(5) provides:

> [W]ithin 90 days after the date of enactment of the Telecommunications Act of 1996, the Commission shall prescribe a dispute resolution process to be utilized in the event that a dispute resolution process is not agreed upon by all the parties when establishing and publishing any industry-wide standard or industry-wide generic requirement for telecommunications equipment or customer premises equipment pursuant to paragraph (4)(A)(v). The Commission shall not establish itself as a party to the dispute resolution process. Such dispute resolution process shall permit any funding party to resolve a dispute with the entity conducting the activity that significantly affects such funding party's interests, in an open, nondiscriminatory, and unbiased fashion, within 30 days after the filing of such dispute. Such disputes may be filed within 15 days after the date the funding party receives a response to its comments from the entity conducting the activity. The Commission shall establish penalties to be assessed for delays caused by referral of frivolous disputes to the dispute resolution process.

Thus, as described in new section 273(d)(5), the Commission's dispute resolution process must be conducted in an open, non-discriminatory and unbiased fashion and so that disputes are resolved within 30 days of the filing of the dispute. The process is triggered only if all funding parties fail to agree to a process for resolving technical issues. Section 273(d)(5) also requires the Commission to establish penalties to be assessed for delays caused by referral of frivolous disputes to the dispute resolution process.[10]

6. In the *NPRM*, we invited members of the public to comment on our proposal to require binding arbitration as the dispute resolution process.[11] We asked commenters to address the methods for selecting an arbitrator or neutral and whether the Commission should make its employees available to serve in that capacity.[12] In addition, we invited commenters to submit alternative proposals to implement this statutory provision.[13] Finally, the *NPRM* solicited proposals or recommendations concerning the types of penalties that should be assessed for delays caused by the referral of frivolous disputes to the dispute resolution process.[14]

7. We received comments from the following entities: (1) Bell Atlantic; (2) Bellcore; (3) BellSouth Corporation and BellSouth Communications, Inc. (BellSouth); (4) Corning Incorporated (Corning); (5) Telecommunications Industry Association (TIA); and (6) U.S. West, Inc. (U.S. West). Reply comments were received from: (1) Ameritech; (2) American National Standards Institute (ANSI); (3) Alliance for Telecommunications Industry Solutions (ATIS); (4) Bellcore; (5) BellSouth; (6) Corning; (7) Northern Telecom, Inc. (Nortel); (8) Pacific Bell; (9) SBC Communications, Inc. (SBC); (10) SpecTran Corp; and (11) TIA. The Commission also received late-filed reply comments from MCI and *ex parte* submissions from Bellcore, Corning and Nortel.

III. Discussion

A. Commission's Binding Arbitration Proposal

8. In the *NPRM*, we sought comment on a binding arbitration as a method that could be used to satisfy the statutory dispute resolution default provision requirement.[15] We observed that this approach appeared consistent with the stated purpose of section 273(d)(5), set forth in the Conference Report, to "enable all interested parties to influence the final resolution of the dispute without significantly impairing the efficiency, timeliness and technical quality of the activity."[16] In addition, the *NPRM* concluded that binding arbitration seemed to be the only feasible dispute resolution process in view of the 30 day deadline for completion of the process.[17]

9. For a variety of reasons, the commenting parties overwhelmingly opposed the binding arbitration proposal set forth in the *NPRM*.[18] The parties generally agreed with Corning's view in its initial comments that binding arbitration would not adequately take into account the broad impact of standards-related disputes on industry participants other than the NASDO and the participating party who invokes the dispute resolution process.[19] The commenters also indicated it would be difficult to identify a neutral arbitrator to resolve these highly technical issues and to arbitrate these issues within the 30-day time frame required by the law. TIA also stated that the use of arbitrators would lead to "compromise" solutions that were inappropriate in view of the technical nature of these disputes.[20] Others, including Bellcore and U.S. West, believed that imposing binding arbitration, without the consent of the parties, was inconsistent with the voluntary nature of the underlying standards process.[21]

10. For example, as U.S. West observed, nothing in the Telecommunications Act alters the fact that standards setting activities by both accredited and non-accredited entities, continue to remain voluntary, depending almost entirely on the good faith of the individual funding entities for their ultimate success or failure.[22] Bellcore further observed in its comments that generic requirements complement standards which by their very nature are not binding on anyone, vendors or purchasers.[23] While noting that generic requirements provide valuable technical information to exchange carriers, Bellcore underscored the fact that such requirements "only have meaning if exchange carriers choose to use them and if suppliers choose to conform their products to them."[24]

11. In late-filed comments, one commenter, MCI, supported the Commission's binding arbitration proposal, finding it preferable to either of two alternative proposals, discussed more fully below, that had been submitted by Corning (Corning I) and Bellcore.[25] As discussed below, however, we conclude that a second proposal submitted by Corning (Corning II) resolves many of the defects that had been evident in both the Corning I and Bellcore alternatives. This proposal also appears to be superior in some respects to the Commission's proposal to use binding arbitration. Therefore, as explained below, we have decided not to use binding arbitration as the default dispute mechanism under section 273(d)(5). We will instead use the alternative procedure proposed by Corning, the Corning II proposal, with some modifications.

B. Commenters' Alternative Proposals

12. In addition to proposing the use of binding arbitration, the *NPRM* invited commenters to submit alternative proposals. We noted that other methods of alternative dispute resolution included, for example, mediation, neutral evaluation, and hybrids of these methods.[26] In response, two very different alternative proposals were initially submitted, one by Corning, a manufacturer of fiber optics equipment, and another by Bellcore.

13. The Corning I proposal involved referral of the technical dispute to an accredited standards development organization (SDO). Many parties commented on this proposal. Although comment was somewhat divided, much of the comment was sharply critical of the proposal. For example, Bellcore and many of the BOCs believed that the Corning I proposal was inconsistent with congressional intent because it excluded the funding parties from participating in resolution of the technical dispute, even though the funders played a major role in funding the NASDO's work and would be most affected by any dispute resolution.[27] They also pointed out that there was no assurance that the SDOs had procedures in place that would enable resolution of the dispute within the 30 day statutory time period. They further believed that the process would often lead to no resolution at all of key technical issues, thereby frustrating the essential purpose of NASDOs to create standards that lead to efficiencies and interoperability within the communications industry. Similarly, in its late filed comments, MCI opposed the Corning I proposal because it was unlikely to result in a binding decision.[28]

14. The two organizations representing relevant SDOs who commented were divided on the Corning I proposal. One of these, TIA, approved the proposal, but the other organization, ATIS, strongly criticized the proposal as promoting "forum shopping."[29] ATIS further stated that its Committee T1, which develops standards for network interfaces, could not accommodate the statutorily mandated 30 day resolution period.[30] Similarly, the two manufacturing companies who commented were divided, with one commenter, SpecTran Corp., supporting the Corning I proposal, and the other, Nortel, strongly disagreeing with it as inviting forum shopping and abuse.[31]

15. Bellcore's original proposal is discussed below, in the context of modifications to it suggested by Corning. In response to the Bellcore proposal, Corning submitted a second proposal, which it characterized as a compromise proposal, and which incorporated many features of the dispute resolution proposal that had been submitted by Bellcore.[32] For the reasons discussed below, we conclude that Corning's latest proposal, which we shall refer to as the Corning II proposal, is generally consistent with the dispute resolution procedure envisioned by Congress in section 273(d)(5). In addition, we believe the Corning II proposal avoids many of the practical and other problems associated with both the Corning I and Bellcore proposals. We have therefore decided to adopt, with some modifications, the Corning II proposal, which is described and discussed below.

C. The Corning II Proposal

16. As indicated above, the dispute resolution rule we adopt in this proceeding is based on a proposal suggested by Bellcore that has been modified by Corning. The Corning II proposal retains many significant features of the original Bellcore proposal that were praised by those commenters who preferred Bellcore's proposal over Corning I. Most significantly, unlike the Corning I plan, the Corning II variation does not require that technical disputes be resolved in forums other than the NASDO. Bellcore's original plan, and the Corning II variation adopted here, permit the funding parties to resolve these disputes internally. To that extent, we believe that the Corning II proposal is consistent with Congress's intent that the process we select should enable all interested parties to influence the final resolution of the dispute.

17. Corning, however, suggests several changes to Bellcore's proposal that we believe will better enable the resolution of disputes in an "open, non-discriminatory and unbiased fashion," consistent with section 273(d)(5). For example, some commenters, primarily Corning and MCI, expressed concern that the Bellcore proposal afforded too much power to the BOCs and Bellcore in controlling resolution of any disputes.[33] The Corning II variation makes five major changes to Bellcore's plan. Most of those changes, we believe, better promote the statutory objectives of fair, unbiased decisionmaking. In response to *ex parte* comments from Bellcore, however, we have modified some aspects of the Corning II proposal to develop the dispute resolution default process we now adopt.[34]

18. *Tri-Partite Panel.* The Corning II proposal permits the disputant to select only one dispute resolution approach. Under the approach proposed by

---

[5] 61 FR 9966, at ¶ 2.
[6] 47 U.S.C. 273 (d)(4), (e).
[7] *Id.*
[8] *Id.*
[9] 47 U.S.C. 273(d)(5).
[10] *Id.*
[11] 61 FR at 9966–9967, ¶3-¶6.
[12] *Id.* at 9967, ¶6.
[13] *Id.* at 9966, ¶2.
[14] *Id.* at 9967, ¶8.
[15] *See* note 10, *supra.*
[16] *Id.* at 9967, ¶3.
[17] *Id.* at ¶4.
[18] *See* comments of Corning at ii, 6–7; comments of Telecommunications Industry Association (TIA) at 2–3; comments of Bellcore at i, 16–18; comments of Bell Atlantic at 2; comments of U.S. West at 2–3; comments of BellSouth at 2–3; comments of Nortel at 4; reply comments of Pacific Bell at 1; reply comments of Alliance for Telecommunications Industry Solutions (ATIS) at 2; reply comments of BellSouth at 1; reply comments of SBC at 2; reply comments of Corning at 2; reply comments of Bellcore at 1. *But see* late-filed comments of MCI at 1.
[19] Comments of Corning at 6.
[20] Comments of TIA at 2–3.
[21] Comments of Bellcore at i, 16; comments of U.S. West at 3.
[22] Comments of U.S. West at 2.
[23] Comments of Bellcore at 17.
[24] *Id.* at 5 and 17.
[25] Late-filed reply comments of MCI at 1–3.
[26] 61 FR at 9967,¶5.
[27] Comments of Bellcore at 3–4, 7; comments of BellSouth at 4.
[28] Late-filed reply comments of MCI at 3.
[29] Comments of TIA at 2–3; reply comments of ATIS at 4–5.
[30] Reply comments of ATIS at 4.
[31] Comments of Nortel at 2–3; comments of SpecTran at 1.
[32] *Ex Parte* submission of Corning at 1.
[33] Reply comments of Corning at 14–16; late-filed comments of MCI at 2.
[34] *See generally, ex parte* submission of Bellcore.

Bellcore, the funding parties could, by majority vote, choose among several "default" options for resolving disputes. These options included "escalating" the dispute to higher decisionmaking bodies within the NASDO; resolution of the dispute by a majority of those funding the standards development effort; or, resolution of the dispute based on the recommendation of a three-party expert advisory panel. The Corning II variation, in contrast, retains only the option of using a three-party expert panel, with one panelist selected by the disputing party, another selected by the NASDO, and a third panelist selected jointly by the panelists representing the NASDO and disputing party. Persons who participated in the generic requirements or standards development process, including the disputing party and the NASDO, are eligible to serve on the panel. As with Bellcore's proposal, this three-member panel, by majority vote, would make a written recommendation concerning the dispute.

19. Several parties, including MCI, criticized some of the dispute resolution options permitted under Bellcore's proposal, particularly the escalation and majority vote options, because these options appeared to give the BOCs undue power in resolving disputes.[35] We agree that the Corning II proposal, which retains only the option of using a tri-partite expert panel, is superior in terms of avoiding the potential that the BOCs or Bellcore would unduly dominate decisionmaking.

20. In commenting on the Corning II proposal, however, Bellcore continues to believe that, while a tri-partite panel should be available as an option and as the fall-back in the event of a deadlock, the funding parties should also be able to use escalation and other procedures.[36] We recognize that this variation on Bellcore's plan removes some of the flexibility that several commenters had applauded in commenting on Bellcore's proposal. We nevertheless conclude that the advantage of the Corning II proposal in terms of avoiding possible unfairness far outweighs any concern about loss of flexibility.

21. Further, as reflected in Corning's comments and in the Corning II proposed rule, disputing parties and Bellcore are also permitted to agree to a means of dispute resolution other than the default procedure provided for in section 273(d)(5). The statutory dispute provision clearly is a remedial measure, which is designed to protect the interests of disputing parties. Hence, the statute merely provides that a disputing party has the option of using the section 273(d)(5) default procedure. Section 273(d)(4) thus states that a disputing party "may utilize the dispute resolution procedures established pursuant to [section 273(d)(5)] * * *" (Emphasis added.)[37] The default procedure therefore is not mandatory if the disputing party and Bellcore both agree to select another approach. Accordingly, we believe that parties will not be deprived of desirable flexibility even though we have decided to limit the default dispute resolution procedure to a single approach. We emphasize, as do many of the commenters, that funding parties should adopt their own dispute resolution procedures whenever possible.

22. *Override Provision.* A second major change to Bellcore's proposal involves the Bellcore provision that would have allowed a majority of the funding parties to reject the recommendation of the tri-partite expert panel. We are sympathetic to the argument that any dispute resolution procedure should permit the funding parties to participate in dispute resolution by having some final say in how the dispute is resolved. Nevertheless, we agree with Corning and other parties, such as MCI and Nortel, who believe that allowing "overrides" by a simple majority of funders may afford too much power to particular blocks of funding parties, including the regional BOCs who currently own Bellcore.[38]

23. To resolve this concern, the Corning II proposal would generally permit funding parties to override a panel recommendation by a vote of three-fourths of the funding parties, excluding the party who invoked the dispute resolution process and the NASDO. Each funding party would have one vote. However, when a funding party has an indirect equity interest in the NASDO or any ownership interest in intellectual property that would be advantaged by the final resolution of the dispute, a decision to reject the recommendation must be by a unanimous vote of the funding parties, again excluding the party which invoked the dispute resolution process and the NASDO.

24. Presumably, due to the regional BOCs' ownership interests in Bellcore, the unanimous vote requirement would apply to Bellcore. Bellcore is concerned that requiring a unanimous vote would permit an affiliate of a disputing party, or another serving as its proxy, to veto the decision of all carriers. Bellcore also believes that Nortel has proposed a reasonable compromise in suggesting that a vote of two-thirds of the funding parties voting be required to reject a panel recommendation.[39]

25. In contrast to the original Bellcore proposal, we think a more stringent "override" proposal offers better protection against biased decisionmaking. We agree with Bellcore that requiring a unanimous vote of funders may be too onerous. However, we think a fair compromise is to require a vote by three-fourths of the voting funders both to reject a panel's recommendation and to substitute another resolution of the dispute. The three-fourths proposal avoids Bellcore's concern that a unanimous vote requirement affords the disputing party the power to veto the decision of all the carriers. At the same time, the three-fourths requirement also decreases Corning's fear that a simple majority—or possibly even a two-thirds vote—affords too much control to the RBOC's.

26. *Standard for Recommended Decision.* The Corning II proposal has recommended a third change that improves upon the original Bellcore proposal. Bellcore proposed that the appropriate issue to be resolved by the recommending panel was "whether there is a sound technical basis for the position of the [NASDO] * * *." That standard, we believe, unfairly disadvantages the disputant by placing upon it an undue burden to demonstrate that the NASDO's approach is not based on a sound technical basis, instead of focusing more on the relative merits of the two approaches. The Corning II proposal, in contrast, focuses more on the relative merits of the technical arguments by requiring the panel to choose "the option that provides the most technically sound solution that is commercially viable* * *."[40] We recognize that the statutory 30-day deadline will create difficulties in resolving the technical merits. Bellcore, for example, objects to the standard proposed by Corning, believing that the panel will be unable to decide within the statutory timeline what is "the most technically sound solution."[41] The statute, however, places no limitation on the types of technical disputes that may be raised by funding parties. We therefore do not believe that the standard for dispute resolution can be limited to whether the NASDO's proposal can be reasonably supported by technical evidence, as Bellcore proposes.

27. For the same reason, we do not agree with Bellcore's view that the panel should be precluded from deciding "that a particular issue is not ready for a decision because there is insufficient technical evidence to support the soundness of any one proposal over any other proposal."[42] Moreover, such a recommendation would not necessarily lead to the absence of a decision on a standard, as Bellcore claims. As indicated above, even if that were the panel's recommendation, the funders would still be able to select a technical standard by a two-third's vote.

28. Finally, Bellcore believes that "commercial viability" should not be part of the decisional basis, claiming that such a basis may go beyond the technical matters contemplated by section 273(a)(5).[43] Bellcore also believes such a standard may involve economic analysis and competitively sensitive business information, data that may be difficult for the panel to obtain.[44]

29. We think that in resolving technical disputes it may well be appropriate to consider the complexity and practical feasibility of particular technical solutions in some circumstances. However, we also believe that the decisional standard proposed by Corning places undue emphasis on commercial and cost-related issues not the technical issues.[45] We shall therefore modify the standard to state that a panel is not precluded from taking into account the complexity of technical approaches and other practical considerations in deciding which option is most technically sound.

30. *Disclosure Requirements.* The Corning II proposal also includes a new disclosure provision requiring that any party in interest submitting information for consideration by the panel must disclose its ownership of intellectual property that may be advantaged or disadvantaged by the final decision, and that the panel must consider this information in making its recommendation.[46] This provision seems designed to lead to decisionmaking that is more fully informed about the possible biases of commenting parties and to result in technical standards that may be met by a broader spectrum of equipment manufacturers. Bellcore objects to this proposal. It states that ANSI-accredited standards development organizations encourage early disclosure of intellectual property rights, but do not require it. Bellcore also believes that requiring disclosure of intellectual property rights would inhibit funding and participation in the activities of the NASDO.

31. We believe the disclosure provisions suggested by Corning are generally consistent with requirements of ANSI-accredited standards organizations. The TIA Engineering Manual, for example, has a policy of encouraging early disclosure of essential patents, and requires its Committees to ask at the beginning of each meeting where a potential standard is being considered whether there is knowledge of essential patents, the use of which may be essential to the standard being developed. Moreover, the fact that the question was asked will be recorded in the meeting report, along with any affirmative responses. Similarly, ANSI's patent policy requires that, prior to approval of any proposed standard, any licenses will be made available to applicants without compensation or "under reasonable terms and conditions."[47]

32. We think that the Corning II proposal that parties submitting information to the panel disclose similar information is generally consistent with these ANSI requirements. However, we shall modify the Corning II proposal somewhat to make it more consistent with the rule followed by the TIA Engineering Manual. Specifically, the rule will require that the panel ask commenting parties whether there is knowledge of patents, the use of which may be essential to the standard or generic requirement being considered. In addition, the fact that the question was asked along with any affirmative responses may be recorded and considered in the panel's recommendation. We do not believe that such a requirement will affect funding and participation in NASDOs. The requirement applies only to those who submit comments to the expert panel, and moreover, such requirements have apparently not discouraged participation in ANSI accredited standards development organizations. In addition, Nortel points out that there appears to be no precedent for ANSI-accredited bodies to link voting rights to intellectual property interests. We see no reason, therefore, to disqualify the holders of such interests from voting on the recommendations of the tri-partite panel.

33. *Costs of Dispute Resolution.* Finally, whereas the Bellcore proposal had required the disputing party to bear the entire cost of the default dispute resolution procedure, the Corning-Bellcore variation requires that the cost of resolving disputes be absorbed by all of the funding parties. This modification, in our view, better ensures that disputants are not unduly discouraged from raising technical issues. In addition, all of the funding parties should benefit from the fairer and more open resolution of these technical questions. It is therefore fitting that they should all share in the cost.

34. In summary, we believe that the statutory objectives can be best fulfilled by the new Corning II approach, with some modifications. This approach incorporates the best aspects of the Bellcore proposal and modifies them to achieve the goal of unbiased decisionmaking. The proposal to utilize a tri-partite expert panel to make recommendations resolving disputes, with a provision that allows the funding parties to override the recommendation, also ensures that, as Congress intended, all of the funding parties are able to participate in influencing the final outcome. The approach is set out in detail in the Appendix of the Report and Order.

D. Funding Parties

35. The commenters were divided over the meaning of the term "funding party." Corning and TIA take the position that Congress intended to allow any interested party access to the alternative dispute resolution process.[48] While acknowledging that sections 273(d)(4) and (d)(5) refer to "funding parties," Corning argues that the clear intent of the statute was only to provide a basis for determining the legitimacy of parties interested in participating in NASDO processes.[49]

36. To put this in perspective, Corning explained that the direct costs of Bellcore's generic requirements were traditionally borne by the affected carriers, with vendors generally making some form of "in-kind" contributions, *i.e.*, technical presentation or technical support.[50] Corning also argues that, under the new statute, funding levels may not be used as an exclusionary device. In this same vein, TIA maintains that a funding party should not be defined by the amount that the party contributed to funding the standards

[35] Late-filed reply comments of MCI at 2.

[36] April 18, 1996, *ex parte* letter from Bellcore at 1.

[37] 47 U.S.C. 273(d)(4).

[38] *Ex parte* submission of Corning at 1, note 1; reply comments of Nortel at 7; late-filed comments of MCI at 2.

[39] *Ex parte* submission of Bellcore at 1.

[40] *Ex parte* submission of Corning at 3.

[41] *Ex parte* submission of Bellcore at 3.

[42] *Id.*

[43] *Id.* at 4.

[44] *Id.*

[45] *Ex parte* submission of Nortel.

[46] *Ex parte* submission of Corning at 2.

[47] Reply comments of ANSI at 4.

[48] Reply comments of TIA at 2.

[49] Reply comments of Corning at 12.

[50] *Id.*

setting activities but rather, by "any amount that demonstrates the party shows a responsible interest in the proceeding."[51] TIA suggests that parties could meet this requirement by posting a performance bond.[52]

37. In response, Bellcore and the RBOC's state that, since there was no congressional debate on section 273(d), the Commission must look to the plain language of the statute. As noted by Bellcore, section 273(d)(4)(A)(v) provides that "a funding party may utilize the dispute resolution procedures established pursuant to paragraph (5)" and section 273(d)(5) states that "[s]uch dispute resolution process shall permit any funding party to resolve a dispute."* * *[53] Bellcore thus opposes TIA's performance bond proposal, concluding that if a vague genuine interest and not actual funding is to be the standard, this could open the door to a variety of ill-motivated though colorable "technical" disputes that the section 273(d)(5) process should not promote.[54]

38. We conclude that the language of the statute clearly supports that only a funding party is permitted to invoke the dispute resolution process contained in Section 273(d). The statute expressly provides that a party may become a funder after a public invitation is issued to interested industry parties "to fund and to participate" and that only a "funding party" may invoke dispute resolution. Moreover, consistent with the clear language of the statute, we think that only parties who are willing to provide actual funding to support the standards setting process may utilize the statutory dispute resolution process. We thus do not agree with TIA's suggestion that merely by posting a performance bond an entity may become a funding party, nor with Corning that "in-kind" contributions are necessarily adequate.

39. At the same time, section 273(d)(4)(A)(2) of the statute expressly requires that funding and participation be allowed on "a reasonable and nondiscriminatory basis, administered in such a manner as not to unreasonably exclude any interested industry party." We therefore believe that the statute requires that NASDOs must make reasonable and nondiscriminatory efforts to ensure that the funding requirement is not manipulated so as to unreasonably exclude outside participants.

[51] Comments of TIA at 3–4.
[52] *Id.*
[53] Reply comments of Bellcore at 10–11.
[54] *Id.* at 7–9.

E. Referral of Frivolous Disputes

40. Section 273(d)(5) directs the Commission to establish penalties for delays caused by the referral of frivolous disputes to the Commission's default process. Both Bellcore and Corning endorsed the proposal made in our *NPRM* to rely on section 1.52 of the Commission's rules to define the term "frivolous dispute." Section 1.52 requires that any document filed with the Commission be signed by the party or attorney and that such signature certifies that the person has read the document, that there is good ground to support it, and thus it is not filed for the purpose of delay.

41. Other commenters either offered alternate suggestions or raised concerns with our proposal. For example, we were referred to the "sham" exception to antitrust immunity enjoyed by parties under the Noerr-Pennington doctrine.[55] Another party referred us to the standards used by federal courts to determine whether complaints are filed in good faith.[56] Another commenter questioned whether we need to assess the motive of the disputant if the claim has no legitimate basis.[57]

42. We recognize that any attempt to give meaning to the term "frivolous" is inherently difficult, as reflected by attempts the courts have made to grapple with similar problems. We have decided, however, to be guided by our existing rule which appears to be as workable as any of the alternatives suggested. Thus, the party responsible for referring a dispute to our process does so with the understanding that the dispute, as defined in section 1.52, is not frivolous, is supported by good ground, and is not filed for the purpose of delay.

43. In seeking comment on the penalties that should be assessed against delaying parties, the *NPRM* asked whether the Commission should rely on its forfeiture authority contained in section 503(b) of the Communications Act, or whether other penalties should be imposed "such as barring the party from further participation in the standards development processes or the imposition of costs on the complainant if its complaint is found to be frivolous."[58] The *NPRM* also sought comment on whether procedural protections were necessary to protect the party subject to the dispute.[59] In this connection, commenters were asked to consider whether there should be a citation and subsequent misconduct before the assessment of such forfeitures.[60]

44. U.S. West argued that "punitive actions being taken to prevent frivolous invocation of the mediation process" were unnecessary and emphasized that the Commission could later adopt rules if necessary.[61] Bellcore argued against the imposition of penalties by the tri-partite panel, emphasizing that the panel's role is a "technical one, not a legalistic penalty-imposing one."[62] In addition, Bellcore proposes that the remedy of barring further participation should "be reserved to address only a pattern of abuse, and not an isolated act"[63] and Corning maintains that it "could substantially impair the subject company's ability to compete in the manufacture and marketing of products which are the subject of the relevant NASDO activities" and is "neither required not authorized by the statute."[64] Finally, Bellcore advocates that, in cases where the Commission determines that a frivolous dispute was referred to the dispute resolution process, in addition to imposing forfeitures as proposed in the *NPRM*, we should require "the party raising a frivolous claim to bear all costs of dispute resolution, and compensating the funding parties for delay."[65]

45. We have concluded that, in light of the above comments, at this time, violations for filing frivolous disputes can be handled best pursuant to our forfeiture authority under section 503(b) of the Communications Act. While we clearly expect referrals of frivolous disputes to be rare occurrences, we will not hesitate to revisit this issue, if necessary, to determine whether more severe penalties should be imposed.

F. Sunset Provision

46. In its initial comments, Corning urged the Commission to make clear that an applicant seeking removal of the requirements of sections 273(d)(3) or 273(d)(4) provide appropriate documentary evidence to support such a request.[66] Bellcore, in response, believes Corning's request is premature.[67] We agree that adoption of evidentiary requirements at this time appears premature. The statute prescribes a public comment period on any such application. We believe we will be in a better position to evaluate the adequacy of the support for any particular application after we have received comment on it.

[55] Comments of Corning at 13.
[56] *See* Rule 11 of the Federal Rules of Civil Procedure; comments of Bellcore at 23.
[57] Comments of Corning at 13.
[58] 61 FR 9967 at ¶8.
[59] *Id.*
[60] *Id.*
[61] Comments of U.S. West at 8.
[62] Comments of Bellcore at 23.
[63] *Id.* at 23–24.
[64] Comments of Bellcore at 24; comments of Corning at 15.
[65] Comments of Bellcore at 23.
[66] Comments of Corning at 16.
[67] Comments of Bellcore at 24.

IV. Procedural Matters

47. *Final Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

Reason for Action

The Telecommunications Act of 1996 permits a Bell Operating Company, through a separate subsidiary, to engage in the manufacture of telecommunications equipment and customer premises equipment after the Commission authorizes the company to provide in-region interLATA services. As one of the safeguards for the manufacturing process, the Telecommunications Act of 1996 amended the Communications Act by creating a new section 273, which sets forth procedures for a "non-accredited standards development organization," such as Bell Communications Research, Inc., to set industry standards for manufacturing such equipment. The statutory procedures allow outside parties to fund and participate in setting the organization's standards and require the organization and the funding parties to attempt to develop a process for resolving any technical disputes. Section 273(d)(5) requires the Commission "to prescribe a dispute resolution process" to be used in the event that all parties cannot agree to a mutually satisfactory dispute resolution process. 47 U.S.C. 273(d)(5). The purpose of this *Report and Order* is to implement Congress's goal by prescribing a dispute resolution process which "enable[s] all interested parties to influence the final resolution of the dispute without significantly impairing the efficiency, timeliness and technical quality of the activity." H.R. Conf. Rep. No. 230, 104th Cong., 2d Sess. 39 (1996).

Summary of the Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

Significant Alternatives Considered

The *Notice of Proposed Rulemaking* in this proceeding offered a binding arbitration proposal and solicited alternative proposals from the commenters. The commenters overwhelmingly opposed the binding arbitration proposal. Alternative proposals were also submitted by the commenters. The regulation selected, a tri-partite expert panel, fulfills the specific statutory parameters of section 273—that the process shall permit resolution "in an open, non-discriminatory and unbiased fashion within 30 days after the filing of such dispute" and that the process will "enable all interested parties to influence the final resolution of the dispute without significantly impairing the efficiency, timeliness and technical quality of the activity."

48. Accordingly, it is ordered that Subpart Q, Part 64 of the Commission's rules is adopted effective June 17, 1996 as set forth below.

49. The action taken herein is taken pursuant to sections 4(i), 4(j), 273(d)(5), 303(r) and 403 of the Communications Act, 47 U.S.C. §§ 154(i) and (j), 273(d)(5), 303(r) and 403.

List of Subjects in 47 CFR Part 64

Communications common carriers, Dispute resolution process, Manufacturing by Bell Operating Companies, Non-accredited standards development organizations, Penalties for delaying parties.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 64 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for Part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, unless otherwise noted. Interpret or apply 47 U.S.C. 201, 218, 226, 228, 273(d)(5), unless otherwise noted.

2. A new Subpart Q is added to Part 64 to read as follows:

Subpart Q—Implementation of Section 273(d)(5) of the Communications Act: Dispute Resolution Regarding Equipment Standards

Sec.

64.1700 Purpose and scope.
64.1701 Definitions.
64.1702 Procedures.
64.1703 Dispute resolution default process.
64.1704 Frivolous disputes/penalties.

Subpart Q—Implementation of Section 273(d)(5) of the Communiations Act: Dispute Resolution Regarding Equipment Standards

§ 64.1700 Purpose and scope.

The purpose of this subpart is to implement the Telecommunications Act of 1996 which amended the Communications Act by creating section 273(d)(5), 47 U.S.C. 273(d)(5). Section 273(d) sets forth procedures to be followed by non-accredited standards development organizations when these organizations set industry-wide standards and generic requirements for telecommunications equipment or customer premises equipment. The statutory procedures allow outside parties to fund and participate in setting the organization's standards and require the organization and the parties to develop a process for resolving any technical disputes. In cases where all parties cannot agree to a mutually satisfactory dispute resolution process, section 273(d)(5) requires the Commission to prescribe a dispute resolution process.

§ 64.1701 Definitions.

For purposes of this subpart, the terms "accredited standards development organization," "funding party," "generic requirement," and "industry-wide" have the same meaning as found in 47 U.S.C. 273.

§ 64.1702 Procedures.

If a non-accredited standards development organization (NASDO) and the funding parties are unable to agree unanimously on a dispute resolution process prior to publishing a text for comment pursuant to 47 U.S.C. 273(d)(4)(A)(v), a funding party may use the default dispute resolution process set forth in section 64.1703.

§ 64.1703 Dispute resolution default process.

(a) *Tri-Partite Panel.* Technical disputes governed by this section shall be resolved in accordance with the recommendation of a three-person panel, subject to a vote of the funding parties in accordance with paragraph (b) of this section. Persons who participated in the generic requirements or standards development process are eligible to serve on the panel. The panel shall be selected and operate as follows:

(1) Within two (2) days of the filing of a dispute with the NASDO invoking the dispute resolution default process, both the funding party seeking dispute resolution and the NASDO shall select a representative to sit on the panel;

(2) Within four (4) days of their selection, the two panelists shall select

a neutral third panel member to create a tri-partite panel;

(3) The tri-partite panel shall, at a minimum, review the proposed text of the NASDO and any explanatory material provided to the funding parties by the NASDO, the comments and any alternative text provided by the funding party seeking dispute resolution, any relevant standards which have been established or which are under development by an accredited-standards development organization, and any comments submitted by other funding parties;

(4) Any party in interest submitting information to the panel for consideration (including the NASDO, the party seeking dispute resolution and the other funding parties) shall be asked by the panel whether there is knowledge of patents, the use of which may be essential to the standard or generic requirement being considered. The fact that the question was asked along with any affirmative responses shall be recorded, and considered, in the panel's recommendation; and

(5) The tri-partite panel shall, within fifteen (15) days after being established, decide by a majority vote, the issue or issues raised by the party seeking dispute resolution and produce a report of their decision to the funding parties. The tri-partite panel must adopt one of the five options listed below:

(i) The NASDO's proposal on the issue under consideration;

(ii) The position of the party seeking dispute resolution on the issue under consideration;

(iii) A standard developed by an accredited standards development organization that addresses the issue under consideration;

(iv) A finding that the issue is not ripe for decision due to insufficient technical evidence to support the soundness of any one proposal over any other proposal; or

(v) Any other resolution that is consistent with the standard described in section 64.1703(a)(6).

(6) The tri-partite panel must choose, from the five options outlined above, the option that they believe provides the most technically sound solution and base its recommendation upon the substantive evidence presented to the panel. The panel is not precluded from taking into account complexity of implementation and other practical considerations in deciding which option is most technically sound. Neither of the disputants (i.e., the NASDO and the funding party which invokes the dispute resolution process) will be permitted to participate in any decision to reject the mediation panel's recommendation.

(b) The tri-partite panel's recommendation(s) must be included in the final industry-wide standard or industry-wide generic requirement, unless three-fourths of the funding parties who vote decide within thirty (30) days of the filing of the dispute to reject the recommendation and accept one of the options specified in paragraphs (a)(5) (i) through (v) of this section. Each funding party shall have one vote.

(c) All costs sustained by the tri-partite panel will be incorporated into the cost of producing the industry-wide standard or industry-wide generic requirement.

§ 64.1704 Frivolous disputes/penalties.

(a) No person shall willfully refer a dispute to the dispute resolution process under this subpart unless to the best of his knowledge, information and belief there is good ground to support the dispute and the dispute is not interposed for delay.

(b) Any person who fails to comply with the requirements in paragraph (a) of this section, may be subject to forfeiture pursuant to section 503(b) of the Communications Act, 47 U.S.C. 503(b).

[FR Doc. 96–12217 Filed 5–16–96; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173 and 180

[Docket No. HM–200; Notice No. 96–9]

RIN 2137–AB37

Hazardous Materials in Intrastate Transportation; Extension of Comment Period

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); extension of comment period.

SUMMARY: RSPA is extending for 60 days, until August 16, 1996. the period for submitting comments on its March 20, 1996 supplemental notice of proposed rulemaking (SNPRM) in this proceeding. In the SNPRM, RSPA proposed certain exceptions from requirements in the Hazardous Materials Regulations that would otherwise apply to: the transportation of small quantities of certain hazardous materials used by carriers, particularly private carriers, in the conduct of their businesses ("materials of trade"); smaller cargo tank motor vehicles (less than 13,250 liters [3,500 gallons] capacity) used exclusively in intrastate transportation of flammable liquid petroleum products; and registered inspections of these smaller cargo tank motor vehicles used exclusively for transporting flammable liquid petroleum fuels.

DATES: *Written comments:* Comments must be received on or before August 16, 1996.

ADDRESSES: *Comments:* Address comments to Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Comments should identify the Docket (HM–200) and be submitted, if possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard showing the docket number. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590–0001. Telephone: 202–366–5046. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:30 p.m.; Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jackie Smith or Diane LaValle, 202–366–8553, Office of Hazardous Materials Standards, RSPA, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: In July 1993, RSPA proposed to extend the application of the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180, to all intrastate carriers of hazardous materials in commerce and their shippers. The notice of proposed rulemaking (NPRM), was published on July 9, 1993 (58 FR 36920), and a correction was published on July 15, 1993 (58 FR 38111). Based on comments to that NPRM, on March 20, 1996, RSPA published a supplemental notice proposing three additional changes to the HMR. *See* 61 FR 11481. These changes would provide: (1) An exception for "materials of trade," certain small quantities of hazardous materials transported and used by carriers, particularly private carriers, in the conduct of their businesses; (2) an exception to permit the continued use of non-specification smaller cargo tank motor vehicles (i.e., less than 13,250 liters [3,500 gallons] capacity) used exclusively in intrastate transportation of flammable liquid petroleum products; and (3) an exception from certain

requirements that address registered inspection of these smaller cargo tank motor vehicles that are used exclusively for transporting flammable liquid petroleum fuels. These proposals are aimed are reducing regulatory burdens on persons subject to the HMR where costs may be disproportionate to safety benefits.

A number of interested parties have requested additional time for them to more fully consider these proposals. Farmers, farm suppliers, and agricultural transporters state that they are presently occupied with activities relating to planting this year's crop, and that they need an extension of the comment period so that they may participate in this important rulemaking. Because these parties' input to this rulemaking would be valuable, RSPA is extending the comment period for 60 days, until August 16, 1996.

Issued in Washington, DC, on May 14, 1996, under authority delegated in 49 CFR part 106, Appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 96–12454 Filed 5–16–96; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 960129019–6019–01; I.D. 051396D]

Groundfish of the Bering Sea and Aleutian Islands Area; Pacific Cod by Vessels Using Hook-and-Line Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the second seasonal Pacific halibut bycatch mortality allowance apportioned to the Pacific cod hook-and-line fishery in the BSAI has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), May 15, 1996, until 12 midnight, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The second seasonal Pacific halibut bycatch mortality allowance for the hook-and-line Pacific cod fishery, which is defined at § 675.21(b)(2)(ii)(A), is 40 metric tons (61 FR 4311, February 5, 1996).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(d), that the second seasonal Pacific halibut bycatch mortality allowance for the Pacific cod hook-and-line fishery in the BSAI has been reached. Therefore, NMFS is prohibiting directed fishing for Pacific cod by vessels using hook-and-line gear in the BSAI.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 13, 1996.

Donald J. Leedy,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–12445 Filed 5–14–96; 3:07 pm]

BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 960129019–6091–01, I.D. 051396E]

Groundfish of the Bering Sea and Aleutian Islands Area; Other Nontrawl Fisheries in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for groundfish in the other nontrawl fishery in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1996 bycatch allowance of Pacific halibut apportioned to the other nontrawl fishery category in the BSAI.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), May 15, 1996, until 12 midnight, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1996 bycatch allowance of Pacific halibut apportioned to the other nontrawl fishery category, which is defined at § 675.21(b)(2)(ii)(E), was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996) as 100 metric tons.

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(d), that the 1996 bycatch allowance of Pacific halibut apportioned to the other nontrawl fishery category in the BSAI has been reached. Therefore, NMFS is closing the directed fishery for groundfish in the other nontrawl fishery category in the BSAI.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: May 13, 1996.

Donald J. Leedy,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–12446 Filed 5–14–96; 3:07 pm]

BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 960129019–6091–01; I.D. 050396A]

Groundfish of the Bering Sea and Aleutian Islands Area; Reserve Apportionment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Apportionment of reserve.

SUMMARY: NMFS is apportioning reserve to certain target species in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow for ongoing harvest and account for previous harvest of the total allowable catch (TAC). It is intended to promote the goals and objectives of the North Pacific Fishery Management Council.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), May 16, 1996,until 12 midnight, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the U.S. BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The Director, Alaska Region, NMFS, has determined that the initial TACs specified for pollock in the Bering Sea subarea; for pollock in the Aleutian Islands subarea; for Atka mackerel in the combined Eastern Aleutian District and Bering Sea subarea; for Pacific ocean perch in the Eastern Aleutian District; for Atka mackerel and Pacific ocean perch in the Central and Western Aleutian Districts; and for Pacific cod, arrowtooth flounder, and the "other species" category in the BSAI; need to be supplemented from the non-specific reserve in order to continue operations and account for prior harvest.

Therefore, in accordance with § 675.20(b), NMFS is apportioning from the reserve to TACs for the following species: (1) for the Bering Sea subarea - 89,250 metric tons (mt) to pollock, (2) for the Aleutian Islands subarea - 2,670 mt to pollock, (3) for the combined Eastern Aleutian District and Bering Sea subarea - 4,005 mt to Atka mackerel; (4) for the Eastern Aleutian District- 454 mt to Pacific ocean perch; (6) for the Central Aleutian District - 5,040 mt to Atka mackerel, 454 mt to Pacific ocean perch; (7) for the Western Aleutian District - 6,879 mt to Atka mackerel; 907 mt to Pacific ocean perch and (6) for the BSAI - 40,500 mt to Pacific cod, 1,350 mt to arrowtooth flounder, and 3,019 mt to the "other species" category.

These apportionments are consistent with § 675.20(a)(2)(i) and do not result in overfishing of a target species or the "other species" category because the revised TACs are equal to or less than specifications of acceptable biological catch.

Pursuant to § 675.20(a)(3)(i), the apportionments of pollock are allocated between the inshore and offshore components:

(1) for the Bering Sea subarea - 31,238 mt to vessels catching pollock for processing by the inshore component and 58,012 mt to vessels catching pollock for processing by the offshore component; (2) for the Aleutian Islands subarea - 935 mt to vessels catching pollock for processing by the inshore component and 1,735 mt to vessels catching pollock for processing by the offshore component.

Pursuant to § 675.20(a)(3)(iv), the apportionment of the BSAI Pacific cod TAC is allocated 810 mt to vessels using jig gear, 17,820 mt to vessels using hook-and-line or pot gear, and 21,870 mt to vessels using trawl gear.

In accordance with the 1996 final specifications for the Bering Sea and Aleutian Islands (61 FR 4311, February 5, 1996), the allocation to hook-and-line/pot gear will result in seasonal apportionments as follows: for the period January 1 through

April 30 - 94,118 mt, for the period May 1 through August 31 - 21,176 mt, and for the period September 1 through December 31 - 3,506 mt.

This apportionment was proposed in the **Federal Register** (61 FR 16085, April 11, 1996) requesting public comment. The public comment period ended on April 25, 1996, and no comments were received.

Classification

This action is taken under 50 CFR 675.20 and is in compliance with E.O. 12866.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: May 10, 1996.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, Notionol Marine Fisheries Service.

[FR Doc. 96–12448 Filed 5–16–96; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 61, No. 97

Friday, May 17, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB67

Loan Policies and Operations; Other Financing Institutions

AGENCY: Farm Credit Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Farm Credit Administration (FCA) requests public comment through an Advance Notice of Proposed Rulemaking (ANPRM) concerning potential revisions to the regulations in subpart P of part 614 that govern the funding and discount relationship between Farm Credit System (Farm Credit, FCS, or System) banks that operate under title I of the Farm Credit Act of 1971, as amended (Act), and non-System other financing institutions (OFIs). Farm Credit Banks (FCBs) and agricultural credit banks (ACBs) are authorized to fund and discount certain short- and intermediate-term loans for non-System lenders, such as commercial banks, savings associations, credit unions, trust companies, agricultural credit corporations, and other agricultural and aquatic lenders as part of their mission to finance agriculture, aquaculture, and other specified rural credit needs. External developments, such as the consolidation of the commercial banking industry, the advent of interstate banking and branching, the gradual reduction of Federal assistance to agriculture and rural communities, and the increased interest of non-System financial institutions in additional sources of funding and liquidity may necessitate revisions to the regulations in subpart P of part 614 so that System banks can fulfill their obligation to meet demands in rural communities for short- and intermediate-term credit. The purpose of any future rulemaking would be to ensure that eligible and creditworthy farmers, ranchers, aquatic producers and harvesters, processing and marketing operators, farm-related businesses, and rural homeowners will continue to have access to affordable, dependable, and stable short- and intermediate-term credit through both System and non-System lenders. Specifically, this ANPRM seeks comments regarding the FCA's OFI regulations and how they may be revised to better implement the statutory provisions.

DATES: Written comments should be received on or before July 16, 1996.

ADDRESSES: Comments may be mailed or delivered to Patricia W. DiMuzio, Associate Director, Regulation Development, Office of Examination, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or sent by facsimile transmission to the FAX number at (703) 734–5784. Copies of all communications received will be available for review by interested parties in the Office of Examination, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Eric Howard, Policy Analyst, Regulation Development, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, or

Richard A. Katz, Senior Attorney, Regulatory Enforcement Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The Agricultural Credit Act of 1923 [1] created 12 Federal intermediate credit banks (FICBs) to discount agricultural production loans for national and State banks, trust companies, savings associations, credit unions, agricultural credit corporations, incorporated livestock loan companies, and other specified lenders. In 1930, Congress authorized the former FICBs to make secured loans and advances directly to such institutions (hereinafter OFIs).[2] As a result, OFIs could borrow from and discount production agricultural loans with System banks before the Farm Credit Act of 1933 [3] created production credit associations (PCAs) as an alternative source of financing the operating needs of farmers and ranchers.

The legislative history to the Act reveals that Congress originally granted OFIs discount privileges at System banks in order to redress the scarcity of operating credit for farmers and ranchers.[4] During the past 73 years, Congress has responded to the changing demands of agricultural producers and other rural residents for affordable short- and intermediate-term credit by updating the statutory authorities of the FICBs and their successor FCBs and ACBs [5] to provide funding and financial assistance to both System and non-System lenders. Currently, section 1.7(b) of the Act authorizes OFIs to obtain funding from FCBs or ACBs for any loan that a PCA could make under section 2.4 of the Act to eligible farmers, ranchers, aquatic producers and harvesters, processing and marketing operators, farm-related businesses, and rural homeowners.

Section 1.7(b)(4) of the Act requires the FCA to enact regulations that assure that funding from Farm Credit banks operating under title I of the Act will be "available on a reasonable basis" to any national bank, State bank, trust company, agricultural credit corporation, incorporated livestock loan company, savings association, credit union, association of agricultural producers engaged in making loans to farmers and ranchers, or corporation engaged in making loans to producers or harvesters of aquatic products that: (1) Is significantly involved in lending for agricultural or aquatic purposes; (2) demonstrates a continuing need for supplementary sources of funds to meet the credit requirements of its agricultural or aquatic borrowers; (3) has limited access to national or regional capital markets; and (4) does not use the services of System banks to extend

[1] Pub. L. No. 503, 42 Stat. 1454, (Mar. 4, 1923).

[2] Pub. L. No. 439, 46 Stat. 816, (June 26, 1930).

[3] Pub. L. No. 75–73D, title II, 48 Stat. 257, 259, (June 16, 1933).

[4] See H. R. Rep. No. 1712, 67th Cong., 1st. Sess. (Feb. 25, 1923), P. 17.

[5] Section 410 of the Agricultural Credit Act of 1987 (1987 Act) created the FCBs through the mandatory merger of the Federal Land Bank and the FICB in each Farm Credit district. See Pub. L. No. 100–233, § 410, 101 Stat. 1568, 1637, (Jan. 6, 1988). Section 7.0 of the Act allows a FCB to merge with a bank for cooperatives in order to form an ACB. Section 7.0 of the Act derives from section 416 of the 1987 Act. Section 7.0 was further amended by section 408(b) of the Agricultural Credit Technical Corrections Act of 1988. See Pub. L. No. 100–233, § 416, 101 Stat. 1568, 1645, (Jan. 6, 1988); Pub. L. No. 100–399, § 408(b), 102 Stat. 989, 1001, (Aug. 17, 1988).

credit to persons and for purposes that cannot be financed by a PCA under title II of the Act. According to the legislative history to section 1.7(b)(4) of the Act,[6] Congress intended that Farm Credit banks act as a primary funding and liquidity source for small, local OFIs so they in turn could meet certain short- and intermediate-term credit needs in their rural communities.[7] However, the legislative history to section 1.7(b)(4) of the Act also indicates that Congress did not intend to exclude other agricultural creditors from funding or discounting loans with System banks,[8] so long as they have a need for supplementary funds that cannot be met through access to national or regional capital markets.

Section 1.7(b) of the Act requires FCBs and ACBs to extend credit to qualified OFIs (within the confines of safety and soundness) as part of their mission to finance agriculture, aquaculture, and other specified rural credit needs. While many OFIs often compete directly with PCAs and agricultural credit associations (ACAs) that own voting stock in the FCB or ACB, the Act requires Farm Credit banks to extend funding on a safe and sound lending basis to any qualified OFI so that farmers, ranchers, aquatic producers and harvesters, farm-related businesses and rural homeowners have access to affordable and dependable credit.

The number of OFIs that fund or discount loans with System banks has declined from a peak of 327 in 1982 to 22 on December 31, 1995. Furthermore, the amount of credit that System banks have extended to OFIs has decreased from almost $914 million in 1981 to $230.8 million as of December 31, 1995. The farm crisis of the 1980s caused a decline in overall agricultural debt, which in turn, substantially reduced the number of OFIs and their demand for System financing. The FCS also experienced significant financial stress between 1984 and 1989, and many OFIs terminated their discounting relationship with System banks because: (1) They sought to reduce their exposure to loss by retiring their investments in FCS banks; (2) the FCS no longer offered competitive rates; or (3) several OFIs ceased operations as a result of merger or closure. Many rural commercial banks, including some OFIs, merged with regional banks or bank holding company networks that did not qualify for OFI status because they were no longer significantly engaged in agricultural lending.

The financial strength of Farm Credit banks has significantly improved in the past several years. As a result, FCBs and ACBs are better positioned to help increase the availability of reasonably priced and dependable credit in many of America's rural communities. Efforts by Federal and State governments to balance their budgets may reduce direct assistance to agriculture and rural development in future years. As rural areas require greater private sector investment to sustain their economic viability, local financial institutions are seeking alternative means to provide affordable credit to their communities on a sustainable basis. Rural lenders also face liquidity problems from time-to-time. Loan-to-deposit ratios at rural depository institutions are now at historically high levels.[9] As the commercial banking industry continues to consolidate into large national and regional networks it is unclear how the credit needs in rural communities will be affected.

Today, several non-System financial institutions are once again expressing interest in obtaining FCS funding for their short- and intermediate-term loans to agricultural and other rural borrowers. However, many of these non-System institutions perceive barriers that impede their access to System funding. Although a variety of factors may have contributed to the historical decline in the OFI lending program, the FCA wants to eliminate any regulatory restrictions that are not required by the Act and its legislative history or do not promote safety and soundness of the FCS.

The FCA wants to ensure that the relationship between Farm Credit banks and OFIs provides another means for meeting the short- and intermediate-term credit needs of agricultural producers and other rural borrowers, as Congress intended. The existing regulations were enacted in 1981, after Congress amended the OFI provisions in the Act. *See* 46 FR 51886 (Oct. 22, 1981). As a result of external developments over the past 15 years, the FCA believes that it is now time to review these regulations in subpart P of part 614 to determine whether they are appropriately addressing the credit needs of non-System institutions that lend to agriculture and rural communities. An ANPRM will give all interested parties an opportunity to provide the FCA with information to assist it in developing proposed regulations that will be responsive to the credit needs of OFIs and their borrowers.[10] Furthermore, the FCA seeks guidance about how new regulations can best promote equitable treatment of OFIs and System associations by FCBs and ACBs. Comments from non-System lenders are encouraged so that the FCA can consider the needs and concerns of eligible financial institutions that the Agency does not examine or regulate.

The Act establishes certain requirements that OFIs must meet in order to initiate and maintain a relationship with the FCS. For example, section 1.10(b) of the Act authorizes FCBs and ACBs to extend credit to OFIs so they can make short- and intermediate-term loans to persons who would be eligible to obtain credit from PCAs.[11] Additionally, each OFI is required by section 4.3A(c)(1)(D)(iii) of the Act to purchase non-voting equity in its funding FCB or ACB. Finally, the same borrower rights that PCAs must provide also apply to OFI loans that are funded by a Farm Credit bank.

Safety and soundness issues will also be addressed when the FCA proposes new OFI regulations. OFIs may pose different safety and soundness considerations for the FCA than direct lender associations. For example, OFIs may merit a different regulatory treatment than System associations for questions relating to collateral and lien perfection because, in contrast to System associations, OFIs can borrow from other lenders without the permission of their System funding banks. In contrast to the authorities vis-à-vis FCS institutions, the FCA lacks broad authority to: (1) Appoint a conservator or receiver for insolvent OFIs; [12] or (2) determine the priority of claims against OFIs in liquidation.[13]

The FCA requests comments and information that address the following questions:

I. Eligibility for OFI Status

A. Significant Involvement in Agricultural or Aquatic Lending

1. What criteria (such as assets, income, composition of the loan portfolio, or other factors) best determine whether an OFI is significantly involved in agricultural or aquatic lending as required by section 1.7(b)(4)(B)(i) of the Act and what specific threshold, if any, should new regulations use? Please explain your recommendation.

2. How should the FCA define an agricultural lender? Would the profiles of agricultural lenders established by other Federal agencies be useful? Please explain your recommendation.

B. An OFI's Need for Supplemental Sources of Funds

What criteria should be used to determine whether depository and non-depository OFIs demonstrate a continuing need for supplementary sources of funds to meet the credit requirements of their agricultural or aquatic borrowers, as required in section 1.7(b)(4)(B)(ii) of the Act? Please explain your recommendations.

C. OFI Access to National or Regional Capital Markets

1. Has the existing regulatory definition of "national or regional capital markets" in § 614.4540 become outmoded? If so, what factors in today's financial environment demonstrate that an OFI has limited access to "national or regional capital markets?"

2. The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 will enable bank holding companies and their commercial bank affiliates to expand, over time, their interstate banking and branching networks. How will this law affect the concept of limited access to "national or regional capital markets" in section 1.7(b)(4)(B)(iii) of the Act?

D. Mergers, Consolidations, and Acquisitions of OFIs

When an OFI merges, consolidates, or is acquired by another financial institution, the eligibility of the successor entity to borrow from an FCB or an ACB must be established anew. Under what conditions, if any, should a successor to an existing OFI be entitled to "grandfather" rights?

E. Parent and Affiliate Relationships

1. What factors should determine whether an OFI applicant is considered together with its parents and affiliates as a single entity?

2. Section 1.7(b)(4)(D) of the Act establishes specific criteria for FCA review of OFI application denials based on the OFI's subsidiary or affiliate relationships. Under §§ 614.4550 and 614.4555, the FCA creates a review procedure when an FCB or ACB rejects an OFI's request for financing for any reason. In the interest of eliminating unnecessary prior approvals and case-by-case reviews, the FCA requests comments on whether there is a compelling need for the regulations to continue to require an FCA review of all OFI applications that have been denied. Please explain your recommendation.

F. Eligibility of Major Financial Institutions

The statute and the legislative history indicate that agricultural lenders that do not meet the criteria of sections 1.7(b)(4)(B) (ii) and (iii) of the Act could still fund or discount certain loans with System banks. What restrictions, if any, should the regulations impose on System funding to these types of institutions?

II. Place of Discount

1. Should new regulations continue the territorial restrictions in existing § 614.4660 which require that an OFI must obtain financing from the FCB or ACB (designated System bank) in whose territory: (1) The OFI maintains its headquarters; or (2) more than 50 percent of the OFI's borrowers is concentrated? If not, what criteria should determine which Farm Credit bank should finance an OFI? Please explain your recommendation.

2. Under what circumstances, if any, should new regulations allow an FCB or ACB to extend financing to an OFI that does not operate in its chartered territory if the designated System bank does not approve the OFI's application?

3. Are there any aspects of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 that the FCA should consider as it develops new regulatory provisions that determine the place of discount for commercial banks and nonbank affiliates of bank holding companies whose networks operate in the chartered territories of more than one Farm Credit bank? Please explain your recommendation.

III. Safety and Soundness

A. Supplemental Collateral

Under what circumstances, if any, should OFIs be required by the new regulations to pledge cash and readily marketable securities or other assets as additional collateral for their loans from System banks?

B. OFI Lending Limit

Current regulations at § 614.4565 impose a lending limit on OFIs. Is this limit appropriate? If not, what alternatives do you suggest and why? How should concentration risk be addressed in a general financing agreement between an OFI and a Farm Credit bank?

C. Insolvency of an OFI

How should new regulations safeguard the interests of an FCB or ACB when an OFI is liquidated?

IV. Fair Treatment Between OFIs and Direct Lender Associations

1. Do current regulations adequately and appropriately ensure that FCBs and ACBs accord impartial and equitable treatment to both FCS associations and OFIs? If not, what changes should be made and why?

2. The regulations currently require, with certain limited exceptions, that OFIs must be treated in a manner that is comparable to direct lender associations. To the extent feasible, the FCA seeks to ensure that OFIs and FCS associations are treated equitably by their funding banks. What circumstances, if any, justify different standards concerning equity investment in the funding bank, interest rate charges, and servicing fees?

V. Other Issues

Are there other regulatory changes, not addressed above, that would improve an FCS bank's ability to serve an OFI and its agricultural customers? Please explain your recommendations.

Dated: May 13, 1996.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 96–12411 Filed 5–16–96; 8:45 am]

BILLING CODE 6705–01–P

[6] Current section 1.7(b)(4) derives from section 203 of the Farm Credit Act Amendments of 1980 (1980 Act). *See* Pub. L. No. 96–592, § 203, 94 Stat. 3437, 3441, (Dec. 24, 1980). Section 203 of the 1980 Act substantially revised former section 2.3 of the Act, which set forth the lending authorities of the FICBs. The new OFI eligibility criteria in section 203 of the 1980 Act were incorporated into former section 2.3(d) of the Act. Section 401 of the 1987 Act, which set forth the powers and obligations of the FCBs, recodified the requirements in former section 2.3(d) as section 1.7(b)(4) of the Act. *See* Pub. L. No. 100–233, § 401, 101 Stat. 1568, 1625 (Jan 6, 1988).

[7] *See* H.R. 96–1287, 96th Cong., 2d. Sess., (1980), 21, 32–34. *See also* 126 Cong. Rec. H 10960–64 (daily ed. Nov. 19, 1980).

[8] *Id.*

[9] A recent study indicates that loan-to-deposit ratios at commercial banks of all sizes that substantially engage in agricultural lending have risen from 53.6 percent in 1987 to 86.2 percent as of June 30, 1995. *See* Economic Research Service, U.S. Dep't of Agriculture, (AIS–60), Agricultural Income and Finance Situation and Outlook Report, 11, 53. (Feb. 1996).

[10] The FCA is aware that Congress is considering proposals that would provide non-System financial institutions greater access to funding and discount relationships with System banks. These legislative proposals go substantially beyond what the existing statute allows. Should any of these proposals be enacted, the FCA would review the regulations in light of the new statutory provisions.

[11] Section 1.10(b) of the Act allows FCBs and ACBs to extend financial services to PCAs, ACAs, and OFIs so they can make: (1) Aquatic loans that mature within 15 years; and (2) loans to farmers, ranchers, farm-related businesses, and non-farm rural homeowners that mature within 7 years, unless the bank's board, under the regulations of the FCA, approve loans that are repayable within 10 years.

[12] Section 4.12(b) of the Act grants the FCA "exclusive power and jurisdiction to appoint a conservator or receiver" for FCS banks and associations.

[13] For the past 65 years, the Federal courts have interpreted various Farm Credit Acts as authorizing the FCA to determine the priority of claims for System institutions in liquidation. *See Wheeler v. Greene*, 280 US 49 (1929); *Knox National Farm Loan Associations v. Phillips*, 300 US 194 (1937); *Little v. First South Production Credit Association*, CA No. J690021 (W) (S.D. Miss. May 16, 1990).

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AH51

Evidence of Dependents and Age

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations concerning the evidence required to establish marriage, dissolution of a marriage, birth of a child, and death of a family member. This amendment would implement a provision of the "Veterans' Benefits Improvements Act of 1994," which authorizes the Secretary to accept the written statement of a claimant as proof of the existence of these relationships. This amendment is intended to facilitate proof of the existence of these relationships.

DATES: Comments must be received on or before July 16, 1996.

ADDRESSES: Mail written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or hand-deliver written comments to: Office of Regulations Management, Room 1176, 801 Eye Street, NW., Washington, DC 20001. Comments should indicate that they are in response to "RIN 2900–AH51." All written comments received will be available for public inspection in the Office of Regulations Management, Room 1176, 801 Eye Street, NW., Washington, DC 20001, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Steven Thornberry, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: Section 301 of the "Veterans' Benefits Improvements Act of 1994," Public Law 103–446, authorizes the Secretary of Veterans Affairs to accept the written statement of a claimant as proof of the existence of the following relationships between the claimant and another person: marriage, dissolution of a marriage, birth of a child, and death of any family member. The statute further authorizes the Secretary to require documentation in support of the claimant's statement if: (1) The claimant does not reside within a State; (2) the claimant's statement on its face raises a question of its validity; (3) there is conflicting information of record; or (4) there is reasonable indication, in the claimant's statement or otherwise, of fraud or misrepresentation.

The Secretary proposes to exercise this discretionary authority. Accordingly, we are proposing to amend 38 CFR 3.204. We are proposing to require that a claimant's written statement contain the date (month and year) and place of the event, the full name and relationship of the other person to the claimant, and, where the claimant's dependent child does not reside with the claimant, the name and address of the person who has custody of the child. It appears that we need this information, which currently must be supplied by an individual claiming additional dependency allowance, not only to make a proper determination of dependency, but also to determine whether or not the claimant's statement is valid or in conflict with other information of record. We are further proposing to require that a claimant seeking benefits on behalf of a dependent provide the social security number of the dependent in accordance with the provisions of 38 CFR 3.216.

We also propose to revise the heading of § 3.204 to reflect its contents more accurately. Finally, in §§ 3.204 and 3.213(a) we propose technical amendments to conform to the substantive changes proposed, and we propose technical changes in the "Cross References" following §§ 3.205 through 3.214 to conform to the heading revision of § 3.204.

Previously, we promulgated an amendment to our adjudication regulations to allow claimants to submit uncertified photocopies of documents to establish birth, death, marriage, or relationship (59 FR 46337 and 60 FR 46531). That amendment implemented a recommendation of VA's Blue Ribbon Panel on Claims Processing and was intended to reduce delays and improve efficiency in claims processing. This proposed rule would, we believe, further improve timeliness and efficiency.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

The collection of information included in proposed §§ 3.204 and 3.213 in this rulemaking proceeding merely concerns the quality of information that may be submitted to VA to establish marriage, dissolution of marriage, birth, death, or marriage of a child. The provisions of 38 U.S.C. 5124 contain specific authority to allow such information collection. The basic requirements for collection of information concerning marriage, dissolution of a marriage, birth, death, or marriage of a child for this rulemaking are set forth at §§ 3.205 through 3.211, 3.215, 3.216.

Title: Written statements concerning existence of dependents.

Summary of collection of information: See discussion above.

Description of the need for information and proposed use of information: See discussion above.

Description of likely respondents: claimants of VA benefits.

Estimated total annual reporting burden: 0 hours.

The estimated annual burden per respondent: 0 hours.

Estimated number of respondents: 541.054.

Estimated annual frequency of responses: 1.

The proposed rule will not increase the information collection burden on the public. This information is already collected on VA Forms 21–526, Veteran's Application for Compensation or Pension, 21–534, Application for Dependency and Indemnity Compensation, Death Pension and Accrued Benefits by a Surviving Spouse or Child and 21–686c, Declaration of Status of Dependents.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would not directly affect small entities. Only VA beneficiaries would be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Since this is a significant amendment, we have prepared a Costs and Benefits analysis in accord with Executive Order 12866 of September 30, 1993, and the Office of Management and Budget has reviewed this analysis.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: October 12, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

Editorial Note: This document was received at the Office of the Federal Register on May 13, 1996.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.204, the section heading is revised, current paragraphs (a) and (b) are redesignated as paragraphs (b) and (c), respectively, and a new paragraph (a) is added to read as follows:

§ 3.204 Evidence of dependents and age.

(a)(1) Except as provided in paragraph (a)(2) of this section, VA will accept, for the purpose of determining entitlement to benefits under laws administered by VA, the written statement of a claimant as proof of marriage, dissolution of a marriage, birth of a child, or death of a dependent, provided that the statement contains: the date (month and year) and place of the event; the full name and relationship of the other person to the claimant; and, where the claimant's dependent child does not reside with the claimant, the name and address of the person who has custody of the child. In addition, a claimant must provide the social security number of any dependent on whose behalf he or she is seeking benefits (see § 3.216).

(2) VA shall require the types of evidence indicated in §§ 3.205 through 3.211 where: the claimant does not reside within a state; the claimant's statement on its face raises a question of its validity; the claimant's statement conflicts with other evidence of record; or, there is a reasonable indication, in the claimant's statement or otherwise, of fraud or misrepresentation of the relationship in question.

(Authority: 38 U.S.C. 5124)

* * * * *

§ 3.204 [Amended]

3. In § 3.204, redesignated paragraph (b) is amended by removing the first sentence and adding in its place "The classes of evidence to be furnished for the purpose of establishing marriage, dissolution of marriage, age, relationship, or death, if required under the provisions of paragraph (a)(2), are indicated in §§ 3.205 through 3.211 in the order of preference."

§ 3.213 [Amended]

4. In § 3.213, paragraph (a) is amended by removing the first sentence and adding in its place "For the purpose of establishing entitlement to a higher rate of pension, compensation, or dependency and indemnity compensation based on the existence of a dependent, VA will require evidence which satisfies the requirements of § 3.204."

5. In the "Cross References" following §§ 3.205, 3.206, 3.207, 3.208, 3.209, 3.210, 3.211, 3.212, 3.213, and 3.214, remove the words "Evidence other than evidence of service" wherever they appear and add in their place the words "Evidence of dependents and age."

[FR Doc. 96–12365 Filed 5–16–96; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180 and 186

[PP 1E4020 and FAP 2H5619/P655; FRL–5364–2]

RIN 2070–AC18

Tau-fluvalinate; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish tolerances for residues of the insecticide tau-fluvalinate in or on the raw agriculture commodities (RAC) apples, oriental pears, and kiwi, to increase the tolerance for the insecticide tau-fluvalinate in or on the RAC fat of cattle and to change the chemical nomenclature in the tolerance. The proposed regulations to establish the maximum permissible levels for residues of the pesticide were requested pursuant to a petition submitted by Sandoz Agro, Inc.

DATES: Comments, identified by the docket control number [PP 1E4020/P655], must be received on or before June 17, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132 CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Comments and data may also be submitted to OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 1E4020/P655]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information." CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-6100, e-mail: larocca.george.gov.epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Registers** of December 13, 1991 (56 FR 65080) and June 10, 1992 (57 FR 24644), EPA issued rules that gave notice that Sandoz Agro., Inc. (formerly Sandoz Crop Protection Corp), 1300 East Touhy Ave., Des Plaines, Illinois 60018-

3300, had submitted food/feed additive petition (FAP) 2H5619 proposing to amend 40 CFR parts 185 and 186 by establishing food/feed additive regulations under section 409 of the, Federal, Food, Drug and Cosmetic Act (21 U.S.C. 348) for the insecticide tau-fluvalinate {(RS)-α-cyano-3-phenoxybenzyl N-(2-chloro-α,α,α-trifluoro-p-tolyl)-D-valinate (formerly known as (-α-RS,2R)-fluvalinate (RS)-α-cyano-3-phenoxybenzyl (R)-2{2-chloro-4-(triflurormethyl)anilino)-3-methylbutanoate}) in or on apple pomace, dry and wet, from imported apples at 2.0 parts per million (ppm) and hops, dry from imported hops at 15.0 ppm. At the same time Sandoz Agro., Inc. also submitted a pesticide petition (PP) 1E4020 proposing to establish tolerances under 408(e) for the insecticide tau-fluvalinate in or on the RACs apples imported from France, Chile and New Zealand at 0.4 ppm; Nashi imported from New Zealand at 0.4 ppm, and Kiwi imported from New Zealand at 0.5 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

On April 22, 1994, Sandoz Agro., Inc. requested voluntary withdrawal of their petition to establish tolerances in hops without prejudice to future filing. In the same letter and at the request of EPA they proposed to increase tolerances for the RACs fat of cattle to 0.1 ppm (previously established at 0.01 ppm), increase the proposed tolerance for apples to 0.5 ppm, and revise the commodity name "nashi" to "oriental pears" since it is the term used in the Codex Classification of Food and Animal Feeds published in the Code of Federal Regulations. The need for the increased cattle fat tolerance arises from the feeding of wet apple pomace to cattle raised outside the U.S. and then importing the cattle fat into the U.S.

With respect to the feed additive proposal for apple pomaces (wet/dry) the Agency no longer considers dry apple pomace a feed item, therefore tolerances are not required for this commodity (based on EPA's latest revision (unpublished) to Table II of the Pesticide Assessment Guidelines, Subdivision O (Residue Chemistry) titled "Raw Agricultural and Processed Commodities and Livestock Feeds Derived from Field Crops"). With respect to wet apple pomace, the Agency has concluded that the proposed cattle fat tolerance of 0.10 ppm and currently established tolerances in the meat, meat by-products and milk of cattle at 0.01 ppm are adequate to cover the residues expected from the proposed tolerance on apples. Since economics and perishability dictate that wet apple pomace will not likely be imported into the U.S. (either from apples processed overseas or treated apples imported and processed in the U.S.) the establishment of a tolerance for the animal feed item wet apple pomace will not be necessary. On July 25, 1995, Sandoz Agro., Inc. withdrew FAP 2H5619 and their request for a feed additive tolerance on wet apple pomace. Further, they amended the tolerance on oriental pears by increasing it to 0.5 ppm to be consistent with the tolerance level on apples.

Sandoz Agro., Inc. submitted a letter dated October 19, 1994, requesting a name change of fluvalinate to "tau-fluvalinate" and a change in chemical nomenclature from (-α-RS,2R)-fluvalinate {RS)-α-cyano-3-phenoxybenzyl (R)-2{2-chloro-4-(triflurormethyl)anilino}-3-methyl-butanoate}) to tau-fluvalinate {(RS)-α-cyano-3-phenoxybenzyl *N*-(2-chloro-α,α,α-trifluoro-p-tolyl)-*D*-valinate for all products registered in the United States (U.S.). This name has appeared on pesticide registrations in Europe since 1989 and reflects the half resolved form of fluvalinate. It is an approved American National Standards Institute (ANSI), British Standards Institute (BSI), and International Organization for Standardization (ISO) name. EPA concludes that the name of tau-fluvalinate is a useful means of distinguishing the half resolved fluvalinate from the completely racemic mixture, and therefore proposes to revise the current chemical name under 40 CFR 180.427 and 186.3400 to read as follows: tau-fluvalinate {(RS)-α-cyano-3-phenoxybenzyl *N*-(2-chloro-α,α,α-trifluoro-p-tolyl)-*D*-valinate.

The data submitted in support of this tolerance and other relevant material have been reviewed. The toxicological and metabolism data considered in support of this tolerance are discussed in detail in a related document published in the **Federal Register** of August 3, 1989 (54 FR 31972).

A chronic dietary exposure analysis was performed for tau-fluvalinate using a reference dose (RfD) of 0.01 mg/kg-bwt/day based on a no-observable effect level (NOEL) of 1.0 mg/kg- bwt/day from a 2–year rat feeding study with an uncertainty factor of 100. The end point effect of concern was decreased body weight gain in both sexes. The Theoretical Maximum Residue Contribution (TMRC) from established tolerances utilizes 1.6% of the RfD for the U.S. population and 7.0% of the RfD for the subpopulation most highly exposed, non-nursing infants (<1 yr). Establishing the new tolerances would utilize 4.9% of the RfD for the U.S. population and 48.3% for non-nursing infants (<1 yr). If the new tolerances are approved, the total percentages of the RfD utilized for the U.S. population and non-nursing infants (< 1yr) are 6.5% and 55.4%, respectively. Generally speaking, EPA has no cause for concern if total residue contribution for published tolerances is less than the RfD. EPA concludes that the chronic dietary risk of tau-fluvalinate, as estimated by the dietary risk assessment, does not appear to be of concern.

The metabolism of the chemical in animals for this use is adequately understood. An adequate analytical method, gas-liquid chromatography, is available for enforcement purposes. The enforcement methodology has been submitted to the Food and Drug Administration for publication in the *Pesticide Analytical Manual Vol. II* (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305-5232.

There are presently no U.S. registrations for use of the insecticide tau-fluvalinate on apples, oriental pears, and kiwis.

Based on the above information, the Agency concludes that the tolerances established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 1E4020/P655]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [PP 1E4020/P655] (including comments and data submitted electronically as described below. A public version of this record, including printed, paper version of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review. In addition, this action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled *Enhoncing the Intergovernmental Partnership*" or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180 and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 2, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

b. Section 180.427 is amended by revising the section heading, the introductory text of paragraph (a), revising the entry for cattle fat and by adding and alphabetically inserting the commodities apples, kiwi, and oriental pears in the table therein paragraph (a), and revising the introductory text of paragraph (b) to read as follows:

§ 180.427 Tau-fluvalinate {(RS)-α-cyano-3-phenoxybenzyl N-(2-chloro-α,α,α-trifluoro-p-tolyl)-D-valinate; Tolerances for residues.

(a) Tolerances are established for residues of the insecticide tau-fluvalinate {(RS)-α-cyano-3-phenoxybenzyl *N*-(2-chloro-α,α,α-trifluoro-p-tolyl)-*D*-valinate in or on the following commodities:

Commodity	Parts per million
Apples	0.5
Cattle, fat	0.1
• • •	• •
Kiwi	0.1
• • •	• •
Oriental pears	0.5
• • •	• •

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n) are established for residues of the insecticide tau-fluvalinate {(RS)-α-cyano-3-phenoxybenzyl *N*-(2-chloro-α,α,α-trifluoro-p-tolyl)-*D*-valinate in or on the following commodities:

* * * * *

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. Section 186.3400 is amended by revising the section heading and introductory paragraph to read as follows:

§ 186.3400 Tau-fluvalinate {(RS)-α-cyano-3-phenoxybenzyl N-(2-chloro-α,α,α-trifluoro-p-tolyl)-D-valinate.

A regulation is established to permit residues of the insecticide taufluvalinate {(RS)-α-cyano-3-phenoxybenzyl *N*-(2-chloro-α,α,α-trifluoro-p-tolyl)-*D*-valinate in or on the following commodities:

* * * * *

[FR Doc. 96–12350 Filed 5–16–96; 8:45 am]

BILLING CODE 6560–50–F

Notices

Federal Register
Vol. 61, No. 97
Friday, May 17, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request an extension for and revision to a currently approved information collection in support of the CCC/Export Credit Guarantee Program (GSM–102) and the CCC/Intermediate Export Credit Guarantee Program (GSM–103) based on re-estimates.

DATES: Comments on this notice must be received by July 16, 1996 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact L.T. McElvain, Director, Commodity Credit Corporation Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture, AgBox 1035, Washington, DC 20250–1035, telephone (202) 720–6211.

SUPPLEMENTARY INFORMATION: .

Title: CCC/Export Credit Guarantee Program (GSM–102) and CCC/Intermediate Export Credit Guarantee Program (GSM–103).

OMB Number: 0551–0004

Expiration Date of Approval: October 31, 1996.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The primary objective of the GSM–102 and GSM–103 programs is to expand U.S. agricultural exports by making available export credit guarantees to encourage U.S. private sector financing of foreign purchases of U.S. agricultural commodities on credit terms. The CCC currently has programs operating in more than 25 countries and 6 country regions with more than 950 exporters currently eligible to participate. Under 7 CFR Part 1493, exporters are required to submit the following: (1) information required for program participation as outlined in section 1493.30, (2) export sales information in connection with applying for a payment guarantee under section 1493.40, (3) evidence of export in section 1493.80, (4) notice of default and claims for loss under section 1493.110, and (5) miscellaneous provisions, including assignment of the proceeds and review of the regulations found in section 1493.140. In addition, each exporter and exporter's assignee (U.S. financial institution) must maintain records on all information submitted to CCC and in connection with sales made under the GSM–102 and GSM–103 program as outlined in section 1493.140. The information collected is used by CCC to manage, plan, evaluate and account for Government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Estimate of Burden: The public reporting burden for these collections is estimated to average 3.97 hours per response.

Respondents: U.S. Exporters of U.S. agricultural commodities, U.S. banks or other financial institutions, producer associations, U.S. export trade associations, and U.S. Government agencies.

Estimated Number of Respondents: 227 per annum.

Estimated Number of Responses per Respondent: 117 per annum.

Estimated Total Annual Burden of Respondents: 6,473.67 hours.

Copies of this information collection can be obtained from Valerie Countiss, the Agency Information Collection Coordinator, at (202) 720–6713.

Requests for comments: Send comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to L.T. McElvain, Director, Commodity Credit Corporation Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture, AgBox 1035, Washington, DC 20250–1035.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, May 9, 1996.

Timothy J. Galvin,

Acting Administrator, Foreign Agricultural Service and Acting Vice President, Commodity Credit Corporation.

[FR Doc. 96–12461 Filed 5–16–96; 8:45 am]

BILLING CODE 3410–05–M

Feed Grain Donations; Three Affiliated Tribes of the Fort Berthold Indian Reservation of North Dakota

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The Executive Vice President, Commodity Credit Corporation (CCC) is announcing that the Three Affiliated Tribes of the Fort Berthold Indian Reservation of North Dakota is an acute distress area and that CCC-owned feed grain will be donated to needy livestock owners on the reservation.

FOR FURTHER INFORMATION CONTACT: Sharon Diel, Agricultural Program Specialist, Farm Service Agency, AG Box Code 0527, P.O. Box 2415, Washington, DC 20013–2415, 202–720–6605.

SUPPLEMENTARY INFORMATION: Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427), and Executive Order 11336, notice is being given that it is determined that:

1. The chronic economic distress of the needy members of the Three Affiliated Tribes using the Fort Berthold Indian Reservation of North Dakota has been materially increased and become acute because of hail storms, wind, and excess rain thereby severely affecting livestock feed production and causing increased economic distress. This reservation is utilized by members of the Three Affiliated Tribes for grazing purposes.

2. The use of feed grain or products thereof made available by CCC for livestock feed for such needy members of the Three Affiliated Tribes using the Fort Berthold Indian Reservation will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, the Fort Berthold Indian Reservation of North Dakota is declared an acute distress area and the donation of feed grain owned by the CCC is authorized to livestock owners who are determined by the Bureau of Indian Affairs, United States Department of the Interior, to be needy members of the Three Affiliated Tribes utilizing such lands. These donations by the CCC may commence upon May 8, 1996, and shall be made available through June 15, 1996, or such other date as may be stated in a notice issued by the Executive Vice President, CCC.

Signed at Washington, DC, on May 9, 1996.

Grant Buntrock,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 96–12380 Filed 5–16–96; 8:45 am]

BILLING CODE 3410–05–P

Forest Service

Extension of Currently Approved Information Collection for Customer and Use Survey Techniques for Operations, Management, Evaluation, and Research

AGENCY: Forest Service, USDA.

ACTION: Notice of intent; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to request an extension of a currently approved information collection related to visitor use of recreational sites on National Forest System lands.

DATES: Comments must be received in writing on or before July 16, 1996.

ADDRESSES: All comments should be addressed to: H. Ken Cordell, Principal Investigator, Forest Service, USDA, Southern Research Station, 320 Green St., Athens, GA 30602.

FOR FURTHER INFORMATION CONTACT: H. Ken Cordell, Outdoor Recreation and Wilderness Assessment, at (706) 546–2451.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

The following describes the information collection to be extended:

Title: Customer and Use Survey Techniques for Operations, Management, Evaluation, and Research.

OMB Number: 0596–0110.

Expiration Date of Approval: June 30, 1996.

Type of Request: Extension of a previously approved information collection.

Abstract: The data collected is evaluated to ensure that the agency meets its Continuous Improvement Program and public service goals and management objectives. National Forest System land visitors are asked to respond to questions that include whether National Forest System land recreational sites are accessible to persons with disabilities, whether access roads are well maintained and adequate parking is available, if grounds and rest rooms are clean and drinking water is safe, and whether agency personnel are available to answer questions and offer assistance. Also, information is collected that reflects the economic impact National Forest System land recreational sites have on local and regional communities. There are seven general categories of information requests: a CUSTOMER on-site survey, four site-specific postage paid mail-in surveys, one expense related postage paid mail-in survey, and a CUSTOMER Report Card. Data gathered in this information collection is not available from other sources.

Customer On-Site Survey

Abstract: The CUSTOMER On-Site Survey is a verbal survey administered by Forest Service personnel or Forest Service volunteers to visitors of recreational sites on National Forest System lands. Answers are filled in by the survey administrator. Data collected in the CUSTOMER On-Site survey include the location of the interview (e.g., roadside, picnic area, boat ramp, etc.), distance traveled to the site, duration of stay at the site, purpose of the visit, number of people included in the group, helpfulness of agency employees, availability of information about the area, and the opportunity to see and hear wildlife.

Estimate of Burden: 15 minutes per response.

Type of Respondents: Visitors utilizing National Forest System lands recreational sites.

Estimated Number of Respondents: 10,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,500 hours.

Customer Postage Paid Mail-In Surveys

Abstract: After the CUSTOMER On-Site Survey has been administered by Forest Service personnel or volunteers, visitors using recreational sites on National Forest System lands are asked to fill out a postage paid mail-in survey. Visitors are given only 1 of 4 different site-specific mail-in surveys used in conjunction with the CUSTOMER On-Site Survey. Each survey focuses on a different aspect of the recreational site. For example, one survey includes questions about convenience of cooking grills, picnic tables, cleanliness of facilities, and adequacy of camp sites. Another survey includes questions about the helpfulness of agency employees, availability of maps for the area, and whether areas are clearly marked. A third survey includes questions about walking trails, condition of access roads and availability of parking, information about historic sites, or absence of human modifications to the visible landscape. The fourth site-specific survey asks questions relating to availability and condition of boat ramps and beaches, fishing, swimming or water-skiing opportunities, and whether the recreational sites are crowded.

Estimate of Burden: 15 minutes per response.

Type of Respondents: Visitors utilizing National Forest System lands recreational sites.

Estimated Number of Respondents: 10,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,500 hours.

Customer Postage Paid Mail-In Expense Survey

Abstract: Visitors at recreational sites on National Forest System lands are also given a postage paid mail-in survey related to their recreational expenses. They are asked to estimate the dollars they spent on recreational equipment and activities and whether the dollars were spent at or near the recreational site. The visitors are asked to return the survey by mail after completing it.

Estimate of Burden: 15 minutes per response.

Type of Respondents: Visitors utilizing National Forest System lands recreational sites.

Estimated Number of Respondents: 10,000.

Estimated number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,500 hours.

Customer Report Card

Abstract: The CUSTOMER Report Card is an on-site survey made available to visitors at the recreational site. The purpose of the CUSTOMER Report Card is to gather data about the experiences visitors have on National Forest System land recreational sites, such as how satisfying the visit was and whether the recreational site met the visitor's needs. When completed, the surveys are placed in a box located at the recreational site for this purpose.

Estimate of Burden: 5 minutes per response.

Type of Respondents: 10,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 834 hours.

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 13, 1996.

Jack Ward Thomas,

Chief.

[FR Doc. 96–12452 Filed 5–16–96; 8:45 am]

BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration

Livestock Care and Handling Guidelines; Comment Request

ACTION: Notice.

SUMMARY: The Agency is proposing to issue livestock care and handling guidelines to assist the industry in complying with the provisions of the Packers and Stockyards Act.

DATES: Comments are invited and should be submitted by July 16, 1996.

ADDRESSES: Comments may be mailed to the Deputy Administrator, Packers and Stockyards Programs, Room 3039, South Building, U.S. Department of Agriculture, Washington, D.C. 20250–2800. Comments received may be inspected during normal business hours in the Office of the Deputy Administrator, Packers and Stockyards Programs.

FOR FURTHER INFORMATION CONTACT: Dan Van Ackeren, Director, Livestock Marketing Division, (202) 720–6951.

SUPPLEMENTARY INFORMATION: Because of public concerns, the Agency initiated a program to review the services, facilities, and procedures for receiving and handling livestock at all stockyards. Since May 1991, the Agency has investigated over 1,400 stockyards to determine whether the livestock handling practices, services, and facilities at these stockyards were adequate to assure livestock are handled and cared for properly. While most stockyards have adequate facilities and exercise good animal care and handling practices, problems were found to exist at some stockyards. Some of the problems encountered at stockyards included: inadequate facilities; handling livestock in a manner that could cause bruising, injury, or unnecessary suffering, including excessive use of electric prods or other driving devices; overcrowding in pens; and not handling nonambulatory or injured livestock promptly. In addition, the Agency has received over 8,000 letters from animal welfare groups or from individuals not identified as producers or as members of any organization concerning the care and handling of "downed" animals at stockyards.

While the Agency already has a regulation (9 CFR 201.82) issued under the provisions of the Packers and Stockyards (P&S) Act that requires stockyard owners to exercise reasonable care and promptness in providing stockyard services to prevent shrinkage, injury, death, or other avoidable loss, that regulation does not adequately address the specific problems found in the Agency's review of the livestock handling practices, services, and facilities of stockyards. The Agency believes issuing specific livestock care and handling guidelines to the stockyard industry would be helpful in dealing with this issue.

After considering the results of over 1,400 stockyard reviews, and the letters from concerned citizens, the Agency is proposing to publish guidelines for the care and handling of livestock at stockyards to assist the industry in complying with the provisions of the Packers and Stockyards Act. The guidelines would advise stockyard owners that they should maintain their facilities in a manner that avoids risk of injury, bruising, unnecessary suffering and stress. The stockyards would be advised to move, pen, and care for livestock in a manner that protects the quality and value of the animal while also providing for the animal's welfare. The guidelines would also advise stockyard owners of the minimum standards the Agency considers necessary for handling nonambulatory animals.

Section 301(b) of the Packers and Stockyards Act (7 U.S.C. 201(b)) defines "stockyard services" as any "services or facilities furnished at a stockyard in connection with the receiving, buying or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling, in commerce, of livestock." Section 304 (7 U.S.C. 205) provides that: "All stockyard services furnished pursuant to reasonable request made to a stockyard owner or market agency at such stockyard shall be reasonable and nondiscriminatory and stockyard services, which are furnished, shall not be refused on any basis that is unreasonable or unjustly discriminatory * * *."

Section 307(a) (7 U.S.C. 208(a)) provides that: "It shall be the duty of every stockyard owner and market agency to establish, observe, and enforce just, reasonable, and nondiscriminatory regulations and practices in respect to the furnishing of stockyard services * * *." Section 312(a) (7 U.S.C. 213(a)) provides that: "It shall be unlawful for any stockyard owner, market agency, or dealer to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in connection with determining whether persons should be authorized to operate at the stockyards, or with the receiving, marketing, buying, or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing, or handling of livestock."

The Guidelines

Livestock in marketing channels should be handled and cared for in a manner that is consistent with the animals' well-being and that protects their quality and value. The Agency does not condone handling livestock in any manner that is inconsistent with good animal husbandry practices and

believes that the failure to provide proper care and handling increases the risk of unnecessary loss to the seller and unnecessary suffering for the animal. It is the Agency's view that stockyards should provide appropriate facilities and follow animal care and handling practices and procedures that minimize the risk of injury, death, or other avoidable loss and avoid unnecessary suffering. Failure to provide appropriate services as detailed in these guidelines could result in the Agency's initiating an enforcement action brought pursuant to Sections 304, 307, and 312 of the Packers and Stockyards Act.

1. Care and Handling of Livestock

(a) Livestock at stockyards should be handled in a manner that protects the quality and value of the animal while also providing for the animal's welfare. Stockyard owners should establish and enforce practices and procedures that ensure the proper treatment of animals. Adequate instruction should be given to employees and proper notice given to truckers, market patrons, and other livestock handlers on the livestock care and handling practices to be followed at the facility. Abuse or mistreatment of animals should not be tolerated.

(b) Livestock facilities, including loading and unloading ramps, gates, fences, scales, and equipment used to provide stockyard services should be reasonably clean and well-maintained. Any object in the facility or on equipment used around livestock that is likely to cause bruising or injury to livestock, such as protruding nails, sharp edges, extended bolts, gate hooks, latches and hinges, should be eliminated or modified. All floors should be constructed or maintained in such a manner that livestock can walk without slipping to prevent injuries caused by falling down.

(c) Livestock of all species should be unloaded, yarded, moved through the facility, and reloaded in a manner to avoid bruising, injury, and unnecessary stress or suffering. When livestock are driven, sorted, or otherwise moved about a facility, such movement should be reasonably paced in a manner consistent with the type, temperament, and condition of the livestock being handled and stockyard conditions.

(d) Livestock driving devices, such as electric prods, canes, whips, paddles or canvas straps, should be used prudently and only to the extent necessary to handle or move livestock. Generally, paddles and canvas straps are equally effective and less likely than other types of driving devices to cause bruising or unnecessary excitement and stress. Electric prods should be of a commercial type designed for use in moving livestock. All electric prodding devices should be used sparingly in order to avoid unnecessary stress and risk of injury to animals. Electric prods should never be applied to the rectum, vagina, eyes, ears or mouth areas.

(e) Stockyards should provide adequate pen space for the number and type of animals handled. Uncastrated mature males should be penned individually if necessary to prevent fighting. Bulls should be penned separately from cows and heifers to prevent mounting which can cripple small or weak animals.

(f) The Agency recognizes that transportation factors, types of livestock and animal nutrition requirements may make periods of withdrawal from feed and water desirable. These periods do not pose a threat to the quality and value of the animals if the animals are moved promptly to their destination. However, livestock held overnight at a stockyard, either before or after sale, should have access to feed and water within 24 hours of receipt at the stockyard.

2. Care and Handling of Nonambulatory Livestock.

(a) Nonambulatory animals, also referred to as "downed animals," are defined as those animals that are unable to stand or walk without assistance. The Agency believes prompt action is the key to preventing unnecessary suffering and protecting the economic value of nonambulatory animals, whether the action is providing veterinary care, transporting it to slaughter, euthanizing the animal, or taking some other effective action.

(b) Stockyards should provide adequate facilities and equipment necessary to handle any livestock they accept on consignment. If a stockyard chooses to accept nonambulatory livestock or if an animal becomes nonambulatory while at the stockyard, the stockyard should provide the necessary equipment to handle the livestock humanely, efficiently, and promptly to avoid unnecessary suffering and preserve the quality and value of the animal.

(c) Stockyard owners should establish pre-planned procedures that provide for assessing the condition of a nonambulatory animal and the options available for its care so prompt decisions can be made on its disposition and removal from the facility.

(d) Nonambulatory animals require special equipment for their handling and movement within the stockyard facility to avoid the risk of further injury and unnecessary suffering. Such equipment may include a front-end loader, sled, belt or mat slide, specialized hoists or slings, or a combination of these devices. Special care should be taken when moving or loading nonambulatory animals onto a suitable conveyance. Nonambulatory animals should be gently rolled onto the conveyance, and an animal should not be shoved against a wall or fence to get it into a loader bucket.

(e) Stockyards that cannot provide proper care in handling nonambulatory livestock or do not have the required special equipment should adopt a policy of refusing to accept such livestock. Further, if an animal becomes nonambulatory while at such facility, the stockyard should promptly euthanize the animal before moving it or secure the prompt services of a veterinarian or other third party with the necessary equipment to provide proper care and handling for the animal.

(f) Dragging of a nonambulatory animal by its limbs is undesirable and should be avoided. In situations where an animal must be moved to accommodate a suitable conveyance, then padded belts should be attached to two noninjured limbs and the rope, cable, or chain attached to the belts. Animals should never be pulled by the neck. If these techniques for movement of the animal are not practical, then the animal should be promptly euthanized.

(g) Separate pens should be provided for weak, injured, and nonambulatory livestock. Such pens should be located for ease of access by specialized equipment. Feed and water should also be provided for the nonambulatory livestock.

(h) When an animal becomes nonambulatory, its condition should be promptly assessed, a decision made as to the proper care or disposition of the animal, and appropriate actions should be taken to protect its quality and value and to avoid unnecessary suffering. When it is determined that an animal should be euthanized, then the action should be taken promptly and humanely without awaiting the arrival of a rendering service.

(Authority: 7 U.S.C. 228(a); 7 CFR 2.22. 2.81)

Done at Washington, D.C. this 13th day of May 1996.

James R. Baker,

Administrator Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 96–12376 Filed 5–16–96; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050996F]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting.

DATES: This meeting will be held on June 12, 1996, from 8:00 a.m. to 5:00 p.m.

ADDRESSES: This meeting will be held at the Radisson Bay Harbor Inn, 7700 Courtney Campbell Causeway, Tampa, FL; telephone: 813–281–8900.

Council address: Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to review Draft Amendment 9 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, U.S. Waters with Supplemental Environmental Impact Statement (EIS), Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis, and Social Impact Assessment (SIA). The amendment is intended to address the Council's commitment to reduce the bycatch mortality of red snapper, particularly juveniles, from shrimp trawls. The amendment includes a review of previous actions and their effects on bycatch as well as various alternatives.

The Shrimp Scientific and Statistical Committee (SSC) will review the draft amendment with various management alternatives for gear including: (1) Status Quo - no change to existing gear regulations; and (2) Requiring Bycatch Reduction Devices (BRDs) in all areas of the exclusive economic zone. They will also look at area specific usage of BRDs including requiring BRDs: (1) inside the 100 fathom contour; (2) inside the 100 fathom contour and west of Cape San Blas, Florida; and (3) between the 10 and 100 fathom contours. Other alternatives that will be discussed include: Area closures, seasonal closures, BRD testing criteria, and a protocol for BRD certification. The Shrimp SSC will also consider a Regulatory Impact Review, which mainly reviews the economic ramifications of the proposed amendment; a Social Impact Assessment; and any environmental consequences. Also considered will be the effects of other Federal laws and regulations.

The Shrimp SSC is comprised of scientists that have specialized in working with the shrimp fishery of the Gulf and have been appointed to advise the Council on shrimp management.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by June 5, 1996.

Dated: May 10, 1996.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Service.

[FR Doc. 96–12449 Filed 5–16–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 050996E]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting.

DATES: The meeting will be held on June 6, 1996, beginning at 8:00 a.m. and will conclude at 5:00 p.m.

ADDRESSES: This meeting will be held at the Tampa Airport Hilton at Metro Center, 2225 North Lois Avenue, Tampa, FL; 813–877–6688.

Council address: Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Antonio B. Lamberte, Economist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review Draft Amendment 9 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, U.S. Waters with Supplemental Environmental Impact Statement, Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis, and Social Impact Assessment (SIA). The amendment is intended to address the Council's commitment to reduce the bycatch mortality of red snapper, particularly juveniles, from shrimp trawls. The amendment includes a review of previous actions and their effects on bycatch as well as various alternatives.

The Socioeconomic Panel (SEP) will review the draft amendment with various management alternatives for gear including: (1) Status Quo - no change to existing gear regulations; and (2) Requiring Bycatch Reduction Devices (BRD) in all areas of the exclusive economic zone. They will also look at area specific usage of BRDs including requiring BRDs: (1) inside the 100 fathom contour; (2) inside the 100 fathom contour and west of Cape San Blas, Florida; and (3) between the 10 and 100 fathom contours. Other alternatives that will be discussed include: area closures, seasonal closures, BRD testing criteria, and a protocol for BRD certification. The SEP will focus their review on the economic and social impacts of these various alternatives, as these impacts are discussed in the RIR and the SIA.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by May 30, 1996.

Dated: May 10, 1996.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–12451 Filed 5–16–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 050996G]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Council) will hold a public meeting.

DATES: The meeting will be held on May 31, 1996, beginning at 10 a.m.

ADDRESSES: The meeting will be held at the Council office.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: A Council appointed ad hoc committee will discuss how to implement a system which allows landing of groundfish in excess of limits and the use of the proceeds to fund fishery programs.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric W. Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: May 10, 1996.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–12450 Filed 5–16–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 042996A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of modification to permit no. 898 (P772#65).

SUMMARY: Notice is hereby given that on May 6, 1996 Permit No. 898, issued to the National Marine Fisheries Service, Southwest Fisheries Science Center, La Jolla, CA 92038, was modified.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Suite 13130 Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4001); and

Coordinator, Pacific Area Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/973–2987).

SUPPLEMENTARY INFORMATION: The subject modification has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

The permittee is authorized to capture, restrain, sedate, and instrument up to 25 adult male Hawaiian monk seals. Nine of these animals may be instrumented with portable camcorders. The permit has been modified to authorize the instrumentation of up to three (adult males only) of these 12 seals with Global Positioning System units in lieu of camcorders. This modification involves no increase in the originally authorized take.

Dated: May 13, 1996.

Ann D. Terbush,

Chief, Permits & Documentation Division, Office of Protected Resources.

[FR Doc. 96–12444 Filed 5–16–96; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Public Hearing

AGENCY: Corporation for National and Community Service.

SUMMARY: The Corporation for National Service announces the convening of a public hearing to be held on Thursday, May 23, 1996 from 2:00 p.m.–5:00 p.m. in Indianapolis, Indiana. Members of the public are invited to participate.

The hearing will address three questions: (1) How best can national service improve communities? (2) What role can service play in making participants better citizens? (3) What is the appropriate role of the federal government in supporting service?

DATES: The public hearing will be held on Thursday, May 23, 1996, from 2:00 p.m.–5:00 p.m.

ADDRESSES: The public hearing will be held at University Place Conference Center and Hotel, 850 West Michigan Street, Indianapolis, Ind. 46202, on the campus of Indiana University/Purdue University Indianapolis.

FOR FURTHER INFORMATION CONTACT: For further information, contact Rhonda Taylor, Associate Director of Special Projects and Initiatives, Corporation for National Service at (202) 606–5000, ext. 282. TTD Number: (202) 565–2799. This notice may be requested in an alternative format for the visually impaired.

SUPPLEMENTARY INFORMATION: The Corporation for National Service is a federal government corporation that engages Americans of all ages and backgrounds in community-based service. This service addresses the nation's educational, public safety, human, and environmental needs to achieve direct and demonstrable results. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service.

Dated: May 14, 1996.

Terry Russell,

General Counsel, Corporation for National Service.

[FR Doc. 96–12437 Filed 5–16–96; 8:45 am]

BILLING CODE 6050–28–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Staged Entry for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products and Silk Apparel Products Produced or Manufactured in the People's Republic of China

May 15, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending earlier directives with respect to textile products from China.

EFFECTIVE DATE: May 15, 1996.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Notices published in the **Federal Register** on December 6, 1995 and December 19, 1995 (60 FR 62413 and 60

FR 65292, respectively) announce the establishment of import restraint limits for certain silk apparel and certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the People's Republic of China and exported during 1996. The Office of the U.S. Trade Representative has decided to stage the entry of certain goods exported from China during the period beginning on May 15, 1996.

This action is being taken to facilitate implementation of a request to CITA from the Office of the U.S. Trade Representative in accordance with section 301 of the Trade Act of 1974, as amended.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995).

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 15, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on November 30, 1995 and December 13, 1995 by the Chairman, Committee for the Implementation of Textile Agreements (CITA). Those directives concern imports of certain silk apparel and certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period beginning on January 1, 1996 and extending through December 31, 1996.

The above directives are hereby amended to the extent necessary to facilitate implementation of the directive of the Office of the U.S. Trade Representative to the Commissioner regarding textile products from China dated May 15, 1996, issued pursuant to section 301 of the Trade Act of 1974, as amended. For your information, entry of the following categories of textile products, produced or manufactured in the People's Republic of China, is hereby limited, over the 30-day period (commencing with exports from China on or after May 15, 1996), to the following amounts:

Category	Amount to be entered
Sublevels in Group I	
218	1,631,752 square meters.
317/326	2,961,510 square meters.
338/339	355,559 dozen.
341	97,889 dozen.
347/348	360,698 dozen.
352	270,175 dozen.
359–V[1]	122,273 kilograms.
360	1,076,438 numbers.
361	601,945 numbers.
447	11,595 dozen.
448	3,259 dozen.
638/639	354,776 dozen.
641	194,097 dozen.
642	45,002 dozen.
647	226,428 dozen.
648	161,781 dozen.
649	131,463 dozen.
650	16,367 dozen.
652	376,963 dozen.
659–S[2]	87,044 kilograms.
840	69,473 dozen.
842	38,367 dozen.
847	183,392 dozen.
Silk Apparel Group 733, 734, 735, 736, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 750, 751, 752, 758 and 759, as a group.	51,915,694 square meter equivalent.
Specific Limit within Group 740 (Men's and boys' shirts, not knit).	495,543 dozen.
741 (Women's and girls' shirts/ blouses, not knit).	1,236,580 dozen.

[1] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[2] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

Textile products in the above group and categories will be sublimits to the calendar year limits for the same group and categories established in the directives dated November 30, 1995 and December 13, 1995.

Categories 740 and 741 will be subject to specific limits for the May 15, 1996 through June 13, 1996 period, and subject to the Silk Group limit for the same period. The May 15, 1996 through June 13, 1996 period for the Silk Group, however, shall be a sublevel of the Silk Group for the 1996 calendar year. Charges for the 1996 calendar year limits for Categories 740 and 741 will be provided by CITA for goods exported during the May 15, 1996 through June 13, 1996 period.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Troy H. Cribb,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–12657 Filed 5–15–96; 3:26 pm]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 17, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the commodities.
3. The action will result in authorizing small entities to furnish the commodities to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Chock Block

2540–00–T27–8865
2540–00–T27–9043
(Requirements for the Defense Distribution Region West, Stockton, CA)
NPA: The Oklahoma League for the Blind, Oklahoma City, Oklahoma

Easel, Display & Training

7520–01–424–4867
7520–01–424–4845
NPA: The Lighthouse for the Blind, Inc., Seattle, Washington

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–12486 Filed 5–16–96; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: June 17, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On March 15, 22 and 29, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 F.R. 10733, 11811 and 14088) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action will not have a severe economic impact on current contractors for the commodities and services.
3. The action will result in authorizing small entities to furnish the commodities and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Towel, Machinery Wiping

7920–00–532–8543
7920–00–519–1912

Services

Food Service

Vandenberg Air Force Base, California

Janitorial/Custodial

Defense National Stockpile Depot, Amsterdam Avenue, Scotia, New York

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–12487 Filed 5–16–96; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Notice of Availability of Surplus Land and Buildings in Accordance With Public Law 103–421 Located at Charles E. Kelly Support Facility, Irwin Support Annex, Manor, PA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: This notice identifies the surplus real property located at the Irwin Support Annex, Manor, PA. The former Nike Missile Launcher site is located in Westmoreland County, on Nike Road, just off Pleasant Valley Road, south of its intersection with Route 130, next to the Turnpike.

FOR FURTHER INFORMATION CONTACT: For more information regarding the particular property identified in this Notice (i.e., acreage, floor plans, existing sanitary facilities, exact location), contact Mr. Gerry Bresee, Real Estate Division, Army Corps of Engineers, P.O. Box 1715, Baltimore, MD 21203 (telephone 410–962–5173, fax 410–962–0866).

SUPPLEMENTARY INFORMATION: This surplus is available under the provisions of the Federal Property and Administrative Services Act of 1945 and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. Notices of interest should be forwarded to Mr. William E. Mitchell II, Redevelopment Director, Redevelopment Authority of the County of Westmoreland, 601 Courthouse Square, Greensburg, Pennsylvania 15601, (telephone 412–830–3050, fax 412–830–3611).

The surplus real property totals approximately 18.93 acres and contains 11 buildings totaling approximately 26,468 square feet of space. Current range of uses include storage and administrative. Future uses may include administrative, storage or residential.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–12377 Filed 5–16–96; 8:45 am]

BILLING CODE 3710–41–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has

been requested by May 16, 1996. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before July 16, 1996.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506 (c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 13, 1996.

Arthur F. Chantker,

Acting Director, Information Resources Group.

Office of the Under Secretary

Type of Review: Emergency.

Title: Evaluation of Federal Efforts to Assist in School Reform.

Abstract: The U.S. Department of Education is charged with evaluating its technical assistance efforts associated with the reauthorized ESEA (Elementary and Secondary Education Act) and Goals 2000. The survey will collect information from school districts regarding the sources of information and technical assistance they use in implementing federal programs.

Additional Information: This survey will contribute to an Evaluation of Federal Efforts to Assist in School Reform, particularly those supported through the ESEA and Goals 2000. This survey will be used to examine school districts' needs and access information and guidance. An emergency review is requested in order to ensure that timely information can inform Department efforts in supporting program implementation. Information is needed to report to Congress and the Office of Management and Budget on the Department's progress in implementing new laws. If data is not collected before districts close for the summer break, the Department would not be able to provide timely information to support program implementation efforts in the next year.

Frequency: One-time.

Affected Public: State, local or Tribal Government, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 2,408.

Burden Hours: 2,204.

[FR Doc. 96–12391 Filed 5–16–96; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 16, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 13, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Extension.

Title: Fulbright-Hays Training Grants: Faculty Research Abroad Program and Doctoral Dissertation Research Abroad Program.

Frequency: Annually.

Affected Public: Individuals or households; Not-for-profit institutions.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 805.

Burden Hours: 27,200.

Abstract: This application allows individual graduate student and faculty members to compete for Fulbright-Hays fellowships and enables the Department of Education to make awards to U.S. institutions of higher education to develop and improve modern foreign language and area studies.

[FR Doc. 96–12392 Filed 5–16–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[Docket No. FE C&E 96–03—Certification Notice–151]

Mid-Georgia Cogen, L.P.; Notice of Filing of Coal Capability Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Filing.

SUMMARY: On May 2, 1996, Mid-Georgia Cogen, L.P., submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 et seq.), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in acccordance with section 201(d).

Owner: Mid-Georgia Cogen, L.P.

Operator: Mid-Georgia Cogen, L.P.

Location: Houston County, Georgia.

Plant Configuration: Combined cycle—topping cycle cogeneration.

Capacity: 323 megawatts.

Fuel: Natural gas.

Purchasing Entities: Georgia Power Company.

In-Service Date: March 1, 1998.

Issued in Washington, D.C., May 13, 1996.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 96–12422 Filed 5–16–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

Notice of Intent To Provide Optional Prescreening Process for the National Industrial Competitiveness Through Energy, Environment and Economics (NICE^3) Program

AGENCY: The Department of Energy (DOE).

ACTION: Notice of intent to provide optional prescreening process for potential applicants under the DOE NICE^3 program solicitation.

Presolicitation: In September, the DOE's Office of Industrial Technologies will issue its FY 1997 competitive solicitation under DOE's NICE^3 program to fund innovative industrial technologies that reduce energy consumption, waste production, and operating costs. In an effort to assist perspective applicants, DOE intends to accept presolicitation submissions from potential applicants that set out a brief description of the project to be proposed under the FY 1997 solicitation. DOE's technical staff will review these brief descriptions and provide constructive feedback to the potential applicant within a two week period. This feedback can be used by a potential applicant in refining their proposal under the FY 1997 solicitation.

Background Information: The goals of the NICE^3 Program are to improve energy efficiency, promote cleaner production, and to improve competitiveness in industry. The intent of the NICE^3 program is to fund projects that have completed the research and development stage and are ready to demonstrate a fully integrated commercial unit. Some industrial technologies that the NICE^3 project has funded follow: SO_3 Cleaning Process in the Manufacture of Semiconductors; Innovative Design of a Brick Kiln Using Low Thermal Mass Technology; Continuously Reform Electroless Nickel Plating Solutions; Recovery and Reuse of Water-Washed Overspray Paint; and HCl Acid Recovery System. For the past five years the NICE^3 program has offered 47 grants (approximately $14.8 million) to fund innovative industrial technologies.

Eligible applicants for funding under that solicitation include any authorized agency of the 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, and any territory or possession of the United States. For convenience, the term State in this notice refers to all eligible State agency applicants. Local governments, State and private universities, private non-profits, private businesses, and individuals, who are not eligible as direct applicants, must work with the appropriate State agencies in developing projects and forming participation arrangements. DOE strongly encourages and requires these types of cooperative arrangements in support of program goals.

The Catalog of Federal Domestic Assistance number assigned to this program is 81.105. Up to $9 million in Federal funds will be made available by

DOE for the 1997 solicitation. Cost sharing is required by all participants. The Federal Government will provide up to 40 percent of the funds for the project in FY 1997. The remaining funds must be provided by the eligible applicants and/or cooperating project participants. In addition to direct financial contributions, cost sharing can include beneficial services or items, such as manpower equipment, consultants, and computer time that are allowable in accordance with applicable cost principles. The state applicant is required to have an industrial partner to be considered eligible for grant consideration.

Presolicitation: This notice is to advise potential applicants to the FY 1997 solicitation that DOE will accept presolicitation submissions that set out that a brief description of the potential project. The submissions should not exceed two pages and should adhere to the format laid out in the preproposal format. This format can be obtained by calling the U.S. Department of Energy's Golden Field Office contacts (listed below). All preproposals submission will be reviewed by NICE [3] project monitors at the Golden Field Office. The monitors will provide comments to the submitter on the proposed project's applicability to the NICE [3] program. In addition, the reviewers will provide feedback which the applicant can use to formulate and refine their proposal.

The submission of a presolicitation description is not mandatory for submitting an application under the FY 1997 solicitation. DOE reviews and comments under the presolicitation process will not be used by DOE in evaluating or awarding applications under the FY 1997 solicitation. The only purpose of the presolicitation process is to assist potential applicants, who may need assistance, in refining their application.

DATES: A brief description of the proposed project can be submitted to the Golden Field Office on or before August 2, 1996. All summaries must be submitted through a state agency.

FOR FURTHER INFORMATION CONTACT: Eric Hass, at (303) 275–4728, or Doug Hooker, at (303) 275–4780, at the U.S. Department of Energy Golden Field Office, 1617 Cole Boulevard, Golden, Colorado 80401, for referral to appropriate DOE Regional Support Office or State Agency and to receive a copy of the format for the brief description. In addition, the format for the brief description and a list of participating state agencies can be located on the internet at WWW.nrel.gov/documents/nice3. The Contract Specialist is James Damm, at (303) 275–4744, and the Contracting Officer is Robert Brown, at (404) 347–2879.

Issued in Golden, Colorado, on May 9, 1996.

John Meeker,

Chief, Procurement.

[FR Doc. 96–12421 Filed 5–16–96; 8:45 am]

BILLING CODE 6450–01–P

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted an energy information collection to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995.

DATES: Comments must be filed by June 17, 1996. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Herbert Miller, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Mr. Miller may be telephoned at (202) 426–1103; e-mail: hmiller@eia.doe.gov; (FAX 202–426–1081).

SUPPLEMENTARY INFORMATION: The Energy Information Administration (EIA) has submitted the energy information collection listed below to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) Collection number and title; (2) summary of the collection of information (includes sponsor; i.e., the DOE component), current OMB document number (if applicable), response obligation (mandatory, voluntary, or required to obtain or retain benefits), and type of request (new, revision, extension, or reinstatement); (3) a description of the need and proposed uses of the information; (4) a description of the likely respondents; and (5) an estimate of the total annual reporting and recordkeeping burden (number of respondents per year times the average number of responses per respondent annually times the average burden per response).

The energy information collections submitted to OMB for review were:

1. Form EIA–882T, "Generic Clearance for Questionnaire Testing, Evaluation, and Research"

2. Energy Information Administration; Docket Number 1905—0186; Response Obligation—Voluntary; and Extension

3. The EIA–882T will be used to conduct pretest/pilot surveys (personal visit or face-to-face interviews, telephone interviews, mail questionnaires), focus groups, and cognitive interviews. Data will be used to modify questionnaires to improve the quality of data. Samples of respondents will be selected to participate.

4. Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government, and State, Local, or Tribal Government

5. 1,000 total annual burden hours (4,000 respondents × 1 response per respondent ×. 25 hours per response).

Statutory Authority: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC, May 13, 1996.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 96–12423 Filed 5–16–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. MG96–11–000]

Granite State Gas Transmission, Inc.; Notice of Filing

May 13, 1996.

Take notice that on May 8, 1996, Granite State Gas Transmission, Inc. (Granite State) filed revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566, *et seq.*[2]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before May 28, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12381 Filed 5–16–96; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. *FERC* (affirmed in part end remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation end Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707 (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994).

[Docket No. EL96–47–000]

Syracuse Power Company v. Niagara Mohawk Power Corporation and Northern Electric Power Co., L.P.; Notice of Filing

May 14, 1996.

Take notice that on April 17, 1996, Syracuse Power Company filed a complaint and request for an investigation relating to the activities of Niagara Mohawk Power Corporation and Northern Electric Power Co., L.P., as co-licensees of the Hudson Falls Project No. 5276.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 15, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to the complaint shall be due on or before June 15, 1996.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12438 Filed 5–16–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG96–68–000, et al.]

Trakya Elektrik Uretim ve Ticaret A.S., et al.; Electric Rate and Corporate Regulation Filings

May 10, 1996.

Take notice that the following filings have been made with the Commission:

1. Trakya Elektrik Uretim ve Ticaret A.S.

[Docket No. EG96–68–000]

On May 8, 1996, Trakya Elektrik Uretim ve Ticaret A.S. ("Applicant"), with its principal office at Bugday Sokak No. 2/9 Kavaklidere, Ankara, Turkey, filed with the Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Applicant states that it is a Turkish joint stock company. Applicant will be engaged directly and exclusively in owning an approximately 478 MW combined cycle gas-fired electric generating facility located on the Marmara Sea, near Istanbul, Turkey. Electric energy produced by the facility will be sold at wholesale to Turkiye Elektrik Uretim, Iletisim A.S. In no event will any electricity be sold to consumers in the United States.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Illinois Power Company

[Docket Nos. ER96–1376–000, ER96–1377–000, ER96–1380–000, ER96–1381–000, ER96–1382–000, ER96–1486–000, ER96–1509–000, ER96–1510–000, ER96–1559–000]

Take notice that on April 17, 1996, Illinois Power Company filed a request to revise the proposed effective date to April 1, 1996, for service in the above-referenced dockets.

Comment date: May 23, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Cinergy Services, Inc.

[Docket No. ER96–1684–000]

Take notice that on April 30, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated April 1, 1996 between Cinergy, CG&E, PSI and VTEC Energy, Inc. (VTEC).

The Interchange Agreement provides for the following service between Cinergy and VTEC.

1. Exhibit A—Power Sales by VTEC
2. Exhibit B—Power Sales by Cinergy

Cinergy and VTEC have requested an effective date of May 1, 1996.

Copies of the filing were served on VTEC Energy, Inc., the New York Public Service Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: May 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. The Montana Power Company

[Docket No. ER96–1685–000]

Take notice that on April 30, 1996, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a Service Agreement with each the Colstrip Project Owners (Colstrip Owners) and Idaho Power Company (Idaho Power) under FERC Electric Tariff, Original Volume No. 4; and an Index of Customers under said Tariff.

A copy of the filing was served upon the Colstrip Owners and Idaho Power.

Comment date: May 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Virginia Electric and Power Company

[Docket No. ER96–1686–000]

Take notice that on April 30, 1996, Virginia Electric and Power Company (Virginia Power), tendered for filing a Modification to the agreement for the purchase of electricity for resale (the Modification) between Virginia Power and the Town of Windsor, North Carolina (Windsor). The Modification provides for the continuation of the requirements service previously received by Windsor with certain changes in the rates, terms and conditions.

Virginia Power requests that the Modification become effective on July 1, 1996.

Virginia Power states that copies of the filing have been served upon Windsor, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: May 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corporation

[Docket No. ER96–1687–000]

Take notice that on April 30, 1996, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission the following documents: (1) an executed Service Agreement between NMPC and Plum Street Enterprises, Inc. (PSE), and (2) two revised pages to NMPC's Wholesale Power Sales Tariff No. 2.

Item (1) is a service agreement that specifies that NMPC agrees to sell power at cost based rates to PSE for resale to retail customers participating in the New Hampshire Retail Access Pilot Program. Item (2) contains language to add a new category of resources (purchased power) for resale to wholesale customers under the Power Sales Tariff.

Niagara Mohawk has served copies of the filing on the NY Public Service Commission, customers authorized to receive service under the sale tariff, and other customers.

NMPC requests effective dates of May 28, 1996 for Item (1), and an effective date of May 1, 1995 for Item (2). NMPC has requested waiver of the notice requirements for good cause shown.

Comment date: May 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Pennsylvania Power & Light Company

[Docket No. ER96–1688–000]

Take notice that on April 30, 1996, Pennsylvania Power & Light Company (PP&L), tendered for filing with the Federal Energy Regulatory Commission Service Agreements (the Agreements) between PP&L and PanEnergy Power Services, Inc. dated March 25, 1996, and between PP&L and AES Power, Inc., dated April 16, 1996.

The Agreements supplement a Short Term Capacity and Energy Sales umbrella tariff approved by the Commission in Docket No. ER96–782–000 on June 21, 1995.

In accordance with the policy announced in *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 54 FERC ¶61,139, *clarified and reh'g granted in part and denied in part*, 65 FERC ¶61,081 (1993), PP&L requests the Commission to make the Agreements effective as of April 30, 1996, because service will be provided under an umbrella tariff and each service agreement is filed within 30 days after the commencement of service. In accordance with 18 CFR 35.11, PP&L has requested waiver of the sixty-day notice period in 18 CFR 35.2(e). PP&L has also requested waiver of certain filing requirements for information previously filed with the Commission in Docket No. ER95–782–000.

PP&L states that a copy of its filing was provided to the customers involved and to the Pennsylvania Public Utility Commission.

Comment date: May 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. American Electric Power Service Corp.

[Docket No. ER96–1689–000]

Take notice that on April 30, 1996, the American Electric Power Service Corporation (AEPSC), tendered for filing service agreements, executed by AEPSC and the following Parties, under the AEP Companies' Power Sales and/or Point-to-Point Transmission Service Tariffs: The Cleveland Electric Illuminating Company, CNG Power Services Corporation, Commonwealth Edison Company, DuPont Power Marketing, Inc., Global Petroleum Corporation, Industrial Energy Applications, Inc., Koch Power Services, Inc., Michigan Public Power Agency, Morgan Stanley Capital Group, Inc., Pennsylvania Power & Light Company, Southern Energy Marketing, Inc., The Toledo Edison Company, Valero Power Services Company, Western Power Services, Inc.

The Power Sales Tariff has been designated as FERC Electric Tariff, First Revised Volume No. 2, effective October 1, 1995. The Point-to-Point Transmission Tariff has been designated AEPSC FERC Electric Tariff Second Revised Volume No. 1, effective September 7, 1993. AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after April 1, 1996.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: May 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Sierra Pacific Power Company

[Docket No. ER96–1690–000]

Take notice that on April 30, 1996, Sierra Pacific Power Company (Sierra), tendered for filing pursuant to 205 of the Federal Power Act (the Act) and 18 CFR Part 35 *et seq.* a proposed reduction in the loss factor applicable to a wheeling service provided under an existing Sierra agreement with Beowawe Geothermal Power Company.

Sierra requests waiver of the 60-day notice period to place the reduced loss factors in effect as of June 1, 1996. Sierra does not believe that any other waiver of the Commission's rules or regulations are necessary for the successful processing of the filing as requested in this transmittal letter. However, Sierra requests waivers of any rules or regulations necessary or desirable for that purpose.

Comment date: May 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Tampa Electric Company

[Docket No. ER96–1691–000]

Take notice that on April 30, 1996, Tampa Electric Company (Tampa Electric), tendered for filing cost support schedules showing an updated daily capacity charge for its scheduled short-term firm interchange service provided under interchange contracts with Florida Power Corporation, Florida Power & Light Company, Florida Municipal Power Agency, Fort Pierce Utilities Authority, Jacksonville Electric Authority, Kissimmee Utility Authority, Oglethorpe Power Corporation, Orlando Utilities Commission, Reedy Creek Improvement District, St. Cloud Electric Utilities, Seminole Electric Cooperative, Inc., Utilities Commission of the City of New Smyrna Beach, Utility Board of the City of Key West, and the Cities of Gainesville, Homestead, Lake Worth, Lakeland, Starke, Tallahassee, and Vero Beach, Florida. Tampa Electric also tendered for filing updated caps on the charges for emergency and scheduled short-term firm interchange transactions under the same contracts.

Tampa Electric requests that the updated daily capacity charge and caps on charges be made effective as of May 1, 1996, and therefore requests waiver of the Commission's notice requirement.

Tampa Electric states that a copy of the filing has been served upon each of the above-named parties to interchange contracts with Tampa Electric, as well as the Florida and Georgia Public Service Commissions.

Comment date: May 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Power and Light Company

[Docket No. ER96–1692–000]

Take notice that on April 30, 1996, Wisconsin Power and Light Company (WP&L), tendered for filing a signed Service Agreement under WP&L's Bulk Power Tariff between itself and the Minnesota Municipal Power Agency, and also Prairie du Sac Electric & Water Utility. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of April 1, 1996.

Comment date: May 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Tampa Electric Company

[Docket No. ER96–1693–000]

Take notice that on April 30, 1996, Tampa Electric Company (Tampa Electric), tendered for filing cost support schedules showing recalculation, based on 1995 data, of the Committed Capacity and Short-Term Power Transmission Service rates under Tampa Electric's agreements to provide qualifying facility transmission service for Mulberry Phosphates, Inc. (Mulberry). Cargell Fertilizer, Inc. (Cargell); and Auburndale Power Partners, Limited Partnership (Auburndale).

Tampa Electric proposes that the updated transmission service rates be made effective as of May 1, 1996, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Mulberry, Cargell, Auburndale, and the Florida Public Service Commission.

Comment date: May 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Kentucky Utilities Company

[Docket No. ER96–1694–000]

Take notice that on April 30, 1996, Kentucky Utilities Company (KU), tendered for filing information on transactions that occurred during April 1, 1996 through April 15, 1996, pursuant to the Power Services Tariff accepted by the Commission in Docket No. ER95–854–000.

Comment date: May 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power Corporation

[Docket No. ER96–1695–000]

Take notice that on April 30, 1996, Florida Power Corporation (Florida Power), tendered for filing revisions to the capacity charges, reservation fees and energy adders for various interchange services provided by Florida Power pursuant to interchange contracts as follows:

Rate schedule	Customer
65	Southeastern Power Administration.
80	Tampa Electric Company.
81	Florida Power & Light Company.
82	City of Homestead.
86	Orlando Utilities Commission.
88	Gainesville Regional Utility.
91	Jacksonville Electric Authority.
92	City of Lakeland.
94	Kissimmee Utility Authority.
95	City of St. Cloud.
100	Fort Pierce Utilities Authority.
101	City of Lake Worth.
102	Florida Power & Light Company.
103	City of Starke.
104	City of New Smyrna Beach.
105	Florida Municipal Power Agency.
108	City of Key West.
119	Reedy Creek Improvement District.
122	City of Tallahassee.
128	Seminole Electric Cooperative, Inc.
134	City of New Smyrna Beach.
139	Oglethorpe Power Corp.
141	City of Vero Beach.
142	Big Rivers Electric Corporation.
148	Alabama Electric Cooperative, Inc.
153	Enron Power Marketing, Inc.
154	Catex Vitol Electric, L.L.C.
155	Louis Dreyfus Electric Power, Inc.
156	Electric Clearinghouse, Inc.
157	LG&E Power Marketing, Inc.
158	MidCon Power Service Corp.
159	Koch Power Services Company.
160	Sonat Power Marketing, Inc.
161	Citizens Lehman Power Sales.
162	AES Power, Inc.
163	Intercoast Power Marketing Company.
164	Valero Power Service Company.
165	Delhi Energy Services, Inc.
166	Eastex Power Marketing, Inc.

The interchange services which are affected by these revisions are: (1) Service Schedule A—Emergency Service; (2) Service Schedule B—Short Term Firm Service; (3) Service Schedule D—Firm Service; (4) Service Schedule F—Assured Capacity and Energy Service; (5) Service Schedule G—Backup Service; (6) Service Schedule H—Reserve Service; (7) Service Schedule I—Regulation Service; (8) Service Schedule OS—Opportunity Sales; (9) Service Schedule RE—Replacement Energy Service; (10) Contract for Assured Capacity And Energy With Florida Power & Light Company; (11) Contract for Scheduled Power and Energy with Florida Power & Light Company.

Florida Power requests that the amended revised capacity charges, reservation fees and energy be made effective on May 1, 1996 and remain effective through April 30, 1997. Florida Power requests waiver of the Commission's sixty-day notice requirement. If waiver is denied, Florida Power requests that the filing be made effective June 15, 1996.

Comment date: May 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Northern States Power Company

[Docket No. ER96–1696–000]

Take notice that on April 30, 1996, Northern States Power Company (Minnesota) (NSP–MN), tendered for filing an Electric Services Agreement dated April 29, 1996, between NSP–MN, Northern States Power Company (Wisconsin) (NSP–WI), and ENRON Power Marketing, Inc. (EPMI) NSP–MN files this agreement on behalf of NSP–WI, EPMI and itself.

The Electric Services Agreement provides for the interchange of electrical power and energy between the parties. NSP requests the Commission waive its Part 35 notice requirements and accept this Agreement for filing effective May 1, 1996.

Comment date: May 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Tampa Electric Company

[Docket No. ER96–1697–000]

Take notice that on April 30, 1996, Tampa Electric Company (Tampa Electric), tendered for filing an updated weekly capacity charge for its short term power service provided under the interchange service contract with Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively, Southern Companies). Tampa Electric also tendered for filing updated caps on energy charges for emergency assistance and short term power service under the contract.

Tampa Electric requests that the updated capacity charge and caps on charges be made effective as of May 1, 1996, and therefore requests waiver of the Commission's notice requirement.

Tampa Electric states that a copy of the filing has been served upon Southern Companies and the Florida Public Service Commission.

Comment date: May 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Williams Energy Services Company (Formerly Williams Power Trading Company)

[Docket No. ER96–1698–000]

Take notice that on April 30, 1996, Williams Energy Services Company's (WESCO's) submitted a letter requesting that the Commission waive its prior notice requirement pursuant to 18 CFR 35.11 to allow WESCO's membership in the Western Systems Power Pool (WSPP) to become effective March 1, 1996. The WSPP Agreement has already been accepted for filing by the Commission in Docket No. ER91–195–000. A copy of the request is on file with the Secretary and open for public inspection at 888 First Street, N.E., Washington, D.C. 20426.

Comment date: May 24, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell.

Secretary.

[FR Doc. 96–12379 Filed 5–16–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP96–472–000, et al.]

Transcontinental Gas Pipe Line Corporation, et al.; Natural Gas Certificate Filings

May 13, 1996.

Take notice that the following filings have been made with the Commission:

1. Transcontinental Gas Pipe Line Corporation

[Docket No. CP96–472–000]

Take notice that on May 2, 1996 Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP96–472–000 a request pursuant to Section 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to expand an existing delivery point to South Carolina Pipeline Corporation (SCPL), known as the Grover Meter Station, located on Transco's mainline in Cleveland County, North Carolina. Transco makes such request, under its blanket certificate issued in Docket No. CP82–426 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco states that SCPL is a transportation, storage and sales customer of Transco under Transco's Rate Schedule IT, FT, GSS, WSS, LG–A, ESS and FS. Transco declares that its proposal herein, to expand the Grover Meter Station, is in response to SCPL's request. It is stated the SCPL uses this point of delivery to receive gas into its intrastate pipeline system.

Transco is proposing to install a new 12-inch orifice meter tube and a 10-inch bypass connection on the existing 10-inch inlet line, replacing the existing 12-inch outlet piping with 16-inch piping, and replacing the odorization injection system.

Transco states that it currently delivers up to 70,000 Dt of gas per day to SCPL at the Grover Meter Station. As a result of the expansion, the capacity of the Grover Meter Station will be increased to 138,000 Dt per day.

Transco mentions that it has sufficient system delivery flexibility to accomplish such additional deliveries without detriment or disadvantage to Transco's other customers.

Transco states that it is not proposing to alter the total volumes authorized for delivery to SCPL on a firm basis or to otherwise change in any way SCPL's firm capacity entitlement on Transco's system. It is further stated that the expansion of this delivery point will have no impact on Transco's peak day deliveries and little or no impact on Transco's annual deliveries, and is not prohibited by Transco's FERC Gas Tariff.

The estimated cost to expand the Grover Meter Station as proposed herein is $220,000. It is indicated that SCPL will be responsible for all costs associated with such expansion.

Comment date: June 27, 1996, in accordance with Standard Paragraph G at the end of this notice.

2. K N Interstate Gas Transmission Co.

[Docket No. CP96–477–000]

Take notice that on May 3, 1996, K N Interstate Gas Transmission Co. (K N Interstate), P.O. Box 281304, Lakewood, Colorado 80228–8304, filed an abbreviated application for a certificate of public convenience and necessity authorizing it to acquire, construct and operate certain pipeline and related facilities designated as the Pony Express Pipeline, pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Federal Energy Regulatory Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

K N Interstate seeks authorization to acquire and convert to natural gas use approximately 804 miles of crude oil pipeline purchased by K N Energy, Inc., K N Interstate's parent company, from Amoco Pipeline Company (APL). These facilities extend from Lost Cabin, Wyoming eastward through the states of Nebraska, Colorado, Kansas and Missouri, terminating in Freeman, Missouri, near Kansas City.

K N Interstate also seeks authorization to construct and operate the following facilities which will also comprise the Pony Express Pipeline: (1) 65-miles of 16-inch pipeline, the Rockport Lateral, extending from Rockport, Colorado northeast to a point near Kimball, Nebraska, where it will interconnect with the former APL facilities; (2) new facilities to reroute the former APL facilities around Class III locations, consisting of 7.6 miles of 12-inch pipeline near Casper, Wyoming and 0.3 miles of 24-inch pipeline located near the Appanoose Grade School in Franklin County, Kansas; (3) 3.2 miles of 20-inch inlet and outlet pipe between the Pony Express Pipeline and K N Interstate's existing Casper Compressor Station; (4) a 5500 HP compressor to be added to the existing Casper Compressor Station, and four new compressor stations consisting of a total of about 45,000 HP located in Converse County, Wyoming, Logan County, Colorado, Rawlins County, Kansas, and Osborne County, Kansas; (5) the upgrade of about 58 miles of 12-inch pipeline on K N Interstate's existing system extending from K N Interstate's existing Huntsman Compressor Station in Cheyenne County, Nebraska to its Weld County Interconnect in Colorado; and (6) new interconnects with supplies from central and southwestern Wyoming, bi-directional interconnects with the existing K N Interstate system, and potential interconnects with third party pipelines. The total estimated cost of the Pony Express Pipeline is approximately $154 million.

K N Interstate avers that the Pony Express Pipeline will have a total pipeline design capacity of 255,000 MMBtu/d. The Rockport Lateral will have a capacity of 120,000 MMBtu/d and will provide access to southwestern Wyoming gas supplies. The remaining 135,000 MMBtu/d of capacity will provide access to central Wyoming gas supplies. K N Interstate proposes to commence initial service on the Pony Express Pipeline with a capacity of 60,000 MMBtu/d on a free-flow basis by the first quarter of 1997, and to reach the maximum capacity of 255,000 MMBtu/d with compression by the third quarter of 1997.

K N Interstate proposes to charge its existing Part 284 transportation rates as initial rates for service on the Pony Express Pipeline. In addition, K N Interstate states that it is filing a pro forma tariff sheet reflecting an extension of its Rate Zone Market Area 3 in order to recognize that the Pony Express Pipeline will extend the K N Interstate system in an easterly direction beyond its traditional service area. K N Interstate also requests that the Commission predetermine in this proceeding that it may charge rolled-in rates for transportation service performed on the Pony Express Pipeline.

Comment date: June 3, 1996, in accordance with Standard Paragraph F at the end of this notice.

3. Williams Natural Gas Company

[Docket No. CP96–483–000]

Take notice that on May 3, 1996, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP96–483–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to utilize an existing tap and regulator and to install replacement measuring facilities for the receipt and/or delivery of transportation gas to United Cities Gas Company (UCG) in Montgomery County, Kansas, under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG states that the annual volumes would be 9,125,000 Dth with a peak day volume of 25,000 Dth and the construction cost would be $162,153 which would be reimbursed by UCG. It is also stated that this change would not be prohibited by its tariff and there would be no adverse impact on existing customers.

Comment date: June 27, 1996, in accordance with Standard Paragraph G at the end of this notice.

4. Natural Gas Pipeline Company of America, El Paso Natural Gas Company

[Docket No. CP96–508–000]

Take notice that on May 7, 1996, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148 and El Paso Natural Gas Company (El Paso), 100 North Stanton, El Paso, Texas 79901, herein collectively referred to as Applicants, filed a joint application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order granting permission and approval to abandon certain exchange and transportation services. The application is on file with the Commission and open to public inspection.

Applicants propose to abandon:

- An exchange service performed under Natural's Rate Schedule X–44 authorized in Docket No. CP74–162, as amended, and under El Paso's Rate Schedule Z–3 authorized in Docket No. CP74–126, as amended. Natural and El Paso state that they are parties to a gas exchange agreement dated September 24, 1973 (1973 Agreement), as amended, whereby Natural delivered up to 65,000 Mcf of natural gas per day to El Paso in Reeves, Pecos and Ward Counties, Texas, Caddo and Washita Counties, Oklahoma, Lea and Eddy Counties, New Mexico and San Juan County, Utah and El Paso delivered equivalent quantities of gas to Natural in Dewey, Beckham, Washita and Grady Counties, Oklahoma, Hansford County, Texas and Eddy, Lea and Roosevelt Counties, New Mexico. They state the exchange was balanced in Ward and Reeves Counties, Texas and Lea County, New Mexico.
- A transportation service for El Paso performed under Natural's Rate Schedule X–46 authorized in Docket No. CP76–86. Natural and El Paso state that they are parties to a gas transportation agreement dated August 25, 1975 (1975 Agreement), whereby El Paso made available on an interruptible basis up to 10,000 Mcf of natural gas per day to Natural at the outlet of Cities Service Oil Company's Bluitt Gasoline Plant in Roosevelt County, New Mexico and Natural redelivered such gas, less fuel, to El Paso in Parmer County, Texas.

By letter agreements dated March 1, 1995, Natural and El Paso agreed to terminate the 1973 Agreement, as amended, and the 1975 Agreement, as of April 1, 1995.

Comment date: June 3, 1996, in accordance with Standard Paragraph F at the end of this notice.

5. NorAm Gas Transmission Company

[Docket No. CP96–514–000]

Take notice that on May 8, 1996, NorAm Gas Transmission Company (NGT), 1600 Smith Street Houston, Texas 77002, filed a request with the Commission in Docket No. CP96–514–000, pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate certain facilities in Arkansas authorized in blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, all as more fully set forth in the request on file with the Commission and open to public inspection.

NGT proposes to convert an existing receipt point into a delivery point on NGT's Line OM–1 to transport gas through facilities to be constructed by U S Gas Services, L.L.C. (U S Gas) for delivery of natural gas to Tyson Foods (Tyson). The volumes to be delivered to U S Gas are approximately 7,000 MMBtu per day and 1,825,000 MMBtu per year. The conversion of this receipt point would require minor above ground construction with an estimated cost of $6,843, which would be reimbursed by U S Gas, acting as agent for Tyson.

Comment date: June 27, 1996, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said

filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12439 Filed 5–16–96; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5507–2]

Agency Information Collection Activities Under OMB Review; Hazardous Waste Industry Studies Information Collection Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) for the Hazardous Waste Industry Studies Information Collection Request, OMB Control No. 2050–0042, expiration date: 07/31/96, has been forwarded to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 17, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 818.06.

SUPPLEMENTARY INFORMATION:

Title: Hazardous Waste Industry Studies Information Collection Request, OMB Control No. 2050–0042; EPA ICR No. 818.06. This is a request for extension of a currently approved collection.

Abstract: Under the Industry Studies Program, EPA's Office of Solid Waste is planning to conduct surveys of various industries during the rest of this fiscal year through FY 1999, primarily for the purpose of developing hazardous waste listing determinations as part of a rulemaking effort under Sections 3001 and 3004 of the Resource Conservation and Recovery Act (RCRA). Information collected under authority of this ICR will be used to establish and expand an information data base with regard to hazardous waste generation and management by industry to support a goal of more effective regulation under Sections 3001 and 3004 of RCRA.

The information acquired through the Industry Studies Program has contributed to the effective development and implementation of the hazardous waste regulatory program. The ICR renewal, once approved, will allow continued and expanded data collection for the following program areas:

- Listing
- Land Disposal Restrictions (LDR) and Capacity
- Source Reduction and Recycling
- Risk Assessment

To support these hazardous waste program areas, EPA has been conducting surveys and site visits for various industries over the past 12 years under authority granted under RCRA Section 3007 and OMB #2050–0042. Responses to these surveys are mandatory and required by EPA to collect data for development of hazardous waste rulemakings as required by a consent decree signed December 9, 1994, which resulted from the *EDF* v. *Reilly* case.

The information collected will be used primarily to determine if wastes from specific industries should be listed as hazardous. In addition, this information also will be used to support other RCRA activities including developing engineering analyses; conducting regulatory impact analyses, economic analyses, and risk assessments; and developing land disposal restrictions treatment standards and waste minimization programs.

Depending on the size and scope of the industry, the information collection will consist either of a census or a representative sample of all the facilities that are included in the specific industries.

EPA anticipates that some data provided by respondents will be claimed as Confidential Business Information (CBI). Respondents may make a business confidentiality claim by marking the appropriate data as CBI. Respondents may not withhold information from the Agency because they believe it is confidential. Information so designated will be disclosed by EPA only to the extent set forth in 40 CFR Part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on January 31, 1996 (61 FR 3395–6). Three comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 38.4 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities:

- Paint Production
- Inorganics
- Solvents (users of 21 specific solvents)
- Petroleum Refining
- Chlorinated Aliphatics
- Dyes and Pigments
- Pulp and Paper

Estimated Number of Respondents: 2,446.

Frequency of Response: 1.14 responses for each respondent.

Estiamted Total Annual Hour Burden: 38.4 hours.

Estimated Total Annualized Cost Burden: $1,260,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 818.06 and OMB Control No. 2050–0042 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory information Division (2137), 401 M Street, SW., Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: May 14, 1996.

Joseph Retzer

Director, Regulatory Information Division.

[FR Doc. 96–12481 Filed 5–16–96; 8:45 am]

BILLING CODE 6560–50–M

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 17, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, 202–260–2740, and refer to EPA ICR No. 1626.03.

SUPPLEMENTARY INFORMATION:

Title: "National Recycling and Emissions Reduction Program" (OMB Control Number 2060–0256; EPA Control Number 1626.05). This is a request for an extension of a currently approved collection.

Abstract: In 1993, EPA promulgated regulations under Section 608 of the Clean Air Act Amendments of 1990 (Act) for the recycling of CFCs and HCFCs in air-conditioning and refrigeration equipment. These regulations were published in 58 FR 28660, and are codified at 40 CFR Part 82, subpart F (§ 82.150 *et seq.*). The reasons the information is being collected, the way the information is to be used, and whether the requirements are mandatory, voluntary, or required to obtain a benefit, are described below. The ICR renewal does not include any burden for third-party or public disclosures not previously reviewed and approved by OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 13, 1996.

Equipment Testing Organizations

Equipment testing organizations must apply to EPA to become approved. Approved equipment testing organizations must maintain records of the tests performed and their results, and must submit a list of all certified equipment to EPA annually. Testing organizations must notify EPA whenever a new model of equipment is certified or whenever an existing certified model fails a recertification test. Information collected from equipment certifiers is required to ensure that recycling and recovery equipment meets the performance standards of the regulation and that all approved testing laboratories have the equipment and expertise to test equipment to these standards.

Servicing and Disposal Establishments

Persons maintaining, servicing, repairing, or disposing of appliances must certify to EPA that they have acquired certified recycling or recovery equipment and are complying with the requirements of the rule. This certification must be renewed in the event of a change of ownership of the service or disposal establishment. In addition, service establishments are required to maintain adequate documentation of technician certification. These requirements help the Agency to target its enforcement efforts.

Reclaimers

Refrigerant reclaimers must maintain records of the names and addresses of persons sending them material for reclamation as well as the quantity of the material (the combined mass of refrigerant and contaminants) sent. In addition, reclaimers must maintain records of the mass of refrigerant reclaimed and the mass of waste products. Reclaimers must report this information (total quantities) to the Agency annually. This information helps the Agency track refrigerant use to ensure that no refrigerant is vented at service or disposal.

Refrigerant Wholesalers

Wholesalers must maintain records indicating the names of purchasers, dates of sales, and quantities of refrigerant purchased. This information helps the Agency to track refrigerant use and identify points of noncompliance. The Agency believes that wholesalers already maintain such records. In addition to normal business records, wholesalers have to maintain records verifying that purchasers of refrigerant are properly certified. These records will be used by EPA inspectors to ensure that refrigerants are only sold to certified technicians. This is to guarantee that individuals who purchase refrigerant are aware of the legal restrictions on its use.

Disposers

Persons disposing of small appliances, room air conditioners, and MVACs must maintain copies of signed statements attesting that the refrigerant has been removed prior to final disposal of each appliance. This information helps EPA to verify that refrigerant is recovered at some point during the disposal process even if the final disposer does not have recovery equipment.

Technicians

In order for technicians to use recycling and recovery equipment, they have to pass a certification test. Technicians have to maintain a wallet-sized certification card. The test is necessary to ensure that technicians understand refrigerant recovery procedures and regulations. The card is necessary to ensure that only certified technicians perform work on air conditioning and refrigeration equipment or purchase refrigerants.

Technician Certification Programs

Organizations operating technician certification programs have to apply to EPA to have their program approved. Approved technician certification programs have to maintain records including the names of certified technicians and the unique numbers assigned to each technician certified through their programs. Approved technician certification programs also have to submit a report to EPA every six months including the pass/fail rate and testing schedules.

The application process ensures that the technician certification programs meet minimum standards for generating, tracking, and grading tests, and keeping records. Record maintenance allows both the Agency and the certification program to verify certification claims and monitor the certification process. The semiannual reports give the Agency the ability to evaluate certification programs and modify the certification test if necessary.

Refrigeration and Air Conditioning Equipment Owners

Owners of refrigeration or air conditioning equipment that contain more than 50 pounds of refrigerant must maintain records of the quantity of refrigerant used during each service procedure performed for the equipment. This ensures that owners can determine when they are subject to leak repair requirements. In addition, equipment owners who decided not to repair leaks must develop and maintain a record of a plan that states that the equipment will be either retired, replaced or retrofitted. The development of such a plan ensures that equipment owners intend to take action to reduce emissions.

Owners of Industrial Process Refrigeration

Under an amendment to the section 608 rule that was promulgated on August 8, 1995 (60 FR 40420), owners of industrial process refrigeration equipment who wish to receive an extension or exclusion under the leak repair amendment are subject to the following reporting and recordkeeping requirements. (The Office of Management and Budget approved the amendment to the ICR reflecting this amendment on September 28, 1995.)

(1) Those persons wishing to extend leak repair compliance beyond the required 30 days must maintain and submit to EPA information identifying the facility, the leak rate, the method used to determine the leak rate and full charge, the date a leak rate greater than allowable was discovered, the location of the leaks, any repair work completed thus far and date completed, a plan to fix other outstanding leaks to achieve allowable leak rate, reasons why greater than 30 days is needed, and an estimate of when repair work will be completed. Any dates and results of static and dynamic tests must also be maintained and submitted to EPA.

(2) Those persons wishing to extend retrofit compliance beyond the required one year must maintain and submit to EPA information identifying the facility, the leak rate, the method used to determine the leak rate and full charge, the date a leak rate of greater than the allowable rate was discovered, the location of leaks, any repair work that has been completed thus far and date completed, a plan to complete the retrofit or replacement of the system, the reasons why more than one year is necessary, the date of notification to EPA, an estimate of when retrofit or replacement work will be completed, if time changes for original estimates occur, documentation of the reason why, and the date of notification to EPA regarding a change in the estimate of when the work will be completed.

(3) Those persons wishing to exclude purged refrigerants that are destroyed from the annual leak rate calculations must maintain records on-site to support the amount of refrigerant claimed sent for destruction. These records must include flow rate, quantity or concentration of the refrigerant in the vent stream, and periods of purge flow.

(4) Those persons wishing to calculate the full charge of an affected appliance by establishing a range based on the best available data, regarding the normal operating characteristics and conditions for the appliance, must maintain records on-site to support the methodology used in selecting or modifying the particular range.

The sum of these changes represents an increase in reporting requirements only for those persons wishing to receive an extension or exclusion under the leak repair amendment.

These reporting and recordkeeping requirements allow determinations to be made regarding requested extensions and exclusions under the amendments to the leak repair provisions, which were written in response to industry concerns and with the concurrence of industry. Specifically, the amendments allow for persons to extend their compliance deadlines, to exclude destroyed purged refrigerants from leak rate calculations, or to use a range rather than calculate the full charge, when certain circumstances exist. EPA would be unable to make determinations as to the viability of a claim regarding the need for an extension without the information under the recordkeeping and reporting requirements. In negotiating the settlement agreement with members of CMA, those members agreed with the proposed recordkeeping and reporting requirements.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average .18 hours per response. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Affected Entities: Entities affected by this action are refrigeration and air conditioning service and repair shops, plumbing, heating, and air conditioning contractors, refrigerated transport service dealers, scrap metal recyclers, and automobile dismantlers and recyclers. Additional entities affected include Clean Air Act Section 608 technician certifications programs, equipment certification programs, refrigerant wholesalers and reclaimers, and other establishments that perform refrigerant removal at service and disposal.

Estimated No. of Respondents: 2,276,142.

Estimated Total Annual Burden on Respondents: 419,546 hours.

Frequency of Collection: Occasional, annual, and semiannual.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the following addresses.

Please refer to EPA ICR No. 1626.05 and OMB No. 2060–0256 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW., Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: May 14, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–12483 Filed 5–16–96; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–5469–5]

Environmental Impact Statements; Notice of Availability (NOA)

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed May 06, 1996 Through May 10, 1996 Pursuant to 40 CFR 1506.9.

*Due to a Power Failure Beyond our Control The EPA NOA of EISs Filed during the Week of April 29, 1996 and May 3, 1996 Appeared in the May 13, 1996 **Federal Register**. The 45 Day Comment Period and the 30 Day Wait Period is Calculated from the Intended May 10, 1996, **Federal Register** Date.

EIS No. 960223, DRAFT EIS, AFS, AK, Helicopter Landings within Wilderness, Implementation, Tongass National Forest, Chatham, Stikine and Ketchikan Area, AK, Due: July 15, 1996, Contact: Bill Tremblay (907) 772–3841.

EIS No. 960224, DRAFT EIS, USN, Naval Spent Nuclear Fuel Container System Management, Loading, Handling and Dry Storage, Transportation and Storage, Handling and Transportation of certain Associated Radioactive Waste, Implementation, United States, Due: July 03, 1996, Contact: William Knoll (703) 602–8229.

EIS No. 960225, DRAFT EIS, NPS, NY, Manhattan Sites General Management Plans, Implementation, Castle Clinton National Monument, Federal Hall National Memorial, General Grant National Memorial, Saint Paul's Church National Historic Site and Theodore Roosevelt Birthplace National Historic Site, New York and Westchester Counties, NY, Due: July 01, 1996, Contact: Joseph Avery (212) 825–1990.

EIS No. 960226, DRAFT EIS, MMS, AL, TX, MS, LA, Central and Western Planning Areas, Gulf of Mexico 1997 Outer Continental Shelf Oil and Gas Sales 166 (March 1997) and 168 (August 1997) Lease Offering, Offshore Marine Environment and coastal counties, Parishes of Alabama, MS, TX and LA, Due: August 09, 1996, Contact: Archie Melancon (703) 787–5471.

EIS No. 960227, FINAL EIS, MMS, AK, Beaufort Sea Planning Area Proposed 1996 Oil and Gas Lease Sale No. 144, Lease Offerings, Alaska Outer Continental Shelf (OCS), AK, Due: June 17, 1996, Contact: George Valiulis (703) 787–1662.

EIS No. 960228, DRAFT EIS, FHW, MT, US 93 Highway Transportation Improvements, between Hamilton (Milepost) 49.0 to Lolo (Milepost 83.2), Funding and COE Section 404 Permit, Ravalli and Missoula Counties, MT, Due: July 19, 1996, Contact: Dale Paulson (406) 441–1230.

EIS No. 960229, DRAFT EIS, USA, AZ, Western Army National Guard Aviation Training Site Expansion Project, Designation of an Expanded Tactical Flight Training Area (TFTA), Development or use of a Helicopter Gunnery Range and Construction and Operation of various Facilities on the Silver Bell Army Heliport (SBAH), Maricopa, Pima and Pinal Counties, AZ, Due: July 01, 1996, Contact: Ltc. Richard Murphy (520) 682–4590. .

Amended Notices

EIS No. 960067, DRAFT EIS, AFS, CO, Routt National Forest Land and Resource Management Plan, Implementation, Grand, Routt, Rio Blanco, Jackson, Moffat and Garfield Counties, CO, Due: July 01, 1996, Contact: Jerry E. Schmidt (970) 879–1722.

Published FR—02–16–96—Review Period Extended.

EIS No. 960156, DRAFT EIS, NPS, CA, Cabrillo National Monument, General Management Plan/Development Concept Plans, Implementation, San Diego County, CA, Due: June 10, 1996, Contact: Terry DiMattio (619) 557–5450.

Published FR—04–12–96—Due Date Correction.

Dated: May 14, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–12488 Filed 5–16–96; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–5469–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 29, 1996 Through May 3, 1996 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the OFFICE OF Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 05, 1996 (61 FR 15251).

Draft EISs

ERP No. D–BLM–K67033–NV Rating EO2, Lone Tree Gold Mine Expansion Project, Plan of Operations Approval and Permit Issuance, Winnemucca District, Humboldt County, NV.

Summary: EPA expressed environmental objections due to potential to degrade groundwater, impacts to wildlife, and uncertainties regarding acid generation. EPA requested additional information on impacts to water quality and habitat in the lower Humboldt River basin and local springs; geochemical characterization; facility design; reclamation, hydrogeologic and geochemical modelling, monitoring; and mitigation.

ERP No. D–DOE–A06178–00 Rating EC2, Programmatic EIS-Stockpile Stewardship and Management Project, Reduced Nuclear Weapons Stockpile in the Absence of Underground Testing, Eight Sites: Oak Ridge Reservation (ORR), Savannah River Site (SRS), Kansas City Plant (KCP) Pantex Plant, Los Alamos Nat'l Lab., Lawrence Livermore Nat'l Lab., Sandia Nat'l and Nevada Test.

Summary: EPA requested that DOE provide additional information and clarity concerning accident risk analysis and environmental justice.

ERP No. D–FHW–J40138–UT Rating EC2, Norman H. Bangerter Highway (Previously Known as the West Valley Highway) 12600 South Street to I–15, Funding and COE Section 404 Permit, in the Cities of Bluffdale, Riverton and Draper, Salt Lake County, UT.

Summary: EPA expressed environmental concerns regarding the extent of wetland impacts, hazardous material spills and the location and effects of borrow. EPA requested that additional information on these issues be included.

ERP No. D–FHW–K40357–CA Rating LO, CA–101/Cuesta Grade Highway Improvements, 1.1 mile north of Reservoir Canyon Road to the Cuesta Grade Overhead, Funding and Permit Issuance, San Luis Obispo County, CA.

Summary: EPA lacked objections to the alternatives and the impacts analysis contained in the draft EIS.

ERP No. D–FHW–L40200–OR Rating EC2, U.S. 101/Oregon Coast Highway Reconstruction, Pacific Way in the City of Gerhart to Dooley Bridge in the City of Seaside, Funding and COE Section 404 Permit, Clatsop County, OR.

Summary: EPA's review has revealed concerns regarding wetlands and water quality. Additional information on this project has been requested for inclusion in the final EIS.

ERP No. D–FRC–K05054–NV Rating No Comment, Blue Diamond South Pumped Storage Hydroelectric (FERC. No. 10756) Project, Issuance of License for Construction, Operation and Maintain, Right-of-Way Grant and Possible COE Section 404 Permit, Clark County, NV.

Summary: Due to the federal furlough of December 18, 1995 through January 5, 1996, the Environmental Protection Agency did not review this EIS.

Final EISs

ERP No. F–BLM–K67025–NV, Cortez Pipeline Gold Deposit Project, Development, Construction and Operation of an Open-Pit Mine, Plan of Operations Approval, Right-of-Way Grants and COE Section 404 Permit, Lander County, NV.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–FHW–L50009–WA, Elliott Bridge No. 3166 Replacement, from WA–169 (Renton-Maple Valley Highway) across the bridge to the intersection of 154th Place S.E., Funding, U.S. CGD Bridge Permit and Section 404 Permit, Cedar River, City of Renton, King County, WA.

Summary: EPA believed the final EIS addresses the major concerns raised previously and therefore has no objection to the actions as proposed.

Dated: May 14, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–12489 Filed 5–16–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5505–9]

Availability of FY 95 Grant Performance Reports for Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee

AGENCY: Environmental Protection Agency [EPA].

ACTION: Notice of availability of grantee performance evaluation reports.

SUMMARY: EPA's grant regulations [40 CFR 35.150] require the Agency to evaluate the performance of agencies which receive grants. EPA's regulations for regional consistency [40 CFR 56.7] require that the Agency notify the public of the availability of the reports of such evaluations. EPA recently performed end-of-year evaluations of eight state air pollution control programs [Alabama Department of Environmental Management, Florida Department of Environmental Regulation, Georgia Environmental Protection Division, Kentucky Department for Environmental Protection, Mississippi Bureau of Pollution Control, North Carolina Department of Environment, Health, and Natural Resources, South Carolina Department of Health and Environmental Control and Tennessee Department of Conservation and Environment], and 16 local programs [Knox County Department of Air Pollution Control, Tn—Chattanooga-Hamilton County Air Pollution Control Bureau, Tn—Memphis-Shelby County Health Department, Tn—Nashville-Davidson County Metropolitan Health Department, Tn—Jefferson County Air Pollution Control District, Ky—Western North Carolina Regional Air Pollution Control Agency, NC—Mecklenburg County Department of Environmental Protection, NC—Forsyth County Environmental Affairs Department, NC—Palm Beach County Public Health Unit, Fl—Hillsborough County Environmental Protection Commission, Fl—Dade County Environmental Resources Management, Fl—Jacksonville Air Quality Division, Fl—Broward County Environmental Quality Control Board, Fl—Pinellas County Department of Environmental Management, Fl—City of Huntsville Department of Natural Resources, Al—Jefferson County Department of Health, Al]. These audits were conducted to assess the agencies' performance under the grants made to them by EPA pursuant to Section 105 of the Clean Air Act. EPA Region 4, has prepared reports for the twenty-four agencies identified above and these 105 reports are now available for public inspection.

ADDRESSES: The reports may be examined at the EPA's Region 4 office, 345 Courtland Street, N.E., Atlanta, Georgia 30365, in the Air, Pesticides, and Toxics Management Division.

FOR FURTHER INFORMATION CONTACT: Linda Thomas, (404) 347–3555 vmx4180, at the above Region 4 address, for information concerning States of Alabama, Florida, Mississippi, Georgia, and local agencies. Vera Bowers, (404) 347–3555 vmx4178, at the above Region 4 address, for information concerning the States of Kentucky, North Carolina, South Carolina, Tennessee and local agencies.

Dated: May 9, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 96–12344 Filed 5–16–96; 8:45 am]

BILLING CODE 6560–50–P

[OPP–50821; FRL–5370–6]

Receipt of a Notification to Conduct Small-Scale Field Testing of a Genetically Engineered Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from Dupont Agricultural Products of Delaware a notification (352-NMP-U) of intent to conduct small-scale field testing involving a baculovirus *Autographa californica* Multiple Nuclear Polyhedrosis Virus (AcMNPV) which has been genetically engineered to express a synthetic gene which encodes for an insect-specific toxin from the venom of the scorpion *Leiurus quinquestriatus hebraeus.* Dupont intends to test this microbial pesticide on cotton and cabbage in seven states. Target pests for these field trials include: the cabbage looper (*Tricholplusia ni*), the tobacco budworm (*Heliothis virescens*), the cotton bollworm (*Helicoverpa zea*), the beet armyworm (*Spodoptera exigua*) and the diamondback moth (*Plutella xylostella*). The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11 (a), the Agency is soliciting public comments on this application.

DATES: Written comments should be submitted to EPA by June 17, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted in ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by docket number OPP–50821. No CBI should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under the SUPPLEMENTARY unit of this document.

FOR FURTHER INFORMATION CONTACT: Linda Hollis, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 5th Floor, CS #1, 2805 Jefferson Davis Hwy., Arlington, VA, (703) 308–8733; e-mail: hollis.linda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to EPA's Statement of Policy entitled, "Microbial Products subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act," published in the **Federal Register** of June 26, 1986 (51 FR 23313), has been received from Dupont Agricultural Products of Delaware (NMP No. 352-NMP-U). The proposed small-scale field trial involves the introduction of a genetically engineered isolate of the baculovirus *Autographa californica* Multiple Nuclear Polyhedrosis Virus (AcMNPV) which has been modified to express a synthetic gene which encodes for an insect-specific toxin from the venom of the scorpion *Leiurus quinquestriatus hebraeus.*

The purpose of the proposed testing will be to assess and compare the efficacy of two genetically modified constructs relative to the wild-type AcMNPV and a chemical insecticide standard against selected lepidoptera pests: *Heliothis virescens, Helicoverpa zea, Spodoptera exigua, Trichoplusia ni,* and *Plutella xylostella.*

The proposed program will consist of one trial per site (except Louisianna) to be conducted in mid-summer 1996 thru fall 1996. Testing will occur in 7 states: Arizona, Georgia, Louisianna, and Mississippi for cotton trials, and Illinois, Maryland, and Texas, for cabbage trials. All sites will be located on secured, fenced research or commercial farmland with limited public access.

There will be a maximum of nine treatments for each trial (cotton and cabbage). The active ingredient will be applied at 5E(12) occlusion bodies/ha (2E(12) occlusion bodies/ac) for three to five applications. There will be a maximum of 5 applications per treatment over a 3 to 4-week period during the growing season. The total amount of active ingredient to be used is 7.2 E12 occlusion bodies.

Treated sites for the cotton trials will each be a total of 4 rows wide by 50 ft. long and replicated 4 times for a total of 800 feet of row per treatment for each trial. Treated sites for the cabbage trials will be a total of 2 rows wide by 25 ft. long and replicated 4 times for a total of 200 feet of row per treatment. The active ingredient will be applied via CO2 backpack sprayer using a hand-held spray broom.

All trials will be surrounded by a 10 ft. minimum unplanted buffer zone. Upon completion of the trials, crops will remain standing in the field for at least 2 weeks prior to destruction and plow down.

Intensive monitoring of the recombinant construct will take place. Soil, leaf, and host insect samples will be collected from all treatments at weekly intervals and monitored for amount and type of virus present until crop destruction. Several assay methods will be employed in order to quantify virus content in soil, plant and host insects. Following review of Dupont's application and any comments received in response to this notice, EPA will decide whether or not an experimental use permit is required.

EPA has established a record for this notice of receipt under docket number OPP–50821 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as (CBI), is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

The official record for this document, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects in 40 CFR Part 172

Environmental protection and Genetically-engineered microbial pesticides.

Dated: May 9, 1996.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 96–12480 Filed 5–16–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66200A; FRL–5368–1]

Withdrawal of a Notice of Intent to Cancel Registration of Certain Products Containing the Active Ingredient Metam-Sodium

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that EPA is withdrawing the Notice of Intent to Cancel the registration of certain pesticide products (Vaporooter A Foaming Fumigant (EPA Reg. No. 9993–1), Foam Coat Vaporooter (EPA Reg. No. 9993–2) and Sanafoam Vaporooter II (EPA Reg. No 9993–3)) held by Airrigation Engineering Company of Pleasanton, CA. EPA approved the amendments to the product registrations to change the classification to restricted use on March 1, 1996. The change in classification became effective on March 1, 1996. Because the registrant has complied with the measures specified in the Agency's Notice of Intent to Cancel, EPA is withdrawing the Notice of Intent to Cancel.

FOR FURTHER INFORMATION CONTACT: By mail, Vivian Prunier, Review Manager, Special Review Branch, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Third floor, Westfield Building, 2800

Jefferson Davis Highway, Arlington, VA (703)–308–8034.

SUPPLEMENTARY INFORMATION: In a **Federal Register** Notice, of September 21, 1994 (59 FR 48430), EPA announced its intent to cancel the registrations of certain pesticide products (Vaporooter A Foaming Fumigant (EPA Reg. No. 9993–1), Foam Coat Vaporooter (EPA Reg. No. 9993–2) and Sanafoam Vaporooter II (EPA Reg. No. 9993–3)) held by Airrigation Engineering Company of Pleasanton, CA. The Agency took this action because Airrigation Engineering Company failed to comply with the Agency's decision to classify the products as restricted use pesticides.

Under FIFRA section 3(d)(1)(C), the Administrator may classify a pesticide for restricted use if she determines that the pesticide, when applied in accordance with the directions for use, warnings and cautions, or, in accordance with widespread and commonly recognized practice, may generally cause unreasonable adverse effects on the environment, unless additional regulatory restrictions are employed. Once classified for restricted use, a product can be applied only by or under the direct supervision of a certified applicator (FIFRA sections 3(d)(1)(C), 12(a)(2)(F), 12(a)(2)(G).

EPA has published regulations that establish procedures that EPA will follow when classifying a product for restricted use. Under 40 CFR 152.165(c)(2), the Agency may notify a registrant that it has decided to classify a pesticide as restricted use and require the registrant to submit certain information to comply with the classification decision. If a registrant fails to comply with this notification, the Agency may initiate cancellation proceedings.

The Agency determined that restricted use classification for the use of metam-sodium products in sewers is required because of the elaborate and complicated methods of applying this pesticide and the potential for harmful exposure. The basis for the Agency's determination is given in the September 21, 1994 Notice of Intent to Cancel. The Airrigation Engineering Company products identified above are metam-sodium products used in sewers that are subject to this classification determination. On September 24, 1993, EPA notified Airrigation Engineering Company of its classification decision. Airrigation Engineering Company refused to comply with the Agency's requirement that the metam-sodium products be classified as restricted use. Because the only measure short of cancellation that would reduce the risks posed by these products to an acceptable level was the restricted use classification and because the registrant would not voluntarily change the classification of its products, the Agency initiated cancellation proceedings.

The September 21, 1994 Notice of Intent to Cancel announced that cancellation could be avoided by amending the registrations of the products identified above to change their classification to restricted use; the change in classification for the Airrigation Engineering Company products would become effective at the same time as the change in classification of similar products whose registrants had already agreed to the restricted use classification. Alternatively, Airrigation Engineering Company could request an evidentiary hearing on the Agency's cancellation decision. Procedures for requesting a hearing were given in the September 21, 1994 Notice.

On November 7, 1994, Airrigation Engineering Company submitted a timely and effective hearing request. During the course of the pre-hearing proceedings, the registrant decided to comply with the Agency's classification decision.

On March 1, 1996, the Agency approved label amendments for the products identified above to change their classification to restricted use.

This Notice announces that Airrigation Engineering Company has complied with the Agency's decision to classify the products identified above as restricted use products. Because Airrigation Engineering Company took the steps to avoid cancellation which were identified in the September 21, 1994 Notice, EPA is withdrawing its Notice of Intent to Cancel the product registrations identified above.

Dated: May 9, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 96–12476 Filed 5–16–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30410; FRL–5367–6]

Woodstream Corporation; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by June 17, 1996.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30410] and the file symbols (47629–R and 47629–E) to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will be accepted on disks in Wordperfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30410]. No "Confidential Business Information" (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Rita Kumar, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8291; e-mail: kumar.rita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received applications from Woodstream Corporation, 69 N. Locust St., Lititz, PA 17543–0327, to register the pesticide products Victor Roach Bait Stations 1 and Victor Roach Bait Stations 2 (EPA File Symbols 47629–R and 47629–E), containing the active ingredient German cockroach pheromone at 0.004 percent for both products, an active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. These products are formulated with boric acid and are proposed for use to kill cockroaches in homes and commercial establishments such as hospitals, restaurants and schools. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30410] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: May 2, 1996.

Janet L. Andersen,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 96–12479 Filed 5–16–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Meeting; Federal Purchase and Stockpile of Potassium Iodide for Use by the General Public in a Radiological Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of Public Meeting.

SUMMARY: FEMA announces the following committee meeting:

NAME: Federal Radiological Preparedness Coordinating Committee (FRPCC), Ad Hoc Subcommittee on Potassium Iodide (KI).

DATES: The meeting will be held June 27, 1996. Any individuals or organizations interested in attending the public meeting or making oral presentations must so indicate by 4:00 PM, May 31, 1996.

TIME OF MEETING: 10:00 AM–4:00 PM.

PLACE: Federal Emergency Management Agency, room 401, 500 C Street, SW., Washington, DC 20472.

PROPOSED AGENDA: The meeting will begin at 10:00 AM with a presentation by the Subcommittee on the background of the Federal potassium iodide policy. That presentation will be followed by a statement of the current issues raised in the Petition for Rulemaking submitted to the U.S. Nuclear Regulatory Commission, and in letters to the Director of FEMA. The meeting will then turn to attendees who have indicated that they want to make oral presentations, including response to any questions that may be asked by members of the Subcommittee. The meeting will adjourn after the Subcommittee and attendees have completed their presentations and any interaction on the subject matter.

SUPPLEMENTARY INFORMATION: The FRPCC issued its policy on the use of KI as a thyroid blocking agent on July 24, 1985 (50 FR 30258). On December 6, 1994, the FRPCC adopted a September 15, 1994 report and recommendations of the Ad Hoc Subcommittee on Potassium Iodide after review of the issues affecting the purchase and stockpile of KI by the Federal government. The Ad Hoc Subcommittee found no basis for changing the 1985 Federal policy, which states that KI should be purchased and stockpiled for emergency workers and institutionalized persons, and that the decision on its use as a protective action for the general public resides with the State, and in some cases, with local health authorities.

The FRPCC is again reviewing the issue of the Federal purchase, stockpile and use of KI by the general public in the event of a radiological emergency at a commercial nuclear power plant. The Petition for Rulemaking submitted to the U.S. Nuclear Regulatory Commission requests that 10 CFR Part 50.47(a)(10) be revised to read: "A range of protective actions, including sheltering, evacuation, and prophylactic use of iodine, have been developed for the plume exposure EPZ [emergency planning zone] for emergency workers and the general public." In addition, the same Petitioner requested FEMA to reconsider the 1985 Federal Policy. Accordingly, the Federal Radiological Preparedness Coordinating Committee formed an Ad Hoc Subcommittee to review and re-evaluate the issue.

The meeting will be open to the public with approximately 30 seats available on a first-come, first-served basis. Individuals or representatives of organizations who plan to attend the meeting or make oral presentations should contact William F. McNutt, Chairman, Federal Radiological Preparedness Coordinating Committee, Ad Hoc Subcommittee on Potassium Iodide, room 634, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2857; (facsimile) (202) 646–4183, on or before 4:00 PM, May 31, 1996.

Dated: May 10, 1996.

Kay C. Goss,

Associate Director for Preparedness, Training and Exercises.

[FR Doc. 96–12460 Filed 5–16–96; 8:45 am]

BILLING CODE 6718–06–P

[Docket No. FEMA–REP–2–NY–3]

Approval of the State of New York Radiological Emergency Response Plan Site-specific to the Indian Point Nuclear Power Generating Station

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: FEMA gives notice of its approval of the State of New York Radiological Emergency Response Plan site-specific to the Indian Point Nuclear Power Generating Station located in Westchester County, New York.

DATES: This approval is effective as of May 3, 1996.

FOR FURTHER INFORMATION CONTACT: Regional Director, FEMA Region II, 26 Federal Plaza, room 1337, New York, NY 10278–0002, (facsimile) (212) 225–7281. Please refer to Docket File No. FEMA–REP–2–NY–3.

SUPPLEMENTARY INFORMATION: On May 3, 1996 the Kay C. Goss, Associate Director for Preparedness, Training and Exercises, Federal Emergency Management Agency, reviewed and approved the State of New York Radiological Emergency Response Plan site-specific to the Indian Point Nuclear Power Generating Station, as follows:

"In accordance with the Federal Emergency Management Agency (FEMA) Rule, 44 CFR 350, the State of New York originally submitted the offsite radiological emergency response plans site-specific to the Indian Point Nuclear Power Generating Station, located in Westchester County, New York, to the Regional Director of FEMA Region II on August 17, 1981, for FEMA review and approval. On October 28, 1991, the Region II Director submitted an evaluation and recommendation for formal approval of the offsite plans and preparedness to the Associate Director for State and Local Programs and Support in accordance with Section 350.11 of the FEMA Rule. However, during the Headquarters review process several issues were identified which were referred back to FEMA Region II for clarification.

"The Regional Director subsequently addressed the issues requiring clarification and resubmitted the evaluation to FEMA Headquarters on November 29, 1995. Included in this evaluation was a review of the full participation offsite radiological emergency preparedness exercise conducted on June 15, 1994, in accordance with 44 CFR 350.9.

"Based on the evaluation and recommendation for approval by the FEMA Region II Director, the review by the Federal Radiological Preparedness Coordinating Committee (FRPCC), and the review by the FEMA Headquarters staff in accordance with 44 CFR 350.12, I find and determine that the State of New York and local offsite radiological emergency response plans and preparedness site-specific to the Indian Point Nuclear Power Generating Station are adequate to protect the health and safety of the public living in the vicinity of the plant. The offsite radiological emergency response plans and preparedness are assessed as adequate in that there is reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency and that the plans are capable of being implemented.

"The prompt alert and notification system installed and operational around the Indian Point Nuclear Power Generating Station was previously approved by FEMA on March 27, 1992, in accordance with the criteria of NUREG–0654/FEMA–REP–1, Rev. 1, Appendix 3, and FEMA–REP–10, "Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants."

"Accordingly, I approve the New York State and local offsite radiological emergency response plans and preparedness, site-specific to the Indian Point Nuclear Power Generating Station. FEMA will continue to review the status of offsite plans and preparedness site-specific to the Indian Point Nuclear Power Generating Station in accordance with Section 350.13 of the FEMA Rule.

"For further details with respect to this action, refer to Docket File No. FEMA–REP–2–NY–3 maintained by the Regional Director, FEMA Region II, 26 Federal Plaza, Room 1337, New York, New York 10278–0002."

Dated: May 3, 1996.

Kay C. Goss,

Associate Director for Preparedness, Training, and Exercises.

[FR Doc. 96–12459 Filed 5–16–96; 8:45 am]

BILLING CODE 6718–06–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 10, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Lamortine G. Hardman, Athens, Georgia; to retain a total of 16.6 percent of the voting shares of First Commerce Bancorp, Inc., Commerce, Georgia, and thereby indirectly acquire First National Bank of Commerce, Commerce, Georgia.

Board of Governors of the Federal Reserve System, May 13, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–12401 Filed 5–16–96; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 10, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Granville Bancshares, Inc., Granville, Illinois; to acquire 100 percent of the voting shares of Sheridan State Bank, Sheridan, Illinois.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Pembroke Bancshares, Inc., Kansas City, Missouri, and Union Bancshares, Inc., Kansas City, Missouri; to acquire 100 percent of the voting shares and merge with Missouri Valley Bancshares, Inc., Mountain Grove, Missouri, and thereby indirectly acquire Citizen's Bank of Southern Missouri, Ava, Missouri.

Board of Governors of the Federal Reserve System, May 13, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–12400 Filed 5–16–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 31, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. VCR Bancorporation LTD, Carlisle, Iowa; to engage *de novo* in making and collecting commercial loans, and acquiring and liquidating low quality commercial, real estate, and consumer loans from affiliated and non-affiliated banks, pursuant to § 225.25 (b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 13, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–12402 Filed 5–16–96; 8:45 am]

BILLING CODE 6210–01–F

Board of Governors; Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 61 FR 21469–70, May 10, 1996.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, May 15, 1996.

CHANGES IN THE MEETING: The open meeting has been canceled, and the scheduled items were handled via notation voting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: May 15, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–12598 Filed 5–15–96; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 39409–24, August 31, 1982, as amended most recently at 61 FR 19942–43, May 3, 1996), is amended to establish an Office of External Affairs within the Health Resources and Services Administration (HRSA).

Under HB–20, Organization and Functions, amend the functional statements for the Office of the Administrator (HBA) by doing the following:

A. Delete the Office of Communications (HBA5) in its entirety and replace it with the following: *Office of External Affairs (HBA5).* Under the direction of Associate Administrator who is a member of the Administrator's immediate staff: (1) Provides leadership and general policy and program direction for, and conducts coordinates communications, public affairs activities of the Health Resources and Services Administration; (2) establishes

and maintains liaison with general public, professional and citizen organizations and public interest groups on a nationwide basis; (3) facilities activities that impact upon the delivery of health care on a national basis; (4) speaks for the Administrator in public meetings and conferences; (5) provides communications assistance to the Agency; writes and prepares speeches for the Administrator, (6) serves as the Agency focal point for women's health (7) serves as the principal advisor for Agency-supported program activities that address women's health and for policy issues internal to and external to the Agency related to the health of women; (8) oversees the coordination and resolution of program and policy issues related to women's health; (9) collects and consolidates data and prepares Agency-level reports, planning and briefing documents on ongoing women's health activities and related accomplishments; (10) identifies and negotiates collaborative women's health efforts within the Agency, PHS, Department and external components; (11) represents the Agency in Departmental, regional, State and National women's health deliberations; chairs and provides support to the HRSA Coordinating Committee on Women's health; (12) services as Federal women's health liaison and resource and assures equity to women in their access to education and training resources and to health/science careers; and (13) coordinates the implementation of Freedom of Information Act for the Agency.

B. Establish within the Office of External Affairs the Division of Communications and Public Affairs (HBA52)—(1) provides communication and public affairs expertise and staff advice and support to the Administrator in program and policy formulations and execution consistent with policy direction established by the Assistant Secretary (Public Affairs); (2) develops and implements policies related to external media relations and internal employee communications; (3) establishes and implements procedures for the development, review, processing, quality control, and dissemination of Administration communications materials; (4) serves as Communications and Public Affairs Officer for the Administrator including establishment and maintenance of productive relationships and with communications media; (5) provides central communications service to all Administration programs; and (6) serves as focal point for coordination of Administration communications activities with those of other health agencies within the Department of Health and Human Services and with field, State, local, voluntary and professional organizations.

C. In the statement for the "Office of Operations and Management (HBA4), delete item number (4) in its entirety and renumber the remaining items in sequential order.

Section HB–30 Delegations of Authority. All delegations and redelegations of authority to Offices affected by this reorganization which were in effect immediately prior to the effective date of this reorganization will continue in effect in them or their successors pending further redelegation.

This reorganization is effective upon date of signature.

Dated: May 6, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–12362 Filed 5–16–95; 8:45 am]

BILLING CODE 4160–15–M

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Integrated Review Schedule.

OMB No.: 0970–0035.

Description: State agencies are required to perform quality control reviews for the AFDC, Food Stamp, and Adult Assistance Programs. The Integrated Review Schedule is jointly designed and used by ACF and FCS. The schedule serves as the comprehensive data entry form for all active quality control reviews in these programs.

Respondents: State Governments.

ANNUAL BURDEN ESTIMATES

Instrument	No. of respondents	No. of responses per respondent	Average burden hours per response	Total burden hours
ACF–4357	55,000	1	1	55,000

Estimated Total Annual Burden Hours: 55,000.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resources Management Services, 370 L'Enfant Promenade, SW., Washington, DC. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by title.

In addition, requests for copies may be made and comments forwarded to the Resorts Clearance Officer over the Internet by sending message to rkatson@acf.dhhs.gov. Internet message must be submitted as an ASCII file without special characters or encryption.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: May 13, 1996.

Larry Guerrero,

Director, Office of Information Systems Services.

[FR Doc. 96–12462 Filed 5–16–96; 8:45 am]

BILLING CODE 4184–01–M

Health Care Financing Administration

[BPD–868–NC]

Medicare and Medicaid Programs; Announcement of Applications From Hospitals Requesting Waivers for Organ Procurement Service Area

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice announces applications which HCFA has received since December 1, 1995, from hospitals requesting waivers from dealing with their designated area organ procurement organizations (OPOs) in accordance with section 1138(a)(2) of the Social Security Act. It supplements a notice published in the **Federal Register** on January 19, 1996, that announced hospital waiver requests received by HCFA as of December 1, 1995. Effective January 1, 1996, a hospital is required to have an agreement with the OPO designated for the area in which it is located unless HCFA grants it a waiver to have an agreement with an alternative, out-of-area OPO. This notice requests comments from OPOs and the general public for our consideration in determining whether such a waiver should be granted.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on July 16, 1996.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–868–NC, P.O. Box 7517, Baltimore, MD 21244–0517.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–868–NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Mark A. Horney (410) 786–4554.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1138(a)(1)(A)(iii) of the Social Security Act (the Act) provides that a hospital or rural primary care hospital that participates in the Medicare or Medicaid programs must establish written protocols for the identification of potential organ donors. Section 155 of the Social Security Act Amendments of 1994 (SSA '94) (Public Law 103–432) amended section 1138 of the Act to require that effective January 1, 1996, a hospital must notify the organ procurement organization (OPO) designated for the service area in which it is located of potential organ donors (sections 1138 (a)(1)(A)(iii) and (a)(3)(B) of the Act). It must also have an agreement to do so only with that designated OPO (sections 1138 (a)(1)(C) and (a)(3)(A)).

The statute also provides that the hospital may obtain a waiver of these requirements from the Secretary. A waiver would allow the hospital to have an agreement with an "out-of-area" OPO (section 1138(a)(2)) if it meets conditions specified in the statute (section 1138(a)(2)(A) (i) and (ii)).

The law further states that in granting a waiver, the Secretary must determine that such a waiver: (1) Would be expected to increase donation; and (2) will assure equitable treatment of patients referred for transplants within the service area served by the designated OPO and within the service area served by the out-of-area OPO (section 1138(a)(2)(A)). In making a waiver determination, the Secretary may consider, among other factors: (1) Cost effectiveness; (2) improvements in quality; (3) whether there has been any change in a hospital's designated OPO service area due to the definition of metropolitan statistical areas (MSAs); and (4) the length and continuity of a hospital's relationship with the out-of-area OPO (section 1138(a)(2)(B)). Under section 1138(a)(2)(D) of the Act, the Secretary is required to publish a notice of any waiver applications within 30 days of receiving the application and offer interested parties an opportunity to comment in writing within 60 days of the published notice. Section 155(a)(2) of SSA '94 provides that any hospital that had an agreement with an out-of-area OPO on the date of enactment of that legislation, October 31, 1994, may obtain a temporary or interim waiver of the requirements of sections 1138 (a)(1)(A)(iii) and (a)(1)(C). The statute requires that the hospital must have submitted a waiver request to the Secretary by January 1, 1996. The statute specifically provides that the hospital's existing agreement with the out-of-area OPO would remain in effect pending the Secretary's final determination under section 1138(a)(2) as to whether the hospital should be granted a permanent waiver.

For hospitals that do not meet these conditions, but that entered into agreements with out-of-area OPOs prior to January 1996, we have established a similar process. Under our section 1138(a)(2) authority to grant waivers if statutory conditions are met, we will make a preliminary determination as to whether the hospital's request meets the requirements of section 1138(a)(2)(A) (i) and (ii) based upon an initial review of its waiver request. If we determine that the hospital appears preliminarily to meet those standards, we will grant the hospital a temporary, interim waiver while we consider further the merits of the hospital's waiver request on a permanent basis. In the meantime, the hospital may continue its relationship with the OPO with which it has an agreement.

II. Hospital Requests for Waiver

In October 1995, we issued a Program Memorandum (Transmittal No. A–95–11) that has been supplied to each hospital. This Program Memorandum detailed the waiver process and discussed the information that may be provided by hospitals requesting a waiver. We indicated that upon receipt of the waiver requests, we would publish a **Federal Register** notice to solicit public comments, as required by law (section 1138(a)(2)(D)).

We will then review the requests and comments received. During the review process, we may consult on an as-needed basis with agencies outside HCFA, including the Public Health Service's Division of Transplantation, the United Network for Organ Sharing, and HCFA regional offices. If necessary, we may request additional clarifying information from the applying hospital or others. We then will make a final determination on the waiver requests and notify the affected hospitals and OPOs.

III. Hospitals That Requested Waivers

On January 19, 1996, we published in the **Federal Register** (61 FR 1389) a notice that announced the waiver applications that we had initially received from hospitals. The January 1996 notice listed eight hospitals that had agreements on October 31, 1994,

whose waiver requests had been received by December 1, 1995.

This notice supplements the January 1996 notice. It announces an additional 148 hospital waiver requests that we have received. The hospitals whose waiver applications were received after December 1, 1995 are listed below under three distinct groups.

The Group I listing includes the hospitals that submitted waiver requests after December 1, 1995 and that had agreements with the requested out-of-area OPO on or before October 31, 1994.

This listing includes 132 hospitals that requested waivers, by the name of the facility, the city and state location of the facility, the requested out-of-area OPO, and the currently designated area OPO.

GROUP I

Name of facility	City	State	Requested OPO[1]	Designated OPO[1]
White River Medical Center	Batesville	AR	AROR	MOMA
Corona Regional Medical Center	Corona	CA	CARO	CAOP
Sierra View District Hospital	Porterville	CA	CADN	CAOP
Mark Twain St. Joseph's Hospital	San Andreas	CA	CAGS	CADN
Cedars-Sinai Medical Center	Los Angeles	CA	CAOP	CARO
Kaweah Delta Health Care District	Visalia	CA	CADN	CAOP
Tulare District Hospital	Tulare	CA	CADN	CAOP
Lindsay District Hospital	Lindsay	CA	CADN	CAOP
Alta District Hospital	Dinuba	CA	CADN	CAOP
Sharp HealthCare Murrieta	Murrieta	CA	CASD	CAOP
Sierra Valley District Hospital	Loyalton	CA	CAGS	CADN
Colusa Community Hospital	Colusa	CA	CAGS	[2]
Sutter Solano Medical Center	Vallejo	CA	CAGS	CADN
Summit Medical Center	Oakland	CA	CAGS	CADN
Indian Valley Hospital District	Greenville	CA	CAGS	CADN
Barstow Community Hospital	Barstow	CA	CARO	CAOP
Bear Valley Community Hospital	Big Bear Lake	CA	CARO	CAOP
Chino Valley Medical Center	Chino	CA	CARO	CAOP
Community Hospital of San Bernadino	San Bernadino	CA	CARO	CAOP
Corona Regional Medial Center	Corona	CA	CARO	CAOP
Desert Hospital	Palm Springs	CA	CARO	CAOP
Desert Valley Hospital	Victorville	CA	CARO	CAOP
Eisenhower Memorial Hospital	Rancho Mirage	CA	CARO	CAOP
Hi-Desert Medical Center	Joshua Tree	CA	CARO	CAOP
Kaiser Foundation Hospitals	Riverside	CA	CARO	CAOP
Kaiser Foundation Hospitals	Fontana	CA	CARO	CAOP
Mountains Community Hospital	Lake Arrowhead	CA	CARO	CAOP
Parkview Community Hospital Medical Center	Riverside	CA	CARO	CAOP
Ridgecrest Community Hospital	Ridgecrest	CA	CARO	CAOP
Riverside Community Hospital	Riverside	CA	CARO	CAOP
San Antonio Community Hospital	Upland	CA	CARO	CAOP
St. Bernardine Medical Center	San Bernardino	CA	CARO	CAOP
St. Mary Regional Medical Center	Apple Valley	CA	CARO	CAOP
Valley Health System	Hemet	CA	CARO	CAOP
Victor Valley Community Hospital	Victorville	CA	CARO	CAOP
Antelope Valley Hospital	Lancaster	CA	CAOP	CARO
Bellwood General Hospital	Bellflower	CA	CAOP	CARO
Beverly Hospital	Montebello	CA	CAOP	CARO
Brotman Medical Center	Culver City	CA	CAOP	CARO
California Hospital Medical Center	Los Angeles	CA	CAOP	CARO
Century City Hospital	Los Angeles	CA	CAOP	CARO
Charter Community Hospital	Hawaiian Gardens	CA	CAOP	CARO
Childrens Hospital	Los Angeles	CA	CAOP	CARO
Daniel Freeman Marina Hospital	Marina del Rey	CA	CAOP	CARO
Daniel Freeman Memorial Hospital	Inglewood	CA	CAOP	CARO
Desert Palms Community Hospital	Palmdale	CA	CAOP	CARO
Doctors Hospital of West Covina	West Covina	CA	CAOP	CARO
Garfield Medical Center	Monterey Park	CA	CAOP	CARO
Henry Mayo Newhall Memorial Hospital	Valencia	CA	CAOP	CARO
High Desert Hospital	Lancaster	CA	CAOP	CARO
Huntington East Valley Hospital	Glendora	CA	CAOP	CARO
Lakewood Regional Medical Center	Lakewood	CA	CAOP	CARO
Lancaster Community Hospital	Lancaster	CA	CAOP	CARO
Lincoln Hospital	Los Angeles	CA	CAOP	CARO
Little Company of Mary Hospital	Torrance	CA	CAOP	CARO
Long Beach Memorial Medical Center/Miller Childrens Hospital	Long Beach	CA	CAOP	CARO
Monterey Park Hospital	Monterey Park	CA	CAOP	CARO
Orthopaedic Hospital	Los Angeles	CA	CAOP	CARO
Pacific Alliance Medical Center	Los Angeles	CA	CAOP	CARO
Pacific Hospital of Long Beach	Long Beach	CA	CAOP	CARO
Pioneer Hospital	Artesia	CA	CAOP	CARO
Presbyterian Intercommunity Hospital	Whittier	CA	CAOP	CARO
Queen of the Valley Hospital	West Covina	CA	CAOP	CARO

GROUP I—Continued

Name of facility	City	State	Requested OPO[1]	Designated OPO[1]
Santa Marta Hospital	Los Angeles	CA	CAOP	CARO
St. Francis Medical Center	Lynwood	CA	CAOP	CARO
St. Joseph Medical Center	Burbank	CA	CAOP	CARO
St. Vincent Medical Center	Los Angeles	CA	CAOP	CARO
Temple Community Hospital	Los Angeles	CA	CAOP	CARO
USC University Hospital	Los Angeles	CA	CAOP	CARO
White Memorial Medical Center	Los Angeles	CA	CAOP	CARO
Woodruff Community Hospital	Long Beach	CA	CAOP	CARO
Day Kimball Hospital	Putnam	CT	CTHH	MAOB
Windham Hospital	Willimantic	CT	CTHH	MAOB
Veterans Memorial Medical Center	Meriden	CT	CTHH	MAOB
Martin Memorial Medical Center, Inc.	Stuart	FL	FLWC	FLMP
Hendry General Hospital	Clewiston	FL	FLSW	FLMP
Phoebe Putney Memorial Hospital	Albany	GA	GALL	GAMC
Palmyra Medical Centers	Albany	GA	GALL	GAMC
St. Francis Hospital	Columbus	GA	GALL	ALOB
Meadows Regional Medical Center	Vidalia	GA	GALL	GAMC
Doctors Hospital	Columbus	GA	GALL	ALOB
Hughston Sports Medicine Hospital	Columbus	GA	GALL	ALOB
The Medical Center, Inc.	Columbus	GA	GALL	ALOB
Athens Regional Medical Center	Athens	GA	GALL	GAMC
Davenport Medical Center	Davenport	IA	IAOP	ILIP
Genesis Medical Center	Davenport	IA	IAOP	ILIP
Jennie Edmundson Memorial Hospital	Council Bluffs	IA	IAOP	NEOR
Swedish American Hospital	Rockford	IL	WIUW	ILIP
Saint Anthony Medical Center	Rockford	IL	WIUW	ILIP
Porter Memorial Hospital	Valparaiso	IN	INOP	ILIP
Franklin Medical Center	Greenfield	MA	CTHH	MAOB
Mary Lane Hospital	Ware	MA	CTHH	MAOB
Baystate Medical Center	Springfield	MA	CTHH	MAOB
Calvert Memorial Hospital	Prince Frederick	MD	MDPC	DCTC
Union Hospital	Elkton	MD	MDPC	PADV
Frederick Memorial Hospital	Frederick	MD	MDPC	DCTC
Marquette General Hospital	Marquette	MI	WIUW	MIOP
Lester E. Cox Medical Center	Springfield	MO	MOMA	MWOB
St. John's Regional Health Center	Springfield	MO	MOMA	MWOB
Skaggs Community Health Center	Branson	MO	MOMA	MWOB
Warren Hospital	Philipsburg	NJ	NJTO	PADV
Our Lady of Lourdes Medical Center	Camden	NJ	NJTO	PADV
Cooper Hospital/University Medical Center	Camden	NJ	NJTO	PADV
Saint Mary's Regional Medical Center	Reno	NV	CADN	NVLV
Washoe Health System	Reno	NV	CADN	NVLV
Arnot Ogden Medical Center	Elmira	NY	NYFL	PATF
Hempstead General Hospital Medical Center	Hempstead	NY	NYRT	NYSB
Long Beach Medical Center	Long Beach	NY	NYRT	NYSB
St. Francis Hospital	Roslyn	NY	NYRT	NYSB
North Shore University Hospital	Manhassett	NY	NYRT	NYSB
Hardin Memorial Hospital	Kenton	OH	OHLP	OHLC
Mercy Hospital	Willard	OH	OHLP	OHLB
Mercy Medical Center	Springfield	OH	OHLP	OHLC
Hood General Hospital	Gransbury	TX	TXGC	TXSB
St. Michael Health Care Center	Texarkana	TX	AROR	TXSB
Darnall Army Community Hospital	Fort Hood	TX	TXSA	TXSB
Metroplex Hospital	Killeen	TX	TXSA	TXSB
Parkview Regional Hospital	Mexia	TX	TXGC	TXSB
Harris Methodist Erath County Hospital	Stephenville	TX	TXGC	TXSB
Hamilton General Hospital	Hamilton	TX	TXGC	TXSB
Palo Pinto General Hospital	Mineral Wells	TX	TXGC	TXSB
Glen Rose Medical Center	Glen Rose	TX	TXGC	TXSB
Decatur Community Hospital	Decatur	TX	TXGC	TXSB
Silsbee Doctors Hospital	Silsbee	TX	TXGC	TXSB
Nan Travis Memorial Hospital	Jacksonville	TX	TXGC	TXSB
Memorial Medical Center	Port Lavaca	TX	TXGC	TXSB
Clinch Valley Medical Center	Richlands	VA	TNET	VAOP
Luther/Midelfort Mayo Health System	Eau Claire	WI	MNOP	WIUW
Door County Memorial Hospital	Sturgeon Bay	WI	WISE	WIUW
Appleton Medical Center	Appleton	WI	WIUW	WISE
Potomac Valley Hospital	Keyser	WV	PATF	MDPC
Weirton Medical Center	Weirton	WV	PATF	OHLP

[1] See Section IV of this notice for keys to the OPO codes and the addresses of the OPOs.

[2] Area not designated.

The Group II listing includes the 11 hospitals that submitted waiver applications after December 1, 1995, and that did not have agreements with the requested out-of-area OPOs on October 31, 1994, but did enter into agreements with the requested OPOs prior to January 1, 1996. We are granting the 11 hospitals included in the Group II listing "interim waivers" pending receipt of public comments and our complete review of those comments.

Section 1138(a)(2)(A) of the Act requires that a waiver can be granted only if it is expected to increase donations and equitable treatment of patients referred for transplant within the service area served by the hospital's designated OPO and within the service area served by the OPO with which the hospital seeks to have an agreement under the waiver. These 11 hospitals requesting waiver have asserted that they meet these standards and have provided specific information to support their claims. We have determined on initial review that these hospitals satisfy the statutory criteria for waiver. We have also determined that to force these hospitals to change from their existing OPO arrangements to their designated OPO during our full consideration of the waiver request could disrupt services provided by hospitals and OPOs, impairing their working relationships, and ultimately possibly eroding the supply of organs for the growing list of people awaiting transplant. In accordance with section 1138(a)(2)(D) of the Act, we are publishing a listing of these providers' requests for waiver and are requesting comments on the requests for waiver before making a final determination.

GROUP II

Name of facility	City	State	Requested OPO[1]	Designated OPO[1]
Community Hospital of Sonoma County	Santa Rosa	CA	CAGS	CADN
Santa Rose Memorial Hospital	Santa Rosa	CA	CAGS	CADN
New Milford Hospital	New Milford	CT	CTHH	NYRT
Noble Hospital	Westfield	MA	CTHH	MAOB
Citizens Memorial Hospital	Bolivar	MO	MOMA	MWOB
Springfield Community Hospital and Clinic	Springfield	MO	MOMA	MWOB
Lima Memorial Hospital	Lima	OH	OHLP	OHLC
St. Rita's Medical Center	Lima	OH	OHLP	OHLC
War Memorial Hospital	Berkeley Springs	WV	VAOP	PATF
Carson-Tahoe Hospital	Carson City	NV	CADN	NVLV
Jackson General Hospital	Ripley	WV	OHLP	PATF

[1] See Section IV of this notice for keys to the OPO codes and the addresses of the OPOs.

The Group III listing includes the five hospitals that submitted waiver applications after December 1, 1995, and that did not enter an agreement with the requested OPOs, but are desirous of changing OPOs. The five hospitals in the Group III listing did not have agreements on October 31, 1994, nor did they enter into an agreement by January 1, 1996. These hospitals have submitted requests for change on a prospective basis. Upon receipt of public comments and our review of the comments, HCFA will make a determination of each hospital's request. Any approval of these requests will be prospective. The hospitals have already been informed that their waivers approvals, if granted, will be on a prospective basis.

GROUP III

Name of facility	City	State	Requested OPO[1]	Designated OPO[1]
VacaValley Hospital	Vacaville	CA	CAGS	CADN
NorthBay Medical Center	Fairfield	CA	CAGS	CADN
St. Joseph Hospital	Eureka	CA	CAGS	CADN
Redwood Memorial Hospital	Fortuna	CA	CAGS	CADN
Rockford Memorial Hospital	Rockford	IL	WIUW	ILIP

[1] See Section IV of this notice for keys to the OPO codes, and the addresses of the OPOs.

IV. Keys to the OPO Codes

The keys to the acronyms used in the Group I, II and III listings to identify OPOs and the OPOs' addresses are as follows:

OPO code	OPO name and address
ALOB	ALABAMA ORGAN CENTER, 301 South 20th Street, Suite 1001, Birmingham, AL 35233.
AROR	ARKANSAS REGIONAL ORGAN RECOVERY AGENCY, 1100 N. University, Suite 200, Little Rock, AR 72207.
AZOB	DONOR NETWORK OF ARIZONA, 3877 North Seventh Street, Phoenix, AZ 85014.
CADN	CALIFORNIA TRANSPLANT DONOR NETWORK, 55 Francisco Street, Suite 510, San Francisco, CA 94133–2115.
CAGS	GOLDEN STATE TRANSPLANT SERVICES, 1760 Creekside Oaks Drive, Suite 160, Sacramento, CA 95833.
CAOP	SOUTHERN CALIFORNIA ORGAN PROCUREMENT CENTER, 2100 W. 3rd Street, Suite 350, Los Angeles, CA 90057.
CARO	REGIONAL ORGAN PROCUREMENT AGENCY OF SOUTHERN CALIFORNIA, 10920 Wiltshire Blvd., Suite 910, Los Angeles, CA 90024–6511.

OPO code	OPO name and address
CASD	ORGAN AND TISSUE ACQUISITION CENTER OF SOUTHERN CALIFORNIA, 3500 Fifth Avenue, Suite 203, San Diego, CA 92103.
CORS	COLORADO ORGAN RECOVERY SYSTEMS, INC., 3773 Cherry Creek North Drive, Suite 601, Denver, CO 80209.
CTHH	NORTHEAST OPO AND TISSUE BANK, Hartford Hospital, 80 Seymour Street, Hartford, CT 06102–5037.
DCTC	WASHINGTON REGIONAL TRANSPLANT CONSORTIUM, 8110 Gatehouse Road, Suite 101 W, Falls Church, VA 22042.
FLFH	TRANSLIFE, 2501 North Orange Avenue, Suite 40, Orlando, FL 32804.
FLWC	LIFELINK OF FLORIDA, 2111 West Swann Avenue, Tampa, FL 33606–2486.
FLMP	UNIVERSITY OF MIAMI OPO, University of Miami School of Medicine, P.O. Box 016310, Miami, FL 33101.
FLSW	LIFELINK OF SOUTHWEST FLORIDA, 12573 New Brittany Blvd., Bldg. 23, Ft. Myers, FL 33907.
FLUF	THE OPO AT UNIVERSITY OF FLORIDA, PO Box 100286, Gainesville, FL 32610–0286.
GALL	LIFELINK OF GEORGIA, 3715 Northside Parkway, 100 Northcreek, Suite 300, Atlanta, GA 30327.
GAMC	MEDICAL COLLEGE OF GEORGIA ORGAN AND TISSUE DONOR SERVICES, BA–S1600, 1120 15th Street, Augusta, GA 30912.
HIOP	ORGAN DONOR CENTER OF HAWAII, 1000 Bishop Street, Honolulu, HI 96813.
IAOP	IOWA STATEWIDE ORGAN PROCUREMENT ORGANIZATION, 1165 S. Riverside Drive, Iowa City, IA 52246.
ILIP	REGIONAL ORGAN BANK OF ILLINOIS, 800 South Wells, Suite 190, Chicago, IL 60607.
INOP	INDIANA ORGAN PROCUREMENT ORGANIZATION, INC., 719 Indiana Avenue, Suite 100, Indianapolis, IN 46202.
KYDA	KENTUCKY ORGAN DONOR AFFILIATES, 305 West Broadway, Suite 316, Louisville, KY 40402.
LAOP	LOUISIANA ORGAN PROCUREMENT AGENCY, 3501 N. Causeway Blvd., #940, Metaire, LA 70002–3626.
MAOB	NEW ENGLAND ORGAN BANK, INC., One Gateway Center, Newton, MA 02158.
MDPC	TRANSPLANT RESOURCE CENTER OF MARYLAND, 1540 Canton Center Drive, Suite R, Baltimore, MD 21227.
MIOP	ORGAN PROCUREMENT AGENCY OF MICHIGAN, 2203 Platt Road, Ann Arbor, MI 48104.
MNOP	LIFESOURCE, UPPER MIDWEST ORGAN PROCUREMENT ORGANIZATION, INC., 2550 University Avenue West, Suite 315 South, St. Paul, MN 55114–1904.
MOMA	MID-AMERICA TRANSPLANT ASSOCIATION, 1139 Olivette Executive Parkway, St. Louis, MO 63132.
MSOP	MISSISSIPPI ORGAN RECOVERY AGENCY, INC., 12 River Bend Place, Suite B, Jackson, MS 39208.
MWOB	MIDWEST ORGAN BANK, 1900 W 47th Place, Suite 400, Westwood, KS 66205.
NCBG	CAROLINA LIFE CARE, North Carolina Baptist Hospitals, Inc., Medical Center Boulevard, Winston-Salem, NC 27157.
NCCM	LIFE SHARE OF THE CAROLINAS, Carolinas Medical Center, P.O. Box 32861, Charlotte, NC 28232.
NCNC	CAROLINA ORGAN PROCUREMENT, 702 Johns Hopkins Drive, Greenville, NC 27834.
NEOR	NEBRASKA ORGAN RETRIEVAL SYSTEM, INC., 4060 Vinton Street, Suite 200, Omaha, ME 68105.
NJTO	NEW JERSEY ORGAN & TISSUE SHARING NETWORK, 150 Morris Avenue, Springfield, NJ 07081.
NMOP	NEW MEXICO DONOR PROGRAM, 2715 Broadbent Parkway NE., Suite J, Albuquerque, NM 87107.
NVLV	NEVADA DONOR NETWORK, 4580 Southeastern Avenue, Suite 33, Las Vegas, NV 89119.
NYAP	OPO OF ALBANY MEDICAL COLLEGE, 47 New Scotland Avenue, AP8, Albany, NY 12208.
NYFL	UNIVERSITY OF ROCHESTER ORGAN PROCUREMENT PROGRAM, 601 Elmwood Avenue, P.O. Box Surgery, Rochester, NY 14642.
NYRT	NEW YORK REGIONAL TRANSPLANT PROGRAM, 475 Riverside Drive—Suite 1244, New York, NY 10115.
NYSB	LONG ISLAND TRANSPLANT PROGRAM UNIVERSITY HOSPITAL OPO, State University of New York at Stony Brook, Stony Brook, NY 11794.
NYWN	UPSTATE NEW YORK TRANSPLANT SERVICES, INC., 165 Genesee Street Suite 102, Buffalo, NY 14209.
OHLB	LIFEBANC, 20600 Chagrin Blvd., Suite 350, Cleveland, OH 44122.
OHLC	LIFE CONNECTION OF OHIO, 1545 Holland Road, Suite C, Maumme, OH 43537.
OHLP	LIFELINE OF OHIO, 770 Kinnear Road, Suite 200, Columbus, OH 43212.
OHOV	OHIO VALLEY LIFE CENTER, 2939 Vernon Place, Cincinnati, OH 45219–2430.
OKOP	OKLAHOMA ORGAN SHARING NETWORK, INC., 5801 N. Broadway, Suite 100, Oklahoma City, OK.
ORUO	PACIFIC NORTHWEST TRANSPLANT BANK, 2611 SW Third, Suite 320, Portland, OR 97201–4952.
PADV	DELAWARE VALLEY TRANSPLANT PROGRAM, 2000 Hamilton Street, Suite 201, Philadelphia, PA 19130.
PATF	CENTER FOR ORGAN RECOVERY AND EDUCATION, 204 Sigma Drive, RIDC Park, Pittsburgh, PA 15238.
PRLL	LIFELINK OF PUERTO RICO, LIFELINK FOUNDATION, INC., Texaco Plaza/Metro Office Park, 2 Calle 1, Suite 411, Guaynabo, PR 00968.
SCOP	SOUTH CAROLINA ORGAN PROCUREMENT AGENCY, 1064 Gardner Road, Suite 105, Charleston, SC 29407.
TNDS	TENNESSEE DONOR SERVICES, 1714 Hayes Street, Nashville, TN 37203.
TNET	LIFE RESOURCES DONOR CENTER, 2812 McKinley Road, Johnson City, TN 37604.
TNMS	MID-SOUTH TRANSPLANT FOUNDATION, 956 Court Avenue, Memphis, TN 38163.
TXGC	LIFE GIFT ORGAN DONATION CENTER, 5615 Kirby Drive, Suite 900, Houston, TX 77005.
TXSA	SOUTH TEXAS ORGAN BANK, 8122 Datapoint Drive, Suite 1150, San Antonio, TX 78229.
TXSB	SOUTHWEST ORGAN BANK, 3500 Maple Avenue, Suite 800, Dallas, TX 75219.
UTOP	INTERMOUTAIN ORGAN RECOVERY SYSTEMS, 230 South 500 East, Suite 290, Salt Lake, UT 84102.
VAOP	VIRGINIA ORGAN PROCUREMENT AGENCY, 1527 Huguenot Road, Midlothian, VA 23113.
VATB	LIFE NET, 5809 Ward Court, Virginia Beach, VA 23455.
WANW	NORTHWEST ORGAN PROCUREMENT AGENCY, 700 Broadway, Seattle, WA 98122.

OPO code	OPO name and address
WASH	SACRED HEART ORGAN PROCUREMENT AGENCY, West 101 Eighth Avenue, TAF–C9, Spokane, WA 99220–4045.
WISE	WISCONSIN DONOR NETWORK, Froedtert Memorial Lutheran Hospital, 9200 W. Wisconsin Avenue, Milwaukee, WI 53226.
WIUW	UNIVERSITY OF WISCONSIN OPO, University of Wisconsin Hospital and Clinics, 600 Highland Avenue, Madison, WI 53792.

This notice does not contain any paperwork burden that is subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995. The form used by hospitals to request waivers of designated OPOs is currently approved by the Office of Management and Budget under 0938–0580, with an expiration date of March 31, 1998.

Authority: Section 1138 of the Social Security Act (42 U.S.C. 1320b–8).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 22, 1996.

Thomas A. Ault,

Director, Bureau of Policy Development, Health Care Financing Administration.

[FR Doc. 96–12463 Filed 5–16–96; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office for Policy Development and Research

[Docket No. FR–4056–N–02]

Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: The due date for comments is: May 24, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, Room 8126, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Office of University Partnerships—telephone (202) 708–1537. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Karadbil.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to a proposed Notice of Funding Availability for the Community Outreach Partnership Centers Program. HUD seeks to implement this initiative as soon as possible.

The Community Outreach Partnership Centers Program (COPC) is a demonstration program which provides grants to public and private institutions of higher education to assist in establishing or carrying out research and outreach activities addressing the problems of urban areas. In fiscal year 1996, approximately 14 New Grants will be awarded. In addition, up to 11 Institutionalization Grants will also be awarded to existing COPC grantees whose current grants are expiring.

Submission of the information required under this information collection is mandatory in order to compete for and receive the benefits of the program. All materials submitted are subject to the Freedom of Information Act and can be disclosed upon request. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. The OMB control number, when assigned, will be announced by a separate notice in the Federal Register. OMB has been requested to approve this action on or before May 20, 1996.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35):

(1) Title of the information collection proposal:

Application Kit—Community Outreach Partnership Centers.

(2) Summary of the collection of information:

Each applicant for the COPC program would be required to submit current information, as listed below as:

1. Transmittal letter signed by the Chief Executive Officer of the institution.
2. OMB Standard Forms 424 (Application for Federal Assistance), Form 424B (Non-Construction Assurances) and Budget.
3. One- to two-page executive summary of the proposed COPC.
4. Narrative Project Management Work Plan.
5. Narrative statement addressing each of the rating factors.
6. Drug-Free Workplace Certification.
7. Form SF–LLL, Disclosure of Lobbying Activities, if applicable.

(7) Financial management and audit information.

(3) Description of the need for the information and its proposed use:

To appropriately determine which Institutions of Higher Education should be awarded COPC grants, certain information is necessary about the applicant's plan, budget, past and future capabilities, and the institutional commitment to the program.

(4) Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information:

Respondents will be public and private institutions of higher education. While community-based organizations and local governments are not direct respondents, because the program calls for the creation of partnerships, they will be involved in the preparation of the action plan that forms the basis of the application for a COPC grant. Grantees will also be expected to prepare and submit semi-annual monitoring reports.

The estimated number of respondents submitting applications is 120. The proposed frequency of the response to the collection of information is one-time. The application need only be submitted once. The estimated number of respondents to the monitoring requirements is 25.

(5) Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

Reporting Burden

Number of respondents: 120 for applicants; 25 for monitoring requirements.

Total burden hours: 80 hours per respondent for applications); 80 hours a year per respondent for monitoring requirements.

Total estimated burden hours: 12,800.

Authority: Sec. 3507, Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 10, 1996.

David S. Cristy,

Director of IRM Policy and Management Division.

[FR Doc. 96–12424 Filed 5–16–96; 8:45 am]

BILLING CODE 4210–62–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3778–N–85]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: May 17, 1996.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: May 10, 1996.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 96–12275 Filed 5–16–96; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–084–06–6310–04: G5–223]

Emergency Closure of Public Lands; Clackamas County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency closure of public lands and access roads in Clackamas County, Oregon.

SUMMARY: Notice is hereby given that certain public lands and access roads in Clackamas County, Oregon are temporarily closed to all public use, including vehicle operation, camping, shooting, hiking and sightseeing, from May 9, 1996 through December 31, 1996, The closure is made under the authority of 43 CFR 8364.1.

The public lands affected by this emergency closure are specifically identified as follows:

Willamette Meridian, Oregon

T. 4 S., R. 5 E., Section 30 NW¼NE¼NW¼, Lot 1, Lot 2
T. 5 S., R. 4 E., Section 3 Lot 15, Lot 16, Lot 17, Lot 18, Lot 19, Lot 20, Lot 21, Lot 22, Lot 23
Section 10 Lot 3, Lot 4
Section 12
Section 14
Section 24

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau employees; Forest Service employees; state, local and federal law enforcement and fire protection personnel; the holders of BLM road use permits that include roads within the closure area; the purchaser of BLM timber within the closure area and its employees and subcontractors. Access by additional parties may be allowed, but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed $1,000.00 and/or imprisonment not to exceed 12 months, as well as the penalties provided under Oregon State law.

The public lands and roads temporarily closed to public use under this order will be posted with signs at points of public access.

The purpose of this emergency temporary closure is to protect persons from potential harm from logging operations, protect valuable public timber resources from unauthorized damage, and to facilitate authorized timber harvest operations.

DATES: This closure is effective from May 9, 1996 through December 31, 1996.

ADDRESSES: Copies of the closure order and maps showing the location of the closed lands and roads are available from the Salem District, 1717 Fabry Rd.. SE, Salem, OR 97306.

FOR FURTHER INFORMATION CONTACT: Richard C. Prather, Cascades Area Manager, Salem District Office, at (503) 375–5646.

Date: May 8, 1996.

Richard C. Prather

Cascades Area Manager.

[FR Doc. 96–12417 Filed 5–16–96; 8:45 am]

BILLING CODE 4310–33–P

[OR–030–06–1220–00: GP6–0158]

Notice of Meetings of Southeastern Oregon Resource Advisory Council

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meetings.

SUMMARY: Notice is given that a meeting of the Southeastern Oregon Resource Advisory Council Rangeland Health Standards and Guides subgroup will be held by teleconference May 23, 1996 from 8:00 p.m. to 9:00 p.m. (Mountain time). Members of the public may observe this meeting by going to the Vale District Office, Bureau of Land Management, 100 Oregon Street, Vale, Oregon. The Subcommittee will discuss rangeland health standards and guidelines on public lands.

Notice is given that a meeting of the Southeastern Oregon Resource Advisory Council will be held June 10, 1996 from 8:00 a.m. to 9:00 p.m. and June 11, 1996 from 8:00 a.m. to 12:00 noon at the Harney County Museum Club Room, 18 West "D" Street, Burns, Oregon.

At an appropriate time, the council will recess for approximately one hour for lunch and one and one-half hours for dinner. Public comments will be received from 7:00 p.m. to 7:30 p.m., June 10, 1996. Topics to be discussed during the meeting are administrative activities of the Council, the Southeastern Oregon Resource Management Plan, standards and guidelines for livestock grazing on public lands; and Oregon's clean water regulations.

Notice is given that a meeting of the Southeastern Oregon Resource Advisory

Council will be held July 13, 1996 from 8:00 a.m. to 9:00 p.m. and July 14, 1996 from 8:00 a.m. to 12:00 noon at the Lakeview Interagency Fire Center, 200 North "E" St., Lakeview, Oregon. An optional field trip to tour sites of prescribed burns will leave from the Silver Lake Range District office, State Highway 31, Silver Lake, Oregon at 12:00 noon, July 12, 1996.

At an appropriate time, the Council will recess for approximately one hour for lunch and one and one-half hours for dinner. Pubic comments will be received from 7:00 p.m. to 7:30 p.m. July 13, 1996. Topics to be discussed are administrative activities of the Council, the Southeastern Oregon Resource Management Plan, standards and guidelines for livestock grazing on public lands, and noxious weeds.

DATES: The Standard and Guides subgroup teleconference will begin 8:00 p.m. to 9:00 p.m. (Mountain time), May 23, 1996.

The Southeastern Oregon Resource Advisory Council meeting will begin at 8:00 a.m. and run to 9:00 p.m., June 10, 1996 and 8:00 a.m. to 12:00 noon June 11, 1996.

The Southeastern Oregon Resource Advisory Council will begin at 8:00 a.m. and run to 9:00 p.m., July 13 and 8:00 a.m. to 12:00 noon on July 14, 1996.

ADDRESSES: The Rangeland Health Subgroup meeting will take place by teleconference which may, be observed at Vale District Office, Bureau of Land Management, 100 Oregon Street, Vale, Oregon.

The Resource Advisory Council meeting will take place in the Harney County Museum Club Room, 18 West "D" Street, Burns, Oregon.

The Resource Advisory Council meeting will take place in the Lakeview Interagency Fire Center, 220 North "E" Street, Lakeview, Oregon.

FOR FURTHER INFORMATION CONTACT: Jonne Hower, Bureau of Land Management, Vale District, 100 Oregon Street, Vale, OR 97918, (Telephone 541 473–3144).

James E. May,

District Manager.

[FR Doc. 96–12378 Filed 5–16–96; 8:45 am]

BILLING CODE 4310–33–M

[OR–958–0777–54; GP6–0103; OR 50776]

Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 798.34 acres of lands to such forms of disposition as may by law be made of National Forest System lands, mining, mineral leasing, and geothermal leasing. The lands have been eliminated from a Forest Service exchange proposal.

EFFECTIVE DATE: June 24, 1996.

FOR FURTHER INFORMATION CONTACT: Pamela Chappel, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–952–6170.

SUPPLEMENTARY INFORMATION: Under the authority of Section 206 of the Federal Land Policy and Management Act of 1976, as amended by the Federal Land Exchange Facilitation Act of 1988, the following described Federal lands have been eliminated from the initial exchange proposal between the Mt. Hood National Forest, Winema National Forest, and Hood River County, Oregon:

Willamette Meridian

Winema National Forest

T. 33 S., R. 7 E.,
Sec. 18, lot 10;
Sec. 19, lots 1 and 2, and SE¼NW¼.
T. 33 S., R. 7 ½ E.,
Sec. 13, lot 8.

Mt. Hood National Forest

T. 1 S., R. 9 E.,
Sec. 36, W½NE¼, N½NW¼, N½S½NW¼, and NW¼SE¼.
T. 1 S., R. 10 E.,
Sec. 2, lots 1 to 4, inclusive, and S½N½.

The areas described aggregate 798.34 acres in Klamath and Hood River Counties.

At 8:30 a.m., on June 24, 1996, the lands will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of records, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on June 24, 1996, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m., on June 24, 1996, the lands will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on June 24, 1996, the lands will be opened to applications and offers under the mineral leasing laws and the Geothermal Steam Act.

Dated: May 8, 1996.

Robert D. DeViney, Jr.

Chief, Branch of Realty and Records Services

[FR Doc. 96–12416 Filed 5–16–96; 8:45 am]

BILLING CODE 4310–33–P

[OR–958–0777–54; GP6–0105; OR–50500]

Public Land Order No. 7184; Withdrawal of National Forest System Land to Protect the Elk River Wild and Scenic Corridor; Oregon; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In Public Land Order No. 7184, 61 FR 5719–5720, published February 14, 1996, as FR Doc. 96–3259, make the following correction:

On page 5719, third column, paragraph 5, under T. 33 S., R. 13 W., which reads "Secs. 13 to 24, inclusive, secs. 29 and 30," is hereby corrected to read "Secs. 13 to 20, inclusive, secs. 22, 23, 24, 29, and 30."

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services, Oregon/Washington.

[FR Doc. 96–12415 Filed 5–16–96; 8:45 am]

BILLING CODE 4310–33–P

[COC–59104; CO–050–1430–01]

Notice of Realty Action; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, proposed permit to authorize use of public lands in Gilpin County, Colorado.

SUMMARY: A Permit under the authority of Section 302 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2762; 43 U.S.C. 1732) (FLPMA) is being considered for short-term use of thirteen (13) small tracts of public land intermingled with municipal land developed as a parking lot. The Permit would allow the government to collect fair market rental. The land and permittee are as follows:

6th Principal Meridian, Colorado

T. 3 S., R. 73 W.,
Section 13: NW¼ (13 tracts within).

The scattered tracts, totalling approximately 6.79 acres, are located within a parking lot owned and operated by Central City, CO. The parking lot was developed for tourist and gaming visitor use at the famous Colorado mining town. The tracts would be offered noncompetitively to the city under a 3-year nonrenewable permit at no less than fair market rental. The Permit term would allow for the completion of the disposal procedure, at fair market value, to the City under the authority of Section 203 (sale) or 206 (exchange) of FLPMA. Additional tracts located within the above noted legal description may be included in the disposal. The general terms and conditions for permits are found in 43 CFR 2920.7. The City would be required to reimburse the United States for reasonable costs incurred in processing and monitoring the Permit, in accordance with 43 CFR 2920.6.

ADDRESSES: Bureau of Land Management, Canon City District, 3170 East Main Street, Canon City, Colorado 81212.

DATES: Interested parties may submit comments to the District Manager at the above address until July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Lindell Greer, Realty Specialist at (719) 269–8532.

SUPPLEMENTARY INFORMATION: Any adverse comments will be evaluated by the State Director, and he may vacate, modify, or continue this realty action.

Stuart I.. Freer,

Associate District Manager.

[FR Doc. 96–12413 Filed 5–16–96; 8:45 am]

BILLING CODE 4310–JB–P

[CO–050–1630–00]

Establishment of Supplementary Rules

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of supplementary rules prohibiting the possession and/or consumption of alcoholic beverages by persons under 21 years of age, the possession of a handgun by persons under 18 years of age or the possession of drug paraphernalia by any person while on public lands.

SUMMARY: The possession or consumption of alcoholic beverages by underage persons, the possession of handguns by juveniles and/or the possession of drug paraphernalia are all growing problems on public lands. The implementation and enforcement of these rules by BLM law enforcement officers will help to protect and promote the public peace, health, safety and welfare of the users of public lands and reduce the destruction of natural resources that are associated with these activities.

This rule adopts Colorado Revised Statutes (18–13–122) dealing with the illegal possession or consumption of ethyl alcohol by an underage person, Colorado Revised Statutes (18–12–108.5) dealing with possession of handguns by juveniles, and Colorado Revised Statutes (18–18–428) dealing with possession of drug paraphernalia in a manner consistent with Colorado Revised Statutes on all BLM administered lands within the Canon City District, State of Colorado.

EFFECTIVE DATE: These restrictions will be effective May 17, 1996 and will remain in effect until rescinded or modified by the authorized officer.

ADDRESSES: Canon City District Office, 3170 East Main St., Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: Jack H. Hagan, District Law Enforcement Ranger, at (719) 269–8535.

SUPPLEMENTARY INFORMATION: The authority for these restrictions is provided in 43 CFR 8365.1–4 and 43 CFR 8365.1–6. Violation of these restrictions are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months as authorized in 43 CFR 8360–7.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 96–12414 Filed 5–16–96; 8:45 am]

BILLING CODE 4310–JB–P

[AK–020–06–1220–00]

Notice of Supplemental Rules for Dalton Highway Recreation Area, Northern District, AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Supplemental Rules.

SUMMARY: Final Notice is hereby given that all public lands in the Dalton Highway Recreation Management Area (1.1 million acres) will be managed under the following Supplemental Rules and Regulations. The Dalton Highway Recreation Management Area starts at the Yukon River, approximately 130 miles north of Fairbanks, Alaska. The purpose of this notice is to inform the public of uses that require supplemental rules from BLM because of issues addressed in the Dalton Highway Recreation Area Management Plan. Those issues concern safety, health and sanitation; protection of natural resources in the area; promotion and enhancement of recreation facilities and opportunities; and reduction of user conflicts.

DATES: These supplementary rules will take effect June 1, 1996. These Supplementary Rules will remain in effect until rescinded or modified by the authorized official (the Northern District Manager). An appeal of this decision may be filed within 30 days of this notice with the Interior Board of Land Appeals.

Supplementary Rules

Camping: No person shall camp in the same area longer than 14 days in a 28-day period, unless authorized in writing by the Authorized Officer. Area is defined as including lands five miles in any direction from any camp site.

Recreational camping is prohibited within the Toolik Lake Area of Critical Environmental Concern/Research Natural Area, unless authorized in writing by the Authorized Officer.

Minerals: All federal stream segments along the Dalton Highway south of Atigun Pass covered by these rules are available for the recreational extraction of minerals using a pan, pick, shovel, rocker and sluice boxes, and metal detectors. Subject to valid existing rights, all other federal lands within the "inner Utility Corridor" are closed to mineral extraction or collection.

For additional information, contact the Northern District Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, AK 99709–3899, or call 1–800–437–7021 or (907) 474–2200.

Livestock: Grazing and quartering of livestock is prohibited within Toolik Lake RNA and within 200 feet of streams, lakes or ponds; or recreational facilities such as campgrounds, developed trails, waysides, etc., and the Dalton Highway. Livestock is defined as any animal used for transportation or packing purposes, excluding dogs.

This decision is consistent with the Utility Corridor Resource Management Plan and Record of Decision, and the Dalton Highway Recreation Area Management Plan, and is authorized in 43 CFR 8365.

FOR FURTHER INFORMATION CONTACT: Dee R. Ritchie, Northern District Manager, 1150 University Ave., Fairbanks, AK 99709–3899.

Dated: May 9, 1996.

Dee R. Ritchie,

District Manager.

[FR Doc. 96–12412 Filed 5–16–96; 8:45 am]

BILLING CODE 4310–JA–P

National Park Service

Notice of Intent To Issue a Prospectus for the Operation of Pack Station Services and Facilities Within Sequoia National Park

SUMMARY: The National Park Service is seeking a concessioner to operate, under a 3-year permit, a pack station providing pack and saddle animal services and facilities within the Mineral King area of Sequoia National Park. These facilities would be operated for the public under the provisions of a Concession Permit. This notice is the formal announcement of the availability of this business opportunity and the initiation of the contracting process.

SUPPLEMENTARY INFORMATION: The pack station is located at an elevation of 7,800 feet in the Southern Sierra Nevada. It is a summer seasonal operation serving visitors to Sequoia National Park. The existing operator does not have a preference in the renewal of this concession permit. The award will be fully competitive based upon the requirements of this Prospectus.

If you are interested in this business opportunity, please ask to be placed on the mailing list by writing or calling: National Park Service, Concession Management Office, Sequoia National Park, Three Rivers, CA 93271 or call: (209) 565–3103—Peggy Williams.

When the Prospectus is issued, submittals will be accepted for a SIXTY (60) day period under terms that will be described in the Prospectus. The release of the Prospectus is expected to occur shortly after the publication of this notice.

Dated: May 3, 1996.

Patricia L. Neubacher,

Acting Field Director, Pacific West Area.

[FR Doc. 96–12490 Filed 5–16–96; 8:45 am]

BILLING CODE 4310–70–P

Notice of Inventory Completion for Native American Human Remains from Lake Winnepesauke, NH, in the Possession of the Hood Museum of Art, Dartmouth College, Hanover, NH

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and associated funerary objects in the possession of the Hood Museum of Art, Dartmouth College, Hanover, NH.

A detailed assessment of the human remains was made by the Hood Museum of Art professional staff in consultation with representatives of the Penobscot Indian Nation and representatives of the Abenaki Nation of Missisquoi (Western Abenaki) and the Abenaki Family Alliance, two non-Federally recognized Native American groups.

In 1945, human remains representing one individual were recovered from the shore of Lake Winnepesauke in Tuftonboro, NH, and donated to the Hood Museum of Art. No known individuals were identified. No associated funerary objects were present.

Visual examinations conducted when this individual was recovered concluded this is a Native American child buried during the mid-18th century. The Western Abenaki are known to have occupied this area during that time, and the place of recovery of this individual is consistent with known Abenaki internment practice.

Because the Abenaki Nation of Missisquoi is a non-Federally recognized Native American group, the Hood Museum of Art included these remains on the museum's culturally unidentifiable human remains inventory. Pursuant to the Abenaki Nation of Missisquoi's request for repatriation, the Hood Museum of Art requested a finding from the Native American Graves Protection and Repatriation Review Committee for disposition of these human remains. A letter of support from the Penobscot Indian Nation for the Abenaki Nation of Missisquoi's request was included in the documentation presented to the Review Committee.

On December 11, 1995, officials of the Hood Museum of Art were formally notified of the recommendation from the Review Committee stating that the Hood Museum of Art " * * *publicize the Western Abenaki's (Abenaki Nation of Missisquoi) repatriation request in local newspapers with circulation in New Hampshire and Vermont * * *If after 30 days, no other claimants have expressed interest in repatriating the remains, [the Hood Museum of Art] may proceed with the repatriation process." Classified legal notices and/or feature articles publicizing the repatriation request ran in five regional/statewide newspapers between January 31, 1996 and March 24, 1996.

As of April 24, 1996, one response was received from these classified legal notices and articles. The Abenaki Family Alliance has stated that the Alliance represents Abenaki families who do not wish to be represented by the Abenaki Nation of Missisquoi. The Abenaki Family Alliance has further stressed that they do not want to slow down or contest the repatriation process in this instance.

Based on the above mentioned information, officials of the Hood Museum of Art have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Hood Museum of Art have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Abenaki Nation of Missisquoi.

This notice has been sent to officials of the Penobscot Indian Nation, the Abenaki Nation of Missisquoi (Western Abenaki), and the Abenaki Family Alliance. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Kellen G. Haak, Registrar and Repatriation Coordinator, Hood Museum of Art, Dartmouth College, Hanover, NH 03755, telephone (603) 646–3109 before June 17, 1996. Repatriation of the human remains and associated funerary objects to the Abenaki Nation of Missisquoi may begin after that date if no additional claimants come forward.

Dated: May 9, 1996.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Chief, Archeology & Ethnography Program.

[FR Doc. 96–12494 Filed 5–16–96; 8:45 am]

BILLING CODE 4310–70–F

Notice of Inventory Completion for Native American Human Remains from the Straits of Juan de Fuca, WA, in the Control of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains from the Straits of Juan de Fuca, WA, in the control of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA.

A detailed assessment of the human remains was made by Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Jamestown S'Klallam Tribe, the Lower Elwa Klallam Tribe, and the Port Gamble S'Klallam Tribe.

In 1868, human remains representing two individuals were removed from two burial locations at New Dungeness, Straits of Juan de Fuca, WA, and donated to the museum by David Mack, Jr. No known individuals were identified. No associated funerary objects are present.

During 1875–1906, Myron Eells stated that the New Dungeness cemetery area was used for S'Klallam community interments identical in manner to the burials of these human remains now in the Peabody Museum of Archaeology and Ethnology's collection. Oral tradition evidence presented by the representatives of the Jamestown S'Klallam Tribe, the Lower Elwa Klallam Tribe, and the Port Gamble S'Klallam Tribe indicates these individuals were removed from known traditional S'Klallam cemetery areas.

Based on the above mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Jamestown S'Klallam Tribe, the Lower Elwa Klallam Tribe, and the Port Gamble S'Klallam Tribe.

This notice has been sent to officials of the Jamestown S'Klallam Tribe, the Lower Elwa Klallam Tribe, and the Port Gamble S'Klallam Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Barbara Issac, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Ave., Cambridge, MA 02138; telephone: (617) 495–2254, before June 17, 1996. Repatriation of the human remains to the Jamestown S'Klallam Tribe, the Lower Elwa Klallam Tribe, and the Port Gamble S'Klallam Tribe may begin after that date if no additional claimants come forward.

Dated: May 8, 1996

Veletta Canouts

Acting Departmental Consulting Archeologist

Deputy Chief, Archeology & Ethnography Program

[FR Doc. 96–12495 Filed 5–16–96; 8:45 am]

BILLING CODE 4310–70–F

Bureau of Land Management

[CA–930–06–1430–00]

Notice of Intent to Prepare a Supplemental Environmental Impact Statement for a Proposed Land Transfer to the State of California for the Purpose of Developing a Low-Level Radioactive Waste Disposal Facility at Ward Valley

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) in California intends to prepare a Supplemental Environmental Impact Statement (SEIS) for a proposed land transfer to the State of California for the purpose of developing a low-level radioactive waste disposal facility at Ward Valley. The SEIS will address new information that has become available and new circumstances that have occurred since the Environmental Impact Statement/Report (EIS/EIR) was completed in April 1991 and the initial SEIS was completed in September 1993. The site of the proposed Federal land transfer is located in San Bernardino County, CA, approximately 20 miles west of the city of Needles.

DATES: The public is invited to submit formal written comments on the scope of the SEIS, or provide new information about the site and proposed actions. All written comments must be received by BLM at the address listed below no later than July 1, 1996.

Three public scoping workshops will also be held, and each will be open to the public at the following dates and locations:

June 3 in Sacramento 2–5 p.m. and 7–9 p.m. at Cal Expo Club, 1600 Exposition Blvd;

June 5 in San Bernardino from 2–5 p.m. and 7–9 p.m. at the National Orange Show Grounds, Arrowhead Avenue, Gate 9, Renaissance Room;

June 12 in Needles from 2–5 p.m. and 7–9 p.m. at Elks Lodge No. 1608, 1000 Lily Hill Drive.

These workshops will provide the public additional opportunities to supply additional information and to identify issues to be addressed in the SEIS. They will be conducted in an open house format; BLM will simply record the issues identified or information offered by the public. Submission of written comments is strongly encouraged to facilitate the sessions.

ADDRESSES: Any written comments or requests to be placed on the mailing list should be sent to Ward Valley Land Transfer Coordinator (CA–930), Bureau of Land Management, 2800 Cottage Way, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Richard F. Johnson or John S. Mills at (916) 979–2820.

SUPPLEMENTARY INFORMATION: The SEIS will focus on new information and circumstances, including the May 1995 National Academy of Sciences Report; the results of tritium and related testing to be conducted at the site; recent U.S. Geological Survey information concerning tritium and other radioactive materials detected in proximity to a closed LLRW facility at Beatty, Nevada, and other evidence of migration of radioactive and other wastes from the Beatty facility; the results of consultation with Native American Tribes; the possible effect of the proposed transfer, construction, and operation of the LLRW facility on areas of cultural importance to nearby Native American Tribes and any Tribal rights recognized by federal law; the designation of Ward Valley by the U.S. Fish and Wildlife Service as critical habitat for the desert tortoise and a 1995 FWS Biological Opinion evaluating the potential impacts of the land transfer and facility on the tortoise and its critical habitat; a report prepared by the U.S. Environmental Protection Agency concerning release of radionuclides into the atmosphere and effects on desert tortoise habitat; a hydrogeologic report on the proposed facility site commissioned by the Metropolitan Water District of Southern California; and other information submitted by the public. Issues that were fully analyzed in the 1991 EIS/EIR and the 1993 SEIS (which was limited to the changed land transfer method from indemnity selection to direct sale), and are not the subject of new information or circumstances, will not be addressed in this SEIS.

A separate public notice will be issued in the near future regarding procedures for the tritium and related testing to be done at the site.

Dated: May 14, 1996.

Ed Hastey,

State Director.

[FR Doc. 96–12592 Filed 5–16–96; 8:45 am]

BILLING CODE 4310–40–M

INTERNATIONAL TRADE COMMISSION

Report to the President on Investigation No. NAFTA–302–1 (Provisional Relief Phase); Broom Corn Brooms [1]

Determinations

On the basis of the statute and available information developed to date in the subject investigation—

Chairman Watson and Commissioner Crawford make a negative determination with respect to whether—

(1) There is clear evidence that, as a result of the reduction or elimination of a duty provided for under the NAFTA, broom corn brooms from Mexico are being imported into the United States in such increased quantities (in absolute terms) and under such conditions so that imports of the article, alone, constitute a substantial cause of serious injury or a threat of serious injury to the domestic industry producing an article that is like, or directly competitive with, the imported article; and

(2) Delay in taking action would cause damage to that industry that would be difficult to repair.

Commissioner Rohr determines—

(1) There is clear evidence that, as a result of the reduction or elimination of a duty provided for under the NAFTA, broom corn brooms from Mexico are being imported into the United States in such increased quantities (in absolute terms) and under such conditions so that imports of the article, alone, constitute a substantial cause of a threat of serious injury to the domestic industry producing an article that is like, or directly competitive with, the imported article; but

(2) Delay in taking action would not cause damage to that industry that would be difficult to repair.

Vice Chairman Nuzum and Commissioners Newquist and Bragg determine—

(1) There is clear evidence that, as a result of the reduction or elimination of a duty provided for under the NAFTA, broom corn brooms from Mexico are being imported into the United States in such increased quantities (in absolute terms) and under such conditions so that imports of the article, alone, constitute a substantial cause of a threat of serious injury (Vice Chairman Nuzum, Commissioners Newquist and Bragg) to the domestic industry producing an article that is like, or directly competitive with, the imported article; and

(2) Delay in taking action would cause damage to that industry that would be difficult to repair.

Background

Following receipt of a petition filed on March 4, 1996, on behalf of the U.S. Cornbroom Task Force and its individual members, the Commission instituted investigation No. NAFTA–302–1 to determine whether, as a result of the reduction or elimination of a duty provided for under the NAFTA, broom corn brooms from Mexico are being imported into the United States in such increased quantities (in absolute terms) and under such conditions so that imports of the article, alone, constitute a substantial cause of serious injury, or a threat of serious injury, to the domestic industry producing an article that is like or directly competitive with the imported article. In addition, the petitioner asserted that critical circumstances exist and requested, pursuant to section 302(a)(2) of the NAFTA Implementation Act (19 U.S.C. § 3352(a)(2)), that provisional relief be provided.

Notice of the institution of the Commission's investigation was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 18, 1996 (61 F.R. 11061).

The Commission transmitted its determination in this investigation to the President on May 3, 1996. The views of the Commission are contained in USITC Publication 2963 (May 1996), entitled "Broom Corn Brooms: Investigation No. NAFTA 302–1 (Provisional Relief Phase)."

Issued: May 10, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–12409 Filed 5–16–96; 8:45 am]

BILLING CODE 7020–02–P

[1] Broom corn brooms are provided for in subheadings 9603.10.05, 9603.10.15, 9603.35, 9603.10.40, 9603.10.50, and 9603.10.60 of the Harmonized Tariff Schedule of the United States.

[Investigation No. 731–TA–748 (Preliminary)]

Engineered Process Gas Turbo-Compressor Systems From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–748 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of engineered process gas turbo-compressor systems, provided for in subheadings 8414.80.20, 8414.90.40, 8419.60.50, 8406.81.10, 8406.82.10, 8406.90.20 through 8406.90.45, and 9032.89.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. § 1673a(c)(1)(B)), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by June 24, 1996. The Commission's views are due at the Department of Commerce within five business days thereafter, or by July 1.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: May 8, 1996.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on May 8, 1996, by Dresser-Rand Company, Corning, NY.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on May 29, 1996, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202–205–3185) not later than the day preceding the conference to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 3, 1996, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: The investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: May 13, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–12410 Filed 5–16–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigation Nos. 332–350 and 332–351]

Monitoring of U.S. Imports of Tomatoes and Peppers

AGENCY: International Trade Commission.

ACTION: Notice that Commission will not publish monitoring reports in 1996.

EFFECTIVE DATE: May 9, 1996.

FOR FURTHER INFORMATION CONTACT: Timothy McCarty (202–205–3324) or Lowell Grant (202–205–3312), Agriculture and Forest Products Division, Office of Industries, or William Gearhart (202–205–3091), Office of the General Counsel, U.S. International Trade Commission. Hearing impaired persons can obtain information on these studies by contacting the Commission's TDD terminal on (202–205–1810).

Background

Section 316 of the North American Free Trade Agreement (NAFTA) Implementation Act (19 U.S.C. 3381) directs the Commission to monitor imports of fresh or chilled tomatoes (HTS heading 0702.00) and fresh or chilled peppers, other than chili peppers (HTS subheading 0709.60.00), until January 1, 2009, as if a request for such monitoring had been made under section 202(d) of the Trade Act of 1974 (19 U.S.C. 2252(d)), for purposes of expediting an investigation concerning provisional relief under section 202 of the Trade Act of 1974. In response, the Commission instituted Investigation No. 332–350, Monitoring of U.S. Imports of Tomatoes (59 F.R. 1763, January 12, 1994) and Investigation No. 332–351, Monitoring of U.S. Imports of Peppers (59 F.R. 1762, January 12, 1994). Although section 316 of the NAFTA Implementation Act does not require the Commission to publish reports on the results of its monitoring activities, the Commission's notices announcing the investigations stated that the Commission planned to publish annual statistical reports of certain trade data through the year 2008.

The Commission has recently instituted two investigations concerning imports of tomatoes and/or peppers, Investigation No. TA–201–66, Fresh Tomatoes and Bell Peppers (61 F.R. 13875, March 28, 1996), under section 202(b) of the Trade Act of 1974 (19 U.S.C. 2252(b)); and preliminary antidumping Investigation No. 731–TA–747 (Preliminary), Fresh Tomatoes from Mexico (61 F.R. 15968, April 10, 1996), under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)). To avoid possible public confusion due to the release of multiple reports containing different data series, the Commission will not publish reports on the results of monitoring in 1996. The Commission will continue to monitor as required by section 316 of the NAFTA Implementation Act and will consider at a later date whether to resume publication of monitoring reports in 1997 and later years.

Issued: May 13, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–12408 Filed 5–16–96; 8:45 am]

BILLING CODE 7020–02–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Invitation for Membership on Advisory Committee

The Joint Board for the Enrollment of Actuaries (Joint Board) established under the Employment Retirement Income Security Act of 1974 (ERISA), is responsible for the enrollment of

individuals who wish to perform actuarial services under ERISA. The Joint Board has established an Advisory Committee on Actuarial Examinations (Advisory Committee) to assist in its examination duties mandated by ERISA. The term of the current Advisory Committee will expire on November 1, 1996. This notice describes the Advisory Committee and invites applications from those interested in service on it.

1. General

To qualify for enrollment to perform actuarial services under ERISA, an applicant must have requisite pension actuarial experience and must satisfy knowledge requirements as provided in the Joint Board's regulations. The knowledge requirements may be satisfied by successful completion of Joint Board examinations in basic actuarial mathematics and methodology and in actuarial mathematics and methodology relating to pension plans qualifying under ERISA.

The Joint Board, the Society of Actuaries and the American Society of Pension Actuaries jointly offer examinations acceptable to the Joint Board for enrollment purposes and acceptable to those actuarial organizations as part of their respective examination programs.

2. Purposes

The Advisory Committee plays an integral role in the examination program by assisting the Joint Board in offering examinations which will enable examination candidates to demonstrate the knowledge necessary to qualify for enrollment. The purpose of the Advisory Committee, as renewed, will remain that of assisting the Joint Board in fulfilling this responsibility. The Advisory Committee will discuss the philosophy of such examinations, will review topics appropriately covered in them, and will make recommendations relative thereto. It also will recommend to the Joint Board proposed examination questions. The Joint Board will maintain liaison with the Advisory Committee in this process to ensure that its views on examination content are understood.

3. Function

The manner in which the Advisory Committee functions in preparing examination questions is intertwined with the jointly administered examination program. Under that program, the participating actuarial organizations draft questions and submit them to the Advisory Committee for its consideration. After review of the draft questions, the Advisory Committee selects appropriate questions, modifies them as it deems desirable, and then prepares one or more drafts of actuarial examinations to be recommended to the Joint Board. (In addition to revisions of the draft questions, it may be necessary for the Advisory Committee to originate questions and include them in what is recommended.)

4. Membership

The Joint Board will take steps to ensure maximum practicable representation on the Advisory Committee of points of view regarding the Joint Board's actuarial examination extant in the community at large and from nominees provided by the actuarial organizations. Since the members of the actuarial organizations comprise a large segment of the actuarial profession, this appointive process ensures expression of a broad spectrum of viewpoints. All members of the Advisory Committee will be expected to act in the public interest, that is, to produce examinations which will help ensure a level of competence among those who will be accorded enrollment to perform actuarial services under ERISA.

Membership normally will be limited to actuaries previously enrolled by the Joint Board. However, individuals having academic or other special qualifications of particular value for the Advisory Committee's work also will be considered for membership. The Advisory Committee will meet about four times a year. Advisory Committee members should be prepared to devote from 100 to 150 hours, including meeting time, to the work of the Advisory Committee over the course of a year. Members will be reimbursed for Advisory Committee travel, meals and lodging expenses incurred in accordance with applicable government regulations.

Actuaries interested in serving on the Advisory Committee should express their interest and fully state their qualifications in a letter addressed to: Joint Board for the Enrollment of Actuaries, c/o Office of Director of Practice, Internal Revenue Service, Suite 600, 801 Pennsylvania Avenue, NW., Washington, DC 20004.

Any questions may be directed to the Joint Board's Executive Director at 202–376–1421.

The deadline for accepting applications is September 3, 1996.

Dated: May 9, 1996.

Robert I. Brauer,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 96–12492 Filed 5–16–96; 8:45 am]

BILLING CODE 4830–01–U

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Conference Room A of the Office of Director of Practice, Suite 600, 801 Pennsylvania Avenue, NW, Washington, DC, on Monday and Tuesday, July 8 and 9, 1996, from 8:30 a.m. to 5 p.m. each day.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, section 1242(a)(1)(B) and to review the May 1996 Joint Board examinations in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the November 1996 pension actuarial examination and the May 1997 basic actuarial examinations will be discussed. In addition, establishing examination guidelines and credit for unanswered questions on the examinations will be addressed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) that the portions of the meeting dealing with the discussion of questions which may appear in the Joint Board's examinations and review of the May 1996 Joint Board examinations fall within the exceptions to the open meeting requirement set forth in Title 5 U.S. Code, section 552(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1:30 p.m. on July 8 and will contique for as long as necessary to complete the discussion, but not beyond 3 p.m. This portion of the meeting will be open to the public as space is available. Time permitting, after discussion of the program, interested persons may make statements germane to this subject. Persons wishing to make oral statements are requested to notify the Committee Management Officer in writing prior to the meeting in order to aid in scheduling the time available, and should submit the written text, or, at a minimum, an outline of comments they proposed to make orally. Such comments will be limited to ten minutes in length. Any interested person also may file a written statement for consideration by the Joint Board and Committee by sending it to the Committee Management Officer. Notifications and statements should be mailed no later than June 19, 1996, to Mr. Robert I. Brauer, Joint Board for the Enrollment of Actuaries, c/o Office of Director of Practice, Internal Revenue Service, Suite 600, 801 Pennsylvania Avenue, NW, Washington, DC 20004 or by facsimile transmission to 202–376–1420.

Dated: May 9, 1996.

Robert I. Brauer,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 96–12491 Filed 5–16–96; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF JUSTICE

[AG Order No. 2029–96]

Summary of the Provisions of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: In accordance with the requirement of section 302(a)(8) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, The United States Department of Justice is publishing this notice summarizing the provisions of Title III of the Act. Title III makes persons who knowingly and intentionally "traffic" in confiscated properties, as defined in the Act, subject to private civil damage suits in Federal district court.

EFFECTIVE DATE: This notice is effective May 17, 1996.

FOR FURTHER INFORMATION CONTACT: David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission, Department of Justice, Washington DC 20579, (202) 616–6975.

SUPPLEMENTARY INFORMATION: On March 12, 1996, President Clinton signed into law the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, P.L. 104–114 (also known as the "Helms-Burton Act"). Title III of the Act discourages foreign investment in properties that were expropriated by the Cuban Government on or after January 1, 1959, without compensation, from persons who are now Untied States nationals. Title III makes persons who knowingly and intentionally "traffic" in such confiscated properties subject to private civil damage suits in Federal district court.

The Act defines "trafficking" broadly, with several exceptions, as set forth below. A trafficker may be liable to the U.S. claimant for the value of the claim, plus interest, reasonable attorney's fees and court costs. In addition, under certain circumstances described below, a person who trafficks in U.S. claimed property may be liable to the claimant for triple the amount of the value of the claim, excluding interest, fees and court costs.

Title III is scheduled to take effect on August 1, 1996. However, the law does not immediately permit U.S. claimants to bring suit to recover from traffickers. First, traffickers will have a three month "grace period" beginning on the effective date during which they may dispose of their interest in the claimed property and avoid liability under Title III. Under the scheduled effective date, therefore, traffickers who dispose of their interests in confiscated property before November 1, 1996, will not be subject to liability to the owner of the claim. Second, until March 13, 1998, only those persons with claims that were certified by the Foreign Claims Settlement Commission ("FCSC") may bring a Title III lawsuit. Third, the Act provides the President with the authority to suspend the effective date for six months, and for additional six month periods, if he determines suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba. Additional requirements and conditions are described below.

Section 302(a)(8) of the Act requires the Attorney General to publish in the **Federal Register** not later than sixty days after enactment "a concise summary of the provisions of this title, including a statement of the liability under this title of a person trafficking in confiscated property, and the remedies available to United States nationals under this title." This notice and the accompanying Summary of the provisions of Title III fulfill the Attorney General's obligations under this section. The Department has coordinated the issuance of this Summary with the Department of State.

Interested persons should refer to the text of the Act itself or consult a private attorney for further information and clarification.

For the reasons set forth in the preamble, and by the authority vested in me as Attorney general, I hereby issue the following Summary of the Provisions of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996:

Summary of the Provisions of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996

1. Liability Under Title III

(a) Under section 302(a)(1) of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAF) Act of 1996 (hereinafter "Title III") subject to certain requirements, conditions, and possible suspensions, a United States national with a claim to property expropriated by the Government of Cuba on or after January 1, 1959, may bring a private lawsuit in U.S. federal district court against a person who trafficks in that property beginning three months after Title III's effective date. The scheduled effective date is August 1, 1996, subject to the President's authority to suspend Title III.

(b) Section 4(13) of the Act defines a trafficker as a person who knowingly and intentionally:

(i) Sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property;

(ii) Engages in a commercial activity using or otherwise benefiting from confiscated property; or

(iii) Causes, directs, participates in, or profits from trafficking by another person, or otherwise engages in trafficking through another person, without the authorization of any United States national who holds a claim to the property.

(c) Trafficking under section 4(13) does not include:

(i) The delivery of international telecommunication signals to Cuba;

(ii) The trading or holding of securities publicly traded or held, unless the trading is with or by a person determined by the Secretary of the Treasury to be a specially designated national;

(iii) Transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel; or

(iv) Transactions and uses of property by a person who is both a citizen and a resident of Cuba, and who is not an official of the Cuban Government or the ruling political party in Cuba.

(d) Section 4(11) defines "person" for purposes of the Libertad Act as any person or entity, including any agency or instrumentality of a foreign state.

(e) For purposes of Title III, "United States national" is defined under

section 4(15) to mean (i) any United States citizen, or (ii) any other legal entity which is organized under the laws of the United States, or of any state, the District of Columbia, or any commonwealth, territory, or possession of the United States, and which has its principal place of business in the United States.

2. Remedies Available Under Title III

(a) Section 302(a)(1)(A) provides that, in addition to attorney's fees and court costs, a trafficker will be liable for money damages to the U.S. national who owns the claim to property being trafficked in the greater of the following amounts:

(i) The amount certified by the Foreign Claims Settlement Commission ("FCSC") plus interest;

(ii) If the claim has not been certified by the FCSC, the amount determined by the court in the course of a Title III action, plus interest; or

(iii) The fair market value of the property calculated according to either the current value of the property or the value of the property when confiscated plus interest, whichever is greater.

Interest is to be calculated from the date of confiscation of the property involved to the date on which the action is brought.

(b) Section 302(a)(2) establishes a presumption that the amount for which a person is liable to a U.S. national owning a claim certified by the FCSC is the amount so certified. This presumption will be rebuttable by clear and convincing evidence that one of the other measures of liability under section 302(a)(1)(A) is appropriate.

(c) Under section 302(a)(3), a person who trafficks in property which either serves as the basis for a claim certified by the FCSC or is the subject of written notice at least thirty days before the initiation of an action will be subject to treble damages. Such person's liability, in addition to court costs and reasonable attorney's fees, will thus be triple the amount determined under section 302(a)(1)(A). The notice required under section 302(a)(3) must be in writing and be posted by certified mail or personally delivered. It must contain a statement of intention to commence a Title III action or to join the person as a defendant, the reasons for such action, a demand that the trafficking cease immediately, and a copy of this summary.

(d) Under section 302(a)(7), a Title III action may be settled and a judgment enforced without obtaining any license or permission of an agency of the U.S. Government. This section does not apply to assets blocked pursuant to authorities under section 5(b) of the Trading With the Enemy Act that were being exercised on July 1, 1977. In addition, no claim against the Cuban Government will be considered a property interest the transfer of which requires a license or permission of an agency of the United States.

3. Requirements and Conditions for a Title III Action

(a) Under section 302(a)(4), if the property was confiscated before March 12, 1996, the U.S. national bringing the claim must have owned the claim before March 12, 1996. If the property was confiscated on or after March 12, 1996, a U.S. national who acquires ownership of a claim to the property after its confiscation by assignment for value may not bring a lawsuit under Title III.

(b) Under section 302(a)(5), a U.S. national who was eligible to file a claim with the FCSC but did not do so may not bring an action under this title. Where the FCSC denied a U.S. national's claim that now serves as the basis for a Title III action, the court hearing the action will accept the FCSC's findings as conclusive. A U.S. national bringing an action on the basis of a claim that was not certified by the FCSC may not file a Title III lawsuit until March 13, 1998. Any person bringing an action under Title III whose claim has not been certified by the FCSC has the burden of proving to the court that the interest in the property that is the subject of the claim is not the subject of a claim so certified.

(c) Section 302(b) establishes that, in order for an action to be brought under Title III, the amount in controversy must exceed $50,000, not including interest, costs, and attorneys fees. This amount is exclusive of the increased liability damages under section 302(a)(3).

(d) Under section 302(c), title 28 of the United States Code and the rules of court generally applicable to actions brought under section 1331 of title 28 govern the procedure to be followed in Title III actions. Service of process on an agency or instrumentality of a foreign state in the court of a commercial activity or against individuals acting under color of law shall be made in accordance with section 1608 of title 28 of the United States Code.

(e) Under section 302(d), any judgment entered under Title III shall not be enforceable against an agency or instrumentality of either a transition government in Cuba or a democratically elected government in Cuba.

(f) Section 302(e) amends section 1611 of title 28 of the United States Code by adding a new section, which states that the property of a foreign state shall be immune from attachment and from execution in an action brought under section 302 to the extent that the property is a facility or installation used by an accredited diplomatic mission for official purposes.

(g) Under section 302(f)(1), a U.S. national who brings an action under Title III may not bring any other action seeking monetary or nonmonetary compensation by reason of the same subject matter.

(h) Section 302(f)(2)(A) establishes limits on further recovery by a U.S. national with a FCSC-certified claim depending on whether such Title III action leads to a recovery of a greater, equal or lesser amount than certified by the FCSC. If the claimant's recovery under Title III is equal to or greater than the amount certified by the FCSC, the U.S. national may not recover any payment on the claim under any claims settlement agreement between the United States and Cuba. If the U.S. national in a Title III action recovers less than the amount certified by the FCSC, the U.S. national may only receive payment in any claims settlement agreement between the United States and Cuba to the extent of the difference between the certified claim and the recovery. If there is no recovery, the U.S. national may still receive payment in a claims settlement agreement between the United States and Cuba and will be treated as any other certified claimant who does not bring an action under Title III.

(i) Section 302(f)(2)(B) provides that in the event some or all Title III actions are consolidated by judicial or other action so as to create a pool of assets available to satisfy such claims, FCSC-certified claims will be entitled to payment in full from such pool before any payment is made from such pool with respect to any claim not so certified.

(j) Under section 302(g), if the United States and the Government of Cuba reach a claims settlement agreement settling FCSC-certified claims, any amount paid by Cuba in such an agreement in excess of the payments made under section 302(f)(2) shall be deposited in the U.S. Treasury.

(k) Under section 302(h), the rights created pursuant to Title III may be suspended upon a presidential determination under section 203 that a transition government in Cuba is in place and may be terminated upon a presidential determination that a democratically elected government in Cuba is in power. Neither of these actions shall affect suits commenced before the dates of suspension or termination. While pending suits may proceed to judgment, such judgments will not be enforceable against a transition or democratically elected government in Cuba under section 302(d).

(l) Claimants bringing an action under Title III will be required to pay a uniform filing fee, to be established by the Judicial Conference of the United States, pursuant to section 302(i).

(m) Section 302(a)(6) provides that no court of the United States shall decline, based upon the act of state doctrine, to make a determination on the merits in an action brought under Title III.

(n) Section 305 provides that actions under section 302 may not be brought more than two years after the trafficking giving rise to the action has ceased to occur.

4. Proof of Ownership of a Claim to Confiscated Property

(a) Section 303(a) provides that certification of a claim by the FCSC is conclusive proof of ownership. In all other cases, the court has the discretion to appoint a special master, including the FCSC, to make determinations of the amount and ownership of the claim. Determinations made by administrative agencies or courts of a foreign government or international organization shall not be conclusive unless made pursuant to binding international arbitration to which the United States or the claimant submitted the claim.

(b) Section 303(b) amends the International Claims Settlement Act of 1949 by authorizing a U.S. district court to refer to the FCSC factual questions under Title III involving the amount and ownership by a U.S. national of a claim to confiscated property in Cuba.

5. Consistency With International Claims Practice

(a) Section 303(c) emphasizes that nothing in the LIBERTAD Act shall be construed to require or otherwise authorize the claims of Cuban nationals who became U.S. citizens after their property was confiscated to be included in a future negotiation and espousal of U.S. claims with a friendly government in Cuba when diplomatic relations are restored. Section 303(c) also states that the LIBERTAD Act shall not be construed as superseding, amending, or otherwise altering certifications that have been made under the FCSC's Cuba Claims Program.

(b) Section 304 amends the International Claims Settlement Act of 1949 to state that no person other than a certified claimant shall have a claim to, participate in, or otherwise have an interest in the compensation proceeds paid to a U.S. national by virtue of a certified claim.

6. Presidential Suspension Authority

(a) Section 306(a) provides that, subject to the President's suspension authority, Title III takes effect on August 1, 1996.

(b) Section 306(b) provides the President with the authority to suspend the effective date of Title III beyond August 1, 1996, for up to six months, and for additional extensions up to six months, upon a determination and report to the appropriate congressional committees that a suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba. An initial determination and report must be submitted to the appropriate congressional committees at least 15 days before August 1, 1996. Additional suspensions or extensions are subject to the same reporting and determination requirements.

(c) Section 306(c) provides the President with the authority to suspend the right to bring an action under Title III after its effective date for up to six months, and for additional extensions up to six months, upon a determination and report that a suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba. Section 306(c) also emphasizes that after the effective date no persons may acquire a property interest in any potential or pending Title III action, nor shall pending actions commenced before the date of suspension be affected by a suspension.

(d) Section 306(d) provides that the President may rescind any suspension made under section 306(b) or section 306(c) upon reporting to the appropriate congressional committees that doing so will expedite a transition to democracy in Cuba.

Dated: May 11, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–12407 Filed 5–16–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated August 14, 1995, and published in the **Federal Register** on August 22, 1995 (60 FR 43613), Ganes Chemicals, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate.

A registered manufacturer of bulk methylphenidate filed a comment alleging that DEA's notice of application, published in the **Federal Register**, did not comply with notice and comment rulemaking requirements of the Administrative Procedure Act (APA). In addition, the commentor stated that Ganes' registration would be contrary to the public interest under 21 U.S.C. 823(a).

The commentor maintains that DEA "has deprived [the commentor] and other registered manufacturers and applicants of the opportunity to offer fully-informed comments on Ganes' application." In support of its position, the commentor submits that "registration of bulk manufacturers of schedule I–II controlled substances is subject to notice and comment rulemaking." For the reasons provided below, this conclusion is an incorrect interpretation of the APA. First, the commentor ignores the basic definitions set forth in the APA and, in so doing, confuses notice and comment rulemaking with agency licensing proceedings. The commentor argues that DEA proceedings to grant or deny an application for registration as a bulk manufacturer are rulemakings. However, the clear language of the definition of a "rule" exposes the error of this analysis. The APA defines "rule making" to mean an "agency process for formulating, amending, or repealing a rule." 5 U.S.C. 551(5).

The APA defines a "rule" as:

> The whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefore or of valuations, costs, or accounting, or practices bearing on any of the foregoing.

5 U.S.C. 551(4).

Review of the APA's definitions of license [1] and licensing [2] reveals that the granting or denial of a manufacturer's application for registration is a licensing action, not a rulemaking. Courts have

[1] Section 551(8) of the APA defines license as "the whole or a part of an agency permit, certificate, approval, *registration*, charter, membership, statutory exemption or other form of permission." (emphasis added).

[2] Licensing is defined as "agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license." 5 U.S.C. 551(9).

frequently distinguished between agency licensing actions and rulemaking proceedings. *See, e.g., Gateway Transportation Co.* v. *United States*, 173 F. Supp. 822, 828 (D.C. Wis. 1959); *Underwater Exotics, Ltd.* v. *Secretary of the Interior*, 1994 U.S. Dist. LEXIS 2262 (1994). Since courts have interpreted agency action relating to licensing as not falling within the APA's rulemaking provisions, it is probably not an oversight that the commentor has not cited any cases in which an agency action on a license was required to comport with § 553 of the APA.

In *Underwater Exotics*, the United States District Court for the District of Columbia drew the distinction between an agency placing conditions on a license and agency creation of a rule. In that case, the Fish and Wildlife Service (Service) imposed certain conditions on the plaintiff's import/export license; the plaintiff sued, arguing, *inter alia*, that the Service failed to comply with the APA's rulemaking requirements.

The court looked to the APA's definitions of "licensing" and "rule" and concluded that "the Service's imposition of these conditions on a license did not violate the APA, because the Service's actions did not involve the creation of a rule." 1994 U.S. Dist. LEXIS 2262, *26. The court explained that:

> The Service's imposition of conditions on the plaintiff's import/export license clearly fall within the definitions of "license" and "licensing," * * * this agency action is not a "rule making." Absent specific statutory direction otherwise, a court should not force an agency to employ a certain procedural format * * *.

Id.

Since the registration of bulk manufacturers is not a "rule," DEA is not required to follow traditional notice and comment rulemaking procedures when granting or denying applications for such registration. In fact, the D.C. Circuit, in a case cited by the commentor, clearly supported this analysis in a decision in which the court stated that "agency action that clearly falls outside the definition of 'rule' is also freed from rulemaking procedures." *Batterton* v. *Marshall*, 648 F. 2d 694, 701 n. 25 (D.C. Cir. 1980).

In a final rule which amended 21 CFR § 1301.43(a), effective July 20, 1995, DEA eliminated the right of current bulk manufacturers or applicants to request a hearing on an application to bulk manufacture a Schedule I or II controlled substance. In the regulation as amended, however, DEA continued to invite comments and objections from such manufacturers or applicants on a pending application. (60 FR 32099 (June 20, 1995)). The commentor claims that DEA voluntarily adopted the APA's notice and comment procedures when it changed the third party hearing regulation in the final rule of June 20, 1995. This contention, however, is not supported by either the notice of proposed rulemaking (59 FR 3055) or the final rule. In fact, while the final rule does invite written comments from current manufacturers and applicants, nowhere in this rule does DEA state, implicitly or explicitly, that it intended to follow notice and comment rulemaking procedures when acting upon a bulk manufacturer's application. DEA simply stated in the final rule that it would take into account such written comments when deciding whether to grant a particular registration or whether to issue an Order to Show Cause proposing to deny an application.

The commentor contends that "[w]ithout access to * * * Ganes' application, any reports of DEA inspections of Ganes, or DEA's assessment of how it might apply the statutory public interest test, it is impossible for [the commentor] and other registered manufacturers to offer fully-informed comments on Ganes' fitness for registration." Nowhere in the final rule was it contemplated that DEA would turn over information in its files in order for others to determine whether to object or not. DEA is well aware of what it has in its own files and will supplement that information with any comments filed in rendering a decision whether or not to grant an application. In determining whether an applicant meets the public interest standard, DEA is perfectly capable of analyzing its own investigative reports. Therefore, it is not necessary for DEA to turn over information it has gathered on a particular applicant to another registered manufacturer.

Moreover, under 21 U.S.C. 824(a), only the Attorney General has the discretion to decide whether or not to file an Order to Show Cause. The rule amending 21 CFR 1301.43 did not and, indeed, could not, authorize a third party to exercise such discretion in light of the clear statutory mandate to place such decisions exclusively with the Attorney General.

If DEA determines, based upon its own investigation and upon information provided to it through written comments, that the registration of an applicant would not be in the public interest, an Order to Show Cause will be issued. If the applicant requests a hearing, the ensuing adjudicatory proceedings will comply with the APA. DEA's decision to address applications via individual adjudication, and not by notice and comment rulemaking, is within its discretion and in conformity with both the APA and the Controlled Substances Act (CSA). Courts have held that agencies have this discretion to determine whether to proceed by rulemaking or individual adjudication. *See PBW Stock Exchange* v. *Securities and Exchange Commission*, 485 F. 2d 718, 731 (3d Cir. 1973), *cert. denied* 94 S. Ct. 1992.

Finally, the commentor's citation to *Rodway* v. *USDA*, 514 F. 2d 809 (D.C. Cir. 1975) and *Heron* v. *Heckler*, 576 F. Supp. 218 (N.D. Cal. 1983) is inappropriate. In those cases, as the commentor itself acknowledges, the agencies in question had either promulgated a regulation or adopted a policy statement specifically espousing the APA's notice and comment requirements. DEA has done neither.

The commentor also submitted that the sixty day comment period was inadequate because that commentor needed more time to obtain and assess documents from DEA and the U.S. Department of Health and Human Services, Food and Drug Administration. The regulation, as amended June 20, 1995, contemplated that DEA would receive information from qualified third parties that is already available and known to such parties. As explained above, the intent of the regulation never was to have other bulk manufacturers or applicants become an independent investigative branch. Under these circumstances, the sixty-day comment period is adequate.

DEA's action upon a bulk manufacturer's application is not a rulemaking action. DEA is therefore not required to follow notice and comment rulemaking when considering these applications. Neither the APA nor the CSA requires DEA to follow notice and comment rulemaking when acting upon bulk manufacturer applications. While DEA invites comments from other bulk manufacturers and applicants, such invitation does not translate into an implicit adoption of notice and comment rulemaking. Consequently, the sixty day comment in which to file comments is reasonable and adequate.

On February 14, 1996, the Commentor filed a belated, additional comment. This comment maintained that the dictum set forth in *MD Pharmaceutical, Inc.* v. *Drug Enforcement Administration*, No. 95–1267 (D.C. Cir. January 2, 1996) required DEA to set forth the reasons why DEA intends to register Ganes under certain factors set forth in 21 U.S.C. 823(a). Whether or not the Commentor's interpretation is correct or not, DEA will adequately address the commentor's objections and set forth the reasons why DEA believes Ganes' application should be granted under the factors pursuant to 21 U.S.C. 823(a) as set forth below.

In stating that Ganes Chemicals, Inc.'s application to manufacture methylphenidate would be contrary to the public interest under 21 U.S.C. 823(a), the commentor argues that Ganes would lack effective controls against diversion of methylphenidate; that Ganes' past experience in the manufacture of controlled substances and experience in the establishment of effective control against diversion were questionable; that there is currently an adequate and uninterrupted supply of methylphenidate under adequately competitive conditions; and that there were other relevant factors to indicate that Ganes' registration would be contrary to the public health and safety.

In support of the contentions that Ganes lacks effective controls to prevent diversion and that Ganes' past experience in this regard was questionable, the commentor states that as a result of an Order to Show Cause issued by DEA and a Civil Complaint filed in the United States District Court for the District of New Jersey charging Ganes with various security and record-keeping violations and with manufacturing controlled substances in excess of quotas, Ganes entered into a Consent Agreement in December 1980, agreeing to withdraw its application to bulk manufacture methaqualone and not reapply until 1984 and pay a $25,000 fine.

Ganes' application is based on the firm's request to add methylphenidate to its existing registration as a bulk manufacturer. Ganes has been and is currently registered with DEA as a bulk manufacturer of other Schedule II controlled substances. Both the Order to Show Cause and the civil complaint occurred over fifteen years ago. The firm has been investigated by DEA on a regular basis since that time to determine if the firm maintains effective controls against diversion and if its continued registration is consistent with the public interest. These investigations have included, in part, inspection and testing of the firm's physical security, audits of the firm's records, verification of compliance with state and local law and a review of the firm's background and history. The investigations have found Ganes to be in compliance with the CSA and its implementing regulations.

The commentor argues that there is an adequate and uninterrupted supply of methylphenidate under adequately competitive conditions. In support of this argument, the commentor asserts that the present bulk manufacturers are adequate for this purpose, that quota restrictions have been eased sufficiently since 1988, and that the commentor sells methylphenidate in dosage form to itself and other distributors.

Under Title 21, CFR 1301.43(b), DEA is not required to limit the number of manufacturers solely because a smaller number is capable of producing an adequate supply, provided effective controls against diversion are maintained. DEA has determined that effective controls against diversion will be maintained by Ganes.

The commentor, in support of its argument that Ganes' registration would be contrary to the public health and safety, cites Ganes' manufacture of the List I chemicals, ephedrine and pseudoephedrine. The commentor states that DEA has reported that ephedrine and pseudoephedrine are used in the clandestine manufacture of methamphetamine and methcathinone and that companies such as Ganes may be the source of these chemicals.

With respect to Ganes' manufacture of ephedrine and pseudoephedrine, there is no evidence of any violations of the Chemical Diversion and Trafficking Act (CDTA) and the Domestic Chemical Diversion Control Act (DCDCA).

Another factor which the commentor claims is relevant is that the Food and Drug Administration (FDA) has made various inspections of Ganes' two production centers between 1980 and 1994, and noted various problems with record keeping, manufacturing practices and product-complaint procedures. The commentor states that some of these findings pertain to controlled substances.

The FDA violations are based on the practices of another federal agency within another department of government operating under the authority of distinctly different statutes. Moreover, DEA has verified with FDA that Ganes' drug registration under the Federal Food, Drug and Cosmetic Act is current, that the nature of the indicated (or noted) FDA citations against Ganes and the FDA actions to ensure compliance do not warrant a finding that Ganes' compliance with Federal laws is so lacking or inadequate as to warrant denial under the CSA.

It is within DEA's sole discretion to decide whether or not to file an Order to Show Cause after reviewing all of the evidence, including the comments and objections provided to DEA under 21 CFR 1301.43(a). After reviewing all the evidence, including the comment filed, DEA has determined, pursuant to 21 U.S.C. 823(a), that it is consistent with the public interest to grant Ganes' application to manufacture methylphenidate at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 13, 1996.

Gene R. Haislip,

Deputy Assistant Administrator Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 96–12429 Filed 5–16–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of May, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,177; EMI Co., Erie, PA

TA–W–32,097; International Paper, Gardiner, OR
TA–W–31,981; Sealright Packaging Co., Inc., Desoto, KS
TA–W–32,119; Jasper Yarn Processing, Inc., Jasper, GA
TA–W–32,190 & A; Northeast Lumber Co., Inc., Chester, ME
TA–W–32,115; Fox Point Sportswear, Inc., Merrill, WI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–32,209; Chic By HIS, Henry I. Siegel Co., Inc., Clinton, KY
TA–W–32,219; Pelican Seafoods, Inc., Pelicon, AK
TA–W–32,110; Cowtown Boot Co., Inc., El Paso, TX
TA–W–32,127; Pennsylvania Power Co., Bruce Mansfield Plant, Shippingport, PA
TA–W–31,985; United Technologies, Hamilton Standard Commercial Aircraft Products, Mesa, AZ

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,075; Coach Leatherware, Carlstadt, NJ
TA–W–32,167; Red Kap Industries, Inc., Tupelo, MS
TA–W–32,235; Zenith Electronics Corp., El Paso, TX
TA–W–31,990; L. Bonfanti, Inc., Salem, MA.
TA–W–32,128; Permian Basin Community Center, Midland, TX
TA–W–32,045; Noram Gas Transmission, Shreveport, LA

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–32,005; The McGraw Hill Co., Blue Ridge Summit, PA

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–31,997; Morton International Adhesives & Chemical Specialties, Danvers, MA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–32,149; Vanity Fair Mills, McAllen, TX

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification.

TA–W–32,196; Liz Clairborne, Inc., (Headquarters Building—1 Liz Clairborne Avenue), North Bergen, NJ

The investigation revealed that criterion (1) and criterion (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location for each determination references the impact date for all workers for such determination.

TA–W–32,060; Rhubarb Fashions, Jersey City, NJ: February 28, 1995.
TA–W–32,073; Rust Evader Corp., Altoona, PA: March 4, 1995.
TA–W–32,087; Vans, Inc., Orange, CA: February 6, 1995.
TA–W–32,131; Ranick Ltd, Athens, GA: March 25, 1995.
TA–W–32,132; Ranick Ltd, Washington, GA: March 25, 1995.
TA–W–32,178 & A; Kentucky Apparel LLP, Burkesville, KY, & El Paso, TX: March 11, 1995.
TA–W–32,260; Buster Brown Apparel, Inc., Garmet Finished Department, Chatanooga, TN: April 15, 1995.
TA–W–32,146; Tex Mex Sportswear International, Inc., El Paso, TX: March 14, 1995.
TA–W–32,099; Stapleton Garmet Co. (Knight Industries), Stapleton, GA: March 11, 1995.
TA–W–32,171; L. Chessler, Inc., Philadelphia, PA: March 25, 1995.
TA–W–32,080; Award Lighting, Miami Lakes, FL: February 19, 1995.
TA–W–32,024; GEM II, Inc., Florala, AL: February 22, 1995.
TA–W–32,181; Century Pine Products, Inc., Redmond, OR: March 25, 1995.
TA–W–32,160; Casablanca Fan Co., City of Industry, CA: March 12, 1995.
TA–W–32,156; Lucia, Inc., Winston-Salem, NC: March 21, 1995.
TA–W–32,070 & A; Marcraft, Bloomsburg, PA & Sewcomp, Inc., New Berling, PA: March 11, 1995.
TA–W–32,245; Super Craft, Garfield, NJ: April 11, 1995.
TA–W–32,124; Mayr Bros. Logging Co., Inc., Hoquiam, WA: March 14, 1995.
TA–W–32,276; Early Manufacturing Co., Blakely, GA: April 18, 1995.
TA–W–32,109; Branch Oil & Gas, Shelby, MT: February 29, 1995.
TA–W–32,184; Timber Products Co., Grove Lumber Div., Springfield, OR: March 19, 1995.
TA–W–31,966; Dreher, Inc., Newark, NJ: January 29, 1995.
TA–W–32,042; Dye-Tex Limited, Roanoke, VA: March 5, 1995.
TA–W–31,999; Beco Well Service, Co., Cement, OK: February 29, 1995.
TA–W–32,272; Teleflex Automotive, Martinsburg, WV:
TA–W–32,255; General Electric Co., Residential Transformer, Hickory, NC: March 20, 1995.
TA–W–32,180; Majester Production Co., Austin, TX: March 20, 1995.
TA–W–32,151; Western Publishing Co., Inc., Racine, WI: May 18, 1996.
TA–W–32,215; Pike Manufacturing Corp., Troy, AL: March 29, 1995.
TA–W–32,186; OSRAM Sylvania, Inc., General Lighting Div., Incandescent Lamp Manufacturing Plant, St. Mary's PA: March 26, 1995.
TA–W–32,114; Forte Cashmere Co., Inc., Woonsocket, RI: March 16, 1995.
TA–W–32,004; Wrangler, Inc., Silver Lake Div. of the Alameda Plant, El Paso, TX: January 10, 1995.
TA–W–32,189; Meren Industries, Inc., Newark, NJ: April 2, 1995.
TA–W–32,176; Advance Transformer Co., Platteville, WI: March 26, 1995.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of May, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–00934; Vanity Fair Mills, McAllen, TX
NAFTA–TAA–00905; Jasper Yarn Processing, Inc., Jasper, GA
NAFTA–TAA–00901; Pennsylvania Power Co., Bruce Mansfield Plant, Shippingport, PA
NAFTA–TAA–00910; Syracuse Lithographing Co., Syracuse, NY
NAFTA–TAA–00895; EMI Co., Erie, PA
NAFTA–TAA–00886; International Paper, Gardiner, OR
NAFTA–TAA–00916; Chic By H.I.S., Henry I. Siegel Co., Inc., Clinton, KY
NAFTA–TAA–00915; Shirts Elite, Inc., Glens Falls, NY
NAFTA–TAA–00912; Vans, Inc., Orange, CA
NAFTA–TAA–00892 & A; Ranick, Ltd, Athens, GA & Washington, GA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–00955; Puchi's Family Fashion Centers, Tucson, AZ
NAFTA–TAA–00918; Permian Basin Community Center, Midland, TX
NAFTA–TAA–00909; Zenith Electronics Corp., El Paso, TX
NAFTA–TAA–00881; Alemeda Equipment Co., Inc., Master Equipment Center, Amherst, NY

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–00914; Terminal Fabrication, Inc., Freeport, IL: February 28, 1995.
NAFTA–TAA–00890 & A; Kentucky Apparel LLP, Burkesville, KY & EL Paso, TX: March 6, 1995.
NAFTA–TAA–00896; Branch Oil & Gas, Shelby, MT: February 29, 1995.
NAFTA–TAA–00948; Irvin Automotive Products, Inc., Del Rio Trim, Del Rio, TX: March 18, 1995.
NAFTA–TAA–00942; Century Pine Products, Inc., Redmond, OR: March 25, 1995.
NAFTA–TAA–00931; Casablanca Fan Co., City of Industry, CA: March 12, 1995.
NAFTA–TAA–00932; Timber Products Co., Grove Lumber Div., Springfield, OR: March 19, 1995.
NAFTA–TAA–00940; OSRAM Sylvania, Inc., General Lighting Div., Incandescent Lamp Manufacturing Plant, St. Mary's PA: March 26, 1995.
NAFTA–TAA–00936; Advance Transformer Co., Platteville, WI: March 26, 1995.
NAFTA–TAA–00922; Western Publishing Co., Inc., Racine, WI: March 22, 1995.
NAFTA–TAA–00935; Majestic Products Co., Austin, TX: March 20, 1995.
NAFTA–TAA–00919; Flexitallic, Inc., Pennsauken, NJ: March 12, 1995.
NAFTA–TAA–00911; Mayr Bros. Logging Co., Inc., Hoquiam, WA: March 14, 1995.
NAFTA–TAA–00933; McGill Electric Switch Product Group, a Div. of Therm-O-Disc, Inc., Valparaiso, IN: March 28, 1995.
NAFTA–TAA–00963; Dolphin International Ltd, The Dalles, OR: April 1, 1995.
NAFTA–TAA–00913; TxMx Sportswear International, Inc., El Paso, TX: March 14, 1995.

I hereby certify that the aforementioned determinations were issued during the month of May 1996. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 9, 1996.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–12443 Filed 5–16–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,472A]

Exxon Company, U.S.A., a/k/a Exxon Corporation, Houston/Corpus Christi Production Division, Including the Marketing Division, Houston, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on December 15, 1994, applicable to all workers of Exxon Company, U.S.A., Houston/Corpus Christi Production Division, Houston, Texas. The notice was published in the **Federal Register** on January 20, 1995 (60 FR 4195). The notice was subsequently amended to reflect a name change from Exxon Company U.S.A. to Exxon Corporation, and published in the **Federal Register** on March 31, 1995 (60 FR 16677).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The State reports that some of the workers of the subject firm are being denied eligibility to apply for TAA because they were in the Marketing Division of Exxon in Houston. Findings show that when the certification was issued it was the Department's intent to include workers of the subject firm engaged in employment related to the exploration and drilling for crude oil, and the administrative, technical and support staff. Accordingly, the Department is amending the certification to specifically include the Marketing Division of the subject firm.

The amended notice applicable to TA–W–30,472A is hereby issued as follows:

All workers of Exxon Company U.S.A., a/k/a Exxon Corporation, Houston/Corpus Christi Production Division, including the Marketing Division, Houston, Texas who became totally or partially separated from employment on or after October 23, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of May 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–12440 Filed 5–16–96; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address show below, not later than May 28, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than May 28, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 29th day of April, 1996.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX.—PETITIONS INSTITUTED ON 4/29/96

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,265	Whirlpool Corporation (IUE)	Evansville, IN	04/10/96	Refrigerators.
32,266	O.I. Brockway, Inc. (GMP)	Brockway, PA	04/16/96	Glass Containers.
32,267	O.I. Brockway, Inc. (GMP)	Crenshaw, PA	04/16/96	Glass Containers.
32,268	Casablanca Fan Company (Co.)	City of Industry, CA	03/12/96	Ceiling Fans.
32,269	Sylray, Inc. (Wkrs)	Orwigsblury, PA	04/15/96	Ladies' Lingerie.
32,270	Ithaca Industries (Wkrs)	Vidalia, GA	03/13/96	Knit Shirts—Distribution.
32,271	Manhattan Shirt Company (Wkrs)	Americus, GA	04/16/96	Shirts.
32,272	Teleflex Automotive (Wkrs)	Martinsburg, WV	04/18/96	Actuation/Control Cable Assemblies.
32,273	Stevenson Manufacturing (Co.)	Stevenson, AL	04/16/96	Children's Apparel.
32,274	Lucent Technologies (IBEW)	Montgomery, IL	04/17/96	Printed Circuit Boards.
32,275	American Stud Co. (Wkrs)	Olney, MT	04/15/96	Lumber.
32,276	Early Manufacturing Co. (Co.)	Blakely, CA	04/18/96	Men's & Ladies' Coats & Sport Blazers.
32,277	Motor Wheel Corporation (UAW)	Mendota, IL	04/16/96	Steel Wheels.
32,278	Team, Inc. (Wkrs)	Fulton, MS	04/15/96	Children's Knitted Sleepers.
32,279	Pants Plus (UNITE)	New York, NY	04/17/96	Ladies' Sportswear.
32,280	Alstyle Apparel (Wkrs)	Lebanon, KY	04/10/96	T-Shirts.
32,281	Williams Advance Material (Wkrs)	Buffalo, NY	03/30/96	Computer Fame Lid Parts.
32,282	Karl Schmidt UNISIA, Inc. (Wkrs)	South Haven, MI	04/15/96	Aluminum Pistons—Automobile.
32,283	Apparel Creations of Amer (Co.)	Notasulga, AL	04/15/96	Ladies' Sportswear.
32,284	United Technologies Auto (Wkrs)	Newton, IL	03/21/96	Wiring Harnesses.
32,285	Alcoa Fujikura LTD (Wkrs)	Dearborn Height, MI	04/12/96	Prototype Vehicle Wireing Harnesses.
32,286	Metric Products Inc. (Wkrs)	Culver City, CA	04/17/96	Wire for Garments.
32,287	Crown Vantage (Co.)	Parchment, MI	04/23/96	Food & Communication Paper.
32,288	Continental General Tire (USWA)	Mayfield, KY	04/16/96	Tires.

[FR Doc. 96–12442 Filed 5–16–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00646 et al.]

Pacific Power a/k/a PacifiCorp, a/k/a Utah Power, Casper, Wyoming, and Other Locations Within Wyoming and Other Locations Within Various States; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of labor issued a Certification for NAFTA Transitional Adjustment Assistance on December 1, 1995, applicable to all workers of Pacific Power, located in Casper, Wyoming, and operating at various locations in the State of Wyoming. The notice was published in the **Federal Register** on January 26, 1996 (61 FR 2538).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations have occurred at other production facilities of the subject firm at various locations within the States of Washington, Oregon, California, Montana, Idaho and Utah. The workers are engaged in employment related to the production of electrical power. The company reports that PacifiCorp was formed to combine Pacific Power and Utah Power.

Consequently, some of the workers may have had their Unemployment Insurance (UI) wages reported under either PacifiCorp, Pacific Power or Utah Power tax accounts. Other findings show that workers of Pacific Power in Centralia, Washington are covered under an existing NAFTA–TAA certification, NAFTA–00655, and are specifically excluded from this amendment.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports from Canada or Mexico. Accordingly, the Department is amending the certification to reflect that in addition to Pacific Power, the workers UI wages may have been paid under PacifiCorp or Utah Power; and to cover worker separations at the other locations of the subject firm.

The amended notice applicable to NAFTA–00646 is hereby issued as follows:

All workers of Pacific Power, a/k/a PacifiCorp, a/k/a Utah Power, Casper, Wyoming and at other locations within Wyoming (NAFTA–00646); and other locations within the following States, who became totally or partially separated from employment on or after October 16, 1994 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974:

NAFTA–00646A Washington (Excluding Centralia)
NAFTA–00646B Oregon
NAFTA–00646C California
NAFTA–00646D Montana
NAFTA–00646E Idaho
NAFTA–00646F Utah.

Signed at Washington, D.C. this 8th day of May 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–12441 Filed 5–16–96; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Information Science and Engineering.

Date and Time: June 5, 1996; 8:30 a.m. to 5:00 p.m.; June 6, 1996; 8:30 a.m. to 2:30 p.m.

Place: 4201 Wilson Blvd., Arlington, VA 22230, Room 1235.

Type of Meeting: Open.

Contact Person: Odessa Dyson, Administrative Officer, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1900.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CISE community; to provide advice to the Assistant Director/CISE on issues related to long range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda:

(1) Discuss reports of CISE Research and Education and Human Resources Review Teams

(2) Review status of CISE Organizational Review Committee Report

(3) Discuss status of CISE and NSF Strategic Planing.

Dated: May 13, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–12398 Filed 5–16–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194).

Date and Time: June 7, 1996, 8:00 a.m.–5:00 p.m.

Place: Rooms 310, 320, 340, 365, 370, 380, 390, 565, and 580, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. George A. Hazelrigg, Program Director, Design Integration Engineering, (703) 306–1330, and Dr. Warren DeVries, Program Director, Manufacturing Processes and Equipment, (703) 306–1330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate unsolicited proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 13, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–12393 Filed 5–16–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel Engineering Education and Centers (#173).

Date/Time: June 6–7, 1996, 8:00 a.m.–5:30 p.m.

Place: National Science Foundation, Room 375, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Mary Poats, Program Manager, Engineering Education and Centers Division, National Science Foundation, Room 585, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning concept papers submitted to NSF for financial support.

Agenda: To review and evaluate concept papers submitted to the Combined Research-Curriculum Development Program.

Reason for Closing: The concept papers being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 13, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–12395 Filed 5–16–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: May 30–31, 1996, 8:00 a.m. to. 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 370, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Bobby Wilson, Program Director, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1634.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for Continuation of financial support.

Agenda: Review for the Minority Research Centers for Excellence Reverse Site Visit.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 13, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–12397 Filed 5–16–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Networking and Communications Research and Infrastructure (NCRI); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Nome: Special Emphasis Panel in Networking and Communications (#1207)

Date and Time: June 3–4, 1996; 8:30 am to 5:00 pm

Place: Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230

Type of Meeting: Closed

Contact Person: Dr. Darleen Fisher, National Science Foundation, Room 1175, Arlington, VA 22230 (703–306–1950).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review & evaluate proposals submitted for the Networking and Communications Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552 b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 13, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–12394 Filed 5–16–96; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Small Business Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Small Business Industrial Innovation (SBIR)–(61)

Dote and Time: June 3–4, 1996, 8:00 a.m.–5:00 p.m.

Type of Meeting: Open

Place: Room 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230

Contact Person: Cheryl Albus, SBIR Program Coordinator, (703) 306–1390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Minutes: May be obtained from the contact person listed above.

Purpose of Committee: To provide advice and recommendations concerning research programs pertaining to the small business community.

Agenda:

June 3, 1996, Room 390

10:00 a.m. to 10:30 a.m.—Welcome and Introductions
10:30 a.m. to 12:30 p.m.—Review and Discussion of Programs
12:30 p.m. to 1:30 p.m.—Lunch
1:30 p.m. to 3:30 p.m.—Discussion of Program Issues
3:30 p.m. to 3:45 p.m.—Break
3:45 p.m. to 5:00 p.m.—Further Discussion of Program Issues
5:00 p.m.—Adjourn

June 4, 1996, Room 390

8:30 a.m. to 10:30 a.m.—Discussion of Future Directions
10:30 a.m. to 12:00 noon—Preparation of Committee Report
12:00 noon–1:00 p.m.—Lunch
1:00 p.m. to 3:00 p.m.—Preparation of Committee Report (continued) Recommendations to NSE (Committee Chair)
3:00 p.m.—Adjourn.

Dated: May 13, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–12396 Filed 5–16–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Number 40–6622]

Pathfinder Mines Corp.; Amendment of Source Material License

AGENCY: Nuclear Regulatory Commission.

ACTION: Amendment of Source Material License SUA–442 to include reclamation milestone dates.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission has amended Pathfinder Mines Corporation's (PMC's) Source Material License SUA–442 to include reclamation milestone dates. This amendment was requested by PMC by its letter dated March 26, 1996, and the receipt of the request by NRC was noticed in the **Federal Register** on April 5, 1996.

The license amendment adds License Condition 50 to include completion dates for various site-reclamation milestones. The schedule proposed by PMC and accepted by the NRC staff is as follows:

(1) Windblown tailings retrieval and placement on the tailings pile, December 31, 1997.

(2) Placement of an interim cover over tailings, December 31, 1997.

(3) Placement of final radon barrier, December 31, 1999.

(4) Placement of erosion protection, December 31, 2000.

(5) Completion of groundwater corrective actions, December 31, 2005.

An environmental assessment is not required since this action is categorically excluded under 10 CFR 51.22(c)(11), and an environmental report from the licensee is not required by 10 CFR 51.60(b)(2).

SUPPLEMENTARY INFORMATION: PMC's amended license, and the NRC staff's technical evaluation of the amendment request are being made available for public inspection at the Commission's Public Document Room at 2120 L Street NW (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Mohammad W. Haque, Uranium Recovery Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6640.

Dated at Rockville, Maryland, this 10th day of May 1996.

Daniel M. Gillen,

Acting Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 96–12406 Filed 5–16–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–146 (License No. DPR–4)]

Saxton Nuclear Experimental Corporation (Saxton Nuclear Experimental Facility); Order Approving Transfer

I

On November 15, 1961, pursuant to 10 CFR Part 50, Provisional Operating License No. DPR–4 was issued to Saxton Nuclear Experimental Corporation (SNEC) for the Saxton Nuclear Experimental Facility (SNEF) located in Saxton, Bedford County, Pennsylvania. On February 29, 1964, the provisional operating license was replaced with a full-term operating license. On February 11, 1967, an order was issued that extended the expiration date of the license from April 13, 1967, to December 31, 1968. On December 27, 1968, Amendment No. 4 was issued to Operating License No. DPR–4 which

extended the expiration date of the license to December 31, 1972. On August 15, 1972, Amendment No. 8 was issued to Amended Facility License No. DPR–4 that changed the license status to possession-only. On January 10, 1974, Amendment No. 9 was issued to Amended Facility License No. DPR–4 which extended the expiration date of the license to February 11, 2000.

II

By letter dated November 21, 1995, as supplemented on March 13, 1996, pursuant to 10 CFR 50.80 and 50.90, SNEC submitted a request for consent to transfer control of the license and approval of amendments to the SNEF Amended Facility License No. DPR–4 and Technical Specifications appended thereto that would add GPU Nuclear Corporation (GPU Nuclear) as a possession-only licensee for the SNEF and would transfer from SNEC to GPU Nuclear all management-related responsibilities for the SNEF. SNEC's responsibilities as a licensee would not otherwise be affected. The NRC published a "Notice of Consideration of Issuance of Amendment to Facility License and Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing" in the **Federal Register** on January 31, 1996 (61 FR 3502), and published a "Notice of Transfer of Control of License" in the **Federal Register** on March 19, 1996 (61 FR 11231).

The transfer of control of Amended Facility License No. DPR–4 is subject to the NRC's approval under 10 CFR 50.80. On the basis of information provided by SNEC in the letters of November 21, 1995, and March 13, 1996, and other information before the Commission, the NRC staff has concluded that GPU Nuclear is qualified to be a joint holder of Amended Facility License No. DPR–4 to the extent and for the purposes described above and that the proposed transfer, subject to the conditions set forth herein, is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the Commission. This proposed action was evaluated by the staff as documented in a Safety Evaluation, dated May 10, 1996.

III

By June 10, 1996, any person adversely affected by this order may file a request for a hearing with respect to issuance of the Order. Any person requesting a hearing shall set forth with particularity how such person's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is to be held, the Commission will issue an Order designating the time and place of such hearing.

If a hearing is held concerning this Order, the issue to be considered at any such hearing will be whether this Order should be sustained.

Any request for a hearing must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Copies should also be sent to the Office of the General Counsel and to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ernest L. Blake, Jr., Esquire; Shaw, Pittman, Potts, and Trowbridge; 2300 N Street NW., Washington, DC 20037.

IV

Accordingly, pursuant to sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234, and 10 CFR 50.80, it is hereby ordered that the Commission consents to the proposed transfer of control of Amended Facility License No. DPR–4 to GPU Nuclear to the extent and for the purposes described herein subject to the following: (1) the approval of the amendment proposed in the SNEC submittals dated November 21, 1995, and March 13, 1996, which, when issued by the NRC, would become effective as of the date of issuance, and (2) should the transfer of the license as set forth above to GPU Nuclear not be completed by August 9, 1996, this Order shall become null and void unless upon application and for good cause shown, this date is extended.

For further details with respect to this action, see the application for amendment and transfer of license dated November 21, 1995, as supplemented on March 13, 1996, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20037, and at the Local Public Document Room located at the Saxton Community Library, 911 Church Street, Saxton, Pennsylvania 16678.

Dated at Rockville, MD., this 10th day of May 1996.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–12405 Filed 5–16–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–244]

Rochester Gas and Electric Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DRP–18 issued to Rochester Gas & Electric Corporation (RG&E) for operation of the R. E. Ginna Nuclear Power Plant located in Wayne County, New York. The proposed amendment would modify the Technical Specifications to correct several typographical errors that were implemented in the Ginna Station Improved Technical Specifications (ITS) at Ginna Station per Amendment No 61.

On February 24, 1996, RG&E implemented the ITS. Currently, Ginna Station is in a defueled condition while in the performance of a steam generator replacement project. While in this condition, several typographical errors have been discovered within the ITS by various plant staff personnel. In general, these errors are minor and are readily apparent. However, several errors could lead to confusion and a potential incorrect application of a requirement. The correction of these more limiting errors is required prior to entering MODE 2 which is scheduled to occur on June 2, 1996. Failure to correct these known errors would therefore prevent a scheduled resumption in power operation. The proposed changes would permit the Ginna Station to enter MODE 2 as planned. Exigent action is justified in order to avoid an unnecessary delay in reactor startup.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards

consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes only correct various typographical errors within the technical specifications. The errors were discovered during use of the new improved technical specifications and do not involve any technical issues when compared to NUREG–1431 or the "old" technical specifications. As such, these changes are administrative in nature and do not impact initiators or analyzed events or assumed mitigation of accident or transient events. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or changes in the methods governing normal plant operation. The proposed changes will not impose any new or different requirements. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The proposed changes will not reduce a margin of plant safety because the changes are administrative in nature. As such, no question of safety is involved, and the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 17, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Rochester Public Library, 115 South Avenue, Rochester, New York 14610. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Jocelyn A. Mitchell, Acting Director, Project Directorate I–1, petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 8, 1996, as supplemented May 10, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Rochester Public Library, 115 South Avenue, Rochester, New York.

Dated at Rockville, Maryland, this fourteenth day of May 1996.

For the Nuclear Regulatory Commission.

Guy S. Vissing,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–12616 Filed 5–16–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21956; 812–9920]

Blue Chip Value Fund, Inc.; Notice of Application

May 14, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Blue Chip Value Fund, Inc.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the Act that would grant an exemption from section 19(b) of the Act and rule 19b–1 thereunder.

SUMMARY OF APPLICATION: Applicant requests an order to make up to four distributions of long-term capital gains in any one taxable year, so long as applicant maintains in effect a distribution policy calling for quarterly distributions of a fixed percentage of its net asset value.

FILING DATES: The application was filed on January 2, 1996, and amended on April 18, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 10, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street N.W., Washington, D.C. 20549. Applicant, 1225 Seventeenth Street, 26th Floor, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is closed-end management investment company organized as a Maryland corporation. Applicant's investment objective is to seek a high level of total investment return, comprised of capital appreciation and current income, through investment primarily in a diversified portfolio of equity securities.

2. From 1989 to April 1994, applicant had a fixed distribution policy calling for four quarterly distributions of an amount equal to 2.5% of its net asset value at the time of the declaration, for a total of approximately 10% of its net asset value per year. Any realized capital gains from 1989 through 1993 were offset by capital loss carryforwards. On April 4, 1994, applicant announced a change in its distribution policy to three quarterly distributions of net investment income, followed by a fourth distribution of an amount equal to the greater of 10% of net asset value less the prior three distributions or the sum of applicant's net investment income and net capital gains.

3. Applicant requests relief to permit it to make up to four distributions of net long-term capital gains in any one taxable year, so long as it maintains in effect a distribution policy calling for quarterly distributions of a fixed percentage of its net asset value (the "Pay-Out Policy").

Applicant's Legal Analysis

1. Section 19(b) provides that registered investment companies may not, in contravention of such rules, regulations, or orders as the SEC may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b–1 limits the number of capital gains distributions, as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986, as amended, (the "Code"), that applicant may make with respect to any one taxable year to one, plus a supplemental distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional long-term capital gains distribution made to avoid the excise tax under section 4982 of the Code.

2. Rule 19b–1, by limiting the number of net long-term capital gain distributions that applicant may make with respect to any one year, has prevented the operation of the Pay-Out Policy because applicant's realized net long-term capital gains in any year may exceed the total of the fixed quarterly distributions that under rule 19b–1 may include such capital gains. In that situation, the rule effectively forces the fixed quarterly distributions, that under the rule may not include such capital gains, to be funded with returns of capital (to the extent net investment income and realized short-term capital gains are insufficient), even though net realized long-term capital gains would otherwise be available therefor. The long-term capital gains in excess of the fixed quarterly distributions permitted by the rule then must either be added as an "extra" on one of the permitted capital gains distributions, thus exceeding the total annual amount called for by the Pay-Out Policy, or be retained by applicant (with applicant paying taxes thereon).

3. Applicant believes that granting the required relief would limit applicant's return of capital distributions to that amount necessary to make up any shortfall between applicant's guaranteed distribution and the total of its investment income and capital gains. The likelihood that applicant's shareholders would be subject to additional tax return complexities involved when applicant retains and pays taxes on long-term capital gains would therefore be avoided.

4. One of the concerns leading to the adoption of section 19(b) and rule 19b–1 was that shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from investment income. In accordance with rule 19a–1, a separate statement showing the source of the distribution (net investment income, net realized capital gains, or returns of capital) will accompany each distribution (or the confirmation of the reinvestment thereof under applicant's dividend reinvestment plan). In addition, a statement showing the amount and source of distributions received during the year will be included with applicant's IRS Form 1099–DIV reports sent to each shareholder who received distributions during the year (including shareholders who sold shares during the year). This information will also be included in applicant's annual report to shareholders. Through these disclosures and other communications with shareholders, applicant states that its shareholders will understand that applicant's fixed distributions are not tied to its investment income and realized capital gains and will not represent yield or investment return.

5. Another concern that led to the adoption of section 19(b) and rule 19b–1 was that frequent capital gain distributions could facilitate improper fund distribution practices, including the practice of urging an investor to purchase fund shares on the basis of an upcoming dividend ("selling the dividend"), where the dividend results in an immediate corresponding reduction in net asset value and is in effect a return of the investor's capital. Applicant believes that this concern does not apply to closed-end investment companies, such as applicant, which do not continuously distribute shares. Although, to date, applicant has completed one rights offering of additional shares to shareholders, the rights offering was short in duration and involved a relatively small number of new shares. The rights in the rights offering were non-transferable and offered only to existing shareholders. The rights were offered only by means of the statutory prospectus, without solicitation by brokers and without payment of any commission or other underwriting fee.

6. Applicant states that another concern leading to the adoption of section 19(b) and rule 19b–1, increase in administrative costs, is not present because applicant will continue to make quarterly distributions regardless of what portion thereof is composed of capital gains.

7. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, applicant believes that the requested exemption meets the standards set forth in section 6(c).

Applicant's Condition

Applicant agrees that the order granting the exemption shall terminate upon the effective date of a registration statement under the Securities Act of 1933 for any future public offering by applicant of its shares other than: (i) a non-transferable rights offering to shareholders of applicant, provided that such offering does not include solicitation by brokers or the payment of any commissions or underwriting fee; and (ii) an offering in connection with a merger, consolidation, acquisition, or reorganization.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–12465 Filed 5–16–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21952; 812–10064]

Emerging Markets Growth Fund, Inc. et al.; Notice of Application

May 10, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Emerging Markets Growth Fund, Inc. ("EMGF"), New World Investment Fund ("NWIF"), IBM Retirement Plan Trust ("Trust I"), and General Motors Employees Global Group pension Trust ("Trust II").

RELEVANT ACT SECTIONS: Order requested under section 17(b) of the Act granting an exemption from section 17(a).

SUMMARY OF APPLICATION: Applicants request an order to permit EMGF to acquire all of the assets of NWIF. Because of certain affiliations, the two funds may not rely on rule 17a–8 under the Act.

FILING DATES: The application was filed on March 28, 1996 and amended on May 9, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 4, 1996, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: EMGF and NWIF c/o The Capital Group Companies, Inc. 11100 Santa Monica Boulevard, Los Angeles, California 90025; and Trust I and Trust II c/o Chase Manhattan Bank, N.A., Chase Metro Tech Center, Brooklyn, New York 11245.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. EMGF is a closed-end management investment company organized as a Maryland corporation and registered under the Act. NWIF is a closed-end management investment company organized as a Massachusetts business trust and registered under the Act. Capital International, Inc. (the "Adviser") serves as investment adviser to EMGF and NWIF. The Adviser is an indirect, wholly-owned subsidiary of The Capital Group Companies, Inc.

2. The International Business Machines Corporation established Trust I to provide monthly income to eligible retired employees. General Motors Corporation ("GM") created Trust II for the benefit of certain employee benefit plans of GM and its subsidiaries. Trust I and Trust II each owns greater than 5% of the outstanding shares of each of EMGF and NWIF.

3. Applicants propose that NWIF (the "Acquired Fund") be combined with and into EMGF (the "Acquiring Fund" and together with the Acquiring Fund, the "Funds") in a tax-free reorganization (the Reorganization"). In the Reorganization, the Acquiring Fund will acquire all of the assets and liabilities, of the Acquired Fund in exchange for shares of the Acquiring Fund, which then will be distributed *pro rata* to former shareholders of the Acquired Fund. The transfer of the assets of the Acquired Fund to the Acquiring Fund, and in exchange the issuance of the Acquired Fund's shares, will be based on the relative net asset values of each of the Funds as of the close of the New York Exchange on the last business day immediately preceding the effective date of the Reorganization. Each Fund will bear its own expenses in connection with the Reorganization.

4. Shares of the Acquired Fund are offered to the public on a continuous basis to investors meeting the Acquired Fund's investor suitability and minimum purchase requirements. The Acquiring Fund's investor suitability requirement provides that each prospective investor that is a "company", as defined in the Act, must have total assets in excess of $5 million. Each prospective investor that is a natural person must be an "accredited investor" within the meaning of Regulation D under the Securities Act of 1933. Shares of the Acquired Fund are offered to the public on a continuous basis under the same conditions and subject to the same suitability limitations.

5. At a meeting on January 26, 1996, the board of directors of the Acquiring Fund, including the disinterested directors, approved the Reorganization. Also on January 26, 1996, the board of trustees of the Acquired Fund, including the disinterested trustees, approved the Reorganization. Each board made the findings required under rule 17a–8 and determined that participation in the Reorganization is in the best interests of its registered investment company and that the interests of existing shareholders of its registered investment company will not be diluted as a result of its effecting the Reorganization. Such findings, and the basis upon which such findings were made, are recorded fully in the minute books of each registered investment company. In addition, the board of trustees of the Acquired Fund considered (a) the potential benefits of the Reorganization to the shareholders of the Acquired Fund, (b) the investment objectives, policies, restrictions, and investment holdings of the Funds, (c) the terms and conditions of the Reorganization that might affect the price of the outstanding shares of the Acquired Fund, and (b) the direct or indirect costs to be incurred by the Acquired Fund or shareholders thereof.

6. In considering the compatibility of the two Funds, the boards noted that the investment objectives of the Funds are similar, in that both Funds seek capital appreciation and income. The principal difference in objectives is that the Acquired Fund concentrates its investments in Latin American countries, and is permitted to invest a greater percentage of its assets in debt securities, while the Acquiring Fund invests in a broader range of emerging market countries, with a greater percent of its assets in equity securities. Nevertheless, the Acquiring Fund's investment policies permit it to invest in substantially all of the securities in which the Acquired Fund may invest.

7. The expected advantages of the Reorganization include: the benefit to shareholders of the Acquired Fund of the Acquiring Fund's lower expense ratio; the elimination of certain duplicative expenses of separate funds, such as separate audit and legal fees; a larger asset base; and enhanced liquidity and portfolio diversification. In addition, shareholders of the Acquiring Fund should benefit from the Reorganization in that it will permit the Acquiring Fund to acquire portfolios securities in the amount of the assets of the Acquired Fund without incurring the expenses that would normally be associated with purchasing such securities in the open market. The Adviser estimates the potential cost savings to the Acquiring Fund to be $344,000.

8. The consummation of the Reorganization is subject to certain conditions, including that the parties shall have received from the SEC the order requested herein, and the receipt of an opinion of tax counsel that the Reorganization will qualify as a tax-free reorganization under the Internal Revenue Code of 1986 and will not result in the recognition of any taxable gain or loss to the Acquiring Fund or the Acquired Fund, or to any shareholders thereof. In addition, applicants agree not to make any material changes to the reorganization agreement that affect the application without the prior approval of the SEC. Applicants also agree not to waive, amend, or modify any provision of the reorganization agreement that is required by state or federal law in order to effect the Reorganization.

9. A registration statement on Form N–14 with respect to the Reorganization will be filed with the SEC. A special meeting of shareholders of the Acquired Fund will be held to consider and act upon the Reorganization.

Applicants' Legal Analysis

1. Section 17(a), in pertinent part, prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from selling to or purchasing from such registered company, or any company controlled by

such registered company, any security or other property.

2. Section 2(a)(3)(A) of the Act provides that any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of any other person is an affiliated person of that person. Section 2(a)(3)(B) provides that any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by another person is an affiliated person of that person.

3. Rule 17a–8 exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

4. As noted above, the Funds have a common investment adviser. Thus, the Reorganization would be exempt from the provisions of section 17(a) by virtue of rule 17a–8, but for the fact that the Funds may be affiliated for reasons other than those set forth in the rule. As previously stated, Trust I and Trust II each owns more than 5% of the outstanding voting securities of each of the Funds. Because of this greater than 5% holding, Trust I and Trust II each is an affiliated person of each of the Funds under section 2(a)(3)(A) and each of the Funds is an affiliated person of each of Trust I and Trust II under section 2(a)(3)(B). Therefore, the Acquiring Fund is an affiliated person of an affiliated person of the Acquired Fund and vice versa.

5. Section 17(b) provides that the SEC may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

6. Applicants submit that the Reorganization meets the standards for relief under section 17(b), in that the terms of the Reorganization, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; the Reorganization is consistent with the investment policy of the Funds; and the Reorganization is consistent with the general purposes of the Act. In addition, applicants submit that each board made the determinations under rule 17a–8 that the Reorganization is in the best interests of its registered investment company and that the interests of existing shareholders of its registered investment company will not be diluted as a result of its effecting the Reorganization.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–12386 Filed 5–16–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21951; No. 812–9978]

John Hancock Mutual Life Insurance Company, et al.

May 10, 1996.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for an Order pursuant to the Investment Company Act of 1940 (the "Act").

APPLICANTS: John Hancock Mutual Life Insurance Company ("John Hancock Mutual"), John Hancock Variable Life Insurance Company ("John Hancock Variable," together with John Hancock Mutual, the "Companies"), John Hancock Variable Annuity Account JF (the "Account"), and John Hancock Funds, Inc. ("JHFI").

RELEVANT ACT SECTIONS: Order requested pursuant to Section 6(c) of the Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of mortality and expense risk and certain optional benefit rider charges from the assets of: (a) the Account in connection with the offer and sale of certain variable annuity contracts ("Existing Contracts"); (b) the Account in connection with the issuance of variable annuity contracts that are materially similar to the Existing Contracts ("Future Contracts," together with Existing Contracts, the "Contracts"); and (c) any other separate account established in the future by the Companies ("Future Account") in connection with the issuance of Contracts, for which JHFI or certain other broker-dealers may act as distributor and principal underwriter. To the extent the Contracts are issued on a group basis, the term "Contract," when used herein, includes any individual certificates or other participations thereunder.

FILING DATE: The application was filed on February 5, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on June 4, 1996, and must be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o Sandra M. DaDalt, Associate Counsel, John Hancock Mutual Life Insurance Company, John Hancock Place, Post Office Box 111, Boston, Massachusetts 02117.

FOR FURTHER INFORMATION CONTACT: Kevin M. Kirchoff, Senior Counsel, or Patrice M. Pitts, Special Counsel, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the public Reference Branch of the Commission.

Applicants' Representations

1. John Hancock Variable, a stock life insurance company incorporated under the laws of the Commonwealth of Massachusetts, is a wholly-owned subsidiary of John Hancock Mutual, a mutual life insurance company organized under the laws of the Commonwealth of Massachusetts.

2. John Hancock Variable is the depositor of the Account, and will serve as depositor for Future Accounts.

3. The Account was established as a separate investment account under the laws of the Commonwealth of Massachusetts on November 13, 1995, pursuant to a resolution of the Board of Directors of John Hancock Variable. The Future Accounts will be separate accounts of either John Hancock Mutual or John Hancock Variable and will be registered with the Commission under the Act.

4. JHFI, an indirect, wholly-owned subsidiary of John Hancock Mutual, is registered as a broker-dealer under the Securities Exchange Act of 1934 ("1934 Act"), and is a member of the National Association of Securities Dealers, Inc. ("NASD"). JHFI will serve as the distributor and principal underwriter of the Existing Contracts and may also serve as the distributor and principal underwriter of Future Contracts.

5. Broker-dealers other than JHFI may also serve as distributors or principal underwriters of Existing Contracts as well as Future Contracts to the extent that Existing Contracts or Future Contracts are sold through alternate distribution channels. Any such other broker-dealer will be registered under the 1934 Act as a broker-dealer and will be a member of the NASD.

6. The Accounts, which will have a number of subaccounts ("Subaccounts"), will invest premium payments received under the Contracts in shares of one or more of the corresponding funds of the John Hancock Declaration Trust and/or such other registered investment companies as the Companies may make available under the Contracts from time to time (each, a "Series Trust"), or any combination thereof. Each Series Trust will be a diversified, open-end management investment company registered under the Act, and may have a number of classes or series.

7. The Contracts are flexible premium deferred annuity contracts that may be issued in group or individual form. Premium payments are subject to certain limits that may be waived by the Companies. The owner of a Contract ("Owner") can allocate premium payments, less any applicable premium taxes, to one or more of the Subaccounts of the Account, and to one or more of the guarantee periods ("Guarantee Periods") of a market value adjustment fixed account ("MVA Fixed Account").

8. Prior to the date on which annuity payments commence ("Date of Maturity"), an Owner may surrender all or a portion of the Surrender Value (defined below), or transfer all or a portion of the accumulated value of the Contract (the total value of the Owner's interest in all Subaccounts and Guarantee Periods under a Contract, the "Accumulated Value"), (a) from one Subaccount to another Subaccount or to a Guarantee Period, or (b) from one Guarantee Period to another Guarantee Period or to a Subaccount. After the Date of Maturity, only transfers among Subaccounts are permitted. "Surrender Value" is the Accumulated Value, adjusted by any applicable market value adjustment ("Market Value Adjustment"), less any applicable contingent deferred sales load ("CDSL"), any applicable Contract fee, any applicable deduction for income taxes withheld, and any applicable premium or similar taxes.

9. The Contract provides for a series of annuity payments beginning on the Date of Maturity. The Owner may select from several annuity options which provide periodic annuity payments on a fixed or variable basis.

10. In the event that the Annuitant dies prior to the Date of Maturity, a death benefit is payable under the Contract. The standard death benefit is equal to the greater of:

(a) The Accumulated Value, adjusted by any Market Value Adjustment, next determined following receipt by the servicing agent of the Companies of due proof of death, together with any required instructions as to the method of settlement, and

(b) the aggregate amount of the premium payments made under the Contract, less any partial withdrawals and CDSL.

11. In addition, certain optional benefit riders are available at an additional charge under the Contracts. These optional benefit riders must be elected at the time the Contract is applied for, and none are available after a Contract has been issued.

12. The Owner may elect a one year stepped-up death benefit rider (the "Enhanced Death Benefit rider"), designed to enhance the standard death benefit payable to the beneficiary. Under this rider, upon the death of the Annuitant prior to the Date of Maturity, the death benefit payable will be the greater of: (a) The standard death benefit, and (b) the highest Accumulated Value, as adjusted by any Market Value Adjustment, as of any Contract anniversary preceding the date of receipt of due proof of death, together with any required settlement instructions, and preceding the Contract anniversary nearest the Annuitant's 81st birthday, plus any premium payments, less any prior partial withdrawals and related CDSL, since such Contract anniversary. The minimum described in clause (b) of the preceding sentence is initially established on the first Contract anniversary and may increase on any future Contract anniversary as a result of additional premium payments or favorable investment performance, but it will never decrease unless partial withdrawals are made. This benefit cannot be purchased by applicants 80 years of age or older

13. An Accidental Death Benefit rider (the "ADB rider") may be elected. Under this rider, upon the accidental death (as defined in the rider) of the Annuitant prior to the Date of Maturity, the beneficiary will receive, in addition to any other death benefit, an amount equal to the Accumulated Value, as of the date of the accident that results in Annuitant's death, up to a maximum of $200,000. This benefit cannot be purchased by applicants 80 years of age or older and ceases, along with applicable charges, at age 80.

14. The Owner may elect a Nursing Home Waiver of CDSL rider (the "Nursing Home rider"), under which the CDSL, if otherwise applicable, will be waived on any withdrawals if, beginning at least 90 days after the date of issue, the Owner becomes confined to a nursing home facility for at least 90 consecutive days, subject to certain conditions. This benefit cannot be purchased by applicants 75 years of age or older, or applicants who were confined to a nursing home within the prior two years.

15. The Contracts and optional benefit riders provide for certain charges described below. Except for the Companies' reservation of right to increase the annual Contract Fee (described below), none of such charges may be increased during the life of a Contract. The Companies may waive or reduce any of the charges under the Contracts, in accordance with their rules, as permitted by the Act, rules thereunder, and applicable Commission orders or staff positions.

16. The Companies deduct an annual fee of $30 per Contract year ("Contract Fee") on all Contracts having an Accumulated Value of less than $10,000. The Contract Fee will be deducted at the beginning of each Contract year after the first and at a full surrender during a Contract year ("Contract Year"). The Companies reserve the right to increase the Contract Fee up to a maximum of $50.

17. The Companies also deduct a daily administrative charge from the assets of the Accounts. This charge is equal to an annual rate of 0.35 percent of the net assets of Contracts with an initial premium payment of less than $250,000, and 0.10 percent of the net assets of Contracts with an initial premium payment of $250,000 or more. The difference between these rates reflects the cost of administering larger Contracts, which is lower in proportion to their Accumulated Value than that of relatively smaller Contracts. The Companies do not anticipate deriving any profit from these administrative charges, and will deduct them in reliance upon, and in compliance with, Rule 26a–1 under the Act.

18. Several states and local governments impose a premium or similar tax on annuities. Currently, such

taxes range up to 5 percent of the Accumulated Value applied to an annuity option. Ordinarily, any state-imposed premium or similar tax will be deducted from the Accumulated Value only at the time of annuitization. The Companies will deduct a charge for these taxes from the Accumulated Value at the time of annuitization, death, surrender, or withdrawal. For Contracts issued in South Dakota, the Companies pay a tax on each premium payment and deduct the charge therefor at the time the payment is made.

19. No sales charge is deducted from any premium payment. However, a CDSL may be assessed on premium payments whenever any amount is withdrawn from a Contract prior to the Date of Maturity. This charge is used to cover expenses relating to the offer and sale of the Contracts, including commissions and other distribution costs and sales-related expenses. The CDSL percentage charge depends upon the number of years that have elapsed from the date of the premium payment to the date of its withdrawal, as follows:

Years from date of premium payment to date of withdrawal or surrender	CDSL (percent)
7 or more	0
6 but less than 7	2
5 but less than 6	3
4 but less than 5	4
3 but less than 4	5
2 but less than 3	5
Less than 2	6

20. Whenever a CDSL is imposed, it is deducted from each Subaccount of the Accounts and each Guarantee Period of the MVA Fixed Account in the proportion that the amount subject to the CDSL in each bears to the total amount subject to the CDSL. In calculating the CDSL, all amounts withdrawn plus all Contract Fees and CDSL are assumed to be deducted first from the earliest purchase payment, and then from the next earliest purchase payment, and so forth until all payments have been exhausted, satisfying the first-in/first-out method of accounting.

21. No CDSL is assessed on amounts applied to provide an annuity or to pay a death benefit. Amounts withdrawn to satisfy the minimum distribution requirements for tax qualified plans also are not subject to a CDSL. In addition, no CDSL will apply to certain withdrawals if an Owner has elected the Nursing Home rider.

22. In any Contract Year, an Owner may withdraw up to 10 percent of the Accumulated Value as of the beginning of the Contract Year without the assessment of any CDSL. If, in any Contract Year, the Owner withdraws an aggregate amount in excess of 10 percent of the Accumulated Value as of the beginning of the Contract Year, the excess amount withdrawn is subject to a CDSL, to the extent it is attributable to premium payments made within seven years of the date of withdrawal or surrender.

23. The Companies do not anticipate that the CDSL will generate sufficient revenues to pay the cost of distributing the Contracts. If the CDSL is insufficient to cover such costs, the deficiency will be met from the general account assets of John Hancock Mutual or John Hancock Variable, as the case may be, which may include profits, if any, derived from the charge for mortality and expense risks.

24. The Companies bear a mortality risk that arises from their contractual obligation to make annuity payments (determined in accordance with the guaranteed annuity tables and other provisions contained in the Contract) regardless of how long all Annuitants or any individual Annuitant may live. This undertaking assures that neither an Annuitant's own longevity, nor an improvement in general life expectancy, will adversely affect the periodic guaranteed annuity payments that the Annuitant will receive under the Contract. The Companies also incur a mortality risk inherent in the standard death benefit, because the benefit payable could be more than the Accumulated Value. The Companies assume an additional mortality risk, since no CDSL is imposed on the payment of the standard death benefit.

25. The expense risk assumed by the Companies is the risk that their actual administrative costs will exceed the amount recovered through the administrative charges. The administrative services to be provided by the Companies, directly or through their affiliates, include: processing applications and issuing the Contracts, processing premium payments, transfers and surrenders, processing purchases and redemptions of fund shares, furnishing confirmations and reports, maintaining records, administering annuity payments, providing account and valuation services, and providing actuarial, financial accounting, regulatory and reporting services.

26. The Companies impose a daily charge to compensate them for bearing mortality and expense risks in connection with the Contracts. This charge is equal to an effective annual rate of 0.90 percent of the value of the net assets in the Account, and is guaranteed not to increase. Of that amount, approximately 0.45 percent is attributable to expense risks and approximately 0.45 percent is attributable to mortality risks. The Companies reserve the right to revise the allocation of the charge between mortality and expense risks.

27. If the administrative charges and the mortality and expense risk charge are insufficient to cover actual expenses and costs assumed, the loss will be borne by the Companies. Conversely, if the charges are more than sufficient, the excess will be profit to the Companies. The Companies currently anticipate that they will derive a profit from the mortality and expense risk charge.

28. Separate monthly charges are made for the Enhanced Death Benefit rider, the ADB rider, and the Nursing Home rider. In each case, the charge for the rider is made through a pro-rata reduction in Accumulation Units of the Subaccounts and dollar amounts in the Guarantee Periods, based on relative values. The charge, made at the beginning of each month, is equal to the Accumulated Value at that time multiplied by 1/12th of the following applicable annual percentage rates: Enhanced Death Benefit rider, 0.15 percent; ADB rider, 0.10 percent; Nursing Home rider, 0.05 percent. Applicants represent that the charges for these optional benefit riders will never exceed these annual rates.

29. Just as the Companies assume a mortality risk through their obligation to make annuity payments and provide the standard death benefit, they also assume certain insurance risks associated with the three optional benefit riders.

30. Under the Enhanced Death Benefit rider, the Companies assume an increased mortality risk because the benefit is potentially greater than that provided by the standard death benefits. A mortality risk also is assumed by the Companies under the Enhanced Death Benefit rider since, as under the standard death benefit, no CDSL is imposed upon the payment of the benefit.

31. The Companies assume a traditional life insurance mortality risk under the ADB rider, and the entire amount of the benefit is payable from the general account assets of John Hancock Mutual or John Hancock Variable, as the case may be.

32. By waiving the CDSL when an Owner becomes confined to a nursing home facility (as provided in the Nursing Home rider), the Companies assume an insurance risk to the extent that any reduced CDSL revenues will not be available to defray marketing expenses incurred in the offer and sale of the Contracts. To compensate the Companies for the risk associated with this potential revenue loss, a charge is made in connection with the benefit provided.

33. The charges for the Enhanced Death Benefit, ADB, and Nursing Home riders are designed to cover the anticipated cost of the benefits provided and the risks assumed, and do not include an element of profit.

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from the provisions of the Act and the rules promulgated thereunder if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Section 26(a)(2)(C) provides that no payment to the depositor of, or principal underwriter for, a registered unit investment trust shall be allowed the trustee or custodian as an expense compensation, exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the trustee or custodian. Section 27(c)(2) prohibits a registered investment company or a depositor or underwriter for such company from selling periodic payment plan certificates unless the proceeds of all payments on such certificates, other than sales loads, are deposited with a trustee or custodian having the qualifications prescribed in Section 26(a)(1), and are held by such trustee or custodian under an agreement containing substantially the provisions required by Sections 26(a)(2) and 26(a)(3) of the Act.

3. Applicants request an order pursuant to Section 6(c) of the 1940 Act exempting them from Sections 26(a)(2)(C) and 27(c)(2) thereof to the extent necessary to permit the deduction of the mortality and expense risk and optional benefit rider charges from the assets of the Account and any Future Accounts in connection with the Contracts, for which JHFI or certain other broker-dealer may act as distributor and principal underwriter.

4. The Companies represent that the 0.90 percent mortality and expense charge assessed under the Contracts is/will be within the range of industry practice of comparable annuity products. This representation is/will be based upon their analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, existence of charge level guarantees, guaranteed death benefits and guaranteed annuity rates. The Companies will maintain at their home office and make available to the Commission memoranda setting forth in detail the products analyzed in the course of, and the methology and result of, their comparative surveys.

5. Applicants submit that the charges equal to an annual rate of 0.15 percent, 0.10 percent, and 0.05 percent of the Accumulated Value, taken at the beginning of the Contract month, for Contracts issued with the Enhanced Death Benefit rider, the ADB rider, and/or the Nursing Home rider, respectively, are reasonable in relation to the risks assumed by the Companies under each of the optional benefit riders. In arriving at this determination, the Companies projected their expected costs in providing these benefits at different issue ages to determine the expected cost of the optional benefit riders.

6. For the Enhanced Death Benefit rider, the Companies conducted a large number of trials, and hypothetical asset returns were projected using generally-accepted actuarial simulation methods. For each asset return pattern generated, hypothetical accumulated values were calculated by applying the projected asset returns to the initial value in a hypothetical account. Each accumulated value so calculated was compared to the amount of the Enhanced Death Benefit payable in the event of the hypothetical annuitant's death during the year in question. By analyzing the results of a statistically valid number of such simulations, the Companies were able, actuarially, to reasonably estimate the level costs of providing the benefits.

7. For the ADB rider, a set of mortality rates was developed for accidental death at each attained age, based on the 1994 Statistical Abstract of the United States and using accepted actuarial techniques. A single weighted average mortality rate was then developed by applying the expected sales distribution by age and premium amount to the accidental death benefit rates derived above. This single rate was then converted into a reasonable charge, again using accepted actuarial techniques.

8. For the Nursing Home rider, a set of probabilities of entering a nursing home based on the 1985 National Nursing Home Survey was developed for quinquenal issue ages. These probabilities were then applied to the amounts of insurance expected to be in force during the CDSL period to calculate the expected loss of CDSL for those issue ages. An appropriate weighted average charge for all issue ages was derived by applying an expected sales distribution percentage varying by age to the present value of the lost CDSLs using accepted actuarial techniques. The weighted average charge was divided by the average premium and the result amortized to derive a Nursing Home rider charge.

9. Applicants note that the .30 percent aggregate amount of charges for the optional benefits, when added to the 0.90 percent mortality and expense risk charge, results in a total charge of 1.20 percent, which Applicants represent is within the industry range for mortality and expense risk charges. Applicants also state that the unbundling of these optional benefits provide the Owner with greater flexibility. The Companies will maintain at their home office and make available to the Commission memoranda setting forth in detail the methodology used in determining that each of the three above-described optional benefit riders is reasonable in relation to risks assumed by the Companies under the Contracts.

10. Applicants acknowledge that, to the extent the mortality experience and unreimbursed expenses of the Companies are less than anticipated, the charge for mortality and expense risks may be a source of profit, which would increase the respective general assets of the Companies available to pay the distribution expenses that the Companies must bear. Under such circumstances, the charge for mortality and expense risks might be viewed as being used to pay cost related to distribution of the Contracts. The Companies have concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Accounts, the Future Accounts, and Owners of the Contracts. The basis for this conclusion will be set forth in memoranda maintained by the Companies at their home office and made available to the Commission.

11. The Companies represent that the Account and Future Accounts will invest only in management investment companies which undertake, in the event any such company adopts a plan under Rule 12b–1 of the Act to finance distribution expenses, to have a board of directors, a majority of whom are not "interested persons" of the investment company (as defined under Section 2(a)(19) of the Act), formulate and approve any such plan.

12. Applicants submit that their request for exemptive relief would promote competitiveness in the variable annuity contract market by eliminating the need for redundant exemptive

applications, thereby reducing the administrative expenses of Applicants and maximizing the efficient use of their resources. Applicants further submit that the delay and expense involved in having repeatedly to seek exemptive relief would impair their ability effectively to take advantage of business opportunities as they arise. Further, if Applicants were required repeatedly to seek exemptive relief with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection.

Conclusion

For the reasons summarized above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–12387 Filed 5–16–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21953; File No. 812–9796]

SAFECO Life Insurance Company, et al.

May 13, 1996.

AGENCY: U.S. Securities and Exchange Commission ("SEC").

ACTION: Notice of application for approval under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: SAFECO Life Insurance Company ("SAFECO"), SAFECO Separate Account C ("Account C"), SAFECO Securities, Inc. ("SSI"), Princor Financial Services Corporation ("Princor"), and Principal Marketing Services, Inc. ("Principal Marketing").

RELEVANT 1940 ACT SECTION: Section 11(a) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 11(a) of the 1940 Act approving the terms of an offer to exchange interests in certain variable annuity contracts issued by Principal Mutual Life Insurance Company ("Principal Mutual Contracts") for variable annuity contracts issued by SAFECO ("SAFECO Contracts").

FILING DATE: The application was filed on October 3, 1995 and amended and restated on May 6, 1996.

HEARING OR NOTIFICATION OF HEARING: An order will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 7, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549; Applicants: SAFECO, Account C and SSI, 15411 N.E. 51st Street, Redmond, Washington 98052; Princor and Principal Marketing, The Principal Financial Group, Des Moines, Iowa 50392–0200.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Staff Attorney, or Wendy Friedlander, Deputy Chief (Office of Insurance Products), Division of Investment Management at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. SAFECO is a stock life insurance company organized under the laws of the state of Washington. SAFECO is licensed to sell individual and group life, accident and health insurance and annuities in the District of Columbia and all states except New York. SAFECO is a wholly-owned subsidiary of SAFECO Corporation, a holding company whose subsidiaries are engaged primarily in insurance and financial service businesses.

2. Account C is a separate account of SAFECO established pursuant to Washington State insurance law and registered with the SEC as a unit investment trust. Account C is divided into sub-accounts, each of which invests exclusively in one of the available portfolios of SAFECO Resource Series Trust or Scudder variable Life Investment Fund.

3. SSI is a wholly-owned subsidiary of SAFECO that is registered with the SEC as a broker-dealer and is a member of the National Association of Securities Dealers, Inc. ("NASD"). SSI is the principal underwriter for the SAFECO Contracts.

4. Princor, an indirect wholly-owned subsidiary of Principal Mutual Life Insurance Company, is registered with the SEC as a broker-dealer. Princor is a member of the NASD and is the principal underwriter of the Principal Mutual Contracts. In connection with the proposed exchange offer and pursuant to a selling agreement with SSI, Princor will act as a selling broker in the sale of the SAFECO Contracts.

5. Principal Marketing, a wholly-owned subsidiary of Principal Mutual, is a licensed general insurance agent in approximately 34 states. Principal Marketing is unaffiliated with SAFECO. Principal Marketing sells variable annuity and variable life insurance contracts of insurance companies unaffiliated with Principal Mutual, but is not registered as a broker-dealer with the SEC.[1]

The SAFECO Contracts

6. The SAFECO Contracts are individual, flexible purchase payment, deferred variable annuity contracts that provide for accumulation of contract values and payment of monthly annuity amounts on a fixed and variable basis. They are designed to be used in retirement plans qualifying under Section 403(b) of the Internal Revenue Code of 1986, as amended, ("Code") and individual retirement programs; such as individual retirement accounts pursuant to Section 408 of the code.

7. Under the SAFECO Contracts a contract holder may withdraw up to 10% of contract value per year without penalty. The SAFECO Contracts have a contingent deferred sales load ("CDSL") that declines over an eight year period from 8% to 0% of the amount withdrawn, in excess of the 10% free withdrawal amount. The CDSL deducted will never exceed 8.5% of the purchase payments made under that particular SAFECO Contract. A withdrawal charge of the lesser of $25 or 2% of the amount withdrawn will apply to each partial withdrawal after the first in any contract year.

8. The SAFECO Contracts have a mortality and expense risk charge of 1.25% of the average daily net asset value of Account C, an asset-based administration charge of 0.15% of the average daily net asset value of Account C, and an annual administration fee, currently $30, which is deducted only if contract value is less than $50,000. The SAFECO Contracts reserve the right to increase the $30 administration fee to $35.

9. A transfer charge of the lesser of $10 or 2% of the amount transferred applies to each transfer exceeding 12 in any contract year (not counting automatic transfers that take place over a period of six months or more).

10. Portfolio expenses for the portfolios available under the SAFECO Contracts range from approximately 0.65% to approximately 1.08% on an annual basis. State premium taxes are deducted at annuitization of from purchase payments, as required by state law.

The Principal Mutual Contract

11. The Principal Mutual Contracts are group variable annuity contracts issued by Separate Account B of Principal Mutual, a mutual life insurance company unaffiliated with SAFECO. Although the Principal Mutual Contracts have no fixed account investment option, they permit a participant to exchange the participation certificate for an associated fixed-dollar annuity contract issued by Principal Mutual

12. The Principal Mutual Contracts have a CDSL that declines over a ten year period from 7% to 0% of the amount withdrawn. The CDSL will never exceed 9% of purchase payments relating to the amounts withdrawn.

13. The Principal Mutual contracts have an administration charge of $25 per year for each participant plus an asset-based administrative charge which is 0.50% of the first $50,000 of contract value of any participant, divided by the total contract value of the participant. If purchase payments for a participant under a Principal Mutual Contract are made as part of a retirement plan sponsored by, or program of, a participant's employer and Principal Mutual receives all of that portion of the purchase payments under such a plan or program directed to annuity contracts for all employees participating in the plan or program, then the percentage of the asset-based administration charge will be computed by dividing 0.50% of the first $50,000 of contract value of a participant by the total contract value of all that employer's participants. In some cases, employers pay all or a portion of the administration charges for their participants.

14. A mortality and expense risk charge of up to 2% of the assets of Account B may be deducted under the Principal Mutual Contracts. Currently the charge is 1.4965% (1.0001% for rollover individual retirement annuities).

15. Although there is no transfer charge under the Principal Mutual Contracts, transfers are limited to two per twelve-month period, absent Principal Mutual's consent. State premium taxes are deducted at annuitization or from purchase payments, in accordance with applicable state law. The respective total expenses of the three investment companies in which Separate Account B assets are invested are .51%, .55%, and .60% on an annual basis.

The Proposed Exchange Offer

16. Applicants state that Principal Mutual supports this application because it no longer intends to offer the Principal Mutual contracts. SAFECO Contracts will be offered to holders of participation certificates issued under Principal Mutual Contracts in connection with a 403(b) Plan. Any exchange pursuant to the offer will be at relative net asset values, *i.e.*, immediately after the exchange, the cash value of a SAFECO Contract acquired will be identical to the participant's cash value under the Principal Mutual Contract immediately prior to the exchange. No administrative fee, sales charge or any other charge will be imposed at the time of the exchange.

17. Surrenders of, or partial withdrawals from, a SAFECO Contract acquired in exchange for a Principal Mutual Contract will be subject to the SAFECO Contract's CDSL. In calculating the amount of the CDSL actually imposed in such a situation, each purchase payment made under the Principal Mutual Contract exchanged will be treated as if it had been made under the SAFECO Contract at the same time and in the same amount as actually made under the Principal Mutual Contract. Aggregate CDSL deductions upon surrender of or partial withdrawals from a SAFECO Contract acquired by exchange will not exceed 8.5% of the sum of the purchase payments made for the Principal Mutual Contract exchanged and the SAFECO Contract acquired.

18. The proposed exchange offer will be conveyed to offerees by written materials and by telephone contact by registered representatives of Princor. Each offeree who expresses interest in the exchange offer will be mailed a prospectus for the SAFECO Contracts. Accompanying that prospectus will be a cover letter and sales literature that has been filed with the NASD. The sales literature and cover letter will highlight the differences between the Principal Mutual Contracts and the SAFECO Contracts and the terms of the exchange offer. Interested offerees will then be contacted again by telephone by registered representatives of Princor. Administrative details of effecting exchanges will be handled by Princor.

19. Pursuant to the terms of a selling agreement authorizing Principal Marketing to solicit sales of SAFECO Contracts in connection with the proposed exchanges, SSI will pay Principal Marketing 3% of amounts exchanged (the SSI Commissions). Principal Marketing will then pay 1% of the amounts exchanged to the registered representatives of Princor responsible for the exchanges.[2]

20. Applicants represent that the exchanges will not have adverse tax consequences for offerees who accept the exchange offer.

Applicants' Legal Analysis

1. Section 11(a) of the 1940 Act makes it unlawful for any registered open-end company, or principal underwriter for such a company, to make or cause to be made an offer to the holder of a security of such company, to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities, unless the terms of the offer have first been submitted to and approved by the SEC or are in accordance with SEC rules adopted under Section 11 of the 1940 Act.

2. Section 11(c) of the 1940 Act requires that any offer of exchange of the securities of a registered unit investment trust for the securities of any other investment company must be approved by the Commission or satisfy applicable rules adopted under Section 11 of the 1940 Act, regardless of the basis of the exchange.

3. Applicants state that because the legislative history of Section 11 indicates a concern with "switching,"[3] applications for orders under Section 11(a) have focused on sales loads or sales load differentials and administrative fees to be imposed as a result of a proposed exchange.

4. Rule 11a–2 permits certain types of exchange offers of one variable annuity

---

[1] Principal Marketing obtained a letter from the SEC's Division of Market Regulation agreeing not to seek enforcement action if Principal Marketing did not register as a broker-dealer based on certain representations including, *e.g.*, that all such sales will be made by insurance agents and brokers of Principal Mutual who are also registered representatives of Princor and that Princor will be responsible for monitoring and controlling the activities of those registered representatives with respect to their sales of variable annuity and variable life insurance contracts. Principal Marketing Services, Inc. (pub. avail. June 2, 1988).

[2] In connection with other sales of SAFECO Contracts not included in the proposed exchange offer, Applicants state that SSI may pay its registered representatives or other distributors up to 5.8% of purchase payments, excluding bonuses and overrides, in commissions.

[3] "Switching" is the practice of inducing security holders of one investment company to exchange their securities for those of a different investment company "solely for the purpose of exacting additional selling charges." H. Rep. 2639, 76th Cong., 3d Sess., 8 (1940).

contract for another. Exchanges are permitted by Rule 11a–2 provided the only variance from relative net asset value is an administrative fee disclosed in the offering account's registration statement, and a sales load or sales load differential calculated according to methods prescribed in the rule.

5. Applicants assert that the terms of the proposed exchange offer would satisfy all of the requirements of Rule 11a–2, except that SAFECO and Principal Mutual are not affiliated and Rule 11a–2 is limited by paragraph (b) to affiliated offerors. The proposed exchange would be made on the basis of relative net asset values, *i.e.*, immediately after the exchange the cash value of a SAFECO Contract acquired will be identical to the participant's cash value under the Principal Mutual Contract immediately prior to the exchange. No administrative fees or sales load would be deducted at the time of the exchange; and any CDSL subsequently deducted upon surrender of, or partial withdrawal from, a SAFECO Contract acquired in an exchange would be calculated as if: (i) the contract holder of that SAFECO Contract had been a contract holder from the date on which he became a participant under the Principal Mutual Contract exchanged; and (ii) each purchase payment for the Principal Mutual Contract exchanged had been made under the Principal Mutual Contract. The total CDSL deducted under a SAFECO Contract acquired by exchange would not exceed 8.5% of the sum of the purchase payments made for the Principal Mutual Contract exchanged and the SAFECO Contract acquired.

6. Applicants assert that the proposed exchange offer would be permitted under Rule 11a–2 if SAFECO and Principal Mutual were affiliated with one another. Applicants also assert that the staff of the SEC in a no-action letter granted to Alexander Hamilton Funds (pub. avail. July 20, 1994) has, in interpreting Section 11(a), stated that the lack of affiliation between two investment companies and their depositors creates fewer Section 11 concerns than the presence of affiliation between two investment companies and their depositors. Therefore, Applicants argue that the lack of affiliation between SAFECO and Principal Mutual does not create any additional concerns under Section 11 and the exchange offer would be permitted under Rule 11a–2 were it not for their lack of affiliation.

7. Applicants argue that while the CDSL for the SAFECO Contracts is nominally higher than that of the Principal Mutual Contracts for the first four contract years, the SAFECO Contracts permit up to 10% of contract value to be withdrawn without the imposition of a CDSL. Accordingly, the CDSL actually imposed upon a full surrender would be slightly greater for the SAFECO Contracts only during the first contract year, and even then it might be less for the SAFECO Contracts if investment performance were sufficient to affect the guaranteed maximum CDSLs of the two contracts. Moreover, the CDSL for the SAFECO Contracts endures for only eight years as opposed to ten years for the CDSL of the Principal Mutual Contracts.

8. Applicants also argue that the expenses of the underlying investment company portfolios to which Principal Mutual Contract assets may be allocated are somewhat lower than those to which SAFECO Contracts assets may be allocated, but the SAFECO Contracts offer seven investment alternatives as compared to only three for the Principal Mutual Contracts. Accordingly, individuals may differ in whether they prefer the lower expenses of the funds available under the Principal Mutual Contracts or the broader range of investment options of the funds available under the SAFECO Contracts.

9. Applicants state that permitting investors to evaluate the relative merits of the two contracts and to select the one that best suits their circumstances and preferences is consistent with the public interest and the protection of investors. Therefore, Applicants assert that the terms of the proposed offer of exchange do not offer any of the "switching" abuses that led to the adoption of Section 11 of the 1940 Act and that approving the exchange offer would be consistent with the precedent established by the SEC's adoption of Rule 11a–2 thereunder.

Conclusion

For the reasons set forth above, Applicants represent that approval of the exchange offer is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–12466 Filed 5–16–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37195; File No. SR–Amex–96–12]

Self-Regulatory Organizations; Order Granting Accelerated Approval To Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments Nos. 1 and 2 To Proposed Rule Change by the American Stock Exchange, Inc., Relating to Listing and Trading of Warrants Based on the Select Technology Stock Index

May 10, 1996.

I. Introduction

On April 9, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade warrants based on the Select Technology Stock Index ("Index").[3]

The proposed rule change appeared in the **Federal Register** on April 23, 1996.[4] No comments were received on the proposed rule change. The Amex subsequently filed Amendment No. 1 to the proposed rule change on May 2, 1996[5] and Amendment No. 2 on May 8, 1996.[6] The Amex has requested accelerated approval for the proposal. This order approves the Amex's proposal, as amended, on an accelerated basis and solicits comments from interested persons on Amendment Nos. 1 and 2.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] The Amex has clarified that the name of the index will be the Select Technology Stock Index. Telephone Conversation between Michael T. Bickford, Vice President, Capital Markets Group, Amex, and Matthew S. Morris, Attorney, Derivatives Regulation, Office of Self-Regulatory Oversight, Division of Market Regulation ("Division"), Commission, on May 3, 1996.

[4] See Securities Exchange Act Release No. 37122 (April 17, 1996), 61 FR 17931 (April 23, 1996).

[5] In Amendment No. 1, the Amex amended its rule filing to clarify that the Commission will be notified if: (1) the number of components in the index decreases to less than nine; (2) the three highest weighted components represent more than 60 percent of the weight of the Index; or (3) the trading volume of any of the components falls below 500,000 shares for each of the last six months. In Amendment No. 1, the Amex also changed the manner in which the value of the Index will be calculated from a price-weighted to an equal-dollar weighted methodology. In addition, the Amex replaced component securities C-Cube Microsystems, Inc., Computer Sciences Corporation, and General Motors Corporation (Class E) with Adaptec Inc., Hewlett Packard Co., and Sun Microsystems. See letter from Michael T. Bickford, Vice President, Capital Markets Group, Amex, to Michael Walinskas, Branch Chief, Derivatives Regulation, Office of Self-Regulatory Oversight, Division, Commission, dated May 2, 1996 ("Amendment No. 1").

[6] In Amendment No. 2, the Amex removed Applied Materials, Inc. as a component security of the Index. See letter from Michael T. Bickford, Vice President, Capital Markets Group, Amex, to Michael Walinskas, Branch Chief, Derivatives Regulation, Office of Self-Regulatory Oversight, Division, Commission, dated May 8, 1996 ("Amendment No. 2").

II. Description

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled index warrants based on the Select Technology Stock Index ("Index Warrants"). The Exchange has represented that the listing and trading of warrants based on the Index will comply in all respects with Amex Rules 1100 through 1110, Amex Rule 462, and Section 106 of the Amex Company Guide.

A. Design of the Index

The Exchange has also represented that the Index is narrow-based and comprised of the stocks of 23 technology companies.[7] The Index is equal-dollar weighted and is therefore designed to ensure that each of the component securities is represented in an approximate "equal" dollar amount. Accordingly, each of the 23 companies included in the Index will represent approximately 4.347 percent of the weight of the Index at the time of issuance of the warrant. The Index multipliers will be determined to yield the benchmark value of 100.00 on the date the warrant is priced for initial offering to the public.

The Exchange has stated that the total market capitalization of the Index was approximately $339.7 billion on April 29, 1996. The median capitalization of the companies in the Index on that date was $5.2 billion, and the average market capitalization of these companies was $14.8 billion. The individual market capitalization of the companies ranged from $730 million to $59 billion. In addition, during the six-month period from October 1995 through March 1996, average monthly trading volume in the Index stocks ranged from approximately 9.1 million shares to approximately 229.6 million shares.

It is currently contemplated that the Select Technology Stock Index will be used as the basis for only one index warrant, which has a term of two-years. If the Exchange wishes to list and trade other products based on the Select Technology Stock Index, including other index warrants, the Exchange will advise the Commission to determine whether an additional filing pursuant to Rule 19b–4 of the Act is necessary or appropriate.

B. Maintenance of the Index

The Exchange represents that it will monitor the component securities in the Index on a monthly basis. In this regard, the Exchange will notify the Commission if: (1) Less than 75 percent of the component securities are eligible for standardized options trading;[8] (2) the number of components in the Index decreases to less than nine; (3) the three highest weighted components represent more than 60 percent of the weight of the Index; or (4) the trading volume of any of the components falls below 500,000 shares for each of the last six months.

Shares of a component stock may be replaced (or supplemented) with other securities under certain limited circumstances, such as the conversion of a component stock into another class of security or the spin-off of a subsidiary. Accordingly, all replacement or supplemental Index component securities will be related to the original component stock. Moreover, if a change in the composition of the Index is contemplated for reasons other than those set forth above, the Exchange will notify the Commission to determine whether a rule filing pursuant to section 19(b) of the Act will be required.

If the stock remains in the Index, the multiplier of that security may be adjusted to maintain the component's relative weight in the Index immediately prior to the corporate action. In the event that a security in the Index is removed due to a corporate consolidation and the holders of such security receive cash, the cash value of such security will be included in the Index and will accrue interest at LIBOR to term.

C. Troding of the Index Warrants

The Index Warrant will be a direct obligation of the issuer, subject to cash-settlement in U.S. dollars and either exercisable throughout its life (*i.e.*, American-style) or exercisable only immediately prior to its expiration date (*i.e.*, European-style). If the Index Warrant is structured as a "put," upon exercise (or at the warrant expiration date if the warrant has an European-style exercise), the holder will receive payment in U.S. dollars to the extent that the value of the Index has declined below a pre-stated cash settlement value. Conversely, if the Index Warrant is structured as a "call," upon exercise (or at the warrant expiration date if the warrant has an European-style exercise), the holder will receive payment in U.S. dollars to the extent that the value of the Index has increased above the pre-stated cash settlement value. If the Index Warrant is "out-of-the-money" at the time of expiration it will expire worthless.

D. Calculation and Dissemination of the Value of the Index

The Index value will be continuously calculated and will be publicly disseminated every fifteen seconds over the Consolidated Tape Association's Network B.

In addition, the multiplier of each component stock remains fixed except in the event of certain types of corporate actions such as the payment of a dividend other than an ordinary cash dividend, stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event. The multiplier of each component stock may also be adjusted, if necessary, in the event of a merger, consolidation, dissolution, or liquidation of an issuer, or in certain other events such as the distribution of property by an issuer to shareholders.

E. Listing Standards and Customer Safeguards

As stated above, the listing and trading of the proposed warrants on the Select Technology Stock Index will comply in all respects with Amex Rules 1100 through 1110, Amex Rule 462, and Section 106 of the Amex Company Guide. These provisions will govern all aspects of the listing and trading of the Index Warrants, including, issuer eligibility,[9] position and exercise limits,[10] reportable positions,[11] automatic exercise,[12] settlement value,[13] margin,[14] and trading halts and suspensions.[15]

Additionally, these warrants will be sold only to accounts approved for the

[7] The component securities of the Index are as follows: Adc Telecommunications, Inc.; America Online, Inc.; Adaptec Inc.; Cisco Systems, Inc.; Computer Associates International, Inc.; Dell Computer Corporation; Digital Equipment Corporation; First Data Corporation; Gateway 2000, Inc.; Hewlett-Packard Co.; Informix Corporation; Intel Corporation; International Business Machines Corp.; Lsi Logic Corporation; Microsoft Corporation; Oracle Systems Corporation; Qualcomm, Inc.; Sun Microsystems; Tencor Instruments; Texas Instruments, Inc.; Vishay Intertechnology, Inc.; Xerox Corporation; and Xilinx Inc.

[8] See Amex Rule 915. Currently, 100 percent of the components are eligible for standardized options trading.

[9] See Section 106 of the Amex Company Guide.

[10] See Amex Rules 1107 and 1108.

[11] See Amex Rule 1110.

[12] See Section 106(f) of the Amex Company Guide.

[13] See Section 106(e) of the Amex Company Guide.

[14] See Amex Rule 462.

[15] See Amex Rule 1109.

trading of standardized options[16] and, the Exchange's options suitability standards will apply to recommendations regarding Index Warrants.[17] The Exchange's rules regarding discretionary orders will also apply to transactions in Index Warrants.[18] Finally, prior to the commencement of trading, the Amex will distribute a circular to its membership calling attention to specific risks associated with warrants on the Index.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[19] Specifically, the Commission finds that the trading of warrants based on the Select Technology Stock Index will serve to protect the public interest and will help to remove impediments to a free and open market by providing investors holding positions in some or all of the securities underlying the Index with a means to hedge exposure to the market risk associated with their portfolios.[20]

Nevertheless, the trading of warrants on the Index raises several concerns relating to the design and maintenance of the Index, customer protection, surveillance, and market impact. The Commission believes, however, for the reasons discussed below, that the Amex has adequately addressed these concerns.[21]

A. Design and Maintenance of the Index

The Commission finds that it is appropriate and consistent with the Act for the Amex to designate the Index as narrow-based for warrant trading as the Index is comprised of a limited number of technology stocks.[22] The Commission also believes that the liquid markets, large capitalizations, and relative weightings of the Index's component stocks significantly minimizes the potential for manipulation of the Index. First, the stocks that comprise the Index are actively-traded, of which nine trade on the New York Stock Exchange, Inc. ("NYSE") and fifteen trade through the facilities of the National Association of Securities Dealers ("NASD") Automated Quotation system ("Nasdaq") and are reported national market system securities ("Nasdaq/NMS"). During the six-month period from October 1995 through March 1996, average monthly trading volume in the Index stocks ranged from approximately 9.1 million shares to approximately 229.6 million shares. Second, the market capitalization of the stocks comprising the Index are very large. Specifically, the total capitalization of the Index, as of April 29, 1996, was approximately $339.7 billion, with the market capitalization of the individual stocks in the Index ranging from approximately $730 million to approximately $59 billion. In addition, the median capitalization of the companies in the Index on that date was $5.2 billion, and the average market capitalization of these companies was $14.8 billion. Third, no one particular stock dominates the Index. Specifically, no single stock accounts for more than approximately 4.347 percent of the Index's value, and the percentage weighting of the three largest issues in the Index account for approximately 13.041 percent of the Index's value.

The Commission notes that with respect to the maintenance of the Index, shares of a component stock will only be replaced (or supplemented) under certain limited circumstances, such as the conversion of a component stock into another class of security, or the spin-off of a subsidiary. Accordingly, all replacement or supplemental Index component securities will be related to the original component stock.[23] In addition, if a change in the composition of the Index is contemplated for reasons other than those set forth above, the Exchange will notify the Commission to determine whether a rule filing pursuant to Section 19(b) of the Act will be required.[24]

The Amex has also implemented several safeguards in connection with the listing and trading of the Index Warrants that will serve to ensure that the Index maintains its intended character as a highly-capitalized and actively-traded index. In this regard, the Exchange will notify the Commission if: (1) Less than 75 percent of the component securities in the Index are eligible for standardized options trading; (2) the number of components in the Index decreases to less than nine; (3) the three highest weighted components represent more than 60 percent of the weight of the Index; or (4) the trading volume of any of the components in the Index falls below 500,000 shares for each of the last six months.[25]

B. Customer Protection

The Commission notes that the rules and procedures of the Exchange adequately address the special concerns attendant to the trading of index warrants. Specifically, the applicable suitability, account approval, disclosure, and compliance requirements of the applicable Amex provisions satisfactorily address potential public customer concerns. Moreover, the Amex plans to distribute a circular to its membership calling attention to specific risks associated with warrants on the Index. Finally, pursuant to the Exchange's listing guidelines, only companies capable of meeting the Amex's index warrant issuer standards will be eligible to issue Index Warrants.[26]

[16] See Amex Rule 1101.

[17] See Amex Rule 1102.

[18] See Amex Rule 1103.

[19] See 15 U.S.C. § 78f(b) (1988).

[20] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a warrant that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[21] The Commission also notes that the Amex is presently only seeking the authority to list and trade a single issuance of warrants on the Index with a term of two-years and that if the Exchange proposes to list and trade other products based on the Index, including other index warrants, the Exchange will advise the Commission in order to determine whether a rule filing pursuant to Section 19(b) of the Act will be necessary or appropriate. This limitation is important since the Index's maintenance criteria might present additional issues if the Index was proposed to be used for Index options trading.

[22] The Commission notes that if the Amex determines to maintain the Index with some number of component securities other than 23, the Exchange should notify the Commission. Telephone Conversation between Michael T. Bickford, Vice President, Capital Markets Group, Amex, and Matthew S. Morris, Attorney, Derivatives Regulation, Office of Self-Regulatory Oversight, Division, Commission, on May 9, 1996.

[23] In addition, as noted above, in the event that a security in the Index is removed due to a corporate consolidation and the holders of such security receive cash, the cash value of such security will be included in the Index and will accrue interest at LIBOR to term.

[24] Telephone Conversation between Michael T. Bickford, Vice President, Capital Markets Group, Amex, and Matthew S. Morris, Attorney, Derivatives Regulation, Office of Self-Regulatory Oversight, Division, Commission, on May 9, 1996.

[25] In the event the Exchange is unable to maintain these requirements, the Exchange will consult with the Commission regarding appropriate regulatory responses.

[26] See Section 106 of the Amex Company Guide which requires, among other things, that the issuer have tangible net worth in excess of $250 million and otherwise substantially exceed size and earnings requirements in Section 101(A) of the Company Guide or meet the alternative guideline in paragraph (a).

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a security index derivative product and the exchange(s) trading the securities underlying the derivative product is an important measure for the surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of the information necessary to detect and deter potential manipulations and other trading abuses, thereby making the security index product less readily susceptible to manipulation. In this regard, the Amex, and the NYSE and the NASD (where the component securities of the Index are currently listed) are all members of the Intermarket Surveillance Group ("ISG"), which provides for the exchange of all necessary surveillance information.[27]

D. Market Impact

The Commission believes that the listing and trading of warrants on the Index will not adversely impact the underlying securities. First, the Amex's existing index warrants surveillance procedures will apply to warrants on the Index. Second, the Index is comprised of highly-capitalized securities that are actively-traded. Lastly, the Amex has established reasonable position and exercise limits for narrow-based stock index warrants,[28] which will serve to minimize potential manipulation and other stock market concerns.

The Commission finds good cause to approve the proposed rule filing, including Amendment Nos. 1 and 2, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that to date no comments were received on the proposal. The Commission also notes that accelerated approval of this rule filing is based, in part, on the following facts: (i) The Amex is presently seeking authority to list and trade only a single issuance of warrants on the Index which have a term of two-years; (ii) the Index's component securities are highly-capitalized and actively-traded; and (iii) the Amex has represented that the warrants on the Index will comply in all respects with the Exchange rules governing the listing and trading of narrow-based warrants, including Amex Rules 1100 through 1110, Amex Rule 462, and Section 106 of the Amex Company Guide. Moreover, Amendment No. 1 to the Amex's proposal describes details of certain Index maintenance procedures and the Index calculation methodology. In this regard, the Commission believes that the Exchange's monthly review of the Index's component securities for options eligibility, percentage weight, and trading volume, as described above, will help to ensure that the Index maintains its intended market character as well as remains an appropriate trading vehicle for public customers. In addition, the equal-dollar methodology is a well-established index calculation method and therefore does not present any new or novel regulatory issues. Lastly, although Amendment Nos. 1 and 2 change the Index's component securities, these modifications are minor and consistent with the Index's general objective. In this context, the Index continues to be comprised of actively-traded and highly-capitalized securities. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve the proposed rule change, including Amendment Nos. 1 and 2, on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–96–12 and should be submitted by June 7, 1996.

IV. Conclusion

For the foregoing reasons, the Commission finds that the Amex's proposal to list and trade warrants based on the Select Technology Stock Index is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–Amex–96–12), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–12383 Filed 5–16–96; 8:45 am]

BILLING CODE 8010–01–M

[27] The ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. The members of the ISG are: the Amex; the Boston Stock Exchange, Inc.; the Chicago Board Options Exchange, Inc.; the Chicago Stock Exchange, Inc.; the NASD; the NYSE; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Due to the potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock, as well as for the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (e.g., the Chicago Mercantile Exchange and the Chicago Board of Trade) have also joined the ISG as affiliate members.

[28] The Commission notes that position limits for narrow-based stock index warrants are set at a level roughly equivalent to 75 percent of narrow-based index options. As a result, position limits for warrants based on the Index will be nine million. *See* Securities Exchange Act Release No. 37007 (March 21, 1996), 61 FR 14165 (March 29, 1996) (order approving establishment of uniform listing and trading guidelines for narrow-based stock index warrants) (SR–Amex–95–39).

[Release No. 34–37196; File No. SR–CBOE–96–18]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to a Hedge Exemption for Industry (Narrow-Based) Index Options

May 10, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 18, 1996, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization.[2] The

[29] 15 U.S.C. § 78s (b)(2) (1988).

[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] On April 15, 1996, the Exchange amended its proposal to indicate that, in connection with the narrow-based index hedge exemption, the CBOE's Department of Market Regulation will monitor daily to determine that each exempted option contract is hedged by the equivalent dollar amount of component securities and for unusual option and stock activity. In addition, the CBOE notes that the hedge exemption account must promptly notify the Exchange of material changes in the portfolio. *See*

Continued

Commission is approving this proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rule 24.4A, "Position Limits for Industry Index Options," to establish a hedge exemption from industry (narrow-based) index option position and exercise limits.[3] The Commission previously has approved similar proposals by the Philadelphia Stock Exchange, Inc. ("PHLX") and the Pacific Stock Exchange, Inc. ("PSE").[4]

The text of the proposed rule change is available at the office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed rule Change

The CBOE proposes to adopt new Interpretation and Policies .01 and .02 to CBOE Rule 24.4A to establish an industry hedge exemption based on the industry index hedge exemptions filed by the PHLX and the PSE, which were approved recently by the Commission.[5] Interpretation and Policy .02 establishes certain compliance requirements for industry index hedge exemption accounts.

Currently, the Exchange has an equity option hedge exemption and a broad-based option index hedge exemption, but no hedge exemption for positions in CBOE industry index options. The CBOE states that its proposal will adopt the same formula used by the PHLX and the PSE for their industry index hedge exemptions, with minor modifications. The proposed narrow-based hedge exemption will be available to both broker-dealers and customers.

In order to qualify for the proposed hedge exemption, a position must be "hedged" by share positions in at least 75% of the number of component stocks of the index, or securities convertible into such stock. The proposed exemption is in addition to the standard limit and other exemptions and may not exceed twice the standard limit established under CBOE Rule 24.4A. The underlying value of the option position may not exceed the value of the underlying portfolio. The value of the underlying portfolio is determined as follows: (1) The total market value of the net stock position; and (2) for positions in excess of the standard limit, subtract the underlying market value[6] of (a) any offsetting calls and puts in the respective index option class; (b) any offsetting positions in stock index futures; and (c) any economically equivalent position (assuming no other hedges for these contracts exist).

Further, the proposal requires that both the options and stock positions be initiated and liquidated in an orderly manner. Specifically, a reduction of the options position must occur at or before the corresponding reduction in the stock portfolio position.

The CBOE notes that its proposal makes minor modifications to the PHLX's narrow-based index hedge exemption requirements to conform the CBOE's language to a pending CBOE proposal to amend broad-based index options position limits and exemptions.[7] According to the CBOE, the Exchange's modifications do not affect the hedge exemption definition or the calculation of the value of the portfolio, but will impose uniform CBOE Department of market Regulation monitoring requirements for both the proposed narrow-based and broad-based index hedge exemptions.

Under the proposal, exercise limits will continue to correstpond to position limits, so that investors may exercise the number of contracts set forth as the position limit, as well as those contracts exempted by this proposal, during five consecutive business days.

As of March 1, 1996, the CBOE trades the following industry index options, with limits as shown:

(1) S&P Banking Index—12,000 contracts;
(2) S&P Chemical Index—9,000 contracts;
(3) S&P Health Care Index—9,000 contracts;
(4) S&P Insurance Index—9,000 contracts;
(5) S&P Retail Index—9,000 contracts;
(6) S&P Transportation Index—9,000 contracts;
(7) CBOE Software Index—9,000 contracts;
(8) CBOE Environmental Index—9,000 contracts;
(9) CBOE Gaming Index—9,000 contracts;
(10) CBOE Global Telecommunications Index—12,000 contracts;
(11) CBOE Israel Index—9,000 contracts;
(12) CBOE Mexico Index—12,000 contracts;
(13) CBOE REIT Index—12,000 contracts;
(14) CBOE Telecommunications Index—12,000 contracts;
(15) CBOE Biotech Index—9,000 contracts;
(16) CBOE Latin 15 Index—12,000 contracts; and
(17) CBOE High Technology Index—12,000 contracts.

The CBOE will require that documentation regarding the qualified stock portfolio be filed with the CBOE's Department of Market Regulation on behalf of a hedge exemption account seeking an exemption. Proposed Interpretation and Policy .02 contains compliance requirements for industry hedge exemption accounts which are identical to the compliance requirements proposed in a pending CBOE proposal for broad-based index hedge exemption accounts.[8] The Exchange states that its Department of Market Regulation will continue to monitor trading activity in industry index options to detect potential abuses, and review to ensure that closing positions subject to an exemption is

Letter from Margaret G. Abrams, Senior Attorney, CBOE, to Yvonne Fraticelli, Attorney, Commission, dated April 10, 1996 ("Amendment No. 1").

[3] Position limits impose a ceiling on the number of option contracts which an investor or group of investors acting in concert may hold or write in each class of options on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls). Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

[4] *See* Securities Exchange Act Release Nos. 36858 (February 16, 1996), 61 FR 7295 (February 27, 1996) (order approving File No. SR–PHLX–95–45) ("PHLX Approval Order"); and 36981 (March 15, 1996), 61 FR 11929 (March 22, 1996) (order approving File No. SR–PSE–95–28) ("PSE Approval Order").

[5] *See* PHLX Approval Order and PSE Approval Order, *supra* note 4.

[6] The CBOE uses the term "underlying market value," instead of the equivalent term "notional value," which the PHLX uses in its proposal, for consistency with a pending CBOE proposal to amend the CBOE's broad-based index hedge exemption. *See* Securities Exchange Act Release No. 36738 (January 19, 1996), 61 FR 2324 (January 25, 1996) (notice of filing of File No. SR–CBOE–96–01) ("Broad-Based Index Option Proposal").

[7] *See* Broad-Based Index Option Proposal, *supra* note 6.

[8] *See* Broad-Based Index Option Proposal, *supra* note 6.

conducted in a fair and orderly manner. In addition, the CBOE's Department of Market Regulation will monitor daily to determine that each exempted option contract is hedged by the equivalent dollar amount of component securities and for unusual option and stock activity.[9]

The CBOE notes that the proposed industry index hedge exemption contains build-in safeguards. Specifically, the "basket" of stocks constituting the hedge must be comprised of at least 75% of the stocks underlying the index. The hedge exemption account must promptly notify the Exchange of any material changes in the value of the portfolio.[10] Further, both the options and stock positions must be initiated and liquidated in an orderly manner, so that a reduction of the options position must occur at or before the corresponding reduction in the stock portfolio position. Finally, the aggregate underlying value of the industry index option position cannot exceed the market value of the underlying hedging portfolio, to ensure that stock transactions are not used to manipulate the market in a manner benefiting the option position.

The Exchange believes that the proposal is consistent with Section 6 of this Act, in general, and, in particular, with Section 6(b)(5), in the narrow-based hedge exemption should increase the depth and liquidity of narrow-based index options markets and allow more effective hedging by investors without increasing the potential for market disruption, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system in a manner consistent with the protection of investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The CBOE has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act. The CBOE believes that approval on an accelerated basis would promote fair competition among exchanges and eliminate the risk, in a multiple-exchange trading environment, of investor confusion respecting hedge exemptions for industry index options. As noted above, the Commission has previously approved similar proposals submitted by the PHLX and the PSE.[11] The CBOE believes that the proposal presents no significant new issues.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[12] The Commission concludes, as it has found previously,[13] that providing for increased position and exercise limits for narrow-based index options in circumstances where those excess positions are fully hedged with offsetting stock positions will provide greater depth and liquidity to the market and will allow investors to hedge their stock portfolios more effectively, without significantly increasing concerns regarding inter-market manipulations or disruptions of either the options market or the underlying stock market.

Specifically, the CBOE proposal contains safeguards that should make it difficult to use the exempted positions to disrupt or manipulate the market. First, requests for the exemption must be approved by the CBOE, which should ensure that the hedges are appropriate for the position being taken and are in compliance with CBOE rules. Second, the stock portfolio must consist of at least 75% of the number of component securities underlying the index, and must correspond in value to the value of the options position hedged, so that the increased positions are less likely to be used in a leveraged manner in any manipulative scheme. As noted above, the value of the hedging portfolio is equal to (1) the total market value of the net stock position; less (2) the value of (a) any offsetting calls and puts in the respective index option class; (b) any offsetting positions in stock index futures; and (c) any economically equivalent positions (assuming no other hedges for these contracts exist).[14] Third, both the options and the stock positions must be initiated and liquidated in an orderly manner. Moreover, a reduction of the options position must occur at or before the corresponding reduction in the stock portfolio position, thereby helping to ensure that the stock transactions are not used to impact the market so as to benefit the options positions. Fourth, the CBOE must be notified of any material change in the portfolio.[15] Fifth, the maximum hedge exemption position is two times the existing limit. The "two times the limit" is not automatic and the CBOE has the authority to approve a hedge limit for less than that amount.

The Commission notes that the CBOE's surveillance procedures are designed to detect as well as deter manipulation and market disruptions. In particular, the CBOE's Department of Market Regulation will monitor the options position of a person utilizing the hedge exemption on a daily basis to determine that each option contract is hedged by the equivalent dollar amount of component securities.[16] In addition, the CBOE's Department of Market Regulation will continue to monitor trading activity in industry index options to detect potential abuses, and will review such activity and ensure that closing positions subject to an exemption is conducted in a fair and orderly manner. Violation of any of the provisions of CBOE Rule 24.4A and the interpretations and policies thereunder, absent reasonable justification or excuse, will result in the withdrawal of the hedge exemption and subsequent denial of an application for a hedge exemption thereunder.

The Commission believes that it is reasonable for the CBOE to allow broker-dealers, as well as public customers, to utilize the proposed hedge exemption.[17] The Commission believes that extending the narrow-based index option hedge exemption to broker-

[2] *See* Amendment No. 1, *supra* note 2.

[9] *Id.*

[10] reported promptly to the CBOE. In such a case, the value of the stock portfolio would be reduced accordingly and therefore the hedged options position must also be reduced. As noted above, a reduction of the options position must occur at or before the corresponding reduction in the stock portfolio position.

[11] *See* PHLX Approval Order and PSE Approval Order, *supra* note 4.

[12] 15 U.S.C. 78f(b) (1988 & Supp. V 1993).

[13] *See* PHLX Approval Order and PSE Approval Order, *supra* note 4.

[14] If a hedge position ceases to exist, this would be viewed as a material change which must be

[15] *See* Amendment No. 1, *supra* note 2.

[16] *See* Amendment No. 1, *supra* note 2. Market participants granted a hedge exemption must promptly notify the Exchange of material changes in the portfolio.

[17] The Commission notes that broker-dealers and public customers may utilize the CBOE's equity hedge exemption. *See* CBOE Rule 4.11, Interpretation and Policy .04, and Securities Exchange Act Release No. 35738 (May 18, 1995), 60 FR 27573 (May 24, 1995) (order approving File Nos. SR–Amex–95–13, SR–CBOE–95–13, SR–NYSE–95–04, SR–PSE–95–05, and SR–PHLX–95–10) (permanently approving hedge exemption pilot programs).

dealers may help to increase the depth and liquidity of the market for industry index options and may help to ensure that public customers receive the full benefit of the exemption. Moreover, the CBOE's monitoring procedures, as described above, should be able to detect any abuses and ensure that the options position, whether broker-dealer or customer, is properly hedged.

The Commission finds good cause for approving the proposed rule change and Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. As noted above, the Commission previously has approved similar proposals submitted by the PHLX and the PSE.[18] The PHLX's and PSE's proposals were published for the full notice and comment period and the Commission received no comments on their proposals. The CBOE's proposal raises no new regulatory issues. Amendment No. 1 strengthens the CBOE's proposal by indicating that the CBOE's Department of Market Regulation will monitor hedge exemption accounts daily to determine that each exempted option contract is hedged by the equivalent dollar amount of component securities. Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change and Amendment No. 1 to the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days after the date of this publication].

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–CBOE–96–18), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–12382 Filed 5–16–96; 8:45 am]

BILLING CODE 8010–01–M

[18] *See* PHLX Approval Order and PSE Approval Order, *supra* note 4.

[19] 15 U.S.C. 78f(b)(2) (1988).

[20] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–37189; International Series Release No. 977; File No. SR–CBOE–96–09]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendments Thereto Relating to the Listing and Trading of Options on the Mexican Indice de Precios y Cotizaciones

May 9, 1996.

On February 27, 1996, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade options on the Indice de Precios y Cotizaciones ("IPC" or "Index"), a cash-settled, broad-based index designed to represent the overall Mexican equity market. The IPC was created, and is maintained, by the Mexican Stock Exchange ("Bolsa") and is widely recognized as the benchmark equity index for Mexico. Notice of the proposed rule change appeared in the **Federal Register** on March 12, 1996.[3] No comments were received on the proposal.

On March 29, 1996, CBOE submitted Amendment No. 1 ("Amendment No. 1") to the proposal to address issues related to Index maintenance criteria.[4] On April 11, 1996, CBOE submitted Amendment No. 2 ("Amendment No. 2") to the proposal to clarify certain Index maintenance criteria and to address issues relating to the reduction and aggregation of position limits.[5] On May 7, 1996, CBOE submitted Amendment No. 3 ("Amendment No. 3," together with Amendments No. 1 and 2, "Amendments") to the proposal to clarify CBOE's procedures for reducing position limits if the Index is subsequently reclassified as narrow-based.[6] This order approves the proposal, as amended, and solicits comments on the Amendments.

I. Description of the Proposal

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style[7] stock index options on the IPC, a broad-based, capitalization-weighted index comprised of 35 of the largest and most liquid stocks (issued by 28 issuers) on the Bolsa.[8] The Exchange believes that options on the Index will provide investors with a low-cost means of participating in the performance of the Mexican economy and hedging against the risk of investing in that economy.

Index Design

The Index was designed by and is maintained by the Bolsa. These stocks selected for inclusion in the IPC were chosen based upon a combination of criteria relating to their trading volume and market capitalization. The Bolsa reviews a component's compliance with these criteria every two months. There are three criteria which could keep a potential replacement component stock from being added to the Index. First, suspended issues or those which have a material possibility of being suspended will not be included in the Index. Second, if the combined weight of two or more series of an index represented company were to exceed 15% of the weight of the Index, then only the series with the highest trading volume will be allowed to remain in the Index. Third, if a company is a subsidiary of another company that is in the Index and it represents more than 75% of the assets of the holding company it will not be included.

The IPC is composed of stocks from eighteen (18) industry groups including: Telecommunications, Diversified Holding Companies, Banks, Broadcasting, Building Materials, Mining, and Financial Services. The

[1] 15 U.S.C. 78s(b)(1) (1988 & Supp. V 1993).

[2] 17 CFR § 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 36902 (March 5, 1996), 61 FR 10043.

[4] *See* Letter from Joseph Levin, CBOE, to Howard Kramer, SEC, dated March 29, 1996.

[5] *See* Letter from Joseph Levin, CBOE, to Howard Kramer, SEC, dated April 8, 1996.

[6] *See* Letter from Eileen Smith, CBOE, to Stephen Youhn, SEC, dated May 6, 1996.

[7] A European-style option may only be exercised during a specified period before expiration.

[8] The Commission notes that Hylsamex SA–BCP is 82% owned by Alfa SA–A and that Tolmex SA–B2 is 99% owned by Cemex Sa.

median capitalization of the firms in the Index on February 2, 1996, was 6.581 billion Pesos (US$889.38 million at the exchange rate of 7.4 pesos per dollar prevailing on February 2, 1996). The average market capitalization of these firms was US$1.553 billion on the same date and using the same rate for exchange. The individual market capitalization of these firms ranged from US$11.956 billion to US$36.29 million on February 2, 1996. The largest stock accounted for 21.99% of the Index, while the smallest accounted for 0.07%. The top five stocks in the Index by weight accounted for 49.71% of the Index.

Calculation

The Index is capitalization weighted and its value is determined by multiplying the price of each stock times the number of shares outstanding, adding those sums and then dividing by a divisor which gave the Index a value of 0.78 on its base date of October 30, 1978. The Index can also be characterized as a "total return" index since it is adjusted for cash distributions. The Index had a closing value of 2862.59 on February 28, 1996.[9] This divisor is adjusted for pertinent changes as described below in the section titled "Maintenance."

Maintenance

The Index will be maintained by the Bolsa. To maintain Index continuity, the divisor will be adjusted to reflect certain events relating to the component stocks. These events include, but are not limited to, ordinary cash dividends, changes in the number of shares outstanding, spin-offs, certain rights issuances, and mergers and acquisitions. When components are substituted, the Bolsa makes every effort to notify the public in advance of the upcoming changes. If it becomes necessary to replace a component between reviews, the Bolsa maintains a list of stocks for substitution. The balsa will publicly commuicate these changes (*e.g.*, news release) with as much notice as possible. The main selection criteria utilized by the Bolsa are trading volume and market capitalization. Although the IPC is presently comprised of 35 stocks, there have been as many as 50 components and the Bolsa is not precluded from increasing (or decreasing) this number.

Because the Index is maintained by the Bolsa, CBOE does not have the ability to ensure that the Bolsa maintains the Index in such a manner that guarantees its continued classification as a broad-based index. Accordingly, CBOE has imposed specific maintenance criteria which, if breached, will result in the Index being re-classified as a narrow-based stock index for index options trading purposes. Upon the occurrence of one of the events listed below, CBOE will immediately re-classify the index as narrow-based: (a) the total market value of the Index falls to less than US$25 billion for the majority of business days in the previous six-month period; [10] (b) the largest component stock accounts for more than 35% of the weight of the Index for the majority of business days in the previous six-month period; (c) the top three component stocks account for more than 60% of the weight of the Index for the majority of days in the previous six-month period; or (d) the number of Index components falls to less than 20.[11]

If one of the above events occurs and the Index is reclassified as narrow-based, CBOE will impose margin requirements consistent with those currently applicable to other narrow-based index options. Accordingly, CBOE will raise the initial margin level requirements for positions carried short in a customer's account from 15% to 20%. CBOE will also reduce the position limits from 50,000 contracts on the same side of the market to a level consistent with narrow-based index options. Specifically, CBOE will require that positions in IPC Index options be subject to the highest position limit level then applicable to narrow-based index options, as governed by CBOE Rule 24.4A.[12] CBOE will reduce position limits in the same manner as is currently used for reducing position limits for existing index options. Thus, all series of IPC options [13] will be scheduled for a position limit decrease effective the Monday following the expiration of the farthest out then trading, non-LEAP option series. If, however, prior to the scheduled decrease or at the time of the subsequent six-month review, the index qualifies again for broadbased treatment, the position limit will not be reduced.[14]

Index Option Trading

The Exchange proposes to base trading in options on the Index on one-tenth of the value of the Index as expressed in U.S. dollars; these are known as full-value options. The Exchange also may provide for the listing of full-value LEAPS and reduced-value LEAPS on the Index. For reduced-value LEAPS, the underlying value would be computed at one-tenth of the value of the full-value options. The current and closing index value of any such reduced-value LEAP will, after such initial computation, be rounded to the nearest one-hundredth. The Exchange will list expiration months for Index options and Index LEAPS in accordance with CBOE Rule 24.9.

The trading hours on the Bolsa are the same as those on the New York Stock Exchange—8:30 a.m. to 3:00 p.m. Chicago time. The trading hours for options on the Index will be from 8:30 a.m. to 3:15 p.m. Chicago time.[15] The Bolsa calculates the value of the IPC based upon the prices of the component securities as traded or quoted on the Bolsa and disseminates this value to vendors of financial information. CBOE or its designee will disseminate the reduced IPC value (*i.e.*, 1/10th of IPC value) through the Options Price Reporting Authority ("OPRA") every 15 seconds throughout the trading day.

Exercise and Settlement

IPC options will be p.m.-settled and expire on the Saturday following the third Friday of the expiration month. Thus, trading in the expiring contract month will normally cease on Friday at 3:15 p.m. (Chicago time) unless a holiday occurs. The exercise settlement value of Index options at expiration will be based upon the closing prices of component stocks on the regular Friday trading sessions in Mexico, ordinarily at 3:00 p.m. Mexico time. If a stock does not trade during this period or if it fails to open for trading, the last available price of the stock will be used in the calculation of the Index. When expirations are moved in accordance with Exchange holidays, such as when the CBOE is closed on the Friday before expiration, the last trading day for expiring options will be Thursday and the exercise settlement value of Index options at expiration will be determined at the close of the regular Thursday trading sessions in Mexico even if the

[9] This divisor is adjusted for pertinent changes as described below in the section titled "Maintenance."

[10] *See* Amendment No. 2. $25 billion represents the approximate U.S. dollar equivalent of 200 billion Mexican pesos, which CBOE originally proposed.

[11] *See* Amendment No. 1. In this regard, each of an issuer's securities which are included in the index would be counted as separate components. For example, Cemex SA–A and SA–B would be counted as two components, despite being issued by the same company.

[12] *See* Amendment No. 2.

[13] Such series include all long-term index option series ("LEAPS®") and reduced-value LEAPS, as discussed below, on the Index.

[14] *See* Amendment No. 3.

[15] IPC options will continue to trade for 15 minutes after the Bolsa closes. This is consistent with trading times for other broad-based index options and also gives market participants the opportunity to adjust their positions after the Bolsa closes.

[2] As noted below, CBOE intends to trade index options based on 1/10th of the full value of the IPC.

Mexican markets are open on Friday. If the Mexican markets are closed on the Friday before expiration and CBOE is open for trading, the last trading day for expiring options will be Thursday.

Surveillance Agreements

The Exchange expects to apply its index option surveillance procedures of IPC options. In addition, the Exchange is aware of a Memorandum of Understanding ("MOU") between the Commission and the Comision Nacional Bancaria y de Valores ("CNBV"), which has oversight responsibility for the Mexican securities and derivatives markets. This MOU will enable the Commission to obtain information concerning the trading of the component stocks of the IPC. The Exchange also will make every effort to enter into an effective surveillance agreement with the Bolsa.

Position Limits

The Exchange is proposing to establish position limits for the Index options equal to 50,000 contracts on the same side of the market, with no more than 30,000 contracts in the series with the nearest expiration date. CBOE represents that these limits are roughly equivalent, in dollar terms, to the limits applicable to options on other indices. Ten reduced-value options will equal one full-value contract for such purposes. Furthermore, the hedge exemption rule applicable to broad-based index options, commentary .01 to CBOE Rule 24.4, will apply to IPC Index options.[16] As discussed above, if the Index is re-classified as narrow-based, CBOE will reduce the position limits to the highest position limit tier then in effect for narrow-based index options.[17]

Exchange Rules Applicable

Except as modified herein, the Rules in Chapter XXIV will be applicable to IPC options. CBOE has the necessary systems capacity to support new series that would result from the introduction of IPC options and has also been informed that OPRA has the capacity to support such new series.[18]

II. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[19] The commission finds that the trading of options based on the IPC, including long-term options based on either the full or a reduced value of the Index, will serve to protect investors, promote the public interest, and help to remove impediments to a free and open securities market by providing investors with a means to hedge exposure to market risk associated with the Mexican equity market and provide a risk management instrument for positions in the Mexican securities market.[20] The trading of options on the Index will permit investors to participate in the price movements of the Mexican equity securities underlying the Index. As a result, the trading of options on the Index will allow investors holding some or all of the underlying components to hedge the risks associated with those positions and should reflect accurately the overall movement of the Mexican equity market.

The trading of Index options and Index LEAPS, however, raises several issues related to index design and structure, customer protection, and surveillance. The Commission believes, for the reasons discussed below, that CBOE has adequately addressed these issues.

A. Index Design and Structure

The Commission finds that it is appropriate and consistent with the Act to apply the Exchange rules applicable to broad-based index options to IPC Index options.[21] First, the Index consists of 35 of the largest and most liquid stocks (issued by 28 issuers) on the Bolsa.[22] Second, stocks in the Index are among the most highly capitalized stocks on the Bolsa. For example, on February 2, 1996, the market capitalization of the individual stocks in the Index ranged from a high of US$11.95 billion to a low of US$36 million, with a mean value of US$1.55 billion. Third, the total capitalization of the Index on the same date was US$54.3 billion.[23] Although this capitalization amount is not large in relation to other broad-based indexes previously approved for options trading, it is nonetheless a substantial capitalization for a foreign market and represents approximately half of the total capitalization of the Bolsa.[24] Fourth, the Index includes stocks of companies from eighteen separate industries. Fifth, the Commission recently approved the CBOE Mexico 30 Index ("Mexico 30 Index"), which is a broad-based, modified capitalization weighted index comprised of thirty Mexican stocks. The Commission notes that the IPC and Mexico 30 Index are substantially similar. Accordingly, the Commission is satisfied that the Index adequately represents the Mexican equity market.

Furthermore, the Commission believes that the general broad diversification of the Index component stocks, as well as their high capitalizations and trading activity, minimize the potential for manipulation of the Index. First, as discussed above, the Index represents a broad cross-section of highly-capitalized Mexican stocks, with no single industry group or stock dominating the Index. Second, the overwhelming majority of stocks that comprise the Index are relatively actively traded. Third, the Commission believes that the Bolsa's index selection and maintenance criteria should serve to ensure that the Index continues to represent stocks with the highest capitalizations and trading volumes on the Bolsa. In addition, the Exchange has proposed position and exercise limits for the Index options that are consistent with other broad-based index options.

Because CBOE is not responsible for Index maintenance, however, the Commission recognizes that certain events beyond CBOE's control may result in the Index changing in a manner such that it is no longer broad-based. In this regard, CBOE has adopted maintenance criteria which, if breached, will result in the re-classification of the Index as narrow-based. If this occurs, CBOE will decrease position limits and increase margin requirements to levels consistent with other narrow-based index options. The Commission believes these criteria are adequate and should serve to prevent a narrow-based index from trading pursuant to more favorable broad-based index option rules.

[16] Telephone conversation between Eileen Smith, CBOE, and Steve Youhn, SEC, on February 28, 1996.

[17] *See* Amendments No. 2 and 3.

[18] *See* Letter from Joe Corrigan, OPRA, to Eileen Smith, CBOE, dated February 21, 1996.

[19] 15 U.S.C. 78f(b)(5) (1988 & Supp. V 1993).

[20] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of rule changes pertaining to any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[21] The reduced value IPC, which is calculated by dividing the full-value Index to be traded on CBOE by ten, is essentially identical to the IPC.

[22] As CBOE notes, while some of the stocks in the Index have relatively low trading volume, they account for only a small percentage of the Index weighting.

[23] In the event the aggregate capitalization of the index falls below $25 billion, CBOE will re-classify the Index as narrow-based, as discussed above.

[24] A foreign index capitalization that is smaller than that of the IPC would raise questions regarding whether that particular index warranted broad-based index options treatment.

Under CBOE's maintenance criteria, no single stock may account for more than 35% of the Index weight and no three components may excess 60% of the total Index weight. In addition, the number of Index components may not fall below 20 and the total capitalization of the Index may not fall below US$25 billion. If any of these events occur, the Index will be re-classified as narrow-based. The Commission believes that these standards will ensure that if the Index becomes dominated by one or a few components, or if it fails to be broadly representative of the Mexican equity market, it will cease to trade pursuant to broad-based index option rules.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Index options and Index LEAPS, can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options and Index LEAPS will be subject to the same regulatory regime as the other standardized options currently traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Index options and Index LEAPS.[25]

C. Surveillance

In evaluating derivative instruments, the Commission, consistent with the protection of investors, considers the degree to which the derivative instrument is susceptible to manipulation. The ability to obtain information necessary to detect and deter market manipulation and other trading abuses is a critical factor in the Commission's evaluation. It is for this reason that it is important for the SEC to determine that there is an adequate mechanism in place to provide for the exchange of information between the market trading the derivative product and the market on which the securities underlying the derivative product are traded. Such mechanisms enable officials to surveil trading in both the derivative product and the underlying securities.[26] For foreign stock index derivative products, such mechanisms are especially important for the relevant foreign and domestic exchanges to facilitate the collection of necessary regulatory, surveillance and other information.

With respect to the CBOE proposal, CBOE and the Bolsa do not have a written surveillance sharing agreement that covers the trading of IPC options at the time.[27] Moreover, it is the Commission's understanding that the Bolsa currently is not able to provide the requisite information for a comprehensive surveillance sharing instrument. Thus it would be impossible for the CBOE to secure a comprehensive agreement. In such cases, the Commission has relied in the past on surveillance sharing arrangements between the relevant regulators. In regard to the IPC, the Commission notes that the Bolsa is under the regulatory oversight of the CNBV, which has responsibility for both the Mexican securities and derivatives markets. The Commission and the CNBV have concluded a Memorandum of Understanding, dated October 18, 1990, that provides a framework for mutual assistance in investigatory and regulatory issues.[28] Based on the relationship between the SEC and CNBV and the terms of the MOU, the Commission understands that both it and the CNBV could acquire information from and provide information to the other similar to that which would be required in a comprehensive surveillance sharing agreement between exchanges.[29] Moreover, the agencies could make a request for information under the MOU on behalf of an SRO that needed the information for regulatory purposes. Thus, should the CBOE need information on Mexican trading in the Index component securities to investigate incidents involving trading of Index options, the SEC could request such information from the CNBV under the MOU. While this arrangement certainly would be enhanced by the existence of direct exchange to exchange surveillance sharing agreements, it is nonetheless consistent with other instances where the Commission has explored alternatives when the relevant foreign exchange was unwilling or unable to enter into a comprehensive surveillance sharing agreement.[30]

Accordingly, the Commission believes the MOU provides sufficient basis for the exchange of necessary surveillance information. The Commission continues to believe strongly, however, that the Bolsa and the CBOE should continue to work together to consummate a formal surveillance sharing agreement to cover IPC Index options as soon as practicable.

The Commission finds good cause for approving the Amendments to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amendments outline CBOE's maintenance criteria with respect to the IPC and the procedures for reducing position limits, if necessary. As discussed above, although CBOE is not responsible for maintenance of the IPC, it has adopted criteria which, if breached, will result in the re-classification of the index to narrow-based. Because CBOE does not have the ability to maintain the Index in order to ensure that it remains broad-based, the Commission believes the adoption of these standards are reasonable to address the trading issues presented by a significant change in the character and composition of the Index. In addition, the Commission believes that the standards are sufficient to ensure that if the IPC does not continue to be representative of the Mexican equity market, or if the Index becomes dominated by one or a small number of stocks, it will cease to be classified as broad-based for U.S. index options

[25] As discussed above, CBOE has represented that it and OPRA have the necessary systems capacity to support those new series of options that would result from the introduction of Index options and Index LEAPS. *See* Memorandum from Joe Corrigan, Executive Director, OPRA, to Eileen Smith, CBOE, dated February 21, 1996.

[26] The Commission believes that a comprehensive surveillance sharing agreement should provide the parties thereto with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. Consequently, the Commission generally requires that such agreements require that the parties provide each other, upon request, with information about market trading activity, clearing activity, and the identity of the purchasers and sellers of securities underlying the derivative product. *See, e.g.*, Securities Exchange Act Release No. 31529 (Nov. 27, 1992), 57 FR 574248.

[27] The CBOE has committed to make every effort to enter into a comprehensive surveillance sharing agreement with the Bolsa.

[28] The CNBV is the successor to the Comision Nacional de Valores of Mexico, which was merged with the Mexican Banking Commission in April 1995 to form the CNBV. *See* National Banking and Securities Commission Act, Mexico, dated April 24, 1995.

[29] This information could include transaction, clearing, and customer identity information necessary to conduct an investigation.

[30] *See, e.g.*, Securities Exchange Act Release No. 36070 (Aug. 9, 1995), 60 FR 42205 (Aug. 15, 1995) (Order Approving Proposed Rule Changes Relating to the Listing and Trading of Warrants on the Deutscher Aktienindex).

trading purposes. If reclassified as narrow-based, Amendment No. 3 establishes procedures for reducing position limits which, the Commission notes, are consistent with existing procedures for reducing narrow-based index option position limits. Accordingly, the Commission believes there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act, to approve the Amendments on an accelerated basis.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the Amendments. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 7, 1996.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change (SR–CBOE–96–09) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[32]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–12385 Filed 5–16–96; 8:45 am]

BILLING CODE 8010–01–M

[31] 15 U.S.C. 78s(b)(2) (1988).

[32] 17 CFR § 200.30–3(a)(12) (1994).

[Release No. 34–37201; File No. SR–CBOE–96–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to as of Add Submissions

May 10, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 15, 1996, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to terminate its fee program for members who, for more than a prescribed percentage of transactions, submit trade information pursuant to CBOE Rule 6.51 after the date on which the trade is executed. (These post-trade date submissions are commonly referred to as "as of adds.") In conjunction with the foregoing, the Exchange also proposes to revise the structure of its as of add summary fine program. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CBOE Rule 6.51 requires, among other things, that (i) a participant in each transaction to be designated by the Exchange shall immediately report the transaction to the Exchange and (ii) each business day, each Clearing Member shall file with the Exchange trade information covering each Exchange transaction made by it or on its behalf during the business day.

On October 1, 1993, the Exchange instituted an as of add fee program to collect fees from members who, for more than a prescribed percentage of transactions, submit trade information pursuant to Rule 6.51 after the date on which the trade is executed. This program is set forth in CBOE Rule 2.26 and currently functions in the following manner. Each individual member is assessed a $10.00 fee for each as of add submitted by the member during a given month that is in excess of 2.4% of the member's trade submissions during that month. Similarly, each Clearing Member is assessed a $3.00 fee for each as of add submitted by the Clearing Member during a given month that is in excess of 1.2% of the Clearing Member's trade submissions during that month. In addition, the total fee under the program that may be assessed against a member in a given month are capped at $500 for individual members and at $1,000 for Clearing Members.

The reason the Exchange implemented the as of add fee program was to allocate the costs borne by the Exchange in processing as of add submissions to those members most responsible for generating those costs and thereby to encourage the submission of information with respect to a trade on the date the trade is executed by creating an economic incentive to submit the information on that day. During the first year of the program, the percentage of as of add submissions declined by 10% even though the Exchange experienced a 37% increase in trading volume. Based on past experience, the Exchange estimates that had the program not been in effect during that time period, the percentage of as of add submissions would have doubled. Since November, 1994, however, the percentage of as of add submissions has remained relatively constant. Therefore, although the program has clearly been effective in reducing the percentage of as of add submissions, it no longer appears to be causing a reduction in the rate of those submissions.

Accordingly, the Exchange is proposing to terminate the as of add fee program and to seek further reductions in the percentage of as of add submissions by revising the structure of the Exchange's as of add summary fine program.

The Exchange instituted its as of add summary fine program on February 1, 1995. The program is a part of the Exchange's minor rule violation plan and is set forth in CBOE Rule 17.50(g)(7). Under the program, any individual member whose monthly percentage of as of add submissions exceeds 7.2% for two consecutive months or any Clearing Member whose monthly percentage of as of add submissions exceeds 3.6% for two consecutive months is subject to a fine of $250 for the first offense, $500 for the second offense, and $1,000 for each subsequent offense occurring during any 12 month period.

The Exchange is proposing to revise the structure of the as of add summary fine program in four primary respects in order to encourage further changes in as of add behavior, and to the extent the Exchange collects fines under the program, to help the Exchange defray the additional costs it incurs in processing as of add submissions.

First, the Exchange is proposing to replace the current as of add summary fine schedule for individual members. The proposed fine schedule would be stricter in two respects: (i) action against an individual member under the fine schedule would be triggered when the member exceeds the maximum allowable as of add submission percentage in a given month instead of when the member exceeds that percentage in two consecutive months as is the case under the current fine schedule and (ii) the maximum allowable as of add submission percentage under the fine schedule would be reduced from its current level of 7.2% to 5%. Specifically, the current find schedule for individual members would be replaced with the following fine schedule. Any individual member whose percentage of as of add submissions in any month exceeds 5% would receive a letter of information for the first offense, a letter of caution for the second offense, a $500 fine for the third offense, a $1,000 fine for the fourth offense, and would be referred to the Exchange's Business Conduct Committee for each subsequent offense occurring during any 12 month period. In addition, as is currently the case, the Exchange would retain the discretion to initiate a formal disciplinary proceeding against an individual member pursuant to Chapter XVII of the Exchange's rules in the event the Exchange determines that any violations of Rule 6.51 are not minor in nature.

Second, the current as of add summary fine schedule for Clearing Members would be deleted and going forward as of add summary fines would only be assessed against individual members. The Exchange believes that such a fine structure is appropriate because individual members have primary control over the timing of trade submissions, and in the Exchange's experience, most as of adds are caused by delays and errors of individual members. Moreover, Clearing Members generally have a greater economic incentive than individual members to reduce as of adds because Clearing Members incur personnel and systems costs due to the extra work necessary to process as of adds whereas individual members do not incur such costs. Therefore, the Exchange believes that the most effective manner in which to achieve a reduction in the percentage of as of adds is to direct the as of add summary fine program toward individual members. Of course, notwithstanding the foregoing, the Exchange would still have the ability to initiate a formal disciplinary proceeding against a Clearing Member for violations of Rule 6.51.

Third, the Exchange is proposing to implement a verification procedure under Rule 17.50 pursuant to which any member who receives an as of add summary fine would be able to request verification of that fine by the Exchange. Under this procedure, the Exchange would attempt to serve any member who incurs an as of add summary fine with a disciplinary notice on or before the 10th day of the month immediately following the month in which the fine is incurred. The member would then have until the 25th day of the month in which the disciplinary notice is served to request verification. After the Exchange's verification process is completed, it would notify the member in writing of the Exchange's determination, and if the member so desired, the member could appeal the fine within 30 days after the date of such notice in accordance with the appeal procedures under Rule 17.50(d). In addition, any member who incurs an as of add summary fine and does not request verification would be able to appeal the fine under Rule 17.50(d) within 30 days after the Exchange's service of the disciplinary notice informing the member of the fine. The above-described verification procedures would function in the same general manner as the verification procedures that are currently in place under Rule 17.50 for fines imposed for failure to submit accurate trade information and for failure to submit trade information to the price reporter, and these procedures would serve to replace the current as of add verification procedures under Rule 2.26(c) which would be eliminated under the proposed rule change along with the remainder of Rule 2.26.

Finally, the current procedures set forth in Rule 2.26(d) which permit the Exchange to suspend the as of add fee program would also be eliminated along with the remainder of Rule 2.26, and instead, would be restated in Rule 17.50 and made applicable to the as of add summary fine program. As is currently the case with respect to the as of add fee program, these procedures would permit the Exchange's Clearing Procedures Committee, with the approval of the President of the Exchange, or his designee, to suspend the as of add summary fine program for periods no greater than 7 calendar days, plus extensions, when unusual circumstances affect the ability of a significant number of members to submit trade information on a timely basis.

The Exchange proposes to implement the proposed rule change within 45 days after its approval by the commission. The purpose of this time interval is to give the Exchange the opportunity to inform members of the approval of the proposed rule change in the Exchange's Regulatory Bulletin before the rule change is put into effect. The Exchange will publish the effective date of the rule change in the Exchange's Regulatory Bulletin and will notify the Commission of the effective date by letter.

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b) (5) in particular, in that the Exchange believes the proposed rule change will serve to reduce the percentage of as of add submissions thereby benefiting both members and investors by increasing the efficiency with which Exchange transactions are processed and by reducing the risk exposure to members and investors that results from the existence of unresolved trades. Accordingly, the Exchange believes that the proposed rule change serves to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–96–24 and should be submitted by June 7, 1996.

For the Commission, by the division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–12388 Filed 5–16–96; 8:45 am]

BILLING CODE 8010–01–M

[1] 17 CFR 200.30–3(a) (12).

[Release No. 34–37204; File No. SR–CHX–96–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated, Relating to the Modification of the Hours of the Exchange's Primary Trading Session and the Establishment of a Post-Primary Trading Session

May 13, 1996.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 9, 1996, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On May 10, 1996, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 10(b) of Article IX, Rule 1 of Article XX, several interpretations and policies under Rule 37 of Article XX, and Rule 1 of Article XXI in order to modify the Exchange's trading hours for each traded security to track the trading hours of the security's primary market and to add a new Post-Primary Trading Session.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the Exchange's Primary Trading Session runs from 8:30 a.m. to 3 p.m., central time, Monday through Friday. One purpose of the proposed rule change is to amend Article XX, Rule 10(b) to conform the Exchange's Primary Trading Session hours for each traded security to the trading hours during which the security is traded on its primary market. If a security's primary market is the CHS, the trading hours will be from 8:30 a.m. to 3:30 p.m., central time.[2]

The proposed rule change would also add a Post-Primary Trading Session ("PPS") on the trading floor.[3] The PPS for orders and securities designated as eligible for the PPS would be for one-half hour after the close of the regular trading session on the security's primary market. Securities in which the CHX is the primary market will not be eligible for the PPS.

Only orders designated as eligible for the PPS would be eligible for execution during the PPS.[4] Market, limit and contingent order types currently acceptable would be accepted for PPS if so designated. In this regard, GTX orders would only be accepted if specifically designated as PPS-eligible. The Exchange's MAX System will not be available as an automated execution system or as an automated routing system during the PPS. As a result, order sending firms must contact a floor broker in order to send an order to the CHX during the PPS. Because the PPS will be an extension of the Exchange's daily auction market, all the Exchange's rules applicable to floor trading during the Exchange's Primary Trading Session, as modified by proposed Interpretation and Policy .05 of Rule 37, Article XX, will continue to be applicable.[5] For example, specialists will be required to quote markets and trading will occur based on real-time price and quote changes.

To accomplish the foregoing, the Exchange is amending Article XX, Rule 1 and Article XXI, Rule 1 to make it clear that these rules also apply to the PPS.[6] The Exchange is also amending Interpretation and Policy .02 of Rule 37, Article XX to make it clear that although GTX orders are executable after the close of the PPS (*i.e.*, in the Exchange's Secondary Trading Session), they are executed based on trading that occurs in a security in a primary market's after-hours closing price trading session, at that closing price, and are not executable based on trading in, or the closing price established in, the PPS.[7]

Finally, the Exchange is also amending Article IX, Rule 10(b) to provide that if trading on the Exchange is halted during the Primary Trading Session pursuant to Article XX, Rule 10A, and such trading halt is still in effect at the close of the Primary Trading Session, the PPS scheduled for that day will be cancelled.[8]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act[9] in that it is designed to promote just and equitable principals of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regualtory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–96–13 and should be submitted June 7, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–12467 Filed 5–16–96; 8:45 am]

BILLING CODE 8010–01–M

[1] *See* Letter from David Rusoff, Attorney, Foley & Lardner, to Ivette Lopez, Assistant Director, Division of Market Regulation, SEC, dated May 9, 1996 ("Amendment No. 1"). Amendment No. 1 added amendments to Article IX, Rule 10(b); Article XX, Rule 1; and Article XXI, Rule 1 to the proposed rule change. Amendment No. 1 also added two paragraphs to the end of Section II.A.1 of the original filing in order to describe the amendments to the proposed rule change contained in Amendment No. 1, and corrected the text of Exhibit A to the original filing. For a more detailed description of Amendment No. 1, see text accompanying notes 6–8.

[2] Trading in the Chicago Basket, currently conducted on the Floor of the Exchange from 8:30 a.m. to 3:15 p.m., central time, will be unaffected by the proposed rule change.

[3] The CHX represents that ITS will be available for both inbound and outbound trades during the PPS to the extent that other market centers (e.g., the Pacific Stock Exchange, Incorporated and the Philadelphia Stock Exchange, Inc.) are open for trading. The CHX also represents the PPS will be surveilled in the same manner and using the same techniques as those used to surveil the Primary Trading Session. To facilitate the surveillance of the PPS, CHX's surveillance staff will remain on-site during the PPS and for any necessary additional time period after the close of the PPS. *See* Letter from David T. Rusoff, Attorney, Foley & Lardner, to Ivette Lopez, Assistant Director, Division of Market Regulation, SEC, dated May 9, 1996 ("ITS/Surveillance Letter").

[4] The Exchange will require order tickets of PPS-eligible orders to include an "E" designator, which will indicate that the order is eligible for execution during the PPS. *See* ITS/Surveillance Letter, *supra* note 3.

[5] As part of the proposed rule change, the Exchange has moved existing Interpretation and Policies .01–.03 of Rule 37(a), Article XX, currently found at the end of subparagraph (a) of Rule 37, to the end of Rule 37, and renumbered existing Interpretation and Policy .01 of Rule 37 as Interpretation and Policy .04.

[6] *See* Amendment No. 1, *supra* note 1.

Article XX of the CHX Rules contains the Exchange's trading rules. Article XX, Rule 1 currently states that the rules contained in Article XX have general applicability to Exchange Contracts made on the Exchange during the Primary Trading Session, and, to the extent determined by the Exchange, to Exchange Contracts not made on the Exchange.

Article XXI, Rule 1 currently requires each Exchange member to promptly advise the Exchange of each of his or her transactions that are executed on the Floor of the Exchange during the Primary Trading Session or through the Portfolio Trading System.

[7] For a description of operation of the Exchange's Secondary Trading Session, see Securities Exchange Act Release No. 33991 (May 2, 1994), 59 FR 23904 (May 9, 1994) (File No. SR–CHX–93–23).

[8] *See* Amendment No. 1, *supra* note 1.

[9] 15 U.S.C. 78f(b)(5).

[Release No. 34–37205; File No. SR–MBSCC–95–08]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Approving Proposed Rule Change Relating to Eligibility Changes for Settlement Balance Order Settlement

May 13, 1996.

On October 17, 1995, MBS Clearing Corporation ("MBSCC") filed a proposed rule change (File No. SR–MBSCC–95–08) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act") relating to eligibility changes for Settlement Balance Order ("SBO") settlement.[1] On November 1, 1995, MBSCC filed an amendment to the proposed rule change.[2] Notice of the proposal was published in the **Federal Register** on December 13, 1995, to solicit comments from interested persons.[3] On January 30, 1996, and April 15, 1996 MBSCC filed additional amendments to the proposed rule change.[4] No comments were received. As discussed below, this order approves the proposed rule change.

I. Description

The proposed rule change modifies MBSCC's procedures to provide that MBSCC will reject trades destined for SBO settlement between multiple accounts of a participant as well as between a participant's account and an account of a related participant.[5] As a

[1] 15 U.S.C. 78s(b) (1988).

[2] Letter from Anthony H. Davidson, Attorney, MBSCC, to Michele Bianco, Division of Market Regulation ("Division"), Commission (November 1, 1995).

[3] Securities Exchange Act Release No. 36557 (December 6, 1995), 60 FR 64083.

[4] Letters from Anthony H. Davidson, Attorney, MBSCC, to Michele Bianco, Division, Commission (January 30, 1996) and to Jerry Carpenter, Associate [sic] Director, Division, Commission (April 12, 1996). The January 30, 1996, amendment adds a definition of related participant to MBSCC's Procedures consistent with language in MBSCC's original filing. The April 15, 1996, amendment provides that a participant requesting a waiver from the eligibility requirements must provide MBSCC with certain assurances. The amendments were technical amendments that did not require republication of notice.

[5] "Related participant" is any affiliate (as defined in Rule 12b–2 of the Act) or entity that is used or intended to be used in whole or in part to

Continued

result of being rejected, such trades must settle on a trade-for-trade basis. A participant may request a waiver of this restriction by providing to MBSCC such assurances as MBSCC may request.[6] These assurances may include but are not limited to (i) a letter describing the reason for the request and the applicable accounts for which relief is sought and containing a representation that the use of multiple accounts is not for the purpose of influencing MBSCC's clearance and settlement process or (ii) an opinion of counsel relating to the use of multiple accounts that is satisfactory to MBSCC.[7]

II. Discussion

The Commission believes the proposal is consistent with the requirements of Section 17A of the Act.[8] Specifically, Section 17A(b)(3)(F)[9] states that the rules of a clearing agency must be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and to protect investors. Under the SBO processing, MBSCC makes cash adjustments to account for variances in the par amount of securities delivered by participants as permitted by the Public Securities Association guidelines.[10] MBSCC believes that the ability to include trades among related accounts could cause a perception that participants might influence the amount of their cash adjustments through submissions of internal trades. Specifically, MBSCC believes it could be possible for a participants to create and submit to MBSCC for SBO settlement fictitious trades between related accounts that would permit the participant to share in a positive cash balance adjustment. By reducing the possibility that a participant can manipulate SBO settlement in such a manner, the proposed rule change should further MBSCC's ability to safeguard the funds in its custody or control and to protect investors.

III. Conclusion

For the reasons stated above, the Commission finds that MBSCC's proposal is consistent with Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–MBSCC–95–08) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–12469 Filed 5–16–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37197; File No. SR–MSRB–95–13]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the Municipal Securities Rulemaking Board Relating to Fee Assessments and Reporting of Sales or Purchases Pursuant to Rules A–13, A–14, and G–14

May 10, 1996.

I. Introduction

On August 11, 1995 the Municipal Securities Rulemaking Board ("Board" or "MSRB") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to change the fees assessed under Rules A–13 and A–14, as well as to change the reporting requirements under Rule G–14. The proposed rule change was published for comment in the **Federal Register** ("Original Proposal").[3] In November 1995, the MSRB submitted Amendment No. 1 to the proposed rule change which was also published for comment ("Amended Proposal").[4] The Commission received twenty-three comment letters in all. For the reasons discussed below, the Commission is approving the proposal.

II. Description and Scope of the Proposed Rule Change

The proposal changes the MSRB's existing fee structure to impose, effective March 1, 1996, transaction-based fees on inter-dealer transactions. The proposal establishes a transaction fee of $.005 per $1,000 par value of bonds on all inter-dealer sales transactions, and effective October 1, 1995, increases the annual fee, applicable to each broker, dealer, and municipal securities dealer who conducts municipal securities business, from $100 to $200. Effective March 1, 1996, the proposal permits the MSRB to use reported transaction information for the purpose of assessing transaction fees.

Rule G–14 requires each inter-dealer transaction that is eligible for automated comparison to be reported to the MSRB through National Securities Clearing Corporation, the central facility provider for the automated comparison process. The corollary change to Rule G–14 under the proposal authorizes the MSRB to use the reported transaction information to assess inter-dealer transaction fees. The MSRB will send monthly invoices to dealers that report inter-dealer sales transactions on their own behalf, and/or on behalf of another dealer.[5] The dealer will be responsible for the timely payment of the entire fee amount to the MSRB, but the MSRB expects that clearing dealers will pass through the fees to executing dealers based upon their transaction volume. To assist the clearing dealer, the invoice will separate out the fees due on the transactions submitted by the clearing dealer on behalf of identified executing dealers.[6] As improvements are made in the timely and accurate reporting of transactions under Rule G–14, including the correct identification of executing brokers, the MSRB will consider revisions in the billing procedure to accommodate direct billing of executing brokers.

As explained in its filing, the proposal is intended to increase revenue to the MSRB to cover budgetary expenditures. The MSRB anticipates its technology expenditures to rise over the next few years as it implements transparency

---

contravene the purposes of the proposed rule change. Letter from Anthony H. Davidson, Attorney, MBSCC, to Michele Bianco, Division, Commission (November 1, 1995).

[6] MBSCC has received two requests for a waiver. Letter from John J. Rioux, Vice President and Assistant General Counsel, J.P. Morgan & Co. Incorporated, to George Parasole, Director of Member Services, MBSCC (February 1, 1996) and letter from Edward K. McCarthy, General Counsel, Liberty Brokerage Inc., to George Parasole, Director of Member Services, MBSCC (February 7, 1996).

[7] Letter from Anthony H. Davidson, Attorney, MBSCC, to Jerry Carpenter, Assistant Director, Division, Commission (April 15, 1996).

[8] 15 U.S.C. 78q–1 (1988).

[9] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[10] Such guidelines permit the over delivery or under delivery of two percent of the par amount of securities to be delivered. MBSCC's cash adjustment procedures pro rate the resulting positive or negative balances to the MBSCC participants with netted out positions.

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30(a)(12) (1995).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 36150 (August 23, 1995), 60 FR 45197 (August 30, 1995).

[4] Securities Exchange Act Release No. 36492 (November 20, 1995), 60 FR 58422 (November 27, 1995).

[5] Under the proposal, the MSRB will bill only for those trades for which the buy and sell sides ultimately have agreed on trade details such as price, transaction amount, and value.

[6] Rule G–14 requires that in each inter-dealer transaction the clearing dealer identify the executing dealer on whose half the transaction is reported. Nevertheless, trades are reported lacking the executing broker's identifier. The fees due on those trades will appear on the clearing dealer's invoice assigned to "blank".

improvements with its institutional and retail transaction reporting system.

The MSRB's rationale for implementing inter-dealer transaction fees is that dealers should be assessed fees based upon their level of participation in the market. The MSRB understands that the transaction fee will have a substantial effect on participants whose transaction activity is primarily or exclusively in the inter-dealer market.[7]

III. Summary of Comments

The Commission received thirteen comment letters on the rule change as originally proposed[8] and an additional ten comment letters on the amended proposal.[9] Of the twenty-three comment letters received, twenty-one were from municipal securities broker's brokers who opposed the aspect of the proposal which would establish an inter-dealer transaction fee.[10]

A. Comments on the Original Proposal

The comments focused almost exclusively on the new transaction fee. All but one of the broker's brokers commented that the proposed fee generated an inequitable burden on the broker's broker and in effect amounted to a double assessment on transactions involving a broker's broker.[11]

Two commenters suggested the MSRB consider different fee structures that might achieve the MSRB's goals. The PSA suggested that the MSRB eliminate both the existing annual fee and underwriting assessment and establish a new annual fee.[12] The PSA proposed an annual fee based on a municipal securities firm's underwriting ranking. Depending on the firm's ranking, a firm would pay between $1,000 and $100,000 per year. The PSA believes this proposal distributes the financial burden more evenly and would simplify the billing process.

Another commenter, a broker's broker, offered three alternatives to the MSRB's proposal to initiate an inter-dealer transaction assessment.[13] This brokers' broker suggested moving to a flat fee structure based on a firm's aggregate market activity. The suggestion is similar to the PSA's, but would use both transaction data and underwriting data to determine a firm's level of market participation. The annual fee would range from $1,000 for the smallest 1,700 firms to $20,000 for the top 50 firms. As a second alternative, Kenny suggested the MSRB meet its funding needs by maintaining the underwriting assessment at $.03 per $1,000 par value and increasing the annual fee for all members to $1,000. Lastly, Kenny suggested that a logical alternative would be for the MSRB to initiate a revenue-based assessment, thus capturing the true participation of each firm in the municipal securities market.[14]

In response to these comments, the MSRB reduced the proposed transaction fee by 50%, but determined to retain its proposed structural changes.[15] The MSRB defended its decision to include sales transactions reported by brokers' brokers in the inter-dealer assessment, noting that broker's brokers represent the sell side on 35% of the par value of reported inter-dealer transactions. In comparison, broker's brokers do not participate in underwriting and consequently would pay no percentage of the underwriting assessment. The MSRB does not find the transaction fee to be disproportionate or unduly burdensome because the broker's brokers comprise a very significant portion of the inter-dealer market. The MSRB asserts that, for the purposes of the transaction fee, transactions involving a broker's broker, although executed at the direction of other dealers, are to be viewed as separate offsetting purchase and sale transactions. Accordingly, the fee does not amount to a double assessment for the "same" transaction but amounts to a fee assessed on any participant on the sell side of any inter-dealer transaction.

The MSRB also believes its proposed transaction fee is likely to be more easily administered than the alternatives offered by the PSA and other commenters. The MSRB stated that it

---

[7] In recognition of this fact, and in response to concerns of commenters and the Commission, the MSRB amended the filing to reduce the originally proposed transaction fee by 50% from $.01 to $.005 per $1,000 par value. The amendment left intact the $.03 per $1,000 underwriting assessment.

[8] *See* letters from Peter C. Byram, Senior Vice President, J.J. Kenny Drake, to Secretary, SEC, dated September 7 1995 ("J.J. Kenny letter 1"); from Richard G. McDermott, Jr., President, Chapdelaine & Co., to Secretary, SEC, dated September 11, 1995 ("Chapdelaine letter"); from John J. Lynch, Jr., Executive Vice President, J.F. Hartfield & Co., Inc., to Secretary, SEC, dated September 12, 1995 ("Hartfield letter"); from Richard W. Smith, President, RW Smith & Associates, Inc., to Jonathan G. Katz, Secretary, SEC, dated September 13, 1995 ("RW Smith letter 1"); from Thomas G. Caffrey, President, Titus and Donnelly, Inc., to Secretary, SEC, dated September 14, 1995 ("Titus letter"); from Patricia MacGeorge, Treasurer, EMR Securities, Inc., to Jonathan G. Katz, Secretary, SEC, dated September 15, 1995 ("EMR letter"); from Robert J. Ellwood, President, R.W., Ellwood & Co., Inc., to Secretary, SEC, dated September 18, 1995 ("R.W. Ellwood letter 1"); from James J. Smith, President, Smith Peters & Stark, to Jonathan G. Katz, Secretary, SEC. dated September 18, 1995 ("Smith Peters letter"); from Brian Kelly, President, Municipal Partners, Inc., to Secretary, SEC, dated September 19, 1996 ("Municipal Partners letter"); from John V. Kick, Treasurer, Barr Brothers & Co., Inc., to Secretary, SEC, dated September 19, 1995 ("Barr letter"); from James Avena, President, Tullett and Tokyo Securities, Inc., to Jonathan G. Katz, Secretary, SEC, dated September 19, 1995 ("Tullett letter 1"); from Glenn Grossman, Senior Managing Director Cantor Fitzgerald, to Jonathan G. Katz, Secretary, SEC, dated September 19, 1995 ("Cantor letter"); and from George Brakatselos, Vice President, Public Securities Association, to Secretary, SEC, dated September 20, 1995 ("PSA letter 1"). Letters were also submitted to the MSRB and forwarded to the Commission. *See* letters from John B. Licata, Chief Executive Officer, Sonoma Securities Corp., dated October 10, 1995 ("Sonoma Letter"), from George Brakatselos, Vice President, Public Securities Association, to Mr. Christopher Taylor, Executive Director, MSRB dated November 1, 1995 ("PSA letter 2"), and from Peter C. Byram, Senior Vice President, J.J. Kenny Drake, Inc., to Board of Directors, MSRB, dated September 19, 1995 ("J.J. Kenny Drake letter 2").

[9] *See* letter from Richard W. Smith, President, RW Smith & Associates, Inc. to Jonathan G. Katz, Secretary, SEC. dated November 8, 1995 ("RW Smith letter 2"); from Dominick F. Antonelli, Chief Operating Officer, Roosevelt & Cross, Inc., to Robert Colby, Deputy Director, SEC, dated November 9, 1995 ("Roosevelt letter"); from the employees of RW Smith & Associates, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 5, 1995 ("Smith employees' letter"); from Richard W. Smith, President, RW Smith & Associations, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 6, 1995 ("RW Smith letter 3"); from George Brakatselos, Vice President, Public Securities Association, to Secretary, SEC, dated December 8, 1995 ("PSA letter 3"); from Peter C. Byram, Senior Vice President, J.J. Kenny Drake, to Jonathan G. Katz, Secretary, SEC, dated December 6, 1995 ("J.J. Kenny letter 3"); from O. Gene Hurst, President, Wolfe & Hurst Bond Brokers, Inc., to Jonathan Katz, Secretary, SEC, dated December 8, 1995 ("Wolfe letter"); from Robert J. Ellwood, President, R.W. Ellwood & Co., Inc., to Secretary, SEC, dated December 12, 1995 ("R.W. Ellwood letter 2"); from John J. Lynch, Jr., Executive Vice President, J.F. Hartfield & Co., Inc., to Secretary, SEC, dated December 15, 1995 ("Hartfield letter 2"); and from James Avena, President, Tullett and Tokyo Securities, Inc., to Jonathan G. Katz, Secretary, SEC. dated December 15, 1995 ("Tullett letter 2").

[10] These firms transact exclusively with other dealers and not with issuers or public investors. The two nonbroker's broker comment letters received by the Commission were from the Public Securities Association ("PSA"). The PSA also sent a comment letter to the MSRB recommending an alternative fee structure. All three PSA letters focused on the proposals' impact on the brokers' broker.

[11] The Sonoma letter opposed the increase in the annual fee, arguing that the increase was not fair to a small firm with little municipal securities business.

[12] *See* letter from George Brakatselos, Vice President, Public Securities Association, to Mr. Christopher Taylor, Executive Director, MSRB, dated November 1, 1995 ("PSA letter 2").

[13] *See* letter from Peter C. Byram, Senior Vice President, J.J. Kenny Drake, Inc. to Board of Directors, MSRB, dated September 19, 1995 ("J.J. Kenny letter 2").

[14] Many commenters echoed the opinion that an assessment based on revenues, similar to that used by the National Association of Securities Dealers and the New York Stock Exchange, would be a more equitable method of determining a firm's participation in the municipal securities market. *See* Hartfield letter, Titus letter, Municipal Partners letter, Cantor letter, Barr letter, PSA letter 1, RW Smith letter 2, and Hartfield letter 2.

[15] Securities Exchange Act Release No. 36492 (November 20, 1995), 60 FR 58422 (November 27, 1995).

considered whether its fees could be derived from the total municipal securities revenues of dealers, and based on the advice of their outside auditors, concluded to not adopt such an assessment. The MSRB stated that the term "municipal securities revenue" is neither clearly defined nor uniformly computed by dealers. In addition, the MSRB believes it could receive a qualified opinion on its audited financial statements unless each dealer had its own "municipal securities revenue" computations independently audited prior to reporting them to the MSRB. The MSRB noted that even if it were, by rule, to define "municipal securities revenue", establish accounting rules for its computation, and require each dealer to use the accounting rules to compute "municipal securities revenue", it would still be necessary for each dealer to have the computation independently audited. The MSRB determined that the high cost to the dealer community of computing the "municipal securities revenue" would make this method of fee assessment impractical. The MSRB also considered the suggestions for raising the annual fee to $1,000 or implementing a staggered schedule based on the dealer's underwriting and/or transaction volume. The MSRB asserted that a $1,000 or more annual fee would constitute an inappropriate barrier to participation in the municipal securities market. The MSRB noted that in 1995, only 850 of the approximately 2,700 municipal securities dealers reported any inter-dealer transactions. Therefore, the MSRB surmised that approximately 1,850 dealers are merely executing an occasional municipal securities transaction as an accommodation for a customer, or are not active at all, but wish to remain capable of executing municipal securities transactions in the future. The MSRB concluded that raising the annual fee to $1,000 or more would likely result in only 850 or so firms continuing to pay the annual fee and participate in the municipal securities market. If this were to happen, the revenue projected would not be sufficient to meet the administrative needs of the MSRB.

B. Comments on the Amended Proposal

The Commission received ten comment letters on the MSRB's amended proposal that reduced the transaction fee from $.01 to $.005 per $1,000 par value of inter-dealer sales transactions. The commenters reiterated their concerns that a fee on inter-dealer transactions was an inappropriate method of measuring a firm's participation in the municipal securities market. The broker's brokers continued to opine that the MSRB did not fully understand the role of a broker's broker. The broker's brokers argued that any fee assessed on their sale transactions was in effect a double assessment on the dealer's sale transaction and thus inequitable.

IV. Discussion

The Commission must approve a proposed MSRB rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that govern the MSRB.[16] The Commission believes that the approval of the proposal meets the above standard. Specifically, Section 15B(b)(2)(J) of the Act provides that each municipal securities broker and each municipal securities dealer shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board.[17]

The MSRB and the broker's brokers both recognize broker's brokers as significant contributors to the municipal securities market. The MSRB contends that broker's brokers should be subject to the inter-dealer transaction fees in the same proportion as they participate in the inter-dealer transaction volume. In contrast, the broker's brokers believe that their sale transactions should be excluded from the inter-dealer assessment because they are in effect a part of the dealer's sale transactions which are already assessed a fee.

The Commission believes that as participants in the municipal marketplace, broker's brokers, like other dealers, should contribute to defraying the administrative costs of the MSRB, particularly as the MSRB undertakes initiatives to improve transparency in the municipal securities market. Historically, broker's brokers have paid only the minimal $100 annual fee despite their volume of transactions. The Commission believes that inter-dealer transaction volume is a reasonable indicator of a firm's participation in the municipal market.[18] This measure will be improved with the addition of institutional and retail transaction volume as the MSRB's transparency program expands in the coming years.

The Commission recognizes that inter-dealer transactions involving broker's brokers also involve a sell transaction by another dealer that is itself subject to the transaction fee. This is true however, not just for transactions involving broker's brokers, but for any riskless principal trade between dealers. Excluding broker's brokers' sales from transaction fees would largely insulate broker's brokers from payment of fees, not withstanding their significant role in municipal securities markets. Although the inter-dealer transaction fee adds a new cost to inter-dealer transactions, for the principal seller as well as the broker's broker, the Commission does not believe that such fees will significantly interfere with inter-dealer transactions involving broker's brokers, given the fee's relative small size and the usefulness of broker's brokers in conducting inter-dealer transactions efficiently and anonymously. While assessing fees based on municipal revenues might lead to fees that provide a more accurate assessment of a firm's participation in the municipal market, the Commission believes that such an approach currently raises definitional and reliability issues as discussed above.

Many of the commenters were troubled that a small community of the municipal market would contribute a large portion of the MSRB's funding.[19] Accordingly, the MSRB reduced the inter-dealer transaction fee 50% to $.005 per $1000 par value.

The Commission does not view the proposed fees as inconsistent with the purposes of the Act. The Commission believes the MSRB's fees should be based, to the extent possible, on comprehensive measures of participation in the municipal market. To this end, the Commission encourages the MSRB to continue to consider the feasibility of a revenue-based fee structure, based on the municipal revenues of brokers, dealer, and municipal securities dealers. The Commission recognizes that such an approach involves definitional and reliability issues that would have to be resolved before a revenue-based fee could be adopted and therefore this fee structure is not a viable option in light of the MSRB's immediate revenue needs. The Commission urges the MSRB to revisit the feasibility of a revenue-based fee structure and work with market participants to address the issues raised by this concept. In developing its fees the Commission encourages the MSRB to continue to build a consensus among market participants on how best to allocate the burden of funding the MSRB operations.

V. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Municipal Securities Rulemaking Board and, in particular, with the requirements of Section 15B of the Act.[20] Specifically, the Commission believes the proposal is consistent with the requirements of Section 15B(b)(2)(J) that the MSRB's rules be designed, among other things, to provide that each municipal securities broker and each municipal securities dealer shall pay to the MSRB such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administrating the Board.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–MSRB–95–13) is approved.

By the Commission.

Dated: May 10, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–12384 Filed 5–16–96; 8:45 am]

BILLING CODE 8010–01–M

[16] 15 U.S.C. 78s(b). The Commission's statutory role is limited to evaluating rules as proposed against the statutory standards. *See* S. Rep. No. 75, 94th Cong., 1st Sess., at 13 (1975.)

[17] 15 U.S.C. 78*o*–4.

[18] The MSRB is projecting inter-dealer sales volume of $400 million in fiscal year 1996, with broker's brokers accounting for $140 million of it. Accordingly, broker's brokers will pay approximately $700,000 in inter-dealer transaction fees while dealers will pay approximately $1.3 million in inter-dealer transaction fees. In addition, many dealers may also incur an underwriting assessment.

[19] *See* J.J. Kenny letter 1, Hartfield letter, Titus letter, EMR letter, Ellwood letter 1, and PSA letter 1.

[20] 15 U.S.C. § 78*o*–4.

[Release No. 34–37202; File No. SR–NSCC–95–17]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Temporarily Approving a Proposed Rule Change to Establish Additional Procedures for Placing Settling Members on Class A Surveillance and Collecting Clearing Fund and Other Collateral Deposits From Settling Members

May 10, 1996.

On December 20, 1995, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–NSCC–95–17) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") to establish additional procedures for placing settling members on Class A Surveillance and collecting clearing fund and other collateral deposits from settling members.[1] Notice of the proposal was published in the **Federal Register** on March 12, 1996.[2] No comment letter were received. For the reasons discussed below, the Commission is temporarily approving the proposed rule change through May 31, 1997.

I. Description of the Proposal

NSCC's Board of Directors has determined that under certain circumstances settling members who clear securities transactions for over-the-counter ("OTC") market makers or who themselves engage in OTC market making can have their financial viability materially impacted by such business.[3] Furthermore, if these settling members dominate one side of the market in their street-side trading positions, either directly by participating in OTC market making or indirectly by clearing transactions for OTC market makers, NSCC believes that the risk of default by the settling member increases.[4] In turn, this could potentially increase NSCC's exposure because NSCC is obligated to complete defaulting settling members' unsettled trades once NSCC's trade guarantee attaches.

The problem is magnified if one or more additional risk factors are present. These additional risk factors can include, without limitation:

(1) Concentrated short selling in dominated issues;

(2) Undue concentration of securities held in inventory by market maker(s) for dominated issues;

(3) Dominated issues also being IPOs less than six months past initial issuance particularly when the current value of the issue is significantly different from its initial sales price or there is undue concentration of inventory in the managing underwriter(s); and

(4) Clearing positions of market makers in dominated issues away from their primary clearing brokers.

Rule 15, Section 3 of NSCC's rules currently provides that any settling member[5] shall furnish to NSCC such adequate assurances of its financial responsibility and operational capability as NSCC may at any time or from time to time deem necessary or advisable in order to protect NSCC. Section 4 of Rule 15 states that such adequate assurances may include, but are not be limited to, increased clearing fund deposits of settling members. Furthermore, Section III.B.1.o. of Addendum B to NSCC's rules sets forth the guidelines for determining when NSCC may place a broker-dealer settling member on Class A surveillance status.[6] Pursuant to these guidelines, NSCC may place a broker-dealer settling member on Class A surveillance if there is any condition which could materially impact the operational or financial viability of the settling member which increases or potentially may increase exposure to NSCC.

In order for NSCC to reduce its potential exposure from the OTC market making activity described above, NSCC is adding Addendum O to its rules and procedures. Addendum O will permit NSCC to place settling members on Class A surveillance if they clear for or are themselves OTC market makers and (i) they do not have sufficient capital or access to capital to support either potential increases in market making activity in dominated OTC issues or (ii) there is the presence of the additional risk factors described above. At its discretion, NSCC may elect not to place settling members on Class A surveillance if it has obtained sufficient assurances that a high degree of mitigating circumstances exist.[7]

Furthermore, NSCC is adopting an interim collateralization policy which will allow NSCC in its discretion to

[1] 15 U.S.C. 78s(b)(1) (1986).

[2] Securities Exchange Act Release No. 36930 (March 6, 1996), 61 FR 10051.

[3] When a market maker, either alone or acting in concert with other market makers, takes net street-side trading positions (*i.e.*, non-retail trading with other broker-dealers) that constitute a disproportionately large percentage of the total net street-side buys or net street-side sells in any issue (*i.e.*, the market maker dominates one side of the market in the issue), the risk of default by that market maker can increase.

[4] However, to the extent that market makers' net street-side trading positions in dominated issues result from legitimate customer orders, the potential adverse impact on the financial viability of a settling member and the potential for increased exposure to NSCC could be mitigated. So long as the customer orders are legitimate, the risks associated with such positions are borne among the individual accounts of the market maker's customers and not concentrated solely in the proprietary accounts of the market maker.

[5] NSCC Rule 1 defines a "settling member" to include any NSCC member, non-clearing member and, except where a contrary intent is expressed in NSCC's rules, a special representative.

[6] Class A Surveillance permits NSCC, among other things, to increase a settling members clearing fund requirement by an amount equal to (i) up to 5% of the settling member's CNS long fail positions, plus (ii) up to 5% of the settling member's short fail posiltions, plus (iii) 2.5% or at NSCC's discretion up to 5% of the settling member's average non-CNS and non-mutual fund services debits, plus (iv) 2.5% of the settling member's average non-CNS and non-mutual fund services credits. NSCC Rules and Procedures, Addendum B, IV(C).

[7] However, the mere fact that a market maker has a large customer base may not necessarily constitute the necessary mitigating circumstances especially if the customers are retail and/or the market maker has a history of customer complaints or other adverse regulatory or disciplinary actions. Refer also to note 4.

require settling members placed on Class A surveillance that clear for or are themselves OTC market makers to meet the following special collateralization requirements:

(1) To the extent that the sum of the absolute dollar values of any such settling members' net unsettled trading positions in all securities dominated [8] by a market maker exceeds such market maker's excess net capital, NSCC can require the settling member to deposit with NSCC at such times and in such manner as NSCC may designate, including an immediate deposit of same-day funds the amount by which the value of the net unsettled trading positions exceed the market maker's excess net capital.[9] In determining the size of net unsettled trading positions, NSCC may take into account offsetting pending (*i.e.*, non-fail) institutional delivery ("ID") transactions that have been confirmed and when NSCC deems appropriate, affirmed,[10] through the ID system of a clearing agency registered under Section 17A of the Act ("registered clearing agency").[11] In addition, if a market maker's net unsettled trading positions in dominated issues are cleared by one or more other settling members, including any settling member on Class A surveillance, NSCC will have the discretion for purposes of calculating the special collateral deposit of treating those positions as if they were all cleared by a settling member on Class A surveillance.

(2) To the extent that the unsettled positions referred to in paragraph (1) above are short (*i.e.*, net sells), NSCC in its discretion may collect more than 100 percent of the amount by which the sum of the absolute dollar values of the net unsettled trading positions of any such settling member in all the securities dominated by a market maker exceeds the market maker's excess net capital.[12] In lieu of cash collateral, NSCC may require or accept a book-entry delivery of securities to NSCC sufficient to cover such short position.

(3) NSCC will reserve the right at all times to accept alternative arrangements for its protection in any of the above situations. NSCC may require special collateral deposits with respect to trading positions in issues dominated by a market maker even when the value of those positions do not exceed the market maker's excess net capital. NSCC also may choose to forego collecting such special collateral even when the value of those positions exceed the market maker's excess net capital but do not exceed some higher threshold.[13] NSCC will make these determinations based on the specific situation and depending upon, among other things, the presence or absence of additional risk factors or mitigating circumstances.

The special collateralization requirements described above are interim measures for settling members on Class A surveillance which will be in effect until NSCC has gained enough experience in surveillance of OTC market maker trading activities to impose permanent special collateralization requirements. Additionally, if there is concentrated short selling in dominated issues, NSCC will maintain its right to collect special collateral deposits from the settling members clearing the short sales without regard to their surveillance status. Special collateral collected from any settling member pursuant to the above procedures will be in addition to the settling member's clearing fund deposit computed in accordance with the formulae set forth in NSCC Procedure XV or in accordance with the alternative method set forth below.

Because NSCC believes that its settling members on Class A surveillance present a higher than normal risk of default and insolvency, NSCC is proposing that such settling members' clearing fund deposits be based on the close-out risk presented by their unsettled positions in NSCC's systems. Therefore, pursuant to Rule 15 as expressed under Addendum O, NSCC will have the discretion to compute the continuous net settlement ("CNS") component of the clearing fund requirement for any settling member on Class A surveillance in accordance with the following alternative method rather than the formulae to calculate clearing fund set forth in NSCC Procedure XV.[14]

(1) NSCC may calculate on a daily or periodic basis the volatility of any such settling member's net unsettled trading positions in CNS eligible issues ("net CNS trading positions"). Such positions shall be determined after taking into account offsetting pending (*i.e.*, non-fail) ID transactions that have been confirmed and, when NSCC deems appropriate, affirmed [15] through the ID system of a registered clearing agency. Such calculation will be made in accordance with the Capital Asset Pricing Model or any other generally accepted portfolio volatility model, including without limitation, any margining formula employed by any other registered clearing agency provided, however, that not less than two standard deviations' volatility shall be calculated under any model chosen. Such calculation will be made utilizing such assumptions and based on such historical data as NSCC deems reasonable and shall cover such range of historical volatility as NSCC from time to time deems appropriate. If such volatility is calculated on a periodic basis, it may be expressed as a percentage of the sum of the absolute values of the firm's net CNS trading positions. Any such calculations, whether expressed as a dollar value or percentage, may be rounded as NSCC deems appropriate.

(2) NSCC shall have the discretion to exclude from the above calculations net CNS trading positions in classes of securities whose volatility is (i) less amenable to statistical analysis such as OTC bulletin board or pink sheet issues or issues trading below a designated dollar threshold (*e.g.*, five dollars) or (ii) amenable to generally accepted statistical analysis only in a complex manner (*e.g.*, municipal or corporate bonds). The amount of clearing fund required with respect to net CNS trading positions in such issues shall be determined by multiplying the absolute value of such positions by a percentage designated by NSCC, which percentage may vary depending on such factors as NSCC deems relevant.

(3) The amounts calculated in accordance with the immediately preceding two numbered paragraphs will be substituted for the amount calculated in accordance with paragraph (1)(c) of Sections A.I.(a), A.II.(a) and A.II.(b) of NSCC's Procedure XV.[16] In addition, NSCC may in its discretion reduce or eliminate the amount calculated in accordance with paragraph (1)(a) of Procedure XV.

(4) NSCC in its discretion also may calculate the total clearing fund requirement of any settling member on a daily basis instead of a twenty-day rolling average basis and may collect deficiencies at such times and in such manner as specified by NSCC from time to time, including immediate collection of same-day funds.

Nothing in the foregoing rule change will limit NSCC's discretion with respect to placing settling members on Class A surveillance or requiring settling members to furnish adequate assurance of financial responsibility or operational capability as set forth in NSCC's rules and procedures.

II. Discussion

Section 17A(b)(3)(F) of the Act [17] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency and generally to protect investors and the public interest. The Commission believes the proposed rule change is consistent with NSCC's obligations under the Act because it will allow NSCC to take particular action to protect itself, its members, and investors in situations where settling members pose an increased risk because of their involvement in OTC market making.

Under the proposal, NSCC will have the authority with respect to settling members who participate in OTC market making activities or clear for correspondents that engage in such activity (1) to place such members on Class A surveillance, (2) to require such members to post additional collateral with NSCC, and (3) to calculate an alternative clearing fund requirement for such members when additional risk factors are present. Collectively, the higher level of surveillance, the additional level of collateralization, and the alternative clearing fund requirements should help to ameliorate NSCC's exposure which in turn should assist NSCC in fulfilling its obligations under the Act to safeguard securities and funds for which it has control of, is responsible for and, generally, to protect investors and the public interest.

The Commission is temporarily approving the proposed rule change through May 31, 1997, so that NSCC can gain additional experience in the surveillance of OTC market makers and the risks posed by clearing such activity. NSCC also will be able to gain experience with the additional collateralization requirements and alternative clearing formula requirements for settling members subject to Class A surveillance prior to permanent imposition of these requirements. Temporary approval also will afford both the Commission and NSCC an opportunity to observe whether the additional collateralization and alternative clearing fund requirements adequately protect NSCC, its members, and investors from the expected risks of participating in and clearing OTC market maker activity and whether adjustments to the procedures are necessary. Prior to filing a proposed rule change seeking permanent approval of the procedures set forth in this temporary approval order, NSCC shall present to the Commission a more detailed report of its findings regarding the adequacy of the controls and discussing any changes to be made to the procedures. During the temporary approval period, NSCC will from time to time apprise the Commission on the operation of the additional collateralization requirements to enable the Commission to monitor the implementation of such requirements.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–95–17) be, and hereby is, approved on a temporary basis through May 31, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–12471 Filed 5–16–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37203; File No. SR–OCC–95–20]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of an Amendment to a Proposed Rule Change Relating to the Issuance, Clearance, and Settlement of Buy-Write Options Unitary Derivatives

May 10, 1996.

On December 27, 1995, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–OCC–95–20) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") relating to the issuance, clearance, and settlement of Buy-Write Options Unitary Derivatives ("BOUND").[1] On February 5, 1996, OCC filed Amendment No. 1 to the proposed rule change.[2] Notice of the proposed rule change, as amended, was published in the **Federal Register** on March 20, 1996.[3] On March 20, 1996, OCC filed Amendment No. 2.[4] Amendment No. 2 is described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of Amendment No. 2 to the proposed rule change is to add a provision to Article XXIV, Section 6 of OCC's By-Laws to specify that the closing price for the underlying security of a BOUND is conclusively presumed to be accurate and shall be final for purposes of determining settlement rights and obligations with respect to that BOUND.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[5]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of Amendment No. 2 to the proposed rule change is to add a provision to Article XXIV, Section 6 of

---

[8] Domination will be determined according to criteria specified by NSCC from time to time.

[9] The term "same-day funds" refers to payment in funds that are immediately available and generally are transferred by electronic means.

[10] In determining net unsettled trading positions, NSCC in its discretion under certain circumstances may elect to take into account offsetting pending confirmed ID transactions only if such transactions also have been affirmed. Moreover, NSCC may decline to consider any ID transaction if it has reason to believe that the institutional counterparty may not or cannot settle such transaction.

[11] 15 U.S.C. 78q–1 (1988).

[12] For example, if a clearing member's excess net capital is $100,000 and the value of its OTC market making activities is $125,000, the rule change permits NSCC to require the clearing member to deposit an additional $25,000. However, if the clearing member's OTC market making activity includes short positions, the rule change will permit NSCC to collect more than $25,000.

[13] From time to time, NSCC will determine in its discretion what such higher threshold shall be.

[14] NSCC Procedure XV contains the formulae usually employed to calculated clearing members' clearing fund requirements.

[15] *Supra* note 10.

[16] *Supra* note 14.

[17] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[18] 17 CFR 200.30–3(a)(12) (1995).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from James C. Yong, First Vice President and General Counsel, OCC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation ("Division"), Commission (February 5, 1996).

[3] Securities Exchange Act Release No. 36960 (March 13, 1996), 61 FR 11458.

[4] Letter from James C. Yong, First Vice President and General Counsel, OCC, to Jerry W. Carpenter, Assistant Director, Division, Commission (March 19, 1996).

[5] The Commission has modified the text of the summaries submitted by OCC.

OCC's By-Laws to specify that the closing price[6] for the underlying security of a BOUND is conclusively presumed to be accurate and shall be final for purposes of determining settlement rights and obligations with respect to that BOUND. The amendment also proposes to add an interpretation to Section 6 to provide that, except in extraordinary circumstances, OCC will not adjust an officially reported closing price for exercise settlement purposes even if the closing price is subsequently found to have been erroneous.

OCC believes the proposed rule change, as amended, is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the proposal should facilitate the prompt and accurate clearance and settlement of BOUNDs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change as amended will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not solicited with respect to the proposed rule change as amended and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–95–20 and should be submitted by June 7, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–12470 Filed 5–16–96; 8:45 am]

BILLING CODE 80–01–M

[6] The term "closing price" is defined under proposed Article XXIV, Section 1(C)(2) of the proposed rule change.

[7] 17 CFR 200.30–3(a)(12) (1995).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Request

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that will require submission to the Office of Management and Budget (OMB) for clearance in compliance with P.L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. Since the last list was published in the **Federal Register** on May 8, 1996, the information collections listed below have been proposed or will require extension of the current OMB approvals: (Call the SSA Reports Clearance Officer on (410) 965–4123 for a copy of the form(s) or package(s), or write to her at the address listed below the information collections.)

1. Report(s) of Student Beneficiary at End of School Year—0960–0089. The information collected on form SSA–1388 is used by the Social Security Administration to verify a student's full-time attendance at an approved educational institution. The affected public consists of claimants or beneficiaries who are students and are requested to provide this information.

Number of Respondents: 200,000.
Frequency of Response: 1.
Average Burden Per Response: 10 minutes.
Estimated Annual Burden: 33,333 hours.

2. Work History Report—0960–0552. The information collected on form SSA–3369 is used to document a claimant's work history and used, in conjunction with other evidence, to determine eligibility for disability benefits. The respondents are claimant's for disability benefits.

Number of Respondents: 2,000,000.
Frequency of Response: 1.
Average Burden Per Response: 30 minutes.
Estimated Annual Burden: 1,000,000 hours.

Written comments and recommendations regarding these information collections should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Charlotte S. Whitenight, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: May 9, 1996.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 96–12215 Filed 5–16–96; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice 2389]

Office of Overseas Schools; Information Collection Under Review

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the **Federal Register.** This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320.10.

1. Summary

The Office of Overseas Schools of the Department of State (A/OS) is responsible: (a) for supporting our overseas missions by determining that adequate educational opportunities exist for dependents of U.S. government personnel stationed abroad and when necessary providing financial and technical assistance to improve elementary and secondary education at post for USG dependents; and (b) for assisting American-sponsored overseas schools to demonstrate U.S. educational philosophy and practice. The following summarizes the information collection proposal submitted to OMB:

Type of request—Reinstatement.
Originating office—Office of Overseas Schools.
Title of information collection—U.S. State Department Approval of Funding to Support Special Educational Programs.
Frequency—Annually.
Form Number—JF–45.
Respondents—The 190 Overseas American sponsored schools.
Estimated number of respondents—190.
Average hours per response—0.25.
Total estimated burden hours—47.50.
44 U.S.C. 3504(h) does not apply.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Charles S. Cunningham (202) 647–0596. Comments and questions should be directed to (OMB) Jefferson Hill (202) 395–3176.

Dated: May 1, 1996.

Patrick F. Kennedy,

Assistant Secretary for Administration.

[FR Doc. 96–12369 Filed 5–16–96; 8:45 am]

BILLING CODE 4710–24–M

[Public Notice 2382]

Bureau for Oceans and International Environmental and Scientific Affairs; Information Collection Under Review

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** and allowed 60 days for public comment.

The purpose of this notice is to allow 60 days for public comments from the date listed at the top of this page in the **Federal Register.** This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320.10.

1. Summary

The Department of State has established guidelines that require each shipment of shrimp shipped to the U.S. have a certification that shipments of shrimp have been harvested in a manner which does not harm sea turtles, pursuant to Section 609 of P.L. 101–162. The DSP–121 is necessary for that certification. The following summarizes the information collection proposal submitted to OMB:

Type of request—Revision of a currently approved collection.
Originating office—Bureau for Oceans and International Environmental and Scientific Affairs.
Title of information collection—Shrimp Exporter's Declaration.
Frequency—Each shipment.
Form Number—DSP–121.
Respondents—Business or others for profit.
Estimated number of respondents—10,000.
Average hours per response—0.5.
Total estimated burden hours—5,000.
44 U.S.C. 3504(h) does not apply.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Charles S. Cunningham (202) 647–0596. Comments and questions should be directed to (OMB) Jefferson Hill (202) 395–3176.

Dated: May 2, 1996.

Patrick F. Kennedy,

Assistant Secretary for Administration.

[FR Doc. 96–12370 Filed 5–16–96; 8:45 am]

BILLING CODE 4710–09–M

[Public Notice 2391]

Bureau of Economic and Business Affairs; Finding of No Significant Impact: Portal Pipe Line Company, Pipeline to Canadian Border Near Portal, ND

AGENCY: Department of State.

ACTION: Notice of a finding of no significant impact with regard to an application to construct, connect, operate and maintain a pipeline to transport crude oil across the U.S.-Canada border.

SUPPLEMENTARY INFORMATION: Portal Pipe Line Company has applied for a Presidential Permit to authorize construction, connection, operation and maintenance of a 12 inch diameter pipeline to convey crude oil cross the border with Canada near Portal, North Dakota.

The proposed pipeline would extend approximately 8 miles inside the United States and convey crude oil from Canada to Portal's existing pipeline system in the United States. The pipeline will initially receive an estimated 30,000 barrels per day for

responsible: (a) for supporting our overseas missions by determining that adequate educational opportunities exist for dependents of U.S. government personnel stationed abroad and when necessary providing financial and technical assistance to improve elementary and secondary education at post for USG dependents; and (b) for assisting American-sponsored overseas schools to demonstrate U.S. educational philosophy and practice. The following summarizes the information collection proposal submitted to OMB:

Type of request—Reinstatement.
Originating office—Office of Overseas Schools.
Title of information collection—U.S. State Department.
Overseas School—Grant Status Report.
Frequency—Annually.
Form Number—JF–61.
Respondents—The 190 Overseas American sponsored schools.
Estimated number of respondents—190.
Average hours per response—0.25.
Total estimated burden hours—47.50.
44 U.S.C. 3504(h) does not apply.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Charles S. Cunningham (202) 647–0596. Comments and questions should be directed to (OMB) Jefferson Hill (202) 395–3176.

Dated: May 1, 1996.

Patrick F. Kennedy,

Assistant Secretary for Administration.

[FR Doc. 96–12368 Filed 5–16–96; 8:45 am]

BILLING CODE 4710–24–M

[Public Notice 2388]

Office of Overseas Schools; Information Collection Under Review

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the **Federal Register.** This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320.10.

1. Summary

The Office of Overseas Schools of the Department of State (A/OS) is responsible: (a) For supporting our overseas missions by determining that adequate educational opportunities exist for dependents of U.S. government personnel stationed abroad and when necessary providing financial and technical assistance to improve elementary and secondary education at post for USG dependents; and (b) for assisting American-sponsored overseas schools to demonstrate U.S. educational philosophy and practice. The following summarizes the information collection proposal submitted to OMB:

Type of request—Reinstatement.
Originating office—Office of Overseas Schools.
Title of information collection—U.S. State Department Approval of Funding to Support Special Educational Programs.
Frequency—Annually.
Form Number—JF–45.
Respondents—The 190 Overseas American sponsored schools.
Estimated number of respondents—190.
Average hours per response—0.25.
Total estimated burden hours—47.50.
44 U.S.C. 3504(h) does not apply.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Charles S. Cunningham (202) 647–0596. Comments and questions should be directed to (OMB) Jefferson Hill (202) 395–3176.

Dated: May 1, 1996.

Patrick F. Kennedy,

Assistant Secretary for Administration.

[FR Doc. 96–12369 Filed 5–16–96; 8:45 am]

BILLING CODE 4710–24–M

transportation with a capacity for approximately 56, barrels per day. The pipeline will facilitate crude oil imports from Canada.

SUMMARY: In accordance with the requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. 4231 *et seq.*, The Council on Environmental Quality (CEQ) regulations, 40 CFR 1500–1508, and Department's regulations for implementation of NEPA (22 CFR Part 161), the Department of State has conducted an environmental assessment of the proposed construction by Portal Pipe Line Company of a crude oil pipeline across the international boundary near Portal, North Dakota. The Department of State is charged with the issuance of Presidential Permits authorizing construction of such international pipelines under Executive Order 11423 (1968), as amended by Executive Order 12847 (1993). Several federal agencies cooperated in preparation of the environmental assessment, reviewing and commenting on the analysis and conclusions presented therein. Agencies participating in this process together with the Department of State included: the Environmental Protection Agency, the Departments of Defense, Treasury, Interior, Commerce, Transportation, the Attorney General, the Chairman of the Surface Transportation Safety Board, and the Director of the Federal Emergency Management Agency.

Interested parties were invited to comment on the proposed application in a **Federal Register** Notice, 60 FR 56384 (November 8, 1995).

Based on the final environmental assessment, which included a preliminary environmental assessment, comments received from interested agencies and responses to those comments, the Department of State has concluded that issuance of a Presidential Permit authorizing construction of the proposed pipeline (as described in the final environmental assessment) will not have a significant effect on the quality of the human environment within the United States. Therefore, in accordance with CEQ's NEPA regulations 40 CFR 1501.4 and 1508.13 and with State Department Regulations, 22 CFR 161.8 (c) an environmental impact statement will not be prepared.

Factors Considered

The environmental assessment carefully considered the route alternative that minimized environmental and human impacts while offering the most direct and economic route. The proposed pipeline would allow the U.S. to move an additional 30,000 barrels a day of oil to major population centers in the Midwest through the construction of an 8 mile pipeline. The pipeline is also being constructed along an existing pipeline right-of-way for most of its length. The proposed pipeline also offers likely advantages over a no action alternative. The U.S. depends heavily on oil imports and other means of importing an additional 30,000 barrels of oil per day could involve greater incremental environmental risks than the proposed pipeline, such as increased shipments by tanker or new pipeline capacity of greater length or through more heavily populated or environmentally sensitive areas.

Further analysis and reasoning supporting the pipeline routing are presented in the original pipeline application. Copies of supporting information for this finding and the final environmental assessment can be obtained from the State Department's Office of International Energy and Commodities Policy, 202–647–2875.

Environmental Justice

In addition to the analysis conducted in accordance with NEPA, the Department of State addressed environmental justice considerations pursuant to Executive Order 12898 of February 11, 1994 ("Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations"). Based on its examination of environmental justice considerations, the Department has determined that the proposed pipeline will not have disproportionately high and adverse human health or environmental effects on minority and low-income populations. The analysis supporting this determination can be obtained from the State Department, Office of International Energy and Commodities Policy, 202–647–2887.

FOR FURTHER INFORMATION ON THE PIPELINE PERMIT APPLICATION CONTACT: Susan Phillips, Office of International Energy and Commodities Policy, Room 3529, U.S. Department of State, Washington, DC, 20520, (20) 647–2887.

Dated: April 4, 1996.

Stephen J. Gallogly,

Acting Director, International Energy and Commodities Policy.

[FR Doc. 96–12367 Filed 5–16–96; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 2390]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

The Advisory Committee on Historical Diplomatic documentation will meet in the Department of State, June 6–7, 1996 in Conference Room 1205.

The Committee will meet in open session from 9:00 a.m. on the morning of Thursday, June 6, 1996, until 12:00 noon. The remainder of the Committee's sessions from 1:30 p.m. on Thursday, June 6, until 1:00 p.m. Friday, June 7, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (P.L. 92–463). It has been determined that discussions during these portions of the meeting will involve consideration of matters not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities will be withheld from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123, (e-mail histoff@ix.netcom.com).

Dated: May 7, 1996.

William Z. Slany,

Executive Secretary.

[FR Doc. 96–12366 Filed 5–16–96; 8:45 am]

BILLING CODE 4710–11–M

[Public Notice 2379]

Bureau of Oceans and International Environmental and Scientific Affairs; Certifications Pursuant to Section 609 of Public Law 101–162

SUMMARY: On April 30, 1996, the Department of State certified, pursuant to Section 609 of Public Law 101–162 ("Section 609"), that 13 nations have adopted programs to reduce the incidental capture of sea turtles in shrimp fisheries comparable to the program in effect in the United States. In addition, the Department certified that the fishing environment in 23 other countries does not pose a threat of the incidental taking of sea turtles protected under Section 609. Shrimp imports from any nation not certified were prohibited effective May 1, 1996, pursuant to Section 609.

EFFECTIVE DATE: May 17, 1996.

FOR FURTHER INFORMATION CONTACT: Hollis Summers, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520–7818; telephone: (202) 647–3940.

SUPPLEMENTARY INFORMATION: Section 609 prohibits imports of shrimp from foreign nations unless the President certifies to the Congress by May 1 of each year either: (1) that the harvesting nation has adopted a program governing the incidental capture of sea turtles in its commercial shrimp fishery comparable to the program in effect in the United States; or (2) that the fishing environment in the harvesting nations does not pose a threat of the incidental taking of sea turtles. The President has delegated the authority to make this certification to the Department of State. Revised State Department guidelines for making the required certifications were published in the **Federal Register** on April 19, 1996 (FR Vol. 61, No. 77, pp. 17342–17344).

A December, 1995 U.S. Court of International Trade decision expanded the scope of Section 609 to include all countries which harvest shrimp. On April 30, 1996, the Department of State certified that 36 of the affected countries have met the requirements of the law. As a result, shrimp imports from all other countries harvested with commercial fishing technology which may adversely affect sea turtles were prohibited pursuant to Section 609 effective May 1, 1996. The ban on shrimp imports from Suriname (in effect since May 1, 1993) and French Guiana (in effect since May 1, 1992) remain in place.

The countries that were certified on April 30, 1996, are Argentina, the Bahamas, Belgium, Belize, Brunei, Canada, Chile, Colombia, Costa Rica, Denmark, the Dominican Republic, Ecuador, El Salvador, Germany, Guatemala, Guyana, Haiti, Iceland, Indonesia, Ireland, Jamaica, Mexico, the Netherlands, New Zealand, Nicaragua, Norway, Oman, Panama, Peru, Russia, Sri Lanka, Sweden, Trinidad and Tobago, the United Kingdom, Uruguay and Venezuela.

Of these, the Department certified that the fishing environment in some countries does not pose a threat of the incidental taking of sea turtles protected by Section 609. The following 15 nations have shrimp fisheries only in cold waters where there is essentially no risk of taking sea turtles: Argentina, Belgium, Canada, Chile, Denmark, Germany, Iceland, Ireland, the Netherlands, New Zealand, Norway, Russia, Sweden, the United Kingdom, and Uruguay. The following 8 nations only harvest shrimp using manual rather than mechanical means to retrieve nets: the Bahamas, Brunei, the Dominican Republic, Haiti, Jamaica, Oman, Peru and Sri Lanka. Use of such small-scale technology does not adversely affect sea turtles.

The following countries were certified as having adopted programs to reduce the incidental capture of sea turtles in shrimp fisheries comparable to the program in effect in the United States: Belize, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Indonesia, Mexico, Nicaragua, Panama, Trinidad and Tobago, and Venezuela.

In implementing the ban on shrimp imports from all countries not certified, any shipment with a recorded date of export prior to May 1, 1996, will be allowed entry into the United States even if it arrives on or after May 1, 1996. That is, shipments in transit prior to the effective date of the ban are not barred from entry.

The Department of State communicated the certifications under Section 609 to the Office of Trade Operations of the United States Customs Service in a letter transmitted on May 2, 1996.

As is clear from the revised guidelines issued by the Department of State on April 19, 1996, the implementation of the Court of International Trade's order has required certain procedural refinements. The Department will keep these guidelines under close review throughout the upcoming year to ensure the effective implementation of Section 609, and will carefully review their effectiveness and enforceability before making any 1997 certifications. It is the intention of the Department to promote the development of comprehensive TED programs in all harvesting nations where shrimp trawl fisheries pose a risk to sea turtles. Any comments on or information regarding the effectiveness of the implementation process is welcome.

Technical Revision

Public Notice 2368, "Revised Notice of Guidelines for Determining Comparability of Foreign Programs for the Protection of Turtles in Shrimp Trawl Fishing Operations," (61 FR 17342), is revised as follows:

"IV. Related Determinations" is amended to read "III. Related Determinations".

In Section III (as amended above), paragraph (b), the reference to "Sections II and III" is amended to read "Sections I and II".

Dated: May 13, 1996.

David A. Colson,

Ambassador, Deputy Assistant Secretary for Oceans.

[FR Doc. 96–12371 Filed 5–16–96; 8:45 am]

BILLING CODE 4710–09–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Comments on the Accessions of Albania, Armenia, Croatia, Saudi Arabia, and Ukraine to the World Trade Organization (WTO), and on U.S. Participation in Negotiations for the Terms of Those Accessions

ACTION: Notice and request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) is requesting written public comments concerning U.S. commercial interests and other issues related to the accession of Albania, Armenia, Croatia, Saudi Arabia, and Ukraine to the WTO. Public comments should include, but not be limited to, information concerning these countries' current trade policies and practices which affect (A) market access for U.S. exports, e.g., tariffs, non-tariff measures; (B) trade and investment in services, and (C) other aspects of their trade regimes subject to WTO provisions that affect U.S. trade interests. Comments received will be considered in developing U.S. positions and objectives for the multilateral and bilateral negotiations that will determine the terms of WTO accession for Albania, Armenia, Croatia, Saudi Arabia, and Ukraine.

DATES: Public comments are due by noon on Friday, June 21, 1996.

ADDRESSES: Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: Barbara Chattin, Director for Tariff Negotiations (202–395–5097), Peter Collins, Deputy Assistant USTR for Services and Investment (202–395–7271) or Cecilia Leahy Klein, Director for WTO Accessions (202–395–3063), Office of the U.S. Trade Representative.

SUPPLEMENTARY INFORMATION: The Chairman of the Trade Policy Staff Committee invites written comments from the public on market access and other issues to be addressed in the course of negotiations with Albania, Armenia, Croatia, Saudi Arabia, and Ukraine for accession to the WTO. Each of these countries has applied for membership in the WTO and has

initiated negotiations with other WTO members. The terms of membership will be negotiated in bilateral meetings with government representatives and in meetings of the Working Parties established by the Members of the WTO to conduct the negotiations. All comments will be considered in developing U.S. positions and objectives for participation in these negotiations, establishment of schedules of commitments and concessions in the areas of agriculture, industrial goods, and trade and investment in services, and for development of the elements of these countries' protocols of accession to the WTO.

The Committee is seeking public comments on the possible affect on U.S. trade of these countries' accession to the WTO, with particular reference to tariffs applied to imports and any other trade measures currently applied by Albania, Armenia, Croatia, Saudi Arabia, and Ukraine that could be subject to the provisions of the WTO, particularly market access issues for goods and services or practices that could affect the competitiveness of U.S. goods and services in those markets. Issues of interest to the TPSC include, but are not limited to: (a) Comments on possible tariff reductions and the removal of border measures such as quotas or import licensing requirements; (b) uniform application of the trading system (c) the provision of national treatment and nondiscriminatory treatment for imports, especially in the area of domestic taxation; (d) transparency in application of trade laws and regulations; (e) right of appeal in cases involving application of trade laws and other laws relating to WTO provisions, such as protection and enforcement of intellectual property rights (IPR) and services; (f) customs processing issues, such as document certification prior to export, fees, customs valuation, and certification requirements; (g) industrial export and domestic subsidies; (h) agricultural export subsidies and domestic supports and incentives; (i) safeguard and unfair trade practice procedures applied to imports; (j) plant, animal, and human health and safety requirements; (k) labeling and shelf-life requirements; (l) food standards and other technical barriers to trade; (m) utilization of preshipment inspection services; (n) activities of state trading enterprises, including restrictions and other trade-distorting practices; (o) price controls and policies; (p) government procurement practices; (q) policies concerning trade in civil aircraft, and (r) the trade-related aspects of investment policies and the protection and enforcement of IPRs. Market access issues for services include, but are not limited to, the right of establishment for U.S. services providers, the ability to provide services on a cross border basis, and the ability of persons to enter temporarily to provide services.

Information on products or practices subject to these negotiations should include, whenever appropriate, the import or export tariff classification number used by these countries for the product concerned. Submissions also should clearly separate issues by country.

Persons submitting written comments should provide a statement, in twenty copies, by noon, Friday, June 21, 1996, to Carolyn Frank, Executive Secretary, TPSC, Office of the U.S. Trade Representative, Room 501, 600 17th Street, NW., Washington, D.C. 20508. Non-confidential information received will be available for public inspection by appointment, in the USTR Reading Room, Room 101, Monday through Friday, 10:00 a.m. to 12:00 noon and 1:00 p.m. to 4:00 p.m. For an appointment call Brenda Webb on 202–395–6186. Business confidential information will be subject to the requirements of 15 CFR § 2003.6. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a non-confidential summary thereof. Other countries pursuing WTO accession whose negotiations are not yet sufficiently advanced to warrant a request for public comment are Algeria, Belarus, Cambodia, Jordan, Kazakhstan, Kyrghyzstan, the Former Yugoslav Republic of Macedonia, Moldova, Nepal, Seychelles, Sudan, Tonga, Uzbekistan, Vanuatu, and Vietnam.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 96–12426 Filed 5–16–96; 8:45 am]

BILLING CODE 3190–01–M

[Docket No. 301–92]

Request for Public Comment and Notice of Public Hearing: Determination Involving Expeditious Action; Proposed Determination Concerning What Further Action To Take Under Section 301(a) in Response to the People's Republic of China's Unsatisfactory Implementation of the 1995 Agreement on Enforcement of Intellectual Property and Market Access

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determination on expeditious action and proposed determination on further action; request for public comment; notice of public hearing.

SUMMARY: Based on monitoring carried out pursuant to subsection 306(a) of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2416(a)), the Acting United States Trade Representative (USTR) considers that China is not satisfactorily implementing the 1995 Agreement on Enforcement of Intellectual Property Rights and Market Access (1995 Agreement) China entered into to resolve the intellectual property rights (IPR) enforcement and market access issues subject to investigation under Title III, chapter I of the Trade Act. In light of this, the USTR must, pursuant to sections 306(b), determine what further action to take under section 301(a) of the Trade Act (19 U.S.C. 2411(a)). The USTR proposes to take the following action: To impose prohibitive tariffs on imports of certain products of China to be drawn from the lists of products set forth in the Annexes to this Notice.

Since the products listed in Annex II to this Notice are subject to quantitative restrictions and it is essential to prevent surges of imports into the U.S. market, the USTR, pursuant to section 304(h)(1) of the Trade Act, has determined that expeditious action is necessary. Pursuant to section 301(a) and (c) of the Trade Act, the USTR has directed the Commissioner of Customs, to limit by date of export entries of the textile and apparel products listed in Annex II, over the 30-day period (commencing with exports from China on or after May 15, 1996) to 15 percent of the 1996 adjusted level for each category of product. In addition, the USTR has requested the Chair of the Committee on Implementation of Textile Agreements (CITA) to amend CITA's relevant directives dated November 30, 1995, and December 13, 1995, in order to facilitate Customs implementation of this determination, and to inform Customs accordingly.

Pursuant to section 304(b) and 306(c) of the Trade Act (19 U.S.C. 2414(b) and 2416(c)), the USTR is seeking public comments and will hold a public hearing on June 6–7, 1996, regarding the expeditious action taken and a proposed determination on what further action to take.

EFFECTIVE DATE: Requests to testify at the hearing must be submitted by noon, Wednesday, May 22, 1996; written testimony is due by noon, Friday, May 31, 1996; and written rebuttals are due by 5:00 p.m., Monday, June 10, 1996. Written comments on the proposed determination are due by noon, Friday, June 14, 1996.

FOR FURTHER INFORMATION CONTACT: Questions concerning the products under consideration for imposition of prohibitive tariffs should be directed to Irving Williamson, Chair Section 301 Committee (202) 395–3432, Deborah Lehr, Deputy Assistant USTR for China and Mongolian Affairs (202) 395–5050, or Caroyl Miller (292) 395–3026 Deputy Chief Textiles Negotiator; questions about the public hearing, written testimony and written comments should be directed to Sybia Harrison, Staff Assistant to Section 301 Committee, (202) 395–3432. All of the above persons are located at the Office of the United States Trade Representative, 600 17th Street, NW, Washington, D.C. 20508.

SUPPLEMENTARY INFORMATION: On June 30, 1994, pursuant to section 302(b) of the Trade Act, the USTR initiated an investigation of those acts, policies and practices of China that were the basis for identification of China as a priority foreign country (PFC) under section 182 of the Trade Act. See 59 FR 35558 (July 12 1994). On February 4, 1995, the USTR determined that certain acts, policies and practices of the Chinese government with respect to the enforcement of IPRs and market access for persons relying on intellectual property protection are unreasonable and constitute a burden or restriction on U.S. commerce. The USTR also determined that trade action in the form of assessment of increased duties on certain products from China was appropriate. See 60 FR 7230 (Feb. 7, 1995).

On February 26, 1995, the government of China agreed to take extensive measures to enforce IPRs and provide market access for persons relying on intellectual property protection. On the basis of the measures that China agreed to undertake, the USTR decided that the action taken pursuant to section 301(c) of the Trade Act, to increase tariffs on certain products from China, was no longer appropriate and terminated that action. The USTR also determined to monitor, under section 306 of the Trade Act, China's implementation of the measures it had agreed to undertake and terminated the investigation. Pursuant to section 182(c)(1)(A) of the Trade Act, the USTR also decided to revoke China's designation as a PFC. See 60 FR 12583 (March 7, 1995). The Agreement setting forth the measures China agreed to take was formally signed on March 11, 1995.

Since then, USTR and other agencies have worked closely and consulted frequently with the Chinese government on implementation of the IPR Agreement. The U.S. government has provided technical assistance and training on enforcement of IPRs and private sector interests have worked with individuals and firms in China to achieve market access for U.S. products and firms.

While some progress has been made in the area of enforcement of IPRs, particularly with respect to enforcement of copyrights at the retail level, critical deficiencies are present in China's implementation of measures to address piracy at the production and wholesale distribution level. Piracy remains particularly rampant in Guangdong province. Manufacturers and distributors—primarily located in southern China—continue to produce pirated CDs, LDS and CD–ROMS in massive quantities. Due to lax enforcement at the point of production and at the border, export of pirated computer software, movies, sound recordings and other products have grown substantially over the past year. Products pirated in China have flooded Southeast Asia, Russia and the other Commonwealth of Independent States (CIS) countries. Latin American and European markets have also been targeted and the U.S. Customs Service has seized pirated CDS and CD–ROMs entering the United States from China. Finally, no significant progress has been made in providing market access to U.S. firms and products that rely on IPR protection.

Based on the results of this monitoring, the USTR considers that China is not satisfactorily implementing the Agreement that was the basis for resolving the IPR enforcement and market access issues under investigation. Consequently, USTR is seeking comments on a proposed determination on what action to take under section 301(a) of the Trade Act.

Proposed Determination and Expeditious Action

Pursuant to sections 306(b) and 301(c) of the Trade Act, the USTR proposes to take the following action: To impose prohibitive tariffs on imports of certain products of China to be drawn from the lists of products set forth in the Annexes to this notice.

The decision on what specific products could be subject to prohibitive tariffs will take into consideration the written comments provided and any written and oral testimony offered at the public hearing.

Since the products listed in Annex II to this Notice are subject to quantitative restrictions and it is essential to prevent surges of imports into the U.S. market, the USTR, pursuant to section 304(h)(1) of the Trade Act, has determined that expeditious action is necessary. Pursuant to section 301 (a) and (c) of the Trade Act, the USTR has directed the Commissioner of Customs, to limit by date of export entries of the textile and apparel products listed in Annex II, over the 30-day period (commencing with exports from China on or after May 15, 1996) to 15 percent of the 1996 adjusted level for each category of product. In addition, the USTR has requested the Chair of CITA to amend CITA's relevant directives dated November 30, 1995, and December 13, 1995, in order to facilitate customs implementation of this determination and to inform Customs accordingly.

Public Comment on Expeditious Action Taken, Proposed Determination and Hearing Participation

In accordance with section 304(b) and 306(c) of the Trade Act, the USTR invites all interested persons to provide written comments on the action take under section 304(b)(1) and the proposed determination. With respect to the proposed trade action under section 301, comments may address: (1) the appropriateness of subjecting the products listed in the Annexes to this notice to prohibitive duties; (2) the level at which duties on particular products should be set; and (3) the degree to which imposition of prohibitive duties on particular products might have an adverse effect on U.S. consumers. Comments will be considered in recommending any determination or action under section 301 to the USTR.

The USTR will also consider the written, oral, and rebuttal comments submitted in the context of a public hearing held pursuant to section 304(b) of the Trade Act and in accordance with 15 CFR 2006.7 through 2006.9. The hearing will commence at 10:00 a.m. on Thursday, June 6, 1996, continue on June 7, 1996, if necessary. The hearing will be held in the Main Hearing Room (Room 101) at the U.S. International Trade Commission, 500 E Street, SW, Washington, D.C.

Request to Testify: Interested person wishing to testify orally at the hearings must provide a written request to do so by noon, Wednesday, May 22, 1996, to Sybia Harrison, Staff Assistant to the Section 301 Committee, Office of the U.S. Trade Representative, 600 17th Street NW, Washington, DC 20508. Requests to testify must include the following information: (1) name, address, telephone and fax numbers, and firm or affiliation; and (2) a brief summary of their presentation. Requests

must conform to the requirements of 15 CFR 2006.8(a). After the Chairman of the Section 301 Committee considers the request to present oral testimony, Ms. Harrison will notify the applicant of the time of his or her testimony. Remarks at the hearing will be limited to 5 minutes.

Written Testimony: In addition, persons presenting oral testimony must submit their complete written testimony by noon on Friday, May 31, 1996. In order to assure each party an opportunity to contest the information provided by other parties, USTR will entertain rebuttal briefs filed by any party by 5:00 p.m., Monday, June 10, 1996. In accordance with 15 CFR 2006.8(c), rebuttal briefs should be strictly limited to demonstrating errors of fact or analysis not pointed out in the briefs or hearing and should be as concise as is possible.

Requirements for Submissions: Written comments on the proposed determinations under section 306 of the Trade Act, written testimony, and rebuttal briefs must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) and are due according to the relevant deadlines noted above. Comments must state clearly the position taken and describe with particularity the supporting rationale, be in English, and be provided in twenty copies to: Chairman, Section 301 Committee, Room 223, USTR, 600 17th St., N.W., Washington, D.C. 20508.

Written comments, testimony, and briefs will be placed in a file (Docket 301–92) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Persons wishing to submit confidential business information must certify in writing that such information is confidential in accordance with 15 CFR 2006.15(b), and such information must be clearly marked "Business Confidential" in a contrasting color ink at the top of each page on each of the twenty copies and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the Docket open to public inspection. An appointment to review the docket (Docket No. 301–92) may be made by calling Brenda Webb (202) 395–6186. The USTR Reading Room is open to the public from 10:00 a.m. to noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 101.

Irving A. Williamson,

Chairman, Section 301 Committee.

BILLING CODE 3190–01–M

Annex I

HTS Subheading	Article
	[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]
	Articles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber:
	Gloves:
4015.11.00	Surgical and medical
	Wood marquetry and inlaid wood; caskets and cases for jewelry or cutlery and similar articles, of wood; statuettes and other ornaments, of wood; wooden articles of furniture not falling within chapter 94:
4420.10.00	Statuettes and other ornaments, of wood
	Other:
	Jewelry boxes, silverware chests, cigar and cigarette boxes, microscope cases, tool or utensil cases and similar boxes, cases and chests, all the foregoing of wood:
	[Cigar and cigarette boxes]
	Other:
4420.90.65	Lined with textile fabrics
	Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; box files, letter trays, and similar articles, of paper or paperboard of a kind used in offices, shops or the like:
	[Cartons, boxes and cases, of corrugated paper or paperboard; folding cartons, boxes and cases, of noncorrugated paper or paperboard; sacks and bags, having a base of a width of 40 cm or more]
	Other sacks and bags, including cones:
	[Shipping sacks and multiwall bags, other than grocers' bags]
4819.40.0040	Other

Annex I (con.)
-2-

HTS Subheading	Article
	Articles of jewelry and parts thereof, of precious metal or of metal clad with precious metal:
	Of precious metal whether or not plated or clad with precious metal:
	[Of silver, whether or not plated or clad with other precious metal]
	Of other precious metal, whether or not plated or clad with precious metal:
	[Rope, curb, cable, chain and similar articles produced in continuous lengths, all the foregoing, whether or not cut to specific lengths and whether or not set with imitation pearls or imitation gemstones, suitable for use in the manufacture of articles provided for in this heading]
	Other:
	[Necklaces and neck chains, of gold; clasps and parts thereof]
7113.19.50	Other
	Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel:
	[Iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like]
	Other:
	Of stainless steel:
	Cooking and kitchen ware:
	[Teakettles]
	Other:
7323.93.0030	Cooking ware

Annex I (con.)
-3-

HTS Subheading	Article
	Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof:
	Electric space heating apparatus and electric soil heating apparatus:
	[Storage heating radiators]
	Other:
	Portable space heaters:
	[Fan-forced]
8516.29.0060	Other
	Other electrothermic appliances:
	Coffee or tea makers:
	Coffee makers:
	[Automatic drip and pump type; percolator]
8516.71.0060	Other
	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line systems; videophones; parts thereof:
	Telephone sets; videophones:
	[Line telephone sets with cordless handsets]
	Other:
	[Videophones]
	Other:
	Single line:
	[Without special features]
	Other (such as memory, redial, autodial, speaker and the like):
8517.19.8050	Incorporating an automatic answering device
8517.19.8070	Other
8517.19.8080	Multiline (including key, call director and consoles)
	Facsimile machines and teleprinters:
8517.21.00	Facsimile machines

Annex I (con.)
-4-

HTS Subheading	Article
	Magnetic tape recorders and other sound recording apparatus, whether or not incorporating a sound reproducing device:
	Telephone answering machines:
8520.20.0040	Announce and record machines
	Transmission apparatus for radiotelephony, radiotelegraphy, radiobroadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras; still image video cameras or other video camera recorders:
	Transmission apparatus incorporating reception apparatus:
	[Transceivers]
	Other:
8525.20.9020	Radio telephones designed for installation in motor vehicles for the Public Cellular Radiotelecommunication Service
	Other radio telephones designed for the Public Cellular Radiotelecommunication Service:
8525.20.9060	Units weighing over 1 kg
8525.20.9070	Other
	Bicycles and other cycles (including delivery tricycles), not motorized:
	Bicycles having both wheels not exceeding 63.5 cm in diameter:
8712.00.1510	Having both wheels not exceeding 50 cm in diameter
	Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:
	[Snow-skis and other snow-ski equipment; parts and accessories thereof]
	Water skis, surf boards, sailboards and other water-sport equipment; parts and accessories thereof:
	[Sailboards and parts and accessories thereof]
	Other:
	[Water skis]
9506.29.0040	Other

Annex I (con.)
-5-

HTS Subheading	Article
	Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof (con.):
	[Golf clubs and other golf equipment; parts and accessories thereof; articles and equipment for table-tennis, and parts and accessories thereof; tennis, badminton or similar rackets, whether or not strung; parts and accessories thereof; balls, other than golf balls and table-tennis balls; ice skates and roller skates, including skating boots with skates attached; parts and accessories thereof]
	Other:
	Articles and equipment for general physical exercise, gymnastics or athletics; parts and accessories thereof:
	[Exercise cycles; exercise rowing machines]
9506.91.0030	Other
	Other:
	[Archery articles and equipment and parts and accessories thereof; badminton articles and equipment, except rackets, and parts and accessories thereof; baseball articles and equipment, except balls, and parts and accessories thereof; football, soccer and polo articles and equipment, except balls, and parts and accessories thereof; ice-hockey and field-hockey articles and equipment, except balls and skates, and parts and accessories thereof; lacrosse sticks; lawn-tennis articles and equipment, except balls and rackets, and parts and accessories thereof; skeet targets; sleds, bobsleds, toboggans and the like and parts and accessories thereof; snowshoes and parts and accessories thereof; swimming pools and wading pools and parts and accessories thereof]
	Other:
	[Nets not elsewhere specified or included]
9506.99.6080	Other

Annex I (con.)
-6-

HTS Subheading	Article
	Fishing rods, fish hooks and other line fishing tackle; fish landing nets, butterfly nets and similar nets; decoy "birds" (other than those of heading 9208 or 9705) and similar hunting or shooting equipment; parts and accessories thereof:
	Fishing rods and parts and accessories thereof:
9507.10.0040	Fishing rods

Annex II

Textile Category	Brief Description

A description of the textile and apparel categories in terms of HTS numbers is available in the 1996 CORRELATION: Textile and Apparel Catgories with the Harmonized Tariff Schedule of the United States.

341	Cotton Blouses and Shirts for Women, Not Knit
352	Cotton Underwear
360	Cotton Pillowcases
361	Cotton Sheets
447	Wool Trousers for Men and Boys
448	Wool Slacks for Women and Girls
641	Man-made Fiber Blouses and Shirts for Women, Not Knit
642	Man-made Fiber Skirts
647	Man-made Fiber Trousers, Slacks and Shorts for Men and Boys
648	Man-made Fiber Trousers, Slacks and Shorts for Women and Girls
649	Man-made Fiber Brassieres and Body Supporting Garments
650	Man-made Fiber Robes and Dressing Gowns
652	Man-made Fiber Underwear
840	Silk-Blend and Non-Cotton Vegetable Fiber Shirts and Blouses, Not Knit
842	Silk-Blend and Non-Cotton Vegetable Fiber Skirts
847	Silk-Blend and Non-Cotton Vegetable Fiber Trousers, Slacks and Shorts
218	Cotton and Man-made Fiber Fabrics of Yarns of Different Colors
317/326	Cotton Twill and Sateen Fabric
338/339	Cotton Knit Shirts for Men and Women
347/348	Cotton Trousers, Slacks and Shorts For Men and Women
359-V	Cotton Vests
638/639	Man-made Fiber Knit Shirts for Men and Women
659-S	Man-made Fiber Swimwear
740	Silk Shirts for Men
741	Silk Blouses for Women
Silk Group	Other Silk Apparel

[FR Doc. 96–12572 Filed 5–15–96; 12:19 pm]
BILLING CODE 3190–01–C

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending 5/10/96

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–96–1358
Date filed: May 7, 1996
Parties: Members of the International Air Transport Association
Subject:
CAC/Reso/184 dated April 22, 1996
Finally Adopted Resolutions R1–8
Minutes—CAC/Meet/114 dated April 22, 1996
Intended effective date: October 1, 1996

Paulette V. Twine,
Chief, Documentary Services Division.
[FR Doc. 96–12436 Filed 5–16–96; 8:45 am]
BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending May 10, 1996

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–96–1362.
Date filed: May 8, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 5, 1996.
Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Section 41101, the Department's Notice, and Subpart Q of the Regulations, requests a Certificate of Public Convenience and Necessity for authority to offer scheduled foreign air transportation of persons, property and mail between a point or points in the United States and a point or points in Poland, via intermediate points in Europe (including but not limited to Vienna, Austria). Delta also requests one of the two third-country code-share service to Warsaw, Poland in conjunction with Austrian Airlines, consistent with the March 22, 1996 Memorandum of Consultations between the governments of the United States and Poland. In addition, Delta and Austrian jointly request a Statement of Authorization under 14 C.F.R. Part 212 to permit Austrian to carry Delta's "DL" designator code on Austrian's flights between Vienna and Warsaw, Poland.

Docket Number: OST–96–1363.
Date filed: May 9, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 6, 1996.
Description: Application of Jet USA Airlines, Inc., pursuant to 49 U.S.C. Section 40102(a)(15), and Subpart Q of the Regulations, requests authority to engage in interstate and overseas scheduled air transportation of persons, property and mail between any point in any state in the United States or the District of Columbia, or any territory or possession of the United States, and any point in any state in the United States or the District of Columbia, or any territory or possession of the United States.

Paulette V. Twine,
Chief, Documentary Services Division.
[FR Doc. 96–12435 Filed 5–16–96; 8:45 am]
BILLING CODE 4910–62–P

Federal Highway Administration

Efficieny, Quality and Effectiveness of Existing Civil Rights Programs; Roundtable Discussions

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meetings; change in meeting date and notice of additional meeting dates.

SUMMARY: The FHWA announced on May 3, 1996 (61 FR 19973), a series of roundtable conferences to obtain information on issues relating to the efficiency, quality, and effectiveness of existing civil rights programs. The meeting date for the first meeting (Portland, Oregon) has been changed from May 22 to May 28. Other information regarding location and contact person remains the same. Two roundtable discussions on June 25 and July 17, 1996, have been added at the locations indicated below.

The agenda for the roundtable discussions includes the topics of state internal and contractor equal employment opportunity (EEO) programs, supportive services, and the administration of specific nondiscrimination statutes. Although the meetings will be open to the public, space will be limited; therefore, the FHWA requests that persons interested in attending the meeting preregister by contacting the "contact person" listed below for the appropriate meeting at least three days prior to the meeting. The Disadvantaged Business Enterprise (DBE) Program will not be discussed at these Roundtables. The DBE program is currently being addressed by a separate interagency workgroup.

DATES: Public meetings will be held at each of the following locations within the span of one day from 8 a.m. to Noon and from 1 p.m. to 5 p.m. Specific dates and exact locations are as follows:

May 28, 1996

Portland State University, Smith Memorial Center, Rooms SMC 294 and SMC 296, 724 South West Harrison Street, Portland, Oregon 97201, contact person: Willie Harris, ph.(503)326–2067.

June 4, 1996

Marque Hotel, 111 Perimeter Center West, Atlanta, Georgia 30346, contact person: Pamela Foster, ph.(404)347–4791

June 25, 1996

Massachusetts Department of Highways, 10 Park Plaza, Conference Rooms 2 and 3, Boston, Massachusetts 02116, contact person: Trish O'Brien, ph. (617) 973–7823

July 17, 1996

FHWA Regional Office, 555 Zang Street, 3rd Floor Conference Rooms A and B, Lakewood, Colorado 80228, contact person: Teresa Banks, ph. (303) 969–6707

FOR FURTHER INFORMATION CONTACT: Ms. Linda J. Brown, Chief, Policy and Program Development Division, Office of Civil Rights, Telephone: (202)366–0471; FAX: (202)366–1599. Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 p.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

(Authority: 23 U.S.C. 315; 49 CFR 1.48)

Issued on: May 14, 1996.

George F. Duffy,
Chief, Program Operations Division, Office of Civil Rights.
[FR Doc. 96–12433 Filed 5–16–96; 8:45 am]
BILLING CODE 4910–22–P

Federal Transit Administration

Transfer of Federally Assisted Land or Facility

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to transfer Federally assisted land or facility.

SUMMARY: 49 U.S.C. Section 5334(g), [formerly called Section 12(k) of The Federal Transit Act], permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal Government if, among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this Notice to advise Federal agencies that the Maryland Mass Transit Administration intends to transfer property located at the intersection of York Road, Dulaney Valley Road, Joppa Road and Allegheny Avenue, in Towson, Maryland.

EFFECTIVE DATE: Any Federal agency interested in acquiring the land or facility must notify the FTA Philadelphia Regional Office of its interest, by June 17, 1996.

ADDRESSES: Interested parties should notify the Regional Office by writing to Mr. Sheldon A. Kinbar, Regional Administrator, Federal Transit Administration, 1760 Market Street, Room 500, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Sheila Byrne, Transportation Program Specialist, Region 3, at 215/656–6900 or Ann Catlin, Real Estate Specialist, Office of Program Management at 202/366–1647.

SUPPLEMENTARY INFORMATION:

Background

49 U.S.C. Section 5334(g) provides guidance on the transfer of capital assets. Specifically, if a recipient of FTA assistance decides an asset acquired under this chapter at least in part with that assistance is no longer needed for the purpose for which it was acquired, the Secretary of Transportation may authorize the recipient to transfer the asset to a local governmental authority to be used for a public purpose with no further obligation to the Government. The Secretary may authorize a transfer for a public purpose other than mass transportation only if the Secretary decides: 49 U.S.C. Section 5334(g) DETERMINATIONS:

(A) The asset will remain in public use for not less than 5 years after the date the asset is transferred;

(B) There is no purpose eligible for assistance under this chapter for which the asset should be used;

(C) The overall benefit of allowing the transfer is greater than the interest of the Government in liquidation and return of the financial interest of the Government in the asset, after considering fair market value and other factors; and

(D) Through an appropriate screening or survey process, that there is no interest in acquiring the asset for Government use if the asset is a facility or land.

Federal Interest in Acquiring Land or Facility

This document implements the requirements of 49 U.S.C. Section 5334(g). Accordingly, FTA hereby provides notice of the availability of the land or facility further described below. Any Federal agency interested in acquiring the affected land or facility should promptly notify the FTA.

If no Federal agency is interested in acquiring the existing land or facility, FTA will make certain that the other requirements specified in 49 U.S.C. Section 5334(g) (1)(A) through (1)(D) are met before permitting the asset to be transferred.

Additional Description of Land or Facility:

Parcel of land approximately 4,485 square feet (identified as 602–608 York Road) located at the intersection of York Road, Dulaney Valley Road, Joppa Road and Allegheny Avenue in Towson, Maryland.

Issued on: May 13, 1996.

Sheldon A. Kinbar,
Regional Administrator.
[FR Doc. 96–12404 Filed 5–16–96; 8:45 am]
BILLING CODE 4910–57–P

Surface Transportation Board [1]

[STB Finance Docket No. 32910]

Northwestern Pacific Railroad Authority; Acquisition Exemption; Former Northwestern Pacific Railroad Line From Southern Pacific Transportation Company and Golden Gate Bridge, Highway and Transportation District

Northwestern Pacific Railroad Authority (NWPRA), a noncarrier,[2] has filed a verified notice of exemption under 49 CFR 1150.31 to acquire former Northwestern Pacific Railroad Line real estate and rail facilities/trackage from Southern Pacific Transportation Company (SP) which extends from Healdsburg, CA (NWP MP 68.2), to Lombard Station, Napa County, CA (SP MP 63.4), via Schellville (NWP MP 40.6/SP MP 72.59), a distance of 66.85 miles.

The purpose of the acquisition is to preserve the railroad corridor for potential future mass transit use.

The transaction was expected to close on or about April 30, 1996.

Freight service on the line will continue to be provided by the California Northern Railroad Company (CNRR) pursuant to long-term lease arrangement with SP.[3] NWPRA will take title subject to the CNRR lease, and CNRR will continue to provide freight service. The joint powers agreement forming the NWPRA make an express commitment that in the event the existing operator files an application to abandon or discontinue freight service over the line NWPRA is to acquire in Finance Docket No. 32910, NCRA will be entitled to obtain an easement from NWPRA permitting it to continue freight service over the line. To provide for this, NWPRA states that it will, simultaneously with the closing of this transaction, transfer a permanent and exclusive freight railroad easement to NCRA, which will become effective only upon the cessation of freight

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which wes enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901.

[2] NWPRA is an independent joint powers public agency created pursuant to California Government Code Section 6500 *et seq.* by virtue of an agreement among the County of Marin, the Golden Gate Bridge, Highway and Transportation District (GGBHTD), and the North Coast Railroad Authority (NCRA).

[3] *See California Northern Railroad Company Limited Partnership—Trackage Rights—Southern Pacific Transportation Company,* Finance Docket No. 32673, (ICC served May 15, 1995).

service by CNRR and the approval by the Board of both the transfer of the easement and the assumption of carrier responsibility by NCRA.

In addition, CNRR currently operates over the segment between NWP MP 26.96 and NWP MP 25.57 pursuant to a freight easement which was retained by SP in a transaction involving GGBHT.[4] At the closing of the transaction in Finance Docket No. 32910, SP's freight easement will be quitclaimed to GGBHTD, which will then grant to NWPRA the rights to operate over the easement area. According to NWPRA, NCRA will obtain an easement from NWPRA to provide freight service over the segment between NWP MP 26.96 and NWP MP 25.57, at the same time that it acquires the easement mentioned earlier, by which it would take over operations after CNRR ceases its operations.

NWPRA states that the future transfer of these easements will imbue NCRA with all carrier rights and responsibilities and that NWPRA will remain a noncarrier holder of the underlying real estate. NWPRA thus states that it intends in the near future to file either a Motion to Dismiss this Notice or a Petition for a Declaratory Order requesting that it be designated as a noncarrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32910, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue NW., Washington, DC 20423. In addition, a copy of each pleading must be served on David J. Miller, Esq., Hanson, Bridgett, Marcus, Vlahos & Rudy, 333 Market Street, Suite 2300, San Francisco, CA 94105.

Decided: May 9, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–12455 Filed 5–16–96; 8:45 am]

BILLING CODE 4915–00–P

[4] *See Golden Gate Bridge, Highway & Transportation District—Acquisition Exemption—Northwestern Pacific Railroad Company and Southern Pacific Transportation Company*, Finance Docket No. 31689 (ICC served July 5, 1990).

Surface Transportation Board [1]

[STB Finance Docket No. 32907]

Ormet Railroad Corporation; Acquisition and Operation Exemption; Consolidated Rail Corporation

Ormet Railroad Corporation of Wheeling, WV (ORC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Consolidated Rail Corporation's Omal Secondary Track from milepost 60.5 at Powhatten Point, to the end of the line, milepost 72.7 at Omal, a distance of 12.2 miles in Monroe County, OH.

ORC will assume the common carrier obligation associated with the line, holding itself out to render common carrier service by railroad. Consolidated Rail Corporation will perform the operations on the line, solely pursuant to a private contractual arrangement, on behalf of and for the account of ORC.

Consummation was to be on or after April 30, 1996. If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32907, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue NW., Washington, DC 20423. In addition, a copy of each pleading must be served on Fritz R. Kahn, Esq., Suite 750 West, 1100 New York Avenue NW., Washington, DC 20005–3934.

Decided: May 10, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–12456 Filed 5–16–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901.

Surface Transportation Board [1]

[STB Finance Docket No. 32899] [2]

Owensville Terminal Company, Inc.; Acquisition and Operation Exemption—Poseyville & Owensville Railroad Company, Inc.

Owensville Terminal Company, Inc. (OTC), a noncarrier, filed a notice of exemption to acquire from Poseyville & Owensville Railroad Company, Inc. (P&O), and operate approximately 11.2 miles of rail branch line in Gibson and Posey Counties, IN, between milepost 271.0 in Poseyville and milepost 282.2 in Owensville.[3] The transaction was to be consummated on or after April 19, 1996.[4]

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) [formerly section 10505(d)] may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction. An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32899, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue NW., Washington, DC 20423. In addition, a copy of each pleading must be served on Robert P. vom Eigen, Esq., Hopkins & Sutter, 888 16th Street NW., Washington, DC 20006.

Decided: April 29, 1996.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901.

[2] This notice corrects the notice previously served and published in the **Federal Register** on May 7, 1996. The prior notice erroneously stated that Owensville Terminal Company, Inc., is a subsidiary of RailAmerica, Inc.

[3] P&O owns the line and operates it as a branch line, using equipment and labor supplied under contract by Garden Spot & Ohio Railroad (GS&O). The line connects with GS&O at Poseyville.

[4] P&O was placed into receivership by the Gibson County Superior Court, Gibson County, IN, in Cause No. 26001–9303–CP–0010. On March 19, 1993, the court appointed Robert W. Musgrave (Musgrave) receiver for P&O. Pursuant to a March 26, 1996 court order, Musgrave agreed to sell the line (real estate, leases and licenses, track, ties, and other track materials) to RailAmerica, Inc. (Rail America), a Delaware corporation. RailAmerica, in turn, will assign its rights and interests in the line to OTC, and Huron and Eastern Railway Company, Inc. (Huron), will supply the labor and equipment, as needed, for OTC to operate the line. OTC and Huron are Michigan corporations, and Huron is a RailAmerica subsidiary.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–12457 Filed 5–16–96; 8:45 am]

BILLING CODE 4915–00–P

Surface Transportation Board [1]

[STB Docket No. AB–55 (Sub-No. 526X)]

CSX Transportation, Inc.; Abandonment Exemption; in Berkeley County, WV

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR1152 Part Subpart F—*Exempt Abandonments* to abandon 1.29 miles of its line of railroad from milepost BBQ–1.64 to milepost BBQ–2.93 near Berkeley, in Berkeley County, WV.

CSXT has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 16, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by May 28, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 6, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Charles M. Rosenberger, Senior Counsel, 500 Water Street, J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 22, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 13, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–12458 Filed 5–16–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to the Board's jurisdiction pursuant to 49 U.S.C. 10903.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 10, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0163.
Form Number: ATF F 5210.5 (3068).
Type of Review: Extension.
Title: Manufacture of Tobacco Products Monthly Report.
Description: ATF F 5210.5 (3068) documents a tobacco products manufacturer's accounting of cigars and cigarettes. The form describes the tobacco products manufactured, articles produced, received, disposed of and statistical classes of large cigars. ATF examines and verifies entries on these reports so as to identify unusual activities, errors and omissions.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 101.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 1,212 hours.

OMB Number: 1512–0200.
Form Number: ATF F 5110.31.
Type of Review: Extension.
Title: Application and Permit to Ship Puerto Rican Spirits to the United States Without Payment of Tax.
Description: ATF F 5110.31 is used to allow a person to ship spirits in bulk into the U.S. The form identifies the person in Puerto Rico from where shipments are to be made, the person in the United States receiving the spirits, amounts of spirits to be shipped, and the bond of the U.S. person to cover taxes on such spirits.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 20.
Estimated Burden Hours Per Respondent: 45 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 450 hours.

OMB Number: 1512–0372.
Recordkeeping Requirement ID Number: ATF REC 5400/2.
Type of Review: Extension.
Title: Records and Supporting Data: Daily Summaries, Records and

Production, Storage, and Disposition, and Supporting Data by Licensed Explosives Manufacturers, and Manufacturers (Limited).

Description: These records, prepared by explosives manufacturers and explosives manufacturers (Limited) provide ATF with the ability to race explosives used in crime.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 1,053.

Estimated Burden Hours Per Recordkeeper: 15 minutes.

Frequency of Response: Weekly.

Estimated Total Recordkeeping Burden: 68,835 hours.

OMB Number: 1512–0467.

Form Number: ATF 5000.24.

Type of Review: Extension.

Title: Excise Tax Return—Alcohol and Tobacco.

Description: Businesses report their Federal excise tax liability on distilled spirits, wine, beer, tobacco products, cigarette papers and tubes on ATF F 5000.24. ATF needs this form to identify the taxpayer and to determine the amount and type of taxes due and paid.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 2,800.

Estimated Burden Hours Per Respondent: 42 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 35,280 hours.

OMB Number: 1512–0497.

Form Number: ATF F 5000.25.

Type of Review: Extension.

Title: Excise Tax Return—Alcohol and Tobacco (Puerto Rico).

Description: Businesses in Puerto Rico report their Federal excise tax liability on distilled spirits, wine, beer, tobacco products, cigarette papers and tubes on ATF F 5000.24. ATF needs this form to identify the taxpayer and to determine the amount and type of taxes due and paid.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 30.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 130 hours.

Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–12430 Filed 5–16–96; 8:45 am]

BILLING CODE 4810–31–P

Submission to OMB for Review; Comment Request

May 9, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1005.

Regulation ID Number: PS–62–87 Final.

Type of Review: Extension.

Title: Low-Income Housing Credit for Federally-Assisted Buildings.

Description: The rule requires the taxpayer (low-income building owner) to seek a waiver in writing from the IRS concerning low-income buildings acquired during a special 10-year period in order to avert a claim against a Federal mortgage insurance fund.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 3 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3,000 hours.

OMB Number: 1545–1011.

Regulation ID Number: Notice 87–61, LR–130–86 Announcement.

Type of Review: Extension.

Title: Long-Term Contracts; Methods of Accounting Under Tax Reform.

Description: These reporting requirements are necessary to permit taxpayers to change their methods of accounting for long-term contracts to comply with section 460 of the Internal Revenue Code.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Per Respondent: 5 hours.

Frequency of Response: Other (for the first taxable year the taxpayer changes its method).

Estimated Total Reporting Burden: 25,000 hours.

OMB Number: 1545–1244.

Regulation ID Number: PS–39–89 NPRM.

Type of Review: Extension.

Title: Limitation on Passive Activity Losses and Credits—Treatment of Self-Charged Items of Income and Exponse.

Description: The IRS will use this information to determine whether the entity has made a proper timely election and to determine that taxpayers are complying with the election in the taxable year of the election and subsequent taxable years.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: Other (first taxable year that entity seeks to make election).

Estimated Total Reporting Burden: 100 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 96–12431 Filed 5–16–96; 8:45 am]

BILLING CODE 4830–01–P

Submission to OMB for Review; Comment Request

May 10, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1005.

Form Number: IRS Form 5074.

Type of Review: Extension.

Title: Low-Income Housing Credit for Federally-Assisted Buildings.

Description: Form 5074 is used by U.S. citizens or residents as an attachment to Form 1040 when they have $50,000 income from U.S. sources and $5,000 from Guam or Northern Mariana Islands. The data is used by IRS to allocate income tax due to Guam or CNMI as required by 26 U.S.C. 7654.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 50.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—2 hr., 57 min.

Learning about the law or the form—7 min.

Preparing the form—42 min.

Copying, assembling, and sending the form to the IRS—17 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 203 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 96–12432 Filed 5–16–96; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 61, No. 97
Friday, May 17, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-933-1430-01; IDI-31741]

Notice of Public Meetings for Proposed Land Withdrawal: Idaho

Correction

In notice document 96–10652 beginning on page 19083 in the issue of Tuesday, April 30, 1996, make the following corrections:

1. On page 19084, in the first column, in the land description under *"(Emitters)"*, in T. 9 S., R. 6 E., in Sec. 15, "NW½" should read "NW¼".

2. On the same page, in the same column, in the land description under *"(Emitters)"*, in T. 13 S., R. 9 E., in Sec. 10, "NE½" should read "NE¼".

BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board

[Docket No. 50–160–Ren; ASLBP No. 95–704–01–Ren]

Georgia Institute of Technology, Atlanta, Georgia; Georgia Tech Research Reactor; (Renewal of Facility License No. R–97)

Correction

In notice document 96–11045, beginning on page 19961, in the issue of Friday, May 3, 1996, make the following corrections:

1. On page 19961, in the third column, in the third full paragraph, in the ninth line, "is"should read "if".

2. On the same page, in the same column, in the fourth full paragraph, in the second line, "10 CFR 2.75(a)" should read "10 CFR 2.715(a)".

BILLING CODE 1505–01–D

federal register

Friday
May 17, 1996

Part II

Office of Personnel Management

SES Positions That Were Career Reserved During 1995; Notice

OFFICE OF PERSONNEL MANAGEMENT

SES Positions That Were Career Reserved During 1995

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: As required by the Civil Service Reform Act of 1978, this gives notice of all positions in the Senior Executive Service (SES) that were career reserved during 1995.

FOR FURTHER INFORMATION CONTACT: Charles Vaughn, Office of Executive Resources, (202) 606–1927.

SUPPLEMENTARY INFORMATION: To fulfill the requirements of 5 U.S.C. 3132(b)(4), OPM is publishing a consolidated list of the titles of career reserved positions in the SES. The following list includes SES positions that were career reserved any time in calendar year 1995, whether or not they were still career reserved on December 31, 1995.

Office of Personnel Management.

James B. King,

Director.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995

Agency organization	Career reserved positions
ADMINISTRATIVE CONFERENCE OF THE U.S. (TERM 10/31/95):	
ORGANIZATION ABOLISHED	EXECUTIVE DIRECTOR.
	RESEARCH DIRECTOR.
	GENERAL COUNSEL.
ADVISORY COUNCIL ON HISTORIC PRESERVATION:	
OFC OF THE EXEC DIRECTOR	EXECUTIVE DIRECTOR.
DEPARTMENT OF AGRICULTURE:	
OFC OF THE INSPECTOR GENERAL	DEPUTY INSPECTOR GENERAL.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	DEP ASST INSPECTOR GENERAL FOR INVESTIGATION.
	ASST INSPECTOR GENERAL FOR AUDIT.
	DEP ASST INSPECTOR GENERAL FOR AUDIT.
	DEP ASST INSPECTOR GENERAL FOR AUDIT.
	ASST INSPECTOR GENERAL FOR POL DEV & RES MGMT.
	DEP ASST INSPECTOR GENERAL FOR INVEST IMMEDIATE OFFICE.
OFFICE OF ASST SEC'Y ADMINISTRATION	DEPUTY CHIEF FINANCIAL OFFICER.
OFFICE OF OPERATIONS	DIRECTOR OFFICE OF OPERATIONS.
OFFICE OF FINANCE AND MANAGEMENT	DIRECTOR, APPLICATIONS SYSTEMS DIVISION.
	DIR, INFO RESOURCES MANAGEMENT DIVISION.
	DIRECTOR, FINANCIAL SERVICES DIVISION.
	DIR, THRIFT SAVINGS PLAN DIVISION.
FARMERS HOME ADMINISTRATION	ASSISTANT ADMINISTRATOR, FINANCE OFFICE.
	CONTROLLER.
FEDERAL CROP INSURANCE CORPORATION	ASSISTANT MANAGER FOR ADMINISTRATION.
	ASSISTANT MANAGER FOR INSURANCE SERVICES.
	ASST MANAGER FOR RESEARCH & DEVELOPMENT.
AGRICULTURAL MARKETING SERVICE	DIRECTOR, FRUIT & VEGETABLE DIVISION.
	DIRECTOR, COTTON DIVISION.
	DIRECTOR, DAIRY DIVISION.
	DIRECTOR, LIVESTOCK DIVISION.
	DIRECTOR, TOBACCO DIVISION.
	AGRICULTURAL MARKETING SVC, DIR POULTRY DIV.
	DIRECTOR, COMPLIANCE STAFF.
	DIRECTOR.
	DIRECTOR.
ANIMAL & PLANT HEALTH INSPECTION SERVICE	DEP ADMR, REGULATORY ENFORCEMENT/ANIMAL CARE.
VETERINARY SERVICES	DIRECTOR, NORTHERN REGION.
	DIRECTOR, WESTERN REGION.
	DIRECTOR, SOUTH CENTRAL REGION.
	DEP ADMR, ANIMAL DAMAGE CONTROL.
	DIR, NATL CTR FOR VETERINARY EPIDEMIOLOGY.
PLANT PROTECTION & QUARANTINE SERVICE	DEP ADMR, INTERNATIONAL SERVICES.
	DIRECTOR, NORTHEASTERN REGION.
	DIRECTOR, SOUTH CENTRAL REGION.
	DIRECTOR, WESTERN REGION.
	DIRECTOR OPERATIONAL SUPPORT PPQ.
FEDERAL GRAIN INSPECTION SERVICE	DIR FIELD MANAGEMENT DIVISION.
FOOD SAFETY AND INSPECTION SERVICE	ASST DEPUTY ADMIN TECHNICAL SERVICES.
	DEP ADMIR–ADMINISTRATIVE MGMT.
	DIR NORTHEAST REGION, PHILA., PA.
	REGL DIRECTOR, ATLANTA GEORGIA.
	DIR, NORTH CENTRAL REGION, DES MOINES, IOWA.
	DIRECTOR, SOUTHWESTERN REGION, DALLAS, TEXAS.
	ASST DEP ADMR COMP & STAFF OPERATIONS.
	ASST DEP ADMIN (ADMIN MGT).
	ASST TO THE DEP ADMR INTERNATIONAL PROGRAMS.
	ASST DEPUTY ADMINISTRATOR.
	REGIONAL DIRECTOR.
	ASSOCIATE DEPUTY ADMINISTRATOR.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	ASSOCIATE ADMINISTRATOR.
	DEPUTY ADMINISTRATOR.
	MATRIX MANAGER, TRACK II.
	DEPUTY ADMINISTRATOR.
	DIRECTOR.
	DEPUTY ADMINISTRATOR.
	DEPUTY ADMINISTRATOR.
	U.S. COORDINATOR FOR CODEX ALIMENTARIUS.
	DEPUTY DIRECTOR.
	DIR ANIMAL PRODUCTION FOOD SAFETY STAFF.
FOOD & NUTRITION SERVICE	DEPUTY ADMIN FOR FINANCIAL MANAGEMENT.
	DEPUTY ADMR FOR MANAGEMENT.
AGRICULTURAL STABILIZATION & CONSERVATION SERVICE	DIRECTOR, BUDGET DIVISION.
FOREIGN AGRICULTURAL SERVICE	DIR, GRAIN & FEED DIV.
	ASSISTANT DEPUTY ADMINISTRATOR MANAGEMENT.
AGRICULTURE RESEARCH SERVICE	DEP ADMR FOR ADM MGMT.
	ASSOC DEP ADMIN FOR ADMINISTRATIVE MANAGEMENT.
	ASST ADMINISTRATOR FOR TECHNOLOGY TRANSFER.
	GLOBAL CHANGE RESEARCH STAFF ASSISTANT.
NATIONAL PROGRAM STAFF OFFICE	DEPUTY ADMINISTRATOR NATIONAL PROGRAM STAFF.
	ASSOC DEP ADMR.
	ASSOCIATE DEP ADMINISTRATOR, ANIMAL SCIENCES.
BELTSVILLE AREA OFFICE	DIRECTOR BELTSVILLE AREA OFFICE.
	ASSOC DIR BELTSVILLE AREA.
	ASSOC DEP ADMR, NATURAL RESOURCES/SYSTEMS.
	ASSOCIATE DEPUTY ADMIN GENETIC RESOURCES.
	ASSOCIATE DEPUTY ADMINISTRATOR.
	SUPERVISORY RESEARCH CHEMIST.
	DIR US NATIONAL ARBORETUM.
	DIR BELTSVILLE HUMAN NUTRITION RESEARCH CTR.
	DIRECTOR, PLANT SCIENCES INSTITUTE.
NORTH ATLANTIC AREA OFFICE	DIRECTOR, EASTERN REGL RESEARCH CENTER.
	RESEARCH PROGRAMS DIRECTOR.
	DIRECTOR, NORTH ATLANTIC AREA.
	ASSOC DIR, NORTH ATLANTIC AREA.
	DIRECTOR, PLUM ISLAND ANIMAL DISEASE CENTER.
SOUTH ATLANTIC AREA OFFICE	RES LEADER-PLANT PHYSIO & PHOTOSYNTHESIS RES.
	ASSOCIATE DIR, SOUTH ATLANTIC AREA.
	DIRECTOR, RUSSELL RESEARCH CENTER.
	SUPERVISORY RESEARCH GENETICIST.
	SUPERVISORY RESEARCH PHYSIOLOGIST.
	DIRECTOR, SOUTH ATLANTIC AREA.
MIDWEST AREA OFFICE	DIR, MIDWEST AREA.
	ASSOC DIR, MIDWEST AREA.
	SUPERVISORY VETERINARY MEDICAL OFFICER.
	SUPERVISORY RESEARCH CHEMIST.
	SUPERVISORY RESEARCH GENETICIST (PLANTS).
	DIR, NATL CTR FOR AGRI UTILIZATION.
MIDSOUTH AREA OFFICE	DIR, SOUTHERN REGIONAL RES CENTER, NEW ORLEANS.
	DIRECTOR, MID-SOUTH AREA.
CENTRAL PLAINS AREA OFFICE	DIR, NATL ANIMAL DISEASE CENTER.
SOUTHERN PLAINS AREA OFFICE	DIRECTOR, SOUTHERN PLAINS AREA.
	DIR, SUBTROPICAL AGRICULTURAL RES LABORATORY.
	RESEARCH LEADER F & F SAFETY RES LABORATORY.
NORTHERN PLAINS AREA OFFICE	DIRECTOR, NORTHERN PLAINS AREA.
	ASSOCIATE DIRECTOR, NORTHERN PLAINS AREA OFC.
	DIR, R.L. HRUSKA US MEAT ANIMAL RES CENTER.
	SUPERVISORY SOIL SCIENTIST.
PACIFIC WEST AREA OFFICE	DIRECTOR, WESTERN REGIONAL RESEARCH CENTER.
	DIR, WESTERN HUMAN NUTRITION RESEARCH CENTER.
	DIRECTOR, PACIFIC WEST AREA OFFICE.
	ASSOCIATE DIRECTOR, PACIFIC WEST AREA OFFICE.
	DIR, WESTERN COTTON RESEARCH LABORATORY.
	SUPERVISORY SOIL SCIENTIST.
	SUPERVISORY SOIL SCIENTIST.
COOPERATIVE STATE RESEARCH SERVICE	ASSOC ADMINISTRATOR FOR GRANTS & PROGRAM SYS.
SOIL CONSERVATION SERVICE	DIRECTOR, ENGINEERING DIVISION.
	DIR, ECOLOGICAL SCIENCES AND TECHNOLOGY DIVISION.
	DEPUTY CHIEF FOR MANAGEMENT.
	DIR, CONSV PLANNING AND APP.
	DIR, COMMUNITY ASST & RES DEVELOPMENT DIV.
	ASSOCIATE DEPUTY CHIEF FOR MANAGEMENT.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	DIR, SOILS (SOIL SCIENTIST).
	DIR, LAND TREATMENT PROGRAM.
	ASSOCIATE DEPUTY CHIEF FOR TECHNOLOGY SCI TEC.
	DIRECTOR, STRATEGIC PLANNING DIVISION.
	DIR, BIOLOGICAL CONSERVATION SCIENCES DIVISION.
	DIR, QUALITY MANAGEMENT & PROG EVAL DIVISION.
	NATIONAL INFORMATION RES MGMT LEADER.
	DIR, CONSERVATION & ECOSSYSTEM ASST DIVISION.
FOREST SERVICE	DEP CHF FOR ADMINISTRATION.
	ASSOCIATE DEPUTY CHIEF-ADMINISTRATION.
	DIR, FOREST PEST MGMT STAFF.
	DIR, FISCAL & ACCOUNTING SERVICES.
	ASSOCIATE DEPUTY CHIEF FOR ADMINISTRATOR.
	DIRECTOR, FIRE AND AVIATION STAFF.
RESEARCH	DIRECTOR, TIMBER MGMT RESEARCH STAFF.
	DIR, INSECT AND DISEASE RESEARCH STAFF.
	DIR FOREST ENVIRONMENT RESEARCH STAFF.
	DIRECTOR, FOREST RESOURCE ECONOMICS STAFF.
	DIR, FOREST FIRE & ATMOS SCIENCES RES STAFF.
NAT'L FOREST SYSTEM	DIR, RANGE MANAGEMENT STAFF.
	DIR, RECREATION, MGMT STAFF.
	DIR TIMBER MANAGEMENT STAFF.
	DIRECTOR, ENGINEERING STAFF.
	DIRECTOR, LANDS STAFF.
	DIR LAND MANAGEMENT PLANNING STAFF.
	DIR, WILDLIFE & FISHERIES MGMT STAFF.
	IPA ASSIGNMENT.
STATE & PRIVATE FORESTRY	DIR COOPERATIVE FORESTRY.
FIELD UNITS	NE AREA DIR, STATE & PRIVATE FORESTRY, U DARB.
	DIR N EASTERN FOREST EXPERIMENT STATION.
	DIR, PACIFIC NW FOREST & RANGE EXP STATION.
	DIR, PACIFIC SW FOR & RANGE EXPER STA.
	DIRECTOR ROCKY MT FOREST & RANGE EXPER STAT.
	DIR S EASTERN FOREST EXPERIMENT STATION.
	DIRECTOR, FOREST PRODUCTS LABORATORY.
	DEP DIR FOREST PRODUCTS LAB.
INTERNATIONAL FOREST SYSTEM	ASSOCIATE DEPUTY CHIEF.
	DIR INTERNATIONAL INSTITUTE OF TROPICAL FOREST.
OFFICE OF ASST SECY FOR ECONOMICS	DIR OFC OF RISK ASSESSMENT & COST-BENEFIT ANL.
ECONOMIC RESEARCH SERVICE	ASSOCIATE ADMINISTRATOR-ECONOMIC RSCH SVC.
	DIRECTOR AGRICULTURE & TRADE ANALYSIS DIV.
	DIRECTOR COMMODITY ECONOMICS DIVISION.
	DIRECTOR RESOURCES & TECHNOLOGY DIVISION.
	DIRECTOR AGRICULTURE & RURAL ECON DIVISION.
	DEP ADMIN FOR INFO RES & MGT OPER.
	DIR, NATURAL RES & ENVIRONMENT DIVISION.
	DIRECTOR, INFORMATION SERVICES DIVISION.
	DIRECTOR, COMMERCIAL AGRICULTURE DIVISION.
	DIRECTOR, RURAL ECONOMY DIVISION.
ECONOMICS MANAGEMENT STAFF	DIRECTOR, ECONOMICS MANAGEMENT STAFF.
NATIONAL AGRICULTURAL STATISTICS SERVICE	ADMR, NATIONAL AGRICULTURAL STATISTICS SERV.
	DEPUTY ADMINISTRATOR FOR OPERATIONS.
	DIR ESTIMATES DIV.
	DIR, STATE STATISTICAL DIVISION.
	DEPUTY ADMINISTRATOR FOR PROGRAMS.
	DIR, SYSTEMS & INFORMATION DIVISION.
	DIRECTOR, SURVEY MANAGEMENT DIVISION.
WORLD AGRICULTURAL OUTLOOK BOARD	DEP CHAIRPERSON.
OFFICE OF ENERGY	DIRECTOR, OFFICE OF ENERGY.
AMERICAN BATTLE MONUMENTS COMMISSION:	
OFFICE OF EXECUTIVE DIRECTOR	EXECUTIVE DIRECTOR.
BOARD FOR INTERNATIONAL BROADCASTING (TERM 10/1/95):	
BOARD STAFF	EXEC DIRECTOR.
	DEP EXEC DIRECTOR/DIRECTOR OF PROGRAM REVIEW.
	GENERAL COUNSEL.
	DIRECTOR OF FINANCIAL & CONGRESSIONAL AFFAIRS.
	INSPECTOR GENERAL.
DEPARTMENT OF COMMERCE:	
OFFICE OF LEGISLATIVE & INTERGOVERNMENTAL AFFAIRS	DEP ADMIN FOR LEGISLATIVE & INTERNAL AFFAIRS.
OFFICE OF THE GENERAL COUNSEL	ASST GENERAL COUNSEL FOR FINANCE & LITIGATION.
	DIRECTOR, OFFICE OF INTELLIGENCE LIAISON.
OFC OF ASST SECY FOR ADMINISTRATION	DIR FOR FEDERAL ASST & MANAGEMENT SUPPORT.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	DIR FOR FINANCIAL MANAGEMENT.
DIRECTOR FOR MANAGEMENT AND INFORMATION	DIR, FOR INFORMATION RESOURCES MANAGEMENT.
DIRECTOR FOR PROCUREMENT & ADMINISTRATIVE SERVICES.	DIRECTOR FOR PROCUREMENT & ADMIN SERVICES.
	DIRECTOR, OFFICE OF SECURITY.
	DEPUTY DIRECTOR FOR PROCUREMENT.
OFFICE OF HUMAN RESOURCES MANAGEMENT	DIRECTOR FOR HUMAN RESOURCES MANAGEMENT.
	DEP DIR OF HUMAN RESOURCES MANAGEMENT.
DIRECTOR FOR PLANNING BUDGET AND EVALUATION	DIRECTOR, OFFICE OF BUDGET.
ECONOMICS AND STATISTICS ADMINISTRATION	DEP ASST SECY FOR STATISTICAL AFFAIRS.
	DIR OFFICE OF BUSINESS ANALYSIS.
BUREAU OF ECONOMIC ANALYSIS	DIRECTOR.
	DEP DIR, BUR OF ECONOMIC ANALYSIS.
	ASSOC DIR FOR NATL ECONOMIC ACCOUNTS.
	ASSOC DIR FOR REGIONAL ECONOMICS.
	ASSOC DIR FOR INTERNATIONAL ECONOMICS.
	CHIEF ECONOMIST.
	CHF STATISTICIAN.
	CHF NATL INCOME & WEALTH DIV.
	CHIEF, BUSINESS OUTLOOK DIV.
	CHIEF INTERNATIONAL INVESTMENT DIVISION.
BUREAU OF THE CENSUS	DEP DIR.
	PRINCIPAL ASSOC DIR & CHIEF FINANCIAL OFFICER.
	PRINCIPAL ASSOCIATE DIRECTOR FOR PROGRAMS.
	CHIEF ADMIN & PUBLICATIONS SERVICES DIVISION.
	COMPTROLLER.
	SENIOR PROGRAM ANALYST.
	ASSOC DIR FOR PLANNING & ORGAN DEVELOPMENT.
	ASSOCIATE DIRECTOR FOR ADMINISTRATION.
	ASSOC DIR FOR INFORMATION TECHNOLOGY.
	CHIEF, COMPUTER SERVICES DIVISION.
DEMOGRAPHIC PROGRAMS	ASSOCIATE DIR FOR DEMOGRAPHIC PROGS.
	CHF, POPULATION DIV.
	CHIEF DEMOGRAPHIC SURVEYS DIVISION.
	CHF, HOUSING & HOUSEHOLD ECON STATISTICS DIV.
	CHIEF, STATISTICAL METHODS DIVISION.
DECENNIAL CENSUS	ASSOCIATE DIRECTOR FOR THE DECENNIAL CENSUS.
	ASSISTANT DIRECTOR FOR DECENNIAL CENSUS.
	CHF, GEOGRAPHY DIV.
	CHIEF DECENNIAL MANAGEMENT DIVISION.
	CHIEF, DECENNIAL STATISTICAL STUDIES DIV.
STATISTICAL DESIGN METHODOLOGY AND STANDARDS	ASSOC DIR FOR STATISTICAL STANDARDS & METHODO.
	CHIEF STATISTICAL RESEARCH DIVISION.
FIELD OPERATIONS	ASSOC DIR FOR FIELD OPERATIONS.
	CHIEF, FIELD DIVISION.
	CHIEF, DATA PREPARATION DIVISION.
ECONOMIC PROGRAMS	ASSOCIATE DIRECTOR FOR ECONOMIC PROGRAMS.
	ASSISTANT DIRECTOR FOR ECONOMIC PROGRAMS.
	CHIEF, AGRICULTURE DIV.
	CHIEF, SERVICES DIVISION.
	CHF, ECONOMIC PLANNING & COORDINATION DIV.
	CHF, FOREIGN TRADE DIV.
	CHF, GOVERNMENT DIV.
	CHF, MANUFACTURING & CONSTRUCTION DIVISION.
	CHF, ECONOMIC STATISTICAL M & P DIVISION.
INSTITUTE FOR TELECOMMUNICATIONS SCIENCES	ASSOC ADMR FOR TELECOMMUNICATIONS SCIENCE.
	DEPUTY DIR FOR SYSTEMS & NETWORKS.
	DEPUTY DIRECTOR FOR SPECTRUM.
ECONOMIC DEVELOPMENT ADMINISTRATION	DEP DIRECTOR FOR PROGRAM OPERATIONS.
OFC OF THE INSPECTOR GENERAL	ASSISTANT INSPECTOR GENERAL FOR AUDITING.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	ASST INSP GEN FOR COMPL & AUDIT RESOLUTION.
	DEPUTY ASSISTANT INSPECTOR GEN FOR AUDITING.
	ASST INSP GEN FOR PLNG, EVAL & INSPECTIONS.
	COUNSEL TO THE INSPECTOR GENERAL.
	ASST INSPECTOR GENERAL FOR SYST EVALUATION.
OFC OF THE UNDER SEC FOR EXPORT	DIRECTOR OF ADMINISTRATION.
	DEP ASST SECRY FOR XORT ENFORCEMENT.
OFC OF ASST SECY FOR TRADE DEVELOPMENT	DIRECTOR OFFICE OF CONSUMER GOODS.
OFC OF DEP ASST SECY FOR COMPLIANCE	DIR, OFFICE OF AGREEMENTS COMPLIANCE.
	DIR, OFFICE OF ANTIDUMPING COMPLIANCE.
OFC OF DEP ASST SECY FOR INVESTIGATIONS	DIR, OFFICE OF ANTIDUMPING INVESTIGATIONS.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION	DIR, OFFICE OF COUNTERVAILING INVESTIGATIONS.
	DIR FOR HIGH PERFORMANCE COMPUTING COMMUN.
	DIR, NOAA COASTAL OCEAN PROGRAM OFFICE.
SYSTEMS PROGRAM OFFICE	DIRECTOR, SYSTEMS ENGINEERING STAFF.
	NEXRAD PROGRAM MANAGER.
	GOES PROGRAM MANAGER.
	CHF/AWI INTERACTIVE PROCESSING SYSTEM/ 1990'S.
	FLEET MODERNIZATION PROGRAM MANAGER.
OFFICE OF ADMINISTRATION	DIR FOR INFORMATION SYSTEMS & FINANCE.
	DIR FOR HUMAN RESOURCES MANAGEMENT.
	DIR FOR PROCUREMENT, GRANTS & ADM SERVICES.
NATIONAL MARINE FISHERIES SERVICE	SENIOR ADVISOR FOR INTERNATIONAL RELATIONS.
	SENIOR SCIENTIST FOR FISHERIES.
	DIR. OFC OF RESEARCH & ENVIRONMENAL INFO.
FISHERIES RESOURCE MANAGEMENT	DIRECTOR, OFFICE OF HABITAT PROTECTION.
	DIRECTOR, OFFICE OF ENFORCEMENT.
FISHERIES CENTERS	SCIENCE & RESEARCH DIR NORTHEAST REGION.
	SCIENCE & RESEARCH DIR.
	SCIENCE & RESEARCH DIR SOUTHWEST REGION.
	SCIENCE & RESEARCH DIR.
	SCIENCE AND RESEARCH DIRECTOR.
NATL ENVIRON SATELLITE, DATA & INFO SERVICES	SATELLITE SYSTEMS PROGRAM MANAGER.
	SENIOR ADVISOR FOR DATA SYSTEMS.
DEPUTY ASST ADMR FOR SATELLITES.	DIR, NATL OCEANOGRAPHIC DATA CENTER.
	DIRECTOR, NATIONAL CLIMATIC DATA CENTER.
	DIR, NATIONAL GEOPHYSICAL DATA CENTER.
	SYSTEMS PROGRAM DIRECTOR.
	DIR OFC OF SYS DEVELOPMENT.
OFFICE OF OCEANIC AND ATMOSPHERIC RESEARCH	DIRECTOR, FORECAST SYSTEMS LABORATORY.
OFFICE OF OCEANIC RESEARCH PROGRAMS	DEP DIR, OFC OF OCEANIC RESEARCH PROGRAMS.
	PROGRAM DIRECTOR FOR WEATHER RESEARCH.
	DEP ASST ADMR FOR EXTRAMURAL RESEARCH.
ENVIRONMENTAL RESEARCH LABORATORIES	DEP DIR, ENVIRONMENTAL RESEARCH LABORATORIES.
	DIR CLIMATE MONITORING & DIAGNOSTICS LAB
ATLANTIC OCEANOGRAPHIC AND METEOROLOGICAL LABS	DIR, ATLANTIC OCEANOGRAPHIC & METEOROLOGICAL.
	DIR, SPACE ENVIRONMENT LABORATORY.
WAVE PROPAGATION LAB	DIRECTOR.
AERONOMY LAB	DIRECTOR, AERONOMY LABORATORY.
GEOPHYSICAL FLUID DYNAMICS LABORATORIES	DIRECTOR.
	SUPERVISORY RSCH METEOROLOGIST.
	SUPERVISORY RSCH METEOROLOGIST.
GREAT LAKES ENVIRONMENTAL RESEARCH LAB	DIR GREAT LAKES ENVIRONMENTAL RESEARCH LAB.
NATIONAL SEVERE STORMS LABORATORY	DIR NAT'L SEVERE STORMS LAB.
AIR RESOURCES LABORATORY	DIRECTOR AIR RESOURCES LABORATORY.
PACIFIC MARINE ENVIRONMENTAL LAB	DIR PACIFIC MARINE ENVIRONMENTAL LAB.
NATIONAL OCEAN SERVICES	DIR, OFFICE OF OCEAN & EARTH SCIENCES.
	SENIOR SCIENTIST FOR OCEAN SERVICES.
	CHIEF, OCEAN OBSERVATION DIVISION.
	CHIEF OCEAN & LAKE LEVELS DIVISION.
OCEAN RESOURCES CONSERVATION AND ASSESSMENT	CHF, STRATEGIC ENVIRONMENTAL ASSESSMENTS DIV.
	CHF, HAZARDOUS MATERIALS R & A DIVISION.
	CHIEF COASTAL MONITORING BIOEFFECTS ASSES DIV.
COAST AND GEODETIC SERVICES	DIR, OFC OF AERONAUTICAL CHARTING/CARTOGRAPHY.
NATIONAL WEATHER SERVICE	ASOS PROGRAM MANAGER.
	DIRECTOR, NOAA DATA BUOY OFFICE.
	CHIEF, MANAGEMENT AND BUDGET STAFF.
	CHIEF, INTERNATIONAL AFFAIRS DIVISION.
	CHF, OFC OF THE FED COORDINATOR FOR METEOROLG.
	DEPUTY ASSISTANT ADMINISTRATOR FOR OPERATIONS.
	DIR, NEXRAD OPERATIONAL SUPPORT FACILITY.
	DIRECTOR, STORM PREDICTION CENTER.
	DIRECTOR, MARINE PREDICTION CENTER.
OFFICE OF METEOROLOGY	DIR, OFFICE OF METEOROLGY.
	CHIEF SERVICE DIVISION.
	CHF, PROG REQUIREMENTS & PLNG DIVISION.
OFFICE OF HYDROLOGY	DIRECTOR, OFFICE OF HYDROLOGY.
	CHIEF, HYDROLOGIC SERVICES DIVISION.
	CHIEF, HYDROLOGIC RESEARCH LABORATORY.
OFFICE OF SYSTEMS OPERATIONS	CHIEF, ENGINEERING DIVISION.
	CHIEF, SYSTEMS OPERATIONS CENTER.
	CHIEF, SYSTEMS INTEGRATION DIVISION.
	DIR, OFFICE OF SYSTEMS OPERATIONS.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
OFFICE OF SYSTEMS DEVELOPMENT	DIRECTOR, OFFICE OF SYSTEMS DEVELOPMENT.
	CHIEF, INTEGRATED SYSTEMS LABORATORY.
	CHIEF, TECHNIQUES DEVEL LABORATORY.
	CHIEF, ADVANCED DEVEL & DEMONSTRATION LAB.
	DEP DIR, OFFICE OF SYSTEMS DEVELOPMENT.
NATIONAL METEROLOGICAL CTR	DIRECTOR NATIONAL METEOROLOGICAL CENTER.
	DEPUTY DIRECTOR.
	DIRECTOR, CLIMATE ANALYSIS CENTER.
	CHIEF, AUTOMATION DIVISION.
	CHIEF, DEVELOPMENT DIV.
	CHF, METEOROLOGICAL OPERATIONS DIVISION.
	DIR, NATL SEVERE STORMS FORECAST CENTER.
	DIRECTOR NATL HURRICANE CENTER.
REGIONAL OFFICES & CENTERS	DIR SOUTHERN REGION, FT WORTH.
	DIR, SALT LAKE CITY REGION.
	DIR, ALASKA REGION, ANCHORAGE.
	DIR EASTERN REGION NWS.
	DIRECTOR CENTRAL REGION.
NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY	DIRECTOR FOR QUALITY PROGRAMS.
	DEP DIR, OFC OF QUALITY PROGRAMS.
	ASSOC DIR FOR TECH & BUSINESS ASSESSMENT.
	DIRECTOR, PROGRAM OFFICE.
OFFICE OF ASSOCIATE DIRECTOR	DEPUTY DIRECTOR FOR INTERNATIONAL AFFAIRS.
ADVANCED TECHNOLOGY PROGRAM	DEP DIRECTOR, ADVANCED TECHNOLOGY PROGRAM.
	DIRECTOR, ADVANCED TECHNOLOGY PROGRAM.
TECHNOLOGY SERVICES	DEPUTY DIRECTOR, TECHNOLOGY SERVICES.
	DIR, OFC OF TECHNOL EVALUATION & ASSESSMENT.
	ASSOCIATE DIRECTOR FOR PROGRAM QUALITY.
OFFICE OF TECHNOLOGY COMMERCIALIZATION	DIR, OFFICE OF TECHNOLOGY COMMERCIALIZATION.
OFFICE OF MEASUREMENT SERVICES	CHF, PHY MEAS S/P OFC OF MEASUREMENT SERVICES.
	DIRECTOR, OFFICE OF MEASUREMENT SERVICES.
OFFICE OF STANDARDS SERVICES	DIR, OFFICE OF STANDARDS SERVICES.
	SENIOR POLICY ADVISOR FOR STANDARDS & TECHNOL.
ELECTRONICS AND ELECTRICAL ENGINEERING LABORATORY.	DIR, ELECTRONICS & ELECTRICAL ENG LABORATORY.
	DEPUTY DIRECTOR.
	DIR, OFFICE OF MICROELECTRONICS PROGRAMS.
ELECTRICITY DIVISION	CHIEF, ELECTRICITY DIVISION.
ELECTROMAGNETIC TECHNOLOGY DIVISION	CHF-ELECTROMAGNETIC TECHNOLOGY DIVISION.
SEMICONDUCTOR ELECTRONICS DIVISION	CHIEF SEMICONDUCTOR ELECTRONICS DIVISION.
	SENIOR RESEARCH SCIENTIST.
MANUFACTURING ENGINEERING LABORATORY	DIR, MANUFACTURING ENGINEERING LABORATORY.
	CHIEF, AUTOMATED PRODUCTION, TECHNOLOGY DIV.
	MANAGER FOR INDUSTRIAL RELATIONS.
	DEP DIR, MANUFACTURING ENGINEERING LABORATORY.
	DIR, MANUFACTURING EXTENSION PARTNERSHIP PROG.
PRECISION ENGINEERING DIVISION	CHIEF, PRECISION ENGINEERING DIVISION.
ROBOT SYSTEMS DIVISION	CHIEF, INTELLIGENT SYSTEMS DIVISION.
FACTORY AUTOMATION SYSTEMS DIVISION	CHIEF, FACTORY AUTOMATION SYSTEMS DIVISION.
PHYSICS LABORATORY	DIRECTOR, PHYSICS LABORATORY.
	COORDINATOR OF RADIATION MEASUREMENT SERVICES.
	DEPUTY DIRECTOR, PHYSICS LABORATORY.
FUNDAMENTAL CONSTANTS DATA CENTER	MGR, FUNDAMENTAL CONSTANTS DATA CENTER.
MOLECULAR PHYSICS DIVISION	CHIEF, MOLECULAR PHYSICS DIV.
QUANTUM METROLOGY DIVISION	CHIEF, QUANTUM METROLOGY DIVISION.
ATOMIC PHYSICS DIVISION	CHIEF, ATOMIC PHYSICS DIVISION.
TIME AND FREQUENCY DIVISION	CHIEF, TIME AND FREQUENCY DIVISION.
QUANTUM PHYSICS DIVISION	SENIOR SCIENTIST.
	SENIOR SCIENTIST & FELLOW OF JILA.
	SENIOR SCIENTIST & FELLOW OF JILA.
ELECTRON AND OPTICAL PHYSICS	GROUP LEADER FOR FAR ULTRAVIOLET PHYSICS.
CHEMICAL SCIENCE AND TECHNOLOGY LABORATORY	DEP DIR, CHEMICAL SCI & TECHNOLOGY LABORATORY.
	DIR, CHEMICAL SCI & TECHNOLOGY LABORATORY.
	DEPUTY DIRECTOR FOR PROGRAMS.
ORGANIC ANALYTICAL RESEARCH DIVISION	CHIEF, ORGANIC ANALYTICAL RESEARCH DIVISION.
	CHIEF, ANALYTICAL CHEMISTRY DIVISION.
SURFACE AND MICROANALYSIS SCIENCE DIVISION	CHF, SURFACE & MICROANALYSIS SCIENCE DIVISION.
	GROUP LEADER, SURFACE SPEC. & THIN FILMS.
BIOTECHNOLOGY DIVISION	CHIEF, BIOTECHNOLOGY DIVISION.
THERMOPHYSICS DIVISION	CHIEF, THERMOPHYSICS DIVISION.
MATERIALS SCIENCE AND ENGINEERING LABORATORY	DIR, MATERIALS SCI & ENG LABORATORY.
	SENIOR SCIENTIST.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	SCIENTIFIC ASSISTANT TO THE DIRECTOR, IMSE.
	DEP DIR, MATERIALS SCI & ENG LAB.
	CHIEF, FILM & FIBER TECHNOLOGY.
	CHIEF, CERAMICS DIVISION.
MATERIALS RELIABILITY DIVISION	CHIEF MATERIALS RELIABILITY DIV.
OFFICE OF INTELLIGENT PROCESSING OF MATERIALS	CHF, OFC OF INTELL PROCESSING OF MATERIALS.
POLYMERS DIVISION	CHIEF, POLYMERS DIVISION.
METALLURGY DIVISION	CHF, METALLURGY DIVISION.
	PHYSICIST (SOLID STATE).
REACTOR RADIATION DIVISION	CHIEF, REACTOR RADIATION DIVISION.
	GROUP LEADER NEUTRON CONDENSED MATTER SCIENCE.
	CHIEF, REACTOR OPERATIONS.
COMPUTER SYSTEMS LABORATORY	CHIEF SYSTEMS & NETWORK ARCHITECTURE DIVISION.
	CHF, ADVANCED SYSTEMS DIVISION.
	CHF, INFO SYST ENGINEERING DIVISION.
	ASSOCIATE DIRECTOR FOR COMPUTER SECURITY.
	CHIEF INFORM SYSTEMS ARCHITECTURE DIVISION.
	ASSOCIATE DIRECTOR FOR PROGRAM IMPLEMENTATION.
	CHIEF, COMPUTER SECURITY DIVISION.
	CHIEF ADVANCED NETWORK TECHNOLOGIES DIV.
BUILDING AND FIRE RESEARCH LABORATORY	CHIEF, STRUCTURES DIVISION.
	DIR, BUILDING & FIRE RESEARCH LABORATORY.
	DEP DIR, BUILDING & FIRE RESEARCH LABORATORY.
	ASST DIR, BUILDING & FIRE RESEARCH LABORATORY.
BUILDING ENVIRONMENT DIVISION	CHIEF, BUILDING ENVIRONMENT DIVISION.
BUILDING MATERIALS DIVISION	CHF, BUILDING MATERIALS DIV.
FIRE SCIENCE AND ENGINEERING DIVISION	CHIEF, FIRE SAFETY ENGINEERING DIVISION.
FIRE MEASUREMENT AND RESEARCH DIVISION	CHIEF, FIRE SCIENCE DIVISION.
COMPUTING AND APPLIED MATHEMATICS LABORATORY	DIR, COMPUTING & APPLIED MATHEMATICS LAB.
	DEP DIR, COMPUTING & APPLIED MATHEMATICS LAB.
	CHIEF, COMPUTER SERVICES DIVISION.
	CHIEF SCIENTIFIC COMPUTING DIVISION.
	ASSOCIATE DIRECTOR FOR COMPUTING.
	CHIEF HIGH PERF SYSTEMS & SERVICES DIVISION.
STATISTICAL ENGINEERING DIVISION.	CHIEF, STATISTICAL ENGINEERING DIVISION.
PATENT AND TRADEMARK ADMINISTRATION	ADMIN FOR LEG & INTERNL AFFAIRS.
	CHIEF OF STAFF.
OFFICE OF ASSISTANT COMMISSIONER FOR PATENTS	ADMINISTRATOR FOR SEARCH & INFORMATION RES.
	DEP ASST COMM FOR PATENT PROCESS SERVICES.
CHEMICAL	GROUP DIRECTOR—110.
	GROUP DIRECTOR—120.
	GROUP DIRECTOR—130.
	GROUP DIRECTOR—150.
	DEPUTY GROUP DIRECTOR—110.
	GROUP DIRECTOR—180.
	DEPUTY GROUP DIRECTOR—150.
	DEPUTY GROUP DIRECTOR—180.
ELECTRICAL	GROUP DIRECTOR—260.
	GROUP DIRECTOR—210.
	GROUP DIRECTOR—220.
	GROUP DIRECTOR—230.
	GROUP DIRECTOR—240.
	GROUP DIRECTOR—250.
	DEPUTY GROUP DIRECTOR—250.
	DEPUTY GROUP DIRECTOR—260.
	DEPUTY GROUP DIRECTOR—230.
	GROUP DIRECTOR—310.
	GROUP DIRECTOR—320.
	GROUP DIRECTOR—330.
	GROUP DIRECTOR—340.
	GROUP DIRECTOR—350.
OFFICE OF ASSISTANT COMMISSIONER FOR TRADEMARKS	CHAIRMAN, TRADEMARK TRIAL & APPEAL BOARD.
	DEPUTY ASST COMMISSIONER FOR TRADEMARKS.
	DIRECTOR, TRADEMARK EXAMINING OPERATION.
COMMODITY FUTURES TRADING COMMISSION:	
OFFICE OF THE GENERAL COUNSEL	DEPUTY GENERAL COUNSEL (OPINIONS & REVIEW).
	DEPUTY GENERAL COUNSEL (LITIGATION).
	DEPUTY GENERAL COUNSEL (REG & ADM).
OFFICE OF THE EXECUTIVE DIRECTOR	DEP EXEC DIR.
	DIR, OFC IN INFORMATION RESOURCES MGMT.
DIVISION ECONOMIC ANALYSIS	DEP CHF ECONOMIST.
	CHIEF COUNSEL.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	ASSOCIATE DIRECTOR FOR SURVEILLANCE.
	DIRECTOR OF ECONOMIC RESEARCH.
	CHF, ANALYSIS SECTION.
DIVISION OF ENFORCEMENT	DEPUTY DIRECTOR (WESTERN OPERATIONS).
	DEPUTY DIRECTOR (EASTERN OPERATIONS).
	ASSOCIATE DIRECTOR.
	ASSOCIATE DIRECTOR.
DIVISION OF TRADING AND MARKETS.	DEPUTY DIRECTOR (CONTRACT MARKETS).
	CHIEF COUNSEL.
CONSUMER PRODUCT SAFETY COMMISSION:	
OFC OF EXECUTIVE DIR	ASST EXEC DIR FOR COMPLIANCE & ENFORCEMENT.
	ASSOC EXEC DIR FOR ADM.
	ASSOCIATE EXECUTIVE DIR FOR FIELD OPERATIONS.
	ASST EXEC DIRECTOR FOR INFORMATION SERVICES.
	EXECUTIVE ASSISTANT.
OFFICE OF HAZARD IDENTIFICATION & REDUCTION	ASST EXEC DIR FOR HAZARD I & R.
	ASSOCIATE EXEC DIR FOR EPIDEMIOLOGY.
ASSOCIATE EXECUTIVE DIRECTOR FOR ECONOMICS.	
CORPORATION FOR NATIONAL AND COMMUNITY SERVICE:	
DEPARTMENT OF THE INSPECTOR GENERAL	INSPECTOR GENERAL.
DEPARTMENT OF THE CHIEF FINANCIAL OFFICER	ASSOCIATE DIRECTOR FOR MANAGEMENT & BUDGET.
	ASST DIR FOR FINANCIAL MANAGEMENT.
OFC SECY OF DEFENSE:	
OFFICE OF THE SECRETARY	ASST TO THE SECY OF DEFENSE (INTEL OVERSIGHT).
OFFICE OF ASSISTANT SECRETARY (SOLIC)	DEP ASST SECY OF DEFENSE (FORCES & RESOURCES).
	DIRECTOR FOR BUDGET AND EXECUTION.
	DIRECTOR FOR REQUIREMENTS & PROGRAMS.
JOINT ACTIVITIES	DIRECTOR DESA.
DIRECTOR OPERATIONAL TEST AND EVALUATION	DEP DIR FOR RESOURCES & ADMINISTRATION.
	DEP DIR FOR LIVE FIRE TEST & EVALUATION.
OFC OF INSPECTOR GENERAL	DEPUTY INSPECTOR GENERAL.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	DEP ASST INSPECTOR GEN FOR INVESTIGATIONS.
	DEP ASST INSPECTOR GENERAL FOR INSPECTIONS.
	ASST INSPECTOR GENL FOR ANALYSIS & FOLLOWUP.
	ASST INSP GEN FOR ADM & INFO MANAGEMENT.
	AIG FOR DEPARTMENTAL INQUIRIES.
	DEP ASST INSPECTOR GEN FOR ADM & INFO MGMT.
	DIR, AUDIT PLANNING & TECHNICAL SUPPORT.
	DIRECTOR, ACQUISITION MANAGEMENT.
	DIRECTOR, LOGISTICS AND SUPPORT.
	DIRECTOR, CONTRACT MANAGEMENT.
	DIR, READINESS & OPERATIONAL SUPPORT.
	DIRECTOR, FINANCIAL MANAGEMENT.
	ASST INSPECTOR GEN FOR AUDIT, POL & OVERSIGHT.
	DEPUTY ASST INSPECTOR GENERAL FOR AUDITING.
	ASST IG FOR INSPECTIONS.
	ASST INSPECTOR GENERAL FOR AUDITING.
	DIR FOR INVESTIGATIVE OPERATIONS.
	ASST INSP GEN FOR CRIMINAL INVESTIGATIVE P/O.
	DEP ASST INSPECTOR GEN FOR PROGRAM EVALUATION.
	DIRECTOR, READINESS & OPERATIONAL SUPPORT.
	DIRECTOR, ACQUISITION MANAGEMENT DIRECTORATE.
	SPECIAL ASSISTANT.
	ASST INSPECTOR GENERAL FOR POLICY & OVERSIGHT.
OFC DEP ASST SECY (CIVILIAN PERSONNEL P/E OPPORTUNITY).	PRIN DIR (CIVILIAN PERS POL/EQUAL OPP).
OFFICE OF ASSISTANT SECY OF DEFENSE (FORCE MGMT POLICY).	DIRECTOR, STAFFING & CAREER MANAGEMENT.
OFC OF DIR OF DOD DEPENDENTS SCHOOLS	SPEC ASST DASD (CPP)/DIR, DEF CPMS.
	CHIEF OF EDUCATIONAL SUPPORT POLICY & LEGISL.
	DIRECTOR, GERMANY REGION.
	DEP DIR DEP OF DEFENSE DEPENDENTS SCHOOL.
	ASSOC DIR FOR FINANCIAL, LOGISTL, & INFO MGMT.
OFFICE ASSISTANT SEC HEALTH AFFAIRS	DIR, DEFENSE MEDICAL SYSTEMS SUPPORT CENTER.
UNIFORMED SERV. UNIVERSITY OF THE HEALTH SCIENCES	SCIENTIFIC DIRECTOR, AFRRI.
OFFICE OF ASST TO SECY OF DEF FOR PUBLIC AFFAIRS	DIR, FREEDOM OF INFORMATION & SECURITY REVIEW.
	DIR ARMED FORCES RADIO & TELEVISION SERVICE.
WASHINGTON HEADQUARTERS SERVICES	DIRECTOR OF PERSONNEL AND SECURITY.
	DIRECTOR REAL ESTATE AND FACILITIES.
	DEP DIR, REAL ESTATE & FACILITIES.
	DEP DIR, PERSONNEL AND SECURITY.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
OFFICE OF THE GENERAL COUNSEL	DEPUTY GENERAL COUNSEL (IG).
	DEP GEN COUNSEL (ENVIRONMENT & INSTALLATIONS).
	DIR DEF OFC OF HEARINGS & APPEALS.
OFC OF UNDER SECY OF DEF FOR ACQ & TECHNOLOGY	DEP DIR MISSILE & SPACE SYSTEMS.
	DIRECTOR FOR DEFENSE PROCUREMENT.
	SR STAFF SPECIALIST FOR S & A SYSTEMS.
	DEP DIR NAVAL WARFARE.
	SR STAFF SPEC FOR MISSILE & SPACE SYST ANAL.
	DEPUTY DIR, COST PRICING & FINANCE.
	SR STAFF SPEC FOR AIR WEAPONS DEF SUPP SYS.
	SR STAFF SPEC CLOSE AIR SUP & AIR INT SYS.
	DEP DIR MUNITIONS.
	SR STAFF SPECIAL FOR AIR SUPERIORITY SYSTEMS.
	DEP DIR, CONTRACT POL & ADMINISTRATION.
	DEPUTY DIR TEST FACILITIES & RESOURCES.
	DEP DIR LAND WARFARE.
	EXECUTIVE DIRECTOR, DEFENSE SCIENCE BOARD.
	DIR COMPUTER AIDED LOGISTICS SUPPORT OFFICE.
	ADUSD (ASIA/MID EAST/S. HEMISPHERE AFFAIRS).
	DEP DIR, ACQUISITION RESOURCES.
	DEP DIR, DEF SYST PROCUREMENT STRATEGIES.
	ASST DEP DIR (PROGRAM & BUDGET INTEGRATION).
	DEP DIR ELECTRONIC WARFARE.
	DIR PLANNING & ANALYSIS.
	DIR, DEF ACQUISITION REG SYS & COUNCIL.
	DEP DIR. FOREIGN CONTRACTOR.
	DIR, ACQUISITION LOG & PRODUCTION READINESS.
	DEP DIR MAYOR POLICY INITIATIVES.
	STAFF SPEC FOR SPEC TECH PROGRAM.
	SPECIAL ASST CONCEPTS & PLANS.
	DEPUTY DIRECTOR DEFENSIVE SYSTEMS.
	PRIN DASD (ATOMIC ENERGY).
	DEP DIR, LAND & MARITIME PROGRAMS.
	DEP DIR, AIR & SPACE PROGRAMS.
	ADUSD (BALLISTIC MISSILE DEFENSE).
	DD MODELING & SIMULATION SOFTWARE.
	DIR OSD STUDIES & FFRDCA.
	ASST DEP UNDER SECY DEF (CRUISE MISSILE DEF).
	PRINC DEP DIR, STRATEGIC & TACTICAL SYSTEMS.
	DIR, PROG ACQUISITION STRATEGIES IMPROVEMENT.
	DEPUTY DIRECTOR AIR WARFARE.
	DEP DIR ARMS CONTROL IMPLEMENTATION COMPL.
	ASST DEP DIR, ARMS CONTROL I & C.
	DEPUTY DIR, INFORMATION MANAGEMENT.
	DIRECTOR IND CAPABILITIES & ASSESSMENTS.
	DEP DIR (TEST & EVALUATION).
	ASST DEP UNDER SECY OF DEF (ACQ P & PO.
OFC OF THE DIR, DEFENSE RESEARCH & ENGINEERING	STAFF SPECIALIST FOR SENSOR TECHNOLOGY
OFC OF DD (RESEARCH AND ADVANCED TECH)	STAFF SPECIALIST FOR VEHICLE PROPULSION.
	STAFF SPECIALIST FOR MATERIALS & STRUCTURES.
	STAFF SPECIALIST FOR WEAPONS.
	DIR ENVIRONMENTAL & LIFE SCIENCES.
	SPEC ASST FOR MCTL & LONG-RANGE PLNNG MATTERS.
	STAFF SPEC FOR ELECTRONIC W/C, CTRL & COMMS.
	DIR, BALANCED TECHNOLOGY INITIATIVE.
OFC OF ASST SECY (COMMAND, CONTROL, COMMUN & INTEL).	DEP DIR COUNTERINTELLIGENCE.
DIRECTOR, THEATER & TACTICAL C3	DIR THEATER & TACTICAL COMMUN COMMAND & CONTR.
DEPUTY ASSISTANT SECRETARY OF DEFENSE (INTELLIGENCE).	DIR SPECIAL TECHNOLOGY.
	DIRECTOR, INTELLIGENCE RESOURCES.
	DIRECTOR, INTELLIGENCE POLICY.
	PRINCIPAL DIR TO DASD I & S.
	DIRECTOR, INTELLIGENCE SYSTEMS.
	DEP DIR INTELLIGENCE SYSTEMS.
	DIR INTELLIGENCE OPERATIONS.
	DEP DIRECTOR, INTELLIGENCE POLICY.
	DIR SPECIAL TECHNOLOGY.
DEPUTY ASSISTANT SECRETARY OF DEFENSE (DEFENSE-WIDE C3).	DIRECTOR, TELECOMMUNICATIONS.
	DEP DIR SPACE & NUCLEAR C3.
	DIRECTOR SPACE & NUCLEAR C3.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
DIRECTOR, C3 MOBILIZATION SYSTEMS	DIR NATIONAL PROGRAMS.
ADVANCED RESEARCH PROJECTS AGENCY (ARPA)	DIRECTOR, ASTO.
	DEPUTY DIRECTOR, ASTO .
	DEPUTY DIRECTOR, MANAGEMENT.
	DEPUTY DIRECTOR.
	DIR ELECTRONIC SYSTEMS TECHNOLOGY OFFICE.
	DIR LAND SYSTEMS OFFICE.
	DIR SENSOR TECHNOLOGY OFFICER.
	DIR MICROCELECTRONICS TECHNOLOGY.
	DEP DIR MICRO ELECTRONICS TECHNOLOGY.
	DIR MARTIME SYSTEMS TECHNOLOGY.
	CHIEF, ADVANCED TECHNOLOGY.
	EXECUTIVE DIRECTOR MANUFACTURING.
	ASST DIR, SENSORS & PROCESSING.
	SPECIAL ASST, INFORMATION TECHNOLOGY.
	ASSISTANT DIRECTOR, INTELLIGENCE & TARGETING.
	DEP DIR FOR WARFARE INFO TECHNOLOGY.
DEFENSE SCIENCES OFFICE	DIR DEFENSE SCIENCES OFFICE.
	ASSISTANT DIRECTOR FOR MATERIAL SCIENCES.
DEFENSE MANUFACTURING OFFICE	EXECUTIVE DIRECTOR, M & M WAVE TECHNOLOGY.
CONTRACTS MANAGEMENT OFFICE	DIR, CONTRACTS MANAGEMENT OFFICE.
NUCLEAR MONITORING OFFICE	DIR NUCLEAR MONITORING RESEARCH OFC.
OFFICE OF THE JOINT CHIEFS OF STAFF	DEP DIR FOR WARGAMING, SIMULATION & OPS.
BALLISTIC MISSILE DEFENSE ORGANIZATION	ASST DIR FOR SENSORS DEMONSTRATIONS.
	ASSISTANT DIRECTOR FOR SENSOR TECHNOLOGY.
	ASSOC DEPUTY FOR I & C TECHNOLOGY.
	DEPUTY FOR PROGRAM OPERATIONS.
	DIRECTOR, CONTRACTS DIRECTORATE.
	DIR BATTLE MAGT COMMAND CONTROL & COMMUN.
	ASSISTANT DEP FOR ACQUISITION MANAGEMENT.
	DEPUTY FOR TECHNOLOGY READINESS.
	PRINCIPAL DEP FOR ACQUISITION THEATER MIS DEF.
DEFENSE CONTRACT AUDIT AGENCY	DIRECTOR, DCAA.
	DEPUTY DIRECTOR, DCAA.
	ASSISTANT DIRECTOR, OPERATIONS.
	ASST DIR, POLICY & PLANS.
	DIRECTOR, FIELD DETACHMENT.
REGIONAL MANAGERS	REGIONAL DIRECTOR, EASTERN.
	REGIONAL DIRECTOR, NORTHEASTERN.
	REGIONAL DIRECTOR, CENTRAL.
	REGIONAL DIRECTOR, WESTERN.
	REGIONAL DIRECTOR, MID-ATLANTIC.
	DEP REGIONAL DIRECTOR EASTERN REGION.
	DEPUTY REGIONAL DIRECTOR NORTHEASTERN REGION.
	DEPUTY REGIONAL DIR CENTRAL REGION.
	DEPUTY REGIONAL DIRECTOR, WESTERN.
	DEP REG DIR MID ATLANTIC REGION.
DEFENSE LOGISTICS AGENCY	SPECIAL ASST FOR INTEGRITY IN CONTRACTING.
	DIR, DEFENSE MANPOWER DATA CENTER.
	CHIEF ACTUARY.
	DEPUTY EXECUTIVE DIRECTOR, DISTRIBUTION.
	DEP COMMANDER DEFENSE INDUSTRIAL SUPPLY CTR.
	DEP DIR, CIVILIAN PERSONNEL MGMT SERVICE.
	DIRECTOR CPMS
OFFICE OF DEPUTY DIRECTOR, ACQUISITION	ASST EXEC DIR, OPERATIONS/POLICY GROUP.
	ASSOC DIR FOR OPERATIONS ACQUISITION.
	EXEC DIR, OPL ASSESSMENT & PROGRAMMING ACQ.
DIRECTORATE OF QUALITY ASSURANCE	DEPUTY COMMANDER.
OFC OF STAFF DIR-SMALL & DISADVANTAGED BUSINESS UNTIL.	STAFF DIR, SMALL & DISADV BUSIN UTILIZATION.
OFFICE OF THE COMPTROLLER	SENIOR POLICY ADV/DAS DEF (C & B MATTERS)
OFFICE OF DEPUTY DIRECTOR, CORPORATE ADMINISTRATION.	EXECUTIVE DIRECTOR, HUMAN RESOURCES.
	ASSOCIATE DIRECTOR, PERSONNEL PROGRAMS.
	ACQUISITION MANAGEMENT ADVISOR DLA CHAIR.
OFFICE OF DEPUTY DIRECTOR, MATERIAL MANAGEMENT	EXECUTIVE DIRECTOR PROCUREMENT.
	DEP EXECUTIVE DIRECTOR, SUPPLY MANAGEMENT.
	DEPUTY COMMANDER.
	DEPUTY COMMANDER.
	ASST EXEC DIR, DLA INTERNATIONAL PROGRAMS.
	ASST EXEC DIR, SYST, TECHN & INTL PROGRAMS.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
DEFENSE PERSONNEL SUPPORT CENTER	DEPUTY COMMANDER.
	DEP COMMANDER, DEF FUEL SUPPLY CENTER.
DEFENSE TRAINING & PERFORMANCE DATA CENTER	DEPUTY DIR DEFENSE MANPOWER DATA CENTER.
DEFENSE CONTRACT MANAGEMENT	EXECUTIVE DIRECTOR, CONTRACT MANAGEMENT.
	ASSOC DIR FOR PROGRAM INTERGRATION ACQUISITION.
DEFENSE INFORMATION SYSTEMS AGENCY	DEP DIRECTOR FOR STRATEGIC PLANS & POLICY.
OFFICE OF THE DIRECTOR	DIRECTOR, DITSO.
	DEPUTY DIRECTOR, DITSO.
	DEPUTY MANAGER NATIONAL COMMUN SYSTEMS.
DIRECTORATE FOR STRATEGIC PLANS AND POLICY	ASSOC DIR FOR ENG, TECHNOLOGY & CORP PLNG.
	CHIEF INFORMATION OFFICER.
	DEP DIR FOR OPERATIONS.
	DEPUTY DIRECTOR DISA.
NATIONAL COMMUNICATIONS SYSTEM	ASST. MGR, NCS, TECHNOLOGY & STANDARDS.
	ASST MGR, NCS, PLANS & OPERATIONS.
	ASST MANAGER NCS PLANS & PROGRAMS.
DISA (FIELD ACTIVITY)	DEP COMMANDER INTEROPERABILITY & TESTING.
	ASSOC DEP CMDR, CENTER FOR SOFTWARE.
	ASSOC D/D, FUNCTIONAL INFO MGMT SUPPORT DEPT.
	DEP COMMANDER, CENTER FOR INFO SYSTEM SECURITY.
DIRECTORATE FOR C4 & INTELLIGENCE PROGRAMS	DEP DIR FOR SWITCHED NETWORK ENGINEERING.
	S/A TO THE DIR, CPSI FOR SATELLITE COM SYS.
	SPEC ASST TO DIR, CTR FOR C3 FOR INT DIG ARCH.
	DIR MILITARY SATELLITE COMMUNICATIONS.
	DIR CENTER FOR SYSTEMS INTERO & INTEGRATION.
	DEP DIR JOINT (IEO).
	DIR CENTER FOR TECHNICAL ARCHITECTURE.
	TECH DIR JOINT INTERO & ENG COMM (JIEO).
	DIR CENTER FOR STANDARDS.
	DIR CENTER FOR ENGINEERING.
	ASSOC DIR CENTER FOR STANDARDS.
	DIRECTOR, CENTER FOR INFO SYSTEMS SECURITY.
	ASSOCIATE DEPUTY DIRECTOR C4I PROGRAMS.
	DEPUTY DIR C4I INTEGRATION SUPPORT ACTIVITY.
DIRECTORATE FOR OPERATIONS	DEP DIR, DCS TELECOMMUNICATIONS NETWORKS.
	ASSOC DEPUTY DIRECTOR, DCS DATA SYSTEMS.
	PRINCIPAL DEPUTY DIRECTOR.
	ASST DEPUTY DIR FOR OPERATIONS.
	CHIEF OPERATIONAL REQUIREMENT CUSTOMER SERVICE.
DIRECTORATE DISA, FOR LOGISTICS, F & S PROJECTS	DIR DEFENSE INFORMATION SYSTEMS.
	DEP DIRECTOR FOR LOGISTICS & PROCUREMENT.
	DEP DIR, LOGISTICS, FACILITIES & SPECIAL PROJ.
DIRECTORATE FOR PERSONNEL AND MANPOWER	DIRECTOR, CENTER FOR AGENCY SERVICES.
	DEP DIR FOR PERSONNEL & MANPOWER.
DIRECTORATE FOR ENGINEERING & INTEROPERABILITY	DEPUTY DIRECTOR, NMCS ADP DIRECTORATE.
	ASSOC DIR FOR TECHNICAL & MANAGEMENT SUPPORT.
	DIR. DEF INFORMATION SYSTEMS PROGRAM ORG.
DIRECTORATE FOR C4 MODELING, SIMULATION AND ASSESSMENT.	DEPUTY DIRECTOR FOR TESTING.
	DEPUTY COMMANDER CENTER FOR SOFTWARE.
DIRECTORATE FOR ENTERPRISE INTEGRATION	DIRECTOR, INFORMATION MANAGEMENT CENTER.
	DIRECTOR, TECHNICAL INTEGRATION OFFICE.
	DIR. NAVY INFORMATION RESOURCES MANAGEMENT.
	TECHNICAL DIR. NAVAL DATA AUTOMATION COMMAND.
COMPTROLLER DIRECTORATE	COMPTROLLER.
OFFICE OF THE DIRECTOR	DEPUTY DIRECTOR.
	ASSISTANT DIRECTOR FOR ARMS CONTROL.
ACQUISITION MANAGEMENT OFFICE	DIR. ACQUISITION MANAGEMENT.
OFFICE OF THE COMPTROLLER	DIR FOR INFORMATION MANAGEMENT.
OPERATIONS DIRECTORATE	DEPUTY DIRECTOR, OPERATIONS DIRECTORATE.
	CHIEF, STRUCTURAL DYNAMICS DIVISION.
	DIR FOR TECH APPLICATIONS.
	CHIEF, ENVIRONMENTS & MODELING DIVISION.
RADIATION SCIENCES DIRECTORATE	DIR FOR RADIATION SCIENCES.
	CHIEF, ATMOSPHERIC EFFECTS DIVISION.
	CHIEF, ELECTRONICS & SYSTEMS TECHNOLOGY DIV.
SHOCK PHYSICS DIRECTORATE	DIRECTOR FOR SHOCK PHYSICS.
	CHIEF, WEAPONS EFFECTS DIVISION.
TEST DIRECTORATE	DIRECTOR FOR TEST.
DEFENSE MAPPING AGENCY	CHIEF, DIGITAL PRODUCTION SYSTEM DEPARTMENT.
	CHF, DIGITAL PRODUCTS DEPARTMENT AC.
	CHF, DIGITAL PRODUCTS DEPARTMENT HTC.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	CHIEF, SCIENTIFIC DATA DEPARTMENT.
	DIR DMA SYS CTR DEP DIR FOR RES & ENGINEERING.
	CHIEF, MAPPING & CHARTING DEPARTMENT.
	CHIEF, MAPPING & CHARTING DEPARTMENT.
	DIR DMA HYROGRAPHIC/TOPOGRAPHIC CENTER.
	DIR DMA RESTON CENTER.
	DIR DMA AEROSPACE CENTER.
	DEP DIR DIR FOR PRODUCTION RESTON CENTER.
	DEP DIR FOR PROGRAM EXECUTION.
	DEP DIR ENG & INTEGRATION DIRECTOR.
	DEP DIR DEP DIR FOR PRODUCTION.
DEFENSE FINANCE & ACCOUNTING SERVICE	DEPUTY DIRECTOR, CLEVELAND CENTER.
DEFENSE INVESTIGATIVE SERVICE	DIR, DEFENSE INVESTIGATIVE SERVICE.
	DEPUTY DIRECTOR (INVESTIGATIONS).
	DEP DIR (INDUSTRIAL SECURITY).
	DEPUTY DIRECTOR (RESOURCES).
	DIR, PERSONNEL INVESTIGATIONS CENTER.
	DEP DIR (INVESTIGATIONS CONTROL & AUTOMATION).
DEPARTMENT OF AIF FORCE:	
OFFICE OF ADMINISTRATIVE ASSISTANT TO THE SECRETARY.	ADMINISTRATIVE ASSISTANT.
OFFICE OF SMALL & DISADVANTAGE BUSINESS UTILIZATION	DIR, OFC OF SMALL & DISADV BUS UTILIZATION.
OFFICE OF THE INSPECTOR GENERAL	DEP ASST INSPECTOR GEN/SPEC INVESTIGATIONS.
OFFICE OF ASAF FOR FINANCIAL MANAGEMENT & COMPTROLLER.	PRINCIPAL DEP ASST SECRY (FINANCIAL MGMT).
ODAS BUDGET	DEPUTY FOR BUDGET.
	DIRECTOR OF BUDGET INVESTMENT.
	DIRECTOR OF BUDGET MANAGEMENT & EXECUTION.
	DEPUTY DIRECTOR OF BUDGET OPERATIONS.
ODAS COST & ECONOMICS	DEP ASST SECY (COST & ECONOMICS).
OFFICE OF ASAF FOR ACQUISITION	PRINCIPAL DAS (ACQUISITION & MGMT).
ODAS COMMUNICATIONS, COMPUTERS & SUPPORT SYSTEMS.	ASSOC DEP ASST SECY (TRANSPORTATION).
	ASSOC DEP ASST SECY (INFO & SUPPORT SYSTEMS).
ODAS RESEARCH, ENGINEERING & INDUSTRIAL POLICY	DIR SCIENCE & TECHNOLOGY.
	DAS (RESEARCH & ENGINEERING).
	DAS (RES ENGINEERING & INDUSTRIES POLICY).
ODAS MANAGEMENT POLICY & PROGRAM INTEGRATION	DEP ASST SECY (MGMT POL & PROG INTEGRATION).
ODAS CONTRACTING	ASSOC DEP ASST SECY (CONTRACTING).
AIR FORCE PROGRAM EXECUTIVE OFFICE	AF PROGRAM EXEC OFFICER, INFO SYSTEMS.
	AIR FORCE PROG EXEC OFCR, CONVENTIONAL STRIKE.
OFC OF ASAF FOR MANPOWER, RESERVE AFFAIRS, INSTALL & ENV.	DEP FOR AIR FORCE REVIEW BOARDS.
ODAS INSTALLATIONS	DEPUTY FOR INSTALLATIONS MANAGEMENT.
AIR FORCE BASE CONVERSION AGENCY	DIR AIR FORCE BASE CONVERSION AGENCY.
OFFICE OF THE CHIEF OF STAFF	AIR FORCE HISTORIAN.
TEST AND EVALUATION	DEPUTY DIR TEST & EVALUATION.
MORALE, WELFARE, RECREATION AND SERVICES	DIR OF RES MGMT & DEP DIR FOR MWR & SERVICES.
ASSISTANT CHIEF OF STAFF FOR C3 AND COMPUTERS	DIR OF ARCHITECTURES TECH & INTEROPERABILITY.
DEPUTY CHIEF OF STAFF, LOGISTICS	ASSOC DIR FOR LOGISTICS PLANS & PROGRAMS.
	CHIEF MODIFICATION & O&M PROGRAMS DIVISION.
	CHIEF COMBAT SUPPORT PROGRAMS DIVISION.
	ASSOC DIR OF MAINTENANCE & SUPPLY.
CIVIL ENGINEER	DEPUTY CIVIL ENGINEER.
	DIR AF CENTER FOR ENVIRONMENTAL EXCELLENCE.
DEPUTY CHIEF OF STAFF, PERSONNEL	DIR CIVIL PERSONNEL POLICY & PERSONNEL PLANS.
	CHIEF AIR FORCE PERSONNEL OPERATIONS AGENCY.
	CHF, AIR FORCE CIVILIAN PERSONNEL MGMT CENTER.
AIR FORCE MATERIEL COMMAND	DIR CENTRALIZED REQUEST FOR PROPOSAL S T O.
PERSONNEL	DIRECTOR, PERSONNEL.
CONTRACTING	DEPUTY DIRECTOR CONTRACTING.
	DEP DIR FOR PROGRAM S&B CLEARANCE.
LOGISTICS	DEPUTY DIRECTOR, LOGISTICS.
ENGINEERING & TECHNICAL MANAGEMENT	DIRECTOR, ENGINEERING & TECHNICAL MGMT.
FINANCIAL MANAGEMENT & COMPTROLLER	DEP DIRECTOR, FINANCIAL MGMT & COMPTROLLER.
COPRORATE INFORMATION	DIR CORPORATE INFORMATION.
PLANS & PROGRAMS	DEPUTY DIRECTOR, PLANS & PROGRAMS.
SPACE AND MISSILE SYSTEMS CENTER	EXECUTIVE DIRECTOR.
PHILLIPS LABORATORY	DEPUTY DIRECTOR.
GEOPHYSICS DIRECTORATE	DIR, SPACE PHYSICS DIVISION.
ELECTRONIC SYSTEMS CENTER	EXECUTIVE DIRECTOR.
	ASST DEP FOR CONTRACTING & MANUFACTURING.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	PROG DIR FOR AIR BASE DECISION SYSTEMS.
	DIRECTOR, ENGINEERING & PROGRAM MANAGEMENT.
	DIRECTOR, PLANS & ADVANCED PROGRAMS.
PLANS AND PROGRAMS DIRECTORATE	DIR PLANS & PROGRAMS.
COMMAND, CONTROL AND COMMUNICATIONS DIRECTORATE.	DIR COMMAND CONTROL COMMUNICATIONS.
STANDARD SYSTEMS GROUP	DIRECTOR, STANDARD SYSTEMS GROUP.
AERONAUTICAL SYSTEMS CENTER	EXECUTIVE DIRECTOR.
	DIR FINANCIAL MANAGEMENT & COMPTROLLER.
	DIRECTOR CONTRACTING.
DEVELOPMENT PLANNING	DIR ADVANCED SYSTEMS ANALYSIS.
INTEGRATED ENGINEERING & TECH MANAGEMENT	DIRECTOR AVIONICS ENGINEERING.
	DIR SYSTEMS ENGINEERING.
DIRECTORS OF ENGINEERING	DIRECTOR OF ENGINEERING F–16.
	DIR OF ENGINEERING B–2.
	DIR OF ENGINEERING F–22.
	DIR OF ENGINEERING C–17.
SYSTEMS PROGRAM OFFICES	DIR PROGRAM INTEGRATION & ANALYSIS.
	DEVELOPMENT SYSTEM MANAGER PROPULSION.
WRIGHT LABORATORY	DIR MANUFACTURING TECHNOLOGY.
	DIR, PLANS & PROGRAMS DIRECTORATE.
HUMAN SYSTEMS CENTER	EXECUTIVE DIRECTOR.
ARNOLD ENGINEERING DEVELOPMENT CENTER	EXECUTIVE DIRECTOR.
AIR FORCE DEVELOPMENT TEST CENTER	EXECUTIVE DIRECTOR.
AIR FORCE FLIGHT TEST CENTER	EXECUTIVE DIRECTOR
JOINT LOGISTICS SYSTEMS CENTER	DIR DEPOT MAINTENANCE.
	DIR CORPORATE INTEGRATION.
AIR LOGISTICS CENTER, SAN ANTONIO	EXECUTIVE DIRECTOR.
	DIRECTOR, FINANCIAL MANAGEMENT.
	PRODUCT GROUP MANAGER, PROPULSION SYSTEMS.
	DIRECTOR, CONTRACTING.
AIR LOGISTICS CENTER, OKLAHOMA CITY	EXECUTIVE DIRECTOR.
	DIRECTOR, FINANCIAL MANAGEMENT.
	DIRECTOR, COMMODITIES MANAGEMENT.
	DIRECTOR, CONTRACTING.
AIR LOGISTICS CENTER, WARNER ROBINS	EXECUTIVE DIRECTOR.
	DIRECTOR, FINANCIAL MANAGEMENT.
	DIRECTOR, TECHNOLOGY & INDUSTRIAL SUPPORT.
	DIRECTOR, CONTRACTING.
AIR LOGISTICS CENTER, OGDEN	EXECUTIVE DIRECTOR.
	DIRECTOR, FINANCIAL MANAGEMENT.
	DIRECTOR, TECHNOLOGY & INDUSTRIAL SUPPORT.
	DIRECTOR, CONTRACTING.
AIR LOGISTICS CENTER, SACRAMENTO	EXECUTIVE DIRECTOR.
	DIRCTOR, FINANCIAL MANAGEMENT.
	DIRECTOR, TECHNOLOGY & INDUSTRIAL SUPPORT.
	DIRECTOR, CONTRACTING.
AIR FORCE AUDIT AGENCY	AUDITOR GENERAL OF THE AIR FORCE.
	ASST AUD GEN (ACQUISITION & LOG AUDITS).
	ASST AUD GEN (FIELD ACTIVITIES).
	ASST AUD GEN (OPERATIONS).
	ASST AUD GEN (FINANCIAL & SUPPORT AUDITS).
AIR EDUCATION & TRAINING COMMAND	PROVOST, AIR UNIVERSITY.
AIR MOBILITY COMMAND	ASST DIRECTOR PLANS & PROGRAMS
	PRINCIPAL DEP DIR OF OPERATIONS FOR TRANSPORT.
AIR FORCE RESERVES	AIR COMMANDER 4TH AIR FORCE.
	AIR COMMANDER 10TH AIR FORCE.
	AIR COMMANDER 22ND AIR FORCE.
AF SPACE COMMAND	SR SCIENTIST & TECH ADVISOR FOR AFSPACECOM.
AF OPERATIONAL TEST & EVAL CTR	TECHNICAL DIRECTOR.
U.S. CENTRAL COMMAND	SCIENTIFIC ADVISOR.
U.S. STRATEGIC COMMAND	ASSOC DIR FOR STRATEGIC PLANNING.
	DEP DIR COMD CTRL COMM COMPUTER & INTEL SYS.
U.S. TRANSPORTATION COMMAND	DIR PROGRAM ANALYSIS & FINANCIAL MGMT.
ORGANIZATION ABOLISHED	TECHNICAL DIRECTOR.
SHAPE TECHNICAL CENTRE	DEPUTY DIRECTOR.
DEPARTMENT OF ARMY:	
OFFICE OF THE SECRETARY	SPECIAL ASST TO THE UNDER SECRETARY.
OFFICE OF THE UNDER SECRETARY	SPEC ASST FOR AIR & MISSIL DEFENSE.
	SPECIAL ASST FOR FORCES & PROGRAM EVALUATION.
	SPECIAL ASSISTANT FOR SYSTEMS.
	SPECIAL ASSISTANT FOR ELECTRONIC SYSTEMS.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	DIR, TEST AND EVALUATION MANAGEMENT AGENCY.
	DIR, U.S. ARMY MODEL I & S MANAGEMENT AGENCY.
OFC OF THE ADMINISTRATIVE ASSISTANT	ADM ASST TO THE SECY OF THE ARMY.
	DEP ADMIN ASST TO THE SECY OF THE ARMY.
OFFICE OF THE GENERAL COUNSEL	DEPUTY GENERAL COUNSEL (FISCAL LAW & POLICY).
HQDA ARMY ACQUISITION EXECUTIVE	DEP PROG EXEC OFCR, FOWARD AREA AIR DEFENSE.
	DEP PROGRAM EXEC OFFICER, COMBAT SUPPORT.
	DEPUTY PEO, ARMORD SYSTEMS MODERNIZATION.
	PROGRAM EXEC OFFICER—STRATEGIC INFO SYS.
	DEP PROG EXEC OFCR, COMMAND & CONTROL SYSTEMS.
	DEPUTY PROG EXECUTIVE OFFICER COMM SYSTEMS.
	PROGRAM EXECUTIVE OFFICER STAMIS.
	PROG EXEC OFCR, FIELD ARTILLERY SYSTEMS.
	PROGRAM MANAGER SUSTAINING BASE AUTOMATION.
	DEP PROGRAM EXECUTIVE OFFICER FOR AVIATION.
	DEP PEO, INTELLIGENCE & ELETRONIC WARFARE.
	PROG EXEC OFCR, TACTICAL WHEELED VEHICLES.
	PROG EXECUTIVER OFCR TACTICAL MISSILES.
	NATIONAL MISSLE DEFENSE PROGRAM MANAGER.
DIR OF INFO SYS FOR COMMAND, CONTROL, COMMS & COMPUTERS.	DIR, OFC US ARMY INFO SYST SEL & ACQ AGENCY.
	DIR OF ARMY INFORMATION.
	VICE DIRECTOR TO THE DISC4.
OASA RESEARCH DEVELOPMENT AND ACQUISITION	DEPUTY ASST SECY OF THE ARMY (PROCUREMENT).
	ASST DIR LAB MANAGEMENT.
	DAS FOR RES & TECH/CHIEF SCIENTIST.
	DEP ASST SECY FOR PLANS & PROGRAMS.
	DEP DIR US CONTRACTING SUPPORT AGENCY.
	DIRECTOR FOR RESEARCH.
	DIRECTOR FOR TECHNOLOGY.
	ASSISTANT DEPUTY FOR PLANS & PROGRAMS.
	DIRECTOR FOR ASSESSMENT & EVALUATION.
ORGANIZATION ABOLISHED	DIRECTOR FOR ADVANCED CONCEPTS & SPACE.
	DIRECTOR FOR LABORATORY MANAGEMENT.
ORGANIZATION ABOLISHED	DIRECTOR FOR PROCUREMENT POLICY.
ORGANIZATION ABOLISHED	DIR FOR PROGRAM EVALUATION.
OFC OF ASST SECRETARY (INSTALLATIONS, LOGISTICS & ENVMT).	DEP FOR PROGRAMS & INSTALL ASSISTANCE.
	DEP PROGRAM EXEC OFFICER FOR CHEM/DEMIL.
OFFICE OF ASST SECY (FINANCIAL MGMT & COMPTROLLER)	ASSISTANT DEPUTY ASA FOR ARMY BUDGET.
	DEPUTY FOR COST ANALYSIS.
	DIR OF INVESTMENT.
	DAS OF THE ARMY (FINANCIAL OPERATIONS).
	SPEC ADV FOR ECONOMIC POL & PRODUCTIVITY PROG.
	DIRECTOR FOR BUSINESS RESOURCES.
OFF OF ASST SECRETARY, MANPOWER & RESERVE AFFAIRS.	DAS (ARMY REV BRDS/EEO COMPLAINTS).
OFC OF ASST SECRETARY CIVIL WORKS	DEPUTY ASA (MANAGEMENT & BUDGET).
	DEPUTY ASA (PLANNING POLICY & LEGISLATION).
	DEPUTY ASA (PROJECT MANAGEMENT).
OFFICE, CHIEF OF STAFF	DIR US ARMY ARMAMENT & CHEMICAL ACQ LOGIS ACT.
OFFICE ASSISTANT CHIEF OF STAFF FOR INSTALLATION MGMT.	DEP ASST CHIEF OF STAFF FOR INSTALLATION MGMT
ORGANIZATION ABOLISHED	SPECIAL ASST THEATRE DEFENSE.
USA SPACE & STATEGIC DEF COMMAND HUNTSVILLE AL OSCA FOA.	DIRECTOR, DIRECTED ENERGY WEAPONS DIRECTORATE.
	CHIEF, BATTLE MANAGEMENT DIVISION.
	PRIN ASSISTANT RESP FOR CONTRACTING.
	CHIEF, PASSIVE SENSORS DIVISION.
	CHF, DISCRIMINATION DIV SENSORS DIRECTORATE.
	DIR, ADVANCED TECHNOLOGY DIRECTORATE.
	PROJ MGR, G–B SURVEILLANCE & TRACKING SYST.
	DIRECTOR, SYSTEMS DIRECTORATE.
OPERATIONAL TEST & EVALUATION COMMAND	DIR, US ARMY COMBAT DEV EXPERMENTATION CENTER.
	TECH DIR, TEST & EXPER COMMAND.
ORGANIZATION ABOLISHED	ASST DIRECTOR FOR RESEARCH PROGRAMS.
	ASST DIR TECHNOLOGY PLANNING.
ORGANIZATION ABOLISHED	ASSISTANT DIRECTOR TECHNOLOGY ASSESSMENT.
ARMY CENTER OF MILITARY HISTORY	CHIEF HISTORIAN.
OFFICE, DEP CHIEF OF STAFF FOR PERSONNEL	DIRECTOR OF MANPRINT.
	DIRECTOR OF MANPOWER.
	ADCSPER (ARMY CIVILIANS).

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
ORGANIZATION ABOLISHED	DEP DIRECTOR OF CIVILIAN PERSONNEL.
ORGANIZATION ABOLISHED	DIRECTOR, CIVILIAN PERSONNEL MGT.
ARMY RESEARCH INSTITUTE	DIR, TRNG RES LAB & ASSOC DIR, ARI.
	DIR, MANP & PERS RES LAB & ASSOC DIR, ARI.
	DIR, US ARMY RES INST & CHIEF PSYCHOLOGIST.
OFFICE, DEPUTY CHIEF OF STAFF FOR LOGISTICS	ASST DIRECTOR FOR SUPPLY MGMT.
	ASST DIR FOR MAINTENANCE MGMT.
	SPEC ASST TO DCSLOG & CHF AV LOG OFC.
	ASST DIR FOR TRANSPORTATION.
	ASST DIR FOR ENERGY & TROOP SUPPORT.
	DIRECTOR FOR SECURITY ASSISTANCE.
	DIRECTOR FOR RESOURCES AND MANAGEMENT.
	EXECUTIVE DIRECTOR, STRATEGIC LOGISTICS AGCY.
	CHIEF AVIATION LOGISTICS OFFICE.
ARMY AUDIT AGENCY	THE AUDITOR GENERAL.
	DEPUTY AUDITOR GENERAL.
	DIRECTOR, LOGISTICAL & FINANCIAL AUDITS.
	DIR, ACQUISITION & FORCE MGMT.
	DIR, AUDIT POLICY PLANS AND RESOURCES.
OFC DEP CHF OF STAFF FOR OPERATIONS & PLANS	TECH ADV TO THE DCSOPS.
	DIR, U.S. ARMY NUCLEAR & CHEMICAL AGENCY.
NATIONAL GUARD BUREAU	PROGRAM MANAGER, RES COMP AUTO SYS
WALTER REED ARMY INSTITUTE OF RESEARCH	CHIEF DEPT OF PHARMACOLOGY.
ORGANIZATION ABOLISHED	SPECIAL ASSISTANT FOR BIOTECHNOLOGY.
TRAINING AND DOCTRINE COMMAND (TRADOC)	SCIENTIFIC ADVISOR TO CG.
	ASST DEPUTY CHIEF OF STAFF FOR RESOURCES MGMT.
	ADCOS FOR TRAINING POLICY PLANS AND PROGRAMS.
	DEPUTY TO THE COMMANDING GEN, CASCOM.
	ASST DEP CHIF OF STAFF FOR BASE OPS SUPPORT.
	ASST DEP CHIEF OF STAFF FOR COMBAT DEVELOP.
TRADOC ANALYSIS CENTER	DIRECTOR.
	DIRECTOR OF OPERATIONS.
	DEPUTY DIRECTOR, TRAC.
	DIRECTOR OF OPERATIONS.
NATIONAL SIMULATIONS CENTER	TECHNICAL DIRECTOR, NATIONAL SIMULATIONS CTR.
MILITARY TRAFFIC MGMT COMMD	DEPUTY TO THE COMMANDER.
	SPECIAL ASST FOR TRANSPORTATION ENGINEERING.
U.S. ARMY FORCES COMMAND	CIVILIAN PERSONNEL DIRECTOR.
	DEPUTY DIRECTOR RESOURCE MANAGEMENT.
	ASST DCS FOR PERS & INST MGNT.
U.S. ARMY CORPS OF ENGINEERS	DIRECTOR OF HUMAN RESOURCES.
	DIRECTOR, RESOURCE MANAGEMENT.
	DIRECTOR, U.S. ARMY CENTER FOR PUBLIC WORKS.
	PRINCIPAL ASST RESPONSIBLE FOR CONTRACTING,
	DEP TO THE COMMANDER FOR PROG & TECH MGNT.
	CHIEF POLICY REVIEW & ANALYSIS DIVISION.
	DIR OF ENGINEERING & TECHNICAL SERVICES.
	DIR OF ENGINEERING & TECHNICAL SERVICES.
	DIR OF PROGRAMS MANAGEMENT.
DIRECTORATE OF CIVIL WORKS	DEPUTY DIRECTOR, CIVIL WORKS.
	CHF—OFC OF POLICY.
	CHIEF, PROGRAMS MANAGEMENT DIVISION.
	CHIEF, PLANNING DIVISION.
	CHIEF, DREDGING DIVISION.
	CHIEF OPERATIONS & READINESS.
	CHIEF ENGINEERING DIVISION.
	CHF, OPS, CONSTRUCTION & READINESS DIVISION.
ORGANIZATION ABOLISHED	DEP/DIR; ENGINEERING AND CONSTRUCTION.
	DEPUTY CHIEF CONSTRUCTION DIVISION.
DIRECTORATE OF MILITARY PROGRAMS	DEPUTY DIRECTOR, MILITARY PROGRAMS.
	CHIEF CONSTRUCTION DIVISION.
	CHIEF, DAEB, ENGINEERING DIVISION.
	CHIEF, PROGRAMS MANAGEMENT DIVISION.
	CHIEF, ENVIRONMENTAL RESTORATION DIVISION.
ORGANIZATION ABOLISHED	CHIEF, WATER RESOURCES SUPPORT CENTER.
DIVISION OF PROGRAMS MANAGEMENT	DIR OF PLANNING, OHIO RIVER.
	DIR OF PLANNING, NO PACIFIC.
	DIR OF PLANNING, SOUTH ATLANTIC.
	DIR OF PLANNING, LOWER MISS VALLEY.
	DIR OF PLANNING, MO RIVER.
	DIR OF PLANNING, SOUTH PACIFIC.
	DIR OF PLANNING, N. ATLANTIC.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	DIR OF PLANNING, SOUTHWESTERN.
	DIR OF PLANNING, NORTH CENTRAL.
	DIRECTOR OF PROGRAMS MGNT.
	DIRECTOR OF PROGRAMS MANAGEMENT.
	DIRECTOR OF PROGRAMS MANAGEMENT.
	DIRECTOR OF PROGRAMS MANAGEMENT.
	DIRECTOR OF PROGRAMS MANAGEMENT.
DIRECTOR OF ENGINEERING & TECHNICAL SERVICES	DIR OF ENGINEERING, OHIO RIVER.
	DIR OF ENGINEERING, SOUTHWESTERN.
	DIR OF ENGINEERING, NORTH CENTRAL.
	DIR OF ENGINEERING, S. PACIFIC.
	DIR OF ENGINEERING, N. ATLANTIC.
	DIR OF ENGINEERING, S. ATLANTIC.
	DIR OF ENGINEERING, LOWER MISS.
	DIR OF ENGINEERING, MISSOURI RIVER.
	DIR OF ENGINEERING, NORTH PACIFIC.
	DIR OF ENGINEERING, PACIFIC OCEAN.
	DIR OF ENGINEERING, EUROPE.
	DIR OF CONSTRUC OPS.
	DIR ENGINEERING & TECHNICAL SERVICES.
	DIR ENGINEERING & TECHNICAL SERVICES.
	DIR OF ENGINEERING & TECHNICAL SERVICES.
	DIRECTOR OF ENGINEERING & TECHNICAL SERVICES.
	DIR OF ENGINEERING & TECHNICAL SERVICES.
	DIRECTOR OF ENGINEERING & TECHNICAL SERVICES.
	DIR OF ENGINEERING & TECHNICAL SERVICES.
	DIR OF ENGINEERING & TECHNICAL SERVICES.
ORGANIZATION ABOLISHED	DIR OF CONSTRUC OPS, S. ATLANTIC.
	DIR OF CONSTRUC OPS, S. WESTERN.
	DIR OF CONSTRUC OPS, OHIO RIVER.
	DIR OF CONSTRUC OPS, LR MS VAL.
	DIR OF CONSTRUC OPS.
	DIR OF CONSTRUC OPS, N ATLANTIC.
	DIR OF CONSTRUC OPS, PACIFIC.
	DIR OF CONSTRUC OPS.
ENGINEER WATERWAYS EXPERIMENT STATION, COE	DIR WATERWAYS EXPERIMENT STATION.
CONSTRUCTION ENGRG RSCH LAB CHAMPAIGNE IL	DIRECTOR.
COLD REGIONS RSCH & ENGRG LAB HANOVER NH	DIRECTOR.
OFFICE OF DCS FOR LOGISTICS & OPERATIONS	ASST DEP CHIEF OF STAFF FOR LOGISTICS.
	EXEC DIRECTOR, LOGISTICS SUPPORT ACTIVITY.
	CHIEF SPECIAL ANALYSIS OFFICE.
OFFICE DEPUTY COMMANDING GENERAL	PRINCIPAL DEPUTY FOR ACQUISITION.
	PRINCIPAL DEPUTY FOR TECHNOLOGY.
OFFICE OF DCS FOR RESEARCH DEV AND ENGINEERING	ADCS FOR RES. D & E FOR TECHNOL & ENG.
OFFICE DEPUTY COMMANDING GENERAL	PRINCIPAL DEPUTY FOR LOGISTICS.
	DEPUTY TO THE COMMANDER.
DEP CHF OF STAFF FOR SUPPLY, MAINTENANCE & TRANSP	ASST DEP CHF OF STAFF FOR POLICY & PROCEDURES.
OFFICE OF DEPUTY CHIEF OF STAFF FOR AMMUNITION	ASST DEPUTY CHIEF OF STAFF FOR AMMUNITION.
OFFICE OF DCS FOR ACQUISITION	ASST DCS FOR ACQUISITION & CONTRACTING.
	ASST DEP CHIEF OF STAFF FOR ACQUIS CONTRACT.
OFFICE OF DEPUTY CHIEF STAFF FOR PERSONNEL	DEP CHIEF OF STAFF FOR PERSONNEL.
OFFICE OF THE DEPUTY CHIEF OF STAFF FOR RES MANAGEMENT.	ADCS FOR RESOURCES MGMT.
	ADCS FOR COST ANALYSIS.
	DEPUTY CHIEF OF STAFF FOR RESOURCE MANAGEMENT.
USA SECURITY ASSISTANCE COMMAND	DEPUTY.
ORGANIZATION ABOLISHED	DIR, SYST INTEGRATION MGMT ACTIVITY.
US ARMY INDUSTRIAL OPERATIONS COMMAND	DEP FOR A & S MGR FOR CONVENTL AMMUN (SMCA).
	DEPUTY FOR LOGISTICS READINESS.
	DEP FOR PRODUCT A & T & INDUSTRIAL OPS MGMT.
	DEP FOR FACILITIES, IND PREPAREDNESS & ENVMT.
	DIR, U.S. ARMY DEF AMMUNITION CENTER & SCHOOL.
ORGANIZATION ABOLISHED	CHF FIRE CONTROL DIVISION.
	CHIEF ARTILLERY ARMAMENTS DIVISION.
U.S. ARMY C & B DEF COMMAND (CBDCOM)—EDGEWOOD RD&E CENTER.	DIRECTOR, ENGINEERING DIRECTORATE.
	DIR, RES & TECHNOLOGY DIRECTORATE.
	TECHNICAL DIR, EDGEWOOD RD&E CENTER.
U.S. ARMY AVIATION & TROOP COMMAND (ATCOM)	TECH DIR–US ARMY AVIATION SYSTEMS COMMAND.
	DIRECTOR OF ENGINEERING.
	DIR OF AEROFLIGHT DYNAMICS.
	EXECUTIVE DIRECTOR, ACQUISITION CENTER.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	DIR OF ADVANCED SYST/ASSOC DIR FOR TECHNOL.
	ASSOC TECH DIR FOR TECH APPL/DIR OF SPEC PROG.
	DIRECTOR OF ACQUISITION MANAGEMENT.
	LOGISTICS DIRECTOR.
	DIRECTOR OF ELECTRONICS & WEAPONIZATION.
	DEPUTY TO THE COMMANDER.
NATICK RESEARCH DEVELOPMENT & ENGINEERING CENTER.	TECHN DIR.
	DIR, INDIVIDUAL PROTECTION DIRECTORATE.
	DIRECTOR, SOLDIER SCIENCE DIRECTORATE.
	DEPUTY TO THE COMMANDER.
U.S. ARMY COMMUNICATIONS ELECT COMD (CECOM)	COMPTROLLER.
	DIRECTOR C3I ACQUISITION CENTER.
CECOM RESEARCH, DEVELOPMENT & ENGINEERING CENTER.	DIR, SPACE & TERRESTRIAL COMM DIRECTORATE.
	DIR, E/W, RECONNAISSANCE, SURVEILLANCE, TAD.
	DIR, I & E WARFARE DIRECTORATE.
	TECH DIR/DIR, RD&E CENTER.
	ASSOC TECHN DIR (RESEARCH & TECHNOLOGY).
	DEPUTY TO THE COMMANDER.
	DIR FOR C3I, LOG & READINESS CENTER.
U.S. ARMY RESEARCH LABORATORY	ADCS FOR TECHNOLOGY PLANNING & MANAGEMENT.
	DIRECTOR U.S. ARMY RESEARCH LABORATORY.
	DIRECTOR SENSORS DIRECTORATE.
OPERATIONS	DIR OPERATIONS DIRECTORATE.
ADVANCED CONCEPTS & PLANS DIRECTORATE	DIR ADVANCED CONCEPTS & PLANS DIRECTORATE.
ORGANIZATION ABOLISHED	DIRECTOR.
	DIRECTOR, SENSORS DIVISION.
ELECTRONICS & POWERS SOURCES DIRECTORATE	DIRECTOR.
BATTLEFIELD ENVIRONMENT DIRECTORATE	DIRECTOR.
SURVIVABILITY/LETHALITY ANALYSIS DIRECTORATE	CHIEF, BALLISTIC VULNERABILITY DIVISION.
	DIRECTOR.
VEHICLE STRUCTURES DIRECTORATE	DIRECTOR.
ADVANCED COMPUTING & INFORMATION SCIENCES DIRECTORATE.	DIRECTOR.
ORGANIZATION ABOLISHED	DIRECTOR.
U.S. ARMY WEAPONS TECHNOLOGY DIRECTORATE (ARL)	DIRECTOR.
	CHIEF, PROPULSION & FLIGHT DIVISION.
	CHIEF, TERMINAL EFFECTS DIVISION.
	CHIEF, WEAPONS CONCEPTS DIVISION.
HUMAN RESEARCH AND ENGINEERING DIRECTORATE	DIRECTOR, HUMAN R & E DIRECTORATE.
U.S. ARMY MATERIALS DIRECTORATE (ARL)	DIR ARMY MTLS & TECH LAB.
ARMY RESEARCH OFFICE (AMC)	DIRECTOR ARO.
	DIR, ELECTRONICS DIVISION.
	DIRECTOR, MATERIALS SCIENCE DIVISION.
	DIR PHYSICS DIV.
	DIR, MATHEMATICAL & COMPUTER SCIENCES DIV.
	DIR, ENG & ENVIRONMENTAL SCIENCES DIVISION.
	DIR, RESEARCH & TECHNOLOGY INTEGRATION.
	DIR, CHEM & BIO SCI DIV.
U.S. ARMY MISSILE COMMAND (MICOM)	DIRECTOR, ACQUISITION CENTER.
	DIR, INTEGRATED MATERIEL MGMT CENTER.
	DEPUTY EXECUTIVE DIRECTOR FOR TMDE.
	DEPUTY FOR PROCUREMENT AND READINESS.
	DEPUTY TO THE COMMANDER.
RESEARCH DEVELOPMENT & ENGINEERING CENTER (RDEC)	TECH DIR FOR M & D, RES, DEV & ENG CENTER.
	DIR FOR SYSTEM ENGINEERING & PRODUCTION.
	DIRECTOR FOR ADVANCED SENSORS.
	DIRECTOR FOR PROPULSION.
	DIR FOR SYSTEMS SIMULATION & DEVELOPMENT.
	ASSOCIATE DIRECTOR FOR SYSTEMS.
	ASSOC DIRECTOR FOR PRODUCT ASSURANCE.
	DIRECTOR FOR WEAPONS SCIENCES.
TANK-AUTOMOTIVE AND ARMAMENTS COMD (TACOM)	DIRECTOR OF RESOURCE MGT.
	DIRECTOR OF ACQUISITION CENTER.
	DIRECTOR OF PRODUCT ASSURANCE & TEST.
	DIRECTOR, INTEGRATED MATERIEL MGMT CENTER.
	VICE PRESIDENT FOR CUSTOMER ENGINEERING.
	VICE PRESIDENT FOR PRODUCT DEVELOPMENT.
	DEPUTY TO THE COMMANDER.
TANK-AUTOMOTIVE RES, D & E CENTER (TARDEC)	VICE PRESIDENT FOR RESEARCH.
	PRESIDENT/DIRECTOR.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
U.S. ARMY ARMAMENT RESEARCH, D & E CENTER (ARDEC)	DIRECTOR, ARMAMENT ENGINEERING DIRECTORATE.
	A/TECH/DIR (SYSTEMS CONCEPTS & TECHNOLOGY).
	TECHNICAL DIRECTOR FOR ARMAMENT.
	A/TECH/DIR (SYS DEVELOPMENT & ENGINEERING).
	ASSOC TECH DIR (PRODUCTS & PROCESS TECHNOL).
	CHF, ENERGETICS & WARHEADS DIVISION.
FIRE SUPPORT ARMAMENTS CENTERS	DEP DIRECTOR FIRE SUPPORT ARMAMENTS CENTER.
CLOSE COMBAT ARMAMENTS CENTER	DEPUTY DIRECTOR, CLOSE COMBAT ARMAMENT CTR.
	CHIEF, LIGHT ARMAMENT DIVISION.
U.S. ARMY SIMULATION, TRAINING & INSTRUMENTATION COMMAND.	DEPUTY TO THE COMMANDER.
U.S. ARMY TEST AND EVALUATION COMMAND, (TECOM)	DIR, REDSTONE TECHNICAL TEST CENTER.
	TECHNICAL DIR, NATIONAL RANGE OPERATIONS.
	TECH DIR & CHF SCI.
	DIR FOR TEST AND ASSESSMENT.
U.S. ARMY MATERIEL SYSTEMS ANALYSIS ACTIVITY	DIRECTOR.
	CHIEF COMBAT INTEGRATION DIVISION.
	CHIEF, COMBAT EVALUATION DIVISION.
	CHIEF, RELIABILITY ANALYSIS DIVISION.
	CHF GROUND WARFARE DIVISION—AMSAA.
ARMY INFORMATION SYSTEMS COMMAND	DEPUTY CHIEF OF STAFF FOR RESOURCE MANAGEMENT.
	TECHNICAL DIRECTOR, ISEC.
	DIRECTOR OF OPERATIONS.
HEADQUARTERS, U.S. ARMY, EUROPE	ASST DEP CHF OF STAFF, PERSONNEL (CIV PERS).
	ASST DEP CHIEF OF STAFF ENG FOR ENG & HOUSING.
	ASST DEP CHF OF STAFF, RESOURCE MGMT USAREUR.
	ASST DEP CHF STAFF FOR ENG (INTL AFFAIRS).
U.S. ARMY SPECIAL OPERATIONS COMMAND	DIR OF FORCE DEVELOPMENT & INTEGRATION.
NATO ACISA	ASST DIR, COMMAND, CONTROL AND COMMS SYST.
JOINT LOGISTICS	PRINCIPAL DEPUTY TO THE COMMANDER.
NATIONAL DEFENSE UNIVERSITY	DIR, INFORMATION RESOURCES MANAGEMENT COLLEGE.
U.S. SOUTHERN COMMAND	SPEC ASST FOR TECHNOLOGY & REQUIREMENTS INTEG.
DEPARTMENT OF NAVY:	
OFFICE OF THE UNDER SECRETARY OF THE NAVY	ASSISTANT FOR ADMINISTRATION.
OFFICE OF THE AUDITOR GENERAL	AUDITOR GENERAL OF THE NAVY.
NAVAL AUDIT SERVICE	EASTERN U.S. AUDIT SERVICES FACILITATOR.
	DIRECTOR, PLANS AND POLICY.
	DIR, NAVAL AUDIT SERVICE WESTERN REGION.
	DIR, NAVAL AUDIT SERVICE CAPITAL REGION.
	DIRECTOR, AUDIT OPERATIONS.
OFFICE OF CIVILIAN PERSONNEL MANAGEMENT	DIR, CIVILIAN PERSONNEL PROGRAMS DIVISION.
	DIR, OFC OF CIVILIAN PERSONNEL MANAGEMENT.
	ASSOCIATE DIRECTOR (OCPM–30).
	ASSOCIATE DIRECTOR (OCPM–20).
	ASSOCIATE DIRECTOR (OCPM–10).
OAS OF THE NAVY (RESEARCH, DEV & ACQUISITION)	DIRECTOR, NAVY ACQUISITION R & S IMPROVEMENT.
	DIRECTOR, PROCUREMENT POLICY.
	DIRECTOR, PRODUCT INTEGRITY.
	HEAD, CONTRACT POLICY.
	DIR, INTL AGREEMENTS, TTSARB & SPECIAL PROJ.
	DIRECTOR, ACQUISITION CAREER MANAGEMENT.
	DIRECTOR FOR AAW & STRIKE AIR PROGRAMS.
	DIR, NAVY INTERNATIONAL PROGRAMS OFFICE.
PROGRAM EXECUTIVE OFFICERS	DIRECTOR, PLANS & PROGRAMS DIVISION.
	HEAD FIRE CONTROL SECTION.
	HEAD OPERATIONS ENGINEERING SECTION.
	TEST & INSTRUMENTATION BRANCH ENGINEER.
	CHF ENGR, MISSILE BRANCH.
	CHF ENGR
	BR ENGR FIRE CONTROL & GUIDANCE BR.
	PROG MGR, MK–50 TORPEDO PROG OFC.
	SECT HEAD. REENTRY SYSTEMS SECT, MISSILE BR.
	DEP P/E OFFICER FOR UNMANNED AERIAL VEHICLES.
	DEP PROG EXEC OFFICER FOR THEATER AIR DEFENSE.
	DIR OF TECHNOLOGY.
	HEAD, RESOURCES BRANCH.
	DEP P/E OFFICER FOR CRUISE MISSILES PROGRAM.
	PROG MANAGER FOR COMM SATELLITE PROGRAMS.
	DEP PROG OFFICER SUBMARINES.
	PROGRAM EXECUTIVE OFFICER, UNDERSEA WARFARE.
	DEP PROG EXEC OFCR FOR TACTICAL AIR PROGRAMS.
	DEP PROG EXEC OFFICER MINE WARFARE.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	PROG EXEC OFFICER FOR SPACE COMMS & SENSORS.
	AEGIS DEPUTY PROGRAM MANAGER.
	PROG. EXEC. OFFICER ASW ASSAULT & SPEC MISS PRO.
	CHIEF ENGINEER, PEO, SCS.
	PROGRAM MANAGER SHIP SELF DEFENSE.
OFC OF THE ASST SECY OF NAVY (FIN MGMT COMPTROLLER).	ASSOC DIR, BUDGET & REPORTS/FISCAL MANAG DIV.
	ASST GENERAL COUNSEL (FINANCIAL MANAGEMENT).
	DIR, INVESTMENT & DEV DIV.
	DIR, FINANCIAL MGMT POL & SYSTEMS DIVISION.
	DIR, OFC OF FIN MGT SYST.
	DIR, BUDGET EVALUATION GROUP.
	DIR RESOURCE ALLOCATION & ANALYSIS DIVISION.
	DIRECTOR, CIVILIAN-CONTRACTOR MANPOWER DIV.
NAVAL CENTER FOR COST ANALYSIS	S/A FOR COST A/T DIR, NAVAL CTR FOR COST ANAL.
	DIR, NAVAL CENTER FOR COST ANALYSIS.
OFFICE OF THE NAVAL INSPECTOR GENERAL	DEPUTY NAVAL INSPECTOR GENERAL.
OFFICE OF THE GENERAL COUNSEL	ASST GEN COUN (RES. DEV & ACQUISITION).
	SPECIAL COUNSEL FOR LITIGATION.
	ASST GENERAL COUNSEL (INSTALL & ENVIRONMENT).
	ASSIST GEN COUN (MANPOWER & RESERVE AFFAIRS).
NAVAL CRIMINAL INVESTIGATIVE SERVICE	DIR NAVAL CRIMINAL INVEST SERVICE.
	ASST DIR OF COUNTERINTELLIGENCE.
	SPECIAL AGENT IN CHARGE NORFOLK FIELD OFC.
	SPECIAL AGENT IN CHARGE.
	ASST DIR CRIMINAL INVESTIGATION.
CHIEF OF NAVAL OPERATIONS	ASST DEP CHF OF NAVAL OPERATIONS (LOGISTICS).
	TECHN DIR, PENTAGON S/A INFO TECHNOL SERVICES.
	HEAD, STUDIES & ANALYSIS BRANCH.
	ASSOCIATE DIRECTOR, ASSESSMENT DIVISION.
	TECH DIR, SUBMARINE & SSBN SECURITY PROGRAM.
	TECHNICAL DIRECTOR.
	ADVISOR FOR RESEARCH & DEVELOPMENT PROGRAMS.
	EXECUTIVE ASSISTANT.
	DEP DR, SUPPORTABILITY, M & M DIVISION.
	DEPUTY DIRECTOR FOR PROGRAMMING.
	HEAD ASSESSMENT & AFFORDABILITY BRANCH.
	ASSOC DIR, EXPEDITIONARY WARFARE DIVISION.
	DIR NAVAL HISTORY/DIR. NAVAL HISTORICAL CTR.
	SPECIAL ASST FOR TECHNOLOGY AND ANALYSIS.
	HEAD, LOGISTICS & FLEET SUPPORT BRANCH.
	HEAD DEEP SUBMERGENCE SYSTEMS BRANCH.
	DEP DIR ENVIR PROTECTION SAFETY OCCP HEAL DIV.
	DIRECTOR STRATEGIC SEALIFT DIVISION.
	ASST FOR EDUCATIONAL RESOURCES.
	TECHN DIR, NAVAL WARFARE ANAL A/F LEVEL PLANS.
BUREAU OF NAVAL PERSONNEL	ACNP FOR MPN FINANCIAL MANAGEMENT.
NAVAL OBSERVATORY	DIR, TIME SERVICE DIV.
BUREAU OF MEDICINE & SURGERY	DEP COMMANDER FOR FIN MGMT & COMPTROLLER.
MILITARY SEALIFT COMMAND	COUNSEL.
	ENGINEERING OFFICER.
	COMPTROLLER.
	DEPUTY COMMANDER.
NAVAL TACTICAL SUPPORT ACTIVITY	DIR NAVY TACTICAL SUPPORT ACTY.
NAVAL OCEANOGRAPHY COMMAND	TECHNICAL/DEPUTY DIRECTOR.
OFC OF COMMANDER IN CHF/ALLIED FORCES/SOUTHERN EUR.	DIRECTOR, TACTICAL DEVELOPMENT & TRAINING.
OFC OF THE COMMANDER-IN-CHIEF, U.S. PACIFIC COMMAND.	CHIEF, RESEARCH & ANALYSIS.
OFC OF THE CHIEF OF NAVAL EDUCATION AND TRAINING	COMPTROLLER.
NAVAL AIR SYSTEMS COMMAND HEADQUARTERS	STANDARDS IMPROVEMENT EXECUTIVE.
	EXECUTIVE DIR, CORPORATE OPERATIONS.
	EXECUTIVE DIRECTOR FOR LOGISTICS.
	EXEC DIR ACQUISITION MGT.
	EXECUTIVE DIRECTOR FOR CONTRACTS.
	DEPUTY COMPTROLLER.
	COUNSEL, NAVAL AIR SYSTEMS COMMAND.
	ASSOC DIRECTOR WEAPONS SYS ENG DIVISION.
	DIR PROD INTEGRITY & PRODUCTION ENG DIVISION.
	DEPUTY HEAD, AVIONICS DEPT.
	DIR, EVALUATION DIV.
	DEPUTY HEAD AIR VEHICLE DEP.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	DEP HEAD LOGISTICS MANAGEMENT.
	HEAD, TACTICAL A & M CONTRACTS DEPARTMENT.
	HEAD AIRCRAFT SUPPORT DEPT.
	SPECIAL ASST FOR TOM.
	HEAD COST DEPARTMENT.
	DEPUTY ACQUISITION EXECUTIVE.
	EXECUTIVE DIRECTOR FOR ENGINEERING.
	DIR FOR SYSTEMS DEFINITION & ALTERNATIVES.
	DIR INDUSTRIAL OPERATIONS.
	DIRECTOR, AIRCRAFT DIVISION.
	HEAD CONCEPTS ANALYSIS EVALUATION PLAN DEPT.
	HEAD PROPULSION & POWER SYSTEMS DEPT.
	DEP HEAD AIRCRAFT SYS ENGINEERING DEPARTMENT.
	HEAD LOGISTICS SUPPORT DEPARTMENT.
	DEPUTY COMMANDER, NAVAL AIR SYS COMMAND.
	HEAD, CRUISE M & U AERIAL VEHICLES DEPT.
	DIR BUDGET FORMULATION JUSTIFICATION EXE DIV.
	DEPUTY COUNSEL, NAVAIR.
	EXECUTIVE DIR FOR INDUSTRIAL CAPABILITIES.
	DIR NAVAL AVIATION SCIENCE & TECH OFFICE.
	ASST COMMANDER FOR CORPORATE OPERATIONS.
	DIR, TECHNOLOGY MATURATION DIRECTORATE.
	HEAD AIR ASW ASSAULT & SPECIAL MISSION PROG.
NAVAL AIR WARFARE CENTER	TECHNICAL DIRECTOR.
NAVAL AIR WARFARE CENTER AIRCRAFT DIVISION WARMINSTER.	HEAD, AIR VEHICLE DEPARTMENT.
	EXEC DIRECTOR.
	HEAD, AVIONICS DEPARTMENT.
	HEAD, TACTICAL AIR SYSTEMS DEPARTMENT.
NAVAL AIR WARFARE CENTER AIRCRAFT DIVISION LAKEHURST.	EXECUTIVE DIRECTOR.
	CHIEF ENGINEER.
	HEAD PROGRAM MANAGEMENT COMPETENCY.
NAVAL AIR WARFARE CENTER AIRCRAFT DIVISION	EXEC DIR, T & E GROUP NAWC-AIRCRAFT DIV.
	DIR OF ATLANTIC RANGES & FACILITIES DEPT.
	DEP COMMANDER, NAWC–AIRCRAFT DIVISION.
NAVAL AIR WARFARE CENTER AIRCRAFT DIV INDIANAPOLIS	DIRECTOR, ENGINEERING COMPETENCY.
	HEAD, SYSTEMS ENGINEERING DEPART.
	HEAD, INDUSTRIAL COMPETENCY.
NAVAL AIR WARFARE CENTER WEAPONS, DIV, PT. MUGU, CA.	DIR SEA RANGE DIRECTORATE.
	HEAD TEST EVALUATION ENGINEERING DEPARTMENT.
	HEAD, SYST ENGINEERING DEPARTMENT.
	DIRECTOR FOR TEST & EVALUATION.
	HEAD, THREAT/TARGET SYST DEPART.
	HEAD, ATTACK WEAPONS DEPARTMENT.
NAVAL AIR WARFARE CENTER WEAPONS DIV, CHINA LAKE, CA.	HEAD, RES AND TECHNOLOGY DIVISION.
	HEAD, PACIFIC RANGES & FACILITIES DEPART.
	HEAD, AVIONICS DEPT.
	HEAD, ENGINEERING DEPARTMENT.
	HEAD INTERCEPT WEAPONS DEPARTMENT.
	HEAD, RANGE DEPARTMENT.
	HEAD, WEAPONS/TARGET DEPT.
	DIR, AIRCRAFT WEAPONS SYSTEMS DIRECTORATE.
	DIR FOR ENG, NAWC–WEAPONS DIVISION.
	HEAD WEAPONS PLANNING GROUP.
	DIRECTOR OF CORPORATE OPERATIONS.
NAVAL TRAINING SYSTEMS CENTER	EXECUTIVE DIRECTOR.
	DIR OF ACQ, ANALYSIS, ENGINEERING & RESEARCH.
SPACE & NAVAL WARFARE SYSTEMS COMMAND	EXEC DIR, CONTRACTS.
	DEPUTY COMPTROLLER.
	COUNSEL SPACE & NAVAL WARFARE SYSTEMS COM.
	CHIEF ENG COMMS SYS PROGRAM DIRECTORATE.
	EXEC DIR, COMM SYST PROG DIRECTORATE.
	CHIEF ENGINEER COMMAND SYS PROG DIRECTORATE.
	ASSOC TECH DIR FOR RESEARCH & TECHNOLOGY.
	EXEC DIR, SPACE TECHNOLOGY DIRECTORATE.
	EXEC DIR/COMMUNICATIONS SYST PROG DIRECTORATE.
	EXEC DIR, UNDERSEA SURVEILLANCE PROG DIR.
	CHIEF ENG UNDERSEA SURVEILLANCE PROG DIRECT.
	DIR OF TECH HEAD ENGINEERING TECH GROUP.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	DIRECTOR, INFORMATION SYSTEMS SECURITY OFFICE.
	EXECUTIVE DIR C41 SYSTEMS DIRECTORATE.
	CHIEF ENG SPAWAR.
	EXEC DIR, NWSAED.
	ASST COMDR FOR POL, OPS & ACQ SUPPORT DIRECT.
	DEPUTY COMMANDER.
NAVAL COMMAND CONTROL & OCEAN SURVEILLANCE CENTER.	TECHNICAL DIRECTOR.
NAVAL COMMAND C & O SURVEILLANCE CTR. RDTE&E DIVISION.	HEAD, SURVEILLANCE DEPT.
	EXECUTIVE DIRECTOR.
	DEP EXEC DIRECTOR.
	HEAD, NAVIGATION & AIR C3 DEPARTMENT.
	HEAD, COMMAND AND CONTROL DEPARTMENT.
	DEPUTY EXEC DIRECTOR/BUSINESS MANAGER.
	HEAD, COMMUNICATION DEPARTMENT.
NAV COMMAND CONTROL & OCEAN SURVEIL COMM WEST COAST DIV.	EXECUTIVE DIRECTOR WEST COAST ISE.
EAST COAST ISE DIVISION	EXECUTIVE DIRECTOR EAST COAST.
NAVAL FACILITIES ENGINEERING COMMAND	SENIOR EXECUTIVE FOR PUBLIC WORKS SUPPORT.
	COUNSEL NAVAL FACILITIES ENGINEERING COMMAND.
	DEPUTY COMPTROLLER.
	DIRECTOR FOR CONTRACTS SUPPORT.
	CHIEF ENGINEER.
	DIR OF REAL ESTATE SUPPORT.
	SENIOR EXECUTIVE FOR BASE CLOSURE OFFICE.
	DIRECTOR FOR ENVIRONMENT.
	DIRECTOR, PLANNING & ENGINEERING SUPPORT.
NAVAL SEA SYSTEMS COMMAND	DIR ENVIRONMENTAL PROTECTION OFC (SEA OOT).
	EXECUTIVE DIRECTOR.
	ASST DEPUTY COMMANDER FOR CONTRACTS.
	COUNSEL NAVAL SEA SYSTEMS COMMAND.
	ASST DEP COMMANDER FOR CONTRACTS.
	DEP PROG MGR & TECH DIR, PMS396B.
	EXECUTIVE DIRECTOR/DEPUTY COMPTROLLER.
	PROG MGR, MINE WARFARE SHIP PROGRAM.
	DIR, SUBMARINE SYSTEMS (S5W & S8G) DIVISION.
	DIRECTOR, REACTOR MATERIALS DIVISIONS.
	DIRECTOR, SECONDARY PLANT COMPONENTS DIVISION.
	HEAD, ADVANCED REACTOR BRANCH.
	DIR NAVAL, ARCHITECTURE GROUP.
	DEPUTY DIRECTOR, SHIP DESIGN GROUP.
	DIRECTOR COST ESTIMATING & ANALYSIS.
	DIR, SHIPBUILDING CONTRACTS DIVISION.
	EXEC DIR, INDUSTRIAL & FACILITY MGMT DIR.
	EXECUTIVE DIRECTOR, SURFACE SHIP DIRECTORATE.
	EXEC DIR SUBMARINE DIRECTORATE.
	DEP PROG MANAGER & TECH DIR SUPPORT SHIP BOAT.
	DIRECTOR, WARFARE SYSTEMS GROUP.
	DIRECTOR, CORPORATE OPERATIONS.
	DEPUTY COMMANDER FOR FLEET LOGISTICS SUPPORT.
	DEP PROG MANAGER TECH DIR ATTACK SUBM PROG.
	DEP PROGRAM MGR, SURFACE SHIP PROG MGMT OFC.
	DEP PROG MANAGER, AIRCRAFT CARRIER PROG OFC.
	DIR, ENVIRONMENTAL ENGINEERING GROUP.
	DIRECTOR FOR SUBMARINE REFUELINGS.
	DIR SURFACE SHIP SYSTEMS DIVISION.
	DEPUTY DIRECTOR, NUCLEAR COMPONENTS DIV.
	DIR, REACTOR PLANT SAFETY & ANALYSIS DIVISION.
	DIR, SHIP S & S INTEGRITY GROUP.
	DIRECTOR, PROPULSION SYSTEMS GROUP.
	DIRECTOR, FIELD ACTIVITY SUPPORT GROUP.
	DIRECTOR, MATERIALS ENGINEERING OFFICE.
	DIR ELECTRICAL ENGINEERING GROUP.
	PROGRAM MANAGER SUP SHIP BOAT CRAFT PROG OFC.
	EXEC DIR, SHIP DESIGN & ENGRNG DIRECTORATE.
	PROG MGR, AMPHIBIOUS W & S SEALIFT PROGRAM.
	DIR, NAVAL SHIPYARD MGT GROUP.
	PROGRAM MANAGER FOR COMMISSIONED SUBMARINES.
	COMMAND ASST FOR HUMAN RESOURCES PROG & DIR.
	DIR, SURFACE SYSTEMS CONTRACTS DIVISION.
	ASSOC DIRECTOR FOR REGULATORY AFFAIRS.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	ASST DEP COMMANDER, SURFACE & AREA AAW SYST.
	DIRECTOR, OFFICE OF RESOURCE MANAGEMENT.
	DIR, REACTOR REFUELING DIVISION.
	DEPUTY COUNSEL, NAVAL SEA SYSTEMS COMMAND.
	DIR ENVIRONMENTAL PROTECTION OFFICE.
	DIRECTOR, SHIP SIGNATURES GROUP.
	DIRECTOR, AUXILIARY SYSTEMS GROUP.
	DIR, COMBAT SYSTEMS DESIGHN & ENG GROUP.
	PROG MGR, DEEP SUBMERGENCE SYST PROG.
	PROGRAM MANAGER, STRATEGIC SEALIFT PROG OFC.
NAVAL ORDNANCE CENTER	DEPUTY COMMANDER, NAVAL ORDNANCE CENTER.
NORFOLK NAVAL SHIPYARD	NAVAL SHIPYARD NUCLEAR ENG MANAGER.
	NAVL SHIPYARD NUCLEAR ENG MGR PUGET NAL SHIP.
NAVAL SURFACE WARFARE CENTER	TECHNICAL DIRECTOR.
NAVAL UNDERSEA WARFARE CENTER	TECHNICAL DIRECTOR.
NAVAL SURFACE WARFARE CENTER, CRANE DIVISION	EXECUTIVE DIRECTOR.
NAVAL UNDERSEA WARFARE CENTER DIV, KEYPORT, WA	EXECUTIVE DIRECTOR.
	CHF RES SCIENTIST (ARCTIC SUBMARINE TECH.
NAVAL SURFACE WARFARE CENTER, PT. HUENEME DIVISION.	EXECUTIVE DIRECTOR.
NAVAL SURFACE WARFARE CENTER, INDIAN HEAD DIVISION	DIRECTOR.
COASTAL SYSTEMS STATION	EXECUTIVE DIRECTOR.
	HEAD COSTAL RESEARCH & TECH DEPT.
	HEAD, COASTAL WARFARE SYSTEMS DEPARTMENT.
NAVAL SURFACE WARFARE CENTER, CARDEROCK DIVISION	DIRECTOR.
	ASSOC DIR FOR MACHINERY R&D/H, MACHINERY R&DD.
	ASSOC DIR FOR HYDROMECHANICS/HEAD, HD.
	ASSOC DIR FOR BUSINESS OPS/HBD.
	ASSOC DIR FOR SYST/P & H SHIP S/P DIRECTORATE.
	ASSOC DIR FOR TECH/ DIR OF TECHNOLOGY & PLANS.
	ASSOC DIR FOR SHIP A/E S/H S/DIRECTORATE.
	ASSOC DIR FOR SS & M/HSS & M DIRECTORATE.
	ASSOC DIR FOR MISE/HMIS ENG DIRECTORATE.
NAVAL SURFACE WARFARE CENTER, DAHLGREN DIVISION	EXEC DIRECTOR.
	HEAD, STATEGIC & SPACE SYSTEMS DEPARTMENT.
	HEAD, WEAPONS SYSTEMS DEPARTMENT.
	HEAD, COMBAT SYSTEMS DEPARTMENT.
	HEAD, SHIP DEFENSE SYSTEMS DEPARTMENT.
	DEPUTY EXECUTIVE DIRECTOR/BUSINESS MANAGER.
	HEAD, STRIKE SYSTEMS DEPARTMENT.
	HEAD, SYSTEMS RES & TECHNOLOGY DEPARTMENT.
	HEAD, WARFARE SYSTEMS DEPARTMENT.
	HEAD, WARFARE ANALYSIS DEPARTMENT.
NAVAL UNDERSEA WARFARE CENTER DIVISION, NEWPORT, RI	HEAD, SUBMARINE SONAR DEPARTMENT.
	EXECUTIVE DIRECTOR.
	HEAD TEST AND EVALUATION DEPT.
	SUPERINTENDENT UNDERWATER SOUND REF DIV.
	DIRECTOR FOR SUBMARINE COMBAT SYSTEMS.
	DIRECTOR, SUBMARINE WARFARE SYSTEMS.
	DIRECTOR, SURFACE ANTI-SUBMARINE WARFARE.
	HD, SUBMARINE ELECTROMAGNETIC SYS DEPT.
	HEAD COMBAT CONTROL SYSTEMS DEPARTMENT.
	HEAD COMBAT SYSTEMS ANALYSIS DEPARTMENT.
	DIRECTOR OF OPERATIONS.
NAVAL SUPPLY SYSTEMS COMMAND HDQTRS	DIR PLANS PROGRAMS & RESOURCES.
	COUNSEL.
	DIR, DEFENSE PRINTING SERV/DEP COMDR, NAVSUP.
	COMPETITION ADVOCATE GEN/ADC, CONTRACTING MGR.
	DIRECTOR OF CONTRACTING FOR SPECIAL PROGRAMS.
	DEP COMMANDER FOR CORPORATE MANAGEMENT.
	ASSISTANT COMMANDER FOR FLEET LOGISTICS OPS.
	DIR INFO TECH INITIATIVES DIVISION.
	EXECUTIVE DIRECTOR.
NAVAL INVENTORY CONTROL POINT	EXECUTIVE DIR LOGISTICS PLANNING & SUPPORT.
	EXEC DIR ACQUISITION & LOGISTICS PLNG & SUPPT.
	VICE COMMANDER.
NAVY FLEET MATERIAL SUPPORT OFFICE	EXEC DIR, ADP SYSTEM PLANNING AND DEVELOPMENT.
NAVAL SUPPLY CENTER, NORFOLK	EXECUTIVE DIRECTOR, PLANNING AND RESOURCES.
U.S. MARINE CORPS HEADQUARTERS OFFICE	DEP DIR FACILITIES & SERVICES DIVISION.
	FISCAL DIR OF THE MARINE CORPS.
	DIR CONTRACTS DIVISION.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	COUNSEL FOR THE COMMANDANT.
	DEPUTY COUNSEL FOR THE COMMANDANT.
	DIRECTOR OF ADMINISTRATION AND RESOURCES.
	ASST DEP CHF OF STAFF FOR INSTALLATIONS & LOG.
	ASST TO THE DEP CHF OF STAFF FOR M & R AFFS.
	ASST DEP CHF OF STAFF FOR REQUIREMENTS & PROG.
MARINE CORPS SYSTEMS COMMAND	EXECUTIVE DIRECTOR.
	DEPUTY FOR FINANCIAL MANAGEMENT.
MARINE CORPS LOGISTICS BASE ALBANY GA	DEPUTY COMMANDER FOR LOGISTICS OPERATIONS.
OFFICE OF NAVAL RESEARCH	DIR, SHIP STRUCTURES & SYSTEMS S&T DIV.
	DIR, MECHANICS & ENERGY CONVERSION S&T DIV.
	DIR ANTI/AIR ANTI/SURF WARF & AERSPACE TEC DV.
	DIR. FIN MGMT/COMPT/SPEC ASST(FM)TO ASN(R,E&S.
	DIR OF PLANNING AND ASSESSMENT.
	DEP DIR FOR TECHNOLOGY PROGRAMS.
	DIRECTOR, COMPUTER SCIENCE DIVISION.
	DIRECTOR, MECHANICS DIVISION.
	DIR OCEAN BIOLOGY/OPTICS/CHEMISTRY DIV.
	DEP CHIEF NAV RES & TECH DIR OFC OF NAV RES.
	DIRECTOR, TECHNOLOGY DIRECTORATE.
	HEAD SPECIAL PROGRAMS DEPARTMENT.
	EXECUTIVE DIR FOR ACQUISITION MANAGEMENT.
	DIR FINANCIAL MANAGEMENT COMPTROLLER.
	DEPUTY COUNSEL (INTELLECUTUAL PROPERTY).
	DIR OCEAN ENG DIV.
	DIR, INDUSTRY INDEPENDENT RES & DEVEL DIR.
	COUNSEL, OFFICE OF NAVAL RESEARCH.
	DIRECTOR, PHYSICS DIVISION.
	DIRECTOR, CHEMISTRY DIVISION.
	DIRECTOR, SCIENCE DIRECTORATE.
	DIR, COGNITIVE & NEURAL SCIENCES DIV.
	DIRECTOR, LIFE SCIENCES DIRECTORATE.
	DIRECTOR, BIOLOGICAL SCIENCES DIVISION.
	DIR, MATHEMATICAL & PHYSICAL SCIENCES DIR.
	DIR, MATHEMATICAL SCIENCES DIVISION.
	DIRECTOR, ELECTRONICS DIVISION.
	DIR OCEAN & ATMOSPHERIC PHYSICS DIV.
	HEAD ENGINEERING.
	DIR STRIKE TECHNOLOGY DIVISION.
	DIR MATH COMPUTER & INFORMATION SCIENCE DIV.
	DIRECTOR, OAS SCI & TECHNOL M & P DIVISION.
	DEPUTY DIRECTOR, TECHNOLOGY DIRECTORATE.
	DIR SCIENCE & TECHNOLOGY DIRECTORATE.
	DIR OAS AT SENSING & SYSTEMS DIVISION.
	HEAD INDUSTRIAL PROGRAMS DEPARTMENT.
	DIR ANTI SUBMARINE WARFARE & UNDERSEA TECH.
	DIR CHEMISTRY & PHYSICS SCI & TECH DIV.
	DIRECTOR, MATERIALS DIVISION.
	DEP DIR SCIENCE & TECHNOLOGY DIRECTORATE.
	DIR CONGITIVE & NEURAL SCIENCE & TECH DIV.
	HEAD PERSONNEL OPTIMIZATION BIO SCI & TEC DEP.
	DIR BIOLOGICAL & BIOMEDICAL SCIENCE & TECH DV.
	HEAD INFO ELECTRONICS & SURVEIL SCI TECH DEPT.
	DIR OF SURVEILLANCE COMMUNICATIONS ELECTRONIC.
	DIRECTOR, ELECTRONICS DIVISION.
	SPEC ASST TO THE DIR, ONR FOR OCEANS SCIENCES.
	ASSOC FOR INTEGRATION OAS ST MODELING PRED DV.
	HEAD OCEAN ATMOSPHERIC SPACE SCI TECH DEPT.
	DIR RELIANCE SCI OPPORTUNITIES PROG INTELL.
	DIR MATERIALS SCI AND TECHNOLOGY DIVISION.
	ASSOC FOR INTEGRATION OAS ST SENSING SYS DIV.
NATO SACLANT ASW RESEARCH CENTER	DIRECTOR NATO SACLANT ASW RESEARCH CENTRE.
NAVAL RESEARCH LABORATORY	SUPERINTENDENT, CHEMISTRY DIVISION.
	SUPERINTENDENT, OPTICAL SCIENCE DIV.
	SUPT MATERIALS SCI AND TECH DIVISION.
	SUPERINTENDENT, PLASMA PHYSICS DIV.
	SUPT CONDENSED MATTER & RADIATION SCI DIV.
	ASSOC DIR OF RES FOR MATL SCI & COMP TECHNOL.
	SUPERINTENDENT, INFO TECHNOL DIV.
	CHF SCI, LAB FOR STRUCTURE OF MATTER.
	DIR OF RESEARCH.
	SUPERINTENDENT SPACE SCIENCE DIV.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	SUPT, RADAR DIV.
	SUPT, ACOUSTICS DIV.
	SUPERINTENDENT ELECTRONICS TECHNOLOGY DIV.
	SUPT, TACTICAL ELECTRONIC WARFARE DIV.
	CHIEF SCIENTIST LAB FOR COMPT PHY FLUID DYNAM.
	HEAD, OFC OF SYST SUPPORT & REQUIREMENTS.
	CHF SCIENTIST & HEAD, SOLAR PHYSICS PROGRAM.
	SUPERINTENDENT, REMOTE SENSING DIVISION.
	ASSOC DIR OF RES FOR BUSINESS OPERATIONS.
	CHIEF SCI & HEAD, BEAM PHYSICS PROGRAM.
	SUPERINTENDENT, MARINE METEOROLOGY DIVISION.
	MGR, JOINT SPACE SYSTEMS TECHNOLOGY PROGRAMS.
	ASSOC DIR RES FOR OCEAN & ATMOSPHERIC SCI TEC.
	HEAD ELECT WARFARE STRATEGIC PLANNING ORG.
	ASSOC DIR OF RESEARCH FOR STRATEGIC PLANNING.
	ASSOC DIR OF RES FOR GEN S & S SYST TECHNOL.
	ASSOC DIR OF RES FOR WARFARE SYS & SENORS RES.
	SUPERINTENDENT, SPACE SYST DEVELOPMENT DEP.
	SUPERINTENDENT, OCEANOGRAPHY DIVISION.
	SUPERINTENDENT, SPACECRAFT ENGINEERING DEP.
	SCIENTIFIC ADVISOR TO NAVAL DOCTRINE COMMAND.
	DIR, NAVAL CENTER FOR SPACE TECHNOLOGY.
	SUPERINTENDENT, MARINE GEOSCIENCES DIVISION.
	HEAD CENTER FOR ENVIRONMENTAL ACOUSTICS.
DEFENSE NUCLEAR FACILITIES SAFETY BOARD:	
	ASST DIR FOR SYS ANALYSIS & INTEGRATION.
	ASST DIR FOR OPERATIONAL SAFETY.
	ASST DIR FOR ENGINEERING DEVELOP & TECHNOLOGY.
	ASST DIR FOR STANDARDS DEVELOP & IMPLEMENT.
	SITE REVIEW OFFICER.
	DEP GEN COUNSEL FOR POL & LITIGATION.
	CHIEF RADIATION & ENVIRONMENTAL SAFETY.
	DEPUTY GENERAL MANAGER.
	ASST DIR FOR PROCESS ENGINEERING.
DEPARTMENT OF EDUCATION:	
CHIEF FINANCIAL OFFICER	DIRECTOR, GRANTS AND CONTRACTS SERVICE.
	DEPUTY DIRECTOR FOR FINANCIAL MANAGEMENT.
	DEP CHF FIN OFCR/DIR FINANCIAL SERVICES.
	DIRECTOR, FIN REP & SYSTEMS OPERATIONS.
OFFICE OF MANAGEMENT	DIRECTOR PERSONNEL MANAGEMENT SERVICE.
	CHAIRPERSON, EDUCATION APPEAL BOARD.
	DIR HUMAN RESOURCES GROUP.
INSPECTOR GENERAL	ASSISTANT INSPECTOR GENERAL FOR AUDITS.
	ASST INSP GEN FOR POLICY PLNG & MGMT SERV.
	ASST INSPECTOR GENERAL FOR INVESTIGATION.
	DEP ASST INSP GEN FOR AUDIT OPERATIONS.
	DEP ASST INSPECTOR GEN FOR TECHN AUDIT SVC.
	ASSOCIATE INSPECTOR GENERAL.
	DEP ASST INSPECTOR GENERAL FOR INVESTIGATION.
GENERAL COUNSEL	ASST GEN COUN FOR BUSIN & ADM LAW.
	ASST GENERAL COUNSEL FOR EDUCATIONAL EQUITY.
	ASST GEN COUNSEL FOR REGULATIONS.
	ASST GEN COUN FOR DIV OF LEGISLATIVE COUNSEL.
	ASST GEN COUN FOR POSTSECONDARY ED & ED RES.
EDUCATIONAL RESEARCH AND IMPROVEMENT	SENIOR ADVISOR ON LIBRARY PROGRAMS.
NATIONAL CENTER FOR EDUCATION STATISTICS	ASSOC COMMR/SURVEYS & COOPERATIVE SYST GROUP.
	ASSOC COMMR FOR DATA D & L STUDIES GROUP.
	ASSOC COMMISSIONER ASSESSMENT GROUP.
DEPARTMENT OF ENERGY:	
ORGANIZATION ABOLISHED	ASST MANAGER FOR ADMINISTRATION.
ORGANIZATION ABOLISHED	TECHNICAL DIRECTOR.
	DIRECTOR, OFFICE OF SPECIAL PROJECTS.
ORGANIZATION ABOLISHED	ASSOC DIR, OFC OF SCIENTIFIC COMPUTING.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
DAS FOR RESEARCH AND DEVELOPMENT	ASSOC DEP ASST SECY FOR MILITARY APPLICATION.
DAS FOR FACILITY TRANSITION AND TECHNICAL SUPPORT	NUCLEAR WEAPONS COMPLEX PROJECT MANAGER.
DAS FOR PLANNING AND RESOURCE MANAGEMENT	ASSOC DAS FOR HUMAN & ADMINISTRATIVE RES. ASSOC DAS FOR PROGRAM A & F MANAGEMENT.
ORGANIZATION ABOLISHED	DIR, ORGANIZATION & MANPOWER ANALYSIS DIV. DEP DIR, HEADQUARTERS PROCUREMENT OPERATIONS.
OFFICE OF ECONOMIC IMPACT & DIVERSITY	ASSOC DIR, OFFICE OF SYSTEM & COMPLIANCE.
ASST SECY FOR ENERGY EFFICIENCY & RENEWABLE ENERGY	MANAGER, GOLDEN FIELD OFFICE.
DAS FOR UTILITY TECHNOLOGIES	DIR, GEOTHERMAL DIVISION. DIR, WIND/HYDRO/OCEAN TECHNOLOGY DIVISION. DIR OFC SOLAR ENERGY CONVERSION. ASSOC DEP ASST SECRETARY FOR UTILITY TECH.
DAS FOR NUCLEAR SAFETY	DIR NUCLEAR SAFETY ENFORCEMENT DIVISION.
DAS FOR ENVIRONMENT	DIRECTOR, OFFICE OF ENVIRONMENTAL AUDIT. DEP DIR INVEST NUCLEAR SAFETY ENFORCEMENT DIV.
OFFICE OF NUCLEAR SAFETY POLICY AND STANDARDS	DIR NUCLEAR OPERATIONS & ANALYSIS.
OFFICE OF CHIEF FINANCIAL OFFICER	DIR OFC OF BUDGET. DEP DIR OFC OF BUDGET. DIRECTOR, BUDGET ANALYSIS DIVISION. DIR OFC OF HEADQUARTERS ACCOUNTING OPERATIONS.
DIRECTOR, BUDGET OPERATIONS DIVISION.	DIR OFC OF DEP ACCOUNTING & FIN SYS DEV. DIR OFC COMPLIANCE AND AUDIT LIAISON. DEPUTY CONTROLLER. CONTROLLER
ENERGY INFORMATION ADMINISTRATION	DIRECTOR, EIA–ADP SERVICES STAFF. DIR, OFC OF OIL AND GAS. DIRECTOR PETROLEUM SUPPLY DIVISION. DIR OFC OF COAL NUCL ELEC & ALTERN FUELS. DIRECTOR, OFC OF ENERGY MARKETS & END USE. DIRECTOR ECONOMICS & STATISTICS DIVISION. DIR OFC OF STATISTICAL STANDARDS. DIRECTOR QUALITY ASSURANCE DIVISION. DIR RESERVES AND NATURAL GAS DIVISION. DIRECTOR PETROLEUM MARKETING DIVISION. DIR, OFC OF INTEGRATION NAL & FORECASTING. DIR, EEUISD. DIR ENERGY SUPPLY & CONVERSION, DIV. DIR, ANALYSIS & SYSTEMS DIV. DIR, ENERGY MARKETS & CONTINGENCY INFO DIV. DIR SURVEY MGMT DIV.
DAS FOR MANAGEMENT AND FINANCE	DIRECTOR, OFFICE OF ACQUISITION MANAGEMENT.
DAS FOR TECHNOLOGY DEVELOPMENT	DIRECTOR, OFFICE OF RESEARCH & DEVELOPMENT.
OFFICE OF ENERGY RESEARCH	ASSOC DIR OFC OF COMPUTATIONAL & TECH RESEARC.
OFFICE OF BASIC ENERGY SCIENCES	DIR CHEM SCI DIV. DIR MAT SCI DIV.
OFFICE OF HIGH ENERGY AND NUCLEAR PHYSICS	DIR HIGH EN PHYSICS DIV.
OFFICE OF FUSION ENERGY	DIR, INTERNATIONAL PROGRAMS STAFF. DIR, CONFINEMENT SYSTEMS DIV.
OFFICE OF MANAGEMENT	DIRECTOR FOR MANAGEMENT.
OFFICE OF HEALTH & ENVIRONMENTAL RESEARCH	DIR HEALTH EFECTS RESEARCH DIVISION.
OFFICE OF LABORATORY MANAGEMENT	CHF PROCESSES AND TECH BR.
	DEPUTY DIR FOR NUCLEAR SAFETY SAFEGUARD. DIR, OFFICE OF ASSESSMENT & SUPPORT.
OFFICE OF SCIENCE EDUCATION & TECHNICAL INFORMATION	DIR FOR UNIVERSITY & SCIENCE ED PROG.
DAS FOR MANAGEMENT	DIRECTOR, OFC OF RESOURCE MANAGEMENT.
ASSOCIATE DS FOR FIELD MANAGEMENT	MANAGER STRATEGIC PLANNING. DIR, OFFICE OF CONTRACTOR EMPLOYEE PROTECTION.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
ALBUQUERQUE OPERATIONS OFFICE	DIR, OFC OF RESOURCE MANAGEMENT & SERVICES. DIR, WEAPONS QUALITY DIVISION. DIR TRANSPORTATION SAFEGUARDS DIV. DIR, PRODUCTION ASSURANCE & OPS DIVISION. DIR, WEAPONS PROGRAMS DIV. DIR OF EMERGENCY PLANS & OPERATIONS. ASST MANAGER. CARLSBAD AREA OFFICE MANAGER.
CHICAGO OPERATIONS OFFICE	CHIEF FINANCIAL OFFICER. ACQUISITION & ASST GROUP MANAGER. AREA MANAGER BATAVIA AREA OFFICE.
IDAHO OPERATIONS OFFICE	CHIEF FINANCIAL OFFICER. CHIEF FINANCIAL OFFICER. ASST MGR OFC OF PROGRAM EXECUTION. ASST MANAGER, OFC OF POL, A & R MANAGEMENT. ASST MANAGER FOR APPLIED E & T TRANSFER.
NEVADA OPERATIONS OFFICE	CHIEF COUNSEL.
OHIO FIELD OFFICE	MANAGER OHIO FIELD OFC.
OAKLAND OPERATIONS OFFICE	ASST MGR FOR ADMIN. CHIEF FINANCIAL OFFICER.
SAVANNAH RIVER OPERATIONS OFFICE	ASST MGR FOR ADMIN. CHIEF FINANCIAL OFFICER.
OAK RIDGE OPERATIONS OFFICE	ASST MANAGER FOR ADMINISTRATION. CHIEF FINANCIAL OFFICER.
ROCKY FLATS OFFICE	MANAGER, ROCKY FLATS FIELD OFFICE. DEPUTY MANAGER, ROCKY FLATS FIELD OFFICE. ASST MANAGER FOR GOVERNMENT OPERATIONS. ASST MGR FOR PROJECT MANAGEMENT & ENGINEERING.
RICHLAND OPERATIONS OFFICE	CHIEF FINANCIAL OFFICER. SOURCE EVALUATION BOARD ADVISOR.
OFFICE OF HEARINGS & APPEALS	DEP DIR FOR LEGAL ANALYSIS. DEP DIR FOR FINANCIAL ANALYSIS. DEP DIR FOR ECON ANALYSIS.
ASST SECY FOR HUMAN RESOURCES & ADMINISTRATION	DIR HQ PERSONNEL OPERATIONS DIV.
DAS FOR HUMAN RESOURCES	DEP DIR OF PERSONNEL. DIR, OFC OF EXECUTIVE & TECHNICAL RESOURCES.
DAS FOR PROCUREMENT AND ASSISTANCE MANAGEMENT	DIR OFC OF INDUSTRIAL RELATIONS. ASSOC DAS FOR HEADQUARTERS PROCUREMENT OPS. ASSOC DIR, OFC OF PROCUREMENT, ASST & PROPERTY. DIR OFC OF CONTRACTOR MGMT & ADMIN. DIR OFC OF CLEARANCE & SUPPORT. DIR OFC POLICY.
OFFICE OF ORGANIZATION AND MANAGEMENT	DIR, OFC OF SPECIAL PROJ & MGMT SYSTEMS. DIR, OFC OF ORGANIZATION & MANAGEMENT.
OFFICE OF ADMINISTRATIVE SERVICES	DIR OFC OF ADMIN SVCS. DEP DIR OF ADMINISTRATIVE SERVICES (WASH, DC).
OFFICE OF INSPECTOR GENERAL	ASST INSPECTOR GENERAL FOR INVESTIGATIONS. MANAGER, WESTERN REGIONAL AUDIT OFFICE. DIRECTOR, AUDIT POLICY, PLANS & PROGRAMS. MANAGER, EASTERN REGIONAL AUDIT OFFICE. DIR CAPITOL REGIONAL AUDIT OFFICE. DEPUTY ASST INSPECTOR GEN FOR INVESTIGATIONS. SPEC ASST FOR POLICY AND PLANNING. COUNSEL TO THE INSPECTOR GENERAL. ASST INSPEC GEN FOR POL & PLNG & MGT. PRINCIPAL DEPUTY INSPECTOR GENERAL. ASSISTANT INSPECTOR GENERAL FOR AUDITS. DEPUTY INSPECTOR GENERAL FOR INSPECTIONS. DEPUTY INSPECTOR GENERAL FOR AUDITS.
OFFICE OF FISSILE MATERIALS DISPOSITION	DEPUTY DIRECTOR.
OFFICE OF NUCLEAR ENERGY, SCIENCE & TECHNOLOGY	DIR SUBMARINE SYSTEMS DIV. DIR INSTRUMENTATION & CONTROL DIV. ASST PROGRAM MANAGER FOR SURFACE SHIPS. DEPUTY DIRECTOR FOR NAVAL REACTORS. SR. NAVAL REACTORS REP. (NWPT NEWS). SENIOR NAVAL REACTORS REP (PEARL HARBOR). DIRECTOR NUCLEAR TECHNOLOGY DIV. DIR REACTOR ENGINEERING DIVISION. HEAD, CORE MANUFACTURING BRANCH. DEP DIRECTOR REACTOR MATERIALS DIVISION. DIRECTOR, FISCAL DIVISION. ASST MANAGER FOR OPERATIONS.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	PROGRAM MANAGER FOR SHIPYARD MATTERS.
	DIR NUCLEAR COMPONENTS DIVISION.
	SENIOR NAVAL REACTORS REPRESENTATIVE.
	MANAGER, IDAHO BRANCH OFFICE.
	PROG MANAGER FOR ADVANCED SUBMARINES.
	DIR ISOTOPE PRODUCTION & DISTRIBUTION PROG.
	ASST MANAGER FOR OPERATIONS.
	SENIOR NAVAL REACTORS REPRESENTATIVE.
	ENGEL WALTER. P.
	DIRECTOR ACQUISITION DIVISION.
	DIRECTOR FOR SUBMARINE REFUELINGS.
	SENIOR NAVAL REACTORS REPRESENTATIVE.
OFFICE OF SECURITY AFFAIRS	DIR OFC OF CLASSIFICATION & TECHNOLOGY.
	DIR OFC OF SECURITY AFFAIRS.
	DEP DIR, OFC OF SECURITY AFFAIRS.
WESTERN AREA POWER ADMINISTRATION	ASST ADMR FOR MGMT SVCS.
ENVIRONMENTAL PROTECTION AGENCY:	
OFC OF THE ASST ADMR FOR ADMIN & RESOURCES MANAGEMENT.	DEP ASST ADMR FOR FINANCE & ACQUISITION.
	DIRECTOR, OFC OF POL & RESOURCE MGMT.
	PRINICPAL DEP ASST ADMR FOR AMD & RES MGMT.
OFFICE OF THE COMPTROLLER	DIR OFC OF THE COMPTROLLER.
	DIR, FINANCIAL MGMT DIV.
	ASSOCIATE COMPTROLLER.
	DIRECTOR, BUDGET DIVISION.
	ASSOC DIR, FINANCIAL MANAGEMENT DIVISION.
OFFICE OF ADMINISTRATION	DIR OFC OF ADMINISTRATION.
	DEPUTY DIR OFC OF ADMINISTRATION.
	DIR, GRANTS ADMIN DIV.
	DIR, FACILITIES & SUPPORT SERVICES DIVISION.
	DIRECTOR, MANAGEMENT & ORGANIZATION DIVISION.
	DIR, NEW HEADQUARTERS PROJECT STAFF.
	DIR, SFTY, HEALTH & ENVIRONMENTAL MGMT DIV.
OFFICE OF INFORMATION RESOURCES MANAGEMENT	DIR OFC OF INFORMATION RESOURCES MANAGEMENT.
	DEP DIR OFC OF INFORMATION RESOURCES MAGNT.
	DIR, ADMINISTRATIVE SYSTEMS DIVISION.
	DIR, INFORMATION MANAGEMENT & SERVICES DIV.
	DIRECTOR ENTERPRISE SYSTEMS DIVISION.
OFC OF ADMINISTRATION & RESOURCES MGMT—CINCINNATI OH.	DIR OFC OF ADMIN AND RESOURCES MANAGEMENT.
OFFICE OF ADMINISTRATION & RESOURCES MGMT—RTP, NC.	DIRECTOR OFFICE OF ADMINISTRATION & RES MGMT.
OFC OF HUMAN RESOURCES AND ORGANIZATIONAL SERVICES.	DIRECTOR, OFFICE OF DATA PROCESSING.
	DIRECTOR, OFFICE OF HUMAN RESOURCES MGMT.
	SPECIAL ASST TO DIRECTOR, OHRM.
	DEP DIR FOR POL, PROGRAMS & EXEC RESOURCES.
	DEP DIR FOR OPERATIONS COMM & CLIENT SERVICES.
	DIR EXEC RES & SPEC PROG DIV.
	DIR OFFICE OF HUMAN RESOURCES & ORG SERVICES.
	ASSOC DIR FOR INTEGRATION & INNVOAION.
	DEP DIR OFC OF HUMAN RESOURCES & ORG SERVICES.
	ASSOC DIRCTOR FOR REENGINEERING & AUTOMATION.
	DIR EXEC RESOURCES & SPECIAL PROGRAMS STAFF.
	EPA IMMEDIATE OFFICE.
	DIR STRATEGIC PLANNING & POLICY SYSTEMS.
OFFICE OF ACQUISITION MANAGEMENT	DIR, SUPERFUND/RCRA PROCUREMENT OPS DIVISION.
	DIRECTOR, OFFICE OF ACQUISITION MANAGEMENT.
	DEP DIR, OFFICE OF ACQUISITION MANAGEMENT.
OFFICE OF GRANTS AND DEBARMENT	DIRECTOR, OFFICE OF GRANTS & DEBARMENT.
OFFICE OF THE ASSISTANT ADMR FOR E & C ASSURANCE	DIRECTOR, OFC OF ENVIRONMENTAL JUSTICE.
	DIR, ADM & RESOURCE MGMT SUPPORT STAFF.
	DIR, ENFORCEMENT CAPACITY & OUTREACH OFFICE.
ORGANIZATION ABOLISHED	DIR NAT'L ENFORCEMENT INVESTIGATIONS CENTER.
OFFICE OF FEDERAL ACTIVITIES	DIR, INTERNATIONAL ENFORCEMENT PROGRAM.
OFFICE OF REGULATORY ENFORCEMENT	DIRECTOR, OFFICE OF REGULATORY ENFORCEMENT.
	DEP. DIR, OFFICE OF REGULATORY ENFORCEMENT.
	DIR WATER ENFORCEMENT DIVISION.
	DIR AIR ENFORCEMENT DIVISION.
OFFICE OF CRIMINAL ENFORCEMENT, FORENSICS & TRAINING.	DIRECTOR, OFFICE OF CRIMINAL ENFORCEMENT.
	DIR NATL ENFORCEMENT TRAINING INSTITUTE.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	DIR OFC OF CRIMINAL ENFORCE FORENSICS TRAIN.
OFFICE OF COMPLIANCE	DEPUTY DIRECTOR, OFFICE OF COMPLIANCE.
OFFICE OF SITE REMEDIATION ENFORCEMENT	DIRECTOR, OFFICE OF COMPLIANCE.
	SENIOR LEGAL ADVISOR.
	DIR, ENFORCEMENT PLANNING, T & D DIVISION.
	DEP DIR, ENFORCEMENT PLANNING, T & D DIVISION.
	DIR, MANUFACTURING, E & T DIVISION.
	DIR. CHEMICAL, COMMERICAL S & M DIVISION.
	DIRECTOR, OFC OF SITE REMEDIATION ENFORCEMENT.
	DEP DIR. OFC OF SITE REMEDIATION ENFORCEMENT.
FEDERAL FACILITIES ENFORCEMENT OFFICE	DIR FEDERAL FACILITIES ENFORCEMENT OFFICE.
OFFICE OF POLICY DEVELOPMENT	DIR WATER & AGRICULTURE POLICY DIV.
	DIR AIR & ENERGY POLICY DIVISION.
	DIR, ECONOMIC ANALYSIS & INNOVATIONS DIV.
OFFICE OF INTERNATIONAL ACTIVITIES	DIR MULTILATERAL STAFF.
OFFICE OF THE INSPECTOR GENERAL	DEPUTY INSPECTOR GENERAL.
OFFICE OF INVESTIGATIONS	ASSIST INSPECTOR GEN FOR INVESTIGATIONS.
	DEP ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
OFFICE OF AUDIT	ASST INSPECTOR GENERAL FOR AUDITS.
	DEP ASST INSPECTOR GENERAL FOR AUDITS.
	ASSOC ASST INSPECT GENERAL FOR AQUIST ASST.
	DEP ASST INSP GEN FOR ACQ & ASST AUDITS.
	PRINCIPAL DEP ASST INSP GEN FOR AUDIT.
OFFICE OF MANAGEMENT	ASST INSPECTOR GEN FOR MGMT & TECH ASSESSMENT.
OFFICE OF WASTEWATER MANAGEMENT	DIRECTOR, PERMITS DIVISION.
	DIRECTOR, MUNICIPAL SUPPORT DIVISION.
	DEPUTY DIRECTOR, MUNICIPAL SUPPORT DIVISION.
OFFICE OF SCIENCE AND TECHNOLOGY	SENIOR SCIENCE ADVISOR.
	DIR, STANDARDS & APPLIED SCIENCE DIVISION.
	DIRECTOR, ENGINEERING & ANALYSIS DIVISION.
	DIR, HEALTH & ECOLOGICAL CRITERIA DIVISION.
OFFICE OF WETLANDS, OCEANS AND WATERSHEDS	DIR, ASSESSMENT & WATERSHED PROTECTION DIV.
	DIR, OCEANS & COASTAL PROTECTION DIVISION.
	DIRECTOR, WETLANDS DIVISION.
OFFICE OF GROUND WATER & DRINKING WATER	DIR, E & P IMPLEMENTATION DIVISION.
	DIRECTOR, DRINKING WATER STANDARDS DIVISION.
	DIRECTOR, GROUND WATER PROTECTION DIVISION.
OFC OF THE ASST ADMR FOR SOLID WASTE AND EMGY RESP.	DIR, SUPERFUND REAUTHORIZATION TASK FORCE.
OFFICE OF SOLID WASTE	DIR, CHARACTERIZATION & ASSESSMENT DIVISION.
	DIRECTOR, PERMITS & STATE PROGRAMS DIVISION.
	DIR, MUNICIPAL & INDUSTRIAL SOLID WASTE DIV.
	DIR HAZARDOUS WASTE INDENTIFICATION DIVISION.
OFFICE OF EMERGENCY AND REMEDIAL RESPONSE	DIRECTOR, HAZARDOUS SITE EVALUATION DIVISION.
	DIR, EMERGENCY RESPONSE DIV.
	DIRECTOR, HAZARDOUS SITE CONTROL DIVISION.
OFC OF THE ASST ADMR FOR AIR AND RADIATION	DIRECTOR OF COMMON SENSE INITIATIVE.
OFFICE OF AIR QUALITY PLANNING AND STANDARDS	DIR, EMISSION STANDARDS DIVISION.
	ASSOC DIR FOR INTERMEDIA & INTGOVT PROG.
	DIR AIR QUALITY STRATEGIES & STANDARDS DIV.
	DIR EMISSIONS MONITORING & ANALYSIS DIVISION.
	DEPUTY DIR OFC OF AIR QUALITY PLANNING & STDS.
OFFICE OF MOBILE SOURCES	DIRECTOR CERTIFICATION DIVISION.
	DIR MANUFACTURERS OPERATIONS DIVISION.
	DIR FIELD OPERATIONS & SUPPORT DIVISION.
	DIR ADVANCED TECHNOLOGY & SUPPORT DIVISION.
	DIR FUELS & ENERGY DIVISION.
	DIR VEHICLE PROGRAMS & COMPLIANCE DIVISION.
OFFICE OF RADIATION & INDOOR AIR	DIR, CRITERIA & STANDARDS DIV.
	DIRECTOR, RADON DIVISION.
	DIR RADIATION STUDIES DIVISION.
OFFICE OF ATMOSPHERIC PROGRAMS	DIR ATMOSPHERIC POLLUTION PREVENTION DIVISION.
	DIRECTOR, ACID RAIN DIVISION.
OFC OF ASST ADMR FOR PESTICIDES AND TOXIC SUBSTANCES.	DIR, OFC OF PROGRAM MANAGEMENT OPERATIONS.
OFFICE OF PESTICIDE PROGRAMS	DIR, REGISTRATION DIVISION.
	DIRECTOR, PROGRAM SUPPORT DIVISION.
	DIR, BIOLOGICAL AND ECONOMIC ANALYSIS DIVISION.
	SENIOR ADVISOR.
	DIR, SPEC REVIEW AND REREGISTRATION DIVISION.
	DIR ENVIR FATE AND EFFECTS DIVISION.
	DIR HEALTH EFFECTS DIVISION.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
OFFICE OF POLLUTION PREVENTION AND TOXICS	DIR POLICY AND SPECIAL PROJECTS STAFF.
	DIR, HEALTH AND ENVIRONMENTAL REV DIV.
	DIRECTOR, ENVIRONMENTAL ASSISTANCE DIVISION.
	DIR, ECONOMICS EXPOSURE AND TECHNOLOGY DIV.
	DIRECTOR, CHEMICAL CONTROL DIVISION.
	DIRECTOR, INFORMATION MANAGEMENT DIVISION.
	DIR, POLLUTION PREVENTION DIV.
	DIR CHEMICAL SCREENING AND RISK ASSESSMENT DIV.
	DIR CHEMICAL MANAGEMENT DIVISION.
OFFICE OF RESOURCES MANAGEMENT AND ADMINISTRATION.	DIR OFC OF RESOURCES MGNT AND ADMIN.
OFFICE OF SCIENCE POLICY	DIRECTOR EXPOSURE ASSESSMENT GROUP.
	DIRECTOR, HUMAN HEALTH ASSESSMENT GROUP.
	DIRECTOR, OFFICE OF SCIENCE POLICY.
ORGANIZATION ABOLISHED	DIR ENVIRONMENTAL CRITERIA AND ASSES OFC RTP.
ORGANIZATION ABOLISHED	DIR, ENVIRONMENTAL CRITERIA AND ASSESSMENT OFC.
OFFICE OF RESEARCH AND SCIENCE INTEGRATION	DIR, ENVIRONMENTAL M&A PROGRAM CENTER.
	DIR OFC OF RESEARCH AND SCI INTEGRATION.
	DEP DIR OFC OF RESEARCH AND SCIENCE INTEGRATION.
ORGANIZATION ABOLISHED	DIR ATMOSPHERIC RES AND EXP ASSESSMENT LAB.
ORGANIZATION ABOLISHED	DIR ENVIRONMENT MONITORING SYST LAB.
ORGANIZATION ABOLISHED	DIR, ENV MONITORING SYS LAB, LAS VEGAS.
NATIONAL HEALTH AND ENVIRONMENTAL EFFECTS RES LAB (RTP).	DIR NATL HEALTH AND ENVIR EFFECTS RES LAB RTP.
	ASSOC DIR FOR HEALTH NHEERL RTP.
	ASSOCIATE DIRECTOR FOR ECOLOGY NHEERL RTP.
ATLANTIC ECOLOGY DIVISION-NARRAGANSETT	DIR AIR AND ENERGY ENG RES LAB.
	DIR, ENVIRONMENTAL RES LAB, NARRAGANSETT.
WESTERN ECOLOGY DIVISION-CORVALLIS	DIR RISK REDUCTION ENGINEERING LABORATORY.
	DIR PACIFIC ECOLOGY DIVISION CORVALLIS.
GULF ECOLOGY DIVISION-GULF BREEZE	DIR, GULF BREEZE ECOLOGY DIVISION.
NATIONAL EXPOSURE RESEARCH LABORATORY (RTP)	DIR NATL EXPOSURE RES LABORATORY RTP.
	DEP DIR FOR MANAGEMENT NERL RTP.
	ASST DIR FOR ECOLOGY NERL RTP.
	ASST TO THE DIR, NATL EXPO RES LABORATORY RTP.
CHARACTERIZATION RESEARCH DIVISION-LAS VEGAS	DIR CHARACTERIZATION RESEARCH DIVISION.
ECOSYSTEMS RESEARCH DIVISION-ATHENS	DIR ENV RESEARCH LABORATORY CORVALLIS.
	DIR ECOSYSTEMS RES DIV, ATHENS.
ORGANIZATION ABOLISHED	DIR ENVIRONMENTAL RESEARCH LAB, ATHENS, GA.
ORGANIZATION ABOLISHED	DIR, ROBERT S KERR ENVIRONMENTAL RES LAB.
ORGANIZATION ABOLISHED	DIR ENVIRONMENTAL RESEARCH LAB-DULUTH.
ORGANIZATION ABOLISHED	DIR ENV RES LAB GULF BREEZE.
NATIONAL RISK MGMT RESEARCH LABORATORY (CINCINNATI).	DIR NATL RISK MGMT LAB CINN.
	DEP DIR FOR MGMT NRML CINN.
	ASSOC DIR FOR HEALTH NRML CINN.
	SPEC ASST DIR NATL RISK MGMT LAB.
	ENVIRONMENTAL TECHNOLOGY EXECUTIVE.
AIR POLLUTION PREVENTION AND CONTROL DIVISION-RTP	DIR-HEALTH EFFECTS RESEARCH LAB-RTP.
	DEP DIR HEALTH EFFECTS RES LAB RTP.
	DIR AIR AND ENERGY ENG RESEARCH DIVISION RTP.
	DIR AIR POLLUTION PREVENTION AND CONTROL DIV.
SUBSURFACE PROCESSES AND SYSTEMS DIVISION-ADA	DIR SUB-SURFACE PROCESS AND SYSTEMS DIVISION.
NATIONAL CENTER FOR ENVIRONMENTAL ASSESSMENT	DIR, OFC OF SCI, PLANNING AND REGULATORY EVAL.
	DIR NATL CTR FOR ENVIRONMENTAL ASSESSMENT.
	ASSOCIATE DIRECTOR FOR HEALTH, NCEA.
	ASSOCIATE DIRECTOR FOR ECOLOGY NCEA.
	SENIOR EXECUTIVE LIAISON FOR GLOBAL CLIMATE.
	SPEC ASST TO ASST ADMIN FOR AIR RADIATION.
NATIONAL CENTER FOR ENVIRONMENTAL ASSESSMENT-WASHINGTON.	DIR CENTER FOR ENVIRONMENTAL RESEARCH INFO.
	DIR NATL CTR ENVIRON ASSESSMENT.
NATIONAL CENTER FOR ENVIRONMENTAL ASSESSMENT-RTP.	DIR NATL CTR ENVIRON ASSESSMENT.
NATIONAL CENTER FOR ENVIRONMENTAL ASSESSMENT-CINCINNATI.	DIR NATL CTR FOR ENVIRONMENTAL ASSESSMENT.
OFFICE OF EXPLORATORY RESEARCH	DIR OFC OF EXPLORATORY RESEARCH.
	DEPUTY DIR FOR MGMT NCERQA.
	PEER REVIEW COMPLIANCE EXECUTIVE.
	DIR ENVIRONMENTAL ENGINEER RESEARCH DIVISION.
	ASSOCIATE DIRECTOR FOR SCIENCE NCERGA.
	DIR NATL CTR DEVL OFC OF RESC QUALITY ASSURE.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
REGION I—BOSTON	DIRECTOR, WATER MANAGEMENT DIVISION.
	DIR WASTE MANAGEMENT DIVISION.
	REGIONAL COUNSEL.
	ASST REGL ADMR FOR PLANNING & MANAGEMENT.
	DIR AIR PESTICIDES & TOXICS MANAGEMENT DIV.
	DIR OFC OF ECOSYSTEM PROTECTION
	DIR OFC OF SITE REMEDIATION RESTORATION.
	DIR OFC OF ENVIRONMENTAL STEWARDSHIP.
	ASST REGIONAL ADMINISTRATOR.
REGION II—NEW YORK	DIRECTOR, ENVIRONMENTAL SERVICES DIVISION.
	DIRECTOR, WATER MANAGEMENT DIVISION.
	ASST REGL ADMR FOR POLICY AND MANAGEMENT.
	DIR AIR & WASTE MANAGEMENT DIVISION.
	REGIONAL COUNSEL, REGION II, NEW YORK.
	DIR. OFFICE OF EMERGENCY & REMEDIAL RESPONSE.
REGION III—PHILADELPHIA	DIRECTOR, WATER MANAGEMENT DIVISION REG III.
	REGIONAL COUNSEL
	DIRECTOR, HAZARDOUS WASTE'MGMT DIV.
	DIRECTOR, ENVIRONMENTAL SERVICES DIVISION.
	ASST REG ADMIN FOR POLICY & MANAGEMENT.
	DIR. AIR MANAGEMENT DIVISION.
	DIR CHESAPEAKE BAY PROGRAM OFFICE.
REGION IV—ATLANTA	DIR WATER MANAGEMENT DIVISION REGION IV.
	DIR ENVIRONMENTAL SERVICES DIVISION REGION IV.
	ASST REGIONAL ADMIN FOR POLICY AND MGMT.
	REGIONAL COUNSEL, REG IV, ATLANTA, GEORGIA.
	DIRECTOR WASTE MANAGEMENT DIVISION.
REGION V—CHICAGO	DIR AIR MANAGEMENT DIV REGION V.
	DIR ENVIR SERVICES DIV REGION V.
	DIR WATER MANAGEMENT DIV REGION V.
	ASST REGIONAL ADMR FOR POLICY & MANAGEMENT.
	REGIONAL COUNSEL.
	DIR WASTE PESTICIDES & TOXICS DIVISION.
	ASSOCIATE DIVISION DIRECTOR FOR RCRA.
	ASSOC DIV DIRECTOR FOR SUPERFUND.
	DIR GREAT LAKES NATL PROG OFC.
	DIRECTOR SUPERFUND DIVISION.
REGION VI—DALLAS	DIR AIR & WASTE MANAGEMENT DIV.
	DIR WATER MANAGEMENT DIVISION.
	DIRECTOR, ENVIRONMENTAL SERVICES DIVISION.
	ASST REGIONAL ADMR FOR MANAGEMENT.
	REGIONAL COUNSEL.
	DIR, AIR, PESTICIDES & TOXIC DIVISION.
	DIRECTOR, COMPLIANCE A & E DIVISION.
	DIR SUPERFUND DIVISION.
	DIR WATER QUALITY PROTECTION DIVISION.
	DIR MULTIMEDIA PLANN & PERMITTING.
REGION VII—KANSAS CITY	DIR WATER MANAGEMENT DIVISION.
	REGIONAL COUNSEL.
	DIRECTOR, WASTE MGMT DIVISION.
	ASST REG ADMIN FOR POLICY & MGNT-REG VII.
	DIRECTOR, AIR AND TOXICS DIVISION.
	DIR SUPERFUND DIVISION.
	DIR AIR RCRA AND TOXICS DIVISION.
	DIR WATER WETLANDS & PESTICIDES DIVISION.
REGION VIII—DENVER	DIR WATER MANAGEMENT DIVISION.
	REGIONAL COUNSEL.
	DIR AIR TOXICS DIVISION.
	ASST REGIONAL ADMR FOR POLICY & MANAGEMENT.
	DIR, ENVIRONMENTAL SERVICES DIVISION.
	DIR ECOSYSTEMS PROTECTION & REMEDIATION.
	DIR OFC OF POLLUTION PREVENTION STATE TRIBAL.
	DIR OFC OF TECH & MGNT SERVICES.
	REGIONAL COUNSEL REGION VIII.
REGION IX—SAN FRANCISCO	DIRECTOR, WATER MANAGEMENT DIVISION.
	DIRECTOR, AIR MANAGEMENT DIVISION.
	REGIONAL COUNSEL, REG IX, SAN FRAN, CAL.
	DIR, TOXICS & WASTE MANAGEMENT DIV.
	ASST REGIONAL ADMR FOR POLICY & MANAGEMENT.
REGION X—SEATTLE	DIR-WATER DIV REG X.
	REGIONAL COUNSEL.
	DIRECTOR AIR AND TOXICS DIVISION.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	DIRECTOR, HAZARDOUS WASTE DIVISION.
	ASST REGL ADMR FOR POLICY & MANAGEMENT.
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION:	
OFFICE OF THE CHAIRMAN	INSPECTOR GENERAL.
FIELD MANAGEMENT—EAST	DIRECTOR FIELD MANAGEMENT PROGRAMS (EAST).
	DISTRICT DIRECTOR (BALTIMORE).
	DIST DIR (NEW YORK).
	DIST DIR (ATLANTA).
	DISTRICT DIRECTOR (DETROIT).
	DIST DIR (MIAMI).
	DIST DIR (MEMPHIS).
	DIST DIR-(BIRMINGHAM).
	DIST DIR-(NEW ORLEANS).
	DIST DIR-(CHARLOTTE).
	DISTRICT DIRECTOR (CLEVELAND).
	DIST DIR-(PHILADELPHIA).
FIELD MANAGEMENT—WEST	DIR FIELD MANAGEMENT PROGRAMS (WEST).
	DIST DIR (HOUSTON).
	DIST DIR (SAN FRANCISCO).
	DIST DIR (DALLAS).
	DIST DIR (CHICAGO).
	DIST DIR-(ST LOUIS).
	DIST DIR-(INDIANAPOLIS).
	PROGRAM MANAGER.
	DIST DIR-(DENVER).
	DIST DIR-(PHOENIX).
	DISTRICT DIR-(SAN ANTONIO).
	DISTRICT DIRECTOR (SEATTLE).
	DISTRICT DIRECTOR (MILWAUKEE).
FEDERAL COMMUNICATIONS COMMISSION:	
OFFICE OF INSPECTOR GENERAL	INSPECTOR GENERAL.
OFFICE OF THE MANAGING DIRECTOR	CHIEF LAND MOBILE & MICROWAVE DIVISION.
	ASSOC MANAGING DIRECTOR/HUMAN RESOURCES MGMT.
OFFICE OF ENGINEERING & TECHNOLOGY	CHIEF, SPECTRUM ENGINEERING DIVISION.
	ASSISTANT BUREAU CHIEF FOR TECHNOLOGY.
COMPLIANCE AND INFORMATION BUREAU	CHIEF ENFORCEMENT DIVISION.
COMMON CARRIER BUREAU	CHIEF, TARIFF DIVISION.
	ASST BUREAU CHIEF (INTERNATIONAL).
	CHIEF DOMESTIC FACILITIES DIVISION.
	CHIEF ACCOUNTING & AUDITS DIVISION.
MASS MEDIA BUREAU	CHIEF AUDIO SERVICES DIVISION.
	CHIEF VIDEO SERVICES DIVISION.
	CHF, ENFORCEMENT DIV.
FEDERAL EMERGENCY MANAGEMENT AGENCY:	
OFFICE OF THE DIRECTOR	CHIEF OF STAFF.
OFFICE OF FINANCIAL MANAGEMENT	CHIEF FINANCIAL OFFICER.
	DEPUTY CHIEF FINANCIAL OFFICER.
	SENIOR PROCUREMENT EXECUTIVE.
OFFICE OF INSPECTOR GENERAL	DEPUTY INSPECTOR GENERAL.
	ASST INSPECTOR GENERAL FOR AUDITING.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
PREPAREDNESS, TRAINING AND EXERCISES DIRECTORATE	DIV DIR, STATE & LOCAL PREPAREDNESS DIVISION.
RESPONSE & RECOVERY DIRECTORATE	DIV DIR, INFRASTRUCTURE SUPPORT DIVISION.
FEDERAL INSURANCE ADMINISTRATION	DEPUTY ADMINISTRATOR.
OPERATIONS SUPPORT DIRECTORATE	ASSOCIATE DIRECTOR.
	DIVISION DIR, ACQUISITION SERVICES DIVISION.
FEDERAL ENERGY REGULATORY COMMISSION (DOE):	
OFC OF CHIEF ACCOUNTANT	DEPUTY CHIEF ACCOUNTANT.
	DIR DIVISION OF AUDITS.
	DIRECTOR, DIVISION OF ACCOUNTING SYSTEMS.
OFC OF HYDROPOWER LICENSING	DIR DIV OF DAM SAFETY & INSPECTIONS.
FEDERAL LABOR RELATIONS AUTHORITY:	
OFFICE OF THE CHAIRMAN	SOLICITOR.
	CHIEF COUNSEL.
	ASST TO THE CHM FOR PROG DEV & NEW INITIATIVE.
OFFICE OF MEMBER	CHIEF COUNSEL.
OFFICE OF MEMBER	CHIEF COUNSEL.
FEDERAL SERVICE IMPASSES PANEL	EXEC DIRECTOR FSIP.
OFC OF THE EXECUTIVE DIRECTOR	EXECUTIVE DIRECTOR.
	DIR, INFORMATION RESOURCES & RESEARCH SERV.
OFC OF THE GENERAL COUNSEL	DEPUTY GENERAL COUNSEL.
	ASST GENERAL COUNSEL (FIELD MANAGEMENT).

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	ASST GENERAL COUNSEL (APPEALS).
	ASST GEN COUNSEL, LEGAL POLICY & ADVICE.
	DIRECTOR OF OPERATIONS & RESOURCES MANAGEMENT.
REGIONAL OFFICES	REGIONAL DIRECTOR-WASHINGTON, DC.
	REGIONAL DIRECTOR-BOSTON.
	REGIONAL DIRECTOR-ATLANTA.
	REGIONAL DIRECTOR-DALLAS.
	REGIONAL DIRECTOR, CHICAGO ILLINOIS.
	REGIONAL DIRECTOR, SAN FRANCISCO.
	REGIONAL DIRECTOR, DENVER.
FEDERAL MARITIME COMMISSION:	
OFFICE OF THE MEMBERS	SECRETARY.
OFFICE OF THE MANAGING DIRECTOR	DEP MANAGING DIR.
	DIR, BUREAU OF ADMINISTRATION.
	PROG MANAGER (DIR BUR OF TRADE M & A).
	PROG MGR (DIR BUR OF TARIFFS C & L).
	DEPUTY DIRECTOR BUREAU OF ENFORCEMENT.
	DIR BUREAU OF ENFORCEMENT.
	DEPUTY MANAGING DIRECTOR.
FEDERAL RETIREMENT THRIFT INVESTMENT BOARD	ASSISTANT GENERAL COUNSEL (ADMIN).
	DIRECTOR OF INVESTMENTS.
	DIRECTOR OF CONTRACTS & ADMINISTRATION.
	DIRECTOR OF AUTOMATED SYSTEMS.
	DIRECTOR OF BENEFITS AND PROGRAM ANALYSIS.
	DIRECTOR OF ACCOUNTING.
	DIRECTOR OF COMMUNICATIONS.
	DEPUTY GENERAL COUNSEL.
	ASSOCIATE GENERAL COUNSEL.
FEDERAL TRADE COMMISSION:	
OFFICE OF THE INSPECTOR GENERAL	INSPECTOR GENERAL.
OFC OF EXECUTIVE DIRECTOR	DEPUTY EXEC DIR FOR MANAGEMENT.
	DEP EXEC DIR FOR PLANNING & INFORMATION.
GENERAL SERVICES ADMINISTRATION:	
OFFICE OF MANAGEMENT SERVICES AND HUMAN RESOURCES.	DIRECTOR OF PERSONNEL.
	DIR OF MANAGEMENT SERVICES.
	DIR TOTAL QUALITY MANAGEMENT & TRAINING.
OFFICE OF FTS 2000	DEP ASSOC ADMIN FOR TELCOMM SYS ACQUISITION.
	DEP ASSOC ADMR FOR NETWORK SERVICES.
OFFICE OF INSPECTION GENERAL	DEPUTY INSPECTOR GENERAL.
	ASST INSPECTOR GEN FOR AUDITING.
	DEPUTY ASST INSPECTOR GENERAL FOR AUDITING.
	COUNSEL TO THE INSPECTOR GENERAL.
	ASST INSPECTOR GEN FOR INVESTIGATIONS.
	ASST INSPECTOR GENERAL FOR QUALITY MANAGEMENT.
OFFICE OF ACQUISITION POLICY	ASSOC ADMINISTRATOR FOR ACQUISITION POLICY.
	DIRECTOR OF FEDERAL ACQUISITION POLICY.
OFFICE OF THE CHIEF FINANCIAL OFFICER	DIRECTOR OF FINANCE.
	DIRECTOR OF BUDGET.
	DIR OF FINANCIAL MANAGEMENT SYSTEMS.
PUBLIC BUILDING SERVICE	ASSISTANT COMMR FOR PROPERTY MANAGEMENT.
	ASSISTANT COMMR FOR FED PROTECTIVE SERVICE.
	ASST COM FOR PROCUREMENT.
	ASST COM FOR REAL PROPERTY DEVELOPMENT.
	DEP ASST COMMISSIONER FOR PROPERTY MANAGEMENT.
	ASST COMM FOR PORTFOLIO MANAGEMENT.
	SPEC ASST/ASST COMR FOR REAL PROPERTY DEV.
	ASST COMMR FOR BUSINESS DEVELOPMENT.
	ASST COMMR FOR GOVERNMENTWIDE REAL PROP POL.
	ASSISTANT COMMR FOR PROPERTY DISPOSAL.
	ASST COMMISSIONER FOR FEE DEVELOPER.
	DEP ASST COMMISSIONER FOR PORTFOLIO MANAGE.
INFORMATION TECHNOLOGY SERVICE.	
	DEP COMM FOR INFO TECHNOLOGY ACQUISITION.
	ASSISTANT COMMR FOR INFO RESOURCES MGMT POL.
	ASST COMR FOR GSA INFO RESOURCES MANAGEMENT.
	DEPUTY COMMR FOR INFO TECHNOLOGY INTEGRATION.
	DEPUTY COMMR FOR LOCAL TELECOMMUNICATIONS.
	ASSISTANT COMMISSIONER FOR RESOURCE MGMT.
	DEP CHIEF INFORMATION OFFICER.
FEDERAL SUPPLY SERVICE	ASST COMMR FOR QUALITY AND CONTRACT ADMIN.
	ASST COMMISSIONER FOR ACQUISITION.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	ASST COMR FOR TRANSPORTATION & PROPERTY MGT.
	ASST COMM FOR BUS MANAGEMENT & MARKETING.
	ASST COMM FOR DISTRIBUTION MGT.
	DEP ASST COMMISSIONER FOR ACUQISITION.
	ASSISTANT COMMISSIONER FOR FSS INFO SYSTEMS.
NEW ENGLAND REGION	ASST REG ADMR FOR PUBLIC BLDG SERVICE.
NORTHEAST & CARIBBEAN REGION	ASST REG ADMR FOR PUBLIC BLDS SERVICE.
	ASST REG ADMR FOR FEDERAL SUPPLY SERVICE.
MID-ATLANTIC REGION	ASST REG ADMR FOR PUBLIC BLDS SERVICE.
	ASST REG ADMR FOR INFO RESO MGMT SER, NE ZONE.
	ASST REGL ADMR FEDERAL SUPPLY SERVICE.
NATIONAL CAPITAL REGION	ASST REGL ADMR FOR INFO RESOURCES MGMT.
	DIR OF FED DOMES ASST CTLG STAFF (IRMS) NCR.
	ASSISTANT REGIONAL ADMINISTRATOR, PBS, NCR.
SOUTHEAST SUNBELT REGION	ASST REG ADMR FOR PUBLIC BLDS SERVICE.
	ASSITANT REG ADMIN FOR INFORM RES MGMT–R–4.
	ASST REG ADMR FOR FEDERAL SUPPLY & SERVICES.
GREAT LAKES REGION	ASST REG ADMR FOR PUBLIC BLDS SERVICE.
THE HEARTLAND REGION	ASST REG ADMR FOR PUBLIC BLDS SERVICE.
GREATER SOUTHWEST REGION	ASST REG ADMR FOR PUBLIC BLDS SERVICE.
	ASST REGIONAL ADMIN FOR INFO TECH SERVICE.
	ASST REG ADMR FOR FEDERAL SUPPLY SERVICE.
ROCKY MOUNTAIN REGION	ASST REG ADMR FOR PUBLIC BLDS SERVICE.
PACIFIC RIM REGION	ASST REGL ADMR FOR PUBLIC BUILDINGS SERVICES.
	ASST REG ADMR FOR FEDERAL SUPPLY SERVICE.
	ASST REG ADMR FOR INFORMATION RES MANAGEMENT.
NORTHWEST/ARCTIC REGION	ASST REGIONAL ADMINISTRATOR, PBS REGION 10.
	DEP ASST REGL ADMINISTRATOR, PBS.
DEPARTMENT OF HEALTH AND HUMAN SERVICES:	
OFFICE OF THE SECRETARY	SENIOR ADVISOR.
	DEPUTY FOR SCIENTIFIC & MEDICAL AFFAIRS.
ODAS FOR BUDGET	DIR DIV OF INTEGRITY & ORGAN REVIEW.
ODAS FOR FINANCE	DEP ASST SEC, FINANCE.
	DIR, OFFICE OF FINANCIAL POLICY.
ODAS FOR GRANTS & ACQUISITION MANAGEMENT	DEP ASST SECY, OGAM.
OAS FOR PLANNING AND EVALUATION	DEP TO DEPUTY ASST SECRY FOR PLANN & EVALUAT.
OAS FOR PERSONNEL ADMINISTRATION	ASST SEC FOR PERSONNEL ADMINISTRATION.
	DIR, OFC OF HUMAN RELATIONS.
	DIR, CENTER FOR HUMAN RES STRATEGIC P & P.
ASSOCIATE GENERAL COUNSEL DIVISIONS	ASSOC GEN COUN, BUSINESS & ADM LAW DIVISION.
	DEP ASSOC GEN COUNL, BUS & ADM LAW DIV.
OFFICE OF THE INSPECTOR GENERAL	PRINCIPAL DEP INSPECTOR GENERAL.
	DEPUTY INSPECTOR GENERAL FOR MGMT & POLICY.
ODIG FOR INVESTIGATIONS	DEP INSP GEN FOR INVESTIGATIONS.
	ASST INSP GENERAL FOR CRIMINAL INVESTIGATIONS.
	ASST INSP GEN FOR CIVIL & ADM REMEDIES.
	ASST INSP GEN FOR INVESTIGATION P & O.
ODIG FOR AUDIT SERVICES	DEP INSPECTOR GENERAL FOR AUDIT SERVICES.
	ASST INSPECTOR GEN FOR SOCIAL SECURITY AUDITS.
	ASST INSP GEN FOR ADM OF C/F & AGIN AUDITS.
	ASST INSPECTOR GEN FOR HEALTH CARE FIN AUDITS.
	ASST INSPECTOR GEN FOR AUDIT POL & OVERSIGHT.
	ASST INSP GEN FOR PUBLIC HEALTH SERV AUDITS.
ODIG FOR EVALUATION & INSPECTIONS	DEP INSP GEN FOR EVALUATION & INSPECTIONS.
ADMINISTRATION ON AGING	DIRECTOR, OFC OF STATE & COMMUNITY PROGRAMS.
	DAS FOR PROG DEV & ELDER RIGHTS PROGRAMS.
PROGRAM SUPPORT CENTER	DIR PROGRAM SUPPORT CENTER.
OFFICE OF PROGRAM SUPPORT	DIR OFC OF FINANCIAL MANAGEMENT.
OFC OF INFORMATION SYSTEMS MANAGEMENT	DIR, OFC OF INFORMATION SYSTEMS MANAGEMENT.
OAA FOR MANAGEMENT	CHIEF ACTUARY.
	DIR, BUREAU OF DATA MANAGEMENT AND STRATEGY.
	DEP DIR, BUREAU OF DATA MANAGEMENT & STRATEGY.
	DIR, OFFICE OF MEDICARE & MEDICAID COST EST.
	DEP DIRECTOR, OFFICE OF THE ACTUARY.
OFFICE OF ASSOCIATE ADMR FOR POLICY	DIR, OFC OF THE ACTUARY (CHIEF ACTUARY).
	DEPUTY DIRECTOR, OFFICE OF THE ACTUARY.
	DIRECTOR, OFC OF MEDICARE & MEDICAID COST EST.
OFFICE ASSOC ADMR, FOR OPERATIONS & RES MANAGEMENT.	DIR OFC OF CONTRACTING & FINANCIAL MANAGEMENT.
	DIRECTOR, OFFICE OF FINANCIAL & HUMAN RES.
	DIRECTOR, OFFICE OF FINANCIAL MANAGEMENT.
	DEPUTY DIRECTOR, OFC OF FINANCIAL MANAGEMENT.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	DIR, OFC OF MEDICARE BENEFITS ADMINISTRATION.
OAS FOR HEALTH	DIRECTOR, FINANCIAL MANAGEMENT SERVICE.
	DEPUTY DIRECTOR, OFFICE OF MANAGEMENT.
	DIRECTOR, OFFICE OF RESOURCE MANAGEMENT.
	DIR, DIV OF PUBLIC HEALTH SERVICE BUDGET.
	DIRECTOR, OFFICE OF RESEARCH INTEGRITY.
	DIRECTOR, DIV OF RESEARCH INVESTIGATIONS.
	DEPUTY DIRECTOR, OFFICE OF RESEARCH INTEGRITY.
SUBSTANCE ABUSE & MENTAL HEALTH SERVICES ADMINISTRATION.	ASSOC ADMR FOR EXTRAMURAL PROGRAMS.
CENTER FOR SUBSTANCE ABUSE PREVENTION	DIR DIV OF COMM PREVENTION & TRAINING.
	DIRECTOR, DIVISION OF WORKPLACE PROGRAMS.
	DIR, DIV OF DEMONSTRATION FOR HIGH RISK POP.
CENTER FOR MENTAL HEALTH SERVICES	CHIEF RETROVIRUS BRANCH.
	DIR DIV OF STSTE & COMMUNITY SYSTEMS DEVELOP.
CENTER FOR SUBSTANCE ABUSE TREATMENT	DIR, OFC OF SCIENTIFIC ANALYSIS & EVALUATION.
CENTERS FOR DISEASE CONTROL & PREVENTION	DIRECTOR, FINANCIAL MANAGEMENT OFFICE.
	SENIOR ADVISOR FOR MINORITY HEALTH EDUCATION.
CENTER FOR INFECTIOUS DISEASES	ASST DIR FOR LABORATORY SCIENCE.
NATL INSTITUTE FOR OCCUPATIONAL SAFETY & HEALTH	ASSISTANT DIRECTOR FOR SCIENCE.
	EXECUTIVE OFFICER, NIOSH.
CENTER FOR ENV HEALTH & INJURY CONTROL	DIR DIV OF ENVIRONMENTAL HEALTH LAB SCIENCES.
CENTER FOR PREVENTION SERVICES	DIR DIV OF STD/HIV PREVENTION.
NATIONAL CENTER FOR HEALTH STATISTICS	ASSOC DIR FOR ANALYSIS & EPIDEMIOLOGY.
	ASSOCIATE DIR, OFC OF P & E PROGRAMS.
	ASSOC DIR FOR RESEARCH & METHODOLOGY.
	ASSOC DIR. OFC OF VITAL & HEALTH STATS SYST.
	ASSOC DIR FOR INTERNAL STATISTICS.
CENTER FOR BIOLOGICAL EVALUATION & RESEARCH	DIR. DIV OF BLOOD COLLECTION & PROCESSING.
	DIRECTOR, DIVISION OF BACTERIAL PRODUCTS.
	DEP DIR, OFC OF BIOLOGICAL PRODUCT REVIEW.
	DIR, DIV OF BIOSTATISTICS & EPIDEMEMIOLOGY.
	DIR OFC OF COMPLIANCE.
	DIR. DIV OF ALLERGENIC PRODUCTS/PARASITOLOGY.
	DIR. OFC OF VACCINES RESEARCH & REVIEW.
	DIR. OFC OF THERAPEUTICS RESEARCH & REVIEW.
	DIR OFC OF BLOOD RESEARCH & REVIEW.
CENTER FOR DRUG EVALUATION & RESEARCH	DIR, CENTER FOR DRUG EVALUATION & RESEARCH.
	DIRECTOR, OFFICE OF MANAGEMENT.
	ASSOC DIR FOR MED POL DIR OFC OF DRUG EVAL I.
	DEP DIR FOR PROGRAM MANAGEMENT.
	DIR. DIV OF CARDIO-RENTAL DRUG PRODUCTS.
	DIR. DIV OF NEUROPHARMACOLOGICAL DRUG PROD.
	DIR. DIV OF MIDICAL IMAGING S & D PRODUCTS.
	DIR. DIV OF G & C DRUG PRODUCTS.
	DIR. DIV OF ANCOLOGY & PULMONARY DRUG PROD.
	DIRECTOR, OFFICE OF DRUG STANDARDS.
	DEP DIR, OFFICE OF DRUG STANDARDS.
	DIR, DIVISION OF OTC DRUG EVALUATION.
	DEP DIR, OFFICE OF GENERIC DRUGS.
	ASSOCIATE DIRECTOR FOR DRUG MONOGRAPH.
	DIR, OFC OF OVER-THE-COUNTER DRUG EVALUATION.
	DIR, OFFICE OF EPIDEMIOLOGY & BIOSTATISTICS.
	DEP DIR, OFC OF EPIDEMIOLOGY & BIOSTATISTICS.
	DIR DIV OF BIOMETRICS.
	DIR, OFFICE OF DRUG EVALUATION II.
	DEP DIR, OFFICE OF DRUG EVALUATION II.
	DIR, DIV OF M & E DRUG PRODUCTS.
	DIR, DIV OF ANTI-INFECTIVE DRUG PRODUCTS.
	DIR, DIV OF ANTI-VIARAL DRUG PRODUCTS.
	DIRECTOR, OFFICE OF COMPLIANCE.
	DIR, DIV OF SCIENTIFIC INVESTIGATIONS.
	DIRECTOR, OFFICE OF RESEARCH RESOURCES.
	DIRECTOR, DIVISION OF BIOPHARMACENTICS.
	DEP DIR, OFFICE OF RESEARCH RESOURCES.
	DEP CTR FOR PHARMACEUTICAL SCIENCE.
	DIR OFC OF DRUG EVALUATION V.
CENTER FOR FOOD SAFETY & APPLIED NUTRITION	DIRECTOR, OFFICE OF SEAFOOD.
	DIRECTOR, OFFICE OF TOXICOLOGICAL SCIENCES.
	ASSOCIATE DIR FOR LABORATORY INVESTIGATIONS.
	DIRECTOR, OFFICE OF PHYSICAL SCIENCES.
	DIR OFC OF PREMARKET APPROVAL.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	DIR OFC OF FIELD PROGRAMS.
	DIR, OFC OF PLANT & DAIRY FOODS & BEVERAGES.
	DIRECTOR, OFFICE OF FOOD LABELING.
	DIR, OFC OF POL, P & S INITIATIVES.
CENTER FOR DEVICES & RADIOLOGICAL HEALTH	DIR, OFFICE OF STANDARDS & REGULATIONS.
	DIR OFFICE OF DEVICE EVALUATION.
	DIR, DIV OF SURGICAL & REHABILITATION DEVICES.
	DIR, DIVISION OF CARDIOVASCULAR DEVICES.
	DIR, DIV OF GENERAL & RESTORATION DEVICES.
	DIR OFFICE OF COMPLIANCE.
	DIR, OFFICE OF SCIENCE AND TECHNOLOGY.
	DEP DIR, OFC OF SCIENCE & TECHNOLOGY.
	DIR, DIV OF REPRODUCTIVE ABDOMINAL EAR THROAT
CENTER FOR VETERINARY MEDICINE.	DIRECTOR, OFFICE OF SCIENCE.
	DIRECTOR, OFFICE OF SURVEILLANCE.
	DIR, OFC OF NEW ANIMAL DRUG EVALUATION.
	DEP DIR FOR HFSCS.
	DEP DIR, THERAPEUTIC & PRODUCTION DRUG REVIEW.
	DIR, DIV OF BIOMETRICS & PRODUCTION DRUGS.
OFFICE OF REGULATORY AFFAIRS	ASSOC COMR FOR REGULATORY AFFAIRS.
	DEP ASSOC COMR FOR REGULATORY AFFAIRS.
	REGL FOOD & DRUG DIRECTOR, NE REGION.
	REGL FOOD & DRUG DIRECTOR MID-ATLANTIC REGION.
	REGL FOOD & DRUG DIRECTOR, SOUTHEAST REGION.
	REGL FOOD & DRUG DIRECTOR, MIDWEST REGION.
	REGL FOOD & DRUG DIRECTOR, SOUTHWEST REGION.
	REGL FOOD & DRUG DIRECTOR, PACIFIC REGION.
	DIR, OFC OF CRIMINAL INVESTIGATIONS.
NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH	DIRECTOR, DIV OF BIOMETRY.
	DIRECTOR, OFFICE OF RESEARCH.
OFFICE OF HEALTH AFFAIRS	DIRECTOR MED STAFF, OFC OF HEALTH AFFAIRS.
OFFICE OF MANAGEMENT AND SYSTEMS	DIR OFC OF FINANCIAL MANAGEMENT.
OFFICE MANAGEMENT	DIR, PARKLAWN COMPUTET CENTER.
BUREAU OF HEALTH RESOURCES DEVELOPMENT	DEP DIR, BUREAU OF HEALTH RESOURCES DEV.
OFFICE OF THE DIRECTOR	DIRECTOR, DIV OF FINANCIAL MANAGEMENT.
	DIRECTOR, DIVISION OF CONTRACTS & GRANTS.
	ASSOCIATE DIRECTOR FOR EXTRAMURAL AFFAIRS.
	ASSOCIATE DIRECTOR FOR DISEASE PREVENTION.
	DIR, OFC OF MEDICAL APPLICATIONS OF RESEARCH.
	DIR, OFFICE OF SCIENTIFIC INTEGRITY.
	DEP DIR FOR SCI POL & TECHNOLOGY TRANSFER.
	ASSOCIATE DIRECTOR FOR ADMINISTRATION.
NATL HEART, LUNG, & BLOOD INSTITUTE	DIR, DIV OF LUNG DISEASES.
	DIR, DIV OF BLOOD DISEASES & RESOURCES.
	DIRECTOR, DIVISION OF EXTRAMURAL AFFAIRS.
	ASSOC DIR FOR INTERNATIONAL PROGRAMS.
	DIR OFC OF BIOSTATICS RESEARCH.
	DEP DIR DIV OF HEART VASCULAR DISEASES.
	DEP DIR DIV OF EPIDEM & CLINICAL APPLICATIONS.
INTRAMURAL RESEARCH	DIR, DIVISION OF INTRAMURAL RESEARCH.
	CHF LAB OF BIOCHEMICAL GENETICS.
	CHF LAB OF BIOCHEMISTRY.
	CHIEF LAB OF BIOPHYSICAL CHEMISTRY.
	CHIEF MACROMOLECULES SECTION.
	CHF, INTERMEDIARY M & B SECTION.
	CHIEF, LABORATORY OF CELLULAR METABOLISM.
	CHF, LAB OF KIDNEY & ELECTROLYTE METABOLISM.
	CHIEF LAB OF CARDIAC ENERGETICS.
	CHIEF, METABOLIC REGULATION SECTION.
NATIONAL CANCER INSTITUTE	ASSOC DIR FOR INTRAMURAL MANAGEMENT.
	ASSOC DIRECTOR FOR EXTRAMURAL MANAGEMENT.
DIVISION OF CANCER BIOLOGY, DIAGNOSIS AND CENTERS	DIR, DIV OF CANCER BIOLOGY DIAGNOSIS & CTRS.
	DEP DIR, DIV OF CANCER BIOLOGY DIAG & CENTERS.
	CHF, MICROBIAL G & B SECTION, LAB OF BIOCHEM.
	CHIEF, LAB OF BIOCHEM INTRAMURAL RES PROG.
	ASSOC DIR, EXTRAMURAL RESEARCH PROGRAM.
	CHIEF DERMATOLOGY BR, INTRAMURAL RES PROG.
	CHIEF, CELL MEDIATED IMMUNITY SECTION.
	CHIEF, LAB OF TUMOR & BIOL IMMUNOLOGY, IRP.
	ASSOC DIR, CTRS TRAINING & RESOURCES PROG.
DIVISION OF CANCER ETIOLOGY	DIR, DIV OF CANCER ETIOLOGY.
	CHIEF LAB OF BIOLOGY.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	CHIEF LABORATORY OF MOLECULAR CARCINOGENESIS .
	CHF LAB OF EXPERIMENTAL PATHOLOGY.
DIVISION OF CANCER PREVENTION & CONTROL	DEP DIR, DIV OF CANCER PREVENTION & CONTROL.
	ASSOCIATE DIR, SURVEILLANCE PROGRAM, DCPC .
	ASSOC DIR, EARLY D & C ONCOLOGY PROGRAM.
DIVISION OF EXTRAMURAL ACTIVITIES	DIR, DIV OF EXTRAMURAL ACTIVITIES.
DIVISION OF CANCER TREATMENT	CHF—RADIATION ONCOLOGY BR
NATL INSTITUTE OF DIABETES & DIGESTIVE & KIDNEY DIS	DIR, DIV KIDNEY UROLOGIC & HEMATOLOGIC DISEASES.
	DIR DIVISION OF EXTRAMURAL ACTIVITIES.
	ASSOC DIRECTOR FOR RESEARCH & ASSESSMENT.
	ASSOC DIR FOR MGT & OPERATIONS.
	CHF, LAB OF MOLECULAR & CELLULAR BIOLOGY.
	DEP DIR FOR MANAGEMENT & OPERATIONS.
INTRAMURAL RESEARCH	CHIEF SECTION ON BIOCHEMICAL MECHANISMS.
	CHF SECT ON METABOLIC ENZYMES.
	CHF SECT ON PHYSICAL CHEMISTRY.
	CHIEF, SECTION ON MOLECULAR STRUCTURE.
	CHIEF THEORETICAL BIOPHYSICS SECTION.
	CHIEF, LABORATORY OF BIO-ORGANIC CHEMISTRY.
	CHIEF OXIDATION MECHANISM SECTION L B C
	CHIEF LABORATORY OF BIOCHEMISTRY & METABOLISM.
	CHF, SEC ON NUCLEAR MAG RES. LAB/CHEM PHYSICS.
	CLINICAL DIR & CHIEF, KIDNEY DISEASE SECTION.
	CHIEF, SECTION ON MOLECULAR BIOPHYSICS.
	CHF, SEC CARBOHYDRATES LAB OF CHEMISTRY/NIDDK.
	CHIEF, LABORATORY OF NEUROSCIENCE, NIDDK.
	CHIEF EPIDEMIOLOGY & CLINICAL RESEARCH BRANCH.
	CHF, LABORATORY OF MEDICINAL CHEMISTRY.
	CHIEF, MORPHOGENESIS SECTION.
NATL INST OF ARTHR & MUSCULOSKELETAL & SKIN DISEASES.	DIRECTOR, EXTRAMURAL PROGRAM.
	DEPUTY DIR.
	CHIEF, LABORATORY OF STRUCTURAL BIOLOGY RES.
NATIONAL LIBRARY OF MEDICINE	DEP DIR, NATL LIB OF MEDICINE.
	DEP DIR FOR RES AND EDUCATION.
	ASSOCIATE DIRECTOR FOR LIBRARY OPERATIONS.
	ASSOC DIR FOR EXTRAMURAL PROGRAMS.
	DEP DIR LISTER HILL NATL CTR FOR BIOMED COMMS.
	DIRECTOR, INFORMATION SYSTEMS.
	DIR NATL CTR FOR BIOTECH INFO.
	ASSOC DIR FOR HEALTH & INFO PROG DEVELOPMENT.
NATL INST OF ALLERGY & INFECTIOUS DISEASES	DIR, DIV OF ALLERGY/IMMUNOLOGY/TRANSPLANTATN.
	CHF, LAB OF PARASITIC DISEASES.
	DIR, DIV OF MICROBIOLOGY/INFECTIOUS DISEASES.
	CHIEF, LAB OF IMMUNOGENETICS.
	DIR, DIV OF EXTRAMURAL ACTIVITIES.
	CH, LAB OF MICROBIAL STRUCTURE AND FUNCTION.
	CHIEF LAB OF MOLECULAR MICROBIOLOGY.
	DIR, DIV ACQUIRED IMMUNIDEFICIENCY SYNDROME.
	CHIEF, BIOLOGICAL RESOURCES BRANCH.
	HEAD, LYMPHOCYTE BIOLOGY SECTION.
	CHIEF, LABORATORY OF INFECTIOUS DISEASES.
	DEP DIR DIV OF ACQUIRED IMMUNODEFICIENCY.
	HEAD EPIDEMIOLOGY SECTION.
	CHIEF, LABORATORY OF MALARIA RESEARCH.
	DIR DIV OF INTRAMURAL RESEARCH.
NATL INST ON AGING	SCIENTIFIC DIRECTOR GERONTOLOGY RSCH CNTR.
	CLIN DIRECTOR AND CHIEF CLIN PHYSIOLOGY BR.
	ASSOC DIR BIOLOGY OF AGING PROGRAM.
	ASSOC DIR, OFFICE OF EXTRAMURAL AFFAIRS.
	ASSOC DIR, EPIDEMI, DEMO, & BIOMETRY PROGRAM.
	ASSOC DIR, OFC OF PLNNG, A & I ACTIVITIES.
	ASSOC DIR NEUROSCI & NEUROPSYCH OF AGING PROG.
NATL INST OF CHILD HEALTH & HUMAN DEVELOPMENT	CHIEF, LABORATORY OF MOLECULAR GENETICS.
	CHF, ENDOCRINOLOGY & REPRODUCTION RESEARCH BR.
	DIRECTOR CTR FORRES FOR MOTHERS & CHILDREN.
	DIRECTOR CNTR FOR POPULATION RESEARCH.
	CHIEF, SECTION ON GROWTH FACTORS.
	ASSOC DIR FOR PREVENTION RESEARCH.
	CHIEF LABORATORY OF MAMALIAN GENES & DEVELOP.
	CHIEF, SECTION ON MOLECULAR ENDOCRINOLOGY.
	CHIEF SECTION NEUROENDOCRINOLOGY.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	CHIEF SECTION ON MICROBIAL GENETICS.
	CHIEF, LABORATORY OF COMPARATIVE ETHOLOGY.
	ASSOCIATE DIRECTOR FOR ADMINISTRATION.
	DIR, NATL CENTER FOR MEDICAL REHAB RESEARCH.
NATL INST OF DENTAL RESEARCH	CHIEF, LABORATORY OF IMMUNOLOGY.
	CHF, ENZYME CHEMISTRY SECTION.
	DIR, EXTRAMURAL PROGRAM.
	CHIEF NEUROBIOLOGY & ANESTHESIOLOGY BRANCH.
NATL INST OF ENVIRONMENTAL HEALTH SCIENCES	DIR, DIV OF INTRAMURAL, NIEHS.
	CHF LAB OF PULMONARY PATHOBIOLOGY.
	CHIEF, LAB OR GENETICS.
	HEAD MUTAGENESIS SECTION.
	HEAD MAMMALIAN MUTAGENESIS SECTION.
	SENIOR SCIENTIFIC ADVISOR.
	ASSOCIATE DIRECTOR FOR MANAGEMENT.
	CHIEF LAB OF MOLECULAR CARCINOGENESIS.
	DIR NATL INST OF ENVIRONMENTAL HEALTH SCIENCE.
	DIR ENVIRONMENTAL TOXICOLOGY PROGRAM.
NATL INST OF GENERAL MEDICAL SCIENCES	DEP DIR NATL INSTITUTE OF GENERAL MED SCI.
	DIR GENETICS PROGRAM.
	ASSOC DIR FOR PROGRAM ACTIVITIES.
	DIR BIO PHYS SCIENCES PROGRAM BRANCH.
	DIR, MINORITY OPPORTUNITIES IN RES PROG BR.
NATL INST OF NEUROLOGICAL DISORDERS AND STROKE	DIR, DIV OF FUNDAMENTAL NEUROSCIENCES.
	DIRECTOR, DIVISION OF STROKE & TRAUMA.
	ASSOCIATE DIRECTOR FOR ADMINISTRATION.
	DIR, BASIC NEUROSCI PROG/CHF/LAB OR NEUROCHEM.
	CHF, LAB OF MOLECULAR & CELLULAR NEUROBIOLOGY
INTRAMURAL RESEARCH	CHIEF LAB OF CENTRAL NERVOUS SYSTEM STUDIES.
	CHF, DEV & METABOLIC NEUROLOGY BRANCH.
	DEPUTY CHIEF, LAB OF CENTRAL NERVOUS SYS STUD.
	HD CELLULAR NEUROPATHOLOGY SECTION.
	CHIEF, NEUROIMAGING BRANCH.
	CHF, SURGICAL NEUROLOGY BRANCH.
	CHIEF BIOMETRY & FIELD STUDIES BRANCH.
	CHIEF, LABORTORY OF NEUROBIOLOGY.
	CHIEF, LABORATORY OF NEURA CONTROL.
	CHIEF BRAIN STRUCTURAL PLATICITY SECTION.
	CHF, LAB OF VIRAL & MOLECULAR PATHOGENESIS.
	CHIEF STROKE BRANCH.
NATL EYE INSTITUTE	CHIEF LABORATORY OF RETINAL CELL & MOL BIOLOG.
	CHIEF, LAB OF MOLECULAR & DEV. BIOLOGY.
	CHIEF, LABORATORY OF SENSORIMOTOR RESEARCH.
NATL INST ON DEAFNESS & OTHER COMMUNICATION DISORDERS.	CHIEF, LABORATORY OF MOLECULAR BIOLOGY.
	DIR, DIV OF COMMUNICATION SCIENCES & DISORDER.
	DIR, DIV OF INTRA RES, NID & OTHER COMM DISOR.
	DEP DIR, NATL INST ON D & O COMMUNICATION DIS.
	CHIEF LABORATORY OF CELLULAR BIOLOGY.
NIH CLINICAL CENTER	ASSOC DIR OF CLINICAL CARE/DIR, CLINICAL CTR.
	ASSOCIATE DIRECTOR FOR PLANNING.
	ASSOC CHF, POSITION EMISSION T & R.
	DEPUTY DIRECTOR FOR MAGAMENT AND OPERATIONS.
	DEPUTY DIRECTOR FOR CLINICAL CARE.
DIVISION OF COMPUTER RESEARCH & TECH	CHIEF, COMPUTER CENTER BRANCH.
	CHIEF, PHYSICAL SCIENCES LAB.
	DEPUTY DIRECTOR.
	ASSOC DIR OFC OF COMPUTING RESOURCES SERVICES.
JOHN E FOGARTY INTL CENTER	ASSOC DIR FOR INTL ADVANCED STUDIES.
NATIONAL CENTER FOR RESEARCH RESOURCES	DIR, NATL CENTER FOR RESEARCH RESOURCES.
	DIR, GEN CLINICAL RES CTR FOR RES RESOURCES.
	DEP DIR, NATL CENTER FOR RESEARCH RESOURCES.
DIVISION OF RESEARCH GRANTS	ASSOCIATE DIRECTOR FOR REFERRAL AND REVIEW.
	ASSOC DIR FOR STATISTICS & ANALYSIS.
NATIONAL CENTER FOR NURSING RESEARCH	DIRECTOR NATIONAL CNTR FOR NURSING RESEARCH
NATIONAL CENTER FOR HUMAN GENOME RESEARCH	DEPUTY DIRECTOR.
	DIR DIV OF INTRAMURAL RES NATL CTR H G R.
	CHIEF DIAG DEVEL BR NATL CTR HUMAN GEN RES.
	CHF, LAB OF GENETIC DIS RES NATL CTR FOR HGR.
NATIONAL INSTITUTE ON DRUG ABUSE	DIR, OFC OF SCI POL, EDUCATION & LEGISLATION.
	ASSOC DIR FOR PLANNING & RESOURCES MANAGEMENT.
	DIR, OFFICE OF EXTRAMURAL PROGRAM REVIEW.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	DIRECTOR DIVISION OF CLINICAL RESEARCH.
	DIR, MEDICATIONS DEVELOPMENT DIVISION.
	CHIEF, NEUROSCIENCE RESEARCH BRANCH.
NATIONAL INSTITUTE OF MENTAL HEALTH	ASSOCIATE DIRECTOR FOR SPECIAL POPULATIONS.
	ASSOCIATE DIRECTOR FOR PREVENTION.
	EXEC OFCR, NATL INSTITUTE OF MENTAL HEALTH.
	DIR, OFC OF LEGISLATIVE ANALYSIS & COORD.
	DIR, DIV OF NEUROSCIENCE & BEHAVIORAL SCI.
	DIRECTOR, DIVISION OF EXTRAMURAL ACTIVITIES.
	CHIEF, NEUROPSYCHIATRY BRANCH.
	CHIEF, CHILD PSYCHIATRY BRANCH.
	CHIEF, BIOLOGICAL PSYCHIATRY BRANCH.
	CHIEF, LABORATORY OF CLINICAL SCIENCE.
	CHIEF, SECTION ON HISTOPHARMACOLOGY.
NATIONAL INSTITUTE ON ALCOHOL ABUSE & ALCOHOLISMS	DIR, NATL INSTITUTE ON ALCOHOL A&A.
	DIRECTOR, DIVISION OF BASIC RESEARCH.
	DIR, DIV OF BIOMETRY & EPIDEMIOLOGY.
AGENCY FOR HEALTH CARE POLICY & RESEARCH	DIR, CTR FOR OUTCOMES & EFFECTIVENESS RESEARCH.
	DIR, CTR FOR GEN HEALTH SERV INTRAMURAL RES.
	DIR, CTR GEN HEALTH SVCE EXTRAMURAL RESEARCH.
	DIR, OFC OF SCI & DATA DEV/AGCY FOR HCP & RES.
ORGANIZATION ABOLISHED	CHF ACTUARY.
	DEP CHIEF ACTUARY (LONG-RANGE).
	DEP CHIEF ACTUARY SHORT RANGE SSA.
ORGANIZATION ABOLISHED	SENIOR FINANCIAL EXECUTIVE.
ORGANIZATION ABOLISHED	ASSOC COMR, OFFICE OF FIN POLICY & OPERATIONS.
	DEP ASSOC COMM FINANCIAL POLICY & OPERATIONS.
ORGANIZATION ABOLISHED	ASSOC COMMISSIONER FOR ACQUISITION & GRANTS.
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT:	
OFFICE OF THE GENERAL COUNSEL	ASSOC GEN COUN FOR PROGRAM ENFORCEMENT.
OFFICE OF THE INSPECTOR GENERAL	DEPUTY INSPECTOR GENERAL.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	ASSISTANT INSPECTOR GENERAL FOR AUDIT.
	ASST INSPECTOR GENERAL FOR MANAGEMENT & POL.
	DEPUTY ASST INSPECTOR GEN FOR AUDIT OPERATION.
	DEP ASST INSPECTOR GEN FOR P&O.
	DEP ASST INSPECTOR GENERAL FOR INVESTIGATION.
	COUNSEL TO THE INSPECTOR GENERAL.
OFFICE OF THE CHIEF FINANCIAL OFFICER	ASSOC DEP CHIEF FINANCIAL OFFICER FOR ACCOUNT.
	DEP CHIEF FINANCIAL OFFICER FOR ACCOUNTING.
	DEP CHIEF FINANCIAL OFFICER FOR FINANCE.
ASSISTANT SECRETARY FOR ADMINISTRATION	DEPUTY DIRECTOR, OFFICE OF HUMAN RESOURCES.
	DIR, OFC OF BUDGET.
	DEP DIR, OFC OF BUDGET.
	DIRECTOR OFC OF PROCUREMENTS & CONTRACTS.
	SPECIAL ADVISOR/COMPTROLLER.
ASSISTANT SECY FOR HOUSING	DIR, MORTGAGE INSURANCE ACCTNG & SERV GROUP.
	DIR OFC OF MULTIFAMILY ASSET MANAGEMENT DISPO.
	HOUSING/FED HOUSINGS ADM COMPTROLLER.
	DIR OFC OF MULTIFAMILY HOUSING PRES PROP DIS.
	DIR OF MULTIFAMILY HOUSING DEVELOPMENT.
	HOUSING FHA DEPUTY COMPTROLLER.
	DIR, OFC OF POL, P&F SYSTEMS ENHANCEMENTS.
	DIRECTOR, RESPA ENFORCEMENT UNIT.
	DIRECTOR, OFFICE OF EVALUATION.
	PROGRAM SYSTEMS PROJECT OFFICER.
	DIR. OFFICE OF MULTIFAMILY HOUSING MANAGEMENT.
ASST SECY FOR FAIR HOUSING AND EQUAL OPPORTUNITY	DIRECTOR, OFFICE OF INVESTIGATIONS.
	DIR, OFC OF FAIR HOUSING I & V PROGRAMS.
	DEP DIR OFC OF EQUAL EMPLOYMENT OPPORTUNITY.
ASST SECY FOR COMMUNITY PLANNING AND DEVELOPMENT.	DIR OFFICE OF ENVIRONMENT AND ENERGY.
	DIRECTOR, OFFICE OF ECONOMIC DEVELOPMENT.
	DIRECTOR, OFC OF COMMUNITY VIABILITY.
GOVERNMENT NATIONAL MORTGAGE ASSOCIATION	VICE PRESIDENT FOR ASSET MANAGEMENT.
	VICE PRESIDENT FOR MORTGAGE BACKED SECURITIES.
	VICE PRESIDENT FOR FINANCE.
	VICE PRESIDENT, OFC OF POL, P&R MANAGEMENT.
	VICE PRESIDENT OFC OF CUSTOMER SERVICE.
ASSTS SECY FOR PUBLIC AND INDIAN HOUSINGS	GEN DEP ASST SECY FOR PUBLIC & INDIAN HOUSING.
	DIR RENTAL ASSISTANCE DIVISION.
	PUBLIC & INDIAN HOUSING-COMPTROLLER.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	DEP ASST SECRY FOR PUBLIC & ASST HOUSING OPER.
	DEPUTY PUBLIC & INDIAN HOUSING COMPTROLLER.
	DEP DIR TO DEP ASST FOR PUB ASST HOUSING.
NEW YORK/NEW JERSEY (NEW YORK)	MANAGER NEWARK.
	MANAGER BUFFALO.
SOUTHEAST (ATLANTA)	MANAGER JACKSONVILLE.
MIDWEST (CHICAGO)	MANAGER COLUMBUS.
	MANAGER DETROIT.
	MANAGER INDIANAPOLIS.
	MANAGER MN/ST PAUL.
SOUTHWEST (FORT WORTH)	MANAGER OKLAHOMA.
PACIFIC/HAWAII (SAN FRANCISCO)	MANAGER LOS ANGELES.
DEPARTMENT OF INTERIOR:	
OFC OF THE INSPECTOR GENERAL	ASSISTANT INSPECTOR GENERAL FOR AUDITING.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	GENERAL COUNSEL.
	DEPUTY ASST INSPECTOR GENERAL FOR AUDITS.
OFC OF THE SOLICITOR	DEPUTY ASSOC SOLICITOR, GENERAL LAW.
	ASST SOLICITOR BUREAU OF PARKS AND RECREATION.
	SPECIAL ASST TO THE ASSOC SOLICITOR-GEN LAW.
	ASSOCIATE SOLICITOR FOR ADMINISTRATION.
	DEP ASSOCIATE SOLICITOR-ENERGY & RESOURCES.
	DEP ASSOCIATE SOLICITOR-INDIAN AFFAIRS.
ASST SECY FOR PLICY, MANAGEMENT AND BUDGET	ASST DIR FOR ECONOMICS.
	ASST DIR, PROGRAM ANALYSIS STAFF.
	MANAGER, SCIENCE AND ENGINEERING.
	DIR, OFC OF FIN MGMT & DEP CHF FIN OFFICER.
	CHIEF DIV OF BUDGET & PROGRAM REVIEW.
	ASST DIR FOR SPECIAL ANALYSIS.
	MANAGER, INDIAN PROGRAMS.
	CHIEF DIV OF BUDGET ADMIN.
	DEPUTY AGENCY ETHICS STAFF OFFICER.
ASST SECRETARY FOR FISH & WILDLIFE & PARKS	EXECUTIVE DIR REGIONAL ECOSYSTEM OFFICE.
NAT'L PARK SERVICE	PARK MANAGER-YOSEMITE (SUPERINTENDENT).
	SENIOR SCIENTIST.
	SCIENCE & TECHNOLOGY ADVISOR.
	PARK MANAGER EVERGLADES.
	SPEC ASST TO THE DIR (R&C COUNCIL).
	PARK MANAGER-YELLOWSTONE (SUPERINTENDENT).
	ASST DIR, DESIGN & CONSTRUCTION (MGR, DSC).
	PARK MANAGER-INDEPENDENCE NATL HISTORIC PARK.
	PARK MANAGER-GRAND CANYON.
US FISH & WILDLIFE SERVICE	DEP REG DIR REG 8 RSCH & DEV.
	DEPUTY REGL DIRECTOR—ATLANTA.
	SPEC ASST TO THE REG DIR RESEARCH & DEVELOP.
NATIONAL BIOLOGICAL SERVICE	DEP ASST DIR—POL, BUDGET, & ADMINISTRATION.
	RESEARCH DIRECTOR PATUXENT RESEARCH CENTER.
	ASST DIR FOR INFORMATION & TECHNOLOGY SERVICE.
OFFICE OF THE REGIONAL DIRECTOR	ASSISTANT DIRECTOR FOR INVENTORY & MONITORING.
BUREAU OF MINES	RESCH DIR, PITTSBURGH RESEARCH CENTER.
	RESEARCH DIR, TWIN CITIES RESEARCH CTR.
	RESEARCH DIRECTOR, ALBANY RESEARCH CTR.
	DIRECTOR, HEALTH & SAFETY RESEARCH CENTER.
	DIRECTOR, ENVIRONMENTAL REMEDIATION RES CTR.
	DIRECTOR, MATERIALS PARTNERSHIPS RES CENTER.
	CHIEF CENTER FOR ENVIRONMENTAL REDEDIATION.
	CHIEF DIV OF ENVIRONMENTAL TECHNOLOGY.
	CHIEF DIVISION OF HEALTH SAFETY & MIN TECH.
	SPEC ASST TO THE DIR, BUREAU OF MINES.
	SENIOR TECHNICAL ADVISOR.
	CHIEF, DIVISION OF RESOURCE EVALUATION.
	CHIEF, DIVISION OF POLICY ANALYSIS.
	DIRECTOR, OFFICE OF MINERAL ISSUES ANALYSIS.
	DIRECTOR, OFFICE OF ADMINISTRATION.
	HELIUM PROGRAM ADMINISTRATOR.
BUREAU OF RECLAMATION	DIRECTOR, POLICY & PROGRAMS.
	RESEARCH DIRECTOR.
	DIRECTOR, TECHNICAL SERVICES CENTER.
	SENIOR SCIENTIST.
	DEPUTY ASS COMMISSIONER-RESOURCES MANAGEMENT.
	SPEC ASST TO THE DIR, RECLAMATION SERV CENTER.
	PROJECT MANAGER/ARIZONA PROJECTS OFFICE.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	CHIEF DIV PROG COORDINATION & FINANCE.
	DIRECTOR, MANAGEMENT SERVICES OFFICE
US GEOLOGICAL SURVEY	STAFF GEOLOGIST FOR NPRA/ALASKA ACTIVITIES.
NATIONAL MAPPING DIV	CHIEF, NATIONAL MAPPING DIVISION.
	ASSOCIATE CHIEF, NATIONAL MAPPING DIVISION
	CHIEF, EROS DATA CENTER.
	CHIEF WESTERN MAPPING CENTER.
	CHIEF MID-CONTINENT MAPPING CENTER.
	CHIEF ROCKY MOUNTAIN MAPPING CENTER.
	ASST DIV CHIEF FOR INFORMATION & DATA SVC.
	CHIEF MAPPING APPLICATIONS.
	ASSOC CHIEF PROGRAMS & FINANCES.
	ASST DIV CHF FOR RESEARCH.
	ASST DIV CHF FOR COORDINATION & REQUIREMENTS.
	ASSOCIATE CHIEF FOR OPERATIONS.
	SR STAFF SCI FOR MAPPING & GEOGRAPHIC DATA.
WATER RESOURCES DIV	CHIEF HYDROLOGIST.
	ASSOC CHIEF HYDROLOGIST.
	REGL HYDROLOGIST CENTRAL REG LAKEWOOD.
	REGL HYDROLOGIST SOUTHEASTERN REGION.
	REGIONAL HYDROLOGIST, WESTERN REGION.
	REGIONAL HYDROLOGIST, NORTHEASTERN REGION.
	ASST CHF HYDROLOGIST FOR OPERATIONS.
	ASST CHIEF HYDROLOGIST FOR SCIEN INFO MGMT.
	ASST CHF HYDROLOGIST FOR WATER A&D COORD.
	ASST CHF HYDRO FOR RES & EXTRNL COORDINATION.
	CHIEF, NATL WATER QUALITY ASSESSMENT (NAWQA).
	ASST CHIEF HYDROLOGIST FOR TECH SUPPORT.
	ASST CHIEF HYDROLOGIST FOR WATER INFORMATION.
	CHF, OFC OF HYDROLOGIC RESEARCH.
	CHIEF OFFICE OF WATER QUALITY.
	CHF, BR OF WATER INFORMATION TRANSFER.
	CHIEF, OFFICE OF GROUND WATER.
	CHIEF OFFICE OF SURFACE WATER.
	CHF, NATIONAL WATER DATA EXCHANGE PROGRAM.
GEOLOGIC DIV	CHIEF GEOLOGIST.
	CHIEF, OFC OF EARTHQUAKES, VOLCANOES & ENGR.
	CHIEF, OFC OF SCIENTIFIC PUBLICATIONS.
	ASSOC CHF GEOLOGIST.
	CHF OFC OF MINERAL RESOURCES.
	CHIEF, OFFICE OF ENERGY & MARINE GEOLOGY.
	CHIEF OFFICE OF INTERNATIONAL GEOLOGY.
	CHIEF, OFFICE OF REGIONAL GEOLOGY.
	ASSISTANT CHIEF GEOLOGIST FOR PROGRAMS.
BUREAU OF LAND MANAGEMENT.	CHIEF, OFFICE OF IRM/MODERNIZATION.
	SPECIAL ASSISTANT TO THE DIRECTOR.
	DEP ASST DIR LANDS & RENEWABLE RESOURCES.
	INTERNATIONAL TECH ASST PROGRAM MANAGER.
OFC OF SURFACE MINING RECLAM & ENFORCEMENT.	ASSISTANT DIRECTOR, WESTERN FIELD OPERATIONS.
	REGIONAL DIRECTOR.
	REGIONAL DIRECTOR.
	REGIONAL DIRECTOR.
MINERALS MANAGEMENT SERVICE	REGIONAL DIRECTOR, GULF OF MEXICO OCS REGION.
	DEP ASSOCIATE DIRECTOR FOR OFFSHORE LEASING.
	CHIEF, LEASING MANAGEMENT DIVISION.
	REGIONAL MANAGER, ALASKA OCS REGION.
	ASSISTANT ASSOC DIR FOR OFFSHORE MINERALS MGT.
	REGIONAL MANAGER, PACIFIC OCS REGION.
	DEP ASSOCIATE DIR FOR OFFSHORE OPERATIONS.
	SPECIAL ASSISTANT TO THE DIRECTOR.
	DEP ASSOC DIR FOR AUDIT.
	DEP ASSOC DIR FOR VALUATION & OPERATIONS.
	DEPUTY ASSOC DIRECTOR FOR ADMINISTRATION.
BUREAU OF INDIAN AFFAIRS.	SPECIAL ASSISTANT (SPECIAL PROJECTS OFFICER).
	DEP TO THE DIR INDIAN EDUCATION PROGRAMS.
	SPEC ASST TO THE ASST SECY-INDIAN AFFAIRS.
INTERNATIONAL DEVELOPMENT COOPERATION AGENCY:	
OFFICE OF THE GENERAL COUNSEL	DEPUTY GENERAL COUNSEL.
	ASST GENERAL COUNSEL FOR ETHICS & ADM.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
OFFICE OF THE INSPECTOR GENERAL	ASST INSPECTOR GENERAL FOR SECURITY.
	ASST INSPECTOR GENERAL INVESTIGATIONS.
	COUNSEL TO THE INSPECTOR GENERAL.
	DEPUTY INSPECTOR GENERAL.
OFFICE OF EQUAL OPPORTUNITY PROGRAMS	DIR OFC OF EQUAL OPPORTUNITY PROGRAMS.
BUREAU FOR GLOBAL PROGRAMS, FIELD SUPPORT AND RESEARCH.	ASSOC ASST ADMR CENTER FOR ECONOMIC GROWTH.
	SENIOR DEPUTY ASSISTANT ADMINISTRATOR.
	DEP ASST ADMR CTR FOR POP, H/N BFGP, FS/RES.
	ASSOCIATE ASSISTANT ADMINISTRATOR.
	ASSOC ASST ADMIN.
BUREAU FOR EUROPE AND THE NEW INDEPENDENT STATES.	DEPUTY ASST ADMINISTRATOR.
BUREAU FOR MANAGEMENT	DIRECTOR OFFICE OF FINANCIAL MGMT.
	DEP CHF FIN OFCR, OFC OF FINANCIAL MANAGEMENT.
	DIR OFFICE OF INFORMATION RESOURCE MANAGEMENT.
	DEPUTY DIRECTOR OFC OF PROCUREMENT.
	DEPUTY DIRECTOR.
	DIR, OFC OF ADMIN SERVICES.
	DEP DIR OFC OF PROCUREMENT BUREAU FOR MAGNT.
	DEPUTY ASST ADMR BUREAU FOR MANAGMENT.
INTERSTATE COMMERCE COMMISSION:	
ORGANIZATION ABOLISHED	DIR OF PERSONNEL.
OFFICE OF THE GENERAL COUNSEL	ASSOC GEN COUNSEL—LITIGATION.
	SENIOR ASSOC GENERAL COUNSEL—LITIGATION.
OFFICE OF PROCEEDINGS	DEPUTY DIRECTOR—LEGAL COUNSEL II.
	DEPUTY DIRECTOR—LEGAL COUNSEL.
	ASSISTANT TO THE DIRECTOR.
OFFICE OF COMPLIANCE & ENFORCEMENT	ASSOC DIR, OFC OF COMPLIANCE & ENFORCEMENT.
	DIRECTOR.
	DEP DIR, SECT OF INVESTIGATIONS & ENFORCEMENT.
	ASSOCIATE DIRECTOR POLICY & REVIEW.
	DEPUTY DIRECTOR, SECTION OF TARIFFS.
	DEP DIRECTOR, SECTION OF OPS & INSURANCE.
	DEP DIR, SECTION OF OPS, INS & TARIFFS.
	ASSOC DIR OFC OF COMPLIANCE & ENFORCEMENT.
REGIONAL OFFICES	REGIONAL DIRECTOR (PHILADELPHIA).
	REGIONAL DIRECTOR (CHICAGO).
	REGIONAL DIRECTOR (SAN FRANCISCO).
DEPARTMENT OF JUSTICE:	
OFFICE OF THE ATTORNEY GENERAL	COUNSEL ON PROFESSIONAL RESPONSIBILITY.
	DEP COUNSEL ON PROFESSIONAL RESPONSIBILITY.
OFC OF THE LEGAL COUNSEL	SPECIAL COUNSEL.
	SPECIAL COUNSEL.
OFFICE OF THE INSPECTOR GENERAL	DEPUTY INSPECTOR GENERAL.
	ASST INSPECTOR GENERAL FOR INSPECTIONS.
	ASSISTANT INSPECTOR GENERAL FOR AUDIT.
	ASSISTANT INSPECTOR GENERAL FOR INVESTIGATION.
	ASST INSPECTOR GEN FOR MANAGEMENT & PLANNING.
	GENERAL COUNSEL.
	DEP ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
JUSTICE MANAGEMENT DIVISION	ASST ATTORNEY GENERAL FOR ADMINISTRATION.
	DEPUTY ASST ATTORNEY GENERAL.
	DEP ASST ATTORNEY GEN HUMAN RES/ADMIN.
	DIR, SECURITY & EMERGENCY PLNNG STAFF.
	DIR LIBRARY STAFF.
	DIR, FACILITIES AND ADMINISTRATIVE SVC STAFF.
	DIR TELECOMMUNICATIONS SERVICES STAFF.
	DIRECTOR MANAGEMENT AND PLANNING STAFF.
	DIRECTOR, BUDGET STAFF.
	SENIOR POLICY ADVISOR.
	DEP ASST ATTORNEY GENERAL, INFO RES MGT.
	DIR PROCUREMENT SERVICES STAFF.
	DIR, SYSTEMS TECHNOLOGY STAFF.
	GENERAL COUNSEL.
	DIR, EQUAL EMPLOYMENT OPPORTUNITY STAFF.
	SENIOR COUNSEL.
OFFICE OF THE COMPTROLLER	DEP ASST ATTORNEY GENERAL; CONTROLLER.
	DIR FINANCE STAFF.
	DEP ASST ATTY GEN FOR DEBT COLLECTION.
	ASST DIR, MANAGEMENT & PLANNING STAFF.
OFFICE OF HUMAN RESOURCES AND ADMINISTRATION	DIRECTOR PERSONNEL STAFF.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
OFFICE OF INFO & ADMIN SERVICES	DIRECTOR, OFC OF ATTY PERS MGMT.
	DIRECTOR, COMPUTER SERVICES STAFF.
	DIRECTOR, SYSTEMS POLICY STAFF.
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW	CHIEF IMMIGRATION JUDGE.
	CHAIRMAN, BOARD OF IMMIGRATION APPEALS.
	CHIEF ADMIN HEARING OFFICER.
ANTITRUST DIVISION	SENIOR LITIGATOR.
	EXECUTIVE OFFICER.
	CHIEF COMPUTERS AND FINANCE SECTION.
OFFICE OF LITIGATION	DEP DIR OF OPERATIONS.
	CHIEF, COMPETITION POLICY SECTION.
CIVIL DIVISION	DIRECTOR OF MANAGEMENT PROGRAMS.
COMMERCIAL LITIGATION BRANCH	SPEC LITIGATION COUNSEL (FOREIGN LITIGATION).
	SPEC LITIGATION COUN, C/L BRANCH.
	DEPUTY BRANCH DIRECTOR/COMMERCIAL LITIGATION.
	DEPUTY BRANCH DIR CIVIL FRAUDS.
FEDERAL PROGRAMS BRANCH	SPECIAL LITIGATION COUNSEL (FEDERAL PROGRAMS).
	DEPUTY BRANCH DIRECTOR.
TORTS BRANCH	SPEC LITIGATION COUNSEL.
	SPEC LITIGATION COUNSEL.
	SPECIAL LITIGATION COUNSEL (TORT LITIGATION).
	DEPUTY BRANCH DIRECTOR.
	DEPUTY BRANCH DIRECTOR.
	DEPUTY BRANCH DIRECTOR.
	DIRECTOR OFFICE OF CONSUMER LITIGATION.
CIVIL RIGHTS DIVISION	SPECIAL LITIGATION COUNSEL.
ENVIRONMENT AND NATURAL RESOURCES DIVISION	APPELLATE LITIGATION COUNSEL.
	EXECUTIVE OFFICER.
OFFICE OF ENVIRONMENTAL RESOURCES	SENIOR LITIGATION COUN ATTORNEY-EXAMINER.
	DEP CHF. ENVIRONMENTAL ENFORCEMENT SECTION.
	DEPUTY CHF, ENVIRONMENTAL ENFORCEMENT SECT.
TAX DIVISION	CHIEF CIVIL TRAIL SECTION SOUTHEASTERN REGION.
DEPUTY ASSISTANT ATTORNEY GENERAL-I	SPECIAL LITIGATION COUNSEL
	SR TRIAL ATTORNEY.
	SPECIAL LITIGATION COUNSEL.
	SPEC LITIGATION COUNSEL
IMMIGRATION AND NATURALIZATION SERVICE	ASST COMMISSIONER FOR DETENTION & DEPORTATION.
	ASST COMMISSIONER FOR ADJUDICATION & NATURAL.
	ASSISTANT COMMISSIONER FOR BORDER PATROL.
	DIRECTOR OF INTERNAL AUDIT.
	DIRECTOR OF SECURITY.
	ASSOC COMR FOR HUMAN RESOURCES & ADMIN.
	ASST COMR, BUDGET.
	REGIONAL DIRECTOR CENTRAL REGION.
	ASST COMMISSIONER ADMINISTRATION.
ASSOCIATE COMMISSIONER FOR EXAMINATIONS	ASST COMM FOR INSPECTIONS.
ASSOCIATE COMMISSIONER FOR ENFORCEMENT	ASSISTANT COMMISSIONER FOR INVESTIGATIONS.
EXECUTIVE ASSOCIATE COMMISSIONER FOR MANAGEMENT	ASSISTANT COMR, HUMAN RESOURCES & DEVELOPMENT.
OFC OF THE ASSOCIATE ATTORNEY GENERAL	DEPUTY ASSOCIATE ATTORNEY GENERAL.
EXECUTIVE OFC FOR U.S. ATTORNEYS	DIR OFC OF MGNT INFORMATION SYSTEMS SUPPORT.
	DIR, OFFICE OF ADMINISTRATION & REVIEW.
	DEP DIR FOR OPERATIONS.
CRIMINAL DIVISION	DEPUTY CHIEF, FRAUD SECTION.
	DIR OFC OF ASSET FORFEITURE.
	SENIOR COUNSEL.
	SENIOR APPEALLEATE COUNSEL.
	SENIOR COUNSEL.
	EXECUTIVE OFFICER.
	DIR INTL CRIMINAL INVEST TRAIN ASST PROGRAM.
OFCE OF DEPUTY ASST ATTORNEY GENERAL I	COUNSEL TO THE OFFICE FRAUD SECTION.
OFC OF DEPUTY ASST ATTORNEY GENERAL II	CHF PUBLIC INTEGRITY SECTION.
	DEPUTY CHIEF PUBLIC INTEGRITY SECTION.
FEDERAL BUREAU OF PRISONS	ASST DIR FOR PLANNING AND DEVELOPMENT.
	GENERAL COUNSEL.
	ASSOC COMMR, FED PRISONS INDUSTRIES, UNICOR.
	DEP ASSOC COMMR FED PRISON INDUSTRIES.
	WARDEN FT WORTH TEXAS
	WARDEN MARIANNA FL
	ASST DIRECTOR FOR HUMAN RES MGMT.
	ASST DIRECTOR FOR PROGRAM REV.
	(WARDEN) MIAMI, FL.
	SENIOR DEPUTY ASST DIR HEALTH SERVICES DIV.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	SENIOR DEPUTY ASSISTANT DIRECTOR.
	REGIONAL DIRECTOR MID ATLANTIC DIVISION.
	ASST DIR., COMMUNITY CORRECTIONS & DETENTION.
	ASST DIR. INFO, POL. & PUBLIC AFRS DIV.
	SR DEP REGL DIRECTOR, MID-ATLANTIC REGION.
	GEN COUNSEL, FED PRISON INDUSTRIES (UNICOR).
	WARDEN, ALLENWOOD, PENNSYLVANIA
	SR MGT COUNSEL, (FEDERAL BUREAU OF PRISONS).
	(WARDEN) FORT DIX, NJ.
	(WARDEN) FCC, FLOREN, CO.
	CORRECTIONAL INST ADMR (ARD) SCR, DALLAS, TX.
	CORRL INST ADMR (SDAD), CC & D DIV. WASH, DC.
	WARDEN, USP, FLORENCE, CO.
	CIA (WARDEN) FED MEDICAL CENTER CARSWELL, TX.
	CIA (WARDEN) U.S. PENITENTIARY, ALLENWOOD, PA.
	(WARDEN) FTC, OKLAHOMA, OK.
	SENIOR DEP ASST DIR (ADMINISTRATION).
	CIA (WARDEN) FED CORTL INST/EL RENO, OK.
	CIA (WARDEN) FED MEDICAL CENTER/MIAMI, FL.
OFFICE OF CORRECTIONAL PROGRAMS	ASST DIR CORRECTIONAL PROGRAMS DIV.
NORTHEAST REGION	REGIONAL DIRECTOR, NORTHEAST REGION.
	WARDEN, LEWISBURG, PA.
	WARDEN, MCKEAN, PA.
	(WARDEN), OAKDALE, LA.
SOUTHEAST REGION	REGIONAL DIRECTOR, SOUTHEAST REGION.
	WARDEN ATLANTA.
	WARDEN, LEXINGTON KENTUCKY.
	WARDEN BUTNER NORTH CAROLINA.
NORTH CENTRAL REGION	REGIONAL DIRECTOR, NORTH CENTRAL REGION.
	WARDEN LEAVENWORTH KANSAS.
	WARDEN SPRINGFIELD MO.
	WARDEN MARION IL.
	WARDEN TERRE HAUTE, IN.
	CORRECTIONAL INSTITUTION ADMR.
SOUTH CENTRAL REGION	CORRECTIONAL INSTITUTION ADMR (WARDEN).
	REGIONAL DIRECTOR, SOUTH CENTRAL REGION.
	WARDEN EL RENO OKLA.
WESTERN REGION	REGIONAL DIRECTOR, WESTERN REGION.
	WARDEN, LOMPOC, CA.
	WARDEN PHOENIX AZ.
	WARDEN FEDERAL CORRECTIONAL INSTITUTION.
OFC OF JUSTICE PROGRAMS	SENIOR COUNSEL.
NATIONAL INSTITUTE OF JUSTICE	ASST DIR, OFC OF DEV TESTING & DISSEMINATION.
BUREAU OF JUSTICE STATISTICS	DEPUTY DIR, BUREAU OF JUSTICE STATISTICS.
U.S. MARSHALS SERVICE	ASSOCIATE DIRECTOR FOR ADMINISTRATION.
	ASSISTANT DIRECTOR FOR HUMAN RESOURCES.
	ASST DIR FOR RESEARCH & DEVELOPMENT.
	ASSOC DIRECTOR FOR OPERATIONAL SUPPORT.
	SENIOR MANAGEMENT ADVISOR.
	ASSOCIATE DIRECTOR FOR TRAINING.
DEPARTMENT OF LABOR:	
OFC OF THE INSPECTOR GENERAL	DEPUTY INSPECTOR GENERAL.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	ASST INSPECTOR GEN FOR AUDIT.
	COUNSEL TO THE INSPECTOR GENERAL.
OFFICE OF LABOR-MANAGEMENT STANDARDS	DIRECTOR, OFC OF POLICY & PROGRAM SUPPORT.
OFFICE OF THE SOLICITOR	DEPUTY SOLICITOR (REGIONAL OPERATIONS).
	ASSOCIATE SOLICITOR FOR LABOR-MANAGEMENT LAWS.
	ASSOC SOLICITOR FOR PLAN BENEFITS SECURITY.
	ASSOC SOLICITOR FOR CIVIL RIGHTS.
	ASSOC SOLICITOR FOR OCCUPATIONAL SAFETY & HLT.
	ASSOC SOLICITOR FOR MINE SAFETY & HEALTH.
	ASSOC SOLICITOR FOR FAIR LABOR STANDARDS.
	ASSOC SOLICITOR FOR EMPLOYEE BENEFITS.
	ASSOC SOL FOR SPEC APPEL & SUP COURT LIT.
	DEP SOLICITOR FOR PLANNING AND COORDINATION.
	DIR, OFFICE OF MANAGEMENT.
	ASSOC SOLICITOR FOR BLACK LUNG BENEFITS.
REGIONAL SOLICITORS	REGIONAL SOLICITOR.
	REGIONAL SOLICITOR REGION IV-ATLANTA.
	REGL SOLICITOR BOSTON.
	REGL SOLICITOR NEW YORK.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	REGIONAL SOLICITOR PHILADELPHIA.
	REGL SOLICITOR DALLAS.
	REGL SOLICITOR KANSAS CITY.
	REGL SOLICITOR SAN FRANCISCO.
OAS FOR ADMINISTRATION AND MANAGEMENT	DIRECTOR, ADMINISTRATIVE & PROCUREMENT PROGS.
	DIR OF MANAGEMENT POLICY AND SYSTEMS.
	DIRECTOR, NATIONAL CAPITAL SERVICE CENTER.
	DIRECTOR OF HUMAN RESOURCES.
	DIRECTOR, DIRECTORATE OF CIVIL RIGHTS.
	DIR NATL CAPITAL SERVICE CENTER.
	DIRECTOR OF INFORMATION RESOURCES MANAGEMENT.
	DIR, ADMINISTRATIVE & PROCUREMENT PROGRAMS.
	DIRECTOR, OFFICE OF PLANNING & ANALYSIS.
	DIRECTOR OFFICE OF BUDGET.
	DEPUTY CHIEF FINANCIAL OFFICER.
	DIR OFC OF FIN INTEGRITY.
	DEPUTY ASSISTANT SECY FOR BUDGET.
	DIRECTOR BUSINESS OPERATIONS CENTER.
OFFICE OF MANAGEMENT, ADMINISTRATION AND PLANNING	DIR OFC OF MGMT, ADMINISTRATION AND PLANNING.
OFC OF FEDERAL CONTRACT COMPLIANCE PROGRAMS	DIRECTOR DIVISION OF PROGRAMS OPERATIONS.
WAGE AND HOUR DIVISION	ASST ADMIN FOR POLICY PLANNING & REVIEW.
	DEP WAGE & HOUR ADMIN.
	DEP NATL OFC PROGRAM ADMINISTRATOR.
OFC OF WORKERS COMPENSATION PROGRAMS.	DIR FEDERAL EMPLOYEES COMPENSATION.
	DIR COAL MINE WORKERS COMPENSATION.
PENSION & WELFARE BENEFITS ADMINISTRATION	DIR OF REGULATIONS & INTERPRETATIONS.
	DIRECTOR OF PROGRAM SERVICES.
	DEPUTY DIRECTOR OF PROGRAM SERVICES.
	DEP ASST SECY FOR PROGRAM OPERATIONS.
	DIRECTOR OF EXEMPTION DETERMINATIONS.
	SENIOR POLICY ADVISOR.
	REGIONAL DIRECTOR.
	REGIONAL DIRECTOR.
	REGIONAL DIRECTOR.
	REGIONAL DIRECTOR.
	DIR OF ENFORCEMENT.
BUREAU OF LABOR STATISTICS	DEPUTY COMMISSIONER.
	ASST COMMR FOR CONSUMER PRICES/PRICE INDEXES.
	ASSOCIATE COMMISSIONER FOR FIELD OPERATIONS.
	ASSOC COMMR FOR PUBLICATIONS & SPEC STUDIES.
DATA ANALYSIS	ASSOC COMMR, ECONOMIC GROWTH.
	ASSOC COMR FOR PRICES AND LIVING CONDITIONS.
	ASSOC COMMR PRODUCTIVITY & TECHNOLOGY.
	ASSOC COMMR FOR RESEARCH & EVALUATION.
	ASSOC COMMR FOR EMPLOYMENT & UNEMPL STATISTICS.
	ASST COMMR FOR CONSUMER PRICES & PRICE INDEXES.
	ASSOC COMMR FOR INDUST PRICES & PRICE INDEXES.
	ASSISTANT COMMISSIONER FOR ECONOMIC RESEARCH.
	ASST COMMISSIONER FOR FEDERAL-STATE PROGRAMS.
	ASST COMMISSIONER FOR CURRENT EMPLOY ANALYSIS.
	ASST COMMR FOR COMPENSATION LEVELS & TRENDS.
	ASST COMMR FOR SAFETY, H & W CONDITIONS.
	ASSOC COMMR COMPENSATION & WORKING CONDITIONS.
	ASST COMM FOR SURVEY METHODS RESEARCH.
	ASST COMM FOR INTERNATIONAL PRICES.
ADMINISTRATRATIVE AND INTERNAL OPERATIONS.	
	DEP COMM FOR ADM AND INTERNAL OPERATIONS.
	ASSOCIATE COMMISSIONER FOR ADMINISTRATION.
	DIRECTOR OF SURVEY PROCESSING.
	DIR OF TECHNOLOGY & COMPUTING SVCS.
	ASST COMR FOR TECHNOLOGY & SURVEY PROCESSING.
	DIR QUALITY & INFO MANAGEMENT.
OFFICE OF WORK-BASED LEARNING	DIRECTOR, OFC OF TRADE ADJUSTMENT ASSISTANCE.
OFFICE OF FINANCIAL & ADMINISTRATIVE MANAGEMENT	COMPTROLLER.
	ADMR, OFC OF FINANCIAL & ADMINISTRATIVE MGMT.
	DIR, OFC OF INFORMATION RESOURCES MANAGEMENT.
ADMINISTRATIVE PROGRAMS	DIR, ADM PROGS.
HEALTH STANDARDS PROGRAMS	DIR HEALTH STANDARDS PROGRAMS.
SAFETY STANDARDS PROGRAMS	DIRECTOR SAFETY STANDARDS PROGRAMS.
FEDERAL/STATE OPERATIONS	DIRECTOR, FEDERA/STATE OPERATIONS.
TECHNICAL SUPPORT	DIRECTOR, TECHNICAL SUPPORT.
MINE SAFETY AND HEALTH ADMINISTRATION	CHF OF STANDARDS, REGULATIONS & VARIANCES.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	DIRECTOR OF ADMINISTRATION AND MANAGEMENT.
	DIRECTOR OF TECHNICAL SUPPORT.
MERIT SYSTEMS PROTECTION BOARD:	
OFFICE OF THE GENERAL COUNSEL	DEPUTY GENERAL COUNSEL.
OFFICE OF THE CLERK OF THE BOARD	CLERK OF THE BOARD.
OFFICE OF POLICY AND EVALUATION	DIRECTOR, OFFICE OF POLICY & EVALUATION.
OFFICE OF PLANNING & RESOURCE MANAGEMENT SERVICES.	DIRECTOR, OFFICE OF ADMINISTRATION.
OFFICE OF MANAGEMENT ANALYSIS	DIR, OFFICE OF MANAGEMENT ANALYSIS.
OFFICE OF THE ADM LAW JUDGE AND REGIONAL OPERATIONS.	DIRECTOR, OFFICE OF REGIONAL OPERATIONS.
ATLANTA REGIONAL OFFICE	REGIONAL DIRECTOR, ATLANTA.
CHICAGO REGIONAL OFFICE	REGIONAL DIRECTOR, CHICAGO.
DALLAS REGIONAL OFFICE	REGIONAL DIRECTOR, DALLAS.
PHILADELPHIA REGIONAL OFFICE	REGIONAL DIRECTOR, PHILADELPHIA.
SAN FRANCISCO REGIONAL OFFICE	REGIONAL DIRECTOR, SAN FRANCISCO.
WASHINGTON REGIONAL OFFICE	REGIONAL DIRECTOR, WASHINGTON, D.C.
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION:	
OFC OF THE ADMINISTRATOR	DIR, BENCHMARKING & EXTERNAL PROGRAMS DIV.
	ASSOCIATE DEPUTY ADMINISTRATOR (TECHNICAL).
	TECHNICAL ASSISTANT TO THE CHIEF ENGINEER.
	CHIEF ENGINEER.
	SPECIAL ASSISTANT TO THE CHIEF ENGINEER.
	TECHNICAL ASST TO THE ASSOC DEP ADMR (TECH).
OFFICE OF THE CHIEF FINANCIAL OFFICER/COMPTROLLER	DIR SYSTEMS ANALYSIS DIVISION.
	DEPUTY CHIEF FINANCIAL OFFICER.
	DIRECTOR, FINANCIAL MANAGEMENT DIVISION.
	DIRECTOR, RESOURCES ANALYSIS DIVISION.
	DEPUTY DIRECTOR FOR PROGRAM RESOURCES.
	DEP DIR RESOURCES ANALYSIS DIVISION.
	DEPUTY DIR. FINANCIAL MANAGEMENT DIVISION.
OFFICE OF EQUAL OPPORTUNITY PROGRAMS	DIRECTOR, DISCRIMINATION COMPLAINTS DIVISION.
	DIR MINORITY UNIV RES & EDUC PROG DIV
	DIRECTOR, MULTICULTURAL PROG & SUPPORT DIV.
	MANAGER MINORITY UNIVERSITY PROGRAMS.
OFFICE OF HUMAN RESOURCES & EDUCATION	ASSOCIATE ADMINISTRATOR FOR HUMAN RESOURCES.
	DIRECTOR, EDUCATION DIVISION.
	DIRECTOR, PERSONNEL DIVISION.
	DIRECTOR, MANAGEMENT SYSTEMS DIVISION.
	DEP ASSOC ADM FOR HUMAN RES & EDUCATION.
	DIRECTOR, NATIONAL SERVICE OFFICE.
	SPECIAL ASST TO THE ASSOCIATE ADMR.
OFFICE OF PROCUREMENT	ASST ADMR FOR PROCUREMENT.
	DIR. ADVANCED PROCUREMENT PLANNING DIVISION.
	DIRECTOR, PROGRAM OPERATIONS DIVISION.
	DIRECTOR, PROCUREMENT POLICY DIVISION.
	DEP ASSISTANT ADMINISTRATOR FOR PROCUREMENT.
	DIR CONTRACT PRICING & FINANCE OFFICE.
	DIR CONTRACT MANAGEMENT DIVISION.
	DIRECTOR HEADQUARTERS AQUISITION DIVISION.
OFFICE OF EXTERNAL RELATIONS	DEP DIR INDUSTRY AFFAIRS DIVISION.
	DEP ASSOC ADMIN FOR POL COOR & INTEL RELATION.
	DIRECTOR ANALYSIS DIVISION.
SPECIAL STUDIES	SPECIAL ASSISTANT.
DEFENSE AFFAIRS	MANAGER, PROGRAM COORDINATION.
	ASST DIR FOR INDUSTRY & TECHNOLOGY.
	DIRECTOR, SPACE FLIGHT DIVISION.
SPACE FLIGHT	DEP DIR, INTERNATIONAL RELATIONS DIVISION.
	DEP SPACE STATION SUPPORT.
	SPEC ASST TO THE DIR INTL RELATIONS DIV.
	SPECIAL ASST FOR ADVANCED PLANNING & ANALYSIS.
	SPECIAL ASSISTANT TO THE DIRECTOR.
POLICY COORDINATION	MANAGER, INTERNATIONAL TECHNOL TRANSFER POL.
INTERNATIONAL RELATIONS	MANAGER, OPERATIONS INTEGRATION.
OFFICE OF MANAGEMENT SYSTEMS & FACILITIES	DEP DIR WIND TUNNEL PROJECT.
	SPECIAL ASSISTANT TO THE ASSOC ADMINISTRATOR.
SECURITY, LOGISTICS & INDUSTRIAL RELATIONS	PROGRAM MANAGER.
	CHIEF, INFORMATION SYST & TECHNOL OFFICE.
	DIR, LOGISTICS & SECURITY DIVISION.
AIRCRAFT MANAGEMENT	DIRECTOR, AIRCRAFT MANAGEMENT OFFICE.
INFORMATION RESOURCES MANAGEMENT	DIRECTOR, INFORMATION RESOURCES MGMT DIVISION.
	DEP DIR, INFORMATION RES MGMT DIVISION.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	DIRECTOR AUTOMATED INFO MGMT PROG OFC.
FACILITIES ENGINEERING	DEPUTY DIRECTOR, FACILITIES, ENGINEERING DIV.
	DIR ENVIRONMENTAL MANAGEMENT DIVISION.
	CHIEF, FACILITIES PLANNING & PROJECTS OFFICE.
	DIRECTOR, FACILITIES ENGINEERING DIVISION.
OFFICE OF SMALL & DISADVANTAGED BUSINESS UTILIZATION.	ASSOC ADMR FOR S & D BUSINESS UTILIZATION.
OFFICE OF LEGISLATIVE AFFAIRS	DEP ASSOC ADMIN.
	DEP ASSOC ADMIN FOR PROGRAMS.
OFFICE OF SPACE FLIGHT	CHIEF MEDICAL OFFICER.
	SPECIAL ASST TO THE ASSOC ADMR.
	TECH ASST TO DEP ASSOC ADMIN FOR SPACE SHUTTL.
	DIRECTOR, ADVANCED PROJECT OFFICE.
	SENIOR ENGINEER SPACE STATION PROGRAM.
POLICY & PLANS	DIR POLICY & PLANS.
INSTITUTIONS	DIRECTOR, RESOURCES MANAGEMENT DIVISION.
	DIR INSTITUTIONS.
	CHIEF PROGRAM EVALUATION.
CHIEF ENGINEER	MANAGER SYSTEMS ENGINEERING INTEGRATION.
	TECH ASST TO THE CHIEF ENGINEER.
	DEPUTY CHIEF ENGINEER.
MISSION DIRECTOR	ASST MISSION DIR MIR.
SPACE SHUTTLE PROGRAM	MANAGER SPACE SHUTTLE SYST INTEGRATION.
	MANAGER, MANAGEMENT INTEGRATION.
	MGR, NATL SPACE TRANS SYST INTEGRATION & OPS.
	ASSISTANT DIRECTOR FOR SPACE SHUTTLE PROGRAM.
	MANAGER, SAFETY & OBSOLESCENCE.
	TECHNICAL ASST TO THE ASSOC ADMIR.
	MANAGER, SHUTTLE PROJECTS OFFICE (MSFC).
	MANAGER SPACELAB CARRIER PROG.
	MANAGER LAUNCH INTEGRATION.
	DIRECTOR, SPACE SHUTTLE OPERATIONS.
	MANAGER, PROGRAM CONTROL (JSC).
	DIRECTOR, PHASE ONE PROGRAM (JSC).
SPACE STATION PROGRAM	MANAGER STRATEGIC UTILIZATION & OPS OFFICE.
	SPACE STATION PROGRAM MANAGER.
	SPACE STATION VEHICLE MANAGER.
	BUSINESS MANAGER, SPACE STATION PROGRAM OFC.
	DEPUTY DIRECTOR, SPACE STATION PROGRAM.
	DIRECTOR, MANAGEMENT OPERATIONS.
	DEPUTY SPACE STATION VEHICLE MANAGER.
	MANAGER INTERNATIONAL PARTNERS OFFICE.
JOHNSON SPACE CENTER	DEP MANAGER, ORBITER & GF PROJECTS OFFICE.
	CHIEF FINANCIAL OFFICER.
	SPEC ASST FOR ENGINEERING OPERATIONS & SAFETY.
	MANAGER FOR TECHNICAL PROJECTS.
	DEPUTY MANAGER FOR INTEGRATION.
	MANAGER FOR DEVELOPMENT.
	DIRECTOR OF HUMAN RESOURCES.
	DEP MGR, SPACE STATION PROJECTS OFFICE.
	MANAGER, ORBETER AND GF PROJECTS OFFICE.
	DEPUTY MANAGER, NEW INITIATIVES OFFICE.
	DEP MGR FOR PROG & OPERATIONS INTEGRATION.
	SPEC ASST FOR COMMUNITY R&S PROJECTS.
	DIR OF TECH TRANSFER & COMMERCIALIZATION.
	CHIEF INFORMATION OFFICER.
	DEPUTY CHIEF INFORMATION OFFICER.
	DEP MANAGER JOHNSON SPACE CTR PROJECTS OFFICE.
MISSION OPERATIONS	ASSISTANT DIRECTOR, MISSION OPERATIONS.
	DIRECTOR, MISSION OPERATIONS.
	ASSISTANT TO THE ASST DIR FOR PROGRAM SUPPORT.
	CHIEF FLIGHT DIRECTOR OFFICE.
	DEPUTY DIRECTOR, MISSION OPERATIONS.
	ASSISTANT DIRECTOR FOR PROGRAM SUPPORT.
	ASST DIR FOR OPERATIONS.
	CHIEF INTEGRATED PLANNING SYSTEM OFFICE.
	CHIEF SIMULATOR & OPERATIONS TECHNOLOGY DIV.
	MANAGER, MISSION OPS BUSINESS MGMT OFFICE.
	CHIEF, CONTROL CENTER SYSTEMS DIVISION.
FLIGHT CREW OPERATIONS	CHIEF, AIRCRAFT OPERATIONS DIVISION.
	DEP DIR, FLIGHT CREW OPERATIONS.
	MANAGER ASSURED CREW RETURN VEHICLE PROJECT.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	DEPUTY DIRECTOR, ENGINEERING.
	CHIEF STRUCTURES AND MECHANICS DIVISION.
	CHIEF, CREW & THERMAL SYSTEMS DIVISION.
	CHIEF, AUTOMATION, R&S DIVISION.
	CHIEF, SYSTEMS ENGINEERING DIVISION.
	DIRECTOR, ENGINEERING.
	CHIEF ENGINEER SPACE STATION PROGRAM.
	CHIEF TRACKING & COMMUNICATIONS DIVISION.
	DEPUTY MANAGER, ENGINEERING TECHNOL OFFICE.
	ASSISTANT TO THE DIRECTOR.
	CHIEF, NAVIGATION, CONTRL & AERONAUTICS DIV.
	CHIEF AVIONIC SYSTEMS DIVISION.
	DEP MGR, TECHNOL & PROJ IMPLEMENTATION OFC.
	ASSISTANT TO THE DIRECTOR, ENGINEERING.
	MANAGER, TECHNOL & PROJ IMPLEMENTATION OFC.
	DEPUTY CHIEF, AVIONIC SYSTEMS DIVISION.
SPACE & LIFE SCIENCES	MANAGER, LUNAR & MARS EXPLORATION PROG OFFICE.
	CHIEF, MEDICAL SCIENCES DIVISION.
	ASSISTANT DIRECTOR FOR ENGINEERING.
	ASSISTANT TO THE DIRECTOR FOR RUSSIAN PROGS.
	CHIEF, FLIGHT CREW SUPPORT DIVISION.
	ASSISTANT DIRECTOR FOR SPACE SCIENCE.
	MANAGER, ORBITER ENGINEERING OFFICE.
	DEPUTY DIRECTOR, SPACE AND LIFE SCIENCES.
	CHIEF FLIGHT DATA SYSTEMS DIVISION.
	MANAGER PAYLORD INTEGRATION & UTILIZATION OFC.
	LIFE SCIENCES REQUIREMENTS MANAGER.
	CHIEF, SOLAR SYSTEM EXPLORATION DIVISION.
INFORMATION SYSTEMS	DIRECTOR INFORMATION SYSTEMS.
	DEPUTY DIRECTOR, INFORMATION SYSTEMS.
BUSINESS MANAGEMENT	PROCUREMENT OFFICER.
	ASST DIR ADMINISTRATION.
	SPECIAL ASSISTANT TO THE DIRECTOR.
	ASSISTANT TO THE DIRECTOR.
CENTER OPERATIONS	DIR CENTER OPERATIONS.
	DEPUTY DIRECTOR, CENTER OPERATIONS.
SAFETY, RELIABILITY & QUALITY ASSURANCE	DIR, SAFETY, RELIABILITY, & QUALITY ASSURANCE.
	DEP DIR, SAFETY, RELIABILITY & QUALITY ASSURANCE.
WHITE SANDS TEST FACILITY	MANAGER, NASA WHITE SANDS TEST FACILITY.
KENNEDY SPACE CENTER	DIR PUBLIC AFFAIRS.
	ASSOCIATE DIRECTOR.
	DEPUTY CONTROLLER.
SHUTTLE MANAGEMENT & OPERATIONS	DIR, SHUTTLE LOGISTICS PROJECT MANAGEMENT.
	DIR OF SHUTTLE MGMT & OPERATIONS.
	DIRECTOR, GROUND ENGINEERING.
	DEP MANAGER, SPACE SHUTTLE SYST INTEGRATION.
	DEPUTY MANAGER LAUNCH INTGRATION.
SAFETY, RELIABILITY & QUALITY ASSURANCE	DIRECTOR, QUALITY ASSURANCE OFFICE.
	DIRECTOR, SAFETY AND RELIABILITY.
	DIRECTOR, QUALITY ASSURANCE
	DIRECTOR MISSION ASSURANCE
ENGINEERING DEVELOPMENT	DEPUTY DIRECTOR OF ENGINEERING DEVELOPMENT.
	DIR, MECHANICAL ENGINEERING.
	DIRECTOR, ELECTRONIC ENGINEERING.
INSTALLATION MANAGEMENT & OPERATIONS	DIRECTOR, INSTALLATION MGMT & OPERATIONS.
	DIRECTOR, FACILITIES ENGINEERING.
	DEPUTY DIR, OF INSTALLATION MGMT & OPERATIONS.
PAYLOAD MANAGEMENT & OPERATIONS	DIRECTOR, STS PAYLOAD OPERATIONS
	DIRECTOR, EXPENDABLE VEHICLES
	DIRECTOR LOGISTICS OPERATIONS
PROCUREMENT	DIRECTOR, PROCUREMENT.
BIOMEDICAL OPERATIONS & RESEARCH	DIRECTOR, BIOMEDICAL OPS & RES OFFICE.
MARSHALL SPACE FLIGHT CENTER	DIR, SYSTEMS SAFETY & RELIABILITY OFFICE.
	DIRECTOR, PROCUREMENT OFFICE.
	COMPTROLLER.
	ASSOC DIR FOR ADVANCED PLANNING.
	DIRECTOR, SAFETY & MISSION ASSURANCE OFFICE.
	DIR, HUMAN RES & ADMINISTRATIVE SUPPORT OFC.
	ASSOCIATE DIRECTOR.
	ASSISTANT TO THE ASSOCIATE DIRECTOR.
	ASSISTANT TO THE CENTER DIR FOR SPACE STATION.
	ASSOCIATE DIRECTOR (TECHNICAL).

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	ASSOCIATE DIRECTOR, ADMINISTRATIVE.
PROGRAM DEVELOPMENT	DEPUTY DIRECTOR, PROGRAM DEVELOPMENT.
	DIRECTOR, PRELIMINARY DESIGN OFFICE.
	DEPUTY MANAGER, TECHNOLOGY TRANSFER OFFICE.
	DIR, RESEARCH & TECHNOLOGY OFFICE.
SCIENCE & ENGINEERING	DIRECTOR, SPACE SCIENCES LAB.
	DIRECTOR, PROPULSION LABORATORY.
	DIRECTOR, SYST ANAL & INTEGRATION LABORATORY.
	DEP DIR STRUCTURES & DYNAMICS LABORATORY.
	DEPUTY DIR, MATERIALS & PROCESSES LABORATORY.
	DEP DIR, MISSION OPERATIONS LABORATORY.
	DEP DIR, SYST ANAL & INTEGRATION LABORATORY.
	CAREER RESERVED POSITIONS.
	DEPUTY DIRECTOR, PROPULSION LABORATORY.
	DIR ASTRIONICS LABORATORY.
	DEP DIR SCIENCE & ENGINEERING.
	DIR STRUCTURES DYNAMICS LABORATORY.
	CHIEF ENGINEER SPACE SHUTTLE MAIN ENGINE PROJ.
	ASST DIRECTOR SCIENCE & ENGINEERING.
	DIR, MATERIALS & PROCESSES LABORATORY.
	DEP DIR FOR SPACE TRANSPORTATION SYSTEMS.
	MANAGER SPACE STATION FURNACE FACILITY.
	DEPUTY MANAGER FOR DEVELOPMENT.
	ASSOC DIR SCI & ENGINEERING DIRECTORATE.
	DIR ADV TRANSPORTATION TECHN OFFICE.
	DIRECTOR, MISSION OPERATIONS LABORATORY.
	DEP MANAGER SUPER LIGHTWEIGHT EXTERNAL TANK.
	DEPUTY DIRECTOR, SPACE SCI LABORATORY.
	CHF ENG, REUSABLE LAUNCH VEHICLE PROJECT.
INSTITUTIONAL & PROGRAM SUPPORT	DIR INFO SYSTEMS OFFICE.
	DIR, INSTITUTIONAL & PROGRAM SUPPORT.
	DEP DIR, INSTITUTIONAL & SUPPORT.
	DIRECTOR, FACILITIES OFFICE.
	ASST DIR FOR DATA SYSTEMS.
	DIR ENVIRONMENTAL ENGINEERING & MGNT OFFICE.
SPACE SHUTTLE PROJECTS	MANAGER, EXTERNAL TANK PROJECT.
	MGR SOLID ROCKET BOOSTER PROJECT.
	MANAGER SPACE SHUTTLE MAIN ENGINE PROJECTS.
	MANAGER, REUSABLE SOLID ROCKET MOTOR PROJECT.
SCIENCE & APPLICATIONS PROJECTS	MANAGER GLOBAL HYDROLOGY & CLIMATE CENTER.
	MANAGER MICROGRAVITY PROJECTS.
OBSERVATORY PROJECTS	MANAGER, OBSERVATORY PROJECTS OFFICE.
	DEP MGR, OBSERVATORY PROJECTS OFFICE.
	CHIEF ENGINEER, OBSERVATORY PROJECTS.
PAYLOAD PROJECTS	DEP MANAGER PAYLOAD PROJECTS OFFICE.
TECHNOLOGY TRANSFER	DIRECTOR, TECHNOLOGY TRANSFER OFFICE.
	MGR EARTH & SPACE SCIENCES PROJECTS.
STENNIS SPACE CENTER	DIRECTOR, CENTER OPERATIONS.
	DEPUTY DIRECTOR, NASA STENNIS SPACE CENTER.
	ASSOC DIRECTOR FOR INSTITUTION.
	DIRECTOR, TEST ENGINEERING.
	DIR INFOR MANAGEMENT SYSTEMS.
OFFICE OF SPACE COMMUNICATIONS	MANAGER, WHITE SANDS SPACE NETWORK COMPLEX.
	CHIEF, COMMUNICATIONS SYSTEMS BRANCH.
GROUND NETWORKS	ASSISTANT ASSOCIATE ADMINISTRATORS (PLANS).
	DIR PROGRAM INTEGRATION DIVISION.
	SPECIAL ASST (OPERATIONS).
PROGRAM INTEGRATION	DIR, COMMUNICATIONS & DATA SYSTEMS DIV.
COMMUNICATIONS & DATA SYSTEMS	DIR, GROUND NETWORK DIVISION.
	DEP DIR, GROUND NETWORK DIVISION.
SPACE NETWORK	MANAGER, TDRSS CONTINUATION PROGRAM.
	MANAGER SPACE NETWORK OPERATIONS.
	DEPUTY DIRECTOR SPACE NETWORK DIVISION.
OFFICE OF SAFETY & MISSION ASSURANCE	DIR, NASA Q & P IMPROVEMENT PROGRAMS DIVISION
	DIRECTOR, SAFETY DIVISION.
	DIR SOFTWARE INDEPENDENT VERTICATION FACILITY.
	DEP ASSOC ADM FOR SAFETY & MISSION QUALITY.
	DIRECTOR, PROGRAMS ASSURANCE DIVISION.
	MGR INTL SP STN INDEP A & O ACT.
	DIRECTOR, PAYLOADS & AERONAUTICS DIVISION.
	TECHNICAL ADVISOR FOR SR M QA INITIATIVES.
	DIRECTOR, QUALITY MANAGEMENT OFFICE.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
OFFICE OF AERONAUTICS	DIRECTOR STRATEGY & POLICY OFFICE.
	DEP ASSOC ADMIN FOR AERONAUTICS MGMT.
	MANAGER TECHNOLOGY TRANSFER.
	SENIOR ENGINEER.
RESOURCES & MANAGEMENT SYSTEMS	DIR, RESOURCES & MANAGEMENT SYSTEMS OFFICE.
HIGH PERFORMANCE COMPUTING & COMMUNICATIONS	MGR HIGH-PERFORMANCE COMPUTING/COMMUNICATIONS.
HIGH PERFORMANCE AIRCRAFT	ASSISTANT DIRECTOR FOR PROGRAM EVALUATION.
HIGH SPEED RESEARCH	DEP DIR HIGH SPEED RESEARCH DIVISION.
INSTITUTIONS	ASST DIRECTOR FOR INSTITUTIONS (FACILITIES).
	DIRECTOR, INSTITUTIONS DIVISION.
NATIONAL AERO-SPACE PLANE	DEP PROG MANAGER NATL AERO-SPACE PLANE.
	DEP DIR, NATIONAL AERO-SPACE PLANE OFFICE.
	DIRECTORM NATIONAL AERO-SPACE PLANE.
	ASST DIR FOR PROGRAM DEVELOPMENT.
CRITICAL TECHNOLOGIES	DIRECTOR, CRITICAL TECHNOLOGIES DIVISION.
AMES RESEARCH CENTER	COMPTROLLER.
	DEPUTY DIRECTOR OF ADMINISTRATION.
	MANAGER, ROTORCRAFT TECHNOLOGY PNNG ACTIVITY.
	SPECIAL ASST FOR ADVANCED CONCEPTS.
	SPECIAL ASSISTANT FOR PROGRAMS.
AEROSPACE SYSTEMS	CHIEF AERONAUTICAL T & S DIVISION.
	CHIEF FLIGHT MGMT & HUMAN FACTORS DIVISION.
	ASSOCIATE DIRECTOR FOR AERONAUTICS.
	DEPUTY DIRECTOR OF AERONAUTICS.
	CHIEF, APPLIED AERODYNAMICS DIVISION.
FLIGHT OPERATIONS	DEPUTY CHF, AIRBORNE SCIENCE & FLIGHT RES DIV.
AEROPHYSICS	CHIEF, SPACE TECHNOLOGY DIVISION.
	DEPUTY DIRECTOR OF INFORMATION SYSTEMS.
SPACE RESEARCH	CHIEF, SPACE SCIENCE DIVISION.
	CHIEF, EARTH SYSTEMS SCIENCE DIVISION.
	CHIEF, ADVANCED LIFE SUPPORT DIVISION.
	CHIEF, INFORMATION SCIENCES DIVISION.
	DEPUTY DIRECTION OF SPACE RESEARCH.
ADMINISTRATION	DEPUTY DIRECTOR OF CENTER OPERATIONS (ADM).
	CHIEF, AIRBORNE SCIENCE & FLIGHT RES DIV.
ENGINEERING & TECHNICAL SERVICES	CHIEF COMPUTATIONAL FLUID DYNAMICS BRANCH.
	CHF, SYSTEMS ENGINEERING DIV.
DRYDEN FLIGHT RESEARCH CENTER	ASST CHIEF, FLIGHT OPERATIONS DIVISION.
FLIGHT OPERATIONS	CHF, FLIGHT OPERATIONS DIVISION.
AEROSPACE PROJECTS	CHIEF AEROSPACE PROJECTS OFFICE.
RESEARCH ENGINEERING	CHF ENGINEER.
	CHIEF RESEARCH ENGINEERING DIVISION.
LANGLEY RESEARCH CENTER	CHIEF ENGINEER.
	DIR OF EDUCATION PROGRAMS.
	ASSISTANT DIRECTOR FOR PLANNING.
	SPECIAL ASSISTANT TO THE DIRECTOR.
AERONAUTICS	CHIEF, AERONAUTICS SYSTEMS ANALYSIS DIV.
	DEPUTY DIRECTOR, AERONAUTICS PROGRAM GROUP.
SPECE & ATMOSPHERIC SCIENCES	CHIEF ATMOSPHERIC SCIENCES DIVISION.
	DEPUTY DIR. S & A SCIENCES PROGRAM GROUP.
	CHIEF, SPACE SYSTEMS & CONCEPT DIVISION.
RESEARCH & TECHNOLOGY	CHIEF MATERIALS DIVISION.
	CHIEF STRUCTURES DIVISION.
	CHIEF INFORMATION SYSTEMS DIVISION.
	CHF, FLIGHT DYNAMICS & CONTROLS DIVISION.
	CHIEF, FLUID MECHANICS DIVISION.
	DEPUTY DIR, RESEARCH & TECHNOLOGY GROUP.
	CHIEF AERODYNAMICS DIVISION.
	MANAGER, SPACE TECHNOLOGY INITIATIVES OFFICE.
	DIRECTOR, RESEARCH & TECHNOLOGY GROUP.
	CHIEF, GAS DYNAMICS DIVISION.
INTERNAL OPERATIONS	CHF., ANALYSIS & COMPUTATION DIVISION.
	DEPUTY DIR, INTERNAL OPS GROUP (FE & O).
	CHIEF FLIGHT ELECTRONICS DIVISION.
	CHIEF EXPERIMENTAL TESTING TECHNOLOGY DIV.
	DEPUTY DIR, FOR ENGINEERING & INFO SYST (IOG).
	CHIEF, AEROSPACE MECHANICAL SYSTEM DIVISION.
	HEAD, PLANNING & RESOURCES MGMT OFFICE.
	CHIEF ENGINEER S E & O.
	SPECIAL ASSISTANT.
HIGH-SPEED RESEARCH PROJECT	DIRECTOR FOR HIGH-SPEED RES PROJECT OFFICE.
HYPERSONIC VEHICLES	DIRECTOR, HYPERSONIC VEHICLES OFFICES.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
SAFETY, ENVIRONMENTAL & MISSION ASSURANCE	CHF, SYST SFTY, QUALITY, & RELIABILITY DIV.
COMPTROLLER	CHIEF FINANCIAL OFFICER.
LEWIS RESEARCH CENTER	DEPUTY DIRECTOR FOR OPERATIONS.
AERONAUTICS	CHF. PROPULSION SYSTEMS DIV.
	CHIEF, INSTRUMENTATION & CONTROL TECHNOL DIV.
	CHF. INTERNAL FLUID MECHANICS DIVISION.
	CHIEF TECHNOLOGIST.
	CHF. AEROPROPULSION ANALYSIS OFFICE.
AEROSPACE TECHNOLOGY	CHIEF, SPACE PROPULSION TECHNOLOGY DIVISION.
	CHIEF, STRUCTURAL SYSTEMS DIVISION.
	CHIEF, STRUCTURES DIVISION.
	DEPUTY DIRECTOR OF AEROSPACE TECHNOLOGY.
	CHIEF, SPACE COMMUNICATIONS DIVISION.
	CHIEF, POWER TECHNOLOGY DIVISION.
	CHIEF, INTERDISCIPLINARY TECHNOLOGY OFFICE.
SPACE FLIGHT SYSTEMS	CHF, ADVANCED SPACE ANALYSIS OFFICE.
	MANAGER, ACTS PROJECT OFFICE.
	CHIEF, SPACE EXPERIMENTS DIVISION.
	DEPUTY DIRECTOR OF SPACE FLIGHT SYSTEMS.
	CHIEF POWER SYSTEMS PROJECT OFFICE.
ENGINEERING	CHF, ELECTRONICS & CONTROL SYSTEMS DIVISION.
	DIRECTOR OF ENGINEERING.
	DEPUTY DIRECTOR OF ENGINEERING.
	CHIEF, PROPULSION & FLUID SERVICES DIVISION.
ADMINSTRATION & COMPUTER SERVICES	CHIEF, COMPUTER SERVICES DIVISION.
	DIR, ADM & COMPUTER SERVICES DIRECTORATE.
EXTERNAL PROGRAMS	DIRECTOR, EXTERNAL PROGRAMS.
MISSION SAFETY & ASSURANCE	CHF, OFC OF SFTY, RELIABILITY & QUALITY ASSUR.
COMPTROLLER	COMPTROLLER.
OFFICE OF SPACE SCIENCE	SPECIAL AST TO THE DEPUTY ASSOC ADMIN.
	ASST ASSOCIATE ADMR FOR TECHNOLOGY.
	MANAGER, CASSINI PROGRAM.
SOLAR SYSTEM EXPLORATION	DEP DIR, SOLAR SYSTEM EXPLORATION DIVISION.
	CHIEF, FLIGHT PROGRAMS BRANCH.
	DEP DIR, SOLAR SYSTEM EXPLORATION DIVISION.
	CHIEF FLIGHT PROGRAMS BRANCH.
	DIRECTOR, SOLAR SYSTEM EXPLORATION DIVISION.
SPACE PHYSICS	CHIEF, SOLAR PHYSICS BRANCH.
	CHIEF, FLIGHT PROGRAMS BRANCH.
	DIRECTOR, SPACE PHYSICS DIVISION.
	CHIEF, PLANETARY SCIENCE BRANCH.
TECHNOLOGY & INFORMATION SYSTEMS	CHIEF, MISSION OPS/SMALL MISSIONS DEV BRANCH.
	DIR HEADQUARTERS INFO RES MGMT DIVISION.
	CHF, INFORMATIN SYSTEMS BRANCH.
ASTROPHYSICS	CHF, HIGH ENERGY ASTROPHYSICS BR.
	CHF, ULTRAVIOLET/VISIBLE ASTROPHYSICS BRANCH.
	DEPUTY DIR ASTROPHYSICS DIVISION.
	ASSISTANT DIRECTOR FOR STRATEGIC PLANNING.
	DIRECTOR, RESOURCES ANALYSIS & INTEGRATION.
OFFICE OF LIFE & MICROGRAVITY SCIENCES & APPLICATIONS.	MANAGER, LAUNCH VEHICLES OFFICE.
MICROGRAVITY SCIENCE & APPLICATIONS	DEP DIR MICROGRAVITY SCIENCE APPLICATIONS DIV.
	DIR, MICROGRAVITY SCIENCES & APPLICATIONS DIV.
LIFE & BIOMEDICAL SCIENCES	CHIEF ENVIR SYS & LIFE SUPPORT BRANCH.
	DIR LIFE & BIOMEDICAL SCIENCE & APPLICS DIV.
	DEP DIR, LIFE SCIENCES DIVISION.
AEROSPACE MEDICINE & OCCUPATIONAL HEALTH	DIRECTOR, PROGRAM INTEGRATION OFFICE.
	DIR, AEROSPACE MED & OCCUPATIONAL HEALTH DIV.
FLIGHT SYSTEMS	CHF, SPACE STATION UTILIZATION BRANCH.
	CHIEF MISSION MANAGEMENT BRANCH.
	DEPUTY DIR FLIGHT SYSTEMS DIVISION.
OFFICE OF INSPECTOR GENERAL	ASSIST INSPECTOR GENERAL FOR INVESTIGATION.
	ASSISTANT INSPECTOR GENERAL FOR AUDITING.
ORGANIZATION ABOLISHED	ASST TO THE ASST DIR FOR PROGRAM SUPPORT.
OFFICE OF SPACE ACCESS & TECHNOLOGY	MANAGER SYSTEMS INTEGRATION.
	CHIEF ENGINEER.
	SPECIAL ASSISTANT TO THE DIRECTOR.
	MANAGER, INDUSTRY PLANNING.
	CAREER RESERVED POSITIONS.
	MANAGER, ORBITAL MANEUVERING VEHICLES.
	MANAGER, COMMUNICATIONS EXPERIMENTS.
	DEPUTY ASSOC ADMR FOR SPACE ACCESS & TECHNOL.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	DIRECTOR, COMMERCIAL DEV & TECHNOL TRANSFER.
	MANAGER FOR PROPULSION TECHNOLOGY.
	MANAGER FOR PROGRAM INTEGRATION.
	DIRECTOR, SPACE PROCESSING DIVSION.
	DEPUTY DIRECTOR, MANAGEMENT OPS DIVISION.
	SPECIAL ASST TO THE ASSOC ADMINISTRATOR.
	SPECIAL ASST FOR COMMERCIAL DEVELOPMENT.
	SPECIAL ASSISTANT FOR FACILITIES.
	DEPUTY DIR SPACECRAFT SYSTEMS DIVISION.
	DEPUTY DIR COMMERCIAL DEV & TECHNOL TRANSFER.
	DEPUTY DIRECTOR, SPACE TRANSPORTATION DIV.
	DIRECTOR, SPACE TRANSPORTATION DIVISION.
OFFICE OF MISSION TO PLANET EARTH	DEP ASSOC ADMR FOR MISSION TO PLANET EARTH.
	SENIOR SCIENCE ADVISOR FOR INTL PROGRAMS.
FLIGHT SYSTEMS	DIRECTOR, FLIGHT SYSTEMS DIVISION.
OPERATIONS, DATA & INFORMATION SYSTEMS	DIRECTOR, OPERATIONS DATA & INFO SYST DIV.
	CHIEF, EARTH SCIENCE D & I SYSTEM BRANCH.
SCIENCE	CHF, ATMOSPHERIC DYNAMICS AND RADIATION BR.
	DIRECTOR SCIENCE DIVISION.
GODDARD SPACE FLIGHT CENTER	DIRECTOR OF HUMAN RESOURCES.
	DIR OF UNIVERSITY PROGRAMS.
COMPTROLLER	COMPTROLLER.
MANAGEMENT OPERATIONS	DEP DIR OF MANAGEMENT OPERATIONS.
	ASSOCIATE DIRECTOR.
	ASSOCIATE DIRECTOR FOR ACQUISITION.
FLIGHT ASSURANCE	DIRECTOR OF FLIGHT ASSURANCE.
	DEP DIR OF FLIGHT ASSURANCE.
FLIGHT PROJECTS	DEPUTY DIRECTOR OF FLIGHT PROJECTS.
	DEP DIR FLIGHT PROJECT FOR PLNG BUSINESS MGMT.
	ASSOC DIR OF FLIGHT PROJ FLIGHT PROJ DIR.
	MGR HUBBLE SPACE TELESCOPE OPER & GROUND SYST.
	DEPUTY DIRECTOR FOR INSTITUTIONAL PROJECTS.
	PROJECT MGR, EARTH OBSERVING SYST AM PROJECT.
	ASSOC DIR OF FLT PROJ HUBBLE SPACE TELESCOPE.
	PROJ MGR, INTL SOLAR TERR PHYSICS PROJ (ISTP).
	DIR OF FLIGHT PROJECTS.
	PROJ MGR HUBBLE SPC TELESCOPE SYST & SERV.
	ASSOCIATE DIRECTOR OF FLIGHT PROJECTS.
	TRACKING & DATA RELAY SATELLITE TDRS PROJ MGR.
	PROJECT MANAGER METEOROLOGICAL (METSAT) PROJEC.
	ASSOC DIR FOR EARTH SCI DATA & INFO SYSTEM.
MISSION OPERATIONS & DATA SYSTEMS	PROJ MGR, EOS-PM PROJ FLIGHT PROJ DIRECT.
	CHIEF, NASA COMMUNICATIONS DIVISION.
	ASSOC DIR OF MISSION OPERATIONS & DATA SYST.
	DEP DIR OF MISSION OPERATIONS & DATA SYSTEMS.
	CHIEF NETWORKS DIVISION.
	CHIEF, FLIGHT DYNAMICS DIVISION.
	PROJECT MGR, EARTH SCI DATA & INFO SYSTEM.
	CHF, MISSION OPS & SYST DEV DIVISION.
SPACE SCIENCES	CHIEF, LAB FOR ASTRONOMY AND SOLAR PHYSICS.
	CHIEF, LAB FOR EXTRATERRESTRIAL PHYSICS.
	ASSOC DIR FOR PROJECTS ENGINEERING.
	DIRECTOR OF SPACE SCIENCES.
	CHIEF, GODDARD INSTITUTE FOR SPACE STUDIES.
	CHIEF LABORATORY FOR HIGH ENERGY ASTROPHYSICS.
	DEPUTY DIRECTOR OF SPACE SCIENCES.
ENGINEERING	DEP DIR OF ENGINEERING.
	CHF, APPLIED ENGINEERING DIV.
	CHIEF ENGINEER.
	CHIEF, SPECIAL PAYLOADS DIVISION.
	CHIEF, MECHANICAL SYSTEMS DIVISION.
	CHIEF, SYSTEMS ENGINEERING DIVISION.
SUBORBITAL PROJECTS & OPERATIONS	CHF, OPERATIONS DIVISION.
	GLOBAL GEOSPACE SCIENCES (GGS) PROJECT MGR.
	DEPUTY DIRECTOR, MISSION TO PLANET EARTH.
EARTH SCIENCES	CHIEF LAB FOR HYDROSPHERIC PROCESSES.
	DEP ASSOC DIR OF FLIGHT PROJ FOR EOS RES MGT.
	CHIEF, SPACE DATA AND COMPUTING DIVISION.
	ASSOCIATE DIR FOR MISSION TO PLANET EARTH.
	ASST DIR OF EARTH SCI FOR PROJECTS ENG.
	CHF, LABORATORY FOR ATMOSPHERES.
	DEPUTY DIRECTOR FOR EARTH SCIENCES.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	DIRECTOR FOR EARTH SCIENCES.
	CHIEF LABORATORY FOR TERRESTRIAL PHYSICS.
	DEPUTY ASSOC DIR FOR EARTH SCI D & I SYST.
OFFICE OF POLICY AND PLANS	DIRECTOR OF SPECIAL STUDIES.
NATIONAL ARCHIVES & RECORDS ADMINISTRATION:	
NATIONAL ARCHIVES & RECORDS ADMINISTRATION	DEPUTY ARCHIVIST OF THE UNITED STATES.
	ASST ARCHIVIST FOR THE NATIONAL ARCHIVES.
	ASST ARCHIVIST FOR PRESIDENTIAL LIBRARIES.
	ASST ARCHIVIST FOR FEDERAL RECORDS CENTERS.
	DIRECTOR OF THE FEDERAL REGISTER.
	ASST ARCHIVIST FOR RECORDS ADMINISTRATION.
	DIRECTOR, LYNDON B. JOHNSON LIBRARY.
	ASST ARCHIVIST FOR SPEC & REGL ARCHIVES.
	ASSISTANT ARCHIVIST FOR ADMINISTRATIVE SERV.
	ASSISTANT ARCHIVIST FOR POLICY & IRM SERVICES.
NATIONAL CAPITAL PLANNING COMMISSION:	
NATIONAL CAPITAL PLANNING COMMISSION STAFF	EXECUTIVE DIRECTOR.
	DEPUTY EXECUTIVE DIRECTOR.
	DIR OF INTERGOVERNMENTAL & PUBLIC AFFAIRS.
	GENERAL COUNSEL.
NATIONAL ENDOWMENT FOR THE ARTS:	
NATIONAL ENDOWMENT FOR THE ARTS	DIRECTOR OF PROGRAM COORDINATION.
	DEPUTY CHAIRMAN FOR MANAGEMENT.
NATIONAL ENDOWMENT FOR THE HUMANITIES:	
NATIONAL ENDOWMENT FOR THE HUMANITIES	DIR, OFFICE OF PLANNING & BUDGET.
	ASST CHAIRMAN FOR OPERATIONS.
NATIONAL LABOR RELATIONS BOARD:	
OFC OF THE BOARD MEMBERS	EXECUTIVE SECY.
	DEPUTY EXECUTIVE SECRETARY.
	INSPECTOR GENERAL.
DIV OF ENFORCEMENT LITIGATION	DEPUTY ASSOC. GEN. COUNSEL APPELLATE COURT BR.
	DIRECTOR, OFFICE OF APPEALS.
DIV OF ADVICE	ASSOCIATE GEN COUNSEL, DIV OF ADVICE.
	DEPUTY ASSOC GEN COUNSEL.
DIV OF ADMINISTRATION	DIRECTOR OF ADMINISTRATION.
	DEPUTY DIRECTOR OF ADMINISTRATION.
DIV OF OPERATIONS MANAGEMENT	ASSOC GENERAL COUNSEL, DIV OF OPERATION-MGMT.
	DEP ASSO GEN COUNSEL, DIV OF OPERATIONS-MGMT.
	ASSISTANT GENERAL COUNSEL.
	ASSISTANT GENERAL COUNSEL.
	ASSISTANT GENERAL COUNSEL.
	ASSISTANT GENERAL COUNSEL.
	ASSIST TO THE GENERAL COUNSEL.
REGIONAL OFFICES	REGL DIR REC 1 BOSTON.
	REGIONAL DIRECTOR, REG. 2, NEW YORK.
	REGIONAL DIRECTOR, REG. 3, BUFFALO.
	REGL DIR REG 4 PHILADELPHIA.
	REGIONAL DIRECTOR, REG. 5, BALTIMORE.
	REGIONAL DIRECTOR, REG. 6, PITTSBURGH.
	REGL DIR, REGION 7, DETROIT MICH.
	REGIONAL DIRECTOR, REG. 8, CLEVELAND.
	REGIONAL DIRECTOR, REG. 9, CINCINNATI.
	REGL DIR REG 10 ATLANTA.
	REGL. DIR., REG. 11, WINSTON SALEM.
	REGIONAL DIRECTOR, REG 12, TAMPA.
	REGIONAL DIRECTOR, REG 13, CHICAGO.
	REGL DIR REG 14 ST LOUIS.
	REGL DIR REG 15 NEW ORLEANS.
	REGL DIR REG 16 FT WORTH.
	REGL DIR REG 17 KANSAS CITY.
	REGL DIR REG 18 MINNEAPOLIS.
	REGL DIR REG 19 SEATTLE.
	REGIONAL DIR, REG 20, SAN FRANCISCO.
	REGIONAL DIRECTOR, REG. 21, LOS ANGELES.
	REGIONAL DIRECTOR REG 22 NEWARK.
	REGIONAL DIRECTOR REG 24 HATO REY PUERTO RICO.
	REGL DIR, REG 25, INDIANAPOLIS.
	REGL DIR REG 26 MEMPHIS.
	REGL DIR REG 27 DENVER.
	REGL. DIR. REG. 28 PHOENIX.
	REGL DIR REG 29 BROOKLYN.
	REGL DIR REG 30 MILWAUKEE.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	REGL. DIR., REG 32, OAKLAND.
	REGIONAL DIRECTOR, REG. 33 PEORIA, IL.
	REGL DIR REG 31 LOS ANGELES.
	REGIONAL DIRECTOR REG 34 HARTFORD.
NATIONAL SCIENCE FOUNDATION:	
OFFICE OF THE DIRECTOR	SENIOR SCIENCE ADVISOR.
	EXECUTIVE ASST & SPECIAL COUNSEL.
	EXECUTIVE ASST & SPECIAL COUNSEL.
OFFICE OF THE GENERAL COUNSEL	DEPUTY GENERAL COUNSEL.
OFFICE OF POLICY SUPPORT	SENIOR STAFF ASSOCIATE PROGRAM EVALUATION.
	SENIOR STAFF ASSOCIATE POLICY ANALYSIS.
	SENIOR ADVISOR.
	SENIOR ADVISOR.
	SR STAFF ASSOCIATE/POLICY ANALYSIS.
	SENIOR STAFF ASSOCIATE.
OFFICE OF POLAR PROGRAMS	MANAGER POLAR OPS SECTION.
	HEAD, POLAR COORDINATION & INFO SECTION.
	DEPUTY OFFICE DIRECTOR.
	HEAD POLAR RESEARCH SUPPORT SECTION.
OFFICE OF THE INSPECTOR GENERAL	INSPECTOR GENERAL.
	ASSISTANT INSPECTOR GENERAL FOR OVERSIGHT.
	DEP INSPECTOR GEN & SENIOR LEGAL ADVISOR.
	ASST INSPECTOR GENERAL FOR AUDIT.
NATIONAL SCIENCE BOARD	SENIOR STAFF ASSOCIATE.
DIRECTORATE FOR GEOSCIENCES	SENIOR SCIENCE ASSOCIATE.
DIVISION OF ATMOSPHERIC SCIENCES.	HEAD, NCAR COORDINATION STAFF.
	SECTION HEAD, UPPER ATMOSPHERE SECTION.
	HEAD LOWER ATMOSPHERE SECTION.
DIVISION OF EARTH SCIENCES	HEAD MAJOR PROJECTS SECTION.
	SECTION HEAD, RESEARCH GRANTS SECTION.
DIVISION OF OCEAN SCIENCES	SECTION HEAD OCEAN SCIENCES RESEARCH SECTION.
DIRECTORATE FOR ENGINEERING	SENIOR ENGINEERING ADVISOR.
DIVISION OF ENGINEERING EDUCATION & CENTERS	DEPUTY DIVISION DIRECTOR (EDUCATION).
	SENIOR STAFF ASSOCIATE.
DIVISION OF DESIGN, MANUFACTURE & INDUSTRIAL INNOVATION.	SENIOR ADVISOR, TECHNOLOGY INTEGRATION.
	SENIOR ADVISOR.
DIV OF ELECTRICAL AND COMMUNICATIONS SYSTEMS	DEPUTY DIVISION DIRECTOR.
DIVISION OF CIVIL AND MECHANICAL SYSTEMS	HEAD HAZARD MITIGATION SECTION.
	HEAD, MECHANICAL & STRUCTURAL SYST SECTION.
DIRECTORATE FOR BIOLOGICAL SCIENCES	EXECUTIVE OFFICER.
DIVISION OF ENVIRONMENTAL BIOLOGY	DEPUTY DIVISION DIRECTOR.
DIRECTORATE FOR MATHEMATICAL AND PHYSICAL SCIENCES.	EXECUTIVE OFFICER.
	SENIOR ADVISOR FOR PLANNING, ANALY & POLICY.
DIVISION OF PHYSICS	DEPUTY DIVISION DIRECTOR.
	EXECUTIVE OFFICER.
DIVISION OF ASTRONOMICAL SCIENCES	EXECUTIVE OFFICER.
DIVISION OF MATHEMATICAL SCIENCES	DEPUTY DIVISION DIRECTOR.
	EXECUTIVE OFFICER.
DIVISION OF MATERIALS RESEARCH	EXECUTIVE OFFICER.
	SENIOR STAFF SCIENTIST.
DIVISION OF CHEMISTRY	DEP DIR DIVISION OF CHEMISTRY.
DIRECTORATE FOR EDUCATION & HUMAN RESOURCES	DEPUTY ASST DIRECTOR.
	SENIOR STAFF ASSOCIATE.
	SENIOR STAFF ASSOCIATE.
DIVISION OF UNDERGRADUATE EDUCATION	SENIOR STAFF ASSOCIATE.
DIVISION OF HUMAN RESOURCE DEVELOPMENT	DEPUTY DIRECTOR.
DIRECTORATE FOR SOCIAL, BEHAVIORAL AND ECONOMIC SCIENCES.	EXE OFFICER SOCIAL BEHAVIORAL ECON SCIENCES.
	SENIOR ADVISOR PLANNING & POLICY.
DIVISION OF INTERNATIONAL PROGRAMS	DEPUTY DIVISION DIRECTOR.
	SENIOR STAFF ASSOCIATE.
	SENIOR STAFF ASSOCIATE.
DIVISION OF SOCIAL, BEHAVIORAL & ECONOMIC RESEARCH	DEPUTY DIRECTOR.
	SENIOR STAFF ASSOCIATE.
DIRECTORATE FOR COMPUTER & INFO SCIENCE & ENGINEERING.	DEPUTY ASST DIR.
DIV OF COMPUTER AND COMPUTATION RESEARCH	DEPUTY DIVISION DIRECTOR.
DIV OF INFORMATION, ROBOTICS & INTELLIGENT SYSTEMS	DEPUTY DIVISION DIRECTOR.
DIVISION OF MICROELECTRONIC INFORMATION PROCESSING SYS.	DEPUTY DIVISION DIRECTOR.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
DIV OF NETWORKING & COMM RES & INFRASTRUCTURE	DEPUTY DIVISION DIRECTOR.
OFFICE OF BUDGET, FINANCE AND AWARD MANAGEMENT	DIRECTOR, OFC OF BUDGET, F&A MANAGEMENT.
	DEP DIR, OFC OF BUDGET, F&A MANAGEMENT.
BUDGET DIVISION	DIRECTOR, BUDGET DIVISION.
DIVISION OF FINANCIAL MANAGEMENT.	DIVISION DIRECTOR.
DIVISION OF GRANTS & AGREEMENTS.	DIVISION DIRECTOR.
DIVISION OF CONTRACTS, POLICY & OVERSIGHT	DIVISION DIRECTOR.
OFFICE OF INFORMATION AND RESOURCE MANAGEMENT	DEP DIR, OFC OF INFORMATION & RESOURCE MGMT.
	SENIOR STAFF ASSOCIATE.
DIVISION OF INFORMATION SYSTEMS.	DEP DIR, DIV OF INFORMATION SYSTEMS.
DIVISION OF HUMAN RESOURCE MANAGEMENT	DIV DIR, DIV OF HUMAN RESOURCE MANAGEMENT.
DIVISION OF ADMINISTRATIVE SERVICES	DIR, DIVISION OF ADMINISTRATIVE SERVICES.
NATIONAL TRANSPORTATION SAFETY BOARD:	
OFFICE OF THE MANAGING DIRECTOR	DEPUTY MANAGING DIRECTOR.
	CHIEF TECHNICAL ADVISOR.
OFFICE OF ADMINISTRATION	DIR OFFICE OF ADMINISTRATION.
OFFICE OF AVIATION SAFETY	DIRECTOR OFC OF AVIATION SAFETY.
	DEPUTY DIRECTOR OFC OF AVIATION SAFETY.
OFFICE OF RESEARCH & ENGINEERING	DIR OFC OF RESEARCH AND ENGINEERING.
	DEPUTY DIR OFC OF RESEARCH AND ENGINEERING.
OFFICE OF SAFETY RECOMMENDATIONS	DIRECTOR OFC OF SAFETY RECOMMENDATIONS.
OFFICE OF SURFACE TRANSPORTATION SAFETY	DIR OFC OF SURFACE TRANSPORTATION SAFETY.
	DEPUTY DIRECTOR.
NUCLEAR REGULATORY COMMISSION:	
ATOMIC SAFETY AND LICENSING BRD PANEL	CHAIRMAN ASLBP.
	DEPUTY CHIEF ADMINISTRATIVE JUDGE EXECUTIVE.
OFFICE OF THE INSPECTOR GENERAL.	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	ASST INSPECTOR GENERAL FOR AUDITS.
DEPUTY GC FOR LICENSING & REGULATION	DEPUTY ASSISTANT GC/LEGISLATIVE COUNSEL.
DEP GC FOR HEARINGS, ENFORCEMENT & ADMINISTRATION	DEPUTY ASSISTANT GC FOR ADMINISTRATION.
ASSISTANT GC FOR HEARINGS AND ENFORCEMENT	DEPUTY ASSISTANT GENERAL COUNSEL.
	DEPUTY ASSISTANT GENERAL COUNSEL.
	DEPUTY ASSISTANT GENERAL COUNSEL.
OFFICE OF COMMISSION APPELLATE ADJUDICATION	DIR OFC OF COMM APPELLATE ADJUDICATION.
DIVISION OF OPERATIONAL ASSESSMENT	CHIEF ENERGY RESPONSE BRANCH.
	CHF, DIAGNOSTIC EVAL & INCIDENT INVEST BRANCH.
DIVISION OF SAFETY PROGRAMS	CHIEF REACTOR ANALYSIS BRANCH.
	CHF RELIABILITY & RISK ASSESSMENT BRANCH.
OFFICE OF ADMINISTRATION	ASSOC DIR FOR CONTRACT, SECURITY, FOI & PUBL.
	DIRECTOR, DIV OF SECURITY.
	DIR DIV OF FREEDOM OF INFO & PUBLICATIONS.
OFFICE OF INFORMATION RESOURCES MANAGEMENT	DEP DIR/LSS ADMR, OFC OF INFO RES MGMT.
OFFICE OF THE CONTROLLER	DEP CHIEF FINANCIAL OFFICER/CONTROLLER.
	DEPUTY CONTROLLER.
	DIR DIVISION OF BUDGET AND ANALYSIS.
	DIR DIVISION OF ACCOUNTING AND FINANCE.
	SPECIAL ASSISTANT FOR INTERNAL CONTROLS.
OFC OF SMALL AND DISADV BUS UTILIZATION/CIVIL RIGHTS	DIRECTOR.
OFFICE OF NUCLEAR REACTOR REGULATION	PROJ DIR PROJECT DIRECTORATE II 1.
	PROJECT DIRECTOR PROJECT DIRECTORATE IV–3.
	CHF, VENDOR INSPECTION BRANCH.
	CHF, RADIATION PROTECTION BRANCH.
	DEP DIR DIV OF RADIATION SAFETY & SAFEGUARDS.
DIVISION OF INSPECTION AND SUPPORT PROGRAMS	DIR, INSPECTION & SUPPORT PROGRAMS.
	CHIEF, PLNG, PROGRAM & MGMT SUPPORT BRANCH.
	CHF, INSPECTION PROGRAM BRANCH.
	CHF, SPECIAL INSPECTIONS BRANCH.
ASSOCIATE DIRECTOR FOR PROJECTS.	DIR, COST BENEFITS LICENSE ACT PROGRAMS.
DIVISION OF REACTOR PROJECTS I–II.	
	PROJECT DIR, PROJECT DIRECTORATE I–1.
	PROJECT DIRECTOR, PROJECT DIRECTORATE I–2.
	PROJECT DIRECTOR, PROJECT DIRECTORATE I–4.
	PROJ DIR PROJECT DIRECTORATE II 2.
	PROJ DIR PROJECT DIRECTORATE II 3.
	PROJECT DIR PROJECT DIRECTORATE II–4.
ORGANIZATION ABOLISHED	DEPUTY DIR, DIV OF REACTOR PROJECT I & II.
DIVISION OF REACTOR PROJECTS III & IV	PROJECT DIRECTOR, PROJECT DIRECTORATE I–3.
	DEP DIR DIV OF PROJECT SUPPORT.
	CHF, TECHNICAL SPECIFICATION BRANCH.
	PROJ DIR PROJECT DIRECTORATE III 1.
	PROJ DIR PROJECT DIRECTORATE III 2.
	PROJ DIRECTOR PROJECT DIRECTORATE III 3.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
DIVISION OF ENGINEERING	PROJ DIR, PROJECT DIRECTORATE IV–1. CHF, EVENTS A&G COMMUNICATIONS BRANCH. PROJ DIR, N–P REACTOR, D&E PROJ DIRECTORATE. PROJECT DIR, PROJ DIRECTORATE IV–2. CHIEF, MATERIALS & CHEMICAL ENGINEERING BR. CHF, MECHANICAL ENGINEERING BRANCH. CHIEF CIVIL ENG & GEOSCIENCES BRANCH. CHIEF ELECTRICAL ENGINEERING BRANCH.
DIVISION OF SYSTEMS SAFETY & ANALYSIS	CHF, PLANT SYSTEMS BRANCH. CHF, REACTOR SYSTEMS BRANCH. CHIEF PROBABLISTIC SAFETY ASSESSMENT BRANCH. CHIEF CONTAINMENT SYS SEVERE ACCIDENT BRCH.
DIVISION OF REACTOR CONTROLS AND HUMAN FACTORS	CHF, HUMAN FACTORS ASSESSMENT BRANCH. CHF, OPERATOR LICENSING BRANCH. CHF, INSTRUMENTATION & CONTROL BRANCH.
DIVISION OF REACTOR PROGRAM MANAGEMENT	CHF, QUALITY ASSUR & MAINT BRANCH. CHF, EMERGENCY P&R PROTECTION. CHF, SAFEGUARDS BRANCH. PROJECT DIR, STANDARDIZATION PROJ DIRECTORATE. PROJ DIR LICENSE RENEWAL & ENVIRONMENTAL REV.
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS DIVISION OF FUEL CYCLE SAFETY & SAFEGUARDS	DEPUTY DIRECTOR, SPENT FUEL PROJECT OFC. CHIEF, OPERATIONS BRANCH. CHIEF, REGL & INTL SAFEGUARDS BRANCH. CHIEF, ENRICHMENT BRANCH. CHIEF, LICENSING BRANCH.
DIV OF INDUSTRIAL & MEDICAL NUCLEAR SAFETY	CHIEF, OPERATIONS BRANCH. CHIEF, MEDICAL, ACAD & COM USE SFTY BRANCH. CHIEF SOURCE CONTAINMENT & DEVICES BR.
DIVISION OF WASTE MANAGEMENT	CHF, HIGH LEVEL WASTE & URANIUM RECOVERY PROJ. CHIEF, PERF ASSESS & HYDROLOGY BRANCH. CHIEF, ENGINEERING & GEOSCIENCES BRANCH. ASST TO THE DIR, DIV OF WASTE MANAGEMENT. CHF, LOW LEVEL WASTE & DECOMMISSIONING PROJ.
OFC OF NUC REGULATORY RESEARCH DIVISION OF ENGINEERING TECHNOLOGY	DIRECTOR: FIN MGT, PROCUREMENT & ADMIN STAFF. CHIEF, MATERIALS ENGINEERING BRANCH. CHIEF, GENERIC SAFETY ISSUES BRANCH. CHIEF, ELECT, M&M ENGINEER BRANCH.
DIVISION OF REGULATORY APPLICATIONS	CHIEF, STRUCTURAL & GEOLOGICAL ENG BRANCH. CHIEF REGULATION DEVELOPMENT BRANCH. CHIEF WASTE MANAGEMENT BRANCH.
DIVISION OF SYSTEMS TECHNOLOGY	CHF, RADIATION PROTECTION & HEALTH EFFECTS BR. CHIEF ACCIDENT EVALUATION BRANCH. CHF, PROBABILISTIC RISK ANALYSIS BRANCH. CHIEF, REACTOR AND PLANT SYSTEMS BRANCH. CHIEF CONTROL INSTR & HUMAN FACTORS BRANCH.
REGION I	DEPUTY REGIONAL ADMINISTRATOR. DIR, DIV OF RADIATION SAFETY & SAFEGUARDS. DEP DIR, DIV OF RADIATION SAFETY & SAFEGUARDS. DIRECTOR DIVISION OF REACTOR SAFETY. DEP DIR, DIV OF REACTOR SAFETY.
REGION II	DIRECTOR, DIVISION OF REACTOR PROJECTS. DEPUTY DIRECTOR, DIVISION OF REACTOR PROJECTS. DEPUTY REGIONAL ADMINISTRATOR REGION II. DIR, DIV OF RADIATION SAFETY & SAFEGUARDS. DEP DIR, DIV OF RADIATION SAFETY & SAFEGUARDS.
REGION III	DIRECTOR, DIVISION OF REACTOR PROJECTS. DEPUTY DIRECTOR, DIVISION OF REACTOR PROJECTS. DIRECTOR, DIVISION OF REACTOR SAFETY. DEP DIR, DIV OF REACTOR SAFETY. DEP REGIONAL ADMINISTRATOR REGION III. DIRECTOR, DIVISION OF REACTOR SAFETY. DEP DIR, DIV OF REACTOR SAFETY.
REGION IV	DIRECTOR, DIVISION OF REACTOR PROJECTS. DEPUTY DIRECTOR DIVISION OF REACTOR PROJECTS. DIR, DIV OF RADIATION SAFETY & SAFEGUARDS. DEP DIR, DIV OF RADIATION SAFETY & SAFEGUARDS. DEPUTY REGIONAL ADMINISTRATOR REGION IV. DIRECTOR DIV OF REACTOR PROJECTS. DEPUTY DIRECTOR, DIV OF REACTOR PROJECTS. DIR, DIV OF RADIATION SAFETY & SAFEGUARDS. DIR, DIVISION OF REACTOR SAFETY. DEP DIR, DIV OF RADIATION SAFETY & SAFEGUARDS.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	DEP DIR, DIVISION OF REACTOR SAFETY.
OFFICE OF GOVERNMENT ETHICS: OFFICE OF GOVERNMENT ETHICS	DEPUTY DIRECTOR. DEPUTY GENERAL COUNSEL. ASSOC DIR FOR PROGRAM DEVELOP & COMPLIANCE.
OFFICE OF MANAGEMENT AND BUDGET: OFFICE OF THE DIRECTOR	ASSISTANT DIRECTOR FOR ADMINISTRATION. DEPUTY ASSOCIATE DIR FOR ECONOMIC POLICY. STAFF ASSISTANT. SENIOR ADVISOR TO THE DEP DIR FOR MANAGEMENT. DEP ASSISTANT DIRECTOR FOR ADMINISTRATION. ASSISTANT TO THE DEPUTY DIRECTOR FOR MGMT.
OFFICE OF GENERAL COUNSEL	ASSOCIATE GENERAL COUNSEL FOR BUDGET.
LEGISLATIVE REFERENCE DIVISION	ASST DIR LEGISLATIVE REFERENCE. CHIEF, LABOR, WELFARE, PERSONNEL BRANCH. CHIEF, ECONOMICS, SCIENCE & GOVT. BRANCH. CHIEF, RESOURCES-DEFENSE-INTERNATIONAL BRANCH.
OFFICE OF FEDERAL PROCUREMENT POLICY	DEP ADMIN FOR PROCUREMENT LAW & LEGISLATION. ASSOC. ADMINISTRATOR FOR MANAGEMENT CONTROL.
OFFICE OF INFORMATION AND REGULATORY AFFAIRS	CHIEF, INFORMATION POLICY & TECHNOLOGY BRANCH. CHIEF, HUMAN RESOURCES AND HOUSING BRANCH. CHIEF, COMMERCE AND LANDS BRANCH. CHIEF STATISTICAL POLICY BRANCH. CHIEF, NATURAL RESOURCES BRANCH. CHF, INFO TECHNOLOGY MANAGEMENT BRANCH. SENIOR ADVISOR. SENIOR ADVISOR.
OFFICE OF FEDERAL FINANCIAL MANAGEMENT	CHIEF MANAGEMENT INTEGRITY BRANCH. DEPUTY ASSISTANT FOR GENERAL MANAGEMENT. ASSOC DIR FOR LEGISLATIVE REF & ADM. DEPUTY CONTROLLER. CHIEF FEDERAL FINANCIAL SYSTEMS BRANCH.
BUDGET REVIEW DIVISION	ASST DIR FOR BUDGET REVIEW. DEP ASST DIR FOR BUDGET ANALYSIS & SYSTEMS. CHIEF BUDGET ANALYSIS BRANCH. DEP CHIEF BUDGET ANALYSIS BRANCH. DEP ASST DIR FOR BUDGET REVIEW & CONCEPTS. CHIEF, BUDGET CONCEPTS BRANCH. CHIEF, BUDGET SYSTEMS BRANCH.
INTERNATIONAL AFFAIRS DIVISION	DEP ASSOC DIR FOR INTERNATL AFFAIRS. DEP CHIEF, INTERNATIONAL AFFAIRS DIVISION. CHIEF, STATE-USIA BRANCH. CHIEF, ECONOMIC AFFAIRS BRANCH. CHIEF INTERNATIONAL SECURITY AFFAIRS BRANCH.
NATIONAL SECURITY DIVISION	DEP ASSOC DIR FOR NATIONAL SECURITY. DEP CHIEF. CHIEF, COMMAND, CTRL, COMMS, & INTELLIG BRANCH. CHIEF, NAVY BRANCH. CHIEF, FORCE STRUCTURE & INVESTMENT BRANCH. CHIEF, ARMY BRANCH. CHIEF, OPER & SUPPORT BRANCH.
ASSOCIATE DIRECTOR FOR HUMAN RESOURCES	ASSOCIATE DIRECTOR FOR HUMAN RESOURCES.
HUMAN RESOURCES DIVISION	CHIEF, LABOR BRANCH. DEPUTY ASSOC DIR FOR HUMAN RESOURCES. CHF, INCOME MAINTENANCE BRANCH.
ASSOCIATE DIRECTOR FOR GENERAL GOVERNMENT & FINANCE.	DEP ASSOC DIR FOR SPECIAL STUDIES. SENIOR ADVISOR FOR CASH & CREDIT MGMT.
TRANSPORTATION, COMMERCE, JUSTICE & SERVICES DIVISION.	D/A FOR TRANSP COMMERCE, JUSTICE & SERVICES. CHIEF COMMERCE BRANCH. CHIEF TRANSPORT BRANCH. CHIEF, JUSTICE/GSA BRANCH.
HOUSING, TREASURY AND FINANCE DIVISION	DEPUTY ASSOC DIR FOR HOUSING TREASURY FINANCE. CHIEF, TREASURY BRANCH. CHIEF, FINANCIAL INSTITUTIONS BRANCH. CHIEF, HOUSING BRANCH.
ASSOC DIR FOR NATURAL RESOURCES, ENERGY, AND SCIENCE.	SENIOR ADVISOR.
NATURAL RESOURCES DIVISION	DEP. ASSOCIATE DIR. FOR NATURAL RESOURCES. CHIEF, WATER RESOURCES BRANCH. CHIEF, AGRICULTURAL BRANCH.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	CHIEF, ENVIRONMENT BRANCH.
	CHIEF INTERIOR BRANCH.
	ASST DIVISION CHIEF NRD.
ENERGY AND SCIENCE DIVISION	DEP. ASSOC. DIR FOR ENERGY & SCIENCE.
	CHIEF, NUCLEAR ENERGY BRANCH.
	CHIEF SCIENCE AND SPACE PROGRAMS BRANCH.
	DEPUTY DIV CHIEF.
	CHIEF, ENERGY BRANCH.
HEALTH DIVISION	DEP ASSOC DIR FOR HEALTH.
	CHIEF HEALTH PROGRAMS & SERVICES BRANCH.
	CHIEF HEALTH & FINANCING BRANCH.
VA/PERSONNEL DIVISION	CHF VETERAN AFFAIRS BRANCH.
	DEPUTY ASSOC DIRECTOR FOR VA & PERSONNEL.
	CHIEF, PERSONNEL, PORTAL, EXOP BRANCH.
OFFICE OF PERSONNEL MANAGEMENT:	
OFFICE OF THE CHIEF FINANCIAL OFFICER	CHIEF FINANCIAL OFFICER.
OFFICE OF THE INSPECTOR GENERAL	DEPUTY INSPECTOR GENERAL.
	ASST INSPECTOR GENERAL FOR AUDITS
OFFICE OF ACTUARIES	DIRECTOR, OFFICE OF ACTUARIES.
OFFICE OF INSURANCE PROGRAMS	ASST DIR FOR INSURANCE PROGRAM.
OFFICE OF RETIREMENT PROGRAMS	ASST DIR FOR RETIREMENT PROGRAMS.
PERSONNEL RESEARCH AND DEVELOPMENT CENTER	DIRECTOR, PERSONNEL RES & DEVELOPMENT CENTER.
STAFFING SERVICE CENTER	DIRECTOR, STAFFING AUTOMATION.
OFFICE OF CLASSIFICATION	ASST DIR FOR CLASSIFICATION.
INVESTIGATIONS SERVICE	ASST DIR FOR WASH INVESTIGATION & TRAINING.
OFFICE OF FEDERAL INVESTIGATIONS	ASST DIR FOR FEDERAL INVESTIGATIONS.
ORGANIZATION ABOLISHED	ASSISTANT DIRECTOR FOR EXECUTIVE RESOURCES.
OFFICE OF CONTRACTING AND ADMINISTRATIVE SERVICES	DIRECTOR OF CONTRACTING & ADMINISTRATIVE SERV.
OFFICE OF MERIT SYSTEMS OVERSIGHT AND EFFECTIVENESS.	ASST DIR FOR MERIT SYSTEMS OVERSIGHT.
OFFICE OF EXECUTIVE RESOURCES	ASST DIRECTOR FOR EXECUTIVE RESOURCES.
ORGANIZATION ABOLISHED	EXECUTIVE FOR ADP OPERATIONS.
ORGANIZATION ABOLISHED	ASST DIR FOR ADMINISTRATIVE LAW JUDGES.
ORGANIZATION ABOLISHED	ASST DIR FOR AGENCY COMPLIANCE & EVALUATION.
ORGANIZATION ABOLISHED	ASST DIR FOR WASH EXAMINING SERVICES.
OFFICE OF SPECIAL COUNSEL:	
HEADQUARTERS, OFFICE OF SPECIAL COUNSEL	ASSOC SPEC COUNSEL (INVESTIGATION).
	ASSOC SPECIAL COUNSEL (PROSECUTION).
	DEPUTY ASSOCIATE SPEC COUNSEL FOR PROSECUTION.
	DIRECTOR FOR MANAGEMENT.
	ASSOCIATE SPECIAL COUNSEL FOR PLAN & ADVICE.
RAILROAD RETIREMENT BOARD:	
BOARD STAFF	DIR OF UNEMPLOYMENT & SICKNESS INSURANCE.
	DIRECTOR OF DATA PROCESSING.
	DIRECTOR FOR PROGRAM ANALYSIS.
	DIRECTOR OF HEARINGS AND APPEALS.
	DIR OF RETIREMENT & SURVIVOR PROGRAMS.
	CHIEF ACTUARY.
	DIRECTOR OF FIELD SERVICE.
	DIRECTOR OF ADMINISTRATION & OPERATIONS.
	DEPUTY GENERAL COUNSEL.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	CHIEF FINANCIAL OFFICER.
	ASSISTANT INSPECTOR GENERAL FOR AUDIT.
	DIRECTOR OF SYSTEMS INITIATIVES.
	DIRECTOR OF TAXATION.
	GENERAL COUNSEL.
SECURITIES AND EXCHANGE COMMISSION:	
OFFICE OF THE CHIEF ACCOUNTANT	DEP CHF ACCOUNTANT.
OFFICE OF THE EXECUTIVE DIRECTOR	DEP EXEC DIRECTOR.
	ASSOCIATE EXECUTIVE DIRECTOR (FINANCE).
	ASSOCIATE EXECUTIVE DIRECTOR (ADMINISTRATION).
DIV OF CORPORATION FINANCE	ASSOCIATE DIRECTOR (OPERATIONS).
	ASSOCIATE DIRECTOR (LEGAL).
SELECTIVE SERVICE SYSTEM:	
SELECTIVE SERVICE SYSTEM	ASSOC DIR INFORMATION MANAGEMENT.
	ASSOCIATE DIRECTOR, OFC OF MGT. SERVICES.
SMALL BUSINESS ADMINISTRATION:	
OFFICE OF THE INSPECTOR GENERAL	ASST INSPECTOR GENERAL FOR AUDITING.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	COUNSEL TO THE INSPECTOR GENERAL.
	DEPUTY INSPECTOR GENERAL.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	ASST INSPECTOR GENERAL FOR MAGNT LEGAL COUSL.
	ASSISTANT INSPECTOR GEN/INSPECTION & EVAL.
OFFICE OF THE GENERAL COUNSEL	ASSOCIATE GENERAL COUNSEL FOR GENERAL LAW.
	ASSOC GEN COUNSEL LITIGATION.
OFFICE OF DISASTER ASSISTANCE	DEPUTY ASSOC ADMR FOR DISASTER ASSISTANCE.
OFFICE OF EQUAL EMPLOYMENT O & C RIGHTS COMPLIANCE.	ASST ADMR FOR EQUAL O & C RIGHT COMPL.
OFFICE OF HEARINGS AND APPEALS	ASST ADMINISTRATOR FOR HEARINGS AND APPEALS.
OFFICE OF FINANCIAL ASSISTANCE	ASSOC ADMINISTRATOR FOR FINANCIAL ASSIST.
	DEP ASSOC ADMR FOR FINANCIAL ASSISTANCE.
	ASST ADMR FOR BORROWER AND LENDER SERVICING.
OFFICE OF MINORITY ENTERPRISE DEVELOPMENT	ASSOC ADMR FOR MSB–COD.
	DEP ASSOC ADMR FOR PROGRAMS (MSB & COD).
OFFICE OF MANAGEMENT AND ADMINISTRATION	CHIEF FIN OFC & ASSOC DEP ADM FOR MGT & ADM.
OFFICE OF INFORMATION RESOURCES MANAGEMENT	ASST ADM FOR INFORMATION RESOURCES MANAGEMENT.
	DEP ASST ADM FOR INFORMATION RES MGMT.
OFFICE OF HUMAN RESOURCES	ASST ADMINISTRATOR FOR HUMAN RESOURCES.
OFFICE OF COMPTROLLER	COMPTROLLER.
DISTRICT DIRECTORS	DISTRICT DIRECTOR.
	DISTRICT DIRECTOR.
	DISTRICT DIRECTOR.
	DISTRICT DIRECTOR.
	DISTRICT DIRECTOR.
	DISTRICT DIRECTOR.
	DISTRICT DIRECTOR.
	DISTRICT DIRECTOR.
	DISTRICT DIRECTOR.
	DISTRICT DIRECTOR.
SOCIAL SECURITY ADMINISTRATION:	
OFFICE OF COMMISSIONER	SENIOR ADVISOR TO THE COMMISSIONER ON IG AFFR.
OFFICE OF THE INSPECTOR GENERAL	ASST INSPECTOR GEN FOR SOCIAL SECURITY AUDITS.
	ASST INSPECTOR GEN FOR INVESTIGATION, P & O.
OFFICE OF ACTUARY	CHIEF ACTUARY.
	DEPUTY CHIEF ACTUARY (LONG-RANGE).
	DEPUTY CHF ACTUARY SHORT RANGE SSA.
OFFICE OF FINANCE, ASSESSMENT AND MANAGEMENT	SENIOR FINANCIAL EXECUTIVE.
OFFICE OF FINANCIAL POLICY AND OPERATIONS	ASSOC COMR, OFFICE OF FIN POLICY & OPERATIONS.
	DEP ASSOC COMM FINANCIAL POLICY & OPERATIONS.
OFFICE OF ACQUISITION AND GRANTS	ASSOC COMMISSIONER FOR ACQUISITION & GRANTS.
DEPARTMENT OF STATE:	
OFFICE OF FOREIGN BUILDINGS OPERATIONS	SUPERVISORY STRUCTURAL ENGINEER.
BUREAU OF INTELLIGENCE AND RESEARCH	DIR OFC OF INTELLIGENCE RESOURCES.
OFFICE OF THE INSPECTOR GENERAL	ASSISTANT INSPECTOR GENERAL FOR AUDITS.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	COUNSEL TO THE INSPECTOR GENERAL.
	DEP ASST INSPECTOR GENERAL FOR AUDITS.
	ASST INSP GEN FOR POLICY, PLNG AND MANAGEMENT.
	DEP ASST INSPECTOR GEN FOR INSPECTIONS.
	DEP ASST INSP GEN FOR OFC OF SECUR OVERSIGHT.
BUREAU OF PERSONNEL	DIRECTOR, OFC OF CIVIL SERVICE PERSONNEL MGMT.
INTERNATIONAL BOUNDARY & WATER COMMISSION	SUPERVISORY CIVIL ENGINEER, OPERATIONS.
DEPARTMENT OF TRANSPORTATION:	
OFC OF COMMERCIAL SPACE TRANSPORTATION	SENIOR ADVISOR.
OFFICE OF INSPECTOR GENERAL	ASST INSP GENERAL FOR AUDITING.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	DEP ASST INSPECTOR GENERAL FOR AUDITING.
	DEP ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	DEPUTY INSPECTOR GENERAL.
	ASST INSPECTOR GENERAL FOR INSPECTIONS & EVAL.
	DEP ASST INSPECTOR GEN FOR INSPECTIONS & EVAL.
	DIRECTOR OF ADMINISTRATION.
	DIR OFC ONFO TECH FINANICAL & SECRETARIAL AUD.
	SENIOR COUNSEL.
ASST SECRETARY FOR BUDGET & PROGRAMS	DEPUTY CHIEF FINANCIAL OFFICER.
ASST SEC FOR ADMINISTRATION	ASST SECY FOR ADMINISTRATION.
OFFICE OF ACQUISITION & GRANT MANAGEMENT	DIRECTOR OFC OF ACQUISITION & GRANT MGNT.
ASSOC ADM'R FOR SAFETY	ASSOC ADMR FOR SAFETY.
OFFICE OF SAFETY ENFORCEMENT	DIRECTOR, OFFICE OF SAFETY ENFORCEMENT.
ASSOCIATE ADMINISTRATION FOR PIPELINE SAFETY	ASSOC ADMR FOR PIPELINE SAFETY.
ORGANIZATION ABOLISHED	ASSOCIATE ADMINISTRATOR FOR MARKETING.
OFC OF ASSOC ADMR FOR SHIP FINANCIAL A & C PREFERENCE.	ASSOC ADMR FOR SHIP FIN A & C PREFERENCE.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
OFFICE OF SYSTEM SAFETY	DIR OFC OF SAFETY SERVICE.
OFFICE OF ACCOUNTING	DIR OFFICE OF ACCOUNTING.
OFFICE OF AIRPORT PLANNING & PROGRAMMING	DIR., OFFICE OF AIRPORT PLANNING & PROGRAM.
	MGR. AIRPORTS FIN ASSISTANCE DIVISION.
ASSISTANT ADMINISTRATOR FOR CIVIL AVIATION SECURITY	DEP ASST ADMR FOR CIVIL AVIATION SECURITY.
OFFICE OF CIVIL AVIATION SECURITY POLICY & PLANNING	DIR, OFC OF CIVIL AVN SECURITY POL & PLANNING.
OFFICE OF CIVIL AVIATION SECURITY OPERATIONS	DIR OFC OF CIVIL AVIATION SECURITY OPERATIONS.
	DEP DIR, OFC OF CIVIL AVIATION SECURITY OPS.
OFFICE OF CIVIL AVIATION SECURITY INTELLIGENCE	DIR OFC CIVIL AVIATION SECURITY INTELLIGENCE.
ASIA/PACIFIC OFFICE	DIRECTOR ASIA/PACIFIC OFFICE.
AIR TRAFFIC SERVICE	DIRECTOR, AIR TRAFFIC SERVICE, AAT–1.
	DEPUTY DIRECTOR, AIR TRAFFIC SERVICE, AAT–2.
AIRWAY FACILITIES SERVICE	PROG DIR, SPECTRUM POL & MANAGEMENT PROGRAM.
REGIONAL AIR TRAFFIC DIVISIONS	MGR, AIR TRAFFIC DIVISION.
	MGR, AIR TRAFFIC DIVISION.
	MGR, AIR TRAFFIC DIV.
	MANAGER, AIR TRAFFIC DIVISION.
	MGR, AIR TRAFFIC DIVISION.
	MGR, AIR TRAFFIC DIVISION.
	MANAGER, AIR TRAFFIC DIVISION.
	MANAGER, AIR TRAFFIC DIVISION, ANE–500.
AIR TRAFFIC RULES & PROCEDURES SERVICE	MANAGER, PROCEDURES DIVISION.
	MGR. AIRSPACE-RULES & AERONAUTICAL INF. DIV.
	DIR, AIR TRAFFIC RULES & PROCEDURES SERVICE.
OFFICE OF AIR TRAFFIC SYSTEM MANAGEMENT	DIRECTOR, AIR TRAFFIC SYSTEM MANAGEMENT.
AIR TRAFFIC PLANS AND REQUIREMENTS SERVICE	DIR, AIR TRAFFIC PLANS & REQUIREMENTS SERV.
	MANAGER SYSTEM PLANS & PROGRAMS DIV.
	MGR AUTOMATION SOFTWARE POL & PLNNG DIVISION.
	MANAGER ADVANCED SYST & FACILITIES DIV.
OFFICE OF AIR TRAFFIC SYSTEM EFFECTIVENESS	DIR, OFC OF AIR TRAFFIC SYST EFFECTIVENESS.
OFFICE OF AIR TRAFFIC PROGRAM MANAGEMENT	DIR, OFC OF AIR TRAFFIC PROGRAM MANAGEMENT.
ASSOCIATE ADMINISTRATOR FOR AVIATION STANDARDS	ASSOC ADMINISTRATOR FOR AVIATION STANDARDS.
	DEPUTY ASSOC ADMINISTRATOR AVIATION STANDARDS.
	DIR, AIRCRAFT PROG, POL & PLANS STAFF, AAD–30.
OFFICE OF AVIATION MEDICINE	FED AIR SURGEON.
	DEPUTY FEDERAL AIR SURGEON.
	MGR, MEDICAL SPECIALITIES DIVISION.
	DIRECTOR CIVIL AEROMED INSTITUTE.
OFFICE OF ACCIDENT INVESTIGATION	DIR, OFFICE OF ACCIDENT INVESTIGATION.
OFFICE OF AVIATION SYSTEMS STANDARDS	PROG DIR, AVIATION SYST STANDARDS.
	DEPUTY DIRECTOR.
	AIRCRAFT OVERSIGHT EXECUTIVE.
NAS TRANSITION & IMPLEMENTATION DIRECTORATE	PROG DIR, NAS TRANSITION & IMPLEMENTATION DIR.
NAS OPERATIONS DIRECTORATE	PROGRAM DIRECTOR, NAS OPERATIONS DIRECTORATE.
ASSOCIATE ADMINISTRATOR FOR REGULATION & CERTIFICATION.	ASSOC ADMR FOR REGULATIONS & CERTIFICATION.
	DEP ASSOC ADMR FOR REGUL & CERTIFICATION.
AIRCRAFT CERTIFICATION SERVICE	DIR, AIRCRAFT CERTIFICATION SERVICE.
	DEPUTY DIRECTOR AIRCRAFT CERTIFICATION SERVIC.
	MANAGER, AIRCRAFT ENGINEERING DIVISION.
	MANAGER, AIRCRAFT MANUFACTURING DIVISION.
REGIONAL AIRCRAFT CERTIFICATION DIVISIONS	MGR TRANSPORT AIRPLANE DIRECTORATE.
	MGR ENGINE & PROPELLER DIRECTORATE.
	MGR SMALL AIRPLANE DIRECTORATE.
	MANAGER ROTORCRAFT DIRECTORATE.
FLIGHT STANDARDS SERVICE	DIR, FLIGHT STANDARDS SERVICE.
	DEP DIR, FLIGHT STANDARDS SERVICE.
	MANAGER, AIR TRANSPORTATION DIVISION.
	MANAGER AIRCRAFT MAINTENANCE DIVISION.
	MGR, FLIGHT STANDARDS NATL FLD OFC, AFS–500.
	MANAGER, TECHNICAL PROGRAMS DIVISION.
REGIONAL FLIGHT STANDARDS DIVISIONS	MGR, FLIGHT STANDARDS DIV.
	MGR, FLIGHT STANDARDS DIVISION.
	MGR, FLIGHT STANDARDS DIV.
	MANAGER, FLIGHT STANDARDS DIVISION.
	MGR. FLIGHT STANDARDS DIV.
	MGR. FLIGHT STANDARDS DIV.
	MGR, FLIGHT STANDARDS DIVISION.
	MGR. FLIGHT STANDARDS DIV.
	MANAGER, FLIGHT STANDARDS DIVISION.
PROGRAM MANAGER FOR ADVANCED AUTOMATION	PROGRAM MGR FOR ADVANCED AUTOMATION.
	DEP PROG MGR FOR ADVANCED AUTOMATED SYSTEM.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	DEP PROG MGR FOR VOICE S & C SYSTEM.
	INTEGRATED PROD TEAM LEADER FOR TERM, AUA–300.
	PROGRAM MANAGER FOR ENROUTE SYSTEMS.
PROGRAM DIRECTOR FOR AUTOMATION	PROGRAM DIRECTOR FOR AUTOMATION.
PROGRAM DIR FOR COMMUNICATIONS & AIRCRAFT ACQUISITION.	PROG DIR FOR COMMUNICATIONS & AIRCRAFT ACQ.
PROGRAM DIRECTOR FOR NAVIGATION & LANDING AIDS	PROGRAM DIR FOR NAVIGATION & LANDING AIDS.
PROGRAM DIRECTOR FOR SURVEILLANCE	PROGRAM DIRECTOR FOR SURVEILLANCE.
PROGRAM DIRECTOR FOR WEATHER & FLIGHT SERVICE SYSTEMS.	PROG DIR FOR WEATHER & FLIGHT SERVICES SYST.
OFFICE ACQUISITION POLICY & OVERSIGHT	DIR, OFC OF ACQUISITION POL & OVERSIGHT.
ASSOCIATE ADMINISTRATOR FOR AVIATION SAFETY	ASSOC ADMIN FOR AVIATION SAFETY.
	DEP ASSOC ADMIN FOR AVIATION SAFETY.
OFFICE OF ACQUISITION	MGR, CONTRACTS DIVISION.
	DIRECTOR, OFC OF ACQUISITION, ASU–1.
	DEPUTY DIRECTOR, OFC OF ACQUISITION.
OFC OF COMMUNICATIONS, NAVIGATION & SURVEILLANCE SYS.	PROGRAM MGR BUSINESS & FINANCIAL MGMT.
	INTEGRATED PRODUCT TEAM LEADER VOICE S & C.
	INTEGRATED PRODUCT TEAM COMMUNICATION.
NAS PROGRAMMING & FINANCIAL MANAGEMENT	DEPUTY DIRECTOR.
	PROGRAMS DIRECTOR PROGRAM EVALUAITON.
FEDERAL HIGHWAY ADMINISTRATION	EXECUTIVE DIRECTOR.
OFFICE OF FISCAL SERVICES	DIRECTOR OFFICE OF FISCAL SERVICES.
OFFICE OF CONTRACTS AND PROCUREMENT	DIRECTOR OFFICE OF CONTRACTS AND PROCUREMENT
ASSOCATION ADMINISTRATOR FOR SAFETY & SYSTEM APP	ASSOC ADMR FOR SAFETY & SYSTEM APPLICATIONS.
OFFICE OF HIGHWAY SAFETY	DIR, OFFICE OF HIGHWAY SAFETY.
OFFICE OF MOTOR CARRIER STANDARDS	DIR OFC OF MOTOR RESEARCH & STANDARDS.
OFFICE OF MOTOR CARRIER SAFETY FIELD OPERATIONS	DIRECTOR OFC OF MOTOR CARRIER FIELD OPERATION.
OFFICE OF ENVIRONMENT & PLANNING	CHIEF ENVIRONMENTAL OPERATIONS DIVISION.
OFFICE OF RIGHT OF WAY	DIR OFC OF RIGHT OF WAY.
	CHIEF, OPERATIONS DIVISION.
NATL CENTER FOR STATISTICS AND ANALYSIS	CHF, ACCIDENT INVESTIGATION DIV.
ASSOC ADMR FOR ENFORCEMENT	ASSOCIATE ADMINISTRATOR FOR SAFETY ASSURANCE.
OFC OF DEFECTS INVESTIGATION	DIR-OFC OF DEFECTS INVESTIGATION.
OFC OF VEHICLE SAFETY COMP	DIR-OFC OF VEHICLE SAFETY COMPLIANCE.
OFFICE OF THE CHIEF OF STAFF	DIRECTOR OF FINANCE AND PROCUREMENT.
DEPARTMENT OF TREASURY:	
DEPUTY ASSISTANT SECRETARY (INTL MONETARY POLICY)	DIR OFC OF FOREIGN EXCHANGE OPERATIONS.
DEPUTY ASSISTANT SECRETARY (TRADE AND INVESTMENT POLICY).	DISTRICT COUNSEL SEATTLE.
FISCAL ASSISTANT SECRETARY	FISCAL ASSISTANT SECRETARY.
	ASSISTANT FISCAL ASSISTANT SECRETARY.
FINANCIAL MANAGEMENT SERVICE	COMMR OF FINANCIAL MANAGEMENT SERVICE.
	DEP COM FINANCIAL MANAGEMENT SERVICE.
DIR, REGIONAL FINANCIAL CENTER (CHICAGO)	
	DIRECTOR, REGL FIN CTR (PHILADELPHIA).
	DIRECTOR, REGL FIN CTR (SAN FRANCISCO).
	DIRECTOR, REG. FIN CTR (AUSTIN).
	COMPTROLLER.
	DIRECTOR, SYSTEMS SERVICES DIRECTORATE.
	ASST COMMISSIONER, INFORMATION RESOURCES.
	ASSISTANT COMMISSIONER, FEDERAL FINANCE.
	DIRECTOR OPERATIONS GROUP.
	DIRECTOR CASH MANAGEMENT DIRECTORATE.
	ASSISTANT COMMISSIONER, REGIONAL OPERATIONS.
	ASST COMR, MANAGEMENT (CHIEF FIN OFCR).
	DIR, SYSTEMS DEVELOPMENT DIRECTORATE.
	DIR, FIN INFORMATION MANAGEMENT DIRECTORATE.
	DIR, TECHNOLOGY & INFORMATION GROUP.
	ASSISTANT COMMISSIONER, FINANCIAL INFORMATION.
	ASSISTANT COMMISSIONER (AGENCY SERVICES).
	ASSISTANT DEPUTY COMMISSIONER FOR RE-ENGINEER.
BUREAU OF THE PUBLIC DEBT	COMMISSIONER.
	DEP COMMR OF THE PUBLIC DEBT.
	ASST COMMISSIONER (SAVINGS BOND OPERATIONS).
	ASST COMMR (FINANCING).
	ASST COMMR (ADMINISTRATION).
	GOVERNMENT SECURITIES ACT PROGRAM DIRECTOR.
	GOVERNMENT SECURITIES POLICY ADVISOR.
	ASST COMMR/SECURITIES & ACCOUNTING SERVICES.
	ASST COMMISSIONER (AUTOMATED INFO SYSTEMS).

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	ASST COMMISSIONER (PUBLIC DEBT ACCOUNTING).
ASSISTANT SECRETARY (ECONOMIC POLICY)	ASST DIR FOR ECONOMIC FORECASTING.
	SR ECONOMIST.
OFC OF THE INSPECTOR GENERAL	DEP ASST INSPECTOR GEN FOR AUDIT (FIN MGMT).
	DEP ASST INSPECTOR GEN FOR AUDIT (AUDIT OPS).
	AIG FOR POLICY, PLANNING & RESOURCES.
	ASST INSP GEN FOR OVERSIGHT & QUALITY ASSUR.
	ASST INSPECTOR GENERAL FOR AUDIT.
	DIRECTOR OF OVERSIGHT.
	EXECUTIVE ASSISTANT.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
ASSISTANT SECRETARY (TAX POLICY)	DIR (ECONOMIC MOD & COMPUTER APPLICATIONS).
ASSISTANT SECRETARY (MANAGEMENT)	DIR, MANAGEMENT PROGRAMS DIRECTORATE.
	DIRECTOR, OFFICE OF PROCUREMENT.
ASSISTANT SECRETARY (ENFORCEMENT)	DIR FIN CRIMES ENFORCEMENT NETWORK.
	DEP DIR. FINANCIAL CRIMES ENFORCEMENT NETWORK.
	ASSOC DIR. OFC OF MGMT/CHF FIN OFCR, FINCEN.
	SENIOR ADVISOR TO THE ASST SECY (ENFORCEMENT).
	DIR EXE OFC FOR ASSET FORFEITURE.
	DIRECTOR, OFFICE OF LAW ENFORCEMENT.
BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS	ASST DIR. CONGRESSIONAL AND MEDIA AFFAIRS.
	ASSISTANT DIRECTOR (INSPECTION).
	DIRECTOR, LABORATORY SERVICES.
	SAC, CHICAGO FIELD DIVISION.
	DEPUTY ASST DIR (SCIENCE & INFO TECHNOLOGY).
	ASST DIR SCIENCE & INFORMATION TECHNOLOGY.
	DEP ASST DIR (LIAISON & PUBLIC INFORMATION).
	DEPUTY DIRECTOR.
	ASST DIR (LIAISON & PUBLIC INFORMATION).
OFFICE OF LAW ENFORCEMENT	ASSOCIATE DIRECTOR (ENFORCEMENT).
	CHIEF, SPEC OPERATIONS DIVISION.
	CHIEF, EXPLOSIVES DIVISION.
	DEPUTY ASSOC DIR (LAW ENFORCEMENT).
	DEP ASSOC DIR CRIMINAL ENFORCEMENT FIELD OPER.
	DEP ASSOC DIR CRIMINAL ENFOR FIELD OPER WEST.
	CHIEF, FIREARMS DIVISION.
	DEPUTY ASSOC DIR CRIMINAL ENFORCEMENT PROGRAM.
FIELD OPERATIONS	SPECIAL AGENT IN CHARGE (NY DISTRICT OFFICE).
	SPECIAL AGENT IN CHARGE (LA DISTRICT OFFICE).
	SPECIAL AGENT IN CHARGE (MIAMI DISTRICT OFC).
	SPEC AGENT IN CHARGE (WASHINGTON DIST OFFICE).
	SPECIAL AGENT-IN-CHARGE (NEW YORK FIELD DIV)
OFFICE OF COMPLIANCE OPERATIONS	ASSOCIATE DIRECTOR (COMPLIANCE OPERATIONS)
	DEP. ASSOCIATE DIR. (COMPLIANCE OPERATIONS).
	CHIEF, REVENUE PROGRAMS DIVISION.
	CHIEF, INDUSTRY COMPLIANCE DIVISION.
	DEP ASSOC. DIR REGULATORY ENFORCEMENT PROGRAMS.
FIELD OPERATIONS	DISTRICT DIRECTOR (NORTH ATLANTIC DISTRICT).
CHIEF COUNSEL	ASSISTANT CHIEF COUNSEL (CHICAGO).
	ASSISTANT CHIEF COUNSEL (NEW YORK).
	STAFF ASSISTANT TO THE CHIEF COUNSEL.
US CUSTOMS SERVICE	REGL COMMR REG 2 N Y.
	REG COMMR, REG 1, BOSTON.
	ASST REGN COMMR OPERATIONS REG II NEW YORK.
	REGL COMMR, REG 4, MIAMI.
	REG COMMR, REG V, NEW ORLEANS.
	REGIONAL COMMISSIONER, CHICAGO.
	ASST REGIONAL COMMR (OPERATIONS).
	ASST REGL COMMR (OPERATIONS).
	ASST REGL COMMR (OPERATIONS).
	ASST REGIONAL COMMR (OPERATIONS).
	DEPUTY ASST COMR (INTERNATIONAL AFFAIRS).
	DISTRICT DIRECTOR, MIAMI.
	DISTRICT DIRECTOR, LAREDO.
	AREA DIR, NEWARK.
	DIR STRATEGIC TRADE CENTER NEW YORK.
	ASST COMMR (INSPECTION & CONTROL).
	DEPUTY ASST COMMR (INSPECTION & CONTROL).
	AREA DIRECTOR, JFK AIRPORT.
	AREA DIRECTOR, NEW YORK SEAPORT.
	DEPUTY ASSISTANT COMMISSIONER (MANAGEMENT).
	DIR CUSTOMS MANAGEMENT CENTER SOUTH FLORIDA.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	DIRECTOR, OFC OF AUTOMATED SYSTEMS OPERATIONS.
	DIR BUDGET AND PLANNING.
	EXEC DIR THE INTERDICTION COMMITTEE.
	REGIONAL COMMISSIONER.
	ASSISTANT COMMISSIONER, OFFICE OF MANAGEMENT.
	DISTRICT DIRECTOR, LOS ANGELES.
	DIR CUSTOMS MANAGEMENT CENTER EAST TAXES.
	DIR OFC OF HUMAN RESOURCES.
	DIRECTOR, OFC OF AUTOMATED COMMERCIAL SYSTEMS.
OFFICE OF REGULATIONS & RULINGS	ASST COMMISSIONER, REGULATIONS & RULINGS.
OFFICE OF INVESTIGATIONS	DEPUTY ASSISTANT COMMISSIONER (ENFORCEMENT).
	SPECIAL AGENT IN CHARGE, MIAMI.
	DIR, OFFICE OF INVESTIGATIVE PROGRAMS.
	DIR, OFFICE OF ENFORCEMENT SUPPORT.
	SPECIAL AGENT IN CHARGE-NEW YORK.
	SPECIAL AGENT IN CHARGE.
	SPECIAL AGENT IN CHARGE (NEW ORLEANS).
	DIRECTOR OFC OF FOREIGN OPERATIONS.
	ASST COMMISSIONER, INVESTIGATIONS.
	SPECIAL AGENT IN CHARGE.
	DEP ASST COMR, OFC OF A & M INTERDICTION.
	SPECIAL AGENT IN CHARGE (HOUSTON).
	SPECIAL AGENT-IN-CHARGE (SAN DIEGO).
	SPECIAL AGENT-IN-CHARGE (CHICAGO).
	SPECIAL AGENT-IN-CHARGE-DALLAS.
OFFICE OF FIELD OPERATIONS	DEPUTY ASST COMM OFC OF REGUL & RULINGS.
	DIR, INTERNATIONAL TRADE COMPLIANCE DIVISION.
	DIR OFC OF REGULATORY AUDIT.
	DIR, CUSTOMS MANAGEMENT CENTER NEW YORK.
	DIR CUSTOMS MANAGEMENT CENTER.
	ASST COMMISSIONER, FIELD OPERATIONS.
	DIR, OFFICE OF TECHNICAL SERVICES.
	DEP ASST COMM (OFC OF TRADE OPERATIONS).
	DEP ASST COMMISSIONER COMMERCIAL OPERATIONS.
	DIR CUSTOMS MANAGEMENT CENTER GULF.
	DIR CUSTOMS MANAGEMENT CENTER.
	PROJECT EXECUTIVE.
	DEPUTY CHIEF FINANCIAL OFFICER (CFO).
	DEP DIR, OFC OF REGULATORY AUDIT.
	PROCESSES & POLICY EXECUTIVE.
	DIR LABORATORIES & SCIENTIFIC SERVICES.
	PROJECT EXECUTIVE.
	PROJECT EXECUTIVE.
	DIR TARIFF CLASSIFICATION APPEALS DIVISION.
	DIR CUSTOMS MANAGEMENT CENTER.
	EXECUTIVE DIRECTOR CUSTOMS MANAGEMENT CENTER.
	DIR CUSTOMS MANAGEMENT CENTER SOUTH PACIFIC.
OFFICE OF FIANCE	ASSISTANT COMMISSIONER, FINANCE.
OFFICE OF INFORMATION & TECHNICAL SERVICES	ASST COMMISSIONER, INFOR & TECHNICAL SERVICES.
OFFICE OF HUMAN RESOURCES MANAGEMENT	ASST COMMISSIONER, HUMAN RESOURCES MGMT.
OFFICE OF STRATEGIC TRADE	DIR STRATEGIC TRADE CENTER PLANTATION FL.
	DIR STRATEGIC TRADE CENTER CHICAGO.
	DIR STRATEGIC TRADE CENTER OPERATIONS
	DIR STRATEGIC TRADE CENTER LONG BEACH.
	DIR STRATEGIC TRADE CENTER DALLAS/FT WORTH.
	PROJECT EXEC (DIR INTERVENTION MANAGEMENT).
	ASST COMMISSIONER, STRATEGIC TRADE.
OFFICE OF INTERNAL AFFAIRS	ASST COMMISSIONER FOR INTERNAL AFFAIRS.
OFFICE OF THE CHIEF COUNSEL	ASST CHIEF COUNSEL (CUSTOMS COURT LITIGAT).
	MIAMI REGL COUNSEL.
	CHICAGO REGL COUNSEL.
	NEW YORK REGL COUNSEL.
	ASSOCIATE CHIEF COUNSEL ENFORCEMENT.
	ASSOC CHIEF COUNSEL (TRADE TARIFF & LEG).
	REGIONAL COUNSEL (SOUTHWEST REGION).
	ASSOC CHIEF COUNSEL (ADMINISTRATION).
	REGIONAL COUNSEL (PACIFIC REGION).
US SECRET SERVICE	DIRECTOR OF THE SECRET SERVICE.
	DEPUTY DIRECTOR U.S. SECRET SERVICE.
	ASSISTANT DIRECTOR, ADMINISTRATION.
	ASSISTANT DIRECTOR INSPECTION.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	ASSISTANT DIRECTOR—TRAINING.
	ASST DIRECTOR-GOVT LIAISON AND PUBLIC AFF.
	DAD—ADMINISTRATION.
	DAD (UNIFORMED FORCES, F & E DEV), OFC TRNG.
	EXEC DIR FOR WORKFORCE PLANN & DIVERSITY MGNT.
	SPECIAL ASST TO THE DIRECTOR.
	DEPUTY ASST DIRECTOR OFFICE OF INSPECTION.
OFFICE OF PROTECTIVE OPERATIONS	ASST DIR (PROTECTIVE OPERATIONS).
	DEP ASST DIR (PROTECTIVE OPERATIONS).
	SPEC AGENT IN CHARGE-PRESIDENTIAL PROTECTIVE.
	SPEC AGENT IN CHARGE-VP PROTECT DIV.
	SPEC AGENT IN CHARGE DIGNITARY PROTECTIVE DIV.
	DEPUTY SPECIAL AGENT IN CHARGE PRES PROT DIV.
	DEPUTY SPECIAL AGENT IN CHARGE—VP PROT DIV.
	DEP ASST DIR PROTECTIVE OPERATIONS.
OFFICE OF PROTECTIVE RESEARCH	ASST DIR (PROTECTIVE RESEARCH).
	DEP. ASST. DIR. (PROTECTIVE RESEARCH).
	SPEC AGENT IN CHARGE-TECH SEC DIV.
	SPEC AGENT IN CHARGE-INTELLIGENCE DIV.
	DEP SPEC AGENT IN CHARGE, INTELLIGENCE DIV.
	CHF, INFO RESOURCES MANAGEMENT DIVISION.
OFFICE OF INVESTIGATIONS	ASST DIRECTOR, INVESTIGATIONS.
	DEPUTY ASST DIR INVESTIGATIONS.
	DEP ASST DIR INVESTIGATIONS.
FIELD OPERATIONS	SPECIAL AGENT IN CHARGE, NEW YORK OFFICE.
	SPECIAL AGENT IN CHARGE, CHICAGO.
	SPECIAL AGENT IN CHARGE, LOS ANGELES OFFICE.
	SPEC AGENT IN CHARGE-WASHINGTON FIELD OFFICE.
	SPEC AGENT IN CHARGE-PHILADELPHIA FIELD OFFICE.
	SPC AGENT IN CHARGE SAN FRANCISCO OFFICE.
	SPECIAL AGENT IN CHARGE, DETROIT.
	SPECIAL AGENT IN CHARGE, DALLAS FIELD OFFICE.
	SPEICAL AGENT IN CHARGE—HOUSTON FIELD OFC.
	SPEC AGENT IN CHARGE—MIAMI FIELD OFFICE.
	SPECIAL AGENT IN CHARGE—BOSTON FIELD OFFICE.
	SPEC AGENT IN CHARGE—ATLANTA FIELD OFFICE.
US MINT	ASSOC DIRECTOR, CHIEF OPERATING OFFICER.
	ASSOC DIRECTOR, CHIEF OPERATING OFFICER.
	DEP ASSOC DIR FOR FINANCE & DEP CHIEF FIN OFC.
	ASSOCIATE DIRECTOR FOR MARKETING.
	ASSOC DIR FOR POL & MGMT CHF FIN OFFICER.
INTERNAL REVENUE SERVICE	REGL DIR OF APPEALS-CENTRAL REGION.
	REG DIR OF APPEALS, MID-ATLANTIC REGION.
	REG DIR OF APPEALS-SOUTHWEST REG.
	REGIONAL DIR OF APPEALS NORTH ATLANTIC REGION.
	REGIONAL DIRECTOR OF APPEALS-WESTERN REGION.
	ASST TO THE COMMISSIONER (EQUAL OPPORTUNITY).
	CHIEF APPEALS OFFICE NEW YORK CITY.
	DEPUTY COMMISSIONER.
	SPECIAL ASST TO THE DEPUTY COMMISSIONER.
	NATIONAL TRANSITION EXECUTIVE.
	REGIONAL DIRECTOR OF APPEALS.
	TAXPAYER OMBUDSMAN.
	CHIEF, APPEALS OFFICE, LONG ISLAND.
	REGIONAL DIRECTOR OF APPEALS.
	ASST NATL TRANSITION EXECUTIVE FOR APPEALS.
	NATIONAL DIRECTOR OF APPEALS.
	CHIEF COMPLIANCE.
	ASSOCIATE COMMISSIONER FOR MODERNIZATION.
	DISTRICT OFFICE TRANSITION SITE EXEUCTIVE.
	COMPUTING CET TRANSITION SITE EXECUTIVE.
	ASSISTANT NATIONAL TRANSITION EXEUCTIVE.
	DEPUTY NATIONAL DIR OF APPEALS.
	SUBMISSION PROCESSING TRANSITION SITE EXECU.
	CUSTOMER SERVICE TRANSITION SITE EXECUTIVE.
	ASST TO THE SENIOR DEP COMMISSIONER.
	DIRECTOR, OFFICE OF BUSINESS TRANSITION.
	MANAGEMENT SYSTEMS SITE EXEUCTIVE.
NORTH ATLANTIC REGION	REG COMMR.
	ARC (CRIMINAL INVESTIGATION).
	ASSISTANT REGIONAL COMMISSIONER (DATA PROC).
	SERVICE CENTER DIRECTOR, ANDOVER, MASS.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	SRVC CTR DIR, BROOKHAVEN.
	DISTRICT DIR, MANHATTAN.
	DISTRICT DIR, BROOKLYN.
	DISTRICT DIR BOSTON.
	DISTRICT DIR, ALBANY.
	DIST DIR (HARTFORD).
	DISTRICT DIR, BUFFALO.
	ASST DIST DIR, BROOKLYN.
	ASSISTANT DISTRICT DIRECTOR MANHATTAN.
	ASST DISTRICT DIR, BOSTON.
	DISTRICT DIRECTOR PROVIDENCE.
	DIST DIR, AUGUSTA.
	DISTRICT DIRECTOR, PORTSMOUTH.
	DISTRICT DIRECTOR, BURLINGTON.
	ASST DISTRICT DIRECTOR BUFFALO.
	REGIONAL CHIEF CUSTOMER SERVICE.
	DIRECTOR OF SUPPORT SERVICES.
	CHIEF COMPLIANCE.
	FIELD INFORMATION SYSTEMS OFFICER.
MID-ATLANTIC REGION	REG COMMISSIONER.
	ASSISTANT REGIONAL COMMISSIONER (DATA PROC).
	SERVICE CENTER DIR, PHILADELPHIA.
	DISTRICT DIR, NEWARK.
	DISTRICT DIR, PITTSBURGH.
	DISTRICT DIRECTOR RICHMOND DISTRICT.
	ASST DISTRICT DIR, PHILADELPHIA.
	ASST DISTRICT DIRECTOR (NEWARK).
	ASST DISTRICT DIRECTOR—BALTIMORE, MD.
	DISTRICT DIRECT, WILMINGTON.
	DISTRICT DIR, BALTIMORE.
	ASST SERVICE CENTER DIRECTOR.
	CHIEF COMPLIANCE.
	DISTRICT DIRECTOR.
	DIR OF SUPORT SERVICES.
SOUTHEAST REGION	REG COMMR.
	ASST REG COMMISSIONER—CRIMINAL INVESTIGATION.
	ASSISTANT REGIONAL COMMISSIONER (DATA PROC).
	SERVICE CENTER DIRECTOR, MEMPHIS.
	SRVC CTR DIR, ATLANTA.
	DISTRICT DIR, JACKSONVILLE.
	DISTRICT DIR, ATLANTA.
	DISTRICT DIRECTOR GREENSBORO.
	DISTRICT DIR, NASHVILLE.
	DISTRICT DIRECTOR BIRMINGHAM.
	DISTRICT DIR, NEW ORLEANS.
	DISTRICT DIRECTOR, COLUMBIA.
	DISTRICT DIRECTOR LITTLE ROCK DISTRICT.
	DISTRICT DIRECTOR, JACKSON, MISS.
	ASST DISTRICT DIRECTOR, JACKSONVILLE.
	ASSISTANT DISTRICT DIRECTOR, ATLANTA.
	DIR OF SUPPORT SERVICES.
	ASST DISTRICT DIRECTOR.
	REGIONAL CHIEF CUSTOMER SERVICE.
	FIELD INFORMATION SYSTEMS OFFICER, SOUTHEAST.
	DISTRICT DIRECTOR.
	ASSISTANT SERVICE CENTER DIRECTOR.
	ASSISTANT DISTRICT DIRECTOR.
CENTRAL REGION	REGIONAL COMMR, CENTRAL.
	ASST REGL COMR (CRIMINAL INVESTIGATION).
	ASST REGL COMMISSIONER (DATA PROCESSING).
	DIR SERVICE CTR CINCINNATI.
	DISTRICT DIR (CLEVELAND).
	DISTRICT DIRECTOR DETROIT.
	DISTRICT DIRECTOR (PARKERSBURG).
	DISTRICT DIRECTOR, INDIANAPOLIS.
	DISTRICT DIRECTOR, LOUISVILLE.
	DISTRICT DIR, CINCINNATI.
	DIRECTOR OF SUPPORT SERVICES.
	CHIEF COMPLIANCE.
	ASST DIRECTOR DETROIT COMPUTING CENTER.
	ASST DISTRICT DIRECTOR DENVER.
	ASSISTANT DISTRICT DIRECTOR.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
MIDWEST REGION	ASSISTANT DISTRICT DIRECTOR DETROIT.
	REGIONAL COMMR, MIDWEST REGION.
	ARC (CRIMINAL INVESTIGATION) MIDWEST REGION.
	ASSISTANT REGIONAL COMMISSIONER (DATA PROC).
	SRVC CTR DIR, KANSAS CITY.
	DISTRICT DIR, CHICAGO.
	DISTRICT DIRECTOR ST LOUIS.
	DISTRICT DIR, ST PAUL.
	DISTRICT DIR, OMAHA.
	DISTRICT DIR, SPRINGFIELD.
	DISTRICT DIR, MILWAUKEE.
	ASST DISTRICT DIR, CHICAGO.
	DISTRICT DIRECTOR, FARGO.
	DISTRICT DIRECTOR, ABERDEEN.
	DIR OF SUPPORT SERVICES.
	NATIONAL DIRECTOR FOR INTERNAL AUDIT PLANNING.
	ASSISTANT DISTRICT DIRECTOR.
	DISTRICT DIRECTOR, HELENA.
	CHIEF COMPLIANCE DEPT OF TREAS.
	DISTRICT DIRECTOR.
	ASSISTANT SERVICE CENTER DIRECTOR.
SOUTHWEST REGION	REGIONAL COMMISSIONER.
	ASSISTANT REGIONAL COMMISSIONER (DATA PROC).
	SERVICE CENTER DIR, OGDEN.
	SERVICE CENTER DIRECTOR, AUSTIN.
	DISTRICT DIR, AUSTIN.
	DISTRICT DIRECTOR, DALLAS.
	DISTRICT DIRECTOR WICHITA.
	DISTRICT DIRECTOR OKLAHOMA CITY.
	DISTRICT DIR, PHOENIX.
	DISTRICT DIR, DENVER.
	ASSISTANT DISTRICT DIRECTOR DALLAS.
	DISTRICT DIRECTOR, ALBUQUERQUE.
	DISTRICT DIRECTOR, CHEYENNE.
	DISTRICT DIRECTOR, SALT LAKE CITY.
	COMPLIANCE CENTER DIRECTOR.
	ASST DISTRICT DIRECTOR AUSTIN.
	FIELD INFORMATION SYSTEMS OFFICER MIDSTATES.
	ASSISTANT SERVICE CENTER DIRECTOR.
	DIRECTOR OF SUPPORT SERVICES.
	CHIEF COMPLIANCE.
	ASSISTANT DISTRICT DIRECTOR, HOUSTON.
	DISTRICT DIRECTOR, HOUSTON.
	REGIONAL CHIEF CUSTOMER SERVICE.
	REGIONAL COMMISSIONER.
	REGIONAL DIRECTOR OF APPEALS MIDSTATES.
	REGIONAL CHF COMPLIANCE OFCR, SOUTHWEST REG COMMR.
WESTERN REGION	ASSISTANT REGIONAL COMMISSIONER (DATA PROC).
	SERVICE CENTER DIRECTOR, FRESNO.
	DISTRICT DIR, LOS ANGELES.
	DISTRICT DIR, SAN FRANCISCO.
	DISTRICT DIRECTOR PORTLAND DISTRICT.
	DISTRICT DIR, SEATTLE.
	ASST DISTRICT DIR, LOS ANGELES.
	ASST DIST DIR SAN FRANCISCO.
	DISTRICT DIRECTOR, HONOLULU.
	DISTRICT DIRECTOR ANCHORAGE.
	DISTRICT DIRECTOR BOISE.
	DISTRICT DIRECTOR (SACRAMENTO).
	DISTRICT DIRECTOR (LAS VEGAS).
	DISTRICT DIRECTOR, SAN JOSE.
	FIELD INFORMATION SYSTEMS OFFICER WESTERN.
	NATIONAL TRANSITION EXECUTIVE FOR APPEALS.
	ASSISTANT DISTRICT DIRECTOR, LAGUNA NIGUEL.
	ASST DISTRICT DIRECTOR SAN JOSE.
	REGIONAL CHIEF CUSTOMER SERVICE.
	ASST DISTRICT DIRECTOR SEATTLE.
	CHIEF COMPLIANCE.
	DISTRICT DIRECTOR, LAGUNA NIGUEL.
	REGIONAL COMMISSIONER, WESTERN.
	DIR OF SUPPORT SERVICES.
	SERVICE CENTER DIRECTOR, FRESNO.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
CHIEF COMPLIANCE OFFICER	ASST COMR (EMPLOYEE P & E ORGANIZATIONS).
	SPECIAL ASST FOR EXEMPT ORGANIZATION MATTERS.
	ASST COMMISSIONER (TAXPAYER SERVICE).
	MODERNIZATION EXECUTIVE.
	ASSISTANT COMMISSIONER (EXAMINATION).
	ASST COMMR (CRIMINAL INVESTIGATION).
	DIR EXEMPT ORGANIZATIONS TECHNICAL DIVISION.
	D/EMPLOYEE PLANS TECH & ACTUARIAL DIVISION.
	DIRECTOR, STATISTICS OF INCOME DIVISION.
	DEP ASST COMMR (CRIMINAL INVESTIGATION).
	DIRECTOR COLLECTION FIELD OPERATIONS.
	ASST/DIR EMPLOYEE PLANS TECHN & ACTURIAL DIV.
	DIRECTOR IF INVESTIGATIONS, EASTERN AREA OPS.
	DIR OF INVESTIGATIONS.
	DIR OF INVESTIGATIONS (TAX REFUND FRAUD).
	DIR OF INVESTIGATIONS, SOUTHERN AREA OF OPS.
	DIRECTOR, OFFICE OF NATIONAL OPERATIONS.
	DIR OF INVESTIGATIONS, CENTRAL AREA OF OPS.
	ASSISTANT COMMISSIONER (COLLECTION).
	ASST COMMISSIONER (COLLECTION).
	NATL DIRECTOR CORPORATE EXAMINATIONS.
	EXEC DIR, ENSUING COMPLIANCE CORE BUSIN SYST.
	ASSISTANT COMMISSIONER (INTERNATIONAL).
	NATIONAL DIRECTOR, COMPLIANCE SPECIALIZATION.
	NATIONAL DIRECTOR, SPECIALTY TAXES.
	CHIEF COMPLIANCE OFFICER.
	SPEC ASST TO THE ASST COMR (CRIMINAL INVEST).
	NATIONAL DIRECTOR SERVICE CENTER COMPLIANCE.
	NATIONAL DIR, COLLECTION FIELD OPERATIONS.
	NATIONAL DIRECTOR COMPLIANCE RESEARCH.
	DEPUTY ASST COMMISSIONER (INTERNATIONAL).
	ASST COMMR (EXAMINATION & GOVNTL LIAISON).
	DIRECTOR, FED STATE RELATIONS DIVISION.
CHIEF, TAXPAYER SERVICES:	EXECUTIVE FOR ELECTRONIC FILING STRATEGY.
	ASST SERVICE CENTER DIR BROOKHAVEN.
	NATL DIR, SUBMISSION PROCESSING DIVISION.
	EXECUTIVE OFCR FOR SERVICE CENTER OPERATIONS.
	CHIEF TAXPAYER SERVICES.
	DIR, TAXPAYER SERVICES DESIGN & REVIEW DIV.
CHIEF FINANCIAL OFFICER	CHIEF FINANCIAL OFFICER.
	CONTROLLER NATIONAL DIR FOR FINANCIAL MGMT.
	NATIONAL DIRECTOR FOR BUDGET.
	DEPUTY ASSISTANT COMMISSIONER (PROCUREMENT).
	DIRECTOR, SUPPORT & SERVICES DIVISION.
	DEP ASST COMMISSIONER (HUMAN RES & SUPPORT).
	DEPUTY CHIEF FINANCIAL OFFICER.
	NATIONAL DIRECTOR FOR SYSTEMS & ACCOUNT STDS.
	NATIONAL DIRECTOR FOR ECONOMIC ANALYSIS.
	ASST COMR (PROCUREMENT).
	NATIONAL DIRECTOR FOR BUDGET.
CHIEF, MANAGEMENT & ADMINISTRATION	SPECIAL ASST TO CHIEF MGMT & ADMINISTRATION.
	DEAN SCHOOL OF INFORMATION TECHNOLOGY.
	DEAN SCHOOL OF PROFESSIONAL DEVELOPMENT.
	NATIONAL DIRECTOR PERSONNEL.
	NATIONAL DIRECTOR OF EDUCATION.
	DIR, RESOURCING BUSINESS SYSTEM & INTEGRATION
	ASST COMMISSIONER (SUPPORT SERVICES)
	CHIEF MANAGEMENT AND ADMINISTRATION.
CHIEF INFORMATION OFFICER	DIR, MARTINSBURG COMPUTING CENTER
	DIR, IRS DATA CENTER DETROIT
	DIRECTOR, SYSTEMS DESIGN DIVISION.
	DIRECTOR, SYSTEMS ACQUISITION DIVISION.
	DIR, INPUT SYSTEMS DIVISION
	DEP ASST COMMISSIONER (INFO SYSTEMS MGMT)
	DIR, PROJECT MGNT DIVISION.
	PRIVACY ADVOCATE.
	DIR, TECHNICAL MANAGEMENT DIVISION.
	DIR, CASE SYSTEMS DIVISION.
	DEP ASST CHF INFO OFFICER INFO SYSTEM DEV.
	DEP NATL DIR APPLICAITONS DESIGN & DEVELOP.
	NATIONAL DIR, APPLICATION DESIGN & DEV.
	DEP NATL DIR, SYST ENG & PROGRAM MANAGEMENT.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	NATL DIR NETWORK & SYSTEMS MANAGEMENT.
	DIR, TELECOMMUNICATIONS DIVISION.
	DIR, OPERATIONS MANAGEMENT DIVISION.
	PROJECTS DIRECTOR, CORPORATE COMPUTING.
	DIRECTOR, QUALITY ASSURANCE DIVISION.
	NATIONAL DIR, SYST ENG & PROGRAM MANAGEMENT.
	DEAN SCHOOL OF TAXATION.
	CHIEF INFORMATION OFFICER.
	DIRECTOR, CORPORATE SYSTEMS DIVISION.
	ASST COMMISSIONER (INFORMATION SYSTEMS MGMT)
	DEPUTY CHIEF INFORMATION OFFICER.
CHIEF, STRATEGIC PLANNING & COMMUNICATIONS	DIRECTOR, TAX FORMS & PUBLICATIONS DIVISION.
	DIRECTOR, LEGISLATIVE AFFAIRS DIVISION.
	NATL DIRECTOR, STRATEGIC PLANNING DIVISION.
	NATIONAL DIRECTOR OF QUALITY.
	NATL DIR, INTERGVTL & EXTERNAL RELATIONS DIV.
	CHIEF STRATEGIC PLANNING & COMMUNICATIONS.
CHIEF, HEADQUARTERS OPERATIONS	CHIEF HEADQUARTERS OPERATIONS.
CHIEF INSPECTOR	CHIEF INSPECTOR.
	DEP CHIEF INSPECTOR.
	ASSISTANT CHIEF INSPECTOR (INT AUDIT).
	ASSISTANT DIRECTOR INTERNAL AUDIT DIVISION.
	ASST CHIEF INSPECTOR (INTERNAL SECURITY).
	ASST DIR, INTERNAL SECURITY DIVISION.
	REGIONAL INSPECTOR, MIDWEST REG.
	REGIONAL INSPECTOR, NORTH ATLANTIC.
	REGIONAL INSPECTOR WESTERN REGION.
	REGIONAL INSPECTOR, SOUTHWEST REG.
	REGIONAL INSPECTOR, MID-ATLANTIC REG.
	REGIONAL INSPECTOR, CENTRAL.
	REGIONAL INSPECTOR SOUTHEAST.
	NATL DIR COMM EDUCATION & QUALITY.
CHIEF COUNSEL	ASST CHIEF COUNSEL (GENERAL LITIGATION)
	ASST CHIEF COUNSEL (CRIMINAL TAX).
	ASST CHIEF COUNSEL (GENERAL LEGAL SERVICES).
	ASST CHIEF COUNSEL (DISCLOSURE LITIGATION).
	ASSISTANT CHIEF COUNSEL (INTERNATIONAL).
	ASSISTANT CHIEF COUNSEL (CORPORATE).
	DEP ASST CHF COUN (INCOME TAX & ACCOUNTING).
	DEP ASST CHF COUN (PASSTHROUGHS/SPEC INDUST).
	ASST CHIEF COUNSEL (FIELD SERVICE).
	ASST CHF COUN (PASSTHROUGHS/SPEC INDUSTRIES).
	DEPUTY ASST CHIEF COUNSEL (CORPORATE).
	DEP ASSOC CHIEF COUNSEL (FIN & MANAGEMENT).
	SPECIAL APPELLATE COUNSEL.
	DEP ASST CHIEF COUNSEL (FIELD SERVICE).
	DEP ASST CHIEF COUN (FINANCIAL INST & PROD).
	DEP ASSOC CHF COUN (ENFORCEMENT LITIGATION).
	DEP ASSOC CHIEF COUNSEL INTERNATIONAL
	ASST CHF COUN (FIN INSTITUTIONS & PRODUCTS).
	DEP ASST CHIEF COUN (INCOME TAX & ACCOUNTING).
	DEP ASSOC CHIEF COUNSEL (EBEO).
	DEP ASST CHF COUN (INCOME TAX & ACCOUNTING).
	ASST CHIEF COUNSEL (INCOME TAX & ACCOUNTING).
	ASSOC CHIEF COUNSEL (ENFORCEMENT LITIGATION).
	ASSOC CHIEF COUNSEL EMP BENEFITS EXEMPT ORG.
	SPECIAL COUNSEL (MODERNIZATION & STRAT PLNNG).
	SPECIAL LITIGATION COUNSEL.
	DEPUTY CHIEF COUNSEL.
	DEP ASSOC CHIEF COUNSEL (DOMESTIC) (TECHNICAL).
	ASSOCIATE CHIEF COUNSEL (INTERNATIONAL).
	ASSOC CHF COUNSEL (FINANCE & MANAGEMENT).
	DEP ASSOC CHIEF COUN (DOMESTIC) (FIELD SERV).
	ASSOC CHIEF COUNSEL (DOMESTIC).
REGIONAL COUNSELS	REGL COUNSEL, CENTRAL REG.
	REGIONAL COUNSEL, MID-ATLANTIC REGION.
	REGL COUNSEL MIDWEST REGION.
	REGL COUNSEL, NORTH ATLANTIC REGION.
	DEP REGL COUN (TAX LITIGAT) NO-ATLANTIC REG.
	DEPUTY REGIONAL COUNSEL (GENERAL LITIGATION).
	REGIONAL COUNSEL SE REGION.
	REGL COUNSEL SOUTHWEST REGION.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	REGIONAL COUNSEL.
	DISTRICT COUNSEL—BOSTON.
	DISTRICT COUNSEL—LOS ANGELES.
	DISTRICT COUNSEL CINCINNATI.
	DISTRICT COUNSEL—PHILADELPHIA.
	DISTRICT COUNSEL—NEWARK.
	DISTRICT COUNSEL, CHICAGO.
	DISTRICT COUNSEL, MANHATTAN.
	DISTRICT COUNSEL—DALLAS.
	DISTRICT COUNSEL—SAN FRANCISCO.
	DEP REGIONAL COUNSEL (TAX LITIGATION).
	DEP REGIONAL COUNSEL (TAX LITIGATION).
	DISTRICT COUNSEL.
	DISTRICT COUNSEL.
	DEPUTY REGIONAL COUNSEL (TAX LITIGATION).
	DISTRICT COUNSEL—WASHINGTON, DC.
	DEPUTY REGIONAL COUNSEL (TAX LITIGATION).
	DISTRICT COUNSEL, BROOKLYN, NEW YORK.
	DISTRICT COUNSEL, ATLANTA.
	DISTRICT COUNSEL, HOUSTON, TEXAS.
	DISTRICT COUNSEL, DENVER.
US ARMS CONTROL AND DISARMAMENT AGENCY:	
INTELLIGENCE, VERIFICATION & INFORMATION SUPPORT BUREAU.	CHIEF, INTELLIGENCE, TECHNOL & ANALYSIS DIV.
OFC OF ADMINISTRATION	DIRECTOR OF ADMINISTRATION.
STRATEGIC AND EURASIAN AFFAIRS BUREAU	CHIEF, STRATEGIC NEG & IMPLEMENTATION DIV.
	CHF, THEATER & STRATEGIC DEFENSES DIVISION.
	CHIEF, DEFENSE CONVERSION DIVISION.
	CHIEF, STRATEGIC TRANSITION DIVISION.
	CHF, STRATEGIC NEG & IMPLEMENTATION DIVISION.
NON-PROLIFERATION AND REGIONAL ARMS CONTROL BUREAU.	CHIEF SCIENTIST.
	CHF, INTERNATIONAL NUCLEAR AFFAIRS DIVISIONS.
MULTILATERAL AFFAIRS BUREAU	CHIEF INTL SECURITY & NUCLEAR POLICY DIVISION.
	CHIEF SCI & TECHNOLOGICAL DIVISION.
UNITED STATES INFORMATION AGENCY:	
OFC OF THE DIRECTOR	ASSISTANT INSPECTOR GENERAL FOR AUDITS.
	ASSISTANT INSPECTOR GENERAL FOR INSPECTIONS.
BUREAU OF MANAGEMENT	DIRECTOR, OFFICE OF PERSONNEL.
	DIRECTOR, OFFICE OF THE COMPTROLLER.
	DIR OFF SECURITY.
	DIR OFC OF CONTRACTS.
	DIRECTOR, OFFICE OF TECHNOLOGY.
BUREAU OF BROADCASTING	DIR ENGINEERING AND TECHNICAL OPERATIONS.
	DEPUTY OF SYSTEMS ENGINEERING.
	DEPUTY FOR PROJECTS MANAGEMENT.
	DEPUTY FOR OPERATIONS.
OFFICE OF INFORMATION RESOURCES	DIRECTOR, OFC OF INFORMATION RESOURCES.
OFC OF THE GEN COUNSEL	DEPUTY GENERAL COUNSEL.
US INTERNATIONAL TRADE COMMISSION:	
OFFICE OF INDUSTRIES	DIR OFC OF INDUSTRIES.
OFFICE OF INVESTIGATIONS	DIR, OFC OF INVESTIGATIONS.
DEPARTMENT OF VETERANS AFFAIRS:	
OFFICE OF THE INSPECTOR GENERAL	DEP INSPECTOR GENERAL.
	ASSISTANT INSPECTOR GENERAL FOR AUDITING.
	ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	ASST INSP GEN FOR POLICY, PLAN & RESOURCES.
	DEP ASST INSPECTOR GENERAL FOR INVESTIGATIONS.
	COUNSELOR TO THE INSPECTOR GENERAL.
	ASST INSPECTOR GENERAL FOR HEALTHCARE INSPECT.
	DIR, AUDIT PLANNING, FIN REV & OPS SUPPORT.
	DEP ASST INSPECTOR GENERAL FOR AUDITING.
BOARD OF VETERANS APPEALS	VICE CHAIRMAN.
	DEPUTY VICE CHAIRMAN.
OFFICE OF FINANCIAL MANAGEMENT	DEP ASST SECY FOR FINANCIAL MANAGEMENT.
	ASSOC DEP ASST SECY FOR FINANCIAL OPERATIONS.
	DIR, AUSTIN FINANCE CENTER, AUSTIN, TX.
OFFICE OF INFORMATION RESOURCES MANAGEMENT	DIR, VA AUTOMATION CTR, AUSTIN, TX.
	ASSOC DEP ASST SECY FOR TELECOMMUNICATIONS.
	ASSOC DEP ASST SECY FOR INFO RES MANAGEMENT.
	ASSOC DEP ASST SECY FOR POL & PROG ASSISTANCE.
OFFICE OF ACQUISITION AND MATERIEL MANAGEMENT	DEP ASST SEC FOR ACQUISITION & MATERIEL MGMT.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR Year 1995—Continued

Agency organization	Career reserved positions
	ASSOC DEP ASSISTANT SECY FOR ACQUISITIONS.
	ASSOC DEP ASST SECY FOR SERV & DISTRIBUTION.
	ASS0C DEP ASST SECY FOR RESOURCES.
	ASSOCIATE DEPUTY ASST SECRETARY FOR MATERIEL.
	ASSOC DAS FOR VA NATL ACQ CENTER HINES., IL.
OFFICE OF HUMAN RESOURCES MANAGEMENT	ASSOC DEP ASST SECY FOR HUMAN RES MANAGEMENT.
	ASSOC DEP ASST SECY FOR HUMAN RES MANAGEMENT.
OFFICE OF SECURITY AND LAW ENFORCEMENT	DEP ASST SECY FOR SECURITY & LAW ENFORCEMENT.
VETERANS BENEFITS ADMINISTRATION	DEPUTY CHIEF FINANCIAL OFFICER.
	DEP DIR COMPENSATION & PENSION SERVICE.
	DEP DIR LOAN GUARANTY SVC.
	CHIEF FINANCIAL OFFICER.
VETERANS HEALTH ADMINISTRATION	DIRECTOR, BUDGET OFFICE.
	DIR, OFFICE OF REAL PROPERTY MANAGEMENT.
	DIR OFFICE OF MEDICAL SHARING.
	DIR, MEDICAL CARE COST RECOVERY OFFICE.
	DIR EMERGENCY MEDICAL PREPAREDNESS OFFICE.
	DEPUTY DIRECTOR EMERGENCY MEDICAL PREP OFC.
	CHIEF FINANCIAL OFFICER.
	DIRECTOR, WESTERN AREA OFFICE.
	DIRECTOR, EASTERN AREA OFFICE.
	DIRECTOR, FACILITIES QUALITY OFFICE.
	DIR CONSULTING SUPPORT OFFICE.
	DIRECTOR, FINANCIAL MANAGEMENT OFFICE.
	DEPUTY CHIEF FINANCIAL OFFICER.
REGIONAL DIRECTORS	DIR CANTEEN SERVICE.

[FR Doc. 96–12103 Filed 5–16–96; 8:45 am]
BILLING CODE 6325–01–M

federal register

Friday
May 17, 1996

Part III

Department of Transportation

Federal Transit Administration

49 CFR Part 639
Capital Leases; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 639

[Docket No. FTA–96–1031]

RIN 2132–AA55

Capital Leases

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule amends "Capital Leases" to treat maintenance costs under a commercial lease of a capital asset as an eligible capital expense. "Capital Leases" implements section 308 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, which allows capital grants under the Federal transit laws to be used for leasing facilities or equipment if a lease is more cost effective than purchase or construction of such items. FTA believes that this amendment is consistent with industry practice and with recent Federal initiatives to streamline federally assisted procurement practices and to ensure that Federal investment in the nation's transportation infrastructure is properly protected.

EFFECTIVE DATE: June 17, 1996.

ADDRESS: United States Department of Transportation, Central Dockets Office, P–125, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Rita Daguillard, Deputy Assistant Chief Counsel, Office of Chief Counsel, (202) 366–1936, or Douglas Kerr, Office of Program Guidance and Support, (202) 366–1656.

I. Supplementary Information

A. Background

Under 49 U.S.C. 5307, Federal funds are provided to urbanized areas on the basis of a statutory formula. These funds are available for the acquisition or construction of mass transportation facilities and equipment ("capital assistance grants"), as well as for payment of a portion of the net operating cost of mass transportation facilities and equipment ("operating assistance grants").

Historically, Federal Transit Administration (FTA) recipients had the discretion to acquire capital assets by long-term or short-term lease, but few did so, since the significant portion of the lease cost (as much as forty percent) representing imputed interest was ineligible for reimbursement under Office of Management and Budget (OMB) cost principles (OMB Circular A–87, "Cost Principles for State, Local, and Indian Tribal Governments").

In 1987, section 308 of the Surface Transportation and Uniform Relocation Assistance Act, Public Law 100–17 (STURAA), expressly authorized the use of section 5307 capital assistance funds to acquire facilities and equipment by lease where leasing is more cost effective than purchase or construction. As explained in the accompanying Senate Report, section 308

> permits grantees to use [section 5307] grant funds to lease major capital cost items such as computers, maintenance of way and other heavy equipment, maintenance of effort rail equipment, radio equipment, bus garages, property or structures for park and ride, and other buildings or facilities used for mass transit purposes. The Committee recognizes that it is often more cost effective for grantees to lease rather than purchase major capital items. Leasing arrangements can also provide transit authorities with flexibility that is needed, for example, to maintain technological advance in their communications and computing equipment or to adapt buildings and other facilities to changing needs. By including this section, the Committee intends to help grantees better manage their operations and conduct long-term and short-term planning.

S. Rep. No. 3, 100th Cong., 1st Sess. 6 (1987).

On October 15, 1991, FTA issued 49 CFR Part 639 (56 FR 51786), which implements section 308. The rule provides that capital grants under section 5307 may be used for leasing facilities or equipment if leasing is more cost effective than purchase or construction of such items. Section 639.27 lists maintenance costs among the factors that a recipient may consider in making its cost-effectiveness determination. Section 639.17, provides that "only costs directly attributable to making a capital asset available to the lessee are eligible for capital assistance" and cites as examples finance charges and ancillary costs such as delivery and installation charges.

B. The Notice of Proposed Rulemaking

On January 31, 1996, FTA issued a notice of proposed rulemaking (NPRM) that would amend section 639.17 to recognize maintenance costs as "costs directly attributable to making a capital asset available to the lessee." In the NPRM, FTA stated that this amendment appeared to be consistent with common industry practice and Federal procurement streamlining measures.

The NPRM pointed out that in reviewing the subject of capital leases, particularly vehicle leases, FTA had noted that maintenance and repair costs are often an integral component of standard commercial lease agreements and that use of capital assistance for such costs is expressly permitted under section 5307. Many commercial vehicle leases, for instance, state that the lessor will provide all maintenance, repairs, and replacement parts needed to keep the capital asset in good operating condition. These services are included in the overall lease cost, rather than being itemized as a separate charge. In such cases, it is not feasible for lessees to separate maintenance charges from the overall lease cost. The NPRM stated that requiring grantees to do so imposes an accounting burden that is inconsistent with Congress' recognition that leasing is often more cost effective and with its intention in section 308 to facilitate grantee operations.

The NPRM moreover noted that since regular maintenance is necessary to ensure the availability and adequate functioning of a capital asset, FTA believes that it is an essential and inseparable element of the lease agreement. Congress has expressly recognized this relationship in allowing capital assistance to be used to acquire "associated capital maintenance items" under section 5307(b)(1), where such items would otherwise have to be funded under the operating assistance program. FTA therefore proposed to recognize maintenance charges as eligible capital costs under a commercial lease directly attributable to the lessee's use of the asset within the definition of section 639.17.

The NPRM pointed out that this proposal is consistent with several recent initiatives, including the President's National Performance Review, Executive Order 12931 (Federal Procurement Reform), and the Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103–355, 108 Stat. 3243 (October 13, 1994)), which direct Federal agencies to remove administrative burdens in procurement processes. They encourage and facilitate the procurement of commercially available items by exempting agencies from unnecessarily burdensome government-unique certifications and accounting requirements that add costs and discourage companies from doing business with them. Section 8203 of FASA, for instance, requires that agencies use uniform, simplified contracts for the procurement of commercial items and that they revise all procurement procedures not required by law to eliminate impediments to use of such contracts. In the NPRM, FTA stated that requiring its recipients to account separately for maintenance costs under a commercial lease is unnecessarily burdensome and makes such leases more costly and cumbersome to administer. Recognizing these costs explicitly in section 639.17 should facilitate recipients' acquisition and maintenance of capital assets by allowing them to enter into standard commercial lease agreements more easily and at less cost.

The NPRM stated that this proposal is consistent with FTA's recently issued Circular 4220.1C ("Third Party Contracting Requirements," October 1, 1995"), which reduces FTA requirements; provides grantees increased flexibility in soliciting, awarding, and administering contracts; reduces FTA's role in third party procurement activity; and allows recipients to use their own procurement practices that reflect State or local laws, provided that they conform to applicable Federal law. FTA noted that neither section 308 of the STURAA nor the accompanying Senate Report indicates that maintenance costs should not be treated as eligible capital expenses.

In the NPRM, FTA sought comment on its proposal to recognize maintenance costs as eligible capital expenses under leasing agreements.

C. Comments on the NPRM

FTA received ten comments in response to the NPRM: six from public transit agencies, two from State departments of transportation, one from a metropolitan planning organization, and one from an association representing local mass transit systems.

All of the commenters strongly supported FTA's proposal to recognize maintenance costs as eligible capital expenses under leasing agreements. They pointed out that the proposed amendment would streamline the procurement process for transit managers and allow them to make contractual arrangements consistent with standard business practices. Two commenters opined that in the current climate of declining Federal operating assistance, the ability to charge maintenance costs as capital expenditures would somewhat ease the impact of these reductions. Overall, the commenters agreed that the amendment would be a positive step toward both increased flexibility in the use of grant funds and decreased administrative burdens on grantees.

One commenter asked whether the costs of maintaining shared elements of a communications network could be eligible capital expenses under the amendment. The commenter noted that the capital items mentioned in the NPRM were for the exclusive use of the lessee, e.g., bus garages, computers, etc. Communications networks, on the other hand, include both shared elements and components that are used exclusively by the lessee. Both, however, are inseparable elements of the network, and maintenance of both is essential to its proper operation.

As the NPRM indicated, the proposed amendment is intended to allow all maintenance services included in the overall lease cost of a capital item to be treated as an eligible capital expense. Therefore, any maintenance services charged to a grantee's capital lease would be eligible, whether they are for shared-use or exclusive-use segments of a system. Moreover, sections 639.25 and 639.27 of the regulation provide that estimated lease costs must be reasonable based on conditions applicable to the recipient, and that recipients are to use maintenance costs as a criterion in comparing leasing with purchasing or constructing an asset. Therefore, recipients may enter into leases of communications networks only if their share of the costs of maintaining common elements is reasonable, and if the cost of leasing, including the maintenance services, is more advantageous than purchase or construction. To the extent that these criteria are met, the cost of maintaining common elements of a communications or other network under a lease agreement would be an eligible capital expense.

One commenter recommended extending the amendment to rural transit services using Federal funds under 49 U.S.C. 5311, since rural systems play an integral role in State transportation networks but lack adequate maintenance resources. As indicated above, under the OMB Circular A–87 requirements that were in effect at the time FTA's leasing regulation was initially promulgated, the portion of the lease cost representing imputed interest was ineligible for reimbursement unless expressly authorized by statute. Because section 308 of the STURAA applied specifically to the use of section 5307 funds, the leasing regulation covered only that program. However, in a recent revision of Circular A–87 (60 FR 26484, May 17, 1995), OMB changed its requirements to allow the reimbursement of interest payments under financing arrangements such as lease agreements. Therefore, specific statutory authorization is no longer required to permit capital reimbursement for the interest portion of any federally funded lease. Accordingly, 49 CFR Part 639 is now applicable to all FTA programs.

One commenter suggested that FTA allow all maintenance costs, including those that are not part of a lease agreement, to be treated as eligible capital expenses. The commenter stated that regular maintenance is necessary to ensure the availability and adequate functioning of all capital assets. Therefore, even in instances where maintenance expenses are paid separately by a recipient under either a lease or purchase arrangement, reimbursement at the capital rate should be allowed.

The commenter's suggestion goes far beyond the scope of this proposed amendment, whose purpose is to facilitate recipient's entry into standard commercial leases that include maintenance and repair costs as integral components. Moreover, as noted above, neither section 308 of the STURAA nor the accompanying Senate Report indicates that maintenance costs should not be treated as eligible capital expenses under a lease arrangement. FTA therefore believes that it has the statutory authority necessary to amend the regulation to allow the reimbursement as capital expenses of maintenance costs included in lease payments. However, FTA does not at the present time interpret its statutory authority to permit maintenance costs incurred outside of a lease agreement to be treated as capital expenses. In order to provide recipients with greater flexibility in their use of grant funds, FTA is considering seeking such authorization, and will amend its grant requirements accordingly at such time.

Another commenter noted that under its Capital Cost of Contracting Policy (FTA Circular 7010.1, December 5, 1986), FTA must approve all leases for vanpool vehicles when section 5307 funds represent more than 35 percent of the lease cost. The commenter proposed that this requirement be eliminated in the interest of streamlining the grant process and removing administrative burdens on acquisitions.

First, the Capital Cost of Contracting Policy should not be confused with capital leasing under 49 CFR 639. Under the Capital Cost of Contracting Policy, a recipient contracts with a private carrier to provide mass transit service. The percentage of the service representing "the capital consumed in the contract" may be paid for with capital funds. Under the capital leasing rule, recipients may acquire tangible assets by lease, and all eligible lease costs may be reimbursed as capital expenses. Second, FTA has used industry studies and other objective data to determine which percentage of the service under a Capital Cost of Contracting arrangement

should be eligible for capital reimbursement. Until it receives information justifying another percentage, it will not amend its Capital Cost of Contracting Policy, and reserves the right to review all contracts in which reimbursement with section 5307 capital funds exceeds that percentage.

Five commenters remarked that the language of section 639.17(b) as currently written contradicts the intent of the NPRM, since it could be construed to disqualify maintenance costs as eligible capital expenses. Section 639.17(b) now provides that "the costs of materials, supplies and services provided under the terms of the lease may not be eligible for capital assistance, if they would not be eligible for capital assistance under a traditional purchase or construction grant." Maintenance costs have not been eligible for capital assistance under a traditional purchase or construction grant, and section 639.17(b) could be interpreted to preclude their reimbursement at the capital level. The commenters requested clarification of section 639.17(b), and one recommended revised language for that section providing such clarification.

D. FTA'S Final Action

In keeping with the comments received, FTA will amend section 639.17(a) to recognize maintenance costs as eligible capital expenses under a lease agreement. FTA believes that this action removes a significant impediment to capital leasing, and provides flexibility that can foster further innovations in the use of Federal funds.

FTA is also revising section 639.17(b) to define eligibility for capital assistance in a manner that should not be construed to eliminate maintenance costs as an eligible capital expense.

II. Regulatory Impacts

A. Executive Order 12866

FTA has determined that this action is not significant under Executive Order 12866 or the regulatory policies and procedures of Department of Transportation regulatory policies and procedures. Since this final rule makes only a technical amendment to current regulatory language, it is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

B. Regulatory Flexibility Act

In accordance with 5 U.S.C. 603(a), as added by the Regulatory Flexibility Act, Pub. L. 96–354, FTA certifies that this rule will not have a significant impact on a substantial number of small entities within the meaning of the Act.

C. Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995.

D. Executive Order 12612

This action has been reviewed under Executive Order 12612 on Federalism and FTA has determined that it does not have implications for principles of federalism that warrant the preparation of a Federalism Assessment. If promulgated, this rule will not limit the policy making or administrative discretion of the States, nor will it impose additional costs or burdens on the States, nor will it affect the States' abilities to discharge the traditional governmental functions or otherwise affect any aspect of State sovereignty.

III. List of Subjects in 49 CFR Part 639

Government contracts, Grant programs—Transportation, Mass transportation.

Accordingly, for the reasons described in the Preamble of this document, FTA is proposing to amend Title 49, Code of Federal Regulations, Part 639 as follows:

PART 639—[AMENDED]

1. The authority citation for Part 639 is revised to read as follows:

Authority: 49 U.S.C. 5307; 49 CFR 1.51.

2. Section 639.17 is revised to read as follows:

§ 639.17 Eligible lease costs.

(a) All costs directly attributable to making a capital asset available to the lessee are eligible for capital assistance, including, but not limited to—

(1) Finance charges, including interest;

(2) Ancillary costs such as delivery and installation charges; and

(3) Maintenance costs.

(b) Any asset leased under this part must be eligible for capital assistance under a traditional purchase or construction grant.

Issued on: May 13, 1996.

Gordon J. Linton,

Administrator.

[FR Doc. 96–12341 Filed 5–16–96; 8:45 am]

BILLING CODE 4910–57–U

federal register

Friday
May 17, 1996

Part IV

Department of Energy

Record of Decision for the Final Environmental Impact Statement on a Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel; Notice

DEPARTMENT OF ENERGY

Record of Decision for the Final Environmental Impact Statement on a Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel

AGENCY: Department of Energy.

ACTION: Record of decision.

SUMMARY: DOE, in consultation with the Department of State, has decided to implement a new foreign research reactor spent fuel acceptance policy as specified in the Preferred Alternative contained in the *Final Environmental Impact Statement on a Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel* (the Final EIS, DOE/EIS–218F of February 1996), subject to additional stipulations specified in Section VII of this Record of Decision. The new policy applies only to aluminum-based and TRIGA (Training, Research, Isotope, General Atomics) foreign research reactor spent nuclear fuel and target material containing uranium enriched in the United States. The purpose of the acceptance policy is to support the broad United States' nuclear weapons nonproliferation policy calling for the reduction and eventual elimination of the use of highly enriched (weapons-grade) uranium in civil commerce worldwide.

EFFECTIVE DATE: The new policy set forth in this Record of Decision is effective upon being made public May 13, 1996, in accordance with DOE's NEPA implementation regulations (10 CFR § 1021.315).

ADDRESSES: Copies of the *Final Environmental Impact Statement on a Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel* (DOE/EIS–0218F, the Final EIS) and this Record of Decision are available in the public reading rooms and libraries identified in the **Federal Register** Notice that announced the availability of the Final EIS (61 FR 6983, February 23, 1996), or by calling 1–800–736–3282 (toll free).

FOR FURTHER INFORMATION CONTACT: For information on the management of foreign research reactor spent nuclear fuel or this Record of Decision contact: Mr. Charles Head, Program Manager, Office of Spent Fuel Management (EM–67), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone (202) 586–9441.

For information on DOE's National Environmental Policy Act (NEPA) process, contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone (202) 586–4600, or leave message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

I. Synopsis of the Decision

The U.S. Department of Energy (DOE) and the Department of State jointly issued the Final Environmental Impact Statement on a Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel (the Final EIS, DOE/EIS–218F) on February 16, 1996. In this Final EIS, DOE and the Department of State considered the potential environmental impacts of a proposed policy to manage spent nuclear fuel from foreign research reactors. After consideration of the Final EIS, public comments submitted on the Draft EIS and concerns expressed following issuance of the Final EIS, DOE, in consultation with the Department of State, has decided to implement the proposed policy as identified in the Preferred Alternative contained in the Final EIS, subject to additional stipulations specified in Section VII of this Record of Decision. This implementation will involve acceptance of approximately 19.2 MTHM (metric tonnes of heavy metal) of foreign research reactor spent fuel and approximately 0.6 MTHM of target material into the United States over a 13 year period, beginning on the effective date of the policy. The spent fuel will be received from abroad through the Charleston Naval Weapons Station in South Carolina (about 80%) and the Concord Naval Weapons Station in California (about 5%). Most of the target material and some of the spent fuel (about 15%) will be received overland from Canada. Shipment through Charleston is expected to begin in the summer of 1996 and through Concord in mid-1997. Shipments from Canada have not been scheduled at this time. The Final EIS demonstrates that the spent fuel and target material could be safely transported overland within the United States by either truck or rail, and DOE has decided that either transportation mode may be used. Nevertheless, based on initial input from the public near the ports of entry indicating a preference for shipment by rail, DOE will generally seek to use rail for shipments from the ports of entry to DOE facilities at the Savannah River Site in South Carolina and the Idaho National Engineering Laboratory in Idaho. The particular mode of transportation to be used will be determined after further discussions between DOE and State, Tribal and local officials. After a limited period of interim storage, the spent fuel will be treated and packaged, or chemically separated, at the Savannah River Site and Idaho National Engineering Laboratory as necessary to prepare it for transport to a final disposal repository.

II. Background

Beginning in the 1950's, as part of the "Atoms for Peace" program, the United States provided nuclear technology to foreign nations for peaceful applications in exchange for their promise to forego development of nuclear weapons. A major element of this program was the provision of research reactor technology and the highly enriched uranium (HEU) needed in the early years to fuel the research reactors. Research reactors play a vital role in important medical, agricultural, and industrial applications. Nevertheless, the highly enriched uranium initially used in the fuel elements for these reactors can also be used in nuclear weapons. In the past, after irradiation in the research reactor, the used fuel elements (often referred to as "spent nuclear fuel" or "spent fuel") were transported to the United States, where they were chemically separated to extract the uranium still remaining in the spent nuclear fuel. In this way, the United States maintained control over disposition of the HEU that it provided to other nations.

Before 1964, bilateral agreements with the countries operating research reactors provided for the lease of the enriched uranium, with explicit provision for the return of the spent nuclear fuel to the United States. After 1964, most agreements provided for the sale of this material to the foreign nation, and the United States began to operate under a policy known as the "Off-Site Fuels Policy", under which the United States continued to accept, temporarily store, and chemically separate the spent nuclear fuel.

Research reactors have become the major civilian users of HEU. To further reduce the danger of nuclear weapons proliferation, the United States in 1978 initiated the Reduced Enrichment for Research and Test Reactors (RERTR) program, which was aimed at reducing the use of HEU in civilian programs by promoting the conversion of foreign and domestic research reactors from HEU fuel to low enriched uranium (LEU) fuel (LEU cannot be used directly in nuclear weapons). As part of the RERTR program, DOE developed LEU fuel and worked with foreign research reactor operators to convert their reactors to run on such fuel.

The foreign research reactor operators who converted to LEU fuel did so in support of nuclear weapons nonproliferation objectives, even though such conversions were expensive and generally resulted in reduced reactor capabilities and increased operating costs. From the beginning of the RERTR program, foreign research reactor operators made it clear that their willingness to convert their research reactors to LEU fuel was contingent upon the continued acceptance by DOE of their spent nuclear fuel for disposition in the United States.

The United States accepted foreign research reactor spent nuclear fuel until the "Off-Site Fuels Policy" expired (in 1988 for HEU fuels and 1992 for LEU fuels). At that time, DOE committed to conduct an environmental review of the impacts of extending the program for accepting foreign research reactor spent nuclear fuel. In 1991, DOE issued an environmental assessment of the potential environmental impacts of the proposed extension. DOE received numerous comments from the public stating that a new, long-term policy should not be implemented until an EIS had been prepared. DOE decided in mid-1993 to prepare an EIS to evaluate the impacts of implementing a new foreign research reactor spent nuclear fuel acceptance policy.

On October 21, 1993, DOE published a Notice of Intent (NOI) (58 FR 54336) to prepare an environmental impact statement on a proposed policy for the acceptance of foreign research reactor spent nuclear fuel containing uranium enriched in the United States. The NOI announced public scoping meetings and requested public comments and suggestions for DOE to consider in its determination of the scope of the EIS. Nine public scoping meetings were held in November and December 1993. DOE received a total of 2,215 scoping comments from 493 commentors.

On April 21, 1995, DOE published a Notice of Availability (60 FR 19899) of the Draft EIS. The Draft EIS analyzed three Management Alternatives for implementing the proposed action:

Management Alternative 1—Accept and manage foreign research reactor spent nuclear fuel in the United States;

Management Alternative 2—Facilitate the management of foreign research reactor spent nuclear fuel overseas; and

Management Alternative 3—A hybrid, or combination, of elements from the first two Management Alternatives.

During the 90-day public comment period (April 21, 1995 to July 20, 1995), about 900 individuals attended 17 public hearings held in or near candidate ports, management sites, and in Washington, DC. In addition to oral comments, DOE received approximately 5,040 written comments contained within approximately 1,250 comment documents on a wide range of policy, economic, and technical issues. Many commentors supported the United States' nuclear weapons nonproliferation policy objective of seeking to reduce the use of HEU (i.e., nuclear weapons-grade uranium) in civil commerce. However, the comments also reflected a wide range of views as to which Management Alternative should be adopted. Some commentors supported management of the spent nuclear fuel in the United States. Other commentors questioned the need to accept spent nuclear fuel from allies of the United States and those countries that appear to have the capability to manage their own spent nuclear fuel abroad. These commentors generally believed that such spent nuclear fuel should be managed overseas. With regard to implementation of the policy in the United States, some commentors preferred the use of military ports, a practice DOE has followed in the recent past based on strong public preference. Risks during transport, including those from terrorism, a sunken cask, severe shipboard fires, and the level of emergency preparedness at ports were frequently raised as matters of concern.

In consideration of public comments, DOE added information to the Final EIS, including: clarification of the proposed United States policy on accepting spent nuclear fuel from allies; examination of the consequences of sabotage or terrorist attack; safety of transportation casks; re-examination of the shipboard fire analysis; and general descriptions of transportation and emergency response regulations and management activities related to safe transport of the spent fuel and target material. In addition, the Naval Weapons Station at Charleston, South Carolina was analyzed along with the other terminals of the port of Charleston that had been included in the Draft EIS.

On February 23, 1996, the U.S. Environmental Protection Agency published a Notice of Availability (61 FR 6983) of the Final Environmental Impact Statement on a Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel (DOE/EIS–0218F of February 1996), after DOE had distributed approximately 3,000 copies of the EIS and/or the EIS Summary to government officials and interested groups and individuals.

DOE has prepared this Record of Decision in accordance with the regulations of the Council on Environmental Quality for Implementing NEPA (40 CFR Parts 1500–1508) and DOE's NEPA Implementing Procedures (10 CFR Part 1021). This Record of Decision is based on DOE's Final Environmental Impact Statement on a Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel (the Final EIS). In making the decisions announced in this Record of Decision, DOE, in consultation with the Department of State, considered environmental impacts and other factors, such as nuclear weapons nonproliferation policies; public comments received on the Draft EIS and concerns expressed following issuance of the Final EIS; analysis of impacts and alternatives in the DOE Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Final Environmental Impact Statement (DOE/EIS–0203–F of April 1995, the "Programmatic SNF&INEL EIS") and the Records of Decision for that EIS (60 FR 28680, June 1, 1995 and 61 FR 9441, March 8, 1996).

III. Policy Considerations

A key goal of United States' nuclear weapons nonproliferation policy is to reduce international civil commerce in HEU, since HEU can be used directly in the production of nuclear weapons. The proposal by DOE and the Department of State to adopt a policy to manage foreign research reactor spent nuclear fuel containing uranium enriched in the United States is intended to support efforts by the United States to convert foreign research reactors from HEU to LEU fuels (the latter cannot be used directly in nuclear weapons) and to gain worldwide acceptance of the use of LEU fuels in new research reactors.

Failure of the United States to manage foreign research reactor spent nuclear fuel could have a number of adverse consequences. Foreign governments and research reactor operators have participated in the RERTR program in large part because the United States previously accepted the spent nuclear fuel from their research reactors. The United States has not accepted HEU spent nuclear fuel for more than seven years, with the exception of recent limited shipments made after completion of the Environmental Assessment of Urgent-Relief Acceptance

of Foreign Research Reactor Spent Nuclear Fuel (DOE/EA–0912, April 1994). As a result, several foreign research reactor operators are running out of space to store their spent nuclear fuel, and others will run out soon. Under such conditions, the foreign research reactor operators must either shut down their reactors, construct new storage facilities, or ship the spent nuclear fuel offsite for storage or reprocessing. Many of the reactor operators do not have the option of increasing their storage capacities due to local regulatory restrictions. Moreover, construction and licensing of new storage facilities cannot be accomplished in time to support continued operations. The most realistic near-term option for a limited number of the reactor operators (particularly those in countries with power reactor programs that have an infrastructure to accept the return of the radioactive waste generated during reprocessing) is to ship their spent nuclear fuel offsite for reprocessing.

The current practice followed in overseas reprocessing of research reactor spent fuel results in separated HEU that is placed back into commerce (some or all of it may be refabricated into new HEU research reactor fuel), a result that undermines United States' nuclear weapons nonproliferation goals. Furthermore, none of the foreign reprocessing facilities have the capability to reprocess the new, high density LEU fuel developed under the RERTR program. Thus, in the absence of action to resolve the question of the disposition of spent nuclear fuel, many foreign research reactor operators who could reprocess to control their spent fuel inventory would likely continue to use, or convert back to, fuel containing HEU. In such a case, the foreign research reactor operator community as a whole would have little incentive to convert their reactors to LEU fuels. This would have the effect of encouraging the foreign research reactor operators to use HEU (weapons-grade uranium) as fuel for their reactors, would increase the amount of HEU in international commerce, and would inevitably increase the opportunity for diversion of HEU into a nuclear weapons program.

DOE and the Department of State do not seek to indefinitely accept or otherwise manage spent nuclear fuel from foreign research reactors. Rather, the purpose of the new policy is to recover as much HEU that originated in the United States as possible from international commerce, while providing the foreign research reactor operators and their host countries time to convert the reactors to LEU fuel and to make their own arrangements for disposition of subsequently generated LEU spent nuclear fuel. The foreign research reactor operators and host countries must be prepared to implement their own arrangements for disposition of their spent nuclear fuel after the policy expires (i.e., after 10 years of spent fuel generation following the effective date of the policy).

IV. Alternatives Evaluated in the Final EIS

DOE evaluated the following alternatives for management of the foreign research reactor spent nuclear fuel:

A. Management Alternative 1: Accept and Manage Foreign Research Reactor Spent Nuclear Fuel in the United States

Under Management Alternative 1, foreign research reactor spent nuclear fuel containing uranium enriched in the United States would be transported to the United States in casks designed to comply with international regulations that are essentially identical to those promulgated by the U.S. Nuclear Regulatory Commission (NRC) and certified by the U.S. Department of Transportation. In accordance with the Record of Decision for the Programmatic SNF&INEL Final EIS, all of the aluminum-based foreign research reactor spent nuclear fuel accepted by DOE (about 18.2 MTHM) would be managed at the Savannah River Site in South Carolina, and the TRIGA elements (about 1 MTHM) would be managed at the Idaho National Engineering Laboratory, pending ultimate disposition.

The basic implementation elements of Management Alternative 1 provide the foundation for the analyses of impacts presented in the EIS. They are:

Policy Duration. The policy duration would be 10 years. Spent nuclear fuel that is currently being stored or that is generated during a 10 year policy period would be accepted. Actual shipments of spent nuclear fuel to the United States could be made for a period of 13 years, starting from the effective date of policy implementation. A five year policy duration and an indefinite duration for acceptance of HEU (with a ten year duration for LEU) were also analyzed as alternatives in the EIS.

Amount of Foreign Research Reactor Spent Nuclear Fuel. The amount of foreign research reactor spent nuclear fuel that would be accepted under the basic implementation of Management Alternative 1 is up to about 19.2 MTHM in up to approximately 22,700 individual spent nuclear fuel elements. These spent nuclear fuel elements would be received from 41 countries. Alternative amounts of spent nuclear fuel considered as implementation alternatives were: receipt of spent fuel only from countries that do not have high-income economies, acceptance of HEU spent fuel only, and acceptance of target material in addition to spent fuel.

Marine Transport. Under the basic implementation alternative, the spent fuel and target materials would be transported by sea in either chartered or regularly scheduled commercial ships. DOE estimates that 721 cask loads of foreign research reactor spent nuclear fuel (a cask load is one spent fuel shipping cask loaded with spent fuel) would be sent to the United States by ship over a 13-year acceptance period under Management Alternative 1. Acceptance of an additional 15 cask loads of target material by sea is also analyzed.

Potential Port(s) of Entry for Foreign Research Reactor Spent Nuclear Fuel. The following potential ports of entry were selected for analysis because they met basic criteria designed to identify the most appropriate ports for use in accepting foreign research reactor spent fuel:

Charleston, SC (includes Charleston Naval Weapons Station and Wando Terminal, Mt. Pleasant)
Concord Naval Weapons Station, CA
Galveston, TX
Hampton Roads, VA (includes Terminals at Newport News, Norfolk, and Portsmouth, VA)
Jacksonville, FL
Military Ocean Terminal Sunny Point, NC
Portland, OR
Savannah, GA
Tacoma, WA
Wilmington, NC

Ground Transport. The basic implementation of Management Alternative 1 would involve transporting casks containing foreign research reactor spent nuclear fuel by truck, rail, or barge from the ports of entry or Canadian border crossings to potential management sites.

Foreign Research Reactor Spent Nuclear Fuel Management Sites. The analysis considered five potential management sites selected to be consistent with the management sites evaluated in the Programmatic SNF&INEL EIS (i.e., the Savannah River Site in South Carolina, the Idaho National Engineering Laboratory, the Oak Ridge Reservation in Tennessee, the Hanford Site in Washington State, and the Nevada Test Site). The Record of Decision for the Programmatic SNF&INEL EIS subsequently eliminated the last three sites from consideration as management sites for spent nuclear fuel from foreign research reactors.

Storage Technologies. During the first few years, storage would take place in existing storage facilities that use either wet or dry storage technologies. Under the basic implementation of Management Alternative 1, any new storage capacity that would be built would be dry storage. Wet storage was also evaluated as an alternative to dry storage.

Near-Term Conventional Chemical Separation in the United States. As an alternative to storage of the spent fuel in the United States, the Final EIS evaluated chemical separation of foreign research reactor spent nuclear fuel and target material in existing facilities at the Savannah River Site or the Idaho National Engineering Laboratory. The HEU could be blended down to LEU to preclude its use in nuclear weapons. The resulting high-level waste could be vitrified and managed onsite until a geologic repository becomes available.

Developmental Treatment and/or Packaging Technologies. As another alternative for management of the spent fuel, the Final EIS discussed a potential development program that DOE could conduct leading to a decision on whether to construct and operate a new treatment and/or packaging facility. The objective of this technical strategy would be to treat, package, and store spent nuclear fuel in a manner suitable for direct placement into a geologic repository without necessarily separating the fissile materials, while meeting or exceeding all applicable safety and environmental requirements.

Financing Arrangements. Under the basic implementation of Management Alternative 1, high-income-economy countries would be charged a competitive fee. The United States would bear the full cost of transporting and managing foreign research reactor spent nuclear fuel received from other countries. The Final EIS also evaluated alternatives in which:

1) All countries would be subsidized;
2) All countries would be charged a full-cost recovery fee; or
3) Countries with high income economies would be charged a full-cost recovery fee, while other countries would be subsidized.

Location for Taking Title. Under the basic implementation of Management Alternative 1, the United States would take title to spent nuclear fuel from foreign research reactors at the limit of United States territorial waters or continental border (for shipments from Canada). The Final EIS also evaluated alternatives in which the United States would take title prior to shipment, at the ports of entry, or at the DOE management sites.

Ultimate Disposition. The Nuclear Waste Policy Act of 1982 (as amended) authorizes disposal of the foreign research reactor spent nuclear fuel in a geologic repository. DOE is working with staff from the Nuclear Regulatory Commission to ensure that the spent fuel management actions it is undertaking for all of its spent fuel, and actions that would be undertaken for any additional foreign research reactor spent fuel to be accepted, will allow either direct emplacement of the spent fuel in a geologic repository or acceptance of the spent fuel in a treated form at a geologic repository.

Decisions regarding the actual disposal of DOE's spent nuclear fuel would follow appropriate environmental review under the National Environmental Policy Act.

B. Management Alternative 2: Facilitate the Management of Foreign Research Reactor Spent Nuclear Fuel Overseas

Under this Management Alternative, two subalternatives were analyzed. In the first subalternative, DOE and the Department of State would provide assistance, incentives, and coordination for spent fuel storage at one or more locations overseas, with appropriate storage technologies, regulations, and safeguards. In the second subalternative, DOE and the Department of State would provide nontechnical assistance, incentives, and coordination to foreign research reactor operators and reprocessors to facilitate reprocessing of spent nuclear fuel overseas in facilities operated under international inspections and safeguards. Facilities operated by the United Kingdom Atomic Energy Authority at Dounreay, United Kingdom, and by Cogema at Marcoule, France might be used for this purpose. After reprocessing, the recovered HEU would be blended down to LEU at these same facilities. The wastes resulting from this reprocessing would be sent to the country in which the spent nuclear fuel was irradiated. If the reprocessing wastes could not be sent to the country in which the spent nuclear fuel was irradiated, such wastes would be accepted by the United States for storage and ultimate geologic disposal. It is important to note that the foreign reprocessing facilities do not have the capability to reprocess the new, high density, LEU fuel developed under the RERTR program.

C. Management Alternative 3: A Combination of Elements from Management Alternatives 1 and 2 (Hybrid Alternative)

Under Management Alternative 3, DOE and the Department of State would combine elements from Management Alternatives 1 and 2 to develop new alternatives for management of foreign research reactor spent nuclear fuel in the United States or abroad. For example, DOE and the Department of State could combine partial storage or reprocessing overseas with partial storage or chemical separation in the United States. Implementation alternatives for the portion of the spent nuclear fuel from foreign research reactors to be managed in the United States would be the same as those for Management Alternative 1.

D. No Action Alternative

In the No Action Alternative, the United States would neither manage foreign research reactor spent nuclear fuel containing uranium enriched in the United States, nor provide technical assistance or financial incentives for overseas storage or reprocessing. In this case, there would be no foreign research reactor spent nuclear fuel shipments to the United States and no assistance to foreign countries for managing foreign research reactor spent nuclear fuel overseas.

E. Preferred Alternative

Under the Preferred Alternative (which is a combination of the implementation elements of Management Alternative 1), DOE would accept and manage in the United States up to 19.2 MTHM of foreign research reactor spent nuclear fuel in up to approximately 22,700 individual spent fuel elements and up to an additional 0.6 MTHM of target material. This spent fuel and target material would come from the following countries:

Table 1—High-income economy countries:

Australia
Austria
Belgium
Canada
Denmark
Finland
France
Germany
Israel
Italy
Japan
Netherlands
Spain
Sweden
Switzerland
Taiwan

United Kingdom

Table 2—Other Countries:

Argentina
Bangladesh
Brazil
Chile
Colombia
Greece
Indonesia
Iran
Jamaica
Malaysia
Mexico
Pakistan
Peru
Philippines
Portugal
Romania
Slovenia
South Africa
South Korea
Thailand
Turkey
Uruguay
Venezuela
Zaire

The types of Foreign Research Reactor Spent Nuclear Fuel and Target Material that would be accepted under the Preferred Alternative are as follows:

- Spent nuclear fuel (HEU and/or LEU) from research reactors operating on LEU fuel or in the process of converting to LEU fuel when the policy becomes effective.
- Spent nuclear fuel (HEU and/or LEU) from research reactors that operate on HEU fuel when the policy becomes effective but that agree to convert to LEU fuel. (Spent nuclear fuel would *not* be accepted from research reactors that could convert to LEU fuel but do not agree to do so.)
- Spent nuclear fuel (HEU) from research reactors having lifetime cores, from research reactors planning to shut down by a specific date while the policy is in effect, and from research reactors for which a suitable LEU fuel is not available.
- Spent nuclear fuel (HEU and/or LEU) from research reactors that are already shut down.
- Unirradiated fuel (HEU and/or LEU) from eligible research reactors would be accepted as spent nuclear fuel. (This material could be a particular nuclear weapons proliferation concern because it is not highly radioactive and thus can be handled manually. Thus could allow it to be stolen more easily.)

For research reactors with both HEU and LEU spent nuclear fuel available for shipment, LEU spent nuclear fuel would not be accepted until all HEU spent nuclear fuel has been accepted, unless there are extenuating circumstances (e.g., deterioration of one or more LEU elements sufficient to cause a health or safety problem if acceptance were delayed). Spent nuclear fuel (HEU and/or LEU) would not be accepted from new research reactors starting operation after the date of implementation of the policy.

The duration of the policy under the Preferred Alternative would be 10 years. Shipments of spent nuclear fuel to the United States could be made for a period of up to 13 years, starting from the effective date of policy implementation, as long as the spent nuclear fuel had already been discharged prior to the beginning of the policy period or is discharged during the policy period. The additional three years in the shipping period were included to provide time for the radiation levels of the last spent fuel discharged during the 10 year policy period to decay enough to allow its transportation, to provide time for logistics in arranging for shipment of the last spent fuel discharged, and to allow for potential shipping delays.

The aluminum-based foreign research reactor spent nuclear fuel (about 18.2 MTHM) and target material (about 0.6 MTHM) would be transported to and managed at the Savannah River Site and the TRIGA foreign research reactor spent nuclear fuel (about 1 MTHM) would be transported to and managed at the Idaho National Engineering Laboratory, in accordance with the Records of Decision for the Programmatic SNF&INEL EIS and the settlement agreement reached between DOE and the State of Idaho [*Public Service Co. of Colorado* v. *Batt*, No. CV 91–0035–S-EJL (D. Id.) and *United States* v. *Batt*, No. CV–91–0054–S-EJL (D. Id.)]. According to this agreement, DOE could accept up to 61 TRIGA spent nuclear fuel shipments from foreign research reactors prior to December 31, 2000 for management at the Idaho National Engineering Laboratory. Before DOE would accept any shipments, the Governor of Idaho would be notified and the Secretary of Energy would certify that the shipments are necessary to meet national security and nonproliferation requirements.

The foreign research reactor spent nuclear fuel and target material would be shipped by either chartered or regularly scheduled commercial ships from the foreign ports to the United States.

Although all of the candidate ports listed in Management Alternative 1 above would be appropriate ports to use for receipt of the spent fuel and target material shipments, DOE would prefer to use the military ports in proximity to the spent nuclear fuel management sites (i.e., Charleston Naval Weapons Station and the Concord Naval Weapons Station) to take advantage of the characteristics of these ports to increase the safety and security of the spent fuel transportation process. (Note: Section VII of this notice designates these two ports as the ports of entry.)

DOE would take title to the foreign research reactor spent nuclear fuel and target material that is shipped by sea after it is unloaded from the ship at the port of entry, and to the spent nuclear fuel and target material shipped solely overland (i.e., from Canada) at the border crossing between Canada and the United States.

The foreign research reactor spent nuclear fuel and target material would be transported from the United States ports to the management sites by truck or rail.

The financing arrangement under the Preferred Alternative would be to charge high-income-economy countries a competitive fee and for the United States to bear the full cost associated with acceptance of spent fuel and target material from other countries. The fee policy for countries with high-income economies would be established in a **Federal Register** notice to allow DOE flexibility to adjust the fee policy to account for inflation, or further development of spent nuclear fuel management practices in the United States.

For the aluminum-based foreign research reactor spent nuclear fuel, the following three-point management strategy would be implemented:

1. New Technology Development/ Dry Storage. DOE would embark immediately on an accelerated program at the Savannah River Site to identify, develop, and demonstrate one or more non-reprocessing, cost-effective treatment and/or packaging technologies to prepare the foreign research reactor spent nuclear fuel for ultimate disposal. The purpose of any new facilities that might be constructed to implement these technologies would be to change the foreign research reactor spent nuclear fuel into a form that is suitable for geologic disposal, without necessarily separating the fissile materials, while meeting or exceeding all applicable safety and environmental requirements.

In conjunction with the examination of new technologies, variations of conventional direct disposal methods would also be explored. After treatment and/or packaging, the foreign research reactor spent nuclear fuel would be managed on site in "road ready" dry storage until transported off-site for continued storage or disposal. DOE would select, develop, and implement, if possible, one or more of these treatment and/or packaging technologies by the year 2000. DOE is committed to avoiding indefinite storage of this spent nuclear fuel in a form that is unsuitable for disposal.

2. Potential Chemical Separation/Wet Storage. Despite DOE's best efforts, it is possible that a new treatment and/or packaging technology may not be ready for implementation by the year 2000. It may become necessary, therefore, for DOE to use the F-Canyon at the Savannah River Site to chemically separate some foreign research reactor spent nuclear fuel elements, while the F-Canyon is operating to stabilize at-risk materials in accordance with the Records of Decision (60 FR 65300, December 19, 1995 and 61 FR 6633, February 21, 1996) issued after completion of the Interim Management of Nuclear Materials Final Environmental Impact Statement (DOE/EIS–0220 of October 1995). Under current schedules, this chemical separation of foreign research reactor spent fuel could take place between the years 2000 and 2002. In that event, the foreign research reactor spent nuclear fuel would be converted into LEU and wastes. The high-level radioactive wastes would be vitrified in the Savannah River Site Defense Waste Processing Facility, while other wastes (all low level) would be solidified in the Savannah River Site Saltstone facility. In order to provide a sound policy basis for making a determination on whether and how to utilize the F-Canyon for chemical separation tasks that are not driven by health and safety considerations, DOE will commission or conduct an independent study of the nonproliferation and other (e.g., cost and timing) implications of chemical separation of spent nuclear fuel from foreign research reactors. The study will be initiated in mid-1996 and will be completed in a timely fashion to allow a subsequent decision about possible use of the F-Canyon for chemical separation of foreign research reactor spent nuclear fuel to be fully considered by the public, the Congress and Executive Branch agencies. Pending disposition of the foreign research reactor spent nuclear fuel by either a new treatment and/or packaging technology or chemical separation in the F-Canyon, the spent nuclear fuel would be placed in existing wet storage at the Savannah River Site.

3. Spent Nuclear Fuel Monitoring (Wet Storage). DOE would conduct a program of close monitoring of any foreign research reactor spent nuclear fuel and target material that would be accepted for storage in existing wet storage facilities. DOE is presently unaware of any technical basis for believing that this spent nuclear fuel cannot be safely stored until one or more of the treatment and/or packaging technologies becomes available. Nevertheless, if health and safety concerns involving any of the foreign research reactor spent nuclear fuel elements are identified prior to development of an appropriate treatment and/or packaging technology, DOE would use the F-Canyon to chemically separate the affected spent nuclear fuel elements, if it is still operating to stabilize at-risk materials.

Because the F-Canyon is only configured to handle LEU, under no circumstances would it be possible to produce separated HEU that is suitable for a nuclear weapon. Instead, depleted uranium would be added to the foreign research reactor spent nuclear fuel near the beginning of the chemical separations process, so that only LEU would be produced when the uranium is separated from the fission products. The trace quantities of plutonium in the spent nuclear fuel would be left in and solidified along with the high-level radioactive wastes. This would further the President's policy to discourage the accumulation of excess weapons-grade fissile materials, to strengthen controls and constraints on these materials and, over time, to reduce worldwide stocks.

The TRIGA foreign research reactor spent nuclear fuel would be stored at the Idaho National Engineering Laboratory in the Fluorinel Dissolution and Fuel Storage facility (wet storage) or preferably in the dry storage Irradiated Fuel Storage Facility and the CPP–749 dry storage area. After 2003, all foreign research reactor spent nuclear fuel at the Idaho National Engineering Laboratory would be managed in accordance with specific provisions of the settlement agreement between DOE and the State of Idaho, until transported off-site for ultimate disposition. Depending on the nature of any new treatment and/or packaging technology that might be developed, the TRIGA spent nuclear fuel would also be processed using such a new technology, if necessary for disposal.

V. Environmentally Preferable Alternatives

CEQ regulations (40 CFR 1505.2) require identification of the environmentally preferred alternative(s). The analysis of alternatives presented in the EIS indicates that the three Management Alternatives and the Preferred Alternative (a modification of subelements of Management Alternative 1) would have only small impacts on the human environment on or around the DOE management sites, the populations near the cask transportation routes, or the affected ports of entry. Using conservative assumptions (i.e., assumptions that tend to overestimate risks), the only measurable potential impacts from incident-free operations are associated with low radiation exposure to workers near the loaded transportation casks, particularly during transportation cask loading or unloading, or near the spent fuel during storage, and; to a much lesser degree, to the general population in and around the ports of entry and the transportation routes. These conservatively calculated impacts are extremely small, and are well within regulatory standards for health and safety.

Although the impacts would be small for each alternative considered, there are differences among the estimated impacts for the various alternatives. Besides the no-action alternative and overseas storage subalternative of Management Alternative 2, which would generate no direct environmental impact in the United States because they would result in no activity in the United States, the lowest impacts in the United States would be associated with implementing the proposed policy overseas under the overseas reprocessing subalternative of Management Alternative 2. In the overseas reprocessing subalternative, the foreign research reactor spent fuel would be reprocessed overseas and only the vitrified reprocessing wastes would be accepted in the United States. This alternative would have a very small environmental impact in the United States since only a small volume of waste in an inert, vitrified form would enter the United States. This would require only a small amount of transportation, handling, and storage in the United States and therefore would result in very little radiation exposure in the United States. Hence, Management Alternative 2 is the environmentally preferred alternative, next to the no action alternative. Both of the other alternatives, the hybrid alternative and the basic implementation of Management Alternative 1, would have relatively higher, but still extremely low, radiation exposure impacts because of the acceptance of a greater volume of material in the United States, resulting in more shipments and increased handling and storage requirements.

Among the Implementation Alternatives to Management Alternative 1 discussed in the Final EIS, accepting foreign research reactor spent fuel into the United States only from developing

nations (i.e., the "Other Nations" listed in Table 2 above) would present the lowest radiological risk in the United States. This is because this subalternative would deal with the least amount of spent fuel. The remaining subalternatives and implementation alternatives discussed in the EIS (including the acceptance of target material in addition to spent fuel, a policy duration of five years instead of ten years, use of wet storage, and chemical separation) do not measurably change the overall potential radiation exposure impact. The chemical separation subalternative would generate slightly higher accident and incident-free radiological exposure risk to the general population, but once again, this is a small variation within the overall small impacts from each of the alternatives.

Implementation of the Preferred Alternative would result in relatively higher, but still extremely low, environmental and health impacts because of the acceptance of the target material (in addition to the maximum amount of spent fuel), resulting in the maximum number of shipments and increased handling and storage requirements, and because of the potential chemical separation of a limited amount of spent fuel.

VI. Comments on the Final EIS

After issuing the Final EIS, DOE and the Department of State received approximately 35 letters commenting on the Preferred Alternative. These included letters from Governor Beasley of South Carolina, Senators Feinstein of California and Glenn of Ohio, Congressmen Baker and Miller of California, and Clyburn of South Carolina, California State officials, mayors and other local officials from the areas around the Charleston Naval Weapons Station and the Concord Naval Weapons Station, and several members of the public. Many of the comments covered issues previously addressed in the Final EIS, such as the following:

- Why is the new spent fuel and target material acceptance policy required?
- How were the preferred ports of entry chosen?
- Why are military ports preferred?
- Has DOE adequately considered the risks associated with shipments through the Concord Naval Shipyard due to its proximity to the highly populated San Francisco Bay area and the potential for seismic activity?
- What kinds of training and other assistance would be provided by DOE to prepare local jurisdictions to deal with the spent fuel shipments?

All of these issues are covered in the Final EIS, either in the body of the EIS or in the responses to comments submitted on the Draft EIS. In the interests of brevity, readers are requested to refer to the Final EIS for information on these issues. In addition, individual responses will be sent to each of the commentors.

The comments on the Final EIS also raised several new issues (i.e., issues not raised during public review of the Draft EIS), as follows:

A. Many commentors from the area around the Concord Naval Weapons Station were concerned that the cost of services required from local police or other city and county departments (e.g., services associated with emergency response, crowd control, etc.) to prepare for or respond to events associated with the spent fuel shipments would unfairly be left to the local communities to fund. The comments stated that DOE should provide funding to cover these additional expenses. To address this concern, DOE has replied that it is willing to enter into an appropriate agreement to reimburse local agencies or provide the incremental resources, either in kind or financial, that would be necessary to enable emergency response personnel to respond to an incident involving the proposed shipments of spent fuel, to provide for public safety in situations that are attributable to the shipment of spent fuel from foreign research reactors, and to allow a greater level of assurance of the protection of the health and safety of the public.

B. Several individuals commented that the Final EIS did not identify the specific local streets and roads over which the spent fuel shipments would travel and did not include site-specific analyses of the risk of the shipments through the ports of entry. DOE replied that the Final EIS does estimate the potential radiological and other health-related impacts (e.g., traffic accidents) of transporting the spent fuel through the ports of entry (see, for example, Volume 1, Table 4–7 in Section 4.2.2.3 of the Final EIS). However, the Final EIS did not address specific characteristics of local streets since local street, or rail, conditions could well change between the time the Final EIS was written and the time the shipments would be made. As a result, the actual route that would be taken for the overland transportation, whether by truck or rail, would be chosen closer to the time the transportation takes place. Selection of the actual route would be accomplished in consultation with the affected States, Tribes, local officials, and the carrier, and considering the conditions of the potential shipment routes at that time. Any route that is chosen would have to meet specific requirements imposed by the Department of Transportation, taking into account specific characteristics of local streets. Thus, when potential impacts are estimated, certain assumptions can be made about the transportation route, without knowing the actual route. Indeed, because the Final EIS analyses are conservative (i.e., they tend to overstate the transportation risks), changes in local conditions would be unlikely to result in changes in transportation risks that would exceed those analyzed in the Final EIS. The Final EIS contains enough information to accurately assess the foreseeable impacts so that the public and Government decision makers are adequately informed of potential consequences.

The same can be said about emergency services, personnel, emergency preparedness and facilities (i.e., specific circumstances may change between issuance of the Final EIS and the time an actual shipment would take place). For this reason, DOE is required to prepare a detailed Transportation Plan in cooperation with State, Tribal and local officials before a shipment is made. The Transportation Plan would specify details concerning how the shipments will be carried out and the routes to be used, planned shipment schedules, roles and responsibilities of emergency response personnel for jurisdictions along the transportation route, emergency plans and communications strategies. The Transportation Plan would also discuss any training to be carried out in preparation for the shipments, and would identify any equipment or other resources required to allow local responders and law enforcement personnel to be adequately prepared for the shipments. This procedure ensures that local officials would be well informed and prepared to handle any contingency before a shipment would be made.

C. One commentor questioned whether an alternate West Coast port would be required if scheduling conflicts occurred at the Concord Naval Weapons Station. DOE explained that this issue had been discussed with the Commander of the Naval Weapons Station and that he had informed DOE that they currently have about 20% slack time available, and that this should be more than adequate to accommodate 5 shipments over 13 years.

D. Recently, new information has come to light regarding the ability of the F and H Canyons (chemical separations facilities used at the Savannah River Site) to withstand a severe earthquake. One commentor requested that DOE delay issuance of the Record of Decision on the proposed acceptance policy until completion of an on-going detailed safety analysis of the facilities. The commentor noted that the Preferred Alternative in the Final EIS would allow chemical separation under certain circumstances, and that chemical separation followed by vitrification of the high-level radioactive wastes remains the one proven means of stabilizing spent fuel and preparing it for ultimate disposition.

In response, DOE explained that, until the on-going analysis is complete, it will not be known with certainty whether the new information will result in a significant change in the range of potential impacts of chemical separation described in the Final EIS. Analysis to date, however, provides reasonable assurance that completion of the seismic analysis will soon demonstrate that chemical separation in the F and H Canyons remains a viable alternative for management of spent fuel. DOE had not contemplated chemical separation of foreign research reactor spent fuel, if at all, until approximately the year 2000, and the Canyons will not be used if the seismic analysis indicates that they pose an unacceptable risk. Chemical separation however, may never need to be pursued because the Preferred Alternative provides for an aggressive new program to develop and implement new treatment and/or packaging technologies to prepare the spent fuel for ultimate disposition without the use of the F and H Canyons. In light of these factors, and in order to encourage the research reactor operators not to withdraw from the Reduced Enrichment for Research and Test Reactors program (and resume or continue using HEU fuels), DOE and the Department of State believe it is necessary to issue the Record of Decision now, rather than awaiting completion of the seismic analysis. Because research reactors are the major users of HEU in civil programs, it is essential that they support the Reduced Enrichment for Research and Test Reactors program if the United States is to achieve the goal of eventually eliminating the use of HEU in civil commerce, thereby reducing the threat of nuclear weapons proliferation worldwide.

DOE further notes that the Final EIS discusses the potential impacts of chemical separation as merely one means of managing the foreign research reactor spent fuel. Under the Preferred Alternative, chemical separation would be considered only after completion of a study of the impacts of chemical separation on United States nuclear weapons nonproliferation policy, and then only if DOE is not ready to implement a new technology to prepare the spent fuel for ultimate disposition in approximately the year 2000 (see Section IV.E.). Even if both chemical separation and a new technology were not available in the year 2000, the Final EIS fully analyzes the potential impacts of storing the spent fuel in wet and dry storage facilities for up to 40 years, so that the full range of reasonable alternative management options is covered in the Final EIS. Therefore, the decision of whether to accept foreign research reactor spent fuel into the United States does not depend on the availability of chemical separation as a management option.

E. Several commentors objected to the fact that DOE spent Government funds to print and mail the Final EIS (or its Summary) to members of the public. DOE explained that the regulations implementing the National Environmental Policy Act require agencies to provide a copy of a Final EIS to any individual who submits "substantive" comment on the draft of that EIS. DOE limited the cost of printing and mailing to the greatest extent possible by mailing only the Summary of the Final EIS to commentors from locations other than Augusta, Georgia, and the States of California, Idaho, and South Carolina who had not specifically requested a copy of the full Final EIS (all individuals and organizations who were sent only a Summary were offered an opportunity to receive the entire Final EIS).

VII. Decision

DOE, in consultation with the Department of State, has decided to implement a new foreign research reactor spent fuel acceptance policy, as specified in the Preferred Alternative in the Final EIS, subject to the additional stipulations noted below. In summary, implementation of the new foreign research reactor spent fuel acceptance policy will involve acceptance of aluminum-based spent fuel, TRIGA spent fuel, and target material containing uranium enriched in the United States, as defined in the Final EIS. This material will be accepted from the 41 countries listed in Section III of this notice. The spent fuel acceptance will involve approximately 19.2 MTHM (metric tonnes of heavy metal) of foreign research reactor spent fuel in up to 22,700 separate spent fuel elements and approximately 0.6 MTHM of target material. This amount of material is the amount that is currently in storage at the foreign research reactors, plus that which DOE estimates will be discharged over the next ten years. Shipments of this spent fuel into the United States will be accepted over a 13 year period, beginning on the effective date of the policy. The foreign research reactor spent nuclear fuel will be shipped by either chartered or regularly scheduled commercial ships. The majority of the spent fuel will be received from abroad through the Charleston Naval Weapons Station in South Carolina (about 80%) and the Concord Naval Weapons Station in California (about 5%). Most of the target material and some of the spent fuel (about 15%) will be received overland from Canada. Shipment through Charleston will begin in the summer of 1996 and through Concord in mid-1997. Shipments from Canada have not been scheduled at this time. After a limited period of interim storage, the spent fuel will be treated and packaged at the Savannah River Site and the Idaho National Engineering Laboratory as necessary to prepare it for transportation to a final disposal repository.

DOE will apply the following additional stipulations to implementation of the new spent fuel acceptance policy:

A. DOE will reduce the number of shipments necessary by coordinating shipments from several reactors at a time (i.e., by placing multiple casks [up to eight] on a ship). DOE currently estimates that a maximum of approximately 150 to 300 shipments through the Charleston Naval Weapons Station and five shipments through the Concord Naval Weapons Station will be necessary during the 13 year spent fuel acceptance period.

B. Target material containing uranium enriched in the United States will be accepted only if a reactor operator wishing to ship target material formally commits to convert to the use of LEU targets, when such targets become available (a program to develop LEU targets is underway as an adjunct to the RERTR program). To demonstrate this commitment, DOE will require that the affected reactor operators enter into an agreement with DOE that sets forth the milestones and schedule for the conversion. Reactor operators currently operating on HEU fuel will be required to enter into a similar agreement regarding conversion of their reactors to operate on LEU fuel.

C. The Final EIS demonstrates that the spent fuel and target material could be safely transported overland within the United States by either truck or rail, and DOE has decided that either

transportation mode may be used. However, based on input from the public in the vicinity of the ports of entry, there appears to be a strong preference for the use of rail. Therefore, DOE will seek to use rail for shipments from the ports of entry to DOE facilities at the Savannah River Site in South Carolina and the Idaho National Engineering Laboratory in Idaho, pending further discussions with the States, Tribes and local jurisdictions along the proposed transportation routes.

D. During the period starting with initial implementation of the new spent fuel acceptance policy through approximately the end of 1999, the Department will aggressively pursue one or more new technologies that would put the foreign research reactor spent fuel in a form or container that is eligible for direct disposal in a geologic repository.

Should a new treatment or packaging technology not be ready for implementation by the year 2000, DOE has under active consideration chemical separation of some of the foreign research reactor spent fuel in the F-Canyon at the Savannah River Site, where it would be blended down to LEU and potentially placed under International Atomic Energy Agency safeguards. The Department intends to conduct a study that will look in more depth at the issues associated with a decision to chemically separate this spent fuel. Issues to be considered include minimizing any potential proliferation risks, cost and timing. The State of South Carolina will be invited to participate in the study.

A subsequent Record of Decision will be issued at approximately the end of 1999 (or sooner if possible) to announce DOE's future management plans for the foreign research reactor spent fuel and target material based on the results of the Department's program to develop the new treatment and/or packaging technologies by that time (including any necessary environmental reviews), and the study discussed above.

Staff from the Nuclear Regulatory Commission have agreed to undertake an independent review of any new technology, or application of existing technologies, that DOE proposes to develop, to provide a high degree of confidence that implementation of such a technology would produce a product that will be acceptable for disposal in a geologic repository.

VIII. Use of All Practicable Means To Avoid or Minimize Harm

Implementation of this decision will result in low environmental and health impacts. However, DOE will take the following steps to avoid or minimize harm wherever possible:

A. DOE will use current safety and health programs and practices to reduce impacts by maintaining worker radiation exposure as low as reasonably achievable and by meeting appropriate waste minimization and pollution prevention objectives.

B. DOE will require that the shipping contractors implement a system to keep records of which ships are used to transport foreign research reactor spent fuel and target materials and which ship crew members, port workers and land transportation workers are involved in the shipments. DOE will include a clause in the contract for shipment of the spent fuel and target material requiring that other ship crew members, port workers and land transportation workers be used if any worker in these categories could approach a 100 mrem dose in any year (the regulatory limit set in 10 CFR Part 20 for radiation exposure to a member of the general public).

C. DOE will reduce the risk associated with shipment of the spent fuel by shipping multiple casks per shipment, up to a maximum of eight, whenever possible, thus reducing the total number of shipments.

D. DOE will implement a process of detailed transportation planning, involving States, Tribes and local jurisdictions through which the shipments will pass, to ensure that all organizations that would respond to an accident involving a foreign research reactor spent fuel shipment will be fully prepared and informed prior to any shipment taking place.

E. DOE will conduct the program to identify and develop an improved means of treating and/or packaging the foreign research reactor spent fuel with the intent of providing a technology to be used to prepare the spent fuel for geologic disposal that has less environmental impacts than the technologies that are currently available.

Items A, C, D, and E above will be accomplished under existing business practices in the normal course of implementing the new spent fuel acceptance policy. For item B, DOE will prepare a Mitigation Action Plan under the provisions of DOE's NEPA implementation procedures (10 CFR 1021.331).

IX. Basis for the Decision

The elements of the decision discussed in Section VI above (i.e., the Preferred Alternative with additional stipulations) have been selected based on the following considerations:

A. Management Alternative.

The various management alternatives considered are discussed in Section 2 of the Final EIS. The analyses in Section 4 of the Final EIS demonstrate that the impacts on the environment, involved workers, and the citizens of the United States from implementation of any of the management alternatives or implementation alternatives analyzed (other than beneficial impacts associated with support for United States nuclear weapons nonproliferation policy) would be small and within applicable regulatory limits, and would not provide a basis for discrimination among the alternatives. As a result, the process for selection of the elements of the action to be taken focused on programmatic considerations:

1. DOE, in consultation with the Department of State, concluded that the No Action Alternative and Management Alternative 2, Implementation Alternative 1a (Overseas Storage) would be unacceptable since these alternatives are not consistent with United States nuclear weapons nonproliferation policy objectives.

2. DOE, in consultation with the Department of State, also believes that Management Alternative 2, Implementation Alternative 1b (Overseas Reprocessing) would not provide an incentive for reactor operators to switch to LEU fuel or continue using LEU fuel. Since there is no overseas reprocessing capability for the new, high density LEU fuel developed by the RERTR program, foreign research reactor operators would have to continue using HEU fuel in order to be able to rely on reprocessing as a spent fuel management approach. In addition, reprocessing could result in the continued production of HEU, which could then be made available in civil commerce. Furthermore, the two countries that provide reprocessing require that the resulting wastes be returned to the countries of origin. Many of the countries in which the foreign research reactors are located do not have the technical or regulatory infrastructure to manage these wastes. Finally, the United States would not be able to impose conditions on the reactor operators or reprocessing firms to assure that its nuclear weapons nonproliferation objectives would be met.

3. The sample hybrid alternative (Management Alternative 3) analyzed in the Draft EIS involved partial reprocessing overseas coupled with partial management in the United States. Even though the use of overseas reprocessing would be more limited in this alternative, many of the concerns raised above with regard to reprocessing would apply. Because of these concerns and uncertainties, DOE and the Department of State do not believe it would be prudent to rely on the use of overseas reprocessing to meet United States' nuclear weapons nonproliferation objectives.

DOE, in consultation with the Department of State, has concluded that a modification of the basic implementation of Management Alternative 1 as specified in the Preferred Alternative balances policy, technical, cost and schedule requirements, and provides the strongest support for United States' nuclear weapons nonproliferation policy objectives because all aspects of the alternative will be under the control of DOE, either directly or through the spent nuclear fuel acceptance contracts with the reactor operators.

B. Management Technology

The alternative spent nuclear fuel management technologies considered are discussed in Sections 2.2.2.7 and 2.6.5 of the Final EIS. The approaches fall into four broad categories, as follows:

Wet Storage. Wet storage is a proven technology, that has been used for decades to safely store research reactor spent fuel from both domestic and foreign reactors. The impacts of continued use of wet storage would be small, and completely within applicable regulatory limits. Furthermore, DOE currently has wet storage facilities in operation at the Savannah River Site and the Idaho National Engineering Laboratory that can be used for storage of foreign research reactor spent nuclear fuel. The water chemistry of the wet storage pools is carefully controlled to minimize the possibility of degradation and allow continued safe operation of the pools.

Dry Storage. Dry storage is also a proven technology that would also have no more than small impacts, completely within applicable regulatory limits. It is the storage medium that is being selected at all commercial power reactor sites where additional storage capacity is being built. Dry storage capacity could be provided at the management sites in time to meet the program's projected needs, if initial spent nuclear fuel receipts were placed into the available wet storage.

Chemical Separation. Chemical separation is also a proven technology, the impacts of which would be small, and completely within applicable regulatory limits. However, DOE is phasing out its chemical separation activities and is currently conducting chemical separations only at the Savannah River Site to stabilize materials for health and safety reasons. Because these chemical separations facilities could be used to treat the foreign research reactor spent nuclear fuel, they provide a contingency to be considered pending availability of an alternate means of treating and/or packaging the spent nuclear fuel prior to ultimate disposition.

New Technologies. In order to prepare the spent fuel for ultimate disposition, some form of treatment and/or packaging may be required. Several promising new technologies, as well as variations of existing technologies, have been proposed and are under evaluation. Relatively simple technologies appear to be feasible, although they require more development work to confirm their viability and the cost of their implementation. This development will take place before DOE makes a decision on implementation of any of the new technologies.

In order to effectively accept and manage the foreign research reactor spent nuclear fuel in the United States, DOE, in consultation with the Department of State, developed the three point strategy for management of aluminum-based spent nuclear fuel discussed in the description of the Preferred Alternative (see Section IV.E.). This strategy draws on the strengths of each of the spent nuclear fuel management technologies discussed above, while avoiding sole reliance on any of them. Due to the relatively more robust nature of the TRIGA spent nuclear fuel, DOE believes that minimal additional development may be needed to prepare it for storage and final disposition. Accordingly, the decision specified in this Record of Decision is to place the TRIGA spent nuclear fuel in existing dry storage facilities at the Idaho National Engineering Laboratory. However, the analysis to determine what treatment, if any, will be necessary to qualify the TRIGA spent fuel for geologic disposal will continue and the appropriate treatment, if any, will be identified and implemented.

DOE will issue a second, separate Record of Decision at approximately the end of 1999 (or sooner if possible) to provide assurance to the States hosting the DOE spent fuel management sites that DOE will place sufficient priority on the new technology development effort, and to ensure that the decision on which spent fuel management approach to adopt for use past the year 2000 receives appropriate scrutiny by Executive Branch agencies, Congress and the public.

C. Duration of the Policy

The alternatives for the duration of the policy that were considered are discussed in Sections 2.2.2.1 and 2.2.2.2 of the Final EIS. In analyzing these alternatives, DOE concluded that the 5-year option is unlikely to provide sufficient time for the reactor operators to arrange for alternative spent nuclear fuel disposal mechanisms, and thus might result in some reactor operators refusing to participate in the program to convert or continue to use LEU fuel. That would substantially undermine the goal of eliminating civil commerce in HEU.

On the other hand, the analysis determined that there was insufficient benefit to be gained from extending acceptance of all foreign research reactor spent fuel containing HEU into the indefinite future because such an approach would be unlikely to provide sufficient incentive for other countries to proceed expeditiously with development of alternative arrangements for disposal not involving the United States.

The approach selected provides the incentive needed to gain the reactor operators' cooperation, while specifying a definite cut-off point. This alternative provides sufficient lead time to allow the reactor operators to make other arrangements for disposition of their spent nuclear fuel, and provides sufficient time to accept all spent nuclear fuel containing HEU enriched in the United States.

D. Amount of Material to Manage

The alternative amounts of material that might be covered by the proposed policy are described in Sections 2.2.1.3 and 2.2.2.1 of the Final EIS. DOE, in consultation with the Department of State, concluded that management of spent nuclear fuel only from countries that do not have high income economies would strongly encourage the resurgence of the use of HEU in the high-income economy countries, as well as opening the United States, fairly or unfairly, to charges that it was not living up to commitments under the Treaty on the Non-Proliferation of Nuclear Weapons. Management of only spent nuclear fuel containing HEU would penalize those reactors that have already converted to the use of LEU fuel, and would provide an incentive for reactors to continue to use HEU fuel, or switch back to its use.

DOE, in consultation with the Department of State, concluded that management of all of the aluminum-

based and TRIGA foreign research reactor spent nuclear fuel currently in storage or projected to be discharged during the policy period, and target material containing uranium enriched in the United States, will provide the best support for United States' nuclear weapons nonproliferation policy. Implementation of this approach will provide an opportunity for removal of all United States origin HEU from civil commerce and will provide an incentive for the continued conversion to and use of LEU as fuel for foreign research reactors, in place of HEU.

DOE added the stipulation specifying that target material will be accepted only from foreign research reactors whose operators who formally agree to switch to use of LEU targets, when such targets become available, to provide an additional incentive for the reactor operators to make the switch to LEU targets.

E. Marine Transport

The alternative approaches to marine transport of foreign research reactor spent nuclear fuel are discussed in Section 2.2.1.5 of the Final EIS. The analyses in the Final EIS demonstrate that the impacts to the environment, workers, or the public from transport of the spent nuclear fuel using any of these types of ships would be small, and within applicable regulatory limits. The analyses do not identify any difference in the small impacts that would result from the use of purpose-built vs. general purpose ships. In addition, "military transports" are in fact the same type of ship as chartered commercial cargo ships and are crewed by civilians, use of "military transports" would not actually result in any difference in impacts. DOE, after consultation with the Department of State, believes that use of actual warships would be unnecessary from a security standpoint.

The approach selected by DOE, after consultation with the Department of State, (use of chartered or commercial ships) provides maximum flexibility for marine transport.

DOE has decided to specify the additional stipulation on reduction of the number of shipments as a means of responding to public concerns regarding the risk of the shipments and to reduce shipping costs.

F. Ground Transport

The ground transportation alternatives (i.e., truck, rail and barge) are discussed in Section 2.2.1.7 of the Final EIS. The analyses in the Final EIS demonstrate that the impacts to the environment, workers, or the public, from any of these modes of ground transport (counting barge as a mode of "ground transport") would be small and within the applicable regulatory limits. Furthermore, the differences in potential impacts between the truck, rail and barge alternatives were not significant.

Both the truck and rail transportation options have been used successfully to transport foreign research reactor spent nuclear fuel in the past. Truck transport was the predominant mode used for over twenty years, until the old "Off-Site Fuels Policy" lapsed in 1988. Rail was the mode used for both shipments under the Environmental Assessment of Urgent-Relief Acceptance of Foreign Research Reactor Spent Nuclear Fuel. Since neither of the ports of entry (see item H below) can reasonably provide barge transport to either of the management sites, barge transport was not included in the preferred alternative.

The Final EIS demonstrates that the spent fuel and target material could be safely transported overland within the United States by either truck or rail, and DOE has decided that either transportation mode may be used. However, there appears to be a strong preference by some members of the public in the port areas for the use of rail. Therefore, in response to this preference, DOE has decided that it will seek to use rail for shipments from the ports of entry to DOE facilities at the Savannah River Site in South Carolina and the Idaho National Engineering Laboratory in Idaho as a general matter, subject to further discussions with the States, Tribes and local jurisdictions along the proposed transportation routes.

G. Title Transfer Location

The alternative points at which DOE might take title to the spent nuclear fuel and target material are discussed in Sections 2.2.1.4 and 2.2.2.4 of the Final EIS.

The point at which title will be transferred has no effect on the physical processes that would take place, and thus will not have any effect on the impacts on the environment, workers, or the public. The Price-Anderson Act would provide liability protection in the unlikely event of a nuclear accident in the United States, whether or not DOE has taken title to the spent nuclear fuel at the time of such an accident. As a result, DOE, after consultation with the Department of State, concluded that the selection of the title transfer location could be made solely on programmatic considerations.

Acceptance of title at the foreign research reactor sites could make the United States Government liable for any accident that might occur in the country of origin, or on the high seas. DOE has been unable to identify any advantage to the United States of taking title outside the United States. Taking title at the limit of United States territorial waters would make the title transfer depend solely on when the ship enters United States waters, which could be difficult for DOE to control in certain circumstances (e.g., during a storm). Acceptance of title when the foreign research reactor spent nuclear fuel actually enters the land mass of the United States (the approach selected) provides the most certainty for implementation. The approach selected ensures that liability for accidents during the transportation process outside the United States will remain with the reactor operators, while reinforcing in the minds of the public that the United States Government will be accountable in the unlikely event of an accident within United States territory.

H. Ports of Entry

The alternative ports of entry considered are discussed in Sections 2.2.1.6 and 3.2 of the Final EIS. The analyses in the EIS demonstrate that the impacts on either the environment, workers, or the public due to use of any of the potential ports of entry analyzed would be small and within applicable regulatory limits.

Although any one or all of the ten ports of entry described in the Final EIS would be acceptable ports of entry, DOE, in consultation with the Department of State, concluded that foreign research reactor spent nuclear fuel marine shipments to the United States should be made via the military ports (selected from among those analyzed in the Final EIS and found acceptable) in closest proximity to the spent nuclear fuel management sites (i.e., the Charleston Naval Weapons Station and the Concord Naval Weapons Station). DOE will seek to transport multiple casks per ship to keep the total number of shipments as small as possible, as well as to reduce risks and costs.

Use of military ports will provide additional confidence in the safety of the shipments due to the increased security associated with the military ports. This could also require much of the spent nuclear fuel to be shipped via chartered ships because commercial ships do not schedule stops at military ports. Use of chartered ships will increase the cost of shipping spent nuclear fuel. This additional cost will be borne by the reactor operators for shipments from high-income economy countries, and by the United States for reactor operators from other countries. The additional cost will be kept to a minimum by shipping as many casks as possible on each ship (up to a maximum of eight per ship).

I. Management Sites

The question of which sites should be used for management of all of DOE's spent nuclear fuel was addressed in the Programmatic SNF&INEL Final EIS, including consideration of the potential receipt of the foreign research reactor spent nuclear fuel. The initial Record of Decision for the Programmatic SNF&INEL Final EIS (60 FR 28680, June 1, 1995), specifies that any aluminum-based foreign research reactor spent nuclear fuel accepted in the United States will be managed at the Savannah River Site; and that the remaining foreign research reactor spent nuclear fuel will be managed at the Idaho National Engineering Laboratory. This decision was not affected by the second Record of Decision for the Programmatic SNF&INEL Final EIS (61 FR 9441, March 8, 1996). The site for management of the target material was left to be decided under the Final Environmental Impact Statement on a Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel (i.e., the Final EIS). All of the target material currently in DOE's possession is managed at the Savannah River Site. The approach selected (i.e., management of target material at the Savannah River Site) is not inconsistent with the decision specified in the Records of Decision for the Programmatic SNF&INEL Final EIS.

The analyses in the Final EIS demonstrate that the impacts to either the environment or the public through use of any of the sites for management of the foreign research reactor spent nuclear fuel and target material would be small, and well within applicable regulatory limits.

J. Financing Arrangement

The alternative financing arrangements are discussed in Sections 2.2.1.2 and 2.2.2.3 of the Final EIS. The financing arrangement selected will have no effect on the physical processes that will take place, and thus will not have any direct environmental effects. However, it could affect how many foreign research reactor operators elect to ship spent nuclear fuel to the United States. For instance, if DOE and the Department of State were to charge a full cost recovery fee to all reactors, some of the reactors in high-income countries and many, if not all, of the reactors in other countries would not have the financial resources to participate. This would reduce the amount of spent fuel to be accepted and also reduce the potential environmental impacts that would be associated with shipment and management of the spent fuel, but would result in an increased risk of diversion of highly enriched uranium into a foreign nuclear weapons program. On the other hand, if the United States subsidized all of the reactors, the United States would bear the full financial burden, even for reactors that can afford to pay their fair share.

DOE, in consultation with the Department of State, concluded that, to encourage that reactor operators in countries with other-than-high-income-economies to participate in the program, the United States should subsidize receipt of their spent nuclear fuel. DOE and the Department of State also concluded that DOE should strive to recover as much of the cost of managing the spent nuclear fuel as possible from high-income economy countries. DOE concluded that it will announce the fee policy in a **Federal Register** notice (separate from this **Federal Register** notice announcing the Record of Decision), so that the fee policy may be changed from time to time as necessary to reflect changes in cost or new information that may be relevant to the policy.

Such an approach will recover as much as possible of the United States' expenses for management of spent nuclear fuel from high-income economy countries (without encouraging any of them to resort to reprocessing of their spent nuclear fuel), will encourage participation by other countries, and will provide a mechanism through which to account for changes in cost and future definition of program details.

X. Conclusion

DOE, in consultation with the Department of State, has decided to implement a new foreign research reactor spent fuel and target material acceptance policy, as specified in the Preferred Alternative contained in the Final EIS, subject to the additional stipulations noted in Section VII and including the mitigation activities identified in Section VIII. This new policy is effective upon being made public, in accordance with DOE's NEPA implementation regulations (10 CFR § 1021.315). The goals of this policy are to support the United States' nuclear weapons nonproliferation policy calling for the reduction, and eventual elimination, of HEU from civil commerce, and to encourage foreign research reactors to switch from HEU fuels to alternative LEU fuels developed under the RERTR program. In reaching this decision, DOE has considered the concerns expressed by the Department of State, the Nuclear Regulatory Commission, the Arms Control and Disarmament Agency, the National Security Council, and the International Atomic Energy Agency concerning the need for such a policy. A critical result of implementing this policy will be the continued viability and vitality of the RERTR program because foreign research reactor operators will have a continued incentive to participate. Similarly, implementation of programs similar to the RERTR program in Russia, the other newly-independent states of the former Soviet Union, China, South Africa, and other countries, and the establishment of a world-wide norm discouraging the use of HEU depends on a commitment by the United States to action such as that embodied in the new foreign research reactor spent fuel and target material acceptance policy. At the same time, the impacts on the environment, workers, and the public from implementing the acceptance program are estimated to be small and well within applicable regulatory limits.

The decision process reflected in this Notice complies with the requirements of the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and its implementing regulations at 40 CFR Parts 1500–1508 and 10 CFR Part 1021.

Issued in Washington, D.C., this 13th day of May, 1996.

Hazel R. O'Leary,

Secretary of Energy.

[FR Doc. 96–12420 Filed 5–16–96; 8:45 am]

BILLING CODE 6450–01–P

OL
1
SS
7
MY
7
996
MI

Federal Register

Friday
May 17, 1996

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 530
Extralabel Drug Use in Animals; Propose Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 530

[Docket No. 96N–0081]

RIN 0910–AA47

Extralabel Drug Use in Animals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is proposing to allow veterinarians to prescribe extralabel uses of certain approved animal drugs and approved human drugs for animals. This action implements the Animal Medicinal Drug Use Clarification Act of 1994 (the AMDUCA). This proposed rule will provide veterinarians greater flexibility for using approved drugs for animal use.

DATES: Written comments on the proposed rule by July 31, 1996. Written comments on the information collection requirements should be submitted by June 17, 1996.

ADDRESSES: Written comments on the proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th St. NW., rm. 10235, Washington, DC 20503, ATTN: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Richard L. Arkin, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1737.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
- A. The Provisions of the AMDUCA
- B. FDA's Extralabel Drug Use Policies

II. Description of the Proposed Rule
- A. Scope and Purpose
- B. Definitions
- C. Specific Issues
  1. Extralabel use when approved drugs are available for intended therapeutic purposes
  2. Compounding
  3. Sponsor Records, Reports, and Adverse Events
- D. Advertising and Promotion Prohibited
- E. Access to Veterinarian Records
- F. Provision Permitting Extralabel Use of Animal Drugs
- G. Limitations
- H. Labeling
- I. Specific Provision for New Animal Drug Extralabel Use in Food Animals
- J. Prohibitions, Safe Levels, Analytical Methods
- K. Extralabel Drug Use in Nonfood Animals

III. Proposed Effective Dates

IV. Environmental Impact

V. Analysis of Impacts

VI. Paperwork Reduction Act of 1995

VII. Federalism

VIII. Request for Comments

Appendix

I. Background

A. The Provisions of the AMDUCA

FDA is proposing rules to implement the AMDUCA (Pub. L. 103–396) which was signed into law on October 22, 1994. Prior to enactment of the AMDUCA, section 512 of the act (21 U.S.C. 360b) provided that a new animal drug (NAD) is deemed unsafe unless it is subject to an approved application and the drug, its labeling and its use conform to such approved application. Therefore, use of an NAD without an approved application or in a manner different from that set out in an approved application resulted in the drug being unsafe under the act. Section 501(a)(5) of the act (21 U.S.C. 351(a)(5)) provides that a drug deemed to be unsafe under section 512 is adulterated. The AMDUCA allows veterinarians to prescribe extralabel uses of approved animal drugs and approved human drugs for animals.

The provisions of the AMDUCA relating to extralabel use of approved NAD's provide that such use must be in accordance with conditions specified by the Secretary of Health and Human Services (the Secretary) by regulations. The animal drug provisions also include several safeguards in allowing veterinarians to prescribe drugs for extralabel uses: (1) If the Secretary finds there is a reasonable probability that an extralabel use may present a risk to public health, the Secretary may establish a safe level for a residue for such extralabel use by regulation or order, and may require the development of analytical methods for residue detection; (2) the Secretary may, by general regulation, provide access to records of veterinarians to ascertain any use or intended use that the Secretary determines may present a risk to public health; and (3) if the Secretary finds, after affording an opportunity for public comment, that an extralabel animal drug use presents a risk to public health or that no acceptable analytical method has been developed and submitted, the Secretary may prohibit such extralabel use by order. In addition, the AMDUCA provides that an extralabel use of an approved NAD is not permitted if the label of another animal drug with the same active ingredient, dosage form, and concentration provides for that different use.

The AMDUCA also allows veterinarians to prescribe approved human drugs for use in animals under conditions specified by the Secretary by regulations. The human drug provisions do not, however, contain the express conditions set out in the statute for extralabel use of approved NAD's.

The AMDUCA adds a new section 301(u) to the act (21 U.S.C. 331(u)) which provides that failure to comply with the regulations or orders implementing the AMDUCA is a prohibited act. In addition, the AMDUCA amends section 512(l) of the act to require drug sponsors to keep records and make reports regarding extralabel uses.

Neither the AMDUCA nor the implementing regulations are intended to lessen the responsibility of the manufacturer, the veterinarian, or the food producer with regard to violative drug residues or other adverse impact on human health. Under the act and this proposal, any amount of residue that may present a risk to public health resulting from an extralabel use would constitute a violation of the act subject to enforcement action, if a safe level or tolerance has not been established. Residue exceeding an established safe level would also constitute a violation of the act, as would residue resulting from an extralabel use where the residue exceeds an established tolerance.

The AMDUCA requires that the Secretary issue final rules implementing the statute within 2 years of the enactment date. The provisions of the AMDUCA are effective upon adoption of the final rules.

B. FDA's Extralabel Drug Use Policies

Under the current statute, extralabel use of drugs in animals is a violation of the act, therefore, FDA set out its enforcement policies regarding such use in two FDA Compliance Policy Guides (CPG's). The first of these was issued on March 9, 1984, as CPG 7125.06, "Extralabel Use of New Animal Drugs in Food-Producing Animals," and was revised most recently on July 20, 1992. In March 1995, CPG 7125.06 was published as Section 615.100 of Chapter 6 in a new agency compilation of CPG's entitled the "FDA Compliance Policy Guides Manual, first edition" (Washington: Government Printing Office, publication 1995–386–982–3373, 1995). The second relevant CPG, "Human-Labeled Drugs Distributed and Used in Animal Medicine," was issued as CPG 7125.35 on March 19, 1991, and was last revised on July 20, 1992. It has been published as Section 615.100 in Chapter 6 of the CPG Manual.

The extralabel CPG's were issued to provide information and direction to FDA personnel in the field about the circumstances in which FDA would take regulatory action against extralabel use of approved NAD's and human drugs in animals and the situation in which the agency would exercise its regulatory discretion and not take action. The scant legislative history of the AMDUCA includes some evidence that the AMDUCA is intended to codify policies similar to those in FDA's CPG's. While there are no committee reports on the AMDUCA, floor statements of individual members of Congress express this intent. For example, Senator Pressler said in debate on the bill, "FDA has stated it will not institute regulatory action against licensed veterinarians for using or prescribing any drugs legally obtained. Thus, this bill codifies existing FDA practice." (140 Congressional Record S14072 (daily ed. October 4, 1994)). Senator Coats made a similar statement on the floor when he noted that the AMDUCA "codifies the practices allowed under the current compliance policy guidelines" regarding the extralabel use of veterinary pharmaceutical products. (140 Congressional Record S14272 (daily ed. October 5, 1994)).

Consistent with these congressional statements, FDA has generally followed policies similar to those in the existing CPG's in this proposed rule. For the public's convenience, the texts of the extralabel CPG's are included in this document in an appendix to the preamble. It is anticipated that the CPG's will be withdrawn after a final rule based on this proposal has been published.

II. Description of the Proposed Rule

A. Scope and Purpose

The proposed rule would apply to the extralabel use in an animal of any approved NAD or approved human drug used by or on the lawful order of a veterinarian within the context of a veterinarian-client-patient relationship. Human drugs include approved new human drugs, as well as over-the-counter (OTC) drugs marketed under OTC monographs as safe and effective and not misbranded within the meaning of 21 CFR part 330. The proposal applies only to the extralabel use of approved NAD's and approved human drugs and not to the use of unapproved drugs.

Consistent with the policies in the CPG's, these proposed rules limit extralabel uses for food-producing animals to those that provide alternative treatment modalities when the health of an animal is threatened, or suffering or death may result from failure to treat an animal, i.e., therapeutic uses. FDA, however, has received increased requests to permit extralabel drug use for certain nontherapeutic uses such as uses related to enhanced animal reproduction. For example, representatives of the aquaculture industry have expressed a need for extralabel uses of drugs for spawning and gender reversal processes. Those representatives contended that certain aquaculture industries would not be able to survive economically without such extralabel uses, because approved drugs have not been available for those uses. Comments by members of the Veterinary Medicine Advisory Committee (VMAC) and others at the April 1995 VMAC meeting generally agreed that extralabel uses might be extended to some reproductive uses in terrestrial and, especially, aquatic animals.

The agency, in considering the appropriate scope of extralabel use under the statute, is concerned about the possible deterrent effect of such broad extralabel use on the widely-shared goal of increasing the number of approved drugs that are available for animal use. Therefore, the agency is interested in public comments as to nontherapeutic extralabel uses such as reproductive uses in terrestrial and, especially, aquatic animals and other possible uses. The agency also is interested in public comment as to appropriate ways to balance extralabel use with the need to preserve the goal of increased availability of new animal drugs approved for such uses under section 512 of the act.

B. Definitions

Proposed § 530.3 includes definitions of relevant terms. The term "extralabel use" means the actual or intended use of a human or animal drug in an animal in a manner that is not in accordance with the approved labeling. This includes, but is not limited to, use in species or for indications (disease or other therapeutic conditions) not listed in the labeling, use at dosage levels, frequencies, or routes of administration other than those stated in the labeling, and deviation from the labeled withdrawal time. Any deviation from labeled withdrawal time based on these different uses must be supported by appropriate scientific information.

The proposed rule defines the term "residue" to mean any compound present in edible animal tissues that results from the use of a drug, and would include the drug, its metabolites, and any other substance formed in or on food because of the drug's use.

The proposal defines a "safe level" as a conservative estimate of a drug residue level in animal tissue derived from toxicology and metabolism data or other scientific information. This level would be established so that concentrations of residues in tissue below the safe level will not raise human food safety concerns.

Under the proposal, a safe level would not be either a safe concentration or a tolerance and would not indicate that an approval exists for the drug in that species or category of animals from which the food is derived. If FDA establishes a safe level and a tolerance is later established through an approval for a particular species or category of animals, the safe level would be superseded by the tolerance for that species or category of animals, and would be revoked.

The term "veterinarian" is defined as a person licensed by a State or Territory to practice veterinary medicine, and who holds a degree of Doctor of Veterinary Medicine (D.V.M.), Veterinary Medical Doctor (V.M.D.), or the equivalent, from an accredited institution.

A "valid veterinarian-client-patient relationship" is defined as one in which: (1) A veterinarian has assumed the responsibility for making medical judgments regarding the health of an animal and the need for medical treatment, and the client (the owner or other caretaker of the animal or animals) has agreed to follow the instructions of the veterinarian; (2) there is sufficient knowledge of the animal(s) by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal(s); and (3) the veterinarian is readily available for followup in case of adverse reactions or failure of the regimen of therapy. Such a relationship can exist only when the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal(s) by virtue of examination of the animal(s), and/or by medically appropriate and timely visits to the premises where the animal(s) are kept. This definition is consistent with the American Veterinary Medicine

Association's definition of a "valid veterinarian-client-patient relationship."

The proposed rules, for purposes of establishing a safe level and requiring the development of analytical methods to detect residues, define the phrase *"a reasonable probability that a drug's use may present a risk to the public health"* as a circumstance in which FDA has reason to believe that use of a drug may be likely to cause a potential adverse event. The proposal, for purposes of providing access to veterinarians' records, would define the phrase *"use of a drug may present a risk to the public health"* to mean a circumstance in which FDA has information that indicates that use of a drug may cause an adverse event. In addition, under the proposal, the phrase *"use of a drug presents a risk to the public health,"* for purposes of prohibiting an extralabel use, means a circumstance in which FDA has evidence that demonstrates that the use of a drug has caused or is likely to cause an adverse event.

In defining these phrases regarding risk, the agency considered the common meaning of the words in these phrases, and other regulations in which FDA has defined similar concepts (e.g., 21 CFR 7.3(m), 7.41, and 803.3(r). The statute provides for an increased level of FDA activity as evidence of public concern becomes more substantial, and as the connection between specific extralabel uses and effect on the public health becomes more apparent. The final step may be prohibition of specified extralabel uses.

A finding that there is a reasonable probability that "a drug's use may present a risk to the public health" could be based on relevant information—assessed in the light of the education and experience of an agency staff member or other qualified person—that there may be a connection between a use and a potential adverse event. This would differ from a finding that "use of a drug may present a risk to the public health," which would normally be based on some greater level of information that demonstrates that there may be some more concrete link between the use and an adverse event. In contrast, a finding that "use of a drug presents a risk to the public health" would require strong evidence of a direct link between the use and the risk.

FDA intends that harm that results from chronic low level or repeat exposure that is not high enough to cause acute toxicity but that could cause toxicity over long periods of time is included within the meaning of "adverse event."

C. Specific Issues

1. Extralabel Use When Approved Drugs are Available For Intended Therapeutic Purposes.

FDA's discretionary policies have precluded extralabel use of an animal or human drug in food-producing animals when an approved drug for the intended use exists. A similar limitation has not applied in the case of animal and human drugs used in animals not intended for human consumption; the agency has exercised broad enforcement discretion with regard to extralabel use in those species.

The AMDUCA provides that an extralabel use of an approved animal drug is not permitted if an approved NAD with the same active ingredient in the same dosage form and concentration exists for that use. The statute does not limit this provision to food-producing animals as FDA did in its CPG. Therefore, proposed §§ 530.20(a)(1) and 530.30(a) limit the extralabel use of approved animal drugs in all animals to circumstances in which there is no approved NAD in the needed dosage form and concentration. The CPG contains an exception that permits an extralabel use where the veterinarian finds, within the context of a valid veterinarian-client-patient relationship, that an approved NAD is clinically ineffective for its intended use. The proposed rule does not include a similar provision. However, the agency invites comment as to whether the agency should permit such an exception.

The AMDUCA does not restrict extralabel use of approved human drugs in a similar manner. However, these proposed rules include the same limitation for extralabel use of human drugs in food-producing animals. FDA believes that, because of the broad public health implications inherent in the treatment of animals that will become food, it is prudent to require the use of an approved NAD if one exists before the extralabel use of a human drug is appropriate.

2. Compounding

FDA considers compounding from an approved drug to be an extralabel use. Thus, the agency views the language of the AMDUCA as giving statutory authorization to the compounding of finished drug products from approved human or approved animal drugs, within limits, under the same conditions as for any other extralabel use. FDA has certain concerns relative to compounding and the use of compounded drugs that can be distinguished from those issues associated with simple extralabel use of an approved finished drug product.

In view of the above, the proposed rule includes several major factors in addition to the general criteria set forth elsewhere in this proposed rule applicable to the extralabel use by compounding from approved drugs. The proposal provides that such extralabel use is permissible if: (1) All relevant portions of proposed part 530 have been complied with; (2) there is no marketed or approved human or new animal drug that, when used as labeled or in conformity with criteria established in this part, will, in the available dosage form and concentration, appropriately treat the condition diagnosed; (3) compounding is performed by a licensed pharmacist or veterinarian within the scope of a professional practice; (4) adequate processes and procedures are followed that ensure the safety and effectiveness of the compounded products; (5) the scale of the compounding operation is commensurate with the established need for compounded products (e.g., similar to that of comparable practices); and (6) all relevant State laws relating to the compounding of drugs for use in animals are followed.

The AMDUCA does not authorize compounding from bulk drugs or unapproved drugs. Compounding by or for veterinarians from bulk drugs or unapproved drugs results in the production of an unapproved NAD that may be subject to regulatory action. Accordingly, proposed § 530.13 provides that allowable extralabel use by compounding applies only to compounding of a product from approved drugs by a veterinarian or a pharmacist on the order of a veterinarian within the practice of veterinary medicine, and that nothing in proposed part 530 is to be construed as permitting compounding from bulk drugs or unapproved drugs.

Additional guidance on the subject of compounding may be provided in guidance documents to be issued by FDA.

3. Sponsor Records, Reports, and Adverse Events

FDA is concerned that the enactment of the AMDUCA could have the unintended effect of reducing the information that has heretofore been provided to the agency by sponsors regarding their products.

Information that helps FDA assure the safe and effective use of approved drugs comes from two sources, among others. First, sponsors submit data and information on adverse events resulting from extralabel uses. Second, sponsors submit supplemental applications to extend the product labels to provide for new uses. The agency's concerns are

that under the AMDUCA the sponsors might have less incentive to submit supplemental applications, and might also be reluctant to report extralabel use adverse events that FDA could require to be stated in the labeling. FDA believes that neither result was intended by Congress. For example, the AMDUCA specifically requires the reporting of adverse events related to extralabel uses.

Section 512(l) of the act requires sponsors to maintain records of and report experiences "and other data and information" regarding a drug. Under 21 CFR 510.300 *et seq.*, "Records and Reports," adopted under section 512(l) of the act, sponsors are currently required to report on extralabel drug uses. Section 2 of the AMDUCA amended section 512(l) of the act by adding new language specifically requiring maintenance of records and reports of experiences related to extralabel drug uses. Accordingly, the sponsor is required to maintain records of and report to the agency all information the sponsor has that pertains to extralabel drug uses, including adverse drug experiences.

Data derived from such records and reports may be used in establishing a prohibition against the use of a drug in food-producing animals under §§ 530.21 and 530.25, or safe levels and analytical methods under proposed §§ 530.22, 530.23, and 530.24. In addition, Section 2 of the AMDUCA amended section 512(e) of the act by adding new language specifically giving authority to the agency to withdraw approval of a NAD based on records and reports of experience with extralabel uses, in addition to experience with an approved use.

FDA believes that it is important to publicize data it has received concerning adverse events resulting from all uses, including extralabel drug uses. This could be done through provision of this information to professional journals, the trade press, and others, through press releases, "Dear Doctor letters," and similar documents. FDA would be interested in receiving comments from the public with respect to any policy that would allow or encourage sponsors to provide extralabel drug use information regarding significant adverse events on labeling.

D. Advertising and Promotion Prohibited

While the AMDUCA and the proposed rule permit extralabel uses of approved drugs, neither the statute nor the proposed rule would permit advertising and promotion of extralabel uses. The act does not permit advertising and promotion of an unapproved use for a human or approved animal drug because scientific data supporting the safety and efficacy of a new drug use must be submitted by the sponsor and reviewed and approved by the agency in order to permit such use to be advertised, promoted, or included on the labeling. Advertising and promoting of any unapproved use for a drug would be inconsistent with the act and would subvert the entire system of drug approval and regulation because there would no longer be any incentive for a sponsor to submit data and go through the approval process for an unapproved use.

Accordingly, proposed § 530.4 includes a statement that the rule shall not be construed as permitting advertising or promotion of extralabel uses of human or new animal drugs.

E. Access to Veterinarian Records

Section 2(a) of the AMDUCA adds a new section 512(a)(4)(C) to the act which provides that FDA may adopt regulations providing FDA the right of access to records maintained by veterinarians to ascertain any extralabel use or intended use of an approved animal drug authorized by the agency that may present a risk to the public health.

Proposed § 530.5 provides that persons designated by FDA (i.e., FDA investigators) would be given access to the records of veterinarians, including records required to be maintained under the act, State veterinary practice acts, and State pharmacy acts. Any person who has custody of these records would be required to permit inspection at any reasonable times, permit copying, and verify such records.

While the AMDUCA does not include an explicit authority for FDA to require the creation and maintenance of records by veterinarians, the statute clearly allows the agency to specify the conditions for extralabel use. The agency believes that the maintenance of records is essential to the agency's ability to implement the statute and protect the public health and, as such, maintenance of records is a condition of allowable extralabel use. However, it is not FDA's intention to create new recordkeeping burdens on veterinarians who are required to keep records under State recordkeeping requirements.

FDA believes that these State required records will include the type of information FDA will need to carry out its statutory responsibilities. Records required by State veterinary practice acts or State pharmacy acts routinely document the existence of a valid veterinarian-client-patient relationship. These records also would provide relevant information concerning extralabel drug uses. Typically, these records include: (1) The name, address, and telephone number of the veterinarian; (2) the name, address, and telephone number of the client; (3) the complaint, or other reason for the provision of services, including information on the patient history, physical examination, and laboratory data; (4) the provisional or final diagnosis and date of diagnosis; (5) identification of the animal(s) treated (including species, breed, age, sex, color, brand, and tag or tattoo number); (6) the date of treatment, prescribing, or dispensing of the drug; (7) the established name of the drug and its active ingredient, or if formulated from more than one ingredient, the established name of each ingredient; the dosage form, strength, and quantity of the prescribed or dispensed drug, and the dates of administration; (8) any directions for use provided, including dose, route of administration, and length of therapy; (9) the number of refills authorized; (10) cautionary statements, if any; and (11) the veterinarian's specified withdrawal, withholding, or discard time(s), if applicable, for meat, milk, eggs, or any food that might be derived from any food animals treated.

Under the proposal, veterinarians would be required to maintain individual records for each nonfood animal treated as required by State veterinary practice and pharmacy acts. State veterinary practice acts generally require veterinarians in large animal practices to maintain records for food-producing animals that are adequate to substantiate the identification of the animals and the medical care provided. Such records in large animal practices can usually be maintained either as individual records or on a group, herd, flock, or per-client basis.

State veterinary practice and State pharmacy acts generally require veterinarians to maintain complete records of receipt and distribution of each veterinary drug. These records, which are maintained in the form required by the appropriate State acts, may include sales invoices, shipping records, prescription files, or records or logs established solely for this purpose. Receipt and distribution records usually are also required to include: (1) The name of the drug, (2) the name and address of the person or corporation from whom the drug was shipped, (3) the date and quantity received, and (4) the name and address of the person to whom the drug was distributed.

Under the proposed rule, drug distribution and use records would be required to be maintained for 2 years or as otherwise required by Federal or State law, whichever is greater.

The proposal would require that veterinarians maintain all records required by State veterinary practice and pharmacy acts in a legible form, document them in an accurate and timely manner, and keep them readily accessible to permit prompt retrieval of information.

Refusal to provide access to such required records is a prohibited act under section 301 of the act as amended by the AMDUCA.

F. Provision Permitting Extralabel Use of Animal Drugs

Proposed § 530.10 provides that extralabel use of an approved human or NAD is permitted by or under the lawful written or oral order of a veterinarian within the context of a veterinarian-client-patient relationship, if the extralabel use is otherwise in compliance with the regulation.

G. Limitations

Proposed § 530.11 sets out the following specific limitations on extralabel use. The following uses result in the drug being deemed to be unsafe within the meaning of the act: (1) Extralabel use in an animal of an approved new animal or human drug by a lay person (except under the supervision of a veterinarian), (2) extralabel use of an approved NAD or human drug in or on an animal feed, (3) extralabel use resulting in any residue which may present a risk to public health, and (4) extralabel use resulting in any residue above an established safe level or tolerance.

H. Labeling

The proposal at § 530.12 would require that any human or animal drug prescribed or dispensed for extralabel use by a veterinarian or a pharmacist on the order of a veterinarian bear or be accompanied by labeling information adequate to assure the safe and proper use of the product. The phrase "be accompanied by" is intended to permit shipment of drugs by a veterinarian or pharmacist on the order of a veterinarian in case quantities. The minimum information required under the proposal is the same as that currently required by CPG and includes: (a) The name and address of the veterinarian; (b) the established name of the drug, or if formulated from more than one active ingredient, the established name of each ingredient; (c) any directions for use specified by the veterinarian, including the class/species or identification of the animal in which it is intended to be used; the dosage, frequency, and route of administration; and the duration of therapy; (d) any cautionary statements; and (e) the veterinarian's specified withdrawal, withholding, or discard time for meat, milk, eggs, or any food that might be derived from the treated animal.

I. Specific Provision for New Animal Drug Extralabel Use in Food Animals

Proposed § 530.20(a)(2) requires as a condition for extralabel use that a veterinarian be required to take a number of affirmative actions before prescribing or dispensing an animal or human drug for an extralabel use in food animals. The veterinarian must do the following: (1) Make a careful diagnosis and evaluation of the conditions for which the drug is to be used; (2) establish a substantially extended withdrawal period prior to marketing of milk, meat, or eggs supported by appropriate scientific information, if applicable; (3) institute procedures to assure that the identity of the treated animal or animals is carefully maintained; and (4) take appropriate measures to assure that assigned timeframes for withdrawal are met and no illegal drug residues occur in any food-producing animal subjected to extralabel treatment.

Because extralabel use of drugs in food-producing animals engenders an increased potential for illegal drug residues in meat, milk, and eggs, which are consumed in significant amounts by the American public, the proposed rule would also set forth additional conditions for extralabel drug use in food-producing animals.

One restriction, contained in proposed § 530.20(b), applies to the extralabel use of either an approved human drug, or an animal drug approved only for use in animals not intended for human consumption. In such instances, records maintained by the veterinarian must reflect the medical rationale for such use. In addition, if there is no published scientific information on public health aspects of the use of the nonfood animal drug in food-producing animals, the veterinarian must determine that the animal and its food products will not enter the human food supply.

A second restriction would apply only to the use of human drugs in food animals. As discussed in section II.C. of this document, proposed § 530.20(a)(1) would not allow such use if an approved animal drug is available for such use (with certain exceptions). Section 530.20(c) requires the additional step of consideration of extralabel use of approved food-animal drug before use of a human drug or drug approved for use in animals not intended for human consumption. In addition, records maintained by the veterinarian must reflect this consideration.

J. Prohibitions, Safe Levels, Analytical Methods

Section 512(a)(4)(B) and (a)(4)(D) of the act as added by the AMDUCA grants FDA the authority to prohibit extralabel drug uses, establish safe levels and require the development of analytical methods. These provisions are included in section 512(a)(4) of the act which addresses approved NAD's and are not specified in section 512(a)(5) which addresses approved human drugs. Nevertheless, FDA believes that, under the general authority in section 512(a)(5) of the act to set the conditions for extralabel use of approved human drugs in animals, the agency may also set safe levels, require development of analytical methods, and prohibit extralabel uses of human drugs when necessary to protect the public health. Thus, the proposed rule applies these safeguards to human drugs as well as animal drugs.

Proposed § 530.21 addresses food-producing animals and states that FDA can prohibit the use of a drug or class of drugs in food-producing animals if the agency determines that: (1) An acceptable analytical method needs to be established and such method has not been established or cannot be established, or (2) the use of the drug or class of drugs presents a risk to public health. Under the proposal, a prohibition may be a general ban on the use of the drug or class of drugs in all food-producing animals, or may be limited to a specific species, indication, dosage form, route of administration, or combination of factors.

Under proposed § 530.22, FDA could establish a safe level for extralabel use of a drug upon a finding that there is a reasonable probability that an extralabel use may present a risk to the public health. To accomplish this, the agency may: (1) Establish a finite safe level based on residue and metabolism information (i.e., toxicological data) from available sources; (2) establish a safe level based on the lowest level that can be measured by a practical analytical method; or (3) establish a safe level based on other appropriate scientific, technical, or regulatory bases.

The proposal allows FDA to require the development of an acceptable analytical method for the quantification or detection of residues. If FDA requires such a method, the agency would announce that requirement in the **Federal Register**. If development of an acceptable analytical method is required and a method is not developed, submitted, and accepted, the agency could, under the proposal, prohibit the extralabel use of the drug in food-producing animals.

The proposed rule provides, however, that if the agency establishes a safe level and a tolerance is later established through an approval for a particular species or category of animals, the safe level is superseded by the tolerance for that species or category of animals.

The proposed rule contemplates that FDA: (1) Will establish safe levels and publish them in the **Federal Register**, and (2) may establish specific analytical methods for drug residue detection for those drugs for which safe levels have been established. The safe levels and the availability of an analytical method will be codified at proposed § 530.40.

Proposed § 530.23 states that FDA will publish a document establishing a safe level in the **Federal Register**. This document would include a statement setting forth the agency's finding that there is a reasonable probability that extralabel use in animals of the human drug or animal drug may present a risk to public health, and would request public comments.

Under the proposed rule, FDA would codify in proposed § 530.40 the following: (1) A current listing of those drugs for which a safe level for extralabel drug use in food-producing animals has been set, and (2) the specific safe levels, and the availability, when one has been developed, of a specific analytical method or methods for drug residue detection.

Proposed § 530.24 provides that copies of analytical methods would be made available upon request from the Center for Veterinary Medicine's Communications and Education Branch (HFV–12), 7500 Standish Pl., Rockville, MD 20855, and that acceptable analytical methods will be incorporated by reference.

While the agency does not intend to engage in prior notice and comment rulemaking for the establishment or acceptance of analytical methods or safe levels, interested persons will have the opportunity to make public comment to the agency as these actions are announced and published that could, if appropriate, result in modifications to the actions.

Proposed § 530.25 provides that FDA could issue an order prohibiting extralabel use of a drug in food-producing animals if the agency finds, after providing an opportunity for public comment, that: (1) An acceptable analytical method has not been developed, submitted, and found to be acceptable by FDA; or (2) an extralabel use in animals of a particular human drug or animal drug presents a risk to the public health.

After making a preliminary determination that a required analytical method has not been developed and submitted, or an extralabel use in food-producing animals of a particular human drug or animal drug presents a risk to the public health, FDA would, under the proposal, publish an order of prohibition with a 90-day delayed effective date in the **Federal Register**. Such order would specify the nature and extent of the order of prohibition and the reasons for the prohibition, and provide a period of not less than 60 days for comments.

The order of prohibition would become effective 90 days after the date of publication of the order of prohibition unless FDA publishes a **Federal Register** document before that date revoking the order of prohibition, modifying it, or extending the period of public comment.

The proposed rule would permit the agency to publish an order of prohibition with an abbreviated comment period and/or delayed effective date in exceptional circumstances (e.g., where there is immediate risk to the public health), provided that the order of prohibition states that the comment period and/or effective date have been abbreviated because there are exceptional circumstances, and sets forth the exceptional circumstances and the agency's rationale for taking such action.

Under the proposal, a current listing of drugs prohibited for extralabel use in food-producing animals would be codified in new § 530.41.

The proposed rule would also note that the agency could, after publishing a **Federal Register** document, remove a drug from the prohibited list after the submission of appropriate information, such as adequate safety and effectiveness data, an acceptable method, approval of a new animal drug application for the prohibited drug and use, or information demonstrating that the prohibition was based on incorrect data.

K. Extralabel Drug Use in Nonfood Animals

Because the same public health implications do not exist in the treatment of nonfood animals as for food animals, the proposed rule does not include the same level of detail for such extralabel use. Specifically, proposed § 530.30 provides that veterinarians can make extralabel use or dispensing of drug products in nonfood-producing animal practice except when such use may threaten the public health. One other limitation, as discussed earlier in the preamble, is that, if an approved NAD for such use exists, an extralabel use of an approved animal or human drug is not permitted. (See proposed § 530.30(a).)

The proposal adds that the agency may publish a document in the **Federal Register** prohibiting a particular extralabel drug use in nonfood animals if the agency determines that it presents a risk to the public health. This provision is consistent with the agency's authority to establish conditions for extralabel use of human drugs under the AMDUCA.

III. Proposed Effective Dates

Under Section 2(d) of the AMDUCA, the amendments to the act permitting the extralabel use of certain approved animal drugs and approved human drugs for animals become effective upon the adoption of final rules implementing the amendments. FDA intends that any final rule that may issue based on this proposal become effective 30 days after the date of publication in the **Federal Register**.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order.

Most of the requirements in this proposed rule have already been implemented by regulated industry,

veterinarians, and pharmacists in response to the existing Compliance Policy Guides relating to extralabel drug use in animals and the passage of the AMDUCA, FDA guidance, and industry trade associations' recommendations, as well as the requirements of State veterinary practice acts and as customary elements of good veterinary medical practice.

The actual cost to industry and the public associated with this proposal will be quite minimal. The AMDUCA was enacted to decriminalize extralabel use of most approved new human and animal drugs in veterinary medicine, and to provide FDA with specific regulatory tools to assure food safety. Congress intended that the new legislation codify FDA's discretionary enforcement policies that have permitted extralabel use of approved new human and animal drugs by veterinarians in specified circumstances.

FDA is likely to require the establishment of a safe level for one to two drugs per year after the proposed rule is finalized. An analytical methodology for drug residue detection will be required for each of these drugs. The sponsor may be willing to provide the methodology in some cases, while in others, FDA, the sponsor, and, perhaps, a third party, may negotiate a cooperative arrangement for methodology development. The range of costs for development of methodologies is likely to range from about $90,000 for a drug for which there are few problems in developing a procedure, upward to about $350,000 for a drug which presents significant problems in methodology development, with an additional $100,000 required for a drug metabolism study. Methodology development costs for a drug presenting an intermediate level of difficulty would be about $170,000. The agency estimates that the average year would see the development of two drug methodologies presenting an intermediate level of development difficulty, with one of those drugs requiring a metabolism study, for an annual cost impact of about $440,000. The proposal does not impose any new extralabel drug use recordkeeping and reporting requirements for sponsors or veterinarians which are not currently required under other sections of the act or under State veterinary practice acts.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a proposed rule on small entities. Because the proposed rule clarifies existing FDA policy, and because most of the requirements in this proposed rule have already been implemented by regulated industry, veterinarians, and pharmacists in response to the existing Compliance Policy Guides relating to extralabel drug use in animals and the passage of the AMDUCA, FDA guidance, and industry trade associations' recommendations, the agency certifies, in accordance with section 605(b) of the Regulatory Flexibility Act, that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. Paperwork Reduction Act of 1995

This proposed rule contains reporting requirements that are subject to public comment and to review by OMB under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Therefore, in accordance with 5 CFR 1320, a description of reporting requirements is given below with an estimate of the annual collection of information burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

With respect to the following collection of information, FDA is soliciting comments on: (1) Whether the proposed collection of information is necessary for proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Extralabel Drug Use in Animals.

Description: This proposed rule provides that FDA may require the development of an acceptable analytical method for the quantification of residues above an established safe level. FDA estimates that it will likely establish safe levels for one to two drugs per year if the rule is finalized, and that an analytical methodology for drug residue detection will be required for each of these drugs. If no method is provided, the Secretary may prohibit the extralabel use. This requirement may be fulfilled by any interested person. FDA believes that the sponsor may be willing to provide the methodology in some cases, while in others, FDA, the sponsor, and perhaps a third party may negotiate a cooperative arrangement for method development.

Description of Respondents: Persons, sponsors, States, or Federal Government.

ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. Of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
21 CFR 530.22(b)	2	1	2	4,160	8,320

There are no operating and maintenance or capital costs associated with this information collection. The agency recognizes that the time and expense of method development is highly variable dependent on the difficulty of the development. The agency estimates that two methods of intermediate difficulty would be developed and these methods may take up to 2 person-years to develop.

The agency has submitted a copy of this proposed rule to OMB for its review and approval of this information collection. Interested persons are requested to send comments regarding this information collection, including suggestions for reducing this burden to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA. Written comments on the information collection should be submitted by June 17, 1996.

VII. Federalism

FDA has analyzed this proposal in accordance with the principles and criteria set forth in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

VIII. Request for Comments

Interested persons may, on or before July 31, 1996, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 530

Administrative practice and procedures, Advertising, Animal drugs, Animal feeds, Human drugs, Labeling, Prescription drugs, Promotion, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Title 21 of the Code of Federal Regulations be amended to add a new part 530 to read as follows:

PART 530—EXTRALABEL DRUG USE IN ANIMALS

Subpart A—General Provisions

Sec. 530.1 Scope.
Sec. 530.2 Purpose.
Sec. 530.3 Definitions.
Sec. 530.4 Advertising and promotion.
Sec. 530.5 Veterinary records.

Subpart B—Rules and Provisions for Extralabel Uses of Drugs in Animals

Sec. 530.10 Provision permitting extralabel use of animal drugs.
Sec. 530.11 Limitations.
Sec. 530.12 Labeling.
Sec. 530.13 Extralabel use from compounding approved new animal and approved human drugs.

Subpart C—Specific Provisions Relating to Extralabel Uses of Animal and Human Drugs in Food-Producing Animals

Sec. 530.20 Conditions for permitted extralabel animal and human drug use in food-producing animals.
Sec. 530.21 Prohibitions for food-producing animals.
Sec. 530.22 Safe levels and analytical methods for food-producing animals.
Sec. 530.23 Procedure for setting and announcing safe levels.
Sec. 530.24 Procedure for announcing analytical methods for drug residue quantification.
Sec. 530.25 Orders prohibiting extralabel uses for drugs in food-producing animals.

Subpart D—Extralabel Use of Human and Animal Drugs in Animals Not Intended for Human Consumption

Sec. 530.30 Extralabel drug use in nonfood animals.

Subpart E—Safe Levels for Extralabel Use in Animals and Drugs Prohibited for Extralabel Use in Animals

Sec. 530.40 Safe levels and availability of analytical methods.
Sec. 530.41 Drugs prohibited for extralabel use in animals.

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); Secs. 201, 301, 501, 502, 503, 505, 507, 512, 701, and 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 360b, 371, 379e).

Subpart A—General Provisions

§ 530.1 Scope.

This part applies to the extralabel use in an animal of any approved new animal drug or approved new human drug by or on the lawful order of a veterinarian within the context of a valid veterinarian-client-patient relationship.

§ 530.2 Purpose.

The purpose of this part is to establish conditions for extralabel use or intended extralabel use in animals by or on the lawful order of veterinarians of approved new animal drugs and approved new human drugs. Such use is limited to treatment modalities when the health of an animal is threatened or suffering or death may result from failure to treat. This section implements the Animal Medicinal Drug Use Clarification Act of 1994 (the AMDUCA) (Pub. L. 103–396).

§ 530.3 Definitions.

(a) *Extralabel use* means actual use or intended use of a drug in an animal in a manner that is not in accordance with the approved labeling. This includes, but is not limited to, use in species not listed in the labeling, use for indications (disease or other conditions) not listed in the labeling, use at dosage levels, frequencies, or routes of administration other than those stated in the labeling, and deviation from the labeled withdrawal time based on these different uses.

(b) *FDA* means the U.S. Food and Drug Administration.

(c) The phrase *a reasonable probability that a drug's use may present a risk to the public health* means that FDA has reason to believe that use of a drug may be likely to cause a potential adverse event.

(d) The phrase *use of a drug may present a risk to the public health* means that FDA has information that indicates that use of a drug may cause an adverse event.

(e) The phrase *use of a drug presents a risk to the public health* means that FDA has evidence that demonstrates that the use of a drug has caused or likely will cause an adverse event.

(f) A *residue* means any compound present in edible tissues that results from the use of a drug, and includes the drug, its metabolites, and any other substance formed in or on food because of the drug's use.

(g) A *safe level* is a conservative estimate of a drug residue level in animal tissue derived from food safety data or other scientific information. Concentrations of residues in tissue below the safe level will not raise human food safety concerns. A safe level is not a safe concentration or a tolerance and does not indicate that an approval exists for the drug in that species or category of animal from which the food is derived.

(h) Veterinarian means a person licensed by a State or Territory to practice veterinary medicine.

(i) A valid veterinarian-client-patient relationship is one in which:

(1) A veterinarian has assumed the responsibility for making medical judgments regarding the health of (an) animal(s) and the need for medical treatment, and the client (the owner of the animal or animals or other caretaker) has agreed to follow the instructions of the veterinarian;

(2) There is sufficient knowledge of the animal(s) by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal(s); and

(3) The practicing veterinarian is readily available for followup in case of adverse reactions or failure of the regimen of therapy. Such a relationship can exist only when the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal(s) by virtue of examination of the animal(s), and/or by medically appropriate and timely visits to the premises where the animal(s) are kept.

§ 530.4 Advertising and promotion.

Nothing in this part shall be construed as permitting the advertising or promotion of extralabel uses in animals of approved new animal drugs or approved human drugs.

§ 530.5 Veterinary records.

(a) Persons designated by FDA shall have access to the records of veterinarians, including records

required to be maintained under the act, State veterinary practice acts, and State pharmacy acts, to ascertain any extralabel use or intended extralabel use of drugs that the agency has determined may present a risk to the public health.

(b) As a condition of extralabel use permitted under this part, veterinarians shall maintain records as required by State veterinary practice and pharmacy acts. Such records shall be legible, documented in an accurate and timely manner, and be readily accessible to permit prompt retrieval of information. Such records shall be adequate to substantiate the identification of the animals and the medical care provided and shall be maintained either as individual records or, in large animal practices, on a group, herd, flock, or per-client basis. As required by the State, such records will typically include, but not be limited to, the following information:

(1) The name, address, and telephone number of the veterinarian;

(2) The name, address, and telephone number of the client;

(3) The complaint, or other reason for the provision of services, including information on the patient history, physical examination, and laboratory data;

(4) The provisional or final diagnosis and date of diagnosis;

(5) Adequate identification of the animal(s) treated;

(6) The date or dates of treatment, prescribing, or dispensing of the drug;

(7) The established name of the drug and its active ingredient, or if formulated from more than one ingredient, the established name of each ingredient; the dosage form, strength, and quantity of the prescribed or dispensed drug, and the dates of administration;

(8) Any directions for use provided, including dose, route of administration, and length of therapy;

(9) The number of refills authorized;

(10) Cautionary statements, if any; and

(11) The veterinarian's specified withdrawal, withholding, or discard time(s), if applicable, for meat, milk, eggs, or any food which might be derived from any food animals treated.

(c) A veterinarian shall keep all required drug distribution and use records for 2 years or as otherwise required by Federal or State law, whichever is greater.

(d) Any person who is in charge, control, or custody of such records shall, upon request of a person designated by FDA, permit such person designated by FDA to, at all reasonable times, have access to, permit copying, and verify such records.

Subpart B—Rules and Provisions for Extralabel Uses of Drugs in Animals

§ 530.10 Provision permitting extralabel use of animal drugs.

An approved new animal drug or human drug intended to be used for an extralabel purpose in an animal is not unsafe under section 512 of the act and is exempt from the labeling requirements of section 502(f) of the act if such use is:

(a) By or on the lawful written or oral order of a veterinarian within the context of a valid veterinarian-client-patient relationship; and

(b) In compliance with this part.

§ 530.11 Limitations.

In addition to uses which do not comply with the provision set forth in § 530.10, the following specific extralabel uses are not permitted and result in the drug being deemed unsafe within the meaning of section 512 of the act:

(a) Extralabel use in an animal of an approved new animal drug or human drug by a lay person (except when under the supervision of a veterinarian);

(b) Extralabel use of an approved new animal drug or human drug in or on an animal feed;

(c) Extralabel use resulting in any residue which may present a risk to public health; and

(d) Extralabel use resulting in any residue above an established safe level or tolerance.

§ 530.12 Labeling.

Any human or animal drug prescribed and dispensed for extralabel use by a veterinarian or dispensed by a pharmacist on the order of a veterinarian shall bear or be accompanied by labeling information adequate to assure the safe and proper use of the product. Such information shall include the following:

(a) The name and address of the veterinarian;

(b) The established name of the drug, or if formulated from more than one active ingredient, the established name of each ingredient;

(c) Any directions for use specified by the veterinarian, including the class/species or identification of the animal in which it is intended to be used; the dosage, frequency, and route of administration; and the duration of therapy;

(d) Any cautionary statements; and

(e) The veterinarian's specified withdrawal, withholding, or discard time for meat, milk, eggs, or any food which might be derived from the treated animal.

§ 530.13 Extralabel use from compounding of approved new animal and approved human drugs.

(a) This part applies to compounding of a product from approved animal or human drugs by a veterinarian or a pharmacist on the order of a veterinarian within the practice of veterinary medicine. Nothing in this part shall be construed as permitting compounding from bulk drugs.

(b) Extralabel use from compounding of approved new animal or human drugs is permitted if:

(1) All relevant portions of this part have been complied with;

(2) There is no approved new animal or approved new human drug that, when used as labeled or in conformity with criteria established in this part, will, in the available dosage form and concentration, appropriately treat the condition diagnosed;

(3) The compounding is performed by a licensed pharmacist or veterinarian within the scope of a professional practice;

(4) Adequate procedures and processes are followed that ensure the safety and effectiveness of the compounded product;

(5) The scale of the compounding operation is commensurate with the established need for compounded products (e.g., similar to that of comparable practices); and

(6) All relevant State laws relating to the compounding of drugs for use in animals are followed.

(c) Guidance on the subject of compounding may be provided in guidance documents issued by FDA.

Subpart C—Specific Provisions Relating to Extralabel Use of Animal and Human Drugs in Food-Producing Animals

§ 530.20 Conditions for permitted extralabel animal and human drug use in food-producing animals.

(a) The following conditions must be met for a permitted extralabel use in food-producing animals of approved new animal and human drugs:

(1) There is no approved new animal drug that is labeled for such use and that contains the same active ingredient which is in the required dosage form and concentration.

(2) Prior to prescribing or dispensing an approved new animal or human drug for an extralabel use in food animals, the veterinarian must:

(i) Make a careful diagnosis and evaluation of the conditions for which the drug is to be used;

(ii) Establish a substantially extended withdrawal period prior to marketing of milk, meat, or eggs supported by appropriate scientific information, if applicable;

(iii) Institute procedures to assure that the identity of the treated animal or animals is carefully maintained; and

(iv) Take appropriate measures to assure that assigned timeframes for withdrawal are met and no illegal drug residues occur in any food-producing animal subjected to extralabel treatment.

(b) The following additional conditions must be met for a permitted extralabel use of an approved human drug, or of an animal drug approved only for use in animals not intended for human consumption, in food-producing animals:

(1) Records maintained by the veterinarian must reflect the medical rationale; and

(2) If there is no published scientific information on the public health aspect of the use of the drug in food-producing animals, the veterinarian must determine that the animal and its food products will not enter the human food supply.

(c) Extralabel use of an approved human drug in food-producing animals will not be permitted unless the veterinarian first considers the extralabel use of an approved animal drug for use in food-producing animals under the provisions of this part. Such consideration must be documented in the veterinarians' records.

§ 530.21 Prohibitions for food-producing animals.

(a) FDA may prohibit the use of an approved new animal or human drug or class of drugs in food-producing animals if FDA determines that:

(1) An acceptable analytical method needs to be established and such method has not been established or cannot be established, or

(2) The use of the drug or class of drugs presents a risk to public health.

(b) A prohibition may be a general ban on the use of the drug or class of drugs or may be limited to a specific species, indication, dosage form, route of administration, or combination of factors.

§ 530.22 Safe levels and analytical methods for food-producing animals.

(a) FDA may establish a safe level for extralabel use of an approved human drug or an approved new animal drug when the agency finds that there is a reasonable probability that an extralabel use may present a risk to the public health. FDA may:

(1) Establish a finite safe level based on residue and metabolism information from available sources;

(2) Establish a safe level based on the lowest level that can be measured by a practical analytical method; or

(3) Establish a safe level based on other appropriate scientific, technical, or regulatory bases.

(b) FDA may require the development of an acceptable analytical method for the quantification of residues above any safe level established under this part. If FDA requires the development of such an acceptable analytical method, the agency will publish notice of that requirement in the **Federal Register**.

(c) The extralabel use of an animal drug or human drug that results in residues exceeding a safe level established under this part is an unsafe use of such drug.

(d) If the agency establishes a safe level and a tolerance is later established through an approval for a particular species or category of animals, for a particular species or category of animals, the safe level is superseded by the tolerance for that species or category of animals.

§ 530.23 Procedure for setting and announcing safe levels.

(a) FDA may issue an order establishing a safe level for a residue of an extralabel use of an approved human drug or an approved animal drug. The agency will publish in the **Federal Register** a notice of the order. The notice will include:

(1) A statement setting forth the agency's finding that there is a reasonable probability that extralabel use in animals of the human drug or animal drug may present a risk to public health, and

(2) A request for public comments.

(b) A current listing of those drugs for which a safe level for extralabel drug use in food-producing animals has been set, the specific safe levels, and the availability, if any, of a specific analytical method or methods for drug residue detection will be codified in § 530.40.

§ 530.24 Procedure for announcing analytical methods for drug residue quantification.

Copies of analytical methods for the quantification of extralabel use drug residues above the safe levels established under § 530.22 will be available upon request from the Communications and Education Branch (HFV–12), Division of Program Communication and Administrative Management, Center for Veterinary Medicine, 7500 Standish Pl., Rockville, MD 20855. When an analytical method for the detection of extralabel use drug residues above the safe levels established under § 530.22 is developed, and that method is acceptable to the agency, FDA will incorporate that method by reference.

§ 530.25 Orders prohibiting extralabel uses for drugs in food-producing animals.

(a) FDA may issue an order prohibiting extralabel use of an approved new animal or human drug in food-producing animals if the agency finds, after providing an opportunity for public comment, that:

(1) An acceptable analytical method required under § 530.22 of this part has not been developed, submitted, and found to be acceptable by FDA; or

(2) The extralabel use in animals presents a risk to the public health.

(b) After making a determination that the analytical method required under § 530.22 has not been developed and submitted, or that an extralabel use in animals of a particular human drug or animal drug presents a risk to the public health, FDA will publish in the **Federal Register**, with a 90 day delayed effective date, an order of prohibition for an extralabel use of a drug in food-producing animals. Such order will:

(1) Specify the nature and extent of the order of prohibition and the reasons for the prohibition, and

(2) Request public comments, and

(3) Provide a period of not less than 60 days for comments.

(c) The order of prohibition will become effective 90 days after date of publication of the order unless FDA publishes a notice in the **Federal Register** prior to that date, that revokes the order of prohibition, modifies it, or extends the period of public comment.

(d) The agency may publish an order of prohibition with a shorter comment period and/or delayed effective date than specified in paragraph (b) in exceptional circumstances (e.g., where there is immediate risk to the public health), provided that the order of prohibition states that the comment period and/or effective date have been abbreviated because there are exceptional circumstances, and the order of prohibition sets forth the agency's rationale for taking such action.

(e) If FDA publishes a notice in the **Federal Register** modifying an order of prohibition, the agency will specify in the modified order of prohibition the nature and extent of the modified prohibition, the reasons for it, and the agency's response to any comments on the original order of prohibition.

(f) A current listing of drugs prohibited for extralabel use in animals will be codified in § 530.41.

(g) After the submission of appropriate information (i.e., adequate

data, an acceptable method, approval of a new animal drug application for the prohibited drug and use, or information demonstrating that the prohibition was based on incorrect data), FDA may, by publication of an appropriate notice in the **Federal Register**, remove a drug from the list of human and animal drugs prohibited for extralabel use in animals, or may modify a prohibition.

(h) FDA may prohibit extralabel use of a drug in food-producing animals without establishing a safe level.

Subpart D—Extralabel Use of Human and Animal Drugs in Animals Not Intended for Human Consumption

§ 530.30 Extralabel drug use in nonfood animals.

(a) Because extralabel use of animal and human drugs in nonfood-producing animals does not ordinarily pose a threat to public health, extralabel use of animal and human drugs is permitted in nonfood-producing animal practice except when the public health is threatened. In addition, the provisions of § 530.20(a)(1) will apply to the use of an approved animal drug.

(b) If FDA determines that an extralabel drug use in animals not intended for human consumption presents a risk to the public health, the agency may publish in the **Federal Register** a notice prohibiting such use following the procedures in § 530.25. The prohibited drug use will be codified in § 530.41.

Subpart E—Safe Levels for Extralabel Use in Animals and Drugs Prohibited for Extralabel Use in Animals

§ 530.40 Safe levels and availability of analytical methods.

In accordance with § 530.22, when the agency finds that there is a reasonable probability than an extralabel use may present a risk to the public health, FDA may establish by order a safe level for an extralabel use in animals of an approved human drug or an approved animal drug, and may establish a specific analytical method or methods for drug residue detection. FDA will publish in the **Federal Register** a notice of the order and the availability, if any, of an analytical method or methods for drug residue detection and will codify them in this section. This section will include the following: A current listing of those drugs for which a safe level for extralabel drug use in food-producing animals has been set, and the specific safe levels, and the availability, when one has been developed, of a specific analytical method or methods for drug residue detection.

§ 530.41 Drugs prohibited for extralabel use in animals.

In accordance with § 530.25, the following drugs are prohibited for extralabel use in animals:

Dated: May 8, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix

Compliance Policy Guides

Chapter 6—Veterinary Medicine

Sec. 608.100 Human-Labeled Drugs Distributed and Used in Animal Medicine (CPG 7125.35)

Background

This Compliance Policy Guide explains how FDA will exercise its enforcement discretion with respect to distribution and use of human-labeled drug products for use in animals. It is FDA's intent to:

—eliminate promotion by manufacturers, distributors, and pharmacies;

—ensure that distribution and dispensing are made only in response to requests by veterinary practitioners (practitioner driven);

—refrain in ordinary circumstances from enforcement actions when human drugs are used or dispensed by veterinarians in treating non-food-producing animals;

—take enforcement action against veterinarians who cause illegal residues in food-producing animals;

—limit use of human-labeled drugs in treating food-producing animals to very narrow circumstances; and

—prohibit use except by or on the order of a licensed veterinarian in the course of his or her practice.

The key regulatory elements under this policy are determination of whether or not (1) the distribution and dispensing are practitioner driven and (2) the veterinary practitioners limit their uses of human-labeled drug products to treating non-food animals, with certain narrow exceptions. Because distribution and dispensing are to be veterinary practitioner driven, and because distributors and pharmacists, after properly distributing the drug, ordinarily cannot control end uses, this policy places primary responsibility on the veterinarian. This policy is not intended to permit the distribution of human-labeled drug products to veterinarians where prohibited or limited by State laws.

FDA is aware that human-labeled drug products have been promoted and distributed by manufacturers, distributors, and pharmacies for use in animals and that such drugs are being prescribed, dispensed, and administered by veterinarians for animal use.

Promotion of human-labeled drug products for veterinary use by these sources has included acts such as advertising animal use in veterinary publications; distribution of labeling and promotional materials suggesting or recommending use of these products in animals; or oral statements from sales personnel describing or recommending use in animals. Such promotion causes the drugs to be misbranded under Section 502(f)(1), or adulterated new animal drugs under Section 501(a)(5), or both. Furthermore, such promotion may subvert the New animal drug approval process by creating a disincentive for drug manufacturers to seek such approvals.

Most veterinary use of human-labeled drug products occurs in non-food animal practice (companion, sporting, exotic, etc.). Many of the maladies of pets and other non-food animals cannot be treated in accordance with current standards of veterinary practice without the use of human-labeled drugs since appropriate drug products bearing veterinary labeling often do not exist. Because of this, FDA has generally refrained from taking enforcement actions in this area because there is no expected adverse impact upon the public health.

FDA is very concerned about the use of human-labeled drugs in food-producing animals because of the increased potential for illegal drug residues in meat, milk, and eggs. Human-labeled drug products have not, among other things, undergone testing for residue depletion from edible tissues. Appropriate withdrawal times to avoid illegal residues in food can only be estimated.

Nevertheless, there are legitimate and important veterinary needs for human-labeled drugs in the treatment of disease or to prevent pain in food-producing animals in instances where there simply are no animal drug products available that would avoid animal suffering or death. Examples include, but are not necessarily limited to analgesics and anesthetics for pain, sedation, and surgery, insulin for ketosis, and antidotes for poisonings.

Policy

A. Distribution and Dispensing

Labeling, advertising, oral representations, or any other act by a manufacturer, distributor, or pharmacy which establishes an intended use of human-labeled drugs for animal use is subject to regulatory action. However, the simple listing of human-labeled drug products in price sheets and catalogues distributed to veterinarians will not ordinarily be subject to such action. Dispensing pharmacists are required by Section 503(f) to label dispensed drugs in accordance with the prescribing veterinarian's instructions, including the name and address of the dispenser, the serial number and date of the order or of its filing, the name of the licensed veterinarian, and directions for use and any cautionary statements. Providing this information does not constitute promotion against which the agency is prepared to take action.

High priority will be placed on actions against manufacturers, distributors, and pharmacies who promote the substitution of human-labeled drug products for animal drugs for economic reasons.

B. Use of human drugs by veterinarians in professional practice

(i) Use in non-food-producing animals; e.g., dogs, cats, horses.

Under usual circumstances, veterinary practitioners may consider the use of human-labeled drug products in non-food-producing animal practice without the threat of FDA enforcement actions. In rare circumstances, for example, when the health of the treated animals is harmed, regulatory attention by FDA would be considered or, preferably, referred to the State veterinary licensing authority for investigation.

(ii) Use in food-producing animals; e.g., cattle, swine, poultry.

Use of human-labeled drug products in food-producing animals should be extremely limited, primarily because of the increased potential for illegal drug residues in meat, milk, and eggs. For example, it is ordinarily unacceptable to use a human-labeled product for common disease conditions in food animals because approved veterinary-labeled drug products; e.g., antibacterials, anti-inflammatory agents, etc. are available. The food animal veterinarian assumes greater responsibility when he or she uses a human drug rather than a veterinary drug. Use of human-labeled drugs may be considered by food animal veterinarians only when they have:

—made a careful and definitive diagnosis and evaluation of the condition for which the drug is to be used, and are otherwise operating within the confines of a veterinarian/client/patient relationship;

—made a deliberate determination that there is no other appropriate veterinary-labeled therapy; i.e., there is no marketed veterinary labeled drug product specifically labeled for the disease condition to be treated or the veterinary drug has been found clinically ineffective by the veterinarian in the animals to be treated; and

—taken adequate steps to prevent the occurrence of illegal residues in edible animal products. This should include a review of the best available toxicological and tissue distribution and tissue residue depletion data and establishment of an extra long drug withdrawal period prior to marketing meat, milk, or eggs. The animal owner or manager should be given explicit written withdrawal instructions. The practitioner should have a high degree of confidence that the client will follow the drug withdrawal instruction.

Regulatory action should be considered when an illegal residue occurs even if the veterinarian followed the foregoing precautions. The enforcement discretion that might be accorded to veterinarians will not be extended to lay persons; e.g., owners, who administer human-labeled drugs either to food-producing or nonfood animals without the supervision of a licensed veterinarian operating within the framework of a valid veterinarian/client/patient relationship.

Veterinarians are expected to follow cautionary handling and disposal provisions, if any, specified in human drug labeling to protect handlers and the environment.

Regulatory Action Guidance

The highest priority for regulatory attention is for follow-up on reports of illegal tissue residues from human-labeled drugs. Follow the instructions in Compliance Program 7371.006, *Illegal Drug Residues in Meat and Poultry* and Compliance Program 7371.008, *National Drug Residue Milk Monitoring Program*. Consultation with Case Guidance Branch for guidance under this policy is indicated when encountering other suspected violations, especially where there is substitution of human-labeled drugs for treatment of common disease conditions in food animals.

The initial enforcement action of choice is ordinarily a Warning Letter. Center concurrence is required prior to issuance. Depending on the circumstances, one or more of the following charges would be appropriate.

—402(a)(2)(D)-food adulterated by illegal residue from a new animal drug;

—402(a)(2)(A)-food adulterated by illegal residue from a human-labeled drug;

—501(a)(5)-adulterated drug (labeled for human use which is accompanied by labeling indicating it for animal use which causes it to be unsafe under Section 512(a) as an unapproved new animal drug);

—502(f)(1)-misbranded human drug when not used as labeled; misbranded human drug promoted for animal use in ways other than by labeling (see 21 CFR 201.128).

Issued: 3/19/91

Revised: 7/20/92

Sec. 615.100 Extralabel Use of New Animal Drugs in Food-Producing Animals (CPG 7125.06)

Background

Concern over the extralabel use of drugs in treating food-producing animals and the possibility that human food may become adulterated with illegal drug residues from such misuse has prompted a revision in the Center for Veterinary Medicine (CVM) extralabel drug use policy. Under the revised policy, a finding of illegal drug residues no longer will be a prerequisite for initiating regulatory action based on extralabel drug use of drugs in food-producing animals.

For the purpose of this policy, "extralabel use" refers to the actual or intended use of a new animal drug in a food-producing animal in a manner that is not in accordance with the drug labeling. This includes, but is not limited to, use in species or for indications (disease or other conditions) not listed in the labeling, use at dosage levels higher than those stated in the labeling, and failure to observe the stated withdrawal time.

FDA in the past has not sanctioned extralabel uses of drugs in food-producing animals, but the agency has stated that it would refrain from instituting regulatory action against licensed veterinarians for using or prescribing in their practices any drugs they could legally obtain. Nevertheless, it has been FDA's position that veterinarians may be subject to regulatory action for any violative drug residues in human food resulting from their prescriptions, recommendations, or treatments contrary to label instructions. Similarly, anyone in the producing or marketing chain who could be shown to have caused illegal drug residues through extralabel use of drugs in food-producing animals has been subject to regulatory action.

In contrast, under usual circumstances veterinary practitioners may consider the extralabel use of drug products in non-food-producing animal practice without being subject to FDA enforcement actions. In rare circumstances, for example when the health of the treated animals is harmed, regulatory attention by FDA would be considered or, preferably, referred to the State veterinary licensing authority for investigation.

Policy

The use or intended use of new animal drugs in treating food-producing animals in any manner other than in accord with the approved labeling causes the drugs to be adulterated under the Federal Food, Drug, and Cosmetic Act (the Act) (sections 501(a)(5) and (6), 512(a)(1)(A) and (B), 512(a)(2)). The agency will consider regulatory action when such use or intended use is found, whether by a veterinarian, producer, or other person. Regulatory actions will also be considered against distributors and others who might cause adulteration of approved new animal drugs. Nevertheless, extralabel drug use in treating food-producing animals may be considered by a veterinarian when the health of animals is immediately threatened and suffering or death would result from failure to treat the affected animals. In instances of this nature, regulatory action would not ordinarily be considered provided all [at] the following criteria are met and precautions observed:

1. A careful medical diagnosis is made by an attending veterinarian within the context of a valid veterinarian-client-patient relationship;* * *

2. A determination is made that (a) there is no marketed drug specifically labeled to treat the condition diagnosed, or drug therapy at the dosage recommended by the labeling has been found clinically ineffective by the veterinarian in the animals to be treated;

3. Procedures are instituted to assure that identity of the treated animals is carefully maintained;

4. Significantly extended time period is assigned for drug withdrawal prior to marketing meat, milk, or eggs; steps are taken to assure that the assigned time frames are met, and no illegal residues occur; and

5. The prescribed or dispensed extralabel drug (prescription legend or over the counter) bears labeling information which is adequate to assure the safe and proper use of the product. At a minimum, the following label information is recommended:

a. The name and address of the veterinary practitioner.

b.The established name of the drug (active ingredient), or if formulated from more than one ingredient, the established name of each ingredient.

c. Any directions for use specified by the practitioner (including the class/species or identification of the animals; and the dosage, frequency, route of administration, and duration of therapy).

d. Any cautionary statements specified by the veterinarian.

e. The veterinarian's specified withdrawal/discard time(s) for meat, milk, eggs, or any food which might be derived from the treated animal(s).

Extra-label use of drugs in treating food-producing animals may under this policy, therefore, be considered only in special circumstances. The "exempting" criteria do not include drug use in treating food-producing animals by the layman. Lay persons cannot be expected to have sufficient knowledge and understanding concerning animal diseases, pharmacology, toxicology, drug interactions, and other scientific parameters to use drugs in treating food-producing animals in any way other than as labeled.

Certain drugs may not be used in treating food-producing animals even under the cited criteria. This includes chloramphenicol. Extralabel uses of drugs in treating food-producing animals for improving rate of weight gain, feed efficiency, or other producing purposes, or for routine disease prevention are inappropriate as is use for therapeutic purposes other than under the circumstances described above. Also, the criteria cited above do not sanction the sale and use, for any purpose, of new animal drugs that are not approved, such as diethylstilbestrol (DES). Furthermore, a drug (including a bulk drug) may not be mixed into feed for any use or at a potency level not specifically permitted by the regulations in 21 CFR Part 558, even if prescribed or ordered by a veterinarian.

Regulatory Guidance

The highest priorities for regulatory attention regarding extra-label use are:

1. Instances where illegal residues occur.
2. In all food-producing animals:
   Chloramphenicol
   Clenbuterol
   Diethylstilbestrol (DES)
   Dimetridazole
   Ipronidazole
   Other nitroimidazoles
   Furazolidone (Except for approved topical use)
   Nitrofurazone (Except for approved topical use)
3. In lactating dairy cattle:
   Sulfonamide drugs (except approved use of sulfa-dimethoxine, sulfabromomethazine and sulfaethoxy-pyridazine)
4. Manufacturers and distributors who promote extra-label use of drugs.
5. The mixing of drugs into medicated feeds intended for extra-label use.
6. Extra-label use by laymen at their own initiative.

* * *A valid veterinarian-client-patient relationship, as defined by the American Veterinary Medical Association is the following: An appropriate veterinarian-client-patient relationship will exist when: (1) the veterinarian has assumed the responsibility for making medical judgements regarding the health of the animal(s) and the need for medical treatment, and the client (owner or other caretaker) has agreed to follow the instructions of the veterinarian; and when (2) there is sufficient knowledge of the animal(s) by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal(s). This means that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal(s) by virtue of an examination of the animal(s), and/or by medically appropriate and timely visits to the premises where the animal(s) are kept; and when (3) the practicing veterinarian is readily available for follow-up in case of adverse reactions or failure of the regimen of therapy.

Issued: 3/9/84

Revised: 5/1/84, 8/1/86, 11/1/86, 7/20/92

[FR Doc. 96–12403 Filed 5–16–96; 8:45 am]
BILLING CODE 4160–01–F

federal register

Friday
May 17, 1996

Part VI

Department of Justice

Bureau of Prisons

28 CFR Parts 501 and 550
Scope of Rules: Prevention of Acts of Violence and Terrorism and Drug Abuse Treatment Programs: Early Release Consideration; Final Rules

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 501

[BOP–1059–I]

RIN 1120–AA54

Scope of Rules: Prevention of Acts of Violence and Terrorism

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This document amends Bureau of Prisons regulations on institutional management with respect to special administrative measures that may be necessary to prevent acts of violence and terrorism that may be caused by contacts with certain inmates. The affected inmate must be notified in writing as promptly as possible of the restrictions to be imposed. Restrictions may be imposed initially for up to 120 days, and may be extended in further increments of 120 days only upon additional written notification that the circumstances identified in the original certification continue to exist.

DATES: This rule shall take effect May 17, 1996; comments must be submitted by July 16, 1996.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons ("Bureau") is adopting interim regulations on the correctional management of inmates whose contacts with other persons present the potential for acts of violence and terrorism. Under these interim regulations, the Warden may implement administrative measures that are reasonably necessary to protect the public against such acts. Application of these measures is likely to affect only a minute portion of the inmate population; those inmates for whom there is an identified concern that the inmate's communications with other persons could serve as an instrumentality for acts of violence and terrorism. These measures will be subject to strict controls, as their implementation may occur only upon written notification by the Attorney General, the head of a federal law enforcement agency, or the head of a member agency of the United States intelligence community, that there is a substantial risk that a prisoner's communications or contacts with persons could result in death or serious bodily injury to persons, or substantial damage to property that would entail the risk of death or serious bodily injury to persons.

It is not the intention of the Bureau that the restrictions imposed in these special cases routinely include complete curtailment of privileges. An inmate upon whom these special restrictions are imposed is entitled to notification in writing of the imposed restrictions and the basis for the restrictions. The affected inmate may appeal imposition of restrictions ordered under this section through the Bureau's Administrative Remedy Program, 28 CFR part 542.

The Bureau is publishing this regulation as an interim rule under the "good cause" provision of 5 U.S.C. 553(b) in order to protect the public interest and to protect against the risk of acts of violence and terrorism. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered before the rule is finalized.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant economic impact on a substantial number of small entities. This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of E.O. 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 28 CFR Part 501

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(p), part 501 in subchapter A of 28 CFR, chapter V is amended as set forth below:

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 501—SCOPE OF RULES

1. The authority citation for 28 CFR part 501 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Section 501.3 is added to part 501 to read as follows:

§ 501.3 Prevention of acts of violence and terrorism.

(a) Upon direction of the Attorney General, the Director, Bureau of Prisons, may authorize the Warden to implement special administrative procedures that are reasonably necessary to protect persons against the risk of death or serious bodily injury. These procedures may be implemented upon written notification to the Director, Bureau of Prisons, by the Attorney General or, at the Attorney General's direction, by the head of a federal law enforcement agency, or the head of a member agency of the United States intelligence community, that there is a substantial risk that a prisoner's communications or contacts with persons could result in death or serious bodily injury to persons, or substantial damage to property that would entail the risk of death or serious bodily injury to persons. These special administrative measures ordinarily may include housing the inmate in administrative detention and/or limiting certain privileges, including, but not limited to, correspondence, visiting, interviews with representatives of the news media, and use of the telephone, as is reasonably necessary to protect persons against the risk of acts of violence or terrorism. The authority of the Director under this paragraph may not be delegated below the level of Acting Director.

(b) Designated staff shall provide to the affected inmate, as soon as practicable, written notification of the restrictions imposed and the basis for these restrictions. The notice's statement as to the basis may be limited in the interest of prison security or safety or to protect against acts of violence or terrorism. The inmate shall sign for and receive a copy of the notification.

(c) Initial placement of an inmate in administrative detention and/or any limitation of the inmate's privileges in accordance with paragraph (a) of this section may be imposed for up to 120 days. Special restrictions imposed in accordance with paragraph (a) of this section may be extended thereafter by the Director, Bureau of Prisons, in 120-day increments upon receipt by the Director of additional written notification from the Attorney General, or, at the Attorney General's direction, from the head of a federal law enforcement agency, or the head of a member agency of the United States intelligence community, that the circumstances identified in the original notification continue to exist. The authority of the Director under this paragraph may not be delegated below the level of Acting Director.

(d) The affected inmate may seek review of any special restrictions imposed in accordance with paragraph (a) of this section through the Administrative Remedy Program, 28 CFR part 542.

[FR Doc. 96–12473 Filed 5–16–96; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 550

[BOP–1052–I]

RIN 1120–AA36

Drug Abuse Treatment Programs: Early Release Consideration

AGENCY: Bureau of Prisons, Justice.

ACTION: Further issuance of interim rule with request for comments.

SUMMARY: In this document, the Bureau of Prisons is further amending its interim rule on Drug Abuse Treatment Programs which allows for consideration of early release of eligible inmates who complete a residential drug abuse treatment program, including a transitional treatment phase. Based upon initial public comment, the Bureau is adding to the interim regulations a requirement that an inmate seeking consideration for early release must complete transitional drug treatment services in a community-based program (i.e., in a Community Corrections Center or on home confinement). This further amendment is necessary to solicit additional comments from the public on this new requirement.

DATES: Effective May 17, 1996; comments are due July 16, 1996.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is further amending its regulations on Drug Abuse Treatment Programs (28 CFR part 550, subpart F). An interim rule on this subject which implemented Section 32001 of the Violent Crime Control and Law Enforcement Act of 1994 (codified at 18 U.S.C. 3621(e)) was published in the **Federal Register** on May 25, 1995 (60 FR 27692).

Public comment received on the interim rule, published May 25, 1995, included comment from the American Psychiatric Association (Association). The Association stated that it believed the program was a good idea, but expressed concern about the adequacy of transitional drug treatment services offered at an institution. Bureau regulations in 28 CFR 550.59(a) require minimum participation of one hour per month for such transitional services. The Association stated that this minimum was probably not of sufficient intensity to facilitate a good outcome and recommended enhanced psychiatric consultation and the availability of a broad array of services.

The Bureau recognizes the importance of transitional services in drug treatment programming and agrees with the Association that an enhanced transitional program, such as is available in a community-based program, increases the opportunity for a good outcome. The Bureau recognizes that implementation of this requirement may preclude some inmates from participation in a community-based program. However, while the Bureau may be able to increase the availability of certain transitional services at an institution, it cannot duplicate within the institution the environment of community-based transitional services (i.e., the evaluation of the inmate in conditions where the inmate is reintegrating into the community). The Bureau, in exercising its discretion in determining the successful completion of a residential drug abuse treatment program under 18 U.S.C. 3621(e), is therefore requiring that consideration for early release be contingent upon the inmate's completion of transitional services in a community-based program (i.e., in a Community Corrections Center or on home confinement).

Section 550.58 has accordingly been amended to reflect this addition. Inmates who will not be able to complete the community-based portion of treatment will be those whose placement in such programs is precluded due to custodial considerations. Such considerations would include the presence of a detainer or the possibility that the inmate's placement in a community-based program would pose a danger to the public. The decision to place an inmate in a community-based program is made by the Warden based on his or her professional discretion.

As of August 17, 1995, approximately 160 inmates who had already qualified for early release consideration under the provisions of the May 25, 1995 interim rule (meaning they had completed the residential program or had been placed in the residential program with an adjusted release date to follow) would not be able to complete the community-based portion of the program due to the exclusion from community-based programs as a result of a detainer. The Bureau has determined that this group of inmates will not be adversely affected by this new interim rule. They will be considered under the rules in effect at the time they entered the residential program. However, any inmate in this group who loses his or her eligibility for early release (due to expulsion from the program or for other reasons as provided by the regulations) must reenter the program and will then be governed by the eligibility requirements of this new interim rule. Any inmate with a detainer, however, who has not entered the residential drug treatment program by August 17, 1995 will be subject to the restrictions of the new interim rule.

This exception from application of this new interim rule for inmates with detainers who had already entered the residential treatment program will not be extended to any other group of inmates. Inmates who are excluded for any other reasons from a community-based program, such as posing a danger to the public, are no longer eligible for an early release. The adjusted projected release dates for these inmates will revert to their prior status. This action is similar to the manner in which projected good time may be recomputed before it is vested.

Additional changes to the introductory text have been made for the sake of clarity. For example, the introductory text more clearly emphasizes that early release consideration for inmates is applicable to inmates sentenced to a term of imprisonment pursuant to the provisions of 18 U.S.C. Chapter 227,

Subchapter D. Inmates sentenced under "old law" provisions are not eligible, regardless of their eligibility for parole. The restriction for inmates who have a prior federal and/or state conviction for homicide, forcible rape, robbery, or aggravated assault has been reworded to remove the phrase "federal and/or state". This is being done in order to include foreign convictions.

The Bureau's response to other comments to the May 25, 1995 interim rule will be contained in a future **Federal Register** document.

Interested persons may participate in this new interim rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received on the interim rule provisions during the comment period will be considered before final action is taken. All comments received remain on file for public inspection at the above address.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 550

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 550 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 550—DRUG PROGRAMS

1. The authority citation for 28 CFR part 550 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4251–4255, 5006–5024 (repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 550.58, the introductory text and paragraphs (a)(1)(iii) and (a)(2)(i) are revised to read as follows:

§ 550.58 Consideration for early release.

Except as provided in this paragraph, an inmate who was sentenced to a term of imprisonment pursuant to the provisions of 18 U.S.C. Chapter 227, Subchapter D, and who completes a residential drug abuse treatment program including subsequent transitional services in a community-based program (i.e., in a Community Corrections Center or on home confinement) during his or her current commitment may be eligible, in accordance with paragraph (a) of this section, for early release by a period not to exceed 12 months. The following categories of inmates are not eligible: INS detainees, pretrial inmates, contractual boarders (for example, D.C., State, or military inmates), inmates whose current offense is determined to be a crime of violence as defined in 18 U.S.C. 924(c)(3), inmates who have a prior conviction for homicide, forcible rape, robbery, or aggravated assault, and inmates who are not eligible for participation in a community-based program as determined by the Warden on the basis of his or her professional discretion.

(a) *Eligibility.* (1) * * *

* * * * *

(iii) The inmate completes a refresher treatment program and all applicable transitional services programs in a community-based program (i.e., in a Community Corrections Center or on home confinement); and

* * * * *

(2) * * *

(i) The inmate completes all applicable transitional services programs in a community-based program (i.e., in a Community Corrections Center or on home confinement); and

* * * * *

[FR Doc. 96–12472 Filed 5–16–96; 8:45 am]

BILLING CODE 4410–05–P

federal register

Friday
May 17, 1996

Part VII

Department of Housing and Urban Development

24 CFR Part 585

Opportunities for Youth: Youthbuild Program; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

24 CFR Part 585

[Docket No. FR–4038–I–01]

RIN 2506–AB79

Opportunities for Youth: Youthbuild Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim rule.

SUMMARY: The Youthbuild program is one of many HUD programs that directly invests in distressed communities, and opportunities to further the goals of the program and stimulate community investment and support for the Youthbuild program must be encouraged. This interim rule amends the regulations for the Youthbuild Program to define administrative costs for which Youthbuild funds may be expended.

DATES: Effective Date: June 17, 1996.

Comments Due Date: July 1, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410–0500.

Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communications submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: The Office of Economic Development, Department of Housing and Urban Development, Room 7136, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 708–2035; TYY (202) 708–1455. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Background

Section 164 of the Housing and Community Development Act of 1992 (Pub.L. 102–550) amended title IV of the National Affordable Housing Act (42 U.S.C. 1437aaa) to add a new subtitle D which established the Youthbuild program. On February 21, 1995, the Department published a final rule at 60 FR 9734, which is codified at 24 CFR Part 585. This interim rule is intended to further address the use of Youthbuild funds for administrative costs, including overhead and salaries and wages associated with an implementation grant.

The Department believes that the Youthbuild program is a valuable tool to promote job skills, neighborhood revitalization and economic self sufficiency and recognizes the need to staff these programs with competent personnel to provide education and training, and other support services to an ever growing population of disadvantaged youths. The Department and Youthbuild grantees now have valuable program experience in cost efficient ways of meeting the program's mission, delivering quality training and services, and serving more youth successfully. These times of shrinking Federal resources make it even more imperative that Youthbuild funds benefit the greatest number of youths. Examples of ways Youthbuild grantees have limited overhead expense include eliminating some administrative positions and assigning tasks to other personnel, physically locating the program in an existing facility, utilizing the expertise and experience of other programs and organizations, paying administrative costs with other funds, using existing equipment from other programs, and securing non-federal matching funds to cover administrative costs. These examples demonstrate that partnerships with other public and private organizations in the community can be one of the keys to an effective program.

The Youthbuild program is one of many HUD programs that directly invests in distressed communities, and opportunities to further the goals of the program and stimulate community investment and support for the Youthbuild program must be encouraged. Numerous Youthbuild grantees have been particularly innovative in establishing partnerships with local organizations such as educational institutions, training organizations, apprenticeship programs, social agencies, foundations and local governments, and adopting innovative and creative ways of delivering program services.

This interim rule will affect only future grant awards.

Justification for Interim Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with HUD's own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public comment is contrary to the public interest. This rule ensures direct program benefits for the maximum number of disadvantaged youths. Further, by letter dated December 6, 1995, the Department asked all Youthbuild implementation grantees to describe innovative ways to limit overhead expenses as well as suggestions for measuring success. This rule takes into consideration those suggestions. Therefore, the Department believes that a 45-day public comment period is more than adequate in light of the compelling need to finalize the Department's policy for limiting overhead expenses.

Other Matters

(a) *Environmental Impact.* A Finding of No Significant Impact with respect to the environment for this interim rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, D.C. 20410.

(b) *Regulatory Flexibility Act.* The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim rule before publication and by approving it certifies that this interim rule would not have a significant economic impact on a substantial number of small entities because the Youthbuild program affects primarily economically disadvantaged young adults by providing assistance for a wide range of multi-disciplinary activities to assist those young adults. The opportunities are designed to help disadvantaged young adults who have dropped out of high school to obtain the education and employment skills necessary to achieve economic self-sufficiency and develop leadership skills and a commitment to community development in low-income communities. It is anticipated that this interim rule will increase the number of young adults receiving assistance under federally-funded Youthbuild programs.

(c) *Executive Order 12612, Federalism.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this interim rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

(d) *Executive Order 12606, The Family.* The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that some of the policies of this interim rule would have a potential significant impact on family formation, maintenance, and general well-being. The expected expansion of opportunities to economically disadvantaged young adults to enhance their education and employment skills will provide a positive impact on the family maintenance and general well-being. However since the impact on the family is beneficial and the interim rule involves very little HUD discretion, no further review is necessary.

(e) *Catalog of Federal Domestic Assistance.* The Catalog of Federal Domestic Assistance Program number assigned to this program is 14.243.

List of Subjects in 24 CFR Part 585

Grant programs—housing and community development, Homeless, Low- and very low-income families, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, part 585 of title 24 of the Code of Federal Regulations is amended as follows:

PART 585—YOUTHBUILD PROGRAM

1. The authority citation for part 585 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 8011.

2. In § 585.305, paragraph (m) is amended to add new paragraphs (m)(1) and (m)(2), to read as follows:

§ 585.305 Eligible activities.

* * * * *

(m) * * *

(1) *Administrative costs.* The amount of Youthbuild funds used to pay the following costs, in whole or in part, must be charged as administrative costs:

(i) Salaries, wages and related costs of the grantee's staff or other staff who are primarily engaged in general program administration and oversight. Youthbuild funded staff presumed to be primarily engaged in general program administration and oversight include the executive director, the program manager, the fiscal officer, the secretary and the administrative or program assistant. However, a grantee may provide evidence to rebut this presumption for an individual case.

(ii) Other costs for goods and services required for the program, such as rental or purchase of vehicles, office supplies and equipment, utilities, insurance, legal, staff training, rental and maintenance of office space, mailing, advertising, technical assistance and fund raising.

(2) *Further restrictions on the use of Youthbuild funds.* (i) Further restrictions may be imposed if the Department determines, based on information readily available that:

(A) Costs are not sufficiently itemized;

(B) The amount of program funds for trainee wages and benefits, including need-based stipends, benefits, incentives, tools and work clothes and/or the number of Youthbuild participants served are low in comparison to other comparable programs;

(C) The participant training period is shorter than that in other comparable programs;

(D) Alternative use of funds for eligible activities would be in the overall interest of the Youthbuild program.

(ii) Restrictions include, but are not limited to, limitations on the use and availability of grant funds, reallocation of Youthbuild program budget, or cancellation of grant.

Dated: April 24, 1996.

Andrew M. Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96–12425 Filed 5–16–96; 8:45 am]

BILLING CODE 4210–29–P

OL
1
SS
7
MY
7
996
MI

federal register

Friday
May 17, 1996

Part VIII

The President

Proclamation 6896—National Defense Transportation Day and National Transportation Week, 1996

Executive Order 13003—Establishing an Emergency Board To Investigate Disputes Between Certain Railroads Represented by the National Carriers' Conference Committee of the National Railway Labor Conference and Their Employees Represented by the Brotherhood of Maintenance of Way Employes

Federal Register
Vol. 61, No. 97
Friday, May 17, 1996

Presidential Documents

Title 3—

The President

Proclamation 6896 of May 15, 1996

National Defense Transportation Day and National Transportation Week, 1996

By the President of the United States of America

A Proclamation

Americans derive daily benefits from the finest transportation system in the world. Our Nation's network of land, sea, and air travel allows for the efficient movement of goods and people, strengthening our economy, uniting our citizens, and linking us to other countries around the globe. As we strive to compete in an international marketplace, we must deepen our commitment to this infrastructure and continue the long-standing partnership between government and industry that has made our successes possible.

Transportation has played a vital role in America's recent economic recovery, creating some 400,000 new jobs in the last 3 years. Fields that faced financial difficulties just a short time ago, such as aerospace, shipbuilding, and airlines, are now profitable and growing. My Administration has been proud to sign more than 30 new market-opening aviation agreements, including an agreement with Canada, our biggest trading partner, that has generated significant economic activity in just one year and facilitated air travel between our two countries.

In an effort to build on this progress and further improve efficiency, we have increased our national investment in infrastructure—by some 11 percent a year over early 1990s levels—while streamlining the Department of Transportation by 10,000 employees and cutting red tape to speed the financing and construction of highway projects. Safety remains a top priority in these efforts, and communities across the country are working to protect drivers, passengers, pedestrians, and bicyclists. Sophisticated communications technology helps relieve traffic congestion in urban areas and expanded mass transit systems move people more quickly and safely with minimal environmental impact.

To celebrate these accomplishments and to honor the millions of men and women, both government and private sector employees, who maintain America's transportation system and contribute so much to our Nation's activities, the Congress, by joint resolution approved May 16, 1957 (36 U.S.C. 160), has designated the third Friday in May of each year as "National Defense Transportation Day" and, by joint resolution approved May 14, 1962 (36 U.S.C. 166), declared that the week within which that Friday falls be designated "National Transportation Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Friday, May 17, 1996, as National Defense Transportation Day and May 12 through May 18, 1996, as National Transportation Week. I urge all Americans to observe these occasions with appropriate ceremonies and activities, giving due recognition to the countless individuals and organizations that build, secure, and operate this country's modern transportation system.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of May, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twentieth

William J. Clinton

[FR Doc. 96–12719
Filed 5–16–96; 12:05 pm]
Billing code 3195–01–P.

Presidential Documents

Executive Order 13003 of May 15, 1996

Establishing an Emergency Board To Investigate Disputes Between Certain Railroads Represented by the National Carriers' Conference Committee of the National Railway Labor Conference and Their Employees Represented by the Brotherhood of Maintenance of Way Employes

Disputes exist between certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference, including Consolidated Rail Corporation (including the Clearfield Cluster), Burlington Northern Railroad Co., CSX Transportation Inc., Norfolk Southern Railway Co., Atchison, Topeka and Santa Fe Railway Co., Union Pacific Railroad, Chicago & North Western Railway Co., Kansas City Southern Railway Co., and their employees represented by the Brotherhood of Maintenance of Way Employes. The railroads involved in these disputes are designated on the attached list, which is made a part of this order.

The disputes have not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (45 U.S.C. 151 *et seq.*) (the "Act").

In the judgment of the National Mediation Board, these disputes threaten substantially to interrupt interstate commerce to a degree that would deprive a section of the country of essential transportation service.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States, including section 10 of the Act (45 U.S.C. 160), it is hereby ordered as follows:

Section 1. *Establishment of Emergency Board ("Board").* There is established effective May 15, 1996, a Board of three members to be appointed by the President to investigate any and all of the disputes raised in mediation. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any railroad carrier. The Board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* The Board shall report to the President with respect to the dispute within 30 days of its creation.

Sec. 3. *Maintaining Conditions.* As provided by section 10 of the Act, from the date of the creation of the Board and for 30 days after the Board has made its report to the President, no change, except by agreement of the parties shall be made by the railroads or the employees in the conditions out of which the disputes arose.

Sec. 4. *Records Maintenance.* The records and files of the Board are records of the Office of the President and upon the Board's termination shall be maintained in the physical custody of the National Mediation Board.

Sec. 5. *Expiration.* The Board shall terminate upon the submission of the report provided for in sections 2 and 3 of this order.

William J. Clinton

THE WHITE HOUSE,
May 15, 1996.

RAILROADS

Alton & Southern Railroad
Atchison, Topeka and Santa Fe Railway Company
Bangor and Aroostook Railroad Company
Belt Railway Company of Chicago
Burlington Northern Railroad Company
Camas Prairie Railroad Company
Chicago and North Western Railway Company
Consolidated Rail Corporation (including the Clearfield Cluster)
CSX Transportation, Inc.
  The Baltimore and Ohio Chicago Terminal Company
  The Baltimore and Ohio Railroad Company (former)
  The Chesapeake and Ohio Railway Company (former) (Northern and Southern Regions)
  Chicago and Eastern Illinois Railroad Company (former)
  Clinchfield Railroad (former)
  Louisville and Nashville Railroad Company (former)
  Monon Railroad (former)
  Richmond, Fredericksburg & Potomac Railway Company
  Seaboard Coast Line Railroad Company (former)
  Toledo Terminal Railroad Company (former)
  Western Maryland Railway Company (former)
  Western Railway of Alabama
Galveston, Houston and Henderson Railroad
Houston Belt and Terminal Railway
The Kansas City Southern Railway Company
  CP-Kansas City Southern Joint Agency
Lake Superior & Ishpeming Railroad Company
Longview, Portland & Northern Railway Company
Los Angeles Junction Railway
Manufacturers Railway Company
Meridian & Bigbee Railroad Company
Missouri-Kansas-Texas Railroad
  Oklahoma, Kansas & Texas Railroad
Missouri Pacific Railroad
New Orleans Public Belt Railroad
Norfolk and Portsmouth Belt Line Railroad Company
Norfolk Southern Railway Company
  The Alabama Great Southern Railroad Company
  Atlantic & East Carolina Railway Company
  Central of Georgia Railroad Company
  The Cincinnati, New Orleans and Texas Pacific Railway Company
  Georgia Southern and Florida Railway Company
  Interstate Railroad Company
  Norfolk & Western Railway Company

  Tennessee, Alabama and Georgia Railway Company
  Tennessee Railway Company
Northeast Illinois Regional Commuter Railroad Corporation
Northern Indiana Commuter Transportation District
Peoria and Pekin Union Railway Company
The Pittsburgh, Chartiers & Youghiogheny Railway Company
Port Terminal Railroad Association
Portland Terminal Railroad Company
Spokane International Railroad
Terminal Railroad Association of St. Louis
Union Pacific Railroad
Utah Railway Company
Western Pacific Railroad
Wichita Terminal Association

[FR Doc. 96–12720
Filed 5–16–96; 12:02 pm]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 61, No. 97

Friday, May 17, 1996

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–523–5227**
Public inspection announcement line	**523–5215**
Laws	
Public Laws Update Services (numbers, dates, etc.)	**523–6641**
For additional information	**523–5227**
Presidential Documents	
Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**
Other Services	
Electronic and on-line services (voice)	**523–4534**
Privacy Act Compilation	**523–3187**
TDD for the hearing impaired	**523–5229**

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. **202–275–0920**

FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

FEDERAL REGISTER PAGES AND DATES, MAY

19155–19502	1
19503–19804	2
19805–20116	3
20117–20418	6
20419–20700	7
20701–21046	8
21047–21360	9
21361–21946	10
21947–24204	13
24205–24432	14
24433–24664	15
24665–24874	16
24875–25134	17

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6889 19503
6890 19803
6891 20419
6892 21045
6893 21047
6894 24661
6895 24663
6896 25129

Executive Orders:
11216 (See EO 13002) 24665
13001 21943
13002 24665
13003 25131

Administrative Orders:
Memorandums:
April 26, 1996 19505
April 26, 1996 24667
April 26, 1996 24877
April 28, 1996 19507

4 CFR

Proposed Rules:
21 19205

5 CFR

Ch. LXIX 20117
300 19509
410 21947
532 20701
831 21953
842 21953

7 CFR

28 19511
51 20702
53 19155
54 19155
272 19155
273 19155
301 20877
319 24433
800 24669
810 24669
900 20717
915 19512
916 19160
917 19160
946 20119
956 20121
959 24877
979 20718
985 20122
1002 20719
1004 20719
1007 20124
1280 ..... 19514, 21049, 21053
1485 24205
1841 21361
1843 21361
1845 21361
1903 21361
1945 21361
1980 21361
2054 21361

Proposed Rules:
51 24247
911 20754
924 20756
944 ..... 20754, 20756
958 20188
1005 19861
1007 19861
1011 19861
1046 19861
1160 20759

8 CFR

3 ..... 19976, 21065, 21228
242 ..... 19976, 21065, 21228

9 CFR

78 19976
130 20421

Proposed Rules:
92 ..... 20189, 20190, 21389
93 20190
94 20190
95 20190
96 20190
98 20190
301 19564
304 19578
308 19578
317 ..... 19564, 19578
318 ..... 19564, 19578
319 19578
320 19564
381 ..... 19564, 19578

10 CFR

20 24669
30 24669
40 24669
61 24669
70 24669
72 24669

Proposed Rules:
26 ..... 21105, 24731
72 24249

11 CFR

110 24533

12 CFR

5 19524
19 20330
20 19524
25 21362
28 19524
205 ..... 19662, 19678
211 24439

220.....20386
228.....21362
250.....19805
263.....20338
308.....20344
345.....21362
509.....20350
563e.....21362
614.....20125

Proposed Rules:
207.....20399
215.....19863
220.....20399
221.....20399
614.....24907

13 CFR

Proposed Rules:
121.....20191

14 CFR

21.....20696
25.....24208, 24213
27.....21904
29.....21894, 21904
31.....20877
39.....19540, 19807, 19808, 19809, 19811, 19813, 19815, 20125, 20127, 20616, 20636, 20638, 20639, 20641, 20643, 20644, 20646, 20668, 20669, 20671, 20672, 20674, 20676, 20677, 20679, 20681, 20682, 21066, 21068, 21070, 21071, 24206, 24214, 24216, 24218, 24220, 24675, 24684, 24686, 24688, 24690, 24691, 24878, 24881, 24883, 24884
43.....19498
71.....19541, 19542, 19816, 19817, 21364, 21365, 21953, 24222, 24223
73.....20127
91.....24430
159.....19784
205.....19164
323.....19164
385.....19166

Proposed Rules:
29.....20760
39.....20192, 20194, 20762, 20764, 21146, 21979, 21980, 21982, 24250
71.....19590, 19591, 19592, 19593, 21910, 21984, 24533
91.....24582
121.....21149, 24582, 24533
127.....24582
135.....24582

15 CFR

902.....19171, 21926
981.....21073

Proposed Rules:
946.....19594

16 CFR

1500.....19818

Proposed Rules:
254.....19869
1210.....20503

17 CFR

1.....19177, 19830
3.....20127
5.....19830
10.....21954
31.....19830
140.....21954
200.....20721, 25652
228.....25652
229.....25652
230.....21356, 25652
231.....24644
232.....25652
239.....25652
240.....21354, 25652
241.....24644
249.....21354
270.....25652
271.....24644
274.....25652
276.....24644

Proposed Rules:
1.....19869
156.....19869

18 CFR

35.....21940
37.....21737
385.....21940
1300.....20117

Proposed Rules:
35.....21847
161.....19211
250.....19211
284.....19211, 19832
346.....19878

19 CFR

10.....19834, 24887
12.....24888
103.....19835
145.....24888
161.....24888

Proposed Rules:
101.....19834

20 CFR

345.....20070
601.....19982
617.....19982
626.....19982
658.....19982
702.....19982

21 CFR

5.....24223
101.....20096, 21074
201.....20096
369.....20096
500.....19542
501.....20096
510.....21075, 24440
520.....24441, 24443
522.....21075, 24440
556.....24440, 24441
558.....21075, 24443, 24694
582.....19542
589.....19542
600.....24227
601.....24227
740.....20096
801.....20096

Proposed Rules:
Ch. I.....21392
25.....19476
102.....19220
130.....19220
131.....19220
133.....19220
135.....19220
136.....19220
137.....19220
139.....19220
145.....19220
146.....19220
150.....19220
152.....19220
155.....19220
156.....19220
158.....19220
160.....19220
161.....19220
163.....19220
164.....19220
165.....19220
166.....19220
168.....19220
169.....19220
210.....20104
211.....20104
328.....21392
530.....25118
589.....24253

22 CFR

126.....19841
514.....20437

24 CFR

0.....19187
201.....19788
290.....19188
585.....25124
941.....19708
970.....19708

Proposed Rules:
206.....21910
888.....20982
901.....20358
3500.....21394

25 CFR

Proposed Rules:
144.....24731
250.....19600
525.....21394

26 CFR

1.....19188, 19189, 19544, 19546, 21366, 21955
301.....19189
602.....19189

Proposed Rules:
1.....20503, 20766, 20767, 21985, 21988
31.....20767
32.....20767
35a.....20767
301.....20503, 21989

27 CFR

1.....20721
4.....20721
7.....20721
16.....20721
19.....20721
20.....20721
21.....20721
22.....20721
24.....20721, 21076
25.....20721
53.....20721
55.....20721
71.....20721
170.....20721
178.....20721
179.....20721
194.....20721
197.....20721
200.....20721
250.....20721
251.....20721
252.....20721
270.....20721
275.....20721
285.....20721
290.....20721
296.....20721

28 CFR

58.....24889
501.....25120
550.....25120

Proposed Rules:
90.....24526
100.....21396

29 CFR

1.....19982
2.....19982
4.....19982
5.....19982
6.....19982
7.....19982
8.....19982
22.....19982
24.....19982
32.....19982
96.....19982
500.....24694
504.....19982
507.....19982
508.....19982
530.....19982
1601.....21370
1910.....19547, 21228
1978.....19982
2619.....21228, 24444
2627.....24694
2676.....24444

Proposed Rules:
Ch. XIV.....20768
4.....19770

30 CFR

75.....20877

Proposed Rules:
Ch. II.....21977
256.....24466
901.....20768
902.....20768
904.....19881, 20768
913.....20768
914.....20768
915.....20768
916.....20768
917.....20768
918.....20768
920.....20768
946.....19885
950.....20773

31 CFR

361.....20437
585.....24696

33 CFR

52.....24233
100.....19192, 20132, 21959, 21960, 21961, 21962
117.....24235
165.....19192, 19841, 21963, 24697, 24698, 24699, 24701, 24892
401.....19548

34 CFR

361.....24390
685.....24446

Proposed Rules:
100.....20196, 21998, 21999, 22001
117.....22002
154.....20084
155.....20084

36 CFR

292.....20726
1228.....19552, 24702

Proposed Rules:
7.....20775
100.....19220
117.....19223

37 CFR

Proposed Rules:
Ch. II.....20197, 22004
1.....19224, 20877

38 CFR

2.....20133, 20437
3.....20438, 20726
4.....20438, 20440
9.....20134
17.....21964, 24236
19.....20447
20.....20447
21.....20727, 24237

Proposed Rules:
3.....24910

39 CFR

3001.....24447

Proposed Rules:
233.....21404

40 CFR

52.....19193, 19555, 20136, 20139, 20142, 20145, 20147, 20453, 20455, 20458, 20730, 20732, 24239, 24457, 24702, 24706, 24709, 24712
60.....20734, 21080
63.....21370
70.....20150, 24457, 24715
80.....20736
81.....20458, 21372, 24239, 24242
89.....20738
90.....20738
123.....20972
131.....20686
141.....24354
180.....19842, 19845, 19847, 19849, 19850, 19852, 19854, 19855, 20742, 20743, 20745, 21378, 24893
300.....20473, 24720, 24894
355.....20473
421.....24242

Proposed Rules:
Ch. I.....19432
51.....19231
52.....19233, 19601, 20199, 20200, 20201, 20504, 21405, 21412, 24467, 24737, 24738
61.....20775
63.....19887, 21414
70.....20202
80.....20779
81.....19233, 21415
89.....20738
90.....20738
170.....19889
148.....21418
180.....19233, 20780, 20781, 24738, 24911
185.....20780
186.....10780, 20781, 24911
261.....21418
268.....21418
271.....21418
300.....19889, 20202, 20785, 21422, 22004, 22006, 24261

41 CFR

50–203.....19982
60–1.....19982
60–30.....19982
60–250.....19366, 19982
60–741.....19336, 19982

42 CFR

405.....19722
412.....21969
486.....19722

Proposed Rules:
84.....24740

43 CFR

11.....20560

44 CFR

61.....19197
62.....24462
64.....19857
206.....19197

45 CFR

Proposed Rules:
1311.....24467

46 CFR

Ch. I.....24464
10.....19858
15.....19858
114.....20556
116.....20556
117.....20556
118.....20556
119.....20556
120.....20556
121.....20556
122.....20556
170.....20556, 24464
171.....24464
173.....20556, 24464
175.....20556
176.....20556
177.....20556
178.....20556
179.....20556
180.....20556
181.....20556
182.....20556
183.....20556
185.....20556
298.....21302
381.....24895
403.....21081
404.....21081

47 CFR

3.....20155
22.....21380
64.....20746, 24897
73.....20490, 20747, 21384, 21385, 21973, 24262, 24263, 24465
90.....21380
97.....21385

Proposed Rules:
Ch. I.....22008
0.....21151
1.....19236, 20505, 24743
2.....19236
15.....24473, 24749
21.....19236
22.....24470
24.....24470
73.....19601, 20206, 20207, 20505, 20789, 21425, 24262, 24263
80.....21151
94.....19236

48 CFR

Ch. 1.....24263
231.....21973
570.....24720
801.....20491
803.....20491
804.....20491
805.....20491
806.....20491
808.....20491
810.....20491
812.....20491
813.....20491
815.....20491
816.....20491
820.....20491
822.....20491
828.....20491
833.....20491
834.....20491
836.....20491
837.....20491
846.....20491
871.....20493
904.....21975
906.....21975
911.....21975
912.....21975
913.....21975
915.....21975
919.....21975
925.....21975
926.....21975
933.....21975
950.....21975
952.....21975
970.....21975
2401.....19468
2402.....19468
2404.....19468
2405.....19468
2406.....19468
2409.....19468
2411.....19468
2412.....19468
2413.....19468
2414.....19468
2415.....19468
2416.....19468
2417.....19468
2419.....19468
2420.....19468
2426.....19468
2428.....19468
2429.....19468
2432.....19468
2434.....19468
2436.....19468
2437.....19468
2442.....19468
2452.....19468
2453.....19468

Proposed Rules:
Ch. 1.....22010
Ch. 2.....22010
52.....24473
901.....19891
905.....19891
906.....19891
908.....19891
915.....19891
916.....19891
917.....19891
922.....19891
928.....19891
932.....19891
933.....19891
935.....19891
936.....19891
942.....19891
945.....19891
952.....19891
971.....19891

49 CFR

18.....21386
90.....21386
107.....21084
171.....21084, 24904
172.....20747
173.....20747, 21084, 24904
174.....20747
176.....20747
178.....21084
180.....24904
195.....24244
228.....20494
397.....20496
564.....20497
571.....19201, 19202, 19560, 19561, 20170, 20172, 20497
604.....19562
609.....19562
639.....25088
1051.....19859
1053.....19859
1164.....21387
1311.....21387
1312.....19859
1330.....024722

Proposed Rules:
219.....21149
382.....21149
537.....22010
571.....19602, 24263, 24265
653.....21149
654.....21149
1002.....20877
1100.....19236
1101.....19236
1102.....19236
1103.....19236
1104.....19236
1105.....19236
1106.....19236
1107.....19236

1108.....19236
1109.....19236
1110.....19236
1111.....19236
1112.....19236
1113.....19236
1114.....19236
1115.....19236
1116.....19236
1117.....19236
1118.....19236
1119.....19236
1120.....19236
1121.....19236
1122.....19236
1123.....19236
1124.....19236
1125.....19236
1126.....19236
1127.....19236
1128.....19236
1129.....19236
1130.....19236
1131.....19236
1132.....19236
1133.....19236
1134.....19236
1135.....19236
1136.....19236
1137.....19236
1138.....19236
1139.....19236
1140.....19236
1141.....19236
1142.....19236
1143.....19236
1144.....19236
1145.....19236
1146.....19236
1147.....19236
1148.....19236
1149.....19236
1185.....22014
1300.....21153
1305.....24474
1312.....19902

50 CFR

17.....24722
216.....21926
222.....21926
253.....19171
255.....19171
620.....20175
658.....24728
661.....20175
663.....21102
672.....19976, 21104, 24729
675.....19976, 24730, 24905
678.....21978

Proposed Rules:

16.....24267
17.....19237, 21426
600.....19390
601.....19390
602.....19390
603.....19390
605.....19390
611.....19390
619.....19390
620.....19390
621.....19390
625.....20506
628.....20789
641.....24267
649.....20207
650.....20207, 21431
651.....20207
652.....19604
672.....24475, 24750
673.....19902, 21431
675.....24475, 24750
676.....24475

REMINDERS

The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Atlantic shark; published 5-13-96

ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Allyl isothiocyanate; published 5-17-96

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Telecommunications Act of 1996; implementation–
Telecommunications or customer premises equipment standards; dispute resolution; published 5-17-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Chlorofluorocarbons and other ozone-depleting substances, products containing or manufactured with; warning statements; published 5-3-96

JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Acts of violence and terrorism prevention; published 5-17-96
Drug abuse treatment programs and early release consideration; published 5-17-96

TRANSPORTATION DEPARTMENT
Coast Guard
Anchorage regulations:
Mississippi; published 4-17-96
Regattas and marine parades:
Annual National Maritime Week Tugboat Races; published 4-17-96

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
de Havilland; published 5-3-96
Diamond Aircraft Industries; published 4-29-96

TRANSPORTATION DEPARTMENT
Maritime Administration
Cargo preference–U.S. flag vessels:
Available U.S. flag commercial vessels; published 5-17-96

TREASURY DEPARTMENT
Customs Service
Articles conditionally free, subject to a reduced rate, etc.:
Steel products; voluntary restraint arrangements; published 5-17-96
Merchandise; special classes:
Prohibited/restricted merchandise; foreign assets control enforcement; published 5-17-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cranberries grown in Massachusetts et al.; comments due by 5-22-96; published 4-22-96
Limes and avocados grown in Florida; comments due by 5-22-96; published 4-22-96
Milk marketing orders:
Southwest Plains; comments due by 5-22-96; published 4-22-96
Potatoes (Irish) grown in–
Washington; comments due by 5-22-96; published 4-22-96

AGRICULTURE DEPARTMENT
Forest Service
National Forest System timber; sale and disposal:
Timber sale and substitution; comments due by 5-20-96; published 4-3-96

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
Sodium citrate buffered with citric acid; use in certain cured and uncured whole meat products; comments due by 5-24-96; published 4-24-96

AGRICULTURE DEPARTMENT
Nondiscrimination in USDA conducted programs and activities; comments due by 5-23-96; published 4-23-96

COMMERCE DEPARTMENT
Export Administration Bureau
Export licensing:
Regulations simplification; comments due by 5-24-96; published 3-25-96

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Gulf of Alaska groundfish; comments due by 5-24-96; published 4-24-96
Pacific Coast groundfish; comments due by 5-24-96; published 5-9-96
Western Pacific crustacean; comments due by 5-23-96; published 4-8-96
Tuna, Atlantic bluefin fisheries; comments due by 5-22-96; published 4-25-96
Whaling provisions; Federal regulatory review; comments due by 5-24-96; published 4-9-96

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 5-22-96; published 4-22-96
Hazardous waste:
Identification and listing–
Exclusion; comments due by 5-20-96; published 4-3-96
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Hexakis (2-methyl-2-phenylpropyl)distannoxane; comments due by 5-20-96; published 3-20-96
Toxic substances:
Significant new uses–
Cyclohexyldiamino ethyl esters (substituted); comments due by 5-20-96; published 4-19-96

FEDERAL COMMUNICATIONS COMMISSION
Practice and procedure:
North American numbering plan; carrier identification codes expansion—
Transition period extension; comments due by 5-21-96; published 5-7-96
Radio and television broadcasting:
Telecommunications Act of 1996; implementation–
Broadcast facilities; license term extension to 8 years; comments due by 5-20-96; published 4-23-96
Radio services, special:
Maritime services–
Passenger ships, large cargo and small; radio installation inspection; comments due by 5-24-96; published 5-9-96
Radio stations; table of assignments:
Colorado; comments due by 5-21-96; published 4-4-96
Iowa et al.; comments due by 5-21-96; published 4-8-96
Kansas; comments due by 5-21-96; published 4-3-96
Mississippi et al.; comments due by 5-23-96; published 4-8-96
Wyoming; comments due by 5-23-96; published 4-8-96

FEDERAL EMERGENCY MANAGEMENT AGENCY
Flood insurance program:
Write-your-own program; assistance to private sector property insurers; comments due by 5-20-96; published 4-3-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Human drugs:
Labeling policy (OTC); interchangeable words in monograph requirement; comments due by 5-20-96; published 3-4-96

INTERIOR DEPARTMENT
Fish and Wildlife Service
Migratory bird hunting:
Natural vegetation in moist soil areas, artificial alteration or manipulation to attract waterfowl; prohibition; comments due by 5-20-96; published 3-22-96

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
North Dakota; comments due by 5-24-96; published 4-24-96

West Virginia; comments due by 5-23-96; published 4-23-96

LABOR DEPARTMENT

Employment and Training Administration

Aliens:

Labor certification process for permanent employment, and researchers employed by colleges and universities; comments due by 5-22-96; published 4-22-96

LABOR DEPARTMENT

Mine Safety and Health Administration

Education and training:

Training and retraining of miners; policy review; comments due by 5-24-96; published 3-20-96

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:

Management official interlocks; comments due by 5-24-96; published 3-25-96

NUCLEAR REGULATORY COMMISSION

Nuclear power reactors, standard design certifications; and combined licenses; early site permits:

Boiling water reactors–

U.S. advanced boiling water reactor and system 80+ standard designs; certification approval; comments due by 5-24-96; published 4-24-96

POSTAL SERVICE

Domestic Mail Manual:

Mail with insufficient postage deposited for delivery; treatment; comments due by 5-20-96; published 4-5-96

SECURITIES AND EXCHANGE COMMISSION

Securities:

Accounting policies for derivative financial and derivative commodity instruments; financial statement footnote disclosures requirements; comments due by 5-20-96; published 4-16-96

Derivative financial, other financial, and derivative commodity instruments; safe harbor for disclosure of information about inherent market risk; comments due by 5-20-96; published 4-16-96

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Trade Representative, Office of United States

Tariff-rate quota amount determinations:

Leaf tobacco; comments due by 5-20-96; published 2-20-96

TRANSPORTATION DEPARTMENT

Coast Guard

Anchorage regulations:

New York; comments due by 5-20-96; published 3-20-96

Ports and waterways safety:

Lake Erie; safety zone; comments due by 5-20-96; published 4-18-96

Regattas and marine parades:

Augusta Southern National Drag Boat Races; comments due by 5-20-96; published 4-18-96

Beaufort Water Festival; comments due by 5-20-96; published 4-19-96

Fort Myers Beach Offshore Grand Prix; comments due by 5-20-96; published 3-20-96

Idle Hour South Channel Challenge; comments due by 5-20-96; published 4-19-96

Provincetown Harbor Swim for Life; comments due by 5-20-96; published 3-20-96

Swim the Bay; comments due by 5-20-96; published 3-20-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Aerospace Technologies of Australia; comments due by 5-24-96; published 3-14-96

AlliedSignal Inc.; comments due by 5-21-96; published 3-22-96

Fokker; comments due by 5-20-96; published 4-10-96

General Electric Co.; comments due by 5-24-96; published 3-25-96

Jetstream; comments due by 5-24-96; published 3-22-96

Jetstream Aircraft Ltd.; comments due by 5-24-96; published 3-25-96

McDonnell Douglas; comments due by 5-21-96; published 3-28-96

Airworthiness standards:

Special conditions–

Embraer (Brazil) Aircraft Corp. model EMB-145 airplane; comments due by 5-20-96; published 4-3-96

Class E airspace; comments due by 5-20-96; published 4-8-96

Restricted areas; comments due by 5-20-96; published 4-22-96

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Windshield defrosting and defogging systems; Federal regulatory review; comments due by 5-23-96; published 4-8-96

Windshield wiping and washing systems; Federal regulatory review; comments due by 5-23-96; published 4-8-96

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Rate procedures:

Rail rate reasonableness and exemption/revocation proceedings; expedited procedures; comments due by 5-20-96; published 5-1-96

UNITED STATES INFORMATION AGENCY

Exchange visitor program:

Program extension procedures, research programs design and conduct, etc.; comments due by 5-23-96; published 4-8-96

LIST OF PUBLIC LAWS

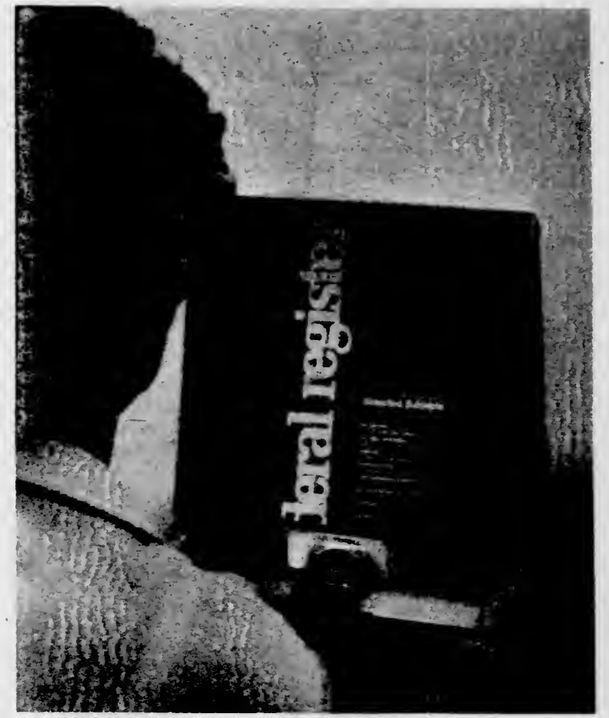
This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 2243/P.L. 104–143

Trinity River Basin Fish and Wildlife Management Reauthorization Act of 1995 (May 15, 1996; 110 Stat. 1338)

Last List May 15, 1996

Microfiche Editions Available...



Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

Microfiche Subscription Prices:

Federal Register:

One year: $433.00
Six months: $216.50

Code of Federal Regulations:

Current year (as issued): $264.00

Superintendent of Documents Subscription Order Form

Order Processing Code:
* 5419

Charge your order. It's easy!

To fax your orders (202) 512–2233

☐ **YES,** enter the following indicated subscriptions in 24x microfiche format:

___ **Federal Register** (MFFR) ❑ One year at $433 each ❑ Six months at $216.50

___ **Code of Federal Regulations** (CFRM5) ❑ One year at $264 each

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

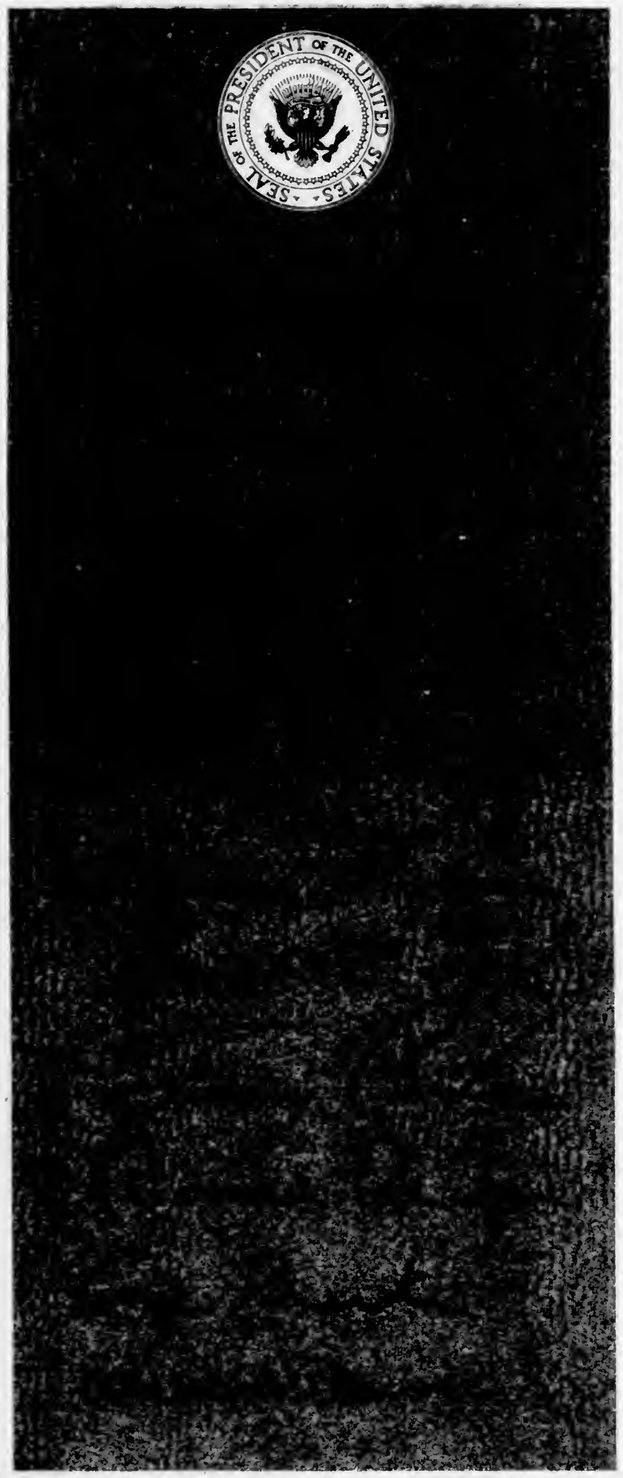
For privacy, check box below:
❑ Do not make my name available to other mailers

Check method of payment:
❑ Check payable to Superintendent of Documents
❑ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
❑ VISA ❑ MasterCard ☐☐☐☐ (expiration)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Authorizing signature) 10/94

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Public Papers of the Presidents of the United States

Annual volumes containing the public messages and statements, news conferences, and other selected papers released by the White House.

Volumes for the following years are available; other volumes not listed are out of print.

George Bush		William J. Clinton	
1991		1993	
(Book II)	$44.00	(Book I)	$51.00
1992		1993	
(Book I)	$47.00	(Book II)	$51.00
1992–93		1994	
(Book II)	$49.00	(Book I)	$56.00
		1994	
		(Book II)	$52.00

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

(Rev. 5-96)

Order Now!

The United States Government Manual 1995/96

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to contact about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix C, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

$33.00 per copy



Superintendent of Documents **Publications** Order Form

Order Processing Code:
* **7784**

Charge your order. It's easy!

To fax your orders (202) 512–2250

☐ **YES,** please send me _____ copies of the **The United States Government Manual, 1995/96**
S/N 069–000–00063–1 at $33 ($41.25 foreign) each.

The total cost of my order is $_____. Price includes regular domestic postage and handling and is subject to change.

_____
(Company or personal name) (Please type or print)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, Zip code)

_____
(Daytime phone including area code)

_____
(Purchase order no.)

Please choose method of payment:
❑ Check payable to the Superintendent of Documents
❑ GPO Deposit Account ☐☐☐☐☐☐–☐
❑ VISA ❑ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

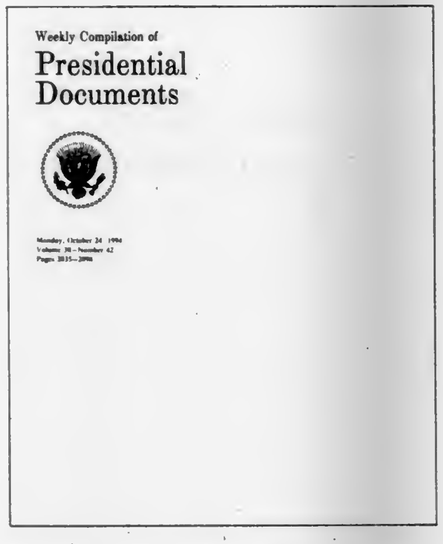
Thank you for your order!

_____
(Authorizing signature) (Rev. 9/95)

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Subscription Order Form

Order Processing Code:
* 5420

Charge your order. It's easy! MasterCard VISA

To fax your orders (202) 512–2233

☐ **YES,** please enter ____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $132.00 First Class Mail ☐ $75.00 Regular Mail

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

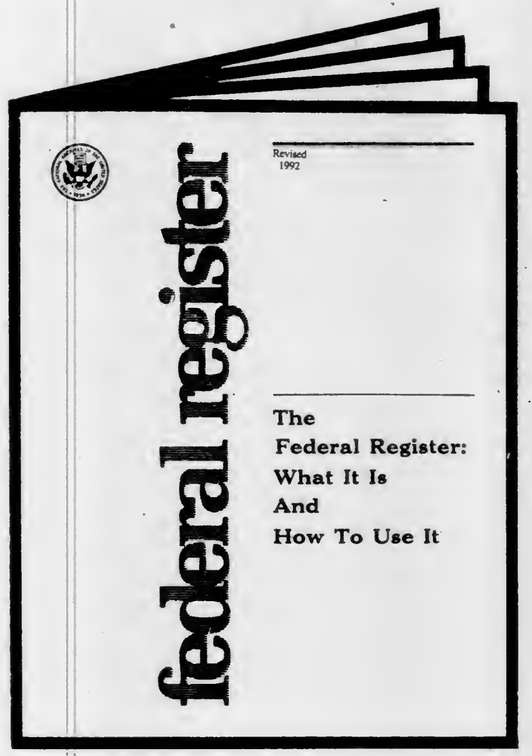
For privacy, check box below:
☐ Do not make my name available to other mailers

Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Authorizing signature) 10/94

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Announcing the Latest Edition

The Federal Register: What It Is and How to Use It

A Guide for the User of the Federal Register — Code of Federal Regulations System

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a sample research problem.

Price $7.00

Superintendent of Documents **Publications** Order Form

P3

Order processing code:
*6173

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202)-512-2250

☐ **YES**, please send me the following:

_____ copies of **The Federal Register - What it is and How To Use it**, at $7.00 per copy. Stock No. 069-000-00044-4

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:
☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date) *Thank you for your order!*

(Authorizing Signature) (Rev. 1-93)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.
$26.00 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.
$24.00 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register



Superintendent of Documents Subscription Order Form

Order Processing Code:
* 5421

Charge your order. It's easy! MasterCard VISA

To fax your orders (202) 512–2233

☐ **YES**, enter the following indicated subscriptions for one year:

___ **LSA ◆ List of CFR Sections Affected** (LCS) at $26.00 each
___ **Federal Register Index** (FRSU) at $24.00 each

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

For privacy, check box below:
❑ Do not make my name available to other mailers

Check method of payment:
❑ Check payable to Superintendent of Documents
❑ GPO Deposit Account [ ][ ][ ][ ][ ][ ] – [ ]
❑ VISA ❑ MasterCard [ ][ ][ ][ ] (expiration)
[ ]

(Authorizing signature) 10/94

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Printed on recycled paper

OL
1
SS
98
MY
20
996
MI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

5–20–96
Vol. 61

No. 98

federal register

Monday
May 20, 1996

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 95 R
UMI
SERIALS ACQUISITIONS
PO BOX 1346
ANN ARBOR MI 48106

OL
1
SS
08
MY
20
996
MI

5–20–96
Vol. 61 No. 98
Pages 25135–25388

Monday
May 20, 1996

Briefings on How To Use the Federal Register
For information on briefings in Chicago, IL and Washington, DC, see announcement on the inside cover of this issue.

federal register

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $494, or $544 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $433. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 61 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243
For other telephone numbers, see the Reader Aids section at the end of this issue.

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

CHICAGO, IL

WHEN: June 11, 1996 at 9:00 am
WHERE: Metcalfe Federal Building, Conference Room 328, 77 West Jackson, Chicago, Illinois 60604
RESERVATIONS: 1–800–688–9889

WASHINGTON, DC

[Two Sessions]

WHEN: June 18, 1996 at 9:00 am, and June 25, 1996 at 9:00 am
WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 61, No. 98
Monday, May 20, 1996

Agriculture Department
See Animal and Plant Health Inspection Service
See Cooperative State Research, Education, and Extension Service

Animal and Plant Health Inspection Service
RULES
Livestock and poultry disease control:
Animals destroyed because of tuberculosis—
Federal indemnity payments for cattle, bison, and cervids, 25135–25138

Antitrust Division
NOTICES
National cooperative research notifications:
Financial Services Technology Consortium, Inc., 25242–25243
Network Management Forum, 25243
Salutation Consortium, 25243

Army Department
See Engineers Corps
NOTICES
Meetings:
Armed Forces Epidemiological Board, 25210
Science Board, 25210–25211

Census Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 25187–25189

Centers for Disease Control and Prevention
NOTICES
Fernald Feed Materials Production Center; cohort mortality study of workers; NIOSH meeting, 25226
Meetings:
Vital and Health Statistics National Committee, 25226
Nursing home worker back pain and injury; evaluation of prevention strategies for reduction; NIOSH meeting, 25226
Occupational noise exposure; recommended standard criteria; NIOSH meeting, 25227–25228

Coast Guard
RULES
Federal regulatory review:
Lifesaving equipment, 25272–25339
Regattas and marine parades:
Norfolk Harborfest, 25149
NOTICES
Agency information collection activities:
Proposed collection; comment request, 25262–25264

Commerce Department
See Census Bureau
See Export Administration Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 25187

Commodity Futures Trading Commission
NOTICES
Meetings:
CFTC-State Cooperation Advisory Committee, 25210

Community Services Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Community food and nutrition program, 25342–25363

Cooperative State Research, Education, and Extension Service
RULES
Grants:
Small business innovation research program; administrative provisions, 25366–25374

Defense Department
See Army Department
See Engineers Corps

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 25211–25212

Employment and Training Administration
NOTICES
Job Training Partnership Act:
Migrant and seasonal farmworker programs; final allocations, 25243–25245

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission

Energy Information Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 25212–25215

Engineers Corps
NOTICES
Base realignment and closure:
Surplus Federal property—
Defense Distribution Depot, UT, 25211

Environmental Protection Agency
RULES
Air programs:
Outer Continental Shelf regulations—
Offset remand, 25149–25151
Pesticide programs:
Production reports; submission time extension, 25151
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Propargite, etc., 25153–25154
Propylene oxide, 25152–25153

PROPOSED RULES
Air programs:
Outer Continental Shelf regulations—
Delegation remand, 25173–25175
Hazardous waste:
Identification and listing—
Exclusions, 25175–25183
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 25220–25223
Reports; availability, etc.:
Wood furniture manufacturing operations; control techniques guidelines document, 25223–25224
Toxic and hazardous substances control:
Chemical testing—
Data receipt, 25224

Export Administration Bureau
NOTICES
Meetings:
Sensors and Instrumentation Technical Advisory Committee, 25189

Family Support Administration
See Community Services Office

Federal Aviation Administration
RULES
Standard instrument approach procedures, 25138–25142
PROPOSED RULES
Class E airspace, 25157–25158
NOTICES
Airport noise compatibility program:
Noise exposure map—
Sarasota-Bradenton International Airport, FL, 25264–25265

Federal Communications Commission
PROPOSED RULES
Common carrier services:
Video programming services; local exchange carrier provision; costs allocation, 25184
Radio and television broadcasting:
Equal employment opportunity (EEO) requirements; streamlining, 25183–25184
Radio services, special:
Private land mobile services—
Public safety radio requirements through 2010 calendar year, 25185

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 25224

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Duquesne Light Co. et al., 25217–25219
Environmental statements; availability, etc.:
Great Lakes Gas Transmission L.P., 25219–25220
Applications, hearings, determinations, etc.:
Norwest Pipeline Corp., 25215–25216
Pacific Gas & Electric Co. et al., 25216–25217
Transwestern Pipeline Co., 25217

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 25224–25225
Permissible nonbanking activities, 25225
Meetings; Sunshine Act, 25225

Financial Management Service
See Fiscal Service

Fiscal Service
PROPOSED RULES
Marketable book-entry Treasury bills, notes, and bonds; sale and issue; uniform offering circular; amendments, 25164–25173

Fish and Wildlife Service
RULES
Migratory bird hunting and conservation stamp (Federal Duck Stamp) contest, 25155–25156

Food and Drug Administration
RULES
Human drugs:
Cold, cough, allergy, bronchodilator, and antiasthmatic products (OTC)—
Bronchodilator products; aerosol containers, pressurized metered dose; monograph amendment, 25142–25147
NOTICES
Food additive petitions:
Albright & Wilson, Ltd., 25228
Witco Corp., 25228
Human drugs:
New drug applications—
SmithKline Beecham Pharmaceuticals; approval withdrawn, 25228–25229

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Arizona
Sitix of Phoenix, Inc.; semiconductor wafer manufacturing plant, 25189–25190
Michigan, 25190
South Carolina, 25190

Harry S. Truman Scholarship Foundation
NOTICES
Meetings; Sunshine Act, 25225–25226

Health and Human Services Department
See Centers for Disease Control and Prevention
See Community Services Office
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health
See Public Health Service

Health Care Financing Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 25229

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service

See National Park Service
See Reclamation Bureau
NOTICES
Self-governance tribes; 1997 FY annual funding agreements negotiated by non-BIA bureaus; eligible programs, 25235–25236

International Development Cooperation Agency
See Overseas Private Investment Corporation

International Trade Administration
NOTICES
Antidumping:
Extruded rubber thread from—
Malaysia, 25190–25194
Granular polytetrafluoroethylene resin from—
Italy, 25195–25196
Sulfanilic acid from—
China, 25196–25200
Tapered roller bearings and parts, finished and unfinished, and four inches or less in outside diameter, and components, from—
Japan, 25200–25205
Countervailing duties:
Circular welded carbon steel pipes and tubes from—
Thailand, 25205–25207
Cut-to-length carbon steel plate from—
Brazil et al., 25207
Export trade certificates of review, 25207–25208

Justice Department
See Antitrust Division
NOTICES
Pollution control; consent judgments:
Consolidation Coal Co. et al., 25241
Riehl, Ralph, et al., 25241–25242
Stringfellow, J.B., Jr., et al., 25242

Labor Department
See Employment and Training Administration

Land Management Bureau
NOTICES
Closure of public lands:
Nevada, 25236–25237
Meetings:
Northeastern Grant Basin Resource Advisory Council, 25237
Resource management plans, etc.:
Sweet Grass Hills, MT, 25237–25238

Maritime Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 25265

Minerals Management Service
RULES
Outer Continental Shelf; oil, gas, and sulphur operations:
Liquid hydrocarbons; flaring or venting gas and burning, 25147–25149
PROPOSED RULES
Federal regulatory review; request for comments, 25160–25164

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 25245

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 25265–25270

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 25229–25230
National Eye Institute, 25230
National Heart, Lung, and Blood Institute, 25230
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 25232
National Institute of Child Health and Human Development, 25231–25232
National Institute of Dental Research, 25232
National Institute of Environmental Health Sciences, 25230–25232
National Institute of General Medical Sciences, 25231
National Institute on Aging, 25232–25233
National Institute on Deafness and Other Communication Disorders, 25229
Research Grants Division special emphasis panels, 25233–25234

National Labor Relations Board
PROPOSED RULES
Procedural rules:
Attorneys or party representatives; misconduct before agency, 25158–25160

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Atlantic mackerel, squid, and butterfish, 25185–25186
NOTICES
Meetings:
Olympic Coast National Marine Sanctuary Advisory Council, 25208
Permits:
Endangered and threatened species, 25208–25209
Marine mammals, 25209–25210

National Park Service
NOTICES
Meetings:
Dayton Aviation Heritage Commission, 25238
Mississippi River Coordinating Commission, 25238
Mississippi River Corridor Study Commission, 25238
Mojave National Preserve Advisory Commission, 25238

National Science Foundation
NOTICES
Meetings:
Polar Programs Special Emphasis Panel, 25245

National Telecommunications and Information Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Telecommunications and information infrastructure assistance program, 25376–25388

Nuclear Regulatory Commission
NOTICES
Meetings:
Nuclear Safety Research Review Committee, 25247–25248

Applications, hearings, determinations, etc.:
New York Power Authority, 25245–25247

Overseas Private Investment Corporation
NOTICES
Privacy Act:
Systems of records, 25239–25241

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
NOTICES
Organization, functions, and authority delegations:
National Institutes of Health, 25234

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Loup Basin Reclamation District, NE; long-term water service contract renewal, 25239

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 25248
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 25251–25253
Depository Trust Co., 25253–25257
New York Stock Exchange, Inc., 25257–25258
Philadelphia Depository Trust Co., 25258–25259
Applications, hearings, determinations, etc.:
Chase Manhattan Bank, N.A., et al., 25248–25250
Commonwealth Energy System, 25250
Star Multi Care Services, Inc., 25250–25251
UniMark Group, Inc., 25251

Small Business Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 25259–25261
Disaster loan areas:
Illinois, 25261

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Maritime Administration
See National Highway Traffic Safety Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 25261–25262

Treasury Department
See Fiscal Service
PROPOSED RULES
Marketable book-entry Treasury bills, notes, and bonds; sale and issue; uniform offering circular; amendments, 25164–25173
NOTICES
Senior Executive Service:
Legal Division Performance Review Board; membership, 25270

Truman, Harry S., Scholarship Foundation
See Harry S. Truman Scholarship Foundation

Separate Parts In This Issue

Part II
Transportation Department, Coast Guard, 25272–25339

Part III
Housing and Urban Development Department, 25342–25363

Part IV
Cooperative State Research, Education, and Extension Service, 25366–25374

Part V
Commerce Department, National Telecommunications and Information Administration, 25376–25388

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
3403 25366

9 CFR
50 25135
77 25135

14 CFR
97 (3 documents) 25138, 25139, 25141
Proposed Rules:
71 25157

21 CFR
310 25142
341 25142

29 CFR
Proposed Rules:
102 25158

30 CFR
250 25147
Proposed Rules:
Ch. II 25160

31 CFR
Proposed Rules:
356 25164

33 CFR
100 25149
110 25149
117 25149

40 CFR
55 25149
167 25151
180 25152
185 25153
Proposed Rules:
55 25173
261 25175

46 CFR
30 25272
31 25272
32 25272
33 25272
35 25272
70 25272
71 25272
75 25272
77 25272
78 25272
90 25272
91 25272
94 25272
96 25272
97 25272
107 25272
108 25272
109 25272
125 25272
133 25272
167 25272
168 25272
188 25272
189 25272
192 25272
195 25272
196 25272
199 25272

47 CFR
Proposed Rules:
1 25183
64 25184
73 25183
90 25185

50 CFR
91 25155
Proposed Rules:
655 25185

Rules and Regulations

Federal Register
Vol. 61, No. 98
Monday, May 20, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 50 and 77

[Docket No. 94–133–2]

Tuberculosis in Cattle, Bison, and Cervids; Payment of Indemnity

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with one change, an interim rule that amended the regulations to provide for the payment of indemnity for cervids destroyed because of tuberculosis, and to provide for the payment of indemnity for cattle, bison, and cervids found to have been exposed to tuberculosis by reason of association with any tuberculous livestock. The interim rule was necessary to encourage owners to rapidly remove cattle, bison, and cervids affected with and exposed to tuberculosis from their herds. Rapid removal of such cattle, bison, and cervids will help protect other cattle, bison, and cervids from tuberculosis and will facilitate tuberculosis eradication efforts in the United States. The interim rule also amended the regulations to deny claims for indemnity for depopulation of cattle, bison, and cervid herds unless other exposed livestock in the herd have been destroyed. This action was necessary to help ensure that when cattle, bison, and cervids in a herd are depopulated, other livestock do not remain as potential sources of infection when the owner restocks the herd with healthy animals.

EFFECTIVE DATE: June 19, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell A. Essey, Senior Staff Veterinarian, Cattle Diseases and Surveillance, VS, APHIS, Suite 3B08, 4700 River Road Unit 36, Riverdale, MD 20737–1231, (301) 734–8715.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis (referred to below as tuberculosis) is a serious communicable disease of cattle, bison, and other species, including humans, caused by *Mycobacterium bovis*. Tuberculosis causes weight loss, general debilitation, and sometimes death. The regulations in 9 CFR part 50 provide for payment of Federal indemnity to owners of certain cattle, bison, or swine destroyed because of tuberculosis.

In an interim rule effective and published in the **Federal Register** on July 24, 1995 (60 FR 37804–37810, Docket No. 94–133–1), the Animal and Plant Health Inspection Service (APHIS) amended the tuberculosis regulations in 9 CFR part 50 to provide for the payment of indemnity for cervids destroyed because of tuberculosis, at rates not to exceed $750 for any reactor cervid and $450 for any exposed cervid. In conjunction with this action, we amended the regulations to make the provisions that apply to cattle and bison also apply to cervids, where appropriate. These provisions include recordkeeping, procedures for claiming indemnity, and claims not allowed.

These provisions also include identification of reactor and exposed cervids to be moved interstate to slaughter. The interim rule required that reactor cervids be identified by branding the letter "T" high on the left hip near the tailhead and at least 5 by 5 centimeters (2 by 2 inches) in size and by attaching to the left ear an approved metal eartag bearing a serial number and the inscription "U.S. Reactor", or a similar State reactor tag; and that exposed cervids be identified by branding the letter "S" high on the left hip near the tailhead and at least 5 by 5 centimeters (2 by 2 inches) in size and by attaching to the left ear an approved metal eartag bearing a serial number. As an alternative to branding, we allowed exposed cervids to be moved interstate to slaughter without branding if they are either accompanied directly to slaughter by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. For reactor cervids, we allowed the same movement without branding as for exposed cervids, if the reactors are identified by a "TB" tattooed on the left ear and with yellow paint sprayed on the left ear.

We also amended the regulations to provide for the payment of indemnity for cattle, bison, and cervids found to have been exposed to tuberculosis by reason of association with any tuberculous livestock, not just by reason of association with tuberculous cattle and bison. Finally, we amended the regulations to deny claims for indemnity for depopulation of cattle, bison, and cervid herds unless other exposed livestock in the herd have been destroyed.

Comments on the interim rule were required to be received on or before September 22, 1995. We received 50 comments by that date. They were from cervid producers and cervid producer associations, other livestock producers, veterinary associations, and animal welfare groups. Forty-eight of the comments supported the interim rule without change; two were opposed to the interim rule. The objections raised by the two comments opposed to the rule are discussed below.

Both of the opposing comments were against the interim rule because it concerns the farming of cervids, and the commenters oppose any activities involving the confinement and breeding of wild animals. One commenter stated that "by offering to pay businesses to slaughter off those captive cervids who test positive for tuberculosis, or who are exposed to the disease, APHIS, in fact, ensures that the confinement and breeding of cervids shall not only continue, but also become more profitable, and, inevitably, more widespread."

The commenters gave two reasons for objecting to the farming of cervids. One is that they claim the farming of wildlife is ecologically irresponsible. They argue that cervids do not have a long history of domestication and breeding for docility, making them ill-suited for captivity; and, the existence of deer farms encourages the public to view wildlife as private property, undermining efforts to protect wildlife in its natural habitat. The second reason is that they claim the farming of wildlife is epidemiologically unwise because it

facilitates disease transfer between wild and domestic species. We have made no changes based on these comments.

The practice of raising deer and elk for agricultural purposes has existed for thousands of years and is considered an established and legitimate agricultural activity. Deer have been farmed in China since before 3000 B.C. The Romans were active game ranchers, and deer and elk farming is today a standard agricultural practice in Europe. Breeding and production of deer, elk, and other cervids has taken place in the United States since at least the 1930's.

It is true that the last 20 years has seen a marked increase in the number of captive cervid farms and ranches. There are currently more than 1,600 deer and elk owners in the United States, raising about 250,000 head. This may account for the increase in the number of *M. bovis* cases discovered in captive cervid herds in the last decade. It is not APHIS' mission, nor is it within our authority, to prohibit what is considered a legitimate agricultural practice. If APHIS were to ignore discoveries of tuberculosis in captive cervids, the consequences for all U.S. livestock, and for wild cervids and other wildlife that can contract tuberculosis, would be devastating. The mission of APHIS is to ensure the health of all livestock in the United States. The indemnity paid to ranchers who must sacrifice tuberculous livestock is not enough to help make their businesses more profitable—the slaughter of diseased livestock always results in monetary loss to an owner. The payment may enable the ranchers to restock their herds, but also will encourage owners who may not otherwise depopulate a tuberculous herd for fear of monetary loss to slaughter their animals knowing they will receive partial compensation. The payment of indemnity to owners of reactor and exposed cervids is very important not only to achieve tuberculosis-free herds of captive cervids, but for the health of all U.S. livestock and for the health of U.S. wildlife.

One of the opposing commenters asked that, if APHIS does choose to make the interim rule final, we amend it to eliminate the need for branding by requiring that all reactor and exposed cervids moved interstate to slaughter be accompanied by an APHIS or State representative or be moved in vehicles closed with official seals applied and removed by an APHIS representative, a State representative, an accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. We have made no changes based on this comment.

It is our belief that most cervid owners will choose to move their animals to slaughter without branding using one of the options provided in the interim rule. Branding a herd of livestock is time-consuming, difficult, and costly because of the effort and personnel needed to restrain each animal. This is even more true for cervids than for other livestock because, as one commenter pointed out, cervids are powerful, flighty, and easily frightened animals requiring firmer restraint than most domesticated cattle and posing a safety risk to anyone handling them. It is far easier to simply herd the animals into a truck which is then sealed by the APHIS representative, State representative, or accredited veterinarian who identified the herd. However, there are always circumstances under which it is impractical or unfeasible for owners to move their animals in this manner, such as lack of a proper vehicle, unavailability of APHIS or State personnel, or inability to market the animals immediately. Under such circumstances, it would be necessary for owners to have the cervids branded.

The commenter further asked that, if we do not make the change requested above, we amend the interim rule by replacing the requirement that cervids be marked with a hot-iron brand with a requirement that allows for any method of marking (specifically, freeze-branding) that produces permanence and legibility by the time of an animal's shipment to slaughter, even if the mark is not instantly recognizable upon application. We have made no changes based on this comment.

This rulemaking concerns animals that have responded to a test for tuberculosis, or are known to have been exposed to an animal that has responded to a test for tuberculosis. Because tuberculosis is such a destructive disease, it is imperative that such animals be either identified immediately or moved to slaughter in such a manner that there is no significant risk the animals will be diverted from their destination. For this reason we did not propose to allow marking methods (such as freeze-branding) that are not instantly recognizable for identifying tuberculosis reactor and exposed cervids. The necessity for an instantly recognizable mark is so that the animals are not unknowingly commingled with healthy animals after they leave the premises where they were identified for slaughter. Even if the "instantly recognizable" requirement were to be waived to allow freeze-branding, the owners of reactor or exposed cervids would have to keep those animals under quarantine for the 18–21 days that it takes for the mark to become visible. That extra time on the farm would increase the chances that healthy animals might become exposed or infected. A central goal of the tuberculosis eradication program is to identify diseased animals and get them away from other animals before the disease can spread. To require the animals to be kept on the farm runs counter to that goal. The owners of the quarantined cervids would also be subject to economic losses associated with feeding and caring for the animals, potential decreases in market prices, and animals dying before sale.

The commenter pointed out that the tattoo mark that the interim rule allows for reactor cervids moved to slaughter in sealed vehicles is instantly recognizable, and that we should allow this method of marking for exposed cervids, as well. The tattoo mark in the ear of reactor cervids moved to slaughter in a sealed vehicle is an added precaution to ensure that a tuberculosis reactor is not sold for any purpose other than slaughter.

There are problems with tattooing that prevent us from offering it as a general alternative to branding for all disease-affected animals. One is that the tattoo must be on skin (not hair) in order to be legible. We have chosen the inside of the ear as the most accessible and reliable area on which to place a tattoo. However, unlike a brand, which can be applied and spotted more easily, the animal's head must be restrained in order to tattoo the ear, and in order to see the tattoo at a later time. Yellow paint on the ear can help identify an animal which has a "TB" tattoo, but it is not foolproof, as paint can wear or rub off. For these reasons, we have chosen to confine the use of a tattoo as disease identification to tuberculosis reactors that are moved to slaughter in sealed vehicles.

Miscellaneous Change

As stated previously, the interim rule required that reactor cervids be identified by a brand and by attaching to the left ear an approved metal eartag bearing a serial number and the inscription "U.S. Reactor", or similar State reactor tag; and that exposed cervids be identified by a brand and by attaching to the left ear an approved metal eartag bearing a serial number. We recently published a final rule that required the same identification for tuberculosis reactor and exposed cattle and bison (Docket No. 95–006–2, 60 FR 48362–48369, published September 19, 1995).

Although not mentioned in any comments we received on this interim rule or on the final rule for cattle and bison, it has nevertheless come to our attention that the requirement that exposed cattle, bison, and cervids be tagged on the left ear needs to be revised to allow the eartag to be attached to either ear. The eartag attached to reactor cattle, bison, and cervids bears the inscription "U.S. Reactor", and has historically been attached to the left ear to help quickly differentiate reactors from other cattle, bison, and cervids. The eartag attached to exposed cattle, bison, and cervids is not a special eartag, but is the same eartag used to identify any animal that has been tested for tuberculosis. Historically, we have not specified to which ear the tag should be attached, and in some cases, it has been policy to attach all eartags except reactor tags to the right ear. Veterinarians and cattle, bison, and cervid owners have been used to attaching non-reactor eartags to either ear, and we have experienced no problems with this system.

Therefore, to avoid confusion, we are revising the interim rule to allow exposed cervids to be identified by attaching to either ear an approved metal eartag bearing a serial number. We are also revising the regulations in 9 CFR part 50 and part 77, concerning tuberculosis in cattle and bison, to allow exposed cattle and bison to be identified by attaching to either ear an approved metal eartag bearing a serial number.

Therefore, based on the rationale set forth in the interim rule and in this document, we are adopting the provisions of the interim rule as a final rule, with the change discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This document makes final an interim rule effective and published in the **Federal Register** on July 24, 1995 (60 FR 37804–37810, Docket No. 94–133–1). As part of the interim rule document, we performed an Initial Regulatory Flexibility Analysis, in which we invited comments concerning potential effects of the interim rule. We stated that we were particularly interested in determining the number and kind of small entities that might incur benefits or costs from implementation of the rule. None of the comments we received on the interim rule addressed our Initial Regulatory Flexibility Analysis, and none provided any information of the type we requested. We have therefore based this Final Regulatory Flexibility Analysis on the data available to us.

The interim rule provided for the payment of indemnity for the destruction of tuberculosis reactor cervids, at the rate of up to $750 per head. The interim rule also provided for the payment of indemnity for cervids, cattle, or bison that are destroyed because of tuberculosis after being exposed to any tuberculous livestock, at the rate of up to $450 per head. These are the same rates currently provided in the regulations for tuberculosis reactor cattle and bison and for cattle and bison exposed to tuberculous cattle and bison. The interim rule was necessary to encourage owners to rapidly remove cattle, bison, and cervids affected with and exposed to tuberculosis from their herds, thereby facilitating tuberculosis eradication efforts in the United States. Depopulation of tuberculous cattle, bison, and cervids is voluntary.

Cervid producers affected by this rule would be primarily producers of deer and elk. There are approximately 1,600 deer and elk producers in the United States, raising about 250,000 head under controlled farm conditions. Holdings vary in size and degree of commercialization, but almost all deer and elk producers can be classified as small businesses (defined by the Small Business Administration as having less than $0.5 million annual gross receipts). However, many producers rely on other sources of income (such as dairy farming or beef cattle ranching) for their livelihoods.

In general, elk producers concentrate on building up their herds, with most newborns retained as breeding stock. However, a fair market value for a heifer elk is between $4,000 and $5,000. Annual income is earned from the sale of antlers cut in the velvet stage of growth. The antlers sell for about $65 per pound, and a single bull elk can produce an average of 18 pounds of antlers per year, for more than 10 years. Thus, a gross income of $1,000 or more can be derived per year from a bull elk.

The value per animal is lower for deer than for elk, and varies by species. Currently, at private sales, prices for good quality fallow does and bucks range between $500 and $1,000. Young deer command only $300 to $500 per head. Slightly lower prices prevail at public auctions.

Destruction of cervid herds affected with tuberculosis is voluntary on the part of the owners. The indemnity payments of up to $750 per head for reactor cervids and up to $450 per head for exposed cervids will partially compensate cervid producers for lost income incurred by the destruction of the animals. These indemnity payments could provide a significant incentive for the owners of these herds to destroy the tuberculous animals. Although the indemnity payments will not completely cover the monetary losses resulting from whole herd depopulation, the payments will significantly reduce losses for deer and elk producers.

The alternative to the interim rule would have been to take no action. We did not consider taking no action a reasonable alternative because, without the economic incentive of Federal compensation for destroyed animals, owners would be more likely to allow tuberculosis infection to persist in their herds.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0084.

List of Subjects

9 CFR Part 50

Animal diseases, Bison, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements, Tuberculosis.

9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, 9 CFR parts 50 and 77 are amended as follows:

PART 50—ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS

1. The authority citation for part 50 continues to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a-1, 120, 121, 125, and 134b; 7 CFR 2.22, 2.80, and 371.2(d).

§ 50.6 [Amended]

2. In § 50.6, paragraphs (b) and (e), the words "the left ear" are removed from the first sentence of each paragraph and the words "either ear" are added in their place.

PART 77—TUBERCULOSIS

3. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

§ 77.5 [Amended]

4. In § 77.5, paragraph (b)(1), the words "the left ear" are removed and the words "either ear" are added in their place.

Done in Washington, DC, this 14th day of May 1996.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–12623 Filed 5–17–96; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 28564; Amdt. No. 1726]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8722.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR Part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

The amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on May 3, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identifed as follows:

** * * Effective May 23, 1996*

Cornith, MS, Roscoe Turner, ILS RWY 17, Orig
Lebanon, TN, Lebanon Muni, NDB RWY 19, Orig
Seattle, WA, Boeing Field/King County Intl, LOC/DME RWY 13R, Orig

** * * Effective June 20, 1996*

Stevensville, MD, Bay Bridge, GPS RWY 11, Orig
Charlevoix, MI, Charlevoix Muni, NDB or GPS RWY 9, Amdt 9
Charlevoix, MI, Charlevoix Muni, NDB or GPS RWY 27, Amdt 10
Fremont, Mi, Fremont Muni, GPS RWY 18, Orig
Wentzville, MO, Wentzville, VOR/DME OR GPS–A, Amdt 2, CANCELLED
Omaha, NE, Eppley Airfield, ILS RWY 14R, Amdt 3B, CANCELLED
Omaha, NE, Eppley Airfield, ILS RWY 32L, Amdt 5, CANCELLED
Portales, NM, Portales Muni, GPS RWY 1, Orig
Cortland, NY, Cortland County-Chase Field, GPS RWY 24, Orig
Sparta, WI, Fort McCoy, GPS RWY 11, Orig
Sparta, WI, Fort McCoy, GPS RWY 29, Orig

** * * Effective July 18, 1996*

Petersburg, WV, LDA/DME–B, Amdt 2
Hollister, CA, Hollister Muni, GPS RWY 31, Orig
Beaumont-Port Arthur, TX, Jefferson Conunty, VOR/DME OR GPS RWY 34, Amdt 7

The FAA published an Amendment in Docket No. 28548, Amdt. No. 1724 to Part 97 of the Federal Aviation Regulations (Vol. 61, FR No. 84, Page 18943; dated Tuesday, April 30, 1996) under Section 97.23 effective 20 Jun 96, which is hereby amended as follows:

SELMA, AL, Craig Field,
VOR RWY 15, Orig
VOR RWY 33, Orig
VOR RWY 32, Amdt 3, CANCELLED

The effective date is changed to 23 MAY 96.

[FR Doc. 96–12641 Filed 5–17–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28565; Amdt. No. 1727]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Date Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the

following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedures before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC, on May 3, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/OME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * Effective Upon Publication.

FDC date	State	City	Airport	FEC No.	SIAP
04/18/96	LA	Slidell	Slidell	6/2294	NDB RWY 19, AMDT 1...
04/18/96	LA	Slidell	Slidell	6/2295	NDB RWY 36, ORIG...
04/18/96	NE	Chadron	Chadron Muni	6/2285	VOR OR GPS RWY 20, AMDT 6...
04/19/96	MS	McComb	McComb-Pike County-John E. Lewis Field.	6/2335	NDB OR GPS RWY 15, AMDT 4...
04/19/96	MS	McComb	McComb-Pike County-John E. Lewis Field.	6/2336	LOC RWY 15, AMDT 6...
04/19/96	NE	Cozad	Codaz Muni	6/2329	VOR OR GPS RWY 13, AMDT 1...
04/19/96	NE	Fairmont	Fairmont State Airfield	6/2331	NDB OR GPS RWY 35, AMDT 1...
04/19/96	NE	Gothenburg	Quinn Field	6/2327	VOR OR GPS-AMDT 1...
04/19/96	NE	Gothenburg	Quinn Field	6/2328	NDB OR GPS RWY 32, AMDT 1...
04/19/96	NE	Kimball	Kimball Muni/Robert E Arraj Field	6/2330	NDB OR GPS RWY 28, ORIG...
04/19/96	NE	Lincoln	Lincoln Muni	6/2322	ILS RWY 17R, AMDT 6...
04/19/96	NE	Lincoln	Lincoln Muni	6/2323	ILS RWY 35L, AMDT 11...
04/19/96	NE	Lincoln	Lincoln Muni	6/2324	VOR OR GPS RWY 17L, AMDT 6...
04/19/96	NE	Lincoln	Lincoln Muni	6/2325	VOR OR GPS RWY 17R, AMDT 11...
04/19/96	NE	Lincoln	Lincoln Muni	6/2326	NDB OR GPS RWY 35L, AMDT 8...
04/22/96	KS	Topeka	Forbes Field	6/2380	VOR/DME OR TACAN OR GPS RWY 21, AMDT 6...
04/22/96	IA	Maquoketa	Maquoketa Muni	6/2388	RNAV OR GPS RWY 33, ORIG...
04/22/96	IA	Maquoketa	Maquoketa Muni	6/2390	NDB OR GPS RWY 15, AMDT 2...
04/22/96	IA	Marshalltown	Marshalltown Muni	6/2402	VOR OR GPS RWY 30, AMDT 7...
04/22/96	KS	Topeka	Forbes Field	6/2378	ILS RWY 31, AMDT 8...

FDC date	State	City	Airport	FEC No.	SIAP
04/22/96	KS	Topeka	Forbes Field	6/2379	VOR/DME OR TACAN RWY 3, AMDT 5...
04/22/96	KS	Topeka	Forbes Field	6/2383	RNAV RWY 13, AMDT 3...
04/22/96	KS	Topeka	Forbes Field	6/2384	NDB OR GPS RWY 31, AMDT 7...
04/22/96	KS	Topeka	Forbes Field	6/2386	NDB OR GPS RWY 13, AMDT 5...
04/22/96	LA	Homer	Homer Muni	6/2403	GPS RWY 30, ORIG...
04/22/96	MO	Kansas City	Kansas City Downtown	6/2396	NDB RWY 19, AMDT 16B...
04/22/96	MO	Kansas Cith	Kansas City Downtown	6/2399	VOR OR GPS RWY 19, AMDT 18...
04/22/96	MO	St Joseph	Rosecrans Memorial	6/2397	NDB OR GPS RWY 35, AMDT 28A...
04/22/96	MO	St Joseph	Rosecrans Memorial	6/2398	ILS RWY 34, AMDT 29A...
04/24/96	TN	Nashville	Nashville Intl	6/2434	ILS RWY 2L AMDT 7...
04/24/96	VA	Winchester	Winchester Regional	6/2447	LOC RWY 32 AMDT 3A...
04/25/96	IA	Sioux City	Sioux Gateway	6/2503	VOR/DME RNAV RWY 17, ORIG...
04/25/96	MO	Point Lookout	M. Graham Clark	6/2499	VOR/DME RNAV OR GPS RWY 23, AMDT 2...
04/25/96	NM	Zuni Pueblo	Zuni Pueblo/Black Rock	6/2481	GSP RWY 7, ORIG...
04/26/96	MO	Kansas City	Richards-Gebaur Memorial	6/2536	ILS 1, RWY 36, AMDT 3...
04/30/96	MD	Fredreick	Frederick Muni	6/2613	GPS RWY ORIG...
04/01/96	WI	Sparti	Fort McCoy	6/2629	NDB OR GPS RWY 29 AMDT 1...
04/26/96	OH	Port Clinton	Carl R. Keller Field	6/2539	GPS RWY 27 ORIG...

[FR Doc. 96–12640 Filed 5–17–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28566; Amdt. No. 1728]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the

conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include "or GPS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove "or GPS" from these non-localizer, non-precision instrument approach procedure titles.) Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is no a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on May 3, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective June 20, 1995*

Mountain Home, AR, Baxter County Regional, VOR/DME RNAV or GPS RWY 5, Amdt IA CANCELLED
Mountain Home, AR, Baxter County Regional, VOR/DME RNAV RWY 5, Amdt IA Paragould, AR, Kirk Field, VOR or GPS RWY 4, Amdt 3A CANCELLED
Paragould, AR, Kirk Field, VOR RWY 4, Amdt 3A
Vacaville, CA, Nut Tree, RNAV or GPS RWY 20, Amdt 1 CANCELLED
Vacaville, CA, Nut Tree, RNAV RWY 20, Amdt 1
Harrisburg, IL, Harrisburg-Raleigh, NDB or GPS RWY 24, Amdt. 9 CANCELLED
Harrisburg, IL, Harrisburg-Raleigh, NDB RWY 24, Amdt. 9
Winfield/Arkansas City, KS, Strother Field, NDB or GPS RWY 35, Amdt. 3A CANCELLED
Winfield/Arkansas City, KS, Strother Field, NDB, RWY 35, Amdt. 3A
Houma, LA, HounaTerrebonne, NDB or GPS RWY 18, Amdt. 4A CANCELLED
Houma, LA, HounaTerrebonne, NDB RWY 18, Amdt. 4A
Corinth, MS, Roscoe Turner, NDB or GPS RWY 17, Amdt. 8 CANCELLED
Corinth, MS, Roscoe Turner, NDB RWY 17, Amdt. 8
Portales, NM, Portales Muni, NDB or GPS RWY 1, Orig. CANCELLED
Portales, NM, Portales Muni, NDB RWY 1, Orig.
Alice, TX, Alice Intl, VOR or GPS RWY 31, Amdt. 11 CANCELLED
Alice, TX, Alice Intl, VOR RWY 31, Amdt. 11
Alpine, TX, Alpine-Casparis Municipal, NDB or GPS RWY 19, Amdt. 5 CANCELLED
Alpine, TX, Alpine-Casparis Municipal, NDB RWY 19, Amdt. 5
Ballinger, TX, Bruce Field, NDB or GPS RWY 35, Amdt. 1 CANCELLED
Ballinger, TX, Bruce Field, NDB RWY 35, Amdt. 1
Houston, TX, Houston Gulf, VOR or GPS RWY 31, Amdt 1A CANCELLED
Houston, TX, Houston Gulf, VOR RWY 31, Amdt 1A
Monahans, TX, Roy Hurd Memorial, VOR/DME or GPS RWY 12, Amdt. 1 CANCELLED
Monahans, TX, Roy Hurd Memorial, VOR/DME RWY 12, Amdt. 1
Palestine, TX, Palestine Muni, NDB or GPS RWY 35, Amdt. 7 CANCELLED
Palestine, TX, Palestine Muni, NDB RWY 35, Amdt. 7
Fond Du Lac, WI, Fond Du Lac County, VOR/DME or GPS RWY 36, Amdt. 6 CANCELLED
Fond Du Lac, WI, Fond Du Lac County, VOR/DME RWY 36, Amdt. 6
Sparta, WI, Sparta/Fort Mc Coy, NDB or GPS RWY 29, Amdt. 1 CANCELLED
Sparta, WI, Sparta/Fort Mc Coy, NDB RWY 29, Amdt. 1
Summersville, WV, Summersville, NDB or GPS RWY 4, Amdt. 2 CANCELLED
Summersville, WV, Summersville, NDB RWY 4, Amdt. 2

[FR Doc. 96–12639 Filed 5–17–96; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310 and 341

[Docket No. 94N–0247]

RIN 0910–AA01

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Amendment of Monograph for OTC Bronchodilator Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the final monograph for over-the-counter (OTC) bronchodilator drug products by removing pressurized metered-dose aerosol container dosage forms for the ingredients epinephrine, epinephrine bitartrate, and racepinephrine hydrochloride. This action is being taken because the OTC marketing of such drug products will require an approved application containing certain information not required by the monograph. The agency is also amending the regulation that lists nonmonograph active ingredients by adding any ingredient(s) in a pressurized metered-dose aerosol container for OTC bronchodilator drug products. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: June 19, 1996.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–105), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2304.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 2, 1986 (51 FR 35326), FDA issued a final monograph establishing conditions under which OTC bronchodilator drug products are generally recognized as safe and effective and not misbranded. Section 341.76(d)(2)(i) (21 CFR 341.76(d)(2)(i)) provides for products containing epinephrine, epinephrine bitartrate, and racepinephrine hydrochloride for use in a pressurized metered-dose aerosol container (hereinafter referred to as an inhaler or MDI). The agency stated in the final monograph (51 FR 35326 at 35333 to 35334) that data and information available at that time concerning the technology to produce reliable MDI dosage forms allowed the agency to generally recognize OTC MDI drug products as safe and effective. Further, the agency had anticipated that MDI drug products would continue to contain a chlorofluorocarbon (CFC) propellant and that marketing would continue under approved applications, as stated in § 2.125(d) (21 CFR 2.125(d)), containing information on manufacturing controls for the MDI.

In the **Federal Register** of March 9, 1995 (60 FR 13014), FDA issued a notice of proposed rulemaking to amend the final monograph for OTC bronchodilator drug products to remove pressurized MDI aerosol container dosage forms for the ingredients epinephrine, epinephrine bitartrate, and racepinephrine hydrochloride. The agency also proposed to amend the regulation that lists nonmonograph active ingredients to add any ingredient(s) in a pressurized MDI aerosol container for OTC bronchodilator drug products.

In the proposal, the agency discussed several developments that changed its view about the inclusion of pressurized MDI dosage forms in the final monograph for OTC bronchodilator drug products. The agency determined that an assessment of the safety and effectiveness of each MDI aerosol drug product must be made based on a reconsideration of the nature of MDI aerosol drug products, potential future reformulations to include new propellants, and the recommendations of various international workshops and FDA advisory committee discussions. The agency proposed that all MDI aerosol dosage forms must have premarket approval to ensure their safety and effectiveness.

Interested persons were invited to file by May 23, 1995, written comments or objections on the proposed regulation. Interested persons were invited to file comments on the agency's economic impact determination by May 23, 1995.

In response to the proposal, one drug manufacturer and an association of pharmaceutical scientists submitted comments. Copies of the comments are on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Final agency action on OTC MDI aerosol drug products containing epinephrine, epinephrine bitartrate, and racepinephrine hydrochloride occurs with the publication of this final rule amending the final monograph for OTC bronchodilator drug products.

As discussed in the proposal (60 FR 13014), the agency advised that the conditions under which the drug products that are subject to this amendment to the final monograph will no longer be generally recognized as safe and effective and are misbranded (nonmonograph conditions) will be effective 30 days after the date of publication in the **Federal Register**. Therefore, on or after June 19, 1996, no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application or abbreviated application (hereinafter called application). Manufacturers are encouraged to comply voluntarily with the final rule at the earliest possible date.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notice published in the **Federal Register** of August 9, 1972 (37 FR 16029), or to additional information that has come to the agency's attention since publication of the advance notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

II. The Agency's Conclusions on the Comments

One comment, from a pharmaceutical scientists' association, agreed with the agency's proposal to amend the final monograph for OTC bronchodilator drug products to remove MDI aerosol dosage forms for the ingredients epinephrine, epinephrine bitartrate, and racepinephrine hydrochloride. The comment also agreed that such products should have premarket approval to ensure their safety and effectiveness. The comment explained that changes in an MDI aerosol could have significant effects on the distribution characteristics of the drug in the airways, produce a pharmacological interaction, and/or enhance toxicity of the drug product. With the phaseout of CFC-containing propellants in MDI aerosol drug products, the comment mentioned that the safety and effectiveness of the replacement propellants in these products will need to be established.

The comment stated that appropriately focused and well-designed clinical studies will be necessary to establish the clinical safety and effectiveness of new non-CFC-containing MDI aerosol formulations. New chemistry, manufacturing, and controls evaluations will be needed to document that the new formulation is compatible with the bronchodilator active ingredient and that drug delivery from the new system is comparable to the old system. The comment added that much of the testing needed to confirm the integrity and proper functioning of MDI aerosol drug products containing non-CFC propellants can be determined by in vitro testing. Such testing could determine particle size, total canister contents, and consistency and reproducibility of dose delivery through the life of the dosage form, as well as assess drug related impurities and leakage rate.

The comment expressed some concern about epinephrine, epinephrine bitartrate, and racepinephrine hydrochloride used in a hand-held rubber bulb nebulizer. The comment stated that the agency's concerns about MDI aerosol dosage forms, particularly changes in the distribution characteristics of the drug in the airways, are equally applicable to hand-held rubber bulb nebulizers and spraying devices currently available. The comment also questioned the emphasis placed on many of the comments and conclusions drawn by the authors of articles cited within the proposed amendment because many of those references did not provide details of the composition of MDI aerosol drug products discussed. The comment did not specify which references failed to provide sufficient details.

Another comment, from a drug manufacturer, disagreed with the agency's proposal. The comment claimed that the proposal does not provide a reasonable basis to support the revocation of the "generally recognized as safe and effective" status of these OTC MDI aerosol drug products. The comment contended that the proposal raises questions about the safety and effectiveness of these drug products in the absence of any data showing that epinephrine-containing MDI aerosol drug products are not safe and effective when used according to

the labeling. The comment stated that the safety information discussed in the proposal relates to MDI aerosol products containing albuterol, and it does not raise any questions with respect to the safety of epinephrine-containing MDI aerosol drug products. The comment argued that because all CFC-containing MDI aerosol drug products must now be the subject of an approved new drug application (NDA), there is no public health issue concerning these drug products and, therefore, no need for this proposed monograph amendment.

The comment added that in the final monograph for OTC bronchodilator drug products (51 FR 35326 at 35333), the agency recognized that manufacturer compliance with FDA's current good manufacturing practice (CGMP) regulations would adequately address the control of the quality of drug product containers, components, and the drug product itself, and that specific requirements for MDI aerosol drug delivery systems in the monograph were unnecessary. The comment indicated that while CGMP compliance is important to assure the proper use of MDI aerosol delivery systems, the proposed amendment provides no evidence that CGMP compliance is a concern for currently-marketed epinephrine MDI aerosols.

The comment agreed with the agency that non-CFC propellants could render an MDI aerosol product a "new drug" under § 310.3(h)(1) (21 CFR 310.3(h)(1)). In that case, additional data would be required to support safety and effectiveness. However, the comment argued that new propellant formulations can be reviewed under an NDA without revoking the OTC monograph status of currently marketed CFC-containing MDI aerosol formulations.

The comment mentioned that the proposal to remove OTC MDI aerosol drug products from the final monograph for OTC bronchodilator drug products is not based on the deliberations of any advisory committee and is in conflict with the determination of the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products that epinephrine-containing OTC MDI aerosol drug products are "generally recognized as safe and effective." The comment stated that the agency should withdraw the proposal until such time as an advisory committee has reviewed the data and voted on a recommendation.

The comment also expressed concern that the agency's action could unnecessarily raise the data burden of NDA's for epinephrine-containing, CFC-propelled MDI's by imposing, without justification, new safety and effectiveness data requirements that are satisfied by the current monograph status. The comment noted that in § 330.11 (21 CFR 330.11), if an OTC drug product meets all the conditions of an applicable monograph, only a review of information pertaining to deviations from those conditions is necessary. The comment contended that § 330.11 encourages innovation and improvement in the pharmaceutical industry without unnecessary regulatory delays and unjustified data burdens. The comment added that, if new NDA's need to be submitted, the additional data required could have the effect of forcing from the market a product that has been the subject of an approved NDA and has had a safe marketing history for many years. Therefore, for these reasons, the comment requested that the agency withdraw the proposed amendment and take no further steps to complete this rulemaking.

The agency has considered the information presented by the comments and determined that marketing of pressurized MDI aerosol bronchodilator drug products containing CFC propellants requires an approved NDA containing information beyond that required by the final monograph for OTC bronchodilator drug products. Since publication of that final monograph in 1986, the agency has reconsidered the nature of MDI aerosol drug products, potential future reformulations to include new propellants, and the recommendations of various international organizations and agency advisory committees concerning the regulatory and data requirements needed to assure the clinical community and patients of the safety and effectiveness of MDI aerosol drug products.

In the proposed monograph amendment (60 FR 13014 to 13020), the agency discussed several specific developments that have changed its views about MDI aerosol dosage forms. These included: (1) Recent publications reporting chemistry, manufacturing, and controls problems resulting from changes to the container and closure system of redesigned MDI aerosol dosage forms; (2) the need for safety and effectiveness data for the new drug products as a result of those chemistry, manufacturing, and controls changes; (3) international workshops and FDA advisory committee discussions focusing on regulatory requirements for modifications to an approved innovator MDI and bioequivalence of generic MDI aerosol drug products; (4) legislation that requires a phaseout of ozone-depleting substances, including CFC propellants in MDI aerosol drug products; and (5) the need for safety data on the alternative propellants that will replace CFC's in MDI aerosol dosage forms, as well as evidence that the new MDI's deliver the drug effectively.

The agency's decision to remove epinephrine ingredients in pressurized MDI aerosol dosage forms from the final monograph for OTC bronchodilator drug products is not based on a specific safety or effectiveness concern that has been identified for any of the currently marketed OTC MDI aerosol drug products. All such products are currently the subject of an approved NDA based on agency regulations in § 2.125(d). The removal of these OTC drug products from the monograph is being done to ensure continued safety and effectiveness of these products and to provide a regulatory basis for adequate regulation of the manufacture of all future OTC MDI aerosol drug products, including those with the new propellants. This action is based on the agency's increased awareness that minor modifications in the manufacturing procedures of these products and the proposed phaseout of CFC propellants have the potential for substantial impact on the safety and effectiveness of these OTC drug products and are not adequately addressed by CGMP guidelines.

In response to the comment regarding the "generally recognized as safe and effective" status of currently marketed OTC MDI aerosol drug products containing epinephrine, epinephrine bitartrate, and racepinephrine hydrochloride, the agency maintains that its preclearance of these products under NDA's alleviates concerns about the safety and effectiveness of these drug products. However, the agency now considers preclearance of the manufacturing processes of these products an important part of assuring their continued safe and effective use.

The agency points out that the safety information discussed in the proposal relates not only to MDI aerosol drug products containing albuterol, but to all such products in pressurized MDI dosage form. Recent data presented to the agency indicate that variability in the performance of an MDI aerosol may result from the physical characteristics of the drug substance, formulation differences, valve and actuator design, and the adequacy of control parameters, specifications, and test methods for each component and the final drug product. Design modification of any component of the drug product may result in significant alterations of the dose delivered to the lung. In addition,

changes in the source or the composition of the drug product may introduce unknown contamination or impurities (extractables) when the propellant comes in contact with the plastic or rubber components of the canister (Ref. 1).

Because all currently marketed OTC CFC-containing MDI aerosols containing epinephrine are the subject of approved applications, the agency does not agree with one comment that this monograph amendment will require additional data or new applications to support the safety and effectiveness of these bronchodilator drug products. Based on agency preclearance under existing applications, the safety and effectiveness of currently marketed OTC MDI drug products are not in question. However, the agency does consider it necessary that OTC marketing of new or reformulated MDI aerosol drug products or products manufactured by a different manufacturer or in a different facility require preclearance via an approved application containing information not required by the monograph to assure the continued safe and effective use of these drug products.

An NDA deviation (§ 330.11) applies to products whose ingredient(s) is included in an OTC drug monograph. OTC MDI aerosol drug products already require an NDA for marketing because of the CFC propellants (§ 2.125(d)). A change in manufacturing procedures may only require a supplement to an NDA. If a change in manufacturing facilities occurs or a product is manufactured by a different company, the affected manufacturer should consult with the agency to ascertain what will be required in the supplemental application.

In the proposed amendment (60 FR 13014 at 13018), the agency cited several international workshops and agency advisory committee discussions that identified the regulatory requirements necessary to determine the safety and effectiveness of reformulated bronchodilator drug products. The Commission of the European Communities, the Drug Information Association, and the agency's Generic Drugs Advisory Committee with representatives from the Pulmonary-Allergy Drugs Advisory Committee (Refs. 2, 3, and 4, respectively) agreed that any change in excipients (including propellants) might result in changes in drug deposition patterns within the lung and might affect absorption and systemic safety. Further, these organizations and committees stated that premarket approval is essential to ensure the identity, strength, quality, and purity of pressurized OTC and prescription bronchodilator drug products.

In response to some of the comment's concerns regarding the use of ephinephrine, epinephrine bitartrate, and racepinephrine hydrochloride in hand-held rubber bulb nebulizers, the agency agrees that some of these concerns about MDI aerosol dosage forms, particularly changes in the distribution characteristics of the drug in the airways, are equally applicable to hand-held rubber bulb nebulizers and spraying devices. The agency intends to reexamine the use of these OTC bronchodilator drugs in hand-held rubber bulb nebulizers in a future issue of the **Federal Register**.

The agency does not agree with one comment that this amendment should be withdrawn until an advisory committee has provided its recommendation. As stated earlier, the agency is not questioning the safety and effectiveness of currently marketed OTC MDI aerosol drug products. However, the agency considers it necessary to review and evaluate the manufacturing controls for these drug products to assure their continued safe and effective use. This monograph amendment deals with process issues (the procedure by which the product gets on the market or how manufacturing changes occur), and in this particular case the agency does not consider it necessary to bring this amendment to an advisory committee for deliberation. However, in some cases, it may be appropriate to bring procedural issues to an advisory committee.

In the proposed monograph amendment (60 FR 13014 at 13020), the agency indicated that there is a statutory phaseout of CFC propellants used in these MDI aerosol products, although an exemption for MDI's for the treatment of asthma and chronic obstructive pulmonary disease exists through 1997. Based on the intended phaseout of CFC-containing propellants in MDI aerosol dosage forms, the agency is aware that the pharmaceutical and other industries are investigating alternative propellants to replace CFC's in MDI's. Given the complexity of MDI aerosol formulations and the interdependence of each of the MDI components, the agency is concerned that the use of new excipients, including non-CFC-containing propellants, could change the distribution characteristics of the MDI bronchodilator drug in the airways, produce a pharmacological interaction, or enhance toxicity of the active drug substance. Such changes in MDI aerosol formulations might alter pulmonary absorption, potentially resulting in changes in the safety and/or therapeutic effectiveness of the bronchodilator drug product. Thus, the agency intends to require manufacturers who reformulate currently approved MDI aerosol drug products with new propellants to submit additional data or a new NDA to demonstrate that inhalation and ingestion of new formulations will not result in local tissue irritation effects or other undesirable consequences, such as loss of effectiveness or local retention, resulting from inappropriate drug deposition characteristics. The additional data must include an assessment of the absorption, distribution, and retention characteristics of new propellant systems in man following inhalation. Drug deposition profiles including the quantity of drug reaching the respiratory airways and its depth of penetration must also be characterized.

Based on the above discussion, the agency considers it essential that any reformulated MDI aerosol (including use of a new propellant or component design alterations) have premarket approval under an approved NDA to ensure the safety and effectiveness of the bronchodilator drug product. Therefore, the agency is removing the ingredients epinephrine, epinephrine bitartrate, and racepinephrine hydrochloride in pressurized MDI aerosol dosage forms from the final monograph for OTC bronchodilator drug products because such products will continue to require an approved NDA containing certain information not required by the monograph. However, the monograph status of these ingredients when used in a hand-held rubber bulb nebulizer is not changed. Such products will remain in the final monograph at this time.

III. References

The following references are on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

(1) Adams, W. P. et al., "Regulatory Aspects of Modifications to Innovator Bronchodilator Metered Dose Inhalers and Development of Generic Substitutes," Journal of Aerosol Medicine, 7:119–134, 1994.

(2) "Report of the Commission of the European Communities' Committee for Proprietary Medicinal Products, Matters Relating to the Replacement of CFCs in Medicinal Products," December 15, 1993, in OTC Vol. 04BFMA3.

(3) Drug Information Association, MDI's in the Milennium: Workshop on Regulatory Issues of Efficacy, Safety, and Quality with Metered Dose Inhalers (MDI's) Drug Dosage Forms, October 18 and 19, 1993, in OTC Vol. 04BFMA3.

(4) Transcripts of the FDA Generic Drugs Advisory Committee Meeting with

Pulmonary-Allergy Drugs Advisory Committee Representation, September 14 and 15, 1993, identified as TS, Docket No. 94N–0247, Dockets Management Branch.

IV. The Agency's Final Conclusions

In this amendment, the agency is removing the ingredients epinephrine, epinephrine bitartrate, and racepinephrine hydrochloride in pressurized MDI aerosol dosage forms from the final monograph for OTC bronchodilator drug products. Accordingly, the agency is amending § 341.76(d)(2) to remove § 341.76(d)(2)(i)(a) and (d)(2)(i)(b). The agency is also amending § 310.545(a)(6)(iv) for bronchodilator drug products by adding new paragraph (a)(6)(iv)(C) and listing thereunder "any ingredient(s) in a pressurized metered-dose aerosol container." In addition, the agency is removing § 341.76(e) from the final monograph because that information now appears in § 330.1(i) (21 CFR 330.1(i)) as part of the general labeling policy for OTC drug products.

The agency points out that incorrect dates were inadvertently inserted in § 310.545(a)(6)(iv)(C) and (d)(26) of the proposed amendment (60 FR 13014 at 13020). Consequently, the agency is revising the dates in these sections to indicate that the conditions of this final rule will be effective 30 days after the date of publication in the **Federal Register**. Further, proposed § 310.545(d)(26) is renumbered in this final rule as § 310.545(d)(25).

V. Analysis of Impacts

The agency received one comment in response to the agency's request for comments on any substantial or significant economic impact that this rulemaking would have on OTC bronchodilator MDI aerosol drug products that contain epinephrine, epinephrine bitartrate, and racepinephrine hydrochloride (60 FR 13014 at 13020). The comment indicated that this rulemaking would have a significant impact on the OTC bronchodilator industry and itself if additional data or new NDA's were requested for existing NDA-approved MDI aerosol drug products. As discussed above, this monograph amendment should have minimal impact on any existing MDI aerosol drug product marketed under an approved NDA. Any changes in manufacturing procedures will require a standard supplemental application that would have been required before the amendment was finalized.

FDA has examined the impacts of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. This monograph amendment does not change the status of any currently marketed MDI aerosol drug products. All such products are currently the subject of an approved application. As is currently the case for marketed MDI aerosol products, in the interest of public health and safety, an approved application will be required for any product that is reformulated to contain a non-CFC propellant. In addition, there are a limited number of MDI aerosol bronchodilator drug product manufacturers. Accordingly, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 341

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 310 and 341 are amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.545 is amended by adding new paragraphs (a)(6)(iv)(C) and (d)(25) and by revising paragraph (d) introductory text to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(6) * * *

(iv) Bronchodilator drug products.

* * *

(C) Approved as of June 19, 1996. Any ingredient(s) in a pressurized metered-dose inhaler container.

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(25) of this section.

* * * * *

(25) June 19, 1996, for products subject to paragraph (a)(6)(iv)(C) of this section.

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

3. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

§ 341.76 [Amended]

4. Section 341.76 is amended by removing paragraphs (d)(2)(i) and (e), redesignating paragraph (d)(2)(ii) as paragraph (d)(2), and revising the heading of newly redesignated paragraph (d)(2) to read as follows:

§ 341.76 Labeling of bronchodilator drug products.

* * * * *

(d) * * *

(2) For products containing epinephrine, epinephrine bitartrate, and racepinephrine hydrochloride identified in § 341.16(d), (e), and (g) for use in a hand-held rubber bulb nebulizer.

* * *

Dated: April 11, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–12499 Filed 5–17–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

30 CFR Part 250

RIN 1010–AB96

Flaring or Venting Gas and Burning Liquid Hydrocarbons

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This rule amends regulations governing restrictions on flaring or venting gas to include restrictions on burning liquid hydrocarbons. MMS made this amendment to clarify that burning liquid hydrocarbons is allowable only under certain circumstances as approved by the Regional Supervisor.

EFFECTIVE DATE: This final rule is effective on June 19, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon Buffington, Engineering and Standards Branch, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: On February 17, 1995, MMS published a rule in the **Federal Register** (60 FR 9312) that proposed to amend the requirements at 30 CFR 250.175, flaring and venting of gas, to include burning liquid hydrocarbons. This rule is necessary because requests to burn liquid hydrocarbons are increasing, and we determined that we needed to provide regulatory guidance on burning.

Response to Comments

During the 60-day comment period, MMS received eight comments, predominately from the oil and gas industry. MMS appreciates the suggestions and comments that we received. We reviewed all of the comments, and in some instances, we revised the final language based on these comments. MMS grouped the comments by the following major issues:

1. In § 250.175(c), MMS proposed that the Regional Supervisor allow a lessee to burn a "minimal" amount of liquid hydrocarbons with prior approval. Several comments suggested that MMS determine the absolute value of "minimal." One comment suggested that we create a table of allowable burn amounts by using distance from shore as the determining factor. In general, the comments said that the term "minimal" is not specific enough.

Response

MMS agrees that, if possible, using an absolute value for the term "minimal" would be desirable. However, we feel that it is impractical to determine an solute value because it depends on many economic, technical, safety, and environmental factors. Therefore, an amount that may be prudent to burn in one area may not be acceptable to burn in another correlative area. Conserving natural resources is a major consideration in burning liquid hydrocarbons. However, our determination of the allowable "minimal" amount that you can burn will also depend on technical, safety, and environmental factors.

2. Several comments suggested that storing and transporting or re-injecting liquid hydrocarbons poses a greater risk than burning them.

Response

MMS agrees that in some cases the alternatives to burning liquid hydrocarbons may be risky to the environment or personnel. That is the reason MMS provided the option of showing the Regional Supervisor that the alternatives are infeasible or pose significant risk. MMS will evaluate the information that you supply concerning the risks of the alternatives case by case. Please be assured that the Regional Supervisor will evaluate your requests to burn hydrocarbons fairly and promptly by using the information that you supply in your requests.

3. Section 250.175(c)—One comment suggested that MMS rewrite the first sentence of paragraph (c) because the phrase "lessees must not burn liquid hydrocarbons" may portray a negative bias against burning liquid hydrocarbons.

Response

MMS did not intend to portray a negative bias against burning liquid hydrocarbons. Our intent was only to set boundaries on burning liquid hydrocarbons. However, to avoid any confusion, MMS will restate the first sentence of paragraph (c) to say that "Lessees may burn produced liquid hydrocarbons only if the Regional Supervisor approves."

4. Section 250.175(a)(3)—Several comments opposed MMS's changing the limit on flaring, without prior approval, during well evaluations and cleaning, to 48 cumulative hours (from 48 continuous hours). The individuals felt that 48 cumulative hours are not always sufficient (especially in deep water). Similarly, one comment recommended that MMS state that the Regional Supervisor has the authority to increase the flaring limit.

Response

MMS feels that, for environmental and conservation reasons, it needs to change the term "continuous" to "cumulative" for flaring during well evaluations and cleaning operations (without prior approval). Otherwise, the term "continuous" would permit multiple flarings of up to 48 hours each simply by having a shut-in period between flarings.

MMS realizes that 48 hours of flaring will not always meet well testing needs. For these occasions, the Regional Supervisor has the authority to increase the flaring limit. MMS will continue to evaluate requests for more than 48 cumulative hours of flaring during well evaluations or cleaning. However, without prior approval, MMS will only allow 48 cumulative hours per testing operation on a single completion. This limit of 48 hours should be adequate to accommodate most operations.

MMS amended the final rule to clarify that the Regional Supervisor has the authority to specify a shorter or longer flaring limit. In addition, the MMS Regions are working on guidelines for extended testing and flaring for deep water.

5. Section 250.175(a)(2)—One comment recommended that MMS delete or define "temporary" which modified "situations" because it is too vague.

Response

MMS agrees that the term "temporary" can be vague, and we deleted it from the final rule.

6. Section 250.175(c)—One comment recommended that MMS define "significant risk" because it is vague.

Response

MMS has changed the phrase to "significant risk that may harm."

7. Several comments suggested that MMS mandate the type of burner that it will permit a lessee to use.

Response

MMS recognizes that many burners exist with widely varying specifications. However, since technology constantly changes, MMS feels that it is impractical and too restrictive to mandate an allowable type of burner. However, the

Regional Supervisor will take into account the type of burner industry proposes to use when evaluating requests to burn liquids.

8. Several comments said that lessees can't predict test volumes or other data that they will need for requests to flare or vent gas and burn liquids.

Response

We realize that lessees can't precisely predict reservoir data. We only ask that, as with all other pre-approval requirements, lessees plan and, to the best of their ability, estimate well test results and removal alternatives. The Regional Supervisor will work with lessees to fairly evaluate requests.

Authors. Sharon Buffington and Jo Ann Lauterbach, Engineering and Technology Division, MMS, prepared this document.

Executive Order (E.O.) 12866

This rule is not a significant rule under E.O. 12866.

Regulatory Flexibility Act

The Department of the Interior (DOI) determined that this rule will not have a significant effect on a substantial number of small entities. In general, we do not consider the entities that engage in offshore activities small due to the technical and financial resources and experience necessary to safely conduct such activities.

In addition, the DOI determined that this rule is not a major rule because it will not result in an annual effect on the economy of $100 million or more. Also, this rule will not have significant adverse effects on competition, employment, investment, productivity, or innovation. The largest cost to industry is for the cases when the lessee must transport the liquid hydrocarbons instead of burning them. Based on the number of well tests, the number of times transportation would occur, the annual gross cost to industry to transport these liquid hydrocarbons is $348,000.

Paperwork Reduction Act

The proposed information collection requirement contained in § 250.175 were approved by the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The OMB control number is 1010–0041. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The MMS estimates the public reporting burden for this information will average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the date needed, and completing and reviewing the information collection.

Takings Implication Assessment

The DOI that this rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment does not need to be prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

Unfunded Mandate Reform Act of 1995

This rule does not contain any unfunded mandates to State, local, or tribal governments or the private sector.

E.O. 12988

The DOI certified to OMB that this rule meets the applicable civil justice reform standards provided in Section 3(b)(2) of E.O. 12988.

National Environmental Policy Act

The DOI determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 250

Continental Shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: March 13, 1996.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set forth above, MMS is amending 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1334.

2. Section 250.175 is revised to read as follows:

§ 250.175 Flaring or venting gas and burning liquid hydrocarbons.

(a) Lessees may flare or vent oil-well gas or gas-well gas without receiving prior approval from the Regional Supervisor only in the following situations:

(1) When gas vapors are flared or vented in small volumes from storage vessels or other low-pressure production vessels and cannot be economically recovered.

(2) During an equipment failure or to relieve system pressures. The lessee must comply with the following conditions:

(i) Lessees must not flare or vent oil-well gas for more than 48 continuous hours unless the Regional Supervisor approves. The Regional Supervisor may specify a limit of less than 48 hours to prevent air quality degradation.

(ii) Lessees must not flare or vent gas from a facility for more than 144 cumulative hours during any calendar month unless the Regional Supervisor approves.

(iii) Lessees must not flare or vent gas-well gas beyond the time required to eliminate an emergency unless the Regional Supervisor approves.

(3) During the unloading or cleaning of a well, drill-stem testing, production testing, or other well-evaluation testing. Flaring or venting must not exceed 48 cumulative hours per testing operation on a single completion. The Regional Supervisor may allow less time to prevent air quality degradation or more time if lessees need additional time to evaluate reservoir parameters.

(b) Lessees may flare or vent oil-well gas for up to 1 year when the Regional Supervisor approves the request for one of the following reasons:

(1) The lessee initiated an action which, when completed, will eliminate flaring and venting; or

(2) The lessee submitted an evaluation supported by engineering, geologic, and economic data indicating that either:

(i) The oil and gas produced from the well(s) will not economically support the facilities necessary to save and/or sell the gas; or

(ii) There is not enough gas to market.

(c) Lessees may burn produced liquid hydrocarbons only if the Regional Supervisor approves. To burn produced liquid hydrocarbons, the lessee must demonstrate that the amounts to burn would be minimal, or that the alternatives are infeasible or pose a significant risk that may harm offshore personnel or the environment. Alternatives to burning liquid hydrocarbons include transporting the liquids or storing and re-injecting them into a producible zone.

(d) Lessees must prepare records detailing gas flaring or venting and liquid hydrocarbon burning for each facility. The records must include, at a minimum:

(1) Daily volumes of gas flared or vented and liquid hydrocarbons burned;

(2) Number of hours of flaring, venting, or burning on a daily basis;

(3) Reasons for flaring, venting, or burning; and

(4) A list of the wells contributing to flaring, venting, or burning, along with the gas-oil ratio data.

(e) Lessees must keep these records for at least 2 years. Lessees must allow Minerals Management Service representatives to inspect the records at the lessees' field office that is nearest the Outer Continental Shelf facility, or at another location agreed to by the Regional Supervisor. If the Regional Supervisor requests to see the records, lessees must provide a copy.

[FR Doc. 96–12544 Filed 5–17–96; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100, 110 and 117

[CGD 05–96–021]

Special Local Regulations for Marine Events; Norfolk Harborfest 1996; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This document implements 33 CFR 100.501 for Norfolk Harborfest 1996, an annual event to be held in the Waterside area of the Elizabeth River between Norfolk and Portsmouth, Virginia. These special local regulations are needed to control vessel traffic within the immediate vicinity of Waterside due to the confined nature of the waterway and the expected vessel congestion during the event. The effect will be to restrict general navigation in the regulated area for the safety of participants and spectators.

EFFECTIVE DATES: The regulations in 33 CFR 100.501, 110.72aa and 117.1007(b) are effective for the following periods: 11 a.m. to 11 p.m., June 7, 1996; 8:30 a.m. to 11 p.m., June 8, 1996; and 9:30 a.m. to 7 p.m., June 9, 1996.

FOR FURTHER INFORMATION CONTACT: LTJG R. Christensen, marine events coordinator, Commander, Coast Guard Group Hampton Roads, 4000 Coast Guard Blvd., Portsmouth, VA 23703–2199, (804) 483–8521.

SUPPLEMENTARY INFORMATION:

Discussion of Rule

Norfolk Harborfest, Inc. will sponsor the Norfolk Harborfest 1996 on June 7, 8, and 9, 1996, in the Waterside area of the Elizabeth River. The event will consist of aerobatic demonstrations, an air/sea rescue demonstration, fireworks, lighted boat parade, and numerous other water events, to include a parade of sailboats and several boat and raft races. A large number of spectator vessels are expected. Therefore, to ensure safety of both participants and spectators, 33 CFR 100.501 will be in effect for the event. Under provisions of 33 CFR 100.501, a vessel may not enter the regulated area unless it is registered as a participant with the event sponsor or it receives permission from the Coast Guard patrol commander. These restrictions will be in effect for a limited period and should not result in significant disruption of maritime traffic. The Coast Guard patrol commander will announce the specific periods during which the restrictions will be enforced.

Additionally, 33 CFR 110.72aa and 33 CFR 117.1007(b) will be in effect while 33 CFR 100.501 is in effect. Section 110.72aa establishes special anchorages which may be used by spectator craft. Section 117.1007(b) provides that the draw of the Berkley Bridge shall remain closed from one hour prior to the scheduled event until one hour after the scheduled event unless the Coast Guard patrol commander allows it to be opened for passage of commercial traffic.

Dated: May 1, 1996.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 96–12645 Filed 5–17–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL–5504–4]

RIN 2060–AG40 and AG39

Outer Continental Shelf Air Regulations Offset Remand

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: The EPA is revising the outer continental shelf (OCS) regulations in response to a decision by the U.S. Court of Appeals for the District of Columbia Circuit. The OCS regulations establish air pollution control requirements for certain sources located on the OCS.

On September 4, 1992, EPA promulgated the OCS regulations, which, in part, set up special offset requirements for OCS sources located within 25 miles of the States' seaward boundaries (the 25-mile limit). The Santa Barbara County Air Pollution Control District filed a petition for review of the regulations on several issues, including the special offset provisions. Upon review, the court found that the special offset provisions departed from the Clean Air Act directive, vacated the regulation in part, and remanded it to EPA for further consideration.

By this action, EPA is revising the OCS regulations to delete the special offset provisions and to require that for sources located within the 25-mile limit, offset requirements apply as they are required in the corresponding onshore area (COA). The EPA is promulgating these revisions as an interim final regulation and is requesting comments on the revisions. The revisions will be in effect during the interim period while EPA receives, reviews and responds to any comments.

DATES: These rules shall be effective as of May 20, 1996. Written comments on this action must be received by EPA at the address below on or before June 19, 1996.

ADDRESSES: The public docket for this action is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the Air and Radiation Docket and Information Center (6101), Attention Docket A–95–06, South Conference Center, Room 4, 401 M Street, SW, Washington, DC 20460. A reasonable fee for copying may be charged.

FOR FURTHER INFORMATION CONTACT: Mr. David Stonefield, U.S. EPA, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5350.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

The Clean Air Act Amendments of 1990 (Act) (Pub. L. 101–549, 104 Stat. 2399 (1990)) added section 328 to the Act and transferred authority to regulate sources on part of the OCS from the Department of the Interior (DOI) to EPA. The DOI retained the authority to regulate OCS sources in the Gulf of Mexico west of 87.5 degrees longitude. As to the remaining portions of the OCS—the Atlantic, Pacific, and Arctic coasts and the Gulf of Mexico east of 87.5 degrees—section 328 requires EPA

to establish requirements for the control of air pollution from OCS sources, to attain and maintain Federal and State ambient air quality standards, and to comply with the provisions of part C of title I of the Act. For sources within 25 miles of the States' seaward boundaries, those requirements must be "the same as would be applicable if the source were located in the [COA]. * * *" For sources beyond the 25-mile limit, the Administrator has discretion in determining the requirements. The EPA proposed (56 FR 63774, December 5, 1991) and promulgated (57 FR 40792, September 4, 1992) regulations to implement the requirements of section 328. Among other things, EPA said that it would require OCS sources to meet the requirements of the operating permits regulations (40 CFR part 71) and the enhanced monitoring regulations when promulgated.

B. Offset Provisions

Generally, in nonattainment areas, a new source or existing source undergoing modification which results in increased emissions must secure emission reductions of an equal or greater amount from existing sources in that area to "offset" its new emissions. In promulgating the OCS regulations, EPA required that OCS sources obtain offsets based on the requirements imposed in the COA and in accordance with special offset requirements for OCS sources that EPA established in 40 CFR 55.5(d). The EPA set up three zones based upon where the offsets were obtained and applied the offset program differently in each. Offsets obtained seaward of the proposed source, zone 1, are subject to the requirements of the COA including any distance penalty or discount. Offsets obtained between the proposed source and the State's seaward boundary, zone 2, are subject to the offset ratio of the COA but not any distance discounting or penalties. Offsets obtained on the landward side of the State's seaward boundary, zone 3, are subject to the requirements of the COA including any distance penalty or discount, but the proposed source is assumed to be located at the State's seaward boundary (40 CFR 55.5(d) and 57 FR 40796).

C. Judicial Review

In November 1992, the Santa Barbara County Air Pollution Control District (APCD) filed a petition for review of the OCS rule in the Court of Appeals for the District of Columbia Circuit, claiming, among other things, that section 328 of the Act requires that the offset provision applicable to OCS sources must be *the same* as those that apply within the COA (*Santa Barbara County Air Pollution Control District* v. *EPA*, 31 F.3d 1179 (D.C. Cir. 1994)). The Santa Barbara County APCD claimed EPA overstepped the statutory boundaries by limiting the application of the COA offset provision with Federal requirements. On August 12, 1994, the Court of Appeals vacated the offset portion of the OCS regulations as it applied to zones 2 and 3, finding that EPA should promulgate the same offset requirements for OCS sources as would be applicable if the OCS sources were located in the COA. The court remanded the provision to EPA for further consideration.

Another issue raised by the Santa Barbara County APCD petition involved EPA's prohibition on the delegation of the authority to implement and enforce the OCS regulations with respect to sources located beyond the 25-mile limit. Pursuant to a request for a voluntary remand, the court remanded this issue to EPA for reconsideration on February 10, 1994. Elsewhere in today's **Federal Register**, EPA is proposing revisions to the OCS regulations to delete that prohibition.

II. Revisions to the Regulations

By this action, EPA is addressing the court's August 12, 1994 decision by revising the offset provision that applies to OCS sources. The EPA is revising section 55.5(d) of the OCS regulations to provide:

> Offset requirements. Offsets shall be obtained based on the applicable requirements of the COA, as set forth in §§ 55.13 and 55.14 of this part.

The EPA will delete the final clause of current § 55.5(d) and the text of subparagraphs (1)–(7), which placed limitations on the application of the offset requirements of the COA.

In accordance with the provisions of the Administrative Procedure Act (APA), EPA is invoking the good cause exception in taking this final action without prior notice and an opportunity for comment (5 U.S.C. 553(b)(B); *Shell Oil Co.* v. *EPA*, 950 F.2d 741, 752 (DC Cir. 1991); *Mid-Tex Elec. Co-op., Inc.* v. *FERC*, 822 F.2d 1123, 1131–34 (DC Cir. 1987)). Because the court has vacated the existing regulations as they apply to zones 2 and 3, there is a gap in continuity of the regulation. The EPA believes good cause exists to make this action final prior to providing an opportunity for notice and comment because such a procedure is unnecessary in light of the court's holding. The court decision clearly indicates that EPA was not entitled to interpret section 328 so as to allow a different application of offsets from what the COA's regulations provide. The court found that there is a clear statutory mandate which EPA should have followed. Since there is no judgment involved in the application of this provision, notice-and-comment rulemaking is unnecessary. Furthermore, because of the gap in continuity of the regulations, it is not practicable to cause notice and an opportunity for public hearing prior to filling the gap, and it is not in the public interest to do so since the gap could cause confusion and delay with respect to permitting.

Finally, for the same reasons articulated above, EPA is invoking the good cause exception to make this action effective immediately upon publication (APA, 5 U.S.C. 553(d)(3)).

Although EPA is invoking the good cause exception to make this action final without prior notice and opportunity for comment, EPA is providing the public with the opportunity to comment on this interim final action. Therefore, the final action is "interim" because EPA will reevaluate its decision in light of any comments received during the comment period and take a subsequent final action.

Appendix A to 40 CFR 55 identifies the State and local requirements incorporated into EPA's OCS regulations. Section 55.12 requires EPA to update appendix A to maintain consistency with onshore regulations. During the next consistency review for each area, EPA will incorporate any additional offset requirements necessary to comply with the requirements of these revisions.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, the Agency must determine whether the regulatory action is significant and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines significant regulatory action as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety of State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It is estimated that the upper bound for the economic impact of these revisions to the OCS rules is between $520,000 and $1,120,000 per year. However, pursuant to the terms of Executive Order 12866, OMB has determined that the revisions to the OCS rules are "significant" because the OCS sources would be regulated by two Federal agencies, EPA and DOI. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Act of 1995 requires that EPA prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Section 203 requires EPA to establish a plan for obtaining input from, informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, EPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The EPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule, unless EPA explains why a particular alternative is not selected or the selection of a particular alternative is inconsistent with law.

Because this interim final rule does not impose any new mandates on State, local, or tribal governments, and the rule is estimated to result in the expenditures by State, local, and tribal governments or the private sector of less than $100 million in any 1 year, EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, EPA is not required to develop a plan with regard to small governments. However, EPA will work with State and local air pollution control agencies that have received delegation of authority to implement and enforce the OCS regulations.

C. Paperwork Reduction Act

These rule revisions do not contain any information collection requirements subject to review by the OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to identify potentially adverse impacts of Federal rules upon small entities. Small entities include small businesses, organizations, and governmental jurisdictions. In instances where significant economic impacts are possible on a substantial number of these entities, agencies are required to perform a regulatory flexibility analysis. Furthermore, *EPA Guidelines for Implementing the Regulatory Flexibility Act*, issued on April 9, 1992, require the Agency to determine whether regulations will have any economic impacts on small entities. As explained in the September 4, 1992 final rule (57 FR 40792), the OCS regulations do not apply to any small entities. Therefore, these revisions to the OCS regulations neither impose any requirements on small entities, nor require or exclude small entities from meeting the requirements of the OCS regulations. As a result, EPA has determined that these revisions will not have a significant impact on a substantial number of small entities.

Therefore, as required under section 605 of the RFA, 5 U.S.C. 605, I certify that these revisions do not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Continental shelf, Intergovernmental relations, Nitrogen oxides, Ozone, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 13, 1996.

Carol M. Browner.

Administrator.

For reasons set out in the preamble, 40 CFR part 55 is revised and amended as set forth below.

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.4

2. Section 55.5 is amended by revising paragraph (d) to read as follows:

§ 55.5 Corresponding onshore area designation.

* * * * *

(d) *Offset requirements.* Offsets shall be obtained based on the applicable requirements of the COA, as set forth in §§ 55.13 and 55.14 of this part.

* * * * *

[FR Doc. 96–12626 Filed 5–17–96; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 167

[OECA; FRL–6507–1]

Pesticide Reports for Pesticide-Producing Establishments (EPA Form 3540–16); 1995 Annual Solicitation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Time extension for submission of reports.

SUMMARY: The EPA announced in the **Federal Register** (61 Vol. 8221, March 4, 1996), that because of delays in completing and distributing reporting packages, that it would extend the due date for submission of annual pesticide production reports (EPA Form 3540–16) for calendar year 1995 until May 1, 1996. In another **Federal Register** document (61 Vol. 14497, April 2, 1996), EPA corrected the original document of March 4, 1996, by stating "Annual pesticide production reports for calendar year 1995 will not be due until two (2) months after the reporting packages are mailed out."

This notice announces that the 1995 Pesticide Reports for Pesticide-Producing Establishments forms (EPA Form 3540–16) will be mailed out by May 24, 1996, and are due to be submitted back to the Agency by July 24, 1996. If you have not received your reporting packages within two weeks from the date of this document, please contact your local EPA Regional office.

DATES: Annual pesticide production reports for calendar year 1995 will be due July 24, 1996.

FOR FURTHER INFORMATION CONTACT: Carol L. Buckingham, (202) 564–5008, fax (202) 564–0085, Environmental Protection Agency, Mail Code 2225A, 401 M Street, SW., Washington, D.C. 20460.

Dated: May 13, 1996.

Steven A. Herman,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 96–12484 Filed 5–17–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 6E4647/R2220; FRL–5357–8]

RIN 2070–AB78

Propylene Oxide; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a time-limited tolerance for residues of the fumigant propylene oxide in or on the raw agricultural commodities almonds, Brazil nuts, filberts, pecans, pistachio nuts, and walnuts. As a practical matter, this regulation reduces the maximum permissible residue level for propylene oxide in or on these nuts from 300 ppm to 150 ppm. The regulation to establish a maximum permissible level for residues of the fumigant was requested in a petition submitted by Aberco, Inc., 9430 Lanham Severn Road, Seabrook, MD 20706.

EFFECTIVE DATE: This regulation becomes effective May 20, 1996.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 6E4647/R2220], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington , DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov.

Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [PP 6E4647/R2220]. No Confidential Business Information (CBI) should be submitted through e-mail. Information not marked confidential may be disclosed publicly by EPA without prior notice. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Walter C. Francis, Acting Chief, Antimicrobial Program Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 250, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703) 305–3661; e-mail: francis.walter @epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

REGULATED ENTITIES

Category	Examples of Regulated Entities
Industry	Nut processors who fumigate with propylene oxide Food processors who use fumigated nuts in food

This table is not exhaustive, but is a guide to the entities EPA believes are regulated by this action.

EPA issued a notice published in the **Federal Register** of February 1, 1996 (61 FR 3697), which announced that Aberco, Inc., 9430 Lanham-Severn Road, Seabrook, MD 20706 had submitted a pesticide petition (PP 6E4647) to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish a tolerance for residues of the fumigant propylene oxide, in or on the raw agricultural commodity nutmeats (except peanuts) when such foods are to be further processed into a final food form, at 300 parts per million (ppm).

All of the comments received in response to this notice of filing supported the issuance of the proposed tolerance.

On April 3, 1996 Aberco, Inc. amended the petition by requesting that the proposed maximum permissible level for residues of propylene oxide be reduced to 150 ppm. Because this is a reduction of a previously proposed tolerance level, an additional period of public comment is not necessary.

The scientific data evaluated for propylene oxide were obtained from the EPA Integrated Risk Information System (IRIS) (1990) and Meylan et al. (EPA, 1986).

Propylene oxide is classified as a B2 carcinogen with an oral slope factor of 1.53E-1 based on benign and malignant tumors in female rats when exposed by gavage.

Because nuts treated with propylene oxide are not sold directly to consumers but are intended to be added to foods that may be further processed (e.g. candy, cereal, baked goods, ice cream), EPA conducted its risk assessment based on information related to anticipated residues at the point of sale to consumers. Under normal conditions of transport and distribution, the average time between release of the treated nuts into commerce and the shipping, processing, and retailing of the final food form containing the nuts is approximately 18 days. Taking into account the percent of the nut commodities treated: almonds (3 percent); Brazil nuts (8 percent); filberts (1 percent); pecans(3 percent); pistachio nuts (1 percent); and walnuts (7 percent), and using a standard off gassing kinetic equation based on a 150 ppm level at the time of shipment from the fumigation site and a transport time of 18 days, the anticipated residues for propylene oxide at the point of consumer purchase are 3.3 ppm.

Based on IRIS and a 1985 report prepared by the World Health Organization (Environmental Health Criteria 56), the cancer endpoint is the most restrictive and conservative measurement of risk. The cancer unit potency or Q^* of 0.153 mg/kg/day^{-1} is over 1,000 times more restrictive that the estimate of an RfD using the No Observed Effect Level (NOEL) of 9 mg/kg/day obtained from a chronic rat study. The theoretical maximum residue contribution (TMRC) for all proposed tolerances (almonds, Brazil nuts, filberts, pecans; pistachio nuts, and walnuts) is 0.002 mg/kg/day for the overall U.S. population. The anticipated residue contribution (ARC) to the U.S. population is 0.000002 mg/kg/day, resulting in a lifetime cancer risk from treated nuts of 3×10^{-7}. This value assumes anticipated residues of 3.3 ppm at the point of consumer purchase. During the 2 year timeframe covered by this time-limited tolerance, the cancer risk would be 8.6×10^{-9}.

The Agency believes that the current cancer risk assessment demonstrates negligible risk.

The pesticide is useful for the purposes for which the tolerance is sought. The nature of the residue is adequately understood and an analytical method for propylene oxide (gas chromatography) previously developed for tolerance petitions 5H5087 and 6H5119 is available in JAOAC, Vol 54, p. 560, 1971.

Additional residue data on propylene oxide and propylene chlorohydrin (2-PCH) are required for a permanent tolerance. These data are required to precisely determine the off-gassing kinetics and to allow the Agency to accurately verify the time interval from fumigation to the point of consumer purchase. At the present time, however, the Agency believes there are adequate data to support a time-limited tolerance while these studies are being developed. Additional toxicological data may be required based on a review of the required residue data. Further, EPA has concerns about the adequacy of the current analytical method. Therefore, a revised analytical method must be developed to address the 2-PCH known to form during fumigation of foods with propylene oxide. Revised enforcement or confirmatory methods for propylene chlorohydrin, as well as for propylene oxide *per se* must also be developed. Any additional tolerance proposals for propylene oxide will be considered on a case-by case basis.

There are presently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerance is established as set forth below. Since the Agency has no evidence that other varieties of nuts are treated with propylene oxide, tolerances are being established only for specific nuts.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under the docket number [PP 6E4647/R2220] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rule-making record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this rule is not "significant" and is not subject to OMB review.

This action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 9, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.491 is added to read as follows:

§ 180.491 Propylene Oxide; tolerance for residues.

A time-limited tolerance to expire on May 20, 1998 is established for residues of the fumigant propylene oxide, in or on the following raw agricultural commodities.

Commodity	Parts per million
Almonds	150
Brazil Nuts	150
Filberts	150
Pecans	150
Pistachio Nuts	150
Walnuts	150

[FR Doc. 96–12500 Filed 5–17–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 185

[OPP–300335B; FRL–5372–2]

Pesticides; Partial Stay of Effective Date for Order Revoking Certain Food Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial stay of Effective Date.

SUMMARY: EPA is staying the effective date of a final rule revoking the food additive regulations (FARs) for certain uses of propargite, mancozeb, ethylene oxide and propylene oxide. The final

rule, subject to objections, was published in the **Federal Register** on March 22, 1996. EPA received petitions to stay the May 21, 1996 effective date for the final rule as it applied to the four pesticides noted above. EPA is staying the effective date until it can review the petitions and determine whether to grant the petitions for stays and if so, for what length of time.

DATES: This partial stay is effective May 20, 1996.

FOR FURTHER INFORMATION CONTACT: Niloufar Nazmi, Special Review Branch (7508W), Special Review and Reregistration Division, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 3rd floor, Westfield Building, 2800 Crystal Drive, Arlington, VA, Telephone: (703) 308–8028, e-mail: nazmi.niloufar@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

In the **Federal Register** of March 22 1996 (61 FR 11993), EPA issued an order by final rule revoking the FARs for certain uses of seven pesticides. EPA revoked the above FARs based on the determination that these FARs are inconsistent with the Delaney clause, in section 409 of the Federal Food, Drug and Cosmetic Act (FFDCA). In the final rule, EPA set an effective date of May 21, 1996 for the revocations.

Any person adversely affected by the March 22, 1996 Order was allowed 30 days to: (1) File written objections to the order, (2) file a written request for an evidentiary hearing on the objections, and (3) file a petition for a stay of the effective date.

EPA received requests from four Petitioners to stay the effective date of revocation for the following: propargite on tea and figs from the Uniroyal Chemical Company; mancozeb on oat bran from the Mancozeb Task Force; ethylene oxide on ground spices from the American Spice Trade Association; and propylene oxide on nutmeats, ground spices, cocoa and gums from Aberco Inc. The Petitioners contend to have satisfied the four criteria outlined in the final rule regarding the stay of an administrative action (21 CFR 10.35). All four Petitioners assert that: (1) They will suffer irreparable injury; (2) their case is not frivolous and is being pursued in good faith; (3) they have demonstrated sound public policy grounds supporting the stay; and (4) the delay resulting from the stay is not outweighed by public health or other public interests.

Full copies of the stay requests may be viewed in the OPP Docket under the document control number. The OPP docket is located in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

By this document, EPA is staying the effective date of the March 22, 1996 final rule until such time as EPA issues its responses to the stay petitions.

List of Subjects in 40 CFR Part 185

Environmental protection, Food additives, Pesticides and pest.

Dated: May 16, 1996.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 185 is amended as follows:

1. The authority citation continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.2850 [Amended]

1. The amendment removing § 185.2850, published at 61 FR 12009, March 22, 1996 is stayed.

§ 185.5000 [Amended]

2. On page 12009, in the issue for March 22, 1996, the removal from the table in § 185.5000 of "figs, dried," and "tea, dried," is stayed. The removal of the entry for raisins is not affected by this stay.

3. On page 12009, in the issue for March 22, 1996, the removal of § 185.5150 is stayed with respect to the removal of the introductory text, paragraphs (a), (b), (c), (d) and (e), and in the table, with respect to the entries for "cocoa," "gums," "processed nutmeats (except peanuts)," and "spices, processed." The removal of the entries for "glace fruit," "prunes, dried," and "starch" is not affected by this stay. For clarity and ease of use by the reader the text that remains pursuant to the stay is set forth below.

§ 185.5150 Propylene oxide.

The food additive propylene oxide may be safely used in or on foods in accordance with the following prescribed conditions:

(a) It is intended as a fumigant in or on bulk quantities of cocoa, gums, processed spices, and processed nutmeats (except peanuts) when such bulk foods are to be further processed into a final food form.

(b) It is applied in fumigation chambers not more than one time at a temperature not in excess of 125° F. The maximum period of fumigation shall not exceed 4 hours for cocoa, processed nutmeats (except peanuts), and processed spices. For edible gums, the maximum duration shall be 24 hours.

(c) When used as described in paragraphs (a) and (b) of this section, residues shall not exceed the following limitations:

Food	Limitations[1]
Cocoa	300
Gums	300
Processed nutmeats (except peanuts)	300
Spices, processed	300

[1] Expressed as parts per million of propylene oxide.

(d) When used as a mixture with carbon dioxide (92 parts of carbon dioxide to 8 parts of propylene oxide on a weight/weight basis), all commodities listed in paragraph (c) of this section may be processed not more than one time for a period not to exceed 48 hours and at a temperature not to exceed 125° F.

(e) To assure safe use of the additive, the label and labeling of the pesticide formulation containing the food additive shall conform to the label an labeling registered by the U. S. Environmental Protection Agency.

9. On page 12009, in the issue for March 22, 1996, the removal of § 185.6300 with respect to the introductory text and bran of oats is stayed. For clarity and ease of use by the reader the text that remains pursuant to the stay is set forth below.

§ 185.6300 Zinc ion and maneb coordination product.

Tolerances are established for residues of a fungicide which is a coordination product of zinc ion and maneb (manganous ethylenebisdithiocarbamate) containing 20 percent manganese, 2.5 percent zinc, and 77.5 percent ethylenebisdithiocarbamate (the whole product calculated as zinc ethylenebisdithiocarbamate) in or on the following processed foods, when present therein as a result of the application of this fungicide to growing crops:

20 parts per million in the bran of oats.

[FR Doc. 96–12736 Filed 5–16–96; 2:14 pm]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 91

RIN 1018–AD71

Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp) Contest

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) revises the regulations governing the conduct of the annual Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp) Contest. The amendments include the following changes: correct the common and Latin name of American Green-winged Teal; deadline August 30 for submitting entry; entrant must be 18 years of age by July 1 to participate in contest; entry fee increased to $100.00; other living creatures, hunting scenes may be part of the design; Interior liability limited to amount of entry fee; third round of voting, judges indicate numerical score from 3 to 5 for each entry; and for tie vote use same method as round three.

EFFECTIVE DATE: The rule is effective July 1, 1996, the beginning of the 1996–97 contest.

ADDRESSES: Manager of Licensing, Federal Duck Stamp Contest, U.S. Fish and Wildlife Service, Department of the Interior, 1849 C Street, NW, Suite 2058, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mrs. Lita F. Edwards, (202) 208–4354.

SUPPLEMENTARY INFORMATION: The Service published the proposed rule to amend these regulations on March 14, 1996 (61 FR 10557).

The Federal Duck Stamp Contest is the only Federal agency-run art contest and has been in existence since 1949 with the 1950 stamp the first to be selected in open competition. The Federal Duck Stamp's main use is a revenue stamp needed by waterfowl hunters. This year's Contest and species information follows:

1. Contest schedule:

1996–97 Federal Duck Stamp Contest—October 15–17, 1996

Public viewing—Tuesday, October 15 from 10:00 a.m. to 2:00 p.m.

Judging—Wednesday, October 16 at 10:30 a.m. through Thursday, October 17 at 9:00 a.m.

2. The Contest will be held at the Department of the Interior building, Auditorium (C Street entrance), 1849 C Street, NW, Washington, DC.

3. The *five* eligible species for the Contest: (1) Black Duck; (2) Canada Goose; (3) Greater Scaup; (4) American Green-winged Teal; and (5) Northern Pintail.

As part of an effort to keep pace with the cost of administering and making minor improvements to the Contest, the Service makes the following changes to this year's contest:

1. The Service corrects the common and Latin name of American Green-winged Teal.

2. Persons wishing to enter this year's Contest may submit entries anytime after July 1, but *all* entries must be postmarked no later than midnight Friday, August 30, 1996.

3. The Service increases the fee for art contest entrants to $100.00. Contest expenses have escalated each year and this increase will defray Service expenses in administering the Contest.

4. The Service requires that all entrants must be 18 years of age as of July 1 to participate in the Contest, as 18 is considered the general age of majority by most jurisdictions.

5. The Service clarifies that other living creatures, scenes, designs may be part of the design as long as living migratory birds are the dominant feature.

6. Each contestant is responsible for obtaining adequate insurance coverage for his/her entry. The Department of the Interior is not responsible for loss or damage unless it is caused by its negligence, or willful misconduct and the amount will not exceed the amount of the entry fee.

7. The Service modifies contest procedures for the third round of judging to allow more consistent scores.

8. In case of a tie vote, judges will use the same process in voting as in the third round to ensure consistency in scoring.

This regulation was not subject to Office of Management and Budget review under Executive Order 12866. These final regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements. The Department of the Interior has determined that this regulation will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) as the changes/revisions to the Contest will affect individuals not businesses or other small entities as defined in the Act. The Service received 1,038 entries for the past 2 years. The fee increase to $100.00 per entrant from $50.00 per entrant represents a $50.00 total increase per entrant. The 2 year average of entries received is 519. If those figures remain constant, then approximately $25,000.00 is the estimated annual increase to the public to participate in the program.

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

Analysis of Public Comment

The Service received no comments from the public on the changes to the regulations.

List of Subjects in 50 CFR Part 91

Hunting, Wildlife.

Accordingly, Title 50, Part 91 of the Code of Federal Regulations is amended as follows:

PART 91—[AMENDED]

1. The authority citation for Part 91 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 718j; 31 U.S.C. 9701

2. Section 91.4 is amended by revising paragraph (e)(4) to read as follows:

§ 91.4 Eligible species.

* * * * *

(e) * * *

(4) American Green-winged Teal (Anas crecca carolinensis)

* * * * *

3. Section 91.11 is amended by revising paragraph (b) to read as follows:

§ 91.11 Contest deadlines.

* * * * *

(b) Entries must be postmarked no later than midnight of August 30.

4. Section 91.12 is revised to read as follows:

§ 91.12 Contest eligibility.

United States citizens, nationals, or resident aliens are eligible to participate in the contest. Any person who has won the contest during the preceding three years will be ineligible to submit an entry in the current year's contest. All entrants must be 18 years of age as of July 1 to participate in the Federal Duck Stamp Contest. Contest judges and their relatives are ineligible to submit an entry. All entrants must submit a non-refundable fee of $100.00 by a cashiers check, certified check, or money order made payable to: U.S. Fish and Wildlife Service. (Personal checks will not be accepted.) All entrants must submit signed Reproduction Rights and Display and Participation Agreements.

5. Section 91.14 is revised to read as follows:

§ 91.14 Restrictions on subject matter of entry.

A live portrayal of any bird(s) of the five or fewer identified eligible species must be the dominant feature of the design. The design may depict more than one of the eligible species. Designs may include, but are not limited to, hunting dogs, hunting scenes, use of waterfowl decoys, National Wildlife Refuges as the background of habitat scenes, and other designs that depict the sporting, conservation, stamp collecting and other uses of the stamp. The overall mandate will be to select the best design that will make an interesting, useful and attractive duck stamp that will be accepted and prized by hunters, stamp collectors, conservationists, and others. The design must be the contestant's original creation and may not be copied or duplicated from previously published art, including photographs. An entry submitted in a prior contest that was not selected for the Federal or a state stamp design may be submitted in the current contest if it meets the above criteria.

6. Section 91.17 is revised to read as follows:

§ 91.17 Property insurance for entries.

Each contestant is responsible for obtaining adequate insurance coverage for his/her entry. The Department of the Interior will not insure the entries it receives nor is it responsible for loss or damage unless it is caused by its negligence or willful misconduct. In any event, the liability of the Department of the Interior will not exceed the amount of the entry fee as specified in § 91.12.

7. Section 91.24 is amended by revising paragraphs (h) and (i) to read as follows:

§ 91.24 Contest procedures.

* * * * *

(h) In the third round of judging, the judges will vote on the remaining entries using the same method as in round two, except they would indicate a numerical score from 3 to 5 for each entry. The Contest Coordinator will tabulate the final votes and present them to the Director, U.S. Fish and Wildlife Service, who will announce the winning entry as well as the entries that placed second and third.

(i) In case of a tie vote for first, second, or third place in the third round, the judges will vote again on the entries that are tied. The judges will vote using the same method as in round three.

* * * * *

Dated: April 25, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–12569 Filed 5–17–96; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 61, No. 98
Monday, May 20, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ANM–011]

Proposed Amendment of Class E Airspace; Baker City, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule would amend the Baker City, Oregon, Class E airspace to provide additional controlled airspace for Instrument Flight Rules (IFR) operations at the Baker City Municipal Airport. The area would be depicted on aeronautical charts for pilot reference. During an airspace review, it was noted that the airport name and the referenced navigational aid were incorrectly stated in the airspace designation for the existing Class E airspace. This proposed rule would correct that error.

DATES: Comments must be received on or before July 1, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, ANM–530, Federal Aviation Administration, Docket No. 96–ANM–011, 1601 Lind Avenue S.W., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James C. Frala, ANM–532.4, Federal Aviation Administration, Docket No. 96–ANM–011, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–ANM–011." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations Branch, ANM–530, 1601 Lind Avenue S.W., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Baker City, Oregon, to provide additional controlled airspace for IFR operations at the Baker City Municipal Airport. The area would be depicted on aeronautical charts for pilot reference. During an airspace review, it was noted that the airport name and the referenced navigational aid were incorrectly stated in the airspace designation for the existing Class E airspace. This proposed rule would correct that error. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389, 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace

Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM OR E5 Baker City, OR

Baker City Municipal Airport, OR
(lat. 44°50'17" N, long. 117°48'35" W)
Baker City VOR/DME
(lat. 44°50'26" N, long. 117°48'28" W)

That airspace extending upward from 1,200 feet above the surface within 7 miles northeast and 5.3 miles southwest of the Baker City VOR/DME 138° and 317° radials extending from 12.2 miles southeast to 14 miles northwest of the VOR/DME, and within 8.7 miles west and 4.3 miles east of the Baker City VOR/DME 345° radial extending from the VOR/DME to the south edge of V–298, and that airspace east of Baker City VOR/DME bounded on the north by the south edge of V–121, on the southeast by the northwest edge of V–269, and on the southwest by the northeast edge of V–4–444; excluding the Boise, ID, Enroute Domestic Airspace Area.

* * * * *

Issued in Seattle, Washington, on May 3, 1996.

Richard E. Prang,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 96–12638 Filed 5–17–96; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Rules Governing Misconduct by Attorneys or Party Representatives Before the Agency

AGENCY: National Labor Relations Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Labor Relations Board (NLRB) is proposing to revise its rules governing misconduct by attorneys and party representatives before the Agency. The proposed changes consolidate the current misconduct rules applicable to unfair labor practice and representation proceedings into a single rule, clarify and revise the current rules to cover such misconduct at any and all stages of any Agency proceeding, whether or not it occurs during a hearing, and set forth the procedures for processing allegations of misconduct. In addition, the proposed changes revise Section 102.21 of the Board's rules governing the filing of answers to unfair labor practice complaints to make that section's disciplinary provisions applicable to non-attorney party representatives as well as attorneys.

DATES: All comments must be received on or before June 19, 1996.

ADDRESSES: All written comments should be sent to Office of the Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Room 11600, Washington, DC 20570. Telephone: (202) 273–1940. The comments should be filed in eight copies, double spaced, on 8½ by 11 inch paper and shall be printed or otherwise legibly duplicated.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, Telephone: (202) 273–1940.

SUPPLEMENTARY INFORMATION: The NLRB's rules governing misconduct by attorneys and party representatives before the Agency are currently set forth in two separate sections of the Board's rules and regulations: Section 102.44 (unfair labor practice proceedings) and 102.66(d) (representation proceedings). These sections, which are virtually identical, currently provide that misconduct at a hearing shall be grounds for summary exclusion from the hearing, and that "such misconduct of an aggravated character" may also be grounds for suspension or disbarment by the Board from further practice before it after due notice and hearing.

Applying these rules, the Board in several cases has suspended or disbarred attorneys or non-attorney party representatives from further practice before the Agency for engaging in misconduct during the course of unfair labor practice or representation hearings. See, e.g., *Joel Kieler*, 316 NLRB 763 (1995); *Sargent Korch*, 314 NLRB 482 (1994); *In re An Attorney*, 307 NLRB 913 (1992); *Kings Harbor Health Care*, 239 NLRB 679 (1978); *Roy T. Rhodes*, 152 NLRB 912 (1965); *Herbert J. Nichol*, 111 NLRB 447 (1955); and *Robert S. Cahoon*, 106 NLRB 831 (1953).

As currently written, however, the Board's rules have several deficiencies. First, they do not specifically cover misconduct that does not occur during the course of a hearing. As a result, the Board has been unable to take effective and appropriate disciplinary action against attorneys or party representatives who are alleged to have engaged in misconduct in the pre-hearing, investigative and/or compliance stages of its proceedings. Thus, for example, the Board recently held that it was without authority under its current rules to institute disciplinary proceedings against an attorney who allegedly suborned perjury during the pre-complaint investigation of an unfair labor practice charge. See *H.P. Townsend Mfg. Co.*, 317 NLRB 1169 (1995). The Board in that case instead transferred the record to the State Bar Association with a request that it investigate whether disciplinary action was warranted.

Second, the Board has found that the language in the current rules, "misconduct of an aggravated character," has sometimes caused confusion about what types of conduct would be subject to suspension or disbarment. See, e.g., *Sargent Korch, supra*, 314 NLRB at 486. The courts often consider both "aggravating" and "mitigating" factors in determining the appropriate sanction for attorney misconduct under the ABA Model Rules of Professional Conduct and the various state rules of professional conduct. See ABA/BNA Lawyers Manual on Professional Conduct 101:3101–3102 (1995). However, the phrase "aggravated" misconduct is not often used as in the Board's rules. This has raised questions about whether the Board's rules are intended to cover the same type of conduct covered by those rules.

Third, the Board's rules fail to set forth the procedures to be followed in processing allegations of misconduct. Thus, the Board's current rules fail to advise parties how or where to file allegations of misconduct or how such allegations will be processed or what their rights are.

The proposed changes are intended to address each of these problems. First, the Board is proposing to revise the rules to cover misconduct at any and all stages of any Agency proceeding, whether or not it occurs during a hearing. Unlike under the current rules, under the new rule misconduct by attorneys or party representatives will be subject to disciplinary sanction even if the misconduct occurs during the pre-hearing, investigative or compliance stage of the proceeding.[1]

Second, the Board is proposing to delete the phrase "aggravated" misconduct from the rules, and to substitute the phrase "misconduct including unprofessional or improper behavior". By substituting this language it is not the Board's intent to make any change in the kind of conduct currently covered by the Board's misconduct rules. Rather, the Board is simply attempting to make the current rule more understandable by using language that is more familiar to attorneys and party representatives who practice before the Board. The Board will continue to consider both aggravating and mitigating factors in determining the appropriate disciplinary sanction.

[1] Misconduct by Agency employees, at any stage of an Agency proceeding, will be dealt with under internal disciplinary procedures.

Third, the Board proposes to set forth the procedures for the processing of misconduct allegations. Under the proposal, all such allegations would be investigated by the Associate General Counsel, Division of Operations-Management or his/her designee (the Investigating Officer). Following an investigation, the Investigating Officer would make a recommendation to the General Counsel, who would make the determination whether to institute disciplinary proceedings against the attorney or party representative (the respondent). The General Counsel's determination not to institute such proceedings would be final and non-reviewable. The procedures also set forth the rights of the respondent to respond and to request a hearing, and the procedures for conducting the hearing, where a hearing is found warranted. Except as otherwise provided, the procedures are similar to those applied in unfair labor practice proceedings.

The procedures also address the role of the person bringing the allegations of misconduct or petitioning for disciplinary proceedings against the respondent. The procedures provide that any such person shall be permitted to partipate in the disciplinary hearing to a limited extent by examining and cross-examining witnesses called by the General Counsel and the respondent, but shall not be a party to the proceeding or afforded the rights of a party to call witnesses or introduce evidence, to file exceptions to the administrative law judge's decision, or to appeal the Board's decision. The Board believes that this provision strikes a proper balance by providing such interested persons the opportunity to participate to some extent in the proceeding while ensuring that the responsibility for prosecuting the disciplinary complaint will at all times remain with the General Counsel and that the disciplinary proceeding will not be transformed into an adversary proceeding between the complaining person and the respondent.[2]

[2] Courts have long held that attorney disciplinary proceedings are in the nature of an internal investigation concerning the protection and integrity of the adjudicatory process rather than adversarial disputes involving the conflicting rights or obligations of private parties. Accordingly, they have refused to grant party status or a right to appeal to the complaining person or individual in such proceedings, even if that person or individual was a party or party representative in the case where the alleged misconduct occurred and/or was permitted to participate in the disciplinary hearing. See *Ramos Colon* v. *U.S. Attorney for the District of Puerto Rico*, 576 F.2d 1 (1st Cir. 1978); *Application of Phillips*, 510 F.2d 126 (2d Cir. 1975); *In re Echeles*, 430 F.2d 347 (7th Cir. 1970); and *Mattice* v. *Meyer*, 353 F.2d 316 (8th Cir. 1965). See also *Matter of Doe*, 801 F. Supp. 478 (D. N.M. 1992). The Board believes that this policy is a sound one and is properly applied in Agency disciplinary proceedings as well.

Finally, the Board is also proposing to revise Section 102.21 of its rules and regulations governing the filing of answers to unfair labor practice complaints. The current rule provides that the answer of a party represented by counsel shall be signed by at least one attorney of record; that the attorney's signature constitutes a certificate by the attorney that he/she has read the answer, there is good ground to support it to the best of his/her knowledge, information and belief, and it is not interposed for delay; and that the attorney may be subjected to appropriate disciplinary action for willful violations of the rule or if scandalous or indecent matter is inserted.

It is not required under the Board's rules, however, that a party representative be an attorney. Further, it is not infrequent that a party will be represented by a non-attorney and that the non-attorney party representative will sign the answer on behalf of the party. Accordingly, the Board believes that Section 102.21 should be revised to make the foregoing provisions of that section applicable to non-attorney party representatives as well as attorneys.

As required by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the NLRB certifies that these rules will not have a significant impact on small business entities.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

For the reasons set forth above, the NLRB proposes to amend 29 CFR Part 102 as follows:

PART 102—RULES AND REGULATIONS

1. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Section 102.21 is revised to read as follows:

§ 102.21 Where to file; service upon the parties; form.

An original and four copies of the answer shall be filed with the Regional Director issuing the complaint. Immediately upon the filing of his answer, respondent shall serve a copy thereof on the other parties. An answer of a party represented by counsel or non-attorney representative shall be signed by at least one such attorney or non-attorney representative of record in his/her individual name, whose address shall be stated. A party who is not represented by an attorney or non-attorney representative shall sign his/her answer and state his/her address. Except when otherwise specifically provided by rule or statute, an answer need not be verified or accompanied by affidavit. The signature of an attorney or non-attorney party representative constitutes a certificate by him/her that he/she has read the answer; that to the best of his/her knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If an answer is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the action may proceed as though the answer had not been served. For a willful violation of this section an attorney or non-attorney party representative may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

§ 102.44 [Removed]

3. Section 102.44 is removed.

§ 102.66 [Amended]

3a. Paragraph (d) of § 102.66 is removed, and paragraphs (e), (f), and (g) are redesignated paragraphs (d), (e), and (f), respectively.

4. The following new Subpart U—Misconduct By Attorneys or Party Representatives, consisting of new § 102.156, is added to read as follows:

Subpart U—Misconduct by Attorneys or Party Representatives

§ 102.156 Exclusion from hearings; Refusal of witness to answer questions; Misconduct including unprofessional or improper behavior by attorneys and party representatives before the Agency; Procedures for processing misconduct allegations.

(a) Misconduct including unprofessional or improper behavior at any hearing before an administrative law judge, hearing officer, or the Board shall be ground for summary exclusion from the hearing.

(b) The refusal of a witness at any such hearing to answer any question which has been ruled to be proper shall, in the discretion of the administrative law judge or hearing officer, be ground for striking all testimony previously given by such witness on related matters.

(c) Notwithstanding any action taken under paragraph (a) of this section, misconduct including unprofessional or improper behavior by an attorney or party representative before the Agency, including but not limited to such misconduct at any hearing, shall be ground for appropriate discipline including suspension and/or disbarment from practice before the Agency and/or other sanctions.

(d) Allegations of misconduct pursuant to paragraph (c) of this section, except for those involving the conduct of Agency employees, shall be handled in accordance with the following procedures:

(1) Allegations that an attorney or party representative has engaged in misconduct may be brought to the attention of the Investigating Officer by any person. The Investigating Officer, for purposes of this paragraph, shall be the Associate General Counsel, Division of Operations-Management, or his/her designee.

(2) The Investigating Officer or his/her designee shall conduct such investigation as he/she deems appropriate. Following an investigation, the Investigating Officer shall make a recommendation to the General Counsel, who shall make the determination whether to institute disciplinary proceedings against the attorney or party representative. If the General Counsel determines not to institute disciplinary proceedings, all interested persons shall be notified of the determination, which shall be final.

(3) If the General Counsel decides to institute disciplinary proceedings against the attorney or party representative, the General Counsel or his/her designee shall serve the Respondent with a complaint which shall include: a statement of the acts which are claimed to constitute misconduct including the approximate date and place of such acts together with a statement of the discipline recommended; notification of the right to a hearing before an administrative law judge with respect to any material issues of fact or mitigation; and an explanation of the method by which a hearing may be requested. Sections 102.24 through 102.51, rules applicable to unfair labor practice proceedings, shall be applicable to the extent that they are not contrary to the provisions of this section.

(4) Within 14 days of service of the disciplinary complaint, the respondent shall respond by admitting or denying the allegations, and may request a hearing. If no response is filed or no material issue of fact or relevant to mitigation warranting a hearing is raised, the matter may be submitted directly to the Board. If no response is filed, then the allegations shall be deemed admitted.

(5) The hearing shall be conducted at a reasonable time, date, and place. In setting the hearing date, the administrative law judge shall give due regard to the respondent's need for time to prepare an adequate defense and the need of the Agency and the respondent for an expeditious resolution of the allegations.

(6) The hearing shall be public unless otherwise ordered by the Board or the administrative law judge.

(7) Any person bringing allegations of misconduct or filing a petition for disciplinary proceedings against an attorney or party representative shall be given notice of the scheduled hearing and shall be afforded the opportunity to examine or cross-examine witnesses called by the General Counsel and respondent at such hearing. Any such questioning must be limited to the issues raised in the General Counsel's complaint. Any such person shall not be a party to the disciplinary proceeding, however, and shall not be afforded the rights of a party to call witnesses and introduce evidence at the hearing, to file exceptions to the administrative law judge's decision, or to appeal the Board's decision.

(8) The respondent will, upon request, be provided with an opportunity to read the transcript or listen to a recording of the hearing.

(9) The General Counsel must establish the alleged misconduct by a preponderance of the evidence.

(10) At any stage of the proceeding prior to hearing, the respondent may submit a settlement proposal to the General Counsel, who may approve the settlement or elect to continue with the proceedings. Any formal settlement reached between the General Counsel and the respondent, providing for entry of a Board order, shall be subject to final approval by the Board. In the event any settlement, formal or informal, is reached after opening of the hearing, such settlement must be submitted to the administrative law judge for approval. In the event the administrative law judge rejects the settlement, either the General Counsel or the respondent may appeal such ruling to the Board as provided in § 102.26.

(11) If it is found that the respondent has engaged in misconduct in violation of paragraph (c) of this section, the Board may issue a final order imposing such disciplinary sanctions as it deems appropriate, including suspension and/or disbarment from practice before the Agency, and/or other sanctions.

(12) Any person found to have engaged in misconduct warranting disciplinary sanctions under this section may seek judicial review of the administrative determination.

Dated: Washington, D.C., May 14, 1996.

By direction of the Board.

John J. Toner,

Executive Secretary.

[FR Doc. 96–12464 Filed 5–17–96; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

Review of Existing Regulations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Review of regulations; request for comment.

SUMMARY: MMS performs annual periodic reviews of its significant regulations and asks the public to participate in these reviews. The purpose of the reviews is to identify and eliminate regulations that are obsolete, ineffective or burdensome. In addition, the reviews are meant to identify essential regulations that should be revised because they are either unclear, inefficient or interfere with normal market conditions.

The purpose of this document is to: Provide the public an opportunity to comment on MMS regulations that should be eliminated or revised; and provide a status update of the actions MMS has taken on comments previously received from the public in response to documents published March 1, 1994 and March 28, 1995.

DATES: Written comments must be received by July 19, 1996.

ADDRESSES: Mail written comments to Department of the Interior; Minerals Management Service, Mail Stop 4013; 1849 C Street NW., Washington, DC 20240; Attention: Bettine Montgomery, MMS Regulatory Coordinator, Policy and Management Improvement.

FOR FURTHER INFORMATION CONTACT: Bettine Montgomery, Policy and Management Improvement, telephone (202) 208–3976; Fax (202) 208–3118.

SUPPLEMENTARY INFORMATION: MMS began a review of its regulations in early 1994 pursuant to the directives contained in the President's Executive Order 12866. The Executive Order calls for periodic regulatory reviews to ensure that all significant regulations are efficient and effective, impose the least possible burden upon the public, and are tailored no broader than necessary to meet the agency's objectives and Presidential priorities.

MMS invited the public to participate in the regulatory review. The invitation was sent out via different media, namely a **Federal Register** document dated March 1, 1994 (59 FR 9718), MMS and independent publications, and public speeches by MMS officials during that time.

MMS received approximately 40 public comments which were almost equally divided between its Royalty Management and Offshore Minerals Management Programs. MMS acknowledged the comments in a July 15, 1994 document (59 FR 36108) and set forth its planned actions to address the comments, along with an estimated timetable for the actions.

In the March 28, 1995, document (60 FR 15888), MMS: (a) asked for further public comments on its regulations, and (b) provided a status update of actions it had taken on the 40 public comments received the prior year. MMS received 10 responses from the March 28 document. We believe MMS has been very responsive to most of the comments received, to date.

This document updates the MMS planned actions and related timetables on the major comments received to date. It also solicits additional comments from the public concerning regulations that should be either eliminated or revised. Since some of the public responses received in response to prior documents contained comments on very specific and detailed parts of the regulations, this document does not address every one received. For information on any comment submitted which is not addressed in this document, please contact Mrs. Montgomery at the number and location stated in the forward sections of this document.

These annual reviews of regulations have resulted in the elimination of approximately 18 pages of regulations from the Code of Federal Regulations and the improvement, by rewriting, of over 200 pages. We are fully committed to improving our regulations and working more closely with our customers and constituents. This is part of our effort to improve government by making it more efficient and responsive.

MMS regulations are found at Title 30 in the Code of Federal Regulations. Parts 201 through 243 contain regulations applicable to MMS' Royalty Management Program (note: part 213 applies to Offshore royalty rate reductions); Parts 250 through 282 are applicable to MMS' Offshore Minerals Management; and Part 290 is applicable to Administrative Appeals.

Status Report

The following is a status report by program area on the comments MMS has received, to date, on its regulations.

A. Offshore Minerals Management (OMM) Program

OMM is currently reviewing the following eight sections of OMM regulations.

1. Regulations applicable to production in deepwater (30 CFR Part 250, Subpart H, Production).

Comments Received—(a) "Revise current regulations to provide for approval of extended flaring periods under certain situations (e.g., deepwater prospects, well tests, etc.) and clarify criteria for flaring or venting small amounts of gas",

(b) "Revise requirements associated with subsea installations * * *", etc.

Action Taken or Planned—An MMS workgroup finalized its report on deepwater regulatory issues. The major recommendation from the report was that MMS should evaluate and regulate deepwater production activities through a "total systems" approach. Under this recommendation, MMS would require a lessee to submit a Deepwater Operations Plan for each deepwater or subsea development project. Individual projects could then be evaluated within the context of the master plan. The Associate Director for Offshore Minerals Management approved the report in May 1995, and we are finalizing guidelines and procedures for the preparation and approval of the Deepwater Operations Plan.

Timetable—We are preparing a Letter to Lessees explaining the Deepwater Operations Plan and will issue it in June 1996.

2. Regulations applicable to blowout preventer (BOP) testing and maintenance requirements (30 CFR 250.56 and 57).

Comments Received—"Revise BOP testing regulations to allow for less frequent and shorter tests. Allow 14 day BOP test interval vs. current 7 day * * *."

Action Taken or Planned—MMS recently announced (March 1996) the selection of an engineering consulting firm to assess the performance of blowout preventer equipment and the frequency it should be tested. Selection of the firm was a joint effort of MMS and industry. MMS will use this cooperative study in determining if increased blowout preventer testing intervals will afford an equal or better degree of protection, safety, or performance. This study requires the systematic review and analysis of blowout preventer test results from wells drilled on the OCS.

Timetable—The contractor will provide us with a report on the study in November 1966. MMS will use the study's results to revise our regulations as appropriate.

3. Regulations governing safety and pollution prevention equipment (SPPE) (30 CFR Subpart H).

Comments Received—(a) "Reduce associated administrative burden on lessees and operators by eliminating unnecessary record keeping requirements (i.e., inventory lists, paperwork notifications, etc.)." (b) "Revise regulations governing Safety Valves to increase time between test and allowable leakage rates."

Action Taken or Planned—(a) MMS is drafting a proposed rule to revise the regulations governing SPPE. This proposed rule will address the concerns raised regarding recordkeeping. (b) MMS is reviewing Subpart H, Production Safety Systems, and plans to rewrite the subpart in plain English and update requirements where warranted. We expect to work with industry in areas where we need further data. The cooperative effort with the blowout preventer study can serve as a model.

Timetable.—(a) MMS should publish this proposed rule in the **Federal Register** by September 1996. (b) MMS will begin rewriting subpart H by this summer. We will work with industry to initiate needed safety value studies early in 1997, following the joint blowout preventer study.

4. Regulations governing conservation of resources and diligence (30 CFR 250. Subpart A, General and Subpart K, Oil and Gas Production Rates).

Comment Received—(a) "Revised Suspension of Production approval/lease holding criteria * * *", (b) "Revise Determination of Well Producibility to make wireline testing and/or mud logging analysis optional * * *", (c) "revise current regulations to provide for approval of extending flaring periods * * *", (d) "Relax restrictions on commingling reservoirs in a common wellbore * * *", (e) "Allow flexibility in the methods of

testing subsea wells. * * *", (f) "MMS [should] determine and specify allowable volumes of liquid hydrocarbons that lessees could burn without requesting approval."

Action Taken or Planned—For (a) above, MMS published a proposed rule on April 25, 1996, to extend the period for holding a lease beyond its primary term from 90 to 180 days. For (b) above, MMS is currently rewriting Subpart A in plain English. This effort will also include any changes needed to the regulations. We will obtain more ideas from industry concerning what changes are needed. For (c) above, MMS will not relax current regulations at this time. We are reviewing the results of air quality studies and will not make any changes to the regulations until this review is complete. For (d) above, MMS issued a Letter to Lessees that allowed for greater flexibility in dealing with commingling issues. For (e) above, MMS will not change the regulations. Current regulations allow operators to request that different testing methods be allowed when conventional testing is impractical. For (f) above, MMS, is addressing the burning of liquid hydrocarbons in a rule that we published as proposed on February 17, 1995. MMS agrees with the benefits of using a specific value for the term "minimal." However, in approving a request to burn liquid hydocarbons, we need to deal with many economic, technical, safety, and environmental factors. Conservation is a key factor in determining how much liquid hydrocarbons a lessee can burn. Making volume determinations on a case by case basis allows us to properly consider technical, safety, and environmental factors.

Timetable.—A final rule addressing (f) above, (burning small quantities of liquid hydrocarbons) is scheduled for publication in May 1996. Proposed rules covering the other matters mentioned above will be published during 1996 and early 1997.

5. Regulations regarding construction and removal of platforms and structures (30 CFR 250. Subpart I, Platforms and Structures).

Comments Received—(a) "Modify platform design wave return period calculation by placing a cap of 100 years on the field life calculation * *-*", (b) "Adopt API RP2A (20th edition) Section 14, Surveys, in its entirety * * *", (c) "Revise site clearance requirements * * *", (d) "Revise requirements for placing protective domes over well studs * * *", etc.

Action Taken or Planned—For (a) above, MMS is reviewing this request and considering some options. For (b) above, MMS will not modify the regulations. Current rules allow operators to petition for longer inspection intervals. On April 15–17, 1996, MMS held a workshop in New Orleans and discussed lease abandonment and platform removal issues with interested parties from other government agencies and private industry. We will continue to work with these parties to identify needed research and potential changes to the regulations.

Timetable—In the coming months, MMS will identify specific action items and timetables for both further regulatory changes and research.

6. Regulations applicable to directional surveys, (30 CFR 250.51).

Comments Received—"Revise directional survey requirements to allow composite measurement-while-drilling directional survey to be acceptable * * *."

Action Taken or Planned—MMS is planning to rewrite the regulations governing Oil and Gas Drilling Operations, found in Subpart D, in plain English. We plan to update the regulations to keep pace with current technology as part of the plain English initiative.

Timetable—MMS plans to begin drafting a proposed rule shortly, Publication in the **Federal Register** would be sometime in 1997.

7. Regulations applicable to daily pollution inspection requirements (30 CFR 250.41).

Comments Received—"Revise current requirements for daily pollution inspection of unmanned production facilities * * *."

Action Taken or Planned—On February 15, 1996, MMS issued a Notice to Lessees regarding the pollution inspection frequency for unmanned facilities. The current regulations allow operators to request a waiver from the daily inspection of unmanned facilities. The Notice to Lessees reviewed the criteria MMS uses in determining whether or not to grant the waiver.

Timetable—MMS has no plans to change the regulations in this area.

8. Regulations applicable to production safety system training (30 CFR 250.214).

Comments Received—(a) "Revise training regulations to reduce the associated burden on operators by modifying requirements (e.g., frequency, refresher requirements, structure, etc.) and allow expanded training delivery modes." (b) "* * * training regulations (well-control) are not clearly stated and often not relevant * * *."

Action Taken or Planned—MMS rewrote the entire section (subpart O) of training regulations in a plain English format and published a proposed rule in the **Federal Register** on November 2, 1995 (60 FR 55683), MMS received comments and is preparing the final rule.

Timetable—MMS should publish the final rule by the end of 1996.

9. Regulations applicable to Pipelines and Pipeline Rights-of-Way (Subpart J).

Comments Received—Revise regulations to avoid duplication of requirements between DOI and the Department of Transportation (DOT).

Action Taken or Planned—MMS continues to work with DOT and with other interested parties to develop a new memorandum of understanding (MOU) between DOI and DOT. After we have a new MOU, MMS will revise regulations to clarify rules and remove redundant requirements, and promote compatible regulations.

Timetable—We expect that DOI and DOT will approve a new MOU by fall of 1996.

B. Royalty Management Program (RMP)

RMP is reviewing regulations in the following subject areas.

1. Statute of Limitations and Record Retention

Comments Received—"Statute of limitations is unclear."

—"Establish a reciprocal 5-year statute of limitations from the date an obligation becomes due."

—"Absence of a record retention program creates some confusion. Regulations should require record retention to coincide with the 5-year statute of limitations."

Action Taken or Planned—The extent of the time periods covered by audits of royalty payments has been a matter of considerable controversy between MMS and the minerals industry for several years. MMS's goal, more recently, as reflected in the Contemporaneous Audit Initiative, has been to conduct all audits on a contemporaneous basis consistent with the most effective and efficient use of audit resources, to provide industry with earlier closure, to streamline the royalty collection process, and to be more responsive to the public we serve.

Timetable—Accordingly, MMS issued a policy memorandum on July 14, 1995, that affirms MMS's policy to complete reviews and audits of royalty payments made on Federal and Indian leased land, including issuance of enforcement documents for underpayments (orders to pay or to recompute and pay). Within the 30 U.S.C. 1713 principal documents retention period, that is within six years of the royalty payment due date. Some exceptions to this requirement may occur in RMP compliance activities.

2. Interests on Overpayments

Comment received—"Interest accrual should be equitable between the Agency and industry."

Action Taken or Planned—MMS does not have statutory authority to remit interest to companies for overpayments. We are pursuing strategies to improve electronic royalty reporting and paying options to our customers. This along with the option for companies to post surety in lieu of paying disputed amounts should decrease lost interest on overpayments to MMS.

Timetable—Ongoing.

3. Gas Valuation

Comments received—"Define gross proceeds more equitably and clearly in this ever changing gas marketing environment."

—"It is important that the Federal Gas Valuation Rule final rule not discriminate against producers which are affiliated with marketing companies and are party to non-arms-length contracts."

—"Extend the elimination of processing and transportation allowance forms to oil."

—"* * * commends the MMS on their use of negotiated rulemaking process to address the valuation of gas. Rule should result in administrative cost savings for all parties."

—"If the Takes vs. Entitlements policy stays in effect, MMS should strictly enforce reporting on actual quantities taken for all industry participants."

Action Taken or Planned—Revisions of the Valuation Regulations Governing Allowances were published in the **Federal Register** as a final rule on February 12, 1996. This rule eliminated most allowance forms filing requirements for oil, gas, and coal produced from Federal leases.

The Federal Gas Valuation proposed rule was published in the **Federal Register** on November 6, 1995, and the comment period closed on February 5, 1996. The proposed rule represented the consensus of the Federal Gas Valuation Negotiated Rulemaking Committee with representation from MMS, industry and the states.

MMS is preparing a **Federal Register** document to announce the reconvening of the committee in June 1966 and another **Federal Register** document to reopen the public comment period. The proposed rule would provide alternatives to using gross proceeds as a basis for gas valuation, such as published natural gas index prices.

The Indian Gas Valuation Negotiated Rulemaking Committee is developing a proposed rule governing the valuation for royalty purposes of natural gas produced from Indian leases. The proposed rule would add a methodology to calculate the major portion value and an alternative methodology for dual accounting as required by Indian lease terms. The proposed rulemaking would simplify and add certainty to the valuation of production from Indian leases.

MMS is developing a proposed rule clarifying what deductions may be taken from gross proceeds for the costs of transportation under Federal Energy Regulatory Commission (FERC) Order No. 636.

Timetable—MMS will reconvene the Federal Gas Valuation Negotiated Rulemaking Committee in June 1996, and has reopened the comment period to discuss options for proceeding further with a rulemaking. MMS anticipates publishing a proposed rulemaking for Indian gas valuation in July 1996. MMS also expects to publish a proposed rule on FERC Order No. 636 early this summer.

4. Reporting Procedures and Threshold

Comments Received—"Eliminate or streamline MMS Form 2014 reporting."

—"Report prior period adjustments on a 'net' basis."

—"Change estimated payment from lease level to payor level."

—"Assess interest at the payor level—for the Indian leases on the basis of each Indian Tribe."

—"Eliminate Payor Information (PIF) Filings. This is an unnecessary and costly reporting requirement."

—"MMS should modify the regulations and system tolerances/thresholds so that only those exceptions that are cost beneficial for MMS to pursue are generated."

—"Set thresholds or tolerances for regulations to save costs to both MMS and industry. (Example: Invoices are sent for less than $1.00.)"

—"MMS should not implement regulations until its systems are programmed to handle the new regulations."

Action Taken or Planned—MMS has revised its billing thresholds and assessments policy to reduce administrative costs, and we continue to review these issues through the Royalty Policy Committee which was formed in September 1995. The Committee's membership includes representatives from states, tribes, allottee associations, industry trade groups and other agencies. At their initial meeting, a Royalty Reporting and Production Accounting Subcommittee was established.

The Subcommittee had its first meeting in November 1995 and agreed to review all royalty and production reporting forms and policies. To assure all areas were addressed, four workgroups were formed to review the Payor Information Form, royalty reporting, oil and gas production reporting, and solids production reporting.

The preliminary recommendations from the workgroups cover streamlining of all reporting forms; reducing or eliminating redundant data collection; changing estimates; and reviewing thresholds for allowance and interest billings.

Timetable—The Subcommittee recommendations are to be finalized and forwarded to the full committee for their review and approval in June 1996. The recommendations will then be reviewed for possible implementation by MMS. In particular, recommendations that can be implemented in the short term without significant cost will be pursued by MMS.

5. Refunds Due to Industry Which Are Controlled by Section 10 of the Outer Continental Shelf Lands Act

Comments Received—"Section 10 refund requirements should be eliminated. The refund process used for onshore properties should be established for offshore properties."

—"Eliminate documentation requirements for refund requests over $250 M, and/or increase this threshold to $500 M; raise the refund request limit to $5 M. Exempt pure accounting adjustments for items such as production date adjustments and incorrect AID numbers; exempt unit revisions because these revisions are often made more than two years after the date of production; establish a time limit on MMS for review of a refund request to expedite the process; and overpayments on OCS properties should be allowed to be offset against any OCS underpayment."

Action Taken or Planned—A legislative change would be required to eliminate the Section 10 refund requirements of 43 U.S.C. 1339.

Section 10(b) of 43 U.S.C. 1339(b) requires MMS to report refunds or credits to both Houses of Congress and can increase the time to process refunds and recoupments. The final rule published on July 28, 1994 (59 FR 38359), Titled "Offsets Recoupments and Refunds of Excess Payments of Royalties, Rentals; Bonuses, or other amounts under Federal Offshore

Minerals Leases" established procedures for obtaining refunds and credits of excess payments and clarified what payments are not subject to Section 10's requirements. Unit agreement revisions are covered in this rule under "Transactions not subject to section 10".

This rule also provides for a de minimis exception to the MMS approval process. On February 23, 1996 (61 FR 7016), MMS published a document raising the de minimis reporting requirements from $250 to $2,500. By raising the de minimis level, companies may now recover overpayments below the de minimis amount from future royalty payments. This change will reduce administrative costs for MMS and companies.

6. The Appeals Process

Comments Received—"Current appeals process is too long."

Action Taken or Planned—MMS has made several administrative processing changes to streamline the appeal process. One change was transferring decisionmaking on routine appeals from the Appeals Division to the Royalty Management Program. This has reduced the Appeals Division's workload by 20 percent and freed up staff to work on more complex cases.

Other efforts included the initiation of several pilot programs to look at additional streamlining possibilities. One pilot program was aimed at decreasing the time and expense incurred by MMS in its preparation of an appellant's administrative record. A second pilot program involved reformatting the decisionmaking process to speed the issuance of shorter, more timely decisions. The third pilot program will test the use of alternative dispute resolution mechanisms to resolve many of the administrative appeals.

Spinoff projects from these pilot efforts are still ongoing and will result in further changes to the appeals process in the future. We are engaged in a concentrated effort, during the spring and summer of 1996, to resolve all of the older, active appeals on the docket. Also, the Royalty Policy Committee has established an Appeals/Settlement/ADR subcommittee which should provide MMS with additional advice on ways to improve the process of resolving disputes involving royalty collections.

Timetable—The first two pilots were put in place the latter half of 1994, and the third pilot began the end of February 1995.

Further administrative streamlining changes and possibly regulatory changes by MMS are anticipated for calendar year 1996.

7. Other MMS Regulatory Actions

—MMS is evaluating comments received on the proposed rule to establish liability for royalty due on Federal and Indian leases, and to establish responsibility to pay and report royalty and other payments.

—MMS published an advance notice of proposed rulemaking on valuation of oil from Federal and Indian leases and is evaluating the comments received from industry, States, and Indian tribes on this notice.

Dated: May 13, 1996.

Cynthia Quarterman,

Director, Minerals Management Service.

[FR Doc. 96–12545 Filed 5–17–96; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE TREASURY

Office of the Assistant Secretary for Financial Markets

Fiscal Service

31 CFR Part 356

Amendments to the Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes and Bonds

AGENCY: Office of the Assistant Secretary for Financial Markets, Treasury.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Secretary of the Treasury (Secretary) is authorized under Chapter 31 of Title 31, United States Code, to issue United States obligations and to offer them for sale under such terms and conditions as the Secretary may prescribe. The Department of the Treasury (Department or Treasury) is issuing this Advance Notice of Proposed Rulemaking to solicit comments on the design details, terms and conditions, and other features of a new type of marketable book-entry security the Treasury intends to issue, inflation-protection notes or bonds, with a return linked to the inflation rate in prices or wages. The Treasury is specifically interested in comments concerning choice of index, structure of the security, auction technique, offering sizes, and maturities. The Treasury also invites comments on other specific issues raised, as well as on any other issues relevant to the new type of security.

DATES: Comments must be received on or before June 19, 1996.

ADDRESSES: Comments should be sent to: the Government Securities Regulations Staff, Bureau of the Public Debt, 999 E Street NW., Room 515, Washington, DC 20239. Comments received will be available for public inspection and copying at the Treasury Department Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Norman Carleton, Director, Office of Federal Finance Policy Analysis, Office of the Assistant Secretary for Financial Markets, at 202–622–2680. In addition, the Treasury plans to hold a series of investor meetings in New York, Washington, DC, Chicago, Boston, San Francisco, and possibly other cities in late May and in June 1996 to discuss the new securities, answer questions, and solicit comments. To request information about attending any of these meetings, contact the Office of Financing, Bureau of the Public Debt, at 202–219–3350.

SUPPLEMENTARY INFORMATION: The Treasury Department intends to issue a new type of marketable book-entry security with a nominal return linked to the inflation rate in prices or wages, as officially published by the United States Government. The Treasury is considering various indices for this purpose, including the Consumer Price Index for All Urban Consumers (CPI-U) published by the Bureau of Labor Statistics (BLS) of the Department of Labor, the core CPI (CPI-U, excluding food and energy, as published by the BLS), the Gross Domestic Product (GDP) deflator published by the Bureau of Economic Analysis (BEA) of the Department of Commerce, and the Employment Cost Index—Private Industry (ECI) also published by BLS. Through this notice, the Treasury is soliciting comments on the design details of the planned inflation-protection securities and on which index (those mentioned above or another index) would be most likely to result in the broadest market for the new securities. At the end of this notice is a hypothetical term sheet with proposed formulas applicable to one of the structures being considered for the new security.

This advance notice of proposed rulemaking is not an offering of securities, and any of the currently contemplated features of inflation-protection securities that are described in this notice may change. The terms and conditions of particular securities that may be offered will be set forth in the Uniform Offering Circular (31 CFR Part 356) and the applicable offering announcement.

The Department intends to issue inflation-protection notes or bonds in order to save on interest costs and to broaden the types of debt instruments available to investors in U.S. financial markets. Because the Treasury, rather than the investor, would bear the inflation risk on an inflation-protection security, the Department expects that the prices at which it would sell this new type of security would capture some or all of the inflation risk premium charged by investors on conventional Treasury securities. In other words, investors should be willing to pay extra for a security on which the issuer, rather than the investor, bears the risk of higher than expected inflation. Consequently, the expected interest costs to the Treasury of inflation-protection securities should be lower than those on conventional Treasury securities.

In addition, inflation-protection securities may prove to be attractive investments to investors who do not now invest in Treasury securities to any significant extent. For example, certain pension funds that currently invest in bonds other than Treasury securities because of the higher yields on private fixed-income securities may find Treasury inflation-protection notes or bonds useful to include in their portfolios. The new securities would offer explicit inflation protection to investors, which has heretofore been unavailable in a Treasury debt instrument. This inflation protection could prove attractive for investments for retirement. Also, because the path of changes in market prices of inflation-protection securities would be markedly different from that of the market price of conventional fixed-income instruments or equity investments, inflation-protection securities could be useful for achieving some portfolio diversification. This broadening of the market for Treasury securities should also result in lower overall interest costs for the Treasury over time.

Indexation Methodology. A design of the inflation-protection securities that is currently being considered is modeled, with some modifications, on the Real Return Bonds currently issued by the Government of Canada. The Department is soliciting comments about this choice of model and the specific details described below and in the hypothetical term sheet, as well as the formulas in the appendix.

For this particular structure, the principal amount of the inflation-protection security is adjusted for inflation, so that the adjusted value remains the same in constant dollars. This is achieved by multiplying the principal value of the security at issuance by an index ratio. The index ratio is the reference index number applicable for the valuation day divided by the reference index number applicable for the issue date.

Because the reporting of a monthly price or wage series index number for a particular month by necessity takes place after the month has ended and because the market needs to determine accrued interest on a daily basis, there has to be a lag in the indexation of the security. For this structure, if it is based on a monthly index that is reported in the following month, the indexation of the principal on the first day of any month is based on the index number for the third preceding month. For example, the index number applicable to the first day of December is the one reported for September. For other days of the month, a linear interpolation is made between the index number for the third preceding month and the one for the second preceding month (in this example, October). Using the third preceding month as the reference month is the minimum lag that enables interpolation between the index number for that month and the following month.

Under this structure, interest is payable semiannually. Interest payments are a fixed percentage of the value of the inflation-adjusted principal, in current dollars, for the date on which it is paid.

Alternative Structures. The Treasury has given the most study to the Canadian model for inflation-protection securities, which in turn is a modification of the United Kingdom's index-linked gilts. However, alternative structures are possible, and the Treasury is asking for comment on whether alternative structures might be more desirable for U.S. financial markets.

One alternative structure is a zero-coupon inflation-indexed security. This type of security could prove to be quite volatile in price, but, if held to maturity, this structure would provide the greatest certainty about its return, since there would be no reinvestment risk associated with coupon payments.

In addition to general comments concerning the market for a zero-coupon inflation-protection security, the Treasury is soliciting comments about the use for this structure of an index, such as the GDP deflator, that is subject to retroactive revisions. Since the Treasury would only make one payment on a zero-coupon inflation-protection security, revisions would be less of a problem from the cash flow perspective than with a security that pays interest every six months. However, the use of an index that is revised retroactively may cause some impediments to trading the security and would complicate the applicable tax rules.

Another quite different structure is an inflation-protection security that pays out principal and interest at periodic intervals. Ignoring the lags, under this structure, each payment is equal in real terms, but the proportion of each payment representing principal and interest changes. In other words, this structure is similar to the cash flows of a home mortgage, and, more specifically, a price level adjusted mortgage. This structure may be appealing to investors desiring a flow of periodic payments that stay constant in real terms. It is also possible that this structure may be more appealing than a Canadian-type security to taxable investors concerned about receiving sufficient cash payments from the security to satisfy the tax on the income from the security.

Price or Wage Indices. The Treasury is requesting comments on which price or wage index is likely to result in the broadest market for inflation-protection securities. Specifically, the Department is considering (1) the CPI–U, (2) the core CPI, (3) the GDP deflator, and (4) the ECI. The Treasury also requests comments on whether another index would serve the desired purpose better.

The CPI–U is the best known measure of inflation, and, as such, is a logical candidate for indexing the securities. However, the CPI–U may not be the best index for certain investors. For example, pension funds' liabilities are more sensitive to change in wages than to changes in consumer prices.

The core CPI is a less volatile index than the CPI–U, and this may be appealing to investors. However, while energy and food prices eventually influence other prices, the core CPI could be criticized for not completely reflecting any trend that may develop in prices in the energy and food sectors.

The GDP deflator is a broad measure of price trends in the economy. As noted above, its use may be better suited to a zero-coupon inflation-protection security than to a note or bond paying semiannual coupons, because the GDP deflator, unlike the other indices under consideration, is subject to periodic revision.

Periodic revisions of an index pose three potential problems. The first is the need for finality in determining payment amounts. Second, the change in an index for a given period could be based on an index number for a previous period that has since been

revised. An indexation methodology designed to correct for revisions in previous values of the index would create additional complexity. Finally, even for a zero-coupon security, revisions may cause complications in the applicable tax rules throughout the life of the security. Revisions may be less of a problem for a security that makes only one payment at maturity than for one that pays interest every six months.

The ECI may appeal to pension funds, whose liabilities are more linked to wage, rather than price, inflation. In this regard, commenters are also asked to address whether the total compensation or the wages and salaries series of the ECI would be the most useful. Since the ECI is a quarterly index, the precise indexation methodology and the formulas in the appendix, which assume a monthly index, would need to be modified.

The Treasury is also requesting comments on whether a seasonally adjusted or non-seasonally adjusted series would be preferable. Seasonal adjustment smoothes out fluctuations, but seasonal factors are subject to revisions for a considerable period of time.

Calculation of the Price or Wage Series. From time to time, government statistical agencies, such as the BLS and the BEA, revise their methodology for calculating indices in order to improve their accuracy. Such revisions on a forward-going basis may affect the inflation rate as measured by the index and, therefore, the return to investors.

For a Canadian-type or level real payment inflation-protection security, revisions of a price or wage index number that has previously been reported, however, would not be used for calculations of principal value or interest payments. This is in order for there to be finality in determining payment amounts.

When a price or wage index is rebased to a different year, the Treasury would use the price or wage index series with the same base year(s) as when the security was first issued, as long as that series continues to be published. The reason for this is to maintain precision in the indexation of the security that may otherwise be lost due to rounding, a problem that becomes more acute if the price or wage index has increased significantly from the original base year(s) to the new one. The Department is specifically soliciting comments on this point.

In the case of an index series reported on a monthly basis in the following month, the Department is considering the following procedure for the Canadian-type security if the index is reported late. If the index number for a particular month is not reported by the last day of the following month, the Department would announce by the end of the next business day an index number based on the last twelve-month change in the index available. This number would be used for all subsequent calculations and would not be replaced by the actual price or wage index number when it is reported. Since the Treasury may use a price or wage series that is not seasonally adjusted, the Treasury welcomes comments on this procedure. The Department believes that this calculation would rarely, if ever, be necessary.

If the price or wage index for an inflation-protection security is discontinued while that security is outstanding, the Treasury would consult with the agency responsible for the index, and, based on such discussions, the Treasury would select an appropriate substitute index and methodology for linking the two series. Determinations of the Secretary in this regard would be final.

Finally, if the Federal Government commences publication of a new version of the index that is more appropriate for indexation than the one originally chosen, the Treasury expects it would then use the new version for indexing new inflation-protection securities. Concerning the introduction of a new version, the Treasury is requesting commenters to address whether the Treasury should also index outstanding inflation-protection securities to the new version starting from its introduction or whether outstanding securities should remain indexed to the original series as long as that series continues to be published.

Auction Technique. The Department is considering offering inflation-protection securities through a single-price auction. The exact type of auction has yet to be determined, and the Department is particularly interested in input from potential auction participants, as well as others, on this subject.

For a Canadian-type inflation-protection security, options include two types of single-price auctions where the Treasury asks for bids in terms of real yield to three decimal places. In the first case, the highest accepted yield would become the coupon, and the inflation-protection note or bond would be issued at par. In the second case, the Treasury would set a coupon after the auction in an increment of 0.125%, and the price of the security would be determined by the formulas in the appendix.

Also, the Treasury could announce a coupon on the security and accept bids in terms of price. However, this option runs counter to the Department's auction practice for its conventional Treasury securities, and, at least initially, it may be difficult to judge what would be the appropriate coupon.

Noncompetitive bids up to $5 million per bidder would be permitted for inflation-protection securities. In order to ensure that enough competitive bids are accepted to price the security fairly, the Treasury is considering whether all or part of the noncompetitive bids should be filled by issuing more securities than the originally announced public offering amount. The Department is requesting comments on this issue.

Given the pricing uncertainty inherent in any new type of security, the Treasury is requesting comments on whether the Treasury should announce prior to a single-price auction of an inflation-protection security that it retains, and may exercise, the option to award an amount greater or less than the announced public offering amount. The reason for awarding less stems from the use of the single-price auction technique and the unique nature of this new instrument. If there were an extremely long tail between the yield necessary to sell, for example, 95 percent of the announced size and the remaining 5 percent, awarding less would avoid issuing the security with an unreasonably high real yield. (In any case, the Secretary reserves the right, in any auction, to award an amount of securities greater or less than the offering amount. See 31 CFR 356.33)

The Department also welcomes comments on whether a single-price or a multiple-price auction would be more appropriate for inflation-protection securities.

The Treasury is also requesting commenters to address whether any of the auction rules for conventional Treasury securities are inappropriate for an offering of inflation-protection securities and specifically whether there should be a limit to the amount recognized at a single yield from a bidder or the amount awarded to a single bidder in an auction of inflation-protection securities.

Frequency. The Treasury contemplates issuance of inflation-protection securities on a regular quarterly cycle.

Reopenings. The Treasury could reopen an issue of an inflation-protection note or bond, though the flexibility to do this under changing market conditions is conditioned by tax issues involving the original issue discount rules that have yet to be decided. A reopening would also be accomplished by an auction. The Department welcomes comments on whether bids on an issue that is being reopened should be in terms of real yield or price.

For a Canadian-type security, amounts bid at an auction for a reopened inflation-protection security would be in terms of original par amount, not the inflation-adjusted par amount. The Treasury would announce prior to the auction the index ratio necessary to convert the original par amount to the inflation-adjusted par value for the settlement date. This means that if the index ratio for the settlement date is 1.03, a $1,000 bid amount would translate into $1,030 inflation-adjusted par value. The Treasury is requesting comments on this procedure.

Also, the Treasury is requesting comments on whether reopenings of an issue would be important for market liquidity, or whether they would act as a constraint on prices, given the possibility of additional supply of the security in the next quarter.

Maturities. The Department's current thinking is that 10-year inflation-protection notes or 30-year inflation-protection bonds would be the most appropriate maturity sectors for this instrument. The Treasury is soliciting comments on which maturity sectors would be most in demand for inflation-protection notes or bonds.

Amounts. The Department is requesting comments on the appropriate size of the initial auctions of inflation-protection notes or bonds. The Treasury intends to increase the size of the auctions from the initial levels over time.

Book-Entry Form and Systems. The inflation-protection securities would be offered only in book-entry form. They would be issued and maintained in the commercial book-entry system which is operated by the Federal Reserve Banks, acting as fiscal agents for the Treasury Department. The Treasury also would make inflation-protection securities available through TREASURY DIRECT, a system designed primarily to enable investors who do not intend to trade Treasury securities to hold their book-entry securities directly on the records of the Treasury.

Eligible amounts for holding and transferring would be in multiples of $1000 of original par value for a Canadian-type inflation-protection security. The Treasury is soliciting comments on any operational issues arising from the fact that the amount of an inflation-protection security held and transferred on the book-entry systems would be referred to in terms of the original par value, not the inflation-adjusted value.

Treasury Tax and Loan Accounts. The Treasury intends to make inflation-protection securities eligible as collateral for Treasury Tax and Loan Accounts. Valuation for collateral purposes would depend on the precise structure of the security.

Stripping. For a Canadian-type security, the Treasury would make inflation-protection securities eligible for stripping on the commercial book-entry system at some point after issuance of the new security had begun. This would not be operationally possible initially. Eligibility for stripping might extend only to inflation-protection securities issued after a future effective date.

Taxation. In general, a payment on an inflation-protection security or an increase in the principal amount of the security attributable to the inflation adjustment would be includible in taxable income for the year in which it occurs and would be treated as interest income. Interest payments on inflation-protection securities generally would have to be included in the owner's taxable income when received or as accrued, depending on the owner's method of accounting for tax purposes. For a zero-coupon inflation-protection security, the difference between the issue price and the original par amount would be interest that the holder would include as taxable income on a constant yield basis. The precise tax treatment in the event the principal decreases because of a decline in the price or wage index has yet to be determined. Other tax issues, including the reporting of income on the securities by brokers and other intermediaries (*i.e.*, custodians), also remain to be determined. Relevant tax issues would be announced before the first issue.

Minimum Guarantee. If the sum of all the interest payments and the inflation-adjusted principal value at maturity of the inflation-protection note or bond is less than the par value of the note or bond at issuance, the Treasury would make an additional payment at maturity for the difference.

After receipt and consideration of responses to this advance notice of proposed rulemaking, the Department intends to issue a final rule amending 31 CFR Part 356, "Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds" (Uniform Offering Circular). Because the rule would relate to public contracts and procedures for United States securities, the notice, public comment, and delayed effective date provisions of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

Hypothetical Term Sheet

Note: This hypothetical term sheet assumes that an inflation-protection note or bond would be linked to a price or wage index reported monthly and that the index number for each month is reported the following month.

Issuer: United States Treasury.

Issue: Inflation-protection note or bond.

Payment Dates: Inflation-adjusted principal on the security will be paid on the maturity date as specified in the offering announcement. Interest on the security is payable on a semiannual basis on the interest payment dates specified in the offering announcement through the date the principal becomes payable. In the event any principal or interest payment date is a Saturday, Sunday or other day on which the Federal Reserve Banks are not open for business, the amount is payable (without additional interest) on the next business day.

Maturities: Ten or thirty years.

Indexing Methodology: To calculate the value of the principal for a particular valuation date, the value of the principal at issuance is multiplied by the index ratio applicable to that valuation date. Semiannual coupon interest is determined by multiplying the value of the principal at issuance by the index ratio for the coupon payment date by one-half the stated rate of interest.

Index Ratio: The index ratio for any date is the ratio of the reference index number (reference INUM) applicable to such date to the reference INUM applicable to the original issue date.

Reference Inum: The reference INUM for the first day of any calendar month is the INUM for the third preceding calendar month. (For example, the reference INUM for December 1 is the INUM reported for September of the same year, which is released in October.) The reference INUM for any other day of the month is calculated by a linear interpolation between the reference INUM applicable to the first day of the month and the reference INUM applicable to the first day of the following month.

Any revisions that the agency responsible for the index makes to any INUM that has been previously released shall not be used in calculations of the value of Treasury inflation-protection securities.

In the case that the INUM for a particular month is not reported by the last day of the following month, the Treasury will announce an index

number based on the last year-over-year inflation rate as measured by the chosen index. Any calculations of the Treasury's payment obligations on the inflation-protection security that need that month's INUM number will be based on the index number that the Treasury has announced.

If the applicable price or wage series is discontinued during the period the inflation-protection security is outstanding, the Treasury will, in consultation with the agency responsible for the series, determine an appropriate substitute index and methodology for linking the discontinued series with the new price or wage index series. Determinations of the Secretary in this regard will be final.

Strips: Eligible for the STRIPS program at a future date.

Taxation: Appreciation of the principal will be taxed as interest income in the period the appreciation occurs. Interest payments will be includible as interest income when received or as they accrue, depending on the taxpayer's method of accounting. Other tax details remain to be determined.

Auction Technique: Single-price auction. Options:

(1) Bidders bid for coupon, with bids expressed to three decimal places. The highest accepted yield becomes the coupon. Security is issued at par.

(2) Bidders bid real yield, with bids expressed to three decimal places. Coupon is set near the highest accepted real yield in increments of 1/8 of 1 percent. Price is determined by formula in the appendix using the highest accepted yield.

(3) Before the auction Treasury announces a coupon, securities are issued at lowest accepted price.

Minimum Guarantee: If the sum of all the interest payments and the inflation-adjusted principal is less than the par value of the security at time of issuance, the Treasury will pay an additional sum at maturity equal to the difference.

Minimums and Multiples to Bid, Hold, and Transfer: The minimum to bid, hold, and transfer is $1000 original principal value. Larger amounts must be in multiples of $1000.

BILLING CODE 4810-39-W

Appendix - Formulas

I. Reference INUM:

$$\text{Ref INUM}_{Date} = \text{Ref INUM}_{M} + \frac{t-1}{D}[\text{Ref INUM}_{M+1} - \text{Ref INUM}_{M}]$$

II. Index Ratio:

$$\text{Index Ratio}_{Date} = \frac{\text{Ref INUM}_{Date}}{\text{Ref INUM}_{Base}}$$

III. Real Price:

A. No initial partial semiannual coupon period:

$$RP = (C/2)a_{\overline{n}|} + 100v^{n}$$

B. With initial partial semiannual coupon period:

$$RP = \frac{C/2 + (C/2)a_{\overline{n}|} + 100v^{n}}{1 + (r/s)(i/2)} - [(s-r)/s](C/2)$$

IV. Settlement amount, including accrued interest, for $100 Original Principal:

$$SA = A + [\text{Index Ratio}_{Date} \times RP]$$

V. Accrued Interest:

$$A = [(s-r)/s] \times (C/2) \times \text{Index Ratio}_{Date}$$

VI. INUM not reported timely for month M:

$$\text{Ref INUM}_{M} = \text{INUM}_{M-1} \times \left[\frac{\text{INUM}_{M-1}}{\text{INUM}_{M-13}}\right]^{\frac{1}{12}}$$

Generalizing for last reported INUM issued N months prior to month M:

$$\text{Ref INUM}_{M} = \text{INUM}_{M-N} \times \left[\frac{\text{INUM}_{M-N}}{\text{INUM}_{M-N-12}}\right]^{\frac{N}{12}}$$

Definitions

RP = real price

SA = settlement amount, including accrued interest, in current dollars per $100 original principal

A = nominal accrued interest per $100 original principal

r = days from settlement date to next coupon date

s = days in current semiannual coupon period

i = real interest rate, compounded semiannually

C = real annual coupon, payable semiannually, in terms of real dollars paid on $100 initial, or real, principal of the security

n = number of full semiannual periods from settlement date to maturity date

v^n = $1/(1 + i/2)^n$

$a_{n\rceil}$ = $(1 - v^n)/(i/2) = v + v^2 + v^3 + \ldots v^n$

Date = valuation date

D = the number of days in the month in which Date falls

t = the calendar day corresponding to Date

INUM = index number

Ref $INUM_M$ = reference INUM for the first day of the calendar month in which Date falls

Ref $INUM_{M+1}$ = reference INUM for the first day of the calendar month immediately following Date

Example[1]

The Treasury issues a 30-year inflation-protection bond on July 15, 1996. The bonds have a par value of $100 and are issued at a discount to yield 3.1% (real). The bonds bear a 3% real coupon, payable on January 15 and July 15 of each year. The base price or wage index applicable to this bond is 120.[2] The settlement amount (SA) is calculated using real price formula III.A (for no partial initial semiannual coupon period) in the appendix:

n = 60

v^n = $1/(1 + i/2)^n$ = $1/(1 + .031/2)^{60}$

= 0.39737847

$a_{n\rceil}$ = $(1 - v^n)/(i/2)$

= $(1 - 0.39737847)/(.031/2)$

= 38.87880825

III.A SA = RP = $(C/2)a_{n\rceil} + 100v^n$

= $(3/2) \times 38.87880825 + 100 \times 0.39737847$

= 98.05605959

April 15, 1997 is the settlement date for a reopening of this bond. The reference wage or price index number for this date is 132 and the additional supply is issued at a real yield of 3.4%. The settlement amount is calculated by

[1] The example shows the intermediate results rounded to eight decimal places, although the calculations were performed without intermediate rounding. In determining prices and accrued interest in actual auctions of Treasury securities, the Department rounds the final results. The price is rounded to three decimal places and the accrued interest amount to six decimal places, based on a par value of 100.

[2] If this were a real example, this number would have been derived using formula I. The index number for January 15 would have been an interpolation between the index number reported for October and the one reported for November.

first using formula V to calculate the nominal accrued interest since the last coupon payment, per $100 original principal.

$$\text{Index Ratio}_{Date} = \frac{\text{Ref INUM}_{Date}}{\text{Ref INUM}_{Base}} = \frac{132}{120} = 1.1$$

$n = 58$

$s = 181$

$r = 91$

V. $A = [(s-r)/s] \times (C/2) \times \text{Index Ratio}_{Date}$

$= [(181-91)/181] \times (3/2) \times 1.1$

$= 0.82044199$

The real price is calculated using formula III.B (for an initial partial semiannual coupon period):

$v^n = 1/(1 + .034/2)^{58} = 0.37617050$

$a_{n\rceil} = (1 - 0.37617050)/(.034/2)$

$= 36.69585314$

$$\text{III.B } RP = \frac{C/2 + (C/2)a_{n\rceil} + 100v^n}{1 + (r/s)(i/2)} - [(s - r)/s](C/2)$$

$$RP = \frac{(3/2) + [(3/2) \times 36.69585314] + (100 \times 0.37617050)}{1 + (91/181) \times (.034/2)} - [(181-91)/181] \times (3/2)$$

$= 92.61700426$

The settlement amount is calculated using formula IV:

IV. $SA = A + [\text{Index Ratio}_{Date} \times RP]$

$= 0.82044199 + (1.1 \times 92.61700426)$

$= 102.69914667$

BILLING CODE 4810-39-C

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1–93)

Authority: 5 U.S.C. 301; 31 U.S.C. 3102, et seq.; 12 U.S.C. 391.

Date: May 15, 1996.

Darcy Bradbury,

Assistant Secretary (Financial Markets).

[FR Doc. 96–12630 Filed 5–16–96; 11:00 am]

BILLING CODE 4810–39–W

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL–5507–7]

RIN 2060–AG40 and AG39

Outer Continental Shelf Air Regulations Delegation Remand

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing revision to the outer continental shelf (OCS) regulations in response to a voluntary remand from the U.S. Court of Appeals for the District of Columbia Circuit. These regulations establish air pollution control requirements for certain sources located on the OCS.

In response to the requirements of section 328 of the Clean Air Act (Act), on September 4, 1992, EPA promulgated the OCS regulations setting up two regimes for controlling air pollution from OCS sources for the purposes of attaining and maintaining Federal air quality standards and to comply with certain Act requirements for preconstruction review of new and modified major sources. Sources located within 25 miles of the States' seaward boundaries (the 25-mile limit) must comply with regulations which are, in most respects, the same as the regulations for similar sources located on shore. Sources beyond the 25-mile limit are required to comply with Federal new source performance standards (NSPS), requirements for the prevention of significant deterioration (PSD), and national emission standards for hazardous air pollutants (NESHAP) related to attainment and maintenance of ambient air quality standards or the requirements of part C of title I of the Act. The Federal operating permits program and enhanced compliance monitoring regulatory requirements will also be incorporated into part 55 when they are promulgated. In promulgating the OCS regulations, EPA provided for delegation to State and local agencies the authority to implement and enforce the regulations for sources within the 25-mile limit. However, EPA did not provide for delegation of the authority to implement and enforce the regulations for sources located beyond the 25-mile limit. The Santa Barbara County Air Pollution Control District (APCD) filed a petition for review of the regulations on several issues, including the issue of delegation beyond the 25-mile limit. Upon EPA's request for a voluntary remand, the court remanded the delegation issue to EPA for reconsideration.

By this action, EPA is revising the OCS regulations to provide for delegation to State and local agencies the authority to implement and enforce the OCS regulations beyond the 25-mile limit. Delegation of the program to any specific State or local agency will be under separate action.

DATES: Written comments on the proposed action must be received by EPA at the address below on or before June 19, 1996.

ADDRESSES: Comments should be submitted to the public docket for this action is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the Air and Radiation Docket and Information Center (6102), Attention Docket A–95–07, South Conference Center, Room 4, 401 M Street, SW, Washington, DC 20460. A reasonable fee for copying may be charged.

FOR FURTHER INFORMATION CONTACT: Mr. David Stonefield, U.S. EPA, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5350.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

The Clean Air Act Amendments of 1990 (Pub. L. 101–549, 104 Stat. 2399 (1990)) added section 328 to the Act and transferred authority to regulate sources on part of the OCS from the Department of the Interior (DOI) to EPA. The DOI retained the authority to regulate OCS sources in the Gulf of Mexico west of 87.5 degrees longitude. As to the remaining portions of the OCS—the Atlantic, Pacific, and Arctic coasts and the Gulf of Mexico east of 87.5 degrees—section 328 requires EPA to establish requirements for the control of air pollution from OCS sources to attain and maintain Federal and State ambient air quality standards and to comply with the provisions of part C (for the prevention of significant deterioration) of title I of the Act. For sources within 25 miles of the States' seaward boundaries, those requirements must be the same as would be applicable if the source were located in the corresponding onshore area (COA). For sources beyond the 25-mile limit, the Administrator had discretion in determining the requirements. The EPA proposed (56 FR 63774, December 5, 1991) and promulgated (57 FR 40792, September 4, 1992) regulations to implement the requirements of section 328. The regulations require, among other things, that sources located beyond 25 miles of States' seaward boundaries meet applicable Federal pollution control requirements which include PSD, NSPS and NESHAP regulations to the extent that they are rationally related to protection of air quality standards or part C of title I of the Act (40 CFR 55.13). In addition, EPA stated in the preamble to the final rule that it would incorporate into the OCS rules the requirements of the Federal operating permits regulations (40 CFR part 71) and the enhanced monitoring regulations, when promulgated (57 FR 40803).

B. Delegation Authority

Section 328(a)(3) of the Act permits States adjacent to an OCS source to adopt and submit to EPA regulations for implementing and enforcing the requirements of that section. It requires that:

> [I]f the Administrator [of EPA] finds that the State regulations are adequate, the Administrator shall delegate to that State any authority the Administrator has under this Act to implement and enforce such requirements.

Therefore, in the OCS regulations, EPA included § 55.11 which authorizes the delegation of the implementation and enforcement authority to State and local agencies for OCS sources that are located within the 25-mile limit. However, in the preamble to the proposed and final rules, EPA stated that it would retain the authority to implement and enforce the OCS regulations for sources located beyond the 25-mile limit for two reasons. First, since the sources located beyond the 25-mile limit are subject only to Federal requirements, the State would have to adopt two OCS programs, one for sources within the 25-mile limit and one for sources beyond the limit. Second, it may be difficult to determine the appropriate agency to receive delegation for sources located beyond the 25-mile limit (56 FR 63784 and 57 FR 40801–802). Therefore, in the final

rule, EPA did not provide for the delegation of the implementation and enforcement authority for sources beyond the 25-mile limit.

C. Judicial Review

On November 2, 1992, the Santa Barbara County APCD filed a petition for review of the OCS regulations with the U.S. Court of Appeals for the District of Columbia Circuit (*Santa Barbara County Air Pollution Control District* v. *EPA*, 31 F. 3rd 1179 (D.C. Cir., 1994)). One of the issues that the Santa Barbara County APCD raised was EPA's failure to provide for delegation of the authority to implement and enforce the OCS regulations for sources located beyond 25 miles from a State's seaward boundary.[1] In reviewing the issue, EPA determined that section 328 of the Act requires it to delegate any authority the EPA has under the Act to implement and enforce the requirements of section 328(a) if it determines that the State government has adequate regulations. Therefore, EPA requested the court to remand this issue to it for reconsideration.

II. Revisions to the Regulations

The OCS regulations contain three references to the delegation authority beyond the 25-mile limit. The EPA is proposing in each case to revise the language of the OCS regulations to make clear that EPA may delegate the authority to implement and enforce the OCS regulations for the OCS sources beyond the 25-mile limit. Specific regulatory changes are proposed for §§ 55.3(c), 55.6(d), and 55.11(a). In addition, to allow for the delegation of authority for sources beyond the 25-mile limit, revisions in the wording of other sections are necessary to clarify the regulations. The specific regulatory changes proposed include revisions to § 55.2 (definition of nearest onshore area) and the addition of § 55.11(j).

Section 55.3 establishes the applicability of the regulations for OCS sources. Section 55.3(c) relates to sources located beyond the 25-mile limit and excludes those sources from the requirements of § 55.11, which specifically deals with the delegation of the authority for implementation and enforcement within the 25-mile limit. The EPA proposes to delete the reference in § 55.3(c) that provides that the delegation requirements of § 55.11 do not apply for sources located beyond the 25-mile limit.

Section 55.6 establishes permit requirements for OCS sources. Section 55.6(d) relates to sources located beyond the 25=mile limit, and paragraph (2) states that the Administrator will retain the authority to implement and enforce the OCS regulations for those sources. The proposed revisions would delete the existing paragraph (2) and replace it with a new paragraph (2) which defines the permit requirements for sources if the program is delegated. The new provisions prohibit the issuance of permits to operators that have not demonstrated compliance with all applicable requirements of the OCS regulations. This new paragraph is identical to the paragraph in § 55.6(c) for sources located within the 25-mile limit.

Section 55.11 currently establishes the requirements for the delegation of the implementation and enforcement of the OCS regulations within the 25-mile limit. The EPA proposes to revise § 55.11(a) to clarify that the State can request delegation for sources beyond the 25-mile limit, as well as for sources located within the 25-mile limit.

The existing definition of "nearest onshore area" (NOA) only applies to sources within 25 miles of States' seaward boundaries. Under the existing regulatory scheme for OCS sources in which EPA retained all authority for sources beyond the 25-mile limit, the definition was only needed for sources located within 25 miles of States' seaward boundaries. However, in delegating the authority to implement and enforce the regulations for sources beyond the 25-mile limit, it will be necessary to determine the NOA for the source. Therefore, EPA is proposing to expand the NOA definition by deleting the limitation to sources within 25 miles of the States' seaward boundaries.

A new subsection "(j)" is proposed for § 55.11 to define the exercise of authority over OCS sources. The delegated agency in the COA for sources located within the 25-mile limit and the delegated agency in the NOA for sources located beyond the 25-mile limit will exercise all delegated authority. If there is no delegated agency in the COA or NOA, EPA will issue permits and implement and enforce the OCS regulations. This language mirrors that of § 55.5(c)(4), which discusses the exercise of authority for sources within the 25-mile limit.

Section 328(a)(4)(B) of the Act and § 55.5 of the OCS regulations establish a procedure for areas other than the NOA to be designated as the COA for sources within the 25-mile limit. Pursuant to § 55.5, for an area other than the NOA to be designated as the COA, it must demonstrate, among other things, that it has more stringent air pollution control regulations than the NOA. Since sources located beyond the 25-mile limit are subject only to Federal regulations, as identified in § 55.13, any delegated State or local agency would be enforcing the same regulations. Therefore, for sources beyond the 25-mile limit, EPA will delegate the authority to implement and enforce the OCS regulations only to the State or local agency that is responsible for the NOA, assuming that the requirements for delegation are met (§ 55.5(b)).

The EPA is also rescinding that preamble language which specifically states that delegation beyond the 25-mile limit is unacceptable (57 FR 40794, 40797, 40801, and 40802).

III. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, the Agency must determine whether the regulatory action is significant and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines significant regulatory action as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has determined that the revisions to the OCS rules are "significant" because the OCS sources would be regulated by two Federal agencies, EPA and DOI. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Act of 1995 requires that EPA prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Section 203 requires EPA to establish a plan for obtaining input from, informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, EPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The EPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule, unless EPA explains why a particular alternative is not selected or the selection of a particular alternative is inconsistent with law.

Because this proposed rule does not impose any new mandates on State, local, or tribal governments, and the rule is estimated to result in the expenditures by State, local, and tribal governments or the private sector of less that $100 million in any 1 year, EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, EPA is not required to develop a plan with regard to small governments. However, EPA will work with eligible State and local air pollution control agencies to assist them in requesting delegation of authority to implement and enforce the OCS regulations.

C. Paperwork Reduction Act

These rule revisions do not contain any information collection requirements subject to review by the OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501, *et seq.*

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to identify potentially adverse impacts of Federal rules upon small entities. Small entities include small businesses, organizations, and governmental jurisdictions. In instances where significant economic impacts are possible on a substantial number of these entities, agencies are required to perform a regulatory flexibility analysis. Furthermore, *EPA Guidelines for Implementing the Regulatory Flexibility Act*, issued on April 9, 1992, require the Agency to determine whether regulations will have any economic impacts on small entities. These revisions to the OCS regulations do not, in themselves, impose any requirements on small entities, nor require or exclude small entities from meeting the requirements of the OCS regulations. As a result, EPA has determined that these revisions will not have a significant impact on a substantial number of small entities.

Therefore, as required under § 605 of the RFA, 5 U.S.C. 605, I certify that these revisions do not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Continental shelf, Intergovernmental relations, Nitrogen oxides, Ozone, permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 13, 1996.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, 40 CFR part 55 is proposed to be amended as set forth below.

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

§ 55.2 [Amended]

2. In § 55.2 the introductory text of the definition of "Nearest Onshore Area" is proposed to be amended by adding a comma after "OCS source" and removing the words "located within 25 miles of the States' seaward boundary," which follows.

3. Section 55.3 is proposed to be amended by revising paragraph (c) to read as follows:

§ 55.3 Applicability.

* * * * *

(c) The OCS sources located beyond 25 miles of States' seaward boundaries shall be subject to all the requirements of this part, except the requirements of §§ 55.4, 55.5, 55.12 and 55.14 of this part.

* * * * *

4. Section 55.6 is proposed to be amended by revising paragraph (d)(2) to read as follows:

§ 55.6 Permit requirements.

* * * * *

(d) * * *

(1) * * *

(2) The Administrator or delegated agency shall not issue a permit to operate to any existing OCS source that has not demonstrated compliance with all the applicable requirements of this part.

* * * * * *

5. Section 55.11 is proposed to be amended by revising paragraph (a) and by adding paragraph (j) to read as follows:

§ 55.11 Delegation.

(a) The governor or the governor's designee of any State adjacent to an OCS source subject to the requirements of this part may submit a request, pursuant to section 328(a)(3) of the Act, to the Administrator for the authority to implement and enforce the requirements of this OCS program (i) within 25 miles of the State's seaward boundary and/or beyond 25 miles of the State's seaward boundary. Authority to implement and enforce §§ 55.5, 55.11, and 55.12 of this part will not be delegated.

* * * * * *

(j) *Delegated Authority.*

The delegated agency in the COA for sources located within 25 miles of the State's seaward boundary or the delegated agency in the NOA for sources located beyond 25 miles of the State's seaward boundary will exercise all delegated authority. If there is no delegated agency in the COA for sources located within 25 miles of the State's seaward boundary, or in the NOA for sources located beyond 25 miles of the State's seaward boundary, the EPA will issue the permit and implement and enforce the requirements of this part. For sources located within 25 miles of the State's seaward boundary, the Administrator may retain the authority for implementing and enforcing the requirements of this part if the NOA and COA are in different States.

[FR Doc. 96–12627 Filed 5–17–96; 8:45 am]

BILLING CODE 6560–60–P

---

40 CFR Part 261

[SW–FRL–5507–8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to grant a

[1] Another issue raised by the Santa Barbara County APCD petition involved EPA special offset provisions for OCS sources. On August 12, 1994, the court vacated that portion of the OCS regulations and remanded it to EPA for further consideration. Elsewhere in today's **Federal Register**, EPA is promulgating an interim final regulation revising the OCS regulation in accordance with the court's instructions.

petition to Giant Refining Company (Giant) to exclude (or "delist"), on a one-time basis, certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 (hereinafter all sectional references are to 40 CFR unless otherwise indicated). This action responds to a delisting petition originally submitted by the Bloomfield Refining Company, Inc. (Bloomfield), in Bloomfield, New Mexico. Bloomfield was purchased by Giant on October 4, 1995. Giant has advised the Agency that it wishes to proceed with the petition for delisting submitted by Bloomfield. This petition was submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of 40 CFR parts 260 through 266, 268 and 273, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator specific" basis from the hazardous waste lists. This proposed decision is based on an evaluation of waste-specific information provided by the petitioner. If this proposed decision is finalized, the petitioned waste will be conditionally excluded from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

The EPA is also proposing the use of a fate and transport model (the EPA Composite Model for Landfills (EPACML)) to evaluate the potential impact of the petitioned waste on human health and the environment, based on the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents that may be released from the petitioned waste, once it is disposed.

DATES: The EPA is requesting public comments on this proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until July 5, 1996. Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on this proposed decision by filing a request with Jane N. Saginaw, Regional Administrator, whose address appears below, by June 4, 1996. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments. Two copies should be sent to William Gallagher, Delisting Program, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202. A third copy should be sent to the New Mexico Environment Department, Hazardous and Radioactive Materials Bureau, 1190 St. Francis Drive, Sante Fe, New Mexico 87502. Identify your comments at the top with this regulatory docket number: "F–96–NMDEL–GIANT."

Requests for a hearing should be addressed to the Regional Administrator, Region 6, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

The RCRA regulatory docket for this proposed rule is located at the Region 6, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202 and is available for viewing in the EPA library on the 12th floor from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The docket may also be viewed at the New Mexico Environment Department, 1190 St. Francis Drive, Sante Fe, New Mexico 87502. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at $0.15 per page for additional copies.

FOR FURTHER INFORMATION, CONTACT: For technical information concerning this notice, contact Michelle Peace, Delisting Program (6PD–O), Region 6, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–7430.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA, the EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in § 261.31 and § 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in § 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, § 260.20 and § 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See § 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See § 260.22(a), 42 U.S.C. § 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. See §§ 261.3 (a)(2)(iv) and (c)(2)(i), referred to as the "mixture" and "derived-from" rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived from" rules and remanded them to the Agency on procedural grounds. *See* Shell Oil Co. v. EPA, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 **Federal Register** (FR) 7628). On December 21, 1995, the EPA proposed rules related to waste mixtures and residues at 60 FR 66344 and invited public comment.

B. Approach Used To Evaluate This Petition

Giant's petition requests a delisting for a listed hazardous waste. In making the initial delisting determination, the EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11 (a)(2) and (a)(3). Based on this review, the EPA agreed with the petitioner that the waste is non-hazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, the EPA would have proposed to deny the petition.) The EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The EPA considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability.

For this delisting determination, the EPA used such information to identify plausible exposure routes (i.e., ground water, surface water, air) for hazardous constituents present in the petitioned waste. The EPA determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for Giant's petitioned waste, and that the major exposure route of concern would be ingestion of contaminated ground water. Therefore, the EPA is proposing to use a particular fate and transport model to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the disposal of Giant's petitioned waste on human health and the environment. Specifically, the EPA used the maximum estimated waste volume and the maximum reported extract concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) were then compared directly to the current health-based levels at an assumed risk value of 10^{-6} used in delisting decision-making for the hazardous constituents of concern.

The EPA believes that this fate and transport model represents a reasonable worst-case scenario for disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a threat to human health or the environment. Because a delisted waste is no longer subject to hazardous waste control, the EPA is generally unable to predict and does not presently control how a waste will be managed after delisting. Therefore, the EPA does not currently consider extensive site-specific factors when applying the fate and transport model.

The EPA also considers the applicability of groundwater monitoring data during the evaluation of delisting petitions. The EPA normally requests groundwater monitoring data for wastes managed on-site to determine whether hazardous constituents have migrated to the underlying groundwater. Groundwater monitoring data provides significant additional information important to fully characterize the potential impact (if any) of the disposal of a petitioned waste on human health and the environment. In this case, the EPA determined that the groundwater monitoring data was not applicable to the evaluation of the petitioned waste. Although Giant's petitioned waste is managed in an on-site waste pile, the EPA Region 6 has not required Giant to install groundwater monitoring wells specifically to monitor the waste pile. Giant does have a monitoring system in place at its facility, including wells in the vicinity of the waste pile. However, the location of these wells were not selected with the specific intent of monitoring the waste pile. For these reasons, the EPA does not believe that data collected from Giant's groundwater monitoring system will provide a clear measure of whether the waste pile has adversely impacted groundwater quality at the Giant site. However, the potential impact of these wastes on the groundwater will be predicted through the application of the EPACML, fate and transport model.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all timely public comments (including those at public hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

Giant Refining Company, Bloomfield, New Mexico

A. Petition for Exclusion

Giant, located in Bloomfield, New Mexico, is involved in the processing and refining of petroleum. Giant petitioned the EPA for an exclusion of a discrete volume of contaminated soil presently stored in an on-site waste pile, generated from the cleaning of two wastewater treatment impoundments (referred to as the South and North Oily Water Ponds) in 1982. The soil is classified as EPA Hazardous Waste No. K051—"API separator sludge from the petroleum refining industry." The listed constituents of concern for EPA Hazardous Waste No. K051 are hexavalent chromium and lead (see Part 261, Appendix VII).

Giant petitioned the EPA to exclude this discrete volume of excavated soil because it does not believe that the waste meets the criteria for which it was listed. Giant also believes that the waste does not contain any other constituents that would render it hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See Section 222 of HSWA, 42 U.S.C. § 6921(f), and 40 CFR § 260.22(d) (2)–(4). Today's proposal to grant this petition for delisting is the result of the EPA's evaluation of Giant's petition.

B. Background

On April 15, 1991, Bloomfield, now Giant, petitioned the EPA to exclude, from the lists of hazardous wastes contained in 40 CFR § 261.31 and § 261.32, a discrete volume of contaminated soil excavated from its wastewater treatment impoundments. Giant subsequently provided additional information to complete its petition. Specifically, in its petition, Giant requested that the EPA grant an one-time exclusion for 2,000 cubic yards of excavated soil presently stored in an on-site waste pile.

In support of its petition, Giant submitted: (1) descriptions of its wastewater treatment processes and the excavation activities associated with the petitioned waste; (2) results from total constituent analyses for the eight Toxicity Characteristic (TC) metals listed in § 261.24 (i.e., the TC metals) antimony, beryllium, cyanide, nickel, vanadium, and zinc from representative samples of the stockpiled waste; (3) results from the Toxicity Characteristic Leaching Procedure (TCLP, SW–846

Method 1311) for the eight TC metals, antimony, beryllium, cyanide, nickel, vanadium, and zinc from representative samples of the stockpiled waste; (4) results from the Oily Waste Extraction Procedure (OWEP, SW–846 Method 1330) for the eight TC metals, antimony, beryllium, nickel, vanadium, and zinc from representative samples of the stockpiled waste; (5) results from the Extraction Procedure Toxicity Test (EP, SW–846 Method 1310) for the eight metals listed in § 261.24 from representative samples of the stockpiled waste; (6) results from total oil and grease analyses from representative samples of the stockpiled waste; (7) test results and information regarding the hazardous characteristics of ignitability, corrosivity, and reactivity; and (8) results from total constituent and TCLP analyses for certain volatile and semi-volatile organic compounds from representative samples of the stockpiled waste.

Giant is an active petroleum refinery. In October 1984, Bloomfield purchased the refinery located in Bloomfield, New Mexico, from Plateau, Inc., a subsidiary of Suburban Propane Gas Corporation. On October 4, 1995, Giant purchased the refinery from Bloomfield. Giant has assumed ownership and operation of the Bloomfield site and wishes to proceed with the petition for delisting originally submitted by Bloomfield. Current refinery operations, including wastewater treatment, are different than the operations on-line during the time period the waste considered in this petition was generated. During the period of interest, Plateau operated the refinery primarily as a producer of gasoline and diesel fuel. The facility processed roughly 10,000 barrels per day of low sulfur crude oil. The refinery was altered substantially during the period of time in which the waste was generated. In 1976, the refinery consisted of a crude unit with a capacity of 8,000 barrels per day. a reformer with a capacity of roughly 2,800 barrels per day, and required tankage and utilities. By November 1982, the refinery had installed a 6,000 barrel per day fluidized catalytic cracking unit, expanded the crude unit to 16,500 barrels per day, installed a wastewater treatment system, and had added to tankage and utilities. The refinery experienced no periods of inactivity during this time.

Prior to November 1982, Plateau operated two wastewater treatment surface impoundments; the bottoms of the two impoundments had been treated with bentonite to retard migration of contaminants. These two impoundments were used to contain water outflow from an API separator. The API separator was used to remove oil and oily sludges from refinery wastewater and consisted of two reinforced concrete bays. The API separator system received wastewaters from many sources during the time period of waste generation, including boiler blowdown; cooling tower blowdown; desalination water; process area runoff; small amounts of solvent cleaners and sealants; and lubricants used in site vehicles, pump reservoirs, metal machining tools, instrument air supplies, and during the overhaul and rebuilding of various pieces of process equipment. Oily wastewater entered the API separator and was contained for a period of approximately 27 hours (flow to the API separator averaged roughly 35 gallons per minute during the period of interest). Oil within the wastewater was allowed to rise and form a separate floating phase. This phase was recovered through a weir at the downstream end of each bay. Wastewater from each bay flowed under the weir, discharging into the first of two impoundments. Wastewater from the first impoundment was subsequently directed through an outflow pipe to the second impoundment. In addition, any oily sludge with a density heavier than the wastewater sank to the bottom of the concrete bays. These sludges were removed and disposed of at a hazardous waste facility approximately every two years.

During the period around October and November 1982, Plateau cleaned the impoundments to install a 100 milliliter synthetic high density polyethylene (HDPE) liner. Approximately 90,000 gallons of sludge were removed by vacuum truck and disposed of in an offsite hazardous waste disposal facility. This sludge was mainly the result of the accumulation of windblown dirt and debris. Visibly contaminated soil from the impoundments was removed and disposed of in an unlined on-site landfill in October 1984. This landfill was a dedicated area of the Giant site, and did not hold any other waste material. Plateau assumed this material was not hazardous based on characteristic testing. As part of subsequent closure activities, the contaminated soil was reexcavated in November 1989 and stockpiled at its present location, where it awaits final disposal. This volume of stockpiled soil is the subject of Giant's delisting petition.

The impoundments were originally installed about 1974 for fresh water use. Following the installation of the API separator in late 1976, wastewater from the API separator was routed to the impoundments for further wastewater treatment. Prior to the installation of the API separator, a tank was used to recover oil from wastewater. The API separator was installed because of substantial expansion planned and underway for the refinery. Therefore, the period of generation of waste sludges into the impoundments (and, therefore, the generation of the contaminated soil) was from late 1976 until the impoundments were cleaned in November 1982.

The stockpiled waste has a moisture content of roughly 25 percent. The waste does not contain any free liquids or liquid petroleum. The stockpiled waste consists only of the waste that was originally deposited in the landfill from the impoundments and a small amount of soils adjacent to the landfill that was removed during the November 1989 excavation activities.

To collect representative samples from a waste pile like Giant's, petitioners are normally requested to divide the unit into four quadrants (not exceeding 10,000 square feet per quadrant) and randomly collect five full-depth core samples from each quadrant. The five full-depth core samples are then composited (mixed) by quadrant to produce a total of four composite samples. See *Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods*, EPA, Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and *Petitions to Delist Hazardous Wastes—A Guidance Manual*, (second edition), EPA, Office of Solid Waste, (EPA/530–R–93–007), March 1993.

The first sampling and analysis of the stockpiled waste took place in May 1990. Two samples of waste were gathered over the full depth of the waste pile, from the surface to the bottom of the waste pile. This was accomplished by cutting trenches into the waste pile using a backhoe and gathering composite samples, with a trowel, from ten locations within each trench spanning the entire depth of the trench. To form a composite from the west side of the waste pile, ten samples each from six trenches were mixed in a bucket (for a total of 60 samples). The same procedure was followed in forming a composite from the east side of the waste pile. These two composite samples were analyzed for the total concentrations (i.e., mass of a particular constituent per mass of waste) of the eight TCLP metals, nickel, antimony, beryllium, vanadium, selected volatile and semi-volatile organic constituents, and oil and grease content. These two samples were also analyzed to determine whether the waste exhibited ignitable, corrosive, or reactive properties as defined, respectively, under § 261.21, § 261.22, and § 261.23, including analysis for total constituent concentrations of cyanide, sulfide, reactive cyanide, and reactive sulfide. These two samples were also analyzed for TCLP concentrations (i.e., mass of a particular constituent per unit volume of extract) of the eight TC metals, nickel, and selected volatile and semi-volatile organic constituents. Finally, these two samples were analyzed for EP toxicity concentrations of the eight metals listed in § 261.24.

To highlight any possible variance of the outer material due to weathering, a third composite sample was formed from samples taken from eight locations across the surface of the waste pile. The maximum depth sampled was twelve inches. This composite sample was subject to the same analyses as the other two composite samples. In August 1990, Giant collected three samples, one sample each from the west side, east side, and surface of the waste pile. These samples were analyzed for TCLP concentrations of selected semi-volatile constituents.

Giant claims that because the waste pile was subjected to several operations that would have mixed the waste to a significant extent, including dredging of the wastewater treatment impoundments; loading and transporting the waste; unloading and spreading the waste in the landfill; reexcavating, loading and transporting the waste; and spreading and contouring the waste, the analytical data obtained from the two composite samples are representative of any variation in the waste pile concentrations. Based on its review of information describing this sampling event, the EPA concluded that these samples were not sufficient to support a delisting determination in part, because only two of the samples represented the full depth of the waste pile. At the request of the EPA, Giant submitted an addendum to its delisting petition. This addendum, submitted on June 25, 1993, included results from the analysis of four additional samples of the petitioned waste. Four waste samples were collected from the waste pile at the Giant facility in April 1993. The waste pile was divided into four quadrants and four full-depth core samples were collected from each quadrant.

All four samples were analyzed for total constituent concentrations of the TC metals, antimony, beryllium, cyanide, nickel, sulfide, vanadium, zinc, reactive cyanide, and reactive sulfide. The four composite samples were also analyzed for oil and grease content and leachate concentrations (using the TCLP and OWEP) of the TC metals, antimony, beryllium, cyanide, nickel, vanadium, and zinc (using distilled water in the cyanide extraction). An aliquot of the full-depth core sample was removed and analyzed for total constituent and TCLP leachate concentrations of selected volatile organic constituents. In addition, the remainder of the sample was composited and analyzed for total constituent and TCLP leachate concentrations of selected semi-volatile organic constituents.

C. Agency Analysis

Giant used SW–846 Methods 7041 through 7740 to quantify the total constituent concentrations of antimony, arsenic, lead, mercury, and selenium; and SW–846 Method 6010 to quantify total constituent concentrations of barium, beryllium, cadmium, chromium, nickel, silver, vanadium, and zinc in the 1990 and 1993 samples. Giant used SW–846 Methods 9010 (modified) to quantify the total constituent concentrations of cyanide in the 1990 and 1993 samples. Giant used Methods 7.3.4.2 and 9030 modified to quantify the total constituent concentrations of sulfide, respectively, in the 1990 and 1993 samples.

Using modified SW 846 Method 9071, Giant determined that the petitioned waste had a maximum oil and grease content of 2.35 percent. Two composite samples of the waste had more than one percent oil and grease. The leachate analyses for one sample extract (as discussed below) was modified in accordance with the OWEP methodology. The leachate analysis for the other sample extract was not modified, as the laboratory had already conducted the TCLP without filtration difficulties. Wastes having more than one percent total oil and grease may either have significant concentrations of constituents of concern in the oil phase, which may not be assessed using the standard leachate procedures, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample.

Giant used SW–846 Method 1311 (TCLP)/Method 6010 to quantify the leachable concentrations of the eight TC metals, antimony, beryllium, nickel, vanadium, and zinc in the 1990 and 1993 samples. SW–846 Method 7470 was used for mercury analyses of the extracts from the 1993 samples. Giant used SW–846 Method 1311 (TCLP; modified using distilled water)/Method 9010 to quantify leachable cyanide concentrations in the 1993 samples. Extractable metals for one of the 1993 composite samples (i.e., Sample D) was evaluated by the OWEP (SW–846 Method 1330).[1]

Giant used SW–846 Method 1310 (EP)/Method 6010 to quantify the leachable concentrations of arsenic, barium, cadmium, chromium, lead, selenium, and silver in the 1990 samples. SW–846 Method 7470 was used for mercury analyses of the extracts from the 1990 samples. The EP analyses were only conducted on the three 1990 composite samples.

Characteristic testing was conducted on the 1990 and 1993 samples of the stockpiled waste, including analysis for reactive cyanide and reactive sulfide (SW–846 Methods 7.3.3.2 and 7.3.4.2, respectively), ignitability (SW–846 Method 1010 (modified)), and corrosivity (SW–846 Method 9045).

Table 1 presents the maximum total constituent and leachate concentrations for the eight TC metals, antimony, beryllium, cyanide, nickel, vanadium, and zinc for the composite samples of the petitioned waste. Table 1 also presents maximum reactive cyanide and reactive sulfide concentrations.

The detection limits presented in Table 1 represent the lowest concentrations quantifiable by Giant when using the appropriate SW–846 or Agency-approved analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, i.e., the "cleanliness" waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limits).

Giant used SW–846 Methods 8240 and 8270 to quantify the total constituent concentrations of 41 volatile and 65 semi-volatile organic compounds, respectively, in the stockpiled waste samples. This suite of constituents included all of the nonpesticide organic constituents listed in § 261.24. Giant used SW–846 Methods 8240 and 8270 to quantify the leachable concentrations of 21 volatile and 76 semi-volatile organic compounds, respectively, in the stockpiled waste samples, following extraction by SW–846 Method 1311

[1] The Oily Waste Extraction Procedure (OWEP) is a leach test used to determine the mobile metal concentration in oily wastes. The OWEP simulates biodegradation that has occurred in the landfill. The oil in the wastes, which tends to bind complex metals such that they are not available for leaching, degrades in the landfill disposal environment, eventually resulting in the release of the metals into the underlying strata and ground water. Per the EPA instructions, Bloomfield modified the OWEP by substituting the Toxicity Characteristic Leaching Procedure (TCLP) for the Extraction Procedure (EP) in step 7.10 of the OWEP method.

(TCLP). This suite of constituents included all of the organic constituents listed in § 261.24. Table 2 presents the maximum total and leachate concentrations of all detected organic constituents in Giant's waste and waste extract samples. Lastly, on the basis of explanations and analytical data provided by Giant, none of the analyzed samples exhibited the characteristics of ignitability, corrosivity, or reactivity. See § 261.21, § 261.22 and § 261.23.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS (ppm) [1] STOCKPILED SOIL

Inorganic constituents	Total constituent analyses	Leachate analyses	
		EP/TCLP	OWEP
Antimony	< 0.3	0.07	< 0.616
Arsenic	3.9	< 0.2	< 2.05
Barium	194	0.632	0.629
Beryllium	0.3	0.002	< 1.03
Cadmium	3.9	0.003	< 0.030
Chromium (total)	507	0.149	< 0.0999
Cyanide (total)	< 1	< 0.02	
Lead	26.2	< 0.08	0.916
Mercury	0.29	< 0.1	< 0.006
Nickel	14.7	0.007	0.954
Selenium	< 0.4	< 0.09	1.68
Silver	< 0.7	< 0.007	< 0.074
Vanadium	55	< 0.04	< 0.41
Zinc	302	1.67	0.978
Cyanide (reactive)	< 2		
Sulfide (reactive)	< 10		

< Denotes that the constituent was not detected at the detection limit specified in the table.
[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS (ppm) [1] STOCKPILED SOIL

Organic constituents	Total constituent analyses	TCLP leachate analyses
Acetone	0.032	< 0.1
Benzo(a)anthracene	1.2	< 0.005
Benzo(a)pyrene	2.1	< 0.005
Chrysene	3.9	< 0.005
Fluorene	1.5	< 0.005
2-Methylnaphthalene	5.9	0.006
Naphthalene	0.83	< 0.005
Phenanthrene	4.4	< 0.005
Pyrene	2.1	< 0.005

< Denotes that the constituent was not detected at the detection limit specified in the table.
[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

Giant submitted a signed certification stating that the waste pile contains 2,000 cubic yards of waste. The EPA reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. The EPA accepted Giant's certified estimate of 2,000 cubic yards of stockpiled waste.

The EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The EPA, however, has maintained a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions. A spot-check visit to a selected facility may be initiated before finalizing a delisting petition or after granting a final exclusion.

D. Agency Evaluation

The EPA considered the appropriateness of alternative waste management scenarios for Giant's stockpiled waste and decided, based on the information provided in the petition, that disposal in a municipal solid waste landfill is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The EPA, therefore, evaluated Giant's petitioned waste using the modified EPACML which predicts the potential for groundwater contamination from wastes that are landfilled. See 56 *FR* 32993 (July 18, 1991), 56 *FR* 67197 (December 30, 1991), and the RCRA public docket for these notices for a detailed description of the EPACML model, the disposal assumptions, and the modifications made for delisting. This model, which includes both unsaturated and saturated zone transport modules, was used to predict reasonable worst-case contaminant levels in groundwater at a compliance point (i.e., a receptor well serving as a drinking-water supply). Specifically, the model estimated the dilution/attenuation factor (DAF) resulting from subsurface processes such as three-dimensional dispersion and dilution from groundwater recharge for a specific volume of waste. The EPA requests comments on the use of the EPACML as applied to the evaluation of Giant's petitioned waste.

For the evaluation of Giant's petitioned waste, the EPA used the EPACML to evaluate the mobility of the hazardous inorganic constituents detected in the extract of samples of Giant's stockpiled waste. The EPA intends to evaluate petitions for wastes no longer being generated on a case-by-case basis. The DAFs are currently calculated assuming an ongoing process generates wastes for 20 years. Therefore, the DAF needs to be adjusted as appropriate for an one-time exclusion. The DAF for the waste volume of 2,000 cubic yards/year has been adjusted for the evaluation of this petition. The DAF for 2,000 cubic yards/year assuming 20 years of generation is 79, for this petition a DAF of 100 is being used. The EPA's evaluation, using a DAF of 100, maximum waste volume estimate of 2,000 cubic yards and the maximum reported TCLP or OWEP leachate concentrations (see Table 1), yielded compliance-point concentrations (see Table 3) that are below the current health-based levels at an assumed risk level of 10^{-6} used in delisting decision-making.

TABLE 3.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (ppm) STOCKPILED SOIL

Inorganic constituents	Compliance point concentrations [1] (mg/l)	Levels of regulatory concern [2] (mg/l)
Antimony	0.0007	0.006
Barium	0.0063	2.0
Beryllium	0.00002	0.004
Cadmium	0.00003	0.005
Chromium	0.0015	0.1
Lead	0.009	0.015
Nickel	0.010	0.1
Selenium	0.017	0.05
Zinc	0.017	10.0

[1] Using the maximum EP/TCLP leachate level and based on a DAF of 100 calculated using the EPACML for an one-time volume of 2,000 cubic yards.
[2] See *Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions*, December 1994 located in the RCRA public docket for today's notice.

The maximum reported or calculated leachate concentrations of antimony, barium, beryllium, cadmium, chromium, lead, nickel selenium, and zinc in the stockpiled waste yielded compliance point concentrations well below the health-based levels used in delisting decision-making. The EPA did not evaluate the mobility of the remaining inorganic constituents (i.e., arsenic, mercury, silver, vanadium, and cyanide) from Giant's waste because they were not detected in the leachate using the appropriate analytical test methods (see Table 1). The EPA believes that it is inappropriate to evaluate nondetectable concentrations of a constituent of concern in its modeling efforts if the nondetectable value was obtained using the appropriate analytical method. If a constituent cannot be detected (when using the appropriate analytical method with an adequate detection limit), the EPA assumes that the constituent is not present and therefore does not present a threat to human health or the environment.

The EPA also evaluated the potential hazard of 2-methylnaphthalene, the only organic constituent detected in the TCLP extract of samples of Giant's stockpiled waste. Although, the EPA does not have a health-based level of concern for comparison, the EPA believes that the reported leachate concentration of 0.006 ppm does not present a potential concern. In particular, were this leachate concentration evaluated using the EPACML, the calculated compliance-point concentration would be 0.00006 ppm, a value lower than other chemicals from the naphthalene family. The EPA does not believe that this concentration, at the receptor well, would present an adverse impact on human health or the environment.

As reported in Table 1, the maximum concentrations of reactive cyanide and sulfide in Giant's stockpiled waste are less than 2 and 10 ppm, respectively. These concentrations are below the EPA's interim standards of 250 and 500 ppm, respectively. See *Interim Agency Thresholds for Toxic Gas Generation*, July 12, 1985, internal Agency Memorandum in the RCRA public docket. Therefore, reactive cyanide and sulfide levels are not of concern.

The EPA concluded, after reviewing Giant's processes, that no other hazardous constituents of concern, other than those tested for, are likely to be present or formed as reaction products or by-products in Giant's waste. In addition, on the basis of explanations and analytical data provided by Giant, pursuant to § 260.22, the EPA concludes that the waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See § 261.21, § 261.22, and § 261.23, respectively.

During the evaluation of Giant's petition, the EPA also considered the potential impact of the petitioned waste via non-ground water routes (i.e., air emission and surface runoff). With regard to airborne dispersion in particular, the EPA believes that exposure to airborne contaminants from Giant's petitioned waste is unlikely. The EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from Giant's waste in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health from airborne exposure to constituents from Giant's stockpiled waste. A description of the EPA's assessment of the potential impact of Giant's waste, with regard to airborne dispersion of waste contaminants, is presented in the RCRA public docket for today's proposed rule.

The EPA also considered the potential impact of the petitioned waste via a surface water route. The EPA believes that containment structures at municipal solid waste landfills can effectively control surface water run-off, as the recently promulgated Subtitle D regulations (see 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents dissolved in the runoff will tend to be lower than the levels in the

TCLP/EP or OWEP leachate analyses reported in today's notice, due to the aggressive acid medium used for extraction in the TCLP/EP and OWEP tests. The EPA believes that, in general, leachate derived from the waste is unlikely to enter a surface water body directly without first travelling through the saturated subsurface zone where further dilution and attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of the solubility of a toxic constituent in water, and are indicative of the fraction of the constituent that may be mobilized in surface water, as well as ground water. The reported TCLP/EP and OWEP extraction data show that the metals in Giant's stockpiled waste are essentially immobile in aqueous solution. Therefore, constituents that might be released from Giant's waste to surface water would be likely to remain undissolved. Finally, any transported constituents would be further diluted in the receiving surface water body due to relatively large flows of the streams/rivers of concern.

Based on the reasons discussed above, the EPA believes that contamination of surface water through run-off from the waste disposal area is very unlikely. Nevertheless, the EPA evaluated potential impacts on surface water if Giant's waste were released from a municipal solid waste landfill through run-off and erosion. *See,* the RCRA public docket for today's proposed rule. The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below the EPA Chronic Water Quality Criteria for aquatic organisms (USEPA, OWRS, 1987). The EPA, therefore, concluded that Giant's stockpiled waste is not a substantial present or potential hazard to human health and the environment via the surface water exposure pathway.

E. Conclusion

The EPA has reviewed the sampling procedures used by Giant and has determined that they satisfy the EPA criteria for collecting representative samples of the variations in constituent concentrations found throughout the waste pile. The data submitted in support of the petition show that constituents in Giant's waste are present below the health-based levels used in the delisting decision-making. In addition, the constituents are immobile and should not leach from the waste pile into potential receptors. The EPA believes that Giant has successfully demonstrated that the stockpiled waste is non-hazardous.

The EPA, therefore, proposes to grant a one-time exclusion to Giant Refining Company, Inc., located in Bloomfield, New Mexico, for the stockpiled waste described in its petition as EPA Hazardous Waste No. K051. The EPA's decision to exclude this waste is based on descriptions of the excavation activities associated with the petitioned waste, descriptions of Giant's wastewater treatment process, and characterization of the stockpiled waste. If the proposed rule is finalized, the petitioned waste will no longer be subject to regulation under Parts 262 through 268 and the permitting standards of Part 270.

If made final, the proposed exclusion will apply only to the 2,000 cubic yards of stockpiled waste generated during the excavation of Giant's two wastewater treatment impoundments (referred to as the South and North Oily Water Ponds). The facility would need to file a new petition for any new waste produced. The facility must treat any excavated soil in excess of the original 2,000 cubic yards as hazardous unless a new exclusion is granted.

Although management of the waste covered by this petition would be removed from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

IV. Effective Date

This rule, if made final, will become effective immediately upon final publication. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six-months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, the EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, pursuant to 5 U.S.C.§ 553(d).

V. Regulatory Impact

Under Executive Order 12866, the EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. This proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of the EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from the EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional impact due to today's rule. Therefore, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. §§ 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on any small entities.

This rule, if promulgated, will not have any adverse economic impact on any small entities since its effect would be to reduce the overall costs of the EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. § 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, the EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, the EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before the EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local or tribal governments or the private sector. The EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty upon state, local or tribal governments or the private sector. In addition, the proposed delisting does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. § 6921(f).

Dated: May 3, 1996.

Jane N. Saginaw,

Regional Administrator.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 2 of Appendix IX of Part 261 it is proposed to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under § 260.20 and 260.22.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
Giant Refining Company, Inc	Bloomfield, New Mexico	Waste generated during the excavation of soils from two wastewater treatment impoundments (referred to as the South and North Oily Water Ponds) used to contain water outflow from an API separator (EPA Hazardous Waste No. K051). This is a one-time exclusion for approximately 2,000 cubic yards of stockpiled waste. This exclusion was published on [insert publication date of the final rule]. Notification Requirements: Giant Refining Company must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.

[FR Doc. 96–12607 Filed 5–17–96; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 73

[MM Docket No. 96–16, FCC 96–198]

Revision of Broadcast EEO Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period; dismissal of petition for reconsideration.

SUMMARY: In *Streamlining Broadcast EEO Rules and Policies,* FCC 96–198, released April 26, 1996 (*Streamlining*), the Commission dismisses a Petition for Reconsideration, grants a Petition for Clarification in part and denies it in part, and grants a motion for extension of time concerning the Commission's *Order and Notice of Proposed Rule Making,* 11 FCC Rcd 5154 (1996), MM Docket No. 96–16, 61 FR 9964 (March 12, 1996) (*NPRM*). The Commission finds that the public interest favors grant of the motion for extension of time.

DATES: Initial comments due July 1, 1996; reply comments due July 31, 1996.

ADDRESSES: Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Hope G. Cooper, Mass Media Bureau, Enforcement Division. (202) 418–1450.

SUPPLEMENTARY INFORMATION: This is a synopsis of *Streamlining,* FCC 96–198, adopted and released April 26, 1996.

The complete text of *Streamlining* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services,

Inc., at (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Synopsis of Order and Notice of Proposed Rule Making

The Commission responds to two pleadings, a Petition for Reconsideration and Clarification, and a Motion for Extension of Time, filed by twenty organizations (including the Minority Media and Telecommunications Council), concerning the Commission's *Order and Notice of Proposed Rule Making*, 11 FCC Rcd 5154 (1996), MM Docket No. 96–16, 61 FR 9964 (March 12, 1996). In the Petition for Reconsideration and Clarification, among other things, Petitioners argue that, because the *NPRM* has the effect of rejecting proposals previously submitted to the Commission, the *NPRM* is a final action against which petitions for reconsideration may be filed pursuant to Section 1.429 of the Commission's Rules. They also argue that the Commission should amend the *NPRM* to include various proposals set forth in the Petition, as well as revise language in the *NPRM* to clarify that it is soliciting comment in support of increased, as well as reduced, EEO requirements. In the Motion for Extension of Time, Petitioners request that the Commission extend the date for submission of comments in response to the *NPRM* to two months following the issuance of an order reconsidering and/or clarifying the *NPRM*. They contend that without such an order they would be unable to develop thorough and meaningful comments to the *NPRM*. In addition, Petitioners assert that their present resources are severely limited by, among other things, their involvement in proceedings concerning the Telecommunications Act of 1996.

2. The Commission rejects Petitioners' argument that the *NPRM* is a final action, finding that the *NPRM* did not implement any rule or reject any proposals presently pending before the Commission, and, accordingly, dismisses the Petition for Reconsideration. *See* 47 CFR 1.429. The Commission grants the Petition for Clarification in part and otherwise denies it. The Commission states that "[t]he proposals in the *NPRM* sought to further the objectives of our EEO Rule and policies while minimizing undue regulatory burdens on broadcasters. We encourage Petitioners to submit with their comments any alternatives to the proposals that further these goals." Finally, the Commission finds that the public interest favors grant of the motion for extension of time, and, therefore, the Commission extends the comment and reply comment dates to July 1, 1996, and July 31, 1996, respectively.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–12588 Filed 5–17–96; 8:45 am]

BILLING CODE 6712–01–P

---

47 CFR Part 64

[CC Docket No. 96–112; FCC 96–214]

Allocation of Costs Associated With Local Exchange Carrier Provision of Video Programming Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In the NPRM, the Commission would define the goals of our cost allocation rules and of the 1996 Act. Guided by these goals, the NPRM would seek specific comment on allocating certain categories of incumbent local exchange carriers' plant between regulated Title II and nonregulated (non-Title II) activities. Particular attention would be directed to the allocation of loop facilities, all of which have been allocated to regulated activities in the past. The intended effect of this action is to revise the Commission's rules regarding cost allocation to accommodate the provision of nonregulated and non-Title II services that share outside plant facilities with regulated services.

DATES: Comments must be submitted on or before May 28, 1996. Reply comments are due on or before June 7, 1996.

ADDRESSES: Federal Communications Commission, 1919 M St., N. W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Andrew Mulitz, Attorney/Advisor Accounting and Audits, Common Carrier Bureau, (202) 418–0850.

SUPPLEMENTARY INFORMATION:

1. This is a summary of the Commission's Notice of Proposed Rulemaking adopted May 10, 1996, and released May 10, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M St., N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., 202 857–3800, 1990 M Street, N.W., Suite 246, Washington, D.C. 20554.

Regulatory Flexibility Analysis

2. We have determined that Section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b) does not apply to this rulemaking proceeding because if promulgated, it would not have a significant economic impact on a substantial number of small entities. The definition of a "small entity" in Section 3 of the Small Business Act excludes any business that is dominant in its field of operation. Although some of the local exchange carriers that will be affected are very small, local exchange companies do not qualify as small entities because they have a nationwide monopoly on ubiquitous access to the subscribers in their service area. The Commission has found all exchange carriers to be dominant in the *Competitive Carrier* proceeding. 85 FCC 2d 1, 23–24 (1980). To the extent that small telephone companies will be affected by these rules, we hereby certify that these rules will not have a significant economic effect on a substantial number of "small entities." Although we do not find that the Regulatory Flexibility Act is applicable to this proceeding, this Commission has an ongoing concern with the effect of its rules and regulations on small business and the customers of the regulated carriers as is evidenced by this proceeding.

Ordering Clause

Accordingly, IT IS ORDERED that, pursuant to Sections 302 and 703 of the 1996 Act, and sections 1, 4(i), 4(j), 201, 215, 218 and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201, 215, 218, 220), a Notice of Proposed Rulemaking is hereby ADOPTED.

It is further ordered that the Secretary shall send a copy of this Notice of Proposed Rulemaking, including the Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 64

Communications common carriers, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–12586 Filed 5–17–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 90

[WT Docket No. 96–86, FCC 96–155]

Public Safety Radio Requirements Through the Year 2010

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: The Commission has adopted a Notice of Proposed Rule Making to address the present deficiencies in public safety wireless communications as well as its expanding spectrum needs. These proposed amendments will solicit comments on how to meet public safety needs, and to facilitate a transition to a communications environment in which public safety agencies have access to higher quality transmission, emerging technologies, and broader services. The Notice also furthers the Commission's efforts to implement Section 6002 of the Omnibus Budget Reconciliation Act of 1993, which requires the Commission to study public safety spectrum needs and to develop a plan that ensures that adequate frequenices are available for public safety uses through the year 2010.

DATES: Comments are due September 20, 1996; reply comments are due October 18, 1996.

FOR FURTHER INFORMATION CONTACT: Robert McNamara the Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, adopted April 5, 1996, and released April 10, 1996. The full text of this action is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N..W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. In this action, the Commission initiates an overall evaluation and assessment of public safety wireless communications, which builds upon our findings and conclusions presented in the 1995 FCC Public Safety Report. We believe that the critical responsibilities of public safety agencies, such as protection of life and property, can be performed more effectively by increasing the flexibility and opportunities that wireless communications can offer. The goal of this proceeding is to develop the data necessary to evaluate the spectrum needs of public safety agencies, to solicit comment on how best to meet these needs, and to facilitate a transition to a communications environment in which public safety agencies have access to higher quality transmission, emerging technologies, and broader services, including the ability to communicate readily with one another (interoperability). We recognize that such an environment can be achieved through a variety of regulatory approaches, such as requiring more efficient use of current public safety spectrum, reallocating additional spectrum for public safety uses, and facilitating the use of commercial service providers for increased communications capacity. We believe, however, that no one approach will satisfy all public safety communications spectrum needs. We further believe that the optimal approach should allow each of these individual approaches to be strategically combined in a way that meets the specific needs of individual public safety entities.

2. The Notice of Proposed Rule Making emphasizes two primary issues. The first issue is the critical nature of public safety responsibilities to the Nation's well being and the role of modern wireless communications in ensuring that these duties are fulfilled effectively. The second issue is that the fragmented nature of present public safety wireless communications has a detrimental impact on present and future capabilities. We believe that bringing about improved quality and tangible access to expanded services is dependent largely on public safety operating in a wider and more consistent environment. This proceeding seeks to broaden the opportunity for public safety agencies to obtain access to the benefits that accrue from the increased competition and innovation that has emerged in telecommunications generally while maintaining the independence, reliability, universal service and security that are integral to public safety. We believe that a regulatory structure can emerge that is more efficient, commits more discretion to users, and facilitates access to a much broader range of services.

3. Authority for issuance of this Notice of Proposed Rule Making is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r).

Final Regulatory Flexibility Analysis

4. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix A of the Notice of Proposed Rule Making. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice of Proposed Rule Making, but they must have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–12587 Filed 5–17–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[I.D. 050296B]

Mid-Atlantic Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings; request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold five public hearings to allow for input on the resubmitted portion of Amendment 5 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fishery.

DATES: Written comments will be accepted through June 7, 1996. The hearings will be held during the months of May and June. See **SUPPLEMENTARY INFORMATION** for the time and dates of the hearings.

ADDRESSES: Send comments to David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New

Street, Dover, DE 19904. The public hearings will be held in New Hampshire, Rhode Island, New Jersey, New York, and North Carolina. See **SUPPLEMENTARY INFORMATION** for the locations of the hearings.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, (302) 674–2331.

SUPPLEMENTARY INFORMATION: Amendment 5 was partially disapproved by NMFS on February 9, 1996. The following management measures were approved by NMFS: Lowering of the *Loligo* maximum sustainable yield; eliminating the possibility of directed foreign fishing for *Loligo*, *Illex*, and butterfish; instituting a dealer and vessel reporting system; instituting an operator permitting system; and expanding of the management unit to include all Atlantic mackerel, *Loligo*, *Illex*, and butterfish under U.S. jurisdiction. NMFS disapproved three measures: (1) The use of long term potential catch to cap allowable biological catch (ABC) for Atlantic mackerel, (2) the *Illex* moratorium, and (3) the exemption from the minimum mesh requirement for the *Loligo* fishery for a vessel fishing for sea herring whose catch is comprised of 75 percent or more of sea herring.

In the draft proposed resubmitted portion of Amendment 5, overfishing for Atlantic mackerel is defined as the catch of Atlantic mackerel exceeding the annual ABC for the species. The fishing mortality rate associated with the total catch of Atlantic mackerel (ABC + C) shall not exceed $F_{0.1}$ (as determined by the most recent stock assessment conducted by the Northeast Fisheries Science Center). ABC is the allowable biological catch in U.S. waters for the upcoming fishing year and C is defined as the quantity of mackerel that is expected to be caught in Canadian waters. In addition, a spawning stock size (S) of no less than 900,000 mt shall be maintained at the end of the fishing year for which catch estimates and quotas are being prepared.

The qualification language for the *Illex* moratorium in the preferred alternative is: A vessel is eligible for a moratorium permit in the *Illex* fishery if it meets any of the following criteria: (1) The vessel had five landings (including at-sea joint venture transfers) of 5,000 lb (2.27 mt) of *Illex* (i.e., landed five trips of at least 5,000 lb (2.27 mt) between August 13, 1981, and August 13, 1993, (2) the vessel is replacing a vessel of substantially similar harvesting capacity that involuntarily left the *Illex* squid fishery during the moratorium, and both the entering and replaced vessels are owned by the same person. "Substantially similar harvesting capacity" means the same or less gross registered tonnage (GRT) and vessel registered length for commercial vessels, or (3) vessels that are judged unseaworthy by the U.S. Coast Guard for reasons other than lack of maintenance may be replaced by a vessel with the same GRT and vessel registered length for commercial vessels.

A vessel that does not qualify for an *Illex* moratorium permit may land *Illex* if: (1) The vessel possesses an incidental catch permit, (2) the vessel fishes with a net legal in the directed fishery, (3) the vessel lands no more than 5,000 lb (2.27 mt) of *Illex* per trip, and (4) the operator of the vessel files the appropriate trip reports. The bycatch allowance may be adjusted by the Director, Northeast Region, NMFS, based on the recommendation of the Council.

The public hearings will be tape recorded with the tapes filed as the official transcript of the hearings. The hearings will be held at the following locations.

1. May 20, 1996, 6 p.m.—Holiday Inn, 300 Woodbury Avenue, Portsmouth, NH.

2. May 21, 1996, 4 p.m.—Holiday Inn at the Crossings, 800 Greenwich Avenue, Warwick, RI.

3. May 30, 1996, 6:30 p.m.—Cape May extension Office, Dennisville Road, Cape May, NJ.

4. June 3, 1996, 7:30 p.m.—Ramada Inn, Exit 72 L.I.E. & Route 25, Riverhead, NY.

5. June 3, 1996, 7 p.m.—North Carolina State Aquarium, Airport Road, Manteo, NC.

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to David R. Keifer (see **ADDRESSES**) at least 5 days prior to the hearing dates.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 14, 1996.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–12534 Filed 5–17–96; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 98
Monday, May 20, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 35).

Agency: Patent and Trademark Office (PTO).

Title: Address-Affecting Provisions.

Agency Approval Number: 0651–0035.

Type of Request: Regular.

Burden: 8,970 hours.

Number of Respondents: 44,850.

Avg. Hour Per Response: .2 hours.

Needs and Uses: This submission of information is used by the PTO to ensure that the information as to the agent or representative, if any, and the correspondence address is current so that correspondence to the representative/applicant from the PTO, whenever such correspondence is mailed, is timely received.

Affected Public: Individuals or Households, Business or other for-profit Institutions, not-for-profit Institutions and the Federal Government.

Frequency: Reporting on Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maya Bernstein, OMB Desk Office, room 10236, New Executive Office Building, Washington, DC 20503.

Dated: May 15, 1996.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–12644 Filed 5–17–96; 8:45 am]

BILLING CODE 3510–16–P

Bureau of the Census

1996 Integrated Coverage Measurement (ICM) Activities—Person Interview and Reconciliation Activities

ACTION: Proposed Agency Information Collection Activity; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1955, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 19, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to David C. Whitford, Bureau of the Census, Room 3771, Washington, D.C. 20233, (301) 457–4035.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of the Census developed the Integrated Coverage Measurement (ICM) approach for measuring coverage of populations during the decennial census. In the 1996 Community Census, we are interested in refining our ICM approach to measuring the coverage of the census for housing units, people, group quarters with a dormitory style of living arrangement, and incorporating the use of administrative records into the ICM. The 1996 Community Census will be conducted in an urban site (six noncontiguous census tracts in Chicago, Illinois) and two American Indian Reservations (Pueblo of Acoma, New Mexico, and Fort Hall Indian Reservation, Idaho).

As soon as the census enumeration is complete, the ICM Person Interview will be conducted using a Computer Assisted Personal Interviewing (CAPI) instrument, a laptop computer. The census enumerations and information from administrative records will be loaded into the CAPI instrument before interviewing begins.

Intensive probing techniques will be used to reconstruct a roster of the residents of the housing unit on census day. The interviewing instrument will examine whether all people mentioned during the interview should be enumerated at the housing unit in question according to census residency rules. For units not enumerated in the census, the interviewer will ask probing questions to determine the status of the units and their occupants on census day, October 5, 1996. Then some initial matching and linking between the roster, the census enumeration, and the administrative records are done within the CAPI instrument. The interviewer will then reconcile the differences between the census enumerations, the administrative records, and the ICM interview. From this "resolved" roster we will have the information we need to produce final estimates of the coverage of the census. The interview data will identify persons missed or incorrectly included in the census as well as persons correctly enumerated.

For quality assurance, at maximum, a 20 percent random sample of respondents in the ICM sample will be reinterviewed using a shortened version of the ICM Person Interview. This reinterview will be done on the CAPI instrument.

After the ICM Person Interviews are conducted, we will conduct an Evaluation Interview; it will be identical to the ICM Person Interview and will be conducted using the CAPI instrument. The objective of this interview is to measure and evaluate data collection error associated with the ICM Person Interview.

An Outmover Tracing Operation will be conducted during the time series when the ICM Person Interviews are being completed. For households where the census day residents have moved out, as identified through the ICM Person Interview, we will attempt to

obtain an ICM proxy interview from the current residents or another reliable proxy. We will attempt to obtain the current address and/or telephone number of the census day residents. We will interview the "outmovers" at their current address in person or by telephone using the ICM Outmover Tracing Questionnaire, Form DT–1340. For outmover households where we successfully trace and interview a member of the Census day household, the information obtained in this interview will be used instead of the information obtained from the proxy. For households where we are unable to locate the Census day residents or obtain an interview from them, we will use the information from the proxy interview.

The ICM Outmover Tracing Questionnaire will also be used in the Outmover Evaluation. The evaluation will measure how effectively the ICM Person Interview identified outmovers.

After the person interview and subsequent matching operation, person matching for Dual System Estimation (DSE) will be conducted. For DSE, results of the ICM Person Interview are combined with the census results to produce a measure of the true population. The estimation technique is called DSE because two independent sources of information or systems are used. Follow-up interviews using Form DT–1301 are needed when prior information is insufficient to determine a person's residence status or match status. After the DSE Follow-up Interview, the results will be coded. The files will then be prepared for missing data and estimation activities.

We will also obtain administrative records of all persons living in dormitories in the urban portion of the 1996 Community Census and match the administrative records to the census. Cases that are possibly matched or nonmatched will be sent to the field for resolution. The DSE Follow-up form, DT–1301A, used during this field resolution will contain only one or two questions to ask of these people. The purpose of the questions is to determine residency status of the people living in dormitories. We will analyze the results of this operation to determine if in Census 2000, we can use administrative records in place of enumeration during the ICM.

II. Method of Collection

Person to person interview.

III. Data

OMB Number: Not available.
Form Number: CAPI Person Interview (no form number); ICM Person Interview QA (no form number); DT–1340, Outmover Tracing Questionnaire; DT–1301, DSE Follow-up Form; and DT-1301A, DSE Follow-up Form for Dormitories.
Type of Review: Regular.
Affected Public: Individuals or households.
Estimated Number of Respondents: 14,188 housing units and 120 people in dormitories.
Estimated Time Per Response: 20 minutes (CAPI Person Interview, Evaluation Interview, Outmover Tracing Questionnaire, and Outmover Tracing Evaluation), 10 minutes (CAPI Person Interview QA); 15 minutes (DSE Follow-up Form); and 1 minute (DSE Follow-up Form for Dormitories).
Estimated Total Annual Burden Hours: 4,327 hours. CAPI Person Interview=3333 hours (20 minutes×10,000 housing units); CAPI Person Interview QA=342 hours (10 minutes×2,053 housing units); Evaluation Interview=149 hours (20 minutes by 446 housing units); Outmover Tracing=267 hours (20 minutes×800 housing units); Outmover Tracing Evaluation=58 hours (20 minutes×175 housing units); DSE Follow-up=178 hours (15 minutes×714 housing units); and DSE Follow-up for Dormitories=2 hours (1 minute×120 people).
Estimated Total Annual Cost: $1,576,998.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 14, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–12521 Filed 5–17–96; 8:45 am]

BILLING CODE 3510–07–P

1997 Economic Censuses Refile Classification Survey

ACTION: Proposed Agency Information Collection Activity; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 19, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to William Bostic, Bureau of the Census, Room 2641, Building 3, Washington, DC 20233–6100, and 301–457–2672 or email at William.G.Bostic.Jr@Info.Census.Gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is the preeminent collector of timely, relevant and quality data about the people and economy of the United States. Economic data are the Census Bureau's primary program commitment during non-decennial census years. The economic census, conducted under authority of Title 13 U.S.C., is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business and the general public.

The 1997 Economic Census will cover virtually every sector of the U.S. economy. The 1987 Standard Industrial Classification (SIC) system is being replaced by the new 1997 North American Industry Classification System (NAICS). The Census Bureau is implementing the new NAICS for the 1997 Economic Censuses. The change to NAICS will require contacting businesses of selected sectors to collect classification information to update the 1997 Economic Censuses mailing lists. The non-goods producing sector which include retail trade, wholesale trade, business services, transportation and other service related industries are the primary areas of the economy where the Census Bureau plans to collect the new NAICS information.

The classification information collected from businesses will be used to update the Census Bureau's mailing lists to ensure respondents will receive the correct 1997 Economic Census form. The collection of this new NAICS information will greatly reduce processing costs and ease reporting burden for the 1997 Economic Censuses data collection. The Census Bureau is not requesting any economic data in this collection.

II. Method of Collection

The Census Bureau will select establishments to receive this survey from the Census Bureau's Standard Statistical Establishment List. Short form questionnaires are designed for respondents to select the industry activity that best describes the establishment's business. The Census Bureau's mail list will include single business establishments and companies with multiple establishments. To be eligible for selection, an establishment must satisfy the following conditions: (1) the current SIC is affected by the NAICS implementation or the current SIC is only coded to the 2 or 3 digit level; and (2) the establishment is above the mail cutoffs planned for the 1997 Economic Census.

III. Data

OMB Number: Not Available.
Form Number: NC–9922.
Type of Review: Regular Review.
Affected Public: Businesses or Other for Profit Institutions, Non-profit Institutions, Small Businesses or Organizations, and State or Local Governments.
Estimated Number of Respondents: 800,000.
Estimated Time Per Response: 5 minutes.
Estimated Total Annual Burden Hours: 66,667 hours.
Estimated Total Annual Cost: The cost to the government for this work is included in the total cost of the 1997 Economic Census, estimated to be $218 million.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 14, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–12522 Filed 5–17–96; 8:45 a.m.]

BILLING CODE 3510–07–P

Bureau of Export Administration

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Sensors and Instrumentation Technical Advisory Committee will be held June 12, 1996, 9:00 a.m., in the Herbert C. Hoover Building, Room 1617M–2, 14th Street between Constitution and Pennsylvania Avenues, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to sensors and related equipment and technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion on Executive Order on licensing processing.
4. Discussion on Export Administration Regulations reform.

Executive Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OAS/EA/BXA—Room 3886C, U.S. Department of Commerce, Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 13, 1995, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: May 14, 1996.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 96–12520 Filed 5–17–96; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Docket 2–96]

Foreign-Trade Zone 75—Phoenix, AZ; Application for Subzone Status; Sitix of Phoenix, Inc. (Semiconductor Wafers); Phoenix, AZ; Extension of Public Comment Period

The comment period for the above case, requesting special-purpose subzone status for the new semiconductor wafer manufacturing plant of Sitix of Phoenix, Inc. (subsidiary of Sumitomo Sitix Corp.), located in Phoenix, Arizona (61 FR 1747, 1/23/96), is further extended to July 19, 1996, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions should include 3 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th and

Pennsylvania Avenue NW, Washington, DC 20230.

Dated: May 9, 1996.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 96–12513 Filed 5–17–96; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 37–96]

Foreign-Trade Zone 43—Battle Creek, MI Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Battle Creek, Michigan, grantee of FTZ 43, requesting authority to expand its zone at a site in Benton Harbor, Michigan, adjacent to the Battle Creek Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 7, 1996.

FTZ 43 was approved on October 19, 1978 (Board Order 138, 43 FR 50233; 10/27/78). Since then the zone has been expanded three times (B.O.s 496, 554 & 555). It currently consists of three sites in the Battle Creek area: *Site 1:* (1,731 acres)—within the Fort Custer Industrial Park and adjacent Columbia West Industrial Park, Battle Creek; *Site 2:* (23 acres)—warehouse facility owned and operated by TLC Warehousing Services, Inc. (TLC), at 6677 Beatrice Drive in Texas Township (Kalamazoo County); and *Site 3:* (22 acres)—warehouse facility, also operated by TLC, 8250 Logistic Drive, Zeeland Township (Ottawa County), some 20 miles southwest of Grand Rapids.

The applicant is now requesting authority to expand the general-purpose zone to include a site (30 acres—2 parcels) located within the 120-acre St. Joseph River Harbor Development Area adjacent to Lake Michigan in Benton Harbor (Berrien County), Michigan, some 50 miles east of Battle Creek. The first parcel is bordered by North Riverview Street, BL–94, the St. Joseph River and the Paw Paw River. The second parcel is bordered by Graham Street, 8th Street, the CSX Railroad Line and the Paw Paw River. The site will be operated by Cornerstone Alliance Council of Commerce and Community Development, a local economic development corporation.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment (original and 3 copies) is invited from interested parties (see FTZ Board address below). The closing date for their receipt is July 19, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period August 5, 1996.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Customs Service, North Central Region, 4950 W. Dickman Road, Battle Creek, Michigan 49016

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW,Washington, DC 20230

Dated: May 10, 1996.

Dennis Puccinelli,

Acting Executive Secretary,

[FR Doc. 96–12514 Filed 5–17–96; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 38–96]

Foreign-Trade Zone 21—Charleston, SC; Request for Manufacturing Authority, Quoizel, Inc., (Lighting Fixtures)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Carolina State Ports Authority, grantee of FTZ 21, requesting authority on behalf of Quoizel, Inc., to manufacture lighting fixtures under zone procedures within FTZ 21, Site 3, Crowfield Corporate Center, Goose Creek, South Carolina. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 8, 1996.

Quoizel is planning to move its headquarters and manufacturing facility to a site located within FTZ 21, Site 3, Crowfield Corporate Center by July 1996. The facility (300 employees) will produce lighting fixtures for households and commercial markets. Some 60 percent of the components are sourced abroad, including lighting fixture parts of glass, plastic, brass and steel. Exports will account for some 10 percent of production.

Zone procedures would exempt Quoizel from Customs duty payments on foreign materials used in manufacturing for export. On domestic sales, the company would be able to choose the duty rates that apply to lighting fixtures (ranging from 3.7% to 7.6%), rather than the duty rates that would otherwise apply to the foreign components (ranging from 4.7% to 13.2%). The application indicates that the savings from zone procedures would help improve the international competitiveness of the Quoizel facility.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 19, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 5, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 81 St. Mary St., Charleston, South Carolina 29403

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: May 10, 1996.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 96–12515 Filed 5–17–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–557–805]

Notice of Preliminary Results and Termination in Part of Antidumping Duty Administrative Review: Extruded Rubber Thread From Malaysia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 20, 1996.

FOR FURTHER INFORMATION CONTACT: Cameron Werker or Shawn Thompson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3874 or (202) 482–1776, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 18, 1993, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" of the Antidumping Duty Order on Extruded Rubber Thread from Malaysia (58 FR 53709). In accordance with 19 CFR 353.22(a)(2), in October 1993, the following producers and exporters of extruded rubber thread requested an administrative review of the antidumping order covering the period April 2, 1992, through September 30, 1993: Heveafil Sdn. Bhd. ("Heveafil"), Rubberflex Sdn. Bhd. ("Rubberflex"), Filati Lastex Elastfibre (Malaysia) ("Filati"), and Rubfil Sdn. Bhd ("Rubfil"). On November 17, 1993, the Department initiated an administrative review for Rubberflex (58 FR 60600). On December 17, 1993, the Department initiated an administrative review for Heveafil, Filati, and Rubfil (58 FR 65964).

On January 26, 1994, the Department issued sales and cost questionnaires to the four companies requesting an administrative review. On March 8, 1994, Filati and Rubfil withdrew their request for administrative review in accordance with 19 CFR 353.22(a)(5). Accordingly, we are terminating this review for Filati and Rubfil.

On March 21, 1994, Heveafil submitted a request to withdraw from this administrative review with respect to sales made during the period April 2, 1992, through August 25, 1992. This request was based on Heveafil's assertion that the company was having difficulty in collecting information for this period. On March 24, 1994, we rejected Heveafil's partial termination request.

Heveafil and Rubberflex submitted questionnaire responses in April 1994. We issued supplemental questionnaires in May 1994 (to both respondents), in April 1995 (to Heveafil) and in July 1995 (to Rubberflex). Responses to these questionnaires were received in June 1994, May 1995, and August 1995, respectively.

In July and August 1995, the Department conducted sales and cost verifications of Heveafil's questionnaire responses, in accordance with 19 CFR 353.36(a)(iv), based in part on Heveafil's assertion that it did not maintain detailed sales and cost records during the first five months of the review period. Regarding Rubberflex, we determined that it was unnecessary to conduct verification, in accordance with 19 CFR 353.36, because (1) Rubberflex was involved in the original investigation (and therefore had been verified during that proceeding); and (2) no data collection problems were indicated for this company in the instant proceeding.

Scope of the Review

The product covered by this review is extruded rubber thread. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Extruded rubber thread is currently classified under subheading 4007.00.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). The HTSUS subheadings are provided for convenience and Customs purposes. Our written description of the scope of this review is dispositive.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

We are conducting this administrative review for Heveafil and Rubberflex in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Such or Similar Merchandise

In determining similar merchandise comparisons, in accordance with section 771(16) of the Act, we considered the following physical characteristics, which appear in order of importance: (1) Quality (*i.e.*, first vs. second); (2) size; (3) finish; (4) color; (5) special qualities; (6) uniformity; (7) elongation; (8) tensile strength; and (9) modulus. With the exception of quality, these characteristics are in accordance with matching criteria set forth in the January 26, 1994, memorandum to the file. Regarding quality, we have added this characteristic in order to address respondents' concerns regarding differences in value related to significant differences in quality.

Regarding color, both respondents assigned separate codes to each shade of color. We reassigned color codes to sales of subject merchandise, in accordance with the instructions contained in the questionnaire. This resulted in our treating all shades of white as equally similar to each other, all shades of black as equally similar, etc., instead of treating a specific shade as most similar to another specific shade.

Fair Value Comparisons

To determine whether sales of extruded rubber thread from Malaysia to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV) for Rubberflex and Heveafil, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Respondents reported bad debt as indirect selling expenses. Therefore, because bad debt was included in the indirect selling expenses, we disregarded sales to all markets (*i.e.*, United States and third country) which were written off as bad debt in order to avoid double-counting these transactions.

United States Price

For sales by both respondents, we based USP on purchase price, in accordance with section 772(b) of the Act, when the subject merchandise was sold to unrelated purchasers in the United States prior to importation and when the exporter's sales price (ESP) methodology of section 772(c) of the Act was not otherwise indicated. In addition, where sales to the first unrelated purchaser took place after importation into the United States, we based USP on ESP, in accordance with section 772(c) of the Act.

A. Heveafil

We removed all sales from the sales database with entry dates after the period of review (POR). In addition, at verification, we found that certain sales Heveafil had designated as U.S. sales were actually sales to a U.S. customer but shipped to Hong Kong to be further manufactured into non-subject merchandise before entering the United States. Accordingly, the merchandise that eventually entered the United States was not subject to the dumping order. Therefore, we consider these sales to be third country sales and have eliminated them from the U.S. sales listing.

We based purchase price on packed, CIF prices to the first unrelated purchaser in the United States. We revised Heveafil's data based on our findings at verification. We made deductions from USP, where appropriate, for rebates. In addition, where appropriate, we made deductions for foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. customs duty, harbor maintenance and merchandise

processing fees, and U.S. brokerage and handling expenses, in accordance with section 772(d)(2) of the Act.

At verification, we found that Heveafil did not report certain purchase price sales of extruded rubber thread which entered the United States during the POR. Because we specifically instructed Heveafil to report all entries into the United States during the POR as well as all sales made during the POR, we based the margin for these unreported sales on the best information otherwise available (BIA) in accordance with section 776(c) of the Act. As BIA, we applied the weighted-average margin found in the this first administrative review, because it is the highest rate ever determined for Heveafil. This is consistent with the Department's general application of partial BIA (*see, e.g., Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al*, 60 FR 10900, 10907 (February 28, 1995) (*AFBs*)).

For sales made from the inventory of the U.S. branch office, we based USP on ESP, in accordance with section 772(c) of the Act. In addition, we reclassified certain purchase price sales as ESP sales because we found at verification that they were canceled by the original purchaser after shipment and resold after importation into the United States.

We calculated ESP based on packed, delivered prices to unrelated customers in the United States. We revised the reported data based on our findings at verification. We made deductions, where appropriate, for rebates. We also made deductions for foreign inland freight, foreign brokerage, ocean freight, marine insurance, U.S. inland freight, U.S. brokerage, entry fees, harbor maintenance and processing fees, and inspection charges. In accordance with section 772(e)(2) of the Act, we made additional deductions, where appropriate, for credit and indirect selling expenses.

B. Rubberflex

We based purchase price on packed, CIF prices to the first unrelated purchaser in the United States. We made deductions from USP, where appropriate, for foreign inland freight, foreign brokerage, containerization expenses, ocean freight, marine insurance, U.S. customs duties, harbor maintenance and merchandise processing fees, and U.S. inland freight expenses, in accordance with section 772(d)(2) of the Act. Rubberflex did not report certain movement charges, although the company reported that it incurred them on all purchase price transactions. Accordingly, we based the amount of the unreported expenses on BIA. As BIA, we used the highest amount reported in the purchase price sales listing for each specific charge (*see e.g., Chrome-Plated Lug Nuts From the People's Republic of China; Final Results of Antidumping Administrative Review* 60 FR 48687 (September 20, 1995)). We disregarded a rebate reported for one purchase price sale, because Rubberflex stated in its questionnaire response that the company did not grant any U.S. rebates during the POR.

For sales made from the inventory of the U.S. subsidiary, we based USP on ESP, in accordance with section 772(c) of the Act. We calculated ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage, containerization expenses, ocean freight, marine insurance, U.S. customs duties, harbor maintenance and processing fees, and U.S. inland freight. In accordance with section 772(e)(2) of the Act, we made additional deductions, where appropriate, for credit and indirect selling expenses.

Rubberflex did not report complete data for certain ESP sales. Accordingly, we used BIA to determine these data, as follows: Where price and/or credit expense data was missing for sales of second quality merchandise, we used the average price and expense data reported for other second quality sales. Where the date of sale was missing and/or the control number was missing, we applied the weighted-average margin found in the LTFV investigation, because it is the highest rate ever determined for Rubberflex. This is consistent with the Department's general application of partial BIA (*see, e.g., AFBs*).

Foreign Market Value

In order to determine whether the home market was viable during the POR, (*i.e.*, whether there were sufficient sales of extruded rubber thread in the home market to serve as a viable basis for calculating FMV), we compared the volume of each of the respondent's home market sales to the volume of its third country sales, in accordance with section 773(a)(1)(B) of the Act and 19 CFR 353.48. Based on this comparison, we determined that neither respondent had a viable home market during the POR. Consequently, we based FMV on third country sales.

In accordance with 19 CFR 353.49(b), we selected the appropriate third country markets for Heveafil and Rubberflex based on the following criteria: similarity of merchandise sold in the third country to the merchandise exported to the United States, the volume of sales to the third country, and the similarity of market organization between the third country and U.S. markets. Specifically, we chose, as the appropriate third country markets, Italy for Heveafil and Hong Kong for Rubberflex.

Because the Department disregarded sales below the cost of production (COP) for both Heveafil and Rubberflex in the original investigation (*see Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia*, 57 FR 38465 (August 25, 1992)), in accordance with our standard practice, there were reasonable grounds to believe or suspect that both Heveafil and Rubberflex had made third country sales at prices below its COP in this review.

In accordance with section 773(b) of the Act, and longstanding administrative practice (*see, e.g., Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Korea*, 56 FR 16306 (April 22, 1991) and *Final Results Administrative Review: Mechanical Transfer Presses from Japan*, 59 FR 9958 (March 2, 1994)), if over ninety percent of respondent's sales of a given model were at prices above the COP, we did not disregard any below-cost sales because we determined that the below-cost sales were not made in substantial quantities. Where we found between ten and ninety percent of respondent's sales of a given product were at prices below the COP, and the below cost sales were made over an extended period of time, we disregarded only the below-cost sales. Where we found that more than ninety percent of respondent's sales were at prices below the COP, and the sales were made over an extended period of time, we disregarded all sales for that product and calculated FMV based on constructed value (CV), in accordance with section 773(e) of the Act.

In order to determine whether third country prices were above the COP, we calculated the COP for each model based on the sum of the respondent's cost of materials, labor, other fabrication costs, and general expenses and packing. We calculated CV for each model based on the sum of respondent's cost of manufacture (COM), plus general expenses, profit and U.S. packing. For general expenses, which includes selling and financial expenses (SG&A), we used the greater of the reported general expenses or the statutory minimum of ten percent of the COM.

For profit, we used the greater of the weighted-average third country profit during the POR or the statutory minimum of eight percent of the COM and SG&A, in accordance with section 773(e)(B) of the Act.

A. Heveafil

We made the following adjustments to Heveafil's reported COP and CV data based on our findings at verification. We increased direct material costs to account for yield loss during production. We increased direct labor to include accrued retirement benefits and other labor costs that had been excluded from COP and CV. We also reclassified certain variable labor costs to fixed overhead. We revised Heveafil's net financing costs to account for the financing cost incurred by its parent company. We recomputed Heveafil's G&A expense to include certain non-production labor costs, general depreciation, the write-off of idle equipment, and a portion of Heveafil's parent company's G&A expense. For further discussion of these adjustments, see the cost calculation memorandum from Stan Bowen and Dennis McClure, accountants in the Office of Accounting, to Christian Marsh, Director of the Office of Accounting, dated April 30, 1996.

Where FMV was based on third country sales, as in the original investigation, we based FMV on CIF prices to unrelated Italian customers in comparable channels of trade as the U.S. customer. Specifically, FMV was based on direct sales from Malaysia for purchase price sales comparisons, and on sales from the inventory of Heveafil's Italian branch office for ESP sales comparisons, in accordance with section 773(a)(1)(B) of the Act. We made adjustments to Heveafil's reported sales data based on our findings at verification. We made no adjustment to FMV for credits issued by the Italian branch office based on our finding at verification that these credits were incorrectly reported (*see* the Italian Branch's sales verification report, dated August 30, 1995).

For third country price-to-purchase price comparisons, we made deductions, where appropriate, for rebates. We also deducted post-sale home market movement charges from FMV under the circumstance of sale provision of section 773 (a)(4)(B) of the Act and 19 CFR 353.56. This adjustment included Malaysian foreign inland freight, brokerage, ocean freight, marine insurance, Italian brokerage, and inland freight to Heveafil's unrelated customers in Italy, where appropriate. Pursuant to 19 CFR 353.56(a)(2), we made circumstance of sale adjustments, where appropriate, for differences in credit expenses.

For third country price-to-ESP comparisons, where appropriate, we made deductions for rebates and credit expenses. We deducted the third country market indirect selling expenses, including inventory carrying costs, pre-sale freight (*i.e.*, foreign inland freight, brokerage, ocean freight, marine insurance, Italian brokerage, and Italian freight to Heveafil's warehouse) and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

For all price-to-price comparisons, we deducted third country packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act. At verification, we found that Heveafil had incorrectly reported its third country and U.S. packing material expenses. Therefore, we based the adjustment for packing materials on BIA. As BIA, we used the lowest packing material expense reported for any Italian sale and the highest packing expense reported for any U.S. sale (*see* Concurrence Memorandum to Barbara R. Stafford from Team, dated April 30, 1996). In addition, where appropriate, we made adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(4)(c) of the Act and 19 CFR 353.57.

For CV-to-purchase price comparisons, we made circumstance of sale adjustments, where appropriate, for credit expenses in accordance with 773 (a)(4)(B) and 19 CFR 353.56.

For CV-to-ESP comparisons, we made deductions, where appropriate, for credit expenses. We also deducted the third country market indirect selling expenses, including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

For all CV-to-price comparisons, we added U.S. packing expenses as specified above, in accordance with section 773(a)(1) of the Act.

B. Rubberflex

We made adjustments to Rubberflex's reported COP and CV data as follows: We recalculated general and administrative expenses, as well as interest expenses, based on the data contained in Rubberflex's audited financial statements. For further discussion of these adjustments, see the cost calculation memorandum from Elizabeth Lofgren, accountant in the Office of Accounting, to Christian Marsh, Director of the Office of Accounting, dated April 30, 1996.

Where FMV was based on third country sales, as in the original investigation, we based FMV on CIF prices to unrelated Hong Kong customers in comparable channels of trade as the U.S. customer. Specifically, FMV was based on direct sales from Malaysia for purchase price sales comparisons, and on sales from the inventory of Rubberflex's Hong Kong subsidiary for ESP sales comparisons.

For third country price-to-purchase price comparisons, we made deductions, where appropriate, for rebates. We also deducted post-sale home market movement charges from FMV under the circumstance of sale provision of 19 CFR 353.56. This adjustment included Malaysian foreign inland freight, brokerage and handling charges, containerization, ocean freight, and marine insurance. Pursuant to 773(a)(4)(B) of the Act and 19 CFR 353.56(a)(2), we made circumstance of sale adjustments, where appropriate, for differences in credit expenses.

For third country price-to-ESP comparisons, we made deductions for rebates, where appropriate. We also made deductions for credit expenses.

We deducted the third country market indirect selling expenses, including inventory carrying costs, bank charges, pre-sale freight expenses (*i.e.*, foreign inland freight, brokerage and handling charges, containerization, ocean freight, marine insurance, Hong Kong duty and brokerage expenses, and freight from the port in Hong Kong to Rubberflex's warehouse), and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

Regarding Hong Kong duties, Rubberflex reported a combined amount for document declaration fees, terminal handling charges, and bank charges. Because the Department's practice is to treat bank charges as a selling expense (rather than a movement charge), we reclassified bank charges as indirect selling expenses and recalculated Hong Kong duties accordingly (*see, e.g., Final Determination of Sales at Less Than Fair Value (LTFV); Oil Country Tubular Goods from Korea* 60 FR 33561, 33562 (June 28, 1995) and *Final Determination of Sales at LTFV; Dynamic Random Access Memory Semiconductors of One Megabit and Above from Korea* 58 FR 15467, 15467–70 (March 23, 1993)).

For all price-to-price comparisons, we deducted third country packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act. In addition, where appropriate, we made adjustments to FMV to account for

differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57.

For CV-to-purchase price comparisons, we made circumstance of sale adjustments, where appropriate, for credit expenses in accordance with section 773(a)(4)(B) of the Act and 19 CFR 353.56.

For CV-to-ESP comparisons, we made deductions, where appropriate, for credit expenses. We also deducted third country market indirect selling expenses, including inventory carrying costs, bank charges, and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

For all CV-to-price comparisons, we added U.S. packing expenses, in accordance with section 773(a)(1) of the Act.

Currency Conversion

We made currency conversions in accordance with 19 CFR 353.60(a). All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we verified information provided by Heveafil by using standard verification procedures, including on-site inspection of the manufacturer's facilities, examination of relevant sales and financial records, and selection of original source documentation containing relevant information. As discussed in the "Background" section of this notice, we did not conduct verification of the sales and cost data submitted by Rubberflex.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margin exists for the period April 2, 1992, through September 30, 1993:

Manufacturer/exporter	Review period	Margin (percent)
Heveafil Sdn. Bhd.	4/02/92–9/30/93	22.74
Rubberflex Sdn. Bhd.	4/02/92–9/30/93	1.59

Interested parties may request a disclosure within 5 days of publication of this notice and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such case briefs.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of extruded rubber thread from Malaysia entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for Heveafil and Rubberflex will be the rates established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 353.6, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the "all others" rate, as set forth below.

On March 25, 1993, the U.S. Court of International Trade (CIT), in *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993), and *Federal-Mogul Corporation* v. *United States*, 822 F.Supp. 782 (CIT 1993), decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement this decision, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the original investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical errors or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews. Because this proceeding is governed by an antidumping duty order, the "all others" rate for the purposes of this review will be 15.16 percent, the "all others" rate established in the LTFV investigation.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 10, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–12501 Filed 5–17–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–703]

Granular Polytetrafluoroethylene Resin From Italy; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On October 17, 1995, the Department of Commerce (the Department) published the preliminary results of its 1993–94 administrative review of the antidumping duty order on granular polytetrafluoroethylene (PTFE) resin from Italy. The review covers one manufacturer/exporter, Ausimont S.p.A. (Ausimont), for the period August 1, 1993, through July 31, 1994. We gave interested parties an opportunity to comment on our preliminary results. Although we received no comments, we have changed our treatment of home market value-added taxes as explained below. The final margin for Ausimont is listed below in the section "Final Results of Review."

EFFECTIVE DATE: May 20, 1996.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Michael Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On October 17, 1995, the Department published in the **Federal Register** the preliminary results of its 1993–94 administrative review of the antidumping duty order on granular PTFE resin from Italy (60 FR 53735). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of the Review

Imports covered by this review are shipments of granular PTFE resins, filled or unfilled, and shipments of wet raw polymer. The order explicitly excludes PTFE dispersions in water and PTFE fine powders. During the period covered by this review, such merchandise was classified under item number 3904.61.90 of the Harmonized Tariff Schedule (HTS). We are providing this HTS number for convenience and Customs purposes only. The written description of the scope remains dispositive.

The review covers one manufacturer/exporter of granular PTFE resin, Ausimont. The review period is August 1, 1993 through July 31, 1994.

Home Market Value-Added Tax

Although no party raised this as an issue, in light of the Federal Circuit's decision in *Federal Mogul* v. *United States*, CAFC No. 94–1097, we have changed our treatment of home market value-added taxes (VAT). Where merchandise exported to the United States is exempt from the VAT, we will add to the U.S. price the absolute amount of such taxes charged in the comparison sales in the home market. This is the same methodology that we adopted following the decision of the Federal Circuit in *Zenith* v. *United States*, 988 F. 2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal Mogul* v. *United States*, 834 F. Supp. 1391 (1993), and we acquiesced in the CIT's decision. We then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; we made adjustments to this amount so that the tax adjustment would not alter a "zero" pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude the Department from using the "*Zenith* footnote 4" methodology to calculate tax-neutral dumping assessments (*i.e.*, assessments that are unaffected by the existence or amount of home market VAT). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct the Department to determine which tax methodology it will employ.

We have determined that the "*Zenith* footnote 4" methodology should be used. First, as we have explained in numerous administrative determinations and court filings over the past decade, and as the Federal Circuit has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the Uruguay Round Agreements Act (URAA) explicitly amended the antidumping law to remove VAT from the home market price and to eliminate the addition of taxes to U.S. price, so that no VAT is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the "*Zenith* footnote 4" methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to U.S. price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, we have elected to treat VAT in a manner consistent with our longstanding policy of tax neutrality and with the GATT.

Final Results of the Review

We determine the following weighted-average dumping margin exists:

Manufacturer/exporter	Period	Margin (percent)
Ausimont S.p.A.	08/01/93–07/31/94	6.64

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentage stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Ausimont will be 6.64 percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will be 46.46 percent for the reasons explained in *Granular Polytetrafluoroethylene Resin From Italy; Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 53735 (October 17, 1994).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 9, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–12512 Filed 5–17–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–815]

Sulfanilic Acid From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests by a U.S. importer of the subject merchandise to the United States and by petitioner, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of China (PRC). The review covers ten manufacturers/exporters of subject merchandise to the United States and the period August 1, 1993 through July 31, 1994. The review indicates the existence of dumping margins during the period of review.

We have preliminarily determined that sales have been made below foreign market value (FMV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between United States price (U.S. price) and FMV.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 20, 1996.

FOR FURTHER INFORMATION CONTACT: Karin Price or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 1992, the Department published in the **Federal Register** (57 FR 37524) the antidumping duty order on sulfanilic acid from the PRC. On August 3, 1994, the Department published in the **Federal Register** (59 FR 39544) a notice of opportunity to request an administrative review of this antidumping duty order. On August 30, 1994, in accordance with 19 CFR 353.22(a) (1994), a U.S. importer of sulfanilic acid from the PRC, PHT International, Inc. (PHT), requested that we conduct an administrative review of four exporters, China National Chemical Construction Company (CNCCC), Hainan Garden Trading Company (Hainan Garden), Yude Chemical Industry Company (Yude), and Zhenxing Chemical Industry Company (Zhenxing). On August 31, 1994, in accordance with 19 CFR 353.22(a), petitioner, R–M Industries, Inc., requested that we conduct an administrative review of Baoding No. 3 Chemical Factory (Baoding), China National Chemical Construction Corporation, Qingdao Branch (CNCCC Qingdao), CNCCC, Jinxing Chemical Factory (Jinxing), Sinochem Hebei Import & Export Corporation (Sinochem Hebei), Sinochem Qingdao, Sinochem Shandong, Yude, and Zhenxing. We published the notice of initiation of this antidumping duty administrative review on September 16, 1994 (59 FR 47609). The notice of initiation was amended on April 14, 1995 (60 FR 19017). The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Scope of Review

Imports covered by this review are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.24 of the Harmonized Tariff Schedule (HTS), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under the subheading 2921.42.24 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt, classifiable under the HTS subheading 2921.42.79, is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

This review covers 10 manufacturers/exporters of sulfanilic acid from the PRC, Baoding, CNCCC, CNCCC Qingdao, Jinxing, Hainan Garden, Sinochem Hebei, Sinochem Shandong, Sinochem Qingdao, Yude, and Zhenxing. The review period is August 1, 1993 through July 31, 1994.

Verification

As provided by section 776(b) of the Act, we conducted verifications of the information provided by CNCCC, Hainan Garden, Sinochem Hebei, Yude, and Zhenxing. We also conducted verifications of two related importers of the subject merchandise, Alchemy International and PHT, at their facilities in the United States. We conducted the verifications using standard verification procedures, including onsite inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Separate Rates

To establish whether a company is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) (*Sparklers*), *as amplified in the Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, May 2, 1994) (*Silicon Carbide*). Under this policy, exporters in non-market-economy (NME) countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control with respect to exports is based on four criteria: (1) Whether the export prices are set by or subject to the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits and financing of losses; (3) whether each exporter has autonomy in making decisions regarding the selection of management; and (4) whether each exporter has the authority to negotiate and sign contracts and other agreements.

Baoding submitted its response to the Department's request for information regarding separate rates in Chinese, but did not respond to our request that the response be translated into English or to further requests for information. Jinxing, CNCCC Qingdao, and Sinochem Qingdao did not respond to our requests for information. Sinochem Shandong submitted a response indicating that it had no exports of the subject merchandise to the United States during the period of review; however, it did not submit a response to the Department's questionnaire regarding separate rates. Therefore, we have not given Baoding, Jinxing, CNCCC Qingdao, Sinochem Qingdao, or Sinochem Shandong a separate rate.

CNCCC, Hainan Garden, Sinochem Hebei, Yude, and Zhenxing have responded to the Department's request for information regarding separate rates. We have found that the evidence on the record demonstrates an absence of government control, both in law and in fact, with respect to their exports according to the criteria identified in *Sparklers* and *Silicon Carbide* for this period of review, and have assigned to each of these companies a separate rate. For further discussion of the Department's preliminary determination that each of these companies is entitled to a separate rate, *see Decision Memorandum to Holly A. Kuga, Director, Office of Antidumping Compliance*, dated August 24, 1995, "Separate rates in the 1993/1994 administrative review of sulfanilic acid from the People's Republic of China," which is on file in the Central Records Unit (room B–099 of the Main Commerce Building).

Collapsing

The Department "collapses" related firms (*i.e.*, treats them as a single entity for review purposes and assigns them a single dumping margin) where the type and degree of relationship is so significant that we find that there is a strong possibility of price manipulation (*Nihon Cement Co., Ltd.* v. *United States*, 17 CIT 400 (1993) (*Nihon*)). Because Yude and Zhenxing each formed joint ventures with PHT during the period of review, we have considered whether Yude and Zhenxing should be collapsed for purposes of this administrative review as a result of their relationships with PHT.

In determining whether to collapse related parties, the Department considers the following criteria:

- Whether the companies have interlocking boards of directors;
- Whether the companies have similar production-processes, facilities, or equipment so as to facilitate shifting of production between the facilities;
- Whether the companies operate as separate and distinct entities;
- Whether the companies share marketing and sales information or offices; and
- Whether the companies are involved in the pricing or production decisions of the other entity.

See Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Canada (58 FR 37099, July 9, 1993) and *Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products from Japan* (58 FR 37154, July 9, 1993).

The use of these factors was upheld by the Court of International Trade (CIT) in *Nihon*. In *Nihon*, the CIT held that, although each of these criteria does not have to be met in order for the Department to collapse related parties, the Department must consider them all.

Based on our analysis of these criteria, we have determined that there is a strong possibility of price manipulation between Yude and Zhenxing, and that Yude and Zhenxing should be collapsed as a result of their relationships with PHT. We have found that some of the same people sit on Yude's and Zhenxing's boards of directors, that Yude and Zhenxing have similar production processes, and that PHT makes sales decisions for each of the joint ventures. For a further discussion of this issue, see *Memorandum from Case Analyst to the File*, dated February 20, 1996, "Analysis for the preliminary results of the 1993/1994 administrative review of sulfanilic acid from the People's Republic of China—Yude Chemical Industry Company and

Zhenxing Chemical Industry Company," which is on file in the Central Records Unit (room B–099 of the Main Commerce Building).

We are collapsing Yude and Zhenxing for the purposes of calculating margins, and we are collapsing their factor data for use in calculating FMV. We have calculated one FMV for Yude and Zhenxing by weight averaging Yude's and Zhenxing's factors based on the quantities of sulfanilic acid each produced during the period of review.

United States Price

The Department used purchase price and exporter's sales price (ESP), in accordance with sections 772 (b) and (c) of the Act, in calculating U.S. price. We made deductions from purchase price and ESP sales, where appropriate, for foreign inland freight, ocean freight, and marine insurance, in accordance with section 772(d)(2)(A). We used surrogate data from India to value foreign inland freight, marine insurance, and ocean freight, in accordance with section 773(c). We selected India as the surrogate country for reasons explained in the "Foreign Market Value" section of this notice. We made additional deductions from ESP sales, where appropriate, for U.S. duties, U.S. brokerage and handling, U.S. inland freight, containerization expenses, and repacking in the United States, in accordance with section 772(d)(2)(A).

Foreign Market Value

For companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall determine FMV using a factors of production methodology if (1) the merchandise is exported from a NME country, and (2) the information does not permit the calculation of FMV using home market prices, third country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. None of the parties to this proceeding has contested such treatment in this review. Accordingly, we calculated FMV in accordance with section 773(c) of the Act and section 353.52 of the Department's regulations. Pursuant to section 773(c)(4), we determined that India is comparable to the PRC in terms of per capita gross national product (GNP), the growth rate in per capita GNP, and the national distribution of labor, and that India is a significant producer of comparable merchandise. For further discussion of the Department's selection of India as the primary surrogate country, *see Memorandum from Director, Office of Policy, to Acting Division Director, Office of Antidumping Compliance*, dated April 13, 1995, "Sulfanilic Acid from the People's Republic of China (PRC): Nonmarket Economy Status and Surrogate Country Selection," and *File Memorandum*, dated August 8, 1995, "India as a significant producer of comparable merchandise in the 1993/1994 administrative review of sulfanilic acid from the People's Republic of China," which are on file in the Central Records Unit (room B099 of the Main Commerce Building).

For purposes of calculating FMV, we valued PRC factors of production as follows, in accordance with section 773(c)(1) of the Act:

- To value aniline used in the production of sulfanilic acid, we used the rupee per kilogram value of imports into India during April 1993–March 1994, obtained from the March 1994 *Monthly Statistics of the Foreign Trade of India, Volume II—Imports (Indian Import Statistics)*. Using wholesale price indices (WPI) obtained from the *International Financial Statistics*, published by the International Monetary Fund (IMF), we adjusted this value to reflect inflation through the period of review. We made adjustments to include freight costs incurred between the suppliers and the sulfanilic acid factories.
- To value sulfuric acid used in the production of sulfanilic acid, we used the rupee per kilogram value reported in *Chemical Weekly*. We made adjustments to include freight costs incurred between the suppliers and the sulfanilic acid factories.
- To value activated carbon used in the production of sulfanilic acid, we used the rupee per kilogram value reported in *Chemical Business*. We made adjustments to include freight costs incurred between the suppliers and the sulfanilic acid factories.
- For direct labor, we used the labor rates reported in the Business International Corporation reports *IL&T India*, released November 1993. This source breaks out labor rates between skilled and unskilled labor for 1993 and provides information on the number of labor hours worked per week. Using WPI obtained from the *International Financial Statistics*, we adjusted the labor rates to reflect inflation through the period of review.
- For factory overhead, we used information reported in the September 1994 *Reserve Bank of India Bulletin*. From this information, we were able to determine factory overhead as a percentage of total cost of manufacture.
- For selling, general and administrative (SG&A) expenses, we used information obtained from the September 1994 *Reserve Bank of India Bulletin*. We calculated an SG&A rate by dividing SG&A expenses by the cost of manufacture.
- To calculate a profit rate, we used information obtained from the September 1994 *Reserve Bank of India Bulletin*. We calculated a profit rate by dividing the before-tax profit by the sum of those components pertaining to the cost of manufacturing plus SG&A.
- To value the inner and outer bags used as packing materials, we used import statistics for India obtained from the *Indian Import Statistics*. Using WPI obtained from the *International Financial Statistics*, we adjusted these values to reflect inflation through the period of review. We adjusted these values to include freight costs incurred between the suppliers and the sulfanilic acid factories.
- To value coal, we used the price of steam coal reported in *The Gazette of India*, June 16, 1994.
- To value electricity, we used the price of electricity reported in the *Electric Utilities Data Book for the Asian and Pacific Region*, January 1993, for the period April 1993 through March 1994. We adjusted the value of electricity to reflect inflation through the period of review using WPI published by the IMF.
- To value truck freight, we used the rate reported in a June 1992 cable from the U.S. Embassy in India submitted for the *Final Determination of Sales at Less Than Foir Value: Sulfonilic Acid from the People's Republic of China* (57 FR 29705, July 6, 1992). We adjusted the truck freight rates to reflect inflation through the period of review using WPI published by the IMF.
- To value rail freight, we used the price reported in a December 1989 cable from the U.S. Embassy in India submitted for the *Final Results of Antidumping Duty Administrative Review: Shop Towels of Cotton from the People's Republic of China* (56 FR 4040, February 1, 1991). We adjusted the rail freight rates to reflect inflation through the period of review using WPI published by the IMF.

Currency Conversion

We made currency conversions in accordance with 19 CFR 353.60(a). Currency conversions were made at the rates certified by the Federal Reserve Bank.

Best Information Available

We preliminarily determine, in accordance with section 776(c) of the Act, that the use of best information available (BIA) is appropriate for Baoding, CNCCC Qingdao, Jinxing, and Sinochem Qingdao because these companies did not respond to our requests for information. Section 776(c) of the Act states that the Department shall use BIA whenever a company refuses or is unable to produce information in a timely manner and in the form required, or significantly impedes an investigation.

In deciding what to use as BIA, section 353.37(b) of the Department's regulations provide that the Department may take into account whether a party refuses to provide requested information or impedes a proceeding. Thus, the Department determines on a case-by-case basis what is BIA. The Department uses a two-tiered approach in its choice of BIA. When a company refuses to provide the information requested in the form required or otherwise significantly impedes the Department's review (first tier), the Department will normally assign to that company the higher of (1) the highest rate found for any firm in the less-than-fair-value (LTFV) investigation or a prior administrative review; or (2) the highest rate found in the current review for any firm. When a company has cooperated with the Department's request for information but fails to provide information requested in a timely manner or in the form required such that margins for certain sales cannot be calculated (second tier), the Department will normally assign to those sales the higher of (1) the highest margin calculated for that company in any previous review or the original investigation for the same class or kind of merchandise; or (2) the highest calculated margin for any respondent in the current review. *See Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of An Antidumping Duty Order (Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom)* (58 FR 39729, July 26, 1993). This practice has been upheld in *Allied-Signal Aerospace Co. v. United States*, 996 F.2d 1185 (Fed. Cir. 1993), and *Krupp Stahl AG et al. v. United States*, 822 F. Supp. 789 (CIT 1993).

We have applied BIA to sales made by Baoding, CNCCC Qingdao, Jinxing, and Sinochem Qingdao. Because these firms did not respond to our questionnaires, as BIA we have applied the highest margin ever in the LTFV investigation, prior administrative reviews, or in this review, which is 85.20 percent. Because these firms have not been found eligible for a separate rate, they form the basis of the PRC country-wide rate, which is therefore also based on non-cooperative BIA.

Non Shipper

Sinochem Shandong submitted a response to the Department's questionnaire stating that it did not ship sulfanilic acid to the United States during the period of review. There is no evidence on the record to demonstrate that Sinochem Shandong shipped subject merchandise to the United States during the period of review. Since we have no information to determine whether Sinochem Shandong merits a separate rate for this review, as discussed in the separate rates section above, Sinochem Shandong falls within the PRC country-wide rate.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist:

Manufacturer/Exporter	Time period	Margin (percent)
China National Chemical Construction Corporation	8/1/93–7/31/94	47.51
Hainan Garden Trading Company	8/1/93–7/31/94	53.36
Sinochem Hebei Import & Export Corporation	8/1/93–7/31/94	2.01
Yude Chemical Industry Company [1]	8/1/93–7/31/94	0.00
Zhenxing Chemical Industry Company [1]	8/1/93–7/31/94	0.00
PRC Rate	8/1/93–7/31/94	85.20

[1] Yude and Zhenxing have been collapsed for the purposes of this administrative review. However, we have listed them separately on this chart for Customs purposes.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. *See* section 353.38(d) of the Department's regulations. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of sulfanilic acid from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies named above which have separate rates will be the rates for those firms established in the final results of this administrative review; (2) for the companies named above which were not found to have separate rates, Baoding, CNCCC Qingdao, Jinxing, Sinochem Qingdao, and Sinochem Shandong, as well as for all other PRC exporters, the cash deposit rate will be the highest margin ever in the LTFV investigation or in this or prior administrative reviews, the PRC rate; and (3) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under section 353.26 of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to

comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Date: May 9, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–12517 Filed 5–17–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–604; A–588–054]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Termination in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Reviews and Termination in Part.

SUMMARY: In response to requests by the petitioner and two respondents, the Department of Commerce (the Department) has conducted administrative reviews of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from Japan (A–588–604), and of the finding on tapered roller bearings, four inches or less in outside diameter, and components thereof, from Japan (A–588–054). The review of the A–588–054 finding covers four manufacturers/exporters and ten resellers/exporters of the subject merchandise to the United States during the period October 1, 1993, through September 30, 1994, and one manufacturer/exporter for the period October 1, 1992, through September 30, 1993. The review of the A–588–604 order covers five manufacturers/exporters, ten resellers/exporters, and seventeen firms identified by the petitioner in this case as forging producers, and the period October 1, 1993, through September 30, 1994. The A–588–604 review also covers one manufacturer/exporter for the period October 1, 1992, through September 30, 1993.

We have preliminarily determined that sales of tapered roller bearings (TRBs) have been made below the foreign market value (FMV). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties equal to the difference between the United States price (USP) and the FMV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: May 20, 1996.

FOR FURTHER INFORMATION CONTACT: Valerie Turoscy or Robert James, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

Background

On August 18, 1976, the Treasury Department published in the **Federal Register** (41 FR 34974) the antidumping finding on TRBs from Japan, and on October 6, 1987, the Department published the antidumping duty order on TRBs from Japan (52 FR 37352). On October 7, 1994 (59 FR 51166), the Department published the notice of "Opportunity to Request an Administrative Review" for both TRB cases. The petitioner, the Timken Co., and two respondents requested administrative reviews. We initiated the A–588–054 and A–588–604 administrative reviews for the period October 1993 through September 1994 on November 14, 1994 (59 FR 56459).

The Department has now conducted these reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). However, we have not conducted a review of Honda Motor Co., Ltd. (Honda) for either the A–588–054 or the A–588–604 case. In our preliminary results notice for the 1992–93 administrative reviews, we published our intent to revoke the A–588–054 finding as to Honda and explained that our final determination concerning Honda's revocation would be published in our final results notice for the 1992–93 administrative reviews (*see Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews, Termination in Part, and Intent to Revoke in Part*, 60 FR 22349 (May 5, 1995)). We have not yet completed those final results and our final determination concerning Honda's revocation has not yet been made. Upon our determination concerning Honda's revocation and the publication of our final results of review for the 1992–93 administrative review period, we will proceed accordingly for Honda in both the A–588–054 and A–588–604 cases.

This notice also includes, along with our 1993–94 preliminary results of review for Koyo Seiko Co., Ltd. (Koyo), our 1992–93 preliminary results of review for Koyo for both the A–588–054 finding and the A–588–604 order. Because our scope proceeding regarding Koyo's rough forgings was concurrent with our 1992–93 preliminary results analysis, we determined that, rather than delay our 1992–93 preliminary results of review for all other reviewed firms, we would conduct Koyo's 1992–93 reviews in both cases after making our final scope determination concerning Koyo's rough forgings. On February 2, 1995, we published in the **Federal Register** our final scope decision concerning Koyo's rough forgings (60 FR 6519), in which we determined that Koyo's rough forgings are within the scope of the A–588–604 order. We provided Koyo additional time to submit its sales and cost information concerning its rough forgings for both the 1992–93 and 1993–94 administrative reviews and have now conducted our review of Koyo for both these periods in accordance with section 751 of the Tariff Act.

Scope of the Review

Imports covered by the A–588–054 finding are sales or entries of TRBs, four inches or less in outside diameter when assembled, including inner race or cone assemblies and outer races or cups, sold either as a unit or separately. This merchandise is classified under the Harmonized Tariff Schedule (HTS) item numbers 8482.20.00 and 8482.99.30.

Imports covered by the A–588–604 order include TRBs and parts thereof, finished and unfinished, which are flange, take-up cartridge, and hanger units incorporating TRBs, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for

automotive use. Products subject to the A–588–054 finding are not included within the scope of this order, except for those manufactured by NTN Toyo Bearing Co., Ltd. (NTN). This merchandise is currently classifiable under HTS item numbers 8482.99.30, 8483.20.40, 8482.20.20, 8483.20.80, 8482.91.00, 8484.30.80, 8483.90.20, 8483.90.30, and 8483.90.60. These HTS item numbers and those for the A–588–054 finding are provided for convenience and Customs purposes. The written description remains dispositive.

The period for each 1993–94 review is October 1, 1993, through September 30, 1994. These reviews cover TRB sales by five TRB manufacturers/exporters (Koyo, NSK Ltd. (NSK), NTN, Nachi-Fujikoshi Corporation (Nachi), and Maekawa Bearing Mfg. Co., Ltd. (Maekawa)), and ten resellers/exporters (Honda, Fuji Heavy Industries, Ltd. (Fuji), Kawasaki Heavy Industries, Ltd. (Kawasaki), Yamaha Motor Co., Ltd. (Yamaha), Sumitomo Corporation (Sumitomo), Itochu Co., Ltd. (Itochu), Suzuki Motor Co., Ltd. (Suzuki), Nigata Converter Co., Ltd. (Nigata), Toyosha Co., Ltd. (Toyosha), and MC International (MC Int'l)). These reviews also cover U.S. sales/importations of forgings by Koyo, NTN, and seventeen firms identified by the petitioner as Japanese forging producers (Daido Steel Co., Ltd. (Daido Steel), Asakawa Screw Co., Ltd. (Asakawa), Fuse Rashi Co., Ltd., Hamanaka Nut Mfg. Co., Ltd., Ichiyanagi Tekko, Isshi Nut Industries (Isshi Nut), Kawada Tekko, Kinki Maruseo Nut Kogyo Kumiai, Kitazawa Valve Co., Ltd. (Kitz Corp.), Nittetsu Bolten, Shiga Bolt, Shinko Bolt, Sugiura Seisakusho, Sumikin Seiatsu, Toyo Valve Co., Unytite Fastener Mfg. Co., Ltd. (Unytite Kogyo), and Showa Seiko Co., Ltd. (Showa)). We are terminating our review for eleven of the seventeen firms as described in the "Termination in Part" section of this notice.

The period for the 1992–93 reviews is October 1, 1992, through September 30, 1993. The 1992–93 reviews of both the A–588–054 and A–588–604 cases included in this notice cover TRB sales by one manufacturer/exporter, Koyo.

Verification

As provided for in section 776(b) of the Tariff Act, we verified information provided by NTN for the 1993–94 review period and information provided by Koyo for the 1992–93 review period. We used standard verification procedures in each of the verifications, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of our NTN and Koyo verification reports.

Best Information Available (BIA)

Total BIA

For these preliminary results, in accordance with section 776(c) of the Tariff Act, for several firms we used BIA, which we determined according to the two-tier BIA methodology outlined in *Antifriction Bearings; Final Results of Antidumping Administrative Reviews and Revocation in Part of Antidumping Duty Order*, 58 FR 39729, 39739 (July 26, 1993) (*AFBs*). Based on this methodology we used BIA as follows:

1. When a company refused to cooperate with the Department or otherwise significantly impeded these proceedings, we used as total BIA the higher of (1) the highest rate found for any firm for the same class or kind of merchandise in the same country of origin in the less-than-fair-value (LTFV) investigation or prior administrative reviews; or (2) the highest rate found in this review for any firm for the same class or kind of merchandise in the same country of origin.

2. When a company substantially cooperated with our requests for information and substantially cooperated at verification, but failed to provide requested information in a timely manner or in the form required or was unable to substantiate it, we used as total BIA the higher of (1) the highest rate ever applicable to that firm for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review (or if the firm had never before been investigated or reviewed, the "all others" rate from the LTFV investigation), or (2) the highest calculated rate in this review for the class or kind of merchandise for any firm from the same country of origin.

Thus, for first-tier (non-cooperative) BIA in these reviews we have used for the A–588–604 review the highest calculated rate for any firm in the history of the order (*i.e.*, 40.37 percent, the rate for NSK in the 1988–89 A–588–604 review), and for the A–588–054 review we have used the highest calculated rate for any firm in the history of the finding (*i.e.*, 47.63 percent, the rate for Koyo in the 1987–88 A–588–054 review).

Listed below is a company-by-company summary of the total BIA used in these reviews.

A. First-Tier (Non-Cooperative) BIA

(i) Maekawa, Yamaha, Toyosha, Nigata, and Suzuki: None of these firms responded to our questionnaire in either the A–588–054 or the A–588–604 review. Therefore, based on the criteria set forth above, as first-tier BIA for each of these firms in the A–588–604 review we used 40.37 percent and for each of these firms in the A–588–054 review, we used 47.63 percent.

(ii) Nachi: In a letter responding to our questionnaire Nachi indicated that it declined to provide the information requested in our questionnaire for both the A–588–604 and A–588–054 reviews. As a result, we used for Nachi first-tier BIA rates of 40.37 percent in the A–588–604 review and 47.63 percent in the A–588–054 review.

(iii) Daido Steel, Kawanda Tekkosho, Asakawa, Ichiyanagi Tekko, and Isshi Nut: These five firms, which were identified as forging producers and which are involved only in the A–588–604 review, did not respond to our questionnaire. As a result, for each firm we used a first-tier BIA rate of 40.37 percent.

(iv) While Kawasaki did respond to our questionnaire, its response contained only general information and a statement indicating that it declined to provide any of the sales-specific information we requested in our questionnaire. The information Kawasaki failed to provide was necessary for our analysis, and Kawasaki's failure to provide this information impeded our ability to conduct the review for Kawasaki. We have therefore used a first-tier BIA rate of 40.47 percent for Kawasaki in the A–588–604 review, and a first-tier BIA rate of 47.63 percent in the A–588–054 review.

Partial BIA

While conducting our 1992–93 and 1993–94 preliminary analysis for Koyo, we discovered that in both reviews Koyo did not report the actual further-processing costs for certain of its U.S. further-processed models. Rather, Koyo reported further-processing costs for these models which were based on the further-processing costs of other U.S. models which Koyo identified as most similar. As a result, the actual further-processing costs requested by the Department for these U.S. models were not reported by Koyo. Furthermore, our review of both Koyo's 1992–93 and 1993–94 questionnaire responses revealed that Koyo failed to indicate in its responses that it reported something other than the actual further-processing costs for certain U.S. models.

In those cases where the overall integrity of a respondent's questionnaire response warrants a calculated rate, but the firm failed to provide certain information, or certain information it provided was inaccurate, it is the Department's practice to use partial BIA (*see, e.g., AFBs* at 10907). Therefore, for these 1992–93 and 1993–94 preliminary results for Koyo, we have used partial BIA for the further-processing costs Koyo failed to accurately report for these particular U.S. models. After making an initial adjustment to all of Koyo's further-processing costs based on information we discovered at verification (see the Office of Accounting's preliminary results calculation memorandum dated October 12, 1995), we determined the single highest ratio between further-processing costs and the gross unit price for all of Koyo's further-manufactured U.S. models. We then applied this ratio to the unit prices for the models in question and used the resulting further-processing cost amounts as partial BIA for these models.

No Shipments

Two resellers, Fuji and MC Int'l, made no shipments of A–588–604 subject merchandise during the review period. Furthermore, neither of these firms was a party to the A–588–604 LTFV investigation or any prior administrative reviews of the A–588–604 case. Because their shipments have never been reviewed individually, we have not assigned a rate to these two firms for the A–588–604 case. If these firms begin shipping subject merchandise at some future date, the entries will be subject to the cash deposit rates attributable to the manufacturer(s) of the subject merchandise.

Concerning those firms identified by the petitioner as forging producers, only one of the 17 firms, Showa, reported that it actually produced forgings used in the manufacture of TRBs. However, Showa also indicated that it did not sell these forgings to the United States, but rather only sold such merchandise to companies in Japan. Because this firm had no U.S. shipments of this merchandise during the review period and has never been involved in an A–588–604 review or the LTFV investigation, we have not assigned an individual rate to Showa for the A–588–604 case. If Showa were to begin shipping at some future date, the entries will be subject to the A–588–604 LTFV "all others" cash deposit rate of 36.52 percent.

Termination in Part

Eleven of the seventeen firms identified by the petitioner as forging producers reported that they did not produce the forgings which have been found to be within the scope of the order, but rather only produced non-scope merchandise such as nuts, bolts, and valves. As a result, because these firms do not produce or sell subject merchandise, we are terminating the A–588–604 review for the following eleven firms: Fuse Rashi Co., Ltd., Hamanaka Nut Mfg. Co., Ltd., Kinki Maruseo Nut Kogyo Kumiai, Kitz Corp., Shiga Bolt, Shinko Bolt, Sugiura Seisakusho, Toyo Valve Co., Nittetsu Bolten, Sumikin Seiatsu, and Unytite Kogyo.

Our termination of the A–588–604 review for these eleven firms does not constitute a revocation of the order as to these firms. If any of the above eleven firms ever become manufacturers/exporters of TRBs or forgings used in the production of TRBs, their merchandise will be subject to the order.

Resellers/Shippers

Of the ten resellers covered by these reviews, we have determined that two of these resellers, Sumitomo and Itochu, are mere shippers of the subject merchandise and do not warrant their own margin. Itochu and Sumitomo contract with larger Japanese companies/suppliers to ship TRBs from the suppliers to the suppliers' U.S. subsidiaries. Because these suppliers knew at the time of the transfer of merchandise to Itochu and Sumitomo that these TRBs were destined for the United States, and because Itochu and Sumitomo had no influence over the sales prices or quantities of these shipments, we have determined that the suppliers' rates, and not unique Sumitomo or Itochu rates, should be applied for cash deposit and appraisement purposes. See, for example, *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts thereof from Germany, et al.; Final Results of Antidumping Duty Administrative Review*, 56 FR 31692, 31747 (July 11, 1991).

United States Price (USP)

The Department used exporter's sales price (ESP) for Koyo, NSK, NTN, Fuji, and MC Int'l, and purchase price for certain of Fuji's and NTN's sales, as defined in section 772 of the Tariff Act, to calculate USP. ESP was based on the packed, delivered price to unrelated purchasers in the United States. We made adjustments, where applicable, for foreign pre-sale inland freight, foreign inland freight, air freight, ocean freight, marine insurance, export inspection fees, brokerage and handling, U.S. inland freight, U.S. duty, commissions to unrelated parties, U.S. credit, discounts, rebates, sales allowances, billing adjustments, technical service expenses, warranties, packing expenses incurred in the United States, and indirect selling expenses (which include inventory carrying costs, warehouse transfer expenses, advertising, other U.S.—incurred selling expenses, and export selling expenses). For NTN and Koyo, we also adjusted ESP for value added in further manufacturing, including an allocation of profit earned on U.S. sales. In addition, based on our verification of Koyo's reported 1992–93 further manufacturing information, and Koyo's response to our 1993–94 supplemental questionnaire, we made adjustments to Koyo's reported 1992–93 and 1993–94 further-manufacturing costs.

NTN's and Fuji's purchase price sales were based on the sales price to the first unrelated purchaser in the United States. We made adjustments to purchase price, where appropriate, for rebates and the following movement expenses: foreign pre-sale inland freight, foreign inland freight, ocean freight, marine insurance, brokerage and handling, U.S. duty, U.S. inland freight, and export inspection fees.

In light of the decision by the United States Court of Appeals for the Federal Circuit (the Federal Circuit) in *Federal-Mogul* v. *United States*, CAFC No. 94–1097, we have changed our treatment of home market consumption taxes. For these preliminary results, where merchandise exported to the United States was exempt from the consumption tax, we added to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that we adopted following the decision of the Federal Circuit in *Zenith* v. *United States*, 988 F. 2d 1573, 1582 (1993), and which was suggested by the Federal Circuit in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal-Mogul* v. *United States*, 834 F. Supp. 1391 (1993), and we acquiesced to the CIT's decision. We then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; we made adjustments to this amount so that the tax adjustment would not alter a "zero" pre-tax dumping assessment.

The foreign exporters in the *Federal-Mogul* case, however, appealed the decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude Commerce from using the "*Zenith* footnote 4" methodology to calculate tax-neutral dumping assessments (*i.e.*, assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct Commerce to determine which tax methodology it will employ.

We have determined that the "*Zenith* footnote 4" methodology should be used. First, as we have explained in numerous administrative determinations and court filings over the past decade, and as the Federal Circuit has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the GATT. Second, the Uruguay Round Agreements Act (URAA) explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the "*Zenith* footnote 4" methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to U.S. price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, we have elected to treat consumption taxes in a manner consistent with our longstanding policy of tax-neutrality and with the GATT.

No other adjustments were claimed or allowed.

Foreign Market Value (FMV)

In accordance with 19 CFR 353.48(a), we determined that the home market was viable for NTN, NSK, Koyo, and Fuji. Therefore, we compared U.S. sales with sales of such or similar merchandise in the home market.

In general, the Department relies on monthly weighted-average prices in the calculation of FMV. For reasons of simplification, consistent with section 777A of the Tariff Act, we used an average of respondents' home market sales for each review period. To determine whether an annual average was representative of the transactions under consideration; we performed the following three-step test (see *AFBs*). First, we compared the annual weighted-average home market price for each model with each of its 12 monthly weighted-average prices for each review period. We calculated the proportion of each model's sales whose annual weighted-average price did not vary more than plus or minus 10 percent from the monthly weighted-average prices. Second, we compared the volume of sales of all models whose annual weighted-average prices did not vary more than plus or minus 10 percent from the monthly weighted-average prices with the total volume of sales of TRBs. If the annual weighted-average price of at least 90 percent of the sales of TRBs did not vary more than plus or minus 10 percent from the monthly weighted-average price, we considered the annual weighted-average price to be representative of the transactions under consideration for that firm. Third, we tested whether there was any correlation between fluctuations in price and time for each model. Where the correlation coefficient was less than 0.05 (where a coefficient approaching 1.0 indicates a direct relation between price and time), we concluded that there was no significant relation between price and time. Because the annual weighted-average prices for each model sold by Koyo, NSK, Fuji, MC Int'l, and NTN during each review period did not vary meaningfully from the monthly weighted-average prices of sales, and because there was no correlation between price and time, we considered the annual weighted-average prices for each review period to be representative of the transactions under consideration. Therefore, we calculated a single FMV for each model sold by Koyo, NSK, Fuji, and NTN on an annual weighted-average basis.

Based on petitioner's allegations and the Department's previous TRB determinations of sales made below the cost of production (COP), in accordance with section 773(b) of the Tariff Act, we determined that there were reasonable grounds to believe or suspect that, for these review periods, NTN, Koyo, and NSK made sales of subject merchandise in the home market at prices less than COP. As a result, we investigated whether NTN, Koyo, or NSK sold such or similar merchandise in the home market at prices below COP. In accordance with 19 CFR 353.51(c), we calculated COP for NTN, NSK, and Koyo as the sum of reported materials, labor, factory overhead, and general expenses, and, where appropriate, compared COP to home market prices net of direct price adjustments and discounts.

In accordance with section 773(b) of the Tariff Act, in determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made in substantial quantities over an extended period of time, and whether such sales were made at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade.

In accordance with our normal practice, for each model for which less than 10 percent, by quantity, of the home market sales during the period of review (POR) were made at prices below the COP, we included all sales of that model in the computation of FMV. For each model for which 10 percent or more, but less than 90 percent, of the home market sales during the POR were priced below the merchandise's COP, we excluded from the calculation of FMV those home market sales which were priced below the merchandise's COP, provided that these below-cost sales were made over an extended period of time. For each model for which 90 percent or more of the home market sales during the POR were priced below the COP and were made over an extended period of time, we disregarded all sales of that model in our calculation and, in accordance with section 773(b) of the Tariff Act, we used the constructed value (CV) of those models, as described below. *See, e.g., Mechanical Transfer Presses from Japan, Final Results of Antidumping Duty Administrative Review*, 59 FR 9958 (March 2, 1994).

In accordance with section 773(b)(1) of the Tariff Act, to determine whether sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost occurred for a particular model to the number of months in which that model was sold. If the model was sold in fewer than three months, we did not disregard below-cost sales unless there were below-cost sales of that model in each month sold. If a model was sold in three or more months, we did not disregard below-cost sales unless there were sales below cost in at least three of the months in which the model was sold. We used CV as the basis for FMV when an insufficient number of home market

sales were made at prices above COP. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews*, 58 FR 64720, 64729 (December 8, 1993).

In the case of NTN, Koyo, and NSK, we compared each firm's individual home market prices with annual COPs. We tested each firm's home market prices on a model-specific basis and found for each firm, (1) models where more than 90 percent of the home market sales were made at below-COP prices and were made over an extended period of time, (2) other models where between 10 and 90 percent of home market sales were made at below-COP prices and over an extended period of time, and (3) yet other models where less than 10 percent of home market sales were made at below-COP prices. *See Polyethylene Terephthalate Film, Sheet, and Strip from Korea*, 56 FR 16306 (April 22, 1991).

Because NTN, NSK, and Koyo provided no indication that their below-cost sales of models within the "greater than 90 percent" and the "between 10 and 90 percent" categories were at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade, we disregarded those sales of models in the "10 to 90 percent" category which were made below cost over an extended period of time. In addition, as a result of our COP test for home market sales of models within the "greater than 90 percent" category, we based FMV on CV for all U.S. sales for which there were insufficient sales of the comparison home market model at or above COP. Finally, where we found, for certain of NTN's, NSK's, and Koyo's models, home market sales for which less than 10 percent were made at below-COP prices, we used all home market sales of these models in our comparisons.

In accordance with section 773(c) of the Tariff Act, we used CV as FMV for those U.S. sales for which there were insufficient sales of the comparison home market model at or above COP, and for those U.S. sales for which there was no sale of such or similar merchandise in the home market. We calculated CV in accordance with section 773(e) of the Tariff Act. We included the cost of materials, labor, and factory overhead in our calculations. Where the actual selling, general, and administrative expenses (SG&A) were less than the statutory minimum of ten percent of the cost of manufacture (COM), we calculated SG&A as ten percent of the COM. Where the actual profits were less than the statutory minimum of eight percent of the COM plus SG&A, we calculated profit as eight percent of the sum of COM plus SG&A. We also adjusted NSK's and NTN's reported COP and CV to reflect the actual COP of related-party inputs.

In accordance with section 773 of the Tariff Act, for those U.S. models for which we were able to find a home market or third-country such or similar match that had sufficient above-cost sales, we calculated FMV based on the packed, F.O.B., ex-factory, or delivered prices to related purchasers (where an arm's-length relationship was demonstrated) and unrelated purchasers in the home market. We made adjustments, where applicable, for post-sale inland freight, credit, commissions, and warranties. We also made adjustments for discounts, rebates, and differences in physical characteristics. In addition, for comparison to ESP sales, we adjusted FMV for indirect selling expenses (which include advertising, inventory carrying costs, pre-sale inland freight, and other selling expenses) in the home market, limiting the home market indirect selling expense deductions by the amount of indirect selling expenses incurred in the United States. In situations where a U.S. sale with no commission was compared to a home market sale with a commission, we limited the deduction from FMV for home market indirect selling expenses by the amount of U.S. indirect selling expenses less the home market commission amount. In those instances where a commission was granted on the U.S. sale only, we increased the amount classified as U.S. indirect selling expenses for comparison to home market indirect selling expenses by the amount of the U.S. commission. We then limited the deduction from FMV for home market indirect selling expenses by the amount of the enhanced U.S. indirect selling expenses. For NTN, NSK, Koyo, and Fuji, all of which reported consumption tax-exclusive home market gross prices, we adjusted FMV for the Japanese consumption tax by adding the absolute amount of home market tax to FMV in accordance with our tax-neutral methodology described above. Finally, after deducting home market packing from FMV, we added to FMV packing expenses incurred in Japan for U.S. sales.

For comparison to purchase price sales, pursuant to section 773 of the Tariff Act, we added to FMV, where applicable, U.S. packing, credit, and direct advertising. We adjusted FMV for the Japanese consumption tax as described above, and for comparison to both ESP and purchase price sales, NTN requested and received a level-of-trade adjustment to FMV based on certain home market indirect expenses.

Because MC Int'l did not sell TRBs in the home market during the review period, but rather only exported TRBs to the United States and other third-country markets, in accordance with section 773(a)(1) of the Tariff Act, we determined that, for MC Int'l, the home market was not viable. Therefore, pursuant to 19 CFR 353.48, for MC Int'l we based FMV on third-country sales.

In selecting the appropriate third-country market to use for comparison purposes, we first determined which third-country markets had adequate volumes of sales within the meaning of 19 CFR 353.49(b)(1). We determined that the volume of sales to a third-country market was adequate if the quantity of sales of such or similar merchandise equalled or exceeded five percent of the quantity of sales in the United States. We then selected the third-country market with the largest volume of sales, and whose organization and development is most like that of the United States, as the most appropriate market for comparison, in accordance with 19 CFR 353.49(b)(2). Therefore, for MC Int'l's sales of TRBs to the first unrelated customer in the United States, we based FMV on MC Int'l's sales to unrelated customers in the United Kingdom. In addition, we applied to MC Int'l's sales in the United Kingdom the identical price stability test described above, and because the annual weighted-average prices for TRBs sold by MC Int'l in the United Kingdom did not vary meaningfully from the monthly weighted-average prices of sales, and because there was no correlation between price and time, we considered the annual weighted-average prices in the United Kingdom to be representative of the transactions under consideration. Therefore, we calculated a single FMV for each model sold by MC Int'l in the United Kingdom on an annual weighted-average basis.

No other adjustments were claimed or allowed.

Preliminary Results of Review

As a result of our comparison of USP to FMV we preliminarily determine that the following margins exist for Koyo for the period October 1, 1992, through September 30, 1993:

Manufacturer/exporter	Margin (Percent)
For the A–588–054 Review:Koyo Seiko	38.64
For the A–588–604 Review: Koyo Seiko	46.03

In addition, we preliminarily determine that the following margins exist for the period October 1, 1993, through September 30, 1994 for the following firms:

Manufacturer/Reseller/Exporter	Margin (percent)
For the A–588–054 Review:	
Koyo Seiko	34.68
Nachi	47.63
NSK	7.61
Fuji	6.08
Kawasaki	47.63
Yamaha	47.63
MC International	2.36
Maekawa	47.63
Toyosha	47.63
Nigata Converter	47.63
Suzuki	47.63
For the A–588–604 Review:	
NTN	19.73
Koyo Seiko	41.21
Nachi-Fujikoshi Corp.	40.37
NSK Ltd.	7.15
Fuji	(1)
Kawasaki	40.37
Yamaha	40.37
MC International	(1)
Maekawa	40.37
Toyosha	40.37
Nigata Converter	40.37
Suzuki	40.37
Showa Seiko	(1)
Daido	40.37
Ichiyanagi Tekko	40.37
Kawada Tekkosho	40.37
Asakawa Screw Co.	40.37
Isshi Nut	40.37

[1] No shipments or sales subject to this review. The firm has no rate from any prior segment of this proceeding.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of these administrative reviews including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between the USP and FMV may vary from the percentages stated above.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided for by section 751(a)(1) of the Tariff Act. A cash deposit of estimated antidumping duties shall be required on shipments of TRBs from Japan as follows:

(1) The cash deposit rates for the reviewed companies will be those rates established in the final results of these reviews. For Koyo, the cash deposit rates will be those rates established in the final results for the 1993–94 administrative reviews;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in these reviews, a prior review, or the original less-than-fair-value (LTFV) investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate for the A–588–054 case will be 18.07 percent and 36.52 percent for the A–588–604 case (*see Preliminary Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan*, 58 FR 51058, 51061 (September 30, 1993)).

All U.S. sales by each respondent will be subject to one deposit rate according to the proceeding.

The cash deposit rate has been determined on the basis of the selling price to the first unrelated customer in the United States. For appraisement purposes, where information is available, the Department will use the entered value of the merchandise to determine the appraisement rate.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675 (a)(1)) and 19 CFR 353.22.

Dated: May 10, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–12519 Filed 5–17–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–549–501]

Certain Circular Welded Carbon Steel Pipes and Tubes From Thailand; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The countervailing duty order on certain circular welded carbon steel pipes and tubes from Thailand was revoked effective January 1, 1995, pursuant to section 753 of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (the Act) (60 FR 40568). The Department of Commerce (the Department) is conducting an administrative review of this order to determine the appropriate assessment rate for entries made during the last review period prior to the revocation of the order (January 1, 1994, through December 31, 1994). We preliminarily determine the net subsidy to be *de minimis* or zero for all companies for the period January 1, 1994 through December 31, 1994 (*see* "Preliminary Results of Review" section). If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, shipments of the subject merchandise from all companies exported on or after January 1, 1994 and entered on or before December 31, 1994. Because this order has been revoked, the Department will not issue further instructions with respect to cash deposits of estimated countervailing duties.

EFFECTIVE DATE: May 20, 1996.

FOR FURTHER INFORMATION CONTACT: Cameron Cardozo or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–1503 or 482–4126, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 1985, the Department published in the **Federal Register** (50 FR 32751) the countervailing duty order on certain circular welded carbon steel pipes and tubes from Thailand. On August 1, 1995, the Department published a notice of "Opportunity to Request an Administrative Review" (60 FR 39151) of this countervailing duty order. We received a timely request for review from Saha Thai Steel Pipe Co., Ltd. (Saha Thai). In accordance with section 355.22 of the Department's Interim Regulations, this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested (*see Antidumping and Countervailing Duties: Interim Regulations; Request for Comments*, 60 FR 25130 (May 11, 1995) (*Interim Regulations*). A review was requested for Saha Thai. However, Saha Thai is affiliated with SAF Pipe Export Co., Ltd. (SAF), an export trading company that began operations in 1993. All pipe exported by SAF is produced by Saha Thai. Because these two companies are affiliated, we are treating them as one corporate entity for purposes of our calculations. Therefore, this review covers the following companies: Saha Thai/SAF.

On November 22, 1995, we extended the period for completion of the preliminary and final results pursuant to section 751(a)(3) of the Tariff Act of 1930, as amended. *See Extension of the Time Limit for Certain Countervailing Duty Administrative Reviews*, 60 FR 55699. As explained in the memoranda from the Assistant Secretary for Import Administration dated November 22, 1995, and January 11, 1996, all deadlines were further extended to take into account the partial shutdowns of the Federal Government from November 15 through November 21, 1995, and December 15, 1995, through January 6, 1996. Therefore, the deadline for these preliminary results is no later than May 30, 1996, and the deadline for the final results of this review is no later than 180 days from the publication of these preliminary results.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Act in effect as of January 1, 1995. The Department is conducting this administrative review in accordance with section 751(a) of the Act. References to the *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act (URAA). *See* 60 FR 80 (January 3, 1995).

Scope of Review

On March 29, 1994, the Department clarified the Harmonized Tariff Schedule (HTS) numbers that were applicable to the subject merchandise (*see Memorandum to Susan Esserman from Susan Kuhbach*, available in the Central Records Unit, Room B099, Main Commerce Building). This clarification was necessary because of annual changes in the HTS. The scope now reads:

Imports covered in this review are shipments of circular welded carbon steel pipes and tubes (pipes and tubes) with an outside diameter of 0.375 inch or more but not over 16 inches, of any wall thickness. These products, commonly referred to in the industry as standard pipe or structural tubing, are produced to various ASTM specifications, most notably A–120, A–53 and A–135. During the review period, this merchandise was classified under item numbers 7306.30.10 and 7306.30.50 of the HTS. The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Programs

I. Programs Preliminarily Determined To Be Not Used

We examined the following programs and preliminarily determine based on the questionnaire responses filed by the government of Thailand and Saha Thai/SAF that Saha Thai/SAF did not apply for or receive benefits under these programs during the review period.

A. Export Packing Credit
B. Tax Certificates for Exporters
C. Electricity Discounts for Exporters
D. Tax and Duty Exemptions Under Section 28 of the Investment Promotion Act
E. Repurchase of Industrial Bills
F. Export Processing Zones
G. International Trade Promotion Fund/Export Promotion Fund
H. Reduced Business Taxes for Producers of Intermediate Goods for Export Industries
I. Additional Incentives under the IPA.

Preliminary Results of Review

For the period of January 1, 1994, through December 31, 1994, we preliminarily determine the net subsidy to be zero for Saha Thai/SAF. In accordance with the Act, any rate less than 0.5 percent *ad valorem* in an administrative review is *de minimis*.

The URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies. The procedures for countervailing duty cases are now essentially the same as those in antidumping cases, except as provided for in section 777(e)(2)(B) of the Act. Requests for administrative reviews must now specify the companies to be reviewed. *See* 19 CFR § 355.22(a). The requested review will normally cover only those companies specifically named. Pursuant to 19 CFR § 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate previously ordered. Accordingly, for the period January 1 through December 31, 1994, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the Customs to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from Saha Thai/SAF exported on or after January 1, 1994, and entered on or before December 31, 1994.

This countervailing duty order was subject to section 753 of the Act. *See, Countervailing Duty Order; Opportunity to Request a Section 753 Injury Investigation*, 60 FR 27,963 (May 26, 1995). Because no domestic interested parties exercised their right under section 753(a) of the Act to request an injury investigation, the International Trade Commission made a negative injury determination with respect to this order, pursuant to section 753(b)(4) of the Act. As a result, the Department revoked this countervailing duty order, effective January 1, 1995, pursuant to section 753(b)(3)(B) of the Act. *Revocation of Countervailing Duty Orders*, 60 FR 40,568 (August 9, 1995). Accordingly, the Department will not issue further instructions with respect to cash deposits of estimated countervailing duties.

Public Comment

Interested parties may request a hearing not later than 10 days after the date of publication of this written notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR § 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR § 355.38(c), are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: May 13, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–12516 Filed 5–17–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–351–818; C–201–810; C–412–815]

Notice of Court Decision: Certain Cut-to-Length Carbon Steel Plate From Brazil, Mexico, and the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Court Decision.

SUMMARY: On April 2, 1996, the United States Court of International Trade (CIT) affirmed the remand determinations made by the Department of Commerce (the Department) that the privatizations of Usinas Siderurgicas de Minas Gerais (USIMINAS), Altos Hornos de Mexico (AHMSA), and British Steel plc (BS plc), respectively, were sales of shares, and that the privatized entities continued to be, for all intents and purposes, the same entities that had received the subsidies prior to privatization. *British Steel Plc. et al.* v. *United States*, Slip Op. 96–6011 (*British Steel II*). In so doing, the Court implicitly rejected the Department's "repayment" methodology set forth in the privatization portion of its *General Issues Appendix*, which is appended to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217, 37259 (July 9, 1993).

EFFECTIVE DATE: May 20, 1996.

FOR FURTHER INFORMATION CONTACT: Roy A. Malmrose, Office of Countervailing Investigations, or Brian Albright, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W. Washington, D.C. 20230; telephone: (202) 482–5414 and (202) 482–2786 respectively.

SUPPLEMENTARY INFORMATION: In its *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil*, 58 FR 37295 (July 9, 1993), *Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Mexico* 58 FR 37352 (July 9, 1993), and *Final Affirmative Countervailing Duty Determination; Certain Steel Products From the United Kingdom*, 58 FR 37393 (July 9, 1993), the Department determined that subsidies provided to certain steel producers remained countervailable after those firms were privatized. The rationale for the Department's determinations was that the countervailing duty law does not require, as a prerequisite for countervailability, that a subsidy bestowed on a producer confer a demonstrable "competitive benefit" on that producer. However, the Department also determined that a portion of the sales prices for USIMINAS, AHMSA, and BS plc, respectively, represented partial repayment of prior subsidies. The Department's privatization methodology was fully set forth in the *General Issues Appendix*.

On February 9, 1995, the CIT held that the Department's privatization methodology was unlawful, and remanded the determinations in question. *British Steel plc et al.* v. *United States*, 879 F. Supp. 1254. In accordance with the CIT's instructions, the Department reexamined the privatization transactions in question. The Department found that USIMINAS, AHMSA, and BS plc were privatized through sales of shares, and that the privatized entities continued to be, for all intents and purposes, the same entities that had received the subsidies prior to privatization. On this basis, and in accordance with the CIT's instructions, the Department determined that the pre-privatization subsidies remained countervailable in full. The Department did not attribute any portion of the sales price for any of the producers to a partial repayment of prior subsidies.

On April 2, 1996, the CIT affirmed the Department's remand determination. *British Steel II*. In so doing, the Court implicitly rejected the "repayment" aspect of the Department's privatization methodology, as set forth in the *General Issues Appendix*.

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. section 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision in *British Steel II* on April 2, 1996, constitutes a decision not in harmony with the Departments final affirmative determinations. Publication of this notice fulfills the *Timken* requirement.

Accordingly, the Department will continue to suspend liquidation pending the expiration of the period of appeal, or, if appealed, until a "conclusive" court decision.

Dated: May 9, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–12518 Filed 5–17–96; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Initiation of Process to Revoke Export Trade Certificate of Review No. 94–00006.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to P & B International. Because this certificate holder has failed to file

an annual report as required by law, the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent P & B International.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325. Pursuant to this authority, a certificate of review was issued on December 30, 1994 to P & B International.

A certificate holder is required by law (Section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review [Sections 325.14 (a) and (b) of the Regulations]. Failure to submit a complete annual report may be the basis for revocation. [Sections 325.10 (a) and 325.14(c) of the Regulations].

The Department of Commerce sent to P & B International on January 11, 1996, a letter containing annual report questions with a reminder that its annual report was due on February 13, 1996. Additional reminders were sent on March 13, 1996, and on April 19, 1996. The Department has received no written response to any of these letters.

On May 14, 1996, and in accordance with Section 325.10 (c)[1] of the Regulations, a letter was sent by certified mail to notify P & B International that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken because of the certificate holder's failure to file an annual report.

In accordance with Section 325.10(c)(2) of the Regulations, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (Section 325.10(c)[2] of the Regulations).

If the answer demonstrates that the material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (Section 325.10(c)[3] of the Regulations).

The Department shall publish a notice in the **Federal Register** of the revocation or modification or a decision not to revoke or modify (Section 325.10(c)[4] of the Regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the **Federal Register** (Sections 325.10(c)(4) and 325.11 of the Regulations).

Dated: May 14, 1996.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 96–12547 Filed 5–17–96; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

Notice; Meeting of the Olympic Coast National Marine Sanctuary Advisory Council

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

SUMMARY: The Advisory Council was established in December 1995 to advise NOAA's Sanctuaries and Reserves Division regarding the management of the Olympic Coast National Marine Sanctuary. The Advisory Council was convened under the National Marine Sanctuaries Act.

TIME AND PLACE: Friday, May 24, 1996, from 9:00 until 4:00. The meeting will be held in the Coast Guard Group Port Angeles Air Station, Port Angeles, Washington.

AGENDA: A facilitated panel discussion of current marine transportation issues affecting the Sanctuary will be held.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Nancy Beres at (360) 457–6622 or Elizabeth Moore at (301) 713–3141.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: May 14, 1996.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 96–12542 Filed 5–17–96; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 051396C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of two applications for scientific research/enhancement permits (P503S and P211J).

SUMMARY: Notice is hereby given that the Idaho Department of Fish and Game in Boise, ID (IDFG) and the Oregon Department of Fish and Wildlife in La Grande, OR (ODFW) have applied in due form for permits to take a threatened species for the purpose of scientific research/enhancement.

DATES: Written comments or requests for a public hearing on either of these applications must be received on or before June 19, 1996.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: IDFG and ODFW request permits under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

IDFG (P503S) requests a permit to take threatened Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a captive rearing program for three populations of chinook salmon in Idaho. The captive rearing program has been proposed as an effort to forestall the extinction of the local populations and to preserve the overall stock structure of Snake River spring/summer chinook salmon. The long-term objective of the program is to achieve the sustainable recovery of the ESA-listed Snake River salmon populations. IDFG propose to collect juveniles for the captive rearing program annually from the upper Salmon River tributaries of West Fork Yankee Fork, upper East Fork, and Lemhi River. IDFG propose to rear and maintain the fish collected until mature. IDFG intends to prevent cohort collapse by supplementing the respective natural adult spawning populations with adults from the captive rearing program.

The captive rearing program was initiated when NMFS issued emergency permit 972 to IDFG on August 7, 1995 (60 FR 42147, August 15, 1995) to allow the collection, handling, and rearing of juvenile, ESA-listed, chinook salmon. Earlier this year, IDFG requested modification 1 to permit 972 for authorization to transfer some of the ESA-listed juveniles collected last year to NMFS's Manchester Marine Experimental Station in WA (61 FR 14296, April 1, 1996). IDFG also requested that the NMFS staff at the laboratory be authorized to rear and maintain the ESA-listed juvenile fish as an agent of IDFG under permit 972. Under their new permit application, IDFG propose that the ESA-listed fish being reared by NMFS be transported back to IDFG when mature to be released in their natal streams for spawning. The issuance of modification 1 to permit 972 is pending. Should a new permit be issued for the captive rearing program, that permit would replace permit 972.

ODFW (P211J) requests a permit to take threatened Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a captive broodstock program for three populations of chinook salmon in Oregon. The captive broodstock program has been proposed as an effort to forestall the extinction of the local populations and to preserve the overall stock structure of Snake River spring/summer chinook salmon. The long-term objective of the program is to achieve the sustainable recovery of the ESA-listed Snake River salmon populations. ODFW propose to collect juveniles for the captive broodstock program annually from the Grande Ronde River Basin tributaries of the Lostine River, Catherine Creek, and the upper Grande Ronde River in northeast Oregon. ODFW propose to rear and maintain the ESA-listed fish in hatcheries until mature, spawn the fish, rear and maintain the resulting progeny to smolts, and release the offspring in their respective parental streams and/or other chinook producing streams within that drainage. ODFW also propose to outplant adults and/or progeny as eggs or parr produced in excess of smolt needs directly into unseeded historic production areas and to collect adults for broodstock beginning in 1997 should returns allow.

The captive broodstock program was initiated when NMFS issued emergency permit 973 to ODFW on August 7, 1995 (60 FR 42147, August 15, 1995) to allow the collection, handling, and rearing of juvenile, ESA-listed, chinook salmon. Earlier this year, ODFW requested modification 1 to permit 973 for authorization to transfer some of the ESA-listed juveniles collected last year to NMFS's Manchester Marine Experimental Station in WA (61 FR 14296, April 1, 1996). ODFW also requested that the NMFS staff at the laboratory be authorized to rear and maintain the ESA-listed juvenile fish as an agent of ODFW under permit 973. Under their new permit application, ODFW propose that the ESA-listed fish being reared by NMFS be transported back to ODFW when mature to be spawned at ODFW's Bonneville Hatchery. The issuance of modification 1 to permit 973 is pending. Should a new permit be issued for the captive broodstock program, that permit would replace permit 973.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on either of these applications would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in these application summaries are those of the applicants and do not necessarily reflect the views of NMFS.

Dated: May 14, 1996.

Eric H. Ostrovsky,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–12533 Filed 5–17–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 051096E]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application to modify permit no. 987 (P598).

SUMMARY: Notice is hereby given that Dr. Jim Darling, Box 384, Tofino, B.C., Canada V0R 2Z0, has requested a modification to Permit No. 987.

DATES: Written comments must be received on or before June 19, 1996.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668.

Written data or views, or requests for a public hearing on this request should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, National Marine Fisheries Service, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject modification is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Permit Holder is currently authority to take (i.e., harass) up to 200 humpback whale (*Megaptera novaeangliae*) in the course of behavioral and photo-identification studies and biopsy sampling, in the waters around the main Hawaiian Islands, primarily off of Maui, Hawaii, over a period of 2 years. The purpose of the research is to collect genetic information that will, among other things, determine the sex and behavior patterns of individual humpback whales involved in "singing" behavior.

The Holder is now requesting that the Permit be modified to: (1) Increase the total number of harassment takes authorized from 200 to up to 1000 animals annually, up to 100 of which may be biopsy sampled annually; (2) increase the duration of the permit from two to three years; (3) authorize the

biopsy of 10 cows with calves or yearlings (biopsy of calves/yearlings is not requested); (4) opportunistically collect biopsy samples from dead stranded whales and retrieve humpback whale carcasses for necropsy; (5) add Southeast Alaska, specifically Frederick Sound and Stephens Passage as research locations; and (6) in the requested Alaska locations, allow the take by harassment of up to 500 humpback whales annually, up to 100 of which may be biopsy sampled annually.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 13, 1996.

Ann D. Terbush,

Chief, Permits and Documentotion Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–12531 Filed 5–17–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 051396H]

Marine Mammals; Permit No. 928 (P351E)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for modification.

SUMMARY: Notice is hereby given that North Gulf Oceanic Society, P.O. Box 15244, Homer, Alaska 99603, has requested a modification to permit No. 928.

DATES: Written comments must be received on or before June 14, 1996.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

Written data or views, or requests for a public hearing on this request should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject modification to permit no. 928, issued on July 18, 1994 (59 FR 37745) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 928 authorizes the Permit Holder to harass during photo-identification studies up to 100 humpback whales (*Megaptera novaeangliae*) annually in Prince William Sound, Alaska and adjacent waters. Permit Holder now seeks authorization to: Increase the number of humpback whales authorized to be harassed during photo-identification activities to 400 annually; biopsy sample up to 50 of these animals annually, not to exceed 100 takes in four years; and to expand the research area to include all Alaska waters.

Dated: May 14, 1996.

Ann D. Terbush,

Chief, Permit and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–12532 Filed 5–15–96; 2:18 pm]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Advisory Committee on CFTC-State Cooperation; May 21, 1996 Public Meeting

AGENCY: Commodity Futures Trading Commission.

ACTION: Correction of time of meeting.

On May 9, 1996, the Commodity Futures Trading Commission published a notion in the **Federal Register** (61 FR 21163) announcing that the Commission's Advisory Committee on CFTC-State Cooperation will conduct a public meeting on May 21, 1996 that will begin at 9:00 a.m. and last until 12:00 noon. The time that this May 21, 1996 meeting will be held is from 9:30 a.m. to 12:30 p.m. in the first floor hearing room (Room 1000) of the Commission's Washington, D.C. headquarters, Three Lafayette Centre, 1155 21st Street NW., Washington, D.C.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–12546 Filed 5–17–96; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board (AFEB); Partially-Closed Meeting

AGENCY: Office of the Surgeon General.

ACTION: Notice of partially-closed meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–463, The Federal Advisory Committee Act, this announces the forthcoming AFEB Meeting. The meeting will be held from 0800–1630, Thursday, June 27, 1996. The purpose of the meeting is to complete pending Board issues and to conduct an executive planning session of the Board and completion of pending issues. There will also be a classified update on biological defense. The meeting location will be at the Walter Reed Army Institute of Research, Washington, D.C., Building 40 Room 3092. This meeting will be partially closed to the public in accordance with Section 552b(c) of title 5, U.S.C. specifically subparagraph (1) thereof and title 5, U.S.C., appendix 1, subsection 10(d). The remainder of the meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: COL Vicky Fogelman, AFEB Executive Secretary, Armed Force Epidemiological Board, Skyline Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041–3258, (703) 681–8012/3.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–12565 Filed 5–17–96; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 23 & 24 May 1996.

Time of Meeting: 0900–1600, 23 May 96; 1000–1600, 24 May 96.

Place: Pentagon-Washington, DC.

AGENDA: The Army Science Board (ASB) Summer Study on "Technical Architecture for Army (C41)" will meet for briefings and discussions on the study subject. These meetings will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of this meeting. For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 96–12582 Filed 5–17–96; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 15 & 16 May 1996.

Time of Meeting: 0900–1700 (on both days).

Place: Pentagon-Washington, DC.

Agenda: The Army Science Board (ASB) Ad Hoc Study on "Army Digitization Information System Vulnerabilities and Security" will meet for briefings and discussions on the study subject. This meeting will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of this meeting. For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 96–12583 Filed 5–17–96; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 27 & 28 June 1996.

Time of Meeting: 0900–1600, 27 June 96; 1000–1600, 28 June 96.

Place: Pentagon—Washington, DC.

Agenda: The Army Science Board (ASB) Summer Study on "Technical Architecture for Army (C41)" will meet for briefings and discussions on the study subject. These meetings will be closed to the public in accordance with Section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C. Appendix 2, subsection 10(d). The proprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of this meeting. For further information, please contact Michelle Diaz at (703) 695–0781.

Michelle P. Diaz,

Acting Administrative Officer, Army Science Board.

[FR Doc. 96–12584 Filed 5–17–96; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Availability of Surplus Land and Buildings Located at Defense Distribution Depot, Ogden, Utah (DDOU)

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of availability.

SUMMARY: This notice identifies the surplus real property located at Defense Distribution Depot, Ogden, Utah (DDOU). DDOU is located one mile from Interstate 15. Commercial and military airports and a rail network are in close proximity.

FOR FURTHER INFORMATION CONTACT: Fore more information regarding a particular building or parcel (i.e., acreage, floor plans, existing sanitary facilities, exact street address), contact Ms. Kathleen Mallis, Base Transition Coordinator at (801) 399–7971; Mr. Steve Sugimoto, Base Transition Officer, at (801) 399–7845; or Ms. Susan Krinks, Reality Specialist, (916) 557–6994.

SUPPLEMENTARY INFORMATION: This surplus property is available under the provisions of the Federal Property and Administrative Services Act of 1949 and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

The surplus real property totals 1,077 acres and includes 10 office buildings, 68 storage buildings, and 156 other buildings. The current range of uses include industrial, storage, commercial, and housing facilities. DDOU is listed as a National Priority List site by the U.S. Environmental Protection Agency.

Future uses may be limited to those described above.

Notices of interest must be submitted within 90 days from the date of this notice. Notices of interest should be forwarded to Ogden Local Redevelopment Authority, Attention: Mr. Michael D. Pavich, 2484 Washington Boulevard, Suite 320, Ogden, Utah 84401–2319.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–12564 Filed 5–17–96; 8:45 am]

BILLING CODE 3710–EZ–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by May 15, 1996. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before July 19, 1996.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street NW., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339

between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506 (c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 14, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: Emergency.

Title: Goals 2000 Comprehensive Local Reform Assistance.

Abstract: The Secretary proposes application requirements and selection criteria for Goals 2000 Comprehensive Local Reform Assistance grants. These grants assist local education agencies in the development and implementation of comprehensive local improvement plans directed at enabling all children to reach challenging academic standards.

Additional Information: The Department of Education analyzes these applications to determine which applicants are best qualified to receive Federal funds under the law. Without the information supplied in this application, that judgment could not be objectively made and these appropriated funds could not be awarded.

Frequency: One-time.

Affected Public: State, local or Tribal Government, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 100.

Burden Hours: 5,000.

[FR Doc. 96–12529 Filed 5–17–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Proposed Collection; Comment Request

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning the proposed new Form EIA–901, "Monthly Report of Natural Gas Marketers"; extension without changes to the Standby Form EIA–191S, "Weekly Underground Gas Storage Report", and Standby Form EIA–857S, "Weekly Report of Natural Gas Purchases and Deliveries to Consumers"; extension with changes to Forms EIA–176, "Annual Report of Natural and Supplemental Gas Supply and Disposition", EIA–191, "Monthly Underground Gas Storage Report", EIA–857, "Monthly Report of Natural Gas Purchases and Deliveries to Consumers", and EIA–895, "Monthly Quantity and Value of Natural Gas Report"; and discontinuation of the Form EIA–627, "Annual Quantity and Value of Natural Gas Report".

DATES: Written comments must be submitted on or before July 19, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Margaret Natof, Reserves and Natural Gas Division, EI–441, Office of Oil and Gas, Energy Information Administration, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202–586–6303, or E-mail to mnatof@eia.doe.gov, or FAX at 202–586–1076.

FOR FURTHER INFORMATION: Requests for additional information or copies of the forms and instructions should be directed to Margaret Natof at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments—General Issues and Specific Issues

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93–275) and the Department of Energy Organization Act (Pub. L. No. 95–91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The Energy Information Administration, as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13)), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Following is background information on each form in the clearance package:

Form EIA–176, "Annual Report of Natural and Supplemental Gas Supply and Disposition"

The Form EIA–176 provides the EIA with the major elements of information required to combine and merge with data collected in other EIA surveys to develop natural gas supply and disposition balances and relevant gas

cost, price, and related information at the State level.

The information collected on the Form EIA–176 is needed and used by the DOE for the following purposes:

(1) to develop and make available to the Congress, the States, and the public an accurate assessment of the supply of natural and supplemental gas available to each of the States from all sources, both internal and external, and the manner in which such supply was utilized or otherwise disposed of;

(2) to determine the quantity of natural gas and supplemental gaseous fuels consumed within each of the States by market sector, the average price for such gas, and the changes in consumption and price patterns over time;

(3) to provide natural gas data to EIA publications including the Annual Energy Review, Annual Energy Outlook, and other EIA publications which are distributed to the Congress, government, industry, and the public; and

(4) to provide natural gas data for the Natural Gas Annual.

EIA–191, "Monthly Underground Gas Storage Report"

Form EIA–191 requests monthly data on the location, ownership, capacity, and operations of all active underground natural gas storage fields. Storage data are a critical link in understanding the deliverability of the natural gas system and overall system operations.

Information collected on the Form EIA–191 is used by the EIA in the following ways:

(1) to provide State level data on underground natural gas storage with respect to injections, withdrawals, inventories, type of storage facility, location, and capacity for the EIA's Natural Gas Monthly. This monthly data collection also provides reliable baseline data on storage operations necessary for analyses, modeling, and comparison with normal industry operations in case of severe weather, natural disasters, or other extreme circumstances;

(2) to provide data on underground natural gas operations for EIA's Monthly Energy Review, Annual Energy Review, Annual Energy Outlook, and Short Term Energy Outlook;

(3) to provide data on underground natural gas storage inventories monthly for various analyses and publications; and

(4) to provide data on all aspects of underground natural gas storage to enable EIA and other elements of DOE to identify and assess supplies of natural gas in storage by geographic location on a timely basis.

EIA–857, "Monthly Report of Natural Gas Purchases and Deliveries to Consumers"

Monthly State level data collected on Form EIA–857 are aggregated by EIA and used to develop information on the average cost of gas purchased by natural gas distribution companies at their citygates, consumption of natural gas by sector, and average price of gas by sector. These data are necessary to provide timely information needed to measure the combined impact of government, industry, and consumer actions; geographic location; interfuel competition; climatic conditions; and other factors upon the natural gas industry and natural gas consumers.

Aggregate monthly data are published in EIA's Natural Gas Monthly and Monthly Energy Review, and are made available to the Congress, State governments, industry, and the public.

EIA–895, "Monthly Quantity of Natural Gas Report"

Form EIA–895 collects monthly data from the appropriate State agencies concerning natural gas production. It provides details on gross withdrawals from gas and oil wells, on volumes vented and flared, volumes used for repressuring, volumes of nonhydrocarbon gases removed, volumes used as fuel on leases, and the amount of natural gas available for market. These data are routinely collected by the States for taxation and statistical purposes.

The aggregate data are published in the Natural Gas Monthly, Natural Gas Annual, Monthly Energy Review, and Annual Energy Review.

Form EIA–901, "Monthly Survey of Natural Gas Marketers"

The proposed Form EIA–901 will provide EIA with information which will be used to estimate the average price of natural gas delivered to end users by State, month, and consuming sector.

The information collected on the EIA–901 will be compiled, combined with data from the Form EIA–857, and used by EIA to estimate monthly volume-weighted average prices of natural gas delivered to end users by sector in each of the States and the total for the United States. Data summaries will be published in the Natural Gas Monthly and Monthly Energy Review and will be made available to DOE, Congress, State governments, industry, and the public. The data collected from this survey will also be used by the DOE as baseline information for State and regional studies and forecasts of natural gas prices. (EIA is currently conducting a pretest of the EIA–901.)

Standby Forms EIA–857S, "Weekly Report of Natural Gas Supplies and Deliveries to Consumers," and EIA–191S, "Weekly Underground Gas Storage Report"

The standby Forms EIA–857S and EIA–191S are designed to fill gaps in the natural gas data collections where monthly data do not provide sufficient information for responses to natural disasters, severe weather, or other catastrophic events. The data would permit EIA to monitor the impact of regional disruptions on a weekly basis when the EIA Administrator determines that conditions or events warrant more frequent data collection.

Data elements on the forms are identical to those on the "parent" forms EIA–857 and EIA–191 except the weekly forms are simplified to the maximum extent possible. The standby forms are intended only for use as determined necessary in extreme situations. EIA would notify OMB of the intent to use the form(s), the region(s) affected, and the estimated burden.

II. Current Actions

This notice includes a new data collection, the EIA–901; an extension of current data collections without change, the EIA–191S, and EIA–857S; and extension of current data collections with changes, the EIA–176, EIA–191, EIA–857, and EIA–895. EIA proposes to discontinue the Form EIA–627. Later this year, a request will be made of the Office of Management and Budget to approve the proposed forms as the Natural Gas Program Package with an expiration date of December 31, 1999.

EIA–901, "Monthly Report of Natural Gas Marketers"

EIA's current data collection system is based on the concept of "bundled" natural gas sales and transportation arrangements. Prior to FERC Order 636, data on bundled natural gas deliveries were readily available from those companies that delivered to end use customers (principally local distribution companies and pipelines). Since the companies making the deliveries had both custody and ownership of the gas, EIA could also collect price data from those companies making deliveries.

With the current system of unbundled sales and transportation, EIA still obtains complete reporting of volumes delivered to end users. Since third parties can now arrange for the sale of natural gas, EIA has lost coverage of the

prices paid by many consumers, particularly in the industrial sector.

In meetings with EIA data providers and data users, the importance of the consumer price data were given high priority. Those prices are important indicators of the overall structure and functioning of the natural gas marketplace. The data are needed and used by the business community for planning purposes and as benchmark and baseline data.

EIA is proposing to collect data from natural gas marketers who are the new participants in the industry since the implementation of Order 636. The data collection would ask marketers to provide monthly reports of volumes, revenues, and distribution costs for natural gas delivered to customers f.o.b. (free on board) the end users' burnertip or f.o.b. the citygate. (EIA is currently pretesting the EIA–901.)

The data would be combined with data collected from both the revised Form EIA–176 and the revised Form EIA–857 to construct end-use prices for each consuming sector.

EIA–176, "Annual Report of Natural and Supplemental Gas Supply and Disposition"

EIA is proposing to change the EIA–176 to collect the revenues on deliveries of natural gas transported for the account of others in Part V, lines 7.1 through 7.4.6.2 of the form. This information will supplement data proposed to be collected on the Form EIA–901, "Monthly Report of Natural Gas Marketers." The proposed changes are expected to place a small increased burden on respondents.

EIA–191, "Monthly Underground Gas Storage Report"

EIA is not proposing any format changes to the Form. However, EIA has received requests for release of the Form EIA–191 data. Therefore, EIA is asking respondents to reconsider and to demonstrate the extent to which their information constitutes trade secrets or commercial and financial information whose release would cause substantial harm to their company's competitive position.

EIA–627, "Annual Quantity and Value of Natural Gas Report"

EIA is proposing the discontinuation of this voluntary form. A proposed change to the EIA–895 would request monthly data on value of natural gas at the wellhead and eliminate the need for a separate annual data collection on the EIA–627.

EIA–857, "Monthly Report of Natural Gas Purchases and Deliveries to Consumers"

EIA proposes only one change to the EIA–857, to collect revenue data on lines 13 through 18 of the form. The purpose of gathering transportation revenue data is to supplement data gathered on the proposed Form EIA–901 in the development of end-user price data. A small change in burden to respondents is anticipated.

EIA–895, "Monthly Quantity and Value of Natural Gas Report"

Proposed changes to the EIA–895 include adding a column to the form to collect data on the value of each volume item on the form. The title of the Form would be changed to "Monthly Quantity and Value of Natural Gas Report." This voluntary report is filed by State agencies of each of the natural gas producing States. The reporting burden for the EIA–895 would be expected to increase from 30 minutes to 45 minutes per response.

Standby Forms EIA–191S, "Weekly Underground Gas Storage Report," and EIA–857S, "Weekly Report of Natural Gas Purchases and Deliveries to Consumers"

No changes are requested to these standby forms. EIA has not previously invoked the use of the forms in emergency situations, but would like to retain the ability to do so should circumstances warrant.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of responses. Since this notice covers more than one form, please indicate to which form(s) your comments apply.

General Issues

EIA is interested in receiving comments from persons regarding:

A. Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility. Practical utility is the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can EIA make to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can data be submitted in accordance with the due date specified in the instructions?

C. Public reporting burden for the proposed forms is estimated to average 4 hours per month for the EIA–901, 20.9 hours annually for the EIA–176, 3.6 hours per month for the EIA–191, 4 hours per month for the EIA–857, and 50 minutes per month for the EIA–895 per response. The burden estimate for the EIA–191S is 4 hours per response and the EIA–857S is 4 hours per response on a weekly basis. Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

Please comment on (1) the accuracy of our estimate and (2) how the agency could minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology.

D. What are the estimated (1) total dollar amount annualized for capital and start-up costs, and (2) recurring annual dollar amount of operation and maintenance and purchase of services costs associated with these data collections? The estimates should take into account the costs associated with generating, maintaining, and disclosing or providing the information. Estimates should not include purchases of equipment or services made as part of customary and usual business practices, or the cost of any burden hours for completing the forms. EIA estimates that there are no additional costs other than those that the respondent incurs in keeping the information for its own uses.

E. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the methods of collection.

As a Potential User

A. Can you use data at the levels of detail indicated on the forms?

B. For what purposes would you use the data? Be specific.

C. Are there alternate sources of data and do you use them? If so, what are their deficiencies and/or strengths?

D. For the most part, information is published by EIA in U.S. customary units, e.g., cubic feet of natural gas. Would you prefer to see EIA publish more information in metric units, e.g., cubic meters? If yes, please specify what information (e.g., natural gas consumption), the metric unit(s) of measurement preferred, and in which EIA publication(s) you would like to see such information.

Specific Issues

EIA is seeking comments on the following specific issues related to the forms covered by this Notice:

Confidentiality of Data on the EIA–191

EIA has received numerous requests for company-level information filed on the EIA–191. Since these data were collected under a pledge of confidentiality, those requests have been denied. However, in light of the fact that many respondents routinely provide their data to the trade press and others, this issue is being reexamined.

A. Should EIA continue to preserve the confidentiality of EIA–191 data?

B. What would be the impact on your company of the release of its filings of the EIA–191?

C. What would be the impact on your company if the EIA were to aggregate your filings from the field level to the company level and release only the company-level aggregate data?

D. How are field-level or company-level natural gas storage data useful to you?

Tax Revenue Information Reported on the EIA–176 and EIA–857

Currently taxes are included in the revenues collected on the EIA–176 and EIA–857. Can your company provide separate data, either as a rate or in dollars, on the taxes collected from its deliveries of natural gas to consumers?

Firm and Interruptible Deliveries (EIA–176)

EIA has been collecting information on EIA–176 on deliveries of natural gas to end users divided into the categories "firm" and "interruptible". Because natural gas purchases and contracting practices have changed significantly since the advent of Order 636, we are requesting your comments on the desirability of continuing to collect these data at this level of detail.

A. For Responding Companies: Is your company able to provide reliable data in response to these data items?

B. For Data Users: Are the data on firm and interruptible deliveries of natural gas to end users useful to you?

Deliveries of Natural Gas to Nonutility Power Producers (Forms EIA–176 and EIA–857)

A. For Data Providers: Is your company able to provide reliable data on deliveries to nonutility power producers?

B. For Data Providers and Users: Are the data on deliveries of natural gas to nonutility power producers useful?

Gas Used for Agriculture (Forms EIA–176 and EIA–857)

Natural gas consumed in agriculture operations has always been classified as part of the commercial sector. For all other fuels on which EIA collects data, agriculture use is considered part of the industrial sector.

A. For Respondent Companies: Is your company able to separate natural gas deliveries to agricultural users and report them as part of the industrial sector?

B. For Data Users: Transferring agricultural use to the industrial sector would allow more meaningful comparisons with other fuels. It would also mean a break in series because EIA has no precise measure of agricultural use with which to adjust previously published data. Should EIA request this change of sector definition?

Electronic or Other Filing Options

EIA is continually seeking ways to improve the convenience of reporting for respondents. Electronic methods of filing EIA forms provide respondents with options that many find easier and less time-consuming than the traditional paper forms. Also, because some editing is performed as data are entered, filing electronically often produces higher quality reports and respondents are subject to fewer follow-up contacts from EIA staff to resolve questions. Electronic filing is preferred by EIA but is not mandatory. Currently the EIA–176 offers an electronic filing option provided on a personal computer diskette programmed with software that can be used on most IBM compatible computers. The EIA–191 offers an electronic filing option which allows users to transmit data directly to the EIA mainframe computer.

A. Does your company have any questions or concerns about the electronic filing options offered by EIA?

B. What other electronic filing options could be offered that your company would like to use?

Revenue Data on the EIA–176 and EIA–857

A. Can respondent companies provide the revenue data for gas transported for the account of others requested on the EIA–176 and the EIA–857?

B. What revenues are included in the data that respondents are asked to provide in response to these new data items?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C., May 13, 1996.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 96–12593 Filed 5–17–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP96–500–000]

Northwest Pipeline Corporation; Notice of Application for Authorization To Abandon and Replace Facilities

May 14, 1996.

Take notice that, on May 6, 1996, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, UT 84108, filed an abbreviated application in Docket No. CP96–500–000: (1) for authorization, pursuant to section 7(b) of the Natural Gas Act, to abandon and remove approximately 200 feet of existing 22-inch pipeline on Northwest's Ignacio to Sumas mainline at a railroad crossing near Soda Springs, in Caribou County, Idaho; and (2) for authorization, pursuant to section 7(c) of the Natural Gas Act and part 157 of the Commission's regulations, to replace that 200-foot segment with new 22-inch replacement pipeline and appurtenances, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Northwest states that the cathodic protection system for the existing 22-inch pipeline segment has been compromised, leading to the potential for future pipeline damage. Northwest asserts that the proposed replacement is required by the present and future public convenience and necessity

because the replacement is needed to maintain the integrity of its mainline transmission system and reduce the risk of pipeline failure and service interruptions to its shippers.

Northwest states that the replacement will occur entirely within Northwest's existing permanent right-of-way, at milepost 539.1 on Northwest's mainline in Caribou County, ID, and that the estimated cost of the proposed project is approximately $870,000—$770,000 to construct the replacement pipeline segment and $100,000 to remove the existing pipeline segment.

Northwest states that: (1) the 22-inch pipeline to be replaced was originally constructed by Northwest's predecessor, Pacific Northwest Pipeline, pursuant to a certificate authorization in Docket No. G–1429 (13 FPC 221); (2) several areas of new temporary construction workspace and a new access road (which may not have been included in the scope of the original construction certificate authorization) will be required to accommodate the construction techniques Northwest needs to employ to remove the existing pipeline from the casing and to install the new replacement pipeline, either in the existing casing or in a new bored, uncased railroad crossing in the existing permanent right-of-way; and (3) Northwest is seeking the subject abandonment and certificate approvals because the contemplated use of temporary construction workspace areas and a new access road do not meet the guidelines for a facilities replacement project under 18 CFR 2.55(b), as clarified in the Commission's March 15, 1995 letter to Tennessee Gas Pipeline Company in Docket No. CP95–198–000.

Northwest also states that, to avoid service disruptions to its customers receiving service at the Soda Springs Meter Station during construction, Northwest will install a temporary 2-inch (above-ground) pipeline, extending approximately 4,120 feet from upstream of the closed block valve to that delivery point.

Any person desiring to be heard, or to make any protest with reference to said application should, on or before June 4, 1996, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding, or to participate as a party in any hearing therein, must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application, if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northwest to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12554 Filed 5–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1663–000]

Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Co., Notice of Filing

May 14, 1996.

Take notice that Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company ("the Companies"), on April 29, 1996, tendered for filing a Joint Application for Authority To Sell Electric Energy at Market-Based Rates Using a Power Exchange. The application describes the way prices will be determined for sales through the Power Exchange ("PX") and the structure and governance of the PX. The Companies propose to supplement the market power showing in the application on May 29, 1996. The Commission anticipates that it will issue an additional notice for the supplemental filing, with a new comment date, at that time.

In addition, the application sets forth recommended time frames for actions by the Companies, the Commission, and the participants in this proceeding. The Commission invites comments on these procedural proposals in addition to comments on the substantive proposal.

Copies of the filing were served upon the Public Utilities Commission of the State of California and other interested parties.

Any person desiring to be heard or to protest such application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All petitions or protests should be filed on or before June 13, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12619 Filed 5–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL96–48–000]

Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Co.; Notice of Filing

May 14, 1996.

Take notice that Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company ("the Companies"), on April 29, 1996, tendered for filing a Petition for a Declaratory Order. This petition requests that the Commission confirm the delineation of certain facilities as "local distribution" (subject to state regulation) and certain other facilities as "transmission" (subject to Commission jurisdiction) based upon their existing uses.

In addition, the application sets forth recommended time frames for actions by the Companies, the Commission, and the participants in this proceeding. The Commission invites comments on these procedural proposals in addition to comments on the substantive proposals.

Any person desiring to be heard or to protest such application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All petitions or protests should be filed on or before June 13, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12620 Filed 5–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EC96–19–000]

Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Co.; Notice of Filing

May 14, 1996.

Take notice that Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company ("the Companies"), on April 29, 1996, tendered for filing a Joint Application for Authorization To Convey Operational Control of Designated Jurisdictional Facilities to an Independent System Operator. This application requests authorization to transfer operational control (but not ownership) of certain transmission facilities to an Independent System Operator ("ISO"). The application describes the proposed governance and structure of the ISO, the manner in which the ISO will operate, and the transmission access and pricing rules that will apply to service over the ISO grid.

In addition, the application sets forth recommended time frames for actions by the Companies, the Commission, and the participants in this proceeding. The Commission invites comments on these procedural proposals in addition to comments on the substantive proposal.

Any person desiring to be heard or to protest such application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All petitions or protests should be filed on or before June 13, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12621 Filed 5–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–370–000]

Transwestern Pipeline Company; Notice of Application

May 14, 1996.

Take notice that on April 30, 1996, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed an application with the Commission in Docket No. CP096–370–000 pursuant to Sections 7(b) and 7(c) of the Natural Gas Act (NGA) requesting a blanket certificate of public convenience and necessity, authorizing Transwestern to install and operate mobile compressors on a temporary basis while existing compressors are undergoing maintenance, and permission and approval to abandon the compressors, all as more fully set forth in the application which is open to the public for inspection.

Transwestern states that it requires the blanket certificate in order to maintain throughout in the event of scheduled or unscheduled maintenance. Transwestern also states that it would attempt to achieve comparable horsepower and deliverability with the temporary compressors as that which is available with the permanent compressors. Transwestern asserts that the blanket certificate would enable Transwestern to install temporary compressors without a prior filing and to avoid interruptions of service to customers. Transwestern states that it does not own a compressor unit which could be used on an as-needed, temporary basis.and that it would use rental units at a cost estimated to be no greater than $75,000 per unit per month.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 24, 1996, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a part to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed with the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transwestern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12553 Filed 5–17–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1573–000, et al.]

Duquesne Light Company, et al.; Electric Rate and Corporate Regulation Filings

May 13, 1996.

Take notice that the following filings have been made with the Commission:

1. Duquesne Light Company

[Docket No. ER96–1573–000]

Take notice that on April 15, 1996, Duquesne Light Company filed a Network Integration Service Tariff and Point-to-Point Transmission Service Tariff.

Copies of the filing were served on the Pennsylvania Public Utility Commission.

Comment date: May 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. UNITIL Power Corporation

[Docket No. ER96–1700–000]

Take notice that on April 30, 1996, UNITIL Power Corporation, tendered for filing pursuant to Schedule II Section H of Supplement No. 1 to Rate Schedule FERC Number 1, the UNITIL System Agreement, the following material:

1. Statement of all sales and billing transactions for the period January 1, 1995 through December 31, 1995 along

with the actual costs incurred by UNITIL Power Corp. by FERC account.

2. UNITIL Power Corp. rates billed from January 1, 1995 to December 31, 1995 and supporting rate development.

Comment date: May 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Union Electric Company

[Docket No. ER96–1701–000]

Take notice that on May 1, 1996, Union Electric Company (UE), tendered for filing an Interchange Agreement dated April 12, 1996, between UE and Louisville Gas and Electric Company. UE asserts that the purpose of the Agreement is to set out specific rates, terms and conditions for the types of power and energy to be exchanged.

Comment date: May 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Public Service Corporation

[Docket No. ER96–1702–000]

Take notice that on May 1, 1996, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed service agreement under its CS–1 Coordination Sales Tariff. The affected customer is Oconto Electric Cooperative. The service agreement provides for capacity and energy sales for an initial ten-year period. On behalf of itself and the customer, WPSC requests an effective date of May 1, 1996.

WPSC has served copies of its filing on Oconto Electric Cooperative, the Public Service Commission of Wisconsin and the other customers served under WPSC's CS–1 Tariff.

Comment date: May 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Gas and Electric Company

[Docket No. ER96–1703–000]

Take notice that on May 1, 1996, Pacific Gas and Electric Company (PG&E), tendered for filing a Scheduling Services Agreement dated April 24, 1996, (the Agreement), between the USGen Power Services, L.P. (USGenPS) and PG&E. USGenPS is a Delaware limited partnership acting as a marketer of electric power. The Agreement provides for PG&E acting as USGenPS's Scheduling Agent for its customers for the purposes of scheduling certain electric power outside the PG&E Control Area.

Copies of this filing have been served upon USGenPS and the California Public Utilities Commission.

Comment date: May 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Black Hills Corporation

[Docket No. ER96–1704–000]

Take notice that on May 1, 1996, Black Hills Corporation (Black Hills), which operates its electric utility business under the name Black Hills Power and Light Company, tendered for filing a power sales agreement, dated as of April 25, 1996, between Black Hills and Calpine Power Services Company.

The new agreement provides for Black Hills to sell Calpine Power Services Company firm capacity and energy during certain defined on-peak periods during 1996 and 1997.

Black Hills requests and provides waiver of the Commission's notice requirements to permit this rate schedule to become effective June 1, 1996.

Comment date: May 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Idaho Power Company

[Docket No. ER96–1705–000]

Take notice that on May 1, 1996, Idaho Power Company tendered for filing with the Federal Energy Regulatory Commission, amendments to Rate Schedule FERC No. 84, its Power Sale Agreement with the cities of Azusa, Banning and Colton, California.

Comment date: May 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Portland General Electric Company

[Docket No. ER96–1706–000]

Take notice that on May 1, 1996, Portland General Electric Company (PGE), tendered for filing a Revision No. 7 to Exhibit C and Revision No. 2 to Exhibit D of the General Transfer Agreement for Integration of Resources between the Bonneville Power Administration and PGE, Contract No. DE–MS79–89BP02273, (Portland General Electric Rate Schedule FERC No. 185).

Copies of the filing have been served on the Bonneville Power Administration.

Pursuant to 18 CFR 35.11, PGE respectfully requests that the Commission grant waiver of the notice requirements of 18 CFR 35.3 to allow the revisions to become effective as of March 31, 1996.

Comment date: May 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Duke Power Company

[Docket No. ER96–1708–000]

Take notice that on May 1, 1996, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement (TSA) between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and The Cincinnati Gas & Electric Company and PSI Energy, Inc. (hereinafter referred to as Cinergy Companies). Duke states that the TSA sets out the transmission arrangements under which Duke will provide Cinergy Companies non-firm transmission service under its Transmission Service Tariff.

Comment date: May 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Power and Light Company

[Docket No. ER96–1713–000]

Take notice that on May 1, 1996, Wisconsin Power and Light Company (WP&L), tendered for filing an Agreement dated April 25, 1996, establishing Prairie du Sac Electric and Water Utility as a customer under the terms of WP&L's Network Integration Service Transmission Tariff.

WP&L requests an effective date of May 1, 1996, and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: May 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Maine Electric Power Company

[Docket No. ER96–1714–000]

Take notice that on May 1, 1996, Maine Electric Power Company (MEPCO), tendered for filing an extension of the term of the Participation Agreement entered into between it and certain United States Utilities, dated June 20, 1969, as amended.

Comment date: May 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Northern Indiana Public Service Company

[Docket No. ER96–1715–000]

Take notice that on May 1, 1996, Northern Indiana Public Service Company, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and K N Marketing, Inc.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to K N Marketing, Inc. under Northern Indiana Public Service Company's Power Sales Tariff, which was accepting for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000. Northern Indiana Public Service Company and K N Marketing, Inc. request waiver of the Commission's sixty-day notice requirement to permit an effective date of May 1, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Northern Indiana Public Service Company

[Docket No. ER96–1716–000]

Take notice that on May 1, 1996, Northern Indiana Public Service Company, tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and Valero Power Services Company.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to Valero Power Services Company under Northern Indiana Public Service Company's Power Sales Tariff, which was accepting for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95–1222–000. Northern Indiana Public Service Company and Valero Power Services Company request waiver of the Commission's sixty-day notice requirement to permit an effective date of May 1, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: May 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12622 Filed 5–17–96; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–297–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Intent To Prepare an Environmental Assessment for the Proposed Security Loop II Project and Request for Comments on Environmental Issues

May 14, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed by the Great Lakes Gas Transmission Limited Partnership (Great Lakes) for its Security Loop II Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Great Lakes wants to complete the looping of its entire mainline system which is fully subscribed with firm service, to provide greater reliability and operating flexibility for its shippers.[2] Great Lakes seeks authority to construct and operate three segments of 36-inch-diameter pipeline loop in the Upper Peninsula of Michigan:

- Loop Segment 1 would be about 2.4-miles-long, wholly within Delta County, Michigan. It would begin at milepost (MP) 560.3 along Great Lakes' existing mainline and end at Great Lakes' existing Rapid River Compressor Station at MP 562.7.
- Loop Segment 2 would be about 12.5-miles-long, also within Delta County, Michigan, extending from MP 562.7 to MP 575.2.
- Loop Segment 3 would be about 9.6-miles-long, in Mackinac County, Michigan. It would begin at Great Lakes' existing Naubinway Compressor Station at MP 640.1 and end at MP 649.7.

As part of this project, Great Lakes would modify existing piping and install additional above-ground facilities at its Rapid River and Naubinway Compressor Stations, and Rapid River Meter Station.[3] The proposed loop construction would also necessitate the abandonment and removal of the existing tie-ins at the beginning of Loop Segment 1, the end of Loop Segment 2, and the end of Loop Segment 3.

The general location of the proposed project facilities are shown in appendix 1.[4]

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern. Federal agencies can request to be cooperating agencies in the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries and wetlands.

[1] Great Lakes' application was filed with the Commission on April 4, 1996 under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The only portions of Great Lakes' existing 968-mile-long 36-inch-diameter mainline which have not been looped are the three segments, totalling 24.5 miles, addressed in this proposal. A loop is a segment of pipeline which is usually installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through that segment of the pipeline system.

[3] The proposed above-ground facilities would consist of a pig launcher and receiver at the Rapid River Compressor Station, a launcher at the Naubinway Compressor Station, and a valve at the Rapid River Meter Station.

[4] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

- Vegetation and wildlife.
- Endangered and threatened species.
- Cultural resources.
- Land use.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention in the EA based on a preliminary review of the proposed facilities and information provided by Great Lakes. Keep in mind that this is a preliminary list.

- Loop Segment 1 would cross lands managed by the Escanaba River State Forest. Loop Segments 1 and 2 would cross lands managed by the Hiawatha National Forest. Loop Segment 3 would cross lands managed by the Lake Superior State Forest.
- Loop Segment 2 would cross the Bay de Noc—Grand Island recreational trail and the Nahma snowmobile trail.
- The three loop segments combined would cross about 12.2 miles of forested land, and about 1.1 mile of agricultural land.
- One residence is located within 50 feet of the proposed construction right-of-way for Loop Segment 1.
- Loop Segment 2 would cross the Whitefish River, which is federally listed as a Wild and Scenic River. The three loops combined would cross 17 other perennial streams, 13 of which have been classified as cold water fisheries.
- The three loops combined would cross 32 wetlands, totalling about 10.6 miles.
- A total of 12 cultural resource sites have been identified along all three loops segments combined, of which 9 have been recommended for additional investigation.

The list of issues may be added to, subtracted from, or changed based on your comments and our analysis.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Washington, D.C. 20426;
- Reference Docket No. CP96–297–000;
- Send a *copy* of your letter to: Paul Friedman, EA Project Manager, Federal Energy Regulatory Commission, OPR/DEER/ERCI—PR11.1, 888 First St., N.E., Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before June 17, 1996.

Additional information about the proposed project is available from Paul Friedman, EA Project Manager, at (202) 208–1108. If you wish to receive a copy of the EA, you should request one from Mr. Friedman at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor." Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for later intervention. You do not need intervenor status to have your scoping comments considered.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12552 Filed 5–17–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5508–1]

Agency Information Collection Activities: Submission for OMB Review, Comment Request; Pre-Certification and Testing Exemptions Reporting and Recordkeeping Requirements for Motor Vehicles and Motor Vehicle Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3506(c)(2)), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Pre-Certification and Testing Exemptions Reporting and Recordkeeping Requirements for motor vehicles and motor vehicle engines (OMB Control No. 2060–0007, approved through 5/31/96). The ICR describes the nature of the information collection and its expected burden and cost.

DATES: Comments must be submitted on or before June 19, 1996.

FOR FURTHER INFORMATION OR A COPY CALL:

Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 95.0.

SUPPLEMENTARY INFORMATION

Title: Pre-Certification and Testing Exemptions Reporting and Recordkeeping Requirements, OMB No. 2060–0007, Expiration date 5/31/96. This ICR is requesting a revision of a currently approved collection activity.

Abstract: Manufacturers of new motor vehicles or engines, manufacturers of vehicle or engine parts, fuel refiners, manufacturers in the business of importing, modifying, or testing uncertified vehicles for resale, and Independent Commercial Importers (ICIs) will report and keep records of applications for pre-certification and testing exemptions. Upon EPA request, they will submit this information to EPA. EPA will use this information to ensure that uncertified vehicles or engines from the pre-certification program and testing exemption program are introduced into commerce only on a temporary basis for legitimate purposes.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 3/4/96 (61 FR 8271); no comments were received.

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjusting the existing ways to comply with previously applicable instructions and requirements; training personnel to be able to respond to a collection of information; searching data sources; completing and reviewing the collection of information, and transmitting or otherwise disclosing the information.

The following table represents the estimated annual burden for this ICR.

Activity	Burden hours	Cost per response	Frequency	Number of respondents
A. Pre-certification exemptions:				
1. Manufacturers	3	$180.00	1	40
2. ICI	3	180.00	1	25
B. Testing exemptions:				
1. Manufacturers/No Importation	40	2,400.00	1	15
2. NonManufacturers/No Importation	5.25	315.50	1	5
3. All/Importation	3	180.00	1	55

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 95.08 and OMB Control No. 2060–0007 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street SW., Washington, D.C. 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street NW., Washington, D.C. 20503.

Dated: May 14, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–12608 Filed 5–17–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5507–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Emission Defect Information and Voluntary Emissions Recall Reports

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3507(a)(1)(D)), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Emission Defect Information and Voluntary Emissions Recall Reports (OMB Control No. 2060–0048, approved through 5/31/96). The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 19, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 282.08.

SUPPLEMENTARY INFORMATION:

Title: Emission Defect Information and Voluntary Emissions Recall Reports (OMB Control No. 2060–0048; EPA ICR No. 282.08) expiring 5/31/96. This ICR is requesting an extension of a currently approved collection activity.

Abstract: Some manufacturers of motor vehicles and certain engines are required to submit two different reports under 40 CFR Part 85, Subpart T, Part 89, Subpart I and Part 90, Subpart I. These reports are only required where certain conditions involving emission defects or voluntary recalls occur.

The "defect information report" (DIR) contains data regarding the class or engine family and number of vehicles or engines on which a defect has been found, and a description of the defect and its effects on vehicle or engine performance and emissions. The Agency uses the DIR to help identify emission-related defects or classes of vehicles or engines which may not comply with federal emissions standards.

The "voluntary emission recall" (VER) report contains data on voluntary recall campaigns conducted by manufacturers, including the procedures used by the manufacturers to conduct voluntary recall campaigns, the identification of vehicles or engines affected by the campaign, and the repair to be completed on recalled vehicles or engines; progress or quarterly updates of the VER reports track the number of vehicles or engines repaired. The Agency uses the VER report and progress reports to ensure that manufacturers are following acceptable procedures when conducting recalls and to track the progress and effectiveness of voluntary recall campaigns.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 3/4/96 (61 FR 8273); no comments were received.

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjusting the existing ways to comply with any previously applicable instructions and requirements; training personnel to be able to respond to a collection of information; searching data sources, completing and reviewing the collection of information; and transmitting or otherwise disclosing the information.

Respondents/Affected Entities: Motor vehicle, motor vehicle engine, large non-road and small non-road engine manufacturers.

Estimated Number of Respondents: 33

Estimated Total Annual Burden: 1669 hours.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 282.08 and OMB Control No. 2060–0048 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street SW., Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street NW., Washington, DC 20503.

Dated: May 14, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–12609 Filed 5–17–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5508–2; OMB #2060–0043; EPA #1081.05]

Agency Information Collection Activities Under OMB Review; National Emission Standards for Hazardous Air Pollutants: Inorganic Arsenic Emissions From Glass Manufacturing Facilities (Subpart N)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3507(a)(1)(D), this notice announces that the Information Collection Request (ICR) for the National Emission Standards for Hazardous Air Pollutants: Inorganic Arsenic Emissions from Glass Manufacturing Facilities (Subpart N) described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 19, 1996..

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 2060–0043.

SUPPLEMENTARY INFORMATION:

Title: OMB Control No. 2060–0043; EPA ICR No. 1081.05. This is a request for extension of a currently approved collection.

Abstract: The Administrator has judged that arsenic emissions from glass manufacturing plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners or operators of sources covered by these standards are subject to the recordkeeping and reporting requirements of the standards as well as those standards prescribed in the General Provisions of the NESHAP.

Owners or operators of the affected facilities described must make the following one-time-only reports: Application for approval of construction or modification (new sources) or a source report (existing sources or new sources with initial start-up preceding effective date of standard); and notification of anticipated and actual dates of start-up. Calculations estimating new emission levels must be reported whenever a change of operation is made that would potentially increase emissions.

Sources subject to these standards are required to demonstrate initial compliance through emission tests. In addition, a continuous monitoring system for the measurement of the opacity of emissions from any control device must be installed and operated. Records of continuous emission monitoring (CEM) results and other data needed to determine emission concentrations shall be maintained at the source and made available for inspection for a minimum of two years.

A written report of each period for which emission rates exceeded the emission limits is required semiannually. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Applications and source reports are sent directly to the EPA Regional Office. Applications and source reports are used to inform the Agency or delegated authority when a source becomes subject to the standards, and the nature of that source. Notification of start-up informs the reviewing authority at what date the source becomes subject to the standards. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated.

Reports, including calculations estimating any subsequent emission levels, are necessary to keep the Agency informed about the source's activities in terms of hazardous air pollutant emissions.

In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on September 29, 1995.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 6,769 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 47.

Estimated Number of Respondents: 47.

Frequency of Response: 2.

Estimated Number of Responses: 43.

Estimated Total Annual Hour Burden: 6769 hours.

Estimated Total Annualized Cost Burden: $206,116.

Sent comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1081.05 and OMB Control No. 2060–0043 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street SW., Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

Dated: May 14, 1996.

Joseph Retzer,

Director, Regulatory Informotion Division.

[FR Doc. 96–12629 Filed 5–17–96; 8:45 am]

BILLING CODE 6560–50–M

[AD–FRL–5507–5]

Control Techniques Guidelines Document; Wood Furniture Manufacturing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of release of final control techniques guidelines (CTG) document.

SUMMARY: A final CTG document for control of volatile organic compounds (VOC) emissions from wood furniture finishing and cleaning operations is available to assist States in analyzing and determining reasonably available control technology (RACT) for stationary sources of VOC emissions located within ozone nonattainment areas. The document recommends RACT for industries included in, but not limited to, nine Standard Industrial Classification (SIC) codes: Wood Kitchen Cabinets (SIC 2434); Wood Household Furniture, except upholstered (SIC 2511); Wood Household Furniture, upholstered (SIC 2512); Wood Television, Radio, Phonograph, and Sewing Machine Cabinets (SIC 2517); Household Furniture Not Classified Elsewhere (SIC 2519); Wood Office Furniture (SIC 2521); Public Building and Related Furniture (SIC 2531); Wood Office and Store Fixtures (SIC 2541); and Furniture and Fixtures Not Elsewhere Classified (SIC 2599).

ADDRESSES: *Control Techniques Guideline.* Copies of the CTG may be obtained from the US EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Almodóvar, (919) 541–0283, Coatings and Consumer Products Group, Emission Standards Division (MD–13), US Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The docket is available for public inspection at the Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, which is listed in the **ADDRESSES** section of this notice. The final CTG document is also available on the Technology Transfer Network (TTN), on the EPA's electronic bulletin boards. This bulletin board provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for up to a 14,400 bps modem. If more information on TTN is needed, call the HELP line at (919) 541–5384.

I. Background

Under the Clean Air Act (CAA), as amended in 1990, State implementation plans (SIP) for ozone nonattainment areas must be revised to require RACT for control of VOC emissions from sources for which the EPA has already published a CTG or for which it will publish a CTG between the date the Amendments were enacted and the date an area achieves attainment status (CAA 182(b)(2)). The EPA has defined RACT as "the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering the technological and economic feasibility" (September 17, 1979, 44 FR 53761).

The CTG review current knowledge and data concerning the technology and costs of various emissions control techniques. The CTG are intended to provide State and local air pollution authorities with an information base for proceeding with their own analyses of RACT to meet statutory requirements.

Each CTG contains a "presumptive norm" for RACT for a specific source category, based on the EPA's evaluation of the capabilities and problems general to the category. Where applicable, the EPA recommends that States adopt requirements consistent with the presumptive norm. However, the presumptive norm is only a recommendation. States may choose to develop their own RACT requirements on a case-by-case basis, considering the emission reductions needed to obtain achievement of the national ambient air quality standards and the economic and technical circumstances of the individual source.

This CTG addresses RACT for control of VOC emissions from wood furniture manufacturing operations. The VOC emissions from wood furniture finishing, cleaning, and washoff operations are addressed. Many of the steps in these operations involve the use of organic solvents and are sources of VOC emissions. The sources, mechanisms, and control of these VOC emissions are described in the CTG.

The determination of presumptive RACT for the wood furniture industry was negotiated under the Federal Advisory Committee Act with members of industry, environmental groups, States, and local agencies. The regulatory negotiation was conducted in conjunction with the negotiation for the proposed national emission standards for hazardous air pollutants (NESHAP) for wood furniture manufacturing operations developed under Section 112(d) of the CAA. This combined effort ensured that both sets of requirements are consistent and coordinated. The Wood Furniture Manufacturing Operations NESHAP was promulgated on December 7, 1995 (60 FR 62930).

II. Summary of Impacts

The EPA estimates that State and local regulations developed pursuant to this final CTG would affect about 970 facilities and reduce VOC emissions by an estimated 20,400 tons per year at a cost of an estimated $20.2 million. Further information on costs and controls is presented in the final CTG document.

III. Executive Order 12866

Under Executive Order 12866 (October 4, 1993 58 FR 51735) the EPA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this final CTG document is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review. This CTG document is not a "rulemaking," rather

it provides information to States to aid them in developing rules.

Dated: May 9, 1996.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 96–12606 Filed 5–17–96; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–44626; FRL–5370–3]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on the diglycidyl ether of bisphenol A (DGEBPA) (CAS No. 1675–54–3). These data were submitted pursuant to an enforceable consent agreement/order issued by EPA under section 4 of the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551; e-mail:TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under 40 CFR Part 790.60, all TSCA section 4 enforceable consent agreements/orders must contain a statement that results of testing conducted pursuant to testing enforceable consent agreements/orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for DGEBPA were submitted by The Society of the Plastics Industry, Epoxy Resin Systems Task Force pursuant to a TSCA section 4 enforceable consent agreement/order at 40 CFR Part 799.5000 and were received by EPA on April 19, 1996. The submission includes two final reports entitled: (1) "DGEBPA: 13 Week Repeated Dose Dermal Toxicity in the Male B6C3F1 Mouse," and (2) "DGEBPA: Two Generation Oral Gavage Reproduction Study in Sprague-Dawley Rats." This chemical is used primarily as the principal component in epoxy resins.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44626). This record includes copies of all studies reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. B–607 Northeast Mall, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Test data.

Dated: May 13, 1996.

Frank Kover,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc 96–12604 File 5–17–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:43 a.m. on Tuesday, May 14, 1996, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Director Joseph H. Neely (Appointive), Ms. Julie Williams, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: May 14, 1996.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 96–12679 Filed 5–15–96; 4:47 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 14, 1996.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Hometown Bancshares, Inc., New Albany, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Hometown National Bank, New Albany, Indiana (a proposed *de novo* bank).

Board of Governors of the Federal Reserve System, May 14, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–12555 Filed 5–17–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 4, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. INTRUST Financial Corporation, Wichita, Kansas; to engage *de novo* through its subsidiary, INTRUST Community Development Corporation, Wichita, Kansas, in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Capital Corp of the West, Merced, California; to acquire Town and Country Finance and Thrift Company, Turlock, California, and thereby engage in industrial banking, pursuant to § 225.25(b)(2) of the Board's Regulation Y, and the underwriting and sale of credit insurance, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 14, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–12556 Filed 5–17–96; 8:45 am]

BILLING CODE 6210–01–F

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Thursday, May 23, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed policy statement describing how interest rate risk will be measured and evaluated for supervisory purposes (proposed earlier for public comment; Docket No. R–0802).

2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System,Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: May 16, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–12744 Filed 5–16–96; 2:13 pm]

BILLING CODE 6210–01–P

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 11:00 a.m., Thursday, May 23, 1996, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 16, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–12745 Filed 5–16–96; 2:13 pm]

BILLING CODE 6210–01–P

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

Sunshine Act Meeting; Annual Meeting of the Trustees and Officers of the Harry S. Truman Scholarship Foundation

TIME AND PLACE: 4:00–5:30 p.m., June 1, 1996, Doniphan Room, Brown Hall, William Jewell College, Liberty, Missouri.

1. Cll to Order, Chairman Staats

2. Approval of the Minutes of 1995 Annual Meeting

3. Introduction of the new Trustees, Chairman Staats

4. Introduction of veteran Truman Scholars participating in the 1996

Truman Scholars Leadership Week at William Jewell College, Executive Secretary Blair

5. Truman Scholarship Honor Institution Award Program and role of the Trustees and Officers in Presenting the Awards to the 17 recipients of the award in the inaugural year, Chairman Staats

6. Executive Secretary's Report including

- Overview of the 1996 Truman Scholar Selection;
- Status of the Trust Fund;
- Plans for the 1996–97 Competition.

7. The Process of Selecting Truman Scholars. Dr. David Nolan, Chair of the Truman Scholarship Finalists Selection Panel and Dr. Richard Ferguson, President of American College Testing.

8. New Business.

9. Adjournment.

Louis H. Blair,

Executive Secretary.

[FR Doc. 96–12741 Filed 5–16–96; 2:13 pm]

BILLING CODE 4738–10–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

NIOSH Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: A Cohort Mortality Study of Workers at the Fernald Feed Materials Production Center.

Time and Date: 7 p.m.–9 p.m., June 19, 1996.

Place: The Plantation Catering and Meeting Center, Oak Room, 9660 Dry Fork Road, Harrison, Ohio 45030.

Status: Open to the public for observation and comment, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The purpose of this meeting is to report the findings of a cohort mortality study of workers who were employed at the Fernald Feed Materials Production Center between 1951–1981. The study was conducted by the Oak Ridge Association Universities (ORAU). The study findings will be presented by the former Project Director, Dr. Donna Cragle, who is currently the Director, Center for Epidemiologic Research at ORAU. The study was managed by NIOSH and funding was provided by the Department of Energy (DOE).

Contact Person For Additional Information: Richard W. Hornung, Dr.P.H., Associate Director for Energy-Related Health Research, Division of Surveillance, Hazard Evaluations, and Field Studies, National Institute for Occupational Safety and Health, M/S R–44, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/841–4400.

Dated: May 14, 1996.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–12558 Filed 5–17–96; 8:45 am]

BILLING CODE 4160–19–M

National Committee on Vital and Health Statistics: Meeting

Pursuant to Pub. L. 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Times and Dates: 9 a.m.–5 p.m., June 5, 1996; 9 a.m.–5 p.m., June 6, 1996.

Place: Room 503A, Hubert H. Humphrey Building, 200 Independence Avenue, SE, Washington, DC 20201.

Status: Open.

Purpose: The Committee will receive an update on the Department's performance partnership program, current privacy legislation activities, and other departmental data collection efforts. The Committee will also discuss its core health data elements project and other aspects of the NCVHS charge.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building each day either between 8:30 and 9 a.m. or 12:30 and 1 p.m. so they can be escorted to the meeting. Entrance to the meeting at other times during the day cannot be assured.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: May 14, 1996.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–12589 Filed 5–17–96; 8:45 am]

BILLING CODE 4163–18–M

National Committee on Vital and Health Statistics Subcommittee on Health Statistics for Minority and Other Special Populations: Time and Date Change

Federal Register *Citation of Previous Announcement:* 61 FR 20527—dated May 7, 1996.

SUMMARY: Notice is given that the meeting time and date for the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Health Statistics for Minority and Other Special Populations, of the Centers for Disease Control and Prevention (CDC) has changed. The meeting place, status, and purpose, announced in the original notice remain unchanged.

Original Time and Date: 1 p.m.–4 p.m., June 3, 1996.

New Time and Date: 1 p.m.–5 p.m., June 4, 1996.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, National Center for Health Statistics, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: May 14, 1996.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–12590 Filed 5–17–96; 8:45 am]

BILLING CODE 4160–18–M

National Institute for Occupational Safety and Health (NIOSH): Cancellation of Meeting

This notice announces the cancellation of a previously announced meeting.

Federal Register *Citation of Previous Announcement:* 61 FR 19628, May 2, 1996.

Previously Announced Time and Date: 1 p.m.–5 p.m., June 5, 1996.

Change in the Meeting: This meeting has been cancelled.

Contact Person For More Information: James W. Collins, NIOSH, CDC, 1095 Willowdale Road, M/S 1133, Morgantown, West Virginia 26505–2888, telephone 304/285–5998.

Dated: May 14, 1996.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–12559 Filed 5–17–96; 8:45 am]

BILLING CODE 4160–19–M

NIOSH Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Notice of Public Meeting and Request for Comments.

Times and Dates: 9 a.m.–5 p.m., June 20, 1996; 9 a.m.–5 p.m., June 21, 1996.

Place: The Hyatt Regency Hotel, Regency Ballrooms E and F, 151 West Fifth Street, Cincinnati, Ohio 45202.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 250 people.

Purpose: The purpose of this notice is to request public comments on the NIOSH draft document, "Criteria for Recommended Standard: Occupational Noise Exposure," NIOSH is planning to convene a public meeting at a later date to discuss the scientific and technical issues relevant to the document.

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Act of 1970 (Public Law 91–596) states that "the Secretary of Health and Human Services shall * * * produce criteria * * * enabling the Secretary of Labor to meet his responsibility for the formulation of safety and health standards" [29 U.S.C. 669(a)(2)]. An occupational safety and health standard is defined as a standard that sets requirements reasonably necessary or appropriate to provide safe or healthful employment at places of employment [29 U.S.C. 652]. In promulgating standards dealing with harmful physical agents under both the Occupational Safety and Health Act of 1970 (Public Law 91–596), and the Federal Mine Safety and Health Act of 1977 (Public Law 95–164), the Secretary of Labor shall set the standard which most adequately assures, to the extent feasible, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard for the period of his working life. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standard, and experience gained under this and other health and safety laws [29 U.S.C. 655(b)(5) and 30 U.S.C. 811(a)(6)(A)]. NIOSH is authorized under 29 U.S.C. 671 and 30 U.S.C. 811(a)(6)(B) to develop new and improved recommended occupational safety and health standards and to perform all functions of the Secretary of Health and Human Services.

II. Issues for Comment

In 1972, NIOSH published "Criteria for a Recommended Standard: Occupational Exposure to Noise," which provided the basis for a recommended standard to reduce the risk of developing permanent hearing loss as a result of occupational noise exposure. NIOSH has evaluated the latest scientific information and is revising some of its previous recommendations.

The NIOSH recommended exposure limit (REL) of 85–dBA for occupational noise exposure was reevaluated using contemporary risk assessment techniques and incorporation of the 4000–Hz audiometric frequency in the definition of hearing impairment. The new risk assessment reaffirms support for the 85–dBA REL. The excess risk of developing occupational noise-induced hearing loss (NIHL) for a 40-year lifetime exposure at the 85–dBA REL is 8%, which is considerably lower than the 25% excess risk at the 90–dBA permissible exposure limit currently enforced by the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA).

NIOSH previously recommended an exchange rate of 5–dB for the calculation of time-weighted average exposures to noise, but it is now recommending a 3–dB exchange rate, which is more firmly supported by scientific evidence. The 5–dB exchange rate is still used by OSHA and MSHA, but the 3–dB exchange rate has been increasingly supported by national and international consensus.

NIOSH recommends an improved criterion for significant threshold shift, which is an increase of 15–dB in hearing threshold at 500, 1000, 2000, 3000, 4000, or 6000Hz that is repeated for the same ear and frequency in back-to-back audiometric tests. The new criterion has the advantages of a high identification rate and a low false-positive rate. In comparison, the criterion recommended in the 1972 criteria document has a high false-positive rate, and the OSHA criterion, called the Standard Threshold Shift, has a relatively low identification rate.

Differing from the 1972 criteria document, NIOSH no longer recommends age correction on individual audiograms. This practice is not scientifically valid, and would delay intervention to prevent further hearing losses in those workers whose hearing threshold levels have increased due to occupational noise exposure. OSHA currently allows age correction only as an option.

The Noise Reduction Rating (NRR) is a single-number, laboratory-derived rating required by the Environmental Protection Agency to be shown on the label of each hearing protector sold in the U.S. In calculating the noise exposure to the wearer of a hearing protector at work, OSHA has implemented the practice of derating the NRR by one-half for all types of hearing protectors. In 1972, NIOSH recommended the use of the full NRR value, but now it recommends derating the NRR by 25% for earmuffs, 50% for formable earplugs and 70% for all other earplugs. This variable derating scheme takes into consideration the performances of different types of hearing protectors.

The draft also recommends that hearing protectors be worn for any noise exposure over 85–dBA, regardless of exposure duration. This measure is simplistic but extremely protective because its implementation does not require the calculation of time-weighed-average (TWA) exposure. This "hard-hat" approach, as opposed to predicating the requirement on TWA exposures, is a departure from what was recommended in 1972.

The criteria document also provides recommendations for the management of hearing loss prevention programs for workers whose noise exposures equal or exceed 82–dBA (i.e., ½ of the REL). The recommendations include program evaluation, which was not articulated in the 1972 criteria document and is not included in the OSHA and MSHA standards.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Technical information may be obtained from Ralph Zumwalde, NIOSH, CDC, 4672 Columbia Parkway, M/S C–32, Cincinnati, Ohio, 45226, telephone 513/533–8319, e-mail address: rdz1@NIOSDT1.em.cdc.gov.

Persons wishing to attend the meeting, present oral comments, obtain a copy of the draft document, or reserve overnight accommodations at the Hyatt Regency Hotel, should respond by May 31, 1996, to Kellie Wilson, NIOSH, 4676 Columbia Parkway, M/S C–34, Cincinnati, Ohio, 45226, telephone 513/533–8362, fax 513/533–8285, e-mail address: kmp0@NIOSDT1.em.cdc.gov.

Persons interested in providing comments on the draft document should submit comments by June 10, 1996, to Diane Manning, NIOSH Docket Office, 4676 Columbia Parkway, M/S C–34, Cincinnati, Ohio, 45226. Comments may also be submitted by e-mail to: dmm2@NIOSDT1.em.cdc.gov. E-mail

attachments may be formatted as WordPerfect 5.0, 5.1/5.2, 6.0/6.1, or ASCII files.

Information can also be obtained by calling 1–800–35–NIOSH or by the Internet NOISH Homepage: http:/ www.cdc.gov/noish/homepage.html.

Dated: May 14, 1996.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–12557 Filed 5–17–96; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

[Docket No. 96F–0145]

Albright & Wilson, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Albright & Wilson, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of tetrakis(hydroxymethyl)phosphonium sulfate as a slimicide for use in the manufacture of paper and paperboard intended to contact food.

DATES: Written comments on the petitioner's environmental assessment by June 19, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0002, 202–418–3080.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5B4472) has been filed by Albright & Wilson, Ltd., c/o Delta Analytical Corp., 7910 Woodmont Ave., suite 1000, Bethesda, MD 20814. The petition proposes to amend the food additive regulations in § 176.300 *Slimicides* (21 CFR 176.300) to provide for the safe use of tetrakis(hydroxymethyl)phosphonium sulfate as a slimicide in the manufacture of paper and paperboard intended to contact food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before June 19, 1996, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: April 30, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–12568 File6d 5–17–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93F–0152]

Witco Corp.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to future filing, of a food additive petition (FAP 3B4348), filed by Witco Corp. proposing that the food additive regulations be amended to provide for the safe use of decanedioic acid, polymer with 1,2-ethanediamine, (Z,Z)-9,12-octadecadienoic acid dimer and 4,4′-(1,3-propaneidyl) bis (piperidine) as a polymer coating onaluminum foil, polyolefin film, and paper and paperboard and as an adhesive, for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 19, 1993 (58 FR 29231), FDA announced that a food additive petition (FAP 3B4348) had been filed by Witco Corp., 5777 Frantz Rd., P.O. Box 646, Dublin, OH 43017. The petition proposed to amend the food additive regulations to provide for the safe use of decanedioic acid, polymer with 1,2-ethanediamine, (Z,Z)-9,12-octadecadienoic acid dimer and 4,4′-(1,3-propaneidyl) bis (piperidine) as a polymer coating on aluminum foil, polyolefin film, and paper and paperboard and as an adhesive, for use in contact with food. Witco Corp. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: April 30, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–12567 Filed 5–17–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0151]

SmithKline Beecham Pharmaceuticals; Withdrawal of Approval of a New Drug Application for Selacryn® Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new drug application (NDA) for Selacryn® (ticrynafen) Tablets held by SmithKline Beecham Pharmaceuticals (Smithkline). SmithKline requested that the NDA be withdrawn because the product is no longer being marketed. SmithKline also waived its opportunity for a hearing.

EFFECTIVE DATE: May 20, 1996.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1038.

SUPPLEMENTARY INFORMATION: By letter dated June 30, 1994, SmithKline, Four Falls Corp. Center, Route 23 and Woodmont Ave., P.O. Box 1510, FF0410, King of Prussia, PA 19406, requested that FDA withdraw NDA 18–103 for Selacryn® (ticrynafen) Tablets, stating that the company discontinued marketing the product in 1980 because of liver toxicity observed after approval of the NDA. SmithKline waived its opportunity for a hearing.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of NDA 18–103, and all amendments and supplements thereto, is hereby withdrawn effective May 20, 1996.

Dated: May 6, 1996.

Murray M. Lumpkin,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 96–12570 Filed 5–15–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summaries of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Evaluation of the Oregon Medicaid Reform Demonstration: Adult Interview, Child Interview, Pediatric Asthma Interview, Insulin-Dependent Diabetes Interview, Low Back Pain Interview, Medical Provider Questionnaire; *Form No.:* HCFA–R–192; *Use:* The survey instruments listed above are for use in the Evaluation of the Oregon Medicaid Reform Demonstration. The Adult and Child Interviews are designed to collect information related to health status, access to care, satisfaction with care and past health insurance status for adult and child members of the Oregon Health Plan (OHP). The Pediatric Asthma Interview, Insulin-Dependent Diabetes Interview and Low Back Pain Interview collect information on quality of care, utilization of care, satisfaction with care and health status of OHP members with selected "tracer conditions." The Medical Provider Questionnaire is designed to collect information on how both participating and non-participating physicians view OHP; *Frequency:* Biennially, Other (one time); *Affected Public:* Not-for-profit institutions, individuals and households, business or other for-profit; *Number of Respondents:* 22,229; *Total Annual Hours:* 3,070.

2. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Evaluation of the Per-Episode Home Health Prospective Payment Demonstration; *Form No.:* HCFA–R–195; *Use:* This evaluation will collect primary data from samples of patients and from demonstration agencies to assess impacts of per-episode payment on access to care, quality of care, and the use of non-Medicare services; *Frequency:* Other (one time); *Affected Public:* Not-for-profit institutions, individuals and households, business or other for-profit; *Number of Respondents:* 19,191; *Total Annual Hours:* 1,901.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Blood Bank Inspection Checklist and Report; *Form No.:* HCFA–282; *Use:* The blood bank inspection checklist instrument is used by the State agency to record data collected as part of the survey and certification process to determine compliance with the requirement for blood bank services under Clinical Laboratory Improvement Amendments; *Frequency:* Biennially; *Affected Public:* State, local, and tribal government, business or other for-profit, not-for-profit institutions, federal government; *Number of Respondents:* 2,500; *Total Annual Hours:* 1,250.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http:// www.ssa.gov/hcfa/hcfahp2.html, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: John Burke, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 13, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–12527 Filed 5–17–96; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, amended (5 United States Code Appendix 2), notice is hereby given of the following meeting:

Name of Committee: Communication Disorders Review Committee.

Date: June 5–7, 1996.

Time: 8 am–5:30 pm, June 5; 8 am–5:30 pm, June 6; 8 am–adjournment, June 7.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville MD 20852.

Contact Person: Craig A. Jordan, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda MD 20892–7180, 301–496–8683.

Purpose/Agenda: To review and evaluate grant applications. The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personnal information concerning individuals associated with the applications and/or proposals, the disclosure of which could constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: May 10, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–12503 Filed 5–17–96; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Frederick Cancer Research & Development Center Advisory Committee.

The open portion of the meeting will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person in advance of the meeting.

Committee Name: Frederick Cancer Research & Development Center Advisory Committee.

Date: June 3–4, 1996.

Place: Frederick Cancer Research and Development Center, Building 549, Executive Board Room, Frederick, MD 21702.

Open: June 3, 1996–8:30 a.m. to 11 a.m.

Agenda: Discussion of administrative matters such as future meetings, budget, and information items related to the operation of the NCI Frederick Research and Development Center.

Closed: June 3, 1996–11 a.m. to adjournment; June 4, 1996–8 a.m. to adjournment.

Agenda: Discussion of previous site visit report and response for the Macromolecular Structure Laboratory with Advanced BioScience Laboratories, Inc.—Basic Research Program and the Structural Biochemistry Program with Science Applications International Corporation. The majority of the closed session will be devoted to a review of contractor technical support programs at NCI FCRDC.

Contact Person: Cedric W. Long, Ph.D., Frederick Cancer Research and Development Center, P.O. Box B, Frederick, MD 21702, telephone: 301–846–1108.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The reports and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the programs, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: May 10, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–12508 Filed 5–17–96; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute; Notice of Meeting of Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Eye Institute, June 10 and 11, 1996 in the Cogan Library, Building 10, Room 10B16, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on June 10 from 9 a.m. until approximately 4 p.m. for general remarks by the Director, Intramural Research Program, National Eye Institute (NEI), one matters concerning the intramural program of the NEI. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 10 from approximately 4 p.m. until recess and on June 11 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual projects conducted by the Laboratory of Immunology. These evaluations and discussions could reveal personal information concerning individuals associated with the projects, including consideration of personnel qualifications and performance, and the competence of individual investigator, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Marie Watkins, Committee Management Officer, NEI, EPS/350, Bethesda, Maryland 20892, (301) 496–5301, will provide a summary of the meeting, roster of committee members, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Watkins in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research; National Institutes of Health.)

Dated: May 10, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–12510 Filed 5–17–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of a Closed Meeting

Purusant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: Sleep Academic Award Review.

Date: June 16, 1996.

Time: 9:00 a.m.

Place: Holiday Inn Chevy Chase, Chevy Chase, Maryland.

Contact Person: Louise P. Corman, Ph.D., Two Rockledge Center, Room 7130, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0270.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commerical property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: May 10, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–12505 Filed 5–17–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meetings:

Nome of SEP: Developmental Toxicity Testing and Research.

Date: June 10, 1996.

Time: 9:00 a.m.

Place: National Institute of Environmental Health Sciences, Building 17, Conference Room 1713, Research Triangle Park, NC 27709.

Contoct Person: Mr. David P. Brown, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: Linking of Environmental Agents and Disease.

Date: July 1–3, 1996.

Time: 8:30 a.m.

Place: National Institute of Environmental Health Sciences, South Campus, Conference Room 101–B, Research Triangle Park, NC 27709.

Contact Person: Dr. Ethel B. Jackson, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–7826.

Purpose/Agenda: To review and evaluate grant applications.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b (c)(6), Title 5, U.S.C. Grant applications and proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health.)

Dated: May 10, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–12502 Filed 5–17–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Notice of a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meeting:

Nome of SEP: Community-Based Prevention/Intervention Research in Environmental Health Sciences.

Date: July 21–23, 1996.

Time: 7:00 p.m.

Place: Radisson Governors Inn, 54 & I–40 at Davis Drive, Research Triangle Park, NC 27709.

Contact Person: Mr. David Brown, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health.)

Dated: May 10, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–12504 Filed 5–17–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the committees of the National Institute of General Medical Sciences for June 1996:

Name of Committee: Biomedical Research & Research Training Committee—Subcommittee A.

Date of Meeting: June 6.

Time: 8:00 a.m.

Place of Meeting: Sheraton Washington Hotel, 2660 Woodley Road at Connecticut Avenue, N.W., Washington, D.C. 2008.

Contact Person: Dr. Carole Latker, Scientific Review Administrator, Building 45, Room 1AS.13k, National Institutes of Health, telephone: 301–594–2848.

Purpose/Agenda: To review institutional national research service award applications.

Name of Committee: Biomedical Research & Research Training Committee—Subcommittee C.

Date of Meeting: June 6.

Time: 8:30 a.m.

Place of Meeting: Sheraton Washington Hotel, 2660 Woodley Road at Connecticut Avenue, N.W., Washington, D.C. 2008.

Contact Person: Dr. Arthur Zachary, Scientific Review Administrator, Building 45, Room 1AS.13b, National Institutes of Health, telephone: 301–594–3663.

Purpose/Agenda: To review institutional national research service award applications.

Name of Committee: Biomedical Research & Research Training Committee—Subcommittee B.

Date of Meeting: June 6.

Time: 8:30 a.m.

Place of Meeting: Sheraton Washington Hotel, 2660 Woodley Road at Connecticut Avenue, N.W., Washington, D.C. 20008.

Contact Person: Dr. Irene Glowinski, Scientific Review Administrator, Building 45, Room 1AS.13j, National Institutes of Health, telephone: 301–594–2772.

Purpose/Agenda: To review institutional national research service award applications.

Name of Committee: Minority Access to Research Careers Review Subcommittee.

Dates of Meeting: June 13–14.

Time of Meeting: 8:30 a.m.–6:00 p.m. (both days).

Place of Meeting: National Institutes of Health, Natcher Conference Center, Conference Room D, Bethesda, Maryland 20892.

Contact Person: Dr. Richard Martinez, Scientific Review Administrator, Building 45, Room 1AS.19g, National Institutes of Health, telephone: 301–594–2849.

Purpose/Agenda: To review grant applications to the Minority Access to Research Careers Program.

These meetings will be closed in accordance with provisions set forth in secs. 552b(c)(4) and 552(c)(6), Title 5 U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion, and evaluation of individual research training grant and research center grant applications. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.859, 93.862 93.863, 93.880, National Institute of General Medical Sciences, National Institutes of Health)

Dated: May 10, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–12506 Filed 5–17–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Notice of Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Child Health and Human Development, June 7, 1996, in Building 31, Room 2A52.

This meeting will be open to the public from 8:00 a.m. to 12 noon on June 7 for the review of the Intramural Research Program and scientific presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, United States Code and section 10(d) of Public Law 92–463, the meeting will be closed to the public on June 7 from 1:00 p.m. to adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Catherine O'Connor, Senior Biomedical Research Program Assistant, NICHD, Building 31, Room 2A50, National Institutes of Health, Bethesda, Maryland, 20892–2425, Area Code 301, 496–2133, will provide a summary of the meeting and a roster of Board members, and substantive program information upon request. Individuals

who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. O'Connor in advance of the meeting.

Dated: May 10, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–12507 Filed 5–17–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting; National Arthritis and Musculoskeletal and Skin Diseases Advisory Council

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council to provide advice to the National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS) on June 6, 1996, Conference Room 6, Building 31, National Institutes of Health, Bethesda, Maryland.

The meeting will be open to the public June 6 from 8:30 a.m. to 11:30 a.m. to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

The meeting of the Advisory Council will be closed to the public on June 6 from 11:30 a.m. to adjournment in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Steven Hausman, Executive Secretary, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council, NIAMS, Natcher Building, Room 5AS–13, Bethesda, Maryland 20892, (301) 594–2463.

A summary of the meeting and roster of the members may be obtained from the Extramural Programs Office, NIAMS, Natcher Building, Room 5AS–13, National Institutes of Health, Bethesda, Maryland 20892, (301) 594–2463.

(Catalog of Federal Domestic Assistance Program No. 93.846, Arthritis, Bone and Skin Diseases, National Institutes of Health)

Dated: May 10, 1996.

Susan K. Feldman,

NIH Committee Management Officer.

[FR Doc. 96–12509 Filed 5–17–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Notice of a Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meeting:

Name of SEP: SBIRs-Phase I, Topic 50—Development of Subchromosome Painting Kits for the Mouse and Phase II, Topic 40—Preparation of User-Friendly Mouse Karyotyping Tools (Telephone Conference Call).

Date: May 29, 1996.

Time: 10:00 a.m.

Place: National Institute of Environmental Health Sciences North Campus, Building 17, Conference Room 1713 Research Triangle Park, NC.

Contact Person: Dr. John Braun, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1446.

Purpose/Agenda: To review and evaluate contract proposals.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to this meeting due to the urgent need to meet timing limitations imposed by the contract review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: May 10, 1996.

Susan K. Feldman,

Committee Monogement Officer, NIH.

[FR Doc. 96–12511 Filed 5–17–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Notice of Meeting of Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Dental Research, on June 6–7, 1996, in Building 30, Trendley Dean Conference Room, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public from 9 a.m. to 5 p.m. on June 6 for the Laboratory of Cellular Development and Oncology presentations and from 8:30 a.m. to 10:30 a.m. on June 7 for a tour of the facilities and Poster Presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, this meeting will be closed to the public from 5 p.m. until recess on June 6 and from 10:30 a.m. until adjournment on June 7 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institute of Dental Research (NIDR), including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Brent Jaquet, Director, Office of Planning, Evaluation, and Communications, NIDR, NIH, Building 31, Room 2C34, Bethesda, Maryland 20892 (telephone: 301–496–6705; e-mail: JaquetB@OD31.nidr.nih.gov) will provide a summary of the meeting, roster of committee members and substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary listed above in advance of the meeting.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

Dated: May 14, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–12612 Filed 5–17–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Name of SEP: National Institute on Aging Special Emphasis Panel (Telephone Conference Call).

Date: May 29, 1996.

Time: 12:00 noon–1:00 p.m.

Place: National Institute on Aging, Gateway Building, Room 2C212, Bethesda, Maryland 20892.

Contact Person: Arthur D. Schaerdel, DVM, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Purpose/Agenda: To review a grant application.

Name of SEP: National Institute on Aging Special Emphasis Panel (Telephone Conference Call).

Date: May 30, 1996.

Time: 12:00 noon–1:00 p.m.

Place: National Institute on Aging, Gateway Building, Room 2C212, Bethesda, Maryland 20892.

Contact Person: Arthur D. Schaerdel, DVM, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Purpose/Agenda: To review a grant application.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: National Institute on Aging Special Emphasis Panel (Telephone Conference Call).

Date: June 11, 1996.

Time: 1:00 noon–2:30 p.m.

Place: National Institute on Aging, Gateway Building, Room 2C212, Bethesda, Maryland 20892.

Contact Person: Maria Mannarino, M.D., Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Purpose/Agenda: To review a grant application.

Name of SEP: National Institute on Aging Special Emphasis Panel (Telephone Conference Call).

Date: June 18, 1996.

Time: 1:00 noon–2:00 p.m.

Place: National Institute on Aging, Gateway Building, Room 2C212, Bethesda, Maryland 20892.

Contact Person: Maria Mannarino, M.D., Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Purpose/Agenda: To review a grant application.

Name of SEP: National Institute on Aging Special Emphasis Panel.

Date: June 18–20, 1996.

Time:

June 18—6:00–10:00 p.m.

June 19—8:00 a.m. to 6:00 p.m.

June 20—8:00 a.m. to adjournment

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Arthur D. Schaerdel, DVM, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Purpose/Agenda: To review cooperative agreement applications.

Name of SEP: National Institute on Aging Special Emphasis Panel (Telephone Conference Call).

Date: August 1, 1996.

Time: 12:00 noon–4:00 p.m.

Place: National Institute on Aging, Gateway Building, Room 2C212, Bethesda, Maryland 20892.

Contact Person: Arthur D. Schaerdel, DVM, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

Purpose/Agenda: To review a grant application.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: May 14, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–12613 Filed 5–17–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: to review individual grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: May 24, 1996.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 5172, Telephone Conference.

Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435–1247.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Biological and Physiological Sciences.

Date: June 14, 1996.

Time: 8:00 a.m.

Place: Washington Dulles Airport Marriott, Chantilly, VA.

Contact Person: Dr. Harish Chopra, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, Maryland 20892, (301) 435–1169.

Name of SEP: Clinical Sciences.

Date: June 17–18, 1996.

Time: 9:00 a.m.

Place: Bethesda Marriott, Bethesda, MD.

Contact Person: Dr. Ronald Suddendorf, Scientific Review Administrator, 6000 Executive Blvd., Suite 409, Bethesda, Maryland 20892, (301) 443–2926.

Name of SEP: Clinical Sciences.

Date: June 19–21, 1996.

Time: 9:00 a.m.

Place: Double Tree Hotel, Rockville, MD.

Contact Person: Dr. Antonio Noronha, Scientific Review Administrator, 6000 Executive Blvd., Suite 409, Bethesda, Maryland 20892, (301) 443–7722.

Name of SEP: Clinical Sciences.

Date: June 19, 1996.

Time: 8:00 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, Maryland 20892, (301) 435–1783.

Name of SEP: Clinical Sciences.

Date: June 26–28, 1996.

Time: 8:00 a.m.

Place: Pooks Hill Marriott, Bethesda, MD.

Contact Person: Dr. Jules Selden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4108, Bethesda, Maryland 20892, (301) 435–1785.

Name of SEP: Biological and Physiological Sciences.

Date: July 8, 1996.

Time: 1:30 p.m.

Place: NIH, Rockledge 2, Room 6168, Telephone Conference.

Contact Person: Dr. Syed Amir, Scientific Review Administrator, 6701 Rockledge Drive, Room 6168, Bethesda, Maryland 20892, (301) 435–1043.

Name of SEP: Chemistry and Related Sciences.

Date: July 9, 1996.

Time: 8:00 a.m.

Place: Embassy Suites, Washington, DC.

Contact Person: Dr. Donald Schneider, Scientific Review Administrator, 6701 Rockledge Drive, Room 5104, Bethesda, Maryland 20892, (301) 435–1165.

Name of SEP: Biological and Physiological Sciences.

Date: July 10–11, 1996.

Time: 8:30 a.m.

Place: Double Tree Hotel, Rockville, MD.

Contact Person: Dr. Dennis Leszczynski, Scientific Review Administrator, 6701

Rockledge Drive, Room 6170, Bethesda, Maryland 20892, (301) 435–1044.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Date: May 14, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–12614 Filed 5–17–96; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 61 FR 14804, April 3, 1996) is amended to reflect the reorganization of the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) as follows: (1) Abolish the Office of Program Planning and Evaluation (HNK12); (2) abolish the Office of Disease Prevention and Technology Transfer (HNK15); (3) establish the Office of Scientific Program and Policy Analysis (HNK19); and (4) revise the functional statements for the Office of Administrative Systems Technology (HNK16) and the Division of Extramural Activities (HNK7).

Section HN–B, Organization and Functions is amended as follows: Under the heading National Institute of Diabetes and Digestive and Kidney Disease (HNK), delete the titles and functional statements in their entirety for the Office of Program Planning and Evaluation (HNK12) and the Office of Disease Prevention and Technology Transfer (HNK15) and insert the following:

Office of Scientific Program and Policy Analysis (HNK19). (1) Advises the Institute Director concerning emerging scientific and program policy issues of significance to the Institute and recommends options for their resolution; (2) develops and executes a program for the planning, assessment, and analysis of the Institute's policies, programs, and research accomplishments; (3) provides technical leadership, guidance, and analytic methods for program development and program planning, evaluation, and analysis related to the disease categories and relevant disciplines within the Institute's mission; (4) directs a program for coordination, review, analysis and presentation of Institute policies, programs, and research advances related to health promotion, disease prevention, technology assessment/transfer, consensus development, clinical trials, women's health issues and international activities; (5) assesses the total Institute program in terms of actual accomplishments vs. plans and recommends programmatic actions to correct discrepancies; (6) directs the compilation and analysis of program data and statistics for special studies and advises the Institute Director and his immediate staff concerning resultant operational and policy implications; and (7) in carrying out the above functions, collaborates with other institutes, the Department, and outside organizations.

Office of Administrative Systems Technology (HNK16). (1) Provides staff assistance to Institute officials in developing policies and strategies relating to planning, implementation and maintenance of automated administrative systems; (2) designs and conducts studies to determine both system needs and improve efficiency of retrieval and storage of administrative information; (3) serves as a resource for current technological advances and trends in both systems hardware and software; (4) provides expertise in systems programming and staff training; (5) tests new systems technology on a limited basis for particular Institute applications; (6) coordinates Information Resources Management (IRM) activities which include preparation of the Institute's Automated Data Processing Plan, management of the system security program, and maintenance of the system hardware inventory; (7) provides an Institute focus for advice and assistance on system configurations, vendor support and procurement procedures and clearances; (8) provides staff assistance for development of general administrative policies and procedures, conducts management studies as needed, and advises on organizational issues; (9) advises the Director and Institute staff on matters relating to the Privacy Act and the Freedom of Information Act; (10) assists on matters related to Institute patenting and technology transfer programs; (11) serves as liaison relating to the above functions with appropriate divisions and other organizations at the NIH as well as components within PHS and the Department.

Division of Extramural Activities (HNK7). (1) Advises the Institute Director concerning Institute extramural program policies related to research contracts, grants, and training programs; (2) identifies areas for increased efforts and advises the three categorical programs of the development of funding levels; (3) provides scientific merit review of applications for special grant programs and research contract proposals; (4) provides Institute programs with grant and contract management and processing services; (5) maintains a system for operational control of funds for numerous individual program budgets; (6) provides report and statistics related to Institute grant and contract programs through operational and technical support activities in program analysis; (7) represents the Institute on overall NIH extramural and collaborative program policy committees and coordinates such policy within the Institute; (8) coordinates the presentation of Institute research grant and training programs to the National Diabetes and Digestive and Kidney Diseases Advisory Council; (9) coordinates program planning in the extramural activities program area and assesses progress toward objectives within the broad field represented by the categorical diseases programs; (10) designs and executes internal evaluations of the NIDDK committee management function which relates to multiple independent scientific advisory groups; and (11) serves as Institute liaison with NIH and HHS offices performing committee management functions.

Dated: May 8, 1996.

Harold Varmus,

Director, NIH.

[FR Doc. 96–12615 Filed 5–17–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

List of Eligible Programs for Inclusion in Fiscal Year 1997 Annual Funding Agreements To Be Negotiated by the Bureau of the Department of the Interior Other Than the Bureau of Indian Affairs and the Self-Governance Tribes

AGENCY: Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists programs or portion of programs that are eligible for inclusion in Fiscal Year 1997 annual funding agreements with Self-Governance Tribes and lists programmatic targets for each of the non-BIA bureaus, pursuant to Section 405(c)(4) of the Tribal Self-Governance Act.

DATES: Eligibility for inclusion in Fiscal Year 1997 annual funding agreements expires on September 30, 1996.

ADDRESSES: Inquires or comments regarding this notice may be directed to the Office of Self-Governance, 1849 C Street, NW, 2548 MIB, Washington, DC 20240. Telephone (202) 219–0240.

SUPPLEMENTARY INFORMATION:

I. Background

The Indian Self-Determination Act Amendments of 1994 (P.L. 103–413, hereinafter referred to as the "Self-Governance Act" or the "Act") instituted a permanent Tribal Self-Governance Program at the Department of the Interior (DOI). Under the Self-Governance Program, certain programs, functions, services and activities or portions thereof in Interior bureaus other than the Bureau of Indian Affairs (hereinafter referred to as "non-BIA") are eligible to be planned, conducted, consolidated, and administered by a Self-Governance tribal government.

Under Section 405(c) of the Self-Governance Act, the Secretary of the Interior is required to publish annually (1) a list of non-BIA programs, services, activities, and functions or portions thereof, that are eligible for inclusion in agreements negotiated under the Self-Governance Program and (2) programmatic targets for these bureaus.

Under the Self-Governance Act, two types of non-BIA programs are eligible for Self-Governance funding agreements. First, pursuant to Section 403(b)(2) of the Act, any non-BIA program, service, function or activity that is administered by Interior that is "otherwise available to Indian tribes or Indians" is eligible to be administered by a tribal government through a Self-Governance agreement. Section 403(b)(2) specifies that "nothing in this subsection may be construed to provide any tribe with a preference with respect to the opportunity of the tribe to administer programs, services, functions and activities, or portions thereof, unless such preference is otherwise provided for by law." Second, under Section 403(c) of the Act, other programs, services, functions, and activities, or portions thereof, that are of "special geographic, historical, or cultural significance" to a Self-Governance Tribe may be included in a Self-Governance Agreement.

II. Eligible Programs of the Department of the Interior Non-BIA Bureaus

Below is a listing by bureau of the type of non-BIA programs, or portions thereof, that may be eligible for Self-Governance annual funding agreements because they are either "otherwise available to Indians" and not precluded by any other law from being contracted out or may have "special geographic, historical, or cultural significance" to a participating tribe. This summary is a general listing of the types of programs that are the bureaus' best estimate of those that are eligible for negotiation at the request of the Self-Governance tribe. The listing is not intended to be exhaustive, especially in terms of programs, services, functions or activities that may have a "special geographic, historical, or cultural significance" to a participating tribe.

The listing also provides a point of contact for each non-BIA bureau.

A. Eligible Programs of the Bureau of Land Management (BLM)—Aspects of the following programs for functions are potentially eligible for negotiations:

- Tribal Mineral Resources.
- Field Survey Related to Tribal Lands.
- Resource Monitoring, Maintenance, and Rehabilitation.

BLM initial point of contact for questions regarding Self-Governance is Dr. Marilyn Nickels, 1849 C Street, NW, (204–LS), Washington, D.C. 20240; telephone (202) 452–0330.

B. Eligible Programs of the Bureau of Reclamation (Reclamation)— Aspects of the following programs or functions are potentially eligible for negotiations:

- Water Resources Management: hydroelectric power generation, municipal and industrial water supply systems, flood control, outdoor recreation, fish and wildlife habitant enhancement, and research.
- Construction: construction of municipal and industrial systems, safety of dams, operation and maintenance of facilities, and management of water resources projects and associated facilities.

Reclamation initial point of contact for questions regarding Self-Governance is Dr. Barbara McDowell, Native American Affairs Office, Bureau of Reclamation (W–6100), 1849 C Street, NW, Washington, D.C. 20240–0001; telephone (202) 208–4733.

C. Eligible Programs of the Fish and Wildlife Service (FWS) Aspects of the following programs or functions are potentially eligible for negotiations:

- Refuge Operations and Management: weed control, habitat management, maintenance, wildlife surveys/studies, visitor services/visitor center operations, acquisition, appraisals, refuge management planning, wetland restoration projects, land surveys, and building site restoration.
- Ecological Services: prelisting (conservation agreements development/management), recovery: development of recovery plans, bald eagle surveys, and wildlife surveys.
- Cultural Resources: survey work, cultural resource planning (on as-needed basis), and archaeological surveys.
- Fisheries: cooperative fishing management and restoration agreements, fish collection (site-specific), fish tagging (site-specific).

FWS initial point of contact for questions regarding Self-Governance is Duncan Brown, Native American Liaison, Fish and Wildlife Service (MS 3012), 1849 C Street, NW, Washington, D.C. 20240–0001; telephone (202) 208–4133.

D. Eligible Programs of the Minerals Management Service (MMS) Aspects of the following programs or functions are potentially eligible for negotiations:

- Royalty Management Program: royalty internship program, online monitoring of royalties and accounts, audit of royalty programs, verification of royalty payments, royalty reporting, accounting, data management, and royalty management for allottee leases.
- Offshore Minerals Management: environmental assessments, environmental impact statements, and environmental studies.

MMS initial point of contact for questions regarding Self-Governance is Joan Killgore, Royalty Liaison Office, Minerals Management Service, 1849 C Street, NW, Washington, D.C. 20240–0001; telephone (202) 208–3512.

E. Eligible Programs of the National Park Service (NPS) Aspects of the following programs or functions are potentially eligible for negotiations:

- On-Going Programs and Activities: archaeological surveys, cultural

resource management projects, ethnographic studies, erosion control, fire protection, hazardous fuel reduction, housing construction and rehabilitation, gathering baseline subsistence data (Alaska), janitorial services, maintenance, natural resource management projects, range assessment (Alaska), reindeer grazing (Alaska), road repair, solid waste collection and disposal, and trail rehabilitation.

• Special Programs: Beringia research and Elwha River restoration.

NPS initial point of contact for questions regarding Self-Governance is Dr. Patricia Parker, American Indian Liaison Office, National Park Service (MS 3410–MIB), PO Box 37127, Washington, D.C. 20013–7127; telephone (202) 208–5475.

F. Eligible Programs of the Office of Surface Mining Reclamation and Enforcement (OSM) Aspects of the following programs or functions are potentially eligible for negotiations:

• Regulatory Program.

• Abandoned Mine Land Reclamation Program.

OSM initial point of contact for questions regarding Self-Governance is Maria Mitchell, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW (MS 210–SIB), Washington, D.C. 20240; telephone (202) 208–2727.

G. Eligible Programs of the U.S. Geological Survey (USGS) Aspects of the following programs or functions are potentially eligible for negotiations:

• Mineral, Environmental, and Energy Assessments.

• Earthquake Hazard Reduction Program.

• Water Resources Data Collection and Investigations.

• Biological Resources Inventory, Monitoring, Research, and Information and Transfer Activities.

Biological resources activities described above are those of the National Biological Service (NBS), which will be merged with the USGS on or before October 1, 1996. NBS will be renamed the Biological Resources Division of USGS, and will continue its programmatic activities in a substantially unchanged manner.

USGS initial point of contact for questions regarding Self-Governance is Sue Marcus, American Indian/Alaska Native Liaison, U.S. Geological Survey (MS 105), National Center, Reston, VA 22092, telephone 703–648–4437.

III. Programmatic Targets

Each of the non-BIA bureaus will successfully negotiate at least one annual funding agreement with a Self-Governance Tribe for Fiscal Year 1997.

Dated: May 10, 1996.

Glynn D. Key,

Counselor to the Secretary, Office of the Secretary.

[FR Doc. 96–12363 Filed 5–17–96; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[NV–030–96–1220–00]

Temporary Closure of Public Lands: Nevada; Carson City District

AGENCY: Bureau of Land Management, Interior Department.

ACTION: Temporary closure of certain public lands in Churchill, Lyon and Douglas Counties on and adjacent to three Off Highway Vehicle race courses:

June 22, 1996: Top Gun 250 Desert Race
July 27, 1996: Fallon 250 at Night Desert Race
September 1, 1996: Yerington to Fallon and Back Desert Race

SUMMARY: The Carson City District announces the temporary closure of selected public lands under BLM administration. This action is being taken to provide for public safety and to protect adjacent resources during the official running of the above named Off Highway Vehicle Races.

EFFECTIVE DATES: June 22, July 27 and September 1, 1996.

FOR FURTHER INFORMATION CONTACT: Fran Hull, Outdoor Recreation Planner, Carson City District, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706, Telephone: (702) 885–6000.

SUPPLEMENTARY INFORMATION: Valley Off-Road Racing Association has been authorized to conduct these race events across public lands under permit number NV–030–9610. A map of each closure may be obtained from Fran Hull at the contact address. The event permittee is required to clearly mark and monitor the event route during the closure periods. Spectators shall remain in safe locations as directed by event officials and BLM personnel.

Spectator and support vehicles are restricted to existing access roads. Driving cross-country is prohibited without specific authorization from BLM. Persons camping on public lands in conjunction with the event must be a minimum of fifty yards away from the race course centerline.

Specific Race Information

1. Top Gun 250 Desert Race: This course will be in effect from 6:00 a.m. until 6:00 p.m. on Saturday, June 22, 1996 during the conduct of a multiple-lap OHV race on roads and washers near Fallon, Nevada in Churchill and Lyon Counties. Public lands affected are located within T16N R25E; T16N 26E; T16N R27E; T16N R28E; T16N R29E; T17N R26E; T17N R27E, M.D.M. Public lands to be closed include the race route and adjacent lands identified with colorful flagging, paper directional arrows and race related warning signs. Portions of Simpson Pass and Wildhorse Basin Roads between Hooten Well and Top Gun Race Way are included within the Closure area. Spectators are welcome at the Start/Finish area at Top Gun Race Way located on Highway 95 south of Fallon and certain Check Points selected by race and BLM officials.

2. Fallon 250 at Night Desert Race: This closure will be in effect from noon until midnight on Saturday, July 27, 1996 during the conduct of a multiple-lap OHV race on roads and washes near Fallon, Nevada in Churchill County. Public lands affected are located within T15N R31E; T15N R32E; T16N R30E; T16N R31E; T16N R32E; T17N R30E; T17N R31E, M.D.M Public lands to be closed include the race route and adjacent lands identified with colorful flagging, paper directional arrows and race related warning signs. Portions of Simpson Pass and Four Mile Canyon Roads between Salt Wells and Sand Springs are included within the Closure area. Spectators are welcome at the Start/Finish area near Sand Mountain Recreation Area located east of Fallon on Highway 50 and certain Check Points selected by race and BLM officials.

3. Yerington to Fallon and Back Desert Race: This closure will be in effect from 6:00 a.m. until 10:00 p.m. on Sunday, September 1, 1996 during the conduct of a point-to-point OHV race on roads and washes between Yerington and Fallon, Nevada in Lyon and Churchill Counties. Public lands affected are located within T13N R24E; T13N R25E; T14N R24E; T15N R24E; T16N R24E; T16N R24E through 31E; T17N R30E; T17N R31E and T18N R30E, M.D.M. Public lands to be closed include the race route and adjacent lands identified with colorful flagging, paper directional arrows and race related warning signs. Portions of Singatse Pass, Churchill Canyon, Adrian Valley, and Eightmile Flat Roads are included within the Closure area. Spectators are welcome at the Yerington and Fallon start/finish areas in addition to certain Check Points as directed by event officials and BLM personnel.

The above restrictions do not apply to race officials, law enforcement and agency personnel monitoring the event.

Authority: 43 CFR 8364 and 43 CFR 8372.

Penalty

Any person failing to comply with the closure order may be subject to the penalties provided in 43 CFR 8360.7.

Dated: May 6, 1996.

James M. Phillips,

Assistant District Monager, Non-Renewoble Resources.

[FR Doc. 96–12525 Filed 5–17–96; 8:45 am]

BILLING CODE 4310–HC–M

[NV–931–1020–001]

Northeastern Great Basin Resource Advisory Council Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Councils' Meeting Location and Time.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), Council meetings will be held as indicated below. The agenda for each meeting includes approval of minutes of the previous meeting, continuation of Council orientation, discussion of Standards and Guidelines for management of the public lands within the jurisdiction of the Council and determination of the subject matter for future meetings.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. The public comment period for the Council meeting is listed below. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meeting, or need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the District Manager at the Elko District Office, 3900 E. Idaho Street, Elko, NV 89803, telephone 702–753–0200.

DATES, TIMES: The time and location of the meeting is as follows: Northeastern Great Basin Resource Advisory Council, BLM Office, 3900 E. Idaho Street, Elko, NV 89803; June 1, starting at 9:00 a.m.; public comments will be June 1 at 10:00 a.m. and at 1:00 p.m.

FOR FURTHER INFORMATION CONTACT: Jeff Weeks, Team Leader for the Northeastern Resource Advisory Council, Battle Mountain Office, telephone 702–635–4000.

SUPPLEMENTAL INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues, associated with the management of the public lands.

Dated: May 10, 1996.

Gerald M. Smith,

District Monoger, Battle Mountain.

[FR Doc. 96–12585 Filed 5–17–96; 8:45 am]

BILLING CODE 4310–HC–M

[MT–063–05–1610–00]

Availability of the Final Sweet Grass Hills Resource Management Plan Amendment and Environmental Impact Statement, Liberty and Toole Counties, MO

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability of the final Sweet Grass Hills resource management plan amendment and environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4327) the Bureau of Land Management (BLM) has prepared a Final EIS on the final amendment and environmental impacts statement (EIS) addresses future management options for land tenure adjustment, off-road vehicle use, oil and gas leasing, and locatable mineral development for lands and minerals administered by the Bureau of Land Management (BLM) in the Sweet Grass Hills in Toole and Liberty Counties, Montana, and amends the West HiLine Resource Management Plan (1988 and 1992). This includes approximately 7,717 surface acres, 19,765 acres of all mineral estate, and 1,644 acres of only oil and gas estate. These lands are administered by the BLM through the Great Falls Resource Area. The proposed alternative and three other alternatives have been developed to provide management options for the Sweet Grass Hills.

DATES: A record of decision will be prepared no earlier than 30 days after the Notice of Availability for the Final EIS is published in the **Federal Register** by the Environemntal Protection Agency.

ADDRESSES: Copies of the Final EIS are available from the Bureau of Land Management, Great Falls Resource Area, 812 14th Street North, Great Falls Montana 59401 or the Lewistown District Office, P.O. Box 1160, Lewistown, Montana 59457–1160. Public reading copies will be available for review at the following locations: Bureau of Land Management, Office of External Affairs, Main Interior Building, Room 5600, 18th and C Streets NW, Washington, DC; Bureau of Land Management, External Affairs Office, Montana State Office, 222 North 32nd Street, Billings, Montana; Bureau of Land Management, Lewistown District Office, Airport Road, Lewistown, Montana; and Great Falls Resource Area, 812 14th Street North, Great Falls, Montana.

FOR FURTHER INFORMATION CONTACT: Tad Day, Team Leader, Great Falls Resource Area, 812 14th Street North, Great Falls, Montana 59401, (406) 727–0503.

SUPPLEMENTARY INFORMATION: The Sweet Grass Hills are significant because of their importance as a religious and cultural use area for Native Americans; they are an integral part of the peregrine falcon reintroduction area; they contain high value recreational lands; and they support diverse wildlife populations. In August 1993, the BLM segregated the Federal mineral estate in the Sweet Grass Hills for a two-year period which closed the area to the location of new mining claims until August 1995. The BLM also began amending the West HiLine Resource Management Plan to reevaluate current management decisions for the Sweet Grass Hills.

About 500 copies of the Draft EIS were distributed to the public and other federal and state agencies in February 1995. During the 90-day public comment period, the BLM held four public meetings to receive oral comments. In addition to oral comments, the BLM received 397 letters on the Draft EIS. All comments, written and oral, were reviewed and considered in preparation of the Final EIS. Comments that presented new data, questioned facts or analyses, or raised questions or issues bearing directly upon the alternatives or environmental analysis, are responded to in the Final EIS. The Final EIS incorporates comments and suggestions made on the Draft EIS during the public review period. Changes were made to the preferred alternative in the Draft EIS including: all Federal minerals (19,765 acres) would be recommended for a 20 year term withdrawal and all BLM land would remain in public ownership.

The amendment to the West HiLine Resource Management Plan will provide specific direction concerning locatable mineral development and will recommend whether all of the area should be closed to mining claim location. If the record of decision

recommends closure, the BLM would begin processing a 20-year term withdrawal.

Dated: May 10, 1996.

David L. Mari,

District Manager.

[FR Doc. 96–12526 Filed 5–17–96; 8:45 am]

BILLING CODE 4310–84–P

Dayton Aviation Heritage Commission

AGENCY: National Park Service, Interior Department.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Dayton Aviation Heritage Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE, TIME, AND ADDRESSES: Monday, June 24, 1996; 2 to 4 p.m., Innerwest Priority Board conference room, 1024 West Third Street, Dayton, Ohio 45407.

AGENDA: This business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons accommodated on a first-come, first-served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. An agenda will be available from the National Park Service, Midwest Region, 1 week prior to the meeting.

FOR FURTHER INFORMATION CONTACT: William Gibson, Superintendent, Dayton Aviation, National Park Service, P.O. Box 9280, Wright Brothers Station, Dayton, Ohio 45409, or telephone 513–225–7705.

SUPPLEMENTARY INFORMATION: The Dayton Aviation Heritage Commission was established by Public Law 102–419, October 16, 1992.

Dated: May 6,1996.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 96–12562 Filed 5–17–96; 8:45 am]

BILLING CODE 4310–70–P

Mississippi River Coordinating Commission Meeting

AGENCY: National Park Service, Interior Department.

ACTION: Notice of Final meeting

SUMMARY: This notice announces an upcoming meeting of the Mississippi River Coordinating Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE, TIME: Thursday, June 20, 1996, 10 a.m. to 11:30 a.m.

ADDRESSES: Holiday Inn Metrodome, 1500 Washington Avenue South, Minneapolis, Minnesota.

The agenda item for the meeting is consideration of an amendment to the Mississippi National River and Recreation Area's comprehensive management plan to provide for partnerships in education programs and facilities within the city of Saint Paul. A Commission vote on the Proposed amendment is expected. Public statements about this topic will be taken.

SUPPLEMENTARY INFORMATION: The Mississippi River Coordinating Commission was established by PL 100–696, November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Superintendent JoAnn Kyral, Mississippi National River and Recreation Area, 175 East Fifth Street, Suite 418, St. Paul, Minnesota 55101 or telephone 612–290–4160.

Dated: May 6, 1996.

William W. Schenk

Field Director, Midwest Field Area.

[FR Doc. 96–12560 Filed 5–17–96; 8:45 am]

BILLING CODE 4310–70–P

Mississippi River Corridor Study Commission

AGENCY: National Park Service, Interior Department.

ACTION: Notice of final meeting.

SUMMARY: This notice sets the schedule for the forthcoming final meeting of the Mississippi River Corridor Study Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

MEETING DATE, TIME, AND ADDRESS: Monday, May 20, 1996; 2 p.m. to 6 p.m., Old State Capital, 100 North Boulevard at River Road, Baton Rouge, Louisiana. This meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons accommodated on a first-come, first-served basis. As this is the final meeting, there are no agenda items, only approval of the previous meeting minutes. The report will be signed by each commission member and distribution will be made to the President of the United States, the Speaker of the House of Representatives, the President of the Senate and the Governors of each of the following states: Arkansas, Illinois, Iowa, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Tennessee, and Wisconsin.

FOR FURTHER INFORMATION CONTACT: Alan M. Hutchings, Assistant Field Director, Planning, Legislation, and WASO Coordination, National Park Service, Midwest Field Area, 1709 Jackson Street, Omaha, Nebraska 68102, or call 402–221–3082.

SUPPLEMENTARY INFORMATION: The Mississippi River Corridor Study Commission was established by Public Law 101–398, September 29, 1990. This commission will expire 90 days after submitting the final report.

Dated: May 7, 1996.

William W. Schenk,

Field Director, Midwest Field Area.

[FR Doc. 96–12561 Filed 5–17–96; 8:45 am]

BILLING CODE 4310–70–P

National Park Service

Mojave National Preserve Advisory Commission; Notice of Meetings

Notice is hereby given in accordance with the Federal Advisory Committee Act that meetings of the Mojave National Preserve Advisory Commission will be held June 12 , 1996; assemble at 1:00 PM at the National Park Service Information Center in Baker California; travel by private vehicle to Kelso Depot, Kelso, California; and June 13, 1966, at 9:30 AM, at the National Park Service Visitor Center at Hole-In-The-Wall, Mojave National Preserve.

The agenda: Provide administrative information concerning Advisory Commission process; update on Northern and Eastern Mojave Planning Process; discussion of issues and Advisory Commission role in planning.

The Advisory Commission was established by PL #03–433 to provide for the advice on the development and implementation of the General Management Plan.

Members of the Commission are:

Micheal Attaway
Irene Ausmus
Rob Blair
Peter Burk
Dennis Casebier
Donna Davis
Nathan 'Levi' Esquerra
Gerald Freeman
Willis Herron
Eldon Hughes
Claudia Luke
Clay Overson
Norbert Riedy
Marcia Turoci
Mal Wessel

This meeting is open to the public.

Mary G. Martin,

Superintendent, Mojave National Preserve.

[FR Doc. 96–12563 Filed 5–17–96; 8:45 am]

BILLING CODE 4310–70–P

Bureau of Reclamation

Proposed Long-Term Water Service Contract Renewal, Sargent and Farwell Units, Middle Loup Division, Pick-Sloan Missouri Basin Program, NE

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of information/scoping meetings.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) will prepare a draft environmental assessment (EA) on the proposed renewal of the long-term water service contract for the Loup Basin Reclamation District which provides service to the Sargent and Farwell Irrigation Districts in the Middle Loup River Basin (Basin) in Nebraska. The existing water service contract will expire in December of 1998.

The purpose of this action is to provide for the continued beneficial use of federally developed water within the Basin. Reclamation is proposing to renew the long-term water service contract for the reclamation district in accordance with current law and policy while examining all reasonable alternatives to balance contemporary surface water needs within the Basin.

Reclamation has scheduled a series of public information/scoping meetings in connection with the development of a Resource Management Assessment (RMA) and the draft EA.

DATES: The schedule for the public information/scoping meetings is:

- May 28, 7:00 p.m., Sargent, NE, Palladium, 105 N. 2nd Street.
- May 29, 7:00 p.m., Loup City, NE, Middle School Gymnasium, 800 N. 8th Street.
- May 30, 7:00 p.m., St. Paul, NE, Public School, 1305 Howard Avenue.
- May 31, 1:00 p.m., Grand Island, NE, Holiday Inn Mid Town, 2503 S. Locust Street.

FOR FURTHER INFORMATION CONTACT: Ms. Jill Manring, Basin Study Coordinator, Bureau of Reclamation, Nebraska-Kansas Area Office, PO Box 1607, Grand Island, NE 68802–1607; telephone: (308) 389–4557.

SUPPLEMENTARY INFORMATION: Reclamation constructed Milburn and Arcadia Diversion Dams, Sherman Dam and Reservoir, and associated canal and drainage systems in the Basin in the 1950's and 1960's pursuant to the Pick-Sloan Missouri Basin Program of the Flood Control Act of 1944.

Prior to initiating construction on the individual projects, Reclamation negotiated and entered into a long-term water service contract with the reclamation district. The initial long-term water service contract which was issued for a 40-year term, became effective upon completion of the respective projects, and will expire in December of 1998.

The location of the reservoir and irrigation districts within a common watershed provided Reclamation an opportunity to evaluate the direct, indirect, and cumulative effects of long-term water service contract renewal from a watershed perspective. Reclamation will initiate its watershed analysis by preparing the RMA to identify water-related resources within the Basin, document their historic and existing conditions, identify resource trends and/or predict future conditions, propose goals and objectives for resource management, and provide a framework for development of the range of alternatives necessary for the comprehensive NEPA compliance document. Much of the information gathered for, and incorporated into, the RMA will be used to prepare the draft EA.

An extensive range of management scenarios will be formulated for the RMA that are unconstrained by existing law or regulation. Input from the public is encouraged to help define different management scenarios. The initial range of management scenarios will include over 25 options and vary from no change from current management to:

- optimizing deliveries of water for irrigation at the expense of other beneficial uses,
- optimizing reservoir management for fisheries and recreation at the expense of irrigation,
- restoring the natural hydrograph to the degree possible, and others. All of the preliminary management scenarios will be evaluated in the RMA process. It should be recognized that some of the management scenarios ultimately identified in the RMA may include actions beyond Reclamation's authority to implement. The RMA process will conclude with the identification of resource management goals and objectives and a reduced range of feasible management scenarios. Further screening, public input, and evaluation during the environmental compliance process will produce an ultimate range of reasonable alternatives that will be considered and evaluated in detail in the EA. Should the EA impact analysis process not result in a Finding of No Significant Impact (FONSI), the NEPA compliance effort will be elevated to an Environmental Impact Statement (EIS). Both the RMA and NEPA compliance documents will assess potential impacts to Indian Trust Assets.

Anyone interested in additional information concerning the environmental compliance or water service contract renewal processes, having suggestions regarding significant environmental issues or management scenarios, or having input about concerns or issues related to Indian Trust Assets should contact Ms. Manring at the above address.

Meetings have been scheduled to inform the public of the status of contract renewal, to allow for public input on the development of preliminary management scenarios to be evaluated in the RMA process, to inform the public of significant issues identified to date, to identify additional significant issues that should be analyzed in the draft EA, and to identify issues related to Indian Trust Assets. The RMA and draft EA are expected to be completed and available for review and comment in mid 1997.

Individuals requiring special assistance at these meetings should make their needs known in advance to Lee Loseke, Bureau of Reclamation, Nebraska-Kansas Area Office, at (308) 389–4625.

Dated: May 14, 1996.

Robert Gyllenborg,

Area Manager.

[FR Doc. 96–12591 Filed 5–17–96; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Privacy Act of 1974, Systems of Records: Employees' Payroll Records

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Pursuant to 5 U.S.C., 522a(e)(4) of the Privacy Act of 1974, the Overseas Private Investment Corporation (the "Corporation") hereby amends the system of records titled OPIC 23, Employees' Payroll Records. On July 7, 1996, the Corporation will convert its existing personnel and payroll systems to the integrated, automated payroll and personnel system maintained by the Denver Administrative Services Center, U.S. Bureau of Reclamation, U.S. Department of Interior. Therefore, the Corporation is updating and republishing an existing system of records, OPIC 23. This system of records, OPIC 23, was originally

published at 41 FR 51570, November 22, 1976.

DATES: Comments must be received within 30 calendar days of this notice (June 10, 1996). This updated system will become effective on July 7, 1996, unless otherwise published in the **Federal Register.**

ADDRESSES: Written comments on the updated system may be addressed to the Director, Human Resources Management, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

FOR FURTHER INFORMATION CONTACT: Stephanie Wrightson, Human Resources Management, Overseas Private Investment Corporation, 1100 New York, Avenue, NW, Washington, DC 20527; 202/336–8531.

Summary of System

OPIC 23

SYSTEM NAME:

Employees' Payroll Records.

SECURITY CLASSIFICATION:

Sensitive but unclassified.

SYSTEM LOCATION:

a. Human Resources Management Overseas Private Investment Corporation 1100 New York Avenue, NW Washington, DC 20527

b. U.S. Bureau of Reclamation Administration Service Center Payroll Operations Division, Mail Stop D–2600 7301 West Mansfield Avenue Lakewood, CO 80235–2230

c. For Retired Personnel Files: National Archives and Records Administration National Personnel Records Center (Civilian Personnel Records Center) 111 Winnebago Street St. Louis, MO 63118

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of the Corporation.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Corporations's system consists of four files. Official personnel files held by the Corporation are governed by the U.S. Office of Personnel Management regulations found in Parts 293 and 297 of Title 5 of the Code of Federal Regulations (CFR). The four categories of Corporation files are described below:

a. Official personnel file—This file consists of the employees' Standard Form 50's and copies of benefits election forms. This is a manual file.

b. Service history file—These records contain name, Social Security number, birth date, effective date, nature of action, pay plan, grade and salary related to personnel actions for OPIC service prior to July 7, 1996. These are automated records.

c. Payroll file—This system consists of documents related to employees' pay and related payroll deductions that are not properly filed in the official personnel file. These files may contain copies of income tax forms, savings bond elections, net deposits and allotments, union dues elections, Corporation benefits elections, and legal process related to garnishments. This is a manual file.

d. Time and attendance reports—This system consists of credit hour records, biweekly summaries of hours worked and leave taken, flextime records, leave applications, authorized premium pay, danger pay requests, and corrections. This information is maintained in an automated system, in supporting documentation, and on microfiche.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12107, dated December 28, 1978 and 5 C.F.R. Parts 293 and 297.

PURPOSE(S):

These records are used to establish and maintain employee qualifications, benefits and pay.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are transmitted by the Corporation directly to the Denver Administrative Services Center, U.S. Bureau of Reclamation, U.S. Department of Interior which in turn transmits them to the following:

(a) To the Treasury Department for payroll purposes.

(b) To the Treasury Department for issuance of savings bonds.

(c) To the U.S. Office of Personnel Management for retirement, health and life insurance purposes, and to carry out the Corporation's Government-wide personnel management functions.

(d) To the National Finance Center, U.S. Department of Agriculture for the Thrift Savings Plan and Temporary Continuation of Coverage.

(e) To the Social Security Administration for compliance with the Federal Insurance Compensation Act.

(f) To the Internal Revenue Service for taxable earnings and withholding purposes.

(g) To the Combined Federal Campaign for charitable contribution purposes.

(h) To the American Federal of Government Employees for union dues.

(i) To state and local government tax entities for income tax purposes.

(j) To the Attorney General of the United States or an authorized representative in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice, or carried out as a legal representative of the Executive Branch agencies.

(k) To the Internal Revenue Service for audit and inspection and investigation purposes.

(l) For employment verifications as authorized in writing by the current or former employee.

(m) To judgment holders for the purposes of garnishments.

(n) To arbitrators pursuant to a negotiated labor agreement or to Equal Employment Opportunity investigators given a contract to hear or investigate employee grievances or complaints of discrimination.

(o) To congressional offices in response to inquiries from congressional offices made at the request of individuals to whom the record pertains.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

No disclosure to consumer reporting agencies is made from these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Official personnel files, payroll files, and time and attendance reports are kept in file folders. Service history files prior to July 7, 1996, are maintained in an automated system.

RETRIEVABILITY:

Official personnel files and payroll files are filed alphabetically by surname. Time and attendance reports are filed by date, type of report, and then by surname. Service history files are retrieved from the automated system by surname or Social Security number.

SAFEGUARDS:

All manual records are stored in a key-locked metal file cabinet. The doors to OPIC's offices in which these cabinets are located are locked outside of business hours or anytime the office is not staffed. Access to the service history files requires a user identification number and password.

RETENTION AND DISPOSAL:

(i) The official personnel file is retained until the end of the first thirty days following the date of the individual's separation from the Corporation if the individual is not thereafter employed by a Federal Agency. After the thirty days, records are sent to the National Archives and Records Administration, National Personnel Records Center, 111 Winnebago Street, St. Louis, Missouri. However, if following the separation from the Corporation, the individual is employed by a Federal Agency, records are maintained until that Federal Agency requests said records from the Corporation; (ii) Service history records are kept for three years following an employee's separation; (iii) Payroll records of the Corporation are maintained for four calendar years following the year in which the employee separates; and (iv) Time and attendance reports are maintained for six years after the year of the employee's separation.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Management, Overseas Private Investment Corporation, 1100 New York Ave., NW., Washington, DC 20527, Telephone (202) 336–8525.

NOTIFICATION PROCEDURE:

Requests by individuals concerning the existence of a record may be addressed to the systems manager above or presented in person at the Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527. The request shall be in writing, signed by the individual, with their full name, any aliases used, their place and date of birth, and their Social Security number.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed or presented in person to the same address as stated in the Notification section above. Requests should be accompanied by information sufficient to identify the individual pursuant to 22 CFR 707.21(b).

CONTESTING RECORD PROCEDURES:

Written requests from individuals to amend their record should be mailed or presented in person to the same address as stated in the Notification section above. Requests for amendments to records and requests for review of a refusal to amend a record must comply with the requirements of 22 CFR 707.22(b)–(e).

RECORD SOURCE CATEGORIES:

The individual concerned and OPIC employees acting in their official capacities.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: May 15, 1996.

James R. Offutt,

Assistant General Counsel Department of Legal Affairs.

[FR Doc. 96–12399 Filed 5–17–96; 8:45 am]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to CERCLA

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Consolidation Coal Co., et al,* Civil Action No. 89–2124, was lodged on May 6, 1996 with the United States District Court for the Western District of Pennsylvania. This proposed consent decree would resolve this cost recovery action under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607, for the Swissvale Auto Surplus Parts Company Site, a metal reclamation and reprocessing facility near Pittsburgh, for a payment of $1.5 million toward reimbursement of expenditures from the Superfund to conduct removal actions at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Consolidation Coal Co., et al,* DOJ Ref. # 90–11–3–334.

The proposed consent decree may be examined at the Office of the United States Attorney, Western District of Pennsylvania, 7th and Grant Streets, Pittsburgh, PA 15219; the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $10.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–12575 Filed 5–17–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging a Final Judgment by Consent Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)

In accordance with the Departmental Policy, 28 C.F.R. § 50.7 notice is hereby given that a consent decree in *United States* v. *Ralph Riehl, et al.,* Civil Action No. 89–226E, was lodged with the United States District Court for the Western District of Pennsylvania on May 3, 1996.

On October 16, 1989, the United States filed a complaint against the owners and operator of, and certain transporters to, the Millcreek Dump Superfund Site (the "Site"), pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9607(a). In June 1992, the United States added certain "generator" defendants, including Alco Industries, Inc. (Alco), to the action. The consent decree is a "cash-out" decree which requires a payment of $325,000.00 and resolves the United States' cost claims against Alco and related corporate entities, for response costs incurred and to be incurred at the Millcreek Site.

The Department of Justice will accept written comments relating to this Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *United States* v. *Ralph Riehl, et al.,* DOJ No. 90–11–3–519. In accordance with Section 7003(d) of RCRA, 42 U.S.C. § 6973(d), commenters may request a public meeting in the affected area.

Copies of the proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Pennsylvania, Federal Building and Courthouse, Room 137, 6th and State Streets, Erie, Pennsylvania, 15219; Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202) 624–0892). A copy of

the proposed Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. When requesting a copy of the proposed Consent Decree, please enclose a check in the amount of $7.25 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 96–12574 Filed 5–17–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that on May 9, 1996, a proposed consent Decree in *United States* v. *J.B. Stringfellow, Jr. et al.*, Civil Action No. 83–2501 (JMI), was lodged with the United States District Court for the Central District of California. The Complaint in this action was brought pursuant to, *inter alia*, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, to recover costs incurred in connection with remedial activities at the Stringfellow Superfund Site in Riverside, California, and to obtain injunctive relief requiring the defendants to take further remedial actions at the Site.

Pursuant to the proposed Consent Decree certain third-party defendants determined to have been *de minimis* contributors of hazardous substances will resolve their liability to the United States, the State, and certain third-party plaintiffs in this action through a payment to the United States of $4,881,300, to be used exclusively for response actions in connection with the Stringfellow Superfund Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044. Comments should refer to *United States* v. *J.B. Stringfellow, Jr. et al.*, Civil Action No. 83–2501 (JMI), D.J. Ref. No. 90–11–2–24.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Central District of California, Federal Building, Room 7516, 300 North Los Angeles Street, Los Angeles, California; Office of Regional Counsel, Environmental Protection Agency, 75 Hawthorn St., San Francisco, California; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library.

In requesting a copy, please enclose a check in the amount of $39.50 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Joel M. Gross,

Chief, Environmental Enforcement Section.

[FR Doc. 96–12576 Filed 5–17–96; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Financial Services Technology Consortium, Inc., Electronic Check Project

Notice is hereby given that, on April 9, 1996, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the Financial Services Technology Consortium, Inc.; Electronic Check Project has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: Novell, Inc., San Jose, CA; InraNet, Inc., Newton, MA; Global Concepts, Inc., Atlanta, GA and Bell Communications Research, Inc., Morristown, NJ have been added to the venture.

On August 10, 1995, the Financial Services Technology Consortium filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to § 6(b) of the Act on January 31, 1996 (61 Fed. Reg. 3463). The last notification was filed on February 13, 1996. The Department of Justice published a notice in the **Federal Register** on April 10, 1996. (61 Fed. Reg. 15970).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–12578 Filed 5–17–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium, Inc.

Notice is hereby given that, on March 11, 1996 and April 12, 1996, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the Financial Services Technology Consortium, Inc., has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: Global Concepts, Inc., Atlanta, GA; Marquette Direct, Minneapolis, MN; NNT Data Communications, Palo Alto, CA; Oracle Corp., El Segundo, CA; and Bottomline Technologies, Inc., Portsmouth, NH have been added to the venture.

On October 21, 1993, the Financial Services Technology Consortium filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to § 6(b) of the Act on December 14, 1993 (58 Fed. Reg. 65399).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–12579 Filed 5–17–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium, Inc., Check Imagineing Project

Notice is hereby given that, on January 11, 1996 and April 9, 1996, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the Financial Service Technology Consortium, Inc.; Check Imaging Project has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: RDM Corporation, Waterloo, Ontario, CANADA; and Polytechnic University, Brooklyn, NY have been added to the venture.

On May 2, 1995, the Financial Services Technology Consortium, Inc.; Check Imaging Project filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to § 6(b) of the Act on June 20, 1995 (60 Fed. Reg. 33169–70).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–12580 Filed 5–17–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Management Forum

Notice is hereby given that, on March 5, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the Network Management Forum ("the Forum") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members to the venture are as follows: CSC Intelicom, Inc., Rochester, NY; General Instrument Corporation, Hatboro, PA; and Motorola, Arlington Heights, IL are Corporate Members. AU-Systems, Stockholm, SWEDEN; Marben Products, Inc., San Jose, CA; Open Networks Engineering, Inc., Ann Arbor, MI; Securicor Wireless Networks, Inc., Redmond, WA; Telecom Solutions, San Jose, CA; Tertio Limited, London, ENGLAND; and X–CEL Communications Limited, Camberley, Surrey, ENGLAND are Associate Members. Air Force C4 Agency, Scott AFB, IL; Cintel, Santafe de Bogota, D.C., COLUMBIA; and Exallon Systems, Malmo, SWEDEN are affiliate Members.

No other changes have been made since the last notification filed with the Department, in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Form filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 Fed. Reg. 49615).

The last notification was filed with the Department on November 30, 1995. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 12, 1996 (61 Fed. Reg. 5409).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–12581 Filed 5–17–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Salutation Consortium

Notice is hereby given that, on October 18, 1995, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Salutation Consortium, formerly the SmartOffice Industry Consortium, has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: Rios Systems Co., Ltd., Yokohama, JAPAN; and Casio Computer Co., Ltd., Tokyo, JAPAN have been added to the venture.

On March 30, 1995, the Salutation Consortium, under the name SmartOffice Industry Consortium, filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to § 6(b) of the Act on June 27, 1995 (60 FR 33233).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–12577 Filed 5–17–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Migrant and Seasonal Farmworker Programs; Final Allocations

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is publishing the estimated final allocation for Program Year (PY) 1996 (July 1, 1996–June 30, 1997) for the Migrant and Seasonal Farmworkers program (MSFW) authorized under Section 402 of the Job Training Partnership Act.

FOR FURTHER INFORMATION CONTACT: Mr. Charles C. Kane, Chief, Division of Seasonal Farmworker Programs. Telephone: (202) 219–5500 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: the allocations set forth in the appendix to this notice were computed according to the Program year 1994 allocation formula published at 59 FR 17577 (April 13, 1994). When the appropriation for the Department of Labor's 1996 fiscal year was enacted into law, it incorporated the prior agreement of the House and Senate Committees on an appropriation amount for the 402 Migrant and Seasonal Farmworker Program of $69,285,000. Grant plans should proceed on the basis of this amount. This amount is a decrease of $10,682,000 from the final (post-rescission) appropriation for PY 1995.

For PY 1996, the State-by-State allocation formula is being applied to $65,486,767. The remaining $3,798,233 of the estimated PY 1996 section 402 appropriation is being held in the section 402 national account to fund the housing program, the Hope, Arkansas, Migrant Rest Center, and other training and technical assistance projects.

Allocation Formula

To maintain programmatic stability during the continued downsizing of the Federal MSFW program, the State-by-State estimated allocations were determined by the same formula that was used to allocate MSFW funds in PY 1995.

Signed at Washington, DC, this 14th day of May, 1996.

Paul A. Mayrand,

Director, Office of Special Targeted Programs.

James DeLuca,

Grant Officer, Division of Acquisition and Assistance.

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION—MIGRANT AND SEASONAL FARMWORKERS
PY 1996 ALLOTMENTS TO STATES

	PY 1995 base	PY 95–PY 96 changes	PY 1996 total
National Total	79,967,000	(10,682,000)	69,285,000
Alabama	900,659	(128,136)	772,523
Alaska	0	0	0
Arizona	1,728,494	(245,911)	1,482,583
Arkansas	1,327,850	(188,912)	1,138,938
California	16,596,441	(2,361,160)	14,235,281
Colorado	916,228	(130,351)	785,877
Connecticut	234,338	(33,339)	200,999
Delaware	134,597	(19,149)	115,448
District of Columbia	0	0	0
Florida	5,267,924	(749,463)	4,518,461
Georgia	1,946,847	(276,976)	1,669,871
Hawaii	286,186	(40,715)	245,471
Idaho	998,028	(141,989)	856,039
Illinois	1,621,762	(230,727)	1,391,035
Indiana	889,035	(126,482)	762,553
Iowa	1,495,035	(212,697)	1,282,338
Kansas	793,746	(112,926)	680,820
Kentucky	1,538,507	(218,882)	1,319,625
Louisiana	905,433	(128,815)	776,618
Maine	372,392	(52,980)	319,412
Maryland	348,386	(49,565)	298,821
Massachusetts	399,270	(56,804)	342,466
Michigan	999,395	(142,183)	857,212
Minnesota	1,449,971	(206,286)	1,243,685
Mississippi	1,648,190	(234,486)	1,413,704
Missouri	1,244,947	(177,117)	1,067,830
Montana	758,883	(107,966)	650,917
Nebraska	881,379	(125,393)	755,986
Nevada	228,391	(32,493)	195,898
New Hampshire	128,075	(18,221)	109,854
New Jersey	455,017	(64,735)	390,282
New Mexico	681,004	(96,886)	584,118
New York	2,105,010	(299,478)	1,805,532
North Carolina	3,419,127	(486,436)	2,932,691
North Dakota	532,730	(75,791)	456,939
Ohio	1,029,322	(146,441)	882,881
Oklahoma	691,724	(98,411)	593,313
Oregon	1,237,183	(176,013)	1,061,170
Pennsylvania	1,389,307	(197,655)	1,191,652
Puerto Rico	3,342,718	(475,565)	2,867,153
Rhode Island	0	0	0
South Carolina	1,228,548	(174,784)	1,053,764
South Dakota	788,092	(112,121)	675,971
Tennessee	1,089,432	(154,992)	934,440
Texas	6,801,621	(967,660)	5,833,961
Utah	279,073	(39,703)	239,370
Vermont	242,426	(34,490)	207,936
Virginia	1,178,883	(167,719)	1,011,164
Washington	1,939,978	(275,999)	1,663,979
West Virginia	249,467	(35,491)	213,976
Wisconsin	1,398,134	(198,911)	1,199,223
Wyoming	229,661	(32,674)	196,987
Formula Total	76,348,846	(10,862,079)	65,486,767
TA/Housing	3,618,154	180,079	3,798,233

[FR Doc. 96–12605 Filed 5–17–96; 8:45 am]
BILLING CODE 4510–30–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration. Office of Records' Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303(a).

DATES: Request for copies must be received in writing on or before July 5, 1996. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Agriculture, Forest Service (N1–95–96–1). Case files for water supply projects and routine water quality tests.

2. Department of the Air Force (N1–AFU–96–5). Blood donor medical histories and blood bank agreements.

3. Department of the Air Force (N1–AFU–96–12). Fire protection records.

4. Department of Defense, Defense Logistics Agency (N1–361–96–1). Contractor and Individual Computer Access Records for routine administrative purposes

5. Department of Housing and Urban Development (N1–207–95–1). Nonsubstantive program subject files, calendars, and other records of daily activities of Assistant Secretaries and equivalent officials. Substantive records of these officials are designated for preservation.

6. Department of Justice, Drug Enforcement Administration (N1–170–94–1). Update to agency's comprehensive schedule.

7. Central Intelligence Agency (N1–263–93–01). Automated and textual records relating to the Foreign Broadcast Information Service (FBIS).

8. Tennessee Valley Authority (N1–142–9–19). TVA Principles and Practices, a manual created by Human Resources. Microfilm copy will be preserved.

Dated: May 8, 1996.

James W. Moore,

Assistant Archivist for Records Administration.

[FR Doc. 96–12524 Filed 5–17–96; 8:45 am]
BILLING CODE 7515–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings.

Name and Committee Code: Special Emphasis Panel in Polar Programs (#1209).

Date and Time: June 3, 1996; 8:00 to 5:00 PM.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 730, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Noel D. Broadbent, Program Director for Arctic Social Science, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1029.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Arctic Social Science proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 14, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–12530 Filed 5–17–96; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–333]

James A. Fitzpatrick Nuclear Power Plant; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–

59 issued to New York Power Authority (the licensee) for operation of the James A. FitzPatrick Nuclear Power Plant located in Oswego, New York.

The proposed amendment would allow reactor coolant system pressure tests to be performed while remaining in the Cold Shutdown Mode. The changes will also allow outage activities on other systems to continue. The changes, with minor exceptions, adopt Special Operations Section 3.10.1, "Inservice Leak and Hydrostatic Testing Operation," from Standard Technical Specifications (STS), NUREG–1433. Minor exceptions are required to ensure consistency within FitzPatrick TS, reflect differences between FitzPatrick TS and STS, and ensure the same level of Emergency Core Cooling System redundancy afforded by STS during pressure testing. These exceptions will be eliminated when the FitzPatrick TS are converted to STS.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of a leak in the reactor coolant pressure boundary during reactor coolant system pressure testing is not increased by considering the reactor to be in Cold Shutdown. Since the pressure tests are performed nearly water solid, at low decay heat values, and near Cold Shutdown conditions, the stored energy in the reactor core will be low. Under these conditions, the potential for failed fuel and a subsequent increase in coolant activity is minimized. In addition, secondary containment integrity will be maintained, in accordance with the Special Operations LCO [Limiting Conditions for Operation], and the secondary containment will be capable of handling any airborne radioactivity or steam leaks that could occur during the performance of hydrostatic or leak testing. The required pressure testing conditions provide adequate assurance that the consequences of a steam leak will be conservatively bounded by the consequences of the postulated main steam line break outside of primary containment. In the event of a large primary system leak, the reactor vessel would rapidly depressurize, allowing the low pressure core cooling systems to operate. The capability of these systems would be adequate to keep the core flooded under this low decay heat load condition. Small system leaks would be detected by leakage inspections before significant inventory loss occurred. Therefore, the consequences of an accident previously evaluated are not significantly increased.

2. Create the possibility of a new or different kind of accident from those previously evaluated.

The proposed changes do not introduce any new accident initiators or failure mechanisms since the changes do not involve any changes to structures, systems, or components, do not involve any change to the operation of systems, and alter procedures only to the extent that the 212 °F limit may be exceeded during reactor coolant system pressure testing with certain systems inoperable. There are no alterations to plant systems designed to mitigate the consequences of accidents. The only difference is that a different subset of plant systems would be utilized for accident mitigation than those utilized during the Hot Shutdown Mode. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from those previously evaluated.

3. Involve a significant reduction in the margin of safety.

Since pressure tests are performed nearly water solid, at low decay heat values, and near Cold Shutdown conditions, the stored energy in the reactor core will be low. Under these conditions, the potential for failed fuel and a subsequent increase in coolant activity is minimized. Since secondary containment integrity will be maintained, in accordance with the Special Operations LCO, the secondary containment will be capable of handling any airborne radioactivity or steam leaks that could occur during the performance of hydrostatic or leak testing. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 19, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petiticns are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Jocelyn A. Mitchell, Acting Project Directorate I–1: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 1, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 14th day of May 1996.

For the Nuclear Regulatory Commission.

Karen R. Cotton,

Acting Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–12617 Filed 5–17–96; 8:45 am]

BILLING CODE 7590–01–P

Nuclear Safety Research Review Committee; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

The Nuclear Safety Research Review Committee (NSRRC) will hold its next meeting on June 27–28, 1996. The location of the meeting will be in rooms 1F7/9, One White Flint North (OWFN) Building, 11555 Rockville Pike, Rockville, MD. The meeting will be held from 9am to 5pm on both days.

The meeting will be held in accordance with the requirements of the Federal Advisory Committee Act (FACA) and will be open to the public. The NSRRC provides advice to the Director of the Office of Nuclear Regulatory Research (RES) on matters of overall management importance in the direction of the NRC's program of nuclear safety research. The main purposes of this meeting will be (1) to discuss the March 27, 1996 NSRRC briefing with the Commission and (2) to review and discuss the reports and recommendations of the Subcommittees on Research in Support of Risk-Based Regulation (PRA); Instrumentation and Control (I&C) and Human Factors; and Subcommittee on Accident Analysis.

Participants in parts of the discussion will include senior NRC staff and other RES technical staff as necessary.

Any inquiries regarding this notice or any subsequent changes in the status and schedule of the meeting, may be made to the Designated Federal Officer, Dr. Jose Luis M. Cortez (telephone: 301–415–6596), between 8:15 am and 5:00 pm.

Dated at Rockville, Maryland this 14th day of May, 1996.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Federal Advisory Committee Management Officer.

[FR Doc. 96–12611 Filed 5–17–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension: Rule 17a–13 SEC File No. 270–27 OMB Control No. 3235–0035

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for approval of extension on the following rule:

Rule 17a–13(b) requires that at least once each calendar quarter, brokers and dealers physically examine and count all securities held and account for all other securities not in their possession, but subject to the broker-dealer's control or direction. Any discrepancies between the broker-dealer's securities count and the firm's records must be noted and, within seven days, the unaccounted for difference must be recorded in the firm's records. Rule 17a–13(c) provides that under specified conditions, the securities count, examination and verification of the broker-dealer's entire list of securities may be conducted on a cyclical basis rather than on a certain date. Although Rule 17a–13 does not require filing a report with the Commission, the discrepancies must be reported on the form required by Rule 17a–5.

The information obtained from Rule 17a–13 is used as an inventory control device to monitor a broker-dealer's ability to account for all securities held, in transfer, in transit, pledged, loaned, borrowed, deposited or otherwise subject to the firm's control or direction. Discrepancies between the securities counts and the broker-dealer's records alert the Commission and the Self Regulatory Organizations ("SROs") to those firms having problems in their back offices.

Because of the many variations in the amount of securities that broker-dealers are accountable for, it is difficult to develop a meaningful figure for the cost of compliance with Rule 17a–13. About fifteen percent of all registered brokers and dealers are exempt from Rule 17a–13. Another significant amount of firms have minimal obligations under the rule because they hold, or are owed few securities. The average amount of time consumed by complying with Rule 17a–13 is approximately 100 hours per year. It should be noted that most broker-dealers would engage in the activities required by Rule 17a–13 even if they were not required to do so.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: May 13, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–12597 Filed 5–17–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21959; International Series Release No. 980; File No. 812–10090]

The Chase Manhattan Bank, N.A. and Chemical Bank; Notice of Application

May 14, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Chase Manhattan Bank, N.A. ("Chase") and Chemical Bank ("Chemical").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from section 17(f) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would amend three prior orders granted to Chase that permit Chase subsidiaries in Malaysia, Mexico, and Russia to maintain in those countries certain assets of U.S. registered investment companies. The requested order would substitute the entity surviving the anticipated merger of Chase and Chemical as the party to which relief is granted. Chemical will survive the merger and change its name to "The Chase Manhattan Bank."

FILING DATE: The application was filed on April 18, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 10, 1996 by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicants, c/o Daniel L. Goelzer, Esq., Baker & McKenzie, 815 Connecticut Avenue NW., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or David M. Goldenberg, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Chase is a national banking association, regulated by the Comptroller of the Currency under the National Bank Act. At December 31, 1995, Chase had shareholders' equity in excess of $8.065 billion. Through its Global Securities Services division, Chase provides custody and related services to global institutional investors, including U.S. registered investment companies.

2. Chemical Bank is a banking institution, organized under the laws of the State of New York. It is regulated as a bank by the Superintendent of Banks of New York, and is a member bank of the Federal Reserve System. At December 31, 1995, Chemical had shareholders' equity in excess of $8.18 billion. Through its Geoserve Securities Services division, Chemical provides custody and related services to global institutional investors, including U.S. registered investment companies.

3. On March 31, 1996, Chase's parent holding company, The Chase Manhattan Corporation, and Chemical's parent holding company, Chemical Banking Corporation, merged. Chemical Banking Corporation was the surviving entity in the merger, and it has changed its name to "The Chase Manhattan Corporation." During July 1996, it is anticipated that Chase will be merged into Chemical (the "Merger"). Chemical will survive the Merger, and will change its name to "The Chase Manhattan Bank" (New Chase").

4. Chase-Malaysia, Chase-Mexico, and Chase-Russia (the "Foreign Subsidiaries") each are indirect subsidiaries of Chase and, after the Merger, each will become an indirect subsidiary of New Chase. Applicants state that, upon the Merger, New Chase will succeed by operation of law to the rights and obligations of Chase, including Chase's obligations under various custody agreements with certain U.S. registered investment companies and under subcustody agreements with each of the three Foreign Subsidiaries.

5. Applicants request an order under section 6(c) for an exemption from section 17(f) that would amend three orders previously granted to Chase (the "Prior Orders")[1] that permit Chase, and Chase's subsidiaries in Malaysia, Mexico, and Russia to provide certain foreign custody arrangements in those countries for the assets of investment companies registered under the Act, other than investment companies registered under section 7(d) of the Act. ("U.S. Investment Companies").[2]

[1] *Chase Manhattan Bank, N.A.*, ("Chase-Malaysia"), Investment Company Act Release Nos. 20647 (Oct. 21, 1994) (notice) and 20706 (Nov. 15, 1994) (order); *Chase Manhattan Bank, N.A.*, ("Chase-Mexico"), Investment Company Act Release Nos. 20694 (Nov. 9, 1994) (notice) and 20753 (Dec. 5, 1994) (order); and *Chase Manhattan Bank, N.A., ("Chase-Russia"), Investment Company Act Release Nos. 20969 (Mar. 28, 1995) (notice) and 21101 (May 31, 1995) (order).*

[2] The Prior Orders define "assets" to include foreign securities, cash, and cash equivalents. "Foreign securities" include securities issued and sold primarily outside the U.S. by a foreign government, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country, and securities issued or guaranteed by the government of the U.S. or by any state or any political subdivision thereof or by any agency thereof or by any entity organized under the laws of the U.S. or of any state thereof which have been issued and sold primarily outside the U.S.

Applicants request that New chase be substituted for Chase under the Prior Orders. The amendment will permit New Chase and its subsidiaries in Malaysia, Mexico,and Russia to continue to provide custody services in those jurisdictions to U.S. Investment Companies under the same terms and conditions as are set forth in the Prior Orders.

6. Each Prior Order requires, among other conditions, that Chase have in place two bilateral contractual arrangements, consisting of a Custody Agreement between Chase and the U.S. Investment Company (or its custodian), and a Subcustody Agreement between Chase and the applicable Foreign Subsidiary. Under the Custody Agreement, Chase undertakes to provide custody or subcustody services, and agrees to delegate certain of its duties and obligations as custodian to the Foreign Subsidiary. The Custody Agreement further provides that the delegation by Chase to the Foreign Subsidiary does not relieve Chase of any responsibility to the U.S. Investment Company or its custodian for any loss due to such delegation, and that Chase will be liable for any loss or claim arising out of or in connection with the performance by the Foreign Subsidiary of the custody services to the same extent as if Chase had itself provided the custody services under the Custody Agreement.

7. Under each Subcustody Agreement, Chase delegates to Chase-Malaysia, Chase-Mexico, and Chase-Russia, respectively, such of Chase's duties and obligations as would be necessary to permit the Foreign Subsidiary to hold assets in custody in Malaysia, Mexico, and Russia, respectively. Each Subcustody Agreement explicitly provides that (a) the Foreign Subsidiary is acting as a foreign custodian for assets that belong to a U.S. Investment Company pursuant to the terms of an exemptive order issued by the SEC and (b) the U.S. Investment Company or its custodian (as the case may be) that has entered into a Custody Agreement is entitled to enforce the terms of the Subcustody Agreement and can seek relief directly against the Foreign Subsidiary. Finally, each Subcustody Agreement provides that it is governed by New York law.

Applicants' Legal Conclusions

1. Section 17(f) of the Act requires every registered management investment company to place and maintain its securities and similar investments in the custody of certain entities, including "banks" having aggregate capital, surplus, and undivided profits of at least $500,000. A "bank," as defined in section 2(a)(5) of the Act, includes (a) a banking institution organized under the laws of the United States; (b) a member of the Federal Reserve System; and (c) any other banking institution or trust company doing business under the laws of any State or of the United States, and meeting certain requirements. Therefore, the only entities located outside the United States which section 17(f) authorizes to serve as custodians for registered management investment companies are the overseas branches of U.S. banks.

2. Rule 17f–5 under the Act expands the group of entities that are permitted to serve as foreign custodians. Rule 17f–5(c)(2)(ii) defines the term "Eligible Foreign Custodian" to include a majority-owned direct or indirect subsidiary of a qualified U.S. bank or bank holding company that is incorporated or organized under the laws of a country other than the United States and that has shareholders' equity in excess of $100 million. Rule 17f–5(c)(3) defines the term "Qualified U.S. Bank" to include a banking institution organized under the laws of the United States or a member bank of the Federal Reserve System that has an aggregate capital, surplus, and undivided profit of not less than $500,000.

3. Chase is a Qualified U.S. Bank as defined in rule 17f–5, since it is a national bank and has aggregate capital, surplus, and undivided profits substantially in excess of the $500,000 minimum required by the rule. Chemical is a Qualified U.S. Bank under rule 17f–5, since it is a member of the Federal Reserve System and has capital substantially in excess of the $500,000 minimum. New Chase will also be a Qualified U.S. Bank after the Merger. The Foreign Subsidiaries are not U.S. banks and are not eligible foreign custodians, because each lacks the required $100 million in shareholders' equity, although each satisfies the other requirements for eligibility under rule 17f–5.

4. Section 6(c) of the Act provides, in relevant part, that the SEC may exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

5. Applicants believe that the requested amendment is necessary and appropriate in the public interest to permit U.S. Investment Companies for which Chase serves as custodian or

subcustodian to continue to use the arrangements currently in place under the Prior Orders after the Merger, and to permit new U.S. Investment Company customers for which New Chase may serve in such capacities to have access to such arrangements. Applicants contend that requiring current U.S. Investment Company customers of Chase to bear the substantial expense and effort of implementing alternative arrangements merely because of the Merger would be contrary to the best interests of investors and public policy. Absent an amendment, New Chase would be unable to offer these services in Malaysia, Mexico, and Russia to such U.S. Investment Companies under the Prior Orders.

6. Applicants believe that the assets to which the Prior Orders relate will be as effectively protected by New Chase as they have been by Chase. Following the Merger, New Chase will be required to assume liability under the Chase-Malaysia, Chase-Mexico, and Chase-Russia orders, to the same extent that Chase is required to do so under these orders. Applicants state that this application does not seek to change in any manner the terms and protections applicable to U.S. Investment Company assets held in custody by the Foreign Subsidiaries.

7. Applicants state that the purpose of section 17(f) is to ensure that U.S. Investment Companies hold securities in a safe manner that protects the interests of their shareholders. The purpose of rule 17f–5 is to relieve U.S. Investment Companies of the expense and inconvenience of transferring assets to the custody of a U.S. bank or other qualified custodian outside the jurisdiction in which the primary trading market for those assets is located and to reduce the risks inherent in maintaining assets outside the United States. Applicants state that the requested amendment would permit New Chase to continue offering custody services in Malaysia, Mexico, and Russia under the same terms and conditions as set forth in the Prior Orders and is, therefore, consistent with these purposes.

8. Applicants state that in granting the Prior Orders, the SEC determined that the arrangements which those orders permit satisfy the standards of section 6(c). Applicants believe that the substitution of New Chase for Chase as the party to which the terms and conditions of those orders apply in no way detracts from the continuing validity of the SEC's determinations. Therefore, applicants believe the requested order satisfies these standards.

Condition

Applicants agree that the order granting the requested relief shall be subject to the condition that, following the merger of Chase and Chemical, New Chase will comply with all of the terms and conditions set forth in the existing orders as if such orders had been granted to New Chase.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–12595 Filed 5–17–96; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–7316]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Commonwealth Energy System, Common Shares of Beneficial Interest, $4 Par Value)

May 14, 1996.

Commonwealth Energy System ("Company" or "System") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing the security from listing and registration include the following:

According to the Company, the Exchange charges the System an annual maintenance fee of $1,000 and listing fees for additional registered shares. The low volume of System shares traded on the BSE does not warrant continued listing on this exchange. Additionally, the System believes that its shareholders receive no significant economic benefit by maintaining its listing with the exchange. The System further believes that its continued listing on the NYSE and the PSE is sufficient to serve the needs of its shareholders throughout the continental United States and its political sub-division thereof.

Any interested person may, on or before June 5, 1996, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC, 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–12538 Filed 5–17–96; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–10751]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Star Multi Care Services, Inc., Common Stock, $0.001 Par Value)

May 14, 1996.

Star Multi Care Services, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, since October 16, 1995 it has been listed on the Nasdaq National Market ("NMS").

In making the decision to withdraw its Security from listing on the PSE, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Security on the PSE and the NMS. The Company does not see any particular advantage in the dual trading of its Security and believes that dual listing would fragment the market for its Security.

Any interested person may, on or before June 5, 1996 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–12536 Filed 5–17–96; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–13242]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (The UniMark Group, Inc., Common Stock, $0.01 Par Value)

May 14, 1996.

The UniMark Group, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, since its initial public offering in August 1994, the Company has changed its primary trading market from the Nasdaq Small-Cap Market to the Nasdaq National Market System (Nasdaq/NMS). Consequently, substantially all of the trading in the Company's securities is effectuated on the Nasdaq/NMS. Therefore, the Board of Directors believes that the Nasdaq/NMS provides the Company's stockholders with a well-established and liquid trading market to effectuate transactions in the Company's securities.

The Company believes the costs involved in maintaining the PSE as a secondary trading market for its securities outweighs the benefits to the Company's stockholders, particularly in light of the historic trading volume of the Company's securities on the PSE.

Any interested person may, on or before June 5, 1996 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–12537 Filed 5–17–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37198; File No. SR–CROE–96–11]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Listing and Trading of Options on the CBOE PC Index

May 10, 1996.

On March 7, 1996, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commisssion"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to list and trade options on the CBOE PC Index ("CBOE PC Index" or "Index"), a narrow-based, equal-weighted index comprised of eight of the largest personal computer manufacturing companies. Notice of the proposed rule change appeared in the **Federal Register** on March 27, 1996.[3] No comments were received on the proposal. This order approves the proposal, as amended.

I. Description of the Proposal

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style stock index options on the CBOE PC Index, an equal-weighted index consisting of stocks of eight of the largest personal computer manufacturing companies. CBOE represents that each of these stocks are actively traded and believes that options on the Index will provide investors with a low-cost means to participate in the performance of the domestic PC industry or a means to hedge the risk of investments in that industry. The Exchange believes that the small number of Index components should facilitate replication of the Index for hedging purposes.

Index Design. As noted above, the CBOE PC Index consists of eight components, all of which trade on the New York Stock Exchange ("NYSE") or Nasdaq.[4] In addition, the Exchange represents that all eight underlying component securities currently meet the Exchange's listing criteria for equity options contained in Exchange Rule 5.3 and are the subject of options trading on U.S. options exchanges.

As of February 6, 1996, the capitalization of the components ranged from a low of $363 million (AST Research) to a high of $65.26 billion (IBM). The total capitalization of the Index as of that date was $135.5 billion; the mean capitalization was $16.9 billion; and the median capitalization was $3.34 billion. Because the Index is equal-weighted, each component accounts for 12.5% of the weight of the Index at the time of rebalancing.

Calculation. The Index will be calculated by CBOE or its designee on a real-time basis using last-sale prices and will be disseminated every 15 seconds. The updated Index values will be displayed by the Consolidated Tape Association and over the facilities of the Options Price Reporting Authority ("OPRA"). If a component is not currently being traded on its primary market, the most recent price at which the share traded on such market will be used in the Index calculation. The value of the Index at the close on February 1, 1996 was 127.65.

The Index is equal-weighted and reflects changes in the prices of the component stocks relative to the Index base date, January 3, 1995 when the Index was set to 100.00. Specifically, each of the component securities is initially represented in equal-dollar amounts, with the level of the Index equal to the combined market value of the assigned number of shares for each of the Index components divided by the current Index divisor. The Index divisor is adjusted to maintain continuity in the Index at the time of certain types of changes. Changes which may result in divisor changes include, but are not limited to, quarterly re-balancing, special dividends, spin-offs, certain rights issuances, and mergers and acquisitions.

Maintenance. The Index will be maintained by CBOE and will be re-balanced after the close of business on Expiration Fridays on the March Quarterly Cycle. The Index will be reviewed regularly and CBOE may change the composition of the Index at any time to reflect changes affecting the components of the Index or the PC markets generally. If it becomes necessary to replace a component, every effort will be made to add a component

[1] 15 U.S.C. § 78s(b)(1) (1988 & Supp. V. 1993).

[2] 17 CFR § 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 36992 (March 20, 1996), 61 FR 13548.

[4] The components of the Index are: Apple Computer, AST Research, Compaq Computer, Dell Computer, Gateway 2000, Hewlett Packard, International Business Machines, and Micron Electronics.

that preserves the character of the Index. If no replacement is available, or if CBOE determines to decrease the number of component stocks, it will submit a proposed rule change pursuant to Section 19(b) of the Act prior to opening any new series of Index options for trading. Absent prior Commission approval, CBOE will not increase to more than ten the number of component stocks in the Index. Finally, if at any time any of the components are not options eligible,[5] the Exchange will submit a rule change pursuant to Section 19(b) of the Act prior to opening any new series of Index options for trading.

Index Option trading. The Exchange proposes to base trading in options on the CBOE PC Index on the full value of that index. The Exchange may list full-value long-term index option series ("LEAPS®"), as provided in Rule 24.9. The Exchange also may provide for the listing of reduced-value LEAPS, for which the underlying value would be computed at one-tenth of the value of the Index. The current and closing index value of any such reduced-value LEAP will, after such initial computation, be rounded to the nearest one-hundredth.

Exercise and Settlement. CBOE PC Index options will have European-style exercise and will be "A.M.-settled index options" within the meaning of the Rules in Chapter XXIV, including Rule 24.9, which is being amended to refer specifically to CBOE PC Index options. The proposed options will expire on the Saturday following the third Friday of the expiration month and the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

Exchange Rules Applicable. Except as modified herein, the Rules in Chapter XXIV will be applicable to CBOE PC Index options. Index option contracts based on the CBOE PC Index will currently be subject to a position limit of 9,000 contracts on the same side of the market.[6] Ten reduced-value options will equal one full-value contract for such purposes.

CBOE represents that it has the necessary systems capacity to support new series that would result from the introduction of options on the Index and has also been informed that OPRA has the capacity to support such new series.[7]

Surveillance. The surveillance procedures currently used to monitor the trading of options on other Exchange-listed indexes will be used to monitor the trading of options on the CBOE PC Index. The Exchange has access to trading activity in the underlying securities, all of which trade on either the NYSE or Nasdaq, via the Intermarket Surveillance Group ("ISG") Agreement.

II. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[8] Specifically, the Commission finds that the trading of CBOE PC Index options, including full-value and reduced-value long-term Index options, will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with an additional means to hedge exposure to market risk associated with stocks in the personal computer industry.[9]

The trading of options on the Index and on a reduced-value Index, however, raises several issues relating to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the CBOE has addressed these issues adequately.

A. *Index Design and Structure.* The Commission believes it is appropriate for the Exchange to designate the Index as a narrow-based index for purposes of index options trading. The Index is comprised of 8 stocks intended to track the personal computer manufacturing sector of the stock market. The Commission also finds that the reduced-value Index is a narrow-based index because it is composed of the same component securities as the Index, and merely dividing the Index value by ten will not alter its basic character. Accordingly, the Commission believes that it is appropriate for the CBOE to apply its rules governing narrow-based index options to trading in the Index options and long-term full-value and reduced-value Index options.

The Commission also believes that the large capitalizations, liquid markets, and relative weightings of the Index's component stocks significantly minimize the potential for manipulation of the Index. First, the stocks that comprise the Index are actively traded, with a mean and median average monthly trading volume for the period between August 1995 and February 1996 of 2.09 million and 2.45 million shares, respectively. Second, the market capitalizations of the stocks in the Index are very large, ranging from a high of $65.26 billion to a low of $363 million as of February 2, 1996, with the mean and median being $16.9 billion and $3.3 billion, respectively. Third, because the index is equal dollar-weighted, as described above, no one particular stock or group of stocks dominates the Index. Specifically, as of February 6th, each stock accounted for 12.5% of the Index's total value and the percentage weighting of the five highest weighted stocks in the Index accounted for 62.5% of the Index's value.

Fourth, the proposed maintenance criteria will serve to ensure that: (1) the Index remains composed of liquid highly capitalized securities; and (2) the Index is not dominated by one or several securities that do not satisfy the Exchange's options listing criteria. Specifically in considering changes to the composition of the Index, CBOE will submit a rule change prusuant to Section 19(b) of the Act prior to the opening of any new series of Index options if at any time any of the components are not options eligible.[10] Finally, the Commission believes that the existing mechanisms to monitor trading activity in the component stocks of the Index, or options on those stocks, will help deter as well as detect any illegal activity.

B. *Customer Protection.* The Commission beleives that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Index options (including full-value and reduced-value long-term Index options), can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) the special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options and Index long-term full-value and reduced-value options will be subject to the same regulatory regime as the other standardized index options currently traded on CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Index options and full-value or reduced-value Index long-term options.

C. *Surveillance.* The Commission believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.[11] In this regard, the Commission notes that the CBOE, NYSE, and NASD are all members of the ISG. The Commission believes that this arrangement ensures the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the Index options and full-value and reduced-value long-term Index options less readily susceptible to manipulations.[12]

D. Market Impact. The Commission believes that the listing and trading of Index options, including full-value and reduced-value Index LEAPS on the CBOE, will not adversely affect the underlying securities markets. First, because of the equal-weighting method that will be used, no one security or group of securities represented in the Index will dominate the weight of the Index immediately following a quarterly rebalancing. Second, the Index maintenance criteria ensure that the Index will be comprised solely of securities that satisfy the Exchange's listing standards for standardized options trading, and that one or a few stocks do not dominate the Index. Third, the currently applicable 9,000 contract position and exercise limits will serve to minimize potential manipulation and market impact concerns. Fourth, the risk to investors of contra-party non-performance will be minimized because the Index options and Index long-term options will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded in the United States.

Lastly, the Commission believes that settling expiring Index options (including full-value and reduced-value long-term Index options) based on the opening prices of component securities is reasonable and consistent with the Act. As has been noted previously, valuing index options for exercise settlement on expiration based on opening rather than closing prices of Index component securities may help to reduce adverse effects on markets for such securities.[13]

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–CBOE–96–11) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–12594 Filed 5–17–96; 8:45 am]

BILLING CODE 8010–01–M

---

[5] Options eligibility requirements include, among other criteria, public float, minimum holder, trading volume, and share price requirements. *See* CBOE Rules 5.3 and 5.4.

[6] CBOE recently increased its position limit tiers applicable to narrow-based index options from 5,000, 7,500, and 10,500 contracts on the same side of the market to 6,000, 9,000, and 12,000 contracts, respectively.

[7] *See* Letter from Joe Corrigan, OPRA, to Eileen Smith, CBOE, dated February 21, 1996.

[8] 15 U.S.C. § 78f(b)(5) (1988).

[9] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options on the Index will provide investors with a hedging vehicle that should reflect the overall movement of the stocks representing companies in the networking sector in the U.S. stock markets.

[10] *See supra* note 5.

[11] *See* Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849.

[12] *See, e.g.*, Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (order approving the listing of index options and index LEAPS on the CBOE Biotech Index).

[13] *See* Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

[14] 15 U.S.C. § 78s(b)(2) (1988).

[15] 17 CFR § 200.30–3(a)(12).

[1] 15 U.S.C. 78(b)(1) (1988).

[Release No. 34–37208; File No. SR–DTC–95–27]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Implementing the Initial Public Offering Tracking System

May 13, 1996.

On January 2, 1996, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–DTC–95–27) under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] seeking to implement the Initial Public Offering ("IPO") Tracking System. On January 31, 1996, DTC amended the proposed rule change.[2] Notice of the proposal was published in the **Federal Register** on March 6, 1996.[3] On march 7, 1996, DTC filed a second amendment to the proposed rule change.[4] The Commission received one comment letter in response to the filing.[5] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

DTC is implementing its IPO Tracking System to allow lead managers (also referred to as managing underwriters) and syndicate members[6] of equity underwritings to monitor "flipping"[7] of new issues. Currently, many IPOs are distributed entirely in physical, certificated form outside the depositories so that tracking may be accomplished by using certificate numbers to monitor the movements of the securities. DTC's IPO Tracking System provides a means for lead managers to track IPOs in a book-entry environment and thus eliminates the need to distribute newly underwritten equity securities through the use of physical certificates.

Currently, securities to be listed on an exchange or quoted through the Nasdaq Stock Market ("Nasdaq") must be made depository eligible.[8] Furthermore, the

---

[2] Memo from Richard B. Nesson, Executive Vice President and General Counsel, DTC, to Christine Sibille, Commission (January 31, 1996).

[3] Securities Exchange Act Release No. 36897 (February 27, 1996), 61 FR 8992.

[4] Letter from Richard B. Nesson, Executive Vice President and General Counsel, DTC, to Christine Sibille, Senior Counsel, Division of Market Regulation, Commission (March 4, 1996). The amendment provides that DTC will provide thirty days notice prior to implementing the IPO Tracking System. Because the amendment did not change the substance of the filing, the Commission did not republish the proposed rule change for comment.

[5] Letter from Carl H. Hewitt, Managing Director and General Counsel, Spear, Leeds & Kellogg, to Commission (May 3, 1996).

[6] Syndicate members are a group of broker-dealers that agree to purchase a new issue of securities from an issuer under an underwriting agreement. The selling group is a group of broker-dealers that market the new issue to the public. Selling group broker-dealers may purchase from a syndicate member or may be a syndicate member.

[7] Flipping occurs when a syndicate's lead manager is supporting the IPO with a stabilization bid (*i.e.*, the lead manager is purchasing shares in the secondary market in order to keep the price of the issue from dropping below its initial offering price), and securities of the IPO that had been distributed to investors are sold by those investors in the secondary market and are purchased by a syndicate member. The lead manager may wish to identify flipped transactions so that underwriting concessions (*i.e.*, the discount from the offering price received by syndicate members) can be recovered from the appropriate syndicate members.

[8] Under the rules of most national securities exchanges and the National Association of Securities Dealers ("NASD"), in order to be listed for trading on a national securities exchange or to

Continued

NASD and most exchanges have rules which require transactions in depository eligible securities between financial intermediaries and between a financial intermediary and a customer with delivery versus payment privileges to be settled by book entry.[9] Due to the need to distribute new issues in physical form (*i.e.*, without using book entry movements) for tracking purposes, these rules provide that prior to the availability of a flipping tracking system a managing underwriter can delay the date a security is deemed depository eligible for up to three months after trading has commended in the security. Once a flipping tracking system becomes available, managing underwriters will no longer have the option to delay an issue's depository eligible date and will be unable to distribute Nasdaq quoted or exchange listed new issues in physical certificate form outside the depositories. DTC will provide notice of the IPO Tracking system's availability date at least thirty calendar days prior to its availability.[10]

Under DTC's proposed rule change, the lead manager will be required to notify DTC of its decision to use the IPO Tracking System to track an issue by 4:00 p.m. two days prior to the date of the initial distribution of securities ("closing date"). On the closing date, DTC's underwriting department will place the IPO shares in the IPO control account of the lead manager.[11] Allocation of these shares by the lead manager depends upon the nature of the ultimate buyer (*i.e.*, retail or institutional).

Retail Trade

For a retail distribution, the lead manager moves the securities from its IPO control account directly to the IPO control account of the selling group broker-dealer for the retail customer.[12] While broker-dealers are not required to provide customer level detail, selling group broker-dealers may populate the IPO database with information for retail accounts (*e.g.*, internal customer identification numbers) either directly into the IPO Tracking System by using the "Add Customer-Level Detail" function or into the IPO Tracking System through submissions of daily formatted trade files. Broker-dealers also may change such information using the IPO Customer Level Adjustment function.

Upon the subsequent sale of a position that was established in the initial distribution, the selling group broker-dealer releases the shares from its IPO control account to its free account by using the IPO release capability through DTC's participant terminal system ("PTS"), computer-to-computer facilities ("CCF"), or main frame dual host ("MDH"). The release instructions must include number of shares, trade date, and price. If the broker-dealer has previously assigned a customer internal account number to the IPO shares, the release instructions must include such number which must match a previously established IPO database entry or the transaction will be rejected. Upon DTC's acceptance of the release instructions, the shares are moved from the broker-dealer's IPO control account to its free account. It is this movement that marks the activity as a flip. All deliveries and Continuous Net Settlement ("CNS") short positions are satisfied from the participant's free account.

Institutional Trade

For an institutional customer, the lead manager moves the shares from its IPO control account directly into the selling group broker-dealer's IPO account at DTC by using an initial distribution deliver order ("DO"). The selling group broker-dealer then distributes the institutional portion of the initial distribution to the institution's custodian, which is either an agent bank or prime broker,[13] through DTC's Institutional Delivery ("ID") system or by submitting a DO with an ID agent bank identifier.[14] The DO or ID confirm will contain the Agent Internal Account ("AIA") number and the Broker Internal Account ("BIA") number,[15] which will be stored in the IPO database.

Agents banks do not have IPO control accounts; therefore, all activity into and out of the agent banks' free accounts is monitored to keep track of customer purchases and sales. When an ID confirm is generated for a sale in a tracked issue, DTC matches the AIA number on the confirm against the AIA number in the IPO database. A warning message is produced on the confirmation and on the affirmed confirmation when an AIA number does not match any AIA number contained in the IPO database. Similarly, settlement authorization or DO processing is prohibited if a match to an AIA number in the IPO database is not found.[16] In order to settle the transaction, the agent bank must either change the AIA number in the IPO database using the IPO Customer-Level Adjustment function or submit a DO with an AIA number that matches the IPO database.

Unlike agent banks, prime brokers will have IPO control accounts at DTC. Shares from an initial distribution are moved into the prime broker's IPO control account, and the IPO database is updated with AIA and BIA numbers from the ID trade confirmation. The IPO Tracking System automatically releases IPO positions to the prime broker's free account for affirmed ID trades of secondary market transactions when the AIA number on the confirmation matches an AIA number contained in the IPO database. It is the release of the IPO position that results in a report of a flip.

When an institutional customer has positions in the same security purchased both in an IPO and in the secondary market, the system uses the secondary market position to complete a delivery before using shares received during the initial distribution. Also, when a customer has received shares from multiple broker-dealers and subsequently sells such shares, the system assigns the "flipped" shares on a prorated basis among the selling group members servicing that customer.

Correspondent Relationships

When an introducing broker (*ie.*, not a DTC participant) is acting as a selling group member, its shares are held by its designated clearing agent, which may be a broker-dealer or agent bank. When

be eligible for inclusion in the Nasdaq and issuer must represent that the CUSIP number identifying the security to be listed of such exchange or to be eligible for inclusion in Nasdaq is included in the file of eligible issues maintained by a securities depository registered as a clearing agency under Section 17A of the Act. *E.g.*, New York Stock Exchange ("NYSE") Rule 227 and NASD Uniform Practice Code Section 11. Securities Exchange Act Release No. 35798 (June 1, 1995), 60 FR 30909.

[9] Securities Exchange Act Release No. 32455 (June 11, 1993), 58 FR 33679. *E.g.*, NYSE Rule 226, NASD By-laws, Schedule D, Part II, Section 1(c)(23) and Uniform Practice Code Section 11.

[10] *Supra* note 3.

[11] IPO control accounts are restricted accounts established for DTC participant broker-dealers in which their IPO shares are kept separate from other shares held by the participants and from which limited account movements may be made without a "flip" being reported. These unreported movements include: (i) the movement of shares from the lead manager (or comanager when there are shares to be distributed to foreign brokers) to a DTC participant and (ii) the movement of shares from a DTC participant to a custodian for an institution.

[12] Share movements out of the selling group broker-dealer's IPO control account will be reported as a flip.

[13] A prime broker is a broker-dealer that acts as custodian for institutional customers and uses DTC's ID system (*i.e.*, the prime broker acts as an agent bank).

[14] Alternatively, the lead manager may deliver directly to the custodian of the selling group member's institutional client. This process is referred to as directed concessions.

[15] The AIA number is the internal number used by the custodian to identify the institutional client. The BIA number is the internal account number that the selling group broker-dealer uses to identify the institutional client.

[16] As a result, the transaction is marked as a fail.

distribution these shares, the lead manager identifies the transaction as a correspondent delivery by entering the Correspondent Account ("CA") number on the DO.[17] The IPO Tracking System captures the CA number from the delivery to the clearing agent. The CA number is stored in the IPO database with the clearing agent's participant number to fully identify a correspondent (*i.e.*, the introducing broker) as a selling group member.[18] Subsequent share movements for correspondents, either sales or account transfers, require use of the CA number and are subject to the same release rules that apply to direct DTC participants.

Physical Certificates

DTC does not accept deposits of physical certificates in tracked issues. Participants may request a physical certificate through a withdrawal-by-transfer ("WT") request, which will be processed beginning on the first settlement day of the issue.[19] For shares held by agent banks, the bank must input into the automated WT system the AIA, CA, and ID agent bank numbers. If the numbers entered do not match those in the IPO database, the WT request will be rejected. If a WT request exceeds the position in the agent bank's account, the request will be rejected, and an error message will be generated. The IPO Tracking System will process WT requests first using shares which were not part of the initial distribution and then using shares which were part of the initial distribution provided there is sufficient position.

For shares held by broker-dealers, the WT request must include the customer identification number. DTC will process WT requests using shares in the IPO control account with a matching customer number. When there is a customer number match in the IPO database, DTC generates a release from the IPO account and reports it on the lead manager's and selling group member's reports as a WT even if the WT is not processed. The released IPO shares are combined with free account shares, and the WT is processed from the free account. If the broker-dealer's IPO control account does not contain shares with a matching customer number, the WT is processed using shares from the free account provided there is sufficient position.

Stock Loan

Participants may process stock loan DOs using stock loan reason codes. Participants do not have to enter individual account numbers (*e.g.*, AIA numbers) to match the IPO database. For brokers, IPO tracked shares do not have to be released by participants to execute stock loans because the IPO system automatically releases these shares. Stock loans will be reported to the lead manager as separate items from flipped shares.

Customer Account Transfer

When a customer account includes shares in a tracked issue, the transfer of such shares cannot occur through the National Securities Clearing Corporation's ("NSCC") normal Automated Customer Account Transfer ("ACAT") system processing. While the initial processing at NSCC will remain the same, at the end of the settlement process NSCC will issue a trade-for-trade ticket for shares in a tracked issue, and the shares will not be delivered through NSCC's Continuous Net Settlement System.[20] Instead, customer shares in a tracked issue must be processed by DTC's new IPO customer account transfer function. The function allows the deliverer (*i.e.*, the broker-dealer or agent bank) to enter the customer internal account number associated with the shares to be delivered, its participant number, and customer internal account number of the broker-dealer to which the shares are to be delivered. The shares are then moved from the IPO control account of the delivering broker-dealer to the IPO control account of the receiving broker-dealer.

Reclamation

Initial distribution deliveries (*i.e.*, deliveries from the lead manager to a selling group member) that are reclaimed and matched will return to the account from which they originated (*i.e.*, the lead manager's IPO control account). Reclamations done for shares which were released from a selling group broker-dealer's IPO control account or a prime broker's IPO control account to a free account to satisfy an obligation on the secondary market will be returned to the delivering participant's free account, and such shares will still be registered as flipped. When a reclamation occurs for an agent bank, the reclaimed DO will be matched to the original delivery, and the information in the IPO database will be reversed (*i.e.*, no flip will be registered).

Oversubscription

Generally, when an issue is oversubscribed the lead manager will purchase securities in the secondary market. These shares will reside in the lead manager's free account. The lead manager will have the option of delivering oversubscribed shares from its free account to selling group members' IPO control accounts or to its IPO control account for its own customers' shares.

Memo Segregation

Participants may enter memo segregation instructions with share quantities that represent the combined total of their free and IPO shares.[21] As DTC processes DOs, the share quantity of the memo segregation instruction will be subtracted from the combined share total of the free account and the IPO account and then compared against the quantity on the DO to determine if the delivery can take place. The shares to be delivered will be removed from the participant's free account.

Termination of Tracking

During the tracking period, the lead manager and selling group members are able to obtain information on the flipping of shares through hard copy or machine readable daily reports or through a new PTS inquiry function.[22] DTC discontinues tracking an IPO on the earlier of the business day following DTC's receipt of a termination request from the managing underwriting or 120 calendar days from the date trading commenced. Once IPO tracking is discontinued, any shares remaining in a broker-dealer's IPO control account are moved to its free account.[23]

[17] The CA number is the clearing firm's internal number for the introducing broker.

[18] When the ultimate purchaser is a retail customer, clearing agents may enter customer-level details into the IPO database on behalf of correspondents. When the ultimate purchaser is an institution, clearing agents are able to use the ID system or a properly identified DO to deliver shares as part of the initial distribution to a custodian.

[19] A WT is used when participants need to withdraw physical stock or registered bond certificates from DTC registered in a name other than DTC's nominee name, Cede & Co. DTC permits participants to withdraw securities in round lots, odd lots, or mixed lots registered in a name designated by the participant.

[20] For a complete description of customer account transfers of IPOs in the ACAT system, refer to Securities Exchange Act Release No. 36931 (March 6, 1996), 61 FR 10050 [File No. SR–NSCC–96–05] (notice of filing of proposed rule change modifying the ACAT service to facilitate the transfer of shares being tracked in the IPO Tracking System).

[21] The memo segregation function creates a memo position within the participant's account enabling participants to protect customer securities.

[22] The lead manager's report combined with market conditions will assist the lead manager in determining when to instruct DTC to discontinue IPO tracking.

[23] DTC will automatically release the shares from the IPO control account to the participant's memo segregation account at the close of the tracking period when requested in writing as a standing instruction by individual participants that use the memo segregation service. Without this standing

Continued

At the close of the tracking period the lead manager receives a final report detailing the selling group members (including the clearing agents) whose customers have flipped. The report includes sale price, trade date, and number of shares as well as the clearing agent's participant number and the CA number. The report also shows: (1) Outstanding CNS short positions for selling group members long in the IPO control account, (2) a total aggregate of all open CNS commitments, (3) WT transfers, and (4) outstanding stock loans by agent banks or broker-dealers. The lead manager's report does not include customer level detail information (*i.e.*, BIA numbers, AIA numbers, or customers internal account numbers).

Selling group members and lead managers, as part of the syndicate, receive a report of their institutional or retail customers' sale transactions.[24] Such report includes the original BIA number, the identity of any prime brokers or agent banks, and the AIA numbers or the customer internal account numbers. This provides sufficient information for selling group members to identify the clients that have potentially flipped shares during the tracking period.

II. Comment Letter

The Commission received one comment letter in response to the proposed rule change.[25] The commenter believes that the proposal is too broad because the IPO Tracking System will allow tracking of all new issues regardless of whether the issues are subject to a stabilization bid. The commenter is concerned that DTC's IPO Tracking System will encourage syndicates to monitor secondary market sales of all IPOs. The commenter believes such use of the IPO Tracking System will place a burden on the marketplace by restricting trading in the secondary market and will infringe upon the anonymous nature of trading.

III. Discussion

The Commission believes that DTC's proposal is consistent with Section 17A of the Act [26] and specifically with Sections 17A(b)(3) (A) and (F) thereunder.[27] Sections 17A(b)(3) (A) and (F) require that a clearing agency be organized and its rules be designed to facilitate and to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of DTC or for which it is responsible. By facilitating a lead manger's ability to track flipping of IPOs in a book-entry environment, DTC's IPO Tracking System should further efficiencies and safety in the clearance and settlement of securities transactions by reducing the number of transactions that are settled outside the national clearance and settlement system.

Book-entry settlement of securities transactions has been a goal since Congress enacted the Securities Acts Amendments of 1975.[28] In Section 17A(e),[29] Congress directed the Commission to use its authority to end the physical movement of securities certificates in connection with the settlement among brokers and dealers of transactions in securities. Since 1975, substantial progress has been made in reducing the flow of physical certificates for settlement of interdealer and institutional securities transactions.[30] Approval of the present rule change should further aid in the efficiencies of the clearance and settlement system because the IPO Tracking System should reduce costs, risks, and delays associated with the physical delivery of certificates.

The one commenter has suggested that the IPO Tracking System is overly broad. It is true that the IPO Tracking System may facilitate the tracking of more issues than the method currently used. However, the increase in the amount of information available to the lead manager does not, in itself, create the problems cited by the commenter. Any use of the IPO Tracking System would need to be consistent with federal securities laws in effect at that time, including, if adopted, recent proposals designed to address concerns about post-offering activities by underwriters.[31] Therefore, the Commission does not believe that the gathering of information by the IPO Tracking System will be detrimental to public policy.

The commenter also stated that the IPO Tracking System prevents anonymity in the securities market. The Commission believes that the IPO Tracking System generally does not provide any more information than is obtained through the current method of tracking with physical certificates. In a retail trade, the selling group broker-dealer is not required to populate the IPO datebase with retail customer information. In instances where customer information is provided either in a retail or institutional trade, only the selling group broker-dealer, and not the lead manager, will receive reports identifying the customer. This process mirrors the flow of information in physicial tracking where a lead manager can identify the selling group broker-dealer by the certificate number, and the selling group broker-dealer can identify its customer by the certificate number. Further, the Commission disagrees that the proposal will restrict secondary market sales. The system may in practice actually make it easier for retail customers to resell through any broker-dealer because an investor can immediately request issuance of physical certificates in her name or request a transfer to another broker-dealer through the ACAT service, which generally provides a more expedient method to transfer an account because the transfer is conducted through book entry movements. Finally, the Commission believes the efficiencies of the IPO Tracking System outweigh the potential for misuse of the system and finds the system to be an effective alternative to the present method of tracking IPO shares in certificate form.

Furthermore, the IPO Tracking System will not impede an investor's ability to obtain physical certificates through a WT transaction. The modifications to the automated WT system allow participants to withdraw physical certificates of tracked issues without causing the withdrawals to show as flipped transactions.[32] Similarly, investors will be able to loan or to pledge stock or to transfer their accounts between broker-dealers during the tracking period.

instruction, DTC will release shares residing in the IPO control account directly into the participant's free account at the end of the tracking period.

[24] Syndicate members will not see information regarding customers of their selling group broker-dealers.

[25] *Supra* note 5.

[26] 15 U.S.C. 78q–1 (1988).

[27] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[28] Pub. L. No. 94–29, 89 Stat. 97 (1975) (codified at 15 U.S.C. 77–80h [1988]).

[29] 15 U.S.C. 78q–1(e) (1988).

[30] *E.g.*, Securities Exchange Act Release Nos. 22021 (September 23, 1983), 48 FR 45167 (order granting full registration to nine clearing agencies); 19698 (April 15, 1983), 48 FR 17604 (order implementing DTC;'s Fast Automated Securities Transfer program); 30283 (January 23, 1992), 57 FR 3658 (order implementing DTC's Deposit/Withdrawal at Custodian program); 30565 (March 20, 1992), 57 FR 10683 (order eliminating DTC's Certificate on Demand service for most corporate issues); 31645 (December 23, 1992), 57 FR 62407 (order approving rule change requiring that most interdealer transactions in municipal securities be settled by book-entry through a depository); 32455 (June 11, 1993), 58 FR 33679 (order approving uniform book-entry settlement rules); and 35798 (June 1, 1995), 60 FR 30909 (order approving depository eligibility requirements).

[31] Securities Exchange Act Release No. 37094 (April 11, 1996), 61 FR 17108.

[32] The system will report the withdrawal of a certificate to the lead manager which may request further clarification from the selling group broker-dealer as to the nature of the transaction.

However, the Commission notes that while a delivery reclaimed by an agent bank on behalf of an institution will be matched to the original delivery and the reclamation will not be recorded as a flip, a reclamation done for shares delivered from a selling group broker-dealer's IPO control account will be registered as flipped. This distinction could possibly result in discrimination between retail customers, who typically hold through broker-dealers, and institutional customers. The Commission understands that this distinction is a result of systems limitations.[33] The Commission urges DTC to monitor this situation once the system is operational to determine whether the limitation has a discriminatory effect. If so, DTC should consider systems modifications to address this concern.

IV. Conclusion

The Commission finds that DTC's proposal is consistent with the requirements of the Act and particularly with Section 17A and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–95–27) be and hereby is approved. As stated, DTC has agreed to notify self-regulatory organizations and managing underwriters at least thirty calendar days prior to the general availability of the IPO Tracking System.[34]

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[35]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–12540 Filed 5–17–96; 8:45 am]

BILLING CODE 8010–01–M

[33] Because all movements out of an agent bank's account are monitored, DTC is able to determine exactly which shares are reclaimed. In contrast, shares are removed from a broker-dealer's free account without regard to their origin.

[34] *Supra* note 3.

[35] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–37211; International Series Release No. 978; File No. SR–NYSE–96–05]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Listing Standards

May 14, 1996.

On March 18, 1996, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change that would permit companies domiciled in Canada, Mexico, and the United States ("North America") [3] to include holders and trading volume in North America toward meeting the stockholder and trading volume requirements for listing on the Exchange pursuant to the domestic listing criteria.

The proposed rule change was published for comment in Securities Exchange Act Release No. 37055 (Apr. 1, 1996), 61 FR 15546 (Apr. 8, 1996). No comments were received on the proposal.

Under the current NYSE rules, companies applying to list on the Exchange must meet the applicable listing criteria. For equity listings, there are two different standards: domestic criteria, which are available to all companies, ("domestic standards") and criteria available solely to non-U.S. companies ("worldwide standards"). Non-U.S. companies may elect to qualify for listing under the Exchange's domestic numerical standards or worldwide numerical standards. Non-U.S. companies, however, must meet all of the criteria within the standard under which they seek to qualify for listing.

Paragraph 102.01 of the NYSE's *Listed Company Manual* ("Manual") sets forth the standards for domestic companies that want to list their equity securities on the Exchange. These standards require applicants to satisfy certain minimum numerical criteria.[4] Under these requirements for listing, the company must have, among things, (a) 2,000 round-lot holders; (b) 2,200 total stockholders, together with an average monthly trading volume of 100,000 shares for the most recent six months; or (c) 500 total stockholders, together with an average monthly trading volume of 1,000,000 shares for the most recent 12 months.[5] The domestic criteria require that these standards be met only through holders and trading volume occurring in the U.S.

The Exchange proposes to amend these initial listing standards to provide that for listing applications from North American companies the Exchange will include all North American holders and North American trading volume in applying the minimum stockholder and trading volume requirements in Paragraph 102.01 of the Manual. The Exchange believes that with continuing integration of the North American market, this market should be viewed as a whole in reviewing a company's eligibility for listing. Moreover, the Exchange believes that this will foster internationalization of the securities markets by enhancing the access of U.S. investors to the trading of Canadian and Mexican securities.

Pursuant to the proposed rule change, the Exchange would look at the number of beneficial holders resident in North America in applying the initial listing criteria of Paragraph 102.01 to North American companies. In computing trading volume, the Exchange will look to the reported volume (i) on U.S. stock exchanges, (ii) in the U.S. over-the-counter market, and (iii) on Canadian or Mexican stock exchanges.[6] The total volume reported from these sources must satisfy the NYSE's initial listing standards. For American Depositary Receipts ("ADRs") to be listed on the NYSE, volume in the ordinary shares would be adjusted to be on an ADR-equivalent basis.[7] Finally, the proposed rule change would make conforming changes to Paragraph 103.00 of the Manual, which establishes alternate initial listing criteria for non-U.S. companies.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For purposes of this rule, a company is "domiciled" in the country under the laws of which it is organized.

[4] In deciding whether to approve the listing of an equity security, the NYSE also takes qualitative factors into consideration. These factors include whether the company is a going concern or a successor thereto, the degree of national interest in the company, the character of the market for its products, its relative stability and position in its industry.

[5] In determining the number of holders for the above distribution standards, the NYSE considers both beneficial and record owners.

[6] According to the NYSE, the NYSE would consider an "exchange" to be a trading market that is regulated as a stock exchange by home-country regulators. The NYSE believes that the Bolsa Mexicana de valores is the only market in Mexico that would be considered an "exchange" for this purpose. In Canada, the NYSE believes that there currently are five stock exchanges that satisfy this test: The Montreal Exchange and the Toronto, Vancouver, Winnipeg, and Alberta Stock Exchanges. *See* letter from Michael J. Simons, Milbank, Tweed, Hadley & McCloy, to Glen Barrentine, Senior Counsel, Division of Market Regulation, SEC, dated April 1, 1996.

[7] For example, assume that a Mexican company has ADRs trading in the United States and ordinary shares trading in Mexico, with each ADR representing 10 ordinary shares. If the company were to apply to list its U.S.-traded ADRs on the NYSE, the Exchange would divide the Mexican share volume by 10 in determining whether the combined ADR/share volume meets the requirements of the listing criteria. For Companies that have multiple series of shares or ADR's the Exchange will include the volume only in the specific ordinary shares and overlying ADRs that would be listed on the exchange.

requirements of Section 6(b).[8] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the pubic interest; and are not designed to permit unfair discrimination between issuers.

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is an activity of critical of critical importance to financial markets and the investing public. Listing standards serve as a means for an exchange to screen issuers and to provide listed status only to *bona fide* companies with sufficient public float, investor base, and trading interest to ensure that the market for a company's stock has the depth and liquidity necessary to maintain fair and orderly markets. Adequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market.

For the reasons set forth below, the Commission believes that the proposed rule change will provide the NYSE with greater flexibility in determining which equity securities warrant inclusion in its market, without compromising the effectiveness of the Exchange's initial listing standards.

The Commission believes that permitting North American companies to satisfy the stockholder and trading volume requirements of the Exchange's domestic initial listing standards by including the holders and trading volume in North America is not inconsistent with the purposes of the Act. With efforts such as the North American Free Trade Agreement ("NAFTA"), North America increasingly is becoming an integrated market place, and companies and investors are able to obtain easier access to markets across borders. There is active interest by U.S. investors in these markets, and Mexican and Canadian issues are actively traded on the Exchange.

The Commission believes that this amendment to the initial listing standards may assist companies domiciled in Canada and Mexico and U.S. companies with a significant presence in those countries to gain admittance to the NYSE and may promote greater investment opportunities across borders in North America. Therefore, the Commission believes that it is not unreasonable to consider the holders and trading volume in all three countries for purposes of reviewing a company's application to list under the domestic initial listing standards on the NYSE.

Moreover, the Commission believes that the NYSE is appropriately looking only to the reported volume on the Canadian and Mexican stock exchanges in addition to the reported volume on the U.S. stock exchanges and in the U.S. over-the-counter market to calculate trading volume.[9] The Commission believes that the reported volume from these non-U.S. exchanges is sufficiently reliable for purposes of determining a company's listing eligibility. Finally, for ADRs, the Exchange will adjust the volume in the ordinary shares to an ADR-equivalent basis for calculating trading volume for purposes of determining eligibility.[10] The Commission believes that this adjustment will more accurately reflect the price of the instrument trading on the NYSE because the price of each share trading in Canada or Mexico may be a fraction of the ADR.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NYSE–96–05) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–12596 Filed 5–17–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37210; File No. SR–Philadep–96–04]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying the Fee Schedule for Position Listings To Incorporate a Quantity Discount for Multiple Municipal Bond Listing Requests

May 14, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 8, 1996, the Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by Philadep. On April 15, 1996, Philadep supplemented the filing.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Philadep proposes to modify its fee schedule for position listing requests to incorporate a quantity discount for multiple municipal bond listing requests.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Philadep included statements concerning the purposes of and the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, as set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Currently, Philadep charges $45 for each position listing request per date, per issuer, and per CUSIP number. Philadep charges a flat fee of $360 for twelve monthly dates per CUSIP number (*i.e.*, twelve end-of-month listings of a particular CUSIP) or $1,300 for fifty-two weekly dates per CUSIP number (*i.e.*, fifty-two end-of-week listings of a particular CUSIP). Philadep proposes to modify its position listing fee schedule to provide a quantity discount for multiple municipal bond listing requests. The discount will be available only if the requests pertain to the same issuer for the same position listing date and if Philadep has at least ten business days from the date of the initial request by the municipality or its agent to provide the requested information. Accordingly, Philadep will charge $20 per CUSIP for the first one hundred municipal bond listing requests, $15 per CUSIP for the second one hundred listings, and $10 per CUSIP for the third one hundred listings. For listing requests in excess of 300 CUSIP numbers, Philadep will charge $7.50 per CUSIP.

Philadep notes that requests for municipal bond positions are unique in that municipal issuers have numerous CUSIP numbers relating to securities which they have issued which gives rise to substantial requests for position listings in such securities. The proposed discount is designed to recognize the unique nature of municipalities' needs to request multiple CUSIP numbers for a single date and to contain the related costs to the municipalities.

Philadep believes its proposed rule change is consistent with the requirements of Section 17A(b)(3)(D)[5] of the Act because it provides for the equitable allocation of reasonable dues, fees, and other charges among Philadep participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Philadep does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[6] of the Act and pursuant to Rule 19b–4(e)(2)[7] promulgated thereunder because the proposal establishes a due, fee, or other charge imposed by Philadep. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of Philadep. All submissions should refer to File Number SR–Philadep–96–04 and should be submitted by June 10, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–12539 Filed 5–17–96; 8:45 am]

BILLING CODE 8010–01–M

---

[8] 15 U.S.C. 78f(b).

[9] If the NYSE were to decide to include trading data from other sources, the NYSE would need to file a proposed rule change with the Commission pursuant to Section 19(b) of the Act.

[10] *See supra* note 7.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from J. Keith Kessel, Compliance Officer, Philadep, to Peter R. Geraghty, Senior Counsel, Division of Market Regulation, Commission (April 10, 1996).

[3] A position listing indicates the participant holders of a certain security and the number of shares Philadep holds on their behalf.

[4] The Commission has modified the text of the summaries prepared by Philadep.

[5] 15 U.S.C. 78q–1(b)(3)(D) (1988).

[6] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

[7] 17 CFR 240.19b–4(e)(2) (1995).

[8] 17 CFR 200.30–3 (a)(12) (1995).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted by no later than July 19, 1996.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S.W., Suite 5000, Washington, D.C. 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: "Loan Servicing Field Visit Report".

Type of Request: Extension of Currently Approved Collections.

Description of Respondents: Small Businesses.

Annual Responses: 45,000.

Annual Burden: 45,000.

Comments: Send all comments regarding this information collection to Annie McCluney, Program Analyst, Office of Borrower and Lender Servicing, Small business Administration, 409 3rd Street, S.W. Suite 8300 Washington, D.C. 20416. Phone No.: 202–205–7545.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Supplementary Information

Title: "Application For Certificate of Competency, Small Purchase Actions".

Type of Request: Extension of Currently Approved Collection.

Description of Respondents: Small Business Owners.

Annual Responses: 1,500.

Annual Burden: 3,000.

Comments: Send all comments regarding this information collection to Curtis B. Rich, Management Analyst, Office of Administrative Service, small Business Administration, 409 3rd Street, S.W. Suite 5000 Washington, D.C. 20416. Phone No.: 202–205–7030.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Supplementary Information

Title: "Stockholder Confirmation".

Type of Request: Extension of Currently Approved Collections.

Description of Respondents: New Licensees.

Annual Responses: 300.

Annual Burden: 50.

Comments: Send all comments regarding this information collection to Charles Mezger, Director, Office of SBIC Examinations, Small Business Administration, 409 3rd Street, S.W. Suite 8300 Washington, D.C. 20416. Phone No.: 202–205–7172.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Supplementary Information

Title: "Secondary Market Disclosure And Assignment Form".

Type of Request: Extension of Currently Approved Collections.

Description of Respondents: SBA Participating Lenders.
Annual Responses: 5,000.
Annual Burden: 10,000.
Comments: Send all comments regarding this information collection to James Hammersley, Director, Secondary Market Activities, Office of Financial Assistance, Small Business Administration, 409 3rd Street, S.W., Suite 8300 Washington D.C. 20416. Phone No.: 202–205–7505.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Supplementary Information

Title: "Management Training Report".
Type of Request: Extension of Currently Approved Collections.
Description of Respondents: Attendees At SBA Sponsored Training.
Annual Responses: 16,000.
Annual Burden: 2,656.
Comments: Send all comments regarding this information collection to John Berbis, Director, Business Education & Resource Management, Office of Business Initiatives, Small Business Administration, 409 3rd Street, S.W. Suite 6100 Washington, D.C. 20416. Phone No.: 202–205–7424.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline White,
Chief, Administrative Information Branch.
[FR Doc. 96–12549 Filed 5–17–96; 8:45 am]
BILLING CODE 8025–01–M

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted by July 19, 1996.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, SW., Suite 5000, Washington, DC. 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: "License Application".
Type of Request: Extension of Currently Approved Collections.
Description of Respondents: Applicants for Small Business Investment. Company Licenses.
Annual Responses: 41.
Annual Burden: 3,280.

Title: "License Application, Statement of Personal History and Qualification, Statement of Management.
Type of Request: Extension of Currently Approved Collections.
Description of Respondents: Applicants for Small Business Investment. Company Licenses.
Annual Responses: 41.
Annual Burden: 3,280.

Comments: Send all comments regarding these information collections to Thomas Bresnan, Chief Administration Officer, Office of Borrower and Lender Servicing, Small Business Administration, 409 3rd Street, S.W., Suite 8300 Washington, D.C. 20416. Phone No.: 202–205–6514.

Send comments regarding whether these information collections are necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "Disaster Loan Authorization and Agreement".
Type of Request: Extension of Currently Approved Collections.
Description of Respondents: Recipients of SBA Disaster Loans.
Annual Responses: 40,701.
Annual Burden: 99,457.

Title: "Disaster Loan Authorization and Agreement".
Type of Request: Extension of Currently Approved Collections.
Description of Respondents: Recipients of SBA Disaster Loans.
Annual Responses: 40,701.
Annual Burden: 99,457.

Comments: Send all comments regarding these information collections to Bridget Dusenbury Disaster Resource Specialist, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, S.W., Suite 6050, Washington, D.C. 20416 Phone No.: 202–205–6734.

Send comments regarding whether these information collections are necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "Size Status Declaration".
Type of Request: Extension of Currently Approved Collections.
Description of Respondents: Small Businesses Requesting Size Determinations.
Annual Responses: 4,200.
Annual Burden: 700.

Comments: Send all comments regarding this information collection to Charles Mezger, Director, Office of SBIC Examinations, Small Business Administration, 409 3rd Street, S.W., Suite 8300 Washington, DC, 20416. Phone No.: 202–205–7172.

Send comments regarding whether this information collections is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "Statement of Personal History (For Use By Small Business Lending Companies and other Non-Bank Lenders, Including Certified Development Companies.
Type of Request: Extension of Currently Approved Collections.
Description of Respondents: Non-Bank Lending Institutions.
Annual Responses: 300.
Annual Burden: 150.

Comments: Send all comments regarding this information collection to Curtis B. Rich, Management Analyst, Office of Administrative Services, Small Business Administration, 409 3rd Street, S.W., Suite 5000 Washington, D.C. 20416. Phone No.: 202–205–7030.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "Lender Field Visit Report".
Type of Request: Extension of Currently Approved Collection.
Description of Respondents: Small Businesses.
Annual Responses: 14,720.
Annual Burden: 14,720.

Comments: Send all comments regarding this information collection to Annie McCluney, Program Analyst, Office of Borrower and Lender Servicing, Small Business Administration, 409 3rd Street, S.W., Suite 8300 Washington, D.C. 20416. Phone No.: 202–205–7545.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline White,
Chief, Administrative Information Branch.
[FR Doc. 96–12550 Filed 5–17–96; 8:45 am]
BILLING CODE 8025–01–M

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted by July 19, 1996.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S.W. Suite 5000, Washington, D.C. 20416. Phone Number: 202–205–6629. Copies of these collections can also be obtained.

SUPPLEMANTARY INFORMATION:

Title: "Liquidation Activities".
Type of Request: Extension of a Currently Approved Collections.
Description of Respondents: Auctioneer Contractors.
Annual Responses: 2,800.
Annual Burden: 28,000.
Comments: Send all comments regarding this information collection to Annie McCluney, Program Analyst, Office of Borrower and Lender Servicing, Small Business Administration, 409 3rd Street, S.W., Suite 8300 Washington, D.C. 20416. Phone No.: 202–205–7545.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "Small Business Institute Counseling Case Report".
Type of Request: Extension of a Currently Approved Collections.
Description of Respondents: Small Business Institute Counselors.
Annual Responses: 6,700.
Annual Burden: 18,090.
Comments: Send all comments regarding this information collection to Curtis B. Rich, Management Analyst, Office of Administrative Services, Small Business Administration, 409 3rd Street, S.W. Suite 5000, Washington, D.C. 20416. Phone No.: 202–205–7030.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "SBDC Program And Financial Reports".
Type of Request: Extension of Currently Approved Collections.
Description of Respondents: SBDC Directors.
Annual Responses: 348.
Annual Burden: 9,000.
Comments: Send all comments regarding this information collection to Mary Ann Holl, Business Development Specialists, Small Business Development Centers, 409 3rd Street, S.W. Suite 4600 Washington, D.C. 20416. Phone No.: 202–205–6766.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "Development Company Reporting Requirements".
Type of Request: Extension of a Currently Approved Collections.
Description of Respondents: Small Businesses Requesting Size Determinations.
Annual Responses: 1.916.
Annual Burden: 3,774.
Comments: Send all comments regarding this information collection to Allan Mandel, Chief, Policy Branch, Office of Borrower and Lender Servicing, Small Business Administration, 409 3rd Street, S.W., 8300 Washington, D.C. 20416. Phone No.: 202–205–6488.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline White,
Chief, Administrative Information Branch.
[FR Doc. 96–12551 Filed 5–17–96; 8:45 am]
BILLING CODE 8025–01–M

Declaration of Disaster Loan Area #2852; Illinois

As a result of the President's major disaster declaration on May 6, 1996, I find that Franklin and St. Clair Counties in the State of Illinois constitute a disaster area due to damages caused by severe storms and flooding beginning on April 28, 1996 and continuing. Applications for loans for physical damages may be filed until the close of business on July 5, 1996, and for loans for economic injury until the close of business on February 6, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308. or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Clinton, Hamilton, Jackson, Jefferson, Madison, Monroe, Perry, Randolph, Saline, Washington, and Williamson Counties in Illinois; and St. Louis County and the City of St. Louis, Missouri.

Interest rates are:

For Physical Damage:	
Homeowners with credit available elsewhere	.250
Homeowners without credit available elsewhere	3.625
Businesses with credit available elsewhere	8.000
Businesses and non-porfit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 285206. For economic injury the numbers are 885700 for Illinois and 885800 for Missouri.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 9, 1996.

Bernard Kulik,
Associate Administrator for Disaster Assistance.
[FR Doc. 96–12610 Filed 5–17–96; 8:45 am]
BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), United States Coast Guard (USCG).

ACTION: Notice.

SUMMARY: The United States Coast Guard (USCG), announces a new information collection request in accordance with the Paperwork Reduction Act of 1995, and invites

comments on "Customer Satisfaction Surveys" for which the USCG intends to request emergency processing approval from the Office of Management and Budget for a period of 90 days.

DATES: Interested parties are invited to submit comments on or before July 15, 1996.

ADDRESSES: Please address written comments to Barbara Davis, 2100 Second Street, SW., G–SII, Washington, D.C. 20593, Telephone number (202) 267–2326. Comments should identify OMB Control Number. Requests for a copy of the information collection should be directed to Barbara Davis, 2100 Second Street, SW., G–SII, Washington, D.C. 20593.

SUPPLEMENTARY INFORMATION: Office of Management and Budget (OMB) regulations (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies a collection that USCG is submitting to OMB for an emergency processing clearance for 90 days.

OMB No: 2115–new.

Title: Customer Satisfaction Surveys.

Affected Entities: Maritime industry and recreational boating public.

Abstract: Customer satisfaction surveys are required by Executive Order 12862, Setting Customer Service Standards, to ensure that the USCG provides the highest quality service to our customers. Steps will be taken to assure anonymity of respondents in each activity covered under this request.

Need for Information: Executive Order 12862, Setting Customer Service Standards, directs USCG to conduct surveys to determine the kind and quality of services the marine industry and the recreational boating public wants and expect.

Proposed Use of Information: This information will be used by Coast Guard to improve service delivery and determine whether additional services are needed.

Burden Statement: The current total annual respondent burden estimate is 16,005 hours. The average burden hour per response vary with each survey.

AGENCY: Department of Transportation (DOT), Federal Transit Administration (FTA).

ACTION: Notice.

SUMMARY: The Federal Transit Administration announces that Railed Fixed Guideway System; State Safety Oversight, is a revision of a currently approved information collection. FTA is soliciting comments on the collection as described below.

DATES: Interested parties are invited to submit comments on or before June 15, 1996.

ADDRESSES: Please address written comments as quickly as possible, to Edward Clarke, Office of information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Copies of FTA information collection request submitted to OMB may be obtained from Sylvia L. Barney; (202) 366–6680; TAD–11; Federal Transit Administration; 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: Customer Satisfaction Surveys.

OMB No: 2115–0558.

Abstract: The Federal Transit Act directs the Federal Transit Administration (FTA) to issue a rule requiring States to oversee the safety of rail fixed guideway systems not regulated by the Federal Railroad Administration (FRA). Section 5330 of the Act, requires each State that receives funds under USC 5307 (formerly section 9 of the Federal Transit Act, as amended) for the operation of a rail fixed guideway system to designate a State oversight agency to require and monitor the implementation of a System Safety Program Plan (SSPP) at each rail fixed guideway system that addresses both safety and security measures.

Need for Information: Collection of information for this program is necessary to ensure that State oversight agencies can perform their designated safety functions. FTA must receive both an annual report and an annual certification for each State oversight agency verifying compliance with Section 5330.

Proposed Use of Information: This information will be used by FTA in exercising its authority to withhold Federal funding to a State or an urbanized area in the State.

Burden Statement: The current total annual respondent burden estimate is 39,036 hours, a decrease of 14,758 hours from the burden reported on previous submission.

Issued in Washington, D.C. on May 15, 1996.

Phillip Leach,

Information Clearance Officer, U.S. Department of Transportation.

[FR Doc. 96–12643 Filed 5–17–96; 8:45 am]

BILLING CODE 4910–57–P

Coast Guard

Reports, Forms and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), United States Coast Guard.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the United States Coast Guard invites comments on certain information collections for which the USCG intends to request approval from the Office of Management and Budget.

DATES: Interested parties are invited to submit comments on or before July 13, 1996.

ADDRESSES: Please address written comments to Barbara Davis, 2100 Second Street, SW., G–SII; Washington, D.C. 20593, Telephone number (202) 267–2326. Comments should identify OMB Control Number. Requests for a copy of the information collection should be directed to Barbara Davis, 2100 Second Street, SW., G–SII, Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, 2100 Second Street, SW; G–SII; Washington, D.C. 20593, Telephone number (202) 267–2326.

SUPPLEMENTARY INFORMATION: Office of Management and Budget (OMB) regulations (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collections that USCG is submitting to OMB for extension or reinstatement, as appropriate. These ICRs are: Plan Approval and Records for Load Lines [2115–0043], Self-propelled Liquefied Gas Vessel [ICR No. 2115–0113], Electrical Engineering Regulations—46 Subchapter J [ICR No. 2115–0115], Electrical Equipment and Fire Protection Systems—46 CFR Subchapter Q [2115–0121], Tank Vessel Examination Letter (CG–840S–1 & 2), Certificate of Compliance/Pressure Vessel Repairs, Maintaining Cargo Gear Record, Shipping Papers, the Tank Vessel Examination Letter and the Certificate of Compliance [ICR No. 2115–0504], Requirements for Lightering of Oil and Hazardous Material Cargoes [2115–0539], (a) Report of MARPOL 73/78 Oil, Noxious Liquid Substance (NLS) and Garbage Discharge; (b) Application for Equivalents, Exemptions, and Alternatives; and©

Voluntary Reports of Pollution Sightings [ICR No. 2115–0556], and Various Forms and Posting Requirements Under 46 CFR Subchapters K and T "Small Passenger Vessel (Under 100 Gross Tons)" [2115–0578]. USCG has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed of final rules published since the information collection were last approved. USCG will request a three-year term of approval for each information collection activity and, when approved by OMB, publish notice of approval in the **Federal Register**.

The following information is provided for each information collection: (1) Title of information collection; (2) OMB Control Number; (3) Affected Entities, (4) Abstract of the information collection activity, including the need for and use of the collection; (5) estimate of total annual reporting and recordkeeping burden; and frequency of collection.

Title: Plan Approval and records for Load Lines [2115–0043].

OMB No.: 2115–0043.

Affected Entities: Owners of merchant vessels over 150 Gross Tons or 79 feet long.

Abstract: Owners of merchant vessels over 150 gross tons or 79 feet long engaged in commerce on international or coast wise voyages by sea are required by law to obtain a load line certificate. This procedure ensures that no such vessel is loaded deeper than the line of safety.

Title 46 CFR 42, 44, 45, and 46, requires Coast Guard to delegate the task of assigning load lines and issuing of certificates to recognized ship classification societies. Coast Guard administers the load line regulations by ensuring that the delegated responsibilities are carried out in accordance with established procedures.

This information collection is a means by which vessel owners or agents may officially make known their intent to load line a vessel, indicate their preference for a particular assigning authority , appeal a decision regarding the status of a vessel and state their choice of surveyors when regulatory compliance is questioned.

Burden Estimate and Frequency: The current total annual respondent burden estimate is 2,133 hours. The average burden hour per response is 10.25 reporting and 19.1 hours recordkeeeping. The frequency of reporting will be occasionally.

Title: Self-propelled Liquefied Gas Vessels [ICR No. 2115–0113].

OMB No.: 2115–0113.

Affected Entities: Owners and operators of liquefied gas carriers.

Abstract: Sixteen reporting and recordkeeping requirements are addresses by this submission. They are needed to ensure compliance with U.S. Regulations for the design and operation of liquefied gas carriers. The regulations also address cargo operations, handling and safety. The regulations currently apply to 195 foreign flag vessels and 14 U.S. flag vessels.

Under 46 U.S.C. 3703, Coast Guard is tasked with the protection of life, property and the marine environment from hazards associated with the carriage of liquid bulk dangerous cargoes.

This information will be used to determine if a vessel meets U.S. safety regulations for the carriage of liquefied gases.

Burden Estimate and Frequency: The current total annual respondent burden estimate is 3,914 hours. The average burden hour per response is 1.87 hours reporting and 17.065 minutes recordkeeping. The frequency of recordkeeping will be occasionally.

Title: Electrical Engineering Regulations—46 Subchapter J [ICR No. 2115–0115].

OMB No.: 2115–0115.

Affected Entities: Manufacturers and owners of new built-vessels.

Abstract: Electrical Engineering Regulations are necessary to promote the safety of life at sea on USCG certified vessels. The Coast Guard reviews plans and procedures to determine compliance and evaluate necessary manning of automated vessels.

Title 46 CFR Subchapter J require the ship building industry to submit to the Coast Guard, for review and approval their electrical engineering plans for new-built vessels. Coast Guard will use this information to ensure compliance with the regulations are met.

Burden Estimate and Frequency: The current total annual respondent burden estimate is 478 hours. The average burden hour per response is 1 hour reporting. The frequency of reporting will be occasionally.

Title: Electrical Equipment and Fire Protection Systems—46 CFR Subchapter Q [2115–0121].

OMB No.: 2115–0121.

Affected Entities: Manufacturers of electrical equipment, vessel designers, shipyards and owners.

Abstract: Electrical equipment and fire protection systems are necessary to promote the safety of life on USCG certified vessels. The Coast Guard reviews plans and procedures to determine compliance and evaluate specifications of automated vessels.

Title 46 CFR Parts 161 through 164 require Coast Guard's approval before specific types of electrical equipment can be installed on modified or new vessels.

Coast Guard will use this information collection to ensure that manufacturers are in compliance with technical requirements contained in the regulations.

Burden Estimate and Frequency: The current total annual respondent burden estimate is 268 hours. The average burden hour per response is 4 hours reporting. The frequency of reporting will be occasionally.

Title: Tank Vessel Examination Letter (CG–840S–1 & 2), Certificate of Compliance/Pressure Vessel Repairs, Maintaining Cargo Gear Record, Shipping Papers, the Tank Vessel Examination Letter and the Certificate of Compliance [ICR No. 2115–0504].

OMB No.: 2115–0504.

Affected Entities: Owners/operators of large merchant vessels and foreign flag tankers.

Abstract: This information is needed to enable the Coast Guard to fulfill its responsibilities for maritime safety under Title 46 U.S.C. 3301, 3305, 3306, 3702, 3703, 3711, and 3714. It is solely for this purpose.

Title 46 CFR requires the reporting of Boiler and Pressure Vessel Repairs, maintaining Cargo Gear Records, Shipping Papers, the Tank Vessel Examination Letter and the Certificate of Compliance.

This information will be used to ensure information that is unique to each vessel is available for Coast Guard boarding personnel and that work done on Coast Guard certified devices have properly been accomplished.

Burden Estimate and Frequency: The current total annual respondent burden estimate is 23,537.73 hours. The average burden hour per response is .16 minutes reporting 3 hours recordkeeping. The frequency of recordkeeping will be occasionally.

Title: Requirements for Lightering of Oil and Hazardous Materials Cargoes [2115–0539].

OMB No.: 2115–0539.

Affected Entities: Owners and operators of passenger vessels and Terminals.

Abstract: Offshore Lightering involves the transfer of large volumes of bulk liquids between vessels, creating the high potential for a major oil spill. The collection of information allows the USCG to provide timely response in an emergency, minimize the environmental

damage from an oil or hazardous material spill and control location and procedures for Lightering activities.

The Port and Tanker Act of 1978, requires the Coast Guard to develop regulations for the Lightering of oil and hazardous materials which take place in the navigable waters of the U.S. or high seas if the cargo is designed for a port or place subject to the jurisdiction of the U.S.

This information will be used to inform the local Coast Guard Captain of the Port of the time and place of cargo transfer.

Also, to ensure the vessels involved are in compliance with Coast Guard inspection requirements, possess a valid Certificate of Responsibility and have approved pollution response plans on file.

Burden Estimate and Frequency: The current total annual respondent burden estimate is 315 hours. The average burden hour per response is 2 hours reporting. The frequency of reporting will be occasionally.

Title: (a) Report of MARPOL 73/78 Oil, Noxious Liquid Substance (NLS) and Garbage Discharge; (b) Application for Equivalents, Exemptions, and Alternatives; and (c) Voluntary Reports of Pollution Sightings [ICR No. 2115–0556].

OMB No.: 2115–0556.

Affected Entities: Individuals business or other for-profit organizations and the Federal Government.

Abstract: Discharge of pollutants in excess of what is permitted under MARPOL 73/78 and pollution sightings must be reported to the Coast Guard so that appropriate response to the threatening pollutions incidents and effective enforcement of MARPOL 73/78 and its implementing law and regulations will be possible. Public should be allowed to apply, in writing for equivalents, exemptions and alternatives.

The Act to prevent Pollution from Ships (33 U.S.C. 1901–1911) requires that the master or other person in charge of a ship to report discharges of pollutants that violate MARPOL 73/78.

Coast Guard will use this information to determine what corrective action is required to prevent, minimize, or mitigate the impact of oil or hazardous chemical pollution on the public health or welfare, or the environment.

Burden Estimate and Frequency: The current total annual respondent burden estimate is 15 hours. The average burden hour per response is 30 minutes reporting. The frequency of reporting and recordkeeping will be occasionally.

Title: Various Forms and Posting Requirements Under 46 CFR Subchapters K and T "Small Passenger Vessel (Under 100 Gross Tons)" [ICR No. 2115–0578].

OMB No.: 2115–0578.

Affected Entities: Small passenger vessel owners.

Abstract: The reporting and recordkeeping requirements are necessary for the proper administration and enforcement of small passenger vessel program. The requirements effect small passenger vessels (under 100 gross tons) which carry more than 6 passengers.

Under 46 U.S.C. 3305 and 3306, the Coast Guard must prescribe regulations for the design, construction, alteration, repair and operation of small passenger vessels to secure the safety of individuals and property on board. The Coast Guard's proposed use of this information is to ensure that compliance with the requirements for proper safety equipment, operation and crew emergency preparedness are met.

Burden Estimate and Frequency: The current total annual respondent burden estimate is 405,608 hours. The average burden hour per response is 1 hour reporting and 4 hours recordkeeping. The frequency of recordkeeping will be occasionally.

Issued in Washington, D.C. on May 13, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96–12498 Filed 5–17–96; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Noise Exposure Map Notice; Sarasota-Bradenton International Airport, Sarasota, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Sarasota Manatee Airport Authority for Sarasota-Bradenton International Airport under the provisions of Title 1 of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is May 7, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–5397, (407) 648–6583, Extension 29.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Sarasota-Bradenton International Airport are in compliance with applicable requirements of Part 150, effective May 7, 1996.

Under Section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title 1 of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Sarasota Manatee Airport Authority. The specific maps under consideration are "EXISTING (1995) NOISE EXPOSURE MAP" and "FUTURE (2000) NOISE EXPOSURE MAP" in the submission. The FAA has determined that these maps for Sarasota-Bradenton International Airport are in compliance with applicable requirements. This determination is effective on May 7, 1996. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–5397

Sarasota Manatee Airport Authority, Sarasota-Bradenton International Airport, 600 Airport Circle, Sarasota, FL 34243

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida May 7, 1996.

Charles E. Blair,

Manager, Orlando Airports District Office.

[FR Doc. 96–12637 Filed 5–17–96; 8:45 am]

BILLING CODE 4910–13–M

MARITIME ADMINISTRATION

[Docket No. M–016; OMB No: 2133–0030]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before July 19, 1996.

FOR FURTHER INFORMATION CONTACT: Christopher Krusa, Office of Maritime, Labor, Training, and Safety, Maritime Administration, MAR–250, Room 7302, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone 202–366–2648 or fax 202–366–3889. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Supplementary Training Course Application.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0030.

Form Number: MA–823.

Expiration Date of Approval: June 30, 1996.

Summary of Collection of Information: Section 1305(a) of the Maritime Education and Training Act of 1980 states that the Secretary may provide additional training on maritime subjects and may make such training available to the personnel of the merchant marine of the United States and to individuals preparing for a career in the merchant marine of the United States. Also, the U.S. Coast Guard (USCG) requires a fire fighting certificate for U.S. merchant marine officers, effective December 1989, pursuant to the 46 CFR 10.205(g) and 10.207(f).

Need and Use of the Information: Information is needed for eligibility assessment, enrollment, attendance verification and recordation. Without this information the courses would not be documented for future reference by the program or individual student. This application form is the only document of record and is used to verify that students have attended the course.

Description of Respondents: U.S. merchant seamen, both officers and unlicensed personnel. U.S. citizens employed in other areas of waterborne commerce also may receive this training on a space available basis.

Annual Responses: 2,000.

Annual Burden: 100 hours.

Comments: Send all comments regarding this information collection to Joel C. Richard, Department of Transportation, Maritime Administration, MAR–120, Room 7210, 400 Seventh Street, S.W., Washington, D.C. 20590. Send comments regarding whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected.

By Order of the Maritime Administrator.

Dated: May 15, 1996.

Joel C. Richard,

Secretary.

[FR Doc. 96–12642 Filed 5–17–96; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 96–24; Notice 2]

Decision That Nonconforming 1985 Maserati Bi-Turbo Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1985 Maserati Bi-Turbo passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1985 Maserati Bi-Turbo passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1985 Maserati Bi-Turbo), and they are capable of being readily altered to conform to the standards.

EFFECTIVE DATE: May 20, 1996.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 40 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be

compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then published this decision in the **Federal Register.**

J.K. Motors of Kingsville, Maryland (Registered Importer R–90–006) petitioned NHTSA to decide whether 1985 Maserati Bi-Turbo passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on March 21, 1996 (61 FR 11676) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–155 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1985 Maserati Bi-Turbo not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1985 Maserati Bi-Turbo originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 14, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–12632 Filed 5–17–96; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 98–025; Notice 2]

Decision That Nonconforming 1990 Mercedes-Benz 500SEL Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1990 Mercedes-Benz 500SEL passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1990 Mercedes-Benz 500SEL passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1990 Mercedes-Benz 560SEL), and they are capable of being readily altered to conform to the standards.

EFFECTIVE DATE: May 20, 1996.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicles safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer R–90–007) petitioned NHTSA to decide whether 1990 Mercedes-Benz 500SEL passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on March 25, 1996 (61 FR 12129) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number of Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–153 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1990 Mercedes-Benz 500SEL is substantially similar to a 1990 Mercedes-Benz 560SEL originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 14, 1996

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–12633 Filed 5–17–96; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 96–026; Notice 2]

Decision That Nonconforming 1990 Mercedes-Benz 500SE Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1990 Mercedes-Benz 500SE passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1990 Mercedes-Benz 500SE passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1990 Mercedes-Benz 300SE), and they are capable of being readily altered to conform to the standards.

EFFECTIVE DATE: May 20, 1996.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–336–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that is receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer R–90–007) petitioned NHTSA to decide whether 1990 Mercedes-Benz 500SE passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on March 25, 1996 (61 FR 12131) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–154 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1990 Mercedes-Benz 500SE is substantially similar to a 1990 Mercedes-Benz 300SE originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 14, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–12634 Filed 5–17–96; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 95–61; Notice 2]

Decision That Nonconforming 1992 Volvo 740 GL and 940 GL Sedan and Wagon Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1992 Volvo 740 GL and 940 GL Sedan and Wagon passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1992 Volvo 740 GL and 940 GL Sedan and Wagon passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S. certified versions of the 1992 Volvo 740 GL and 940 GL Sedan and Wagon), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective as of the date of its publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

J.K. Motors of Kingsville, Maryland ("J.K.") (Registered Importer R–90–006) petitioned NHTSA to decide whether 1992 Volvo 740 GL and 940 GL Sedan and Wagon passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on August 10, 1995 (61 FR 40878) to afford an opportunity for public comment. The notice identified the vehicles which J.K. believes to be substantially similar as 1992 Volvo 740

GL and 940 GL sedans and wagons that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

As noted in the notice of petition, the petitioner claimed that it had carefully compared non-U.S. certified 1992 Volvo 740 GL and 940 GL sedans and wagons to their U.S. certified counterparts, and found them to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1992 Volvo 740 GL and 940 GL sedans and wagons, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claimed that non-U.S. certified 1992 Volvo 740 GL and 940 GL sedans and wagons are identical to their U.S. certified counterparts with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107 *Reflecting Surfaces,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver From the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 211 *Wheel Nuts, Wheel Discs and Hubcaps,* 212 *Windshield Retention,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner stated that non-U.S. certified 1992 Volvo 740 GL and 940 GL sedans and wagons comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contended that these vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarkers; (b) installation of U.S.-model taillamp lenses which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* Installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a seat belt warning buzzer; (b) installation of knee bolsters to augment the vehicles' air bag based passive restraint systems, which otherwise conforms to the standard. The petitioner stated that in addition to a driver's side air bag, the vehicles are equipped with side impact protection systems, with manual lap and shoulder belts in the front and rear outboard seating positions, and with a manual lap belt in the center seating positions.

One comment was received in response to the notice of petition, from Volvo Cars of North America, Inc. ("Volvo"), the United States representative of Volvo Car Corporation of Gothenburg, Sweden, the vehicle's manufacturer. In its comment, Volvo stated that in addition to the noncompliances noted in the petition, the 1992 Volvo 740 GL and 940 GL Sedan and Wagon have a parking brake reminder light and, if so equipped, an anti-lock brake system light that do not comply with Standard No. 101. Volvo additionally asserted that none of the exterior lamps on these vehicles comply with Standard No. 108, and that their left (driver's) side outside mirror does not comply with Standard No. 111. Volvo also observed that the vehicles' rear door locks do not comply with Standard No. 206 because they are capable of being opened with the inside door handle when locked. Volvo finally disputed the petitioner's contention that the vehicles comply with the Bumper Standard at 49 CFR Part 581, and asserted that they neither have U.S. model bumpers nor have they been tested for compliance with the standard.

NHTSA accorded J.K. an opportunity to respond to Volvo's comments. In its response, J.K. stated that U.S. model components are substituted for all noncomplying dash controls and displays, so all reminder lights will meet Standard No. 101. J.K. additionally stated that all exterior lamps on the vehicles are changed so that they meet Standard No. 108 after conversion. J.K. noted that the driver's side mirror assembly on European versions of the vehicles does not meet Standard No. 111, but that the same component on Saudi and Gulf State versions do. As a consequence, J.K. stated that mirrors may have to be replaced on non-U.S. certified models on a case-by-case basis, based on the part numbers inscribed on those items. J.K. also acknowledged that the rear door locks on European versions of the vehicle will have to be changed to comply with Standard No. 206, and that the noncomplying components will be identified on a case-by-case basis by examining their part numbers. J.K. stated that the same procedure will be used to identify noncomplying bumpers on European versions of the vehicle, which it acknowledged must be reinforced or replaced with U.S. model components to meet Part 581. J.K. observed that the Saudi and Gulf States versions of the vehicle have U.S. model bumpers already installed.

NHTSA has reviewed each of the issues that Volvo has raised regarding J.K.'s petition. NHTSA believes that J.K.'s responses adequately address each of those issues. NHTSA further notes that the modifications described by J.K. have been performed with relative ease on thousands of nonconforming vehicles imported over the years, and would not preclude the non-U.S. certified 1992 Volvo 740 GL and 940 GL Sedan and Wagon from being found "capable of being readily modified to comply with all Federal motor vehicle safety standards."

NHTSA has accordingly decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–137 is the vehicle eligibility number assigned to vehicles admissible under this decision.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1992 Volvo 740 GL and 940 GL Sedan and Wagon passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 1992 Volvo 740 GL and 940 GL Sedan and Wagon passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 14, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 96–12635 Filed 5–17–96; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 96–048; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1984 Mitsubishi Pajero Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1984 Mitsubishi Pajero passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1984 Mitsubishi Pajero that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is June 19, 1996.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) has petitioned NHTSA to decide whether 1984 Mitsubishi Pajero passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1984 Mitsubishi Montero. Champagne has submitted information indicating that the manufacturer of the 1984 Mitsubishi Montero certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that it carefully compared the 1984 Mitsubishi Pajero to the 1984 Mitsubishi Montero, and found the two models to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the 1984 Mitsubishi Pajero, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1984 Mitsubishi Montero that was offered for sale in the United States, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the 1984 Mitsubishi Pajero is identical to the certified 1984 Mitsubishi Montero with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107 *Reflecting Surfaces,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 203 *Impact Protection for the Driver From the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 211 *Wheel Nuts, Wheel Discs and Hubcaps,* 212 *Windshield Retention,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies which incorporate headlamps with DOT markings; (b) installation of front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 111 *Rearview Mirrors:* Replacement of the convex passenger side rear view mirror.

Standard No. 114 *Theft Protection:* Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN

reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars:* Installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer. The petitioner states that the vehicle is equipped at each front designated seating position with a combination lap and shoulder restraint that adjusts by means of an automatic retractor and releases by means of a single push button. The petitioner further states that the vehicle is equipped with a combination lap and shoulder restraint that releases by means of a single push button at each rear outboard seating position, and with a lap belt at the rear center seating position.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action of the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on : May 14, 1996.

Marilynne Jacobs,

Director, Office of Vehicle Sofety Complionce.

[FR Doc. 96–12636 Filed 5–17–96; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

[General Counsel Designation No. 220]

Appointment of Members to the Legal Division Performance Review Board

Under the authority granted to me as General Counsel of the Department of the Treasury by 31 U.S.C. 301 and 26 U.S.C. 7801, Treasury Department Order No. 101–5 (Revised), and pursuant to the Civil Service Reform Act, I hereby appoint the following persons to the Legal Division Performance Review Board:

(1) For the General Counsel Panel—
- Neal S. Wolin, Deputy General Counsel, who shall serve as Chairperson;
- Russell L. Munk, Assistant General Counsel (International Affairs);
- John E. Bowman, Assistant General Counsel (Banking and Finance);
- Robert M. McNamara, Jr., Assistant General Counsel (Enforcement);
- Kenneth R. Schmalzabach, Assistant General Counsel (General Law and Ethics); and
- Elizabeth B. Anderson, Chief Counsel, United States Customs Service.

(2) For the Internal Revenue Service Panel—
- Chairperson, Deputy Chief Counsel, IRS;
- Deputy General Counsel;
- Two Associate Chief Counsel, IRS; and
- Two Regional Counsel, IRS.

I hereby delegate to the Chief Counsel of the Internal Revenue Service the authority to make the appointments to the IRS Panel specified in this Designation and to make the publication of the IRS Panel as required by 5 U.S.C. 4314(c)(4).

Dated: May 13, 1996.

Edward S. Knight,

General Counsel.

[FR Doc. 96–12541 Filed 5–17–96; 8:45 am]

BILLING CODE 4810–25–M

federal register

Monday
May 20, 1996

Part II

Department of Transportation

Coast Guard

46 CFR Part 30 et al.
Lifesaving Equipment; Interim Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 30, 31, 32, 33, 35, 70, 71, 75, 77, 78, 90, 91, 94, 96, 97, 107, 108, 109, 125, 133, 167, 168, 188, 189, 192, 195, 196, and 199

[CGD 84–069]

RIN 2115–AB72

Lifesaving Equipment

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: As part of the President's Regulatory Review Initiative to remove or revise unnecessary government regulations, this interim rule removes numerous obsolete sections from the Code of Federal Regulations and eliminates duplication of other provisions by consolidating the lifesaving requirements for most U.S. inspected vessels into the new subchapter W. This rule revises the lifesaving equipment regulations for U.S. inspected vessels. It implements the provisions of Chapter III of the Safety of Life at Sea Convention 1974, as amended, and revises lifesaving regulations for Great Lakes vessels and certain vessels in domestic trade which are not covered by the Safety of Life at Sea Convention. The rule also replaces many prescriptive regulations with performance-based alternatives. The Coast Guard is requesting public comment on this interim rule because it has been more than 5 years since publication of the notice of proposed rulemaking.

EFFECTIVE DATES: This interim rule is effective on October 1, 1996. Comments on this interim rule must be received on or before July 31, 1996. The Director of the Federal Register approves the incorporation by reference of certain publications listed in the regulations as of October 1, 1996.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) [CGD 84–069], U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on collection-of-information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

A copy of the material listed in "Incorporation by Reference" of this rule is available for inspection at room 1404, U.S. Coast Guard Headquarters. Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary.

The revised Chapter III of the Safety of Life at Sea Convention (SOLAS) is published by the International Maritime Organization (IMO) in "SOLAS, Consolidated Edition, 1992" (IMO publication IMO–11OE). The International Maritime Organization also publishes the "Recommendation on Testing of Life-saving Appliances, Resolution A.689(17)" and the other IMO documents incorporated by reference in this rule. The International Maritime Organization publications and documents referred to in this rule are available from the International Maritime Organization, Publications Section, 4 Albert Embankment, London SE1 7SR, England.

In addition, IMO publications are available from the following U.S. sources:

Baker-Lyman & Co., Inc., P.O. Box 838, 3220 South I–10 Service Road, West, Metairie, LA 70004, telephone (504) 831–3685 or (800) 535–6956.

Baker-Lyman & Co., Inc., 8876 Gulf Freeway, Suite 110, Houston, TX 77017, telephone (713) 943–7032.

Labelmaster, 5724 North Pulaski Road, Chicago, IL 60646–6797, telephone (312) 478–0900.

McCurnin Nautical Charts Co., 2318 North Woodlawn Avenue, Metairie, LA 70001, telephone (504) 888–4500.

Marine Education Textbooks, 124 North Van Avenue, Houma, LA 70363–5895, telephone (504) 879–3866.

Maryland Nautical Sales, Inc., 1400 East Clement Street, Baltimore, MD 21230, telephone (410) 752–4268.

Nautical Charts Supply, Inc., 90 Hudson Street, New York, NY 10013, telephone (212) 925–8849.

New York Nautical Instrument & Service Corp., 140 West Broadway, New York, NY 10013, telephone (212) 962–4522.

Safe Navigation, Inc., 820 Long Beach Boulevard, Long Beach, CA 90813, telephone (310) 590–8744.

UNZ & Co., 190 Baldwin Avenue, Jersey City, NJ 07306, telephone (201) 795–5400.

Navigation and Vessel Inspection Circulars (NVIC) and the Coast Guard's Marine Safety Manual are available by subscription from the Government Printing Office, Washington, DC 20402, telephone (202) 783–3238. Previously issued NVICs may be purchased from the U.S. Coast Guard National Maritime Center (Attn: NVIC), 4200 Wilson Boulevard, Suite 510, Arlington, VA 22203–1804, telephone (703) 235–1605.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markle, Chief, Lifesaving and Fire Safety Standards Division (G–MSE–4), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, telephone (202) 267–1444, fax (202) 267–1069. Normal office hours are between 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD 84–069] and the specific section of this interim rule to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this interim rule based on the comments.

The Coast Guard plans no additional public hearings. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that another opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold another public hearing at a time and place announced by a later notice in the **Federal Register.**

Regulatory History

The Coast Guard published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** on December 31, 1984 (49 FR 50745). That notice described the major changes under consideration and invited comments on the project.

The Coast Guard published a notice of proposed rulemaking (NPRM) for this rulemaking in the **Federal Register** on April 21, 1989 (54 FR 16196), and invited comments on its proposals. Fifty-six letters were submitted to the public docket from vessel operators, industry associations, drilling companies, equipment manufacturers, interested individuals, Coast Guard offices, and the National Transportation Safety Board (NTSB). The comments generally supported the regulatory proposals in concept, but many suggested changes to particular provisions in the proposed rule. These comments are addressed in the "Discussion of Comments and Changes" section of this preamble.

A public hearing was held to receive comments on the proposed rules, particularly the provisions affecting passenger ferries. The hearing was announced in a **Federal Register** notice on October 5, 1989 (54 FR 41124), and the hearing was held in Seattle, Washington, on October 17, 1989. Fifty-nine persons attended the hearing and 18 persons presented oral comments during the hearing. Comments received at the hearing are also discussed in the "Discussion of Comments and Changes" section of this preamble.

On November 16, 1995, the Coast Guard published an interim rule with a request for comments that revised the regulations for offshore supply vessels (OSV) including liftboats [CGD 82–004 and CGD 86–074] (60 FR 57630). That rule created a new subchapter L containing a complete set of regulations applicable to new OSVs. The rule added and reserved 46 CFR part 133 for OSV lifesaving requirements, which are now added to subchapter L by this rule.

This interim rule does not affect small passenger vessels inspected under subchapter T in 46 CFR chapter I. Lifesaving equipment regulations for small passenger vessels were published in an interim rule on January 10, 1996 (61 FR 865), as part of a comprehensive project to revise subchapter T and establish a new subchapter K covering larger small passenger vessels with higher carriage capacities [CGD85–080].

This rule is being published as an interim rule and the Coast Guard is seeking comments on it, because publication of the NPRM occurred more than 5 years ago. If warranted by the comments, the Coast Guard may revise these regulations before their effective date.

This project is part of the President's Regulatory Review Initiative to remove or revise unnecessary government regulations. This project removes numerous obsolete sections from the Code of Federal Regulations (CFR) and eliminates others by consolidating the lifesaving requirements for most U.S. inspected vessels into the new subchapter W. Subchapter W also replaces many prescriptive regulations with performance-based alternatives.

Review of NPRM

On June 17, 1983, the International Maritime Organization (IMO) Maritime Safety Committee approved the 1983 Amendments to SOLAS, including a new Chapter III (Lifesaving Appliances and Arrangements). The new SOLAS requirements came into force on July 1, 1986, for the United States and all other contracting governments. The Safety of Life at Sea Convention applies to ships on international voyages, except—

(1) Ships of war and troopships;

(2) Cargo ships (including tankers) under 500 tons gross tonnage;

(3) Ships not propelled by mechanical means;

(4) Wooden ships of primitive build;

(5) Pleasure yachts not engaged in trade; and

(6) Fishing vessels.

In addition to the changes necessary to conform lifesaving requirements to SOLAS, the Coast Guard has made a number of other revisions to the lifesaving system regulations for inspected vessels in domestic services in response to problems identified through investigations into casualties that had occurred over a 25-year period. The Coast Guard Authorization Act of 1984 also directed improvements in the lifesaving systems on passenger ferries.

The Coast Guard considered many provisions of the regulations existing at the start of this rulemaking to be obsolete. Some regulatory provisions dated back to the 1940s. The NPRM, therefore, proposed a new subchapter W in 46 CFR chapter I, which would contain requirements for the number and type of lifesaving appliances and arrangements on tank vessels, cargo vessels, passenger vessels over 100 tons gross tonnage, oceanographic vessels, nautical school vessels, OSVs, and mobile offshore drilling units (MODU). The structure of the proposed subchapter W closely paralleled SOLAS, Chapter III, even though its provisions applied to vessels in domestic services as well as to those subject to SOLAS. The Coast Guard also proposed to remove the lifesaving provisions in the various individual vessel subchapters throughout 46 CFR chapter I, which would be consolidated into subchapter W. Only provisions related to lifesaving system inspections, operations, and drills were proposed to be left in the individual vessel subchapters.

Overview of Interim Rule

This interim rule revises vessel lifesaving equipment carriage regulations in 46 CFR chapter I, for tank vessels, cargo and miscellaneous vessels, MODUs, passenger vessels, nautical school vessels, OSVs, and oceanographic research vessels. Revisions are included in 46 CFR chapter I, subchapter I–A for MODUs and subchapter L for OSVs. The remaining provisions are consolidated in a new subchapter W of 46 CFR chapter I. Subchapter W replaces most of the lifesaving equipment regulations currently individually prescribed in separate subchapters applicable to tank vessels, cargo and miscellaneous vessels, passenger vessels, nautical school vessels, and oceanographic research vessels.

The NPRM proposed to remove the lifesaving requirements from 46 CFR chapter I, subchapter I–A for MODUs, and publish them in the new subchapter W. As a result of the offshore industry's comments and a recommendation by the Coast Guard's National Offshore Industry Advisory Committee, however, the revised lifesaving regulations for MODUs will remain in subchapter I–A. For the same reason, the lifesaving regulations for OSVs, including liftboats, are being placed in subchapter L rather than subchapter W.

Relationship to SOLAS and Recent SOLAS Revisions

The Coast Guard has compared the regulations in this interim rule to the international standards in SOLAS and has determined that this rule does not unnecessarily establish requirements in excess of international standards. This rule removes some requirements that were proposed in the NPRM that exceeded the requirements in SOLAS.

Since the 1983 SOLAS Amendments were adopted, a number of other amendments to Chapter III of SOLAS have been adopted. The Coast Guard, anticipating some of these changes, proposed them in the NPRM and they are included in this interim rule. Other changes to SOLAS clarify or create alternative ways of meeting SOLAS requirements. These changes are also included in this interim rule. New SOLAS requirements that were not proposed in the NPRM or that do not offer alternatives are not part of this interim rule. All of these provisions are discussed in the "Discussion of Comments and Changes" section of this preamble.

Organization of Subchapter W

Subparts A, B, C, and D of subchapter W are based on Chapter III of SOLAS.

Section numbers in subparts A, B, C, and D of subchapter W are generally related to the regulation numbers in Chapter III of SOLAS, but paragraph designations are not related to the numbering in Chapter III of SOLAS. To find the corresponding SOLAS, Chapter III regulation for subparts A, B, C, and D of subchapter W, beginning with § 199.10, divide the section number following the decimal point by 10. Subparts E and F of subchapter W set out the requirements for vessels that are not subject to SOLAS and provide for exceptions and alternatives to the SOLAS requirements.

Discussion of Comments and Changes

Comments

The Coast Guard received 74 comments on the NPRM that consisted of both letters to the docket and remarks at the public hearing. The following paragraphs contain and analysis of comments received and an explanation of any changes if any, made in the rules.

Numerous comments noted editorial problems in the NPRM. The Coast Guard has incorporated these comments where appropriate, but the changes are not discussed in detail in this preamble. Some other comments addressed subjects beyond the scope of the revisions proposed in the NPRM. These comments are also not discussed in detail. Comments that generally supported the NPRM, or that disagreed with the NPRM but failed to provide reasoning for the disagreement, are also not addressed in this preamble.

Two comments stated that the full impact of the NPRM could not be accurately assessed until: (a) the effects of the International Tonnage Convention (ITC) on U.S. law are determined; (b) subchapter L (OSVs) is published; (c) proposed subchapter T revisions are known; and (d) sections of subchapter W that apply to boats regulated under subchapters L and T are known. The impact of this rule is discussed more fully in the Regulatory Impact Analysis to this rule and the "Regulatory Evaluation" section of this preamble.

The ITC applies to all vessels on international voyages over 24 meters (79 feet) in length that were built after July 18, 1994. Vessels built on or before July 18, 1994, on international voyages may continue to use their domestic tonnage to determine their tonnage-based requirements for the life of the vessel, unless major alterations are made to the vessel.

The lifesaving requirements applying to OSVs, which were proposed in the NPRM to be part of subchapter W, are now being published as part of subchapter L. An interim rule promulgating subchapter L, which applies only to OSVs, including liftboats was published on November 16, 1995 (60 FR 57630). This should eliminate any confusion concerning what lifesaving requirements apply to OSVs. Vessels must be less than 500 tons gross tonnage to be inspected as OSVs under subchapter L. Any vessel in the offshore service business which is 500 tons gross tonnage or over, would have to meet the applicable lifesaving requirements of subchapter W.

The interim rule for small passenger vessels regulated under subchapter T and K was published on January 10, 1996 (61 FR 865). The Coast Guard invites comments on the impact of this rule as it relates to the provisions of the ITC and subchapters L, T, and K.

Several comments objected to the SOLAS lifesaving rules under subchapter W being applied to all vessels, regardless of their type or service. This rule does not apply SOLAS rules to all vessels. Section 199.10(b) excludes non-self-propelled vessels from the lifesaving equipment regulations if these vessels do not have accommodation or work spaces on board. For other vessels, the SOLAS, Chapter III regulations provide the basis for the structure of subchapter W. Many of the SOLAS requirements apply broadly to lifesaving system installations on all vessels. Subparts A, B, C, and D of subchapter W set out the requirements for vessels on international voyages that are subject to SOLAS and are based on SOLAS, Chapter III. Subparts E and F of subchapter W set out the requirements for vessels that are not subject to SOLAS and provide for exceptions and alternatives to the SOLAS requirements. The Coast Guard has deleted provisions proposed in the NPRM that were in excess of SOLAS unless there is good cause for their retention. Most of the deleted provisions were Coast Guard interpretations of SOLAS requirements that do not need to be included in these regulations, or were additional requirements with marginal safety benefits. The Coast Guard has also decided to consolidate all of the regulations related to SOLAS, Chapter III in subchapter W. The NPRM had proposed locating only the lifesaving equipment and arrangement regulations in subchapter W. The regulations pertaining to onboard inspection of lifesaving equipment proposed in the NPRM were to be included in the inspections part in each of subchapters D, H, I, and U. Similarly, requirements for drills and for marking of lifesaving equipment were also proposed to be placed in the operations part of each of these subchapters. The organization of this interim rule eliminates needless duplication of these regulations in different parts of the CFR.

The Coast Guard intends that SOLAS and other international instruments be the basis for safety requirements on U.S. vessels. To this end, § 199.03(b) states that any vessel carrying a valid Passenger Ship Safety Certificate supplemented by a Record of Equipment, or a valid Cargo Ship Safety Equipment Certificate supplemented by a Record of Equipment, is considered to have met the requirements of subchapter W if the vessel also complies with several specific additional requirements listed. This will make compliance with Coast Guard regulations easier for designers and operators who use SOLAS as a basis for designing and equipping a vessel. A similar provision is included in § 108.503 for MODUs built to the IMO MODU Code. None of the items on the list are major cost items.

Several comments indicated a need for flexibility in the rules, with one comment suggesting that the Officer in Charge, Marine Inspection (OCMI), should be able to exercise discretion in determining lifesaving equipment requirements. The Coast Guard agrees with the comment, and has included rules that provide for certain exceptions and equivalents to be authorized by the Commandant (G–MSE), for exemptions to be granted by the Coast Guard District Commander, and for alternatives that may be accepted by the OCMI. See §§ 199.09, 199.20(d), and 199.40(e).

Several comments suggested that "SOLAS approved" equipment should be accepted by the Coast Guard. There is no internationally recognized "SOLAS approved" equipment in the sense implied by the comment. Under SOLAS, each national maritime safety authority approves or accepts equipment meeting SOLAS requirements for its own vessels. The degree of enforcement of the SOLAS requirements varies widely. The Coast Guard approves equipment that meets the SOLAS requirements and must be used on U.S. registered vessels. However, Coast Guard-approved equipment may not always be readily available, for example, in foreign ports. Under the provisions of § 199.40(e), the OCMI has sufficient authority to accept foreign-approved equipment on a case-by-case basis, when warranted.

A number of comments addressed specific test and inspection procedures proposed in the NPRM. Some comments proposed deletion of certain details while others proposed more testing and inspection. In response to the comments, the testing and inspection requirements in this rule are significantly simplified compared to those proposed in the NPRM. This rule establishes test objectives and performance standards rather than detailed complex requirements for the conduct of the tests. This simplifies the sections on these inspections and tests, and makes them consistent with the level of detail presented in the regulations on other initial and subsequent inspections for vessel certification. This will allow flexibility in the test procedures. These tests and inspection requirements appear in § 199.45.

Specific Provisions

One comment suggested that the ring lifebuoys arranged for quick release from the navigation bridge be required to fall clear of the vessel under all circumstances. The Coast Guard agrees with the comment and now requires that the ring lifebuoy fall directly into the water without striking the vessel. See §§ 199.70(a)(v) and 108.590(a)(iv).

Section 199.620(d)(2) has been added to allow a new type of lifejacket that has been approved since publication of the NPRM on domestic services. These extended-size lifejackets are approved for adults as well as some larger children. If an operator uses these lifejackets, the number of child-size lifejackets carried to meet the requirements in § 199.70(b)(1)(i) may be reduced. To take the reduction in child-size lifejackets, extended-size lifejackets that have the same lower size limit must be substituted for all of the required adult lifejackets. The number of child-size lifejackets required depends on the lower size limit of the extended-size lifejackets and is calculated using one of the formulas given in § 199.620(d)(2). The vessel operator still has the responsibility under § 199.70(b)(1)(i) to make sure that the vessel has a lifejacket of suitable size for each person on board.

One comment suggested the deletion of proposed § 199.72(c), which contained special requirements for additional lifejackets on Great Lakes vessels that have forward berthing or working spaces widely separated from messing or recreational spaces aft. The comment indicated that, with some minor revisions, the provisions for additional lifejackets in proposed § 199.72(a)(1)(ii) would be sufficient to require the necessary lifejackets in these spaces. The Coast Guard agrees and has revised § 199.70(b)(2)(iii) to address the stowage of these additional lifejackets.

The NTSB urged the Coast Guard to require lifejackets for all passengers to be located at muster stations on passenger ships in addition to those lifejackets required to be stowed in passenger cabins. The NTSB had previously recommended that lifejackets and immersion suits be stowed outside of passenger and crew berthing rooms and closer to, or at, emergency stations. The Coast Guard does not agree that lifejackets should always be stowed at muster stations. However, §§ 199.70(b)(2)(v) and 199.212(b) are based on current SOLAS requirements and, taken together, will ensure that sufficient lifejackets for passengers are available at, or near, the muster stations on passenger ships.

Proposed §§ 199.78(a) (3) and (4) on stowage details for lifejackets have been removed from this rule. Also removed are the details on whistles and how to secure them to lifejackets, which were in proposed § 199.76 of the NPRM. Detailed requirements on the assignment of immersion suits to passenger vessel crewmembers in proposed §§ 199.214 (a) and (b) have also been removed. There are no similar requirements in SOLAS, and in accordance with the policy previously discussed, the Coast Guard has decided not to impose these additional requirements because of their marginal safety benefits.

The Coast Guard has deleted a proposed requirement for at least one certificated person to be assigned to a lifeboat for every 20 passengers. The proposed requirement in the NPRM was consistent with regulations effective at the time, but is in excess of the current SOLAS requirement. The Coast Guard has decided not to impose this additional requirement on U.S. vessels. See § 199.100(c).

Several comments opposed the proposed requirement in § 199.110(d) of the NPRM for all survival craft embarkation stations to be located where it is not necessary to climb up more than three steps or stairs. One comment stated that the requirement was not clear because of the various deck levels, stairways, and ladders that are involved in the design of a ship. The Coast Guard has deleted this section in this rule. There is no similar requirement in SOLAS and, in accordance with the policy previously discussed, the Coast Guard has decided not to impose this additional requirement because of its marginal safety value.

One comment stated that the proposed requirement for rotation-resistant wire rope in § 199.153(b) of the NPRM (§ 199.153 (a) in this rule) should only apply to installations in which single point boat connections are used. The Coast Guard disagrees. Wire ropes that twist easily can lead to tangles at the winch or to tangles in multiple-part falls after a boat has been launched. Rotation-resistant wire rope is a SOLAS requirement for all launching appliances using falls and it is an appropriate requirement for launching appliances even on vessels not subject to SOLAS.

In response to the request to allow for flexibility in compliance expressed by some comments, the descriptions of some of the items of equipment in § 199.175(b) have been simplified by eliminating unnecessary detail. Coast Guard Navigation and Vessel Inspection Circular (NVIC) 2–92 contains detailed recommendations for survival craft equipment and describes options and inspection criteria that can not be easily or appropriately covered in the regulations.

One comment suggested that the Coast Guard should amend the requirement that at least one drill be held at night every 3 months by removing the master's discretion to determine that a night drill would be unsafe. The comment further stated that it should be possible to safely hold at least one drill at night in a 3-month period. Another comment suggested removing the restriction on conducting abandon-ship drills and fire drills immediately after each other. The Coast Guard has decided to delete both requirements from § 199.180 because they are not in SOLAS, Chapter III. Scheduling of required drills is left to the master's discretion.

One comment noted the difficulty and expense in obtaining replacement rockets for rocket-propelled line-throwing appliances. Modern line-throwing appliances of this type are self-contained units, which include the rocket, service line, and the firing mechanism. This arrangement makes them much easier to use. If the rocket is fired during a drill, the complete unit must be replaced or else it must be partially disassembled so that the rocket may be replaced. In the latter case, if the unit is not reassembled properly, it could misfire in an actual emergency. For these reasons, the Coast Guard has changed the line-throwing appliance drill regulations in §§ 199.180(e) and 109.213(e) to allow actual firing of a line-throwing appliance to be at the discretion of the master. The rockets have a 4-year expiration date and the Coast Guard anticipates that actual firings will be conducted using rockets near their expiration dates.

Several comments suggested that existing cargo and tank vessels in ocean, coastwise, and Great Lakes services should not have to comply with the proposed requirement to retrofit totally enclosed lifeboats and gravity davits, noting that SOLAS does not have such a requirement. Five comments stated that enclosed lifeboats and gravity davits were unjustified and costly to U.S. operators on the Great Lakes, causing a competitive disadvantage with Canadian and tug/barge operators who do not have to meet retrofit regulations. One comment suggested that davit-launched inflatable liferafts should be used for the retrofit aboard Great Lakes vessels instead of lifeboats. In 1994, the United States proposed to an IMO subcommittee that totally enclosed lifeboats and gravity davits be required on SOLAS ships by January 1, 2006. While there was support for the proposal, the requirement was not adopted. Therefore, the Coast Guard has removed the requirement for retrofitting of totally enclosed lifeboats and gravity davits as proposed in the NPRM.

Some comments objected to the proposed Coast Guard regulations requiring ring lifebuoys that exceeded the number required under SOLAS on certain larger cargo vessels. The Coast Guard agrees and has reduced the number of ring lifebuoys required for passenger ships in ocean and short international voyage service in § 199.271 to the numbers required by SOLAS.

Several comments were concerned about the proposed requirement in § 199.157(a) that lifeboats be capable of being launched with the vessel making headway of at least 5 knots. Some believed that this would be a dangerous drill requirement. This is not a drill requirement but rather, is a performance-based design requirement. Others were concerned that this was a new requirement with which it would be difficult to comply. In fact, it is possible to meet this requirement with on-load release devices and painter arrangements that have been used on U.S. vessels for over 40 years. It is a feature needed not only on ships, but on MODUs as well. Although MODUs are usually at a fixed location, they may need to launch survival craft in a current. This requirement is included in the MODU regulations at § 108.555(a). For vessels regulated under subchapter W, § 199.280(c) follows SOLAS by limiting the requirement to cargo vessels over 20,000 tons gross tonnage.

The NPRM proposed a prohibition on aluminum lifeboats and davits on tank vessels and MODUs. The proposal was based on experiences in which aluminum boats were destroyed in transitory deck fires and were subsequently not available when the ship had to be abandoned. One comment suggested that an aluminum lifeboat should be permitted if it is protected at its stowage location by a water spray, noting that this was being permitted by marine safety administrations in other countries. The Coast Guard agrees with the comment and this rule, therefore, permits aluminum lifeboats and davits on tank vessels and MODUs when a water spray system is provided. See §§ 199.290(b) and 108.515(d).

A number of comments were received regarding the radio lifesaving equipment requirements proposed in the NPRM. Since the NPRM was published, the Federal Communications Commission (FCC) published a final rule implementing the Global Maritime Distress and Safety System (GMDSS) on U.S. vessels (57 FR 9063, March 16, 1992). The GMDSS is an automated, worldwide, ship-to-shore, distress alerting system that relies on satellite and advanced terrestrial communications systems. The FCC rules cover most vessels that the Coast Guard inspects for ocean and coastwise service. Among other requirements, the FCC rules include two-way VHF radiotelephone apparatus, satellite emergency position indicating radiobeacons (EPIRB), and survival craft radar transponders (SART). The FCC rules do not, however, require radio lifesaving equipment for all vessels that were covered by the requirements proposed in the NPRM. Therefore, this rule includes EPIRB requirements in § 199.510 for vessels operating on the Great Lakes as well as for cargo vessels and OSVs less than 300 tons gross tonnage in ocean and coastwise service. Under § 199.610(m), these vessels have until February 1, 1999, to comply with the satellite EPIRB requirement. This is the date established by SOLAS for full worldwide implementation of GMDSS.

One comment stated that corrosion of wire rope falls was not as significant a problem on vessels operating on the Great Lakes as on vessels operating in salt water services and therefore, the requirement to change the falls at intervals of not more than 5 years was excessive. The Coast Guard agrees and has excluded vessels operating in fresh water services from compliance with the requirement. See § 199.610(a)(4).

The NPRM proposed that survival craft not be required for vessels in Great Lakes service, and in lakes, bays, and sounds service that operate within 3 miles of shore where the water is less than 1 meter (3.3 feet) deep. This shallow water exemption has been revised to be consistent with that in subchapters T and K for small passenger vessels. Survival craft will not be required on vessels in Great Lakes service; lakes, bays, and sounds service; or river service if the vessel operates within 3 miles of shore in areas where the vessel cannot sink deep enough to submerge the topmost deck or where the OCMI determines that survivors can wade ashore. See table 199.630(a) in conjunction with § 199.630(h) and table 199.640(a) in conjunction with § 199.640(f).

One comment suggested that lifeboats for dry cargo vessels be required to be equipped with self-contained air support systems due to the large amounts of flammable liquids and poisons carried as packaged cargo and ship's stores. Although the Coast Guard agrees that toxic atmospheres and fire on the water are a possible problem in some casualties involving dry cargo ships, this does not justify the suggested requirement, which would exceed the SOLAS requirements.

Passenger Vessels Not on International Voyages

The NPRM proposed that passenger vessels on unlimited ocean routes be required to have the same lifesaving systems as required by SOLAS for ships on international voyages and that vessels in coastwise service (i.e., within 20 miles of the coastline) be required to have the same lifesaving systems as required by SOLAS for ships on short international voyages. In response to concerns raised by operators of vessels that operate on domestic voyages beyond 20 miles but within 50 miles, this interim rule allows vessels in domestic services that operate out to 50 miles offshore to comply with the SOLAS short international voyage requirements. This is also consistent with an operational category for small passenger vessels in the interim rule for subchapters K and T. See table 199.620(a) in conjunction with § 199.630(c).

One ferry operator, objecting to the proposal for ferries to carry inflatable buoyant apparatus (IBA) sufficient to accommodate 110 percent of the number of persons on board, stated that ferries should be given consideration for equivalence of safety requirements based on their design and area of operation (protected waters in proximity to land and quick assistance). Another comment pointed out that current safety measures, such as vessel traffic services, bridge-to-bridge communications, close proximity of other vessels, radar systems, and stringent personnel

qualifications, make ferry operations safer than in the past. However, another comment supporting the survival craft proposals pointed out that the present regulations were originally written over 40 years ago and were relevant to an era when ferries were smaller, slower, carried fewer hazardous materials, and operated in less congested waters. Another comment writer did not believe the NPRM adequately justified the need for the proposed requirements for ferries operating in lakes, bays, and sounds service. Several comments pointed out that no ferry casualties were identified in support of the proposed rules and that the probability of a ferry casualty that would require abandonment was very low, considering all of the safety measures presently in effect. Cost to acquire and service inflatable buoyant apparatus, to train crewmembers, and to possibly provide otherwise unnecessary crewmembers in order to launch the inflatable buoyant apparatus and help passengers embark was a major issue for ferry operators. An organization of ferry passengers did not want to pay for inflatable buoyant apparatus either through higher fares or increased taxes. Other comments, acknowledging that ferry casualties were rare, were concerned about the high number of deaths and injuries that would occur in the event of a severe ferry accident.

The 1984 Coast Guard Authorization Act directed improvement in the lifesaving equipment on passenger ferries. This Congressional direction followed publication of a report on "Improving Maritime Traffic Safety on Puget Sound Waterways," prepared by the University of Washington. This report cited the lack of liferafts on Puget Sound, Alaska, ferries as a potential problem considering the numerous close encounters that ferries are involved in and the potential catastrophic results that would accompany a casualty because these ferries may carry as many as 2,500 passengers. However, the safety record for these ferries in terms of lives lost is very good, with no recorded fatalities from accidents over the last 35 years. One of the contributors to the University of Washington report stated,

> [e]xperience relating to very low probability, very high consequence accidents, like the possible sinking of a ferry with a large number of passengers aboard, indicates they are impossible to predict. Statistical models are not meaningful. Thus the admirable safety record of the Washington State Ferry System, in my opinion, can not be used as an argument to say that either no major accident will happen in the future, since none have occurred to date, or that one is likely to happen by the law of averages * * *

While concentration on incident avoidance is prudent, some consideration of consequence mitigation is also warranted.

The comment indicated that while "liferafts" (sic) were an example of such consequence mitigation, he had not necessarily concluded that liferafts were the proper choice of consequence mitigation.

The Coast Guard's position is that all of the comments have merit. Even though serious casualties involving ferries and other passenger vessels in domestic services have been rare, because of the potential hazard to large numbers of people, the possibility of such casualties needs to be appropriately addressed. Therefore, in table 199.630(a) and § 199.630(d), ferries and passenger vessels are required to carry a sufficient number of IBAs having an aggregate capacity that is sufficient to accommodate the total number of persons on board. Under certain lower-risk circumstances described in § 199.630(g), operators can reduce the number of IBAs to provide an aggregate capacity sufficient to accommodate 67 percent of the persons on board. (IBAs are tested to a 50 percent overload condition to make sure they can accommodate extra people in clam water.) Recognizing that abandoning the vessel into IBAs introduces its own hazards and that vessels operating in certain areas may be able to obtain assistance in other ways, table 199.630(a) and § 199.630(f) provide an alternative for ferries and other passenger vessels without overnight accommodations that operate in the Great Lakes service; in lakes, bays, and sounds service; or in river service. The alternative provides that vessels may have a safety assessment approved by the OCMI that includes, among other things, consideration of the waterway and other traffic in the operating area and development of a comprehensive shipboard safety management and contingency plan.

Comments from operators of passenger vessels other than ferries also expressed concern over the expense of adding lifesaving equipment. They also cited the excellent safety record of these vessels in recent years. Nevertheless, these vessels carry large numbers of people, especially gaming vessels. The gaming vessel industry did not exist when the NPRM was published in 1989. Gaming vessels do not usually move passengers from one port to another, nor do they ordinarily engage in voyages such as sight-seeing for the enjoyment of passengers. Some vessels although fully capable of navigation, do not normally leave the dock, and other vessels operate over short distances in protected "moats." For these reasons, the Coast Guard specifically invites comments on lifesaving requirements that should be applicable to these vessels. As is the case for ferries, even one abandon-ship incident in which large numbers of passengers could not be accommodated in survival craft would be unacceptable. The Coast Guard considers the hazard to persons aboard gaming vessels to be similar to those presented by passenger ferries. They carry passengers in a high density configuration, do not have overnight accommodations, and typically operate on a fixed route and schedule in a limited geographic area. Therefore, the Coast Guard has applied the requirements for emergencies to these vessels that are similar to ferries operating on the same waters.

Cargo and Tank Vessels Operating on the Great Lakes

The NPRM proposed that cargo and tank vessels in Great Lakes service be required to carry totally enclosed lifeboats launched by gravity davits with an aggregate capacity sufficient to accommodate 100 percent of the persons on board and liferafts served by launching appliances also meeting the aggregate capacity requirement. The NPRM proposals contrast with ocean and coastwise vessels requirements to carry lifeboats and float-free liferafts with an aggregate capacity sufficient to accommodate 100 percent of persons on board. The Great Lakes proposal represented an upgrade over the existing regulations.

One comment suggested that Great Lakes vessels be required to carry the same survival craft as vessels in ocean service. Other comments suggested that totally enclosed lifeboats and gravity davits would not enhance crew survivability aboard Great Lakes vessels and that the current lifesaving systems were adequate. Some comments suggested the use of davit-launched inflatable liferafts (presumably 100 percent each side) aboard Great Lakes vessels in lieu of lifeboats. Some comments on the NPRM noted that Great Lakes vessels are also required to carry immersion suits so in the event survivors have to enter cold water to get to a survival craft, they still have a good chance of being rescued. The comments noted that the Great Lakes casualty reports discussed in the NPRM indicated that rapid launching and hypothermia protection were the main needs in Great Lakes lifesaving systems rather than additional lifeboats.

The Coast Guard agrees with the comments stating that rapid launching and hypothermia protection are the primary needs for Great Lakes vessels.

The Coast Guard does not agree, however, that lifesaving systems need to be the same on the Great Lakes as for ocean and coastwise voyages. Therefore, the rules are retained as proposed in the NPRM. Although conditions on the Great Lakes can be just as severe as conditions in ocean waters, the fact that the Great Lakes are bounded on all sides by a shoreline means that a search operation for a major vessel casualty on the Great Lakes would probably be completed much faster than on ocean waters. This is especially true because the Coast Guard is also requiring these vessels to carry 406 MHz satellite EPIRBs.

Offshore Industry—MODUs and OSVs

Various comments from the offshore industry, including members of the National Offshore Safety Advisory Committee (NOSAC), opposed the inclusion of MODUs and OSVs under subchapter W. The comment writers requested that the Coast Guard keep the regulations for these vessels as self-contained as possible. As discussed in the "Overview of the Interim Rule" section of this preamble, the Coast Guard has put the revised lifesaving regulations for OSVs into subchapter L and has retained the lifesaving requirements for MODUs in subchapter I–A, where they have been located since the original publication of subchapter I–A. One exception is that, under § 108.500(b), requirements for surface-type units (drillships) will be the same as those for tank vessels under subchapter W. Unlike other MODUs, drillships have ship-shaped hulls and have problems similar to tank ships in the case of a casualty requiring abandonment of the vessel. This is consistent with the treatment of surface-type units under the MODU Code.

MODUs

Consistent with the Coast Guard's policy of aligning national standards with international standards, the regulations for MODU lifesaving systems are based on the IMO MODU Code for the construction of new MODUs. Three comments from the offshore industry opposed adoption of MODU Code standards as part of the U.S. regulations. This opposition was focused on the requirement for additional lifeboats. Following the MODU Code means a requirement for 200 percent capacity in lifeboats on most MODUs, contrasted with the present subchapter I–A requirement for 100 percent lifeboats and 100 percent davit-launched liferafts. One comment stated that none of the investigations of recent MODU accidents recommended increasing the number of lifeboats and that requiring lifeboats in lieu of liferafts was not justified because of such considerations as cost, weight, and size. Other comments indicated that davit-launched liferafts could not be effectively used on MODUs. Davit-launched liferafts were originally developed for launching down the straight sides of conventional ships. They are very light in weight compared to lifeboats and are therefore subject to wind and wave action in the relatively unprotected position beneath a MODU in distress. Because liferafts are not powered, they are subject to being driven into and damaged by the legs and columns of the MODU once they are released from the falls, unless they can immediately establish a tow from a lifeboat or rescue boat.

The Coast Guard agrees with the comments citing the shortcomings of davit-launched liferafts on MODUs and concludes that davit-launched liferafts should only be used on the small self-elevating units where there are no other options, as proposed in the NPRM. The Coast Guard does not agree with comments that indicate additional lifeboats on larger units are unnecessary. Even though there may have been no specific recommendations in the casualty reports to indicate the need for additional lifeboats, the abandonment of the OCEAN RANGER showed how lifeboats may be rendered unusable in a casualty and result in insufficient lifeboats for those on board. Another casualty to the Norwegian semi-submersible accommodation platform ALEXANDER L. KIELLAND also resulted in lost lifeboats. The Coast Guard has retained regulations based on the MODU Code with certain exceptions. See part 108, subpart E of these rules.

Several comments stated that the station bill requirements proposed in § 199.645 of the NPRM should not apply to MODUs because this information was required to be included in the operating manual currently required under 46 CFR 109.121. The Coast Guard does not agree. Section 109.121(c)(22) requires the operating manual to cover procedures for evacuating personnel from the unit, but this does not replace the station bill. The station bill has been renamed muster list in accordance with the internationally accepted term. The muster list requirements are located in § 108.901 of these rules and replace the station bill requirements currently in §§ 109.501 and 109.505.

One comment suggested revision of proposed § 199.650(d) to require that all survival craft be able to be launched only with the unit in a normal working position or a normal floating intact transit condition. The purpose of the revision was to prevent problems for certain mat-supported self-elevating units on which the mat footprint extends beyond the sides of the hull. In certain transit conditions with the mat fully retracted, some of the survival craft might be launched onto the mat. The Coast Guard agrees in principle with the comment. The problem is addressed in § 108.550(c)(2), which authorizes the OCMI to allow a reduction in the total number of survival craft when the unit is in the transit mode and the number of personnel on board is reduced. In such cases, sufficient survival craft must be available for use by the total number of personnel remaining on board. This should resolve the problem because although personnel on board are normally reduced in transit, they must still be provided with a way to evacuate.

One comment suggested that proposed § 199.650(e)(3), which stated "the location and orientation of each lifeboat [on a MODU] must take into consideration the in-water operating capabilities of the lifeboat," was vague and should be deleted. The Coast Guard agrees that the proposed wording was vague. In this rule, § 108.550(f)(3) states "the location and orientation of each lifeboat must be such that the lifeboat is either headed away from the unit upon launching, or can be turned to a heading away from the unit immediately upon launching."

Two comments stated that the written and audiovisual training material requirements in § 109.213(a) were intended for conventional SOLAS ships and not MODUs. The Coast Guard disagrees. This material is prepared by all lifesaving equipment manufacturers and is available for equipment used on MODUs as well as for equipment on conventional vessels.

Several comments were concerned about the requirement now in § 109.213(g) to provide abandonment training on MODUs within two weeks after crew or industrial personnel join the unit. The comments stated that the word "orientation" should be substituted for "training," and that this orientation should take place within 2 days. The Coast Guard believes that the immediate orientation given to persons as they first arrive at a MODU should continue. This orientation may include some of the elements the on board training required, but it does not necessarily replace the training requirement. The use of the term "join the unit" is intended to provide some flexibility with regard to the extent of training given to itinerant contractor personnel.

Several comments questioned the need to periodically replace falls on MODUs, as required in § 109.301(j), if the falls were thoroughly inspected and found satisfactory. The Coast Guard does not agree that it is possible to adequately inspect falls visually so the requirement has been retained. The NPRM noted that casualties had occurred as a result of lifeboat falls that parted due to deterioration. The Coast Guard is aware of newly developed nondestructive inspection equipment for wire rope falls, but has not been able to determine its suitability or practicality. It is possible that, in the future, use of such equipment could allow thorough fall inspections and continued use of falls in good condition, but use of such inspection equipment will not be authorized at the current time.

OSVs

The NTSB's comments opposed the continued use of lifefloats as survival craft on OSVs operating in the Gulf of Mexico because these devices do not protect against hypothermia. The Coast Guard agrees that hypothermia can be a problem in the Gulf of Mexico and that lifefloats and buoyant apparatus do not keep survivors out of the water. However, the casualty record of these vessels does not indicate that a change is needed. The Coast Guard believes that lifefloats should continue to be acceptable because, as a result of the addition of satellite EPIRBs on these vessels and the volume of marine traffic associated with the offshore oil industry in the Gulf of Mexico, rescue should come rapidly. This provision is in § 133.105(c).

The NTSB also opposed the exemption of liftboats from the requirement for having launching appliances for liferafts. The comment noted that, if the vessel were elevated and it became necessary to abandon ship, launching appliances might be crucial. The Coast Guard does not agree with the comment and has not changed this provision of the rule. A liftboat is a specialized type of OSV with movable legs capable of raising its hull above the surface of the sea. The operating characteristics of liftboats make the use of liferaft launching appliances highly unlikely. Liftboats exist for the sole purpose of servicing offshore structures, such as production platforms. Liftboats come alongside these structures and the liftboat's legs are jacked down so that the liftboat's deck elevates out of the water to the level of the structure's deck. If there is an emergency aboard the liftboat, crew can simply walk over onto the structure. If there is an emergency on the structure, the liftboat would jack down and move away. If there is a leg failure on a liftboat, it will collapse into the water where it has a very low freeboard, making launching appliances unnecessary. See § 133.150(c)(5).

New 1996 SOLAS Amendments

The International Maritime Organization has developed a new set of amendments to SOLAS, Chapter III, which were recently adopted and are contained in the 1996 SOLAS Amendments. These amendments will come into force July 1, 1998. The 1996 SOLAS Amendments remove the performance and construction requirements for lifesaving appliances from Chapter III of SOLAS and put them into a new mandatory Lifesaving Appliances Code (LSA Code). The requirements for the number and arrangement of lifesaving appliances on ships remain in SOLAS, Chapter III along with regulations concerning their operation and maintenance. These amendments also contain some new and some revised regulations, which are included in this interim rule to the extent that they were anticipated and proposed in the NPRM. New regulations that were not proposed in the NPRM, but which provide alternatives or lessened requirements, are also included. The following paragraphs summarize the more significant revisions to SOLAS, Chapter III in the 1996 SOLAS Amendments and explain the way they are addressed in this interim rule. The Coast Guard is adopting certain of these SOLAS revisions in subchapter W so that it will be in line with the SOLAS requirements when they come into force. Comments are invited on these new provisions.

The 1996 SOLAS Amendments revise the installation requirements for free-fall lifeboats on cargo ships. Free-fall lifeboats were included as an option in the 1983 SOLAS Amendments and in the NPRM. To the extent that the revisions do not impose more stringent requirements than those in the NPRM, they are included in this interim rule. Specifically, special requirements for free-fall lifeboat launching arrangements are in §§ 199.110(e), 199.120(b), 199.150(c), and 199.157.

Anti-exposure suits are allowed in the 1996 SOLAS Amendments as an option to immersion suits for the crews of rescue boats and marine evacuation systems. Immersion suits are intended as survival equipment in cold water and, as such, they can be bulky and restrictive. Anti-exposure suits can be designed to be practical working suits and can still provide reasonable hypothermia protection. This interim rule, like SOLAS, allows this option in § 199.70(c). Several comments on the NPRM objected to the immersion suit requirement for rescue boat crews on vessels and MODUs operating between 32 degrees north and 32 degrees south latitude because immersion suits are not required in these latitudes for the rest of the persons on board. The Coast Guard agrees, and SOLAS 1996 also allows exemption from the requirement in warm climates. Therefore, the exemption is contained in this interim rule under §§ 199.70(c)(1), 108.580(c)(1), and 133.70(c)(1).

The 1996 SOLAS Amendments require clear deck space to accommodate all persons assigned to muster stations, but at least 0.35 square meters (3.75 square feet) per person. Neither the 1983 SOLAS Amendments nor the NPRM under this docket included this minimum area requirement. Therefore, this requirement is not included in this interim rule. Nevertheless, any ship built after July 1, 1998, engaged in international voyages will have to comply.

The 1983 SOLAS Amendments required that as far as practicable, survival craft be stowed in a secure and sheltered position and protected from damage by fire and explosion. The NPRM proposed that, on tankers, survival craft stowage locations be protected from the cargo tank area by the deckhouse or A-class divisions. The 1996 SOLAS Amendments only require that survival craft on tankers not be stowed on or above a cargo tank, slop tank, or other tank containing explosive or hazardous cargoes. This interim rule includes this less strict requirement in § 199.290(c).

The 1983 SOLAS Amendments allowed the use of marine evacuation systems in place of davit-launching systems for liferafts. Marine evacuations systems consist of a slide or chute to provide passage to a water-level platform, from which liferafts are boarded. The 1983 SOLAS Amendments did not contain any requirements for installation, training, drills, or servicing of these appliances. The 1996 SOLAS Amendments do include installation, training, drill, and servicing requirements, and they are included in this interim rule. Since marine evacuation systems are optional, these requirements would only affect operators who choose this option. See §§ 199.145, 199.150(b), and 199.201(b). Marine evacuation systems have also been added as alternatives to liferaft launching devices discussed in subchapters I–A and L. See §§ 108.525, 108.545, 133.145, and 133.150(c).

The 1996 SOLAS Amendments require that recovery of a rescue boat be possible in not more than 5 minutes in moderate sea conditions when the rescue boat is loaded with its full complement of persons and equipment. This requirement was not contemplated in the NPRM and is therefore not included in this rule.

The 1996 SOLAS Amendments require that rescue boat embarkation and recovery arrangements allow for safe and efficient handling of a stretcher case. This requirement has been included in this interim rule, because the Coast Guard believes that rescue boat embarkation and recovery arrangements generally meet this requirement, and that this requirement can generally be met at the design stage at no additional expense. The requirement is in § 199.160(c)(1).

The 1996 SOLAS Amendments revised the requirements for passenger safety instructions. The Coast Guard believes that these requirements present no additional burden on the operator and they have therefore been included in § 199.180(b).

The 1983 SOLAS Amendments required falls to be turned end-for-end every 2½ years and replaced every 5 years. The 1996 Amendments allow an alternative for fall designs that can not be turned end-for-end. These falls can be examined periodically and replaced at least every 4 years. The alternative has been included in § 199.190(j).

The 1983 SOLAS Amendments required all engines in lifeboats and rescue boats to be operated each week for at least 3 minutes. The 1996 Amendments add that, during this period of time, it should be demonstrated that the gear box and gear box train are engaging satisfactorily. It also provides for alternatives for rescue boat outboard engines that can not be run out of water for 3 minutes. These provisions have been included in § 199.190(d)(2).

Numerous accidents have occurred as a result of poor launching appliance and lifeboat release gear condition, which is largely due to inadequate maintenance or infrequent servicing. The 1996 SOLAS Amendments contain specific requirements for periodic servicing of this equipment. These servicing requirements have been included in § 199.190(i). In general, the servicing requirements do not exceed the maintenance and inspection that a prudent operator now performs to ensure that lifesaving equipment is in working order and ready for immediate use. The SOLAS requirements adopted in this rulemaking are consistent with current manufacturers' instructions on maintenance of this equipment.

The 1996 SOLAS Amendments state that, for a davit-launched survival craft on passenger ships, the height of the davit head with the survival craft in embarkation position shall, as far as practicable, not exceed 15 meters (50 feet) to the waterline when the ship is in its lightest seagoing condition. This is not a requirement, but a strong recommendation to designers to avoid excessively high stowage locations for survival craft on passenger ships. This provision has been included in § 199.230(c) as a recommendation and not a new requirement.

Another SOLAS, Chapter III revision adopted in 1991 after the NPRM was published affected fire training and drill requirements in regulation 18, Chapter III of SOLAS. Those requirements were not substantially different than those proposed in the NPRM and they are, therefore, included in this rule at § 199.180(f).

Incorporation by Reference

1. The following material is incorporated by reference in § 108.101:

American Bureau of Shipping (ABS)—Rules for Building and Classing Offshore Mobile Drilling Units, ANSI A14.3, ANSI Z89.1, American Petroleum Institute (API)—API Spec 2C with supplement 2, ASTM F–1121, Federal Specification ZZ–H–451 F, IMO Resolution A.520(13), IMO Resolution A.658(16), IMO Resolution A.760(18), NFPA 407, NFPA 496, and Underwriters Laboratories (UL)—UL 19–78.

2. The following material is incorporated by reference in § 125.180:

IMO Resolution A.520(13), and IMO Resolution A.760(18).

3. The following material is incorporated by reference in § 199.05:

ASTM F1003, ASTM F1014, IMO Resolution A.520(13), IMO Resolution A.604(15), IMO Resolution A.657(16), IMO Resolution A.760(18), IMO Resolution A.212(VII), and IMO Resolution A.328(IX).

Copies of the material are available for inspection where indicated under **ADDRESSES**. Copies of the material are available at the addresses in §§ 108.101, 125.180, and 199.05.

The Coast Guard has submitted this material to the Director of the Federal Register for approval of the incorporation by reference.

Assessment

This interim rule is not a significant regulatory action under section 3(f) of Executive Order 12866. However, due to its nature, it has been reviewed by the Office of Management and Budget under that order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

An interim assessment has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES**. The Assessment is summarized as follows.

This interim rule applies to all existing and new U.S. inspected passenger vessels 100 tons gross tonnage and over, cargo vessels, tankships, manned cargo and tank barges, oceanographic research vessels, nautical school vessels (with the exception of sailing school ships), OSVs, and MODUs. Coast Guard records list 1,012 existing vessels that do not have SOLAS, MODU, or Special Purpose Vessel Code certificates (161 passenger vessels, 120 cargo vessels, 48 tankships, 12 manned barges, 4 oceanographic research vessels, 8 nautical school vessels, 567 OSVs, and 92 MODUs) are currently operating under the U.S. flag, and will be affected by this interim rule. Because the regulations in this interim rule are based on SOLAS, the IMO MODU Code, and the IMO Special Purpose Vessel Code, vessels with certificates indicating compliance with these standards will not be substantially affected by this interim rule. Therefore vessels with SOLAS, MODU, or Special Purpose Vessel Code certificates are not included in the regulatory analysis.

Discussion of Comments

Several comments to the NPRM suggested that the estimated cost to comply with implementation requirements and the recurring cost to vessel owners were understated. One comment estimated implementation cost for the proposed requirements to be $3 million and that it would affect seven specific passenger ferries. Another comment provided calculations to support an implementation cost estimate of $562,500 per passenger ferry.

The requirements in this interim rule are different from or less than those proposed in the NPRM. This interim rule contains fewer refit requirements for existing vessels and also provides alternatives for passenger ferries which provide a lower cost alternative. For example, if a passenger ferry operating on a lakes, bays, and sounds service chooses to have an approved safety assessment rather than fit additional survival craft, the cost of the assessment will be substantially less than the costs for additional survival craft estimated in the NPRM. The cost estimates in this summary and in the assessment reflect the requirements of this interim rule and have taken into account the cost estimates provided by the passenger ferry industry.

Industry Costs

Industry cost for this interim rule is estimated based on the implementation cost to existing vessels, the implementation cost to new vessels, and the recurring cost to all vessels for replacement of appliances as they become unserviceable.

Compliance cost of this interim rule will total about $19.2 million. The present value of the costs will total $16 million. This reflects a 7 percent discount to 1996 of the projected future estimated costs of this interim rule in accordance with current Office of Management and Budget guidance. Passenger vessels account for an estimated 50 percent of total costs; cargo vessels, tankships, and manned barges together account for an estimated 13 percent of total costs; and oceanographic research vessels, nautical school vessels, OSVs, and MODUs account for the remainder. A discussion of costs for each requirement follows.

The costs associated with the interim rule on lifesaving appliances and arrangements were developed based on vessel type, vessel use, and average vessel size. Cost analysis calculations were based upon the following assumptions: (1) the interim rule will come into effect on October 1, 1996, for all requirements except a requirement for retro-reflective material on all lifesaving appliances (required as of October 1, 1997), the carriage of immersion suits and thermal protective aids on passenger vessels (required as of October 1, 2001), and the number and type of survival craft required for certain vessels (required as of October 1, 2001); (2) the estimate of annual new vessels affected by this interim rule is directly proportional to the number of vessels that will be annually retired from the U.S. fleet; therefore, the vessel population will remain constant; (3) the average capacity of a passenger vessel was estimated to be 500 persons; (4) the average capacity on all other affected vessels was estimated to be 50 persons; (5) no costs for this rule were associated with existing vessels presently carrying a SOLAS certificate; (6) both costs and benefits developed for this rulemaking are discounted at 7 percent back to 1996; (7) recurring cost items are annualized based on the average life of each lifesaving appliance or equipment; and (8) all recurring costs are calculated through the year 2001.

Survival Craft for MODUs. As required by § 180.525, new MODUs, except for small self-elevating units, must increase their lifeboat capacity. Lifeboats having an aggregate capacity of twice the number of persons on board would be typical. The lifeboats will cost about $400,000 each. The requirements in § 108.550(c), that new MODUs provide greater clearance for lifeboats and liferafts from MODU structures, could amount to $200,000 per lifeboat or liferaft installation, for a total cost of $600,000 to comply with both requirements.

MODUs—Float-Free Liferafts. The cost of replacing davit-launched liferafts with float-free liferafts as required in § 108.525(a)(2) applies to newly constructed MODUs. This replacement will result in an estimated cost savings of $60,000 per vessel.

Distress Signals. The cost to replace distress signals as required in §§ 108.595(b), 133.60(b), and 199.60(c) applies to all vessels on oceans, coastwise, and Great Lakes services. Each vessel is required to have a minimum of 12 rocket parachute flares. Vessels on Great Lakes services are offered an alternative to use hand flares. The annual recurring cost of this requirement to industry, based on a 3-year replacement schedule, is estimated to be $123,280.

Lifejacket Lights. The cost of lifejacket lights meeting SOLAS standards required in §§ 108.580(b), 108.580(c), 199.70(b), and 199.70(c) applies to cargo vessels 500 tons gross tonnage and over, and all other vessels on ocean and coastwise services except for OSVs. Additionally, the cost will vary based on vessel type. Lifejacket light costs were based on the added cost of a light ($5) for each jacket. There is no implementation cost associated with this requirement for new vessels and existing vessels. Lights are already required by regulation and are only required to be upgraded if they become unserviceable. The annual recurring cost, based on a 5-year replacement schedule, is estimated to be $15,200.

Lifejackets with Increased Freeboard. The cost of new lifejackets with the greater freeboard required by SOLAS standards, as cited in §§ 108.580(b) and 199.70(b) applies to MODUs and all vessels on ocean and coastwise services, with exceptions to OSVs, and will vary based on the vessel size. The additional cost is estimated to be $1,200 for each passenger vessel and $120 for each other vessel. The annual recurring cost is estimated to be $29,400.

Lifebuoy Lifelines. The cost to replace lifebuoy lifelines as required in §§ 108.580(a)(2), 133.70(c)(4), and 199.70(a)(3) applies to all vessels. The cost per vessel is estimated to be $20. The annual recurring cost, based on a 5-year replacement schedule, is estimated to be $4,048.

Emergency Instructions. The cost of emergency instructions required in §§ 108.901(c), 133.80, and 199.80 applies to all vessels and will vary based on vessel size and amount of accommodations on board. The new vessel and existing vessel implementation cost of generating the emergency instructions is estimated to be $50 per vessel. The copy cost required for posting is estimated to be minimal. Therefore, the total cost to industry for this requirement is $50,600. No recurring costs were associated with this requirement.

Operating Instructions. The cost of operating instructions required in §§ 108.655, 133.90, and 199.90 applies to all vessels and will vary based on the vessel size. The new vessel and existing vessel implementation cost of generating the instructions is estimated to be $50 per vessel. The cost for copying materials required for posting is estimated to be minimal. The total cost to industry for this requirement is $50,600. No recurring costs were associated with this requirement.

Manning and Supervision. There is no cost directly associated with the requirements of §§ 109.323 and 199.100. The interim rule does not require the hiring of additional crew because current U.S. manning requirements are sufficient to meet this condition. The training costs associated with this requirement are reflected in the costs for drills and onboard training.

Falls. The cost to renew falls as required in §§ 109.301(j) and 199.190(j) applies to all vessels except for MODUs, and vessels in services limited to fresh water. The cost will vary based on vessel type and size. Each set of falls costs about $2,500. The annual recurring cost to industry to replace falls, based on a 5-year replacement, is estimated to be $1,050,000.

Inspection for Certification. The additional cost to inspect and certify vessels as required in § 199.45 applies to all new vessels and will vary based on vessel size. The cost to inspect and certify small vessels, which include OSVs and manned barges, is estimated to be $2,000 each. Large vessels, which include all other vessels affected by the interim rule, are estimated to cost $5,000 each. The annual cost to industry is estimated to be $80,000.

Launching Appliances for High Freeboard Vessels. The high speed launching appliances as required in §§ 108.553 and 199.153 applies to about

25 percent of all new MODUs and cargo/tank vessels. The cost per vessel is estimated to be $5,000.

Line Thrower Firings. The cost of annual line thrower firings as required in § 190.170 has been eliminated. It applies to all vessels carrying line-throwing appliances, which are self-propelled vessels on ocean services with the exception of tankships, which are not required to conduct firing under the present regulations. The annual cost savings to industry is estimated to be $556,000.

Drills and Onboard Training. The cost to provide onboard training as required in §§ 109.213 and 199.180 applies to all vessels, with exception of OSVs, and will vary based on vessel size. The cost attributed to the time loss due to performing drills is negligible because drills are presently required by regulation. The only difference between present requirements and the requirement in this rule is that some drills will now be training sessions. The annual costs associated with the additional training sessions and related expenses are estimated to be $2,000 each for large vessels and $500 each for small vessels. The total implementation and annual recurring costs to existing and new vessels for this requirement are estimated to be $872,000.

Maintenance of Equipment. The maintenance of equipment as required by §§ 109.301 and 199.190 applies to all vessels, with exception of OSVs, and those operating on lakes, bays, and sounds services, and rivers services. No new vessel implementation or recurring cost is associated with this requirement. Existing vessel implementation costs for the requirement to carry spare parts is estimated to be $100 per vessel and is applicable to about 802 vessels. The total existing vessel implementation cost to industry for this requirement is estimated to be $24,500. No recurring costs were estimated for this requirement.

Partially Enclosed Lifeboats. The cost of partially enclosed lifeboats as required in § 199.202 applies to newly constructed oceangoing passenger vessels. The added cost per vessel is estimated to be $50,000.

Totally Enclosed Lifeboats. The cost of totally enclosed lifeboats as required in § 199.261 applies to newly constructed cargo vessels. The added cost per vessel is estimated to be $50,000.

Fire Protected Lifeboats. The cost of fire protected lifeboats as required in § 199.261 applies to newly constructed tank vessels. The added cost per vessel is estimated to be $60,000.

Cargo Vessel Immersion Suits. The requirement to carry immersion suits for all persons on board as required by § 199.273 applies to all cargo vessels. This requirement affects cargo vessels not limited to operating between 32 degrees north latitude and 32 degrees south latitude. No cost is associated with this requirement because existing regulations mandate suits on all cargo vessels.

Emergency Position Indicating Radio Beacons (EPIRBs). The cost to install EPIRBs as required by §§ 133.60(a) and 199.510 applies to all vessels. However, because the FCC presently has a requirement for EPIRBs, the new and existing vessel implementation cost of this rule will only affect cargo vessels and OSVs less than 300 tons gross tonnage and all vessels operating on the Great Lakes. The cost of an EPIRB is estimated to be $1,200 for each vessel. The estimated total implementation cost to industry for this requirement for new and existing vessels is $649,200. Because these vessels are provided an alternative of using an existing EPIRB until 1999, if fitted before October 1, 1996, the implementation costs associated with this requirement are evenly distributed over the years 1997 through 1999. Recurring cost for this requirement was estimated based on a 5-year replacement schedule for the EPIRB batteries. These batteries were estimated to cost $400 per EPIRB. The recurring cost for this requirement to the industry is estimated to be $43,280.

Retro-Reflective Material on all Floating Appliances. The cost to equip floating appliances with retroflective material as required by §§ 108.515(a)(2), 133.10(b)(2), and 199.10(i)(1)(i) applies to all vessels. The new and existing implementation cost will vary based on the number of lifeboats, rescue boats, and other lifesaving appliances each vessel is required to carry. It is estimated that vessels will have to fit about 40 items with retro-reflective material at a cost of $5 per item. Therefore, the total implementation cost to industry to meet this requirement is estimated to be $197,800. The recurring cost of this requirement is estimated to be $25 per vessel. The total annual recurring cost to industry is estimated to be $25,300.

Equipment for Lifeboats. The cost of periodically replacing certain equipment required by §§ 108.575(b), 133.175(b), and 199.175(b), applies to all vessels, with the exception of OSVs, and those operating on lakes, bays, and sounds services, and rivers services, and will vary based on vessel type. It is estimated that passenger vessels will spend about $500 annually per vessel on replacement equipment and other vessels will each spend about $50 annually per vessel. The total annual recurring cost to industry for this requirement is estimated to be $16,300.

Rescue Boats. The cost of the replacing rescue boats as required by §§ 108.560, 133.135, and 199.202 applies to existing and new passenger vessels on lakes, bays, and sounds service, and Great Lakes service. The cost of a rescue boat is estimated to be $50,000. The recurring annual cost to industry based on a 25-year replacement schedule is estimated to $272,000.

Possenger Vessel Immersion Suits and Thermal Protective Aids. The cost of immersion suits and thermal protective aids as required by § 199.214 applies to passenger vessels not limited to operating between 32 degrees north and 32 degrees south latitude. Where applicable, passenger vessels must carry at least three immersion suits or anti-exposure suits for each lifeboat on the vessel. It is estimated that 9 passenger vessels must provide 3 immersion suits for 8 lifeboats at a cost of $1,200 per lifeboat. Thermal protective aids are also required on these vessels for each person not provided with an immersion suit. The thermal protective aids were estimated to cost $35 each. The estimated total new and existing implementation cost to industry to meet this requirement is $141,750. No recurring costs are associated with this requirement.

Survival Craft for Passenger Vessels. The type and number of survival craft required by § 199.201 affects all passenger vessels. Alternatives to these requirements for passenger vessels in certain services are provided in § 199.630. Vessel operators may choose alternatives for meeting survival craft requirements. It is estimated that 50 percent of the passenger vessel population will choose the option to develop a safety management and contingency plan. Operators will spend an estimated $10,000 *per operator* to develop the safety management and contingency plan and possibly demonstrate some aspect of it. Some additional equipment or vessel modifications might be required to implement the plan, for an estimated non-recurring cost of $10,000 per vessel. The remaining 50 percent of passenger vessels will increase the number of inflatable buoyant apparatus (IBAs) to accommodate either 100 percent or 67 percent of the passenger population, where applicable. The existing vessel implementation cost for passenger vessels required to accommodate 100 percent of the passengers with IBAs is estimated to be $70,000 assuming 10 50-person IBAs are required on the average 500-passenger ferry. In addition, these IBAs will have to be installed on the vessel, and in some cases launching or boarding appliances may be required. This could amount to an additional $40,000 per vessel, for a total cost of $110,000 per vessel. Additionally, the IBAs must be serviced annually. Assuming $400 per IBA in servicing fees, this will amount to a recurring annual cost of about $4,000 per year per vessel.

Survival Craft for Cargo Vessels. As required by § 199.261(b)(2), ocean and coastwise cargo/tank ships and manned barges must increase their float-free liferaft capacity by 50 percent. This additional liferaft will cost about $4,000 per vessel installed. The raft will have to be serviced annually at an estimated cost of $400 for each servicing.

Davit Launched Liferaft. The cost of davit-launched liferafts on one side for 100 percent capacity as required in § 199.640(d) applies to newly constructed cargo vessels on Great Lakes services. The cost per vessel is estimated to be $30,000.

Government Costs

The cost of this interim rule to the Federal government includes costs to the Maritime Administration (MARAD). About 1 percent of MARAD's active fleet is involved in commercial service; therefore, requiring compliance with this interim rule. The MARAD commercial fleet is comprised of six freight ships and four tank ships. The total implementation costs to MARAD's existing vessels are an estimated $39,812. MARAD's annual cost to upgrade equipment as it becomes unserviceable is estimated to be $33,659.

State and local governments account for 8 percent of the affected population, or about 75 ferries and other vessels regulated under subchapter H. The total implementation cost to existing state vessels is estimated to be about $1.9 million, assuming that 50 percent of the ferries opt for a safety management and contingency plan that does not involve additional lifesaving equipment. The recurring annual cost to existing and new vessels is estimated to be $358,567.

Total Costs

The total costs of this interim rule are $8,463,250 in implementation costs to existing vessels and $10,742,972 in recurring annual costs to existing and new vessels. Costs of the interim rule are forecast to 2001. Vessel owners must meet the interim rule's requirements beginning October 1, 1996. Exceptions hold for the following requirements: (1) the type of survival craft for certain vessels as required in §§ 199.10(i)(1)(ii), 199.261(b)(2), and 199.630; and (2) immersion suits and thermal protective aids for certain passenger vessels as required in §§ 199.10(i)(1)(iii) and 199.214. Both have a 5-year phase-in period, ending October 1, 2001. Another exception to the October 1, 1996, date is the requirement for retro-reflective material on all floating appliances, and certain operational requirements listed in §§ 108.515(a)(2), 133.10(b)(2), and 199.10(i)(1)(i), which will be required on October 1, 1997. Costs are estimated at $2,739,290 in 1997; $4,224,933 in 1998 and 1999; and $4,008,533 in 2000 and 2001. The present value of the costs of this interim rule discounted at 7 percent to 1996 is estimated to total $11,259,277.

Cost-Benefit Evaluation

A benefit analysis that accounts for the overall improvement in lifesaving appliances and arrangements realized by this interim rule was completed by researching 475 Coast Guard rescue cases, relating these cases to the risk associated with the potential for losing a life at sea on the affected vessel fleet, and estimating how many of these potential lost lives would be saved by the implementation of this interim rule. Rescue case data was reviewed from the Coast Guard's Search and Rescue Mission Information System (SARMIS) over the past 5 years. The criteria for selecting the case data included the likelihood of the case type to result in a person entering the water. For example, cases involving a collision or sinking were reviewed but adrift and ice bound cases were not included. Because SARMIS only records vessel length, the case data for this analysis was not differentiated based on the vessel's gross tonnage but rather on the vessel's length overall (LOA). The following vessel LOA estimates were used to assess vessel tons gross tonnage: an LOA of over 100 feet was used to assess passenger vessels over 100 tons gross tonnage (subchapter H); an LOA between 66 to 200 feet was used to assess OSVs (subchapter L); an LOA of over 200 feet was used to assess cargo vessels—including manned barges (subchapter I); an LOA of over 66 feet was used to assess tank vessels—including manned barges (subchapter D); an LOA of over 66 feet was used to assess nautical school vessels and research vessels; and all MODU data entries were used.

The overall improvement in lifesaving appliances and arrangements realized by this interim rule were estimated by estimating the 5-year case data on Coast Guard rescues and recording the number of lives at risk (lives lost and saved by the Coast Guard) due to each type of vessel casualty that would be likely to result in a person entering the water for each vessel type. The casualty types considered in this interim rule were capsizing, fire and explosion, flooding and sinking, and collisions.

The number of lives at risk considered for each casualty and vessel type was then adjusted to reflect current Coast Guard rescue effectiveness. This adjusted range of lives at risk calculation was done by multiplying the Coast Guard's Search and Rescue program effectiveness for lives saved (90 percent) to the range of lives at risk calculated for each casualty type. For example, according to the SARMIS data, there were 99 lives lost due to capsizing, 25 lives lost due to fire and explosion, 0 lives lost due to flooding and sinking, and 0 lives lost due to collision over the past 5 years on passenger vessels over 100 feet in length. The adjusted number of lives at risk on passenger ships follows: (99 lives multiplied by .10) plus (25 lives multiplied by .10) plus (0 lives multiplied by .10) plus (0 lives multiplied by .10).

The probability that the improved lifesaving appliances and arrangements will increase the rescue likelihood of lives at risk was estimated based on the adjusted calculations. For capsizing casualties, the probability of this interim rule increasing a person's rescue was estimated to be between 5 and 15 percent. This was determined by considering the positive effects of increased survival craft availability, visibility, and the effectiveness of crew training on egress. For fire and explosion casualties, the probability of this interim rule increasing a person's rescue was estimated to be between 0 and 5 percent. This was determined by considering the positive effects of increased standards for stowage arrangements of survival craft on new vessels, availability of survival craft in remote locations, and the effectiveness of crew training on fire fighting and abandonment. For flooding and sinking casualties, the probability of this interim rule increasing a person's rescue was estimated to be between 2 and 8 percent. This was determined by considering the positive effects of increased standards for launching arrangements of survival craft on new vessels and the effectiveness of muster lists and emergency instructions. For collision casualties, the probability of this interim rule increasing a person's rescue was estimated to be between 1 and 5 percent. This was determined by considering the positive effects of

requirements for emergency communication capabilities, drill requirements, and improved equipment capabilities.

Factoring in the effectiveness estimated to adjusted range of lives at risk for passenger vessels becomes the accumulation of the following: capsizing risks range from .5 to 1.5 lives (9.9 lives at risk multiplied by .05) and (9.9 lives at risk multiplied by .15)]; fire and explosion risks range from 0 to .13 lives; flooding and sinking calculations result in 0 lives; and collision calculations result in 0 lives. Therefore, the benefits from this interim rule for passenger vessels over the next 5 years range from .5 lives to 1.63 lives saved.

This calculation was done for the remaining vessel types. For cargo vessels over 200 feet in length, 0 lives were lost due to capsizing, 84 lives were lost due to fire and explosion, 147 lives were lost due to flooding and sinking, and 0 lives were lost due to collision over the past 5 years. Using this method the estimated adjusted range of lives at risk for cargo vessels becomes the following: capsizing calculations result in 0 lives; fire and explosion risks range from 0 to .4 lives; flooding and sinking risks range from .3 to 1.2 lives; and collision calculations result in 0 lives. Therefore, the benefits from this interim rule for cargo vessels over the next 5 years range from .3 lives to 1.6 lives saved.

For tank vessels over 66 feet in length, 0 lives were lost due to capsizing, 66 lives were lost due to fire and explosion, 26 lives were lost due to flooding and sinking, and 0 lives were lost due to collision over the past 5 years. Using this method the estimated adjusted range of lives at risk for tank vessels becomes the following: capsizing calculations result in 0 lives; fire and explosion risks range from 0 to .3 lives; flooding and sinking risks range from .1 to .2 lives; and collision calculations result in 0 lives. Therefore, the benefits from this interim rule for tank vessels over the next 5 years range from .1 lives to .5 lives saved.

For OSVs 66 to 200 feet in length, 18 lives were lost due to capsizing, 11 lives were lost due to fire and explosion, 136 lives were lost due to flooding and sinking, and 7 lives were lost due to collision over the past 5 years. Using this method the estimated adjusted range of lives at risk for OSVs follows: capsizing risks range from .1 to 2.7 lives; fire and explosion risks range from 0 to .1 lives; flooding and sinking risks range from .3 to 1.1 lives; and collision risks range from .01 to .04 lives. Therefore, the benefits from this interim rule for OSVs over the next 5 years range from .41 lives to 3.94 lives saved.

For MODUs of all lengths, 0 lives were lost due to capsizing, 25 lives were lost due to fire and explosion, 16 lives were lost due to flooding and sinking, and 0 lives were lost due to collision over the past 5 years. Using this method the estimated adjusted range of lives at risk for MODUs follows: capsizing calculations result in 0 lives; fire and explosion risks range from 0 to .125 lives; flooding and sinking risks range from .03 to .13 lives; and collision calculations result in 0 lives. Therefore, the benefits from this interim rule for MODUs over the next 5 years range from .03 lives to .25 lives saved.

For nautical school and research vessels, insufficient data was found in order to assess them independently. However, the Coast Guard finds that the benefits realized by this interim rule would be similar to the cargo and passenger vessel benefits for nautical school and research vessels.

The total discounted cost for this interim rule is estimated to be $11,259,277. The benefits from this interim rule for passenger vessels, cargo vessels, tank vessels, OSVs, and MODUs over the next 5 years range from 1.34 lives to 7.92 lives saved. The overall benefit for the five vessel categories affected for the first 5 years of this interim rule implementation is estimated to be between $3.6 million and $21.4 million. The present value of the estimated range is between $2.2 million and $13 million. Based on the willingness of society to pay $2.7 million for the value of a fatality averted, as determined by the Department of Transportation (DOT), if this interim rule causes a reduction in the number of fatalities by 4.2 people in 5 years, the benefits will exceed the cost. The number of persons at risk in a major marine casualty would range from about 25 to 2,000 or more. Since this interim rule addresses shortcomings in lifesaving systems identified in past major marine casualties, the Coast Guard is confident that more than four lives would be saved by the requirements in this rule in any single major casualty involving a vessel equipped to this rule. Furthermore, the benefits of this interim rule could be realized at any time throughout a vessel's economic life, which may extend for 25 years or more, not just during the 5-year analysis period. As discussed previously, statistical models are not meaningful in predicting the occurrence of such low probability/high consequence accidents. Since some of the less tangible benefits realized through unification of the U.S. regulations with international regulations are not taken into account in this analysis, the Coast Guard is confident that the total benefits exceed total costs, and has determined that this interim rule is cost effective.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this interim rule will have a significant economic impact on small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business act (15 U.S.C. 632). "Small entities" also include not-for-profit organizations and small governmental jurisdictions.

This interim rule considered small business impact for vessels privately held by independent companies with less than 500 employees. It may affect certain OSVs operating primarily in the Gulf of Mexico. An estimated one-half of the OSV population is owned by 35 vessel owners, each having 9 or fewer OSVs. Information provided by the International Association of Drilling Contractors and the Passenger Vessel Association, show that there is one MODU and about 10 percent of passenger vessels regulated under subchapter H that should be given consideration under the Regulatory Flexibility Act.

Sufficient flexibility and alternatives are built into the rule to allow small entities to comply with requirements at a modest cost. The greatest cost item to OSVs requires the purchase of satellite EPIRBs. Flexibility has been provided by allowing vessels which currently have class A EPIRBs or two class C EPIRBs, installed to retain these until February 1999, after which these vessels must meet the new requirement of the interim rule. Other flexibilities offered include a 5-year phase-in period to certain passenger vessels to comply with survival craft requirements. These passenger vessels are provided with alternative options for meeting survival craft requirements.

Because of these accommodations, the Coast Guard certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this interim rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this interim rule will economically affect it.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other similar requirements.

This interim rule contains collection-of-information requirements. The Coast Guard has submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has approved them. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESSES**. The section numbers of those provisions and the corresponding OMB approval numbers are as follows:

a. § 31.36–1—2115–0071
b. § 35.07–10—2115–0071
c. § 35.10–1—2115–0071
d. § 35.10–5—2115–0576, 2115–0577
e. § 35.40–40—2115–0577
f. § 70.28–1—2115–0071
g. § 78.13–1—2115–0576, 2115–0577
h. § 78.17–50—2115–0071
i. § 78.37–5—2115–0071
j. § 78.47–45—2115–0577
k. § 90.27–1—2115–0071
l. § 97.13–1—2115–0576, 2115–0577
m. § 97.15–35—2115–0071
n. § 97.35–5—2115–0071
o. § 97.37–42—2115–0577
p. § 107.305—2115–0554
q. § 108.105—2115–0554
r. § 108.645—2115–0577
s. § 108.646—2115–0577
t. § 108.647—2115–0577
u. § 108.649—2115–0577
v. § 108.650—2115–0577
w. § 108.655—2115–0577
x. § 108.901—2115–0557
y. § 109.213—2115–0071
z. § 109.301—2115–0071
aa. § 109.323—2115–0576, 2115–0557
ab. § 109.425—2115–0007
ac. § 109.433—2115–0071
ad. § 133.40—2115–0554
ae. § 133.70—2115–0577
af. § 133.80—2115–0577
ag. § 133.90—2115–0577
ah. § 167.55–5—2115–0577
ai. § 167.65–1—2115–0071
aj. § 188.27–1—2115–0071
ak. § 195.06–1—2115–0071
al. § 196.13–1—2115–0576, 2115–0577
am. § 196.15–35—2115–0071
an. § 196.35–5—2115–0071
ao. § 196.37–37—2115–0577
ap. § 199.10—2115–0007
aq. § 199.40—2115–0554
ar. § 199.60—2115–0577
as. § 199.70—2115–0577
at. § 199.80—2115–0577
au. § 199.90—2115–0577
av. § 199.100—2115–0576, 2115–0577
aw. § 199.175—2115–0577
ax. § 199.176—2115–0577
ay. § 199.178—2115–0577
az. § 199.180—2115–0071, 2115–0577
ba. § 199.190—2115–0071
bb. § 199.217—2115–0577
bc. § 199.640—2115–0577

Federalism

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any 1 year. Because this interim rule is estimated to result in the expenditure by state, local, and tribal governments of less than $100 million per year, a budgetary impact statement has not been prepared. Nevertheless, much of the information required in a budgetary impact statement can be found in the Final Regulatory Assessment for this rule.

Several state and local governments operate about 75 passenger ferries and other vessels regulated under subchapter H. Total implementation costs to the passenger vessel industry affected by this interim rule are estimated at $6.7 million and the total recurring annual costs from 1998 through 2001 is estimated to be $3 million. State and local government passenger ferries and other vessels account for an estimated 34 percent or $3.3 million of the total compliance costs for passenger vessels. The implementation costs to state and local government vessels accounts for $1.9 million and the total annual recurring cost would account for $1.4 million.

Because of the minimal estimated cost to state and local governments, the Coast Guard finds that preparation of a Federalism Assessment is unwarranted.

Environment

The Coast Guard considered the environmental impact of this interim rule and concluded that under paragraph 2.B.2 of Commandant Instruction M16475.1B, this interim rule is categorically excluded from further environmental documentation. This interim rule is made to enhance the safety and survivability of personnel at sea, as well as improving the effectiveness of search and rescue. It is expected to have no environmental impact. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 32

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 33

Cargo vessels, Marine safety, Occupational safety and health, Seamen.

46 CFR Part 35

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 70

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 71

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 75

Marine safety, Passenger vessels.

46 CFR Part 77

Marine safety, Navigation (water), Passenger vessels.

46 CFR Part 78

Marine safety, Navigation (water), Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 90

Cargo vessels, Marine safety.

46 CFR Part 91

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 94

Cargo vessels, Marine safety.

46 CFR Part 96

Cargo vessels, Fire protection, Marine safety.

46 CFR Part 97

Cargo vessels, Marine safety, Navigation (water), Reporting and recordkeeping requirements.

46 CFR Part 107

Marine safety, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 108

Fire prevention, Incorporation by reference, Marine safety, Occupational safety and health, Oil and gas exploration, Vessels.

46 CFR Part 109

Marine safety, Occupational safety and health, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 125

Incorporation by reference, Marine safety, Occupational safety and health, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 133

Marine safety, Occupational safety and health, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 167

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Seamen, Vessels.

46 CFR Part 168

Occupational safety and health, Schools, Seamen, Vessels.

46 CFR Part 188

Marine safety, Oceanographic research vessels.

46 CFR Part 189

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

46 CFR Part 192

Marine safety, Oceanographic research vessels.

46 CFR Part 195

Marine safety, Navigation (water), Oceanographic research vessels.

46 CFR Part 196

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

46 CFR Part 199

Cargo vessels, Incorporation by reference, Marine safety, Oil and gas exploration, Passenger vessels, Reporting and recordkeeping requirements, Vessels.

Dated: May 7, 1996.

James C. Card,

Rear Admiral, U.S. Coast Guard Chief, Marine Safety and Environmental Protection.

For the reasons set out in the preamble, under the authority of 46 U.S.C. 3306, the Coast Guard amends 46 CFR chapter I as follows:

SUBCHAPTER D—TANK VESSELS

PART 30—GENERAL PROVISIONS

1. The authority citation for part 30 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. 5103, 5106; 49 CFR 1.45, 1.46; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507; Section 30.01–5 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

§ 30.01–5 [Amended]

2. In § 30.01–5, paragraph (b) is removed and reserved.

3. In § 30.01–6, paragraph (d) is revised to read as follows:

§ 30.01–6 Application to vessels on an international voyage.

* * * * *

(d) The Commandant or his authorized representative may exempt any vessel from the construction requirements of this subchapter if the vessel does not proceed more than 20 nautical miles from the nearest land in the course of its voyage.

PART 31—INSPECTION AND CERTIFICATION

4. The authority citation for part 31 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 545757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46. Section 31.10–21a also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

5. In § 31.01–1, paragraph (a) is revised to read as follows:

§ 31.01–1 Inspections required—TB/ALL.

(a) Every tank vessel subject to the regulations in this subchapter shall be inspected biennially, annually, or oftener, if necessary, by the Coast Guard to see that the hull, boilers, machinery, equipment, apparatus for storage, and appliances of the vessel comply with marine inspection laws, and the regulations in this subchapter, and when applicable, subchapters E, F, J, O, Q, S, and W of this chapter and 33 CFR parts 155 and 157.

* * * * *

6. In § 31.05–1, paragraph (a) is revised to read as follows:

§ 31.05–1 Issuance of certificate of inspection—TB/ALL.

(a) When a tank vessel is found to comply with the regulations in this subchapter, and applicable provisions of subchapters E, F, J, O, Q, S, and W of this chapter and 33 CFR parts 155 and 157, a certificate of inspection will be issued to it, or to its owners, by the Officer in Charge, Marine Inspection.

* * * * *

7. Subpart 31.36 is added to read as follows:

Subpart 31.36—Lifesaving Appliances and Arrangements

Sec.

31.36–1 Lifesaving appliances and arrangements—TB/ALL.

Subpart 31.36—Lifesaving Appliances and Arrangements

§ 31.36–1 Lifesaving appliances and arrangements—TB/ALL.

All lifesaving appliances and arrangements on tank vessels must be in accordance with subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

PART 33—[REMOVED]

8. Part 33 is removed.

PART 35—OPERATIONS

9. The authority citation for part 35 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

10. In § 35.07–10, paragraph (b)(1) is revised, paragraphs (b)(2) and (b)(7) are removed, and paragraphs (b) (3), (4), (5), (6), (8), (9), and (10) are redesignated as paragraphs (b)(2) through (b)(8) to read as follows:

§ 35.07–10 Actions required to be logged-TB/ALL.

* * * * *

(b) * * *

(1) Onboard training, musters, and drills: held in accordance with subchapter W (Lifesaving Appliances or Arrangements) of this chapter.

* * * * *

11. Section 35.10–1 is revised to read as follows:

§ 35.10–1 Emergency training, musters, and drills—T/ALL.

Onboard training, musters, and drills must be in accordance with subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

12. Section 35.10–5 is revised to read as follows:

§ 35.10–5 Muster lists, emergency signals, and manning—T/ALL.

The requirements for muster lists, emergency signals, and manning must be in accordance with subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

§§ 35.10–6, 35.10–7, 35.10–9, 35.10–20, 35.10–25, 35.10–30 [Removed]

13. Sections 35.10–6, 35.10–7, 35.10–9, and 35.10–20, 35.10–25, and 35.10–30 are removed.

§§ 35.30–50, 35.30–55 [Removed]

14. Sections 35.30–50 and 35.30–55 are removed.

15. In subpart 35.40, the subpart heading is revised to read as follows:

Subpart 35.40–Posting and Marking Requirements—TB/ALL

16. Section 35.40–40 is revised to read as follows:

§ 35.40–40 Marking and instructions for fire and emergency equipment—TB/ALL.

Lifesaving appliances, instructions to passengers, and stowage locations for all tank vessels must be in accordance with subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

SUBCHAPTER H—PASSENGER VESSELS

PART 70—GENERAL PROVISIONS

17. The authority citation for part 70 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; Section 70.01–15 also issued under the authority of 44 U.S.C. 3507.

18. In § 70.05–10, paragraph (d) is revised to read as follows:

§ 70.05–10 Application to vessels on an international voyage.

* * * * *

(d) The Commandant or his authorized representative may exempt any vessel from the construction requirements of this subchapter if the vessel does not proceed more than 20 nautical miles from the nearest land in the course of its voyage.

§ 70.10–3 [Removed]

19. Section 70.10–3 removed.

20. Sec. 70.10–34 is added to read as follows:

§ 70.10–34 Passenger.

(a) The term *passenger* means—

(1) On an international voyage, every person other than—

(i) The master and the members of the crew or other persons employed or engaged in any capacity on board a vessel on the business of that vessel; and

(ii) A child under 1 year of age.

(2) On other than an international voyage, an individual carried on the vessel, except—

(i) The owner or an individual representative of the owner or, in the case of a vessel under charter, an individual charterer or individual representative of the charter;

(ii) The master; or

(iii) A member of the crew engaged in the business of the vessel who has not contributed consideration for carriage and who is paid for onboard services.

(b) The term *passenger for hire* means a passenger for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.

21. Section 70.10–35 is revised to read as follows:

§ 70.10–35 Passenger Vessel.

The term *passenger vessel* means—

(a) On an international voyage, a vessel of at least 100 tons gross tonnage carrying more than 12 passengers; and

(b) On other than an international voyage, a vessel of at least 100 tons gross tonnage—

(1) Carrying more than 12 passengers, including at least one passenger for hire; or

(2) That is chartered and carrying more than 12 passengers.

22. Section 70.10–43 is revised to read as follows:

§ 70.10–43 Short international voyage.

A short international voyage is an international voyage in the course of which a vessel is not more than 200 miles from a port or place in which the passengers and crew could be placed in safety. Neither the distance between the last port of call in the country in which the voyage begins and the final port of destination nor the return voyage may exceed 600 miles. The final port of destination is the last port of call in the scheduled voyage at which the vessel commences its return voyage to the country in which the voyage began.

23. Subpart 70.28 is added to read as follows:

Subpart 70.28—Lifesaving Appliances and Arrangements

Sec.

70.28–1 Lifesaving appliances and arrangements.

Subpart 70.28—Lifesaving Appliances and Arrangements

§ 70.28–1 Lifesaving appliances and arrangements.

All lifesaving appliances and arrangements on passenger vessels must be in accordance with subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

PART 71—INSPECTION AND CERTIFICATION

24. The authority citation for part 71 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

25. Section 71.15–1 is revised to read as follows:

§ 71.15–1 Standards in inspection of hulls, boilers, and machinery.

In the inspection of hulls, boilers, and machinery of vessels, the standards established by the American Bureau of Shipping, see part 70, subpart 70.35 of this chapter respecting material and inspection of hulls, boilers, and machinery, and the certificate of classification referring thereto, except where otherwise provided for by the rules and regulations in this subchapter, subchapter E (Load Lines), subchapter F (Marine Engineering), subchapter J (Electrical Engineering), and subchapter W (Lifesaving Appliances and Arrangements) of this chapter, shall be accepted as standard by the inspectors.

26. In § 71.20–20, paragraph (a)(1) is revised, paragraph (a) is redesignated as introductory text, and paragraphs (a) (1), (2), (3), (4), (5), and (6) are redesignated as paragraphs (a) through (f) to read as follows:

§ 71.20–20 Specific tests and inspections.

* * * * *

(a) For inspection procedures of lifesaving appliances and arrangements, see subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

* * * * *

27. Section 71.25–15 is revised to read as follows:

§ 71.25–15 Lifesaving equipment.

For inspection procedures of lifesaving appliances and arrangements, see subchapter W (Lifesaving

Appliances and Arrangements) of this chapter.

PART 75—[REMOVED]

28. Part 75 is removed.

PART 77—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

29. The authority citation for part 77 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

30. Subpart 77.06 is added to read as follows:

Subpart 77.06—Lifesaving Appliances and Arrangements

Sec.
77.06–1 Installation.

Subpart 77.06—Lifesaving Appliances and Arrangements

§ 77.06–1 Installation.

The installation of all lifesaving appliances and arrangements must be in accordance with the requirements of subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

PART 78—OPERATIONS

31. The authority citation for part 78 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1981 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

32. Section 78.13–1 is revised to read as follows:

§ 78.13–1 Muster lists, emergency signals, and manning.

The requirements for muster lists, emergency signals, and manning must be in accordance with subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

§§ 78.13–5, 78.13–10, 78.13–15, 78.13–20 [Removed]

33. Sections 78.13–5, 78.13–10, 78.13–15 and 78.13–20 are removed.

Subpart 78.14—[Removed]

34. Subpart 78.14 is removed.

§ 78.17–40 [Removed]

35. Section 78.17–40 is removed.

36. Section 78.17–50 is revised to read as follows:

§ 78.17–50 Emergency training, musters, and drills.

Onboard training, musters, and drills must be in accordance with subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

§§ 78.17–52, 78.17–55, 78.17–60, 78.17–70, 78.17–85, 78.17–90 [Removed]

37. Sections 78.17–52, 78.17–55, 78.17–60, 78.17–70, 78.17–85, and 17.17–90 are removed.

38. In § 78.37–5 paragraphs (a)(10) and (a)(12) are removed, paragraph (a) is redesignated as introductory text, and paragraphs (a)(1), (2), (3), (4), (5), (6), (7), (8), (9), (11), (13), (14), and (15) are redesignated as paragraphs (a) through (m) and newly redesignated paragraph (a) is revised to read as follows:

§ 78.37–5 Actions required to be logged.

* * * * *

(a) Onboard training, musters, and drills: held in accordance with subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

* * * * *

§§ 78.47–43, 78.47–45 [Removed]

39. Sections 78.47–43 and 78.47–45 are removed.

40. A new § 78.47–45 is added to read as follows:

§ 78.47–45 Markings for lifesaving appliances, instructions to passengers, and stowage locations.

Lifesaving appliances, instructions to passengers, and stowage locations must be marked in accordance with subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

§§ 78.47–47, 78.47–50, 78.47–51, 78.47–60, 78.47–63, 78.47–65, 78.47–72 [Removed]

41. Sections 78.47–47, 78.47–50, 78.47–51, 78.47–60, 78.47–63, 78.47–65, and 78.47–72 are removed.

Subpart 78.49—[Removed]

42. Subpart 78.49 is removed.

Subpart 78.87—[Removed]

43. Subpart 78.87 is removed.

SUBCHAPTER I—CARGO AND MISCELLANEOUS VESSELS

PART 90—GENERAL PROVISIONS

44. The authority citation for part 90 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

45. In § 90.05–10, paragraph (d) is revised to read as follows:

§ 90.05–10 Application to vessels on an international voyage.

* * * * *

(d) The Commandant or his authorized representative may exempt any vessel from the construction requirements of this subchapter if the vessel does not proceed more than 20 nautical miles from the nearest land in the course of its voyage.

§ 90.10–3 [Removed]

46. Section 90.10–3 is removed.

47. Section 90.10–29 is revised to read as follows:

§ 90.10–29 Passenger.

(a) The term *passenger* means—

(1) On an international voyage, every person other than—

(i) The master and the members of the crew or other persons employed or engaged in any capacity on board a vessel on the business of that vessel; and

(ii) A child under 1 year of age.

(2) On other than an international voyage, an individual carried on the vessel, except—

(i) The owner or an individual representative of the owner or, in the case of a vessel under charter, an individual charterer or individual representative of the charterer;

(ii) The master; or

(iii) A member of the crew engaged in the business of the vessel who has not contributed consideration for carriage and who is paid for onboard services.

(b) The term *passenger for hire* means a passenger for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.

48. Subpart 90.27 is added to read as follows:

Subpart 90.27—Lifesaving Appliances and Arrangements

Sec.
90.27–1 Lifesaving appliances and arrangements.

Subpart 90.27—Lifesaving Appliances and Arrangements

§ 90.27–1 Lifesaving appliances and arrangements.

All lifesaving appliances and arrangements must be in accordance with subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

PART 91—INSPECTION AND CERTIFICATION

49. The authority citation for part 91 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

50. Section 91.15–1 is revised to read as follows:

§ 91.15–1 Standards in inspection of hulls, boilers, and machinery.

In the inspection of hulls, boilers, and machinery of vessels, the standards established by the American Bureau of Shipping, see part 90, subpart 90.35 of this chapter, respecting material and inspection of hulls, boilers, and machinery, and the certificate of classification referring thereto, except where otherwise provided for by the rules and regulations in this subchapter, subchapter E (Load Lines), subchapter F (Marine Engineering), subchapter J (Electrical Engineering), and subchapter W (Lifesaving Appliances and Arrangements) of this chapter, shall be accepted as standard by the inspectors.

51. In § 91.20–20, paragraph (a) is redesignated as introductory text, and paragraphs (a) (1), (2), (3), (4), and (5) are redesignated as paragraphs (a) through (e) and newly redesignated paragraph (a) is revised to read as follows:

§ 91.20–20 Specific tests and inspections.

* * * * *

(a) For inspection procedures of lifesaving appliances and arrangements, see subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

* * * * *

52. Section 91.25–15 is revised to read as follows:

§ 91.25–15 Lifesaving equipment.

For inspection procedures of Lifesaving appliances and arrangements, see subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

PART 94—[REMOVED]

53. Part 94 is removed.

PART 96—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

54. The authority citation for part 96 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1981 Comp., p. 277; 49 CFR 1.46.

55. Subpart 96.06 is added to read as follows:

Subpart 96.06—Lifesaving Appliances and Arrangements

Sec.
96.06–1 Installation.

Subpart 96.06—Lifesaving Appliances and Arrangements

§ 96.06–1 Installation.

The installation of all lifesaving appliances and arrangements must be in accordance with subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

PART 97—OPERATIONS

56. The authority citation for part 97 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

57. Section 97.13–1 is revised to read as follows:

§ 97.13–1 Muster lists, emergency signals, and manning.

The requirements for muster lists, emergency signals, and manning must be in accordance with subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

§§ 97.13–5, 97.13–10, 97.13–15, 97.13–20 [Removed]

58. Sections 97.13–5, 97.13–10, 97.13–15 and 97.13–20 are removed.

Subpart 97.14—[Removed]

59. Subpart 97.14 is removed.

§ 97.15–25 [Removed]

60. Section 97.15–25 is removed.

61. Section 97.15–35 is revised to read as follows:

§ 97.15–35 Emergency training, musters, and drills.

Onboard training, musters, and drills must be in accordance with subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

§§ 97.15–37, 97.15–40, 97.15–45, 97.15–50, 97.15–65, 97.15–70 [Removed]

62. Sections 97.15–37, 97.15–40, 97.15–45, 97.15–50, 97.15–65, and 97.15–70 are removed.

63. In § 97.35–5, paragraphs (a)(7) and (a)(9) are removed, paragraph (a) is redesignated as introductory text, and paragraphs (a) (1), (2), (3), (4), (5), (6), (8), (10), (11), and (12) are redesignated as paragraphs (a) through (j) and newly redesignated paragraph (a) is revised to read as follows:

§ 97.35–5 Actions required to be logged.

* * * * *

(a) Onboard training, musters, and drills: held in accordance with subchapter W (Lifesaving appliances and Arrangements) of this chapter.

* * * * *

§§ 97.37–37, 97.37–40 [Removed]

64. Sections 97.37–37 and 97.37–40 are removed.

65. Section 97.37–42 is added to read as follows:

§ 97.37–42 Markings for lifesaving appliances, instructions to passengers, and stowage locations.

Lifesaving appliances, instructions to passengers, and stowage locations must be marked in accordance with subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

§§ 97.37–43, 97.37–55 [Removed]

66. Sections 97.37–43 and 97.37–55 are removed.

Subparts 97.39, 97.85—[Removed]

67. Subparts 97.39 and 97.85 are removed.

SUBCHAPTER I–A—MOBILE OFFSHORE DRILLING UNITS

PART 107—INSPECTION AND CERTIFICATION

68. The authority citation for part 107 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 5115; 49 CFR 1.45, 1.46; § 107.05 also issued under the authority of 44 U.S.C. 3507.

69. In § 107.111, add definitions, in alphabetical order, to read as follows:

§ 107.111 Definitions.

* * * * *

Accommodation means a cabin or other covered or enclosed place intended to carry persons.

* * * * *

Approval series means the first six digits of a number assigned by the Coast Guard to approved equipment. Where approval is based on a subpart of subchapter Q of this chapter, the approval series corresponds to the number of the subpart. A listing of approved equipment, including all of the approval series, is published periodically by the Coast Guard in Equipment Lists (COMDTINST M16714.3 series), available from the Superintendent of Documents.

* * * * *

Embarkation ladder means the ladder provided at survival craft embarkation stations to permit safe access to survival craft after launching.

Embarkation station means the place where a survival craft is boarded.

Float-free launching means the method of launching a survival craft or lifesaving appliance whereby the craft or appliance is automatically released from a sinking unit and is ready for use.

Free-fall launching means the method of launching a survival craft whereby

the craft, with its full complement of persons and equipment on board, is released and allowed to fall into the sea without any restraining apparatus.

* * * * *

Immersion suit means protective suit that reduces loss of body heat of a person wearing it in cold water.

* * * * *

Inflatable appliance means an appliance that depends upon nonrigid, gas-filled chambers for buoyancy and that is normally kept uninflated until ready for use.

Inflated appliance means an appliance that depends upon nonrigid, gas-filled chambers for buoyancy and that is kept inflated and ready for use at all times.

* * * * *

Launching appliance or *launching arrangement* means the method or devices for transferring a survival craft or rescue boat from its stowed position to the water. For a launching arrangement using a davit, the term includes the davit, winch, and falls.

Lifejacket means a flotation device approved as a life preserver or lifejacket.

Marine evacuation system means an appliance designed to rapidly transfer large numbers of persons from an embarkation station by means of a passage to a floating platform for subsequent embarkation into associated survival craft, or directly into associated survival craft.

* * * * *

Muster station means the place where the crew and industrial personnel assemble before boarding a survival craft.

* * * * *

Novel lifesaving appliance or arrangement means one that has new features not fully covered by the provisions of this subchapter but providing an equal or higher standard of safety.

* * * * *

Rescue boat means a boat designed to rescue persons in distress and to marshal survival craft.

Retrieval means the safe recovery of survivors.

Seagoing condition means the operating condition of the unit with the personnel, equipment, fluids, and ballast necessary for safe operation on the waters where the unit operates. For bottom-bearing mobile offshore drilling units (MODU), the term also applies in the bottom-bearing mode, but the lightest seagoing condition is considered to be the highest anticipated operating condition.

* * * * *

Survival craft means a craft capable of sustaining the lives of persons in distress after abandoning the unit on which they were carried. The term includes lifeboats and liferafts, but does not include rescue boats.

* * * * *

70. In § 107.231, paragraphs (h), (i), and (z) are removed; and paragraphs (j) through (y), (aa), (bb), and (cc) are redesignated as paragraph (h) through (y); and paragraph (b) through (q) and newly redesignated paragraph (v) are revised to read as follows:

§ 107.231 Inspection for certification.

* * * * *

(b) The survival craft and rescue boat launching appliances are in proper condition and operating properly at loads ranging from light load to full load.

(c) The lifeboats and rescue boats, including engines and release mechanisms are in proper condition and operating properly.

(d) The flotation equipment such as lifebuoys, lifejackets, immersion suits, work vests, lifefloats, buoyant apparatus, and associated equipment are in proper condition.

(e) Each inflatable liferaft and inflatable lifejacket has been serviced as required under this chapter;

(f) Each hydrostatic release unit, other than a disposable hydrostatic release unit, has been serviced as required under this chapter.

(g) The crew has the ability to effectively carry out abandonment and fire fighting procedures.

* * * * *

(v) Tests and inspections of the lifesaving equipment shall be carried out during the initial inspection for certification, and whenever any new item of lifesaving equipment is installed on the unit. The tests and inspections shall determine that the installation of each item of lifesaving equipment is consistent with each condition of its approval, as listed on its Coast Guard Certificate of Approval. The tests and inspections shall also demonstrate, as applicable,—

(1) The proper condition and operation of the survival craft and rescue boat launching appliances at loads ranging from light load to 10 percent overload;

(2) The proper condition and operation of lifeboats and rescue boats, including engines and release mechanisms;

(3) The proper condition of flotation equipment such as lifebuoys, lifejackets, immersion suits, work vests, and associated equipment;

(4) The proper condition of distress signaling equipment, including EPIRB's, SART's, and pyrotechnic signaling devices;

(5) The proper condition of line-throwing appliances;

(6) The proper condition and operation of embarkation and debarkation appliances, including embarkation-debarkation ladders, and alternate means of escape;

(7) The ability of the crew to effectively carry out abandonment and firefighting procedures; and

(8) The ability to meet the egress and survival craft launching requirements of this part.

* * * * *

§§ 107.239, 107.243 [Removed]

71. Section 107.239 and 107.243 are removed.

72. In § 107.305, paragraphs (bb) and (cc) are revised to read as follows:

§ 107.305 Plans and information.

* * * * *

(bb) The location and arrangement of each lifesaving system including each embarkation deck, showing each overboard discharge and clearances from projections and obstructions in the way of launching lifeboats, rescue boats, and liferafts throughout the range of list and trim angles required under part 108, subpart E of this chapter.

(cc) The weight of each lifeboat, rescue boat, and davit-launched liferaft when fully equipped and loaded.

* * * * *

PART 108—DESIGN AND EQUIPMENT

73. The authority citation for part 108 continues to read as follows:

Authority: 43 U.S.C. 1333, 1333(d); 46 U.S.C. 3102, 3306, 5115; 49 CFR 1.46.

74. In § 108.101, paragraph (b) is revised to read as follows:

§ 108.101 Incorporation by reference.

* * * * *

(b) The material approved for incorporation by reference in this part and the sections affected are:

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 19103

ASTM D93–94, Flash Point by Pennsky-Martens Closed Cup Tester	108.500
ASTM F–1014, Standard Specification for Flashlights on Vessels, 1986	108.497
ASTM F–1121, International Shore Connections for Marine Fire Applications, 1987	108.427

International Maritime Organization (IMO)

4 Albert Embankment, London, SE1 7SR, England

Resolution A.520(13), Code of Practice for the Evaluation, Testing and Acceptance of Prototype Novel Life-saving Appliances and Arrangements; 17 November 1983.	108.105.
Resolution A.649(16), Code for the Construction and Equipment of Mobile Offshore Drilling Units (MODU Code), 19 October 1989 with amendments of June 1991.	108.503.
Resolution A.658(16), Use and Fitting of Retro-reflective Materials on Life-saving Appliances, 20 November 1989.	108.645; 108.649.
Resolution A.760(18), Symbols Related to Life-saving Appliances and Arrangements, 17 November 1993.	108.646; 108.647; 108.649; 108.655.

75. Section 108.103 is revised to read as follows:

§ 108.103 Equipment not required on a unit.

Each item of lifesaving and firefighting equipment carried on board the unit in addition to equipment of the type required under this subchapter, must—

(a) Be approved; or

(b) Be acceptable to the cognizant OCMI, for use on the unit.

76. In § 108.105, paragraph (a) is revised, and paragraphs (c) through (f) are added to read as follows:

§ 108.105 Substitutions for required fittings, material, apparatus, equipment, arrangements, calculations, and tests.

(a) Where this subchapter requires a particular fitting, material, apparatus, equipment, arrangement, calculation or test, the Commandant (G–MSE) may accept any substitution that is at least as effective as that specified. If necessary, the Commandant (G–MSE) may require engineering evaluations and tests to demonstrate the equivalence of the substitution.

* * * * *

(c) The Commandant (G–MSE) may accept a novel lifesaving appliance or arrangement, if it provides a level of safety equivalent to the requirements of this part and the appliance or arrangement—

(1) Is evaluated and tested in accordance with IMO Resolution A.520(13), Code of Practice for the Evaluation, Testing and Acceptance of Prototype Novel Life-saving Appliances and Arrangements; or

(2) Has successfully undergone evaluation and tests that are substantially equivalent to those recommendations.

(d) During a unit's construction and when any modification to the lifesaving arrangement is done after construction, the owner must obtain acceptance of lifesaving arrangements from the Commandant (G–MSC).

(e) The OCMI may accept substitute lifesaving appliances other than those required by this part, except for—

(1) Survival craft and rescue boats; and

(2) Survival craft and rescue boat launching and embarkation appliances.

(f) Acceptance of lifesaving appliances and arrangements will remain in effect unless—

(1) The OCMI deems their condition to be unsatisfactory or unfit for the service intended; or

(2) The OCMI deems the crew's ability to use and assist others in the use of the lifesaving appliances or arrangements to be inadequate.

77. Subpart E is revised to read as follows:

Subpart E—Lifesaving Equipment

Sec.

108.500 General.
108.503 Relationship to international standards.
108.510 Application.
108.515 Requirements for units built before October 1, 1996.
108.520 Type of survival craft.
108.525 Survival craft number and arrangement.
108.530 Stowage of survival craft.
108.540 Survival craft muster and embarkation arrangements.
108.545 Marine evacuation system launching arrangements.
108.550 Survival craft launching and recovery arrangements: general.
108.553 Survival craft launching and recovery arrangements using falls and a winch.
108.555 Lifeboat launching and recovery arrangements.
108.557 Free-fall lifeboat launching and recovery arrangements.
108.560 Rescue boats.
108.565 Stowage of rescue boats.
108.570 Rescue boat embarkation, launching and recovery arrangements.
108.575 Survival craft and rescue boat equipment.
108.580 Personal lifesaving appliances.
108.595 Communications.
108.597 Line-throwing appliance.

Subpart E—Lifesaving Equipment

§ 108.500 General.

(a) Each unit, other than a surface type unit, must meet the requirements in this subpart.

(b) Each surface type unit must meet the lifesaving system requirements in subchapter W of this chapter, for a tank vessel certificated to carry cargoes that have a flash less than 60 °C, as determined under ASTM D93–94.

(c) The OCMI may require a unit to carry specialized or additional lifesaving equipment other than as required by this part, if the OCMI determines the conditions of the unit's service present uniquely hazardous circumstances which are not adequately addressed by existing requirements.

§ 108.503 Relationship to international standards.

For the purposes of this part, any unit carrying a valid IMO MODU Safety Certificate, including a listing of lifesaving equipment as required by the 1989 IMO MODU Code, is considered to have met the requirements of this subpart if, in addition to the requirements of the 1989 IMO MODU Code, it meets the following requirements:

(a) Each new lifeboat and launching appliance may be of aluminum construction only if its stowage location is protected with a water spray system in accordance with § 108.550(d) of this chapter.

(b) Each lifejacket, immersion suit, and emergency position indicating radiobeacon (EPIRB) must be marked with the unit's name in accordance with §§ 108.649 and 108.650.

(c) Inflatable lifejackets, if carried, must be of the same or similar design as required by § 108.580(b).

(d) Containers for lifejackets, immersions suits, and anti-exposure suits must be marked as specified in § 108.649(g).

(e) Each liferaft must be arranged to permit it to drop into the water from the deck on which it is stowed as required in § 108.530(c)(3).

(f) Survival craft must be arranged to allow safe disembarkation onto the unit after a drill in accordance with § 108.540(f).

(g) The requirements for guarding of falls in §§ 108.553 (d) and (f) must be met.

(h) The winch drum requirements described in § 108.553(e) must be met

for all survival craft winches, not just multiple drum winches.

(i) The maximum lowering speed requirements from §§ 108.553 (h) and (i) must be met.

(j) An auxiliary line must be kept with each line-throwing appliance in accordance with § 108.597(c)(2).

(k) Immersion suits are required on all units, except those operating between the 32 degrees north and 32 degrees south latitude in accordance with § 108.580(c).

(l) All abandonment drills conducted on units carrying immersion suits must include immersion suits.

§ 108.510 Application.

(a) For the purposes of this subpart—

(1) *Similar stage of construction* means the stage at which—

(i) Construction identifiable with a specific unit begins; and

(ii) Assembly of that unit comprising at least 50 metric tons (55.1 U.S. tons) or 1 percent of the estimated mass of all structural material, whichever is less, has been achieved.

(2) *Unit constructed* means a unit, the keel of which is laid or which is at a similar stage of construction.

(b) Subject to § 108.515, each unit constructed before October 1, 1996, must meet the requirements of this subpart, except for the number, type, and arrangement of lifeboats (including survival capsules), lifeboat davits, winches, inflatable liferafts, liferaft launching equipment, and rescue boats.

(c)(1) If a District Commander determines that the overall safety of the persons on board a unit will not be significantly reduced, the District Commander may grant an exemption from compliance with a provision of this part to a specific unit for a specified geographic area within the boundaries of the Coast Guard District. This exemption may be limited to certain periods of the year.

(2) Requests for exemption under this paragraph must be in writing to the OCMI for transmission to the District Commander in the area in which the unit is in service or will be in service.

(3) If the exemption is granted by the District Commander, the OCMI will endorse the unit's Certificate of Inspection with a statement describing the exemption.

§ 108.515 Requirements for units built before October 1, 1996.

(a) Units which were constructed prior to October 1, 1996, must—

(1) By October 1, 1997, have either—

(i) Lifeboats and liferafts that meet § 108.525; or

(ii) Totally enclosed fire-protected lifeboats of sufficient capacity to accommodate 100 percent of the persons permitted on board, plus additional totally enclosed lifeboats or davit-launched liferafts of sufficient capacity to accommodate 100 percent of the persons permitted on board the unit. The following exceptions apply:

(A) An open lifeboat may be used instead of davit-launched liferafts as long as it is in good working order. An open lifeboat requiring extensive repairs must be replaced with either a totally enclosed fire-protected lifeboat, or davit-launched liferafts.

(B) A submersible unit constructed before January 3, 1979, may continue to use the lifesaving arrangements described on the units Certificate of Inspection in effect on October 1, 1996.

(2) By October 1, 1997, fit retro-reflective material on all floating appliances, lifejackets, and immersion suits.

(3) Except for the requirements in paragraphs (a)(1) and (a)(2) of this section, units may retain the arrangement of lifesaving appliances previously required and approved for the unit, as long as the arrangement or appliance is maintained in good condition to the satisfaction of the OCMI.

(b) When any lifesaving appliance or arrangement on a unit subject to this part is replaced, or when the unit undergoes repairs, alterations or modifications of a major character involving replacement of, or any addition to, the existing lifesaving appliances or arrangements, each new lifesaving appliance and arrangement must meet the requirements of this part, unless the OCMI determines that the unit cannot accommodate the new appliance or arrangement, except that—

(1) A survival craft is not required to meet the requirements of this part if it is replaced without replacing its davit and winch; and

(2) A davit and its winch are not required to meet the requirements of this part if one or both are replaced without replacing the survival craft.

§ 108.520 Type of survival craft.

(a) Each lifeboat must be a fire-protected lifeboat approved under approval series 160.135. A lifeboat of aluminum construction in the hull or canopy must be protected in its stowage position by a water spray system meeting the requirements of part 34, subpart 34.25 of this chapter.

(b) Each inflatable liferaft must be approved under approval series 160.151. Each rigid liferaft must be approved under approval series 160.118. Each liferaft must have a capacity of six persons or more.

§ 108.525 Survival craft number and arrangement.

(a) Each unit must carry the following:

(1) Lifeboats installed in at least two widely separated locations on different sides or ends of the unit. The arrangement of the lifeboats must provide sufficient capacity to accommodate the total number of persons permitted on board if—

(i) All the lifeboats in any one location are lost or rendered unusable; or

(ii) All the lifeboats on any one side or end of the unit are lost or rendered unusable.

(2) Liferafts arranged for float-free launching and having an aggregate capacity that will accommodate the total number of persons permitted on board.

(b) In the case of a self-elevating unit where, due to its size or configuration, lifeboats can not be located in the widely separated locations required under paragraph (a)(1) of this section, the OCMI may accept the following number and arrangement of survival craft:

(1) Lifeboats with an aggregate capacity to accommodate the total number of persons permitted on board.

(2) Liferafts served by launching appliances or marine evacuation systems of an aggregate capacity to accommodate the total number of persons permitted on board. These liferafts may be the float-free liferafts under paragraph (a)(2) of this section, or liferafts in addition to the float-free liferafts.

§ 108.530 Stowage of survival craft.

(a) *General.* Each survival craft required to be served by a launching appliance or marine evacuation system must be stowed as follows:

(1) Each survival craft must be stowed as close to the accommodation and service spaces as possible.

(2) Each survival craft must be stowed in a way that neither the survival craft nor its stowage arrangements will interfere with the embarkation and operation of any other survival craft or rescue boat at any other launching station.

(3) Each survival craft must be stowed as near the water surface as is safe and practicable.

(4) Each survival craft must be stowed where the survival craft, in the embarkation position, is above the waterline with the unit—

(i) In the fully loaded condition; and

(ii) Listed up to 20 degrees either way, or to the angle where the unit's weatherdeck edge becomes submerged, whichever is less.

(5) Each survival craft must be sufficiently ready for use so that two crew members can complete preparations for embarkation and launching in less than 5 minutes.

(6) Each survival craft must be fully equipped as required under this subpart.

(7) Each survival craft must be in a secure and sheltered position and protected from damage by fire and explosion, as far as practicable.

(8) Each survival craft must not require lifting from its stowed position in order to launch, except that a davit-launched liferaft may be lifted by a manually powered winch from its stowed position to its embarkation position.

(b) *Additional lifeboat-specific stowage requirements.* In addition to meeting the requirements of paragraph (a) of this section, each lifeboat must be stowed as follows:

(1) The unit must be arranged so each lifeboat, in its stowed position, is protected from damage by heavy seas.

(2) Each lifeboat must be stowed attached to its launching appliance.

(3) Each lifeboat must be provided a means for recharging the lifeboat batteries from the unit's power supply at a supply voltage not exceeding 50 volts.

(c) *Additional liferaft-specific stowage requirements.* In addition to meeting the requirements of paragraph (a) of this section, each liferaft must be stowed as follows:

(1) Each liferaft must be stowed to permit manual release from its securing arrangements.

(2) Each liferaft must be stowed at a height above the waterline in the lightest seagoing condition, not greater than the maximum stowage height indicated on the liferaft. Each liferaft without an indicated maximum stowage height must be stowed not more than 18 meters (59 feet) above the waterline in the unit's lightest seagoing condition.

(3) Each liferaft must be arranged to permit it to drop into the water from the deck on which it is stowed. A liferaft stowage arrangement meets this requirement if it—

(i) Is outboard of the rail or bulwark;

(ii) Is on stanchions or on a platform adjacent to the rail or bulwark; or

(iii) Has a gate or other suitable opening to allow the liferaft to be pushed directly overboard.

(4) Each davit-launched liferaft must be stowed within reach of its lifting hook, unless some means of transfer is provided that is not rendered inoperable—

(i) Within the list limits specified in paragraph (a)(4)(ii) of this section;

(ii) By unit motion; or

(iii) By power failure.

(5) Each rigid container for an inflatable liferaft to be launched by a launching appliance must be secured in a way that the container or parts of it are prevented from falling into the water during and after inflation and launching of the contained liferaft.

(6) Each liferaft must have a painter system providing a connection between the unit and the liferaft.

(7) Each liferaft or group of liferafts must be arranged for float-free launching. The arrangement must ensure that the liferaft or liferafts when released and inflated, are not dragged under by the sinking unit. A hydrostatic release unit used in a float-free arrangement must be approved under approval series 160.162.

§ 108.540 Survival craft muster and embarkation arrangements.

(a) Each muster station must have sufficient space to accommodate all persons assigned to muster at that station. One or more muster stations must be close to each embarkation station.

(b) Each muster station and embarkation station must be readily accessible from accommodation and work areas.

(c) Each lifeboat must be arranged to be boarded and launched directly from the stowed position.

(d) Each lifeboat must be arranged to be boarded by its full complement of persons within 3 minutes from the time the instruction to board is given.

(e) Each davit-launched and free-fall survival craft muster station and embarkation station for a survival craft which is boarded before it is launched must be arranged to enable stretcher cases to be placed in the survival craft.

(f) Means must be provided for bringing each davit-launched survival craft against the side of the unit and holding it alongside to allow persons to be—

(1) Safely embarked in the case of a survival craft intended to be boarded over the edge of the deck; and

(2) Safely disembarked after a drill in the case of a survival craft not intended to be moved to the stowed position with a full complement of persons on board.

(g) Each davit-launched liferaft launching arrangement must have a means to hold the liferaft in the embarkation position that—

(1) Will hold the liferaft securely in high winds;

(2) Can be rapidly engaged in the proper position for boarding; and

(3) Can be rapidly released for launching by one person from within the loaded liferaft.

(h) Each launching station or each two adjacent launching stations must have an embarkation ladder as follows:

(1) Each embarkation ladder must be approved under approval series 160.117 or be a rope ladder approved under approval series 160.017, and must be installed in a way that—

(i) Each embarkation ladder must extend in a single length, from the deck to the waterline in the lightest seagoing condition with the unit listed not less than up to 15 degrees either way; or

(ii) Each embarkation ladder may be replaced by a device approved to provide safe and rapid access to survival craft in the water, if the OCMI permits the device, provided that there is at least one embarkation ladder on each side of the unit.

(2) An embarkation ladder is not required if—

(i) The distance from the embarkation deck to the unit's lightest operating waterline is less than 3 meters (10 feet); and

(ii) The unit is not in international service.

(3) If the embarkation ladders can not be supported against a vertical flat surface, the unit must instead be provided with at least two widely separated fixed metal ladders or stairways extending from the deck to the surface of the water and meet the following:

(i) Each inclined fixed ladder must meet the requirements under § 108.159.

(ii) Each vertical fixed ladder must meet the requirements under § 108.160 for fixed ladders, except that the vertical bars in cages must be open at least 500 millimeters (20 inches) on one side throughout the length of the ladder.

(iii) If a fixed ladder can not be installed, the OCMI may approve an alternate means of escape with sufficient capacity to permit all persons permitted on board to safely descend to the waterline.

(4) Alternate means of escape under paragraphs (h)(1)(ii) and (h)(3) of this section, such as portable slides, safety booms, moveable ladders, elevators, and controlled descent devices must be approved. An alternate means of escape must have sufficient capacity to permit all persons permitted on board to safely descend to the waterline within 10 minutes from the time the signal to start is given.

§ 108.545 Marine evacuation system launching arrangements.

(a) *Arrangements.* Each marine evacuation system must have the following arrangements:

(1) Each marine evacuation system must be capable of being deployed by one person.

(2) Each marine evacuation system must enable the total number of persons

for which it is designed, to be transferred from the unit into the inflated liferafts within a period of 10 minutes from the time the signal to abandon the unit is given.

(3) Each marine evacuation system must be arranged so that liferafts may be securely attached to the platform and released from the platform by a person either in the liferaft or on the platform.

(4) Each marine evacuation system must be capable of being deployed from the unit under unfavorable conditions of list of up to 20 degrees.

(5) If the marine evacuation system has an inclined slide, the angle of the slide from horizontal must be within a range of 30 to 35 degrees when the unit is upright and in the lightest seagoing condition.

(6) Each marine evacuation system platform must be capable of being restrained by a bowsing line or other positioning system that is designed to deploy automatically, and if necessary, be capable of being adjusted to the position required for evacuation.

(b) *Stowage.* Each marine evacuation system must be stowed as follows:

(1) There must not be any openings between the marine evacuation system's embarkation station and the unit's side at the unit's waterline in the lightest seagoing condition.

(2) The marine evacuation system must be protected from any projections of the unit's structure or equipment.

(3) The marine evacuation system's passage and platform, when deployed, its stowage container, and its operational arrangement must not interfere with the operation of any other lifesaving appliance at any other launching station.

(4) Where appropriate, the marine evacuation system's stowage area must be protected from damage by heavy seas.

(c) *Stowage of associated liferafts.* Inflatable liferafts used in conjunction with the marine evacuation system must be stowed as follows:

(1) Each inflatable liferaft used in conjunction with the marine evacuation system must be close to the system container, but capable of dropping clear of the deployed chute and boarding platform.

(2) Each inflatable liferaft used in conjunction with the marine evacuation system must be capable of individual release from its stowage rack.

(3) Each inflatable liferaft used in conjunction with the marine evacuation system must be stowed in accordance with § 108.530.

(4) Each inflatable liferaft used in conjunction with the marine evacuation system must be provided with pre-connected or easily connected retrieving lines to the platform.

§ 108.550 Survival craft launching and recovery arrangements: general.

(a) Each launching appliance for a lifeboat must be a davit approved under approval series 160.132, with a winch approved under approval series 160.115. Each launching appliance for a davit-launched liferaft must be approved under approval series 160.163, with an automatic disengaging apparatus approved under approval series 160.170.

(b) All lifeboats required for abandonment by the total number of persons permitted on board must be capable of being launched with their full complement of persons and equipment within 10 minutes from the time the signal to abandon the unit is given.

(c) Each survival craft must be arranged to clear each leg, column, footing, brace, mat, and each similar structure below the hull of a self-elevating unit and clear the upper hull, the columns, and the pontoons of a column stabilized unit, with the unit in an intact condition.

(1) The survival craft must be arranged to be launched down the straight side of the unit or be mounted on a structure intended to provide clearance from lower structures of the unit.

(2) The OCMI may allow a reduction in the total number of survival craft meeting this requirement when the unit is in the transit mode and the number of personnel on board is reduced. In such cases, sufficient survival craft must be available for use by the total number of personnel remaining on board.

(d) Each lifeboat of aluminum construction in the hull or canopy, and each aluminum launching appliance must be protected in its stowage position by a water spray system meeting the requirements of part 34, subpart 34.25 of this chapter.

(e) With the exception of the secondary means of launching for free-fall lifeboats, each launching appliance together with all its lowering and recovery gear must be arranged in a way that the fully equipped survival craft it serves can be safely lowered when loaded with its full complement of persons, and also without persons, against—

(1) A list of up to 20 degrees on the high side; and

(2) A list of up to 20 degrees or the degree of list where the survival craft becomes waterborne, whichever, is the greater, on the low side.

(f) When the unit is under any unfavorable condition such as maximum airgap, lightest transit or operational condition, or any damaged condition under part 174, subpart C of this chapter,—

(1) Notwithstanding the requirements under § 108.550(e), survival craft launching appliances and marine evacuation systems must be capable of operation;

(2) Falls, where used, must be long enough for survival craft to reach the water; and

(3) Lifeboats with an aggregate capacity that will accommodate the total number of persons permitted on board must be capable of being launched safely, and clear of any obstruction. The location and orientation of each lifeboat must be such that the lifeboat is either headed away from the unit upon launching, or can be turned to a heading away from the unit immediately upon launching.

(g) A launching appliance must not depend on any means other than gravity or stored mechanical power independent of the unit's power supplies to launch the survival craft it serves, in the fully loaded and equipped conditions, and also in the light condition.

(h) Each launching appliance's structural attachment to the vessel must be designed, based on the ultimate strength of the construction material, to be at least 4.5 times the load imparted on the attachment by the launching appliance and its fully loaded survival craft under the most adverse combination of list and trim under paragraph (b) of this section.

(i) Each launching appliance must be arranged so that—

(1) All parts requiring regular maintenance by the crew are readily accessible and easily maintained;

(2) The launching appliance remains effective under conditions of icing;

(3) The same type of release mechanism is used for each similar survival craft carried on board the unit; and

(4) The preparation and handling of survival craft at any one launching station does not interfere with the prompt preparation and handling of any other survival craft at any other station.

(j) Each launching mechanism must be arranged so it may be actuated by one person from a position on the unit's deck, and also from a position within the survival craft. Each launching and recovery arrangement must allow the operator on the deck to observe the survival craft at all times during launching.

(k) Means must be provided outside the machinery space to prevent any discharge of water onto survival craft during abandonment.

§ 108.553 Survival craft launching and recovery arrangements using falls and a winch.

Survival craft launching and recovery arrangements, in addition to meeting the requirements in § 108.550, must meet the following requirements:

(a) Each fall wire must be of rotation-resistant and corrosion-resistant steel wire rope.

(b) The breaking strength of each fall wire and each attachment used on the fall must be at least six times the load imparted on the fall by the fully-loaded survival craft.

(c) Each fall must be long enough for the survival craft to reach the water with the unit in its lightest seagoing condition, under unfavorable conditions of trim and with the unit listed not less than 20 degrees either way.

(d) Each unguarded fall must not pass near any operating position of the winch, such as hand cranks, payout wheels, and brake levers.

(e) Each winch drum must be arranged so the fall wire winds onto the drum in a level wrap, and a multiple drum winch must be arranged so that the falls wind off at the same rate when lowering, and onto the drums at the same rate when hoisting.

(f) Each fall, where exposed to damage or fouling, must have guards or equivalent protection. Each fall that leads along a deck must be covered with a guard that is not more than 300 millimeters (1 foot) above the deck.

(g) The lowering speed for a fully loaded survival craft must be not less than that obtained from the following formula:

(1) $S=0.4+(0.02\ H)$, where S is the speed of lowering in meters per second, and H is the height in meters from the davit head to the waterline at the lightest seagoing condition, with H not greater than 30, regardless of the lowering height.

(2) $S=79+(1.2\ H)$, where S is the speed of lowering in feet per minute, and H is the height in feet, with H not greater than 99.

(h) The lowering speed for a survival craft loaded with all of its equipment must be not less than 70 percent of the speed required under paragraph (g) of this section.

(i) The lowering speed for a fully loaded survival craft must be not more than 1.3 meters per second (256 feet per minute).

(j) If a survival craft is recovered by electric power, the electrical installation, including the electric power-operated boat winch, must meet the requirements in subchapter J of this chapter. If a survival craft is recovered by any means of power, including a portable power source, safety devices must be provided which automatically cut off the power before the davit arms or falls reach the stops in order to avoid overstressing the falls or davits, unless the motor is designed to prevent such overstressing.

(k) Each launching appliance must be fitted with brakes that meet the following requirements:

(1) The brakes must be capable of stopping the descent of the survival craft or rescue boat and holding it securely when loaded with it full complement of persons and equipment.

(2) The brake pads must, where necessary, be protected from water and oil.

(3) Manual brakes must be arranged so that the brake is always applied unless the operator, or a mechanism activated by the operator, holds the brake control in the off position.

§ 108.555 Lifeboat launching and recovery arrangements.

Liftboat launching and recovery arrangements, in addition to meeting the requirements in §§ 108.550 and 108.553, must meet the following requirements:

(a) Each lifeboat must be capable of being launched with the unit making headway of 5 knots in calm water, or with the unit anchored or bearing on the bottom in a current of up to 5 knots. A painter may be used to meet this requirement.

(b) Each lifeboat must be provided with a launching appliance. The launching appliance must be capable of launching and recovering the lifeboat with its crew.

(c) Each launching appliance arrangement must allow the operator on the unit to observe the lifeboat at all times during recovery.

(d) Each launching appliance arrangement must be designed to ensure persons can safely disembark from the survival craft prior its stowage.

§ 108.557 Free-fall lifeboat launching and recovery arrangements.

(a) The launching appliance for a free-fall lifeboat must be designed and installed so that the launching appliance and the lifeboat it serves operate as a system to protect the occupants from harmful acceleration forces and to effectively clear the unit.

(b) The launching appliance must be designed and arranged so that in its ready to launch position, the distance from the lowest point on the lifeboat it serves to the water surface with the unit in its lightest seagoing condition does not exceed the lifeboat's certificated free-fall height.

(c) The launching appliance must be arranged so as to preclude accidental release of the lifeboat in its unattended stowed position. If the means provided to secure the lifeboat cannot be released from inside the lifeboat, the means to secure the lifeboat must be arranged as to preclude boarding the lifeboat without first releasing it.

(d) Each free-fall launching arrangement must be provided with a secondary means to launch the lifeboat by falls. Such means must comply with the requirements of §§ 108.550, 108.553, and 108.555. Notwithstanding § 108.550(e), the launching appliance must be capable of launching the lifeboat against unfavorable conditions of list of 5 degrees in any direction and it need not comply with the speed requirements of §§ 108.553 (g), (h), and (i).

If the secondary launching appliance is not dependent on gravity, stored mechanical power or other manual means, the launching arrangement must be connected both to the unit's main and emergency power supplies.

§ 108.560 Rescue boats.

Each unit must carry at least one rescue boat. Each rescue boat must be approved under approval series 160.156. A lifeboat is accepted as a rescue boat if it also meets the requirements for a rescue boat.

§ 108.565 Stowage of rescue boats.

(a) Rescue boats must be stowed as follows:

(1) Each rescue boat must be ready for launching in not more than 5 minutes.

(2) Each rescue boat must be in a position suitable for launching and recovery.

(3) Each rescue boat must be in a way that neither the rescue boat nor its stowage arrangements will interfere with the operation of any survival craft at any other launching station.

(4) Each rescue boat that is also a lifeboat, must be in compliance with § 108.530.

(b) Each rescue boat must be provided a means for recharging the rescue boat batteries from the unit's power supply at a supply voltage not exceeding 50 volts.

(c) Each inflated rescue boat must be kept fully inflated at all times.

§ 108.570 Rescue boat embarkation, launching and recovery arrangements.

(a) Each rescue boat must be capable of being launched with the unit making headway of 5 knots in calm water, or

with the unit anchored or bearing on the bottom in a current of up to 5 knots. A painter may be used to meet this requirement.

(b) Each rescue boat embarkation and launching arrangement must permit the rescue boat to be boarded and launched in the shortest possible time.

(c) If the rescue boat is one of the unit's survival craft, the rescue boat must also be as follows:

(1) The rescue boat must meet the embarkation arrangement and launching station requirements of § 108.510.

(2) The rescue boat must meet the launching arrangement requirements of §§ 108.550 and 108.557, and if the launching arrangement uses falls and a winch, § 108.553.

(3) If the launching arrangement uses a single fall, the rescue boat must have an automatic disengaging apparatus approved under approval series 160.170, instead of a lifeboat release mechanism.

(d) Rapid recovery of the rescue boat must be possible when loaded with its full complement of persons and equipment. If the rescue boat is also a lifeboat, rapid recovery must be possible when loaded with its lifeboat equipment and an approved rescue boat complement of at least six persons.

(e) Each rescue boat launching appliance must be fitted with a powered winch motor.

(f) Each rescue boat launching appliance must be capable of hoisting the rescue boat when loaded with its full rescue boat complement of persons and equipment at a rate of not less than 0.3 meters per second (59 feet per minute).

§ 108.575 Survival craft and rescue boat equipment.

(a) All lifeboat and rescue boat equipment must be as follows:

(1) The equipment must be secured within the boat by lashings, storage in lockers, or compartments, storage in brackets or similar mounting arrangements or other suitable means.

(2) The equipment must be secured in such a manner as not to interfere with any abandonment procedures or reduce seating capacity.

(3) The equipment must be as small and of as little mass as possible.

(4) The equipment must be packed in a suitable and compact form.

(5) The equipment should be stowed so the items do not—

(i) Reduce the seating capacity;

(ii) Adversely affect the seaworthiness of the survival craft or rescue boat; or

(iii) Overload the launching appliance.

(b) Each lifeboat, rigid liferaft, and rescue boat, unless otherwise stated in this paragraph, must carry the equipment specified for it in table § 108.575(b) of this section. A lifeboat that is also a rescue boat must carry the equipment in the table column marked for a lifeboat. Each item in the table has the same description as in § 199.175 of this chapter.

TABLE 108.575(b).—SURVIVAL CRAFT EQUIPMENT

Item No.	Item	International service			Other than international service		
		Lifeboat	Rigid liferaft	Rescue boat	Lifeboat	Rigid liferaft	Rescue boat
1	Bailer [1]	1	1	1	1	1	1
2	Bilge pump [2]	1	.....	.....	1	.....	.....
3	Boathook	2	.....	1	2	.....	1
4	Bucket [3]	2	.....	1	2	.....	1
5	Can opener	3	3	.....	.....	.....	.....
6	Compass	1	.....	1	1	.....	1
7	Dipper	1	.....	.....	1	.....	.....
8	Drinking cup	1	1	.....	.....	.....	.....
9	Fire extinguisher	1	.....	1	1	.....	1
10	First-aid kit	1	1	1	1	1	1
11	Fishing kit	1	1	.....	.....	.....	.....
12	Flashlight	1	1	1	1	1	1
13	Hatchet	2	.....	.....	2	.....	.....
14	Heaving line	2	1	2	2	1	2
15	Instruction card	.....	1	.....	.....	1	.....
16	Jackknife	1	.....	.....	1	.....	.....
17	Knife [1 4]	.....	1	1	.....	1	1
18	Ladder	1	.....	1	1	.....	1
19	Mirror, signaling	1	1	.....	1	1	.....
20	Oars (units) [5 6]	1	.....	1	1	.....	1
	Paddles	.....	2	.....	.....	2	.....
21	Painter	2	1	1	2	1	1
22	Provisions (units per person)	1	1	.....	.....	.....	.....
23	Pump [7]	.....	.....	1	.....	.....	.....
24	Radar reflector	1	1	1	.....	.....	.....
25	Rainwater collection device	1	.....	.....	.....	.....	.....
26	Repair kit [7]	.....	.....	1	.....	.....	1
27	Sea anchor	1	2	1	1	2	1
28	Searchlight	1	.....	1	1	.....	1
29	Seasickness kit (kits/person)	1	1	.....	1	1	.....
30	Signal, smoke	2	2	.....	2	1	.....
31	Signal, hand flare	6	6	.....	6	6	.....
32	Signal, parachute flare	4	4	.....	4	4	.....
33	Skates and fenders [8]	1	.....	.....	1	.....	.....
34	Sponge [7]	.....	2	2	.....	2	2
35	Survival instructions	1	1	.....	1	1	.....
36	Table of lifesaving signals	1	1	.....	1	1	.....
37	Thermal protective aid (percent of persons) [9]	10%	10%	10%	10%	10%	10%
38	Took kit	1	.....	.....	1	.....	.....

TABLE 108.575(b).—SURVIVAL CRAFT EQUIPMENT—Continued

Item No.	Item	International service			Other than international service		
		Lifeboat	Rigid liferaft	Rescue boat	Lifeboat	Rigid liferaft	Rescue boat
39	Towline [10]	1	.....	1	1	.....	1
40	Water (liters per person)	3	1.5	.....	3	1	.....
41	Whistle	1	1	1	1	1	1

Notes:
[1] Each liferaft approved for 13 persons or more must carry two of these items.
[2] Bilge pumps are not required for boats of self-bailing design.
[3] Not required for inflated or rigid/inflated rescue boats.
[4] A hatchet counts toward this requirement in rigid rescue boats.
[5] Oars not required on a free-fall lifeboat; a unit of oars means the number of oars specified by the manufacturer.
[6] Rescue boats may substitute buoyant oars for paddles, as specified by the manufacturer.
[7] Not required for a rigid rescue boat.
[8] Required if specified by the boat manufacturer.
[9] Sufficient thermal protective aids are required for at least 10% of the persons the survival craft is equipped to carry, but not less than two.
[10] Required only if the lifeboat is also the rescue boat.

§ 108.580 Personal lifesaving appliances.

(a) *Lifebuoys.* Each unit must carry at least eight lifebuoys approved under approval series 160.150 as follows:

(1) *Stowage.* Lifebuoys must be stowed as follows:

(i) Each lifebuoy must be capable of being rapidly cast loose.

(ii) Each lifebuoy must not be permanently secured to the unit in anyway.

(iii) Lifebuoys must be so distributed as to be readily available on each side of the unit and, as far as practicable, on each open deck extending to the side of the unit. The lifebuoys with attached self-igniting lights must be evenly distributed on all sides of the unit.

(iv) At least two lifebuoys, each with attached self-activating smoke signals, must be stowed where they can be quickly released from the navigating bridge or main control station, or a location readily available to personnel on board. These lifebuoys should, when released, fall directly into the water without striking any part of the unit.

(2) *Attachments and fittings.* Lifebuoys must have the following attachments and fittings:

(i) At least one lifebuoy on each side of the unit fitted with a buoyant lifeline that is—

(A) At least as long as twice the height where it is stowed above the waterline in the lightest seagoing condition, or 30 meters (100 feet), whichever is the greater;

(B) Non-kinking;

(C) Not less than 8 millimeters (5/16 inch) in diameter;

(D) Of a breaking strength which is not less than 5 kiloNewtons (1,124 pounds-force); and

(E) Is, if synthetic, a dark color or certified by the manufacturer to be resistant to deterioration from ultraviolet light.

(ii) At least one-half the total number of lifebuoys on the unit must each be fitted with a self-igniting light approved under approval series 161.010. A self-igniting light must not be attached to the lifebuoys required by this section to be fitted with lifelines.

(iii) At least two lifebuoys on the unit each must be fitted with a self-activating smoke signal approved under approval series 160.157. Lifebuoys fitted with smoke signals must also be fitted with lights.

(b) *Lifejackets.* Each unit must carry lifejackets approved under approval series 160.155, 160.176, or 160.177. If the unit carries inflatable lifejackets, they must be of the same or similar design and have the same method of operation.

(1) *General.* Each unit must carry a lifejacket for each person on board and in addition, a sufficient number of lifejackets must be carried for persons at each work station and industrial work site.

(2) *Stowage.* Lifejackets must be stowed as follows:

(i) The lifejackets must be readily accessible.

(ii) The additional lifejackets required by paragraph (b)(1) of this section must be stowed in places readily accessible to the work stations and industrial work sites.

(iii) Where, due to the particular arrangements of the unit, the lifejackets under paragraph (b)(1) of this section could become inaccessible, the OCMI may require an increase in the number of lifejackets to be carried, or suitable alternative arrangements.

(3) *Attachments and fittings.* Lifejackets must have the following attachments and fittings:

(i) Each lifejacket must have a lifejacket light approved under approval series 161.112 securely attached to the front shoulder area of the lifejacket. On a unit not in international service, a light approved under approval series 161.012 may be used. However, chemiluminescent-type lifejacket lights are not permitted on units certificated to operate on waters where water temperature may drop below 10 °C (50 °F).

(ii) Each lifejacket must have a whistle firmly secured by a cord to the lifejacket.

(c) *Immersion suits or anti-exposure suits.* Each unit must carry immersion suits approved under approval series 160.171 or anti-exposure suits approved under approval series 160.153.

(1) *General.* Each unit, except units operating between 32 degrees north latitude and 32 degrees south latitude, must carry—

(i) Immersion suits or anti-exposure suits of suitable size for each person assigned to the rescue boat crew;

(ii) Immersion suits approved under approval series 160.171 of the appropriate size for each person on board, which count toward meeting the requirements of paragraph (c)(1)(i) of this section; and

(iii) In addition to the immersion suits required under paragraph (c)(1)(ii) of this section, each watch station, work station, and industrial work site must have enough immersion suits to equal the number of persons normally on watch in, or assigned to, the station or site at one time. However, an immersion suit is not required at a station or site for a person whose cabin or berthing area (and the immersion suits stowed in that location) is readily accessible to the station or site.

(2) *Attachments and fittings.* Immersion suits or anti-exposure suits must have the following attachments and fittings:

(i) Each immersion suit or anti-exposure suit must have a lifejacket light approved under approval series

161.112 securely attached to the front shoulder area of the immersion suit or anti-exposure suit. On a unit not in international service, a light approved under approval series 161.012 may be used. However, chemiluminescent type lifejacket lights are not permitted on units certificated to operate on waters where water temperature may drop below 10 °C (50 °F).

(ii) Each immersion suit or anti-exposure suit must have a whistle firmly secured by a cord to the immersion suit or anti-exposure suit.

§ 108.595 Communications.

(a) *Radio lifesaving appliances.* Radio lifesaving appliance installations and arrangements must meet the requirements of 47 CFR part 80.

(b) *Distress flares.* Each unit must—

(1) Carry not less than 12 rocket parachute flares approved under approval series 160.136; and

(2) Stow the flares in a portable watertight container carried on the navigating bridge, or if the unit does not have a bridge, in the control room.

§ 108.597 Line-throwing appliance.

(a) *General.* Each unit in international service must have a line-throwing appliance that is approved under approval series 160.040. Each unit not in international service must carry a line-throwing appliance approved under either approval series 160.040 or 160.031.

(b) *Stowage.* The line-throwing appliance and its equipment must be readily accessible for use.

(c) *Additional equipment.* Each unit must carry the following equipment for the line-throwing appliance:

(1) The equipment on the list provided by the manufacturer with the approved appliance; and

(2) An auxiliary line that—

(i) Has a breaking strength of at least 40 kiloNewtons (9,000 pounds-force);

(ii) Is, if synthetic, a dark color or certified by the manufacturer to be resistant to deterioration from ultraviolet light; and

(iii) Is—

(A) At least 450 meters (1,500 feet) long, if the line-throwing appliance is approved under approval series 160.040; or

(B) At least 150 meters (500 feet) long, if the line-throwing appliance is approved under approval series 160.031.

78. Section 108.645 is revised to read as follows:

§ 108.645 Markings on lifesaving appliances.

(a) *Lifeboats and rescue boats.* Each lifeboat and rescue boat must be plainly marked as follows:

(1) Each side of each lifeboat and rescue boat bow must be marked in block capital letters and numbers with—

(i) The name of the unit; and

(ii) The name of the port required to be marked on the stern of the unit to meet the requirements of part 67, subpart 67.13 of this chapter.

(2) The length and beam of the boat and the number of persons the boat is equipped for, not exceeding the number shown on its nameplate, must be clearly marked in permanent characters.

(3) The number of the boat and the unit's name, must be plainly marked or painted so that the markings are visible from above the boat.

(4) Type II retro-reflective material approved under approval series 164.018 must be placed on the boat and meet the arrangement requirements in IMO Resolution A.658(16).

(b) *Rigid liferafts.* Each rigid liferaft must be marked as follows:

(1) The name of the unit must be marked on each rigid liferaft.

(2) The name of the port required to be marked on the stern of the unit to meet the requirements of part 67, subpart 67.13 of this chapter.

(3) The length of the painter must be marked on each rigid liferaft.

(4) At each entrance of each rigid liferaft, the number of persons the rigid liferaft is equipped for, not exceeding the number shown on its nameplate, must be marked in letters and numbers at least 100 millimeters (4 inches) high, in a color contrasting to that of the liferaft.

79. Section 108.646 is added to read as follows:

§ 108.646 Marking of stowage locations.

(a) Containers, brackets, racks, and other similar stowage locations for lifesaving equipment, must be marked with symbols in accordance with IMO Resolution A.760(18), indicating the devices stowed in that location for that purpose.

(b) If more than one device is stowed in that location, the number of devices must also be indicated.

(c) Survival craft should be numbered consecutively, starting from the unit's bow and designating survival craft on the starboard side with odd numerals, and survival craft on the port side with even numerals.

80. Section 108.647 is revised to read as follows:

§ 108.647 Inflatable liferafts.

The number of the liferaft and the number of persons it is permitted to accommodate must be marked or painted in a conspicuous place in the immediate vicinity of each inflatable liferaft in block capital letters and numbers. The word "liferaft" or the appropriate symbol from IMO Resolution A.760(18) shall be used to identify the stowage location. Liferafts stowed on the sides of the unit should be numbered in the same manner as the lifeboats. This marking must not be on the inflatable liferaft container.

81. Section 108.649 is revised to read as follows:

§ 108.649 Lifejackets, immersion suits, and lifebuoys.

(a) Each lifejacket must be marked—

(1) In block capital letters with the name of the unit; and

(2) With type I retro-reflective material approved under approval series 164.018. The arrangement of the retro-reflective material must meet IMO Resolution A.658(16).

(b) The lifejacket stowage positions must be marked with either the word "LIFEJACKET" or with the appropriate symbol from IMO Resolution A.760(18).

(c) Each immersion suit or anti-exposure suit must be marked in block capital letters with the name of the unit.

(d) Immersion suits or anti-exposure suits must be stowed so they are readily accessible, and the stowage positions must be marked with either the words "IMMERSION SUITS" or "ANTI-EXPOSURE SUITS", or with the appropriate symbol from IMO Resolution A.760(18).

(e) Each lifebuoy must be marked—

(1) In block capital letters with the unit's name and with the name of the port required to be marked on the unit under part 67, subpart 67.13 of this chapter; and

(2) With type II retro-reflective material approved under part 164, subpart 164.018 of this chapter. The arrangement of the retro-reflective material must meet IMO Resolution A.658(16).

(f) Each lifebuoy stowage position must be marked with either the words "LIFEBUOY" or "LIFE BUOY", or with the appropriate symbol from IMO Resolution A.760(18).

(g) Each lifejacket, immersion suit, and anti-exposure suit container must be marked in block capital letters and numbers with the quantity, identity, and size of the equipment stowed inside the container. The equipment may be identified in words, or with the appropriate symbol from IMO Resolution A.760(18).

82. Section 108.650 is added to read as follows:

§ 108.650 EPIRBs and SARTs.

Emergency position indicating radiobeacons and search and rescue transponders. Each EPIRB and SART should have the name of the unit plainly marked or painted on its label, except for EPIRBs or SARTs in an inflatable liferaft or permanently installed in a survival craft.

83. Section 108.655 is revised to read as follows:

§ 108.655 Operating instructions.

Each unit must have posters or signs displayed in the vicinity of each survival craft and the survival craft's launching controls that—

(a) Illustrate the purpose of controls;

(b) Illustrate the procedures for operating the launching device;

(c) Give relevant instructions or warnings;

(d) Can be easily seen under emergency lighting conditions; and

(e) Display symbols in accordance with IMO Resolution A.760(18).

84. Subpart J is added to read as follows:

Subpart J—Muster list

Sec.

108.901 Muster list and emergency instructions.

Subpart J—Muster list

§ 108.901 Muster list and emergency instructions.

(a) *General.* Copies of clear instructions must be provided on the unit, detailing the actions that each person on board should follow in the event of an emergency.

(b) *Muster list.* Copies of the muster list must be posted in conspicuous places throughout the unit including on the navigating bridge, in the control room, and in crew accommodation spaces. The muster list must be posted at all times while the unit is in service. After the muster list has been prepared, if any change takes place that necessitates an alteration in the muster list, the person in charge must either revise the muster list or prepare a new one. Muster lists must provide the following information:

(1) Each muster list must specify instructions for operating the general emergency alarm system.

(2) Each muster list must specify the emergency signals.

(3) Each muster list must specify the actions to be taken by the crew and industrial personnel when each signal is sounded.

(4) Each muster list must specify how the order to abandon the unit will be given.

(5) Each muster list must specify the persons that are assigned to make sure that lifesaving and firefighting appliances are maintained in good condition and ready for immediate use.

(6) Each muster list must specify the duties assigned to the different members of the crew, that include—

(i) Closing the watertight doors, fire doors, valves, scuppers, sidescuttles, skylights, portholes, and other similar openings in the unit's hull;

(ii) Equipping the survival craft and other lifesaving appliances;

(iii) Preparing and launching the survival craft;

(iv) Preparing other lifesaving appliances;

(v) Mustering the visitors and other persons in addition to the crew and industrial personnel;

(vi) Using communication equipment;

(vii) Manning the emergency squad assigned to deal with fires and other emergencies;

(viii) Special duties assigned with respect to the use of firefighting equipment and installations;

(ix) Cover the duties of the crew in case of collisions or other serious casualties; and

(x) Cover the duties of the crew in case of severe storms.

(7) Each muster list must specify the duties assigned to members of the crew in relation to visitors and other persons on board in case of an emergency, that include—

(i) Warning visitors and other persons on board;

(ii) Seeing that visitors and other persons on board are suitably dressed and have donned their lifejackets or immersion suits correctly;

(iii) Assembling visitors and other persons on board at muster stations; and

(iv) Keeping order in the passageways and on the stairways and generally controlling the movements of the visitors and other persons on board;

(8) Each muster list must specify substitutes for key persons if they are disabled, taking into account that different emergencies require different actions.

(c) *Emergency instructions.* Illustrations and instructions in English and any other appropriate language, as determined by the OCMI, must be posted in each cabin used for persons who are not members of the crew or industrial personnel, and be conspicuously displayed at each muster station and in other accommodation spaces to inform industrial personnel of—

(1) The fire and emergency signal;

(2) Their muster station;

(3) The essential actions they must take in an emergency;

(4) The location of lifejackets, including child-size lifejackets;

(5) The method of donning lifejackets;

(6) If immersion suits are provided, the location of the immersion suits; and

(7) Fully illustrated instructions on the method of donning immersion suits.

PART 109—OPERATIONS

85. The authority citation for part 109 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 5115, 6101, 10104; 49 CFR 1.46.

§§ 109.207, 109.208 [Removed]

86. Sections 109.207 and 109.208 are removed.

87. Section 109.213 is revised to read as follows:

§ 109.213 Emergency training and drills.

(a) *Training materials.* Abandonment training material must be on board each unit. The training material must consist either of a manual of one or more volumes, written in easily understood terms and illustrated wherever possible, or audiovisual training aids, or both as follows:

(1) If a training manual is used, a copy must be made available to each person on board the unit. If audiovisual training aids are used, they must be incorporated into the onboard training sessions described under paragraph (g) of this section.

(2) The training material must explain, in detail—

(i) The procedure for donning lifejackets, immersion suits, and anti-exposure suits carried on board;

(ii) The procedure for mustering at the assigned stations;

(iii) The procedure for boarding, launching, and clearing the survival craft and rescue boats;

(iv) The method of launching from within the survival craft;

(v) The procedure for releasing from launching appliances;

(vi) The method and use of devices for protection in launching areas, where appropriate;

(vii) Illumination in launching area;

(viii) The use of all survival equipment;

(ix) The use of all detection equipment;

(x) With illustrations, the use of radio lifesaving appliances;

(xi) The use of sea anchors;

(xii) The use of engine and accessories;

(xiii) The recovery of survival craft and rescue boats, including stowage and securing;

(xiv) The hazards of exposure and the need for warm clothing;
(xv) The best use of the survival craft for survival;
(xvi) The methods of retrieval, including the use of helicopter rescue gear (slings, baskets, stretchers), and unit's line throwing apparatus;
(xvii) The other functions contained in the muster list and emergency instructions; and
(xviii) The instructions for emergency repair of the lifesaving appliances.
(b) *Familiarity with emergency procedures.* Every crew member with assigned emergency duties on the muster list, must be familiar with their assigned duties before working on the unit.
(c) *Drills—general.* (1) Drills must, as far as practicable, be conducted as if there were an actual emergency.
(2) Every crew member must participate in at least one abandonment drill and one fire drill every month. A drill must take place within 24 hours of a change in crew or industrial personnel if more than 25 percent of the persons on board have not participated in an abandonment drill on board the unit in the previous month.
(3) Drills must be held before the unit enters service for the first time after modification of a major character, or when a new crew is engaged.
(d) *Abandonment drills.* (1) Abandonment drills must include the following:
(i) Each drill must include summoning of industrial personnel and crew to muster stations with the general alarm, followed by drill announcements on the public address or other communication system, and ensuring that all on board are made aware of the order to abandon ship.
(ii) Each drill must include reporting to stations and preparing for the duties described in the muster list.
(iii) Each drill must include checking that industrial personnel and crew are suitably dressed.
(iv) Each drill must include checking that lifejackets or immersion suits are correctly donned.
(v) Each drill must include lowering of at least one lifeboat after any necessary preparation for launching.
(vi) Each drill must include starting and operating the lifeboat engine.
(vii) Each drill must include operating davits used for launching the liferafts.
(2) Different lifeboats must, as far as practicable, be lowered in compliance with the requirements of paragraph (d)(1)(v) of this section at successive drills.
(3) Each lifeboat must be launched with its assigned operating crew aboard, and maneuvered in the water at least once every 3 months, during an abandonment drill.
(4) As far as is reasonable and practicable, rescue boats other than lifeboats which are also rescue boats, must be launched each month with their assigned crew aboard and maneuvered in the water. In all cases this requirement must be complied with at least once every 3 months.
(5) If a unit is fitted with marine evacuation systems, drills must include an exercising of the procedures required for the deployment of such a system up to the point immediately preceding actual deployment of the system. This aspect of drills should be augmented by regular instruction using the on board training aids. Additionally, every crew member assigned to duties involving the marine evacuation system must, as far as practicable, be further trained by participation in a full deployment of a similar system into water, either on board a unit or ashore, at intervals of not longer than 2 years, but in no case longer than 3 years.
(6) Emergency lighting for mustering and abandonment must be tested at each abandonment drill.
(7) On a unit carrying immersion suits or anti-exposure suits, immersion suits or anti-exposure suits must be worn by crew members and industrial personnel in at least one abandonment drill per month. If wearing the suit is impracticable due to warm weather, the crew members must be instructed on its donning and use.
(e) *Line-throwing appliance.* A drill must be conducted on the use of the line-throwing appliance at least once every 3 months. The actual firing of the appliance is at the discretion of the person in charge.
(f) *Fire drills.* (1) Fire drills must, as far as practicable, be planned in such a way that due consideration is given to regular practice in the various emergencies that may occur depending on the type of unit.
(2) Each fire drill must include—
(i) Reporting to stations, and preparing for the duties described in the muster list for the particular fire emergency being simulated;
(ii) Starting of fire pumps and the use of two jets of water to determine that the system is in proper working order;
(iii) Checking the fireman's outfits and other personal rescue equipment;
(iv) Checking the relevant communication equipment;
(v) Checking the operation of watertight doors, fire doors, and fire dampers and main inlets and outlets of ventilation systems in the drill area;
(vi) Checking the necessary arrangements for subsequent abandonment of the unit; and
(vii) Operation of remote controls for stopping ventilation and fuel supplies to machinery spaces.
(3) The equipment used during drills must immediately be brought back to its fully operational condition, and any faults and defects discovered during the drills must be remedied as soon as possible.
(g) *Onboard training and instruction.* (1) Except as provided in paragraph (g)(2) of this section, onboard training in the use of the unit's lifesaving appliances, including survival craft equipment, and in the use of the unit's fire-extinguishing appliances must be given to each member of the crew and industrial personnel as soon as possible but not later than 2 weeks after they join the unit.
(2) If crew or industrial personnel are on a regularly scheduled rotating assignment to the unit, onboard training in the use of the unit's lifesaving appliances, including survival craft equipment, and in the use of the unit's fire-extinguishing appliances must be given not later than 2 weeks after the time of first joining the unit.
(3) The crew and industrial personnel must be instructed in the use of the unit's fire-extinguishing appliances, lifesaving appliances, and in survival at sea at the same interval as the drills. Individual instruction may cover different parts of the unit's lifesaving and fire-extinguishing appliances, but all the unit's lifesaving and fire-extinguishing appliances, must be covered within any period of 2 months.
(4) Crew and industrial personnel must be given instructions which include, but are not limited to—
(i) The operation and use of the unit's inflatable liferafts;
(ii) The problems of hypothermia, first aid treatment for hypothermia and other appropriate first aid procedures;
(iii) The special instructions necessary for use of the unit's lifesaving appliances in severe weather and severe sea conditions; and
(iv) The operation and use of fire-extinguishing appliances.
(5) Onboard training in the use of davit-launched liferafts must take place at intervals of not more than 4 months on each unit with davit-launched liferafts. Whenever practicable this must include the inflation and lowering of a liferaft. If this liferaft is a special liferaft intended for training purposes only, and is not part of the unit's lifesaving equipment, this liferaft must be conspicuously marked.
(6) Each of the industrial personnel without designated responsibility for the survival of others on board, must be instructed in at least—
(i) The emergencies which might occur on that particular type of unit;
(ii) The consequences of panic;
(iii) The location and actuation of fire alarm controls;
(iv) The location and proper method of use of firefighting equipment;
(v) Fire precautions;
(vi) The types of all lifesaving appliances carried on the unit and proper methods of using them, including—
(A) The correct method of donning and wearing a lifejacket, and if provided an immersion suit;
(B) Jumping into the water from a height while wearing a lifejacket and, if provided, an immersion suit;
(C) How to board survival craft from the unit and from the water;
(D) Operation and use of the unit's inflatable liferafts;
(E) Special instructions necessary for use of the unit's lifesaving appliances in severe weather and severe sea conditions;
(F) Swimming while wearing a lifejacket; and
(G) Keeping afloat without a lifejacket.
(vii) Where appropriate, how to survive in the water—
(A) In the presence of fire or oil on the water;
(B) In cold conditions; and
(C) If sharks may be present.
(viii) Problems of hypothermia, first aid treatment for hypothermia and other appropriate first aid procedures;
(ix) The need to adhere to the principles of survival; and
(x) The basic methods of boarding helicopters.
(7) Each member of the crew and each of the industrial personnel with designated responsibility for the survival of others on board must be instructed in at least the items covered in paragraph (g)(6) of this section, and—
(i) Methods of detection, isolation, control, and extinguishing of fire;
(ii) Checking and maintaining fire fighting equipment;
(iii) Marshaling of personnel; and
(iv) Abandonment of the unit, including—
(A) Launching survival craft;
(B) Getting survival craft quickly and safely clear of the unit; and
(C) Righting a capsized survival craft.
(v) Handling all survival craft and their equipment, including—
(A) Checking and maintaining their readiness for immediate use;
(B) Using equipment to the best advantage;
(C) Using the sea anchor;
(D) Remaining, as far as practicable, in the general vicinity of the unit, well clear of but not downwind of any hydrocarbons or fire;
(E) Recovering and, as far as practicable, caring for other survivors;
(F) Keeping a lookout;
(G) Operating available means of detection by others, including radio distress alerting and radio emergency procedures; and
(H) Making proper use of food and drinking water and using protective measures in survival craft such as those for preventing exposure to cold, sun, wind, rain, and sea, and for preventing seasickness.
(vi) Cautioning on the preservation of body fluids and the dangers of drinking seawater;
(vii) Transferring personnel from survival craft to helicopters or to work boats;
(viii) Maintaining morale; and
(ix) Methods of helicopter rescue.
(h) *Records.* (1) When musters are held, details of abandonment drills, fire drills, other lifesaving appliances, and onboard training must be recorded in the unit's official logbook. Logbook entries must include the following:
(i) Logbook entries must identify the date and time of the drill, muster, or training session.
(ii) Logbook entries must identify the survival craft and fire-extinguishing equipment used in the drills.
(iii) Logbook entries must identify the inoperative or malfunctioning equipment and the corrective action taken.
(iv) Logbook entries must identify crew members participating in drills or training sessions.
(v) Logbook entries must identify the subject of the onboard training session.
(2) If a full muster, drill, or training session is not held at the appointed time, an entry must be made in the logbook stating the circumstances and the extent of the muster, drill, or training session held.

§§ 109.215, 109.217, 109.219, 109.221, 109.225 [Removed]

88. Sections 109.215, 109.217, 109.219, 109.221, and 109.225 are removed.

89. Section 109.301 is revised to read as follows:

§ 109.301 Operational readiness, maintenance, and inspection of lifesaving equipment.

(a) *Operational readiness.* Except as provided in § 109.301(b)(3), each lifesaving appliance must be in good working order and ready for immediate use at all times when the unit is in operation.
(b) *Maintenance.* (1) The manufacturer's instructions for onboard maintenance of lifesaving appliances must be onboard and must include the following for each appliance—
(i) Checklists for use when carrying out the inspections required under § 109.301(e);
(ii) Maintenance and repair instructions;
(iii) A schedule of periodic maintenance;
(iv) A diagram of lubrication points with the recommended lubricants;
(v) A list of replaceable parts;
(vi) A list of sources of spare parts; and
(vii) A log for records of inspections and maintenance.
(2) In lieu of compliance with paragraph (b)(1) of this section, The OCMI may accept a planned maintenance program that includes the items listed in that paragraph.
(3) If lifeboats, rescue boats or rigid liferafts are maintained and repaired while the unit is in operation, there must be a sufficient number of lifeboats and liferafts remaining available for use to accommodate all persons on board.
(c) *Spare parts and repair equipment.* Spare parts and repair equipment must be provided for each lifesaving appliance and component subject to excessive wear or consumption and that needs to be replaced regularly.
(d) *Weekly inspections and tests.* (1) Each survival craft, rescue boat, and launching appliance must be visually inspected to ensure its readiness for use.
(2) Each lifeboat engine and rescue boat engine must be run ahead and astern for not less than 3 minutes, unless the ambient temperature is below the minimum temperature required for starting the engine. During this time, demonstrations should indicate that the gear box and gear box train are engaging satisfactorily. If the special characteristics of an outboard motor fitted to a rescue boat would not allow the outboard motor to be run other than with its propeller submerged for a period of 3 minutes, the outboard motor should be run for such period as prescribed in the manufacturer's handbook.
(3) The general alarm system must be tested.
(e) *Monthly inspections.* (1) Each lifesaving appliance, including lifeboat equipment, must be inspected monthly using the checklists required under paragraph (b) of this section to make sure it is complete and in good working

order. A report of the inspection, including a statement as to the condition of the equipment, must be recorded in the unit's official logbook.

(2) Each EPIRB and each SART other than an EPIRB or SART in an inflatable liferaft, must be tested monthly. The EPIRB must be tested using the integrated test circuit and output indicator to determine that it is operative.

(f) *Annual inspections.* Annual inspection and repair must include the following:

(1) Each survival craft, except for inflatable liferafts, must be stripped, cleaned, and thoroughly inspected and repaired, as needed, at least once in each year, including emptying and cleaning each fuel tank, and refilling it with fresh fuel.

(2) Each davit, winch, fall and other launching appliance must be thoroughly inspected and repaired, as needed, once in each year.

(3) Each item of survival equipment with an expiration date must be replaced during the annual inspection and repair, if the expiration date has passed.

(4) Each battery clearly marked with an expiration date, that is used in an item of survival equipment must be replaced during the annual inspection and repair, if the expiration date has passed.

(5) Except for a storage battery used in a lifeboat or rescue boat, each battery without an expiration date that is used in an item of survival equipment must be replaced during the annual inspection and repair.

(g) *Servicing of inflatable lifesaving appliances, inflated rescue boats, and marine evacuation systems.*

(1) Each inflatable lifesaving appliance and marine evacuation system must be serviced—

(i) Within 12 months of its initial packing; and

(ii) Within 12 months of each subsequent servicing, except when servicing is delayed until the next scheduled inspection of the unit, provided the delay does not exceed 5 months.

(2) Each inflatable lifejacket must be serviced in accordance with servicing procedures meeting the requirements of part 160, subpart 160.176 of this chapter. Each hybrid inflatable lifejacket must be serviced in accordance with the owners manual and meet the requirements of part 160, subpart 160.077 of this chapter.

(3) Each inflatable liferaft must be serviced—

(i) Whenever the container of the raft is damaged, or the straps or seal broken; and

(ii) In accordance with servicing procedures meeting the requirements of part 160, subpart 160.051 of this chapter.

(4) Each inflated rescue boat must be repaired and maintained in accordance with the manufacturer's instructions. All repairs must be made at a servicing facility approved by the Commandant (G–MSE), except for emergency repairs carried out on board the unit.

(h) *Periodic servicing of hydrostatic release units.* Each hydrostatic release unit, other than a disposable hydrostatic release unit, must be serviced—

(1) Within 12 months of its manufacture and within 12 months of each subsequent servicing, except when servicing is delayed until the next scheduled inspection of the unit, provided the delay does not exceed 5 months; and

(2) In accordance with repair and testing procedures meeting the requirements of part 160, subpart 160.062 of this chapter.

(i) *Periodic servicing of launching appliances and release gear.* (1) Launching appliances must be serviced at the intervals recommended in the manufacturer's instructions, or as set out in the shipboard planned maintenance program.

(2) Launching appliances must be thoroughly examined at intervals not exceeding 5 years and upon completion of the examination, the launching appliance must be subjected to a dynamic test of the winch brake.

(3) Lifeboat and rescue boat release gear must be serviced at the intervals recommended in the manufacturer's instructions, or as set out in the planned maintenance program.

(4) Lifeboat and rescue boat release gear must be subjected to a thorough examination by properly trained personnel familiar with the system at each inspection for certification.

(5) Lifeboat and rescue boat release gear must be operationally tested under a load of 1.1 times the total mass of the lifeboat when loaded with its full complement of persons and equipment, whenever overhauled, or at least once every 5 years.

(j) *Maintenance of falls.* (1) Each fall used in a launching appliance must be turned end-for-end at intervals of not more than 30 months and must be renewed when necessary due to deterioration or at intervals of not more than 5 years, whichever is earlier.

(2) As an alternative to paragraph (j)(1) of this section, each fall may be inspected annually and renewed whenever necessary due to deterioration or at intervals of not more than 4 years, whichever is earlier.

(k) *Rotational deployment of marine evacuation systems.* In addition to or in conjunction with the servicing intervals of marine evacuation systems required by paragraph (g)(1) of this section, each marine evacuation system must be deployed from the unit on a rotational basis. Each marine evacuation system must be deployed at least once every 6 years.

§§ 109.305, 109.307, 109.313, 109.314, 109.317, 109.320, 109.321 [Removed]

90. Sections 109.305, 109.307, 109.313, 109.314, 109.317, 109.320 and 109.321 removed.

91. Section 109.323 is revised to read as follows:

§ 109.323 Manning of survival craft and supervision.

(a) There must be a sufficient number of trained persons on board the survival craft for mustering and assisting untrained persons.

(b) There must be a sufficient number of deck officers, able seamen, or certificated persons on board to operate the survival craft and launching arrangements required for abandonment by the total number of persons on board.

(c) There must be one person placed in charge of each survival craft to be used. The person in charge must—

(1) Be a deck officer, able seaman, or certificated person. The OCMI, considering the number of persons permitted on board, and the characteristics of the unit, may permit persons practiced in the handling and operation of liferafts or inflatable buoyant apparatus to be placed in charge of liferafts or inflatable buoyant apparatus;

(2) Have another person designated second-in-command of each lifeboat permitted to carry more than 40 persons. This person should be a deck officer, able seaman, or certificated person; and

(3) Have a list of the survival craft crew and must see that the crewmembers are acquainted with their duties. The second-in-command of a lifeboat must also have a list of the lifeboat crew.

(d) There must be a person assigned to each motorized survival craft who is capable of operating the engine and carrying out minor adjustments.

(e) The person in charge must make sure that the persons required under paragraphs (a), (b), and (c) of this section are equitably distributed among the unit's survival craft.

§ 109.325 [Removed]

92. Section 109.325 is removed.

§ 109.341 [Removed]

93. Section 109.341 is removed.

94. Section 109.425 is revised to read as follows:

§ 109.425 Repairs and alterations: fire detecting and extinguishing equipment.

(a) Before making repairs or alterations, except emergency repairs or alterations to fire detecting and extinguishing equipment, the master or person in charge shall report the nature of the repairs or alterations to the OCMI.

(b) When emergency repairs or alterations to fire detecting or fire-extinguishing equipment have been made, the master or person in charge shall report the nature of the repairs or alterations to the OCMI.

95. In § 109.433, paragraph (d) is revised; paragraphs (e) through (i), and (n) are removed; and paragraphs (j) through (m) are redesignated as paragraphs (e) through (h) to read as follows:

§ 109.433 Logbook entries.

* * * * *

(d) The logbook must include information on emergency training drills required in § 109.213(h).

* * * * *

96. In subpart E, the heading is revised to read as follows:

Subpart E—Emergency Signals

§ 109.501 [Removed]

97. Section 109.501 is removed.

98. In § 109.503, paragraph (a) is removed, and paragraphs (b) and (c) are redesignated as paragraphs (a) and (b), and the section heading and newly redesignated paragraph (b)(2) are revised to read as follows:

§ 109.503 Emergency signals.

* * * * *

(b) * * *

(2) If whistle signals are used to direct the handling of lifeboats and davit-launched liferafts, they must be—

(i) One short blast to lower the lifeboats and davit-launched liferafts; and

(ii) Two short blasts to stop lowering the lifeboats and davit-launched liferafts.

* * * * *

§ 109.505 [Removed]

99. Section 109.505 is removed.

SUBCHAPTER L—OFFSHORE SUPPLY VESSELS

PART 125—GENERAL

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.46.

100. In § 125.160, add definitions in alphabetical order, to read as follows:

§ 125.160 Definitions.

* * * * *

Anti-exposure suit means a protective suit designed for use by rescue boat crews and marine evacuation system parties.

Approval series means the first six digits of a number assigned by the Coast Guard to approved equipment. Where approval is based on a subpart of subchapter Q of this chapter, the approval series corresponds to the number of the subpart. A listing of approved equipment, including all of the approval series, is published periodically by the Coast Guard in Equipment Lists (COMDTINST M16714.3 series), available from the Superintendent of Documents.

* * * * *

Crew means all persons carried on board the OSV to provide navigation and maintenance of the OSV, its machinery, systems, and arrangements essential for propulsion and safe navigation or to provide services for other persons on board.

* * * * *

Embarkation ladder means the ladder provided at survival craft embarkation stations to permit safe access to survival craft after launching.

Embarkation station means the place where a survival craft is boarded.

* * * * *

Float-free launching means that method of launching a survival craft or lifesaving appliance whereby the craft or appliance is automatically released from a sinking vessel and is ready for use.

* * * * *

Immersion suit means a protective suit that reduces loss of body heat of a person wearing it in cold water.

Inflatable appliance means an appliance that depends upon nonrigid, gas-filled chambers for buoyancy and that is normally kept uninflated until ready for use.

Inflated appliance means an appliance that depends upon nonrigid, gas-filled chambers for buoyancy and that is kept inflated and ready for use at all times.

* * * * *

Launching appliance or *launching arrangement* means the method or devices for transferring a survival craft or rescue boat from its stowed position to the water. For a launching arrangement using a davit, the term includes the davit, winch, and falls.

* * * * *

Lifejacket means a flotation device approved as a life preserver or lifejacket.

* * * * *

Marine evacuation system means an appliance designed to rapidly transfer large numbers of persons from an embarkation station by means of a passage to a floating platform for subsequent embarkation into associated survival craft, or directly into associated survival craft.

* * * * *

Muster station means the place where the crew and offshore workers assemble before boarding a survival craft.

Novel lifesaving appliance or arrangement means one that has new features not fully covered by the provisions of this part but that provides an equal or higher standard of safety.

* * * * *

Rescue boat means a boat designed to rescue persons in distress and to marshal survival craft.

Seagoing condition means the operating condition of the OSV with the personnel, equipment, fluids, and ballast necessary for safe operation on the waters where the OSV operates.

Survival craft means a craft capable of sustaining the lives of persons in distress from the time of abandoning the OSV on which the persons were originally carried. The term includes lifeboats, liferafts, buoyant apparatus, and lifefloats, but does not include rescue boats.

101. In § 125.180, paragraph (b) under International Maritime Organization (IMO), the entries for Resolution A.658(16) and Resolution A.760(18) are revised, and a new entry for Resolution A.520(13) is added in numerical order to read as follows:

§ 125.180 Incorporation by reference.

* * * * *

(b) * * *

International Maritime Organization (IMO)

4 Albert Embankment, London, SE1 7SR, England

Resolution A.520(13), Code of Practice for the Evaluation, Testing and Acceptance of Prototype Novel Life-saving Appliances and Arrangements, 17 November 1983. 133.40

Resolution A.658(16), Use and Fitting of Retroreflective Materials on Life-saving Appliances, 20 November 1989.	131.855; 131.875; 133.70
Resolution A.760(18), Symbols Related to Life-saving Appliances and Arrangements, 17 November 1993.	131.875; 133.70; 133.90
International Convention for the Safety of Life at Sea (SOLAS), Consolidated Edition, 1992	126.170

102. Part 133, consisting of §§ 133.03 through 133.175, is added to read as follows:

PART 133—LIFESAVING SYSTEMS

Subpart A—General

Sec.

133.03 Relationship to international standards.
133.07 Additional equipment and requirements.
133.09 Equivalents.
133.10 Applicability.
133.20 Exemptions.
133.40 Evaluation, testing and approval of lifesaving appliances and arrangements.
133.45 Tests and inspections of lifesaving equipment and arrangements.

Subpart B—Requirements for All OSVs

133.60 Communications.
133.70 Personal lifesaving appliances.
133.80 Emergency instructions.
133.90 Operating instructions.
133.105 Survival craft.
133.110 Survival craft muster and embarkation arrangements.
133.120 Launching stations.
133.130 Stowage of survival craft.
133.135 Rescue boats.
133.140 Stowage of rescue boats.
133.145 Marine evacuation system launching arrangements.
133.150 Survival craft launching and recovery arrangements: general.
133.153 Survival craft launching and recovery arrangements using falls and a winch.
133.160 Rescue boat embarkation, launching and recovery arrangements.
133.170 Line-throwing appliance.
133.175 Survival craft and rescue boat equipment.

Authority: 46 U.S.C. 3306; 46 CFR 1.46.

Subpart A—General

§ 133.03 Relationship to international standards.

This subpart and subpart B of this part are based on Chapter III, SOLAS. Section numbers in this subpart and subpart B of this part are generally related to the regulation numbers in Chapter III, SOLAS, but paragraph designations are not related to the numbering in Chapter III, SOLAS. To find the corresponding Chapter III, SOLAS regulation for this subpart and subpart B of this part, beginning with § 133.10, divide the section number following the decimal point by 10.

§ 133.07 Additional equipment and requirements.

The OCMI may require an OSV to carry specialized or additional lifesaving equipment other than as required in this part if the OCMI determines that the conditions of a voyage present uniquely hazardous circumstances which are not adequately addressed by existing requirements.

§ 133.09 Equivalents.

When this part requires a particular fitting, material, or lifesaving appliance or arrangement, the Commandant (G–MSE) may accept any other fitting, material, or lifesaving appliance or arrangement that is at least as effective as that required by this part. The Commandant may require engineering evaluations and tests to determine the equivalent effectiveness of the substitute fitting, material, or lifesaving appliance or arrangement.

§ 133.10 Applicability.

(a) Unless expressly provided otherwise in this part, this part applies to all inspected OSVs of the United States flag, including lifeboats.

(b) Offshore supply vessels which were constructed prior to October 1, 1996, must—

(1) By October 1, 1997, meet the requirements of §§ 133.60(a), 133.80, and 133.90;

(2) By October 1, 1997, fit retro-reflective material on all floating appliances, lifejackets, and immersion suits; and

(3) Offshore supply vessels may retain the arrangement of lifeboats, lifeboat davits, winches, inflatable liferafts, liferaft launching equipment, rescue boats, lifefloats, and buoyant apparatus previously required and approved for the OSV, as long as the arrangement or appliance is maintained in good condition to the satisfaction of the OCMI.

(c) When any lifesaving appliance or arrangement on an OSV subject to this part is replaced, or when the OSV undergoes repairs, alterations, or modifications of a major character involving replacement of, or any addition to, the existing lifesaving appliances or arrangements, each new lifesaving appliance and arrangement must meet the requirements of this part, unless the OCMI determines that the OSV cannot accommodate the new appliance or arrangement.

§ 133.20 Exemptions.

(a) If a District Commander determines that the overall safety of the persons on board an OSV will not be significantly reduced, the District Commander may grant an exemption from compliance with a provision of this part to a specific OSV for a specified geographic area within the boundaries of the Coast Guard District. This exemption may be limited to certain periods of the year.

(b) Requests for exemption under this section must be in writing to the OCMI for transmission to the District Commander in the area in which the OSV is in service or will be in service.

(c) If the exemption is granted by the District Commander, the OCMI will endorse the OSV's Certificate of Inspection with a statement describing the exemption.

§ 133.40 Evaluation, testing and approval of lifesaving appliances and arrangements.

(a) Each item of lifesaving equipment required by this part to be carried on board the OSV must be approved.

(b) Each item of lifesaving equipment carried on board the OSV in addition to those required by this part must—

(1) Be approved; or

(2) Be accepted by the cognizant OCMI for use on the OSV.

(c) The Commandant (G–MSE) may accept a novel lifesaving appliance or arrangement if it provides a level of safety equivalent the requirements of this part and if the appliance or arrangement—

(1) Is evaluated and tested in accordance with IMO Resolution A.520(13), Code of Practice for the Evaluation, Testing and Acceptance of Prototype Novel Life-saving Appliances and Arrangements; or

(2) Has successfully undergone evaluation and tests that are substantially equivalent to those recommendations.

(d) During an OSV's construction, and when any modification to the lifesaving arrangement is done after construction, a OSV owner must obtain acceptance of lifesaving arrangements from the Commandant (G–MSC).

(e) The OCMI may accept substitute lifesaving appliances other than those required by this part, except for—

(1) Survival craft and rescue boats; and

(2) Survival craft and rescue boat launching and embarkation appliances.

(f) Acceptance of lifesaving appliances and arrangements will remain in effect unless—

(1) The OCMI deems their condition to be unsatisfactory or unfit for the service intended; or

(2) The OCMI deems the crew's ability to use and assist others in the use of the lifesaving appliances or arrangements to be inadequate.

§ 133.45 Tests and inspections of lifesaving equipment and arrangements.

(a) *Initial inspection.* The initial inspection of lifesaving appliances and arrangements for certification includes a demonstration of—

(1) The proper condition and operation of the survival craft and rescue boat launching appliances at loads ranging from light load to 10 percent overload;

(2) The proper condition and operation of rescue boats, including engines and release mechanisms;

(3) The proper condition of flotation equipment such as lifebuoys, lifejackets, immersion suits, work vests, lifefloats, buoyant apparatus, and associated equipment;

(4) The proper condition of distress signaling equipment, including EPIRB and pyrotechnic signaling devices;

(5) The proper condition of line-throwing appliances;

(6) The proper condition and operation of embarkation appliances, including embarkation ladders and marine evacuation systems;

(7) The ability of the crew to effectively carry out abandon-ship procedures; and

(8) The ability to meet the egress and survival craft launching requirements of this part.

(b) *Reinspections.* Tests and inspections of lifesaving equipment shall be carried out during each inspection for renewal of certification, and shall demonstrate, as applicable,—

(1) The proper condition and operation of the survival craft and rescue boat launching appliances at loads ranging from light load to full load;

(2) The proper condition and operation of rescue boats including engines and release mechanisms;

(3) The proper condition of flotation equipment such as lifebuoys, lifejackets, immersion suits, work vests, lifefloats, buoyant apparatus, and associated equipment;

(4) That each inflatable liferaft and inflatable lifejacket has been serviced as required under this chapter;

(5) That each hydrostatic release unit, other than a disposable hydrostatic release unit, has been serviced as required under this chapter; and

(6) That the crew has the ability to effectively carry out abandon-ship procedures.

(c) *Other inspections.* Lifesaving appliances and arrangements are subject to tests and inspections described in paragraph (b) of this section during OSV boardings to ensure that the appliances and arrangements comply with applicable requirements, are in satisfactory condition, and remain fit for service.

Subpart B—Requirements for All OSVs

§ 133.60 Communications.

(a) *Emergency position indicating radiobeacons (EPIRB) and search and rescue transponders (SART).*

(1) Each OSV must carry a category 1 406 MHz satellite EPIRB meeting the requirements of 47 CFR part 80.

(2) When the OSV is underway, the EPIRB must be stowed in its float-free bracket with the controls set for automatic activation and mounted in a manner so that it will float free if the OSV sinks.

(3) Each EPIRB should have the name of the OSV plainly marked or painted on its label, except for EPIRBs in an inflatable liferaft or permanently installed in a survival craft.

(b) *Distress flares.* Each OSV must—

(1) Carry not less than 12 rocket parachute flares approved under approval series 160.136; and

(2) Stow the flares on or near the OSV's navigating bridge.

(c) *Onboard communications and alarm systems.* Each OSV must meet the requirements for onboard communications between emergency control stations, muster and embarkation stations, and strategic positions on board, and the emergency alarm system requirements in part J of this chapter, and be supplemented by either a public address system or other suitable means of communication.

(d) *Emergency position indicating radiobeacon alternative.* OSVs, as an alternative to the requirements in paragraph (a) of this section, may until February 1, 1999, have a Coast Guard-approved class A EPIRB, if the EPIRB was—

(1) Manufactured after October 1, 1988; and

(2) Installed on the OSV on or before July 5, 1996.

§ 133.70 Personal lifesaving appliances.

(a) *Lifebuoys.* Each OSV must carry lifebuoys approved under approval series 160.150 and 160.050 as follows:

(1) *Number.* The number of lifebuoys carried must be as prescribed in table 133.70 of this section.

TABLE 133.70

Length of vessel in meters (feet)	Minimum number of ring lifebuoys	
	Ocean service	Coast-wise service
Under 30 (98)	8	3
30 (98) and under 60 (196)	8	4
60 (196) and under 100 (328)	8	6
100 (328) and over ...	12	12

(2) *Stowage.* Lifebuoys must be stowed as follows:

(i) Each lifebuoy must be capable of being rapidly cast loose.

(ii) Each lifebuoy must not be permanently secured to the OSV in any way.

(iii) Each lifebuoy stowage position must be marked with either the words "LIFEBUOY" or "LIFE BUOY", or with the appropriate symbol from IMO Resolution A.760(18).

(iv) Lifebuoys must be so distributed as to be readily available on each side of the OSV and, as far as practicable, on each open deck extending to the side of the OSV. At least one lifebuoy must be located near the stern of the OSV. The lifebuoys with attached self-igniting lights must be equally distributed on both sides of the OSV.

(3) *Color and markings.* Lifebuoys must be colored and marked as follows:

(i) Each lifebuoy must be orange.

(ii) Each lifebuoy must be marked in block capital letters with the name of the OSV and the name of the port required to be marked on the stern of the OSV under § 67.13 of this chapter.

(4) *Attachments and fittings.* Lifebuoys must have the following attachments and fittings:

(i) At least one lifebuoy on each side of the OSV fitted with a buoyant lifeline that is—

(A) At least as long as twice the height where it is stowed above the waterline in the lightest seagoing condition, or 30 meters (100 feet), whichever is the greater;

(B) Non-kinking;

(C) Not less than 8 millimeters (5/16 inch) in diameter;

(D) Of a breaking strength which is not less than 5 kiloNewtons (1,124 pounds-force); and

(E) Resistant to deterioration from ultraviolent light. Line that is certified by the manufacturer or is synthetic and a dark color meets this requirement.

(ii) Except for an OSV in coastwise service and under 30 meters (99 feet) in length, at least one-half the total number of lifebuoys, but not less than two, must

each be fitted with a self-igniting light approved under approval series 161.010. The self-igniting light must not be attached to the lifebuoys required by this section to be fitted with lifelines. However, if the OSV carries less than four lifebuoys, a buoyant lifeline can be fitted to one of the lifebuoys with a self-igniting light.

(b) *Lifejackets.* Each OSV must carry lifejackets approved under approval series 160.002, 160.005, 160.055, 160.077, 160.155, 160.176, or 160.177. If the OSV carries inflatable lifejackets, they must be of the same or similar design and have the same method of operation.

(1) *General.* Each OSV must carry a lifejacket for each person on board and in addition, a sufficient number of lifejackets must be carried for persons on watch and for use at remotely located survival craft stations.

(2) *Stowage.* Lifejackets must be stowed as follows:

(i) The lifejackets must be readily accessible.

(ii) The lifejacket stowage positions must be marked with either the word "LIFEJACKETS" or with the appropriate symbol from IMO Resolution A.760(18).

(iii) The additional lifejackets required by paragraph (b)(1) of this section must be stowed on the bridge, in the engine control room, and at other manned watch stations..

(3) *Markings.* Each lifejacket must be marked—

(i) In block capital letters with the name of the OSV; and.

(ii) With type I retro-reflective material approved under approval series 164.018. The arrangement of the retro-reflective material must meet IMO Resolution A.658(16).

(4) *Lifejacket lights.* Each lifejacket must have a lifejacket light approved under approval series 161.112 or 161.012 securely attached to the front shoulder area of the lifejacket. Chemiluminescent-type lifejacket lights approved under approval series 161.012 are not permitted on OSVs certificated to operate on waters where water temperature may drop below 10 °C (50 °F).

(c) *Immersion suits or anti-exposure suits.* Immersion suits must be approved under approval series 160.171, and anti-exposure suits must be approved under approval series 160.153.

(1) *General.* Each OSV, except OSVs operating in the Gulf of Mexico or on other routes between 32 degrees north latitude and 32 degrees south latitude, must carry—.

(i) An immersion suit or anti-exposure suit of suitable size for each person assigned to the rescue boat crew; and

(ii) An immersion suit of the appropriate size for each person on board. The immersion suits required under this paragraph count toward meeting the requirements of paragraph (c)(1)(i) of this section.

(2) *Stowage.* Immersion suits and anti-exposure suits must be stowed as follows:

(i) Immersion suits and anti-exposure suits must be stowed so they are readily accessible, and the stowage positions must be marked with the words "IMMERSION SUITS" or "ANTI-EXPOSURE SUITS" as appropriate, or with the appropriate symbol from IMO Resolution A.760(18).

(ii) If watch stations, work stations, or work sites are remote from cabins, staterooms, or berthing areas and the immersion suits are stowed in those locations, there must be, in addition to the immersion suits required under paragraph (c)(1)(ii) of this section, enough immersion suits stowed at the watch stations, work stations, or work sites to equal the number of persons normally on watch in, or assigned to, those locations at any time.

(3) *Markings.* Each immersion suit or anti-exposure suit must be marked in block capital letters with the name of the OSV.

(4) *Lights for immersion suits or anti-exposure suits.* Each immersion suit or anti-exposure suit must have a lifejacket light approved under approval series 161.112 or 161.012 securely attached to the front shoulder area of the immersion suit or anti-exposure suit. Chemiluminescent-type lifejacket lights approved under approval series 161.012 are not permitted on OSVs certificated to operate on waters where water temperature may drop below 10 °C (50 °F).

(d) *Lifejacket, immersion suit, and anti-exposure suit containers.* Each lifejacket, immersion suit, and anti-exposure suit container must be marked in block capital letters and numbers with the quantity, identity, and size of the equipment stowed inside the container. The equipment may be identified in words, or with the appropriate symbol from IMO Resolution A.760(18).

§ 133.80 Emergency instructions.

(a) *General.* Copies of clear instructions must be provided on the OSV, detailing the actions that each person on board should follow in the event of an emergency.

(b) *Emergency instructions.* Illustrations and instructions in English and any other appropriate language, as determined by the OCMI, must be conspicuously displayed at each muster station and in spaces where offshore workers are carried, to inform offshore workers of—

(1) The fire and emergency signal;

(2) Their muster station;

(3) The essential actions they must take in an emergency;

(4) The location of lifejackets; and

(5) The method of donning lifejackets.

§ 133.90 Operating instructions.

Each OSV must have posters or signs displayed in the vicinity of each survival craft and the survival craft's launching controls that—

(a) Illustrate the purpose of controls;

(b) Illustrate the procedures for operating the launching device;

(c) Give relevant instructions or warnings;

(d) Can be easily seen under emergency lighting conditions; and

(e) Display symbols in accordance with IMO Resolution A.760(18).

§ 133.105 Survival craft.

(a) Each survival craft must be approved and equipped as follows:

(1) Each inflatable liferaft—

(i) On an OSV on an unlimited oceans route, must be approved under approval series 160.151 and be equipped with a SOLAS A pack;

(ii) On an OSV on an oceans route limited to within 50 nautical miles of the shore, must be approved under approval series 160.151 and be equipped with either a SOLAS A pack or SOLAS B pack; and

(iii) On an OSV on a coastwise route, must be approved under approval series 160.151 or 160.151, with any approved equipment pack.

(2) Each rigid liferaft must be approved under approval series 160.118 and be equipped as specified in table 133.175 of this part.

(3) Each inflatable buoyant apparatus must be approved under approval series 160.010.

(4) Each lifefloat must be approved under approval series 160.027 and be equipped with the following:

(i) *One boathook.*

(ii) *Two paddles.* Each paddle must be at least 1.2 meters (4 feet) long and buoyant.

(iii) *One painter.* The painter must—

(A) Be at least 30 meters (100 feet) long, but not less than three times the distance between the deck where the lifefloats are stowed and to the OSV's waterline in the lightest seagoing condition;

(B) Have a breaking strength of at least 6.7 kiloNewtons (1,500 pounds-force), except that if the capacity of the lifefloat is 50 persons or more, the breaking strength must be at least 13.4 kiloNewtons (3,000 pounds-force);

(C) If made of a synthetic material, be dark in color or certified by the manufacturer to be resistant to deterioration from ultraviolet light;

(D) Be stowed in such a way that it runs out freely when the buoyant apparatus, inflatable buoyant apparatus, or lifefloat floats away from the sinking OSV; and

(E) Have a float-free link meeting the requirements of part 160, subpart 160.073 of this chapter, connecting the painter to the OSV.

(iv) *One self-igniting light.* The self-igniting light must be approved under approval series 161.010, and must be attached to the buoyant apparatus, inflatable buoyant apparatus, or lifefloat by a 12-thread manila or equivalent lanyard, at least 5.5 meters (18 feet) long. The self-igniting light is not required on a lifefloat with a capacity of 24 persons or less.

(5) Each marine evacuation system must be approved under approval series 160.175.

(6) Lifeboats may be substituted for liferafts. If lifeboats are installed on an OSV, their installation and arrangement must meet the applicable requirements of subchapter W of this chapter.

(b) Except as provided in paragraph (c) of this section, OSVs must carry one or more liferafts with an aggregate capacity that will accommodate the total number of persons on board. The liferafts must be—

(1) Stowed in a position providing for easy side-to-side transfer at a single open deck level; or

(2) Additional liferafts must be provided to bring the total capacity available on each side to at least 100 percent of the total number of persons on board. If additional liferafts are provided and the rescue boat required under § 133.135 is also a lifeboat, it may be included in the aggregate capacity requirement.

(c) Each OSV operating in the Gulf of Mexico, as an alternative to the requirements of paragraph (b) of this section, may carry a sufficient number of inflatable buoyant apparatus or a sufficient number of lifefloats, having an aggregate capacity that, together with any lifeboats, rescue boats, and liferafts, will accommodate the total number of persons on board.

§ 133.110 Survival craft muster and embarkation arrangements.

(a) Each OSV must have muster stations that—

(1) Are near the embarkation stations, unless the muster station is the embarkation station;

(2) Permit ready access for the offshore workers to the embarkation station, unless the muster station is the embarkation station; and

(3) Have sufficient room to marshal and instruct the offshore workers.

(b) Each muster station must have sufficient space to accommodate all persons assigned to muster at that station. One or more muster stations must be close to each embarkation station.

(c) Each muster station and embarkation station must be readily accessible to accommodation and work areas.

(d) Each muster station and embarkation station must be adequately illuminated by lighting supplied from the emergency source of electrical power.

(e) Each davit-launched survival craft muster station and embarkation station must be arranged to enable stretcher cases to be placed in the survival craft.

(f) Each launching station or each two adjacent launching stations with an embarkation position more than 3 meters (10 feet) above the waterline in the lightest seagoing condition, must have an embarkation ladder as follows:

(1) Each embarkation ladder must be approved under approval series 160.117 or approval series 160.017.

(2) Each embarkation ladder must extend in a single length, from the deck to the waterline in the lightest seagoing condition under unfavorable conditions of trim and with the OSV listed not less than 15 degrees either way.

(3) Each embarkation ladder may be replaced by a device approved to provide safe and rapid access to survival craft in the water, if the OCMI permits the device, provided that there is at least one embarkation ladder on each side of the OSV.

(g) Each davit-launched liferaft must be arranged to be boarded and launched from a position immediately adjacent to the stowed position or from a position to where, under § 133.130, the liferaft is transferred before launching.

(h) If a davit-launched survival craft is embarked over the edge of the deck, the craft must be provide with a means for bringing it against the side of the OSV and holding it alongside the OSV to allow persons to safely embark.

(i) If a davit-launched survival craft or rescue boat is not intended to be moved to the stowed position with persons on board, the craft must be provided with a means for bringing it against the side of the OSV and holding it alongside the OSV to allow persons to safely disembark after a drill.

§ 133.120 Launching stations.

(a) Each launching station must be positioned to ensure safe launching with clearance from—

(1) The propeller; and

(2) The steeply overhanging portions of the hull.

(b) Each survival craft be launched down the straight side of the OSV.

(c) Each launching station in the forward part of the OSV must—

(1) Be located aft of the collision bulkhead in a sheltered position; and

(2) Have a launching appliance approved as being of sufficient strength for forward installation.

§ 133.130 Stowage of survival craft.

(a) *General.* Each survival craft must be stowed as follows:

(1) Each survival craft must be as close to the accommodation and service spaces as possible.

(2) Each survival craft must be in a way that neither the survival craft nor its stowage arrangements will interfere with the embarkation and operation of any other survival craft or rescue boat at any other launching station.

(3) Each survival craft must be as near the water surface as is safe and practicable.

(4) Other than liferafts intended for throw-overboard launching, each survival craft must be not less than 2 meters above the waterline with the OSV—

(i) In the fully loaded condition;

(ii) Under unfavorable conditions of trim; and

(iii) Listed up to 20 degrees either way, or to the angle where the OSV's weatherdeck edge becomes submerged, whichever is less.

(5) Each survival craft must be sufficiently ready for use so that two crew members can complete preparations for embarkation and launching in less than 5 minutes.

(6) Each survival craft must be fully equipped as required under this part.

(7) Each survival craft must be in a secure and sheltered position and protected from damage by fire and explosion, as far as practicable.

(8) Each survival craft must not require lifting from its stowed position in order to launch, except that—

(i) A davit-launched liferaft may be lifted by a manually powered winch from its stowed position to its embarkation position; or

(ii) A survival craft that weights 185 kilograms (407.8 pounds) or less, may require lifting of not more than 300 millimeters (1 foot).

(b) *Additional liferaft stowage requirements.* In addition to meeting the requirements of paragraph (a) of this section, each liferaft must be stowed as follows:

(1) Each liferaft must be stowed to permit manual release from its securing arrangements.

(2) Each liferaft must be stowed at a height above the waterline in the lightest seagoing condition not greater than the maximum stowage height indicated on the liferaft container. Each liferaft without an indicated maximum stowage height must be stowed not more than 18 meters (59 feet) above the waterline in the OSV's lightest seagoing condition.

(3) Each liferaft must be arranged to permit it to drop into the water from the deck on which it is stowed. A liferaft stowage arrangement meets this requirement if it—

(i) Is outboard of the rail or bulwark;

(ii) Is on stanchions or on a platform adjacent to the rail or bulwark; or

(iii) Has a gate or other suitable opening to allow the liferaft to be pushed directly overboard and—

(A) Each gate or opening must be large enough to allow the liferaft to be pushed overboard; and

(B) If the liferaft is intended to be available for use on either side of the OSV, a gate or opening must be provided on each side.

(4) Each davit-launched liferaft must be stowed within reach of its lifting hook, unless some means of transfer is provided that is not rendered inoperable—

(i) Within the limits of trim and list and list specified in paragraph (a)(4)(iii) of this section;

(ii) By OSV motion; or

(iii) By power failure.

(5) Each rigid container for an inflatable liferaft to be launched by a launching appliance must be secured in a way that the container or parts of it are prevented from falling into the water during and after inflation and launching of the contained liferaft.

(6) Each liferaft must have a painter system providing a connection between the OSV and the liferaft.

(7) Each liferaft or group of liferafts must be arranged for float-free launching. The arrangement must ensure that the liferaft or liferafts when released and inflated, are not dragged under by the sinking OSV. A hydrostatic release unit used in a float-free arrangement must be approved under approval series 160.162.

(c) *Additional lifefloat stowage requirements.* Each lifefloat must be capable of float-free launching and be arranged as follows:

(1) Lifefloats must be secured to the OSV by—

(i) A hydrostatic release unit approved under approval series 160.062 or 160.162 and that is appropriate for the size and number of the lifefloats attached to them; or

(ii) Lashings that can be easily slipped.

(2) A painter must be secured to the lifefloat by—

(i) The attachment fitting provided by the manufacturer; or

(ii) A wire or line that encircles the body of the lifefloat and will not slip off, and meets the requirements of § 133.105(a)(4)(iii).

(3) If lifefloats are arranged in groups with each group secured by a single painter,—

(i) The combined weight of each group must not exceed 185 kilograms (407.8 pounds);

(ii) Each lifefloat must be individually attached to the group's single painter by its own painter which must be long enough to allow floating without contact with any other lifefloat in the group;

(iii) The strength of the float-free link and the strength of the group's single painter must be appropriate for the combined capacity of the group of lifefloats;

(iv) The group of lifefloats must not be stowed in more than four tiers. When stowed in tiers, the separate units must be kept apart by spacers; and

(v) The group of lifefloats must be stowed to prevent shifting with easily detached lashings.

§ 133.135 Rescue boats.

(a) Each OSV must carry at least one rescue boat. Each rescue boat must be approved under approval series 160.156 and equipped as specified in table 133.175 of this part.

(b) Offshore supply vessels, as an alternative to the requirement in paragraph (a) of this section, may carry a motor-propelled workboat or a launch if the workboat or launch must meet the embarkation, launching, and recovery arrangement requirements in § 133.160(a), (c), (d), (e), and (f).

(c) A rescue boat is not required for a vessel operating on the continental shelf of the United States, if—

(1) The OCMI determines the vessel is arranged to allow a helpless person to be recovered from the water;

(2) The recovery of the helpless person can be observed from the navigating bridge; and

(3) The vessel does not regularly engage in operations that restrict its maneuverability.

§ 133.140 Stowage of rescue boats.

(a) Rescue boats must be stowed as follows:

(1) Each rescue boat must be ready for launching in not more than 5 minutes.

(2) Each rescue boat must be in a position suitable for launching and recovery.

(3) Each rescue boat must be stowed in a way that neither the rescue boat nor its stowage arrangements will interfere with the operation of any survival craft at any other launching station.

(b) Each rescue boat must be provided a means for recharging the rescue boat batteries from the OSV's power supply at a supply voltage not exceeding 50 volts.

(c) Each inflated rescue boat must be kept fully inflated at all times.

§ 133.145 Marine evacuation system launching arrangements.

(a) *Arrangements.* Each marine evacuation system must have the following arrangements:

(1) Each marine evacuation system must be capable of being deployed by one person.

(2) Each marine evacuation system must enable the total number of persons for which it is designed, to be transferred from the OSV into the inflated liferafts within a period of 10 minutes from the time an abandon-ship signal is given.

(3) Each marine evacuation system must be arranged so that liferafts may be securely attached to the platform and released from the platform by a person either in the liferaft or on the platform.

(4) Each marine evacuation system must be capable of being deployed from the OSV under unfavorable conditions of trim of up to 10 degrees either way and of list of up to 20 degrees either way.

(5) If the marine evacuation system has an inclined slide, the angle of the slide from horizontal must be within a range of 30 to 35 degrees when the OSV is upright and in the lightest seagoing condition.

(6) Each marine evacuation system platform must be capable of being restrained by a bowsing line or other positioning system that is designed to deploy automatically, and if necessary, be capable of being adjusted to the position required for evacuation.

(b) *Stowage.* Each marine evacuation system must be stowed as follows:

(1) There must not be any openings between the marine evacuation system's embarkation station and the OSV's side at the OSV's waterline in the lightest seagoing condition.

(2) The marine evacuation system's launching positions must be arranged, as far as practicable, to be straight down the OSV's side and safely clear the propeller and any steeply overhanging positions of the hull.

(3) The marine evacuation system must be protected from any projections of the OSV's structure or equipment.

(4) The marine evacuation system's passage and platform, when deployed; its stowage container; and its

operational arrangement must not interfere with the operation of any other lifesaving appliance at any other launching station.

(5) Where appropriate, the marine evacuation system's stowage area must be protected from damage by heavy seas.

(c) *Stowage of associated liferafts.* Inflatable liferafts used in conjunction with the marine evacuation system must be stowed as follows:

(1) Each inflatable liferaft used in conjunction with the marine evacuation system must be close to the system container, but capable of dropping clear of the deployed chute and boarding platform.

(2) Each inflatable liferaft used in conjunction with the marine evacuation system must be capable of individual release from its stowage rack.

(3) Each inflatable liferaft used in conjunction with the marine evacuation system must be stowed in accordance with § 133.130.

(4) Each inflatable liferaft used in conjunction with the marine evacuation system must be provided with preconnected or easily connected retrieving lines to the platform.

§ 133.150 Survival craft launching and recovery arrangements: general.

(a) All survival craft required for abandonment by the total number of persons on board must be capable of being launched with their full complement of persons and equipment within 10 minutes from the time the abandon-ship signal is given.

(b) Each launching appliance for a davit-launched liferaft must be approved under approval series 160.163, with an automatic disengaging apparatus approved under approval series 160.170.

(c) Unless expressly provided otherwise, each survival craft must be provided launching appliances or marine evacuation systems, except—

(1) Those survival craft that can be boarded from a position on deck less than 4.5 meters (14.75 feet) above the waterline in the lightest seagoing condition and that have a mass of not more than 185 kilograms (407 pounds);

(2) Those survival craft that can be boarded from a position on deck less than 4.5 meters (14.75 feet) above the waterline in the lightest seagoing condition and that are stowed for launching directly from the stowed position, under unfavorable conditions of trim of 10 degrees and list of 20 degrees either way;

(3) Those survival craft that are carried in excess of the survival craft for 200 percent of the total number of persons on board the OSV, and that have a mass of not more than 185 kilograms (407 pounds);

(4) Those survival craft carried in excess of the survival craft for 200 percent of the total number of persons on board the OSV, and are stowed for launching directly from the stowed position under unfavorable conditions of trim of 10 degrees and list of 20 degrees either way;

(5) Those survival craft that are provided for use in conjunction with a marine evacuation system, and stowed for launching directly from the stowed position under unfavorable conditions of trim of 10 degrees and list of 20 degrees either way; or

(6) Liferafts installed on lifeboats.

(d) Each launching appliance must be arranged so that the fully equipped survival craft the launching appliance serves can be safely launched against unfavorable conditions of trim of up to 10 degrees either way and of list of up to 20 degrees either way,—

(1) When the survival craft is loaded with its full complement of persons; and

(2) When not more than the required operating crew is on board.

(e) A launching appliance must not depend on any means other than gravity or stored mechanical power, independent of the OSV's power supplies, to launch the survival craft the launching appliance serves, in the fully loaded and equipped condition, and also in the light condition.

(f) Each launching appliance's structural attachment to the OSV must be designed to be at least 4.5 times—

(1) The load imparted on the attachment by the launching appliance and its fully loaded survival craft under the most adverse combination of list and trim as required under paragraph (b) of this section; and

(2) The ultimate strength of the construction material.

(g) Each launching appliance must be arranged so that—

(1) All parts requiring regular maintenance by the OSV's crew are readily accessible and easily maintained;

(2) The launching appliance remains effective under conditions of icing;

(3) The same type of release mechanism is used for each similar survival craft carried on board the OSV;

(4) The preparation and handling of each survival craft at any one launching station does not interfere with the prompt preparation and handling of any other survival craft at any other station;

(5) The persons on board the OSV can safely and rapidly board the survival craft;

(6) Each davit-launched liferaft can be boarded by its full complement of persons within 3 minutes from the time the instruction to board is given: and

(7) During preparation and launching, the survival craft, its launching appliance, and the area of water into which it is to be lunched is illuminated by lighting supplied from the emergency source of electrical power.

(h) Each launching mechanism must be arranged so it may be actuated by one person, both from a position on the OSV's deck, and from a position within the survival craft. Each launching and recovery arrangement must allow the operator on the deck to observe the survival craft at all times during launching.

(i) Means must be provided outside the machinery space to prevent any discharge of water onto survival craft during abandonment.

§ 133.153 Survival craft launching and recovery arrangement using falls and a winch.

Survival craft launching and recovery arrangements, in addition to meeting the requirements in § 133.150, must meet the following requirements:

(a) Each fall wire must be of rotation-resistant and corrosion-resistant steel wire rope.

(b) The breaking strength of each fall wire and each attachment used on the fall must be at least six time the load imparted on the fall by the fully-loaded survival craft.

(c) Each fall must be long enough for the survival craft to reach the water with the OSV in its lightest seagoing condition, under unfavorable conditions of trim and with the OSV listed not less than 20 degrees either way.

(d) Each unguarded fall must not pass near any operating position of the winch, such as hand cranks, pay-out wheels, and brake levers.

(e) Each winch drum must be arranged so the fall wire winds onto the drum in a level wrap. A multiple drum winch must be arranged so that the falls wind off at the same rate when lowering, and onto the drums at the same rate when hoisting.

(f) Each fall, where exposed to damage or fouling, must have guards or equivalent protection. Each fall that leads along a deck must be covered with a guard that is not more than 300 millimeters (1 foot) above the deck.

(g) The lowering speed for a fully loaded survival craft must be not less than that obtained from the following formula:

(1) $S=0.4+(0.02\ H)$, where S is the speed of lowering in meters per second, and H is the height in meters from the davit head to the waterline at the lightest seagoing condition.

(2) S=79+(1.2 H), where S is the speed of lowering in feet per minute, and H is the height in feet.

(h) The lowering speed for a survival craft loaded with all of its equipment must be not less than 70 percent of the speed required under paragraph (g) of this section.

(i) The lowering speed for a fully loaded survival craft must be not more than 1.3 meters per second (256 feet per minute).

(j) If a survival craft is recovered by electric power, the electrical installation, including the electric power-operated boat winch, must meet the requirements in part 129 of this chapter. If a survival craft is recovered by any means of power, including a portable power source, safety devices must be provided which automatically cut off the power before the davit arms or falls reach the stops in order to avoid overstressing the falls or davits, unless the motor is designed to prevent such overstressing.

(k) Each launching appliance must be fitted with brakes that meet the following requirements:

(1) The brakes must be capable of stopping the descent of the survival craft or rescue boat and holding it securely when loaded with its full complement of persons and equipment.

(2) The brake pads must, where necessary, be protected from water and oil.

(3) Manual brakes must be arranged so that the brake is always applied unless the operator, or a mechanism activated by the operator, holds the brake control in the off position.

§ 133.160 Rescue boat embarkation, launching and recovery arrangements.

(a) Each rescue boat must be able to be boarded and launched directly from the stowed position with the number of persons assigned to crew the rescue boat on board. If the rescue boat is also a lifeboat and the other lifeboats are boarded and launched from an embarkation deck, the arrangements must be such that the rescue boat can also be boarded and launched from the embarkation deck.

(b) Each rescue boat must be capable of being launched with the OSV making headway of 5 knots in calm water. A painter may be used to meet this requirement.

(c) Each rescue boat embarkation and launching arrangement must permit the rescue boat to be boarded and launched in the shortest possible time.

(d) Rapid recovery of the rescue boat must be possible when loaded with its full complement of persons and equipment.

(e) Each rescue boat launching appliance must be fitted with a powered winch motor.

(f) Each rescue boat launching appliance must be capable of hoisting the rescue boat when loaded with its full rescue boat complement of persons and equipment at a rate of not less than 0.3 meters per second (59 feet per minute).

§ 133.170 Line-throwing appliance.

(a) *General.* Each OSV must have a line-throwing appliance that is approved under approval series 160.031 or 160.040.

(b) *Stowage.* The line-throwing appliance and its equipment must be readily accessible for use.

(c) *Additional equipment.* Each OSV must carry the following equipment for the line-throwing appliance:

(1) The equipment on the list provided by the manufacturer with the approved appliance.

(2) An auxiliary line that—

(i) For an appliance approved under approval series 160.040, is at least 450 meters (1,500 feet) long;

(ii) For an appliance approved under approval series 160.031, is at least 150 meters (500 feet) long;

(iii) Has a breaking strength of at least 40 kiloNewtons (9,000 pounds-force); and

(iv) Is, if synthetic, a dark color or certified by the manufacturer to be resistant to deterioration from ultraviolet light.

§ 133.175 Survival craft and rescue boat equipment.

(a) All rescue boat equipment must be as follows:

(1) The equipment must be secured within the boat by lashings, storage in lockers or compartments, storage in brackets or similar mounting arrangements, or other suitable means.

(2) The equipment must be secured in such a manner as not to interfere with any abandonment procedures or reduce seating capacity.

(3) The equipment must be as small and of as little mass as possible.

(4) The equipment must be packed in a suitable and compact form.

(5) The equipment should be stowed so the items do not—

(i) Reduce the seating capacity;

(ii) Adversely affect the seaworthiness of the survival craft or rescue boat; or

(iii) Overload the launching appliance.

(b) Each rigid liferaft and rescue boat, unless otherwise stated in this paragraph, must carry the equipment specified for it in table 133.175 of this section. Each item in the table has the same description as in § 199.175 of this chapter.

TABLE 133.175.—SURVIVAL CRAFT EQUIPMENT

Item No.	Item	Oceans		Coastwise	
		Rigid liferaft (SOLAS A Pack)	Rescue boat	Rigid liferaft (SOLAS B Pack)	Rescue boat
1	Bailer [1]	1	1	1	1
3	Boathook	.....	1	.....	1
4	Bucket [2]	.....	1	.....	1
5	Can opener	3	.....	.....	.....
6	Compass	.....	1	.....	1
8	Drinking cup	1	.....	.....	.....
9	Fire extinguisher	.....	1	.....	1
10	First-aid kit	1	1	1	1
11	Fishing kit	1	.....	.....	.....
12	Flashlight	1	1	1	1
14	Heaving line	1	2	1	2
15	Instruction card	1	.....	1	.....
17	Knife [1 3]	1	1	1	1
18	Ladder	.....	1	.....	1
19	Mirror, signalling	1	.....	1	.....

TABLE 133.175.—SURVIVAL CRAFT EQUIPMENT—Continued

Item No.	Item	Oceans		Coastwise	
		Rigid liferaft (SOLAS A Pack)	Rescue boat	Rigid liferaft (SOLAS B Pack)	Rescue boat
20	Oars, units [4]	.....	1	.....	1
	Paddles	2	.....	2	.....
21	Painter	1	1	1	1
22	Provisions (units per person)	1	.....	.....	.....
23	Pump [5]	.....	1	.....	1
24	Radar reflector	1	1	1	1
26	Repair kit [5]	.....	1	.....	1
27	Sea anchor	2	1	2	1
28	Searchlight	.....	1	.....	1
29	Seasickness kit (units per person)	1	.....	1	.....
30	Signal, smoke	2	.....	1	.....
31	Signal, hand flare	6	.....	6	.....
32	Signal, parachute flare	4	.....	4	.....
34	Sponge [5]	2	2	2	2
35	Survival instructions	1	.....	1	.....
36	Table of lifesaving signals	1	.....	1	.....
37	Thermal protective aids (percent of persons) [6]	10%	10%	10%	10%
39	Towline	.....	1	.....	1
40	Water (liters per person)	1.5	.....	1	.....
41	Whistle	1	1	1	1

Notes:
[1] Each liferaft equipped for 13 persons or more must carry two of these items.
[2] Not required for inflated or rigid-inflated rescue boats.
[3] A hatchet counts towards this requirement in rigid rescue boats.
[4] Oars are not required on a free-fall lifeboat; a unit of oars means the number of oars specified by the boat manufacturer.
[5] Not required for a rigid rescue boat.
[6] Sufficient thermal protective aids are required for at least 10% of the persons the survival craft is equipped to carry, but not less than two.

SUBCHAPTER R—NAUTICAL SCHOOLS

PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

103. The authority citation for part 167 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 8105; 46 U.S.C. App. 1295g; 49 CFR 1.46.

104. Section 167.05–25 is revised to read as follows:

§ 167.05–25 Nautical school ship.

The term *nautical school ship* means a vessel operated by or in connection with a nautical school or an educational institution under Section 13 of the Coast Guard Authorization Act of 1986.

105. Section 167.05–35 is added to read as follows:

§ 167.05–35 Public nautical school.

The term *public nautical school* means any school or branch thereof operated by any State or political subdivision thereof or a school operated by the United States Maritime Administration that offers instruction for the primary purpose of training for service in the merchant marine.

106. Section 167.15–28 is added to read as follows:

§ 167.15–28 Inspection of lifesaving appliances and arrangements.

The inspection of lifesaving appliances and arrangements must be in accordance with the requirements for special purpose vessels in subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

107. Section 167.35–1 is revised to read as follows:

§ 167.35–1 General.

Lifesaving appliances and arrangements on nautical school ships must be in accordance with the requirements for special purpose vessels in subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

§§ 167.35–2, 167.35–3, 167.35–5, 167.35–10, 167.35–15, 167.35–20, 167.35–25, 167.35–30, 167.35–35, 167.35–40, 167.35–45, 167.35–50, 167.35–60, 167.35–65, 167.35–70, 167.35–72, 167.35–75, 167.35–80, 167.35–85, 167.35–90 [Removed]

108. Sections 167.35–2, 167.35–3, 167.35–5, 167.35–10, 167.35–15, 167.35–20, 167.35–25, 167.35–30, 167.35–35, 167.35–40, 167.35–45, 167.35–50, 167.35–60, 167.35–65, 167.35–70, 167.35–72, 167.35–75, 167.35–80, 167.35–85, and 167.35–90 are removed.

109. In § 167.55–5, the section heading and paragraph (j) are revised and the note at the end of the section is removed to read as follows:

§ 167.55–5 Marking of fire and emergency equipment.

* * * * *

(j) *Lifesaving appliances.* Each lifesaving appliance must be marked as required under subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

* * * * *

110. Section 167.65–1 is revised to read as follows:

§ 167.65–1 Emergency training, musters, and drills.

Onboard training, musters, and drills must be in accordance with subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

§ 167.65–55 [Removed]

111. Section 167.65–55 is removed.

PART 168—CIVILIAN NAUTICAL SCHOOL VESSELS

112. The authority citation for part 168 continues to read as follows:

Authority: 46 U.S.C. 3306; 46 U.S.C. App. 1295g; 49 CFR 1.46.

113. Section 168.05–5 is revised to read as follows:

§ 168.05–5 Application of passenger vessel inspection regulations.

Where the requirements are not covered specifically in this part, all the regulations applying to passenger vessels in subchapters E (Load Lines), F (Marine Engineering), H (Passenger Vessels), J (Electrical Engineering), K (Small Passenger Vessels Carrying More Than 150 Passengers Or With Overnight Accommadations For More Than 49 Passengers), P (Manning), Q (Specifications), T (Small Passenger Vessels), and W (Lifesaving Appliances and Arrangements) of this chapter are hereby made applicable to all vessels or other floating equipment used by or in connection with any civilian nautical school, whether such vessels or other floating equipment are being navigated or not, except vessels of the Navy or Coast Guard.

114. Section 168.10–1 is revised to read as follows:

§ 168.10–1 Nautical school vessels.

The term *nautical school vessel* means a vessel operated by or in connection with a nautical school or an educational institution under Section 13 of the Coast Guard Authorization Act of 1986.

115. Section 168.10–5 is revised to read as follows:

§ 168.10–5 Civilian nautical school.

The term *civilian nautical school* means any school or branch thereof operated and conducted in the United States, except State nautical schools and schools operated by the United States or any agency thereof, which offers instruction for the primary purpose of training for service in the merchant marine.

SUBCHAPTER U—OCEANOGRAPHIC RESEARCH VESSELS

PART 188—GENERAL PROVISIONS

116. The authority citation for part 188 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

117. In § 188.05–10, paragraph (d) is revised to read as follows:

§ 188.05–10 Application to vessels on an international voyage.

* * * * *

(d) The Commandant or his authorized representative may exempt any vessel from the construction requirements of this subchapter if the vessel does not proceed more than 20 nautical miles from the nearest land in the course of its voyage.

§ 188.10–52 [Removed]

118. Section 118.10–52 is removed.

119. Section 118.10–53 is revised to read as follows:

§ 188.10–53 Oceanographic research vessel.

The term *oceanographic research vessel* means a vessel that the Secretary finds is being employed only in instruction in oceanography or limnology, or both, or only in oceanographic or limnological research, including those studies about the sea such as seismic, gravity meter, and magnetic exploration and other marine geophysical or geological surveys, atmospheric research, and biological research.

120. Subpart 188.27 is added to read as follows:

Subpart 188.27—Lifesaving Appliances and Arrangements

Sec.

188.27–1 Lifesaving appliances and arrangements.

Subpart 188.27—Lifesaving Appliances and Arrangements

§ 188.27–1 Lifesaving appliances and arrangements.

All lifesaving appliances and arrangements shall be in accordance with the requirements for special purpose vessels in subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

PART 189—INSPECTION AND CERTIFICATION

121. The authority citation for part 189 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

122. Section 189.15–1 is revised to read as follows:

§ 189.15–1 Standards in inspection of hulls, boilers, and machinery.

In the inspection of hulls, boilers, and machinery of vessels, the standards established by the American Bureau of Shipping, see part 188, subpart 188.35 of this chapter, respecting material and construction of hulls, boilers, and machinery, and certificate of classification referring thereto, except where otherwise provided for by the rules and regulations in this subchapter, subchapter E (Load Lines), subchapter F (Marine Engineering), subchapter J (Electrical Engineering), and subchapter W (Lifesaving Appliances and Arrangements) of this chapter shall be accepted as standard by the inspectors.

123. In § 189.20–20, paragraph (a) is redesignated as introductory text, and paragraphs (a)(1), (2), (3), and (4) are redesignated as paragraphs (a) through (d) and newly redesignated paragraph (a) is revised to read as follows:

§ 189.20–20 Specific tests and inspections.

* * * * *

(a) For inspection procedures of lifesaving appliances and arrangements, see subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

* * * * *

124. Section 189.25–15 is revised to read as follows:

§ 189.25–15 Lifesaving equipment.

For inspection procedures of lifesaving appliances and arrangements, see subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

PART 192—[REMOVED]

125. Part 192 is removed.

PART 195—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

126. The authority citation for part 195 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

127. Subpart 195.06 is added to read as follows:

Subpart 195.06—Lifesaving Appliances and Arrangements

Sec.

195.06–1 Lifesaving appliances and arrangements.

Subpart 195.06—Lifesaving Appliances and Arrangements

§ 195.06–1 Lifesaving appliances and arrangements.

All lifesaving appliances and arrangements shall be in accordance with the requirements for special purpose vessels in subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

PART 196—OPERATIONS

128. The authority citation for part 196 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2213, 3306, 5115, 6101; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

129. Section 196.13–1 is revised to read as follows:

§ 196.13–1 Muster lists, emergency signals, and manning.

The requirements for muster lists, emergency signals, and manning must be in accordance with subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

§§ 196.13–5, 196–13.10, 196.13–15, 196.13–20 [Removed]

130. Sections 196.13–5 196.13–10, 196.13–15 and 196.13–20 are removed.

Subpart 196.14—[Removed]

131. Subpart 196.14 is removed.

§ 196.15–25 [Removed]

132. Section 196.15–25 is removed.

133. Section 196.15–35 is revised to read as follows:

§ 196.15–35 Emergency training, musters, and drills.

Onboard training, musters, and drills must be in accordance with subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

§§ 196.15–37, 196.15–40, 196.15–45, 196.15–50, 196.15–65, 196.15–70 [Removed]

134. Sections 196.15–37, 196.15–40, 196.15–45, 196.15–50, 196.15–65, and 196.15–70 are removed.

135. In § 196.35–5, paragraphs (a)(6) and (a)(8) are removed, paragraph (a) is redesignated as introductory text, and paragraphs (a)(1), (2), (3), (4), (5), (7), (9), (10), (11), (12), and (13) are redesignated as paragraphs (a) through (k) and newly designated paragraph (a) is revised to read as follows:

§ 196.35–5 Actions required to be logged.

* * * * *

(a) Onboard training, musters, and drills: held in accordance with subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

* * * * *

136. Section 196.37–37 is revised to read as follows:

§ 196.37–37 Markings for lifesaving appliances, instructions to passengers, and stowage locations.

Lifesaving appliances, instructions to passengers, and stowage locations must be marked in accordance with subchapter W (Lifesaving Appliances and Arrangements) of this chapter.

§§ 196.37–40, 196.37–43, 196.37–49 [Removed]

137. Sections 196.37–40, 196.37–43, and 196.37–49 are removed.

Subpart 196.39—[Removed]

138. Subpart 196.39 is removed.

Subpart 196.90—[Removed]

139. Subpart 196.90 is removed.

140. Subchapter W, consisting of part 199, is added to read as follows:

SUBCHAPTER W—LIFESAVING APPLIANCES AND ARRANGEMENTS

PART 199—LIFESAVING SYSTEMS FOR CERTAIN INSPECTED VESSELS

Subpart A—General

Sec.

199.01 Purpose.
199.03 Relationship to international standards.
199.05 Incorporation by reference.
199.07 Additional equipment and requirements.
199.09 Equivalents.
199.10 Applicability.
199.20 Exemptions.
199.30 Definitions.
199.40 Evaluation, testing and approval of lifesaving appliances and arrangements.
199.45 Tests and inspections of lifesaving equipment and arrangements.

Subpart B—Requirements for All Vessels

199.60 Communications.
199.70 Personal lifesaving appliances.
199.80 Muster list and emergency instructions.
199.90 Operating instructions.
199.100 Manning of survival craft and supervision.
199.110 Survival craft muster and embarkation arrangements.
199.120 Launching stations.
199.130 Stowage of survival craft.
199.140 Stowage of rescue boats.
199.145 Marine evacuation system launching arrangements.
199.150 Survival craft launching and recovery arrangements; general.
199.153 Survival craft launching and recovery arrangements using falls and a winch.
199.155 Lifeboat launching and recovery arrangements.
199.157 Free-fall lifeboat launching and recovery arrangements.
199.160 Rescue boat embarkation, launching and recovery arrangements.
199.170 Line-throwing appliance.
199.175 Survival craft and rescue boat equipment.
199.176 Markings on lifesaving appliances.
199.178 Marking of stowage locations.
199.180 Training and drills.
199.190 Operational readiness, maintenance and inspection of lifesaving equipment.

Subpart C—Additional Requirements for Passenger Vessels

199.200 General.
199.201 Survival craft.
199.202 Rescue boats.
199.203 Marshalling of liferafts.
199.211 Lifebuoys.
199.212 Lifejackets.
199.214 Immersion suits and thermal protective aids.
199.217 Muster list and emergency instructions.
199.220 Survival craft and rescue boat embarkation arrangements.
199.230 Stowage of survival craft.
199.240 Muster stations.
199.245 Survival craft embarkation and launching arrangements.
199.250 Drills.

Subpart D—Additional Requirements for Cargo Vessels

199.260 General.
199.261 Survival craft.
199.262 Rescue boats.
199.271 Lifebuoys.
199.273 Immersion suits.
199.280 Survival craft embarkation and launching arrangements.
199.290 Stowage of survival craft.

Subpart E—Additional Requirements for Vessels Not Subject to SOLAS

199.500 General.
199.510 EPIRB requirements.
199.520 Lifeboat requirements.

Subpart F—Exemptions and Alternatives for Vessels Not Subject to SOLAS

199.600 General.
199.610 Exemptions for vessels in specified services.
199.620 Alternatives for all vessels in a specified service.
199.630 Alternatives for passenger vessels in a specified service.
199.640 Alternatives for cargo vessels in a specified service.

Authority: 46 U.S.C. 3306, 3703; 46 CFR 1.46.

Subpart A—General

§ 199.01 Purpose.

(a) This part sets out the requirements for lifesaving appliances and arrangements for all inspected U.S. vessels except for—

(1) Offshore supply vessels, which are covered by subchapter L of this chapter;

(2) Mobile Offshore Drilling Units (MODU), which are covered by subchapter I–A of this chapter;

(3) Small passenger vessels, which are covered by subchapters K and T of this chapter; and

(4) Sailing school vessels, which are covered by part 169 of this chapter.

(b) This subpart and subparts B, C, and D of this part set out the requirements for vessels on international voyages that are subject to the International Convention for the Safety of Life at Sea, 1974, and its Protocol of 1978, as amended (SOLAS).

(c) Subparts E and F of this part set out additional requirements, alternatives, and exemptions for vessels that are not subject to SOLAS.

§ 199.03 Relationship to international standards.

(a) This subpart and subparts B, C, and D of this part are based on Chapter III, SOLAS. Section numbers in this subpart and subparts B, C, and D of this part are generally related to the

regulation numbers in Chapter III, SOLAS, but paragraph designations are not related to the numbering in Chapter III, SOLAS. To find the corresponding Chapter III, SOLAS regulation for this subpart and subparts B, C, and D of this part, beginning with § 199.10, divide the section number following the decimal point by 10.

(b) For purposes of this part, any vessel carrying a valid Passenger Ship Safety Certificate supplemented by a Record of Equipment, or a valid Cargo Ship Safety Equipment Certificate supplemented by a Record of Equipment, is considered to have met the requirements of this part if the equipment meets § 199.40 and if, in addition to the requirements of SOLAS Chapter III, the vessel meets the following requirements:

(1) Each new lifeboat and launching appliance on a tank vessel may be of aluminum construction only if its stowage location is protected with a water spray system in accordance with § 199.290(b).

(2) Each child-size lifejacket and immersion suit must be appropriately marked and stowed separately from adult or extended-size devices as required in § 199.70(b)(2).

(3) Each lifejacket and immersion suit must be marked with the vessel's name in accordance with §§ 199.70 (b)(3) and (c)(3).

(4) Inflatable lifejackets, if carried, must be of the same or similar design as required by § 199.70(b).

(5) Containers for lifejackets, immersions suits, and anti-exposure suits must be marked as specified in § 199.70(d).

(6) Instructions for passengers must include illustrated instructions on the method of donning lifejackets as required in § 199.80(c)(5).

(7) Each liferaft must be arranged to permit it to drop into the water from the deck on which it is stowed as required in § 199.130(c)(3).

(8) Lifeboats and rescue boats must be arranged to allow safe disembarkation onto the vessel after a drill in accordance with § 199.110(h).

(9) The requirements for guarding of falls in §§ 199.153 (d) and (f) must be met.

(10) The winch drum requirements described in § 199.153(e) must be met for all survival craft winches, not just multiple drum winches.

(11) The maximum lowering speed requirements for launching arrangements using falls and a winch in §§ 199.153 (i) and (j) must be met.

(12) An auxiliary line must be kept with each line-throwing appliance in accordance with § 199.170(c)(2).

(13) Immersion suits must be carried on all cargo vessels except those operating between the 32 degrees north and 32 degrees south latitude in accordance with § 199.273.

(14) Vessels carrying immersion suits must conduct drills in accordance with §§ 199.180 (d)(11) and (d)(12).

(c) The certificates in paragraph (b) of this section will be accepted as proof of compliance with the requirements in this part unless the Officer in Charge, Marine Inspection (OCMI), determines that—

(1) The condition of the vessel or of its equipment does not correspond substantially with the particulars of its certificates; or

(2) The vessel and its equipment have not been maintained in conformance with the provisions of the regulations in this part.

§ 199.05 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register**; and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC, and at the U.S. Coast Guard, Lifesaving and Fire Safety Branch (G–MSE–4), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are as follows:

American Society for Testing and Materials (ASTM)

1916 Race Street, Philadelphia, PA 1903

ASTM D93–94, Flash Point by Pennsky-Martens Closed Cup Tester	199.261; 199.290
ASTM F1003, Standard Specification for Searchlights on Motor Lifeboats, 1986 (Reapproved 1992).	199.175
ASTM F1014, Standard Specification for Flashlights on Vessels, 1986	199.175

International Maritime Organization (IMO)

4 Albert Embankment, London, SE1 7SR, England

MSC Circular 699, Revised Guidelines for Passenger Safety Instructions, 17 July 1995	199.217
Resolution A.520(13), Code of Practice for the Evaluation, Testing and Acceptance of Prototype Novel Life-saving Appliances and Arrangements, 17 November 1983.	199.40
Resolution A.657(16), Instructions for Action in Survival Craft, 19 November 1989	199.175
Resolution A.658(16), Use and Fitting of Retro-reflective Materials on Life-saving Appliances, 20 November 1989.	199.70; 199.176
Resolution A.760(18), Symbols Related to Life-saving Appliances and Arrangements, 17 November 1993.	199.70; 199.90
Resolution MSC.4(48), International Code for the Construction and Equipment of Ships carrying Dangerous Chemicals in Bulk (IBC Code), 1994.	199.30; 199.280
Resolution MSC.5(48), International Code for the Construction and Equipment of Ships carrying Liquefied Gases in Bulk, (IGC Code), 1993.	199.30; 199.280

§ 199.07 Additional equipment and requirements.

The OCMI may require a vessel to carry specialized or additional lifesaving equipment other than as required in this part if the OCMI determines that the conditions of a voyage present uniquely hazardous circumstances that are not adequately addressed by existing requirements.

§ 199.09 Equivalents.

When this part requires a particular fitting, material, or lifesaving appliance or arrangement, the Commandant (G–MSE) may accept any other fitting, material, or lifesaving appliance or arrangement that is at least as effective as that required by this part. The Commandant may require engineering evaluations and tests to determine the equivalent effectiveness of the substitute fitting, material, or lifesaving appliance or arrangement.

§ 199.10 Applicability.

(a) Unless expressly provided otherwise in this Chapter, this part applies to all inspected U.S. flag vessels.

(b) This part does not apply to nonself-propelled vessels without accommodations or work stations on board, and unless otherwise required by this chapter, does not apply to offshore supply vessels, mobile offshore drilling units, small passenger vessels, and sailing school vessels.

(c) For purposes of the application of this part, a cargo vessel, whenever built, which is converted to a passenger vessel is deemed to be a passenger vessel that is constructed on the date on which the conversion commences.

(d) This subpart and subparts B, C, and D of this part apply to vessels engaged on international voyages, except—

(1) Cargo vessels of less than 500 tons gross tonnage;

(2) Vessels not propelled by mechanical means;

(3) Wooden vessels of primitive build; and

(4) Vessels solely navigating the Great Lakes of North America and the River Saint Lawrence as far east as a straight line drawn from Cap des Rosiers to West Point, Anticosti Island and, on the north side Anticosti Island, the 63rd meridian.

(e) Vessels engaged on international voyages which were constructed before July 1, 1986, must meet the requirements of §§ 199.70(b)(4)(i), 199.80, 199.90, 199.100, 199.180, 199.190 (paragraph (b) applies as much as practicable), 199.214, 199.217, 199.250, 199.261 (b)(2) and (e), and 199.273, and must fit retro-reflective material on all floating appliances, lifejackets and immersion suits. Except for the requirements of §§ 199.261 (b)(2) and (e), vessels may retain the number, type, and arrangement of lifesaving appliances previously required and approved for the vessel, as long as the arrangement or appliance is maintained in good condition to the satisfaction of the OCMI.

(f) For the purposes of this part, the following vessels must meet the requirements for passenger vessels:

(1) Passenger vessels.

(2) Special purpose vessels carrying more than 50 special personnel.

(3) Special purpose vessels carrying not more than 50 special personnel if the vessels meet the structural fire protection requirements in subchapter H of this chapter for passenger vessels of the same size.

(g) For the purposes of this part, the following vessels must meet the requirements for cargo vessels:

(1) Cargo vessels.

(2) Tank vessels.

(3) Special purpose vessels carrying not more than 50 special personnel that do not meet the structural fire protection requirements in subchapter H of this chapter for passenger vessels of the same size.

(h) (1) Passenger vessels on international voyages must meet the requirements of this subpart and subparts B and C of this part.

(2) Cargo vessels on international voyages must meet the requirements of this subpart and subparts B and D of this part.

(3) The provisions for passenger vessels on short international voyages in this subpart and subparts B and C of this part do not apply to special purpose vessels described in paragraphs (f) (2) and (3) of this section.

(i) Vessels not on international voyages and vessels listed in paragraph (d) of this section must meet the requirements of this subpart and subparts B, C, D, and E of this part unless otherwise exempted or permitted by subpart F of this part.

(1) Vessels on other than international voyages and vessels listed in paragraph (d) of this section which were constructed prior to October 1, 1996, must—

(i) By October 1, 1997, meet the requirements of §§ 199.70(b)(4)(i), 199.80, 199.90, 199.100, 199.180, 199.190 (paragraph (b) applies as much as practicable), 199.217, 199.250, 199.273, and 199.510, and fit retro-reflective material on all floating appliances, lifejackets and immersion suits;

(ii) By October 1, 2001, passenger vessels must carry the number and type of survival craft specified in table 199.630 of this part and cargo vessels in oceans and coastwise service must carry the number and type of survival craft specified in § 199.261 (b)(2) and (e);

(iii) By October 1, 2001, passenger vessels must carry the immersion suits and thermal protective aids specified in § 199.214; and

(iv) Except for the requirements in paragraphs (i)(1)(ii) and (i)(1)(iii) of this section, vessels may retain the arrangement of lifeboats, lifeboat davits, winches, inflatable liferafts, liferaft launching equipment, rescue boats, lifefloats, and buoyant apparatus previously required and approved for the vessel, as long as the arrangement or appliance is maintained in good condition to the satisfaction of the OCMI.

(2) This paragraph does not apply to public vessels.

(j) When any lifesaving appliance or arrangement on a vessel subject to this part is replaced, or when the vessel undergoes repairs, alterations or modifications of a major character involving replacement of, or any addition to, the existing lifesaving appliance or arrangements, each new lifesaving appliance and arrangement must meet the requirements of this part, unless the OCMI determines that the vessel cannot accommodate the new appliance or arrangement, except that—

(1) A survival craft is not required to meet the requirements of this part if it is replaced without replacing its davit and winch; and

(2) A davit and its winch are not required to meet the requirements of this part if one or both are replaced without replacing the survival craft.

(k) No extensive repairs or alterations, except in an emergency, may be made to a lifesaving appliance without advance notification to the OCMI. Insofar as possible, each repair or alteration must be made with material and tested in the manner specified in this subchapter and applicable to the new construction requirements in subchapter Q of this chapter. Emergency repairs or alterations must be reported as soon as practicable to the OCMI, where the vessel may call after such repairs are made. Lifeboats, rescue boats, or rigid liferafts may not be reconditioned for use on a vessel other than the one they were originally built for, unless specifically accepted by the OCMI.

§ 199.20 Exemptions.

(a) *Vessels engaged on international voyages.* (1) The following types of vessels engaged on international voyages may request an exemption from Commandant (G–MCO) from requirements of this part:

(i) A vessel for which the sheltered nature and conditions of an international voyage would render the application of any specific requirements of this part unreasonable or unnecessary and which in the course of the voyage does not proceed more than 20 miles from the nearest land.

(ii) A vessel embodying features of a novel kind to which the application of any provision of this part would seriously impede research into the development of such features and their incorporation on vessels engaged on international voyages.

(2) A written request for exemption under this section must be submitted to the cognizant OCMI for review and forwarding to Commandant (G–MCO).

(b) *Single voyage exemption from SOLAS requirements.* A vessel that is not normally engaged on international voyages, but which, under exceptional

circumstances, is required to undertake a single international voyage, may be exempted from the applicable requirements in this subpart and subparts B, C, and D of this part by the Commandant (G–MCO). A written request for exemption under this paragraph must be submitted to the cognizant OCMI for review and forwarding to Commandant (G–MCO).

(c) *Exemption Certificates.* When Commandant (G–MCO) grants an exemption under paragraph (a) or (b) of this section, an Exemption Certificate describing the exemption will be issued by the appropriate OCMI. The Exemption Certificate must be carried on board the vessel at all times and must be available to Coast Guard personnel upon request.

(d) *Vessels not engaged on international voyages.* (1) If a District Commander determines that the overall safety of the persons on board a vessel will not be significantly reduced, the District Commander may grant an exemption from compliance with a provision of this part to a specific vessel for a specified geographic area within the boundaries of the Coast Guard District. This exemption may be limited to certain periods of the year.

(2) Requests for exemption under this paragraph must be made in writing to the OCMI for transmission to the district Commander for the area in which the vessel is in service or will be in service.

(3) If the exemption is granted by the District Commander, the OCMI will endorse the vessel's Certificate of Inspection with a statement describing the exemption.

§ 199.30 Definitions.

The following definitions apply to this part:

Accommodation means a cabin, or other covered or enclosed place, intended to be occupied by persons. Each place in which passengers and special personnel is carried is considered an accommodation, whether or not it is covered or enclosed. Accommodations include, but are not limited to halls, dining rooms, mess rooms, lounges, corridors, lavatories, cabins, offices, hospitals, cinemas, game and hobby rooms, and other similar places open to persons on board.

Anti-exposure suit means a protective suit designed for use by rescue boat crews and marine evacuation system parties.

Approval series means the first six digits of a number assigned by the Coast Guard to approved equipment. Where approval is based on a subpart of subchapter Q of this chapter, the approval series corresponds to the number of the subpart. A listing of approved equipment, including all of the approval series, is published periodically by the Coast Guard in Equipment Lists (COMDTINST M16714.3 series), available from the Superintendent of Documents.

Approved means carrying an approval granted by the Commandant under subchapter Q of this chapter.

Cargo vessel means any vessel that is not a passenger vessel.

Certificated person means a person holding a U.S. merchant mariner's document with an endorsement as a lifeboatman or another inclusive rating under part 12 of this chapter.

Child, for the purpose of determining the number of lifejackets required under this part, means a person less than 41 kilograms (90 pounds) in mass.

Civilian nautical school means any school or branch thereof operated and conducted in the United States, except State nautical schools and schools operated by the United States or any agency thereof, which offers instruction for the primary purpose of training for service in the merchant marine.

Coastwise voyage means a voyage on the waters of any ocean or the Gulf of Mexico no more than 20 nautical miles offshore.

Commandant means the Commandant of the U.S. Coast Guard.

Crew means all persons carried on board the vessel to provide navigation and maintenance of the vessel, its machinery, systems, and arrangements essential for propulsion and safe navigation or to provide services for other persons on board.

District Commander means an officer of the U.S. Coast Guard designated by the Commandant to command all Coast Guard activities within a Coast Guard District. Coast Guard Districts are described in 33 CFR part 2.

Detection means the determination of the location of survivors or survival craft.

Embarkation ladder means the ladder provided at survival craft embarkation stations to permit safe access to survival craft after launching.

Embarkation station means the place where a survival craft is boarded.

Extended-size lifejacket means a lifejacket that is approved for use by adults as well as by some larger children.

Ferry means a vessel as described in § 70.10–15 of this chapter.

Float-free launching means that method of launching a survival craft or lifesaving appliance whereby the craft or appliance is automatically released from a sinking vessel and is ready for use.

Free-fall launching means that method of launching a survival craft whereby the craft, with its full complement of persons and equipment on board, is released and allowed to fall into the sea without any restraining apparatus.

Immersion suit means a protective suit that reduces loss of body heat of a person wearing it in cold water.

Inflatable appliance means an appliance that depends upon nonrigid, gas-filled chambers for buoyancy and that is normally kept uninflated until ready for use.

Inflated appliance means an appliance that depends upon nonrigid, gas-filled chambers for buoyancy and that is kept inflated and ready for use at all times.

International voyage means a voyage from the United States to a port outside the United States or conversely; or, a voyage originating and terminating at ports outside the United States. Voyages between the continental United States and Hawaii or Alaska, and voyages between Hawaii and Alaska, shall be considered international voyages for the purposes of this part.

Lakes, bays, and sounds means the waters of any lakes, bays, or sounds other than the waters of the Great Lakes.

Launching appliance or *launching arrangement* means the method or devices designed to transfer a survival craft or rescue boat from its stowed position to the water. For a launching arrangement using a davit, the term includes the davit, winch, and falls.

Length of vessel, means the load-line length defined in § 42.13–15(a) of this chapter.

Lifejacket means a flotation device approved as a life preserver or lifejacket.

Major character means any repair, alteration or modification to a vessel that is a major conversion as decided by the Commandant (G–MCO).

Major conversion means a conversion of a vessel that—

(a) Substantially changes the dimensions or carrying capacity of the vessel;

(b) Changes the type of the vessel;

(c) Substantially prolongs the life of the vessel; or

(d) Otherwise so changes the vessel that it is essentially a new vessel.

Marine evacuation system means an appliance designed to rapidly transfer large numbers of persons from an embarkation station by means of a passage to a floating platform for subsequent embarkation into associated survival craft, or directly into associated survival craft.

Mobile offshore drilling unit (MODU) means a vessel capable of engaging in drilling operations for the exploration or exploitation of subsea resources.

Muster station means the place where persons on board assemble before boarding a survival craft.

Nautical school vessel means a vessel operated by or in connection with a nautical school or an educational institution under Section 13 of the Coast Guard Authorization Act of 1986.

Novel lifesaving appliance or arrangement means a lifesaving appliance or arrangement that has new features not fully covered by the provisions of this part but that provides an equal or higher standard of safety.

Ocean means the waters of any ocean or the Gulf of Mexico more than 20 nautical miles offshore.

Oceanographic research vessel means a vessel that the Secretary finds is being employed only in instruction in oceanography or limnology, or both, or only in oceanographic or limnological research, including those studies about the sea such as seismic, gravity meter, and magnetic exploration and other marine geophysical or geological surveys, atmospheric research, and biological research.

Officer in Charge, Marine Inspection (OCMI), means a Coast guard Officer responsible for marine inspection functions in a Marine Inspection Zone. Marine Inspection Zones are described in 33 CFR part 2.

Passenger means—

(a) On an international voyage, every person other than—

(1) The master and the members of the crew or other persons employed or engaged in any capacity on board a vessel on the business of that vessel; and

(2) A child under 1 year of age.

(b) On other than an international voyage, an individual carried on the vessel, except—

(1) The owner or an individual representative of the owner or, in the case of a vessel under charter, an individual charterer or individual representative of the charterer;

(2) The master; or

(3) A member of the crew engaged in the business of the vessel who has not contributed consideration for carriage and who is paid for onboard services.

Passenger for hire means a passenger for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.

Passenger vessel means—

(a) On an international voyage, a vessel of at least 100 tons gross tonnage carrying more than 12 passengers; and

(b) On other than an international voyage, a vessel of at least 100 tons gross tonnage—

(1) Carrying more than 12 passengers, including at least one passenger for hire; or

(2) That is chartered and carrying more than 12 passengers.

Public nautical school means any school or branch thereof operated by any State or political subdivision thereof or a school operated by the United States Maritime Administration that offers instruction for the primary purpose of training for service in the merchant marine.

Public vessel means a vessel that—

(a) Is owned, or demise chartered, and operated by the U.S. Government or a government of a foreign country including a vessel operated by the Coast Guard or Saint Lawrence Seaway Development Corporation, but not a vessel owned or operated by the Department of Transportation or any corporation organized or controlled by the Department; and

(b) Is not engaged in commercial service.

Rescue boat means a boat designed to rescue persons in distress and to marshal survival craft.

Retrieval means the safe recovery of survivors.

Rivers, in relation to vessel service, means operating exclusively in the waters of rivers and/or canals.

Seagoing condition means the operating condition of the vessel with the personnel, equipment, fluids, and ballast necessary for safe operation on the waters where the vessel operates.

Scientific personnel means individuals on board an oceanographic research vessel only to engage in scientific research, or to instruct or receive instruction in oceanography or limnology.

Similar stage of construction means the stage at which—

(a) Construction identifiable with a specific vessel begins; and

(b) Assembly of that vessel has commenced comprising at least 50 metric tons (55.1 U.S. tons) or 1 percent of the estimated mass of all structural material, whichever is less.

Short international voyage is an international voyage in the course of which a vessel is not more than 200 miles from a port or place in which the passengers and crew could be placed in safety. Neither the distance between the last port of call in the country in which the voyage begins and the final port of destination, nor the return voyage, may exceed 600 miles. The final port of destination is the last port of call in the scheduled voyage at which the vessel commences its return voyage to the country in which the voyage began.

Special personnel means all persons who are not passengers or members of the crew and who are carried on board a special purpose vessel in connection with the special purpose of that vessel or because of special work being carried out aboard that vessel. Special personnel include—

(a) On oceanographic research vessels, scientific personnel; and

(b) On nautical school vessels, students, cadets, and instructors who are not members of the crew.

Special purpose vessel means a mechanically self-propelled vessel which by reason of its function carries on board more than 12 special personnel including passengers. Special purpose vessels include oceanographic research vessels and nautical school vessels.

Survival craft means a craft capable of sustaining the lives of persons in distress from the time of abandoning the vessel on which the persons were originally carried. The term includes lifeboats, liferafts, buoyant apparatus, and lifefloats, but does not include rescue boats.

Tank vessel means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

(a) Is a vessel of the United States;

(b) Operates on the navigable waters of the United States; or

(c) Transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States.

Toxic vapor or gas means a product for which emergency escape respiratory protection is required under Subchapter 17 of the International Code for the Construction and Equipment of Ships carrying Dangerous Chemicals in Bulk (IBC Code) and under Subchapter 19 of the International Code for the Construction and Equipment of Ships carrying Liquefied Gases in Bulk (IGC Code).

Vessel constructed means a vessel, the keel of which is laid or which is at a similar stage of construction.

Warm water means water where the monthly mean low water temperature is normally more than 15 °C (59 °F).

§ 199.40 Evaluation, testing and approval of lifesaving appliances and arrangements.

(a) Each item of lifesaving equipment required by this part to be carried on board the vessel must be approved.

(b) Each item of lifesaving equipment carried on board the vessel in addition to those required by this part must—

(1) Be approved; or

(2) Be accepted by the cognizant OCMI for use on the vessel.

(c) The Commandant (G–MSE) may accept a novel lifesaving appliance or arrangement if it provides a level of safety equivalent to the requirements of this part and the appliance or arrangement—

(1) Is evaluated and tested in accordance with IMO Resolution A.520(13), Code of Practice for the Evaluation, Testing and Acceptance of Prototype Novel Life-saving Appliances and Arrangements; or

(2) Has successfully undergone evaluation and tests that are substantially equivalent to those recommendations.

(d) During the vessel's construction and when any modification to the lifesaving arrangement is done after construction, a vessel owner must obtain acceptance of lifesaving arrangements from the Commandant (G–MSC).

(e) The OCMI may accept substitute lifesaving appliances other than those required by this part except for—

(1) Survival craft and rescue boats; and

(2) Survival craft and rescue boat launching and embarkation appliances.

(f) Acceptance of lifesaving appliances and arrangements will remain in effect unless—

(1) The OCMI deems their condition to be unsatisfactory or unfit for the service intended; or

(2) The OCMI deems the crew's ability to use and assist others in the use of the lifesaving appliances or arrangements to be inadequate.

§ 199.45 Tests and inspections of lifesaving equipment and arrangements.

(a) *Initial inspection.* The initial inspection of lifesaving appliances and arrangements for certification includes a demonstration of—

(1) The proper condition and operation of the survival craft and rescue boat launching appliances at loads ranging from light load to 10 percent overload;

(2) The proper condition and operation of lifeboats and rescue boats, including engines and release mechanisms;

(3) The proper condition of flotation equipment such as lifebuoys, lifejackets, immersion suits, work vests, lifefloats, buoyant apparatus, and associated equipment;

(4) The proper condition of distress signaling equipment, including emergency position indicating radiobeacons (EPIRB), search and rescue transponders (SART), and pyrotechnic signaling devices;

(5) The proper condition of line-throwing appliances;

(6) The proper condition and operation of embarkation appliances, including embarkation ladders and marine evacuation systems;

(7) The ability of the crew to effectively carry out abandon-ship and fire-fighting procedures; and

(8) The ability to meet the egress and survival craft launching requirements of this part.

(b) *Reinspections.* Tests and inspections of the lifesaving equipment shall be carried out during each inspection for renewal of certification, and shall include, as applicable, a demonstration of—

(1) The proper condition and operation of the survival craft and rescue boat launching appliances at loads ranging from light load to full load, except that any portion of the load test conducted in connection with replacement or end-for-ending of a fall since the vessel's last inspection or reinspection, need not be repeated;

(2) The proper condition and operation of lifeboats and rescue boats, including engines and release mechanisms;

(3) The proper condition of flotation equipment such as lifebuoys, lifejackets, immersion suits, work vests, lifefloats, buoyant apparatus, and associated equipment;

(4) The proper servicing of each inflatable liferaft and inflatable lifejacket has been serviced as required under this chapter;

(5) The proper servicing of each hydrostatic release unit, other than a disposable hydrostatic release unit, as required under this chapter; and

(6) The ability of crew to effectively carry out abandon-ship and fire-fighting procedures.

(c) *Other inspections.* (1) Lifesaving appliances and arrangements are subject to tests and inspections described in paragraph (a) of this section whenever a new lifesaving appliance is installed on the vessel. The test in paragraph (a)(1) of this section must be carried out whenever a wire fall for a launching appliance is replaced or turned end-for-end.

(2) Lifesaving appliances and arrangements are subject to tests and inspections described in paragraph (b) of this section during vessel boardings to ensure that the appliances and arrangements comply with applicable requirements, are in satisfactory condition, and remain fit for the service.

Subpart B—Requirements for All Vessels

§ 199.60 Communications.

(a) *Radio lifesaving appliances.* Radio lifesaving appliance installations and arrangements must meet the requirements of 47 CFR part 80.

(b) *Emergency position indicating radiobeacons (EPIRB) and search and rescue transponders (SART).* Each EPIRB and SART should have the name of the vessel plainly marked or painted on its label, except for EPIRBs or SARTs in an inflatable liferaft or permanently installed in a survival craft.

(c) *Distress signals.* Each vessel must—

(1) Carry not less than 12 rocket parachute flares approved under approval series 160.136; and

(2) Stow the flares on or near the vessel's navigating bridge.

(d) *Onboard communications and alarm systems.* Each vessel must meet the requirements for onboard communications between emergency control stations, muster and embarkation stations, and strategic positions on board. Each vessel must also meet the emergency alarm system requirements in subchapter J of this chapter, which must be supplemented by either a public address system or other suitable means of communication.

§ 199.70 Personal lifesaving appliances.

(a) *Lifebuoys.* Each vessel must carry lifebuoys approved under approval series 160.150 as follows:

(1) *Stowage.* Lifebuoys must be stowed as follows:

(i) Each lifebuoy must be capable of being rapidly cast loose.

(ii) No lifebuoy may be permanently secured to the vessel in any way.

(iii) Each lifebuoy stowage position must be marked with either the words "LIFEBUOY" or "LIFE BUOY", or with the appropriate symbol from IMO Resolution A.760(18).

(iv) Lifebuoys must be so distributed as to be readily available on each side of the vessel and, as far as practicable, on each open deck extending to the side of the vessel. At least one lifebuoy must be located near the stern of the vessel. The lifebuoys with attached self-igniting lights must be equally distributed on both sides of the vessel.

(v) At least two lifebuoys, each with attached self-activating smoke signals, must be stowed where they can be quickly released from the navigating bridge and should, when released, fall directly into the water without striking any part of the vessel.

(2) *Markings.* Each lifebuoy must be marked in block capital letters with the name of the vessel and the name of the port required to be marked on the stern of the vessel under § 67.13 of this chapter.

(3) *Attachments and fittings.* Lifebuoys must have the following attachments and fittings:

(i) At least one lifebuoy on each side of the vessel fitted with a buoyant lifeline that is—

(A) At least as long as twice the height where it is stowed above the waterline with the vessel in its lightest seagoing condition, or 30 meters (100 feet) in length, whichever is the greater;

(B) Non-kinking;

(C) Not less than 8 millimeters (5/16 inch) in diameter;

(D) Of a breaking strength which is not less than 5 kiloNewtons (1,124 pounds-force); and

(E) Is, if synthetic, a dark color or certified by the manufacturer to be resistant to deterioration from ultraviolet light.

(ii) At least one-half the total number of lifebuoys on the vessel must each be fitted with a self-igniting light approved under approval series 161.010. The self-igniting light may not be attached to the lifebuoys required by this section to be fitted with lifelines.

(iii) At least two lifebuoys on the vessel must be fitted with a self-activating smoke signal approved under approval series 160.157. Lifebuoys fitted with smoke signals must also be fitted with lights.

(b) *Lifejackets.* Each vessel must carry lifejackets approved under approval series 160.155, 160.176 or 160.177. If the vessel carries inflatable lifejackets, they must be of the same or similar design and have the same method of operation.

(1) *General.* Each vessel must carry a lifejacket for each person on board, and in addition—

(i) A number of lifejackets suitable for children equal to at least 10 percent of the total number of passengers on board must be provided, or such greater number as may be required to provide a lifejacket of suitable size for each person smaller than the lower size limit of the adult-size lifejacket; and

(ii) A sufficient number of lifejackets must be carried for persons on watch and for use at remotely located survival craft stations.

(2) *Stowage.* Lifejackets must be stowed as follows:

(i) The lifejackets must be readily accessible.

(ii) The child-size lifejackets must be stowed separately from the adult lifejackets.

(iii) The lifejackets stowage positions must be marked with the words "LIFEJACKETS" or "CHILD LIFEJACKETS" as appropriate, or with the appropriate symbol from IMO Resolution A.760(18).

(iv) The additional lifejackets for persons on watch required by paragraph (b)(1)(ii) of this section must be stowed on the bridge, in the engine control room, and at other manned watch stations.

(v) Where, due to the particular arrangements of the vessel, the lifejackets required by paragraph (b) of this section may become inaccessible, alternative provisions must be made to the satisfaction of the OCMI that may include an increase in the number of lifejackets to be carried.

(3) *Markings.* Each lifejacket must be marked—

(1) In block capital letters with the name of the vessel; and

(ii) With Type I retro-reflective material approved under approval series 164.018. The arrangement of the retro-reflective material must meet IMO Resolution A.658(16).

(4) *Attachments and fittings.* Lifejackets must have the following attachments and fittings:

(i) Each lifejacket must have a lifejacket light approved under approval series 161.112 securely attached to the front shoulder area of the lifejacket.

(ii) Each lifejacket must have a whistle firmly secured by a cord to the lifejacket.

(c) *Rescue boat and marine evacuation system immersion suits or anti-exposure suits.* (1) *General.* Each vessel, except vessels operating on routes between 32 degrees north latitude and 32 degrees south latitude, must carry immersion suits approved under approval series 160.171 or anti-exposure suits approved under approval series 160.153 of suitable size for each person assigned to the rescue boat crew and each person assigned to a marine evacuation system crew.

(2) *Stowage.* Immersion suits or anti-exposure suits must be stowed so they are readily accessible. The stowage positions must be marked with either the words "IMMERSION SUITS" or "ANTI-EXPOSURE SUITS" as appropriate, or with the appropriate symbol from IMO Resolution A.760(18).

(3) *Markings.* Each immersion suit or anti-exposure suit must be marked in block capital letters with the name of the vessel.

(4) *Attachments and fittings.* Immersion suits or anti-exposure suits must have the following attachments and fittings:

(i) Each immersion suit or anti-exposure suit must have a lifejacket light approved under approval series 161.112 securely attached to the front shoulder area of the immersion suit or anti-exposure suit.

(ii) Each immersion suit or anti-exposure suit must have a whistle firmly secured by a cord to the immersion suit or anti-exposure suit.

(d) *Lifejacket, immersion suit, and anti-exposure suit containers.* Each lifejacket, immersion suit, and anti-exposure suit container must be marked in block capital letters and numbers with the quantity, identity, and size of the equipment stowed inside the container. The equipment may be identified in words or with the appropriate symbol from IMO Resolution A.760(18).

§ 199.80 Muster list and emergency instructions.

(a) *General.* Clear instructions must be provided on the vessel that detail the actions each person on board should follow in the event of an emergency.

(b) *Muster list.* Copies of the muster list must be posted in conspicuous places throughout the vessel including on the navigating bridge, in the engine room, and in crew accommodation spaces. The muster list must be posted before the vessel begins its voyage. After the muster list has been prepared, if any change takes place that necessitates an alteration in the muster list, the master must either revise the existing muster list or prepare a new one. Each muster lists must at least specify—

(1) The instructions for operating the general emergency alarm system and public address system;

(2) The emergency signals;

(3) The actions to be taken by the persons on board when each signal is sounded;

(4) The order to abandon the vessel will be given;

(5) The officers that are assigned to make sure that lifesaving and firefighting appliances are maintained in good condition and ready for immediate use;

(6) The duties assigned to the different members of the crew. Duties to be specified include—

(i) Closing the watertight doors, fire doors, valves, scuppers, sidescuttles, skylights, portholes, and other similar openings in the vessel's hull;

(ii) Equipping the survival craft and other lifesaving appliances;

(iii) Preparing and launching the survival craft;

(iv) Preparing other lifesaving appliances;

(v) Mustering the passengers and other persons on board;

(vi) Using communication equipment;

(vii) Manning the emergency squad assigned to deal with fires and other emergencies; and

(viii) Using firefighting equipment and installations.

(7) The duties assigned to members of the crew in relation to passengers and other persons on board in case of an

emergency. Assigned duties to be specified include—

(i) Warning the passengers and other persons on board;

(ii) Seeing that passengers and other persons on board are suitably dressed and have donned their lifejackets or immersion suits correctly;

(iii) Assembling passengers and other persons on board at muster stations;

(iv) Keeping order in the passageways and on the stairways and generally controlling the movements of the passengers and other persons on board; and

(v) Making sure that a supply of blankets is taken to the survival craft; and

(8) The substitutes for key persons if they are disabled, taking into account that different emergencies require different actions.

(c) *Emergency instructions.* Illustrations and instructions in English, and any other appropriate language as determined by the OCMI, must be posted in each passenger cabin and in spaces occupied by persons other than crew, and must be conspicuously displayed at each muster station. The illustrations and instructions must include information on—

(1) The fire and emergency signal;

(2) Their muster station;

(3) The essential actions they must take in an emergency;

(4) The location of lifejackets, including child-size lifejackets; and

(5) The method of donning lifejackets.

§ 199.90 Operating instructions.

Each vessel must have posters or signs displayed in the vicinity of each survival craft and the survival craft's launching controls that—

(a) Illustrate the purpose of controls;

(b) Illustrate the procedures for operating the launching device;

(c) Give relevant instructions or warnings;

(d) Can be easily seen under emergency lighting conditions; and

(e) Display symbols in accordance with IMO Resolution A.760(18).

§ 199.100 Manning of survival craft and supervision.

(a) There must be a sufficient number of trained persons on board the vessel for mustering and assisting untrained persons.

(b) There must be a sufficient number of deck officers, able seamen, or certificated persons on board the vessel to operate the survival craft and launching arrangements required for abandonment by the total number of persons on board.

(c) There must be one person placed in charge of each survival craft to be used. The person in charge must—

(1) Be a deck officer, able seaman, or certificated person. The OCMI, considering the nature of the voyage, the number of persons permitted on board, and the characteristics of the vessel, may permit persons practiced in the handling and operation of liferafts or inflatable buoyant apparatus to be placed in charge of liferafts or inflatable buoyant apparatus; and

(2) Have a list of the survival craft crew and ensure that the crewmembers are acquainted with their duties.

(d) There must be a second-in-command designated for each lifeboat. This person should be a deck officer, able seaman, or certificated person. The second-in-command of a lifeboat must also have a list of the lifeboat crew.

(e) There must be a person assigned to each motorized survival craft who is capable of operating the engine and carrying out minor adjustments.

(f) The master must make sure that the persons required under paragraphs (a), (b), (c), and (d) of this section are equitable distributed among the vessel's survival craft.

§ 199.110 Survival craft muster and embarkation arrangements.

(a) Each muster station must have sufficient space to accommodate all persons assigned to muster at that station. One or more muster stations must be close to each embarkation station.

(b) Each muster station and embarkation station must be readily accessible to accommodation and work areas.

(c) Each muster station and embarkation station must be adequately illuminated by lighting with power supplied from the vessel's emergency source of electrical power.

(d) Each alleyway, stairway, and exit giving access to a muster and embarkation station must be adequately illuminated by lighting that is capable of having its power supplied by the vessel's emergency source of electrical power.

(e) Each davit-launched and free-fall survival craft muster station and embarkation station must be arranged to enable stretcher cases to be placed in the survival craft.

(f) Each launching station, or each two adjacent launching stations, must have an embarkation ladder as follows:

(1) Each embarkation ladder must be approved under approval series 160.117 or be a rope ladder approved under approval series 160.017.

(2) Each embarkation ladder must extend in a single length from the deck to the waterline with the vessel in its lightest seagoing condition under unfavorable conditions of trim and with the vessel listed not less than 15 degrees either way.

(3) Provided that there is at least one embarkation ladder on each side of the vessel, the OCMI may permit additional embarkation ladders to be other approved devices that provide safe and rapid access to survival craft in the water.

(4) The OCMI man accept other safe and effective means of embarkation for use with a liferaft required under § 199.261(e).

(g) If a davit-launched survival craft is embarked over the edge of the deck, the craft must be provided with a means for bringing it against the side of the vessel and holding it alongside the vessel to allow persons to safely embark.

(h) If a davit-launched survival craft is not intended to be moved to the stowed position with persons on board, the craft must be provided with a means for bringing it against the side of the vessel and holding it alongside the vessel to allow persons to safely disembark after a drill.

§ 199.120 Launching stations.

(a) Each launching station must be positioned to ensure safe launching with clearance from the propeller and from the steeply overhanging portions of the hull.

(b) Each survival craft must be launched down the straight side of the vessel, except for free-fall launched survival craft.

(c) Each launching station in the forward part of the vessel must—

(1) Be in a sheltered position that is located aft of the collision bulkhead; and

(2) Have a launching appliance approved with an endorsement as being of sufficient strength for forward installation.

§ 199.130 Stowage of survival craft.

(a) *General.* Each survival craft must be stowed—

(1) As close to the accommodation and service spaces as possible;

(2) So that neither the survival craft nor its stowage arrangements will interfere with the embarkation and operation of any other survival craft or rescue boat at any other launching station;

(3) As near the water surface as is safe and practicable;

(4) Except for liferafts intended for throw-overboard launching, not less than 2 meters above the waterline with the vessel—

(i) In the fully loaded condition;

(ii) Under unfavorable conditions of trim; and

(iii) Listed up to 20 degrees either way, or to the angle at which the vessel's weatherdeck edge becomes submerged, whichever is less.

(5) Sufficiently ready for use so that two crew members can complete preparations for embarkation and launching in less than 5 minutes;

(6) In a secure and sheltered position and protected from damage by fire and explosion, as far as practicable; and

(7) So as not to require lifting from its stowed position in order to launch, except that—

(i) A davit-launched liferaft may be lifted by a manually powered winch from its stowed position to its embarkation position; or

(ii) A survival craft that weights 185 kilograms (407.8 pounds) or less may be lifted not more than 300 millimeters (1 foot) in order to launch.

(b) *Additional lifeboat stowage requirements.* In addition to the requirements of paragraph (a) of this section, each lifeboat must be stowed as follows:

(1) Each lifeboat for lowering down the side of the vessel must be stowed as far forward of the vessel's propeller as practicable. Each lifeboat, in its stowed position, must be protected from damage by heavy seas.

(2) Each lifeboat must be stowed attached to its launching appliance.

(3) Each lifeboat must have a means for recharging the lifeboat batteries from the vessel's power supply at a supply voltage not exceeding 50 volts.

(c) *Additional liferaft stowage requirements.* In addition to the requirements of paragraph (a) of this section, each liferaft must be stowed as follows:

(1) Each liferaft must be stowed to permit manual release from its securing arrangements.

(2) Each liferaft must be stowed at a height above the waterline not greater than the maximum stowage height indicated on the liferaft container with the vessel in its lightest seagoing condition. Each liferaft without an indicated maximum stowage height must be stowed not more than 18 meters (59 feet) above the waterline with the vessel in its lightest seagoing condition.

(3) Each liferaft must be arranged to permit it to drop into the water from the deck on which it is stowed. A liferaft stowage arrangements meets this requirement if it—

(i) Is outboard of the rail or bulwark;

(ii) Is on stanchions or on a platform adjacent to the rail or bulwark; or

(iii) Has a gate or other suitable opening large enough to allow the liferaft to be pushed directly overboard and, if the liferaft is intended to be available for use on either side of the vessel, such gate or opening is provided on each side of the vessel.

(4) Each davit-launched liferaft must be stowed within reach of its lifting hook, unless some means of transfer is provided that is not rendered inoperable—

(i) Within the limits of trim and list specified in paragraph (a)(4) of this section;

(ii) By vessel motion; or

(iii) By power failure.

(5) Each rigid container for an inflatable liferaft to be launched by a launching appliance must be secured so that the container or parts of it do not fall into the water during and after inflation and launching of the contained liferaft.

(6) Each liferaft must have a painter system providing a connection between the vessel and the liferaft.

(7) Each liferaft or group of liferafts must be arranged for float-free launching. The arrangement must ensure that the liferaft or liferafts, when released and inflated, are not dragged under by the sinking vessel. A hydrostatic release unit used in a float-free arrangement must be approved under approval series 160.162.

§ 199.140 Stowage of rescue boats.

(a) *General.* Rescue boats must be stowed—

(1) To be ready for launching in not many than 5 minutes;

(2) In a position suitable for launching and recovery;

(3) In a way that neither the rescue boat nor its stowage arrangements will interfere with the operation of any survival craft at any other launching station; and

(4) If it is also a lifeboat, in compliance with the requirements of § 199.130.

(b) Each rescue boat must have a means provided for recharging the rescue boat batteries from the vessel's power supply at a supply voltage not exceeding 50 volts.

(c) Each inflated rescue boat must be kept fully inflated at all times.

§ 199.145 Marine evacuation system launching arrangements.

(a) *Arrangements.* Each marine evacuation system must—

(1) Be capable of being deployed by one person;

(2) Enable the total number of persons for which it is designed, to be transferred from the vessel into the inflated liferafts within a period of 30 minutes in the case of a passenger vessel and 10 minutes in the case of a cargo vessel from the time an abandon-ship signal is given;

(3) Be arranged so that liferafts may be securely attached to and released from the marine evacuation system platform by a person either in the liferaft or on the platform;

(4) Be capable of being deployed from the vessel under unfavorable conditions of trim of up to 10 degrees either way and of list of up to 20 degrees either way;

(5) If the marine evacuation system has an inclined slide, it must—

(i) Be arranged so the angle of the slide from horizontal is within a range of 30 to 35 degrees when the vessel is upright and in its lightest seagoing condition; and

(ii) If the vessel is a passenger vessel, be arranged so the angle of the slide from horizontal is no more than 55 degrees in the final stage of flooding as described in subchapter S of this chapter; and

(6) Be capable of being restrained by a bowsing line or other positioning system that is designed to deploy automatically and if necessary, is capable of being adjusted to the position required for evacuation.

(b) *Stowage.* Each marine evacuation system must be stowed as follows:

(1) There must not be any openings between the marine evacuation system's embarkation station and the vessel's side at the waterline with the vessel in its lightest seagoing condition.

(2) The marine evacuation system's launching positions must be arranged, as far as practicable, to be straight down the vessel's side and to safely clear the propeller and any steeply overhanging positions of the hull.

(3) The marine evacuation system must be protected from any projections of the vessel's structure or equipment.

(4) The marine evacuation system's passage and platform, when deployed; its stowage container; and its operational arrangement must not interfere with the operation of any other lifesaving appliance at any other launching station.

(5) The marine evacuation system's stowage area must be protected from damage by heavy seas.

(c) *Stowage of associated liferafts.* Inflatable liferafts used in conjunction with the marine evacuation system must be stowed—

(1) Close to the system container, but capable of dropping clear of the deployed chute and boarding platform;

(2) So it is capable of individual release from its stowage rack;

(3) In accordance with the requirements of § 199.130; and

(4) With pre-connected or easily connected retrieving lines to the platform.

§ 199.150 Survival craft launching and recovery arrangements; general.

(a) (1) Each launching appliance for a lifeboat must be approved under approval series 160.132 with a winch approved under approval series 160.115.

(2) Each launching appliance for a davit-launched liferaft must be approved under approval series 160.163 with an automatic disengaging apparatus approved under approval series 160.170.

(b) Unless expressly provided otherwise in this part, each survival craft must be provided with a launching appliance or marine evacuation system, except those survival craft that—

(1) Can be boarded from a position on deck less than 4.5 meters (14.75 feet) above the waterline with the vessel in its lightest seagoing condition and that are stowed for launching directly from the stowed position under unfavorable conditions of trim of 10 degrees and list of 20 degrees either way;

(3) Are carried in excess of the survival craft for 200 percent of the total number of persons on board the vessel, and that have a mass of not more than 185 kilograms (407 pounds);

(4) Are carried in excess of the survival craft for 200 percent of the total number of persons on board the vessel and that are stowed for launching directly from the stowed position under unfavorable conditions or trim of 10 degrees and list of 20 degrees either way; or

(5) Are provided for use in conjunction with a marine evacuation system and that are stowed for launching directly from the stowed position under unfavorable conditions of trim of 10 degrees and list of 20 degrees either way.

(c) With the exception of the secondary means of launching for free-fall lifeboats, each launching appliance must be arranged so that the fully equipped survival craft it serves can be safely launched against unfavorable conditions of trim of up to 10 degrees either way and of list of up to 20 degrees either way—

(1) When the survival craft is loaded with its full complement of persons; and

(2) When not more than the required operating crew is on board.

(d) A launching appliance must not depend on any means other than gravity or stored mechanical power, independent of the vessel's power supplies, to launch the survival craft it serves in both the fully loaded and equipped condition and in the light condition.

(e) Each launching appliance's structural attachment to the vessel must be designed, based on the ultimate strength of the construction material, to be at least 4.5 times the load imparted on the attachment by the launching appliance and its fully loaded survival craft under the most adverse combination of list and trim under paragraph (c) of this section.

(f) Each launching appliance must be arranged so that—

(1) All parts requiring regular maintenance by the vessel's crew are readily accessible and easily maintained;

(2) The launching appliance remains effective under conditions of icing;

(3) The same type of release mechanism is used for each similar survival craft carried on board the vessel;

(4) The preparation and handling of each survival craft at any one launching station does not interfere with the prompt preparation and handling of any other survival craft at any other station;

(5) The persons on board the vessel can safely and rapidly board the survival craft; and

(6) During preparation and launching, the survival craft, its launching appliance, and the area of water into which it is to be launched are illuminated by lighting supplied from the vessel's emergency source of electrical power.

(g) Each launching and recovery arrangement must allow the operator on the deck to observe the survival craft at all times during launching.

(h) Means must be provided outside the machinery space to prevent any discharge of water onto survival craft during launching.

(i) If there is a danger of the survival craft being damaged by the vessel's stabilizer wings, the stabilizer wings must be able to be brought inboard using power from the emergency source of electrical power. Indicators operated by the vessel's emergency power system must be provided on the navigating bridge to show the position of the stabilizer wings.

§ 199.153 Survival craft launching and recovery arrangements using falls and a winch.

Survival craft launching and recovery arrangements, in addition to meeting the requirements in § 199.150, must meet the following requirements:

(a) Each launching mechanism must be arranged so it may be actuated by one person from a position on the vessel's deck, and except for secondary launching appliances for free-fall launching arrangements, from a position within the survival craft.

(b) Each fall wire must be of rotation-resistant and corrosion-resistant steel wire rope.

(c) The breaking strength of each fall wire and each attachment used on the fall must be at least six times the load imparted on the fall by the fully-loaded survival craft.

(d) Each fall must be long enough for the survival craft to reach the water with the vessel in its lightest seagoing condition, under unfavorable conditions of trim, and with the vessel listed not less than 20 degrees either way.

(e) Each unguarded fall must not pass near any operating position of the winch, such as hand cranks, pay out wheels, and brake levers.

(f) Each winch drum must be arranged so the fall wire winds onto the drum in a level wrap. A multiple drum winch must be arranged so that the falls wind off at the same rate when lowering and onto the drums at the same rate when hoisting.

(g) Each fall, where exposed to damage or fouling, must have guards or equivalent protection. Each fall that leads along a deck must be covered with a guard that is not more than 300 millimeters (1 foot) above the deck.

(h) The lowering speed for a fully loaded survival craft must be not less than the speed obtained from one of the following formulas:

(1) $S=0.4+(0.02\ H)$, where S the lowering speed in meters per second and H is the lowering height in meters from the davit head to the waterline with the vessel in its lightest seagoing condition, with H not greater than 30 regardless of the actula lowering height.

(2) $S=79+(1.2\ H)$, where S is the lowering speed in feet per minute and H is the lowering height in feet from the davit head to thee waterline with the vessel in its lightest seagoing condition, with H not greater than 99 regardless of the actual lowering height.

(i) The lowering speed for a survival craft loaded with all of its equipment must be not less than 70 percent of the speed required under paragraph (g) of this section.

(j) The lowering speed for a fully loaded survival craft must be not more than 1.3 meters per second (256 feet per minute).

(k) If a survival craft is recovered by electric power, the electrical installation, including the electric power-operated boat winch, must meet the requirements in subchapter J of this chapter. If a survival craft is recovered by any means using power, including a portable power source, safety devices must be provided that automatically cut off the power before the davit arms or falls reach the stops in order to avoid overstressing the falls or davits, unless the motor is designed to prevent such overstressing.

(l) Each launching appliance must be fitted with brakes that meet the following requirements:

(1) The brakes must be capable of stopping the descent of the survival craft or rescue boat and holding the survival craft or rescue boat securely when loaded with its full complement of persons and equipment.

(2) The brake pads must, where necessary, be protected from water and oil.

(3) Manual brakes must be arranged so that the brake is always applied unless the operator, or a mechanism activated by the operator, holds the brake control in the off position.

§ 199.155 Lifeboat launching and recovery arrangements.

Lifeboat launching and recovery arrangements, in addition to meeting the requirements in §§ 199.150 and 199.153, must meet the following requirements:

(a) Each lifeboat must be provided with a launching appliance. The launching appliance must be capable of launching and recovering the lifeboat with its crew.

(b) Each launching appliance arrangement must allow the operator on the vessel to observe the lifeboat at all times during recovery.

(c) Each launching appliance arrangement must be designed to ensure persons can safely disembark from the survival craft prior to its stowage.

(d) Each lifeboat, other than a totally enclosed lifeboat, must be provided with a davit span with not less than two lifelines of sufficient length to reach the water with the vessel in its lightest seagoing condition, under unfavorable conditions of trim, and with the vessel listed up to 20 degrees either way.

§ 199.157 Free-fall lifeboat launching and recovery arrangements.

(a) The launching appliance for a free-fall lifeboat must be designed and installed so that the launching appliance and the lifeboat it serves operate as a system to protect the occupants from harmful acceleration forces and to effectively clear the vessel.

(b) The launching appliance must be designed and arranged so that, in its ready to launch position, the distance from the lowest point on the lifeboat it serves to the water surface with the vessel in its lightest seagoing condition does not exceed the lifeboat's certificated free-fall height.

(c) The launching appliance must be arranged to preclude accidental release of the lifeboat in its unattended stowed position. If the means provided to secure the lifeboat cannot be released from inside the lifeboat, the means to secure the lifeboat must be arranged to preclude boarding the lifeboat without first releasing it.

(d) Each free-fall launching arrangement must be provided with a secondary means to launch the lifeboat by falls. Such means must comply with the requirements of §§ 199.150, 199.153, and 199.155. Notwithstanding § 199.150(c), the secondary launching appliance must be capable of launching the lifeboat against unfavorable conditions of trim of 2 degrees either way and of list of 5 degrees either way. The secondary launching appliance need not comply with the speed requirements of §§ 199.153 (g), (h), and (i). If the secondary launching appliance is not dependent on gravity, stored mechanical power, or other manual means, the launching arrangement must be connected both to the vessel's main and emergency power supplies.

§ 199.160 Rescue boat embarkation, launching and recovery arrangements.

(a) Each rescue boat must be capable of being launched with the vessel making headway of 5 knots in calm water. A painter may be used to meet this requirement.

(b) Each rescue boat embarkation and launching arrangement must permit the rescue boat to be boarded and launched in the shortest possible time.

(c) The rescue boat must meet the embarkation and launching arrangement requirements of §§ 199.110 (e) and (g), 199.150, 199.155, and if the launching arrangement uses falls and a winch, § 199.153.

(d) If the rescue boat is one of the vessel's survival craft, the rescue boat must also meet the following requirements:

(1) The rescue boat must meet the muster and embarkation arrangement requirements of § 199.110 and the launching station requirements of § 199.120.

(2) If the launching arrangement uses a single fall, the rescue boat may have an automatic disengaging apparatus approved under approval series 160.170 instead of a lifeboat release mechanism.

(e) Rapid recovery of the rescue boat must be possible when loaded with its full complement of persons and equipment. If the rescue boat is also a lifeboat, rapid recovery must be possible when loaded with its lifeboat equipment and an approved rescue boat complement of at least six persons.

(f) Each rescue boat launching appliance must be fitted with a powered winch motor.

(g) Each rescue boat launching appliance must be capable of hoisting the rescue boat when loaded with its full rescue boat complement of persons and equipment at a rate of not less than 0.3 meters per second (59 feet per minute).

§ 199.170 Line-throwing appliance.

(a) *General.* Each vessel must have a line-throwing appliance approved under approval series 160.040.

(b) *Stowage.* The line-throwing appliance and its equipment must be readily accessible for use.

(c) *Additional equipment.* Each vessel must carry the following equipment for the line-throwing appliance—

(1) The equipment on the list provided by the manufacturer with the approved appliance; and

(2) An auxiliary line that—

(i) Is at least 450 meters (1,500 feet) long;

(ii) Has a breaking strength of at least 40 kiloNewtons (9,000 pounds-force); and

(iii) Is, if synthetic, of a dark color or certified by the manufacturer to be resistant to deterioration from ultraviolet light.

§ 199.175 Survival craft and rescue boat equipment.

(a) All lifeboat and rescue boat equipment—

(1) Must be secured within the boat by lashings, by storage in lockers or compartments, by storage in brackets or similar mounting arrangements, or by other suitable means;

(2) Must be secured in such a manner as not to interfere with any abandonment procedures or reduce seating capacity;

(3) Must be as small and of as little mass as possible;

(4) Must be packed in a suitable and compact form; and

(5) Should be stowed so the items do not—

(i) Reduce the seating capacity;

(ii) Adversely affect the seaworthiness of the survival craft or rescue boat; or

(iii) Overload the launching appliance.

(b) Each lifeboat, rigid liferaft, and rescue boat, unless otherwise stated in this paragraph, must carry the equipment listed in this paragraph and specified for it in table 199.175 of this section under the vessel's category of service. A lifeboat that is also a rescue boat must carry the equipment in the table column marked for a lifeboat.

(1) *Bailer.* The bailer must be buoyant.

(2) *Bilge pump.* The bilge pump must be approved under approval series 160.044 and must be installed in a ready-to-use condition as follows:

(i) The bilge pump for a lifeboat approved for less than 70 persons must be either size 2 or size 3.

(ii) The bilge pump for a lifeboat approved for 70 persons or more must be size 3.

(3) *Boathook.* In the case of a boat launched by falls, the boathook must be kept free for fending-off purposes. For inflated rescue boats and for rigid-inflated rescue boats, each boathook must be designed to minimize the possibility of damage to the inflated portions of the hull.

(4) *Bucket.* The bucket must be made of corrosion-resistant material and should either be buoyant or have an attached lanyard at least 1.8 meters (6 feet) long.

(5) *Can opener.* A can opener may be in a jackknife approved under approval series 160.043.

(6) *Compass.* The compass and its mounting arrangement must be approved under approval series 160.014. In a totally enclosed lifeboat, the compass must be permanently fitted at the steering position; in any other boat it must be provided with a binnacle, if necessary to protect it from the weather, and with suitable mounting arrangements.

(7) *Dipper.* The dipper must be rustproof and attached to a lanyard that should be at least 0.9 meters (3 feet) long.

(8) *Drinking cup.* The drinking cup must be graduated and rustproof. The cup should also be of a breakage-resistant material.

(9) *Fire extinguisher.* The fire extinguisher must be approved under approval series 162.028. The fire extinguisher must be type B–C, size II, or larger. Two type B–C, size I fire extinguishers may be carried in place of a type B–C, size II fire extinguisher.

(10) *First aid kit.* The first aid kit in a lifeboat and in a rescue boat must be approved under approval series 160.041. The first aid kit in a rigid liferaft must be approved under approval series 160.054.

(11) *Fishing kit.* The fishing kit must be approved under approval series 160.061.

(12) *Flashlight.* The flashlight must be a type I or type III that is constructed and marked in accordance with the American Society of Testing and Materials (ASTM) F1014. One spare set of batteries and one spare bulb, stored in a watertight container, must be provided for each flashlight.

(13) *Hatchet.* The hatchet must be approved under approval series 160.013. The hatchet should be stowed in brackets near the release mechanism and, if more than one hatchet is carried, the hatchets should be stowed at opposite ends of the boat.

(14) *Heaving line.* The heaving line must be buoyant, must be at least 30 meters (99 feet) long, must have a buoyant rescue quoit attached to one end, and should be at least 8 millimeters (5/16 inches) in diameter.

(15) *Instruction card.* The instruction card must be waterproof and contain the information required by IMO Resolution A.657(16). The instruction card should be located so that it can be easily seen upon entering the liferaft.

(16) *Jackknife.* The jackknife must be approved under approval series 160.043 and must be attached to the boat by its lanyard.

(17) *Knife.* The knife must be of the non-folding type with a buoyant hanle as follows:

(i) The knife for a rigid liferaft must be secured to the raft by a lanyard and stowed in a pocket on the exterior of the canopy near the point where the painter is attached to the liferaft. If an approved jackknife is substituted for the second knife required on a liferaft equipped for 13 or more persons, the jackknife must also be secured to the liferaft by a lanyard.

(ii) The knife in an inflated or rigid-inflated rescue boat must be of a type designed to minimize the possibility of damage to the fabric portions of the hull.

(18) *Ladder.* The boarding ladder must be capable of being used at each entrance on either side or at the stern of the boat to enable persons in the water to board the boat. The lowest step of the ladder must be not less than 0.4 meters (15.75 inches) below the boat's light waterline.

(19) *Mirror.* The signalling mirror must be approved under approval series 160.020.

(2) *Oars and paddles.* Each lifeboat and rescue boat must have buoyant oars or paddles of the number, size, and type specified by the manufacturer of the boat. An oarlock or equivalent device, either permanently installed or attached to the boat by a lanyard or chain, must be provided for each oar. Each oar should have the vessel's name marked on it in block letters.

(21) *Painter.* (i) One painter on a lifeboat and the painter on a rescue boat must be attached by a painter release device at the forward end of the lifeboat. The second painter on a lifeboat must be secured at or near the bow of the lifeboat, ready for use. On lifeboats to be launched by free-fall launching, both painters must be stowed near the bow ready for use.

(A) If the painter is of synthetic material, the painter must be of a dark color or certified by the manufacturer to be resistant to deterioration from ultraviolet light.

(B) The painter for a lifeboat and each painter for a rescue boat must be of a length that is at least twice the distance from the stowage position of the boat to the waterline with the vessel in its lightest seagoing condition, or must be meters (50 feet) long, whichever is the greater.

(C) The painter must have a breaking strength of at least 34 kiloNewtons (7,700 pounds-force).

(D) The painter for a rigid liferaft must be of a length that is at least 20 meters (66 feet) plus the distance from the liferaft's stowed position to the waterline with the vessel in its lightest seagoing condition, or must be 15 meters (50 feet) long, whichever is the greater.

(E) If the painter is of synthetic material, the painter must be of a dark color or certified by the manufacturer to be resistant to deterioration from ultraviolet light.

(F) The painter must have a breaking strength of at least 15 kiloNewtons (3,937 pounds-force) for liferafts approved for more than 25 persons, of at least 20 kiloNewtons (2,250 pounds-force) for liferafts approved for 9 to 25 persons, and of at least 7.5 kiloNewtons (1,687 pounds-force) for any other liferaft.

(G) The painter must have a float-free link meeting the requirements of part 160, subpart 160.073 of this chapter secured to the end of the painter that is attached to the vessel. The float-free link arrangement must break under a load of 2.2±0.4 kiloNewtons (400 to 536 pounds-force).

(22) *Provisions.* Each unit of provisions must be approved under approval series 160.046 and must provide at least 10,000 kiloJoules (2,390 calories). Individual provision packages may provide less than 10,000 kiloJoules, as long as the total quantity of provisions on board provides for at least 10,000 kiloJoules per person.

(23) *Pump.* The pump or bellows must be manually operated and should be arranged so it is capable of inflating any part of the inflatable structure of the rescue boat.

(24) *Radar reflector.* The radar reflector must be capable of detection at a distance of 4 nautical miles and must have a mounting arrangements to install it on the boat in its proper orientation. A 9-GigaHertz radar transponder may be substituted for the radar reflector if the transponder is accepted by the Federal Communications Commission as meeting the requirements of 47 CFR part 80 and is stowed in the boat or raft.

(25) *Rainwater collection device.* The rainwater collection device must be arranged to collect falling rain and direct it into the water tanks in the lifeboat. If the lifeboat carries a manually-powered, reverse osmosis desalinator approved under approval series 160.058, a rainwater collection device is not required.

(26) *Repair kit.* The repair kit for an inflated and a rigid-inflated rescue boat must be packed in a suitable container and include at least—

(i) Six sealing clamps;

(ii) Five 50-millimeter (2-inch) diameter tube patches;

(iii) A roughing tool; and

(iv) A container of cement compatible with the tube fabric. The cement must have an expiration date on its container that is not more than 24 months after the date of manufacture of the cement.

(27) *Sea anchor.* (i) The sea anchor for a lifeboat must be approved under approval series 160.019.

(ii) Each sea anchor for a rigid liferaft must be of the type specified by the liferaft manufacturer and must be fitted with a shock resistant hawser. It may also be fitted with a tripping line. One sea anchor must be permanently attached to the liferaft in such a way that, when the liferaft is waterborne, it will cause the liferaft to lie oriented to the wind in the most stable manner. The second sea anchor must be stowed in the liferaft as a spare. A davit-launched liferaft and a liferaft on a passenger vessel must have the permanently attached sea anchor arranged to deploy automatically when the liferaft floats free.

(iii) The sea anchor for a rescue boat must be of the type specified by the rescue boat manufacturer, and must have a hawser of adequate strength that is at least 10 meters (33 feet) long.

(28) *Searchlight.* (i) The searchlight must be of the type originally provided with the approved lifeboat or rescue boat, or must be certified by the searchlight manufacturer to meet ASTM F1003. The boat must carry two spare bulbs.

(ii) The searchlight must be permanently mounted on the canopy or must have a stanchion-type or collapsible-type, portable mounting on the canopy. The mounting must be located to enable operation of the searchlight by the boat operator.

(iii) The searchlights power source must be capable of operating the light without charging or recharging for not less than—

(A) Three hours of continuous operation; or

(B) Six hours total operation when it is operated in cycles of 15 minutes on and 5 minutes off.

(iv) If the searchlight's power source is an engine starting battery, there must be sufficient battery capacity to start the engine at the end of either operating period specified in paragraph (b)(28)(iii) of this section.

(v) The searchlight's power source must be connected to the searchlight using watertight electrical fittings.

(29) *Seasickness kit.* The seasickness kit must be in a waterproof package and must include one waterproof seasickness bag, anti-seasickness medication sufficient for one person for 48 hours, and instructions for using the medication. Each seasickness kit should be stowed within reach of the seat for which it is intended.

(30) *Signal, smoke.* The smoke signal must be approved under approval series 160.122.

(31) *Signal, hand flare.* The hand flare must be approved under approval series 160.121.

(32) *Signal, rocket parachute flare.* The rocket parachute flare must be approved under approval series 160.136.

(33) *Skates and fenders.* The skates and fenders must be as specified by the lifeboat or rescue boat manufacturer to facilitate launching and prevent damage to a lifeboat intended for launching down the side of a vessel.

(34) *Sponge.* The sponge must be suitable for soaking up water.

(35) *Survival instructions.* The survival instructions must be as described in IMO Resolution A.657(16), Annex I for liferafts and Annex II for lifeboats.

(36) *Table of lifesaving signals.* The table of lifesaving signals must be as described in Annex IV to the International Regulations for Preventing Collisions at Sea 1972, as amended, and must be printed on a waterproof card or stored in a waterproof container.

(37) *Thermal protective aid.* The thermal protective aid must be approved under approval series 160.174.

(38) *Tool kit.* The tool kit must contain sufficient tools for minor adjustments to the engine and its accessories.

(39) *Towline.* The towline must be buoyant and at least 50 meters (164 feet) long. The towline must have a breaking strength of not less than 13.3 kiloNewtons (3,000 pounds-force) or be of sufficient strength to tow the largest liferaft carried on the vessel when loaded with its full complement of persons and equipment at a speed of at least 2 knots.

(40) *Water.* The water must be emergency drinking water approved under approval series 160.026.

(i) The requirement for up to one-third of the emergency drinking water may be met by a desalting apparatus approved under approval series 160.058 that is capable of producing the substituted amount of water in 2 days.

(ii) The requirement for up to two-thirds of the emergency drinking water may be met by a manually-powered, reverse osmosis desalinator approved under approval series 160.058 and that is capable of producing the substituted amount of water in 2 days.

(41) *Whistle.* The whistle must be corrosion-resistant, and should be a ball-type or multi-tone whistle that is attached to a lanyard.

TABLE 199.175.—SURVIVAL CRAFT EQUIPMENT

Item No.	Item	International voyage			Short international voyage		
		Lifeboat	Rigid liferaft (SOLAS A pack)	Rescue boat	Lifeboat	Rigid liferaft (SOLAS B pack)	Rescue boat
1	Bailer[1]	1	1	1	1	1	1
2	Bilge pump[2]	1			1		
3	Boathook	2		1	2		1
4	Bucket[3]	2		1	2		1
5	Can opener	3	3		3		
6	Compass	1		1	1		1
7	Dipper	1			1		

TABLE 199.175.—SURVIVAL CRAFT EQUIPMENT—Continued

Item No.	Item	International voyage			Short international voyage		
		Lifeboat	Rigid liferaft (SOLAS A pack)	Rescue boat	Lifeboat	Rigid liferaft (SOLAS B pack)	Rescue boat
8	Drinking cup	1	1		1		
9	Fire extinguisher	1		1	1		1
10	First aid kit	1	1	1	1	1	1
11	Fishing kit	1	1				
12	Flashlight	1	1	1	1	1	1
13	Hatchet	2			2		
14	Heaving line	2	1	2	2	1	2
15	Instruction card		1			1	
16	Jackknife	1			1		
17	Knife[1 4]		1	1		1	1
18	Ladder	1		1	1		1
19	Mirror, signalling	1	1		1	1	
20	Oars, units[5 6]	1		1	1		1
	Paddles		2			2	
21	Paddles	2	1	1	2	1	1
22	Provisions (units per person)	1	1				
23	Pump[7]			1			1
24	Radar reflector	1	1	1	1	1	1
25	Rainwater collection device	1			1		
26	Repair kit[7]			1			1
27	Sea anchor	1	2	1	1	2	1
28	Searchlight	1		1	1		1
29	Seasickness kit (units per person)	1	1		1	1	
30	Signal, smoke	2	2		2	1	
31	Signal, hand flare	6	6		6	3	
32	Signal, parachute flare	4	4		4	2	
33	Skates and fenders[8]	1		1	1		1
34	Sponge[7]		2	2		2	2
35	Survival instructions	1	1		1	1	
36	Table of lifesaving signals	1	1		1	1	
37	Thermal protective aids	10%[9]	10%[9]	10%[9]	10%[9]	10%[9]	10%[9]
38	Tool kit	1			1		
39	Towline[10]	1		1	1		1
40	Water (liters per person)	3	1.5		3		
41	Whistle	1	1	1	1	1	1

Notes:
[1] Each liferaft equipped for 13 persons or more must carry two of these items.
[2] Not required for boats of self-bailing design.
[3] Not required for inflated or rigid-inflated rescue boats.
[4] A hatchet counts towards this requirement in rigid rescue boats.
[5] Oars are not required on a free-fall lifeboat; a unit of oars means the number of oars specified by the boat manufacturer.
[6] Rescue boats may substitute buoyant paddles for oars, as specified by the manufacturer.
[7] Not required for a rigid rescue boat.
[8] Required if specified by the boat manufacturer.
[9] Sufficient thermal protective aids are required for at least 10% of the persons the survival craft is equipped to carry, but not less than two.
[10] Required only if the lifeboat is also the rescue boat.

§ 199.176 Markings on lifesaving appliances.

(a) *Lifeboats and rescue boats.* Each lifeboat and rescue boat must be plainly marked as follows:

(1) Each side of each lifeboat and rescue boat bow must be marked in block capital letters and numbers with—

(i) The name of the vessel; and

(ii) The name of the port required to be marked on the stern of the vessel to meet the requirements of part 67, subpart 67.13 of this chapter.

(2) The length and beam of the boat and the number of persons for which the boat is equipped must be clearly marked, preferably on the bow, in permanent characters. The number of persons for which the boat is equipped must not exceed the number of persons shown on its nameplate.

(3) The number of the boat and a means of identifying the vessel to which the boat belongs, such as the vessel's name, must be plainly marked or painted so that the markings are visible from above the boat.

(4) The Type II retro-reflective material approved under approval series 164.018 must be placed on the boat to meet the arrangement requirements in IMO Resolution A.658(16).

(b) *Rigid liferafts.* Each rigid liferaft must be marked as follows:

(1) The name of the vessel must be marked on each rigid liferaft.

(2) The name of the port required to be marked on the stern of the vessel to meet the requirements of part 67, subpart 67.13 of this chapter must be marked on each rigid liferaft.

(3) The rigid liferaft must be marked with the words "SOLAS A pack" or "SOLAS B pack", to reflect the pack inside.

(4) The length of the painter must be marked on each rigid liferaft.

(5) At each entrance of each rigid liferaft, the number of persons for which the rigid liferaft is equipped must be marked in letters and numbers at least 100 millimeters (4 inches) high and in a color contrasting to that of the liferaft. The number of persons for which the liferaft is equipped must not exceed the number of persons shown on its nameplate.

§ 199.178 Marking of stowage locations.

(a) Containers, brackets, racks, and other similar stowage locations for lifesaving equipment must be marked with symbols in accordance with IMO Resolution A.760(18) indicating the device stowed in that location.

(b) If more than one device is stowed in a location, the number of devices stowed must be indicated.

(c) Survival craft should be numbered consecutively starting from the vessel's bow. Survival craft on the starboard side should be numbered with odd numerals and survival craft on the port side should be numbered with even numerals.

(d) Each liferaft stowage location should be marked with the capacity of the liferaft stowed there.

§ 199.180 Training and drills.

(a) *Training materials.* Training material must be on board each vessel and must consist of a manual of one or more volumes written in easily understood terms and illustrated wherever possible, or of audiovisual training aids, or of both as follows:

(1) If a training manual is used, a copy must be in each crew messroom and recreation room or in each crew cabin. If audiovisual training aids are used, they must be incorporated into the onboard training sessions described in paragraph (g) of this section.

(2) The training material must explain in detail—

(i) The procedure for donning lifejackets, immersion suits, and anti-exposure suits carried on board;

(ii) The procedure for mustering at the assigned stations;

(iii) The procedure for boarding, launching, and clearing the survival craft and rescue boats;

(iv) The method of launching from within the survival craft;

(v) The procedure for releasing survival craft from launching appliances;

(vi) The methods and use of devices for protection in launching areas, where appropriate;

(vii) The illumination in the launching areas;

(viii) The use of all survival equipment;

(ix) The use of all detection equipment;

(x) With the assistance of illustrations, the use of radio lifesaving appliances;

(xi) The use of sea anchors;

(xii) The use of the survival craft engine and accessories;

(xiii) The recovery of survival craft and rescue boats, including stowage and securing;

(xiv) The hazards of exposure and the need for warm clothing;

(xv) The best use of the survival craft for survival;

(xvi) The methods of retrieval, including the use of helicopter rescue gear such as slings, baskets, and stretchers; the use of breeches-buoy and shore lifesaving apparatus; and the use of the vessel's line-throwing apparatus;

(xvii) All other functions contained in the muster list and emergency instructions; and

(xviii) The instructions for emergency repair of the lifesaving appliances.

(b) *Familiarity with emergency procedures.* (1) Every crewmember with emergency duties assigned on the muster list must be familiar with their assigned duties before the voyage begins.

(2) On a vessel engaged on voyage when the passengers or special personnel are scheduled to be on board for more than 24 hours, musters of the passengers and special personnel must take place within 24 hours after their embarkation. Passengers and special personnel must be instructed in the use of the lifejackets and the action to take in an emergency.

(3) Whenever new passengers or special personnel embark, a safety briefing must be given immediately before sailing or immediately after sailing. The briefing must include the instructions required by § 199.80 and must be made by means of an announcement in one or more languages likely to be understood by the passengers and special personnel. The announcement must be made on the vessel's public address system or by other equivalent means likely to be heard by the passengers and special personnel who have not yet heard it during the voyage. The briefing may be included in the muster required by paragraph (b)(2) of this section if the muster is held immediately upon departure. Information cards or posters, or video programs displayed on the vessel video displays, may be used to supplement the briefing, but may not be used to replace the announcement.

(c) *Drills—general.* (1) Drills must, as far as practicable, be conducted as if there were an actual emergency.

(2) Every crewmember must participate in at least one abandon-ship drill and one fire drill every month. The drills of the crew must take place within 24 hours of the vessel leaving a port if more than 25 percent of the crew have not participated in abandon-ship and fire drills on board that particular vessel in the previous month.

(3) Drills must be held before sailing when a vessel enters service for the first time, after modification of a major character, or when a new crew is engaged.

(4) The OCMI may accept other equivalent drill arrangements for those classes of vessels for which compliance with this paragraph is impracticable.

(d) *Abandon-ship drills.* (1) Abandon-ship drills must include—

(i) Summoning persons on board to muster stations with the general alarm followed by drill announcements on the public address or other communication system and ensuring that the persons on board are made aware of the order to abandon ship;

(ii) Reporting to stations and preparing for the duties described in the muster list;

(iii) Checking that persons on board are suitably dressed;

(iv) Checking that lifejackets or immersion suits are correctly donned;

(v) Lowering of at least one lifeboat after any necessary preparation for launching;

(vi) Starting and operating the lifeboat engine; and

(vii) Operating davits used for launching the liferafts.

(2) Abandon-ship drills should also include conducting a mock search and rescue of passengers or special personnel trapped in their staterooms, and giving instructions in the use of radio lifesaving appliances.

(3) Different lifeboats must, as far as practicable, be lowered to comply with the requirements of paragraph (d)(1)(v) of this section at successive drills.

(4) Except as provided in paragraphs (d)(5) and (d)(6) of this section, each lifeboat must be launched with its assigned operating crew aboard and maneuvered in the water at least once every 3 months during an abandon-ship drill.

(5) Lowering into the water, rather than launching of a lifeboat arranged for free-fall launching, is acceptable when free-fall launching is impracticable, provided that the lifeboat is free-fall launched with its assigned operating crew aboard and is maneuvered in the water at least once every 6 months. However, when compliance with the 6-month requirement is impracticable, the OCMI may extend this period to 12 months, provided that arrangements are made for simulated launching at intervals of not more than 6 months.

(6) The OCMI may exempt a vessel operating on short international voyages from the requirement to launch the lifeboats on both sides of the vessel if

berthing arrangements in port and operations do not permit launching of lifeboats on one side. However, all lifeboats on the vessel must be lowered at least once every 3 months and launched at least annually.

(7) As far as is reasonable and practicable, rescue boats, other than lifeboats which are also rescue boats, must be launched with their assigned crew aboard and maneuvered in the water each month. Such launching and maneuvering must occur at least once every 3 months.

(8) If lifeboat and rescue boat launching drills are carried out with the vessel making headway, such drills must, because of the dangers involved, be practiced in sheltered waters only and be under the supervision of an officer experienced in such drills.

(9) If a vessel is fitted with marine evacuation systems, drills must include an exercising of the procedures required for the deployment of such a system up to the point immediately preceding actual deployment of the system. This aspect of drills should be augmented by regular instruction using the on board training aids. Additionally, every crewmember assigned to duties involving the marine evacuation system must, as far as practicable, participate in a full deployment of a similar system into water, either on board a vessel or ashore, every 2 years but not longer than every 3 years. This training may be associated with the deployments required by § 199.190(k).

(10) Emergency lighting for mustering and abandonment must be tested at each abandon-ship drill.

(11) If a vessel carries immersion suits or anti-exposure suits, the suits must be worn by crewmembers in at least one abandon-ship drill per month. If wearing the suits is impracticable due to warm weather, the crewmembers must be instructed on their donning and use.

(12) If a vessel carries immersion suits for persons other than the crew, the abandon-ship drill must include instruction to these persons on the stowage, donning, and use of the suits.

(e) *Line-throwing appliance.* A drill must be conducted on the use of the line-throwing appliance at least once every 3 months. The actual firing of the appliance is at the discretion of the master.

(f) *Fire drills.* (1) Fire drills must, as far as practicable, be planned with due consideration given to the various emergencies that may occur for that type of vessel and its cargo.

(2) Each fire drill must include—

(i) Reporting to stations and preparing for the duties described in the station bill for the particular fire emergency being simulated;

(ii) Starting of fire pumps and the use of two jets of water to determine that the system is in proper working order;

(iii) Checking the firemen's outfits and other personal rescue equipment;

(iv) Checking the relevant communications equipment;

(v) Checking the operation of watertight doors, fire doors, and fire dampers and main inlets and outlets of ventilation systems in the drill area; and

(vi) Checking the necessary arrangements for subsequent abandonment of the vessel.

(3) The equipment used during drills must immediately be brought back to its fully operational condition. Any faults and defects discovered during the drills must be remedied as soon as possible.

(g) *Onboard training and instruction.* (1) Onboard training in the use of the vessel's lifesaving appliances, including survival craft equipment, and in the use of the vessel's fire-extinguishing appliances must be given as soon as possible but not later than 2 weeks after a crewmember joins the vessel.

(2) If the crewmember is on a regularly scheduled rotating assignment to the vessel, the training required in paragraph (g)(1) of this section need be given only within 2 weeks of the time the crewmember first joins the vessel.

(3) The crew must be instructed in the use of the vessel's fire-extinguishing and lifesaving appliances and in survival at sea at the same interval as the drills. Individual units of instruction may cover different parts of the vessel's lifesaving and fire-extinguishing appliances, but all the vessel's lifesaving and fire-extinguishing appliances must be covered within any period of 2 months.

(4) Every crewmember must be given instructions that include, but are not limited to—

(i) The operation and use of the vessel's inflatable liferafts;

(ii) The problems of hypothermia, first aid treatment for hypothermia, and other appropriate first aid procedures;

(iii) Any special instructions necessary for use of the vessel's lifesaving appliances in severe weather and severe sea conditions; and

(iv) The operation and use of fire-extinguishing appliances.

(5) Onboard training in the use of davit-launched liferafts must take place at intervals of not more than 4 months on each vessel with davit-launched liferafts. Whenever practicable, this training must include the inflation and lowering of a liferaft. If this liferaft is a special liferaft intended for training purposes only and is not part of the vessel's lifesaving equipment, this liferaft must be conspicuously marked.

(h) *Records.* (1) When musters are held, details of abandon-ship drills, fire drills, drills of other lifesaving appliances, and onboard training must be recorded in the vessel's official logbook. Logbook entries must include—

(i) The date and time of the drill, muster, or training session;

(ii) The survival craft and fire-extinguishing equipment used in the drills;

(iii) Identification of inoperative or malfunctioning equipment and the corrective action taken;

(iv) Identification of crewmembers participating in drills or training sessions; and

(v) The subject of the onboard training session.

(2) If a full muster, drill, or training session is not held at the appointed time, an entry must be made in the logbook stating the circumstances and the extent of the muster, drill, or training session held.

§ 199.190 Operational readiness, maintenance, and inspection of lifesaving equipment.

(a) *Operational readiness.* Before the vessel leaves port and at all times during the voyage, each lifesaving appliance must be in working order and ready for immediate use.

(b) *Maintenance.* (1) The manufacturer's instructions for onboard maintenance of lifesaving appliances must be on board the vessel. The following must be provided for each appliance.

(i) Checklists for use when carrying out the inspections required under paragraph (e) of this section.

(ii) Maintenance and repair instructions.

(iii) A schedule of periodic maintenance.

(iv) A diagram of lubrication points with the recommended lubricants.

(v) A list of replaceable parts.

(vi) A list of sources of spare parts.

(vii) A log of records of inspections and maintenance.

(2) In lieu of compliance with paragraph (b)(1) of this section, the OCMI may accept a shipboard planned maintenance program that includes the items listed in that paragraph.

(c) *Spare parts and repair equipment.* Spare parts and repair equipment must be provided for each lifesaving appliance and component that is subject to excessive wear or consumption and that needs to be replaced regularly.

(d) *Weekly inspections and tests.* (1) Each survival craft, rescue boat, and launching appliance must be visually inspected to ensure its readiness for use.

(2) Each lifeboat engine and rescue boat engine must be run ahead and astern for not less than 3 minutes, unless the ambient temperature is below the minimum temperature required for starting the engine. During this time, demonstrations should indicate that the gear box and gear box train are engaging satisfactorily. If the special characteristics of an outboard motor fitted to a rescue boat do not allow the outboard motor to be run for a period of 3 minutes other than with its propeller submerged, the outboard motor should be run for such period as prescribed in the manufacturer's handbook.

(3) The general alarm system must be tested.

(e) *Monthly inspections.* (1) Each lifesaving appliance, including lifeboat equipment, must be inspected monthly using the checklists required under paragraph (b)(1)(i) of this section to make sure the appliance and the equipment are complete and in good working order. A report of the inspection, including a statement as to the condition of the equipment, must be recorded in the vessel's official logbook.

(2) Each EPIRB and each SART, other than an EPIRB or SART in an inflatable liferaft, must be tested monthly. The EPIRB must be tested using the integrated test circuit and output indicator to determine that it is operative.

(f) *Annual inspections.* Annual inspections must include the following:

(1) Each survival craft, except for inflatable craft, must be stripped, cleaned, and thoroughly inspected and repaired, as needed, at least once each year and each fuel tank must be emptied, cleaned, and refilled with fresh fuel.

(2) Each davit, winch, fall, and other launching appliance must be thoroughly inspected and repaired, as needed, once each year.

(3) Each item of survival equipment with an expiration date must be replaced during the annual inspection if the expiration date has passed.

(4) Each battery clearly marked with an expiration date and used in an item of survival equipment must be replaced during the annual inspection if the expiration date has passed.

(5) Except for a storage battery used in a lifeboat or rescue boat, each battery without an expiration date that is used in an item of survival equipment must be replaced during the annual inspection.

(g) *Servicing of inflatable lifesaving appliances, inflated rescue boats, and marine evacuation systems.*

(1) Each inflatable lifesaving appliance and marine evacuation system must be serviced—

(i) Within 12 months of its initial packing; and

(ii) Within 12 months of each subsequent servicing, except when servicing is delayed until the next scheduled inspection of the vessel, provided the delay does not exceed 5 months.

(2) Each inflatable lifejacket must be serviced in accordance with servicing procedures meeting the requirements of part 160, subpart 160.176 of this chapter. Each hybrid inflatable lifejacket must be serviced in accordance with the owners manual and meet the requirements of part 160, subpart 160.077 of this chapter.

(3) Each inflatable liferaft must be serviced—

(i) In accordance with servicing procedures meeting the requirements of part 160, subpart 160.051 of this chapter; and

(ii) Whenever the container of the raft is damaged, or the straps or seal broken.

(4) Each inflated rescue boat must be repaired and maintained in accordance with the manufacturer's instructions. All repairs must be made at a serving facility approved by the Commandant (G–MSE), except for emergency repairs carried out on board the vessel.

(h) *Periodic servicing of hydrostatic release units.* Each hydrostatic release unit, other than a disposable hydrostatic release unit, must be serviced in accordance with repair and testing procedures meeting the requirements of part 160, subpart 160.062 of this chapter—

(1) Within 12 months of its manufacture; and

(2) Within 12 months of each subsequent servicing, except when servicing is delayed until the next scheduled inspection of the vessel, provided the delay does not exceed 5 months.

(i) *Periodic serving of launching appliances and release gear.* (1) Launching appliances must be serviced at the intervals recommended in the manufacturer's instructions or as set out in the shipboard planned maintenance program.

(2) Launching appliances must be thoroughly examined at intervals not exceeding 5 years and, upon completion of the examination, the launching appliance must be subjected to a dynamic test of the winch brake.

(3) Lifeboat and rescue boat release gear must be serviced at the intervals recommended in the manufacturer's instructions, or as set out in the shipboard-planned-maintenance program.

(4) Lifeboat and rescue boat release gear must be subjected to a thorough examination by properly trained personnel familiar with the system at each inspection for certification.

(5) Lifeboat and rescue boat release gear must be operationally tested under a load of 1.1 times the total mass of the lifeboat when loaded with its full complement of persons and equipment whenever overhauled or at least once every 5 years.

(j) *Maintenance of falls.* (1) Each fall used in a launching appliance must—

(i) Be turned end-for-end at intervals of not more than 30 months; and

(ii) Be renewed when necessary due to deterioration or at intervals of not more than 5 years, whichever is earlier.

(2) As an alternative to paragraph (j)(1) of this section, each fall may—

(i) Be inspected annually; and

(ii) Be renewed whenever necessary due to deterioration or at intervals of not more than 4 years, whichever is earlier.

(k) *Rotational deployment of marine evacuation systems.* In addition, to or in conjunction with, the servicing intervals of marine evacuation systems required by paragraph (g)(1) of this section, each marine evacuation system must be deployed from the vessel on a rotational basis. Each marine evacuation system must be deployed at least once every 6 years.

Subpart C—Additional Requirements for Passenger Vessels

§ 199.200 General.

Passenger vessels and special purpose vessels described in § 199.10(f), must meet the requirements in this subpart in addition to the requirements in subparts A and B of this part.

§ 199.201 Survival craft.

(a) Each survival craft must be approved and equipped as follows:

(1) Each lifeboat must be approved under approval series 160.135 and equipped as specified in table 199.175 of this part.

(2) Each inflatable liferaft must be approved under approval series 160.151 and equipped with—

(i) A SOLAS A pack; or

(ii) For a passenger vessel on a short international voyage, a SOLAS B pack.

(3) Each rigid liferaft must be approved under approval series 160.118 and equipped as specified in table 199.175 of this part.

(4) Each marine evacuation system must be approved under approval series 160.175.

(5) Each liferaft must have a capacity of six persons or more.

(b) Each passenger vessel must carry the following:

(1) A combination of lifeboats and liferafts that have an aggregate capacity sufficient to accommodate the total number of persons on board, provided that—

(i) On each side of the vessel, lifeboats with an aggregate capacity sufficient to accommodate at least 37.5 percent of the total number of persons on board are carried; and

(ii) Any liferafts that are provided in combination with the lifeboats are served by launching appliances or marine evacuation systems equally distributed on each side of the vessel.

(2) In addition to the survival craft required in paragraph (b)(1) of this section, additional liferafts must be provided that have a aggregate capacity sufficient to accommodate at least 25 percent of the total number of persons on board. The additional liferafts—

(i) Must be served by at least one launching appliance or marine evacuation system on each side of the vessel. These launching appliances or marine evacuation systems must be those described under paragraph (b)(1)(ii) of this section or be equivalent approved appliances capable of being used on both sides of the vessel; and

(ii) Are not required to be stowed in accordance with § 199.130(c)(4).

(c) Each passenger vessel engaged on a short international voyage that also complies with the standards of subdivision requirements for vessels on short international voyages as described in subchapter S of this chapter may, as an alternative to the lifeboat requirements in paragraph (b)(1)(i) of this section, carry lifeboats with an aggregate capacity sufficient to accommodate at least 30 percent of the total number of persons on board. These lifeboats must be equally distributed, as far as practicable, on each side of the vessel.

(d) Each passenger vessel that is less than 500 tons gross tonnage and is certificated to permit less than 200 persons on board is not required to meet the requirements of paragraphs (b) or (c) of this section if it meets the following:

(1) On each side of the vessel—

(i) Liferafts are carried with an aggregate capacity sufficient to accommodate the total number of persons on board and are stowed in a position providing for easy side-to-side transfer at a single open deck level; or

(ii) Liferafts are carried with an aggregate capacity sufficient to accommodate 150 percent of the total number of persons on board. If the rescue boat required under § 199.202 is also a lifeboat, its capacity may be included to meet the aggregate capacity requirement.

(2) If the largest survival craft on either side of the vessel is lost or rendered unserviceable, there must be survival craft available for use on each side of the vessel, including those which are stowed in a position providing for side-to-side transfer at a single open deck level, with a capacity sufficient to accommodate the total number of persons on board.

§ 199.202 Rescue boats.

(a) Each passenger vessel of 500 tons gross tonnage and over must carry on each side of the vessel at least one rescue boat approved under approval series 160.156 that is equipped as specified in table 199.175 of this part.

(b) Each passenger vessel of less than 500 tons gross tonnage must carry at least one rescue boat approved under approval series 160.156 that is equipped as specified in table 199.175 of this part.

(c) A lifeboat is accepted as a rescue boat if, in addition to being approved under approval series 160.135, it is also approved under approval series 160.156.

§ 199.203 Marshalling of liferafts.

(a) Each passenger vessel must have a lifeboat or rescue boat for each six liferafts when—

(1) Each lifeboat and rescue boat is loaded with its full complement of persons; and

(2) The minimum number of liferafts necessary to accommodate the remainder of the persons on board have been launched.

(b) A passenger vessel engaged on a short international voyage that also complies with the standards of subdivision requirements for vessels on short international voyages as described in subchapter S of this chapter may have a lifeboat or rescue boat for each nine liferafts when—

(1) Each lifeboat and rescue boat is loaded with its full complement of persons; and

(2) The minimum number of liferafts necessary to accommodate the remainder of the persons on board have been launched.

§ 199.211 Lifebuoys.

(1) Each passenger vessel must carry the number of lifebuoys prescribed in table 199.211 of this section.

TABLE 199.211.—REQUIREMENTS FOR LIFEBUOYS FOR PASSENGER VESSELS

Length of vessel in meters (feet)	Minimum number of lifebuoys
Under 60 (196)	8
60(196) and under 120(393)	12
120(393) and under 180 (590)	18
180 (590) and under 240 (787)	24
240 (787) and over	30

(b) Notwithstanding § 199.70(a)(3)(ii), each passenger vessel under 60 meters (196 feet) in length must carry at least six lifebuoys with self-igniting lights.

§ 199.212 Lifejackets.

(a) In addition to the lifejackets required under § 199.70(b), each passenger vessel must carry lifejackets for at least 5 percent of the total number of persons on board. These lifejackets must be stowed in conspicuous places on deck or at muster stations.

(b) Where lifejackets for persons other than the crew are stowed in staterooms located remotely from direct routes between public spaces and muster stations, any additional lifejackets required by § 199.70(b)(2)(v) for these persons must be stowed in the public spaces, near muster stations, or on direct routes between them. These lifejackets must be stowed so that their distribution and donning does not impede orderly movement to muster stations and survival craft embarkation stations.

§ 199.214 Immersion suits and thermal protective aids.

(a) Each passenger vessel must carry at least three immersion suits approved under approval series 160.171 for each lifeboat on the vessel.

(b) In addition to the requirements in paragraph (a) of this section, each passenger vessel must carry a thermal protective aid approved under approval series 160.174 for each person not provided with an immersion suit.

(c) The immersion suits and thermal protective aids required under paragraphs (a) and (b) of this section are not required if the passenger vessel operates only on routes between 32 degrees north and 32 degrees south latitude.

§ 199.217 Muster list and emergency instructions.

(a) The format of each passenger vessel muster list required under § 199.80 must be approved by the OCMI.

(b) The passenger vessel muster list or emergency instructions must include procedures for locating and rescuing persons other than the crew who may be trapped in their staterooms.

(c) As an alternative to the requirements in § 199.80(c), the passenger vessel emergency instructions may meet the requirements of MSC Circular 699 (Guidelines for Passenger Safety Instructions).

§ 199.220 Survival craft and rescue boat embarkation arrangements.

(a) Survival craft embarkation arrangements must be designed for—

(1) Each lifeboat to be boarded and launched either directly from the stowed position or from an embarkation deck, but not both; and

(2) Davit-launched liferafts to be boarded and launched from a position immediately adjacent to the stowed positions or from a position where, as described under § 199.130(b)(4), the liferaft is transferred before launching.

(b) Each rescue boat must be able to be boarded and launched directly from the stowed position with the number of persons assigned to crew the rescue boat on board. Notwithstanding paragraph (a)(1) of this section, if the rescue boat is also a lifeboat and the other lifeboats are boarded and launched from an embarkation deck, the arrangements must be such that the rescue boat can also be boarded and launched from the embarkation deck.

§ 199.230 Stowage of survival craft.

(a) To meet the requirements of § 199.130(b)(1), each lifeboat on a passenger vessel of 80 meters (262 feet) in length and upwards must be stowed where the after-end of the lifeboat is at least 1.5 times the length of the lifeboat forward of the vessel's propeller.

(b) The stowage height of a survival craft must take into account the vessel's escape provisions, the vessel's size, and the weather conditions likely to be encountered in the vessel's intended area of operation.

(c) The height of the davit head of each davit when it is in position to launch the survival craft should, as far as practicable, not exceed 15 meters (49 feet) to the waterline when the vessel is in its lightest seagoing condition.

§ 199.240 Muster stations.

Each passenger vessel must, in addition to meeting the requirements of § 199.110, have muster stations that—

(a) Are near the embarkation stations, unless a muster station is also an embarkation station;

(b) Permit ready access to the embarkation station, unless a muster station is also an embarkation station; and

(c) Have sufficient room to marshal and instruct passengers and special personnel.

§ 199.245 Survival craft embarkation and launching arrangements.

(a) Each davit-launched liferaft must be arranged to be rapidly boarded by its full complement of persons.

(b) All survival craft required for abandonment by the total number of persons on board must be capable of being launched with the survival crafts' full complement of persons and equipment within a period of 30 minutes from the time the abandon-ship signal is given.

§ 199.250 Drills.

(a) An abandon-ship drill and a fire drill, as described in § 199.180, must be conducted on each passenger vessel at least weekly.

(b) The entire crew does not have to be involved in every drill, but each crewmember must participate in an abandon-ship drill and a fire drill each month.

(c) Passengers and special personnel must be strongly encouraged to attend abandon-ship and fire drills.

Subpart D—Additional Requirements for Cargo Vessels

§ 199.260 General.

Cargo vessels and special purpose vessels, as described in § 199.10(g), must meet the requirements in this subpart in addition to the requirements in subparts A and B of this part.

§ 199.261 Survival craft.

(a) Each survival craft must be approved and equipped as follows:

(1) Each lifeboat must be a totally enclosed lifeboat approved under approval series 160.135 and equipped as specified in table 199.175 of this part.

(2) Each inflatable liferaft must be approved under approval series 160.151 and be equipped with a SOLAS A pack.

(3) Each rigid liferaft must be approved under approval series 160.118 and be equipped as specified in table 199.175 of this part.

(4) Each liferaft must have a capacity of six persons or more.

(5) Each marine evacuation system must be approved under approval series 160.175.

(b) Each cargo vessel must carry—

(1) On each side of the vessel, lifeboats with an aggregate capacity sufficient to accommodate the total number of persons on board; and

(2) Liferafts—

(i) With an aggregate capacity sufficient to accommodate the total number of persons on board and that are stowed in a position providing for easy side-to-side transfer at a single open deck level; or

(ii) With an aggregate capacity on each side sufficient to accommodate the total number of persons on board.

(c) A cargo vessel is not required to meet the requirements of paragraph (b) of this section if it carries—

(1) Lifeboats capable of being free-fall launched over the stern of the vessel that have an aggregate capacity sufficient to accommodate the total number of persons on board; and

(2) On each side of the vessel, liferafts with an aggregate capacity sufficient to accommodate the total number of persons on board with the liferafts on at least one side of the vessel being served by launching appliances or marine evacuation systems.

(d) Cargo vessels less than 85 meters (278 feet) in length, with the exception of tank vessels, are not required to meet paragraphs (b) or (c) of this section if they meet the following:

(1) On each side of the vessel—

(i) Liferafts are carried with an aggregate capacity sufficient to accommodate the total number of persons on board and are stowed in a position providing for easy side-to-side transfer at a single open deck level; or

(ii) Liferafts are carried with an aggregate capacity sufficient to accommodate 150 percent of the total number of persons on board. If the rescue boat required under § 199.262 is also a lifeboat, its capacity may be included to meet the aggregate capacity requirement.

(2) In the event the largest survival craft on either side of the vessel is lost or rendered unserviceable, there must be survival craft available for use on each side of the vessel, including those which are stowed in a position providing for side-to-side transfer at a

single open deck level, with a capacity sufficient to accommodate the total number of persons on board.

(e) Each cargo vessel on which the horizontal distance from the extreme end of the stem or stern of the vessel to the nearest end of the closest survival craft is more than 100 meters (328 feet) must carry, in addition to the liferafts required by paragraphs (b)(2) and (c)(2) of this section, a liferaft stowed as far forward or aft, or one as far forward and another as far aft, as is reasonable and practicable. The requirement for the liferaft to float free under § 199.130(c)(7) does not apply to a liferaft under this paragraph, provided it is arranged for quick manual release.

(f) Each lifeboat on a tank vessel certificated to carry cargos that emit toxic vapors or gases must be approved as a lifeboat with a self-contained air support system or a fire-protected lifeboat.

(g) Each lifeboat must be approved as a fire-protected lifeboat if it is carried on a tank vessel certificated to carry cargos that have a flashpoint less than 60 °C as determined under ASTM D93–94.

§ 199.262 Rescue boats.

(a) Each cargo vessel must carry at least one rescue boat. Each rescue boat must be approved under approval series 160.156 and be equipped as specified in table 199.175 of this part.

(b) A lifeboat is accepted as a rescue boat if, in addition to being approved under approval series 160.135, it also is approved under approval series 160.156.

§ 199.271 Lifebuoys.

Each cargo vessel must carry the number of lifebuoys prescribed in table 199.271 of this section.

TABLE 199.271.—REQUIREMENTS FOR LIFEBUOYS ON CARGO VESSELS

Length of vessel in meters (feet)	Minimum number of lifebuoys
Under 100 (328)	8
100 (328) and under 150 (492)	10
150 (492) and under 200 (656)	12
200 (656) and over	14

§ 199.273 Immersion suits.

(a) Each cargo vessel must carry an immersion suit approved under approval series 160.171 of an appropriate size for each person on board.

(b) If watch stations, work stations, or work sites are remote from cabins, staterooms, or berthing areas and the immersion suits stowed in those locations, there must be, in addition to the immersion suites required under paragraph (a) of this section, enough immersion suits stowed at the watch stations, work stations, or work sites to equal the number of persons normally on watch in, or assigned to, those locations at any time.

(c) The immersion suits required under paragraphs (a) and (b) of this section are not required if the cargo vessel operates only on routes between 32 degrees north and 32 degrees south latitude.

(d) The immersion suits required under this section can be included to meet the requirements of § 199.70(c).

§ 199.280 Survival craft embarkation and launching arrangements.

(a) Each lifeboat must be arranged to be boarded and launched directly from the stowed position.

(b) Each davit-launched liferaft must be arranged to be boarded and launched from a position immediately adjacent to the stowed position or from a position where, under § 199.130(b)(4), the liferaft is transferred before launching.

(c) Cargo vessels of 20,000 tons gross tonnage or more must carry lifeboats that are capable of being launched, using painters if necessary, with the vessel making headway at speeds up to 5 knots in clam water.

(d) All survival craft required for abandonment by the total number of persons on board must be capable of being launched with their full complement of persons and equipment within 10 minutes from the time the abandon-ship signal is given.

(e) On a tank vessel carrying crude oil, product, chemicals, or liquefied gases, notwithstanding the requirements of § 199.150(b), each launching appliance, together with its lowering and recovery gear, must be arranged so that the fully equipped survival craft the launching appliance serves can be safely lowered on the lower side of the vessel at the angle of heel after damage calculated in accordance with—

(1) The International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocal of 1978 (MARPOL 73/78), in the case of an oil tanker;

(2) The International Code for the Construction and Equipment of Ships carrying Dangerous Chemicals in Bulk, in the case of a chemical tanker; or

(3) The International Code for the Construction and Equipment of Ships carrying Liquefied Gases in Bulk, in the case of a gas carrier.

§ 199.290 Stowage of survival craft.

(a) To meet the requirements of § 199.130(b)(1), each lifeboat—

(1) On a cargo vessel 80 meters (262 feet) or more in length but less than 120 meters (393 feet) in length, must be stowed with the after-end of the lifeboat at a distance not less than one length of the lifeboat forward of the vessel's propeller; and

(2) On a cargo vessel 120 meters (393 feet) or more in length, must be stowed with the after end of the lifeboat not less than 1.5 times the length of the lifeboat forward of the vessel's propeller.

(b) On a tank vessel certificated to carry cargos that have a flashpoint less the 60 °C as determined under ASTM D93–94, each lifeboat or launching appliance of aluminum construction must be protected by a water spray system meeting the requirements of part 34, subpart 34.25 of this chapter.

(c) Other than the stowage position for the liferaft required under § 199.261(e), no stowage position or muster and embarkation station for a survival craft on a tank vessel may be located on or above a cargo tank, slop tank, or other tank containing explosives or hazardous liquids.

(d) Each lifeboat and davit-launched liferaft must be arranged to be boarded by its full complement of persons within 3 minutes from the time the instruction to board is given.

Subpart E—Additional Requirements for Vessels Not Subject to SOLAS

§ 199.500 General.

This subpart sets out requirements in addition to the requirements in subparts A, B, C, and D of this part applicable to vessels not subject to SOLAS.

§ 199.510 EPIRB requirements.

(a) Each vessel must carry a category 1 406 MHz satellite EPIRB meeting the requirements of 47 CFR part 80.

(b) When the vessel is underway, the EPIRB must be stowed in its float-free bracket with the controls set for automatic activation and be mounted in a manner so that it will float free if the vessel sinks.

§ 199.520 Lifeboat requirements.

When the vessel's lifeboats are used to carry persons to and from the vessel in a harbor or at an anchorage, the survival craft remaining on the vessel must have an aggregate capacity sufficient to accommodate all persons remaining on board.

Subpart F--Exemptions and Alternatives for Vessels Not Subject to SOLAS

§ 199.600 General.

This subpart sets out specific exemptions and alternatives to requirements in subparts A, B, C, D, and E of this part for vessels not subject to SOLAS.

§ 199.610 Exemptions for vessels in specified services.

(a) *All vessels.* Vessels operating in coastwise; Great Lakes; lakes, bays, and sounds; and rivers service are exempt from requirements in subparts A through E of this part as specified in this paragraph and in table 199.610(a) of this section.

(1) *Non-self propelled vessels.* Non-self propelled vessels need not meet the EPIRB requirement in § 199.510 and the rescue boat requirements in §§ 199.202 or 199.262 if they are in tow, moored to or alongside a MODU or a self-propelled vessel, or moored to shore.

(2) *Vessels operating on short runs.* The distress signals requirement in § 199.60(c) need not be met if the vessel operates on a route with a duration of 30 minutes or less.

(3) *Vessels operating in shallow water.* The float-free link described in §§ 199.175(b)(21)(ii)(B) and 199.640(j)(4)(E) is not required if the vessel operates on a route on which the water depth is never more than the length of the painter.

(4) *Vessels operating in fresh water.* The survival craft fall renewal described in § 199.190(j) is not required if the vessel operates on a fresh water route and inspection shows that the falls are not damaged by corrosion.

TABLE 199.610(a).—EXEMPTIONS FOR ALL VESSELS IN SPECIFIED SERVICES

Section or paragraph in this part	Service			
	Coastwise	Great Lakes	Lakes, bays, and sounds	Rivers
199.60(c): Distress signals	Not Exempt	Not Exempt	Exempt	Exempt.
199.70(a)(3)(iii): Lifebuoys fitted with smoke signals	Exempt	Exempt	Exempt	Exempt.
199.70(b)(1)(i): Carriage of additional child-size lifejackets	(1)	(1)	(1)	(1).
199.70(b)(4)(i): Lifejacket lights	(2)	(2)	Exempt	Exempt.
199.70(b)(4)(ii): Lifejacket whistles	Exempt	Exempt	Exempt	Exempt.
199.70(c): Immersion suits for rescue boat crew members	Not Exempt	Not Exempt	Exempt	Exempt.
199.70(c)(4)(ii): Immersion suit whistles	Exempt	Exempt	Exempt	Exempt.
199.100(c)(1): Requirements for person-in-charge of survival craft	Not Exempt	Not Exempt	Not Exempt	Exempt.
199.100(d): Designation of second-in-command of survival craft	(3)	(3)	(3)	Exempt.
199.100(f): Embarkation ladders at launching stations	(4)	(4)	(4)	(4).
199.130(a)(4): Survival craft embarkation position	Not Exempt	Not Exempt	Exempt	Exempt.
199.170: Line-throwing appliance	Not Exempt	Exempt	Exempt	Exempt.
199.510: EPIRB requirement	(5)	(6)	Exempt	Exempt.

Notes:
(1) Exempt if the vessel does not carry persons smaller than the lower size limit of the lifejackets carried.
(2) Exempt if the vessel is a ferry or has no overnight accommodations.
(3) Exempt if the survival craft has a carrying capacity of less than 40 persons.
(4) Exempt if the distance is less than 3 meters (10 feet) from the embarkation deck to the water with the vessel in its lightest seagoing operating condition.
(5) Exempt if the vessel is a cargo vessel under 300 tons gross tonnage and operates on a route no more than 3 nautical miles from shore.
(6) Exempt if the vessel operates on a route no more than 3 nautical miles from shore.

(b) *Passenger vessels.* In addition to the exemptions in paragraph (a) of this section, passenger vessels operating in coastwise; Great Lakes; lakes, bays, and sounds; and rivers service are exempt from requirements in subparts A through E of this part as specified in table 199.610(b) of this section.

TABLE 199.610(b).—EXEMPTIONS FOR PASSENGER VESSELS IN SPECIFIED SERVICES

Section or paragraph in this part	Service			
	Coastwise	Great Lakes	Lakes, bays, and sounds	Rivers
199.203: Marshalling of liferafts	Not Exempt	Exempt	Exempt	Exempt.
199.211(b): Lights on lifebuoys	(1)	(1)	(1)	(1)
199.212(a): Carriage of additional five percent lifejackets	Exempt	Exempt	Exempt	Exempt.
199.214: Immersion suits and thermal protective aids in lifeboats	Not Exempt	Not Exempt	Exempt	Exempt.

Note:
[1] Exept if the length of vessel is under 60 meters (197 feet) and there are self-igniting lights attached to at least one-half the required lifebuoys.

(c) *Cargo vessels.* In addition to the exemptions in paragraph (a) of this section, cargo vessels operating in coastwise; Great Lakes; lakes, bays, and sounds; and rivers service are exempt from requirements in subparts A

through E of this part as specified in table 199.610(c) of this section.

TABLE 199.610(c).—EXEMPTIONS FOR CARGO VESSELS IN SPECIFIED SERVICES

Section or paragraph in this part	Service				
	Oceans	Coastwise	Great Lakes	Lakes, Bays, and Sounds	Rivers
199.70(a)(3)(ii): Lights on lifebuoys	Not exempt	(1)	(1)	(1)	(1)
199.80(b): Muster list	(2)	(2)	(2)	(2)	(2)
199.262(a): Rescue boats	(2,3)	(3)	(3)	(3)	(3)
199.273: Immersion suits	Not exempt	Not exempt	Not exempt	Exempt	Exempt

Notes:
[1] Exempt if the length of vessel is under 30 meters (99 feet).
[2] Exempt if the vessel is under 500 tons gross tonnage.
[3] Exempt if—(i) the OCMI determines the vessel is arranged to allow a helpless person to be recovered from the water.
(ii) recovery of the helpless person can be observed from the navigating bridge; and
(iii) the vessel does not regularly engage in operations that restrict its maneuverability.

§ 199.620 Alternatives for all vessels in a specified service.

(a) *General.* Vessels operating in oceans; coastwise; Great Lakes; lakes, bays, and sounds; and rivers service may comply with alternative requirements to subparts A through E of this part as described in this section for the services specified in table 199.620(a) of this section.

TABLE 199.620(a).—ALTERNATIVE REQUIREMENTS FOR ALL VESSELS IN A SPECIFIED SERVICE

Section or paragraph in this part	Service and reference to alternative requirement section or paragraph				
	Oceans	Coastwise	Great Lakes	Lakes, Bays and Sounds	Rivers
199.70(a): Lifebuoy approval series	199.620(b) [1]	199.620(b) [1]	199.620(b)	199.620(b)	199.620(b).
199.70(b): Lifejacket approval series.	199.620(c) [2]	199.620(c) [2]	199.620(c)	199.620(c)	199.620(c).
199.70(b)(1): Number of lifejackets carried.	No Alternative	199.620(d)	199.620(d)	199.620(d)	199.620(d).
199.70(b)(4)(i): Lifejacket light approval series.	No Alternative	199.620(e)	199.620(e)	Not Applicable	Not Applicable.
199.110(f): Embarkation ladder	199.620(f)	199.620(f)	199.620(f)	199.620(f)	199.620(f).
199.130(b): Survival craft stowage position.	No Alternative	No Alternative	199.625(g)	199.625(g)	199.625(g).
199.170: Line-throwing appliance approval series.	199.620(h) [2]	199.620(h) [3]	Not Applicable	Not Applicable	Not Applicable.
199.201(a)(2) or .261(a)(2): Inflatable liferaft equipment.	199.620(l) [4]	199.620(l)	199.620(l)	199.620(l)	199.620(l).
199.175: Lifeboat, rescue boat, and rigid liferaft equipment.	199.620(i) [4]	199.620(i)	199.620(j)	199.620(j)	199.620(j).
199.201(a)(2) and 199.261: Liferaft approval series.	No Alternative	199.620(k)	199.620(k)	199.620(k)	199.620(k).
199.510: EPIRB requirement	199.620(m)(1)	199.620(m)(1)	199.620(m)	Not Applicable	Not Applicable.
199.190(c): Spares and repair equipment.	199.620(n)	199.620(n)	199.620(n)	199.620(n)	199.620(n).

Notes:
[1] Alternative applies if lifebuoy is orange.
[2] Alternative applies only to cargo vessels that are less than 500 tons gross tonnage.
[3] Alternative applies to cargo vessels that are less than 500 tons gross tonnage and to all passenger vessels.
[4] Alternative applies to passenger vessels limited to operating no more than 50 nautical miles from shore.

(b) *Lifebuoy approval series.* As an alternative to a lifebuoy approved under approval series 160.150, vessels may carry a lifebuoy approved under approval series 160.050.

(c) *Lifejackets approval series.* As an alternative to a lifejacket meeting the approval requirements in § 199.70, vessels may carry a lifejacket approved under approval series 160.002, 160.005, 160.055, or 160.077.

(d) *Lifejacket quantity.* Vessels may carry lifejackets as follows:

(1) If lifejackets are stowed in cabins, staterooms, or berthing areas that are readily accessible to each watch or work station, the requirement in § 199.70(b)(2)(iv) to have lifejackets at each watch or work station need not be met.

(2) If the vessel carries lifejackets that are designated extended-size, then the number of child-size lifejackets carried to meet § 199.70(b)(1)(i) may be reduced. To take the reduction in child-size lifejackets, extended-size lifejackets having the same lower size limit must be substituted for all of the required adult lifejackets. The number of child-size lifejackets required depends on the lower size limit of the extended-size lifejackets and is calculated by any one of the following formulas where PC is the number of child-size lifejackets expressed as a percentage of the number of lifejackets required under § 199.70(b)(1):

(i) PC=LS+4.1, where LS equals the lower size limit expressed in kilograms.

(ii) PC=LS+9, where LS equals the lower size limit expressed in pounds.

(iii) PC=(LS−81)+7.6, where LS equals the lower size limit expressed in centimeters.

(iv) PC=(LS−32)+3, where LS equals the lower size limit expressed in inches.

(e) *Lifejacket light approval series.* As an alternative to lights approved under approval series 161.112, vessels may use lights for lifejackets and immersions suits approved under series 161.012. Chemiluminescent-type lifejacket lights approved under approval series 161.012 are not permitted on vessels certificated to operate on waters where water temperature may drop below 10 °C (50 °F).

(f) *Embarkation ladder.* An embarkation ladder may be a chain ladder approved under approval series 160.017.

(g) *Survival craft stowage positions.* Vessels having widely separated accommodation and service spaces may have, as an alternative to the requirements of § 199.130(b), all required lifeboats and 50 percent of the required liferafts stowed as close as possible to the accommodation and service space that normally holds the greatest number of persons, with the remainder of the liferafts stowed as close as possible to each other accommodation and service space.

(h) *Line-throwing appliance approval series.* As an alternative to a line-throwing appliance that meets the requirements in § 199.170, vessels may carry a line-throwing appliance approved under approval series 160.031, which may have an auxiliary line that is at least 150 meters (500 feet).

(i) *Lifeboat, rescue boat, and rigid liferaft equipment; oceans and coastwise.* Lifeboats, rescue boats, and rigid liferafts may carry the equipment specified in table 199.175 of this part for vessels on a short international voyage.

(j) *Lifeboat, rescue boat, and rigid liferaft equipment; other services.* As an alternative to meeting the survival craft equipment requirements of § 199.175, a vessel may carry the equipment specified in table 199.620(j) of this section under the vessel's category of service. Each item in the table has the same description as in § 199.175.

TABLE 199.620(j).—SURVIVAL CRAFT EQUIPMENT

Item No.	Item	Great Lakes			Lakes, bays and sounds			Rivers		
		Lifeboat	Rigid liferaft	Rescue boat	Lifeboat	Rigid liferaft	Rescue boat	Lifeboat	Rigid liferaft	Rescue boat
1	Bailer [1]	1	1	1	1	1	1			
2	Bilge pump [2]	1								
3	Boathook	1		1	1		1	1		1
4	Bucket [3]	1		1	1			1		
9	Fire extinguisher	1		1	1		1	1		1
12	Flashlight	1	1	1						
13	Hatchet	2			1			1		
15	Instruction card		1			1			1	
18	Ladder	1		1						
20	Oars, units [4 5]	1		1	1		1	1		1
	Paddles		2			2			2	
21	Painter	2	1	1	1	1	1	1	1	1
23	Pump [6]			1				1		1
26	Repair kit [6]			1				1		
27	Sea anchor	1	2	1						
28	Searchlight	1		1						
31	Signal, hand flare	6	6		6	6				
32	Signal, parachute flare	4	4							
33	Skates and fenders [7]	1		1	1		1	1		1
34	Sponge [6]		2	2		2	2			
35	Survival instructions	1	1		1	1				
38	Tool kit	1			1			1		
39	Towline [6]	1		1	1		1	1		1

Notes:
[1] Each liferaft approved for 13 persons or more must carry two of these items.
[2] Not required for boats of self-bailing design.
[3] Not required for inflated or rigid-inflated rescue boats.
[4] Oars not required on a free-fall lifeboat; a unit of oars means the number of oars specified by the boat manufacturer.
[5] Rescue boats may substitute buoyant paddles for oars, as specified by the manufacturer.
[6] Not required for a rigid rescue boat.
[7] Required if specified by the manufacturer.
[8] Required only if the lifeboat is also the rescue boat.

(k) *Liferaft approval series.* As an alternative to liferafts that meet the requirements in §§ 199.201(a) and 199.261(a), vessels may—

(1) Carry inflatable liferafts approved under approval series 160.051; and

(2) Have liferafts with a capacity less than six persons.

(l) *Inflatable liferaft equipment.* As an alternative to the SOLAS A Pack, vessels may have a SOLAS B Pack for each inflatable liferaft.

(m) *EPIRB requirements.* As an alternative to EPIRBs that meet the requirements in § 199.510, vessels may have the following:

(1) Until February 1, 1999, a Coast Guard-approved Class A EPIRB manufactured after October 1, 1988, and installed on the vessel on or before October 1, 1996.

(2) Until February 1, 1999, two Class C EPIRBs installed on the vessel on or before October 1, 1996. Class C EPIRBs must be installed—

(i) In a weathertight enclosure;

(ii) In a readily accessible location;

(iii) One on each side of the vessel;

(iv) If the vessel has two or more widely separated deckhouses, at separate deckhouses; and

(v) At or near a principal embarkation station.

(n) *Spare parts and repair equipment.* As an alternative to carrying spare parts and repair equipment as required in § 199.190(c), a vessel need not carry spare parts and repair equipment if it operates daily out of a shore base where spare parts and repair equipment are available.

§ 199.630 Alternatives for passenger vessels in a specified service.

(a) In addition to the alternatives for certain requirements in § 199.620, passenger vessels operating in oceans; coastwise; Great Lakes; lakes, bays, and sounds; and rivers service may comply with alternative requirements to subparts A through C of this part as described in this section for the services specified in table 199.630(a) of this section.

TABLE 199.630(a).—ALTERNATIVE REQUIREMENTS FOR PASSENGER VESSELS IN A SPECIFIED SERVICE

Section or paragraph in this part	Service and reference to alternative requirement section or paragraph				
	Oceans	Coastwise	Great Lakes	Lakes, bays, and sounds	Rivers
199.60(c): Distress signals	No Alternative	No Alternative	199.630(b)	Not Applicable	Not Applicable.
199.201(b): Number and type of survival craft carried.	199.630(c) [1]	199.630(c) or 199.630(d) [2].	199.630(c) or 199.630(d) [2] or 199.630(e) or 199.630(f) [2] or 199.630(g) [2 3] or 199.630(h) [4].	199.630(c) or 199.630(d) or 199.630(e) or 199.630(f) [2] or 199.630(g) [2 3] or 199.630(h) [4].	199.630(c) or 199.630(d) or 199.630(e) or 199.630(f) or 199.630(g) or 199.630(h). [4]
199.202: Rescue boat approval series.	No Alternative	No Alternative	No Alternative	199.630(i) [5]	199.630(i).
19.203: Marshalling of liferafts	No Alternative	199.630(j)	Not Applicable	Not Applicable	Not Applicable.
1992.211(a): Quantity of lifebuoys.	No Alternative	199.630(k)	199.630(k)	199.630(k)	199.630(k).

Notes:
(1) Alternative applies if the vessel operates on a route no more than 50 nautical miles from shore.
(2) Alternative applies if the vessel is a ferry or has no overnight accommodations.
(3) Alternative applies during periods of the year the vessel operates in warm water.
(4) Alternative applies if the vessel operates in shallow water not more than 3 miles from shore where the vessel cannot sink deep enough to submerge the topmost deck.
(5) Alternative applies if the vessel operates on sheltered lakes or harbors.

(b) As an alternative to distress signals that meet the requirements of § 199.60, vessels may carry at least 12 hand red flare distress signals approved under approval series 160.021 or 160.121.

(c) As an alternative to the lifeboat capacity requirements of § 199.201(b)(1)(i), vessels may carry lifeboats with an aggregate capacity sufficient to accommodate not less than 30 percent of the total number of persons on board. These lifeboats must be equally distributed, as far as practicable, on each side of the vessel.

(d) As an alternative to the survival craft requirements of § 199.201(b), vessels may carry inflatable buoyant apparatus having an aggregate capacity, together with the capacities of any lifeboats, rescue boats, and liferafts carried on board sufficient to, accommodate the total number of persons on board. These inflatable buoyant apparatus must—

(1) Be served by launching appliances or marine evacuation systems evenly distributed on each side of the vessel if the embarkation deck is more than 3 meters (10 feet) above—

(i) The waterline under normal operating conditions; or

(ii) The equilibrium waterline after the vessel is subjected to the assumed damage and subdivision requirements in part 171 of this chapter;

(2) Be stowed in accordance with the requirements of §§ 199.130 (a) and (c); and

(3) Be equipped in accordance with the requirements in table 199.640(j) of this part.

(e) As an alternative to the survival craft requirements of § 199.201(b), vessels may carry—

(1) Liferafts having an aggregate capacity, together with the capacities of any lifeboats carried on board, sufficient to accommodate the total number of persons on board that are served by launching appliances or marine evacuation systems evenly distributed on each side of the vessel; and

(2) In addition to the liferafts required in paragraph (e)(1) of this section, additional liferafts that have an aggregate capacity sufficient to accommodate at least 10 percent of the total number of persons, or equal to the capacity of the largest single survival craft on the vessel, whichever is the greater. The additional liferafts are not required to be stowed in accordance with § 199.130(c), but they must be served by at least one launching appliance or marine evacuation system on each side of the vessel.

(f) As an alternative to the survival craft requirements of § 199.201(b), vessels must have a safety assessment approved by the local OCMI that addresses the following:

(1) The navigation and vessel safety conditions within the vessel's planned operating area including—

(i) The scope and degree of the risks or hazards to which the vessel will be subject during normal operations;

(ii) The existing vessel traffic characteristics and trends, including traffic volume; the sizes and types of vessels involved; potential interference with the flow of commercial traffic; the presence of any unusual cargoes; and other similar factors;

(iii) The port and waterway configuration and variations in local conditions of geography, climate, and other similar factors; and

(iv) Environmental factors.

(2) A comprehensive shipboard safety management and contingency plan that is tailored to the particular vessel, is easy to use, is understood by vessel management personnel both on board and ashore, is updated regularly, and includes—

(i) Guidance to assist the vessel's crew in meeting the demand of catastrophic vessel damage;

(ii) Procedures to mobilize emergency response teams;

(iii) Procedures for moving passengers from the vessel's spaces to areas protected from fire and smoke, to embarkation areas, and off the vessel. The procedures must address provisions for passengers with physical or mental impairments;

(iv) Lifts of external organizations that the vessel's operator would call for assistance in the event of an incident;

(v) Procedures for establishing and maintaining communications on board the vessel and with shoreside contacts; and

(vi) Guidance on theoretical, practical, and actual simulation training that includes the personnel or organizations identified in the plan so they can practice their roles in the event of an incident.

(g) As an alternative to the survival craft requirements of § 199.201(b), vessels may carry inflatable buoyant apparatus having an aggregate capacity, together with the capacities of any lifeboats, rescue boats and liferafts carried on board, sufficient to accommodate 67 percent of the total number of persons on board. These inflatable buoyant apparatus must meet the arrangement requirements of §§ 199.630 (d)(1) through (d)(3).

(h) A vessel need not comply with the requirements for survival craft in § 199.201(b) if the vessel operates—

(1) On a route that is in shallow water not more than 3 miles from shore and the vessel cannot sink deep enough to submerge the topmost deck; or

(2) Where the cognizant OCMI determines that survivors can wade ashore.

(i) As an alternative to the rescue boat required in § 199.202, vessels may carry a rescue boat meeting the requirements of part 160, subpart 160.056 of this chapter if it is equipped with a motor and meets the following:

(1) The towline for the rescue boat must be at least the same size and length as the rescue boat painter.

(2) The rescue boat must meet the embarkation, launching, and recovery arrangement requirements in §§ 199.160 (b) through (f). The OCMI may allow deviations from the rescue boat launching requirements based on the characteristics of the boat and the conditions of the vessel's route.

(j) As an alternative to the requirements of § 199.203(a), a vessel that meets the subdivision requirements in § 171.068 of this chapter may meet the requirements of § 199.203(b).

(k) Vessels carrying lifebuoys may carry—

(1) The number of lifebuoys specified in table 199.630(k) of this section instead of the number required in § 199.199.211; and

(2) If the vessel carries less than four lifebuoys, at least two with a self-igniting light attached to the lifebuoy. A buoyant lifeline may be fitted to one of the lifebuoys with a self-igniting light.

TABLE 199.630(k).—REQUIREMENTS FOR LIFEBUOYS

Length of vessel in meters (feet)	Minimum number of lifebuoys
Under 30 (98)	3
30 (98) and under 60 (196)	4
60 (196) and under 90 (297)	5
90 (297) and under 120 (393)	12
120 (393) and under 180 (590)	18
180 (590) and under 240 (787)	24
240 (787) and over	30

§ 199.640 Alternatives for cargo vessels in a specified service.

(a) In addition to the alternatives for certain requirements in § 199.620, cargo vessels operating in oceans; coastwise; Great Lakes; lakes, bays, and sounds; and rivers service may comply with alternative requirements to subparts A, B, and D of this part as described in this section for the services specified in table 199.640(a) of this section.

TABLE 199.640(a)—ALTERNATIVE REQUIREMENTS FOR CARGO VESSELS IN A SPECIFIED SERVICE

Section or paragraph in this part	Service or reference to alternative requirement section				
	Oceans	Coastwise	Great Lakes	Lakes, bays, and sounds	Rivers
199.60(c): Distress signals	199.640(b) [1]	199.640(b) [1]	199.640(b) [1] or 199.630(b).	Not Applicable	Not Applicable.
199.261: Number and type of survival craft carried.	199.640(c) [6]	199.640(c) [6]	199.640(c) [2] or 199.640(d) or 199.640(e) [3] or 199.640(f) [4].	199.640(c) [2] or 199.640(d) or 199.640(e) [3] or 199.640(f) [4].	199.640(c) or 199.640(d) or 199.640(e) [3] or 199.640(f). [4]
199.262: Rescue boat substitution.	No Alternative	199.640(g)	199.640(g)	199.640(g) or 199.640(h) [5].	199.640(g) or 199.640(h).
199.271: Lifebuoy quantity	No Alternative	199.640(i)	199.640(i)	199.640(i)	199.640(i).

Notes:
[1] Alternative applies to vessels less than 150 tons gross tonnage that do not carry passengers or persons in addition to the crew.
[2] Alternative applies to cargo vessels less than 85 meters in length, tank vessels less than 500 tons gross tonnage, and nonself-propelled vessels.
[3] Alternative applies during periods of the year that the vessel operates in warm water.
[4] Alternative applies if the vessel operates in shallow water not more than 3 miles from shore where the vessel cannot sink deep enough to submerge the topmost deck.
[5] Alternative applies if the vessel operates on sheltered lakes or harbors.
[6] Alternative applies to vessels less than 500 tons gross tonnage.

(b) Vessels of less than 150 tons gross tonnage that do not carry persons other than the crew, may carry, as an alternative to distress signals that meet the requirements of § 199.60, six hand red flare distress signals approved under approval series 160.021 and six hand orange smoke distress signals approved under approval series 160.037.

(c) As an alternative to the survival craft requirements of §§ 199.261(b), (c), or (d), vessels may carry one or more liferafts with an aggregate capacity sufficient to accommodate the total number of persons on board. The liferafts must be—

(1) Readily transferable for launching on either side of the vessel; or

(2) Supplemented with additional liferafts to bring the total capacity of the liferafts available on each side of the vessel to at least 100 percent of the total

number of persons on board. If additional liferafts are provided and the rescue boat required under § 199.262 is also a lifeboat, its capacity may be included in meeting the aggregate capacity requirement.

(d) As an alternative to the survival craft requirements in §§ 199.261 (b), (c), or (d), vessels may carry one or more totally enclosed lifeboats with an aggregate capacity sufficient to accommodate the total number of persons on board and one or more liferafts with an aggregate capacity sufficient to accommodate the total number of persons on board. This combination of survival craft must meet the following:

(1) The aggregate capacity of the lifeboats and liferafts on each side of the vessel must be sufficient to accommodate the total number of persons on board.

(2) If the survival craft are stowed more than 100 meters (328 feet from either the stem or the stern of the vessel, an additional liferaft must be carried and stowed as far forward or aft as is reasonable and practicable. The requirement for the liferaft to float free under § 199.290(b) does not apply to a liferaft under this paragraph, provided the liferaft is arranged for quick manual release.

(e) As an alternative to the survival craft requirements in §§ 199.261 (b), (c), or (d), during periods of the year the vessel operates in warm water, a vessel may carry lifefloats with an aggregate capacity sufficient to accommodate the total number of people on board. The lifefloat launching arrangement, stowage, and equipment must meet the requirements in § 199.640(j).

(f) A vessel need not comply with the requirements for survival craft in §§ 199.261 (b), (c), or (d) if the vessel operates—

(1) On a route that is in shallow water not more than 3 miles from shore and where the vessel cannot sink deep enough to submerge the topmost deck; or

(2) Where the cognizant OCMI determines that survivors can wade ashore.

(g) As an alternative to the rescue boat requirement in § 199.262(a), vessels may carry a motor-propelled workboat or a launch that meets all the embarkation, launching, and recovery arrangement requirements in §§ 199.160 (b) through (f). The OCMI may allow deviations from the rescue boat launching requirements based on the characteristics of the boat and the conditions of the vessel's route.

(h) An an alternative to the rescue boat requirement in § 199.262, vessels may carry a rescue boat meeting the requirements of part 160, subpart 160.056 of this chapter if the rescue boat is equipped with a motor and meets the following:

(1) The towline for the rescue boat must be at least the same size and length as the rescue boat painter.

(2) The rescue boat must meet the embarkation, launching, and recovery arrangement requirements in §§ 199.160 (b) through (f). The OCMI may allow deviations from the rescue boat launching requirements based on the characteristics of the boat and the conditions of the vessel's route.

(i) As an alternative to the number of lifebuoys required in § 199.271, vessels may carry—

(1) If the vessel is self-propelled, the number of lifebuoys specified in table 199.640(i) of this section; or

(2) If the vessel is non self-propelled, one lifebuoy on each end of the vessel.

TABLE 199.640(i)—REQUIREMENTS FOR LIFEBUOYS

Length of vessel in meters (feet)	Minimum No. of Lifebuoys
Under 30 (98)	3
30 (98) and under 60 (196)	4
60 (196) and under 100 (328)	6
100 (328) and under 150 (492)	10
150 (492) and under 200 (656)	12
200 (256) and over	14

(j) *Vessels carrying buoyant apparatus, inflatable buoyant apparatus, or lifefloats.* Vessels carrying buoyant apparatus, inflatable buoyant apparatus, or lifefloats must meet the following:

(1) *General.* Each buoyant apparatus and inflatable buoyant apparatus must be approved under approval series 160.010. Each lifefloat must be approved under approval series 160.027.

(2) *Stowage.* Each buoyant apparatus, inflatable buoyant apparatus, or lifefloat must, in addition to meeting the general stowage requirements of § 199.130(a), be stowed as follows:

(i) Each inflatable buoyant apparatus must meet the liferaft stowage requirements in § 199.130(c).

(ii) Each buoyant apparatus and lifefloat must—

(A) Meet the liferaft stowage requirements in §§ 199.130(c) (1), (2), (3), (6), and (7); or

(B) Meet the liferaft stowage requirements in §§ 199.130(c) (1), (2), (3), and (6), and have lashings that can be easily released.

(iii) A painter must be secured to the buoyant apparatus or lifefloat by—

(A) The attachment fitting provided by the manufacturer; or

(B) A wire or line that encircles the body of the buoyant apparatus or lifefloat, that will not slip off, and that meets the requirements of paragraph (4)(iii) of this section.

(iv) If buoyant apparatus or lifefloats are arranged in groups with each group secured by a single painter—

(A) The combined mass of each group must not exceed 185 kilograms (407.8 pounds);

(B) Each buoyant apparatus or lifefloat must be individually attached to the group's single painter by its own painter, which must be long enough to allow the buoyant apparatus or lifefloat to float without contacting any other buoyant apparatus or lifefloat in the group;

(C) The strength of the float-free link and the strength of the group's single painter must be appropriate for the combined capacity of the group of buoyant apparatus or lifefloats;

(D) The group of buoyant apparatus or lifefloats must not be stowed in more than four tiers and, when stowed in tiers, the separate units must be kept apart by spacers; and

(E) The group of buoyant apparatus or lifefloats must be stowed to prevent shifting with easily detached lashings.

(3) *Marking.* Each buoyant apparatus or lifefloat must be marked plainly in block capital letters and numbers with the name of the vessel and the number of persons approved to use the device as shown on its nameplate.

(4) *Equipment.* Unless otherwise stated in this paragraph, each buoyant apparatus and lifefloat must carry the equipment listed in this paragraph and specified for it in table 199.640(j) of this section under the vessel's category of service.

(i) *Boathook.*

(ii) *Paddle.* Each paddle must be at least 1.2 meters (4 feet) long and buoyant.

(iii) *Painter.* The painter must—

(A) Be at least 30 meters (100 feet) long, but not less than three times the distance from the deck where the buoyant apparatus, inflatable buoyant apparatus, or lifefloats are stowed to the vessel's waterline with the vessel in its lightest seagoing condition;

(B) Have a breaking strength of at least 6.7 kiloNewtons (1,500 pounds-force), or if the capacity of the buoyant apparatus or lifefloat is 50 persons or more, have a breaking strength of at least 13.4 kiloNewtons (3,000 pounds-force);

(C) If made of a synthetic material, be of a dark color or be certified by the manufacturer to be resistant to deterioration from ultraviolet light;

(D) Be stowed in such a way that it runs out freely when the buoyant apparatus or lifefloat floats away from the sinking vessel; and

(E) Have a float-free link meeting the requirements of part 160, subpart 160.073 of this chapter secured to the end of the painter that is attached to the vessel, that is of the proper strength for the size and number of the buoyant apparatus or lifefloats attached to the float-free link.

(iv) *Self-igniting light.* The self-igniting light must be approved under approval series 161.010 and must be attached to the buoyant apparatus or lifefloat by a 12-thread manila or equivalent lanyard that is at least 5.5 meters (18 feet) long.

TABLE 199.640(j).—BUOYANT APPARATUS AND LIFEFLOAT EQUIPMENT

Item No.	Item	Oceans, coastwise, and Great Lakes	Lakes, bays, sounds, and rivers
i	Boathook[1]	1	1
ii	Paddles[1]	2	2
iii	Painter	1	1
iv	Self-igniting light[2]	1	

Notes:
[1] Not required to be carried on buoyant apparatus.
[2] Not required to be carried on buoyant apparatus or life floats with a capacity of 24 persons or less.

[FR Doc. 96–11777 Filed 5–17–96; 8:45 am]
BILLING CODE 4910–14–M

OL
1
SS
8
IY
0
996
MI

federal register

Monday
May 20, 1996

Part III

Department of Health and Human Services

Office of Community Services

Community Food and Nutrition Programs; Fiscal Year 1996, Request for Applications; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

[Program Announcement No. OCS 96–07]

Request for Applications Under the Office of Community Services' Fiscal Year 1996 Community Food and Nutrition Program

AGENCY: Office of Community Services, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for applications under the Office of Community Services' Community Food and Nutrition Program.

SUMMARY: The Office of Community Services (OCS) announces that competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under Section 681A of the Community Services Block Grant Act of 1981 as amended. This Program Announcement contains forms and instructions for submitting an application. The awarding of grants under this Program Announcement is subject to the availability of funds for support of these activities.

CLOSING DATE AND TIME: The closing date and time for receipt of applications is July 19, 1996 at 4:30 p.m., eastern time zone. Applications received after 4:30 p.m. on that day will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline date and time at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, S.W., Mail Stop 6C–462, Washington, D.C. 20447, Attention: Application for Community Food and Nutrition Program. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline date and time.

Applications handcarried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, S.W., Washington, D.C. 20024, between Monday and Friday (excluding Federal holidays).

(Applicants are cautioned that express/overnight mail services do not always deliver as agreed)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

FOR FURTHER INFORMATION CONTACT: Joseph Carroll, Acting Director, OCS, Division of Community Discretionary Programs, Attention: CFN Programs, 370 L'Enfant Promenade S.W., Washington, D.C. 20447, (202) 401–9345.

Table of Contents

Part A—Preamble
1. Legislative Authority
2. Definitions of Terms
3. Purpose of Community Food and Nutrition Program
4. Project Requirements
Part B—Application Requirements
1. Eligible applicants
2. Availability of Funds and Grant Amounts
3. Project Periods and Budget Periods
4. Administrative Costs/Indirect Costs
5. Program Beneficiaries
6. Number of Projects in Application
7. Multiple Submittal
8. Sub-Contracting or Delegating Projects
Part C—Program Area
General Projects
Part D—Review Criteria
Criteria for Review and Evaluation of Application Submitted Under this Program Announcement
Part E—Instructions for Completing Application Package
1. SF–424—*Application for Federal Assistance*
2. SF–424A—*Budget Information—Non-Construction*
3. SF–424B—*Assurances—Non-Construction*
4. Project Narrative
Part F—Application Procedures
1. Availability of Forms
2. Application Submission
3. Intergovernmental Review
4. Application Consideration
5. Criteria for Screening Applications
a. Initial Screening
b. Pre-Rating Review
c. Evaluation Criteria
Part G—Contents of Application Package and Receipt Process
Part H—Post Award Information and Reporting Requirements

Part A—Preamble

1. Legislative Authority

The Community Services Block Grant Act, as amended, authorizes the Secretary of Health and Human Services to make funds available under several programs to support program activities which will result in direct benefits targeted to low-income people. This Program Announcement covers the grant authority found at Section 681A, Community Food and Nutrition, which authorizes the Secretary to make funds available for grants to be awarded on a competitive basis to eligible entities for local and statewide programs (1) to coordinate existing private and public food assistance resources, whenever such coordination is determined to be inadequate, to better serve low-income communities; (2) to assist low-income communities to identify potential sponsors of child nutrition programs and to initiate new programs in underserved or unserved areas; and (3) to develop innovative approaches at the State and local levels to meet the nutrition needs of low-income people.

2. Definitions of Terms

For purposes of this Program Announcement the following definitions apply:

—*Displaced worker:* An individual who is in the labor market but has been unemployed for six months or longer.
—*Indian tribe:* A tribe, band, or other organized group of Native American Indians recognized in the State or States in which it resides or considered by the Secretary of the Interior to be an Indian tribe or an Indian organization for any purpose.
—*Innovative project:* One that departs from or significantly modifies past program practices and tests a new approach.
—*Migrant Farmworker:* An individual who works in agricultural employment of a seasonal or other temporary nature who is required to be absent from his/her place of permanent residence in order to secure such employment.
—*Seasonal farmworker:* Any individual employed in agricultural work of a seasonal or other temporary nature who is able to remain at his/her place of permanent residence while employed.

—*Underserved area (as it pertains to child nutrition programs):* A locality in which less than one-half of the low-income children eligible for assistance participate in any child nutrition program.
—*Budget Period:* The term "budget period" refers to the interval of time into which a grant period of assistance (project period) is divided for budgetary and funding purposes.
—*Eligible Entity:* States and other public and private non-profit agencies/organizations including Community Action Agencies. (See Part B.1.)
—*Project Period:* The term "project period" refers to the total time for which a project is approved for support, including any approved extensions.
—*Self-Sufficiency:* A condition where an individual or family does not need and is not eligible for public assistance.

3. Purpose of Community Food and Nutrition Program

The Department of Health and Human Services (DHHS) is committed to improving the overall health and nutritional well-being of individuals through improved preventive health care and promotion of personal responsibility. The DHHS encourages the approach to health promotion and nutritional responsibility with personal messages aimed at families and communities, in various settings and environments in which individuals and groups can most effectively be reached.

The DHHS is specifically interested in improving the health and nutrition status of low-income persons through improved access to healthy nutritious foods or by other means. DHHS encourages community efforts to improve the coordination and integration of health and social services for all low-income families, and to identify opportunities for collaborating with other programs and services for this population. Such collaboration can increase a community's capacity to leverage resources and promote an integrated approach to health and nutrition through existing programs and services.

4. Project Requirements

Projects funded under this program should:

(a) Be designed and intended to provide nutrition benefits, including those which incorporate the benefits of disease prevention, to a targeted low-income group of people;

(b) Provide outreach and public education to inform eligible low-income individuals and families of other nutritional services available to them under the various Federally assisted programs;

(c) Carry out targeted communications/social marketing to improve dietary behavior and increase program participation among eligible low-income populations. Populations to be targeted can include displaced workers, elderly people, children, and the working poor.

(d) Consult with and/or inform local offices that administer other food programs such as W.I.C. and Food Stamps, where applicable, to ensure effective coordination which can jointly target services to increase their effectiveness. Such consultation may include involving these offices in the planning of grant applications.

(e) Focus on one or more legislatively mandated program activities: (1) Coordination of existing private and public food assistance resources, whenever such coordination is determined to be inadequate, to better serve low-income populations; (2) assistance to low-income communities in identifying potential sponsors of child nutrition programs and initiating new programs in unserved or underserved areas; and (3) development of innovative approaches at the state or local levels to meet the nutrition needs of low-income people.

OCS views this program as a capacity building program, rather than as a service delivery program.

Part B—Application Requirements

1. Eligible Applicants

Eligible applicants are States and public and private non-profit agencies/organizations with a demonstrated ability to successfully develop and implement programs and activities similar to those enumerated above. OCS encourages Historically Black Colleges and Universities and minority institutions to submit applications. Eligible applicants with programs benefitting Native Americans and Migrant Farmworkers are also encouraged to submit applications.

Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Services's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS tax code or by providing a copy of the currently valid IRS tax exemption certificate or by providing a copy of the applicant's Articles of Incorporation bearing the seal of the State in which the corporation or association is domiciled.

2. Availability of Funds and Grant Amounts

a. Fiscal Year 1996 Funding

The funds expected to be available for grant awards under the CFN Program in fiscal year 1996 are $1,600,000 for General Projects.

b. Grant Amounts

No individual grant application will be considered for an amount which is in excess of $50,000.

c. Mobilization of Resources

OCS would like to mobilize as many resources as possible to enhance projects funded under this program. OCS supports and encourages applications submitted by applicants whose programs will leverage other resources, either cash or third-party in-kind.

3. Project Periods and Budget Periods

For most projects OCS will grant funds for one year. However, in rare instances, depending on the characteristics of any individual project and on the justification presented by the applicant in its application, a grant may be made for a period of up to 17 months.

4. Administrative Costs/Indirect Costs

There is no administrative cost limitation for projects funded under this program. Indirect costs consistent with approved Indirect Cost Rate Agreements are allowable. Applicants should enclose a copy of the current approved rate agreement. However, it should be understood that indirect costs are part of, and not in addition to, the amount of funds awarded in the subject grant.

5. Program Beneficiaries

Projects proposed for funding under this Announcement must result in direct benefits targeted toward low-income people as defined in the most recent Annual Update of Poverty Income Guidelines published by DHHS. Attachment A to this Announcement is an excerpt from the most recently published guidelines. Annual revisions of these guidelines are normally published in the **Federal Register** in February or early March of each year and are applicable to projects being implemented at the time of publication. Grantees will be required to apply the most recent guidelines throughout the project period. The **Federal Register** may be obtained from public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office,

Washington, D.C. 20402. No other government agency or privately defined poverty guidelines are applicable to the determination of low-income eligibility for this OCS program.

6. Number of Projects in Application

An application may contain only one project and this project must address the basic criteria found in Parts C and D. Applications which are not in compliance with these requirements will be ineligible for funding.

7. Multiple Submittal

There is no limit to the number of applications that can be submitted as long as each application is for a different project. However, no applicant can receive more than one grant.

8. Sub-Contracting or Delegating Projects

OCS will not fund any project where the role of the eligible applicant is primarily to serve as a conduit for funds to other organizations.

Part C—Program Area

General Projects

The application should include a description of the target area and population to be served as well as a discussion of the nature and extent of the problem to be solved. The application must contain a detailed and specific work program that is both sound and feasible. Projects funded under this Announcement must produce permanent and measurable results that fulfill the purposes of this program as described above. The OCS grant funds, in combination with private and/or other public resources, must be targeted to low-income individuals and communities.

Applicants will certify in their submission that projects will only serve the low-income population as stipulated in the DHHS Poverty Income Guidelines (Attachment A). Failure to comply with the income guidelines may result in the application being ineligible for consideration for funding.

If an applicant is proposing a project which will affect a property listed in or eligible for inclusion in the National Register of Historic Places, it must identify this property in the narrative and explain how it has complied with the provisions of Section 106 of the National Historic Preservation Act of 1966 as amended. If there is any question as to whether the property is listed in or eligible for inclusion in the National Register of Historic Places, applicant should consult with the State Historic Preservation Officer. The applicant should contact OCS early in the development of its application for instructions regarding compliance with the Act and data required to be submitted to DHHS.

In the case of projects proposed for funding which mobilize or improve the coordination of existing public and private food assistance resources, the guidelines governing those resources apply. However, in the case of projects providing direct assistance to beneficiaries through grants funded under this program, beneficiaries must fall within the official DHHS Poverty Income Guidelines as set forth in Attachment A.

Applications which propose the use of grant funds for the development of any printed or visual materials must contain convincing evidence that these materials are not available from other sources. OCS will not provide funding for such items if justification is not sufficient. Approval of any films or visual presentations proposed by applicants approved for funding will be made part of the grant award. In cases where material outlays for equipment (audio and visual) are requested, specific evidence must be presented that there is a definite programmatic connection between the equipment (audio and visual) usage and the outreach requirements described in Part A.3 of this Announcement.

OCS is also interested in projects that address the needs of homeless families and welcomes applications which seek to develop innovative approaches to promote health, and nutritional awareness among low-income populations.

Part D—Review Criteria

Applications which pass the initial screening and pre-rating review (See Part F, Section 5) will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the Announcement.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements as described in Part F.

When writing their Project Narrative applicants should respond to the review criteria using the same sequential order.

(**Note:** The following review criteria reiterate the information requirements contained in Part B of this Announcement.)

Criteria for Review and Evaluation of Applications Submitted Under This Program Announcement

Criterion I

Analysis of Needs/Priorities (Maximum: 10 Points)

(a) Target area and population to be served are adequately described (0–4 Points).

In addressing the above criterion, the applicant should include a description of the target area and population to be served including specific details on any minority population(s) to be served.

(b) Nature and extent of problem(s) and/or need(s) to be addressed are adequately described and documented (0–6 Points).

In addressing the above criterion, the applicant should include a discussion of the nature and extent of the problem(s) and/or need(s), including specific information on minority populations(s).

Criterion II

Adequacy of Work Program (Maximum: 25 Points)

(a) Realistic quarterly time targets are set forth by which the various work tasks will be completed (0–10 Points).

(b) Activities are adequately described and appear reasonably likely to achieve results which will have a desired impact on the identified problems and/or needs (0–15 Points).

In addressing the above Criterion, the applicant should address the basic criteria and legislatively-mandated activities found in Parts A–1 and A–3 and should include:

1. Project priorities and rationale for selecting them which relate to the specific nutritional problem(s) and/or need(s) of the target population which were identified under Criterion I;

2. Goals and objectives which speak to the(se) problem(s) and/or need(s); and

3. Project activities which if successfully carried out can be reasonably expected to result in the achievement of these goals and objectives.

Criterion III

Significant and Beneficial Impact (Maximum: 30 Points)

(a) Applicant proposes to significantly improve or increase nutrition services to low-income people and such improvements or increases are quantified (0–15 Points).

(b) Project incorporates promotional health and social services activities for low-income people, along with nutritional services (0–5 Points).

(c) Project will significantly leverage or mobilize other community resources and such resources are detailed and quantified (0–5 Points).

(d) Project addresses problem(s) which can be resolved by one-time OCS funding or demonstrates that non-Federal funding is available to continue the project without Federal support (0–5 Points).

In addressing the above Criterion, the applicant *must include* quantitative data for Items (a), (b), and (c), and discuss how the beneficial impact relates to the relevant legislatively-mandated program activities identified in Part A.1 and the problems and/or needs described under Criterion I.

Criterion IV

Coordination/Services Integration (Maximum: 15 Points)

(a) Project shows evidence of coordinated community-based planning in its development, including strategies in the Work Program to carry on activities in collaboration with other locally funded Federal programs (such as DHHS health and social services and USDA Food and Consumer Service programs) in ways that will eliminate duplication and will, for example, (1) unite funding streams at the local level to increase program outreach and effectiveness, (2) facilitate access to other needed social services by coordinating and simplifying intake and eligibility certification processes for clients, or (3) bring project participants into direct interaction with holistic family development resources in the community where needed. (0–10 Points)

(b) Community Empowerment Consideration—Special consideration will be given to applicants who are located in areas which are characterized by poverty and other indicators of socio-economic distress such as a poverty rate of at least 20 percent, designation as an Empowerment Zone or Enterprise Community, high levels of unemployment, and high levels of incidences of violence, gang activity, crime, or drug use. Applicants should document that they were involved in the preparation and planned implementation of a comprehensive community-based strategic plan to achieve both economic and human development in an integrated manner. (0–5 Points)

If the applicant is receiving funds from the State for community food and nutrition activities, the applicant should address how the funds are being utilized, and how they will be coordinated with the proposed project to maximize the effectiveness of both. If State funds are being used in the project for which OCS funds are being requested, their usage should be specifically described.

Criterion V

Organization Experience in Program Area and Staff Responsibilities (Maximum 15 Points)

(a) Organizational experiences in program area (0–5 Points)

Documentation provided indicates that projects previously undertaken have been relevant and effective and have provided permanent benefits to the low-income population. Organizations which propose providing training and technical assistance have detailed competence in the program area and as a deliverer with expertise in the fields of training and technical assistance. If applicable, information provided by these applicants also addresses related achievements and competence of each cooperating or sponsoring organization.

(b) Management History (0–5 Points)

Applicants must demonstrate their ability to implement sound and effective management practices and if they have been recipients of other Federal or other governmental grants, they must also document that they have consistently complied with financial and program progress reporting and audit requirements. Such documentation may be in the form of references to any available audit or progress reports and should be accompanied by a statement by a Certified or Licensed Public Accountant as to the sufficiency of the applicant's financial management system to protect adequately any Federal funds awarded under the application submitted.

(c) Staffing Skills, Resources and Responsibilities (0–5 Points)

The application adequately describes the experience and skills of the proposed project director showing that the individual is not only well qualified, but that his/her professional capabilities are relevant to the successful implementation of the project. If the key staff person has not yet been identified, the application contains a comprehensive position description which indicates that the responsibilities to be assigned to the project director are relevant to the successful implementation of the project. The application must indicate that the applicant has adequate facilities and resources (i.e. space and equipment) to successfully carry out the work plan.

In addressing the above Criterion, the applicant *must clearly show* that sufficient time of the Project Director and other senior staff will be budgeted to assure timely implementation and oversight of the project and that the assigned responsibilities of the staff are appropriate to the tasks identified for the project.

Criterion VI

Adequacy of Budget (Maximum: 5 Points)

The budget is adequate and administrative costs are appropriate in relation to the services proposed. (0–5 Points)

Part E—Instructions for Completing Application Package

The standard forms attached to this Announcement shall be used when submitting applications for all funds under this Announcement. It is recommended that you reproduce single-sided copies of the SF–424, SF–424A and SF–424B, and type your application on the copies. Please prepare your application in accordance with instructions provided on the forms as well as with the OCS specific instructions set forth below:

1. SF–424—Application for Federal Assistance (Attachment B–1)

Item 1. *Type of Submission*—For the purposes of this Announcement, all projects are considered *Applications*; there are no *Pre-Applications.*

Item 2. *Date Submitted* and *Applicant Identifier*—Enter the date the application is submitted to the Administration for Children and Families (ACF) and the applicant's internal control number, if applicable.

Item 3. *Date Received by State*—N/A

Item 4. *Date Received by Federal Agency*—Leave blank

Items 5. & 6. *Applicant Information & Employer Identification Number*—The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous DHHS grantee, enter the Central Registry System/Employee Identification Number (CRS/EIN) and the Payment Identifying Number (PIN), if one has been assigned, in the Block entitled *Federal Identifier* located at the top right hand corner of the form.

Item 7. *Type of Applicant*—If the applicant is a non-profit corporation, enter the letter "N" in the box and specify non-profit corporation in the space marked "Other". Proof of non-profit status, such as IRS certification, Articles of Incorporation, or By-laws, must be included as an appendix to the project narrative.

Item 8. *Type of Application*—Check "New"

Item 9. *Name of Federal Agency*—Enter "DHHS–ACF/OCS"

Item 10. *The Catalog of Federal Domestic Assistance (CFDA) Number*—The CFDA number for the OCS program covered under this Announcement is 93.571. The title is "Community Services Block Grant Discretionary Awards—Community Food and Nutrition Program".

Item 11. *Descriptive Title of Project*—Enter a brief descriptive title of the project.

Item 12. *Areas Affected by Project*—List only the largest unit or units affected, such as State, county or city.

Item 13. *Proposed Project Dates*—Show 12-month project period. (See Part B.3) In addition, the project period start date must be on or before September 30, 1996.

Item 14. *Congressional District of Applicant/Project*—Enter the number(s) of the Congressional District where the applicant's principal office is located and the number(s) of the Congressional District(s) where the project will be located.

Item 15. *Estimated Funding*—(15a.) Show the total amount requested for the entire project period; (15b. thru 15e.) For each line item, show both cash and third-party in-kind contributions for the total project period; (15f.) Show the estimated amount of program income for the total project period; (15g.) Enter the sum of all the lines.

2. SF–424A—Budget Information—Non-Construction Programs (Attachment B–2)

See the Instructions accompanying the Attachment as well as the Instructions set forth below.

In completing these sections, the *Federal Funds* budget entries will relate to the requested OCS Community Food and Nutrition Program funds only, and *Non-Federal* will include mobilized funds from all other sources—applicants, State, and other. Federal funds other than those requested from the Community Food and Nutrition Program should be included in *Non-Federal* entries.

Sections A and D of SF–424A must contain entries for both Federal (OCS) and non-Federal (mobilized) funds.

Section A—Budget Summary

Lines 1–4

Column (a) Line 1—Enter OCS CFN Program
Column (b) Line 1—Enter 93.571
Columns (c) and (d)—Not Applicable
Columns (e), (f), and (g)—For lines 1 through 4, enter in appropriate amounts needed to support the project for the entire project period.

Line 5

Enter the figures from Line 1 for all columns completed, (e), (f), and (g).

Section B—Budget Categories

This section should contain entries for OCS funds only. For all projects, the first budget period of 12 months will be entered in Column (1).

Allocability of costs is governed by applicable cost principles set forth in the *Code of Federal Regulations (CFR)*, Title 45, Parts 74 and 92.

Budget estimates for administrative costs must be supported by adequate detail for the grants officer to perform a cost analysis and review. Adequately detailed calculations for each budget object class are those which reflect estimation methods, quantities, unit costs, salaries, and other similar quantitative detail sufficient for the calculation to be duplicated. For any additional object class categories included under the object class *other*, identify the additional object class(es) and provide supporting calculations.

Supporting narratives and justifications are required for each budget category, with emphasis on unique/special initiatives; large dollar amounts; local, regional, or other travel; new positions; major equipment purchases; and training programs.

A detailed itemized budget with a separate budget justification for each major item should be included as indicated below:

Line 6a

Personnel—Enter the total costs of salaries and wages.

Justification—Identify the project director. Specify by title or name the percentage of time allocated to the project, the individual annual salaries and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Line 6b

Fringe Benefits—Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on Line 6j.

Justification—Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Line 6c

Travel—Enter total cost of all travel by employees of the project. Do not enter costs for consultant's travel.

Justification—Include the name(s) of traveler(s), total number of trips, destinations, length of stay, mileage rate, transportation costs and subsistence allowances.

Line 6d

Equipment—Enter the total costs of all equipment to be acquired by the project. *Equipment* means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for financial statement purposes, or (b) $5,000. [*Note:* If an applicant's current rate agreement was based on another definition for equipment, such as "tangible personal property $500 or more", the applicant shall use the definition used by the cognizant agency in determining the rate(s). However, consistent with the applicant's equipment policy, lower limits may be set.]

Justification—Equipment to be purchased with Federal funds must be required to conduct the project, and the applicant organization or its subgrantees must not already have the equipment or a reasonable facsimile available to the project.

Line 6e

Supplies—Enter the total costs of all tangible personal property (surplus) other than that included on line 6d.

Line 6f

Contractual—Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations including delegate agencies and specific project(s) or businesses to be financed by the applicant.

Justification—Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and selection process of the awards as part of the budget justification. Also provide back-up documentation identifying the name of contractor, purpose of contract, and major cost elements.

Note: Whenever the applicant/grantee intends to delegate part of the program to another agency, the applicant/grantee must submit Sections A and B of this Form SF–424A, completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total costs of all such agencies will be part of the amount shown on Line 6f. Provide draft Request for Proposal in accordance with 45 CFR Part 74, Appendix A. All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.

Line 6g

Construction—Not applicable.

Line 6h

Other—Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (non-contractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Line 6j

Indirect Charges—Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by DHHS or other Federal agencies.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should, immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent *DHHS Guide for Establishing Indirect Cost Rates* and submit it to the appropriate DHHS Regional Office. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool cannot be also budgeted or charged as direct costs to the grant. Indirect costs consistent with approved Indirect Cost Rate Agreements are allowable.

Line 6k

Totals—Enter the total amount of Lines 6i and 6j.

Line 7

Program Income—Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Justification—Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources

This section is to record the amounts of *Non-Federal* resources that will be used to support the project. *Non-Federal* resources mean other than OCS funds for which the applicant has received a commitment. Provide a brief explanation, on a separate sheet, showing the type of contribution, broken out by Object Class Category, (See SF–424A, Section B.6) and whether it is cash or third-party in-kind. The firm commitment of these required funds must be documented and submitted with the application in order to be given credit in the criterion.

Except in unusual situations, this documentation must be in the form of letters of commitment or letters of intent from the organization(s)/individuals from which funds will be received.

Line 8

Column (a)—Enter the project title.

Column (b)—Enter the amount of cash or donations to be made by the applicant.

Column (c)—Enter the State contribution.

Column (d)—Enter the amount of cash and third party-in-kind contributions to be made from all other sources.

Column (e)—Enter the total of columns (b), (c), and (d).

Lines 9, 10 and 11

Leave Blank

Line 12

Carry the total of each column of Line 8, (b) through (e). The amount in Column (e) should be equal to the amount on Section A, Line 5, Column (f).

Justification—Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs

Line 13

Federal—Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the 12 month budget period.

Line 14

Non-Federal—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15

Totals—Enter the total of Lines 13 and 14.

Section F—Other Budget Information

Line 21

Direct Charges—Include narrative justification required under Section B for each object class category for the total project period.

Line 22

Indirect Charges—Enter the type of DHHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the approved rate agreement.

Line 23

Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

3. SF–424B—Assurances Non-Construction Programs (Attachment B–3)

All applicants must sign and return the "Assurances" with the application.

4. Project Narrative

Each narrative should include the following major sections:

a. Analysis of Need
b. Project Design (Work Programs)
c. Organizational Experience in the Program Area
d. Management History
e. Staffing and Resources
f. Staff Responsibilities

The project narrative must address the specific purposes mentioned in Part A of this Program Announcement. The narrative should provide information on how the application meets the evaluation criteria in Part D of this Program Announcement.

Part F—Application Procedures

1. Availability of Forms

Applications for awards under this OCS program must be submitted on Standard Forms (SF) 424, 424A, and 424B. Part E and the Attachments to this Program Announcement contain all the instructions and forms required for submittal of applications. The forms may be reproduced for use in submitting applications.

A copy of the **Federal Register** containing this Announcement is available for reproduction at most local libraries and Congressional District Offices. If this Program Announcement is not available at these sources it may be obtained by writing or telephoning the office listed in the section entitled **FOR FURTHER INFORMATION CONTACT** at the beginning of this Announcement.

The information requested under this Program Announcement is covered under the following OMB information collection clearances: SF–424 (OMB No.

0348–0043), SF–424A (OMB No. 0348–0044), SF–424B (OMB No. 0348–0040), and other requirements for OCS applications (OMB No. 0970–0062).

2. Application Submission

Applications, once submitted, are considered final and no additional materials will be accepted.

Applicants *must* submit one signed original application and four copies.

3. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of January, 1996, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by Federally-recognized Indian Tribes need take no action in regard to E.O. 12372:

Alaska
Colorado
Connecticut
Hawaii
Idaho
Kansas
Louisiana
Massachusetts
Minnesota
Montana
Nebraska
Oklahoma
Oregon
Pennsylvania
South Dakota
Tennessee
Virginia
Washington
American Samoa
Palau

All remaining jurisdictions participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on the proposed new award.

The SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, S.W., Mail Stop 6C–462, Washington, D.C. 20447

A list of the Single Points of Contact for each State and Territory is included as Attachment G of this Announcement.

4. Application Consideration

Applications which meet the screening requirements in Section 5 below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program guidelines and evaluation criteria published in this Announcement. Applications will be reviewed by persons outside of the OCS unit which would be directly responsible for programmatic management of the grant. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will generally be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since the Director may also consider other factors deemed relevant including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicant; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on OCS or other Federal agency grants. OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

5. Criteria for Screening Applications

a. *Initial Screening*—All applications that meet the application deadline will be screened to determine completeness and conformity to the requirements of this Announcement. Only those applications meeting the below listed requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a completed and signed Standard Form SF–424.

(2) The SF–424 must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

b. *Pre-rating Review*—Applications which pass the initial screening will be forwarded to reviewers for analytical comment and scoring based on the criteria detailed in the Section below and the specific requirements contained in Part A of this Announcement. Prior to the programmatic review, these reviewers and/or OCS staff will verify that the applications comply with this Program Announcement in the following areas:

(1) *Eligibility*—Applicant meets the eligibility requirements found in Part B.

(2) *Number of Projects*—The application contains only one project.

(3) *Target Populations*—The application clearly targets the specific outcomes and benefits of the project to low-income participants and beneficiaries as defined in the DHHS Poverty Income Guidelines (Attachment A).

(4) *Grant Amount*—The amount of funds requested does not exceed $50,000.

(5) *Program Focus*—The application addresses the purposes described in Part A of this Announcement.

c. *Evaluation Criteria*—Applications which pass the initial screening and pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and major weaknesses under each applicable criterion published in this Announcement.

Part G—Contents of Application and Receipt Process

1. Contents of Application

Each application submission must include *a signed original and four additional copies of the application.* Each copy of the application *must* contain, in the order listed, each of the following:

a. *Table of Contents* with page numbers noted for each major section and subsection of the application, including the appendices. Each page in the application, including those in all appendices, must be numbered consecutively.

b. *A Project Abstract* which is a succinct description of the project in 200 words or less.

c. *The SF–424 (Application for Federal Assistance)* should be completed in accordance with instructions provided with the form, as well as OCS specific instructions set forth in Part E of this Announcement. The SF–424 must contain an original signature of the certifying representative of the applicant organization. Applicants must also be aware that the applicant's legal name (Item 5) *must* match the Employer Identification Number (Item 6).

d. *SF–424A (Budget Information) must* be completed.

e. *SF–424B (Assurances—Non-Construction Programs)* must be filed by applicants requesting financial assistance for a non-construction project. Applicants must sign and return the SF–424B with their applications.

f. *Restriction on Lobbying Activities* Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. Applicants must sign and return the certification with their applications.

g. *Disclosure of Lobbying Activities (SF-LLL)* Fill-in, sign and date form found at Attachment F, (required only if lobbying has actually taken place or is expected to take place in trying to obtain the grant for which the applicant is applying.)

h. *Project Narrative* (See Part E, Section 4)

i. *Certification Regarding Drug-Free Workplace Requirements (Attachment C)* Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications.

j. *Certification Regarding Debarment, Suspension, Etc. (Attachment D)* Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications.

k. *Certification Regarding Environmental Tobacco Smoke (Attachment E)* Applicants must make the appropriate certification of their compliance with the Pro-Children Act of 1944. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications.

The total number of pages for the narrative portion of the application package must not exceed 30 pages in their entirety. Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on 8½×11 inch paper only. They must not include colored, oversized or folded materials, organizational brochures, or other promotional materials, slides, films, clips, etc. Such materials will be discarded if included.

Applications should be two-holed punched at the top center and fastened separately with a compressor slide paper fastener or a binder clip.

While applications must be comprehensive, OCS encourages conciseness and brevity in the presentation of materials and cautions the applicant to avoid unnecessary duplication of information.

2. Acknowledgement of Receipt

An acknowledgement will be mailed to all applicants with an identification number which will be noted on the acknowledgement. This number must be referred to in all subsequent communications with OCS concerning the application. If an acknowledgment is not received within three weeks after the application deadline, applicants must notify ACF by telephone (202) 401–9365. Applicant should also submit a mailing label for the acknowledgement.

Part H—Post Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which provides the amount of Federal funds approved for use in the project, the budget period for which support is provided, and the terms and conditions of the award.

In addition to the General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grants, grantees will be subject to the provisions of 45 CFR Parts 74 (non-governmental) and 92 (governmental) along with OMB Circulars 122 (non-governmental) and 87 (governmental).

Grantees will be required to submit semi-annual progress and financial reports (SF–269) as well as a final progress and financial report.

Grantees are subject to the audit requirements in 45 CFR Parts 74 and 92.

Section 319 of Public Law 101–121, signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying when applicant has engaged in lobbying activities or is expected to lobby in trying to obtain the grant. It provides limited exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using appropriated funds for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to submit a declaration setting forth whether payments to lobbyists have been or will be made out of non-appropriated funds and, if so, the name, address, payment details, and purpose of any agreements with such lobbyists whom recipients or their subtier contractors or subgrantees will pay with the *nonappropriated* funds and (3) to file quarterly up-dates about the use of lobbyists if any event occurs that materially affects the accuracy of the information submitted by way of declaration and certification. The law establishes civil penalties for noncompliance and is effective with respect to contracts, grants, cooperative agreements and loans entered into or made on or after December 23, 1989. See Attachment F for certification and disclosure forms to be submitted with the applications for this program.

Attachment H indicates the regulations which apply to all applicants/grantees under the Discretionary Grants Program.

Dated: May 13, 1996.

Donald Sykes,

Director, Office of Community Services.

BILLING CODE 4184–01–P

Attachment A

1995 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$7,470
2	10,030
3	12,590
4	15,150
5	17,710
6	20,270
7	22,830
8	25,390

For family units with more than 8 members, add $2,580 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

POVERTY INCOME, GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1	$9,340
2	12,540
3	15,740
4	18,940
5	22,140
6	25,340
7	28,540
8	31,740

For family units with more than 8 members, add $3,200 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

POVERTY GUIDELINES FOR HAWAII

Size of family unit	Poverty guideline
1	$8,610
2	11,550
3	14,490
4	17,430
5	20,370
6	23,310
7	26,250
8	29,190

For family units with more than 8 members, add $2,940 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

BILLING CODE 4184–01–M

Attachment B-1

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A State; B County; C Municipal; D Township; E Interstate; F Intermunicipal; G Special District; H Independent School Dist; I State Controlled Institution of Higher Learning; J Private University; K Indian Tribe; L Individual; M Profit Organization; N Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A Increase Award; B Decrease Award; C Increase Duration; D Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ • ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.,

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a Federal	$ .00	a YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____
b Applicant	$ .00	
c State	$ .00	b NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
d Local	$ .00	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
e Other	$ .00	
f Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
g TOTAL	$ .00	☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a Typed Name of Authorized Representative	b Title	c Telephone number
d Signature of Authorized Representative		e Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184–01–C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   —"New" means a new assistance award.
   —"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   —"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use of the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project, if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the state intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-M

Attachment B-2

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Nonfederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 - 19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184-01-C

Instructions for the SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal Grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1–4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of lines 6a to 6h in each column.

Line 6j—show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Attachment B–3

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4278–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

BILLING CODE 4184–01–M

Attachment C

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

Attachment D

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

(c) are not presently indicated or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participate shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions" provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment E

Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1944 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for children's services and that all subgrantees shall certify accordingly.

Attachment F

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or

attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184–01–M

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier ____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*	13. Type of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

BILLING CODE 4184–01–C

Attachment G—OMB State Single Point of Contact Listing

Arizona

Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1314, FAX: (602) 280–1305

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, FAX: (501) 682–5206

Alabama

Jon C. Strickland, Alabama Department of Economic and Community Affairs, Planning and Economic Development Division, 401 Adams Avenue, Montgomery, Alabama 36103–5690, Telephone: (205) 242–5483, FAX: (205) 242–5515

California

Grants Coordinator, Office of Planning & Research, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone: (916) 323–7480, FAX: (916) 323–3018

Delaware

Francine Booth, State Single Point of Contact Executive Department, Thomas Collins Building, P.O. Box 1401, Dover, Delaware 19903, Telephone: (302) 739–3326, FAX: (302) 739–5661

District of Columbia

Charles Nichols, State Single Point of Contact, Office of Grants Mgmt. & Dev., 717 14th Street, N.W.—Suite 500, Washington, D.C. 20005, Telephone: (202) 727–6554, FAX: (202) 727–1617

Florida

Florida State Clearinghouse, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, Florida 32399–2100, Telephone: (904) 922–5438, FAX: (904) 487–2899

Georgia

Tom L. Reid, III, Administrator, Georgia State Clearinghouse, 254 Washington Street, S.W.—Room 401J, Atlanta, Georgia 30334, Telephone: (404) 656–3855 or (404) 656–3829, FAX: (404) 656–7938

Illinois

Barbara Beard, State Single Point of Contact, Department of Commerce and Community Affairs, 620 East Adams, Springfield, Illinois 62701, Telephone: (217) 782–1671, FAX: (217) 534–1627

Indiana

Amy Brewer, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone: (317) 232–5619, FAX: (317) 233–3323

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4859

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601–8204, Telephone: (502) 573–2382, FAX: (502) 573–2512

Maine

Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone: (207) 287–3261, FAX: (207) 287–6489

Maryland

William G. Carroll, Manager State Clearinghouse for Intergovernmental Assistance, Maryland Office of Planning, 301 W. Preston Street—Room 1104, Baltimore, Maryland 21201–2365, Staff Contact: Linda Janey, Telephone: (410) 225–4490, FAX: (410) 225–4480

Michigan

Richard Pfaff, Southeast Michigan Council of Governments, 1900 Edison Plaza, 660 Plaza Drive, Detroit, Michigan 48226, Telephone: (313) 961–4266

Mississippi

Cathy Malette, Clearinghouse Officer, Department of Finance and Administration, 455 North Lamar Street, Jackson, Mississippi 39202–3087, Telephone: (601) 359–6762, FAX: (601) 359–6764

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 760, Truman Building, Jefferson City, Missouri 65102, Telephone: (314) 751–4834, FAX: (314) 751–7819

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone: (702) 687–4065, FAX: (702) 687–3983

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, FAX: (603) 271–1728

New Jersey

Gregory W. Adkins, Assistant Commissioner, New Jersey Department of Community Affairs.

Please direct all correspondence and questions about intergovernmental review to: Andrew J. Jaskolka, State Review Process, Intergovernmental Review Unit CN 800, Room 813A, Trenton, New Jersey 08625–0800, Telephone: (609) 292–9025, FAX: (609) 633–2132.

New Mexico

Robert Peters, State Budget Division, Room 190 Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–3640

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone: (518) 474–1605

North Carolina

Chrys Baggett, Director, N.C. State Clearinghouse, Office of the Secretary of Admin., 116 West Jones Street, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, FAX: (919) 733–9571

North Dakota

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone: (701) 224–2094, FAX: (701) 224–2308

Ohio

Larry Weaver, State Single Point of Contact, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411

Please direct correspondence and questions about intergovernmental review to: Linda Wise, Telephone: (614) 466–0698, FAX: (614) 466–5400.

Rhode Island

Daniel W. Varin, Associate Director, Department of Administration/Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 277–2656, FAX: (401) 277–2083

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street—Room 477, Columbia, South Carolina 29201, Telephone: (803) 734–0494, FAX: (803) 734–0385

Texas

Tom Adams, Governor's Office, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711, Telephone: (512) 463–1771, FAX: (512) 463–1880

Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1535, FAX: (801) 538–1547

Vermont

Nancy McAvoy, State Single Point of Contact, Pavilion Office Building, 109 State Street, Montpelier, Vermont 95609, Telephone: (802) 828–3326, FAX: (802) 828–3339

West Virginia

Fred Cutlip, Director, Community Development Division, W. Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, FAX: (304) 558–3248

Wisconsin

Martha Kerner, Section Chief, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–2125, FAX: (608) 267–6931

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone: (307) 777–7574, FAX: (307) 638–8967

Territories

Guam

Mr. Giovanni, T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone: 011–671–472–2285, FAX: 011–671–472–2825

Puerto Rico

Norma Burgos/Jose E. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Officer, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (809) 727–4444, (809) 723–6190, FAX: (809) 724–3270, (809) 724–3103

North Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Virgin Islands

Jose George, Director, Office of Management and Budget, #41 Norregade Emanicipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct all questions and correspondence about intergovernmental review to: Linda Clarke, Telephone: (809) 774–0750, FAX: (809) 776–0069.

Attachment H—Department of Health and Human Services (DHHS) Regulations Applying to All Applicants/Grantees Under the Community Food and Nutrition Program

Title 45 of the Code of Federal Regulations

Part 16—DHHS Grant Appeals Process
Part 74—Administration of Grants (non-governmental)
Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):
Sections
74.26—Non-Federal Audits
74.27—Allowable cost for hospitals and non-profit organizations among other things
74.32—Real Property
74.34—Equipment
74.35—Supplies
74.24—Program Income
Part 75—Informal Grant Appeal Procedures
Part 76—Debarment and Suspension from Eligibility for Financial Assistance

Subpart F—Drug Free Workplace Requirements

Part 80—Non-discrimination Under Programs Receiving Federal Assistance through DHHS Effectuation of Title VI of the Civil Rights Act of 1964
Part 81—Practice and Procedures for Hearings Under Part 80 of this Title
Part 83—Regulation for the Administration and Enforcement of Sections 799A and 845 of the Public Health Service Act
Part 84—Non-discrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance
Part 85—Enforcement of Non-discrimination on the Basis of Handicap in Programs or Activities Conducted by DHHS
Part 86—Non-discrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefitting from Federal Financial Assistance
Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance
Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (**Federal Register**, March 11, 1988)
Part 93—New Restrictions on Lobbying
Part 100—Intergovernmental Review of DHHS Programs and Activities

Attachment I

Optional Checklist (for use of applicant only) to verify contents of application

A. Application contains:.	Check
1. Table Contents	[ ]
2. A project Abstract (no more than 200 words)	[ ]
3. Completed SF–424, Application for Federal Assistance	[ ]
4. Completed SF–424A, Budget Information—Non-construction Programs	[ ]
5. Signed SF 424B, Assurances—Non-Construction Programs	[ ]
6. A project narrative with the following components:	
a. Analysis of need	[ ]
b. Project design	[ ]
c. Organizational experience in program	[ ]
d. Management history	[ ]
e. Staffing and resources (resume or job description)	[ ]
f. Staff responsibilities	[ ]
7. Relevant portions of the organization's By-Laws or Articles of Incorporation confirming eligibility	[ ]
8. A signed copy of Certification Regarding the Anti-Lobbying Provision	[ ]
9. A completed Disclosures of Lobbying Activities Form, if appropriate	[ ]
10. A self-addressed mailing label which can be used to acknowledge receipt of application	[ ]
B. Application does not exceed a total of 30 pages	[ ]
C. Application includes one original and four copies, printed on white 8½ by 11 inch paper	[ ]
D. Applicant is aware that in signing and submitting the application for funds under the CFN Program, it is certifying that it has read and understood the Federal Guidelines concerning a drug-free workplace, the debarment regulations, and environmental tobacco smoke, set forth in Attachments C, D and E respectively	[ ]

[FR Doc. 96–12566 Filed 5–17–96; 8:45 am]
BILLING CODE 4184–01–M

OL
1
SS
08
MY
20
996
MI

federal register

Monday
May 20, 1996

Part IV

Department of Agriculture

Cooperative State Research, Education, and Extension Service

7 CFR Part 3403
Small Business Innovation Research Grants Program; Administrative Provisions; Final Rule

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3403

Small Business Innovation Research Grants Program; Administrative Provisions

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Final rule.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) is amending its regulations relating to the administration of the Small Business Innovation Research (SBIR) Grants Program, which prescribe the procedures to be followed annually in the solicitation of research grant proposals, the evaluation of such proposals, and the award of competitive research grants under this program. This rule amends those regulations by encouraging the individuals who are principally responsible for the scientific or technical direction of the proposed work to be designated as the principal investigator, making it a condition that Federal funds remain for an extension of a Phase I grant and that an extension will not normally exceed 12 months, requiring that when purchasing equipment or products with agreement funds that only American-made items are purchased to the extent possible, and making a few additional changes. CSREES is publishing these regulations in their entirety in order to enhance their use by the public and to ensure expeditious submission and processing of grant proposals.

(The CSREES was established by Pub. L. 103–354, the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, and the functions of the Cooperative State Research Service (CSRS) were transferred to the CSREES by the Secretary of Agriculture in the Secretary's Memorandum 1010–1, October 20, 1994.)

EFFECTIVE DATE: May 20, 1996.

FOR FURTHER INFORMATION CONTACT:

Louise Ebaugh, Director, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, AG Box 2245, Washington, DC 20250–2245. Telephone: (202) 401–5024.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the collection of information requirements contained in this final rule have been approved under OMB Document Nos. 0524–0022, 0524–0025, and 0524–0026.

Classification

This rule has been reviewed under Executive Order 12866, and it has been determined that it is not a "significant regulatory action" rule because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule will not create any serious inconsistencies or other wise interfere with any actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees or loan programs and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order No. 12866. In addition, it will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–534 (5 U.S.C. 601 et seq.). This rule has been reviewed in accordance with Executive Order No. 12778, Civil Justice Reform, and the required certification has been made to OMB. All State and local laws and regulations that are in conflict with this rule are preempted. No retroactive effect is to be given to this rule. This rule does not require administrative proceedings before parties may file suit in court.

Regulatory Analysis

Not required for this rulemaking.

Environmmental Impact Statement

This regulation does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969, as amended.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.212, Small Business Innovation Research (SBIR Program). For the reasons set forth in the Final Rule-related Notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, and pursuant to the Notice found at 52 FR 22831, June 16, 1987, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background and Purpose

On June 10, 1988, the Department published a Final Rule in the **Federal Register** (53 FR 21966–21972), which established Part 3403 of Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations, for the purpose of administering the U.S. Department of Agriculture's Small Business Innovation Research (SBIR) Grants Program conducted under the authority of the Small Business Innovation Development Act of 1982, as amended (15 U.S.C. 638) and section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies' programs for fiscal year ending September 30, 1987, and for other purposes, as made applicable by section 101(a) of Pub. L. No. 99–591, 100 Stat. 3341. This rule established and codified the procedures to be followed in the solicitation of competitive small business innovation research proposals, the evaluation of such proposals, and the award of grants under this program. On September 20, 1991, the Department published a Final rule in the **Federal Register** (56 FR 47882–47889), which amended the Cooperative State Research Service (CSRS) regulations relating to the Small Business Innovation Research Grants Program. On December 30, 1994, the Department published a Final Rule in the **Federal Register** (59 FR 68072) which amended 7 CFR Chapter XXXIV to reflect the abolishment of CSRS and the establishment of CSREES. On August 17, 1995, the Department published a notice in the **Federal Register** (60 FR 42990) requesting comments on proposed revisions to the Proposed Rule—Small Business Innovation Research (SBIR) Grants Program. Interested parties were invited to submit comments. The Department received one comment from a Federal agency. The comment was considered in developing this final revision.

Comment and Response

General

Comment: The commentor suggested that the rule be amended to associate award eligibility and approval procedures more closely with performance and financial accountability.

Response: This comment requires a thorough examination since it has far-reaching implications not only for the SBIR program but for other Departmental programs. The Department is currently establishing a committee to evaluate and consider the suggestions and will respond directly to the commenting agency when appropriate. If further changes to the program are deemed necessary, the Department will publish a proposed amendment to the SBIR rule and invite public comments.

List of Subjects in 7 CFR Part 3403

Grant Programs—Agriculture, Grant administration.

For the reasons set out in the preamble, Title 7, Subtitle B, Chapter XXXIV, Part 3403 of the Code of Federal Regulations is revised to read as follows:

PART 3403—SMALL BUSINESS INNOVATION RESEARCH GRANTS PROGRAM

Subpart A—General Information

Sec.
3403.1 Applicability of regulations.
3403.2 Definitions.
3403.3 Eligibility requirements.

Subpart B—Program Description

3403.4 Three-phase program.

Subpart C—Preparation and Submission of Proposals

3403.5 Requests for proposals.
3403.6 General content of proposals.
3403.7 Proposal format for phase I applications.
3403.8 Proposal format for phase II applications.
3403.9 Submission of proposals.

Subpart D—Proposal Review and Evaluation

3403.10 Proposal review.
3403.11 Phase I evaluation criteria.
3403.12 Phase II evaluation criteria.
3403.13 Availability of information.

Subpart E—Supplementary Information

3403.14 Terms and conditions of grant awards.
3403.15 Notice of grant awards.
3403.16 Use of funds; changes.
3403.17 Other Federal statutes and regulations that apply.
3403.18 Other conditions.

Authority: 5 U.S.C. 638.

Subpart A—General Information

§ 3403.1 Applicability of regulations.

(a) The regulations of this part apply to small business innovation research grants awarded under the general authority of section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies' programs for fiscal year ending September 30, 1987, and for other purposes, as made applicable by section 101(a) of Public Law 99–591, 100 Stat. 3341, and the provisions of the Small Business Innovation Development Act of 1982, as amended (15 U.S.C. 638). The Small Business Innovation Development Act of 1982, as amended, mandates that each Federal agency with an annual extramural budget for research or research and development in excess of $100 million participate in a Small Business Innovation Research (SBIR) program by reserving a statutory percentage of its annual extramural budget for award to small business concerns for research or research and development in order to stimulate technological innovation, use small business to meet Federal research and development needs, increase private sector commercialization of innovations derived from Federal research and development, and foster and encourage the participation of socially and economically disadvantaged small business concerns and women-owned small business concerns in technological innovation. The U.S. Department of Agriculture (USDA) will participate in this program through the issuance of competitive research grants which will be administered by the Office of Competitive Research Grants and Awards Management, Cooperative State Research, Education, and Extension Service (CSREES).

(b) The regulations of this part do not apply to research grants awarded by the Department of Agriculture under any other authority.

§ 3403.2 Definitions.

As used in this part:

Ad hoc reviewers means experts or consultants, qualified by training and experience in particular scientific or technical fields to render expert advice on the scientific or technical merit of grant applications in those fields, who review on an individual basis one or several of the eligible proposals submitted to this program in their area of expertise and who submit to the Department written evaluations of such proposals.

Awarding official means any officer or employee of the Department who has the authority to issue or modify research project grant instruments in behalf of the Department.

Budget period means the interval of time into which the project period is divided for budgetary and reporting purposes.

Commercialization means the process of developing markets and producing and delivering products or services for sale (whether by the originating party or by others); as used here, commercialization includes both government and commercial markets.

Department means the Department of Agriculture.

Funding agreement is any contract, grant, or cooperative agreement entered into between any Federal agency and any small business for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government.

Grantee means the small business concern designated in the grant award document as the responsible legal entity to whom a grant is awarded under this part.

Peer review group means experts or consultants, qualified by training and experience in particular scientific or technical fields to give expert advice on the scientific and technical merit of grant application in those fields, who assemble as a group to discuss and evaluate all of the eligible proposals submitted to this program in their area of expertise.

Principal investigator means a single individual designated by the grantee in the grant application and approved by the Department who is responsible for the scientific or technical direction of the project. Therefore, the individual should have a scientific and technical background.

Program solicitation is a formal request for proposals whereby an agency notifies the small business community of its research or research and development needs and interests in selected areas and invites proposals from small business concerns in response to those needs.

Project means the particular activity within the scope of one of the research topic areas identified in the annual solicitation of applications, which is supported by a grant award under this part.

Project period means the total length of time that is approved by the Department for conducting the research project as outlined in an approved grant application.

Research or research and development (R&D) means any activity which is:

(1) A systematic, intensive study directed toward greater knowledge or understanding of the subject studied;

(2) A systematic study directed specifically toward applying new knowledge to meet a recognized need; or

(3) A systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

Research project grant means the award by the Department of funds to a grantee to assist in meeting the costs of conducting for the benefit of the public an identified project which is intended and designed to establish, discover, elucidate, or confirm information or the underlying mechanisms relating to a research topic area identified in the annual solicitation of applications.

Small business concern means a concern which at the time of award of phase I and Phase II funding agreements meets the following criteria:

(1) Is organized for profit, independently owned or operated, is not dominant in the field in which it is proposing, has its principal place of business located in the United States, has a number of employees not exceeding 500 (full-time, part-time, temporary, or other) in all affiliated concerns owned or controlled by a single parent concern, and meets the other regulatory requirements outlined in 13 CFR part 121. Business concerns, other than licensed investment companies, or State development companies qualifying under the Small Business Investment Act of 1958, 15 U.S.C. 661, *et seq.*, are affiliates of one another when directly or indirectly one concern controls or has the power to control the other or third parties (or party) control or have the power to control both. Control can be exercised through common ownership, common management, and contractual relationships. The term "affiliates" is defined in greater detail in 13 CFR 121.401(a) through (m). The term "number of employees" is defined in 13 CFR 121.407. Business concerns include, but are not limited to, any individual, partnership, corporation, joint venture, association, or cooperative.

(2) Is at least 51 percent owned, or in the case of a publicly owned business at least 51 percent of its voting stock is owned, by United States citizens or lawfully admitted permanent resident aliens.

Socially and economically disadvantaged individual is a member of any of the following groups: Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Subcontinent Asian Americans, other groups designated from time to time by the Small Business Administration (SBA) to be socially disadvantaged, or any other individual found to be socially and economically disadvantaged by the SBA pursuant to section 8(a) of the Small Business Act, 15 U.S.C. 637(a).

Socially and economically disadvantaged small business concern is one that is:

(1) At least 51 percent owned by

(i) An Indian tribe or a native Hawaiian organization, or

(ii) One or more socially and economically disadvantaged individuals; and

(2) Whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals.

Subcontract is any agreement, other than one involving an employer-employee relationship, entered into by a Federal Government funding agreement awardee calling for supplies or services required solely for the performance of the original funding agreement.

United States means the several States, the territories and possessions of the United States, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia.

Women-owned small business concern means a small business concern that is at least 51 percent owned by a woman or women who also control and operate it. "Control" as used in this context means exercising the power to make policy decisions. "Operate" as used in this context means being actively involved in the day-to-day management of the concern.

§ 3403.3 Eligibility requirements.

(a) *Eligibility of firm.* (1) Each organization submitting a proposal must qualify as a small business for research purposes, as defined in § 3403.2. Joint ventures and limited partnerships are eligible to apply for and to receive research grants under this program, provided that the entity created qualifies as a small business in accordance with section 2(3) of the Small Business Act (15 U.S.C. 632) and as defined in § 3403.2 of this part. For both phase I and phase II the research must be performed in the United States.

(2) A minimum of two-thirds of the research or analytical work, as determined by budget expenditures, must be performed by the proposing organization under phase I grants. For phase II awards, a minimum of one-half of the research or analytical effort must be conducted by the proposing firm. The space used by the SBIR awardee to conduct the research must be space over which it has exclusive control for the period of the grant.

(b) *Eligibility of principal investigator.* (1) It is strongly suggested that the individual responsible for the scientific or technical direction of the project be designated as the principal investigator. In addition, the primary employment of the principal investigator must be with the proposing firm at the time of award and during the conduct of the proposed research. Primary employment means that more than one-half of the principal investigator's time is spent in the employ of the small business. Primary employment with the small business applicant precludes full-time employment with another organization.

(2) If the proposed principal investigator is employed by another organization (e.g., university or another company) at the time of submission of the application, documentation must be submitted with the proposal from the principal investigator's current employer verifying that, in the event of an SBIR award, he/she will become a less-than half-time employee of such organization and will remain so for the duration of the SBIR project.

Subpart B—Program Description

§ 3403.4 Three-phase program.

The Small Business Innovation Research Grants Program will be carried out in three separate phases described in this section. The first two phases are designed to assist USDA in meeting its research and development objectives and will be supported with SBIR funds. The purpose of the third phase is to pursue the commercial applications or objectives of the research carried out in phases I and II through the use of private or Federal non-SBIR funds.

(a) Phase I is the initial stage in which the scientific and technical merit and feasibility of an idea related to one of the research areas described in the program solicitation is evaluated, normally for a period not to exceed 6 months. In special cases, however, where a proposed research project requires more than 6 months to complete, a longer grant period may be considered. A proposer of a phase I project with an anticipated duration beyond 6 months should specify the length and duration in the proposal at the time of its submission to USDA in order for it to be considered at the time of award. (See § 3403.16(c) for changes in project period subsequent to award).

(b) Phase II is the principal research or research and development effort in which the results from Phase I are expanded upon and further pursued, normally for a period not to exceed 24 months. Only those small businesses previously receiving phase I awards are eligible to submit phase II proposals. For each phase I project funded the awardee may apply for a phase II award only once. Phase I awardees who for valid reasons cannot apply for phase II support in the next fiscal year funding cycle may apply for support not later than the second fiscal year funding cycle.

(c) Phase III is to stimulate technological innovation and the national return on investment from research through the pursuit of commercial objectives resulting from the work supported by SBIR funding carried out in phases I and II. This portion of the project is performed by the small business firm and privately funded or Federally funded by a non-SBIR source through the use of a follow-on funding commitment. A follow-on funding commitment is an agreement between the small business firm and a provider of follow-on capital for a specified amount of funds to be made available to the small business for further development of their effort upon achieving certain mutually agreed upon technical objectives during phase II.

Subpart C—Preparation and Submission of Proposals

§ 3403.5 Requests for proposals.

(a) *Phase I.* A program solicitation requesting phase I proposals will be prepared each fiscal year in which funds are made available for this purpose. The solicitation will contain information sufficient to enable eligible applicants to prepare grant proposals and will include descriptions of specific research topic areas which the Department will support during the fiscal year involved, forms to be completed and submitted with proposals, and special requirements. A notice will be published in the **Federal Register** informing the public of the availability of the program solicitation.

(b) *Phase II.* For each fiscal year in which funds are made available for this purpose, the Department will send a letter requesting phase II proposals from the phase I grantees eligible to apply for phase II funding in that fiscal year. The letter will be accompanied by the solicitation which contains information sufficient to enable eligible applicants to prepare grant proposals and includes forms to be submitted with proposals as well as special requirements.

§ 3403.6 General content of proposals.

(a) The proposed research must be responsive to one of the USDA program interests stated in the research topic descriptions of the program solicitation.

(b) Proposals must cover only scientific/technological research activities. A firm must not propose product development, technical assistance, demonstration projects, classified research, or patent applications. Many of the research projects supported by the SBIR program lead to the development of new products based upon the research results obtained during the project. However, projects that seek funding solely for product development where no research is involved, i.e. the funds are needed to permit the development of a project based on previously completed research, will not be accepted. Literature surveys should be conducted prior to preparing proposals for submission and must not be proposed as a part of the SBIR phase I or phase II effort. Proposals principally for the development of proven concepts toward commercialization or for market research should not be submitted since such efforts are considered the responsibility of the private sector and therefore are not supported by USDA.

(c) A proposal must be limited to only one topic. The same proposal may not be submitted under more than one topic. However, an organization may submit separate proposals on the same topic. Where similar research is discussed under more than one topic, the proposer should choose that topic whose description appears most relevant to the proposer's research concept. Duplicate proposals will be returned to the applicant without review.

(d) Phase I applicants should submit a research proposal of no more than 25 pages, including cover page, budget, and all proposal-related enclosures or attachments. The text must be prepared on only one side of the page using standard size (8½" × 11"; 21.6 cm × 27.9 cm) white paper, 2.5 cm margins and type no smaller than 11 point font size regardless of whether it is single or double spaced. In the interest of equity to all proposers, no additional attachments, appendixes, or references beyond the 25-page limitation will be considered in the proposal evaluation process, and proposals in excess of the 25-page limitation will not be considered for review or award. In addition, supplementary materials, revisions, and/or substitutions will not be accepted after the due date for proposals. Phase II applicants should submit a research proposal of no more than 50 pages, including cover page, budget, and all proposal-related enclosures or attachments.

§ 3403.7 Proposal format for phase I applications.

(a) *Cover sheet.* Photocopy and complete Form CSREES–667 in the program solicitation. The original of the cover sheet must at a minimum contain the pen-and-ink signatures of the proposed principal investigator(s) and the authorized organizational official. A proposal which does not contain the signature of the authorized organizational official will not be considered a legal document and will be returned to the proposing small business firm without review. All other copies of the proposal must also contain a cover sheet, but facsimile or photocopied signatures will be accepted. The title should be a brief (80-character maximum), clear, specific designation of the research proposed. It will be used to provide information to Congress and also will be used in issuing press releases. Therefore, it should not contain highly technical words. In addition, phrases such as "investigation of" or "research on" should not be used.

(b) *Project summary.* Photocopy and complete Form CSREES–668 in the program solicitation. The technical abstract should include a brief description of the problem or opportunity, project objectives, and a description of the effort. Anticipated results and potential commercial applications of the proposed research also should be summarized in the space provided. Keywords, to be provided in the last block on the page, should characterize the most important aspects of the project. The project summary of successful proposals may be published by USDA and, therefore, should not contain proprietary information.

(c) *Technical content.* The main body of the proposal should include:

(1) *Identification and significance of the problem or opportunity.* Clearly state the specific technical problem or opportunity addressed and its importance.

(2) *Background and rationale.* Indicate the overall background and technical approach to the problem or opportunity and the part that the proposed research plays in providing needed results.

(3) *Relationship with future research or research and development.* Discuss the significance of the phase I effort in providing a foundation for the phase II R&D effort. State the anticipated results of the approach if the project is successful (phases I and II). This should address:

(i) The technical, economic, social, and other benefits to the Nation and to users of the results such as the commercial sector, the Federal Government, or other researchers;

(ii) The estimated total cost of the approach relative to benefits; and, if appropriate,

(iii) Any specific policy issues or decisions which might be affected by the results.

(4) *Phase I technical objectives.* State the specific objectives of the phase I research or research and development effort, including the technical questions it will try to answer to determine the feasibility of the proposed approach.

(5) *Phase I work plan.* This work plan must provide an explicit, detailed description of the phase I research or research and development approach. The plan should indicate the tasks to be performed as well as how and where the work will be carried out. The phase I effort should attempt to determine the technical feasibility of the proposed concept. The work plan should be linked with the technical objectives of the research and the questions the effort is designed to answer. Therefore, it should flow logically from § 3403.7(c)(4) of this part. This section should constitute a substantial portion of the total proposal.

(6) *Related research or research and development.* Describe the significant research or research and development activities from relevant literature that are directly related to the proposed effort, including any conducted by the principal investigator or by the proposing firm, how it relates to the proposed effort, and any planned coordination with outside sources. The proposer must persuade reviewers that he or she is aware of related research in the selected subject.

(d) *Key personnel and bibliography.* Identify key personnel involved in the effort, including information on their directly related education and experience. For each key person, provide a chronological list of the most recent representative publications in the topic area during the preceding 5 years, including those in press. (List the authors (in the same order as they appear on the paper), the full title, and the complete reference as these usually appear in journals. Where vitae are extensive, summaries that focus on most relevant experience or publications may be necessary to meet the proposal size limitation in phase I and phase II.

(e) *Facilities and equipment.* Describe the types, location, and availability of instrumentation and physical facilities necessary to carry out the work proposed. Items of equipment to be purchased must be fully justified under this section.

(f) *Consultants.* Involvement of university or other consultants in the planning and research stages of the project is permitted and may be particularly helpful to small firms which have not previously received Federal research awards. If such involvement is intended, it should be described in detail. Proposals must include letters from proposed consultants indicating willingness to serve in order for such participation to be evaluated during the proposal review process. (See § 3403.11(d) or § 3403.12(5), as appropriate).

(g) *Potential post application.* Briefly describe:

(1) Whether and by what means the proposed research appears to have potential commercial application; and

(2) Whether and by what means the proposed research appears to have potential use by the Federal Government. Firms with prior USDA SBIR grant support should summarize their progress in commercializing the results of that research. Past performance in the commercialization process may be a consideration in award decisions.

(h) *Current and pending support.* If a proposal, substantially the same as the one being submitted, has been previously funded or is currently funded, pending, or about to be submitted to another Federal agency or to USDA in a separate action, the proposer must provide the following information:

(1) Name and address of the agency(s) to which a proposal was submitted, or will be submitted, or from which an award is expected or has been received.

(2) Date of actual or anticipated proposal submission or date of award, as appropriate.

(3) Title of proposal or award, identifying number assigned by the agency involved, and the date of program solicitation under which the proposal was submitted or the award was received.

(4) Applicable research topic area for each proposal submitted or award received.

(5) Title of research project.

(6) Name and title of principal investigator for each proposal submitted or award received. USDA will not make awards that duplicate research funded (or to be funded) by other Federal agencies.

(i) *Cost-breakdown on proposal budget.* Photocopy and complete form CSREES–55 in the program solicitation only for the phase under which you are currently applying. (An applicant for phase I funding should not submit both phase I and II budgets.) Please note the following in completing the budget:

(1) *Salaries and wages.* Indicate the number and kind of personnel for whom salary support is sought. For key personnel, also indicate the number of work months of involvement to be supported with USDA funds (see blocks labeled "CSREES Funded Work Months"), and explain how the level of compensation was established, e.g., the hourly rate of pay, the monthly rate of pay, or the yearly rate of pay.

(2) *Equipment.* Performing organizations are expected to have appropriate facilities, suitably furnished and equipped. Items of equipment may be requested provided that they are specifically identified and adequately justified, but such requests should normally not exceed 10% of the budget for phase I. When purchasing equipment or a product under the SBIR funding agreement, the awardee should purchase only American-made items whenever possible. Equipment is defined as an article of nonexpendable, tangible personal property having a useful life of more than 2 years and an acquisition cost of $500 or more per unit. Vesting of title to equipment purchased with funds provided under an SBIR funding agreement will be determined by USDA based upon whether such transfer would be more cost effective than recovery of the property by the government. Awardees should plan to lease expensive equipment.

(3) *Travel.* The inclusion of travel will be carefully reviewed with respect to need and appropriateness for the research proposed. Foreign travel may not be included in the phase I budget.

(4) *Subcontracting limits.* Subcontracting may not exceed one-third of the research or analytical effort during phase I. In addition, subcontractors must perform their portion of the work in the United States. If subcontracting costs are anticipated, they should be indicated in block I, "All Other Direct Costs," on the budget sheet. A breakdown of subcontractual costs is required. For proposals involving subcontractual arrangements, the applicant must submit an agreement or letter of consent signed by the subcontractor in order for such participation to be evaluated during the proposal review process.

(5) *Fee.* A reasonable fee not to exceed 7% is permitted under this program. All fees are subject to negotiation with USDA. If a fee is requested, the amount should be indicated in block M on the budget sheet.

(6) *Indirect costs.* If available, the current rate negotiated with the cognizant Federal negotiating agency should be used, unless restricted by statute. Indirect costs may not exceed the lesser of the negotiated rate or the rate restricted by statute. If no rate has been negotiated, a reasonable dollar amount in lieu of indirect costs may be requested, which will be subject to approval by USDA. A proposer may elect not to charge direct costs and, instead, use all grant funds for direct costs. If a negotiated rate is used, the percentage and base should be indicated in the space allotted under item K on the budget sheet. If indirect costs are not charged, the phrase "None requested" should be written in this space.

(7) *Cost-sharing.* Cost-sharing is permitted for proposals under this program; however, cost-sharing is not required nor will it be an evaluation factor in considering the competitive merit of proposals submitted.

(j) *Research involving special considerations.* (1) If the proposed research will involve recombinant DNA molecules, human subjects at risk, or laboratory animal care, the proposal must so indicate and include an assurance statement (Form CSREES–662) as the last page of the proposal. The original of the assurance statement must at a minimum contain the pen-and-ink signature of the authorized organizational official. This form will not be considered a part of the 25-page limitation for Phase I proposals and the 50-page limitation for Phase II proposals. In order to complete the assurance statement, the proposer may be required to have the research plan reviewed and approved by an appropriate "Institutional Review Board" prior to commencing actual substantive work. It is suggested that proposers contact local universities, colleges, or nonprofit research organizations which have established such reviewing mechanisms to have this service performed.

(2) Guidelines to be applied and observed when conducting such research are:

(i) *Recombinant DNA Molecules.* "Guidelines for Research Involving Recombinant DNA Molecules" issued by the National Institutes of Health, as revised.

(ii) *Human Subjects at Risk.* Regulations issued by the Department of Health and Human Services. (See 7 CFR Part 1c.)

(iii) *Laboratory Animal Care.* Regulations issued by the Department of Agriculture. (See 9 CFR Parts 1, 2, 3, and 4.)

(k) *Proprietary information.* (1) If a proposal contains proprietary information that constitutes a trade secret, proprietary commercial or financial information, confidential personal information, or data affecting the national security, it will be treated in confidence to the extent permitted by law, provided the information is clearly marked by the proposer with the term "confidential proprietary information" is confided to a separate page or pages, and provided the following legend also appears in the designated area at the bottom of the proposal's cover sheet (Form CSREES–667):

The following pages (specify) contain proprietary information which (name of proposing organization) requests not be released to persons outside the Government, except for purposes of evaluation.

(2) USDA by law is required to make the final decision as to whether the information is required to be kept in confidence. Information contained in unsuccessful proposals will remain the property of the proposer. However, USDA will retain for one year one file copy of all proposals received; extra copies will be destroyed. Public release of information for any proposal submitted will be subject to existing statutory and regulatory requirements. Any proposal which is funded will be considered an integral part of the award and normally will be made available to the public upon request except for designated proprietary information that is determined by USDA to be proprietary information.

(3) The inclusion of proprietary information is discouraged unless it is necessary for the proper evaluation of the proposal. "If proprietary information is to be included, it should be limited, set apart from other text on a separate page, and keyed to the text by numbers." It should be confided to a few critical technical items which, if disclosed, could jeopardize the obtaining of foreign or domestic patents. Trade secrets, salaries, or other information which could jeopardize commercial competitiveness should be similarly keyed and presented on a separate page. "Proposals or reports which attempt to restrict dissemination of large amounts of information may be found unacceptable by USDA. Any other legend than that listed in paragraph (k)(1) of this section may be unacceptable to USDA and may constitute grounds for return of the proposal without further consideration." Without assuming any liability for inadvertent disclosure, USDA will limit dissemination of such information to its employees and, where necessary for the evaluation of the proposal, to outside reviewers on a confidential basis.

(l) Rights in data developed under SBIR funding Agreement. The SBIR legislation provides for "retention of rights in data generated in the performance of the contract by the small business concern."

(1) The legislative history clarifies that the intent of the statute is to provide authority for the participating agency to protect technical data generated under the funding agreement, and to refrain from disclosing such data to competitors of the small business concern or from using the information to produce future technical procurement specifications that could harm the small business concern that discovered and developed the innovation until the small business concern has a reasonable chance to seek patent protection, if appropriate.

(2) Therefore, except for program evaluation, participating agencies shall protect such technical data for a period of not less than 4 years from the completion of the project from which the data were generated unless the agencies obtain permission to disclose such data from the contractor or grantee. The government shall retain a royalty-free license for government use of any technical data delivered under an SBIR funding agreement whether patented or not.

(m) *Organizational management information.* Before the award of an SBIR funding agreement, USDA requires the submission of certain organization management, personnel and financial information to assure the responsibility of the proposer. Form CSRS–666 ("Organizational Information") and Form CSRS–665 ("Assurance of Compliance with the Department of Agriculture Regulations Under Title VI of the Civil Rights Act of 1964, as amended") are used for this purpose. This information is not required unless a project is recommended for funding, and then it is submitted on a one-time basis only. However, new forms should be submitted if a small business has undergone significant changes in organizations, personnel, finance, or policies including those relating to civil rights.

§ 3403.8 Proposal format for phase II applications.

(a) *Cover sheet.* Follow instructions found in § 3403.7(a) of this part.

(b) *Project summary.* Follow instructions found in § 3403.7(b) of this part.

(c) *Phase I results.* The proposal should contain an extensive section that lists the phase I objectives and makes detailed presentation of the phase I results. This section should establish the degree to which phase I objectives were met and feasibility of the proposed research project was established.

(d) *Proposal.* Since phase II is the principal research and development effort, proposals should be more

comprehensive than those submitted under phase I. However, the outline contained in § 3403.7(c) of this part should be followed, tailoring the information requested to the phase II project.

(e) *Coast breakdown on proposal budget.* (1) For phase II, a detailed budget is required for each year of requested support. In addition, a summary budget is required detailing the requested support for the overall project period. Form CSREES–55, "Proposal Budget," is to be used for this purpose and may be photocopied as necessary.

(2) *Travel.* Foreign travel may be included as necessary in the phase II budget. Such a request will be reviewed with respect to need and appropriateness for the research proposed and therefore should be adequately justified in the proposal.

(3) *Subcontracting limits.* The instructions found in § 3403.7(i)(4) of this part apply to phase II proposals except that the subcontracting limit is changed from one-third to one-half of the research or analytical effort.

(f) *Organizational management information.* Each phaser II awarded will be asked to submit an updated statement of financial condition (such as the latest audit report, financial statements or balance sheet).

(g) *Follow-on funding commitment.* If the proposer has obtained a contingent commitment for phase III follow-on funding, it should be forwarded with the phase II application. It will not count as part of the 50-page limit for phase II application.

(h) *Documentation of multiple phase II awards.* (1) An applicant that submits a proposal for a funding agreement for phase I and that has received more than 15 phase II awards during the preceding 5 fiscal years must document the extent to which it was able to secure phase III funding to develop concepts resulting from previous phase II award. This documentation should include the name of the awarding agency, date of award, funding agreement number, topic or subtopic title, amount and date of phase II funding and commercialization status for each phase II award.

(2) USDA shall collect and retain the information submitted under paragraph (h)(1) at least until the General Accounting Office submits the report required under section 106 of the Small Business Research and Development Enhancement Act of 1992.

§ 3403.9 Submission of proposals.

The program solicitation for phase I proposals and the letter requesting phase II proposals will provide the deadline date for submitting proposals, the number of copies to be submitted, and the address where proposals should be mailed or delivered.

Subpart D—Proposal Review and Evaluation

§ 3403.10 Proposal review.

(a) All research grant applications will be acknowledged.

(b) Phase I and phase II proposals will be judged competitively in a two-stage process, based primarily upon scientific or technical merit. First, each proposal will be screened by USDA scientists to ensure that it is responsive to stated requirements contained in the program solicitation. Proposals found to be responsive will be technically evaluated by peer scientists knowledgeable in the appropriate scientific field using the criteria listed in § 3403.11 or § 3403.12 of this part, as appropriate. Proposals found to be nonresponsive will be returned to the proposing firm without review.

(c) Both internal and external peer reviewers may be used during the technical evaluation stage of this process. Selections will be made from among recognized specialists who are uniquely qualified by training and experience in their respective fields to render expert advice on the merit of proposals received. It is anticipated that such experts will include those located in universities, Government, and non-profit research organizations. If possible, USDA intends that peer review groups shall be balanced with minority and female representation and with an equitable age distribution.

(d) Technical reviewers will base their conclusions and recommendations on information contained in the phase I or phase II proposal. It cannot be assumed that reviewers are acquainted with any experiments referred to within a proposal, with key individuals, or with the firm itself. Therefore, the proposal should be self-contained and written with the care and thoroughness accorded papers for publication.

(e) Final decisions will be made by USDA based upon the ratings assigned by reviewers and consideration of other factors, including the potential commercial application, possible duplication of other research, any critical USDA requirements, and budget limitation. In addition, the follow-on funding commitment will be a consideration for phase II proposals.

§ 3403.11 Phase I evaluation criteria.

USDA plans to select for award those proposals offering the best value to the Nation, with approximately equal consideration given to each of the following criteria except for paragraph (a) of this section which will receive twice the value of any of the other items:

(a) The scientific/technical quality of the phase I research plan and its relevance to the stated objectives, with special emphasis on innovativeness and originality.

(b) Importance of the problem or opportunity and anticipated benefits of the proposed research, if successful.

(c) Adequacy of the phase I objectives to show incremental progress toward proving the feasibility of approach.

(d) Qualifications of the principal investigator(s), other key staff and consultants, and the probable adequacy of available or obtainable instrumentation and facilities.

§ 3403.12 Phase II evaluation criteria.

(a) A phase II proposal may be submitted only by a phase I awardee. The phase II proposal will be reviewed for overall merit based on the following criteria with each item receiving approximately equal weight except for paragraphs (a) (1) and (2) of this section, which will receive twice the value of any of the other items:

(1) The scientific/technical quality of the proposed research, with special emphasis on innovativeness and originality.

(2) Degree to which phase I objectives were met and feasibility was established.

(3) The technical, economic, and/or social importance of the problem or opportunity and anticipated benefits if Phase II research is successful.

(4) The adequacy of the phase II objectives to meet the problem or opportunity.

(5) The qualifications of the principal investigator(s) and other key personnel to carry out the proposed work.

(6) Reasonableness of the budget requested for the work proposed.

(b) In the event that two or more phase II proposals are of approximately equal technical merit, the follow-on funding commitment for continued development in phase III will be an important consideration. The value of the commitment will depend upon the degree of commitment made by non-Federal investors, with the maximum value resulting from a signed agreement with reasonable terms for an amount at least equal to the funding requested from USDA in phase II..

§ 3403.13 Availability of information.

Information regarding the peer review process will be made available to the extent permitted under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), the SBIR policy Directive, and implementing Departmental and other Federal regulations. Implementing Departmental regulations are found at 7 CFR part 1.

Subpart E—Supplementary Information

§ 3403.14 Terms and conditions of grant awards.

Within the limit of funds available for such purpose, the awarding official shall make research project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this part. The beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the Federal Acquisition Regulation (48 CFR part 31), and the Department's Uniform Federal Assistance Regulations (7 CFR part 3015).

§ 3403.15 Notice of grant awards.

(a) The grant award document shall include, at a minimum, the following:

(1) Legal name and address of performing organization.

(2) Title of project.

(3) Name(s) and address(es) of Principal Investigator(s).

(4) Identifying grant number assigned by the Department.

(5) Project period, which specifies how long the Department intends to support the effort.

(6) Total amount of Federal financial assistance approved during the project period.

(7) Legal authorities under which the grant is awarded.

(8) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award.

(9) Other information or provisions deemed necessary by the Department to carry out its granting activities or to accomplish the purpose of a particular research project grant.

(b) The notice of grant award, in the form of a letter, will provide pertinent instructions and information to the grantee which are not included in the grant award document described in paragraph (a).

§ 3403.16 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) *Change in project plans.* (1) The permissible changes by the grantee, principal investigator(s), or other key project personnel in the approved research project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the principal investigator(s) are uncertain as to whether a change complies with this provision, the question must be referred to the Department for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the Department prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the Department prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the Department prior to effecting such transfers.

(c) *Changes in project period.* The project period may be extended by the Department to complete or fulfill the purposes of an approved project provided Federal funds remain. The extension shall be conditioned upon prior request by the grantee and approval in writing by the Department. In such cases the extension will not normally exceed 12 months, the phase I award will still be limited to $55,000, and the submission of a Phase II proposal will be delayed by one year. The extension allows the grantee to continue expending the remaining Federal funds for the intended purpose over the extension period. In instances where no Federal funds remain, it is unnecessary to approve an extension since the purpose of the extension is to continue using Federal funds. The grantee may opt to continue the Phase I project after the grant's termination and closeout, however, the grantee would have to do so without additional Federal funds. In the latter case, no communication with USDA is necessary. However, the maximum delay for submission of a Phase II proposal remains as specified in § 3403.4(b).

(d) *Changes in approved budget.* Changes in an approved budget shall be requested by the grantee and approved in writing by the Department prior to instituting such changes if the revision will:

(1) Involve transfers of amounts budgeted for indirect costs to absorb increase in direct costs;

(2) Involve transfers of amounts budgeted for direct costs to accommodate changes in indirect cost rates negotiated during a budget period and not approved when a grant was awarded;

(3) Result in a need or claim for the award of additional funds; or

(4) Involve transfers or expenditures of amounts requiring prior approval as set forth in the Departmental regulations or in the grant award.

§ 3403.17 Other Federal statutes and regulations that apply.

Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

7 CFR Part 1—USDA implementation of Freedom of Information Act.

7 CFR Part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects;

7 CFR Part 3—USDA implementation of OMB Circular A–129, Managing Federal Credit Programs.

7 CFR Part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives where applicable (i.e., Circular Nos. A–102, A–110, A–87, A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Public Law 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3017, as amended—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), as amended.

7 CFR Part 3018—USDA implementation of New Restrictions on Lobbying. Imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3407—CSREES procedures to implement the National Environmental Policy Act;

48 CFR Part 31—Contract Cost Principles and Procedures of the Federal Acquisition Regulation.

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR Part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

§ 3403.18 Other conditions.

The Department may, with respect to any research project grant, impose additional conditions prior to or at the time of any award when, in the Department's judgment, such conditions are necessary to assure or protect advancement of the approved project, the interests of the public, or the conservation of grant funds.

Done at Washington, D.C., this 10th day of May, 1996.

B.H. Robinson,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 96–12375 Filed 5–17–96; 8:45 am]

BILLING CODE 3410–22–M

federal register

Monday
May 20, 1996

Part V

Department of Commerce

National Telecommunications and Information Administration

Telecommunications and Information Infrastructure Assistance Program; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket Number: 950124024–6130–04]

RIN 0660–AA04

Telecommunications and Information Infrastructure Assistance Program (TIIAP)

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice, funding availability and applications received.

SUMMARY: On February 29, 1996, the National Telecommunications and Information Administration (NTIA) announced the solicitation of grant applications for the Telecommunications and Information Infrastructure Assistance Program (TIIAP) to promote the widespread use of advanced telecommunications and information technologies in the public and non-profit sectors. By providing matching grants for Demonstration, Access, and Planning projects, this program will help develop a nationwide, interactive, multimedia information infrastructure that is accessible to all citizens, in rural as well as urban areas. At the time the Notice of Solicitation of grant applications appeared in the **Federal Register**, the TIIAP had not been appropriated funds through the fiscal year, and the Notice stated that TIIAP would publish a Notice when the appropriation for fiscal year 1996 was finalized. This Notice announces both the appropriation level and the applications that were received in response to the February 29, 1996 solicitation.

FOR FURTHER INFORMATION CONTACT: Stephen J. Downs, Acting Director, the Telecommunications and Information Infrastructure Assistance Program, Telephone: 202/482–2048. Fax: 202/501–5136. E-mail: tiiap@ntia.doc.gov.

SUPPLEMENTARY INFORMATION:

Funding Availability

By **Federal Register** Notice dated February 29, 1996, the NTIA, within the Department of Commerce, announced that the program was soliciting grant applications, and that the closing date for receipt of applications was 5 p.m. EST, April 4, 1996.[1] The Notice of Solicitation of Grant Applications provided that announcement of available funds would be made once a final appropriation for the TIIAP was enacted into law. On April 26, 1996, by enactment of Public Law 104–134, the TIIAP was appropriated $21.5 million for FY 1996.[2]

Except for the Notice that funding for the TIIAP for FY 1996 is $21.5 million, all other information announced in the Notice of Solicitation of Grant Applications remains in effect.

For further information on the Telecommunications and Information Infrastructure Assistance Program, please refer to the program's Notice of Solicitation of Grant Applications, published in the **Federal Register** on February 29, 1996.[3]

Applications Received

In all, 809 applications were received from 50 states, the District of Columbia, and the Commonwealth of Puerto Rico. The total amount of funds requested by the applications is $260 million.

Notice is hereby given that the TIIAP received applications from the following organizations. The list includes all applications received. Identification of any application only indicates its receipt. It does *not* indicate that it has been accepted for review, has been determined to be eligible for funding, or that an application will receive an award.

BILLING CODE 3510–60–P

State and file No.	Organization
Alabama:	
960229	Alabama Department of Economic and Community Affairs.
960461	Mobile Area Free-Net, Inc.
960511	Selma University.
960073	University of South Alabama.
960113	University of West Alabama.
Alaska:	
960479	Chistochina Village Council.
960800	Council of Athabascan Tribal Governments.
960714	Fairbanks North Star Borough School District.
960596	Galena City School District.
960041	Kodiak Island Borough.
960287	Matanuska-Susitna Borough School District.
960260	North Slope Borough.
960080	P.A.R.E.N.T.S., Inc.
960243	Southeast Regional Resource Center.
960051	State of Alaska.
960453	University of Alaska—Anchorage.
Arizona:	
960756	Arizona Board of Regents.
960446	City of Avondale.
960614	City of Phoenix.
960007	Conchise County.
960775	Gila River Health Care Corporation.
960573	Information & Referral Services, Inc.
960099	Maricopa Community Colleges.
960047	National Law Center for Inter-American Free Trade.
960100	Navajo Community College.
960518	White Mountain Apache Tribe.
Arkansas:	
960676	AEEA/PKI, Inc.
960711	Board of Trustees, University of Arkansas.

[1] 61 FR 7950 (Feb. 29, 1996).

[2] Balanced Budget Downpayment Act, II, Pub. L. No. 104–134, 110 Stat. 1321 (1996).

[3] 61 FR 7950 (Feb. 29, 1996).

State and file No.	Organization
960106	Main Street Arkansas.
960128	Nettleton Public Schools.
960425	Pottsville High School.
960052	University of Arkansas at Little Rock.
960185	University of Arkansas Cooperative Service.
960065	University of Arkansas for Medical Sciences.
960310	University of Arkansas for Medical Sciences.
960032	White River Planning and Development District, Inc.
California:	
960439	ARC Associates.
960318	Association of Bay Area Governments.
960230	Boys and Girls Club of San Fernando Valley.
960504	Calaveras County Economic Development Company.
960708	California Black Health Network.
960654	California Community Colleges Foundation.
960364	California Department of Justice.
960181	California Institute of Technology.
960019	California Museum Foundation.
960717	California Rural Indian Health Board.
960193	Carson/Lomita/Torrance Private Industry Council.
960389	Cedars-Sinai Medical Center.
960188	Chabot Observatory & Science Center.
960120	Citrus Community College.
960526	Coachella Valley Association of Governments (CVAG).
960440	Copper Mountain Campus.
960352	County of Los Angeles.
960716	County of San Diego.
960726	Crippled Children's Society of Southern California.
960370	Del Norte Clinics, Inc.
960390	Drew Economic Development Corp.
960733	EConnecticut Technolink Foundation, Inc.
960068	Economic Resources Corporation.
960636	Empire Union School District.
960752	Far West Laboratory for Educ. Research & Dev.
960118	Foundation for the American Academy of Ophthalmology.
960665	Fresno County Economic Opportunities Commission.
960715	Glenn County Office of Education.
960283	Greater Los Angeles Council on Deafness.
960270	HandsNet, Inc.
960481	Housing Authority of the City of Los Angeles.
960323	Internews Network, Inc.
960340	Japanese American Cultural & Community Center.
960245	Korean Youth and Community Center.
960698	Lake Department of Community Development.
960149	Los Angeles County Office of Education.
960326	Los Angeles Educational Partnership.
960132	Los Angeles Mission College.
960422	Los Angeles Urban League.
960119	Merced Union High School District.
960058	Midpeninsula Homecare and Hospice Services, Inc.
960609	NetDay.
960795	Northern California Cultural Communications.
960721	Northridge Cooperative Homes, Inc.
960057	Oxnard School District.
960667	Peralta Community College District.
960623	Plugged in-Learning Through Technology.
960523	Pomona College.
960417	Porterville Union High School District.
960694	Protection & Advocacy, Inc.
960322	PUENTE Learning Center.
960314	Ramona Unified School District.
960797	Rancho Santiago College.
960671	Redwood City Police Department.
960186	Regents of the University of California.
960566	Regents of the University of California.
960403	Regents of the University of California.
960463	Resident Controlled Housing Association.
960115	Richmond Police Activities League.
960003	Riverside Unified School District.
960560	S.F. Early Childhood Information Systems Project.
960578	San Benito County Office of Education.
960576	San Diego Consortium and Private Industry Council.
960779	San Fernando Valley Neighborhood Legal Services, Inc.
960174	San Luis Obispo County.

State and file No.	Organization
960195	Santa Ana Unified School District.
960611	Santa Barbara Museum of Natural History.
960703	South Bay Advanced Educational Technology Consortium.
960702	South San Francisco Unified School
960358	Tomas Rivera Center.
960547	United Way of Ventura County.
960659	University of California Board of Regents.
960189	University of Southern California.
960207	University of Southern California.
960753	University of Southern California.
960076	Utility Consumers Action Network.
960005	Western Commerical Space Center, Inc.
960079	Western Identification Network, Inc.
960762	World Institute on Disability.
960276	Yosemite Community College.
Colorado:	
960004	Alpine Medical Network.
960304	Cherry Creek School District #5.
960074	City of Arvada.
960655	Colorado Department of Education.
960662	Colorado Department of Public Safety.
960781	Colorado Dept. of Public Helth and Environment.
960148	Colorado State University.
960470	Denver Public Library.
960652	Five Points Media Center Corporation.
960773	Front Range Community College.
960768	High Plains Rural Health Network.
960275	Larimer County.
960799	Pueblo Community College.
960486	San Luis Valley Development Resources Group.
960103	Regents of the University of Colorado.
960418	University of Colorado.
960091	Western Governors' Association.
960146	Western Governors' Association.
Connecticut:	
960666	Bibliomation, Inc.
960707	Capitol Region Council of Governments.
960329	Connecticut Healthcare Research and Education Foundation, Inc.
960129	Connecticut Pre-engineering Program, Inc.
960769	Eastern Connecticut Resource Conservation and Development Area.
960219	Groton Public Schools.
960071	Hartford Primary Care Consortium, Inc.
960723	Hartford Public Library.
960605	Town of Newington.
960190	Trinity College.
960480	Tunxis Community Technical College.
960210	Westport Public Schools.
960550	Workplace, Inc.
Delaware:	
960521	Cheyney University.
District of Columbia:	
960728	Association for Community Based Education.
960592	Center for Law and Social Policy.
960761	Council on Library Resources.
960689	District of Columbia Public Schools.
960315	Georgetown University.
960729	Georgetown University.
960022	Global Satellite Broadcasting.
960442	Hine Junior High School.
960434	Immigration and Refugee Services of America.
960496	John F. Kennedy Center for the Performing Arts.
960610	Milton S. Eisenhower Foundation.
960552	National Congress of American Indians.
960527	National Consumers League.
960196	National Hispanic Council on Aging.
960760	National Small Business United.
960677	National Urban Coalition.
960730	Rural Coalition.
960316	Center for Civic Networking, Inc.
960460	George Washington University.
960537	George Washington University.
960599	Mathematical Association of America.
960718	Trinity College.
960252	United Cerebral Palsy Associations, Inc.

State and file No.	Organization
960490	Urban Family Institute.
960663	Wider Opportunities for Women, Inc.
960095	Youth Policy Institute.
Florida:	
960130	Bay County Public Library Association.
960142	Board of County Commissioners of Palm Beach County.
960332	Central Florida Community College.
960506	Children's Medical Services.
960045	City of Alachua.
960644	City of Apopka.
960746	City of Hollywood.
960805	City of Miami Beach.
960744	Dennis and Associates.
960292	Florida Atlantic University.
960419	Gainesville Regional Utilities.
960090	Gulf Coast Community College.
960363	H. Lee Moffitt Cancer Center & Research Institute.
960309	Housing Authority of Brevard County.
960104	Indian River Community College.
960441	Lee County Board of County Commissioners.
960343	Metropolitan Dade County.
960054	Okaloosa-Walton Community College.
960656	Ruckel Middle School/Niceville High.
960675	School Board of Broward County.
960330	Southeast Florida Library Information Network, Inc.
960582	Suwannee County School Board.
960426	University of South Florida.
960640	Valencia Community College.
Georgia:	
960286	Athens Regional Library System.
960601	Atlanta Empowerment Zone Corporation.
960360	Augusta Technical Institute.
960433	Butler Street YMCA.
960064	Camden County Board of Education.
960062	Central Savannah River Area Regional Development Center.
960449	Chattahoochee County Education Center.
960556	City of Atlanta.
960278	Emory University.
960451	Georgia Tech Research Corporation.
960810	Glynn County Board of Commissioners.
960216	Kennesaw State College.
960333	Mercer University.
960600	Metro Atlanta Task Force for the Homeless, Inc.
960179	Newnan Water Sewage & Light Commission.
960809	Roddenbery Memorial Library.
960192	Sara Hightower Regional Library.
960519	Sumter Electric Membership Corporation.
960161	Sullivan Center, Inc.
960548	Troup Electric Membership Corporation.
960176	World Relief.
960299	Young Harris College.
Hawaii:	
960687	Alu Like, Inc.
960565	Department of Land and Natural Resources.
960122	Hawaii Department of Education.
960127	Hawaii State Department of Education.
960411	Hawaii State Department of Health.
960133	Hawaii State Public Library System.
960279	Legal Aid Society of Hawaii.
960642	Maui Economic Development Board, Inc.
960060	Pacific Region Educational Laboratory.
960431	University of Hawaii.
Idaho:	
960484	Idaho Department of Juvenile Corrections.
960686	USA Dry Pea and Lentil Council, Inc.
Illinois:	
960249	Center for Neighborhood Technology.
960206	Chicago Public Schools.
960070	City of Peoria.
960410	College of DuPage.
960622	Decatur Memorial Foundation.
960678	Emeri Cabezas.
960391	Illinois State Museum Society.
960257	Kishwaukee College.

State and file No.	Organization
960017	Lacon Public Library District.
960083	Lincoln Park Renewal.
960522	Maria High School.
960338	Mercer County Hospital.
960520	Midwestern University.
960757	NAES College.
960542	Oak Park Elementary School District 97.
960629	Riverbluff Health Services Alliance.
960365	Rock Valley College.
960335	Sangamon County Emergency Telephone Systems Department.
960510	Southern Illinois University.
960312	Stephenson Area Vocational Technical Education System.
960691	Hureston Foundation.
960018	University of Illinois.
960724	University of Illinois at Chicago.
960155	University of Illinois Board of Trustees.
960053	Village of Downers Grove.
960013	West Aurora Public School District No. 129.
960265	West Central Municipal Conference.
Indiana:	
960298	Central Indiana Educational Service Center.
960300	Eastside Community Investments, Inc.
960168	Fort Wayne Area Infonet.
960653	Indiana Department of Education.
960098	Ivy Tech State College.
960668	Lake County Public Library.
960692	Legal Services Organization of Indiana.
Iowa:	
960598	Arrowhead Area Education Agency.
960607	Cass County Memorial Hospital.
960637	CedarNet, Inc.
960749	City of Marshalltown.
960152	Department of Public Defense.
960459	Des Moines Area Community College.
960722	Graceland College.
960669	Iowa Assoc. of Independent Colleges and Universities.
960399	Iowa City Community School District.
960407	Iowa State University of Science and Technology.
960274	Kirkwood Community College.
960372	Northwest Iowa Area Education Agency Coop.
960387	South Central Consortium Foundation.
960597	University of Iowa.
Kansas:	
960016	Amecowley County Community College.
960253	Hays Medical Center.
960151	Kansas Department of Human Resources.
960554	Kansas State University.
960394	Reno County.
Kentucky:	
960415	Appalachian College Association, Inc.
960242	Barren River Development Council.
960225	Big Sandy Telecommuting Services, Inc.
960258	Center for Rural Development.
960591	Jewish Hospital Foundation, Inc.
960094	Kentucky Rural Telecommunications Center, Inc.
960604	Kentucky Science and Technology Council, Inc.
960354	Media Working Group, Inc.
960638	National Center for Family Literacy.
Louisiana:	
960319	Avoyelles Parish School Board.
960214	City of New Orleans.
960213	City-Parish of East Baton Rouge.
960574	Iberville Parish Police Jury.
960221	Jefferson Parish Government.
960140	Louisiana Commission on Law Enforcement.
960471	Louisiana Department of Labor.
960493	Louisiana Systematic Initiatives Program.
960320	Orleans Private Industry Council, Inc.
960002	Pregnancy Institute.
960117	South Cameron Memorial Hospital.
960145	UNITY for the Homeless.
Maine:	
960509	EColorado 2000.
960124	Judicial Department.

State and file No.	Organization
960227	Oxford Hills Technical School (MVR #11).
960172	Training & Development Corporation.
960414	University of Maine.
Maryland:	
960393	Baltimore County Public Schools.
960231	Board of Education of Prince George's County.
960012	Catonsville Community College.
960232	Chesapeake College.
960579	Computer Training and Development Corp.
960327	Empower Baltimore Management Corporation.
960474	Epilepsy Association of Maryland, Inc.
960738	Governor's Office for Children, Youth, and Families.
960160	Homeless Persons Representation Project, Inc.
960690	Izaak Walton League of America.
960647	Montgomery County Government.
960001	NASRO Foundation.
960495	People's Pro Bono Action Center, Inc.
960476	Prince George's County Police Department.
960584	Prince George's County Public Schools.
960540	Tacoma Empowerment Consortium.
960546	Enterprise Foundation, Inc.
960559	University of Maryland at Baltimore.
960646	University of Maryland at Baltimore.
960285	University of Maryland Biotechnology Institute.
960367	University of Maryland University College.
960034	Washington County Free Library.
960526	Youth Achievers USA, Inc.
Massachusetts:	
960114	Berkshire Community College.
960208	Boston Public Schools.
960025	Braintree Electric Light Department.
960204	Brandeis University.
960650	Civil Rights Project, Inc.
960036	Douglas Public Schools.
960356	E.F. Schumacher Society.
960448	Education Development Center, Inc.
960514	Education Development Center, Inc.
960087	Greater Lawrence Family Health Center.
960557	Lexington Public Schools.
960784	Lowell Telecommunications Corp.
960182	Massachusetts Coalition of Battered Women Service Groups.
960035	Massachusetts Institute of Technology.
960033	Middlesex County Sheriffs Department.
960097	National Consumer Law Center, Inc.
960500	Nauset Regional School District.
960092	New England Board of Higher Education.
960794	New England Medical Center Hospitals, Inc.
960543	North Adams Department of Technical & Media Services.
960545	Northeast States for Coordinated Air Use Management.
960334	Orange Public Elementary Schools.
960269	Springfield College.
960612	Community Builders, Inc.
960184	Town of Wellesley.
960280	Tufts University.
960321	University of Massachusetts School of Education.
960301	Wellesley College.
960580	WGBH Educational Foundation.
960396	WGBH Educational Foundation.
Michigan:	
960156	Allegan Muskegon Ottawa Substance Abuse Agency.
960082	Allen Park Police Department.
960643	Alpena-Montmorency-Alcona Educational Svc District.
960266	Battle Creek Community Foundation.
960468	Branch Intermediate School District.
960487	Butterworth Health System.
960256	Cable Communications Public Benefit Corporation.
960236	Capital Area United Way.
960386	Central Operations for Police Services.
960613	City of Detroit Employment and Training Department.
960272	Delta-Schoolcraft Intermediate School District.
960808	Global Rivers Environmental Education Network.
960240	Grand Traverse Band of Ottawa and Chippewa Indians.
960296	Great Lakes Commission.
960344	Legal Services Association of Michigan.

State and file No.	Organization
960261	Michigan Public Health Institute.
960641	Michigan State University.
960804	Michigan Technological University.
960030	Novi Police Department.
960704	School District of the City of Detroit.
960049	Regents of the University of Michigan.
960138	United Way Community Services.
960293	University of Detroit Mercy.
960424	Van Buren Intermediate School District.
960271	Wayne State University.
Minnesota:	
960713	Cable Access Saint Paul.
960807	Cook County Community Center.
960570	Fond du Lac Tribal & Community College.
960234	Independent School District #95.
960621	Inver Hills Community College.
960569	Migizi Communications, Inc.
960382	Minneapolis American Indian Center.
960373	Minneapolis Community and Technical College.
960639	Minneapolis Police Department.
960528	Minneapolis Telecommunications Network.
960063	Minnesota Department of Human Services.
960437	Morris Area High School.
960238	Pine Technical College.
960648	Rural Health Services, Inc.
960105	Southeast Service Cooperative.
960670	Southwest/West Central Service Cooperatives.
960745	Southwest/West Central Service Cooperatives.
960516	Duluth Clinic.
960436	Twin Cities Housing Development.
960110	United Way of Olmsted County.
Mississippi:	
960720	Institute of Higher Learning.
960770	Mississippi Resource Center.
960619	Mississippi State University.
960037	Mississippi Valley State University.
960044	University of Southern Mississippi.
Missouri:	
960046	California Progress, Inc.
960273	Central Ozarks Private Industry Council.
960725	City of Clayton.
960748	City of Kansas City.
960317	Columbia Online Information Network.
960199	Diocese of Kansas City—St. Joseph.
960345	Kansas City Area Development Council.
960141	Meramec Regional Planning Commission.
960361	Missouri Osteopathic Medical Education Consortium.
960777	Rolla Technical Institute.
960020	St. Joseph School District.
960218	St. Louis Development Corporation.
960469	St. Peters Staff Support Services Administration.
960695	Curators of the University of Missouri.
960307	United Way of Greater St. Louis, Inc.
960765	Visiting Nurse Association Corporation.
Montana:	
960349	City of Hardin.
960788	Dillon-Net.
960575	Healthy Mothers Healthy Babies the Montana Coalition.
960302	Montana Rural School Technology Consortium.
960561	Montana 4–H Foundation.
960175	Montana State University.
960169	University of Great Falls.
Nebraska:	
960029	A°DEC Corporation.
960348	Board of Regents of the Univrsity of Nebraska—Lincoln.
960674	Bryan Memorial Hospital.
960347	City of Crete.
960555	Lincoln Action Program, Inc.
960645	University of Nebraska.
960567	University of Nebraska Board of Regents.
Nevada:	
960630	INTER Tribal Council of Nevada, Inc.
960187	Nevada Rural Hospital Project Foundation.
960563	Reno Police Department.

State and file No.	Organization
960477	University of Nevada, Las Vegas.
New Hampshire:	
960413	Berlin High School.
960443	New Hampshire Public Radio, Inc.
960194	New Hampshire School Administrative Unit #53.
960741	Rochester School Department.
960263	Southeastern Regional Education Service Center, Inc.
New Jersey:	
960763	Bourough of Laurel Springs.
960357	Cathedral Healthcare Services.
960498	Church of St. Margaret.
960740	Collingwood Board of Education.
960378	County of Cumberland.
960381	Franklin Police Department.
960355	Greater Egg Harbor Regional High School District.
960134	Greater Newark Conservancy.
960163	Libraries of Middlesex Automation Consortium.
960697	Little Egg Harbor Police Department.
960791	Monmouth-Ocean Hospital Service Corp.
960226	Moorestown Township Public Schools.
960102	National Housing Institute.
960608	Newark Public Schools.
960147	Rutgers, the State University of New Jersey.
960789	Somerset County Technical Institute.
960164	Stevens Institute of Technology.
960388	Union City Board of Education.
960423	Union Organization for Social Service.
960362	University of Medicine and Dentistry of New Jersey.
New Mexico:	
960294	African American Community Coalition.
960505	City of Las Cruces.
960247	Cooperative Educational Services.
960027	Northern New Mexico Community College.
960101	Northwest New Mexico Council of Governments.
960198	San Juan County Communications Authority.
960379	University of New Mexico.
New York:	
960088	Albany-Schoharie-Schenectady-Saratoga Boces.
960742	Bethesda Church of God in Christ, Inc.
960535	Board of Cooperative Educational Services.
960339	Cheektowaga-Sloan UFSD.
960572	Clinical Directors Network, Inc.
960507	College Entrance Examination Board.
960015	College of Saint Rose.
960244	Columbia University.
960308	Community School District 13.
960787	Community School District 21.
960465	Community School District 22.
960657	Community School District 29/Magnetech 231.
960306	Contemporary Art Institute of New York.
960241	Cornell University.
960778	Council for the Arts in Westchester.
960755	Darby Hill Communications, Inc.
960538	Educatioal Alliance, Inc.
960524	Falu Foundation.
960284	Federation of Protestant Welfare Agencies, Inc.
960404	Foundation for Minority Interests in Media, Inc.
960200	Fund for the Borough of Brooklyn.
960544	Hamburg Central School District.
960066	Health Research, Inc./New York State Department of Health.
960473	Health Research, Inc./New York State Department of Health.
960735	Health Research, Inc./New York State Department of Health.
960435	Higher Education Development Fund.
960785	Hostos Community College.
960205	Human Resources Administration.
960267	Institute For Contemporary Art.
960452	Learning & Infor. Network for Cmnty Telecomputing, Inc.
960021	Local Initiatives Support Corporation.
960162	Lockport City School District.
960377	Millard Fillmore Hospitals.
960602	National Urban Technology Center.
960116	New York City Public Schools.
960111	New York Public Library.
960421	New York Public Library.

State and file No.	Organization
960359	New York University Medical Center.
960790	Niagara University.
960402	NYSERNET, Inc.
960158	Orleans Niagara Board Of Cooperative Educational Services.
960719	P.S. 186, the Castlewood School.
960515	Playing to Win, Inc.
960183	Pratt Institute.
960305	Research Foundation of SUNY.
960173	Research Foundation of CUNY.
960180	Research Foundation of CUNY.
960503	Research Foundation of CUNY.
960472	Research Foundation of CUNY.
960571	Research Foundation of SUNY.
960684	Research Foundation of SUNY.
960489	Research Foundation of SUNY.
960342	Research Foundation of CUNY.
960291	Rockland County Board of Cooperative Educational Services.
960289	Rockland Economic Development Corporation.
960445	Rural Development Leadership Network.
960215	Sullivan County.
960137	SUNY Plattsburgh In Conjunction.
960157	Town of Tonawanda.
960539	Trustees of Columbia University in the City of New York.
960217	Village of North Syracuse.
960043	Yonkers Public Schools.
North Carolina:	
960089	Bladen County School.
960658	Central Piedmont Community College.
960457	City of Greensboro Fire Department.
960028	City of Winston-Salem.
960374	Martin County Schools.
960400	Maryland Community College.
960615	Montgomery Community College.
960685	Montreat College.
960792	Mountain Area Health Education Foundation.
960558	North Carolina A&T State University.
960392	North Carolina Client and Community Development Center.
960191	North Carolina Office of the State Controller.
960447	North Carolina State University.
960059	North Carolina Wesleyan College.
960093	Public Library of Charlotte and Mecklenburg County.
960233	Regional Education Service Alliance.
960337	SERVE, Inc.
960618	Southern Rural Development Initiative.
960350	University of North Carolina Greensboro.
North Dakota:	
960008	Catholic Family Service.
960014	McKenzie County School District #1.
960375	Medcenter One Health Systems.
960705	North Dakota State Radio Communications.
Ohio:	
960553	Appalachian Center for Economic Networks, Inc.
960384	Aurora Police Department.
960455	Bowling Green state University.
960802	Caracole, Inc.
960023	Cleveland City School District.
960771	Cleveland Clinic Foundation.
960420	Cloverleaf Vocational Marketing Education/OWE.
960603	Cuyahoga Metropolitan Housing Authority.
960009	Eat Palestine Police Department.
960525	Help Hotline Crisis Center, Inc.
960031	Mechanicsburg Exempted Village Schools.
960366	Ohio Legal Assistance Foundation.
960383	Ohio University.
960143	School Study Council of Ohio.
960620	Telecommunications Commission of Northwest Ohio.
960767	Toledo Department of Fire & Rescue Operations.
960397	Toledo Metropolitan Area Council of Governments.
960673	University of Cincinnati.
960616	University of Findlay.
960786	Washington County Commissioners.
960277	Willoughby Municipal Court.
960368	Zoological Society of Cincinnati.
Oklahoma:	

State and file No.	Organization
960562	Caddo-Kiowa Vocational Technical Center.
960533	Cheyenne Cultural Center, Inc.
960803	Chickasaw Nation.
960416	Companion Recording, Inc.
960743	Native American Cultural & Educational Authority.
960170	University of Oklahoma.
960376	University of Tulsa
Oregon:	
960754	Central Oregon Economic Development Council.
960485	Clackamas County.
960165	Columbia Foundation.
960680	Concordia University.
960664	Coos County Education Service District.
960458	Forest Grove School District.
960109	Intertribal GIS Council.
960482	Lane County Public Safety Coordinating Council.
960040	Medford School District 549c.
960069	Mid-Columbia Economic Development District .
960209	Mount Hood Community College.
960736	Northwest Portland Area Indian Health Board.
960371	Oregon Health Division.
960701	Oregon Office for Services to Children & Families.
960313	Portland Community College.
960328	Rural Health Connections.
960166	Coquille Indian Tribe.
960727	Private Industry Council, Inc.
960336	Tillamook School District. #9
960341	University of Oregon.
960587	Washington County Education Service District.
Pennsylvania:	
960682	Allegheny-Singer Research Institute.
960508	Berks Community Television.
960536	Borough of New Brighton.
960153	California University of Pennsylvania.
960254	Crawford County Development Corporation.
960050	Delaware Valley Regional Planning Commission.
960681	Duquesne University.
960171	Duquesne University of the Holy Ghost.
960409	Duquesne University of the Holy Ghost.
960235	Ephrata Community Hospital Foundation.
960750	Fayette County Community Action Agency, Inc.
960450	Germantown Settlement.
960201	Harrisburg Bureau of Planning.
960712	Hill House Association Community Access Network.
960438	Information Renaissance.
960577	Institute for Civic Renewal.
960589	Mayor's Office of Community Services.
960255	National Environmental Education & Training Center, Inc.
960751	Northwest Pennsylvania Training Partnership Consortium, Inc.
960541	Pennsylvania College of Technology.
960131	Pennsylvania Legal Services.
960700	Pennsylvania State University.
960432	Philadelphia Education Fund.
960606	Philadelphia Enterprise Center.
960590	Pitcairn Police Department.
960633	Pittsburg Regional Center for Science Teachers (PRCST).
960661	Research for Better Schools, Inc.
960264	Seneca Highlands Intermediate Unit 9.
960467	Sheraden Community Development Corporation.
960734	Temple University of the Commonwealth System of Higher Education.
960324	The Road, Inc.
960780	Thomas Jefferson University.
960766	Tri-County Partnership for Independent Living.
960466	University City Science Center.
960464	Volunteers for the Philadelphia Indigent, Inc.
960672	Waynesburg College.
960412	Williamsburg Community School District.
Puerto Rico:	
960529	Ana G. Mendez University System.
960061	Municipality of San Juan.
960532	Puerto Rico Department of Health.
Rhode Island:	
960282	Bryant College.
960159	Cranston Public Schools.

State and file No.	Organization
960262	Cumberland Police Department.
960534	Salve Regina University.
960395	Providence Plan.
960108	Town of Johnston.
960731	Women & Infants Hospital of Rhode Island.
South Carolina:	
960380	Benedict College.
960635	Charleston County School District.
960039	Chesterfield-Marlboro Technical College.
960048	Consolidated School District of Aiken County.
960583	Florence-Darlington Technical College.
960429	Midlands Technical College.
960406	South Carolina Educational Television Network.
960551	South Carolina State Budget and Control Board.
960806	University of South Carolina.
South Dakota:	
960295	Black Hills Special Services Cooperative.
960764	Center for Rural Health and Economic Development.
960649	Mni Sose Intertribal Water Rights Coalition, Inc.
960125	South Dakota Department of Labor.
960290	South Dakota School of Mines and Technology.
960197	South Dakota State University.
Tennessee:	
960038	Emergency Communications of the Mid-South, Inc.
960530	Memphis City Schools.
960679	Shelby County Government.
960167	State of Tennessee.
960066	Tennessee Board of Regents.
960772	Duck River Agency.
960084	United Way of the Mid-South.
960483	University of Memphis.
960739	University of Tennessee.
960353	University of Tennessee Medical Center.
960223	Vision Five Group.
Texas:	
960759	Abilene Independent School District.
960369	Alliance for Higher Education.
960281	American Institute for Learning.
960428	Austin Free-Net.
960112	Bell County Network for Educational Technology.
960798	City of Pasadena.
960178	City of San Antonio.
960056	Conroe Independent School District.
960732	County of Cameron.
960136	Dallas County Community College District.
960177	El Paso Community College.
960086	Federation of State Medical Boards of the United States, Inc:
960401	Gholson Independent School District.
960628	Hill/Navarro Electronic Consortium, Inc.
960085	Houston Community College System.
960220	Migrant Clinicians Network, Inc.
960617	North Harris Montgomery Community College District.
960268	North Texas Education & Training Co-op, Inc.
960067	Plano Public Library System.
960581	Pleasanton Independent School District.
960634	Prairie View A&M University.
960408	Sam Houston State University.
960776	San Angelo Community Development & Public Housing Authority.
960494	San Diego Independent School District.
960497	SUPER NebraskaT Consortium.
960594	Texas A&M Research Foundation.
960688	Texas Agricultural Experiment Station Texas A&M University System.
960782	Texas Association of Minority Business Enterprises.
960107	Texas State Technical College.
960297	Texas Workforce Commission.
960747	Texoma Council of Government.
960478	University of North Texas.
960202	University of Texas At El Paso.
960331	Volunteer Center of Dallas County.
960502	Waco Creative Arts Center.
960246	Warm Springs Rehabilitation Foundation, Inc.
960796	Wharton County Junior College.
Utah:	
960801	Association of Rural Centers of Health.

State and file No.	Organization
960491	Interwest Quality of Care, Inc.
960444	Utah Issues Information Program.
960531	Utah State University.
960699	Utah State University.
960303	Utah Valley State College.
960585	Valley Emergency Communications Center.
Vermont:	
960512	Franklin Northeast Supervisory Union.
960259	National Gardening Association.
960593	Trinity College of Vermont.
960398	Unified School District #36.
960250	University of Vermont and State Agricultural College.
960010	Vermont Technical College.
Virginia:	
960026	Campbell County School Division.
960737	Cities In Schools, Inc.
960513	City of Newport News.
960011	Danville Community College.
960081	Department of State Police.
960462	Fairfax Opportunities Unlimited, Inc.
960475	Fairfax-Falls Church United Way.
960631	George Mason College.
960632	Gum Springs Community Development Corporation.
960154	Kidz On-line, Inc.
960211	Lynchburg City Schools.
960696	Norfolk Public Library.
960492	Northern Virginia Community College.
960237	Southside Virginia Community College.
960783	Southside Virginia Regional Technology Consortium.
960488	Southwest Virginia Education and Training Network.
960228	Tidewater Community College.
960624	United Negro College Fund, Inc.
960139	Virginia Commonwealth University Medical College of Virginia.
960501	Virginia Polytechnic Institute & State University.
960288	Virginia Space Grant Consortium.
960706	William A. Hunton YMCA.
Washington:	
960683	AIDS Housing of Washington.
960224	Battle Ground School District 19.
960072	Bi-County Police Information Network.
960625	City of Burien.
960549	City of Seattle.
960123	City of Spokane Police Department.
960627	Eastern Washington University.
960811	Homeless Women's Network.
960346	Lower Columbia College.
960758	Lower Elwha Klallam Tribe.
960385	Northwest Justice Project.
960430	Pacific NorthWest Economic Region Foundation.
960595	Quileute Tribal School.
960150	South Puget Intertribal Planning Agency.
960075	Spokane Tribe of Indians.
960351	Stanwood School District #401.
960248	University of Washington.
960693	Virginia Mason Medical Center.
960055	Washington State 4–H Foundation.
960405	Washington State University.
960427	Washington State University.
960517	Washington Technology Access Center.
960651	Western Washington University.
960239	Yakima Valley Museum.
West Virginia:	
960096	North Central Reg. Edu. Service Agency (RESAVII).
960078	West Virginia Community Action Directors Association.
960710	West Virginia University.
960568	West Virginia University.
Wisconsin:	
960203	ABC for Health, Inc.
960077	Board of Regents of the University of Wisconsin.
960251	Chippewa Falls Area Unified School District.
960024	Marshfield Police Department.
960144	Medical College of Wisconsin.
960660	Milwaukee Access Telecommunications Authority.
960126	Milwaukee Public Schools.

State and file No.	Organization
960709	Northern Wisconsin Educational Community System.
960588	Oak Creek Police Department.
960774	Project Bootstrap, Inc.
960135	Pulaski Community School District.
960121	School District of Osceola.
960456	Society's Assets, Inc.
960311	Sparta Area School District.
960454	University of Wisconsin System.
Wyoming:	
960793	Community Resource Center.
960499	Fremont County School District No. 24.
960222	Ivinson Memorial Hospital.
960212	Lincoln County School District No. 2.
960042	Northwest Community College District.
960586	University of Wyoming.

Bernadette McGuire-Rivera,
Associate Administrator, Office of Telecommunications and Information Applications.
[FR Doc. 96–12631 Filed 5–17–96; 8:45 am]
BILLING CODE 3510–60–M

Reader Aids

Federal Register
Vol. 61, No. 98
Monday, May 20, 1996

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations
General Information, indexes and other finding aids — 202–523–5227
Public inspection announcement line — 523–5215

Laws
Public Laws Update Services (numbers, dates, etc.) — 523–6641
For additional information — 523–5227

Presidential Documents
Executive orders and proclamations — 523–5227
The United States Government Manual — 523–5227

Other Services
Electronic and on-line services (voice) — 523–4534
Privacy Act Compilation — 523–3187
TDD for the hearing impaired — 523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: 301–713–6905

FEDERAL REGISTER PAGES AND DATES, MAY

19155–19502 1
19503–19804 2
19805–20116 3
20117–20418 6
20419–20700 7
20701–21046 8
21047–21360 9
21361–21946 10
21947–24204 13
24205–24432 14
24433–24664 15
24665–24874 16
24875–25134 17
25135–25388 20

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR
Proclamations:
6889 19503
6890 19803
6891 20419
6892 21045
6893 21047
6894 24661
6895 24663
6896 25129
Executive Orders:
11216 (See EO 13002) 24665
13001 21943
13002 24665
13003 25131
Administrative Orders:
Memorandums:
April 26, 1996 19505
April 26, 1996 24667
April 26, 1996 24877
April 28, 1996 19507

4 CFR
Proposed Rules:
21 19205

5 CFR
Ch. LXIX 20117
300 19509
410 21947
532 20701
831 21953
842 21953

7 CFR
28 19511
51 20702
53 19155
54 19155
272 19155
273 19155
301 20877
319 24433
800 24669
810 24669
900 20717
915 19512
916 19160
917 19160
946 20119
956 20121
959 24877
979 20718
985 20122
1002 20719
1004 20719
1007 20124
1280 ..... 19514, 21049, 21053
1485 24205
1841 21361
1843 21361
1845 21361
1903 21361
1945 21361
1980 21361
2054 21361
3403 25366
Proposed Rules:
51 24247
911 20754
924 20756
944 ..... 20754, 20756
958 20188
1005 19861
1007 19861
1011 19861
1046 19861
1160 20759

8 CFR
3 ..... 19976, 21065, 21228
242 ..... 19976, 21065, 21228

9 CFR
50 25136
77 25135
78 19976
130 20427
Proposed Rules:
92 ..... 20189, 20190, 21389
93 20190
94 20190
95 20190
96 20190
98 20190
301 19564
304 19578
308 19578
317 ..... 19564, 19578
318 ..... 19564, 19578
319 19578
320 19564
381 ..... 19564, 19578

10 CFR
20 24669
30 24669
40 24669
61 24669
70 24669
72 24669
Proposed Rules:
26 ..... 21105, 24731
72 24249

11 CFR
110 24533

12 CFR
5 19524
19 20330
20 19524
25 21362

28.....19524
205.....19662, 19678
211.....24439
220.....20386
228.....21362
250.....19805
263.....20338
308.....20344
345.....21362
509.....20350
563e.....21362
614.....20125

Proposed Rules:
207.....20399
215.....19863
220.....20399
221.....20399
614.....24907

13 CFR

Proposed Rules:
121.....20191

14 CFR

21.....20696
25.....24208, 24213
27.....21904
29.....21894, 21904
31.....20877
39.....19540, 19807, 19808, 19809, 19811, 19813, 19815, 20125, 20127, 20616, 20636, 20638, 20639, 20641, 20643, 20644, 20646, 20668, 20669, 20671, 20672, 20674, 20676, 20677, 20679, 20681, 20682, 21066, 21068, 21070, 21071, 24206, 24214, 24216, 24218, 24220, 24675, 24684, 24686, 24688, 24690, 24691, 24878, 24881, 24883, 24884
43.....19498
71.....19541, 19542, 19816, 19817, 21364, 21365, 21953, 24222, 24223
73.....20127
91.....24430
97.....25138. 25139, 25141
159.....19784
205.....19164
323.....19164
385.....19166

Proposed Rules:
29.....20760
39.....20192, 20194, 20762, 20764, 21146, 21979, 21980, 21982, 24250
71.....19590, 19591, 19592, 19593, 21910, 21984, 24533, 25157
91.....24582
121.....21149, 24582, 24533
127.....24582
135.....24582

15 CFR

902.....19171, 21926
981.....21073

Proposed Rules:
946.....19594

16 CFR

1500.....19818

Proposed Rules:
254.....19869
1210.....20503

17 CFR

1.....19177, 19830
3.....20127
5.....19830
10.....21954
31.....19830
140.....21954
200.....20721, 25652
228.....25652
229.....25652
230.....21356, 25652
231.....24644
232.....25652
239.....25652
240.....21354, 25652
241.....24644
249.....21354
270.....25652
271.....24644
274.....25652
276.....24644

Proposed Rules:
1.....19869
156.....19869

18 CFR

35.....21940
37.....21737
385.....21940
1300.....20117

Proposed Rules:
35.....21847
161.....19211
250.....19211
284.....19211, 19832
346.....19878

19 CFR

10.....19834, 24887
12.....24888
103.....19835
145.....24888
161.....24888

Proposed Rules:
101.....19834

20 CFR

345.....20070
601.....19982
617.....19982
626.....19982
658.....19982
702.....19982

21 CFR

5.....24223
101.....20096, 21074
201.....20096
310.....25142
341.....25142
369.....20096
500.....19542
501.....20096
510.....21075, 24440
520.....24441, 24443
522.....21075, 24440
556.....24440, 24441
558.....21075, 24443, 24694
582.....19542
589.....19542
600.....24227
601.....24227
740.....20096
801.....20096

Proposed Rules:
Ch. 1.....21392
25.....19476
102.....19220
130.....19220
131.....19220
133.....19220
135.....19220
136.....19220
137.....19220
139.....19220
145.....19220
146.....19220
150.....19220
152.....19220
155.....19220
156.....19220
158.....19220
160.....19220
161.....19220
163.....19220
164.....19220
165.....19220
166.....19220
168.....19220
169.....19220
210.....20104
211.....20104
328.....21392
530.....25118
589.....24253

22 CFR

126.....19841
514.....20437

24 CFR

0.....19187
201.....19788
290.....19188
585.....25124
941.....19708
970.....19708

Proposed Rules:
206.....21910
888.....20982
901.....20358
3500.....21394

25 CFR

Proposed Rules:
144.....24731
250.....19600
525.....21394

26 CFR

1.....19188, 19189, 19544, 19546, 21366, 21955
301.....19189
602.....19189

Proposed Rules:
1.....20503, 20766, 20767, 21985, 21988
31.....20767
32.....20767
35a.....20767
301.....20503, 21989

27 CFR

1.....20721
4.....20721
7.....20721
16.....20721
19.....20721
20.....20721
21.....20721
22.....20721
24.....20721, 21076
25.....20721
53.....20721
55.....20721
71.....20721
170.....20721
178.....20721
179.....20721
194.....20721
197.....20721
200.....20721
250.....20721
251.....20721
252.....20721
270.....20721
275.....20721
285.....20721
290.....20721
296.....20721

28 CFR

58.....24889
501.....25120
550.....25120

Proposed Rules:
90.....24526
100.....21396

29 CFR

1.....19982
2.....19982
4.....19982
5.....19982
6.....19982
7.....19982
8.....19982
22.....19982
24.....19982
32.....19982
96.....19982
500.....24694
504.....19982
507.....19982
508.....19982
530.....19982
1601.....21370
1910.....19547, 21228
1978.....19982
2619.....21228, 24444
2627.....24694
2676.....24444

Proposed Rules:
Ch. XIV.....20768
4.....19770
102.....25158

30 CFR

75.....20877
250.....25147

Proposed Rules:
Ch. II.....21977, 25160
256.....24466
901.....20768
902.....20768
904.....19881, 20768
913.....20768
914.....20768
915.....20768
916.....20768
917.....20768
918.....20768
920.....20768
946.....19885

950.....20773

31 CFR

361.....20437
585.....24696

Proposed Rules:
356.....25164

33 CFR

52.....24233
100.....19192, 20132, 21959, 21960, 21961, 21962, 25149
110.....25149
117.....24235, 25149
165.....19192, 19841, 21963, 24697, 24698, 24699, 24701, 24892
401.....19548

34 CFR

361.....24390
685.....24446

Proposed Rules:
100.....20196, 21998, 21999, 22001
117.....22002
154.....20084
155.....20084

36 CFR

292.....20726
1228.....19552, 24702

Proposed Rules:
7.....20775
100.....19220
117.....19223

37 CFR

Proposed Rules:
Ch. II.....20197, 22004
1.....19224, 20877

38 CFR

2.....20133, 20437
3.....20438, 20726
4.....20438, 20440
9.....20134
17.....21964, 24236
19.....20447
20.....20447
21.....20727, 24237

Proposed Rules:
3.....24910

39 CFR

3001.....24447

Proposed Rules:
233.....21404

40 CFR

52.....19193, 19555, 20136, 20139, 20142, 20145, 20147, 20453, 20455, 20458, 20730, 20732, 24239, 24457, 24702, 24706, 24709, 24712
55.....25149
110.....25149
117.....25149
60.....20734, 21080
63.....21370
70.....20150, 24457, 24715
80.....20736
81.....20458, 21372, 24239, 24242
89.....20738
90.....20738
123.....20972
131.....20686
141.....24354
167.....25151
180.....19842, 19845, 19847, 19849, 19850, 19852, 19854, 19855, 20742, 20743, 20745, 21378, 24893, 25152
185.....25153
300.....20473, 24720, 24894
355.....20473
421.....24242

Proposed Rules:
Ch. I.....19432
51.....19231
52.....19233, 19601, 20199, 20200, 20201, 20504, 21405, 21412, 24467, 24737, 24738
55.....25173
61.....20775
63.....19887, 21414
70.....20202
80.....20779
81.....19233, 21415
89.....20738
90.....20738
170.....19889
148.....21418
180.....19233, 20780, 20781, 24738, 24911
185.....20780
186.....10780, 20781, 24911
261.....21418, 25175
268.....21418
271.....21418
300.....19889, 20202, 20785, 21422, 22004, 22006, 24261

41 CFR

50–203.....19982
60–1.....19982
60–30.....19982
60–250.....19366, 19982
60–741.....19336, 19982

42 CFR

405.....19722
412.....21969
486.....19722

Proposed Rules:
84.....24740

43 CFR

11.....20560

44 CFR

61.....19197
62.....24462
64.....19857
206.....19197

45 CFR

Proposed Rules:
1311.....24467

46 CFR

Ch. I.....24464
10.....19858
15.....19858
30.....25272
31.....25272
32.....25272
33.....25272
35.....25272
70.....25272
71.....25272
75.....25272
77.....25272
78.....25272
90.....25272
91.....25272
94.....25272
96.....25272
97.....25272
107.....25272
108.....25272
109.....25272
114.....20556
116.....20556
117.....20556
118.....20556
119.....20556
120.....20556
121.....20556
122.....20556
125.....25272
133.....25272
167.....25272
168.....25272
170.....20556, 24464
171.....24464
173.....20556, 24464
175.....20556
176.....20556
177.....20556
178.....20556
179.....20556
180.....20556
181.....20556
182.....20556
183.....20556
185.....20556
188.....25272
189.....25272
192.....25272
195.....25272
196.....25272
199.....25272
298.....21302
381.....24895
403.....21081
404.....21081

47 CFR

3.....20155
22.....21380
64.....20746, 24897
73.....20490, 20747, 21384, 21385, 21973, 24262, 24263, 24465
90.....21380
97.....21385

Proposed Rules:
Ch. I.....22008
0.....21151
1.....19236, 20505, 24743, 25183
2.....19236
15.....24473, 24749
21.....19236
22.....24470
24.....24470
64.....25184
73.....19601, 20206, 20207, 20505, 20789, 21425, 24262, 24263, 25183
80.....21151
90.....25185
94.....19236

48 CFR

Ch. 1.....24263
231.....21973
570.....24720
801.....20491
803.....20491
804.....20491
805.....20491
806.....20491
808.....20491
810.....20491
812.....20491
813.....20491
815.....20491
816.....20491
820.....20491
822.....20491
828.....20491
833.....20491
834.....20491
836.....20491
837.....20491
846.....20491
871.....20493
904.....21975
906.....21975
911.....21975
912.....21975
913.....21975
915.....21975
919.....21975
925.....21975
926.....21975
933.....21975
950.....21975
952.....21975
970.....21975
2401.....19468
2402.....19468
2404.....19468
2405.....19468
2406.....19468
2409.....19468
2411.....19468
2412.....19468
2413.....19468
2414.....19468
2415.....19468
2416.....19468
2417.....19468
2419.....19468
2420.....19468
2426.....19468
2428.....19468
2429.....19468
2432.....19468
2434.....19468
2436.....19468
2437.....19468
2442.....19468
2452.....19468
2453.....19468

Proposed Rules:
Ch. 1.....22010
Ch. 2.....22010
52.....24473
901.....19891
905.....19891
906.....19891
908.....19891
915.....19891
916.....19891
917.....19891
922.....19891
928.....19891
932.....19891

933.....19891
935.....19891
936.....19891
942.....19891
945.....19891
952.....19891
971.....19891

49 CFR

18.....21386
90.....21386
107.....21084
171.....21084, 24904
172.....20747
173.....20747, 21084, 24904
174.....20747
176.....20747
178.....21084
180.....24904
195.....24244
228.....20494
397.....20496
564.....20497
571.....19201, 19202, 19560, 19561, 20170, 20172, 20497
604.....19562
609.....19562
639.....25088
1051.....19859
1053.....19859
1164.....21387
1311.....21387
1312.....19859
1330.....024722

Proposed Rules:

219.....21149
382.....21149
537.....22010
571.....19602, 24263, 24265
653.....21149
654.....21149
1002.....20877
1100.....19236
1101.....19236
1102.....19236
1103.....19236
1104.....19236
1105.....19236
1106.....19236
1107.....19236
1108.....19236
1109.....19236
1110.....19236
1111.....19236
1112.....19236
1113.....19236
1114.....19236
1115.....19236
1116.....19236
1117.....19236
1118.....19236
1119.....19236
1120.....19236
1121.....19236
1122.....19236
1123.....19236
1124.....19236
1125.....19236
1126.....19236
1127.....19236
1128.....19236
1129.....19236
1130.....19236
1131.....19236
1132.....19236
1133.....19236
1134.....19236
1135.....19236
1136.....19236
1137.....19236
1138.....19236
1139.....19236
1140.....19236
1141.....19236
1142.....19236
1143.....19236
1144.....19236
1145.....19236
1146.....19236
1147.....19236
1148.....19236
1149.....19236
1185.....22014
1300.....21153
1305.....24474
1312.....19902

50 CFR

17.....24722
91.....25155
216.....21926
222.....21926
253.....19171
255.....19171
620.....20175
658.....24728
661.....20175
663.....21102
672.....19976, 21104, 24729
675.....19976, 24730, 24905
678.....21978

Proposed Rules:

16.....24267
17.....19237, 21426
600.....19390
601.....19390
602.....19390
603.....19390
605.....19390
611.....19390
619.....19390
620.....19390
621.....19390
625.....20506
628.....20789
641.....24267
649.....20207
650.....20207, 21431
651.....20207
655.....25185
652.....19604
672.....24475, 24750
673.....19902, 21431
675.....24475, 24750
676.....24475

REMINDERS

The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Sheep and goats, and germ plasm from sheep and goats; published 4-19-96

AGRICULTURE DEPARTMENT
Cooperative State Research, Education, and Extension Service
Grants:
Small business innovation research program; administrative provisions; published 5-20-96

ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Outer Continental Shelf regulations–
Offset remand; published 5-20-96
Air quality implementation plans; approval and promulgation; various States:
Alabama; published 3-19-96
Colorado; published 3-19-96
Illinois; published 3-19-96
Indiana; published 3-19-96
Massachusetts; published 3-21-96
Montana; published 3-19-96
Tennessee; published 3-19-96
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Propargite, etc.; published 5-20-96
Propylene oxide; published 5-20-96

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Public and Indian housing:
Performance funding system; streamlining; published 4-19-96

TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
California; published 4-19-96

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Aviat Aircraft Inc.; published 5-2-96
Royal Inventum Co.; published 3-21-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Horses; vesicular stomatitis; comments due by 5-31-96; published 4-1-96
Interstate transportation of animals and animal products (quarantine):
Brucellosis in cattle and bison–
Brucella vaccine approval; comments due by 5-31-96; published 4-1-96

AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
Pear crop provisions; comments due by 5-28-96; published 4-25-96

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
Processed meat and poultry products; nutrient content claim and general definition and standard of identity; comment period extension; comments due by 5-28-96; published 2-27-96

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Atlantic golden crab fishery, etc.; comments due by 5-28-96; published 4-11-96
Northeast multispecies, Atlantic sea scallop, and American lobster; comments due by 5-30-96; published 5-6-96
Ocean salmon off coasts of Washington, Oregon, and California; comments due by 5-31-96; published 5-6-96
International fisheries in U.S. Exclusive Economic Zone and on high seas; regulations consolidation; comments due by 5-30-96; published 5-21-96
Magnuson Act provisions; regulations consolidation and update; comments due by 5-31-96; published 5-1-96

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Contractor overhead certification; comments due by 5-28-96; published 3-29-96

ENVIRONMENTAL PROTECTION AGENCY
Air pollution; standards of performance for new stationary sources:
Volatile organic compound (VOC) emissions–
Automobile refinish coatings; comments due by 5-30-96; published 4-30-96
Air quality implementation plans:
Preparation, adoption, and submittal–
Volatile organic coumpound definition; HFC 43-10mee and HCFC 225ca and cb exclusion; comments due by 5-31-96; published 5-1-96
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 5-30-96; published 4-30-96
Florida; comments due by 5-28-96; published 4-25-96
Kansas and Missouri; comments due by 5-28-96; published 4-25-96
Wisconsin; comments due by 5-29-96; published 4-29-96
Hazardous waste program authorizations:
Alabama; comments due by 5-28-96; published 4-25-96
Kentucky; comments due by 5-28-96; published 4-26-96
North Carolina; comments due by 5-28-96; published 4-25-96
South Carolina; comments due by 5-28-96; published 4-26-96
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Aluminum tris (O-ethylphosphonate); comments due by 5-28-96; published 4-26-96
Dicofol, etc.; comments due by 5-30-96; published 3-1-96
Quizalofop ethyl; comments due by 5-28-96; published 4-26-96

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Microwave relocation for C, D, E, and F blocks; voluntary negotiation period shortening, etc.; comments due by 5-28-96; published 5-15-96
Communications equipment:
Radio frequency devices–
Vehicle radar systems and radio astronomy operations; protection from interference; use of frequency bands above 40 GHz restricted; comments due by 5-28-96; published 3-29-96
Television broadcasting:
Telecommunications Act of 1996–
Cable reform provisions; comments due by 5-28-96; published 4-30-96

FEDERAL ELECTION COMMISSION
Reports by political committees:
Electronic filing of reports; comments due by 5-28-96; published 3-27-96

GENERAL ACCOUNTING OFFICE
Practice and procedure:
Personnel Appeals Board–
Reductions in force; comments due by 5-31-96; published 3-7-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare and Medicaid:
Prepaid health care organizations; physician incentive plans requirements; comments due by 5-28-96; published 3-27-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Inspector General Office, Health and Human Services Department
Medicare and Medicaid:

Prepaid health care organizations; physician incentive plans requirements; comments due by 5-28-96; published 3-27-96

INTERIOR DEPARTMENT
Fish and Wildlife Service
Migratory bird hunting:
Migratory bird harvest information program; participating States; comments due by 5-29-96; published 4-29-96

INTERIOR DEPARTMENT
Tribal government:
Self-governance program; awarding negotiation and planning grants; procedure establishment; comments due by 5-31-96; published 4-23-96

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Immigration:
Immigrant petitions--
Battered or abused spouses and children; classification as immediate relative of U.S. citizen or preference immigrant; self-petitioning; comments due by 5-28-96; published 3-26-96

JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Inmate personal property; authorized personal property lists standardization and transportation procedures; comments due by 5-31-96; published 4-1-96

POSTAL SERVICE
International Mail Manual:
International package consignment service implementation; comments due by 5-31-96; published 3-28-96

SECURITIES AND EXCHANGE COMMISSION
Securities:
Odd-lot tender offers by issuers; comments due by 5-28-96; published 4-25-96

SMALL BUSINESS ADMINISTRATION
Small business size standards:
Nonmanufacturer rule; waivers--
Purified terephthalic acid ground and unground; comments due by 5-29-96; published 5-6-96
Tabulating paper (computer forms, manifold or continuous); comments due by 5-29-96; published 5-6-96

TRANSPORTATION DEPARTMENT
Coast Guard
Merchant marine officers and seamen:
Electronic records of shipping articles and certificates of discharge; comments due by 5-28-96; published 3-28-96
Tankermen and persons in charge of dangerous liquids and liquefied gases transfers; qualifications; comment period reopening; comments due by 5-28-96; published 3-26-96
Regattas and marine parades:
Harborwalk Boat Race; comments due by 5-28-96; published 3-26-96
Suncoast Kilo Run et al.; comments due by 5-31-96; published 5-1-96

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 5-28-96; published 4-15-96
AlliedSignal, Inc.; comments due by 5-28-96; published 3-26-96
Beech; comments due by 5-28-96; published 4-15-96
CFM International; comments due by 5-28-96; published 3-26-96
McDonnell Douglas; comments due by 5-31-96; published 4-19-96
Airworthiness standards:
Special conditions--
Cessna model 425 airplanes; comments due by 5-30-96; published 4-30-96
Class E airspace; comments due by 5-27-96; published 4-16-96
Jet routes; comments due by 5-30-96; published 4-16-96

TRANSPORTATION DEPARTMENT
Federal Highway Administration
Motor carrier safety standards:
Commercial Driver's License and Physical Qualification Requirements Negotiated Rulemaking Advisory Committee--
Intent to establish; comments due by 5-29-96; published 4-29-96

TRANSPORTATION DEPARTMENT
Surface Transportation Board
Railroad contracts:
Specified rail services provision under specified rates and conditions; comment due date extended; comments due by 5-28-96; published 4-22-96

TREASURY DEPARTMENT
Customs Service
Organization and functions; field organization, ports of entry, etc.:
Columbus, OH; port limits extension; comments due by 5-31-96; published 5-3-96

TREASURY DEPARTMENT
Fiscal Service
Treasury certificates of indebtedness, notes, and bonds; State and local government series; comments due by 5-30-96; published 4-30-96

LIST OF PUBLIC LAWS

This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 2064/P.L. 104–144

To grant the consent of Congress to an amendment of the Historic Chattahoochee Compact between the States of Alabama and Georgia. (May 16, 1996; 110 Stat. 1342)

H.R. 2137/P.L. 104–145

Megan's Law (May 17, 1996; 110 Stat. 1345)

Last List May 17, 1996

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $883.00 domestic, $220.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, or Master Card). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at **(202) 512–1800** from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to **(202) 512-2233.**

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–028–00001–1)	$4.25	Feb. 1, 1996
3 (1994 Compilation and Parts 100 and 101)	(869–026–00002–6)	40.00	¹ Jan. 1, 1995
4	(869–028–00003–7)	5.50	Jan. 1, 1996
5 Parts:			
1–699	(869–028–00004–5)	26.00	Jan. 1, 1996
700–1199	(869–028–00005–3)	20.00	Jan. 1, 1996
1200–End, 6 (6 Reserved)	(869–028–00006–1)	25.00	Jan. 1, 1996
7 Parts:			
0–26	(869–026–00007–7)	21.00	Jan. 1, 1995
27–45	(869–026–00008–5)	14.00	Jan. 1, 1995
46–51	(869–028–00009–6)	13.00	Jan. 1, 1996
52	(869–028–00010–0)	5.00	Jan. 1, 1996
53–209	(869–028–00011–8)	17.00	Jan. 1, 1996
210–299	(869–028–00012–6)	35.00	Jan. 1, 1996
300–399	(869–026–00013–1)	16.00	Jan. 1, 1995
400–699	(869–028–00014–2)	22.00	Jan. 1, 1996
700–899	(869–026–00015–8)	23.00	Jan. 1, 1995
900–999	(869–028–00016–9)	30.00	Jan. 1, 1996
1000–1059	(869–026–00017–4)	23.00	Jan. 1, 1995
1060–1119	(869–026–00018–2)	15.00	Jan. 1, 1995
1120–1199	(869–026–00019–1)	12.00	Jan. 1, 1995
1200–1499	(869–028–00018–5)	29.00	Jan. 1, 1996
1500–1899	(869–028–00019–3)	41.00	Jan. 1, 1996
1900–1939	(869–028–00020–7)	16.00	Jan. 1, 1996
1940–1949	(869–026–00023–9)	30.00	Jan. 1, 1995
1950–1999	(869–028–00022–3)	39.00	Jan. 1, 1996
2000–End	(869–028–00023–1)	15.00	Jan. 1, 1996
8	(869–028–00024–0)	23.00	Jan. 1, 1996
9 Parts:			
1–199	(869–026–00027–1)	30.00	Jan. 1, 1995
200–End	(869–026–00028–0)	23.00	Jan. 1, 1995
10 Parts:			
0–50	(869–028–00027–4)	30.00	Jan. 1, 1996
51–199	(869–026–00030–1)	23.00	Jan. 1, 1995
200–399	(869–028–00029–1)	5.00	Jan. 1, 1996
400–499	(869–028–00030–4)	21.00	Jan. 1, 1996
500–End	(869–028–00031–2)	34.00	Jan. 1, 1996
11	(869–026–00034–4)	14.00	Jan. 1, 1995
12 Parts:			
*1–199	(869–028–00033–9)	12.00	Jan. 1, 1996
200–219	(869–026–00036–1)	16.00	Jan. 1, 1995
220–299	(869–028–00035–5)	29.00	Jan. 1, 1996
300–499	(869–026–00038–7)	23.00	Jan. 1, 1995
500–599	(869–026–00039–5)	19.00	Jan. 1, 1995
600–End	(869–028–00038–0)	31.00	Jan. 1, 1996
13	(869–026–00041–7)	32.00	Jan. 1, 1995
14 Parts:			
1–59	(869–026–00042–5)	33.00	Jan. 1, 1995
*60–139	(869–028–00041–0)	30.00	Jan. 1, 1996
*140–199	(869–028–00042–8)	13.00	Jan. 1, 1996
200–1199	(869–026–00045–0)	23.00	Jan. 1, 1996
*1200–End	(869–028–00044–4)	16.00	Jan. 1, 1995
15 Parts:			
0–299	(869–028–00045–2)	16.00	Jan. 1, 1996
300–799	(869–028–00046–1)	26.00	Jan. 1, 1996
800–End	(869–028–00047–9)	18.00	Jan. 1, 1996
16 Parts:			
0–149	(869–028–00048–7)	6.50	Jan. 1, 1996
150–999	(869–028–00049–5)	19.00	Jan. 1, 1996
1000–End	(869–028–00050–9)	26.00	Jan. 1, 1996
17 Parts:			
1–199	(869–026–00054–9)	20.00	Apr. 1, 1995
200–239	(869–026–00055–7)	24.00	Apr. 1, 1995
240–End	(869–026–00056–5)	30.00	Apr. 1, 1995
18 Parts:			
1–149	(869–026–00057–3)	16.00	Apr. 1, 1995
150–279	(869–026–00058–1)	13.00	Apr. 1, 1995
280–399	(869–026–00059–0)	13.00	Apr. 1, 1995
400–End	(869–026–00060–3)	11.00	Apr. 1, 1995
19 Parts:			
1–140	(869–026–00061–1)	25.00	Apr. 1, 1995
141–199	(869–026–00062–0)	21.00	Apr. 1, 1995
200–End	(869–026–00063–8)	12.00	Apr. 1, 1995
20 Parts:			
1–399	(869–026–00064–6)	20.00	Apr. 1, 1995
400–499	(869–026–00065–4)	34.00	Apr. 1, 1995
500–End	(869–026–00066–2)	34.00	Apr. 1, 1995
21 Parts:			
1–99	(869–026–00067–1)	16.00	Apr. 1, 1995
100–169	(869–026–00068–9)	21.00	Apr. 1, 1995
170–199	(869–026–00069–7)	22.00	Apr. 1, 1995
200–299	(869–026–00070–1)	7.00	Apr. 1, 1995
300–499	(869–026–00071–9)	39.00	Apr. 1, 1995
500–599	(869–026–00072–7)	22.00	Apr. 1, 1995
600–799	(869–026–00073–5)	9.50	Apr. 1, 1995
800–1299	(869–026–00074–3)	23.00	Apr. 1, 1995
1300–End	(869–026–00075–1)	13.00	Apr. 1, 1995
22 Parts:			
1–299	(869–026–00076–0)	33.00	Apr. 1, 1995
300–End	(869–026–00077–8)	24.00	Apr. 1, 1995
23	(869–026–00078–6)	22.00	Apr. 1, 1995
24 Parts:			
0–199	(869–026–00079–4)	40.00	Apr. 1, 1995
200–219	(869–026–00080–8)	19.00	Apr. 1, 1995
220–499	(869–026–00081–6)	23.00	Apr. 1, 1995
500–699	(869–026–00082–4)	20.00	Apr. 1, 1995
700–899	(869–026–00083–2)	24.00	Apr. 1, 1995
900–1699	(869–026–00084–1)	24.00	Apr. 1, 1995
1700–End	(869–026–00085–9)	17.00	Apr. 1, 1995
25	(869–026–00086–7)	32.00	Apr. 1, 1995
26 Parts:			
§§ 1.0-1–1.60	(869–026–00087–5)	21.00	*Apr. 1, 1995
§§ 1.61–1.169	(869–026–00088–3)	34.00	Apr. 1, 1995
§§ 1.170–1.300	(869–026–00089–1)	24.00	Apr. 1, 1995
§§ 1.301–1.400	(869–026–00090–5)	17.00	Apr. 1, 1995
§§ 1.401–1.440	(869–026–00091–3)	30.00	Apr. 1, 1995
§§ 1.441–1.500	(869–026–00092–1)	22.00	Apr. 1, 1995
§§ 1.501–1.640	(869–026–00093–0)	21.00	Apr. 1, 1995
§§ 1.641–1.850	(869–026–00094–8)	25.00	Apr. 1, 1995
§§ 1.851–1.907	(869–026–00095–6)	26.00	Apr. 1, 1995
§§ 1.908–1.1000	(869–026–00096–4)	27.00	Apr. 1, 1995
§§ 1.1001–1.1400	(869–026–00097–2)	25.00	Apr. 1, 1995
§§ 1.1401–End	(869–026–00098–1)	33.00	Apr. 1, 1995
2–29	(869–026–00099–9)	25.00	Apr. 1, 1995
30–39	(869–026–00100–6)	18.00	Apr. 1, 1995
40–49	(869–026–00101–4)	14.00	Apr. 1, 1995

Title	Stock Number	Price	Revision Date
50-299	(869-026-00102-2)	14.00	Apr. 1, 1995
300-499	(869-026-00103-1)	24.00	Apr. 1, 1995
500-599	(869-026-00104-9)	6.00	[4] Apr. 1, 1990
600-End	(869-026-00105-7)	8.00	Apr. 1, 1995
27 Parts:			
1-199	(869-026-00106-5)	37.00	Apr. 1, 1995
200-End	(869-026-00107-3)	13.00	[6] Apr. 1, 1994
28 Parts:			
1-42	(869-026-00108-1)	27.00	July 1, 1995
43-end	(869-026-00109-0)	22.00	July 1, 1995
29 Parts:			
0-99	(869-026-00110-3)	21.00	July 1, 1995
100-499	(869-026-00111-1)	9.50	July 1, 1995
500-899	(869-026-00112-0)	36.00	July 1, 1995
900-1899	(869-026-00113-8)	17.00	July 1, 1995
1900-1910 (§§ 1901.1 to 1910.999)	(869-026-00114-6)	33.00	July 1, 1995
1910 (§§ 1910.1000 to end)	(869-026-00115-4)	22.00	July 1, 1995
1911-1925	(869-026-00116-2)	27.00	July 1, 1995
1926	(869-026-00117-1)	35.00	July 1, 1995
1927-End	(869-026-00118-9)	36.00	July 1, 1995
30 Parts:			
1-199	(869-026-00119-7)	25.00	July 1, 1995
200-699	(869-026-00120-1)	20.00	July 1, 1995
700-End	(869-026-00121-9)	30.00	July 1, 1995
31 Parts:			
0-199	(869-026-00122-7)	15.00	July 1, 1995
200-End	(869-026-00123-5)	25.00	July 1, 1995
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-026-00124-3)	32.00	July 1, 1995
191-399	(869-026-00125-1)	38.00	July 1, 1995
400-629	(869-026-00126-0)	26.00	July 1, 1995
630-699	(869-026-00127-8)	14.00	[5] July 1, 1991
700-799	(869-026-00128-6)	21.00	July 1, 1995
800-End	(869-026-00129-4)	22.00	July 1, 1995
33 Parts:			
1-124	(869-026-00130-8)	20.00	July 1, 1995
125-199	(869-026-00131-6)	27.00	July 1, 1995
200-End	(869-026-00132-4)	24.00	July 1, 1995
34 Parts:			
1-299	(869-026-00133-2)	25.00	July 1, 1995
300-399	(869-026-00134-1)	21.00	July 1, 1995
400-End	(869-026-00135-9)	37.00	July 5, 1995
35	(869-026-00136-7)	12.00	July 1, 1995
36 Parts			
1-199	(869-026-00137-5)	15.00	July 1, 1995
200-End	(869-026-00138-3)	37.00	July 1, 1995
37	(869-026-00139-1)	20.00	July 1, 1995
38 Parts:			
0-17	(869-026-00140-5)	30.00	July 1, 1995
18-End	(869-026-00141-3)	30.00	July 1, 1995
39	(869-026-00142-1)	17.00	July 1, 1995
40 Parts:			
1-51	(869-026-00143-0)	40.00	July 1, 1995
52	(869-026-00144-8)	39.00	July 1, 1995
53-59	(869-026-00145-6)	11.00	July 1, 1995
60	(869-026-00146-4)	36.00	July 1, 1995
61-71	(869-026-00147-2)	36.00	July 1, 1995
72-85	(869-026-00148-1)	41.00	July 1, 1995
86	(869-026-00149-9)	40.00	July 1, 1995
87-149	(869-026-00150-2)	41.00	July 1, 1995
150-189	(869-026-00151-1)	25.00	July 1, 1995
190-259	(869-026-00152-9)	17.00	July 1, 1995
260-299	(869-026-00153-7)	40.00	July 1, 1995
300-399	(869-026-00154-5)	21.00	July 1, 1995
400-424	(869-026-00155-3)	26.00	July 1, 1995
425-699	(869-026-00156-1)	30.00	July 1, 1995
700-789	(869-026-00157-0)	25.00	July 1, 1995
790-End	(869-026-00158-8)	15.00	July 1, 1995
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-026-00159-6)	9.50	July 1, 1995
101	(869-026-00160-0)	29.00	July 1, 1995
102-200	(869-026-00161-8)	15.00	July 1, 1995
201-End	(869-026-00162-6)	13.00	July 1, 1995
42 Parts:			
1-399	(869-026-00163-4)	26.00	Oct. 1, 1995
400-429	(869-026-00164-2)	26.00	Oct. 1, 1995
430-End	(869-026-00165-1)	39.00	Oct. 1, 1995
43 Parts:			
1-999	(869-026-00166-9)	23.00	Oct. 1, 1995
1000-3999	(869-026-00167-7)	31.00	Oct. 1, 1995
4000-End	(869-026-00168-5)	15.00	Oct. 1, 1995
44	(869-026-00169-3)	24.00	Oct. 1, 1995
45 Parts:			
1-199	(869-022-00170-7)	22.00	Oct. 1, 1995
200-499	(869-026-00171-5)	14.00	Oct. 1, 1995
500-1199	(869-026-00172-3)	23.00	Oct. 1, 1995
1200-End	(869-026-00173-1)	26.00	Oct. 1, 1995
46 Parts:			
1-40	(869-026-00174-0)	21.00	Oct. 1, 1995
41-69	(869-026-00175-8)	17.00	Oct. 1, 1995
70-89	(869-026-00176-6)	8.50	Oct. 1, 1995
90-139	(869-026-00177-4)	15.00	Oct. 1, 1995
140-155	(869-026-00178-2)	12.00	Oct. 1, 1995
156-165	(869-026-00179-1)	17.00	Oct. 1, 1995
166-199	(869-026-00180-4)	17.00	Oct. 1, 1995
200-499	(869-026-00181-2)	19.00	Oct. 1, 1995
500-End	(869-026-00182-1)	13.00	Oct. 1, 1995
47 Parts:			
0-19	(869-026-00183-9)	25.00	Oct. 1, 1995
20-39	(869-026-00184-7)	21.00	Oct. 1, 1995
40-69	(869-026-00185-5)	14.00	Oct. 1, 1995
70-79	(869-026-00186-3)	24.00	Oct. 1, 1995
80-End	(869-026-00187-1)	30.00	Oct. 1, 1995
48 Chapters:			
1 (Parts 1-51)	(869-026-00188-0)	39.00	Oct. 1, 1995
1 (Parts 52-99)	(869-026-00189-8)	24.00	Oct. 1, 1995
2 (Parts 201-251)	(869-026-00190-1)	17.00	Oct. 1, 1995
2 (Parts 252-299)	(869-026-00191-0)	13.00	Oct. 1, 1995
3-6	(869-026-00192-8)	23.00	Oct. 1, 1995
7-14	(869-026-00193-6)	28.00	Oct. 1, 1995
15-28	(869-026-00194-4)	31.00	Oct. 1, 1995
29-End	(869-026-00195-2)	19.00	Oct. 1, 1995
49 Parts:			
1-99	(869-026-00196-1)	25.00	Oct. 1, 1995
100-177	(869-026-00197-9)	34.00	Oct. 1, 1995
178-199	(869-026-00198-7)	22.00	Oct. 1, 1995
200-399	(869-026-00199-5)	30.00	Oct. 1, 1995
400-999	(869-026-00200-2)	40.00	Oct. 1, 1995
1000-1199	(869-026-00201-1)	18.00	Oct. 1, 1995
1200-End	(869-026-00202-9)	15.00	Oct. 1, 1995
50 Parts:			
1-199	(869-026-00203-7)	26.00	Oct. 1, 1995
200-599	(869-026-00204-5)	22.00	Oct. 1, 1995
600-End	(869-026-00205-3)	27.00	Oct. 1, 1995

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869-026-00053-1)	36.00	Jan. 1, 1995
Complete 1996 CFR set		883.00	1996
Microfiche CFR Edition:			
Subscription (mailed as issued)		264.00	1996
Individual copies		1.00	1996
Complete set (one-time mailing)		264.00	1995
Complete set (one-time mailing)		244.00	1994
Complete set (one-time mailing)		223.00	1993

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1994 to March 31, 1995. The CFR volume issued April 1, 1994, should be retained.

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example*:

A renewal notice will be sent approximately 90 days before this date.

```
AFR  SMITH212J                DEC95 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

A renewal notice will be sent approximately 90 days before this date.

```
AFRDO  SMITH212J              DEC95 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9375.

To order a new subscription: Please use the order form provided below.

Order Processing Code: * 5468

Superintendent of Documents Subscription Order Form

Charge your order. It's easy! MasterCard VISA

To fax your orders (202) 512–2233

☐**YES,** please enter my subscriptions as follows:

___ subscriptions to **Federal Register** (FR); *including* the daily Federal Register, monthly Index and LSA List of Code of Federal Regulations Sections Affected, at $544 ($680 foreign) each per year.

___ subscriptions to **Federal Register,** *daily only* (FRDO), at $494 ($617.50 foreign) each per year.

The total cost of my order is $_____. (Includes regular shipping and handling.) Price subject to change.

For privacy, check box below:
☐ Do not make my name available to other mailers

Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration date)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Thank you for your order!

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

Authorizing signature 10/94

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Printed on recycled paper

OL
1
S S
9
IY
1
996
MI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

5–21–96
Vol. 61

No. 99

federal register

Tuesday
May 21, 1996

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 96 R
UMI
SERIALS ACQUISITIONS
PO BOX 1346
ANN ARBOR MI 48106

5–21–96
Vol. 61 No. 99
Pages 25389–25548

federal register

Tuesday
May 21, 1996

Briefings on How To Use the Federal Register
For information on briefings in Chicago, IL and Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20403, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $494, or $544 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $433. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 61 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243
For other telephone numbers, see the Reader Aids section at the end of this issue.

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

CHICAGO, IL

WHEN: June 11, 1996 at 9:00 am
WHERE: Metcalfe Federal Building, Conference Room 328, 77 West Jackson, Chicago, Illinois 60604
RESERVATIONS: 1–800–688–9889

WASHINGTON, DC

[Two Sessions]

WHEN: June 18, 1996 at 9:00 am, and June 25, 1996 at 9:00 am
WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 61, No. 99
Tuesday, May 21, 1996

Agriculture Department
See Animal and Plant Health Inspection Service
See Forest Service

Animal and Plant Health Inspection Service
RULES
Import and export user fees
Correction, 25513

Census Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 25478–25480

Centers for Disease Control and Prevention
PROPOSED RULES
Respiratory devices used to protect workers in hazardous environments, certification; NIOSH meeting
Correction, 25513
NOTICES
Meetings:
Public Health Service Activities and Research at DOE Sites Citizens Advisory Committee, 25495

Commerce Department
See Census Bureau
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration

Defense Department
RULES
Acquisition regulations:
Direct submission of vouchers to disbursing office, 25409
Higher education institutions with anti-ROTC policy, 25408–25409
NOTICES
Meetings:
Electron Devices Advisory Group, 25482
Science Board task forces, 25482–25483
Wage Committee, 25483

Education Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 25483–25484
Meetings:
National Educational Research Policy and Priorities Board, 25484–25485

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board—
Fernald Site, 25485–25486
Pantex Plant, TX, 25485

Environmental Protection Agency
RULES
Air pollutants; hazardous; national emission standards:
Perchloroethylene emissions from dry cleaning facilities—
California, 25397–25400
PROPOSED RULES
Acquisition regulations:
Source selection process, 25440–25443

Federal Aviation Administration
PROPOSED RULES
Airports:
Passenger facility charges, 25420–25421
Airworthiness directives:
Beech, 25418–25420
de Havilland, 25417–25418

Federal Communications Commission
NOTICES
Meetings:
1997 World Radiocommunication Conference Industry Committee (WRC–97 Advisory Committee), 25490
Payment accepted from non-Federal sources; semiannual report, 25490–25491

Federal Contract Compliance Programs Office
PROPOSED RULES
Government contractors, affirmative action requirements; EO 11246 implementation, 25516–25526

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Alabama et al., 25405–25407
Arizona et al., 25400–25402
Florida et al., 25402–25403
Georgia et al., 25403–25405
PROPOSED RULES
Flood elevation determinations:
Arizona et al., 25435–25440
Connecticut et al., 25429–25435

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Midwest Hydraulic Co., 25488–25489
Hydroelectric applications, 25489–25490
Applications, hearings, determinations, etc.:
Colorado Interstate Gas Co., 25486
East Tennessee Natural Gas Co., 25486
Great Lakes Transmission L.P., 25486–25487
Mississippi River Transmission Corp., 25487
Tennessee Gas Pipeline Co., 25487
Texas Eastern Transmission Corp., 25487–25488
Williams Natural Gas Co., 25488

Federal Maritime Commission
NOTICES
Agreements; additional information requests:
Crowley American Transport, Inc., et al., 25491
Freight forwarder licenses:
AAA International Shipping et al., 25491

Federal Reserve System
RULES
Availability of funds and collection of checks (Regulation CC):
Technical amendments, 25389–25390
NOTICES
Banks and bank holding companies:
Change in bank control, 25491–25492
Formations, acquisitions, and mergers, 25492
Permissible nonbanking activities, 25492–25493

Federal Trade Commission
NOTICES
Prohibited trade practices:
Atlas Supply Co., 25493
Blenheim Expositions, Inc., 25493
Devro International plc et al., 25493
Johnson & Johnson Consumer Products, Inc., 25493–25494
Praxair, Inc., 25494
Safe Brands Corp. et al., 25494
Stop & Shop Companies, Inc., et al., 25494–25495
West Point-Pepperell, Inc., 25495

Food and Drug Administration
RULES
Chlorofluorocarbon propellants in self-pressurized containers:
Sterile aerosol talc—
Addition to list of essential uses, 25390–25392
Food additives:
Adjuvants, production aids, and sanitizers—
Formaldehyde, polymer with 1-naphthylenol, 25395–25396
Chlorine dioxide; correction, 25392
Paper and paperboard components—
Diethanolamine, 25392–25395
PROPOSED RULES
Food for human consumption:
Food labeling—
Nutrient content claims; "healthy" definition; fruits, vegetables, etc., inclusion; correction, 25421
NOTICES
Biological product licenses:
Worldwide Biologicals, Inc., 25495–25496
Federal regulatory review:
Grassroots regulatory partnership meetings—
Pacific Region; medicated feed industry, 25496–25497
Human drugs:
Glyburide tablets 4.5 milligrams; determination that it was not withdrawn from sale for reasons of safety or effectiveness, 25497
Hydrocortisone acetate topical ointment 2.5%; determination that it was not withdrawn from sale for reasons of safety or effectiveness, 25497–25498
Medroxyprogesterone acetate 100 milligrams per milliliter; determination that it was not withdrawn from sale for reasons of safety or effectiveness, 25498–25499

Forest Service
NOTICES
Environmental statements; availability, etc.:
Summit County et al., UT; petroleum pipeline, 25477–25478
Forest Legacy Program guidelines; revision; comment request, 25478

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Interior Department
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Justice Department
See Justice Programs Office

Justice Programs Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 25506–25507
Grants and cooperative agreements; availability, etc.:
Program plans (1996 FY); correction, 25507

Labor Department
See Federal Contract Compliance Programs Office
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Alaska Native claims selection:
Arviq Inc., 25500
Meetings:
Arizona Resource Advisory Council, 25500
Lower Snake River District Resource Advisory Council, 25500
Resource management plans, etc.:
Churchill County, NV, 25500–25501
Withdrawal and reservation of lands:
Idaho, 25501

Minerals Management Service
PROPOSED RULES
Royalty management:
Federal leases; natural gas valuation regulations; amendments, 25421–25425
NOTICES
Outer Continental Shelf operations:
Sand and gravel resources lease sale, 25501–25504

National Aeronautics and Space Administration
NOTICES
Meetings:
Space Science Advisory Committee, 25507–25508

National Institute of Standards and Technology
NOTICES
Meetings:
Computer System Security and Privacy Advisory Board, 25480
Manufacturing engineering tool kits project; cooperative research and development consortium, 25480–25481

National Institutes of Health
NOTICES
Meetings:
National Institute of Mental Health, 25499

National Oceanic and Atmospheric Administration
PROPOSED RULES
International fisheries in U.S. Exclusive Economic Zone and on high seas; regulations consolidation, 25443–25475
NOTICES
Meetings:
Pacific Fishery Management Council, 25481
Permits:
Marine mammals, 25481

National Park Service
NOTICES
Boundary establishment, descriptions, etc.:
Big Thicket National Preserve, TX; Menard Creek Corridor Unit, 25505
Environmental statements; availability, etc.:
Santa Rosa Island, Channel Islands National Park, CA, 25505
National Register of Historic Places:
Pending nominations, 25505–25506

National Telecommunications and Information Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Public telecommunications facilities planning and construction program, 25528–25547

Nuclear Regulatory Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 25508–25509
Meetings; Sunshine Act, 25509
Petitions; Director's decisions:
Maine Yankee Atomic Power Co., 25509–25510
Regulatory guides; issuance, availability, and withdrawal, 25510
Applications, hearings, determinations, etc.:
Carolina Power & Light Co., 25509

Occupational Safety and Health Administration
NOTICES
Meetings:
Occupational Safety and Health National Advisory Committee, 25507

Pension Benefit Guaranty Corporation
RULES
Single-employer and multiemployer plans:
Valuation of plan benefits, etc.—
Interest rates and factors, etc; correction, 25513

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Railroad Retirement Board
RULES
Public information availability; fee schedule, 25390

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 25511
Applications, hearings, determinations, etc.:
Santa Fe Pacific Gold Corporation, 25510–25511

Substance Abuse and Mental Health Services Administration
NOTICES
Grant and cooperative agreement awards:
National Association of State Mental Health Program Directors, 25499–25500

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
North Dakota, 25425–25426
Oklahoma, 25426–25428

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Coopersville & Marne Railway Co., 25511

Transportation Department
See Federal Aviation Administration
See Surface Transportation Board
RULES
Americans with Disabilities Act; implementation:
Accessibility guidelines—
Transportation for individuals with disabilities, 25409–25416

Treasury Department
RULES
Tobacco products; sale and distribution restriction, 25396

United States Information Agency
NOTICES
Art objects; importation for exhibition:
Masterpieces from the Palazzo Doria Pamphilj, Rome, 25511–25512

Veterans Affairs Department
PROPOSED RULES
Medical benefits:
Alcohol and drug dependence disorders; contract program; eligibility criteria, 25428–25429
NOTICES
Committees; establishment, renewal, termination, etc.:
Structural Safety of Veterans Affairs Department Facilities Advisory Committee, 25512
Meetings:
Scientific Review Board for Health Services Research and Development Service, 25512

Separate Parts In This Issue

Part II
Labor Department, Federal Contract Compliance Programs Office, 25516–25526

Part III
Commerce Department, National Telecommunications and Information Administration, 25528–25547

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

9 CFR
130 25513

12 CFR
229 25389

14 CFR
Proposed Rules:
39 (2 documents) 25417, 25418
158 25420

20 CFR
200 25390

21 CFR
2 25390
173 25392
176 25392
178 25395
Proposed Rules:
101 25421

29 CFR
2619 25513

30 CFR
Proposed Rules:
202 25421
206 25421
211 25421
934 25425
936 25426

31 CFR
12 25396

38 CFR
Proposed Rules:
17 25428

40 CFR
63 25397

41 CFR
Proposed Rules:
60–1 25516
60–60 25516

42 CFR
Proposed Rules:
84 25513

44 CFR
65 (3 documents) 25400, 25402, 25403
67 25405
Proposed Rules:
67 (2 documents) 25429, 25435

48 CFR
209 25408
242 25409
243 25408
Proposed Rules:
1515 25440
1552 25440

49 CFR
37 25409
38 25409

50 CFR
Proposed Rules:
246 25443
280 25443
281 25443
282 25443
298 25443
299 25443
300 25443
301 25443
371 25443
380 25443
695 25443

Rules and Regulations

Federal Register
Vol. 61, No. 99
Tuesday, May 21, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–0925]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendment.

SUMMARY: The Board is publishing technical amendments to Appendices A and B of Regulation CC. The amendments will conform the Appendices to a realignment in Federal Reserve check-processing regions by adding the routing numbers formerly assigned to the Jericho check-processing region to the East Rutherford check-processing region in Appendix A, and by eliminating the reference to routing numbers formerly assigned to the Jericho office that were subject to a reduced availability schedule for depositary banks in the East Rutherford check-processing territory in Appendix B.

EFFECTIVE DATE: October 15, 1996.

FOR FURTHER INFORMATION CONTACT: Stephanie Martin, Senior Attorney (202/452–3198), or Heatherun Allison, Attorney (202/452–3565), Legal Division. For the hearing impaired *only*: Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: The Board's Regulation CC (12 CFR part 229) implements the Expedited Funds Availability Act (12 U.S.C. 4001 *et seq.*) and requires banks[1] to make funds deposited into transaction accounts available for withdrawal within specified time frames. The Act and regulation allow banks to place longer holds on nonlocal checks than on local checks. A nonlocal check is one for which the paying bank[2] is located in a different check-processing region than the depositary bank. Regulation CC defines "check-processing region" as "the geographical area served by an office of a Federal Reserve Bank for purposes of its check-processing activities."[3] Appendix A of Regulation CC lists the Federal Reserve check-processing offices and the 4-digit routing number prefixes that are local to each office. Appendix B of Regulation CC lists 4-digit routing number prefixes to which reduced availability schedules apply in certain cases.

Effective October 15, 1996, the Federal Reserve Bank of New York will discontinue processing checks at its Jericho office and will incorporate the Jericho check-processing region into the East Rutherford check-processing region. This consolidation is part of a larger effort by the Federal Reserve Bank of New York to achieve greater efficiency in its check operations by consolidating systems, equipment, and operations.[4] Accordingly, the routing number list in Appendix A is being changed to reflect the Jericho-East Rutherford consolidation. The reference in Appendix B to routing numbers formerly assigned to the Jericho office that were subject to a reduced availability schedule for depositary banks in the East Rutherford check-processing territory is also being deleted, because those routing numbers are now all "local" with respect to the East Rutherford check-processing territory.

Although the substance of Regulation CC will be unaffected by the amendments to Appendices A and B, the consolidation of check-processing regions may require some banks to adjust their internal procedures for assigning funds availability. For example, beginning on October 15, 1996, checks deposited in the former Jericho region will now be considered local checks in the East Rutherford region (and vice versa). Banks that now distinguish between the Jericho and East Rutherford regions in assigning availability will need to realign their internal operating systems to reflect the consolidation.

Banks also need to reflect any availability policy changes in their disclosures, as the availability for certain checks may be improved. Section 229.18(e) of Regulation CC provides that, in the case of an availability policy change that expedites the availability of funds, a bank shall send a notice of the change to holders of consumer accounts not later than 30 days after implementation.

The amendments adopted by the Board are technical amendments that reflect the realignment of Federal Reserve check-processing regions and are required by the statutory and regulatory definitions of "check-processing region." Accordingly, 5 U.S.C. 553(b), requiring public comment, does not apply.

Final Regulatory Flexibility Analysis

The amendment will apply to all banks, regardless of size. There is no possible alternative rule for small banks, as "check-processing region" is defined by the Expedited Funds Availability Act, which applies to all banks. The amendment will affect only those banks in the current Jericho and East Rutherford check-processing regions that distinguish between checks drawn on paying banks located in those two regions for purposes of assigning availability. The Board expects that the majority of small institutions located in those two regions will be unaffected by the amendment.

List of Subjects in 12 CFR Part 229

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 12 CFR part 229 is amended as follows:

PART 229—[AMENDED]

1. The authority citation for part 229 continues to read as follows:

---

[1] The term *bank* refers to any depository institution, including commercial banks, savings institutions, and credit unions.

[2] The *paying bank* is the bank by, at, or through which a check is payable. The *depositary bank* is the first bank to which a check is transferred.

[3] 12 CFR § 229.2(m). The Act's definition is substantially similar (12 U.S.C. 4001(9)).

[4] In 1992 the Federal Reserve Bank of New York transferred its head office check-processing operations to its Jericho office. The Board made corresponding changes to Appendix A of Regulation CC at that time. 58 FR 2, January 4, 1993. Similarly, the Federal Reserve Bank of New York in 1994 discontinued check-processing at its Buffalo office and incorporated the Buffalo check-processing region into the Utica check-processing region. The Board made corresponding changes to Appendices A and B–2 at that time. 59 FR 48789, September 23, 1994.

Authority: 12 U.S.C. 4001 *et seq.*

2. In Appendix A to part 229, under the heading "SECOND FEDERAL RESERVE DISTRICT," the numbers appearing directly under the subheading "*Jericho Office*" are transferred in numerical order under the subheading "*East Rutherford Office*", and the subheading "*Jericho Office*" is removed.

3. In Appendix B to part 229, the entry for "*East Rutherford*" is removed.

By order of the Board of Governors of the Federal Reserve System, May 15, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–12683 Filed 5–20–96; 8:45 am]

BILLING CODE 6210–01–P

RAILROAD RETIREMENT BOARD

20 CFR Part 200

RIN 3220–AB19

Availability of Information to Public

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends its regulations establishing fees to be assessed in connection with the search for records and provision of documents by the Board. The revision will eliminate the exemption from cherge for the first 100 pages of reproduction and the first two hours of search time for requesters of documents who are not included within the specific categories provided in the regulations.

EFFECTIVE DATE: May 21, 1996.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4929, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 200.4(g)(2)(v) of the Board's regulations provides for fees to be assessed in connection with the production of documents for "All other requesters", i.e. those requesters who do not fall within other categories provided for in the regulation. Those other categories include requests by commercial users, by educational and non-commercial scientific institutions, by representatives of the news media, and by subjects of records in Privacy Act Systems of Records. Currently § 200.4(g)(2)(v) provides that the Board does not charge "other requesters" for the first 100 pages of reproduction and the first two hours of search time.

The Board is authorized to charge for such costs of reproduction and search time by section 12(d) of the Railroad Unemployment Insurance Act (45 U.S.C. 362(d)) which provides, in pertinent part, that:

> * * * the Board may furnish such information to any person or organization upon payment by such person or organization to the Board of the cost incurred by the Board by reason thereof; and the amounts so paid to the Board shall be credited to the railroad unemployment insurance administration fund established pursuant to section 11(a) of this Act.

This provision is incorporated into the Railroad Retirement Act by section 7(b)(3) of that Act (45 U.S.C. 231f(b)(3)).

The Board has been receiving an increasing number of genealogical requests (almost 700 for the first six months of 1995 compared with about 450 for the same period in 1994) with a current estimated cost per request of $16.00. The Board has determined that it is more equitable that the costs for provision of this information be borne by the individuals who need the information, rather than the railroad industry as a whole. Accordingly, the Board proposes to eliminate the exemption from charge for the first 100 pages of reproduction and the first two hours of search time for requesters covered by § 200.4(g)(2)(v).

This rule was published as a proposed rule on January 18, 1996, inviting comments on or before March 18, 1996 (61 FR 1252). No comments were received.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action for purposes of Executive Order 12866. Therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 200

Railroad employees, Railroad retirement, Railroad unemployment insurance.

For the reasons set out in the preamble, title 20, chapter II, part 200 of the Code of Federal Regulations is amended as follows:

PART 200—GENERAL ADMINISTRATION

1. The authority citation for part 200 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5) and 45 U.S.C. 362; § 200.4 also issued under 5 U.S.C. 552; § 200.5 also issued under 5 U.S.C. 552a; § 200.6 also issued under 5 U.S.C. 552b; and § 200.7 also issued under 31 U.S.C. 3717.

2. Section 200.4 is amended by revising paragraph (g)(2)(v) to read as follows:

§ 200.4 Availability of information to public.

* * * * *

(g) * * *

(2) * * *

(v) *All other requesters.* For requesters who do not fall within the purview of paragraphs (g)(2) (i), (ii), (iii), or (iv) of this section, the RRB will charge the full direct cost of searching for and reproducing records that are responsive to the request. The RRB will not charge for such costs to be assessed if the total is less than $10.00. If the total is $10.00 or more, the RRB may waive the charge or reduce it if it determines that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

* * * * *

Dated: May 7, 1996.

By authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 96–12737 Filed 5–20–96; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 2

[Docket No. 95P–0088]

Chlorofluorocarbon Propellants in Self-Pressurized Containers; Addition to List of Essential Uses

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) has granted the petition of Bryan Corp. (Bryan) to add sterile aerosol talc to the list of products containing a chlorofluorocarbon (CFC) propellant for an essential use. Essential use products are exempt from FDA's ban on the use of CFC propellants in FDA-regulated products and the Environmental Protection Agency's (EPA's) ban on the use of CFC's in pressurized dispensers. This document amends FDA's regulations governing use of CFC's to include sterile aerosol talc as an essential use.

EFFECTIVE DATE: June 4, 1996.

FOR FURTHER INFORMATION CONTACT: Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1049.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 1, 1996 (61 FR 8002), FDA published, in response to a citizen petition submitted by Bryan, a proposed rule to amend § 2.125 (21 CFR 2.125) to add sterile aerosol talc administered intrapleurally by thoracoscopy for human use to the list of products containing a CFC propellant for an essential use.

Under § 2.125 (21 CFR 2.125), any food, drug, device, or cosmetic in a self-pressurized container that contains a CFC propellant for a nonessential use is adulterated, or misbranded, or both, under the Federal Food, Drug, and Cosmetic Act. This prohibition is based on scientific research indicating that CFC's may reduce the amount of ozone in the stratosphere and thereby increase the amount of ultraviolet radiation reaching the earth. An increase in ultraviolet radiation may increase the incidence of skin cancer, change the climate, and produce other adverse effects of unknown magnitude on humans, animals, and plants. Section 2.125(d) exempts from the adulteration and misbranding provisions of § 2.125(c) certain products containing CFC propellants that FDA determines provide unique health benefits that would not be available without the use of a CFC.

These products are referred to in the regulation as essential uses of CFC's and are listed in § 2.125(e). Under § 2.125(f), any person may petition the agency to request additions to the list of uses considered essential. To demonstrate that the use of a CFC is essential, the petition must be supported by an adequate showing that: (1) There are no technically feasible alternatives to the use of a CFC in the product; (2) the product provides a substantial health, environmental, or other public benefit unobtainable without the use of the CFC; and (3) the use does not involve a significant release of CFC's into the atmosphere or, if it does, the release is warranted by the consequence if the use were not permitted.

EPA regulations implementing provisions of the Clean Air Act contain a general ban on the use of CFC's in pressurized dispensers (40 CFR 82.64(c) and 82.66(d)). These regulations exempt from the general ban "medical devices" that FDA considers essential and that are listed in § 2.125(e). Section 601(8) of the Clean Air Act (42 U.S.C. 7671(8)) defines "medical device" as any device (as defined in the Federal Food, Drug, and Cosmetic Act), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), and drug delivery system, if such device, product, drug, or drug delivery system uses a class I or class II ozone-depleting substance for which no safe and effective alternative has been developed (and where necessary, approved by the Commissioner of Food and Drugs (the Commissioner)); and if such device, product, drug, or drug delivery system has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator of EPA (the Administrator). Class I substances include CFC's, halons, carbon tetrachloride, methyl chloroform, methyl bromide, and other chemicals not relevant to this document (see 40 CFR part 82, appendix A to subpart A). Class II substances include hydrochlorofluorocarbons (HCFC's) (see 40 CFR part 82, appendix B to subpart A).

II. Petition Received by FDA

Bryan submitted a petition under § 2.125(f) and 21 CFR part 10 requesting an addition to the list of CFC uses considered essential. The petition is on file under the docket number appearing in the heading of this document and may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. The petition requested that sterile aerosol talc be included in § 2.125(e) as an essential use of CFC's. The petition contained a discussion supporting the position that there are no technically feasible alternatives to the use of CFC's in the product. It included information showing that no alternative delivery systems (e.g., the pneumatic atomizer) can assure consistent sterility. The petition also stated that Bryan is unaware of any appropriate substitute propellants (e.g., compressed gases). Also, the petition stated that the product provides a substantial health benefit that would not be obtainable without the use of CFC's. In this regard, the petition contained information to support the use of this product in the treatment of malignant pleural effusions, a condition in which fluid accumulates in the space between the outside surface of the lung and the inside surface of the chest wall (pleural cavity) as a result of involvement by an underlying cancer. The petition also provided information indicating that use of the product would involve a limited release of CFC's into the atmosphere and the release is warranted by the health benefits of the product.

Based on the evidence before it in the petition and in Bryan's new drug application for the drug product, the agency has determined that for many patients suffering from pleural effusions, the use of sterile aerosol talc provides a special benefit that would be unavailable without the use of CFC's. FDA also agrees that the use of CFC's for this product does not involve a significant release of CFC's into the atmosphere. Therefore, FDA is amending § 2.125(e) to include sterile aerosol talc administered intrapleurally by thoracoscopy for human use in the list of essential uses of CFC propellants.

A copy of the proposed rule was provided to the Administrator. Interested persons were given 30 days to comment on the proposed rule. FDA received no comments on the proposed rule.

Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the agency is not aware of any adverse impact this final rule will have on any small entities, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

List of Subjects in 21 CFR Part 2

Administrative practice and procedure, Cosmetics, Devices, Drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under

authority delegated to the Commissioner of Food and Drugs, 21 CFR part 2 is amended as follows:

PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

1. The authority citation for 21 CFR part 2 continues to read as follows:

Authority: Secs. 201, 301, 305, 402, 408, 409, 501, 502, 505, 507, 512, 601, 701, 702, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 335, 342, 346a, 348, 351, 352, 355, 357, 360b, 361, 371, 372, 374); 15 U.S.C. 402, 409.

2. Section 2.125 is amended by adding new paragraph (e)(15) to read as follows:

§ 2.125 Use of chlorofluorocarbon propellants in self-pressurized containers.

* * * * *

(e) * * *

(15) Sterile aerosol talc administered intrapleurally by thoracoscopy for human use.

* * * * *

Dated: May 15, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–12758 Filed 5–21–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 173

[Docket No. 93F–0483]

Secondary Direct Food Additives Permitted in Food for Human Consumption; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that appeared in the **Federal Register** of March 3, 1995 (60 FR 11899). The document amended the food additive regulations to provide for the safe use of chlorine dioxide to control the microbial population in poultry process water. The document was published with some errors. This document corrects those errors. Additionally, the agency is revising some of the discussion in the preamble for clarification. These changes are not substantive and do not affect the agency's conclusion regarding the use of chlorine dioxide in poultry process water. The codified regulation remains unchanged.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3074.

In FR Doc. 95–5275, appearing on page 11899 in the **Federal Register** of Friday, March 3, 1995, the following corrections are made:

1. On page 11899, in the second column, in the first full paragraph, beginning in line 8, "reaction of chlorine with sodium chlorite" is corrected to read "oxidation of sodium chlorite"; in the same paragraph, beginning in line 10, "acidification of sodium chlorite" is corrected to read "disproportionation of sodium chlorite in the presence of acids (Ref. 1)."; and in the same paragraph, beginning in line 16, "(Ref. 1)." is corrected to read "Ref. 1a)."

2. On page 11899, in the second column, in the second full paragraph, in line 5, "of chlorine" is corrected to read "with chlorine".

3. On page 11899, in the second column, in the fourth full paragraph, in the 4th line from the bottom, "studies" is corrected to read "safety studies" and in the 3rd line from the bottom "petitioner were" is corrected to read "petitioner on poultry were".

4. On page 11899, in the third column, in the first paragraph, in line 3, "3 ppm" is corrected to read "100 ppm".

5. On page 11899, in the third column, in the first paragraph, beginning in line 5 and ending in line 21, "These data show that organic * * * in drinking water.)" is corrected to read "These data show that comparable trace levels of chloroform and dichloromethane were detected in both untreated and chlorine dioxide-treated poultry process water and that chlorine dioxide treatment did not appear to contribute to their formation."

6. On page 11899, in the third column, in the first paragraph, in line 23, "20" is corrected to read "100", and beginning in line 24, "no mutagenic" is corrected to read "negligible mutagenic".

7. On page 11899, in the third column, in the third paragraph, beginning in line 8, "(No chlorite or chlorate could * * * for the method used)." is removed.

(Note: The finding of no significant residues of chlorite and chlorate was not based on chemical analysis. The agency determined that any residues of chlorite and chlorate remaining on poultry would be converted to chloride (a major component of table salt) during cooking.)

8. On page 11900, in the first column, in the first full paragraph, beginning in line 3, "linoleic, linolenic, and arachidonic acid)" is corrected to read "linoleic and linolenic acid)", and in the same paragraph, in line 11, "levels 7 to 10 times" is corrected to read "levels 8 to 22 times".

9. On page 11900, in the first column, in the second full paragraph, in line 4, "measurable" is corrected to read "significant".

10. On page 11900, in the first column, in the third full paragraph, in line 6, "no" is corrected to read "negligible".

11. On page 11900, in the third column, Ref. 1a is added to read "1a. U.S. patent No. 4,247,531.", and Ref. 6 is corrected to read "6. CRC Handbook of Chemistry and Physics, 71st ed., 1990–1991, David R. Lide, Editor-in-Chief, CRC Press, Boca Raton, FL. See Table of Electrochemical Potentials (re chlorite and chlorate), sections 8–16."

Dated: May 14, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–12757 Filed 5–20–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 176

[Docket No. 92F–0313]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of diethanolamine as a boiler water additive in paper mill boilers used in the manufacture of paper and paperboard intended for use in contact with aqueous and fatty food. This action is in response to a food additive petition filed by Betz Laboratories, Inc.

DATES: Effective May 21, 1996; written objections and requests for a hearing by June 20, 1996.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305). Food and Drug Administration, 12420 Parklawn Dr., rm 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Diane E. Robertson, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of September 14, 1992 (57 FR 41944), FDA announced that a food additive petition (FAP 2B4329) had been filed by Betz Laboratories, Inc., 4636 Somerton Rd., Trevose, PA 19053–6783. The petition proposed to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of diethanolamine as a boiler water additive in paper mill boilers.

In its evaluation of the safety of this additive, FDA has reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it may contain minute amounts of 1,4-dioxane and ethylene oxide, which are carcinogenic impurities, resulting from the manufacture of the additive. Residual amounts of reactants and manufacturing aids, such as 1,4-dioxane and ethylene oxide, are commonly found as contaminants in chemical products, including food additives.

II. Determination of Safety

Under the so-called "general safety clause" of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The food additives anticancer, or Delaney, clause of the act (21 U.S.C. 348(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to the impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety clause using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive, *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984).

III. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, diethanolamine, will result in exposure to no greater than 5 parts per billion (ppb) of the additive in the daily diet (3 kilograms (kg)) or an estimated daily intake (EDI) of 15 micrograms per person per day (μ/person/day) (Ref. 1) and that the cumulative dietary concentration of the additive from all regulated uses is conservatively 58 ppb in the daily diet or an EDI of 170 μ/person/day.

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that a small increase in dietary exposure is safe.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limit of risk presented by 1,4-dioxane and ethylene oxide, carcinogenic chemicals that may be present as impurities in the additive. This risk evaluation of 1,4-dioxane and ethylene oxide has two aspects: (1) Assessment of the worst-case exposure to these impurities from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. 1,4-Dioxane

FDA has estimated the hypothetical worst-case exposure to 1,4-dioxane from the petitioned use of the additive in the manufacture of paper to be 0.6 part per quadrillion (ppq) of the daily diet (3 kg), or 2 picograms (pg)/person/day (Ref. 3). The agency used data from a carcinogenesis bioassay on 1,4-dioxane conducted by the National Cancer Institute (Ref. 4), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the proposed use of the additive (Ref. 4). The results of the bioassay on 1,4-dioxane demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats.

Based on the estimated worst-case exposure to 1,4-dioxane of 2 pg/person/day, FDA estimates that the upper-bound limit of lifetime human risk from the use of the subject additive is 6.9 x 10^{-14}, or 6.9 in 100 trillion (Ref. 5). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to 1,4-dioxane is expected to be substantially less than the worst-case exposure, and therefore, the upper-bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty that no harm from exposure to 1,4-dioxane would result from the proposed use of the additive.

B. Ethylene Oxide

FDA has estimated the hypothetical worst-case exposure to ethylene oxide from the petitioned use of the additive in the manufacture of paper to be 0.6 ppq of the daily diet (3 kg), or 2 pg/person/day (Ref. 3). The agency used data from a carcinogenesis bioassay on ethylene oxide conducted for the Institute of Hygiene, University of Mainz, Germany to estimate the upper-bound limit of lifetime human risk from exposure to ethylene oxide resulting from the proposed use of the additive (Ref. 6). The results of the bioassay on ethylene oxide demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinomas of the forestomach and carcinomas in situ of the glandular stomach.

Based on the estimated worst-case exposure to ethylene oxide of 2 pg/person/day, FDA estimates that the upper-bound limit of lifetime human risk from the use of the subject additive is 3.7 x 10^{-12}, or 3.7 in 1 trillion (Ref. 5). Because of the numerous conservative assumptions used in calculating the exposure estimate, actual lifetime-averaged individual exposure to ethylene oxide is likely to be substantially less than the worst-case exposure, and therefore, the upper-bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty that no harm from exposure to ethylene oxide would result from the proposed use of the additive.

C. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of 1,4-dioxane and ethylene oxide present as impurities in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low level at which 1,4-dioxane and ethylene oxide may be expected to remain as impurities following production of the additive, the agency would not expect these impurities to

become components of food at other than extremely small levels; and (2) the upper-bound limits of lifetime risk from exposure to these impurities, even under worst-case assumptions, are very low, less than 6.9 in 100 trillion for 1,4-dioxane and less than 3.7 in 1 trillion for ethylene oxide, respectively.

IV. Conclusion

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed use of the additive in paper mill boilers used in the manufacture of paper and paperboard products intended for use in contact with aqueous and fatty food is safe. Based on this information, the agency has also concluded that the additive will have the intended technical effect. Therefore, § 176.170 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

V. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VI. Objections

Any person who will be adversely affected by this regulation may at any time on or before June 20,1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum dated September 8, 1993, from the Chemistry Review Branch (HFS–247), to the Indirect Additives Branch (HFS–216) concerning "FAP 2B4329 (MATS No. 654; M 2.1). Submission of 6/5/92; Betz Laboratories. Diethanolamine in papermill boilers."

2. Kokoski, C. J., "Regulatory Food-Additive Toxicology," in *Chemical Safety Regulation and Compliance*, edited by F. Homburger and J. K. Marquis, S. Karger, New York, NY, pp. 24–33, 1985.

3. Memorandum dated April 28, 1994, from the Chemistry Review Branch (HFS–247) to the Indirect Additives Branch (HFS–216) concerning "FAP 2B4329 (MATS No. 654; M 2.4): Diethanolamine. Paper mill boiler additive. Betz Laboratories-Submission of 4/8/94."

4. "Bioassay of 1,4-Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI–CG–TR–80, 1978.

5. Memorandum, Report of the Quantitative Risk Assessment Committee, October 28, 1994.

6. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2-Propylene Oxide Upon Intragastric Administration to Rats," *British Journal of Cancer*, 46:924, 1982.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: Secs. 201, 402, 406, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 379e).

2. Section 176.170 is amended in the table in paragraph (a)(5) by revising the entry for "Diethanolamine" under the heading "Limitations" to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of Substances	Limitations
. . .	. . .
Diethanolamine	For use only: 1. As an adjuvant to control pulp absorbency and pitch content in the manufacture of paper and paperboard prior to the sheet-forming operation. 2. In paper mill boilers.
. . .	. . .

* * * * *

Dated: May 15, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–12762 Filed 5–20–96; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 178

[Docket No. 93F–0385]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of formaldehyde, polymer with 1-naphthylenol, as a release agent, applied on the internal parts of reactors employed in the production of polyvinyl chloride and acrylic copolymers intended for food-contact applications. This action is in response to a petition filed by Compagnia Italiana di Ricerca e Sviluppo, srl (CIRS).

DATES: Effective May 21, 1996; written objections and requests for a hearing by June 20, 1996.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of November 18, 1993 (58 FR 60859), FDA announced that a food additive petition (FAP 3B4380) had been filed by Compagnia Italiana di Ricerca e Sviluppo, srl (CIRS), c/o AAC Consulting Group, 1730 Rhode Island Ave. NW., Washington, DC 20036. The petition proposed to amend the food additive regulations in part 178 (21 CFR part 178) to provide for the safe use of formaldehyde, polymer with 1-naphthylenol, as an antiscaling agent, applied on the internal parts of reactors employed in the production of polyvinyl chloride and acrylic copolymers intended for food-contact applications. During its review, the agency determined that the use of the additive as an antiscaling agent has essentially the same technical effect as that of a release agent. This final rule reflects this conclusion and therefore FDA is listing the additive in § 178.3860 *Release agents*.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe and that the regulations in § 178.3860 should be amended as set forth below.

FDA's review of the petition indicates that the additive may contain trace amounts of formaldehyde as an impurity. The potential carcinogenicity of formaldehyde was reviewed by the Cancer Assessment Committee (the Committee) of FDA's Center for Food Safety and Applied Nutrition. The Committee noted that for many years, formaldehyde has been known to be a carcinogen by the inhalation route, but it concluded that these inhalation studies are not appropriate for assessing the potential carcinogenicity of formaldehyde in food. The Committee's conclusion was based on the fact that the route of administration (inhalation) is not relevant to the safety of formaldehyde residues in food and the fact that tumors were observed only locally at the portal of entry (nasal turbinates). In addition, the agency has received literature reports of two drinking water studies on formaldehyde: (1) A preliminary report of a carcinogenicity study purported to be positive by Soffritti et al. (1989), conducted in Bologna, Italy (Ref. 1); and (2) a negative study by Til et al. (1989), conducted in The Netherlands (Ref. 2). The Committee reviewed both studies and concluded that data concerning the Soffritti study reported, "* * * were unreliable and could not be used in the assessment of the oral carcinogenicity of formaldehyde" (Ref. 3). This conclusion is based on a lack of critical details in the study, questionable histopathological conclusions, and the use of unusual nomenclature to describe the tumors. Based on the Committee's evaluation, the agency has determined that there is no basis to conclude that formaldehyde is a carcinogen when ingested.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before June 20, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Soffritti, M., F. Maltoni, and R. Biagi, "Formaldehyde: An Experimental Multipotential Carcinogen," *Toxicology and Industrial Health*, vol. 5, No. 5:699–730, 1989.

2. Til, H. P., R. A. Woutersen, V. J. Feron, V. H. M. Hollanders, H. E. Falke, and J. J. Clary, "Two-Year Drinking Water Study of Formaldehyde in Rats," *Food Chemical Toxicology*, vol. 27, No. 2, pp. 77–87, 1989.

3. Memorandum of conference concerning "formaldehyde;" meeting of the Cancer Assessment Committee, FDA; April 24, 1991, and March 4, 1993.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.3860 is amended in the table in paragraph (b) by alphabetically adding a new entry under the headings "List of substances" and "Limitations" to read as follows:

§ 178.3860 Release agents.

* * * * *

(b) * * *

List of substances	Limitations
. . .	. . .
Formaldehyde, polymer with 1-naphthylenol (CAS Reg. No. 25359–91–5).	For use only as an antiscaling or release agent, applied on the internal parts of reactors employed in the production of polyvinyl chloride and acrylic copolymers, provided that the residual levels of the additive in the polymer do not exceed 4 parts per million.
. . .	. . .

Dated: May 15, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–12761 Filed 5–20–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Departmental Offices

31 CFR Part 12

Sale and Distribution of Tobacco Products

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Final rule.

SUMMARY: Section 636 of the Department of the Treasury's Appropriations Act, Pub. L. 104–52, requires the Secretary of the Treasury to promulgate regulations that restrict the sale of tobacco products in vending machines and the distribution of free samples of tobacco products in any Federal building under the jurisdiction of the Secretary of the Treasury. Section 636 permits the Secretary to designate areas not subject to these prohibitions, if such areas also prohibit the presence of minors.

EFFECTIVE DATE: May 21, 1996.

FOR FURTHER INFORMATION CONTACT: Robert T. Harper, (202) 622–0500.

SUPPLEMENTARY INFORMATION: The Department of the Treasury has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866. Pursuant to 5 U.S.C. sec. 553(a)(2), this rule is not required to be published for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

List of Subjects in 31 CFR Part 12

Concessions, Federal buildings and facilities, Vending machines.

For the reasons set forth in the preamble, 31 CFR part 12 is added as follows:

PART 12—RESTRICTION OF SALE AND DISTRIBUTION OF TOBACCO PRODUCTS

Sec.

12.1 Purpose.
12.2 Definitions.
12.3 Sale of tobacco products in vending machines prohibited.
12.4 Distribution of free samples of tobacco products prohibited.
12.5 Prohibitions not applicable in areas designated by the Secretary of the Treasury.

Authority: Sec. 636, Pub. L. 104–52, 109 Stat. 507.

§ 12.1 Purpose.

This part contains regulations implementing the "Prohibition of Cigarette Sales to Minors in Federal Buildings Act," Public Law 104–52, Section 636, with respect to buildings under the jurisdiction of the Department of the Treasury.

§ 12.2 Definitions.

As used in this part—

(1) the term *Federal building under the jurisdiction of the Secretary of the Treasury* includes the real property on which such building is located;

(2) the term *minor* means an individual under the age of 18 years; and

(3) the term *tobacco product* means cigarettes, cigars, little cigars, pipe tobacco, smokeless tobacco, snuff, and chewing tobacco.

§ 12.3 Sale of tobacco products in vending machines prohibited.

The sale of tobacco products in vending machines located in or around any Federal building under the jurisdiction of the Secretary of the Treasury is prohibited, except in areas designated pursuant to § 12.5 of this part.

§ 12.4 Distribution of free samples of tobacco products prohibited.

The distribution of free samples of tobacco products in or around any Federal building under the jurisdiction of the Secretary of the Treasury is prohibited, except in areas designated pursuant to § 12.5 of this part.

§ 12.5 Prohibitions not applicable in areas designated by the Secretary of the Treasury.

The prohibitions set forth in this part shall not apply in areas designated by the Secretary as exempt from the prohibitions, but all designated areas must prohibit the presence of minors.

George Muñoz,

Assistant Secretary for Management and Chief Financial Officer.

[FR Doc. 96–12273 Filed 5–20–96; 8:45 am]

BILLING CODE 4810–25–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–5444–6]

State of California; Approval of Section 112(l) Authority for Hazardous Air Pollutants; Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The California Air Resources Board (CARB) requested approval, under section 112(l) of the Clean Air Act (CAA), to implement and enforce California's "Airborne Toxic Control Measure for Emissions of Perchloroethylene from Dry Cleaning Operations" (dry cleaning ATCM) in place of the "National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities" (dry cleaning NESHAP) for area sources. In addition, to streamline the approval process for future CAA section 112(l) applications, CARB also requested approval of its demonstration that California has adequate authorities and resources to implement and enforce all CAA section 112 programs and rules, with the exception of the accidental release prevention program to be promulgated pursuant to CAA section 112(r). The Environmental Protection Agency (EPA) has reviewed CARB's requests for approval and has found that these requests satisfy all of the requirements necessary to qualify for approval, with the exception of CARB's supplemental request for the authority to determine equivalent emission control technology for dry cleaning facilities. Thus, EPA is hereby granting California the authority to implement and enforce its dry cleaning ATCM in place of the dry cleaning NESHAP, except for those provisions of the dry cleaning NESHAP that apply to major sources; disapproving CARB's supplemental request for approval of the authority to determine equivalent emission control technology for dry cleaning facilities; and approving CARB's demonstration that California has adequate authorities and resources to implement and enforce all CAA section 112 programs and rules, with the exception of the accidental release prevention program to be promulgated pursuant to CAA section 112(r).

EFFECTIVE DATE: This action is effective on June 20, 1996. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 20, 1996.

ADDRESSES: Copies of CARB's requests for approval are available for public inspection at the following locations:

U.S. Environmental Protection Agency, Region IX, Rulemaking Section (A–5–3), Air and Toxics Division, 75 Hawthorne Street, San Francisco, California 94105–3901.

California Air Resources Board, Stationary Source Division, 2020 "L" Street, P.O. Box 2815, Sacramento, California 95812–2815.

U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (Mail Code 6102), 401 M Street SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901, (415) 744–1200.

SUPPLEMENTARY INFORMATION:

I. Background

On September 22, 1993, the Environmental Protection Agency (EPA) promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for perchloroethylene dry cleaning facilities (*see* 58 FR 49354), which has been codified in 40 CFR Part 63, Subpart M, "National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities" (dry cleaning NESHAP). On July 10, 1995, EPA received the California Air Resources Board's (CARB) request for approval to implement and enforce section 93109 of Title 17 of the California Code of Regulations, "Airborne Toxic Control Measure for Emissions of Perchloroethylene from Dry Cleaning Operations" (dry cleaning ATCM), in place of the dry cleaning NESHAP for area sources. As part of its dry cleaning ATCM application, CARB also requested approval of its demonstration that California has adequate authorities and resources to implement and enforce all Clean Air Act (CAA) section 112 programs and rules, with the exception of the accidental release prevention program to be promulgated pursuant to CAA section 112(r). The purpose of this demonstration is to streamline the approval process for future CAA section 112(l) applications. Finally, as a supplement to its request for approval of the dry cleaning ATCM, CARB also requested approval of the authority to determine equivalent emission control technology for dry cleaning facilities in place of 40 CFR 63.325.

On October 17, 1995, EPA announced in the **Federal Register** (*see* 60 FR 53728) its receipt of CARB's requests and the availability for the public to comment on CARB's application. This announcement included a detailed discussion of the background and format of CARB's application.

II. Summary of Public Comments

EPA received letters from four commenters regarding CARB's requests. All four commenters were in favor of granting California the authority to implement and enforce its dry cleaning ATCM in place of the dry cleaning NESHAP. One commenter also believed that California has adequate authorities and resources to implement and enforce all CAA section 112 programs and rules. Comments regarding CARB's supplemental request for the authority to determine equivalency of control technology for dry cleaning facilities is discussed in section III.A.3 below.

III. EPA Action

A. California's Dry Cleaning ATCM

Under CAA section 112(l), EPA may approve State rules or programs to be implemented and enforced in place of certain otherwise applicable CAA section 112 Federal rules, emission standards, or requirements. The Federal regulations governing EPA's approval of State rules or programs under section 112(l) are located at 40 CFR Part 63, Subpart E (*see* 58 FR 62262, dated November 26, 1993). Under these regulations, a State has the option to request EPA's approval to substitute a State rule for the applicable Federal rule. Upon approval, the State is given the authority to implement and enforce its rule in place of the otherwise applicable Federal rule. To receive EPA approval using this option, the requirements of 40 CFR 63.91 and 63.93 must be met.

After reviewing CARB's request for approval of its dry cleaning ATCM, EPA has determined that CARB's request meets all the requirements necessary to qualify for approval under CAA section 112(l) and 40 CFR 63.91 and 63.93. Accordingly, with the exception of the dry cleaning NESHAP provisions discussed in sections III.A.2 and III.A.3 below, California is granted the authority to implement and enforce its dry cleaning ATCM in place of the dry cleaning NESHAP. Although California now has primary implementation and enforcement responsibility, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable

emission standard or requirement under CAA section 112. As of the effective date of this final notice, the dry cleaning ATCM is the Federally-enforceable standard in California and is enforceable by the Administrator and citizens under the CAA.

1. Stringency

When a State requests EPA's approval to substitute a State rule for the applicable CAA section 112 Federal rule, EPA is required to make a detailed and thorough evaluation of the State's submittal to ensure that it meets the stringency and other requirements of 40 CFR 63.93. During its evaluation of the dry cleaning ATCM, EPA noted that several provisions of the dry cleaning NESHAP did not directly correlate with provisions of the dry cleaning ATCM, including some of the equipment installation compliance deadlines and some of the reporting and recordkeeping requirements. On the other hand, EPA also noted that many aspects of the dry cleaning ATCM afford greater overall emission reductions than the dry cleaning NESHAP. In the final analysis, EPA believes that approval of the dry cleaning ATCM will result in emission reductions from each affected source that are no less stringent than would result from the dry cleaning NESHAP.

2. Major Dry Cleaning Sources

Under the dry cleaning NESHAP, dry cleaning facilities are divided between major sources and area sources. CARB's request for approval included only those provisions of the dry cleaning NESHAP that apply to area sources. Thus, dry cleaning facilities that are major sources, as defined by the dry cleaning NESHAP, remain subject to the dry cleaning NESHAP and the CAA Title V operating permit program.

3. Authority to Determine Equivalent Emission Control Technology for Dry Cleaning Facilities

Under the dry cleaning NESHAP, any person may petition the EPA Administrator for a determination that the use of certain equipment or procedures is equivalent to the standards contained in the dry cleaning NESHAP (*see* 40 CFR 63.325). As a supplement to its request for approval of the dry cleaning ATCM, CARB also requested approval of the authority to determine equivalent emission control technology for dry cleaning facilities. This supplement included the following sections of the dry cleaning ATCM that CARB requested to be approved in place of 40 CFR 63.325: sections 93109(a)(17); 93109(g)(3)(A)(5); 93109(g)(3)(B)(2)(iii); and 93109(h).

While one commenter was in favor of EPA delegating this authority to California, another commenter, who also supported such delegation, believed that EPA should retain some authority for the equivalency determination to provide a minimum amount of consistency among the various State programs; otherwise, according to this commenter, manufacturers of alternative technologies may have to seek approval from a number of State authorities in order to develop a national market for their equipment. In its response to this latter comment, CARB stated that the authority to approve alternative equipment relates solely to alternative equipment offered for sale to the California perchloroethylene dry cleaning industry. According to CARB, nationwide consistency will be maintained for any equipment offered for sale both in California and other States because EPA would continue to approve that alternative equipment under the dry cleaning NESHAP; if other States receive this authority, then the manufacturers of alternative equipment who wish to target nationwide sales may have to design alternative technologies that meet the most stringent standard, whether it is a State or Federal standard.

EPA is disapproving CARB's supplemental request based on the statutory language of CAA section 112(h)(3). This disapproval, however, is limited only to those provisions within the dry cleaning ATCM (i.e., sections 93109(a)(17); 93109(g)(3)(A)(5); 93109(g)(3)(B)(2)(iii); and 93109(h)) that allow for the use of alternative emission control technology without previous approval from EPA under CAA section 112(h)(3) and 40 CFR 63.325.

The delegation of authority to determine equivalent emission control technology was discussed in EPA's notice of final rulemaking, "Approval of State Programs and Delegation of Federal Authorities," published on November 26, 1993 (*see* 58 FR 62262). In that notice, it was concluded that "EPA does not delegate authority to determine equivalency of emission control technologies to the States * * * because these determinations require notice and opportunity for comment and impact National [sic] consistency standards." 58 FR 62279. While States may develop procedures for alternative control technology demonstrations and make their own equivalency determinations under State law, a source seeking permission to use an alternative means of emission limitation under CAA section 112(h)(3) must also receive approval, after notice and opportunity for comment, from EPA before using such alternative means of emission limitation for the purpose of complying with CAA section 112.

B. California's Authorities and Resources To Implement and Enforce CAA Section 112 Standards

Any request for approval under CAA section 112(l) must meet the approval criteria in 112(l)(5) and 40 CFR Part 63, Subpart E. To streamline the approval process for future applications, a State may submit a one-time demonstration that it has adequate authorities and resources to implement and enforce any CAA section 112 standards. If such demonstration is approved, then the State would no longer need to resubmit a demonstration of these same authorities and resources for every subsequent request for delegation of CAA section 112 standards. However, EPA maintains the authority to withdraw its approval if the State does not adequately implement or enforce an approved rule or program.

As part of its dry cleaning ATCM application, CARB also requested approval of its demonstration that California has adequate authorities and resources to implement and enforce all CAA section 112 programs and rules, with the exception of the accidental release prevention program to be promulgated pursuant to CAA section 112(r). After reviewing CARB's demonstration of California's authorities and resources, EPA is approving this demonstration as meeting the approval criteria of 40 CFR 63.91(b) (1), (3), and (6). Although this approval will not result in delegation of the CAA section 112 standards, it will obviate the need for CARB to resubmit a demonstration of these same authorities and resources for every subsequent request for delegation of CAA section 112 standards, regardless of whether CARB requests approval of rules that are identical to or differ from the CAA section 112 standards as promulgated.

Since the above demonstration is also required under 40 CFR Part 70, EPA will evaluate this demonstration as it applies to Part 70 sources when it evaluates the Part 70 program applications submitted by the California air pollution control or air quality management districts.

1. Penalty Authorities

As part of its request for approval, CARB submitted a finding by California's Attorney General stating that "State law provides civil and criminal enforcement authority consistent with [40 CFR] 63.91(b)(1)(i), 63.91(b)(6)(i), and 70.11, including authority to recover penalties and fines in a maximum amount of not less than $10,000 per day *per violation* * * *." (emphasis added). In accordance with this finding, EPA understands that the California Attorney General interprets section 39674 and the applicable sections of Division 26, Part 4, Chapter 4, Article 3 ("Penalties") of the California Health and Safety Code as allowing the collection of penalties for multiple violations per day. In addition, EPA also understands that the California Attorney General interprets section 42400(c)(2) of the California Health and Safety Code as allowing for, among other things, criminal penalties for knowingly rendering inaccurate any monitoring *method* required by a toxic air contaminant rule, regulation, or permit.

As stated in section III.A above, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112, including the authority to seek civil and criminal penalties up to the maximum amounts specified in CAA section 113.

2. Variances

Division 26, Part 4, Chapter 4, Articles 2 and 2.5 of the California Health and Safety Code provide for the granting of variances under certain circumstances. EPA regards these provisions as wholly external to CARB's requests for approval to implement and enforce CAA section 112 programs or rules and, consequently, is proposing to take no action on these provisions of State law. EPA has no authority to approve provisions of State or local law, such as the variance provisions referred to, that are inconsistent with the CAA. EPA does not recognize the ability of a State or local agency who has received delegation of a CAA section 112 program or rule to grant relief from the duty to comply with such Federally-enforceable program or rule, except where such relief is granted in accordance with procedures allowed under CAA section 112. As stated above, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112.

Similarly, section 39666(f) of the California Health and Safety Code allows local agencies to approve alternative methods from those required in the ATCMs, but only as long as such approvals are consistent with the CAA. As mentioned in section III.A.3 above, a source seeking permission to use an alternative means of emission limitation under CAA section 112 must also receive approval, after notice and opportunity for comment, from EPA before using such alternative means of emission limitation for the purpose of complying with CAA section 112.

IV. Administrative Requirements

A. Unfunded Mandates Reform Act

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

The rule being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this final determination does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Approvals under 40 CFR 63.93 do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because this approval does not impose any new requirements, it does not have a significant impact on affected small entities.

C. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Incorporation by reference, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. Section 7412.

Dated: March 1, 1996.

Felicia Marcus,

Regional Administrator.

Title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for Part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Section 63.14 is amended by adding paragraph (d) to read as follows:

§ 63.14 Incorporation by Reference.

* * * * *

(d) *State and Local Requirements.* The materials listed below are available at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M Street, SW., Washington, DC.

(1) *California Regulatory Requirements Applicable to the Air Toxics Program*, March 1, 1996, IBR approved for § 63.99(a)(5)(ii) of subpart E of this part.

(2) [Reserved]

Subpart E—Approval of State Programs and Delegation of Federal Authorities

3. Subpart E is amended by reserving §§ 63.97 and 63.98; and by adding § 63.99 to read as follows:

§ 63.97 [Reserved]

§ 63.98 [Reserved]

§ 63.99 Delegated Federal Authorities.

(a) This section lists the specific source categories that have been delegated to the air pollution control agencies in each State under the procedures described in this subpart.

(1)–(4) [Reserved]

(5) California

(i) [Reserved]

(ii) Affected sources must comply with the *California Regulatory Requirements Applicable to the Air Toxics Program*, March 1, 1996 (incorporated by reference as specified in § 63.14) as described below.

(A) The material incorporated in Chapter 1 of the *California Regulatory Requirements Applicable to the Air Toxics Program* pertains to the perchloroethylene dry cleaning source category, and has been approved under the procedures in § 63.93 to be implemented and enforced in place of Subpart M—National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as it applies to area sources only, as defined in § 63.320(h).

(1) Authorities not delegated.

(i) California is not delegated the Administrator's authority to implement

and enforce those provisions of Subpart M which apply to major sources, as defined in § 63.320(g). Dry cleaning facilities which are major sources remain subject to Subpart M.

(ii) California is not delegated the Administrator's authority of § 63.325 to determine equivalency of emissions control technologies. Any source seeking permission to use an alternative means of emission limitation, under sections 93109(a)(17), 93109(g)(3)(A)(5), 93109(g)(3)(B)(2)(iii), and 93109(h) of the California Airborne Toxic Control Measure, must also receive approval from the Administrator before using such alternative means of emission limitation for the purpose of complying with section 112.

[FR Doc. 96–12475 Filed 5–20–96; 8:45 am]
BILLING CODE 6560–50–W

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7180]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Map(s) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Acting Associate Director for Mitigation reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Associate Director for Mitigation certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Pima	City of Tucson	Mar. 21, 1996, Mar. 28, 1996, *Arizona Daily Star.*	The Honorable George Miller, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85710–7210.	Feb. 22, 1996	040076

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Colorado: Summit	Unincorporated areas	Mar. 6, 1996, Mar. 13, 1996, *Summit County Journal.*	The Honorable Marsha Osborn, Chairperson, Summit County Board of Commissioners, P.O. Box 68, Breckenridge, Colorado 80424.	Feb. 8, 1996	080290
Kansas:					
Johnson	City of Olathe	Mar. 20, 1996, Mar. 27, 1996, *Johnson County Sun.*	The Honorable Larry Campbell, Mayor, City of Olathe, P.O. Box 768, Olathe, Kansas 66051–0768.	Feb. 23, 1996	200173
Johnson	City of Overland Park	Mar. 20, 1996, Mar. 27, 1996, *Johnson County Sun.*	The Honorable Ed Eilert, Mayor, City of Overland Park, P.O. Box 168, Overland Park, Kansas 66212.	Feb. 23, 1996	200174
Sedgwick	Unincorporated areas	Mar. 1, 1996, Mar. 8, 1996, *Daily Reporter.*	The Honorable Mark Schroeder, Chairman, Board of County Commissioners, Sedgwick County, 525 North Main Street, Suite 320, Wichita, Kansas 67203.	Feb. 12, 1996	200321
Maryland: Montgomery	City of Gaithersburg	Mar. 20, 1996, Mar. 27, 1996, *Gaithersburg Gazette.*	The Honorable W. Edward Bohrer, Jr., Mayor, City of Gaithersburg, 31 South Summit Avenue, Gaithersburg, Maryland 20877–2098.	Feb. 27, 1996	240050
Montana: Fergus	Town of Denton	Mar. 20, 1996, Mar. 27, 1996, *Lewistown News-Argus.*	The Honorable Robert Patterson, Mayor, Town of Denton, Office of the Town Clerk, Denton, Montana 59430.	Feb. 23, 1996	300020
Oklahoma: Canadian	City of Oklahoma City	Mar. 13, 1996, Mar. 20, 1996, *Journal Record.*	The Honorable Ronald J. Norick, Mayor, City of Oklahoma City, 200 North Walker Avenue, Oklahoma City, Oklahoma 73102.	Feb. 26, 1996	405378
Texas:					
Travis	City of Austin	Mar. 13, 1996, Mar. 20, 1996, *Williamson County Sun.*	The Honorable Bruce Todd, Mayor, City of Austin, P.O. Box 1088, Austin, Texas 78767.	Jan. 19, 1996	480624
Tarrant	City of Bedford	Mar. 22, 1996, Mar. 29, 1996, *Fort Worth Star-Telegram.*	The Honorable Rick D. Hurt, Mayor, City of Bedford, P.O. Box 157, Bedford, Texas 76095–0157.	Mar. 5, 1996	480585
El Paso	City of El Paso	Mar. 7, 1996, Mar. 14, 1996, *El Paso Times.*	The Honorable Larry Francis, Mayor, City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901–1196.	Feb. 16, 1996	480214
Bexar, Comal, and Guadalupe.	City of Schertz	Mar. 7, 1996, Mar. 14, 1996, *Herald Newspaper.*	The Honorable Earl W. Sawyer, Mayor, City of Schertz, P.O. Drawer I, Schertz, Texas 78154.	Feb. 14, 1996	480269

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Smith	City of Tyler	Mar. 21, 1996, Mar. 28, 1996, *Tyler Morning Telegraph.*	The Honorable Smith T. Reynolds, Jr., Mayor, City of Tyler, P.O. Box 2039, Tyler, Texas 75710–2039.	Feb. 20, 1996	480571
Williamson	Unincorporated areas	Mar. 13, 1996, Mar. 20, 1996, *Williamson County Sun.*	The Honorable John Doerfler, Williamson County Judge, Williamson County Courthouse, 710 Main Street, Georgetown, Texas 78626.	Jan. 19, 1996	481079

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: May 13, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–12718 Filed 5–20–96; 8:45 am]

BILLING CODE 6718–04–P

44 CFR Part 65

[Docket No. FEMA–7178]

Changes In Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Acting Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida: Lake	Unincorporated areas	Mar. 26, 1996, Apr. 2, 1996 *The Lake Sentinel.*	Ms. Sue Whittle, Lake County Manager, P.O. Box 7800, Tavares, Florida 32778.	Mar. 18, 1996	120421 B
Georgia: Bryan	Unincorporated areas	Mar. 27, 1996, Apr. 3, 1996, *Richmond Hill-Bryan County News.*	Mr. Thomas Bacon, Chairman of the Bryan County Board of Commissioners, P.O. Box 430, Pembroke, Georgia 31321.	Mar. 19, 1996	130016 A
Illinois: McHenry County.	Lake-In-The-Hills (Village).	Mar. 15, 1996, Mar. 22, 1996, *The Northwest Herald.*	Ms. Christine Thomrose, President of the Village of Lake-In-The-Hills, 1115 Crystal Lake Road, Lake-In-The-Hills, Illinois 60102.	Mar. 7, 1996	170481 C
Indiana: Lake	Schererville (town)	Mar 27, 1996, Apr. 3, 1996, *Post-Tribune.*	Mr. Stephen Z. Kil, Manager of the Town of Schererville, 833 West Lincoln Highway, Schererville, Indiana 46375.	July 2, 1996	180142 B
New Jersey: Union	Roselle (borough)	Apr. 11, 1996, Apr. 18, 1996, *Roselle Spectator.*	The Honorable Joseph L. Picaro, Mayor of the Borough of Roselle, 210 Chestnut Street, Roselle, New Jersey 07203.	April 2, 1996	340472 A
North Carolina: Dare	Unincorporated areas	Apr. 2, 1996, Apr. 9, 1996, *The Coastal Times.*	Mr. Robert V. Owens, Chairman of the Dare County Board of Commissioners, P.O. Box 1000, Manteo, North Carolina 27954.	Mar. 25, 1996	375348 E
Puerto Rico	Commonwealth	Mar. 19, 1996, Mar. 25, 1996, *El Nuevo Dia.*	Ms. Norma N. Burgos-Andujar, Chairwoman of the Puerto Rico Planning Board, Minillas Station, P.O. Box 41119, San Juan, Puerto Rico 00940–9985.	Sept. 13, 1996	720000 C

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: May 13, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–12716 Filed 5–20–96; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Acting Associate Director has resolved

any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings. The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612 Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Georgia: Cobb (FEMA Docket No. 7169).	City of Marietta	Dec. 1, 1995, Dec. 8, 1995, *Marietta Daily Journal.*	The Honorable Ansley Meaders, Mayor of the City of Marietta, P.O. Box 609, Marietta, Georgia 30061.	Oct. 23, 1995	130226F
Indiana:					
Hamilton (FEMA Docket No. 7169).	City of Carmel	Nov. 8, 1995, Nov. 15, 1995, *Carmel News Tribune.*	The Honorable James Brainard, Mayor of the City of Carmel, One Civic Square, Carmel, Indiana 46032.	Oct. 31, 1995	180081
Johnson (FEMA Docket No. 7165).	Unincorporated areas	Oct. 18, 1995, Oct. 25, 1995, *Daily Journal.*	Mr. Joseph Dettart, Chairman of the Johnson County Board of Commissioners, 86 West Court Street, Courthouse Annex, Franklin, Indiana 46131.	Jan. 23, 1996	180111C
New Jersey: Bergen (FEMA Docket No. 7165).	Borough of Rockleigh	Oct. 18, 1995, Oct. 25, 1995, *The Record.*	The Honorable Roberta Adams, Mayor of the Borough of Rockleigh, 26 Rockleigh Road, Rockleigh, New Jersey 07647.	Oct. 13, 1995	340071F

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Pennsylvania: Clinton (FEMA Docket No. 7169).	Borough of Flemington	Nov. 21, 1995, Nov. 28, 1995, *The Lock Haven Express.*	Mr. Gerry Yanneralla, President of the Flemington Borough Council, 126 High Street, Flemington, Pennsylvania 17745.	Nov. 13, 1995	420326B
Wisconsin: Juneau (FEMA Docket No. 7165).	Unincorporated areas	June 1, 1995, June 8, 1995, *Juneau County Star Times.*	Mr. James Barrett, President of the Juneau County Board, 220 State Street, Juneau, Wisconsin 53948.	May 25, 1995	550580C

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: May 13, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–12715 Filed 5–20–96; 8:45 am]

BILLING CODE 6718–03–P

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register.**

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
ALABAMA	
Oneonta (city), Blount County (FEMA Docket No. 7168)	
Dry Creek:	
Approximately 0.4 mile downstream of Pocoda Drive	*785
At U.S. Route 231	*850
Maps available for inspection at the Oneonta City Hall, 202 Third Avenue East, Oneonta, Alabama.	
MASSACHUSETTS	
Gay Head (town), Dukes County (FEMA Docket No. 7164)	
Atlantic Ocean:	
Approximately 0.7 mile west of the intersection of Black Brook and Moshup Trail	*9
Approximately 1,400 feet southwest of the intersection of Moshup Trail and South Road near Lighthouse Road	*11
Menemsha Bight:	
Approximately 600 feet north of the intersection of Lobsterville Road and West Payson Road	*12
Approximately 500 feet north of the intersection of Lobsterville Road and West Payson Road	*10
Vineyard Sound:	
Approximately 0.4 mile north of the intersection of Lighthouse Road and Moshup Trail	*11
Maps available for inspection at the Office of the Building Inspector, 65 State Road, Gay Head, Massachusetts.	
West Tisbury (Town), Dukes County (FEMA Docket No. 7164)	
Atlantic Ocean:	
Approximately 700 feet south of the end of Butlers Pond Road	*10
Approximately 650 feet south of the intersection of Jennie Athearn Road and Little Homer Pond Road	*9
Maps available for inspection at the West Tisbury Town Hall, 1059 State Street, West Tisbury, Massachusetts.	
MICHIGAN	
Hartland (township), Livingston County (FEMA Docket No. 7155)	
North Ore Creek:	
At Parshallville Road	*909
At Fenton Road	*966
Maps available for inspection at the Hartland Township Office, 3191 Hartland Road, Hartland, Michigan.	
MINNESOTA	
Koochiching County (unincorporated areas) (FEMA Docket No. 7138)	
Rainy River:	
At downstream county boundary with the City of International Falls	*1,111
At Canadian National Railroad bridge	*1,112
Maps available for inspection at the Administration Office, Koochiching County Courthouse, International Falls, Minnesota.	
NORTH CAROLINA	
Williamston (town), Martin County (FEMA Docket No. 7164)	
Roanoke River:	
Approximately 0.3 mile downstream of U.S. Route 13	*12
Approximately 0.4 mile upstream of U.S. Route 13	*12
Maps available for inspection at the Town Hall, 100 East Main Street, Williamston, North Carolina.	
NEW YORK	
Dresden (town), Washington County (FEMA Docket No. 7164)	
Lake George:	
Entire shoreline within community	*321
Maps available for inspection at the Town Hall, Dresden Center Road, RD 1, Whitehall, New York.	
Elmira (town), Chemung County (FEMA Docket No. 7164)	
Newtown Creek:	
Approximately 0.5 mile downstream of confluence of Diven Creek	*861
Approximately 0.51 mile upstream of confluence of Diven Creek	*862
McCann's Tributary:	
At confluence with Diven Creek	*861
Approximately 825 feet upstream of McCann's Boulevard	*862
Maps available for inspection at the Elmira Town Hall, 1255 West Water Street, Elmira, New York.	
Elmira Heights (village), Chemung County (FEMA Docket No. 7164)	
McCann's Tributary:	
At McCann's Boulevard	*861
Approximately 1,000 feet upstream of McCann's Boulevard	*862
Maps available for inspection at the Elmira Heights Village Hall, 215 Elmwood Avenue, Elmira Heights, New York.	
Geneseo (town), Livingston County (FEMA Docket No. 7168)	
Jaycox Creek:	
At Lima Road	*815
Approximately 2.79 miles upstream of Lima Road	*1001
Maps available for inspection at the Geneseo Town Office, 119 Main Street, Geneseo, New York.	
Geneseo (village), Livingston County (FEMA Docket No. 7168)	
Jaycox Creek:	
Approximately 75 feet downstream of downstream corporate limits	*822
Approximately 330 feet upstream of Seminole Avenue	*867
Genesee River:	
At downstream corporate limit	*557
At upstream corporate limit	*558
Maps available for inspection at the Geneseo Village Office, 119 Main Street, Geneseo, New York.	
Hague (town), Warren County (FEMA Docket 7168)	
Lake George:	
Entire shoreline within community	*321
Maps available for inspection at the Town of Hague Community Center, Route 8, Hague, New York.	
Hillburn (village), Rockland County (FEMA Docket No. 7164)	
Ramapo River:	
Approximately 550 feet downstream of the downstream crossing of the Conrail	*277
At upstream corporate limits	*299

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
Maps available for inspection at the Village Hall, 31 Mountain Avenue, Hillburn, New York.	
Horseheads (town), Chemung County (FEMA Docket No. 7164)	
Beaver Brook:	
At confluence with Newtown Creek	*877
Approximately 1,035 feet upstream of East Mills Street	*885
North Branch Newtown Creek:	
At confluence with Newtown Creek	*929
Approximately 325 feet upstream of confluence with Newtown Creek	*932
Maps available for inspection at the Horseheads Town Hall, 150 Wygant Road, Horseheads, New York.	
Horseheads (village), Chemung County (FEMA Docket No. 7164)	
Newtown Creek:	
Approximately 750 feet downstream of Route 14/17	*877
Approximately 535 feet upstream of East Franklin Street	*891
Maps available for inspection at the Horseheads Village Hall, 202 South Main Street, Horseheads, New York.	
Lake George (village), Warren County (FEMA Docket No. 7159)	
Lake George:	
Entire shoreline within community	*321
Maps available for inspection at the Village of Lake George Administrative Building, Amherst Street, Lake George, New York.	
Lewis (town), Lewis County (FEMA Docket No. 7168)	
East Branch Mohawk River:	
Approximately 0.47 mile downstream of State Route 26	*1457
Approximately 0.74 mile upstream of State Route 26	*1499
Maps available for inspection at the Lewis Town Clerk's Office, 791 Main Street, West Leyden, New York.	
OHIO	
Dayton (city), Montgomery County (FEMA Docket No. 7164)	
Lilly Creek:	
Approximately 0.15 mile upstream of confluence with Mad River	*761
Approximately 0.60 mile upstream of Byesville Boulevard	*781
Shallow Ponding Area (Zone AH):	
Just Southeast of Springfield Pike; approximately 900 feet northeast of unnamed road	*767
Approximately 200 feet northwest of Springfield Pike	*766
Maps available for inspection at the Dayton City Hall, 101 West Third Street, Dayton, Ohio.	
Montgomery County (unincorporated areas) (FEMA Docket No. 7168)	
Lilly Creek:	
Approximately 100 feet downstream of downstream corporate limits	*780
At upstream corporate limits	*786
Maps available for inspection at the County Planning Commission, 451 North Third Street, Dayton, Ohio.	
Riverside (city), Montgomery County (FEMA Docket No. 7168)	
Lilly Creek:	
Approximately 200 feet upstream of Byesville Boulevard	*768
Approximately 132 feet downstream of Harshman Road	*787
Shallow Ponding Area (Zone AH):	
Approximately 700 feet northwest of the intersection of Byesville Boulevard and Fairfax Avenue	*766
Approximately 500 feet north of intersection of Glendean Avenue and Springfield Avenue	*766
Just south of intersection of Springfield Pike and Fairfax Avenue	*767
North side of intersection of Fairfax Avenue and Derwent Drive	*767
Shallow Flooding Area (Zone AO):	
Southside of intersection of Fairfax Avenue and Derwent Drive	#2
North side of intersection of Fairpark Avenue and Fairfax Avenue	#2
Shallow Ponding Area (Zone AH):	
Approximately 700 feet northwest of the intersection of Byesville Boulevard and Fairfax Avenue	*766
Approximately 500 feet north of intersection of Glendean Avenue and Springfield Avenue	*766
Maps available for inspection at the City Hall, 1791 Harshman Road, Riverside, Ohio.	
PENNSYLVANIA	
Shirley (Township), Huntingdon County (FEMA Docket No. 7164)	
Aughwick Creek:	
Approximately 1,090 feet upstream of U.S. Route 522	*571
Approximately 1,775 feet upstream of U.S. Route 522	*571
Maps available for inspection at the Shirley Township Building, Shirleysburg, Pennsylvania.	
PUERTO RICO	
Commonwealth (FEMA Docket No. 7149)	
Espiritu Santo River:	
Approximately 0.65 kilometer upstream of the confluence with the Atlantic Ocean	*2.2
Approximately 4.61 kilometers upstream of the confluence with the Atlantic Ocean	*6.9
Rio Guanajibo:	
Approximately 1,200 meters downstream of Puerto Rico Highway 2	*80.0
Approximately 870 meters downstream of Puerto Rico Highway 368	*100.8
*Elevation in meters (Mean Sea Level)	
Maps available for inspection at the North Minillas Building, Dediezo Avenue, 22 Top, Santurce, Puerto Rico.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: May 13, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–12713 Filed 5–20–96; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF DEFENSE

48 CFR Parts 209 and 243

[DFARS Case 96–D305]

Defense Federal Acquisition Regulation Supplement; Institutions of Higher Education

AGENCY: Department of Defense (DoD).
ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a statutory prohibition on providing funds to institutions of higher education which have an anti-ROTC policy.

DATES: Effective date: May 21, 1996.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before July 22, 1996, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Mr. Michael Pelky, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, D.C. 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 96–D305 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Michael Pelkey, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements Section 541 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106). Section 541 provides that no funds available to DoD may be provided by contract or grant to institutions of higher education which have an anti-ROTC policy.

B. Regulatory Flexibility Act

The Interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to institutions of higher education which are determined to have an anti-ROTC policy. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 96–D305 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Compelling reasons exist to promulgate this rule without prior opportunity for public comment. This rule implements Section 541 of the National Defense Authorization Act for Fiscal year 1996 (Public Law 104–106), which was effective upon enactment on February 10, 1996. However, comments received in response to the publication of this rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 209 and 243

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 209 and 243 are amended as follows:

PART 209—CONTRACTOR QUALIFICATIONS

The authority citation for 48 CFR Parts 209 and 243 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Sections 209.470–1 and 209.470–2 are revised to read as follows:

209.470–1 Policy.

(a)(1) Section 558 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337) provides that no funds available to DoD may be provided by grant or contract to any institution of higher education that has a policy of denying or that effectively prevents the Secretary of Defense from obtaining for military recruiting purposes—

(i) Entry to campuses or access to students on campuses; or

(ii) Access to directory information pertaining to students.

(2) Section 541 of the National Defense Authorization Act for Fiscal Year 1996 (10 U.S.C. 983) provides that no funds appropriated or otherwise available to DoD may be obligated by contract or by grant, including a grant of funds to be available for student aid, to any institution of higher education that, as determined by the Secretary of Defense, has an anti-ROTC policy and at which, as determined by the Secretary, the Secretary would otherwise maintain or seek to establish a unit of the Senior Reserve Officer Training Corps, or at which the Secretary would otherwise enroll or seek to enroll students for participation in a unit of the Senior Reserve Officer Training Corps at another nearby institution of higher education. This prohibition applies to new contracts and all contract modifications. (See 243.105.) This prohibition shall cease to apply to that institution upon a determination by the Secretary that the institution no longer has an anti-ROTC policy.

(b) Institutions of higher education that are determined under 32 CFR part 216 to have the policy or practice in paragraph (a)(1) or (a)(2) of this subsection shall be listed as ineligible on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs published by the General Services Administration. (See FAR 9.404.)

(c) In cases where a determination is made under 32 CFR part 216 that specific subordinate elements of an institution of higher education, rather than the institution as a whole, have the policy or practice in paragraph (a)(1) or (a)(2) of this subsection, 32 CFR part 216 provides that the prohibition on use of DoD funds applies only to those subordinate elements.

209.470–2 Procedures.

(a) Agencies shall not solicit offers from, award contracts to, or consent to subcontracts with ineligible contractors.

(b) After a determination of ineligibility under 209.470–1(a)(1), departments and agencies shall make no further payments under existing contracts with the institutions, and shall initiate termination action.

PART 243—CONTRACT MODIFICATIONS

3. Section 243.105 is revised to read as follows:

243.105 Availability of funds.

(a)(i) 10 U.S.C. 2405 prohibits adjustments in price under a shipbuilding contract entered into after December 7, 1983, for a claim, request for equitable adjustment, or demand for payment under the contract, arising out of events occurring more than 18 months before submission of the claim, request, or demand.

(ii) Section 558 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337) provides that no funds available to DoD may be provided by contract or contract modification, nor may contract payments be made, to an institution of higher education that has a policy of denying or that effectively prevents the Secretary of Defense from obtaining for military recruiting purposes—

(A) Entry to campuses or access to students on campuses; or

(B) Access to directory information pertaining to students. (See 209.470.)

(iii) Pursuant to 10 U.S.C. 983, no funds may be obligated by contract or contract modification to an institution of higher education that has an anti-ROTC policy. (See 209.470.)

[FR Doc. 96–12766 Filed 5–20–96; 8:45 am]

BILLING CODE 5000–04–M

48 CFR Part 242

[DFARS Case 96–D007]

Defense Federal Acquisition Regulation Supplement; Direct Submission of Vouchers to Disbursing Office

AGENCY: Department of Defense (DOD).
ACTION: Final rule.

SUMMARY: The Director of Defense Procurement is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to allow the contract auditor to authorize direct submission of interim vouchers for provisional payment to the disbursing office, for contractors with approved billing systems.

EFFECTIVE DATE: May 21, 1996.

FOR FURTHER INFORMATION CONTACT: Rick Layser, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350. Please cite DFARS Case 96–D007.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS 242.803 to reduce unnecessary review and approval, by the contract auditor, of interim vouchers for provisional payment under DoD contracts.

B. Regulatory Flexibility Act

This final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 96–D007 in correspondence.

C. Paperwork Reduction Act

This rule does not impose any new information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 242

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 242 is amended as follows:

PART 242—CONTRACT ADMINISTRATION

1. The authority citation for 48 CFR Part 242 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 242.803 is amended by redesignating paragraphs (b)(i)(C) and (b)(i)(D) as paragraphs (b)(i)(D) and (b)(i)(E), respectively, and by adding a new paragraph (b)(i)(C) to read as follows:

242.803 Disallowing costs after incurrence.

* * * * *

(b) * * *

(i) * * *

(C) Authorizing direct submission of interim vouchers for provisional payment to the disbursing office for contractors with approved billing systems.

* * * * *

[FR Doc. 96–12765 Filed 5–20–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Parts 37 and 38

[Docket No. 49658]

RIN 2105–AC13

Transportation for Individuals With Disabilities

AGENCY: Department of Transportation (DOT), Office of the Secretary.
ACTION: Final rule.

SUMMARY: The Department is amending several provisions of its rules implementing the Americans with Disabilities Act (ADA). Some of the changes are being made in response to petitions received by the Department. The first change will ensure that the rule treats independent private schools similarly to other schools. The second change will apply the same gap standard to high speed automated guideway transit (AGT) systems as is applied to other rapid and light rail systems. The third petition granted in this rule will give local jurisdictions more discretion with respect to advance reservation systems for paratransit services. However, the Department is withdrawing a proposal that would have permitted transit authorities to determine that certain bus stops may be designated as non-accessible stops.

This rule will also make six amendments that derive from the Department's own proposals. The first will decrease the paperwork burden of producing annual paratransit plan updates once the paratransit system reaches full compliance with ADA regulations. The second will clarify a visitor's eligibility for paratransit services. The third will clarify the vehicle acquisition requirements for private entities not primarily engaged in the business of transporting people. The fourth amendment will remove "inability to comply" as a condition of gaining a determination of equivalent facilitation. The final two amendments will eliminate confusion in a cross reference within the regulation and correct a typographical error. The Department has concluded that no change is warranted in the regulatory definition of a personal care attendant.

EFFECTIVE DATE: This final rule is effective June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD); or Richard Wong, Office of Chief Counsel, Federal Transit Administration, same street address, Room 9316. (202) 366–4011.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Department published its notice of proposed rulemaking (NPRM) on the issues covered by this rule on July 21, 1994. The NPRM included proposed amendments that were petitioned for by the public on which the Department took no initial position and proposals that the Department generated internally. The Department received over 275 comments on the NPRM, most of which came from individuals with disabilities, organizations representing them and transit authorities. Additional

comments were received from state disability advocates, engineering groups, paratransit providers and equipment manufacturers, as well as others.

II. Petitions for Rulemaking

1. Bus Stops

This issue, raised in the NPRM on the basis of a petition from Seattle Metro, was the most controversial in the rulemaking. Disability community commenters were virtually unanimous in strongly opposing Seattle's suggestion that transit authorities be authorized to declare a bus stop "off limits" to wheelchair users, or in some cases, to all lift users, on the basis that conditions at the stop made its use too dangerous for such passengers. These commenters included disability advocacy organizations, individuals, the U.S. Department of Justice, and state and local government agencies. A few transit agencies also shared their point of view.

The first point these commenters made was that individuals with disabilities—not transit agencies—should decide when a given stop is appropriate for them to use. Individuals with disabilities know their own abilities better than anyone else, and can make reasonable choices about what is or is not safe for them. Allowing other parties, such as transit agencies, to make these choices smacks of paternalism and is the sort of well-intended constraint on the activities of persons with disabilities that the ADA is specifically intended to prevent. Providing discretion to transit authorities to deny to passengers with disabilities the use of facilities that other passengers are allowed to use is a clear violation of the ADA's nondiscrimination mandate, many commenters said.

What made the proposal additionally objectionable, many of these commenters said, was that there was no empirical evidence that there was a significant safety problem at bus stops. There might be speculation that a safety problem existed, and worry about potential liability, but there were few, if any, facts presented that the problem was real. When there is a nondiscrimination mandate like that of the ADA, any classification that denies services to the protected class must be based on demonstrated facts, they said, not on fear. Many of these commenters pointed to the ADA's "direct threat" concept as a model for determining when it is acceptable to deny services or facilities to individuals with disabilities based on a safety risk. This concept, they noted, focuses on the individual situation of each disabled person, not on the presumed abilities of a class of persons with disabilities.

Finally, a number of these commenters noted that, if individuals are denied use of stops, they will become eligible for paratransit, which will increase costs to transit authorities. There could also be situations in which people would be denied service altogether because of limited capacity on paratransit systems, one commenter noted. (Two transit authority commenters said, on the other hand, that transit authorities' desire to avoid adding to paratransit costs would be a deterrent to abuse of discretion to limit passengers' use of unsafe stops.)

Many disability community commenters, and several transit authorities as well, opposed the petition's suggestion that the standard for determining the suitability of a stop for disabled passengers be the new construction standard for bus stops in the Americans with Disabilities Act Accessibility Guidelines (AADAG). This standard, they said, was of questionable relevance to streetside bus stops in mass transit systems, and was inappropriate for use in a situation involving existing facilities in any event. The obligation that public entities have for existing facilities, they noted, is to make them program accessible, not necessarily to bring them up to new construction standards. The new construction standard was never intended to be a safety standard, or a criterion to determine when an individual with disabilities would be allowed to use a facility. The petitioner was the only commenter to support the proposal to use the new construction standard.

A large majority of the transit providers that commented supported the idea that they should have discretion to declare stops "off limits" to lift users on the basis of safety. Because some stops had hazards that affect passengers with disabilities in ways that other passengers are not affected (e.g., stops that have a narrow area for maneuvering that present a problem to wheelchair users but not ambulatory persons, stops with a drop-off that can result in a wheelchair overturning), it is rational to prevent accidents and injuries by denying use of these stops to persons for whom the hazards are serious. Concern about liability was another reason advanced by many transit commenters. Seattle said it had experienced seven accidents because of bus stop problems since 1987, including one serious injury that resulted in a settlement of over $400,000.

While the transit community generally supported Seattle's petition, there were a number of interesting nuances in transit provider comments. Some emphasized the necessity of working with the disability community on bus stop access issues, including public hearings or other opportunities for public participation. Improving or moving existing bus stops was a step mentioned by others. Differences among buses and passengers need to be taken into consideration, others said. Prodding the Department of Justice to issue regulations requiring local governments to work on making bus stops under their control program accessible was another suggestion. Better training for drivers on how to deploy lifts safely in a variety of situations was also recommended. Some commenters also mentioned (but apparently did not favor) the possibility of closing stops to all passengers if they were not safely usable by passengers with disabilities.

This is a case in which both sides of the debate have genuine concerns. The petitioner and comments supporting its position worry, in good faith, about potential safety problems facing wheelchair users at some bus stops and about ensuing liability problems that may result for transit providers. In the absence of legal constraints on the use of classifications based on disability, it could arguably be rational for transit providers to take the kind of action that the petition proposes.

However, the ADA imposes strong legal constraints on the use of classifications based on disability. Under the ADA, a proposed action which treats a disability-based class of persons differently from the rest of the public cannot be accepted merely because it may assuage a party's good faith concerns about safety. This is a position that the Department has taken consistently as it has developed and implemented its ADA regulations.

For example, before and during the development of Part 37, there was considerable discussion of transit providers' good-faith safety concerns about transporting three-wheeled "scooters." Many commenters asserted that these devices were unstable and difficult to secure, and asked that transit providers have the discretion to exclude them on the basis of these safety-related concerns. The Department required that providers carry such mobility devices, noting the absence of "information in the record that would support a finding that carrying non-traditional wheelchairs would constitute a 'direct threat' to the safety of others. * * *" (56 FR 45617; September 6, 1991).

Subsequently, transit community commenters raised the issue of the use of lifts by standees, which the original version of Part 37 required. The commenters expressed the concern that standees could fall off the lifts or hit their heads, resulting in injury to passengers and liability for providers. With one exception (concerning a particular lift model that was no longer being manufactured), there was little information in the record demonstrating that a real safety problem, as distinct from speculation or fears concerning potential safety problems, existed. The Department rejected the proposal, saying that—

> [t]he ADA is a nondiscrimination statute, intended to ensure * * * that people with disabilities have access to transportation services. To permit a transportation provider to exclude a category of persons with disabilities from * * * access to a vehicle on the basis of a perceived safety hazard, absent information in the record that the hazard is real, would be inconsistent with the statute. * * * While we understand the concerns of transit agency commenters about the potential safety risks that may be involved, the Department does not have a basis in the rulemaking record for authorizing a restriction on lift use by standees. (58 FR 63096; November 30, 1993).

The Department's analysis of the Seattle petition is very similar to its response to these two previous issues. The petition presents a genuine, good-faith concern that a certain condition (here, terrain or other problems at particular bus stops) may create a safety hazard for a class of persons with disabilities. There is, in the comments favoring the petition, agreement that difficult conditions at some stops might, indeed, create some safety risks for wheelchair users or other persons with disabilities. But there is little in the record to suggest that there is substantial, pervasive, or strong evidence that a real, as distinct from speculative, safety problem exists.

To its credit, the petitioner attempted to show the Department that problem stops existed for which the petitioner's proposed remedy was needed. The petitioner provided a videotaped demonstration of wheelchair users attempting to get on and off buses using lifts at several problem stops. After reviewing the tape, the Department concluded that it is reasonable to believe that at such stops, wheelchair users may well have greater difficulty, and take longer, in using bus lifts than at other stops. In some of the situations, there could be a higher risk to wheelchair users than at other, more "normal," stops. The Department does not find this evidence sufficient, however, to justify carving out an exception to the nondiscrimination mandate of the ADA.

In thinking about situations in which safety reasons are advanced for using disability-based classifications, the Department finds it useful to consider the "direct threat" provisions that exist in other provisions of the ADA. "Direct threat" permits exceptions—specific to an individual—to be made to ADA nondiscrimination requirements on the basis of safety. The Department of Justice (DOJ) rule implementing Title III of the ADA in the context of public accommodations defines the concept as follows:

> Direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services. In determining whether an individual poses a direct threat to the health or safety of others, a public accommodation must make an individualized assessment, based on a reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk. (28 CFR 36.208 (b)–(c)).

Very similar regulatory language appears in the Equal Employment Opportunity Commission (EEOC) rules implementing Title I of the ADA in the context of employment (29 CFR 1630.2(r); see also discussion 56 FR 35745; July 26, 1991). The Department of Justice regulation implementing Title II of the ADA in the context of state and local government programs does not include "direct threat" language in its regulatory text, but the preamble applies the concept to the essential eligibility requirements for participating in state and local programs (56 FR 35701; July 26, 1991).

While the DOJ and EEOC language concerning "direct threat" does not necessarily apply in its entirety to transportation issues, the Department believes that it is appropriate, and in keeping with the language and intent of the statute, to determine that disability-based classifications in transportation having a safety rationale are supportable only on the basis of analysis that incorporates the essentials of the "direct threat" concept in a way consistent with the nature of transportation programs. The petition at issue in this rulemaking does not, in the Department's view, closely approach what is necessary to be adopted under such an analysis.

As a general matter, the points raised by commenters opposed to the proposal, as described above, have been more persuasive to the Department than those points made by its proponents. These points add to the discussion above as reasons for the Department's decision.

The Department believes that transit providers which, like Seattle, sincerely desire both to provide nondiscriminatory service to individuals with disabilities and to maximize bus stop safety have some means available to achieve these objectives. For example, a transit provider could provide information to lift users about potential hazards at certain stops and offer informational on alternative stops or routings to such passengers, where alternatives were available. The provider could also offer paratransit to those passengers who chose to avoid using the stops as a result.

The transit provider could make operational modifications to mitigate potential hazards. For example, if there is limited space or a potential hazard at a stop, the bus could let a wheelchair user board at a nearby area that was easier to use or stop at a greater distance from the curb. We are aware that transit providers are often reluctant to depart from normal practices in this regard (although such deviations appear commonplace during inclement weather, such as when bottomless puddles, "Blizzard of '96"-size snowbanks, or carnivorous potholes make access to normal stops difficult for all passengers). Nevertheless, these are among the kinds of "reasonable modifications of policies, practices, or procedures [to] mitigate the risk" that the ADA calls for.

Transit providers can also urge local governments to improve accessibility to bus stops, mitigate hazards at stops, or, if need be, move stops to better locations. The Department is aware that transit providers often do not control the placement of stops or the land on which they are located, though we believe that transit providers should continue the effort to work with their local governments on these matters.

For these reasons, the Department is withdrawing the proposal, based on the Seattle petition, to permit transit providers to limit the use of certain bus stops by lift users. The existing rule's language (49 CFR 37.167(g)) will remain in effect, without change. Any transit provider that may have instituted limits on the use of particular stops by lift users, except as authorized by this provision, must cease implementing the limits, as they are explicitly contrary to the Department's ADA rule.

2. Requirements for Private School Transportation

The Department has decided to grant the petition of the National Association of Independent Schools (NAIS) and adopt the proposed private school exemption. In doing so, the Department emphasizes the importance of ensuring that schools provide disabled students with equal access to all of the schools' academic and extracurricular programs. Private schools will therefore have to provide equivalent transportation services to disabled students in order to be eligible for the exemption. The final rule will apply the same standard for equivalent service as is found in § 37.105.

This change is being made because the current requirement that all new buses purchased be lift equipped does not apply to most schools. Public schools are exempt because their transportation services are excluded from the ADA's definition of "designated public transportation." Schools with a religious affiliation are exempt based on the ADA's exemption for religious organizations. Private elementary and secondary schools that receive Federal financial assistance get the same exemption as public schools if they provide equivalent transportation services to students with disabilities and are covered by section 504 of the Rehabilitation Act of 1973. By now, the Department's regulation exempts all schools except private, non-religious schools that receive no Federal financial assistance.

The NAIS petition pointed out the anomalous result of the regulation applying more stringent and costly standards to schools that receive no Federal financial assistance than is applied to schools that do receive assistance. In response to the NAIS petition, the NPRM proposed amending § 37.27 to apply the same equivalent services standard to independent schools as is applied to private schools that receive Federal assistance. The majority of the comments received on this aspect of the proposal supported extending the private school exemption. However, many commenters did express concerns about disabled students' access to school events. This concern was shared by the few commenters who opposed the exemption.

The Department also shares these concerns. The independent private schools will be subject to the same equivalent service standard that other private schools must meet, namely that "when viewed in [their] entirety" transportation services must be "provided in the most integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals * * *" 49 C.F.R. § 37.105. Any test for equivalence under § 37.105 would go beyond providing equal access to transportation to and from school and include transportation to and from all of the school's extracurricular activities. This approach is consistent with the Department of Education's requirement that non-academic and extracurricular activities and services be provided in such a way as to ensure disabled students an equal opportunity for participation. See 34 C.F.R. § 104.37(a)(1). In fact, the Department of Education goes so far as to include transportation itself as a covered non-academic service. See id. at § 104.37(a)(2).

One commenter raised the possibility that a school that does not purchase lift equipped buses because it has no disabled students might exclude disabled applicants in the future to avoid the expense of purchasing lifts. This concern could be valid. However, the possibility of the rule change encouraging future discrimination in the admissions process is speculative and the Department has neither the authority nor the expertise to address admissions discrimination.

3. People Mover Gap Standards

The Department has decided to adopt the NPRM's proposal to allow high speed AGT systems to comply with the same train door to platform gap standard as other high speed rail systems. The petition was submitted by the American Society of Civil Engineers (ASCE). ASCE cited the wide variation in AGT system speed—5 to 80 miles per hour—and requested that faster AGT systems be subjected to the less stringent requirements applied to rapid and light rail systems. ASCE had studied existing AGT systems and claimed that most do not meet current AGT standards of one inch horizontal and half inch vertical gaps between the train door and the platform edge. According to ASCE's analysis, AGT systems that run at under 20 miles per hour can reasonably be expected to meet the current gap standards. Faster AGT systems, however, require vehicles with larger, more complicated suspensions that make it more difficult to meet the smaller gap standard.

The proposal was not controversial. Only one of the 17 comments received objected to the principle of a speed division and two objected to the proposed 3-inch gap standard for the higher speed trains. The proposal would allow AGT systems that operate at over 20 mph at any point on the system to comply with the rapid/light rail gap standards of a 3 inch horizontal gap and ⅝ inch vertical gap. One commenter suggested that the larger gap only be permitted on sections of the track on which the AGT system actually ran at over 20 mph. The suggestion is being rejected because it ignores the underlying rationale for the speed division. If the AGT vehicle is to be capable of traveling at higher speeds on other segments of the system, it will require the more sophisticated suspension, which will in turn make the smaller gap standard more difficult to meet at all stops.

ASCE pointed out that the Access Board's preamble discussion refers to "AGT vehicles that travel at slow speed," and subsequent Access Board manuals suggest that the rapid/light rail gap standard should apply to faster AGT vehicles. The Access Board has interpreted its guidelines as permitting the construction that ASCE urges and the Department's action today will prevent any conflict or confusion between the guidelines and the rule.

4. 14-Day Advance Reservations

The proposal to remove the 14-day advance reservation requirement generated significant interest among commenters of all types. While approximately 130 commenters advocated keeping the reservation requirement, most expressed dissatisfaction with current reservation systems, suggested different reservation times, capacity allotments for advanced reservations or demonstration projects before a change in the requirement is made. Of the approximately 60 commenters who advocated repealing the requirement, many made similar recommendations.

Approximately 45 commenters made 11 different suggestions for changing the number of days allowed for advance reservations. Ten of these commenters believed that the number of days should be flexible and made no specific suggestion, five others suggested a range of 1 to 3 days, one commenter suggested 3 to 7 days and one suggested 7 to 8 days. Among the 27 commenters who endorsed a specific number of days, there were seven different recommendations, ranging from 1 day to 10 days, with 7 days being the most popular (13 commenters).

Eight commenters suggested limiting the percentage of paratransit capacity which could be reserved in advance. Most of these eight commenters did not offer a specific percentage limit, those who did were split between 40 and 50 percent. Three other commenters suggested capping the number of trips an individual rider could reserve in advance. Similarly, these commenters did not agree on any one number.

The most common complaint about advance reservations was that they caused an unmanageable number of cancellations and no-shows. Twenty one commenters suggested penalties for riders who failed to show up for scheduled rides. Twelve other commenters suggested that this problem could be solved by requiring confirmation. Among these twelve comments were three different suggestions for when the confirmation should be made; there was also disagreement over whether the rider or the transit provider should be responsible for making the confirmation call.

Finally, ten commenters complained that long reservation times created prioritization, illegally favoring individuals with certain types of disabilities or favoring certain types of trips. Eight commenters pointed out that advance reservations drain the capacity of paratransit systems, but seven others countered that the real problem is limited capacity, which in turn causes reservation problems.

In light of the substantial dissatisfaction with the current 14-day reservation requirement evident from the comments and the abundant and varied suggestions for improving reservation systems, the Department has decided to remove the requirement and allow local transit providers, in conjunction with the riding public, the discretion to establish reservation systems that best meet local needs. Under the amended rule, transit systems can establish any reservation system that meets the other requirements of this part, with a maximum 14-day advance reservation period. Paratransit systems that wish to take advantage of the flexibility provided by this amendment by changing their reservation systems will have to ensure public participation in the decision to change and local review of the functioning of the new system. The public participation requirements of § 37.137(b) will apply.

One of the points commenters made in favor of retaining some advance reservation capacity in paratransit systems was the added security it affords concerning occasional, important, time-sensitive trips. For example, if someone has airline reservations, the person needs to be at the airport at a particular time on a particular day. The person is likely to be more comfortable if he or she knows, prior to the day before travel, that a paratransit reservation is confirmed. While we do not believe that this kind of situation is sufficient, given the downsides of an advance reservation requirement, to justify mandating advance reservations, we suggest that, as transit providers consult with their communities about reservation system changes, that they explore means of addressing this concern.

It should be emphasized that, in order to meet Part 37 requirements, all paratransit systems must provide at least one-day advance reservations at all times. One of the apparent reasons that users take advantage of existing advance reservation systems in large numbers is their apprehension that, if they wait until the day before travel, the capacity of the system to serve them will have been exhausted. This can lead, in turn, to the scheduling, no-show, and cancellation problems cited in many comments. To make a short-term reservation or real-time scheduling system work properly, transit providers need to make sure that adequate vehicle and communications capacity is available, such that systematic denials of service do not exist to an extent that would constitute a capacity constraint (see § 37.131(f)(3)((i)(B)).

III. DOT-Proposed Adjustments to the Rule

1. Reduction of Paperwork for Paratransit Plan Updates

The NPRM proposed that transit authorities that had fully implemented the paratransit requirements of the rule would no longer have to send in annual updates to FTA. The thinking behind this proposal was that, once full compliance had been achieved, annual updates, and the process required to generate them, would become an unnecessary administrative burden. Instead, there would be a simple certification of compliance. If, for any reason, a transit authority slipped out of full compliance, it would have to inform FTA and file updates until it was once again in full compliance.

Transit agencies generally supported the proposed change, citing the difficulty that many small providers have with annual paperwork submissions. Some of these commenters said, however, that there should be other means (e.g., additions to the National Transportation Database) of monitoring and reporting data on paratransit costs and service. Disability community commenters, on the other hand, favored retention of the existing requirement. Some were suspicious of claims by transit authorities that they were really in full compliance. A common theme in these comments was that the public participation requirements accompanying the annual update was a good opportunity for the disability community to have input concerning service problems. Indeed, some commenters said, public participation provisions should be strengthened.

Some of the comments also pointed to a statutory issue. Section 233(c)(7)(B) of the ADA provides that the Department's regulations shall require each public entity that operates fixed route service to submit a paratransit plan to the Secretary within 18 months after the effective date of the section and "on an annual basis thereafter, submit to the Secretary, and commence implementation of, a plan for providing [paratransit] services." In its original ADA rule, the Department implemented this requirement by establishing the annual plan update requirement.

This requirement makes sense during the phase-in period for paratransit service. While a transit authority is gradually building up its paratransit service to the point where it meets all service criteria, it is reasonable for the transit authority to send in annual progress reports that have been developed through the public participation process set forth in the rule. Once the transit authority has fully met all the service criteria, however, there is no new "progress" to report. There is no implementation to "commence," since the service required by the rule is already up and running, and need only be continued for the transit authority to meet its ADA paratransit obligations.

Once the transit authority is fully meeting all service criteria (including the criterion concerning capacity constraints), submitting an annual certification that it is continuing to meet all these criteria as provided in its previously-approved plan meets the letter and intent of § 223(c)(7)(B). Of course, should the transit authority fall below full compliance with all criteria, it would need to inform FTA and resume substantive annual updates until it was once again in full compliance.

In response to comments, the Department will make two modifications to the proposed regulatory language. First, as noted above, there would need to be a report to FTA if the transit authority fell out of compliance. Second, we are adding a provision authorizing FTA to direct a transit authority to conduct a public participation process and submit a plan update if, in FTA's judgment (based, for example, on consumer complaints about service), there is a reasonable basis for

concern about continuing full compliance.

Because the regulation already requires a mechanism for continuing public participation (see § 37.137(c)), the Department is not persuaded that the public participation process accompanying plan updates is essential to provide public input to providers about paratransit service. While changes to National Transit Database reporting concerning paratransit are outside the scope of this rulemaking, the Federal Transit Administration will consider whether some modifications to this report to provide more data about paratransit service are desirable.

2. Visitor Eligibility

The NPRM requested comment on its proposal to clarify the eligibility of visitors to use paratransit services. The proposed change would have specified that the 21 days that transit operators must provide service to eligible visitors was 21 days within a year period, as opposed to 21 continuous days. The proposed regulatory text would have read: "A public entity is not required to provide service to a visitor for more than 21 days per year from the date of the first paratransit trip used by the visitor." (emphasis added). The Department has decided to clarify the provision by specifying that the maximum amount of service which transit providers must provide eligible visitors is 21 days per calendar year. The Department will further amend the rule to allow local providers the option of restricting the 21 days of service use to 21 continuous service days following the first trip.

Transit providers were split on whether visitors should be eligible for 21 continuous days or 21 days per year. Approximately half of the providers who commented complained of administrative difficulties inherent in keeping track of 21 days of service spread out over an entire year. It was also pointed out that with 21 days per year, paratransit operators have more difficulty managing capacity because they cannot predict demand. Other providers disagreed, reporting no administrative burden or capacity drain from allowing visitors 21 days per year. Capital Metro of Austin, Texas believes that 21 continuous days of eligibility is insufficient to meet the needs of frequent visitors, such as college students returning home on breaks, and instead allows visitors six months of service before requiring them to apply for local eligibility. Individuals with disabilities and advocacy groups almost all favored 21 days per year.

When an individual with a disability travels to another city, it remains the Department's policy that he or she have open and ready access to local mass transit without any need to have planned the trip in advance. Indeed, often the traveler will be unfamiliar with the new city and have no way to know in advance what his or her travel needs will be. For this reason, the Department's amendment to this provision emphasizes that in no case may a transit provider require a visitor to apply for or be granted eligibility certification before being able to use the provider's paratransit service as provided in § 37.127.

Given the desire commenters expressed for clarification of how the visitor eligibility provision is intended to work, and the likelihood that there may be many situations in which individuals (e.g., business travelers, weekend trip visitors) will make repeat trips to a given city during a year, the Department has decided to require that transit authorities permit a visitor to use the service on any combination of 21 days throughout a 365-day period. For example, if Ms. Smith first uses the service on April 1, she could use the service on April 2–6, May 17, July 10–15, October 7, etc. until she had used the service on 21 days in the period extending through March 31 of the next calendar year. The way that XYZ chooses to implement visitor eligibility should be made part of its paratransit program and visitors should be provided materials clearly explaining how XYZ's visitor policy works.

3. Vehicle Acquisition for "Private Not Primarily Engaged" Providers

Section 37.101 contains the vehicle acquisition requirements for private entities not primarily engaged in the business of transporting people. Paragraph (d) of the section applies to private entities which operate demand responsive systems which purchase vehicles with seating capacity over 16. When these entities purchase such a vehicle, it must be accessible to individuals who use wheelchairs, unless the entity can show that when viewed in its entirety, its system provides equivalent service to individuals with disabilities. The standard for equivalent service is found in § 37.105, to which paragraph (d) refers the reader.

Neither § 37.101 nor the ADA has any vehicle acquisition requirement for private entities not primarily engaged in transporting people which operate demand responsive systems which purchase vehicles with seating capacity of 16 or less. This has created the mistaken impression that there are no service standards which apply to these systems. The ADA does require private operators of demand responsive systems to provide equivalent service to individuals with disabilities regardless of whether or not they purchase any new vehicles. This requirement is contained in Section 302(b)(2)(C) of the ADA and is reflected in the Department's regulations in § 37.171. Section 37.171 applies the same standard for overall equivalent service as is found in § 37.105.

To eliminate the confusion which has resulted from these requirements, this final rule adds a new paragraph to § 37.101 which explicitly states that private entities operating demand responsive systems that purchase vehicles with capacity of 16 or fewer must provide equivalent service to individuals with disabilities. The new paragraph refers the reader to both the requirement stated in § 37.171 and the standard articulated in § 37.105.

4. Personal Care Attendants

The NPRM requested comments on the question of how to define a personal care attendant (PCA), and whether further definition was necessary, for the purposes of determining eligibility to ride paratransit free while accompanying a paratransit eligible individual. Half of all comments received on the NPRM addressed this issue. Individuals with disabilities and advocacy groups were overwhelmingly opposed to any attempt to further define a PCA, often expressing the opinion that further definition would constitute an invasion of privacy.

Transit authorities were divided on the question, with eight believing that there was no problem and no further action warranted, and more than a dozen believing that something should be done. Three transit authorities suggested registering the PCAs themselves, and three more believed that only PCAs needed for the trip should qualify, not those whose services were required at the destination. Several commenters suggested that individuals who needed PCAs should register that need as part of the application process—something that the Appendix already allows paratransit providers to require. Three of the transit authorities that supported requiring riders to register the need for a PCA went further to suggest that individuals who have registered a need for a PCA be denied service when riding alone.

The Department has decided not to amend the regulatory text regarding PCAs. We wish to reemphasize, however, that the existing definition of a PCA does not distinguish between PCAs whose services are required during the paratransit ride and those required at the destination. Limiting riders to PCAs who were required on the paratransit trip could leave a rider unable to function at his or her destination, thereby making the trip meaningless.

Finally, several commenters suggested requiring those who register as using a PCA be denied service when riding alone. The Department did not adopt this suggestion. Riders who use a PCA for destination needs may well have varying needs depending on the trip purposes. Requiring these riders to be accompanied by a PCA even when they do not expect to require assistance will create unnecessary expenses for the rider and further burden the seating capacity of the transit provider. Other riders may have varying levels of assistance needs over time, and requiring these riders to either further define their needs in advance or always travel with a PCA is unjustifiably intrusive.

5. Equivalent Facilitation

The final substantive change proposed in the NPRM was to delete the requirement that an entity demonstrate an inability to comply with existing requirements as a condition of obtaining a determination of equivalent facilitation. As explained in the NPRM, the original purpose of the provision was to limit departures from established regulatory standards and promote uniformity and predictability. The Department was concerned, however, that requiring a showing of inability to comply was having the effect of stifling innovation and discouraging the development of new technologies that might provide equal or even greater accessibility at a lower cost.

The discussion of this change that appeared in the preamble of the NPRM addressed only whether a petitioning entity should have to demonstrate its inability to comply. A drafting error in the proposed regulatory text created the impression that the amendment would have gone further, eliminating other reporting requirements associated with the petition for equivalent facilitation. The Department apologizes for the error and wishes to note that at no time were the other requirements considered for removal.

Commenters were split on this proposal. All commenting transit authorities and providers agreed with the proposal, as did a few other commenters. Many of these commenters clearly conditioned their support on the Department ensuring that the change did not allow any decrease in accessibility. Members of the disability community voiced strong dissent to the proposal. Almost all of the comments filed by individuals with disabilities and their advocacy groups viewed the change as a weakening of the ADA's accessibility standards and many expressed distrust of the Department's ability to ensure legitimate equivalence.

Recognizing that significant costs can be associated with ADA compliance, the Department feels that to ensure the most widespread long-term compliance, it must allow as much flexibility as possible and encourage the development of new, more cost effective technologies. Accordingly, the requirement that an entity show that it is unable to comply with current standards is being eliminated from the petition for equivalent facilitation. Petitioning entities must continue to show that their alternative method actually provides equal or greater accessibility. This point protects the interests of the disability community concerning maintaining the strength of accessibility requirements. The other reporting requirements of the petition found in § 37.7 and § 37.9 will also remain, such as demonstrating the effectiveness of the alternative measures for compliance and documenting the public participation used in developing the alternative method. The Department notes that the original purpose of the requirement, encouraging uniformity and predictability, remains an important goal.

6. Clarification of Appendix Statement on Vehicle Lift Dimensions

The NPRM proposed to clarify a reference to the Part 38 standards for accessible vehicles. Appendix D to Part 37 contains explanatory statements and guidelines for Part 37. In Appendix D, section 37.13, the discussion of section 37.13 of the rule refers to the "new 30" by 48" lift platform specifications." This statement was intended to refer to the Part 38 standards for lift platforms. The reference oversimplifies the Part 38 standard, which requires 30 × 48 inch dimensions at a height of 2 inches above the platform base, but only requires a width of 28.5 inches at the base itself. To eliminate the confusion created by the reference, section 37.13 of Part 37, Appendix D will be amended to replace the words "new 30" by 48" " with the words "Part 38".

7. Typographical Errors

The typographical errors in §§ 37.3 and 37.11(a) will be corrected as described in the NPRM.

Regulatory Analyses and Notices

This final rule is not significant under Executive Order 12866. It is significant under the Department's Regulatory Policies and procedures, because it amends a significant rule having substantial public interest. We expect economic impacts to be minimal, so we have not prepared a regulatory evaluation. There are no Federalism impacts sufficient to warrant the preparation of a Federalism assessment. The Department certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Issued this 7th day of March, 1996, at Washington, DC.

Federico Peña,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department proposes to amend 49 CFR Part 37 and 49 CFR Part 38 as follows:

PART 37—[AMENDED]

1. The authority citation for 49 CFR Part 37 is proposed to continue to read as follows:

Authority: Americans with Disabilities Act of 1990 (42 U.S.C. 12101–12213); 49 U.S.C. 322.

2. The authority citation for 49 CFR Part 38 is proposed to be revised to read as follows:

Authority: Americans with Disabilities Act of 1990 (42 U.S.C. 12101–12213); 49 U.S.C. 322.

3. In part 37, § 37.27(b) is proposed to be revised to read as follows:

§ 37. 27 Transportation for elementary and secondary education systems.

* * * * *

(b) The requirements of this part do not apply to the transportation of school children to and from a private elementary or secondary school, and its school-related activities, if the school is providing transportation service to students with disabilities equivalent to that provided to students without disabilities. The test of equivalence is the same as that provided in § 37.105. If the school does not meet the requirement of this paragraph for exemption from the requirements of this part, it is subject to the requirements of this part for private entities not primarily engaged in transporting people.

§ 37.3 [Amended]

4. In part 37, § 37.3 the definition of the term "Designated public transportation" is amended by replacing

the word "containing" with the word "continuing."

5. In Part 37, § 37.7 is amended by revising paragraph (b)(2)(ii) and removing and reserving (b)(2)(iii) to read as follows:

§ 37.7 Standards for accessible vehicles.

* * * * *

(b) * * *

(2) * * *

(ii) Specific provision of part 38 of this title concerning which the entity is seeking a determination of equivalent facilitation.

* * * * *

6. In Part 37, § 37.9 is amended by revising paragraph (d)(2)(ii) to read as follows and removing and reserving (d)(2)(iii):

§ 37.9 Standards for accessible facilities.

* * * * *

(d) * * *

(2) * * *

(ii) Specific provision of Appendix A to Part 37 concerning which the entity is seeking a determination of equivalent facilitation.

* * * * *

§ 37.11 [Amended]

7. In part 37, § 37.11(a) is amended by replacing the words "subpart F" with the words "subpart C."

8. In Part 37, § 37.101 is amended by adding a new paragraph (e), to read as follows:

§ 37.101 Purchase or lease of vehicles by private entities not primarily engaged in the business of transporting people.

* * * * *

(e) Demand Responsive System, Vehicle Capacity of 16 or Fewer. Entities providing demand responsive transportation covered under this section are not specifically required to ensure that new vehicles with seating capacity of 16 or fewer are accessible to individuals with wheelchairs. These entities are required to ensure that their systems, when viewed in their entirety, meet the equivalent service requirements of §§ 37.171 and 37.105, regardless of whether or not the entities purchase a new vehicle.

9. In Part 37, § 37.127(e) is revised to read as follows:

§ 37.127 Complementary paratransit service for visitors.

* * * * *

(e) A public entity shall make the service to a visitor required by this section available for any combination of 21 days during any 365-day period beginning with the visitor's first use of the service during such 365-day period. In no case shall the public entity require a visitor to apply for or receive eligibility certification from the public entity before receiving the service required by this section.

10. In part 37, § 37.131(b)(4) is revised to read as follows:

§ 37.131 Service criteria for complementary paratransit.

* * * * *

(b)* * *

* * * * *

(4) The entity may permit advance reservations to be made up to 14 days in advance of an ADA paratransit eligible individual's desired trips. When an entity proposes to change its reservations system, it shall comply with the public participation requirements equivalent to those of § 37.131(b) and (c).

* * * * *

11. In Part 37, § 37.135 is amended by revising paragraph (c) to read as follows:

§ 37.135 Submission of paratransit plan.

* * * * *

(c) *Annual Updates.* Except as provided in this paragraph, each entity shall submit an annual update to its plan on January 26 of each succeeding year.

(1) If an entity has met and is continuing to meet all requirements for complementary paratransit in §§ 37.121–37.133 of this part, the entity may submit to FTA an annual certification of continued compliance in lieu of a plan update. Entities that have submitted a joint plan under § 37.141 may submit a joint certification under this paragraph. The requirements of §§ 37.137–37.139 do not apply when a certification is submitted under this paragraph.

(2) In the event of any change in circumstances that results in an entity which has submitted a certification of continued compliance falling short of compliance with §§ 37.121–37.133, the entity shall immediately notify FTA in writing of the problem. In this case, the entity shall also file a plan update meeting the requirements of §§ 37.137–37.139 of this part on the next following January 26 and in each succeeding year until the entity returns to full compliance.

(3) An entity that has demonstrated undue financial burden to the FTA shall file a plan update meeting the requirements of §§ 37.137–37.139 of this part on each January 26 until full compliance with §§ 37.121–37.133 is attained.

(4) If FTA reasonably believes that an entity may not be fully complying with all service criteria, FTA may require the entity to provide an annual update to its plan.

Appendix D [Amended]

12. In Part 37, Appendix D, the paragraph entitled "Section 37.13 Effective Date for Certain Vehicle Lift Specifications" is proposed to be amended by replacing the words "new 30" by 48"" with the words "Part 38."

§ 38.173 [Amended]

13. In part 38, § 38.173(a) is amended by adding the words "(i.e., at a speed of no more than 20 miles per hour at any location on their route during normal operation)" after the words "slow speed."

14. In part 38, § 38.173(d) is amended by adding the following sentence at the end thereof, to read as follows:

§ 38.173 Automated guideway transit vehicles and systems.

* * * * *

(d) * * * AGT systems whose vehicles travel at a speed of more than 20 miles per hour at any location on their route during normal operation are covered under this paragraph rather than under paragraph (a) of this section.

[FR Doc. 96–11935 Filed 5–20–96; 8:45 am]
BILLING CODE 4910–62–P

Proposed Rules

Federal Register
Vol. 61, No. 99
Tuesday, May 21, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–264–AD]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–7 series airplanes. This proposal would require repetitive non-destructive inspections to detect disbonding of fuselage skin panels, and repair, if necessary. This proposal is prompted by a report of disbonding on fuselage skin panels, which was attributed to a manufacturing process error. The actions specified by the proposed AD are intended to prevent disbonding of the skin panels of the fuselage, which could result in degradation of the structural capability of the airplane fuselage.

DATES: Comments must be received by July 1, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–264–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Sol Maroof, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7522; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–264–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–264–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–7 series airplanes. Transport Canada Aviation advises that it has received a report indicating that, during a routine inspection, disbonding was discovered on a fuselage skin panel. Investigation revealed that the apparent cause of the disbonding was due to the initial material preparation process that was used on the fuselage skin panels during manufacture. Such disbonding, if not corrected, could result in degradation of the structural capability of the airplane fuselage.

Explanation of Relevant Service Information

Bombardier has issued Service Bulletin S.B. 7–51–1, Revision 'A', dated March 31, 1995, which describes procedures for conducting repetitive non-destructive inspections of de Havilland Model DHC–7 series airplanes to detect disbonding of the fuselage skin panels. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–94–15 in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Requirements of the Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require repetitive non-destructive inspections to detect disbonding of the fuselage skin panels. These inspections would be required to be accomplished in accordance with the service bulletin described previously.

If any disbonding is detected on any fuselage skin panel, its repair would be required to be accomplished in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 50 de Havilland Model DHC–7 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 18 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $54,000, or $1,080 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

De Havilland, Inc: Docket 95–NM–264–AD.

Applicability: Model DHC–7 series airplanes, serial numbers 003 through 113 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent disbonding of the skin panels of the fuselage, which could result in degradation of the structural capability of the airplane fuselage, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a non-destructive inspection to detect disbonding of the fuselage skin panels, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin S.B. 7–51–1, Revision 'A', dated March 31, 1995.

(1) If no disbonding is detected, repeat the inspection thereafter at intervals not to exceed 3 years.

(2) If any disbonding is detected, prior to further flight, repair it in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 14, 1996.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–12602 Filed 5–20–96; 8:45 am]

BILLING CODE 4910–13–P

---

14 CFR Part 39

[Docket No. 96–NM–54–AD]

RIN 2120–AA64

Airworthiness Directives; Beech (Raytheon) Model Hawker 1000 and BAe 125–1000A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Beech (Raytheon) Model Hawker 1000 and BAe 125–1000A series airplanes, that currently requires inspections to detect various discrepancies of the fuel hose assemblies on the auxiliary power unit (APU), and correction of any discrepancy found. That AD was prompted by several reports of heat damage to the fuel hose assembly on the APU. This action would add a requirement to replace the existing conduit of the fuel feed hose with new improved conduit, which would terminate the repetitive inspections. The actions specified by the proposed AD are intended to prevent failure of a fuel hose due to heat damage caused by incorrect routing or bleed air leakage; such failure could result in a malfunction of the APU, a fuel fire in the fuselage rear equipment bay, and reduced structural integrity of the surrounding structure.

DATES: Comments must be received by July 1, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–54–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Beech Aircraft Corporation, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, ACE–116W, Wichita Aircraft Certification Office, FAA, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; telephone (316) 946–4146; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–54–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–54–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 27, 1995, the FAA issued AD 95–10–01, amendment 39–9218 (60 FR 22501, May 8, 1995), applicable to certain Beech (Raytheon) Model Hawker 1000 and BAe 125–1000A series airplanes, to require inspections to detect various discrepancies of the fuel hose assemblies on the auxiliary power unit (APU), and correction of any discrepancy found. That action was prompted by several reports of heat damage to the fuel hose assembly on the APU. The requirements of that AD are intended to prevent failure of a fuel hose due to heat damage caused by incorrect routing or bleed air leakage; such failure could result in a malfunction of the APU, a fuel fire in the fuselage rear equipment bay, and reduced structural integrity of the surrounding structure.

Actions Since Issuance of AD 95–10–01

Since the issuance of that AD, the FAA has reviewed and approved Beech (Hawker/Raytheon) Service Bulletin SB.49–47–25A825A, dated August 1, 1995, which describes procedures for the replacement of existing vinyl conduit (Pt. No. SLV–40–1½) of the fuel feed hose for the APU with a new improved conduit (Pt. No. 20 97 04415). The new conduit is made from convoluted PTFE (a commercial fluoro plastic tubing), which can withstand temperatures of up to 240 degrees Centigrade. Accomplishment of this replacement eliminates the need for repetitive inspections, as described in Raytheon Service Bulletin SB 49–44, dated January 20, 1995 (which was cited in AD 95–10–01 as the appropriate source of service information).

FAA's Conclusions

The FAA has determined that replacement of the existing conduit with convoluted PTFE tubing will positively address the unsafe condition identified as failure of a fuel hose due to heat damage caused by incorrect routing or bleed air leakage; such failure could result in a malfunction of the APU, a fuel fire in the fuselage rear equipment bay, and reduced structural integrity of the surrounding structure.

Explanation of the Requirements of the Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 95–10–01. It would continue to require inspections to detect various discrepancies of the fuel hose assemblies on the auxiliary power unit (APU), and correction of any discrepancy found. However, this proposed AD also would add a new requirement to replace the existing vinyl conduit of the fuel feed hose for the APU with a new improved conduit, which would constitute terminating action for the repetitive inspection requirements. The new action would be required to be accomplished in accordance with Beech (Hawker/Raytheon) Service Bulletin SB.49–47–25A825A, dated August 1, 1995, as described previously.

The FAA has determined that long term continued operational safety will be better assured by modifications or design changes to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed modification requirement is in consonance with these considerations.

Cost Impact

There are approximately 48 Beech Model Hawker 1000 and BAe 125–1000A series airplanes of the affected design in the worldwide fleet. The FAA estimates that 31 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 95–10–01 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $1,860, or $60 per airplane, per inspection cycle.

The new actions that are proposed in this AD action would take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $218 per airplane. Based on these figures, the cost impact on U.S. operators of the new proposed requirements of this AD is estimated to be $14,198, or $458 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient

federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9218 (60 FR 22501, May 8, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Beech Aircraft Corporation (formerly DeHavilland; Hawker Siddeley; British Aerospace, plc; Raytheon Corporate Jets, Inc.): Docket 96–NM–54–AD. Supersedes AD 95–10–01, Amendment 39–9218.

Applicability: Model Hawker 1000 and BAe 125–1000A series airplanes, post modification 259722C, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Note 2: Beech (Raytheon) Model BAe 125–1000B series airplanes are similar in design to the airplanes that are subject to the requirements of this AD and, therefore, also may be subject to the unsafe condition addressed by this AD. However, as of the effective date of this AD, those models are not type certificated for operation in the United States. Airworthiness authorities of countries in which the Model BAe 125–1000B series airplanes are approved for operation should consider adopting corrective action, applicable to those models, that is similar to the corrective action required by this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a fuel hose assembly on the auxiliary power unit (APU), which could result in a malfunction of the APU, a potential fuel fire in the fuselage rear bay, and reduced structural integrity of the surrounding structure, accomplish the following:

(a) Within 30 days after May 23, 1995 (the effective date of AD 95–10–01, amendment 39–9218), perform inspections to detect discrepancies of the fuel feed hose assemblies on the APU; an inspection to assure proper positioning of the air leak detection system; and an inspection of the bleed air system for signs of leakage; in accordance with paragraph 2.B. of the Accomplishment Instructions of Raytheon Service Bulletin SB 49–44, dated January 20, 1995.

(1) If no discrepancy is found: Thereafter, following the last flight of each day, perform an inspection to detect discoloration of the fuel hose assembly (outlet from the fuel pump box) on the APU, in accordance with paragraph 2.B.(2) and 2.C. of the Accomplishment Instructions of the service bulletin.

(2) If any discrepancy is found, prior to further flight, correct the discrepancy in accordance with paragraph 2.B. of the Accomplishment Instructions of the service bulletin.

(b) Within 200 flight hours after the effective date of this AD, replace the existing conduit of the fuel feed hose for the auxiliary power unit (APU) with new improved conduit (modification 25A825A), in accordance with Beech (Raytheon/Hawker) Service Bulletin SB.49–47–25A825A, dated August 1, 1995. Accomplishment of the replacement constitutes terminating action for paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 14, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–12601 Filed 5–20–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 158

[Docket No. 27791; Notice No. 96–3A]

RIN 2120–AF69

Passenger Facility Charges

AGENCY: Federal Aviation Administration, DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); extension of comment period.

SUMMARY: This document announces an extension of the comment period on The ANPRM entitled, "Passenger Facility Charges" (61 FR 16678; April 16, 1996). This comment period is extended from May 16, 1996, until August 16, 1996. The extension responds to the request of the Air Transport Association of America (ATA) and is needed to permit ATA, and other affected parties, additional time to develop comments responsive to the ANPRM.

DATES: The comment period is being extended from May 16, 1996, to August 16, 1996.

ADDRESSES: As stated in Notice No. 96–3, comments should be mailed or delivered in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Docket No. 27791, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 27791. Comments may be examined in Room 915G on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Sheryl Scarborough, Passenger Facility Charge Branch (App–530), Airports Financial Assistance Division, Office of Airports Planning and Programming, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8825.

SUPPLEMENTARY INFORMATION: On April 16, 1996, the Federal Aviation Administration (FAA) issued Notice No. 96–3, entitled "Passenger Facility Charges" that sought public comment on changes to several sections of Title 14, Code of Federal Regulations, Part 158 that deal with the collection, handling, and remittance of PFC's. The notice specified the quantity and quality of airline cost data necessary for the FAA to determine an adequate rate of airline compensation. In addition, the notice included several proposed modifications to part 158 that would allow air carriers to be compensated based on PFC's collected; would implement the statutory prohibition (FAA Authorization Act of 1994) on collection of PFC's from passengers traveling on frequent flyer awards; and clarified various terms. Finally, the notice requested comments on several proposals dealing with ways to safeguard PFC revenue in the event of carrier bankruptcy.

By a request dated April 23, 1996, ATA asked that the comment period be extended 90 days to allow interested parties to respond adequately to the complex issues in the notice. ATA states that in light of the demands that the cost data guidance will place upon responding carriers and the carrier response rate that the FAA has established, an extension is needed to permit the submission of the information in the detail and to the extent that the FAA wishes.

The FAA has determined that an extension of the comment period will allow ATA and its members additional time for a more thorough review of applicable issues and questions raised by the ANPRM, and the drafting of responsive comments.

In order, therefore, to give all interested persons additional time to complete their comments, the FAA finds that it is in the public interest to extend the comment period.

Accordingly, the comment period will close on August 16, 1996.

Issued in Washington, DC, on May 16, 1996.

Paul L. Galis,

Director, Office of Airport Planning and Programming.

[FR Doc. 96–12739 Filed 5–16–96; 3:32 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 91N–384H and 95P–0241]

RIN 0910–AA19

Food Labeling: Nutrient Content Claims, Definition of Term: Healthy

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the **Federal Register** of February 12, 1996 (61 FR 5349). The document proposed to amend the food labeling regulations to permit certain processed fruits and vegetables and enriched cereal-grain products that conform to a standard of identity to bear the term "healthy." The document was published with an inadvertent error. This document corrects that error.

DATES: Written comments by July 18, 1996. FDA proposes that any final rule that may issue based on this proposal become effective on the date of publication in the **Federal Register.**

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Felicia B. Satchell, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

In FR Doc. 96–2980, appearing on page 5349 in the **Federal Register** of Monday, February 12, 1996, the discussion that appears on page 5354 in the first column under the heading "V. Environmental Impact" is corrected by removing the paragraph that appears there in its entirety and adding in its place "The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required."

Dated: May 15, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–12689 Filed 5–20–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 206, and 211

RIN 1010–AC02

Amendments to Gas Valuation Regulations for Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of reopening of public comment period.

SUMMARY: The Minerals Management Service (MMS) is reopening the public comment period under a proposed rule published in the **Federal Register** on November 6, 1995, amending the regulations governing the valuation for royalty purposes of natural gas produced from Federal leases (60 FR 56007). In the December 13, 1995, **Federal Register** we extended the comment period through February 5, 1996 (60 FR 64000). Based on the diversity of comments received under the proposed rule, in this notice we are publishing a summary of those comments, outlining five options for proceeding with further rulemaking, and requesting public comment on the five options.

DATES: Comments must be submitted on or before July 22, 1996.

ADDRESSES: You must send comments to: David S. Guzy, Chief, Rules and Procedures Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3101, Denver, Colorado 80225–0165, telephone (303) 231–3432, fax (303) 231–3194, e-Mail David__ Guzy@smtp.mms.gov, courier delivery to building 85, Room A–212, Denver Federal Center, Denver, CO 80225.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, Minerals Management Service, Royalty Management Program, telephone (303) 231–3432, fax (303) 231–3194, e-Mail David__Guzy@smtp.mms.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On June 27, 1994, in response to the Vice President's National Performance Review, the Secretary chartered the Federal Gas Valuation Negotiated Rulemaking Committee (Committee) for the purpose of improving the regulations that govern the valuation, for royalty purposes, of gas produced from Federal leases. The Committee was comprised of representatives from large oil and gas companies, independents,

trade associations, States, and MMS. We asked the Committee to address the valuation and reporting of gas from approved Federal unit and communitization agreements and the valuation of gas sold under non-arm's-length contracts. We later expanded the charter of the Committee to include the valuation of gas sold under arm's-length contracts in a post-Federal Energy Regulatory Commission Order No. 636 marketing environment. Other issues, such as allowable gathering and compression deductions, transportation allowance determinations, transportation and processing allowance forms, and dual accounting, also were the subject of the Committee's attempt at streamlining and simplifying the procedures for valuing Federal gas.

On November 6, 1995, we published a proposed rule reflecting the consensus decisions of the Committee that would amend the regulations governing the valuation of Federal gas. The amendments would add several alternative valuation methods to the existing regulations. The amendments would allow lessees to choose from several options for valuing gas for royalty purposes, including for example published index prices, affiliated companies' arm's-length resale prices, and residue gas prices applied to the wellhead. The amendments would eliminate several administrative functions such as allowance form filing and accounting for comparison, also known as "dual accounting" as well as redefine specific terms to provide certainty regarding their deductibility from royalty. The amendments would also clarify who is responsible for reporting and paying royalties on gas produced from approved Federal agreements containing a mix of leases with different lessors, royalty rates, or funds recipients, so called "mixed agreements".

While the proposed rule reflected the consensus decisions of the Committee, we received many comments opposing the proposed valuation alternatives and the reporting and payment requirements for mixed agreements. Many of the comments focused on the complexity of the rule that arose from trying to develop options for valuing gas sold under an array of marketing environments. While many comments were supportive of allowing various options, clarifying terms, and eliminating certain administrative burdens, we received a significant number of comments that raise concerns about whether we should proceed in publishing a final rule based on the consensus of the Committee.

We also received comments on five specific issues associated with the proposed amendments for which comments were requested:

1. How should we improve the benchmarks (at 30 CFR § 206.152(c) and 206.153(c)) for valuing gas sold under non-arm's-length contracts when the gas is not subject to the alternative valuation methods?

2. Should we require royalties on amounts received by lessees using index-based valuation for gas contract settlements entered into after the effective date of the rule?

3. What should be the consequences if we do not publish the final safety net median value (as defined in the November 6, 1995, **Federal Register** Notice) within 2 years after the end of the relevant calendar year?

4. How should we process a credit for royalties paid on volumes in excess of the volume a lessee is entitled to take from a mixed agreement during the relevant calendar year?

5. How should we address the additional reporting on the Report of Sales and Royalty Remittance (Form MMS–2014) that would be necessary to implement the proposed rule?

II. Summary of Public Comments

We received comments from 44 entities, including independents, major oil and gas companies, trade associations, States, a royalty owner, and a pipeline company. Below is a summary of those comments. On January 22, 1996, we held a public meeting to receive verbal comments on the proposed rule. Five industry participants provided verbal comments that were consistent with the written comments submitted by their companies or trade associations. We have a transcript of those comments available for review. If you are interested in reviewing either the written comments in full or the transcript of the public meeting, you may contact David S. Guzy, Chief, Rules and Procedures Staff, Minerals Management Service, Royalty Management Program, telephone (303) 231–3432, fax (303) 231–3194, e-Mail David__ Guzy@smtp.mms.gov. A complete set of the public comments is also available on the Internet at www.rmp.mms.gov.

Independents (24 Commenters)

In general, most independents opposed index pricing as a valuation alternative. They claimed its complexity discriminates against them from a competitive standpoint. They also feared that index-based valuation would lead to it becoming a *minimum* for royalties in excess of gross proceeds. They pointed out that gross proceeds should be acceptable and that the rule should state so explicitly.

A form letter was submitted by 17 small independents outlining their concerns. They asserted that the rule, because of the increased costs under index valuation (and associated safety net median value and transportation allowance requirements), would violate the Regulatory Flexibility Act. Many claimed that they did not have the staff to implement the different options and to track the published index points. They also cited overall concerns that a more complex rule coupled low prices and higher transportation costs, particularly in the Rocky Mountains, would harm them. However, one large independent expressed its support for index-based valuation.

All independents objected to paying additional royalties under the safety net median value procedure if MMS is late in publishing the final safety net median value. Many objected to comparing spot sales valued on an index price to other types of sales valued on gross proceeds under the safety net procedure. They also objected to paying royalties on their entitled share of production under a mixed agreement because it would discriminate against them as a small producer who cannot market its full share of production every month.

Both small and large independents supported:

(1) eliminating the allowance forms and dual accounting for Federal leases,

(2) using a residue gas price or an index price to value gas at the wellhead, and

(3) the new definitions of gathering and compression. In addition, the larger independents recommended:

(1) reordering the benchmarks for valuing mixed agreement production to which the lessee is entitled but does not sell,

(2) including exceptions to entitlements reporting for mixed agreements and exceptions to takes reporting (as explained in the June 9, 1995, **Federal Register**, 60 FR 30492, Amendments of Regulations to Establish Liability for Royalty Due on Federal and Indian Leases, and To Establish Responsibility to Pay and Report Royalty and Other Payments) for agreements containing only Federal leases with the same royalty rate and fund recipients, so-called 100 percent Federal agreements, and

(3) clarifying that royalties must be reported and paid on a lessee's takes for 100 percent Federal agreements.

The larger independents opposed:

(1) the provision denying royalty-free use of gas downstream from the facility measurement point (FMP),

(2) the proposal to require royalties on gas contract settlement monies received by payors using index-based valuation,

(3) the concept of looking to an affiliate's resale under the benchmarks, and

(4) the exclusion of coalbed methane for consideration as a separate zone (as defined in the November 6, 1995, **Federal Register** Notice) under index-based valuation.

Majors (9 Commenters)

The majors held the same views as the independents on many issues:

—Allowance forms,
—Dual accounting,
—Wellhead valuation option,
—Takes for 100 percent Federal agreements with exceptions,
—The mixed agreement benchmarks,
—Royalty-free use of gas downstream of the FMP,
—Royalties on gas contract settlement monies,
—Late publication of the final safety net median value,
—Looking to an affiliate's resale price, and
—Coalbed methane.

However, the majors diverged from independents regarding entitlements reporting for mixed agreements and index-based valuation. In keeping with the consensus of the Committee, the majors advocated entitlements for mixed agreements and index-based valuation as an alternative to gross proceeds.

One major requested that the rule be more explicit that MMS is accepting a "range" of values for royalty purposes and that the highest one isn't necessarily what determines value. They also wanted assurance that gross proceeds values would not be subject to additional royalties by comparison to indices. They opposed any additional royalties if MMS delays publishing the final safety net median value.

Trade Associations (6 Commenters)

The various trade associations represented primarily majors, independents, or both groups. Therefore, their comments were mixed on several issues. Only two trade associations, representing independents, provided negative views towards index-based valuation. Understandably, their comments were very similar to the independents' comments.

In general, the trade associations held the same views as the other industry groups regarding:

—Allowance forms,
—Dual accounting,
—Wellhead valuation option,
—Takes for 100 percent Federal agreements with exceptions,
—Mixed agreement benchmarks,
—Royalty-free use of gas downstream of the FMP,
—Royalties on gas contract settlement monies,
—Late publication of the final safety net median value,
—Looking to an affiliate's resale price, and
—Coalbed methane.

They also recommended:

(1) allowing all compression after the separator as a cost of transportation,

(2) retaining the term "location differential" as adopted by the Committee (in the March 1995 Final Report of the Committee) in situations where the lessee's gas does not flow to the Index Pricing Point (as defined in the November 6, 1995, **Federal Register** Notice) used for valuation, and

(3) allowing full depreciation on all newly-purchased transportation or processing facilities, regardless whether previously depreciated under an MMS schedule.

Most all independent, major, and trade association commenters agreed that all reporting issues should be left to the Royalty Policy Committee's Subcommittee on Royalty Reporting and Production Accounting.

States (3 Commenters)

The States' basically objected to the option to allow index-based valuation. A few could live with it if the safety net median value procedure remained intact. However, they objected to the limits imposed on additional royalties and the abundance of options for valuation. Therefore, they insisted on retaining an election period minimum of 2 years for all options to prevent manipulation of royalty valuation. They also pointed out perceived inequities between lessees paying on gross proceeds and those paying on an index price:

(1) The election procedure discriminates against dedicated (as defined in the November 6, 1995, **Federal Register** Notice) contract holders who have no options but to pay on gross proceeds.

(2) Lessees paying on gross proceeds are treated inequitably if lessees paying on an index price are allowed to pay on less than market value.

(3) Lessees paying on gross proceeds have less transportation allowance options.

(4) Lessees paying on an index price are excused from the "marketable condition" requirement applicable to gross proceeds.

The States also believed there should be no limit on additional royalties under the safety net median value procedure because:

(1) the median value calculation protects the lessee from high-priced contracts,

(2) the limits were only agreed to prior to developing the abundance of options, and

(3) lessees should pay on the full market value of production, not a percentage.

The States were concerned that index prices or residue gas prices applied to the wellhead would cost them revenues because of the forgone loss of the value of liquids extracted from the gas.

Further, the States believed that there should be no interest holiday for the period prior to the initial safety net median value calculation (that is, interest should accrue from the date of production). They stressed that accurate reporting is critical to the safety net median value procedure. They were concerned that the new gathering definition would lead to a loss in royalty revenue, and suggested using the FMP as the dividing line between gathering and transportation. The States supported or recommended:

(1) entitlements for mixed agreements, with no exception to pay on takes for small producers. One State opposed waiving interest for lessees paying on takes for the period prior to the deadline to pay on entitlements.

(2) royalties due on gas contract settlement monies,

(3) new benchmarks providing for great latitude in establishing value, including looking to an affiliate's resale price and prices reported to public utility commissions or the Federal Energy Regulatory Commission,

(4) excluding quality as a factor in determining zones (such as for coalbed methane), and

(5) developing zones only within or close to areas with valid index prices.

III. Options for Proceeding

Because the comments on the proposed rule were substantial, particularly from independents and the States, we are considering five options for proceeding with a final rulemaking on the valuation of gas from Federal leases. We request comments from all interested parties on each of the following five options.

Option 1

—Publish a final rule implementing the consensus of the Committee with minor modifications reflecting the comments received from the public.

1. Write the final rule in plain English.

2. Adopt the minor procedural and technical improvements suggested in the public comments that would not modify the consensus of the Committee.

3. Delete the second sentence in proposed 30 CFR 202.450(b), denying royalty-free use of gas downstream of the FMP.

4. Include a provision for takes-based reporting for 100 percent Federal agreements and stand alone leases.

Issues for Which MMS Specifically Requested Comments in the Proposed Rule

5. If the final safety net median value is not published within 2 years following the end of the applicable calendar year, then we would not require the lessee paying on an index-based method to pay interest from the end of the 2 years until we publish the final safety net median value. If we have still not published the final safety net median value within 2 years and 6 months after the end of the calendar year, then the initial safety net median value becomes the final safety net median value.

6. We would require index-based payors to pay royalty on contract settlement proceeds received from settlement entered into after the effective date of the rule.

7. For overtaken volumes in a mixed agreement by a small producer who paid on takes, we would process the credit through a recoupment based on the weighted average value of the previous year's sales.

8. We would issue separate guidance on the reporting of gas valuation methods consistent with the recommendations of the Royalty Policy Committee's Subcommittee on Royalty Reporting and Production Accounting.

9. We would publish a separate rulemaking on benchmark valuation taking into consideration the comments received under the November 6, 1995, proposed rule.

Option 2

—Retain the Committee's index-based method but replace the MMS-calculated safety net median value with a safety net value based on company specific data.

For example, at the end of the applicable calendar year we would require an index-based payor to compare the weighted average of its index-based values for its production in the zone to its own weighted average pool price (net of transportation) for all of its arm's-length sales of production from the zone. This would include all arm's-length sales in the pool including sales by an affiliate. If the weighted average index-based value is within plus or minus a certain percent of the weighted average pool price, then there is no additional royalty or no refund. However, if the weighted average index-based value for the zone for the year is a certain percent (or more) greater than the weighted average pool price net at the lease, we would issue a refund to the index-based payor. Likewise, if the weighted average index-based value for the year is a certain percent (or more) less than the weighted average pool price, then the index-based payor would owe additional royalty. This provision would be self-implementing and subject to audit.

Option 3

—Retain the basic philosophy of the Committee's index-based method but propose changes to simplify the rule as follows:

1. Index-based valuation must be applied to the wellhead MMBtu. No option to value residue gas based on an index price and no option for gross proceeds payors to apply a gross-proceeds based residue value to the wellhead MMBtu.

2. Retain the safety net median value procedure, but eliminate the additional royalty limitations.

3. Determine the Index Pricing Point using the weighted average method. No option to use the fixed-index method (both of these methods are described in the November 6, 1995, **Federal Register** Notice).

4. The safety net median value would be based on the weighted average of all arm's-length gross proceeds in the zone.

5. For all arm's-length transportation and all jurisdictional (as defined in the November 6, 1995, **Federal Register** Notice) transportation, the transportation allowance would equal the weighted average of all of the actual rates paid to each of the applicable Index Pricing Points through which the lessee's gas flowed. For non-arm's-length, non-jurisdictional transportation, lessees would use third party arm's-length transportation contracts as recommended by the Committee.

6. In order to provide more certainty and consistency, modify the "bright line" (distinction) between transportation and gathering to be at the FMP consistent with the "bright line" test for the allowability of compression. We would approve exceptions on a case-by-case basis. Add a provision to prevent manipulation in location of compressors.

Option 4

—Retain the Committee's index-based method but propose changes to simplify the rule as follows:

1. Eliminate the MMS-calculated safety net median value and instead use the self-implementing company-based safety net value described in option 2 above.

2. The index-based value must be applied to the wellhead MMBtu. No option to value residue gas based on an index price. Gross proceeds payors would have the option to apply a gross-proceeds based residue value to the wellhead MMBtu with a self-implementing safety net value procedure that compares the gross proceeds of their processed gas and NGL's with the gross proceeds residue gas price applied to the wellhead MMBtu. Provisions for refund/payment would be the same as under option 2 above.

3. Determine the Index Pricing Point using the closest index pricing point to which the gas physically flows using any valid publication (as described in the November 6, 1995, **Federal Register** Notice).

4. For all arm's-length transportation and all jurisdictional transportation, the transportation allowance would equal the actual rate paid to the closest index pricing point. For non-arm's-length, non-jurisdictional transportation, use third-party arm's-length transportation contracts as recommended by the Committee.

5. In order to provide more certainty and consistency, modify the "bright line" (distinction) between transportation and gathering to be at the FMP consistent with the "bright line" test for the allowableness of compression. Exceptions may be approved by us on a case-by-case basis. Add a provision to prevent manipulation in location of compressors.

Option 5

—Do not implement the alternative valuation options recommended by the Committee and instead:

1. Maintain the current gross proceeds-based valuation regulations with modifications to simplify the current benchmark system for non-arm's-length sales at 30 CFR 206.152(c) and 206.153(c) (1995) as follows: First Benchmark: Weighted average of comparable arm's-length contracts in the field or area between third parties and the lessee or its affiliate. Comparable arm's-length contracts are those whose volumes are within plus or minus 20 percent of the volumes sold under the non-arm's-length contract on a monthly basis. MMS requests comments on whether the volume transferred under a non-arm's-length arrangement should be evaluated on the basis of all gas under the contract or by the size of each individual delivery package. Second Benchmark: First bona-fide arm's-length sale by the affiliate, except to retail customers. Third Benchmark: Other relevant matters.

2. Adopt the Committee's recommendation for entitlements-based reporting for mixed agreements, but with no exception for small producers. Under limited circumstances, allow MMS-approved exceptions to entitlements-based reporting if all lessees agree.

3. Adopt industry's comments to include in this rule the explicit provision for takes-based reporting for 100 percent Federal agreements and stand alone leases.

4. In response to the State's comments and in order to provide more certainty and consistency, modify the "bright line" (distinction) between transportation and gathering to be at the FMP, consistent with the "bright line" test for the allowability of compression. We may approve exceptions on a case-by-case basis. Add a provision to prevent manipulation in the location of compressors.

IV. Request for Public Comments

It is our intent to publish regulations that are: (1) Clear and understandable (2) responsive to the changing needs of royalty payors, (3) equitable to all affected parties, and (3) practical for us to administer. Such regulations should reduce administrative costs to both payors and MMS, while not generating a significant loss of royalty revenues. Based on the comments received, we are concerned that the proposed rule may not satisfy these goals. Therefore, we request input on how to improve the gas valuation regulations so that all affected parties benefit.

We specifically request comments on the five options outlined above for finalizing the proposed regulations in light of the public comments we received. We recognize that, for each affected party, each option holds benefits in certain areas while containing drawbacks in other areas. We emphasize that the five listed options are not exhaustive but merely suggestions for an improved, simplified, and streamlined valuation process. We welcome any new options or any modifications to the proposed options for consideration.

We are not requesting comments on the summary of comments outlined in this notice, only on the five options described above or other options suggested for valuing gas from Federal leases.

The policy of the Department is, whenever practicable, to give the public an opportunity to participate in the rulemaking process. Accordingly, you should submit written comments, suggestions, or objections regarding this notice to the location identified in the **ADDRESSES** section of this notice. You should submit comments on or before the date identified in the **DATES** section of this notice.

Dated: May 15, 1996.

Michael A. Miller,

Acting Associate Director for Royalty Management.

[FR Doc. 96–12723 Filed 5–20–96; 8:45 am]

BILLING CODE 4310–MR–P

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[ND–033–FOR]

North Dakota Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of additional explanatory information pertaining to a previously proposed amendment to the North Dakota abandoned mine land reclamation (AMLR) plan (hereinafter, the "North Dakota plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional explanatory information for North Dakota's proposed statute and plan provisions pertain to contractor eligibility and sole-source procurement procedures and policies. The amendment is intended to revise the North Dakota plan to meet the requirements of the corresponding Federal regulations and to improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.d.t., June 20, 1996.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below. Copies of the North Dakota plan, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Room 2128, Casper, Wyoming 82601–1918

Louis A. Ogaard, Director, AML Division, Public Service Commission, Capitol Building, Bismarck, ND 58505–0165

FOR FURTHER INFORMATION CONTACT:

Guy Padgett, Telephone: (307) 261–6555, Internet address: GPADGETT@CWYGW.OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Plan

On December 23, 1981, the Secretary of the Interior approved the North Dakota plan. General background information on the North Dakota plan, including the Secretary's findings and the disposition of comments, can be found in the December 23, 1981, **Federal Register** (46 FR 62253). Subsequent actions concerning North Dakota's plan and plan amendments can be found at 934.25.

II. Proposed Amendment

By letter dated September 20, 1995, North Dakota submitted a proposed amendment to its plan (administrative record No. ND–X–02) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota submitted the proposed amendment in response to a September 26, 1994, letter (administrative record No. ND–X–01) that OSM sent to North Dakota in accordance with 30 CFR 884.15(b), and at its own initiative. The provisions of the North Dakota plan that North Dakota proposed to add or revise were: North Dakota Century Code (NDCC) 38–14.2–03(14), powers and duties of the Commission; procurement procedures; contract procedures; policy 2–01–81(5), procurement policy and contract policy; and State agency organizational chart.

OSM announced receipt of the proposed amendment in the October 16, 1995, **Federal Register** (60 FR 53564), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. ND–X–05). Because no one requested a public hearing or meeting, none was held. The public comment period ended on November 15, 1995.

During its review of the amendment, OSM identified concerns relating to (1)

the powers and duties of the Commission at NDCC 38–14.2–03(14), concerning the eligibility of successful bidders to receive AMLR contracts and (2) procurement procedures at section IV. C. 5 of the North Dakota plan provisions, concerning noncompetitive negotiation (sole-source procurement) when emergency or severe time constraints preclude issuing a formal request for proposals. OSM notified North Dakota of the concerns by letter dated December 7, 1995 (administrative record No. ND–X–04). North Dakota responded in a letter dated April 30, 1996, be submitting additional explanatory information (administrative record No. ND–X–09).

North Dakota proposes additional explanatory information for NDCC 38–14.2–03(14), contractor responsibility, in the form of a policy that provides guidelines to govern the selection of successful bidders for AMLR contracts, and section IV. C. 5 of its plan provisions, procurement procedures, in the form of a statement concerning sole-source procurement.

Specifically, North Dakota proposes to add a policy statement that requires a background search of successful bidders for AMLR contracts, provides the criteria to be used in determining the eligibility of the successful bidder under 30 CFR 773.15(b)(1) at the time of contract award, limits the award of the AMLR contract to a successful bidder who meets the criteria used to determine eligibility, and provides that the eligibility determination will be made through OSM's Applicant/Violator System for each AMLR contract to be awarded. North Dakota also proposes that the Federal regulation at 43 CFR 12.76(d)(4)(i)(B), which is cited in OSM's December 7, 1995, issue letter, and implements one part of the Office of Management and Budget (OMB) Circular A–102 (commonly known as the "Common Rule"), does not apply to States and that States are required to abide by 43 CFR 12–76(a) only.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed North Dakota plan amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 884.15(a), OSM is seeking comments on whether the proposed amendment satisfies the applicable plan approval criteria of 30 CFR 884.14. If the amendment is deemed adequate, it will become part of the North Dakota plan.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of Tribe or State AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific Tribe or State, not by OSM. Decisions on proposed Tribe or State AMLR plans and revisions thereof submitted by a Tribe or State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed Tribe or State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Tribe or State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the Tribe or State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

6. Unfunded Mandates Reform Act

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 934

Abandoned mine reclamation programs, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 9, 1996.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 96–12726 Filed 5–20–96; 8:45 am]

BILLING CODE 4310–05–M

---

30 CFR Part 936

[OK–018–FOR]

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a propose amendment to the Oklahoma regulatory program (hereinafter, the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to Oklahoma's Coal Program Rules and Regulations. Oklahoma proposes to recodify and reinstate rules pertaining to an exemption for coal extraction incidental to government-financed or other construction. The amendment is intended to revise the Oklahoma program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., c.d.t., June 20, 1996. If requested, a public hearing on the proposed amendment will be held on June 17, 1996. Requests to present oral testimony at the hearing must be received by 4:00 p.m., c.d.t., on June 5, 1996.

ADDRESSES: Written comments should be mailed or hand delivered to Jack R. Carson, Acting Director, Tulsa Field Office, at the address listed below.

Copies of the Oklahoma program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Jack R. Carson, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470 Tulsa, Oklahoma, 74135–6547, Telephone: (918) 581–6430.

Oklahoma Department of Mines, 4040 N. Lincoln Blvd., Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521–3859.

FOR FURTHER INFORMATION CONTACT: Jack R. Carson, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. General background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program can be found in the January 19, 1981, **Federal Register** (46 FR 4902). Subsequent actions concerning Oklahoma's program and program amendments can be found at 30 CFR 936.15 and 936.16.

II. Proposed Amendment

By letter dated April 26, 1996, Oklahoma submitted a proposed amendment to its program pursuant to SMCRA (Administrative Record No. OK–974). Oklahoma submitted the proposed amendment at its own initiative. Oklahoma proposes to reinstate rules pertaining to an exemption for coal extraction incidental to government-financed or other construction. These rules were previously codified as part 707. Oklahoma proposes to recodify these rules at Oklahoma Administrative Code (OAC) 460, Chapter 20, Subchapter 6.

Section 460:20–6–1, Purpose

This section specifies the purpose of Subchapter 6 as establishing procedures for determining those surface coal mining and reclamation operations that meet the exemption criteria for coal extraction as an incidental part of government-financed construction.

Section 460:20–6–2, Responsibility

This section specifies that the Department of Mines is responsible for enforcing the requirements of Subchapter 6. It also specifies that persons conducting coal extraction as an incidental part of government-financed construction is responsible for keeping specified documentation on the site of the extraction operation.

Section 460:20–6–3, Definitions

This section contains definitions for the terms "Extraction of coal as an incidental part"; "Government financing agency"; and "Government-financed construction."

Section 460:20–6–4, Applicability

This section specifies that a permit must be obtained unless the coal extraction is an incidental part of government-financed construction.

Section 460:20–6–5, Information to be Maintained on Site

This section specifies the information that must be maintained on the site of the extraction operation.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.d.t., on June 5, 1996. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber.

Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and

its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 9, 1996.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 96–12725 Filed 5–20–96; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AH77

Contract Program for Veterans With Alcohol and Drug Dependence Disorders

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend 38 CFR Part 17 by modifying eligibility criteria for veterans participating by contract in the Department of Veterans Affairs' program of alcohol and drug dependence or abuse treatment and rehabilitation in residential and nonresidential facilities. Current regulations stipulate that, prior to participation in contract care under this program, veterans must be provided hospital care in facilities over which the Secretary has direct jurisdiction. It is proposed to change the regulations to stipulate that, prior to participation in contract care, veterans must have been or must be receiving care (regardless of whether it was or is hospital care) by professional staff over whom the Secretary has jurisdiction (regardless of whether it is direct jurisdiction). The proposed elimination of the requirement of "hospital care" appears to be necessary to address changed clinical practices and continue the intended program. In the past, substance abuse treatment generally was provided in a hospital setting. Now, much substance abuse treatment also is provided in an ambulatory care or residential setting. Also, the proposal to change "direct jurisdiction of the Secretary" to "jurisdiction of the Secretary" would allow for continuation of any cases in which VA has had involvement (including, among other things, fee basis care) and thereby help ensure that a complete course of treatment is provided.

DATES: Comments must be received on or before July 22, 1996.

ADDRESSES: Mail written comments concerning these proposed regulations to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or hand deliver written comments to: Office of Regulations Management, Room 1176, 801 Eye Street, NW., Washington, DC 20001. Comments should indicate that they are submitted in response to "RIN 2900–AH77." All written comments are available for public inspection in the Office of Regulations Management, Room 1176, 801 Eye Street, NW., Washington, DC 20001 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Karen G. Boies, Ph. D., Deputy Associate Director for Addictive Disorders and Psychiatric Rehabilitation, Veterans Health Administration, Department of Veterans Affairs, (202) 565–7316.

SUPPLEMENTARY INFORMATION: This proposed rule is authorized under provisions of 38 U.S.C. 501 and 38 U.S.C. 1720A.

The Secretary hereby certifies that the provisions of the proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. There does not appear to be a basis for considering special provisions for small entities since, in all likelihood, only entities that are small entities would conduct activities affected by this rule. Also, because of budgetary constraints and the high utilization of this program, we anticipate no change in the total number of bed days of care paid by VA to participating small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, dental health, Drug abuse, Foreign relations, Government contracts, Grant program—health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: February 20, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is proposed to be amended as follows:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. In section 17.80, paragraph (a)(1) is revised to read as follows:

§ 17.80 Alcohol and drug dependence or abuse treatment and rehabilitation in residential and nonresidential facilities by contract.

(a) * * *

(1) Veterans who have been or are being furnished care by professional staff over which the Secretary has jurisdiction and such transitional care is reasonably necessary to continue treatment.

* * * * *

[FR Doc. 96–12662 Filed 5–20–96; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7179]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Connecticut	Granby (Town), Hartford County.	Dismal Brook	Upstream side of East Street	None	*279
			At the Massachusetts State boundary	None	*370
		East Branch Salmon Brook.	Approximately 1,830 feet downstream of Silver Street Dam.	None	*284
			At State boundary	None	*533
		Creamery Brook	Approximately 2,000 feet upstream of the confluence with East Branch Salmon Brook.	None	*219
			Approximately 875 feet upstream of Creamery Hill Road.	None	*252
		Hungary Brook	At upstream side of Notch Road	None	*202
			Approximately 0.87 mile upstream of Quarry Road.	None	*230
		Bradley Brook	At upstream side of Meadowbrook Road	None	*216

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 760 feet upstream of East Street.	None	*278
		West Branch Bradley Brook.	Approximately 1,125 feet downstream of Twilight Drive.	None	*226
			Approximately 1,685 feet upstream of Stardust Drive.	None	*255
		East Branch Bradley Brook.	At the confluence with Bradley Brook	None	*217
			Approximately 150 feet upstream of East Street.	None	*259
		East Fork of East Branch Bradley Brook.	At confluence with East Branch Bradley Brook.	None	*243
			Approximately 170 feet upstream of East Street.	None	*259

Maps available for inspection at the Granby Town Hall, 15 North Granby Road, Granby, Connecticut.

Send comments to Mr. William F. Smith, Jr., Granby Town Manager, Granby Town Hall, 15 North Granby Road, Granby, Connecticut 06035.

Michigan	Fork (Township) Mecosta County.	Chippewa River	Approximately 2.1 miles downstream from 19 Mile Road.	None	*941
			Approximately 100 feet upstream of 10th Avenue.	None	*956

Maps available for inspection at the Fork Township Hall, 147 Northern Avenue, Barryton, Michigan.

Send comments to Mr. Louis McNelley, Supervisor of Fork Township, 5186 Hoover Road, Barryton, Michigan 49305.

New York	Atlantic Beach (Village). Nassau County	Atlantic Ocean	At intersection of Bay Boulevard and Bermuda Street.	None	*10
			Approximately 550 feet south of intersection of Ocean Boulevard and Wayne Avenue.	*14	*15
		Reynolds Channel	Approximately 500 feet north of Bay Boulevard and Albany Boulevard.	*7	*8

Maps available for inspection at the Village Hall, 65 The Plaza, Atlantic Beach, New York.

Send comments to The Honorable Earliene Shipper, Mayor of the Village of Atlantic Beach, 65 The Plaza, Atlantic Beach, New York 11509.

New York	Bayville (Village) Nassau County.	Mill Neck Creek/Oyster Bay Harbor.	Approximately 600 feet Northeast of Bayville Bridge enters community.	*13	*15

Maps available for inspection at the Village Hall, 34 School Street, Bayville, New York.

Send comments to The Honorable Victoria Siegel, Mayor of the Village of Bayville, Village Hall, 34 School Street, Bayville, New York 11709.

New York	Cedarhurst (Village) Nassau County.	Head of Bay/Motts Creek	Intersection of Oxford Road and Arlington Place.	None	*8

Maps available for inspection at the Village Hall, 200 Cedarhurst, Cedarhurst, New York.

Send comments to The Honorable Andrew J. Parise, Mayor of the Village of Cedarhurst, 200 Cedarhurst, Cedarhurst, New York 11516.

New York	East Rockaway (Village) Nassau County.	Mill River	At intersection of Rhame Avenue and Althouse Avenue.	None	*7
			At intersection of Williamson Street and 6th Avenue.	*8	*7

Maps available for inspection at the East Rockaway Village Hall, 376 Atlantic Avenue, East Rockaway, New York.

Send comments to The Honorable Charles H. Formont, Mayor of the Village of East Rockaway, 376 Atlantic Avenue, East Rockaway, New York 11518–0189.

New York	Freeport (Village) Nassau County.	Atlantic Ocean/Baldwin Bay.	Approximately 200 feet west of intersection of Suffolk Street and South Long Beach Avenue.	*9	*8
		Baldwin Bay	Approximately 150 feet south of intersection of Morris Avenue and Meister Boulevard.	*7	*8
		Hudson Bay	Approximately 1,750 feet southeast of intersection of Anchorage Way and South Grove Avenue.	*7	*9

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Freeport Village Building Department, 46 North Ocean Avenue, Freeport, New York.					
Send comments to The Honorable Richard Wissler, Mayor of the Village of Freeport, 46 North Ocean Avenue, Freeport, New York 11520.					
New York	Great Neck (Village) Nassau County.	Manhasset Bay	Approximately 200 feet southeast of the intersection of East Shore Road and Vista Hill Road.	*15	*14
Maps available for inspection at the Great Neck Village Hall, 61 Baker Hill Road, Great Neck, New York.					
Send comments to The Honorable Isabel Varlotta, Mayor of the Village of Great Neck, 61 Baker Hill Road, Great Neck, New York 11023.					
New York	Great Neck Plaza (Village) Nassau County.	Russells Creek	Approximately 1,640 feet downstream of Clent Road.	None	*63
			At Clent Road	None	*74
Maps available for inspection at the Village Hall, Building Department, 2 Gussack Plaza, Great Neck, New York.					
Send comments to The Honorable Robert Rosegarden, Mayor of the Village of Great Neck Plaza, 2 Gussack Plaza, Great Neck, New York 11022.					
New York	Hempstead (Town) Nassau County.	Head of Bay	Approximately 250 feet west of intersection of West Avenue and Baker Avenue.	*9	*8
		Hewlett Bay/Macy Channel.	Approximately 700 feet east of intersection of Elinor Road and Cedar Avenue.	*8	*7
		Brosewere Bay	Approximately 500 feet south of intersection of Woodmere Boulevard and Hickory Road.	*9	*8
		Valley Stream	Approximately 300 feet west of the intersection of Mill Road and Sidney Place.	*8	*10
		Hewlett Bay	Approximately 50 feet south of West Boulevard extended.	*8	*9
		East Rockaway Inlet	Approximately 200 feet west of intersection of Bay Boulevard and Granada Street.	*11	*10
		Atlantic Ocean	Approximately 500 feet south of Malone Avenue extended.	*14	*15
		Reynolds Channel	Approximately 1,200 feet north from intersection of Yates Avenue and West Beach Street.	*7	*8
		Freeport Creek	Approximately 1,000 feet southeast of the end of South Main Street.	*9	*7
Maps available for inspection at the Engineering Department, 350 Front Street, Hempstead, New York.					
Send comments to Mr. Gregory Peterson, Hempstead Town Supervisor, 1 Washington Avenue, Hempstead, New York 11550–4923.					
New York	Hewlett Bay Park (Village) Nassau County.	Hewlett Bay: Macy Channel.	At intersection of Everett Avenue and Seawane Drive.	None	*7
			Approximately 650 feet east of intersection of Piermont Avenue and Veeder Drive.	*8	*7
Maps available for inspection at the Village Hall, 30 Piermont Avenue, Hewlett, New York.					
Send comments to The Honorable Mitchell Sahn, Mayor of the Village of Hewlett Bay Park, 30 Piermont Avenue, Hewlett, New York 11557.					
New York	Hewlett Harbor (Village) Nassau County.	Hewlett Bay: Thixton Creek.	Approximately 500 feet southeast of intersection of Harbor Road and Thixton Drive.	*8	*9
		Hewlett Bay: Macy Channel.	Intersection of Everett Avenue and Seawane Drive.	*8	*7
Maps available for inspection at the Hewlett Harbor Village Hall, 449 Pepperidge Road, Hewlett Harbor, New York.					
Send comments to The Honorable Gerald H. Morganstern, Mayor of the Village of Hewlett Harbor, 449 Pepperidge Road, Hewlett Harbor, New York 11557.					
New York	Hewlett Neck (Village) Nassau County.	Brosewere Bay: Georges Creek.	Approximately 600 feet southeast of the intersection of Dolphin Drive and Curtis Road.	*8	*7
			Approximately 50 feet east of Adams Cane cul-de-sac.	*8	*7

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Hewlett Bay: Georges Creek.	Approximately 300 feet east of intersection of Hewlett Neck Road and Dolphin Lane.	None	*7

Maps available for inspection at the Village Hall, 30 Piermont Avenue, Hewlett, New York.

Send comments to The Honorable Sheldon Shame, Mayor of the Village of Hewlett Neck, 30 Piermont Avenue, Hewlett, New York 11557.

New York	Island Park (Village) Nassau County.	Wreck Lead Channel	Approximately 500 feet southwest of intersection of Railroad Place and Bridge Plaza.	*7	*8
		Hog Island Channel	Approximately 475 feet north of intersection of Island Parkway and Sherborne Place.	*7	*8

Maps available for inspection at the Village Hall, 127 Long Beach Road, Island Park, New York.

Send comments to The Honorable Jacqueline Papatsos, Mayor of the Village of Island Park, 127 Long Beach Road, Island Park, New York 11558.

New York	Lawrence (Village) Nassau County.	Brosewere Bay	Approximately 1,000 feet south of the intersection of Burton Lane and Albro Lane.	*8	*7
			Approximately 1,000 feet southeast from intersection of Buxton Lane and Albro Lane.	*8	*9
		Broad Channel	Approximately 1,000 feet southeast of confluence with Post Lead.	*8	*9
		Reynolds Channel	Approximately 250 feet southeast from 2nd Street extended.	*8	*10
		Bannister Creek	Approximately 1,000 feet south of the intersection of Rock Hall Road and Nassau Expressway.	None	*7
			Intersection of North Street and Monroe Street.	*8	*7

Maps available for inspection at the Lawrence Village Building Department, 196 Central Avenue, Lawrence, New York.

Send comments to The Honorable Nancy B.W. Coe, 196 Central Avenue, Lawrence, New York 11559

New York	Long Beach (City) Nassau County.	Atlantic Ocean	Approximately 850 feet southeast of the intersection of East Broadway and Roosevelt Boulevard.	*14	15
		Reynolds Channel	Approximately 500 feet north of intersection of Lindell Boulevard and West Bay Drive.	*7	*8

Maps available for inspection at the City Hall, 1 West Chester Street, Long Beach, New York.

Send comments to Mr. Edwin L. Eaton, Long Beach City Manager, City Hall, 1 West Chester Street, Long Beach, New York 11561.

New York	Malverne (Village) Nassau County.	Motts Creek	At Motley Street	None	*24
			Approximately 220 feet upstream of Franklin Avenue.	None	*30

Maps available for inspection at the Village Hall, 99 Church Street, Malverne New York.

Send comments to The Honorable Joseph Canzoneri, Mayor of the Village of Malverne, 99 Church Street, Malverne, New York 11561.

New York	Massapequa Park (Village) Nassau County.	Atlantic Ocean: South Oyster Bay.	Approximately 350 feet south of the intersection of Skylark Road and Whitewood Drive.	*8	*9
			Approximately 125 feet southwest of the intersection of Knell Drive and Harbor Lane East.	*7	*8
		Massapequa Creek	Approximately 250 feet downstream of Southern State Parkway.	None	*38
			At Clark Street	None	*18

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified

Maps available for inspection at the Village Hall, 151 Front Street, Massapequa Park, New York.

Send comments to The Honorable George Nussbaum, Mayor of the Village of Massapequa Park, 151 Front Street, Massapequa Park, New York 11762.

New York	North Hempstead (Town) Nassau County.	Little Neck Bay	Approximately 200 feet southwest of the intersection of Shorecliff Place and Bayside Road.	*14	*13
			Approximately 400 feet northwest of the intersection of Woodland Place and Bayview Avenue.	None	*13
		Manhasset Bay	Approximately 175 feet west of West Shore Drive and Bayview Avenue.	*14	*16
		Russells Creek	Approximately 700 feet upstream of Melbourne Road.	None	*115

Maps available for inspection at the North Hempstead Town Hall, 220 Plandome Road, Manhasset, New York.

Send comments to Ms. Mary Newburger, North Hempstead Town Supervisor, 220 Plandome Road, Manhasset, New York 11030.

New York	Plandome Heights (Village) Nassau County.	Manhasset Bay	Approximately 100 feet west of the waterway and Shore Drive at the intersection of Shore Drive and The Beachway.	None	*14
			At northern corporate limits approximately 500 feet west of intersection of The Beachway and Shore Drive.	None	*16

Maps available for inspection at the Plandome Heights Village Office, 34 Grandview Circle, Manhasset, New York.

Send comments to The Honorable John Keitz, Mayor of the Village of Plandome Heights, P.O. Box 1384, Manhasset, New York 11030.

New York	Plandome Manor (Village) Nassau County.	Manhasset Bay	Approximately 750 feet west of intersection of Lake and Bayview Roads.	*17	*16

Maps available for inspection at the Plandome Manor Village Hall, 1526 North Plandome Road, Plandome Manor, New York.

Send comments to Mr. Richard Rode, Plandome Manor Village Building Inspector, P.O. Box 951, Plandome Manor, New York 11030.

New York	Plandome (Village) Nassau County.	Manhasset Bay	Approximately 600 feet west of intersection of Shoreview Lane and Plandome Road.	None	*14
			Approximately 750 feet west of intersection of Shoreview Lane and Plandome Road.	None	*16

Maps available for inspection at the Plandome Village Hall, 65 South Drive, Plandome, New York.

Send comments to The Honorable Brian J. Vincent, Mayor of the Village of Plandome, 65 South Drive, Plandome, New York 11030.

New York	Rockville Centre (Village) Nassau County.	Mill River	Approximately 360 feet west of intersection of River Avenue and Demott Place.	None	*7

Maps available for inspection at the Rockville Centre Village Engineer's Office, 110 Maple Avenue, Rockville Centre.

Send comments to Mr. Anthony M. Cancellieri, Rockville Centre Village Administrator, P.O. Box 950, Rockville Centre, New York 11571.

New York	Sands Point (Village) Nassau County.	Sandspoint/Hempstead Harbor.	Approximately 800 feet east of intersection of Harbor Road and Todd Drive.	*17	*10

Maps available for inspection at the Sands Point Village Hall, Tibbits Lane, Port Washington, New York.

Send comments to The Honorable Leonard Wurzel, Mayor of the Village of Sands Point, P.O. Box 188, Port Washington, New York 11050.

New York	Thomaston (Village) Nassau County.	Manhasset Bay	Approximately 500 feet northeast of Colonial Road and East Shore Road.	None	*15
		Russells Creek	At Clent Road	None	*74
			Approximately 0.15 mile upstream of Clent Road.	None	*92

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inpsection at the Thomaston Village Hall, 100 East Shore Road, Great Neck, New York.					
Send comments to The Honorable Bryan J. Holzberg, Mayor of the Village of Thomaston, 100 East Shore Road, Great Neck, New York 11023.					
New York	Valley Stream (Village) Nassau County.	Motts Creek	Approximately 120 feet northeast of the intersection of Hungry Harbor Road and Rosedale Road.	None	*8
Maps available for inpsection at the Valley Stream Village Hall, 123 South Central Avenue, Valley Stream, New Y ork.					
Send comments to The Honorable James Darcy, Mayor of the Village of Valley Stream, 123 South Central Avenue, Valley Stream, New York 11582.					
New York	Woodsburgh (Village) Nassau County.	Woodmere Channel	At intersection of Meadow Drive and Channel Road.	None	*7
			Approximately 500 feet south of intersection of Channel Road and Meadow Drive.	*8	*7
		Brosewere Bay	Approximately 450 feet southeast of intersection of Bay Drive and Hickory Road.	*8	*9
Maps available for inspection at the Woodsburgh Village Hall, 30 Piermont Avenue, Hewlett, New York.					
Send comments to The Honorable Susan L. Schlaff, Mayor of the Village of Woodsburgh, 30 Piermont Avenue, Hewlett, New York 11557.					
North Carolina	Whiteville (City) Columbus County.	Griffith Branch	Approximately 0.5 mile downstream of Nolan Avenue.	None	*55
			Approximately 210 feet upstream of Bentmoor Drive.	None	*79
		Mollies Branch	At Seaboard Coastline Railroad	None	*59
			Approximately 0.4 mile upstream of U.S. Business Routes 74–76.	None	*72
		Soules Swamp	Approximately 0.9 mile downstream of U.S. Route 701 Bypass.	None	*53
			Approximately 0.6 mile upstream of U.S. Route 701 Bypass.	None	*58
		White Marsh	At Seaboard Coastline Railroad	None	*54
			Approximately 20 feet upstream of U.S. Route 74–76 Bypass.	None	*59
Maps available for inspection at the Whiteville City Hall, 317 South Madison Street, Whiteville, North Carolina.					
Send comments to Mr. Jelf Emory, Whiteville City Manager, P.O. Box 607, Whiteville, North Carolina 28472.					
Pennsylvania	Hartfield (Borough) Montgomery County.	West Branch Neshaminy Creek.	Approximately 300 feet downstream of Lakewood Avenue.	None	*300
			Approximately 150 feet upstream of Lakewood Avenue.	None	*301
Maps available for inspection at the Borough Hall, 401 South Main Street, Hatfield, Pennsylvania.					
Send comments to Ms. Stephanie Teoli, Manager of the Borough of Hatfield, P.O. Box 190, Hatfield, Pennsylvania 19440–0190.					
Pennsylvania	Tredyffrin (Township) Chester County.	Little Valley Creek	On the upstream side of Mill Road	*149	*147
			Approximately 1,800 feet upstream of Church Road.	None	*245
		Tributary No. 2 of Trout Creek.	At confluence with Trout Creek	*155	*160
			Approximately 100 feet upstream of the confluence with Trout Creek.	*159	*160
		East Tributary to Crum Creek.	Approximately 650 feet upstream of Devon Road.	None	*467
			Approximately 830 feet upstream of Devon Road.	None	*470
Maps available for inspection at the Tredyffrin Municipal Building, 1100 DuPortail Road, Berwyn, Pennsylvania.					
Send comments to Mr. Jospeh A. Janasik, Tredyffrin Township Manager, 1100 DuPortail Road, Berwyn, Pennsylvania 19312.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated May 13, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–12714 Filed 5–20–96; 8:45 am]

BILLING CODE 6718–04–P

44 CFR Part 67

[Docket No. FEMA–7181]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood elevations and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Arizona	Pima County (Unincorporated Area).	Santa Cruz River	Just upstream of Pima Mine Road	*2,663	*2,668
			4,650 feet upstream of Pima Mine Road	*2,671	*2,673
			3,850 feet downstream of Sahura Rita Road.	*2,698	*2,698
			Just upstream of Sahura Rita Road	*2,709	*2,711
			1,870 feet upstream of Sahura Rita Road	*2,716	*2,716
			3,350 feet downstream of U.S. Highway 89.	*2,736	*2,741
			Just upstream of U.S. Highway 89	*2,751	*2,751
			1,770 feet upstream of U.S. Highway 89	*2,755	*2,758
			11,270 feet upstream of U.S. Highway 89	*2,791	*2,790
			5,010 feet downstream of Continental Road.	*2,830	*2,829

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			370 feet upstream of Continental Road ...	*2,854	*2,850
			7,340 feet upstream of Continental Road	*2,868	*2,869
			12,410 feet upstream of Continental Road.	*2,886	*2,888
			21,540 feet upstream of Continental Road.	*2,917	*2,924
			19,800 feet downstream of Pima County-Santa Cruz.	*2,961	*2,960
			7,128 feet downstream of Pima County-Santa Cruz County corporate limits.	*3,005	*3,004
			500 feet downstream of Pima County-Santa Cruz County corporate limits.	*3,027	*3,029
			Just downstream of Pima County-Santa Cruz County corprate limits.	*3,028	*3,030

Maps are available for inspection at Pima County Department of Transportation and Flood Control District, Public Works, Building, 201 North Stone Avenue, Tucson, Arizona.

Send comments to the Honorable Paul Marsh, Chairman, Pima County Board of Supervisors, 130 West Congress Street, Tucson, Arizona 85701.

California	Hesperia (City) San Bernardino County.	Antelope Valley Wash	At confluence with the Mojave River	None	*2,900
			Approximately 150 feet upstream of Lake Arrowhead Road.	None	*2,940
			At Peach Avenue	None	*2,974
			Approximately 50 feet upstream of Pico Avenue.	None	*3,035
			Approximately 200 feet upstream of Joshua Street.	None	*3,120
			At Ash Street	None	*3,154
			At E Avenue	None	*3,182
			Approximately 850 feet upstream of Ranchero Road.	None	*3,206

Maps are available for inspection at the City of Hesperia, 15776 Main Street, Hesperia, California

Send comments to Mr. David A. Berger, City Manager, City of Hesperia, City Hall, 15776 Main Street, Hesperia, California 92345

California	Vacaville (City) Solano County.	Ulatis Creek	At Leisure Town Road	*81	+85
			Approximately 100 feet upstream of Ulatis Drive.	*111	+114
			Approximately 2,250 feet upstream of Allison Drive.	*129	+133
			Just downstream of East Monte Vista Drive.	*170	+172
			Just downstream of Fruitvale Road	*194	+195
			At Farrell Road	*232	+233
		Laguna Creek	At confluence with Alamo Creek	*181	+183
			Approximately 100 feet upstream of Highway 80.	*198	+205
		Alamo Creek	Approximately 2,000 feet downstream of Alamo Drive (main channel).	*96	+100
			Approximately 2,000 feet downstream of Alamo Drive (west overbank).	N/A	+103
			Approximately 1,600 feet downstream of Nut Tree Road.	*105	+108
			Just upstream of Tulare Drive	*120	+125
			Just downstream of Crystal Lane	*174	+176
			At confluence with Encinosa Creek	*208	+213
			Approximately 5,300 feet upstream of the confluence of Encinosa Creek.	*233	+234
		Encinosa Creek	At confluence with Alamo Creek	*208	+213
			Approximately 3,100 feet upstream of Alamo Drive.	*233	+233
		Bucktown Creek	Approximately 400 feet downstream of Farrell Road.	*224	+227
			Just downstream of Farrell Road	*228	+229

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified

*Elevation in feet (NGVD of 1929) (To convert to NAVD, and 2.59 feet to NGVD elevation).

+Elevation in feet (NAVD of 1988).

Maps are available for inspection at the City of Vacaville, City Hall, Department of Community Development, 650 Merchant Street, Vacaville, California.

Send comments to The Honorable David Fleming, Mayor, City of Vacaville, 650 Merchant Street, Vacaville, California 95688.

Texas	Aledo (City) Parker County.	Clear Fork Trinity River	At the southern corporate limit	None	*792
			At confluence of the unnamed tributary near Hidden Valley Drive.	None	*795
			At Old Tunnel Road on the western corporate limit.	None	*798

Maps are available for inspection at the City of Aledo, Aledo City Hall, 200 Old Annetta Road, Aledo, Texas.

Send comments to The Honorable Robert A. Lewis, P.O. Drawer R, Aledo, Texas 76008.

Texas	Annetta (Town) Parker County.	Clear Fork Trinity River	At eastern corporate limit south of Annetta Road.	None	*800
			At eastern corporate limit, near South Fork Trinity River.	None	*804

Maps are available for inspection at the Town of Annetta, City Office, 405–407 Highway 1187 North, Aledo, Texas.

Send comments to The Honorable Bruce Moore, Mayor, Town of Annetta, P.O. Box 91, Aledo, Texas 76008.

Texas	Annetta North (Town) Parker Couty.	Clear Fork Trinity River	Just upstream of Union Pacific Railroad Bridge.	None	*808
			At eastern corporate limit approximately 3,000 feet upstream of Underwood Road.	None	*809
			Approximately 2 miles upstream of Underwood Road.	None	*816

Maps are available for inspection at the home of the Town Secretary, Town of Annetta North, 457 Qual Ridge Drive, Aledo, Texas.

Send comments to The Honorable Kenneth Hensley, Mayor, Town of Annetta North, P.O. Box 262, Aledo, Texas 76008.

Texas	Annetta South (Town) Parker County.	Clear Fork Trinity River	At the southern corporate limit	None	*786
			At the northern corporate limit	None	*789

Maps are available for inspection at the home of The Honorable Douglas Koldin, Mayor, Town of Annetta South, 403 Koldin Drive, Aledo, Texas.

Send comments to The Honorable Douglas Koldin, Mayor, Town of Annetta South, P.O. Box 61, Aledo, Texas 76008.

Texas	Hays County	San Marcos River	At the border of Hays County and Guadalupe County.	*552	*551
			At confluence of Sink Creek	*577	*577
		Plum Creek	At the border of Township of Uhland and Caldwell County.	*542	*538
			8,500 feet upstream of Interstate Highway 35 Bridge.	*730	*732
		Stream Plum-1	At confluence with Plum Creek	*632	*631
			Just above Sledge Street bridge	None	*729
		Brushy Creek	Just above State Highway 21	*544	*542
			1,150 feet upstream of Satterwhite Road bridge.	*653	*654
		Stream Brushy-1	At confluence with Brushy Creek	*557	*556
			650 feet upstream of County Road 131 Bridge.	*645	*643
		Stream Brushy-1A	At confluence with Stream Brushy-1	*597	*596
			Behind dam located 1,200 feet from County Road 157 Bridge.	*631	*631
		Cottonwood Creek	At Old Bastrop Highway bridge	*593	*592
			200 feet upstream of Center Point Road	None	*669
		Stream CC–1	At confluence with Cottonwood Creek	*603	*601
			Just west of Interstate Highway 35	None	*642
		Stream CC–2	At confluence with Cottonwood Creek	*643	*639

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			1,870 feet upstream of Hunter Road Bridge.	*711	*711
		Stream CC–2D	At confluence with Cottonwood Creek	*637	*634
			Just upstream of Interstate Highway 35	*654	*656
		Stream CC–IH35	At confluence with Stream CC–1	None	*643
			At the divergence from Cottonwood Creek.	*654	*656
		Blanco River	At confluence with San Marcos River	*572	*571
			3,300 feet upstream of confluence of Wanslow Creek.	*1,029	*1,021
		Bypass Creek	2,500 feet south of Missouri, Kansas, Texas Railroad bridge.	None	*563
			1,050 feet upstream of Harris Hill Road Bridge.	*606	*603
		Stream BPC–1	At confluence with Stream BPC–2	*579	*573
			At divergence from Blanco River	*590	*593
		Stream BPC–2	At confluence with Bypass Creek	*581	*573
			At the divergence from Blanco River	*597	*599
		Loneman Creek	At confluence with Blanco River	*767	*760
			Just above Deer Lake Road bridge	*917	*913
			200 feet downstream of County Road 317.	*1,044	*1,042
		Smith Creek	At confluence with Loneman Creek	*877	*872
			Above earthen dam 4,700 feet upstream from Deer Lake Road Bridge.	*1,015	*1,015
		Cypress Creek	At confluence with Blanco River	*841	*839
			1,250 feet above confluence of Stream CC–3.	*1,004	*1,001
		Stream Cypress-1	At confluence with Cypress Creek	*972	*967
			3,900 feet upstream of Valley Spring Road.	*1,035	*1,033
		Wilson Creek	At confluence with Blanco River	*848	*843
			100 feet downstream of dirt road that intersects FM 2325.	*1,006	*1,005
		Willow Springs Creek	At confluence with San Marcos River	*574	*571
			2,400 feet upstream of McCarty Lane	*716	*715
		Stream WSC–RR	At confluence with Purgatory Creek	*586	*582
			At the diversion from Willow Springs Creek.	*591	*592
		Stream WSC–1	At confluence with Willow Springs Creek	*671	*672
			600 feet upstream of McCarty Lane	*707	*707
		Purgatory Creek	At confluence with San Marcos River	*574	*571
			Approximately 20,000 feet upsteam of SCS Dam #4.	*910	*910
		Stream PC–1	At confluence with Purgatory Creek	*656	653
			6,300 feet upstream of McCarty Lane bridge.	*793	*792
		Sink Creek	At confluence with San Marcos River	*579	*577
			At County Road 213 crossing	*802	*801
		Onion Creek	At the border of Travis County and Hays County.	*649	*644
			Approximately 2,5 miles upstream of County Road 190 bridge.	*1,145	*1,141
		Bear Creek	At the border of Hays County and Travis County.	*805	*805
			At dam located 2,000 feet upstream of Wildwood Hills Lane.	*983	*986
		Little Bear Creek	At the border of Hays County and Travis County.	*675	*672
			2,500 feet upstream of Arbor Trail	*814	*815
		Stream LB–1	At confluence with Little Bear Creek	*743	*741
			2,500 feet upstream of Chaparral Road	*791	*790
		Stream Bear-1	At confluence with Bear Creek	*848	*848
			At the border of Hays County and Travis County.	*923	*922
		Stream Bear-1A	At confluence with Stream Bear-1	*851	*851
			2,000 feet upstream of Todd Road bridge	*1,036	*1,037
		Stream Bear-2	At confluence with Bear Creek	*850	*848
			4,650 feet upstream of confluence with Bear Creek.	*920	*921

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Barton Creek	At the border of Hays County and Travis County.	*951	*942
			At County Road 169	None	*1,133
		Long Branch	At the border of Hays County and Travis County.	*1,036	*1,035
			Above dam located 3,000 feet upstream of Carriage House Lane.	*1,160	*1,160
		Stream BC–1	At confluence with Barton Creek	*955	*948
			3,300 feet upstream of confluence of Stream BC–1A.	*1,151	*1,151
		Stream BC–1A	At confluence with Stream BC–1	*1,085	*1,085
			1,870 feet upstream of confluence with Stream BC–1.	*1,124	*1,124
		Roy Branch	At confluence with Barton Creek	*962	*957
			2,100 feet upstream of Oakwood Lane Bridge.	*1,105	*1,103
		Cottonwood Branch	At confluence with Ray Branch	*993	*991
			1,000 feet upstream of Hidden Hills Drive bridge.	*1,096	*1,096
		Little Barton Creek	At confluence with Barton Creek	*996	*989
			2,500 feet upstream of Spring Lake Drive bridge.	*1,246	*1,245
		Stream BC–2	At confluence with Barton Creek	*1,100	*1,096
			750 feet upstream of County Road 169	*1,227	*1,227
		Stream BC–2A	At confluence with Stream BC–2	*1,154	*1,153
			Approximately 5,500 feet upstream of confluence with Stream BC–2.	*1,236	*1,236
		School House Hollow	At confluence with Barton Creek	None	*1,119
			Above dam located 2,000 feet upstream of County Road 169 bridge.	*1,192	*1,192
		Stream SH–1	At confluence with School House Hollow	*1,186	*1,185
			Approximately 4,000 feet upstream of confluence with School House Hollow.	*1,262	*1,261
		Purgatory Creek Diversion #1.	At confluence with Purgatory Creek	*584	*583
			At divergence from Purgatory Creek	*605	*602
		Purgatory Creek Diversion #2.	At confluence with Willow Springs Creek	*581	*581
			At divergence from Purgatory Creek	*586	*585

Maps are available for inspection at Hays County Environmental Health Department, 1251 Civic Center Loop, San Marcos, Texas.

Send comments to The Honorable Eddie Etheredge, Judge, Hays County Courthouse, 102 North L.B.J. Drive, San Marcos, Texas 78666.

Maps are available for inspection at the City of Kyle, Department of Public Works, City Hall, 101 South Burleson, Kyle, Texas.

Send comments to The Honorable Marle D. Wilkins, Mayor, City of Kyle, P.O. Box 40, Kyle, Texas 78640.

Maps are available for inspection at the City of San Marcos, Engineering Department, San Marcos City Hall, 630 East Hopkins Street, San Marcos, Texas.

Send comments to The Honorable Kathy Morris, Mayor, City of San Marcos, 630 East Hopkins Street, San Marcos, Texas 78666.

Maps are available for inspection at the City of Woodcreek, 17 Wildwood, Wimberley, Texas 78676.

Send comments to The Honorable Jeannie Pool, Mayor, City of Woodcreek, P.O. Box 1570, Woodcreek, Texas 78676.

Maps are available for inspection at the City of Buda, City Hall, 121 North Main Street, Buda, Texas.

Send comments to The Honorable W.G. White, Mayor, City of Buda, P.O. Box 1218, Buda, Texas 78610.

Maps are available for inspection at the City of Hays, c/o Mayor of Hays, 12633 Red Bud Trail, Buda, Texas.

Send comments to The Honorable William Couch, Mayor, City of Hays, 12633 Red Bud Trail, Buda, Texas 78610.

Maps are available for inspection at the City of Niederwald, Go Forth Water Supply, 13841 Comino Real, Neiderwald, Texas.

Send comments to The Honorable Fern Howze, Mayor, City of Neiderwald, 13851 Comino Real, Neiderwald, Texas 78640.

Maps are available for inspection at the Township of Uhland, 17 Cotton Gin Road, Uhland, Texas.

Send comments to The Honorable Dan Sorrells, Mayor, Township of Uhland, 17 Cotton Gin Road, Uhland, Texas 78640.

Texas	Newton County (Unincorporated Areas).	Sabine River	At the border of Orange County and Newton County.	None	*17
			At the State Highway 12 bridge	None	*24
			At the U.S. Highway 190 bridge	None	*72
			At the State Highway 63 bridge	None	*107

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			At the border of Newton County and Sabine Parish.	None	*117
Maps are available for inspection at the Newton County Courthouse, Highway 190 West, Newton, Texas.					
Send comments to The Honorable Lon Sharver, Newton County Judge, P.O. Box J, Newton, Texas 75966.					
Texas	Parker County (Unincorporated Areas).	Clear Fork Trinity River	At Tarrant County-Parker County Line	None	*734
			Just downstream of Armageddon Ranch Road.	None	*752
			At Underwood Road	None	*808
			Approximately 150 feet upstream of Crown Road Bridge.	*847	*843
			At City of Weatherford corporate limits	*859	*856
		Stream CF (WP)–1	Approximately 1,200 feet downstream of East Bankhead Drive.	None	*827
			Approximately 120 feet downstream of East Bankhead Drive.	None	*835
			Just upstream of East Bankhead Drive	None	*841
Maps are available for inspection at the Floodplain Department, Office of the County Judge, One Courthouse Square, Weatherford, Texas.					
Send comments to The Honorable Ben Long, County Judge, Parker County Courthouse, One Courthouse Square, Weatherford, Texas 76086.					
Texas	Weatherford (City) Parker County.	Clear Fork Trinity River	At the corporate limits approximately 1,000 feet downstream of West Lake Drive.	*859	*856
			Approximately 400 feet upstream of West Lake Road.	None	*860
Maps are available for inspection at the Department of Code Enforcement, City of Weatherford, City Hall, 303 Palo Pinto Street, Weatherford, Texas.					
Send comments to The Honorable Sherry Watson, Mayor, City of Weatherford, P.O. Box 255, Weatherford, Texas 76086.					
Texas	Willow Park (City)	Clear Fork Trinity River	At the corporate limits approximately 400 feet downstream of East Bankhead Highway.	*833	*830
			Approximately 100 feet upstream of Interstate Highway 20.	*839	*834
			At the upstream corporate limits approximately 6,300 feet upstream of Interstate Highway 20 westbound.	*845	*843
Maps are available for inspection at City Hall, City of Willow Park, 101 Stage Coach Trail, Willow Park, Texas.					
Send comments to The Honorable William Clemens, Mayor, City of Willow Park, 101 Stage Coach Trail, Willow Park, Texas 76086.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: May 13, 1996.

Richard W. Krimm,

Acting Associate Director for Mitigation.

[FR Doc. 96–12717 Filed 5–20–96; 8:45 am]

BILLING CODE 6718–04–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1515 and 1552

[FRL–5505–3]

Acquisition Regulation; Source Selection Process

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to revise its acquisition regulation (48 CFR Chapter 15) coverage on the source selection process. EPA is aware that Part 15 of the Federal Acquisition Regulation is currently undergoing revision. The Agency believes that its changes will not conflict with any subsequent revisions to Part 15. Additionally, the Agency believes that the changes to its acquisition regulation are needed now as an interim measure to streamline the process and empower Contracting Officers at EPA. This rule is also necessary to implement portions of the Federal Acquisition Streamlining Act of 1994.

DATE: Comments should be submitted not later than July 22, 1996.

ADDRESSES: Written comments should be submitted to the contact listed below at the following address: U.S. Environmental Protection Agency, Office of Acquisition Management (3802F), 401 M Street SW., Washington, DC 20460. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: Senzel.Louise@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 format or ASCII file format. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed on-line at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Louise Senzel, Environmental Protection Agency, Office of Acquisition Management (3802F), 401 M Street SW., Washington, DC 20460. Telephone: (202) 260–6204.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866

The proposed rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)

C. Regulatory Flexibility Act

The EPA certifies that this proposed rule does not exert a significant economic impact on a substantial number of small entities. The requirements to contractors under the proposed rule impose no reporting, record-keeping, or any compliance costs.

D. Unfunded Mandates

This proposed rule will not impose unfunded mandates on state or local entities, or others.

E. Regulated Entities

EPA contractors are entities potentially affected by this action. Specifically, those entities competing under solicitations for negotiated procurements will be affected.

Category	Regulated entity
Industry	EPA Contractors.

List of Subjects in 48 CFR Parts 1515 and 1552

Government procurement.

Authority: The provisions of this regulation are issued under 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

Dated: May 7, 1996.

Betty L. Bailey,

Director, Ofice of Acquisition Monagement.

Therefore, 48 CFR chapter 15 is proposed to be amended as set forth below:

PARTS 1515 AND 1552—[AMENDED]

1. The authority citations for parts 1515 and 1552 continue to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

§ 1515.407 [Amended]

2. Section 1515.407 is amended by removing paragraph (a)(1) and by redesignating paragraphs (a) (2) and (3) as (a) (1) and (2).

3. Section 1515.604 is amended by revising paragraphs (a), (c) and (d) to read as follows:

1515.604 Responsibilities and duties.

* * * * *

(a) *Source Selection Official.* The Source Selection Official (SSO) is the official responsible for overall management of the source selection process. Duties of the SSO include, but are not limited to, appointing members and chairpersons of the Source Evaluation Board, the Technical Evaluation Panel (TEP), and the Business Evaluation Panel (BEP); and approving solicitation related documents. However, the Contracting Officer is responsible for approving amendments to solicitation documents. The SSO may waive the requirement in 1515.612(a)(v) for at least one member of the TEP to be an individual not involved in managing the current contract. The SSO also approves the competitive range determination and makes the source selection decision.

* * * * *

(c) *Technical Evaluation Panel (TEP).* The Program Office has the responsibility for developing the technical evaluation criteria and statement of work for the solicitation. The TEP has the responsibility for evaluating the technical aspects of the offerors' technical proposals. Based on the recommendation of the Program Office, the SSO has the discretion of assigning this evaluation responsibility to the Project Officer, if appropriate, or to the TEP. When offerors' past performance is evaluated as part of the technical proposal evaluation process, the past performance evaluation shall be conducted by the TEP, or by the Contracting Officer and the Project Officer. Based on input from the Project Officer, the Contracting Officer has the discretion of assigning this responsibility to the TEP or to the Contracting Officer and Project Officer.

(d) *Business Evaluation Panel (BEP).* (1) The Contracts Office has the responsibility for reviewing solicitation evaluation criteria and the Statement of Work from a business perspective; evaluating the business, pricing, and contractual aspects of the offerors' business and technical proposals; and examining other factors such as the responsibility of the offerors. Based on the recommendation of the Contracting Officer, the SSO has the discretion to designate these responsibilities to the Contracting Officer or designating a BEP. Sections 1515.612(a) (vi) and (vii) are applicable only when the SSO has designated a BEP. (2) When no BEP is convened, the Contracting Officer shall perform a preliminary cost evaluation of each offeror's cost/price proposal to identify any cost elements that appear unreasonable or questionable. When cost analysis is employed, the Contracting Officer shall perform a detailed cost analysis of the business proposal which includes an evaluation of the offeror's subcontracting program, management structure, and any other relevant factors which may prevent award to an offeror. This analysis may be included in a separate report, in the competitive range determination, or in the pre/post-negotiation memorandum.

4. Section 1515.604–70 is amended by adding paragraph (c) to read as follows:

1515.604–70 Personal conflicts of interest.

* * * * *

(c) Each EPA employee (including special employees) involved in source evaluation and selection is required to comply with the Office of Government Ethics ethics provisions at 5 CFR part 2635.

5. Section 1515.605 is amended by revising paragraphs (a) and (b) and adding paragraph (c) to read as follows:

1515.605 Evaluation factors.

* * * * *

(a) The Contracting Officer shall insert the provisions at 1552.215–70, "EPA Source Evaluation and Selection Procedures—Negotiated Procurement" and either: the provision in 1552.215–

71, "Evaluation Factors for Award," where all evaluation factors other than cost or price when combined are significantly more important than cost or price; or the provision in Alternate I to 1552.215–71, where all evaluation factors other than cost or price when combined are significantly less important than cost or price; or the provision in Alternate II to 1552.215–71, where award will be made to the offeror with the lowest-evaluated cost or price whose technical proposal meets the minimum needs of the Government; or the provision in Alternate III where all evaluation factors other than cost or price when combined are approximately equal to cost or price. The Contracting Officer may use provisions substantially the same as 1552.215–71, Alternate I to 1552.215–71, Alternate II to 1552.215–71, or Alternate III to 1552.215–71 without requesting a deviation to the EPAAR.

(b) Technical evaluation criteria should be prepared in accordance with FAR 15.605 and inserted into paragraph (b) of the provision at 1552.215–71, Alternate I, and Alternate III. If technical evaluation criteria are used in Alternate II, the criteria should be prepared in accordance with FAR 15.605 and inserted into paragraph (b). When past performance is to be used as an evaluation factor, the Contracting Officer must develop a criteria for evaluating past performance and include such criteria in section M of the solicitation.

(c) *Evaluation Methodologies.* Evaluation criteria may be developed using methodologies other than numerical scoring, e.g., adjectival ratings or color scoring. The relative importance of the evaluation criteria must be clearly identified in the solicitation. The Contracting Officer should identify and prepare evaluation criteria consistent with FAR 15.605.

6. Section 1515.608 is amended by revising paragraphs (a)(1), (b)(1)(ii), and (b)(2)(i); by adding paragraph (b)(3); by removing paragraph (c) and by redesignating paragraphs (d) and (e) as (c) and (d) to read as follows:

1515.608 Proposal evaluation.

(a) * * *

(1) Technical proposals shall be evaluated solely on the factors specified in the solicitation and in accordance with FAR 15.608. Additionally, the evaluation of technical proposals (including past performance factors) shall be accomplished using the scoring plan shown below or one specifically developed for the solicitation. Contracting Officers may request that the TEP also indicate whether proposals are acceptable or unacceptable, and/or whether the offerors' response to individual criteria are acceptable or unacceptable.

SCORING PLAN

Value	Descriptive statement
0	The factor is not addressed, or is totally deficient and without merit.
1	The factor is addressed, but contains deficiencies and/or weaknesses that can be corrected only by major or significant changes to relevant portions of the proposal, or the factor is addressed so minimally or vaguely that there are widespread information gaps. In addition, because of the deficiencies, weaknesses, and/or information gaps, serious concerns exist on the part of the TEP about the offeror's ability to perform the required work.
2	Information related to the factor is incomplete, unclear, or indicates an inadequate approach to, or understanding of the factor. The TEP believes there is question as to whether the offeror would be able to perform satisfactorily.
3	The response to the factor is adequate. Overall, it meets the specifications and requirements, such that the TEP believes that the offeror could perform to meet the Government's minimum requirements.
4	The response to the factor is good with some superior features. Information provided is generally clear, and the approach is acceptable with the possibility of more than adequate performance.
5	The response to the factor is superior in most features. The goal of the technical evaluation is to understand each offeror's proposal and to assess each proposal relative to the specified evaluation factors. The TEP report(s) should address any perceived strengths, as well as any perceived weaknesses or deficiencies, and risks associated with the offerors' performance. Scores may or may not change from the initial evaluation to the supplemental evaluation, depending on the offeror's response to interrogatories. The supplemental TEP report must explain the rationale for no change in score as well as any decrease or increase in score as a result of the offeror's response to interrogatories.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(ii) Any interrogatories the Contracting Officer should submit to offerors to clarify their technical proposals to address any weaknesses, deficiencies, or questions associated with their technical proposals. The Contracting Officer may review the technical proposals and TEP evaluation, and submit any additional interrogatories deemed appropriate.

(2)(i) A statement that the respective technical evaluation panel members are free from actual or potential personal conflicts of interest and are in compliance with the Office of Government Ethics ethics provisions at 5 CFR Part 2635.

* * * * *

(3) The Contracting Officer may release the cost/price proposals to the entire TEP or solely to the TEP Chairperson, after the TEP has completed its evaluation of initial proposals. The TEP or Chairperson should evaluate cost/price proposals to determine whether the offerors' cost/price proposals adequately reflect their technical proposals and the requirements of the solicitation, and demonstrate that the proposed price or cost provides an adequate understanding of the requirements of the solicitation. Any inconsistencies between the proposals and the solicitation requirements should be identified. Any inconsistencies between the cost and technical proposals should also be identified.

* * * * *

7. Section 1515.609 is amended by revising paragraph (c) to read as follows:

1515.609 Competitive range.

(a) * * *

(b) * * *

(c)(1) When a single proposal is the only proposal in the competitive range, as part of the required discussion in the competitive range determination, Contracting Officers shall address at a minimum the following factors: whether the requirement could have been broken up into smaller components; whether the solicitation provided adequate response time; whether the requirement could have been satisfied with reduced staffing levels (discussion may be combined with the first factor); and if applicable, whether the work required onsite could otherwise be performed at a contractor's facility, avoiding the cost and logistical implications of relocating employees.

(2) In cases where only a single proposal has been received and a competitive range determination has not been prepared, the discussion of the reasons for receipt of the single proposal which otherwise would be contained in the competitive range determination shall be included in the source selection document. The discussion in the source selection document at a minimum shall address the factors referenced in paragraph (c)(1) of this section.

(3) The Contracting Officer shall provide a copy of the competitive range determination or source selection document to the Competition Advocate for review and concurrence prior to approval.

8. Section 1515.611 is revised to read as follows:

1515.611 Best and final offers.

The Contracting Officer shall establish a common cut-off date for receipt of revised proposals and/or confirmations of negotiations (best and final offers) upon completion of negotiations.

9. Section 1515.612 is amended by revising paragraphs (a)(1) (iii), (iv) and (v); and by adding paragraph (c) to read as follows:

1515.612 Formal source selection.

(a) * * *

(1) * * *

(iii) SEB Membership—The SSO will determine the organizational levels of the individuals to serve on the SEB.

(iv) TEP Chairperson—The SSO will determine, based on the recommendation of the requesting program office, the Chairperson of the TEP. For recompetes or follow-on contracts, the Chairperson should normally not be the incumbent contract's Project Officer.

(v) TEP Membership—At least two members, in addition to the Project Officer, who are knowledgeable of the procurement's technical aspects. If the procurement is a follow-on to an existing contract, at least one of the TEP members should be someone who is not involved in managing the current contract, preferably from outside of the program division which originated the requirement. See 1515.605(a) for waiver of this requirement.

* * * * *

(c) *Source selection plan.* No separate source selection plan is required. The Contracting Officer may include the information required by FAR 15.612(c) in the individual acquisition plan.

10. Section 1552.215–70 is revised to read as follows:

1552.215–70 EPA Source Selection and Selection Procedures—Negotiated Procurements (XX 1996)

As prescribed in 1515.605, insert the following provision.

EPA Source Selection and Selection Procedures—Negotiated Procurements (XX 1996)

(a) The Government will perform source selection in accordance with FAR part 15 and the EPA Source Evaluation and Selection Procedures in EPAAR Part 1515 (48 CFR part 1515). The significant features of this procedure are:

(1) The Government will perform either cost analysis or price analysis of the offeror's cost/business proposal in accordance with FAR parts 15 and 31, as appropriate. In addition, the Government will also evaluate proposals to determine contract cost or price realism. Cost or price realism relates to an offeror's demonstrating that the proposed cost or price provides an adequate reflection of the offeror's understanding of the requirements of this solicitation, i.e., that the cost or price is not unrealistically low or unreasonably high.

(2) The Government will evaluate technical proposals as specified in 1552.215–71, Evaluation Factors for Award.

(b) In addition to evaluation of the previously discussed elements, the Government will consider in any award decision the responsibility factors set forth in FAR part 9.

(End of Provision)

11. Section 1552.215–71 is revised as follows:

1552.215–71 Evaluation Factors for Award.

As prescribed in 1515.605, insert one of the following provisions.

Evaluation Factors for Award (XX 1996)

(a) The Government will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the Government, cost or price and other factors considered. For this solicitation, all evaluation factors other than cost or price when combined are significantly more important than cost or price.

(b) Technical Evaluation Criteria.

(End of Provision)

Evaluation Factors for Award (XX 1996) Alternate I (XX 96)

(a) The Government will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the Government, cost or price, and other factors considered. For this solicitation, all evaluation factors other than cost or price when combined are significantly less important than cost or price.

(b) Technical Evaluation Criteria.

(End of Provision)

Evaluation Factors for Award—Proposal Meets the Minimum Needs of the Government With the Lowest Evaluated Cost/Price. Alternate II (XX 1996)

(a) The Government will make award to the lowest-evaluated cost or price, technically acceptable, responsible offeror whose offer meets the minimum needs of the Government. In the event that there are two or more technically acceptable, equal price (cost) offers, the Government will consider other factors, as listed below in descending order of importance:

(b) Technical Evaluation Criteria.

(End of Provision)

Evaluation Factors for Award (XX 1996) Alternate III (XX 96)

(a) The Government will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the Government, cost or price, and other factors considered. For this solicitation, all evaluation factors other than cost or price when combined are approximately equal to cost or price.

(b) Technical Evaluation Criteria.

(End of Provision)

1552.215–72 [Removed]

12. Section 1552.215–72 is removed.

[FR Doc. 96–12628 Filed 5–20–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 246, 280, 281, 282, 298, 299, 300, 301, 371, 380, and 695

[Docket No. 960419115–6115–01; I.D. 032196A]

RIN 0648–AI22

International Fisheries; Consolidation of Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to consolidate 10 CFR parts into one part that would contain regulations governing international fisheries in the U.S. Exclusive Economic Zone (EEZ) and on the high seas. All but one of the consolidated parts implement an international agreement, convention, or treaty to which the United States is a party. The consolidated text would be reorganized into a more logical and cohesive order, duplicative and outdated provisions would be eliminated, and editorial changes would be made for readability, clarity, and uniformity. Framework procedures would be added for the specifications of annual management measures under two parts. In addition, an obsolete CFR part would be removed. The purpose of this proposed rule is to make the regulations more concise, better organized and, therefore, easier for the public to use. This proposed action is part of the President's Regulatory Reinvention Initiative.

DATES: Comments must be received on or before June 14, 1996.

ADDRESSES: Comments should be sent to Robert Gorrell, Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments regarding burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be sent to Robert Gorrell at the above address and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Robert Gorrell, 301–713–2343.

SUPPLEMENTARY INFORMATION:

Background

In March 1995, President Clinton issued a directive to Federal agencies regarding their responsibilities under his Regulatory Reinvention Initiative. This initiative is part of the National Performance Review and calls for comprehensive regulatory reform. The President directed all agencies to undertake a review of all their regulations, with an emphasis on eliminating or modifying those that are obsolete, duplicative, or otherwise in need of reform. This proposed rule is intended to carry out the President's directive with respect to those regulations governing international fisheries, other than whaling and Atlantic highly migratory species, under the jurisdiction of NMFS.

Consolidation of regulations into one CFR part (50 CFR part 300). Currently, regulations governing international fisheries, other than whaling and Atlantic highly migratory species, are contained in 11 separate parts of title 50 of the CFR. NMFS is proposing to remove nine of the parts (parts 246 (Marking of Containers or Packages), 280 (Pacific Tuna Fisheries), 282 (South Pacific Tuna Fisheries), 298 (United States-Canada Fisheries Enforcement Agreement), 299 (U.S. Nationals Fishing in the Russian Fisheries), 301 (Pacific Halibut Fisheries), 371 (Fraser River Sockeye and Pink Salmon Fisheries), 380 (Antarctic Marine Living Resources Convention Act of 1984), and 695 (Vessels of the United States Fishing in Columbian Treaty Waters)) and to consolidate the regulations contained therein with the existing regulations in part 300 (High Seas Fisheries). NMFS also is proposing to eliminate part 281 (Restrictions on Tuna Imports) as no longer necessary. The consolidated regulations would provide the public with a single reference source for the regulations applying to international fisheries. Consolidation would result in one set of regulations that is more concise, clearer, and easier to use than the existing regulations found in 11 separate parts.

Reorganization of measures within the consolidated regulations and elimination of obsolete or duplicative provisions. NMFS proposes to simplify and shorten all the existing international fisheries regulations and recodify these in part 300. A subpart A containing general provisions would be created with a separate subpart (subparts B through K) for each of the 10 parts being consolidated. Because portions of the existing regulations contain identical or nearly identical provisions, this rule would combine and restructure text. Regulatory language would be revised to improve clarity and consistency.

Duplicative and obsolete provisions would be removed. Terms and other regulatory provisions believed to be nonessential also would be removed. No substantive changes, except for those specifically identified below, are intended.

This proposed rule includes five types of substantive revisions. First, proposed subpart A—General includes a definitions section (§ 300.2). The standard for inclusion under general definitions is that the term have general applicability throughout the part. All these terms were moved from one or more of the existing parts that would be consolidated. Where a term was defined similarly in two or more existing parts, a single definition was selected for inclusion in § 300.2. Consequently, definitions for some parts have been modified slightly, while others are newly applicable. Some terms in subpart A are defined differently in certain other subparts. In those instances, the definition of the term as set forth in the program subpart applies therein, rather than the definition contained in the general subpart.

Second, proposed subpart A—General includes both a general prohibitions section (§ 300.4) and a facilitation of enforcement section (§ 300.5). The prohibitions and facilitation of enforcement sections contain provisions that are generally applicable to many situations. One group of prohibitions deals with the protection of authorized officers and observers, another group insures the validity of information and recordkeeping and assists in investigations, another protects against destruction of evidence, and another prohibits the transportation or possession of illegally obtained living marine resources. The prohibitions in the other subparts contain prohibitions that are specific to each subpart. The facilitation of enforcement provisions are grouped by compliance assurance, communications, boarding, and signals. Some subparts have their own facilitation of enforcement provisions that are specific to each subpart. The general provisions were drawn from several of the existing parts that would be consolidated; however, these provisions are newly applicable for most subparts.

Third, proposed subpart E—Pacific Halibut Fisheries would greatly reduce the existing Pacific halibut regulations by eliminating from codification all but one of the existing sections containing management measures and substituting a new International Pacific Halibut Commission (IPHC) annual management measures section (§ 300.62) and a new catch sharing plan and domestic management section (§ 300.63). Many of the definitions also would be removed from codification, as those terms would no longer be used in codified text. The IPHC annual management measures section would establish a procedure for the Assistant Administrator for Fisheries, NMFS (Assistant Administrator), to publish the IPHC regulations by single notice in the **Federal Register**. The catch sharing plan section would establish a procedure for the Assistant Administrator and the appropriate Regional Fishery Management Council to develop plans to apportion catch limits adopted by the IPHC and implement domestic management measures by preliminary and final notices in the **Federal Register**. A prohibitions section would be added to make it unlawful to fish for halibut except in accordance with the IPHC's annual management measures or in accordance with the Assistant Administrator's catch sharing plans and implementing management measures. The one existing section that would remain codified concerns fishing by U.S. treaty Indian tribes (§ 300.64). All those management measures adopted by the IPHC and NMFS and currently in effect (as codified in the current 50 CFR part 301 with 1996 revisions published at 61 FR 11337, March 20, 1996) would continue in effect until replaced by management measures in 1997 to be published in the **Federal Register** pursuant to §§ 300.62 and 300.63 proposed by this rule. This substantive change is discussed in more detail below.

Fourth, proposed subpart H—Antarctic Marine Living Resources would establish a framework procedure by which NMFS would publish annual management measures by single notice in the **Federal Register**, rather than by codified rules. These management measures are modified annually and need not be codified. All those management measures adopted by the Commission for the Conservation of Antarctic Marine Living Resources (Commission) and published on March 5, 1996 (61 FR 8483), as well as other Commission measures still in effect, would continue in effect until replaced by management measures in 1997 to be published in the **Federal Register** under the proposed framework procedures at § 300.111. This substantive change is discussed in more detail below.

Fifth, the requirements of part 281—Restrictions on Tuna Imports are proposed for elimination because they are no longer necessary. For approximately 2 decades, there have not been yellowfin quotas under the Convention for the Establishment of an Inter-American Tropical Tuna Commission that the part 281 regulations were designed to address. If there were a need in the future for a tuna quota regime under the Inter-American Tropical Tuna Commission, there would be adequate time to implement such a regulatory scheme. No quotas are expected in the foreseeable future.

Decodification of the IPHC's Regulations and NMFS's Catch Sharing Regulations. Proposed subpart E contains an annual management measures section that explains the process for NMFS publishing IPHC's annual management measures by single notice, with immediate regulatory effect, in the **Federal Register**. The annual management measures would need to be published by March 15. In addition, the IPHC makes its regulations available to fishermen in handbook form. Presently, IPHC's regulations are codified. Of the current codified domestic halibut management sections, only one section (Fishing by U.S. Treaty Indian Tribes) would be retained.

Proposed subpart E also contains a catch sharing plan section that explains implementation of catch sharing plans. It explains the two notice process for NMFS to implement management measures under the area 2A catch sharing plan. The preliminary notice of management measures would need to be published by January 1. The public would be provided a comment period that extends until after the annual IPHC meeting when the final catch limits are announced. The measures will then be published in a final notice, with immediate regulatory effect.

By decodifying the IPHC regulations and NMFS's catch sharing regulations, the administration of the management program would be improved and the potential for confusion would be avoided.

The parties to the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea convene an annual meeting in January. At the annual meeting the Commission adopts final catch limits and other management measures after considering staff and industry recommendations and public testimony. These measures generally are revised annually. Because title 50 CFR is published only once a year, reflecting measures in effect as of the preceding October 1, many of the measures would have been superseded and conceivably could cause confusion. Also, the Office of the Federal Register prefers not to codify regulations with limited effect, i.e., generally a year or less.

Establishment of broad framework procedures for future Antarctic regulatory changes. Proposed subpart G contains framework procedures to implement annual management measures by regulatory notice. By establishing a framework for implementing management measures that are adopted annually by the Commission and agreed to by the United States, the administration of the management program would be improved, the potential for confusion would be avoided, and the codification of regulations would be reduced.

The parties to the Convention on the Conservation of Antarctic Marine Living Resources meet annually to adopt conservation and other management measures to govern fishing and related activities to be conducted in the Antarctic region. Following the conclusion of the meeting, the Secretary of State publishes a document for public comment, in the **Federal Register**, of the measures adopted by the Commission. If the United States does not object to the measures within 90 days of notification by the Commission, the United States is bound by those measures. After considering any public comment on the measures, the Assistant Administrator publishes a final rule codifying the management measures. These measures generally have a limited effect of approximately 1 year, when measures for the succeeding year supersede current measures. Therefore codification is not necessary and could cause confusion. Further, the Office of the Federal Register prefers not to codify regulations with limited effect. Under the framework proposed in this rule, notification of annual measures would be published in the **Federal Register**, and would have force and effect until superseded by the next year's notice, unless otherwise modified or withdrawn.

References to Other Proposed Rules. NMFS, in another rulemaking published May 1, 1996, at 61 FR 19390, proposed to consolidate general provisions of the Magnuson Fishery Conservation and Management Act into 50 CFR part 600. Because some of the general provisions to be consolidated into part 600 apply to several international fisheries regulations proposed for consolidation in this rule, the regulatory text in this rule includes references to the consolidated part 600, rather than to existing codified text.

Request for comments. NMFS specifically requests comments or suggestions for further consolidation or elimination of obsolete or duplicative provisions contained in the proposed revision to international fisheries regulations.

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated, to the Assistant Administrator, the authority to sign material for publication in the **Federal Register**.

Classification

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed consolidations and revisions to the existing regulatory text are intended to make the regulations more concise, better organized, and easier for the public to use and would have little or no economic impact on any small entities. Applying selected prohibitions and facilitation of enforcement provisions to all subparts could result in improved enforcement of the regulations, but are not expected to change fishing practices, costs, or revenues. As a result, a regulatory flexibility analysis was not prepared.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) that were previously approved by the Office of Management and Budget.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless

that collection of information displays a currently valid OMB Control Number.

The following collection-of-information requirements have been approved by OMB for international fisheries regulations under the following approval numbers:

(a) *Approved under 0648–0304*—High seas fisheries, vessel permits (§ 300.13), estimated at .5 hours per response.

(b) *Approved under 0648–0148*—Pacific tuna fisheries, yellowfin tuna recordkeeping and written reports (§ 300.22), estimated at .1 hours per response.

(c) *Approved under 0648–0202*—Pacific bluefin tuna dealer permits (§ 300.24), estimated at .083 hours per response.

(d) *Approved under 0648–0239*—Pacific bluefin tuna dealer recordkeeping and reporting (§ 300.25), estimated at .25 hours per response.

(e) *Approved under 0648–0239*—Pacific tuna fisheries, Pacific bluefin tuna affixing of tags (§ 300.26(c)), estimated at .017 hours per response.

(f) *Approved under 0648–0239*—Pacific tuna fisheries, Pacific bluefin tuna removal of tags (§ 300.26(d)), estimated at .017 hours per response.

(g) *Approved under 0648–0218*—South Pacific tuna fisheries, vessel licenses (§ 300.32), estimated at .25 hours per response.

(h) *Approved under 0648–0306*—South Pacific tuna fisheries, reporting requirements (§ 300.34), estimated at .25 hours per marking.

(i) *Approved under 0648–0306*—South Pacific tuna fisheries, vessel and gear identification (§ 300.35), estimated at .25 hours per marking.

(j) *Approved under 0648–0194*—Antarctic marine living resources, procedure for according protection to CCAMLR ecosystem monitoring program sites, general (§ 300.103(a)), estimated at 1 hour per response.

(k) *Approved under 0648–0194*—Antarctic marine living resources, scientific research (§ 300.104(d)), estimated at 80 hours per response.

(l) *Approved under 0648–0194*—Antarctic marine living resources, scientific research (§ 300.104(e)), estimated at .25 hours per response.

(m) *Approved under 0648–0194*—Antarctic marine living resources, initiating a new fishery (§ 300.105(c)), estimated at 16 hours per response.

(n) *Approved under 0648–0194*—Antarctic marine living resources, exploratory fishing (§ 300.106(e)), estimated at 40 hours per response.

(o) *Approved under 0648–0306*—Antarctic marine living resources, vessel identification (§ 300.108(a)), estimated at .25 hours per marking.

(p) *Approved under 0648–0305*—Antarctic marine living resources, gear identification (§ 300.108(c)), estimated at .25 hours per marking.

(q) *Approved under 0648–0194*—Antarctic marine living resources, harvesting permits (§ 300.112), estimated at .5 hours per response.

(r) *Approved under 0648–0194*—Antarctic marine living resources, import permits (§ 300.113), estimated at .5 hours per response.

(s) *Approved under 0648–0205*—Vessels of the United States fishing in Colombian Treaty waters, certificates and permits (§ 300.123), estimated at .33 hours per response.

(t) *Approved under 0648–0016*—Vessels of the United States fishing in Colombian Treaty waters, recordkeeping and reporting (§ 300.124(b)), estimated at .22 hours per response.

(u) *Approved under 0648–0306*—Vessels of the United States fishing in Colombian Treaty waters, vessel identification (§ 300.125), estimated at .25 hours per marking.

(v) *Approved under 0648–0228*—U.S. nationals fishing in Russian fisheries, permit procedures (§ 300.152), estimated at .5 hours per response.

(w) *Approved under 0648–0228*—U.S. nationals fishing in Russian fisheries, permit issuance, copies (§ 300.153(b)), estimated at .167 hours per response.

(x) *Approved under 0648–0228*—U.S. nationals fishing in Russian fisheries, recordkeeping and reporting, vessel permit abstract report (§ 300.154(b)), estimated at .5 hours per response.

(y) *Approved under 0648–0228*—U.S. nationals fishing in Russian fisheries, recordkeeping and reporting, activity reports (§ 300.154(c)), estimated at .5 hours per response.

(z) *Approved under 0648–0228*—U.S. nationals fishing in Russian fisheries, recordkeeping and reporting, recordkeeping (§ 300.154(d)), estimated at .083 hours per response.

The estimated response times shown include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding burden estimates, or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects

50 CFR Part 246

Exports, Fish, Imports, Labeling, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Parts 280 and 282

Fisheries, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 281

Fisheries, Imports, Treaties.

50 CFR Part 298

Canada, Fisheries, Treaties.

50 CFR Part 299

Fisheries, Reporting and recordkeeping requirements, Russian Federation, Treaties.

50 CFR Part 300

Fisheries, High seas fishing, International agreements, Reporting and recordkeeping requirements, Permits.

50 CFR Parts 301 and 695

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 371

Canada, Fisheries, Fishing, Indians, Treaties.

50 CFR Part 380

Administrative practice and procedure, Antarctica, Fish, Imports, Marine resources, Reporting and recordkeeping requirements, Treaties, Wildlife.

Dated: May 13, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, chapters II, III, and VI are proposed to be amended as follows:

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PARTS 246, 280, 281, 282, 298, AND 299 [REMOVED]

1. Under the authority of 16 U.S.C. 3371–3378, 16 U.S.C. 951–961 and 971 *et seq.*, 16 U.S.C. 973–973r, and 16 U.S.C. 1801 *et seq.*, 50 CFR parts 246, 280, 281, 282, 298, and 299 are removed and subchapter L is vacated.

2. Chapter III is revised to read as follows:

CHAPTER III—INTERNATIONAL FISHING AND RELATED ACTIVITIES

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart A—General

Sec.
300.1 Purpose and scope.
300.2 Definitions.
300.3 Relation to other laws.
300.4 General prohibitions.
300.5 Facilitation of enforcement.

Subpart B—High Seas Fisheries

300.10 Purpose.
300.11 Definitions.
300.12 Issuing offices.
300.13 Vessel permits.
300.14 Vessel and gear identification.
[Reserved]
300.15 Prohibitions.
300.16 Penalties.
300.17 Reporting and recordkeeping.
[Reserved]

Subpart C—Pacific Tuna Fisheries

300.20 Purpose and scope.
300.21 Definitions.
300.22 Yellowfin Tuna—Recordkeeping and written reports.
300.23 Yellowfin Tuna—Persons and vessels exempted.
300.24 Pacific Bluefin Tuna—Dealer permits.
300.25 Pacific Bluefin Tuna—Dealer recordkeeping and reporting.
300.26 Pacific Bluefin Tuna—Tags.
300.27 Pacific Bluefin Tuna—Documentation requirements.
300.28 Pacific Bluefin Tuna—Prohibitions.

Subpart D—South Pacific Tuna Fisheries

300.30 Purpose and scope.
300.31 Definitions.
300.32 Vessel licenses.
300.33 Compliance with applicable national laws.
300.34 Reporting requirements.
300.35 Vessel and gear identification.
300.36 Closed area stowage requirements.
300.37 Radio monitoring.
300.38 Prohibitions.
300.39 Exceptions.
300.40 Civil penalties.
300.41 Investigation notification.
300.42 Findings leading to removal from fishing area.
300.43 Observers.
300.44 Other inspections.

Subpart E—Pacific Halibut Fisheries

300.60 Purpose and scope.
300.61 Definitions.
300.62 Annual management measures.
300.63 Catch sharing plans and domestic management measures.
300.64 Fishing by U.S. treaty Indian tribes.
300.65 Prohibitions.

Subpart F—Fraser River Sockeye and Pink Salmon Fisheries

300.90 Purpose and scope.
300.91 Definitions.
300.92 Relation to other laws.
300.93 Reporting requirements.
300.94 Prohibitions and restrictions.
300.95 Treaty Indian fisheries.
300.96 Penalties.
300.97 Inseason orders.

Subpart G—Antarctic Marine Living Resources

300.100 Purpose and scope.
300.101 Definitions.
300.102 Relationship to other treaties, conventions, laws, and regulations.
300.103 Procedure for according protection to CCAMLR Ecosystem Monitoring Program Sites.
300.104 Scientific research.
300.105 Initiating a new fishery.
300.106 Exploratory fisheries.
300.107 Reporting and recordkeeping requirements.
300.108 Vessel and gear identification.
300.109 Gear disposal.
300.110 Mesh size.
300.111 Framework for annual management measures.
300.112 Harvesting permits.
300.113 Import permits.
300.114 Appointment of a designated representative.
300.115 Prohibitions.
300.116 Facilitation of enforcement and inspection.
300.117 Penalties.

Figure 1 to Subpart G—Boundaries of the Statistical Reporting Area in the Southern Ocean

Figure 2 to Subpart G—The Use of Streamer Lines to Minimize the Incidental Mortality of Seabirds in the Course of Longline Fishing or Longline Fishing Research Operations in the Convention Area

Subpart H—Vessels of the United States Fishing in Colombian Treaty Waters

300.120 Purpose.
300.121 Definitions.
300.122 Relation to other laws.
300.123 Certificates and permits.
300.124 Recordkeeping and reporting.
300.125 Vessel identification.
300.126 Prohibitions.
300.127 Facilitation of enforcement.
300.128 Penalties.
300.129 Fishing year.
300.130 Vessel and gear restrictions.
300.131 Conch harvest limitations.
300.132 Lobster harvest limitations.

Subpart I—United States-Canada Fisheries Enforcement

300.140 Purpose and scope.
300.141 Definitions.
300.142 Prohibitions.
300.143 Facilitation of enforcement.
300.144 Penalties and sanctions.

Subpart J—U.S. Nationals Fishing in Russian Fisheries

300.150 Purpose.
300.151 Definitions.
300.152 Procedures.
300.153 Permit issuance.
300.154 Recordkeeping and reporting.
300.155 Requirements.
300.156 Prohibited acts.
300.157 Penalties.

Subpart K—Transportation and Labeling of Fish or Wildlife

300.160 Requirement for marking of containers or packages.
300.161 Alternatives and exceptions.

Subpart A—General

Authority: 16 U.S.C. 773 *et seq.*; 16 U.S.C. 951–961 and 971 *et seq.*; 16 U.S.C. 973–973r; 16 U.S.C. 2431 *et seq.*; 16 U.S.C. 3371–3378; 16 U.S.C. 3636(b); 16 U.S.C. 5501 *et seq.*; and 16 U.S.C. 1801 *et seq.*

§ 300.1 Purpose and scope.

The purpose of this part is to implement the fishery conservation and management measures provided for in the international treaties, conventions, or agreements specified in each subpart, as well as certain provisions of the Lacey Act Amendments of 1981. The regulations in this part apply, except where otherwise specified in this part, to all persons and all places subject to the jurisdiction of the United States under the acts implemented under each subpart.

§ 300.2 Definitions.

In addition to the definitions in each act, agreement, convention, or treaty specified in subparts B through K of this part, the terms used in this part have the following meanings:

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, or a designee. Address: Room 14555, 1315 East-West Highway, Silver Spring, MD 20910.

Authorized officer means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard; or any U.S. Coast Guard personnel accompanying and acting under the direction of a commissioned, warrant, or petty officer of the U.S. Coast Guard;

(2) Any special agent or fisheries enforcement officer of NMFS; or

(3) Any person designated by the head of any Federal or state agency that has entered into an agreement with the Secretary of Commerce or the Commandant of the U.S. Coast Guard to enforce the provisions of any statute administered by the Secretary.

CCAMLR inspector means a person designated by a member of the Commission for the Conservation of Antarctic Marine Living Resources as an inspector under Article XXIV of the Convention on the Conservation of Antarctic Marine Living Resources to verify compliance with measures in effect under the Convention.

Director, Alaska Region, means Director, Alaska Region, NMFS, 709 West Ninth Street, Suite 401, P.O. Box 21668, Juneau, AK 99802, or a designee.

Director, Northeast Region, means Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298, or a designee.

Director, Northwest Region, means Director, Northwest Region, NMFS, 7600 Sand Point Way, NE., BIN C15700, Bldg. 1, Seattle, WA 98115, or a designee.

Director, Southeast Fisheries Science Center, means Director, Science and Research, Southeast Fisheries Science

Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, or a designee.

Director, Southeast Region, means Director, Southeast Region, NMFS, 9721 Executive Center Drive, N., St. Petersburg, FL 33702, or a designee.

Director, Southwest Region, means Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, or a designee.

Exclusive Economic Zone or *EEZ* means the zone established by Presidential Proclamation 5030, dated March 10, 1983, as defined in 16 U.S.C. 1802(6).

Fishing or *to fish* means:

(1) The catching or taking of fish;

(2) The attempted catching or taking of fish;

(3) Any other activity that can reasonably be expected to result in the catching or taking of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1) through (3) of this definition.

Fishing vessel means any vessel, boat, ship, or other craft that is used for, equipped to be used for, or of a type normally used for fishing.

IATTC means the Inter-American Tropical Tuna Commission, established pursuant to the Convention for the Establishment of an Inter-American Tropical Tuna Commission.

Import means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction, constitutes an importation within the meaning of the customs laws of the United States.

IRCS means International Radio Call Sign.

Magnuson Act means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Notional of the United States or *U.S. national* means any person subject to the jurisdiction of the United States, including, but not limited to, a citizen or resident of the United States, or a person employed on a vessel of the United States. In the case of a corporation, partnership or other non-natural person, this includes, but is not limited to, any entity that is the owner of a vessel of the United States.

NMFS means the National Marine Fisheries Service, NOAA, Department of Commerce.

NMFS Headquarters means NMFS, 135 East-West Highway, Silver Spring, MD 20910. Attention: Office of Fisheries Conservation and Management.

Official number means the documentation number issued by the USCG or the certificate number issued by a state or the USCG for an undocumented vessel, or any equivalent number if the vessel is registered in a foreign nation.

Operator means, with respect to any vessel, the master or other individual aboard and in charge of that vessel.

Owner means, with respect to any vessel:

(1) Any person who owns that vessel in whole or part (whether or not the vessel is leased or chartered);

(2) Any charterer of the vessel, whether bareboat, time, or voyage;

(3) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(4) Any agent designated as such by a person described in this definition.

Person means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized, or existing under the laws of any state), and any Federal, state, local, or foreign government or any entity of any such government.

Secretary means the Secretary of Commerce or a designee.

USCG means the United States Coast Guard.

Yellowfin tuna means any fish of the species *Thunnus albacares* (synonomy: *Neothunnus macropterus*).

§ 300.3 Relation to other laws.

Other laws that may apply to fishing activities addressed herein are set forth in § 600.705 of this chapter.

§ 300.4 General prohibitions.

It is unlawful for any person subject to the jurisdiction of the United States to:

(a) Violate the conditions or restrictions of a permit issued under this part.

(b) Fail to submit information, fail to submit information in a timely manner, or submit false or inaccurate information, with respect to any information required to be submitted, reported, communicated, or recorded pursuant to this part.

(c) Make any false statement, oral or written, to an authorized officer concerning the catching, taking, harvesting, possession, landing, purchase, sale, or transfer of fish, or concerning any other matter subject to investigation by that officer under this part.

(d) Conceal any material fact (including by omission), concerning any matter subject to investigation by an authorized officer under this part.

(e) Refuse to allow an authorized officer to inspect any report or record required to be made or kept under this part.

(f) Falsify, cover, or otherwise obscure, the name, home port, official number (if any), or any other similar marking or identification of any fishing vessel subject to this part such that the vessel cannot be readily identified from an enforcement vessel or aircraft.

(g) Fail to comply immediately with any of the enforcement and boarding procedures specified in this part.

(h) Refuse to allow an authorized officer to board a fishing vessel, or enter any other area of custody (i.e., any vessel, building, vehicle, live car, pound, pier, or dock facility where fish might be found) subject to such person's control, for the purpose of conducting any inspection, search, seizure, investigation, or arrest in connection with the enforcement of this part or any other applicable law.

(i) Destroy, stave, or dispose of in any manner, any fish, gear, cargo, or other matter, upon any communication or signal from an authorized officer of the United States, or upon the approach of such an officer, enforcement vessel, or aircraft, before the officer has had the opportunity to inspect same, or in contravention of directions from such an officer.

(j) Intentionally destroy evidence that could be used to determine if a violation of this part has occurred.

(k) Assault, resist, oppose, impede, intimidate, threaten, obstruct, delay, prevent, or interfere, in any manner, with an authorized officer in the conduct of any boarding, inspection, search, seizure, investigation, or arrest in connection with enforcement of this part.

(l) Resist a lawful arrest or detention for any act prohibited by this part.

(m) Interfere with, delay, or prevent, by any means, the apprehension, arrest, or detection of another person, knowing that such person has committed any act prohibited by this part.

(n) Interfere with, obstruct, delay, or prevent, by any means, an investigation, search, seizure, or disposition of seized property in connection with enforcement of this part.

(o) Ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any living marine resource taken or retained in violation of this part.

(p) Violate any provision of any statute implemented by this part.

(q) Attempt to do any of the foregoing.

§ 300.5 Facilitation of enforcement.

(a) *Compliance.* The operator of, or any other person aboard, any fishing vessel subject to this part must immediately comply with instructions and signals issued by an authorized officer or CCAMLR inspector to stop the vessel, and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record (where applicable), and catch for purposes of enforcing this part.

(b) *Communications.* (1) Upon being approached by a USCG vessel or aircraft, or other vessel or aircraft with an authorized officer or CCAMLR inspector aboard, the operator of a fishing vessel must be alert for communications conveying enforcement instructions.

(2) VHF–FM radiotelephone is the preferred method of communicating between vessels. If the size of the vessel and the wind, sea, and visibility conditions allow, a loudhailer may be used instead of the radio. Hand signals, placards, high frequency radiotelephone, voice, flags, whistle or horn may be employed by an authorized officer or CCAMLR inspector, and message blocks may be dropped from an aircraft.

(3) If other communications are not practicable, visual signals may be transmitted by flashing light directed at the vessel signaled. USCG units will normally use the flashing light signal "L" which, in the International Code of Signals, means "you should stop your vessel instantly."

(4) Failure of a vessel's operator promptly to stop the vessel when directed to do so by an authorized officer or CCAMLR inspector, or by an enforcement vessel or aircraft, using loudhailer, radiotelephone, flashing light, flags, whistle, horn or other means constitutes prima facie evidence of the offense of refusal to allow an authorized officer or CCAMLR inspector to board.

(5) A person aboard a vessel who does not understand a signal from an enforcement unit and who is unable to obtain clarification by loudhailer or radiotelephone must consider the signal to be a command to stop the vessel immediately.

(c) *Boarding.* The operator of a vessel directed to stop must:

(1) Monitor Channel 16, VHF–FM, if so equipped.

(2) Stop immediately and lay to or, if appropriate and/or directed to do so by the authorized officer or CCAMLR inspector, maneuver in such a way as to allow the safe boarding of the vessel by the authorized officer or CCAMLR inspector and the boarding party.

(3) Except for those vessels with a freeboard of 4 ft (1.25 m) or less, provide a safe ladder, if needed, for the authorized officer or CCAMLR inspector and boarding party to come aboard.

(4) When necessary to facilitate the boarding or when requested by an authorized officer or CCAMLR inspector, provide a manrope or safety line, and illumination for the ladder.

(5) Take such other actions as necessary to facilitate boarding and to ensure the safety of the authorized officer or CCAMLR inspector and the boarding party.

(d) *Signals.* The following signals, extracted from the International Code of Signals, may be sent by flashing light by an enforcement unit when conditions do not allow communications by loudhailer or radiotelephone. Knowledge of these signals by vessel operators is not required. However, knowledge of these signals and appropriate action by a vessel operator may preclude the necessity of sending the signal "L" and the necessity for the vessel to stop instantly.

(1) "AA" repeated (.– .–) is the call to an unknown station. The operator of the signaled vessel should respond by identifying the vessel by radiotelephone or by illuminating the vessel's identification.

(2) "RY–CY" (.–. –.–– –.–. –.––) means "you should proceed at slow speed, a boat is coming to you." This signal is normally employed when conditions allow an enforcement boarding without the necessity of the vessel being boarded coming to a complete stop, or, in some cases, without retrieval of fishing gear that may be in the water.

(3) "SQ3" (... ––.– ...––) means "you should stop or heave to; I am going to board you."

Subpart B—High Seas Fisheries

Authority: 16 U.S.C. 5501 *et seq.*

§ 300.10 Purpose.

This subpart implements the High Seas Fishing Compliance Act of 1995 (Act), which requires the Secretary to license U.S. vessels fishing on the high seas.

§ 300.11 Definitions.

In addition to the terms defined in § 300.2 and those in the Act and the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted by the Conference of the Food and Agriculture Organization of the United Nations on November 24, 1993 (Agreement), the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Act, or the Agreement, the definition in this section shall apply.

High seas means the waters beyond the territorial sea or exclusive economic zone (or the equivalent) of any Nation, to the extent that such territorial sea or exclusive economic zone (or the equivalent) is recognized by the United States.

High seas fishing vessel means any vessel of the United States used or intended for use on the high seas for the purpose of the commercial exploitation of living marine resources as a harvesting vessel, mothership, or any other support vessel directly engaged in a fishing operation.

International conservation and management measures means measures to conserve or manage one or more species of living marine resources that are adopted and applied in accordance with the relevant rules of international law, as reflected in the 1982 United Nations Convention on the Law of the Sea, and that are recognized by the United States.

Regional Director means any one of the Directors of the five NMFS regional offices, defined under § 300.2, serving as the issuing office.

§ 300.12 Issuing offices.

Any Regional Director may issue permits required under this subpart. While applicants for permits may submit an application to any Regional Director, applicants are encouraged to submit their applications (with envelopes marked "Attn: HSFCA Permits") to the Regional Director with whom they normally interact on fisheries matters.

§ 300.13 Vessel permits.

(a) *Eligibility.* (1) Except for vessels having unpaid or overdue civil penalties, criminal fines, or other liabilities incurred in a judicial proceeding under any statute administered by NOAA, any high seas fishing vessel of the United States is eligible to receive a permit under this subpart, unless the vessel was previously authorized to be used for fishing on the high seas by a foreign nation, and—

(i) The foreign nation suspended such authorization, because the vessel undermined the effectiveness of international conservation and management measures, and the suspension has not expired; or

(ii) The foreign nation, within the 3 years preceding application for a permit under this section, withdrew such authorization, because the vessel

undermined the effectiveness of international conservation and management measures.

(2) The restrictions in paragraphs (a)(1) (i) and (ii) of this section do not apply if ownership of the vessel has changed since the vessel undermined the effectiveness of international conservation and management measures, and the new owner has provided sufficient evidence to the Regional Director demonstrating that the owner and operator at the time the vessel undermined the effectiveness of such measures has no further legal, beneficial, or financial interest in, or control of, the vessel.

(3) The restrictions in paragraphs (a)(1) (i) and (ii) of this section do not apply if it is determined by the Regional Director that issuing a permit would not subvert the purposes of the Agreement.

(b) *Application forms.* The owner or operator of a high seas fishing vessel may apply for a permit under this subpart by completing an application form. Applicants may obtain an application form from a Regional Director.

(c) *Application information.* An applicant must submit a complete and accurate permit application, signed by the owner or operator, to the appropriate Regional Director.

(d) *Fees.* NMFS will charge a fee to recover the administrative expenses of permit issuance. The amount of the fee will be determined in accordance with the procedures of the NOAA Finance Handbook, available from a Regional Director, for determining administrative costs of each special product or service. The fee is specified with the application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded will invalidate any permit.

(e) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit, which will include appropriate conditions or restrictions, within 30 days of receipt of a completed application and payment of the appropriate fee.

(2) The Regional Director will notify the applicant of any deficiency in the application.

(f) *Validity.* Permits issued under this subpart are valid for 5 years from the date of issuance. Renewal of a permit prior to its expiration is the responsibility of the permit holder. For a permit to remain valid to its expiration date, the vessel's USCG documentation or state registration must be kept current. A permit issued under this subpart is void when the name of the owner or vessel changes, or in the event the vessel is no longer eligible for U.S. documentation, such documentation is revoked or denied, or the vessel is removed from such documentation.

(g) *Change in application information.* Any changes in vessel documentation status or other permit application information must be reported to the Regional Director in writing within 15 days of such changes.

(h) *Transfer.* A permit issued under this subpart is not transferable or assignable to another vessel or owner; it is valid only for the vessel and owner to which it is issued.

(i) *Display.* A valid permit, or a copy thereof, issued under this subpart must be on board the vessel while operating on the high seas and available for inspection by an authorized officer. Faxed copies of permits are acceptable.

§ 300.14 Vessel and gear identification. [Reserved]

§ 300.15 Prohibitions.

In addition to the prohibitions in § 300.4, it is unlawful for any person to:

(a) Use a high seas fishing vessel on the high seas in contravention of international conservation and management measures.

(b) Use a high seas fishing vessel on the high seas, unless the vessel has on board a valid permit issued under § 300.13.

§ 300.16 Penalties.

Any person or high seas fishing vessel found to be in violation of the Act, this subpart, or any permit issued under this subpart will be subject to the civil and criminal penalty provisions, permit sanctions, and forfeiture provisions prescribed in the Act, 15 CFR part 904 (Civil Procedures), and other applicable laws.

§ 300.17 Reporting and recordkeeping. [Reserved]

Subpart C—Pacific Tuna Fisheries

Authority: 16 U.S.C. 951–961 and 971 *et seq.*

§ 300.20 Purpose and scope.

The regulations in this subpart implement the Tuna Conventions Act of 1950 (Act), the Atlantic Tunas Convention Act of 1975, and the IATTC recommendations for the conservation of yellowfin tuna and the recommendations of the International Commission for the Conservation of Atlantic Tunas for the conservation of bluefin tuna, so far as they affect vessels and persons subject to the jurisdiction of the United States.

§ 300.21 Definitions.

In addition to the terms defined in § 300.2, in the Act, the Convention for the Establishment of an Inter-American Tropical Tuna Commission, and the International Convention for the Conservation of Atlantic Tunas, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Act, or the Conventions, the definition in this section shall apply.

Bluefin tuna means the fish species *Thunnus thynnus* that is found in any ocean area.

Fishing vessel means any vessel, boat, ship, or other craft that is used for, equipped to be used for, or of a type that is normally used for fishing or for assisting or supporting a vessel engaged in fishing, except purse seine skiffs.

Pacific bluefin tuna means the subspecies of bluefin tuna *Thunnus thynnus orientalis* that is found in the Pacific Ocean.

Regional Director means the Director, Southwest Region.

Tag means the flexible, self-locking ribbon issued by the NMFS for the identification of bluefin tuna under § 300.26 or § 285.30 of this chapter.

§ 300.22 Yellowfin tuna—Recordkeeping and written reports.

The master or other person in charge of a fishing vessel, or a person authorized in writing to serve as the agent for either person, must keep an accurate log of all operations conducted from the fishing vessel, entering for each day the date, noon position (stated in latitude and longitude or in relation to known physical features), and the tonnage of fish on board, by species. The record and bridge log maintained at the request of the IATTC shall be sufficient to comply with this paragraph, provided the items of information specified are accurately entered in the log.

§ 300.23 Yellowfin tuna—Persons and vessels exempted.

This subpart does not apply to:

(a) Any person or vessel authorized by the IATTC, the Assistant Administrator, or any state of the United States to engage in fishing for research purposes.

(b) Any person or vessel engaged in sport fishing for personal use.

§ 300.24 Pacific bluefin tuna—Dealer permits.

(a) *General.* A dealer importing Pacific bluefin tuna, or purchasing or receiving for export Pacific bluefin tuna first landed in the United States, must have a valid permit issued under this section.

(b) *Application.* A dealer must apply for a permit in writing on an appropriate form obtained from the Regional Director. The application must be signed by the dealer and be submitted to the Regional Director at least 30 days before the date upon which the dealer desires to have the permit made effective. The application must contain the following information: Company name, principal place of business, owner's or owners' names, applicant's name (if different from owner or owners) and mailing address and telephone number, and any other information required by the Regional Director.

(c) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit within 30 days of receipt of a completed application.

(2) The Regional Director will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(d) *Duration.* Any permit issued under this section is valid until December 31 of the year for which it is issued, unless suspended or revoked.

(e) *Alteration.* Any permit that is substantially altered, erased, or mutilated is invalid.

(f) *Replacement.* The Regional Director may issue replacement permits. An application for a replacement permit is not considered a new application.

(g) *Transfer.* A permit issued under this section is not transferable or assignable; it is valid only for the dealer to whom it is issued.

(h) *Inspection.* The dealer must keep the permit issued under this section at his/her principal place of business. The permit must be displayed for inspection upon request of any authorized officer, or any employee of NMFS designated by the Regional Director for such purpose.

(i) *Sanctions.* The Assistant Administrator may suspend, revoke, modify, or deny a permit issued or sought under this section. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) *Fees.* The Regional Director may charge a fee to recover the administrative expenses of permit issuance. The amount of the fee is calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook, available from the Regional Director, for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

(k) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under this section, the dealer issued a permit must report the change to the Regional Director in writing. The permit is void if any change in information is not reported within 15 days.

§ 300.25 Pacific bluefin tuna—Dealer recordkeeping and reporting.

Any person issued a dealer permit under § 300.24:

(a) Must submit to the Regional Director a biweekly report on bluefin imports and exports on forms supplied by NMFS.

(1) The report required by this paragraph (a) must be postmarked and mailed at the dealer's expense within 10 days after the end of each 2-week reporting period in which Pacific bluefin tuna were exported. The biweekly reporting periods are defined as the first day to the 14th day of each month and the 15th day to the last day of the month.

(2) Each report must specify accurately and completely for each tuna or each shipment of bulk-frozen tuna exported: Date of landing or import; any tag number (if so tagged); weight in kilograms (specify if round or dressed); and any other information required by the Regional Director. At the top of each form, the company's name, license number, and the name of the person filling out the report must be specified. In addition, the beginning and ending dates of the 2-week reporting period must be specified by the dealer and noted at the top of the form.

(b) Must allow an authorized officer, or any employee of NMFS designated by the Regional Director for this purpose, to inspect and copy any records of transfers, purchases, or receipts of Pacific bluefin tuna.

(c) Must retain at his/her principal place of business a copy of each biweekly report for a period of 2 years from the date on which it was submitted to the Regional Director.

§ 300.26 Pacific bluefin tuna—tags.

(a) *Issuance.* The Regional Director will issue numbered tags to each person receiving a dealer's permit under § 300.24.

(b) *Transfer.* Tail tags issued under this section are not transferable and are usable only by the permitted dealer to whom they are issued.

(c) *Affixing tags.* At the discretion of dealers permitted under § 300.24, a tag issued under paragraph (a) of this section may be affixed to each Pacific bluefin tuna purchased or received by the dealer. If so tagged, the tag must be affixed to the tuna between the fifth dorsal finlet and the keel and tag numbers must be recorded on NMFS reports required by § 300.25(a) and any documents accompanying the shipment of Pacific bluefin tuna for domestic commercial use or export.

(d) *Removal.* An NMFS-issued tag affixed to any Pacific bluefin tuna at the option of any permitted dealer under paragraph (c) of this section or any tag affixed to any Pacific bluefin tuna to meet the requirements of § 285.202(a)(6)(v) of this chapter must remain on the tuna until the tuna is cut into portions. If the tuna or tuna parts subsequently are packaged for transport for domestic commercial use or for export, the tag number must be written legibly and indelibly on the outside of any package or container.

(e) *Reuse.* Tags issued under this section are separately numbered and may be used only once, one tail tag per fish, to distinguish the purchase of one Pacific bluefin tuna. Once affixed to a tuna or recorded on any package, container or report, a tail tag and associated number may not be reused.

§ 300.27 Pacific bluefin tuna—documentation requirements.

Bluefin tuna imported into, or exported or re-exported from the customs territory of the United States is subject to the documentation requirements specified in part 285 of this chapter (§§ 285.200–285.203).

§ 300.28 Pacific bluefin tuna—prohibitions.

In addition to the prohibitions in § 300.4, it is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(a) Import Pacific bluefin tuna or purchase or receive for export Pacific bluefin tuna first landed in the United States without a valid dealer permit issued under § 300.24.

(b) Remove any NMFS-issued tag affixed to any Pacific bluefin tuna at the option of any permitted dealer or any tag affixed to a Pacific bluefin tuna to meet the requirements of § 285.202(a)(6)(v) of this chapter, before removal is allowed under § 300.26, or fail to write the tag number on the shipping package or container as specified in § 300.26.

(c) Reuse any NMFS-issued tag affixed to a Pacific bluefin tuna at the option of a permitted dealer or any tag affixed to a Pacific bluefin tuna to meet the requirements of § 285.202(a)(6)(v) of this chapter or reuse any tag number previously written on a shipping package or container as prescribed by § 300.26.

Subpart D—South Pacific Tuna Fisheries

Authority: 16 U.S.C. 973–973r.

§ 300.30 Purpose and scope.

This subpart implements the South Pacific Tuna Act of 1988 (Act) and the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (Treaty) and applies to persons and vessels subject to the jurisdiction of the United States.

§ 300.31 Definitions.

In addition to the terms defined in § 300.2, in the Act, and in the Treaty, and unless the context requires otherwise, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Act, or the Treaty, the definition in this section shall apply.

Administrator means the individual or organization designated by the Pacific Island Parties to act on their behalf under the Treaty and notified to the United States.

Applicable national law means any provision of law of a Pacific Island Party that is described in paragraph 1(a) of Annex I of the Treaty.

Authorized inspector means any individual authorized by a Pacific Island Party or the Secretary to conduct inspections, to remove samples of fish, and to gather any other information relating to fisheries in the Licensing Area.

Authorized officer means any officer who is authorized by the Secretary, or the Secretary of Transportation, or the head of any Federal or state agency that has entered into an enforcement agreement with the Secretary under section 10(a) of the Act.

Authorized party officer means any officer authorized by a Pacific Island Party to enforce the provisions of the Treaty.

Closed area means any of the closed areas identified in Schedule 2 of Annex I of the Treaty.

Fishing means searching for, catching, taking, or harvesting fish; attempting to search for, catch, take, or harvest fish; engaging in any other activity that can reasonably be expected to result in the locating, catching, taking, or harvesting of fish; placing, searching for, or recovering fish aggregating devices or associated electronic equipment such as radio beacons; any operations at sea directly in support of, or in preparation for, any activity described in this paragraph; or aircraft use, relating to the activities described in this definition, except for flights in emergencies involving the health or safety of crew members or the safety of a vessel.

Fishing arrangement means an arrangement between a Pacific Island Party and the owner of a U.S. fishing vessel that complies with section 6(b) of the Act.

Fishing vessel or *vessel* means any boat, ship, or other craft that is used for, equipped to be used for, or of a type normally used for commercial fishing, and that is documented under the laws of the United States.

Licensing Area means all waters in the Treaty Area except for:

(1) Those waters subject to the jurisdiction of the United States in accordance with international law.

(2) Those waters within closed areas.

(3) Those waters within limited areas closed to fishing.

Licensing period means the period of validity of licenses issued in accordance with the Treaty.

Limited area(s) means those areas so identified in Schedule 3 of Annex I of the Treaty.

Operator means any person who is in charge of, directs or controls a vessel, including the owner, charterer and master.

Pacific Island Party means a Pacific island nation that is a party to the Treaty.

Regional Director means the Director, Southwest Region, or a designee.

Transship means to unload any or all of the fish on board a licensed vessel either ashore or onto another vessel.

Treaty Area means the area described in paragraph 1(k) of Article I of the Treaty.

§ 300.32 Vessel licenses.

(a) Each vessel fishing in the Licensing Area must have a license issued by the Administrator for the licensing period being fished, unless excepted by § 300.39. Each licensing period begins on June 15 and ends on June 14 of the following year.

(b) Upon receipt, the license or a duly certified copy, facsimile or telex confirmation must be carried on board the vessel when in the Licensing Area or Closed Areas and must be produced at the request of authorized officers, authorized party officers, or authorized inspectors. Prior to receipt of the license, but after issuance, a vessel may be used to fish, provided the number of the issued license is available on board.

(c) Application forms for licenses to use a vessel to fish in the Licensing Area may be requested from, and upon completion, must be returned to, the Regional Director. All of the information requested on the form and the following must be supplied before the application will be considered complete:

(1) The licensing period for which the license is requested.

(2) The name of an agent, located in Port Moresby, Papua New Guinea, who, on behalf of the license holder, will receive and respond to any legal process issued in accordance with the Treaty.

(3) Documentation from an insurance company showing that the vessel will be fully insured for the licensing period against all risks and liabilities normally covered by maritime liability insurance.

(4) If the owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, reasonable assurances that the owner or charterer will be financially able to fulfill any and all responsibilities under the Treaty, Act, and regulations, including the payment of any penalties or fines.

(5) A copy of the vessel's USCG Certificate of Documentation.

(d) The number of available licenses are set forth in Schedule 2 of Annex II of the Treaty.

(e) Applications for vessels may be submitted at any time; complete applications will be forwarded to the Secretary of State for transmittal to the Administrator.

(f) The Secretary, in consultation with the Secretary of State, may determine that a license application for a vessel should not be forwarded to the Administrator if:

(1) The application is not in accord with the Treaty, Act, or regulations;

(2) The owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, and reasonable financial assurances have not been provided to the Secretary that the owner or charterer will be financially able to fulfill any and all responsibilities under the Treaty, Act, and regulations, including the payment of any penalties or fines;

(3) The owner or charterer has not established to the satisfaction of the Secretary that the vessel will be fully insured for the licensing period against all risks and liabilities normally covered by maritime liability insurance; or

(4) The owner or charterer has not paid any final penalty assessed by the Secretary in accordance with the Act.

(g) An applicant will be promptly notified if that applicant's license application will not be forwarded to the Administrator, and of the reasons therefor. Within 15 days of notification by the Regional Director that the application will not be forwarded, an applicant may request reconsideration by providing a petition for reconsideration accompanied by new or additional information.

§ 300.33 Compliance with applicable national laws.

The operator of the vessel shall comply with each of the applicable national laws, and the operator of the vessel shall be responsible for the compliance by the vessel and its crew with each of the applicable national laws, and the vessel shall be operated in accordance with those laws.

§ 300.34 Reporting requirements.

(a) License holders shall comply with the reporting requirements of parts 4 and 5 of Annex I to the Treaty.

(b) Information provided by license holders under Schedule 5 of Annex I of the Treaty shall be provided on the designated Forum Fisheries Agency form(s) to the Regional Director within 2 days of reaching port.

(c) Information provided by license holders under Schedule 6 of Annex I of the Treaty shall be provided on the designated Forum Fisheries Agency form(s) to the Regional Director within 2 days of completing unloading.

(d) Any information required to be recorded, or to be notified, communicated or reported pursuant to a requirement of these regulations, the Act, or the Treaty shall be true, complete and correct. Any change in circumstances that has the effect of rendering any of the information provided false, incomplete or misleading shall be communicated immediately to the Regional Director.

§ 300.35 Vessel and gear identification.

While a vessel is in the Licensing Area, a Limited Area closed to fishing, or a Closed Area, a recent and up-to-date copy of the International Code of Signals (INTERCO) shall be on board and accessible at all times. The operator shall comply with the 1989 Food and Agricultural Organization standard specifications for the marking and identification of fishing vessels. The international radio call sign of the vessel shall be painted in white on a black background, or in black on a white background, and be clear, distinct, and uncovered, in the following manner:

(a) On both sides of the vessel's hull or superstructure, with each letter and number being at least 1 m high and having a stroke width of 16.7 cm, with the background extending to provide a border around the mark of not less than 16.7 cm.

(b) On the vessel's deck, on the body of any helicopter and on the hull of any skiff, with each letter and number being at least 30 cm high, and having a stroke width of 5 cm with the background extending to provide a border around the mark of not less than 5 cm.

(c) On any other equipment being carried by and intended to be separated from the vessel during normal fishing operations, with each letter and number being at least 10 cm high and having a stroke width of 1.7 cm, with the background extending to provide a border around the mark of not less than 1.7 cm.

§ 300.36 Closed area stowage requirements.

At all times while a vessel is in a Closed Area, the fishing gear of the vessel shall be stowed in a manner as not to be readily available for fishing. In particular, the boom shall be lowered as far as possible so that the vessel cannot be used for fishing, but so that the skiff is accessible for use in emergency situations; the helicopter, if any shall be tied down; and launches shall be secured.

§ 300.37 Radio monitoring.

The international distress frequency, 2.182 mHz, and 156.8 mHz (Channel 16, VHF) shall be monitored continuously from the vessel for the purpose of facilitating communication with the fisheries management, surveillance and enforcement authorities of the Parties.

§ 300.38 Prohibitions.

(a) Except as provided for in § 300.39, in addition to the prohibitions in § 300.4, it is unlawful for any person subject to the jurisdiction of the United States to do any of the following:

(1) To violate the Act or any provision of any regulation or order issued pursuant to Act.

(2) To use a vessel for fishing in violation of an applicable national law.

(3) To violate the terms and conditions of any fishing arrangement to which that person is a party.

(4) To use a vessel for fishing in a Limited Area in violation of the requirements set forth in Schedule 3 of Annex I of the Treaty on "Limited Areas".

(5) To use a vessel for fishing in any Closed Area.

(6) To refuse to permit any authorized officer or authorized party officer to board a fishing vessel for purpose of conducting a search or inspection in connection with the enforcement of the Act or the Treaty.

(7) To refuse to comply with the instructions of an authorized officer or authorized party officer relating to fishing activities under the Treaty.

(8) To refuse to permit an authorized inspector full access to any place where fish taken in the Licensing Area is unloaded.

(9) To refuse to allow an authorized inspector to remove samples of fish from a vessel that fished in the Licensing Area.

(10) To forcibly assault, resist, oppose, impede, intimidate, or interfere with:

(i) Any authorized officer, authorized party officer or authorized inspector in the conduct of a search or inspection in connection with the enforcement of these regulations, the Act or the Treaty; or

(ii) An observer in the conduct of observer duties under the Treaty.

(11) To transship fish on board a vessel that fished in the Licensing Area, except in accordance with the conditions set out in parts 3 and 4 of Annex I to the Treaty.

(b) Except as provided for in § 300.39, it is unlawful for any person subject to the jurisdiction of the United States when in the Licensing Area:

(1) To use a vessel to fish unless validly licensed as required by the Administrator.

(2) To use a vessel for directed fishing for southern bluefin tuna or for fishing for any kinds of fish other than tunas, except that fish may be caught as a incidental bycatch.

(3) To use a vessel for fishing by any method, except the purse-seine method.

(4) To use any vessel to engage in fishing after the revocation of its license, or during the period of suspension of an applicable license.

(5) To operate a vessel in such a way as to disrupt or in any other way adversely affect the activities of traditional and locally based fishermen and fishing vessels.

(6) To use a vessel to fish in a manner inconsistent with an order issued by the Secretary under § 300.42 (section 11 of the Act).

(7) Except for circumstances involving force majeure and other emergencies involving the health or safety of crew members or the safety of the vessel, to use aircraft in association with fishing activities of a vessel, unless it is identified on the license application for the vessel, or any amendment thereto.

§ 300.39 Exceptions.

(a) The prohibitions of § 300.38 and the licensing requirements of § 300.32 do not apply to fishing for albacore tuna by vessels using the trolling method outside of the 200 nautical mile

fisheries zones of the Pacific Island Parties.

(b) The prohibitions of § 300.38(a)(4), (a)(5), and (b)(3) do not apply to fishing under the terms and conditions of a fishing arrangement.

§ 300.40 Civil penalties.

The procedures of 15 CFR part 904 apply to the assessment of civil penalties, except as modified by the requirements of section 8 of the Act.

§ 300.41 Investigation notification.

Upon commencement of an investigation under section 10(b)(1) of the Act, the operator of any vessel concerned shall have 30 days after receipt of notification of the investigation and the operator's rights under section 10(b)(1) to submit comments, information, or evidence bearing on the investigation, and to request in writing that the Secretary provide the operator an opportunity to present the comments, information, or evidence orally to the Secretary or the Secretary's representative.

§ 300.42 Findings leading to removal from fishing area.

(a) Following an investigation conducted under section 10(b) of the Act, the Secretary, with the concurrence of the Secretary of State, and upon the request of the Pacific Island Party concerned, may order a fishing vessel that has not submitted to the jurisdiction of that Pacific Island Party to leave immediately the Licensing Area, all Limited Areas, and all Closed Areas upon making a finding that:

(1) The fishing vessel—

(i) While fishing in the Licensing Area did not have a license under the Treaty to fish in the Licensing Area, and that under paragraph 2 of Article 3 of the Treaty, the fishing is not authorized to be conducted in the Licensing Area without a license;

(ii) Was involved in any incident in which an authorized officer, authorized party officer, or observer was allegedly assaulted with resultant bodily harm, physically threatened, forcibly resisted, refused boarding or subjected to physical intimidation or physical interference in the performance of duties as authorized by the Act or the Treaty;

(iii) Has not made full payment within 60 days of any amount due as a result of a final judgement or other final determination deriving from a violation in waters within the Treaty Area of a Pacific Island Party; or

(iv) Was not represented by an agent for service of process in accordance with the Treaty; or

(2) There is probable cause to believe that the fishing vessel—

(i) Was used in violation of section 5(a)(4), (a)(5), (b)(2), or (b)(3) of the Act;

(ii) Used an aircraft in violation of section 5(b)(7) of the Act; or

(iii) Was involved in an incident in which section 5(a)(7) of the Act was violated.

(b) Upon being advised by the Secretary of State that proper notification to Parties has been made under paragraph 7 of Article 5 of the Treaty that a Pacific Island Party is investigating an alleged infringement of the Treaty by a vessel in waters under the jurisdiction of that Pacific Island Party, the Secretary shall order the vessel to leave those waters until the Secretary of State notifies the Secretary that the order is no longer necessary.

(c) The Secretary shall rescind any order issued on the basis of a finding under paragraphs (a)(1)(iii) or (iv) of this section (subsections 11(a)(1)(C) or (D) of the Act) as soon as the Secretary determines that the facts underlying the finding do not apply.

(d) An order issued in accordance with this section is not subject to judicial review.

§ 300.43 Observers.

(a) The operator and each member of the crew of a vessel shall allow and assist any person identified as an observer under the Treaty by the Pacific Island Parties:

(1) To board the vessel for scientific, compliance, monitoring and other functions at the point and time notified by the Pacific Island Parties to the Secretary.

(2) Without interfering unduly with the lawful operation of the vessel, to have full access to and use of facilities and equipment on board the vessel that the observer may determine are necessary to carry out observer duties; have full access to the bridge, fish on board, and areas that may be used to hold, process, weigh and store fish; remove samples; have full access to vessel's records, including its log and documentation for the purpose of inspection and copying; have reasonable access to navigation equipment, charts, and radios, and gather any other information relating to fisheries in the Licensing Area.

(3) To disembark at the point and time notified by the Pacific Island Parties to the Secretary.

(4) To carry out observer duties safely.

(b) The operator shall provide the observer, while on board the vessel, at no expense to the Pacific Island Parties, with food, accommodation and medical facilities of reasonable standard as may be acceptable to the Pacific Island Party whose representative is serving as the observer.

§ 300.44 Other inspections.

The operator and each member of the crew of any vessel from which any fish taken in the Licensing Area is unloaded or transshipped shall allow, or arrange for, and assist any authorized inspector, authorized party officer, or authorized officer to have full access to any place where the fish is unloaded or transshipped, to remove samples, to have full access to the vessel's records, including its log and documentation for the purpose of inspection and photocopying, and to gather any other information relating to fisheries in the Licensing Area without interfering unduly with the lawful operation of the vessel.

Subpart E—Pacific Halibut Fisheries

Authority: 16 U.S.C. 773–773k.

§ 300.60 Purpose and scope.

This subpart implements the North Pacific Halibut Act of 1982 (Act) and is intended to supplement, not conflict with, the annual fishery management measures adopted by the International Pacific Halibut Commission (Commission) under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention).

§ 300.61 Definitions.

In addition to the terms defined in § 300.2 and those in the Act and the Convention, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Act, or the Convention, the definition in this section shall apply.

Area 2A includes all waters off the States of California, Oregon, and Washington.

Commercial fishing means fishing, the resulting catch of which either is, or is intended to be, sold or bartered.

Person includes an individual, corporation, firm, or association.

Subarea 2A–1 includes all U.S. waters off the coast of Washington that are north of 46°53′18″ N. lat. and east of 125°44′00″ W. long., and all inland marine waters of Washington.

Treaty Indian tribes means the Hoh, Jamestown S'Klallam, Lower Elwha S'Klallam, Lummi, Makah, Port Gamble S'Klallam, Quileute, Quinault, Skokomish, Suquamish, Swinomish, and Tulalip tribes.

§ 300.62 Annual management measures.

Annual management measures may be added and modified through adoption by the Commission and publication in the **Federal Register** by the Assistant Administrator, with immediate regulatory effect. Such measures may include, *inter alia*, provisions governing: Licensing of vessels, inseason actions, regulatory areas, fishing periods, closed periods, closed areas, catch limits (quotas), fishing period limits, size limits, careful release of halibut, vessel clearances, logs, receipt and possession of halibut, fishing gear, retention of tagged halibut, supervision of unloading and weighing, and sport fishing for halibut. The Assistant Administrator will publish the Commission's regulations setting forth annual management measures in the **Federal Register** by March 15 each year. Annual management measures may be adjusted inseason by the Commission.

§ 300.63 Catch sharing plans and domestic management measures.

Catch sharing plans (CSP) may be developed by the appropriate regional fishery management council, and approved by NMFS, for portions of the fishery. Any approved catch sharing plan may be obtained from the Director, Northwest Region, or the Director, Alaska Region.

(a) The catch sharing plan for area 2A provides a framework that shall be applied to the annual Area 2A total allowable catch (TAC) adopted by the Commission, and shall be implemented through domestic and Commission regulations, which will be published in the **Federal Register** each year before March 15. The Area 2A CSP allocates halibut among the treaty Indian fishery, segments of the non-Indian commercial fishery, and segments of the recreational fishery.

(1) Each year, before January 1, NMFS will publish a proposal to govern the recreational fishery under the CSP for the following year and will seek public comment. The comment period will extend until after the Commission's annual meeting, so the public will have the opportunity to consider the final area 2A total allowable catch (TAC) before submitting comments. After the Commission's annual meeting and review of public comments, NMFS will publish in the **Federal Register** the final rule governing sport fishing in area 2A. Annual management measures may be adjusted inseason by NMFS.

(2) A portion of the commercial TAC is allocated as incidental catch in the salmon troll fishery in Area 2A. Each year the landing restrictions necessary to keep the fishery within its allocation will be recommended by the Pacific Fishery Management Council at its spring meetings, and will be published in the **Federal Register** along with the annual salmon management measures.

(3) The commercial longline fishery in area 2A is governed by the annual management measures published pursuant to §§ 300.62 and 300.63.

(4) The treaty Indian fishery is governed by § 300.64 and tribal regulations. The annual quota for the fishery will be announced with the Commission regulations under § 300.62

(b) The catch sharing plan for area 4 allocates the annual TAC among area 4 subarea, and will be implemented by the Commission in management measures published pursuant to § 300.62.

§ 300.64 Fishing by U.S. treaty Indian tribes.

(a) Halibut fishing in subarea 2A–1 by members of U.S. treaty Indian tribes located in the State of Washington is governed by this section.

(b) Commercial fishing for halibut by treaty Indians is permitted only in subarea 2A–1 with hook-and-line gear in conformance with the season and quota established annually by the Commission.

(c) Commercial fishing periods and management measures to implement paragraph (b) of this section will be established by treaty Indian tribal regulations.

(d) Commercial fishing for halibut by treaty Indians shall comply with the Commission's management measures governing size limits, careful release of halibut, logs, and fishing gear (published pursuant to § 300.62), except that the 72-hour fishing restriction preceding the opening of a halibut fishing period shall not apply to treaty Indian fishing.

(e) Ceremonial and subsistence fishing for halibut by treaty Indians in subarea 2A–1 is permitted with hook-and-line gear from January 1 to December 31.

(f) No size or bag limits shall apply to the ceremonial and subsistence fishery, except that when commercial halibut fishing is prohibited pursuant to paragraph (b) of this section, treaty Indians may take and retain not more than two halibut per person per day.

(g) Halibut taken for ceremonial and subsistence purposes shall not be offered for sale or sold.

(h) Any member of a U.S. treaty Indian tribe who is engaged in commercial or ceremonial and subsistence fishing under this section must have on his or her person a valid treaty Indian identification card issued pursuant to 25 CFR part 249, subpart A, and must comply with the treaty Indian vessel and gear identification requirements of Final Decision No. 1 and subsequent orders in *United States* v. *Washington* 384 F. Supp. 312 (W.D. Wash., 1974).

(i) The following table sets forth the fishing areas of each of the 12 treaty Indian tribes fishing pursuant to this section. Within subarea 2A–1, boundaries of a tribe's fishing area may be revised as ordered by a Federal Court.

Tribe	Boundaries
HOH	Between 47°54′18″ N. lat. (Quillayute River) and 47°21′00″ N. lat. (Quinault River), and east of 125°44′00″ W. long.
JAMESTOWN S'KLALLAM	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1486, to be places at which the Jamestown S'Klallam Tribe may fish under rights secured by treaties with the United States.
LOWER ELWHA S'KLALLAM.	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 459 F. Supp. 1049 and 1066 and 626 F. Supp. 1443, to be places at which the Lower Elwha S'Klallam Tribe may fish under rights secured by treaties with the United States.
LUMMI	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 384 F. Supp. 360, as modified in Subproceeding No. 89–08 (W.D. Wash., February 13, 1990) (decision and order re: cross-motions for summary judgement), to be places at which the Lummi Tribe may fish under rights secured by treaties with the United States.
MAKAH	North of 48°02′15″ N. lat. (Norwegian Memorial), west of 123°42′30″ W. long., and east of 125°44′00″ W. long.

Tribe	Boundaries
PORT GAMBLE S'KLALLAM.	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1442, to be places at which the Port Gamble S'Klallam Tribe may fish under rights secured by treaties with the United States.
QUILEUTE	Between 48°07'36" N. lat. (Sand Point) and 47°31'42" N. lat. (Queets River), and east of 125°44'00" W. long.
QUINAULT	Between 47°40'06" N. lat. (Destruction Island) and 46°53'18" N. lat. (Point Chehalis), and east of 125°44'00" W. long.
SKOKOMISH	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 384 F. Supp. 377, to be places at which the Skokomish Tribe may fish under rights secured by treaties with the United States.
SUQUAMISH	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 459 F. Supp. 1049, to be places at which the Suquamish Tribe may fish under rights secured by treaties with the United States.
SWINOMISH	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 459 F. Supp. 1049, to be places at which the Swinomish Tribe may fish under rights secured by treaties with the United States.
TULALIP	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1531–1532, to be places at which the Tulalip Tribe may fish under rights secured by treaties with the United States.

§ 300.65 Prohibitions.

In addition to the prohibitions in § 300.4, the following prohibitions apply within this subpart. It is unlawful for any person to fish for halibut except in accordance with:

(a) The management measures published under § 300.62.

(b) The catch sharing plans and management measures implemented under § 300.63.

Subpart F—Fraser River Sockeye and Pink Salmon Fisheries

Authority: Pacific Salmon Treaty Act, 16 U.S.C. 3636(b).

§ 300.90 Purpose and scope.

This subpart implements the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3631–3644) (Act) and is intended to supplement, not conflict with, the fishery regimes and Fraser River Panel regulations adopted under the Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon, signed at Ottawa, January 28, 1985 (Treaty).

§ 300.91 Definitions.

In addition to the terms defined in § 300.2 and those in the Act and the Treaty, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Act, or the Treaty, the definition in this section shall apply.

All-citizen means any person who is not a treaty Indian fishing in that treaty Indian's tribal treaty fishing places pursuant to treaty Indian tribal fishing regulations (whether in compliance with such regulations or not).

Authorized officer means, in addition to those individuals identified under *authorized officer* at § 300.2, any state, Federal, or other officer as may be authorized by the Secretary in writing, including any treaty Indian tribal enforcement officer authorized to enforce tribal fishing regulations.

Commission means the Pacific Salmon Commission established by the Pacific Salmon Treaty.

Consistent regulation or consistent order means any Federal, state, or treaty Indian tribal regulation or order that is in addition to and not in conflict with (at least as restrictive as) any regime of the Commission, Fraser River Panel regulation, inseason order of the Secretary, or these regulations.

Fishing gear—

(1) *Gill net* means a fishing net of single web construction, not anchored, tied, staked, placed, or weighted in such a manner that it cannot drift.

(2) *Purse seine* means all types of fishing gear consisting of a lead line, cork line, auxiliary lines, purse line and purse rings and of mesh net webbing fashioned in such a manner that it is used to encircle fish, and in addition prevent their escape under the bottom or lead line of the net by drawing in the bottom of the net by means of the purse line so that it forms a closed bag.

(3) *Reef net* means a non-self-fishing open bunt square or rectangular section of mesh netting suspended between two anchored boats fashioned in such a manner that to impound salmon passing over the net, the net must be raised to the surface.

(4) *Troll fishing gear* means one or more lines that drag hooks with bait or lures behind a moving fishing vessel.

(5) *Treaty Indian fishing gear* means fishing gear defined, authorized, and identified under treaty Indian tribal laws and regulations in accordance with the requirements of Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash., 1974).

Fraser River Panel means the Fraser River Panel established by the Pacific Salmon Treaty.

Fraser River Panel Area (U.S.) means the United States' portion of the Fraser River Panel Area specified in Annex II of the Treaty as follows:

(1) The territorial water and the high seas westward from the western coast of Canada and the United States of America and from a direct line drawn from Bonilla Point, Vancouver Island, to the lighthouse of Tatoosh Island, Washington—which line marks the entrance of Juan de Fuca Strait—and embraced between 48° and 49° N. lat., excepting therefrom, however, all the waters of Barkley Sound, eastward of a straight line drawn from Amphitrite Point to Cape Beale and all the waters of Nitinat Lake and the entrance thereto.

(2) The waters included within the following boundaries: Beginning at Bonilla Point, Vancouver Island, thence along the aforesaid direct line drawn from Bonilla Point to Tatoosh Lighthouse, Washington, described in paragraph (1) of this definition, thence to the nearest point of Cape Flattery, thence following the southerly shore of Juan de Fuca Strait to Point Wilson, on Whidbey Island, thence following the western shore of the said Whidbey Island, to the entrance to Deception Pass, thence across said entrance to the southern side of Reservation Bay, on Fidalgo Island, thence following the western and northern shore line of the said Fidalgo Island to Swinomish Slough, crossing the said Swinomish Slough, in line with the track of the Great Northern Railway (Burlington Northern Railroad), thence northerly following the shoreline of the mainland to Atkinson Point at the northerly entrance to Burrard Inlet, British Columbia, thence in a straight line to the southern end of Bowen Island, then westerly following the southern shore of Bowen Island to Cape Roger Curtis, thence in a straight line to Gower Point, thence westerly following the shoreline to Welcome Point on Sechelt Peninsula, thence in a straight line to Point Young on Lasqueti Island, thence in a straight line to Dorcas Point on Vancouver Island, thence following the eastern and southern shores of the said Vancouver Island, to the starting point at Bonilla Point, as shown on the British Admiralty Chart Number 579, and on the U.S. Coast and Geodetic Survey Chart Number 6300, as corrected to March 14, 1930, copies of which are annexed to the 1930 Convention between Canada and the United States of America for Protection, Preservation, and Extension of the Sockeye Salmon Fishery in the Fraser River System as amended, signed May 26, 1930. [Note: U.S. Coast and Geodetic Survey Chart Number 6300 has been replaced and updated by NOAA Chart Number 18400.]

(3) The Fraser River and the streams and lakes tributary thereto.

(4) The Fraser River Panel Area (U.S.) includes Puget Sound Management and Catch Reporting Areas 4B, 5, 6, 6A, 6B, 6C, 6D, 7, 7A, 7B, 7C, 7D, and 7E as defined in the Washington State Administrative Code at Chapter 220–22 as of June 27, 1986.

Fraser River Panel regulations means regulations applicable to the Fraser River Panel Area that are recommended by the Commission (on the basis of proposals made by the Fraser River Panel) and approved by the Secretary of State.

Mesh size means the distance between the inside of one knot to the outside of the opposite (vertical) knot in one mesh of a net.

Pink salmon means *Oncorhynchus gorbuscha*.

Sockeye salmon means the anadromous form of *Oncorhynchus nerka*.

Treaty fishing places (of an Indian tribe) means locations within the Fraser River Panel Area (U.S.) as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), to be places at which that treaty Indian tribe may take fish under rights secured by treaty with the United States.

Treaty Indian means any member of a treaty Indian tribe whose treaty fishing place is in the Fraser River Panel Area (U.S.) or any assistant to a treaty Indian authorized to assist in accordance with § 300.95(d).

Treaty Indian tribe means any of the federally recognized Indian tribes of the State of Washington having fishing rights secured by treaty with the United States to fish for salmon stocks subject to the Pacific Salmon Treaty in treaty fishing places within the Fraser River Panel Area (U.S.). Currently these tribes are the Makah, Tribe, Lower Elwha Klallam Tribe, Port Gamble Klallam Tribe, Jamestown Klallam Tribe, Suquamish Tribe, Lummi Tribe, Nooksack Tribe, the Swinomish Indian Tribal Community, and the Tulalip Tribe.

§ 300.92 Relation to other laws.

(a) Insofar as they are consistent with this part, any other applicable Federal law or regulation, or any applicable law and regulations of the State of Washington or of a treaty Indian tribe with treaty fishing rights in the Fraser River Panel Area (U.S.) will continue to have force and effect in the Fraser River Panel Area (U.S.) with respect to fishing activities addressed herein.

(b) Any person fishing subject to this subpart is bound by the international boundaries now recognized by the United States within the Fraser River Panel Area (U.S.) described in § 300.91, notwithstanding any dispute or negotiation between the United States and Canada regarding their respective jurisdictions, until such time as different boundaries are published by the United States.

(c) Any person fishing in the Fraser River Panel Area (U.S.) who also fishes for groundfish in the EEZ should consult Federal regulations at part 663 of this title for applicable requirements, including the requirement that vessels engaged in commercial fishing for groundfish (except commercial passenger vessels) have vessel identification in accordance with § 663.6. Federal regulations governing salmon fishing in the EEZ, which includes a portion of the Fraser River Panel Area (U.S.), are at part 661 of this title. Annual regulatory modifications are published in the **Federal Register**.

(d) Except as otherwise provided in this subpart, general provisions governing off-reservation fishing by treaty Indians are found at 25 CFR part 249, subpart A. Additional general and specific provisions governing treaty Indian fisheries are found in regulations and laws promulgated by each treaty Indian tribe for fishermen fishing pursuant to tribal authorization.

(e) Nothing in this subpart relieves a person from any other applicable requirements lawfully imposed by the United States, the State of Washington, or a treaty Indian tribe.

§ 300.93 Reporting requirements.

Any person fishing for sockeye or pink salmon within the Fraser River Panel Area (U.S.) and any person receiving or purchasing fish caught by such persons are subject to State of Washington reporting requirements at Washington Administrative Code, Chapter 220–69. Treaty Indian fishermen are subject also to tribal reporting requirements. No separate Federal reports are required.

§ 300.94 Prohibitions and restrictions.

In addition to the prohibitions in § 300.4, the following prohibitions and restrictions apply.

(a) In addition to the prohibited acts set forth in the Act at 16 U.S.C. 3637(a), the following restrictions apply to sockeye and pink salmon fishing in the Fraser River Panel Area (U.S.):

(1) The Fraser River Panel Area (U.S.) is closed to sockeye and pink salmon fishing, unless opened by Fraser River Panel regulations or by inseason orders of the Secretary issued under § 300.97 that give effect to orders of the Fraser River Panel, unless such orders are determined not to be consistent with domestic legal obligations. Such regulations and inseason orders may be further implemented by regulations promulgated by the United States, the State of Washington, or any treaty Indian tribe, which are also consistent with domestic legal obligations.

(2) It is unlawful for any person or fishing vessel subject to the jurisdiction of the United States to fish for, or take and retain, any sockeye or pink salmon:

(i) Except during times or in areas that are opened by Fraser River Panel regulations or by inseason order, except that this provision will not prohibit the direct transport of legally caught sockeye or pink salmon to offloading areas.

(ii) By means of gear or methods not authorized by Fraser River Panel regulations, inseason orders, or other applicable Federal, state, or treaty Indian tribal law.

(iii) In violation of any applicable area, season, species, zone, gear, or mesh size restriction.

(b) It is unlawful for any person or fishing vessel subject to the jurisdiction of the United States to—

(1) Remove the head of any sockeye or pink salmon caught in the Fraser River Panel Area (U.S.), or possess a salmon with the head removed, if that salmon has been marked by removal of the adipose fin to indicate that a coded wire tag has been implanted in the head of the fish.

(2) Fail to permit an authorized officer to inspect a record or report required by the State of Washington or treaty Indian tribal authority.

(c) Notwithstanding paragraph (a) of this section, nothing in this subpart will be construed to prohibit the retention of sockeye or pink salmon caught by any person while lawfully engaged in a fishery for subsistence or ceremonial purposes pursuant to treaty Indian tribal regulations, for recreational purposes pursuant to recreational fishing regulations promulgated by the State of Washington, or as otherwise authorized by treaty Indian tribal or State of Washington law or regulation, provided that such treaty Indian tribal or State regulation is consistent with U.S.-approved Commission fishery regimes, Fraser River Panel regulations, or inseason orders of the Secretary applicable to fishing in the Fraser River Panel Area (U.S.).

(d) The following types of fishing gear are authorized, subject to the restrictions set forth in this subpart and according to the times and areas established by Fraser River Panel regulations or inseason orders of the Secretary:

(1) All citizens: Gill net, purse seine, reef net, and troll fishing gear. Specific restrictions on all citizens gear are contained in the Washington State Administrative Code of Chapter 220–47.

(2) Treaty Indians: Treaty Indian fishing gear.

(e) Geographic descriptions of Puget Sound Salmon Management and Catch Reporting Areas, which are referenced in the Commission's regimes, Fraser River Panel regulations, and in inseason orders of the Secretary, are found in the Washington State Administrative Code at Chapter 220–22.

§ 300.95 Treaty Indian fisheries.

(a) Any treaty Indian must comply with this section when fishing for sockeye and pink salmon at the treaty Indian tribe's treaty fishing places in the Fraser River Panel Area (U.S.) during the time the Commission or the Secretary exercises jurisdiction over these fisheries. Fishing by a treaty Indian outside the applicable Indian tribe's treaty fishing places will be subject to the Fraser River Panel regulations and inseason orders applicable to all citizens, as well as to the restrictions set forth in this section.

(b) Nothing in this section will relieve a treaty Indian from any applicable law or regulation imposed by a treaty Indian tribe, or from requirements lawfully imposed by the United States or the State of Washington in accordance with the requirements of Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash., 1974).

(c) *Identification.* (1) Any treaty Indian fishing under the authority of this subpart must have in his or her possession at all times while fishing or engaged in any activity related to fishing the treaty Indian identification required by 25 CFR 249.3 or by applicable tribal law.

(2) Any person assisting a treaty Indian under the authority of paragraph (d) of this section must have in his or her possession at all such times a valid identification card issued by the Bureau of Indian Affairs or by a treaty Indian tribe, identifying the holder as a person qualified to assist a treaty Indian. The identification card must include the name of the issuing tribe, the name, address, date of birth, and photograph of the assistant, and the name and identification number of the treaty Indian whom the assistant is authorized to assist.

(3) Identification described in paragraph (c) (1) or (2) of this section must be shown on demand to an authorized officer by the treaty Indian or authorized assistant.

(4) Any treaty Indian fishing under this subpart must comply with the treaty Indian vessel and gear identification requirements of Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash., 1974).

(d) *Fishing assistance.* (1) Any member of a treaty Indian tribe fishing under this subpart may, if authorized by the treaty Indian's tribe, receive fishing assistance from, and only from, the treaty Indian tribal member's spouse, forebears, children, grandchildren, and siblings, as authorized by the U.S. District Court for the Western District of Washington in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash., 1974). For purposes of this section, the treaty Indian tribal member whom the assistant is authorized to assist must be present aboard the fishing vessel at all times while engaged in the exercise of treaty Indian fishing rights subject to this subpart.

(2) No treaty Indian may, while fishing at a treaty fishing place in accordance with treaty-secured fishing rights, permit any person 16 years of age or older other than the authorized holder of a currently valid identification card issued in accordance with the requirements of paragraphs (c) (1) and (2) of this section to fish for said treaty Indian, assist said treaty Indian in fishing, or use any gear or fishing location identified as said treaty Indian's gear or location.

(3) Treaty Indians are prohibited from participating in a treaty Indian fishery under this section at any time persons who are not treaty Indians are aboard the fishing vessel or in contact with fishing gear operated from the fishing vessel, unless such persons are authorized employees or officers of a treaty Indian tribe or tribal fisheries management organization, the Northwest Indian Fisheries Commission, the Commission, or a fisheries management agency of the United States or the State of Washington.

§ 300.96 Penalties.

Any treaty Indian who commits any act that is unlawful under this subpart normally will be referred to the applicable tribe for prosecution and punishment. If such tribe fails to prosecute such persons in a diligent manner for the offense(s) referred to the tribe, or if other good cause exists, such treaty Indian may be subject to the penalties and procedures described in the Magnuson Act.

§ 300.97 Inseason orders.

(a) During the fishing season, the Secretary may issue orders that establish fishing times and areas consistent with the annual Commission regime and inseason orders of the Fraser River Panel. Inseason orders will be consistent with domestic legal obligations. Violation of such inseason orders is violation of this subpart.

(b) *Notice of inseason orders.* (1) Official notice of such inseason orders is available from NMFS (for orders applicable to all-citizen fisheries) and from the Northwest Indian Fisheries Commission (for orders applicable to treaty Indian fisheries) through the following Area Code 206 toll-free telephone hotlines: All-citizen fisheries: 1–800–562–6513; Treaty Indian fisheries: 1–800–562–6142.

(2) Notice of inseason orders of the Secretary and other applicable tribal regulations may be published and released according to tribal procedures in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash., 1974).

(3) Inseason orders may also be communicated through news releases to radio and television stations and newspapers in the Fraser River Panel Area (U.S.).

(4) Inseason orders of the Secretary will also be published in the **Federal Register** as soon as practicable after they are issued.

Subpart G—Antarctic Marine Living Resources

Authority: 16 U.S.C. 2431 *et seq.*

§ 300.100 Purpose and scope.

(a) This subpart implements the Antarctic Marine Living Resources Convention Act of 1984 (Act).

(b) This subpart regulates—

(1) The harvesting of Antarctic marine living resources or other associated activities by any person subject to the jurisdiction of the United States or by any vessel of the United States.

(2) The importation into the United States of any Antarctic marine living resource.

§ 300.101 Definitions.

In addition to the terms defined in § 300.2, in the Act, and in the Convention on the Conservation of Antarctic Marine Living Resources, done at Canberra, Australia, May 7, 1980 (Convention). Convention, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, such Act, or such Convention, the definition in this section shall apply.

ACA means the Antarctic Conservation Act of 1978 (16 U.S.C. 2401 *et seq.*).

Antarctic convergence means a line joining the following points along the parallels of latitude and meridians of longitude:

Lat.	Long.
50° S	0.
50° S	30° E.
45° S	30° E.
45° S	80° E.
55° S	80° E.
55° S	150° E.
60° S	150° E.
60° S	50° W.
50° S	50° W.
50° S	0.

Antarctic finfishes include the following:

Scientific name	Common name
Gobionotothen gibberifrons	Humped rockcod.
Notothenia rossii	Marbled rockcod.
Lepidorhirus squamifrons	Grey rockcod.
Dissostichus eleginoides	Patagonian toothfish.
Patagonothen brevicauda guntheri.	Patagonian rockcod.
Pleuragramma antarcticum	Antarctic silverfish.
Trematomus spp.	Antarctic cods.
Chaenocephalus aceratus	Blackfin icefish.
Chaenodraco wilsoni	Spiny icefish.
Champsocephalus gunnari	Mackerel icefish.
Chionodraco rastrospinosus	Ocellated icefish.
Pseudochaenichthys georgianus.	South Georgia icefish.

Antarctic marine living resources or *AMLR(s)* means the populations of finfish, mollusks, crustaceans, and all other species of living organisms, including birds, found south of the Antarctic Convergence, and their parts or products.

Commission means the Commission for the Conservation of Antarctic Marine Living Resources established under Article VII of the Convention.

Convention waters means all waters south of the Antarctic Convergence.

Directed fishing, with respect to any species or stock of fish, means any fishing that results in such fish comprising more than 1 percent by weight, at any time, of the catch on board the vessel.

Fish means finfish, mollusks, and crustaceans.

Fishery means:

(1) One or more stocks of fish that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics.

(2) Any fishing for such stocks.

Harvesting vessel means any vessel of the United States (this includes any boat, ship, or other craft), that is used for, equipped to be used for, or of a type that is normally used for harvesting.

Individual permit means an NSF permit issued under 45 CFR part 670; or an NSF award letter (demonstrating that the individual has received an award from NSF to do research in the Antarctic); or a marine mammal permit issued under § 216.31 of this chapter; or an endangered species permit issued under § 222.21 of this chapter.

Inspection vessel means a vessel carrying a CCAMLR inspector and displaying the pennant approved by the Commission to identify such vessel.

Land or *landing* means to begin offloading any fish, to arrive in port with the intention of offloading any fish, or to cause any fish to be offloaded.

NSF means National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Recreational fishing means fishing with hook and line for personal use and not for sale.

Scientific research activity means any activity for which a person has a permit from NMFS under § 216.31 of this title or an award letter from NSF or a permit from the NSF under 45 CFR part 670. Scientific research activities may also include harvesting or other associated activities if such activities are designated as scientific research activities by the Assistant Administrator.

§ 300.102 Relationship to other treaties, conventions, laws, and regulations.

(a) Other conventions and treaties to which the United States is a party and other Federal statutes and implementing regulations may impose additional restrictions on the harvesting and importation into the United States of AMLRs.

(b) The ACA implements the Antarctic Treaty Agreed Measures for the Conservation of Antarctic Fauna and Flora (12 U.S.T. 794). The ACA and its implementing regulations (45 CFR part 670) apply to certain defined activities of U.S. citizens south of 60° S. lat.

(c) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), the Migratory Bird Treaty Act (16 U.S.C. 701 *et seq.*), and their implementing regulations also apply to the harvesting and importation of AMLRs.

§ 300.103 Procedure for according protection to CCAMLR Ecosystem Monitoring Program Sites.

(a) *General.* (1) Any person subject to the jurisdiction of the United States must apply for and be granted an entry permit authorizing specific activities prior to entering a CCAMLR Ecosystem Monitoring Program (CEMP) Protected Site designated in accordance with the CCAMLR Conservation Measure describing the Procedures for According Protection for CEMP Sites.

(2) If a CEMP Protected Site is also a site specially protected under the Antarctic Treaty (or the Protocol on Environmental Protection to the Antarctic Treaty and its Annexes, when it enters into force), an applicant seeking to enter such a Protected Site

must apply to the Director of the NSF for a permit under applicable provisions of the ACA or any superseding legislation. The permit granted by NSF shall constitute a joint CEMP/ACA Protected Site permit and any person holding such a permit must comply with the appropriate CEMP Protected Site Management Plan. In all other cases, an applicant seeking a permit to enter a CEMP Protected Site must apply to the Assistant Administrator for a CEMP permit in accordance with the provisions of this section.

(b) *Responsibility of CEMP permit holders and persons designated as agents under a CEMP permit.* (1) The CEMP permit holder and person designated as agents under a CEMP permit are jointly and severally responsible for compliance with the Act, this subpart, and any permit issued under this subpart.

(2) The CEMP permit holder and agents designated under a CEMP permit are responsible for the acts of their employees and agents constituting violations, regardless of whether the specific acts were authorized or forbidden by the CEMP permit holder or agents, and regardless of knowledge concerning their occurrence.

(c) *Prohibitions regarding the Antarctic Treaty System and other applicable treaties and statutes.* Holders of permits to enter CEMP Protected Sites are not permitted to undertake any activities within a CEMP Protected Site that are not in compliance with the provisions of:

(1) The Antarctic Treaty, including the Agreed Measures for the Conservation of Antarctic Fauna and Flora (including the Protocol on the Environmental Protection to the Antarctic Treaty and its Annexes when it enters into force), as implemented under by the ACA and any superseding legislation. (Persons interested in conducting activities subject to the Antarctic Treaty or the Protocol should contact the Office of Polar Programs, NSF).

(2) The Convention for the Conservation of Antarctic Seals.

(3) The Convention and its Conservation Measures in force, implemented under the Act.

(d) *Prohibitions on takings.* Permits issued under this section do not authorize any takings as defined in the applicable statutes and implementing regulations governing the activities of persons in Antarctica.

(e) *Issuance criteria.* Permits designated in this section may be issued by the Assistant Administrator upon a determination that:

(1) The specific activities meet the requirements of the Act.

(2) There is sufficient reason, established in the permit application, that the scientific purpose for the intended entry cannot be served elsewhere.

(3) The actions permitted will not violate any provisions or prohibitions of the Protected Site's Management Plan submitted in compliance with the CCAMLR Conservation Measure describing the Procedures for According Protection to CEMP Sites.

(f) *Application process.* An applicant seeking a CEMP permit from the Assistant Administrator to enter a CEMP Protected Site shall include the following in the application.

(1) A detailed justification that the scientific objectives of the applicant cannot be accomplished elsewhere and a description of how said objectives will be accomplished within the terms of the Protected Site's Management Plan.

(2) A statement signed by the applicant that the applicant has read and fully understands the provisions and prohibitions of the Protected Site's Management Plan. Prospective applicants may obtain copies of the relevant Management Plans and the CCAMLR Conservation Measure describing the Procedures for According Protection to CEMP Sites by requesting them from the Assistant Administrator.

(g) *Conditions.* CEMP permits issued under this section will contain special and general conditions including a condition that the permit holder shall submit a report describing the activities conducted under the permit within 30 days of the expiration of the CEMP permit.

(h) *Duration.* Permits issued under this section are valid for a period of 1 year. Applicants requesting a permit to reenter a Protected Site must include the report required by the general condition in the previously issued CEMP permit describing the activities conducted under authority of that permit.

(i) *Transfer.* CEMP permits are not transferable or assignable. A CEMP permit is valid only for the person to whom it is issued.

(j) *Modification.* (1) CEMP permits can be modified by submitting a request to the Assistant Administrator. Such requests shall specify:

(i) The action proposed to be taken along with a summary of the reasons therefore.

(ii) The steps that the permit holder may take to demonstrate or achieve compliance with all lawful requirements.

(2) If a requested modification is not in compliance with the terms of the Protected Site's Management Plan, the Assistant Administrator will treat the requested modification as an application for a new CEMP permit and so notify the holder. Modifications will be acted upon within 30 days of receipt. The CEMP permit holder must report to the Assistant Administrator any change in previously submitted information within 10 days of the change.

(3) Additional conditions and restrictions. The Assistant Administrator may revise the CEMP permit effective upon notification of the permit holder, to impose additional conditions and restrictions as necessary to achieve the purposes of the Convention, the Act and the CEMP Management Plan. The CEMP permit holder must, as soon as possible, notify any and all agents operating under the permit of any and all revisions or modifications to the permit.

(k) *Revocation or suspension.* CEMP permits may be revoked or suspended based upon information received by the Assistant Administrator and such revocation or suspension shall be effective upon notification to the permit holder.

(1) A CEMP permit may be revoked or suspended based on a violation of the permit, the Act, or this subpart.

(2) Failure to report a change in the information submitted in a CEMP permit application within 10 days of the change is a violation of this subpart and voids the application or permit, as applicable. Title 15 CFR part 904 governs permit sanctions under this subpart.

(l) *Exceptions.* Entry into a Protected Site described in this section is lawful if committed under emergency conditions to prevent the loss of human life, compromise human safety, prevent the loss of vessels or aircraft, or to prevent environmental damage.

(m) *Protected sites.* (1) Sites protected by the Antarctic Treaty and regulated under the ACA are listed at 45 CFR part 670 subparts G and H.

(2) The following sites have been identified as CEMP Protected Sites subject to the regulatory authority of the Act:

(i) *Seal Islands, South Shetland Islands*—The Seal Islands are composed of islands and skerries located approximately 7 km north of the northwest corner of Elephant Island, South Shetland Islands. The Seal Islands CEMP Protected Site includes the entire Seal Islands group, which is defined as Seal Island plus any land or rocks exposed at mean low tide within a distance of 5.5 km of the point of highest elevation on Seal Island. Seal Island is situated at 60°59′14″ S. lat., 55°23′04″ W. long.

(ii) *Cape Shirreff and the San Telmo Islands.* This designation takes effect on May 1, 1995. Cape Shirreff is a low, ice-free peninsula towards the western end of the north coast of Livingston Island, South Shetland Islands, situated at 62°29′ S. lat., 60°47′ W. long., between Barclay Bay and Hero Bay. San Telmo Island is the largest of a small group of ice-free rock islets, approximately 2 km west of Cape Shirreff. The boundaries of the Cape Shirreff CEMP Protected Site are identical to the boundaries of the Site of Special Scientific Interest No. 32, as specified by ATCM Recommendation XV–7. No manmade boundary markers indicate the limits of the SSSI or protected site. The boundaries are defined by natural features and include the entire area of the Cape Shirreff peninsula north of the glacier ice tongue margin, and most of the San Telmo Island group. For the purposes of the protected site, the entire area of Cape Shirreff and the San Telmo Island group is defined as any land or rocks exposed at mean low tide within the area delimited by the map of SSSI No. 32 and available from the Assistant Administrator.

§ 300.104 Scientific research.

(a) The management measures issued pursuant to the procedures at § 300.111 do not apply to catches of less than 5 tons taken by any vessel for research purposes, unless otherwise indicated.

(b) Catches taken by any vessel for research purposes will be considered as part of any catch limit.

(c) The catch reporting procedure identified in management measures issued pursuant to the procedures at § 300.111 applies whenever the catch within any 5-day reporting period exceeds 5 tons, unless more specific reporting requirements apply to the species being fished.

(d) Any person, organization or institution planning to use a vessel for research purposes, when the estimated catch is expected to be less than 50 tons, must provide the following vessel and research notification to the Assistant Administrator at least 2 months in advance of the planned research:

(1) Name and registration number of vessel.

(2) Division and subarea in which research is to be carried out.

(3) Estimated dates of entering and leaving CCAMLR Convention Area.

(4) Purposes of research.

(5) Fishing equipment to be used (bottom trawl, midwater trawl, longline, crab pots, other).

(e) The following measures apply to any person planning to use any vessel for research purposes, when the estimated catch is expected to be more than 50 tons:

(1) The person must use the CCAMLR Format for Reporting Plans for Finfish Surveys in the Convention Area when the Total Catch is Expected to be More Than 50 Tons to report the details of the research plan to the Assistant Administrator at least 7 months in advance of the planned starting date for the research. A copy of the format is available from the Assistant Administrator.

(2) The format requires:

(i) The name of the CCAMLR Member.

(ii) Survey details.

(iii) Description of the vessel.

(iv) Description of the fishing gear to be used.

(v) Description of acoustic gear to be used.

(vi) Survey design and methods of data analyses.

(vii) Data to be collected.

(3) A summary of the results of any research fishing subject to these provisions must be provided to the Assistant Administrator within 150 days of the completion of the research fishing and a full report must be provided within 11 months.

(4) Catch and effort data resulting from the research fishing must be reported to the Assistant Administrator using the CCAMLR C4 haul-by-haul reporting format for research vessels.

§ 300.105 Initiating a new fishery.

(a) A new fishery, for purposes of this section, is a fishery on a species using a particular method in a statistical subarea for which:

(1) Information on distribution, abundance, demography, potential yield and stock identity from comprehensive research/surveys or exploratory fishing has not been submitted to CCAMLR;

(2) Catch and effort data have never been submitted to CCAMLR; or

(3) Catch and effort data from the two most recent seasons in which fishing occurred have not been submitted to CCAMLR.

(b) An individual subject to these regulations intending to develop a new fishery shall notify the Assistant Administrator no later than July 1 of the year in which he or she intends to initiate the fishery and shall not initiate the fishery pending CCAMLR review.

(c) The notification shall be accompanied by information on:

(1) The nature of the proposed fishery, including target species, methods of fishing, proposed region and any minimum level of catches that would be required to develop a viable fishery.

(2) Biological information from comprehensive research/survey cruises, such as distribution, abundance, demographic data and information on stock identity.

(3) Details of dependent and associated species and the likelihood of them being affected by the proposed fishery.

(4) Information from other fisheries in the region or similar fisheries elsewhere that may assist in the valuation of potential yield.

§ 300.106 Exploratory fisheries.

(a) An exploratory fishery, for purposes of this section, is a fishery that was previously defined as a new fishery under § 300.105.

(b) A fishery will continue to be classified as an exploratory fishery until sufficient information is available to:

(1) Evaluate the distribution, abundance, and demography of the target species, leading to an estimate of the fishery's potential yield.

(2) Review the fishery's potential impacts on dependent and related species.

(3) Allow the CCAMLR Scientific Committee to formulate and provide advice to the Commission on appropriate harvest catch levels and fishing gear.

(c) Each vessel participating in an exploratory fishery must carry a scientific observer.

(d) The operator of any vessel engaging in an exploratory fishery must submit, by the date specified in the operator's harvesting permit, catch, effort, and related biological, ecological, and environmental data as required by a data collection plan for the fishery formulated by the CCAMLR Scientific Committee.

(e) In addition to the requirements in § 300.112, any individual planning to enter an exploratory fishery must notify the Assistant Administrator no later than 4 months in advance of the annual meeting of CCAMLR. The Assistant Administrator will not issue a permit to enter an exploratory fishery until after the requirements of § 300.112 have been met and the meeting of CCAMLR, which receives and considers the notice made to the Assistant Administrator, has been concluded.

§ 300.107 Reporting and recordkeeping requirements.

The operator of any vessel required to have a permit under this subpart must:

(a) Accurately maintain on board the vessel a fishing logbook and all other reports and records required by its permit.

(b) Make such reports and records available for inspection upon the

request of an authorized officer or CCAMLR inspector.

(c) Within the time specified in the permit, submit a copy of such reports and records to the Assistant Administrator.

§ 300.108 Vessel and gear identification.

(a) *Vessel identification.* (1) The operator of each harvesting vessel assigned an IRCS must display that call sign amidships on both the port and starboard sides of the deckhouse or hull, so that it is visible from an enforcement or inspection vessel, and on an appropriate weather deck so that it is visible from the air.

(2) The operator of each harvesting vessel not assigned an IRCS, such as a small trawler associated with a mothership or one of a pair of trawlers, must display the IRCS of the associated vessel, followed by a numerical suffix specific for the non-assigned vessel.

(3) The vessel identification must be in a color in contrast to the background and must be permanently affixed to the harvesting vessel in block roman alphabet letters and arabic numerals at least 1 m in height for harvesting vessels over 20 m in length, and at least 0.5 m in height for all other harvesting vessels.

(b) *Navigational lights and shapes.* Each harvesting vessel must display the lights and shapes prescribed by the International Regulations for Preventing Collisions at Sea, 1972 (TIAS 8587, and 1981 amendment TIAS 10672), for the activity in which the harvesting vessel is engaged (as described at 33 CFR part 81).

(c) *Gear identification.* (1) The operator of each harvesting vessel must ensure that all deployed fishing gear that is not physically and continuously attached to a harvesting vessel is clearly marked at the surface with a buoy displaying the vessel identification of the harvesting vessel (see paragraph (a) of this section) to which the gear belongs, a light visible for 2 miles at night in good visibility, and a radio buoy. Trawl codends passed from one vessel to another are considered continuously attached gear and do not have to be marked.

(2) The operator of each harvesting vessel must ensure that deployed longlines, strings of traps or pots, and gillnets are marked at the surface at each terminal end with a buoy displaying the vessel identification of the harvesting vessel to which the gear belongs (see paragraph (a) of this section), a light visible for 2 miles at night in good visibility, and a radio buoy.

(3) Unmarked or incorrectly identified fishing gear may be considered abandoned and may be disposed of in accordance with applicable Federal regulations by any authorized officer or CCAMLR inspector.

(d) *Maintenance.* The operator of each harvesting vessel must:

(1) Keep the vessel and gear identification clearly legible and in good repair.

(2) Ensure that nothing on the harvesting vessel obstructs the view of the markings from an enforcement or inspection vessel or aircraft.

(3) Ensure that the proper navigational lights and shapes are displayed for the harvesting vessel's activity and are properly functioning.

§ 300.109 Gear disposal.

(a) The operator of a harvesting vessel may not dump overboard, jettison or otherwise discard any article or substance that may interfere with other fishing vessels or gear, or that may catch fish or cause damage to any marine resource, including marine mammals and birds, except in cases of emergency involving the safety of the ship or crew, or as specifically authorized by communication from the appropriate USCG commander or authorized officer. These articles and substances include, but are not limited to, fishing gear, net scraps, bale straps, plastic bags, oil drums, petroleum containers, oil, toxic chemicals or any manmade items retrieved in a harvesting vessel's gear.

(b) The operator of a harvesting vessel may not abandon fishing gear in Convention waters.

(c) The operator of a harvesting vessel must provide a copy of the CCAMLR information brochure "Marine Debris—A Potential Threat to Antarctic Marine Mammals" to each member of the crew of the harvesting vessel and must display copies of the CCAMLR placard "Avoidance of Incidental Mortality of Antarctic Marine Mammals" in the wheelhouse and crew quarters of the harvesting vessels. Copies of the brochure and placard will be provided to each holder of a harvesting permit by NMFS when issuing the permit.

§ 300.110 Mesh size.

(a) The use of pelagic and bottom trawls having the mesh size in any part of a trawl less than indicated is prohibited for any directed fishing for the following Antarctic finfishes:

(1) *Notothenia rossii* and *Dissostichus eleginoides*—120 mm.

(2) *Champsocephalus gunnari*—90 mm.

(3) *Gobionotothen gibberifrons*, *Notothenia kempi* and *Lepidorhirus squamifrons*—80 mm.

(b) Any means or device that would reduce the size or obstruct the opening of the meshes is prohibited.

(c) The following procedure will be used for determining compliance with mesh size requirements.

(1) *Description of gauges.* (i) Gauges for determining mesh sizes will be 2 mm thick, flat, of durable material and capable of retaining their shape. They may have either a series of parallel-edged sides connected by intermediate tapering edges with a taper of one to eight on each side, or only tapering edges with the taper defined above. They will have a hole at the narrowest extremity.

(ii) Each gauge will be inscribed on its face with the width in millimeters both on the parallel-sided section, if any, and on the tapering section. In the case of the latter, the width will be inscribed every 1 mm interval, but the indication of the width may appear at regular intervals other than 1 mm.

(2) *Use of the gauge.* (i) The net will be stretched in the direction of the long diagonal of the meshes.

(ii) A gauge as described in paragraph (c)(1) of this section will be inserted by its narrowest extremity into the mesh opening in a direction perpendicular to the plane of the net.

(iii) The gauge may be inserted into the mesh opening either with a manual force or using a weight or dynamometer, until it is stopped at the tapering edges by the resistance of the mesh.

(3) *Selection of meshes to be measured.* (i) Meshes to be measured will form a series of 20 consecutive meshes chosen in the direction of the long axis of the net, except that the meshes to be measured need not be consecutive if the application of paragraph (c)(3)(ii) of this section prevents it.

(ii) Meshes less than 50 cm from lacings, ropes, or codline will not be measured. This distance will be measured perpendicular to the lacings, ropes or codline with the net stretched in the direction of that measurement. No mesh will be measured which has been mended or broken or has attachments to the net fixed at that mesh.

(iii) Nets will be measured only when wet and unfrozen.

(4) The measurement of each mesh will be the width of the gauge at the point where the gauge is stopped, when using this gauge in accordance with paragraph (c)(2) of this section.

(5) Determination of the mesh size of the net will be the arithmetical mean in millimeters of the measurements of the total number of meshes selected and measured as provided for in paragraphs (c) (3) and (4) of this section, the arithmetical mean being rounded up to the next millimeter.

(6) *Inspection procedure.* (i) One series of 20 meshes, selected in accordance with paragraph (c)(3) of this section, will be measured by inserting the gauge manually without using a weight or dynamometer. The mesh size of the net will then be determined in accordance with paragraph (c)(5) of this section. If the calculation of the mesh size shows that the mesh size does not appear to comply with the rules in force, then two additional series of 20 meshes selected in accordance with paragraph (c)(3) of this section will be measured. The mesh size will then be recalculated in accordance with paragraph (c)(5) of this section, taking into account the 60 meshes already measured; this recalculation will be the mesh size of the net.

(ii) If the captain of the vessel contests the mesh size determined in accordance with paragraph (c)(6)(i) of this section, such measurement will not be considered for the determination of the mesh size and the net will be remeasured.

(A) A weight or dynamometer attached to the gauge will be used for remeasurement. The choice of weight or dynamometer is at the discretion of the inspectors. The weight will be fixed to the hole in the narrowest extremity of the gauge using a hook. The dynamometer may either be fixed to the hole in the narrowest extremity of the gauge or be applied at the largest extremity of the gauge.

(B) The accuracy of the weight or dynamometer must be certified by the appropriate national authority.

(C) For nets of a mesh size of 35 mm or less as determined in accordance with paragraph (c)(6)(i) of this section, a force of 19.61 newtons (equivalent to a mass of 2 kg) will be applied, and for other nets, a force of 49.03 newtons (equivalent to a mass of 5 kg).

(D) For the purposes of determining the mesh size in accordance with paragraph (c)(5) of this section, when using a weight or dynamometer, one series of 20 meshes only will be measured.

§ 300.111 Framework for annual management measures.

(a) *Introduction.* New management measures may be added and others modified through publication of a regulatory action in the **Federal Register**. The following framework process authorizes the implementation of measures that may affect the operation of the commercial or exploratory fisheries, gear, area restrictions, or changes in catch and/or effort.

(b) *Preliminary notice.* The Secretary of State shall publish preliminary notice in the **Federal Register** of the management measures adopted by the parties to the Convention.

(c) *Procedure.* At its annual meeting, usually in October or November, the Commission may recommend new measures and that established measures be modified, removed, or re-instituted. After public notice of those recommendations by the Secretary of State and opportunity for public comment, and after considering the impact of instituting the measures and any public comment received by the Secretary of State, the Assistant Administrator may implement the management measures by notice in the **Federal Register**, with immediate force and effect. The notification in the **Federal Register** will summarize new management measures, and respond to any public comments received by the Secretary of State on the preliminary notice.

(d) *Types of management measures to be frameworked.* Management measures that may be implemented by regulatory notice rather than by codified regulation are those that generally will not remain in effect for more than 12 months and include catch restrictions, time and area closures, and gear restrictions.

§ 300.112 Harvesting permits.

(a) *General.* (1) Every vessel subject to the jurisdiction of the United States that attempts to reduce or reduces any AMLR to possession must have a harvesting permit authorizing the attempt or reduction, unless the attempt or reduction occurs during recreational fishing or is covered by an individual permit. Boats launched from a vessel issued a harvesting permit do not require a separate permit, but are covered by the permit issued the launching vessel. Any enforcement action that results from the activities of a launched boat will be taken against the launching vessel.

(2) Permits issued under this section do not authorize vessels or persons subject to the jurisdiction of the United States to harass, capture, harm, kill, harvest, or import marine mammals. No marine mammals may be taken in the course of commercial fishing operations unless the taking is allowed under the Marine Mammal Protection Act and/or the Endangered Species Act pursuant to an exemption or permit granted by the appropriate agency.

(b) *Responsibility of owners and operators.* (1) The owners and operators of each harvesting vessel are jointly and severally responsible for compliance with the Act, this subpart, and any permit issued under the Act and this subpart.

(2) The owners and operators of each such vessel are responsible for the acts of their employees and agents constituting violations, regardless of whether the specific acts were authorized or forbidden by the owners or operators, and regardless of knowledge concerning their occurrence.

(3) The owner of such vessel must report any sale, change in ownership, or other disposition of the vessel to the Assistant Administrator within 15 days of the occurrence.

(c) *Application.* Application forms for harvesting permits are available from the Assistant Administrator (Attn: CCAMLR permits). A separate fully completed and accurate application must be submitted for each vessel for which a harvesting permit is requested at least 90 days before the date anticipated for the beginning of harvesting.

(d) *Issuance.* The Assistant Administrator may issue a harvesting permit to a vessel if the Assistant Administrator determines that the harvesting described in the application will meet the requirements of the Act and will not:

(1) Decrease the size of any harvested population to levels below those that ensure its stable recruitment. For this purpose, the Convention recommends that its size not be allowed to fall below a level close to that which ensures the greatest net annual increment.

(2) Upset the ecological relationships between harvested, dependent, and related populations of AMLRs and the restoration of depleted populations to levels that will ensure stable recruitment.

(3) Cause changes or increase the risk of changes in the marine ecosystem that are not potentially reversible over 2 or 3 decades, taking into account the state of available knowledge of the direct and indirect impact of harvesting, the effect of the introduction of alien species, the effects of associated activities on the marine ecosystem and of the effects of environmental changes, with the aim of making possible the sustained conservation of AMLRs.

(4) Violate the management measures issued pursuant to § 300.111 of this subpart.

(5) Violate any other conservation measures in force with respect to the United States under the Convention or the Act.

(e) *Duration.* A harvesting permit is valid from its date of issuance to its date of expiration unless it is revoked or suspended.

(f) *Transfer.* Permits are not transferable or assignable. A permit is valid only for the vessel to which it is issued.

(g) *Display.* Each harvesting vessel when engaged in harvesting must either have on board an up-to-date copy of its harvesting permit or a fully completed and up-to-date harvesting vessel certificate and the vessel operator must produce it for inspection upon the request of an authorized officer or CCAMLR inspector. In order for the certificate to be considered complete, the vessel owner or operator must enter on it the name and IRCS of the vessel issued the harvesting permit, the number of the harvesting permit and its date of issuance and expiration, the harvesting authorized by the permit, and all conditions and restrictions contained in the permit. Blank certificates are available from the Assistant Administrator.

(h) *Changes in information submitted by permit applicants or holders*—(1) *Changes in pending applications.* Applicants for a harvesting permit must report to the Assistant Administrator in writing any change in the information contained in the application. The processing period for the application will be extended as necessary to review the change.

(2) *Changes occurring after permit issuance*—(i) *Changes other than in the manner and amount of harvesting.* The owner or operator of a vessel that has been issued a harvesting permit must report to the Assistant Administrator in writing any change in previously submitted information other than a proposed change in the location, manner, or amount of harvesting within 15 days of the change. Based on such reported information, the Assistant Administrator may revise the permit effective upon notification to the permit holder. As soon as possible, the vessel owner or operator must revise any harvesting vessel certificate evidencing the permit, accordingly.

(ii) *Requested changes in the location, manner, or amount of harvesting.* Any changes in the manner or amount of harvesting must be proposed in writing to the Assistant Administrator and may not be undertaken unless authorized by the Assistant Administrator through a permit revision or issuance of a new permit. If a requested change in the location, manner, or amount of harvesting could significantly affect the status of any Antarctic marine living resource, the Assistant Administrator will treat the requested change as an application for a new permit and so notify the holder.

(i) *Additional conditions and restrictions.* The Assistant Administrator may revise the harvesting permit, effective upon notification to the permit holder, to impose additional conditions and restrictions on the harvesting vessel as necessary to achieve the purposes of the Convention or the Act. The permit holder must, as soon as possible, direct the vessel operator to revise the harvesting vessel certificate, if any, accordingly.

(j) *Revision, suspension, or revocation for violations.* A harvesting permit may be revised, suspended, or revoked if the harvesting vessel is involved in the commission of any violation of its permit, the Act, or this subpart. Failure to report a change in the information contained in an application within 15 days of the change is a violation of this subpart and voids the application or permit, as applicable. If a change in vessel ownership is not reported, the violation is chargeable to the previous owner. Title 15 CFR part 904 governs permit sanctions under this subpart.

§ 300.113 Import permits.

(a) *General.* (1) Any AMLR may be imported into the United States if its harvest is authorized by an individual permit or a harvesting permit. The harvesting permit, the harvesting vessel certificate, or the individual permit, or a copy of any thereof, must accompany the import. AMLRs harvested by entities not subject to U.S. jurisdiction and, thus, not harvested under a U.S. issued permit (i.e., a harvesting permit or an individual permit), also may be imported into the United States if such harvesting will meet or met the requirements of the Act and will not or did not violate any conservation measure in force with respect to the United States under the Convention or the Act or violate any of the regulations in this subpart, including resource management measures contained therein. A NMFS issued import permit or copy thereof must accompany such an import as proof that the foreign harvested resources met such requirements. Further, the importer is required to complete and return to the Assistant Administrator, no later than 10 days after the date of the importation, an import ticket reporting the importation. However, in no event may a marine mammal be imported into the United States unless authorized and accompanied by an import permit issued under the Marine Mammal Protection Act and/or the Endangered Species Act.

(2) A permit issued under this section does not authorize the harvest of any AMLRs.

(b) *Application.* Application forms for import permits are available from the Assistant Administrator (Attn: CCAMLR permits). A fully completed and accurate application must be submitted for each import permit requested at least 30 days before the anticipated date of the importation.

(c) *Issuance.* The Assistant Administrator may issue an import permit if the Assistant Administrator determines that the importation meets the requirements of the Act and that the resources were not or will not be harvested in violation of any conservation measure in force with respect to the United States or in violation of any regulation in this subpart. Blank import tickets will be attached to the permit. Additional blank import tickets are available from the Assistant Administrator.

(d) *Duration.* An import permit is valid from its date of issuance to its date of expiration unless it is revoked or suspended.

(e) *Transfer.* An import permit is not transferable or assignable.

(f) *Changes in information submitted by permit applicants or holders*—(1) *Changes in pending applications.* Applicants for an import permit must report in writing to the Assistant Administrator any change in the information submitted in their import permit application. The processing period for the application will be extended as necessary to review the change.

(2) *Changes occurring after permit issuance.* Any entity issued an import permit must report in writing to the Assistant Administrator any changes in previously submitted information. Any changes that would not result in a change in the importation authorized by the permit must be reported on the import ticket required to be submitted to the Assistant Administrator no later than 10 days after the date of importation. Any changes that would result in a change in the importation authorized by the permit, such as country of origin, type and quantity of the resource to be imported, and Convention statistical subarea from which the resource was harvested, must be proposed in writing to the Assistant Administrator and may not be undertaken unless authorized by the Assistant Administrator by a permit revision or new permit.

(g) *Revision, suspension, or revocation.* An import permit may be revised, suspended, or revoked based upon information subsequently reported, effective upon notification to the permit holder. An import permit may be revised, suspended, or revoked,

based upon a violation of the permit, the Act, or this subpart. Failure to report a change in the information contained in an import permit application is a violation of this subpart and voids the application or permit, as applicable. Title 15 CFR part 904 governs permit sanctions under this subpart.

(h) *Disposition of resources not accompanied by required documentation.* (1) When AMLRs are imported into the United States unaccompanied by a permit authorizing import, the importer must either:

(i) Abandon the resources;

(ii) Waive claim to the resources; or

(iii) Place the resources into a bonded warehouse and attempt to obtain a permit authorizing their importation.

(2) If, within 60 days of such resources being placed into a bonded warehouse, the District Director of the U.S. Customs Service receives documentation that import of the resources into the United States is authorized by a permit, the resources will be allowed entry. If documentation of a permit is not presented within 60 days, the importer's claim to the resources will be deemed waived.

(3) When resources are abandoned or claim to them waived, the resources will be delivered to the Administrator of NOAA, or a designee, for storage or disposal as authorized by law.

§ 300.114 Appointment of a designated representative.

(a) All holders of permits authorizing fishing in subarea 48.3 must appoint a designated representative in the United States.

(b) The designated representative will be notified of closures under § 300.111 and must transmit this information to the vessel on the grounds.

(c) The designated representative may receive catch reports from the vessel and transmit the reports to NMFS in writing.

§ 300.115 Prohibitions.

In addition to the prohibitions in § 300.4, it is unlawful for any person to:

(a) Reduce to possession or attempt to reduce to possession any AMLRs without a permit for such activity as required by § 300.112.

(b) Import into the United States any AMLRs without either a permit to import those resources as required by § 300.113 or a permit to harvest those resources as required by § 300.112.

(c) Engage in harvesting or other associated activities in violation of the provisions of the Convention or in violation of a conservation measure in force with respect to the United States under Article IX of the Convention.

(d) Ship, transport, offer for sale, sell, purchase, import, export or have custody, control or possession of, any AMLR that he or she knows, or reasonably should have known, was harvested in violation of a conservation measure in force with respect to the United States under article IX of the Convention or in violation of any regulation promulgated under this subpart, without regard to the citizenship of the person that harvested, or vessel that was used in the harvesting of, the AMLR.

(e) Refuse to allow any CCAMLR inspector to board a vessel of the United States or a vessel subject to the jurisdiction of the United States for the purpose of conducting an inspection authorized by the Act, this subpart, or any permit issued under the Act.

(f) Refuse to provide appropriate assistance, including access as necessary to communications equipment, to CCAMLR inspectors.

(g) Refuse to sign a written notification of alleged violations of Commission measures in effect prepared by a CCAMLR inspector.

(h) Assault, resist, oppose, impede, intimidate, or interfere with a CCAMLR inspector in the conduct of any boarding or inspection authorized by the Act, this subpart, or any permit issued under the Act.

(i) Use any vessel to engage in harvesting after the revocation, or during the period of suspension, of an applicable permit issued under the Act.

(j) Fail to identify, falsely identify, fail to properly maintain, or obscure the identification of a harvesting vessel or its gear as required by this subpart.

(k) Fish in a closed area.

(l) Trawl with a mesh size in any part of the trawl net smaller than that allowed for any directed fishing for Antarctic finfishes as specified in management measures issued pursuant to § 300.111.

(m) Use any means or device that would reduce the size or obstruct the opening of the trawl meshes specified in management measures issued pursuant to § 300.111.

(n) Possess fish in violation of the catch limit specified in management measures issued pursuant to § 300.111.

(o) Discard netting or other substances in the Convention Area in violation of § 300.109.

(p) Violate or attempt to violate any provision of this subpart, the Act, any other regulation promulgated under the Act or any permit issued under the Act.

§ 300.116 Facilitation of enforcement and inspection.

In addition to the facilitation of enforcement provisions of § 300.5, the following requirements apply to this subpart.

(a) *Access and records.* (1) The owners and operator of each harvesting vessel must provide authorized officers and CCAMLR inspectors access to all spaces where work is conducted or business papers and records are prepared or stored, including but not limited to personal quarters and areas within personal quarters. If inspection of a particular area would interfere with specific on-going scientific research, and if the operator of the harvesting vessel makes such assertion and produces an individual permit that covers that specific research, the authorized officer or CCAMLR inspector will not disturb the area, but will record the information pertaining to the denial of access.

(2) The owner and operator of each harvesting vessel must provide to authorized officers and CCAMLR inspectors all records and documents pertaining to the harvesting activities of the vessel, including but not limited to production records, fishing logs, navigation logs, transfer records, product receipts, cargo stowage plans or records, draft or displacement calculations, customs documents or records, and an accurate hold plan reflecting the current structure of the vessel's storage and factory spaces.

(3) Before leaving vessels that have been inspected, the CCAMLR inspector will give the master of the vessel a Certificate of Inspection and a written notification of any alleged violations of Commission measures in effect and will afford the master the opportunity to comment on it. The ship's master must sign the notification to acknowledge receipt and the opportunity to comment on it.

(b) *Reports by non-inspectors.* All scientists, fishermen, and other non-inspectors present in the Convention area and subject to the jurisdiction of the United States are encouraged to report any violation of Commission conservation and management measures observed in the Convention area to the Office of Ocean Affairs (CCAMLR Violations), Department of State, Room 5801, Washington, DC 20520.

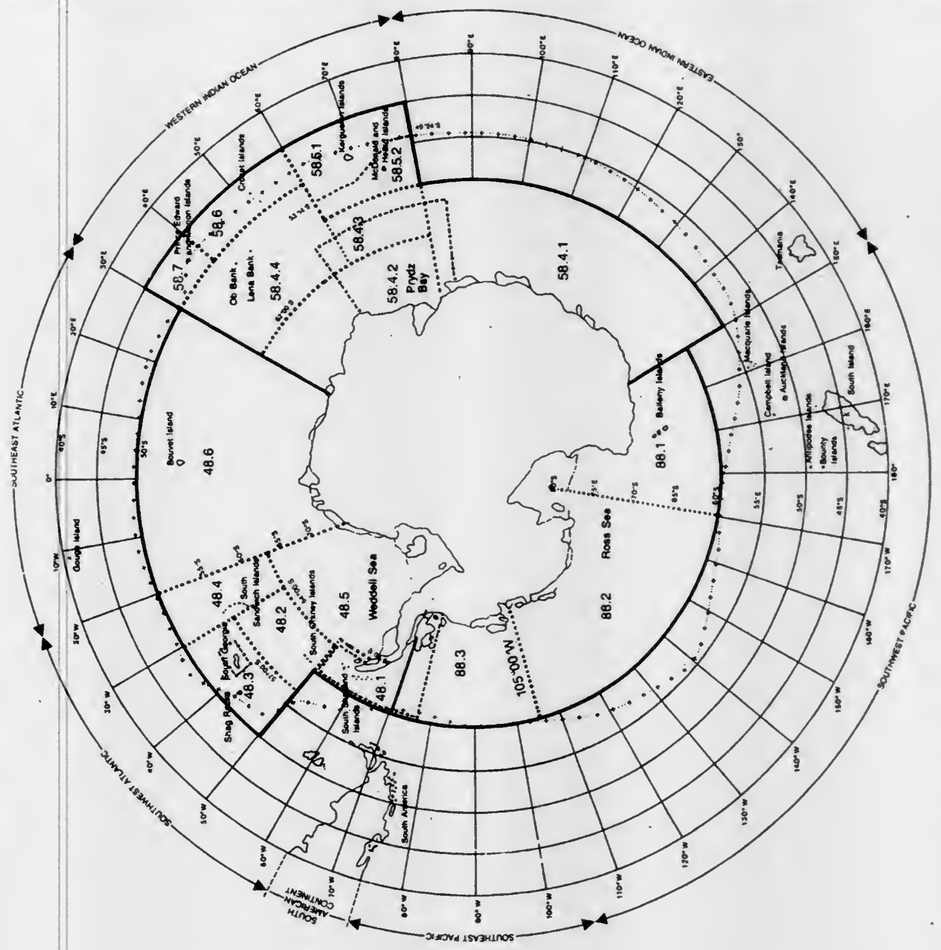
(c) *Storage of AMLRs.* The operator of each harvesting vessel storing AMLRs in a storage space on board the vessel must ensure that non-resource items are neither stowed beneath nor covered by resource items, unless required to maintain the stability and safety of the vessel. Non-resource items include, but are not limited to, portable conveyors, exhaust fans, ladders, nets, fuel bladders, extra bin boards, or other moveable non-resource items. These

non-resource items may be in a resource storage space when necessary for the safety of the vessel or crew or for the storage of the items. Lumber, bin boards, or other dunnage may be used for shoring or bracing of product to ensure the safety of crew and to prevent shifting of cargo within the space.

§ 300.117 Penalties.

Any person or harvesting vessel found to be in violation of the Act, this subpart, or any permit issued under this subpart will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, 15 CFR part 904, and other applicable laws.

BILLING CODE 3510–22–W



CCAMLR

Boundaries of the Statistical Reporting Areas in the Southern Ocean

LEGEND
- STATISTICAL AREA / ZONE STATISTIQUE / СТАТИСТИЧЕСКИЙ РАЙОН / AREA ESTADISTICA
- STATISTICAL SUBAREA / SOUS-ZONE STATISTIQUE / СТАТИСТИЧЕСКИЙ ПОДРАЙОН / SUBAREA ESTADISTICA
- ANTARCTIC CONVERGENCE / CONVERGENCE ANTARCTIQUE / АНТАРКТИЧЕСКАЯ КОНВЕРГЕНЦИЯ / CONVERGENCIA ANTARTICA
- CONTINENT, ISLAND / CONTINENT, ILE / МАТЕРИК, ОСТРОВ / CONTINENTE, ISLA
- INTEGRATED STUDY REGION / ZONE D'ETUDE INTEGREE / РАЙОН КОМПЛЕКСНЫХ МСС/ЛЕДОВАНИЙ / REGION DE ESTUDIO INTEGRADO

Figure 1 to Subpart G--Boundaries of the Statistical Reporting Area in the Southern Ocean

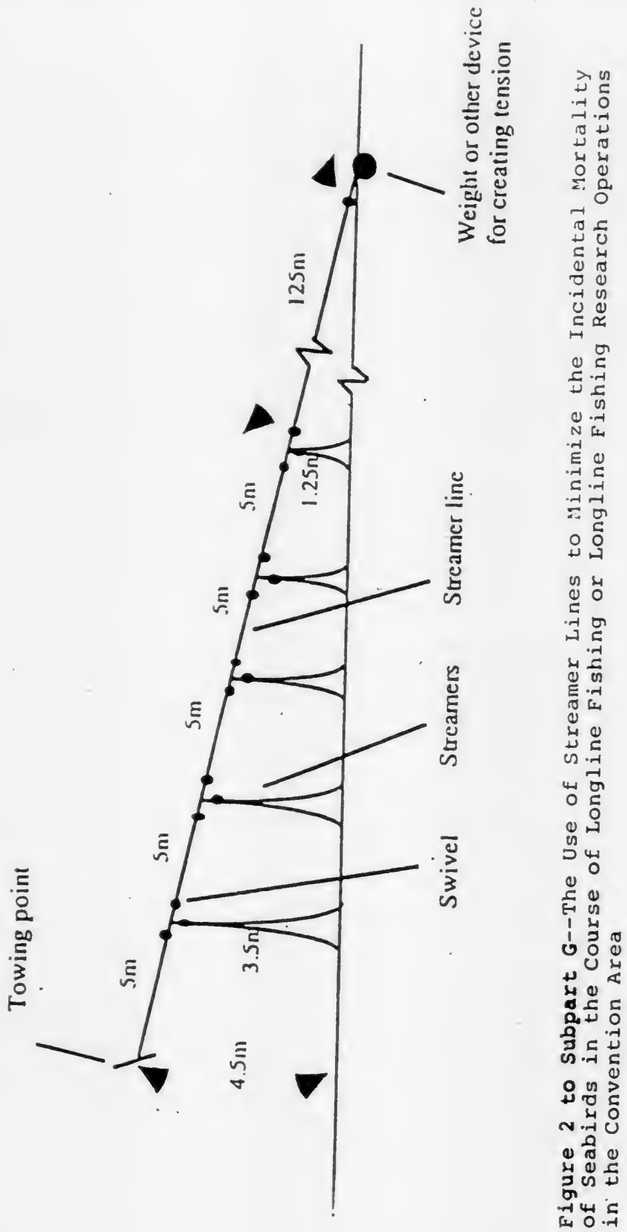


Figure 2 to Subpart G--The Use of Streamer Lines to Minimize the Incidental Mortality of Seabirds in the Course of Longline Fishing or Longline Fishing Research Operations in the Convention Area

BILLING CODE 3510-22-C

Subpart H—Vessels of the United States Fishing in Columbian Treaty Waters

Authority: 16 U.S.C. 1801 *et seq.*

§ 300.120 Purpose.

This subpart implements fishery conservation and management measures as provided in fishery agreements pursuant to the Treaty Between the Government of the United States of America and the Government of the Republic of Colombia Concerning the Status of Quita Sueno, Roncador and Serrana (TIAS 10120) (Treaty).

§ 300.121 Definitions.

In addition to the terms defined in § 300.2, the Magnuson Act, and § 600.10 of this title, and in the Treaty, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Magnuson Act, or the Treaty, the definition in this section shall apply.

Conch means *Strombus gigas.*

Factory vessel means a vessel that processes, transforms, or packages aquatic biological resources on board.

Lobster means one or both of the following:

(1) Smoothtail lobster, *Panulirus laevicauda.*

(2) Spiny lobster, *Panulirus argus.*

Regional Director means the Director, Southeast Region, or a designee.

Science and Research Director means the Director, Southeast Fisheries Science Center.

Treaty waters means the waters of one or more of the following:

(1) *Quita Sueno*, enclosed by latitudes 13°55′ N. and 14°43′ N. between longitudes 80°55′ W. and 81°28′ W.

(2) *Serrana*, enclosed by arcs 12 nautical miles from the low water line of the cays and islands in the general area of 14°22′ N. lat., 80°20′ W. long.

(3) *Roncador*, enclosed by arcs 12 nautical miles from the low water line of Roncador Cay, in approximate position 13°35′ N. lat., 80°05′ W. long.

§ 300.122 Relation to other laws.

(a) The relation of this subpart to other laws is set forth in § 600.705 of this title and paragraph (b) of this section. Particular note should be made to the reference in § 600.705 to the applicability of title 46 U.S.C., under which a Certificate of Documentation is invalid when the vessel is placed under the command of a person who is not a citizen of the United States.

(b) Minimum size limitations for certain species, such as reef fish in the Gulf of Mexico, may apply to vessels transitting the EEZ with such species aboard.

§ 300.123 Certificates and permits.

(a) *Applicability.* An owner of a vessel of the United States that fishes in treaty waters is required to obtain an annual certificate issued by the Republic of Colombia and an annual vessel permit issued by the Regional Director.

(b) *Application for certificate/permit.* (1) An application for a permit must be submitted and signed by the vessel's owner. An application may be submitted at any time, but should be submitted to the Regional Director not less than 90 days in advance of its need. Applications for the ensuing calendar year should be submitted to the Regional Director by October 1.

(2) An applicant must provide the following:

(i) A copy of the vessel's valid USCG certificate of documentation or, if not documented, a copy of its valid state registration certificate.

(ii) Vessel name and official number.

(iii) Name, address, telephone number, and other identifying information of the vessel owner or, if the owner is a corporation or partnership, of the responsible corporate officer or general partner.

(iv) Principal port of landing of fish taken from treaty waters.

(v) Type of fishing to be conducted in treaty waters.

(vi) Any other information concerning the vessel, gear characteristics, principal fisheries engaged in, or fishing areas, as specified on the application form.

(vii) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.

(c) *Issuance.* (1) The Regional Director will request a certificate from the Republic of Colombia if:

(i) The application is complete.

(ii) The applicant has complied with all applicable reporting requirements of § 300.124 during the year immediately preceding the application.

(2) Upon receipt of an incomplete application, or an application from a person who has not complied with all applicable reporting requirements of § 300.124 during the year immediately preceding the application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the Regional Director's notification, the application will be considered abandoned.

(3) The Regional Director will issue a permit as soon as the certificate is received from the Republic of Colombia.

(d) *Duration.* A certificate and permit are valid for the calendar year for which they are issued, unless the permit is revoked, suspended, or modified under subpart D of 15 CFR part 904.

(e) *Transfer.* A certificate and permit issued under this section are not transferable or assignable. They are valid only for the fishing vessel and owner for which they are issued.

(f) *Display.* A certificate and permit issued under this section must be carried aboard the fishing vessel while it is in treaty waters. The operator of a fishing vessel must present the certificate and permit for inspection upon request of an authorized officer or an enforcement officer of the Republic of Colombia.

(g) *Sanctions and denials.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(h) *Alteration.* A certificate or permit that is altered, erased, or mutilated is invalid.

(i) *Replacement.* A replacement certificate or permit may be issued upon request. Such request must clearly state the reason for a replacement certificate or permit.

(j) *Change in application information.* The owner of a vessel with a permit must notify the Regional Director within 30 days after any change in the application information required by paragraph (b)(2) of this section. The permit is void if any change in the information is not reported within 30 days.

§ 300.124 Recordkeeping and reporting.

(a) *Arrival and departure reports.* The operator of each vessel of the United States for which a certificate and permit have been issued under § 300.123 must report by radio to the Port Captain, San Andres Island, voice radio call sign "Capitania de San Andres," the vessel's arrival in and departure from treaty waters. Radio reports must be made on 8222.0 kHz or 8276.5 kHz between 8:00 a.m. and 12 noon, local time (1300–1700, Greenwich mean time) Monday through Friday.

(b) *Catch and effort reports.* Each vessel of the United States must report its catch and effort on each trip into treaty waters to the Science and Research Director on a form available from the Science and Research Director. These forms must be submitted to the Science and Research Director so as to be received no later than 7 days after the end of each fishing trip.

§ 300.125 Vessel identification.

(a) *Official number.* A vessel with a permit issued pursuant to § 300.123, when in treaty waters, must display its official number on the port and starboard sides of the deckhouse or hull,

and on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft. The official number must be permanently affixed to or painted on the vessel and must be in block arabic numerals in contrasting color to the background at least 18 inches (45.7 cm) in height for fishing vessels over 65 ft (19.8 m) in length, and at least 10 inches (25.4 cm) in height for all other vessel.

(b) *Duties of operator.* The operator of each fishing vessel must—

(1) Keep the official number clearly legible and in good repair.

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material aboard obstructs the view of the official number from an enforcement vessel or aircraft.

§ 300.126 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this title and the prohibited acts specified in § 300.4, it is unlawful for any person to do any of the following:

(a) Fish in treaty waters without the certificate and permit aboard, or fail to display the certificate and permit, as specified in § 300.123 (a) and (f).

(b) Fail to notify the Regional Director of a change in application information, as specified in § 300.123(j).

(c) Fail to report a vessel's arrival in and departure from treaty waters, as required by § 300.124(a).

(d) Falsify or fail to display and maintain vessel identification, as required by § 300.125.

(e) Fail to comply immediately with instructions and signals issued by an enforcement officer of the Republic of Colombia, as specified in § 300.127.

(f) Operate a factory vessel in treaty waters, as specified in § 300.130(a).

(g) Use a monofilament gillnet in treaty waters, as specified in § 300.130(b).

(h) Use autonomous or semi-autonomous diving equipment in treaty waters, as specified in § 300.130(c).

(i) Use or possess in treaty waters a lobster trap or fish trap without a degradable panel, as specified in § 300.130(d).

(j) Possess conch smaller than the minimum size limit, as specified in § 300.131(a).

(k) Fish for or possess conch in the closed area or during the closed season, as specified in § 300.131 (b) and (c).

(l) Retain on board a berried lobster or strip eggs from or otherwise molest a berried lobster, as specified in § 300.132(a).

(m) Possess a lobster smaller than the minimum size, as specified in § 300.132(b).

(n) Fail to return immediately to the water unharmed a berried or undersized lobster, as specified in § 300.132(a) and (b).

§ 300.127 Facilitation of enforcement.

(a) The provisions of § 600.730 of this title and paragraph (b) of this section apply to vessels of the United States fishing in treaty waters.

(b) The operator of, or any other person aboard, any vessel of the United States fishing in treaty waters must immediately comply with instructions and signals issued by an enforcement officer of the Republic of Colombia to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record, and catch for purposes of enforcing this subpart.

§ 300.128 Penalties.

Any person committing or fishing vessel used in the commission of a violation of the Magnuson Act or any regulation issued under the Magnuson Act, is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Magnuson Act, to part 600 of this title, to 15 CFR part 904, and to other applicable law. In addition, Colombian authorities may require a vessel involved in a violation of this subpart to leave treaty waters.

§ 300.129 Fishing year.

The fishing year for fishing in treaty waters begins on January 1 and ends on December 31.

§ 300.130 Vessel and gear restrictions.

(a) *Factory vessels.* Factory vessels are prohibited from operating in treaty waters.

(b) *Monofilament gillnets.* A monofilament gillnet made from nylon or similar synthetic material are prohibited from being used in treaty waters.

(c) *Tanks and air hoses.* Autonomous or semiautonomous diving equipment (tanks or air hoses) are prohibited from being used to take aquatic biological resources in treaty waters.

(d) *Trap requirements.* A lobster trap or fish trap used or possessed in treaty waters that is constructed of material other than wood must have an escape panel located in the upper half of the sides or on top of the trap that, when removed, will leave an opening no smaller than the throat or entrance of the trap. Such escape panel must be constructed of or attached to the trap with wood, cotton, or other degradable material.

(e) *Poisons and explosives.* [Reserved]

§ 300.131 Conch harvest limitations.

(a) *Size limit.* The minimum size limit for possession of conch in or from treaty waters is 7.94 oz (225 g) for an uncleaned meat and 3.53 oz (100 g) for a cleaned meat.

(b) *Closed area.* The treaty waters of Quita Sueno are closed to the harvest or possession of conch.

(c) *Closed season.* During the period July 1 through September 30 of each year, the treaty waters of Serrana and Roncador are closed to the harvest or possession of conch.

§ 300.132 Lobster harvest limitations.

(a) *Berried lobsters.* A berried (egg-bearing) lobster in treaty waters may not be retained on board. A berried lobster must be returned immediately to the water unharmed. A berried lobster may not be stripped, scraped, shaved, clipped, or in any other manner molested to remove the eggs.

(b) *Size limit.* The minimum size limit for possession of lobster in or from treaty waters is 5.5 inches (13.97 cm), tail length. Tail length means the measurement, with the tail in a straight, flat position, from the anterior upper edge of the first abdominal (tail) segment to the tip of the closed tail. A lobster smaller than the minimum size limit must be returned immediately to the water unharmed.

Subpart I—United States-Canada Fisheries Enforcement

Authority: 16 U.S.C. 1801 *et seq.*

§ 300.140 Purpose and scope.

This subpart implements the Agreement Between the Government of the United States of America and the Government of Canada on Fisheries Enforcement executed at Ottawa, Canada, on September 26, 1990 (Agreement), allowing each party to the Agreement to take appropriate measures, consistent with international law, to prevent its nationals, residents and vessels from violating those national fisheries laws and regulations of the other party. This subpart applies, except where otherwise specified in this subpart, to all persons and all places (on water and on land) subject to the jurisdiction of the United States under the Magnuson Act. This includes, but is not limited to, activities of nationals, residents and vessels of the United States (including the owners and operators of such vessels) within waters subject to the fisheries jurisdiction of Canada as defined in this subpart, as well as on the high seas and in waters subject to the fisheries jurisdiction of the United States.

§ 300.141 Definitions.

In addition to the terms defined in § 300.2 and those in the Magnuson Act and the Agreement, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Magnuson Act, or the Agreement, the definition in this section applies.

Applicable Canadian fisheries law means any Canadian law, regulation or similar provision relating in any manner to fishing by any fishing vessel other than a Canadian fishing vessel in waters subject to the fisheries jurisdiction of Canada, including, but not limited to, any provision relating to stowage of fishing gear by vessels passing through such waters, and to obstruction or interference with enforcement of any such law or regulation.

Authorized officer of Canada means any fishery officer, protection officer, officer of the Royal Canadian Mounted Police, or other employee authorized by the appropriate authority of any national or provincial agency of Canada to enforce any applicable Canadian fisheries law.

Canadian fishing vessel means a fishing vessel:

(1) That is registered or licensed in Canada under the Canada Shipping Act and is owned by one or more persons each of whom is a Canadian citizen, a person resident and domiciled in Canada, or a corporation incorporated under the laws of Canada or of a province, having its principle place of business in Canada; or

(2) That is not required by the Canada Shipping Act to be registered or licensed in Canada and is not registered or licensed elsewhere but is owned as described in paragraph (1) of this definition.

Waters subject to the fisheries jurisdiction of Canada means the internal waters, territorial sea, and the zone that Canada has established, extending 200 nautical miles from its coasts, in which it exercises sovereign rights for the purpose of exploration, exploitation, conservation and management of living marine resources, to the extent recognized by the United States.

§ 300.142 Prohibitions.

The prohibitions in this section apply within waters subject to the fisheries jurisdiction of Canada and during hot pursuit therefrom by an authorized officer of Canada. It is unlawful for any national or resident of the United States, or any person on board a vessel of the United States, or the owner or operator of any such vessel, to do any of the following:

(a) Engage in fishing in waters subject to the fisheries jurisdiction of Canada without the express authorization of the Government of Canada.

(b) Take or retain fish in waters subject to the fisheries jurisdiction of Canada without the express authorization of the Government of Canada.

(c) Be on board a fishing vessel in waters subject to the fisheries jurisdiction of Canada, without stowing all fishing gear on board either:

(1) Below deck, or in an area where it is not normally used, such that the gear is not readily available for fishing; or

(2) If the gear cannot readily be moved, in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing; unless the vessel has been authorized by the Government of Canada to fish in the particular location within waters subject to the fisheries jurisdiction of Canada in which it is operating.

(d) While on board a fishing vessel in waters subject to the fisheries jurisdiction of Canada, fail to respond to any inquiry from an authorized officer of Canada regarding the vessel's name, flag state, location, route or destination, and/or the circumstances under which the vessel entered such waters.

(e) Violate the Agreement, any applicable Canadian fisheries law, or the terms or conditions of any permit, license or any other authorization granted by Canada under any such law.

(f) Fail to comply immediately with any of the enforcement and boarding procedures specified in § 300.143.

(g) Destroy, stave, or dispose of in any manner, any fish, gear, cargo or other matter, upon any communication or signal from an authorized officer of Canada, or upon the approach of such an officer, enforcement vessel or aircraft, before the officer has had the opportunity to inspect same, or in contravention of directions from such an officer.

(h) Refuse to allow an authorized officer of Canada to board a vessel for the purpose of conducting any inspection, search, seizure, investigation or arrest in connection with the enforcement of any applicable Canadian fisheries law.

(i) Assault, resist, oppose, impede, intimidate, threaten, obstruct, delay, prevent, or interfere, in any manner, with an authorized officer of Canada in the conduct of any boarding, inspection, search, seizure, investigation or arrest in connection with the enforcement of any applicable Canadian fisheries law.

(j) Make any false statement, oral or written, to an authorized officer of Canada in response to any inquiry by that officer in connection with enforcement of any applicable Canadian fisheries law.

(k) Falsify, cover, or otherwise obscure, the name, home port, official number (if any), or any other similar marking or identification of any fishing vessel subject to this subpart such that the vessel cannot be readily identified from an enforcement vessel or aircraft.

(l) Attempt to do any of the foregoing.

§ 300.143 Facilitation of enforcement.

(a) *General.* Persons aboard fishing vessels subject to this subpart must immediately comply with instructions and/or signals issued by an authorized officer of the United States or Canada, or by an enforcement vessel or aircraft, to stop the vessel, and with instructions to facilitate safe boarding and inspection for the purpose of enforcing any applicable Canadian fisheries law, the Agreement, or this subpart. All of the provisions of § 300.5 regarding communications, boarding, and signals apply to this subpart. For purposes of this subpart, authorized officer in § 305 means an authorized officer of the United States or Canada. (See paragraph (b) of this section for specific requirements for complying with signals and instructions issued by an authorized officer of Canada.)

(b) *Canadian signals.* In addition to signals set forth in § 300.5, persons aboard fishing vessels subject to this subpart must immediately comply with the following signals by an authorized officer of Canada.

(1) Authorized officers of Canada use the following signals to require fishing vessels to stop or heave to:

(i) The hoisting of a rectangular flag, known as the International Code Flag "L", which is divided vertically and horizontally into quarters and colored so that:

(A) The upper quarter next to the staff and the lower quarter next to the fly are yellow; and

(B) The lower quarter next to the staff and the upper quarter next to the fly are black;

(ii) The flashing of a light to indicate the International Morse Code letter "L", consisting of one short flash, followed by one long flash, followed by two short flashes (. – . .); or

(iii) The sounding of a horn or whistle to indicate the International Morse Code letter "L", consisting of one short blast, followed by one long blast, followed by two short blasts (. – . .).

(2) Authorized officers of Canada use the following signals to require a fishing vessel to prepare to be boarded:

(i) The hoisting of flags representing the International Code Flag "SQ3"; or

(ii) The flashing of a light, or the sounding of a horn or whistle, to indicate the International Morse Code Signal "SQ3" (. . . – – . – . . . – –).

§ 300.144 Penalties and sanctions.

Any person, any fishing vessel, or the owner or operator of any such vessel, who violates any provision of the Agreement or this subpart, is subject to the civil and criminal fines, penalties, forfeitures, permit sanctions, or other sanctions provided in the Magnuson Act, part 600 of this title, 15 CFR part 904 (Civil Procedures), and any other applicable law or regulation.

Subpart J—U.S. Nationals Fishing in Russian Fisheries

Authority: 16 U.S.C. 1801 *et seq.*

§ 300.150 Purpose.

This subpart regulates U.S. nationals fishing in the Russian fisheries and implements the Agreement between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on Mutual Fisheries Relations, signed May 31, 1988.

§ 300.151 Definitions.

In addition to the terms defined in § 300.2 and those in the Magnuson Act, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2 or the Magnuson Act, the definition in this section shall apply.

Affiliates means two persons (including individuals and entities) related in such a way that—

(1) One indirectly or directly controls or has power to control the other; or

(2) A third party controls or has power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a reorganized entity having the same or similar management, ownership, or employees as a former entity.

Agreement means the Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on Mutual Fisheries Relations, signed May 31, 1988.

Embassy of the Russian Federation means the Fisheries Attache of the embassy located in Washington, D.C.

Fishery resource means any fish, any stock of fish, any species of fish, and any habitat of fish.

Fishing or *to fish* means any activity that does, is intended to, or can reasonably be expected to result in catching or removing from the water fishery resources. Fishing also includes the acts of scouting, processing, and support.

Operator, with respect to any vessel, means the master or other individual on board and in charge of either the vessel, the vessel's fishing operation, or both.

Owner, with respect to any vessel, means any person who owns that vessel in whole or in part, whether or not it is leased or chartered to or managed by another person, or any charterer, whether bareboat, time, or voyage, and any person who acts in the capacity of a charterer, or manager, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel, any officer, director, manager, controlling shareholder of any entity described in this definition, any agent designated as such by any person described in this definition, and any affiliate of any person described in this definition.

Processing means any operation by a vessel to receive fish from a fishing vessel and/or the preparation of fish, including but not limited to cleaning, cooking, canning, smoking, salting, drying, or freezing, either on the vessel's behalf or to assist another vessel.

Regional Director means Director, Alaska Region, or a designee.

Relevant laws and regulations of the Russian Federation means those Russian laws and regulations that concern fishing for fishery resources over which Russia exercises sovereign rights or fishery management authority.

Russian and *Federation* mean the Russian Federation, its government, or any organ or entity of its government.

Russian continental shelf or *continental shelf of Russia* means the seabed and subsoil of the submarine areas over which, consistent with international law, Russia exercises sovereign rights.

Russian Economic Zone or *Russian EZ* means a zone of waters off the coast of Russia beyond and adjacent to the Russian territorial sea extending a distance of up to 200 nautical miles from the baseline from which the territorial sea is measured, within which, consistent with international law, Russia has sovereign rights over the fishery resources.

Russian Federation or *Russia* means the governing entity that succeeded the Union of Soviet Socialist Republics, and that is the successor party to the Agreement of May 31, 1988.

Russian fisheries, Russian fishery resources, or *fishery resources over which Russia exercises sovereign rights or fishery management authority* means fishery resources within the Russian EZ, fishery resources of the Russian continental shelf, and anadromous species that originate in the waters of Russia, whether found in the Russian EZ or beyond any exclusive economic zone or its equivalent.

Scouting means any operation by a vessel exploring (on behalf of the vessel or another vessel) for the presence of fish by any means that do not involve the catching of fish.

Support means any operation by a vessel assisting fishing by another vessel, including—

(1) Transferring or transporting fish or fish products; or

(2) Supplying a fishing vessel with water, fuel, provisions, fishing equipment, fish processing equipment, or other supplies.

§ 300.152 Procedures.

(a) *Application for annual permits.* U.S. vessel owners and operators must have a valid permit issued by the Russian Federation obtained pursuant to a complete application submitted through NMFS before fishing in the Russian EZ or for Russian fishery resources. Application forms and copies of applicable laws and regulations of the Russian Federation may be obtained from NMFS Headquarters.

(b) *Other application information.* Applications for motherships, processing or transport vessels must identify the type of fishing gear to be employed or the fishing quotas if the vessel has received or is requesting a quota. To facilitate processing, NMFS requests that permit applications for more than 10 vessels be grouped by type and fishing area, and provide the name, address, telephone, and FAX number(s) of an individual who will be the official point of contact for an application.

(c) *Review of Applications.* NMFS will review each application, and, if it is complete, forward it to the Department of State for submission to the competent authorities of the Russian Federation. NMFS will notify the permit applicant when the permit is submitted to the Russian Federation. NMFS will return incomplete applications to the applicant.

(d) *Direct Communication.* U.S. applicants may communicate directly with the Russian Federation with regard to the status of their applications or permits and are encouraged to do so. Owners and operators should make direct contact and work with Russian industry and government authorities.

§ 300.153 Permit issuance.

(a) *Acceptance.* Once the Department of State has accepted the conditions and restrictions proposed by the Russian Federation and all fees have been paid, the competent authorities of the Russian Federation will approve the application. The Russian Federation will issue a permit to the vessel owner for each fishing vessel for which it has approved an application. That vessel will thereupon be authorized by the Russian Federation to fish in accordance with the Agreement and the terms and conditions set forth in the permit. The vessel owner is prohibited from transferring the permit to any other vessel or person. Any such transfer, or the sale or other transfer of the vessel, will immediately invalidate the permit. The vessel owner must notify NMFS of any change in the permit application information submitted to NMFS Headquarters under § 300.152 within 7 calendar days of the change.

(b) *Copies.* The vessel owner and operator must mail a copy of each permit and any conditions and restrictions issued for that vessel by the Russian Federation within 7 calendar days of its receipt to NMFS Headquarters.

(c) *Validity.* Any permit issued by the Russian Federation with respect to a vessel subject to this subpart will be deemed to be a valid permit only if:

(1) A completed permit application has been forwarded to the competent authorities of the Russian Federation as provided in § 300.152(b)(1).

(2) Such application has been approved and a permit issued by the competent authorities of the Russian Federation as provided in paragraph (a) of this section.

(3) The U.S. Department of State has notified the competent authorities of the Russian Federation that it has accepted the conditions and restrictions as provided in paragraph (a) of this section. The permit will be rendered invalid by: The transfer or sale of the permit specified in paragraph (a) of this section; the failure to submit to NMFS any changes in permit application information as required by paragraph (a) of this section; failure to submit to NMFS any permit copy required by paragraph (b) of this section or any other information or report required by any other provision of this subpart; or the failure to pay required permit fees.

(d) *Russian-imposed sanctions.* (1) The Russian Federation will impose appropriate fines, penalties, or forfeitures in accordance with its laws, for violations of its relevant laws or regulations.

(2) In the case of arrest and seizure of a U.S. vessel by Russian authorities, notification will be given promptly through diplomatic channels informing the United States of the facts and actions taken.

(3) The Russian Federation will release U.S. vessels and their crews promptly, subject to the posting of reasonable bond or other security.

(4) The sanctions for violations of limitations or restrictions on fishing operations will be appropriate fines, penalties, forfeitures, or revocations or suspensions of fishing privileges.

§ 300.154 Recordkeeping and reporting.

(a) *General.* The owner and operator of a vessel subject to this subpart are responsible for complying with all recordkeeping and reporting requirements in this part in a timely and accurate manner. Reports and records required by this subpart must be in English, in the formats specified, and unless otherwise specified, based on Greenwich mean time (GMT).

(b) *Vessel permit abstract report.* (1) The owner and operator of a vessel subject to this subpart must submit to NMFS Headquarters a permit abstract report containing the following information:

(i) Vessel name.

(ii) Russian Federation permit number.

(iii) Duration of permit (e.g., 1/1/91–12/31/91).

(iv) Authorized areas of fishing operations in geographic coordinates.

(v) Authorized catch quota in tons.

(vi) Authorized fishing gear.

(vii) Type of permit (e.g., catcher).

(2) The report must be telefaxed to (301) 713–0596 within 5 calendar days of receipt of the Russian permit.

(c) *Activity reports.* The owner and operator of a vessel subject to this subpart must submit to the Regional Director by telefax to (907) 586–7313, the following reports:

(1) *Depart Report* (Action code DEPART). At least 24 hours before the vessel departs from the EEZ for the Russian EZ, NMFS must receive the following information:

(i) The date (month and day), and time (hour and minute GMT), and position (latitude and longitude to the nearest degree and minute), at which the vessel will depart the EEZ for the Russian EZ.

(ii) The weight in metric tons (to the nearest hundredth of a metric ton) of all fish and fish product (listed by species and product codes) on board the vessel at the time it will depart the EEZ.

(2) *Return Report (Action code RETURN).* At least 24 hours before a vessel that has been in the Russian EZ enters the EEZ, NMFS must receive the following information:

(i) The date (month and day), time (hour and minute GMT), and position (latitude and longitude to the nearest degree and minute), at which the vessel will enter the EEZ.

(ii) The weight in metric tons (to the nearest hundredth of a metric ton) of all fish and fish products (listed by species and product codes) on board the vessel at the time it will enter the EEZ, and the areas (Russian EZ, U.S. EEZ, or other) in which such fish products were harvested or received.

(3) All reports must specify: The appropriate action code ("DEPART" or "RETURN"); the vessel's name and international radio call sign (IRCS); the sender's name and telephone number, and FAX, TELEX, and COMSAT numbers; the date (month and day) and time (hour and minute GMT) that the report is submitted to NMFS; and the intended date and U.S. port of landing. A list of species and product codes may be obtained from the Regional Director.

(d) *Recordkeeping.* The owner and operator of a vessel subject to this subpart must retain all copies of all reports required by this subpart on board the vessel for 1 year after the end of the calendar year in which the report was generated. The owner and operator must retain and make such records available for inspection upon the request of an authorized officer at any time for 3 years after the end of the calendar year in which the report was generated, whether or not such records on board the vessel.

§ 300.155 Requirements.

(a) *Compliance with permit requirements.* (1) U.S. nationals and vessels subject to this subpart must have a valid permit, as specified in § 300.153(c) in order to fish for Russian fishery resources.

(2) U.S. nationals and vessels subject to this subpart that are fishing for Russian fishery resources must comply with all provisions, conditions, and restrictions of any applicable permit.

(b) *Compliance with Russian law.* U.S. nationals and vessels fishing for Russian fishery resources must comply with the relevant laws and regulations of the Russian Federation.

(c) *Protection of marine mammals.* U.S. nationals and vessels fishing for Russian fishery resources may not harass, hunt, capture, or kill any marine mammal within the Russian EZ, attempt to do so, except as may be provided for by an international agreement to which

both the United States and Russia are parties, or in accordance with specific authorization and controls established by the Russian Federation. The provisions of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.* also apply to any person or vessel subject to the jurisdiction of the United States while in the Russian EZ, and it shall not be a defense to any violation of the MMPA that the person or vessel was acting in accordance with any permit or authorization issued by the Russian Federation.

(d) *Cooperation with enforcement procedures.* (1) The operator of, or any person aboard, any U.S. vessel subject to this subpart must immediately comply with instructions and signals issued by an authorized officer of the Russian Federation to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing record, and catch for purposes of enforcing the relevant laws and regulations of Russia.

(2) The operator of, and any person aboard, any U.S. vessel subject to this subpart, must comply with directions issued by authorized officers of the Russian Federation in connection with the seizure of the vessel for violation of the relevant laws or regulations of the Russian Federation.

(3) U.S. nationals and vessels subject to this subpart must pay all fines and penalties and comply with forfeiture sanctions imposed by the Russian Federation for violations of its relevant laws and regulations.

(4) The operator of, and any person aboard, any U.S. vessel subject to this subpart must immediately comply with instructions and signals issued by an authorized officer of the United States to stop the vessel and with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing records, and catch for purposes of enforcing the Magnuson Act, the Agreement, and this subpart.

(e) *Compliance with observer requirements.* The owner of, operator of, and any person aboard, any U.S. vessel fishing in the Russian EZ or for Russian fishery resources to which a Russian observer is assigned must—

(1) Allow and facilitate, on request, boarding of a U.S. vessel by the observer.

(2) Provide to the observer, at no cost to the observer or the Russian Federation, the courtesies and accommodations provided to ship's officers.

(3) Cooperate with the observer in the conduct of his or her official duties.

(4) Reimburse the Russian Federation for the costs of providing an observer aboard the vessel.

§ 300.156 Prohibited acts.

In addition to the prohibited acts specified at § 300.4, it shall be unlawful for any U.S. national or vessel, or the owner or operator of any such vessel:

(a) To fish for Russian fishery resources without a valid permit issued by the competent authorities of the Russian Federation.

(b) To violate the provisions, conditions, and restrictions of an applicable permit.

(c) To violate the relevant laws and regulations of Russia.

(d) To harass, hunt, capture, or kill any marine mammal within the Russian EZ, or while fishing for Russian fishery resources, except as provided in § 300.155(c).

(e) To fail to comply immediately with enforcement and boarding procedures specified in § 300.155(d).

(f) To refuse to allow an authorized officer of the Russian Federation to board and inspect a vessel subject to this subpart for purposes of conducting any search, inspection, arrest, or seizure in connection with the enforcement of the relevant laws and regulations of the Russian Federation.

(g) To assault, resist, oppose, impede, intimidate, threaten, or interfere with, in any manner, any authorized officer of the Russian Federation in the conduct of any search, inspection, seizure, or arrest in connection with enforcement of the relevant laws and regulations of the Russian Federation.

(h) To fail to pay fines or penalties or comply with forfeitures imposed for a violation of the relevant laws and regulations of the Russian Federation.

(i) To refuse or fail to allow a Russian observer to board a vessel subject to this subpart while fishing in the Russian EZ, or for Russian fishery resources.

(j) To fail to provide to a Russian observer aboard a vessel fishing in the Russian EZ or for Russian fishery resources, the courtesies and accommodations provided to ship's officers.

(k) To assault, resist, oppose, impede, intimidate, threaten, interfere with, harass, or fail to cooperate, in any manner, with a Russian observer placed aboard a vessel subject to this subpart.

(l) To fail to reimburse the Russian Federation for the costs incurred in the utilization of Russian observers placed aboard such vessel.

(m) To possess, have custody or control of, ship, transport, offer for sale, sell, purchase, transship, import, export, or traffic in any manner, any fish or parts thereof taken or retained, landed, purchased, sold, traded, acquired, or possessed, in any manner, in violation of the relevant laws and regulations of the Russian Federation, the Magnuson Act, or this subpart.

(n) To enter the Russian EZ to fish unless a permit application has been submitted through NMFS to the competent authorities of the Russian Federation by the U.S. Department of State for such vessel as provided in this subpart.

(o) To fish for Russian fisheries or to possess fish taken in Russian fisheries on board a vessel subject to this subpart without a valid permit or other valid form of authorization issued by the competent authorities of the Russian Federation on board the vessel.

(p) To falsify, or fail to report to NMFS, any change in the information contained in a permit application subject to this subpart within 7 calendar days of such change.

(q) To attempt to do, cause to be done, or aid and abet in doing, any of the foregoing.

(r) To violate any other provision of this subpart.

§ 300.157 Penalties.

In addition to any fine, penalty, or forfeiture imposed by the Russian Federation, nationals and vessels of the United States violating the prohibitions of § 300.156 are subject to the fines, penalties, and forfeitures and the adjudicative procedures provided in the Magnuson Act, 16 U.S.C. 1858, 1860, 1861, and any other applicable laws and regulations of the United States.

Subpart K—Transportation and Labeling of Fish or Wildlife

Authority: 16 U.S.C. 3371–3378.

§ 300.160 Requirement for marking of containers or packages.

Except as otherwise provided in this subpart, all persons are prohibited from importing, exporting, or transporting in interstate commerce any container or package containing any fish or wildlife (including shellfish) unless each container or package is conspicuously marked on the outside with both the name and address of the shipper and consignee and an accurate list of its contents by species and number of each species.

§ 300.161 Alternatives and exceptions.

(a) The requirements of § 300.160 may be met by complying with one of the following alternatives to the marking requirement:

(1)(i) Conspicuously marking the outside of each container or package containing fish or wildlife with the word "fish" or "wildlife" as appropriate for its contents, or with the common name of its contents by species, and

(ii) Including an invoice, packing list, bill of lading, or similar document to accompany the shipment that accurately states the name and address of the shipper and consignee, states the total number of packages or containers in the shipment, and for each species in the shipment specifies: The common name that identifies the species (examples include: chinook (or king) salmon; bluefin tuna; and whitetail deer); and the number of that species (or other appropriate measure of quantity such as gross or net weight). The invoice, packing list, bill of lading, or equivalent document must be securely attached to the outside of one container or package in the shipment or otherwise physically accompany the shipment in a manner that makes it readily accessible for inspection; or

(2) Affixing the shipper's wildlife import/export license number preceded by "FWS" on the outside of each container or package containing fish or wildlife if the shipper has a valid wildlife import/export license issued under authority of part 14 of this title. For each shipment marked in accordance with this paragraph (a)(2), the records maintained under § 14.93(d) of this title must include a copy of the invoice, packing list, bill of lading, or other similar document that accurately states the information required by paragraph (a)(1)(ii) of this section.

(3) In the case of subcontainers or packages within a larger packing container, only the outermost container must be marked in accordance with this section, provided, that for live fish or wildlife that are packed in subcontainers within a larger packing container, if the subcontainers are numbered or labeled, the packing list, invoice, bill of lading, or other similar document, must reflect that number or label.

(4) A conveyance (truck, plane, boat, etc.) is not considered a container for purposes of requiring specific marking of the conveyance itself, provided that:

(i) The fish or wildlife within the conveyance is carried loosely or is readily identifiable, and is accompanied by the document required by paragraph (a)(1)(ii) of this section; or

(ii) The fish or wildlife is otherwise packaged and marked in accordance with this subpart.

(b) The requirements of § 300.160 do not apply to containers or packages containing—

(1) Fox, nutria, rabbit, mink, chinchilla, marten, fisher, muskrat, and karakul that have been bred and born in captivity, or their products, if a signed statement certifying that the animals were bred and born in captivity accompanies the shipping documents;

(2) Fish or shellfish contained in retail consumer packages labeled pursuant to the Food, Drug and Cosmetic Act, 21 U.S.C. 301 *et seq.*; or

(3) Fish or shellfish that are landed by, and offloaded from, a fishing vessel (whether or not the catch has been carried by the fishing vessel interstate), as long as the fish or shellfish remain at the place where first offloaded.

PART 695—[REMOVED]

3. Under the authority of 16 U.S.C. 1801 *et seq.*, 50 CFR part 695 is removed.

[FR Doc. 96–12447 Filed 5–15–96; 5:02 pm]
BILLING CODE 3510–22–W

Notices

Federal Register
Vol. 61, No. 99
Tuesday, May 21, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to construct, operate, and maintain a petroleum pipeline across National Forest System lands.

DATES: Comments concerning the scope of the analysis should be received in writing by June 21, 1996.

ADDRESSES: Send written comments to Michael Sieg, District Ranger, 6944 South 3000 East, Salt Lake City, Utah 84121.

FOR FURTHER INFORMATION CONTACT: Nancy Krebs, Project Leader, (801) 943–2763.

SUPPLEMENTARY INFORMATION: Anschutz Ranch East Pipeline, Inc. (AREPI) has proposed construction of a 10-inch petroleum pipeline form Kimball Junction in Summit County, Utah to North Salt Lake in Davis County, Utah. The proposed buried pipeline would be approximately 27 miles long with about nine miles of the pipeline on National Forest System lands in Salt Lake County, Utah. The purpose of the pipeline is to provide additional crude oil transportation capacity to five Salt Lake area oil refineries. This new crude pipeline would transport Canadian crude that would arrive at Kimball Junction through a series of existing and proposed interstate and intrastate pipelines. It is also AREPI's intent to install fiber optic cable in the pipeline trench both for pipeline communication purposes and for future commercial sale of excess fiber optic capacity.

Pipe corrosion protection, a communication system, pig launchers and receivers, test leads, mainline sectionalizing valves and various check valves are incorporated into the initial pipeline design for pipeline protection, systems and pipe monitoring, and emergency control. The pipeline would operate at a maximum pressure of 1,440 psi and has a minimum operating life of 25 years. No pump stations are proposed to be built within this pipeline segment. Initial pipeline capacity is proposed to be 55,000 barrels per day with the capability of increasing capacity to 70,000 barrels per day by adding a future pump to an existing line near Coalville, Utah. The pipeline parallels existing utility rights-of-way for most of its length. AREPI has proposed initiation of construction in late summer of 1997.

Most of the proposed pipeline right-of-way lies within municipal watersheds of northern Utah's Wasatch Mountains and within the boundaries of the Wasatch-Cache National Forest. In addition to Forest Service approvals, a number of local and state governmental agencies would be involved in permitting or regulating pipeline construction and right-of-way reclamation and maintenance.

The Forest Service's decisions are whether or not to issue Special Use Permits for the long-term operations and short-term construction rights-of-way on National Forest System lands as proposed, with modifications, or not at all taking into consideration the cumulative environmental effects of the pipeline over its entire 27 miles.

The public scoping process will close June 24. Scoping Notices describing the proposal, preliminarily identified issues, the Forest Service decision to be made, interests of other local and state government agencies, and opportunities for public participation was mailed on May 20 to over 600 individuals, organizations, and agencies. Public scoping meetings will be held May 30 at the Burns Fire Hall, 700 West Bitner Road, at Kimball Junction in Summit County and on June 12 at the Read Auditorium in Orson Spencer Hall, Central Campus Driver, the University of Utah, Salt Lake City, Utah. Both meetings begin at 6:30 p.m.

Preliminarily identified issues include potential effects to the watershed, surface water quality, and culinary water supplies; terrestrial and aquatic plant and animal species and their habitats; cultural and historic resources; open space and visual quality; public use areas and parks; existing and proposed hiking and biking trails; public safety; anticipated future adjacent resident, commercial, and business developments; and others. Alternatives may include adjustments to the proposed right-of-way, various approaches to construction and reclamation, exploring other transportation means such as increasing capacity in existing lines, and no action. No action would preclude construction of the proposed pipeline across National Forest System lands.

In order to construct and operate the line, other permits, rights-of-way, or regulatory approvals would have to be obtained by the proponent from private and public landowners, and local governments including the State of Utah, Summit County, Salt Lake County, Salt Lake City, and the City of North Salt Lake. Public agencies with regulatory authority over pipeline construction and approval have specifically been invited by the Forest Service to participate in the NEPA process.

The public is invited to submit comments or suggestions to the address above. The responsible official is Bernie Weingardt, Forest Supervisor. A draft EIS is anticipated to be filed in December 1996 and the final EIS filed in May 1997.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.** It is very important that those interested in the proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act 40 CFR 1503.3).

In addition, Federal court decisions have established that reviews of the draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviews' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that

could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F.Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: May 14, 1996.

Robert Cruz,

Environmental Coordinator.

[FR Doc. 96–12661 Filed 5–20–96; 8:45 am]

BILLING CODE 3410–11–M

Revised Forest Legacy Program Guidelines

AGENCY: Forest Service, USDA.

ACTION: Notice of availability; request for comment.

SUMMARY: The Cooperative Forestry Assistance Act of 1978 (CFAA) authorizes a Forest Legacy Program, the purpose of which is to identify and protect environmentally important private forest lands that may be threatened by conversion to non-forest uses. The Federal Agricultural Improvement and Reform Act of 1996 amended the CFAA to provide for Optional State Grants to States requesting funding support to carry out the Program. The Forest Service hereby gives notice of the availability of revised guidelines for implementing the revisions to the Forest Legacy Program in Fiscal Year 1996 and requests comments.

DATES: Comments must be received in writing on or before June 20, 1996.

ADDRESSES: Send written comments to Director, Cooperative Forestry Staff, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090, via FAX at (202) 205–1271, or via the INTERNET (ASCII only) at /s=cf/oul=w01c@mhs-fswa.attmail.com.

FOR FURTHER INFORMATION CONTACT: Single copies of the guidelines for implementing the Forest Legacy Program may be obtained by writing the Director, Cooperative Forestry Staff, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090, via FAX at (202) 205–1271, or by calling (202) 205–1389. Information may also be requested by E-Mail (ASCII only) at /s=cf/oul=w01c@mhs=fswa.attmail.com.

Questions about the revised Forest Legacy Program Guidelines may be addressed to Ted Beauvais, Cooperative Forestry Staff, at (202) 205–1190.

SUPPLEMENTARY INFORMATION: Section 1217 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (104 Stat. 3526) and the Federal Agricultural Improvement and Reform Act of 1996 authorize the Secretary of Agriculture to provide a Federal grant to a designated State agency for carrying out the Forest Legacy Program. The purpose of the Federal grant is to provide Optional State Grants to States for the acquisition of environmentally important private lands and interests in the lands with title to the land vested in the State. Under section 7(a) of the Cooperative Forestry Assistance Act (16 U.S.C. 2103c(c)), the Secretary of Agriculture continues to have authority to acquire from willing landowners, environmentally important forest lands and interests therein for Federal acquisition.

The revised Forest Legacy Program guidelines are divided into three parts:

Part 1—General Program Guidelines: Program direction applicable to all aspects of the Forest Legacy Program.

Part 2—Federal Acquisition Program Guidelines: Program direction applicable to States and Forest Service units selecting the Federal acquisition and ownership process, where ownership of lands or interests in lands is vested in the United States.

Part 3—State Grant Program Guidelines: Program direction applicable to States and Forest Service units where the State has elected the State grant option and acquisitions result in State ownership.

The guidelines are for the use of agencies, State Forest Stewardship Coordinating Committees, and the Forest Service in implementing the Forest Legacy Program nationwide.

The revised implementation guidelines are available for review and comment by the Governors through State forestry agencies and to land trusts, conservation organizations, forest industry groups, landowners, and other organizations interested in the Forest Legacy Program. Those entities currently on the Forest Legacy Program mailing list maintained by the Forest Service will receive direct notice of the revised guidelines.

Dated: May 15, 1996.

Jerry A. Sesco,

Acting Chief.

[FR Doc. 96–12732 Filed 5–20–96; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of the Census

The American Community Survey (ACS)

ACTION: Proposed agency information collection activity; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paper work and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 22, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments(s) and instructions should be directed to Lawrence S. McGinn, Bureau of the Census, Room 2A, Silver Hill Executive Plaza, Washington, DC 20233–8400, (301) 763–8327.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is authorized to conduct surveys necessary to furnish current data on subjects covered by the major census authorized by Title 13, United States Code. The data from the ACS will determine the feasibility of a continuous measurement system that provides socioeconomic data on a continual basis throughout the decade for small areas and small subpopulations.

The American Community Survey, implemented in November 1995, is a continuing full-scale operation of a continuous measurement system in four survey sites—Fulton County, Pennsylvania; Rockland County, New York; Brevard County, Florida; and Multnomah County, Oregon, including the city of Portland. The survey also includes a national sample to test response rates and our ability to obtain telephone numbers for nonresponse households. The data collected in this survey will be within the general scope and nature of those inquiries covered in the decennial census every ten years.

We plan to continue sampling and enumeration in the American Community Survey in 1997 and 1998. We also plan to add testing of procedures for identification, sampling, and data collection for special populations, i.e. American Indian reservations, military bases, college dormitories, and institutional group quarters such as hospitals.

The American Community Survey will include a national sample, the present survey sites, and additional sites in Douglas County, Nebraska; Otero County, New Mexico; Harris and Fort Bend Counties, Texas; and Franklin County, Ohio, including the entire city of Columbus.

II. Method of Collection

In the urban areas, the Census Bureau will mail questionnaires to the households covered by the American Community Survey and request a response as soon as possible after receipt. In the rural sites where city-style addresses are not available, Field Representatives will deliver the questionnaires to the household. For those households not returning the questionnaire, we will collect household information by both telephone interview and personal visit. Participation of the selected households will be mandatory in accordance with the provisions of Title 13.

III. Data

OMB Number: 0607–0810.

Form Number: TACS–1/1A, TACS–10/10A, TACS–12(L)/12A(L), TACS–13(L)/13A(L), TACS–14(L)/14A(L), TACS–15(L), TACS–16(L), TACS–20/20A, TACS–30/30A.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 135,000.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 67,500 hours.

Estimated Total Annual Cost: $19.5 million.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collections techniques or others forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 15, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–12667 Filed 5–20–96; 8:45 a.m.]

BILLING CODE 3510–07–P

Company Organization Survey

ACTION: Proposed agency information collection activity; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 22, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Paul S. Hanczaryk, Bureau of the Census, Room 2546, Federal Building 3, Washington, DC 20233–6100; telephone (301) 457–2580.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the annual Company Organization Survey (COS) in order to update and maintain a central, multipurpose business register, known as the Standard Statistical Establishment List (SSEL). In particular, the COS supplies critical information to the SSEL concerning the establishment composition, organizational structure, and operating characteristics of multiestablishment enterprises.

The SSEL serves two fundamental purposes:

- First and most important, it provides sampling populations and enumeration lists for the Census Bureau's economic surveys and censuses, and it serves as an integral part of the statistical foundation underlying those programs. Essential for this purpose is the SSEL's ability to identify all known United States business establishments and their parent enterprises. Further, the SSEL must accurately record basic business attributes needed to control sampling and enumeration. These attributes include industrial and geographic classifications, measures of size and economic activity, ownership characteristics, and contact information (for example, name and address).
- Second, it provides establishment data that serve as the basis for the annual County Business Patterns (CBP) statistical series. CBP reports present data on number of establishments, first quarter payroll, annual payroll, and mid-March employment summarized by industry and employment size class for the United States, states, the District of Columbia, Puerto Rico, counties, and county-equivalents. No other annual or more frequent series of industry statistics provides comparable detail, particularly for small geographic areas.

The Census Bureau plans to revise the existing COS collection, which is approved through November 1997. This revision will not make substantive changes to the survey's content. Rather, it will amend instructions and add relatively short reference lists for respondents to use as guides when reporting updated industrial classifications for selected establishments. These changes will improve collection of classification information and obtain industry detail that is needed to prepare for implementation of the North American Industry Classification System in the 1997 Economic Censuses. The revised collection will employ procedures that the Census Bureau tested and used for the 1987 COS, when the agency implemented the most recent revision to the Standard Industrial Classification in conjunction with the 1987 Economic Censuses.

The planned change in the 1996 COS collection will affect reporting for some 120,000 establishments operated by approximately 30,000 multiestablishment enterprises. The impact on response burden for those enterprises should be small, and overall estimated response burden for the survey will actually decrease. The decrease is due primarily to a reduction in panel size made possible by improved methodology for selectively

targeting the collection to enterprises affected by changes in organization and/or operating characteristics.

A complementary collection, the 1997 Economic Censuses Refile Classification Survey, will obtain improved classification information from single-establishment enterprises and from selected small multiestablishment enterprises not covered by the 1996 COS. The Census Bureau will coordinate these collections so as to avoid duplication and minimize response burden on businesses.

II. Method of Collection

The 1996 COS will direct inquiries to 85,000 multiestablishment enterprises, which operate 1.1 million establishments. This panel will be drawn from the SSEL universe of nearly 200,000 multiestablishment enterprises, which operate 1.5 million establishments. Additionally, the panel will include approximately 1,000 new payroll tax entities that have become active during 1996. The procedure for constructing the COS panel selectively targets enterprises that are most likely to report changes in organization and/or operating characteristics, and it also targets new payroll tax entities that are most likely to report affiliation with a multiestablishment enterprise. In general, the selection of these units is based on enterprise size/complexity and administrative records indications. Additionally, the panel will include a small probability sample of the multiestablishment enterprises not selected by the targeting procedure.

The survey is conducted by mail canvass. More than 300 larger enterprises (accounting for approximately 22 percent of covered establishments) return their COS reports by automated/electronic means. All other survey respondents return a paper questionnaire. Data content is identical for all reporting modes. The instrument includes inquiries on ownership or control by a domestic parent, ownership or control by a foreign parent, and ownership of foreign affiliates. Further, the instrument lists an inventory of establishments belonging to the enterprise and its subsidiaries, and it requests updates to the inventory, including additions, deletions, and changes to information on Federal employer identification number, name and address, industrial classification, end-of-year operating status, mid-March employment, first quarter payroll, and annual payroll.

III. Data

OMB Number: 0607–0444.
Form Number: NC–9901.
Type of Review: Regular submission.
Affected Public: Businesses or other for-profit institutions, not-for-profit institutions.
Estimated Number of Respondents: 85,000 enterprises.
Estimated Time Per Response: 1.7 hour.
Estimated Total Annual Burden Hours: 144,500.
Estimated Total Annual Cost: Included in the total annual cost of the SSEL, which is estimated to be $6.1 million for fiscal year 1996.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 15, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–12668 Filed 5–20–96; 8:45 a.m.]

BILLING CODE 3510–07–P

National Institute of Standards and Technology

Computer System Security and Privacy Advisory Board; Meeting

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Advisory Board will meet Wednesday, June 12 and Thursday, June 13, 1996 from 9:00 a.m. to 5:00 p.m. The Advisory Board was established by the Computer Security Act of 1987 (P.L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. All sessions will be open to the public.

DATES: The meeting will be held on June 12 and 13, 1996 from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will take place at the National Institute of Standards and Technology, Gaithersburg, Maryland 20899–0001.

AGENDA:

—Welcome and Overview
—Issues Update
—Encryption Update
—Privacy Update
—Fingerprint Identification Briefing
—Pending Business
—Public Participation
—Agenda development for September meeting
—Wrap-up.

PUBLIC PARTICIPATION: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking area asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the Computer Systems Laboratory, Building 820, Room 426, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001. It would be appreciated if fifteen copies of written material were submitted for distribution to the Board by June 5, 1996. Approximately 20 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Roback, Board Secretariat, Computer Systems Laboratory, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, MD 20899–0001, telephone: (301) 975–3696.

Dated: May 16, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–12749 Filed 5–20–96; 8:45 am]

BILLING CODE 3510–13–M

Announcement of an Opportunity To Join a Cooperative Research and Development Consortium for the Manufacturing Engineering Tool Kits Project

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to attend a meeting on June 10–11, 1996 to discuss setting up a cooperative research consortium. The goal of the consortium is to develop an integrated tool kit for the manufacturing industry. Parties interested in participating in the consortium should be prepared to invest adequate resources in the collaboration and be firmly committed to the goal of developing an integrated tool kit.

The program will be within the scope and confines of The Federal Technology Transfer Act of 1986 (Public Law 99–502, 15 U.S.C. 3710a), which provides federal laboratories, including NIST, with the authority to enter into cooperative research agreements with qualified parties. Under this law, NIST may contribute personnel, equipment and facilities—but no funds—to the cooperative research program.

Members will be expected to make an in-kind contribution to the consortium's efforts in the form of test parts, product data, process data, manufacturing expertise, and personnel. The program is expected to last 18 months. This is not a grant program.

DATES: Interested parties should contact NIST to confirm their interest and learn the exact times and location at the address, telephone number or FAX number shown below no later than July 7, 1996.

ADDRESSES: Metrology Building, Room A127, National Institute of Standards and Technology, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Swee K. Leong, Telephone: 301–975–5426; FAX: 301–258–9749.

SUPPLEMENTARY INFORMATION: Participating companies will contribute product data, process data and a sample test part containing typical machining features that will be of similar size and complexity as those found on the company's product. National Institute of Standards and Technology (NIST) will use this information to develop test cases. NIST will use the data to integrate and demonstrate software and hardware systems within the Manufacturing Engineering Took Kit project. The project will produce a virtual manufacturing system to demonstrate how leading edge technology could be applied to automate the creation of NC programs for machining operations, to conduct virtual NC tape try out, and to validate a manufacturing data package. The collaborative effort would allow participating companies to evaluate these leading edge technologies and systems more thoroughly at NIST.

Dated: May 14, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–12746 Filed 5–20–96; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 051496B]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a public meeting.

DATES: The meeting will be held on June 11, beginning at 8 a.m. and may go into the evening until business for the day is completed. The meeting will reconvene on June 12 at 8 a.m. and continue no later than 5 p.m.

ADDRESSES: The meeting will be held at the Council office, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting is to review the Council's April 1996 instructions to the GMT and prepare reports for the June 1996 Council meeting. The GMT will review information relating to the rate of groundfish landings, including analysis of the size of landings of various species during 1995 and early 1996. The proposed agenda also includes preliminary review of industry proposals relating to sale of amounts of fish landed in excess of trip limits, restrictions on transfers (including leases) of limited entry permits, allowing vessels to begin their landing periods mid-month, and data collection.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: May 15, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–12659 Filed 5–20–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 050496D]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce. 0

ACTION: Issuance of photography permit no. 1002 (P604).

SUMMARY: Notice is hereby given that Mr. Andrew Byatt, Great Natural Journeys, Natural History Unit, BBC, Whiteladies Road, Bristol, England BS8 2LR, has been issued a permit to take by Level B harassment several species of non-threatened, non-endangered marine mammals for purposes of commercial photography.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4001); and

Director, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–6150).

SUPPLEMENTARY INFORMATION: On April 2, 1996, notice was published in the **Federal Register** (61 FR 14556) that the above-named applicant had submitted a request for a permit to take several species of marine mammals by Level B harassment during the course of commercial photographic activities. The requested permit has been issued, under the authority of § 104(c)(6) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*).

Dated: May 8, 1996.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–12658 Filed 5–20–96; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, advisory group on electron devices.

ACTION: Notice.

SUMMARY: Working Group C (Electro-Optics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, 11 June 1996.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments proposed to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. II § 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: May 15, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–12654 Filed 5–20–96; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the DOD Advisory Group on Electron Devices

Office of the Secretary

AGENCY: Department of Defense, Advisory Group on electron devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, 30 May 1996.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Eliot Cohen, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. § 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: May 15, 1996.

L. M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–12655 Filed 5–20–96; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Meeting of the DoD Advisory on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION. Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 1800–2100, Thursday, May 23, 1996.

ADDRESSES: The meeting will be held at the Hyatt Regency Monterey, Windjammer I, Old Golf Course Rd., Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Walter Gelnovatch, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Advance Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: May 15, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison OFficer, Department of Defense.

[FR Doc. 96–12656 Filed 5–20–96; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Improved Application of Intelligence to the Battlefield, Follow-up

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Improved Application of Intelligence to the Battlefield, Follow-up will meet in closed session on May 30–31 and June 6, 1996, at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will evaluate the implementation of the Task Forces' previous recommendations and determine if other C4I/Information systems improvements will enhance support to the coalition operating forces.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: May 14, 1996.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–12653 Filed 5–20–96; 8:45 am]

BILLING CODE 5000–04–M

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on June 4, 1996; June 11, 1996; June 18, 1996; and June 25, 1996, at 10:00 a.m. in room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: May 15, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–12652 Filed 5–20–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 20, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: May 15, 1996.

Kent Hannaman,

Acting Director, Information Resources Group.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Report of Children and Youth with Disabilities Receiving Special Education Under Part B of Individuals with Disabilities Education Act (IDEA).

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 58.

Burden Hours: 15,196.

Abstract: This package provides instructions and forms necessary for States to report the number of children with disabilities served under IDEA–B receiving special education and related services. It serves as the basis for distributing federal assistance, monitoring, implementing, and Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Personnel Employed and Needed to Provide Special Education and Related Services for Children and Youth with Disabilities.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 58.

Burden Hours: 10,585.

Abstract: This package provides instructions and forms for States to report the number of personnel employed and needed in the provision of special education and related services. Data are obtained from state and local education agencies and are used to assess the implementation of the Individuals with Disabilities Education Act and for monitoring, planning and reporting to Congress.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Individuals with Disabilities Education Act (IDEA), Part B, Implementation of Free Appropriate Public Education (FAPE) Requirement.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 58.
Burden Hours: 198,418.
Abstract: This package provides instructions and forms for States to report the setting in which children with disabilities served under IDEA–B receive special education and related services. The form satisfies reporting requirements in this area and is used to monitor SEAs and for Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Report of Children and Youth with Disabilities Exiting Special Education During the 1996–97 School Year.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 58.
Burden Hours: 16,124.
Abstract: This package provides instructions and a form necessary for States to report the settings in which children with disabilities served under Individuals with Disabilities Education Act, Part B receive special education and related services. The form satisfies reporting requirements and is used by the Office of Special Education Programs to monitor SEAs and for Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Report of Program Settings Where Early Intervention Services are Provided to Infants and Toddlers with Disabilities and Their Families.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 58.
Burden Hours: 928.
Abstract: This package provides instructions and forms necessary for States to report the program settings where early intervention services are provided to infants and toddlers with disabilities served under the Individuals with Disabilities Education Act (IDEA), Part H. Data are obtained from State and local service agencies and are used to assess the implementation of IDEA and for monitoring, implementing, and Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Number and Type of Personnel Employed and Contracted and Additional Personnel Needed to Provide Early Intervention Services for Infants and Toddlers with Disabilities and Their Families.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 58.
Burden Hours: 3,596.
Abstract: This package provides instructions and forms necessary for States to report the number of personnel employed and needed in the provision of early intervention services for infants and toddlers with disabilities served under the Individuals with Disabilities Education Act (IDEA), Part H. Data are obtained from state and local service agencies and are used to assess the implementation of IDEA and for monitoring, implementing, and Congressional reporting.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Report of Infants and Toddlers Receiving Intervention Services in Accord with Part H and Report of Early Intervention Services on Individualized Family Service Plans (IFSPS) Provided to Infants and Toddlers and Their Families in Accord with Part H.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 58.
Burden Hours: 2,378.
Abstract: This package provides instructions and forms necessary for States to report the number of infants and toddlers with disabilities served under the Individuals with Disabilities Education Act (IDEA), Part H receiving early intervention services and the services provided as indicated on the IFSP. Data are obtained from State and local service agencies and are used to assess the implementation of IDEA and for monitoring, implementing, and Congressional reporting.

[FR Doc. 96–12665 Filed 5–20–96; 8:45 am]
BILLING CODE 4000–01–P

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board, Education.
ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the National Educational Research Policy and Priorities Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10 (a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATES AND TIME: June 6, 1996, 2 p.m. to 5 p.m.; June 7, 1996, 8 a.m. to 2:30 p.m.

ADDRESSES: First Floor Conference Room, 80 F Street NW., Washington, D.C. 20208.

FOR FURTHER INFORMATION CONTACT: John Christensen, Designated Federal Official, National Educational Research Policy and Priorities Board, 555 New Jersey Avenue, NW., Washington, D.C. 20208–7564. Telephone: (202) 219–2065; Fax: (202) 219–1528. Internet: John__Christensen@ed.gov.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994 (the Act). The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement (the Office) to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office. The Act directs the Board to provide guidance to the Congress in its oversight of the Office; to advise the United States on the Federal educational research and development effort; and to solicit advice from practitioners, policymakers, and researchers to define research needs and suggestions for research topics. The meeting of the Board is open to the public.

The agenda for June 6 will center on the solicitation of public comment prior to the development of a long-term Educational Research Priorities Plan. On June 7, the Board will review the activities of several research and development centers funded by the Office. A final agenda will be available from the Board's office on May 29.

Records are kept of all Board proceedings, and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, 555 New Jersey Avenue, NW., Washington, D.C. 20208–7564.

Sharon P. Robinson,
Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 96–12742 Filed 5–20–96; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex Plant

AGENCY: Department of Energy.
ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant.

DATE AND TIME: Tuesday, May 28, 1996: 1:30 p.m.–5:30 p.m.

ADDRESSES: Amarillo Federation of Women's Clubs, 2001 Civic Circle, Amarillo, Texas.

FOR FURTHER INFORMATION CONTACT: Tom Williams, Program Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806)477–3121.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Board provides input to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda:
1:30 pm—Welcome—Agenda Review—Approval of Minutes
1:45 pm—Co-Chairs' Comments
2:00 pm—Subcommittee Reports
—Community Outreach
—Budget and Finance
—Nominations
—Program and Training
—Policy and Personnel
2:45 pm—Updates
—Occurrence Reports—DOE
3:15 pm—Break
3:30 pm—Discussion
—Dr. Mark Somma, Core Value Assessment
—EIS June Technical Briefing
—Pantex Environmental Safety & Health Report
5:00 pm—Task Force Reports
—Sitewide Environmental Impact Statement
—Environmental Restoration
—Public Participation/Public Information
5:30 pm—Adjourn.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Williams' office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting, due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10:00 pm, Monday through Thursday; 7:45 am to 5:00 pm on Friday; 8:30 am to 12:00 noon on Saturday; and 2:00 pm to 6:00 pm on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 am to 7:00 pm on Monday; 9:00 am to 5:00 pm, Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Tom Williams at the address or telephone number listed above.

Issued at Washington, DC on May 15, 1996.

Rachel M. Samuel,
Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–12708 Filed 5–20–96; 8:45 am]
BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.
ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald.

DATES: Saturday, June 8, 1996: 8:30 a.m.–12:30 p.m. (Public comment session, 11:45 a.m.–12:00 p.m.).

ADDRESSES: Alpha Building, 10967 Hamilton Cleves Highway, Harrison, Ohio.

FOR FURTHER INFORMATION CONTACT: John S. Applegate, Chair of the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061, or call the Fernald Citizens Task Force office (513) 648–6478.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the Fernald site.

Tentative Agenda: Saturday, June 8, 1996

8:30 a.m.—Call to Order, Chair's Remarks and New Business
8:45 a.m.—Communitee Chairs' Reports
9:00 a.m.—Approve Changes to Operating Procedures and Ground Rules
9:15 a.m.—On-Site Disposal Facility 60% Design Issues
10:15 a.m.—Break
10:30 a.m.—Transportation Issues
11:45 a.m.—Opportunity for Public Input
12:00 p.m.—Wrap Up
12:15 p.m.—Adjourn.

A final agenda will be available at the meeting, Saturday, June 8, 1996.

Public Participation: The meeting is open to the public. Written statements may be filed with the Task Force chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Task Force chair at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official, Gary Stegner, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual

wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to John S. Applegate, Chair, the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061 or by calling the Task Force message line at (513) 648–6478.

Issued at Washington, DC on May 15, 1996.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–12709 Filed 5–20–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP96–190–001]

Colorado Interstate Gas Company; Notice of Tariff Compliance Filing

May 15, 1996.

Take notice that on May 10, 1996, Colorado Interstate Gas Company (CIG), tendered for filing revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1. The new tariff sheets are filed to comply with Ordering Paragraph (c) of the Order issued April 25, 1996 in Docket No. RP96–190–000.

In accordance with the April 25, 1996 Order, Article 38 of the General Terms and Conditions of the Tariff has been revised to state that new and existing Shippers that pay the maximum recourse rates have the same right to capacity as a Shipper willing to pay the higher negotiated rate. In addition, the revised tariff sheets state that negotiated rates do not apply as the price cap for capacity release transactions.

Any person desiring to protest said filing should file a protest Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12671 Filed 5–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–128–002]

East Tennessee Natural Gas Company; Notice of Cashout Report

May 15, 1996.

Take Notice that on May 13, 1996, East Tennessee Natural Gas Company (East Tennessee) tendered for filing a report of cashout activity for the November 1993 through October 1994 period.

East Tennessee states that the cashout report reflects a total cashout loss during this period of $180,752.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 22, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12674 Filed 5–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–143–035]

Great Lakes Gas Transmission Limited Partnership; Notice of Revised Compliance Tariff Filing

May 15, 1996.

Take notice that Great Lakes Gas Transmission Limited Partnership (Great Lakes), on May 10, 1996, tendered its revised compliance filing providing for refund and surcharge amounts together with implementing tariff changes as required by the Commission's Order on Remand issued herein on July 26, 1995, and Order on Rehearing, Clarification and Compliance Filing issued herein on April 25, 1996. The tariff sheets setting forth the applicable rates for the locked-in period from November 1, 1991 through September 30, 1995, are as follows:

	Effective
First revised volume No. 1:	
6 Sub twenty-forth revised sheet No. 4	11/01/91
Sub twenty-fifth revised sheet No. 4	04/01/93
6 Sub fortieth revised sheet No. 57(i)	11/01/91
Sub forty first revised sheet No. 57(i)	04/01/93
Second revised volume No. 1:	
Fourth sub original sheet No. 4	11/01/93
Substitute first revised sheet No. 4	11/01/94
Substitute original sheet No. 4A	11/01/94
Third sub original sheet No. 5	11/01/93
Original volume No. 2:	
Sixth substitute twenty-sixth revised sheet No. 53	11/01/91
Substitute twenty-seventh revised sheet No. 53	04/01/93
Second substitute twenty-eight revised sheet No. 53	11/01/93
Seventh substitute eighteenth revised sheet No. 77	11/01/91
Second sub nineteenth revised sheet No. 77	04/01/93
Third substitute forth revised sheet No. 78	11/01/91
Substitute fifth revised sheet No. 78	04/01/93
Seventh substitute fourteenth revised sheet No. 151	11/01/91
Second sub fifteenth revised sheet No. 151	04/01/93
Second substitute sixteenth revised sheet No. 151	11/01/93
Sixth substitute eleventh revised sheet No. 223	11/01/91
Substitute twelfth revised sheet No. 223	04/01/93
Second substitute thirteenth revised sheet No. 223	11/01/93
Sixth substitute eleventh revised sheet No. 245	11/01/91
Substitute twelfth revised sheet No. 245	04/01/93
Second substitute thirteenth revised sheet No. 245	11/01/93
Sixth substitute fifth revised sheet No. 269	11/01/91
Substitute sixth revised sheet No. 269	04/01/93
Second substitute seventh revised sheet No. 269	11/01/93
Sixth substitute eleventh revised sheet No. 294	11/01/91
Substitute twelfth revised sheet No. 294	04/01/93
Second substitute thirteenth revised sheet No. 294	11/01/93
Seventh substitute sixth revised sheet No. 603	11/01/91
Substitute seventh revised sheet No. 603	04/01/93
Second substitute eighth revised sheet No. 603	11/01/93
Fourth substitute third revised sheet No. 604	11/01/91
Substitute fourth revised sheet No. 604	04/01/93
Second substitute fifth revised sheet No. 604	11/01/93
Sixth substitute fourth revised sheet No. 865	11/01/91

	Effective
Substitute fifth revised sheet No. 865	04/01/93
Sixth substitute fourth revised sheet No. 866	11/01/91
Substitute fifth revised sheet No. 866	04/01/93
Sixth substitute third revised sheet No. 905	11/01/91
Substitute fourth revised sheet No. 905	04/01/93
Sixth substitute fourth revised sheet No. 906	11/01/91
Substitute fifth revised sheet No: 906	04/01/93
Fourth substitute first revised sheet No. 1008	11/01/91
Substitute second revised sheet No. 1008	04/01/93
Original volume No. 3:	
7 Sub fourth revised sheet No. 2	11/01/91
3 Sub fifth revised sheet No. 2	01/01/92
2 Sub sixth revised sheet No. 2	10/01/92
2 Sub seventh revised sheet No. 2	01/01/93
Substitute eighth revised sheet No. 2	04/01/93
Substitute ninth revised sheet No. 2	10/01/93
7 Sub fourth revised sheet No. 3	11/01/91
4 Sub fifth revised sheet No. 3	01/01/92
3 Sub alt sixth revised sheet No. 3	05/01/92
2 Sub seventh revised sheet No. 3	10/01/92
2 Sub eighth revised sheet No. 3	01/01/93
Substitute ninth revised sheet No. 3	04/01/93
Substitute tenth revised sheet No. 3	10/01/93

Great Lakes states that, pursuant to the Commission's rehearing order, any party owing surcharge amounts must notify Great Lakes in writing no later than August 8, 1996, as to whether that party elects to make such payment in a lump sum or to amortize payment over a period of three years or less.

Great Lakes states that copies of the filing were served upon all parties to these proceedings, each of Great Lakes' customers, and the Public Service Commissions of the States of Michigan, Minnesota and Wisconsin.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's rules and Regulations. All such motions or protests should be filed on or before May 22, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12676 Filed 5–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–4–25–001]

Mississippi River Transmission Corporation; Notice of Compliance Filing

May 15, 1996.

Take notice that on April 22, 1996, Mississippi River Transmission Corporation (MRT) submitted for filing revised worksheets reflecting the calculation of Miscellaneous Revenues in accordance with Section 18 of the General Terms and Conditions of MRT's FERC Gas Tariff, Third Revised Volume No. 1 and in compliance with the April 11, 1996 "Order Denying Request for Waiver" issued by the Federal Energy Regulatory Commission in this proceeding.

MRT states that, as explained in its filing, the worksheets reflect the calculation of Miscellaneous Revenues applicable to the period November 1, 1993 through October 31, 1995 for the cashout costs related to onsystem imbalances, and the period November 1, 1993 through March 31, 1995 for the cashout costs related to offsystem imbalances.

MRT states that copies of the compliance filing have been mailed to all parties on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 22, 1996. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12669 Filed 5–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–195–000]

Tennessee Gas Pipeline Company; Notice of Technical Conference

May 15, 1996.

In the Commission's order issued on April 26, 1996, in the above-captioned proceeding,[1] the Commission held that the filing raises issues for which a technical conference is to be convened.

The conference has been scheduled for Wednesday, May 29, 1996, at 1:00 p.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12670 Filed 5–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–357–004]

Texas Eastern Transmission Corporation; Notice of Report Filing

May 15, 1996.

Take notice that on April 30, 1996, Texas Eastern Transmission Corporation (Texas Eastern) filed a report discussing its actual experience regarding the "enhanced segment rights" and the "capacity release" procedures. The report is pursuant to an order issued April 17, 1995 in Docket No. RP94–357–000.

The enhanced segmented transportation rights allow customers to receive and deliver their zone limit (MDQ adjusted for capacity release) once in each upstream market zone. These rights also give customers the right to deliver gas to Texas Eastern storage points without these deliveries being included in the calculation of gas delivered in excess of customer's contract MDQ.

Texas Eastern states that the report shows that 56 percent of enhanced segment rights transactions that occurred during the period October 1994 through February 1996 involved the use of capacity under released contracts. Texas Eastern also states that the report shows that the use of capacity release on its system has increased significantly. The report reflects that for the 12 months ended February 29, 1996, as compared to the 12 months ended February 28, 1995, capacity release delivered volumes increased by 61 percent, reservation charge credit backs increased by 66 percent, and total deals increased by 95 percent.

[1] 75 FERC ¶ 61,102 (1996).

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 22, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12675 Filed 5–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP96–173–002 and RP89–183–062]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 15, 1996.

Take notice that on May 9, 1996, Williams Natural Gas Company (WNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute First Revised Sheet Nos. 8A and 8B and Original Sheet Nos. 8C and 8D, with the proposed effective date of April 13, 1996, and Twelfth Revised Sheet No. 6A, with the proposed effective date of June 1, 1996.

WNG states that on March 13, 1996, it filed in Docket Nos. RP96–173–000 and RP89–183–000 to recover approximately $6.0 million of additional contract reformation and gas supply realignment costs pursuant to the November 24, 1992 Stipulation and Agreement (November 24 S & A) in Docket No. RP89–183, *et al.* and Article 14 of its FERC Gas Tariff. On April 9, 1996, the Commission issued an Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions (April 9 order). WNG was directed to file "revised tariff sheets reflecting the allocation of 10 percent of the GSR costs above $50 million to IT customers, to be recovered through a volumetric surcharge and reflecting a 90 percent allocation of the remaining GSR costs to the firm transportation customers, to be recovered through a reservation surcharge." WNG states that the instant filing is made in compliance with the April 9 order.

WNG states that a copy of its filing were served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of WNG's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12672 Filed 5–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–145–001]

Williams Natural Gas Company; Notice of Cash-Out Report

May 15, 1996.

Take notice that on May 10, 1996, Williams Natural Gas Company (WNG) tendered for filing, pursuant to Article 9.7(d) of the General Terms and Conditions of its FERC Gas Tariff, a revised report of net revenue received from cash-outs.

WNG states that it submitted its original report of net revenue received from cash-outs for the period October 1, 1994 through September 30, 1995 on February 16, 1996 pursuant to Article 9.7(d) of the General Terms and Conditions of its FERC Gas Tariff. By letter order issued April 10, 1996, the Commission accepted WNG's cash-out report pursuant to WNG increasing the principal refund amount by $73,233.95, plus the appropriate amount of interest. WNG states that the instant filing is being made to reflect this increase in refunds.

WNG states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the docket referenced above and on all jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 22, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12673 Filed 5–20–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10805–002, WI]

Midwest Hydraulic Company; Notice of Site Visit and Scoping Pursuant to the National Environmental Policy Act of 1969

May 15, 1996.

On April 23, 1993, the Federal Energy Regulatory Commission (Commission) issued a letter accepting the Midwest Hydraulic Company's application for license for the Hatfield Project, located on the Black River in Jackson and Clark Counties, Wisconsin.

The purpose of this notice is to: (1) advise all parties as to the proposed scope of the staff's environmental analysis, including cumulative effects, and to seek additional information pertinent to this analysis; and (2) advise all parties of their opportunity for comment.

Scoping Process

The Commission's scoping objectives are to:

- Identify significant environmental issues;
- Determine the depth of analysis appropriate to each issue;
- Identify the resource issues not requiring detailed analysis; and
- Identify reasonable project alternatives.

The purpose of the scoping process is to identify significant issues related to the proposed action and to determine what issues should be covered in the environmental document pursuant to the National Environmental Policy Act of 1969 (NEPA). The document entitled "Scoping Document I" (SDI) will be circulated shortly to enable appropriate federal, state, and local resource agencies, developers, Indian tribes, nongovernmental organizations (NGO's), and other interested parties to effectively participate in and contribute to the scoping process. SDI provides a brief description of the proposed action, project alternatives, the geographic and temporal scope of a cumulative effects analysis, and a list of preliminary issues identified by staff.

Project Site Visit

The applicant and the Commission staff will conduct a site visit of the Hatfield Project on June 6, 1996, at 9:00 a.m. They will meet at the powerhouse of the project site, located on Powerhouse Road, in the city of Hatfield, Jackson and Clark Counties, Wisconsin 54754. All interested individuals, NGO's and agencies are invited to attend. All participants are responsible for their own transportation and should bring a hard hat. For more details, interested parties should contact Andrew Blystra, the applicant contact, at (616) 394–0606, prior to the site visit date.

Scoping Meetings

The Commission staff will conduct two scoping meetings. All interested individuals, organizations, and agencies are invited to attend and assist the staff in identifying the scope of environmental issues that should be analyzed in the NEPA document.

The agency scoping meeting will be held on June 5, 1996, from 1:00 p.m. to 4:00 p.m., at the Wisconsin Department of Natural Resources, on Highway 54, Black River Falls, Wisconsin 54615.

The public scoping meeting will be held on June 6, 1996, from 7:00 p.m. to 10:00 p.m. at the Jackson County Bank Community Room, 8 Main Street, Black River Falls, Wisconsin 54615.

The Commission will decide, based on the application, and agency and public comments at the scoping session, whether licensing the Hatfield Project constitutes a major federal action significantly impacting the quality of the human environment. Irrespective of the Commission's determination to prepare an environmental assessment or an environmental impact statement for the Hatfield Project, the Commission staff will not hold additional scoping meetings other than those scheduled, as listed above.

Objectives

At the scoping meetings, the Commission staff will: (1) summarize the environmental issues tentatively identified for analysis in the NEPA document; (2) solicit from the meeting participants all available information, especially quantified data, on the resources at issue, and (3) encourage statements from experts and the public on issues that should be analyzed in the NEPA document. Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed.

Meeting Procedures

The meetings will be recorded by a stenographer and become a part of the formal record of the Commission proceeding on the Hatfield Project. Individuals presenting statements at the meetings will be asked to identify themselves for the record.

Concerned parties are encouraged to offer us verbal guidance during public meetings. Speaking time allowed for individuals will be determined before each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least 5 minutes to present their views.

All those attending the meeting are urged to refrain from making any communications concerning the merits of the application to any member of the Commission staff outside of the established process for developing the record as stated in the record of the proceeding.

Persons choosing not to speak but wishing to express an opinion, as well as speakers unable to summarize their positions within their allotted time, may submit written statements for inclusion in the public record 15 days after June 6, 1996.

All filings should contain an original and 14 copies. Failure to file an original and 14 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. See 18 CFR 4.34(h). In addition, commenters *may* submit a copy of their comments on a 3½-inch diskette formatted for MS–DOS based computers. In light of our ability to translate MS–DOS based materials, the text need only be submitted in the format and version that it was generated (i.e., MS Word, WordPerfect 5.1/5.2, ASCII, etc.). It is not necessary to reformat word processor generated text to ASCII. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format and then write them to files on a diskette formatted for MS–DOS machines. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, and should clearly show the following captions on the first page: Hatfield Project, FERC No. 10805.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedures, requiring parties or interceders (as defined in 18 CFR 385.2010) to file documents on each person whose name is on the official service list for this proceeding. See 18 CFR 4.34(b).

The Commission staff will consider all written comments and may issue a Scoping Document II (SDII). SDII will include a revised list of issues, based on the scoping sessions.

For further information regarding the scoping process, please contact Christopher Metcalf, Federal Energy Regulatory Commission, Office of Hydropower Licensing, 888 First Street NE., Washington, DC 20426 at (202) 219–2810.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12677 Filed 5–20–96; 8:45 am]

BILLING CODE 6717–01–M

Notice of Change of Name and Transfer of License

May 15, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Change of Name and Transfer of License.

b. Project No: 2935–008.

c. Date Filed: May 3, 1996.

d. Applicant: Graniteville Company and GTXL, Inc.

e. Name of Project: Enterprise.

f. Location: On the Augusta Canal of the Savannah River in the City of Augusta, Richmond County, Georgia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contact: Ms. Sharon Rodgers, Vice President, Legal, Graniteville Company, PO Box 128, Graniteville, SC 29829–0128, (803) 663–2334.

i. FERC Contact: Thomas F. Papsidero, (202) 219–2715.

j. Comment Date: June 21, 1996.

k. Description of Filing: Application to change licensee's name from Granitvellie Company to TXL Corp. and to transfer the license for the Enterprise Project from TXL Corp. to GTXL, Inc.

l. This notice also consists of the following standard paragraphs: B, C2 and D2.

B. Comments, Protests, or Motions to Interven—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified

comment date for the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12678 Filed 5–20–96; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

Third Meeting of the WRC–97 Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–97 Advisory Committee will be held on Wednesday, May 29, 1996, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 1997 World Radiocommunication Conference.

DATES: May 29, 1996; 2:00 p.m.–4:30 p.m.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Room 856, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Cecily C. Holiday, FCC International Bureau, Satellite and Radiocommunication Division, at (202) 418–0749.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the Advisory Committee for the 1997 World Radiocommunication Conference to provide advice, technical support and recommendations relating to the preparation of recommended United States proposals and positions for the 1997 World Radiocommunication Conference (WRC–97). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the third meeting of the WRC–97 Advisory Committee.

This meeting will continue reviewing the work of the organization of the Advisory Committee. It will also review the schedule of meetings of the International Telecommunication Union Radiocommunication Sector relating to international preparations for WRC–97 and provide an update on the FCC's preparatory process for WRC–97.

The WRC–97 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. Further information regarding the WRC–97 Advisory Committee is available on the World Wide Web at: http://www.fcc.gov/ib/wrc97/.

The proposed agenda for the third meeting is as follows:

Agenda

Third Meeting of the WRC–97 Advisory Committee, Federal Communications Commission, 1919 M Street NW., Room 856, Washington, DC 20554, Wednesday, May 29, 1996; 2:00 p.m.–4:30 p.m.

1. Opening Remarks
2. Agenda Approval
3. Report on the Progress of the Informal Working Groups
4. Update on NTIA's Radio Conference Subcommittee Activities
5. Advisory Committee Meeting Schedule
6. Timeline of Significant International Events
7. Other Business.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–12711 Filed 5–20–96; 8:45 am]

BILLING CODE 6712–01–M

Semiannual Report of Payment Accepted From Non-Federal Sources Under 31 U.S.C. 1353 for the Period Beginning October 1, 1995, Ending March 31, 1996, Summary Report; Revision

Reimbursement/In-kind Payments in Excess of $250

Total Number of Sponsored Events: 86.

Total Number of Sponsoring Organizations: 76.

Total Number of Different Commissioners/Employees Attending: 82.

Total Amount of Reimbursement Received

	Check	In-kind
In excess of $250	$103,597.12	$42,156.78
Under $250 (Detail not included)	948.25	356.60
Total ...	104,545.37	42,513.38

Semiannual Report of Payment Accepted From Non-Federal Sources Under 31 U.S.C. 1353 for Period Beginning April 1, 1995, Ending September 30, 1995

1. *Agency:* Federal Communications Commission.
2. *Employee:* Government Position: Jane E. Mago—Revised, Senior Advisor to Commissioner, Rachelle B. Chong.
3. *Event:* 1995 FCBA Annual Seminar.
4. *Sponsor of Event:* Federal Communications, Bar Association—FCBA.
5. *Sponsor Address:* 1722 Eye Street NW., Suite 300, Washington, D.C. 20006.
6. *Location of Event:* Hot Springs, Virginia.
7. *Employee's Role:* Panelist.
8. *Dates of Event:* 05/19–21/95.
9. *Travel Dates:* 05/19–21/95.

10. (a) Nature of benefit	(c) Type and amount of payment	
	Check	In kind
1. Round-trip Transportation	$120.00	$
2. Hotel Room		432.64
3. Meals		100.00
	120.00	532.64

(b) Non-Fed Source: Same as No. 4.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–12710 Filed 5–20–96; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Request for Additional Information

Agreement No.: 202–010424–032.

Title: United States Atlantic and Gulf Hispaniola Steamship Freight Association.

Parties: Crowley American Transport, Inc., NPR, Inc. d/d/a Navieras, A.P. Moller-Maersk Line, Sea-Land Service, Inc.

Synopsis: Notice is hereby given that the Federal Maritime Commission pursuant to section 6(d) of the Shipping Act of 1984 (46 U.S.C. app. 1701–1720) has requested additional information from the parties to the Agreement in order to complete the statutory review of Agreement No. 202–010424–032 as required by the Act. This action extends the review period as provided in section 6(c) the Act.

Dated: May 16, 1996.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–12740 Filed 5–20–96; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

License Number: 1466.
Name: Ana T. Binns d/b/a AAA International Shipping.
Address: 5730 W. Manchester Blvd., Los Angeles, CA 90045.
Date Revoked: January 13, 1996.
Reason: Failed to maintain a valid surety bond.

License Number: 3811.
Name: Ben Odihirin Company, Inc.
Address: 690 Wainwright Street, Union, NJ 07083.
Date Revoked: March 28, 1996.
Reason: Failed to maintain a valid surety bond.

License Number: 3860.
Name: Cargolink International, Inc.
Address: 1401 N.W. 78th Ave., Ste. 201, Miami, FL 33126.
Date Revoked: March 30, 1996.
Reason: Failed to maintain a valid surety bond.

License Number: 3569.
Name: Cojan Corporation d/b/a Ambassador International Services.
Address: 7035 West 65th Street, Bedford Park, IL 60638.
Date Revoked: March 26, 1996.
Reason: Surrendered license voluntarily.

License Number: 2613.
Name: Condor Shipping Company Inc.
Address: 35–35 149th Street, Flushing, NY 11354.
Date Revoked: March 23, 1996.
Reason: Failed to maintain a valid surety bond.

License Number: 3045.
Name: General Cargo Services, Inc.
Address: 1374 N.W. 78th Avenue, Miami, FL 33126.
Date Revoked: April 25, 1996.
Reason: Failed to maintain a valid surety bond.

License Number: 2609.
Name: Jose Regil-Martinez d/b/a Regil International Transportation Company.
Address: 932 Crestview Drive, Pasadena, CA 91107.
Date Revoked: April 6, 1996.
Reason: Failed to maintain a valid surety bond.

License Number: 2741.
Name: La Montana Moving & Storage, Inc.
Address: 1976 Crotona Parkway, Bronx, NY 10460.
Date Revoked: March 29, 1996.
Reason: Failed to maintain a valid surety bond.

License Number: 2625.
Name: Manufacturers Export Service, Inc.
Address: 8501 Inkster Road, Taylor, MI 48180.
Date Revoked: April 28, 1996.
Reason: Failed to maintain a valid surety bond.

License Number: 1730.
Name: Reliable International Inc.
Address: 550 Division Street, Elizabeth, NJ 07201.
Date Revoked: March 13, 1996.
Reason: Failed to maintain a valid surety bond.

License Number: 2750.
Name: Right-O-Way Ocean Transport International, Inc. d/b/a Eurocontinental, The Right-O-Way Maritime Co.
Address: 180 South Prospect Avenue, Tustin, CA 92680.
Date Revoked: March 30, 1996.
Reason: Failed to maintain a valid surety bond.

License Number: 3906.
Name: The Maust Corporation.
Address: 1762 6th Avenue South, Seattle, WA 98124.
Date Revoked: May 3, 1996.
Reason: Surrendered license voluntarily.

License Number: 3491.
Name: Tsuyoshi Nakamura d/b/a T. Nakamura CHB.
Address: 12620 Yukon Avenue, Hawthorne, CA 90250.
Date Revoked: March 28, 1996.
Reason: Failed to maintain a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 96–12648 Filed 5–20–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 5, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Eldon Bracton Thoma, II, Tullahoma, Tennessee; to acquire an additional 4.47 percent, for a total of 27.82 percent, and Eldon Bracton Thoma, III, Tullahoma, Tennessee, to acquire an additional 4.27 percent, for a total of 25.01 percent, of the voting shares of FN BancCorp., Inc., Tullahoma, Tennessee, and thereby indirectly acquire First National Bank of Tullahoma, Tullahoma, Tennessee.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230

South LaSalle Street, Chicago, Illinois 60690:

1. Jean W. Lange, Winterset, Iowa; to acquire an additional 35.44 percent, for a total of 38.28 percent of the voting shares of Madison Holding Company, Winterset, Iowa, and thereby indirectly acquire Union State Bank, Winterset, Iowa.

Board of Governors of the Federal Reserve System, May 15, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–12680 Filed 5–20–96; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 14, 1996.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. F.N.B. Corporation, Hermitage, Pennsylvania; to acquire 100 percent of the voting shares of Southwest Bank, Inc., Naples, Florida, and thereby indirectly acquire First National Bank of Naples, Naples, Florida, and Cape Coral National Bank, Cape Coral, Florida.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Palm Beach National Holding Company, North Palm Beach, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Palm Beach National Bank & Trust Company, North Palm Beach, Florida.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Thera Holding Partners, Inc., Houston, Texas (in formation); to become a bank holding company by acquiring 33 percent of the voting shares of Citizens Bankers, Inc., Baytown, Texas, and thereby indirectly acquire 100 percent of the voting shares of Citizens Bankers of Delaware, Inc., Wilmington, Delaware; 96.9 percent of the voting shares of Baytown State Bank, Baytown, Texas; 98.6 percent of the voting shares of Citizens Bank and Trust Company of Baytown, Baytown, Texas; and 100 percent of the voting shares of Pasadena State Bank, Pasadena, Texas.

Board of Governors of the Federal Reserve System, May 15, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–12681 Filed 5–20–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 5, 1996.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Community Bancshares, Inc., Joseph, Oregon; to acquire Citizens Title and Escrow Service, Inc., Enterprise, Oregon, and thereby engage in insurance agency activities, including the sale of title insurance, in small towns and escrow service activities, pursuant to §§ 225.25(b)(8)(iii) and 225.25(b)(3) of the Board's Regulation Y. These activities will be conducted throughout Enterprise, Oregon, and surrounding area not to exceed 5,000 in population.

Board of Governors of the Federal Reserve System, May 15, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–12682 Filed 5–20–96; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[Dkt. No. 5794]

Atlas Supply Company; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set aside order.

SUMMARY: This order reopens a 1951 consent order—which prohibited Atlas from receiving illegal allowances or knowingly accepting or inducing discriminatory prices in their purchase of automotive tires, tubes, batteries, accessories or other automobile products—and sets aside the consent order pursuant to the Commission's Sunset Policy Statement, under which the Commission presumes that the public interest requires terminating competition orders that are more than 20 years old.

DATES: Consent order issued July 19, 1951. Set aside order issued August 24, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Daniel Ducore, FTC/S–2115, Washington, D.C. 20580, (202) 326–2526.

SUPPLEMENTARY INFORMATION: In the Matter of Atlas Supply Company. The prohibited trade practices and/or corrective actions are removed as indicated.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; Sec. 2, 49 Stat. 1526; 15 U.S.C. 45, 13)

Donald S. Clark,

Secretary.

[FR Doc. 96–12700 Filed 5–20–96; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3633]

Blenheim Expositions, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, a Florida-based company, that produces franchise trade shows and expositions, from misrepresenting the sales, income or profits, or the success rate of franchise owners, unless it possesses and relies upon competent and reliable scientific evidence to support the claims. In addition, the respondent is prohibited from misrepresenting the validity, results, contents, conclusions, or interpretations of any survey, test, poll or study.

DATES: Complaint and Order issued December 22, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Tom Cohn, FTC/H–238, Washington, DC 20580, (202) 326–3532.

SUPPLEMENTARY INFORMATION: On Thursday, October 12, 1995, there was published in the **Federal Register**, 60 FR 53186, a proposed consent agreement with analysis In the Matter of Blenheim Expositions, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 96–12701 Filed 5–20–96; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3650]

Devro International plc, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, a New Jersey-based personal health-care products company and its parent corporation from misrepresenting the results or conclusions of any test or study concerning any over-the-counter products with a use relating to human reproduction, reproductive organs or sexually transmitted diseases (STDs). It requires the respondent to have competent and reliable scientific evidence for any claims regarding the efficacy of over-the-counter contraceptives or products to protect collagen sausage casings in the United States and Canada. If the transaction is not completed in the prescribed time, the Commission may appoint a trustee to divest the assets.

DATES: Complaint and Order issued April 3, 1996.[1]

SUPPLEMENTARY INFORMATION: On Tuesday, December 19, 1995, there was published in the **Federal Register**, 60 FR 65328, a proposed consent agreement with analysis In the Matter of Devro International plc, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary

[FR Doc. 96–12702 Filed 5–20–96; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3636]

Johnson & Johnson Consumer Products, Inc.; Prohibited Trade Practices, and Affirmative Correction Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, a New Jersey-based personal health-care products company and its parent corporation from misrepresenting the results or conclusions of any test or study concerning any over-the-counter products with a use relating to human reproduction, reproductive organs or sexually transmitted diseases (STDs). It requires the respondent to have competent and reliable scientific evidence for any claims regarding the efficacy of over-the-counter contraceptives or products to protect

[1] Copies of the Consent Order and Set Aside Order are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

[1] Copies of the Complaint, the Decision and Order, and Commissioner Azuenaga's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

against STDs. In addition, the respondent must have competent and reliable scientific evidence to substantiate the advertising claims of any personal lubricant and/or spermicide.

DATES: Complaint and Order issued January 18, 1996.[1]

FOR FURTHER INFORMATION CONTACT: Linda Badger or Matthew Gold, FTC/San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, CA 94103.

SUPPLEMENTARY INFORMATION: On Friday, October 27, 1995, there was published in the **Federal Register**, 60 FR 55033, a proposed consent agreement with analysis In the Matter of Johnson & Johnson Consumer Products, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 96–12703 Filed 5–20–96; 8:45 am]

BILLING CODE 6750–01–M

[Dkt C–3648]

Praxair, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order requires, among other things, Praxair, Inc., a Connecticut corporation, to divest, within 12 months to Commission-approved acquirers, four CBI atmospheric gases production plants, located in Vacaville and Irwindale, California; Bozrah, Connecticut; and Madison, Wisconsin. If the transaction is not completed in the prescribed time, a trustee may be appointed to divest the four plants.

DATES: Compliant and Order issued April 1, 1996.[1]

FOR FURTHER INFORMATION CONTACT: Ann Malester, FTC/S–2308, Washington, DC 20580, (202) 326–2682.

SUPPLEMENTARY INFORMATION: On Monday, January 22, 1996, there was published in the **Federal Register** 61 FR 1573, a proposed consent agreement with analysis in the matter of Praxair, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 96–12704 Filed 5–20–96; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3647]

Safe Brands Corporation, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order requires the respondents, among other things, to have reliable scientific evidence to substantiate certain claims regarding the environmental benefits, the level of engine protection and the safety of any antifreeze, coolant or deicer. The consent order also requires the respondents to provide a disclosure statement cautioning consumers that Sierra antifreeze may be harmful if swallowed. In addition, the consent order prohibits the respondents from misrepresenting the recyclability of such products and their packages.

DATES: Complaint and Order issued March 26, 1996.[1]

FOR FURTHER INFORMATION CONTACT: Joel Winston, FTC/S–4002, Washington, D.C. 20580, (202) 326–3153.

SUPPLEMENTARY INFORMATION: On Tuesday, December 12, 1995, there was published in the **Federal Register**, 60 FR 63717, a proposed consent agreement with analysis In the Matter of Safe Brands Corporation, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 96–12705 Filed 5–20–96; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3649]

The Stop & Shop Companies, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order requires, among other things, the respondents to divest 17 supermarkets, within nine months, to Commission-approved acquirers. If the respondents fail to satisfy any of the divestiture provisions, the Commission may appoint a trustee to divest the supermarkets.

DATES: Complaint and Order issued April 2, 1996.[1]

FOR FURTHER INFORMATION CONTACT: Ronald Rowe, FTC/S–2602, Washington, DC 20580, (202) 326–2610.

---

[1] Copies of the Complaint, the Decision and Order, and Commissioner Azcuenaga's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, D.C. 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Complaint and Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

[1] Copies of the Complaint, the Decision and Order, and Commissioner Azcuenaga's statement are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: On Wednesday, November 8, 1995, there was published in the **Federal Register**, 60 FR 56338, a proposed consent agreement with analysis In the Matter of The Stop & Shop Companies, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 96–12706 Filed 5–20–96; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3244]

West Point-Pepperell, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set aside order.

SUMMARY: This order reopens a 1988 consent order—which required West Point to divest certain towel and sheet manufacturing facilities and prohibited West Point, for 10 years, from making certain acquisitions in the sheet and towel industries without prior Commission approval—and sets aside the consent order pursuant to the Commission's Prior Approval Policy Statement, under which the Commission presumes that the public interest requires setting aside the prior approval requirements in outstanding merger orders and making them consistent with that policy.

DATES: Consent order issued December 14, 1988. Set aside order issued October 4, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Daniel Ducore, FTC/S–2115, Washington, D.C. 20580, (202) 326–2526.

SUPPLEMENTARY INFORMATION: In the Matter of West Point-Pepperell, Inc. The prohibited trade practices and/or corrective actions are removed as indicated.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 96–12707 Filed 5–20–96; 8:45 am]

BILLING CODE 6750–01–M

---

[1] Copies of the Consent Order and Set Aside Order are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering Laboratory Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering Laboratory Health Effects Subcommittee (INEL).

Times and Dates: 8 a.m.–5 p.m., June 5, 1996; 7 p.m.–9 p.m., June 5, 1996; 8 a.m.–12:15 p.m., June 6, 1996.

Place: Quality Inn Pocatello Park Hotel, 1555, Pocatello Creek Road, Pocatello, Idaho 83201.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The Subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at respective DOE sites. Activities shall focus on providing a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters To Be Discussed: Agenda items include: the Biological Effects of Radiation—Radionuclides releases other than plutonium that could cause health effects, declassification issues, high efficiency particulate air filters, environmental monitoring—past and present, discussion of Phase I, and other than radionuclides present at INEL (e.g., chemicals: most toxic and carcinogenic).

Agenda items are subject to change as priorities dictate.

Contact Persons For More Information: Arthur J. Robinson or Nadine Dickerson, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F–35, Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: May 15, 1996.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–12686 Filed 5–20–96; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

[Docket No. 92N–0438]

Worldwide Biologicals, Inc.; Revocation of U.S. License No. 832–003

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 832–003) and the product license issued to Worldwide Biologicals, Inc., for the manufacture of Source Plasma. A notice of opportunity for a hearing on a proposal to revoke the licenses was published in the **Federal Register** of March 22, 1993. Worldwide Biologicals, Inc., subsequently requested a hearing. In a separate legal proceeding, the responsible head of Worldwide Biologicals, Inc., voluntarily surrendered U.S. License No. 832–003 pursuant to a plea agreement with the United States Attorney for the Southern District of Ohio and the Office of Consumer Litigation, United States Department of Justice, which represented FDA in the proceeding. In light of Worldwide Biologicals, Inc.'s, surrender of its license, the firm's request for an opportunity for a hearing on the issue of license revocation became moot. FDA, therefore, proceeded to revoke the licenses.

DATES: The revocation of the establishment license (U.S. License No. 832–003) and product license became effective September 29, 1994.

FOR FURTHER INFORMATION CONTACT: Stephen M. Ripley or Tracey H. Forfa, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike,

Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION: FDA has revoked the establishment license (U.S. License No. 832–003) and the product license for the manufacture of Source Plasma issued to Worldwide Biologicals, Inc., 508–A Owen Dr., Fayetteville, NC 28304.

By letter dated June 15, 1992, issued pursuant to 21 CFR 601.5(b), FDA notified the firm of FDA's intent to revoke U.S. License No. 832–003 and announced its intent to offer an opportunity for a hearing. In a facsimile dated June 24, 1992, the firm notified FDA of its intent to request a hearing on the proposed license revocation.

In the **Federal Register** of March 22, 1993 (58 FR 15351), FDA issued a notice of opportunity for a hearing, pursuant to 21 CFR 12.21(b), on the proposal to revoke the establishment license (U.S. License No. 832–003) and product license issued to Worldwide Biologicals, Inc., for the manufacture of Source Plasma. As described in the notice of opportunity for a hearing, the grounds for the proposed license revocation included the following: (1) The results of FDA inspections of the firm conducted from June 24 through July 2, 1991; January 17 through January 27, 1992; and May 5 and 6, 1992; as well as from the inspection of Worldwide Biologicals, Inc., 1085 Ohio Pike, Cincinnati, OH, the site of the testing laboratory approved to perform all required testing for the Fayetteville facility, from July 18 through August 26, 1991; (2) a determination by FDA that the deviations documented during the inspections of the firm demonstrated significant noncompliance with the applicable regulations and standards in the firm's license; and (3) a determination by FDA that there was no assurance that the firm would properly implement a corrective action plan that it had proposed. FDA's determination was based on the firm's failure to adequately implement previously promised corrections. Documentation in support of the proposed revocation had been placed on file for public examination with the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

Following publication of the notice of opportunity for a hearing on March 22, 1993, FDA's Dockets Management Branch received two letters, dated April 12, 1993, and May 20, 1993, from the firm's responsible head. In the letter of April 12, 1993, Worldwide Biologicals, Inc., requested a hearing on the proposed license revocation. In the letter of May 20, 1993, Worldwide Biologicals, Inc., submitted its request for a hearing and set forth information and factual analyses to support its request.

While the request for a hearing was pending, representatives of the U.S. Department of Justice, on behalf of FDA, charged the responsible head of Worldwide Biologicals, Inc., with criminal violations of Federal laws governing the manufacturing, labeling, and shipping of human blood plasma. On April 6, 1994, the responsible head entered into a plea agreement with the United States Attorney for the Southern District of Ohio and the Office of Consumer Litigation, United States Department of Justice. In a superseding plea agreement filed on April 29, 1994, with the clerk of the United States District Court, Southern District of Ohio, Western Division, the responsible head of the firm agreed to surrender U.S. License No. 832 immediately upon sentencing. Sentencing took place on September 23, 1994. FDA notified Worldwide Biologicals, Inc., by letter of September 29, 1994, that the licenses had been revoked.

Based on the voluntary surrender of U.S. License No. 832, Worldwide Biologicals Inc.'s request for a hearing on the issue of license revocation became moot. Although the revocation proceedings that FDA initiated only pertained to the firm's Fayetteville, NC location (U.S. License No. 832–003), the surrender of U.S. License No. 832 affects all Worldwide Biologicals, Inc., locations under that license.

Accordingly, under 21 CFR 601.5, section 351 of the Public Health Service Act (42 U.S.C. 262), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.68), the establishment license (U.S. License No. 832–003) and the product license for the manufacture of Source Plasma issued to Worldwide Biologicals, Inc., were revoked, effective September 29, 1994.

This notice is issued and published under 21 CFR 601.8 and the redelegation at 21 CFR 5.67.

Dated: May 2, 1996.

Kathryn C. Zoon,

Director, Center for Biologics Evaluation and Research.

[FR Doc. 96–12688 Filed 5–20–96; 8:45 am]

BILLING CODE 4160–01–F

Grassroots Regulatory Partnership Meeting; Pacific Region San Francisco District Office; Medicated Feed Industry

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of a public meeting.

SUMMARY: The Food and Drug Administration (FDA) (Office of External Affairs, Office of Regulatory Affairs, Office of the Pacific Region, and the Center for Veterinary Medicine) is announcing a free public meeting as a followup to a meeting held in April 1995. FDA's San Francisco District Office (Pacific Region) and the Center for Veterinary Medicine will meet with interested persons in the Pacific Region to address specific issues related to the medicated feed industry to help the industry comply with FDA regulations. The agency is holding this meeting to promote the President's initiative for a partnership approach with front-line regulators and the people affected by the work of this agency.

DATES: The public meeting will be held on Friday, May 31, 1996, from 8 a.m. to 4:30 p.m.

ADDRESSES: The public meeting will be held at the Red Lion Inn, 1401 Arden Way, Sacramento, CA 95815. Attendees requiring overnight accommodations may contact the hotel at 916–922–8041.

FOR FURTHER INFORMATION CONTACT:

Regarding the Sacramento area: Karen L. Robles or Susan R. Nelson, Food and Drug Administration, 650 Capitol Mall, rm. 6002, Sacramento, CA 95814, 916–498–6403 or 916–498–6400 or FAX 916–498–6401.

Regarding the Fresno area: Robert J. Anderson, Food and Drug Administration, 2202 Monterey St., suite 104E, Fresno, CA 93721, 209–487–5321 or FAX 209–487–5305.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 20, 1995 (60 FR 19753), FDA announced that a series of Grassroots Regulatory Partnerships meetings would be held. This document announces a free public meeting as a followup to the meetings held in April 1995. Those persons interested in attending this public meeting should FAX their comments and registration including name, firm/organization, address, telephone and FAX numbers to the appropriate contact person listed above, by Friday, May 24, 1996.

There is no registration fee for this meeting, but advance registration is required. Space is limited and all interested parties are encouraged to register early. The goals of this meeting are to listen to concerns and ideas, and to identify next steps for the agency.

Dated: May 15, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–12650 Filed 5–20–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95P–0285]

Determination That Glyburide Tablets 4.5 Milligrams Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that glyburide (Glynase® PresTab®) tablets 4.5 milligrams (mg) was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow sponsors to submit abbreviated new drug applications (ANDA's) for glyburide tablets 4.5 mg.

FOR FURTHER INFORMATION CONTACT: Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1049.

SUPPLEMENTARY INFORMATION: In 1984, Congress passed into law the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the listed drug, which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDA's do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments included what is now section 505(j)(6) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(6)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products with Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162 (21 CFR 314.162)). Another FDA regulation also provides that the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved (§ 314.161(a)(1) (21 CFR 314.161(a)(1))). FDA may not approve an ANDA that does not refer to a listed drug.

Novopharm Ltd., submitted a citizen petition, dated August 21, 1995 (Docket No. 95P–0285/CP1), under 21 CFR 10.25(a) and 10.30 requesting that the agency determine whether glyburide tablets 4.5 mg was withdrawn from sale for reasons of safety or effectiveness and, if the agency determines that the drug was not withdrawn from sale for reasons of safety or effectiveness, to keep the drug in the "Approved Drug Products with Therapeutic Equivalence Evaluations." Glyburide tablets 4.5 mg, along with the 1.5-mg, 3-mg, and 6-mg strengths, is the subject of approved NDA 20–051 held by the Upjohn Co. (Upjohn). Upjohn obtained approval to market the 4.5-mg strength of glyburide tablets on September 24, 1993. Upjohn has never marketed the 4.5-mg strength of glyburide tablets. FDA has determined, for purposes of §§ 314.161 and 314.162(c), that never marketing an approved drug product is equivalent to withdrawing the drug for sale.

FDA has reviewed its records and, under §§ 314.161 and 314.162(c), has determined that glyburide tablets 4.5 mg was not withdrawn from sale for reasons of safety or effectiveness and will continue to list glyburide tablets 4.5 mg in the "Discontinued Drug Product List" contained in the "Approved Drug Products with Therapeutic Equivalence Evaluations." The "Discontinued Drug Product List" lists, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDA's that refer to glyburide tablets 4.5 mg may be submitted to the agency.

The agency notes that there is a patent listed in the Orange Book for Glynase® PresTab® tablets that will not expire until April 10, 2007. This patent will prevent FDA from approving ANDA's that refer to Glynase® PresTab® tablets with an effective date before April 10, 2007, if the patent is valid and the manufacture, use, or sale of the drug product for which approval is being sought would infringe the patent. Novopharm Ltd., states in its petition that it does not intend to make a generic drug that refers to Glynase® PresTab® tablets available for sale until the expiration of the patent. Between now and the time an ANDA for glyburide tablets 4.5 mg is submitted, approved, or the approval goes into effect, FDA may obtain new information on the safety and effectiveness of glyburide tablets that will prevent the agency from receiving or approving the ANDA.

Dated: May 15, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–12759 Filed 5–20–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95P–0128]

Determination That Hydrocortisone Acetate Topical Ointment 2.5% Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that hydrocortisone (Cortef®) acetate topical ointment 2.5% was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow sponsors to submit abbreviated new drug applications (ANDA's) for hydrocortisone acetate topical ointment 2.5%.

FOR FURTHER INFORMATION CONTACT: Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1049.

SUPPLEMENTARY INFORMATION: In 1984, Congress passed into law the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the listed drug, which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDA's do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the

subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments included what is now section 505(j)(6) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(6)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products with Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162 (21 CFR 314.162)). Regulations also provide that the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved (§ 314.161(a)(1) (21 CFR 314.161(a)(1))). FDA may not approve an ANDA that does not refer to a listed drug.

On May 12, 1995, Reed & Carnrick Pharmaceuticals submitted a citizen petition (Docket No. 95P–0128/CP1) under 21 CFR 10.25(a) and 10.30 requesting that the agency determine whether hydrocortisone acetate topical ointment 2.5% was withdrawn from sale for reasons of safety or effectiveness and, if the agency determines that the drug was not withdrawn from sale for reasons of safety or effectiveness, to keep the drug in the "Approved Drug Products with Therapeutic Equivalence Evaluations." Hydrocortisone acetate topical ointment 2.5%, along with the 1% strength, is the subject of approved NDA 8–917 held by the Upjohn Co. (Upjohn). On July 28, 1953, Upjohn obtained approval to market the 2.5% strength of hydrocortisone acetate topical ointment. Upjohn withdrew the drug from sale in 1991.

FDA has reviewed its records and, under §§ 314.161 and 314.162(c), has determined that hydrocortisone acetate topical ointment 2.5% was not withdrawn from sale for reasons of safety or effectiveness and will continue to list hydrocortisone acetate topical ointment 2.5% in the "Discontinued Drug Product List" contained in the "Approved Drug Products with Therapeutic Equivalence Evaluations." The "Discontinued Drug Product List" lists, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDA's that refer to hydrocortisone acetate topical ointment 2.5% may be submitted to the agency.

Dated: May 15, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–12690 Filed 5–20–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93P–0322]

Determination that Medroxyprogesterone Acetate 100 Milligrams per Milliliter Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that medroxyprogesterone acetate (Depo-Provera®) 100 milligrams per milliliter (mg/mL) was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow sponsors to submit abbreviated new drug applications (ANDA's) for medroxyprogesterone acetate 100 mg/mL.

FOR FURTHER INFORMATION CONTACT: Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1049.

SUPPLEMENTARY INFORMATION: In 1984, Congress passed into law the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the listed drug, which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDA's do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments included what is now section 505(j)(6) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(6)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products with Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162 (21 CFR 314.162)). Regulations also provide that the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved (§ 314.161(a)(1) (21 CFR 314.161(a)(1))). FDA may not approve an ANDA that does not refer to a listed drug.

On August 30, 1993, King & Spalding submitted a citizen petition (Docket No. 93P–0322/CP1) under 21 CFR 10.25(a) and 10.30 requesting that the agency determine whether medroxyprogesterone acetate 100 mg/mL was withdrawn from sale for reasons of safety or effectiveness and, if the agency determines that the drug was not withdrawn from sale for reasons of safety or effectiveness, to keep the drug in the "Approved Drug Products with Therapeutic Equivalence Evaluations." Medroxyprogesterone acetate 100 mg/mL, along with the 400 mg/mL strength, is the subject of approved NDA 12–541 held by the Upjohn Co. (Upjohn). On December 1, 1992, Upjohn withdrew medroxyprogesterone acetate 100 mg/mL from sale.

FDA has reviewed its records and, under §§ 314.161 and 314.162(c), has determined that medroxyprogesterone acetate 100 mg/mL was not withdrawn from sale for reasons of safety or effectiveness and will continue to list medroxyprogesterone acetate 100 mg/mL in the "Discontinued Drug Product List" contained in the "Approved Drug Products with Therapeutic Equivalence Evaluations." The "Discontinued Drug Product List" lists, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDA's that refer to medroxyprogesterone acetate 100 mg/mL may be submitted to the agency.

FDA has also considered the comment submitted by Upjohn, dated November 19, 1993, opposing an FDA determination that medroxyprogesterone acetate 100 mg/mL was withdrawn from the market for reasons other than safety or effectiveness. The comment does not contain any information indicating that the drug was withdrawn for reasons of safety or effectiveness, but rather indicates that Upjohn did not perceive a need to keep medroxyprogesterone acetate in a 100 mg/mL strength on the market because the 400 mg/mL strength, which Upjohn also marketed, was viewed as a more convenient strength for the approved indication of adjunctive therapy and palliative treatment of inoperable recurrent and metastatic endometrial or renal carcinoma.

Dated: May 15, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–12760 Filed 5–21–96; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the following National Institute of Mental Health Special Emphasis Panel.

The meeting will be open to the public to provide concept review of proposed contract or grant solicitations.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the contact person named below in advance of the meeting.

Name of Committee: National Institute of Mental Health Special Emphasis Panel (Telephone Conference Call)

Date: May 22, 1996.

Time: 1:30 p.m.

Place: Parklawn Building, Room 9–105, 5600 Fishers Lane, Rockville, MD 20857.

Agenda: To provide concept review for a contract project entitled "Pilot Study of Verapamil in Females with Bipolar Disorder."

Contact Person: Michael J. Moody, Contracts Review Coordinator, Parklawn Building, Room 9–105, 5600 Fishers Lane, Rockville, MD 20857, Telephone 301, 443–3367.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: May 16, 1996.

Anna Snouffer,

Committee Management Specialist, NIH.

[FR Doc. 96–12857 Filed 5–17–96; 1:41 pm]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Programmatic Supplement to the Cooperative Agreement With the National Association of State Mental Health Program Directors

AGENCY: Center for Mental Health Services (CMHS), Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Planned single-source supplemental award to assist State mental health, substance abuse, and Medicaid officials to develop pragmatic performance measures and outcome indicators for use in Medicaid managed behavioral health care contracting.

SUMMARY: This notice is to provide information to the public concerning a planned programmatic supplement to an ongoing cooperative agreement between the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS) and the National Association of State Mental Health Program Directors (NASMHPD). The ongoing cooperative agreement funds the Technical Assistance Center for State Mental Health Planning. The programmatic supplement is being provided to address a need that arose from the recommendations of the SAMHSA Conference—Partnerships for Change. The conference highlighted national and State trends in organizing and financing public mental health and substance abuse care. Federal and State officials received strong encouragement to expand their collaboration across levels of government and between mental health, substance abuse, and Medicaid agencies to prepare for rapid changes in their roles, responsibilities, and funding. A particularly acute need identified was a core set of quality assurance and performance measures that public purchasers of managed behavioral health care services could use to monitor the new contracting mechanism. In the absence of a core set of measures, it is possible that persons with severe and persistent mental illnesses, chronic substance abuse disorders, and children and adolescents with serious emotional problems may be placed into managed care systems with inadequate safeguards and controls. In fact, the network of community-based services that has been developed with great difficulty over the last three decades may be jeopardized if public sector managed care contracts lack essential performance standards and quality assurance guidelines.

The NASMHPD Board of Directors, in close collaboration with the NASMHPD Research Institute, and the Boards of Directors of the National Association of State Alcohol and Drug Abuse Directors (NASADAD) and the American Public Welfare Association (APWA), have all identified as their top mutual priority the development of performance measurement indicators that could be used by States that are letting contracts for Medicaid managed behavioral health care. NASMHPD, which represents the State mental health agencies in every State, has a long history of facilitating the voluntary collection of uniform mental health data across States. NASMHPD has worked with State mental health agencies and CMHS on the Mental Health Statistics Improvement Program (MHSIP) to foster the collection, analysis, and reporting of data which are useful for systems management, policy decisions, evaluation, performance assessment, and research in the States, as well as nationally. State health care reform efforts and the introduction of managed care financial arrangements have placed new demands on States for quality assurance and accountability information. NASMHPD's Technical Assistance Center cooperative agreement with CMHS represents a unique capacity that does not exist anywhere else. The NASMHPD Technical Assistance Center works closely with every State mental health agency. A supplement to the existing cooperative agreement will allow the NASMHPD Technical Assistance Center to develop a consensus among State mental health, substance abuse, and Medicaid agencies around the collection of information about managed care that can be used internally by States for quality assurance and contract monitoring purposes, while, at the same time, assuring cooperation across States so that data items and data collection procedures are uniform so that valid national and cross-state comparisons can be made. Therefore, SAMHSA's CMHS has determined that a supplement to the existing cooperative agreement with NASMHPD should be made to carry out this important work.

This notice is not a request for applications; only NASMHPD is eligible to apply for the supplement to the existing cooperative agreement. If the NASMHPD supplemental application is recommended for approval by the Special Review Committee, funds will be made available.

Authority: The programmatic supplement to the ongoing cooperative agreement will be made under the authority of Section 1948(a)

of the Public Health Service Act, as amended (42 USC 300x–58).

AVAILABILITY OF FUNDS: The programmatic supplement will be for a 6-month period with up to $80,000 total costs (direct and indirect costs) available for that period.

FOR FURTHER INFORMATION CONTACT: Richard J. Bast, CMHS Division of State and Community Development Systems, Room 15C–26 Parklawn Building (301–443–4257) or Eric Goplerud, SAMHSA Managed Care Initiative, Room 12C–10 Parklawn Building (301–443–4456). The mailing address is: 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: May 14, 1996.

Richard Kopanda,

Acting Executive Officer, SAMHSA.

[FR Doc. 96–12649 Filed 5–20–96; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P; Notice for Publication F–14920–A]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Arviq Incorporated for approximately 5,189 acres. The lands involved are in the vicinity of Platinum, Alaska, within T. 14 S., R. 74 W., Seward Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in The Tundra Drums. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until June 20, 1996 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Elizabeth Sherwood,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 96–12721 Filed 5–20–96; 8:45 am]

BILLING CODE 4310–$$–P

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting, notice of meeting.

SUMMARY: This notice announces the fifth meeting of the Arizona Resource Advisory Council. The meeting will be held June 13, 1996, beginning at 8:30 a.m. in the Washington Room at the Bureau of Land Management National Training Center, 9828 N. 31st Avenue, Phoenix, Arizona. The agenda items to be covered at the business meeting include review of previous meeting minutes, report to the Council on Standards and Guidelines briefings with Federal and State organizations, discussion of standards and guidelines draft working group document, discussion of an open forum session for the Council to receive information from other organizations within Arizona, and a report from the Public Relations working group. A public comment period will take place at 11:30 a.m. on June 13, 1996 for any interested publics who wish to address the Council.

FOR FURTHER INFORMATION CONTACT: Clinton Oke or Ken Mahoney, Bureau of Land Management, Arizona State Office, 3707 North 7th Street, Phoenix, Arizona 85014, (602) 650–0512.

Michael A. Ferguson,

Deputy State Director, Resource Planning, Use and Protection Division.

[FR Doc. 96–12753 Filed 5–20–96; 8:45 am]

BILLING CODE 4310–32–P

[ID–990–01–1020–00)]

Notice of Meeting

SUMMARY: The Lower Snake River District Resource Advisory Council will conduct a field tour to examine U.S. Air Force proposed alternative locations for new target and emitter sites on public lands in Owyhee County.

DATES: June 3, 1996. The field tour will depart from the Lower Snake River District Office at 6:00 a.m.

ADDRESSES: The Lower Snake River District Office is located at 3948 Development Avenue, Boise, Idaho

FOR FURTHER INFORMATION CONTACT: Barry Rose, Lower Snake River District Office (208–384–3393).

Dated: May 15, 1996.

Barry Rose,

Public Affairs Specialist.

[FR Doc. 96–12722 Filed 5–20–96; 8:45 am]

BILLING CODE 4310–GG–P

[NV–930–1430–01; N–58667]

Intent To Prepare a Planning Amendment to the Lahontan Resource Management Plan/Notice of Recreation and Public Purposes Act Classification: Churchill County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a plan amendment and environmental document and notice of classification of land.

SUMMARY: The following described public land in Churchill County, Nevada has been examined and determined to be suitable for classification pursuant to the Recreation and Public Purposes Act of 1926, as amended (43 U.S.C. 869 *et seq.*):

Mount Diablo Meridian

T. 16 N., R. 29 E.,
Sec. 19, E½SE¼.
Sec. 20, SW¼NE¼, SE¼NW¼, SW¼, W½SE¼.

This public land is within an area currently identified in the Lahontan Resource Management Plan (RMP) for retention in federal ownership for multiple uses. The Bureau of Land Management will consider amending the RMP to change the land designation of up to 400 acres, from retention status to disposal status. The amendment and associated environmental document will also analyze the suitability of the land for conveyance to the City of Fallon for use as a landfill. Conveyance may only occur if the plan amendment is approved.

DATES AND ADDRESSES: Interested persons may submit comments regarding the proposed plan amendment to the District Manager, Carson City District Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706 until June 20, 1996. Additionally, for a period of 45 days from the date of publication, interested persons may submit comments regarding the land classification for public purposes appropriate under the Recreation and Public Purposes Act. Comments on the classification are restricted to whether the land is physically suited for development for public purposes,

whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs. Any objections to the classification will be evaluated by the State Director. In the absence of any objections, the classification will become effective July 22, 1996.

SEGREGATION: This land is hereby segregated from all forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. Pending a decision on plan amendment and action on the City of Fallon's Recreation and Public Purposes application, this segregation shall continue until an opening order is published in the **Federal Register** or until issuance of a conveyance document, whichever occurs first.

SUPPLEMENTARY INFORMATION: The public land is located approximately 16 miles south of Fallon, Nevada, just west of State Highway 95. The following resources will be considered in preparation of the amendment: lands, recreation, wildlife, range, minerals, cultural resources, visual resources, soil, water, air, and threatened and endangered species. Staff members representing each resource will be consulted during preparation of the environmental document. The State of Nevada Division of Environmental Protection has reviewed a site suitability study and concurs that the site meets all Federal (Subtitle D) and Nevada State (NAC 444.678 through 444.6795) siting criteria for a landfill. The public is invited to participate in the identification of issues related to the proposed transfer of the subject land to the City of Fallon for development and operation of a landfill. Anticipated issues include:

(1) Transfer of public land out of Federal ownership.

(2) Change in character and use of land from undeveloped open space utilized mainly for recreation activities and livestock grazing to a restricted-access facility.

(3) Potential impacts to recreationist and livestock grazing.

(4) Potential visual impacts.

(5) Potential impacts to adjacent landowner Planning documents and other pertinent materials may be examined at the Carson City District Office between 7:30 a.m. and 5:00 p.m. Monday through Friday.

Dated this 8th day of May, 1996.

James M. Phillips,

Acting District Manager.

[FR Doc. 96–12660 Filed 5–20–96; 8:45 am]

BILLING CODE 4310–HC–P

[ID–933–1430–01; IDI–31786]

Notice of Proposed Withdrawal and Opportunity for Public Meeting, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service proposes to withdraw 5.03 acres of National Forest System land for construction of the Salmon Canyon Copper Boating Site Recreation Area. Publication of this notice in the **Federal Register** will close the land for up to two years from location and entry under the United States mining laws. The land will remain open to mineral leasing and all other uses which may be made of National Forest System lands.

DATES: Comments and requests for a public meeting must be received by August 19, 1996.

ADDRESSES: Comments and meeting requests should be sent to the Idaho State Director, BLM, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: Cathie Foster, BLM, Idaho State Office, (208) 384–3163.

SUPPLEMENTARY INFORMATION: On April 16, 1996, the United States Department of Agriculture, Forest Service, filed an application to withdraw the following-described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Boise Meridian

T. 23 N., R. 16 E.,

A tract of land being that part of the SE¼ of unsurveyed sec. 26, more particularly described as follows:

Beginning at Salmon River Road GPS control point No. 9, a 3½ inch aluminum cap on a 1-inch aluminum drive-in rod with NAD 83 latitude 45°18'00.9169" North and longitude 114°33'33.7864" West; thence North 75°15'58" East, 2148.09 feet to the ordinary high water mark of the right bank of the Salmon River and AP–1, a 3½ inch aluminum cap on a 1-inch aluminum drive-in rod, the *Point of Beginning;* thence North 5°50'23" West, 755.08 feet to AP–2, a 3½ inch aluminum cap on a 1-inch aluminum drive-in rod; thence North 89°54'35" East, 640.79 feet to the ordinary high water mark of the right bank of the Salmon River and AP–3, a 3½ inch aluminum cap on a 1-inch aluminum drive-in rod; thence southwesterly along the ordinary high water line of the right bank of the Salmon River to AP–1 the *Point of Beginning.*

The area described contains 5.03 acres in Lemhi County.

For a period of 90 days, from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their view in writing to the Idaho State Director of the Bureau of Land Management.

Notice is hereby given that opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Idaho State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the *newspaper* at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300. For a period of two years from the date of publication of this notice in the **Federal Register,** the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

The temporary segregation of the lands in connection with this withdrawal application shall not affect administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the Department of Agriculture.

Dated: May 7, 1996.

Jimmie Buxton,

Branch Chief, Lands and Minerals.

[FR Doc. 96–12738 Filed 5–20–96; 8:45 am]

BILLING CODE 4310–GG–M

Minerals Management Service

Request for Federal Outer Continental Shelf Lease Sale for Sand and Gravel Resources

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Request for Information and Interest (RFIN).

SUMMARY: On February 12, 1996, the Minerals Management Service received a request for a nonenergy minerals (sand and gravel) lease sale. After reviewing the request, MMS decided to initiate steps which may lead to a lease sale, the first being the publication of this RFIN.

The planning area under consideration in this RFIN is depicted on the accompanying page-sized map.

Authority: This RFIN is published pursuant to the Outer Continental Shelf (OCS) Lands Act as amended (43 U.S.C. 1331–1356, (1988) (OCSLA), and the regulations issued thereunder (30 CFR 281).

Purpose of the RFIN

The purpose of the RFIN is to (1) determine whether additional interest exists in obtaining leases for sand and gravel resources on the Outer Continental Shelf (OCS) and where that interest lies within the planning area and (2) obtain other information that would be relevant to the decision to bold a sand and gravel lease sale.

Information and nominations within the defined planning area are sought from all interested parties. State and local governments, industry, other Federal agencies and all other interested parties may respond to a Request for Information and Interest. Information provided may include but is not limited to geologic, archaeologic, environmental, socioeconomic, biologic, navigational, recreational, commercial and multiple-use considerations within the planning area. This early planning and consultation step is important for ensuring that all interests and concerns are communicated to the Department of the Interior (DOI) for future decisions in the leasing process pursuant to the OCS Lands Act, as amended (43 U.S.C. 1331–1356 (1988)), and regulations at 30 CFR Part 281. This RFIN does not imply, nor should it be construed to indicate, that a preliminary decision to lease in the area described below has been made. However, should MMS later decide to offer any of the planning area for lease, parties to such action will be expected to comply with all applicable laws including the National Environmental Policy Act, the OCS Lands Act, and the Coastal Zone Management Act.

Description of the Area

The RFIN planning area is located off the northern coast of New Jersey beginning 3 nautical miles from shore and extending north to south from Sandy Hook to Surf City. The landward boundary is coincident with the 3-mile demarcation between the Federal OCS and State submerged lands jurisdiction. The seaward width of the RFIN planing area is narrowest in the north (approximately 12 miles) and broadens gradually to the south. The total area available for nominations and comments consists of 160 whole or partial blocks (each whole block is approximately 9 square miles). Respondents may nominate and comment on any acreage within the entire RFIN planning area. A large scale map of the RFIN planning area (hereinafter referred to as the RFIN map) showing boundaries of the RFIN planning area with numbered blocks is available from MMS at the following address: Minerals Management Service, Office of International Activities and Marine Minerals (or INTERMAR), 381 Elden St., Mail Stop 4030, Herndon, VA 22070 [Phone: (703) 787–1292–FAX: (703) 787–1284].

The RFIN responses will help determine if lease tract size should differ from present block configurations. Tract sizes will be established if a proposed leasing notice is issued.

Instructions on the RFIN

Industry respondents are requested to nominate specific blocks or acreage within the RFIN planning area that they would like considered in a potential OCS lease sale. Nominations must be depicted on the large scale RFIN map by outlining the area(s) of interest. Respondents are also asked to submit a list of block numbers nominated (including both whole and partial blocks) to facilitate correct interpretation of their nominations on the RFIN map. Although the identities of those submitting nominations become a matter of public record, the individual acreage or block nominations are deemed to be proprietary information.

Respondents should rank areas nominated according to priority of interest based on priority 1 (high), 2 (medium), or 3 (low). Areas nominated that do not indicate priorities will be considered priority 3. Respondents are encouraged to be specific in indicating areas or blocks by priority. Blanket priorities on large areas are less useful in the analysis of industry interest. The name and telephone number of a person in the respondent's organization to contact for additional information or clarifications should be included in the response.

Comments are sought from all interested parties about particular geological, environmental, biological, archaeological, navigational, recreational, commercial, social, and economic conditions, multiple-use considerations, or other information that might bear upon potential leasing and development in the RFIN planning area. Comments are also sought on potential conflicts with federally approved State and local coastal zone management plans (CMPs) that may result from the proposed sale or future mineral development activities. If possible, these comments should identify specific CMP policies, the nature of the conflicts foreseen, and steps that MMS could take to avoid or mitigate the potential conflicts. Comments may be in terms of broad areas or restricted to particular blocks. Those submitting comments are requested to list block numbers or clearly outline the subject area on the large-scale RFIN map.

Nominations, information, and/or comments must be received no later than 60 days following publication of this document in the **Federal Register** in envelopes labeled "Nominations (or Information) for Northern New Jersey RFIN". The RFIN map with indications of interest and/or comments should be submitted to: Minerals Management Service, Office of International Activities and Marine Minerals (or INTERMAR), 381 Elden Street, Mail Stop 4030, Herndon, VA 22070.

Use of Information From the RFIN

Information submitted in response to this RFIN serves several purposes. First, responses will be used to identify areas of potential mineral leasing and development. Second, comments on possible environmental impacts and multiple-use conflicts will aid in the analysis and handling of concerns in and near the RFIN planning area. Based on this information a preliminary determination will be made on the potential advantages and disadvantages of OCS sand and gravel exploration and development for the RFIN planning area and whether the prelease process should be continued. Third, comments may be used to identify potential conflicts between offshore activities and State or local CMPs. Finally, comments may be used in developing lease terms and conditions to ensure safe offshore mineral development activities, if the lease sale is held.

Shallow Dredging and Prohibition on Disposal

To preserve ocean bottom topography and promote rapid recolonization of biota in dredged areas, MMS intends to restrict dredging to relatively shallow and uniform depths. The Agency does not intend to issue leases in areas designated as mud dump sites nor will it permit lessees to mine deep pits for use in the disposal of any material.

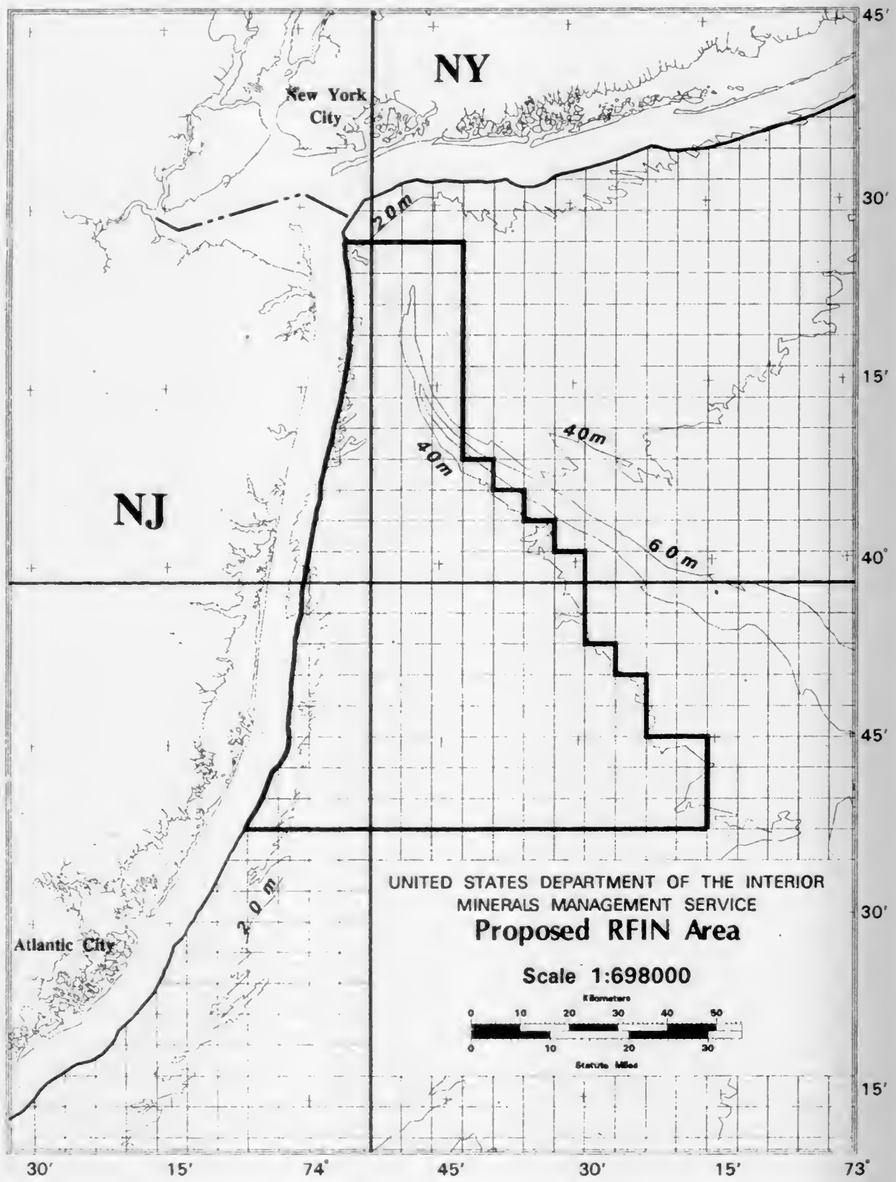
While the MMS is generally aware of the existence of navigation channels, mud dump sites, shipwrecks and other factors that could have a bearing on leasing in the planning area, more detailed information is solicited to insure that these factors receive full consideration.

Dated: May 12, 1996.

Cynthia Quarterman,

Director, Minerals Management Service.

BILLING CODE 4310–MR–P



[FR Doc. 96–12543 Filed 5–20–96; 8:45 am]

BILLING CODE 4310–MR–C

National Park Service

Notice of Boundary Revision, Menard Creek Corridor Unit, Big Thicket National Preserve

SUMMARY: Section 1 of the Act of October 11, 1974, (88 Stat. 1254) provides for the establishment of Big Thicket National Preserve and authorizes the United States to accept title to any lands, or interests in lands, located outside the boundaries of the preserve which any private person, organization, or public or private corporation may offer to donate to the United States, if the Secretary finds that such lands would make a significant contribution to the purposes for which the preserve was created and he may administer such lands as part of the preserve.

Notice is given that the boundary of the Menard Creek Corridor Unit of Big Thicket National Preserve has been revised pursuant to the above act, to include 0.56 acres of land depicted as Tract No. 126–30 on land acquisition status map, segment 126, having drawing no. 175–30,005 dated August 15, 1995, prepared by the Lands Program, Southwest System Support Office.

This map is on file and available for inspection in the office of the National Park Service, Department of the Interior, Lands Program, Southwest System Support Office, and the Office of the Superintendent, Big Thicket National Preserve.

Dated: November 2, 1995.

Ronald E. Everhart,

Acting Director, Intermountain Field Area.

[FR Doc. 96–12755 Filed 5–20–96; 8:45 am]

BILLING CODE 4310–70–P

Draft Environmental Impact Statement/ Resources Management Plan for Santa Rosa Island, Channel Islands National Park; Notice of Availability

SUMMARY: Pursuant to § 102(2)(c) of the National Environmental Policy Act of 1969 (P. L. 91–190, as amended), the National Park Service, Department of the Interior, has prepared a Draft Environmental Impact Statement assessing the potential impacts of the proposed Resources Management Plan for Improvement of Water Quality and Conservation of Rare Species and Their Habitats on Santa Rosa Island, Santa Barbara County, California. Once approved, the plan will guide resources management on Santa Rosa Island for the next 15 years.

Background

The draft Resources Management Plan and Environmental Impact Statement (DEIS/RMP) presents a proposal and four alternatives for improving water quality and riparian areas and promoting the conservation of rare species and their habitats on Santa Rosa Island. "Rare species" includes both species which have been proposed for listing as threatened or endangered under the Endangered Species Act, and those species which are candidates for such listing.

The proposed action, Alternative C, Targeted Action, would improve water quality in surface streams and protect riparian habitat areas on Santa Rosa Island, by excluding cattle and horses from one pasture, by establishing a seasonal grazing rotation in another pasture, and by constructing small riparian exclosures in several drainages. Conservation measures for rare species and their habitats would include removing the island's deer herd, reducing its elk herd, and excluding cattle and horses from one pasture. Both objectives would be fostered by increasing grazing management standards.

In addition, the following four (4) alternatives are considered in the DEIS/RMP: Alternative A "No Action" would continue the existing cattle ranching and commercial hunt operation, with no changes. Alternative B "Minimal Action" consists of excluding cattle from one pasture, removing the island's deer herd, and constructing small riparian exclosures in several drainages. Alternative D "Conservation Team Recommendations" includes phased closure of pastures and phased reduction of cattle numbers, as well as removal of the island's deer and reduction in the island's elk herd. Alternative E "Immediate Removal of Ungulates" consists of removal of all cattle, horses, elk and deer from the island within three years.

Additional Details

Written comments on the DEIS/RMP may be addressed to the Superintendent, Channel Islands National Park, 1901 Spinnaker Drive, Ventura, CA 93001. All such comments must be received no later than sixty (60) days from the date of publication of this Notice. Also, a public meeting to facilitate DEIS/RMP review will be scheduled during July, 1996. This will be advertised via local and regional media and by written announcement mailed to all individuals, organizations, and agencies who responded during the scoping period (which was initiated by the Notice of Intent published in the **Federal Register** on September 15, 1995). Inquiries about the DEIS/RMP and requests for copies of the document may be directed to the Superintendent at the above address, or via telephone at (805) 658–5776. The official responsible for decisions regarding this plan is the Field Director, Pacific West Area, National Park Service.

Dated: May 10, 1996.

Patricia Neubacher,

Acting Field Director, Pacific West Area.

[FR Doc. 96–12756 Filed 5–20–96; 8:45 am]

BILLING CODE 4310–70–P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 11, 1996. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by June 5, 1996.

Carol D. Shull,

Keeper of the National Register.

Arizona

Pima County

Pie Allen Historic District, Roughly bounded by N. Euclid Ave., E. 6th St., N. Park Ave., and E. 10th St., Tucson, 96000648

Arkansas

Lafayette County

Bradley Elementary School Building (Railroad Era Resources of Southwest Arkansas MPS) Jct. of W. 7th St. and AR 160, SW corner, Bradley, 96000634

Bradley High School Gymnasium (Railroad Era Resources of Southwest Arkansas MPS) Jct. of W. 6th and Central Sts., NE corner, Bradley, 96000635

First Methodist Church (Railroad Era Resources of Southwest Arkansas MPS) Jct. of Chestnut and 4th Sts., NW corner, Lewisville, 96000639

First Presbyterian Church (Railroad Era Resources of Southwest Arkansas MPS) Jct. of Market and Church Sts., SW corner, Stamps, 96000640

House at W. 7th St. (Railroad Era Resources of Southwest Arkansas MPS) Jct. of W. 7th and Central Sts., SW corner, Bradley, 96000636

Peoples Bank and Loan Building (Railroad Era Resources of Southwest Arkansas MPS) Jct. of Spruce and 3rd Sts., SW corner, Lewisville, 96000637

Triplett Company Building (Railroad Era Resources of Southwest Arkansas MPS)

2nd St., W of jct. with Spruce St., Lewisville, 96000638

Little River County

Anderson—Hobson Mercantile Store (Railroad Era Resources of Southwest Arkansas MPS) 201 Schuman St., Foreman, 96000642

First Christian Church (Railroad Era Resources of Southwest Arkansas MPS) Jct. of 2nd and Commerce Sts., SW corner, Ashdown, 96000632

Hawkins House (Railroad Era Resources of Southwest Arkansas MPS) Jct. of 3rd Ave. and 3rd St., NW corner, Foreman, 96000641

Hunter—Coulter House (Railroad Era Resources of Southwest Arkansas MPS) Jct. of 2nd and Commerce Sts., NW corner, Ashdown, 96000633

S. S. P. Mills and Son Building (Railroad Era Resources of Southwest Arkansas) Jct. of Texarkana Ave. and Main St., NW corner, Wilton, 96000631

Sevier County

DeQueen & Eastern Railraod Machine Shop (Railroad Era Resources of Southwest Arkansas MPS) Northwestern edge of DeQueen and Eastern RR yard, adjacent to AR 329, DeQueen, 96000643

Gillham Jail (Railroad Era Resources of Southwest Arkansas MPS) Located in the park to the N of the Kansas City—Southern RR tracks in the center of Gillham, Gillham, 96000647

Goff and Gamble Merchandise Store (Railroad Era Resources of Southwest Arkansas MPS) 1 block N of the Kansas City—Southern RR tracks in the center of Gillham, Gillham, 96000646

Hotel Dee Swift (Railroad Era Resources of Southwest Arkansas MPS) 123 N. Port Arthur St., DeQueen, 96000644

King Schoolhouse (Railroad Era Resources of Southwest Arkansas MPS) Approximately 1 mi. E of AR 71 near center of King, King, 96000645

Georgia

Fulton County

Crescent Apartments, 979 Crescent Ave., NW, Atlanta, 96000649

Maine

Cumberland County

Friends School, Off W side of Leach Hill Rd., .5 mi. SW of jct. with ME 121, Casco, 96000650

Portland Packing Company Factory, 14—26 York St., Portland, 96000651

Oxford County

Bennett, Nathaniel and Elizabeth, House, W side of Crockett Ridge Rd., 1.4 mi. N of jct. with ME 117, Norway vicinity, 96000652

Piscataquis County

Harriman School, N side of North Rd., 1.7 mi. NE of jct. with Parson Landing Rd., Dover—Foxcroft vicinity, 96000653

Washington County

Union Evangelical Church, N side of Addison Ridge Rd., 2 mi. S of US 1, Addison vicinity, 96000654

Maryland

Baltimore Independent City

Loudon Park National Cemetery (Civil War Era National Cemeteries MPS) 3445 Frederick Ave., Baltimore, 96000655

New Jersey

Hudson County

Hale—Whitney Mansion, 100 Broadway, Bayonne, 96000657

Hunterdon County

Riegel Ridge Community Center, Co. Rt. 519, approximately 1.5 mi N of NJ—PA state line, Holland Township, Milford vicinity, 96000656

Warren County

Port Murray Historic District, Roughly, Port Murray Rd. from Cherry Tree Bend Rd. to Hoffman Rd., Mansfield Township, Washington vicinity, 96000658

Tennessee

Giles County

Batte—Brown—Blackburn House, 318 W. Madison St., Pulaski, 96000659

[FR Doc. 96–12754 Filed 5–20–96; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Assistance

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; subgrant award report for Violence Against Women Formula Grant Program.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the **Federal Register**. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact the Violence Against Women Grants Office, 202–307–6026, U.S. Department of Justice, Fourth Floor, 633 Indiana Avenue, NW, Washington, DC 20531. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to the address and phone number set forth.

Overview of this information collection:

(1) Type of Information Collection: New collection.

(2) Title of the Form/Collection: STOP Violence Against Women Formula Grant Program Subgrant Award Report

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: None. Violence Against Women Branch, Crime Act Support Division, Bureau of Justice Programs, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State, local or tribal governments. *Other:* None.

The Crime Act of 1994 enacted the Violence Against Women Formula Grant Program. This program awards grant money to the states and territories to combat violence against women. The Subgrant Award Report will be completed by each of the states and territories and will provide information on each subgrant awarded under the program.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 560 responses at 1.0 hour each.

(6) An estimate of the total public burden (in hours): associated with the collection: 560 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: May 15, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–12733 Filed 5–20–96; 8:45 am]

BILLING CODE 4410–21–M

[OJP No. 1083]

RIN 1121–ZA33

Notice of Program Plans for Fiscal Year 1996; Correction

AGENCY: Department of Justice, Office of Justice Programs.

ACTION: Correction.

SUMMARY: In the notice document 61 FR 21238 beginning on page 21238 in the issue of Thursday, May 9, 1996, make the following correction:

On page 21288 in the second column, the address for receipt of a Program Announcement and Application Kit for the Office for Victims of Crime was listed as 1301 Pennsylvania Avenue, Suite 200, NW, Washington, D.C. 20531. This should be changed to 633 Indiana Avenue, NW, Washington D.C. 20531.

Dated: May 16, 1996.

Reginald L. Robinson,

Deputy Assistant Attorney General, Office of Justice Programs.

[FR Doc. 96–12859 Filed 5–20–96; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), will meet on June 12–13, 1996 at the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S4215A–C, Washington, DC. The meetings of the full Committee are open to the public and will begin at 9 a.m. on June 12 and at 8:30 a.m. on June 13. The meeting will conclude at approximately 5 p.m. on June 12 and at approximately 12 p.m. on June 13.

On June 12, OSHA will brief the ACCSH regarding the status of standards-related activities for construction. In particular, the Agency will report on the draft final rule for scaffolds (subpart L); the deliberations of the Steel Erection Negotiated Rulemaking Advisory Committee; and the status of rulemaking efforts regarding fall protection (subpart M). Also, the work group on Safety and Health Programs will report to the full Advisory Committee and the full Committee will discuss the report.

After a lunch break, the work groups on Safety and Health Programs, Confined Spaces, and Health and Safety for Women in Construction will meet from approximately 2 p.m. to 5 p.m.

On June 13, the work groups on Confined Spaces and Health and Safety for Women in Construction will report back to the full Advisory Committee and the full Committee will discuss the reports from the work groups.

Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs, at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting.

Anyone who wishes to make on oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chairman of the Advisory Committee. Individuals with disabilities who wish to attend the meeting should contact Tom Hall, at the address indicated below, if special accommodations are needed.

For additional information contact: Tom Hall, Division of Consumer Affairs, Room N–3647, Telephone 202–219–8615, at the Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210. An official record of the meeting will be available for public inspection at the OSHA Docket Office, Room N–2625, Telephone 202–219–7894.

Signed at Washington, DC this 15th day of May, 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 96–12750 Filed 5–20–96; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–050]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee.

DATES: Monday, June 17, 1996, 8:30 a.m. to 5:00 p.m.; Tuesday, June 18, 1996, 8:30 a.m. to 5:00 p.m.; Wednesday, June 19, 1996, 8:30 a.m. to 2:30 p.m.

ADDRESSES: NASA Headquarters, Conference Room MIC 7–AB–West, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Guenter R. Reigler, Code SR, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1588.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—Status of prior SScAC recommendations
—NASA Headquarters Reorganization
—FY 97 Budget Request
—Subcommittee Business

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: May 15, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96–12698 Filed 5–20–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–051]

NASA Advisory Council (NAC), Solar System Exploration Subcommittee (SSES); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting cancellation.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 61FR20839, notice number 96–047, May 8, 1996.

PREVIOUSLY ANNOUNCED DATES OF MEETING: Thursday, June 6, 1996, 8:30

a.m. to 5:00 p.m.; and Friday, June 7, 1996, 8:30 to 1:00 p.m.

Meeting has been cancelled.

CONTACT PERSON FOR FURTHER INFORMATION CONTACT:
Dr. Jurgen Rahe, Code SA, National Aeronautics and Space Administration, Washington, DC 20546, (202/358–2150).

Dated: May 14, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96–12699 Filed 5–20–96; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: New.
2. The title of the information collection: Generic Clearance for Customer Satisfaction Surveys.
3. The form number if applicable: Not applicable.
4. How often the collection is required: Three per year.
5. Who will be required or asked to report: Licensees, applicants, and the public.
6. An estimate of the number of responses: 600.
7. An estimate of the number of annual respondents: 600.
8. The estimate of the number of hours needed annually to complete the requirement or request: 300.
9. An indication of whether Section 3507(d), Public Law 104–13 applies: Not applicable.
10. Abstract: The NRC plans to conduct voluntary customer satisfaction surveys to evaluate its programs with respect to customer satisfaction and how NRC can improve its programs.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW, (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by June 20, 1996: Peter Francis, Office of Information and Regulatory Affairs, NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 13th day of May 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–12694 Filed 5–20–96; 8:45 am]

BILLING CODE 7590–01–P

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Revision.
2. The title of the information collection:

10 CFR Part 74—Material Control and Accounting of Special Nuclear Material
NUREG 1065—Acceptance Criteria for the Low Enriched Uranium Reform Amendments
NUREG/CR 5734—Acceptable Standard Format and Content for the Fundamental Nuclear Material Control (FNMC) Plan Required for Low-Enriched Uranium Enrichment Facilities and
NUREG 1280—Standard Format and Content Acceptance Criteria for the Material Control and Accounting (MC&A) Reform Amendment

3. The form number if applicable: Not applicable.
4. How often the collection is required: Submission of the fundamental nuclear material control plan is a one-time requirement which has been completed by all current licensees. Specified inventory and material status reports are required annually or semiannually. Other reports are submitted as events occur.
5. Who will be required or asked to report: Persons licensed under 10 CFR Parts 70 or 72 who possess and use certain forms and quantities of special nuclear material.
6. An estimate of the number of responses: 14.
7. The estimated number of annual respondents: 9.
8. An estimate of the total number of hours needed annually to complete the requirement or request: 3,923 (Approximately 16 hours per response for reports and 411 hours annually per recordkeeper).
9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.
10. Abstract: 10 CFR Part 74 establishes requirements for material control and accounting of special nuclear material, and specific performance-based regulations for licensees authorized to possess and use strategic special nuclear material, or to possess and use, or produce, special nuclear material of low strategic significance. The information is used by the NRC to make licensing and regulatory determinations concerning material control and accounting of special nuclear material and to satisfy obligations of the United States to the International Atomic Energy Agency (IAEA). Submission or retention of the information is mandatory for persons subject to the requirements.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library) NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by June 20, 1996: Peter Francis, Office of Information and Regulatory Affairs (3150–0123), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo, Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 14th day of May 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Officinl for Information Resources Management.

[FR Doc. 96–12695 Filed 5–20–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Carolina Power & Light Company (the licensee) to withdraw its March 31, 1995, application for proposed amendment to Facility Operating License Nos. 50–325 and 50–324 for the Brunswick Steam Electric Plant, Units 1 and 2, located in Brunswick County, North Carolina.

The proposed amendment would have provided an exception to Technical Specification (TS) 3.0.4 that would have permitted an operational mode change of a unit if the second unit was in cold shutdown or refueling (Operational Conditions 4 or 5 respectively) and one of the second unit's offsite power circuits was inoperable.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 13, 1995 (60 FR 18860). However, by letter dated December 20, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 31, 1995, and the licensee's letter dated December 20, 1995, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Dated at Rockville, Maryland, this 14th day of May 1996.

For the Nuclear Regulatory Commission.

Brenda L. Mozafari,

Project Manager, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–12697 Filed 5–20–96; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of May 20, 27, June 3, and 10, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 20

Wednesday, May 22
10:00 a.m.—Affirmation Session (PUBLIC MEETING) (if needed).
2:00 p.m.—Briefing by International Programs (CLOSED—Ex. 1).

Friday, May 24
9:30 a.m.—Meeting with Advisory Committee on Reactor Safeguards (ACRS) (PUBLIC MEETING). (Contact: John Larkins, 301–415–7360)

Week of May 27—Tentative

Thursday, May 30
2:00 p.m.—Briefing on Status of Dry Cask Storage Issues (PUBLIC MEETING). (Contact: William Travers, 301–415–8500)

Friday, May 31
10:00 a.m.—Briefing on NRC Inspection Activities (PUBLIC MEETING). (Contact: Bill Borchardt, 301–415–1257)
11:30 a.m.—Affirmation Session (PUBLIC MEETING) (if needed).

Week of June 3—Tentative

Monday, June 3
10:00 a.m.—Briefing on Part 100 Final Rule on Reactor Site Criteria (PUBLIC MEETING). (Contact: Charles Ader, 301–415–5622)

Thursday, June 6
3:30 p.m.—Affirmation Session (PUBLIC MEETING) (if needed).

Week of June 10—Tentative

Tuesday, June 11
2:00 p.m.—Briefing on Status of Risk Harmonizaiton (PUBLIC MEETING). (Contact: Judith Greenwald, 301–415–6635)
3:30 p.m.—Affirmaiton Session (PUBLIC MEETING) (if needed).

The schedule for Commisison meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

* * * * *

Dated: May 16, 1996.

Andrew L. Bates,

Senior Level Advisor, Office of the Secretary.

[FR Doc. 96–12811 Filed 5–17–96; 10:23 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–309]

Maine Yankee Atomic Power Company, Maine Yankee Atomic Power Station; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by letter dated January 20, 1996, Friends of the Coast—Opposing Nuclear Pollution (Petitioner) requested that the Nuclear Regulatory Commission (NRC) take action with regard to the Maine Yankee Nuclear Power Station (Maine Yankee), licensed to Maine Yankee Atomic Power Company (licensee).

Petitioner requests that the Commission take expedited action to:

(1) Suspend the operating license of Maine Yankee pending resolution of the Petition; (2) examine and test by plug sampling—or other ASME approved method—all large piping welds that may have been susceptible to micro-fissures at the time of construction; (3) reanalyze Maine Yankee containment as one located in an area where seismic risk is not "low"; (4) reduce the licensed operating capacity of Maine Yankee to a level consistent with a flawed containment and/or flawed reactor coolant piping welds; (5) provide an informal public hearing in the area of the plant regarding the Petition; and (6) place Petitioner on service and mailing lists relevant to its interests in safety at Maine Yankee and all public forums opened by the NRC.

As the basis for these requests, the Petition states that: (1) The containment is inadequate for power operation in excess of the original license, and may be inadequate for the original power operation limits because of insupportable original design acceptance criteria, yet the NRC staff recommended to the Commission that it grant a license amendment permitting this design. It is further stated that the Maine Yankee containment was designed and constructed without diagonal reinforcement rods, based on low seismic risk. Additionally, after a 1979 earthquake of 4.2 magnitude and an epicenter less than 10 miles from the plant site, the NRC ordered the shutdown of Maine Yankee until piping and piping supports could be seismically qualified. There is no public record, however, that the NRC reevaluated this marginally acceptable containment design, including prior to granting license amendments to operate at increased power; and (2) the Maine Yankee emergency core cooling system (ECCS), reactor coolant piping, and other large piping have not been adequately analyzed for materials degradation to ensure integrity at power operation in excess of the originally licensed power level, or under accident conditions. The Atomic Energy Commission's concern with "micro-fissures" in reactor coolant system welds led to appointment of a task force, and prompted studies and reports in 1971 (prior to heightened awareness of embrittlement phenomena) that concluded that the microfissures would not propagate or grow under foreseeable conditions. The Petitioner asserts that large pipe welds next to the reactor vessel have endured 23 years of corrosion, stress, vibration, and radiation and may fail, initiating a loss-of-coolant accident, or may be subject to thermal shock failure initiated by use of the ECCS.

The Petition has been referred to the Director of the Office of Nuclear Reactor Regulation (NRR) pursuant to 10 CFR 2.206. As provided by Section 2.206, appropriate action will be taken on the Petition within a reasonable time. By letter dated May 13, 1996, the Director denied the Petitioner's request for suspension of Maine Yankee's operating license, pending resolution of the Petition.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street NW., Washington, D.C. 20555–0001 and the local public document room in the Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578.

Dated at Rockville, Maryland this 13th day of May 1996.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–12693 Filed 5–20–96; 8:45 am]

BILLING CODE 7590–01–P

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 2 of Regulatory Guide 1.82, "Water Sources for Long-Term Recirculation Cooling Following a Loss-of-Coolant Accident," has been revised to provide current guidance on methods acceptable to the NRC staff for meeting the Commission's requirements with respect to the sumps and suppression pools that perform the functions of water sources for emergency core cooling, containment heat removal, and containment atmosphere cleanup. This guide also updates the guidance on evaluating blockage by debris in the sumps and suppression pools of boiling water nuclear power reactors.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Single copies of regulatory guides may be obtained free of charge by writing the Office of Administration, Attention: Distribution and Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax at (301) 415–2260. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 6th day of May 1996.

For the Nuclear Regulatory Commission

Themis P. Speis,

Deputy Director, Office of Nuclear Regulatory Research.

[FR Doc. 96–12696 Filed 5–20–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–8627]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Santa Fe Pacific Gold Corporation, Common Stock, $0.01 Par Value)

May 15, 1996.

Santa Fe Pacific Gold Corporation ("Company" or "SFPG") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the Chicago Stock Exchange, Inc. ("CHX").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the Security of SFPG is currently traded on the NYSE and the CHX. The Company incurs annual fees for each of the exchanges. Currently SFPG is paying an annual fee of $2,500 to the CHX.

From time to time SFPG has issued additional shares of Security for use in connection with its employee benefit plans and expects in the future to issue additional shares for the purpose of raising additional equity capital. For new shares issued, SFPG will incur additional costs for listing new shares on the CHX.

The majority of SFPG's stock is traded on the NYSE. Since the vast majority of SFPG stock is currently traded on NYSE, SFPG believes that it is not cost effective to maintain a listing on a regional exchange. The Company has therefore determined that a single listing, on the NYSE, will be sufficient to serve the needs of its stockholders.

Any interested person may, on or before June 6, 1996, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–12735 Filed 5–20–96; 8:45 am]

BILLING CODE 8010–01–M

Sunshine Act Meeting; Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of May 20, 1996.

A closed meeting will be held on Tuesday, May 21, 1996, at 10:00 a.m. An open meeting will be held on Thursday, May 23, 1996, at 10:00 a.m. A closed meeting will be held on Thursday, May 23, 1996, following the 10:00 a.m. open meeting.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will extend the closed meeting. Certain staff members who have an interest in the matter may also be present.

The General Counsel of the Commission, or his desginee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b (c)(4), (8), (9)(A) and (10) and 17 CFR 200.402 (a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matter at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the item listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, May 21, 1996, at 10:00 a.m., will be:

Institution of administrative proceedings of an enforcement nature.

The subject matter of the open meeting scheduled for Thursday, May 23, 1996, at 10:00 a.m., will be:

The Commission will hear oral argument on an appeal by Robert D. Potts from the decision of an administrative law judge. For further information, please contact Susan B. Mann at (202) 942–0902.

The subject matter of the closed meeting scheduled for Thursday, May 23, 1996, following the 10:00 a.m., open meeting, will be:

Post oral argument discussion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: May 17, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–12900 Filed 5–17–96; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board[1]

[STB Finance Docket No. 32942]

Coopersville & Marne Railway Company—Acquisition and Operation Exemption—Central Michigan Railway Company (19491)

Coopersville & Marne Railway Company of Coopersville, MI (CMR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate certain railroad lines of Central Michigan Railway Company (CMGN) from: (1) Milepost 1.16 at Marne, to milepost 8.5 at Coopersville, a distance of 7.34 miles; and (2) milepost 1.16, (old 166.44) at Marne, to milepost 159.5 at Walker, a distance of 6.94 miles, for a total distance of 14.28 miles, in Kent and Ottawa Counties, MI.

Consummation of the transaction was to be on or after May 8, 1996.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32942, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423. In addition, a copy of each pleading must be served on Fritz R. Kahn, Esq., Suite 750 West, 1100 New York Avenue, NW., Washington, DC 20005–3934.

Decided: May 14, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–12734 Filed 5–20–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901.

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit "Masterpieces from the Palazzo Doria Pamphilj, Rome" (See list[1]) imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at The National Gallery of Art, Washington, D.C., from on or about June 16, 1996, through on or about September 2, 1996, following a showing at the National Gallery, London, England, is in the national

[1] A copy of this list may be obtained by contacting Jacqueline Caldwell, Assistant General Counsel, at 202/619–6982; the address is Room 700, U.S. Information Agency, 301–4th Street, SW., Washington, D.C. 20547.

interest. Public Notice of this determination is ordered to be published in the Federal Register.

Dated: May 15, 1996.

Les Jin,

General Counsel.

[FR Doc. 96–12743 Filed 5–20–96; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities; Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities has been renewed for a 2-year period beginning April 11, 1996, through April 11, 1998.

Dated: May 13, 1996.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 96–12663 Filed 5–20–96; 8:45 am]

BILLING CODE 8320–01–M

Scientific Review and Evaluation Board for Health Services Research and Development Service; Notice of Meeting

The Department of Veterans Affairs, Veterans Health Administration, gives notice under Public Law 92–463, that a meeting of the Scientific Review and Evaluation Board for Health Services Research and Development Service will be held at the Holiday Inn-Government Center, 5 Blossom Street, Boston, MA, June 18, through June 20, 1996. The session on June 18, 1996, is scheduled to begin at 1:00 p.m. and end at 5:00 p.m. (Eastern Time). The sessions scheduled for June 19 and 20 are scheduled to begin at 8:00 a.m. and end at 5:00 p.m. (Eastern Time). The purpose of the meeting is to review research and development applications concerned with the measurement and evaluation of health care systems and with testing new methods of health care delivery and management. Applications are reviewed for scientific and technical merit. Recommendations regarding their funding are prepared for the Acting Chief Research and Development Officer (12).

This meeting will be open to the public (to the seating capacity of the room) at the start of the June 18 session for approximately a half an hour to cover administrative matters and to discuss the general status of the program. The closed portion of the meeting involves discussion, examination, reference to, and oral review of staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by the subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Mr. Bill Judy, Manager, Program Review (124F), Health Services Research and Development Service, Department of Veterans Affairs, 810 Vermont Avenue, NW, (Techworld), Washington, DC at least five days before the meeting. For further information, he can be reached at 202.565.7298 until May 17, 1996. Following that date, Mr. judy's new telephone number will be 202.273.7298.

Dated: May 13, 1996.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

IIR Project Merit Review—Agenda, Health Services Research and Development Service, Department of Veterans Affairs

Holiday Inn, Government Center, 5 Blossom Street, Boston, Massachusetts 02114, Tel. 617.742.7630, Fax. 617.742.4192

June 18, 1996

1:00 p.m.—Welcome, Introductions and Instructions
1:30 p.m.—Application Reviews
3:30 p.m.—Break
3:45 p.m.—Application Reviews
5:00 p.m.—Meeting Recess

June 19, 1996

8:00 p.m.—Application Reviews
10:00 a.m.—Break
10:15 a.m.—Application Reviews
1:00 p.m.—Lunch
2:00 p.m.—Application Reviews
3:30 p.m.—Break
3:45 p.m.—Application Reviews
5:00 p.m.—Meeting Recess

June 20, 1996

8:00 p.m.—Application Reviews
10:00 a.m.—Break
10:15 a.m.—Application Reviews
1:00 p.m.—Lunch
2:00 p.m.—Application Reviews
3:30 p.m.—Break
3:45 p.m.—Application Reviews
5:00 p.m.—Meeting Adjourned

[FR Doc. 96–12664 Filed 5–20–96; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 61, No. 99
day, May 21, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 92-174-2]

RIN 0579-AA67

Import/Export User Fees

Correction

In rule document 96–11211 beginning on page 20421 in the issue of Tuesday, May 7, 1996, make the following corrections:

1. On page 20430, in the table, in the fifth column, in the ninth line, "3.754" should read "3.75"; and in the sixth column, in the ninth line, "3,631" should read "43,631".

§ 130.10 [Corrected]

2. On page 20435, in the first column, in § 130.10(a), in the table, in the first column, the heading should read "Number of birds in isolette".

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

42 CFR Part 84

National Institute for Occupational Safety and Health (NIOSH); Meeting

Correction

In proposed rule document 96–11859 beginning on page 24740 in the issue of Thursday, May 16, 1996, make the following correction:

On page 24740, in the second column, under **DATES**, in 3.. "June 8, 1996" should read "June 12, 1996.

BILLING CODE 1505–01–D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

Correction

In rule document 95–20141 beginning on page 42037 in the issue of Tuesday, August 15, 1995, make the following correction:

Appendix B to Part 2619 [Corrected]

On page 42039, in Appendix B to Part 2619, the table at the top of the page should read "Table II [Annuity Valuations]".

BILLING CODE 1505–01–D

OL
1
SS
9
MY
1
996
MI

federal register

Tuesday
May 21, 1996

Part II

Department of Labor

Office of Federal Contract Compliance Programs

41 CFR Parts 60–1 and 60–60

Government Contractors, Affirmative Action Requirements; Implementation of Executive Order 11246; Proposed Rule

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Parts 60–1 and 60–60

Government Contractors, Affirmative Action Requirements; Implementation of Executive Order 11246

AGENCY: Office of Federal Contract Compliance Programs (OFCCP), ESA, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal would revise certain provisions of the current regulations implementing Executive Order 11246, as amended, to reduce burdens on the regulated community and to improve administration of the Order. The Executive Order prohibits all nonexempt Government contractors and subcontractors, and federally assisted construction contractors and subcontractors, from discriminating in employment, and requires these contractors to take affirmative action to ensure that employees and applicants are treated without regard to race, color, religion, sex and national origin. The proposed revisions to the regulations on obligations of contractors and subcontractors concern record retention, compliance monitoring, and segregated facilities. In addition, the proposal would amend certain provisions of the regulations to parallel provisions included in OFCCP's final rule implementing Section 503 of the Rehabilitation Act of 1973, as amended, which was published in the **Federal Register** on May 1, 1996. The proposal also would transfer some sections of the regulations on contractor evaluation procedures for supplies and services to the regulations on obligations of contractors and subcontractors and delete the remainder of the sections. Finally, this proposal would withdraw portions of a final rule published on December 30, 1980 (and subsequently suspended), and it hereby withdraws a proposed rule published on August 25, 1981 (and supplemented on April 23, 1982).

DATES: To be assured of consideration, comments must be in writing and must be received on or before July 22, 1996.

ADDRESSES: Comments should be sent to Joe N. Kennedy, Deputy Director, OFCCP, Room C–3325, 200 Constitution Avenue, N.W., Washington, DC 20210.

As a convenience to commenters, OFCCP will accept public comments transmitted by facsimile (FAX) machine. The telephone number of the FAX receiver is 202–219–6195. To assure access to the FAX equipment, only public comments of six or fewer pages will be accepted via FAX transmittal. Receipts of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling OFCCP at 202–219–9430 (voice), 1–800–326–2577 (TDD).

FOR FURTHER INFORMATION CONTACT: Joe N. Kennedy, Deputy Director, OFCCP, Room C–3325, 200 Constitution Avenue, N.W., Washington, DC 20210. Telephone 202–219–9475 (voice), 1–800–326–2577 (TDD). Copies of this NPRM, including copies in alternate formats, may be obtained by calling 202–219–9430 (voice), 1–800–326–2577 (TDD). The alternate formats available are large print, electronic file on computer disk and audio-tape.

SUPPLEMENTARY INFORMATION:

Background

OFCCP's regulations at 41 CFR chapter 60 implementing Executive Order 11246, as amended (30 FR 12319, September 28, 1965) have not undergone substantive revision since the 1970s. A final rule was published on December 30, 1980 (45 FR 86215; corrected at 46 FR 7332, January 23, 1981), but was stayed in accordance with Executive Order 12291 on January 28, 1981 (46 FR 9084). This rule later was stayed indefinitely on August 25, 1981 (46 FR 42865), pending action on a notice of proposed rulemaking (NPRM) published on that same date (46 FR 42968; supplemented at 47 FR 17770, April 23, 1982). OFCCP has taken no further action on the August 25, 1981, proposal, or consequently on the 1980 stayed final rule.

Both the 1980 final rule and the 1981 proposal addressed 41 CFR part 60–1. The changes they would have made to 41 CFR part 60–1 have been considered in developing today's NPRM and, where pertinent, are discussed in the Section-by-Section analysis below. To avoid conflict with today's NPRM, OFCCP proposes to withdraw part 60–1 of the 1980 final rule, and hereby withdraws the 1981 and 1982 NPRMs in their entirety.

As discussed in the Section-by-Section analysis, today's NPRM proposes changes to 41 CFR part 60–1 provisions concerning record retention, compliance monitoring, and segregated facilities. In addition, to ensure consistency in OFCCP programs, today's NPRM proposes conforming certain part 60–1 provisions to parallel provisions revised by OFCCP's final rule implementing Section 503 of the Rehabilitation Act of 1973, as amended (61 FR 19336; May 1, 1996). These proposed conforming changes would affect several definitions and, for example, some aspects of enforcement.

Finally, today's NPRM proposes the deletion of most sections of part 60–60 from the regulations and the transfer of a few sections to part 60–1. The deleted sections describe OFCCP's traditional compliance review process and the transferred sections relate to preservation of confidentiality of data submitted by contractors, the timeframe within which a contractor must submit an affirmative action program and supporting documents and authorization for agreements concerning nationwide AAP formats. Similar deletions and transfers were contained in the 1980 final rule and the 1981 proposal.

Section-by-Section Analysis

Section 60–1.3 Definitions

The proposal adds one new definition for compliance evaluation and revises several others to render them consistent with the definitions included in OFCCP's Section 503 final rule.

"Compliance Evaluation." The proposal adds a new definition of the term "compliance evaluation" to reflect OFCCP's authority to conduct a variety or range of activities to assess a contractor's compliance status. Previously OFCCP generally has conducted a full compliance review of a contractor, assessing all its employment practices, whenever it reviewed a contractor's status. As discussed in more detail in the preamble discussion of § 60–1.20, the proposal would allow OFCCP to use any one or a combination of actions to examine a contractor's compliance with one or more of the Executive Order 11246 requirements. Thus, the proposal would allow OFCCP to streamline the review process for many contractors. The proposal also would allow OFCCP to focus its investigatory resources where they are needed, while conducting some level of review of a broader segment of the contractor universe.

"Contract." The current regulation defines the term "contract" as "any Government contract or any federally assisted construction contract." The proposal adds the word "subcontract" to this definition ("any Government contract or subcontract or any federally assisted construction contract or subcontract") to eliminate the need to reference "subcontract" each time "contract" is referenced in the body of the regulation. Accordingly, the proposal generally references the term "subcontract" only when necessary to

the context. This same change would have been made by the 1980 final rule.

"Deputy Assistant Secretary." The Director of OFCCP recently was redesignated the Deputy Assistant Secretary for Federal Contract Compliance Programs. The proposal, therefore, substitutes a definition of "Deputy Assistant Secretary," for the definition of "Director" in the current regulations, and makes this title change throughout the proposal. To ensure internal consistency, OFCCP intends to issue a rule making a corresponding universal change to its regulations before publishing the final rule resulting from this proposal.

"Government Contract." The proposed definition of "Government contract" is revised to clarify that covered contracts include those under which the Government is a seller of goods or services, as well as those under which it is a purchaser. This change reflects OFCCP's long-standing interpretation of the scope of the Executive Order, upheld in *Crown Central Petroleum Corp.* v. *Kleppe* (424 F. Supp. 744 (D. Md. 1976)), that sales by the Government result in covered contracts. Hence, the proposal substitutes a reference to contracts for the "purchase, sale or use of personal property or nonpersonal services" and a definition of the term "personal property" for the existing reference to the "furnishing" of supplies or services, or for the use of real or personal property, including lease arrangements.

"Rules, regulations and relevant orders of the Secretary of Labor." A rule published on May 3, 1996 (61 Fed. Reg. 19982) amended the definition of "Secretary" to include a "designee" of the Secretary of Labor. The definition of "rules, regulations and relevant orders of the Secretary of Labor" in the current regulations, which makes reference to the designee of the Secretary, therefore is no longer necessary and is omitted in this proposal.

"Subcontract." The proposal conforms the current definition of "subcontract" to the proposed definition of "Government contract" above; that is, as revised, the proposed definition references agreements for the "purchase, sale or use" of personal property or nonpersonal services.

"United States." OFCCP proposes to revise the current definition of "United States" by deleting the Panama Canal Zone (which was ceded back to Panama under the terms of the Panama Canal Treaty) and by specifying the possessions and territories of the United States as: the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island.

Section 60–1.8 Segregated Facilities

Today's proposal would revise § 60–1.8, which currently sets out a general prohibition regarding the maintenance of segregated facilities (paragraph (a)) and a certification requirement regarding compliance with that obligation (paragraph (b)).

Specifically, under paragraph (a) of § 60–1.8, nonexempt contractors and subcontractors must ensure that facilities they provide to their employees are not segregated on the basis of race, color, religion or national origin. Further, paragraph (a) states that this obligation extends to all contracts containing the equal opportunity clause, regardless of the amount of the contract.

Paragraph (b) of the regulation provides that, prior to the award of a Government contract or federally assisted construction contract, each contracting agency or applicant for Federal financial assistance involving a construction contract shall require the prospective prime contractor to submit a certification that it does not and will not maintain segregated employee facilities. Paragraph (b) also requires prime contractors and subcontractors, prior to the award of subcontracts, to obtain such a certification from their prospective subcontractors.

This proposal would conform § 60–1.8 with the Executive Order's general nondiscrimination requirements, by adding sex to the list of bases upon which segregation is prohibited, with the proviso that separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes. The proposal also would make a number of stylistic changes to existing paragraph (a).

OFCCP proposes to withdraw the written certification requirement (paragraph (b) of the current regulation). The certification requirement originally was incorporated into the Executive Order regulations in 1967 (see 32 FR 7439, May 19, 1967). At that time, segregation in employee facilities, especially on the basis of race, was not uncommon. The certification requirement was intended in large part to put contractors on notice that such segregation was unlawful and would not be tolerated. In the intervening 28 years, as a result of civil rights law enforcement and other factors, employers have become aware that segregation in employee facilities is unlawful. Indeed, such segregation has been significantly reduced. Because today's proposal would retain and strengthen the basic prohibition regarding segregated facilities, which OFCCP will continue to monitor through compliance investigations, the proposed withdrawal of the certification requirement will not reduce protections afforded to workers.

Withdrawing the certification requirement will significantly reduce compliance burdens on contractors. The Government lets approximately 350,000 prime contracts each year. If it is assumed that each prime contract results in an average of four subcontracts, and that it takes about one-half hour to prepare and submit the written certification, eliminating the certification requirement would reduce compliance burdens on the contractor community by roughly 875,000 hours. This estimate may significantly understate the savings; many contractors annually solicit the certification from all of their prospective vendors rather than limiting their request to those firms that actually are subcontractors on Federal projects.

The 1980 final rule, and the 1981 proposal, would have made similar revisions to the segregated facilities regulation.

Section 60–1.12 Record Retention

OFCCP's primary Executive Order recordkeeping and record retention regulations are contained in 41 CFR 60–1.40 and 60–4.3, and parts 60–2 and 60–3 (the Uniform Guidelines on Employee Selection Procedures, hereafter UGESP). The regulations require certain contractors to develop, implement and maintain a written affirmative action program (AAP) for each of their establishments; to compile the results of the program; to update the program annually; and to provide the program and supporting documentation to OFCCP upon request; to maintain data on applicants, selection and referral procedures and, as applicable, adverse impact and evidence of validity; and, if engaged in Federal or federally assisted construction, to compile and maintain data on employees and applicants for construction jobs. Although retention of relevant records is implicit in the requirement to analyze selection decision data, prepare an annual update, and provide supporting documentation, the Executive Order regulations, with one exception, do not expressly prescribe a record retention period. That exception is the requirement under the UGESP to keep certain adverse impact data for two years after the adverse impact has been eliminated.

Paragraph (a) of the proposal amends this obligation in several ways: First it

makes the record retention obligation applicable to any personnel or employment record made or kept by the contractor, and sets out a listing of examples of the types of records that must be retained. This provision conforms to the analogous requirement under Title VII of the Civil Rights Act of 1964. (Thus, contractors with 15 or more employees, i.e., those that are covered by Title VII of the Civil Rights Act, already are required to comply with this requirement. The only contractors that will be newly covered by this requirement are those that have Government contracts subject to the Executive Order's regulations (e.g., those with contracts that exceed $10,000) and that have fewer than 15 employees. This group of contractors consists almost entirely of small construction contractors.)

Second, proposed paragraph (a) stipulates that the required record retention period is two years. It is OFCCP's practice to review the contractor's employment practices dating back two years prior to the initiation of a compliance evaluation and to assess liability for discriminatory practices dating back two years. Proposed paragraph (a) requires smaller contractors (those that have fewer than 150 employees or that do not have a Government contract of at least $150,000) to retain records for a minimum of one year, rather than two years. Most contractors are covered by the one year record retention period imposed by Title VII. OFCCP is proposing a shorter record retention period for smaller contractors as a method of reducing regulatory burden on such contractors. This proposal is consistent with a provision included in OFCCP's Section 503 final rule.

Third, proposed paragraph (a) requires that when a contractor has been notified that a complaint has been filed, that a compliance evaluation has been initiated or that an enforcement action has been commenced, the contractor shall preserve all relevant personnel records until the final disposition of the action. This provision conforms to the corresponding record retention requirement under Title VII. The purpose of this requirement is obvious—to ensure that OFCCP can obtain all relevant documents during a compliance investigation or enforcement action.

Proposed paragraph (b) provides that a contractor establishment required to develop a written affirmative action program (AAP) shall maintain its current AAP and its AAP for the preceding AAP year, along with documentation of good faith efforts taken under the AAPs. Such documentation might reflect, for example, the contractor's outreach and recruitment efforts undertaken to increase its pool of female or minority applicants, or training programs instituted to enhance the skills and talents of incumbent employees to increase the pool of those eligible for promotion. This provision is intended to ensure that the AAPs are available to OFCCP during a compliance evaluation.

Proposed paragraph (c) provides that the failure to preserve the records required by proposed paragraphs (a) and (b) constitutes noncompliance with the Order. Additionally, proposed paragraph (c), in a provision that is not paralleled in the current regulations, states that where a contractor has destroyed or failed to preserve required records, there may be a presumption that such records would have been unfavorable to the contractor. However, this presumption will not apply where a contractor demonstrates that the destruction or failure to preserve records resulted from circumstances beyond the contractor's control (e.g., fires, floods, tornados, or other natural disasters). This provision is consistent with EEOC's practice under Title VII, as set forth at § 632.3(b)(2)(ii) of EEOC's Compliance Manual. The intent of this provision is to deter contractors from deliberate attempts to frustrate OFCCP's compliance monitoring and enforcement efforts by destroying or failing to preserve records. The adverse inference established by paragraph (c) would be used by OFCCP in both investigations of compliance and in enforcement litigation.

Proposed paragraph (d), which is not paralleled in the current regulations, would clarify that the contractor is obligated to preserve only those records which are created or kept on or after the effective date of the regulations.

The proposed regulation has been carefully drafted to comport with requirements under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA) and the requirement included in OFCCP's final rule implementing Section 503 of the Rehabilitation Act of 1973, as amended. The Title VII, ADEA, and ADA regulations contain record retention requirements for similar records that vary from one to three years. The vast majority of Federal contractors already are subject to one or more of these statutes and thus already are required to maintain the records described in this proposed regulation.

Section 60–1.20 Compliance Evaluations

The proposal would revise paragraphs (a) and (d) of this section, which respectively address compliance reviews in general, and preaward clearance requirements.

In the current regulations, paragraph (a) describes the purpose of a compliance review of a contractor's implementation of its nondiscrimination and affirmative action obligations, provides that the review shall consist of a comprehensive analysis of all relevant practices, and provides that recommendations for appropriate sanctions shall be made. The proposal specifically authorizes OFCCP's use of additional methods to evaluate a contractor's compliance with the regulations. The proposal specifies that the compliance evaluation methods available to OFCCP, other than the full compliance review, may include a range of activities designed to focus, for example, on the contractor's written affirmative action plan; the accuracy of data submitted for review at desk audit; or on one component or organizational unit of the contractor's workforce. Thus, the proposal would allow OFCCP to streamline the review process in many cases.

The proposal also would revise paragraph (d), which currently requires OFCCP to conduct a preaward compliance review of contractors being considered for contracts of $1 million or more. The preaward provision has been a component of OFCCP's regulatory procedures since 1968. The intent of the preaward clearance provision is to prevent the award of large dollar contracts to contractors which are either in noncompliance or unwilling to comply with the EEO clause of the contract.

Specifically, § 60–1.20(d) requires the awarding agency to obtain clearance from OFCCP prior to awarding Federal supply/ service contracts of $1 million or more. OFCCP must certify that a Federal contractor/prospective contractor is in compliance before the award of a contract.

The concept of preaward compliance reviews was premised on three assumptions: (1) Contracts of a sizable dollar amount tend to generate expanded hiring, promotion and upgrading opportunities; (2) the conduct of a compliance review immediately prior to the award is the most efficient way of ensuring that those employment opportunities be used to address the consequences of any past job discrimination; and (3) contractors tend to be more amenable to achieving compliance across-the-board when it is an immediate condition of the contract. Although these assumptions generally are still correct, the preaward review has not been a successful compliance mechanism for the past 15 years.

OFCCP has been severely hampered in its efforts to plan and carry out compliance reviews because of the regulatory and other requirements associated with preaward requests. OFCCP recognized the shortcomings of the preaward process as early as 1979 and attempted to modify the provision in the 1980 final rule. The 1981 proposal would have eliminated the requirements for preaward clearance. The ineffectiveness of the preaward provision also was identified and cited in 1985 and 1988 reports of the Department of Labor Inspector General.

Several factors contribute to the difficulties with the preaward process, including: insufficient staff and budget to process the large volume of preaward requests—approximately 27,625 preaward requests were received in FY '93; the short time available within which to conduct preaward reviews; and court rulings that require a hearing before OFCCP may declare a contractor ineligible for contracts. See e.g., *Illinois Tool Works* v. *Marshall*, 601 F.2d 943 (7th Cir. 1979).

In addition, some contracting agencies have expressed concerns about the traditional preaward process. OFCCP has held consultations with various contracting agencies during the past year and has adopted a number of administrative reforms as a result. Those reforms relate to its interactions with the contracting agencies during the preaward process, and they were implemented in order to ensure that the process is as streamlined as possible. Those consultations are ongoing and OFCCP will continue to work with the contracting agencies to improve the process.

Based on the foregoing concerns with the current preaward provision, OFCCP considered a number of options including the complete elimination of the preaward provision, an increase in the dollar amount of the preaward contract threshold, and the replacement of the preaward review with a postaward review. OFCCP decided to promulgate this proposal which modifies the provision by making the preaward compliance review optional. Thus, preaward reviews will be conducted if OFCCP determines that a review would constitute the best use of its limited resources. OFCCP may consider factors such as whether the contract is likely to generate significant employment opportunities, whether the contractor has held a covered Federal contract before, whether the contractor has been reviewed before and, if so, whether prior reviews have revealed noncompliance at the same or other establishments, the length of time that has passed since a prior review, and the EEO–1 profile of the contractor. It is difficult to describe more precisely the factors OFCCP will use, because they may change over time as economic conditions change. For example, in recent years the most growth in employment opportunities has occurred in small businesses and that growth has occurred in the service sector of the economy. Because these facts may change in future years, they are not specified as factors OFCCP will consider when deciding whether to conduct a preaward review. By making the preaward review optional, the proposal allows OFCCP the necessary flexibility and latitude in establishing the agency's enforcement priorities, rather than continuing to allow those priorities to be dictated by the incoming preaward requests. OFCCP invites commenters to address whether it should make preaward reviews optional, or should retain such reviews as mandatory.

This proposal provides, as does the current regulation, that OFCCP will provide an awarding agency with its conclusions regarding clearance for an award. However, the proposal requires that OFCCP inform an awarding agency within 15 days of its intention to conduct a preaward review. If OFCCP does not inform an awarding agency within that period of its intention to conduct a preaward review, clearance shall be presumed and the agency is authorized to proceed with the award. If OFCCP informs an awarding agency of its intention to conduct a preaward review, OFCCP shall be allowed an additional 20 days after the date that it so informs the agency to provide its conclusions. If OFCCP does not provide an awarding agency with its conclusions within that period, clearance shall be presumed and the agency is authorized to proceed with the award. This proposal ensures that the preaward review process will not contribute to any unnecessary delay in the procurement process.

This proposal continues the threshold for preaward notification at $1 million. However, OFCCP invites commenters to address whether the existing threshold should be changed or retained, in light of the dual goals of streamlining the procurement process and ensuring that OFCCP has the information necessary to allow it to evaluate the compliance status of companies that may be awarded new Government contracts. In addition, OFCCP invites commenters to address the option of moving from preaward reviews to a system under which OFCCP reviews would be performed concurrent with the awarding of a Federal contract.

Finally, as discussed under the heading of part 60–60 below, the proposal moves provisions now contained in part 60–60 that relate to confidentiality of data, timely submission of documents to OFCCP, and nationwide AAP formats to this section.

Section 60–1.26 Enforcement Proceedings

The proposal revises and restructures for clarity § 60–1.26, which details Executive Order enforcement procedures. With the exception of the provision relating to calculating interest, this proposal is not intended to make substantive changes to this section. Proposed subsection (a) contains general provisions applicable to both administrative and judicial enforcement. Proposed subsection (b) addresses administrative enforcement procedures, and proposed subsections (c) and (d) cover judicial enforcement proceedings, which are handled by the Department of Justice.

The proposal also makes several specific changes to this section that are consistent with provisions included in OFCCP's Section 503 final rule at 41 CFR 60–741.65(a)(1). First, it clarifies in subsection (a)(2) that OFCCP may seek relief for victims of discrimination identified either during a compliance evaluation or a complaint investigation whether or not such individuals have filed a complaint with OFCCP. OFCCP has long maintained that such a limitation on available relief clearly is inconsistent with the Order. OFCCP's position recently was upheld in a case under Section 503, *OFCCP* v. *Commonwealth Aluminum*, 82–OFC–6 (Assistant Secretary for Employment Standards, February 10, 1994), Federal court review pending *sub nom. Commonwealth Aluminum Corporation* v. *United States* (WD Ky., No. 94–0071–O(C)).

Second, the proposal states, also in subsection (a)(2), that interest on back pay shall be compounded quarterly at the percentage rate established by the Internal Revenue Service for the underpayment of taxes. This provision would reverse the ruling of the Department of Labor's Assistant Secretary for Employment Standards in *OFCCP* v. *Washington Metropolitan Area Transit Authority*, 84–OFC–8 (orders dated August 23 and November 17, 1989), that simple interest, rather

than compounded interest, should be used in the calculation of back pay awards under Section 503. That Section 503 ruling, which relied upon the Department's regulations (at 29 CFR part 20) implementing Section 11 of the Debt Collection Act of 1982 (31 U.S.C. 3717), could be construed as applicable also to relief under the Executive Order. OFCCP had a longstanding policy of requiring that interest on back pay awards under the Executive Order be compounded; such policy is consistent with the case law under Title VII of the Civil Rights Act of 1964. OFCCP believes that it must reinstate this policy to ensure that victims of discrimination obtain complete "make whole" relief.

Third, the proposal provides in subsection (b)(1) that administrative enforcement proceedings also may be instituted where OFCCP determines that referral for formal enforcement (rather than settlement) is appropriate. Fourth, the proposal specifies in subsection (b)(1) that the administrative enforcement referral will be made to the Solicitor of Labor.

The proposal states that the rules of evidence set out in the hearing rules applicable to the Department's Administrative Law Judges shall also apply to hearings conducted under 41 CFR part 60–30. These rules, which were issued in 1990, are generally applicable to the Department's formal adversarial adjudications. Consistent with a requirement included in OFCCP's Section 503 final rule, the proposal also requires that the Department's Final Administrative Order in an Executive Order case be issued within one year from the date of the Administrative Law Judge's recommended decision, or the submission of the parties' exceptions and responses to exceptions to such decision (if any), whichever is later. OFCCP believes that this time limit is needed to ensure that aggrieved individuals obtain expeditious relief and that contractors are assured of closure of the administrative proceedings.

Section 60–1.27 Sanctions

The current sanction regulation provides only that the sanctions authorized by section 209 of the Executive Order may be exercised by or with the approval of the Director of OFCCP. The 1980 final rule and the 1981 proposal deleted the current sanction regulation as a separate provision, and they both generally merged the sanction regulation with the regulation pertaining to enforcement proceedings. The regulation pertaining to enforcement proceedings currently is set forth at § 60–1.26. In the 1980 final rule the combined sanctions and enforcement proceedings regulation appeared at § 60–1.29, and in the 1981 proposal the combined regulation appeared at § 60–1.68.

The proposal adds a new paragraph specifically addressing the sanction of debarment. Paragraph (b) of the proposal provides for a fixed term debarment for a period of six months or more, as well as indefinite term debarment. The Secretary already has ordered the imposition of a fixed term debarment in *OFCCP* v. *Disposable Safety Wear*, 92–OFC–11 (Decision and Final Administrative Order of the Secretary of Labor, September 29, 1992). See also *OFCCP* v. *Blaine Construction Co.*, 94–OFC–4 (Decision and Final Administrative Order of the ALJ, March 9, 1994); *OFCCP* v. *KRT Drywall/ Acoustical*, 94–OFC–14 (Order of the ALJ, August 18, 1994); *OFCCP* v. *State Construction of Southeast Wisconsin*, 94–0FC–18 (Orders of the ALJ, August 31 and September 8, 1994). The proposal simply provides contractors with greater notice that a fixed term debarment of six months or more may be imposed in some cases instead of an indefinite term debarment. OFCCP believes that the use of fixed period debarments will serve as a more effective deterrent and encourage compliance among the recalcitrant contractors who repeatedly break their promises of future compliance with respect to affirmative action and recordkeeping and retention requirements. OFCCP has found that the current practice of reinstating the contractor upon its simple demonstration of compliance is insufficient to ensure voluntary compliance. Under the current procedure the contractor may be reinstated immediately without incurring any economic loss for a violation of an affirmative action requirement (e.g., a contractor which has failed to develop an AAP can simply do so to be eligible for reinstatement). A fixed term debarment establishes a trial period during which a contractor can demonstrate its commitment and ability to establish personnel practices that will ensure continued compliance with the requirements of the Executive Order. Thus, in a Final Administrative Order, the Adminstrative Review Board could order a company to take specific action to come into compliance and to submit periodic reports to OFCCP regarding its compliance status during the fixed term debarment period. A fixed term debarment scheme will strengthen the Executive Order program by deterring contractors from engaging in violations based upon "a cold weighing of the costs and benefits of noncompliance." *Janik Paving & Construction* v. *Brock*, 828 F.2d 84 (2d Cir. 1987). Where fixed term debarment is ordered, in lieu of an indefinite term debarment, the length of the debarment period will be determined on a case-by-case basis, depending upon factors such as the nature and severity of the violations. A contractor debarred for a fixed term will not be automatically reinstated upon the conclusion of the fixed term debarment period. In making his or her determination as to whether reinstatement of such a contractor is appropriate, the Deputy Assistant Secretary shall consider whether the contractor has demonstrated that it has established and will carry out employment policies and practices in compliance with the Executive Order. If the contractor failed to comply with the Department's Final Administrative Order, it would not be eligible for reinstatement at the conclusion of the fixed term debarment period.

Section 60–1.30 Notification of Agencies

Consistent with a regulation in OFCCP's Section 503 final rule, the proposal would delete the requirement that OFCCP distribute a list of debarred contractors to all executive departments and agencies, and substitute a requirement that the Deputy Assistant Secretary ensure that the heads of agencies are notified of debarments. Accordingly, the section would be renamed "Notification of agencies" instead of "Contract ineligibility list." The General Services Administration now publishes a listing of debarred contractors, and it would be redundant for OFCCP to issue a separate list.

The 1980 final rule would have required that OFCCP promptly notify the Comptroller General of the United States regarding contract cancellations and debarments. Further, that section of the final rule would have required that OFCCP take appropriate steps to notify prime contractors of the debarred contractor's ineligibility for subcontracts. Notice now is provided adequately by the General Services Administration's list of debarred contractors.

Section 60–1.31 Reinstatement of Ineligible Prime Contractors and Subcontractors

The proposal would revise this section to make it consistent with proposed § 60–1.27(b), which authorizes debarment either for an indefinite period or for a fixed period of not less than six months. Accordingly, the proposal provides that a contractor debarred for an indefinite period may request reinstatement at any time, and that a contractor debarred for a fixed period may request reinstatement after the expiration of the fixed period. In either type of debarment, the contractor, as under the current regulations, would be required to show that it has established and will carry out employment practices in compliance with the Executive Order.

Further, the proposal would adopt some of the 1980 final rule's reinstatement procedures. For instance, similar to the 1980 final rule, the proposal specifies that the contractor may be subject to a compliance evaluation before a final determination is made on the reinstatement request. The 1980 final rule would have established some additional detailed procedures that OFCCP, upon reconsideration, does not believe need to be incorporated into the regulations.

Section 60–1.32 Intimidation and Interference

Currently, the regulations provide that the sanctions and penalties contained therein may be exercised against any contractor which fails to ensure that no person intimidates, threatens, coerces or discriminates against any individual because he or she files a complaint or otherwise participates in compliance activity under the Executive Order or a similar Federal, state or local law. The proposal contains a similar prohibition but specifies that the contractor itself shall not engage in such activities and shall ensure that all persons under its control do not do so, and adds that the prohibition applies to harassment. Further, the proposal states that the prohibition applies to an individual's opposition to any practice that is unlawful under the Order or similar Federal, state or local laws, and to the exercise of any other right protected by the Order. The proposal is consistent with a provision included in OFCCP's Section 503 final rule, and it is substantially similar to the counterpart provision in the 1980 final rule (§ 60–1.28). The intent of the proposal is to incorporate strengthened provisions that ensure that individuals fully enjoy all rights protected under the Order, the regulations and comparable Federal, state and local laws without the threat of harassment or intimidation.

Section 60–1.34 Violation of a Conciliation Agreement or Letter of Commitment

The proposal contains a clarification that in enforcement proceedings related to violation of a conciliation agreement, OFCCP is not required to present proof of the underlying violations resolved by the agreement. This provision, which reflects OFCCP's current practice and which is consistent with OFCCP's Section 503 final rule, is to remove any doubt that OFCCP need not litigate claims that have already been resolved through the agreement.

Section 60–1.42 Notices to be Posted

Technical corrections are made to the wording of the poster regarding the jurisdictional coverage of Title VII and the address of EEOC.

Section 60–1.43 Access to Records and Site of Employment

Consistent with a provision included in OFCCP's Section 503 final rule, the proposal specifies that computerized records are among the records to which the contractor shall permit OFCCP access for inspection and copying. In addition, the proposal specifies that contractors must permit OFCCP access to their premises for the purpose of conducting compliance evaluations and complaint investigations (the current regulation mentions only compliance reviews). Further, the proposal revises the list of uses which can be made of information OFCCP obtains from a contractor, to include the administration of other laws that are enforced in whole or in part, by OFCCP.

Part 60–60—Contractor Evaluation Procedures for Contractors for Supplies and Services

Part 60–60 is to be deleted. Most of part 60–60 is properly characterized as internal operating procedures. A number of the procedures have been incorporated into OFCCP's Federal Contract Compliance Manual, and the provisions regarding confidentiality of data furnished to OFCCP by contractors are proposed to be incorporated into part 60–1. Specifically, provisions currently found at §§ 60–60.2(a), 60–60.3(a)(3), 60–60.3(d) and 60–60.4(a–d) will be incorporated into § 60–1.20 with minor changes. The 1980 final rule, and the 1981 proposal, would have made similar revisions to part 60–60.

Regulatory Procedures

Executive Order 12866

The Department is issuing this proposed rule in conformance with Executive Order 12866. This proposal has been determined to be significant for purposes of Executive Order 12866 and therefore has been reviewed by OMB. This proposal does not meet the criteria of Section 3(f)(1) of Executive Order 12866 and therefore the information enumerated in Section 6(a)(3)(C) of that Order is not required.

In accordance with section 6 of Executive Order 12866, an assessment of the potential costs and benefits of the proposal has been made. Potential costs and benefits of record retention and certification proposals are discussed below in the sections on the Regulatory Flexibility Act and the Paperwork Reduction Act. As noted therein, this proposal would significantly reduce the compliance burden on the contractor community by eliminating the segregated facilities certification requirement. OFCCP anticipates publishing an additional proposal relating to 41 CFR part 60–2 and the requirements of written affirmative action programs that would, if adopted, further reduce the burdens on contractors. OFCCP's goal in proposing regulatory changes is to streamline its existing regulations and to reinvent its current processes in order make both contractor compliance and agency enforcement more efficient and cost effective. Therefore, OFCCP invites comments on additional ways to reduce compliance burdens such as simplified compliance procedures for small contractors.

Regulatory Flexibility Act

The proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities. A requirement that records be maintained for one to two years (depending upon contractor size) might result in a slight additional storage burden for some small entities; conversely, small entities and other contractors would benefit from the elimination of the segregated facilities certification. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Paperwork Reduction Act

The proposed rule would slightly revise information collection requirements currently approved by OMB under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*).

As previously stated, withdrawing the certification requirement will significantly reduce compliance burdens on contractors. The Government lets approximately 350,000 prime contracts each year. If it is assumed that each prime contract results in an average of four

subcontracts, and that it takes about one-half hour to prepare and submit the written certification, eliminating the certification requirement would reduce compliance burdens on the contractor community by roughly 875,000 hours. This estimate may significantly understate the savings; many contractors annually solicit the certification from all of their prospective vendors rather than limiting their request to those firms that actually are subcontractors on Federal projects.

Although for contractors with 150 or more employees and a contract of $150,000 or more this proposal extends to two years the current obligations such contractors already have under Title VII and the ADA to retain records for one year, there will be only a minimal increase in burden imposed on contractors as a result of this change. A similar conclusion was reached by EEOC in 1991 when it doubled its existing six-month retention period under Title VII to one year—an obligation that applies to a significantly larger universe of employers than does the obligation under the Executive Order. *See* 56 FR 35753 (July 26, 1991). Employers, especially larger ones, are increasingly maintaining electronic records. Where this is the case, compliance with the requirement will impose little or no additional burden. In many cases, additional storage space would be needed only for applications of persons not hired (which generally are not cost effective to record and store electronically).

In addition, the proposal makes this retention obligation applicable to a broader range of records than was previously required by the Executive Order regulations. However, this proposal would conform the obligation to the analogous requirement under EEOC's regulations (29 CFR 1602.14) issued pursuant to Title VII and the ADA.

OFCCP solicits comments concerning the proposed revisions to the collections of information contained in this proposed rule. OFCCP solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The revised collections of information contained in this proposed rule have been submitted to OMB for review under section 3507(d) of the Paperwork Reduction Act of 1995. Written comments on these proposed information collection revisions may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment Standards, Washington, D.C. 20503.

Unfunded Mandates Reform Act

The proposed rule, if promulgated, will not include any Federal mandate that may result in the expenditure by state, local and tribal governments in the aggregate, or by the private sector, of $100,000,000 or more in any one year.

List of Subjects

41 CFR Part 60–1

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Investigations, Reporting and recordkeeping requirements.

41 CFR Part 60–60

Equal employment opportunity, Government procurement, Reporting and recordkeeping requirements.

Signed at Washington, D.C., this 10th day of May, 1996.

Robert B. Reich,

Secretary of Labor.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

Shirley J. Wilcher,

Deputy Assistant Secretary for Federal Contract Compliance.

Accordingly, part 60–1 of the rule amending 41 CFR chapter 60 published on December 30, 1980 (45 FR 86216), which was delayed indefinitely at 46 FR 42865, is proposed to be withdrawn; the proposed rule published on August 25, 1981 (46 FR 42968; supplemented at 47 FR 17770, April 23, 1982) is hereby withdrawn in its entirety; and under the authority of Executive Order 11246, as amended, Title 41 of the Code of Federal Regulations, chapter 60, is proposed to be amended as follows:

60–1—[AMENDED]

The authority citation for part 60–1 continues to read as follows:

Authority: Sec. 201, E.O. 11246 (30 FR 12319), as amended by E.O. 12086.

2. Section 60–1.3 is amended by removing the definitions of *Director* and *Rules, regulations, and relevant orders of the Secretary of Labor,* by revising the definitions of *Contract, Government contract, Subcontract* and *United States,* and by adding, in alphabetical order, the definitions of *Compliance evaluation* and *Deputy Assistant Secretary* to read as follows:

§ 60–1.3 Definitions.

* * * * *

Compliance evaluation means any one or combination of actions OFCCP may take to examine a Federal contractor or subcontractor's compliance with one or more of the Executive Order 11246 requirements.

* * * * *

Contract means any Government contract or subcontract or any federally assisted construction contract or subcontract.

* * * * *

Deputy Assistant Secretary means the Deputy Assistant Secretary for Federal Contract Compliance Programs, United States Department of Labor, or his or her designee.

* * * * *

Government contract means any agreement or modification thereof between any contracting agency and any person for the purchase, sale or use of personal property or nonpersonal services. The term "personal property," as used in this section, includes supplies, and contracts for the use of real property (such as lease arrangements), unless the contract for the use of real property itself constitutes real property (such as easements). The term "nonpersonal services" as used in this section includes, but is not limited to, the following services: Utilities, construction, transportation, research, insurance, and fund depository. The term *Government contract* does not include:

(1) Agreements in which the parties stand in the relationship of employer and employee; and

(2) Federally assisted construction contracts.

* * * * *

Subcontract means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the purchase, sale or use of personal property or nonpersonal services which, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one of more contracts is performed, undertaken or assumed.

* * * * *

United States, as used herein, shall include the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island.

3. Section 60–1.8 is revised to read as follows:

§ 60–1.8 Segregated facilities.

To comply with its obligations under the Order, a contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensuring that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term "facilities," as used in this section, means waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees: *Provided,* That separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

4. A new § 60–1.12 is added to subpart A to read as follows:

§ 60–1.12 Record retention.

(a) *General requirements.* Any personnel or employment record made or kept by the contractor shall be preserved by the contractor for a period of not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later. However, if the contractor has fewer than 150 employees or does not have a Government contract of at least $150,000, the minimum record retention period shall be one year from the date of the making of the record or the personnel action involved, whichever occurs later. Such records include, but are not necessarily limited to, records pertaining to hiring, assignment, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship, and other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications and resumes, tests and test results, and interview notes. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of not less than two years from the date of the termination, except that contractors that have fewer than 150 employees or that do not have a Government contract of at least $150,000 shall keep such records for a period of not less than one year from the date of the termination. Where the contractor has received notice that a complaint of discrimination has been filed, that a compliance evaluation has been initiated, or that an enforcement action has been commenced, the contractor shall preserve all personnel records relevant to the complaint, compliance evaluation or enforcement action until final disposition of the complaint, compliance evaluation or enforcement action. The term "personnel records relevant to the complaint," for example, would include personnel or employment records relating to the complainant and to all other employees holding positions similar to that held or sought by the complainant and application forms or test papers submitted by unsuccessful applicant and by all other candidates for the same position as that for which the complainant unsuccessfully applied. Where a compliance evaluation has been initiated, all personnel and employment records described above are relevant until OFCCP makes a final disposition of the evaluation.

(b) *Affirmative action programs.* A contractor establishment required under § 60–1.40 to develop a written affirmative action program (AAP) shall maintain its current AAP and documentation of good faith effort, and shall preserve its AAP and documentation of good faith effort for the immediately preceding AAP year, unless it was not then covered by the written AAP requirement.

(c) *Failure to preserve records.* Failure to preserve complete and accurate records as required by paragraphs (a) and (b) of this section constitutes noncompliance with the contractor's obligations under the Executive Order and this part. Where the contractor has destroyed or failed to preserve records as required by this section, there may be a presumption that the information destroyed or not preserved would have been unfavorable to the contractor: *Provided,* That this presumption shall not apply where the contractor shows that the destruction or failure to preserve records results from circumstances that are outside of the contractor's control.

(d) The requirements of this section shall apply only to records made or kept on or after [30 days after date of publication of final rule].

5. In § 60–1.20, the section heading and paragraphs (a) and (d) are revised and paragraphs (e), (f) and (g) are added to read as follows:

§ 60–1.20 Compliance evaluations.

(a) OFCCP may conduct compliance evaluations to determine if the prime contractor or subcontractor maintains nondiscriminatory hiring and employment practices and is taking affirmative action to ensure that applicants are employed and that employees are placed, trained, upgraded, promoted, and otherwise treated during employment without regard to race, color, religion, sex, or national origin. A compliance evaluation may consist of any one of the following or any combination thereof:

(1) A compliance review, which consists of comprehensive analysis and evaluation of each aspect of the aforementioned practices, policies, and conditions resulting therefrom;

(2) An off-site review of records, which could consist of a full desk audit, a review of the contractor's affirmative action plan or parts thereof, or a review of particular records such as personnel activity data;

(3) A compliance check, where OFCCP ascertains whether or not the contractor has maintained records consistent with § 60–1.12 and/or has developed an AAP consistent with § 60–1.40; or

(4) A focused review, where OFCCP restricts its on-site review to one or more components of the contractor's organization or one or more aspects of the contractor's employment practices.

* * * * *

(d) *Preaward compliance evaluations.* Each agency shall include in the invitation for bids for each formally advertised nonconstruction contract or state at the outset of negotiations for each negotiated contract, that if the award, when let, should exceed the amount of $1 million or more, the prospective contractor and its known first-tier subcontractors with subcontracts of $1 million or more may be subject to a compliance evaluation before the award of the contract. The awarding agency will notify OFCCP and request appropriate action and findings

in accordance with this subsection. Within 15 days of the notice OFCCP will inform the awarding agency of its intention to conduct a preaward review. If OFCCP does not inform the awarding agency within that period of its intention to conduct a preaward review, clearance shall be presumed and the awarding agency is authorized to proceed with the award. If OFCCP informs the awarding agency of its intention to conduct a preaward review, OFCCP shall be allowed an additional 20 days after the date that it so informs the awarding agency to provide its conclusions. If OFCCP does not provide the awarding agency with its conclusions within that period, clearance shall be presumed and the awarding agency is authorized to proceed with the award.

(e) Each prime contractor or subcontractor with 50 or more employees and a contract of $50,000 or more is required to develop a written affirmative action program for each of its establishments (§ 60–1.40). If a contractor fails to submit an affirmative action program and supporting documents, including the workforce analysis, within 15 days of a request, the enforcement procedures specified in § 60–1.26(b) shall be applicable. Contractors may reach agreement with OFCCP on nationwide AAP formats or on frequency of updating statistics.

(f) *Confidentiality and relevancy of information.* If the contractor is concerned with the confidentiality of such information as lists of employee names, reasons for termination, or pay data, then alphabetic or numeric coding or the use of an index of pay and pay ranges, consistent with the ranges assigned to each job group, are acceptable for desk audit purposes. The contractor must provide full access to all relevant data on-site as required by § 60–1.43. Where necessary, the compliance officer may take information made available during the on-site evaluation off-site for further analysis. An off-site analysis should be conducted where issues have arisen concerning deficiencies or an apparent violation which, in the judgment of the compliance officer, should be more thoroughly analyzed off-site before a determination of compliance is made. The contractor must provide all data determined by the compliance officer to be necessary for off-site analysis. Such data may only be coded if the contractor makes the code available to the compliance officer. If the contractor believes that particular information which is to be taken off-site is not relevant to compliance with the Executive Order, the contractor may request a ruling by the OFCCP District/Area Director. The OFCCP District/Area Director shall issue a ruling promptly. The contractor may appeal that ruling to the OFCCP Regional Director within 10 days of receipt. The Regional Director shall issue a final ruling promptly. Pending a final ruling, such information may not be copied by OFCCP and access to the information shall be limited to the compliance officer and personnel involved in the determination of relevancy. Data determined to be not relevant to the investigation will be returned to the contractor immediately.

(g) *Public access to information.* The disclosure of information obtained from a contractor will be evaluated pursuant to the public inspection and copying provisions of the Freedom of Information Act, 5 U.S.C. 552, and the Department of Labor's implementing regulations at 29 CFR part 70.

6. Section 60–1.26 is revised to read as follows:

§ 60–1.26 Enforcement proceedings.

(a) *General.* (1) Violations of the Order, the equal opportunity clause, the regulations in this chapter, or applicable construction industry equal employment opportunity requirements, may result in the institution of administrative or judicial enforcement proceedings. Violations may be found based upon, *inter alia*, any of the following:

(i) The results of a complaint investigation;

(ii) The results of a compliance review;

(iii) The results of a compliance evaluation;

(iv) Analysis of an affirmative action program;

(v) The results of an on-site review of the contractor's compliance with the Order and its implementing regulations;

(vi) A contractor's refusal to submit an affirmative action program;

(vii) A contractor's refusal to allow an on-site compliance evaluation to be conducted;

(viii) A contractor's refusal to establish, maintain and supply records or other information as required by the regulations in this chapter or applicable construction industry requirements;

(ix) A contractor's alteration or falsification of records and information required to be maintained by the regulations in this chapter; or

(x) Any substantial or material violation or the threat of a substantial or material violation of the contractual provisions of the Order, or of the rules or regulations in this chapter.

(2) OFCCP may seek back pay and other make whole relief for victims of discrimination identified during a complaint investigation or compliance evaluation. Such individuals need not have filed a complaint as a prerequisite to OFCCP seeking such relief on their behalf. Interest on back pay shall be calculated from the date of the loss and compounded quarterly at the percentage rate established by the Internal Revenue Service for the underpayment of taxes.

(b) *Administrative enforcement.* (1) OFCCP may refer matters to the Solicitor of Labor with a recommendation for the institution of administrative enforcement proceedings, which may be brought to enjoin violations, to seek appropriate relief, and to impose appropriate sanctions. The referral may be made when violations have not been corrected in accordance with the conciliation procedures in this chapter, or when OFCCP determines that referral for consideration of formal enforcement (rather than settlement) is appropriate. However, if a contractor refuses to submit an affirmative action program, or refuses to supply records or other requested information, or refuses to allow OFCCP access to its premises for an on-site review, and if conciliation efforts under this chapter are unsuccessful, OFCCP may immediately refer the matter to the Solicitor, notwithstanding other requirements of this chapter.

(2) Administrative enforcement proceedings shall be conducted under the control and supervision of the Solicitor of Labor and under the Rules of Practice for Administrative Proceedings to Enforce Equal Opportunity under Executive Order 11246 contained in part 60–30 of this chapter and the Rules of Evidence set out in the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges contained in 29 CFR part 18, subpart B: *Provided*, That a Final Administrative Order shall be issued within one year from the date of the issuance of the recommended findings, conclusions and decision of the Administrative Law Judge, or the submission of any exceptions and responses to exceptions to such decision (if any), whichever is later.

(c) *Referrals to the Department of Justice.* (1) The Deputy Assistant Secretary may refer matters to the Department of Justice with a recommendation for the institution of judicial enforcement proceedings. There are no procedural prerequisites to a referral to the Department of Justice. Such referrals may be accomplished without proceeding through the conciliation procedures in this chapter, and a referral may be made at any stage in the procedures under this chapter.

(2) Whenever a matter has been referred to the Department of Justice for consideration of judicial enforcement, the Attorney General may bring a civil action in the appropriate district court of the United States requesting a temporary restraining order, preliminary or permanent injunction (including relief against noncontractors, including labor unions, who seek to thwart the implementation of the Order and regulations), and an order for such additional sanctions or relief, including back pay, deemed necessary or appropriate to ensure the full enjoyment of the rights secured by the Order, or any of the above in this paragraph (c)(2).

(3) The Attorney General is authorized to conduct such investigation of the facts as he/she may deem necessary or appropriate to carry out his/her responsibilities under the regulations in this chapter.

(4) Prior to the institution of any judicial proceedings, the Attorney General, on behalf of the Deputy Assistant Secretary, is authorized to make reasonable efforts to secure compliance with the contract provisions of the Order. The Attorney General may do so by providing the contractor and any other respondent with reasonable notice of his/her findings, his/her intent to file suit, and the actions he/she believes necessary to obtain compliance with the contract provisions of the Order without contested litigation, and by offering the contractor and any other respondent a reasonable opportunity for conference and conciliation, in an effort to obtain such compliance without contested litigation.

(5) As used in the regulations in this part, the Attorney General shall mean the Attorney General, the Assistant Attorney General for Civil Rights, or any other person authorized by regulations or practice to act for the Attorney General with respect to the enforcement of equal employment opportunity laws, orders and regulations generally, or in a particular matter or case.

(6) The Deputy Assistant Secretary or his/her designee, and representatives of the Attorney General may consult from time to time to determine what investigations should be conducted to determine whether contractors or groups of contractors or other persons may be engaged in patterns or practices in violation of the Executive Order or these regulations, or of resistance to or interference with the full enjoyment of any of the rights secured by them, warranting judicial proceedings.

(d) *Initiation of lawsuits by the Attorney General without referral from the Deputy Assistant Secretary.* In addition to initiating lawsuits upon referral under this section, the Attorney General may, subject to approval by the Deputy Assistant Secretary, initiate independent investigations of contractors which he/she has reason to believe may be in violation of the Order or the rules and regulations issued pursuant thereto. If, upon completion of such an investigation, the Attorney General determines that the contractor has in fact violated the Order or the rules and regulations issued thereunder, he/she shall make reasonable efforts to secure compliance with the contract provisions of the Order. He/she may do so by providing the contractor and any other respondent with reasonable notice of the Department of Justice's findings, its intent to file suit, and the actions that the Attorney General believes are necessary to obtain compliance with the contract provisions of the Order without contested litigation, and by offering the contractor and any other respondent a reasonable opportunity for conference and conciliation in an effort to obtain such compliance without contested litigation. If these efforts are unsuccessful, the Attorney General may, upon approval by the Deputy Assistant Secretary, bring a civil action in the appropriate district court of the United States requesting a temporary restraining order, preliminary or permanent injunction, and an order for such additional sanctions or equitable relief, including back pay, deemed necessary or appropriate to ensure the full enjoyment of the rights secured by the Order or any of the above in this paragraph (d).

(e) To the extent applicable, this section and part 60–30 of this chapter shall govern proceedings resulting from any Deputy Assistant Secretary's determinations under § 60–2.2(b) of this chapter.

7. Section 60–1.27 is revised to read as follows:

§ 60–1.27 Sanctions.

(a) *General.* The sanctions described in subsections (1), (5), and (6) of Section 209(a) of the Order may be exercised only by or with the approval of the Deputy Assistant Secretary. Referral of any matter arising under the Order to the Department of Justice or to the Equal Employment Opportunity Commission shall be made by the Deputy Assistant Secretary.

(b) *Debarment.* A contractor may be debarred from receiving future contracts or modifications or extensions of existing contracts, subject to reinstatement pursuant to § 60–1.31, for any violation of Executive Order 11246 or the implementing rules, regulations and orders of the Secretary of Labor. Debarment may be imposed for an indefinite term or for a fixed minimum period of at least six months.

8. Section 60–1.30 is revised to read as follows:

§ 60–1.30 Notification of agencies.

The Deputy Assistant Secretary shall ensure that the heads of all agencies are notified of any debarments taken against any contractor.

9. Section 60–1.31 is revised to read as follows:

§ 60–1.31 Reinstatement of ineligible prime contractors and subcontractors.

A prime contractor or subcontractor debarred from further contracts for an indefinite period under the Order may request reinstatement in a letter filed with the Deputy Assistant Secretary at any time after the effective date of the debarment; a prime contractor or subcontractor debarred for a fixed period may make such a request upon the expiration of the fixed debarment period. In connection with the reinstatement proceedings, all debarred contractors shall be required to show that they have established and will carry out employment policies and practices in compliance with the Order and implementing regulations. Before reaching a decision, the Deputy Assistant Secretary may conduct a compliance evaluation of the contractor and may require the contractor to supply additional information regarding the request for reinstatement. The Deputy Assistant Secretary shall issue a written decision on the request.

10. Section 60–1.32 is revised to read as follnws:

§ 60–1.32 Intimidation and interference.

(a) The contractor, subcontractor or applicant shall not harass, intimidate, threaten, coerce, or discriminate against any individual because the individual has engaged in or may engage in any of the following activities:

(1) Filing a complaint;

(2) Assisting or participating in any manner in an investigation, compliance evaluation, hearing, or any other activity related to the administration of the Order or any other Federal, state or local law requiring equal opportunity;

(3) Opposing any act or practice made unlawful by the Order or any other Federal, state or local law requiring equal opportunity; or

(4) Exercising any other right protected by the Order.

(b) The contractor, subcontractor or applicant shall ensure that all persons under its control do not engage in such

harassment, intimidation, threats, coercion or discrimination. The sanctions and penalties contained in this part may be exercised by OFCCP against any contractor, subcontractor or applicant who violates this obligation.

11. In § 60–1.34, paragraph (a)(4) is added to read as follows:

§ 60–1.34 Violation of a conciliation agreement or letter of commitment.

(a) * * *

(4) In any proceeding involving an alleged violation of a conciliation agreement OFCCP may seek enforcement of the agreement itself and shall not be required to present proof of the underlying violations resolved by the agreement.

* * * * *

12. Section 60–1.42 is amended by revising paragraph (a) to read as follows:

§ 60–1.42 Notices to be posted.

(a) Unless alternative notices are prescribed by the Deputy Assistant Secretary, the notices which prime contractors and subcontractors are required to post by paragraphs (1) and (3) of the equal opportunity clause in § 60–1.4 will contain the following language and be provided by the contracting or administering agencies:

EQUAL EMPLOYMENT OPPORTUNITY IS THE LAW—DISCRIMINATION IS PROHIBITED BY THE CIVIL RIGHTS ACT OF 1964 AND BY EXECUTIVE ORDER No. 11246

Title VII of the Civil Rights Act of 1964–*Administered by:*

THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Prohibits discrimination because of Race, Color, Religion, Sex, or National Origin by Employers with 15 or more employees, by Labor Organizations, by Employment Agencies, and by Apprenticeship or Training Programs.

ANY PERSON

Who believes he or she has been discriminated against

SHOULD CONTACT

THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

1801 L Street N.W., Washington, D.C. 20507

Executive Order No. 11246–*Administered by:*

THE OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

Prohibits discrimination because of Race, Color, Religion, Sex, or National Origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

By all Federal Government Contractors and Subcontractors, and by Contractors Performing Work Under a Federally Assisted Construction Contract, regardless of the number of employees in either case.

ANY PERSON

Who believes he or she has been discriminated against

SHOULD CONTACT

THE OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

U.S. Department of Labor, Washington, D.C. 20210

* * * * *

13. Section 60–1.43 is revised to read as follows:

§ 60–1.43 Access to records and site of employment.

Each prime contractor and subcontractor shall permit access during normal business hours to its premises for the purpose of conducting on-site compliance evaluations and complaint investigations. Each contractor shall permit the inspecting and copying of such books and accounts and records, including computerized records, and other material as may be relevant to the matter under investigation and pertinent to compliance with the Order, and the rules and regulations promulgated pursuant thereto by the agency, or the Deputy Assistant Secretary. Information obtained in this manner shall be used only in connection with the administration of the Order, the Civil Rights Act of 1964 (as amended), and any other law that is or may be enforced in whole or in part by OFCCP.

PART 60–60—[REMOVED]

14. Part 60–60 is removed.

[FR Doc. 96–12687 Filed 5–20–96; 8:45 am]
BILLING CODE 4510–27–P

Tuesday
May 21, 1996

Part III

Department of Commerce

National Telecommunications and Information Administration

Public Telecommunications Facilities Program (PTFP); Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket Number: 960205021–6132–02]

RIN 0660–ZA01

Public Telecommunications Facilities Program (PTFP)

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice, funding availability and applications received.

SUMMARY: The National Telecommunications and Information Administration (NTIA) previously announced the solicitation of grant applications for the Public Telecommunications Facilities Program (PTFP) for planning and construction grants for public telecommunications facilities. The PTFP had not received its final status of funding at that time, and stated that PTFP would publish a notice when the funding status for fiscal year 1996 was known. This notice will announce the funding level, as well as announce the applications which were received in response to the solicitation.

FOR FURTHER INFORMATION CONTACT: Dennis Connors, Director, Public Broadcasting Division, telephone: (202) 482–5802; fax: (202) 482–2156. Information about the PTFP can also be obtained electronically via Internet (send inquiries to http://www.ntia.doc.gov) or through the NTIA BBS at (202) 482–1199 (set computer modems for 8 stop bits, 0 polarity).

SUPPLEMENTARY INFORMATION: *Funding Availability:* By **Federal Register** notice dated February 22, 1996, the NTIA, within the Department of Commerce, announced that the program was soliciting grant applications, and that the closing date for receipt of applications was 5 p.m. EST, March 28, 1996.[1] The Notice of Closing Date provided that announcement of available funds would be made once Congress appropriated an amount for the PTFP. On April 26, 1996, Congress appropriated $15.5 million for the PTFP.[2]

Except for the notice that funding for the PTFP for FY 1996 is $15.5 million, all other information announced in the Notice of Closing Date remains in effect.

For further information on the Public Telecommunications Facilities Program, please refer to the program's Notice of Closing Date, published in the **Federal Register** on February 22, 1996.[3]

Applications Received: In all, 251 applications were received from 47 states, the District of Columbia, Guam, the Commonwealth of Puerto Rico, American Samoa, and the Commonwealth of the Northern Mariana Islands. The total amount of funds requested by the applications is $54.9 million.

Notice is hereby given that the PTFP received applications from the following organizations. The list includes all applications received. Identification of any application only indicates its receipt. It does *not* indicate that it has been accepted for review, has been determined to be eligible for funding, or that an application will receive an award.

Any interested party may file comments with the Agency supporting or opposing an application and setting forth the grounds for support or opposition. Such comments must contain a certification that a copy of the comments has been delivered to the applicant. Comments must be sent to the following address: NTIA/PTFP, Room 4625, 14th Street and Constitution Ave., NW., Washington, DC 20230.

The Agency will incorporate all comments from the public and any replies from the applicant in the applicant's official file.

AK (Alaska)

File No. 96132 CTB Alaska Public Telecomm., Inc., 3877 University Drive, Anchorage, AK 99508. Signed By: Ms. Susan Reed, President. Funds Requested: $663,350. Total Project Cost: $844,479. To replace the 22-year-old transmitter for public TV station KAKM, which operates on Ch. 7 in Anchorage. The project would also purchase a replacement hot-standby STL for one of the station's STL hops, SAP generation equipment, and diverse test equipment items.

File No. 96249 ICTB Bethel Broadcasting, Inc., Pouch 468, Bethel, AK 99559. Signed By: Mr. John McDonald, General Manager/Station KYUK. Funds Requested: $543,340. Total Project Cost: $742,510. To purchase three digital encoders to convert the satellite offerings of the Distance Delivery Consortium from analog to digital service. The Distance Delivery Consortium provides instructional programming to 52 villages in the Yukon-Kuskokwim Delta of Western Alaska, the Interior of Alaska, and Southeast Alaska. The project will also purchase 74 compressed digital receivers to receive the digital satellite service.

AL (Alabama)

File No. 96006 CTB Alabama ETV Commission, 2112 11th Avenue South, Ste 400, Birmingham, AL 35205–2884. Signed By: Ms. Judy Stone, APT Executive Director. Funds Requested: $186,878. Total Project Cost: $373,756. Replace fourteen Alabama Public Television microwave equipment shelters throughout the state network, add a shelter and wiring for an emergency generator at WCIQ which experiences AC power outages, and replace the network's on-line editing system at its only production facility in Montgomery, Alabama.

File No. 96087 CTB 95055. City of Prichard, 216 East Prichard Lane, Prichard, AL 36610. Signed By: Hon. Jesse Norwood, Mayor. Funds Requested: $418,924. Total Project Cost: $668,924. To establish a low-power noncommercial television station operating on Channel 60 in Prichard, Alabama, to provide educational and informational services to the city of Prichard and surrounding areas.

File No. 96107 CRB Gadsden State Community College, 1001 George Wallace Drive, Gadsden, AL 35902. Signed By: Dr. Victor Ficker, President. Funds Requested: $49,250. Total Project Cost: $98,500. To upgrade the power and antenna height of noncommercial radio station, WSGN–FM, operating on 91.5 MHz from Gadsden State Community College in Gadsden, Alabama.

File No. 96124 ICTN 95082. Black Warrior Telecom Consortium, 607 Highway 80 West, Demopolis, AL 36732. Signed By: Mr. Marcus Walters, President. Funds Requested: $193,484. Total Project Cost: $257,978. To construct a video production studio and purchase related test equipment for the Black Warrior Telecommunications Consortium, Inc., Demopolis, Alabama. The studio will allow the Consortium to originate educational programming to be transmitted over the ITFS systems operated by the Consortium members. The Consortium is composed of five school systems (Marengo, Greene, and Sumter Counties and the cities of Demopolis and Linden City) and the West Alabama Health Services, all located in rural west Alabama.

File No. 96178 ICTBN University of AL Board of Trustees, Box 870104,G–60 Rose Admin. Bld, Tuscaloosa, AL 35487. Signed By: Dr. Robert Wells, Ass't Academic VP for Research. Funds Requested: $138,771. Total Project Cost: $277,542. To convert an analog Ku-band uplink to digital compression. The conversion to digital will enable continued distribution of three weekly instructional series on Integrated Science to over 150,000 students nationwide in grades 5, 6, and 7, and will permit the delivery of this program directly to schools and public television entities.

[1] 61 FR 6912 (Feb. 22, 1996).

[2] Balanced Budget Downpayment Act, II, Pub. L. No. 104–134, 110 Stat. 1321 (1996).

[3] 61 FR 6912 (Feb. 22, 1996).

AR (Arkansas)

File No. 96105 CTB Arkansas ETV Commission, 350 South Donaghey, Conway, AR 72032. Signed By: Ms. Susan Howarth, Executive Director. Funds Requested: $242,049. Total Project Cost: $484,099. To improve the state's public television network by establishing a production and distance learning studio in Little Rock thus improving the AETN's ability to produce and broadcast news and information programs from the state capital. AETN serves approximately 2.35 million people.

File No. 96110 CRB Arkansas State University, 104 Cooley St, P.O. Drawer 2160, State University, AR 72467. Signed By: Dr. Stanley Williams, VP for Finance & Admin. Funds Requested: $36,783. Total Project Cost: $73,567. To improve public radio station KASU–FM, 91.9 MHz, State University, by replacing old, obsolete origination equipment. KASU–FM will acquire digital workstations, digital audio boards and editing packages, two audio consoles, monitor amplifiers, microphones and speakers and related equipment. KASU–FM serves approximately 250,000 people in AR, MO and TN.

File No. 96235 CTB AR Education TV Commission, 350 South Donaghey, Conway, AR 72032. Signed By: Ms. Susan Howarth, Executive Director. Funds Requested: $212,500. Total Project Cost: $425,000. To improve public television station KETS–TV, Ch. 2, in Little Rock, by strengthening the commercial tower on which its antenna is mounted. KETS–TV, the flagship station of the AETN, serves more than 1 million people.

AS (American Samoa)

File No. 96004 CTB American Samoa Government, Office of Public Information, Pago Pago, AS 96799. Signed By: Mrs. Vaoita Savali, Director. Funds Requested: $253,470. Total Project Cost: $253,470. To improve the production facilities of public television station KVZK–TV, operating on Ch. 2 in Pago Pago, by purchasing three studio cameras and related equipment. The project will also provide test equipment to ensure continued operation of this facility which serves 57,000 residents of American Samoa.

File No. 96250 ICRTN Government of American Samoa, Office of Governor, Pago Pago, AS 96799. Signed By: Mr. Aifili Lutali, Governor. Funds Requested: $398,600. Total Project Cost: $398,600. To activate a new service for distance education by purchasing a digital satellite system to serve American Samoa. The system will provide compressed digital video and be affiliated with the Pan-Pacific Educational and Communications Experiments by Satellite (PEACESAT) program headquartered in Hawaii.

AZ (Arizona)

File No. 96063 PRB Hopi Foundation, Highway 264 Market 367–9,, Hotevilla, AZ 86030. Signed By: Ms. Barbara Poley, Executive Director. Funds Requested: $37,176. Total Project Cost: $41,156. Conduct planning activities, including engineering and research studies, for the construction of a public radio facility in Hotevilla, Arizona, serving the Hopi Indian reservation of northeastern Arizona.

File No. 96075 CTN San Carlos Apache Tribe, San Carlos Avenue, Bldg. # 13, San Carlos, AZ 85550. Signed By: Mr. Raymond Stanley, Tribal Chairman. Funds Requested: $12,980. Total Project Cost: $17,309. To purchase studio production equipment to allow the San Carlos Apache Tribe to originate programming to be transmitted over the local cable television system on a community access channel.

File No. 96088 CTB Arizona State University, 10th & Myrtle, Box 871603, KAET, Tempe, AZ 85287–1405. Signed By: Ms. Janice Bennett, Director, Res. & Creative Act. Funds Requested: $139,600. Total Project Cost: $279,200. To improve public television station KAET–TV, Ch. 8, Phoenix (Tempe), by replacing old, unreliable production equipment including electronic editor, field production camera and video recorder, remote production switcher, monitors, character generator and four Beta video recorders. KAET–TV serves approximately 2.8 million people.

File No. 96111 ICTN Northern Arizona University, Comm. Bldg, Rm 123, Osborne Rd., Flagstaff, AZ 86011. Signed By: Dr. Jeanette Baker, Contract Officer, NAU. Funds Requested: $1,278,014. Total Project Cost: $2,556,028. To purchase the interconnection and video classroom equipment required to expand Northern Arizona University's (NAU) duplex microwave-based distance learning system—called NAUNet—to six additional sites: Arizona Western College at San Luis; Central Arizona College at Apache Junction; Chinle Unified School District; Coconino Community College at Page; Eastern Arizona College at Payson; and Northland Pioneer College at Show Low. The project would also install hub site equipment at NAU/Flagstaff, NAU/Yuma, and at the NAUNet hub site in Phoenix. All system end-points would include equipment for interface with host-institution Local Area Networks (LANs) and would provide students with local dial-up access to e-mail, bulletin boards, and Internet service.

File No. 96123 CRB Maricopa County Cmty Coll. Dist., 3124 East Roosevelt, Phoenix, AZ 85008. Signed By: Dr. Alfredo de los Santos, Vice Chancellor Ed. Dev. Funds Requested: $15,089. Total Project Cost: $30,178. To acquire 420 SCA radio receivers for use by print-impaired persons. The special receivers will be distributed to all areas served by the stations carrying the service. The main studio is in Phoenix, with satellite facilities in Tucson and Flagstaff. This 24-hour service provides the only radio reading service in AZ.

File No. 96173 CRB White Mountain Apache Tribe, Tribal Exe Bldg SR 73, PO Box 70, Whiteriver, AZ 85941. Signed By: Mr. Ronnie Lupe, Chairman. Funds Requested: $68,033. Total Project Cost: $90,711. To expand the facilities of public radio station KNNB–FM, 88.1 MHz, in Whiteriver by relocating and increasing the power of the station. KNNB–FM will acquire a new transmitter, tower, antenna, transmission and other dissemination equipment.

File No. 96186 CRB Northern Arizona University, Comm. Bldg 16, Rm 229, Osborn Rd, Flagstaff, AZ 86011. Signed By: Dr. Jeanette Baker, Contract Officer. Funds Requested: $108,351. Total Project Cost: $144,469. To activate a new FM public radio station on 90.9 MHz, in Page. Station will repeat the signal of KNAU–FM, Flagstaff, and have local origination capacity. Project includes sufficient local production equipment to constitute a full service facility. Studios will be located on the Coconino Community College campus. New station will provide first public radio service to approximately 9,448 people in northern AZ and southern UT.

CA (California)

File No. 96008 CTB California Community TV Network, 559 E. Alisal Street, #106, Salinas, CA 93905. Signed By: Mr. Wendell Chino, President. Funds Requested: $324,748. Total Project Cost: $431,330. The California Community Television Network, KCAH–TV in Salinas, CA., operating on Channel 25, seeks a grant to help install a 10 kw transmitter and antenna system to provide the first public TV signal for

significant portions of Santa Cruz, Monterey, Santa Clara and San Benito counties, sections of San Mateo, and small areas in Stanislaus, Merced and Alameda counties, all of which include 198,114 potential viewers who will receive first signal.

File No. 96016 CRB State of CA—Humboldt State Univ, Humboldt State University, Arcata, CA 95521. Signed By: Dr. Edward Webb, Vice President. Funds Requested: $67,860. Total Project Cost: $90,480. KASU–FM, operating on 90.5 MHz in Arcata, California seeks a grant to construct a repeater transmitter, operating on 91.9 MHz, at Crescent City, CA and establish a satellite studio facility in Crescent City which will provide Del Notre County with its first public radio origination capability. The project will provide first public radio service to approximately 13,000 potential listeners.

File No. 96025 PTN Ed T/C Consortium of Central CA, 1101 E. University, Fresno, CA 93741. Signed By: Dr. Robert Wyman, Executive Director. Funds Requested: $199,865. Total Project Cost: $560,445. Educational Telecommunications Consortium of Central Valley region of California, located in Fresno, CA, requests funding for a comprehensive Planning project to develop a Four County regional area in Central California, including Fresno, Madera, Tulare and Kings Counties, to interface existing resources with those needed for the region and for the purpose of sharing training and technology resources both instructional and administrative. This would allow professional staff and some students to utilize new and emerging technology in a regional Center.

File No. 96028 CTB San Mateo County Comm Coll District, 1700 West Hillsdale Blvd., San Mateo, CA 94002. Signed By: Dr. Lois Callahan, Chancellor. Funds Requested: $406,628. Total Project Cost: $813,257. KCSM–TV, Ch 60, in San Mateo, CA, requests replacement of its aged production switcher, audio board, cameras, and associated equipment and to construct a satellite uplink to provide educational courses and adult learning materials, teleconferences, etc, to colleges in the Bay Area, cable educational channels and libraries in the communities of Northern California. This station serves 4,650,000 potential viewers.

File No. 96029 CTB Los Angeles Unified School Dist., 1061 West Temple Street, Los Angeles, CA 90012. Signed By: Mr. Sidney Thompson, Superintendent. Funds Requested: $558,520. Total Project Cost: $1,117,040. KLCS–TV, Channel 58 in Los Angeles, CA requests replacement of its 23 year old transmitter and to link, by Digital Duplex, KLCS with the facilities at the studios of the Educational Telecommunications Network (ETN). ETN is an FCC licensed Ku-Band Satellite network owned and operated by the Los Angeles County Office of Education.

File No. 96044 CTB KQED, Inc., 2601 Mariposa Street, San Francisco, CA 94110–1400. Signed By: Mrs. Mary G.F. Bitterman, President & CEO. Funds Requested: $459,285. Total Project Cost: $918,570. To improve KQED–TV, Channel 9, in San Francisco, CA, by replacing the editing system, by adding two Digital ½" VCR's and adding the Sales Tax and the A–133 Audit. The applicant provides service to 5.5 million potential viewers in the San Francisco area.

File No. 96050 CTB Valley Public Television, Inc., 1544 Van Ness Avenue, Fresno, CA 93721. Signed By: Mr. Colin Dougherty, Exec. Dir/General Manager. Funds Requested: $270,137. Total Project Cost: $540,274. To improve KVPT–TV, Channel 18, in Fresno, CA, by replacing its 19 year old transmitter Applicant currently serves a potential TV audience of 2,300,000.

File No. 96058 CRB KQED, Inc., 2601 Mariposa Street, San Francisco, CA 94110. Signed By: Mrs. Mary Bitterman, President and CEO. Funds Requested: $97,010. Total Project Cost: $194,020. KQED–FM, operating at 110kw ERP, on 88.5 MHz, in San Francisco, CA, seeks to replace its 17 year-old transmitter and antenna, both at the end of their useful life. KQED–FM provides service to 5.3 million potential listeners.

File No. 96062 CRB San Diego Comm College District, 1313 Twelfth Avenue, San Diego, CA 92101. Signed By: Mr. Augustine Gallego, Chancellor. Funds Requested: $61,383. Total Project Cost: $122,766. To improve KSDS–FM, operating on 88.3 MHz, in San Diego, CA, by replacing a 20 year old transmitter, a 19 year old antenna and transmission line, increasing its power, and adding circular polarization, to provide the station's program service to an extended population by increasing KSDS's power capacity from 831 watts ERP to 19,000 watts ERP.

File No. 96112 CRB Nevada City Community Broadcast Gp, 401 Spring Street, Nevada City, CA 95959. Signed By: Mr. Brian Terhorst, General Manager. Funds Requested: $42,907. Total Project Cost: $85,815. To improve KVMR–FM, operating on 89.5 MHz, in Nevada City, CA, by replacing the transmitter, antenna, feedlines, tower, STL antenna, adaptor and wattmeter and adding a satellite downlink to bring first service of national programming to a majority of the station's 340,000 potential listeners.

File No. 96122 CTB KBSV–TV, P.O. Box 4116, Modesto, CA 95352. Signed By: Dr. Sargon Dadesho, Director of Mass Media. Funds Requested: $313,500. Total Project Cost: $418,000. To improve KBSV–TV which will operate on Channel 23 starting April 16, 1996, by establishing a first Local Origination Capacity. The main objective of this station is to provide multicultural and educational programs to the diversified population in its coverage area. Applicant claims no other station is serving the functions outlined above. The coverage area includes 370,000 potential viewers.

File No. 96125 CRB Pacifica Foundation, 1929 MLK Jr. Avenue, Berkeley, CA 94704. Signed By: Ms. Patricia Scott, Executive Director. Funds Requested: $160,929. Total Project Cost: $214,572. To improve KPFK–FM, operating on 90.7 MHz, in North Hollywood, CA and KPFT–FM, operating on 90.1 MHz, in Houston, TX, by replacing a mismatched set of old tape decks and cart machines with digital technology. The applicant provides service to approximately 13,840,832 listeners in North Hollywood and approximately 3,192,000 listeners in Houston.

File No. 96135 IPTN Kern Community College District, 100 East College Avenue, Porterville, CA 93257. Signed By: Dr. Bonnie Rogers, President. Funds Requested: $46,185. Total Project Cost: $82,667. To develop a plan for a telecommunications system that would incorporate materials from the Kern Educational Telecommunications Consortium and other sources, in providing a distance learning and job training service to an underserved, largely Hispanic and American Indian population in southern Tulare County, California.

File No. 96152 CRB Los Angeles Radio Reading Service, 3580 Wilshire Blvd. Suite 1660, Los Angeles, CA 90010. Signed By: Mr. Paul J. Vandeventer, Executive Director. Funds Requested: $19,275. Total Project Cost: $25,700. The Los Angeles Radio Reading Service has been granted its subsidiary frequency by KCSN–FM in Los Angeles and now requests funding for a start-up inventory of 300 SCA receivers and multi-user site equipment for one convalescent home and two residential homes for those who are blind. Additionally, the project includes an FM antenna and a low power transmitter, a transmit coupling, a coaxial cable and wire cable.

File No. 96159 CRB San Francisco Unified School Dist., 2576 Harrison Street, San Francisco, CA 94110. Signed By: Ms. Linda Davis, Deputy Superintendent. Funds Requested: $18,973. Total Project Cost: $37,945. To improve KALW–FM, operating on 91.7 MHz, in San Francisco, CA, by replacing its 16 year old satellite dish and 10 year old audio console and to upgrade its communication system by purchasing a telephone interface to allow on-air call conferencing. Applicant currently serves 1,977,000 potential listeners.

File No. 96161 CRB California State Univ, Northridge, 18111 Nordhoff Street, Northridge, CA 91330–8312. Signed By: Mr. Mark Lipschutz, Director, Res. & Spon. Project. Funds Requested: $9,422. Total Project Cost: $18,844. To improve KCSN–FM, operating on 88.5 MHz, in Northridge, CA, by adding digital editing equipment which will optimize the applicant's use of the DAT and mini-disc equipment KCSN acquired under a '94 grant. The items requested include: the core system, interface, signal processor, keyboard, hard drive, noise reduction, software, computer, tape drive and monitor. The station serves approximately 1.5 million people.

File No. 96181 CRB Bet-Nahrain, Inc., P.O. Box 4116, Modesto, CA 95352. Signed By: Dr. Sargon Dedesho, Director of Mass Media. Funds Requested: $182,235. Total Project Cost: $242,980. To enable KBES–FM, operating on 89.5 MHz, located in Ceres, CA, to acquire the necessary items of equipment to bring the inventory of an already operating station to the basic level of equipment requirements established by PTFP. The equipment requested is a 150 to 200 watt transmitter, plus all the items listed in the Guidelines Booklet for the On-Air Control Room, Production Control Room, and News Control Room. Approximately 370,000 potential listeners benefit from the KBES–FM Programming.

File No. 96182 CTB Bay Area Multicultural T/C Asso., 1740 Cesar Chavez Street, San Francisco, CA 94124. Signed By: Mr. Humberto Cintron, President, Board of Directors. Funds Requested: $263,166. Total Project Cost: $350,888. To activate a minority public TV station, operating on Channel 32 in San Francisco, CA, which will provide programming for the 2.2 million Bay Area residents who are members of 5 minority groups. The applicant has applied to the FCC to be granted the license for Channel 32 in place of the current license-holder of Ch 32.

File No. 96188 ICTB Kern Educational T/com. Consortium, 1300 17th Street, City Centre, Bakerfield, CA 93301–4533. Signed By: Dr. Kelly Blanton, Kern County Superintendent. Funds Requested: $888,116. Total Project Cost: $1,184,155. To establish a noncommercial television station in Bakersfield, CA, which will bring a first public TV signal to approximately 780,000 residents of that area. In addition to some nationally-distributed public television programming, the station will transmit a vast amount of instructional programming from the Kern Educational Telecommunications Consortium, which has its headquarters in Bakersfield. The new station will also incorporate into its schedule programming targeted towards the Hispanic-American population, which constitutes approximately 30% of the total population of the station's proposed service area.

File No. 96207 ICTN Monterey County Office of Education, 901 Blanco Court, Salinas, CA 93901. Signed By: Mr. William Barr, Superintendent. Funds Requested: $338,454. Total Project Cost: $676,908. To add two ITFS links to the Monterey County Office of Education's existing distance learning system, and purchase microwave equipment to interconnect the ITFS system with diverse other transmission outlets throughout the Office's service area.

File No. 96221 ICTN The National Hispanic University, 14271 Story Road, San Jose, CA 96127. Signed By: Dr. Roberto Cruz, President. Funds Requested: $244,043. Total Project Cost: $305,053. To purchase a VSAT satellite terminal and electronic classroom facilities to permit the National Hispanic University to become a participating member of the Hispanic Educational Telecommunications System (HETS).

CO (Colorado)

File No. 96024 CTB University of Southern Colorado, 2200 Bonforte Boulevard, Pueblo, CO 81001. Signed By: Dr. Robert Shirley, President. Funds Requested: $534,438. Total Project Cost: $1,068,876. To extend and improve the facilities of KTSC–TV, Channel 8 in Pueblo by activating translators in Durango (Ch. 29), Ignacio (Ch. 15) and Towaoc (Ch. 49) to provide first public television service to approximately 56,000 residents of western Colorado. KTSC will also replace a failing 15-year-old ¾ inch videotape system and will upgrade its facilities to offer stereo broadcast and descriptive video services.

File No. 96091 CRB Boulder Community Broadcasting, 1900 Folsom Avenue, Suite 100, Boulder, CO 80302. Signed By: Ms. Marty Durlin, Station Manager. Funds Requested: $8,715. Total Project Cost: $17,430. To enhance and improve the production facilities of KGNU–FM, operating on 88.5 in Boulder, Colorado, by purchasing and installing two Digital Audio Workstations.

File No. 96095 ICTN 95262. National Technological University, 700 Centre Avenue, Ft. Collins, CO 80526. Signed By: Dr. Lionel Baldwin, President. Funds Requested: $413,576. Total Project Cost: $827,152. To construct two additional Ku-band satellite uplinks in the National Technological University system which will increase engineering programming distributed nationwide. The uplinks will be located at the University of California, Berekely and the University of Florida, Gainesville. The project also proposes to add digital compression equipment for existing Ku-band uplinks at Kansas State University, Manhattan, KS and the University of Texas at Austin.

File No. 96106 IPTN Regis University, 3333 Regis Blvd., Denver, CO 80221. Signed By: Dr. William Husson, Academic Dean. Funds Requested: $61,620. Total Project Cost: $140,760. On behalf of the Association of Jesuit Colleges and Universities (AJCU), Regis University in Denver, Colorado will manage the development of a plan for the use of telecommunications facilities in an interconnected system among the 28 AJCU institutions through local technology applications for distance learning services including the sharing of educational courses.

File No. 96117 CTB Region 10 League for Economic, 300 North Cascade, Suite 1, Montrose, CO 81401. Signed By: Mrs. Mary Helen deKoevend, Chairperson. Funds Requested: $57,705. Total Project Cost: $76,940. To maintain and improve the broadcast services of KTSC–TV, Channel 8 in Montrose, Colorado, by replacing four translator and one transmitter serving over 47,000 residents of Montrose, Ouray and Delta counties.

File No. 96162 IPTN Colorado Community College, 9125 E. 10th Drive, Aurora, CO 80010. Signed By: Mr. Don Goodwin, Executive Director, HEAT Ctr. Funds Requested: $318,600. Total Project Cost: $498,600. To develop the technology master plan toward the design of the Lowry Telecommunications and Information Infrastructure network in support of an open learning system for distance learning and training, through the Higher Education and Advanced Technology (HEAT) Center in the Lowry Community of Aurora, Colorado.

File No. 96205 ICTN Northern Colorado Board of Coop., 830 South

Lincoln Street, Longmont, CO 80501. Signed By: Dr. Jack Hale, Executive Director/NC BOCES. Funds Requested: $328,034. Total Project Cost: $1,125,148. To establish a two-way, interactive compressed video distance learning system to serve the diverse academic institutions of the northeast quadrant of Colorado. For this project, the Northern Colorado Board of Cooperative Educational Services is acting on behalf of a partnership of 38 K–12 school districts, three community colleges, a university, and the State's Division of Telecommunications. The proposal would interconnect six existing distance education networks and extend service to five presently-unserved remote sites. The new network would be known as the Colorado Information Infrastructure.

CT (Connecticut)

File No. 96083 IPTN Norwich Commun. Tech. Learning Ctr., 194 Washington Street, Norwich, CT 06360. Signed By: Mr. William Stanley, Chairman, Board of Directors. Funds Requested: $85,350. Total Project Cost: $335,350. To assist the Norwich Communications Technology Learning Center, Inc. in planning how to put into place the strategies, community support, and technological structures needed to establish interactive distance learning systems that would serve the schools and businesses of Eastern Connecticut.

File No. 96192 CRB University of New Haven, 300 Orange Avenue, West Haven, CT 06516. Signed By: Dr. James Uebelacker, Provost. Funds Requested: $17,400. Total Project Cost: $34,800. To improve WNHU–FM, operating on 88.7 MHz, in West Haven, CT, by replacing a 1970 vintage Moseley TFL–280BFN Limiter and to replace 2 1974 vintage cart machines with a digital master control work station and storage facility. Applicant provides service to approximately 1 million potential listeners.

DC (District of Columbia)

File No. 96019 CRB American University, Brandywine Building, Washington, DC 20016–8082. Signed By: Mr. Donald Myers, Vice Pres. of Fin. & Treasurer. Funds Requested: $47,000. Total Project Cost: $188,000. To improve the signal of public radio station WAMU, 88.5 MHz, Washington, DC, by replacing its worn-out and unreliable transmitter. The station serves a population of about 4,306,989.

File No. 96053 CRB 95155. Univ. of the District of Columbia, 4200 Connecticut Ave, NW, Washington, DC 20008. Signed By: Dr. Martha Bridgeforth, V.P., Institutional Adv. Funds Requested: $19,386. Total Project Cost: $38,772. To improve the facilities of public radio station WDCU–FM, operating on 90.1 MHz, by purchasing a C band satellite downlink. The downlink will enable the station to broadcast programming from National Public Radio and other sources distributed by the Public Radio Satellite System. WDCU–FM serves 3 million people in the Washington DC metropolitan area.

File No. 96232 IPRTN Soundprint Media Center, Incorp, 4000 Brandywine St. NW, Suite 620, Washington, DC 20016. Signed By: Ms. Moira Rankin, Executive Producer. Funds Requested: $99,565. Total Project Cost: $123,803. To develop a plan based on research regarding the potential use of existing and proposed new technologies at public television and radio stations nationwide, that would determine the possible integration of these technologies in a telecommunications network for distance learning services.

FL (Florida)

File No. 96030 CTB University of Florida, Weimer Hall, Gainesville, FL 32611. Signed By: Dr. Thomas Walsh, Director of Research. Funds Requested: $53,940. Total Project Cost: $107,880. To upgrade the facilities of WUFT–TV, Channel 5 in Gainesville, by replacing worn-out and obsolete master control equipment with digital video storage technology.

File No. 96037 CTB South Florida Public Telecom., Inc., 3401 South Congress Avenue, Boynton Beach, FL 33426. Signed By: Mrs. Mary Souder, President/CEO. Funds Requested: $166,600. Total Project Cost: $333,200. To improve the broadcast services of WXEL–TV, Channel 42 in Boyton Beach and to provide Descriptive Video Services to blind and visually impaired individuals, by replacing the station's 12-year-old routing system and the master control switcher with analog/digital equipment.

File No. 96043 CTB Florida State University, 1600 Red Barber Plaza, Tallahassee, FL 32310. Signed By: Dr. Robert Johnson, VP for Research. Funds Requested: $133,275. Total Project Cost: $266,550. To ensure a continued high quality production and programming facility at WFSU and WFSG by replacing 14-year-old, ¾ inch editing equipment.

File No. 96086 CTB University of South Florida, 4202 Fowler Avenue, WRB 219, Tampa, FL 33620. Signed By: Mr. James Heck, General Manager. Funds Requested: $41,812. Total Project Cost: $83,624. To upgrade its broadcast capabilities, WUSF–TV, Channel 16 in Tampa, by replacing its worn-out and unreliable optical disc units with a video server.

File No. 96089 CTB Florida West Coast Pub. Brdcstg., 1300 North Boulevard, Tampa, FL 33677–4033. Signed By: Mr. Stephen L. Rogers, President & CEO. Funds Requested: $217,850. Total Project Cost: $435,700. To improve the production capacity of WEDU–TV, Channel 3 in Tampa, by purchasing a switcher, editor and effects equipment so that the station can continue to produce programming for local, state and national distribution.

File No. 96090 ICTN School Board of Broward County, 600 Southeast Third Avenue, Ft. Lauderdale, FL 33301. Signed By: Dr. Frank Petruzielo, Superintendent of Schools. Funds Requested: $136,962. Total Project Cost: $273,924. To establish an Instructional Television Fixed Service (ITFS) system, with associated video classroom and satellite receive-only earth station, to bring distance learning to the public school students of Broward County, Florida.

File No. 96113 CRB Florida Institute of Technology, 150 W. University Blvd., Melbourne, FL 32901. Signed By: Mr. Robert Merrill, Director, Sponsored Programs. Funds Requested: $23,126. Total Project Cost: $30,835. To improve its facilities and provide first public radio service to approximately 13,000 people, WFIT–FM, operating on 89.5 MHz in Melbourne, will increase its antenna height from 34 meters to 46 meters and its power from 2,350 Watts to 8,000 Watts.

File No. 96139 ICTBN Coastal Educational Broadcasters, 1200 W. Intern't Speedway Blvd., Daytona Beach, FL 32114. Signed By: Dr. Don Thigpen, President. Funds Requested: $491,000. Total Project Cost: $982,000. To improve the transmission, origination, and test equipment of public TV station WCEU, broadcasting on Ch. 15 from Daytona Beach, FL. The project would embrace both broadcast and nonbroadcast elements. The project's transmission equipment would allow the station to add four educational programming streams to the existing Daytona Beach Community College ITFS system. The origination equipment would permit WCEU–TV to produce additional programming for its over-the-air broadcast audience as well as to integrate its broadcast and educational services and to move to digital random access and tape storage. The project also includes equipment for an interactive video classroom; this would be used to originate instructional classes for high school students.

File No. 96174 CRB Sylum Education Foundation, 485 N.E. 160 Terrace, North Miami Beach, FL 33162. Signed By: Mr. Chris Bain, President. Funds Requested: $74,895. Total Project Cost: $99,866. To construct a noncommercial FM station, operating on 88.7 MHz, to provide radio services targeted to the young people in the City of North Miami Beach and surrounding areas.

File No. 96198 ICTN Florida International University, NE 151 Street and Biscayne Blvd., Miami, FL 33181. Signed By: Dr Thomas Breslin, Vice Provost for Research. Funds Requested: $362,190. Total Project Cost: $848,692. To establish a distance learning system under the auspices of the South Florida Distance Learning Network, which is composed of Florida International University and other academic institutions in the South Florida area. The system will provide diverse instructional programming to Dade, Broward, and Monroe Counties. The proposed system will transmit via fiber optics and via the ITFS system of public television station WLRN, Ch. 17, Miami. Station WLRN–TV is licensed to the Dade County School Board.

File No. 96217 CRB 95116. University of Florida, 2208 Weimer Hall, Gainesville, FL 32611. Signed By: Mr. Richard Lehner, General Manager. Funds Requested: $28,769. Total Project Cost: $57,538. To install automation equipment at WUFT–FM, operating on 89.1 MHz in Gainesville, to maintain 24-hour a day programming in a cost-effective manner.

File No. 96218 CTB Florida Gulf Coast University, Channel 30 Drive, Bonita Springs, FL 33923. Signed By: Dr. Roy McTarnaghan, President. Funds Requested: $342,114. Total Project Cost: $684,229. To improve the broadcast operations of WSFP–TV, Channel 30 in Bonita Springs, Florida, by replacing obsolete, inefficient and trouble-prone origination equipment and acquiring one LIS mass storage unit.

File No. 96219 CRB Florida Gulf Coast University, 8111 College Parkway, Fort Myers, FL 33919. Signed By: Dr. Roy McTarnaghan, President. Funds Requested: $134,061. Total Project Cost: $268,123. To upgrade and improve its facilities, WSFP–FM, operating 90.1 MHz in Fort Myers, by replacing worn-out and obsolete local origination equipment.

File No. 96223 CRB Florida Gulf Coast University, 8111 College Parkway, Fort Myers, FL 33919. Signed By: Dr. Roy McTarnaghan, President. Funds Requested: $67,850. Total Project Cost: $135,700. To bring first public radio programming services to approximately 60,000 residents of Collier County, WSFP–FM, operating on 90.1 MHz in Fort Myers, will activate a repeater transmitter in Marco Island operating on 91.7 MHz.

File No. 96241 CTB Community Communications, Inc., 11510 East Colonial Drive, Orlando, FL 32817. Signed By: Mr. Stephen McKenney Steck, President. Funds Requested: $49,168. Total Project Cost: $98,336. To improve the post-production capabilities of WMFE–TV, Channel 24 in Orlando, by purchasing a digital video effects unit and a font generator to more effectively meet increased demand for the station's editing facilities.

File No. 96243 CTB WJCT, Inc., 100 Festival Park Avenue, Jacksonville, FL 32202. Signed By: Mr. William Dresser, President & General Manager. Funds Requested: $190,000. Total Project Cost: $380,000. To maintain the high quality of the broadcast services of WJCT–TV, Channel 7 in Jacksonville, Florida, by replacing three 12-year-old studio camera systems.

GA (Georgia)

File No. 96076 PTB Albany Technical Institute, 1021 Lowe Road, Albany, GA 31701. Signed By: Dr. Anthony Parker, President. Funds Requested: $90,180. Total Project Cost: $90,180. Conduct planning and research activities for the construction of a broadcast facility that will provide distance learning services to students in rural, remote communities of Baker, Calhoun, Clay, Randolph and Terrell counties, Georgia.

File No. 96079 CRB 95281. GA Public Telecomm. Commission, 1540 Stewart Ave., S.W., Atlanta, GA 30310. Signed By: Mr. Frank Bugg, Deputy Director. Funds Requested: $27,000. Total Project Cost: $54,000. Peach State Public Radio will establish a noncommercial FM radio station operating on 88.3 MHz in Demorest, GA. to provide first service to a population of over 260,000 people in the Northeast section of Georgia.

File No. 96082 CTN City of Atlanta, 68 Mitchell St. SW, Ste 1200, Atlanta, GA 30335. Signed By: Dr. Renee Kemp-Rotan, Act. Dir., Bur. of Econ. Devel. Funds Requested: $399,100. Total Project Cost: $798,200. To assist the City of Atlanta in constructing four electronic town centers and media parks serving the residents of Atlanta's Empowerment Zone neighborhoods.

File No. 96109 CTB Atlanta Board of Education, 740 Bismark Road, NE, Atlanta, GA 30324. Signed By: Dr. Benjamin Canada, Superintendent. Funds Requested: $156,869. Total Project Cost: $313,738. To improve the production facilities of WPBA–TV, Ch. 30 in Atlanta, GA, by replacing 10 year old 1" video tape machines with modern video cassette machines. The project will also replace obsolete test and monitoring equipment necessary for the station to continue service to 2.5 million people in the greater Atlanta area.

File No. 96130 IPTN Clark Atlanta University, James Brawley Dr. at Fair St. SW, Atlanta, GA 30314. Signed By: Dr. Kofi Bota, Vice President, Rsch/Spons Pgm. Funds Requested: $67,507. Total Project Cost: $79,347. To develop a plan, managed by Clark Atlanta University, for a comprehensive telecommunications system among Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs) that could potentially incorporate various technologies in a nationwide interactive distance learning service.

GU (Guam)

File No. 96167 ICRTN University of Guam, House 6 UOG Station, Mangilao, GU 96923. Signed By: Ms. Carmen Fernandez, Director/CCE–OF. Funds Requested: $354,200. Total Project Cost: $354,200. To activate a new service for distance education by purchasing a digital satellite system to serve Guam. The system will provide compressed digital video and be affiliated with the Pan-Pacific Educational and Communications Experiments by Satellite (PEACESAT) program headquartered in Hawaii.

HI (Hawaii)

File No. 96212 CTB Hawaii Public Broadcasting Auth., 2350 Dole Street, Honolulu, HI 96822. Signed By: Mr. Sheldon Robbs, Executive Director. Funds Requested: $150,000. Total Project Cost: $150,000. To improve the transmission facilities of Hawaii Public Broadcasting on the island of Hawaii by replacing six public television translators and related equipment serving 57,000 people on the Big Island. Replacement equipment will be placed at translators located at Honohina, Hilo, Kilauea Military Camp, Naalehu, South Point and Waimea.

File No. 96251 PTN University of Hawaii, 2540 Maile Way, Spalding HL. 253, Honolulu, HI 96822. Signed By: Dr. Peter Garrod, Interim Director of Research. Funds Requested: $98,051. Total Project Cost: $130,117. To develop a plan for the extension of the Pan-Pacific Education and Communication Experiments by Satellite (PEACESAT) Network and its programs and services, beyond the District Centers and into the outlying, underserved communities in American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

IA (Iowa)

File No. 96129 ICTN Eastern IA Community College Dist., 306 West River Drive, Davenport, IA 52801. Signed By: Dr. John Blong, Chancellor. Funds Requested: $114,971. Total Project Cost: $229,943. To construct two video classrooms, with associated interconnection equipment, in the Kahl Educational Center, located in downtown Davenport. The Center is a campus of Scott Community College, which in turn is part of the Eastern Iowa Community College District. The video classrooms will originate and receive instructional programming transmitted over the Iowa Communications Network. One classroom will focus on programming of regional interest, the second on classes for statewide distribution.

File No. 96143 CRB 95238. Iowa State Univ. of Science & Tech, Pammel Drive, Ames, IA 50011. Signed By: Mr. Richard E. Hasbrook, Contracts & Grants Officer. Funds Requested: $159,777. Total Project Cost: $213,037. To extend the signal of public radio station WOI-FM, 90.1 MHz, Ames, IA, by constructing a repeater station to operate on 89.1 MHz in Ottumwa, IA. The new station will provide the first public radio signal to about 63,295 residents of southeastern Iowa.

File No. 96154 CRB Kirkwood Community College, P.O. Box 2068, Cedar Rapids, IA 52404. Signed By: Dr. Norm Nielsen, President. Funds Requested: $51,097. Total Project Cost: $113,549. To improve the signal quality and production capability of public radio station KCCK, 88.3 MHz, Cedar Rapids, IA, by replacing its 18-year-old transmitter, antenna, and transmission line, and by replacing worn-out and obsolete audio recording and playback equipment. The station serves a population of about 358,382 persons.

File No. 96193 CTB Iowa Public Broadcasting Board, 6450 Corporate Drive, Johnston, IA 50131. Signed By: Mr. C. David Bolender, Executive Director. Funds Requested: $90,281. Total Project Cost: $180,562. To improve the signals of two translators operated by Iowa Public Television, Johnston, IA, by replacing their transmitters and associated equipment. The translators concerned broadcast on channel 14 in Decorah, IA, and on channel 41 in Lansing, IA. Together they serve about 35,137 persons. In addition to the translators, Iowa Public Television operates eight full-power TV stations across the state.

File No. 96215 CRB Western Iowa Tech. Cmty. College, 4647 Stone Avenue, Sioux City, IA 51106. Signed By: Dr. Robert E. Dunker, President. Funds Requested: $49,828. Total Project Cost: $99,656. To improve the signal quality of public radio station KWIT, 90.3 MHz, Sioux City, IA, by replacing its worn-out 19-year-old transmitter. In addition, the project will acquire a dummy load and dehydrator and convert the station's STL from analog to digital operation. KWIT serves a population of about 360,000.

ID (Idaho)

File No. 96166 CTB Idaho Public Television, 1450 N. Orchard, Boise, ID 83706. Signed By: Mr. Jerold Garber, General Manager. Funds Requested: $305,312. Total Project Cost: $407,083. To replace worn out dissemination equipment with an automated system which will improve the operations of KAID in Boise, KIPT in Twin Falls, KISU in Pocatello, KUID in Moscow and KCDT in Coeur D'Alene.

IL (Illinois)

File No. 96033 CTN City of Urbana, 400 South Vine, Urbana, IL 61801. Signed By: Ms. Amy Jordan, Urbana Public TV Coordinator. Funds Requested: $59,325. Total Project Cost: $118,650. To help the City of Urbana establish a PEG cable television community access to transmit City Council meetings and other government-related programming.

File No. 96118 CTB West Central IL Educ Telecom Corp, Shepherd Road, Bldg. K, Room 64, Springfield, IL 62707. Signed By: Dr. Jerold Gruebel, President/General Manager. Funds Requested: $155,874. Total Project Cost: $259,790. To improve the service of the West Central Illinois Educational Telecommunications Corporation (dba CONVOCOM), Springfield, IL, by converting its Springfield translator to a full-power repeater operating on Channel 65 by acquiring a high-gain antenna system and by establishing a reliable microwave link between Springfield and CONVOCOM station WSEC (TV), Jacksonville, IL. It is estimated that some 258,542 persons will receive enhanced public television service from this project.

File No. 96225 CTB Black Hawk College, 6600 34th Avenue, Moline, IL 61265. Signed By: Dr. Judith A. Redwine, President. Funds Requested: $944,732. Total Project Cost: $1,259,643. To extend and improve the signal of public television station WQPT, operating on Ch. 24, Moline, IL, by relocating its transmitting facilities to Orion, IL, and increasing its power and antenna height. Benefiting from this project will be an estimated 204,710 persons who cannot now receive a Grade B or better public television signal because of terrain, distance from a station, and other factors affecting reliable reception. The station now serves an estimated 237,886 persons.

File No. 96228 CRB University of Illinois, 1110 West Main Street, Urbana, IL 61801. Signed By: Mr. Craig S. Bazzani, Comptroller. Funds Requested: $9,107. Total Project Cost: $18,214. To improve the signal coverage of WILL–FM, 90.9 MHz, Champaign-Urbana, IL, by activating a translator to operate on 101.1 MHz in Urbana to overcome interference from terrain features and strong stations operating on near-by frequencies. WILL–FM serves a population of about 119,894 persons.

IN (Indiana)

File No. 96048 CTB Indiana University, P.O. Box 1847, Bloomington, IN 47402. Signed By: Dr. George Walker, Vice President, Research. Funds Requested: $52,088. Total Project Cost: $104,176. To improve public television station WITU, operating on Ch. 30, Bloomington, IN, by acquiring a new switcher and a hard-disk video file server to replace worn-out and obsolete master control equipment. The station serves a population of about 485,800.

File No. 96151 CTB Michiana Public Broadcasting Corp., 2300 Charger Boulevard, Elkhart, IN 46514. Signed By: Ms. Trina Cutter, President/General Manager. Funds Requested: $57,038. Total Project Cost: $114,075. To improve public television station WNIT, operating on Ch. 34, Elkhart, IN, by replacing aging and obsolete video editing and test equipment. The station serves a population of about 791,000.

File No. 96176 CRB Metro Indianapolis Pub Bdcstg, Inc., 1401 North Meridian Street, Indianapolis, IN 46202. Signed By: Mr. Lloyd Wright, President & General Manager. Funds Requested: $55,000. Total Project Cost: $110,000. To improve public radio station WFYI–FM, 90.1 MHz, Indianapolis, IN, by replacing its 26-year-old transmitter, which is worn-out and obsolete. The station serves a population of about 2-million.

File No. 96230 CTB Tri-State Public Teleplex, Inc., 405 Carpenter Street, Evansville, IN 47708–1027. Signed By: Mr. David Dial, President and General Manager. Funds Requested: $84,580. Total Project Cost: $169,161. To improve the operation of public station WNIN–TV, Ch. 9, Evansville, IN, by replacing several items of worn-out and obsolete production equipment, including a character generator, lighting instruments, and a field camera and by acquiring a hard-disk digital video editing system. The station serves a population of about 750,000.

File No. 96233 CTB Ball State University, Ball State University, Muncie, IN 47306–0080. Signed By: Dr. James L. Pyle, Exec Dir, Academic Research. Funds Requested: $230,738. Total Project Cost: $461,476. To improve the operation of public television station WIPB, Ch. 49, Muncie, IN, by replacing obsolete and worn-out cameras and a character generator. The station serves a population of about 980,000.

KS (Kansas)

File No. 96002 ICTN Western Kansas Cmty Srvcs Consort., 1007 West Eighth Street, Pratt, KS 67124. Signed By: Ms. Joyce Hartmann, Executive Director. Funds Requested: $168,883. Total Project Cost: $356,589. To assist the Consortium's five community colleges to extend their instructional programming throughout the Consortium's 41-county educational service area. Colby Community College proposes to interconnect with two existing distance learning networks. Dodge City Community College would install four portable ITV classrooms in rural areas and purchase a satellite receive-only earth station. Garden City Community College will construct four video classrooms, one at the Lee Richardson Zoo. Pratt Community College will expand its connectivity to the existing A–Plus Network. Seward County Community College will equip a video classroom in the community of Johnson.

File No. 96021 CRB Kanza Society, Inc., 210 North Seventh, Garden City, KS 67846–5519. Signed By: Ms. Kathleen Holt, Executive Director. Funds Requested: $91,534. Total Project Cost: $140,821. To improve and extend the signal of KANZ–FM (91.1 MHz) in Garden City and KZNA–FM (90.5 MHz) in Hill City, by replacing (including changing existing frequency), relocating or changing the coverage of the following twelve FM translators: Ashland, KS (K252AX to 92.9 MHz); Atwood, KS (K237CN); Colby, KS (K205BR); Dodge City, KS (K242AE to 92.9 MHz); Elkhart, KS (K252AV to 90.3 MHz); Goodland, KS (K219AJ to 89.7 MHz); Guymon, OK (K205FP); Lamar, CO (K252BY to 90.7 MHz); Ness City, KS (K252AY to 92.9 MHz); St. Francis, KS (K257DI to 96.3 MHz); Sharon Springs, KS (K214AU); and Tribune, KS (K252AW to 89.5 MHz). The changes will result in approximately 35,217 people receiving a first public radio signal.

File No. 96051 CRB Kansas State University, Room 2, Fairchild Hall, Manhattan, KS 66506–4701. Signed By: Dr. R. W. Trewyn, Assoc. Vice Provost for Res'ch. Funds Requested: $18,090. Total Project Cost: $36,180. To improve the facilities of public radio station KKSU–AM, 580 kHZ, in Manhattan, by converting the station to a stereo production facility, converting to digital record and playback technology, and expanding the routing and distribution system due to additional demands. KKSU–AM will also acquire an oscilloscope. Station serves about 5.4 million people in parts of KS, NE, MO, IA and OK.

File No. 96138 CRB Wichita State University, 3317 East 17th Street, Wichita, KS 67208. Signed By: Dr. Gerald Loper, Associate Vice President. Funds Requested: $19,250. Total Project Cost: $38,500. To improve the facilities of public radio station KMUW–FM, 89.1 MHz, in Wichita, by installing an uninterruptable power supply system to keep the station on the air during power outages and replacing 10-to-20 year old analog production equipment with digital recording and editing equipment. KMUW–FM serves about 678,000 people in south central KS.

File No. 96140 CTB Kansas Public Telecom. Service, 320 West 21st St., P.O. Box 288, Wichita, KS 67201. Signed By: Mr. Zoel Parenteau, President & General Manager. Funds Requested: $14,357. Total Project Cost: $28,715. To improve the facilities of public television station KPTS–TV, Ch. 8, in Wichita, by replacing an old, obsolete video tape recorder, acquiring a new waveform monitor, a new color monitor and an FCC required EBS encoder decoder. KPTS–TV serves approximately 388,000 people.

File No. 96180 CRB Kansas Public Broadcasting Council, 900 SW Jackson, Room 751S, Topeka, KS 66612–1275. Signed By: Mr. David M. Wilson, Chairman. Requested: $41,528. Total Project Cost: $83,056. To purchase a portable Ku-band satellite uplink as well as six fixed downlinks to be placed at public radio stations serving the state. The equipment will be used to share programming gathered from around the state. Downlinks will be placed at KHCC–FM, Hutchinson, KANZ–FM, Garden City, KANU–FM, Lawrence, KKSU–AM, Manhattan, KRPS–FM, Pittsburg and KMUW–FM, Wichita.

File No. 96202 CTB Smoky Hills Public Television, 604 Elm Street, Bunker Hill, KS 67626. Signed By: Mr. David Wilson, CEO/General Manager. Funds Requested: $58,000. Total Project Cost: $116,000. To extend the signal of public television station KOOD–TV, Ch. 9, in Bunker Hill, by constructing a new repeater station in Dodge City, on Ch. 21. Project also includes an Electronic Field Production unit consisting of a portable video camera, recorder and accessories to be used to provide additional production capacity to better serve the proposed coverage area. Station will provide a first over-the-air signal to about 26,000 people.

File No. 96214 CRB Hutchinson Community College, 815 N. Walnut, Suite 300, Hutchinson, KS 67501. Signed By: Dr. Edward Berger, President. Funds Requested: $31,150. Total Project Cost: $62,300. To improve public radio station KHCC–FM, 90.1 MHz, in Hutchinson, by replacing obsolete equipment with a digital audio storage system and interfaces, three DAT recorders and four microphones. This station, and its two repeater stations, serve approximately 925,000 people in central KS.

File No. 96222 CTB Washburn University of Topeka, 1700 Southwest College Avenue, Topeka, KS 66621. Signed By: Dr. Hugh Thompson, President. Funds Requested: $114,547. Total Project Cost: $229,094. To improve public television station KTWU–TV, Ch. 11, in Topeka by replacing its 42 year old transmission line, adding a backup studio to transmitter microwave system, and upgrading its master control operations by adding a digital video playback system. KTWU–TV serves approximately 1.26 million people.

KY (Kentucky)

File No. 96098 CRB Murray State University, 15th & Olive Streets, Murray, KY 42071. Signed By: Dr. James Booth, Provost. Funds Requested: $37,620. Total Project Cost: $50,160. To improve reception to its current audience and to reach approximately 54,000 new listeners, WKMS–FM, operating on 91.3 MHz in Murray, Kentucky, will activate a translator in Paducah (92.1 MHz) and a repeater in Madisonville (90.1 MHz).

File No. 96171 ICTN Center for Rural Development, 2292 South Highway 27, Suite 300, Somerset, KY 42501. Signed By: Mrs. Hilda Gay Legg, Executive Director. Funds Requested: $619,588. Total Project Cost: $826,117. To establish a production studio for The Center for Rural Development, Somerset, KY. The studio will allow the Center to produce instructional programming as part of its mandate to act as a training and education center for a 40-county service area. The Center's partners in this telecommunications enterprise are the University of Kentucky and Kentucky Educational Television.

File No. 96196 CTB Kentucky Educational Television, 600 Cooper Drive, Lexington, KY 40502. Signed By: Mrs. Virginia Fox, Executive Director. Funds Requested: $689,076. Total Project Cost: $1,148,460. To improve the broadcast services of WKMJ–TV, Channel 68 in Louisville, Kentucky, by replacing the aging transmitter, the transmission line and the antenna which was damaged by lightning.

File No. 96210 CTB Fifteen Telecommunications, Inc., 4421 Bishop Lane/PO Box 37380, Louisville, KY 40218. Signed By: Mr. John-Robert Curtin, President & CEO. Funds Requested: $39,975. Total Project Cost: $79,950. To improve the broadcast operations of WKPC–TV, Channel 15 in Louisville, Kentucky by constructing a free standing 195 ft. tower for the station's STL and ITFS.

LA (Louisiana)

File No. 96045 CTB Educational Broadcasting Fdn., 2929 South Carrollton Avenue, New Orleans, LA 70118. Signed By: Mr. James Kelly, General Manager. Funds Requested: $94,808. Total Project Cost: $189,617. To improve the production facilities of public television station WLAE–TV, operating on Ch. 32 in New Orleans, LA. The project will replace a 20 year old video production switcher for the production of local programs. WLAE–TV serves 1.2 million people in the greater New Orleans area.

File No. 96093 CTB Greater New Orleans ETV Found., 916 Navarre Avenue, New Orleans, LA 70124. Signed By: Mr. Randall Feldman, President & General Manager. Funds Requested: $191,500. Total Project Cost: $383,000. To improve the production facilities of public television station WYES–TV, operating on Ch. 12 in New Orleans, by replacing 1" video tape machines with digital video cassette machines and replacing four Betacam players with a disc storage system. The project will also replace a 10 year old DVE system with a dual channel system and purchase a non-linear editor for the production of local programs. WYES–TV serves 1.7 million people in the greater New Orleans area.

File No. 96127 ICTN New Orleans Educ. T/C Consortium, 2929 South CarrolltonAvenue, New Orleans, LA 70118. Signed By: Dr. Robert Lucas, Executive Director. Funds Requested: $287,293. Total Project Cost: $574,586. To purchase T–1 interconnection and video classroom equipment to allow the New Orleans Educational Telecommunications Consortium to extend its ITFS-based distance learning service to Lake Ponchartrain's north shore and to the Stennis Space Center, which is located in Mississippi.

File No. 96246 ICTN 95147. Northwestern State University, Kyser Hall, Room 153, Natchitoches, LA 71497. Signed By: Dr. Robert Alost, President. Funds Requested: $569,528. Total Project Cost: $759,371. To purchase a Ku-band mobile satellite uplink to expand the distance learning opportunities to under served areas of Louisiana, Arkansas, Mississippi and Oklahoma.

MA (Massachusetts)

File No. 96036 CRB 95145. Cape & Islands Commm Public Radio, 78 Gardiner Road, Woods Hole, MA 02543. Signed By: Mr. Jay Allison, President. Funds Requested: $212,450. Total Project Cost: $283,270. To provide first public radio service to 70,639 citizens of Woods Hole and Nantucket, MA by constructing new FM broadcast studios, control rooms, antennas and transmitters at 90.1 MHz, Woods Hole, MA, and 91.1 MHz, Nantucket, MA.

File No. 96131 CRB University of Massachusetts, Amherst, MA 01003. Signed By: Ms. Carol Sprague, Acting Assoc. Director. Funds Requested: $46,827. Total Project Cost: $93,655. To improve WFCR–FM, operating on 88.5 MHz, in Amherst, MA, by replacing the audio console and associated items: monitor amplifier, monitor speakers, storage system, two cassette decks, two turntables, microphone processor, telephone hybrid, routing switcher, cabinets, and test equipment. Applicant provides service to approximately 1,144,371 potential listeners.

File No. 96158 CRB University of Massachusetts, 100 Morrissey Blvd., Boston, MA 02125. Signed By: Mr. Paul O'Keefe, Director. Funds Requested: $67,730. Total Project Cost: $92,730. To improve WFPB–FM, operating on 91.9 MHz, in Falmouth, MA, by replacing the present temporary system, using mostly borrowed and rented equipment which makes this project a middle ground between establishing a new first service and replacing an existing system. The applicant owns very few broadcast items, so the equipment requested is basically an activation package. WFPB–FM will serve approximately 40,000 listeners.

File No. 96208 CTB WGBH Educational Foundational, 125 Western Avenue, Boston, MA 02134. Signed By: Mr. Andrew Griffiths, VP/Finance and Administration. Funds Requested: $587,605. Total Project Cost: $1,175,210. To improve WGBH–TV, operating on Ch 2, in Boston, MA, by replacing six eighteen-year-old studio cameras. WGBH Educational Foundation serves approximately 5,430,000 viewers.

File No. 96220 ICTN Douglas Public Schools, 21 Davis Street, East Douglas, MA 01516. Signed By: Mrs. Concetta Verge, Superintendent. Funds Requested: $19,323. Total Project Cost: $38,647. To establish a video conference classroom for the Douglas, Mass., Public Schools to be used for distance learning purposes. The project would use PicTel equipment with the signals transmitted via ISDN.

File No. 96244 ICTN Springfield Technical Cmty College, One Armory Square, Springfield, MA 01105. Signed By: Dr. Andrew Scibelli, President. Funds Requested: $250,000. Total Project Cost: $500,000. To help establish a T–1-based, compressed video, interactive distance learning network that will allow Springfield Technical Community College (STCC) to provide instructional programming to eight schools and fifty small businesses in Springfield, MA. The equipment will also permit STCC to interconnect with the University of Massachusetts and 120 other national universities as well as with a New England-wide technical training collaborative of eight colleges offering common curricula. The proposed network will serve a large section of Springfield that the Federal Government has designated an Enterprise Zone.

MD (Maryland)

File No. 96073 CRB Univ. of Maryland Eastern Shore, Backbone Road, Princess Anne, MD 21853. Signed By: Dr. William Hytche, President, UMES. Funds Requested: $86,647. Total Project Cost: $115,550. To provide first public radio service to over 70,000 residents of Eastern Delaware and Northern Maryland, WESM–FM, operating on 91.3 MHz in Princess Anne, Maryland, will construct a repeater station in Massey, MD.

File No. 96078 ICTN Salisbury State University, 1101 Camden Avenue, Salisbury, MD 21801. Signed By: Dr. Nelson Butler, Interim President. Funds Requested: $151,300. Total Project Cost: $201,762. A consortium of three State higher education academic institutions would interconnect their three campuses to form a distance learning system to serve Maryland's lower eastern shore. The three are Salisbury State University, the University of Maryland/Eastern Shore, and Wor-Wic Community College. The project would construct a duplex microwave system linking the three campuses and an STL system that would interconnect with an existing ITFS transmission site near Salisbury. The project would also install a video classroom at Wor-Wic Community College and receive sites at high schools in 12 area communities.

File No. 96189 CTB Maryland Public Broadcasting Comm., 11767 Owings Mills Boulevard, Owings Mills, MD 21117. Signed By: Dr. Archie Buffkins, Interim President/CEO. Funds Requested: $1,016,000. Total Project Cost: $2,032,000. To upgrade the broadcast operations of WMPT–TV, Channel 22 in Annapolis, Maryland, by replacing the 22-year-old transmitter and the antenna/transmission line system.

File No. 96201 ICTN Chesapeake Regional Network, Inc., 39 Old Hilltop Rd., Conowingo, MD 21918. Signed By: Mr. Douglas Donley, President. Funds Requested: $60,685. Total Project Cost: $84,285. To establish an Instructional Television Fixed Service (ITFS) to provide instructional programming to rural Cecil County, located in Maryland between Baltimore and Philadelphia, PA.

ME (Maine)

File No. 96014 CTN Pleasant Point Passamaquoddy Tribe, P.O. Box 339, Perry, ME 04667. Signed By: Ms. Pamela Francis, Executive Director. Funds Requested: $30,118. Total Project Cost: $46,335. To extend the cable television community access channel of the Passamaquoddy Tribe of Pleasant Point to the entire Passamaquoddy Reservation. At present, the channel is cablecast only to approximately 25% of the Reservation, to an area known as the Old Pleasant Point Reservation.

File No. 96080 PTB St. John Plantation, RR 3 box 410, Fort Kent, ME 04743. Signed By: Mr. Fernald Jandreau, First Selectman. Funds Requested: $7,500. Total Project Cost: $7,500. This is an ineligible application. The applicant is a commercial station, WFKT–TV, channel 4, in Fort Kent ME. Its basic purpose is to strengthen the broadcast capability of commercial television station WAGM–TV, channel 8, which evidently is owned by the applicant and to extend local broadcasting capability of WFKT–TV to surrounding communities. In the time pressure we have, there is no point in spending any more time on this ineligible project.

MI (Michigan)

File No. 96003 ICTN Alpena-Mont.-Alcona Ed. Srvc. Dist., 2118 U.S. 23 South, Alpena, MI 49707. Signed By: Mr. Thomas Lanway, Superintendent. Funds Requested: $433,750. Total Project Cost: $870,250. To install cables for voice, video, and data transmission into every classroom and library in four Michigan counties. The project would also purchase 40 personal computers in each school building or library in order to allow those facilities to interconnect with the Internet. The project is a joint effort between the applicant and the Iosco Intermediate School District.

File No. 96066 CRB Central Michigan University, 3965 East Broomfield Road, Mount Pleasant, MI 48859. Signed By: Dr. Leonard E. Plachta, President. Funds Requested: $321,991. Total Project Cost: $429,322. To activate a repeater station operating at 95.7 MHz to bring the first public radio signal to approximately 51,501 residents in and around Oscoda, MI. The new station will repeat the programming of public station WCMU-FM, 89.5 MHz, Mt. Pleasant, MI, which presently serves a population of about 291,577.

File No. 96068 CTB Detroit Educational Television Fndn, 7441 Second Boulevard, Detroit, MI 48202–2796. Signed By: Mr. Steve Antoniotti, President and General Manager. Funds Requested: $149,887. Total Project Cost: $299,775. To improve the operation of public television station WTVS, Ch. 56, Detroit, MI, by replacing a worn-out and obsolete switcher and by acquiring an emergency power generator for the station's transmitter. WTVS serves a population of about 4,500,000.

File No. 96134 IPTN Lansing Community College, 528 N. Capitol, Lansing, MI 48933. Signed By: Dr. Valerianna Moeller, Executive V. Pres./ Provost. Funds Requested: $75,300. Total Project Cost: $105,750. To explore the feasibility of various technologies that could be appropriate for an interactive distance learning system in southeastern Michigan, among Lansing Community College, and the K–12 schools in the Livingston County Educational Service District and the Ingham County Intermediate School District.

File No. 96144 CTB Michigan State University, 84 Wilson Road, East Lansing, MI 48824–1212. Signed By: Mr. Daniel Evon, Asst Dir, Grants Admin. Funds Requested: $549,925. Total Project Cost: $1,099,851. To improve the quality and reliability of the signal of public station WKAR–TV, Ch. 23, East Lansing, MI, by replacing its failing 18-year-old transmitter, STL, and the associated control, monitoring, and test equipment. The station serves a population of about 2,069,000.

File No. 96185 CRB Northwestern Michigan College, 1701 East Front Street, Traverse City, MI 49684. Signed By: Mr. Timothy Quinn, President. Funds Requested: $39,055. Total Project Cost: $52,073. To upgrade non-commercial radio station WNMC, 90.9 MHz, Traverse City, MI, by increasing its power, moving its antenna, and changing its frequency to 90.7MHz. The station currently serves a population of about 63,000. The project will add an estimated 60,400 persons, who have access to public radio service from another station.

File No. 96224 CRTB Northern Michigan University, Northern Michigan University, Marquette, MI 49855. Signed By: Dr. Michael J. Roy, VP/Finance and Administration. Funds Requested: $53,620. Total Project Cost: $107,240. To improve public station WNMU–TV, Ch. 13, and WNMU–FM, 90.1 MHz, Marquette, MI, by replacing failing audio recording equipment, upgrading their tower lighting, and acquiring equipment for descriptive video, closed captioning, and FCC-mandated Emergency Alert Notification. The stations serve a population of about 200,000.

File No. 96226 CRB Northern Michigan University, Northern Michigan University, Marquette, MI 49855. Signed By: Dr. Michael J. Roy, VP/Finance and Administration. Funds Requested: $8,513. Total Project Cost: $17,026. To extend the signal of WNMU–FM, 90.1 MHz, Marquette, MI, by activating a translator to operate at 107.3 MHz in Stephenson, MI, bringing the first public radio signal to about 13,000 residents of the south-central Upper Peninsula of Michigan. The project will also enable the re-activation of an existing translator on 91.3 MHz in Marinette, WI, that had to be shut down when a new full-power station overroad the signal from WNMU–FM. This translator serves a population of about 15,518.

File No. 96237 ICTN Hillsdale Co. Intermed School Dist, 3471 Beck Road, Hillsdale, MI 49242. Signed By: Mr. Gary Moore, Superintendent. Funds Requested: $847,191. Total Project Cost: $1,129,588. To establish a fiber optics-based, interactive distance learning system which will interconnect the eight schools served by the Hillsdale County Intermediate School District, located in extreme southern Michigan.

File No. 96238 CTB Grand Valley State University, 301 West Fulton Street, Grand Rapids, MI 49504–6492. Signed By: Ms. Jean Enright, Secretary, Board of Control. Funds Requested: $104,679. Total Project Cost: $209,358. To improve the operation of public station WGVU–TV, Ch. 35, Grand Rapids, MI, by replacing obsolete and worn-out video tape recorders. The project will also benefit WGVK–TV, Ch. 52, which repeats the programming of WGVU–TV in Kalamazoo, MI. The

stations serve a population of about 1,274,200:

MN (Minnesota)

File No. 96056 CTB West Central Minnesota ETV CO, 120 West Schlieman Avenue, Appleton, MN 56208. Signed By: Mr. Ansel Doll, General Manager. Funds Requested: $176,310. Total Project Cost: $352,620. To extend the service of KWCM–TV, operating on Ch. 10, in Appleton, MN, by activating a first signal repeater station, operating on Ch 69, in Fergus Falls, MN, an area of west central Minnesota not now served by public TV and containing a population of approximately 50,714 potential viewers.

File No. 96104 CTN Asian Media Access, Inc., 730 Henepin Avenue, # 812, Minneapolis, MN 55403. Signed By: Mr. Virendra Ratnayake, President of the Board. Funds Requested: $844,380. Total Project Cost: $1,125,850. To construct the first Asian-American production studio in the United States that will serve as a media center for Asian American communities and will produce Asian Lanuguage news, magazine shows, documentaries and educational programming.

File No. 96137 CRB Red Lake Band of Chippewa Indians, Tribal Headquarters Building, Red Lake, MN 56671. Signed By: Mr. Bobby Whitefeather, Tribal Chairman. Funds Requested: $617,725. Total Project Cost: $823,725. The purpose of this project is to construct a new public radio station to serve the Red Lake Indian Reservation and surrounding areas in northern Minnesota, providing the first signal for approximately 7,000 residents within the coverage area. The station, if funded, will operate on 91.4 MHz with a power of 100 KW, ERP.

File No. 96206 CRB Minnesota Public Radio, 45 E 7th Street, St. Paul, MN 55101. Signed By: Mr. Dennis Hamilton, Vice President. Funds Requested: $206,194. Total Project Cost: $412,389. To improve the Minnesota Public Radio Network of 16 network stations by replacing an old C-Band portable uplink with a Ku-band uplink based at St. Paul, replacing cart machines at the 16 network stations, and also in South Dakota and Michigan. Additionally, this project requests backup STLs for MPR stations in Rochester and Duluth, MN. This network serves approximately 4,547,000 potential listeners.

File No. 96236 CRB White Earth Land Recovery Project, Box 327, White Earth, MN 56591. Signed By: Ms. Roxanne Struthers, Chairperson. Funds Requested: $407,528. Total Project Cost: $543,370. The Niijii Broadcast Corporation, a subsidiary of the White Earth Land Recovery Project, in White Earth, MN, is requesting funding to activate a first signal public radio station for the White Earth Ojibwe Indian reservation in Northern Minnesota. A PTFP Planning grant awarded in 1995 enabled the applicant to conduct a community needs assessment and site review, and to prepare a FCC construction permit application which have resulted in the project. The proposed station will provide first service to approximately 9,200 listeners.

MO (Missouri)

File No. 96010 CRB University of Missouri, 8001 Natural Bridge Road, St. Louis, MO 63121. Signed By: Mr. Douglas Wartzok, Assoc Vice Chan. Dean of Grad. Funds Requested: $25,860. Total Project Cost: $51,720. To improve the production facilities of public radio station KWMU, 90.7 MHz, St. Louis, MO, by replacing worn-out and unreliable equipment, including a console, CD players, microphones, and microphone processors. The station serves a population of about 2,734,900 persons.

File No. 96013 CRB Curators of the Univ. of Missouri, 8001 Natural Bridge Road, St. Louis, MO 63121. Signed By: Mr. Douglas Wartzok, Assoc. Vice Chan. Dean of Grad. Funds Requested: $28,675. Total Project Cost: $57,350. To improve the operational reliability of public radio station KWMU, 90.7 MHz, St. Louis, MO, by acquiring a back-up power generator and an Uninterruptable Power Supply. The station serves a population of about 2,734,900.

File No. 96027 CRB New Wave Corporation, 915 East Broadway, Columbia, MO 65201. Signed By: Mr. Brian Mann, Interim General Manager. Funds Requested: $8,125. Total Project Cost: $18,250. To improve the production capability of public radio station KOPN, 89.5 MHz, Columbia, MO, by replacing an obsolete, 15-year-old on-air audio console. The project will also acquire the equipment for the Emergency Alert System, which the FCC requires all stations to activate. KOPN serves a population of about 250,000 persons.

File No. 96041 ICTN University of Missouri/St. Louis, 8001 Natural Bridge Rd., St. Louis, MO 63121–4499. Signed By: Dr. Douglas Wartzok, Assoc. Vice Chancel./Research. Funds Requested: $775,131. Total Project Cost: $1,700,275. To construct a two-way, interactive telecommunications system—to be called St. Louis EdNet—linking diverse educational and cultural institutions throughout the greater St. Louis area. This includes locations in Illinois as well as in Missouri. The proposed system's design is based on interconnecting three large networks that are already established: the St. Louis Community College Network; the University of Missouri/St. Louis's existing network; and the cable TV and ITFS networks associated with the Cooperating School Districts (the latter consists of 28 K–12 public school districts in the area).

File No. 96160 ICTN Ozarks Technical Community College, 1417 North Jefferson, Springfield, MO 65802. Signed By: Dr. Norman Myers, President. Funds Requested: $184,421. Total Project Cost: $245,895. To construct an ISDN, telephone-line-based distance learning system to permit Ozarks Technical Community College to transmit its instructional programming to schools and the general population throughout its service area of southwest Arkansas. Specifically, the system will reach five school districts—i.e., Republic, Strafford, Rogersville, Nixa, and Reeds Spring—all of which are to be found in a three-county area; the counties are Greene, Stone, and Christian.

File No. 96187 CTB Public Television 19, Inc., 125 East 31st Street, Kansas City, MO 64108. Signed By: Mr. William T. Reed, President & CEO. Funds Requested: $250,835. Total Project Cost: $501,670. To improve the facilities of public television station KCPT, Ch. 19, Kansas City, MO, by replacing seven worn-out, obsolete video tape recorders and test equipment, and by acquiring a second master control switcher and a video "cache" system. KCPT serves a population of about 1,900,000 persons.

MP (Marianas Protectorate)

File No. 96069 IPRTN Northern Marianas College, P.O. Box 1250, Saipan, MP 96950. Signed By: Ms. Agnes McPhetres, President. Funds Requested: $24,275. Total Project Cost: $24,275. To conduct a study and develop the design for the use of technologies in a distance learning system to be established as the Pacific Technical Education Network, between Honolulu, Hawaii and Saipan, Northern Marianas Islands.

MS (Mississippi)

File No. 96172 CRTB Mississippi Authority for ETV, 3825 Ridgewood Road, Jackson, MS 39211. Signed By: Mr. Larry Miller, Executive Director. Funds Requested: $88,242. Total Project Cost: $176,484. Replace FM radio modulation monitoring equipment, FM exciters, and the radio and television high speed RF monitoring system at transmitter sites throughout the state of Mississippi, to improve FM stereo performance, ensure compliance with power measurement requirements, and protect transmitters from potential damage.

MT (Montana)

File No. 96034 CRB Montana State University—Billings, 1500 North 30th Street, Billings, MT 59101–0298. Signed By: Dr. Ronald Sexton, Chancellor. Funds Requested: $42,815. Total Project Cost: $92,815. To purchase a Ku-band satellite uplink system for KEMC–FM, operating on 91.7 MHz in Billings. The satellite system would place downlinks to provide programming to six existing facilities operated by KEMC–FM. Downlinks would be provided at a repeater station serving Bozeman, MT and translators serving Havre, Helena, and Miles City, MT, as well as Cody and Sheridan, WY.

File No. 96177 CRB Bd of Regents, MT University System, 330 Strand Union Building, Bozeman, MT 59717. Signed By: Mr. Philip Charles, General Manager. Funds Requested: $30,495. Total Project Cost: $52,995. To improve the facilities of noncommercial radio station KGLT–FM, operating on 91.9 MHz in Bozeman, MT by purchasing a new FM antenna, exciter and related equipment. The applicant has lost its lease at its current transmitter site and the new equipment will ensure continued service to 47,000 people. The transmitter will be relocated to a higher elevation and the new antenna will permit a power increase from 2 KW to 68 KW.

NC (North Carolina)

File No. 96032 CRB Wilkes Community College, Collegiate Drive, Wilkesboro, NC 28697. Signed By: Dr. Gordon Burns, President of WCC. Funds Requested: $36,999. Total Project Cost: $49,332. To provide first public radio services to approximately 47,000 residents of northwest North Carolina by upgrading WSIF–FM, operating on 90.9 MHz in Wilkesboro, from a Class D station to a Class A radio facility. WSIF–FM will change frequency to 94.7 MHz, increase power and change the antenna system.

File No. 96046 CRB 95100. Better Life, Inc., 230–B Roanoke Avenue, Roanoke Rapids, NC 27870. Signed By: Mr. George Campbell, Executive Director. Funds Requested: $91,500. Total Project Cost: $122,000. To upgrade its services and extend its coverage to provide first public radio service and first radio reading services to approximately 46,000 residents of northeast North Carolina and southeast Virginia, WZRU, operating on 88.5 MHz in Roanoke Rapids, NC, will relocate its antenna to a higher tower and will install a digital STL system.

File No. 96074 ICTN College of the Albemarle, 1208 North Road St., Elizabeth City, NC 27906. Signed By: Dr. Larry R. Donnithorne, President. Funds Requested: $136,000. Total Project Cost: $181,500. To construct a two-way distance learning video classroom at the College of the Albemarle to allow the College to offer and receive instructional programming via its ITFS channels and the North Carolina Information Highway.

File No. 96231 CTB Univ. of NC Center for Public TV, 10 T.W. Alexander Drive, Research Triangle Park, NC 27709. Signed By: Mr. Tom Howe, Director & GM. Funds Requested: $1,574,523. Total Project Cost: $4,890,000. To improve broadcast operations and extend its coverage area to include approximately 779,000 potential new viewers in the state's northeast region by the replacement of critical transmission equipment and construction of a taller tower at WUND–TV, Channel 2, in Columbia, SC.

File No. 96242 CTB Gospel & Deliverance Ministry, Inc., Rt. 1, Box 171–E, Shannon, NC 28386. Signed By: Mr. Gerald Locklear, President. Funds Requested: $680,000. Total Project Cost: $1,115,000. To construct a low-power television station on Ch. 47 to serve the educational and training needs of the community, specifically the Native American population of Robeson County.

ND (North Dakota)

File No. 96141 CRB Dakota Radio Information Service, Liberty Mem. Bldg., 604 E. Blvd., Bismarck, ND 58505. Signed By: Ms. Marcella Schmaltz, President. Funds Requested: $5,156. Total Project Cost: $6,875. To acquire 125 SCA receivers for use by the print-impaired in western ND. The radio reading service receivers would be distributed in areas covered by six new FM radio translator stations which were funded by PTFP in 1995. Since this is the first time 90.1 MHz has been used in this area, there is no inventory of receivers available for distribution. The service provides the only locally originated service in ND. It broadcasts on the stations licensed to Prairie Public Broadcasting.

NE (Nebraska)

File No. 96018 CTB University of Nebraska, 60th & Dodge Streets, Omaha, NE 68182–0022. Signed By: Dr. Delbert Weber, Chancellor. Funds Requested: $38,000. Total Project Cost: $80,000. To improve public television station KYNE-TV, Ch. 26, in Omaha, by acquiring two camera control systems that will allow the use of two PTFP-funded field cameras in the studio during productions which require more than three studio cameras. Station provides service to more than 600,000 people.

File No. 96081 ICTN A DEC, University of Nebraska-Lincoln, Lincoln, NE 68583. Signed By: Dr. Janet Poley, President/CEO. Funds Requested: $1,364,587. Total Project Cost: $2,729,175. To purchase five additional C band uplinks, convert 12 existing uplinks from analog to digital, and equip 174 existing downlinks with digital reception equipment. Uplinks will be placed at Delaware State University, Florida A&M University, the University of Illinois, Kansas State University and West Virginia University.

File No. 96096 CRB 95148. Sunrise Communications, Inc., 941 "O" Street, Suite 1025, Lincoln, NE 68508. Signed By: Mr. Dick Noble, General Manager. Funds Requested: $84,612. Total Project Cost: $112,816. To improve the facilities of public radio station KZUM-FM, 89.3 MHz, in Lincoln by acquiring new and replacement equipment for the on-air control and production control rooms as well as a C-band satellite downlink. Station serves approximately 214,000 people.

File No. 96142 CTB Nebraska Educ Telecomm Commission, 1800 N. 33rd Street, Lincoln, NE 68501. Signed By: Mr. Jack McBride, Secretary. Funds Requested: $152,032. Total Project Cost: $304,065. To improve the production facilities of the state's public television network by replacing old, obsolete origination equipment. Items to be acquired include: a remote unit audio console, 7 mini-disk recorder/players, 7 mini-disk players, a digital audio workstation, color and black/white monitors as well as waveform monitors and vectorscopes test equipment. Much of the equipment being replaced is in excess of 20 years old is a maintenance problem. The network serves about 1.5 million people.

File No. 96147 CRB Nebraska Educ Telecomm Commission, 1800 N. 33rd Street, PO Box 8311, Lincoln, NE 68501. Signed By: Mr. Jack McBride, Secretary. Funds Requested: $23,212. Total Project Cost: $46,425. To improve the facilities of the state's public radio network by acquiring production equipment to replace old, obsolete equipment that is no longer operating properly. Requested equipment includes: a digital audio workstation, a telephone hybrid for on-air call-ins, mini-disk recorder/player and 4 mini-disk players. The state's public radio network serves

approximately 872,000 people in NE and parts of KS and WY.

NH (New Hampshire)

File No. 96031 CRB New Hampshire Public Radio, 207 North Main Street, Concord, NH 03301–5048. Signed By: Mr. Mark Handley, President. Funds Requested: $40,422. Total Project Cost: $80,845. To improve WEVO–FM, operating on 89.1 MHz, in Concord, NH, by upgrading the station's program origination from tape to digital/audio production and automation, which will result in upgrading production both in the studios and in master control.

File No. 96240 CTB University of New Hampshire, Route 155A, Mast Rd., PO Box 110, Durham, NH 03824. Signed By: Mr. Steven Bernstein, Sr. Grant & Contract Officer. Funds Requested: $130,000. Total Project Cost: $260,000. To improve originating station WENH-TV, operating on Ch 11, in Durham, NH, by replacing the studio production control switcher and field ENG Kit for production of local programming. This state network originating station serves the entire state of New Hampshire, totaling 1,109,252 potential viewers.

NJ (New Jersey)

File No. 96070 CTB New Jersey Public Broadcasting Auth, 25 South Stockton Street, Trenton, NJ 08625. Signed By: Mrs. Elizabeth Christopherson, Executive Director. Funds Requested: $118,600. Total Project Cost: $237,200. To improve the network originating station, WNJT–TV, operating on Ch 52, in Trenton, NJ, by upgrading two ¾" format Analog Videotape Editing systems with two Non-Linear Digital Systems, and upgrading a 40 unit Video Cart Playback System in Master Control with a Digital Video Server. This originating station provides service state-wide to approximately 7,730,188 potential viewers.

NM (New Mexico)

File No. 96001 CTB Univ. of NM & Albuquerque Schools, 1130 University Blvd. NE, Albuquerque, NM 87102. Signed By: Mrs. Ann Powell, Dir.Rsch.-Admin. Univ. of NM. Funds Requested: $400,000. Total Project Cost: $800,000. To improve public television station KNME–TV, Ch. 5, in Albuquerque. Project will replace three studio cameras, a still store, and editing equipment with new non-linear editing equipment. KNME–TV serves about 1.1 million people.

File No. 96007 CTN Mescalero Apache Tribe, 101 Central Street, Mescalero, NM 88340. Signed By: Mr. Wendell Chino, President. Funds Requested: $767,119. Total Project Cost: $1,022,825. To install a cable-fiber optic interconnection system that will, initially, extend the Mescalero Apache Reservation's public television signal to an additional 820 Reservation homes. Over-the-air signal transmission to these homes is blocked by terrain. Via translators, the Mescalero Tribe receives the public television service of station KENW–TV, Portales, NM. The cable will also be connected to the Mescalero hospital, the Mescalero public schools, and the Tribal and Federal Government offices.

File No. 96020 CRB Alamo Navajo School Board, Inc., P.O. Box 907, Magdalena, NM 87825. Signed By: Mr. George Apachito, President. Funds Requested: $13,781. Total Project Cost: $18,375. To improve the facilities of public radio station KABR–AM, 1500 kHZ, in Magdalena, by replacing old equipment in the on-air control room with equipment that will upgrade its ability to automate part of the broadcast day. This will permit an increase in broadcast hours without increasing the staff size. Most of the station's equipment is original and was purchased in 1983 when it went on the air. KABR–AM serves approximately 11,000 people in west central NM.

File No. 96060 CRB Northern NM Radio Foundation, 116 West Buena Vists, Santa Fe, NM 87501. Signed By: Mr. William Sims, President. Funds Requested: $88,332. Total Project Cost: $117,777. To activate a new public radio station on 89.5 MHz, in Las Vegas. Station would be a Rocky Mountain Alternative Station (RMAS) that would repeat the signal of KANW–FM, Albuquerque. In addition, local programming would be provided by the RMAS station staff. Proposed 100-watt station would be located on the campus of the Luna Vocational-Technical Institute and would also be used to instruct students in broadcast skills. Station would provide the first local origination service to about 18,254 people in Las Vegas and surrounding Miguel County, NM.

File No. 96163 CTB Eastern New Mexico University, 15th and Avenue O, Portales, NM 88130. Signed By: Mr. Duane Ryan, Director of Broadcasting. Funds Requested: $49,230. Total Project Cost: $98,460. To improve the facilities of public television station, KENW–TV, Ch. 3, in Portales, by replacing an obsolete character generator and test/monitoring equipment including a waveform/vectorscope, a signal test generator and a modulation monitor. KENW–TV serves about 350,000 residents of eastern NM and west TX.

File No. 96168 CTB Eastern New Mexico University, 15th and Avenue O, Portales, NM 88130. Signed By: Mr. Duane Ryan, Director of Broadcasting. Funds Requested: $101,335. Total Project Cost: $202,670. To improve the facilities of the existing microwave interconnection system between the three state public television stations: KENW–TV, Ch. 3, in Portales, KNME–TV, Ch. 5, in Albuquerque and KRWG–TV, Ch. 22, in Las Cruces. The system also connects four public radio stations: KUNM–FM and KANW–FM in Albuquerque; KRWG–FM, Las Cruces, and KENW–FM, Portales. Project would replace existing hetrodyne microwave receiver/transmitter equipment, replace analog audio subcarrier units with digital equipment and add video synchronizers at microwave endpoints. System serves about 982,000 people in NM.

File No. 96175 ICTN Hispanic Educ'l Telecom. System, Woodward Hall, 115C, Albuquerque, NM 87131–4016. Signed By: Dr. Richard Peck, Chair of HETS Board. Funds Requested: $840,606. Total Project Cost: $1,120,808. To expand participation in the Hispanic Educational Telecommunications System (HETS) project by constructing VSAT satellite terminals and origination classrooms at seven colleges serving Hispanic students: Kings River Community College in California; the John Jay College of Criminal Justice in New York State; Florida International University and Miami Dade Community College in Florida; and the University of Puerto Rico, John Jay College of Criminal Justice and the Ana Mendez University System in Puerto Rico. Origination classrooms will also be constructed at the University of Texas-Brownsville in Texas, and Lehman College in New York State, which currently have HETS VSAT equipment.

File No. 96179 ICTN No. New Mexico Network for Rural Ed, PO Box 640, Bernalillo, NM 87004. Signed By: Mr. Hank Dominguez, President. Funds Requested: $445,719. Total Project Cost: $891,438. To establish a distance education network serving schools and colleges in 14 rural counties in Northern New Mexico. C-band VSAT satellite uplinks and origination studios will be placed at Northern New Mexico Community College in Espanola and New Mexico Highlands University at Las Vegas, NM. Satellite C-band downlinks will be placed at 10 sites, 15 sites will receive both a C-band and Ku-band downlink, and 18 existing downlinks will be upgraded to received compressed digital satellite signals. The project also includes a mobile VSAT terminal for program origination throughout the region.

File No. 96248 CRB Southern New Mexico Radio Fdn., 1505 Crescent Drive, Alamogordo, NM 88310. Signed By: Mr. Robert Flotte, President. Funds Requested: $174,039. Total Project Cost: $232,052. To activate a new FM public radio station on 91.7 MHz, in Alamogordo to provide first local origination to approximately 55,000 people. Proposed new Rocky Mountain Alternative Station (RMAS) will repeat the signal of KRWG–FM, Las Cruces, and will also have local origination capability. Studios will be located on the Alamogordo Branch campus of New Mexico State University.

NV (Nevada)

File No. 96234 CTB Clark County School District, 4210 Channel 10 Drive, Las Vegas, NV 89119. Signed By: Mr. Thomas Axtell, General Manager. Funds Requested: $484,100. Total Project Cost: $818,600. To extend and improve the services of KLVX–TV, Channel 10 in Las Vegas by activating 3 new translators to serve approximately 12,000 residents of Beatty, Goldfield, Mercury, Nevada Test Site, Oasis Valley, Silver Peak and Tonopah. KLVX–TV will also install a new microwave system and replace obsolete and worn out origination equipment including the main routing switcher, two production cameras and test equipment.

NY (New York)

File No. 96009 CRB 95108. State University of NY, Oswego, 14 Lanigan Hall, Oswego, NY 13126. Signed By: Mr. William Shigley, Station Manager. Total Requested: $62, 293. Total Project Cost: $124,586. To improve WRVO–FM, operating on 89.9 MHZ, in Oswego, NY by replacing an old and wornout transmitter and related equipment. This station serves approximately 549, 000 listeners. This project is a reactivation from last year.

File No. 96012 ICTN Rochester Institute of Technology, 91 Lomb Memorial Drive, Rochester, NY 14623. Signed By: Mr. Stanley D. McKenzie, Provost & VP. Funds Requested: $383,581. Total Project Cost: $558,937. To establish a distance learning network in collaboration with Genessee Valley Board of Cooperative Education Services (BOCES) and five area community colleges located in the Rochester-Syracuse-Binghamton area of New York State. The project would purchase multi-point, desk-top video conferencing technology and software to provide diverse educational services and training opportunities to students who are, for the most part, located in remote rural sites.

File No. 96022 CRB Colleges of the Seneca, Hobart & William, Smith Colleges, Geneva, NY 14456. Signed By: Mr. Richard Guarasci, Dean, Hobart College. Funds Requested: $26,500. Total Project Cost: $53,000. To improve WEOS–FM, operating on 89.7 MHz,in Geneva, NY, by replacing the Cart Machine, and upgrading the studio editing system by adding the Non-Linear editing system, the Audio Hard Disc and the Dat Cassette Recorder. The station serves approximately 83,000 listeners.

File No. 96039 CRBN WNYC, One Centre Street, New York, NY 10007. Signed By: Ms. Laura Walker, President. Funds Requested: $6,000. Total Project Cost: $12,000. To improve WNYC–FM, operating on 93.9 MHz, in New York City, by upgrading the master control room control station console due to the addition of new equipment required for satellite operations. Applicant serves approximately 750,000 potential listeners and operates WNYC–AM on frequency 820 Khz.

File No. 96047 CRTB 95122. WMHT Educational Telecommunications, 17 Fern Avenue, PO Box 17, Schenectady, NY 12301. Signed By: Ms. Elizabeth Hood, WMHQ Station. Total Requested: $330,300. Total Project Cost: $660,600. To improve WMHT–TV, CH 17 and WMHT–FM, 89.1 MHz, in Albany, NY by replacing the routing systems interconnecting its television and radio stations, replacing its Master Control Console, Automation System, and Monitoring equipment, and by replacing the master control switchers for its two TV stations, WMHT–TV and WMHQ–TV. This project will help to improve the Public Radio and TV to approximately 2,225,550 people in eastern New York, western Massachusetts, Connecticut, and Vermont.

File No. 96071 ICTN 95064. WXXI Public Broadcasting Council, 280 State Street, Rochester, NY 14614. Signed By: Mr. Norm Silverstein, President and CEO. Funds Requested: $97,461. Total Project Cost: $198,900. To construct a Ku-band satellite uplink to permit public television station WXXI–TV, operating on Ch. 21 in Rochester, NY, to distribute programming nationwide. The uplink would permit the timely distribution of programming such as "Assignment: The World" after the demise of the New York Terrestrial Distribution System, which interconnected all New York State public television stations with an uplink in New York City.

File No. 96149 CRTB Pub Bdcstg Council of Central NY, 506 Old Liverpool Rd., Box 2400, Syracuse, NY 13220–2400. Signed By: Mr. Richard Russell, President & CEO. Funds Requested: $73,600. Total Project Cost: $147,200. To improve WCNY–TV, Ch 24 and WCNY–FM, 91.3 MHz, in Syracuse, NY, by replacing Channel 24's STL, the six-foot microwave transmit antenna and dish, 400 feet of microwave transmission line, a six-foot microwave receive antenna and dish with 200 feet of transmission line at the Pompey transmitter; by replacing for WCNY–FM the STL, and adding 500 receiving units for the applicant's Radio Reading Service. The applicant, with its 2 TV stations and 2 FM stations, serves approximately 1,775,000 people, a TV and Radio in Syracuse and two Radio stations, one in Utica and one in Watertown.

File No. 96157 CRB WSKG Public T/C Council, 601 Gates Road, Vestal, NY 13850. Signed By: Mr. Michael Ziegler, President & CEO. Funds Requested: $123,750. Total Project Cost: $165,000. To expand the coverage of WSKG–FM, operating on 89.3 MHz, in Vestal, NY, by activating full power repeater transmitter in Hornell, NY, which will provide first signal to approximately 47,975 listeners.

File No. 96194 IPTN Niagara County Community College, 3111 Saunders Settlement Road, Sanborn, NY 14132. Signed By: Mr. Gerald Miller, President. Funds Requested: $78,292. Total Project Cost: $127,221. To assess the applicable technologies that could potentially be appropriate to address distance learning needs in Niagara County, New York and surrounding areas, and develop a telecommunications implementation plan for distance learning and training services.

File No. 96203 CTB WSKG Public Telecomm Council, 601 Gates Road, Vestal, NY 13850. Signed By: Mr. Michael Ziegler, President & CEO. Funds Requested: $824,625. Total Project Cost: $1,099,500. To expand WSKG–TV, Ch 46, in Vestal, NY, by establishing a full power repeater TV station in Corning, NY, which will provide first signal to approximately 250,000 viewers. WSKG–TV now operates a TV translator on channel 30 at a power of 1 kilowatt in the Elmira, New York area. This one kilowatt translator is on the same channel as the full power unused allocation in Corning. The coverage provided by the new Corning allocation will also encompass the present coverage of the channel 30 translator, which will reduce the total amount of first service.

OH (Ohio)

File No. 96023 CTB Public Bdcstg Fndn of NW Ohio, 136 Huron Street,

Toledo, OH 43604. Signed By: Ms. Shirley E. Timonere, President & General Manager. Funds Requested: $561,060. Total Project Cost: $1,122,120. To improve public station WGTE–TV, Ch. 30, Toledo, OH, by replacing worn-out and obsolete transmission equipment, including the transmitter, antenna, transmission line, and remote control system. The station serves a population of about 3,583,000.

File No. 96057 CTB Bowling Green State University, 245 Troup Street, Bowling Green, OH 43403. Signed By: Dr. Louis I. Katzner, Assoc Vice President, Research. Funds Requested: $130,750. Total Project Cost: $261,500. To improve the operation of public station WBGU–TV, Ch. 27, Bowling Green, OH, by replacing items of worn-out and obsolete production equipment, including a routing switcher, an editing system, a lighting control system, and lighting fixtures. The station serves a population of about 1,300,000.

File No. 96114 CRB The Ohio State University, 2400 Olentangy River Road, Columbus, OH 43210. Signed By: Mr. Dale K. Ouzts, Dir of Telecomm & Gen Manager. Funds Requested: $219,225. Total Project Cost: $292,300. To extend the signal of public station WOSU–FM, 89.7 MHz, Columbus, OH, by activating a repeater station on 91.1 MHz in Marion, OH. The new station will provide the first public radio signal to about 19,061 persons, and the first nighttime public radio signal to nearly 130,000 persons. WOSU–FM serves a population of about 1,574,00.

File No. 96128 CRB Ohio University, 9 South College Street, Athens, OH 45701. Signed By: Dr. Carol Blum, Associate Vice President. Funds Requested: $138,298. Total Project Cost: $276,596. To improve the operation of public station WOUB–FM, 91.3 MHz, Athens, OH, by replacing worn-out and out-dated items of production equipment, including audio consoles, DAT recorders, CD players, jack panels, distribution amplifiers, an audio editing system, microphones, and an audio switcher and by acquiring a hard-disk audio storage system. The station serves a population of about 853,284.

File No. 96136 CTB The Ohio State University, 2400 Olentangy River Road, Columbus, OH 43210. Signed By: Mr. Dale K. Ouzts, Dir, Telecomm Ctr & Gen Mgr. Funds Requested: $257,219. Total Project Cost: $514,438. To improve the operation of public station WOSU–TV, Ch. 34, Columbus, OH, by replacing worn-out and obsolete items of production equipment, including video tape machines, camera pedestals, and a file server, and items of test equipment. The station serves a population of 1,866,000 in central and southern Ohio.

File No. 96146 CRB Public Bdcstg Fndn of NW Ohio, 136 Huron Street, Toledo, OH 43604. Signed By: Ms. Shirley E. Timonere, President & General Manager. Funds Requested: $63,265. Total Project Cost: $126,530. To improve the operation of public station WGTE–FM, 91.3 MHz, Toledo, OH, by replacing items of worn-out and obsolete equipment, including its transmitter, master control console, CD players, and DAT recorders, and by acquiring a hard-disk audio storage system and digital audio workstations. The station serves a population of 1,101,300.

File No. 96200 CTB ETV Assn of Metropolitan Cleveland, 4300 Brookpark Road, Cleveland, OH 44134–1191. Signed By: Mr. Jerry Wareham, President/General Manager. Funds Requested: $405,050. Total Project Cost: $810,100. To improve public television station WVIZ, Ch. 25, Cleveland, OH, by replacing worn-out and unreliable video tape machines with a hard-disk video server and a robotic digital tape storage system. The station serves a population of about 3,700,000.

File No. 96229 CTB Greater Dayton Public TV, Inc., 110 South Jefferson Street, Dayton, OH 45402. Signed By: Mr. David M. Fogarty, President and Gen Manager. Funds Requested: $99,449. Total Project Cost: $198,898. To improve the operation of public television station WPTD, Ch. 16, Dayton, OH, by replacing various items of worn-out, obsolete equipment, including a routing switcher, a character generator, and monitors, and by acquiring a non-linear tape editing system and an Emergency Alert System. The station serves a population of about 2,632,738.

OK (Oklahoma)

File No. 96061 CTB Oklahoma Educational TV Authority, 7403 North Kelley Avenue, Oklahoma City, OK 73113. Signed By: Mr. Robert Allen, Executive Director. Funds Requested: $350,000. Total Project Cost: $700,000. To improve the facilities of KOET–TV, Channel 3 in Eufaula, and KWET–TV, Channel 12 in Cheyenne by upgrading the transmitters to provide stereo broadcast and SAP services to the community. In addition, the Network's production center in Oklahoma City will replace 17-year-old studio cameras and 16-year-old videotape recorders.

File No. 96115 ICTN Oklahoma St. Univ./Technical Branch, 1801 East 4th Street, Okmulgee, OK 74447. Signed By: Dr. Robert Klabenes, Provost. Funds Requested: $114,206. Total Project Cost: $228,412. To install two compressed, interactive video classrooms as well as associated interconnection equipment to allow Oklahoma State University/Technical Branch/Okmulgee to provide graduate education to Okmulgee County and, via the OneNet system, to disseminate technical education programming throughout the State.

File No. 96195 ICTN Oklahoma State University, Stillwater, OK 74078. Signed By: Dr. Harry Birdwell, VP for Bus. & Ext. Rel. Funds Requested: $130,901. Total Project Cost: $261,802. To install a compressed video classroom and video bridge on the main campus of Oklahoma State University. The classroom will originate instructional programming to be transmitted statewide. The course work will be in the areas of Health Care Management, Engineering Management, Teacher Certification, Educational Specialist, and Telecommunications Management.

File No. 96211 CRB 95198. University of Central Oklahoma, 100 North University Drive, Edmond, OK 73034. Signed By: Mr. Carl Reherman, Director of Outreach. Funds Requested: $118,215. Total Project Cost: $157,620. To provide first public radio service to over 40,000 residents of Pittsburgh County, KCSC–FM, operating on 90.1 MHz in Edmond, Oklahoma, will construct a repeater station in McAlester, operating on 91.9 MHz.

OR (Oregon)

File No. 96216 CTB 95097. Oregon Public Broadcasting, 7140 SW Macadam Ave, Portland, OR 97219. Signed By: Mr. Maynard Orme, President/CEO. Funds Requested: $158,875. Total Project Cost: $317,750. To replace the 30 year old broadcast antenna, transmission line and tower of public television station KOAC–TV, operating on Ch. 7 in Corvallis, OR. The project will enable the station to continue service to 220,000 residents of the Willamette Valley and coastal communities in western Oregon.

PA (Pennsylvania)

File No. 96052 CRB WQED Pittsburgh, 4802 Fifth Avenue, Pittsburgh, PA 15213. Signed By: Mr. H. Melvin Ming, Chief Operating Officer. Funds Requested: $59,029. Total Project Cost: $118,058. To expand and improve the service of public radio station WQED–FM, 89.3 MHz, Pittsburgh, PA, to the Johnstown, PA, area by replacing a translator with a full-power repeater station. An estimated 168,102 persons in western Pennsylvania will receive their first public radio signal from the proposed new transmitter.

File No. 96067 CTB Public Broadcasting of NW PA, Inc., 8425 Peach Street, Erie, PA 16509. Signed By: Mr. F. Brady Louis, President and General Manager. Funds Requested: $54,898. Total Project Cost: $109,797. To improve the production capability of public television station WQLN–TV, Ch. 54, Erie, PA, by replacing obsolete and worn-out cameras. The station serves a population of about 713,000 persons.

File No. 96077 CRB West Philadelphia Ed Bdcst Corp, Inc, 3901 Market Street, Philadelphia, PA 19104. Signed By: Sis. Atikah Bey, Executive Director. Funds Requested: $35,000. Total Project Cost: $70,000. To improve radio station WPEB, 88.1 MHz, Philadelphia, PA, by replacing unspecified items of studio equipment.

File No. 96094 CTB Lehigh Valley Pub. T/C Corp., 123 Sesame Street, Bethlehem, PA 18015. Signed By: Mr. James Baum, President & General Manager. Funds Requested: $164,240. Total Project Cost: $328,480. To improve the production capability of public television station WLVT, Ch. 39, Bethlehem, PA, by replacing its worn-out and obsolete production switcher and acquiring a local insertion server. The station serves a population of about 4,500,000 persons.

File No. 96121 IPTN Philadelphia Enterprise Center, 4601 Market Street, Suite 4000, Philadelphia, PA 19139. Signed By: Mrs. Della Clark, President. Funds Requested: $57,150. Total Project Cost: $114,300. To develop a plan for the use of appropriate technologies that would be feasible to establish a telecommunications center, Project M.A.N. (Minority Alliance Network) that would provide a distance learning and training service to an underserved, low-income, minority population in Philadelphia, Pennsylvania.

File No. 96145 CRB Pennsylvania State University, 202 Wagner Building, University Park, PA 16802–3899. Signed By: Mr. Robert Killoren, Director of Sponsored Programs. Funds Requested: $30,447. Total Project Cost: $60,895. To improve the operation of public radio station WPSU, 91.5 MHz, University Park, PA, by acquiring equipment necessary to permit unattended overnight operation. The project will also acquire the Emergency Alert System equipment necessary to replace the old Emergency Broadcast System, as required by the FCC. WPSU serves a population of about 366,196 persons.

File No. 96156 CTB WQED Pittsburgh, 4802 Fifth Avenue, Pittsburgh, PA 15213. Signed By: Mr. George Miles, Jr., President & CEO. Funds Requested: $30,912. Total Project Cost: $61,913. To improve the service of public television station WQED–TV, Ch. 13, Pittsburgh, PA, by acquiring the necessary equipment to implement descriptive video for an estimated 65,000 sight-impaired persons in the station's coverage area, which included approximately 3,250,000 people.

File No. 96164 CTB Pennsylvania State University, 202 Wagner Building, University Park, PA 16802–3899. Signed By: Mr. Robert Killoren, Director of Sponsored Programs. Funds Requested: $28,533. Total Project Cost: $57,066. To improve the service of public television station WPSX, Ch. 3, University Park, PA, by acquiring the necessary equipment to implement descriptive video service for sight-impaired persons in the station's coverage area, which has a population of about 1,365,627 persons.

File No. 96190 CTB Pennsylvania State University, 202 Wagner Building, University Park, PA 16802–3899. Signed By: Mr. Robert Killoren, Director of Sponsored Programs. Funds Requested: $60,576. Total Project Cost: $121,152. To improve the production capability of public television station WPSX, Ch. 3, University Park, PA, by replacing its outmoded and worn-out off-line video editing stations with a non-linear editing system. The station serves an area with a population of about 1,365,627 persons.

File No. 96239 ICTN Lancaster Co. Area Vo-Tech Schools, 1730 Hans Herr Drive, Willow Street, PA 17584. Signed By: Dr. Richard Burley, Executive Director. Funds Requested: $318,881. Total Project Cost: $637,762. To purchase the equipment for three electronic classrooms and one video production studio—as well as the associated mixing routing, and switching equipment—all to be part of a private, fiber optics-based distance learning system in Lancaster and Lebanon Counties in south central Pennsylvania. The system will interconnect 22 school districts, four area vocational schools, one intermediate unit, four colleges, the public library system, a local hospital, and area businesses/industries.

PR (Puerto Rico)

File No. 96038 CRB University of Puerto Rico, Ponce de Leon Ave. & Pastrana St, Rio Piedras, PR 00931. Signed By: Dr. Efrain Gonzalez-Tejera, Chancellor. Funds Requested: $56,849. Total Project Cost: $113,698. To improve WRTU–FM, operating on 89.7 MHz, Rio Piedras, PR, by upgrading and replacing production equipment for 2 of its 3 studios. The items include two stereo consoles, 22 stereo line inputs, 4 cardioid microphones, stereo cassette deck, 4 CD cart machines, direct drive turntable, console furniture, 2 stereo record/play cart machines, 4 reel to reel record machines, 2 multi effects processors, 4 studio monitor speakers, 2 digital work stations, and 4 Dat record/play machines. WRTU–FM currently serves approximately 2,400,000 listeners.

File No. 96065 CRB University of Puerto Rico, Ponce de Leon Ave. & Pastrana S, Rio Piedras, PR 00931. Signed By: Dr. Efrain Gonzalez-Tejera, Chancellor. Funds Requested: $167,623. Total Project Cost: $335,246. To provide first public radio service to approximately 475,000 residents of the west coast of Puerto Rico by constructing a new FM station in Mayaguez, operating on 88.3 MHz.

SC (South Carolina)

File No. 96092 CRB 95295. South Carolina State University, 300 College Street, Orangeburg, SC 29117–0001. Signed By: Dr. Leroy Davis, Interim President. Funds Requested: $123,020. Total Project Cost: $164,030. To improve and upgrade the facilities of non-commercial radio station WSSB, 90.3 MHz, Orangeburg, SC, by replacing analog control room and production equipment with digital and by acquiring a satellite downlink to gain access to nationally distributed public radio programming. The station serves a population of 114,730.

File No. 96155 ICTN South Carolina ETV Commission, 1101 George Rogers Boulevard, Columbia, SC 29201. Signed By: Mr. Ronald Schoenherr, Senior Vice President. Funds Requested: $359,296. Total Project Cost: $718,592. To construct a locally-programmed, four-channel ITFS distance learning system to serve Williamsburg County, in eastern South Carolina. The system will primarily serve the educational needs of the elementary, middle, secondary, and vocational schools in the county, a total of 15 schools and over 7,000 students. The system, however, will also offer adult education courses to benefit the entire population of the county. The proposed system will be part of the South Carolina Educational Television Commission's expanding statewide telecommunications network.

File No. 96245 ICTN Horry-Georgetown Technical College, P.O. Box 1966, Conway, SC 29526. Signed By: Dr. D. Kent Sharples, President. Funds Requested: $85,600. Total Project Cost: $269,855. To assist Horry-Georgetown Technical College in interconnecting its three campuses with a T–1-based distance learning system. The project would purchase the basic multi-point interconnection equipment for the College's whole system and a video

classroom for the Myrtle Beach campus. The College's other two campuses are in Conway—the main campus—and in Georgetown. The equipment would help the College participate in the South Carolina Technical College Distance Learning Network, which will permit the exchange of course work among the 16 technical colleges statewide.

SD (South Dakota)

File No. 96119 CRB Dakota Nation Broadcasting Corp., BIA, Rd. 7 Tekakwitha Complex, Sisseton, SD 57262. Signed By: Mr. Mike LaBelle, Station Manager. Funds Requested: $42,788. Total Project Cost: $61,725. To upgrade and improve the broadcast operations of KSWS–FM, 89.3 MHz in Sesseton, South Dakota, by replacing the worn-out and obsolete transmitter, constructing a new 197 ft. tower in a new location and purchasing audio storage equipment.

TN (Tennessee)

File No. 96049 CTB 95069. Mid-South Public Com. Foundation, 900 Getwell Street, Memphis, TN 38111–1880. Signed By: Mr. Michael LaBonia, President & CEO. Funds Requested: $83,100. Total Project Cost: $166,200. To upgrade the facilities of WKNO–TV, Channel 12 in Memphis, by replacing worn-out and out-dated 3/4 inch video tape machines used daily in production, editing and on-air operations.

File No. 96084 CTB Metropolitan Board of Public Educ, 161 Rains Avenue, Nashville, TN 37203. Signed By: Dr. Richard Benjamin, Director of Schools. Funds Requested: $200,000. Total Project Cost: $533,200. To upgrade the facilities of WDCN–TV, Channel 8 in Nashville, by replacing 20-year old field cameras, monitoring and related equipment.

File No. 96120 CRB Cossitt Library, 1850 Peabody Avenue, Memphis, TN 38104. Signed By: Ms. Judith Drescher, Director of Libraries. Funds Requested: $231,361. Total Project Cost: $308,481. To extend the signal of WYPL–FM, operating on 89.3 MHz in Memphis, to provide Radio Reading Services to an additional population of approximately 600,000 residents of Tennessee and surrounding communities in neighboring states.

File No. 96170 ICTN The University of Tennessee, 615 McCallie Ave., Chattanooga, TN 37403. Signed By: Dr. Frederick Obear, Chancellor. Funds Requested: $96,537. Total Project Cost: $193,074. To extend the compressed video distance learning systems of the University of Tennessee/Chattanooga to Marion and Rhea Counties by constructing video classrooms in strategically-located sites in each of those counties. It is hoped that the project would eventually serve residents of Hamilton, Bledsoe, Sequatchie, and Grundy Counties as well. The project would be accomplished as a partnership with The Southeast Tennessee Private Industry Council, an employment and training agency established to deliver education and job training to a six-county area of southeast Tennessee. The project's distance learning classrooms would be part of the Council's planned One-Stop Career Centers in Rhea and Marion Counties.

File No. 96197 CTB East Tennessee Pub. Comm. Corp., 1611 E. Magnolia Avenue, Knoxville, TN 37917. Signed By: Mr. Richard Meschendorf, Chair-Board of Trustees. Funds Requested: $190,302. Total Project Cost: $380,604. To upgrade the facilities of WSJK–TV in Sneedville and WKOP–TV in Knoxville by replacing obsolete Master Control equipment and adding other non-existent equipment to meet current broadcast standards.

File No. 96227 CRB University of Tennessee, 615 McCallie Avenue, Chattanooga, TN 37403. Signed By: Dr. Frederick Obear, Chancellor. Funds Requested: $36,759. Total Project Cost: $73,519. To improve broadcast operations and ensure dependable coverage, WUTC–FM, operating on 88.1 MHz in Chattanooga, will relocate its antenna and replace the transmitter.

TX (Texas)

File No. 96017 CTB El Paso Public TV Foundation, Education Bldg. Room #105, El Paso, TX 79902. Signed By: Mr. Robert Munoz, President & General Manager. Funds Requested: $412,275. Total Project Cost: $549,701. To improve the facilities of public television station KCOS–TV, Ch. 13, in El Paso, by replacing its old 18-year old RCA transmitter and related equipment. The replacement equipment will permit KCOS–TV to broadcast in stereo and have SAP capabilities. KCOS–TV serves approximately 650,000 people, 65% of which are Hispanic.

File No. 96059 CTB University of Houston, 1600 Smith Street, Suite 3400, Houston, TX 77004. Signed By: Mr. James Crowther, General Counsel. Funds Requested: $333,954. Total Project Cost: $742,120. To improve public television station KUHT–TV, Ch. 8, in Houston, by replacing its aging and outdated on-air routing switcher and on-air videotape machines with digital equipment. In addition, KUHT–TV will acquire test equipment to allow it to maintain its digital broadcast equipment. KUHT–TV serves approximately 4.2 million people.

File No. 96099 CTB North Texas Public Broadcasting Inc, 3000 Harry Hines Blvd., Dallas, TX 75201. Signed By: Mr. Donald Boswell, Acting President. Funds Requested: $25,000. Total Project Cost: $54,000. To improve the facilities of KERA–TV, Ch. 13, Dallas and KDTN–TV, Ch. 2, Denton, by replacing an 11-year old master control still store. This piece of equipment is essential to both stations since they share origination facilities, personnel and studios. The stations provide service to approximately 4.6 million people.

File No. 96108 CTB Central Texas College, 6200 W. Central Texas Expressway, Killeen, TX 76542. Signed By: Dr. James Anderson, Chancellor. Funds Requested: $27,000. Total Project Cost: $54,000. To improve public television station KNCT–TV, Ch. 46, in Killeen by replacing aging industrial grade on-air U-Matic videotape machines with a digital hard-disk storage retrieval system. KNCT–TV serves approximately 460,000 people.

File No. 96133 CTB Alamo Public T/C Council, 501 Broadway, San Antonio, TX 78215. Signed By: Ms. Joanne Winik, President & General Manager. Funds Requested: $82,526. Total Project Cost: $165,052. To improve public television station KLRN–TV, Ch. 9, in San Antonio by acquiring off-line editing facilities, multi-channel digital audio recording and editing capability. KLRN–TV would also replace two 10-year-old, worn out ¾" videocassette recorders. Market is 55.6% Hispanic. New equipment will facilitate second language versions of programming. KLRN–TV serves approximately 2 million people by over-the-air broadcasts and cable.

File No. 96165 ICTN Texas State Technical College, 300 College Drive, Sweetwater, TX 79556. Signed By: Dr. Clay Johnson, President. Funds Requested: $125,751. Total Project Cost: $251,502. To assist in the establishment of a distance learning network interconnecting the main campus of the Texas State Technical College at Sweetwater with its three extension campuses at Abilene, Breckenridge, and Brownwood. The project would equip a sophisticated lecture video classroom at the main campus; this classroom would have complementary tape production and editing capabilities. The project would also install video classrooms at the three extension campuses. The system will use V–Tel equipment to allow the College's network to interconnect with the V–Tel-based Texas VIDNET system and the network of the Southwest Center for Advanced Technological Education (SCATE). The College's system will use T–1 telephone interconnection.

File No. 96184 CTB Capital of Texas Public T/C Council, 2504–B Whitis Street, Austin, TX 78705. Signed By: Mr. Bill Arhos, President. Funds Requested: $89,034. Total Project Cost: $178,068. To improve public television station KLRU–TV, Ch. 18, in Austin by acquiring a Local Insertion System (LIS) and the accompanying digital audio and videotape support systems. The LIS will eliminate the need to create a daily dub reel in order to make quality station breaks. This process will permit a more efficient use of station equipment and personnel. KLRU–TV serves in excess of 1 million people and is a producer of nationally distributed programming.

File No. 96209 ICTN INFO–NET, PO Box 838, Star, TX 76880. Signed By: Mr. James Ethridge, Superintendent. Funds Requested: $394,330. Total Project Cost: $569,330. To extend the INFO–NET distance learning system to four additional schools districts in central Texas. The new INFO–NET members would be the Evant, Lometa, Richland Springs, and San Saba Independent School Districts. The INFO–NET system currently consists of eight rural Central Texas schools districts: Brady, Cherokee, Goldthwaite, Lohn, Mullin, Priddy, Rochelle, and Star. With the additional districts, the INFO–NET systems would serve the following counties: McCulloch, Mills, San Saba, Coryell, Hamilton, and Lampasas.

UT (Utah)

File No. 96011 CRB Utah State University, 745 N 1200 E, Logan, UT 84322. Signed By: Mr. M.K. Jeppesen, Director, Contracts & Grants. Funds Requested: $14,160. Total Project Cost: $18,880. To extend the signal of public radio station KUSU–FM, 91.5 MHz, in Logan by establishing three FM translators at the following locations: Huntington (Green River/Rural Emery County), on 90.9 MHz; Panquitch, on 88.7 MHz; and Price, on 91.5 MHz. The translators will provide a first public radio service to about 2,400 people and will strengthen and improve the signal to others.

File No. 96183 CTB University of Utah, Media Svcs, 101 Wasatch, Rm 193, Salt Lake City, UT 84112. Signed By: Mr. Ted Capener, VP for University Relations. Funds Requested: $148,424. Total Project Cost: $260,352. To improve and extend the signals of KUED–TV, Ch. 7, Salt Lake City and KULC–TV, Ch. 9, in Ogden, by replacing the following 8 television translators: K38CJ, Teasdale/Bicknell; K30CW, Maryvale/Piute Co.; K40AH, Torrey/Teasdale; K63BY, Milford/Rural Beaver Co.; K62BR, Virgin/Hurricane Mesa; K47AK Rural Washington Co.; K42AJ Richfield/Monroe; K60BU, Orangeville/Rural Emery Co. Project also includes a microwave tv relay system connecting Ford Ridge to Tabby Mountain and the replacement of an aging video tape recorder for KUED–TV. Project would permit approximately 21,300 people to receive a first or improved public television signal.

File No. 96213 ICTN Utah State University, Eccles Conference Ctr., Rm. 102C, Logan, UT 84322–5035. Signed By: Mr. M. K. Jeppesen, Director, Contracts & Grants. Funds Requested: $608,345. Total Project Cost: $1,240,848. To establish a video compression-based distance learning network that will interconnect 47 sites of the Utah State University system. The network will feature ten origination sites. It will use full-motion video with extension computer networking.

VA (Virginia)

File No. 96015 CRB James Madison University, PO Box 1292, Harrisonburg, VA 22801. Signed By: Mr. Henry Schiefer, Assistant VP for Finance. Funds Requested: $10,400. Total Project Cost: $20,800. To upgrade the production facilities of WMRA–FM, operating on 90.7 MHz in Harrisonburg, Virginia, by establishing a digital editing studio.

File No. 96035 ICTN Southside VA Community College, 109 Campus Drive, Alberta, VA 23821. Signed By: Dr. John Cavan, President. Funds Requested: $200,000. Total Project Cost: $300,000. To purchase the equipment for a hub site, with associated connectivity equipment, that will allow the Southside Virginia Telecommunications Network to extend its distance learning systems to eight public high schools, one community college, and one four-year senior institution. The system will feature an integrated voice, video, and data network.

File No. 96042 IPRTN Public Service T/C Corporation, 5203 Leesburg Pike, Falls Church, VA 22041. Signed By: Dr. Louis Bransford, Chief Executive Officer. Funds Requested: $95,660. Total Project Cost: $95,660. To explore and determine the available time and potential capacity that may exist at satellite uplink facilities in the Washington, D.C. area and possibly other areas in the United States, so that national educational organizations and associations may be able to consider more cost-effective and efficient ways of sharing these resources for distance learning and training services.

File No. 96085 ICTN Old Dominion University, Education Building, Room 228, Norfolk, VA 23529–0526. Signed By: Dr. Robert Ash, Vice President/Research. Funds Requested: $867,138. Total Project Cost: $1,734,277. To purchase varied equipment that would allow Old Dominion University to expand its distance learning service to the hearing-impaired. The project would also obtain electronic field production equipment and state-of-the-art editing equipment so that the University might incorporate pre-produced on-location programming segments into televised courses. In addition, other equipment purchased by the project would permit the University's faculty to use voice, data, and video programming in their on-campus courses.

File No. 96097 PRB Clinch Valley College, 1 College Avenue, Wise, VA 24293. Signed By: Dr. L. Jay Lemons, Chancellor. Funds Requested: $10,430. Total Project Cost: $26,865. To conduct planning activities for the establishment of a local public radio station that will serve the programming needs of approximately 35,000 residents of the City of Norton, Virginia, and of rural communities in Wise, Russell, Scott and Dickenson Counties.

File No. 96100 PTB Greater Washington Educ. T/C Assoc., 3620 South 27th Street, Arlington, VA 22206. Signed By: Mr. Joseph Widoff, Sr. V.P., Operations & Admin. Funds Requested: $275,065. Total Project Cost: $550,130. To help public television station WETA plan for the development of the first fully digital Advanced Television (ATV) site in the United States. The project would prepare an HDTV/ATV implementation model to assist both public and commercial television broadcasters in making the transition to ATV. WETA-TV operates on Ch. 26 throughout the greater Washington, D.C. area.

File No. 96126 ICTB Hampton University, 607 Orchard Road, Hampton, VA 23668. Signed By: Dr. William Harvey, President. Funds Requested: $1,116,496. Total Project Cost: $1,488,663. To construct a noncommercial educational television station on the campus of Hampton University to operate on Ch. 55. The objective of the new station would be to broadcast telecourses to the communities of Hampton, Norfolk, Virginia Beach, Portsmouth, Chesapeake, Suffolk, Newport News, Williamsburg, Yorktown and the lower eastern shore of Virginia.

File No. 96169 ICTN Amer. Indian Higher Ed Consortium, 121 Oronoco Street, Alexandria, VA 22314. Signed By: Ms. Margarette Perez, President, AIHEC. Funds Requested: $300,000. Total Project Cost: $400,000. To

establish satellite distance learning facilities at four additional tribal colleges which are members of the American Indian Higher Education Consortium. VSAT terminals and instructional classrooms will be placed at Cheyenne River Community College, Eable Butte, SD, College of the Menominee Nation, Keshena, WI, Fort Berthold Community College, New Town, ND and United Tribes Technical College, Bismarch, ND.

VT (Vermont)

File No. 96148 ICTN 95257. The University of Vermont, 322 South Prospect Street, Burlington, VT 05401–3505. Signed By: Ms. Regina White, Director, Sponsored Programs. Funds Requested: $558,074. Total Project Cost: $1,116,147. To provide a Ku-band satellite uplink, master control and classroom production equipment for the University of Vermont. The project will provide for the satellite distribution of advanced placement and college degree programs to sites throughout the state.

WA (Washington)

File No. 96026 CTB Bates Technical College, 1101 S Yakima Avenue, Tacoma, WA 98405. Signed By: Mr. William Mohler, President. Funds Requested: $437,829. Total Project Cost: $583,773. To provide first public television programming services to approximately 175,000 residents of the north Puget Sound region of Washington State, KBTC–TV, Channel 28 in Tacoma, will activate a repeater station (Ch. 34) with a transmitter to be located on Mt. Constitution in Orcas Island.

File No. 96040 CRB 95290. Spokane Public Radio, 2319 N. Monroe Street, Spokane, WA 99205. Signed By: Mr. Richard Kunkel, General Manager. Funds Requested: $18,480. Total Project Cost: $24,640. To provide first public radio service to about 9,100 residents of Boundary County, Idaho, KPBX–FM, operating on 91.1 MHz in Spokane, Washington, will activate a repeater station in Bonners Ferry, ID, operating on 92.1 MHz.

File No. 96101 CRB Spokane Public Radio, 2319 N. Monroe Street, Spokane, WA 99205. Signed By: Mr. Richard Kunkel, General Manager. Funds Requested: $115,710. Total Project Cost: $154,280. To improve and upgrade its broadcast facilities, KPBX–FM, operating on 91.1 MHz in Spokane, Washington, by replacing worn-out and unreliable equipment, including a 16-year-old transmitter, a 7-year-old STL system, two main control boards and a DAT machine.

File No. 96192 CTN City of Tacoma, 747 Market Street, Tacoma, WA 98402. Signed By: Mr. Ray E. Corpuz, Jr., City Manager. Funds Requested: $308,822. Total Project Cost: $411,763. To purchase the equipment for a remote video production studio, to be placed in a van, that would improve the capabilities of the City of Takoma, WA, to provide coverage of significant community events for transmission over the City's government access cable television channel.

File No. 96116 CRB Washington State University, Administration Road, Pullman, WA 99164–2530. Signed By: Ms. Carol Zuiches, Dir., Off of Grant & Rsch Dev. Funds Requested: $233,149. Total Project Cost: $310,866. To bring public radio service to approximately 120,000 rural residents of western and north central Washington State plus about 180,000 residents of southern British Columbia, WSU will activate repeater stations in Omak (90.1 MHz.), Chehalis (88.9 MHz.) and Port Angeles (90.1 MHz).

File No. 96153 CTB KCTS Television, 401 Mercer Street, Seattle, WA 98109. Signed By: Mr. Burnill Clark, President & CEO. Funds Requested: $507,905. Total Project Cost: $677,207. To provide first public television service to over 237,000 residents of northwest Washington, KCTS–TV, Channel 9 in Seattle, will construct a repeater station in Bellingham, Washington, operating on Channel 34.

File No. 96204 CTB KCTS Television, 401 Mercer Street, Seattle, WA 98109. Signed By: Mr. Burnill Clark, President & CEO. Funds Requested: $193,571. Total Project Cost: $297,802. To improve and upgrade the broadcast facilities of KYVE–TV, Channel 47 in Yakima, Washington, by replacing the antenna, which was damaged by lightning, and adding stereo processing, transmission and monitoring equipment.

File No. 96247 ICTB Northwest Indian College, 2522 Kwina Road, Bellingham, WA 98226. Signed By: Dr. Robert Lorence, President. Funds Requested: $210,726. Total Project Cost: $280,968. To purchase 12 satellite downlink terminals which will extend the applicant's distance learning offerings to additional sites in Washington State, Oregon and Alaska. Northwest Indian College currently provides service to 4 tribal communities via satellite and participates in the American Indian Higher Education Consortium's satellite distance learning project.

WI (Wisconsin)

File No. 96005 CRB White Pine Community Bdcstg, Inc, 303 W. Prospect Street, Rhinelander, WI 54501. Signed By: Mr. Robert Fiocchi, President. Funds Requested: $14,719. Total Project Cost: $29,437. To improve WXPR–FM, operating on 91.MHz, in Rhinelander, WI, by adding 4 tape recorders, 2 cart emulators, 4 SCSI audio drives, the main CPU, the system peripheral interface, and the Radio Systems DDS. WXPR–FM currently serves approximately 66,000 listeners.

File No. 96054 CTB State of Wisconsin, 3319 West Beltline Highway, Madison, WI 53713–4296. Signed By: Mr. Thomas L. Fletemeyer, Executive Director. Funds Requested: $421,020. Total Project Cost: $935,600. The originating and distribution station of the Wisconsin 6 station TV network, WHA–TV, operating on channel 21, is requesting replacement of the worn-out, obsolete master control equipment. This will replace two electromechanical program origination devices with an all-electronic multichannel video library system incorporating file servers and videotape machines. The network provides full service for approximately 5,160,000 viewers.

File No. 96064 IPTN Cooperative Educ. Service Agency 7, 595 Baeten Rd, Green Bay, WI 54304. Signed By: Dr. James Coles, Administrator. Funds Requested: $154,849. Total Project Cost: $520,238. To design an interactive regional telecommunications network for distance learning and training, through the North and East Wisconsin Alliance for Distance Education (NEWADE) which includes four technical colleges, two University of Wisconsin system colleges, a museum, environmental center, library system, and 27 K–12 school districts in the Cooperative Educational Service Agency 7 in a seven-county area surrounding Green Bay, Wisconsin.

File No. 96072 ICTN Western Wisconsin Technical College, 304 North Sixth Street, La Crosse, WI 54602–0908. Signed By: Dr. Lee Rasch, President. Funds Requested: $31,750. Total Project Cost: $63,500. To construct a video conferencing system that will extend nursing educational and instructional programming to the Western Wisconsin Technical College campuses in Independence, Black River Falls, Mauston, and Viroqua.

File No. 96103 IPTN Project Bootstrap Inc., 210 South Brooks Street, Madison, WI 53715–1562. Signed By: Mrs. Joanne Griffin, Executive Director. Funds Requested: $10,475. Total Project Cost: $17,915. To plan for methods of enabling At-Risk high school and middle school students in disadvantaged areas of Dane County and particularly Madison, Wisconsin,

participate in distance learning opportunities through the use of various technologies in an interconnected classroom system.

File No. 96150 CRB Back Porch Radio Brdcstg, Inc., 118 South Bedford Street, Madison, WI 53703. Signed By: Mr. Terry O'Laughlin, President, Board of Directors. Funds Requested: $21,000. Total Project Cost: $42,687. To improve WORT–FM, operating on 89.9 MHz, in Madison, WI, by replacing the transmitter and accessories and adding a dial-up remote control unit. The 16 year old transmitter is in constant need of repair. The station provides service to approximately 390,000 listeners.

File No. 96199 CTB University of Wisconsin, 2420 Nicolet Drive, Green Bay, WI 54311. Signed By: Ms. Cheryl Gest, Administrative Officer. Funds Requested: $85,000. Total Project Cost: $170,000. To improve one of the 7 Wisconsin Public Television Network stations, WPNE, Ch 38 in Green Bay, by replacing 3 digital VTRs, an Editing Controller and 3 Waveform Monitors. WPNE–TV serves approximately 488,000 viewers in its coverage area.

WV (West Virginia)

File No. 96055 CRB WV Educational Brdstg Authority, 600 Capitol Street, Charleston, WV 25301. Signed By: Ms. Rita Ray, Executive Director. Funds Requested: $7,499. Total Project Cost: $9,999. To provide first public radio service to about 17,000 people in the rural communities of Logan and Bluefield, WVPN–FM, operating on 88.5 MHz in Charleston, West Virginia, will install a translator in Logan, operating on 91.9 MHz., and all necessary satellite equipment.

File No. 96191 PRB U.N.I.T.Y. Communications, Inc., 1560 Jackson St., P.O. Box 5605, Charleston, WV 25361. Signed By: Mr. Charles Blackmon, President. Funds Requested: $989,789. Total Project Cost: $989,789. To conduct a needs assessment and to develop a plan for the establishment of a public radio station that will serve the Afro-American community of Charleston, West Virginia, by providing educational programming and training facilities in the field of radio broadcasting.

Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. 96–12792 Filed 5–20–96; 8:45 am]

BILLING CODE 3510–60–P

Reader Aids

Federal Register

Vol. 61, No. 99

Tuesday, May 21, 1996

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–523–5227**
Public inspection announcement line	**523–5215**
Laws	
Public Laws Update Services (numbers, dates, etc.)	**523–6641**
For additional information	**523–5227**
Presidential Documents	
Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**
Other Services	
Electronic and on-line services (voice)	**523–4534**
Privacy Act Compilation	**523–3187**
TDD for the hearing impaired	**523–5229**

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. **202–275–0920**

FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

FEDERAL REGISTER PAGES AND DATES, MAY

19155–19502	1
19503–19804	2
19805–20116	3
20117–20418	6
20419–20700	7
20701–21046	8
21047–21360	9
21361–21946	10
21947–24204	13
24205–24432	14
24433–24664	15
24665–24874	16
24875–25134	17
25135–25388	20
25389–25548	21

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6889 19503
6890 19803
6891 20419
6892 21045
6893 21047
6894 24661
6895 24663
6896 25129

Executive Orders:
11216 (See EO 13002) 24665
13001 21943
13002 24665
13003 25131

Administrative Orders:
Memorandums:
April 26, 1996 19505
April 26, 1996 24667
April 26, 1996 24877
April 28, 1996 19507

4 CFR

Proposed Rules:
21 19205

5 CFR

Ch. LXIX 20117
300 19509
410 21947
532 20701
831 21953
842 21953

7 CFR

28 19511
51 20702
53 19155
54 19155
272 19155
273 19155
301 20877
319 24433
800 24669
810 24669
900 20717
915 19512
916 19160
917 19160
946 20119
956 20121
959 24877
979 20718
985 20122
1002 20719
1004 20719
1007 20124
1280 ..... 19514, 21049, 21053
1485 24205
1841 21361
1843 21361
1845 21361
1903 21361
1945 21361
1980 21361
2054 21361
3403 25366

Proposed Rules:
51 24247
911 20754
924 20756
944 ..... 20754, 20756
958 20188
1005 19861
1007 19861
1011 19861
1046 19861
1160 20759

8 CFR

3 ..... 19976, 21065, 21228
242 ..... 19976, 21065, 21228

9 CFR

50 25135
77 25135
78 19976
130 ..... 20421, 25513

Proposed Rules:
92 ..... 20189, 20190, 21389
93 20190
94 20190
95 20190
96 20190
98 20190
301 19564
304 19578
308 19578
317 ..... 19564, 19578
318 ..... 19564, 19578
319 19578
320 19564
381 ..... 19564, 19578

10 CFR

20 24669
30 24669
40 24669
61 24669
70 24669
72 24669

Proposed Rules:
26 ..... 21105, 24731
72 24249

11 CFR

110 24533

12 CFR

5 19524
19 20330
20 19524
25 21362

28.....19524
205.....19662, 19678
211.....24439
220.....20386
228.....21362
229.....25389
250.....19805
263.....20338
308.....20344
345.....21362
509.....20350
563e.....21362
614.....20125

Proposed Rules:
207.....20399
215.....19863
220.....20399
221.....20399
614.....24907

13 CFR

Proposed Rules:
121.....20191

14 CFR

21.....20696
25.....24208, 24213
27.....21904
29.....21894, 21904
31.....20877
39.....19540, 19807, 19808, 19809, 19811, 19813, 19815, 20125, 20127, 20616, 20636, 20638, 20639, 20641, 20643, 20644, 20646, 20668, 20669, 20671, 20672, 20674, 20676, 20677, 20679, 20681, 20682, 21066, 21068, 21070, 21071, 24206, 24214, 24216, 24218, 24220, 24675, 24684, 24686, 24688, 24690, 24691, 24878, 24881, 24883, 24884
43.....19498
71.....19541, 19542, 19816, 19817, 21364, 21365, 21953, 24222, 24223
73.....20127
91.....24430
97.....25138. 25139, 25141
159.....19784
205.....19164
323.....19164
385.....19166

Proposed Rules:
29.....20760
39.....20192, 20194, 20762, 20764, 21146, 21979, 21980, 21982, 24250, 25417, 25418
71.....19590, 19591, 19592, 19593, 21910, 21984, 24533, 25157
91.....24582
121.....21149, 24582, 24533
127.....24582
135.....24582
158.....25420

15 CFR

902.....19171, 21926
981.....21073

Proposed Rules:
946.....19594

16 CFR

1500.....19818

Proposed Rules:
254.....19869
1210.....20503

17 CFR

1.....19177, 19830
3.....20127
5.....19830
10.....21954
31.....19830
140.....21954
200.....20721, 25652
228.....25652
229.....25652
230.....21356, 25652
231.....24644
232.....25652
239.....25652
240.....21354, 25652
241.....24644
249.....21354
270.....25652
271.....24644
274.....25652
276.....24644

Proposed Rules:
1.....19869
156.....19869

18 CFR

35.....21940
37.....21737
385.....21940
1300.....20117

Proposed Rules:
35.....21847
161.....19211
250.....19211
284.....19211, 19832
346.....19878

19 CFR

10.....19834, 24887
12.....24888
103.....19835
145.....24888
161.....24888

Proposed Rules:
101.....19834

20 CFR

200.....25390
345.....20070
601.....19982
617.....19982
626.....19982
658.....19982
702.....19982

21 CFR

2.....25390
5.....24223
101.....20096, 21074
173.....25392
201.....20096
310.....25142
341.....25142
369.....20096
500.....19542
501.....20096
510.....21075, 24440
520.....24441, 24443
522.....21075, 24440
556.....24440, 24441
558.....21075, 24443, 24694
582.....19542
589.....19542
600.....24227
601.....24227
740.....20096
801.....20096

Proposed Rules:
Ch. 1.....21392
25.....19478
101.....25421
102.....19220
130.....19220
131.....19220
133.....19220
135.....19220
136.....19220
137.....19220
139.....19220
145.....19220
146.....19220
150.....19220
152.....19220
155.....19220
156.....19220
158.....19220
160.....19220
161.....19220
163.....19220
164.....19220
165.....19220
166.....19220
168.....19220
169.....19220
210.....20104
211.....20104
328.....21392
530.....25118
589.....24253

22 CFR

126.....19841
514.....20437

24 CFR

0.....19187
201.....19788
290.....19188
585.....25124
941.....19708
970.....19708

Proposed Rules:
206.....21910
888.....20982
901.....20358
3500.....21394

25 CFR

Proposed Rules:
144.....24731
250.....19600
525.....21394

26 CFR

1.....19188, 19189, 19544, 19546, 21366, 21955
301.....19189
602.....19189

Proposed Rules:
1.....20503, 20766, 20767, 21985, 21988
31.....20767
32.....20767
35a.....20767
301.....20503, 21989

27 CFR

1.....20721
4.....20721
7.....20721
16.....20721
19.....20721
20.....20721
21.....20721
22.....20721
24.....20721, 21076
25.....20721
53.....20721
55.....20721
71.....20721
170.....20721
178.....20721
179.....20721
194.....20721
197.....20721
200.....20721
250.....20721
251.....20721
252.....20721
270.....20721
275.....20721
285.....20721
290.....20721
296.....20721

28 CFR

58.....24889
501.....25120
550.....25120

Proposed Rules:
90.....24526
100.....21396

29 CFR

1.....19982
2.....19982
4.....19982
5.....19982
6.....19982
7.....19982
8.....19982
22.....19982
24.....19982
32.....19982
96.....19982
500.....24694
504.....19982
507.....19982
508.....19982
530.....19982
1601.....21370
1910.....19547, 21228
1978.....19982
2619.....21228, 24444, 25513
2627.....24694
2676.....24444

Proposed Rules:
Ch. XIV.....20768
4.....19770
102.....25158

30 CFR

75.....20877
250.....25147

Proposed Rules:
Ch. II.....21977, 25160
202.....25421
206.....25421
211.....25421
256.....24466
901.....20768
902.....20768
904.....19881, 20768
913.....20768
914.....20768
915.....20768
916.....20768
917.....20768
918.....20768
920.....20768
934.....25425
936.....25426
946.....19885
950.....20773

31 CFR

12.....25396
361.....20437
585.....24696

Proposed Rules:
356.....25164

33 CFR

52.....24233
100.....19192, 20132, 21959, 21960, 21961, 21962, 25149
110.....25149
117.....24235, 25149
165.....19192, 19841, 21963, 24697, 24698, 24699, 24701, 24892
401.....19548

34 CFR

361.....24390
685.....24446

Proposed Rules:
100.....20196, 21998, 21999, 22001
117.....22002
154.....20084
155.....20084

36 CFR

292.....20726
1228.....19552, 24702

Proposed Rules:
7.....20775
100.....19220
117.....19223

37 CFR

Proposed Rules:
Ch. II.....20197, 22004
1.....19224, 20877

38 CFR

2.....20133, 20437
3.....20438, 20726
4.....20438, 20440
9.....20134
17.....21964, 24236
19.....20447
20.....20447
21.....20727, 24237

Proposed Rules:
3.....24910
17.....25428

39 CFR

3001.....24447

Proposed Rules:
233.....21404

40 CFR

52.....19193, 19555, 20136, 20139, 20142, 20145, 20147, 20453, 20455, 20458, 20730, 20732, 24239, 24457, 24702, 24706, 24709, 24712
55.....25149
110.....25149
117.....25149
60.....20734, 21080
63.....21370, 25397
70.....20150, 24457, 24715
80.....20736
81.....20458, 21372, 24239, 24242
89.....20738
90.....20738
123.....20972
131.....20686
141.....24354
167.....25151
180.....19842, 19845, 19847, 19849, 19850, 19852, 19854, 19855, 20742, 20743, 20745, 21378, 24893, 25152
185.....25153
300.....20473, 24720, 24894
355.....20473
421.....24242

Proposed Rules:
Ch. I.....19432
51.....19231
52.....19233, 19601, 20199, 20200, 20201, 20504, 21405, 21412, 24467, 24737, 24738
55.....25173
61.....20775
63.....19887, 21414
70.....20202
80.....20779
81.....19233, 21415
89.....20738
90.....20738
170.....19889
148.....21418
180.....19233, 20780, 20781, 24738, 24911
185.....20780
186.....10780, 20781, 24911
261.....21418, 25175
268.....21418
271.....21418
300.....19889, 20202, 20785, 21422, 22004, 22006, 24261

41 CFR

50–203.....19982
60–1.....19982, 25516
60–30.....19982
60–60.....25516
60–250.....19366, 19982
60–741.....19336, 19982

42 CFR

405.....19722
412.....21969
486.....19722

Proposed Rules:
84.....24740, 25513

43 CFR

11.....20560

44 CFR

61.....19197
62.....24462
64.....19857
65.....25400, 25402, 25403
67.....25405
206.....19197

Proposed Rules:
67.....25429, 25435

45 CFR

Proposed Rules:
1311.....24467

46 CFR

Ch. I.....24464
10.....19858
15.....19858
30.....25272
31.....25272
32.....25272
33.....25272
35.....25272
70.....25272
71.....25272
75.....25272
77.....25272
78.....25272
90.....25272
91.....25272
94.....25272
96.....25272
97.....25272
107.....25272
108.....25272
109.....25272
114.....20556
116.....20556
117.....20556
118.....20556
119.....20556
120.....20556
121.....20556
122.....20556
125.....25272
133.....25272
167.....25272
168.....25272
170.....20556, 24464
171.....24464
173.....20556, 24464
175.....20556
176.....20556
177.....20556
178.....20556
179.....20556
180.....20556
181.....20556
182.....20556
183.....20556
185.....20556
188.....25272
189.....25272
192.....25272
195.....25272
196.....25272
199.....25272
298.....21302
381.....24895
403.....21081
404.....21081

47 CFR

3.....20155
22.....21380
64.....20746, 24897
73.....20490, 20747, 21384, 21385, 21973, 24262, 24263, 24465
90.....21380
97.....21385

Proposed Rules:
Ch. I.....22008
0.....21151
1.....19236, 20505, 24743, 25183
2.....19236
15.....24473, 24749
21.....19236
22.....24470
24.....24470
64.....25184
73.....19601, 20206, 20207, 20505, 20789, 21425, 24262, 24263, 25183
80.....21151
90.....25185
94.....19236

48 CFR

Ch. 1.....24263
209.....25408
231.....21973
242.....25409
243.....25408
570.....24720
801.....20491
803.....20491
804.....20491
805.....20491
806.....20491
808.....20491
810.....20491
812.....20491
813.....20491
815.....20491
816.....20491
820.....20491
822.....20491
828.....20491
833.....20491
834.....20491
836.....20491
837.....20491
846.....20491
871.....20493
904.....21975
906.....21975
911.....21975
912.....21975
913.....21975
915.....21975
919.....21975
925.....21975
926.....21975
933.....21975
950.....21975
952.....21975
970.....21975
2401.....19468
2402.....19468
2404.....19468
2405.....19468
2406.....19468
2409.....19468
2411.....19468
2412.....19468
2413.....19468
2414.....19468
2415.....19468
2416.....19468
2417.....19468
2419.....19468
2420.....19468
2426.....19468
2428.....19468
2429.....19468
2432.....19468
2434.....19468
2436.....19468
2437.....19468
2442.....19468

2452.....19468
2453.....19468
Proposed Rules:
Ch. 1.....22010
Ch. 2.....22010
52.....24473
901.....19891
905.....19891
906.....19891
908.....19891
915.....19891
916.....19891
917.....19891
922.....19891
928.....19891
932.....19891
933.....19891
935.....19891
936.....19891
942.....19891
945.....19891
952.....19891
971.....19891
1515.....25440
1552.....25440

49 CFR

18.....21386
37.....25409
38.....25409
90.....21386
107.....21084
171.....21084, 24904
172.....20747
173.....20747, 21084, 24904
174.....20747
176.....20747
178.....21084
180.....24904
195.....24244
228.....20494
397.....20496
564.....20497
571.....19201, 19202, 19560, 19561, 20170, 20172, 20497
604.....19562
609.....19562
639.....25088
1051.....19859
1053.....19859
1164.....21387
1311.....21387
1312.....19859
1330.....024722
Proposed Rules:
219.....21149
382.....21149
537.....22010
571.....19602, 24263, 24265
653.....21149
654.....21149
1002.....20877
1100.....19236
1101.....19236
1102.....19236
1103.....19236
1104.....19236
1105.....19236
1106.....19236
1107.....19236
1108.....19236
1109.....19236
1110.....19236
1111.....19236
1112.....19236
1113.....19236
1114.....19236
1115.....19236
1116.....19236
1117.....19236
1118.....19236
1119.....19236
1120.....19236
1121.....19236
1122.....19236
1123.....19236
1124.....19236
1125.....19236
1126.....19236
1127.....19236
1128.....19236
1129.....19236
1130.....19236
1131.....19236
1132.....19236
1133.....19236
1134.....19236
1135.....19236
1136.....19236
1137.....19236
1138.....19236
1139.....19236
1140.....19236
1141.....19236
1142.....19236
1143.....19236
1144.....19236
1145.....19236
1146.....19236
1147.....19236
1148.....19236
1149.....19236
1185.....22014
1300.....21153
1305.....24474
1312.....19902

50 CFR

17.....24722
91.....25155
216.....21926
222.....21926
253.....19171
255.....19171
620.....20175
658.....24728
661.....20175
663.....21102
672.....19976, 21104, 24729
675.....19976, 24730, 24905
678.....21978
Proposed Rules:
16.....24267
17.....19237, 21426
246.....25443
280.....25443
281.....25443
282.....25443
298.....25443
299.....25443
300.....25443
301.....25443
371.....25443
380.....25443
600.....19390
601.....19390
602.....19390
603.....19390
605.....19390
611.....19390
619.....19390
620.....19390
621.....19390
625.....20506
628.....20789
641.....24267
649.....20207
650.....20207, 21431
651.....20207
655.....25185
652.....19604
672.....24475, 24750
673.....19902, 21431
675.....24475, 24750
676.....24475
695.....25443

REMINDERS

The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

DEFENSE DEPARTMENT
Acquisition regulations:
- Direct submission of vouchers to disbursing office; published 5-21-96
- Higher education institutions with anti-ROTC policy; published 5-21-96

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
- Rhode Island; published 3-22-96
- Wisconsin; published 3-22-96

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Captan, etc.; published 3-22-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food additives:
- Adjuvants, production aids, and sanitizers--
  - Formaldehyde, polymer with 1-naphthylenol; published 5-21-96
- Paper and paperboard components--
  - Diethanolamine; published 5-21-96

RAILROAD RETIREMENT BOARD
Public information availablty; fee schedule; published 5-21-96

TREASURY DEPARTMENT
Tobacco products; sale and distribution restriction; published 5-21-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
- Horses; vesicular stomatitis; comments due by 5-31-96; published 4-1-96

Interstate transportation of animals and animal products (quarantine):
- Brucellosis in cattle and bison--
  - Brucella vaccine approval; comments due by 5-31-96; published 4-1-96

AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
- Pear crop provisions; comments due by 5-28-96; published 4-25-96

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
- Processed meat and poultry products; nutrient content claim and general definition and standard of identity; comment period extension; comments due by 5-28-96; published 2-27-96

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
- Atlantic golden crab fishery, etc.; comments due by 5-28-96; published 4-11-96
- Northeast multispecies, Atlantic sea scallop, and American lobster; comments due by 5-30-96; published 5-6-96
- Ocean salmon off coasts of Washington, Oregon, and California; comments due by 5-31-96; published 5-6-96

International fisheries in U.S. Exclusive Economic Zone and on high seas; regulations consolidation; comments due by 5-30-96; published 5-21-96
Magnuson Act provisions; regulations consolidation and update; comments due by 5-31-96; published 5-1-96

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
- Contractor overhead certification; comments due by 5-28-96; published 3-29-96

ENVIRONMENTAL PROTECTION AGENCY
Air pollution; standards of performance for new stationary sources:
- Volatile organic compound (VOC) emissions--
  - Automobile refinish coatings; comments due by 5-30-96; published 4-30-96

Air quality implementation plans:
- Preparation, adoption, and submittal--
  - Volatile organic coumpound definition; HFC 43-10mee and HCFC 225ca and cb exclusion; comments due by 5-31-96; published 5-1-96

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 5-30-96; published 4-30-96
- Florida; comments due by 5-28-96; published 4-25-96
- Kansas and Missouri; comments due by 5-28-96; published 4-25-96
- Wisconsin; comments due by 5-29-96; published 4-29-96

Hazardous waste program authorizations:
- Alabama; comments due by 5-28-96; published 4-25-96
- Kentucky; comments due by 5-28-96; published 4-26-96
- North Carolina; comments due by 5-28-96; published 4-25-96
- South Carolina; comments due by 5-28-96; published 4-26-96

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Aluminum tris (O-ethylphosphonate); comments due by 5-28-96; published 4-26-96
- Dicofol, etc.; comments due by 5-30-96; published 3-1-96
- Quizalofop ethyl; comments due by 5-28-96; published 4-26-96

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
- Microwave relocation for C, D, E, and F blocks; voluntary negotiation period shortening, etc.; comments due by 5-28-96; published 5-15-96

Communications equipment:
- Radio frequency devices--
  - Vehicle radar systems and radio astronomy operations; protection from interference; use of frequency bands above 40 GHz restricted; comments due by 5-28-96; published 3-29-96

Television broadcasting:
- Telecommunications Act of 1996--
  - Cable reform provisions; comments due by 5-28-96; published 4-30-96

FEDERAL ELECTION COMMISSION
Reports by political committees:
- Electronic filing of reports; comments due by 5-28-96; published 3-27-96

GENERAL ACCOUNTING OFFICE
Practice and procedure:
- Personnel Appeals Board--
  - Reductions in force; comments due by 5-31-96; published 3-7-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare and Medicaid:
- Prepaid health care organizations; physician incentive plans requirements; comments due by 5-28-96; published 3-27-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Inspector General Office, Health and Human Services Department
Medicare and Medicaid:
- Prepaid health care organizations; physician incentive plans requirements; comments due by 5-28-96; published 3-27-96

INTERIOR DEPARTMENT
Fish and Wildlife Service
Migratory bird hunting:
- Migratory bird harvest information program; participating States; comments due by 5-29-96; published 4-29-96

INTERIOR DEPARTMENT
Tribal government:
- Self-governance program; awarding negotiation and planning grants; procedure establishment; comments due by 5-31-96; published 4-23-96

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Immigration:

Immigrant petitions--
Battered or abused spouses and children; classification as immediate relative of U.S. citizen or preference immigrant; self-petitioning; comments due by 5-28-96; published 3-26-96

JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Inmate personal property; authorized personal property lists standardization and transportation procedures; comments due by 5-31-96; published 4-1-96

POSTAL SERVICE
International Mail Manual:
International package consignment service implementation; comments due by 5-31-96; published 3-28-96

SECURITIES AND EXCHANGE COMMISSION
Securities:
Odd-lot tender offers by issuers; comments due by 5-28-96; published 4-25-96

SMALL BUSINESS ADMINISTRATION
Small business size standards:
Nonmanufacturer rule; waivers--
Purified terephthalic acid ground and unground; comments due by 5-29-96; published 5-6-96
Tabulating paper (computer forms, manifold or continuous); comments due by 5-29-96; published 5-6-96

TRANSPORTATION DEPARTMENT
Coast Guard
Merchant marine officers and seamen:
Electronic records of shipping articles and certificates of discharge; comments due by 5-28-96; published 3-28-96
Tankermen and persons in charge of dangerous liquids and liquefied gases transfers; qualifications; comment period reopening; comments due by 5-28-96; published 3-26-96
Regattas and marine parades:
Harborwalk Boat Race; comments due by 5-28-96; published 3-26-96
Suncoast Kilo Run et al.; comments due by 5-31-96; published 5-1-96

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 5-28-96; published 4-15-96
AlliedSignal, Inc.; comments due by 5-28-96; published 3-26-96
Beech; comments due by 5-28-96; published 4-15-96
CFM International; comments due by 5-28-96; published 3-26-96
McDonnell Douglas; comments due by 5-31-96; published 4-19-96
Airworthiness standards:
Special conditions--
Cessna model 425 airplanes; comments due by 5-30-96; published 4-30-96
Class E airspace; comments due by 5-30-96; published 4-30-96
Jet routes; comments due by 5-30-96; published 4-16-96

TRANSPORTATION DEPARTMENT
Federal Highway Administration
Motor carrier safety standards:
Commercial Driver's License and Physical Qualification Requirements Negotiated Rulemaking Advisory Committee--
Intent to establish; comments due by 5-29-96; published 4-29-96

TRANSPORTATION DEPARTMENT
Surface Transportation Board
Railroad contracts:
Specified rail services provision under specified rates and conditions; comment due date extended; comments due by 5-28-96; published 4-22-96

TREASURY DEPARTMENT
Customs Service
Organization and functions; field organization, ports of entry, etc.:
Columbus, OH; port limits extension; comments due by 5-31-96; published 5-3-96

TREASURY DEPARTMENT
Fiscal Service
Treasury certificates of indebtedness, notes, and bonds; State and local government series; comments due by 5-30-96; published 4-30-96

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List May 20, 1996

NEW EDITION

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

Revised January 1, 1994

The GUIDE is a useful reference tool, compiled from agency regulations, designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

Compiled by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Order Form

Charge your order. It's easy! MasterCard VISA

Order Processing Code: * 7296

To fax your orders (202) 512-2250

❑ **YES,** send me ____ subscriptions to **1994 Guide to Record Retention Requirements in the CFR,** S/N 069-000-00056-8, at $20.00 ($25.00 foreign) each.

The total cost of my order is $ _____. (Includes regular shipping and handling.) Price subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

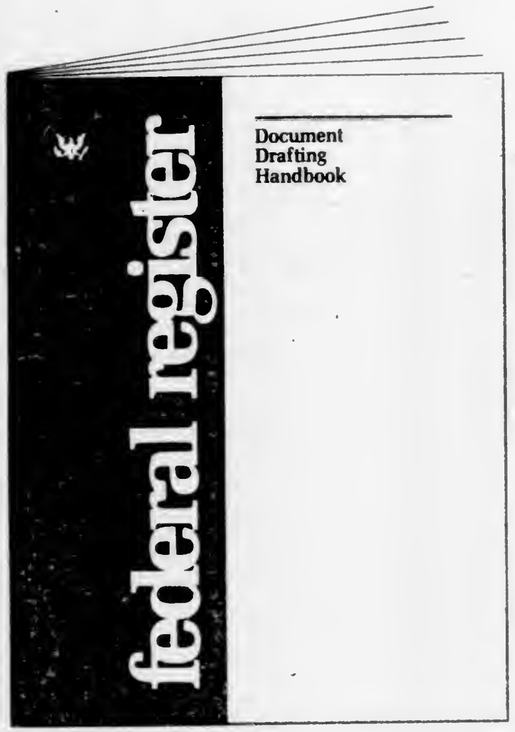
Purchase order number (optional)

Check method of payment:
❑ Check payable to Superintendent of Documents
❑ GPO Deposit Account ☐☐☐☐☐☐ – ☐
❑ VISA ❑ MasterCard ☐☐ / ☐☐ (expiration date)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Thank you for your order!

Authorizing signature 4/94

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954



Federal Register Document Drafting Handbook

A Handbook for Regulation Drafters

This handbook is designed to help Federal agencies prepare documents for publication in the Federal Register. The updated requirements in the handbook reflect recent changes in regulatory development procedures, document format, and printing technology.

Price $5.50

Superintendent of Documents Publication Order Form

Order processing code: *6133

Charge your order. It's easy!

To fax your orders and inquiries—(202) 512-2250

☐ **YES,** please send me the following indicated publications:

_____ copies of **DOCUMENT DRAFTING HANDBOOK at $5.50 each.** S/N 069-000-00037-1

1. The total cost of my order is $_____ Foreign orders please add an additional 25%.
All prices include regular domestic postage and handling and are subject to change.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

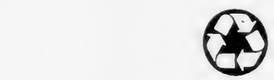
_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

(Rev 12/91)

4. **Mail To:** New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954



Printed on recycled paper

OL
1
SS
1
0
0
MY
2 2
996
UMI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

5–22–96
Vol. 61

No. 100

federal register

Wednesday
May 22, 1996

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 96 R
UMI
SERIALS ACQUISITIONS
PO BOX 1346
ANN ARBOR MI 48106

OL
1
SS
1
0
0
MY
2 2
996
UMI

5–22–96
Vol. 61 No. 100
Pages 25549–25774

federal register

Wednesday
May 22, 1996

Briefings on How To Use the Federal Register
For information on briefings in Chicago, IL and Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $494, or $544 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $433. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 61 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243
For other telephone numbers, see the Reader Aids section at the end of this issue.

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

CHICAGO, IL

WHEN: June 11, 1996 at 9:00 am
WHERE: Metcalfe Federal Building, Conference Room 328, 77 West Jackson, Chicago, Illinois 60604
RESERVATIONS: 1–800–688–9889

WASHINGTON, DC

[Two Sessions]

WHEN: June 18, 1996 at 9:00 am, and June 25, 1996 at 9:00 am
WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 61, No. 100
Wednesday, May 22, 1996

Agricultural Marketing Service
RULES
Fruits, vegetables, and other products, processed:
Inspection, certification, and standards fee schedule, 25549–25550
Onions, imported, 25556–25557

Agriculture Department
See Agricultural Marketing Service
See Food and Consumer Service
See Food Safety and Inspection Service

Bonneville Power Administration
NOTICES
Records of decision:
Templates (new power sales contracts) and amendatory agreement (No. 7), 25657

Children and Families Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 25680–25681
Grants and cooperative agreements; availability, etc.:
Social services block grants; State allotments, 25681–25682

Commerce Department
See Export Administration Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Chicago Mercantile Exchange—
Taiwan Stock Index, 25636
Meetings; Sunshine Act, 25636–25637

Consumer Product Safety Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 25637

Defense Department
See Navy Department
RULES
Privacy Act; implementation, 25561–25566

Employment and Training Administration
NOTICES
Unemployment compensation:
Unemployment insurance program letters—
Federal unemployment insurance law interpretation, 25691–25693

Employment Standards Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 25693–25694

Energy Department
See Bonneville Power Administration
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
See Western Area Power Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Environmental Management Site-Specific Advisory Board, 25646–25647
Environmental statements; availability, etc.:
Argonne National Laboratory-West, ID—
Electrometallurgical treatment research and demonstration project, 25647–25655
Hanford Site, WA—
Plutonium finishing plant stabilization, 25655–25656
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Ventron Site, MA, 25656–25657

Energy Efficiency and Renewable Energy Office
NOTICES
Meetings:
State Energy Advisory Board, 25657

Environmental Protection Agency
RULES
Air programs:
Ambient air quality standards, national—
Sulfur oxides (sulfur dioxide), 25566–25580
Stratospheric ozone protection—
Ozone-depleting substances; substitutes list, 25585–25594
Clean Air Act:
Acid rain program—
Continuous emission monitoring; correction, 25580–25585
PROPOSED RULES
Air programs:
Stratospheric ozone protection—
Ozone-depleting substances; substitutes list, 25604–25612
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 25665–25666
Pesticide registration, cancellation, etc.:
Diethyl toluamide, etc., 25666–25669
Reports; availability, etc.:
Urban soil lead abatement demonstration project; integrated report on three-city lead study, 25669–25670

Equal Employment Opportunity Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 25670–25671

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Export Administration Bureau
NOTICES
Meetings:
Information Systems Technical Advisory Committee, 25620–25621

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 25558–25560
McDonnell Douglas, 25557–25558
PROPOSED RULES
Airworthiness directives:
de Havilland, 25598–25600
Class E airspace, 25600–25601
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 25729–25730
Exemption petitions; summary and disposition, 25730–25731
Grants and cooperative agreements; availability, etc.:
Airport capital improvement program national priority system; comment request, 25731–25732
Meetings:
Aviation Rulemaking Advisory Committee, 25732
RTCA, Inc., 25732–25733
Passenger facility charges; applications, etc.:
Miami International Airport, FL, 25733

Federal Communications Commission
RULES
Common carrier services:
Domestic public fixed services—
Frequency interference; CFR correction, 25594
Radio stations; table of assignments:
Virginia, 25594–25595

Federal Deposit Insurance Corporation
PROPOSED RULES
Deposit insurances rules; simplification, 25596–25598

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Central Illinois Light Co. et al., 25658–25660
Hydroelectric applications, 25660–25661
Oil pipelines:
Producer price index for finished goods; annual change, 25661–25662
Applications, hearings, determinations, etc.:
Columbia Gas Transmission Corp., 25657–25658
Roosevelt Water Conservation District, 25658
Williams Natural Gas Co., 25658

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control; correction, 25671
Formations, acquisitions, and mergers, 25671–25672
Meetings; Sunshine Act, 25672

Federal Trade Commission
RULES
Trade regulation rules:
Waist belts, leather content; misbranding and deception; CFR part removed, 25560–25561
NOTICES
Prohibited trade practices:
Loewen Group, Inc., et al., 25672–25680

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species;
Mexican gray wolf; nonessential experimental population in Arizona and New Mexico, 25618–25619
NOTICES
Endangered and threatened species permit applications, 25686–25687

Food and Consumer Service
RULES
Child nutrition programs:
Summer food service and child and adult care food programs; free and reduced price meal eligibility requirements, 25550–25555

Food and Drug Administration
NOTICES
Meetings:
Advisory committees, panels, etc., 25682–25684

Food Safety and Inspection Service
NOTICES
Meetings:
Codex Alimentarius Commission; Executive Committee, 25620

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Alabama
MagneTek, Inc.; electronic fluorescent lighting ballasts and components manufacturing facility, 25621

General Services Administration
NOTICES
Bill of lading accountability record; optional form (OF 1121); stocking change, 25680

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration

Hearings and Appeals Office, Energy Department
NOTICES
Special refund procedures; implementation, 25662–25664

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Continuum of care systems—
Homeless individuals; supportive housing, shelter plus care, and single room occupancy dwellings, 25684–25685
Mortgage and loan insurance programs:
Insured affordable multifamily project loans; housing finance agency risk-sharing program; additional units availability, 25752–25762
Organization, functions, and authority delegations:
Assistant Secretary for Community Planning and Development et al., 25685–25686

Indian Affairs Bureau
PROPOSED RULES
Indian Gaming Regulatory Act:
Class III (casino) gaming on Indian lands; authorization procedures when States raise Eleventh amendment defense
Correction, 25604

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Reclamation Bureau

Internal Revenue Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 25741

International Trade Administration
NOTICES
Antidumping:
Forged steel crankshafts from — United Kingdom, 25621
Countervailing duties:
Iron metal castings from— India, 25623–25627
Applications, hearings, determinations, etc.:
Mississippi State University et al., 25621–25623
Shriners Hospital, 25623

International Trade Commission
NOTICES
Import investigations:
Uruguay Round Agreements Act (URAA), General Agreement on Tariffs and Trade (GATT); Customs rules of origin international harmonization, 25688–25689

James Madison Memorial Fellowship Foundation
PROPOSED RULES
Fellowship program requirements, 25612–25618

Justice Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Americans with Disabilities Act; technical assistance program, 25744–25749
Pollution control; consent judgments:
Motorola, Inc., et al., 25689
Sanitary District of Hammond et al., 25689–25690

Labor Department
See Employment and Training Administration
See Employment Standards Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 25690
Senior Executive Service:
Performance Review Board; membership, 25690

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Arizona, 25687

Maritime Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 25733–25734

National Highway Traffic Safety Administration
RULES
Fuel economy standards:
Light trucks; 1998 model year, 25595
NOTICES
Motor vehicle theft prevention standard; exemption petitions, etc.:
General Motors Corp., 25734–25736

National Institute of Standards and Technology
NOTICES
Information processing standards, Federal:
Electronic data interchange, 25627–25632

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 25595
NOTICES
Grants and cooperative agreements; availability, etc.:
Pribilof Islands, AK; environmental restoration program, 25632–25635
Permits:
Endangered and threatened species, 25635
Marine mammals, 25635

Navy Department
NOTICES
Privacy Act:
Systems of records, 25637–25646

Nuclear Regulatory Commission
NOTICES
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 25696–25720
Applications, hearings, determinations, etc.:
Innovative Weaponry, Inc., 25694–25696

Office of United States Trade Representative
See Trade Representative, Office of United States

Patent and Trademark Office
NOTICES
Two-year exclusivity period claims:
G.D. Searle & Co., 25635–25636

Presidential Advisory Committee on Gulf War Veterans' Illnesses
NOTICES
Meetings, 25720–25721

Presidential Documents
PROCLAMATIONS
Special observances:
Boorda, Admiral Jeremy M., death (Proc. 6898), 25767
Safe Boating Week, National (Proc. 6897), 25765
World Trade Week (Proc. 6899), 25769–25770
EXECUTIVE ORDERS
Committees; establishment, renewal, termination, etc.
National Railway Labor Conference; labor dispute (EO 13004), 25771–25773

Public Health Service
See Food and Drug Administration

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
San Jose, CA; South Bay water recycling project, 25687–25688

Research and Special Programs Administration
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 25736–25739

Securities and Exchange Commission
PROPOSED RULES
Securities, etc.:
Independent Offices Appropriations Act fees; elimination, 25601–25604
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 25721–25722
Self-regulatory organizations; proposed rule changes:
Delta Clearing Corp., 25722

Small Business Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 25723

Social Security Administration
NOTICES
Privacy Act:
Computer matching programs, 25723
Systems of records, 25724–25727

State Department
NOTICES
Organization, functions, and authority delegations, 25727

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Bootheel Regional Rail Corp. et al., 25739
Livonia, Avon & Lakeville Railroad Corp., 25739–25740
Norfolk Southern Railway Co. et al., 25740
Railroad services abandonment:
CSX Transportation, Inc., 25740–25741

Tennessee Valley Authority
NOTICES
Environmental statements; availability, etc.:
Chickamauga Dam, TN; navigation lock project, 25727–25729
Meetings; Sunshine Act, 25729

Thrift Supervision Office
NOTICES
Applications, hearings, determinations, etc.:
Algiers Homestead Association, 25741
Dime Savings Bank of Williamsburgh, 25741
Ocean Fedral Savings Bank, 25741–25742

Trade Representative, Office of United States
NOTICES
Meetings:
Industry Policy and Sector/Functional Advisory Committees, 25720

Transportation Department
See Federal Aviation Administration
See Maritime Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board
NOTICES
Secretarial determinations:
Hellenikon International Airport, Athens, Greece—Effective security measures notification, 25729

Treasury Department
See Internal Revenue Service
See Thrift Supervision Office

Western Area Power Administration
NOTICES
Power rate adjustments:
Boulder Canyon Project, AZ and NV, 25664–25665

Separate Parts In This Issue

Part II
Justice Department, 25744–25749

Part III
Housing and Urban Development Department, 25752–25762

Part IV
The President, 25765–25773

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6897.....25765
6898.....25767
6899.....25769
Executive Orders:
13004.....25771

7 CFR
52.....25549
225.....25550
226.....25550
980.....25556

12 CFR
Proposed Rules:
330.....25596

14 CFR
39 (2 documents).....25557, 25558
Proposed Rules:
39.....25598
71.....25600

16 CFR
405.....25560

17 CFR
Proposed Rules:
230.....25601
240.....25601
250.....25601
270.....25601
275.....25601

25 CFR
Proposed Rules:
291.....25604

32 CFR
324.....25561

40 CFR
50.....25566
75.....25580
82.....25585
Proposed Rules:
82.....25604

45 CFR
Proposed Rules:
2400.....25612

47 CFR
21.....25594
73.....25594

49 CFR
533.....25595

50 CFR
675.....25595
Proposed Rules:
17.....25618

Rules and Regulations

Federal Register
Vol. 61, No. 100
Wednesday, May 22, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[FV–96–326]

Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products Regulations Governing Inspection and Certification

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Certain Other Products [1] by increasing the lot inspection and less than year round fees charged for the inspection of processed fruits and vegetables and certain other products. These revisions are necessary in order to recover, as nearly as practicable, the costs of performing inspection services under the Agricultural Marketing Act of 1946.

EFFECTIVE DATE: October 6, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Rodeheaver, Branch Chief, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 0709 South Building, Washington, D.C. 20090–6456, Telephone (202) 720–4693.

SUPPLEMENTARY INFORMATION: This rule has been determined to be not significant for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget.

[1] May include the following: Honey; molasses, except for stockfeed; nuts and nut products, except oil; sugar (cane, beet, and maple); sirups (blended), sirups, except from grain; tea, cocoa, coffee, spices, condiments.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Agricultural Marketing Service (AMS), has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act. The final rule reflects certain fee increases needed to recover the costs of services rendered in accordance with the Agricultural Marketing Act (AMA) of 1946. The inspection, grading and certification program for processed fruits and vegetables and related products is voluntary.

The AMA authorizes voluntary official inspection, grading, and certification on a user-fee basis, of processed food products including processed fruits, vegetables, and processed products made from them. The AMA provides that reasonable fees be collected from the user of the program services to cover as nearly as practicable the costs of services rendered. This final rule amends the schedule of fees and charges for lot inspection and less than year round inspection services rendered to the processed fruit and vegetable industry to reflect the costs currently associated with the program.

AMS regularly reviews these programs to determine if fees are adequate. Employee salary and benefits are major program costs that account for approximately 85 percent of the total operating budget. A general and locality salary increase for Federal employees, ranging from 3.09 to 6.25 percent depending on locality, effective January 1995, has materially affected program costs. Another general and locality salary increase, ranging from 2.39 to 2.87 percent depending upon locality (amounting to approximately $625,000), was effective January 1996; further standardization program costs, previously funded by appropriated funds, must be paid for by user fees.

While a concerted effort to cut costs resulted in overhead savings of $623,926 in FY95 over FY94, the last fee increase in August 1994 did not result in collection of enough revenue to cover all these increases and still maintain an adequate reserve balance (four months of costs) called for by Agency policy and prudent financial management. Currently the Processed Products Branch (PPB) trust fund reserve balance for all programs is approximately $1.480 mil. under the desirable level of $11.031. Further action is necessary to meet rising costs and maintain adequate reserve balances. This action will assist in moving the PPB trust fund toward a more adequate level and will result in an estimated $368,000 in additional revenues. Projected FY96 revenues for the lot inspection and less than year round inspection programs are $8.291 mil. with costs projected at $8.194 and a reserve of $2.682.

A notice of proposed rulemaking was published in the **Federal Register** (61 FR 9654) on March 11, 1996 with a thirty day comment period. The comment period closed on April 11, 1996. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Agricultural Marketing Service. No comments were received regarding this proposed rule.

After consideration of all relevant matter presented, this action makes final the changes as proposed on March 11, 1996. The changes are made effective October 6, 1996 to coincide with the beginning of the first accounting period in the 1997 fiscal year.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and record keeping requirements, and Vegetables.

For the reasons set forth in the preamble, 7 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for 7 CFR Part 52 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

§ 52.42 [Amended]

2. In § 52.42, the figure "$39.50" is revised to read "$41.00".

§ 52.50 [Amended]

3. In § 52.50, the figure "$39.50" is revised to read "$41.00".

§ 52.51 [Amended]

4. In § 52.51, paragraph (c)(2) is amended by removing the figure "$39.50" and adding in its place "$42.00" and paragraph (d)(1)is amended by removing the figure "$39.50" and adding in its place "$42.00".

Dated: May 16, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–12835 Filed 5–21–96: 8:45 am]

BILLING CODE 3410–02–P

Food and Consumer Service

7 CFR Parts 225 and 226

RIN 0584–AB17

Determination of Eligibility for Free Meals by Summer Food Service Program Sponsors and Free and Reduced Price Meals by Child and Adult Care Food Program Institutions

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the regulations governing the collection of social security numbers and household income information on the application for free meals under the Summer Food Service Program (SFSP) for Children, and for free and reduced price meals under the Child and Adult Care Food Program (CACFP). The rule removes the requirement that households provide the social security numbers of all adult members of the household and requires the household to provide only the social security number of the adult household member who signs the application. Finally, when reporting household income, the household will no longer be required to indicate how often individual income amounts are received, or to calculate its total current income. All of the above provisions are intended to reduce paperwork and facilitate eligibility determinations for free and reduced price meals by simplifying the application requirements for both households and approving officials, while maintaining program integrity.

EFFECTIVE DATE: June 21, 1996.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie or Edward Morawetz, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, Department of Agriculture, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302 or telephone 703–305–2620.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Administrator of the Food and Consumer Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. The effect of the provisions of this rule will be to reduce paperwork and facilitate eligibility determinations for free and reduced price meals by simplifying the application requirements for both households and approving officials, while maintaining program integrity.

Executive Order 12372

The CACFP and SFSP are listed in the Catalog of Federal Domestic Assistance under No. 10.558 and 10.559, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

Information Collection

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the reporting and recordkeeping changes included in this rule have been approved by the Office of Management and Budget (OMB) under control numbers 0584–0055 and 0584–0280.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the SFSP, the administrative procedures are set forth under the following regulations: (1) Program sponsors and food service management companies must follow State agency hearing procedures issued pursuant to 7 CFR § 225.13; and (2) Disputes involving procurement by State agencies and sponsors must follow administrative appeal procedures to the extent required by 7 CFR § 225.17 and 7 CFR Part 3015. In the CACFP, the administrative procedures are set forth under the following regulations: (1) Institution appeal procedures in 7 CFR § 226.6(k); and (2) Disputes involving procurement by State agencies and institutions must follow administrative appeal procedures to the extent required by 7 CFR § 226.22 and 7 CFR Part 3015.

This rule codifies the amendments set forth under sections 202(b)(2)(A) and (b)(2)(B)(i) of the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101–147) regarding the collection of social security numbers and total income calculations for programs under the National School Lunch Act (42 U.S.C. 1751 et seq.) and the Child Nutrition Act of 1966 (42 U.S.C. 1771 *et seq.*). Section 202(c) of Pub. L. 101–147 required that final regulations be issued incorporating these amendments by July 1, 1990. However, we were unable to issue regulations on the collection of social security numbers and total income calculation amendments before the statutory deadline. The provisions were implemented by a policy memorandum issued on May 18, 1990.

This rule is being issued as a final rule, rather than a proposed rule, because of the mandated implementation date. Further, this rule is being issued as a final rule because of the need to formally implement these changes to the application procedures. Although a policy memorandum has already been distributed to give State agencies guidance, the SFSP and CACFP regulations must be amended to codify the changes mandated by sections 202(b)(2)(A) and 202(b)(2)(B)(i) of Pub. L. 101–147. Final regulations have already been promulgated incorporating these changes for the National School Lunch, School Breakfast and Special Milk Programs (56 FR 33857, July 24, 1991). For consistency and simplicity, it is important that the SFSP and CACFP regulations be amended to conform with the National School Lunch, School Breakfast, and Special Milk Program regulations. Finally, the changes to the application being made by this rulemaking will simplify the application procedures for households. For these reasons, the Administrator of the Food and Consumer Service has determined, in accordance with 5 U.S.C. 553(b)(3)(B), that it is impracticable and contrary to public interest to take prior public comment and that good cause therefore exists for publishing this rule without prior public notice and comment.

Background

For the purpose of determining eligibility for free meals in the SFSP and free and reduced price meals in the CACFP, sponsors/institutions must distribute free meal or free and reduced price meal applications to the families of enrolled participants. Prior to the amendments made by Pub. L. 101–147, under both programs, households applying for benefits were required to submit an application containing complete documentation of eligibility, as defined in Sections 225.2, "Documentation," and 225.15(f) of the SFSP regulations (7 CFR Part 225) and Sections 226.2, "Documentation," and 226.23(e)(1) of the CACFP regulations (7 CFR Part 226). Under current Sections 225.15(f)(3) and 226.23(e)(1)(iv) of the SFSP and CACFP regulations, respectively, "documentation" for participating children who were members of Aid to Families with Dependent Children (AFDC) assistance units or food stamp households means the completion of the following information on the application: the child's name; a current food stamp or AFDC case number; and the signature of an adult household member. Under current Section 226.23(e)(1)(v) of the CACFP regulations, for adult participants who were members of food stamp households or who receive assistance under the Supplemental Security Income (SSI) for the Aged, Blind and Disabled Program or under the Grant to States for Medical Assistance Programs (Medicaid), "documentation" of eligibility means the completion of the following information on the application: the name of the adult participant; his/her food stamp case number or SSI or Medicaid identification number; and the signature of an adult household member.

In all other cases, under current regulations, documentation for all children in the SFSP and for all children and adults applying for participation in the CACFP consists of a completed free meal or free and reduced price meal application that, pursuant to Section 225.15(f)(2) of the SFSP regulations and Sections 226.23(e)(1)(ii) and (iii) of the CACFP regulations includes: the names of the child or adult for whom application is being made; the names of all other household members; social security numbers for all adult household members or an indication that an adult household member did not have a social security number; the total current income and the income received by each household member identified by source; and the signature of an adult household member. The official responsible for making eligibility determinations (the "determining official") for free or reduced price benefits is required to review the application to ensure that it is complete and, for households that submitted income information, to compare the household size and income to the Income Eligibility Guidelines issued annually by the Department. Households that provide a food stamp, AFDC, Medicaid or SSI number on the application are considered categorically eligible for free meals.

Social Security Numbers

Section 202(b)(2)(A) of Pub. L. 101–147, enacted on November 10, 1989, amended section 9(d)(1) of the National School Lunch Act (42 U.S.C. 1758(d)(1)) to eliminate the requirement for the collection of the social security numbers of all adult household members as a condition of eligibility for participants who are not categorically eligible for benefits. Rather, the law now requires that the member of the household who executes the application include the social security number of the parent or guardian who is the primary wage earner responsible for the care of the child for whom application is made, or the number of another appropriate adult member of the child's household, as determined by the Secretary. Additionally, section 9(d)(1), as further amended by section 202(b)(2)(A) of Pub. L. 101–147, requires that the household provide the social security numbers of each adult household member if the application is selected for verification of eligibility.

On May 9, 1996, the Department issued an interim rule at 55 FR 19237 which implemented sections 202(b)(2)(A) and (B) of Pub. L. 101–147 in the National School Lunch, School Breakfast and Special Milk Programs. That interim rule gave households the option of providing either the social security number of the primary wage earner or that of the household member signing the application. This option was provided in the interim rule because the Department wished to provide households with flexibility in complying with the social security number requirement. In order to provide guidance to SFSP and CACFP administrators and beneficiaries prior to the July 1, 1990, legislative deadline, and in the interest of maintaining as much consistency as possible in the free and reduced price meal application process among the Child Nutrition Programs, an identical policy was established for the SFSP and the CACFP in a policy memorandum issued by the Department on May 18, 1990.

Commenters on the interim rule for the school programs, as well as other State and local school officials who have informally advised the Department of their experiences with the application process, believe that providing households with this option would actually result in complicating, rather than simplifying, the application process and would add to paperwork and administrative burdens. In response to those comments, the final rule governing free and reduced price applications in the National School Lunch, School Breakfast and Special Milk Programs requires only that the social security number of the adult household member who signs the application be provided (56 FR 33857, July 24, 1991). In lieu of providing a social security number, the adult household member signing the application may indicate that he or she does not possess one. In making this change from the interim rule, the Department believed that the final School Programs rule further simplified the application process, while maintaining program integrity, since the adult who signs the application must also certify that the information on the application is true and correct. Based on the foregoing, and in an effort to maintain consistency among the Child Nutrition Programs, this interim rule adopts the same application requirements for the SFSP and the CACFP.

Accordingly, this rule amends Sections 225.2, "Documentation," and 225.15(f)(2)(iii) of the SFSP regulations and Sections 226.2, "Documentation," and 226.23(e)(1)(ii)(C) and (iii)(C) of the CACFP regulations to require a completed application to include the social security number of the adult household member who signs the application. As permitted in current regulations, if the adult household member signing the application does not have a social security number, the household may indicate this fact in lieu of providing a social security number.

In a related area, section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note) requires agencies to give advance notice and disclosure to the public of any requirement to provide social security numbers and of the uses to be made of those social security numbers. In accordance with this law, the Department requires that any individual

required to disclose his/her social security number must be informed: (1) whether that disclosure is mandatory or voluntary; (2) by what statutory authority or other authority each number is solicited; and (3) what uses will be made of the number. The current SFSP and CACFP regulations at Section 225.15(f)(2)(vi), and Sections 226.23(e)(1)(ii)(F) and (iii)(E) contain the Department's prototype Privacy Act Statements for free and reduced price applications. They reflect the statutory requirement in effect prior to the enactment of Pub. L. 101–147 that the application contain the social security number of each adult household member. These prototype Privacy Act Statements must also be modified to include the requirement that only the social security number of the adult household member signing the application need be provided (or an indication that he or she does not possess one). In addition, a new Section 225.15(f)(4) must be added and Section 226.23(h)(2)(iii) must be revised to require that households selected for verification provide the social security number for each adult household member (or an indication that the member does not possess a number) and that the notice of selection for verification also include a statement which meets the requirements of section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note). State agencies and institutions should contact their own legal counsel to ensure that their notices comply with the Privacy Act requirements.

Accordingly, this rule amends Section 225.15(f)(2)(vi) of the SFSP regulations and Sections 226.23(e)(1)(ii)(F) and (iii)(E) of the CACFP regulations to make the aforementioned changes to each Program's prototype Privacy Act statement. In addition, Section 225.15(f)(4) has been added to the SFSP regulations and Section 226.23(h)(2)(iii) of the CACFP regulations has been revised to require that households selected for verification must provide the social security number of each adult member, or an indication that a household member does not possess one.

This rule also makes several technical changes to Part 226 to conform with the requirement that only the social security number of the adult household member signing the application for free and reduced price meals must be provided. Specifically, this rule amends the provisions found at Sections 226.15(e)(2), 226.15(e)(3), 226.17(b)(7), 226.18(f), 226.19(b)(8)(i), and 226.19a(b)(8) which govern various documentation and record retention requirements for participation in the CACFP. This rulemaking amends these sections to require that the documentation for eligibility and retention of information conform with Section 226.23(e)(1). As mentioned above, as a result of this rule, Section 226.23(e)(1) will now require only the social security number of the adult household member signing the application. In lieu of providing a social security number, the adult household member signing the application may indicate that he or she does not possess one.

Income Information

Section 202(b)(2)(B)(i) of Pub. L. 101–147 amended section 9(d)(2)(A) of the National School Lunch Act (42 U.S.C. 1758(d)(2)(A)) to require that households provide appropriate documentation relating to their income so that individuals responsible for approving free and reduced price applications may calculate the total current income for use in determining eligibility for benefits. The current regulations at Sections 225.2, "Documentation," and 225.15(f)(2) and Sections 226.2, "Documentation," and 226.23(e)(1)(ii)(D) and (iii)(D), require that households provide the total household income on the application, as well as the income received by each household member, identified by source and amount. Based on the language of Pub. L. 101–147, this rule eliminates the requirement that the applicant household calculate total income. The elimination of this requirement will further simplify the application process and will reduce the burden on determining officials, who previously had to contact the household when there were inconsistencies between the sum of the income received by each household member identified by source and the total income figure for the household. As a result of this interim rule, the determining official will now use the income information provided by households to calculate the household's total current income. Households will still be required to indicate the amount of income received by each household member, identified by source.

A technical change is also being made to Sections 225.2, "Documentation," and 225.15(f)(2) of the SFSP regulations and Sections 226.2, "Documentation," and 226.23(e)(1)(ii)(D) and (iii)(D) of the CACFP regulations to add, as necessary, the phrase "other cash income" to the examples of sources of income (i.e., earnings, wages, welfare, pensions, support payments, unemployment compensation, and social security). This technical change is being made to bring about consistency within each Part, as well as with the other child nutrition programs covered by 7 CFR Part 245 (Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools). No change is being made regarding the type of income to be reported on free and reduced price meal applications. Further, a technical amendment is being made to Section 225.15(f)(2)(iv) to make the language describing the sources of income conform with the examples of sources of income found in Section 225.2, "Documentation," and with the sources of income regulations under the National School Lunch, School Breakfast, and Special Milk Programs. A technical change is also being made to incorporate the undesignated paragraph into the introductory paragraph in Section 225.15(f)(3).

Accordingly, the Department is amending Section 225.2, "Documentation," and Section 225.15(f)(2) of the SFSP regulations and Sections 226.2, "Documentation," and 226.23(e)(1)(ii)(D) and (iii)(D) of the CACFP regulations to eliminate the requirement that households provide their total income on the application and to make the other technical changes discussed above.

Definition of Income

To simplify the application process, the Department is amending the definition of "Current income" at Section 226.2 of the CACFP regulations and adding a definition of "Current income" at Section 225.2 of the SFSP regulations to reflect the actual treatment of income by households submitting income information on the application and by determining officials reviewing that information. Currently, in Section 226.2, "Current income" is defined as "income received during the month prior to application for free or reduced-price meals and multiplied by 12." The definition further requires that, if this income does not accurately reflect the household's annual income, the income determination must be based on the household's projected annual income. In practice, however, most determining officials do not convert the income amounts listed for each household member to an annual income figure. Rather, if any income is reported as other than a monthly amount, most determining officials convert these income amounts to a monthly income figure and base eligibility on total monthly household income.

Therefore, the definition of "Current income" added to Section 225.2 and the definition of "Current income" at Section 226.2, as amended by this rule, define "Current income" simply as income received during the month prior to application, and the reference to annualization is being deleted. If the prior month's income is not representative of the household's annual rate of income, the household must still report its projected annual income.

Accordingly, Section 226.2 of the CACFP regulations is amended, and a definition of "Current income" is added to Section 225.2 of the SFSP regulations, to define "Current income" as income received during the month prior to application for free or reduced-price meals.

Technical Changes to OMB Control Numbers

The OMB Control Number table found at Section 225.20 is revised to reflect current OMB control numbers for information collection/recordkeeping requirements for the following Sections: 225.3–225.4; 225.6–225.10; 225.12–224.13; and 225.15–225.18.

Request for Comments

Since the Department has exercised some discretion in the implementation of these provisions, comments and suggestions are particularly encouraged on the following amendments: (1) the requirement that only the social security number of the adult household member who executes the application be provided; and (2) the requirement that households report only monthly income for each member. The Department reminds commenters that the changes to the application requirements are intended to reduce paperwork by simplifying the application requirements while maintaining program integrity.

List of Subjects

7 CFR Part 225

Food assistance programs, Grant programs—health, infants and children.

7 CFR Part 226

Day care, Food assistance programs, Grant programs—health, infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Parts 225 and 226 are amended as follows:

PART 225—SUMMER FOOD SERVICE PROGRAM

1. The authority citation for Part 225 continues to read as follows:

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

2. In Section 225.2:

a. A new definition of *Current income* is added in alphabetical order.

b. Paragraph (a) of the definition of *Documentation* is revised.

The addition and revision specified above read as follows:

§ 225.2 Definitions.

* * * * *

Current income means income, as defined in Section 225.15(f)(2)(iv), received during the month prior to application for free meals. If such income does not accurately reflect the household's annual income, income shall be based on the projected annual household income. If the prior year's income provides an accurate reflection of the household's current annual income, the prior year may be used as a base for the projected annual income.

* * * * *

Documentation means (a) the completion of the following information on a free meal application:

(1) names of all household members;

(2) income received by each household member, identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security and other cash income);

(3) the signature of an adult household member; and

(4) the social security number of the adult household member who signs the application, or an indication that the he/she does not possess a social security number; or,

* * * * *

3. In Section 225.15:

a. Paragraphs (f)(2)(iii) and (f)(2)(iv) are revised;

b. Paragraph (f)(2)(vi) is amended by removing the first four sentences and by adding four new sentences in their place and by adding a new sentence before the word "and" at the end of the paragraph;

c. Paragraph (f)(3) is amended by removing the undesignated text following paragraph (f)(3)(ii) and by revising the introductory text of paragraph (f)(3); and

d. A new paragraph (f)(4) is added.

The additions and revisions specified above read as follows:

§ 225.15 Management responsibilities of sponsors.

* * * * *

(f) * * *

(2) * * *

(iii) the social security number of the adult household member who signs the application, or an indication that he/she does not possess a social security number;

(iv) the income received by each household member, identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security, and other cash income);

* * * * *

(vi) a statement which includes substantially the following information: "Section 9 of the National School Lunch Act requires that, unless a food stamp or AFDC case number is provided for your child, you must include the social security number of the adult household member signing the application, or indicate that the household member does not have a social security number. Provision of a social security number is not mandatory, but if a social security number is not provided or an indication is not made that the signer does not have a social security number, the application cannot be approved. This notice must be brought to the attention of the household member whose social security number is disclosed. The social security number may be used to identify the household member in carrying out efforts to verify the correctness of information stated on the application.

* * * The sponsor shall take the income information provided by the household on the application and calculate the household's total current income;

* * * * *

(3) If they so desire, households applying on behalf of children who are members of food stamp households or AFDC assistance units may apply for free meal benefits using the procedures described in this paragraph rather than the procedures described in paragraph (f)(2) of this section. In accordance with paragraph (f)(2)(vi) of this section, if a food stamp or AFDC case number is provided, it may be used to verify the current food stamp or AFDC certification for the child(ren) for whom free meal benefits are being claimed. Whenever households applying for benefits for children not receiving food stamp or AFDC benefits, they must apply for those children in accordance with the requirements set forth in paragraph (f)(2) of this section. Households applying on behalf of children who are members of food stamp households or AFDC assistance units shall be required to provide:

* * * * *

(4) Households selected to provide verification shall provide a social security number for each adult household member or an indication that such member does not have one. The notice to households of selection for verification shall include the following:

(i) Section 9 of the National School Lunch requires that unless the child's

food stamp or AFDC case number is provided, households selected for verification must provide the social security number of each adult household member;

(ii) In lieu of providing a social security number, an adult household member may indicate that he/she does not possess one;

(iii) Provision of a social security number is not mandatory but if a social security number is not provided for each adult household member or an indication is not made that he/she does not possess one, benefits will be terminated;

(iv) The social security number may be used to identify household members in carrying out efforts to verify the correctness of information stated on the application and continued eligibility for the program. These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting employers to determine income, contacting a food stamp or welfare office to determine current certification for receipt of food stamps or AFDC benefits, contacting the State employment security office to determine the amount of benefits received and checking the documentation produced by household members to prove the amount of income received. These efforts may result in loss or reduction of benefits, administrative claims or legal actions if incorrect information was reported; and

(v) This information must be provided to the attention of each adult household member disclosing his/her social security number. State agencies shall ensure that the notice complies with section 7 of Pub. L. 93–579 (Privacy Act of 1974). These households shall be provided with the name and phone number of an official who can assist in the verification effort. Selected households shall also be informed that, in lieu of any information that would otherwise be required, they can submit proof of current food stamp or AFDC Program certification as described in paragraph (f)(3) of this section to verify the free meal eligibility of a child who is a member of a food stamp household or AFDC assistance unit. All households selected for verification shall be advised that failure to cooperate with verification efforts will result in the termination of benefits.

* * * * *

4. In Section 225.20, the OMB Control Number table is revised to read as follows:

§ 225.20 Information collection/recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB control No.
225.3–225.4.	0584–0280
225.6–225.10	0584–0280
225.12–225.13	0584–0280
225.15–225.18	0584–0280

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

5. The authority citation for Part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

6. In Section 226.2:

a. The definition of *Current income* is amended by removing the words "and multiplied by 12"; and

b. The definition of *Documentation* is revised to read as follows:

§ 226.2 Definitions.

* * * * *

Documentation means (a) the completion of the following information on a free and reduced-price application:

(1) names of all household members;

(2) income received by each household member, identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security and other cash income);

(3) the signature of an adult household member; and

(4) the social security number of the adult household member who signs the application, or an indication that he/she does not possess a social security number; or

(b) For a child who is a member of a food stamp household or an AFDC assistance unit, "documentation" means the completion of only the following information on a free and reduced-price application:

(1) the name(s) and appropriate food stamp or AFDC case number(s) for the child(ren); and

(2) the signature of an adult member of the household; or

(c) For an adult participant who is a member of a food stamp household or is an SSI or Medicaid participant, as defined in this section, "documentation" means the completion of only the following information on a free and reduced- price application:

(1) the name(s) and appropriate food stamp case number(s) for the participant(s) or the adult participant's SSI or Medicaid identification number, as defined in this section; and

(2) the signature of an adult member of the household.

* * * * *

7. In Section 226.15, paragraphs (e)(2) and (e)(3) are revised to read as follows:

§ 226.15 Institution Provisions.

* * * * *

(e) * * *

(2) Documentation of the enrollment of each participant at child care centers, adult day care centers and outside-school-hours care centers including information used to determine eligibility for free or reduced price meals in accordance with § 226.23(e)(1).

(3) Documentation of the enrollment of each child at day care homes and information used to determine the eligibility of enrolled providers' children for free or reduced price meals in accordance with § 226.23(e)(1).

* * * * *

8. In Section 226.17, paragraph (b)(7) is revised to read as follows:

§ 226.17 Child Care Center Provisions.

* * * * *

(b) * * *

(7) Child care centers shall collect and maintain documentation of the enrollment of each child, including information used to determine eligibility for free and reduced price meals in accordance with § 226.23(e)(1).

* * * * *

§ 226.18 [Amended]

9. In Section 226.18, paragraph (f) is amended by adding the words ", in which case the day care home must maintain documentation of the information used to determine the eligibility of enrolled providers' children for free or reduced price meals in accordance with § 226.23(e)(1)" at the end of the paragraph.

10. In Section 226.19, paragraph (b)(8)(i) is revised to read as follows:

§ 226.19 Outside-school-hours care center provisions.

* * * * *

(b) * * *

(8) * * *

(i) Documentation of enrollment for all children, including information used to determine eligibility for free or reduced price meals in accordance with § 226.23(e)(1);

* * * * *

11. In Section 226.19a, paragraph (b)(8) is revised to read as follows:

§ 226.19a Adult day care center provisions.

* * * * *

(b) * * *

(8) Adult day care centers shall collect and maintain documentation of the enrollment of each adult participant including information used to determine eligibility for free and reduced price meals in accordance with § 226.23(e)(1).

* * * * *

12. In Section 226.23:

a. Paragraph (e)(1)(ii)(C) is revised;

b. Paragraph (e)(1)(ii)(D) is amended by removing the words "total current household income, and the";

c. Paragraph (e)(1)(ii)(F) is amended by removing the first four sentences and by adding six new sentences in their place.

d. Paragraph (e)(1)(iii)(C) is revised;

e. Paragraph (e)(1)(iii)(D) is amended by removing the words "total current household income, and the";

f. Paragraph (e)(1)(iii)(E) is amended by removing the first four sentences and by adding six new sentences in their place;

g. Paragraph (e)(4) is amended by adding a new sentence at the beginning of the paragraph;

h. Paragraphs (h)(2)(iv) through (h)(2)(viii) are redesignated as paragraphs (h)(2)(v) through (h)(2)(ix); and

i. Paragraph (h)(2)(iii) is amended by redesignating all text after the second sentence as paragraph (h)(2)(iv), and by revising the remaining text in paragraph (h)(2)(iii).

The additions and revisions specified above read as follows:

§ 226.23 Free and reduced-price meals.

* * * * *

(e)(1) * * *

(ii) * * *

(C) The social security number of the adult household member who signs the application, or an indication that he/she does not possess a social security number;

* * * * *

(F) A statement which includes substantially the following information: "Section 9 of the National School Lunch Act requires that, unless a food stamp or AFDC case number is provided for your child, you must include a social security number on the application. This must be the social security number of the adult household member signing the application. If the adult household member signing the application does not possess a social security number, he/she must indicate so on the application. Provision of a social security number is not mandatory, but if a social security number is not provided or an indication is not made that the adult household member signing the application does not have one, the application cannot be approved. This notice must be brought to the attention of the household member whose social security number is disclosed. The social security number may be used to identify the household member in carrying out efforts to verify the correctness of information stated on the application. * * *

* * * * *

(iii) * * *

(C) The social security number of the adult household member who signs the application, or an indication that he/she does not possess a social security number;

* * * * *

(E) A statement which includes substantially the following information: "Section 9 of the National School Lunch Act requires that, unless a food stamp case number or SSI or Medicaid assistance identification number is provided for the adult for whom benefits are sought, you must include a social security number on the application. This must be the social security number of the adult household member signing the application. If the adult household member signing the application does not possess a social security number, he/she must indicate so on the application. Provision of a social security number is not mandatory, but if a social security number is not provided or an indication is not made that the adult household member signing the application does not have one, the application cannot be approved. This notice must be brought to the attention of the household member whose social security number is disclosed. The social security number may be used to identify the household member in carrying out efforts to verify the correctness of information stated on the application. * * *

* * * * *

(4) * * * The institution shall take the income information provided by the household on the application and calculate the household's total current income. * * *

* * * * *

(h) * * *

(2) * * *

(iii) Households shall be informed in writing that they have been selected for verification and they are required to submit the requested verification information to confirm their eligibility for free or reduced-price benefits by such date as determined by the State agency. Those households shall be informed of the type or types of information and/or documents acceptable to the State agency and the name and phone number of an official who can answer questions and assist the household in the verification effort. This information must include a social security number for each adult household member or an indication that he/she does not have one. State agencies shall inform selected households that:

(A) Section 9 of the National School Lunch Act requires that, unless households provide the child's food stamp or AFDC case number, or the adult participant's food stamp case number or SSI or Medicaid assistance identification number, those selected for verification must provide the social security number of each adult household member;

(B) In lieu of providing a social security number, an adult household member may indicate that he/she does not possess one;

(C) Provision of a social security number is not mandatory, but if a social security number is not provided for each adult household member or an indication is not made that he/she does not possess one, benefits will be terminated;

(D) The social security number may be used to identify household members in carrying out efforts to verify the correctness of information stated on the application and continued eligibility for the program. These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting employers to determine income, contacting Federal, State or local agencies to determine current certification for receipt of food stamps or AFDC, SSI or Medicaid benefits, contacting the State employment security office to determine the amount of benefits received, and checking the documentation produced by household members to prove the amount of income received. These efforts may result in loss or reduction of benefits, administrative claims or legal actions if incorrect information was reported; and

(E) This information must be provided to the attention of each adult household member disclosing his/her social security number. State agencies shall ensure that the notice complies with section 7 of Pub. L. 93–579 (Privacy Act of 1974). These households shall be provided with the name and phone number of an official who can assist in the verification effort.

* * * * *

Dated: April 30, 1996.

William E. Ludwig,

Administrator.

[FR Doc. 96–12851 Filed 5–21–96; 8:45 am]

BILLING CODE 3410–30–U

Agricultural Marketing Service

7 CFR Part 980

[FV95–980–1FR]

Vegetables; Import Regulations; Modification of Regulatory Time Periods for Imported Onions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule modifies the time periods when imported onions are regulated based on the grade, size, quality, and maturity requirements of the South Texas onion and Idaho-Eastern Oregon onion marketing orders. The change is needed to make the onion import requirements consistent with regulatory time period changes made under the South Texas onion marketing order.

EFFECTIVE DATE: June 4, 1996.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 690–0464; Fax number (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. There are approximately 148 importers of onions who will be affected by this rule. Small agricultural service firms, which include onion importers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000. The majority of onion importers may be classified as small entities.

Import regulations issued under the Act are based on regulations established under Federal marketing orders which regulate the handling of domestically produced products. Thus, this final rule should have small entity orientation, and impact on both small and large business entities in a manner comparable to rules issued under marketing orders. This rule modifies the dates when imported onions are regulated, based on requirements of the South Texas onion and Idaho-Eastern Oregon onion marketing orders.

Section 8e of the Act provides that whenever certain specified commodities, including onions, are regulated under a Federal marketing order, imports of that commodity into the United States are prohibited unless they meet the same or comparable grade, size, quality, and maturity requirements. Section 8e also provides that whenever two or more marketing orders regulate the same commodity produced in different areas of the United States, the Secretary shall determine with which area the imported commodity is in most direct competition and apply regulations based on that area to the imported commodity.

Marketing Order No. 958 regulates onions grown in certain counties of Idaho and Eastern Oregon and Marketing Order No. 959 regulates onions grown in South Texas. Fresh onion shipments from Idaho-Eastern Oregon are regulated throughout the year, while onion shipments from South Texas had been regulated from March 1 through June 15 each year. On the basis of past shipment data, the Secretary determined that onions imported during the March 10 through June 15 period were in most direct competition with onions grown in South Texas and found that the minimum grade, size, quality, and maturity requirements for onions imported during that period should be the same as those established for South Texas onions under Marketing Order No. 959. The Secretary further determined that onions imported during the June 16 through March 9 period were in most direct competition with onions grown in Idaho-Eastern Oregon and that the minimum grade, size, quality, and maturity requirements for onions imported during that period should be the same as those established for Idaho-Eastern Oregon onions under Marketing Order No. 959.

Based on a recommendation of the South Texas Onion Committee (committee), the agency responsible for local administration of Marketing Order No. 959, the Department has changed the end of the South Texas regulatory period from June 15 to June 4. Because South Texas onions will no longer be regulated after June 4, and Idaho-Eastern Oregon onions are regulated throughout the year, the Department has determined that onions imported during the March 10 through June 4 period are in most direct competition with onions produced in South Texas and that the minimum grade, size, quality, and maturity requirements established under the South Texas marketing order should apply to onions imported during the March 10 through June 4 period, instead of the previous March 10 through June 15 period. Imports of onions during the June 5 through March 9 period will be required to meet minimum grade, size, quality, and maturity requirements based on those established under the Idaho-Eastern Oregon marketing order.

The proposed rule concerning this action was published in the February 9, 1996, **Federal Register** (61 FR 4941), with a 30-day comment period ending March 11, 1996. No comments were received.

In accordance with section 8e of the Act, the U.S. Trade Representative has concurred with the issuance of this final rule.

Based on the above, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C 553, it is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This regulation imposes no additional restrictions on onion importers by ending import requirements based on South Texas on June 4 of each season rather than June 15 of each season; (2) section 8e of the Act requires import requirements based on South Texas (7 CFR part 959) to change to those based on Idaho-Eastern Oregon (7 CFR part 958) when South Texas is no longer the area of production with which the imported commodity is in most direct competition; (3) changing the ending date of the domestic regulation was discussed at a public meeting, and all interested persons had an opportunity to provide input; and (4) there are no regulatory burdens imposed by this rule which require special preparations of importers.

List of Subjects in 7 CFR Part 980

Food grades and standards, Imports, Marketing agreements, Onions, Potatoes, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 980 is hereby amended as follows:

PART 980—VEGETABLES; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 980 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 980.117 [Amended]

2. In § 980.117, paragraph (a)(2) is amended by removing "June 16" and adding in its place "June 5" and by removing "June 15" and adding in its place "June 4"; paragraph (b)(1) is amended by removing "June 16" and adding in its place "June 5"; and paragraph (b)(2) is amended by removing "June 15" and adding in its place "June 4."

Dated: May 14, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–12836 Filed 5–21–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–185–AD; Amendment 39–9629; AD 96–11–04]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9 and Model DC–9–80 Series Airplanes, Model MD–88 Airplanes, and C–9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 and Model DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes, that requires modification of the slant panel insulation blankets on the slant pressure panel of the main landing gear. The amendment also requires a visual inspection to detect discrepancies of the left and right seal assemblies of the overwing emergency exit door, and replacement of any discrepant door seal. This amendment is prompted by a report that the flaps and landing gear did not extend or retract properly due to water accumulation in the slant pressure panel area. The actions specified by this AD are intended to prevent such water accumulation, which could result in the failure of the flaps or landing gear to properly extend or retract.

DATES: Effective June 26, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 26, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5237; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9 and Model DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes was published in the **Federal Register** on January 31, 1996 (61 FR 3341). That action proposed to require modification of the slant panel insulation blankets on the slant pressure panel of the main landing gear. That action also proposed to require a visual inspection to detect discrepancies of the left and right seal assemblies of the overwing emergency exit door, and replacement of the discrepant door seal.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Two commenters support the proposed rule.

Requests to Extend the Compliance Time

Several commenters request that the compliance time for accomplishment of the modification be extended from the proposed 24 months. These commenters request an extension to as much as 36 months, which will allow the modification to be accomplished during a regularly scheduled heavy maintenance check when the airplanes are brought to main base for an extended hold. Two of these commenters state that they would have to special schedule their fleet in order to accomplish the modification within the proposed compliance time; this would entail considerable additional expenses.

After consideration of all the available information, the FAA cannot conclude that an extension of the proposed compliance time is warranted. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of accomplishing the required modification within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. Further, the proposed compliance time of 24 months was arrived at initially with the concurrence of affected operators, the manufacturer, and the FAA. In light of this, and in consideration of the amount of time that has already elapsed since issuance of the original notice, the FAA has determined that further delay of accomplishment of the requirements of this final rule is not appropriate. However, under the provisions of paragraph (b) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 1,500 McDonnell Douglas Model DC–9 and Model DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) series airplanes of the affected design in

the worldwide fleet. The FAA estimates that 1,000 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $480,000, or $480 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–11–04 McDonnell Douglas: Amendment 39–9629. Docket 95–NM–185–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), –82 (MD–82), –83 (MD–83), –87 (MD–87) series airplanes; Model MD–88 airplanes; and C–9 (military) series airplanes; as listed in McDonnell Douglas Service Bulletin DC9–53–268, dated August 11, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent water accumulation in the slant pressure panel area, which could result in the failure of the flaps or landing gear to properly extend or retract, accomplish the following:

(a) Within 24 months after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD, in accordance with McDonnell Douglas Service Bulletin DC9–53–268, dated August 11, 1995.

(1) Modify the slant panel insulation blankets on the slant pressure panel of the main landing gear.

(2) Perform a visual inspection to detect discrepancies (i.e., defects and constant gap) of the left and right seal assemblies of the overwing emergency exit door. If any discrepancy is detected, prior to further flight, replace door seal in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification, inspection, and replacement shall be done in accordance with McDonnell Douglas Service Bulletin DC9–53–268, dated August 11, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 26, 1996.

Issued in Renton, Washington, on May 14, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–12600 Filed 5–21–96; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 39

[Docket No. 95–NM–162–AD; Amendment 39–9628; AD 96–11–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200, –300, and –400 Series Airplanes Equipped With General Electric Model CF6–80C2 PMC and CF6–80C2 FADEC Engines, and Pratt & Whitney Model PW4000 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747–200, –300, and –400 series airplanes, that currently requires inspection of each fuel feed line of the outboard engine in the engine strut to determine if interference with an adjacent pneumatic duct clamp has caused damage, and repair or replacement of the fuel feed tube, if necessary. That AD also currently requires inspection and replacement of the adjacent pneumatic duct clamp with a non-rotating type clamp, if necessary. This amendment requires modification of the upper gap area of the strut of the number 1 and 4 engines. This amendment is prompted by a report of fuel leakage in the strut of the number 4 engine due to a high profile clamp that chafed the fuel line. The actions specified by this AD are intended to prevent chafing of the fuel line in the strut of the number 1 and 4 engines, which could result in rupture of the fuel line and subsequent in-flight engine fire.

DATES: Effective June 26, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 26, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2673; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 91–05–19, amendment 39–6918 (56 FR 8705, March 1, 1991), which is applicable to certain Boeing Model 747–200, –300, and –400 series airplanes, was published in the **Federal Register** on January 29, 1996 (61 FR 2730). The action proposed to supersede AD 91–05–19 to require modification of the upper gap area of the strut of the number 1 and 4 engines.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 363 Boeing Model 747–200, –300, –400 series airplanes equipped with General Electric Model CF6–80C2 PMC and CF6–80C2 FADEC engines, and Pratt & Whitney Model PW4000 engines of the affected design in the worldwide fleet. The FAA estimates that 39 airplanes of U.S. registry will be affected by this AD.

The actions that are required by this AD will take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact on U.S. operators of the new requirements of this AD is estimated to be $14,040, or $360 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6918 (56 FR 8705, March 1, 1991), and by adding a new airworthiness directive (AD), amendment 39–9628, to read as follows:

96–11–03 Boeing: Amendment 39–9628. Docket 95–NM–162–AD. Supersedes AD 91–05–19, Amendment 39–6918.

Applicability: Model 747–200, –300, and –400 series airplanes having line positions 679 through 1041 inclusive; equipped with General Electric Model CF6–80C2 PMC and CF6–80C2 FADEC, and Pratt & Whitney Model PW4000 engines; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the fuel line in the strut of the number 1 and 4 engines, which could result in rupture of the fuel line and subsequent in-flight engine fire, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the upper gap area of the strut of the number 1 and 4 engines, in accordance with Boeing Service Bulletin 747–36A2097, Revision 3, dated September 28, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Boeing Service Bulletin 747–36A2097, Revision 3, dated September 28, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group,

P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 26, 1996.

Issued in Renton, Washington, on May 14, 1996.

S.R. Miller,

Acting Manoger,Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–12599 Filed 5–21–96; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 405

Trade Regulation Rule on Misbranding and Deception as to Leather Content of Waist Belts

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission announces the removal of the Trade Regulation Rule concerning Misbranding and Deception as to Leather Content of Waist Belts (Leather Belt Rule or Rule), 16 CFR Part 405. The Commission has reviewed the rulemaking record and determined that the Leather Belt Rule is no longer necessary. The proposed Guides for Select Leather and Imitation Leather Products will cover belts and the benefits of the Rule are retained through the inclusion of belts in the proposed Guides. Repealing the Leather Belt Rule eliminates unnecessary duplication. Further, if necessary, the Commission can address misrepresentations involving leather belts on a case-by-case basis, administratively under Section 5 of the Federal Trade Commission Act (FTC Act), 15 U.S.C. 45, or through enforcement actions under Section 13(b), 15 U.S.C. 53(b), in federal district court. Such actions can provide additional guidance to industry members on what practices are unfair or deceptive.

EFFECTIVE DATE: May 22, 1996.

ADDRESSES: Requests for copies of the Statement of Basis and Purpose should be sent to the FTC's Public Reference Branch, Room 130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580; (202) 326–2222; TTY for the hearing impaired (202) 326–2502.

FOR FURTHER INFORMATION CONTACT: Lemuel Dowdy or Edwin Rodriguez, Attorneys, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Sixth Street and Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–2981 or (202) 326–3147.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

I. Background

The Trade Regulation Rule concerning Misbranding and Deception as to Leather Content of Waist Belts, 16 CFR Part 405, was promulgated on June 27, 1964, to remedy deceptive practices involving misrepresentations about the leather content of waist belts that are not offered for sale as part of a garment. The Rule prohibits representations that belts are made from the hide or skin of an animal when such is not the case, or that belts are made of a specified animal hide or skin when such is not the case. In addition, the Rule requires that belts made of split leather, and ground, pulverized or shredded leather bear a label or tag disclosing the kind of leather of which the belt is composed. The Rule also requires that non-leather belts having the appearance of leather bear a tag or label disclosing their composition or disclosing that they are not leather.

As part of its continuing review of its trade regulation rules to determine their current effectiveness and impact, the Commission published a **Federal Register** notice on March 27, 1995, 60 FR 15725, asking questions about the benefits and burdens of the Rule to consumers and industry. On the same date, the Commission published a **Federal Register** notice, 60 FR 15724, soliciting comment on its Industry Guides for luggage, shoes, and ladies' handbags.[1] After reviewing the comments received in response to these two notices, on September 18, 1995, the Commission published an Advance Notice of Proposed Rulemaking (ANPR) seeking comment on its proposal to repeal the Leather Belt Rule, 60 FR 48070. On the same day, the Commission published two other notices, one announcing the rescission of the three separate guides for luggage, shoes, and handbags, 60 FR 48027, and the second seeking comment on one set of proposed, consolidated guidelines, entitled the Guides for Select Leather and Imitation Leather Products, 60 FR 48056. The ANPR proposing the repeal of the Rule stated that, because the proposed Guides would cover belts, the Commission had tentatively determined that a separate Leather Belt Rule was no longer necessary.

The Commission received two comments in response to the ANPR.[2] One of these comments supported retention of the existing Leather Belt Rule because the commenter believed that rescission of the Rule may decrease the accuracy of the labeling of waist belts.[3] The other comment supported consolidating the Rule into one set of guidelines governing disclosures of the content of leather products.[4]

After reviewing the comments submitted, on March 5, 1996, the Commission published a Notice of Proposed Rulemaking (NPR), 61 FR 8499, initiating a rulemaking proceeding to consider whether the Leather Belt Rule should be repealed or remain in effect. The Commission stated it would hold a public hearing for the presentation of testimony, if there was interest. No one requested that the Commission hold a hearing. In response to the NPR, the Commission received one comment, which expressed no objection to the repeal of the Leather Belt Rule.[5]

II. Basis for Repeal of Rule

The Commission has decided to repeal the Leather Belt Rule for the reasons discussed in the NPR. In sum, the Commission has determined that the benefits of the Rule are retained through the inclusion of belts in the proposed Guides for Select Leather and Imitation Leather Products. While repealing the Rule would eliminate the Commission's ability to obtain civil penalties for any future misrepresentations of the leather content of belts, the Commission has determined that this action would not seriously jeopardize the Commission's ability to act effectively to prevent the mislabeling of leather belts. Any significant problems that might arise could be addressed on a case-by-case basis, administratively under Section 5 of the FTC Act, 15 U.S.C. 45, or through enforcement actions under Section 13(b), 15 U.S.C. 53(b), in federal district court. Prosecuting serious or knowing misrepresentations in district court allows the Commission to seek injunctive relief as well as equitable remedies, such as redress or disgorgement. Any necessary administrative or district court actions would also serve to provide industry members with additional guidance about what practices are unfair or deceptive.

In addition, the Commission has concluded that including belts in the proposed Guides and eliminating the Rule reduces duplication and streamlines the regulatory scheme, thereby responding to President Clinton's National Regulatory Reinvention Initiative, which, among other things, urges agencies to eliminate obsolete or unnecessary regulations. Accordingly, the Commission has determined that a separate Leather Belt Rule is not necessary and hereby announces the repeal of the Rule.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–11, requires an analysis of the anticipated impact of the repeal of the Rule on small businesses. The reasons for repeal of the Rule have been explained in this Notice. Repeal of the Rule would appear to have little or no effect on small business. The Commission did not receive any information in response to the ANPR and NPR that supports a different conclusion. Moreover, the commission is not aware of any existing federal laws and regulations that would conflict with repeal of the Rule. For these reasons, the Commission certifies, pursuant to Section 605 of the RFA, 5 U.S.C. 605, that this action will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The Leather Belt Rule imposes third-party disclosure requirements that constitute "information collection requirements" under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Accordingly, repeal of the Rule would eliminate any burdens on the public imposed by these disclosure requirements.

List of Subjects in 16 CFR Part 405

Advertising, Clothing, Labeling, Leather and leather products industry, Trade practices.

PART 405—[REMOVED]

The Commission, under authority of Section 18 of the Federal Trade Commission Act, 15 U.S.C. 57à, amends chapter 1 of title 16 of the Code of Federal Regulations by removing Part 405.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–12817 Filed 5–21–96; 8:45 am]

BILLING CODE 6750–01–M

[1] See Guides for the Luggage and Related Products Industry, 16 CFR Part 24; Guides for Shoe Content Labeling and Advertising, 16 CFR Part 231; and Guides for the Ladies' Handbag Industry, 16 CFR Part 247.

[2] The comments were submitted by Larry E. Gundersen (1), a consumer, and Humphreys Inc. (2), a manufacturer of leather belts.

[3] Gundersen (1).

[4] Humphreys Inc. (2).

[5] This comment was submitted by Luggage and Leather Goods Manufacturers of America, Inc. (LLGMA). The comment also expressed no objection to the inclusion of belts in the Guides for Select Leather and Imitation Leather Products and stated that LLGMA would publish the Guides in its magazine when they are adopted.

DEPARTMENT OF DEFENSE

Defense Finance and Accounting Service

32 CFR Part 324

[DFAS Reg. 5400.11–R]

DFAS Privacy Act Program

AGENCY: Defense Finance and Accounting Service, DOD.

ACTION: Final rule.

SUMMARY: This rule establishes the Defense Finance and Accounting Service Privacy Act Program. The Defense Finance and Accounting Service (DFAS) was established to provide finance and accounting services for the DoD Components and other Federal activities, as designated by the Comptroller, DoD.

The Defense Finance and Accounting Service was activated on January 15, 1991, to improve the overall effectiveness of DoD financial management through the consolidation, standardization and integration of finance and accounting systems, procedures and operations. DFAS is also responsible for identifying and implementing finance and accounting requirements, systems and functions for appropriated and non-appropriated funds, as well as working capital, revolving funds and trust fund activities--including security assistance.

EFFECTIVE DATE: May 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Genevieve Turney (703) 607–5165 or DSN 327–5165.

SUPPLEMENTARY INFORMATION: Executive Order 12866. The Director, Administration and Management, Office of the Secretary of Defense has determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

This rule establishes the Defense Finance and Accounting Service (DFAS) Privacy Act Program. DFAS was established to provide finance and accounting services for the DoD Components and other Federal activities, as designated by the Comptroller, DoD. The proposed rule was previously published on March 1, 1996, at 61 FR 8003. No comments were received resulting in any contrary determinations, therefore, DFAS is adopting the rule as published.

List of subjects in 32 CFR part 324

Privacy.

Accordingly, 32 CFR part 324 is added to read as follows:

PART 324–DFAS PRIVACY ACT PROGRAM

Subpart A–General Information

324.1 Issuance and purpose.
324.2 Applicability and scope.
324.3 Policy.
324.4 Responsibilities.

Subpart B–Systems of Records

324.5 General information.
324.6 Procedural rules.
324.7 Exemption rules.

Subpart C–Individual Access to Records

324.8 Right of access.
324.9 Notification of record's existence.
324.10 Individual requests for access.
324.11 Denials.
324.12 Granting individual access to records
324.13 Access to medical and psychological records.
324.14 Relationship between the Privacy Act and the Freedom of Information Act.

Appendix A to part 324 – DFAS Reporting Requirements

Appendix B to part 324 – System of Records Notice

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

Subpart A – General information

§ 324.1 Issuance and purpose.

The Defense Finance and Accounting Service fully implements the policy and procedures of the Privacy Act and the DoD 5400.11-R[1], 'Department of Defense Privacy Program' (see 32 CFR part 310). This regulation supplements the DoD Privacy Program only to establish policy for the Defense Finance and Accounting Service (DFAS) and provide DFAS unique procedures.

§ 324.2 Applicability and scope.

This regulation applies to all DFAS, Headquarters, DFAS Centers, the Financial System Organization (FSO), and other organizational components. It applies to contractor personnel who have entered a contractual agreement with DFAS. Prospective contractors will be advised of their responsibilities under the Privacy Act Program.

§ 324.3 Policy.

DFAS personnel will comply with the Privacy Act of 1974, the DoD Privacy Program and the DFAS Privacy Act Program. Strict adherence is required to ensure uniformity in the implementation of the DFAS Privacy Act Program and to create conditions that will foster public trust. Personal information maintained by DFAS organizational elements will be safeguarded. Information will be made available to the individual to whom it pertains to the maximum extent practicable. Specific DFAS policy is provided for Privacy Act training, responsibilities, reporting procedures and implementation requirements. DFAS Components will not define policy for the Privacy Act Program.

§ 324.4 Responsibilities.

(a) *Director, DFAS.*

(1) Ensures the DFAS Privacy Act Program is implemented at all DFAS locations.

(2) The Director, DFAS, will be the Final Denial Appellate Authority. This authority may be delegated to the Director for Resource Management.

(3) Appoints the Director for External Affairs and Administrative Support, or a designated replacement, as the DFAS Headquarters Privacy Act Officer.

(b) *DFAS Headquarters General Counsel.*

(1) Ensures uniformity is maintained in legal rulings and interpretation of the Privacy Act.

(2) Consults with DoD General Counsel on final denials that are inconsistent with other final decisions within DoD. Responsible to raise new legal issues of potential significance to other Government agencies.

(3) Provides advice and assistance to the DFAS Director, Center Directors, and the FSO as required, in the discharge of their responsibilities pertaining to the Privacy Act.

(4) Acts as the DFAS focal point on Privacy Act litigation with the Department of Justice.

(5) Reviews Headquarters' denials of initial requests and appeals.

(c) *DFAS Center Directors.*

(1) Ensures that all DFAS Center personnel, all personnel at subordinate levels, and contractor personnel working with personal data comply with the DFAS Privacy Act Program.

(2) Serves as the DFAS Center Initial Denial Authority for requests made as a result of denying release of requested information at locations within DFAS Center authority. Initial denial authority may not be redelegated. Initial denial appeals will be forwarded to the appropriate DFAS Center marked to the attention of the DFAS Center Initial Denial Authority.

(d) *Director, FSO.*

(1) Ensures that FSO and subordinate personnel and contractors working with personal data comply with the Privacy Act Program.

(2) Serves as the FSO Initial Denial Authority for requests made as a result of denying release of requested information at locations within FSO authority. FSO Initial denial authority may not be redelegated.

(3) Appoints a Privacy Act Officer for the FSO and each Financial System Activity (FSA).

(e) *DFAS Headquarters Privacy Act Officer.*

(1) Establishes, issues and updates policy for the DFAS Privacy Act Program and monitors compliance. Serves as the DFAS single point of contact on all matters concerning Privacy Act policy. Resolves any conflicts resulting from implementation of the DFAS Privacy Act Program policy.

(2) Serves as the DFAS single point of contact with the Department of Defense Privacy Office. This duty may be delegated.

(3) Ensures that the collection, maintenance, use and/or dissemination of records of identifiable personal information is for a necessary and lawful purpose, that the information is current and accurate for the intended use and that adequate security safeguards are provided.

(4) Monitors system notices for agency systems of records. Ensures that new, amended, or altered notices are promptly prepared and published. Reviews all notices submitted by the DFAS Privacy Act Officers for correctness and submits same to the Department of Defense Privacy Office for publication in the **Federal Register.** Maintains and publishes a listing of DFAS Privacy Act system notices.

(5) Establishes DFAS Privacy Act reporting requirement due dates. Compiles all Agency reports and submits the completed annual report to the Defense Privacy Office. DFAS reporting requirements are provided in Appendix A to this part.

(6) Conducts annual Privacy Act Program training for DFAS Headquarters (HQ) personnel. Ensures that subordinate DFAS Center and FSO Privacy Act Officers fulfill annual training requirements.

(f) *FSO and Financial System Activities (FSAs) Legal Support.* The FSO and subordinate FSA organizational elements will be supported by the appropriate DFAS-HQ or DFAS Center General Counsel office.

(g) *DFAS Center(s) Assistant General Counsel.*

(1) Ensures uniformity is maintained in legal rulings and interpretation of the Privacy Act and this regulation. Consults with the DFAS-HQ General Counsel as required.

(2) Provides advice and assistance to the DFAS Center Director and the FSA in the discharge of his/her responsibilities pertaining to the Privacy Act.

(3) Coordinates on DFAS Center and the FSA denials of initial requests.

(h) *DFAS Center Privacy Act Officer.*

(1) Implements and administers the DFAS Privacy Act Program for all personnel, to include contractor personnel, within the Center, Operating Locations (OpLocs) and Defense Accounting Offices (DAOs).

(2) Ensures that the collection, maintenance, use, or dissemination of records of identifiable personal information is in a manner that assures that such action is for a necessary and lawful purpose; the information is timely and accurate for its intended use; and that adequate safeguards are provided to prevent misuse of such information. Advises the Program Manager that systems notices must be published in the **Federal Register** prior to collecting or maintenance of the information. Submits system notices to the DFAS-HQ Privacy Act Officer for review and subsequent submission to the Department of Defense Privacy Office.

(3) Administratively controls and processes Privacy Act requests. Ensures that the provisions of this regulation and the DoD Privacy Act Program are followed in processing requests for records. Ensures all Privacy Act requests are promptly reviewed. Coordinates the reply with other organizational elements as required.

(4) Prepares denials and partial denials for the Center Director's signature and obtain required coordination with the assistant General Counsel. Responses will include written justification citing a specific exemption or exemptions.

(5) Prepares input for the annual Privacy Act Report as required using the guidelines provided in Appendix A to this part.

(6) Conducts training on the DFAS Privacy Act Program for Center personnel.

(i) *FSO Privacy Act Officer.*

(1) Implements and administers the DFAS Privacy Act Program for all personnel, to include contractor personnel, within the FSO.

(2) Ensures that the collection, maintenance, use, or dissemination of records of identifiable personal information is in a manner that assures that such action is for a necessary and lawful purpose; the information is timely and accurate for its intended use; and that adequate safeguards are provided to prevent misuse of such information. Advises the Program Manager that systems notices must be published in the **Federal Register** prior to collecting or maintenance of the information. Submits system notices to the DFAS-HQ Privacy Act Officer for review and subsequent submission to the Department of Defense Privacy Office.

(3) Administratively controls and processes Privacy Act requests. Ensures that the provisions of this regulation and the DoD Privacy Act Program are followed in processing requests for records. Ensure all Privacy Act requests are promptly reviewed. Coordinate the reply with other organizational elements as required.

(4) Prepares denials and partial denials for signature by the Director, FSO and obtains required coordination with the assistant General Counsel. Responses will include written justification citing a specific exemption or exemptions.

(5) Prepares input for the annual Privacy Act Report (RCS: DD DA&M(A)1379) as required using the guidelines provided in Appendix A to this part.

(6) Conducts training on the DFAS Privacy Act Program for FSO personnel.

(j) *DFAS employees.*

(1) Will not disclose any personal information contained in any system of records, except as authorized by this regulation.

(2) Will not maintain any official files which are retrieved by name or other personal identifier without first ensuring that a system notice has been published in the **Federal Register.**

(3) Reports any disclosures of personal information from a system of records or the maintenance of any system of records not authorized by this regulation to the appropriate Privacy Act Officer for action.

(k) *DFAS system managers (SM).*

(1) Ensures adequate safeguards have been established and are enforced to prevent the misuse, unauthorized disclosure, alteration, or destruction of personal information contained in system records.

(2) Ensures that all personnel who have access to the system of records or are engaged in developing or supervising procedures for handling records are totally aware of their responsibilities to protect personal information established by the DFAS Privacy Act Program.

(3) Evaluates each new proposed system of records during the planning stage. The following factors should be considered:

(i) Relationship of data to be collected and retained to the purpose for which the system is maintained. All information must be relevant to the purpose.

(ii) The impact on the purpose or mission if categories of information are not collected. All data fields must be necessary to accomplish a lawful purpose or mission.

(iii) Whether informational needs can be met without using personal identifiers.

(iv) The disposition schedule for information.

(v) The method of disposal.

(vi) Cost of maintaining the information.

(4) Complies with the publication requirements of DoD 5400.11-R, 'Department of Defense Privacy Program' (see 32 CFR part 310). Submits final publication requirements to the appropriate DFAS Privacy Act Officer.

(l) *DFAS program manager(s).* Reviews system alterations or amendments to evaluate for relevancy and necessity. Reviews will be conducted annually and reports prepared outlining the results and corrective actions taken to resolve problems. Reports will be forwarded to the appropriate Privacy Act Officer.

(m) *Federal government contractors.* When a DFAS organizational element contracts to accomplish an agency function and performance of the contract requires the operation of a system of records or a portion thereof, DoD 5400.11-R, 'Department of Defense Privacy Program' (see 32 CFR part 310) and this part apply. For purposes of criminal penalties, the contractor and its employees shall be considered employees of DFAS during the performance of the contract.

(1) *Contracting Involving Operation of Systems of Records.* Consistent with Federal Acquisition Regulation (FAR)[2] and the DoD Supplement to the Federal Acquisition Regulation (DFAR)[3], Part 224.1, contracts involving the operation of a system of records or portion thereof shall specifically identify the record system, the work to be performed and shall include in the solicitations and resulting contract such terms specifically prescribed by the FAR and DFAR.

(2) *Contracting.* For contracting subject to this part, the Agency shall:

(i) Informs prospective contractors of their responsibilities under the DFAS Privacy Act Program.

(ii) Establishes an internal system for reviewing contractor performance to ensure compliance with the DFAS Privacy Act Program.

(3) *Exceptions.* This rule does not apply to contractor records that are:

(i) Established and maintained solely to assist the contractor in making internal contractor management decisions, such as records maintained by the contractor for use in managing the contract.

(ii) Maintained as internal contractor employee records, even when used in conjunction with providing goods or services to the agency.

(4) *Contracting procedures.* The Defense Acquisition Regulatory Council is responsible for developing the specific policies and procedures for soliciting, awarding, and administering contracts.

(5) *Disclosing records to contractors.* Disclosing records to a contractor for use in performing a DFAS contract is considered a disclosure within DFAS. The contractor is considered the agent of DFAS when receiving and maintaining the records for the agency.

[1] Copies may be obtained at cost from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] Copies may be obtained at cost from the Superintendent of Documents, P.O. Box 37195, Pittsburgh, PA 15250–7954.

[3] See footnote 2 to § 324.4(m)(1)

Subpart B – Systems of Records

§ 324.5 General information.

(a) The provisions of DoD 5400.11-R, 'Department of Defense Privacy Program' (see 32 CFR part 310) apply to all DFAS systems of records. DFAS Privacy Act Program Procedural Rules, DFAS Exemption Rules and System of Record Notices are the three types of documents relating to the Privacy Act Program that must be published in the **Federal Register.**

(b) A system of records used to retrieve records by a name or some other personal identifier of an individual must be under DFAS control for consideration under this regulation. DFAS will maintain only those Systems of Records that have been described through notices published in the **Federal Register.**

(1) *First amendment guarantee.* No records will be maintained that describe how individuals exercise their rights guaranteed by the First Amendment unless maintenance of the record is expressly authorized by Statute, the individual or for an authorized law enforcement purpose.

(2) *Conflicts.* In case of conflict, the provisions of DoD 5400.11-R take precedence over this supplement or any DFAS directive or procedure concerning the collection, maintenance, use or disclosure of information from individual records.

(3) *Record system notices.* Record system notices are published in the **Federal Register** as notices and are not subject to the rule making procedures. The public must be given 30 days to comment on any proposed routine uses prior to implementing the system of record.

(4) *Amendments.* Amendments to system notices are submitted in the same manner as the original notices.

§ 324.6 Procedural rules.

DFAS procedural rules (regulations having a substantial and direct impact on the public) must be published in the **Federal Register** first as a proposed rule to allow for public comment and then as a final rule. Procedural rules will be submitted through the appropriate DFAS Privacy Act Officer to the Department of Defense Privacy Office. Appendix B to this part provides the correct format. Guidance may be obtained from the DFAS-HQ and DFAS Center Records Managers on the preparation of procedural rules for publication.

§ 324.7 Exemption rules.

(a) *Submitting proposed exemption rules.* Each proposed exemption rule submitted for publication in the **Federal Register** must contain: The agency identification and name of the record system for which an exemption will be established; The subsection(s) of the Privacy Act which grants the agency authority to claim an exemption for the system; The particular subsection(s) of the Privacy Act from which the system will be exempt; and the reasons why an exemption from the particular subsection identified in the preceding subparagraph is being claimed. No exemption to all provisions of the Privacy Act for any System of records will be granted. Only the Director, DFAS may make a determination that an exemption should be established for a system of record.

(b) *Submitting exemption rules for publication.* Exemption rules must be published in the **Federal Register** first as proposed rules to allow for public comment, then as final rules. No system of records shall be exempt from any provision of the Privacy Act until the exemption rule has been published in the **Federal Register** as a final rule. The DFAS Privacy Act Officer will submit proposed exemption rules, in proper format, to the Defense Privacy Office, for review and submission to the **Federal Register** for publication. Amendments to exemption rules are submitted in the same manner as the original exemption rules.

(c) *Exemption for classified records.* Any record in a system of records maintained by the Defense Finance and Accounting Service which falls within the provisions of 5 U.S.C. 552a(k)(1) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G)-(e)(4)(I) and (f) to the extent that a record system contains any record properly classified under Executive Order 12589 and that the record is required to be kept classified in the interest of national defense or foreign policy. This specific exemption rule, claimed by the Defense Finance and Accounting Service under authority of 5 U.S.C. 552a(k)(1), is applicable to all systems of records maintained, including those individually designated for an exemption herein as well as those not otherwise specifically designated for an exemption, which may contain isolated items of properly classified information

(1) *General exemptions.* (Reserved)

(2) *Specific exemptions.* (Reserved)

Subpart C – Individual Access to Records

§ 324.8 Right of access.

The provisions of DoD 5400.11-R, 'Department of Defense Privacy Program' (see 32 CFR part 310) apply to all DFAS personnel about whom records are maintained in systems of records. All information that can be released consistent with applicable laws and regulations should be made available to the subject of record.

§ 324.9 Notification of record's existence.

All DFAS Privacy Act Officers shall establish procedures for notifying an individual, in response to a request, if the system of records contains a record pertaining to him/her.

§ 324.10 Individual requests for access.

Individuals shall address requests for access to records to the appropriate Privacy Act Officer by mail or in person. Requests for access should be acknowledged within 10 working days after receipt and provided access within 30 working days. Every effort will be made to provide access rapidly; however, records cannot usually be made available for review on the day of request. Requests must provide information needed to locate and identify the record, such as individual identifiers required by a particular system, to include the requester's full name and social security number.

§ 324.11 Denials.

Only a designated denial authority may deny access. The denial must be in writing.

§ 324.12 Granting individual access to records.

(a) The individual should be granted access to the original record (or exact copy) without any changes or deletions. A record that has been amended is considered the original.

(b) The DFAS component that maintains control of the records will provide an area where the records can be reviewed. The hours for review will be set by each DFAS location.

(c) The custodian will require presentation of identification prior to providing access to records. Acceptable identification forms include military or government civilian identification cards, driver's license, or other similar photo identification documents.

(d) Individuals may be accompanied by a person of their own choosing when reviewing the record; however, the custodian will not discuss the record in the presence of the third person without written authorization.

(e) On request, copies of the record will be provided at a cost of $.15 per page. Fees will not be assessed if the cost is less that $30.00. Individuals requesting copies of their official personnel records are entitled to one free copy and then a charge will be assessed for additional copies.

§ 324.13 Access to medical and psychological records.

Individual access to medical and psychological records should be provided, even if the individual is a minor, unless it is determined that access could have an adverse effect on the mental or physical health of the individual. In this instance, the individual will be asked to provide the name of a personal physician, and the record will be provided to that physician in accordance with guidance in Department of Defense 5400.11-R, 'Department of Defense Privacy Program' (see 32 CFR part 310).

§ 324.14 Relationship between the Privacy Act and the Freedom of Information Act.

Access requests that specifically state or reasonably imply that they are made under FOIA, are processed pursuant to the DFAS Freedom of Information Act Regulation. Access requests that specifically state or reasonably imply that they are made under the PA are processed pursuant to this regulation. Access requests that cite both the FOIA and the PA are processed under the Act that provides the greater degree of access. Individual access should not be denied to records otherwise releasable under the PA or the FOIA solely because the request does not cite the appropriate statute. The requester should be informed which Act was used in granting or denying access.

Appendix A to part 324–DFAS Reporting Requirements

By February 1, of each calendar year, DFAS Centers and Financial Systems Organizations will provide the DFAS Headquarters Privacy Act Officer with the following information:

1. Total Number of Requests for Access:

a. Number granted in whole:

b. Number granted in part:

c. Number wholly denied:

d. Number for which no record was found:

2. Total Number of Requests to Amend Records in the System:

a. Number granted in whole:

b. Number granted in part:

c. Number wholly denied:

3. The results of reviews undertaken in response to paragraph 3a of Appendix I to OMB Circular A-130 [4].

[4] Copies available from the Office of Personnel Management, 1900 E. Street, Washington, DC 20415.

Appendix B to part 324–System of Records Notice

The following data captions are required for each system of records notice published in the **Federal Register.** An explanation for each caption is provided.

1. *System identifier.* The system identifier must appear in all system notices. It is limited to 21 positions, including agency code, file number, symbols, punctuation, and spaces.

2. *Security classification.* Self explanatory. (DoD does not publish this caption. However, each agency is responsible for maintaining the information.)

3. *System name.* The system name must indicate the general nature of the system of records and, if possible, the general category of individuals to whom it pertains. Acronyms should be established parenthetically following the first use of the name (e.g., 'Field Audit Office Management Information System (FMIS)'). Acronyms shall not be used unless preceded by such an explanation. The system name may not exceed 55 character positions, including punctuation and spaces.

4. *Security classification.* This category is not published in the **Federal Register** but is required to be kept by the Headquarters Privacy Act Officer.

5. *System location.* a. For a system maintained in a single location, provide the exact office name, organizational identity, routing symbol, and full mailing address. Do not use acronyms in the location address.

b. For a geographically or organizationally decentralized system, describe each level of organization or element that maintains a portion of the system of records.

c. For an automated data system with a central computer facility and input or output terminals at geographically separate locations, list each location by category.

d. If multiple locations are identified by type of organization, the system location may indicate that official mailing addresses are published as an appendix to the agency's compilation of systems of records notices in the **Federal Register.** If no address directory is used, or if the addresses in the directory are incomplete, the address of each location where a portion of the record system is maintained must appear under the 'system location' caption.

e. Classified addresses shall not be listed but the fact that they are classified shall be indicated.

f. The U.S. Postal Service two-letter state abbreviation and the nine-digit zip code shall be used for all domestic addresses.

6. *Categories of individuals covered by the system.* Use clear, non technical terms which show the specific categories of individuals to whom records in the system pertain. Broad descriptions such as 'all DFAS personnel' or 'all employees' should be avoided unless the term actually reflects the category of individuals involved.

7. *Categories of records in the system.* Use clear, non technical terms to describe the types of records maintained in the system. The description of documents should be limited to those actually retained in the system of records. Source documents used only to collect data and then destroyed should not be described.

8. *Authority for maintenance of the system.* The system of records must be authorized by a Federal law or Executive Order of the President, and the specific provision must be cited. When citing federal laws, include the popular names (e.g., '5 U.S.C. 552a, The Privacy Act of 1974') and for Executive Orders, the official titles (e.g., 'Executive Order 9397, Numbering System for Federal Accounts Relating to Individual Persons').

9. *Purpose(s).* The specific purpose(s) for which the system of records was created and maintained; that is, the uses of the records within DFAS and the rest of the Department of Defense should be listed.

10. *Routine uses of records maintained in the system, including categories of users and purposes of the uses.* All disclosures of the records outside DoD, including the recipient of the disclosed information and the uses the recipient will make of it should be listed. If possible, the specific activity or element to which the record may be disclosed (e.g., 'to the Department of Veterans Affairs, Office of Disability Benefits') should be listed. General statements such as 'to other Federal Agencies as required' or 'to any other appropriate Federal Agency' should not be used. The blanket routine uses, published at the beginning of the agency's compilation, applies to all system notices, unless the individual system notice states otherwise.

11. *Disclosure to consumer reporting agencies:* This entry is optional for certain debt collection systems of records.

12. *Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system.* This section is divided into four parts.

13. *Storage:* The method(s) used to store the information in the system (e.g., 'automated, maintained in computers

and computer output products' or 'manual, maintained in paper files' or 'hybrid, maintained in paper files and in computers') should be stated. Storage does not refer to the container or facility in which the records are kept.

14. *Retrievability:* How records are retrieved from the system (e.g., 'by name,' 'by SSN,' or 'by name and SSN') should be indicated.

15. *Safeguards:* The categories of agency personnel who use the records and those responsible for protecting the records from unauthorized access should be stated. Generally the methods used to protect the records, such as safes, vaults, locked cabinets or rooms, guards, visitor registers, personnel screening, or computer 'fail-safe' systems software should be identified. Safeguards should not be described in such detail as to compromise system security.

16. *Retention and disposal:* Describe how long records are maintained. When appropriate, the length of time records are maintained by the agency in an active status, when they are transferred to a Federal Records Center, how long they are kept at the Federal Records Center, and when they are transferred to the National Archives or destroyed should be stated. If records eventually are destroyed, the method of destruction (e.g., shredding, burning, pulping, etc.) should be stated. If the agency rule is cited, the applicable disposition schedule shall also be identified.

17. *System manager(s) and address.* The title (not the name) and address of the official or officials responsible for managing the system of records should be listed. If the title of the specific official is unknown, such as with a local system, the local director or office head as the system manager should be indicated. For geographically separated or organizationally decentralized activities with which individuals may correspond directly when exercising their rights, the position or title of each category of officials responsible for the system or portion thereof should be listed. Addresses that already are listed in the agency address directory or simply refer to the directory should not be included.

18. *Notification procedures.* (1) Notification procedures describe how an individual can determine if a record in the system pertains to him/her. If the record system has been exempted from the notification requirements of subsection (f)(l) or subsection (e)(4)(G) of the Privacy Act, it should be so stated. If the system has not been exempted, the notice must provide sufficient information to enable an individual to request notification of whether a record in the system pertains to him/her. Merely referring to a DFAS regulation is not sufficient. This section should also include the title (not the name) and address of the official (usually the Program Manager) to whom the request must be directed; any specific information the individual must provide in order for DFAS to respond to the request (e.g., name, SSN, date of birth, etc.); and any description of proof of identity for verification purposes required for personal visits by the requester.

19. *Record access procedures.* This section describes how an individual can review the record and obtain a copy of it. If the system has been exempted from access and publishing access procedures under subsections (d)(1) and (e)(4)(H), respectively, of the Privacy Act, it should be so indicated. If the system has not been exempted, describe the procedures an individual must follow in order to review the record and obtain a copy of it, including any requirements for identity verification. If appropriate, the individual may be referred to the system manager or another DFAS official who shall provide a detailed description of the access procedures. Any addresses already listed in the address directory should not be repeated.

20. *Contesting records procedures.* This section describes how an individual may challenge the denial of access or the contents of a record that pertains to him or her. If the system of record has been exempted from allowing amendments to records or publishing amendment procedures under subsections (d)(1) and (e)(4)(H), respectively, of the Privacy Act, it should be so stated. If the system has not been exempted, this caption describes the procedures an individual must follow in order to challenge the content of a record pertaining to him/her, or explain how he/she can obtain a copy of the procedures (e.g., by contacting the Program Manager or the appropriate DFAS Privacy Act Officer).

21. *Record source categories:* If the system has been exempted from publishing record source categories under subsection (e)(4)(I) of the Privacy Act, it should be so stated. If the system has not been exempted, this caption must describe where DFAS obtained the information maintained in the system. Describing the record sources in general terms is sufficient; specific individuals, organizations, or institutions need not be identified.

22. *Exemptions claimed for the system.* If no exemption has been established for the system, indicate 'None.' If an exemption has been established, state under which provision of the Privacy Act it is established (e.g., 'Portions of this system of records may be exempt under the provisions of 5 U.S.C. 552a(k)(2).')

Dated: May 15, 1996.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–12856 Filed 5–21–96; 8:45 am]

BILLING CODE 5000–04–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[AD–FRL–5508–5]

RIN 2060–AA61

National Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide)—Final Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final decision.

SUMMARY: In accordance with sections 108 and 109 of the Clean Air Act (Act), EPA has reviewed and revised the air quality criteria upon which the existing national ambient air quality standards (NAAQS) for sulfur oxides are based. Based on that review, this document announces EPA's final decision under section 109(d)(1) that revisions of the NAAQS for sulfur oxides are not appropriate at this time, aside from several minor technical changes.

In lieu of the two alternatives to short-term NAAQS proposed on November 15, 1994, EPA will shortly propose revisions to 40 CFR part 51 to establish concern and intervention levels under section 303 of the Act and associated guidance to assist States in addressing short-term peaks of sulfur dioxide (SO_2). Final action will be taken on proposed changes to 40 CFR parts 53 and 58 when final action is taken on the 40 CFR part 51 proposal and associated guidance.

EFFECTIVE DATE: May 22, 1996.

ADDRESSES: A docket containing information relating to EPA's review of the SO_2 NAAQS (Docket No. A–84–25) is available for public inspection in the Air & Radiation Docket Information Center, U.S. Environmental Protection Agency, South Conference Center, Room M–1500, 401 M Street, SW, Washington, DC, telephone (202) 260–7548. The docket may be inspected between 8 a.m. and 5:30 p.m. on weekdays, and a reasonable fee may be charged for copying. For the availability of related information, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Ms. Susan Lyon Stone, Air Quality Strategies and Standards Division (MD–15), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541-1146.

SUPPLEMENTARY INFORMATION:

Availability of Related Information

The *1982 revised criteria document,* Air Quality Criteria for Particulate Matter and Sulfur Oxides (three volumes, EPA–600/8–82–029af-cf, December 1982; Volume I, NTIS # PB–84–120401, $36.50 paper copy and $9.00 microfiche; Volume II, NTIS # PB–84–120419, $77.00 paper copy and $9.00 microfiche; Volume III, NTIS # PB–84–120427, $77.00 paper copy and $20.50 microfiche); the 1986 criteria document addendum, Second Addendum to Air Quality Criteria for Particulate Matter and Sulfur Oxides (1982): Assessment of Newly Available Health Effects Information (EPA/600/8–86–020–F, NTIS # PB–87–176574, $36.50 paper copy and $9.00 microfiche); the *1994 criteria document supplement,* Supplement to the Second Addendum (1986) to Air Quality Criteria for Particulate Matter and Sulfur Oxides (1982): Assessment of New Findings on Sulfur Dioxide Acute Exposure Health Effects in Asthmatic Individuals (1994) (EPA–600/FP–93/002); the *1982 staff paper,* Review of the National Ambient Air Quality Standards for Sulfur Oxides: Assessment of Scientific and Technical Information (EPA–450/5–82–007, November 1982; NTIS # PB–84–102920, $36.50 paper copy and $9.00 microfiche); the *1986 staff paper addendum,* Review of the National Ambient Air Quality Standards for Sulfur Oxides: Updated Assessment of Scientific and Technical Information (EPA–450/05–86–013, December 1986; NTIS # PB–87–200259, $19.50 paper copy and $9.00 microfiche) and the *1994 staff paper supplement,* Review of the National Ambient Air Quality Standards For Sulfur Oxides: Updated Assessment of Scientific and Technical Information, Supplement to the 1986 OAQPS staff paper addendum (1994) (EPA–452/R–94–013, September 1994; NTIS # PB–95–124160, $27.00 paper copy and $12.50 microfiche) are available from: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, or call 1–800–553–NTIS. (Add $3.00 handling charge per order.) Other documents generated in connection with this standard review are also available in the EPA docket identified above.

Table of Contents

I. Background
- A. Legislative Requirements Affecting this Decision
  - 1. Primary Standards
  - 2. Related Control Requirements
- B. Sulfur Oxides and Existing Standards for SO_2
- C. 1988 Proposal
- D. 1994 Reproposal
- E. Rulemaking Docket

II. Summary of Public Comments
- A. Current 24-hour and Annual Standards
- B. Regulatory Alternatives to Address Short-term Peak SO_2 Exposures

III. Rationale for Final Decision
- A. Current 24-hour and Annual Standards
- B. Short-term Peak SO_2 Exposures
  - 1. Assessment of Health Effects Associated with Short-term SO_2 Exposures
  - 2. Air Quality and Exposure Considerations
  - 3. Conclusions
- C. Final Decision on Primary Standards
- D. Technical Changes

IV. Regulatory Impacts
- A. Executive Order 12866
- B. Regulatory Flexibility Analysis
- C. Impact on Reporting Requirements
- D. Unfunded Mandates Reform Act
- E. Environmental Justice

References

Appendix I—1987 Clean Air Scientific Advisory Committee (CASAC) Closure Letter

Appendix II—1994 CASAC Closure Letter

I. Background

A. Legislative Requirements Affecting This Decision

1. Primary Standards

Two sections of the Act govern the establishment and revision of NAAQS. Section 108 (42 U.S.C. 7408) directs the Administrator to identify pollutants which "may reasonably be anticipated to endanger public health or welfare" and to issue air quality criteria for them. These air quality criteria are to "reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of (a) pollutant in the ambient air * * *"

Section 109 (42 U.S.C.7409) directs the Administrator to propose and promulgate "primary" NAAQS for pollutants identified under section 108. Section 109(b)(1) defines a primary standard as one "the attainment and maintenance of which, in the judgment of the Administrator, based on the criteria and allowing an adequate margin of safety, [is] requisite to protect the public health." For a discussion of the margin of safety requirement, see the November 15, 1994 proposed rule (59 FR 58958).

Section 109(d) of the Act (42 U.S.C. 7409(d)) requires periodic review and, if appropriate, revision of existing criteria and standards. The process by which EPA has reviewed the criteria and standards for sulfur oxides under section 109(d) is described in a later section of this notice.

2. Related Control Requirements

States are primarily responsible for ensuring attainment and maintenance of ambient air quality standards once the EPA has established them. Under section 110 (42 U.S.C. 7410) and part D of title I of the Act (42 U.S.C. 7501–7515), States are to submit, for EPA approval, State implementation plans (SIP's) that provide for the attainment and maintenance of such standards through control programs directed to sources of the pollutants involved. The States, in conjunction with EPA, also administer the prevention of significant deterioration program (42 U.S.C. 7470–7479) for these pollutants. In addition, Federal programs provide for nationwide reductions in emissions of these and other air pollutants through the Federal motor vehicle control program under title II of the Act (42 U.S.C. 7521–7574), which involves controls for automobile, truck, bus, motorcycle, and aircraft emissions; new source performance standards under section 111 (42 U.S.C. 7411); national emission standards for hazardous air pollutants under section 112 (42 U.S.C. 7412); and title IV of the Act Amendments of 1990 (42 U.S.C. 7651–76510), which specifically provides for major reductions in SO_2 emissions.

B. Sulfur Oxides and Existing Standards for SO_2

The focus of this standard review is on the health effects of SO_2, alone and in combination with other pollutants. Other sulfur oxide (SO_x) vapors (e.g., sulfur trioxide, SO_3) are not commonly found in the atmosphere. Sulfur dioxide is a rapidly-diffusing reactive gas that is very soluble in water. It is emitted principally from combustion or processing of sulfur-containing fossil fuels and ores. At elevated concentrations, SO_2 can adversely affect human health.

Sulfur dioxide occurs in the atmosphere with a variety of particles and other gases and undergoes chemical and physical interactions with them, forming sulfates and other transformation products. Information on the effects of the principal atmospheric transformation products of SO_2 (i.e., sulfuric acid and sulfates) was

considered in the review of the particulate matter standards that culminated in revision of the standards on July 1, 1987 (52 FR 24634); it will be considered again in the next review of the particulate matter standards, the commencement of which was announced on April 12, 1994 (59 FR 17375).

On April 30, 1971, EPA promulgated primary and secondary NAAQS for sulfur oxides, measured as SO_2, under section 109 of the Act (36 FR 8186). The existing primary standards for SO_2 are 365 $\mu g/m^3$ (0.14 ppm), averaged over a period of 24 hours and not to be exceeded more than once per year, and 80 $\mu g/m^3$ (0.030 ppm) annual arithmetic mean. The secondary standard was set at 1300 $\mu g/m^3$ (0.50 ppm) averaged over a period of 3 hours and not to be exceeded more than once per year. The scientific and technical bases for the current standards are contained in the original criteria document, Air Quality Criteria for Sulfur Oxides (DHEW, 1970). For a history of the effects of SO_2 regulations on trends in SO_2 emissions and ambient concentrations, see the November 15, 1994 proposed rule (59 FR 58958).

Annual average SO_2 levels range from less than 0.004 ppm in remote rural sites to over 0.03 ppm in the most polluted urban industrial areas. The highest short-term values are found in the vicinity (< 20 km) of major point sources. In the absence of adequate controls, maximum levels at such sites for 24-hour, 3-hour, and 1-hour averages can reach or exceed 0.4 ppm, 1.4 ppm, and 2.3 ppm, respectively. The origins, relevant concentrations and potential effects of SO_2 are discussed in greater detail in the revised criteria document (EPA, 1982a), in the staff paper (EPA, 1982b), in the criteria document addendum (EPA, 1986a), the staff paper addendum (EPA, 1986b), the criteria document supplement (EPA, 1994a), and the staff paper supplement (EPA, 1994b).

C. 1988 Proposal

Based on reviews of the original air quality criteria and standards for sulfur oxides, EPA published a proposed decision not to revise the existing primary and secondary standards on April 26, 1988 (53 FR 14926).[1] In reaching the provisional conclusion that the current standards provided adequate protection against the health and welfare effects associated with SO_2, EPA was mindful of uncertainties in the available evidence concerning the risk that elevated short-term (< 1-hour) SO_2 concentrations might pose to asthmatic individuals exercising in ambient air. The EPA specifically requested broad public comment on the alternative of revising the current standards and adding a new 1-hour primary standard of 0.4 ppm. The notice also announced that if a 1-hour primary standard were adopted, consideration would be given to replacing the current 3-hour secondary standard (1,300 $\mu g/m^3$ (0.50 ppm)) with a 1-hour secondary standard set equal to the primary standard, and adopting an expected-exceedance form for all of the standards.[2]

In the same notice, EPA also proposed minor technical revisions to the standards, including restating the levels for the primary and secondary standards in terms of ppm rather than $\mu g/m^3$, adding explicit rounding conventions, and specifying data completeness and handling conventions. In addition, EPA announced its intention to retain the block averaging convention for the 24-hour, annual, and 3-hour standards and proposed to eliminate any future questions in this regard by adding clarifying language to 40 CFR 50.4 and 50.5. Based on its assessment of the SO_2 health effects information, EPA also proposed to revise the significant harm levels for SO_2 and the associated example air pollution episode levels (40 CFR part 51). Finally, EPA proposed some minor modifications to the ambient air quality surveillance requirements (40 CFR part 58).

D. 1994 Reproposal

As a result of public comments on the 1988 proposal and other post-proposal developments, EPA published a second proposal regarding revision of the primary standards for sulfur oxides on November 15, 1994 (59 FR 58958).[3] The 1994 reproposal was based in part on supplements to the criteria document (EPA, 1994a) and staff paper (EPA, 1994b) that were prepared to take into account recent health studies. Drafts of these documents were made available for review by the public and by the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board, which provided its advice and recommendations in a letter dated June 1, 1994 (reprinted as Appendix II to this preamble). These and other aspects of the administrative process leading to the 1994 reproposal are described more fully in the reproposal notice.

As in the 1988 proposal, EPA proposed to retain the existing 24-hour and annual standards. The EPA also solicited comment on three regulatory alternatives to further reduce the health risk posed by exposure to high 5-minute peaks of SO_2 if additional protection were judged to be necessary. The three alternatives included: 1) Revising the existing primary SO_2 NAAQS by adding a new 5-minute standard of 0.60 ppm SO_2, 1 expected exceedance; 2) establishing a new regulatory program under section 303 of the Act to supplement protection provided by the existing NAAQS, with a trigger level of 0.60 ppm SO_2, 1 expected exceedance; and 3) augmenting implementation of existing standards by focusing on those sources or source types likely to produce high 5-minute peak concentrations of SO_2.[4]

In the reproposal notice, EPA specifically requested public comment in several key areas. First, EPA requested the submittal of factual information on the frequency of occurrence of 5-minute peak SO_2 levels in the ambient air, as well as information on the source or source types and the nature of events that are most likely to give rise to such peak SO_2 levels. Second, EPA requested the submission of data that would allow better characterization of the asthmatic population at risk and the frequency that an asthmatic individual would likely be exposed to peak concentrations of 0.60 ppm SO_2 and above, while at elevated ventilation rates. Third, EPA requested that asthma specialists in the medical community submit their views on the medical significance of the reported SO_2 effects, and on whether a numerical value below or above 0.60 ppm SO_2 would be more appropriate to protect asthmatic individuals.

The technical changes to the SO_2 NAAQS that were first proposed in 1988, including formally adopting the block averaging convention, stating the standards in ppm rather than $\mu g/m^3$, adopting explicit rounding and data completeness conventions and other technical changes, were reproposed in this notice. Comments on this reproposal were to be received by February 13, 1995.

On December 29, 1994 (59 FR 67255), EPA announced that a public hearing on the reproposal would be held on February 8, 1995, and that the public comment period was being extended to March 15, 1995. The public hearing was held at the U.S. Environmental Protection Agency's Environmental Research Center Auditorium in Research Triangle Park, NC.

On March 14, 1995 (60 FR 13663), the public comment period was extended again, to April 14, 1995, to allow additional time for commenters to review the proposed requirements for implementing the three regulatory alternatives (59 FR 12492, March 7, 1995) before submitting comments on the 1994 reproposal.

E. Rulemaking Docket

The EPA established a standard review docket (Docket No. A–79–28) for the sulfur oxides review in July 1979. The EPA also established a rulemaking docket (Docket No. A–84–25) for the 1988 proposal as required by section 307(d) of the Act. The standard review docket and a separate docket established for criteria document revision (Docket No. ECAO–CD–79–1) have been incorporated into the rulemaking docket.

II. Summary of Public Comments

There were 95 written comments received prior to the end of the comment period on April 14, 1995. An additional 10 written comments were received after the close of the comment period. Of the 105 submissions, 53 were provided by individual industrial companies or industrial associations, 16 by Federal, State and local government agencies, 7 by environmental and public interest groups, and 5 by interested individuals, including one neighborhood association. Comments also were received from physicians and other independent experts knowledgeable about the health effects described in the reproposal. Along with its written comments, one environmental group submitted videotaped testimony.

In addition, 14 persons presented testimony at the February 8, 1995 public hearing. The written text of the comments presented, as well as a transcript of the hearing, may be found in Docket No. A–84–25, Category VIII–F, located in the Air and Radiation Docket Information Center (see the Addresses section above).

A general summary of the public comments follows. Some of the most significant comments are addressed, explicitly or implicitly, in other sections of this preamble. A more detailed summary of the comments received and EPA's responses to them has been placed in Docket No. A–84–25, Category IX–C.

A. Current 24-hour and Annual Standards

Most commenters concurred with EPA's conclusion that the existing 24-hour and annual standards provide adequate protection against SO_2-induced health effects associated with those averaging periods.

B. Regulatory Alternatives To Address Short-term Peak SO_2 Exposures

Almost all commenters agreed on the basic nature of the health effects associated with short-term exposure to SO_2 in controlled human exposure studies; that is, that brief (5-minute) exposures to 0.5 to 1.0 ppm SO_2 caused a proportion of asthmatic subjects at elevated ventilation rates to develop measurable and statistically significant bronchoconstriction, producing a range of symptoms from barely perceptible to severe enough to cause cessation of activity and medication use. In contrast, the comments were sharply divided on whether the existing standards should be supplemented by one of the three regulatory alternatives identified in the 1994 reproposal.

In general, industry commenters and affiliated physicians argued that additional regulatory protection from health effects associated with exposure to short-term peaks of SO_2 was unnecessary. Two broad arguments were made for this position. First, these commenters typically argued that the health effects associated with 5-minute peaks in the range of 0.6 to 1.0 ppm SO_2 are not significant because the effects are transient, subsiding within 1 to 2 hours without medication, do not include a late-phase inflammatory response, can be avoided or ameliorated with medication, and are similar qualitatively and quantitatively to the kinds of effects that asthmatic individuals experience on an almost daily basis as a result of exposure to common stimuli. Second, these commenters argued that exposures to 5-minute peaks of SO_2 are currently rare and, with the advent of title IV reductions in SO_2 emissions, likely to become even rarer. In this regard, some commenters agreed with EPA's conclusion that the existing standards markedly limit the occurrence of short-term peaks of SO_2.

Conversely, environmental and public interest groups and affiliated physicians, citizens and physicians living in SO_2-impacted areas, and independent experts argued that health effects that cause cessation of activity and medication use are adverse health effects, even if transient and preventable or reversible with medication. Citizens and physicians living in SO_2-impacted areas also argued that asthmatic individuals living around industrial sources of SO_2 are repeatedly exposed to short-term peaks of SO_2, and that such repeated exposures affect their health adversely through exacerbation of their asthma and reduction in their quality of life. Some of these commenters disagreed with EPA's conclusion that the existing standards limit the occurrence of short-term peaks of SO_2.

In general, Federal, State and local government agencies focused on the same two broad issues as the other commenters (significance of the health effects and likelihood of exposure) as a basis for supporting or not supporting adoption of one of the three proposed regulatory alternatives to address short-term peaks of SO_2. In addition, most governmental agencies submitted comments on implementation of the alternatives and tended to favor one or another based on the anticipated efficiency and effectiveness of implementing them. Of the 11 State agencies that commented, four favored adopting either the proposed 5-minute NAAQS or the section 303 program. One State agency recommended that EPA not adopt any of the proposed alternatives at this time but continue to study the problem, adding that the proposed level of the standard, 0.60 ppm SO_2, might not be low enough to include an adequate margin of safety. Another State agency was not in favor of adopting any of the proposed regulatory alternatives because it already had adequate authority to eliminate short-term peaks of SO_2 in problem areas. The remaining five State agencies opposed adoption of any of the three proposed regulatory alternatives. Of the two local agencies that commented, one opposed any new regulations. The other did not comment on the need for new SO_2 regulations but provided 5-minute SO_2 data from the local SO_2 surveillance network and relevant information about the causes and temporal distribution of 5-minute peaks ≥0.60 ppm SO_2. Of the three Federal agencies that commented, all supported adoption of a 5-minute NAAQS or the section 303 program alternative.

III. Rationale for Final Decision

A. Current 24-hour and Annual Standards

In the 1994 reproposal, EPA proposed to determine that revisions to the 24-hour and annual standards were not appropriate. As in the 1988 proposal, EPA provisionally concluded that the current 24-hour and annual standards

[1] The proposal notice contains a detailed history of the process leading to the 1988 proposal.

[2] EPA also concluded that it was not appropriate at that time to propose a separate secondary SOx standard to provide increased protection against acidic deposition-related effects of SOx.

[3] A final decision that revision of the secondary standard was not appropriate was signed on April 15, 1993 and published in the **Federal Register** on April 21, 1993 (58 FR 21351).

[4] In a subsequent notice, EPA solicited comment on proposed requirements for implementing each of the alternatives (59 FR 12492, March 7, 1995).

were both necessary and adequate to protect public health against effects associated with those averaging periods. The EPA also provisionally concluded that retaining the current 24-hour and annual standards was consistent with the scientific data assessed in the criteria document and staff paper and their addenda, and with the advice and recommendations of the staff and CASAC (Appendix I).

Most comments on the 1994 reproposal focused on whether or not there was a need to adopt one of the regulatory alternatives to limit short-term peaks of SO_2. Virtually every commenter that mentioned the existing primary standards agreed with EPA's conclusion that these standards were necessary and adequate to protect the public health against effects associated with those averaging periods. No commenter argued that the concentrations of these standards should be changed.

After taking into account the public comments, the Administrator again concludes, based on the scientific data assessed in the criteria document and staff paper and their addenda, and consistent with the advice and recommendations of the staff and CASAC, that the 24-hour and annual standards provide adequate protection against the health effects associated with 24-hour and annual SO_2 concentrations. Accordingly, the Administrator concludes that revisions to the 24-hour and annual standards are not appropriate at this time. In reaching this decision, the Administrator notes that the health effects information on 24-hour and annual SO_2 exposures has remained largely unchanged since 1988. As newer information becomes available and is incorporated into new criteria documents, it will provide the basis for future reviews of the 24-hour and annual standards.

B. Short-Term Peak SO_2 Exposures

As reflected in the 1994 reproposal and in public comments on the reproposal, the question of whether revision of the existing NAAQS is appropriate to address risks that may be posed by short-term peaks of SO_2 depends upon two factors: (1) The nature and significance of the health effects per se, and (2) the number of people likely to be exposed under conditions likely to produce such effects. The next two sections address these factors in turn, and the Administrator's overall conclusions are discussed in section III.B.3.

1. Assessment of Health Effects Associated With Short-term SO_2 Exposures

This section focuses on the nature and significance of health effects that have been observed in controlled human exposure studies, putting aside temporarily, questions about the likelihood of such effects occurring under real-life conditions. Subsections a.–c. are adopted from the summary discussion in the 1994 reproposal of several important aspects of the health effects associated with short-term peak concentrations of SO_2. Additional references on these subjects are provided in the reproposal notice. Public comments on the most important and controversial aspects of the short-term SO_2 health effects are discussed in subsection d., with some indication of the Administrator's conclusions on particular issues. The last subsection contains the Administrator's overall conclusions regarding the significance of health effects associated with exposure to short-term peaks of SO_2.

a. *Sensitive Populations.* It is clear that healthy, nonasthmatic individuals are essentially unaffected by acute exposures to SO_2 at concentrations below 2 ppm, and that the population of concern for the effects of short-term SO_2 exposure consists of mild and moderate asthmatic children, adolescents and adults that are physically active outdoors. This is a subset of the approximately 10 million people or 4 percent of the population of the United States that are estimated to have asthma (NIH, 1991). The true prevalence may be as high as 7 to 10 percent of the population (Evans et al., 1987), because some individuals with mild asthma may be unaware that they have the disease and thus go unreported. The prevalence is higher among African-Americans, older (8- to 11-year-old) children, and urban residents (Schwartz et al., 1990).

b. Asthma. The Expert Panel Report from the National Asthma Education Program of the National Heart, Lung and Blood Institute (NIH, 1991) has defined asthma as "a lung disease with the following characteristics: (1) airway obstruction that is reversible (but not completely so in some patients) either spontaneously or with treatment, (2) airway inflammation, and (3) increased airway responsiveness to a variety of stimuli." Common symptoms include cough, wheezing, shortness of breath, chest tightness, and sputum production. Asthma is characterized by an exaggerated bronchoconstrictor response to many physical challenges (e.g., cold or dry air, exercise) and chemical and pharmacologic agents (e.g., histamine or methacholine).

Daily variability in lung function measurements is a typical feature of asthma, with the poorest function (i.e., lowest forced expiratory volume in 1 second (FEV_1) and highest specific airway resistance (SR_{aw})) being experienced in the early morning hours and the best function (i.e., highest FEV_1 and lowest SR_{aw}) occurring in the mid-afternoon.

The degree of exercise tolerance varies with the severity of disease. Mild asthmatic individuals have good exercise tolerance but may not tolerate vigorous exercise such as prolonged running. Moderate asthmatic individuals have diminished exercise tolerance, and individuals with severe disease have very poor exercise tolerance that markedly limits physical activity. Many asthmatic individuals experience bronchoconstriction when exercising, even in clean air. This response, called exercise-induced bronchoconstriction, is made worse by cold, dry air. Exercise-induced bronchoconstriction is followed by a refractory period of several hours during which an asthmatic individual is less susceptible to bronchoconstriction (Edmunds et al., 1978). This refractory period may alter an asthmatic individual's responsiveness to SO_2 or other inhaled substances.

c. Short-term SO_2 Health Effects. The EPA's concern about the potential public health consequences of exposures to short-term peaks of SO_2 arose from the extensive literature involving brief (2- to 10-min) controlled exposures of persons with mild (and in some cases more moderate) asthma to concentrations of SO_2 in the range of 0.1 ppm to 2 ppm while at elevated ventilation rates. The major effect of SO_2 on sensitive asthmatic individuals is bronchoconstriction, usually evidenced in these studies by increased SR_{aw} or decreased FEV_1, and the occurrence of clinical symptoms such as wheezing, chest tightness, and shortness of breath. The proportion of asthmatic individuals who respond, the magnitude of the response and the occurrence of symptoms increase as SO_2 concentrations and ventilation rates increase. The health effects are relatively transient. Numerous studies have shown that lung function typically returns to normal for most subjects within an hour of exposure. No substantial "late phase" responses have been noted for SO_2, unlike the case for more specific stimuli (e.g., pollen, dust mites, or other allergens) in which "late phase" inflammatory responses often occur 4–8 hours after exposure and are often much more severe and dangerous than earlier immediate responses.

The available data also indicate that most types of regularly administered asthma medications are not very effective in blocking the SO_2 response. The exception, however, is the most commonly used class of asthma medications, the β-sympathomimetic drugs (beta-agonist bronchodilator), which are usually highly effective in preventing the SO_2 response from developing, if taken shortly before exposure, or ameliorating the effect, if taken after symptoms develop.

In assessing the results from the controlled human exposure studies, it should be noted that the individuals who participate in such studies typically have mild allergic asthma and can go without medication altogether or can discontinue medication for brief periods of time if exposures are conducted outside their normal allergy season. In addition, the responses of African-American and Hispanic adolescents and young adults to short-term SO_2 exposures have not been studied systematically. Finally, subjects who participate in controlled exposure studies are also generally self-selected and this may introduce some bias. Thus, the extent to which the participants in the studies reflect the characteristics of the asthmatic population at large is not known. Nevertheless, the high degree of consistency among studies suggests that the subjects are generally representative of the population at risk or that any selection bias is consistently present across a diverse group of laboratories (EPA, 1994a).

The criteria document supplement (EPA, 1994a) contains a summary of the literature on the health effects associated with brief exposures to SO_2. Recent studies have provided useful information about the magnitude of responses in the range of 0.4 to 1.0 ppm SO_2, the range of interest identified in the 1988 proposal (53 FR 14948, April 26, 1988). Data from several of these recent large-scale chamber studies were reexamined in Appendix B of the criteria document supplement (EPA, 1994a) to provide a better understanding of the responses observed in more sensitive subjects. Forced expiratory volume in 1 second was used as a measure of lung function, in addition to specific airway resistance, and other endpoints examined included symptoms, alteration of workload, and medication usage occurring as a consequence of these exposures.

Table B–1 of the criteria document supplement (EPA, 1994a) summarizes the lung function changes in response to SO_2 concentrations in the range of 0.6–1.0 ppm from controlled human exposure studies. Because different studies used different measures of lung function (FEV_1 or SR_{aw}), and different concentrations of SO_2, the discussion that follows describes group mean changes first for the studies that used the measure SR_{aw}, then group mean changes for studies that used FEV_1, and then finally the individual responses.

The data indicate that, in terms of group mean changes, total SR_{aw} changes[5] were approximately twice as great at 0.6 ppm and above as at 0.5 ppm and below. The differences were even more pronounced when the changes in SR_{aw} due to SO_2 alone (i.e., after correction for the effects of exercise) were considered.

For FEV_1, the differences in responses between 0.4 ppm and 0.6 ppm SO_2 were not as pronounced. At 0.6 ppm SO_2, group mean decreases in total FEV_1 of approximately 20 percent were observed in the mild and moderate asthmatics studied. The changes in FEV_1 due to SO_2 alone resulted in decreases in FEV_1 of approximately 15 percent (EPA, 1994a, Table B–1).

In addition, at 0.6 ppm SO_2, 25 percent or more of the subjects had pronounced individual responses (either a 200 percent or greater increase in SR_{aw} or a 20 percent or greater decrease in FEV_1) due to SO_2 alone (total changes in lung function for these individuals would be expected to be even greater). In contrast, at ≤0.5 ppm SO_2, these more pronounced individual responses were less frequent, occurring in fewer than 25 percent of the subjects for both measures of lung function for all but one group studied (EPA, 1994a, p. B–2).

While not examined in as much detail as lung function, other indicators of severity also tend to increase with increasing SO_2 concentration. In one study, for example, four of 24 moderate/severe asthmatic subjects were required to reduce their exercise level because of asthma symptoms at 0.6 ppm SO_2. This occurred only once at each of the lower concentrations (EPA, 1994a). Two recent studies, which considered medication used to mitigate the effects of SO_2 as a health endpoint and which followed the subjects' medication use in detail, found approximately twice as many subjects took medication immediately after exposure to 0.6 ppm SO_2 than after exposure to 0.3 ppm SO_2 (EPA, 1994a, Table 7, p. 40).

Considering the variety of endpoints for which information is available, clearly the effects beginning at 0.6 ppm and up to 1.0 ppm are more pronounced than those at lower concentrations. This is in agreement with the conclusions reached in the staff paper addendum (EPA, 1986b), which stated that there were "clearer indications of clinically or physiologically significant effects at 0.6 to 0.75 ppm SO_2 and above."

The staff also compared the effects of SO_2 observed in these recent controlled human exposure studies to the effects of moderate exercise, typical daily variation in lung function, and the severity of frequently-experienced asthma symptoms. The effects of 0.6 ppm SO_2 exposure at moderate exercise, as measured by FEV_1, exceeded either the typical effect of exercise alone or typical daily variations in FEV_1 (EPA, 1994a, sections 4.3 and 5.3). For symptomatic responses, two to eight times as many subjects, after exposure at exercise to 0.6 ppm SO_2, experienced symptoms of at least moderate severity (13–62 percent of subjects) than after exercise in clean air alone (4–19 percent of subjects) (EPA, 1994a, p. B–12). In addition, a significant portion of subjects (approximately 15 to 60 percent, depending on asthma status) participating in certain controlled human exposure studies seemed to experience symptoms more frequently in response to 0.6 ppm SO_2 than at any other time during their participation in the studies (EPA, 1994a, p. B–12).

Furthermore, the response seen in the most sensitive 25 percent of responders at 0.6 ppm equalled or exceeded approximately a 30 percent decline in FEV_1 for mild asthmatic subjects, and approximately a 40 percent decline for moderate asthmatic individuals. By comparison, during clinical bronchoprovocation testing, changes are not usually induced beyond a 20 percent decrease in FEV_1.

In addition, while at least some subjects can experience such a 20 percent decline without experiencing symptoms, in recent studies focusing on effects at 0.6 ppm SO_2, from 33–43 percent of moderate asthmatics and from 6–35 percent of mild asthmatics experienced at least a 20 percent

[5] Since elevated ventilation sufficient for oronasal breathing to occur is a requirement for most asthmatic persons to respond to SO_2, and because many asthmatic individuals experience bronchoconstriction responses to exercise alone, it is useful to distinguish between the two different effects. In this discussion, "total FEV_1 (or SR_{aw})" refers to the total change in lung function experienced by a subject as a result of an exposure to SO_2 while at exercise, while "the effect of changes due to SO_2 alone" refers to the total lung function change observed minus the change seen for that subject from a control exposure at exercise in clean air. Both measures have their utility: total FEV_1 or SR_{aw} indicates the magnitude of overall lung function change actually experienced by the subject, while the change due to SO_2 alone indicates how much of this total change is attributable to the pollutant itself.

decrease in total FEV_1 in conjunction with symptoms rated as being of moderate severity or worse. It should be noted that the asthmatic subjects with moderate/severe disease started an exposure with compromised lung function compared to mild asthmatic subjects. While the response to SO_2 was similar in the mild versus the moderate/severe asthmatic subjects, similar functional declines beginning from a different baseline may have different biological importance (EPA, 1994a, pp. 21–25).

In the staff paper addendum, "bronchoconstriction * * * accompanied by at least noticeable symptoms," was seen as an appropriate measure of concern (EPA, 1986b, p. 37).

However, a substantial proportion of the subjects in these more recent studies experienced greater effects, bronchoconstriction with at least moderate symptoms, beginning at 0.6 ppm SO_2 (EPA, 1994a).

Considering the recent body of evidence along with previous studies, the criteria document supplement (EPA, 1994a) concluded that substantial percentages (≥ 25 percent) of mild or moderate asthmatic individuals exposed to 0.6 to 1.0 ppm SO_2 during moderate exercise would be expected to have respiratory function changes and severity of symptoms distinctly exceeding those experienced as typical daily variation in lung function or in response to other stimuli, such as moderate exercise. The severity of effects for many of the responders is likely to be of sufficient concern to cause disruption of ongoing activities, use of bronchodilator medication, and/or possible seeking of medical attention. At most, only 10 to 20 percent of mild or moderate asthmatic individuals are likely to exhibit lung function decrements in response to SO_2 exposures of 0.2 to 0.5 ppm that would be of distinctly larger magnitude than typical diurnal variation in lung function or changes in lung function experienced by them in response to other often-encountered stimuli. Furthermore, it appears likely that only the most sensitive responders might experience sufficiently large lung function changes and/or respiratory symptoms of such severity as to be of potential health concern; that is, leading to the disruption of ongoing activities, the need for bronchodilator medication, or seeking of medical attention.

d. Public Comments on Significance of Health Effects. In regard to the measured changes in lung function (expressed as FEV_1 or SR_{aw}), commenters did not disagree with the EPA's summary of the available literature contained in the November 15, 1994 (59 FR 58958) reproposal. Where there continues to be a real divergence of opinion among asthma specialists and others is on interpretation of the results, or on the medical significance of the lung function changes that have been measured in exercising asthmatic subjects and summarized in the various EPA documents. At issue are not the published data about SO_2-induced bronchoconstriction, but how they are interpreted.

As noted in the 1994 reproposal, bronchoconstriction caused by brief exposure to 0.6 to 1.0 ppm SO_2 is transient. Measurements of lung function start to improve when the exposure ceases, or when the subject ceases to exercise and the ventilation rate decreases to resting levels; after 5 minutes of exposure, the magnitude of the response does not worsen even if exposure and elevated ventilation rate continue. Most often, lung function returns to preexposure levels within 1 hour, occasionally taking up to 2 hours to return to normal. A dose of one of the most commonly used classes of medication, inhaled $beta_2$-agonists, rapidly attenuates or prevents the response. The transient nature of the response led some commenters to argue that the health effects are not significant. These commenters stated that although they would advise an asthmatic individual to take medication, cease activity or avoid the stimulus, this behavior was an everyday part of an asthmatic individual's life and not cause for medical concern. Other commenters argued that any effect which may entail bronchoconstriction severe enough to limit activity or cause medication use is a significant health effect.

Many commenters argued that the documented effects are not medically significant because, as one commenter put it, "changes in lung function are not meaningful endpoints in themselves, but must be placed in the context of asthmatics' typical respiratory function, which is both highly variable and reactive to many stimuli and conditions" (see Docket No. A–84–25, VIII–D–71). In general, these commenters argued that the responses to short-term peaks of SO_2 in the range of 0.6 to 1.0 ppm are similar in nature and magnitude to the well-tolerated responses to a variety of non-specific stimuli (cold, dry air, exercise, irritants such as perfume) encountered on a daily basis by most asthmatic individuals and are not in themselves deleterious to the asthmatic individual's health. Other commenters argued that this fact does not justify the neglect of potential ambient air SO_2 effects, and that unusual susceptibility to an inhaled pollutant does not simply constitute a problem for the susceptible individual.

Despite these opposing points of view, there was some agreement that frequency of occurrence of SO_2-induced health effects could make a difference in the concern that a physician feels. That is, some physicians felt that the documented SO_2-induced health effects were well tolerated by asthmatic individuals; however, if the effects occurred frequently enough, then they would be cause for medical concern (public hearing transcript, 1995, p. 155). Other physicians felt that such effects are a cause for concern despite their transient and reversible nature; if exposures occurred rarely enough, however, these physicians would be less concerned (public hearing transcript, 1995, p. 89–90). Several commenters also noted that cold air appears to act at least additively with SO_2, and that the bronchoconstrictive effect of cold air which contains SO_2 is larger than that of either exposure condition alone.

Some commenters took issue with EPA's assessment of the proportion of asthmatic individuals who would experience meaningful symptoms or have any disruption of daily activities. Based on personal experience, one commenter stated that most asthmatics do not begin to perceive bronchoconstriction until FEV1 falls to about 50 percent of its normal value and SR_{aw} increases about 400 percent (see Docket No. A–84–25, VIII–D–71). Other commenters agreed that the kinds of symptomatic responses experienced by asthmatic subjects exposed to SO_2 in the reviewed chamber studies are no more than brief, perceptible reactions that might temporarily disrupt activities, but are well tolerated and do not endanger the individuals' health or cause them to seek medical attention. On the other hand, commenters who believed the effects were significant argued that transient and reversible decrements in lung function are adverse if they cause physical discomfort, interfere with normal activity or impair the performance of daily activities, or aggravate chronic respiratory disease by increasing the frequency or severity of asthma attacks. Several commenters argued that measurable effects have occurred after brief exposures, with elevated ventilation rates, to concentrations as low as 0.25 to 0.28 ppm SO_2, and thus that the proposed 5-minute standard of 0.60 ppm SO_2 leaves no margin of safety. However, as stated above, considering a variety of endpoints for which information is available, clearly the effects beginning at 0.6 ppm and up to 1.0 ppm are more

pronounced than at lower concentrations.

As noted in the criteria document supplement (EPA, 1994a), the staff paper supplement (EPA, 1994b) and the November 15, 1994 reproposal (59 FR 58958), unlike the effects of allergens and viral infections, there is no evidence that short-term exposure to SO_2 while at an elevated ventilation rate leads to any "late phase" response. "Late-phase" bronchoconstriction is indicative of a more serious inflammatory reaction which takes much longer to resolve and which can lead to emergency room visits and/or hospitalization. The "late phase" inflammatory response can also cause the airways to become more sensitive to other stimuli. Since this type of response has not been observed with brief exposures in the range of 0.6 to 1.0 ppm SO_2, many commenters argued that the health of asthmatic individuals is not affected by such exposures.

The ability of inhaled $beta_2$-agonists, the most commonly prescribed class of asthma medications, to prevent or ameliorate the effects of SO_2 exposure was frequently cited as one reason why most asthmatic individuals are unlikely to experience bronchoconstriction due to exposure to short-term peaks of SO_2. These commenters argued that since most asthmatic individuals experience exercise-induced bronchoconstriction, they are highly likely to premedicate with an inhaled $beta_2$-agonist medication prior to exercise and therefore be protected from SO_2-induced health effects. Further, these commenters stated that the highly variable compliance rates for medicine usage cited by EPA in the criteria document supplement (EPA, 1994a), staff paper supplement (EPA, 1994b) and November 15, 1994 reproposal (59 FR 58958) do not apply to physically active asthmatic individuals, for whom medication compliance rates are significantly better.

Conversely, many other commenters agreed with EPA that medication compliance rates can be very poor, even for individuals who are physically active, like children, and that many asthmatic individuals use medication only after symptoms occur. These individuals would be at risk for experiencing SO_2-induced bronchoconstriction. Some commenters, including one from a State's Office of Environmental Health Hazard Assessment, which recently reviewed that State's 1-hour SO_2 standard (see Docket No. A–84–25, VIII–D–65), commented that an optimal medication regimen from the standpoint of reducing SO_2-induced bronchoconstriction may result in undesirable side effects. Some of these commenters also noted that SO_2 exposure could cause asymptomatic, exercise-induced bronchoconstriction to become symptomatic, thereby causing an asthmatic individual to take medicine that would normally not be needed. Several commenters argued that relying on medication use instead of regulation was poor public policy. Some of these commenters also argued that asthmatic individuals of lower socioeconomic status may not be able to afford medication or have limited access to health care. In the Administrator's judgment, these concerns about accessibility of medication and health care, and the variability of medication compliance rates, are legitimate ones. Although the use of medication may substantially reduce the incidence and/or severity of SO_2-induced bronchoconstriction, the mere availability of medication does not necessarily mean that all asthmatic individuals will necessarily be protected from this effect. The Administrator therefore concludes that this factor should not be regarded as dispositive in assessing the appropriateness of regulatory action to provide additional protection against short-term SO_2 peaks.

Many commenters argued that there are no epidemiological studies which show an association between short-term peaks of SO_2 and adverse health effects such as asthma symptoms or increased visits to physicians or hospital emergency rooms. Some of these commenters argued that the changes in lung function and symptoms found in some subjects in controlled human exposure studies may not be indicative of what would occur in real-world situations. The reason that there are no epidemiological studies showing an association between short-term (5- to 10-minute) peaks of SO_2 and real-world health effects is that apparently no studies have been conducted to examine the association or lack thereof of short-term SO_2 peaks and adverse health effects. This is most likely because it would be difficult to design and conduct an epidemiological study that could detect possible associations between very brief (5- to 10-minute), geographically localized, peak SO_2 exposures and respiratory effects in asthmatic individuals. Furthermore, the responses of naturally-breathing asthmatics exposed to SO_2 under controlled conditions in an environmental chamber presumably reflect responses that would be observed in the ambient ("real-world") environment under similar conditions of activity level, air temperature, and humidity. Although there is evidence that other inhaled materials that modify airway responsiveness can influence the response to SO_2, there is no reason, at the present time, to suggest that the ambient pollutant mixture would cause either a suppression or an augmentation of SO_2 effects through some, as yet unrecognized, chemical interaction.

e. Significance of Health Effects. Taking into account the available health effects studies and the body of comments on the health effects, the Administrator agrees with the staff assessment that a substantial percentage (20 percent or more) of mild-to-moderate asthmatic individuals exposed to 0.6 to 1.0 ppm SO_2 for 5 to 10 minutes at elevated ventilation rates, such as would be expected during moderate exercise, would be expected to have lung function changes and severity of respiratory symptoms that clearly exceed those experienced from typical daily variation in lung function or in response to other stimuli (e.g., moderate exercise or cold/dry air). For many of the responders, the effects are likely to be both perceptible and thought to be of some health concern; that is, likely to cause some disruption of ongoing activities, use of bronchodilator medication, and/or possibly seeking of medical attention. The EPA agrees with other commenters that the frequency with which such effects are experienced may affect the public health concern that is appropriate. Taking into account the broad range of opinions expressed by CASAC members, medical experts, and the public, the Administrator concludes that repeated occurrences of such effects should be regarded as significant from a public health standpoint. Accordingly, the Administrator also concurs with the staff judgment that the likely frequency of occurrence of such effects should be a consideration in assessing the overall public health risk in a given situation.

2. Air Quality and Exposure Considerations

Another major basis for considering whether additional regulatory measures are appropriate to reduce the occurrence of short-term peaks of SO_2 has been the estimation of the geographic extent and the frequency of 5-minute peaks greater than 0.60 ppm SO_2 in the ambient air, and the likelihood that these peaks would result in exposure conditions that could cause significant health effects. As discussed in the staff paper supplement (EPA, 1994b) and the 1994 reproposal, the occurrence of short-term peaks of SO_2 is relatively infrequent and highly localized around point sources of

SO_2. None of the air quality or exposure information subsequently received by EPA has changed this assessment.

In 1993 and again in 1994, EPA requested that States collect and submit 5-minute SO_2 ambient monitoring data from source-based monitors. Data were submitted from both industry and State-run monitors and while much of this information was considered in the 1994 staff paper supplement (EPA 1994b) and in the 1994 reproposal, a few sites subsequently provided more data. Available data have been compiled and statistical parameters calculated in a report for EPA by Systems Applications International or SAI (1996).[6] In general, the data confirm that a substantial number of short-term peaks greater than 0.60 ppm can occur in the vicinity of certain sources.

As indicated previously, an important consideration is whether such short-term peaks of SO_2 are likely to cause episodes of bronchoconstriction in asthmatic individuals. Thus, one method of assessing the public health significance of SO_2-induced effects is to estimate the likelihood that asthmatic individuals will be exposed to such peaks while simultaneously at elevated ventilation rates (EPA, 1994a, p.51). It should be noted, however, that not all asthmatic individuals who experience such exposures will necessarily experience SO_2-induced health effects, either because of individual variability or other factors.

[6] The 5-minute concentrations ranged from 0 to > 2.5 ppm SO_2. The number of observations recorded at any monitor ranged from 308 to 48,795 hours, with the mean number of observations equalling 7,646 hours (a complete year of hourly maximum 5-minute averages would contain 8,760 observations). There were 63 monitors, located in 16 States, with continuous data sets of either the maximum 5-minute block average per hour or all of the 5-minute block averages per hour. For data sets containing all of the 5-minute block averages per hour, the maximum 5-minute block average for each hour was extracted and that parameter was used throughout the analysis. Of the 63 monitors, 26 (41 percent) registered 1 or more concentrations greater than the proposed short-term standard of 0.60 ppm SO_2 during the time periods represented for the monitors involved. For any given monitor, the number of such exceedances ranged from 0 to 139, which corresponds to 0 to 3 percent of the hours represented in the data. Of the 26 monitors measuring at least 1 exceedance, 11 monitors recorded from 1 to 5 exceedances, while 8 monitors in 4 communities recorded from 25 to 139 exceedances. While these data came from sourcebased monitors, the existing SO_2 monitoring network is designed to characterize ambient air quality associated with 3-hour, 24-hour, and annual SO_2 concentrations rather than to detect short-term peak SO_2 levels. This could have resulted in underestimates of the maximum 5-minute block averages recorded. Therefore, changes in monitor siting and density near SO_2 sources most likely to produce high 5-minute peaks could increase both the number of exceedances and the concentrations of the maximum 5-minute block averages recorded.

At the time of the 1994 reproposal, three exposure analyses were available that estimated the frequency of SO_2 exposures that could result in measurable health effects. Two of the analyses estimated the potential frequency of exposure events resulting from operation of utility boilers nationwide. For these two studies, detailed information on actual emissions was available on a plant-by-plant basis (Burton et al., 1987; Rosenbaum et al., 1992) to use in estimating ambient SO_2 concentrations and then exposures. The utility analyses estimated there would be 68,000 exposure events per year at ≥ 0.5 ppm SO_2, which would affect approximately 44,000 asthmatic individuals at elevated ventilation rates. Taking into account full implementation of the title IV program of the Act, in the year 2015, the number of exposure events at ≥ 0.5 ppm SO_2 attributable to the utility sector was estimated to drop to 40,000 per year, contingent on trading decisions.

The third exposure analysis available at the time of the 1994 reproposal estimated nationwide SO_2 exposures resulting from the operation of nonutility sources. Because actual data were not available, some conservative assumptions had to be made about operating parameters, which increased the uncertainties in the analysis (Stoeckenius et al., 1990). Probably the largest single source of uncertainty in this analysis was the emissions estimates used for the nonutility sources. The analysis estimated 114,000 to 326,000 exposures to 0.5 ppm SO_2 per year around nonutility sources. These exposures were estimated to affect 24,000 to 122,000 asthmatic individuals at elevated ventilation rates, implying that exposed individuals may be exposed more than four times a year, on average.

Combining the utility and nonutility exposure estimates results in a prediction of 180,000 to 395,000 total exposure events to 0.5 ppm SO_2 nationwide, per year. These analyses indicate that 68,000 to 166,000 asthmatic individuals (or 0.7 to 1.8 percent of the total asthmatic population) potentially could be exposed one or more times, while outdoors at exercise, to 5 minute peaks of $SO_2 \geq 0.5$ ppm. The number of asthmatic individuals likely to be exposed to ≥ 0.60 ppm SO_2 under the same conditions, of course, would be smaller. The methodologies employed in these analyses, together with the associated uncertainties, are discussed in some detail in the staff paper supplement (EPA, 1994b, pp. 46–47, Appendix B).

In response to the 1994 reproposal, several industry associations sponsored and submitted as a public comment a revised analysis of exposures around four types of nonutility sources (industrial/commercial/institutional boilers, kraft and sulfite process pulp and paper mills, and copper smelters) by Sciences International, Inc. (1995). This study incorporated new data and additional analyses designed to eliminate the need for some of the more conservative assumptions employed in the Stoeckenius et al. (1990) study. A principal feature of the new study is the use of improved source and emissions data for all four source categories examined and especially for sulfite process pulp mills and copper smelters. The new analysis estimated significantly fewer expected exposure events for the four source categories examined. In the original study, the four categories were estimated to contribute a total of 73,000 to 259,000 exposure events (Stoeckenius et al., 1990). In the revised analysis, this range decreased by an order of magnitude, to between 7,892 and 23,099 events. The same basic procedures were used to calculate expected exposures in both the 1990 and 1995 studies. However, a direct comparison of the results of the two exposure analyses may not be possible due to differences in some key details between the two studies, which are highlighted in a technical review by Stoeckenius (1995) of the Sciences International, Inc. (1995) exposure analysis. In general, that review indicates that while the Stoeckenius et al. (1990) study utilized several very conservative assumptions, which most likely led to an overestimate of exposures for these three source categories. The Sciences International, Inc. (1995) reanalysis did not provide reliable estimates of the degree of conservatism resulting from the original assumptions which could then be used for the purpose of comparison. In contrast, the updated information and data for copper smelters used in the Sciences International, Inc. (1995) reanalysis most likely resulted in a more accurate estimate of exposures for that source category than did previously available estimates (Stoeckenius, 1995).

Another industry commenter submitted an exposure analysis (see Docket No. A–84–25, VIII–G–08) that utilized actual SO_2 ambient air monitoring and demographic data from a community located near a copper-smelting facility. The results of this analysis indicate that the probability of SO_2-related episodes of bronchoconstriction in the sensitive population of asthmatic individuals in the community is very low. There was no evidence of an association between 5-minute concentrations of $SO_2 > 0.60$ ppm and episodes of bronchoconstriction in the sensitive population.

These exposure analyses and the body of 5-minute SO_2 monitoring data underscore the views of the Administrator, the staff and the CASAC, reflected in the 1994 reproposal, that the likelihood that asthmatic individuals will be exposed to 5-minute peak SO_2 concentrations of concern, while outdoors and at elevated ventilation rates, is very low when viewed from a national perspective. Even in communities where frequent 5-minute peaks have been recorded, the likelihood of exposure is highly variable. One county public health agency submitted 5-minute SO_2 monitoring data (see Docket No. A–84–25, VIII–D–15), for the years 1993–1994, from the 10 continuous SO_2 monitors in the local surveillance network. Only monitors located near large industrial sources of SO_2 measured exceedances of 0.60 ppm SO_2. Of 29 exceedances measured over a 2-year period, approximately half of the exceedances were associated with breakdowns of the desulfurization equipment used to control SO_2 emissions from coke plants in the county. The agency noted that more than 70 percent of the hours in which exceedances were measured occurred very late at night or early in the morning, which would reduce the likelihood of the exceedances affecting the sensitive population.

Nonetheless, the 5-minute monitoring data indicate that some communities in proximity to SO_2 sources are repeatedly subjected to high short-term concentrations of SO_2 in the ambient air. Asthmatic individuals who reside in proximity to certain individual sources may be at greater risk of being exposed to such peak SO_2 levels while at elevated ventilation rates, and, therefore, at greater risk of suffering health effects than the asthmatic population as a whole. This conclusion is supported by the comments of citizens and physicians living in areas where high 5-minute peaks of SO_2 have been recorded. Citizens have reported, for example, that they developed asthma upon moving to an SO_2-impacted area; that their asthma is better, both in terms of symptoms and indicators such as peak flow measurements when they leave the SO_2-impacted area on vacation or for medical treatment; and that their peak flow measurements decrease when the wind is blowing from the direction of the local SO_2 source(s). These citizens express the belief that ambient SO_2 concentrations are responsible for their symptoms. Physicians have commented that they believe that ambient air SO_2 concentrations in their communities are negatively affecting the health of their patients. Most of these comments came from two of the six communities for which SO_2 monitoring data show repeated high 5-minute peaks greater than 0.60 ppm SO_2.

The data also indicate that asthmatic individuals living in communities in which 5-minute peaks greater than 0.60 ppm SO_2 rarely occur may be subject to much less risk of experiencing health effects that cause cessation of activities or increased medication use. Even when monitors record a substantial number of such peaks, the likelihood that a significant number of asthmatic individuals will be exposed to such peaks with some frequency while at elevated ventilation rates may range from nonexistent to fairly high depending upon such localized factors as the magnitude and frequency of the peaks, the times of occurrence, meteorological conditions in the area, the density of the population near the source(s) involved, and daily activity patterns. Thus, estimation of risk must be done on a case-by-case basis and be based on site-specific factors. In short, the data clearly show that 5-minute peaks greater than 0.60 ppm SO_2 can occur around particular industrial point sources of SO_2, that such peaks are not ubiquitous from a national perspective but instead appear to occur only in the vicinity of such sources, and that the risk of exposures that could cause significant health effects in asthmatic individuals cannot be estimated based solely on the number of recorded high 5-minute peaks of SO_2, but instead must be estimated using site-specific factors.

3. Conclusions

For reasons discussed above, based on her assessment of the relevant scientific and technical information and taking into account public comment, it is the Administrator's judgment that 5-minute peak SO_2 levels do not pose a broad public health problem when viewed from a national perspective. As discussed in some detail in the 1994 reproposal, the existing suite of SO_2 standards and associated control strategies clearly limit both the occurrence of high 5-minute peak SO_2 levels, and the likelihood that asthmatic individuals will be exposed to them while outdoors and at elevated ventilation rates.

In considering the residual risk posed by such peak concentrations, the Administrator has taken a number of factors into account. As discussed in the criteria document and staff paper supplements (EPA 1994a, p. 51, EPA 1994b, p. 59), an important consideration in determining the public health risk posed by 5-minute concentrations in the range of 0.60 to 1.0 ppm SO_2 is the frequency with which an asthmatic individual may be exposed while at an elevated ventilation rate. As discussed earlier, there is some agreement that infrequent exposures in this range may not be a cause for significant concern. As the frequency of exposure increases, so does concern about the associated public health risk. Asthmatic individuals living in communities in which 5-minute peaks in the range of 0.60 to 1.0 ppm SO_2 rarely occur may be unlikely to experience exposure events that would cause them to cease their activities or increase medication use. In particular locations, of course, the concentrations involved in exposure events can exceed 1.0 ppm SO_2, and could induce a greater response in an exposed asthmatic individual than lower concentrations. Thus, frequency of exposure events alone is not an adequate indicator of the risk to public health. As discussed above, factors such as the magnitude of 5-minute SO_2 peaks, time of day, activity patterns, and the size of the population exposed are also relevant. As a result, whether 5-minute peak SO_2 concentrations will pose a significant public health risk depends largely on highly localized factors.

Given the localized, infrequent and site-specific nature of the risk involved, the Administrator has concluded that short-term peak concentrations of SO_2 do not constitute the type of ubiquitous public health problem for which establishing a NAAQS would be appropriate. For similar reasons, the Administrator concludes that adoption of a section 303 program employing a uniform, nationwide trigger level would not be an appropriate response. With respect to the third alternative identified in the 1994 reproposal (augmenting implementation of existing SO_2 NAAQS), it has become increasingly clear that even full attainment of the existing SO_2 standards would not preclude the occurrence of high 5-minute SO_2 peaks in particular locations. Moreover, given the site-specific nature of the problem, States can more effectively identify for monitoring purposes, sources that may be causing or contributing to high 5-minute SO_2 concentrations.

For the reasons discussed previously, the Administrator has concluded that repeated exposures to 5-minute peak SO_2 levels of 0.60 ppm and above could

pose a risk of significant health effects for asthmatic individuals at elevated ventilation rates in some localized situations. The Administrator has also concluded that the residual health risks posed by short-term concentrations are most appropriately addressed at the State level. In the Administrator's judgment, the States are in a far better position than EPA to assess the highly localized and site-specific factors that determine whether the occurrence of such concentrations in a given area poses a significant public health risk to the local population, and if so, to fashion an appropriate remedial response. This view was also advanced by some States in their comments on the 1994 reproposal.

To assist the States in addressing short-term peak SO_2 levels, EPA will publish a reproposal notice superseding the March 1995 notice (59 FR 12492) that proposed revisions to 40 CFR part 51 establishing a new program under section 303 of the Act that would differ from that contemplated in the 1994 reproposal. The new program would also differ from existing programs under section 303 that are designed to protect against episodic events.

In particular, EPA plans to propose two new levels as guides to State action: A "concern level" at 0.60 ppm SO_2, 5-minute block average; and an "intervention level" at 2.0 ppm SO_2, 5-minute block average. Under the program to be proposed, the States would determine whether 5-minute peak SO_2 levels recorded in the range of 0.60 to 2.0 ppm SO_2 posed a significant public health risk and, if so, the appropriate remedial response. To assist the States in reaching such determinations, the proposal will identify, in the form of guidance, factors that EPA believes should be considered in assessing whether recorded peaks pose a significant health risk to the local population. Among other things, the factors would include the frequency and magnitude of observed 5-minute peaks, and the likelihood and frequency of exposures for asthmatic individuals at elevated ventilation rates. In assessing whether observed 5-minute peaks in this range posed a significant public health risk, thus warranting intervention, the States would be advised to take into account the above factors, as well as others they might deem appropriate. It is the Administrator's judgment that establishing such a program, in which the States would determine at the local level whether peak SO_2 levels in the range of 0.60 to 2.0 ppm SO_2 posed a significant public health risk and, if so, the appropriate remedial response, is the most effective approach for addressing this potential public health problem.

C. Final Decision on Primary Standards

For the reasons discussed above, and in the November 15, 1994 reproposal notice (58 FR 58958), it is the Administrator's judgment under section 109(d)(1) that revisions to the existing primary SO_2 NAAQS are not appropriate at this time. As provided for under the Act, the EPA will continue to assess the scientific information on health effects associated with 5-minute, 24-hour and annual SO_2 exposures as it emerges from research and ongoing SO_2 monitoring programs, and will update the air quality criteria for sulfur oxides accordingly. The revised criteria will provide the basis for the next review of the primary NAAQS for SO_2.

D. Technical Changes

There were relatively few comments on the proposed technical changes. Several environmental and public interest groups and one State preferred the running averaging convention, while industry comments supported the block averaging convention. A small number of comments were also received both for and against the change from $\mu g/m^3$ to ppm. Taking these comments into account, EPA has decided to promulgate the technical changes set forth in the 1994 reproposal. First, the block averaging convention will be retained, and language clarifying this point will be adopted in the regulation (40 CFR 50.4 and 50.5). Under the block convention, periods such as 24 hours and 3 hours are measured sequentially and do not overlap; when one averaging period ends, the next begins.

Although the wording of the original 24-hour, 3-hour, and annual SO_2 standards may have been ambiguous on the matter, the earliest actions of the EPA signify that the block averaging convention was intended for these standards (OAQPS, 1986), and block averages have generally been used in implementing the standards. Given a fixed standard level, the use of the alternative, running averages, would represent a tightening of the standards (Faoro, 1983; Possiel, 1985). For reasons explained in this notice and in the April 21, 1993, notice on the secondary NAAQS (58 FR 21351), the Administrator has already determined that protection of the public health and welfare does not require tightening the existing standards. Therefore, EPA will retain the block averaging convention for the 24-hour, 3-hour, and annual standards.

The second technical change to be adopted is that the levels for the primary and secondary NAAQS will be stated in ppm rather than $\mu g/m^3$ (40 CFR 50.4 and 50.5). This will be done to make the SO_2 NAAQS consistent with those for other pollutants and to facilitate public understanding of the standards. Although the ppm levels are slightly less than their current $\mu g/m^3$ counterparts, the differences are considered negligible (Frank, 1988).

Finally, the explicit rounding conventions and the data completeness and handling conventions put forth in the reproposal will be adopted.

IV. Regulatory Impacts

A. Executive Order 12866

Under Executive Order 12866, the Agency must determine whether a regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public docket and made available for public inspection at EPA's Air and Radiation Docket Information Center (Docket No. A–84–25).

The EPA has judged that today's decision on the SO_2 primary NAAQS is not an economically-significant regulatory action as defined by Executive Order 12866 because there are no additional costs or other impacts as a result of not revising the standards. The EPA, therefore, has deemed unnecessary the preparation of a final regulatory impact statement.

B. Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant impact on a substantial number of small entities. The Regulatory Flexibility Act requires that all Federal agencies consider the impacts of final regulations on small entities, which are defined to be small businesses, small organizations, and small governmental jurisdictions (5 U.S.C. 601 *et seq.*). A decision not to revise the existing primary NAAQS for SO_2 would, of course, impose no new requirements on small entities. In addition, the SIPs necessary to implement the existing primary standards have been substantially adopted and implemented. Additional SIP requirements will be needed only for those areas or sources which are designated as nonattainment for the existing primary standards now or in the future. Given the current air quality and attainment status, however, it is very unlikely that new SIP requirements would be required that would significantly affect a substantial number of small entities.

C. Impact on Reporting Requirements

There are no reporting requirements directly associated with an ambient air quality standard promulgated under section 109 of the Act (42 U.S.C. 7400). There are, however, reporting requirements associated with related sections of the Act, particularly sections 107, 110, 160, and 317 (42 U.S.C. 7407, 7410, 7460, and 7617). This final action will not result in any changes in these reporting requirements since it would retain the existing levels and averaging times for the primary standards. The current standards are covered under EPA Information Collection Request Number 940.13.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under sections 202, 203, and 205, respectively, of the UMRA, EPA generally must: (1) Prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year; (2) develop a small government agency plan; and (3) identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.

Because the Administrator has decided not to revise the existing primary NAAQS for SO_2, this action will not impose any new expenditures on governments or on the private sector, or establish any new regulatory requirements affecting small governments. Accordingly, EPA has determined that the provisions of sections 202, 203, and 205 of the UMRA do not apply to this final decision.

E. Environmental Justice

Executive Order 12848 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionally high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. These requirements were addressed in the draft Regulatory Impact Analysis (59 FR 58958; November 15, 1994) and taken into account by EPA in reaching its determination that revisions to the existing primary SO_2 NAAQS are not appropriate at this time.

List of Subjects in 40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: May 14, 1996.

Carol M. Browner,

Administrator.

References

Burton, C.S.; Stockenius, T.E.; Stocking, T.S.; Carr, E.L.; Austin, B.S.; Roberson, R.L. (1987) Assessment of exposures of exercising asthmatics to short-term SO_2 levels as a result of emissions from U.S. fossil-fueled power plants. Systems Applications, Inc., San Rafael, CA. Pub. No. 87/176, September 23, 1987.

DHEW [U.S. Department of Health, Education, and Welfare] (1970), Air Quality Criteria for Sulfur Oxides, U.S. Government Printing Office, Washington, DC, AP–50.

Edmunds, A.T.; Tooley, M.; Godfrey, S. (1978) The refractory period after exercise-induced asthma: its duration and relation to the severity of exercise, Am. Rev. Resp. Dis. 117:247–254.

EPA (1982a), Air Quality Criteria for Particulate Matter and Sulfur Oxides, Environmental Criteria and Assessment Office, Research Triangle Park, NC, EPA–600/8–82–029a–c.

EPA (1982b), Review of the National Ambient Air Quality Standards for Sulfur Oxides: Assessment of Scientific and Technical Information-OAQPS Staff Paper, Office of Air Quality Planning and Standards, Research Triangle Park, NC, EPA–450/5–82–007.

EPA (1986a), Second Addendum to Air Quality Criteria for Particulate Matter and Sulfur Oxides (1982): Assessment of Newly Available Health Effects Information, Environmental Criteria and Assessment Office, Research Triangle Park, NC, EPA–450/5–86–012.

EPA (1986b), Review of the National Ambient Air Quality Standards for Sulfur Oxides: Updated Assessment of Scientific and Technical Information, Addendum to the 1982 OAQPS Staff Paper, Office of Air Quality Planning and Standards, Research Triangle Park, NC EPA–450/05–86–013.

EPA (1994a), Supplement to the Second Addendum (1986) to Air Quality Criteria for Particulate Matter and Sulfur Oxides (1982): Assessment of New Findings on Sulfur Dioxide Acute Exposure Health Effects in Asthmatic Individuals, Environmental Criteria and Assessment Office, Research Triangle Park, NC, EPA/600/FP–93/002.

EPA (1994b), Review of the Ambient Air Quality Standards for Sulfur Oxides: Updated Assessment of Scientific and Technical Information, Supplement to the 1986 OAQPS Staff Paper Addendum, Office of Air Quality Planning and Standards, Research Triangle Park, NC, EPA/452/R–94–013.

Evans, R., III; Mullally, D. I.; Wilson, R. W.; Gergen, P. J.; Rosenberg, H. M.; Grauman, J. S.; Chevarley, F. M.; Feinleib, M. (1987), National trends in the morbidity and mortality of asthma in the US. Prevalence, hospitalization and death from asthma over two decades: 1965–1984, Chest 91(suppl.): 65S–74S.

Faoro, B., U.S. EPA, Data Analysis Section (1983), Comparison of Second Max Non-Overlapping and Midnight-to-Midnight (Block) Average, Memorandum to William F. Hunt Jr., Chief, Data Analysis Section, August 15, 1983, Docket No. A–79–28, II–B–11.

Frank, N. U.S. EPA, Technical Support Division (1988), Memorandum to John Haines, Air Quality Management Division, January 5, 1988, Docket No. A–84–25, II–B–3.

National Institutes of Health (1991), Guidelines for the diagnosis and management of asthma, Bethesda, MD: U.S. Department of Health and Human Services, National Heart, Lung, and Blood Institute, National Asthma Education Program; publication no. 91–3042.

OAQPS [Office of Air Quality Planning and Standards] (1986), Proper Interpretation of the Averaging Convention for the National Ambient Air Quality Standards for Sulfur Oxides, OAQPS Staff Position Paper, March 1986, Docket No. A–79–28, II–A–15.

Possiel, N.C., U.S. EPA, Model Applications Section (1985), Analysis of Running Versus Block SO_2 Model Estimates, Memorandum to Henry C. Thomas, Standards Development Section, August 27, 1985, Docket No. A–79–28, II–B–12.
Public Hearing (1995), Transcript of meeting held in Research Triangle Park, NC on February 8, 1995, Docket No. A–84–25, VIII–F–17.
Rosenbaum, A.S.; Hudischewskyj, A.B.; Roberson, R.L.; Burton, C.S. (1992) Estimates of Future Exposures of Exercising Asthmatics to Short-term Elevated SO_2 Concentrations Resulting from Emissions of U.S. Fossil-fueled Power Plants: Effects of the 1990 Amendments to the Clean Air Act and a 5-minute Average Ambient SO_2 Standard. Pub. No. SYSAPP–92/016, April 23, 1992.
Schwartz, J.; Gold, D.; Dockery, D. W.; Weiss, S. T.; Speizer, F. E. (1990), Predictors of asthma and persistent wheeze in a national sample of children in the United States: association with social class, perinatal events, and race, Am. Rev. Respir. Dis. 142: 555–562.
Sciences International, Inc. (1995), Estimate of the Nationwide Exercising Asthmatic Exposure Frequency to Short-Term Peak Sulfur Dioxide Concentrations in the Vicinity of Non-Utility Sources. Alexandria, VA, Docket No. A–84–25, VIII–D–71.
Stoeckenius, T.E. (1995), Technical Review of NMA's Report on: 'Estimate of the Nationwide Exercising Asthmatic Exposure Frequency to Short-Term Peak Sulfur Dioxide Concentrations in the Vicinity of Non-Utility Sources.' ENVIRON International Corporation, Novato, CA, Docket No. A–84–25, VIII–A–01.
Stoeckenius, T.E.; Garelick, B.; Austin, B.S.; O'Connor, K.; Pehling, J.R. (1990). Estimates of Nationwide Asthmatic Exposures to Short-term Sulfur Dioxide Concentrations in the Vicinity of Non-Utility Sources. Systems Applications Inc., San Rafael, CA, Pub. No. SYSAPP–90/129, December 6, 1990.
Systems Applications International (1996) Summary of 1988–1995 Ambient 5–Minute SO_2 Concentration Data. Systems Applications International, Research Triangle Park, NC, Docket No. A–84–25, VIII–A–02.

Appendix I to the Preamble

February 19, 1987

The Honorable Lee M. Thomas,
Administrator U.S. Environmental Protection Agency, Washington, DC 20460

Dear Mr. Thomas: The Clean Air Scientific Advisory Committee (CASAC) has completed its review of the 1986 Addendum to the 1982 Staff Paper on Sulfur Oxides (*Review of the National Ambient Air Quality Standards for Sulfur Oxides: Updated Assessment of Scientific and Technical Information*) prepared by the Agency's Office of Air Quality Planning and Standards (OAQPS).

The Committee unanimously concludes that this document is consistent in all significant respects with the scientific evidence presented and interpreted in the combined Air Quality Criteria Document for Particulate Matter/Sulfur Oxides (1982) and its 1986 Addendum, on which CASAC issued its closure letter on December 15, 1986. The Committee believes that the 1986 Addendum to the 1982 Staff Paper on Sulfur Oxides provides you with the kind and amount of technical guidance that will be needed to make appropriate decisions with respect to the standards. The Committee's major findings and conclusions concerning the various scientific issues and studies discussed in the staff paper addendum are contained in the attached report.

Thank you for the opportunity to present the Committee's views on this important public health and welfare issue.

Sincerely,

Morton Lippmann, Ph.D.,
Chairman, Clean Air Scientific Advisory Committee.

cc: A. James Barnes
Gerald Emison
Lester Grant
Vann Newill
John O'Connor
Craig Potter
Terry Yosie

Summary of Major Scientific Issues and CASAC Conclusions on the 1986 Draft Addendum to the 1982 Sulfur Oxides Staff Paper

The Committee found the technical discussions contained in the staff paper addendum to be scientifically thorough and acceptable, subject to minor editorial revisions. This document is consistent in all significant respects with the scientific evidence presented in the 1982 combined Air Quality Criteria Document for Particulate Matter/Sulfur Oxides and its 1986 Addendum, on which the Committee issued its closure letter on December 15, 1986.

Scientific Basis for Primary Standards

The Committee addressed the scientific basis for a 1-hour, 24-hour, and annual primary standards at some length in its August 26, 1983 closure letter on the 1982 Sulfur Oxides Staff Paper. That letter was based on the scientific literature which had been published up to 1982. The present review has examined the more recently published studies.

It is clear that no single study of SO_2 can fully address the range of public health issues that arise during the standard setting process. The Agency has completed a thorough analysis of the strengths and weaknesses of various studies and has derived its recommended ranges of interest by evaluating the weight of the evidence. The Committee endorses this approach.

The Committee wishes to comment on several major issues concerning the scientific data that are available. These issues include:

- Recent studies more clearly implicate particulate matter than SO_2 as a longer-term public health concern at low exposure levels.
- A majority of Committee members believe that the effects reported in the clinical studies of asthmatics represent effects of significant public health concern.
- The exposure uncertainties associated with a 1-hour standard are quite large. The relationship between the frequency of short-term peak exposures and various scenarios of asthmatic responses is not well understood. Both EPA and the electric power industry are conducting further analyses of a series of exposure assessment issues. Such analyses have the potential to increase the collective understanding of the relationship between SO_2 exposures and responses observed in subgroups of the general population.
- The number of asthmatics vulnerable to peak exposures near electric power plants, given the protection afforded by the current standards, represents a small number of people. Although the Clean Air Act requires that sensitive population groups receive protection, the size of such groups has not been defined. CASAC believes that this issue represents a legal/policy matter and has no specific scientific advice to provide on it.

CASAC's advice on primary standards for three averaging times is presented below:

1-Hour Standard—It is our conclusion that a large, consistent data base exists to document the bronchoconstrictive response in mild to moderate asthmatics subjected in clinical chambers to short-term, low levels of sulfur dioxide while exercising. There is, however, no scientific basis at present to support or dispute the hypothesis that individuals participating in the SO_2 clinical studies are surrogates for more sensitive asthmatics. Estimates of the size of the asthmatic population that experience exposures to short-term peaks of SO_2 (0.2–0.5 parts per million (ppm) SO_2 for 5–10 minutes) during light to moderate exercise, and that can be expected to exhibit a bronchoconstrictive response, varies from 5,000 to 50,000.

The majority of the Committee believes that the scientific evidence supporting the establishment of a new 1-hour standard is stronger than it was in 1983. As a result, and in view of the significance of the effects reported in these clinical studies, there is strong, but not unanimous support for the recommendation that the Administrator consider establishing a new 1-hour standard for SO_2 exposures. The Committee agrees that the range suggested by EPA staff (0.2—0.5 ppm) is appropriate, with several members of the Committee suggesting a standard from the middle of this range. The Committee concludes that there is not a scientifically demonstrated need for a wide margin of safety for a 1-hour standard.

24-Hour Standard—The more recent studies presented and analyzed in the 1986 staff paper addendum, in particular, the episodic lung function studies in children (Dockery et al., and Dassen et al.) serve to strengthen our previous conclusion that the rationale for reaffirming the 24-hour standard is appropriate.

Annual Standard—The Committee reaffirms its conclusion, voiced in its 1983 closure letter, that there is no quantitative basis for retaining the current annual standard. However, a decision to abolish the annual standard must be considered in the light of the total protection that is to be offered by the suite of standards that will be established.

The above recommendations reflect the consensus position of CASAC. Not all CASAC reviewers agree with each position adopted because of the uncertainties associated with the existing scientific data. However, a strong majority supports each of the specific recommendations presented above, and the entire Committee agrees that this letter represents the consensus position.

Secondary Standards

The 3-hour secondary standard was not addressed at this review.

Appendix II to the Preamble

June 1, 1994.

Honorable Carol M. Browner,
Administrator, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460

Subject: Clean Air Scientific Advisory Committee Closure on the Supplements to Criteria Document and Staff Position Papers for SO_2

Dear Ms. Browner: The Clean Air Scientific Advisory Committee (CASAC) at a meeting on April 12, 1994, completed its review of the documents: Supplement to the Second Addendum (1986) to Air Quality Criteria for Particulate Matter and Sulfur Oxides; Assessment of New Findings on Sulfur Dioxide and Acute Exposure Health Effects in Asthmatics; and Review of the National Ambient Air Quality Standards for Sulfur Oxides: Updated Assessment of Scientific and Technical Information, Supplement to the 1986 OAQPS Staff Paper Addendum. The Committee notes, with satisfaction, the improvements made in the scientific quality and completeness of the documents.

With the changes recommended at our March 12 session, written comments submitted to the Agency subsequent to the meeting, and the major points provided below, the documents are consistent with the scientific evidence available for sulfur dioxide. They have been organized in a logical fashion and should provide an adequate basis for a regulatory decision. Nevertheless, there are four major points which should be called to your attention while reviewing these materials:

1. A wide spectrum of views exists among the asthma specialists regarding the clinical and public health significance of the effects of 5 to 10 minute concentrations of sulfur dioxide on asthmatics engaged in exercise. On one end of the spectrum is the view that spirometric test responses can be observed following such short-term exposures and they are a surrogate for significant health effects. Also, there is some concern that the effects are underestimated because moderate asthmatics, not severe asthmatics, were used in the clinical tests. At the other end of the spectrum, the significance of the spirometric test results are questioned because the response is similar to that evoked by other commonly encountered, non-specific stimuli such as exercise alone, cold, dry air inhalation, vigorous coughing, psychological stress, or even fatigue. Typically, the bronchoconstriction reverses itself within one or two hours, is not accompanied by a late-phase response (often more severe and potentially dangerous than the immediate response), and shows no evidence of cumulative or long-term effects. Instead, it is characterized by a short-term period of bronchoconstriction, and can be prevented or ameliorated by beta-agonist aerosol inhalation.

2. It was the consensus of CASAC that the exposure scenario of concern is a rare event. The sensitive population in this case is an unmedicated asthmatic engaged in moderate exercise who happens to be near one of the several hundred sulfur dioxide sources that have the potential to produce high ground-level sulfur dioxide concentrations over a small geographical area under rare adverse meteorological conditions. In addition, CASAC pointed out that sulfur dioxide emissions have been significantly reduced since EPA conducted its exposure analysis and emissions will be further reduced as the 1990 Clean Air Act Amendments are implemented. Consequently, such exposures will become even rarer in the future.

3. It was the consensus of CASAC that any regulatory strategy to ameliorate such exposures be risk-based—targeted on the most likely sources of short-term sulfur dioxide spikes rather than imposing short-term standards on all sources. All of the nine CASAC Panel members recommended that Option 1, the establishment of a new 5-minutes standard, not be adopted. Reasons cited for this recommendation included: the clinical experiences of many ozone experts which suggest that the effects are short-term, readily reversible, and typical of response seen with other stimuli. Further, the committee viewed such exposures as rare events which will even become rarer as sulfur dioxide emissions are further reduced as the 1990 amendments are implemented. In addition, the committee pointed out that enforcement of a short-term NAAQS would require substantial technical resources. Furthermore, the committee did not think that such a standard would be enforceable (see below).

4. CASAC questioned the enforceability of a 5-minute NAAQS or "target level." Although the Agency has not proposed an air monitoring strategy, to ensure that such a standard or "target level" would not be exceeded, we infer that potential sources would have to be surrounded by concentric circles of monitors. The operation and maintenance of such monitoring networks would be extremely resource intensive. Furthermore, current instrumentation used to routinely monitor sulfur dioxide does not respond quickly enough to accurately characterize 5-minute spikes.

The Committee appreciates the opportunity to participate in this review and looks forward to receiving notice of your decision on the standard. Please do not hesitate to contact me if CASAC can be of further assistance on this matter.

Sincerely,

George T. Wolff, Ph.D.,
Choir, Clean Air Scientific Advisory Committee.

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 109 and 301(a), Clean Air Act, as amended (42 U.S.C. 7409, 7601(a)).

2. Section 50.4 is revised to read as follows:

§ 50.4 National primary ambient air quality standards for sulfur oxides (sulfur dioxide).

(a) The level of the annual standard is 0.030 parts per million (ppm), not to be exceeded in a calendar year. The annual arithmetic mean shall be rounded to three decimal places (fractional parts equal to or greater than 0.0005 ppm shall be rounded up).

(b) The level of the 24-hour standard is 0.14 parts per million (ppm), not to be exceeded more than once per calendar year. The 24-hour averages shall be determined from successive nonoverlapping 24-hour blocks starting at midnight each calendar day and shall be rounded to two decimal places (fractional parts equal to or greater than 0.005 ppm shall be rounded up).

(c) Sulfur oxides shall be measured in the ambient air as sulfur dioxide by the reference method described in Appendix A to this part or by an equivalent method designated in accordance with part 53 of this chapter.

(d) To demonstrate attainment, the annual arithmetic mean and the second-highest 24-hour averages must be based upon hourly data that are at least 75 percent complete in each calendar quarter. A 24-hour block average shall be considered valid if at least 75 percent of the hourly averages for the 24-hour period are available. In the event that only 18, 19, 20, 21, 22, or 23 hourly averages are available, the 24-hour block average shall be computed as the sum of the available hourly averages using 18, 19, etc. as the divisor. If fewer than 18 hourly averages are available, but the 24-hour average would exceed the level of the standard when zeros are substituted for the missing values, subject to the rounding rule of paragraph (b) of this section, then this shall be considered a valid 24-hour average. In this case, the 24-hour block average shall be computed as the sum of the available hourly averages divided by 24.

3. Section 50.5 is revised to read as follows:

§ 50.5 National secondary ambient air quality standard for sulfur oxides (sulfur dioxide).

(a) The level of the 3-hour standard is 0.5 parts per million (ppm), not to be exceeded more than once per calendar year. The 3-hour averages shall be determined from successive nonoverlapping 3-hour blocks starting at midnight each calendar day and shall be rounded to 1 decimal place (fractional parts equal to or greater than 0.05 ppm shall be rounded up).

(b) Sulfur oxides shall be measured in the ambient air as sulfur dioxide by the reference method described in appendix A of this part or by an equivalent method designated in accordance with Part 53 of this chapter.

(c) To demonstrate attainment, the second-highest 3-hour average must be based upon hourly data that are at least 75 percent complete in each calendar quarter. A 3-hour block average shall be considered valid only if all three hourly averages for the 3-hour period are available. If only one or two hourly averages are available, but the 3-hour average would exceed the level of the standard when zeros are substituted for the missing values, subject to the rounding rule of paragraph (a) of this section, then this shall be considered a valid 3-hour average. In all cases, the 3-hour block average shall be computed as the sum of the hourly averages divided by 3.

[FR Doc. 96–12863 Filed 5–21–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 75

[FRL–5506–6]

Acid Rain Program: Continuous Emission Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amendment to final rule; correction.

SUMMARY: On May 17, 1995, EPA published direct final amendments to the Continuous Emission Monitoring (CEM) rule in the Acid Rain Program for the purpose of making implementation of the program simpler, streamlined, and more efficient. The amendments to the original January 11, 1993 rule became final and effective on July 17, 1995. During the public comment period on the direct final rule and its companion proposed rule, EPA received significant, adverse comments on those amended provisions that related to notifications for periodic relative accuracy test audits. EPA is removing the provisions added in the direct final rule related to notifications. EPA will address the removed provisions in a future final rule. EPA is also extending the public comment period on the removed provisions for 15 days to allow the public to respond to the significant, adverse comments. All other provisions of the direct final rule remain final.

In addition, EPA is publishing technical corrections of typographical and similar inadvertent errors in the final rule, as promulgated May 17, 1995.

DATES: *Effective date:* The effective date of the amended rule provisions and corrections is May 22, 1996.

Comment date: Comments in response to the significant, adverse comments on the direct final rule must be received on or before June 6, 1996.

ADDRESSES: Any written comments in response to the significant, adverse comments on the direct final rule must be identified as being in response to such comments in Docket No. A–94–16 and must be submitted in duplicate to: EPA Air Docket (6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. The docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the above address. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Margaret Sheppard, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 233–9180.

SUPPLEMENTARY INFORMATION: EPA received significant, adverse comments on certain provisions of the direct final rule amending part 75 from a group of utilities called the Texas Subgroup. These comments were apparently submitted on time, but EPA became aware of this only after the provision became final. After the close of the comment period, the Texas Subgroup submitted a letter, dated November 2, 1995, clarifying its comments. The comments and the November 28, 1995 letter are found in Docket No. A–94–16, items V–D–23 and V–D–24. The Texas Subgroup made significant, adverse comments on the provisions of §§ 75.21(d)and 75.61(a)(5). Therefore, those provisions in the direct final rule are being removed and are considered proposed provisions until EPA takes further comment and addresses the comments in a future final rule.

The Texas Subgroup commented adversely upon the requirements in §§ 75.21(d) and 75.51(a)(5) for notifications of the date on which periodic Relative Accuracy Test Audits (RATAs) will be performed. The direct final provisions require submission of written notification to the Administrator, the appropriate EPA Regional Office, and the applicable State or local air pollution control agency at least 21 days before the scheduled date of a RATA. The date may be rescheduled if written or oral notice is provided to EPA and to the appropriate State or local air quality agency at least seven days before the earlier of the original scheduled date or the new test date. The Texas Subgroup felt that this provision created additional paperwork. In addition, they felt the provisions could force utilities to delay rescheduled RATAs unnecessarily for seven days simply to meet the notification requirement.

In discussions with EPA, the Texas Subgroup suggested that perhaps the provisions are not needed or the provisions could be revised to provide more flexibility in the case where a RATA is rescheduled. Some possibilities that the Texas Subgroup discussed with EPA included: allowing utilities to receive permission from EPA, State and local agency Acid Rain Program contacts to proceed with testing in less than seven days from the date of notification; creating an "emergency" notification two days after the new testing date is known, similar

to that for recertification (§ 75.61(a)(1)(ii)); and allowing notification electronically to reduce the paperwork burden, where the EPA Regional office or State or local agency will accept such a notification.

EPA also notes that the purpose of the notification for periodic RATAs is to enable EPA or State or local agency staff to observe the testing. Notifications of periodic RATAs will allow EPA, State and local agencies to observe a larger percentage of units than if utilities only were to submit notice for certification and recertification testing. The ability of agency staff to attend certification and recertification testing is limited since EPA has significantly shortened the notification period for most recertification tests and allows utilities to proceed with recertification testing before notifying the Agency in emergency situations and since there were a large number of sources testing in a short time period during initial certification. Even so, agency staff attended many RATAs for initial certification testing. However, initial certification generally occurs before the period when an affected unit is required to comply with emission reductions. Therefore, to enhance the quality of quality assurance testing and the quality of emission data during compliance, EPA and State and local agencies need the opportunity to observe periodic RATAs. EPA notes that, during certification testing, EPA personnel have observed and corrected deviations from acceptable stack testing procedures. Based on these observations during initial certification, EPA believes it is critical for EPA, State, and local agency personnel to be able to observe periodic RATAs in order to ensure the quality of monitored data for the Acid Rain Program. Moreover, advance notification of the date of periodic RATA testing allows the cost-effective use of agency resources by coordinating auditing of monitor performance with regularly scheduled quality assurance testing and by coordinating field observations at multiple locations. If agency personnel were not to observe periodic RATA testing, agencies would need to perform or require performance of additional RATAs under the audit provisions of section 2.4 of Appendix B of part 75. This would be more intrusive for utilities, and more time-consuming and costly for both utilities and agencies, than coordinating with periodic RATA testing.

The Agency notes that it is relatively easy for a utility that schedules testing to notify agencies of a known testing date. In fact, it will take a utility roughly the same amount of time to respond to EPA and State or local agency enquiries about testing dates as it takes the utility to generate the short notice and mail it or to make a telephone call. In contrast, it is relatively difficult, time-consuming and intrusive for State or local air pollution control agencies or EPA Regional Offices to contact each utility with Phase I and II affected units to determine when testing will occur at each unit. EPA and State or local agency personnel must call each utility, contact the appropriate utility staff person, and discuss the scheduling information.

In addition, EPA is considering changes to the periodic RATA notification provisions that would reduce the burden of reporting a notification. Part of the paperwork burden could be eliminated by removing the requirement that notifications be provided to the Administrator (received by EPA's Acid Rain Division). In addition, a State or local air pollution control agency or EPA regional office could be allowed to waive the notification requirement. For example, a State or local air pollution control agency or an EPA regional office could decide that it would not observe a class of units (e.g., low-emitting gas-fired units). EPA is therefore considering allowing State or local air pollution control agencies or EPA Regional Offices to issue a utility a waiver from periodic RATA notification requirements for some or all utility units within their respective States, air quality districts or EPA regions until notifications are specifically requested again. This would relieve utilities of some reporting burden, while still ensuring that State or local agencies or EPA regional offices would be able to observe RATA testing when they wished to do so. Moreover, where a test needs to be rescheduled in less than seven days, another option that would create greater flexibility for utilities would be a shorter period of advance notification, such as telephone, facsimile, or electronic mail notification on the day the utility knows the rescheduled date of testing, which would be required to be at least two days (48 hours) before the new date of testing. EPA requests comment on these possible solutions.

No other significant, adverse comments were received by EPA on the direct final rule. Thus, all other provisions of the direct final rule became final on July 17, 1995 and remain in effect.

In addition, the EPA is correcting various errors found in the direct final rule, as promulgated on May 17, 1995. These corrections are technical. Most correct typographical errors; some reinstate provisions that were inadvertently removed from the final regulations originally promulgated on January 11, 1993 (58 FR 3590, 1993) when the May 17, 1995 document was published.

The rule provisions in this document either remove requirements already incorporated in the May 17, 1995 notice or reinstate regulatory requirements that were previously approved when the regulations were originally issued on January 11, 1993. The requirements of Executive Orders 12866 and 12875, the Regulatory Flexibility Act, the Unfunded Mandates Act, and the Paperwork Reduction Act are therefore not applicable to this action. All applicable administrative requirements will be met when the proposed amendments are addressed in a future final rule.

For additional information, see the direct final rule. 60 FR 26510 (May 17, 1995).

List of Subjects in 40 CFR Part 75

Environmental protection, Air pollution control, Carbon dioxide, Continuous emission monitors, Electric utilities, Incorporation by reference, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: April 30, 1996.

Brian J. McLean,

Director, Acid Rain Division.

PART 75—[AMENDED]

Part 75 of title 40, chapter I of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 75 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651K.

2. Section 75.14 is amended by revising paragraph (c) to read as follows:

§ 75.14 Specific provisions for monitoring opacity.

* * * * *

(c) *Gas-fired units.* The owner or operator of an affected unit that qualifies as gas-fired, as defined in § 72.2 of this chapter, based on information submitted by the designated representative in the monitoring plan is exempt from the opacity monitoring requirements of this part. Whenever a unit previously categorized as a gas-fired unit is recategorized as another type of unit by changing its fuel mix, the owner or operator shall install, operate, and certify a continuous opacity monitoring system as required by paragraph (a) of this section by

December 31 of the following calendar year.

* * * * *

3. Section 75.15(b)(1) is amended by revising Equation 7 to read as follows:

§ 75.15 Specific provisions for monitoring SO_2 emissions removal by qualifying Phase I technology.

* * * * *

(b) * * *

(1) * * *

Where, * * *

* * * * *

$$E_{ci} = \frac{\sum_{j=1}^{p} E_{icj}}{p} \qquad \text{Eq. 7)}$$

§ 75.16 [Amended]

4. Section 75.16(a)(2)(ii)(A) is amended by adding the word "in" between the phrases "compensating units" and "accordance with part 72".

§ 75.21 [Amended]

5. Section 75.21 is amended by removing and reserving paragraph (d).

§ 75.33 [Amended]

6. Section 75.33(c)(5) is amended by revising the word "proper" to read "prior".

7. Section 75.50(a) is revised to read as follows:

§ 75.50 General recordkeeping provisions.

(a) *Recordkeeping requirements for affected sources.* The provisions of this section shall remain in effect prior to January 1, 1996. The owner or operator shall meet the requirements of either §§ 75.50 or 75.54 prior to January 1, 1996. On or after January 1, 1996, the owner or operator shall meet the requirements of § 75.54 only. The owner or operator of any affected source subject to the requirements of this part shall maintain for each affected unit (or for each group of affected or nonaffected units utilizing a common stack and common monitoring systems pursuant to § 75.16 through § 75.18 of this part (referred to hereafter as "each affected unit")) a file of all measurements, data, reports, and other information required by this part at the source in a form suitable for inspection for at least three (3) years from the date of each record. This file shall contain the following information:

(1) The data and information required in paragraphs (b) through (f) of this section;

(2) The component data and information used to calculate values required in paragraphs (b) through (f) of this section;

(3) The current monitoring plan as specified in § 75.53 of this part; and

(4) The quality control plan as described in Appendix B of this part.

* * * * *

§ 75.61 [Amended]

8.–9. Section 75.61 is amended by removing and reserving paragraph (a)(5).

10. Appendix A, Section 2.1.1.1 is amended by adding the variables for Equations A–1a and A–1b and note at the end of the section to read as follows:

Appendix A of Part 75—Specifications and Test Procedures [Amended]

* * * * *

2.1.1.1 Maximum Potential Concentration

* * * * *

Where,

MPC=Maximum potential concentration (ppm, wet basis). (To convert to dry basis, divide the MPC by 0.9.)

%S=Maximum sulfur content of fuel to be fired, wet basis, weight percent, as determined by ASTM D3177–89, ASTM D4239–85, ASTM D4294–90, ASTM D1552–90, ASTM D129–91, or ASTM D2622–92 for solid or liquid fuels (incorporated by reference under § 75.6).

GCV=Minimum gross calorific value of the fuel lot consistent with the sulfur analysis (Btu/lb), as determined using ASTM D3176–89, ASTM D240–87 (Reapproved 1991), or ASTM D2015–91 (incorporated by reference under § 75.6).

$\%O_{2w}$=Minimum oxygen concentration, percent wet basis, under normal operating conditions.

$\%CO_{2w}$=Maximum carbon dioxide concentration, percent wet basis, under normal operating conditions.

11.32×10^6=Oxygen-based conversion factor in (Btu/lb)(ppm)/%.

6.93×10^6=Carbon dioxide-based conversion factor in (Btu/lb)(ppm)/%

Note: All percent values to be inserted in the equations of this section are to be expressed as a percentage, not a fractional value, e.g., 3, not .03.

11. Appendix A, Section 2.1.4 is amended by replacing the variable "F_d" with the variable "F_c" in Equation A–3b to read as follows:

$$MPV = \left(\frac{F_c H_f}{A}\right)\left(\frac{100}{\%CO_{2d}}\right)\left[\frac{100}{100 - \%H_2O}\right] \qquad \text{(Eq. A – 3b)}$$

Where:

* * * * *

Appendix A—[Amended]

12. Appendix A, Section 7.6.5 is amended by revising the first two variable definitions for Equation A–11 to read as follows:

7.6.5 Bias Adjustment

* * * * *

Where:

$CEM_i^{Monitor}$=Data (measurement) provided by the monitor at time i.

$CEM_i^{Adjusted}$=Data value, adjusted for bias, at time i.

* * * * *

13. Appendix A of part 75 is amended by adding Figures 1 through 4 at the end of Appendix A, to read as follows:

Figures for Appendix A of Part 75

FIGURE 1.—LINEARITY ERROR DETERMINATION

Day	Date and time	Reference value	Monitor value	Difference	Percent of reference value
Low-level:					

Figures for Appendix A of Part 75—Continued

FIGURE 1.—LINEARITY ERROR DETERMINATION

Day	Date and time	Reference value	Monitor value	Difference	Percent of reference value
Mid-level:					
High-level:					

FIGURE 2.—RELATIVE ACCURACY DETERMINATION (POLLUTANT CONCENTRATION MONITORS)

Run No.	Date and time	SO_2 (ppm[c])			Date and time	CO_2 (Pollutant) (ppm[c])		
		RM[a]	M[b]	Diff		RM[a]	M[b]	Diff
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
Arithmetic Mean Difference (Eq. A–7). Confidence Coefficient (Eq. A–9). Relative Accuracy (Eq. A–10).								

[a] RM means "reference method data."

[b] M means "monitor data."
[c] Make sure the RM and M data are on a consistent basis, either wet or dry.

FIGURE 3.—RELATIVE ACCURACY DETERMINATION (FLOW MONITORS)

Run No.	Date and time	Flow rate (Low) (scf/hr)*			Date and time	Flow rate (Normal) (scf/hr)*			Date and time	Flow rate (High) (scf/hr)*		
		RM	M	Diff		RM	M	Diff		RM	M	Diff
1												
2												
3												
4												
5												
6												
7												
8												
9												
10												
11												
12												
Arithmetic Mean Difference (Eq. A–7). Confidence Coefficient (Eq. A–9). Relative Accuracy (Eq. A–10).												

* Make sure the RM and M data are on a consistent basis, either wet or dry.

FIGURE 4.—RELATIVE ACCURACY DETERMINATION (NO_X/Diluent Combined System)

Run No.	Date and time	Reference method data		NO_X system (lb/mmBtu)		
		NO_X( )[a]	O_2/CO_2%	RM	M	Difference
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
Arithmetic Mean Difference (Eq. A–7). Confidence Coefficient (Eq. A–9). Relative Accuracy (Eq. A–10).						

[a] Specify units: ppm, lb/dscf, mg/dscm.

Appendix D To Part 75—Optional SO_2 Emissions Data Protocol for Gas-Fired and Oil-Fired Units [Amended]

14. Appendix D, section 2.1.5.2 is amended by revising the phrase "bypass fuel" to read "backup fuel".

15. Appendix D, section 2.1.6.1 is amended by revising the phrase "bypass fuel" to read "backup fuel".

Appendix F of Part 75—Conversion Procedures [Amended]

16. Appendix F, section 3.4, Equation F–10 is amended by changing the superscript in the sum from "n" to "m", to read as follows:

$$E_a = \sum_{i=1}^{m} \frac{E_i}{m} \qquad \text{(Eq. F-10)}$$

Where,

* * * * *

17. Appendix F, section 4.4.1 is amended by adding Equation F–14b after the variables for Equation F–14a and before the variables for Equation F–14b, to read as follows:

4.4.1

* * * * *

or

$$CO_{2w}\frac{100}{20.9}\frac{F_c}{F}\left[20.9\left(\frac{100-\%H_2O}{100}\right)-O_{2w}\right] \qquad \text{(Eq. F-14b)}$$

* * * * *

Appendix F, Section 5.5.1—[Amended]

18. Appendix F, Section 5.5.1 is amended by revising the last variable for Equation F–19 from "106" to read "10^6" in the definition for the variable.

Appendix G of Part 75—Determination of CO_2 Emissions [Amended]

Appendix G, Section 4—[Amended]

19. Appendix G, section 4 is amended by redesignating Equation G–7 as Equation G–8.

[FR Doc. 96–12482 Filed 5–21–96; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 82

[FRL–5467–1]

RIN 2060–AG12

Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This action finalizes restrictions or prohibitions on substitutes for ozone depleting substances (ODSs) under the U.S. Environmental Protection Agency (EPA) Significant New Alternatives Policy (SNAP) program. SNAP implements section 612 of the amended Clean Air Act of 1990 which requires EPA to evaluate and regulate substitutes for the ODSs to reduce overall risk to human health and the environment. Through these evaluations, SNAP generates lists of acceptable and unacceptable substitutes for each of the major industrial use sectors. The intended effect of the SNAP program is to expedite movement away from ozone depleting compounds while avoiding a shift into high-risk substitutes posing other environmental problems.

On March 18, 1994, EPA promulgated a final rulemaking setting forth its plan for administering the SNAP program (59 FR 13044), and issued decisions on the acceptability and unacceptability of a number substitutes. In this Final Rulemaking (FRM), EPA is issuing its preliminary decisions on the acceptability of certain substitutes not previously reviewed by the Agency. To arrive at determinations on the acceptability of substitutes, the Agency completed a cross-media evaluation of risks to human health and the environment by sector end-use.

DATES: Effective date June 21, 1996.

The information collection requirements contained in Appendix C of subpart G of part 82 have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them. EPA will publish a document in the **Federal Register** announcing OMB approval.

ADDRESSES: Public Docket: Public comments and data specific to this final rule are in Docket A–91–42, Central Docket Section, South Conference Room 4, U.S. Environmental Agency, 401 M Street, SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays. Telephone (202) 260–7549; fax (202) 260–4400. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Nancy Smagin at (202) 233–9126 or fax (202) 233–9577, Stratospheric Protection Division, USEPA, Mail Code 6205J, 401 M Street, SW., Washington, DC 20460

SUPPLEMENTARY INFORMATION:

I. Overview of This Action

This action is divided into five sections, including this overview:

I. Overview of This Action
II. Section 612 Program
A. Statutory Requirements
B. Regulatory History
III. Listing of Substitutes
IV. Administrative Requirements
V. Additional Information
Appendix: Summary of Listing Decisions

II. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA is referring to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

Rulemaking—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

Listing of Unacceptable/Acceptable Substitutes—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.

Petition Process—Section 612(d) grants the right to any person to petition EPA to add a substitute to or delete a substitute from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.

90–day Notification—Section 612(e) requires EPA to require any person who

produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

Outreach—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

Clearinghouse—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published the Final Rulemaking (FRM) (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam blowing; solvent cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consume large volumes of ozone-depleting compounds.

The Agency defines a "substitute" as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to chemical manufacturers, but may include importers, formulators or end-users when they are responsible for introducing a substitute into commerce.

III. Listing of Substitutes

To develop the lists of unacceptable and acceptable substitutes, EPA conducts screens of health and environmental risks posed by various substitutes for ozone-depleting compounds in each use sector. The outcome of these risks screens can be found in the public docket, as described above in the **ADDRESSES** portion of this notice.

Under section 612, the Agency has considerable discretion in the risk management decisions it can make in SNAP. The Agency has identified five possible decision categories: acceptable, acceptable subject to use conditions; acceptable subject to narrowed use limits; unacceptable; and pending. Acceptable substitutes can be used for all applications within the relevant sector end-use. Conversely, it is illegal to replace an ODS with a substitute listed by SNAP as unacceptable. A pending listing represents substitutes for which the Agency has not received complete data or has not completed its review of the data.

After reviewing a substitute, the Agency may make a determination that a substitute is acceptable only if certain conditions of use are met to minimize risks to human health and the environment. Use of such substitutes in ways that are inconsistent with such use conditions renders these substitutes unacceptable.

Even though the Agency can restrict the use of a substitute based on the potential for adverse effects, it may be necessary to permit a narrowed range of use within a sector end-use because of the lack of alternatives for specialized applications. Users intending to adopt a substitute acceptable with narrowed use limits must ascertain that other acceptable alternatives are not technically feasible. Companies must document the results of their evaluation, and retain the results on file for the purpose of demonstrating compliance. This documentation shall include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, e.g., performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes. Use of such substitutes in application and end-uses which are not specified as acceptable in the narrowed use limit renders these substitutes unacceptable.

In this Final Rulemaking (FRM), EPA is issuing decisions on the acceptability of certain substitutes not previously reviewed by the Agency. The proposed rulemaking for these decisions was published on October 2, 1995 (60 FR 51383). As described in the proposed rule, EPA believes that notice-and-comment rulemaking is required to place any alternative on the list of prohibited substitutes, to list a substitute as acceptable only under certain use conditions or narrowed use limits, or to remove an alternative from either the list of prohibited or acceptable substitutes.

EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substitute. Consequently, EPA adds substitutes to the list of acceptable alternatives without first requesting comment on new listings. Updates to the acceptable and pending lists are published as separate Notices in the **Federal Register**.

Parts A. through C. below present a detailed discussion of the substitute listing determinations by major use sector. Tables summarizing listing decisions in this Final Rulemaking are in Appendix below. The comments contained in the Appendix provide additional information on a substitute. Since comments are not part of the regulatory decision, they are not mandatory for use of a substitute. Nor should the comments be considered comprehensive with respect to other legal obligations pertaining to the use of the substitute. However, EPA encourages users of acceptable substitutes to apply all comments in their application of these substitutes. In many instances, the comments simply allude to sound operating practices that have already been identified in existing industry and/or building-code standards. Thus, many of the comments, if adopted, would not require significant changes in existing operating practices for the affected industry.

A. Refrigeration and Air Conditioning

Response to Comment

EPA received one comment supporting the requirement to use unique fittings when retrofitting motor vehicle air conditioning systems (MVACS). The commenter, however, requested EPA reduce the information required on the label. EPA based the labeling requirements very closely on SAE J1660 and a petition by the Mobile Air Conditioning Society (MACS), and believes all of the information proposed in the NPRM is necessary, as clarified below. The commenter requested that EPA remove each of the following pieces of information from the label.

- Technician name and address.

EPA requires this information to ensure that both the consumer and various agencies know exactly who worked on the vehicle. In addition, this information allows the consumer to check that the technician is certified to work on MVACS.

- ASHRAE designation.

The American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) assigns unique numbers to new refrigerants. Refrigerant properties depend very strongly on both the components and the individual percentages within a blend. The composition of all ASHRAE-designated refrigerants is public, and EPA believes it is important for consumers and technicians to be aware of such information if it is available.

- Lubricant Manufacturer.

Given the large number of new refrigerants and lubricants, EPA believes the consumer is best served by having this information. This information is particularly important since it is extremely difficult to test every possible refrigerant/lubricant combination in every vehicle.

- "Ozone depleter" phrase.

The commenter reasoned that SNAP acceptability was the only relevant criterion to protect the ozone layer. Until November 15, 1995, however, only ozone-depleting substances were required to be recovered from MVACS, and since the composition of certain blends was confidential, EPA believed it was important to alert technicians of the necessity of recovering the refrigerant during servicing and disposal. EPA still believes that this statement does not add significantly to the label size and provides useful information to the consumer.

- Flammability phrase.

The commenter requested that this phrase be shortened from "This refrigerant is FLAMMABLE. Take appropriate precautions." to "FLAMMABLE". However, because flammable refrigerants are not currently in use, EPA believes it is extremely important to draw attention to a flammable substitute. Technicians and consumers need to be aware of the potential hazards posed by flammable refrigerants, and the entire phrase serves that purpose better than a single word.

In addition to the above rationale, the labeling requirements cannot be changed each time EPA lists a new refrigerant as acceptable for use in MVACS subject to use conditions. The labeling requirements were finalized on June 13, 1995 (60 FR 51383) for HCFC Blend Beta, R–401C, and HFC–134a. It is not reasonable to require vendors of those refrigerants to modify their labels or to meet standards not imposed on subsequent refrigerants. EPA believes the labeling requirements are necessary and appropriate to help the MVAC industry in its transition away from CFC–12 in as smooth and safe a manner as possible.

2. Acceptable Subject to Use Conditions

a. CFC–12 Automobile and Non-automobile Motor Vehicle Air Conditioners, Retrofit and New

EPA is concerned that the existence of several substitutes in this end-use may increase the likelihood of significant refrigerant cross-contamination and potential failure of both air conditioning systems and recovery/recycling equipment. In addition, a smooth transition to the use of substitutes strongly depends on the continued purity of the recycled CFC–12 supply. In order to prevent cross-contamination and preserve the purity of recycled refrigerants, EPA is imposing several conditions on the use of all motor vehicle air conditioning refrigerants. For the purposes of this rule, no distinction is made between "retrofit" and "drop-in" refrigerants; retrofitting a car to use a new refrigerant includes all procedures that result in the air conditioning system using a new refrigerant. Please note that EPA only reviews refrigerants based on environmental and health factors.

When retrofitting a CFC–12 system to use any substitute refrigerant, the following conditions must be met:

- Each refrigerant may only be used with a set of fittings that is unique to that refrigerant. These fittings (male or female, as appropriate) must be used with all containers of the refrigerant, on can taps, on recovery, recycling, and charging equipment, and on all air conditioning system service ports. These fittings must be designed to mechanically prevent cross-charging with another refrigerant. A refrigerant may only be used with the fittings and can taps specifically intended for that refrigerant. Using an adapter or deliberately modifying a fitting to use a different refrigerant will be a violation of this use condition. In addition, fittings shall meet the following criteria, derived from Society of Automotive Engineers (SAE) standards and recommended practices:

—When existing CFC–12 service ports are to be retrofitted, conversion assemblies shall attach to the CFC–12 fitting with a thread lock adhesive and/or a separate mechanical latching mechanism in a manner that permanently prevents the assembly from being removed.

—All conversion assemblies and new service ports must satisfy the vibration testing requirements of sections 3.2.1 or 3.2.2 of SAE J1660, as applicable, excluding references to SAE J639 and SAE J2064, which are specific to HFC–134a.

—In order to prevent discharge of refrigerant to the atmosphere, systems shall have a device to limit compressor operation before the pressure relief device will vent refrigerant. This requirement is waived for systems that do not feature such a pressure relief device.

—All CFC–12 service ports not retrofitted with conversion assemblies shall be rendered permanently incompatible for use with CFC–12 related service equipment by fitting with a device attached with a thread lock adhesive and/or a separate mechanical latching mechanism in a manner that prevents the device from being removed.

- When a retrofit is performed, a label must be used as follows:

—The person conducting the retrofit must apply a label to the air conditioning system in the engine compartment that contains the following information:

*The name and address of the technician and the company performing the retrofit
*The date of the retrofit
*The trade name, charge amount, and, when applicable, the ASHRAE refrigerant numerical designation of the refrigerant
*The type, manufacturer, and amount of lubricant used
*If the refrigerant is or contains an ozone-depleting substance, the phrase "ozone depleter"
*If the refrigerant displays flammability limits as measured according to ASTM E681, the statement "This refrigerant is FLAMMABLE. Take appropriate precautions."

—This label must be large enough to be easily read and must be permanent.

—The background color must be unique to the refrigerant.

—The label must be affixed to the system over information related to the previous refrigerant, in a location not normally replaced during vehicle repair.

—Information on the previous refrigerant that cannot be covered by the new label must be permanently rendered unreadable.

- No substitute refrigerant may be used to "top-off" a system that uses another refrigerant. The original refrigerant must be recovered in accordance with regulations issued under section 609 of the CAA prior to charging with a substitute.

Since these use conditions necessitate unique fittings and labels, it will be necessary for developers of automotive refrigerants to consult with EPA about the existence of other alternatives. Such

discussions will lower the risk of duplicating fittings already in use.

No determination guarantees satisfactory performance from a refrigerant. Consult the original equipment manufacturer or service personnel for further information on using a refrigerant in a particular system.

(a) HCFC Blend Delta

HCFC Blend Delta is acceptable as a substitute for CFC–12 in retrofitted and new motor vehicle air conditioners, subject to the use conditions applicable to motor vehicle air conditioning described above. The composition of this blend has been claimed confidential by the manufacturer. This blend contains at least one HCFC, and therefore contributes to ozone depletion, but to a much lesser degree than CFC–12. Regulations regarding recycling and reclamation issued under section 609 of the Clean Air Act apply to this blend. Its production will be phased out according to the accelerated schedule (published 12/10/93, 58 FR 65018). The GWPs of the components are moderate to low. This blend is nonflammable, and leak testing has demonstrated that the blend never becomes flammable.

(b) Blend Zeta

Blend Zeta is acceptable as a substitute for CFC–12 in retrofitted and new motor vehicle air conditioners, subject to the use conditions applicable to motor vehicle air conditioning described above. The composition of this blend has been claimed confidential by the manufacturer. This blend does not contribute to ozone depletion. The GWPS of the components are moderate to low. This blend is nonflammable, and leak testing has demonstrated that the blend never becomes flammable.

B. Solvents

1. Response to Comment

In response to EPA's proposal, the Agency received public comment stating that the scope of SNAP did not extend to setting workplace standards for chemicals. The Agency disagrees with this comment, and it discussed in the original SNAP rule-making (59 FR 13044, March 18, 1994) how it is using section 612 authority under the Clean Air Act to set workplace standards as interim measures until OSHA has had an opportunity to review and decide on the need for standards under OSHA legislative authorities. The commenter suggested that EPA review with OSHA its intention of setting these standards. The EPA has already taken this step, and EPA and OSHA are in agreement about the ability and the need for the SNAP program to set occupational standards as an interim regulatory measure until the chemical in question has been reviewed by OSHA. Further discussion of this issue is included under the Fire Extinguishing section below.

2. Acceptable Subject to Use Conditions

a. Metals Cleaning

(1) Monochlorotoluenes/ Benzotrifluorides

Monochlorotoluenes/benzotrifluorides are acceptable subject to use conditions as substitutes for CFC–113 and MCF in metals cleaning. These two classes of chemicals are being sold as blends for a variety of cleaning applications. Of all the structures of commercial interest, the only chemical with an Occupational Safety and Health Administration (OSHA) standard is orthochlorotoluene, one of the monochlorotoluenes. This substance has an OSHA Permissible Exposure Level (PEL) of 50 ppm. Using this standard as a proxy, the Agency is setting a workplace standard of 50 ppm for monochlorotoluenes as a group. None of the benzotrifluorides has a PEL. Based on a toxicological study recently completed by the company interested in commercialization of these chemicals, the Agency is setting a workplace standard of 25 ppm for benzotrifluorides. Companies intending to use monochlorotoluene/ benzotrifluoride mixtures should take the inherent hazard of these chemicals into account.

These workplace standards are designed to protect worker safety until the Occupational Safety and Health Administration (OSHA) sets its own standards under P.L. 91–596. The existence of the EPA standards in no way bars OSHA from standard-setting under OSHA authorities as defined in P.L. 91–596.

b. Electronics Cleaning

(1) Monochlorotoluenes/ Benzotrifluorides

Monochlorotoluenes/benzotrifluorides are acceptable subject to use conditions as substitutes for CFC–113 and MCF in electronics cleaning. For the reasons described in the section on metals cleaning, the Agency is setting a workplace standard of 50 ppm for monochlorotoluenes and 25 ppm for benzotrifluorides.

These workplace standards are designed to protect worker safety until the Occupational Safety and Health Administration (OSHA) sets its own standards under P.L. 91–596. The existence of the EPA standards in no way bars OSHA from standard-setting under OSHA authorities as defined in P.L. 91–596.

c. Precision Cleaning

(1) Monochlorotoluenes/ Benzotrifluorides

Monochlorotoluenes/benzotrifluorides are acceptable subject to use conditions as substitutes for CFC–113 and MCF in precision cleaning. For the reasons described in the section on metals cleaning, the Agency is setting a workplace standard of 50 ppm for monochlorotoluenes and 25 ppm for benzotrifluorides.

These workplace standards are designed to protect worker safety until the Occupational Safety and Health Administration (OSHA) sets its own standards under P.L. 91–596. The existence of the EPA standards in no way bars OSHA from standard-setting under OSHA authorities as defined in P.L. 91–596.

C. Fire Suppression and Explosion Protection

1. Response to Comments

Comment: One commenter stated that EPA's regulation of total flooding agents is within the purview of OSHA, and that EPA should defer to OSHA rather than create duplicative regulation. Further, the commenter states that the conditions EPA has stipulated allowing exposure to oxygen deficient atmospheres of 10% to 12% oxygen is hazardous and inconsistent with OSHA's requirement for 19.5% oxygen in confined spaces. The commenter further advised EPA that OSHA published an update to its Respiratory Protection Standard (November 15, 1994, 59 FR 58906) which includes a chart indicating that oxygen concentrations below 16% at sea level should require the extra precautions that go with IDLH atmospheres (immediately dangerous to life and health). The commenter also pointed out the OSHA regulations requiring predischarge alarms. In summary, the commenter recommended (1) that EPA revise the proposed rule to be consistent with current OSHA regulation, (2) that EPA not establish a 12% "no effect level" or a 10% "lowest effect level," and (3) that EPA leave this regulatory activity to OSHA.

Response: EPA would like to direct the commenter's attention to the original SNAP rulemaking published March 18, 1994 (59 FR 13044), as discussed in the Solvents section above. The Agency responded to many comments questioning its authority to promulgate workplace safety regulations. To quote earlier language from the Comment Response document:

> In imposing conditions of use, EPA does not intend to preempt other regulatory authorities, such as those exercised by the Occupational Safety and Health Administration (OSHA) or other government or industrial standard-setting bodies. Rather, EPA hopes to fill existing regulatory gaps during the interim period of substitution away from ozone-depleting compounds and provide the needed margin of protection to human health and the environment until other regulatory controls or standards are developed under appropriate authorities.
>
> EPA anticipates applying use conditions only in the rare instances where clear regulatory gaps exist, and where an unreasonable risk would exist in the absence of any condition. These limitations will only remain in place until the appropriate standard setting agency acts. Once existing gaps are filled, EPA will rescind any conditions which have become redundant. The mechanism for informing the public of this change will be the quarterly **Federal Register** notices updating the status of the SNAP lists.

For the March 18, 1994 SNAP rulemaking, EPA had conducted an analysis of existing regulation of low oxygen atmospheres and determined that none relates to the use of a fixed gaseous system. (Available from the EPA Air Docket A–91–42, IV–A–4. "Evaluation of Federal Regulations and Industry Guidelines Governing Minimum Oxygen Levels in Work Areas Protected By Gaseous Total Flooding Fire Protection Systems," Memo from ICF Incorporated to Karen Metchis, EPA, 1993.) OSHA had a number of inquiries concerning the definition of "oxygen deficient atmospheres", but the definition remained unclear with OSHA stating that any atmosphere containing less than 19.5 per cent oxygen falls within the definition of "oxygen deficient atmosphere." However existing regulations concerned only such things as entering tanks (Ventilation Standard, 29 CFR 1910.94), confined spaces not intended for occupancy, etc. In addition, the proposed OSHA Respiratory Standard cited by the commenter does not apply to fire protection systems, except in situations where personnel wish to reenter an area that has experienced a system discharge.

The Agency views discharge of fire extinguishment systems as emergency situations, whether they be accidental discharges or discharges in response to a fire. In these cases, personnel are expected to quickly egress from an area, presumably before discharge occurs, but potentially very quickly after discharge. To prohibit use of this technology for fear of emergency situations would be akin to prohibiting the use of a particular chemical for fear of an accidental spill. Both cases represent an emergency situation that should be handled accordingly. Inert gas systems are not to be used while personnel remain in an area to conduct normal duties.

Current OSHA regulations (1910.162) allow use of halon in fixed extinguishing systems in normally occupied areas in amounts that would result in an oxygen deficient atmosphere. The same regulation allows use of carbon dioxide systems in normally occupied areas even though exposure to discharge of a CO_2 system results in immediate death. Thus, it is not inconsistent with current OSHA regulations to design fire extinguishing systems that might result in low oxygen atmospheres provided that certain protections are present.

Comment: The manufacturer of one inert gas system commented that EPA has erred in determining that inert gases without CO_2 can be used at the same levels and for the same exposure times as inert gases with added CO_2, and referenced a supporting document, "Physiological Effects of Abrupt Exposure to 10% O2 with 4% CO_2," dated February 15, 1995. Further, the commenter explained why EPA's concern that added CO_2 might cause an increased inspiration of combustion products is not warranted, by elaborating on three exposure scenarios to a fire agent: no-fire, small-fire, and large-fire. The commenter pointed out that only in the case of a large fire will high levels of combustion products exist and in that case the risk of the fire greatly exceeds any incremental risk from the added CO_2.

Response: While EPA generally agrees with the commenter's elaboration of the scenarios of exposure, the question of the relative importance of the effects of inert gases systems with and without added CO_2 in fire protection scenarios is the subject of a current peer review on hypoxic atmospheres. Pending the outcome of that assessment, EPA may re-propose use conditions on these agents either to increase flexibility in the use of these agents and/or to differentiate the use conditions applicable to systems with or without added CO_2.

Comment: One manufacturer of this agent stated that the most recently published atmospheric information on CF_3I indicates that its atmospheric lifetime is less than one day, the ozone depletion potential is less than 0.0008 and more likely below 0.0001, and its global warming potential is less than five.

The commenter further stated that, compared to Halon 1211, its weight and volume equivalence are 0.94 and 0.83 respectively. Finally, the commenter requested that CF_3I not be referred to as Halon 13001, as this might confuse the public as to why "halon" was being replaced by a "halon."

In addition, the manufacturer provided the Agency with the report entitled "Exposure Assessment of Firefighters to Triodide during Streaming Scenarios," conducted at Tyndall Air Force Base. The results of personal monitoring indicated that exposure to this agent during use indoors does not exceed its cardiotoxic effect levels.

Response: The Agency agrees with the commenter and will use the most recent information on atmospheric characteristics as well as weight and volume equivalence, as noted by the commenter. In addition, CF_3I will not be labeled Halon 13001 in order to avoid general confusion. Finally, the Agency is proceeding to list this agent as acceptable for use as a streaming agent in nonresidential uses.

2. Acceptable Subject to Use Conditions

As was discussed in the March 18, 1994 SNAP rulemaking, EPA in some cases finds acceptable the use of an agent only under certain conditions. In implementing its use of conditions, the Agency has sought to avoid overlap with other existing regulatory authorities. EPA believes that section 612 clearly authorizes imposition of use conditions to ensure safe use of replacement agents. EPA's mandate is to list agents that "reduce the overall risk to human health and the environment" for "specific uses."

In light of this authorization, EPA is only intending to set conditions for the safe use of halon substitutes in the workplace until OSHA incorporates specific language addressing gaseous agents into OSHA regulation. Under OSHA Public Law 91–596, section 4(b)(1), OSHA is precluded from regulating an area currently being regulated by another federal agency. EPA is specifically deferring to OSHA, and has no intention to assume responsibility for regulating workplace safety especially with respect to fire protection. EPA's workplace use conditions will not bar OSHA from regulating under its P.L. 91–596 authority.

a. Total Flooding Agents

(1) IG–55 (Formerly [Inert Gas Blend] B)

IG–55 is acceptable as a Halon 1301 substitute for total flooding

applications. IG–55, which is comprised of 50% nitrogen and 50% argon, is designed to lower the oxygen level in a protected area to a level that does not support combustion, and, unlike pure carbon dioxide systems, sufficient oxygen remains to maintain life support.

The toxicological issues of concern with inert gas systems differ from those of halocarbon agents, in that the end-point for hypoxic (low oxygen) atmospheres is asphyxiation while the end-point for halocarbons is cardiac sensitization leading to cardiac arrhythmias. Thus, EPA requested the manufacturers of the inert gas systems to conduct a peer review by a panel of medical specialists to consider specific questions concerning exposing the typical working population to this agent. In addition, a panel of medical specialists convened by EPA to review all inert gas systems concluded that the use conditions imposed by EPA are conservative and adequate.

The results of the peer reviews further convinces us that the SNAP conditions previously listed for IG–541 are appropriate for IG–55 and IG–01 as well. Specifically, while the terms No Observed Adverse Effect Level (NOAEL) and Lowest Observed Adverse Effect Level (LOAEL) refer to cardiotoxic effect levels which are not appropriate when discussing hypoxic atmospheres, EPA is establishing a 'no effect level' for inert gas systems at 12% oxygen, and a 'lowest effect level' at 10% oxygen.

Thus, consistent with the Occupational Safety and Health Administration (OSHA) conditions used by EPA for all total flooding agents, EPA is specifying that an IG–55 system could be designed to an oxygen level of 10% if employees can egress the area within one minute, but may be designed only to the 12% level if it takes longer than one minute to egress the area. If the possibility exists for the oxygen to drop below 10%, employees must be evacuated prior to such oxygen depletion. A design concentration of less than 10% oxygen may only be used in normally unoccupied areas, as long as any employee who could possibly be exposed can egress within 30 seconds.

EPA stresses that, even though the medical specialists concur that it is probably safe to expose the typical worker to 10% or 12% oxygen for up to five minutes, EPA does not encourage any employee to intentionally remain in the area, even in the event of accidental discharge. In addition, the system must include alarms and warning mechanisms as specified by OSHA.

EPA intends that all personnel be evacuated from an area prior to, or quickly after, discharge. An inert gas system may not be designed with the intention of personnel remaining in the area unless appropriate protection is provided, such as self-contained breathing apparatus.

(2) IG–01 (Formerly [Inert Gas Blend] C)

IG–01 is acceptable as a Halon 1301 substitute for total flooding applications. IG–01 is comprised 100% of argon, and as with IG–55, is designed to lower the oxygen level in a protected area to a level that does not support combustion, while maintaining sufficient oxygen for life support.

As with IG–55, an IG–01 system may be designed to an oxygen level of 10% if employees can egress the area within one minute, but may be designed only to the 12% level if it takes longer than one minute to egress the area. If the possibility exists for the oxygen to drop below 10%, employees must be evacuated prior to such oxygen depletion. A design concentration of less than 10% may only be used in normally unoccupied areas, as long as any employee who could possibly be exposed can egress within 30 seconds.

EPA stresses that, even though the medical specialists concur that it is probably safe to expose the typical worker to 10% or 12% oxygen for up to five minutes, EPA does not encourage any employee to intentionally remain in the area, even in the event of accidental discharge. In addition, the system must include alarms and warning mechanisms as specified by OSHA.

Please refer to the discussion of IG–55 for a fuller description of inert gas systems.

3. Acceptable Subject to Narrowed Use Limits

(a) Streaming Agents

(1) CF_3I

CF_3I is acceptable as a Halon 1211 substitute in nonresidential applications. CF_3I is a fluoroiodocarbon with an atmospheric lifetime of less than one day due to its rapid photolysis in the presence of light. Due to its short atmospheric lifetime of one day and its photolytic decomposition mechanism, the resulting GWP of this agent is less than 5, while its ODP when released at ground level is 0.0008 and more likely below.

CF_3I has a weight and volume equivalence to Halon 1211 of 0.94 and 0.83, respectively. While it is potentially a 'drop-in' replacement for Halon 1211, with some modifications in elastomers or other system materials, there exists a question as to whether current technical standards allow the reuse of halon 1211 canisters for other chemicals. Both the National Fire Protection Association (NFPA) standard and UL listings should be examined in this context.

Cardiac sensitization data received by the Agency indicate that CF_3I has a NOAEL of 0.2 per cent and a LOAEL of 0.4 per cent. Personal monitoring for this agent was conducted using 2½ to 13 pound extinguishers in various indoor applications. The resulting data indicate that cardiotoxic levels are not likely to be exceeded when used as a streaming agent. While the tests were conducted in different scenarios both with and without ventilation, EPA recommends that this agent be used in well ventilated areas. Because of the low cardiac sensitization values, EPA is prohibiting use of this agent in consumer residential applications where the possibility exists of incorrect use by untrained users.

D. Aerosols

1. Response to Comment

As discussed in the section on solvent cleaning, EPA received a comment stating that it did not have authority under SNAP to set workplace standards. For the reasons described above, the Agency disagrees with this comment.

2. Acceptable Subject to Use Conditions

a. Solvents

(1) Monochlorotoluenes/ Benzotrifluoridos

Monochlorotoluenes/benzotrifluorides are acceptable subject to use conditions as substitutes for CFC–113 and MCF as aerosol solvents. These two classes of chemicals are being sold as blends for aerosol applications. Of all the structures of commercial interest, the only chemical with an Occupational Safety and Health Administration (OSHA) standard is orthochlorotoluene, one of the monochlorotoluenes. This substance has an OSHA Permissible Exposure Level (PEL) of 50 ppm. Using this standard as a proxy, the Agency is setting a workplace standard of 50 ppm for monochlorotoluenes as a group. None of the benzotrifluorides has a PEL. Based on a toxicological study recently completed by the company interested in commercialization of these chemicals, the Agency is setting a workplace standard of 25 ppm for benzotrifluorides. Companies intending to use monochlorotoluene/ benzotrifluoride mixtures should take the inherent hazard of these chemicals into account in implementing applications.

These workplace standards are designed to protect worker safety until the Occupational Safety and Health Administration (OSHA) sets its own standards under P.L. 91–596. The existence of the EPA standards in no way bars OSHA from standard-setting under OSHA authorities as defined in P.L. 91–596.

E. Adhesives, Coatings and Inks

1. Response to Comment

As discussed in the section on solvent cleaning, EPA received a comment stating that it did not have authority under SNAP to set workplace standards. For the reasons described above, the Agency disagrees with this comment.

2. Acceptable Subject to Use Conditions

a. Monochlorotoluenes/ Benzotrifluorides

Monochlorotoluenes/benzotrifluorides are acceptable subject to use conditions as substitutes for CFC–113 and MCF in adhesives, coatings, and inks. These two classes of chemicals are being sold as blends for these applications. Of all the substances of commercial interest, the only chemical with an Occupational Safety and Health Administration (OSHA) standard is orthochlorotoluene, one of the monochlorotoluenes. This substance has an OSHA Permissible Exposure Level (PEL) of 50 ppm. Using this standard as a proxy, the Agency is setting a workplace standard of 50 ppm for monochlorotoluenes as a group. None of the benzotrifluorides has a PEL. Based on a toxicological study recently completed by the company interested in commercialization of these chemicals, the Agency is setting a workplace standard of 25 ppm for benzotrifluorides. Companies intending to use monochlorotoluene/ benzotrifluoride mixtures should take the inherent toxicity of these chemicals into account in implementing applications.

These workplace standards are designed to protect worker safety until the Occupational Safety and Health Administration (OSHA) sets its own standards under P.L. 91–596. The existence of the EPA standards in no way bars OSHA from standard-setting under OSHA authorities as defined in P.L. 91–596.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735; October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order and EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations have been documented in the public record.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires EPA to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing any small governments that may be significantly or uniquely affected by the rule. Section 205 requires that regulatory alternatives be considered before promulgating a rule for which a budgetary impact statement is prepared. The Agency must select the least costly, most cost-effective, or least burdensome alternative that achieves the rule's objectives, unless there is an explanation why this alternative is not selected or this alternative is inconsistent with law.

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. However, the rule has the net effect of reducing burden from part 82, Stratospheric Protection regulations, on regulated entities.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 604(a), applies to any rulemaking that is subject to public notice and comment requirements. The Act requires that a regulatory flexibility analysis be performed or the head of the Agency certifies that a rule will not have a significant economic effect on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

The Agency believes that this final rule will not have a significant effect on a substantial number of small entities and has therefore concluded that a formal RFA is unnecessary. Because costs of the SNAP requirements as a whole are expected to be minor, the rule is unlikely to adversely affect businesses, particularly as the rule exempts small sectors and end-uses from reporting requirements and formal agency review. In fact, to the extent that information gathering is more expensive and time-consuming for small companies, this rule may well provide benefits for small businesses anxious to examine potential substitutes to any ozone-depleting class I and class II substances they may be using, by requiring manufacturers to make information on such substitutes available.

D. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document will be prepared by EPA and a copy will be available from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St., S.W.; Washington, DC 20460 or by calling (202) 260–2740. The information requirements are not effective until OMB approves them. The reasons for these information requirements are explained in the section on automobile air conditioning (III.A.2.a), and will be mandatory once the ICR is approved under section 612 of the Clean Air Act.

EPA estimates that, over a 5 year period, approximately 30 million cars will be retrofitted with alternative refrigerants, and that the burden to complete and apply a label will not exceed 5 minutes per car. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire,

install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

V. Additional Information

For copies of the comprehensive SNAP lists or additional information on SNAP contact the Stratospheric Protection Hotline at 1–800–296–1996, Monday-Friday, between the hours of 10:00 a.m. and 4:00 p.m. (EST).

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). **Federal Register** notices can be ordered from the Government Printing Office Order Desk (202) 783–3238; the citation is the date of publication. Notices and rulemaking under the SNAP program can also be retrieved electronically from EPA's Protection of Stratospheric Ozone Technology Transfer Network (TTN), Clean Air Act Amendment Bulletin Board. The access number for users with a 1200 or 2400 bps modem is (919) 541–5742. For users with a 9600 bps modem the access number is (919) 541–1447. For assistance in accessing this service, call (919) 541–5384 during normal business hours (EST). Finally, all ozone depletion-related NPRMS, FRMs, and Notices may be retrieved from EPA's Ozone Depletion World Wide Web site, at http://www.epa.gov/docs/ozone/title6/usregs.html.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: May 13, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.180 is amended by revising paragraph (a)(8)(ii) to read as follows:

§ 82.180 Agency review of SNAP submissions.

(a) * * *

(8) * * *

(ii) *Communication of Decision to the Public.* The Agency will publish in the **Federal Register** on a quarterly basis a complete list of the acceptable and unacceptable alternatives that have been reviewed to date. In the case of substitutes proposed as acceptable with use restrictions, proposed as unacceptable or proposed for removal from either list, a rulemaking process will ensue. Upon completion of such rulemaking, EPA will publish revised lists of substitutes acceptable subject to use conditions or narrowed use limits and unacceptable substitutes to be incorporated into the Code of Federal Regulations. (See Appendices to this subpart.)

* * * * *

3. Subpart G is amended by adding Appendix C to read as follows:

Subpart G—Significant New Alternatives Policy Program

* * * * *

Appendix C to Subpart G—Substitutes Subject to Use Restrictions and Unacceptable Substitutes Listed in the May 22, 1996 Final Rule, Effective June 21, 1996

Refrigeration and Air Conditioning Sector—Acceptable Subject to Use Conditions

HCFC Blend Delta and Blend Zeta are acceptable subject to the following conditions when used to retrofit a CFC–12 motor vehicle air conditioning system:

1. Each refrigerant may only be used with a set of fittings that is unique to that refrigerant. These fittings (male or female, as appropriate) must be used with all containers of the refrigerant, on can taps, on recovery, recycling, and charging equipment, and on all air conditioning system service ports. These fittings must be designed to mechanically prevent cross-charging with another refrigerant. A refrigerant may only be used with the fittings and can taps specifically intended for that refrigerant. Using an adapter or deliberately modifying a fitting to use a different refrigerant will be a violation of this use condition. In addition, fittings shall meet the following criteria, derived from Society of Automotive Engineers (SAE) standards and recommended practices:

a. When existing CFC–12 service ports are to be retrofitted, conversion assemblies shall attach to the CFC–12 fitting with a thread lock adhesive and/or a separate mechanical latching mechanism in a manner that permanently prevents the assembly from being removed.

b. All conversion assemblies and new service ports must satisfy the vibration testing requirements of sections 3.2.1 or 3.2.2 of SAE J1660, as applicable, excluding references to SAE J639 and SAE J2064, which are specific to HFC–134a.

c. In order to prevent discharge of refrigerant to the atmosphere, systems shall have a device to limit compressor operation before the pressure relief device will vent refrigerant. This requirement is waived for systems that do not feature such a pressure relief device.

d. All CFC–12 service ports not retrofitted with conversion assemblies shall be rendered permanently incompatible for use with CFC–12 related service equipment by fitting with a device attached with a thread lock adhesive and/or a separate mechanical latching mechanism in a manner that prevents the device from being removed.

2. When a retrofit is performed, a label must be used as follows:

a. The person conducting the retrofit must apply a label to the air conditioning system in the engine compartment that contains the following information:

i. The name and address of the technician and the company performing the retrofit.

ii. The date of the retrofit.

iii. The trade name, charge amount, and, when applicable, the ASHRAE refrigerant numerical designation of the refrigerant.

iv. The type, manufacturer, and amount of lubricant used.

v. If the refrigerant is or contains an ozone-depleting substance, the phrase "ozone depleter."

vi. If the refrigerant displays flammability limits as measured according to ASTM E681, the statement "This refrigerant is FLAMMABLE. Take appropriate precautions."

b. This label must be large enough to be easily read and must be permanent.

c. The background color must be unique to the refrigerant.

d. The label must be affixed to the system over information related to the previous refrigerant, in a location not normally replaced during vehicle repair.

e. Information on the previous refrigerant that cannot be covered by the new label must be permanently rendered unreadable.

3. No substitute refrigerant may be used to "top-off" a system that uses another refrigerant. The original refrigerant must be recovered in accordance with regulations issued under section 609 of the CAA prior to charging with a substitute.

SOLVENT CLEANING SECTOR—PROPOSED ACCEPTABLE SUBJECT TO USE CONDITIONS SUBSTITUTES

Application	Substitute	Decision	Conditions	Comments
Metals Cleaning with CFC–113, MCF and HCFC–141b.	Monochlorotoluenes and benzotrifluorides.	Acceptable	Subject to a 50 ppm workplace standard for monochlorotoluenes and a 25 ppm standard for benzotrifluorides.	The workplace standard for monochlorotoluenes is based on an OSHA PEL of 50 ppm for orthochlorotoluene. The workplace standard for benzotrifluorides is based on a recent toxicology study.
Electronics Cleaning w/ CFC–113, MCF and HCFC–141b.	Monochlorotoluenes and benzotrifluorides.	Acceptable	Subject to a 50 ppm workplace standard for monochlorotoluenes and a 25 ppm standard for benzotrifluorides.	The workplace standard for monochlorotoluenes is based on an OSHA PEL of 50 ppm for orthochlorotoluene. The workplace standard for benzotrifluorides is based on a recent toxicology study.
Precision Cleaning w/ CFC–113, MCF and HCFC–141b.	Monochlorotoluenes and benzotrifluorides.	Acceptable	Subject to a 50 ppm workplace standard for monochlorotoluenes and a 25 ppm standard for benzotrifluorides.	The workplace standard for monochlorotoluenes is based on an OSHA PEL of 50 ppm for orthochlorotoluene. The workplace standard for benzotrifluorides is based on a recent toxicology study.

FIRE SUPPRESSION AND EXPLOSION PROTECTION—ACCEPTABLE SUBJECT TO USE CONDITIONS: TOTAL FLOODING AGENTS

Application	Substitute	Decision	Conditions	Comments
Halon 1301	IG–55 (formerly [Inert Gas Blend] B).	Acceptable	Until OSHA establishes applicable workplace requirements:	The Agency does not contemplate personnel remaining in the space after system discharge during a fire without Self Contained Breathing Apparatus (SCBA) as required by OSHA.
Total Flooding Agents.	.....	.....	IG–55 systems may be designed to an oxygen level of 10% if employees can egress the area within one minute, but may be designed only to the 12% oxygen level if it takes longer than one minute to egress the area.	
			If the possibility exists for the oxygen to drop below 10%, employees must be evacuated prior to such oxygen depletion.	EPA does not encourage any employee to intentionally remain in the area after system discharge, even in the event of accidental discharge. In addition, the system must include alarms and warning mechanisms as specified by OSHA.
			A design concentration of less than 10% may only be used in normally unoccupied areas, as long as any employee who could possibly be exposed can egress within 30 seconds.	See additional comments 1, 2.
	IG–01 (formerly [Inert Gas Blend] C).	Acceptable	Until OSHA establishes applicable workplace requirements:	The Agency does not contemplate personnel remaining in the space after system discharge during a fire without Self Contained Breathing Apparatus (SCBA) as required by OSHA.
			IG–01 systems may be designed to an oxygen level of 10% if employees can egress the area within one minute, but may be designed only to the 12% oxygen level if it takes longer than one minute to egress the area.	
			If the possibility exists for the oxygen to drop below 10%, employees must be evacuated prior to such oxygen depletion.	EPA does not encourage any employee to intentionally remain in the area after system discharge, even in the event of accidental discharge. In addition, the system must include alarms and warning mechanisms as specified by OSHA.

FIRE SUPPRESSION AND EXPLOSION PROTECTION—ACCEPTABLE SUBJECT TO USE CONDITIONS: TOTAL FLOODING AGENTS—Continued

Application	Substitute	Decision	Conditions	Comments
			A design concentration of less than 10% may only be used in normally unoccupied areas, as long as any employee who could possibly be exposed can egress within 30 seconds.	See additional comments 1, 2.

1—Must conform with OSHA 29 CFR 1910 Subpart L Section 1910.160 of the U.S. Code.
2—Per OSHA requirements, protective gear (SCBA) must be available in the event personnel must reenter the area.

ACCEPTABLE SUBJECT TO NARROWED USE LIMITS: STREAMING AGENTS

Application	Substitute	Decision	Comments
Halon 1211 ..... Streaming Agents	CF_3I	Acceptable in non-residential uses only.	

AEROSOLS—PROPOSED ACCEPTABLE SUBJECT TO USE CONDITIONS SUBSTITUTES

Application	Substitute	Decision	Conditions	Comments
CFC–113, MCF and HCFC–141b as solvent.	Monochlorotoluenes and benzotrifluorides.	Acceptable	Subject to a 50 ppm workplace standard for monochlorotoluenes and a 25 ppm standard for benzotrifluorides.	The workplace standard for monochlorotoluenes is based on an OSHA PEL of 50 ppm for orthochlorotoluene. The workplace standard for benzotrifluorides is based on a recent toxicology study.

ADHESIVES, COATINGS AND INKS—PROPOSED ACCEPTABLE SUBJECT TO USE CONDITIONS SUBSTITUTES

Application	Substitute	Decision	Conditions	Comments
CFC–113, MCF and HCFC–141b.	Monochlorotoluenes and benzotrifluorides.	Acceptable	Subject to a 50 ppm workplace standard for monochlorotoluenes and a 25 ppm standard for benzotrifluorides.	The workplace standard for monochlorotoluenes is based on an OSHA PEL of 50 ppm for orthochlorotoluene. The workplace standard for benzotrifluorides is based on a recent toxicology study.

[FR Doc. 96–12625 Filed 5–21–96; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 21

[MM Docket No. 94–131 and PP Docket No. 93–253, FCC 95–230]

Domestic Public Fixed Radio Services

CFR Correction

In title 47 of the Code of Federal Regulations, parts 20 to 39, revised as of October 1, 1995, in § 21.902 the first paragraph (c), (c)(1), and (c)(1)(i) beginning at the bottom of the first column on page 91 should be removed. In the second column paragraph (c)(1)(ii) was inadvertently omitted and should read as follows:

§ 21.902 Frequency interference.

* * * * *

(c) * * *

(1) * * *

(ii) If the great circle path between the applicant's proposed transmitter and the protected service area of any authorized, or previously–proposed, cochannel or adjacent–channel station(s) is within 241.41 km (150 miles) or less and 90 percent or more of the path is over water or within 16.1 km (10 miles) of the coast or shoreline of the Atlantic Ocean, the Pacific Ocean, the Gulf of Mexico, any of the Great Lakes, or any bay associated with any of the above (see secs. 21.701(a), 21.901(a) and 74.902 of this chapter;

* * * * *

BILLING CODE 1505-01-D

47 CFR Part 73

[MM Docket No.90–67, RM–7482, RM–7026, RM–7057]

Radio Broadcasting Services; Bon Air, Chester, Mechanicsville, Ruckersville, Williamsburg and Fort Lee, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document grants in part the petition for reconsideration filed by Capitol Broadcasting Company of Virginia, denies the petition for partial reconsideration filed by Keymarket of Virginia, Inc. and affirms the result in *Second Report and Order*, 57 FR 45578 (October 2, 1992). The *Second Report and Order* granted a change of community of license of Station WDCK(FM)(formerly WQSF(FM)) from Williamsburg to Fort Lee, Virginia. This document also dismisses a petition for reconsideration filed by Roy H. Park Broadcasting of Virginia, Inc., at the party's request. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 22, 1996.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2130.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 90–67 adopted May 3, 1996 and released May 13, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–12776 Filed 5–21–96; 8:45 am]
BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. 94–20; Notice 5]

RIN 2127–AF16

Light Truck Average Fuel Economy Standard, Model Year 1998

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Delay of effective date.

SUMMARY: This notice delays the effective date of the final rule on light truck fuel economy, in accordance with legislation concerning Congressional review of regulations.

DATES: Effective May 3, 1996, the effectiveness of the rule published on April 3, 1996 at 61 FR 14680 is suspended from May 3, 1996 through June 21, 1996. The effective date of the rule is June 22, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Otto Matheke, III, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202–366–5263).

SUPPLEMENTARY INFORMATION: On April 3, 1996, NHTSA published a final rule (61 FR 14680) establishing the corporate average fuel economy standard for light trucks for model year 1998. Consistent with agency practice, the effective date was May 3, 1996, 30 days after publication in the **Federal Register**. However, new provisions concerning Congressional review of regulations were enacted on March 29, 1996, as Chapter 8 of Title 5 of the United States Code (P.L. 104–121).

Section 801(a) of Title 5 provides that a major rule, such as the light truck CAFE rule, is to be effective 60 days after publication in the **Federal Register** or 60 days after submission of the rule to Congress for review, whichever is later, unless the Congress passes a resolution disapproving the rule. The light truck CAFE rule was submitted to Congress on April 22, 1996. The agency accordingly is delaying the effectiveness of the rule until June 22, 1996, 60 days after it was submitted to Congress.

Issued on: May 13, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–12453 Filed 5–21–96; 8:45 am]
BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 960129019–6019–01; I.D. 051696A]

Groundfish of the Bering Sea and Aleutian Islands Area; Pacific Ocean Perch in the Western Aleutian District

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of Pacific ocean perch in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that catches of Pacific ocean perch in the Western Aleutian District be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the Pacific ocean perch total allowable catch (TAC) in the Western Aleutian District has been caught.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), May 19, 1996, until 12 midnight A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20 (a)(7)(ii), the Pacific ocean perch TAC for the Western Aleutian District was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996), and increased by an apportionment from the reserve (61 FR 16085, April 11, 1996) to 6,050 metric tons (mt).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.20(a)(9), that the TAC for Pacific ocean perch in the Western Aleutian District has been reached. Therefore, NMFS is requiring that further catches of Pacific ocean perch in the Western Aleutian District be treated as prohibited species in accordance with § 675.20(c)(3).

Classification

This action is taken under 50 CFR 675.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 16, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management. National Marine Fisheries Service.

[FR Doc. 96–12799 Filed 5–17–96; 1:41 pm]
BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 100
Wednesday, May 22, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064–AB73

Simplification of Deposit Insurance Rules

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Board of Directors of the Federal Deposit Insurance Corporation (FDIC) is seeking comment on whether the deposit insurance rules (insurance regulations) should be simplified and, if so, how. If the Board finds simplification to be warranted, it will propose specific amendments on which public comment will then be invited. The purpose of this notice is to solicit comments to help guide the possible preparation of a proposed rule. This notice presents only a general description of the insurance simplification options being considered and includes no regulatory text.

DATES: Written comments must be received by the FDIC on or before August 20, 1996.

ADDRESSES: Written comments are to be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand-delivered to Room F–402, 1776 F Street, N.W., Washington, D.C. 20429, on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898–3838; Internet address: comments@FDIC.gov). Comments will be available for inspection in the FDIC Public Information Center, room 100, 801 17th Street, N.W., Washington, D.C., between 9:00 a.m. and 5:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Joseph A. DiNuzzo, Acting Senior Counsel, Legal Division, (202) 898–7349; Adrienne George, Attorney, Legal Division, (202) 898–3859; Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Background

One of the FDIC's corporate operating projects under its Strategic Plan is to simplify the deposit insurance rules. The purpose is to promote public understanding of deposit insurance and to increase financial institution and consumer understanding of deposit insurance. This Advance Notice of Proposed Rulemaking (Notice) is one of the steps in realizing the project's goals.

This effort to simplify the FDIC's insurance regulations, found in 12 CFR part 330 (part 330), also is intended to satisfy the provisions in section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4803(a), to reduce regulatory burden and improve efficiency.

The FDIC revised its insurance regulations twice in the recent past. The first time, in 1990, was necessitated by the termination of the Federal Savings and Loan Insurance Corporation (FSLIC). The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (Pub. L. 101–73, 103 Stat. 183 (1989)) required the FDIC to issue uniform insurance regulations for deposits in all insured depository institutions, including those previously insured by the FSLIC. The second set of recent changes in the FDIC insurance rules were made pursuant to provisions in the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102–242 (1991)). A provision in FDICIA, in essence, limited the insurance coverage of employee benefit and retirement plans. Also, in February 1995, the FDIC issued disclosure requirements in connection with the limited availability of insurance for employee benefit plan accounts, 60 FR 7701 (Feb. 9, 1995).

The amendments made to the insurance rules in 1990 not only reconciled differences between the FSLIC insurance regulations and the then-existing FDIC regulations, they also revised the insurance regulations to, among other things, better organize and define terms used in the regulations, convert long-standing interpretive opinions into regulations, resolve outstanding issues and clarify ambiguous provisions.

Although the insurance rules were revised relatively recently, the Corporation believes, preliminarily, that at least some additional modification to and simplification of the insurance rules would be helpful. The need for these changes has been brought to the FDIC's attention in several ways, especially through the steady receipt of letters and phone calls on insurance questions. Experience with bank and thrift failures also has enabled the staff to identify procedural aspects of the regulations which, when applied in accordance with the regulations, may prove unfair to certain depositors in some situations.

The FDIC must be mindful of the applicable statutory parameters in considering whether and to what extent to modify the insurance regulations. The general statutory basis for and guidance on deposit insurance is found in section 11(a) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1821(a), which provides, in relevant part, that deposits are insured up to $100,000 based on the "right" and "capacity" in which the deposits are maintained. The FDIC interprets the "right-and-capacity" criterion as essentially meaning ownership. Thus, the rules provide "separate" insurance coverage for different types of accounts which are owned in different ways. For example, accounts owned by an individual are not added to joint accounts in which that same individual has an ownership interest. "Separate" insurance means that each category of account in which a person has an ownership interest is covered for up to $100,000 separately insured from the funds in other categories of accounts.

Possible Areas of Simplification

Preliminarily, the Board believes that certain technical and moderate substantive revisions to the deposit insurance rules may be warranted. Technical revisions would entail rewriting ambiguous provisions of the rules and generally making the rules easier to understand. Moderate substantive revisions would entail making some substantive changes to the rules (and statute) but the FDIC intends to retain the principles that insurance is based on deposit ownership and that separate insurance coverage within the same institution depends upon the different "rights and capacities" in which deposits can be held.

The FDIC has identified the following possible revisions to the insurance regulations and laws:

1. *Rewrite certain parts of the rules to make them clearer and easier to understand.* Ambiguous and potentially ambiguous provisions of the rules would be rewritten and part 330 might be reordered and reorganized.

2. *Eliminate step one of the two steps involved in determining insurance coverage for joint accounts.* Joint ownership is one of the account categories that qualifies for separate insurance coverage. 12 CFR 330.7. Thus, an individual who has an individual deposit and interests in joint accounts at the same insured bank or thrift would be insured for up to $100,000 per category of account. Currently deposit insurance for joint accounts is determined by a two-step process: first, all joint accounts that are identically owned (i.e., held by the same combination of individuals) are added together and the combined total is insurable up to the $100,000 maximum; second, each person's interests in joint accounts involving different combinations of individuals are combined and the total is insured up to the $100,000 maximum.

One option to simplify the current joint account rules is to eliminate the first step of the two-step process. Under this alternative, all funds held in joint accounts would be allocated among the owners and each owner's interests in all joint accounts (held at the same depository institution) would be added and insured up to $100,000 in the aggregate.

3. *Revise the recordkeeping rules allowing the FDIC more flexibility (for the benefit of depositors) in determining the ownership of deposits held in a custodial or fiduciary capacity.* The insurance regulations impose specific recordkeeping requirements as a precondition for insuring parties other than those whose names appear on the depository institution's deposit account records. 12 CFR 330.4. For example, if A is acting as an agent for B, C, and D and places funds belonging to them in an insured bank or thrift, the institution's deposit account records must show that A is holding the account as an agent in order for the FDIC to recognize the ownership interests of B, C and D. The FDIC will then insure the account as if it were held directly by B, C, and D (the owners of the account) as long as the institution's deposit account records or the agent's records (maintained in "good faith and in the regular course of business") evidence B, C and D's ownership interests in the account. In this context, we say that the insurance "passes-through" the agent to the owner(s) of the account.

The recordkeeping requirements intentionally limit the FDIC's ability to consider evidence outside the deposit account records of an insured institution in determining the ownership of deposits. They establish a presumption that deposited funds are actually owned in the manner indicated on the account records. Those records are binding on the depositor if they are "clear and unambiguous". The FDIC has the discretion, however, to decide whether records are clear and unambiguous. If the FDIC determines that the records are unclear or ambiguous, then it may consider evidence other than the deposit account records. The question is whether this discretion provides the FDIC with sufficient flexibility to recognize beneficial and/or multiple ownership of accounts when such ownership is not reflected on the bank or thrift's deposit account records.

The objective in amending the recordkeeping requirements would be to allow the FDIC staff more flexibility to consider the actual ownership interests in deposit accounts and thereby prevent possible hardships. The proper balance must be struck, however, to avoid fraud in post-failure situations and to enable the FDIC to reasonably and expeditiously calculate the insured deposits at failing institutions. One option would be to amend the rules to allow the FDIC to look beyond the deposit accounts records of the depository institution where account titles are indicative of a fiduciary relationship. Two examples would be accounts held by attorneys and those held by entities such as title companies, who commonly hold funds for others.

4. *Consider changing the rules on "payable upon death" accounts.* The insurance rules provide for separate coverage for funds owned by an individual and deposited into any account commonly referred to as a "payable-on-death" account, tentative or "Totten" trust account, revocable trust account, or similar account (POD accounts). 12 CFR 330.8. The account must evidence an intention that upon the death of the owner the funds shall belong to certain qualifying beneficiaries. The qualifying beneficiaries are limited to the owner's spouse, children and grandchildren. The owner is insured up to $100,000 as to each such named qualifying beneficiary, separately from any other accounts of the owner or the beneficiaries. Thus, if the individual names his spouse, three children and two grandchildren as beneficiaries, the account would be insured up to $600,000.

The FDI Act does not expressly require that POD accounts receive separate insurance coverage. The purpose of the POD separate insurance rule is to track state laws that allow for the so-called "poor-man's will" in which deposit account balances can be transmitted upon the death of the account owner to beneficiaries named in the account without an underlying trust document or will. It is support for this will-substitute that underlies the separate insurance for POD accounts. The FDIC limits the qualifying beneficiaries to the spouse, children and grandchildren of the account owner because it believes that such limitation strikes a reasonable balance between providing separate coverage to those most likely to be named as beneficiaries of a POD account while not overly expanding this category of deposit insurance coverage.

In the context of simplifying the insurance regulations, the question arises whether the FDIC should consider revising the POD rules on qualifying degrees of kinship. The FDIC, therefore, requests comments on whether and, if so, how the POD insurance rules should be revised.

5. *Consider modifying the way the FDIC insures certain types of accounts upon the death of the owner(s) of the accounts.* The ownership interest of a deposit account often changes upon the death of the owner of the account. If the beneficiaries/executor of the decedent do not act immediately after the decedent's death to change the nature of the account, insurance coverage may be decreased, sometimes significantly. For example, if a husband and wife hold a joint account, a payable-upon-death account and two individual accounts in their respective names, the death of one spouse would result in the surviving spouse becoming the sole owner of the joint account and the payable-upon-death account. Thus, the accounts would be aggregated with the surviving spouse's individual account, possibly resulting in a substantial reduction in insurance coverage.

The former FSLIC, as a matter of policy, allowed a grace period of six months following the death of a depositor for the decedent's deposits to be restructured. If an insured thrift failed during the grace period and additional insurance would be available if the decedent had not died, the FSLIC insured the account(s) based on the account ownership shown on the institution's records as if the decedent were still living. The reason for the FSLIC policy was to "lessen the

hardship" that might be caused otherwise. In the course of revising the FDIC insurance regulations in 1990 (in conjunction with FSLIC's termination) the FDIC decided against adopting the FSLIC's grace-period policy because of the questionable underlying legal basis. The argument is that insurance coverage is based on the ownership of the deposits. If under the applicable state law the ownership of an account changes immediately upon the account owner's death, then the FDIC should recognize that change immediately.

The FDIC has limited flexibility to amend its regulations on the insurance of accounts upon an owner's death. That is because, as indicated above, deposit insurance is statutorily based on deposit ownership. If the ownership of a particular deposit changes automatically under the applicable state law upon the owner's death, then the insurance coverage may change also. That is the FDIC's long-standing position on the issue. Although the FDIC has concerns about whether a sound legal basis exists for providing a "grace period" (for insurance purposes) on accounts owned by a person who dies, the FDIC welcomes comments on this issue.

6. *Recommend that the FDI Act be amended to change the way employee benefit plans are insured.* Under an amendment to the FDI Act made by FDICIA, pass-through insuranco coverage is not available to employee benefit plan deposits that are accepted by an insured bank or thrift when the institution does not meet prescribed capital requirements. 12 U.S.C. 1821(a)(1)(D). If an institution accepts employee benefit plan deposits at a time when it is not sufficiency capitalized, such deposits are insured only up to $100,000 per plan (as opposed to $100,000 per participant or beneficiary). The FDICIA-originated provision is the only one in the FDI Act and regulations to base insurance coverage on the capital sufficiency of the insured institution where the deposits are placed. The statute is complex and very difficult for the industry and the public to understand. Moreover, if deposits are made with an insured bank or thrift that does not meet the prescribed capital requirements, there is no disadvantage to the institution. The depositor is the disadvantaged party.

The FDIC believes Congress should replace the employee benefit plan provision with a general prohibition against insured institutions accepting employee benefit plan deposits when they are not sufficiently capitalized. This would be consistent with the statute pertaining to brokered deposits and, thus, would prevent the disadvantage to depositors if an insured institution provides incorrect information about its capital condition. Comments are requested on whether the FDIC should recommend this statutory amendment to the Congress.

7. *Consider revising the rules on living trust accounts.* A "living trust" is a formal trust in which the owner retains control of the trust assets during his or her lifetime and designates the beneficiaries of the assets upon his or her death. The owner may revoke or change the terms of the trust during his or her lifetime. In 1993 the FDIC Legal Division prepared guidelines on the insurance of revocable accounts, with an emphasis on living trusts. The guidelines are very detailed and somewhat complex. At the same time the Legal Division prepared the guidelines on living trusts, the FDIC also adopted an informal policy not to review complex living trust documents to determine POD coverage but, instead, to recommend that persons inquiring about such coverage consult with the lawyer who drafted the living trust. Despite the availability of the FDIC guidelines on living trusts and the existence of the FDIC's current policy not to review trust documents, the FDIC still receives numerous questions about the insurance of POD accounts held in connection with living trusts.

One possibility in simplifying the insurance rules on living trusts is to limit the scope of the POD regulation to accounts which name qualifying beneficiaries without reference to any underlying trust documents. The rule would apply only to the traditional POD account intended as a free-standing will substitute and would not apply to any other type of revocable trust extraneous to the POD account itself. This interpretation of the POD provision would be consistent with the original rationale for extending separate insurance coverage for this category of account and revise the coverage rules for the formal type of revocable account which has added unintended complexity and caused expansion to this category of coverage.

Request for Comment

The Board of Directors of the FDIC is seeking comment on all of the above-mentioned possible means of simplifying the deposit insurance rules, including the likely effect of such changes on consumers and the banking industry. The Board also is seeking suggestions on any other ways that the rules might be streamlined, simplified and clarified.

By order of the Board of Directors.

Dated at Washington, D.C., this 14th day of May, 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 96–12780 Filed 5–21–96; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–158–AD]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all de Havilland Model DHC–7 series airplanes. This proposal would require certain structural inspections, and repair, if necessary. This proposal is prompted by a structural re-evaluation, which identified certain significant structural items to inspect for fatigue cracking as these airplanes approach and exceed the manufacturer's original design life. The actions specified by the proposed AD are intended to prevent fatigue cracking in these areas which, if not detected and corrected in a timely manner, could reduce the structural integrity of these airplanes.

DATES: Comments must be received by July 1, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–158–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Sol Maroof, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7522; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–158–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–158–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on all de Havilland Model DHC–7 series airplanes. Service experience shows that transport category aircraft of this type require certain supplemental structural inspections and maintenance to compensate for the effects of prolonged time-in-service. As a result, the manufacturer has conducted a structural reassessment of these airplanes and has identified additional significant structural items where fatigue damage is likely to occur. The criteria for this reassessment are contained in FAA Advisory Circular (AC) 91–60, "Continued Airworthiness of Older Airplanes."

Explanation of Relevant Service Information

De Havilland has issued Temporary Revision (TR 5–84), dated June 15, 1994, of the DHC–7 Maintenance Manual (PSM 1–7–2), Chapter 5–60–00. TR 5–84 was developed based on service experience with the purpose of extending the Model DHC–7 series airplanes' life beyond 40,000 total flights cycles. It describes procedures for repetitive detailed visual inspections to detect cracks, loose or broken fasteners, and deformations of the vertical stabilizer, horizontal stabilizer, and lower skin panels of the wing. That document also indicates that operators should submit the results of these inspections to the manufacturer. Transport Canada Aviation classified this document as mandatory and issued Canadian airworthiness directive CF–94–19, dated October 6, 1994, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require that operators incorporate, into their FAA-approved maintenance inspection program, the inspections specified in DHC–7 Maintenance Manual (PSM 1–7–2), Chapter 5–60–00, Temporary Revision (TR 5–84), dated June 15, 1994. The actions would be required to be accomplished in accordance with the document described previously.

Additionally, the proposed AD would require the repair of any findings of cracks, loose or broken fasteners, or deformations in accordance with either:

1. The DHC–7 Maintenance Manual; or

2. The DHC–7 Structural Repair Manual;

3. Other data meeting the certification basis of the airplane which is approved by the Manager, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate; or

4. Data meeting the certification basis of the airplane which is approved by Transport Canada Aviation.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 15 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $45,000, or $900 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

De Havilland, Inc.: Docket 95–NM–158–AD.

Applicability: All Model DHC–7 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been other modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

(a) Within 6 months after the effective date of this AD, incorporate into the FAA-approved maintenance inspection program the inspections and inspection intervals defined in DHC–7 Maintenance Manual (PSM 1–7–2), Chapter 5–60–00, Temporary Revision (TR 5–84), dated June 15, 1994; and inspect the significant structural items prior to the thresholds specified in TR 5–84 of PSM 1–7–2. Repeat the inspections thereafter at the intervals specified in TR 5–84 of PSM 1–7–2.

(b) Prior to further flight, repair any discrepancies detected during any inspection required by paragraph (a) of this AD in accordance with one of the following:

(1) The DHC–7 Maintenance Manual; or

(2) The DHC–7 Structural Repair Manual; or

(3) Other data meeting the certification basis of the airplane which is approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate; or

(4) Data meeting the certification basis of the airplane which is approved by Transport Canada Aviation.

(c) All inspection results, positive or negative, must be reported to de Havilland in accordance with "Introduction," paragraph 5, of DHC–7 Maintenance Manual (PSM 1–7–2), Chapter 5–60–00, Temporary Revision (TR 5–84), dated June 15, 1994. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, New York ACO.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 15, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–12728 Filed 5–21–96; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 71

[Airspace Docket No. 95–ANM–22]

Proposed Establishment of Class E Airspace, Colstrip, Montana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule would establish the Colstrip, Montana, Class E airspace to accommodate a new Global Positioning System (GPS) standard instrument approach procedure (SIAP) to the Colstrip Airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before July 8, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, ANM–530, Federal Aviation Administration, Docket No. 95–ANM–22, 1601 Lind Avenue S.W., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James Frala, ANM–532.4, Federal Aviation Administration, Docket No. 95–ANM–22, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory aeronautical, economic, environmental, and energy related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 95–ANM–22." the postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docked.

Availability NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations Branch, ANM–530, 1601 Lind Avenue S.W., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Colstrip, Montana, to accommodate a new GPS SIAP to the Colstrip Airport. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth

* * * * *

ANM MT E5 Colstrip, MT

Colstrip Airport, MT
(Lat. 45°51'10" N, long. 106°42'34" W)
Billings Logan International Airport, MT
(Lat. 45°48'30" N, long. 108°32'38" W)

That airspace extending upward from 700 feet above the surface within a 13.5-mile radius of Colstrip Airport; that airspace extending upward from 1,200 feet above the surface bounded on the north by the south edge of V–2, on the east by the west edge of V–254, on the south along lat. 45°30'00" N, and on the west by the 60-mile arc centered on Billings Logan International Airport; excluding the Forsyth and Miles City, MT Class airspace areas.

* * * * *

Issued in Seattle, Washington, on May 8, 1996.

Richard E. Prang,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 96–12839 Filed 5–21–96; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 240, 250, 270, and 275

[Release Nos. 33–7293; 34–37220; 35–26517; IC–21961; IA–1563; File No. S7–14–96]

RIN 3235–AG79

Proposal To Eliminate Fees Previously Adopted by the Commission Pursuant to the Independent Offices Appropriations Act of 1952

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (Commission) is proposing to eliminate each of the user fees currently adopted under the Independent Offices Appropriations Act of 1952, in conjunction with rules under the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, and the Investment Advisers Act of 1940. These fees were first adopted in 1972 to contribute towards the cost of agency operations. However, since that time, the amount of fees collected by the Commission has increased dramatically. In 1995, the Commission collected nearly double the amount of fees required to fund the agency's operations.

DATES: Comments must be received on or before July 8, 1996.

ADDRESSES: All interested persons are invited to submit their views and comments concerning the rule proposal should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, Mail Stop 6–9, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7–14–96; this file number should be included in the subject line if E-mail is used. Comment letters will be available for inspection and copying in the public reference room at the same address. Electronically submitted comments will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Henry I. Hoffman, Office of the Comptroller, at (202) 942–0343.

SUPPLEMENTARY INFORMATION: Each fee identified for elimination is listed on the attached table labeled TABLE OF IOAA FEES PROPOSED FOR ELIMINATION.

Proposal

In 1972, to offset the cost to the government of related Commission operations, the Securities and Exchange Commission established through rulemaking a fee schedule for numerous types of applications, statements and reports.[1] These regulatory fees, authorized under Title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C.A. 9701), are commonly referred to as IOAA fees.[2]

Today, the Commission is proposing the elimination of each of its current IOAA fees.[3] The collection of these fees

[1] Securities Act of 1933, Release No. 5229, January 25, 1972.

[2] The Independent Offices Appropriations Act of 1952, specifically 31 U.S.C. 9701, authorizes independent agencies of the federal government to prescribe fees and charges for activities that provide benefits to individuals and businesses. This statute states that "It is the sense of Congress that each service * * * provided by an agency * * * to a person * * * is to be self-sustaining to the extent possible." The statute also authorizes the head of each agency to prescribe regulations establishing the charge for a service. Notably, a separate provision of the Securities Exchange Act of 1934 (Exchange Act) specifically authorizes the Commission to impose fees authorized by this act. 15 U.S.C. 14(g)(4).

[3] See attached table of IOAA fees. Note that the Commission's proposal would only eliminate the collection of regulatory fees imposed under the IOAA; it would not affect other fees imposed by

Continued

is no longer appropriate since the amount of revenue currently generated by statutory fees imposed under the securities laws far exceeds the annual cost of Commission operations. The additional revenue added by the IOAA fees is an insignificant portion of the total revenue received. In fiscal 1972, the Commission collected $19 million in fees and cost $27 million to operate. IOAA fees represented 12 percent of the total 1972 revenue. In fiscal 1995, the Commission collected $559 million in fees and was appropriated $297 million for operating costs. IOAA fees represented just 2 percent of the total 1995 revenue.[4]

This significant difference between the amount of fee revenue collected by the Commission and the amount of its annual funding level has been of continuing concern to Congress. In 1988, the Securities Subcommittee of the Senate Committee on Banking, Housing and Urban Affairs directed the Commission to study its fee structure and funding status (Commission Fee Study).[5]

As a result of the Commission Fee Study and continuing Congressional concerns about the level of the Commission's fees, in 1993 the House passed H.R. 2239, the Securities and Exchange Commission Authorization Act of 1993. One of the stated purposes of this bill was to "establish a system for the annual adjustment of fees collected by the Commission so that the total amount appropriated to the Commission for any fiscal year will be offset by the amount collected during such fiscal year * * *"[6]

Although Congress did not enact H.R. 2239, in 1995 members of the Commission's authorization committee in the Senate stated that the total amount of fees collected annually by the agency far exceed the cost of its regulation and, therefore, should be reduced.[7]

On March 12, 1996, the House passed H.R. 2972, the "Securities and Exchange Commission Authorization Act of 1996." This bill has as a major purpose, "to reduce over time the rates of fees charged under the Federal securities laws."[8] Notably, H.R. 2972 contains a sense of the Congress resolution that the Commission should eliminate its fees imposed under the IOAA.[9]

The Commission is proposing to eliminate IOAA fees for two additional reasons. First, the Commission is committed, consistent with its mission of investor protection, to eliminate unnecessary regulations imposed on the capital formation process. The Commission has determined that eliminating these IOAA fees will reduce such burdens but neither harm investors nor the Commission's mission to protect them. Second, the collection of these IOAA fees imposes a disproportionate cost on the Commission. In 1995, IOAA fees represented less than 2% of the total fee revenue collected by the Commission, but more than one-half of the total number of fee payments processed by Commission staff, making recordkeeping for these fees disproportionately costly.

Cost/Benefit Analysis

Comments are requested related to any costs or benefits associated with the elimination of the Commission's current IOAA fees. The elimination of IOAA fees will provide an obvious benefit to persons obligated to pay such fees, *i.e.*, they will no longer have to pay the fees. In addition, the Commission will avoid the costs associated with processing and auditing the collection of such fees; Commission resources spent on those tasks will be reallocated to other mandated tasks. Other costs and benefits are expected to be *de minimis*.

Summary of Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposed rule changes. The analysis reiterates the reasons and objectives for the proposed rule changes discussed above in this release. The analysis also describes the legal basis for the proposal and discusses its effect on small entities as defined by the Securities Act, the Exchange Act, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, and the Investment Advisers Act of 1940. This proposed rule imposes no additional reporting, recordkeeping or other compliance requirements on small businesses, and the Commission believes that there are no overlapping or conflicting federal rules. In addition, the Commission does not believe that any significant alternative to the proposal would both accomplish the stated objectives and minimize any significant impact on small companies. In fact, the alternatives to eliminating the fee would be to maintain or increase the current fees. Neither alternative provides any increased benefit nor is appropriate in the public interest. The Commission encourages the submission of written comments with respect to the Initial Regulatory Flexibility Analysis. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Henry I. Hoffman, Securities and Exchange Commission, Office of the Comptroller, Room 2080, Washington, D.C. 20549.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed elimination of IOAA fees does not impose recordkeeping or information collection requirements, or other collections of information which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Statutory Basis: The Commission's authority for this action is 31 U.S.C. 9701 and 15 U.S.C. 14(g)(4).

statute that are also collected by the Commission. These statutory fees include registration fees collected pursuant to Section 6(b) of the Securities Act of 1933 (Securities Act) and Section 307(b) of the Trust Indenture Act of 1939, going private fees collected pursuant to Section 13 of the Exchange Act, proxy and tender offer fees collected pursuant to Section 14 of the Exchange Act, and transaction fees collected pursuant to Section 31 of the Exchange Act.

[4] The vast increase in Commission fee revenue between 1972 and 1995 has developed from two basic sources. First is a significant increase in the underlying value of the securities on which the statutory fees are based. The underlying value of securities registered with the Commission under Section 6(b) of the Securities Act increased from $62 billion to $1.2 trillion from 1972 to 1995. Further, during the same period, the value of shares transected on the U.S. securities exchanges and subject to a fee under Section 31 of the Exchange Act increased from $196 billion to $3 trillion. Second is the increased use of offsetting collections under Section 6(b) of the Securities Act to fund agency operations since 1990. The amount of offsetting revenue collected under Section 6(b) in 1991, the first year fee revenue was used to directly offset Commission funding, was $37 million at a fee rate of 1/40 of one percent, and in 1995 was $157 million at an increased fee rate of 1/29 of one percent.

[5] Senate Report 100–105, 100th Cong., 1st Session, and, in response, Commission issued findings in a U.S. Securities and Exchange Commission "Self Funding Study" (January 1989) and accompanying "Legislative Proposals and Fee Options" (January 1989).

[6] H.R. 2239, Section 31A.(a).

[7] Letter dated April 6, 1995, from Senator D'Amato, Chairman of the Senate Banking Committee, to Senators Domenici and Exon, respectively Chairman and Ranking Member of the Senate Committee on the Budget.

[8] H.R. 2972, Section 2(2).

[9] Ibid. Section 7(1) states that "the fees authorized by the amendments made by this Act are in lieu of, and not in addition to, any fees that the Securities and Exchange Commission is authorized to impose or collect pursuant to Section 9701 of title 31, United States Code * * *".

SECURITIES AND EXCHANGE COMMISSION TABLE OF IOAA FEES PROPOSED FOR ELIMINATION

Fee cite	Rule/form/schedule	Amount	Description
Securities Act of 1933			
17 CFR 230.236(a),(c)	Rule 236	$100	Exemption of shares offered in connection with certain transactions.
17 CFR 230.252(f)	Form 1–A	500	Offering statement under Regulation A.
17 CFR 230.310(a)	Schedules A, B, C or D	100	Offering sheet under Regulation B.
17 CFR 230.604(a)	Form 1–E	100	Notification of offering under Regulation E by a small business investment company.
17 CFR 230.652.	Form 1–F	100	Notification under Regulation F.
Securities Exchange Act of 1934			
17 CFR 240.0–11(c)(1)(ii)	Schedule 14A	125	Proxy Statement.
17 CFR 240.0–11(c)(1)(ii) 17 CFR 240.14c–5(g)	Schedule 14C	125	Information Statement.
17 CFR 240.12b–7	Form 8–A	250	Registration of certain classes of securities pursuant to Section 12(b) or (g).
17 CFR 240.12b–7	Form 8–B	250	Registration of securities of certain successor issuers pursuant to Section 12(b) or (g).
17 CFR 240.12b–7	Form 10	250	General form for registration of securities pursuant to Section 12(b) or (g).
17 CFR 240.12b–7	Form 10–SB	250	Optional form for the registration of securities of a small business issuer.
17 CFR 240.12b–7	Form 18	250	Application for registration of securities of foreign governments and political subdivisions thereof.
17 CFR 240.12b–7, 17 CFR 240.13a–1, 17 CFR 240.15d–1.	Form 20–F	250	Registration of securities of foreign private issuers pursuant to Section 12 (b) or (g) and annual reports pursuant to Sections 13 and 15(d)
17 CFR 240.12b–7, 17 CFR 240.13a–1, 17 CFR 240.15d–1.	Form 40–F	250	Registration of securities of certain Canadian issuers pursuant to Section 12(b) or (g) and for reports pursuant to Section 15(d) and Rule 15d–4.
17 CFR 240.13a–1, 17 CFR 240.15d–1	Form 10–K	250	Annual report pursuant to Sections 13 and 15(d).
17 CFR 240.13a–1, 17 CFR 240.15d–1	Form 10–KSB	250	Optional form for annual report of small business issuers under Sections 13 and 15(d).
17 CFR 240.13a–1	Form 18–K	250	Annual report for foreign governments and political subdivisions thereof.
17 CFR 240.13d–7	Schedule 13D, Schedule 13D/A (if amended to >5%).	100	Schedule for reporting beneficial ownership of more than five percent in an equity security.
17 CFR 240.13d–7	Schedule 13G, Schedule 13G/A (if amended to >5%).	100	Short form schedule for reporting beneficial ownership of more than five percent in an equity security
17 CFR 240.14a–6(i)	Schedule 14A	125/500	Proxy Statement.
17 CFR 240.14a–101 (Item 22(a)(2))	Schedule 14A	125	Proxy filing fee for investment companies.
17 CFR 240.15d–1	Form 11–K	250	Annual report for employee stock purchase savings and similar plans.
Public Utility Holding Company Act of 1935			
17 CFR 250.1(d)	Form U5S	250	Annual report of registered holding company.
17 CFR 250.94(b)	Form U–13–60	250	Annual report of mutual or subsidiary service company.
17 CFR 250.106	Form U–1	2,000	Application-declaration statement.
17 CFR 250.106	Form U–3A–2	2,000/500	Annual holding company exemption statement.
17 CFR 250.106	Form U–3A3–1	500	Bank exemption statement.
17 CFR 250.106	Form U–13–1	2,000	Application for approval of mutual or subsidiary service company.
17 CFR 250.106	Form U–7D	200/100	Certificate of lease of utility facilities.
17 CFR 250.106	Form U–R–1	2,000	Declaration regarding a reorganization.
Investment Company Act of 1940			
17 CFR 240.14a–101 (Item 22(a)(2))	Schedule 14A	125	Proxy filing fee.
17 CFR 270.0–5(d)	Rule 0–5	500	Application under the 1940 Act.
17 CFR 270.8b–6	Rule 8b–6, Forms N–1A, N–2, N–3, N–4 and N–5.	1,000	1940 Act registration fee.
17 CFR 270.24f–2(a)(3)	Rule 24f–2	500	Registration of an indefinite amount of securities.
17 CFR 270–30a–1	Rule 30–1	125	Form N-SAR filing fee.

SECURITIES AND EXCHANGE COMMISSION TABLE OF IOAA FEES PROPOSED FOR ELIMINATION—Continued

Fee cite	Rule/form/schedule	Amount	Description
Investment Advisers Act of 1940 ("Advisers Act")			
17 CFR 275.0–5(d)	Rule 0–5	150	Application under the Advisers Act.
17 CFR 275.203–3(a)	Rule 203–3	150	Advisers Act registration fee.

[1] (First/subseq.).

Dated: May 16, 1996.
By the Commission.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 96–12777 Filed 5–21–96; 8:45 am]
BILLING CODE 8010–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 291

RIN 1076–AD67

Establishing Departmental Procedures To Authorize Class III Gaming on Indian Lands When a State Raises an Eleventh Amendment Defense To Suit Under the Indian Gaming Regulatory Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Correction.

SUMMARY: This document corrects the name of the issuing agency and the CFR part number for the advance notice of proposed rulemaking regarding Class III Indian gaming on Indian lands published on May 10, 1996.

FOR FURTHER INFORMATION CONTACT: George Skibine, Director, Indian Gaming Management Staff, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Beginning on page 21394 in the issue of Friday, May 10, 1996, make the following corrections on page 21394:

1. In the heading of the document, under the heading "Department of the Interior," the issuing agency was previously listed as the National Indian Gaming Commission. This should be changed to read Bureau of Indian Affairs.

2. In the CFR heading of the document, the CFR citation was previously listed as 25 CFR Part 525. This should be changed to read 25 CFR Part 291.

3. The agency in the AGENCY caption is corrected to read "Bureau of Indian Affairs, Interior."

Dated: May 16, 1996.
Ada E. Deer,
Assistant Secretary—Indian Affairs.
[FR Doc. 96–12763 Filed 5–21–96; 8:45 am]
BILLING CODE 4310–02–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5507–6]

RIN 2060–AG12

Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes restrictions or prohibitions on substitutes for ozone depleting substances ((ODS)) under the U.S. Environmental Protection Agency (EPA) Significant New Alternatives Policy (SNAP) program. SNAP implements section 612 of the amended Clean Air Act of 1990 which requires EPA to evaluate and regulate substitutes for the ODS to reduce overall risk to human health and the environment. Through these evaluations, SNAP generates lists of acceptable and unacceptable substitutes for each of the major industrial use sectors. The intended effect of the SNAP program is to expedite movement away from ozone depleting compounds while avoiding a shift into high-risk substitutes posing other environmental problems.

On March 18, 1994, EPA promulgated a final rulemaking setting forth its plan for administering the SNAP program (59 FR 13044), and issued decisions on the acceptability and unacceptability of a number of substitutes. In this Notice of Proposed Rulemaking (NPRM), EPA is issuing its preliminary decisions on the acceptability of certain substitutes not previously reviewed by the Agency. To arrive at determinations on the acceptability of substitutes, the Agency completed a cross-media evaluation of risks to human health and the environment by sector end-use.

DATES: Written comments or data provided in response to this document must be submitted by June 21, 1996. A public hearing, if requested, will be held in Washington, D.C. Any hearing will be strictly limited to the subject matter of this proposal, the scope of which is discussed below. If such a hearing is requested, it will be held on June 6, 1996, and the comment period would then be extended to July 8, 1996. Anyone who wishes to request a hearing should call Sally Rand at (202) 233–9739 by May 29, 1996. Interested persons may contact the Stratospheric Protection Hotline at 1–800–296–1996 to learn if a hearing will be held and to obtain the date and location of the hearing.

ADDRESSES: *Public Comments.* Written comments and data should be sent to Docket A–91–42, Central Docket Section, South Conference Room 4, U.S. Environmental Agency, 401 M Street, SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 4:00 p.m. on weekdays. Telephone (202) 260–7549; fax (202) 260–4400. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying. To expedite review, a second copy of the comments should be sent to Sally Rand, Stratospheric Protection Division, Office of Atmospheric Programs, U.S. EPA, 401 M Street, SW., 6205–J, Washington, DC. 20460. Information designated as Confidential Business Information (CBI) under 40 CFR part 2 subpart B must be sent directly to the contact person for this notice. However, the Agency is requesting that all respondents submit a non-confidential version of their comments to the docket as well.

FOR FURTHER INFORMATION CONTACT: Nancy Smagin at (202) 233–9126 or fax (202) 233–9577, Stratospheric Protection Division, USEPA, Mail Code 6205J, 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Overview of This Action

This action is divided into five sections, including this overview:

I. Overview of This Action
II. Section 612 Program
A. Statutory Requirements
B. Regulatory History
III. Proposed Listing of Substitutes
IV. Administrative Requirements
V. Additional Information
Appendix: Summary of Proposed Listing Decisions

II. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

Rulemaking—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

Listing of Unacceptable/Acceptable Substitutes—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.

Petition Process—Section 612(d) grants the right to any person to petition EPA to add a substitute to or delete a substitute from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.

90-day Notification—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

Outreach—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

Clearinghouse—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published the Final Rulemaking (FRM) (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam blowing; solvent cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consume large volumes of ozone-depleting compounds.

The Agency defines a "substitute" as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to chemical manufacturers, but may include importers, formulators or end-users when they are responsible for introducing a substitute into commerce.

III. Proposed Listing of Substitutes

To develop the lists of unacceptable and acceptable substitutes, EPA conducts screens of health and environmental risks posed by various substitutes for ozone-depleting compounds in each use sector. The outcome of these risk screens can be found in the public docket.

Under section 612, the Agency has considerable discretion in the risk management decisions it can make in SNAP. The Agency has identified five possible decision categories: acceptable, acceptable subject to use conditions; acceptable subject to narrowed use limits; unacceptable; and pending. Acceptable substitutes can be used for all applications within the relevant sector end-use. Conversely, it is illegal to replace an ODS with a substitute listed by SNAP as unacceptable for that end-use. A pending listing represents substitutes for which the Agency has not received complete data or has not completed its review of the data.

After reviewing a substitute, the Agency may make a determination that a substitute is acceptable only if certain conditions of use are met to minimize risks to human health and the environment. Such substitutes are placed on the acceptable subject to use conditions lists. Use of such substitutes in ways that are inconsistent with such use conditions renders these substitutes unacceptable.

Even though the Agency can restrict the use of a substitute based on the potential for adverse effects, it may be necessary to permit a narrowed range of use within a sector end-use because of the lack of alternatives for specialized applications. Users intending to adopt a substitute acceptable with narrowed use limits must ascertain that other acceptable alternatives are not technically feasible. Companies must document the results of their evaluation, and retain the results on file for the purpose of demonstrating compliance. This documentation shall include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, e.g., performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes. Use of such substitutes in application and end-uses which are not specified as acceptable in the narrowed use limit renders these substitutes unacceptable.

In this Notice of Proposed Rulemaking (NPRM), EPA is issuing its preliminary decision to restrict use of certain substitutes not previously reviewed by the Agency. As described in the final rule for the SNAP program (59 FR 13044), EPA believes that notice-and-comment rulemaking is required to place any alternative on the list of prohibited substitutes, to list a substitute as acceptable only under certain use conditions or narrowed use limits, or to remove an alternative from either the list of prohibited or acceptable substitutes.

EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substitute. Consequently, EPA periodically adds substitutes to the list of acceptable alternatives without first requesting comment on new listings. Updates to the acceptable and pending lists are published in separate Notices in the **Federal Register**.

Parts A. through C. below present a detailed discussion of the proposed substitute listing determinations by major use sector. Tables summarizing listing decisions in this Notice of Proposed Rulemaking are in Appendix A. The comments contained in Appendix A provide additional information on a substitute. Since comments are not part of the regulatory decision, they are not mandatory for use of a substitute. Nor should the comments be considered comprehensive with respect to other legal obligations pertaining to the use of the substitute. However, EPA encourages users of

substitutes to apply all comments in their application of these substitutes. In many instances, the comments simply allude to sound operating practices that have already been identified in existing industry and/or building-code standards. Thus, many of the comments, if adopted, would not require significant changes in existing operating practices for the affected industry.

A. Refrigeration and Air Conditioning

1. Acceptable Subject to Use Conditions

a. CFC–12 Automobile and Non-automobile Motor Vehicle Air Conditioners, Retrofit and New. EPA is concerned that the existence of several substitutes in this end-use may increase the likelihood of significant refrigerant cross-contamination and potential failure of both air conditioning systems and recovery/recycling equipment. In addition, a smooth transition to the use of substitutes strongly depends on the continued purity of the recycled CFC–12 supply. In order to prevent cross-contamination and preserve the purity of recycled refrigerants, EPA is proposing several conditions on the use of all motor vehicle air conditioning refrigerants. For the purposes of this proposed rule, no distinction is made between "retrofit" and "drop-in" refrigerants; retrofitting a car to use a new refrigerant includes all procedures that result in the air conditioning system using a new refrigerant. Please note that EPA only reviews refrigerants based on environmental and health factors.

In particular, when retrofitting a CFC–12 system to use any substitute refrigerant, the following conditions must be met:

• Each refrigerant may only be used with a set of fittings that is unique to that refrigerant. These fittings (male or female, as appropriate) must be used with all containers of the refrigerant, on can taps, on recovery, recycling, and charging equipment, and on all air conditioning system service ports. These fittings must be designed to mechanically prevent cross-charging with another refrigerant. A refrigerant may only be used with the fittings and can taps specifically intended for that refrigerant. Using an adapter or deliberately modifying a fitting to use a different refrigerant will be a violation of this use condition. In addition, fittings shall meet the following criteria, derived from Society of Automotive Engineers (SAE) standards and recommended practices:

—When existing CFC–12 service ports are to be retrofitted, conversion assemblies shall attach to the CFC–12 fitting with a thread lock adhesive and/or a separate mechanical latching mechanism in a manner that permanently prevents the assembly from being removed.

—All conversion assemblies and new service ports must satisfy the vibration testing requirements of sections 3.2.1 or 3.2.2 of SAE J1660, as applicable, excluding references to SAE J639 and SAE J2064, which are specific to HFC–134a.

—In order to prevent discharge of refrigerant to the atmosphere, systems shall have a device to limit compressor operation before the pressure relief device will vent refrigerant. This requirement is waived for systems that do not feature such a pressure relief device.

—All CFC–12 service ports not retrofitted with conversion assemblies shall be rendered permanently incompatible for use with CFC–12 related service equipment by fitting with a device attached with a thread lock adhesive and/or a separate mechanical latching mechanism in a manner that prevents the device from being removed.

• When a retrofit is performed, a label must be used as follows:

—The person conducting the retrofit must apply a label to the air conditioning system in the engine compartment that contains the following information:

* The name and address of the technician and the company performing the retrofit
* The date of the retrofit
* The trade name, charge amount, and, when applicable, the ASHRAE refrigerant numerical designation of the refrigerant
* The type, manufacturer, and amount of lubricant used
* If the refrigerant is or contains an ozone-depleting substance, the phrase "ozone depleter"
* If the refrigerant displays flammability limits as measured according to ASTM E681, the statement "This refrigerant is FLAMMABLE. Take appropriate precautions."

—This label must be large enough to be easily read and must be permanent.

—The background color must be unique to the refrigerant.

—The label must be affixed to the system over information related to the previous refrigerant, in a location not normally replaced during vehicle repair.

—Information on the previous refrigerant that cannot be covered by the new label must be permanently rendered unreadable.

• No substitute refrigerant may be used to "top-off" a system that uses another refrigerant. The original refrigerant must be recovered in accordance with regulations issued under section 609 of the CAA prior to charging with a substitute.

Since these use conditions necessitate unique fittings and labels, it will be necessary for developers of automotive refrigerants to consult with EPA about the existence of other alternatives. Such discussions will lower the risk of duplicating fittings already in use.

No determination guarantees satisfactory performance from a refrigerant. Consult the original equipment manufacturer or service personnel for further information on using a refrigerant in a particular system.

(a) All refrigerants. *All refrigerants listed in future notices as being acceptable as substitutes for CFC–12 in retrofitted and new motor vehicle air conditioners are proposed to be subject to the use conditions described above.*

In the March 18, 1994 FRM (59 FR 13044), EPA established that the public would be informed via a Notice when substitutes are added to the acceptable list. If EPA intended to place any restrictions, including use conditions, on the use of a substitute, that determination would require full notice-and-comment rulemaking. In this NPRM, however, EPA proposes to modify that approach for motor vehicle air conditioning systems (MVACS).

As explained above, EPA is concerned about potential cross-contamination because of the large number of MVAC refrigerants. In this NPRM, EPA is proposing to impose the same use conditions on all future MVAC refrigerants as were imposed on HFC–134a and HCFC Blend Beta (60 FR 31092), and were proposed for HCFC Blend Delta and Blend Zeta (60 FR 51383). Because of EPA's interest in timely review of substitute refrigerants, EPA believes it is appropriate to propose that these use conditions be applied to all future refrigerants for use in motor vehicle air conditioning, thereby removing the requirement for future notice-and-comment rulemaking on this issue. In the future, EPA will add refrigerants to the list of automotive substitutes that are acceptable subject to use conditions without notice-and-comment rulemaking. Such action will occur in the same manner as Notices of Acceptability. If further restrictions are necessary for a specific refrigerant (for example, if a substitute is found unacceptable), then EPA will propose such action in notice-and-comment rulemaking.

(b) R–406A. *R–406A, which consists of HCFC–22, HCFC–142b, and isobutane, is proposed acceptable as a substitute for CFC–12 in retrofitted and new motor vehicle air conditioners, subject to the use conditions applicable to motor vehicle air conditioning described above, in addition to the requirement that retrofitting an MVAC system to R–406A must include replacing non-barrier hoses with barrier hoses.* Because HCFC–22 and HCFC–142b contribute to ozone depletion, this blend is considered a transitional alternative. Regulations regarding recycling and reclamation issued under section 608 of the Clean Air Act apply to this blend. HCFC–142b has one of the highest ODPS among the HCFCS. The GWPS of HCFC–22 and HCFC–142b are somewhat high. Although HCFC–142b and isobutane are flammable, the blend is not. After significant leakage, however, this blend may become weakly flammable. The manufacturer has performed a risk assessment that demonstrates that it can be used safely in this end-use. There is concern that HCFC–22 will seep out of traditional hoses. Thus, at the manufacturer's suggestion, EPA is imposing an additional condition that barrier hoses must be used with R–406A. Note: R–406A is sold under the trade names "GHG" and "McCool."

The R–406A submission contained the first risk assessment that attempted to quantify the additional risk posed by using a refrigerant that is nonflammable but that may fractionate to a flammable state. EPA invites comment on this risk assessment, which may be obtained from USEPA Air Docket A–91–42, file VI–D–120. The assessment concludes that an additional 0.018 injuries will occur per million vehicles annually. This value is extremely low. In addition, even an error of a factor of 100 would still result in very low additional risk.

(c) HCFC Blend Lambda. *HCFC Blend Lambda, which consists of HCFC–22, HCFC–142b, and isobutane, is proposed acceptable as a substitute for CFC–12 in retrofitted and new motor vehicle air conditioners, subject to the use conditions applicable to motor vehicle air conditioning described above, in addition to the requirement that HCFC Blend Lambda must be used with barrier hoses.* Because HCFC–22 and HCFC–142b contribute to ozone depletion, they will be phased out of production. Therefore, this blend will be used primarily as a retrofit refrigerant. However, HCFC Blend Lambda is acceptable for use in new systems, subject to the same use conditions. Regulations regarding recycling and reclamation issued under section 608 of the Clean Air Act apply to this blend. HCFC–142b has one of the highest ODPS among the HCFCS. The GWPS of HCFC–22 and HCFC–142b are somewhat high. Although HCFC–142b and isobutane are flammable, the blend is not. After significant leakage, this blend may become weakly flammable. However, this blend contains more HCFC–22 and less of the two flammable components than R–406A, and therefore should be at least as safe to use as R–406A. In addition, as discussed above in the R–406A section, the manufacturer has performed a risk assessment that demonstrates that R–406A can be used safely in this end-use. Finally, as stated above, this blend contains even lower percentages of flammable components than R–406A.

There is concern that HCFC–22 will seep out of traditional hoses. Thus, at the manufacturer's suggestion, EPA is imposing an additional condition that barrier hoses must be used with R–406A. Note: this blend is sold under the trade name "GHG-HP."

(d) HCFC Blend Xi, HCFC Blend Omicron. *HCFC Blend Xi and HCFC Blend Omicron, both of which consist of HCFC–22, HCFC–124, HCFC–142b, and isobutane, are proposed acceptable as substitutes for CFC–12 in retrofitted and new motor vehicle air conditioners, subject to the use conditions applicable to motor vehicle air conditioning described above, in addition to the requirement that these blends must be used with barrier hoses.* Because HCFC–22 and HCFC–142b contribute to ozone depletion, they will be phased out of production. Therefore, these blends will be used primarily as retrofit refrigerants. However, these blends are acceptable for use in new systems, subject to the same use conditions. Regulations regarding recycling and reclamation issued under section 608 of the Clean Air Act apply to these blends. HCFC–142b has one of the highest ODPS among the HCFCS. The GWPS of HCFC–22 and HCFC–142b are somewhat high. Although HCFC–142b and isobutane are flammable, these blends are not. In addition, testing on these blends has shown that they do not become flammable after leaks. EPA is concerned that HCFC–22 will seep out of traditional hoses. Thus, EPA is proposing an additional condition that barrier hoses must be used with HCFC Blend Xi and HCFC Blend Omicron. Note: HCFC Blend Xi is being sold under the trade names "GHG–X4", "Autofrost", and "Chill-It," and HCFC Blend Omicron is being sold under the trade names "Hot Shot" and "Kar Kool."

B. Solvent Cleaning

1. Acceptable Subject to Use Conditions

a. Electronics Cleaning.

(a) HFC–4310mee. *HFC–4310mee is proposed as an acceptable substitute for CFC–113 and methyl chloroform (MCF) in electronics cleaning subject to a 200 ppm time-weighted average workplace exposure standard and a 400 ppm workplace exposure ceiling.* HFC–4310mee is a new chemical that has just completed review by EPA's Premanufacture Notice Program under the Toxic Substances Control Act. This chemical does not deplete the ozone layer since it does not contain chlorine or bromine. It does have some potential to contribute to global warming since its 500-year Global Warming Potential (GWP) is 520 and it has a 20.8 year lifetime. However, the GWP and lifetime for HFC–4310 are both lower than the GWP and lifetime for CFC–113 and significantly lower than for PFCs, which are other substitutes for ozone-depleting solvents.

HFC–4310mee does exhibit some toxicity in tests reviewed by EPA, and causes central nervous system effects at relatively low levels. However, these effects are reversible and cease once chemical exposure is eliminated. Review under the SNAP program and the PMN program determined that a time-weighted average workplace exposure standard of 200 ppm and a workplace exposure ceiling of 400 ppm would be adequately protective of human health and that companies could readily meet these exposure limits using the types of equipment specified in the product safety information provided by the chemical manufacturer.

These workplace standards are designed to protect worker safety until the Occupational Safety and Health Administration (OSHA) sets its own standards under P.L. 91–596. The existence of the EPA standards in no way bars OSHA from standard-setting under OSHA authorities as defined in P.L. 91–596.

B. Precision Cleaning

(a) HFC–4310mee. *HFC–4310mee is proposed as an acceptable substitute for CFC–113 and methyl chloroform in precision cleaning subject to a 200 ppm time-weighted average workplace exposure standard and a 400 ppm workplace exposure ceiling.* The reasoning behind this determination is presented above in the section on electronics cleaning.

These workplace standards are designed to protect worker safety until the Occupational Safety and Health Administration (OSHA) sets its own standards under P.L. 91–596. The existence of the EPA standards in no way bars OSHA from standard-setting under OSHA authorities as defined in P.L. 91–596.

2. Acceptable Subject to Narrowed Use Limits

a. Electronics Cleaning.

(a) Perfluoropolyethers. *Perfluoropolyethers are proposed as acceptable substitutes for CFC–113 and MCF in the electronics cleaning sector for high performance, precision-engineered applications only where reasonable efforts have been made to ascertain that other alternatives are not technically feasible due to performance*

or safety requirements. These chemicals have global warming characteristics comparable to the perfluorocarbons and, as a result, are proposed to be subject to the same restrictions. A full discussion of the global warming concerns and related risk management decision can be found under 59 FR 13044 (March 18, 1994, at p. 13094)

b. Precision Cleaning.

(a) Perfluoropolyethers.

Perfluoropolyethers are proposed as acceptable substitutes for CFC–113 and MCF in the precision cleaning sector for high performance, precision-engineered applications only where reasonable efforts have been made to ascertain that other alternatives are not technically feasible due to performance or safety requirements. These chemicals have global warming characteristics comparable to the perfluorocarbons and, as a result, are proposed to be subject to the same restrictions. A full discussion of the global warming concerns and related risk management decision can be found under 59 FR 13044 (March 18, 1994, at p. 13094).

3. Unacceptable

a. Electronics Cleaning.

(a) HCFC–141b. *HCFC–141b is unacceptable as a substitute for CFC–113 and MCF in electronics cleaning under existing rules (59 FR 13044; March 18, 1994); today's notice proposes to amend this unacceptability determination and proposes existing uses of HCFC–141b as acceptable in high-performance electronics cleaning until January 1, 1997.* This proposed determination extends the use date for HCFC–141b in solvent cleaning, but only for existing users in high-performance electronics and only for one year. The extension does not affect the production phaseout date for HCFC–141b, which is January 1, 2003.

The extension should not be viewed as a reason to postpone replacement of 141b. Alternatives exist for nearly all solvent cleaning applications of 141b, and the principal reason for the extension is the long lead time necessary to test, select, and implement a chosen substitute in high-performance applications where stringent qualifications testing is the norm.

Existing regulations affect 141b in two ways. Under the production phaseout for ozone-depleting substances (ODS), 141b has a phaseout date of January 1, 2003. This regulation, developed under section 604 of the Clean Air Act (CAA), states that chemical manufacturers will no longer be allowed to manufacture 141b as of that date (40 CFR Part 82, Subpart G, Appendix A). HCFC–141b is also subject to a number of use restrictions relevant to solvent cleaning operations. According to regulations developed under section 612 of the CAA—the SNAP program—the only companies allowed to use 141b in solvent cleaning equipment are existing users. Existing users were defined in the March 1994 determination as companies who had 141b-based solvent cleaning equipment in place as of April 18, 1994. No new substitutions into 141b for solvent cleaning were permitted, and even existing users may use 141b only until January 1, 1996. This use ban date for existing users is the subject of the extension in today's proposal. HCFCS, including 141b, are also covered by other use restrictions such as the nonessential ban (section 610) and labeling (section 611). The 610 and 611 regulations are not discussed here. If you need more information about these regulations, call the Stratospheric Ozone Protection Hotline at 1–800–296–1996.

Many users and vendors of 141b have requested that the Agency postpone the effective date of the use ban under SNAP for solvent cleaning beyond January 1, 1996. In response to these petitions, EPA is proposing an extension. Note, however, that the only change is that existing uses in high-performance electronics cleaning would be permitted for an additional year until January 1, 1997. (Precision cleaning uses are also extended in today's proposal, but are listed in the next section.) "High-performance electronics" would include high-value added components for aerospace, military, or medical applications such as hybrid circuits or other electronics for missile guidance systems. The existing policy of no new substitutions into 141b is maintained and uses of 141b in metals cleaning and basic electronics cleaning would still end as of January 1, 1996. These restricted applications include cleaning of basic, formed metal parts and high-volume electronics cleaning such as components for consumer electronics.

An important distinction is that "solvent cleaning" in the SNAP program is defined to cover replacements of ODS in industrial cleaning, either in vapor degreasing or cold cleaning. It does not include aerosol applications, which are covered separately under the SNAP program. It also does not include other solvent cleaning uses of ODS such as in textile cleaning, dry cleaning, flushing of automotive air conditioning systems, or hand wiping. This means, for instance, that the use ban date does not apply to 141b used for hand wiping. However, users should understand that although these uses are not currently governed by the SNAP program, responsible corporate policy would be to implement alternatives to ODS where possible. Additionally, SNAP reserves the right to regulate any use where significant environmental differences exist in the choice of alternatives.

To minimize the paperwork burden, no reporting is proposed for companies that qualify for an extension.

The extension is not an excuse to delay selecting an alternative. The principal reason for extending the permissible period of use for 141b in these narrowed applications is not that alternatives do not exist, but that users need more time to qualify and implement alternatives. Even with the extension, uses of 141b in the specified applications will only be permitted for another 12 months beyond the current use ban date. This additional time can only be used productively if users begin now to select, test, order equipment and materials, etc.

The search for alternatives should include not just aqueous and semi-aqueous alternatives, but also recently developed cleaning chemicals and technologies. Information on vendors of substitutes is available from the Stratospheric Ozone Protection Hotline. Call 1–800–296–1996 and ask for the Vendor List for Precision Cleaning. In addition, EPA has more detailed information available on topics such as retrofitting 141b degreasers to use HFCS or on cleaning of medical devices.

b. Precision Cleaning.

(a) HCFC–141b. *HCFC–141b is unacceptable as a substitute for CFC–113 and MCF in precision cleaning under existing rules (59 FR 13044; March 18, 1994); today's notice proposes to amend this unacceptability determination and proposes existing uses of HCFC–141b as acceptable in precision cleaning until January 1, 1997.* This proposed determination extends the use date for HCFC–141b in solvent cleaning, but only for existing users in precision cleaning and only for one year. The extension does not affect the production phaseout date for HCFC–141b, which is January 1, 2003.

For a full discussion of the rationale for extension, please see the previous section on electronics cleaning. This discussion applies in full to users of precision cleaning, which for purposes of this extension is defined to include cleaning of devices of high-value added, precision-engineered parts such as precision ball bearings for navigational devices, or other components for aerospace, or medical uses.

C. Aerosols

1. Acceptable Subject to Narrowed Use Limits

a. Solvents.

(a) Perfluorocarbons. *Perfluorocarbons (PFCs) are proposed as acceptable substitutes for CFC–113 and MCF for aerosol applications only where reasonable efforts have been made to ascertain that other alternatives are not technically feasible due to performance or safety requirements.* EPA is proposing to permit the use of PFCs in aerosols applications despite their global warming potential since so few nontoxic, nonflammable solvents exist and this sector presents a high probability of worker exposure and safety risks. PFCs are already subject to similar restrictions in the solvents cleaning sector due to global warming concerns (59 FR 13044, March 18, 1994). This decision, if implemented as proposed, will allow users to select PFCs in the event of performance or safety concerns while guarding against widespread, unnecessary use of these potent greenhouse gases.

(b) Perfluoropolyethers. *Perfluoropolyethers (PFPEs) are proposed as acceptable substitutes for CFC–113 and MCF for aerosol applications only where reasonable efforts have been made to ascertain that other alternatives are not technically feasible due to performance or safety requirements.* EPA is proposing to permit the use of perfluoropolyethers in aerosols applications despite their global warming potential since so few nontoxic, nonflammable solvents exist and this sector presents a high probability of worker exposure and safety risks. PFCs, which have global warming potentials comparable to the PFPEs, are already subject to similar restrictions in the solvents cleaning sector due to global warming concerns (59 FR 13044, March 18, 1994). This decision, if implemented as proposed, will allow users to select perfluoropolyethers in the event of performance or safety concerns while guarding against widespread, unnecessary use of these potent greenhouse gases.

2. Unacceptable

a. Propellants.

(a) SF6. *SF6 is proposed as unacceptable substitute for CFC–11, CFC–12, HCFC–22 and HCFC–142b in aerosol applications.* This chemical has been of commercial interest as a compressed gas propellant substitute for ozone-depleting propellants. It has an atmospheric lifetime of 3,200 years and a 100-year global warming potential (GWP) of 24,900. CFC–11, in contrast, has a lifetime of 50 years and a GWP of 4,000. Formulators have indicated to the EPA that other compressed gases such as CO_2 would work equally well and could be formulated at similar or lower cost.

3. Amendment to List of Substances Being Replaced

EPA proposes today to add CFC–12 and CFC–114 to the list of aerosol propellants being replaced by substitutes reviewed under SNAP. This will ensure that companies replacing these CFCS in their products will be able to adhere to SNAP rulings in the replacement process. The environmental trade-offs associated with replacing CFC–12 and CFC–114 versus CFC–11 do not change significantly, since the ODPS for all the CFCS are roughly the same.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

Pursuant to the terms of Executive Order 12866, OMB notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order and EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations have been documented in the public record.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires EPA to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing any small governments that may be significantly or uniquely affected by the rule. Section 205 requires that regulatory alternatives be considered before promulgating a rule for which a budgetary impact statement is prepared. The Agency must select the least costly, most cost-effective, or least burdensome alternative that achieves the rule's objectives, unless there is an explanation why this alternative is not selected or this alternative is inconsistent with law.

Because this proposed rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this proposed rule, the Agency is not required to develop a plan with regard to small governments.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 604(a), applies to any rulemaking that is subject to public notice and comment requirements. The Act requires that a regulatory flexibility analysis be performed or the head of the Agency certifies that a rule will not have a significant economic effect on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

The Agency believes that this proposed rule will not have a significant effect on a substantial number of small entities and has therefore concluded that a formal RFA is unnecessary. Because costs of the SNAP requirements as a whole are expected to be minor, the is unlikely to adversely affect businesses, particularly as the rule exempts small sectors and end-uses from reporting requirements and formal agency review. In fact, to the extent that information gathering is more expensive and time-consuming for small companies, this rule may well provide benefits for small businesses anxious to examine potential substitutes to any ozone-depleting class I and class II substances they may be using, by requiring manufacturers to make information on such substitutes available.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1774.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136), 401 M St., SW., Washington, DC 20460 or by calling (202) 260–2740. The reasons for these information requirements are explained in the section on automobile air conditioning (III.A.1.a), and the requirements will be mandatory under section 612 of the Clean Air Act once the ICR is approved.

EPA is proposing to apply the information requirements described above to this rulemaking, previous similar rulemakings, and future rulemakings. Therefore, once the ICR is approved and this proposed rule is finalized, the ICR will also apply to requirements described in rules published on June 13, 1995 (60 FR 31092) and a rule expected to be published in April, 1996.

EPA estimates that the burden of learning about the requirements will be approximately ten minutes, and that filling out each required label itself will take under one minute. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136), 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after May 22, 1996, a comment to OMB is best assured of having its full effect if OMB receives it by June 21, 1996. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

V. Additional Information

For copies of the comprehensive SNAP lists or additional information on SNAP contact the Stratospheric Protection Hotline at 1–800–296–1996, Monday–Friday, between the hours of 10:00 a.m. and 4:00 p.m. (EST).

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). **Federal Register** notices can be ordered from the Government Printing Office Order Desk, (202) 783–3238; the citation is the date of publication. Notices and rulemaking under the SNAP program can also be retrieved electronically from EPA's Protection of Stratospheric Ozone Technology Transfer Network (TTN), Clean Air Act Amendment Bulletin Board. The access number for users with a 1200 or 2400 bps modem is (919) 541–5742. For users with a 9600 bps modem the access number is (919) 541–1447. For assistance in accessing this service, call (919) 541–5384 during normal business hours (EST). Finally, all ozone depletion-related NPRMS, FRMs, and Notices may be retrieved from EPA's Ozone Depletion World Wide Web site, at http://www.epa.gov/docs/ozone/title6/usregs.html.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: May 13, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 82 is proposed amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. Sec. 7414, 7601, 7671–7671q.

2. Section 82.180 is amended by revising paragraph (a)(8)(ii) to read as follows:

§ 82.180 Agency review of SNAP submissions.

(a) * * *

(8) * * *

(ii) Communication of Decision to the Public. The Agency will publish in the **Federal Register** periodic updates to the list of the acceptable and unacceptable alternatives that have been reviewed to date. In the case of substitutes proposed as acceptable with use restrictions, proposed as unacceptable or proposed for removal from either list, a rulemaking process will ensue. Upon completion of such rulemaking, EPA will publish revised lists of substitutes acceptable subject to use conditions or narrowed use limits and unacceptable substitutes to be incorporated into the Code of Federal Regulations. (See Appendices to this subpart.)

* * * * *

3. Subpart G is amended by adding Appendix D to read as follows:

Subpart G—Significant New Alternatives Policy Program

* * * * *

Appendix D to Subpart G—Substitutes Subject to Use Restrictions and Unacceptable Substitutes Listed

Refrigeration and Air Conditioning Sector Proposed Use Conditions

R–406A/"GHG"/"McCool", "GHG–HP", "GHG–X4"/"Autofrost"/"Chill-It", "Hot Shot"/"Kar Kool", and all refrigerants when listed in subsequent notices, are proposed acceptable subject to the following conditions when used to retrofit a CFC–12 motor vehicle air conditioning system or

when used in a new motor vehicle air conditioning system:

1. Each refrigerant may only be used with a set of fittings that is unique to that refrigerant. These fittings (male or female, as appropriate) must be used with all containers of the refrigerant, on can taps, on recovery, recycling, and charging equipment, and on all air conditioning system service ports. These fittings must be designed to mechanically prevent cross-charging with another refrigerant. A refrigerant may only be used with the fittings and can taps specifically intended for that refrigerant. Using an adapter or deliberately modifying a fitting to use a different refrigerant will be a violation of this use condition. In addition, fittings shall meet the following criteria, derived from Society of Automotive Engineers (SAE) standards and recommended practices:
   a. When existing CFC–12 service ports are to be retrofitted, conversion assemblies shall attach to the CFC–12 fitting with a thread lock adhesive and/or a separate mechanical latching mechanism in a manner that permanently prevents the assembly from being removed.
   b. All conversion assemblies and new service ports must satisfy the vibration testing requirements of sections 3.2.1 or 3.2.2 of SAE J1660, as applicable, excluding references to SAE J639 and SAE J2064, which are specific to HFC–134a.
   c. In order to prevent discharge of refrigerant to the atmosphere, systems shall have a device to limit compressor operation before the pressure relief device will vent refrigerant. This requirement is waived for systems that do not feature such a pressure relief device.
   d. All CFC–12 service ports shall be retrofitted with conversion assemblies or shall be rendered permanently incompatible for use with CFC–12 related service equipment by fitting with a device attached with a thread lock adhesive and/or a separate mechanical latching mechanism in a manner that prevents the device from being removed.
2. When a retrofit is performed, a label must be used as follows:
   a. The person conducting the retrofit must apply a label to the air conditioning system in the engine compartment that contains the following information:
      i. The name and address of the technician and the company performing the retrofit
      ii. The date of the retrofit
      iii. The trade name, charge amount, and, when applicable, the ASHRAE refrigerant numerical designation of the refrigerant
      iv. The type, manufacturer, and amount of lubricant used
      v. If the refrigerant is or contains an ozone-depleting substance, the phrase "ozone depleter"
      vi. If the refrigerant displays flammability limits as measured according to ASTM E681, the statement "This refrigerant is FLAMMABLE. Take appropriate precautions."
   b. This label must be large enough to be easily read and must be permanent.
   c. The background color must be unique to the refrigerant.
   d. The label must be affixed to the system over information related to the previous refrigerant, in a location not normally replaced during vehicle repair.
   e. Information on the previous refrigerant that cannot be covered by the new label must be permanently rendered unreadable.
3. No substitute refrigerant may be used to "top-off" a system that uses another refrigerant. The original refrigerant must be recovered in accordance with regulations issued under section 609 of the CAA prior to charging with a substitute.

SOLVENT CLEANING SECTOR—PROPOSED ACCEPTABLE SUBJECT TO USE CONDITIONS SUBSTITUTES

Application	Substitute	Proposed Decision	Conditions	Comments
Electronics Cleaning w/ CFC–113 and MCF.	HFC–4310mee	Acceptable	Subject to a 200 ppm time-weighted average workplace exposure standard and a 400 ppm workplace exposure ceiling.	
Precision Cleaning w/ CFC–113 and MCF.	HFC–4310mee	Acceptable	Subject to a 200 ppm time-weighted average workplace exposure standard and a 400 ppm workplace exposure ceiling.	

SOLVENT SECTOR—PROPOSED ACCEPTABLE SUBJECT TO NARROWED USE LIMITS

Application	Substitute	Proposed decision	Comments
Electronics Cleaning w/ CFC–113 and MCF.	Perfluoropolyethers	Perfluoropolyethers are proposed as acceptable substitutes for CFC–113 and MCF in the precision cleaning sector for high performance, precision-engineered applications only where reasonable efforts have been made to ascertain that other alternatives are not technically feasible due to performance or safety requirements.	PFPEs have similar global warming profile to the PFCs, and the SNAP decision on PFPEs parallels that for PFCs.
Precision Cleaning w/ CFC–113 and MCF.	Perfluoropolyethers	Perfluoropolyethers are proposed as acceptable substitutes for CFC–113 and MCF in the precision cleaning sector for high performance, precision-engineered applications only where reasonable efforts have been made to ascertain that other alternatives are not technically feasible due to performance or safety requirements.	PFPEs have similar global warming profile to the PFCs, and the SNAP decision on PFPEs parallels that for PFCs.

PROPOSED UNACCEPTABLE SUBSTITUTES

End-use	Substitute	Proposed decision	Comments
Electronics Cleaning w/ CFC–113 and MCF.	HCFC–141b	Extension of existing unacceptability determination to grant existing uses in high-performance electronics permission to continue until January 1, 1997.	This proposed determination extends the use date for HCFC–141b in solvent cleaning, but only for existing users in high-performance electronics and only for one year.

PROPOSED UNACCEPTABLE SUBSTITUTES—Continued

End-use	Substitute	Proposed decision	Comments
Precision Cleaning w/ CFC–113 and MCF.	HCFC–141b	Extension of existing unacceptability determination to grant existing uses in precision cleaning permission to continue until January 1, 1997.	This proposed determination extends the use date for HCFC–141b in solvent cleaning, but only for existing users in precision cleaning and only for one year.

AEROSOLS SECTOR—PROPOSED ACCEPTABLE SUBJECT TO NARROWED USE LIMITS

Application	Substitute	Proposed Decision	Comments
CFC–113, MCF, and HCFC–141b as aerosol solvents.	Perfluorocarbons	Perfluorocarbons are proposed as acceptable substitutes for aerosol applications only where reasonable efforts have been made to ascertain that other alternatives are not technically feasible due to performance or safety requirements.	PFCs have extremely long atmospheric lifetimes and high Global Warming Potentials. This decision reflects these concerns and is patterned after the SNAP decision on PFCs in the solvent cleaning sector.
	Perfluoropolyethers	Perfluorocarbons are proposed as acceptable substitutes for aerosol applications only where reasonable efforts have been made to ascertain that other alternatives are not technically feasible due to performance or safety requirements.	PFPEs have similar global warming profile to the PFCs, and the SNAP decision on PFPEs parallels that for PFCs in the solvent cleaning sector.

PROPOSED UNACCEPTABLE SUBSTITUTES

End-use	Substitute	Decision	Comments
CFC–11, CFC–12, HCFC–22, and HCFC–142b as aerosol propellants.	SF6	Unacceptable	SF6 has the highest GWP of all industrial gases, and other compressed gases meet user needs in this application equally well.

[FR Doc. 96–12624 Filed 5–21–96; 8:45 am]
BILLING CODE 6560–50–P

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

45 CFR Part 2400

Fellowship Program Requirements

AGENCY: James Madison Memorial Fellowship Foundation.

ACTION: Proposed rule.

SUMMARY: The following are proposed revised regulations governing the annual competition for James Madison Fellowships and the obligations of James Madison Fellows. These regulation would update and replace several aspects of the the Foundation's existing regulations as implemented by the James Madison Memorial Fellowship Act of 1986. These revised regulations would govern the qualifications and applications of candidates for fellowships; the selection of Fellows by the Foundation; the graduate programs Fellows must pursue; the terms and conditions attached to awards; the Foundation's annual Summer Institute on the Constitution; and related requirements and expectations regarding fellowships.

DATES: Comments must be submitted on or before July 22, 1996.

ADDRESSES: James Madison Memorial Fellowship Foundation, 2000 K Street, NW, Suite 303, Washington, DC 20006–1809.

FOR FURTHER INFORMATION CONTACT: Lewis F. Larsen, (202) 653–8700.

SUPPLEMENTARY INFORMATION: The reason for the proposed changes to the Foundation's regulations comes as a result of the Foundation's desire to clarify several of the rules and regulations which James Madison Fellows must observe when accepting their fellowships. Although many of the changes are minor insertions of words and punctuation, this document specifically expands the definition section to include further detailed definitions on Credit Hour Equivalent, Incomplete, Repayment, Satisfactory Progress, Stipend, Teaching Obligation, Termination and Withdrawal. The Foundation now encourages James Madison Fellows to choose a graduate program which does not include the writing of a thesis. Graduate programs for which Fellows may apply have been broadened to included political science. Finally, a section entitled "Teaching Obligation" was added to further clarify the obligation to teach, required by the Foundation once each fellow has earned a master's degree.

List of Subjects in 45 CFR Part 2400

Education, Fellowships.

Dated: May 16, 1996.

Paul A. Yost, Jr.,

President.

For the reasons set forth in the preamble and under authority of 20 U.S.C. 4501 *et seq.*, chapter XXIV, title 45 of the Code of Federal Regulations is amended by revising part 2400 to read as follows:

Chapter XXIV—James Madison Memorial Fellowship Foundation

PART 2400—FELLOWSHIP PROGRAM REQUIREMENTS

Subpart A—General

2400.1 Purposes.
2400.2 Annual competition.
2400.3 Eligibility.
2400.4 Definitions.

Subpart B—Application

2400.10 Application.
2400.11 Faculty representatives.

Subpart C—Application Process

2400.20 Preparation of application.
2400.21 Contents of application.
2400.22 Application deadline.

Subpart D—Selection of Fellows

2400.30 Selection criteria.
2400.31 Selection process.

Subpart E—Graduate Study

2400.40 Institutions of graduate study.
2400.41 Degree programs.
2400.42 Approval of Plan of Study.
2400.43 Required courses of graduate study.
2400.44 Commencement of graduate study.
2400.45 Special consideration: Junior Fellows' Plan of Study.
2400.46 Special consideration: second master's degrees.
2400.47 Summer Institute's relationship to fellowship.
2400.48 Fellows' participation in the Summer Institute.
2400.49 Contents of the Summer Institute.
2400.50 Allowances and Summer Institute costs.
2400.51 Summer Institute accreditation.

Subpart F—Fellowship Stipend

2400.52 Amount of stipend.
2400.53 Duration of stipend.
2400.54 Use of stipend.
2400.55 Certification for stipend.
2400.56 Payment of stipend.
2400.57 Termination of stipend.
2400.58 Repayment of stipend.

Subpart G—Special Conditions

2400.59 Other awards.
2400.60 Renewal of award.
2400.61 Postponement of award.
2400.62 Evidence of master's degree.
2400.63 Excluded graduate study.
2400.64 Alterations to Plan of Study.
2400.65 Teaching obligation.
2400.66 Completion of fellowship.

Authority: 20 U.S.C. 4501 *et seq.*

Subpart A—General

§ 2400.1 Purposes.

(a) The purposes of the James Madison Memorial Fellowship Program are to:

(1) Provide incentives for master's degree level graduate study of the history, principles, and development of the United States Constitution by outstanding in-service teachers of American history, American government, social studies, and political science in grades 7–12 and by outstanding college graduates who plan to become teachers of the same subjects; and

(2) Strengthen teaching in the nation's secondary schools about the principles, framing, ratification, and subsequent history of the United States Constitution.

(b) The Foundation may from time to time operate its own programs and undertake other closely-related activities to fulfill these goals.

§ 2400.2 Annual competition.

To achieve its principal purposes, the Foundation holds an annual national competition to select teachers in grades 7–12, college seniors, and college graduates to be James Madison Fellows.

§ 2400.3 Eligibility.

Individuals eligible to apply for and hold James Madison Fellowships are United States citizens, United States nationals, or permanent residents of the Northern Mariana Islands who are:

(a) Teachers of American history, American government, social studies, or political science in grades 7–12 who:

(1) Are teaching full time during the year in which they apply for a fellowship;

(2) Are under contract, or can provide evidence of being under prospective contract, to teach full time as teachers of American history, American government, social studies, or political science in grades 7–12;

(3) Have demonstrated records of willingness to devote themselves to civic responsibilities and to professional and collegial activities within their schools and school districts;

(4) Are highly recommended by their department heads, school heads, school district superintendents, or other supervisors;

(5) Qualify for admission with graduate standing at accredited universities of their choice that offer master's degree programs allowing at least 12 semester hours or their equivalent of study of the origins, principles, and development of the Constitution of the United States and of its comparison with the constitutions of other forms of government;

(6) Are able to complete their proposed courses of graduate study within five calendar years from the commencement of study under their fellowships, normally through part-time study during summers or in evening or weekend programs;

(7) Agree to attend the Foundation's four-week Summer Institute on the Constitution, normally during the summer following the commencement of study under their fellowships; and

(8) Sign agreements that, after completing the education for which the fellowship is awarded, they will teach American history, American government, social studies, or political science full time in secondary schools for a period of not less than one year for each full academic year of study for which assistance was received, preferably in the state listed as their legal residence at the time of their fellowship award. For the purposes of this provision, a full academic year of study is the number of credit hours determined by each university at which Fellows are studying as constituting a full year of study at that university. Fellows' teaching obligations will be figured at full academic years of study; and when Fellows have studies for partial academic years, those years will be rounded upward to the nearest one-half year to determine Fellows' total teaching obligations.

(b) Those who aspire to become full-time teachers of American history, American government, social studies, or political science in grades 7–12 who:

(1) Are matriculated college seniors pursuing their baccalaureate degrees full time and will receive those degrees no later than August 31st of the year of the fellowship competition in which they apply or prior recipients of baccalaureate degrees;

(2) Plan to begin graduate study on a full-time basis;

(3) Have demonstrated records of willingness to devote themselves to civic responsibilities;

(4) Are highly recommended by faculty members, deans, or other persons familiar with their potential for graduate study of American history and government and with their serious intention to enter the teaching profession as secondary school teachers of American history, American government, social studies, or political science in grades 7–12;

(5) Qualify for admission with graduate standing at accredited universities of their choice that offer master's degree programs that allow at least 12 semester hours or their equivalent of study of the origins, principles, and development of the Constitution of the United States and of its comparison with the constitutions and history of other forms of government;

(6) Are able to complete their proposed courses of graduate study in no more than two calendar years from the commencement of study under their fellowships, normally through full-time study;

(7) Agree to attend the Foundation's four-week Summer Institute on the Constitution, normally during the summer following the commencement of study under their fellowships; and

(8) Sign an agreement that, after completing the education for which the fellowship is awarded, they will teach American history, American government, social studies, or political science full time in secondary schools for a period of not less than one year for each full academic year of study for which assistance was received, preferably in the state listed as their legal residence at the time of their fellowship award. For the purposes of this provision, a full academic year of

study is the number of credit hours determined by each university at which Fellows are studying as constituting a full year of study at that university. Fellows' teaching obligations will be figured at full academic years of study; and when Fellows have studies for partial academic years, those years will be rounded upward to the nearest one-half year to determine Fellows' total teaching obligations.

§ 2400.4 Definitions.

As used in this part:

Academic year means the period of time in which a full-time student would normally complete two semesters, two trimesters, three quarters, or their equivalent of study.

Act means the James Madison Memorial Fellowship Act.

College means an institution of higher education offering only a baccalaureate degree or the undergraduate division of a university in which a student is pursuing a baccalaureate degree.

Credit hour equivalent means the number of graduate credit hours obtained in credits, courses or units during a quarter, a trimester, or a semester which are needed to equal a specific number of semester graduate credit hours.

Fee means a typical and usually non-refundable charge levied by an institution of higher education for a service, privilege, or use of property which is *required* for a Fellow's enrollment and registration.

Fellow means a recipient of a fellowship from the Foundation.

Fellowship means an award, called a James Madison Fellowship, made to a person by the Foundation for graduate study.

Foundation means the James Madison Memorial Fellowship Foundation.

Full-time study means study for an enrolled student who is carrying a full-time academic workload as determined by the institution under a standard applicable to all students enrolled in a particular educational program.

Graduate study means the courses of study beyond the baccalaureate level, which are offered as part of a university's master's degree program and which lead to a master's degree.

Incomplete means a course which the Foundation has paid for but the Fellow has received an incomplete grade or the Fellow has not received graduate credit for the course.

Institution of higher education has the meaning given in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

Junior Fellowship means a James Madison Fellowship granted either to a college senior or to a college graduate who has received a baccalaureate degree and who seeks to become a secondary school teacher of American history, American government, social studies, or political science for full-time graduate study toward a master's degree whose course of study emphasizes the framing, principles, history, and interpretation of the United States Constitution.

Master's degree means the first pre-doctoral graduate degree offered by a university beyond the baccalaureate degree, for which the baccalaureate degree is a prerequisite.

Matriculated means formally enrolled in a master's degree program in a university.

Repayment means if the fellowship is relinquished by the fellow or is terminated by the Foundation prior to the completion of the Fellow's degree, and/or the Fellow fails to fulfill the teaching obligation after the graduate degree is awarded, the Fellow must repay to the Foundation all Fellowship costs received plus interest at a rate of 6% per annum and, if applicable, reasonable collection fees.

Resident means a person who has legal residence in the state, recognized under state law. If a question arises concerning a Fellow's state of residence, the Foundation determines, for the purposes of this program, of which state the person is a resident, taking into account the Fellow's place of registration to vote, his or her parent's place of residence, and the Fellow's eligibility for in-state tuition rates at public institutions of higher education.

Satisfactory progress for a Junior Fellow means the completion of the number of required courses normally expected of full-time master's degree candidates at the university that the Fellow attends, with grades acceptable to that university, in not more than two calendar years from the commencement of that study. Satisfactory progress for a Senior Fellow means the completion each year of a specific number of required courses in the Fellow's master's degree program, as agreed upon each year with the Foundation and outlined on the Plan of Study form, with grades acceptable to the Fellow's university, in not more than five calendar years from the commencement of that study.

Secondary school means grades 7 through 12.

Senior means a student at the academic level recognized by an institution of higher education as being the last year of study before receiving the baccalaureate degree.

Senior Fellowship means a James Madison Fellowship granted to a secondary school teacher of American history, American government, social studies, or political science for part-time graduate study toward a master's degree whose course of study emphasizes the framing, principles, history, and interpretation of the United States Constitution.

State means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and, considered as a single entity, Guam, the United States Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and, until adoption of its Compact of Free Association, the Republic of Palau.

Stipend means the amount paid by the Foundation to a Fellow or on his or her behalf to pay the allowable costs of graduate study which have been approved under the fellowship.

Teaching obligation means that a Fellow, upon receiving a master's degree, must teach American history, American government, social studies, or political science on a full-time basis to students in secondary school for a period of not less than one year for each year for which financial assistance was received.

Term means the period—semester, trimester, or quarter—used by an institution of higher education to divide its academic year.

Termination means the non-voluntary ending of a fellowship by the Foundation when the Fellow has not complied with the rules and regulations of the fellowship or has not made satisfactory progress in his or her program of study.

University means an institution of higher education that offers post-baccalaureate degrees.

Withdrawal means the voluntary relinquishment or surrender of a Fellowship by the Fellow.

Subpart B—Application

§ 2400.10 Application.

Eligible applicants for fellowships must apply directly to the Foundation.

§ 2400.11 Faculty representatives.

Each college and university that chooses to do so may annually appoint or reappoint a faculty representative who will be asked to identify and recruit fellowship applicants on campus, publicize the annual competition on campus, and otherwise assist eligible candidates in preparation for applying. In order to elicit the appointment of faculty representatives, the Foundation will each year request the head of each college and university campus to appoint or reappoint a faculty representative and to provide the Foundation with the name, business address, and business telephone number of a member of its faculty representative on forms provided for that purpose.

Subpart C—Application Process

§ 2400.20 Preparation of application.

Applications, on forms mailed directly by the Foundation to those who request applications, must be completed by all fellowship candidates in order that they be considered for an award.

§ 2400.21 Contents of application.

Applications must include for

(a) Senior Fellowships:

(1) Supporting information which affirms an applicant's wish to be considered for a fellowship; provides information about his or her background, interests, goals, and the school in which he or she teaches; and includes a statement about the applicant's educational plans and specifies how those plans will enhance his or her career as a secondary school teacher of American history, American government, social studies, or political science;

(2) An essay of up to 600 words that explains the importance of the study of the Constitution to:

(i) Young students;

(ii) The applicant's career aspirations and his or her contributions to public service; and

(iii) Citizenship generally in a constitutional republic;

(3) The applicant's proposed course of graduate study, including the name of the degree to be sought, the required courses to be taken, as well as information about the specific degree sought;

(4) Three evaluations, one from an immediate supervisor, that attest to the applicant's strengths and abilities as a teacher in grades 7–12; and

(5) A copy of his or her academic transcript.

(b) Junior Fellowships:

(1) Supporting information which affirms an applicant's wish to be considered for a fellowship; provides information about the applicant's background, interests, goals, and the college which he or she attends or attended; and includes a statement about the applicant's educational plans and specifies how those plans will lead to a career as a teacher of American history, American government, social studies, or political science in grades 7–12;

(2) An essay of up to 600 words that explains the importance of the study of the Constitution to:

(i) Young students;

(ii) The applicant's career aspirations and his or her contribution to public service; and

(iii) Citizenship generally in a constitutional republic;

(3) Applicant's proposed course of graduate study, including the name of the degree sought, the name of the required courses to be taken, and information about the specific degree sought;

(4) Three evaluations that attest to the applicant's academic achievements and to his or her potential to become an outstanding secondary school teacher; and

(5) A copy of his or her academic transcript.

§ 2400.22 Application deadline.

Completed applications must be received by the Foundation no later than March 1st of each year preceding the start of the academic year for which candidates are applying.

Subpart D—Selection of Fellows

§ 2400.30 Selection criteria.

Applicants will be evaluated, on the basis of materials in their applications, as follows:

(a) Demonstrated commitment to teaching American history, American government, social studies, or political science at the secondary school level;

(b) Demonstrated intention to pursue a program of graduate study that emphasizes the Constitution and to offer classroom instruction in that subject;

(c) Demonstrated record of willingness to devote themselves to civic responsibility;

(d) Outstanding performance or potential of performance as classroom teachers;

(e) Academic achievements and demonstrated capacity for graduate study; and

(f) Proposed courses of graduate study, especially the nature and extent of their subject matter components, and their relationship to the enhancement of applicants' teaching and professional activities.

§ 2400.31 Selection process.

(a) An independent Fellow Selection Committee will evaluate all valid applications and recommend to the Foundation the most outstanding applicants from each state for James Madison Fellowships.

(b) From among candidates recommended for fellowships by the Fellow Selection Committee, the Foundation will name James Madison Fellows. The selection procedure will assure that at least one James Madison Fellow, junior or senior, is selected from each state in which there are at least two legally resident applicants who meet the eligibility requirements set forth in § 2400.3 and are judged favorably against the selection criteria in § 2400.30.

(c) The Foundation may name, from among those applicants recommended by the Fellow Selection Committee, an alternate or alternates for each fellowship. An alternate will receive a fellowship if the person named as a James Madison Fellow declines the award or is not able to pursue graduate study as contemplated at the time the fellowship was accepted. An alternate may be named to replace a Fellow who declines or relinquishes an award until, but no later than, March 1st following the competition in which the alternate has been selected.

(d) Funds permitting, the Foundation may also select, from among those recommended by the Fellow Selection Committee, Fellows at large.

Subpart E—Graduate Study

§ 2400.40 Institutions of graduate study.

Fellowship recipients may attend any accredited university in the United States with a master's degree program offering courses or training that emphasize the origins, principles, and development of the Constitution of the United States and its comparison with the constitutions and history of other forms of government.

§ 2400.41 Degree programs.

(a) Fellows may pursue a master's degree in history or political science (including government or politics), the degree of Master of Arts in Teaching in history or political science (including government or politics), or a related master's degree in education that permits a concentration in American history, American government, social studies, or political science. Graduate degrees under which study is excluded from fellowship support are indicated in § 2400.63.

(b) A master's degree pursued under a James Madison Fellowship may entail either one or two years or their equivalent of study, according to the requirements of the university at which a Fellow is enrolled.

§ 2400.42 Approval of Plan of Study.

The Foundation must approve each Fellow's Plan of Study. To be approved, the plan must:

(a) On a part-time or full-time basis lead to a master's degree in history or political science, the degree of Master of

Arts in Teaching in history or political science, or a related master's degree in education that permits a concentration in American history, American government, social studies, or political science;

(b) Include courses, graduate seminars, or opportunities for independent study in topics directly related to the framing and history of the constitution of the United States;

(c) Be pursued at a university that assures a willingness to accept up to 6 semester hours of accredited transfer credits from another graduate institution for a Fellow's satisfactory completion of the Foundation's Summer Institute on the Constitution. For the Foundation's purposes, these 6 semester hours may be included in the required minimum of 12 semester hours or their equivalent of study of the United States Constitution; and

(d) Be pursued at a university that encourages the Fellow to enhance his or her capacities as a teacher of American history, American government, social studies, or political science and to continue his or her career as a secondary school teacher. The Foundation reserves the right to refuse to approve a Fellow's Plan of Study at a university that will not accept on transfer the 6 credits for the Institute.

§ 2400.43 Required courses of graduate study.

(a) To be acceptable to the Foundation, those courses related to the Constitution referred to in § 2400.43(b) must amount to at least 12 semester or 18 quarter hours or their credit hour equivalent of study of topics directly related to the United States Constitution. More than 12 semester hours or their credit hour equivalent of such study is strongly encouraged.

(b) The courses that fulfil the required minimum of 12 semester hours or their credit hour equivalent of study of the United States Constitution must cover one or more of the following subject areas:

(1) The history of colonial America leading up to the framing of the Constitution;

(2) The Constitution itself, its framing, the history and principles upon which it is based, its ratification, the Federalist Papers, Anti-Federalist writings, and the Bill of Rights;

(3) The historical development of political theory, constitutional law, and civil liberties as related to the Constitution;

(4) Interpretations of the Constitution by the Supreme Court and other branches of the federal government;

(5) Debates about the Constitution in other forums and about the effects of constitutional norms and decisions upon American society and culture; and

(6) Any other subject clearly related to the framing, history, and principles of the Constitution.

(c) If a master's degree program in which a Fellow is enrolled requires a master's thesis in place of a course or courses, the Fellow will have the option of writing the thesis based on the degree requirements. The preparation of a master's thesis should not add additional required credits to the minimum number of credits required for the master's degree. If a Fellow must write a thesis, the topic of the thesis must relate to subjects concerning the framing, principles, or history of the United States Constitution. If the Fellow can choose between two degree tracks, a thesis track or a non-thesis track, the Foundation strongly encourages the non-thesis track.

§ 2400.44 Commencement of graduate study.

(a) Fellows may commence study under their fellowships as early as the summer following the announcement of their award. Fellows are normally expected to commence study under their fellowships in the fall term of the academic year following the date on which their award is announced. However, as indicated in § 2400.61, they may seek to postpone the commencement of fellowship study under extenuating circumstances.

(b) In determining the two- and five-year fellowship periods of Junior and Senior Fellows respectively, the Foundation will consider the commencement of the fellowship period to be the date on which each Fellow commences study under a fellowship.

§ 2400.45 Special consideration: Junior Fellows' Plan of Study.

Applicants for Junior Fellowships who seek or hold baccalaureate degrees in education are strongly encouraged to pursue master's degrees in history or political science. Those applicants who hold undergraduate degrees in history, political science, government, or any other subjects may take some teaching methods and related courses, although the Foundation will not pay for them unless they are required for the degree for which the Fellow is matriculated. The Foundation will review each proposed Plan of Study for an appropriate balance of subject matter and other courses based on the Fellow's goals, background, and degree requirements.

§ 2400.46 Special consideration: second master's degree.

The Foundation may award Senior Fellowships to applicants who are seeking their second master's degrees providing that the applicants' first master's degree was obtained at least five years prior to the year in which the applicants would normally commence study under a fellowship. In evaluating applications from individuals intending to pursue a second master's degree, the Fellow Selection Committee will favor those applicants who are planning to become American history, American government, social studies, or political science teachers after having taught another subject and applicants whose initial master's degree was in a subject different from that sought under the second master's degree.

§ 2400.47 Summer Institute's relationship to fellowship.

Each year, the Foundation offers, normally during July, a four-week graduate-level Institute on the principles, framing, ratification, and implementation of the United States Constitution at an accredited university in the Washington, DC area. The Institute is an integral part of each fellowship.

§ 2400.48 Fellows' participation in the Summer Institute.

Each Fellow is required as part of his or her fellowship to attend the Institute, normally during the summer following the Fellow's commencement of graduate study under a fellowship.

§ 2400.49 Contents of the Summer Institute.

The principal element of the Institute is a graduate history course, "Foundations of American Constitutionalism." Other components of the Institute include study visits to sites associated with the lives and careers of members of the founding generation.

§ 2400.50 Allowances and Summer Institute costs.

For their participation in the Institute, Fellows are paid an allowance to help offset income foregone by their required attendance. The Foundation also funds the costs of the Institute and Fellows' round-trip transportation to and from the Institute site. The costs of tuition, required fees, books, room, and board entailed by the Institute will be paid for by the Foundation directly but may be offset against fellowship award limits if the credits earned for the Institute are included within the Fellows' degree requirements.

§ 2400.51 Summer Institute accreditation.

The Institute is accredited for six graduate semester credits by the university at which it is held. It is expected that the universities at which Fellows are pursuing their graduate study will, upon Fellows' satisfactory completion of the Institute, accept these credits or their credit-hour equivalent upon transfer from the university at which the Institute is held in fulfillment of the minimum number of credits required for Fellows' graduate degrees. Satisfactory completion of the Institute will fulfill 6 of the Foundation's 12 semester credits required in graduate study of the history and development of the Constitution. Fellows, with the Foundation's assistance, are strongly encouraged to make good faith efforts to have their universities incorporate the Institute into their Plan of Study and accept the 6 Institute credits toward the minimum number of credits required for their master's degrees.

Subpart F—Fellowship Stipend

§ 2400.52 Amount of stipend.

Junior and Senior Fellowships carry a stipend of up to a maximum of $24,000 pro-rated over the period of Fellows' graduate study. In no case shall the stipend for a fellowship exceed $12,000 per academic year. Within this limit, stipends will be pro-rated over the period of Fellows' graduate study as follows: a maximum of $6,000 per academic semester or trimester of full-time study, and a maximum of $4,000 per academic quarter of full-time study. Stipends for part-time study will be pro rata shares of those allowable for full-time study.

§ 2400.53 Duration of stipend.

Stipends for Junior Fellowships may be payable over a period up to 2 calendar years of full-time graduate study, and those for Senior Fellowships may be payable over a period of not more than 5 calendar years of part-time graduate study, beginning with the dates under which Fellows commence their graduate study under their fellowships. However, the duration of stipend payments will be subject to the maximum payment limits, the length of award time limits, and the completion of the minimum degree requirements, whichever occurs first.

§ 2400.54 Use of stipend.

Stipends shall be used only to pay the costs of tuition, required fees, books, room, and board associated with graduate study under a fellowship. The costs allowed for a Fellow's room and board will be the amount the Fellow's university reports to the Foundation as the cost of room and board for a graduate student if that student were to share a room at the student's university. If no shared graduate housing exists, then costs for regular shared student housing will be used. If no campus housing exists, the equivalent room and board costs at neighboring universities will be used. Stipends for room, board, and books will be pro-rated for Fellows enrolled in study less than full time. The Foundation will not reimburse Fellows for any portion of their master's degree study, that Fellows may have completed prior to the commencement of their fellowships. Nor will the Foundation reimburse Fellows for any credits acquired above the minimum number of credits required for the degree. If a Fellow has already taken and paid for courses that can be credited toward the Fellow's graduate degree under a fellowship, those must be credited to the degree; the remaining required courses will be paid for by the Foundation.

§ 2400.55 Certification for stipend.

In order to receive a fellowship stipend, a Fellow must submit the following nine items in writing:

(a) An acceptance of the terms and conditions of the fellowship including a completed certificate of compliance form;

(b) Evidence of admission to an approved graduate program;

(c) Certified copies of undergraduate and, if any, graduate transcripts;

(d) A certified payment request form indicating the estimated costs for tuition, required fees, books, room, and board;

(e) A photo copy of the university's bulletin of cost information;

(f) The amount of income from any other grants or awards;

(g) Information about the Fellow's degree requirements, including the number of required credits to fulfill the degree;

(h) A statement of the university's willingness to accept the transfer of 6 credits toward the Fellow's degree requirements for the Fellow's satisfactory completion of the Summer Institute (see § 2400.51); and

(i) A full Plan of Study over the duration of the fellowship, including information on the contents of required courses. Senior Fellows must provide evidence of their continued full- time employment as teachers in grades 7–12.

§ 2400.56 Payment of stipend.

Payment for tuition, required fees, books, room, and board subject to the limitations in § 2400.52 through § 2400.55 and § 2400.59 through § 2400.60 will be paid to each Fellow at the beginning of each term of enrollment upon the Fellow's submission of a completed Payment Request Form and the University bulletin of cost information.

§ 2400.57 Termination of stipend.

(a) The Foundation may suspend or terminate the payment of a stipend if a Fellow fails to meet the criteria set forth in § 2400.40 through § 2400.44 and § 2400.60, except as provided for in § 2400.61. Before it suspends or terminates a fellowship under these circumstances, the Foundation will give notice to the Fellow, as well as the opportunity to be heard with respect to the grounds for suspension or termination.

(b) The Foundation will normally suspend the payment of a stipend if a Fellow has more than one grade of "incomplete" in courses for which the Foundation has made payment to the Fellow.

§ 2400.58 Repayment of stipend.

(a) If a Fellow fails to secure a master's degree, fails to teach American history, American government, social studies, or political science on a full-time basis in a secondary school for at least one school year for each academic year for which assistance was provided under a fellowship, fails to secure fewer than 12 semester hours or their credit hour equivalent for study of the Constitution as indicated in § 2400.43(b), or fails to attend the Foundation's Summer Institute on the Constitution, the Fellow must repay all of the fellowship costs received plus interest at the rate of 6% per annum or as otherwise authorized and, if applicable, reasonable collection fees, as prescribed in section 807 of the Act (20 U.S.C. 4506(b)).

(b) If a Fellow withdraws from the fellowship or has a fellowship terminated by the Foundation, the Foundation will seek to recover all fellowship funds which have been remitted to the Fellow or on his or her behalf under a fellowship.

Subpart G—Special Conditions

§ 2400.59 Other awards.

Fellows may accept grants from other foundations, institutions, corporations, or government agencies to support their graduate study or to replace any income foregone for study. However, the stipend paid by the Foundation for allowable costs indicated in § 2400.52 will be reduced to the extent these costs are paid from other sources, and in no

case will fellowship funds be paid to Fellows to provide support in excess of their actual total costs of tuition, required fees, books, room, and board. The Foundation may also reduce a Fellow's stipend if the Fellow is remunerated for the costs of tuition under a research or teaching assistantship or a work-study program. In such a case, the Foundation will require information from a Fellow's university about the intended use of assistantship or work-study support before remitting fellowship payments.

§ 2400.60 Renewal of award.

(a) Provided that Fellows have submitted all required documentation and are making satisfactory academic progress, it is the intent of the Foundation to renew Junior Fellowship awards annually for a period not to exceed two calendar years or the completion of their graduate degrees, whichever comes first, and Senior Fellowships for a period not to exceed 5 calendar years (except when those periods have been altered because of changes in Fellows' Plan of Study as provided for in § 2400.64), or until a Fellow has completed all requirements for a master's degree, whichever comes first. In no case, however, will the Foundation continue payments under a fellowship to a Fellow who has reached the maximum payments under a fellowship as indicated in § 2400.52, or completed the minimum number of credits required for the degree. Although Fellows are not discouraged in taking courses in addition to those required for the degree or required to maintain full-time status, the Foundation will not in such cases pay for those additional courses unless they are credited to the minimum number of credits required for the degree.

(b) Fellowship renewal will be subject to an annual review by the Foundation and certification by an authorized official of the university at which a Fellow is registered that the Fellow is making satisfactory progress toward the degree and is in good academic standing according to the standards of each university.

(c) As a condition of renewal of awards, each Fellow must submit an annual activity report to the Foundation by July 15th. That report must indicate, through submission of a copy of the Fellow's most recent transcript, courses taken and grades achieved; courses planned for the coming year; changes in academic or professional plans or situations; any awards, recognitions, or special achievements in the Fellow's academic study or school employment; and such other information as may relate to the fellowship and its holder.

§ 2400.61 Postponement of award.

Upon application to the Foundation, a Fellow may seek postponement of his or her fellowship because of ill health or other mitigating circumstances, such as military duty, temporary disability, necessary care of an immediate family member, or unemployment as a teacher. Substantiation of the reasons for the requested postponement of study will be required.

§ 2400.62 Evidence of master's degree.

At the conclusion of graduate studies, each Fellow must provide a certified transcript which indicates that he or she has secured an approved master's degree as set forth in the Fellow's original Plan of Study or approved modifications thereto.

§ 2400.63 Excluded graduate study.

(a) James Madison Fellowships do not provide support for study toward doctoral degrees, for the degree of master of arts in public affairs or public administration, or toward the award of teaching certificates. Nor do fellowships support practice teaching required for professional certification or other courses related to teaching unless those courses are required for the degree. In those cases, however, the Foundation will provide reimbursement only toward those courses related to teaching that fall within the minimum number of courses required for the degree, not in addition to that minimum.

§ 2400.64 Alterations to plan of study.

Although Junior Fellows are expected to pursue full-time study and Senior Fellows to pursue part-time study, the Foundation may permit Junior Fellows with an established need (such as the need to accept a teaching position) to study part time and Senior Fellows with established need (such as great distance between the Fellow's residence and the nearest university, thus necessitating a full-time leave of absence from employment in order to study) to study full time.

§ 2400.65 Teaching obligation.

Upon receiving a Master's degree, each Fellow must teach American history, American government, social studies, or political science on a full-time basis to students in secondary school for a period of not less than one year for each academic year for which financial assistance was received. Each Fellow will be required to provide the Foundation with an annual certification from an official of the secondary school where the Fellow is employed indicating the teaching activities of the Fellow during the past year. This same certification will be required each year until the Fellow's teaching obligation is completed. Any teaching done by the Fellow prior to or during graduate studies does not count towards meeting this teaching obligation.

§ 2400.66 Completion of fellowship.

A Fellow will be deemed to have satisfied all terms of a fellowship and all obligations under it when the Fellow has completed no fewer than 12 graduate semester hours or the equivalent of study of the Constitution, formally secured the masters degree, attended the Foundation's Summer Institute on the Constitution, completed teaching for the number of years and fractions thereof required as a condition of accepting Foundation support for study, and submitted all required reports.

[FR Doc. 96–12790 Filed 5–21–96; 8:45 am]
BILLING CODE 6820–05–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Establishment of a Nonessential Experimental Population of the Mexican Gray Wolf in Arizona and New Mexico

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public meetings and hearings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces its intention to hold public open house meetings and hearings on the Proposed Rule for the Proposed Establishment of a Nonessential Experimental Population of the Mexican Gray Wolf in Arizona and New Mexico. The meetings and hearings will be held in El Paso, Texas; Alamogordo and Silver City, New Mexico; and Springerville, Arizona.

DATES: The meetings/hearings will be held in El Paso, Texas, on June 10 from 6:00 to 10:00 p.m.; in Alamogordo, New Mexico, on June 11 from 6:00 to 10:00 p.m.; in Silver City, New Mexico, on June 13 from 6:00 to 10:00 p.m.; and in Springerville, Arizona, on June 15 from 2:00 to 6:00 p.m. Times and places of these meetings will also be announced in the local media and in mailings to the interested public. The comment period on the Proposed Rule closes on July 1, 1996, and comments must be postmarked by the closing date to be considered.

ADDRESSES: The public meeting/hearing location in El Paso, Texas, is the Ysleta Unified School District, Christo Rey and Chamizal Rooms, at 9600 Sims Drive; the location in Alamogordo, New Mexico, is the Civic Center Conference Room and Auditorium at 800 First Street; the location in Silver City, New Mexico, is the Lighthall Classroom 202 and Lighthall Auditorium on the Western New Mexico University campus; and the location in Springerville, Arizona, is the Round Valley Unified School District Auditorium at 450 South Butler Street. Questions and comments on the Proposed Rule should be sent to David R. Parsons, Mexican Wolf Recovery Coordinator, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103–1306. Copies of the Proposed Rule, a fact sheet that summarizes the rule, the draft Environmental Impact Statement (EIS) for Proposed Reintroduction of the Mexican Wolf to its Historic Range in the Southwestern United States, and the draft EIS summary can be obtained at this address.

FOR FURTHER INFORMATION CONTACT: Mr. David R. Parsons (see **ADDRESSES** section), or phone at (505) 248–6920; or facsimile at (505)248–6922.

SUPPLEMENTARY INFORMATION:

Background

In the June 27, 1995, **Federal Register** (60 FR 33224–33225) the Service announced the availability of a draft EIS for a proposal to reintroduce Mexican wolves to portions of their historic range in the southwestern United States. Alternatives A (the Proposed Action) and B of the draft EIS propose the reintroduction of Mexican wolves classified as a nonessential experimental population as allowed under section 10(j) of the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*).

In the May 1, 1996, **Federal Register** (61 FR 19237–19248), the Service issued the Proposed Rule for establishing a nonessential experimental population of the Mexican gray wolf in Arizona and New Mexico. A nearly identical Draft Proposed Mexican Wolf Experimental Population Rule was included as Appendix C in the draft EIS. The Proposed Rule is an integral part of Alternatives A and B in the draft EIS, both of which propose the establishment of a nonessential experimental population of Mexican wolves. It provides needed management flexibility for addressing potential wolf-human conflicts associated with wolf reintroduction, such as livestock depredation by wolves. This Proposed Rule differs from Appendix C of the draft EIS only by the inclusions of an updated status of the National Environmental Policy Act process and some "plain language" revisions to make the rule more readable. No substantive provisions of Appendix C of the draft EIS have changed.

If you submitted a written comment or formal oral testimony during the draft EIS comment period on the Draft Proposed Rule, as set forth in Appendix C, or as summarized in the draft EIS text or the draft EIS Summary, it is not necessary to resubmit that comment for it to be considered in this comment period on the Proposed Rule.

Four public open house meetings/hearings will be held (see **DATES** and **ADDRESSES** sections). Agency representatives will be available at these meetings to provide information about the Proposed Rule; consult with you regarding provisions of the rule; answer your questions; and receive your written comments. Carter Niemeyer, the Animal Damage Control Wolf Specialist for the northern Rocky Mountain region, will give a formal presentation on wolf-livestock interactions following wolf reestablishment in Montana, Wyoming, and Idaho. We will conclude with a formal public hearing where oral testimony on the Proposed Rule will be recorded. Anyone wishing to make an oral statement for the record is encouraged to provide a copy of his or her statement at the start of the hearing. If attendance at the hearing is large, the time allotted for oral statements may be limited. Written comments and oral testimony receive equal consideration.

The Proposed Rule will be revised after the close of the comment period and, depending on future decisions with respect to Mexican wolf recovery, may then be issued as a Final Rule. The Service's goal is that the Final Rule, if issued, would, to the maximum extent practicable, represent an agreement between the Service and the agencies, local governments, tribes, private landowners, and other potentially affected parties regarding how to manage reintroduced Mexican wolves with minimal adverse impacts while promoting their conservation and recovery. This goal is consistent with ESA regulations on experimental populations (50 CFR sec. 17.81(d)).

Comments on the Proposed Rule must be received or postmarked by July 1, 1996, and sent to the Service office in the **ADDRESSES** section.

Dated: May 16, 1996.

Nancy M. Kaufman,

Regional Director.

[FR Doc. 96–12816 Filed 5–21–96; 8:45 am]
BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 61, No. 100
Wednesday, May 22, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 96–024N]

Codex Alimentarius: Public Meeting of Executive Committee Meeting

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture (USDA); the Food and Drug Administration (FDA), U.S. Department of Health and Human Services (HHS); and the Environmental Protection Agency (EPA) are sponsoring a public meeting on May 29, 1996, to provide information and receive public comments on agenda items that will be discussed at the Codex Executive Meeting, which will be held in Geneva, Switzerland, June 4–7, 1996. The cosponsors of the May 29th public meeting recognize the importance of providing interested parties the opportunity to obtain background information on the Forty-third Session of the Executive Committee of the Codex Alimentarius Commission (Codex) and to address items on the Agenda.

DATES: The public meeting is scheduled for Wednesday, May 29, 1996, from 1:00 p.m. to 3:00 p.m.

ADDRESSES: The public meeting will be held in Room 107–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 14th and Independence Avenue SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Joan Mondschein, Confidential Assistant to the Administrator, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 1763, South Agriculture Building, 14th and Independence Avenue, SW, Washington, DC 20250. Telephone: (202) 720–7323; Fax: (202) 720–5124.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, USDA, FDA, and EPA manage and carry out U.S. Codex activities.

Issues To Be Discussed at the Public Meeting

The following specific issues will be discussed during the public meeting:

1. Financial and Budgetary Matters
   —Report on the accounts of the Joint FAO/WHO Food Standards Programme for 1994/5 and on the budget for 1996/7
   —Cost implications of providing documentation and interpretation in the Arabic language
   —New mechanisms for strengthening of Codex work
2. Implementation of the Commission's Programme of Work
   —Progress in achieving the Medium-Term Objectives
   —Implementation of decisions taken by the 21st Session of the Commission
   —Management of the Programme of Work
   Proposals for new items of work (Step 1)
   —Consideration of Proposed Draft Standards and related texts at Step 5
3. Risk Analysis in Codex Work: Progress report.
4. Determination, Interpretation and Application of Residue Limits.
5. Draft Provisional Agenda for the 22nd Session of the Codex Alimentarius Commission.

Done at Washington, DC, May 16, 1996.

Michael R. Taylor,

Under Secretary for Food Safety.

[FR Doc. 96–12844 Filed 5–21–96; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Information Systems Technical Advisory Committee will be held June 19 & 20, 1996, Room 1617M–2, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. This Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to information systems equipment and technology.

June 19

Closed Session: 9:00 a.m.–5:00 p.m.

1. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

June 20

General Session: 9:00 a.m.–12:00 p.m.

2. Opening remarks by the Chairmen.
3. Presentation of papers or comments by the public.
4. Discussion on reform of the Export Administration Regulations.
5. Presentation on technology trends for input/output interfaces.
6. Presentation on cryptography metrics: strength and techniques.

General Session: 1:00 p.m.–5:00 p.m.

7. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

The General Session of the meeting is open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that public presentation materials or comments be forwarded at least one week before the meeting to the address listed below: Ms. Lee Ann Carpenter, TAC Unit/OAS/EA Room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 10, 1995, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of these Committees and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of these Committees is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Lee Ann Carpenter, 202–482–2583.

Dated: May 17, 1996.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 96–12869 Filed 5–21–96; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Order No. 823]

Grant of Authority for Subzone Status, MagneTek, Inc. (Electronic Fluorescent Lighting Ballasts), Madison, AL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Huntsville-Madison County Airport Authority, grantee of Foreign-Trade Zone 83, for authority to establish special-purpose subzone status at the manufacturing facility (electronic fluorescent lighting ballasts and components) of MagneTek, Inc., in Madison, Alabama, was filed by the Board on November 3, 1995, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 70–95, 60 FR 57216, 11–14–95); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 83B) at the MagneTek, Inc., plant, in Madison, Alabama, at the location described in the application, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 9th day of May 1996.

Paul L. Joffe,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–12872 Filed 5–21–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–412–602]

Certain Forged Steel Crankshafts From the United Kingdom; Extension of Time Limits of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits of antidumping duty administrative review.

SUMMARY: The Department of Commerce (The Department) is extending the time limits for preliminary and final results in the administrative review of the antidumping duty order on certain forged steel crankshafts from the United Kingdom, covering the period September 1, 1994, through August 31, 1995, since it is not practicable to complete the review within the time limits mandated by the Tariff Act of 1930, as amended, 19 U.S.C. 1675(a) (the Act).

EFFECTIVE DATE: May 22, 1996.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine, Lyn Johnson, or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce has received a request to conduct an administrative review of the antidumping duty order on certain forged steel crankshafts from the United Kingdom. On October 12, 1995, the Department initiated this administrative review covering the period September 1, 1994, through August 31, 1995. The Department adjusted the time limits by 28 days due to the government shutdowns, which lasted from November 14, 1995, to November 20, 1995, and from December 15, 1995, to January 6, 1996. *See* Memorandum to the file from Paul L. Joffe, Acting Assistant Secretary for Import Administration, January 11, 1996. As adjusted, the current time limits are July 1, 1996, for the preliminary results and November 29, 1996, for the final results.

It is not practicable to complete this review within the time limits mandated by section 751 (a)(3)(A) of the Act. *See* Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary for Compliance to Paul L. Joffe, Acting Assistant Secretary for Import Administration, May 9, 1996. Therefore, in accordance with that section, the Department is extending the time limits for the preliminary results to November 29, 1996, and for the final results to March 31, 1997.

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 353.34(b).

Dated: May 14, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–12870 Filed 5–21–96; 8:45 am]

BILLING CODE 3510–DS–M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural

Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 95–088R. Applicant: Mississippi State University, Box C, Mississippi State, MS 39762. Instrument: Stopped-Flow Spectrometer, Model SX.17MV. Manufacturer: Applied Photophysics Limited, United Kingdom. Intended Use: Original notice of this resubmitted application was published in the **Federal Register** of October 23, 1995.

Docket Number: 96–015. Applicant: Princeton University, 110 Washington Road, Princeton, NJ 08544–0033. Instrument: Spectrophotometer/ Fluorimeter System. Manufacturer: Hi-Tech Scientific, United Kingdom. Intended Use: The instrument will be used for studies of metalloporphyrin catalysts to determine which chemical properties determine the rates of oxidative catalysis. Application Accepted by Commissioner of Customs: February 26, 1996.

Docket Number: 96–016. Applicant: University of Iowa Hospitals and Clinics, 200 Hawkins Drive, Iowa City, IA 52242. Instrument: [^{11}C] Methylation Synthesis Module. Manufacturer: Nuclear Interface GmbH, Germany. Intended Use: The instrument will be used to generate short-lived Carbon-11 radioactively labeled chemicals which will be used to study basic and clinical aspects of human disease and metabolism. The objective of these studies is to understand the basis of a disease and aid in its detection and prevention. Application Accepted by Commissioner of Customs: February 26, 1996.

Docket Number: 96–017. Applicant: University of Iowa Hospitals and Clinics, 200 Hawkins Drive, Iowa City, IA 52242. Instrument: [^{18}F] Synthesis Module. Manufacturer: Nuclear Interface GmbH, Germany. Intended Use: The instrument will be used to generate short-lived Fluorine-18 radioactively labeled chemicals which will be used to study basic and clinical aspects of human disease and metabolism. The objective of these studies is to understand the basis of a disease and aid in its detection and prevention. Application Accepted by Commissioner of Customs: February 26, 1996.

Docket Number: 96–018. Applicant: Texas A&M University, Department of Biochemistry and Biophysics, College Station, TX 77843–2128. Instrument: Multi-Mixing Stopped-Flow Spectrometer, Model SX.18MV. Manufacturer: Applied Photophysics Ltd., United Kingdom. Intended Use: The instrument will be used to follow chemical reactions of enzymes over time courses of less than a second during experiments conducted to determine the chemical mechanisms of flavoprotein oxidases and of tetrahydropterin-dependent hydroxylases. In addition, the instrument will be used to provide training for students enrolled in Biochemistry and Biophysics 690 "Theory of Biochemical Research" and Biochemistry and Biophysics 691 "Research". Application Accepted by Commissioner of Customs: February 27, 1996.

Docket Number: 96–019. Applicant: University of Illinois at Urbana-Champaign, Purchasing Division, 206 South Wright Street, Urbana, Il 61801. Instrument: Stopped-Flow Reaction Analyser, Model SX.17MV. Manufacturer: Applied Photophysics, United Kingdom. Intended Use: The instrument will be used to study rapid reaction of bacterial hemecopper oxidases. The two kinds of experiments planned include the reaction of the enzymes with ligands such as cyanide and azide, and the reaction with reductants. This will involve examining a series of mutants to determine the functional importance of specific residues in the mechanism of these enzymes. Application Accepted by Commissioner of Customs: February 27, 1996.

Docket Number: 96–020. Applicant: National Institutes of Health, National Institute of Diabetes & Digestive & Kidney Diseases, 1550 E. Indian School Road, Phoenix, AZ 85014. Instrument: Mass Spectrometer, Model Delta S. Manufacturer: Finnigan MAT, Germany. Intended Use: The instrument will be used for studies of stable isotopes of oxygen and hydrogen in urine which are aimed at understanding energy expenditure as a factor in the development of obesity and diabetes in the Pima Indian population. Application Accepted by Commissioner of Customs: February 28, 1996.

Docket Number: 96–021. Applicant: Carnegie Institution of Washington, Department of Terrestrial Magnetism, 5241 Broad Branch Road, NW, Washington, DC 20015. Instrument: Mass Spectrometer, Model IMS 6F. Manufacturer: CAMECA, France. Intended Use: The instrument will be used for in-situ analysis of trace elements (<0.1%) and isotopes in geologic minerals and for imaging of spatial distribution of trace elements and isotopes. Application Accepted by Commissioner of Customs: February 28, 1996.

Docket Number: 96–022. Applicant: Howard Hughes Medical Institute, 4000 Jones Bridge Road, Chevy Chase, MD 20815–6789. Instrument: 4 Syringe Stopped-Flow Module, Model SFM–4/S. Manufacturer: BioLogic, France. Intended Use: The instrument will be used to explore a variety of fundamental questions that concern the *in vivo* folding of proteins and the actions of molecular chaperones. The instrument will be configured for use in stopped-flow fluorescence intensity and anisotropy experiments designed to dissect and understand how proteins are manipulated and folded by molecular chaperones. Application Accepted by Commissioner of Customs: February 28, 1996.

Docket Number: 96–023. Applicant: Yale University, School of Medicine, Department of MB&B, 333 Cedar Street, New Haven, CT 06510. Instrument: Shielded Gradient System, Model IC60. Manufacturer: Oxford Magnet Technology, United Kingdom. Intended Use: The instrument will be used for studies of nuclear magnetic resonance properties of metabolite chemicals in human brain, liver and kidney. NMR spectroscopic methods will be developed and tested on chemical solutions and on human subjects. When these methods are optimized they will be used in experiments designed to measure rates of metabolism and metabolite concentrations in normal humans and in disease states. Other research projects will include (1) the study of cerebral metabolism in humans, (2) continued studies of muscle and hepatic glycogen metabolism in man, and (3) non-invasive probe of tissue metabolism. Application Accepted by Commissioner of Customs: February 28, 1996.

Docket Number: 96–024. Applicant: The University of Georgia, College of Pharmacy, DW Brooks Drive, Athens, GA 30602–2352. Instrument: Mass Spectrometer, Model VG AutoSpec. Manufacturer: Fisons Instruments, United Kingdom. Intended Use: The instrument will be used to analyze by high resolution mass spectrometry synthetic and naturally occurring nucleosides as part of an effort to create new anti-viral and anti-cancer drugs. In addition, the instrument will be used to train professional and graduate students in mass spectrometry. Application Accepted by Commissioner of Customs: March 1, 1996.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–12874 Filed 5–21–96; 8:45 am]

BILLING CODE 3510–DS–P

Notice of Withdrawal of Application for Duty-Free Entry of Scientific Instrument

Shriners Hospital has withdrawn Docket Number 95–077, an application for duty-free entry of a 3–Dimensional Motion Analyzer System, Model VICON 370. We have discontinued processing in accordance with Section 301.5(g) of 15 CFR part 301.

Frank W. Creel,

Director, Statutory Import Programs.

[FR Doc. 96–12873 Filed 5–21–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–533–063]

Certain Iron Metal Castings From India: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on certain iron metal castings from India. We preliminarily determine the net subsidy to be zero or *de minimis* for Delta Enterprises and Super Iron Foundry, and 5.45 percent *ad valorem* for all other companies for the period January 1, 1993 through December 31, 1993. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as indicated above. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 22, 1996.

FOR FURTHER INFORMATION CONTACT: Christopher Cassel or Lorenza Olivas, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 16, 1980, the Department published in the **Federal Register** (45 FR 50739) the countervailing duty order on certain iron-metal castings from India. On October 7, 1994, the Department published a notice of "Opportunity to Request an Administrative Review" (59 FR 51166) of this countervailing duty order. We received a timely request for review from the Municipal Castings Fair Trade Council and individually-named members on October 24, 1994.

We initiated the review, covering the period January 1, 1993 through December 31, 1993, on November 14, 1994 (59 FR 56549). The review covers 14 manufacturers/exporters of the subject merchandise and six programs.

Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994. However, references to the Department's *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. *See* 60 FR 80 (Jan. 3, 1995).

Scope of the Review

Imports covered by the review are shipments of Indian manhole covers and frames, clean-out covers and frames, and catch basin grates and frames. These articles are commonly called municipal or public works castings and are used for access or drainage for public utility, water, and sanitary systems. During the review period, such merchandise was classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 7325.10.0010 and 7325.10.0050. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Verification

As provided in section 776(b) of the Act, we verified information provided by the Government of India and, six producers/exporters of the subject merchandise. We followed standard verification procedures, including meeting with government and company officials, and examination of relevant accounting and original source documents. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Calculation Methodology for Assessment and Cash Deposit Purposes

In accordance with *Ceramica Regiomontana, S.A.* v. *United States*, 853 F. Supp. 431 (CIT 1994), we calculated the net subsidy on a country-wide basis by first calculating the subsidy rate for each company subject to the administrative review. We then weight-averaged the rate received by each company using as the weight its share of total Indian exports to the United States of subject merchandise, including all companies, even those with *de minimis* and zero rates. We then summed the individual companies' weight-averaged rates to determine the subsidy rate from all programs benefitting exports of subject merchandise to the United States.

Since the country-wide rate calculated using this methodology was above *de minimis*, as defined by 19 CFR § 355.7 (1994), we proceeded to the next step and examined the net subsidy rate calculated for each company to determine whether individual company rates differed significantly from the weighted-average country-wide rate, pursuant to 19 CFR 355.22(d)(3). Two companies (Delta Enterprises and Super Iron Foundry) had significantly different net subsidy rates during the review period pursuant to 19 CFR 355.22(d)(3). The rate for these companies was zero. These companies are treated separately for assessment and cash deposit purposes. All other companies are assigned the country-wide rate.

Analysis of Programs

I. Programs Conferring Subsidies

A. Programs Previously Determined to Confer Subsidies

1. Pre-Shipment Export Financing. The Reserve Bank of India (RBI),

through commercial banks, provides pre-shipment financing, or "packing credits," to exporters. Upon presentation of a confirmed order or letter of credit, exporters may receive pre-shipment loans for working capital purposes, *i.e.*, for the purchase of raw materials and for packing, warehousing, and transporting of export merchandise. Exporters may also establish pre-shipment credit lines upon which they may draw as needed. Credit line limits are established by commercial banks, based upon the company's creditworthiness and past export performance. Companies that have pre-shipment credit lines typically pay interest on these loans on a quarterly basis on the outstanding balance of the account at the end of each period. In general, packing credits are granted for a period of up to 180 days.

In prior administrative reviews of this order, the Department found this program to be *de jure* specific, and thus countervailable, because receipt of pre-shipment export financing was contingent upon export performance and the interest rates were preferential. (*See e.g., Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India,* 56 FR 41658 (August 22, 1991); *Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India,* 56 FR 52515 (October 21, 1991 (*1987 and 1988 Indian Castings Final Results*). No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. During the POR, the rate of interest charged on pre-shipment export loans ranged from 13.0 percent to 15.5 percent, depending on the length and date of receipt of the loan.

The Government of India (GOI) classifies the companies under review as small-scale industry companies. Therefore, as we have done in past relevant cases, we used the small-scale industry short-term interest rates published in the August 1994 *Reserve Bank of India Annual Report 1993–94* as our benchmark. This rate was 15 percent during the POR for all categories of advances. We compared this benchmark to the interest rate charged on pre-shipment loans and found that for certain loans granted under this program, the interest rate charged was lower than the benchmark. The use of this benchmark rate is consistent with prior reviews of this order. (*See Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India,* 60 FR 44843 (*August 29, 1995) (1991 Indian Castings Final Results*)).

Eight of the fourteen respondent companies used pre-shipment export loans for shipments of subject castings to the United States during the POR. To calculate the benefit from the pre-shipment loans to these eight companies, we compared the actual interest paid on these loans with the amount of interest that would have been paid using the benchmark interest rate of 15 percent. If the benchmark rate exceeded the program rate, the difference between those amounts is the benefit. If a company was able to segregate pre-shipment financing applicable to subject merchandise exported to the United States, we divided the benefit derived from only those loans by total exports of subject merchandise to the United States. If a firm was unable to segregate pre-shipment financing, we divided the benefit from all pre-shipment loans by total exports. On this basis, we preliminarily determine the net subsidy from this program to be 0.13 percent *ad valorem* for all manufacturers and exporters in India of certain iron-metal castings, except for those firms listed below which have significantly different total subsidies from all programs combined. The net subsidy for those firms is as follows:

Manufacturer/Exporter	Rate (percent)
Delta Enterprises	0.00
Super Iron Foundry	0.00

2. *Post-Shipment Export Financing and Post-Shipment Credit Denominated in Foreign Currency (PSCFC).* The Reserve Bank of India, through commercial banks, provides post-shipment rupee denominated loans to exporters upon presentation of export documents. Post-shipment financing also consists of bank discounting of foreign customer receivables. In general, post-shipment loans are granted for a period of up to 180 days. The interest rate for post-shipment financing ranged from 13 to 18 percent during the POR. In the *1987 and 1988 Indian Castings Final Results*, the Department found this program to be specific, and thus countervailable, because receipt of the post-shipment export financing in rupees was contingent upon export performance and the interest rates were preferential. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

On January 1, 1992, the GOI amended the original post-shipment financing scheme and introduced the "Scheme for Post-Shipment Credit Denominated in Foreign Currency (PSCFC)." Under the amended scheme, exporters may discount foreign currency export bills at interest rates linked to the London Interbank Offering Rate (LIBOR). These loans are not provided to the borrower in the foreign currency, but allow the post-shipment credit liability of the exporter to be denominated in foreign currency, which is then liquidated with foreign currency export proceeds.

Upon presentation of the export bill, the bank will discount the bill for a period of up to 180 days at an interest rate determined by the RBI. The interest amount, calculated at the applicable foreign currency interest rate, will be deducted from the total amount of the bill, and the exporter's account will be credited for the rupee equivalent of the net foreign currency amount. Commercial banks are required to convert the net amount of the export bill drawn or expressed in U.S. dollars into rupees at a contracted exchange rate (if the exporter takes forward cover) or at the rate prevailing on the date of negotiation or discount by the bank. The exporter's credit liability will continue to be shown in U.S. dollars. If payment from the overseas customer is received within the due date for the loan, the exporter's account is considered fully liquidated or "crystallized". Where payment by the overseas customer is made beyond the due date, additional interest will be recovered from the exporter for the number of days payment is overdue. The additional interest amount is calculated in U.S. dollars for the delayed period at the overdue foreign currency interest rate set by the RBI. This amount is then converted into rupees at the commercial bank's prevailing selling rate of the U.S. dollar and deducted from the exporter's account.

Any exchange rate risk on the dollar amount of the bill (*i.e.*, gain or loss due to the change in value of the rupee vis-a-vis the dollar) will be borne by the commercial bank. If the overseas customer defaults, the exporter must repay the rupee equivalent of the export bill at the exchange rate prevailing on the date the payment of the export bill would have been due. During the POR, the discount rate charged on these bills ranged from 6.5 percent to 6.75 percent, while the overdue foreign currency interest rate was 8.5 percent. For overdue bills repaid beyond 180 days, the normal rupee interest rates apply. These rates ranged from 15 to 22 percent during the POR.

For reasons stated in the prior section for pre-shipment financing above, we are using the small-scale industry short-term interest rates published in the August 1994 *Reserve Bank of India Annual Report 1993–94* as our benchmark for short-term rupee denominated post-shipment loans. However, because loans under this program are discounted, and the effective rate paid by exporters on these loans is a discounted rate, we derived a benchmark discount rate of 13.04 percent for the POR.

Where loans are denominated in foreign currency, as is the case for PSCFC loans, our normal practice is to use a foreign currency benchmark, which would be the interest rate on alternative dollar-indexed loans in India. However, we have not been able to find such a benchmark, and must, therefore, use as a benchmark a rupee-denominated interest rate, adjusted to take into account movements in the rupee-dollar exchange rate over the term of the loan. In this situation, our preference would be to adjust the benchmark by the "expected" movement in the rupee/dollar exchange rate by comparing the spot rate on the day the bill was discounted with the forward exchange rate. Because we were unable to find forward exchange rates for the POR, we adjusted the benchmark used for rupee denominated post-shipment loans described above, by the actual movement in the rupee/dollar exchange rate over the period for which the export bill was discounted. Therefore, the adjusted benchmark varied for each PSCFC loan.

During the POR, 11 of the 14 respondent companies made payments on post-shipment export or PSCFC loans for shipments of subject castings to the United States. To calculate the benefit from these loans we followed the same short-term loan methodology discussed above for pre-shipment financing. We divided the benefit by either total exports or exports of the subject merchandise to the United States, depending on whether the company was able to segregate the post-shipment financing on the basis of destination of the exported good. On this basis, we preliminarily determine the net subsidy from this program to be 1.25 percent *ad valorem* for all manufacturers and exporters in India of certain iron-metal castings, except for those firms listed below which have significantly different total subsidies from all programs combined. The net subsidy for those firms is as follows:

Manufacturer/Exporter	Rate (percent)
Delta Enterprises	0.00
Super Iron Foundry	0.00

3. *Income Tax Deductions Under Section 80HHC.* Under section 80HHC of the Income Tax Act, the GOI allows exporters to deduct profits derived from the export of goods and merchandise from taxable income. In the *1987 and 1988 Indian Castings Final Results*, the Department found this program to *de jure* specific, and thus countervailable, because receipt of benefits was contingent upon export performance. No new information or evidence of changed circumstances has been submitted in this proceeeding to warrant reconsideration of this finding.

To calculate the benefit to each company, we subtracted the total amount of income tax the company actually paid during the review period from the amount of tax the company would have paid during the review period had it not claimed any deductions under section 80HHC. We then divided this difference by the value of the company's total exports. On this basis, we preliminarily determine the net subsidy from this program to be 3.64 percent for all manufacturers and exporters in India of certain iron-metal castings, except for those firms listed below which have significantly different total subsidies from all programs combined. The net subsidy for those firms is as follows:

Manufacturer/Exporter	Rate (percent)
Delta Enterprises	0.00
Super Iron Foundry	0.04

4. *Import Mechanisms.* The GOI allows companies to transfer certain types of import licenses to other companies in India. During the POR, producers/exporters of subject castings sold Additional Licenses, Replenishment Licenses, and Special Import Licenses. In prior administrative reviews of this order, we determined that the sale of these licenses by exporters is countervailable. *See* the *1987 and 1988 Indian Castings Final Results* and the *1991 Indian Castings Final Results.* No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

Because the sale of Special Import Licenses and Additional Licenses could not be tied to specific shipments, we calculated the subsidies by dividing the total amount of proceeds a company received from sales of these licenses by the total value of its exports of all products to all markets. Also, because sales of Replenishment Licenses can be tied to specific exports, we calculated the subsidies by dividing the amount of proceeds a company received from sales of Replenishment Licenses that was attributable to shipments of subject castings to the United States by the total value of the company's exports of subject castings to the United States. We do not consider the sale of Replenishment Licenses issued for non-subject merchandise to have benefitted exports of the subject merchandise.

We preliminarily determine the net subsidy from the sale of Additional, Special Import, and Replenishment Licenses to be 0.04 percent *ad valorem* for all manufacturers and exporters in India of certain iron-metal castings, except for those firms listed below which have significantly different aggregate benefits. The net subsidies for those firms are as follows:

Manufacturer/Exporter	Rate (percent)
Delta Enterprises	0.00
Super Iron Foundry	0.00

B. *New Programs Preliminarily Found to Confer Subsidies*

1. *Exemption of Export Credit from Interest Taxes.* At verification, the GOI and commercial bank officials explained that starting from September, 1991, commercial banks were required to pay a 3 percent tax on all interest accrued from borrowers. This tax is passed on to borrowers in its entirety. As of April 1, 1993, the GOI exempted from the interest tax all interest accruing or arising to any commercial bank on loans and advances made to any exporter as export credit. *See* the *1993 GOI Verification Report* at 6–7 and Exhibits EEPC–8, 9, 10 and 11 (October 30, 1995) (Public Document). Because only interest accruing or arising on loans and advances made to exporters in the form of export credit is exempt from the interest tax, we preliminarily determine this exemption to provide countervailable benefits to exporters. During the POR, eleven of the fourteen respondent companies made interest payments on export related loans, through the pre- and post-shipment financing schemes.

To calculate the benefit to each company, we first determined the total amount of interest paid by each producer/exporter of subject castings from April 1 to December 31, 1993, by adding all interest payments made on pre- and post-shipment loans after April 1, 1993. For the two companies that reported aggregate interest on pre- and post-shipment loans for the POR, and for which we were unable to determine what portion of the reported interest was paid after April 1, 1993, we

assumed that the company's interest payments were evenly distributed over each quarter of 1993, and, therefore, that 75 percent of the interest reported was paid in the last three quarters of 1993, *i.e.*, from April 1 through December 31. Next, we multiplied this amount by three percent, the amount of tax that the interest would have been subject to without the exemption. We then divided the benefit by the value of the company's total exports or exports of subject merchandise to the United States, depending on whether the export financing was on total exports or only exports of subject castings to the U.S. On this basis, we preliminarily determine the net subsidy from this program to be 0.06 percent *ad valorem* for all manufacturers and exporters in India of certain iron-metal casting, except for those firms listed below which have significantly different total subsidies from all programs combined. The net subsidy for those firms is as follows:

Manufacturer/Exporter	Rate (percent)
Delta Enterprises	0.00
Super Iron Foundry	0.00

2. *Imports Made Under an Advance License through the Liberalized Exchange Rate Management System (LERMS).* The Liberalized Exchange Rate Management System or LERMS, in effect from March 1, 1992 through February 28, 1993, was part of the GOI's economic liberalization efforts, aimed in part at achieving full convertibility of the rupee. Under the LERMS, the importation of goods under the Duty Exemption Scheme (with Advance Licences), was financed at two rates: 40 percent at the official RBI rate and 60 percent at the (higher) market determined rate. We verified that the LERMS was terminated effective February 28, 1993, after which all foreign exchange earnings and the financing of all imports was at the full market exchange rate. (See section II.1. below for a discussion of foreign exchange earnings under the LERMS).

While the LERMS was in effect, purchases of most imports are made at the market exchange rate. This applied to both exporters and non-exporters. An exception to this were goods imported under the Duty Exemption Scheme which permitted exporters holding an Advance License to purchase imports at dual exchange rates through February 28, 1993. Sixty percent of the value of the import was charged at the market rate and forty percent at the Reserve Bank determined official dollar/rupee exchange rate. The Advance License was the only license under which imports were charged at the 60/40 ratio. These licenses allow exporters to import products duty free, that are subsequently consumed in the production of exported goods. Castings exporters used Advance Licenses by the importation of pig iron consumed in the production of the subject merchandise.

The receipt of these licenses was previously determined to be not countervailable, because the Advance License operates as duty drawback scheme, and the drawback of import duties on raw materials consumed in the production of exported goods was found to be not excessive. *See* the *1991 Indian Castings Final Results*. However, Advance Licenses are issued to companies based on their status as exporters. As such, provisions under the LERMS which allow exporters to import goods at exchange rates more favorable than those available to non-exporters constitutes an export subsidy within the meaning of § 355.43(a)(1) of the Department's *Proposed Regulations*. Therefore, because the official rupee/dollar exchange rate was lower than the market rate during the POR, thereby lowering the cost of goods imported under an Advance License during January and February of 1993, we preliminarily determine the importation of goods under an Advance License at the 60/40 ratio to provide countervailable benefits to producers/exporters of the subject merchandise.

During the POR, three of the fourteen respondent companies made imports against an Advance License while the LERMS was still in effect. To calculate the benefit to each company, we subtracted the total amount the company paid in rupees for the imported goods from the amount they would have paid if the imports had been paid for at the higher market exchange rate. We then divided the benefit by the value of the company's total exports. On this basis, we preliminarily determine the net subsidy from this program to be 0.33 percent *ad valorem* for all manufacturers and exporters in India of certain iron-metal castings, except for those firms listed below which have significantly different total subsidies from all programs combined. The net subsidy for those firms is as follows:

Manufacturer/Exporter	Rate (percent)
Delta Enterprises	0.00
Super Iron Foundry	0.00

Because we verified that this program was terminated as of February 28, 1993, and there are no residual benefits, for cash deposit purposes, in accordance with section § 355.50 of the Department's *Proposed Regulations*, the deposit rate for this program will be zero.

II. Programs Preliminarily Found Not to Confer Subsidies

1. *Inward Exchange Remittances under the Liberalized Exchange Rate Management System (LERMS).* The Liberalized Exchange Rate Management System or LERMS, in effect from March 1, 1992 through February 28, 1993, was part of the GOI's economic liberalization efforts, partly aimed at achieving full convertibility of the rupee. Under the LERMS, all inward exchange remittances, *i.e.*, foreign exchange earnings, were converted into rupees either at the market exchange rate or at dual exchange rates: 40 percent at the official RBI rate and 60 percent at the (higher) market determined rate. We verified that the LERMS was terminated effective February 28, 1993, after which all foreign exchange remittances and the financing of all imports was at the full market exchange rate. (For a discussion of import financing under the LERMS, see I.B.2. above.) During January and February of 1993, while the LERMS was in effect, castings exporters converted all of their export earnings at the 60/40 exchange rate ratio described above.

Because all transactions by which Indian companies or individuals exchanged foreign currency into rupees while the LERMS was in effect were converted at the 60/40 exchange rate ratio or at the higher market exchange rate, we preliminarily determine that the export earnings of castings producers, converted at the dual exchange rates under LERMS, do not confer countervailable benefits with respect to the subject merchandise.

III. Programs Preliminarily Found Not To Be Used

We examined the following programs and preliminarily find that the producers/exporters of the subject merchandise did not apply for or receive benefits under these programs during the period of review:

1. Market Development Assistance (MDA)
2. Rediscounting of Export Bills Abroad
3. International Price Reimbursement Scheme (IPRS)
4. Cash Compensatory Support Program (CCS)
5. Pre-Shipment Financing in Foreign Currency (PSFC)

Preliminary Results of Review

For the period January 1, 1993 through December 31, 1993, we preliminarily determine the net subsidy to be zero or *de minimis* for Delta Enterprises and Super Iron Foundry, and 5.45 percent *ad valorem* for all other companies. In accordance with 19 CFR 355.7, any rate less than 0.5 percent *ad valorem* is *de minimis*.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to assess the following countervailing duties:

Manufacturer/Exporter	Rate (percent)
Delta Enterprises	0.00
Super Iron Foundry	0.00
All Other Companies	5.45

The Department also intends to instruct the U.S. Customs Service to collect a cash deposit of estimated countervailing duties of zero percent of the f.o.b. invoice price on all shipments of the subject merchandise from Delta Enterprises and Super Iron Foundry, and 5.13 percent of the f.o.b. invoice price on all shipments of the subject merchandise from all other companies.

Public Comment

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR § 355.38(c), are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR § 355.22.

Dated: May 14, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–12871 Filed 5–21–96; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

[Docket No. 950314073–6067–02]

RIN 0693–ZA07

Approval of Federal Information Processing Standards Publication 161–2, Electronic Data Interchange (EDI)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce that the Secretary of Commerce has approved a revision of Federal Information Processing Standard (FIPS) 161–1, Electronic Data Interchange (EDI), which will be published as FIPS Publication 161–2. This revision reflects changes in the development of voluntary industry standards for Electronic Data Interchange (EDI), including the planned alignment of the X12 and UN/EDIFACT families of standards, and provides updated guidance to Federal agencies in the selection of EDI standards. The revision adopts the HL7 standards for EDI as an alternative for certain healthcare applications. It also establishes a Federal EDI Standards Management Committee to harmonize the development of EDI transaction set and message standards among Federal agencies, and the setting of governmentwide implementation conventions for EDI applications used by Federal agencies. FIPS PUB 161–2 supersedes FIPS PUB 161–1 in its entirety. The announcement section of FIPS 161–2 is provided in this notice.

On April 3, 1995, notice was published in the **Federal Register** (60 FR 16854–16857) that a revision of Federal Information Processing Standard (FIPS) 161–1, Electronic Data Interchange (EDI), was being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NIST. On the basis of this review, NIST recommended that the Secretary approve the revised standard as Federal Information Processing Standards Publication (FIPS PUB) 161–2, and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

EFFECTIVE DATE: FIPS PUB 161 was effective September 30, 1991.

ADDRESSES: Interested parties may purchase copies of the announcement section of FIPS 161–2 from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the standard.

Documents defining both the X12 and EDIFACT families of standards are available from DISA, Inc. or from its named contractor. DISA, Inc. serves as the secretariat for Accredited Standards Committee (ASC) X12 and the Pan American EDIFACT Board (PAEB) and its address and phone number are as follows: Data Interchange Standards Association, Inc. (DISA, Inc.), 1800 Diagonal Road, Suite 200, Alexandria, VA 22314–2852. Telephone (703) 548–7005.

HL7 documents are available from: Health Level Seven, Inc., 3300 Washtenaw Avenue, Suite 227, Ann Arbor, MI 48104. Telephone (313) 677–7777.

FOR FURTHER INFORMATION CONTACT: Mr. Roy Saltman, telephone (301) 975–3376, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Dated: May 16, 1996.

Samuel Kramer,

Associate Director.

Federal Information Processing Standards Publication 161–2, 1996 Month Day, Announcing the Standard for Electronic Data Interchange (EDI)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 5131 of the Information Technology Management

Reform Act of 1996 and the Computer Security Act of 1987, Public Law 104–106.

1. Name of Standard. Electronic Data Interchange (EDI) (FIPS PUB 161–2).

2. Category of Standard. Electronic Data Interchange.

3. Explanation.

3.1. Definition and Use of EDI. EDI is the computer-to-computer interchange of strictly formatted messages that represent documents other than monetary instruments. EDI implies a sequence of messages between two parties, either of whom may serve as originator or recipient. The formatted data representing the documents may be transmitted from originator to recipient via telecommunications or physically transported on electronic storage media.

In EDI, the usual processing of received messages is by computer only. Human intervention in the processing of a received message is typically intended only for error conditions, for quality review, and for special situations. For example, the transmission of binary or textual data is not EDI as defined here unless the data are treated as one or more data elements of an EDI message and are not normally intended for human interpretation as part of on-line data processing.

An example of EDI is a set of interchanges between a buyer and a seller. Messages from buyer to seller could include, for example, request for quotation (RFQ), purchase order, receiving advice and payment advice; messages from seller to buyer could include, similarly, bid in response to RFQ, purchase order acknowledgment, shipping notice and invoice. These messages may simply provide information, e.g., receiving advice or shipping notice, or they may include data that may be interpreted as a legally binding obligation, e.g., bid in response to RFQ or purchase order.

EDI is being used also for an increasingly diverse set of concerns, for example, for interchanges between healthcare providers and insurers, for travel and hotel bookings, for education administration, and for government regulatory, statistical and tax reporting.

3.2. Standards Required for EDI. From the point of view of the standards needed, EDI may be defined as an interchange between computers of a sequence of standardized messages taken from a predetermined set of message types. Each message is composed, according to a standardized syntax, of a sequence of standardized data elements. It is the standardization of message formats using a standard syntax, and the standardization of data elements within the messages, that makes possible the assembling, disassembling, and processing of the messages by computer.

Implementation of EDI requires the use of a family of interrelated standards. Standards are required for, at minimum: (a) the syntax used to compose the messages and separate the various parts of a message, (b) types and definitions of application data elements, most of variable length, (c) the message types, defined by the identification and sequence of data elements forming each message, and (d) the definitions and sequence of control data elements in message headers and trailers.

Additional standards may define: (e) a set of short sequences of data elements called data segments, (f) the manner in which more than one message may be included in a single transmission, and (g) the manner of adding protective measures for integrity, confidentiality, and authentication into transmitted messages.

3.3. Limited Coverage of this Standard. This FIPS covers only EDI. It does not cover other forms of electronic interchange, for example, systems of interchange that do not consist of messages taken from a predetermined set. Additionally, an interchange application including only one or two predetermined message types using only fixed-length data elements is excluded from coverage of this FIPS. This FIPS also is not intended to cover transmissions from medical, laboratory, or environment-sensing instrumentation.

3.4. The Long-Range Goal for EDI Standards. There are several different EDI standards in use today, but the achievement of a single universally-used family of EDI standards is a long-range goal. A single universally-used family of standards would make use of EDI more efficient and minimize aggregate costs of use. Specifically, it would (a) minimize needs for training of personnel in use and maintenance of EDI standards, (b) eliminate duplication of functionality and the costs of achieving that duplication now existing in different systems of standards, (c) minimize requirements for different kinds of translation software, and (d) allow for a universal set of data elements that would ease the flow of data among different but interconnected applications, and thereby maximize useful information interchange.

This FIPS PUB recognizes the reality that some families of EDI standards were developed to provide solutions to immediate needs, and that inclusion of the goal of universality in their development would have unacceptably delayed their availability. However, a future is envisioned in which the benefits of universality outweigh the sunk costs in specialized solutions, leading first to cooperation among standards developers, then to harmonization of standards, and eventually to a single universally accepted family of EDI standards.

3.5. Adoption of Specific Families of Standards. This FIPS PUB adopts, with specific conditions specified below, the families of EDI standards known as X12, UN/EDIFACT and HL7. This FIPS PUB does not mandate the implementation of EDI systems within the Federal Government; rather it requires the use of the identified families of standards with specified constraints when Federal departments or agencies implement EDI systems.

The UN/EDIFACT standards may be used for any application, domestic or international. The X12 standards may be used for any domestic application. The HL7 standards are adopted as an alternative for certain healthcare applications, specifically for transmission of patient records and of clinical, epidemiological, and regulatory data. HL7 standards are not to be used for healthcare insurance administrative applications, such as for enrollments, claims, and claim payments, or for any aspect of the Government procurement cycle, such as for registration of vendors, RFQ, purchase order, shipping notice, or payment advice.

The cross-use of data elements is encouraged. A data element received through one system of EDI standards, or through a non-EDI interchange, may be re-transmitted as a data element in any of the approved systems of EDI standards.

The adopted standards were developed by the following organizations: the X12 standards by Accredited Standards Committee X12 on Electronic Data Interchange (ASC X12), accredited by the American National Standards Institute (ANSI); the HL7 standards by Health Level Seven, Inc., an ANSI-accredited standards developer; and the UN/EDIFACT standards by the United Nations (UN) Economic Commission for Europe—Working Party (Four) on Facilitation of International Trade Procedures (UN/ECE/WP.4). Technical input from the United States in the development of UN/EDIFACT at the UN is through the Pan American EDIFACT Board (PAEB). The PAEB is separate from ASC X12, and it serves as the coordinating body for national standards organizations of North, Central, and South America.

3.6. Status of this FIPS PUB Revision. FIPS PUB 161–2 supersedes FIPS PUB 161–1 in its entirety. FIPS PUB 161–2 contains editorial changes, updated references to documents and organizations, and new guidance to agencies on the selection of national and international standards and implementation conventions. This guidance is based on recent voluntary industry standards activities and on the Federal Government initiative that commenced with the Presidential Memorandum of October 26, 1993 entitled "Streamlining Procurement Through Electronic Commerce."

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. U.S. Department of Commerce, National Institute of Standards and Technology (NIST), Computer Systems Laboratory.

6. Cross Index and Related Documents.

6.1. Cross Index.

—FIPS PUB 146–2, Profiles for Open Systems Internetworking Technologies, May 1995.

6.2. Related Documents.

—ASC X12W/95–137, The ASC X12 Plan for Technical Migration to and Administrative Alignment With UN/EDIFACT (amended), 5/8/95.

—NIST Special Publication 500–224, Stable Implementation Agreements for Open System Environment, Version 8, Edition 1, 12/94.

—NIST Special Publication 800–9, Good Security Practices for Electronic Commerce, Including Electronic Data Interchange, 12/93/.

—Office of Management and Budget (OMB) Circular A–119 (revised), Federal Participation in the Development and Use of Voluntary Standards, 10/93.

—UN/ECE/WP.4—Recommendation No. 25 on the Use of the UN/EDIFACT Standard, 9/95.

6.3. Sources of Documents. For the source of cited NIST publications, including FIPS PUBS, see Section 13. For the source of X12, UN/EDIFACT and HL7 documents, see Subsection 10.1.

7. Objectives. The primary objectives of this standard are:

a. to ease the interchange of data sent electronically by use of common standards that allow for automated message processing;

b. to promote the achievement of the benefits of EDI: reduced paperwork, fewer transcription errors, faster response time for procurement and customer needs, reduced inventory requirements, more timely payment of vendors, and closer coordination of data being processed on different computers for the same application;

c. to promote migration to a universally used family of EDI standards, in order to further Government efficiency and to minimize the cost of EDI implementation by preventing duplication of effort.

8. Applicability.

8.1. Conditions of application. EDI may be employed with any type of operational data representable as a sequence of data elements that is needed to be transmitted or received on a repetitive basis by a Federal agency in the course of its activities. This standard is applicable to the interchange of such data on a particular subject within a Federal agency, or between a Federal agency and another organization (which may be another Federal agency), if (1) The data are to be transmitted electronically or physically transported between computers using EDI, and (2) the necessary standard messages meeting the data requirements of the Federal agency for the subject of the interchange have been developed and approved, and are acceptable for use under the conditions set forth in this FIPS PUB.

8.2. Subject Matter. Examples of applications (not necessarily the subject of current standards) are:

a. vendor search and selection: price/sales catalogs, bids, proposals, requests for quotations, notices of contract solicitation, debarment data, trading partner profiles;

b. contract award: notices of award, purchase orders, purchase order acknowledgments, purchase order changes;

c. product data: specifications, manufacturing instructions, reports of test results, safety data;

d. shipping, forwarding, and receiving: shipping manifests, bills of lading, shipping status reports, receiving reports;

e. customs: release information; manifest update;

f. payment information: invoices, remittance advices, payment status inquiries, payment acknowledgments;

g. inventory control: stock level reports, resupply requests, warehouse activity reports;

h. maintenance: service schedules and activity, warranty data;

i. tax-related data: tax information and filings;

j. insurance-related data: healthcare claim; mortgage insurance application;

k. other government activities: communications license application; court conviction record; hazardous material report; healthcare event report.

9. Coordination of Federal EDI Standards Development and Implementation.

9.1. Federal EDI Standards Management Coordinating Committee. There is established a Federal EDI Standards Management Coordinating Committee (FESMCC). The FESMCC is established to support the goal of a single face for the Federal Government to its trading partners in the use of EDI.

9.1.1. A responsibility of the FESMCC is the selection of implementation conventions (ICs) to be used with EDI interchanges between the Federal Government and its trading partners. EDI messages (also called transaction sets) are approved by standards committees with allowances for format options, in order to widen the applicability of the standards to different uses. The purpose of ICs is to select specific options in EDI standards so that interchanges are completely determined in format in advance of use.

9.1.2. The basic functions of the FESMCC are:

(a) to adopt Government-wide ICs for use with EDI standards; the goal is adoption of one IC for each functional application of a message or transaction set within a given version/release of an EDI standard;

(b) to coordinate Federal agency participation in EDI standards bodies, to assure adequate consideration of the Government's business needs and to assure consistency of position; and

(c) to share EDI information among agencies regrading current or planned implementations to avoid duplicate efforts and streamline the process.

9.1.3. Voting membership in the FESMCC shall consist of, at minimum, one representative from each participating Federal Executive Branch department and independent agency using or planning to use EDI, plus a representative from NIST. The FESMCC, under its charter and operating rules (see Subsection 9.1.5), may add additional voting representatives, including those from the other branches of the Federal Government. The chair of the FESMCC shall be elected by its membership and approved by OMB.

9.1.4. The FESMCC shall establish a secretariat in order to maintain an official registry of approved and draft ICs, provide controlled access to the registry including electronic remote access capability, provide a point of contact for publicizing draft ICs and receiving comments on them, provide a single point for submission of work requests to standards bodies, and for related functions.

9.1.5. The FESMCC shall establish a charter and operating rules to assist it in carrying out its identified functions.

9.2. Functional Work Groups.

9.2.1. The FESMCC may establish Functional Work Groups (FWGs) to consider and recommend ICs in subject

areas. Examples of subject areas are procurement, finance, logistics, and healthcare. Requirements for voting membership shall be established by the FESMCC under its charter and operating rules. The voting members shall elect a chair.

9.2.2. Each FWG shall recommend, to the full FESMCC, ICs that it has developed and approved as meeting Federal Government and trading partner business requirements. FWGs should consult with appropriate industry groups in the development of ICs.

9.3. Agency Responsibilities.

9.3.1. Agencies shall register ICs that they are using with the FESMCC secretariat.

9.3.2. Agencies using X12, UN/EDIFACT, or HL7 versions and releases for which ICs have been established by the FESMCC shall adopt those ICs. If an IC does not meet business needs, requirements shall be submitted to the FESMCC. ICs shall be classified as Implementer's Agreements pursuant to this FIPS PUB, but are not themselves FIPS PUBs.

9.3.3. Agencies using or planning to use EDI shall designate representatives to the FESMCC and each relevant FWG.

9.3.4. Agencies requiring new EDI standards or changes to existing EDI standards to meet their business needs shall submit their requirements to the appropriate standards bodies and shall simultaneously submit their requirements to the FESMCC and relevant FWGs for coordination. Procedures and forms for submission of new requirements through ASC X12 are specified in Standing Document (SD) 2, Operations Manual, and SD6, Operations Manual for UN/EDIFACT Standards. These manuals are available from Data Interchange Standards Association, Inc. (DISA, Inc.). Procedures and forms for submission of new requirements for UN/EDIFACT standards directly through the PAEB are also available from DISA, Inc. HL7 operating procedures are specified in its bylaws, available from Health Level Seven, Inc.

10. Specifications. Documents are available that define the X12, UN/EDIFACT, and HL7 standards and provide information about the standards organizations and their standards development processes. Developments are continuing in each of these families of standards.

10.1. Source of Documents. Documents concerning both the X12 and UN/EDIFACT families of standards are available from DISA, Inc. or from its named contractor. DISA, Inc. serves as the secretariat for ASC X12 and the PAEB and may be contacted at:

Address: Data Interchange Standards Association, Inc., 1800 Diagonal Road—Suite 200, Alexandria, VA 22314–2852,
Phone: (703) 548–7005

A list of available standards publications, as well as descriptive material, prices and ordering procedures, may be found in the most recent DISA, Inc. Publications Catalog.

HL7 documents are available from:

Address: Health Level Seven, Inc., 3300 Washtenaw Avenue, Suite 227, Ann Arbor, MI 48104,
Phone: (313) 677–7777

10.2. ASC X12 Documents. X12 standards are published periodically with revisions and updates, and standards included in a publication may have one of two possible statuses:

(1) Draft Standards for Trial Use (DSTUs); these are fully approved by ASC X12, and are typically published as "releases" at one-year intervals. DSTU Version 3, Release 4, identified as 003040, was published in 12/93; Version 3, Release 5, identified as 003050, was published in 12/94. The next release, identified as 003060, is available as of 1/96.

(2) American National Standards (ANSs); these are fully approved by ASC X12 and by ANSI, and are typically published as "versions" at intervals of three to five years. ANS Version 3, 3/92, is functionally equivalent to DSTU Version 2, Release 4. It is expected that ANS Version 4, planned for 1997, will be functionally equivalent to DSTU Version 3, Release 7, identified as 003070.

10.3. UN/EDIFACT Documents. UN/EDIFACT standards are published periodically with revisions and updates, and standards included in a publication may have one of two possible statuses:

(1) Status 1, approved for trial use. A set of documents identified as UN/EDIFACT Draft Messages and Directories, Version D.95A, was published in 5/95. This document also included Status 2 messages. A new set of standards, identified as D.95B and also including Status 2 messages, was approved in 9/95.

(2) Status 2, fully approved by UN/ECE/WP.4. The set of Status 2 documents may be referred to as the UN Trade Data Interchange Directory (UNTDID). The last published version of Status 2 standards only, S.93A, was issued in 5/94. See also Subsection 11.4 for additional information on UN/EDIFACT Status 2.

10.4. HL7 Documents. HL7 standards are published as a single volume. The current set is Version 2.2, published 12/94. A new Version 2.3 is planned for Fall 1996. HL7 standards also have one of two possible statuses:

(1) HL7 standards, approved by the membership of HL7 but not yet approved by ANSI.

(2) American National Standards (ANSs); these are fully approved by HL7 and by ANSI.

11. Implementation.

11.1. Schedule for Adoption. FIPS PUB 161 was effective on September 30, 1991. Federal agencies that are not using EDI for subject matter for which X12, UN/EDIFACT, and HL7 standards have been approved and issued shall utilize only those standards in EDI systems that they procure or develop, subject to the qualifications of Subsections 3.5, 11.3, 11.4 and 11.5. Agencies that are using those standards shall continue to do so, subject to the same qualifications. Agencies that were using other standards on or after September 30, 1991 shall be governed by Subsection 11.6.

11.2. Acceptance of UN/EDIFACT by ASC X12. In January 1995, ASC X12, by a membership vote, approved the *ASC X12 Plan for Technical Migration to and Administrative Alignment With UN/EDIFACT*. This plan was modified at the February 1995 plenary meeting of ASC X12. Key features of the modified Alignment Plan are:

(1) Draft standards based on X12-syntax or on UN/EDIFACT syntax may be submitted by ASC X12 to ANSI for processing as ANSs.

(2) X12 Release 003070 shall form the basis of Version 4 of draft proposed X12 American National Standards (ANSs).

(3) After the release of Version 4, ASC X12 shall continue for a period of time, in accordance with the plan, to develop, maintain, approve and publish X12-syntax transaction sets and supporting documents.

(4) An ASC X12 ballot shall be conducted in 1998 to determine if X12-syntax transaction set development should be terminated. If the ballot for termination is not approved, a three-year repeating cycle shall occur thereafter, until no new X12-syntax transaction sets are being developed.

11.3. Selection of a Family of Standards.

11.3.1. Different families of EDI standards are distinct, although performing similar functions; the existence of one does not preclude the others. Equivalent functionality may be obtained in any system by the addition, if required, of new or revised message formats and data elements. Software that assembles and disassembles messages and transaction sets, called translation software, is widely available, often for more than one system in the same package. In selecting a family of standards for domestic applications, agencies should attempt to maximize Government economy and efficiency and to minimize the costs imposed on U.S. businesses.

11.3.2. For any domestic application with a non-Government partner, and for related intra-Government applications, selection of a family of standards shall take into account the prevailing family used in the industry of the interchange partners for the application. However, UN/EDIFACT standards shall be employed for new or significantly upgraded interchanges in the absence of demonstrably higher costs, or at the request of interchange partners providing a significant fraction of interchange traffic. Continued long-term use and maintenance of more than one family of standards is unacceptably inefficient.

11.3.3. For international applications except as specified in Subsection 11.3.4, planning for migration to the UN/EDIFACT family of standards shall commence at this time if that family is not currently being used. A timetable for conversion to UN/EDIFACT of existing international implementations shall be set as applicable standards and software become available. New or significantly upgraded interchanges shall employ only standards using UN/EDIFACT.

11.3.4. The HL7 family of standards may be used for international applications in the fields of public health and health regulatory information, pursuant to agreements of international organizations whose membership includes representation of national or multi-national governmental health agencies. However, users shall coordinate with the developers of UN/EDIFACT, in order to prevent duplication of effort, provide for cross-use of data elements, and provide a path for harmonization and eventual migration or coalescence.

11.4. Use of Category (1) Standards. UN/EDIFACT Status 1 standards, X12 DSTUs, and HL7 standards not yet approved by ANSI are defined as Category (1) standards. UN/EDIFACT Status 2 standards and ANSs submitted by ASC X12 and HL7 are defined as Category (2) standards. Federal agencies shall use only Category (1) or Category (2) standards for EDI implementations. Industry practice is to use Category (1) standards; these represent the latest consensus and are available sooner than the corresponding full standards of Category (2). Consequently, Category (1) standards are preferred, but not mandated at this time. Note: There is a possibility that UN/EDIFACT Status 2 standards will be eliminated by UN/ECE/WP.4. In that case, UN/EDIFACT Status 1 standards would be required when UN/EDIFACT is implemented.

11.5. Continued Use of Existing Approved Implementations. An existing implementation of any version of an approved standard specified in Subsections 3.5, 11.3 and 11.4 may continue to be used as long as it continues to meet the business needs of the using agency and its interchange partners. Significant upgrades of existing implementations shall be to versions and releases for which ICs have been approved by the FESMCC, if any are available.

11.6. Continued Use of Other EDI Standards. Under the initial issue of this FIPS, Federal agencies using "industry-specific" EDI standards were permitted to use those standards for five years from September 30, 1991, i.e., until September 30, 1996. Agencies were permitted to use "industry-specific" EDI standards beyond five years only if no equivalent X12 or UN/EDIFACT standards, as appropriate, were approved and issued by September 30, 1995. If an equivalent and appropriate standard were issued after the latter date, agencies were given one year to convert. These provisions remain in effect for all application areas except health care.

For healthcare applications, agencies may use EDI standards other than UN/EDIFACT, X12, or HL7 through September 30, 1997. Other standards may be used beyond that date only if no functionally equivalent standards that meet the conditions of use specified in Subsections 3.5, 11.3 and 11.4 are approved and issued by September 30, 1996. If a Category (1) standard meeting business requirements and allowable conditions of use is first issued after the latter date, agencies have one year to convert following the issuance of the release containing the implementable standard.

Requirements for submission of proposed new or revised standards are specific in Subsection 9.3.4.

11.7. Security and Authentication. Agencies shall employ risk management techniques to determine the appropriate mix of security controls needed to protect specific data and systems. The selection of controls shall take into account procedures required under applicable laws and regulations.

Optional tools and techniques for implementation of security and authentication may be provided by ASC X12 and UN/ECE/WP.4 for use in connection with their respective families of standards. Agencies may utilize these tools and techniques, and/or they may utilize other methods in systems supporting the EDI data interchange. Methods and procedures implemented shall be consistent with applicable FIPS PUBS and guidance documents issued in NIST.

12. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to Section 3506(a) of Title 44, U.S. Code.

Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse affect the accomplishment of the mission of an operator which is not offset by Government-wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; Attn: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Reform and Oversight of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall he part of the procurement documentation and retained by the agency.

13. Where to Obtain Copies of NIST Publications. Copies of this publication and NIST publications referenced in Section 6 are for sale by the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161; phone (703) 487–4650. When ordering this publication, refer to Federal Information Processing Standards Publication 161–2 (FIPSPUB161–2), and title. Payment may be made by check, money order, or NTIS deposit account.

[FR Doc. 96–12748 Filed 5–21–96; 8:45 am]
BILLING CODE 3510–CN–M

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

[Docket No. 960516134–6134–01]

RIN 0648–ZA23

Financial Assistance for the Pribilof Environmental Restoration Program.

AGENCY: Office of Administration (OA), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings and availability of federal assistance.

SUMMARY: NOAA issues this notice describing the procedures under which applications will be accepted, and how NOAA will determine which applications it will fund for environmental restoration work to be completed on the Pribilof Islands, Alaska. Pursuant to Public Law 104–91 (PL 104–91), section 3(d) requires the use of local entities and residents of the Pribilof Islands, to the maximum extent practical for completion of environmental restoration work to be performed. Applications will be solicited for projects as defined in the Two-Party Agreement executed between NOAA and Alaska Department of Environmental Conservation (ADEC), State of Alaska. A copy of the Two-Party Agreement is included in the NOAA Application kit for this program. This notice implements Part I of two parts: Part I being environmental restoration work to commence in fiscal year 1996 (FY96), and Part II environmental restoration work to commence in FY97 and beyond. Public Law 104–91 section 3(f) authorized a maximum of $10,000,000.00 to be appropriated in fiscal years 1996, 1997, and 1998 to carryout all of purposes identified under P.L. 104–91. The FY96 appropriations act makes $10,000,000 available for this year. From this amount, approximately $2,500,000 will be available for cooperative agreements awarded to implement Part I.

DATES: A public meeting to discuss general pre-award requirements for this Federal assistance program will be held on St. George Island, Alaska on May 21, 1996 from 3:00 p.m. to 5:00 p.m. at the St. George Recreation Hall. A public meeting will also be held on St. Paul Island, Alaska on May 22, 1996 from 3:30 p.m. to 5:30 p.m. at the St. Paul Recreation Hall.

Complete applications must be received or postmarked by [Insert 45 days from the date of this notice]. Applicants must submit one signed original and two copies of the complete application. No facsimile applications will be accepted. Generally, the time required to process applications is 60 days from the closing date of the solicitation.

ADDRESSES: Applications should be sent to Western Administrative Support Center (WASC), Facilities and Logistics Division, 7600 Sand Point Way NE, Seattle, WA 98115. Telephone: (206) 526–4434 or (206) 526–6160. Application kits, with instructions for completion and copies of the Two-Party Agreement, may be obtained from the NOAA Grants Management Division, SSMC2, Room 5416, 1325 East West Highway, Silver Spring, MD 20910. Telephone (301) 713–0942.

FOR FURTHER INFORMATION CONTACT: For questions regarding grants management policies and interpretation contact: Steve Drescher at (301) 713–0942. For information regarding technical aspects of specific projects: Thanh Minh Trinh at (206) 526–6647 or Anthony Mercadante at (206) 526–6674.

SUPPLEMENTARY INFORMATION: A Catalog of Federal Domestic Assistance (CFDA) number for this program will be requested. Part I of this program will proceed concurrently with NOAA's request for inclusion of this program in the CFDA.

I. Introduction

A. Background

Under the provisions of Public Law 104–91, the Secretary of Commerce shall, subject to the availability of appropriations, provide assistance for the cleanup of landfills, wastes, dumps, debris, storage tanks, property, hazardous or unsafe conditions, and contaminants including petroleum products and their derivatives, on lands which the U.S. Government abandoned, quitclaimed, or otherwise transferred or are obligated to transfer, to local entities or residents on the Pribilof Islands, Alaska pursuant to the Fur Seal Act of 1966 (16 U.S.C. 1151 et seq.), as amended, or other applicable law.

Work to commence in FY96 under section one of this notice will include (a) Surface Debris Removal on both St. Paul and St. George Islands, and (b) Underground Storage Tank Removal on both St. Paul and St. George Islands.

B. Funding

NOAA issues this notice to solicit applications for federal assistance, describing the intent to award cooperative agreements, the procedures under which applications will be accepted for Part I and how NOAA will select the applications it will fund.

Sharing of project costs by applicants is not required and will not be considered in the technical evaluation of proposals.

II. Funding Priorities

Part I of this Program will be on the removal and disposal/recycling of surface debris as per the Two Party Agreement referenced above.

Greatest consideration will be given to applications that will promote the economic stability or future self-sufficiency of the recipient.

III. How To Apply

A. Eligible Applicants

Applications for cooperative agreements may be made in accordance with the procedures set forth in this notice, by any local entity or resident of the Pribilof Islands, as defined in the Fur Seal Act of 1966 (16 U.S.C. 1151 et seq.), as amended, and who is a citizen or national of the United States.

Federal Government employees including full-time, part-time, and intermittent personnel are not eligible to submit an application under this solicitation.

Assistance from NOAA employees is available to eligible applicants, by telephone and will be limited to such issues, as the program goals, funding, priorities and application forms. *Since this is a competitive program, assistance will not be provided in conceptualizing, developing, or structuring competitive proposals.*

B. Duration and Terms of Funding

Generally, cooperative agreements are awarded for a period of 1 year, but no more than 18 months.

If an application for an award is selected for funding, the Department has no obligation to provide any additional future funding in connection with that award. Amendments to increase funding or extend the period of performance is at the discretion of the Department.

Publication of this announcement does not obligate NOAA to award any specific grant or cooperative agreement

or to obligate any part of the entire amount of funds available.

C. Format

Applications for project funding must be complete, and must identify the principal participants and include copies of any agreements between the participants and the applicant describing the specific tasks to be performed. Project applications must respond to priorities contained in section II of this document. Project applications must be submitted in the format that follows:

1. Cover sheet: An applicant must use Standard Form 424 (revised 4–92) as a cover sheet for each project. The forms are included in the NOAA Application kit.

2. Project Budget: A budget must be submitted for each project, using SF–424A (Rev. 4/92), Budget Information Non-Construction Programs. The applicants must submit cost estimates of the direct total project costs. Estimates of the direct costs must be specified in the categories listed on the SF–424A. A budget narrative/detail must also be provided as described in the NOAA Application Kit. The budget may also include an amount for indirect costs, if the applicant has an established indirect cost rate with the Federal Government. A copy of the current, approved, negotiated indirect cost Agreement with the Federal Government must be included with the application. The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less. This restriction also applies to any subrecipient of this program.

Fees or profits are not allowable costs under the awards.

The total costs of the project consist of all costs to accomplish the objectives of the project during the period the project is conducted. A project begins on the effective date of an award and ends on the date specified in the award. Only costs incurred during the award period shall be considered allowable, allocable and reasonable. Accordingly, *the time expended and costs incurred in either the development of a project or the financial assistance application, or in any subsequent discussions or negotiations prior to awards, are not reimbursable.*

3. Project Narrative Description: The project must be completed and accurately described, as follows:

a. Executive Summary. Provide a brief discussion on the nature of the problem, the location of the project, and a historical/background information as it relates to the project.

b. Project Objectives: State what the proposed project is expected to accomplish, and describe how this will eliminate or reduce the problem(s) described in 3.a. above.

c. Participation in the project or any part thereof by Persons or Groups Other Than the Applicant: Describe the nature of such participation.

d. Federal, State, and Local Government Coordination/Activities: List any existing Federal, state, or local government programs or activities that this project would affect, including activities under state Coastal Zone Management Plans and those requiring consultation with Federal Government under the Endangered Species Act and the Marine Mammal Protection Act. Describe the relationship between the project and these plans or activities.

e. Project Work Plan: The Work Plan statement of work is an action plan of activities to be conducted during the period of the project. This section requires the applicant to prepare a detailed narrative, fully describing the work to be performed that will achieve the previously articulated objectives. A milestone chart that outlines major goals, supporting work activities, and time frame, and individuals responsible for various work activities may be used to describe the work to be performed. The narrative should include information that responds to the following questions:

(1) How will the project be designed? What design incurred in the performance of project tasks to criteria will be used? (e.g., pertinent regulatory compliance such as environmental and safety regulations, cost and technology effectiveness, and etc.)

(2) What will be accomplished? (e.g., removal and salvaging of surface debris)

(3) What work, activities or procedures (be specific as possible) will be undertaken to accomplish the project objectives?

(4) Who will be responsible for carrying out the various activities? (Highlight work that will be subcontracted and provisions for competitive subcontracting). All key personnel and subcontracts proposed by the applicant are subject to the review and approval of NOAA. NOAA will maintain a high level of substantial involvement during the project period to ensure compliance by the recipient and its subcontractors with all statutory requirements, including environmental compliance.

(5) Which regulations govern the proposed type of work (e.g., state or federal? Environmental or Safety?, ADEC's Soil Remediation or Solid Waste regulations?) and project objectives? Who will be responsible for ensuring that the proposed project activities and objectives satisfy the governing regulations?

(6) The narrative/milestone chart should graphically illustrate:

(a) Steps to accomplish the major activities;

(b) Critical path(s), supporting activities, and associated time lines (e.g., month 1, month 2); and

(c) The individual(s) responsible for the various activities. This information is critical to understanding and reviewing the application. NOAA encourages applicants to provide sufficient detail. Applications lacking sufficient detail will be eliminated from further consideration.

f. Project Management and Personnel Qualifications: Describe how the project will be organized and managed. Provide an organizational chart and line of communication. List all persons directly employed by the applicant who will be involved in the project, their qualifications, experience, and level of involvement in the project. If any portion of the project will be conducted through consultants and/or subcontractors, applicants, as appropriate, must follow procurement guidance in 15 CFR part 24, "Grants and Cooperative Agreements to State or Local Governments", or OMB Circular A–110 for Institutions of Higher Education, Hospitals, and other Non-profit Organizations, Commercial Organizations and individuals. If a consultant and/or subcontractor is selected prior to the submission of an application, include the name and qualifications of the consultant and/or subcontractor and the process used for selection.

IV. Evaluation of Proposed Projects

NOAA will solicit technical evaluations of each project application from a Source Evaluation Board composed of appropriate public sector experts. Individual point scores will be given to project applications, based on the following criteria:

1. Problem Description and Conceptual Approach for Resolution. Both the applicant's comprehension of the problem(s) and the overall concept proposed to resolve the problem(s) will be evaluated. (25 points)

2. Soundness of Project Design/ Technical Approach. Applications will be evaluated to determine whether or not the applicant provided sufficient

information to evaluate the project technically and, if so, the strengths and/or weaknesses of the technical design proposed for problem resolution. (25 points)

3. Project Management and Experience and Qualification of Personnel. The organization and management of the project, and other key personnel in terms of related experience and qualifications will be evaluated. Those projects that do not identify the key personnel or project manager with his or her qualifications will receive a lower point score. (20 points)

In reviewing and evaluating applications that include consultants and subcontracts, NOAA will consider the following additional criteria:

a. Is the *involvement of the primary applicant necessary* to conduct the project and the accomplishment of its goals and objectives?

b. Is the proposed allocation of the primary applicant's time reasonable and commensurate with the applicant's involvement in the project?

c. Are the proposed costs for the primary applicant's involvement in the project reasonable and commensurate with the benefits to be derived from the applicant's participation?

4. Project Evaluation. The effectiveness of the applicant's proposed methods to evaluate the project in terms of meeting its goals and objectives will be evaluated. (10 points)

5. Project Costs. The justification and allocation of the budget in terms of the work to be performed and reasonable costs will be evaluated. (20 points)

V. Selection Procedures and Project Funding

After applications have been evaluated and ranked, the Director WASC, will select from the highest-ranked applicants the number of projects recommended for funding, ensuring that there is no duplication with other projects to be funded by NOAA or other Federal organizations. The list of recommended applicants will be forwarded to NOAA Grants Management Division to issue the award(s). Applicants not recommended for funding are not given further consideration and will be notified of non-selection.

The exact amount of the funds awarded to a project will be determined in pre-award negotiations between the applicant and NOAA program and grants management representatives.

Projects/remediation should not be initiated in expectation of Federal funding until a notice of award document is signed and issued by the Grants Officer.

It is the Department's policy to make awards to applicants who are competently managed, responsible, and committed to achieving the objectives of the awards they receive. Adverse information concerning the applicant's financial stability, past experience with Federal grants, and other information about the applicant's responsibility may result in an application not being considered for funding.

VI. Administrative Requirements

A. Obligation of the Applicant

1. An Applicant must:

a. Meet all application requirements and provide all information necessary for the evaluation of the project proposal.

b. Be available, upon request, in person, by telephone or by designated representative, to respond to questions during the review and evaluation of the project proposal.

2. Primary Applicant Certification. Applicants will be required to submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug Free Workplace Requirements and Lobbying". The following explanations are hereby provided:

a. Nonprocurement Debarment and Suspension. Prospective participants (as defined at 15 CFR part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

b. Drug-Free Workplace. Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR part 26, Subpart F, "Government wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

c. Anti-Lobbying. Person(s) (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provision of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions". The lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, which ever is greater; and

d. Anti-Lobbying Disclosure. Any applicant that has paid or will pay for lobbying using any funds must submit Standard Form SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

3. Lower Tier Certifications. Successful applicants shall require applicants/bidders for subgrants, contracts, subcontractors, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying", and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients of subrecipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the awards document.

B. Other Requirements

1. Federal Policies and Procedures. Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

2. Name check review. All non-profit and for profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the recipient have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the recipient's management, honesty, or financial integrity.

3. False Statements. A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment (18 U.S.C. 1001).

4. Past Performance. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

5. Delinquent Federal Debts. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

a. The delinquent account is paid in full;

b. A negotiated repayment schedule is established and at least one payment is received; or

c. Other arrangements satisfactory to DOC are made.

6. Buy American-Made Equipment or Products. Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding under this program.

7. Preaward Activities. If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover Preaward costs.

VII. Classification

A notice of availability of financial assistance for this program will also appear in the Commerce Business Daily.

This action has been determined to be not significant for purposes of E.O. 12866.

Applications under this program are subject to E.O. 12372, "Intergovernmental Review of Federal Programs."

The application mentioned in this notice is subject to the Paperwork Reduction Act. It has been approved by the Office of Management and Budget under control numbers 0348–0043, 0348–0044, and 0348–0046. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection displays a current valid OMB Control Number.

Authority: Public Law 104–91.

Dated: May 16, 1996.

Michael J. Nelson,

Acting Director, Procurement, Grants and Administrative Services, Office of Finance and Administration.

[FR Doc. 96–12768 Filed 5–17–96; 2:27 pm]

BILLING CODE 3510–12–U

National Oceanic and Atmospheric Administration

[I.D. 051396F]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit 988, amendment 1 to permit 942, and modification 2 to permit 962.

SUMMARY: Notice is hereby given that NMFS issued Permit 988, Amendment 1 to Permit 942, and Modification 2 to by Permit 962, permits to take listed sea turtles for the purpose of scientific research, subject to certain conditions set forth therein.

ADDRESSES: The applications, permits, and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401); and

Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141) for Permits 942 and 962

or

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310–980–4016) for Permit 988.

SUPPLEMENTARY INFORMATION: Notice was published on January 23, 1996 (61 FR 1748) that an application had been filed by Dr. Peter Dutton of NMFS Southwest Fisheries Science Center and Donna McDonald of Ocean Planet Research, Inc. (P602) to take listed sea turtles for scientific research as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–222). The applicants requested authorization to capture 50 green (*Chelonia mydas*), 5 olive ridley (*Lepidochelys olivacea*), and 5 loggerhead (*Caretta caretta*) sea turtles in San Diego Bay. The turtles would be measured, weighed, have blood and stomach samples taken, and have tags and transmitters attached. The purpose of the research is to reassess the status of sea turtles in San Diego Bay. The applicants requested a 5-year permit. On May 10, 1996, NMFS issued Permit 988 authorizing the above research.

Notice was published on February 29, 1996 (61 FR 7776) that a four-year extension to Permit 962 had been requested by Carlos Diez and Robert van Dam of the University of Central Florida (P509B) to take listed sea turtles for scientific research as authorized by the ESA. On May 10, 1996, NMFS issued Modification 2 to Permit 962, extending it until May 31, 2000. The applicants are authorized to capture listed sea turtles in Puerto Rico.

On April 25, 1996, as authorized by the ESA, NMFS issued Amendment 1 to Permit 942 held by Jane Anne Provancha of the Dynamac Corporation (P576). This amendment updated the permit conditions regarding netting to capture sea turtles, so as to avoid interaction with any species not authorized in the permit.

Issuance of this permit, modification, and amendment, as required by the ESA, was based on a finding that these actions: (1) Were applied for in good faith, (2) will not operate to the disadvantage of the listed species that are the subject of the actions, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 14, 1996.

Eric H. Ostrovsky,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–12784 Filed 5–21–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 050896A]

Marine Mammals; Permit No. 728 (P36C)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of modification.

SUMMARY: Notice is hereby given that permit no. 728, issued to Dr. Bernd Würsig and Dr. Graham Worthy, Marine Mammal Research Program, Department of Marine Biology, Texas A&M University, P.O. Box 1675, Galveston, TX 77553–1675, to take Atlantic bottlenose dolphins (*Tursiops truncatus*) was extended until December 31, 1996.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130 Silver Spring, MD 20910 (301/713–2289); and

Southeast Region, NMFS, 9721 Executive Center Drive, North, St. Petersburg, FL 33702–2532 (813/570–5301).

SUPPLEMENTARY INFORMATION: The subject modification has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the provisions of paragraphs (d) and (e) of § 216.33 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: May 13, 1996.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–12782 Filed 5–21–96; 8:45 am]

BILLING CODE 3510–22–F

Patent and Trademark Office

Notice of Two Year Exclusivity Period; DAYPRO® Oxaprozin

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of Receipt of Notice of Entitlement under section 2105 of the FDA Export Reform and Enhancement Act of 1996 (Chapter 1A of Pub. L. No. 104–134).

SUMMARY: The Patent and Trademark Office has received notification from G. D. Searle & Co. that it claims entitlement under section 2105 of the FDA Export Reform and Enhancement Act of 1996 (Chapter 1A of Pub. L. No. 104–134) for its drug product DAYPRO—oxaprozin.

FOR FURTHER INFORMATION CONTACT: Karin Tyson by telephone at (703) 305–9285; by mail marked to her attention and addressed to the Assistant Commissioner for Patents, Box DAC, Washington, D.C. 20231; or by fax marked to her attention at (703) 308–6916.

SUPPLEMENTARY INFORMATION: On April 25, 1996, the FDA Export Reform and Enhancement Act of 1996 (Act) (Chapter 1A of Pub. L. No. 104–134) was enacted. Section 2105 thereof grants specified exclusive rights to the owner of the right to market a specified nonsteroidal anti-inflammatory drug who has complied with the Act. The text of Section 2105 is as follows:

(a) In General.—Any owner on the date of enactment of this Act of the right to market a nonsteroidal antiinflammatory drug that—

(1) contains a previously patented active agent;

(2) has been reviewed by the Federal Food and Drug Administration for a period of more than 120 months as a new drug application; and

(3) was approved as safe and effective by the Federal Food and Drug Administration on October 29, 1992, shall be entitled, for the 2-year period beginning on October 29, 1997, to exclude others from making, using, offering for sale, selling, or importing into the United States such active agent, in accordance with section 154(a)(1) of title 35, United States Code.

(b) Infringement.—Section 271 of title 35, United States Code shall apply to the infringement of the entitlement provided under subsection (a). No application described in section 271(e)(2)(A) of title 35, United States Code, regardless of purpose, may be submitted prior to the expiration of the entitlement provided under subsection (a).

(c) Notification.—Not later than 30 days after the date of enactment of this Act, any owner granted an entitlement under subsection (a) shall notify the Commissioner of Patents and Trademarks and the Secretary of Health and Human Services of such entitlement. Not later than 7 days after receipt of such notice, the Commissioner and Secretary shall publish an appropriate notice of the receipt of such notice.

On May 15, 1996, G. D. Searle & Co., filed a notice with the Commissioner of Patents and Trademarks of its claim for entitlement pursuant to Section 2105(c) of the Act. The notice states that G. D. Searle & Co. was the owner of the right to market the nonsteroidal antiinflammatory drug oxaprozin on April 25, 1996, the date of enactment of the Act. Further, the notice states: that oxaprozin contains an agent that was patented and covered by U.S. Patent No. 3,578,671; that a New Drug Application (NDA) was filed on August 10, 1982 for oxaprozin and was reviewed for a period of more than 120 months; and that oxaprozin was approved as safe and effective by the Federal Food and Drug Administration on October 29, 1992.

Dated: May 16, 1996.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 96–12882 Filed 5–21–96; 8:45 am]

BILLING CODE 3510–16–U

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Futures and Option Contracts on the Taiwan Stock Index

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in futures and futures options on the Taiwan Stock Index. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before June 21, 1996.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW., Washington, DC 20581. Reference should be made to the Chicago Mercantile Exchange Taiwan Stock Index futures and option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW., Washington, DC 20581, telephone 202–418–5277.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5097.

Other materials submitted by the CME in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on May 16, 1996.

Blake Imel,

Acting Director.

[FR Doc. 96–12820 Filed 5–21–96; 8:45 am]

BILLING CODE 6351–01–P

Meetings; Sunshine Act

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, June 7, 1996.

PLACE: 1155 21st St. N.W., Washington, D.C. 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–12992 Filed 5–20–96; 8:45 am]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, June 14, 1996.

PLACE: 1155 21st St. N.W., Washington, D.C. 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–12993 Filed 5–20–96; 1:15 pm]

BILLING CODE 6351–01–M

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, June 21, 1996.

PLACE: 1155 21st St. N.W., Washington, D.C. 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–12994 Filed 5–20–96; 1:15 pm]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, June 28, 1996.

PLACE: 1155 21st St. N.W., Washington, D.C. 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–12995 Filed 5–20–96; 1:15 pm]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Coal- and Wood-Burning Stoves

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of November 9, 1995 (60 FR 56577), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek reinstatement of approval of the information collection requirements in 16 CFR Part 1406, "Coal- and Wood-Burning Appliances—Notification of Performance and Technical Data." By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget a request for reinstatement of approval of those information collection requirements without change through May 30, 1999.

The rule codified at 16 CFR Part 1406 requires manufacturers and importers of certain coal- and wood-burning appliances to provide safety information to consumers on labels affixed to those products and in instructions to accompany those products. The rule also requires manufacturers and importers to provide to the Commission copies of labels and instructions and an explanation of how certain clearance distances in those labels and instructions were determined.

The purposes of the reporting requirements in part 1406 are to reduce risks of injuries from fires associated with the installation, operation, and maintenance of the appliances which are subject to the rule. The reporting requirements also assist the Commission determine the extent to which manufacturers and importers comply with the requirements in part 1406.

Additional Information About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, DC 20207

Title of information collection: Coal- and Wood-Burning Appliances—Notification of Performance and Technical Data (16 CFR Part 1406).

Type of request: Reinstatement of approval without change.

General description of respondents: Manufacturers and importers of coal- and wood-burning fireplace stoves, heaters, and similar appliances.

Estimated number of respondents: 10.

Estimated average number of hours per respondent: 3 per year.

Estimated number of hours for all respondents: 30 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be sent within 30 days of publication of this notice to Donald Arbuckle, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies of the request for reinstatement of information collection requirements and supporting documentation are available from Nicholas V. Marchica, Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, extension 2243.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 96–12764 Filed 5–21–96; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; Amend Record System

AGENCY: Department of the Navy, DOD.

ACTION: Amend record system.

SUMMARY: The Department of the Navy proposes to amend seven system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on June 21, 1996, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend seven system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

The specific changes to the system of records are set forth below followed by the system of records notice published in its entirety, as amended. The amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: May 16, 1996.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N04066–1

SYSTEM NAME:

Bad Checks and Indebtedness Lists *(September 20, 1993, 58 FR 48862).*

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

At end of entry, add 'includes all holders of NEXCARDs.'

CATEGORIES OF RECORDS IN THE SYSTEM:

At end of entry, add 'NEXCARD data base.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete '80 Stat 308 and 88 Stat 393.'

* * * * *

STORAGE:

Delete entry and replace with 'Mainframe magnetic tapes, disk drives, printed reports, file folders, and PC hard and floppy disks.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Locked file cabinets, supervised office space, supervised computer tape library which is accessible only through the data center, entry to which is controlled by a 'cardpad' security system, for which only authorized personnel are given the access code. PC entry into the system may only be made through individual passwords.'

RETENTION AND DISPOSAL:

At end of entry, add 'NEXCARD customer master records are saved daily for one month after which they become part of the monthly master files which are saved for a year. The administrator of the NEXCARD, Citicorp Retail Services, retains and stores the year-end master files indefinitely in a vault contained in their mega-data center in Nevada.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete second paragraph and replace with 'Record Holder: Treasurer, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724 (for Navy exchanges).'

* * * * *

N04066–1

SYSTEM NAME:

Bad Checks and Indebtedness Lists.

SYSTEM LOCATION:

Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724 (for all Navy exchanges).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patrons of Navy exchanges who have passed bad checks; recruits who have open accounts with Navy exchanges; patrons who have made C.O.D. mail order transactions and those patrons who make authorized charge or credit purchases where their accounts are maintained on the basis of an identifying particular such as name and/or Social Security Number, includes all holders of NEXCARDs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Bad Check System (including: Returned Check Ledger; Returned Check Report; copies of returned checks; bank advice relative to the returned check(s); correspondence relative to attempt by the Navy exchange to locate the patron and/or obtain payment; a printed report of names of those persons who have not made full restitution promptly, or who have had one or more checks returned through their own fault or negligence); Accounts Receivable Ledger, detailed by patron; C.O.D. Sales Ledger; and NEXCARD data base.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 6011; Federal Claims Collection Act of 1966 (Pub. L. 89–508) and Debt Collection Act of 1982 (Pub. L. 97–365); and E.O. 9397.

PURPOSE(S):

To maintain an automated tracking and accounting system for individuals indebted to the Department of the Navy.

Records in this system are subject to use in approved computer matching programs authorized under the Privacy Act of 1974, as amended, for debt collection purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To a commercial credit reporting agency for the purpose of either adding to a credit history file or obtaining a credit history file for use in the administration of debt collection.

To a debt collection agency for the purpose of collection services to recover indebtedness owed to the Department of the Navy.

To the Internal Revenue Service (IRS) to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim by Navy against the tax payer pursuant to 26 U.S.C. 6103(m)(2) and in accordance with 31 U.S.C. 3711, 3217, and 3718.

Note: Redisclosure of a mailing address from the IRS may be made only for the purpose of debt collection, including to a debt collection agency in order to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982, except that a mailing address to a consumer reporting agency is for the limited purpose of obtaining a commercial credit report on the particular taxpayer. Any such address information obtained from the IRS will not be used or shared for any other Navy purpose or disclosed to another Federal , state, or local agency which seeks to locate the same individual for its own debt collection purpose.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices also apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act of 1966 (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Mainframe magnetic tapes, disk drives, printed reports, file folders, and PC hard and floppy disks.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Locked file cabinets, supervised office space, supervised computer tape library which is accessible only through the data center, entry to which is controlled by a 'cardpad' security system, for which only authorized personnel are given the access code. PC entry into the system may only be made through individual passwords.

RETENTION AND DISPOSAL:

Records are kept for ten years and then destroyed. NEXCARD customer master records are saved daily for one month after which they become part of the monthly master files which are saved for a year. The administrator of the NEXCARD, Citicorp Retail Services, retains and stores the year-end master files indefinitely in a vault contained in their mega-data center in Nevada.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

Record Holder: Treasurer, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724 (for Navy exchanges).

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

In the initial inquiry, the requester must provide full name, Social Security Number, and the activity where they had their dealings. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requesters must provide proof of identity containing the requester's signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

In the initial inquiry, the requester must provide full name, Social Security Number, and the activity where they had their dealings. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requesters must provide proof of identity containing the requester's signature.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual; the bank involved; activity sales records; Internal Revenue Service; credit bureaus; and the Defense Manpower Data Center.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05300–2

SYSTEM NAME:

Administrative Personnel Management System *(August 17, 1995, 60 FR 42853).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Add two addresses as follows "Commander in Chief, U.S. Atlantic Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488 and Commander in Chief, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI, 96861–4028."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

In line 16, after the words, 'biographical data;' add 'date of birth;'.

* * * * *

N05300–2

SYSTEM NAME:

Administrative Personnel Management System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices. Included in this notice are those records duplicated for maintenance at a site closer to where the employee works (e.g., in an administrative office or a supervisor's work area).

Commander in Chief, U.S. Atlantic Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI, 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian, (including former members and applicants for civilian employment), military and contract employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence/records concerning personnel identification, location (assigned organization code and/or work center code); MOS; labor code; payments for training, travel advances and claims, hours assigned and worked, routine and emergency assignments, functional responsibilities, clearance, access to secure spaces and issuance of keys, educational and experience characteristics and training histories, travel, retention group, hire/termination dates; type of appointment; leave; trade, vehicle parking, disaster control, community relations, (blood donor, etc), employee recreation programs; grade and series or rank/rate; retirement category; awards; biographical data; date of birth; property custody; personnel actions/dates; violations of rules; physical handicaps and health/safety data; veterans preference; postal address; location of dependents and next of kin and their addresses; mutual aid association memberships; union memberships; qualifications; computerized modules used to track personnel data; and other data needed for personnel, financial, line, safety and security management, as appropriate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To manage, supervise, and administer programs for all Navy civilian and military personnel such as preparing rosters/locators; contacting appropriate personnel in emergencies; training; identifying routine and special work assignments; determining clearance for access control; record handlers of hazardous materials; record rental of welfare and recreational equipment; track beneficial suggestions and awards; controlling the budget; travel claims; manpower and grades; maintaining statistics for minorities; employment; labor costing; watch bill preparation;

projection of retirement losses; verifying employment to requesting banking; rental and credit organizations; name change location; checklist prior to leaving activity; payment of mutual aid benefits; safety reporting/monitoring; and, similar administrative uses requiring personnel data. Arbitrators and hearing examiners in civilian personnel matters relating to civilian grievances and appeals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

File folders, card files, magnetic tape, magnetic disc, personal computer.

RETRIEVABILITY:

Name, Social Security Number, employee badge number, case number, organization, work center and/or job order, supervisor's shop and code.

SAFEGUARDS:

Password controlled system, file, and element access based on predefined need to know. Physical access to terminals, terminal rooms, buildings and activities' grounds are controlled by locked terminals and rooms, guards, personnel screening and visitor registers.

RETENTION AND DISPOSAL:

Normally retained for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, and address of the individual concerned and should be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, employment papers, other records of the organization, official personnel jackets, supervisors, official travel orders, educational institutions, applications, duty officer, investigations, OPM officials, and/or members of the American Red Cross.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05330–1

SYSTEM NAME:

Manhour Accounting System *(February 22, 1993, 58 FR 10753).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Add two addresses as follows 'Commander in Chief, U.S. Atlantic Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488 and Commander in Chief, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI, 96861–4028.'

* * * * *

N05330–1

SYSTEM NAME:

Manhour Accounting System.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander in Chief, U.S. Atlantic Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI, 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record contains such information as name, grade/rate, Social Security Number, organizational code, work center code, grade code, pay rate, labor code, type transaction, hours assigned. Data base includes scheduling and assignment of work; skill level; tools issued; leave; temporary assignments to other areas.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To effectively manage the work force.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape and paper.

RETRIEVABILITY:

Name, organization code, Social Security Number, and work center.

SAFEGUARDS:

Files are stored in a limited access area. Information provided via batch processing is of a predetermined and strictly formatted nature.

RETENTION AND DISPOSAL:

Individual personal data are retained only for that period of time that an individual is assigned. Upon departure of an individual, personal data are deleted from the records and history records are not maintained.

SYSTEM MANAGER(S) AND ADDRESS:

The commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the naval activity where currently employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, address of individual concerned, and should be signed.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the naval activity where currently employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, address of individual concerned, and should be signed.

CONTESTING RECORD PROCEDURE:

The Navy's rules for accessing records, and for contesting contents and appealing determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, correspondence, and personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05340–1

SYSTEM NAME:

Combined Federal Campaign/Navy Relief Society *(February 22, 1993, 58 FR 10754).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Add two addresses as follows 'Commander in Chief, U.S. Atlantic Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488 and Commander in Chief, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI, 96861–4028.'

* * * * *

N05340–1

SYSTEM NAME:

Combined Federal Campaign/Navy Relief Society.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander in Chief, U.S. Atlantic Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI, 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All assigned personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, Social Security Numbers, payroll identifying data, contributor cards and lists.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O.s 9397 and 10927.

PURPOSE(S):

To manage the Combined Federal Campaign and Navy Relief Society Fund drives and provide the respective campaign coordinator with necessary information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, and magnetic tape.

RETRIEVABILITY:

Name, Social Security Number, and organization.

SAFEGUARDS:

Access is limited and provided on a need to know basis only. Records are locked in safes and/or guarded offices.

RETENTION AND DISPOSAL:

Records are maintained for one year or completion of next equivalent campaign and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the naval activity where currently or previously employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, address of the individual concerned, and should be signed.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the naval activity where currently or previously employed. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include full name, Social Security Number, address of the individual concerned, and should be signed.

CONTESTING RECORD PROCEDURE:

The Navy's rules for accessing records, and for contesting contents and appealing determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Payroll files, administrative personnel files, contributors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05354–1

SYSTEM NAME:

Equal Opportunity Management Information System *(February 22, 1993, 58 FR 10757).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Add two addresses as follows 'Commander in Chief, U.S. Atlantic Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488 and Commander in Chief, U.S. Pacific

Command, PO Box 64028, Camp H.M. Smith, HI, 96861–4028.'

* * * * *

N05354–1

SYSTEM NAME:

Equal Opportunity Management Information System.

SYSTEM LOCATION:

Primary location: Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001; local activity to which individual is attached. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

Commander in Chief, U.S. Atlantic Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI, 96861–4028.

Secondary location: Department of the Navy activities in the chain of command between the local activity and the headquarters level. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel who are involved in formal or informal complaints or investigations involving aspects of equal opportunity; and/or who have initiated, or were the subject of correspondence concerning aspects of equal opportunity.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and records concerning incident data, endorsements and recommendations, formal and informal complaints and investigations concerning aspects of equal opportunity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To assist in equal opportunity measures, including but not limited to, complaints, investigations, and correspondence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes, disc, and drums. Manual records may be stored in paper files, microfiche, or microform.

RETRIEVABILITY:

Filed alphabetically by last name of individual concerned.

SAFEGUARDS:

Computer facilities are located in restricted areas accessible only to authorized persons that are properly screened, trained and cleared. Manual records and computer printouts are available only to authorized personnel having a need to know.

RETENTION AND DISPOSAL:

Records maintained for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001; or to the local activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The letter should contain full name and signature of the requester. The individual may visit the Chief of Naval Personnel, Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001; or, in accordance with the Directory of Department of the Navy Mailing Addresses (i.e., local activities).

The letter should contain full name and signature of the requester. The individual may visit the Chief of Naval Personnel, Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Federal, state, and local court documents; military investigatory reports; general correspondence concerning individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under the provisions of 5 U.S.C. 552a(k)(1) and (k)(5), as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3), (c) and (e) and published in 32 CFR Part 701, subpart G. For additional information contact the system manager.

N05370–2

SYSTEM NAME:

Financial Interest Disclosure Statements *(February 22, 1993, 58 FR 10758).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Add two addresses as follows 'Commander in Chief, U.S. Atlantic Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488 and Commander in Chief, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI, 96861–4028.'

* * * * *

N05370–2

SYSTEM NAME:

Financial Interest Disclosure Statements.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Commander in Chief, U.S. Atlantic Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

Commander in Chief, U.S. Pacific Command, PO Box 64028, Camp H.M. Smith, HI, 96861–4028.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals required to file SF 450, SF 278, and/or DD Form 1787.

CATEGORIES OF RECORDS IN THE SYSTEM:

SF 450, Confidential Statement of Affiliations and Financial Interests; SF 278, Financial Disclosure Report; DD Form 1787, Report of DOD and Defense Related Employment; Position Descriptions; and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Public Law 95–521, Ethics in Government Act of 1978; E.O. 11222; and E.O. 9397.

PURPOSE(S):

To permit supervisors, counselors, and other responsible DON officials to determine whether there are actual or apparent conflicts of interests between members' or employees' present and prospective official duties and their nonfederal affiliations and financial interests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and card files.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Information is locked in a file cabinet accessible to authorized personnel only.

RETENTION AND DISPOSAL:

SF 450 and a complete record of all action taken thereon are retained for a period of six years in a central location within the command or activity to which the reporting official was assigned at the time of filing, after which they will be destroyed.

SF 278 and DD Forms 1787 are retained for six years from the date of filing, and then destroyed unless needed for any investigation in which case they shall be held pending completion of the investigation.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Officials: General Counsel, Navy Department, Washington, DC 20360–5110 and Judge Advocate General, 200 Stovall Street, Alexandria, VA 22332–2400.

Record Holder: Commanding Officer or head of the organization in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commanding Officer or head of the activity where they filed the forms.

Written requests should contain full name and must be signed by the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Commanding Officer or head of the activity where they filed the forms.

Written requests should contain full name and must be signed by the individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned, his/her supervisor, and ethics counselor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N06150–2

SYSTEM NAME:

Health Care Record System *(August 17, 1995, 60 FR 42855).*

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In paragraph nine, first line, replace the word 'physicians' with 'health care providers.'

* * * * *

N06150–2

SYSTEM NAME:

Health Care Record System.

SYSTEM LOCATION:

Military outpatient health (medical and dental) records of active duty individuals are retained at the member's medical or dental treatment facility. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Military outpatient health (medical and dental) records of current reservists are retained by the member's command. Military outpatient health (medical and dental) records of retired and separated individuals are retained at the National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100; Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, LA 70149–7800; Marine Corps Reserve Support Center, 10905 El Monte, Overland Park, KS 66211–1408; Bureau of Medicine and Surgery, 2300 E Street, Northwest, Washington, DC 20372–5300; or Commandant of the Marine Corps, Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–0001.

Inpatient health records are retained at the originating naval medical treatment facility (official mailing addresses are published as an appendix to the Navy's compilation of system of records notices); Department of Veterans Affairs Hospitals; other medical treatment facilities such as PRIMUS; National Personnel Records Center (Military), 9700 Page Avenue, St. Louis, MO 63132–5100; National Personnel Records Center (Civilian), 111 Winnebago Street, St. Louis, MO 63118–4199; Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, LA 70149–7800; Marine Corps Reserve Support Center, 10950 El Monte, Overland Park, KS 66211–1408; Medical Director, American Red Cross, Washington, DC 20226; Bureau of Medicine and Surgery, 2300 E Street, Northwest, Washington, DC 20372–5300; or Commandant of the Marine Corps, Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–0001.

Outpatient health (medical and dental) treatment records of civilians are

retained at the originating naval medical or dental treatment facility (official mailing addresses are published as an appendix to the Navy's compilation of system of records notices); Department of Veterans Affairs Hospitals; other medical treatment facilities such as PRIMUS; National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5100; National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118–4199; Medical Director, American Red Cross, Washington, DC 20226; Bureau of Medicine and Surgery, 2300 E Street, Northwest, Washington, DC 20372–5300; or Commandant of the Marine Corps, Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps personnel, other military personnel, dependents, retired and separated military personnel and dependents, civilian employees, Red Cross personnel, foreign personnel, VA beneficiaries, humanitarian patients, and all other individuals who receive treatment at a Navy medical or dental treatment facility. All commercial insurance carriers with whom the Department of the Navy has filed a claim under the Third Party Payers Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Outpatient and inpatient health (medical and dental) records contain forms documenting care and treatment. These records contain patient and sponsor demographic data.

Secondary health records contain forms documenting care and treatment at specific departments or clinics.

Subsidiary health records contain information from individual health records and supporting documentation. Examples are: X-ray files; electrocephalogram tracing files; laboratory or secondary treatment record with supporting documentation or they may be based on the files; pharmacy files, social work case files; alcohol rehabilitation files; psychiatric or psychology case files, including psychology files documenting the clinical psychological evaluation of individuals for suitability for certain assignments; nursing care plans; medication and treatment cards, stat/daily orders; patient intake and output forms; ward reports; day books; nursing service reports; pathology and clinical laboratory reports; tumor registries; autopsy reports; laboratory information system (LABIS); blood transfusion reaction records; blood donor and blood donor center records; pharmacy records, surgery records, and vision records and reports; communicable disease case files, statistics, and reports; occupational health, industrial, and environmental control records, statistics, and reports, including data concerning periodic and total lifetime accumulated exposure to occupational/environmental hazards; emergency room and sick call logs; family advocacy case files, statistics, reports, and registers; psychiatric workload statistics and unit evaluations; gynecology malignancy data, etc.

Aviation physical examinations and evaluation case files contain medical records documenting fitness for admission or retention in aviation programs.

Marine Security Guard Battalion psychological examination, evaluation, and treatment case files contain medical records documenting suitability for assignment as Embassy Guards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 1095, Collection from Third Party Payers Act; 10 U.S.C. 5131 (as amended); 10 U.S.C. 5132; 44 U.S.C. 3101; 10 CFR part 20, Standards for Protection Against Radiation; and, E.O. 9397.

PURPOSE(S):

This system is used by officials, employees and contractors of the Department of the Navy (and members of the National Red Cross in naval medical treatment facilities) in the performance of their official duties relating to the health and medical treatment of Navy and Marine Corps members; physical and psychological qualifications and suitability of candidates for various programs; personnel assignment; law enforcement; dental readiness; claims and appeals before the Council of Personnel Boards and the Board for Correction of Naval Records; member's physical fitness for continued naval service; litigation involving medical care; performance of research studies and compilation of statistical data; implementation of preventive medicine programs and occupational health surveillance programs; implementation of communicable disease control programs; and management of the Bureau of Medicine and Surgery's Radiation program and to report data concerning individual's exposure to radiation.

This system is also used for the initiation and processing, including litigation, of affirmative claims against potential third party payers.

This system is used by officials and employees of other components of the Department of Defense in the performance of their official duties relating to the health and medical treatment of those individuals covered by this record system; physical and psychological qualifications and suitability of candidates for various programs; and the performance of research studies and the compilation of medical data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the Department of Veterans Affairs in the performance of their official duties relating to the adjudication of veterans' claims and in providing medical care to Navy and Marine Corps members.

To officials and employees of other departments and agencies of the Executive Branch of Government upon request in the performance of their official duties related to review of the physical qualifications and medical history of applicants and employees who are covered by this record system and for the conduct of research studies.

To private organizations (including educational institutions) and individuals for authorized health research in the interest of the Federal Government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies.

To officials and employees of the National Research Council in cooperative studies of the National History of Disease.To officials and employees of local and state governments and agencies in the performance of their official duties relating to public health and welfare, communicable disease control, preventive medicine, child and spouse abuse prevention and public safety.

To officials and employees of local and state governments and agencies in the performance of their official duties relating to professional certification, licensing and accreditation of health care providers.

To law enforcement officials to protect the life and welfare of third parties. This release will be limited to necessary information. Consultation with the hospital or regional judge advocate is advised.

To spouses of service members (including reservists) who are infected with the Human Immunodeficiency Virus. This release will be limited to HIV positivity information. Procedures for informing spouses will be published by the Director, Naval Medicine and must be used.

To military and civilian health care providers to further the medical care and treatment of the patient.

To release radiation data per 10 CFR part 20.

To third parties in those cases where the Government is seeking reimbursement under the Third Party Payers Act.

When required by federal statute, by executive order, or by treaty, medical record information will be disclosed to the individual, organization, or government agency, as necessary.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system of records notices also apply to this system.

Note: Records of identity, diagnosis, prognosis or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, except as provided in 42 U.S.C. 290dd-2(e), be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under 42 U.S.C. 290dd-2(b). The 'Blanket Routine Uses' do not apply to these types of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Primary, secondary, and subsidiary medical health records are stored in file folders, microform, on magnetic tape, personal computers, machine listings, discs, and other computerized or machine readable media.

RETRIEVABILITY:

Military health (medical and dental) treatment records are filed and maintained by the last four digits of the military member's Social Security Number, the member's last name, or the member's Social Security Number. A locator case file cross-references the patient's name with the location of his/her record.

Inpatient (clinical) health records are filed and maintained by the last four digits of the sponsor's Social Security Number or a register number. A manual or automatic register of patients is kept at each Navy medical treatment facility. The location of the file can be determined by a seven-digit register number or the patient's name.

Outpatient (medical and dental) health records are filed and maintained by the sponsor's Social Security Number or date of birth, relationship to the sponsor, and name. A locator file cross-references the patient's name with the location of his/her record.

Treatment records retired to a Federal Records Center prior to 1971 are retrieved by the name and service number or file number. After that date, records are retrieved by name and Social Security Number.

Aviation medical records are filed and maintained by Social Security Number and name.

Marine Security Guard Battalion psychological examination, evaluation, and treatment case files contain medical records documenting fitness for assignment as Embassy Guards and are filed and maintained by Social Security Number and name. Subsidiary health care records may or may not be identified by patient identifier. When they are, they may be retrieved by name and Social Security Number.

SAFEGUARDS:

Records are maintained in various kinds of filing equipment in specific monitored or controlled access rooms or areas; public access is not permitted. Computer terminals are located in supervised areas. Access is controlled by password or other user code system. Utilization reviews ensure that the system is not violated. Access is restricted to personnel having a need for the record in providing further medical care or in support of administrative/clerical functions. Records are controlled by a charge-out system to clinical and other authorized personnel.

RETENTION AND DISPOSAL:

Health care records are retained, retired, and disposed of in accordance with Secretary of the Navy Instruction 5215.5 (Disposal of Navy Marine Corps Records) and Bureau of Medicine and Surgery Instruction 6150.1 (Health Care Treatment Records). Specifics are given below:

Military health (medical and dental) records, are transferred with the member upon permanent change of duty station to his/her new duty station. These records are retired to the National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5100; Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, LA 70149–7800; and, Marine Corps Reserve Support Center, 10950 El Monte, Overland Park, KS 66211–1408.

Inpatient health records are transferred to the National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5100 or to the National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118–4199, two years after the calendar year of the last date of treatment.

Outpatient health records of civilians are transferred to the National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5100 or to the National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118–4199, two years after the calendar year of the last date of treatment.

X-ray files are retained on-site and destroyed three years after the last x-ray in the file. Asbestos x-rays are retained on site indefinitely.

Secondary health record may be retained separate from the health record. A notation is made in the health record that these records exist and where they are being kept. When the health record is retired or the patient transfers, these records should be entered in the health record.

Aviation medical records are retained at the activity and destroyed when 30 years old.

Marine Security Guard Battalion psychological examination, evaluation, and treatment case files containing medical records documenting fitness for assignment as Embassy Guards are retained at the activity and destroyed after 50 years.

Clinical psychology case files documenting suitability for special assignment will be retained at the originating medical treatment facility and destroyed when 50 years old.

Radiation exposure records for personnel are maintained indefinitely in the health record, and in a centralized exposure registry held by the Navy Environmental Health Center Detachment, Naval Dosimetry Center, Bethesda, MD 20889–5614.

SYSTEM MANAGER(S) AND ADDRESS:

Service medical (health and dental) records for active and reserve, Navy and Marine Corps: Chief, Bureau of Medicine and Surgery, 2300 E Street, Northwest, Washington, DC 20372–5300; Commanding Officers, Naval Activities, Ships and Stations; and, Director, National Personnel Records

Center, Military Personnel Records, 9700 Page Avenue, St. Louis, MO 63132–5100. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

Inpatient and outpatient treatment records: Chief, Bureau of Medicine and Surgery, 2300 E Street, Northwest, Washington, DC 20372–5300; Commanding Officers and Officers-in-Charge of naval medical treatment facilities; and, Director, National Personnel Records Center, Military Personnel Records, 9700 Page Avenue, St. Louis, MO 63132–5100. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

NOTIFICATION PROCEDURE:

Active duty Navy and Marine Corps personnel and drilling members of the Navy and Marine Corps Reserves seeking to determine whether this system of records contains information about themselves should address written inquiries to the originating medical or dental treatment facility. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

Inactive Naval Reservists should address requests for information to the Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, LA 70149–7800. Marine Reservists should address requests for information to Marine Corps Reserve Support Center, 10950 El Monte, Overland Park, KS 66211–1408. Former members who have no further reserve or active duty obligations should address requests for information to the Director, National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5100.

All written requests should contain the full name and Social Security Number of the individual, his/her signature, and in those cases where his/her period of service ended before 1971, his/her service or file number. In requesting records for personnel who served before 1964, information provided to the National Personnel Records Center should also include date and place of birth and dates of periods of active Naval service.

Records may be requested in person. Proof of identification will consist of the Armed Forces Identification Card or by other types of identification bearing picture and signature.

Requests for inpatient records within two years of inpatient stay should be addressed to the Commanding Officer of the hospital where the individual was treated.

Requests for inpatient records after two years after inpatient stay should be addressed to the Director, National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118–4199 or to the Director, National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5100.

Requests for subsidiary medical records should be addressed to the Commanding Officer of medical or dental center where treatment was received.

The following data should be provided: Full name, Social Security Number, status, date(s) of treatment or period of hospitalization, address at time of medical treatment, and service number.

Full name, date, and place of birth, I.D. card or driver's license, or other identification to sufficiently identify the individual with the medical records held by the treatment facility must be presented.

RECORD ACCESS PROCEDURE:

Individuals seeking access to record about themselves contained in this system of records should address written inquiries to the medical or dental treatment facility where treatment was received or to the officials listed under 'Notification procedure'.

CONTESTING RECORD PROCEDURE:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Reports from attending and previous physicians and other medical personnel regarding the results of physical, dental, and mental examinations, treatment, evaluation, consultation, laboratory, x-rays, and special studies conducted to provide health care to the individual or to determine the individual's physical and dental qualification.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 96–12855 Filed 5–21–96; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF ENERGY

Office of Environmental Management; Environmental Management Site Specific Advisory Board; Renewal

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (Public Law 92–463), and in accordance with title 41 of the Code of Federal Regulations, section 101–6.1015(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Environmental Management Site Specific Advisory Board has been renewed for a two-year period beginning May 16, 1996.

The purpose of the Board is to provide the Assistant Secretary for Environmental Management with advice and recommendations on environmental management projects and issues such as risk management, economic development, future land use, and budget prioritization activities, from the perspectives of affected groups and State and local governments. Board membership will reflect the full diversity of views in the affected community and region and be composed primarily of people who are directly affected by site clean-up activities. Members will include interested stakeholders from local governments, Indian Tribes, environmental and civic groups, labor organizations, universities, waste management and environmental restoration firms, and other interested parties. Representatives from the Department of Energy (DOE), the Environmental Protection Agency, and State governments will be ex-officio members of the Board. Selection and appointment of Board members will be accomplished using procedures designed to ensure diverse membership and a balance of viewpoints. Consensus recommendations to the DOE from the Board on the resolution of numerous difficult issues will help achieve DOE's objective of an integrated environmental management program.

The Secretary of Energy has determined that renewal of the Environmental Management Site Specific Advisory Board is necessary to conduct the DOE's business and is in the public interest. The Board will operate in accordance with the provisions of the Federal Advisory Committee Act, the DOE Organization Act (Public Law 95–91), and rules and regulations issued in implementation of those Acts.

Further information regarding this advisory board may be obtained from Rachel Murphy Samuel at (202) 586–3279.

Issued in Washington, DC on May 16, 1996.

JoAnne Whitman,

Deputy Advisory Committee Management Officer.

[FR Doc. 96–12821 Filed 5–21–96; 8:45 am]

BILLING CODE 6450–01–P

Electrometallurgical Treatment Research and Demonstration Project in the Fuel Conditioning Facility at Argonne National Laboratory—West; Finding of No Significant Impact (FONSI)

AGENCY: Department of Energy.

ACTION: Finding of no significant impact.

SUMMARY: The United States Department of Energy has prepared an environmental assessment, DOE/EA–1148 (finalized on May 15, 1996), on the proposed *Electrometallurgical Treatment Research and Demonstration Project in the Fuel Conditioning Facility at Argonne National Laboratory—West.* The Proposed Action is to conduct a research and demonstration project involving electrometallurgical processing of up to 100 Experimental Breeder Reactor–II driver assemblies and 25 Experimental Breeder Reactor–II blanket assemblies in the Fuel Conditioning Facility at Argonne National Laboratory—West. Electrometallurgical processing involves the dissolution of spent nuclear fuel by use of an electric current in a molten salt mixture. The uranium in the fuel is collected at the cathode and subsequently melted to form a metal ingot; the structural metals and some fission products are retrieved undissolved from the anode and are cast into a metal ingot; and eventually most fission products and all transuranic elements are isolated in a ceramic waste form. The number of driver fuel assemblies covered by the Proposed Action would provide the minimum fission product loading (3 percent) necessary to evaluate the effectiveness of the removal of fission products from the electrorefiner salt and their concentration in the ceramic waste form. In addition, the 25 blanket assemblies proposed would provide a sufficient quantity of material to evaluate the higher efficiency electrorefining necessary to process the much larger blanket assemblies. The Proposed Action would require approximately three years, and is designed to address demonstration goals for electrometallurgical treatment technology outlined by the National Research Council in a 1995 report to the Department. In accordance with the Council on Environmental Quality requirements contained in 40 CFR Parts 1500–1508. the environmental assessment examined the environmental impacts of the Proposed Action and potential alternatives.

The Department distributed a draft environmental assessment for public review and comment from February 5, 1996 to March 22, 1996 (61 FR 3922, January 29, 1996), and conducted public meetings on the draft assessment in Idaho Falls, Idaho on February 21, 1996, and Washington, D.C. on February 27, 1996. In response to several requests, the Department reopened the public review period until May 3, 1996 (61 FR 16471, April 15, 1996).

The Department has considered all comments on the draft environmental assessment, including comments submitted by 5 members of Congress, 17 organizations, and 53 individuals. Those comments and the Department's responses are presented in an appendix to the final environmental assessment entitled, "Comment Response Document." A summary of the major public comments and the Department's responses is provided under Supplementary Information below.

The Department has decided to proceed with the proposed demonstration. Even if successful, however, the demonstration will not automatically lead to the treatment of more Experimental Breeder Reactor–II spent nuclear fuel or to other broader applications of electrometallurgical technology. The Department will not make any significant additional use of the electrometallurgical refining technology without first preparing an environmental impact statement. Specifically, the Department will not use this technology to treat the remaining Experimental Breeder Reactor–II spent fuel or make another production-scale use of the technology without preparing an environmental impact statement.

The Department would exercise its authority to prevent proliferation sensitive information and technology advances resulting from the proposed demonstration from becoming available to potential proliferant-risk countries, including exercising its authority under the Atomic Energy Act, the Nuclear Nonproliferation Act of 1978 and the Department's implementing regulations.

Based on the analysis in the environmental assessment, which is incorporated herein by reference, and after consideration of all the comments received as a result of the public review process, the Department of Energy has determined that the Proposed Action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. Therefore, an environmental impact statement is not required.

FOR FURTHER INFORMATION CONTACT: Persons requesting additional information regarding the Electrometallurgical Treatment Project or a copy of the environmental assessment should contact: Mr. Robert G. Lange, Associate Director for Facilities (NE–40), Office of Nuclear Energy, Science and Technology, U.S. Department of Energy (GTN), 19901 Germantown Road, Germantown, Maryland 20874.

Mr. Lange may also be reached by calling (301) 903–2915.

Persons requesting general information on the Department of Energy's National Environmental Policy Act process should contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Ms. Borgstrom may also be reached by calling (202) 586–4600, or by leaving a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

The Department of Energy is responsible for managing spent nuclear fuel in its inventory, including spent nuclear fuel from the Experimental Breeder Reactor-II. The Department manages 25.5 metric tons (heavy metal) of Experimental Breeder Reactor-II fuel at Argonne National Laboratory-West and the Idaho Chemical Processing Plant, both located at the Idaho National Engineering Laboratory near Idaho Falls. The Department has a legally binding commitment to remove spent nuclear fuel from the State of Idaho by the year 2035, including fuel from the Experimental Breeder Reactor-II. The Experimental Breeder Reactor-II fuel is unlikely to be suitable for direct disposal in a geologic repository because it is saturated with sodium, which is a reactive material. Experimental Breeder Reactor-II spent fuel may also be unsuitable for direct disposal in a geologic repository because of criticality concerns associated with fuels containing highly-enriched uranium.

The Department has identified electrometallurgical treatment as a promising technology to treat

Experimental Breeder Reactor-II spent nuclear fuel to make it suitable for repository disposal, but an appropriate demonstration is needed to provide sufficient information for the Department to evaluate the feasibility of the technology. At the Department's request, the National Research Council conducted an independent assessment of the potential application of electrometallurgical technology to treat spent nuclear fuel from the Experimental Breeder Reactor-II. In its 1995 report, the Council recommended that the Department proceed to demonstrate the feasibility of electrometallurgical technology using Experimental Breeder Reactor-II spent nuclear fuel. A successful demonstration of the electrometallurgical technology on a sufficient sample of the Experimental Breeder Reactor-II spent nuclear fuel, combined with research and testing of the resulting waste forms, is expected to provide information the Department needs to determine whether to propose applying this technology to the remainder of the Experimental Breeder Reactor-II spent nuclear fuel or other spent nuclear fuel.

Proposed Action

The Proposed Action is to conduct a research and demonstration project involving electrometallurgical processing of up to 100 Experimental Breeder Reactor-II driver assemblies and 25 Experimental Breeder Reactor-II blanket assemblies in the Fuel Conditioning Facility at Argonne National Laboratory-West. Electrometallurgical processing involves the dissolution of spent nuclear fuel by use of an electric current in a molten salt mixture. The uranium in the fuel is collected at the cathode and subsequently melted to form a metal ingot; the structural metals and some fission products are retrieved undissolved from the anode and are cast into a metal ingot; and eventually most fission products and all transuranic elements are isolated in a ceramic waste form. The number of driver fuel assemblies covered by the Proposed Action would provide the minimum fission product loading (3 percent) necessary to evaluate the effectiveness of the removal of fission products from the electrorefiner salt and their concentration in the ceramic waste form. In addition, the 25 blanket assemblies would provide a sufficient quantity of material to evaluate the higher efficiency electrorefining necessary to process the much larger blanket assemblies. The Proposed Action would require approximately three years, and is designed to address demonstration goals for electrometallurgical treatment technology outlined by the National Research Council in its 1995 report.

The one hundred driver assemblies involved in the Proposed Action would require multiple batch operations of the processing equipment in a remote, radioactive hot cell with an inert argon atmosphere. These operations would be sufficient to demonstrate the overall dependability and predictability of the process, considering equipment reliability, repair and maintenance, and operability of linked process steps. In addition, processing 100 driver fuel assemblies is expected to produce waste-form samples with representative radioactive waste loadings in quantities sufficient for testing. It is expected that the testing of these samples will assist in the development and characterization for future repository acceptance of the two process waste forms (ceramic and metal) produced by the electrometallurgical processing technique.

In order to evaluate higher efficiency electrorefining, 25 blanket assemblies would be processed in a second electrorefiner to be installed in the Fuel Conditioning Facility hot cell. Testing of the electrorefining concept with nonradioactive surrogate materials and construction of the second electrorefiner are currently underway at the Argonne National Laboratory-East site near Chicago, Illinois. Under the Proposed Action, this electrorefiner would be transported to Argonne National Laboratory-West, installed in the Fuel Conditioning Facility hot cell, and used to process the 25 blanket assemblies. This processing would require about seven batch operations in the high efficiency electrorefiner. These operations would demonstrate a one-day throughput of approximately 160 kilograms (353 pounds) per batch.

The Fuel Conditioning Facility is a small research facility, and its material handling equipment could not sustain the continued preparation of spent nuclear fuel for operation of the high-efficiency electrorefiner at a throughput equivalent to a production operation. Even though a production-scale operation in the Fuel Conditioning Facility is not possible with existing equipment, however, this demonstration would show the feasibility of batch operation electrorefining at a capacity approaching 200 kilograms per day (441 pounds per day) of radioactive Experimental Breeder Reactor-II spent nuclear fuel in a suitably designed and equipped facility, as recommended by the National Research Council. Seven batch operations should be sufficient to evaluate the reliability of the equipment and to meet the intent of the National Research Council's recommendation regarding high-efficiency electrorefining.

Alternatives Analyzed

The environmental assessment analyzed in detail the following alternatives to the Proposed Action:

1. Conducting the research and demonstration project in a facility at an alternative location, i.e., the Test Area North Hot Shop at the Idaho National Engineering Laboratory;
2. Conducting an equipment performance verification project by treating 50 driver assemblies and 10 blanket assemblies in the Fuel Conditioning Facility; and
3. Taking no action, i.e., placing all the Experimental Breeder Reactor-II spent nuclear fuel in interim storage, and not demonstrating the electrometallurgical treatment technology.

Alternative 1, Demonstration at an Alternative Facility and Location, would result in higher program cost and extensive additional waste generated from required facility modifications and relocation of the nuclear materials presently stored in the Test Area North Hot Shop to allow for the appropriate reconfiguration of that facility to accommodate electrorefining equipment. This alternative would also require the transportation on public highways of spent nuclear fuel and the electrometallurgical equipment from the Argonne National Laboratory-West to the Test Area North Hot Shop, which would not be necessary for the Proposed Action.

Alternative 2, Equipment Performance Verification, is very similar to the Proposed Action in terms of its environmental impacts. However, this alternative would not fully satisfy the purpose and need for Department of Energy action because this alternative would not provide sufficient quantities of fission products, transuranics, and sodium impurities to test the electrorefiner under conditions comparable to production-scale operation and to address the recommendations of the National Research Council.

Alternative 3, No Action, is also similar to the Proposed Action in that the environmental impacts that would result from packaging and storing all the Experimental Breeder Reactor-II spent nuclear fuel would be small. However, the No-Action Alternative would not provide the information and data needed to determine whether to continue the development of this technology as a potential management option for the disposal of Experimental Breeder Reactor-II sodium-bonded spent nuclear fuel.

Alternatives Considered But Not Analyzed in Detail in the Environmental Assessment

Demonstration of a technology other than electrometallurgical processing was not analyzed in detail because there are no other "innovative" spent nuclear fuel treatment technologies that have reached a stage of development to warrant testing by the Department of Energy with irradiated fuel. The environmental assessment discussed, but did not analyze in detail, the following alternative treatment technologies:

- *Chloride Volatility:* This very high temperature process would convert spent nuclear fuel to chloride compounds in a gaseous state, from which the constituents could be separated into appropriate streams for further treatment. Demonstration of chloride volatility technology would require development of very high temperature, corrosion-resistant equipment. This technology has not reached a stage of development suitable for demonstration with spent nuclear fuel.
- *Glass Material Oxidation and Dissolution:* This treatment concept would dissolve spent nuclear fuel using a system of lead and lead oxide with the intent of incorporating most spent nuclear fuel constituents in a glass waste form. It too has not reached a stage of development suitable for demonstration with spent nuclear fuel.
- *Plasma Arc Process:* This extremely high temperature process would use an electric arc to melt spent nuclear fuel, allowing the constituents to separate into glass and metal phases. However, this technology is still in the early stages of research and development and is not currently suitable for demonstration with spent nuclear fuel.
- *Hot, Water-Saturated Carbon Dioxide and Alcohol/Water Rinsing Processes:* These processes, which would react the sodium to form sodium carbonate, would require extensive development to safely control the reactions and to stabilize the products of the reactions before they could be considered ready for a demonstration with sodium-bonded fuel.
- *Low-Temperature Vacuum Distillation:* This process would evaporate the sodium from around the uranium fuel. It would not work for the Experimental Breeder Reactor-II driver fuel, however, because from 20 to 40 percent of the sodium in the driver fuel has been absorbed into the porous metal fuel alloy.

In addition, the environmental assessment considered, but did not analyze in detail, existing technologies that would require some development and modification. These technologies include:

- *Mechanical Processing:* This process has been used on some Experimental Breeder Reactor-II blanket fuel assemblies to strip away the layer of metallic sodium under the fuel's cladding. Considerable development of optical and control systems would be required for safe and reliable remote operation of a high-power laser to remove the fuel cladding in a radioactive hot cell environment. The sodium adhering to the cladding material, as well as the uranium, would be contaminated by cesium-137 during the cutting process and would require additional treatment and perhaps creation of a new waste form for disposal purposes. Mechanical processing would not work for the driver fuel assemblies, however, because from 20 to 40 percent of the sodium in the driver assemblies has been absorbed within the fuel, and therefore could not be removed except by dissolving or melting the fuel.
- *Plutonium Uranium Extraction (PUREX) Processing at the Idaho Chemical Processing Plant:* Modifying this reprocessing plant to dissolve the modern Experimental Breeder Reactor-II spent nuclear fuel would require changes in the dissolution process. These changes would be necessary because the zirconium in the modern Experimental Breeder Reactor-II fuel alloy inside a stainless steel cladding would require chemical additives to control the dissolution reaction safely. In addition, the plant would have to be restarted to carry out the demonstration. Because of excessive cost and the development required, processing of Experimental Breeder Reactor-II spent nuclear fuel at the Idaho Chemical Processing Plant is not a reasonable alternative to the proposed limited demonstration of electrometallurgical treatment technology.
- *Dissolution and Vitrification:* This process, which would dissolve spent nuclear fuel in acid (initial stage of PUREX process) and then vitrify it in borosilicate glass, would require a major modification to the existing dissolution process at the Savannah River site in order to be used in a demonstration with Experimental Breeder Reactor-II fuel. This modification would be similar to the modification that would be required for the Idaho Chemical Processing Plant discussed above. Further, the fuel would have to be packaged and shipped to Savannah River, which would be inconsistent with the Records of Decision (60 Fed. Reg. 28680, June 1, 1995 and 61 Fed. Reg. 9441, March 8, 1996) for the Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Environmental Impact Statement. These decisions require the regionalization of the type of spent fuel that would be involved in the demonstration to the Idaho National Engineering Laboratory.

Treatment at a Location Outside of the Idaho National Engineering Laboratory

The Department also considered electrometallurgical treatment at a location outside of the Idaho National Engineering Laboratory. This alternative would require the removal, decontamination and relocation of existing equipment to a newly constructed hot cell facility where the demonstration project would be conducted. This is not considered a reasonable alternative for a limited demonstration, because of the excessive cost and time involved for these preparative activities. This alternative would also be contrary to the Records of Decision for the Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Environmental Impact Statement.

Spent Fuel, Byproduct, and Waste Material Management

The Proposed Action would generate process wastes from the treatment operations and incidental wastes from the normal support operations of a hot cell facility. The process wastes include the fuel assembly hardware, metal waste form and ceramic waste form. The incidental wastes include operational wastes such as broken equipment, rags, packaging materials and other miscellaneous items. After use of the demonstration equipment has been completed, decommissioning wastes would include the disposal of the process equipment and process fluids such as the electrorefiner salt and cadmium. These materials would be categorized and disposed of according to existing Department of Energy orders and the Argonne National Laboratory radioactive waste management procedures. Two uranium byproducts would be recovered from the demonstration: low-enriched uranium blended down from the highly-enriched uranium in the driver fuel assemblies,

and depleted uranium from the blanket fuel assemblies. The uranium byproducts would be characterized according to the level of residual contamination. Adequate storage locations exist at Argonne National Laboratory-West to accommodate the small volume of spent nuclear fuel, waste materials, and byproduct uranium.

These materials, except the metal waste form and ceramic waste form, are currently produced at the Argonne National Laboratory-West site and would continue to be produced under all alternatives. The metal waste form and ceramic waste form, which would be classified as high level waste, would contain the fission products from the spent nuclear fuel and would be stored in the Radioactive Scrap and Waste Facility at Argonne National Laboratory-West. Both the high-level waste forms and the spent nuclear fuel elements are highly radioactive, requiring identical double containment and shielding, as well as special handling procedures.

Because processing assemblies would result in waste forms that are more compact, less storage volume would be required for the waste forms and uranium byproducts of the treated assemblies than for the untreated spent nuclear fuel assemblies. Under the Proposed Action, the Radioactive Scrap and Waste Facility storage requirement would be 38 liners (vertical underground storage cylinders). Byproduct uranium ingots would total 0.15 cubic meters (5.3 cubic feet) in volume [equivalent to two Radioactive Waste and Scrap Facility canisters (engineered storage containers with welded tops that fit into the storage liners)]. The Equipment Performance Verification Alternative (see Alternatives Analyzed, above) would require 59 Radioactive Waste and Scrap Facility storage liners and storage space for 0.07 cubic meters (2.5 cubic feet) of uranium byproduct ingots (equivalent to one Radioactive Waste and Scrap Facility canister). A larger number of storage liners would be required in this alternative because more spent fuel would have to be stored. The No-Action Alternative would require 81 Radioactive Waste and Scrap Facility storage liners. The number of storage liners required under the Demonstration in the Alternative Facility at the Test Area North Hot Shops at the Idaho National Engineering Laboratory is the same as the Proposed Action because only the location of the treatment process is different.

Low level radioactive wastes would be generated by routine facility operations under all alternatives, ranging in volume from 20 cubic meters (700 cubic feet) in the Proposed Action to 70 cubic meters (2475 cubic feet) in the No-Action Alternative. Fifty cubic meters (1750 cubic feet) of transuranic waste would be generated in the action alternatives.

Comparisons of waste that would be generated under the Proposed Action and the current Idaho National Engineering Laboratory inventory of similar waste are shown in Table 1. Adequate waste storage capacity exists for all alternatives.

Environmental Consequences of the Proposed Action

Surface Water Impacts: As described in Section 4.3.5 of the environmental assessment, the Proposed Action would not produce liquid effluents, so there would not be any impacts to surface waters or groundwater from effluents. To prevent potential releases to surface or subsurface waters resulting from spills of hazardous materials used in buildings, the Fuel Conditioning Facility and other buildings are designed, constructed and maintained to contain these materials.

TABLE 1. COMPARISONS OF WASTE GENERATED UNDER THE PROPOSED ACTION

Waste streams	Proposed Action (m^3)	Current INEL inventory* (m^3)	Percent of INEL inventory (%)
High level waste	0.52	10,000	0.0052
TRU waste	50	65,000	0.092
Low level waste	20	9,500	0.21
Mixed waste	1	1,100	0.10
Greater than class C waste	1.4	9,100	0.015
Environmental restoration waste**	192	320,000	0.06

*Source: "Intergration of EM activities at the INEL," Idaho National Engineering Laboratory, March 31, 1995.
**Waste that would be generated from decommissioning activities following the demonstration.

Land Impacts: Land use at Argonne National Laboratory-West has been dedicated to nuclear reactor and spent fuel research since 1955. All activities associated with the Proposed Action would take place on previously disturbed land and within existing structures.

Cultural Resources: All activities associated with the Proposed Action would be conducted within existing facilities. No archeological or historic sites and structures would be affected.

Threatened or Endangered Species: There are no known threatened or endangered species or sensitive habitats that would be affected by the Proposed Action.

Nonradioactive Air Emissions: As summarized in Section 4.1.1.1 of the environmental assessment, potential impacts from nonradioactive releases associated with the Proposed Action are very small. A small amount of refrigerant gas (freon R–22) may escape from the argon cell cooling system at the Fuel Conditioning Facility and electrical equipment cleaning will also contribute a small amount. No adverse consequences would be expected to result from the estimated total refrigerant gas release of about 90 kilograms (200 pounds) per year, which is small (400 times less) compared with the 36,000 kilograms per year (40 tons per year) Idaho regulatory threshold for "significant" release of volatile organic compounds.

Radioactive Air Emissions: As summarized in Section 4.1.1.2 of the environmental assessment, potential offsite doses from routine operations during this Proposed Action are quite small, less than 1.1×10^{-6} rem per year to the maximally exposed individual. This is more than a factor of 9,000 less than the 0.01 rem per year annual dose limit imposed by the National Emission Standards for Hazardous Air Pollutents program. No increased radiation levels, above background, would be detectable at the Argonne National Laboratory-West site or at the Idaho National Engineering Laboratory site boundary.

Worker Health Effects (Normal Operating Conditions): As described in Section 4.1.2 of the environmental assessment, under the Proposed Action, the average exposure of workers to radiation is small, and is not expected to increase to levels above those of the No-Action Alternative. The average annual exposure for a worker in the Fuel Conditioning Facility directly involved in the project is estimated to be 0.06 rem per year, and 0.03 rem per year for those not directly involved. These numbers are less than the 0.35 rem per year annual natural background radiation in the surrounding Eastern Snake River Plain. The probability of a single additional latent cancer fatality among workers involved in the project from the increased exposure is estimated to be one chance in 1,000.

Transportation Impacts: Transportation risks at the Idaho National Engineering Laboratory are small and would not be increased as a result of this Proposed Action. The Argonne National Laboratory-West workers travel over public highways to reach work. Since the Proposed Action would not require an increase in the total number of employees, there is no increase in transportation risk for employees. Likewise, there would be no increase in waste shipments over public highways from Argonne National Laboratory-West facilities to the Radioactive Waste Management Complex (such shipments are associated with routine facility operations and would also be required for the No-Action Alternative). High-level waste, spent nuclear fuel and low-enriched uranium transfers between Argonne National Laboratory-West facilities do not use public highways. The net number of transfers within the Argonne National Laboratory-West site would not increase as a result of the Proposed Action.

Socioeconomic Impacts: As described in Section 4.3.2 of the environmental assessment, it is not anticipated that the Proposed Action would have any measurable socioeconomic impacts on the area surrounding the Idaho National Engineering Laboratory. Any additional research personnel hired to help plan, conduct and interpret the experiments would be more than offset by a reduction in force that has been occurring due to shutdown of Experimental Breeder Reactor-II. No net additional personnel would be hired as a result of the Proposed Action.

Procurements of materials or services required for the Proposed Action would be minimal, and would be very small compared to the overall Idaho National Engineering Laboratory budget.

Potential Environmental Impacts of Facility Accidents: As described in Section 4.2 of the environmental assessment, the Final Safety Analysis Report (Revision 0, May 1, 1995) for the Fuel Conditioning Facility evaluated the consequences of a broad range of potential facility accidents which could possibly release radioactivity to the environment.

The largest radiological risk to an individual worker from any of the reasonably foreseeable accidents would be an increase of 3 chances in 10,000 of death by cancer due to radiation exposure following an accidental spent fuel transfer cask drop outside the facility. (The estimated probability of this accident is in a range from 1 chance in 100 to 1 chance in 10,000.) Since this accident would involve spent nuclear fuel, it would apply to each of the alternatives, including the No-Action Alternative. If such an accident occurred, up to 600 workers might be exposed to radiation, resulting in approximately 0.2 latent cancer fatalities; an estimated 0.003 latent cancer fatalities among the off-site population (within 50 miles of the site) could occur. This accident also represents the largest risk to the maximally exposed (public) individual, with an increase of 1 chance in 20 million of developing a fatal cancer if the accident did occur. The probability of developing a nonfatal cancer would be 1 chance in 2 million for the maximally exposed individual worker and 1 chance in 100 million for the maximally exposed individual member of the public.

An air cell exhaust system flow reversal accident represents the largest risk from an accident that distinguishes the action alternatives, including the Proposed Action, from the No-Action Alternative. (The probability of this accident is estimated to be between 1 chance in 10,000 and 1 chance in 1 million.) If this accident occurred, an individual worker would have 1 chance in 400,000 of developing a fatal cancer. A member of the public at the site boundary receiving the maximum dose would have 1 chance in 20 million of contracting a fatal cancer as a result of such an accident.

Consequences of Beyond-Design-Basis Accidents: Beyond-design-basis accidents are those accidents with probabilities of occurrence estimated to be between 1 in a million and 1 in 10 million. As described in Section 4.2.1.2 of the environmental assessment, two beyond-design-basis accidents have been evaluated for the modified Fuel Conditioning Facility. The first accident is a metal fire occurring simultaneously with small breaches in the argon cell confinement and with concurrent failure of abatement by the two separate stages of high-efficiency particulate air filtration provided by the safety exhaust system. The second accident, an aircraft crash into the facility, is described in detail in DOE/ID–10471, "Accident Assessments for Idaho National Engineering Laboratory Facilities."

The airplane crash accident assumes that a large commercial jet crashes into the Fuel Conditioning Facility, resulting in penetration of the argon cell and a fire in the facility involving aviation fuel. This accident would result in a radiation dose of 250 person-rem among the potentially exposed population within an 80 kilometer (50 mile) radius. The estimated increase in latent cancer fatalities is 0.13, or approximately 1 chance in 8, of an additional cancer fatality. The corresponding increase in nonfatal cancers is estimated to be 0.025, or 1 chance in 40, of an additional nonfatal cancer. Based on conservative estimates (i.e., estimates that tend to overstate the impacts), 2 radiation-induced cancer fatalities among 600 potentially-exposed workers would result.

In the metal fire accident; a fire in the hot process metal is assumed to start after sufficient oxygen enters through argon cell breaches resulting from a beyond-design-basis earthquake. This accident would result in a radiation dose of 74 person-rem among the population within an 80 kilometer (50 mile) radius. The estimated increase in latent cancer fatalities is 0.037, or approximately 1 chance in 24, of an additional cancer fatality among potentially exposed members of the public. Based on conservative estimates, three radiation-induced cancer fatalities among workers would result.

Taking account of the potential consequences and probabilities of occurrence, the accident risks associated with the Proposed Action are small.

Natural Hazards: As described in Section 4.2.2 of the environmental assessment, the Fuel Conditioning Facility Final Safety Analysis Report provides a discussion of natural phenomena hazards. The principal potential natural hazard is earthquakes. The air cell, argon cell, general building and safety equipment building were analyzed and were confirmed to maintain structural integrity during and after the design-basis earthquake (0.21 g acceleration). All structures can easily accommodate the straight wind loading of 95 mph and the snow loading of 40 pounds per square foot.

Spent Nuclear Fuel, Uranium By-Products and Waste Management

Impacts: As discussed in Section 4.5 of the environmental assessment, using a common comparison basis for estimating waste volumes for each alternative, implementation of the Proposed Action would result in a net decrease in the combined volume of high-level waste and spent nuclear fuel at Argonne National Laboratory-West. For the volume of high level wastes generated by the process, adequate storage capacity currently exists on-site. The Proposed Action would increase the volume of low-enriched uranium and high-level radioactive waste stored at the Argonne National Laboratory-West site. The increased volumes, however, would occupy a small percentage of the available storage space.

Compared to the No-Action Alternative, the Proposed Action would also result in a net decrease in the amount of low-level waste generated and shipped to the Idaho National Engineering Laboratory Radioactive Waste Management Complex, because some of the waste generated from normal facility operations would be characterized as transuranic waste. Therefore, the reduction in low-level waste volumes would be offset by a net increase in the amount of transuranic waste. Argonne National Laboratory-West and the Idaho National Engineering Laboratory Radioactive Waste Management Complex have adequate interim storage capacity to accommodate the transuranic waste, which would be less than one-tenth of one percent of the current inventory at the Idaho National Engineering Laboratory.

The amounts of mixed waste and nonradioactive waste generated under the Proposed Action are the same as would be expected under the No-Action Alternative. Existing, adequate storage capacity exists for any of the wastes that would be generated.

Cumulative Impacts: A cumulative impact is the result of the incremental impact of the Proposed Action added to all other past, present, and reasonably foreseeable future actions. Cumulative impacts associated with Idaho National Engineering Laboratory spent nuclear fuel, environmental restoration, and waste management activities have been described and analyzed in Volume 2, Section 5.15 of the Spent Nuclear Fuel and Idaho National Engineering Laboratory Environmental Impact Statement. As discussed in Section 4.3 of the environmental assessment, the environmental impacts of the Proposed Action would be small and would add only a small increment to past, present or reasonably foreseeable impacts at the Idaho National Engineering Laboratory. Therefore, the Proposed Action would not result in significant cumulative impacts.

Environmental Justice: As discussed above and described in Section 4.6 of the environmental assessment, the potential environmental impacts calculated for activities associated with the Proposed Action are small, and present little or no risk to any segment of the surrounding population. Therefore, the impacts also do not constitute disproportionately high or adverse impacts on any minority or low-income population.

Consistency with United States Nonproliferation Policy: It is the policy of the United States not to encourage the civil use of plutonium. The proposed demonstration project would not separate plutonium from the processed Experimental Breeder Reactor-II fuel. Moreover, the technology employed is not capable of separating plutonium. Even with extensive modification, the technology would not be capable of separating plutonium that would be suitable for a proliferant nuclear weapons program. Further, by removing and then blending down the highly enriched uranium in the Experimental Breeder Reactor-II driver fuel, the project supports the United States goal of seeking to eliminate, where possible, the accumulation of stockpiles of highly enriched uranium. As a result, the proposed demonstration project is consistent with United States nonproliferation policy.

Principal Concerns Raised During Public Comment Period: As noted above, a draft environmental assessment was available for public comment from February 5, 1996 through May 3, 1996. The Department carefully considered all comments received and prepared a detailed "Comment Response Document," which is an appendix to the final environmental assessment. The following discussion summarizes the principal concerns raised by commentors and the Department's responses.

Reprocessing: Some commentors suggested that the proposed demonstration of electrometallurgical treatment technology is "reprocessing" because it involves the separation of spent nuclear fuel constituents, could involve the future reuse of the separated materials, and/or has evolved from a technology that was originally intended to support the now-terminated Integral Fast Reactor project. As a result, some commentors suggested that the Department's National Environmental Policy Act regulation (10 CFR Part 1021, Appendix D to Subpart D) requires the preparation of an environmental impact statement for the proposed demonstration program.

It is important to note that preparation of an environmental impact statement is not automatically required by Appendix D, which is entitled "Classes of Actions That *Normally* Require Environmental Impact Statements" (emphasis added). At most, the inclusion of a class of actions in Appendix D establishes a presumption that activities falling within that class are generally "major" activities requiring the preparation of an environmental impact statement. That presumption is overcome when an evaluation of a specific proposal indicates that it is not a "major" activity and would not produce any significant environmental impacts.

The particular provision of Appendix D at issue originated in 1990, when the Department issued a Notice of Proposed Rulemaking (55 **Federal Register** 46444, November 2, 1990) that eventually was promulgated in 1992 as 10 CFR Part 1021. Among the new classes of actions proposed as "normally requiring Environmental Impact Statements" was the "siting, construction, operation, and decommissioning of reprocessing facilities." The preamble to the proposed rule described this provision's intended scope as one of several new classes of activity "related to the siting, construction and operation of *major nuclear facilities*" (emphasis added). It is apparent from this preamble language that the Department regarded the scale of the proposed activity and its potential for significant impacts, not the designation of an activity as "reprocessing," as the important factor in establishing the need for an environmental impact statement.

Unlike the large reprocessing facilities existing at the time the regulations were promulgated, the proposed demonstration project does not generate large volumes of liquid high-level waste or have other significant impacts. The Proposed Action is simply a *demonstration* of electrometallurgical treatment technology involving equipment whose size and configuration cannot accommodate full-scale treatment activities. As demonstrated in the environmental assessment, the demonstration project would generate 640 kilograms (0.52 cubic meters, or approximately the size of a three-drawer file cabinet) of solid high-level waste in metal or ceramic form, but no liquid high-level waste. In light of these minimal impacts, it was appropriate for the Department to prepare an environmental assessment to assist in determining whether to prepare an environmental impact statement.

Indeed, the Department does not regard the proposed treatment process as "reprocessing" as that term has been used historically and is used in the Department's National Environmental Policy Act regulations. The purpose of the Department's historical reprocessing activities was to recover plutonium and highly-enriched uranium from spent nuclear fuel for reuse in defense-related activities, including weapons production. These activities required large production-scale buildings and ancillary facilities. The Department of Energy regulations implementing the National Environmental Policy Act were drafted with these reprocessing activities in mind. In contrast, the much smaller-scale proposed demonstration of electrometallurgical technology would not involve the separation of plutonium from fission products or the reuse or recycling of any separated materials for defense-related purposes.

As noted in Section 2.3 of the environmental assessment, this technology does separate spent nuclear fuel constituents into certain groups. For driver spent nuclear fuel, these groups are (1) highly-enriched uranium (which would promptly be blended with depleted uranium to form low-enriched uranium), (2) a mixture of fission products and plutonium, and (3) cladding metal. For the blanket fuel, these groups are (1) low-enriched uranium, (2) a mixture of fission products and plutonium, and (3) cladding metal.

With regard to the potential reuse of separated materials, the treatment of the 100 driver assemblies would result, after blending, in approximately 1400 kilograms (3080 pounds) of low-enriched uranium. As described in Section 2.3 of the environmental assessment, this low-enriched uranium would be stored at Argonne National Laboratory-West until a decision is made regarding its ultimate disposition. The disposition of this material would be consistent with future departmental decisions regarding other similar materials, but it would not involve reuse for defense-related purposes. Potential disposition options for this material include its sale to the commercial nuclear industry for use as power reactor fuel.

For all of these reasons, the Department of Energy does not believe that the proposed demonstration of electrometallurgical technology constitutes "reprocessing" within the meaning of 10 CFR Part 1021, Appendix D to Subpart D, even if it does fall within some broader definitions of "reprocessing" that are used in other contexts.

Nonproliferation: Some commentors suggested that the proposed demonstration project is contrary to the nonproliferation policy of the United States regarding materials that could be used by other countries or groups to construct nuclear weapons. The United States policy on nonproliferation is contained in Presidential Decision Directive 13, a classified document. On September 27, 1993, at the time Presidential Decision Directive-13 was signed, an unclassified press release summarizing its contents was issued. Among other things, the summary states that the United States does not encourage the civil use of plutonium, and accordingly the United States does not itself engage in plutonium reprocessing for either nuclear weapons or nuclear power purposes. As described in Section 4.7 of the environmental assessment, the electrorefining equipment that would be a part of the proposed demonstration project is not capable of separating plutonium from spent nuclear fuel. The plutonium contained in the spent nuclear fuel, along with other actinides and most constituent fission products, would be immobilized in the zeolite ceramic waste form. Thus, because it does not separate plutonium, the proposed demonstration is consistent with the nonproliferation policy of the United States.

Some of the commentors suggested, however, that with adjustment to or refinements of either of the electrorefiners that would be a part of the Proposed Action, this technology could be made to separate plutonium for weapons use. During the Integral Fast Reactor Program, which was canceled in 1994, the Department attempted to develop an electrorefiner that included a liquid cadmium cathode to collect and concentrate plutonium and all other transuranic elements present in the spent nuclear fuel. Successful application of this process would have resulted in a plutonium product contaminated or mixed with uranium, other transuranic elements, and rare earth fission products. Development of the cathode progressed only to the point where the technical feasibility of the concept was established. No prototype or working model was ever commissioned for the Fuel Conditioning Facility.

As conceived, however, the liquid cadmium cathode would have produced a metal-alloy product containing up to 70 percent plutonium; this plutonium alloy could have been obtained only after subsequent processing in a high-temperature vacuum furnace. The balance of materials remaining in the plutonium product after electrorefining, but prior to subsequent processing, would be those most difficult to separate from plutonium by any chemical means: uranium, americium, neptunium, curium, and the rare earth fission products. This plutonium metal-alloy product would have high transuranic content, a high heat source, a high neutron radiation source, and a high gamma radiation source, any one of which would make design of a weapon extremely difficult. Neutron and gamma radiation sources would be three to four orders of magnitude higher than weapons-grade or reactor-grade material. These levels of radiation are lethal and would require handling of the material by remote means. As a result of the high heat, neutron, and gamma radiation sources, and the transuranic contamination, any attempt to use plutonium in this form for weapons purposes would add significant difficulties to any potential proliferant's efforts.

The Department requested a study by the Defense Technologies Engineering Division of Lawrence Livermore National Laboratory to determine the feasibility of misusing electrometallurgical technology in order to produce plutonium that could be used in a proliferant nuclear weapons program. While the report from that study is classified, an unclassified presentation on the conclusions from the report was given to the Department by Lawrence Livermore National Laboratory in March 1994 and is summarized in Section 4.7 of the environmental assessment. The unclassified presentation stated that the report concluded that significant new process inventions and new weapons designs would be required before material resulting from the process could be used in a nuclear weapons program. The major problems for prospective weapons designers would be:

(a) the actinides collected with the fission products would result in a very high heat output, which would complicate and might even preclude the design of even a simple nuclear device due to the heat output's effect on high explosive and plutonium components; (b) radiation levels from the material would be incapacitating and lethal to individuals coming in contact with the material for the purpose of weapons fabrication; (c) designing processes to deal with these radiation levels would significantly complicate a proliferant's development and deployment programs and production activities; and (d) over time, high radiation fields would

negatively impact material behavior and electronic circuitry.

Some of the commentors also suggested that, because this technology separates highly-enriched uranium from the Experimental Breeder Reactor-II driver spent nuclear fuel, use of the technology would violate United States policy on nonproliferation. While it is correct that the technology would separate the highly-enriched uranium from the driver spent nuclear fuel, under the proposed demonstration project the highly-enriched uranium would be melted in the casting furnace and combined with depleted uranium to produce low-enriched uranium (less than 20 percent enrichment) without ever leaving the argon cell. This blending-down activity would, in fact, be part of the spent nuclear fuel treatment process. Blending down would be done to reduce costs associated with the higher levels of security required for safeguarding highly-enriched uranium. Also, it should be noted that this technology is incapable of increasing the level of enrichment of uranium contained in spent nuclear fuel being treated. Therefore, this technology would not be useful to a nation seeking to enrich uranium to weapons-grade level. However, because the technology permits the separation of highly-enriched uranium, which could, in the wrong hands, pose a proliferation risk, the Department would exercise its authority to prevent proliferation sensitive information and technology advances resulting from the proposed demonstration from becoming available to potential proliferant-risk countries, including exercising its authority under the Atomic Energy Act, the Nuclear Nonproliferation Act of 1978 and the Department's implementing regulations. Separating the highly-enriched uranium from Experimental Breeder Reactor-II spent nuclear fuel and blending it down to less than 20 percent enrichment is consistent with United States nonproliferation policy.

Appropriate Level of National Environmental Policy Act Review: Several commentors suggested that the Proposed Action is part of a larger program, and that the Department must prepare an environmental impact statement that analyzes the larger program, including full-scale implementation of electrometallurgical treatment. Commentors further expressed concern that the Proposed Action would prejudice the Department's choice of options under a larger program, either because of the commitment of resources that would be invested in studying the electrometallurgical technology, or because the proposed demonstration would set a precedent for the technology's further, broader application.

The Department does not agree with these assertions. The Department has no current proposal to apply the technology more broadly. The Department prepared this environmental assessment to assess the environmental impacts of a proposal to apply electrometallurgical treatment technology only to a limited number of Experimental Breeder Reactor-II spent nuclear fuel assemblies sufficient for the purpose of further research and development as recommended by the National Research Council. The Department needs the information from the proposed demonstration to determine whether electrometallurgical treatment is a feasible technology for treating the remainder of the Experimental Breeder Reactor-II spent nuclear fuel or other spent nuclear fuel requiring processing for disposal. Only after data from such a demonstration are analyzed can the Department assess whether to propose a broader application of the technology. In the absence of a proposal for broader application, no "program" or broader activity exists to be analyzed.

The Department has decided to proceed with the proposed demonstration. Even if successful, however, the demonstration would not automatically lead to the treatment of more Experimental Breeder Reactor-II spent nuclear fuel or to other broader applications of electrometallurgical technology. The Department will not make any significant additional use of the electrometallurgical refining technology without first preparing an environmental impact statement. Specifically, the Department will not use this technology to treat the remaining Experimental Breeder Reactor-II spent fuel or make another production-scale use of the technology without preparing an environmental impact statement.

Public Comment Process: Several commentors suggested that the Department did not allow the public proper and timely access to the documents referenced in the draft environmental assessment. The draft environmental assessment was transmitted for public review and comment on January 29, 1996, with an initial comment period from February 5 to March 22. References cited in the draft environmental assessment originally were not sent to the public reading rooms, but were available upon request from the Department of Energy document manager in Idaho.

In the course of public hearings in Idaho Falls, Idaho, on February 21, 1996, a commentor requested that the documents referenced in the draft environmental assessment be made available in the Department's public reading rooms and that the public comment period be extended by another two months. The Department agreed to place the references in the public reading rooms but deferred the decision on extending the comment period. A member of the Department of Energy panel stated that he would "* * * try to have them (the references) in the public reading rooms within the next week." Thirty-seven of the 48 references were reproduced and sent to each of the nine public reading rooms by March 8. The Department believed the remaining 11 references were already in the reading rooms as references to the Department of Energy Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Environmental Impact Statement (DOE/EIS–0203–F). On March 25, another commentor brought to the Department's attention the fact that not all documents were in the public reading rooms in Washington, D.C. and in Idaho Falls. In response, the missing documents were sent directly to the commentor, and duplicates were placed in the reading rooms. The comment response period was extended to April 5.

In response to additional comments that not all documents had been found in the public reading rooms, an inventory of each of the reading rooms was taken by Department of Energy or Argonne National Laboratory personnel on April 6. Missing documents were provided, and all documents were personally verified by Department of Energy or Argonne National Laboratory personnel to be in place in the reading rooms on April 8. Further, an additional document and reference location was established in the main library of the University of California at Irvine. On April 15, 1996, the public comment period was reopened until May 3. The Department believes that making the reference documents available to the public and reopening the comment period have allowed an adequate opportunity to review and comment on the environmental assessment and to consult the reference documents.

Finding

Based on the analysis in the environmental assessment and after considering all comments received through the public review process, the Department of Energy has determined that the *Electrometallurgical Treatment Research and Demonstration Project in the Fuel Conditioning Facility at Argonne National Laboratory - West* does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. Therefore, an environmental impact statement is not required.

Issued in Washington, D.C., this 15th day of May 1996.

Terry R. Lash,

Director Office of Nuclear Energy, Science and Technology U.S. Department of Energy.

[FR Doc. 96–12861 Filed 5–21–96; 8:45 am]

BILLING CODE 6450–01–P

Final Environmental Impact Statement for the Plutonium Finishing Plant Stabilization, Hanford Site, Richland, Benton County, Washington

AGENCY: U.S. Department of Energy.

ACTION: Notice of availability.

SUMMARY: The U.S. Department of Energy (DOE), Richland Operations Office, announces the availability of the *Plutonium Finishing Plant Stabilization Final Environmental Impact Statement* (DOE/EIS–0244–F). The Final Environmental Impact Statement (EIS) was prepared pursuant to the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations [CFR] Parts 1500–1508), and DOE's Implementing Procedures (10 CFR Part 1021). The continued presence of relatively large quantities of chemically reactive materials in their present form and location within the Plutonium Finishing Plant (PFP) Facility poses an unacceptable long-term risk to workers, the public, and the environment. DOE has identified the need to expeditiously and safely reduce radiation exposure to workers and the risk to the public; reduce future resources needed to safely manage the facility; and remove, stabilize, store, and manage plutonium, pending DOE's future use and disposition decisions.

DOE's preferred alternative is removal of readily retrievable plutonium bearing material in hold-up at the PFP Facility and stabilization of these and other plutonium-bearing materials at the PFP Facility through the following four treatment processes: 1) ion exchange, vertical calcination and thermal stabilization of solutions; 2) thermal stabilization of oxides, fluorides, and process residues in a continuous furnace; 3) repackaging of metals and alloys; and 4) pyrolysis of polycubes and combustibles. In addition, DOE is evaluating other alternatives for stabilizing or immobilizing these materials as well as a "no action" alternative.

FOR FURTHER INFORMATION CONTACT: Requests for copies or questions concerning the PFP Stabilization EIS should be directed to: Mr. Ben F. Burton, U.S. Department of Energy, Richland Operations Office, Attn: PFP Stabilization EIS, P.O. Box 550, MSIN B1–42, Richland, Washington 99352, (888) 946–3700.

For general information on DOE's EIS process and other matters related to NEPA, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background, Purpose and Need for Agency Action. In the late 1980s, the halt in the production of weapons-grade plutonium froze the existing PFP Facility manufacturing pipeline in a state that was unsuited for long-term storage. On January 24, 1994, the Secretary of Energy commissioned a comprehensive assessment to identify and prioritize the environmental, safety, and health vulnerabilities that arise from the storage of plutonium in DOE facilities and determine which are the most dangerous and urgent. The DOE-wide assessment, commonly referred to as *The Plutonium Vulnerability Study*, identified environmental, safety, and health vulnerabilities at the PFP Facility. These included storage of unstable forms of plutonium, a potential for criticality accidents, and seismic weaknesses.

Scoping. A Notice of Intent to prepare the EIS and hold public scoping meetings in Spokane, Richland, and Bellevue, Washington, and Hood River and Portland, Oregon, was published by DOE in the **Federal Register** on October 27, 1994. A subsequent Notice of Intent was published by DOE in the **Federal Register** on November 23, 1994, announcing additional meetings in Portland, Oregon, and Seattle, Washington. The Notice of Intent invited oral and written comments and suggestions on the proposed scope of the EIS, including environmental issues and alternatives, and invited public participation in the NEPA process. Overall, scoping comments were received that assisted in identifying major issues for subsequent in-depth analysis in the Draft EIS. As a result of the scoping process, an *Implementation Plan for the PFP Stabilization EIS* was developed to provide guidance for preparing the Draft EIS and record the results of the scoping process.

Public Hearing. On December 5, 1995, a Notice of Availability was published in the **Federal Register** (60 FR 62244) which formally announced the release and availability of the Draft EIS. The public hearing date, time, and location were also published and public comment was requested. A public meeting on the Draft EIS. The public hearing date, time, and location were also published and public comment was requested. A public meeting on the Draft EIS was held in Pasco, Washington, on January 11, 1996. While the comment period officially ended on January 23, 1996, DOE accepted comments through February 15, 1996. Both oral and written comments were received during the comment period.

Notice of Limited Reopening of Public Comment Period. On May 3, 1996, a Notice of Limited Reopening of Public Comment Period was published in the **Federal Register** (61 FR 19914) which formally announced the release and availability of a supplementary alternative which involves immobilization of a portion of the inventory of the plutonium-bearing materials in cement at the PFP Facility. Comments on the analysis of potential impacts described in the supplementary information have been solicited during a 21-day comment period that will end May 24, 1996. Comments received will be considered in the preparation of the Record of Decision.

AVAILABILITY OF FINALS EIS: Copies of the Final EIS have been distributed to Federal, state, and local officials and agencies, as well as organizations and individuals known to be interested in or affected by the proposed project. Additional copies may be obtained by contacting Mr. Burton as provided in the section of this notice entitled **FOR FURTHER INFORMATION CONTACT.** Copies of the Final EIS, including appendices and reference material will be available for public review at the locations listed below. Comments received in response to this **Federal Register** notice will be considered in the preparation of the Record of Decision.

U.S. Department of Energy, Headquarters, Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3142

U.S. DOE Public Reading Room, Washington State University, Tri-Cities Branch, 100 Sprout Road, Richland, WA 99352, (509) 376–8583,
Government Publications, University of Washington, Suzzallo Library, Box 352900, 15th Avenue NE., and Campus Parkway, Seattle, WA 98185–2900, (206) 543–1937
Gonzaga University, Foley Center, East 502 Boone Avenue, Spokane, WA 99258, (509) 324–5931
Portland State University, Branford Price Millar Library, SW Harrison and Park, Portland, OR 97207, (503) 725–4735.

You may also receive a copy of the Final EIS by calling the Hanford Cleanup Hotline toll-free at 1–800–321–2008.

Signed in Richland, Washington, this 10th day of May 1996, for the United States Department of Energy.

John D. Wagoner,

Manager, Richland Operations Office.

[FR Doc. 96–12824 Filed 5–21–96; 8:45 am]

BILLING CODE 6450–01–P

Floodplain Statement of Findings for Remedial Action at the Ventron Site and Adjacent Harbor Sediment in Essex County, Massachusetts

AGENCY: Former Sites Restoration Division, Department of Energy (DOE).

SUBJECT: Floodplain statement of findings.

SUMMARY: This is a Floodplain Statement of Findings prepared in accordance with 10 CFR Part 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements. DOE proposes to remediate sediment and soil with elevated levels of uranium-238 from the 100-year floodplain of the Bass and Danvers Rivers and from the floodplain buffer zone adjacent to the 100-year floodplain at the Ventron site in Essex County, Massachusetts. DOE prepared a Floodplain and Wetlands Assessment describing the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the affected floodplain. DOE would endeavor to allow 15 days of public review after publication of the Statement of Findings before implementation of the proposed action.

FOR FURTHER INFORMATION ON THIS PROPOSED ACTION OR TO COMMENT ON THE ACTION, CONTACT: Mr. Jim Kopotic, Ventron Site Manager, Former Sites Restoration Division, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, TN 37831–8541, Phone: (423) 576–4991, FAX: (423) 576–0956.

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN AND WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–42, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: This is a Floodplain Statement of Findings prepared in accordance with 10 CFR Part 1022. A Notice of Floodplain and Wetland Involvement was published in the **Federal Register** (Vol. 61, pp. 11621–11622) on March 21, 1996, and a Floodplain and Wetlands Assessment was incorporated in the engineering evaluation and cost analysis prepared for the Ventron site. DOE proposes to remediate sediment and soil with elevated levels of uranium-238 that are located in the 100-year floodplain of the Bass and Danvers Rivers and the 100-yr floodplain buffer zone adjacent to the floodplain at the Ventron site in Essex County, Massachusetts. The entire Ventron site is also within the Massachusetts coastal zone. The proposed action would be in a floodplain because levels of uranium-238 in some sediment and soil in the floodplain at the site exceed guidelines for residual radioactivity and future use without radiological restrictions of the site. DOE has structured potential cleanup options by affected media: harbor sediments and on-site soil and furnace ash. Alternative actions considered for harbor sediments are no action or, complete removal of harbor sediment with levels of uranium-238 over 50 pCi/g. Alternative actions considered for on-site soil and furnace ash also include no action or, complete removal of on-site soil and furnace ash with levels of uranium-238 over 50 pCi/g. Access to sediment and soil may require decontamination and demolition of structures at the site. There is no practicable alternative to the proposed action. The proposed action would conform to applicable state and local floodplain protection standards.

The following steps would be taken to minimize potential harm to or within the affected floodplain:

1. The design and performance of excavation activities would incorporate standard best management practices in accordance with U.S. Department of Agriculture Natural Resource Conservation Service (formerly the Soil Conservation Service) methods, or the equivalent, to control erosion and siltation from excavations.

2. Remediation operations would confine the areas of sediment and soil disturbance to the minimum necessary for successful completion of the project.

3. Care would be exercised to provide minimum practicable exposure of sediment and soil to erosion.

4. All erosion and sediment barriers would remain in place until the excavation is successfully stabilized by applicable measures.

5. Disturbed sediment and soil in or adjacent to the floodplain, waterways, wetlands, coastal zone, and areas subject to tidal action and excavations would be stabilized or otherwise protected to prevent off-site migration, as conditions warrant, in accordance with Massachusetts soil erosion and sediment control standards or their equivalent.

6. DOE would not dispose waste rubble, sediment, or soil in the floodway or within the tidal zone. Waste mulch not serving to control erosion or sediment would also not be disposed of in channels or on waterway banks.

7. Remediation would not obstruct any streams or tidal areas and all streams and tidal zones would retain their original capacity for storing floodwaters. The proposed action would not impede flow or increase flooding.

8. All areas excavated in or adjacent to the floodplain, wetlands, the Massachusetts coastal zone, and areas subject to tidal action would be restored to grade by the current owner, Morton International, as required, and the proposed activities would not subject lives or property to any increased risk of flooding.

9. DOE would not use areas within the floodplain for temporary or permanent storage of excavated sediment, soil, or demolition rubble; however, some areas within the floodplain and wetland buffer zone, and the Massachusetts coastal zone may be used for temporary storage of excavated materials with appropriate measures in place to properly contain excavated materials.

10. The proposed action would conform to applicable state and local floodplain, wetland, and coastal zone protection standards and would be consistent with Massachusetts' coastal zone management policies.

11. The proposed action would not result in the destruction of any floodplain or wetland and would be consistent with the President's policy of "no net loss" of wetlands in the United States and Executive Orders 11988 and 11990.

DOE will endeavor to allow 15 days of public review after publication of the Statement of Findings before implementation of the proposed action.

Issued in Oak Ridge, Tennessee on May 6, 1996.

James L. Elmore,

Alternate NEPA Compliance Officer.

[FR Doc. 96–12825 Filed 5–21–96; 8:45 am]

BILLING CODE 6450–01–P

Bonneville Power Administration

Templates (New Power Sales Contracts) and Amendatory Agreement No. 7

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to offer BPA's public utility customers choices about their business relationships with BPA over the next 5 years. One choice being offered is for the public utility customers, and potentially other types of customers, to negotiate a new tailored contract for firm load requirements service based on contract templates that have been negotiated through a public process and comment period. Requirements service is the firm power products that a BPA customer has a right to purchase from BPA for the customer's general firm power load requirements and its new large single loads. Contracts based on the templates will be available at least through August 1, 1996.

The other key choice BPA is offering is an opportunity to amend their 1981 or 1984 Power Sales Contracts. With Amendatory Agreement No. 7, BPA is offering terms that will address certain changes in the electric power marketplace and in the needs of BPA customers. This amendment is offered in the context of the market-driven approach selected in BPA's Business Plan process. This amendment is planned to be the final step in a sequence of offers to public utility customers intended to strengthen BPA's competitive position in the electric power market and to strengthen its business relationships with its customers. This decision is consistent with BPA's Business Plan, the Business Plan Final Environmental Impact Statement (DOE/EIS–0183, June 1995), and the Business Plan ROD (August 15, 1995).

ADDRESSES: Copies of this ROD, the Business Plan Environmental Impact Statement, and the Business Plan ROD may be obtained by calling BPA's toll-free document request line: 1–800–622–4520.

FOR FURTHER INFORMATION, CONTACT: Katherine S. Pierce—EC, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number (503) 230–3962, fax number (503) 230–5699.

Issued in Portland, Oregon, on May 13, 1996.

Randall W. Hardy,

Administrator and Chief Executive Officer.

[FR Doc. 96–12826 Filed 5–21–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board, Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463; 86 Stat. 770), notice is hereby given of the following meeting:

Name: State Energy Advisory Board.

Date and Time: June 27, 1996 from 9:00 am to 5:00 pm, and June 28, 1996 from 9:00 am to 12:00 pm.

Place: The Industrial Electrotechnology Laboratory, room 2427, NCSU College of Textiles, Research Drive, Raleigh, NC 27695. 919–515–3941.

Contact: William J. Raup, Office of Building Technology, State, and Community Programs, Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, Telephone 202/586–2214.

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives and programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101–440).

Tentative Agenda: Briefings on, and discussions of:

- The FY 1997 Federal budget request for Energy Efficiency and Renewable Energy programs.
- Issues related to DOE National Laboratories, relating to deployment of technology through the States.
- Review and approval of any committee activity.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 16, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–12822 Filed 5–21–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP96–520–000]

Columbia Gas Transmission Corporation; Notice of Application

May 16, 1996.

Take notice that on May 13, 1996, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP96–520–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity pursuant to Section 157.7 of the Commission's regulations, as well as a temporary certificate pursuant to Section 157.17 of the Commission's regulations, authorizing the increase in compressor station horsepower, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia requests authorization to increase the horsepower at its Hellertown Compressor Station, located in Northampton County, Pennsylvania, from 917 to 1100 horsepower (hp) per unit, for a total of 2200 hp, and incremental increase of 366 hp. It is stated that to accommodate the proposed increase in horsepower, Columbia must also replace the existing, appurtenant eight 8-inch diameter compressor cylinders with eight 8½-inch diameter compressor cylinders, and provide sound attenuation to ensure reliability of service to its customers.

Columbia requests a temporary certificate to allow it to continue operation of its Hellertown Compressor Station at the higher horsepower level until the Commission issues a permanent certificate. It is stated that, due to a pipeline rupture on January 6, 1996, Columbia's Line 1278 was repaired and the operating pressure was decreased from 1200 psig to 1080 psig, pending remedial work to restore the operation integrity of the pipeline. Columbia contends that the decreased operating pressure created a shortage of

facility capacity to serve Columbia's customers in the New York area. According to Columbia, it became necessary to operate the Hellertown Compressor Station at the higher horsepower to ensure continued service to customers in the New York area on an emergency basis. Columbia states that it has operated in this mode since January 13, 1996, and that its extended terms for emergency service will expire on May 13, 1996. Columbia estimates that the Line 1278 operating pressure will not be restored until November 1997, based on a remediation plan agreed to by Columbia, in consultation with the Department of Transportation. It is stated that Columbia must therefore continue supplementing deliveries to its New York customers through the Hellertown Compressor Station. Therefore, a temporary certificate is required to continue this level of service. Columbia states that the permanent certificate and subsequent appurtenant compressor facility upgrades will allow Columbia to better serve all of its customers over a wider operating range, thus enhancing the flexibility of providing service to its New York customers.

Columbia states that it does not request authorization for any new or additional service. It is stated that the proposed horsepower increase is necessary to provide reliable service to all of Columbia's New York area customers. Columbia estimates the cost of the appurtenant facility upgrades at $860,000. It is stated that no additional costs are required to achieve the 1100 hp rating per unit, since each unit was derated originally.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 28, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held with further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12789 Filed 5–21–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11572–000]

Roosevelt Water Conservation District; Notice of Application for Errata to Conduit Exemption

May 16, 1996.

Take notice that the deadline date under the notice issued April 29, 1996 (61 FR 19927, May 3, 1996) has been changed to August 2, 1996. The applicant's zip code should also be corrected to read "85236."

Lois D. Cashell,

Secretary.

[FR Doc. 96–12848 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–516–000]

Williams Natural Gas Company; Notice of Request Under Blanket Authorization

May 16, 1996.

Take notice that on May 10, 1996, Williams Natural Gas Company (WNG), P.O. Box 2400, Tulsa, Oklahoma, 74102, filed in Docket No. CP96–516–000 a request pursuant to Sections 157.205, and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, and 157.216) for approval to abandon in place approximately 4,166 feet of the Superior eight-inch loop pipeline located in Jewell County, Kansas, under the blanket certificate issued in Docket No. CP82–479–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG states that it is proposing to abandon the eight-inch pipeline where the pipeline crosses White Rock Creek, a tributary to Lovewell Reservoir, located in Jewell County, Kansas. WNG further states that in 1955, it installed a ten-inch pipeline which paralleled the eight-inch pipeline could either be operated as a single line or both the eight-inch line or ten-inch line pipeline could be operated simultaneously. It is further asserted that the parallel ten-inch line has sufficient capacity to continue to provide service without detriment or disadvantage to any WNG customer. WNG indicates that the reclaim cost of the line is estimated to be $1,200 with a salvage value of $0.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12788 Filed 5–21–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1845–001, et al.]

Central Illinois Light Co., et al.; Electric Rate and Corporate Regulation Filings

May 14, 1996.

Take notice that the following filings have been made with the Commission:

1. Central Illinois Light Co.

[Docket No. ER95–1845–001]

Take notice that on April 22, 1996, Central Illinois Light Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: May 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Heartland Energy Services, Inc., Acme Power Marketing, Inc.,

[Docket No. ER94–108–008, Docket No. ER94–1530–008 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On May 1, 1996, Heartland Energy Services, Inc. filed certain information as required by the Commission's August 9, 1994 order in Docket No. ER94–108–000.

On April 10, 1996, Acme Power Marketing, Inc. filed certain information as required by the Commission's October 18, 1994 order in Docket No. ER94–1530–000.

3. Enerconnect, Inc.)

[Docket No. ER96–1424–000]

Take notice that on May 2, 1996, Enerconnect, Inc. tendered for filing supplemental information to its March 28, 1996, filing in the above-referenced docket.

Comment date: May 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Kansas City Power & Light Company

[Docket Nos. ER96–1472–000, ER96–1473–000, and ER96–1474–000]

Take notice that on April 29, 1996, Kansas City Power & Light Company tendered for filing a Notice of Withdrawal in the above-referenced dockets.

Comment date: May 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. New York State Electric & Gas Company

[Docket No. ER96–1508–000]

Take notice that on May 3, 1996, New York State Electric & Gas Company tendered for filing supplemental information to its April 4, 1996, filing in the above-referenced docket.

Comment date: May 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Midwest Energy, Inc.)

[Docket Nos. ER96–1550–000 and ER95–590–000]

Take notice that on May 3, 1996, Midwest Energy, Inc. tendered for filing amendments in the above-referenced dockets.

Comment date: May 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER96–1703–000]

Take notice that on May 3, 1996, Pacific Gas and Electric Company (PG&E), tendered for filing an amendment to its filing dated April 30, 1996 of the Scheduling Services Agreement dated April 24, 1996, (the Agreement), between PG&E and USGen Power Services, L.P. (USGenPS). This amended filing is made to request waivers for an effective date of May 1, 1996 for the Agreement.

Copies of this filing have been served upon USGenPS and the California Public Utilities Commission.

Comment date: May 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Duke Power Company

[Docket No. ER96–1709–000]

Take notice that on May 1, 1996, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement (TSA) between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Electric Clearinghouse, Inc. (ECT). Duke states that the TSA sets out the transmission arrangements under which Duke will provide ECI non-firm transmission service under its Transmission Service Tariff.

Comment date: May 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Duke Power Company

[Docket No. ER96–1710–000]

Take notice that on May 1, 1996, Duke Power Company (Duke), tendered for filing a Schedule MR Transaction Sheet under Service Agreement No. 4 of Duke's FERC Electric Tariff, Original Volume No. 3 and Notices of Cancellation of Schedule MR Transaction Sheets dated February 26, 1996, February 27, 1996 and April 4, 1996.

Comment date: May 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. The Washington Water Power Company

[Docket No. ER96–1711–000]

Take notice that on May 1, 1996, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 a revision to its Rate Schedule FERC No. 105. WWP requests an effective date of July 1, 1996.

A copy of this filing has been served upon Bonneville, the Idaho Public Utilities Commission, and the Washington Utilities and Transportation Commission.

Comment date: May 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Green Mountain Power Corporation

[Docket No. ER96–1717–000]

Take notice that on May 1, 1996, Green Mountain Power Corporation (GMP) tendered for filing revisions GMP's to FERC Electric Tariff, Original Volume No. 2.

Comment date: May 28, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. PECO Energy Company

[Docket No. ER96–1720–000]

Take notice that on May 2, 1996, PECO Energy Company (PECO), filed a Service Agreement dated April 26, 1996, with Oglethorpe Power Corporation (OGLETHORPE) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds OGLETHORPE as a customer under the Tariff.

PECO requests an effective date of April 26, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to OGLETHORPE and to the Pennsylvania Public Utility Commission.

Comment date: May 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. New England Power Pool

[Docket No. ER96–1721–000]

Take notice that on May 2, 1996, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by Southern Energy Marketing, Inc. (Southern). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit Southern to join the over 90 Participants already in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Southern a Participant in the Pool. NEPOOL requests an effective date of June 1, 1996 for commencement of participation in the Pool by Southern.

Comment date: May 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Central Illinois Public Service Company

[Docket No. ER96–1722–000]

Take notice that on May 2, 1996, Central Illinois Public Service Company (CIPS), submitted two Service Agreements, dated April 8, and April 10, 1996, establishing VTEC Energy, Inc.

(VTEC) and Illinova Power Marketing, Inc. (Illinova), respectively, as customers under the terms of CIPS' Coordination Sales Tariff CST–1 (CST–1 Tariff).

CIPS requests effective dates of April 8, 1996, for the service agreement with VTEC, and April 10, 1996, for the service agreement with Illinova and the revised Index of Customers. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon VTEC, Illinova and the Illinois Commerce Commission.

Comment date: May 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. UtiliCorp United Inc.

[Docket No. ER96–1723–000]

Take notice that on May 2, 1996, UtiliCorp United Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with *Carolina Power & Light Company*. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to *Carolina Power & Light Company* pursuant to the tariff.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Carolina Power & Light Company*.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: May 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. SDS Petroleum Products, Inc.

[Docket No. ER96–1724–000]

Take notice that on May 3, 1996, SDS Petroleum Products, Inc. (SDS), tendered for filing pursuant to Rule 205, 18 CFR 385.205, an application for waivers and blanket approvals under various regulations of the Commission and for an Order accepting its FERC Electric Rate Schedule No. 1 to be effective on the earlier date of May 3, 1996, or the date of the Commission's Order herein.

SDS has its principal place of business at 14190 East Evans Avenue, Aurora, Colorado, 80014–1431. SDS intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where SDS sells electric energy, it purposes to make such sales at rates, terms, and conditions to be mutually agreed upon with the purchasing party. SDS nor it's affiliate (SDS Fuels and Services) are not in the business of generating, transmitting, or distributing electric power.

Comment date: May 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Northwestern Public Service Company

[Docket No. ES96–26–000]

Take notice that on May 7, 1996, Northwestern Public Service Company (Northwestern) filed an application, under § 204 of the Federal Power Act, seeking authorization to issue the following securities:

(i) not more than 2 million shares of its Common Stock, par value $3.50 per share (this amount is in addition to 1,757,110 shares previously authorized by the Commission and not yet issued); and

(ii) not more than $100 million of its Mortgage Bonds, notes, debentures, subordinated debentures (including monthly income preferred securities (MIPS)), guarantees or other evidences of indebtedness (this amount is in addition to $10 million previously authorized by the Commission and not yet issued).

The previous authorizations were granted in Docket No. ES95–33–000 *et al.*

Also, Northwestern requests an exemption from the Commission's competitive bidding and negotiated placement requirements.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12787 Filed 5–21–96; 8:45 am]

BILLING CODE 6717–01–P

Notice of Intent to File an Application for a New License

May 8, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent to File an Application for a New License.

b. *Project No.:* 2416.

c. *Date filed:* April 22, 1996.

d. *Submitted By:* Aquenergy Systems, Inc., current licensee.

e. *Name of Project:* Ware Shoals.

f. *Location:* On the Saluda River, in the Town of Ware Shoals, Greenwood, Laurens, and Abbeville Counties, SC.

g. *Filed Pursuant to:* 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of original license:* May 1, 1965.

i. *Expiration date of original license:* September 30, 2001.

j. *The project consists of:* (1) a 545-foot-long, 24-foot-high stone-rubble gravity-type dam having a taintor gate bay; (2) a 6,000-foot-long reservoir having an 88 acre surface area and a 528 acre-foot storage capacity at normal pool elevation 508 feet m.s.l.; (3) a stone-rubble intake structure; (4) a 2,700-foot-long canal; (5) four 7-foot-diameter, 345-foot-long penstocks; (6) a steel surge tank; (7) a powerhouse containing two generating units with a total installed capacity of 6,200-kW; (8) a 2.3-kV transmission line; and (9) appurtenant facilities.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Aquenergy Systems, Inc., 1311–A Miller Road, Greenville, SC 29607, Attn: Kathy Dority, (864) 281–9630.

l. *FERC contact:* Charles T. Raabe (202) 219–2811.

m. Pursuant to 18 CFR 16.8, 16.9, and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by September 30, 1999.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–12847 Filed 5–21–96; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application Accepted for Filing With the Commission

April 25, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11577–000.

c. *Date filed:* April 15, 1996.

d. *Applicant:* Summit Hydropower, Inc.

e. *Name of Project:* Windsor Locks Hydro Project.

f. *Location:* On the Connecticut River, near Suffield, Enfield, and Windsor Locks, Hartford County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act 16 USC § § 791(a)–825(r).

h. *Applicant Contact:* Mr. Duncan S. Broatch, 92 Rocky Hill Road, Woodstock, CT 06281, (860) 974–1620.

i. *FERC Contact:* Edward Lee at (202) 219–2809.

j. *Comment Date:* July 5, 1996.

k. *Description of Project:* The proposed project would consist of: (1) the existing Windsor Locks Canal Company's 10-foot-high and 1,484-foot-long timber dam; (2) an existing 4,940 acre-foot reservoir; and (3) a powerhouse having a capacity of 1,450 Kw with an average annual generation of 10,400 Kwh.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $43,000. The existing dam and site works are owned by Windsor Locks Canal Company, 2 Elm Street, Windsor Locks, CT 06096.

l. *Purpose of Project:* Project power would be sold to a local utility, Northeast Utilities.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96–12849 Filed 5–21–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM93–11–000]

Revisions To Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992

(Issued May 16, 1996.)

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Annual Change in the Producers Price Index for Finished Goods, Minus One Percent.

SUMMARY: The Commission is issuing the index that oil pipelines must apply to their July 1, 1995–June 30, 1996 rate ceiling levels to compute their rate ceiling levels for the period July 1, 1996, through June 30, 1997, in accordance with 18 CFR 342.3(d). This index, which is the percent change (expressed as a decimal) in the annual average Producer Price Index for Finished Goods from 1994 to 1995, minus one percent, is .009124. Oil pipelines must multiply their July 1, 1995–June 30, 1996 rate ceiling levels by 1.009124 to compute their rate ceiling levels for the period July 1, 1996 through June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Michelle Veloso, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2008

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours

at 888 First Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397 if dialing locally or 1–800–856–3720 if dialing long distance. To access CIPS, set your communications software to use 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS indefinitely in ASCII and WordPerfect 5.1 format. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in the Public Reference Room at 888 First Street, NE., Washington, DC 20426.

Notice of Annual Change in the Producer Price Index for Finished Goods, Minus One Percent

Issued May 16, 1996.

The Commission's regulations include a methodology for oil pipelines to change their rate through use of an index systems that establishes ceiling levels for such rates. The index system as set forth at 18 CFR 342.3 is based on the annual change in the Producer Prince Index for Finished Goods (PPI–FG), minus one percent. The regulations provide that each year the Commission will publish an index reflecting the final change in the PPI–FG, minus one percent, after the final PPI–FG is made available by the Bureau of Labor Statistics in May of each calendar year.

The annual average PPI–FG index figure for 1994 was 125.5 and the annual average PPI–FG index for 1995 was 127.9.[1] Thus, the percent change (expressed as a decimal) in the annual average PPI–FG from 1994 to 1995, minus one percent, is .009124.[2] Oil pipelines must multiply their July 1, 1995–June 30, 1996 rate ceiling levels by 1.009124 to compute their rate ceiling levels for the period July 1, 1996, through June 30, 1997, in accordance with 18 342.3(d).

To obtain July 1, 1996–June 30, 1997 ceiling levels, pipelines must first calculate their ceiling levels for the January 1, 1995–June 30, 1995 index period, by multiplying their December 31, 1994 rates by 1.009175. Pipelines must then multiply those ceiling levels. Finally, pipelines must multiply their July 1, 1995–June 30, 1996 ceiling levels by 1.009124 to obtain the July 1, 1996–June 30, 1997 ceiling levels. See Explorer Pipeline Company, 71 FERC ¶ 61,416 at n. 6 (1995) for an explanation of how ceiling levels must be calculated.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12850 Filed 5–21–96; 8:45 am]

BILLING CODE 6717–01–M

[1] The final figure for the annual average PPI–FG is published by the Bureau of Labor Statistics in mid-May of each year. This figure is publicly available from the Division of Industrial Prices and Price Indexes of the Bureau of Labor Statistics, at (202) 606–7705, and is available in print in August in Table 1 of the annual data supplement to the BLS publication *Producer Price Indexes.*

[2] (127.9 – 125.5)/125.5=.019124; .019124 – .01=.009124.

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy announces procedures for disbursement of $48,307.13 of crude oil overcharge funds obtained by the DOE from Texas American Oil Corporation (Texas American), Case No. VEF–0019. The OHA has determined that these funds, plus accrued interest, be distributed as direct restitution to individual claimants who were injured by crude oil overcharges.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Ave., SW., Washington DC 20585–0107, Telephone No. (202) 426–1575.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR § 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute $48,307.13 (plus accrued interest) remitted to the DOE by the trustee-in-bankruptcy for Texas American. The DOE is currently holding these funds in an interest-bearing escrow account pending distribution.

The OHA will allocate all of the crude oil overcharge funds obtained from Texas American for individual claimants. This is in accordance with *Texas American Oil Corp.* v. *DOE*, 44 F.3d 1557 (Fed. Cir. 1995) (en banc), in which the United States Court of Appeals for the Federal Circuit held that the DOE's claim in the Texas American bankruptcy proceeding on behalf of individual claimants should have a higher priority than its claim on behalf of the states and federal government. Pursuant to that decision, the bankruptcy court distributed to the DOE an amount equivalent to only 20 percent of its liquidated claim in the Texas American bankruptcy proceeding, since under the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986), a maximum of 20 per cent of the crude oil overcharge funds remitted to the DOE are reserved for injured purchasers of refined petroleum products.

Refunds to eligible purchasers will be based on the volume of products that they purchased during the price control period. The volumetric refund amount is $0.0016 per gallon. Because the June 30, 1995 deadline for crude oil refund applications has passed, no new applications for refund will be accepted in this proceeding. As we state in the Decision, the Texas American funds will be added to the general crude oil overcharge pool for direct restitution to claimants that have filed timely applications.

Dated: May 14, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

May 14, 1996.

Name of Case: Texas American Oil Corporation.

Date of Filing: September 1, 1995.

Case Number: VEF–0019.

On March 14, 1996, the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) issued a Proposed Decision and Order (PDO) which tentatively established refund procedures for the distribution of crude oil overcharge funds obtained from Texas American Oil Corporation (Texas American). *Texas American Oil Co.*, Case No. VEF–0019, 61 Fed. Reg. 13170 (March 26, 1996). After a review of the comments received, the DOE has determined that the procedures set forth in the Proposed Decision and Order should be adopted.

I. Background

On September 19, 1988, the OHA issued a Remedial Order (RO) that found that Texas American had violated 10 CFR § 211.67(e)(2) by receiving excessive small refiner bias benefits under the DOE's Entitlements Program.

Texas American Oil Corp., 17 DOE ¶ 83,017 (1988). However, Texas American had filed a petition in bankruptcy on July 2, 1987, and its bankruptcy proceeding was still pending when the RO was issued. The trustee-in-bankruptcy approved the DOE's claim in the amount of $241,535.67, but classified it as a non-pecuniary loss in accordance with Section 726(a)(4) of the Bankruptcy Code and Class 9 of the Plan of Liquidation.[1] Since Class 9 claims were inferior to Class 7 claims, and there were insufficient assets to satisfy any Class 9 claim, or to satisfy fully the Class 7 claims, the effect of the trustee's determination was to preclude the DOE from receiving any compensation from Texas American's estate.

The DOE argued before the Bankruptcy Court that the trustee's determination was erroneous on the grounds that its claim was for restitution and therefore was a Class 7 claim. The Bankruptcy Court, however, rejected the DOE's position and held that Class 9 was the proper classification since the DOE's claim was not for actual pecuniary loss suffered by the holder of the claim. *In re Texas American Oil Corp.*, No. 387–33522–SAF–11 (Bankr. N.D. Tex. Mar. 5, 1992). This decision was reversed by the U.S. District Court which, relying on a prior decision of the Temporary Emergency Court of Appeals (TECA), held that a DOE claim under Section 209 of the Economic Stabilization of 1970 (ESA), 12 U.S.C. § 1904 note, was properly placed in the same class and priority as the general unsecured claims of other creditors. *Texas American Oil Corp.* v. *DOE*, No. 3:92–CV–1146–G (N.D. Tex. Sept. 14, 1992) (citing *DOE* v. *West Texas Marketing Corp.*, 763 F.2d 1411 (Temp. Emer. Ct. App. 1985) (*West Texas*)). This decision was in turn reversed by the United States Court of Appeals for the Federal Circuit, which held that the DOE's claim in the Texas American bankruptcy proceeding should be bifurcated, with the portion claimed on behalf of individual persons who suffered actual injury to be classified in Class 7 of the Plan of Liquidation and the portion to be paid to the federal and state governments to be classified in Class 9. *Texas American Oil Corp.* v. *DOE*, 44 F.3rd 1557 (Fed. Cir. 1995)(en banc). On remand, the Bankruptcy Court implemented the Federal Circuit's decision by distributing the 20 percent of DOE's liquidated claim ($48,307.13) that fell within Class 7 to DOE and the remaining 80 percent ($193,228.53) to the other Class 7 creditors. *In re Texos American Oil Corp.*, No. 387–33522–SAF–11 (Bankr. N.D. Tex. April 12, 1995). The funds that the DOE received from Texas American were deposited in an interest-bearing escrow account maintained by the Department of the Treasury.[2]

In accordance with 10 CFR Part 205, Subpart V, on September 1, 1995, the Office of General Counsel, Regulatory Litigation (OGC) (formerly the Economic Regulatory Administration) filed a Petition for the Implementation of Special Refund Procedures that requested OHA to formulate and implement procedures to distribute the Texas American funds. On January 16, 1996, we issued a Proposed Decision and Order that tentatively established refund procedures for the distribution of crude oil overcharge funds obtained from Texas American and four other firms. *Brio Petroleum, Inc.*, Case Nos. VEF–0017 *et al.*, 61 FR 1919 (January 24, 1996). In accordance with the Modified Statement of Restitutionary Policy in Crude Oil Cases (MSRP), 51 FR 27899 (August 4, 1986), that the DOE issued in connection with the Final Settlement Agreement approved in *In re The Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan. 1986), the January 16 Proposed Decision proposed that 40 percent of the funds be disbursed to the federal government, another 40 percent be disbursed to the states, and the remaining 20 percent be reserved for applicants who file claims showing that they were injured by crude oil overcharges. However, we subsequently determined that the circumstances under which the DOE obtained the Texas American funds required that the funds be disbursed in a manner different than that set forth in the Proposed Decision. Accordingly, we issued the March 14, 1996 PDO, in which we tentatively determined that all of the funds received from Texas American be allocated to individual claimants. On April 24, 1996, we received comments on behalf of 14 designated states (the States). In their comments, the States disagreed with the refund procedures set forth in the PDO, but asserted that they would not formally object to them in view of the small amount of money involved. Instead, they reserved their right to object to any future proposed distributions of crude oil funds solely to individual claimants.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see* Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. § 4501 *et seq. See also Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

III. Refund Procedures

Since the States have not formally objected to the proposed refund procedures, it is not necessary for us to respond to the specific arguments that they raise. We do, however, disagree with the States' position that the decisions of the Federal Circuit and the Bankruptcy Court (on remand) do not affect the manner in which we must distribute the crude oil funds in the present case.[3] Thus, we shall distribute the funds received from Texas American (and accrued interest on those funds) solely to individual claimants in the DOE's crude oil refund proceeding. In our view, which we believe to be correct, this distribution scheme is required by the unique circumstances under which these funds were obtained

[1] Section 726(a)(4) places non-pecuniary loss claims in the fourth priority in the distribution of a bankrupt estate:

11 U.S.C. § 726. Distribution of property of the estate

* * * * *

(a)(4) fourth, in payment of any allowed claim, whether secured or unsecured, for any fine, penalty, or forfeiture, or for multiple, exemplary, or punitive damages, arising before the earlier of the order for relief or the appointment of a trustee, to the extent that such fine, penalty, forfeiture, or damages are not compensation for actual pecuniary loss suffered by the holder of such claim[.]

Class 7 (Unsecured Claims) consisted of allowed claims of unsecured creditors, while Class 9 (Non-Pecuniary Loss) consisted of "Allowed Claims for any fine, penalty, or forfeiture, or for multiple, exemplary, or punitive damages, as further described in 11 U.S.C. § 726(a)(4)." Texas American Bankruptcy Committee Plan of Liquidation §§ 3.07, 3.09.

[2] As of March 31, 1996, the account contained $50,815.65, consisting of $48,307.13 principal and $2,508.52 interest.

[3] We also do not accept the States' attempt to blur the distinction between recipients of direct and indirect restitution. It is true that, prior to the Federal Circuit decision, it was the DOE's consistent position that both types of recipients should be treated the same for purpose of distributing funds from bankrupt estates. Nevertheless, our prior Decisions make it clear that, unlike the beneficiaries of indirect restitution, individual claimants cannot receive direct refunds without a finding of injury, though that finding may be based on a presumption of injury. *See* 10 C.F.R. § 205.282(e) ("[T]he standards for evaluation of individual claims may be based upon appropriate presumptions"). *See also Ernest A. Allerkamp*, 17 DOE ¶ 85,079 at 88,175–76 (1988); *City of Columbus, Georgia*, 16 DOE ¶ 85,550 (1987).

by the DOE. While the *Texas American v. DOE* decision is contrary to the position of the DOE that had been upheld in the *West Texas* case,[4] we are constrained by the Federal Circuit's decision. The clear import of that determination is that we must use the funds received from Texas American solely for direct restitutionary purposes. Moreover, as indicated above, the Bankruptcy Court, in accordance with the Federal Circuit's determination, distributed to the DOE only 20 percent of its liquidated claim in the Texas American bankruptcy proceeding. This percentage is equivalent to the portion of crude oil overcharge funds that we have consistently reserved for individual claimants under the MSRP. We therefore decline to modify our proposed allocation of the Texas American funds in response to the States' comments.

Except for the manner in which the funds will be allocated, we shall follow the procedures set forth in prior refund proceedings involving crude oil overcharge funds. Thus, claimants will be required to (i) document their purchase volumes of petroleum products during the August 19, 1973–January 27, 1981 crude oil price control period, and (ii) prove that they were injured by the alleged crude oil overcharges. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations will be presumed to have been injured by Texas American's crude oil overcharges. In order to receive a refund, end-users will not need to submit any further evidence of injury beyond the volume of petroleum products purchased during the price control period. We shall base refunds to claimants on a volumetric amount that is currently $0.0016 per gallon. *See* 60 FR 15562 (March 24, 1995).

A party that has already submitted a claim in the DOE crude oil proceeding need not file another claim in order to obtain its appropriate restitutionary share of crude oil funds. Moreover, because the June 30, 1995 deadline for crude oil refund applications has passed, we shall not accept any new applications. *See Western Asphalt Service*, 25 DOE ¶ 85,047 (1995).

[4] The Federal Circuit in *Texas American v. DOE* ascribed its unwillingness to follow the *West Texas* decision to judicial, statutory, and related policy changes that had occurred since the issuance of that decision. The Federal Circuit also specifically overruled TECA's ruling that a DOE bankruptcy claim under the ESA to be paid to the federal and state governments on behalf of their citizens was for restitution and not for a penalty.

Instead, these funds will be added to the general crude oil overcharge pool used for direct restitution. Finally, an applicant who has executed and submitted a valid waiver pursuant to one of the escrows established by the Final Stripper Well Settlement Agreement will be considered to have waived its rights to apply for a crude oil refund under Subpart V. *See, e.g., Mid-America Dairymen, Inc., v. Herrington*, 878 F.2d 1448 (Temp Emer. Ct. App. 1989); *see also Hoechst Celanese Chemical*, 25 DOE ¶ 85,066 (1996).

It Is Therefore Ordered That:

(1) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller of the Department of Energy shall take all steps necessary to transfer the $48,307.13 obtained from Texas American Oil Corporation, COTS No. N00S90460, plus accrued interest, into the subaccount denominated "Crude Tracking-Claimants 4," Number 999DOE010Z.

(2) This is a final Order of the Department of Energy.

[FR Doc. 96–12823 Filed 5–21–96; 8:45 am]
BILLING CODE 6450–01–P

Western Area Power Administration

Boulder Canyon Project—Proposed Firm Power Service Base Charge

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Base Charge Adjustment.

SUMMARY: The Western Area Power Administration (Western) is announcing the Fiscal Year 1996 annual rate adjustment for Rate Year 1997 under Rate Order WAPA–70 for firm power service for the Boulder Canyon Project (BCP). The annual rate adjustments are a requirement of the ratesetting methodology of WAPA–70 which was approved on a final basis by the Federal Energy Regulatory Commission on April 19, 1996. The existing rate schedule was placed into effect on November 1, 1995. The power repayment spreadsheet study indicates that the proposed Base Charge for BCP firm power service is necessary to provide sufficient revenue to pay all annual costs (including interest expense), plus repayment of required investment within the allowable time period. The proposed Base Charge for firm power service is expected to become effective October 1, 1996.

DATES: The consultation and comment period will begin with publication of this notice in the **Federal Register** and will end not less than 90 days later, or August 22, 1996, whichever occurs later. A public information forum will be held at 10 a.m. on June 13, 1996, at Western's Desert Southwest Customer Service Regional office, 615 South 43rd Avenue, Phoenix, Arizona. A public comment forum at which Western will receive oral and written comments will be held at 10 a.m. on July 15, 1996, at Western's Desert Southwest Customer Service Regional office. Written comments should be received by Western by the end of the consultation and comment period to be assured consideration and should be sent to the address below.

FOR FURTHER INFORMATION CONTACT:

Mr. J. Tyler Carlson, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2453.

Mr. Anthony H. Montoya, Assistant Regional Manager, For Power Marketing, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2780.

SUPPLEMENTARY INFORMATION: The proposed Base Charge for BCP firm power is based on an Annual Revenue Requirement of $46,421,533. The Base Charge consists of an Energy Dollar of $23,968,846 and a Capacity Dollar of $22,452,687. The Forecast Energy Rate will be 5.46 mills/kilowatthour (mills/kWh), Forecast Capacity Rate will be $0.96 per kilowatt per month ($/kW-mo).

The existing BCP firm power Base Charge is based on an Annual Revenue Requirement of $45,196,960, consisting of an Energy Dollar of $23,460,351 and a Capacity Dollar of $21,736,609. The existing BCP forecast energy rate is 6.12 mills/kWh and forecast capacity rate is $0.93/kW-mo.

Since the proposed rates constitute a major rate adjustment as defined by the procedures for public participation in general rate adjustments, as cited below, both a public information forum and a public comment forum will be held. After review of public comments, Western will recommend proposed charges/rates for approval on a final basis by the Deputy Secretary of DOE pursuant to Section 13.13 of the BCP Implementation Agreement.

The power rates for the BCP are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*), the Reclamation Act of 1902 (43 U.S.C. 391 *et seq.*), as amended and supplemented by subsequent

enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), the Colorado River Basin Project Act of 1968 (43 U.S.C. 1501 *et seq.*), the Colorado River Storage Project Act (43 U.S.C. 620 *et seq.*), the Boulder Canyon Project Act (43 U.S.C. 617 *et seq.*), the Boulder Canyon Project Adjustment Act (43 U.S.C. 618 *et seq.*), the Hoover Power Plant Act of 1984 (43 U.S.C. 619 *et seq.*), the General Regulations for Power Generation, Operation, Maintenance, and Replacement at the Boulder Canyon Project, Arizona/Nevada (43 CFR Part 431) published in the **Federal Register** at 51 FR 23960 on July 1, 1986, and the General Regulations for the Charges for the Sale of Power From the Boulder Canyon Project, Final Rule (10 CFR Part 904) published in the **Federal Register** at 51 FR 43124 on November 28, 1986, the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions (10 CFR Part 903) published in the **Federal Register** at 50 FR 37837 on September 18, 1985, and the DOE financial reporting policies, procedures, and methodology (DOE Order No. RA 6120.2 dated September 20, 1979).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated: (1) The authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place power rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove power rates to FERC.

AVAILABILITY OF INFORMATION: All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the proposed rates for energy and capacity are and will be made available for inspection and copying at Western's Desert Southwest Customer Service Regional office, 615 South 43rd Avenue, Phoenix, Arizona 85005.

DETERMINATION UNDER EXECUTIVE ORDER 12866: DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

ENVIRONMENTAL EVALUATION: In compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR Parts 1500–1508); and DOE NEPA Regulations (10 CFR Part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Issued in Golden, Colorado, May 10, 1996.

J. M. Shafer,

Administrator.

[FR Doc. 96–12827 Filed 5–21–96; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5509–4]

Agency Information Collection Activities Under OMB Review; National Recycling and Emissions Reduction Program, OMB Number: 2060–0256

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the following information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Recycling and Emissions Reduction Program, OMB Number: 2060–0256. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 21, 1996.

FOR FURTHER INFORMATION OR A COPY CALL:

Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1626.06.

SUPPLEMENTARY INFORMATION:

Title: National Recycling and Emissions Reduction Program (OMB Control No. 2060–0256; EPA ICR No. 1626.06). This ICR is revision of an existing collection.

Abstract: The Agency has proposed to add a degree of flexibility to its regulations governing the recycling of refrigerants. This ICR includes a request for the approval of information requirements for independent laboratories to apply to EPA to become certifiers of reclaimers, and for certified reclaimers to maintain records of the quantity of material sent for reclamation. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. These changes were proposed in a Supplemental Rule Regarding a Recycling Standard (Proposed) Under the Section 608 of the Clean Air Act, published in the **Federal Register** on February 29, 1996 (61 FR 7858).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to add 5080 hours to the existing approved total of 565,000 hour. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and revise the collection of information, and transmit or otherwise disclose the information.

Respondents/Affected Entities: Refrigerant Reclaimers.

Estimated Number of Respondents: 2,500.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 5080 hours.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1626.06 and OMB Control No. 2060–0256 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW., Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW., Washington, DC 20503.

Dated: May 17, 1996.

Richard Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 96–12866 Filed 5–21–96; 8:45 am]

BILLING CODE 6560–50–M

[OPP–66226; FRL 5368–6]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by August 20, 1996, orders will be issued canceling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be canceled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 52 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000121–00017	Diethyl toluamide	*N,N*-Diethyl-meta-toluamide and other isomers
000257–00131	Switzer Emulsion Bowl Cleaner & Disinfectant	Hydrogen chloride
000257–00332	Pinky Emulsion Bowl & Porcelain Cleaner Disinfectant	Hydrogen chloride Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14}, 30%C_{16}, 5%C_{18}, 5%C_{12}) Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C_{12}, 32%C_{14})
000264 LA–81–0040	Weed one 2,4-DP	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate
000279 LA–91–0020	Furadan 4F	2,3-Dihydro-2,2-dimethyl-7-benzofuranyl methylcarbamate
000352 LA–82–0031	Du Pont Lannate Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 LA–92–0003	Du Pont Bladex 4L Herbicide	Cyanazine
000352 OR–83–0025	Vydate L Insecticide Nematicide	Oxamimidic acid, *N',N*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-methyl ester
000352 OR–90–0021	Harmony Extra Herbicide	Methyl 3-(((((4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino)carbonyl) Methyl 2-(((((4-methoxy-6-methyl-1,3,5-triazin-2-yl)methylamino)
000400 AZ–82–0010	Comite Agricultural Miticide	2-(*p*-tert-Butylphenoxy)cyclohexyl 2-propynyl sulfite
000400 FL–85–0002	Comite. CR An Agricultural Miticide	2-(*p*-tert-Butylphenoxy)cyclohexyl 2-propynyl sulfite
000400 OR–92–0020	Comite Agricultural Miticide	2-(*p*-tert-Butylphenoxy)cyclohexyl 2-propynyl sulfite
000400 WA–92–0032	Comite Agricultural Miticide	2-(*p*-tert-Butylphenoxy)cyclohexyl 2-propynyl sulfite
000904–00415	Pratt Oxamyl 10% Granular	Oxamimidic acid, *N',N*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-methyl ester
000904–00417	Oxamyl 10% Granular Ag	Oxamimidic acid, *N',N*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-methyl ester
001021–01046	D-Trans Intermediate 1818	2-Methyl-4-oxo-3-(2-propenyl)-2-cyclopenten-1-yl d-trans-2,2-dimethyl- Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) 2-Hydroxyethyl octyl sulfide (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
002393 WA–87–0025	Mylone 99G Soil Fumigant NC	Tetrahydro-3,5-dimethyl-2*H*-1,3,5-thiadiazine-2-thione
002935 MS–91–0001	Riverdale Sodium Salt of MCPA	Sodium 2-methyl-4-chlorophenoxyacetate
002935 OR–79–0029	Wilbur - Ellis Lime Sulfur Solution	Calcium polysulfide Calcium thiosulfate
003125 FL–87–0008	Baytex Liquid Concentrate Insecticide	*O,O*-Dimethyl *O*-(4-(methylthio)-*m*-tolyl)phosphorothioate
003862–00096	Chemscope 500 Diazinon Residual Spray	*N*-Octyl bicycloheptene dicarboximide

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		O,O-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
004816–00051	Cube Resins	Rotenone Cube Resins other than rotenone
004816–00120	BPR Liquid Base	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Rotenone Cube Resins other than rotenone
004816–00123	BPR Dust Base	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Rotenone Cube Resins other than rotenone
004816–00166	Rotenone 5% Emulsifiable Insecticide	Rotenone Cube Resins other than rotenone
004816–00423	Pet Spray Concentrate	Butoxypolypropylene glycol 1-Naphthyl-*N*-methylcarbamate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
004816–00445	Patio & Outdoor Special Concentrate Code 845.01	Butoxypolypropylene glycol Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% (1-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cycloprop
004816–00459	Plant Spray P.R. Concentrate Insecticide	Pyrethrins Rotenone Cube Resins other than rotenone
004816–00662	Pyrenone Sevin S.E.C.	1-Naphthyl-*N*-methylcarbamate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
004816–00671	Butacide Sevin S.E.C.	1-Naphthyl-*N*-methylcarbamate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
005602–00150	Secret Treatment	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate Xylene range aromatic solvent
007501–00140	Gustafson Apron + Captan - Fungicide Seed Protectant	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide *N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
007501 ND–87–0006	Gustafson Apron-FL Seed Treatment Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
008370–00008	Nyco Wintergreen Disinfectant & Deodorant	Isopropanol Alkyl* dimethyl benzyl ammonium chloride *(50%C_{14}, 40%C_{12}, 10%C_{16})
009779–00182	Riverside 50% Sevin Concentrate Dust	1-Naphthyl-*N*-methylcarbamate
009779–00190	Riverside 5% Garden Dust	1-Naphthyl-*N*-methylcarbamate
010204–00003	Markopine Pine Oil Disinfectant Coef. 5	Pine oil Soap
011525–00031	Disinfectant Spray "H"	Ethanol Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14}, 30%C_{16}, 5%C_{18}, 5%C_{12}) Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C_{12}, 32%C_{14})
011556–00030	Neguvon Technical	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
011556–00109	EPCO Thrichloroton Pouron Cattle Insec. Control of Catt	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
019713–00338	Aidex Butyl-4E Weed Killer	Butyl 2,4-dichlorophenoxyacetate

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
047000–00029	Economy Swimming Pool Algaecide Containing Hyamine 3500	Ethanol
		Alkyl* dimethyl benzyl ammonium chloride *(50%C_{14}, 40%C_{12}, 10%C_{16})
049320–00006	Natur-Gro R-50	Ryanodine
049320–00007	Tri-Excel DS Natur-Gro Triple Plus	Pyrethrins Rotenone Cube Resins other than rotenone Ryanodine
055615–00002	Green Turf Weeder 60 Plus	3,5-Dinitro-*N4*,*N4*-dipropylsulfanilamide
055615–00003	Green Turf Weeder 75 Plus	3,5-Dinitro-*N4*,*N4*-dipropylsulfanilamide
055638–00006	Dagger Manufacturing Concentrate	Pseudomonas fluorescens EG-1053 (previously coded 006418)
059639 UT–94–0003	Dibrom 8 Emulsive	1,2-Dibromo-2,2-dichloroethyl dimethyl phosphate
062719–00198	B & G Ban-Bug D	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate Xylene range aromatic solvent
066676 ND–94–0006	Tree Guard	Benzyl diethyl ((2,6-xylylcarbamoyl)methyl) ammonium benzoate
069421–00001	Black Flag Flying Insect Killer	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
069421–00002	Black Flag House and Garden Insect Killer	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000121	Spectrum, A Div of United Industries Corp., Box 15842, St Louis, MO 63114.
000257	Cello Corp., 1354 Old Post Rd., Havre De Grace, MD 21078.
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709.
000279	FMC Corp., Agricultural Products Group, 1735 Market St., Philadelphia, PA 19103.
000352	E. I. Du Pont De Nemours & Co., Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000400	Uniroyal Chemical Co., Inc., 74 Amity Rd., Bethany, CT 06524.
000904	Miller Chemical & Fertilizer Corp., Pratt-Gabriel Division, Box 333, Hanover, PA 17331.
001021	McLaughlin Gormley King Co., 8810 Tenth Ave North, Minneapolis, MN 55427.
002393	Haco, Inc., Box 7190, Madison, WI 53707.
002935	Wilbur Ellis Co., 191 W. Shaw Ave, Fresno, CA 93704.
003125	Bayer Corp., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
003862	ABC Compounding Co., Inc., Box 16247, Atlanta, GA 30321.
004816	Agrevo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
005602	Hub States Corp., 8455 Keystone Crossing, Suite 150, Indianapolis, IN 46240.
007501	Gustafson, Inc., Box 660065, Dallas, TX 75266.
008370	Nyco Products Co., 5332 Dansher Rd., Countryside, IL 60525.
009779	Riverside/Terra Corp., 600 Fourth St., Sioux City, IA 51101.
010204	Marko Inc., 1310 Southport Rd., Spartanburg, SC 29306.
011525	CCL Custom Mfg. Inc., Hegeler Lane, Danville, IL 61832.
011556	Bayer Corp., Agriculture Division, Animal Health, Box 390, Shawnee Mission, KS 66201.
019713	Drexel Chemical Co., Box 13327, Memphis, TN 38113.
047000	Chem-Tech Ltd., Attn: James Melton, 4515 Fleur Dr., #303, Des Moines, IA 50321.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
049320	Progressive Agri-Systems, Inc., 125 W. Seventh Street, Wind Gap, PA 18091.
055615	Wilbro, Inc., Corner 3rd & Lexington, Norway, SC 29113.
055638	Ecogen Inc., 2005 Cabot Blvd W., Langhorne, PA 19047.
059639	Valent U.S.A. Corp., 1333 N. California Blvd, Ste 600, Walnut Creek, CA 94596.
062719	DowElanco, 9330 Zionsville Rd., 308/3e, Indianapolis, IN 46268.
066676	Nortech Forest Products Inc., 7600 W. 27th St., Suite B11, St Louis Park, MN 55426.
069421	Black Flag Insect Control Systems, c/o PS & RC, Box 493, Pleasanton, CA 94566.

III. Loss of Active Ingredients

Unless the requests for cancellation are withdrawn, three pesticide active ingredients will no longer appear in any registered products. Those who are concerned about the potential loss of these active ingredients for pesticidal use are encouraged to work directly with the registrant to explore the possibility of their withdrawing the request for cancellation. The active ingredients are listed in the following Table 3, with the EPA Company and CAS Number.

TABLE 3. — ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

CAS No.	Chemical Name	EPA Company No.
94–80–4	Butyl 2,4-dichlorophenoxyacetate stems of	019713
53404–31–2	Butoxyethyl 2-(2,4-dichlorophenoxy)propionate	000264
15662–33–6	Ryanodine	049320

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before August 20, 1996. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticide and pests, Product registrations.

Dated: May 3, 1996.

Frank Sanders,

Director, Program Management and Support Division.

[FR Doc. 96–12603 Filed 5–21–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5509–3]

Integrated Report of the Urban Soil Lead Abatement Demonstration Project

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a final report titled, Integrated Report of the Urban Soil Lead Abatement Demonstration Project (EPA/600/P–93/001 aF), as well as the pertinent underlying data sets and documentation. This Report is an integrated assessment of scientific data from the separate Boston, Baltimore and Cincinnati studies.

ADDRESSES: To obtain a single copy of the Integrated Report, interested parties should contact the ORD Publications Office, Technology Transfer Division, National Risk Management Research Laboratory, U.S. Environmental Protection Agency, 26 W. Martin Luther King Drive, Cincinnati, OH 45268; telephone: 513–569–7562; facsimile:

513–569–7566. Copies of the Integrated Report will be available on or about May 30, 1996. Please provide your name and mailing address, and request the document by the title and EPA number (EPA/600/P–93/001aF). Also, a limited number of the 1993 individual reports on the separate city studies are still available. The EPA document numbers for the separate three city reports are: Boston (EPA/600/AP–93/001b) Baltimore (EPA/600/AP–93/001c) and Cincinnati (EPA/600/AP–93/001d). There will be a limited number of paper copies of the Integrated Report available from the above source. Requests will be filed on a first-come-first-served basis. After the supply is exhausted, copies of the Integrated Report and any of the individual final reports on the separate city studies can be purchased separately or as a set, from the National Technical Information Service (NTIS) by calling (703) 487–4650 or sending a facsimile to (703) 321–8547. The NTIS order numbers are: Urban Soil Lead Abatement Demonstration Project. Volume 1: Integrated Report (PB96–168356), Urban Soil Lead Abatement Demonstration Project. Volume 2: Boston Report (PB96–168364), Urban Soil Lead Abatement Demonstration Project. Volume 3: Baltimore Report (PB96–168372), and Urban Soil Lead Abatement Demonstration Project. Volume 4: Cincinnati Report (PB96–168380). The NTIS ordered number for the four volume set is PB96–168349.

An official copy, on diskette only, of the underlying data sets used in the EPA Integrated Report and a copy of the accompanying documentation, can be obtained by contacting: Dr. Robert W. Elias, National Center for Environmental Assessment (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: (929) 541–4167; facsimile: (919) 541–5078. e-mail: elias.robert@epamail.epa.gov

FOR FURTHER INFORMATION CONTACT: Dr. Robert W. Elias, National Center for Environmental Assessment (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: (919) 541–4167; facsimile: (919) 541–5078. e-mail: elias.robert.@epamail.epa.gov: or Larry J. Zaragoza, Office of Solid Waste and Emergency Response (5204G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone; (703) 603–8867, facsimile: (703) 603–9100, e-mail: zaragoza.larry@epamail.epa.gov

SUPPLEMENTARY INFORMATION: The Urban Soil Lead Abatement Demonstration Project, generally known as the Three-City Lead Study, was authorized in 1986 under Section 111(b)(6) of the Superfund Amendments and Reauthorization Act [42 U.S.C. § 9611(a)(6)] and was initiated in December 1986 in cooperation with states, state health departments, and local scientists. The purpose was to determine whether abatement of lead in soil could reduce the lead in blood of inner city children. The three selected cities, chosen in late 1987, were Boston, Baltimore, and Cincinnati. The individual results for each of the three cities were initially presented at an EPA-sponsored symposium in August 1992 and published as final reports in August 1993.

While not part of the original project plan, EPA believed that all interested parties would benefit from an integrated assessment of data from the three coordinated studies. Thus, as an adjunct to the original project, this Integrated Report was developed. It includes further statistical analysis and integrates and standardizes, as appropriate, the results of the individual three cities studies into a single report.

The final EPA Integrated Report on the Three-City Lead Study basically confirms the findings of the individual city reports. The Integrated Report concludes that:

(1) When soil is a significant source of lead in the child's environment, the abatement of that soil will result in a reduction in exposure that will, under certain conditions, cause a reduction in childhood blood lead concentrations.

(2) Although these conditions for a reduction in blood are not fully understood, it is likely that four factors are important: (1) The past history of exposure of the child to lead, as reflected in the preabatement blood lead; (2) the magnitude of the reduction in soil lead concentrations; (3) the magnitude of the other sources of lead exposure, relative to soil; and (4) a direct exposure pathway between soil and the child.

Dated: May 16, 1996.

Joseph K. Alexander,

Deputy Assistant Administrator for Research and Development.

[FR Doc. 96–12865 Filed 5–21–96; 8:45 am]

BILLING CODE 6560–50–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Commission announces that on May 15, 1996 it submitted the existing collection of information listed below to the Office of Management and Budget for approval. No public comments were received in response to the Commission's March 15, 1996 initial notice of the proposed collection.

DATES: Written comments on this notice must be submitted on or before June 21, 1996.

ADDRESSES: Comments should be submitted to Desk Officer for Equal Employment Opportunity Commission, Office of Management and Budget, New Executive Office Building, 725 Seventeenth Street, N.W., Room 10235, Washington, D.C. 20503, (202) 395–7316, Facsimile (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Margaret, Ulmer Holmes, Office of Management, Room 2204, 1801 L Street N.W., Washington, D.C. 20507, (202) 663–4279 (voice) or (202) 663–7114 (TDD).

SUPPLEMENTARY INFORMATION:

Collection Title: Recordkeeping Requirements of Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. Part 1607.

Form Number: None.

Frequency of Report: None required.

Type of Respondent: Business, non-for-profit institutions, federal, state, or local governments, and farms.

Standard Industrial Classification (SIC) Code: Multiple.

Description of Affected Public: Any employer, labor, organization, or employment agency covered by the federal equal employment opportunity laws.

Responses: 666,000.

Reporting Hours: 1,450,000.

Number of Forms: None.

Abstract: The records required to be maintained by 29 C.F.R. 1607.4 and 1607.15 are used by respondents to assure that they are complying with Title VII; by the Commission in investigating, conciliating, the litigating charges of employment discrimination; and by complainants in establishing violations of federal equal employment opportunity laws.

Burden Statement: There are no reporting requirements associated with UGESP. Thus the only paperwork burden derives from the required recordkeeping. There are a total of 666.000 employers who have 15 or more employees and that are, therefore, subject to the recordkeeping requirement. Prior to the imposition of the UGESP recordkeeping requirement, the Commission proposed to conduct a practical utility survey to obtain estimates of burden hours. The intended survey was not approved by OMB, however, and the Commission relied instead on data obtained from the Business Roundtable study on "Cost of Government Regulation" conducted by the Arthur Anderson Company.

In its initial estimate of recordkeeping burden the Commission relied on data from that study to derive the estimate of 1.91 million hours. In a subsequent submission to OMB for clearance of the UGESP collection, the Commission made an adjustment to reflect the increase in the incidence of computerized recordkeeping that had resulted in a reduction of total burden hours of approximately 300,000, and had brought the total burden down to 1.6 million hours.

In the calculation of the initial burden of UGESP compliance, the estimated number of employees covered by the guidelines was 71.1 million. Average cost per employee was taken to be $1.79. Since most of this cost, however, was for employers' administrative functions and represented the time spent in reviewing their selection processes for 'adverse impact' and in reviewing and validating their testing procedures, the actual recordkeeping function was estimated to be in the range of 10 to 15 percent of the total per-employee costs, or between $.179 and $.2685 per employee. The Commission used these per-employee costs, even though it believed that they were an over-estimate. In the initial estimate the Commission used the higher end of the range.

The Commission now believes that a better estimate is the midpoint of the range or $.22 per employee. The number of employees also has grown by 15 million since the initial estimate, so that there now are 86 million subject to UGESP. In addition, from the private employer survey the Commission has been conducting for the past 30 years (the EEO–1), it is aware that 29.7 percent of the private employers file their employment reports on magnetic tapes, on diskettes, or on computer printouts. Thus, at a minimum, that proportion of employers has computerized recordkeeping. From the same survey the Commission also has learned that when records are computerized, the burden hours for reporting, and thus for recordkeeping, are about one-fifth of the burden hours associated with non-computerized records. Therefore, the Commission's current estimate of recordkeeping burden hours is as follows:

Computerized recordkeepers—(.29)×86 mil×($.044)=$1,097,360

All other recordkeepers—(.71)×86 mil×($.22)=$13,433,200

Total recordkeeping cost = $14,530,560

Total Burden Hours are then computed by dividing the total cost of recordkeeping by $10, the hourly rate of staff recordkeepers. The total new estimate of burden hours associated with the UGESP recordkeeping then is 1.45 million hours. Assumptions made in deriving the estimate are as follows:

Cost per employee for manual records is $.22*

Cost per employee for computerized records is $.044*

Hourly rate of pay for recordkeeping staff is $10,00**

* Both of these are derived from a private employer study.

** To the extent that this is an under-estimate, the reporting burden is over-estimated.

Dated: May 16, 1996.

For the Commission.

Maria Borrero,

Executive Director.

[FR Doc. 96–12767 Filed 5–21–96; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 96-9394) published on pages 16791 and 16792 of the issue for Wednesday, April 17, 1996.

Under the Federal Reserve Bank of New York heading, the entry for HSBC Holdings plc, London, England, and HSBC Holdngs BV, Amsterdam, The Netherlands, is revised to read as follows:

1. HSBC Holdings plc, London, England; and HSBC Holdings BV, Amsterdam, The Netherlands; to engage *de novo* through its subsidiary, HSBC Futures, Inc., New York, New York, in executing and clearing, executing without clearing, clearing without executing, and providing other related services, including incidental advisory services, with respect to futures and options on futures on certain non-financial commodities. Also, to execute without clearing, and clear without executing, futures on certain financial products. The proposed activities would be provided to institutional investors and employees trading for their own accounts throughout the world. (See, *J.P. Morgan & Co. Incorporated*, 80 Fed. Res. Bull. 151 (1994); and *Northern Trust Corporation*, 79 Fed. Res. Bull. 723 (1993)).

Comments on this application must be received by May 31, 1996.

Board of Governors of the Federal Reserve System, May 16, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-12794 Filed 5-21-96; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking

activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 17, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Financial Corporation, Terre Haute, Indiana; to merge with Crawford Bancorp, Inc., Robinson, Illinois, and thereby indirectly acquire Crawford County State Bank, Robinson, Illinois.

Board of Governors of the Federal Reserve System, May 16, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-12793 Filed 5-21-96; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE BOARD

Government in the Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Tuesday, May 28, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 17, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96-12931 Filed 5-20-96; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL TRADE COMMISSION

[File No. 931-0084]

The Loewen Group, Inc; Loewen Group International, Inc.; Propose Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subjected to final Commission approval, would require, among other things, the Covington, Kentucky-based company to divest the Castelwood Funeral Home in Castelwood, Virginia within nine months of acquiring it. The Consent Agreement settles allegations that Lowen's proposed acquisition of Heritage Family Funeral Services, Inc., would substantially reduce competition in Castlewood, because Loewen and heritage are the only firms providing funeral services in the Castlewood area.

DATES: Comments must be received on or before July 22, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:
Thomas B. Carter, Dallas Regional Office, Federal Trade Commission, 100 N. Central Expressway, Suite 500, Dallas, TX 75201. (214) 767-5518.
Gary D. Kennedy, Dallas Regional Office, Federal Trade Commission, 100 N. Central Expressway, Suite 500, Dallas, TX 75201. (214) 767-5512.
James R. Golder, Dallas Regional Office, Federal Trade Commission, 100 N. Central Expressway, Suite 500, Dallas, TX 75201. (214) 767-5508.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition of the voting securities of Heritage Family Funeral Services, Inc. by The Loewen Group Inc., a corporation, and Loewen Group International, Inc., a corporation (hereinafter collectively referred to as "Loewen"), and it now appearing that Loewen is willing to enter into an agreement containing an order to divest certain assets, and to cease and desist from certain acts.

It is hereby agreed by and between Loewen, its duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed respondent The Loewen Group Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the province of British Columbia, Canada, with its office and principal place of business located at 4126 Norland Avenue, Burnaby, British Columbia, Canada V5G 3S8.

2. Proposed respondent Loewen Group International, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 50 East River Center Boulevard, Covington, Kentucky 41011. Proposed respondent Loewen Group International, Inc. is a wholly-owned subsidiary of The Loewen Group Inc.

3. Loewen admits all the jurisdictional facts set forth in the draft of complaint.

4. Loewen waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Loewen, in which even it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as

the circumstances require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by Loewen that the law has been violated as alleged in the draft of complaint here C13, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to Loewen, (1) issue its complaint corresponding in form and substance with the draft of complaint E13 and its decision containing the following order to divest and to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to divest and to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to Loewen's address as stated in this agreement shall constitute service. Loewen waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Loewen has read the proposed complaint and order contemplated hereby. It understands that, once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Loewen further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

It is ordered that as used in this order, the following definitions shall apply:

A. "Loewen" means The Loewen Group Inc. and Loewen Group International, Inc., their directors, officers, employees, agents and representatives, predecessors, successors and assigns, their subsidiaries, divisions, groups and affiliates controlled by Loewen, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

B. "Funeral" means a group of services provided at the death of an individual, the focus of which is some form of commemorative ceremony of the life of the deceased at which ceremony the body is present; this group of services ordinarily includes, but is not limited to: the removal of the body from the place of death; its embalming or other preparation; making available a place for visitation and viewing, for the conduct of a funeral service, and for the display of caskets and outside cases; and the arrangement for the conveyance of the body to a cemetery or crematory for final disposition.

C. "Funeral establishment" means any facility that provides funerals.

D. "Property to be Divested" means all of the assets, properties, business and goodwill, tangible and intangible, utilized by the Castlewood Funeral Home located on Highway 58 in Castlewood, Virginia, including, but not limited to:

1. All right, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits;

2. All machinery, fixtures, equipment, furniture, tools and other tangible personal property;

3. All right, title and interest in the trade name of any funeral establishment, *provided that* the trade name "Heritage" need not be divested;

4. All right, title and interest in the books, records and files pertinent to the Property to be Divested;

5. Vendor lists, management information systems, software, catalogs, sales promotion literature, and advertising materials; and

6. All right, title, and interest in and to the contracts entered into in the ordinary course of business with customers (together with associated bids and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors, and consignees.

II.

It is further ordered that:

A. Within nine (9) months after Loewen acquires the Property to be Divested, Loewen shall divest, absolutely and in good faith, the Property to be Divested. The Property to be Divested is to be divested only to an acquirer or acquirers that receive the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture required by this order is to ensure the continued use of the Property to be Divested as an ongoing viable enterprise providing funerals and to remedy the lessening of competition alleged in the Commission's complaint.

B. Pending divestiture of the Property to be Divested, Loewen shall maintain the viability and marketability of the Property to be Divested and shall not cause or permit the destruction, removal, or impairment of any assets or business of the Property to be Divested, except in the ordinary course of business and except for ordinary wear and tear.

C. Loewen shall comply with the Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I. Said agreement shall continue in effect until Loewen has divested the Property to be divested or until such other time as the Agreement to Hold Separate provides.

III.

It is further ordered that:

A. If Loewen has not divested, absolutely and in good faith and with the Commission's prior approval, the Property to be Divested as required by paragraph II of this order within nine (9) months after Loewen has acquired the Property to be Divested, the Commission may appoint a trustee to divest the Property to be Divested. In the event the Commission or the Attorney General brings an action pursuant to Section 5 (*1*), or any other statute enforced by the Commission, Loewen shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(*1*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Loewen to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this order, Loewen shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Loewen, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Lowen has not opposed, in writing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to

Loewen of the identity of any proposed trustee, Loewen shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Property to be Divested.

3. The trustee shall have the power and authority to abrogate any contract or agreement between Loewen and any individual which restricts, limits or otherwise impairs the ability of such individual to purchase the Property to be Divested or to become a director, officer, employee, agent or representative of any acquirer of the Property to be Divested.

4. Within ten (10) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, Loewen shall execute a trust agreement that transfers to the trustees all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

5. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III.B.4 to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed trustee, by the court; *provided, however,* that the Commission may extend the divestiture period only two (2) times.

6. The trustee shall have full and complete access to the personnel, books, records and facilities relating to the Property to be Divested, or any other relevant information, as the trustee may request. Loewen shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Loewen shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Loewen shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or for a court-appointed trustee, the court.

7. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Loewen's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in Paragraph II of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Loewen from among those approved by the Commission.

8. The trustee shall serve, without bond or other security, at the cost and expense of Loewen, on such reasonable and customary terms and conditions as the Commission or the court may set. The trustee shall have authority to employ, at the cost and expense of Loewen, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Loewen and the trustee's power shall be terminated. The trustee's compensation shall be based at least in a significant part on a commission arrangement contingent on the trustee's divesting the Property to be Divested.

9. Loewen shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

10. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this order.

11. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

12. The trustee shall have no obligation or authority to operate or maintain the Property to be Divested.

13. The trustee shall report in writing to Loewen and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV.

It is further ordered that, for a period of ten (10) years from the date this order becomes final, Loewen shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise.

A. Acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, engaged at the time of such acquisition, or within the two years preceding such acquisition, in the provision of funerals in Russell County, Virginia or within fifteen (15 miles of the Russell County, Virginia line; or

B. Acquire any assets used for or used in the previous two years for (and still suitable for use for) funeral establishments in Russell County, Virginia or within fifteen (15) miles of the Russell County, Virginia line.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Office of the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Loewen and not of any other party to the transaction. Loewen shall provide the Notification to the Commission at least thirty (30) days prior to acquiring any such interest (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information, Loewen shall not consumate the acquisition until twenty (20) days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Commission's Bureau of Competition.

Provided, however, that prior notification shall not be required by this Paragraph IV of this Order for:

1. The construction or development by Loewen of a new funeral establishment; or

2. Any transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

V.

It is further ordered that:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Loewen has fully complied with the provisions of Paragraphs II or III of this order, Loewen shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II and III of this order. Loewen shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Loewen shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, Loewen shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraph IV of this order. Such reports shall include, but not be limited to, a listing by name and location of all acquisitions of funeral establishments in the United States located within forty (40) miles of a funeral establishment owned by Loewen at the time of the acquisition, including but not limited to acquisitions due to default, foreclosure proceedings or purchases in foreclosure, made by Loewen during the twelve (12) months preceding the date of the report.

VI.

It is further ordered that, for a period of ten (10) years from the date this order becomes final, Loewen shall notify the Commission at least thirty (30) days prior to any proposed change in its organization, such as dissolution, assignment or sale resulting in the emergence of a successor, or the creation or dissolution of subsidiaries, or any other change that may affect compliance obligations arising out of this order.

VII.

It is further ordered that, for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege, upon written request with reasonable notice to Loewen made to its principal officer, Loewen shall permit any duly authorized representative or representatives of the Commission:

A. Access, during the office hours of Loewen and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Loewen relating to any matters contained in this order; and

B. Upon five (5) days' notice to Loewen and without restraint or interference therefrom, to interview officers or employees of Loewen, who may have counsel present, regarding such matters.

Appendix I

In the Matter of The Loewen Group Inc., a corporation, and Loewen Group International, Inc., a corporation. File No. 931–0084.

Agreement To Hold Separate

This Agreement to Hold Separate (the "Agreement") is by and between The Loewen Group Inc. ("Loewen Group"), a corporation organized and existing under the laws of the province of British Columbia, Canada, with its office and principal place of business located at 4126 Norland Avenue, Burnaby, British Columbia, Canada V5G 3S8; Loewen Bropu International, Inc. ("Loewen Group International"), a wholly-owend subsidiary of Loewen Group, which is a corporation organized and existing under the laws of the State of Delaware, with its office and principal place of business located at 50 East River Center Boulevard, Covington, Kentucky 41011; and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, as amended, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

Premises

Whereas, on or about January 26, 1993, Loewen Group through its wholly-owned subsidiary Loewen Group International entered into an Agreement with Heritage Family Funeral Services, Inc. ("Heritage") in which Loewen Group International agreed to acquire Heritage (the "Acquisition"); and

Whereas, both Heritage and Loewen Group International own funeral establishments that provide funerals to consumers; and

Whereas, the Commission is now investigating the Acquisition to determine if the Acquisition would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order (the "Loewen/Heritage Consent Agreement"), the Commission must place the Loewen/Heritage Consent Agreement on the public record for public comment for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached preserving the *status quo ante* and holding separate the assets and business of the Property to be Divested pursuant to Paragraph II (hereinafter "Hold Separate Assets") of the Loewen/Heritage Consent Agreement and the order, once it is final ("Consent Order") until the divestiture contemplated by the Consent Order has been made, divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible or might be less than an effective remedy; and

Whereas, the purposes of this Agreement, the Loewen/Heritage Consent Agreement, and the Consent Order are to:

(1) Preserve the Hold Separate Assets as a viable independent business pending the divestiture described in the Loewen/Heritage Consent Agreement and Consent Order;

(2) Preserve the Commission's ability to require the divestiture of the funeral establishment required by the Consent Order; and

(3) Remedy any anticompetitive aspects of the Acquisition; and

Whereas, Loewen Group's and Loewen Group International's entering into this Agreement shall in no way be construed as an admission by Loewen Group and Loewen Group International that the Acquisition is illegal; and

Whereas, Loewen Group and Loewen Group International understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the Parties agree, upon the understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Order for public comment, it will grant early termination of the Hart-Scott-Rodino waiting period, as follows:

1. Loewen Group and Loewen Group International agree to execute and be bound by the attached Loewen/Heritage Consent Agreement.

2. Loewen Group and Loewen Group International shall hold the Hold Separate Assets separate and apart from the date this Agreement is accepted until the first to occur of,

a. Three (3) business days after the Commission withdraws its acceptance of the Loewen/Heritage Consent Agreement pursuant to the provisions of section 2.34 of the Commission's Rules; or

b. The day after the divestiture required by the Consent Order is accomplished.

3. Loewen Group's and Loewen Group International's obligation to hold the Hold Separate Assets separate and apart shall be on the following terms and conditions:

a. The Hold Separate Assets, as they are presently constituted, shall be held separate

and apart and shall be operated independently of Loewen Group and Loewen Group International except to the extent that Loewen Group and Loewen Group International must exercise direction and control over the Hold Separate Assets to assure compliance with this Agreement, the Loewen/Heritage Consent Agreement, or the Consent Order.

b. Except as provided herein and as is necessary to assure compliance with this Agreement, the Loewen/Heritage Consent Agreement, and the Consent Order, Loewen Group and Loewen Group International shall not exercise direction or control over, or influence directly or indirectly, the Hold Separate Assets or any of their operations or business.

c. Loewen Group and Loewen Group International shall cause the Hold Separate Assets to continue using their present name and trade name, and shall maintain and preserve the viability and marketability of the Hold Separate Assets and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair their marketability or viability.

d. Loewen Group and Loewen Group International shall refrain from taking any actions that may cause any material adverse change in the business or financial conditions of the Hold Separate Assets.

e. Loewen Group and Loewen Group International shall not change the composition of the management of the Hold Separate Assets, except that Loewen Group and Loewen Group International shall have the power to fill vacancies and remove management for cause.

f. Loewen Group and Loewen Group International shall maintain separate financial and operating records and shall prepare separate quarterly and annual financial statements for the Hold Separate Assets and shall provide the Commission with such statements for the funeral establishment within ten days of their availability.

g. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or litigation, or negotiating agreements to dispose of assets, Loewen Group and Loewen Group International shall not receive or have access to, or the use of, any of the Hold Separate Assets' "material confidential information" not in the public domain, except as such information would be available to Loewen Group and Loewen Group International in the normal course of business if the Acquisition had not taken place. Any such information that is obtained pursuant to this subparagraph shall only be used for the purpose set out in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to Loewen Group and Loewen Group International from sources other than Heritage, and includes but is not limited to pre-need customer lists, prices quoted by suppliers, or trade secrets.)

h. All earnings and profits of the Hold Separate Assets shall be held separately. If necessary, Loewen Group and Loewen Group International shall provide the Hold Separate Assets with sufficient working capital to operate at their current rate of operation.

i. Loewen Group and Loewen Group International shall refrain from, directly or indirectly, encumbering, selling, disposing of, or causing to be transferred any assets, property, or business of the Hold Separate Assets, except that the Hold Separate Assets may advertise, purchase merchandise and sell or otherwise dispose of merchandise in the ordinary course of business.

4. Should the Federal Trade Commission seek in any proceeding to compel Loewen Group and Loewen Group International to divest themselves of the shares of Heritage stock that they may acquire, or to compel Loewen Group and Loewen Group International to divest any assets or businesses of Heritage that they may hold, or to seek any other injunctive or equitable relief, Loewen Group and Loewen Group International shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Loewen Group and Loewen Group International also waive all rights to contest the validity of this Agreement.

5. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Loewen Group and Loewen Group International made to their principal offices, Loewen Group and Loewen Group International shall make available to any duly authorized representative or representatives of the Commission:

a. All books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Loewen Group and Loewen Group International, for inspection and copying during office hours and in the presence of counsel; and

b. Upon five (5) days' notice to Loewen Group and Loewen Group International and without restraint or interference from Loewen Group or Loewen Group International, officers or employees of Loewen Group and Loewen Group International, who may have counsel present, for interviews regarding any such matters.

6. This agreement shall not be binding until approved by the Commission.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from The Loewen Group Inc. and Loewen Group International, Inc. (hereinafter collectively referred to as "Loewen").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether to withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint in this matter charges Loewen with violating Section 5 of the Federal Trade Commission Act, as amended, and Section 7 of the Clayton Act, as amended, in connection with Loewen's proposed acquisition of Castlewood Funeral Home, in Castlewood, Virginia.

The consent order contains provisions designed to remedy the alleged violations.

Part I of the order contains the definitions of terms that are used in the order.

Part II of the order requires that within nine (9) months of the date that Loewen acquires Castlewood Funeral Home, Loewen must divest Castlewood Funeral Home.

Part III of the order provides for the appointment of a trustee to accomplish the divestiture required by the order if Loewen fails to make a timely divestiture.

Part IV of the order requires Loewen, for ten (10) years, to provide written notification to the Commission prior to acquiring any interest in a funeral home located in Russell County, Virginia, or within fifteen (15) miles of the Russell County, Virginia, line.

Part V of the order requires Loewen to provide periodic compliance reports until the divestiture is completed. Part V also requires Loewen, for ten (10) years, to provide annual compliance reports detailing how it is complying with Part IV of the order.

Part VI of the order requires Loewen, for ten (10) years, to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part VII of the order permits Commission representatives, for the purpose of determining or securing compliance with the order, to have access to Loewen's offices to inspect and copy documents and, upon five days' notice, to interview Loewen's officers and employees.

Appendix I to the order is an Agreement to Hold Separate in which Loewen has agreed to hold separate and preserve the assets of Castlewood Funeral Home until Loewen divests the home.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order, or to modify any of their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96–12818 Filed 5–21–96; 8:45 am]

BILLING CODE 6750–01–M

[File No. 931–0052]

The Loewen Group, Inc.; Loewen Group International, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In the settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Covington, Kentucky-based company to divest one of its three funeral homes in Brownsville, Texas and divest a large funeral home in San Benito, Texas or two smaller funeral homes in Harlingen, Texas. The Consent Agreement settles allegations that Lowen's acquisition of certain funeral homes in the Brownsville area and the Harlingen/San Benito area of Cameron County, Texas would decrease competition and increase the likelihood of collusion in those markets.

DATES: Comments must be received on or before July 22, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Thomas B. Carter, Dallas Regional Office, Federal Trade Commission, 100 N. Central Expressway, Suite 500, Dallas, TX 75201. (214) 767–5518.

Gary D. Kennedy, Dallas Regional Office, Federal Trade Commission, 100 N. Central Expressway, Suite 500, Dallas, TX 75201. (214) 767–5512.

James R. Golder, Dallas Regional Office, Federal Trade Commission, 100 N. Central Expressway, Suite 500, Dallas, TX 75201. (214) 767–5512.

James R. Golder, Dallas Regional Office, Federal Trade Commission, 100 N. Central Expressway, Suite 500, Dallas, TX 75201. (214) 767–5508.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission") having initiated an investigation of the acquisition of the assets of Garza Memorial Funeral Home, Inc. and Thomae-Garza Funeral Directors, Inc. by the Loewen Group Inc., a corporation, and Loewen Group International, Inc., a corporation (hereinafter collectively referred to as "Loewen"), and it now appearing that Loewen is willing to enter into an agreement containing an order to divest certain assets, and to cease and desist from certain acts,

It is hereby agreed by and between Loewen, its duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed respondent The Loewen Group Inc, is a corporation organized, existing and doing business under and by virtue of the laws of the province of British Columbia, Canada, with its office and principal place of business located at 4126 Norland Avenue, Burnaby, British Columbia, Canada V5G 3S8.

2. Proposed respondent Loewen Group International, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 50 East River Center Boulevard, Covington, Kentucky 41011. Proposed respondent Loewen Group International, Inc. is a wholly-owned subsidiary of The Loewen Group Inc.

3. Loewen admits all the jurisdictional facts set forth in the draft of complaint.

4. Loewen waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or context the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Loewen, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by Loewen that the law has been violated as alleged in the draft of complaint here, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to Loewen, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to divest and to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to divest and to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to Loewen's address as stated in this agreement shall constitute service. Loewen waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Loewen has read the proposed complaint and order contemplated hereby. It understands that, once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Loewen further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that, as used in this order, the following definitions shall apply:

A. "Loewen" means The Loewen Group Inc. and Loewen Group International, Inc., their directors, officers, employees, agents and representatives, predecessors, successors and assigns, their subsidiaries, divisions, groups and affiliates controlled by Loewen, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

B. "Funeral" means a group of services provided at the death of an individual, the focus of which is some form of commemorative ceremony of the life of the deceased at which ceremony the body is present; this group of services ordinarily includes, but is not limited to: the removal of the body from the place of death; its embalming or other preparation; making available a place for visitation and viewing, for the conduct of a funeral service, and for the display of caskets and outside cases; and the arrangement for and conveyance of the body to a cemetery or crematory for final disposition.

C. "Funeral establishment" means any facility that provides funerals.

D. "Properties to be Divested" means all of the assets, properties, business and goodwill, tangible and intangible, utilized by: (a) either Thomae-Garza Funeral Directors, Inc. or both Pitts, Kriedler-Ashcraft Funderal Directors, Inc. and Garza-Elizondo Funeral Directors in Cameron County, Texas; and (b) either Garza Memorial Funeral Home, Inc., Paragon Trevino Funeral Home, Inc., or Darling-Mouser Funeral Home, Inc. in Cameron County, Texas; including, but not limited to:

1. All right, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits;

2. All machinery, fixtures, equipment, furniture, tools and other tangible personal property;

3. All right, title and interest in the trade name of any funeral establishment;

4. All right, title and interest in the books, records and files pertinent to the Properties to be Divested;

5. Vendor lists, management information systems, software, catalogs, sales promotion literature, and advertising materials; and

6. All right, title, and interest in and to the contracts entered into in the ordinary course of business with customers (together with associated bids and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors, and consignees.

II

It is further ordered that:

A. Within twelve (12) months after the date this order becomes final, Loewen shall divest, absolutely and in good faith, the Properties to be Divested. The Properties to be Divested are to be Divested only to an acquirer or acquirers that receive the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestitures required by this order is to ensure the continued use of the Properties to be Divested as ongoing viable enterprises providing funerals and to remedy the lessening of competition alleged in the Commission's complaint.

B. Pending divestiture of the Properties to be Divested, Loewen shall maintain the viability and marketability of the Properties to be Divested and shall not cause or permit the destruction, removal, or impairment of any assets or business of the Properties to be Divested, except in the ordinary course of business and except for ordinary wear and tear.

III

It is further ordered that:

A. If Loewen has not divested, absolutely and in good faith and with the Commission's prior approval, the Properties to be Divested as required by Paragraph II of this order within twelve (12) months after the date this order becomes final, the Commission may appoint a trustee to divest the Properties to be Divested. In the event the Commission or the Attorney General brings an action pursuant to Section 5(*1*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*1*), or any other statute enforced by the Commission, Loewen shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(*1*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Loewen to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this order, Loewen shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Loewen, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Loewen has not opposed, in writing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Loewen of the identity of any proposed trustee, Loewen shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Properties to be Divested.

3. The trustee shall have the power and authority to abrogate any contract or agreement between Loewen and any individual which restricts, limits or otherwise impairs the ability of such individual to purchase the Properties to be Divested or to become a director, officer, employee, agent or representative of any acquirer of the Properties to be Divested.

4. Within ten (10) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, Loewen shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures required by this order.

5. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III.B.4 to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed trustee, by the court; *provided, however,* that the Commission may extend the divestiture period only two (2) times.

6. The trustee shall have full and complete access to the personnel, books, records and facilities relating to the Properties to be Divested, or any other relevant information, as the trustee may request. Loewen shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Loewen shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by Loewen shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or for a court-appointed trustee, the court.

7. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Loewen's absolute and unconditional obligation to divest at no minimum price. The divestitures shall be made in the manner and to the acquirer or acquirers as set out in Paragraph II of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Loewen from among those approved by the Commission.

8. The trustee shall serve, without bond or other security, at the cost and expense of Loewen, on such reasonable and customary terms and conditions as the Commission or the court may set. The trustee shall have authority to employ, at the cost and expense of Loewen, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestitures and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Loewen and the trustee's power shall be terminated. The trustee's compensation shall be based at least in a significant part on a commission arrangement contingent on the trustee's divesting the Properties to be Divested.

9. Loewen shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

10. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this order.

11. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this order.

12. The trustee shall have no obligation or authority to operate or maintain the Properties to be Divested.

13. The trustee shall report in writing to Loewen and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered that, for a period of ten (10) years from the date this order becomes final, Loewen shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, engaged at the time of such acquisition, or within the two years preceding such acquisition, in the provision of funerals in Cameron County, Texas or within fifteen (15) miles of the Cameron County, Texas line; or

B. Acquire any assets used for or used in the previous two years for (and still suitable for use for) funeral establishments in Cameron County, Texas or within fifteen (15) miles of the Cameron County, Texas line.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Office of the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Loewen and not of any other party to the transaction. Loewen shall provide the Notification to the Commission at least thirty (30) days prior to acquiring any such interest (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information, Loewen shall not consummate the acquisition until twenty (20) days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Commission's Bureau of Competition.

Provided, however, that prior notification shall not be required by this Paragraph IV of this Order for:

1. the construction or development by Loewen of a new funeral establishment; or

2. any transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

V

It is further ordered that:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Loewen has fully complied with the provisions of Paragraphs II or III of this order, Loewen shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II and III of this order. Loewen shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of the order, including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Loewen shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, Loewen shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraph IV of this order. Such reports shall include, but not be limited to, a listing by name and location of all acquisitions of funeral establishments in the United States located within forty (40) miles of a funeral establishment owned by Loewen at the time of the acquisition, including but not limited to acquisitions due to default, foreclosure proceedings or purchases in foreclosure, made by Loewen during the twelve (12) months preceding the date of the report.

VI

It is further ordered that, for a period of ten (10) years from the date this order becomes final, Loewen shall notify the

Commission at least thirty (30) days prior to any proposed change in its organization, such as dissolution, assignment or sale resulting in the emergence of a successor, or the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of this order.

VII

It is further ordered that, for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege, and upon written request with reasonable notice to Loewen made to its principal offices, Loewen shall permit any duly authorized representative or representatives of the Commission:

A. Access, during the office hours of Loewen and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Loewen relating to any matters contained in this order; and

B. Upon five (5) days' notice to Loewen and without restraint or interference therefrom, to interview officers or employees of Loewen, who may have counsel present, regarding such matters.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from The Loewen Group Inc. and Loewen Group International, Inc. (hereinafter collectively referred to as "Loewen").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether to withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint in this matter charges Loewen with violating Section 5 of the Federal Trade Commission Act, as amended, and Section 7 of the Clayton Act, as amended, in connection with Loewen's acquisitions of Garza Memorial Funeral Home, Inc., in Brownsville, Texas, and Thomae-Garza Funeral Directors, Inc., in San Benito, Texas.

The consent order contains provisions designed to remedy the alleged violations.

Part I of the order contains the definitions of terms that are used in the order.

Part II of the order requires that within twelve (12) months of the date that the order becomes final, Loewen must divest: (1) either Thomae-Garza Funeral Directors, Inc., or both Pitts, Kriedler-Ashcraft Funeral Directors, Inc., and Garza-Elizondo Funeral Directors; and (2) Garza Memorial Funeral Home, Inc., or Paragon Trevino Funeral Home, Inc., or Darling-Mouser Funeral Home, Inc.

Part III of the order provides for the appointment of a trustee to accomplish the divestitures required by the order if Loewen fails to make timely divestitures.

Part IV of the order requires Loewen, for ten (10) years, to provide written notification to the Commission prior to acquiring any interest in a funeral home located in Cameron County, Texas, or within fifteen (15) miles of the Cameron County, Texas, line.

Part V of the order requires Loewen to provide periodic compliance reports until the divestitures are completed. Part V also requires Loewen, for ten (10) years, to provide annual compliance reports detailing how it is complying with Part IV of the order.

Part VI of the order requires Loewen, for ten (10) years, to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part VII of the order permits Commission representatives, for the purpose of determining or securing compliance with the order, to have access to Loewen's offices to inspect and copy documents and, upon five days' notice, to interview Loewen's officers and employees.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order, or to modify any of their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96–12819 Filed 5–21–96; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Office of Transportation Audits; Stocking Change of an Optional Form

AGENCY: Federal Supply Service, General Services Administration.

ACTION: Notice.

SUMMARY: This notice announces the General Services Administration's intent to change the stocking requirement of OF 1121, Bill of Lading Accountability Record because of low user demand. This form is now authorized for local reproduction by all Federal agencies. You can obtain the camera copy in two ways:

On the internet. Address: http://www.gsa.gov/forms, or;

From CARM, Attn.: Barbara Williams, (202) 501–0581.

FOR FURTHER INFORMATION CONTACT: Mr. James Fitzgerald, Director, Transportation Audit Division, Office of Transportation Audits, (202) 219–1494.

DATES: Effective May 22, 1996.

Dated: May 14, 1996.

Theodore D. Freed,

Standard and Optional Forms Management Officer.

[FR Doc. 96–12772 Filed 5–21–96; 8:45 am]

BILLING CODE 6820–BG–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Proposed Projects

Title: At-Risk Child Care, Annual Report.

OMB No.: 0970–0126.

Description: Completing this form partially fulfills the reporting requirements of Section 402(i)(6)(B) of the Social Security Act (the Act) whereby the Secretary of DHHS must compile and report certain information annually that is pertinent to the At-Risk program. Additionally the report provides a means for each State to report subsequent period expenditure to determine the State's compliance with the non-supplantation provisions found at Section 402(i)(5)(D) of the Act.

Respondents: State Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–301	54	1	3.5	189
Estimated Total Annual Burden Hours: 189.				

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by title.

In addition, requests for copies may be made and comments forwarded to the Reports Clearance Officer over the Internet by sending message to rsargis@acf.dhhs.gov. Internet messages must be submitted as an ASCII file without special characters or encryption.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: May 16, 1996.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 96–12809 Filed 5–21–96; 8:45 am]

BILLING CODE 4184–01–M

Federal Allotments to States for Social Services Expenditures, Pursuant to Title XX, Block Grants to States for Social Services; Revised Promulgation for Fiscal Year 1996

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notification of revised allocation of title XX—social services block grant allotments for Fiscal Year 1996.

SUMMARY: This issuance sets forth the individual allotments to States for Fiscal Year 1996, pursuant to title XX of the Social Security Act, as amended (Act). This revision is required by Public Law 104–134, the Omnibus Consolidated Rescissions and Appropriations Act of 1996, which decreased the amount available for title XX allotments to $2.381 billion.

FOR FURTHER INFORMATION CONTACT: Frank A. Burns, (202) 401–5536.

SUPPLEMENTARY INFORMATION: For Fiscal Year 1996, the allotments are based upon the Bureau of Census population statistics contained in its reports "Updated National/State Population Estimates" (CB94–43 Table 1) released March 1994, and "1990 Census of Population and Housing" (CPH–6–AS and CPH–6–CNMI) published April 1992, which was the most recent data available from the Department of Commerce at the time of the Department's initial promulgation.

EFFECTIVE DATE: The allotments are effective October 1, 1995.

FISCAL YEAR 1996 FEDERAL ALLOTMENTS TO STATES FOR SOCIAL SERVICES—TITLE XX BLOCK GRANTS

	Initial FY 96 allotment	Revised FY 96 allotment
TOTAL	$2,800,000,000	$2,381,000,000
ALABAMA	45,202,466	38,438,240
ALASKA	6,477,545	5,508,227
AMERICAN SAMOA	104,188	88,597
ARIZONA	42,492,693	36,133,964
ARKANSAS	26,169,280	22,253,234
CALIFORNIA	336,951,078	286,528,750
COLORADO	38,498,207	32,737,226
CONNECTICUT	35,378,190	30,084,096
DELAWARE	7,567,931	6,435,445
DIST. OF COL.	6,250,831	5,315,439
FLORIDA	147,677,222	125,578,382
GEORGIA	74,675,294	63,500,670
GUAM	482,759	410,515
HAWAII	12,663,600	10,768,583
IDAHO	11,875,499	10,098,416
ILLINOIS	126,279,733	107,382,874
INDIANA	61,677,021	52,447,495
IOWA	30,379,684	25,833,582
KANSAS	27,324,443	23,235,536
KENTUCKY	40,905,695	34,784,451
LOUISIANA	46,368,424	39,429,720
MAINE	13,376,130	11,374,488
MARYLAND	53,601,682	45,580,573
MASSACHUSETTS	64,904,998	55,192,429

FISCAL YEAR 1996 FEDERAL ALLOTMENTS TO STATES FOR SOCIAL SERVICES—TITLE XX BLOCK GRANTS—Continued

	Initial FY 96 allotment	Revised FY 96 allotment
MICHIGAN	102,323,614	87,011,617
MINNESOTA	48,765,115	41,467,764
MISSISSIPPI	28,533,584	24,263,738
MISSOURI	56,505,781	48,050,095
MONTANA	9,068,563	7,711,516
NEBRASKA	17,349,024	14,752,866
NEVADA	14,995,516	12,751,544
NEW HAMPSHIRE	12,156,192	10,337,105
NEW JERSEY	85,060,957	72,332,192
NEW MEXICO	17,446,187	14,835,490
NEW YORK	196,453,134	167,055,326
NORTH CAROLINA	74,977,580	63,757,721
NORTH DAKOTA	6,866,197	5,838,721
NO. MARIANA ISLANDS	96,552	82,103
OHIO	119,737,413	101,819,564
OKLAHOMA	34,881,578	29,661,800
OREGON	32,733,192	27,834,905
PENNSYLVANIA	129,982,730	110,531,742
PUERTO RICO	14,482,759	12,315,515
RHODE ISLAND	10,806,704	9,189,557
SOUTH CAROLINA	39,329,492	33,444,114
SOUTH DAKOTA	7,729,870	6,573,150
TENNESSEE	55,048,334	46,810,744
TEXAS	194,661,013	165,531,384
UTAH	20,080,388	17,075,502
VERMONT	6,229,239	5,297,077
VIRGIN ISLANDS	482,759	410,515
VIRGINIA	70,076,237	59,589,828
WASHINGTON	56,732,495	48,242,884
WEST VIRGINIA	19,648,552	16,708,287
WISCONSIN	54,389,783	46,250,742
WYOMING	5,084,873	4,323,960

DATED: May 10, 1996.

Donald Sykes,

Director Office of Community Services.

[FR Doc. 96–12860 Filed 5–21–96; 8:45 am]

BILLING CODE 4184–01–P

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Peripheral and Central Nervous System Drugs Advisory Committee

Date, time, and place. June 6, 1996, 8:30 a.m., Holiday Inn—Bethesda, Versailles Ballrooms III and IV, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 3 p.m.; open public hearing, 3 p.m. to 3:30 p.m., unless public participation does not last that long; William Freas or Sheila D. Langford, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Bethesda, MD 20852, 301–827–0314, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Peripheral and Central Nervous System Drugs Advisory Committee, code 12543. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in neurological disease.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 31, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss product license application 96–0350 for Activase™ (alteplase), Genentech, for the management of acute ischemic stroke.

Antiviral Drugs Advisory Committee

Date, time, and place. June 6 and 7, 1996, 8:30 a.m., Quality Hotel, Maryland Ballroom, 8727 Colesville Rd., Silver Spring, MD.

Type of meeting and contact person. Open committee discussion, June 6, 1996, 8:30 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 5 p.m.; open committee discussion, June 7, 1996, 8:30 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 5 p.m.; Rhonda W. Stover or Liz Ortuzar, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Antiviral Drugs Advisory Committee, code 12531. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 31, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On June 6, 1996, the committee will discuss data relevant to new drug application (NDA) 20–585, Bravavir® (sorivudine), Bristol Myers Squibb, for use in the treatment of herpes zoster in immunocompromised adults. On June 7, 1996, the committee will discuss data relevant to NDA 20–636, Viramune® (nevirapine), Boehringer Ingelheim, for use in the treatment of human immunodeficiency virus infection.

Peripheral and Central Nervous System Drugs Advisory Committee

Date, time, and place. June 7, 1996, 8:30 a.m., Holiday Inn—Bethesda, Versailles Ballrooms III and IV, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open committee discussion, 8:30 a.m. to 4 p.m.; open public hearing, 4 p.m. to 5 p.m., unless public participation does not last that long; Michael A. Bernstein, Center for Drug Evaluation and Research (HFD–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2775, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Peripheral and Central Nervous System Drugs Advisory Committee, code 12543. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in neurological disease.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 1, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will review data from two clinical studies which evaluated Myotrophin®'s utility in treating patients with amyotrophic lateral sclerosis. Data from these studies have been submitted to FDA in support of a treatment protocol, investigational new drug application 39,927, Cephalon, Inc.

Advisory Committee for Reproductive Health Drugs (formerly Fertility and Maternal Health Drugs Advisory Committee)

Date, time, and place. June 28, 1996, 9 a.m., Holiday Inn—Gaithersburg, Whetstone and Walker Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open committee discussion, 9 a.m. to 5 p.m.; open public hearing, at the completion of the formal presentations, at approximately 2 p.m. to 3 p.m., unless public participation does not last that long; Philip A. Corfman, Center for Drug Evaluation and Research (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3510, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Advisory Committee for Reproductive Health Drugs, code 12537. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of obstetrics and gynecology.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 17, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the safety and efficacy of certain oral contraceptives for postcoital emergency use. Over the years, there has been increasing interest in this use by health care professionals and consumers. This use has been approved in some countries, and physicians have prescribed oral contraceptives for emergency use in the United States, although contraceptives marketed in the United States are not labeled for this use. On November 23, 1994, the Center for Reproductive Law and Policy submitted a citizen's petition requesting FDA to direct sponsors of certain oral contraceptives to amend the labeling and patient package inserts to include information regarding the use of these products for postcoital emergency contraception (Docket No. 94P–0427). FDA denied the petition but determined that it would be appropriate to discuss the scientific issues related to the safety and effectiveness of this use with the Reproductive Health Drugs Advisory Committee to determine whether the data support the use under certain conditions.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 16, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–12797 Filed 5–21–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4042–N–02]

Office of the Assistant Secretary for Community Planning and Development; Notice of Funding Availability for Continuum of Care Homeless Assistance; Clarification; Supportive Housing Program (SHP); Shelter Plus Care (S+C); Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals (SRO)

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability (NOFA); clarification.

SUMMARY: On March 15, 1996 (61 FR 10866), HUD published a notice announcing the availability of fiscal year (FY) 1996 funding for three of its programs which assist communities in combatting homelessness. The three programs are: (1) Supportive Housing; (2) Shelter Plus Care; and (3) Section 8 Moderate Rehabilitation for Single Room Occupancy Dwellings for Homeless Individuals. The Congress had not yet enacted a FY 1996 appropriation for HUD at the time of publication of the March 15, 1996 notice of funding availability (NOFA). Accordingly, the March 15, 1996 NOFA set forth HUD's estimate of the FY 1996 funding that the Congress would make available. The Congress has since enacted a FY 1996 appropriation for HUD. This notice provides the final FY 1996 amount made available under the March 15, 1996 NOFA.

DEADLINE DATES: The original application deadline date is not changed. All applications are due in HUD Headquarters before midnight Eastern Time on June 12, 1996. HUD will treat as ineligible for consideration applications that are received after that deadline. *Applications may not be sent by facsimile (FAX).*

ADDRESSES: For a copy of the application package and supplemental information please call the Community Connections information center at 1–800–998–9999 (voice) or 1–800–483–2209 (TDD), or contact by internet at gopher://amcom.aspensys.com:75/11/funding. Also, you can purchase, for a nominal fee, a video that walks you through the application package and provides general background that can be useful in preparing your application. The fee for the video may be waived in cases of financial hardship. For copies of the relevant portions of your community's Consolidated Plan, please contact the local or State official responsible for that Plan. If you need assistance in identifying this person, please call your local HUD Field Office.

Before close of business on the deadline date completed applications will be accepted at the following address: Special Needs Assistance Programs, Room 7270, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410, Attention: Continuum of Care Funding. On the deadline date, hand-carried applications will be received at the South lobby of the Department of Housing and Urban Development at the above address. Two copies of the application must also be sent to the HUD Field Office serving the State in which the applicant's projects are located. A list of Field Offices appears in an appendix of this NOFA. Field Office copies must be received by the application deadline as well, but a determination that an application was received on time will be made solely on receipt of the application at HUD Headquarters in Washington.

ELECTRONIC SUBMISSION: In addition to submitting the application narratives and forms in the traditional manner, you may also include an electronic version of your materials on a 3½' computer diskette. The inclusion of the computer version this year is strictly an optional supplement to the standard application.

If you use HUD's Consolidated Planning software to generate supplemental maps, charts, or project lists, please include these files on the diskette as well.

FOR FURTHER INFORMATION CONTACT: The Community Connections information center at 1–800–998–9999 (voice) or 1–800–483–2209 (TDD), or by internet at gopher://amcom.aspensys.com:75/11/funding.

SUPPLEMENTARY INFORMATION:

A. The March 15, 1996 NOFA

On March 15, 1996 (61 FR 10866), HUD published a NOFA announcing the 1996 homeless assistance competition to help communities develop Continuum of Care systems to assist homeless persons. These funds are available under three HUD programs to create community systems for combatting homelessness. The three programs are: (1) Supportive Housing; (2) Shelter Plus Care; and (3) Section 8 Moderate Rehabilitation for Single Room Occupancy Dwellings for Homeless Individuals. The March 15, 1996 NOFA contained information concerning the Continuum of Care approach, eligible applicants, eligible activities, application requirements, and application processing.

Congress had not yet enacted a FY 1996 appropriation for HUD at the time of publication of the March 15, 1996 NOFA. Accordingly, the March 15, 1996 NOFA set forth HUD's estimate of the FY 1996 funding that the Congress would make available. HUD published the NOFA in order to give potential applicants adequate time to prepare applications. The purpose of this notice is to publish the final FY 1996 amount made available under the March 15, 1996 NOFA.

B. Final FY 1996 Funding Amount Under the March 15, 1996 NOFA

On April 26, 1996, the President signed the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (OCRA) (Pub.L. 104–134, approved April 26, 1996). The OCRA makes $823,000,000 in FY 1996 funds available for HUD's homeless assistance grants programs. Of this amount, $675 million is being made available under the March 15, 1996 NOFA. Of the remaining amount, HUD is making $115 million available for the Emergency Shelter Grants Program, and $33 million for the renewal of previously awarded grants.

C. Revised Pro Rata Need Estimates

Appendix B to the March 15, 1996 NOFA set forth two columns of pro rata need estimates for use by eligible jurisdictions. These figures were based on different HUD estimates of the FY 1996 funding amount that the Congress would make available. Estimate A, which equalled $675 million, was based on Congressional action authorizing interim spending, referred to as a Continuing Resolution. Estimate B, which totalled $925 million, reflected the Administration's FY 1996 Budget request (published February 1995). As explained above, the final FY 1996 amount made available under the March 15, 1996 NOFA is $675 million. Applicants should therefore utilize Estimate A in determining their relative need estimates. Estimate B should be disregarded.

Dated: May 16, 1996.

Andrew M. Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96–12796 Filed 5–21–96; 8:45 am]

BILLING CODE 4210–29–P

Office of the Secretary

[Docket No. FR 4044–D–01]

Office of the Assistant Secretary for Community Planning and Development; Delegation and Redelegation of Authority Concerning the Base Closure Community Redevelopment and Assistance Act of 1994

AGENCY: Office of the Secretary, and Office of the Assistant Secretary for CPD, HUD.

ACTION: Notice of delegation and redelegation of authority.

SUMMARY: The Secretary of the Department of Housing and Urban Development has certain administrative authority under the Base Closure Community Redevelopment and Assistance Act of 1994 and its implementing regulations at 32 CFR Part 92 and 24 CFR Part 586. The Secretary is delegating this authority to administer the Act and implementing regulations to the Assistant Secretary for Community Planning and Development. The Assistant Secretary for Community Planning and Development is redelegating the specific authority to render adverse determinations of base reuse plans, pursuant to the Act and regulations, to the Deputy Assistant Secretary for Economic Development. Additionally, the Secretary is ratifying all actions taken by the Assistant Secretary for Community Planning and Development and the Deputy Assistant Secretary for Economic Development, from October 1, 1995, through the date of signature of this document by the Secretary, with respect to the approval of applications received pursuant to the Act, in accordance with 32 CFR 92.35 and 24 CFR 586.35.

EFFECTIVE DATE: May 10, 1996.

FOR FURTHER INFORMATION CONTACT: Jacquie M. Lawing, Deputy Assistant Secretary for Economic Development, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 7204, Washington, DC 20410, (202) 708–0270. A telecommunications device for the hearing-impaired (TDD) is available at (202) 708–1455. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Base Closure Community Redevelopment and Homeless Assistance Act of 1994, Pub. L. 103–421, 108 Stat. 4346, approved October 25, 1994, 42 U.S.C. 11301, note, ("Redevelopment Act") amends the Defense Authorization Amendments and Base Closure and Realignment Act of 1988, Pub. L. 100–526, and the National Defense Authorization Act of Fiscal Year 1991, Pub. L. 101–510 (both at 10 U.S.C. § 2687, note), both as amended by the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103–160. The Redevelopment Act is implemented jointly by both the Department of Defense ("DoD") and the Department of Housing and Urban Development ("HUD"). DoD published its implementing regulations at 60 FR 40277, 32 CFR Part 92, on August 8, 1995, and HUD published its implementing regulations at 60 FR 42972, 24 CFR Part 586, on August 17, 1995. These regulations vest authority with the Secretary of HUD to make determinations with regard to plans for reuse of closing/realigning military installations. The regulations also provide HUD with the authority to approve waivers upon completion of a determination and finding of good cause, except for deadlines and actions required on the part of DoD.

The present action is intended to delegate to the Assistant Secretary for Community Planning and Development the authority to approve base reuse plans and to grant waivers. The present action is also intended to delegate the authority to render adverse determinations of base reuse plans to the Assistant Secretary for Community Planning and Development, who is redelegating this authority to the Deputy Assistant Secretary for Economic Development. Additionally, by executing the present document, the Secretary is ratifying all actions taken by the Assistant Secretary for Community Planning and Development and the Deputy Assistant Secretary for Economic Development on behalf of the Secretary of HUD, from October 1, 1995, through the date of signature of this document by the Secretary, with respect to the approval of applications received pursuant to the Redevelopment Act, in accordance with 32 CFR 92.35, and 24 CFR 586.35.

Accordingly, the Secretary delegates, and the Assistant Secretary for

Community Planning and Development redelegates authority as follows:

Section A. Authority Delegated

The Secretary of the Department of Housing and Urban Development delegates to the Assistant Secretary for Community Planning and Development the authority to administer the Base Closure Community Redevelopment and Assistance Act of 1994, including:

i. The authority to approve base reuse plans, pursuant to 32 CFR 92.35, and 24 CFR 586.35;

ii. the authority to grant waivers, pursuant to 32 CFR 92.15(b), and 24 CFR 586.15(b); and

iii. the authority to render adverse determinations of base reuse plans, pursuant to 32 CFR 92.40, and 24 CFR 586.40.

Section B. Authority Redelegated

The Assistant Secretary for Community Planning and Development redelegates to the Deputy Assistant Secretary for Economic Development the authority to render adverse determinations of base reuse plans, pursuant to 32 CFR 92.40, and 24 CFR 586.40.

Section C. Actions Ratified

The Secretary of Housing and Urban Development hereby ratifies all actions previously taken by the Assistant Secretary for Community Planning and Development and the Deputy Assistant Secretary for Economic Development, from October 1, 1995, through the date of signature of this document by the Secretary, with respect to the approval of applications for the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, in accordance with 32 CFR 92.35, and 24 CFR 586.35.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. § 3535(d).

Dated: May 10, 1996.

Henry G. Cisneros,

Secretary of Housing and Urban Development.

Andrew M. Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96–12781 Filed 5–21–96; 8:45 am]

BILLING CODE 4210–32–M, 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10 (c) of he Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

PRT–814965

Applicant: Dr. Allan M. Hale, Rust Environment and Infrastructure, Inc., Cincinnati, Ohio.

The applicant requests a permit to take (capture and release) Indiana Bats (*Myotis sodalis*) within Martin, Greene, and Lawrence Counties, Indiana. Surveys are proposed to document presence or absence of the species on behalf of the Crane Division, Naval Surface Warfare Center, Crane, Indiana, and activities are proposed to enhance survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Division of Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/725–3536 x250); FAX: (612/725–3526).

Dated: May 15, 1996.

Matthias A. Kerschbaum,

Acting Assistant Regional Director, Ecological Services, Region 3, Fish and Wildlife Service, Fort Snelling, Minnesota.

[FR Doc. 96–12814 Filed 5–21–96; 8:45 am]

BILLING CODE 4310–55–M

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–810353.

Applicant: Camp Cooley Ranch, Franklin, TX

The applicant requests a permit to authorize interstate and foreign commerce, export, and cull of excess male barasingha (*Cervus duvouceli*) from their captive herd for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application(s) for permits to conduct certain activities with marine mammals. The application(s) was/were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–814780

Applicant: Carnegie Museum of Natural History, Pittsburgh, PA.

Type of Permit: Import for public display.

Name and Number of Animals: Polar Bear (*Ursus maritimus*), 1.

Summary of Activity to be Authorized: The applicant has requested a permit to import one polar bear legally harvested in the Northwest Territories, Canada for the purposes of public display.

Source of Marine Mammals for Research/Public Display: Canada.

Period of Activity: Up to five years from issuance of a permit, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 430, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice at the above address.

Dated: May 17, 1996.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 96–12854 Filed 5–21–96; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[AZ–026–05–5440–10–A132; AZA 29170]

Arizona: Continuation of Public Land Segregation, Pima County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice continues the segregation on the 20 acres cited in notice documents 95–21078, page 44042 in the issue of Thursday, August 24, 1995; and 95–22914, page 47961 in the issue of Friday, September 15, 1995. The segregation is continued because the noncompetitive sale of public lands cannot take place until the Lower Gila Resource Area RMP Amendment is finalized. The segregation from appropriation under the public land laws, including the mining laws, on the following land will continue for 270 days from the date of this publication:

Gila and Salt River Meridian, Arizona

T. 12 S., R. 6 W.,

Sec. 33, SE¼SW¼NE¼, NE¼NW¼SE¼.

The area described contains 20 acres.

FOR FURTHER INFORMATION CONTACT:

Hector Abrego of the Phoenix District Office, U.S. Bureau of Land Management, 2015 West Deer Valley Rd., Phoenix, Arizona 85027, (602) 780–8090 E-mail: habrego@0033wp.azso.az.blm.gov.

Dated: May 15, 1996.

David J. Miller,

Associate District Manager.

[FR Doc. 96–12724 Filed 5–21–96; 8:45 am]

BILLING CODE 4310–32–M

Bureau of Reclamation

FES 96 29

South Bay Water Recycling Project, San Jose, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability on the final environmental impact statement.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended), the Bureau of Reclamation (Reclamation) has prepared a final environmental impact statement (FEIS) for the South Bay Water Recycling Project (SBWRP). The FEIS is based on a 1992 environmental impact report (EIR) prepared by the City of San Jose (City). The SBWRP would divert treated freshwater effluent from South San Francisco Bay through a water reclamation program. This would include construction of pump stations and recycled distribution pipelines. Reclamation would provide a grant of up to 25 percent of the total project cost to the City to support the SBWRP.

ADDRESSES: Copies of the FEIS are also available for the public at the following locations:

- Bureau of Reclamation, Mid-Pacific Regional Liaison, 1849 C Street NW., Washington, DC 20240; telephone: (202) 208–6274.
- Bureau of Reclamation, Regional Director, Attn: MP–720 2800 Cottage Way, Sacramento, CA 95825–1898; telephone: (916) 979–2297.
- Bureau of Reclamation, Mid-Pacific Regional Library, 2800 Cottage Way, Sacramento, CA. 95825–1898; telephone: (916) 979–2462.
- City of San Jose, Environmental Services Department, Tech. Support Division., 700 Los Esteros Road, San Jose, CA 95134; telephone: (408) 945–5300.

Libraries:

Copies will also be available at public libraries located in San Jose (Main, Alviso, Berryessa, East San Jose, Carnegie, and Empire Branches).

FOR FURTHER INFORMATION CONTACT: Ms. Mona Jefferies-Soniea, Bureau of Reclamation, Division of Planning, 2800 Cottage Way, Sacramento, CA 95825; telephone (916) 979–2297.

SUPPLEMENTARY INFORMATION: The SBWRP, formerly known as the San Jose Nonpotable Reclamation Project, was developed in response to an order from the Environmental Protection Agency (EPA) and the California Regional Water Quality Control Board—San Francisco Region in order to re-establish salinity levels of the salt water marsh in the southern tip of San Francisco Bay. In addition to protecting the South Bay habitat, the program also develops nonpotable water supply for the Santa Clara Valley, which can be used in place of potable water for appropriate purposes. Funding will come from loans from the State Water Resources Control Board and EPA, a grant from Reclamation, and local funding. The SBWRP would be implemented in two phases: Phase I would consist of installing facilities to supply up to 9,000 acre-feet/year of nonpotable water for landscape irrigation, agriculture and industrial uses. Phase II would consist of installing facilities to supply an additional up to 27,000 acre-feet/year for either nonpotable or potable use. The City completed a final EIR for the SBWRP in November 1992 to comply with the California Environmental Quality Act. At that time, Reclamation had not been involved and therefore no federal requirement for compliance with NEPA existed. The FEIS is based on this final EIR. The EIR analyzed Phase I in detail and analyzed Phase II programmatically.

The proposed action (Phase I) is to construct pump stations, storage tanks, 48.5 miles of 6 to 54-inch diameter pipeline and appurtenant facilities in the cities of San Jose, Santa Clara, and Milpitas. There would also be minor modifications of the existing San Jose/Santa Clara Water Pollution Control Plant to provide additional chlorination. Alternatives to the proposed action include:

- Pipeline Alignment Alternative, to avoid construction of pipelines near residences.
- Flow Allocation Alternative, which would allocate most of the reclaimed water for potable uses. The water would be used for groundwater recharge, mainly using percolation basins.
- Habitat Enhancement Alternative, to also supply water to riparian restoration areas along creeks and rivers in the study area, as well as for potable and other nonpotable purposes.
- No Action.

The draft environmental impact statement (DEIS) was issued August 1, 1995. Responses to comments received from interested organizations and individuals on the DEIS are addressed in the FEIS. No decision will be made on the proposed action until 30 days after the release of the FEIS. After the 30-day waiting period, Reclamation will complete a Record of Decision (ROD). The ROD will state the action that will be implemented and will discuss all factors leading to the decision.

Dated: May 7, 1996.

Roger K. Patterson,

Regional Director.

[FR Doc. 96–12747 Filed 5–21–96 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–360]

International Harmonization of Customs Rules of Origin

AGENCY: International Trade Commission.

ACTION: Request for public comment on draft proposals for chapters 01–24, 92–97.

EFFECTIVE DATE: May 15, 1996.

FOR FURTHER INFORMATION CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements (O/TA&TA) (202–205–2595), Chapters 01–24 Ronald Heller (202–205–2596), or Chapters 92–97 Lawrence A. DiRicco (202–205–2606).

Parties having an interest in particular products or HTS chapters and desiring to be included on a mailing list to receive available documents pertaining thereto should advise Diane Whitfield by phone (202–205–2610) or by mail at the Commission, 500 E St. SW., Room 404, Washington, D.C. 20436. Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202–205–1810). The media should contact Margaret O'Laughlin, Public Affairs Officer (202–205–1819).

BACKGROUND: Following receipt of a letter from the United States Trade Representative (USTR) on January 25, 1995, the Commission instituted Investigation No. 332–360, International Harmonization of Customs Rules of Origin, under section 332(g) of the Tariff Act of 1930 (60 FR 19605, April 19, 1995).

The investigation is intended to provide the basis for Commission participation in work pertaining to the Uruguay Round Agreement on Rules of Origin (ARO), under the General Agreement on Tariffs and Trade (GATT) 1994 and adopted along with the Agreement Establishing the World Trade Organization (WTO).

The ARO is designed to harmonize and clarify nonpreferential rules of origin for goods in trade on the basis of the substantial transformation test; achieve discipline in the rules' administration; and provide a framework for notification, review, consultation, and dispute settlement. These harmonized rules are intended to make country-of-origin determinations impartial, predictable, transparent, consistent, and neutral, and to avoid restrictive or distortive effects on international trade. The ARO provides that technical work to those ends will be undertaken by the Customs Cooperation Council (CCC) (now informally known as the World Customs Organization or WCO), which must report on specified matters relating to such rules for further action by parties to the ARO. Eventually, the WTO Ministerial Conference is to "establish the results of the harmonization work program in an annex as an integral part" of the ARO.

In order to carry out the work, the ARO calls for the establishment of a Committee on Rules of Origin of the WTO and a Technical Committee on Rules of Origin (TCRO) of the CCC. These Committees bear the primary responsibility for developing rules that achieve the objectives of the ARO.

A major component of the work program is the harmonization of origin rules for the purpose of providing more certainty in the conduct of world trade. To this end, the agreement contemplates a 3-year CCC program, to be initiated as soon as possible after the entry into force of the Agreement Establishing the WTO. Under the ARO, the TCRO is to undertake (1) to develop harmonized definitions of goods considered wholly obtained in one country, and of minimal processes or operations deemed not to confer origin, (2) to consider the use of change in Harmonized System classification as a means of reflecting substantial transformation, and (3) for those products or sectors where a change of tariff classification does not allow for the reflection of substantial transformation, to develop supplementary or exclusive origin criteria based on value, manufacturing or processing operations or on other standards.

To assist in the Commission's participation in work under the Agreement on Rules of Origin (ARO), the Commission is making available for public comment draft proposed rules for goods of:

Chapter 01—Live Animals
Chapter 02—Meat and Edible Meat Offal
Chapter 03—Fish and Crustaceans, Molluscs and Other Aquatic Invertebrates
Chapter 04—Dairy Products; Bird's Eggs; Natural Honey; Edible Products of Animal Origin Not Elsewhere Specified or Included
Chapter 05—Products of Animal Origin, Not Elsewhere Specified or Included
Chapter 06—Live Trees and Other Plants; Bulbs, Roots and the Like; Cut Flowers and Ornamental Foliage
Chapter 07—Edible Vegetables and Certain Roots and Tubers
Chapter 08—Edible Fruits and Nuts; Peel of Citrus Fruit or Melons
Chapter 09—Coffee, Tea, Mate and Spices
Chapter 10—Cereals
Chapter 11—Products of the Milling Industry; Malt; Starches; Inulin; Wheat Gluten
Chapter 12—Oil Seeds and Oleaginous Fruits; Miscellaneous Grains, Seeds and Fruits; Industrial or Medicinal Plants; Straw and Fodder
Chapter 13—Lac; Gums, Resins and Other Vegetable Saps and Extracts
Chapter 14—Vegetable Plaiting Materials; Vegetable Products Not Elsewhere Specified or Included
Chapter 15—Animal or Vegetable Fats and Oils and their Cleavage Products; Prepared Edible Fats; Animal or Vegetable Waxes
Chapter 16—Preparations of Meat, of Fish or of Crustaceans, Molluscs or Other Aquatic Invertebrates
Chapter 17—Sugars and Sugar Confectionary
Chapter 18—Cocoa and Cocoa Preparations
Chapter 19—Preparations of Cereals, Flour, Starch, Milk; Pastrycooks Products
Chapter 20—Preparations of Vegetables, Fruit, Nuts or Other Parts of Plants
Chapter 21—Miscellaneous Edible Preparations
Chapter 22—Beverages, Spirits and Vinegar
Chapter 23—Residues and Waste from the Food Industries; Prepared Animal Fodder
Chapter 24—Tobacco and Manufactured Tobacco Substitutes
Chapter 92—Musical Instruments; Parts and Accessories of Such Articles
Chapter 93—Arms and Ammunition; Parts and Accessories Thereof
Chapter 94—Furniture; Bedding, Mattresses, Mattress Supports, Cushions, and Similar Stuffed Furnishings; Lamps and Lighting Fittings, n.e.s.o.i; Illuminated Signs, Illuminated Nameplates and the Like; Prefabricated Buildings
Chapter 95—Toys; Games, and Sports Requisites; Parts and Accessories Thereof
Chapter 96—Miscellaneous Manufactured Articles (e.g., worked carving materials, brooms and brushes, travel sets, buttons, slide fasteners, pens, pencils and similar articles, typewriter ribbons, smoking pipes)
Chapter 97—Works of Art, Collectors' Pieces and Antiques of the

Harmonized System that are not considered to be wholly made in a single country. The rules rely largely on the change of heading as a basis for ascribing origin.

Copies of the proposed revised rules will be available from the Office of the Secretary at the Commission, from the Commission's Internet web server (http://www.usitc.gov), or by submitting a request on the Office of Tariff Affairs and Trade Agreements voice messaging system, 202–205–2592 or by FAX at 202–205–2616.

These proposals, which have been reviewed by interested government agencies, are intended to serve as the basis for the U.S. proposal to the Technical Committee on Rules of Origin (TCRO) of the Customs Cooperation Council (CCC) (now known as the World Customs Organization or WCO). The proposals do not necessarily reflect or restate existing Customs treatment with respect to country of origin applications for all current non-preferential purposes. Based upon a decision of the Trade Policy Staff Committee, the proposals are intended for future harmonization for the nonpreferential purposes indicated in the ARO for application on a global basis. They seek to take into account not only U.S. Customs' current positions on substantial transformation but additionally seek to consider the views of the business community and practices of our major trading partners as well. As such they represent an attempt at reaching a basis for agreement among the contracting parties. The proposals may undergo change as proposals from other government administrations and the private sector are received and considered. Under the circumstances, the proposals should not be cited as authority for the application of current domestic law.

If eventually adopted by the TCRO for submission to the Committee on Rules of Origin of the World Trade Organization, these proposals would comprise an important element of the ARO work program to develop harmonized, non-preferential country of origin rules, as discussed in the Commission's earlier notice. Thus, in view of the importance of these rules, the Commission seeks to ascertain the views of interested parties concerning the extent to which the proposed rules reflect the standard of substantial transformation provided in the Agreement. In addition, comments are also invited on the format of the proposed rules and whether it is preferable to another presentation, such as the format for the presentation of the NAFTA origin or marking rules.

Forthcoming Commission notices will advise the public on the progress of the TCRO's work and will contain any harmonized definitions or rules that have been provisionally or finally adopted.

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements concerning this phase of the Commission's investigation. Written statements should be submitted as quickly as possible, and follow-up statements are permitted; but all statements must be received at the Commission by the close of business on July 1, 1996, in order to be considered. Information supplied to the Customs Service in statements filed pursuant to notices of that agency has been given to us and need not be separately provided to the Commission. Again, the Commission notes that it is particularly interested in receiving input from the private sector on the effects of the various proposed rules and definitions on U.S. exports. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of *Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Office of the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

Issued: May 16, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–12837 Filed 5–21–96;8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department of Justice policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Motorola, Inc. et al.*, Civ. No. 4:96–CV–226–Y was lodged on May 6, 1996 with the United States District Court for the Northern District of Texas, Fort Worth division.

The proposed Consent Decree resolves the United States' claim for reimbursement of response costs incurred at the Pesses Company (S'West) site pursuant to Sections 104, 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9606 and 9607(a) ("CERCLA"). The Consent Decree reimburses the United States and Texas for $2.46 million of its response costs at this Fort Worth, Texas site. The United States filed a Complaint simultaneously with the lodging of the Consent Decree alleging that the defendants by contract, agreement or otherwise arranged for disposal or treatment of hazardous substances at the site and are subject to liability under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Motorola et al.*, DOJ Ref. No. 90–11–3–665.

The proposed Consent Decree may be examined at the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $6.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–12773 Filed 5–21–96; 8:45 am]

BILLING CODE 4410–01–P–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed consent decree settling claims brought by the United States and the State of Indiana against Defendant American Chemical Service, Inc. in *United States* v. *Sanitary District of Hammond, et al.*, Civil Action No.

2:93 CV 225 JM, was lodged on April 25, 1996 with the United States District Court for the Northern District of Indiana. The proposed consent decree resolves claims against American Chemical Service, Inc. for penalties and injunctive relief pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319, in connection with wastewater discharges from the American Chemical Service facility in Griffith, Indiana to publicly owned sewers. The proposed consent decree requires American Chemical Service to pay a civil penalty of $59,500 to the United States and $25,500 to the State. In addition, the decree requires American Chemical Service to undertake actions that will bring it into compliance with the effluent limit for toluene prescribed in the industrial discharge permit issued to it by the Hammond Sanitary District.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Sanitary District of Hammond, et al.*, Civil Action No. 2:93 CV 225 JM, and the Department of Justice Reference No. 90–5–1–1–3308A.

The proposed consent decree may be examined at the Office of the United States Attorney, Northern District of Indiana, 1001 Main Street, Suite A, Dyer, Indiana, 46311; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590; and at the Consent Decree Library, 1120 G Street, NE., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $4.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–12774 Filed 5–21–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

May 17, 1996.

The Department of Labor has submitted the following (see below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by May 24, 1996. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5095).

Comments and questions about ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316).

The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarify of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: Occupational Safety and Health Administration.

Title: Collection of Information from Stakeholders, Pre-proposal, in Safety and Health Program Standard Rulemaking.

OMB Number: None.

Frequency: One-time.

Affected Public: Stakeholders who wish to respond.

Number of Respondents: 150.

Estimated Time Per Respondent: 45 to 90 minutes.

Total Burden Hours: 150.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): None.

Description: This collection of information has been sent to approximately 200 stakeholders attached to a document summarizing the provisions under consideration for OSHA's proposed Safety and Health Program Standard. The collection of information basically seeks to elicit individual stakeholders general comments on whether the document and OSHA's performance to date are reasonable and responsive to stakeholder's concerns and more specific comments on scope and recordkeeping provisions. The purpose of the collection of information is to make OSHA better informed regarding its performance in the pre-proposal stage of this rulemaking and regarding remaining major concerns of stakeholders, in order for OSHA to set an appropriate agenda for upcoming stakeholder meetings.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96–12845 Filed 5–21–96; 8:45 am]

BILLING CODE 4510–26–M

Office of the Secretary

Senior Executive Service; Appointment of a Member to the Performance Review Board

Title 5 U.S.C. 4314(c)(4) provides that Notice of the appointment of an individual to serve as a member of the Performance Review Board of the Senior Executive Service shall be published in the **Federal Register.**

The following individual is hereby appointed to a three-year term on the Department's Performance Review Board:

Cynthia A. Metzler

For Further Information Contact: Mr. Larry K. Goodwin, Director of Human Resources, Room C5526, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone: (202) 219–6551.

Signed at Washington, D.C., this 17th day of May, 1996.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 96–12862 Filed 5–21–96; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letters Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation as part of its role in the administration of the Federal-State unemployment compensation program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Employment Security Agencies (SESAs). The UIPL described below is published in the **Federal Register** in order to inform the public.

UIPL 14–96

Several States have requested guidance concerning the Federal requirements for experience rating as they relate to Indian tribes. In order to assure consistent treatment of Indian tribes by the States, this UIPL sets forth the applicable Federal law and the Department of Labor's interpretation of the law. This UIPL was developed with the assistance and advice of the Internal Revenue Service.

Dated: May 16, 1996.

Timothy M. Barnicle,

Assistant Secretary of Labor.

Classification: UI
Correspondence Symbol: TEURL
Date: April 12, 1996.

Directive: Unemployment Insurance Program Letter No. 14–96.

To: All State Employment Security Agencies.

From: Mary Ann Wyrsch, Director, Unemployment Insurance Service.

Subject: Experience Rating of Indian Tribes.

1. *Purpose.* To advise States of the application of the experience rating requirements of Federal law to Indian tribes.

2. *References.* Sections 501, 1402(a)(15), 3301–3310 (the Federal Unemployment Tax Act (FUTA)), 7701(a), 7871, and 7873(a)(2) of the Internal Revenue Code (IRC); 25 U.S.C. Sections 450b and 479; Revenue Rulings 56–110, 59–354, 68–493 and 85–194; and Unemployment Insurance Program Letters (UIPLs) 29–83, 29–83, Change 1, 12–87 and 24–89.

3. *Background.* It is the Department's position that the granting of reimbursement status to Indian tribes liable for the Federal unemployment tax is consistent with the experience rating requirements of Section 3303(a)(1), FUTA. However, some States have nevertheless granted such Indian tribes reimbursement status. Although congressional action has been anticipated on this matter for a considerable time, it does not appear to be forthcoming. Therefore, the Department is issuing this UIPL to assure consistent treatment of tribes for experience rating purposes. This UIPL also contains a discussion concerning State jurisdiction over the tribes.

Rescissions: None.

Expiration Date: April 30, 1997.

Unless greater specificity is required, this UIPL will use the term "tribe" to describe the Indian tribe, its tribal government as well as other tribal governmental entities and tribal business enterprises. Section 7701(a)(40)(A) of the IRC defines the term "Indian tribal government" to mean "the governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska natives, which is determined by the Secretary [of the Treasury], after consultation with the Secretary of the Interior, to exercise governmental functions." Tribal governments, usually called "tribal councils," frequently operate business enterprises. "Tribe" is not defined in the IRC. For purposes of the Indian Self-Determination and Education Assistance Act, a tribe is defined as "any Indian tribe, band, nation or other organized group or community * * * which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." 25 U.S.C. § 450b(e). For purposes of the Indian Reorganization Act, a "tribe" refers to "any Indian tribe, organized band, pueblo, or Indians residing on one reservation." 25 U.S.C. § 479.

4. *Federal Law Requirements.* Section 3301, FUTA, imposes an excise tax on every employer (as defined in Section 3306(a)(1), FUTA) with "respect to having individuals in his employ * * *" To encourage States to cover these services, Section 3302, FUTA, provides for a "normal" and an "additional" credit against this tax. Also, as described below, FUTA requires States to cover services performed for certain entities which are not subject to the FUTA tax and to offer such entities a reimbursement option.

As a condition of receiving the additional credit, Section 3303(a)(1), FUTA, requires that State law provide that "no reduced rate of contributions * * * is permitted to a *person* (or group of persons) * * * except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk." (Emphasis added.) Therefore, except as explained below, if an entity is a "person," that entity may be assigned a reduced rate only on the basis of its experience or other factors bearing a direct relation to unemployment risk (hereafter "experience"). If a "person" is assigned a rate that is not based on experience, the State's assignment of rates will conflict with Federal law requirements and all employers in the State will lose the additional credit against the FUTA tax.

To determine if an entity is a "person," States may rely on the entity's FUTA tax status. Section 3306(a)(12), FUTA, defines the term "employer" as, in part, "any person * * *." Only "employers" are liable for the FUTA tax (Section 3301, FUTA). Thus, any entity determined by the IRS to be an employer subject to and liable for the FUTA tax is a "person" which must be experience rated.

However, since the term "person" is broader than the term "employer," it is possible for an entity to be a "person" even though it is not liable for the FUTA tax. One way this will happen is if all the services performed for a "person" are excluded from the definition of "employment" in Section 3306, FUTA. Two of these exclusions are described in paragraphs (7) and (8) of Section 3306(c):

(7) service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions; and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 3301;

(8) service performed in the employ of a religious, charitable, educational or other organization described in section 501(c)(3) which is exempt from income tax under section 501(a).

Since these State and local governmental entities and nonprofit organizations are not subject to the FUTA tax, the principal incentive for requiring State unemployment compensation (UC) coverage—the receipt of the tax credits against the FUTA tax for the individual employer—is absent. Sections 3304(a)(6) and 3309, FUTA, therefore, require, as a condition for all employers in a State to receive credit against the FUTA tax, that the State cover these services. These sections further require that States extend the option to make "payments (in lieu of contributions)," commonly called reimbursements, based on these services. The only way a "person" can qualify for reimbursing status under a State law without conflicting with Federal law is by meeting one of these two exclusions.

Providing reimbursement status is viewed by the Department as assigning a zero rate to the "person" because no prospective liability is created. (Similarly, assigning no rate is viewed as assigning a zero rate.) Unless the "person" qualified for reimbursement status as discussed in the preceding paragraph, a conflict with Section 3303(a)(1), FUTA, would exist since the zero rate would not be based on experience. In addition, such a zero rate would not be based on the three years of experience immediately preceding the computation date and "persons" would not receive rates based on the same factors over the same period of time. (A discussion of these experience rating requirements is found in UIPL 29–83 and its Change 1.)

5. *Status of Tribes under Federal Law.* It is well established that the IRS and the courts consider tribes to be "persons" for Federal tax purposes. The term "person" is define in Section 7701(a)(1), IRC, "to mean and include an individual, a trust, estate, partnership, association, company or corporation." IRS Revenue Ruling 85–194 addressed whether an Indian tribal

government was a "person." That ruling held that the definition of "person" in Section 7701(a)(1), IRC, "is sufficiently broad to include a governmental body." *See Ohio* v. *Helvering*, 292 U.S. 360 (1934). Therefore, the tribal government was a "person." The fact that tribes may perform governmental functions does not, therefore, form a basis for excepting them from the definition of "person." In fact, in cases where they are subject to the FUTA tax, they are plainly "persons" under Federal law since only "persons" are subject to this tax.

In Revenue Ruling 56–110, the IRS determined that a business enterprise operated by a tribe is not an instrumentality wholly-owned by the United States and, therefore, is liable for the FUTA tax. Revenue Ruling 59–354 held that a tribal council is liable for FUTA taxes for employees of the council and employees of tribal council business enterprises. Revenue Ruling 68–493 held that services performed by an Indian employee are not excepted from the FUTA definition of employment merely because the Indian is a ward of the United States.

Courts have upheld the IRS position that tribes are subject to FUTA. *See Matter of Cabazon Indian Casino*, 57 B.R. 398 (Bankr. 9th Cir. 1986), and *Washoe Tribes* v. *United States*, 79–2 U.S. Tax Cas. (CCH) P97189. Also, *Confederated Tribes of Warm Springs Reservation* v. *Kurtz*, 691 F.2d 878 (9th Cir. 1982), established that tribes are liable for Federal excise taxes. Under Section 3301, FUTA, the FUTA tax is specifically defined as an excise tax.

The FUTA liability of tribes is confirmed by the fact that two special provisions were deemed necessary to exempt certain tribal services from the FUTA tax. First, an amnesty provision was created in 1986 to exempt service in the employ of "a qualified Indian entity" from the FUTA tax for a specific period during which the entity (that is, the tribe) was not covered by a State UC program. See UIPL 12–87. Second, Section 1402(a)(15) and 7873(a)(2) were added to the IRC in 1988 to exclude from the FUTA tax services "performed in a fishing rights-related activity of an Indian tribe by a member of such tribe for another member of such tribe or for a qualified Indian entity." See UIPL 24–89.

Even though tribes perform governmental functions, this does not mean that a tribe may be treated as a governmental entity for FUTA purposes. In fact, in Section 7871, IRC, Congress has clearly delineated those situations where a tribe may be treated as a State for Federal tax purposes. These purposes do not include the FUTA tax.[1] The FUTA governmental exclusion in Section 3306(c)(7) applies only to State governments or "political subdividisons thereof." In the attached correspondence, the IRS has confirmed that, even where tribes are considered to be political subdivisions or agencies of a State under State law, the tribes remain subject to the FUTA tax in the same way as other private employers. (The IRS further stated that tribes would likely not be allowed a credit against the FUTA tax for any reimbursements made to a State's unemployment fund.) A State may, for UC purposes, treat a tribe as a Section 3306(c)(7) entity, FUTA, entity only if the tribe is in fact such an entity under Federal law. Merely designating a tribe as a governmental entity under State UC law is not sufficient; the tribe must be a Section 3306(c)(7) entity in all respects. The term "polical subdivision" is a Federal law term; it is not affected by the State's use of that term.

In sum, if a tribe is subject to the FUTA tax, it is a "person." This tribe is not a governmental entity described in Section 3306(c)(7) since such entities are exempt from the FUTA tax. The State may not give this tribe reimbursable status and may assign it a reduced rate only on the basis of its experience.

6. *Status of Tribes under State Law—Jurisdictional Issues.* The provisions of FUTA relating to taxable services do not require a State to cover these services for UC purposes. Instead, coverage is encouraged by granting employers credit against the FUTA tax for contributions paid on services covered under State law. Since States have limited jurisdictional rights over tribes or activities on reservations, State UC coverage has not always been extended to the tribes. In some States, the continuation of coverage for tribal services is conditioned on the tribe's payment of its UC benefit costs. If tribes are not covered under State law, then they will not be eligible for any credit against the FUTA tax.

A leading State court decision on this jurisdictional matter is *Employment Security Department* v. *the Cheyenne River Sioux Tribe*, 119 N.W.2d 285 (S.D. 1963). In this case, South Dakota sought to collect from a tribe contributions owed to the State's UC fund. The *Cheyenne* Court noted that the tribal authority in certain areas results in the existence of three forms of government within the geographical confines of the State: the United States of America, the State itself and Indian tribes. In concluding that the Cheyenne River Sioux Tribe was immune from suit, the Court decided that "unless Congress enacts a statute authorizing, or consenting to, actions to enforce the claimed liability, the courts of this state have no jurisdiction of the Tribe in this civil action."

The United States Supreme Court has confirmed the States' limited jurisdiction over tribes. In *Bryan* v. *Itasca County*, 426 U.S. 373, 96 S.Ct. 2102 (1976), the Court held that States may not impose a tax, in this case a personal property tax, on Indians living on reservations without the consent of Congress. In *White Mountain Apache Tribe* v. *Bracker*, 448 U.S. 136, 143, 100 S.Ct. 2578, 2583 (1980), the Court held that States could not impose taxes on a non-tribal company operating on a reservation. The *White Mountain* opinion provided a useful summary concerning the status of tribes:

The status of the tribes has been described as "'an anomalous one and of complex character,'" for despite their partial assimilation into American culture, the tribes have retained "'a semi-independent position . . . not as States, not as nations, not as possessed of the full attributes of sovereignty, but as a separate people, with the power of regulating their internal and social relations, and thus far not brought under the laws of the Union or the State within whose limits they resided.'" [Citations omitted.]

At least one State mandates UC coverage of tribes on the basis that, through Section 3305(d), FUTA, Congress has provided States with the authority to cover services on lands held in trust for the tribes by the Federal government. That section provides that "[n]o person shall be relieved from compliance with a State unemployment compensation law on the ground that services were performed on land or premises owned, held, or possessed by the United States, and any State shall have full jurisdiction and power to enforce the provisions of such law to the same extent and with the same effect as though such place were not owned, held, or possessed by the United States." The Department has not, however, taken a position on this.

In short, States have limited jurisdictional authority to impose or collect a State UC tax on tribes. However, unless this tax is imposed by the State and paid by the tribes, the tribes receive no credit against the FUTA tax for which they are liable.

7. *Summary.* Although tribes may perform governmental activities, this does not mean that they are not liable for the FUTA tax. In fact, both the IRS and the courts have concluded that tribes are "persons" liable for the tax. For employers in a State to receive the additional credit, the State may assign reduced rates to any "person" only on the basis of experience. If a State does not assign a rate based on experience to a FUTA liable employer, this experience requirement is not met. Only entities excluded from the FUTA tax under Sections 3306(c) (7) and (8) qualify for reimbursement status. As FUTA liable tribes are not among those entities qualifying for the reimbursement option, they must be assigned a reduced rate only on the basis of experience.

8. *Action Required.* State agencies should assure that, for experience rating purposes,tribes are treated consistent with the Federal law requirements described herein.

9. *Inquiries.* Please direct inquiries to the appropriate Regional Office.

Attachment

Department of the Treasury

Internal Revenue Service

Washington, D.C. 20224

October 10, 1995.

Ms. Mary Ann Wyrsch,

Director, Unemployment Insurance Service, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210

Dear Ms. Wyrsch: This is in response to your letter of August 29, 1995, to Commissioner Richardson requesting our views on the liability of Indian tribes under the Federal Unemployment Tax Act (FUTA). Your letter was forwarded to this office for reply.

You state that the Colorado Employment Security Act has amended their definition of "Political Subdivision," for purposes of the Employment Security Act, to include an Indian tribe organized pursuant to the Indian Reorganization Act of 1934. This amendment confers on Indian tribes in Colorado the option of either paying contributions to the State unemployment fund or reimbursing the State account for the amount of benefits paid based upon service with the Tribe. You question whether this amendment to Colorado law and the fact that tribes have chosen the reimbursement option changes the status of the tribes for purposes of determining the amount of tax due under FUTA. As explained below, it is the position of the Internal Revenue Service that Indian tribes are treated in the same way as private employers. The amendment to Colorado law does not change our position.

In addition you ask whether Indian tribes being treated as political subdivisions of a State are exempt from FUTA. If tribes are being treated as private employers, you also ask whether the FUTA tax is reduced by any reimbursements made by the tribes. While we are unable to comment directly on the Indian tribes in Colorado, we can provide the following general information.

Section 3301 of the Internal Revenue Code imposes on every employer a tax (the FUTA tax) on the total wages (as defined in section 3306(b)) paid by him during the calendar year with respect to employment (as defined in section 3306(c)). Thus, unless the payments are excepted from the term "wages" or the services performed by the employee are excepted from the term "employment" such payments will be subject to FUTA.

Section 3306(c)(7) provides an exception from the definition of "employment," for purposes of FUTA, for service performed in the employ of a State or political subdivision.

Section 3309 allows States to provide for unemployment coverage for governmental organization under the "direct reimbursement method." Under the direct reimbursement method, a qualifying organization is allowed to obtain state unemployment coverage for its employees by agreeing to reimburse the State for unemployment benefits that are attributable to services performed for the organization. The reimbursement of benefits is in lieu of paying state unemployment tax based on the experience rate of the organization. This provision applies to service which is excluded from the term "employment" by reason of section 3306(c)(7), which is service performed in the employ of a State, or political subdivision thereof.

It is the long-standing position of the Service that American Indian tribes are not political subdivisions or agencies of a state for federal employment tax purposes. For purposes of FUTA, Indian tribes and their tribal activities are treated in the same way as private employers. Although section 7871 of the Code provides that an Indian tribal government is a State for certain enumerated Internal Revenue Code purposes, these purposes do not include federal employment taxes. Thus, service for a tribal government does not qualify for the exception from the definition of "employment" under section 3306(c)(7). See Rev. Rul. 59–354, 1959–2 C.B. 24 and Rev. Rul. 68–493, 1968–2 C.B. 426 (copies attached).

Section 3302(a)(1) of the Code provides that the taxpayer may, to the extent provided in subsections (a) and (c), credit against the tax imposed by section 3301, the amount of contributions paid by the taxpayer into an unemployment fund maintained during the taxable year under the unemployment compensation law of a State which is certified as provided in section 3304 for the 12-month period ending on October 31 of such year.

As stated above, for purposes of FUTA, Indian tribes and their tribal activities are treated in the same way as private employers. Thus, if a tribe is not contributing to a State unemployment fund, it would be required to pay FUTA at the full rate. Because the reimbursement option under section 3309 is not available to Indian tribes, we have never addressed the question of whether reimbursements made to a State unemployment fund by an Indian tribe would reduce the amount of FUTA tax owed by the tribe. Section 3302(a) allows a credit for *contributions* paid by a taxpayer. Section 3309 allows for reimbursements *in lieu of contributions*. Given this language, it appears that Indian tribes would not be allowed a credit for any reimbursements they made.

We hope this information is helpful. If we can be of further assistance, please contact Jean M. Casey of my staff at (202) 622–6040.

Sincerely yours,

Mary E. Oppenheimer,

Assistant Chief Counsel, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations).

[FR Doc. 96–12751 Filed 5–27–96; 8:45 am]

BILLING CODE 4510–30–M

[1] Section 7871 lists 17 different provisions/chapters of Federal law, including those addressing charitable contributions, accident and health plans, and bonds. Although Section 7871(a)(2) provides that tribes will be treated as States for purposes of four excise taxes, the FUTA tax is not mentioned. (Section 3301, FUTA, describes the FUTA tax as an excise tax.) The legislative history of Section 7871 is clear that the need for legislation arose because "Indian tribal governments are not treated as State and local governments." S. Rep. No. 646, 97th Cong. 2nd. Sess. 8 (1982). Also, see *Cabazon* at 401.

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed revision collection of FECA Medical Report Forms: CA–7, CA–8, CA–16b, CA–20, CA–20a, CA–1090, CA–1303, CA–1305, CA–1306, CA–1314, CA–1316, CA–1331, CA–1332, A–1336, OWCP–5a, OWCP–5b, and OWCP–5c.

A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before July 24, 1996. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSEE: Mr. Rich Elman, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 219–6375 (this is not a toll-free number), fax 202–219–6592.

SUPPLEMENTARY INFORMATION:

I. Background

Statute 5 USC 8101 et seq. of the Federal Employees' Compensation Act provides for the payment of benefits for wage-loss and/or for permanent payment to a scheduled member, arising out of a work-related injury or disease. The CA–7 and CA–8 request information, allowing the Office of Workers' Compensation Programs to fulfill its statutory requirements for the period of compensation claimed (e.g., the pay rate, dependents, earnings, dual benefits and third party information). The other forms in this proposed revision collection collect medical

information necessary to determine entitlement to benefits under FECA.

II. Current Actions

The Department of Labor seeks the revision approval to collect this information in order to carry out its responsibility to determine eligibility for and the compensation of benefits. The OWCP–5a, OWCP–5b and OWCP–5c are being revised. The CA–1302, formerly included in 1215–0103, is being eliminated.

Type of Review: Revision.

Agency: Employment Standards Administration.

Title: FECA Medical Report Forms.

OMB Number: 1215–0103.

Agency Numbers: CA–7, CA–8, CA–16b, CA–20, CA–20a, CA–1090, CA–1303, CA–1305, CA–1306, CA–1314, CA–1316, CA–1331, CA–1332, A–1336, OWCP–5a, OWCP–5b, and OWCP–5c.

Affected Public: Individuals or households; Businesses or other for-profit; Federal Government.

Total Respondents: 441,855.

Frequency: As needed.

Total Responses: 441,855.

Estimated Total Burden Hours: 43,412.

Total	Form respondents	Responses	Total response time	Burden hours
CA–7	200	200	20 min	67
CA–8	200	200	5 min	17
CA–16B	157,000	157,000	5 min	13,083
CA–17B	134,000	134,000	5 min	11,167
CA–20	92,000	92,000	5 min	7,667
CA–20a	20,000	20,000	5 min	1,667
CA–1090	800	800	5 min	67
CA–1303	4,000	4,000	20 min	1,333
CA–1305	80	80	20 min	27
CA–1306	25	25	10 min	4
CA–1314	1,200	1,200	20 min	400
CA–1316	1,100	1,100	10 min	183
CA–1331	750	750	5 min	63
CA–1332	1,500	1,500	30 min	750
CA–1336	2,000	2,000	5 min	167
OWCP–5a	7,000	7,000	15 min	1,750
OWCP–5b	5,000	5,000	15 min	1,250
OWCP–5c	15,000	15,000	15 min	3,750
Totals	441,855	441,855		43,412

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $141,394.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 17, 1996.

Cecily A. Rayburn,

Director, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 96–12846 Filed 5–21–96; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–30266, License No. 30–23697–01E, EA 96–170]

Innovative Weaponry, Inc., Albuquerque, New Mexico; Confirmatory Order Modifying License (Effective Immediately)

I

Innovative Weaponry, Inc. of Nevada, (IWI or Licensee) is the holder of NRC License No. 30–23697–01E issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license authorizes the Licensee to distribute byproduct material (i.e., tritium) in gunsights as specified in the license. The license was transferred from IWI of New Mexico to IWI of Nevada on April 3, 1995. Although due to expire on June 30, 1993, the license has remained active based on a timely renewal application.

II

Based on its review of the results of an NRC investigation conducted from May 9, 1995, through March 22, 1996, the NRC identified the following apparent violations of IWI's license conditions: (1) IWI distributed tritium in gunsights not approved by the NRC and not specifically authorized on the license; and (2) IWI distributed tritium sources obtained from a manufacturer not authorized on the license. In addition, as indicated in a letter issued to IWI on April 17, 1996, it appeared that the violations were committed by the President and Executive Vice President of the company.

These apparent violations and the concern that they were committed by the President and Executive Vice President were discussed with IWI representatives at a predecisional enforcement conference in Rockville, Maryland on April 23, 1996. The Licensee admitted that violations had occurred but denied that there was any intent to commit the violations. Notwithstanding the Licensee's position on intent, the NRC is concerned that the violations resulted from a lack of effective action to assure compliance with license requirements, despite IWI officials being aware that the NRC license contained limitations on what could and could not be distributed.

III

As a result of the NRC investigation, the NRC staff questioned whether it should have the requisite reasonable assurance that IWI will comply with agency requirements. At the predecisional enforcement conference and a meeting on the same date to discuss license amendment issues, the Licensee voluntarily committed to actions to address the NRC's concerns about its ability to conduct its activities in compliance with the license and applicable NRC requirements. The Licensee offered to develop the following plans and to submit them to the NRC for approval: (1) a training plan to assure that all IWI employees, including management, understand the

NRC license and applicable NRC requirements; (2) an audit plan to assure compliance with requirements to be implemented by a third-party, independent auditor; and (3) development of written procedures to maintain accountability, control, and security of materials authorized by the NRC for distribution. The NRC has concluded that implementation of these commitments, which are described in more detail below, would provide the necessary assurance that licensed activities will be in compliance with NRC requirements in the future.

I find that the Licensee's commitments set forth at the predecisional enforcement conference and licensing meetings conducted on April 23, 1996, are acceptable and necessary and conclude that with these commitments the public health, safety and interest are reasonably assured. In a telephone call on May 8, 1996, with Mr. James Tourtellotte, the Licensee's attorney, the Licensee agreed to this action. I have also determined, based on the Licensee's consent and on the significance of the conduct described above, that the public health and safety require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT LICENSE NO. 30–23697–01E IS MODIFIED AS FOLLOWS:

1. The Licensee shall submit for NRC approval, within 30 days of the issuance of this Order, a training plan designed to assure that all IWI employees, including management, who are involved in activities that may affect compliance with the NRC license are familiar with the conditions and restrictions contained in the license, as well as with all other applicable NRC requirements. The training plan also shall provide for training in accountability, control, and security of licensed material in gunsights authorized by the NRC for distribution to persons exempt from licensing. The training plan shall provide for initial training of all existing employees, including management, within 30 days of the issuance of this Order, training for new employees, including management, prior to their working with licensed materials, and annual refresher training thereafter.

2.a. The Licensee shall submit for NRC approval, within 30 days of the date of this Order, the name and qualifications of an independent auditor or auditors whom the Licensee proposes to conduct the audits described below and who are capable of conducting such audits to assure compliance with all NRC license conditions and requirements.

b. The Licensee shall submit for NRC approval, within 30 days of the NRC's approval of the above auditor, an audit plan which shall provide for periodic audits to assure compliance with all NRC license conditions and requirements. The audit plan shall provide for an initial audit, followed by quarterly audits for a 1-year period, and semi-annual audits thereafter. The audit plan shall provide for audit reports to be issued to the Licensee and the NRC at the same time within 30 days of the completion of each audit. The audit report shall contain findings on the Licensee's state of compliance with NRC requirements and recommendations to achieve compliance if deficiencies are noted. The plan shall provide for the Licensee to respond in writing to all audit findings within 30 days of each audit report, with a copy to the NRC. The response shall state the actions taken by the licensee to address audit recommendations with which the Licensee agrees. For those recommendations that the Licensee disputes, the Licensee shall provide the basis for dispute and any other action taken.

3. The Licensee shall develop and implement, within 30 days of the issuance of this Order, written procedures designed to maintain inventory and accountability of gunsights with sources authorized by the NRC for distribution to persons exempt from licensing.

4. Upon approval of the actions required under items 1 and 2.a above, items 1 and 2.b shall be implemented until relaxed by the Regional Administrator, Region IV.

5. Requests for approval of the auditor, audit plan, training plan, and for changes of the approved auditor, changes to the audit plan, and to reports required to be submitted, shall be submitted to the Regional Administrator, Region IV, with a copy to the Director, Office of Nuclear Materials Safety and Safeguards.

The Regional Administrator, Region IV, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), any person other than the Licensee, adversely affected by the Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 15th day of May 1996.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 96–12810 Filed 5–21–96; 8:45 am]

BILLING CODE 7590–01–P

UNITED STATES NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 27, 1996, through May 10, 1996. The last biweekly notice was published on May 8, 1996 (61 FR 20842).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By June 21, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with

the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: April 5, 1996

Description of amendments request: Pursuant to 10 CFR 50.80 and 50.90, the Baltimore Gas and Electric Company (BGE) hereby requests the transfer and amendment of Operating License Nos. DPR-53 and DPR-69 for Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2.

The proposed license transfers and amendments are requested as part of the pending merger between BGE and Potomac Electric Power Company into Constellation Energy Corporation. The proposed license transfers would transfer authority to possess and operate Calvert Cliffs from BGE to Constellation Energy Corporation. The proposed amendments would change the licenses as well as the related Technical Specifications, to reflect this transfer by submitting Constellation Energy Corporation in place of BGE as the licensee for Calvert Cliffs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment will change the name of the licensee authorized to possess and operate Calvert Cliffs Nuclear Power Plant from Baltimore Gas and Electric Company (BGE) to Constellation Energy Corporation. This amendment request is necessary because of a proposed merger of BGE and Potomac Electric Power Company into Constellation Energy Corporation. As a result of the savings achieved through a reduction in operating costs due to the merger, Constellation Energy Corporation will have the financial resources to possess and operate Calvert Cliffs.

In addition, Constellation Energy Corporation personnel will be technically qualified to operate the plant. Baltimore Gas and Electric Company nuclear personnel have been named to management positions in Constellation Energy Corporation, and will remain responsible for Calvert Cliffs operation and maintenance. The proposed amendment involves no changes in the training program or operating organization for Calvert Cliffs.

The proposed amendment does not require any physical change to the facilities or substantive modifications to the Technical Specifications or to procedures. The proposed change does not increase the probability of an accident previously evaluated because it does not affect any initiators in any previously evaluated accidents. The proposed change does not increase the consequences of an accident previously evaluated because it does not affect any of the items on which the consequences depend.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not modify the plant's configuration or operations. As a result, no new accident initiators are introduced. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

This amendment request is necessary because of a proposed merger of BGE and Potomac Electric Power Company into Constellation Energy Corporation. As a result of the savings achieved through a reduction in operating costs due to the merger, Constellation Energy Corporation will have the financial resources to possess and operate Calvert Cliffs. Also, Constellation Energy Corporation personnel will be technically qualified to operate the plant. Baltimore Gas and Electric Company nuclear personnel. have been named to management positions in Constellation Energy Corporation, and will remain responsible for Calvert Cliffs' operation and maintenance. The proposed amendment involves no changes in the training program or operating organization for Calvert Cliffs. In addition, the proposed amendment to substitute Constellation Energy Corporation for BGE does not result in any changes to the physical design or operation of the plant. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Susan Frant Shankman, Acting

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: April 2, 1996

Description of amendments request: The proposed amendments revise the Brunswick Steam Electric Plant, Units 1 and 2, Technical Specifications (TS) to allow uprate of the units to 105 percent of rated thermal power.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

. May the proposed activity involve a significant increase in the probability or consequences of an accident evaluated previously in the Safety Analysis Report?

The increase in power level, steam flow, feedwater flow and associated instrument setpoint changes will not significantly increase the probability or consequences of an accident previously evaluated.

The probability (frequency of occurrence) of Design Basis Accidents occurring is not affected by the increase in power level, as plant equipment will remain in compliance with the applicable regulatory criteria (ASME Codes, IEEE Standards, NEMA Standards, Regulatory Guide criteria, etc.). The physical plant changes necessary to support power uprate include instrument setpoint changes, indicating meter scale changes for the RWCU [reactor water cleanup] System flow and Main Steam Flow indicators, Leak Detection, Process Computer, ERFIS [emergency response facility information system], and Feedwater System software changes, and SRV [safety/relief valve] setpoint changes. The setpoints were calculated in accordance with the CP&L Setpoint Methodology. Utilizing this methodology ensures scram setpoints (instrument settings that initiate automatic plant shutdowns) will be established such that there is no significant increase in scram frequency due to uprate. No new challenges to safety related equipment will result from power uprate.

The changes in consequences of hypothetical accidents which would occur from 102% of the uprated power (2609 MWt), compared to those previously evaluated from [greater than or equal to] 102% of the original power (2485 MWt), are not significant, because the accident evaluations at uprated power will not result in exceeding the NRC approved acceptance limits. The spectrum of hypothetical accidents and transients has been investigated, and those accidents/transients currently evaluated in the UFSAR [Updated Final Safety Analysis Report] were shown to meet the plant's current regulatory criteria at uprated conditions (105%). In the area of core design, for example, the fuel operating limits will still be met at the uprated power level, and fuel reload analyses show plant transients will still meet the criteria accepted by the NRC as specified in NEDO-24011, "GESTAR II." Challenges to fuel or ECCS [emergency core cooling system] performance have been evaluated and shown to meet the criteria of 10CFR50 Appendix K. Challenges to the containment have been evaluated and still meet 10CFR50 Appendix A Criterion 38, Long Term Cooling, and Criterion 50, Containment. Bounding events involving radiological releases have been evaluated and were shown to be well within the criteria of 10CFR100.

2. May the proposed activity create the possibility of a new or different kind of accident from any accident previously evaluated in the Safety Analysis Report?

The change in reactor thermal power will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Equipment that could be affected by power uprate has been evaluated. No new operating mode, safety related equipment lineup, accident scenario, or equipment failure mode was identified. The full spectrum of accident considerations defined in the BNP [Brunswick Nuclear Plant] UFSAR has been evaluated and no new or different kind of accident has been identified. Uprate uses developed technology and applies it within the capabilities of existing plant equipment in accordance with existing regulatory criteria including NRC approved codes, standards, and methods. General Electric has designed BWRs [Boiling Water Reactors] of higher power levels than the uprated power of any of the currently uprated BWR/4 fleet and has not identified new power dependent accidents.

The changes to the Technical Specifications required to implement power uprate make little change to the plant's configuration. These changes fall into three major categories. The first includes those changes resulting from power uprate parameter changes. These parameter changes, such as the increase in vessel pressure, temperature and piping system flows are minor in nature. The evaluations have shown the plant is still within its design capabilities when operating under these conditions. The changes required as a result of power uprate will not affect the design function(s) of currently installed equipment; therefore, there is no possibility of a new or different kind of failure mode. The second set of changes is a result of applying setpoint methodology to calculate TS Allowable Values and Normal Trip Setpoints for instruments that are directly affected by the parameter changes due to power uprate. By using CP&L's methodology, the TS values were calculated to ensure adequate margin exists between the analytical limit and the TS Allowable Value. The third change include [sic] setpoints that were reconstituted by the power uprate project. Again, CP&L methodology was applied and the results show the setpoints have moved to a more conservative value. This will reduce the likelihood of spurious scrams and unnecessary challenges to safety systems while ensuring initiation/actuation equipment continues to function consistent with existing accident analyses.

3. Does the proposed activity involve a significant reduction in a margin of safety defined in the basis of any Operating License Technical Specification?

Power Uprate will not involve a significant reduction in a margin of safety. The bounding events which had been analyzed in the UFSAR were reevaluated to demonstrate that power uprate can be implemented without exceeding any analyzed limit. Because the applicable safety analysis criteria and limits are satisfied for power uprate, the margin of safety associated with the safety limits and other limits identified in the Technical Specifications will be maintained.

As discussed in Section 5 of GE Nuclear Energy's License Topical Report NEDO-31984P "Generic Evaluations of General Electric Boiling Water Reactor Power Uprate," the safety margins prescribed by the Code of Federal Regulations (CFR) have been maintained by meeting the appropriate regulatory criteria. Similarly, the margins provided by the application of the ASME design criteria have been maintained. The Brunswick unique analysis NEDC-32466P "Power Uprate Safety Analysis Report for Brunswick Steam Electric Plant Units 1 and 2" discusses the effects of power uprate on safety margins for (1) fuel thermal limits, (2) design basis accidents and the challenges for fuel, containment and radiological releases, (3) transient analysis, (4) non-LOCA radiological releases, and (5) environmental consequences. These evaluations conclude that applicable safety analysis criteria and limits are satisfied, and thus, the margins of safety will be maintained.

The changes to the Technical Specification instrumentation will not involve a reduction in the margin of safety. The calculations performed for power uprate have established an analytical limit and calculated the TS Allowable Value and Nominal Trip Setpoint using formal setpoint methodology. This ensures the instrumentation functional requirements are met.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Eugene V. Imbro

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: March 29, 1996

Description of amendment request: The proposed amendment would revise the technical specifications (TS) to add an allowance to complete a TS required surveillance within 24 hours of discovery of a missed surveillance in accordance with the guidance of Generic Letter (GL) 87-09, "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements." The wording specifying intervals for testing has been changed to reflect wording consistent the new STS. Typographical errors in the basis are also being corrected.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes clarify and incorporates [sic] NRC guidance for application of extending or moving surveillance intervals by plus or minus 25%, by elimination of restrictive surveillance interval descriptions that conflict with NRC guidance, by allowing for an additional 24 hours to perform missed surveillances, and by providing a defined finite period for the term "immediate" for Technical Specification (TS) and Inservice Inspection (ISI) surveillances. The basis for extending or moving surveillances, as stated in GL 89-14, "Line-Item Improvements in Technical Specifications - Removal of the 3.25 Limit on Extending Surveillance Intervals," is to provide plants flexibility for scheduling the performance of surveillances and to permit consideration of plant operating conditions that may not be suitable for conducting a surveillance at the specified time interval. Such operating conditions include transient plant operation or ongoing surveillance or maintenance activities. Extending surveillance intervals during plant operation can result in a benefit to safety when a scheduled surveillances [sic] is due at a time that is not suitable for conducting the scheduled surveillance. NUREG-1431, "Standard Technical Specifications - Westinghouse Plants," states "the 25% extension does not significantly degrade the reliability that results from performing the surveillance at its specified frequency." This is based on the recognition that the most probable result of any particular surveillance being performed is the verification of conformance with the surveillance requirements. The basis for the 24 hour delay period, as stated in the basis for NUREG-1431, includes consideration of unit conditions, adequate planning, availability of personnel, the time required to perform the surveillance, the recognition that the most probable result of any particular surveillance being performed is the verification of conformance with the requirements." The basis for defining the term "immediate" is to provide guidance to plant personnel for conducting operability testing of the Steam Driven Auxiliary Feedwater pump after extended shutdown periods in order to minimize plant risks and not pose an unsafe operational transient during an unstable plant configuration (i.e., during plant startup). Since these changes do not affect plant design, operation, or the manner in which testing is performed, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes clarify and incorporates [sic] NRC guidance for application of extending or moving surveillance intervals by plus or minus 25%, by elimination of restrictive surveillance interval descriptions that conflict with NRC guidance, by allowing for an additional 24 hours to perform missed surveillances, and by providing a defined finite period for the term "immediate" for TS and ISI surveillances. Since these changes do not affect plant design, operation, or the manner in which testing is performed, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The changes proposed, with the exception of allowing an additional 24 hours to complete missed surveillances, are to clarify existing surveillance intervals and to provide more specific and detailed criteria without changing current surveillance scheduling methodologies. The NRC has determined that allowing an additional 24 hours to complete missed surveillance tests minimizes additional challenges to plant operations such that there is a conservative balance between the risk associated with performing the surveillance during stable plant conditions and the risk of imposing a plant transient due to TS action statements or changing "modes" of operation. These extensions are current industry practices endorsed by the NRC which provide flexibility for scheduling and performing surveillances and permit consideration of plant operating conditions that may not be suitable for conducting a surveillance at either the specified time interval or inadvertently missing the surveillance interval. The risk to safety is low in contrast to the alternatives; therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Eugene V. Imbro

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: April 8, 1996

Description of amendment request: The proposed amendments would change various sections of the Technical Specifications (TS) to reflect the transition of fuel supplier from Generic Electric to Siemens Power Corporation (SPC). The amendments would revise the definitions and Limiting Conditions for Operation related to Linear Heat Generation Rate, Critical Power Ratio, Maximum Critical Power Ratio, and Fraction of Limiting Power Density to incorporate SPC terms and methodology or to make the TS vendor neutral. Section 6.0 of the TS would be revised to include SPC references. The proposed amendment also adds a requirement to adjust the Average Planar Linear Heat Generation Rate when the reactor is in single loop operation since SPC methodologies may require this reduction factor for SPC fuel. The SPC methodologies to be added to the TS have previously been approved by the NRC. The proposed amendment would also relocate requirements for the traversing in-core probe system from the TS to the Core Operating Limits Report and would upgrade the fuel description in Section 5.0 as a line item from the Improved Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The consequences of an evaluated accident are determined by the operability of plant

systems designed to mitigate those consequences. Limits will be established consistent with NRC approved methods to ensure that fuel performance during normal, transient, and accident conditions is acceptable. The proposed Technical Specifications amendment reflects previously approved SPC methodology used to analyze normal operations, including anticipated operational occurrences (AOOs), and to determine the potential consequences of accidents.

Licensing Methods and Models

The proposed amendment is to support operation with NRC approved fuel and licensing methods supplied from Siemens Power Corporation. In accordance with FSAR Chapter 15, the same accidents and transients will be analyzed with the new fuel and methods as were analyzed by GE for GE fuel. The analysis methods and models are NRC approved (Note the mixed core treatment of critical power ratio is being addressed under separate correspondence). These approved methods and models are used to determine the fuel thermal limits. Traversing In-core Probe (TIP) uncertainty are assumptions in the approved Siemens core monitoring methodologies. The SPC core monitoring code enables the site to monitor k_{eff} as well as rod density to perform the reactivity anomaly surveillance. This is consistent with GE methodology. Therefore, the change in licensing analysis methods and models does not significantly increase the probability of an accident or the consequences of an accident previously identified. The support systems for minimizing the consequences of transients and accidents are not affected by the proposed amendment.

New Fuel Design

The use of ATRIUM 9B fuel at LaSalle does not involve a significant increase in the probability or consequences of any accident previously evaluated in the FSAR. The ATRIUM-9B fuel is generically approved for use as a reload BWR fuel type. (See Boiling Water Reactor Licensing Methodology Summary, Siemens Power Corporation, EMF-94-217(NP)). Limiting postulated occurrences and normal operation have been analyzed using NRC-approved methods for the ATRIUM 9B fuel design to ensure that safety limits are protected and that acceptable transient and accident performance is maintained.

The reload fuel has no adverse impact on the performance of in-core neutron flux instrumentation or control rod drive response. The ATRIUM-9B fuel design will not adversely affect performance of neutron instrumentation nor will it adversely affect the movement of control blades. The exterior dimensions of the ATRIUM-9B fuel assembly are essentially identical to the GE9B; the ATRIUM-9B fuel assembly for LaSalle uses a standard fuel channel and normal control cell positioning (i.e., no offset). Thus, no adverse interactions with the adjacent control blade and nuclear instrumentation are anticipated. Additionally, given the above mentioned overall envelope similarities, no problems are anticipated with other station equipment such as the fuel storage racks, the new fuel inspection stand and the spent fuel pool fuel preparation machine.

The ATRIUM 9B design is neutronically compatible with the existing fuel types and core components in the LaSalle core. SPC tests have demonstrated that the ATRIUM-9B fuel design is hydraulically compatible with the GE9 fuel. The bundle pressure drop characteristics of the ATRIUM 9B bundle are similar to those of the GE9 fuel design, hence core thermal-hydraulic stability characteristics are not adversely affected by the ATRIUM 9B design.

An evaluation of the Emergency Procedures is being performed to ensure that the use of the ATRIUM-9B fuel at LaSalle does not alter any assumptions previously made in evaluating the radiological consequences of an accident at LaSalle Station.

Methods approved by the NRC are being used in the evaluation of fuel performance during normal and abnormal operating conditions. The ComEd and SPC methods to be used for the cycle specific transient analyses have been previously NRC approved. The exception is the mixed core treatment of critical power ratio, which is being addressed under separate correspondence.

The description of the fuel is expanded to be consistent with NUREG-1434. The description of the fuel materials, lead test assembly use, and stating that designs must have been analyzed with NRC Staff approved codes does not change existing methods; it only describes them.

Review of the above concludes that the probability of occurrence and the consequences of an accident previously evaluated in the safety analysis report have not been significantly increased.

* * * * *

2. Create the possibility of a new or different kind of accident from any accident previously evaluated:

Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications of the plant configuration, including changes in allowable modes of operation.

Licensing Methods and Models

The proposed Technical Specification amendment reflects previously approved SPC methodology used to analyze normal operations, including AOOs, and to determine the potential consequences of accidents. As stated above, the proposed changes do not permit modes of reactor operation which differ from those currently permitted.

New Fuel Design

The basic design concept of a 9x9 fuel pin array with an internal water box has been used in various lead assembly programs and in reload quantities in Europe since 1986. WNP-2 has loaded reload quantities since 1991. Approximately 650 water box assemblies have been irradiated in the United States through 1995, with a substantially higher number being irradiated overseas. The NRC has reviewed and approved the ATRIUM-9B fuel design. (See Boiling Water Reactor Licensing Methodology Summary, Siemens Power Corporation, EMF-94-217(NP)). The similarities in fuel design and operation indicate there would be no expectation of introducing new or different types of accidents than have been considered for the existing fuel. Therefore, the use of ATRIUM-9B fuel at LaSalle does not create the possibility of a new or different kind of accident from any accident previously evaluated.

* * * * *

3. Involve a significant reduction in the margin of safety for the following reasons:

The existing margin to safety is provided by the existing acceptance criteria (e.g., 10CFR50.46 limits). The proposed Technical Specification amendment reflects previously approved SPC methodology used to demonstrate that the existing acceptance criteria are satisfied. The revised methodology has been previously reviewed and approved by the USNRC for application to reload cores of GE BWRs. References for the Licensing Topical Reports which document this methodology, and include the Safety Evaluation Reports prepared by the USNRC, are added to the Reference section of the Technical Specifications as part of this amendment.

Licensing Methods and Models

The proposed amendment does not involve changes to the existing operability criteria. NRC approved methods and established limits (implemented in the Core Operating Limits Report) ensure acceptable margin is maintained. The ComEd and SPC reload methodologies for the ATRIUM-9B reload design are consistent with the Technical Specification Bases. The Limiting Conditions for Operation are taken into consideration while performing the cycle specific and generic reload safety analyses. NRC approved methods are listed in Specification 6.0 of the Technical Specifications.

Analyses performed with NRC-approved methodology have demonstrated that fuel design and licensing criteria will be met during normal and abnormal operating conditions. Therefore, there is not a significant reduction in the margin of safety.

New Fuel Design

The exterior dimensions of the ATRIUM-9B fuel assembly are essentially identical to the GE9B; the ATRIUM-9B fuel assembly for LaSalle uses a standard fuel channel and normal control cell positioning; i.e., no offset. Thus, no adverse interactions with the adjacent control blade and nuclear instrumentation are anticipated. The change does not adversely impact equipment important to safety and, therefore does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: April 9, 1996

Description of amendment request: The proposed amendments would eliminate the automatic reactor scram function and the group 1 and 3 isolation valve closure functions associated with the Main Steam Line Radiation Monitoring (MSLRM) system high radiation setpoint. Elimination of these functions will eliminate potential spurious scrams and isolations caused by increased main steam line radiation levels during hydrogen injection. The licensee also proposes to raise the MSLRM system alarm setpoints which are not part of the Technical Specifications to include increased background radiation during hydrogen injection. The proposed amendment would also delete the surveillance requirements for the associated instruments.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

Redefining the full power radiation background, thus changing the MSLRM alarm setpoint, does not change the probability of occurrence of any accident which has been postulated and analyzed in the UFSAR, but will reduce the probability of the inadvertent MSIV closure transient which is an analyzed transient in the UFSAR. It does not change the probability of malfunction of any equipment important to safety associated with [loss of coolant accident] LOCA, fuel handling accident or [control rod drop accident] CRDA. It also does not change the resultant offsite radiological dose from the bounding design basis CRDA. This is based upon all radioactivity, resulting from the design basis CRDA, going to the condenser instantaneously (or independent of the actual MSLRM setpoint) in the offsite dose calculation.

The elimination of reactor scram and isolation of MSIVs, isolation of main steam line drain valves and reactor water sample line valves, associated with the MSLRM system actuation do not introduce, mitigate, or reduce the probability of any design basis accident, or any accident, evaluated in the UFSAR. The topical report NEDO-31400A has shown that there is essentially no reasonable radiological consequence benefit in a design basis CRDA of retaining the MSLRM associated reactor scram and MSIV isolation function. In addition, the probability of inadvertent scram and isolation is reduced. The proposed change will not adversely impact the operation of the [reactor protection system] RPS or [primary containment isolation system] PCIS with respect to performing its other intended safety functions. The proposed change will not affect the operation of other plant systems or equipment important to safety. The consequences of eliminating the automatic closure of the main steam line drain isolation valves and reactor recirculation water sample line isolation valves along with the MSIVs has been evaluated to be negligible additions to the CRDA doses. A [LaSalle County Station] LSCS unique analysis has demonstrated that the radiological doses as a result of design basis CRDA are acceptable.

The MSLRM system high radiation trip was intended to function in response to a CRDA which has been previously evaluated. No credit for MSIV closure was taken in the CRDA analysis since it postulates that all the radioactive material assumed to be released from the fuel is transported to the main condenser prior to MSIV closure. Furthermore, the probability of a fuel failure is independent of the operation of the MSLRM system.

By eliminating the MSLRM induced MSIV closure, the Offgas system can be utilized to reduce potential offsite doses after a CRDA. The [mechanical vacuum pump] MVP is tripped no later than 15 minutes of a Hi-Hi radiation alarm but analytically results in acceptable offsite doses.

Thus the proposed amendment will not increase the probability of any accident previously evaluated, and the elimination of the MSLRM isolation signal for MSIVs and other small containment valves will not significantly increase the consequences of a CRDA as previously evaluated.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

Redefining the full power radiation background, thus changing the actual MSLRM alarm setpoint, does not alter the configuration of the plant. It does not revise any logic or function of the MSLRM trip channels or add, replace, or delete any equipment important to safety. Therefore it does not introduce any new failure modes or create any possibility of a new accident which may challenge safety to the public and has not been previously analyzed. It also does not involve any equipment which either has not been evaluated previously, or may have any safety consequences to the public.

The proposed Technical Specification changes involve eliminating the MSLRM system high radiation trip function for initiating an automatic reactor scram, and automatic isolations. The proposed changes will not affect the operation of other plant systems or equipment important to safety. The MSLRM system will continue to initiate alarms as before. Plant procedures will be in place to take appropriate mitigative measures in response to a high alarm.

The isolation and reactor scram functions associated with the MSLRM system actuation were originally intended to mitigate, not prevent, a potential accident scenario such as a CRDA or gross fuel failure event. Adding or removing an electronic signal, such as the one from the MSLRM system, does not change system or hardware design within the reactor vessel pressure boundary, and therefore will not create the possibility of a new or different kind of accident from those evaluated in the UFSAR like a LOCA or CRDA during power operation. It also does not create the possibility of a new or different kind of accident outside the reactor vessel pressure boundary from those evaluated in the UFSAR, such as a LOCA or Fuel Handling Accident. Removing the isolation signal also reduces the probability of inadvertent scram and isolation.

Therefore the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3) Involve a significant reduction in the margin of safety because:

The current MSLRM trip Hi-Hi alarm setpoint (about 4 R/hour with full power background at 1.3 R/hour) is at 3 times the full power radiation background. As indicated in the plant unique analytical result for LSCS, the radiological reading at the MSLRMs for design basis CRDA is equivalent to over 1200 times the normal full power radiation background (1600 R/hour divided by 1.3 R/bour), or 150 times the full power radiation background during peak HWC environment (since the radiation background is 8 times the normal background). Thus the safety margin was very large, and would still be quite large with the HWC background factored into the MSLRM actuation setpoint (3 x 8 x 1.3 = about 50). The Hi alarm setpoint of 1.5 times full power background likewise will have a higher safety margin. Thus there is basically no adverse consequence to the margin of safety in the basis for the LaSalle technical specifications.

The proposed Technical Specification changes to eliminate the MSLRM system high radiation trip function for initiating an automatic reactor scram, and automatic closure of the MSIVs, main steam line drain isolation valves, and reactor recirculation water sample line isolation valves do not cause radiological dose consequences to exceed the limit established by SRP 15.4.9.

Per NEDO-31400A, the elimination of MSLRM trip/scram signal will result in the reduction of potential inadvertent scrams, unnecessary safety-related actuations, undue vessel isolation, and duty challenges during normal plant operation. These can be interpreted to be a potential reduction in core damage frequency, which translates to an improvement in the margin of safety.

Thus the margin of safety as defined in the basis of the technical specifications is essentially unaffected, and is therefore acceptable.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

requested amendments involve no significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: April 16, 1996

Description of amendment request: The proposed amendments would eliminate the Technical Specification requirement to perform response time testing for selected instruments. The instruments affected are the sensors for selected reactor protection system instrumentation, main steam isolation actuation instrumentation, and all sensors for emergency core cooling system (ECCS) actuation instrumentation. The proposed changes are supported by analyses performed by the Boiling Water Reactor Owners' Group as documented in NEDO-32291-A which was approved by the NRC for use in license amendment applications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The purpose of the proposed Technical Specification (TS) change is to eliminate response time testing requirements for selected components in the Reactor Protection System (RPS), Isolation Actuation instrumentation and Emergency Core Cooling System (ECCS) actuation instrumentation. The Boiling Water Reactor Owners' Group (BWROG) has completed an evaluation which demonstrates that response time testing is redundant to the other TS-required testing. These other tests, in conjunction with actions taken in response to NRC Bulletin 90-01, "Loss of Fill-Oil in Transmitters Manufactured by Rosemount," and Supplement 1, are sufficient to identify failure modes or degradations in instrument response time and ensure operation of the associated systems within acceptable limits. There are no known failure modes that can be detected by response time testing that cannot also be detected by the other TS-required testing. This evaluation was documented in NEDO-32291-A, "System Analyses for the Elimination of Selected Response Time Testing Requirements," dated October 1995. LaSalle County Station, LaSalle, has confirmed the applicability of this evaluation to LaSalle. In addition, LaSalle will complete the actions identified in the NRC staffs safety evaluation of NEDO-32291-A.

Because of the continued application of other existing TS-required tests such as channel calibrations, channel checks, channel functional tests, and logic system functional tests, the response time of these systems will be maintained within the acceptance limits assumed in plant safety analyses and required for successful mitigation of an initiating event. The proposed changes do not affect the capability of the associated systems to perform their intended function within their required response time, nor do the proposed changes themselves affect the operation of any equipment. As a result, LaSalle has concluded that the proposed changes do not involve a significant increase in the probability or the consequences of an accident previously evaluated.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed changes only apply to the testing requirements for the components identified above and do not result in any physical change to these or other components or their operation. As a result no new failure modes are introduced. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3) Involve a significant reduction in the margin of safety because:

The current TS-required response times are based on the maximum allowable values assumed in the plant safety analyses. These analyses conservatively establish the margin of safety. As described above, the proposed changes do not effect the capability of the associated systems to perform their intended function within the allowed response time used as the basis for the plant safety analyses. The potential failure modes for the components within the scope of this request were evaluated for impact on instrument response time. This evaluation confirmed that, with the exception of loss of fill-oil of Rosemount transmitters, the remaining TS-required testing is sufficient to identify failure modes or degradations in instrument response times and ensure that operation of the applicable instrumentation is within acceptable limits. The actions taken in response to NRC Bulletin 90-01 and Supplement 1 are adequate to identify loss of fill-oil failures of Rosemount transmitters. As a result, it has been concluded that plant and system response to an initiating event will remain in compliance with the assumptions of the safety analysis.

Further, although not explicitly evaluated, the proposed changes will provide an improvement to plant safety and operation by the following:

a. Reducing the time safety systems are unavailable,

b. Reducing the potential for safety system actuations,

c. Reducing plant shutdown risk,

d. Limiting radiation exposure to plant personnel, and

e. Eliminating the diversion of key personnel resources to conduct unnecessary testing.

Therefore, LaSalle has concluded that this request will not significantly reduce the margin of safety, and may actually cause an increase in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: November 2, 1994

Description of amendment request: The proposed amendments would delete the content of Appendix B, "Environmental Protection Plan" (nonradiological), and modify License Condition 2.C.(2) to delete that portion which refers to the Environmental Protection Plan.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. [The proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated]:

Deletion of the Environmental Protection Plan and modifying License Condition 2.C.(2) will have no impact on the probability or consequences of an accident previously evaluated because the changes will not have any impact upon the design or operation of any plant systems or components.

2. [The proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated]:

The proposed revision will not create the possibility of a new or different kind of accident from any previously evaluated because the revision is administrative in nature and will not change the types and amounts of effluent that will be released.

3. [The proposed amendments would not involve a significant reduction in a margin of safety]:

The proposed revision will not reduce a margin of safety because it is administrative in nature and will not [a]ffect the margin of safety as defined in the basis for any Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

Duquesne Light Company, et al., Docket No. 50-412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania

Date of amendment request: April 29, 1996

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 5.3.1 to allow the use of ZIRCO as an alternate zirconium-based fuel rod material and remove the word clad since it has been eliminated from the text of the NRC's improved Standard Technical Specifications (NUREG-1431). Limited substitution of fuel rods by ZIRCO filler rods would also be permitted. The proposed amendment would revise Note 2 on TS Table 3.9-1 to specify that the maximum burnup in the peak fuel rod in a fuel assembly stored in Region 2 spent fuel racks should not exceed the NRC-approved limit for WCAP-12610 rather than the current maximum burnup limit of 60 GWD/MTU.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increaso in the probability or consequences of an accident previously evaluated?

The methodologies used in the accident analyses remain unchanged. The proposed changes do not change or alter the design assumptions for the systems or components used to mitigate the consequences of an accident. Use of ZIRLO fuel rod material does not adversely affect fuel performance or impact nuclear design methodology. Therefore, accident analysis results are not impacted.

The operating limits will not be changed and the analysis methods to demonstrate operation within the limits will remain in accordance with NRC approved methodologies. Other than the changes to the fuel assemblies, there are no physical changes to the plant associated with this technical specification change. A safety analysis will continue to be performed for each cycle to demonstrate compliance with all fuel safety design bases.

VANTAGE 5 fuel assemblies with ZIRLO fuel rods meet the same fuel assembly and fuel rod design bases as other VANTAGE 5 fuel assemblies. In addition, the 10 CFR 50.46 criteria are applied to the ZIRLO fuel rods. The use of these fuel assemblies will not result in a change to the reload design and safety analysis limits. Since the original design criteria are met, the ZIRLO fuel rods will not be an initiator for any new accident. The fuel rod material is similar in chemical composition and has similar physical and mechanical properties as Zircaloy-4. Thus, the fuel rod integrity is maintained and the structural integrity of the fuel assembly is not affected. ZIRLO improves corrosion performance and dimensional stability. No concerns have been identified with respect to the use of an assembly containing a combination of Zircaloy-4 and ZIRLO fuel rods.

The dose predictions in the safety analyses are not sensitive to the fuel rod material used; therefore, the radiological consequences of accidents previously evaluated in the safety analysis remain valid. A reload analysis is completed for each cycle, in accordance with NRC approved methodologies. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated.

VANTAGE 5 fuel assemblies with ZIRLO fuel rods satisfy the same design bases as those used for other VANTAGE 5 fuel assemblies. All design and performance criteria continue to be met and no new failure mechanisms have been identified. The ZIRLO fuel rod material offers improved corrosion resistance and structural integrity.

The proposed changes do not affect the design or operation of any system or component in the plant. The safety functions of the related structures, systems, or components are not changed in any manner, nor is the reliability of any structure, system, or component reduced. The changes do not affect the manner by which the facility is operated and do not change any facility design feature, structure, or system. No new or different type of equipment will be installed. Since there is no change to the facility or operating procedures, and the safety functions and reliability of structures, systems, or components are not affected, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The use of Zircaloy-4, ZIRLO, or stainless steal filler rods in fuel assemblies will not involve a significant reduction in the margin of safety because analyses using NRC approved methodology will be performed for each configuration to demonstrate continued operation within the limits that assure acceptable plant response to accidents and transients. These analyses will be performed using NRC approved methods that have been approved for application to the fuel configuration.

Use of ZIRLO as fuel rod material does not change the VANTAGE 5 reload design and safety analysis limits. The use of these fuel assemblies will take into consideration the normal core operating conditions allowed in the technical specifications. For each reload core, the fuel assemblies will be evaluated using NRC approved reload design methods, including consideration of the core physics analysis peaking factors and core average linear heat rate effects.

Based on the above, ii is concluded that the proposed license amendment request does not result in a significant reduction in margin with respect to plant safety as defined in the UFSAR [Updated Final Safety Analysis Report] or any plant technical specification BASES.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2 (ANO-1&2), Pope County, Arkansas

Date of amendment request: May 2, 1996

Description of amendment request: The proposed technical specification amendments would extend the allowed outage times for emergency diesel generators at Arkansas Nuclear One, Units 1 and 2 to 7 days with an additional, once per refueling cycle extension of 7 more days for each machine.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The emergency diesel generators (EDGs) are backup alternating current power sources

designed to power essential safety systems in the event of a loss of offsite power. The EDGs are not accident initiators in any accident previously evaluated. Probabilistic Safety Analysis (PSA) methods were utilized in order to fully evaluate the EDG allowed outage time (AOT) extension proposed in this submittal. The results of these analyses indicate there is not a significant increase in the probability of an accident previously evaluated. Therefore, this change does not involve an increase in the probability of an accident previously evaluated.

The EDGs provide backup power to components that mitigate the consequences of accidents. The current TSs allow for an EDG to be removed from service for an AOT. The proposed amendment extends the current AOT for an EDG. The proposed change does not allow any more equipment to be removed from service at one time. The proposed changes to the AOTs do not affect any of the assumptions used in deterministic safety analysis. By extending the EDG AOT, the consequences of an accident previously evaluated will remain unchanged.

The proposed change removes redundant requirements associated with an inoperable emergency power supply from the TS for the pressurizer proportional heaters. The operability requirements for emergency power supplies and actions to be taken if an EDG is inoperable are already addressed in the ANO-2 TS 3.8.1.1.

The associated changes that remove the requirements to test the EDGs if one or both offsite power supplies are inoperable, for an inoperable station battery, for an inoperable component in the two ESF electrical distribution systems; the accelerated testing requirements of the EDGs, and the daily testing requirements for the operable EDGs improve the reliability for the operable EDGs by reducing the number of unnecessary starts and stops. By improving the EDG reliability, this change will not increase the consequences of the accidents previously evaluated.

The other changes in this submittal associated with the bases are considered administrative in nature and have no effect on the consequences of an accident previously evaluated.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

This proposed change does not alter the design, configuration, or method of operation of the plant. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed changes do not affect the Technical Specification limiting conditions for operation or their bases which support the deterministic analyses used to establish the margin of safety.

Calculations performed to analyze the change in risk based on these changes produced acceptable values which are included in the tables located in the description of changes section. These calculated changes in risk fall well within that which is normally considered acceptable. When the additional benefit of maintaining the Emergency Diesel Generators available during shutdown cooling operations associated with refueling outages in considered, the overall change in risk is further reduced.

The remaining proposed changes are either associated with increasing EDG reliability or considered administrative in nature.

Therefore, this change does not involve a significant reduction in the margin of safety

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: November 20, 1995, as supplemented by the letter dated December 15, 1995.

Description of amendment request: The licensee has proposed to revise the Grand Gulf Nuclear Station (GGNS), Unit 1, Technical Specifications (TSs) as follows for the drywell, the drywell airlock, and the drywell isolation valves:

1. For the drywell in Limiting Condition of Operation (LCO) 3.6.5.1, the surveillance frequency interval for the drywell bypass test in Surveillance Requirement (SR) 3.6.5.1.1 would be increased from 18 months to 10 years. For this interval change, an increased testing frequency would be required if bypass performance degrades (i.e., the leakage is greater than the limit for two consecutive tests) and the application of SR 3.0.2, the allowance to extend the surveillance interval by 25 percent, would be restricted to 12 months on the 10-year interval. This includes deleting the Note in SR 3.6.5.1.1.

2. For the drywell airlock in LCO 3.6.5.2, the following changes are requested: (a) the leak rate SR 3.6.5.2.2 would be transferred from the airlock LCO (3.6.5.2) to SR 3.6.5.1.3 in the drywell LCO (3.6.5.1), (b) the requirement in SR 3.6.5.2.2 for the air lock to meet a specific overall leakage limit would be deleted, (c) the Note in SR 3.6.5.2.2 that stated that an inoperable air lock door does not invalidate the previous air lock leakage test would be deleted, (d) the test pressure for the air lock leakage test in SR 3.6.5.2.2 would be reduced from 11.5 psig to 3 psid, and (e) the surveillance frequency interval for the air lock leakage and interlock testing, required in SRs 3.6.5.2.1 and 3.6.5.2.2, would be increased from 18 months to 24 months.

3. For the drywell airlock in LCO 3.6.5.2 and the drywell isolation valves in LCO 3.6.5.3, the Action Notes, which identify that the actions required by drywell LCO 3.6.5.1 must be taken when the drywell bypass leakage limit is not met, would be deleted. Action C.1 of LCO 3.6.5.2 and its associated completion time would also be deleted.There would also be changes to the Bases of the TSs for the above LCOs and SRs, based on the proposed changes.

Basis for proposed no significant hazards consideration determination: The amendment request dated November 20, 1995, applied to both the Grand Gulf Nuclear Station (GGNS) and the River Bend Station (RSB); however, not all of the proposed amendments apply to GGNS. This Notice only discusses the amendment request for GGNS. The reference below to proposed amendments which do not apply to GGNS are marked by "[....]".

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration in its application dated November 20, 1995, which is presented below:

Entergy Operations, Inc. proposes to change the current Grand Gulf Nuclear Station (GGNS) [....] Technical Specifications. The specific proposed changes are:

1. The Surveillance Frequency [interval] for the drywell bypass test is changed [increased] from 18 months to 10 years with an increased testing frequency required if performance degrades.

2. The following changes are requested for the drywell air lock testing: (a) the leakage rate surveillance is moved from the air lock Limiting Condition for Operation (LCO) to the drywell LCO, (b) the requirement for the air lock to meet a specific overall leakage limit is deleted, (c) the Note that an inoperable air lock door does not invalidate the previous air lock leakage test is deleted, (d) the GGNS test pressure for the air lock leakage test is changed [reduced] from 11.5 psig to 3 psid, [....] and ([e]) the Surveillance Frequency [interval] for the air lock leakage test and interlock test is changed [increased] from 18 months to 24 months.

3. The Actions Notes in the drywell air lock LCO and the drywell isolation valve LCO that identifies that the Actions required by the drywell LCO must be taken when the drywell bypass leakage limit is not met is deleted. [Action C.1 of LCO 3.6.5.2 and its associated completion time would also be deleted.]

[4. ...]

The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). The proposed changes involve the withdrawal of operating restrictions previously imposed because acceptable operation of the Mark III primary containment design had not been demonstrated at the time of licensing. As published in the Federal Register regarding no significant hazards consideration criteria, granting of a relief, based upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation had not yet been demonstrated does not involve a significant hazards consideration (Ref. 48 FR 14870). Furthermore, a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Entergy Operations, Inc. has evaluated the no significant hazards consideration in its request for this license amendment, even though the above-mentioned criterion is satisfied by this proposal. In accordance with 10 CFR 50.91(a), Entergy Operations, Inc. is providing the analysis of the proposed amendment against the three standards in 10 CFR 50.92(c). A description of the no significant hazards consideration determination follows:

I. The proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

The requested changes are either administrative changes which clarify the format of the requirement or change the requirement to match the design bases of the plant, a change which relocates the requirement to the Technical Specification Bases, or a change in [the] surveillance interval. Each of these types of change are discussed below:

1. The administrative changes clarify the format of the requirement or change the requirement to match the design bases of the plant. Clarifying [the] administrative format of the Technical Specifications does not result in any changes to the Technical Specification requirements and, as a result, does not involve a significant increase in the probability or consequences of an accident previously evaluated. Also, changing the requirements of the Technical Specifications to more closely match the design bases of the plant will continue to assure that the plant will respond as assumed in the accident analyses and, as a result, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes relocate information to the Technical Specification Bases. In the Technical Specifications Bases the relocated information will be maintained in accordance with 10 CFR 50.59 and subject to the change control provisions in Chapter 5 of Technical Specifications. Since any changes to the Technical Specifications Bases will be evaluated per the requirements of 10 CFR 50.59, no increase (significant or insignificant) in the probability or consequences of an accident previously evaluated will be allowed. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

3. The proposed changes in frequency for the drywell bypass leakage and drywell air lock surveillances will continue to ensure that no paths exist through passive drywell boundary components that would permit gross leakage from the drywell to the primary containment air space and result in bypassing the primary containment pressure-suppression feature beyond the design basis limit. The Mark III primary containment system satisfies General Design Criterion 16 of Appendix A to 10 CFR Part 50. Maximum drywell bypass leakage was determined previously by reviewing the full range of postulated primary system break sizes. The limiting case was a primary system small break loss of coolant accident (LOCA) and yielded a design allowable drywell bypass leakage rate limit of approximately 35,000 scfm for GGNS [....]. The Technical Specifications acceptable limit for the bypass leakage following a surveillance is less than 10% of this design basis value. The most recent bypass leakage value was approximately 2.5% for GGNS [....] of the design allowable leakage rate limit for the limiting event. EOI [Entergy Operations, Inc.] is committed to maintaining programmatic and oversight controls that ensure that drywell bypass leakage remains a small fraction of the design allowable leakage limit.

The drywell is typically exposed to essentially 0 psig during normal plant operation and 3 psig during drywell bypass leak rate testing. These pressures are considerably lower than the structural integrity test pressure and are less likely to initiate a crack or cause an existing crack to grow. Visual inspections of the accessible drywell surfaces that have been performed since the structural integrity tests have not revealed the presence of additional cracking or other abnormalities. Therefore, additional cracking of the drywell structure is not expected due to testing or operation and, similar to the justification for the ten year 10 CFR 50 Appendix J Type A test interval, it is not considered credible for the passive drywell structure to begin to leak sufficiently to impact the design drywell bypass leakage limit.

The primary containment's ability to perform its safety function is fairly insensitive to the amount of drywell leakage, thereby providing a margin to loss of the drywell safety function that is not normally available for systems. This insensitivity is demonstrated by the extremely high limiting event design basis allowable leakage for the drywell (e.g., 35,000 scfm for GGNS [....]). The limiting leakage is almost an order of magnitude higher for other events. Additionally, an even higher allowable leakage can be realistically accommodated by the primary containment due to the margins in the containment design. Because of the margins available, it will take valves in multiple penetration flow paths leaking excessively to cause the primary containment to fail as a result of overpressurization, the probability that drywell isolation valve leakage will result in primary containment failure due to excessive drywell leakage is not considered significant and this drywell/primary containment failure mode is not considered credible.

The proposed Technical Specification changes have no significant impact on the GGNS Individual Plant Examination (IPE) [....] conducted per NRC Generic Letter 88-20. The IPEs considered overpressurization failure of primary containment as part of the primary containment performance assessment. Due to the magnitude of acceptable drywell leakage and the extremely low probabilities of achieving such leakage, primary containment failure due to preexisting excessive drywell leakage was considered a non significant contributor to primary containment failure. Primary containment overpressurization failure can occur with or without preexisting excessive drywell leakage in a severe accident. This is due to physical phenomena associated with potentially extreme environmental conditions inside primary containment following a severe accident. However, the calculated frequency of such extreme conditions is very small. The proposed changes do not impact the IPE evaluated phenomena causing primary containment overpressurization failure nor significantly increase the probability that the drywell has preexisting excessive leakage and therefore would not contribute to these accident scenarios.

For the reasons discussed above, the proposed changes do not have any significant risk impact to accidents previously evaluated and do not significantly increase the consequences of an accident previously evaluated. Additionally, drywell leakage is not the initiator of any accident evaluated; therefore, changes in the frequency of the surveillance for drywell leakage does not increase the probability of any accident evaluated.

Therefore, the proposed changes do not significantly increase the probability or consequences of an accident previously evaluated.

II. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The requested changes are either administrative changes which clarify the format of the requirement or change the requirement to match the design bases of the plant, a change which relocates the requirement to the Technical Specification Bases, or a change in surveillance interval. Each of these types of change are discussed below:

1. The administrative changes in the Technical Specification requirements do not

involve a physical alteration of the plant (no new or different type of equipment will be installed) nor does it change the methods governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

2. The proposed relocation of requirements does not involve a physical alteration of the plant (no new or different type of equipment will be installed) nor does it change the methods governing normal plant operation. The proposed change will not impose or eliminate any requirements. Adequate control of the information will be maintained in the Technical Specification Bases. Thus, the change proposed does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change modifies the surveillance frequency for drywell bypass leakage and drywell air lock surveillances. The changes only impact the test frequency and do not result in any change in the response of the equipment to an accident. The changes do not alter equipment design or capabilities. The changes do not present any new or additional failure mechanisms. The drywell is passive in nature and the surveillance will continue to verify that its integrity has not deteriorated. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

III. The proposed change does not involve a significant reduction in a margin of safety.

The requested changes are either administrative changes which clarify the format of the requirement or change the requirement to match the design bases of the plant, a change which relocates the requirement to the Technical Specification Bases, or a change in surveillance interval. Each of these types of changes are discussed below:

1. The administrative changes in the Technical Specification requirements do not involve a physical alteration of the plant (no new or different type of equipment will be installed) nor does it change the methods governing normal plant operation. Thus, this change does not cause a significant reduction in the margin of safety.

2. The relocation of requirements will not reduce a margin of safety because it has no impact on any safety analysis assumptions. In addition, the requirements to be transferred from the Technical Specifications to the Technical Specifications Bases are the same as the existing Technical Specifications. Since any future changes to these requirements in the Technical Specifications Bases will be evaluated per the requirements of 10 CFR 50.59, no reduction (significant or insignificant) in a margin of safety will be allowed.

3. The proposed change modifies the surveillance frequency for drywell bypass leakage and associated air lock surveillances. Reliability of drywell integrity is evidenced by the measured leakage rate during past drywell bypass leakage surveillances. Appropriate design basis assumptions will be upheld, even when combined with the complementary bypass leakage surveillances as proposed. Drywell integrity will continue to be tested by means of the proposed periodic drywell bypass leakage test, performance of the drywell air lock door latching and interlock mechanism surveillance, and performance of additional surveillances including exercising of drywell isolation valves. The combination of these surveillances will provide adequate assurance that drywell bypass leakage will not exceed the design basis limit. Margins of safety would not be reduced unless leakage rates exceeded the design allowable drywell bypass leakage limit. Therefore, the proposed change does not cause a significant reduction in the margin of safety.

Therefore, the proposed changes do not cause a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 11, 1995, as supplemented by letter dated February 12, 1996.

Description of amendment request: The proposed change will reduce the minimum reactor coolant cold leg temperature from 544 Degrees F to 541 degrees F in Technical Specification Section 3.2.6, "Reactor Coolant Cold Leg Temperature."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change involves a 3°F reduction in the minimum core inlet temperature. This change will not have any impact on the probability of occurrence of any accident documented in the FSAR.

The impact of this change on the consequences of events documented in the FSAR has been evaluated. The evaluation demonstrated that most events are insensitive to the core inlet temperature. The events that are impacted by lower core inlet temperature are:

Loss of condenser vacuum (LOCV),
Part length CEA drop,
Single CEA withdrawal within deadband, and
CEA ejection.

The LOCV event has been reanalyzed for the upcoming Cycle (Cycle 8) and the results indicate that the peak RCS pressure remains below the acceptable limit (110% of the design pressure, i.e., 2750 psia). The reactivity anomaly events (remaining events) will be reanalyzed as part of COLSS/CPC setpoint calculations. These calculations will be performed prior to Cycle 8 startup and will address the impact of the 3°F reduction on the minimum core inlet temperature. The CPC/COLSS databases and/or addressable constants will be modified, as needed due to proposed change, prior to cycle startup.

A qualitative assessment of the impact of the proposed change on the calculated LOCA blowdown loads that are applied to the major NSSS components, their supports and the reactor vessel internals was also performed. This assessment consisted of an evaluation of the design margins on the major components and a determination of the impact this lower temperature would have on those margins. The evaluation concluded that the impact of a 3°F cold leg temperature reduction will be well within the current design margins. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change to the minimum core inlet temperature does not involve any change to any equipment or the manner in which the plant will be operated. Since no hardware modifications or changes in operation procedures will be made, the proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The impact of the proposed change on the Waterford 3 FSAR analyses have been evaluated. The evaluation showed that the events that were impacted were important with respect to RCS pressure and fuel thermal limits. One of the events that was impacted by the proposed change was the LOCV event. This event was analyzed and the results showed that the peak RCS pressure remained below the acceptable limit. The impact of this change on other events (reactivity anomaly events) will be evaluated as part of the COLSS/CPC setpoint calculations and the COLSS/CPC databases and/or addressable constants will modified as needed to account for any adverse impact on the results of these events due to the proposed change.

The impact of this change on the Linear Heat Generation Rate limits which varies as a function of the cold leg temperature, is accounted for by Technical Specification 3.2.1, "Linear Heat Rate". The impact of this change on LOCA blowdown loads were evaluated to be insignificant compared to the current design margins. Therefore, the proposed change will not involve a significant reduction in a margin of safety, specifically fuel thermal limits and RCS pressure limit.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Dates of amendment request: March 20, 1996, and April 23, 1996

Description of amendment request: The licensee proposed to change the Turkey Point Units 3 and 4 Technical Specifications (TS) to relocate the requirements for surveillance testing of the water level and pressure channel instrumentation for the reactor coolant system accumulators and clarify the remaining TS surveillance tests. These amendments also modify the existing action statements of TS 3.5.1 for accumulators to reflect the requirements of NUREG-1431 by requiring a 72-hour period to restore boron concentration if it is not within the limits, and a 1-hour period to restore any other condition rendering the accumulators inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed amendments conform to the guidance given in Enclosure 1 of the NRC GL [Generic Letter] 93-05. The overall functional capabilities of the Emergency Core Cooling System (ECCS) accumulators will not be modified by the proposed change. This amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated for the following reasons:

1) The Water Level and Pressure Channel Instrumentation does not perform a specific safety function, and merely provides an indicating function. The instrumentation in no way affects the capability of the accumulators to perform their respective safety function.

2) The changes in most of the ACTION statements are more restrictive than current TS requirements due to the one hour vice four hour completion time, and therefore will not increase the probability or consequences of a previously evaluated accident. If one accumulator is inoperable for a reason other than boron concentration, the accumulator must be returned to OPERABLE status within 1 hour. In this condition, the required contents of three accumulators cannot be assumed to reach the core during a Loss Of Coolant Accident (LOCA). Due to the severity of the consequences should a LOCA occur in these conditions, the 1 hour completion time to open the valve, remove power to the valve, or restore the proper water volume or nitrogen cover pressure ensures that prompt action will be taken to return the inoperable accumulator to OPERABLE status. The completion time minimizes the potential for exposure of the plant to a LOCA under these conditions. The 1 hour requirement for restoring a closed isolation valve is merely a clarification of the existing "immediate" time requirement.

3) In the case of low-out-of-specification boron concentration in one accumulator, it must be returned to within the limits within 72 hours. In this condition, ability to maintain subcriticality or minimum boron precipitation time may be reduced. The boron in the accumulators contributes to the assumption that the combined ECCS water in the partially recovered core during the early reflooding phase of a large break LOCA is sufficient to keep that portion of the core subcritical. One accumulator below the minimum boron concentration limit, however, will have no effect on available ECCS water and an insignificant effect on core subcriticality during reflood. Boiling of ECCS water in the core during reflood concentrates boron in the saturated liquid that remains in the core. In addition, current Turkey Point analysis demonstrate that the accumulators discharge only a small amount following a large main steam line break. Therefore, their impact on boron concentration in the reactor coolant system is minor and not a design limiting event. Thus, 72 hours is allowed to return the boron concentration to within limits and does not increase the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The use of the modified specifications can not create the possibility of a new or different kind of accident from any previously evaluated since the proposed amendments will not change the physical plant or the modes of plant operation defined in the facility operating license. No new failure mode is introduced due to the surveillance changes and clarifications, since the proposed changes do not involve the addition or modification of equipment nor do they alter the design or operation of affected plant systems.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The operating limits and functional capabilities of the affected system are unchanged by the proposed amendment. The modified specifications which remove surveillance requirements from the TS to plant procedures are consistent with the NRC GL 93-05 line-item improvement guidance do not significantly reduce any of the margins of safety even though the amount of surveillances is decreased. The modification of the existing ACTION Statements do not have an adverse on [sic] affect on the margin of safety for the following reasons:

1) The SI [Safety Injection] Accumulator Water Level and Pressure Channel instrumentation performs no safety function.

2) The changes in ACTION statements a) and b) are for the most part more restrictive than existing TS requirements, the reason being the removal of instrumentation requirements for operability.

3) In the case of low-out-of-specification boron concentration in one accumulator, the requirement will be less restrictive, but the low boron concentration in one accumulator will have no effect on available ECCS water and an insignificant effect on core subcriticality during reflood and therefore will not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied.Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

Attorney for licensee: J. R. Newman, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036

NRC Project Director: Frederick J. Hebdon

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: April 19, 1996

Description of amendment request: The proposed amendment would include revisions to Technical Specification (TS) 3.3.6.1, "Primary Containment and Drywell Isolation Instrumentation≥; TS 3.3.6.2, "Secondary Containment Isolation Instrumentation≥; TS 3.3.7.1, "Control Room Ventilation System Instrumentation≥; TS 3.6.1.2, "Primary Containment Air Locks≥; TS 3.6.1.3,

"Primary Containment Isolation Valves≥; TS 3.6.4.1, "Secondary Containment≥; TS 3.6.4.2, "Secondary Containment Isolation Dampers≥; TS 3.6.4.3, "Standby Gas Treatment≥; TS 3.7.3, "Control Room Ventilation≥; and TS 3.7.4, "Control Room AC System." These TSs would be revised to eliminate CORE ALTERATIONS as an applicable condition for which the associated Limiting Conditions for Operation (LCO) must be met. Consistent changes are also proposed for the associated ACTIONS in each of these LCOs, to reflect the changes in the applicable conditions. The intent of these proposed changes is to allow certain activities such as control rod venting, which is considered a CORE ALTERATION in MODE 5, to be performed without the requirements of the identified LCOs being met.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed changes eliminate CORE ALTERATIONS as an applicable condition requiring operability of the primary and secondary containment and control room ventilation system. As stated in the BASES for the associated Technical Specifications, operability of these systems is primarily required for mitigation of the design basis accident - fuel handling accident (DBA-FHA) and design basis accident - loss of coolant accident (DBA-LOCA). The performance of CORE ALTERATIONS alone is neither a precursor to, nor a condition during which these DBAs are postulated to occur. The proposed changes only delete CORE ALTERATIONS as an applicable condition for the affected Technical Specifications. All other applicable MODES or specified conditions, including operations with the potential for draining the reactor vessels (OPDRVs) and the movement of irradiated fuel assemblies within the primary or secondary containment, remain unchanged. Further, the limitations placed on the handling of light loads are also unchanged. The Technical Specifications (and the separate requirements imposed on the handling of light loads) will thus continue to require that systems or functions designed to mitigate design-basis/previously evaluated accidents are OPERABLE during the relevant operating MODES or conditions. On the basis of the above, it is concluded that the requested amendment will not increase the probability or consequences of any accident previously evaluated.

2. The proposed changes do not involve any modification to the plant design or to the operation of plant systems (except to determine when certain analyzed accident-mitigating systems or features are required to be OPERABLE). The failure modes considered for the proposed changes are the same as those previously considered, therefore, it can be concluded that no new failure modes will be created. On this basis, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The changes being made to eliminate CORE ALTERATIONS as an applicable condition for which certain LCOs must be met, do not eliminate the requirements for operability of those systems or features assumed to mitigate design-basis or analyzed accidents during the applicable MODES when such systems or features are assumed to be available for performing their mitigating function. The safety margins assumed or established by the accident analyses for those design-basis events (as described in the accident analyses of the Clinton Power Station Updated Final Safety Analysis Report) therefore remain unchanged. Further, the proposed changes do not impact the controls imposed on the handling of light loads (including unirradiated fuel assemblies) for ensuring that such activities cannot result in an event that yields consequences more severe than those calculated for the DBA-FHA. With respect to reactivity concerns during refueling operations (MODE 5), all systems or features required to be OPERABLE for precluding inadvertent criticality and monitoring reactivity changes will continue to be required OPERABLE as per the current Technical Specification requirements. The deletion of CORE ALTERATIONS as an applicable condition only applies to the noted systems which do not contribute to precluding reactivity events. Based on the above, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Leah Manning Stetener, Vice President, General Counsel, and Corporate Secretary, 500 South 27th Street, Decatur, Illinois 62525

NRC Project Director: Gail H. Marcus

Illinois Power Company and Soyland Power Coöperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: May 1, 1996

Description of amendment request: The proposed amendment would revise the Clinton Power Station (CPS) Operating License and Technical Specifications (TS) to implement 10 CFR Part 50, Appendix J - Option B, by referring to Regulatory Guide 1.163, "Performance-Based Containment Leak-Test Program." Specifically, changes would be made to paragraph 2.D of the Operating License; TS Section 1.1, "Definitions;" TS 3.6.1.1, "Primary Containment;" TS 3.6.1.1, "Primary Containment Air Locks;" TS 3.6.1.3, "Primary Containment Isolation Valves (PCIVs);" and TS Section 5.5, "Programs and Manuals."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change implements new Option B of 10 CFR 50 Appendix J for performance-based primary containment leakage testing. The proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any parameters or conditions that contribute to the initiation of any accidents previously evaluated. Thus, the proposed change cannot increase the probability of any accident previously evaluated.

The proposed change potentially affects the leak-tight integrity of the primary containment structure which is designed to mitigate the consequences of a loss-of-coolant accident (LOCA) by limiting the release of fission products contained in the post-LOCA primary containment atmosphere. Functional integrity of the primary containment must be maintained during and following the peak transient pressures and temperatures that may result from a LOCA. Because the proposed change does not alter the plant design, including the primary containment and primary containment penetrations, and because it only affects the frequency of measuring Type A, B, and C leakage without changing the acceptance criteria for the Type A, B, and C leakage rate tests, the proposed change does not directly result in an increase in the primary containment leakage. However, decreasing the test frequency can increase the probability that an increase in primary containment leakage could go undetected for an extended period of time. To minimize that probability, test intervals will be established based on the performance history of components being tested.

NUREG-1493, "Performance-Based Containment Leak-Test Program," provides the technical basis for the NRC's rulemaking to revise primary containment leakage testing requirements for nuclear power reactors in 10 CFR 50, Appendix J. NUREG-1493 documents the NRC's determination that the effect of primary containment leakage on overall accident risk is minimal since risk is dominated by accident sequences that result in failure of bypass of primary containment. NUREG-1493 also documents that increasing the Type A leakage test intervals would have a minimal impact on public risk, and that Type B and C tests can identify the vast majority (greater than ninety five percent) of all leakage paths. Therefore, performance-based alternatives to current local leakage-testing requirements are feasible without significant risk impacts.

Based on the above, IP has concluded that the proposed change will not result in a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any of the parameters or conditions that could contribute to initiation of any accidents. This change involves the reduction of Type A, B, and C test frequency. Except for the method of defining the test frequency, the methods for performing the actual tests are not changed. No new accident modes are created by extending the testing intervals. No safety-related equipment or safety functions are altered as a result of this change. Thus, extending the test frequency has no influence on, nor does it contribute to the possibility of a new or different kind of accident or malfunction from those previously analyzed.

Based on the above, IP has concluded that the proposed change will not create the possibility of a new or different kind of accident not previously evaluated.

3. The request does not involve a significant reduction in a margin to safety. The proposed change only affects the frequency of the Type A, B, and C testing. Except for the method of defining the test frequency, the methods for performing the actual tests are not changed. However, the proposed change can increase the probability that an increase in primary containment leakage could go undetected for an extended period of time. NUREG-1493 has determined that under several different accident scenarios, the increased risk of radioactivity release from primary containment is negligible with the implementation of these proposed changes.

The margin of safety that has the potential of being impacted by the proposed change involves the offsite dose consequences of postulated accidents which are directly related to the rate of primary containment leakage. The primary containment isolation system is designed to limit leakage to L_a, which is defined by the CPS Technical Specifications to be 0.65% of primary containment air weight per day at the calculated peak containment internal pressure for the design basis loss of coolant accident (P_a). The limitation on the rate of primary containment leakage is designed to ensure that the total leakage volume will not exceed the value assumed in the accident analyses at the peak accident pressure (P_a). The margin of safety for the offsite dose consequences of postulated accidents directly related to the primary containment leakage rate is maintained by continuing to meet the 1.0 L_a acceptance criteria. The L_a value is not being modified by this proposed change.

Except for the method of defining the test frequency, no change in the method of testing is being proposed. The Type A, B, and C tests will continue to be done at full pressure (P_a) or greater. Other programs are in place to ensure that proper maintenance and repairs are performed during the service life of the primary containment and systems and components penetrating the primary containment.

As a result, IP has concluded that the proposed change will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Leah Manning Stetener, Vice President, General Counsel, and Corporate Secretary, 500 South 27th Street, Decatur, Illinois 62525

NRC Project Director: Gail H. Marcus

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: January 25, 1996

Description of amendment request: The amendment proposes to extend instrumentation and miscellaneous surveillance test intervals (STI) to support 24-month operating cycles. Additionally, this application proposes: (1) to revise the Trip Level Settings for Emergency Bus Loss of Voltage and Degraded Voltage Instrumentation, (2) to revise the Reactor Protection System (RPS) Normal Supply Electrical Protection Assembly (EPA) Undervoltage Trip Setpoint, and (3) to make editorial revisions, clarification and Bases changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed STI changes evaluated in Section IV.A do not involve any physical changes to the plant, do not alter the way these systems function, and will not degrade the performance of the plant safety systems. Proposed instrument setpoint changes ensure that plant safety limits are not exceeded due to instrument drift predicted for the longer calibration interval. The type of testing and the corrective actions required if the subject surveillances fail remains the same. The proposed changes do not adversely affect the reliability of these systems or affect the ability of the systems to meet their design objectives. A historical review of surveillance test results supports these conclusions.

The Trip Level Setpoint changes evaluated in Section IV.B ensure that the related systems perform as assumed in the transient and accident analysis by ensuring that plant safety limits are not exceeded due to instrument drift predicted for the longer calibration interval. The changes do not alter the system function, and will not degrade the performance of plant safety systems. The proposed Trip Level Setting changes do not adversely affect the reliability of these systems or adversely affect the ability of these systems to meet their design objectives.

The editorial, clarification and Bases changes evaluated in Section IV.C propose enhancements that clarify the Technical Specifications requirements and are editorial in nature. These changes do not alter any Technical Specification requirement, do not involve physical changes to the plant, or alter any operational setpoints. There are no safety implications in these proposed changes.

2. create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed STI changes evaluated in Section IV.A do not modify the design or operation of the plant, therefore, no new failure modes are introduced. Proposed instrument setpoint changes ensure that plant safety limits are not exceeded due to instrument drift resulting from the longer calibration interval. No changes are proposed to the type and method of testing performed, only to the length of the surveillance test interval. Past equipment performance and on-line testing indicate that longer test intervals will not degrade these systems. A historical review of surveillance test results supports these conclusions.

The Trip Level Setpoint changes evaluated in Section IV.B ensure that the related systems perform as assumed in the transient and accident analysis by ensuring that plant safety limits are not exceeded due to instrument drift predicted for the longer calibration interval. The changes do not alter the system function, introduce any new failure modes, and will not degrade the performance of plant safety systems. The proposed Trip Level Setting changes do not adversely affect the reliability of these systems or adversely affect the ability of these systems to meet their design objectives.

The editorial, clarification and Bases changes evaluated in Section IV.C propose enhancements that clarify the Technical Specifications requirements and are editorial in nature. These changes do not alter any Technical Specification requirement, do not involve physical changes to the plant, or alter any operational setpoints. There are no safety implications in these proposed changes.

3. involve a significant reduction in a margin of safety.

Although the proposed STI changes evaluated in Section IV.A will result in an increase in the interval between surveillance tests, the impact on system reliability is minimal. This is based on more frequent on-line testing and the redundant design of the evaluated systems. A review of past surveillance history has shown no evidence

of failures which would significantly impact the reliability of these systems. Operation of the plant remains unchanged by these proposed STI extensions. The assumptions in the Plant Licensing Basis are not adversely impacted. Therefore, the proposed changes do not result in a significant reduction in the margin of safety.

The Trip Level Setpoint changes evaluated in Section IV.B ensure that the related systems perform as assumed in the transient and accident analysis by ensuring that plant safety limits are not exceeded due to instrument drift predicted for the longer calibration interval. The changes do not alter the system function, introduce any new failure modes, and will not degrade the performance of plant safety systems. The proposed Trip Level Setting changes do not adversely affect the reliability of these systems or adversely affect the ability of these systems to meet their design objectives.

The editorial, clarification and Bases changes evaluated in Section IV.C propose enhancements that clarify the Technical Specifications requirements and are editorial in nature. These changes do not alter any Technical Specification requirement, do not involve physical changes to the plant, or alter any operational setpoints. There are no safety implications in these proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Susan Frant Shankman, Acting

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: April 24, 1996

Description of amendment request: This amendment proposes to relocate Technical Specification (TS) 3.11.B/4.11.B "Crescent Area Ventilation" and associated Bases from the TS to an Authority controlled procedure.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment will not involve a significant hazards consideration as defined in 10 CFR 50.92, based on the following:

(1) These changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

No modifications, no changes to operating procedure requirements, and no reduction in equipment reliability are being made as a result of these changes. Operating limitations will continue to be imposed, and required surveillance will continue to be performed in accordance with regulations, and written procedures and instructions that are auditable by the [Nuclear Regulatory Commission] NRC. Crescent Area Ventilation operability and testing requirements will continue to be an integral part of FitzPatrick plant operation.

Although future changes to the Crescent Area Ventilation system will no longer be controlled by 10 CFR 50.90, proposed changes will be evaluated under 10 CFR 50.59 and plant procedures. Programmatic controls will continue to assure that Crescent Area Ventilation system changes will not adversely affect [Emergency Core Cooling System] ECCS or [Reactor Core Isolation Cooling] RCIC system operability. As such, there is no significant increase in the probability or consequences of an accident previously evaluated.

(2) These changes do not create the possibility of a new or different type of accident previously evaluated because:

No modifications, no changes to operating procedure requirements, and no reduction in equipment reliability are being made as a result of these changes. Compliance with Crescent Area Ventilation system operability and surveillance requirements will be assured by maintaining them in an Authority controlled procedure. Changes to the Crescent Area Ventilation system will be subject to the requirements of 10 CFR 50.59. Therefore, the proposed changes do not introduce any failure mechanism of a different type than those previously evaluated since there are no changes being made to the facility and do not create the possibility of a new or different type of accident previously evaluated.

(3) The proposed amendment does not involve a reduction in a margin of safety because:

The Crescent Area Ventilation system supports Core Spray, [Low Pressure Coolant Injection] LPCI mode of [Residual Heat Removal] RHR, containment cooling mode of RHR, [High Pressure Coolant Injection] HPCI, and RCIC operability, and Crescent Area Ventilation system inoperability does affect these systems. As a result, the requirement for Crescent Area Ventilation to be operable for these systems to be considered operable is implicit in TS Sections 3.5.A, 3.5.B, 3.5.C, 3.5.E, and the definition of OPERABLE contained in TS Section 1.0.J. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Susan Frant Shankman, Acting

Public Service Electric & Gas Company, Docket No. 50-311, Salem Nuclear Generating Station, Unit No. 2, Salem County, New Jersey

Date of amendment request: May 7, 1996

Description of amendment request: The proposed amendment involves a one-time change to Technical Specification (TS) 3/4.7.6, "Control Room Emergency Air Conditioning System." The change would permit refueling of Salem, Unit 2, with the Control Room Emergency Air Conditioning System (CREACS) inoperable in Modes 5 and 6. The change will expire after the completion of the Control Room and CREACS upgrade, which is currently in progress, and the restart and entry into Mode 4 of Unit 2 from the current outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The CREACS is not an accident initiator. CREACS functions post-accident to provide cooling for Control Room equipment and habitability for operations personnel. Therefore, CREACS has no influence on the probability of any of the previously evaluated accidents or the other events evaluated as listed below.

Event

Fuel Handling Accident (Salem)
Waste Gas or Volume Control Tank Failures
Uncontrolled Boron Dilution
Loss of Offsite Power
Fuel Handling Accident (Hope Creek)
Liquid and Gaseous Waste Releases (Hope Creek)
Loss of Coolant Accident (LOCA) (Hope Creek)
Chemical Storage
Barge Collision
Control Room Internal and External Fire
Loss of Spent Fuel Pool Cooling
Loss of Decay Heat Removal
The Control Area Air Conditioning System (CAACS) and other measures will be available to maintain Control Room Envelope (CRE) ambient temperatures and habitability.

The proposed one-time change does not impact the consequences of an accident previously evaluated based on the following discussions.

The fuel has decayed to such low levels for more than six months that doses associated with the fuel handling accident are well within the limits of GDC [General Design Criteria] 19. There is insufficient activity remaining in either gaseous waste storage or liquid waste storage to force a Control Room evacuation. In the event of a Loss of Offsite Power (LOOP), uncontrolled boron dilution event, loss of spent fuel pool cooling or loss of decay heat removal, CREACS is not required in Modes 5 or 6 to mitigate the consequences of this event and CRE habitability will be maintained.

For a Hope Creek fuel handling accident, gaseous radwaste release of LOCA, dose to Salem Control Room personnel will not exceed GDC 19 limits. PSE&G [Public Service Electric & Gas] will maintain the CAACS [Control Area Air Conditioning System] outside air intakes either isolated or capable of being isolated in the event of a Hope Creek LOCA. The Hope Creek Event Classification Guide [ECG] requires notification of the Salem Control Room in the event of an emergency that has the potential to result in a radioactive release. The Salem Control Room will isolate the outside air intakes if isolation has not already been accomplished.

For the other events evaluated, the need for evacuation is not considered credible for any event with the exception of an internal or external fire. However, the possibility of evacuation of the CRE in the event of an internal or external fire would be no different whether or not CREACS is operating. In the event of an internal fire, CAACS will remain in operation to provide purging of the CRE. For the case of a possible external fire, the need for evacuation is not considered credible because of the short duration of the CREACS outage and improbability of the factors which are necessary to require an evacuation of the Control Room (i.e. wind direction, wind speed, amount of smoke). If an external fire is detected, operator action will be taken to isolate the CRE from outside air while CAACS remains available. In the unlikely event that the Control Room would become uninhabitable due to smoke in the atmosphere, evacuation procedures would be followed as in the case of the internal fire.

The one chemical storage type event which might impact the Control Room, rupture of an ammonium hydroxide tanker, is precluded by administrative controls such that no ammonium hydroxide tanker deliveries will be allowed during the system upgrade period.

The CAACS will maintain the current design function and TS Bases requirements of the CREACS that the ambient air temperature does not exceed the allowable temperature for continuous duty rating for equipment and instrumentation cooled by the system for the combined CRE. The CAACS will be maintained functional while modification to the CREACS is ongoing to provide cooling during normal operation and under postulated accident conditions. Should the temperature in the CRE exceed allowable levels (85 Degrees F), administrative controls will be in place to require restoration of the temperature to within acceptable levels using CAACS, and prevent any Core Alteration activities or positive reactivity changes until the temperature is restored to acceptable levels.

Therefore, the proposed one-time TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The CREACS is not an accident initiator. CREACS functions post-accident to provide cooling for Control Room equipment and habitability for operations personnel. Therefore, CREACS inoperability during Modes 5 and 6 will not result in the creation of a new or different kind of accident from any accident previously evaluated. All pertinent accidents have been assessed and no other scenarios dealing with fuel movement, or the need for an operable CREACS in Mode 5 or 6, have been deemed credible.

Therefore, the proposed one-time change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed one-time change does not significantly reduce the margin of safety as defined in the Bases for the TS because (1) there is no credible event as analyzed in Salem UFSAR [updated final safety analysis report] Chapter 15 which can cause an unacceptable environment in the CRE since the fuel has been decaying for at least six months, (2) fuel movement inside the Fuel Handling Building (FHB) is restricted in accordance with plant TS unless FHB ventilation is operable, (3) dose to Salem control room personnel from a potential Hope Creek fuel handling accident, gaseous radwaste release or Loss of Coolant Accident will not exceed GDC 19 limits (4) the one event which might impact the Control Room, rupture of an ammonium hydroxide tanker, is precluded by administrative controls such that no ammonium hydroxide tanker deliveries will be allowed during the CREACS upgrade period, and (5) in the unlikely event that Control Room evacuation is required, there is no impact on operator ability to mitigate the consequences of an accident in the current plant configuration.

Therefore, the proposed one-time TS change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Southern Nuclear Operating Company, Inc., Docket No. 50-364, Joseph M. Farley Nuclear Plant, Unit 2, Houston County, Alabama

Date of amendment request: March 29, 1996

Description of amendment request: The proposed amendment would revise Technical Specification 3/4.4.6 "Steam Generators" and its associated Bases. Specifically, the steam generator repair limit would be modified to clarify that the appropriate method for determining serviceability for tubes with outside diameter stress corrosion cracking at the tube support plate is by a methodology that more reliably assesses structural integrity. This amendment request is in accordance with NRC's Generic Letter 95-05, "Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of Farley units in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Testing of model boiler specimens for free standing tubes at room temperature conditions shows burst pressures as high as approximately 5000 psi for indications of outer diameter stress corrosion cracking with voltage measurements as high as 26.5 volts. Burst testing performed on pulled tubes, including tubes pulled from Farley Unit 2, with up to 7.5 volt indications show burst pressures in excess of 5300 psi at room temperature. As stated earlier, tube burst criteria are inherently satisfied during normal operating conditions by the presence of the tube support plate. Furthermore, correcting for the effects of temperature on material properties and minimum strength levels (as the burst testing was done at room temperature), tube burst capability significantly exceeds the R.G. [Regulatory Guide] 1.121 criterion requiring the maintenance of a margin of 1.43 times the steam line break pressure differential on tube burst if through-wall cracks are present without regard to the presence of the tube support plate. Considering the existing data base, this criterion is satisfied with bobbin coil indications with signal amplitudes over twice the 2.0 volt voltage-based repair criteria, regardless of the indicated depth measurement. This structural limit is based on a lower 95% confidence level limit of the

data at operating temperatures. The 2.0 volt criterion provides a conservative margin of safety to the structural limit considering expected growth rates of outside diameter stress corrosion cracking at Farley. Alternate crack morphologies can correspond to a voltage so that a unique crack length is not defined by a burst pressure to voltage correlation. However, relative to expected leakage during normal operating conditions, no field leakage has been reported from tubes with indications with a voltage level of under 7.7 volts for a 3/4 inch tube with a 10 volt correlation to 7/8 inch tubing (as compared to the 2.0 volt proposed voltage-based tube repair limit). Thus, the proposed amendment does not involve a significant increase in the probability or consequences of an accident.

Relative to the expected leakage during accident condition loadings, the accidents that are affected by primary-to-secondary leakage and steam release to the environment are Loss of External Electrical Load and/or Turbine Trip, Loss of All AC Power to Station Auxiliaries, Major Secondary System Pipe Failure, Steam Generator Tube Rupture, Reactor Coolant Pump Locked Rotor, and Rupture of a Control Rod Drive Mechanism Housing. Of these, the Major Secondary System Pipe Failure is the most limiting for Farley in considering the potential for off-site doses. The offsite dose analyses for the other events which model primary-to secondary leakage and steam releases from the secondary side to the environment assume that the secondary side remains intact. The steam generator tubes are not subjected to a sustained increase in differential pressure, as is the case following a steam line break event. This increase in differential pressure is responsible for the postulated increase in leakage and associated offsite doses following a steam line break event. In addition, the steam line break event results in a bypass of containment for steam generator leakage. Upon implementation of the voltage-based repair criteria, it must be verified that the expected distributions of cracking indications at the tube support plate intersections are such that primary-to-secondary leakage would result in site boundary dose within the current licensing basis. Data indicate that a threshold voltage of 2.8 volts could result in through-wall cracks long enough to leak at steam line break conditions. Application of the proposed repair criteria requires that the current distribution of a number of indications versus voltage be obtained during the refueling outages. The current voltage is then combined with the rate of change in voltage measurement and a voltage measurement uncertainty to establish an end of cycle voltage distribution and, thus, leak rate during steam line break pressure differential. The leak rate during a steam line break is further increased by a factor related to the probability of detection of the flaws. If it is found that the potential steam line break leakage for degraded intersections planned to be left in service coupled with the reduced allowable specific activity levels result in radiological consequences outside the current licensing basis, then additional tubes will be plugged or repaired to reduce steam line break leakage potential to within the acceptance limit. Thus, the consequences of the most limiting design basis accident are constrained to present licensing basis limits.

2) The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed voltage-based tube support plate elevation steam generator tube repair criteria does not introduce any significant changes to the plant design basis. Use of the criteria does not provide a mechanism that could result in an accident outside of the region of the tube support plate elevations. Neither a single or multiple tube rupture event would be expected in a steam generator in which the repair criteria have been applied during all plant conditions. The bobbin probe signal amplitude repair criteria are established such that operational leakage or excessive leakage during a postulated steam line break condition is not anticipated. Southern Nuclear has previously implemented a maximum leakage limit of 150 gpd per steam generator. The R.G. 1.121 criterion for establishing operational leakage limits that require plant shutdown are based upon leak-before-break considerations to detect a free span crack before potential tube rupture. The 150 gpd limit provides for leakage detection and plant shutdown in the event of the occurrence of an unexpected single crack resulting in leakage that is associated with the longest permissible crack length. R.G. 1.121 acceptance criteria for establishing operating leakage limits are based on leak-before-break considerations such that plant shutdown is initiated if the leakage associated with the longest permissible crack is exceeded. The longest permissible crack is the length that provides a factor of safety of 1.43 against bursting at steam line break pressure differential. A voltage amplitude of approximately 9 volts for typical outside diameter stress corrosion cracking corresponds to meeting this tube burst requirement at the 95% prediction interval on the burst correlation. Alternate crack morphologies can correspond to a voltage so that a unique crack length is not defined by the burst pressure versus voltage correlation. Consequently, a typical burst pressure versus through-wall crack length correlation is used below to define the "longest permissible crack" for evaluating operating leakage limits.

The single through-wall crack lengths that result in tube burst at 1.43 times steam line break pressure differential and steam line break conditions are about 0.54 inch and 0.84 inch, respectively. Normal leakage for these crack lengths would range from about 0.4 gallons per minute to 4.5 gallons per minute, respectively, while lower 95% confidence level leak rates would range from about 0.06 gallons per minute to 0.6 gallons per minute, respectively.

An operating leak rate of 150 gpd per steam generator has been implemented. This leakage limit provides for detection of 0.4 inch long cracks at nominal leak rates and 0.6 inch long cracks at the lower 95% confidence level leak rates. Thus, the 150 gpd limit provides for plant shutdown prior to reaching critical crack lengths for steam line break conditions at leak rates less than a lower 95% confidence level and for three times normal operating pressure differential at less than nominal leak rates.

Considering the above, the implementation of voltage-based plugging criteria will not create the possibility of a new or different kind of accident from any previously evaluated.

3) The proposed license amendment does not involve a significant reduction in margin of safety.

The use of the voltage-based tube support plate elevation repair criteria is demonstrated to maintain steam generator tube integrity commensurate with the requirements of Generic Letter 95-05 and R.G. 1.121. R.G. 1.121 describes a method acceptable to the NRC staff for meeting GDC [Generic Design Criteria] 2, 14, 15, 31, and 32 by reducing the probability of the consequences of steam generator tube rupture. This is accomplished by determining the limiting conditions of degradation of steam generator tubing, as established by inservice inspection, for which tubes with unacceptable cracking should be removed from service. Upon implementation of the criteria, even under the worst case conditions, the occurrence of outside diameter stress corrosion cracking at the tube support plate elevations is not expected to lead to a steam generator tube rupture event during normal or faulted plant conditions. The most limiting effect would be a possible increase in leakage during a steam line break event. Excessive leakage during a steam line break event, however, is precluded by verifying that, once the criteria are applied, the expected end of cycle distribution of crack indications at the tube support plate elevations would result in minimal, and acceptable primary to secondary leakage during the event and, hence, help to demonstrate radiological conditions are less than an appropriate fraction of the 10 CFR [Part] 100 guideline.

The margin to burst for the tubes using the voltage-based repair criteria is comparable to that currently provided by existing Technical Specifications.

In addressing the combined effects of LOCA [loss-of-coolant accident] + SSE [safe-shutdown earthquake] on the steam generator component (as required by GDC 2), it has been determined that tube collapse may occur in the steam generators at some plants. This is the case as the tube support plates may become deformed as a result of lateral loads at the wedge supports at the periphery of the plate due to either the LOCA rarefaction wave and/or SSE loadings. Then, the resulting pressure differential on the deformed tubes may cause some of the tubes to collapse.

There are two issues associated with steam generator tube collapse. First, the collapse of steam generator tubing reduces the RCS [reactor coolant system] flow area through the tubes. The reduction in flow area increases the resistance to flow of steam from the core during a LOCA which, in turn, may potentially increase Peak Clad Temperature (PCT). Second, there is a potential the partial through-wall cracks in tubes could progress to through-wall cracks during tube deformation or collapse or that short through-wall indications would leak at significantly higher leak rates than included in the leak rate assessments.

Consequently, a detailed leak-before-break analysis was performed and it was concluded that the leak-before-break methodology (as permitted by GDC 4) is applicable to the Farley reactor coolant system primary loops and, thus, the probability of breaks in the primary loop piping is sufficiently low that they need not be considered in the structural design basis of the plant. Excluding breaks in the RCS primary loops, the LOCA loads from the large branch line breaks were analyzed at Farley and were found to be of insufficient magnitude to result in steam generator tube collapse or significant deformation.

Regardless of whether or not leak-before-break is applied to the primary loop piping at Farley, any flow area reduction is expected to be minimal (much less than 1%) and PCT margin is available to account for this potential effect. Based on analyses' results, no tubes near wedge locations are expected to collapse or deform to the degree that secondary to primary in-leakage would be increased over current expected levels. For all other steam generator tubes, the possibility of secondary-to-primary leakage in the event of a LOCA + SSE event is not significant. In actuality, the amount of secondary-to-primary leakage in the event of a LOCA + SSE is expected to be less than that originally allowed, i.e., 500 gpd per steam generator. Furthermore, secondary-to-primary in-leakage would be less than primary-to-secondary leakage for the same pressure differential since the cracks would tend to tighten under a secondary-to-primary pressure differential. Also, the presence of the tube support plate is expected to reduce the amount of in-leakage.

Addressing the R.G. 1.83 considerations, implementation of the tube repair criteria is supplemented by 100% inspection requirements at the tube support plate elevations having outside diameter stress corrosion cracking indications, reduced operating leakage limits, eddy current inspection guidelines to provide consistency in voltage normalization, and rotating probe inspection requirements for the larger indications left in service to characterize the principle degradation mechanism as outside diameter stress corrosion cracking.

As noted previously, implementation of the tube support plate elevation repair criteria will decrease the number of tubes that must be taken out of service with tube plugs or repaired. The installation of steam generator tube plugs or tube sleeves would reduce the RCS flow margin, thus implementation of the voltage-based repair criteria will maintain the margin of flow that would otherwise be reduced through increased tube plugging or sleeving.

Considering the above, it is concluded that the proposed change does not result in a significant reduction in margin with respect to plant safety as defined in the Final Safety Analysis Report or any bases of the plant Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: Herbert N. Berkow

Southern Nuclear Operating Company, Inc., Docket No. 50-364, Joseph M. Farley Nuclear Plant, Unit 2, Houston County, Alabama

Dote of amendment request: April 22, 1996

Description of amendment request: The proposed amendment would implement a new F* criterion based on maintaining existing safety margins for steam generator tube structural integrity concurrent with allowance for NDE (nondestructive examination) eddy current uncertainty.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change retains the existing margin in the F* distance used to meet regulatory guidance of draft Regulatory Guide 1.121 and only changes the amount of assumed NDE eddy current uncertainty based on the type of eddy current technology utilized in the inspection. Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated. WCAP 11306, Revision 2, "Tubesheet Region Plugging Criterion for the Alabama Power Company Farley Nuclear Station Unit 2 Steam Generators," provides adequate basis for the F* distance proposed of 1.54 plus allowance for eddy current uncertainty measurement. Since the value of 1.54 inches was used in the analysis no new or different kind of accident from any accident previously evaluated will be created.

3. The proposed change does not involve a significant reduction in a margin safety. Since the value of 1.54 inches already is used in the steam generator tube pull out analysis, there is no significant change to a margin safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: Herbert N. Berkow

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, MissouriDate of application request: February 23, 1996, as supplemented by letter dated April 24, 1996.

Description of amendment request: The amendment would add a footnote in the license for Callaway Plant, Unit No. 1 to indicate that Union Electric Company has entered into a merger agreement with CIPSCO Incorporated which provides for Union Electric Company to become a wholly-owned operating company of Ameren Corporation, a registered public utility holding company under the Public Utility Holding Company Act of 1935, as amended. After the merger, Union Electric Company would continue to own and operate the Callaway Plant as an operating company subsidiary of Ameren Corporation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not affect accident initiators or assumptions. The radiological consequences of any accident previously evaluated remain unchanged. The change is an administrative change to reflect Union Electric's status as an operating company subsidiary of Ameren.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not reduce the margin of safety assumed in any accident analysis or affect any safety limits. The change is administrative and reflects Union Electric's status as an operating company subsidiary of Ameren.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not reduce the margin of safety assumed in any accident

analysis or affect any safety limits. The change is administrative and reflects Union Electric's status as an operating company subsidiary of Ameren.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: William H. Bateman

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: April 30, 1996

Description of amendment request: The proposed amendment would revise Kewaunee Nuclear Power Plant (KNPP) Technical Specification (TS) 3.1.b.1, its associated bases, and Figure TS 3.1-4 by extending the low temperature overpressure protection (LTOP) requirements through the end of operating cycle 33 or 33.41 effective full power years. The only technical change being proposed is the substitution of end of life fluence for the end of operating cycle 21 fluence.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The LTOP setpoint and revised P/T [pressure/temperature] limits reflected in proposed Figure TS 3.1-4 ensure that the Appendix G pressure/temperature limits are not exceeded, and therefore, help ensure that RCS integrity is maintained. The changes do not modify the reactor coolant system pressure boundary, nor make any physical changes to the facility design, material, construction standards, or setpoints. The LTOP valve setpoint remains set at 500 psi. The LTOP enabling temperature based on Figure TS 3.1-2 is 338°F and is more conservative than a value of 303° Figure TS 3.1-4. The LTOP enabling temperature based on Figure TS 3.1-2 remains unchanged by this PA [proposed amendment]. The probability of a LTOP event occurring is independent of the pressure-temperature limits for the RCS pressure boundary. Therefore, the probability of a LTOP event occurring remains unchanged.

The calculation of pressure temperature limits in accordance with approved regulatory methods provides assurance that reactor pressure vessel fracture toughness requirements are met and the integrity of the RCS [reactor coolant system] pressure boundary is maintained. Similar methodology was used in calculations to support approved amendment 120 to the Kewaunee Technical Specifications dated April 26, 1995. The material property basis, including chemistry factor and initial reference temperature for the unirradiated material (RT_{NDT}), used for this PA is the same as that used in the current TS. The only technical change being made in this PA is the use of end of life fluence.

The use of predicted fluence values through the end of operating cycle 33 is appropriately considered within the calculations in accordance with standard industry methodology previously docketed under WCAP 13227 and WCAP 14279. The neutron exposure projections utilized for calculation of the reference temperature were multiplied by a factor of 1.11 to adjust for biases observed between cycle specific calculations and the results of neutron dosimetry for the four surveillance capsules removed from the KNPP reactor. The factor of 1.11 was derived by taking the average of the measured to calculation (M/C) flux ratios obtained from the dosimetry results of capsules V, R, P, and S removed from the KNPP reactor vessel. The resulting effect of using predicted fluence values through the end of cycle 33 instead of cycle 21 is to require the plant to evaluate LTOP transients to more limiting requirements. The proposed PT limits are shifted to a lower pressure and higher temperature, which is more conservative.

The changes do not adversely affect the integrity of the RCS such that its function in the control of radiological consequences is affected. In addition, the changes do not affect any fission barrier. The changes do not degrade or prevent the response of the LTOP relief valve or other safety related system to accidents described in Chapter 14 of the USAR. In addition, the changes do not alter any assumption previously made in the radiological consequences evaluations nor affect the mitigation of the radiological consequences of an accident described in the USAR. Therefore, the consequences of an accident previously evaluated in the USAR will not be increased.

Thus, the operation of KNPP Unit 1 in accordance with the PA does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Create the possibility of a new or different type of accident from an accident previously evaluated.

The Appendix G pressure temperature limitations were prepared using methods derived from the ASME Boiler and Pressure Vessel Code and the criteria set forth in NRC Regulatory Standard Review Plan 5.3.2. The changes do not cause the initiation of any accident nor create any new credible limiting failure for safety-related systems and components. The changes do not result in any event previously deemed incredible being made credible. As such, it does not create the possibility of an accident different than any evaluated in the USAR.

The changes do not have any effect on the ability of the safety-related systems to perform their intended safety functions. The changes do not create failure modes that could adversely impact safety-related equipment. Therefore, it will not create the possibility of a malfunction of equipment important to safety different than previously evaluated in the USAR. Thus, the PA does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The use of Paragraph (c)(2)(ii)(A) of 10 CFR 50.61, initial reference temperature of -50°F, and the fluence values through EOC [end of cycle] 33 does not modify the reactor coolant system pressure boundary, nor make any physical changes to the LTOP setpoint or system design. Proposed Figure TS 3.1-4 was prepared in accordance with regulatory requirements and requires evaluation of LTOP events to more limiting requirements of neutron exposure projections of 33.41 EFPY instead of 18.40 EFPY.

Therefore, the PA does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Involve a significant reduction in the margin of safety.

The Appendix G pressure temperature limitations were prepared using methods derived from the ASME Boiler and Pressure Vessel Code and the criteria set forth in NRC Regulatory Standard Review Plan 5.3.2. These documents along with the calculational limitations specified in 10 CFR 50.61 are an acceptable method for implementing the requirements of 10 CFR 50 Appendices G and H. Inherent conservatism in the P/T limits resulting from these documents include:

a. An assumed defect in the reactor vessel wall with a depth equal to 1/4 of the thickness of the vessel wall (1/4T) and a length equal to 1-1/2 times the thickness of the vessel wall.

b. Assumed reference flaw oriented in both longitudinal and circumferential directions and limiting material property. At KNPP, the only weld in the core region is oriented in the circumferential direction.

c. A factor of safety of 2 is applied to the membrane stress intensity factor.

d. The limiting toughness is based upon a reference value (K_{IR}) which is a lower bound on the dynamic crack initiation or arrest toughness.

e. A 2-sigma margin term is applied in determining the adjusted reference temperature (ART) that is used to calculate the limiting toughness.

Similar methodology was used in calculations to support approved amendment 120 dated April 26, 1995. Beyond the conservatism described above, WPSC [Wisconsin Public Service Corporation] has incorporated the following additional margin in preparing this PA:

a. The neutron exposure projections were multiplied by a factor of 1.11 to adjust for biases observed between cycle specific calculations and the results of neutron dosimetry for the four surveillance capsules removed from the KNPP reactor. The factor of 1.11 was derived by taking the average of the measured to calculation (M/C) flux ratios obtained from the dosimetry results of capsules V, R, P, and S removed from the KNPP reactor vessel.

b. The calculated material-specific chemistry factor value is 191.27 and is based on KNPP surveillance capsule data from capsules V, R, and P. Utilization of KNPP's most recent surveillance capsule data from capsule S results in chemistry factor value of 190.6. Consistent with calculation C10689, Revision 1 the value used for chemistry factor in this PA remains 191.27, which is conservative.

c. The LTOP enabling temperature based on Figure TS 3.1-2 is 338°F and is more conservative than a value of 303°F which is supported by proposed Figure TS 3.1-4. The LTOP enabling temperature based on Figure TS 3.1-2 remains unchanged by this PA.

d. The reactor coolant pump starting restrictions of TS 3.1.a.1.c remain in place.

An alternative methodology to the safety margins required by Appendix G to 10 CFR Part 50 has been developed by the ASME Working Group on Operating Plant Criteria. This methodology is contained in ASME Code Case N-514. The Code Case N-514 provides criteria to determine pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of the relief valve used for LTOP. Specifically, the ASME Code Case N-514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110% of the P/T limits of the existing ASME Appendix G; and redefines the enabling temperature as a coolant temperature less than 200°F or a reactor vessel metal temperature less than RT_{NDT} + 50°F greater. Code Case N-514, "Low Temperature Overpressure Protection," has been approved by the ASME Code Committee but not yet approved for use in Regulatory Guide 1.147. The content of this code case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI. It is expected that when the NRC revises 10 CFR 50.55a, it will endorse the 1993 Addenda and Appendix G of Section XI into the regulations. As stated above, this PA utilizes Appendix G limits and an enabling temperature corresponding to a reactor vessel metal temperature less than RT_{NDT} + 90°F, which is more conservative than the alternative methodology contained in Code Case N-514.

The revised calculations meet the NRC acceptance criteria for the LTOP setpoint and system design as described in NRC Safety Evaluation Report (SER) dated September 6, 1995 which concluded that "the spectrum of postulated pressure transients would be mitigated...such that the temperature pressure limits of Appendix G to 10 CFR 50 are maintained."

Utilization of methodology set forth in the ASME Boiler and Pressure Vessel Code, NRC Regulatory Standard Review Plan 5.3.2, 10 CFR 50.61, and 10 CFR 50 Appendices G and H with the above additional margins ensures that proper limits and safety factors are maintained. Thus, the PA does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin 54311-7001

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701-1497

NRC Project Director: Gail H. Marcus

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: May 1, 1996

Description of amendment request: The proposed amendment would revise Kewaunee Nuclear Power Plant (KNPP) Technical Specification (TS) 4.2.b, "Steam Generator Tubes," its associated bases, and Figure TS 4.2-1 by redefining the pressure boundary for Westinghouse mechanical hybrid expansion joint (HEJ) steam generator (SG) tube sleeves. The proposed amendment supersedes in its entirety a previously submitted proposed amendment dated October 6, 1995, which was published in the **Federal Register** on November 8, 1995 (60 FR 56372).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist.

1. Operation of the KNPP in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Mechanical testing shows inherent structural integrity of the HEJ [hybrid expansion joint] upper joint such that the tube rupture capability recommendations of RG [Regulatory Guide] 1.121 are met, even for instances of 100-percent throughwall, 360 degree degradation in the HRLT [hardroll lower transition] region. Structural test results are documented in WCAPs-14157, -14157 Addendum 1, -14446 and -14641. Based on this test data, the structural recommendations of RG 1.121 are satisfied when there is a difference of at least 0.003 inch, between the maximum hardroll diameter of the sleeve, and the diameter at the elevation of the PTI [parent tube indication] center line; i.e. there is an interference lip of 0.003 inch or more. The proposed pressure boundary will allow PTIs located such that there is a minimum diameter change of 0.003 inch (not including an allowance for measurement uncertainty) between the maximum point of the sleeve hardroll, and the diameter at the elevation of the PTI peak amplitude to remain in service. Based on the high degree of structural integrity of the HEJ upper joint, it can be concluded that application of the revised pressure boundary criteria will not result in an increased probability of an accident previously evaluated.

Each sleeved tube with a PTI located in the HRLT such that there is a change in diameter of 0.003 inch to 0.013 inch, will be assigned a conservatively bounding primary-to-secondary SLB [steam line break] leakage value of 0.025 gpm per indication. Indications located such that there is a change in diameter of greater than 0.013 inch will not contribute to the SLB leakage. The total number of indications remaining in service will be limited such that the primary-to-secondary leakage during a postulated SLB will not exceed a small fraction of the 10 CFR Part 100 guidelines. For KNPP this has been calculated to be 34.0 gpm for the faulted loop. Therefore, it can be concluded that application of the revised pressure boundary criteria will not increase the consequences of an accident previously evaluated.

2. The proposed license amendment request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the revised pressure boundary will not introduce a change to the design basis or operation of the plant. Mechanical testing of degraded sleeve joints supports the conclusions that the joint retains structural integrity (tube burst) capability consistent with RG 1.121, and leakage integrity with regards to a small fraction of the 10 CFR Part 100 guidelines. As with the initial installation of the sleeves, implementation of the relocated pressure boundary does not interact with other portions of the reactor coolant system. Any hypothetical accident as a result of potential PTIs is bounded by the existing tube rupture accident analysis. Neither the sleeve design nor implementation of the redefined pressure boundary affects any other component or location of the tube outside of the immediate area repaired. Therefore application of the revised pressure boundary criteria will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendment does not involve a significant reduction in the margin of safety.

The safety factors used in establishment of the HEJ sleeved tube pressure boundary are consistent with the safety factors in the ASME Boiler and Pressure Vessel Code used in SG [steam generator] design. Based on the sleeve-to-tube geometry, it is unrealistic to consider that application of the revised pressure boundary could result in single tube leak rates exceeding the normal makeup capacity during normal operating conditions. The pressure boundary developed in WCAPs-14446 and -14641 have been developed using the methodology of RG 1.121. The performance characteristics of the postulated degraded parent tubes of HEJ sleeve/tube joints have been verified by testing to retain structural integrity and preclude significant leakage during normal and postulated accident conditions. Testing indicates that postulated circumferentially separated tubes which the pressure boundary [addresses] would not experience axial displacement during either normal operation or SLB conditions. The existing offsite dose evaluation performed for KNPP in support of the voltage based repair criteria for axial ODSCC [outside diameter stress corrosion cracking] at TSP [tube support plate] intersections established a faulted loop primary to secondary leak rate of 34.0 gpm. Following implementation of the criteria, postulated leakage from all sources must not exceed 34.0 gpm in the faulted loop. Maintenance of this limit will ensure that offsite doses would not exceed the currently accepted limit of a small fraction of the 10 CFR Part 100 guidelines. The pressure boundary definition uses a conservatively established "per indication" leak rate for estimation of SLB leakage. This leak rate is applied to all indications left in service within the HRLT, regardless of indications length and throughwall extent. Application of the revised pressure boundary criteria will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin 54311-7001.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701-1497

NRC Project Director: Gail H. Marcus

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: July 29, 1994, as superseded by letter dated September 15, 1995, and supplements dated March 8, 1996, and April 18, 1996

Description of amendment request: The proposed amendment revises TS 3/4.8.1 and its associated Bases to improve overall emergency diesel generator reliability and availability.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

These proposed changes do not involve a change in the operational limits or physical design of the emergency power system. Emergency diesel generator operability and reliability will continue to be assured while minimizing the number of required emergency diesel generator starts. Also, emergency diesel generator reliability will be enhanced by minimizing severe test conditions which can lead to premature failures.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

These proposed changes do not involve a change in the operational limits or physical design of the emergency power system. The performance capability of the emergency diesel generator will not be affected. Emergency diesel generator reliability and availability will be improved by the implementation of the proposed changes. There is no actual impact on any accident analysis.

3. The proposed change does not involve a significant reduction in a margin of safety.

These proposed change do not involve a change in the operational limits or physical design of the emergency power system. The performance capability of the emergency diesel generator will not be affected. Emergency diesel generator reliability and availability will be improved by the implementation of the proposed changes. No margin of safety is reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: William H. Bateman

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: May 1, 1996

Description of amendment request: This license amendment request proposes to revise Section 6.0 of the technical specifications to reflect position title changes within the Wolf Creek Nuclear Operating Corporation (WCNOC) organization.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a significant increase in the probability of consequences of an accident previously evaluated. These changes involve administrative changes to the WCNOC organization and to the position qualification of plant personnel.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This change is administrative in nature and does not involve a change to the installed plant systems or the overall operating philosophy of Wolf Creek Generating Station.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not involve a significant reduction in a margin of safety. This change does not involve any changes in overall organizational commitments. A position title change alone does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: William H. Bateman

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: April 25, 1996

Brief description of amendment request: The amendment relocates the technical specification (TS) Traversing In-Core Probe System Limiting Condition for Operation 3/4.3.7.7 and its Bases 3/4.3.7.7 to the Technical Requirements Manual, and modifies Note (f) of TS Table 4.3.1.1-1.

Date of publication of individual notice in **Federal Register:** May 8, 1996 (61 FR 20840)

Expiration date of individual notice: June 7, 1996

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: April 26, 1996

Brief description of amendment request: The proposed amendment would correct minor technical and administrative errors in the Improved Technical Specifications prior to its implementation.

Date of individual notice in **Federal Register:** May 9, 1996 (61 FR 21213)

Expiration date of individual notice: June 10, 1996

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: February 1, 1996

Brief description of amendments: These amendments revised (1) Technical Specifications (TS) 3/4.1.1.1, 6.9.1.9, and 6.9.1.10 to relocate the shutdown margin (reactor trip breakers open) to the Core Operating Limits Report; (2) TS 3/4.3.2 (Tables 3.3-3 and 3.3-4) to specify an additional restriction for the allowed low-pressurizer-pressure trip setpoint when reducing reactor coolant (RCS) system pressure in Mode 3; (3) TS Section 2.2.1 (Table 2.2-1) to make it consistent with the footnote in TS Tables 3.3-3 and 3.3-4; and (4) TS Sections 3/4.5.2 and 3/4.5.3 to require two emergency core cooling system subsystems to be operable in Mode 3 whenever the RCS cold-leg temperature is equal to or above 485°F. The Table of Contents and the Bases are also revised to reflect these changes.

Date of issuance: April 30, 1996

Effective date: April 30, 1996, to be implemented within 45 days of issuance

Amendment Nos.: Unit 1 - 106; Unit 2 - 98; Unit 3 - 78

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 27, 1996 (61 FR 13522) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 30, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: December 27, 1995

Brief description of amendments: These amendments modify Tables 3.3-11 and 4.3-7 of Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS-1 and BVPS-2) Technical Specification 3.3.3.8 (Accident Monitoring Instrumentation) such that only one valve position indication system for the power-operated relief valves and safety valves is required to be operable. Minor editorial changes to BVPS-1 TS 3.3.3.8 and its associated Action Statements are also being made. These changes make the requirements of TS 3.3.3.8 consistent with the NRC's Improved Standard Technical Specifications (NUREG-1431, Revision 1) and with the guidance of Regulatory Guide 1.97, NUREG-0578, and NUREG-0737.

Date of issuance: May 1, 1996

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment Nos.: 199 and 81

Facility Operating License Nos. DPR-66 and NPF-73: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 31, 1996 (61 FR 3499) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 1, 1996No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Duquesne Light Company, et al., Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: February 12, 1996

Brief description of amendment: The amendment revises Technical Specification (TS) 4.6.2.2.d to delete the reference to the specific test acceptance criteria for the Containment Recirculation Spray Pumps and replaces the specific test acceptance criteria with reference to the requirements of the Inservice Testing (IST) Program. In addition, the 18-month test frequency is replaced with the test frequency requirements specified in the IST Program. The amendment also revises the Bases for TS 4.6.2.2.d to describe this revision to TS 4.6.2.2.d.

Date of issuance: May 7, 1996

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No: 200

Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 13, 1996 (61 FR 10393) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 7, 1996 No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Nuclear Generating Plant, Unit No. 3, Citrus County, Florida

Date of application for amendments: March 21, 1996 as supplemented April 8, 15, and 18, 1996.

Description of amendment request: The proposed amendment provides for interim repair criteria for volumetric intergranular attack (IGA) indications in the once-through-steam generators (OTSG). The interim repair criteria is based on bobbin coil voltage response and motorized rotating pancake coil probe dimensional measurements. The amendment would be applicable for IGA indications within the region below the first tube support plate and the secondary face of the lower tubesheet (first span) of the OTSG and for one cycle only until Refuel 11.

Date of issuance: April 30, 1996

Effective date: April 30, 1996Amendment Nos. 154

Facility Operating License No. DPR-72: Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: Yes (61 FR 13888). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by April 29, 1996, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of amendment. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated April 30, 1996

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

Indiana Michigan Power Company, Docket No. 50-316, Donald C. Cook, Nuclear Plant, Unit No. 2, Berrien County, Michigan

Date of application for amendment: March 12, 1996 (AEP:NRC:1248)

Brief description of amendment: The amendment removes the technical specifications related to shutdown and control rod position indication while in shutdown modes 3, 4, and 5.

Date of issuance: May 2, 1996

Effective date: May 2, 1996, with full implementation within 45 days

Amendment No.: 194

Facility Operating License No. DPR-74. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** March 27, 1996 (61 FR 13527) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 2, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: May 5, 1995 and July 14, 1995, supplemented by letter dated March 5, 1996

Brief description of amendment: The amendment revised the Technical Specifications to 1) verify that the redundant diesel generator is operable upon the loss of one diesel generator, and implement provisions to verify that the operable diesel generator does not have a common cause failure; 2) incorporate provisions to allow a modified start for the diesel generators; and 3) remove the requirement that the reactor power level be reduced to 25% of rated power upon loss of both diesel generator units or both incoming power sources (start-up and emergency transformers). In addition, the period of time allowed for continued reactor operation with both diesels inoperable was reduced from 24 to two hours.

Date of issuance: April 29, 1996

Effective date: April 29, 1996

Amendment No.: 175

Facility Operating License No. DPR-46: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 27, 1995 (60 FR 49939) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 29, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Memorial Library, 1810 Courthouse Avenue, Auburn, NE 68305.

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: September 22, 1995

Description of amendment request: The amendment changes the ACTION specified in Table 3.3-3, Engineered Safety Features Actuation System Instrumentation, from ACTION 18 to ACTION 15 for Functional Unit 8.b, Automatic Switchover to Containment Sump - RWST Level Low-Low.

Date of issuance: May 7, 1996,

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 47

Facility Operating License No. NPF-86. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 6, 1995 (60 FR 62493) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 7, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: May 26, 1995, as supplemented October 20, 1995, and May 3, 1996.

Brief description of amendment: The amendment modifies Technical Specification (TS) 3.8.1.2, "Electrical Power Systems, Shutdown," TS 3.8.2.2, "Electrical Power Systems, A.C. Distribution - Shutdown," and TS 3.8.2.4, "Electrical Power Systems, D.C. Distribution - Shutdown," to provide operational flexibility as well as consistency between action statements and to eliminate certain surveillance requirements that are not applicable in Mode 5 or 6.

The proposed changes relating to TS 3.8.1.1, "Electrical Power Systems, A.C. Sources, Operating," are not included in this amendment since this portion of the TS change is still under review by the staff and will be addressed at a later date.

Date of issuance: May 6, 1996

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 197

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 6, 1995 (60 FR 62493) The October 20, 1995, letter formally withdrew the need for exigent handling of the May 26, 1995, request and requested an additional change to TS 3.8.2.4. The May 3, 1996, letter withdrew a portion of the initial request which did not affect the initial proposed no significant hazards consideration. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 6, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360, and Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, CT 06385.

Power Authority of the State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: March 14, 1996

Brief description of amendment: The amendment allows a one-time extension of the intervals for the pressurizer safety valve setpoint and snubber functional testing that is due in May 1996.

Date of issuance: May 3, 1996

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 165

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 3, 1996, (61 FR 14835) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 3, 1996.No significant hazards consideration comments received: No

Local Public Document Room locotion: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of applicotion for amendments: January 4, 1996

Brief description of amendments: The amendments change Technical Specification 3/4.8.2.5, "28-Volt D.C. Distribution - Operating." The amendment for Unit 1 makes Unit 1 requirements similar to Unit 2 by defining the specific battery chargers that are required for each train and by restricting the use of the backup battery charger to 7 days. The amendments for both units also require that the 28-Volt DC bus be energized for that bus to be OPERABLE.

Date of issuance: April 29, 1996

Effective date: Both units, as of date of issuance, to be implemented within 60 days.Amendment Nos. 182 and 163

Facility Operating License Nos. DPR-70 and DPR-75. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 14, 1996 (61 FR 5818) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 29, 1996No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: September 6, 1995, as supplemented by letters dated January 30, 1996, March 27, 1996, and April 2, 1996.

Brief description of amendment: The amendment revises TS 5.3.1 to reflect a change in the maximum initial enrichment for reload fuel, subject to the integral fuel burnable absorber (IFBA) requirements, and a change in the maximum fuel enrichment not requiring IFBAs. The amendment also changes the maximum reference $k_{infinity}$ in TS 5.6.1.1 for fuel storage in Region 1 of the spent fuel pool and revises TS Figure 3.9-1 to reflect a change to the maximum initial enrichment for fuel stored in Region 2 of the spent fuel pool.

Date of issuance: April 30, 1996

Effective date: April 30, 1996, to be implemented within 30 days from the date of issuance.

Amendment No.: 109

Facility Operating License No. NPF-30: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 8, 1995 (60 FR 56372). The January 30, 1996, March 27, 1996, and April 2, 1996, supplemental letters provided additional clarifying information and did not change the original no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 30, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: February 9, 1996

Brief description of amendment: The amendment revised Technical Specification 5.3.1 to allow the use of ZIRLO clad fuel rods and ZIRLO filler rods.

Date of issuance: April 30, 1996

Effective date: April 30, 1996, to be implemented within 30 days of issuance.

Amendment No.: 110

Facility Operating License No. NPF-30: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 28, 1996 (61 FR 7558) The Commission's related

evaluation of the amendment is contained in a Safety Evaluation dated April 30, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: January 30, 1996

Brief description of amendments: These amendments modify the Technical Specifications requirements for the sampling of the reactor coolant for dissolved oxygen chlorides and fluorides.

Date of issuance: 209 and 209

Effective date: April 29, 1996 Amendment Nos. 209 and 209

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 27, 1996 (61 FR 13533) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 29, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: January 19, 1996, as supplemented by letter dated March 19, 1996.

Brief description of amendment: The amendment modifies the Technical Specifications for leak tests of containment isolation valves. The amendment replaces the current specified surveillance intervals for containment leak testing with new surveillance requirements to conduct containment leak testing according to a performance-based containment leak test program.

Date of issuance: May 8, 1996

Effective date: May 8, 1996, to be implemented within 30 days of issuance.

Amendment No.: 144

Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 14, 1996 (61 FR 5820) The March 19, 1996, supplemental letter provided additional clarifying information and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 8, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Dated at Rockville, Maryland, this 15th day of May 1996.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 96-12691 Filed 5-21-96; 8:45 am]

BILLING CODE 7590-01-F

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Industry Policy and Sector/Functional Advisory Committee Meetings

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Industry Policy and Sector/Functional Advisory Committee meetings.

SUMMARY: The meetings will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to section 2155(f)(2) of title 19 of the United States Code, the U.S. Trade Representative has determined that these meetings will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, these meetings will be closed to the public.

DATES: The period of March 1, 1996 to March 1, 1998.

ADDRESSES: All meetings will be held at the U.S. Department of Commerce, 14th Street and Independence Avenue, Washington, D.C. 20230, unless an alternate site is necessary.

FOR FURTHER INFORMATION CONTACT: Ms. Phyllis Shearer Jones, Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison, Office of the United States Trade Representative at (202) 395–6120 or Wendy Smith, Director of the Trade Advisory Center, Department of Commerce at (202) 482–3268.

Charlene Barshefsky,

Acting United States Trade Representative.

[FR Doc. 96–12858 Filed 5–21–96; 8:45 am]

BILLING CODE 3190–01–M

PRESIDENTIAL ADVISORY COMMITTEE ON GULF WAR VETERANS' ILLNESSES

Notice of Open Meeting

AGENCY: Presidential Advisory Committee on Gulf War Veterans' Illnesses.

SUMMARY: This notice is hereby given to announce an open meeting of a panel of the Presidential Advisory Committee on Gulf War Veterans' Illnesses. The panel will discuss scientific and clinical issues related to reproductive health and Gulf War veterans and will receive comment from members of the public. Dr. Joyce C. Lashof, Advisory Committee chair, will chair this panel meeting.

DATES: June 17, 1996, 9:30 a.m.–4:15 p.m.; June 18, 1996, 8:30 a.m.–12:30 p.m.

PLACE: Renaissance Madison Hotel, 515 Madison Street, Seattle, WA 98104.

SUPPLEMENTARY INFORMATION: The President established the Presidential Advisory Committee on Gulf War Veterans' Illnesses by Executive Order 12961, May 26, 1995. The purpose of this Advisory Committee is to review and provide recommendations on the full range of government activities associated with Gulf War veterans' illnesses. The Advisory Committee reports to the President through the Secretary of Defense, the Secretary of Health and Human Services, and the Secretary of Veterans Affairs. Advisory Committee members have expertise relevant to the functions of the Committee and are appointed by the President from non-Federal sectors.

Tentative Agenda

Monday, June 17, 1996.

9:30 a.m. Call to order and opening remarks
9:40 a.m. Public comment
10:40 a.m. Break
11:00 a.m. Public comment (cont.)
12:00 .m. Lunch
1:15 p.m. Biological plausibility: teratology, ovarian toxicity, and spermatotoxicity
2:00 p.m. Reproductive toxicology, hazard assessment, and the Gulf War
2:45 p.m. Break
3:00 p.m. Epidemiology of infertility, subfertility, fetal loss, and birth defects in the U.S.
3:35 p.m. Evaluating rates of congenital anomalies in children of Gulf War veterans
4:15 p.m. Recess

Tuesday, June 18, 1996

8:30 a.m. Call to order
8:35 a.m. Assessing reproductive health in special populations
9:55 a.m. Diagnosis, defining syndromes, determining prevalence, and surveillance
10:45 a.m. Break
11:00 a.m. Genetic services, referral, and outreach: Department of Veterans Affairs
11:40 a.m. Genetic services, referral, and outreach: Department of Defense
12:15 p.m. Committee and staff discussion
12:30 p.m. Adjourn

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Members of the public who wish to make oral statements should contact the Advisory Committee at the address or telephone number listed below at least five business days prior to the meeting. Reasonable provisions will be made to include on the agenda presentations from individuals who have not yet had an opportunity to address the Advisory Committee. Priority will be given to Gulf War veterans and their families. The panel chair is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. People who wish to file written statements with the Advisory Committee may do so at any time.

FOR FURTHER INFORMATION CONTACT: John D. Longbrake, Presidential Advisory Committee on Gulf War Veterans' Illnesses, 1411 K Street, N.W., suite 1000, Washington, DC 20005–3404, Telephone: (202) 761–0066, Fax. (202) 761–0310.

Dated: May 17, 1996.

Carol A. Bock,

Federal Register Liaison Officer, Presidentiol Advisory Committee on Gulf War Veterans' Illnesses.

[FR Doc. 96–12853 Filed 5–21–96; 8:45 am]

BILLING CODE 3610–76–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Proposed New Collections

Rule 101	SEC File No. 270–408.	OMB Control No. 3235–new.
Rule 102	SEC File No. 270–409.	OMB Control No. 3235–new.
Rule 103	SEC File No. 270–410.	OMB Control No. 3235–new.
Rule 104	SEC File No. 270–411.	OMB Control No. 3235–new.

Proposed Revisions

Rule 17a–2	SEC File No. 270–189.	OMB Control No. 3235–0201.
Regulation S–K.	SEC File No. 270–2.	OMB Control No. 3235–0071.
Regulation S–B.	SEC File No. 270–370.	OMB Control No. 3235–0417.
Form S–1	SEC File No. 270–58.	OMB Control No. 3235–0065.
Form S–2	SEC File No. 270–60.	OMB Control No. 3235–0072.
Form S–3	SEC File No. 270–61.	OMB Control No. 3235–0073.
Form S–11 ...	SEC File No. 270–64.	OMB Control No. 3235–0067.
Form SB–1	SEC File No. 270–374.	OMB Control No. 3235–0423.
Form SB–2	SEC File No. 270–366.	OMB Control No. 3235–0418.
Form F–1	SEC File No. 270–249.	OMB Control No. 3235–0258.
Form F–2	SEC File No. 270–250.	OMB Control No. 3235–0257.
Form F–3	SEC File No. 270–251.	OMB Control No. 3235–0256.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for approval of proposed new collections and proposed revisions on the following rules and forms:

Rules 101 and 102 would prohibit distribution participants form purchasing activities during a distribution of securities. These covered persons may seek to use an exception to this rule that would require such persons to calculate the average daily trading volume of the securities in distribution, maintain and audit a policy regarding information barriers between their affiliates, and maintain a written policy regarding general compliance with Regulation M. The Commission estimates that 1,597 respondents would collect information under Rule 101 and that approximately 43,522 hours would be required annually for these collections. In addition, the Commission estimates that 577 respondents would collect information under Rule 102 and that approximately 577 hours would be required for these collections.

Rule 103 provides an exception to Rule 101 for passive market making in Nasdaq securities. A distribution participant that seeks use of this exception would be required to disclose to third parties its intention to engage in passive market making. The Commission estimates that 375 respondents would collect information under Rule 103 and that approximately 375 hours would be required annually for these collections.

Rule 104 would permit stabilizing by a distribution participant during a distribution so long as the distribution participant discloses information to the market and investors. This rule requires disclosure in offering materials of the potential stabilizing transactions and to inform the market when a stabilizing bid is made. It also requires the distribution participants (*i.e.*, the syndicate manager) to maintain information regarding syndicate covering transactions and penalty bids. The Commission estimates that 522 respondents would collect information under Rule 104 and that approximately 522 hours would be required annually for these collections.

Rule 17a–2 requires underwriters to maintain information regarding stabilizing activities. This rule would be amended to reflect the new records required under proposed Rule 104. The Commission estimates that 522 respondents would collect information under Rule 17a–2 and that approximately 2,610 hours would be required annually for these collections.

Item 502(d) of Regulation S–K and Regulation S–B requires disclosure in offering materials of stabilization and passive market making. These provisions would be amended to require new wording of the legends already required. Item 508 of Regulation S–K and Regulation S–B requires disclosure in offering materials regarding underwriting activities. These provisions would be amended to require that potential stabilizing activities be described more fully. These amendments would affect the information required in Forms S–1, S–2, S–3, S–11, SB–1, SB–2, F–1, F–2, and F–3, which incorporate Items 502(d) and 508. The Commission estimates that each form would incur an additional .5 burden hour to comply with these revisions.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 6, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–12778 Filed 5–21–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37212; File No. SR–DCC–96–07]

Self Regulatory Organizations; Delta Clearing Corp.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Addition of Tullet and Tokyo Securities Inc. as an Interdealer Broker for Delta Clearing Corp.'s Repurchase Agreement Clearance System

May 14, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 29, 1996, Delta Clearing Corp. ("DCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to notify the Commission that Tullet and Tokyo Securities Inc. ("Tullet") has been authorized as an interdealer broker in DCC's over-the-counter clearance and settlement system for U.S. Treasury repurchase ("repo") transactions.

[1] 15 U.S.C. 78s(b)(1) (1988).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DCC's system clears repro agreements that have been agreed to through the facilities of interdealer brokers that have been authorized by DCC ("Authorized Brokers") to offer their services to DCC participants,[3] Currently, Liberty Brockerage, Inc., RMJ Special Brokerage Inc., Euro Brokers Maxcor Inc., Prebon Securities (USA) Inc., and Tradition (Government Securities) Inc. are Authorized Brokers. The purpose of the proposed rule change is to notify the Commission that Tullet has been authorized to act as an Authorized Broker in DCC's clearance and settlement system for repo trades.

The proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions, and therefore, the proposed rule change is consistent with the requirements of the Act, specifically Section 17A of the Act, and the rules and regulations thereunder.[4]

(B) Self-Regulatory Organization's Statement on Burden on Competition

DCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

[2] The Commission has modified parts of these statements.

[3] For a complete description of DCC's repo clearance system, see Securities Exchange Act Release No. 36367 (October 13, 1995), 60 FR 54095.

[4] 15 U.S.C. 78q–1 (1988).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[5] and Rule 19v–4(e)(4) thereunder,[6] in that the proposal effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communication relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and coping in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at DCC. All submissions should refer to File No. SR–DCC–96–07 and should be submitted by June 12, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–12812 Filed 5–21–96; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[6] 17 CFR 240.19b–4(e)(4) (1995).

[7] 17 CFR 200.30–3(a)(12) (1995).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval of a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before July 22, 1996.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S.W., Suite 5000, Washington DC 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: "Application For Small Business Size Determination".

Type of Request: Extension of a Currently Approved Collection.

Description of Respondents: Small Businesses Requesting an SBA Size Status Determination.

Annual Responses: 4,125.

Annual Burden: 16,500.

Comments: Send all comments regarding this information collection to Joan Bready, Small Business Administration, 409 3rd Street, S.W., Suite 8300 Washington, D.C. 20416. Phone No.: 202–205–7323.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 96–12791 Filed 5–21–96; 8:45 am]

BILLING CODE 8025–01–M

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; Computer Matching Program (SSA/Department of the Treasury, Bureau of the Public Debt (BPD))—Match Number 1038

AGENCY: Social Security Administration.

ACTION: Notice of Computer Matching Program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct with BPD.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–5138 or writing to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program and Integrity Reviews as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503) amended the Privacy Act (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal Government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. Among other things, it requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that this computer matching program complies with the requirements of the Privacy Act, as amended.

Dated: May 9, 1996.

Shirley S. Chater,

Commissioner of Social Security.

Notice of Computer Matching Program, Social Security Administration (SSA) with the Department of the Treasury, Bureau of Public Debt (BPD)— Match Number 1038

A. Participating Agencies

SSA and BPD.

B. Purpose of the Matching Program

The purpose of this matching program is to establish conditions and procedures for BPD disclosure of certain savings bond information useful to SSA in verifying eligibility and payment amount under the supplemental security income (SSI) program provided under title XVI of the Social Security Act (Act) to individuals with income and resources below levels established by law and regulations.

C. Authority for Conducting the Matching Program

Section 1631(e)(1)(B) and (f) of the Act (42 U.S.C. 1383(e)(1)(B) and (f)).

D. Categories of Records and Individuals Covered by the Match

SSA will provide BPD with a finder file, extracted from SSA's Supplemental Security Income Record System, containing Social Security numbers of individuals who receive SSI payments. This information will be matched with BPD files in BPD's savings bond registration system of records (United States savings-type securities) and a reply file of matched records will be furnished to SSA. Upon receipt of BPD's reply file, SSA will match identifying information from the BPD file with SSA's records to ensure that the data pertain to the relevant SSI recipients.

E. Inclusive Dates of the Match

The matching program shall become effective no sooner than 40 days after a copy of the agreement, as approved by the Data Integrity Boards of both agencies, is sent to Congress and the Office of Management and Budget (OMB) (or later if OMB objects to some or all of the agreement), or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 96–12832 Filed 5–21–96; 8:45 am]

BILLING CODE 4190–29–P

Privacy Act of 1974; Report of Altered System of Records and New Routine Use

AGENCY: Social Security Administration (SSA).

ACTION: Altered system of records and new routine use.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a), we are issuing public notice of our intent to alter an existing system of records entitled "Master Representative Payee File (MRPF)." We are proposing to alter the MRPF by expanding the categories of records maintained to include an additional type of record. The proposed alteration will expand the categories of records maintained to include information about persons convicted of statutory violations where a violation was committed in connection with the individual's service as a Social Security representative payee. We also are proposing to establish a new routine use of the information that is maintained in the system. We invite public comment on this publication.

DATES: We filed a report of the proposed altered system and new routine use with the Chairman, Committee on Government Reform and Oversight of the House of Representatives, the Chairman, Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on May 3, 1996. The proposed alteration will become effective on July 1, 1996, unless we receive comments on or before that date which would result in a contrary determination.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. Comments may be faxed to (410) 966–0869. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Martorana, Social Insurance Specialist, Confidentiality and Disclosure Branch, Office of Disclosure Policy, Social Security Administration, 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 410–965–1745.

SUPPLEMENTARY INFORMATION:

I. Discussion of the Proposed Alteration—Expansion of Categories of Records Maintained in the MRPF

The MRPF maintains information that Social Security field offices use when screening applicants to determine suitability as representative payees for Social Security claimants and beneficiaries who are incapable of handling their Social Security benefits and those who are required by law to have payees. The MRPF currently contains records about persons who have been convicted under sections 208 or 1632 of the Social Security Act (the Act), and others whose certification as representative payees SSA has revoked due to misuse of funds paid under Title II or Title XVI of the Act. The past performance of individuals as representative payees is therefore considered material to decisions that are made regarding future appointments. In order to afford better protection for our beneficiaries, we are now proposing that information about convictions of individuals for violations of statutes other than sections 208 and 1632 of the Act be made available to Social Security personnel, when such violations were committed in connection with the individual's service as a Social Security representative payee. We will obtain this information from the SSA, Office of Inspector General (OIG). The OIG will obtain this information as a result of its investigation of alleged payee misuse cases. Accordingly, we are proposing to revise the MRPF to include the following information as a new category of records:

Names and Social Security Numbers (SSNs) or Employer Identification Numbers (EINs)) of persons convicted of violations of statutes other than sections 208 and 1632 of the Social Security Act, when such violations were committed in connection with an individual's service as a Social Security representative payee.

II. Proposed Routine Use Disclosure of Data in the System

We are proposing to establish the following new routine use of information maintained in the MRPF system; the new routine use will be #16.

16. Information may be disclosed to the Office of Personnel Management (OPM) for the administration of that Office's representative payee programs.

We contemplate disclosing information to OPM under this routine use only in situations in which an applicant has filed to serve on behalf of a Social Security beneficiary and also filed to serve for an OPM annuitant. Information maintained in this system of records about the applicant's qualifications or past performance as a representative payee on behalf of SSA will be disclosed for consideration by OPM in evaluating the suitability of an applicant to serve as representative payee for OPM clients.

III. Compatibility of the Proposed Routine Use

The Privacy Act (5 U.S.C. 552a(a)(7) and 5 U.S.C. 552a(b)(3)) and our disclosure regulation (20 CFR part 401) permit us to disclose data for a routine use, i.e., a use serving a purpose which is compatible with the purpose for which we collected the information. Section 401.310 of the regulation permits us to disclose information under a routine use for administering our programs or, under certain circumstances, for use in similar income-maintenance or health-maintenance programs of other agencies.

The proposed routine use will permit SSA to disclose information to OPM when an individual who has applied to serve as a representative payee on behalf of a Social Security beneficiary applies to serve as a representative payee for an OPM annuitant. The relevant OPM program has the same income maintenance purpose as SSA programs and the information to be disclosed is relevant to identical matters in both programs. Thus, the proposed routine use is appropriate and meets the criteria in the Privacy Act and SSA's regulations.

IV. Effect of the Proposed Alteration and Routine Use Disclosure on Individual Privacy Rights

The system will maintain additional information about current and past representative payees and representative payee applicants to ensure that the best applicants are selected as representative payees on behalf of incapable beneficiaries. The MRPF system will identify an individual convicted under a statute other than sections 208 or 1632 of the Act only if the violation was committed in connection with the individual's service as a Social Security representative payee. Disclosing information to OPM about violations related to payee service will result in a more effectively administered pension program. The information that will be disclosed to OPM will assist that agency in enhancing public service and in protecting the property rights of incapable pensioners. Since information will be shared only in tightly controlled situations, we do not believe that the proposed changes to the MRPF will have any unwarranted effect on individual privacy rights.

V. Minor Revisions

We have made the following minor revisions to the notice of the MRPF system:

- Changed "ORSI" in the system name to "OPBP."
- Changed "Office of Retirement and Survivors Insurance" in the system manager section to "Office of Program Benefits Policy."
- Because SSA is now independent of the Department of Health and Human Services we have assigned a new SSA identification number (OPPEC–005) to the MRPF and added language to the "notification procedure" section of the MRPF notice indicating that HHS regulations governing notification procedures for the system are still in effect at this time.

Dated: May 3, 1996.

Shirley S. Chater,

Commissioner of Social Security.

09–60–0222

SYSTEM NAME:

Master Representative Payee File, SSA/OPBP.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The system database will be available by direct electronic access by Social Security field offices (FOs). Addresses of FOs can be found by calling the number listed in local telephone directories under "United States Department of Health and Human Services, Social Security Administration" or under "Social Security Administration." The data base is housed at the: National Computer Center, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information about persons whose certifications as representative payees have been revoked or terminated on or after January 1, 1991; persons who have been convicted of a violation of section 208 or section 1632 of the Social Security Act (the Act); persons who are acting or have acted as representative payees, representative payee applicants who were not selected to serve as representative payees, and beneficiaries/applicants who are being served by representative payees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data in this system consist of:

- Names and Social Security Numbers (SSNs) (or employer identification numbers (EINs)) of representative payees whose certifications for payment of benefits as representative payees have been revoked or terminated on or after January 1, 1991, because of misuse of benefits under title II or title XVI of the Act;
- Names and SSNs (or EINs) of all persons convicted of violations of sections 208 or 1632 of the Act;
- Names, addresses, and SSNs (or EINs) of persons convicted of violations of statutes other than sections 208 and 1632 of the Act, when such violations were committed in connection with the individual's service as a Social Security representative payee;
- Names, addresses, and SSNs (or EINs) of representative payees who are receiving benefit payments pursuant to section 205(j) or section 1631(a)(2) of the Act;
- Names, addresses, and SSNs of individuals for whom representative payees are reported to be providing representative payee services under section 205(j) or section 1631(a)(2) of the Act;
- Names, addresses, and SSNs of representative payee applicants who were not selected as representative payees;
- Names, addresses, and SSNs of persons who were terminated as representative payees for reasons other than misuse of benefits paid to them on behalf of beneficiaries/recipients;
- Information on the representative payees' relationship to the beneficiaries/recipients they serve;
- Names, addresses, and EINs of organizations authorized to charge a fee for providing representative payee services;
- Codes which indicate the relationship (other than familial) between the beneficiaries/recipients and the individuals who have custody of the beneficiaries/recipients;
- Dates and reasons for payee terminations (e.g., performance not acceptable, death of payee, beneficiary in direct payment, etc.) and revocations;
- Codes indicating whether representative payee applicants were selected or not selected;
- Dates and reasons representative payee applicants were not selected to serve as payees and dates and reasons for changes of payees (e.g., beneficiary in direct payment, etc.);
- Amount of benefits misused;
- Identification number assigned to the claim on which the misuse occurred;
- Date of the determination of misuse; and
- Information about a felony conviction reported by the representative payee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205(a), 205(j) and 1631(a) of the Act.

PURPOSE(S):

Information maintained in this system will assist SSA in the representative payee selection process by enabling Social Security field offices to more carefully screen applicants and to determine their suitability to become representative payees. SSA also will use the data for management information and workload projection purposes and to prepare annual reports to Congress on representative payee activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed for routine uses as indicated below.

1. Information may be disclosed to the Department of Justice (DOJ), to a court or other tribunal, or to another party before such tribunal, when

(a) SSA, or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect SSA or any of its components,

is a party to litigation or has an interest in such litigation. Disclosure will occur only if SSA determines that the use of such records before the tribunal is relevant and necessary to the litigation, would help in the effective representation of the governmental party, and, in each case, such disclosure is compatible with the purpose for which the records were collected.

2. Information pertaining to an individual may be disclosed to a Congressional office in response to an inquiry from that office made at the request of the subject of the records.

3. Information may be disclosed to the General Services Administration and the National Archives and Records Administration for the purpose of conducting records management studies under 44 U.S.C. 2904 and 2906, when such disclosure is not prohibited by Federal law.

4. Information may be disclosed to the Department of Veterans Affairs (DVA) Regional Office in the Philippines for

the administration of the Social Security Act in the Philippines through services and facilities of that agency.

5. Information may be disclosed to the Department of State for administration of the Social Security Act in foreign countries through services and facilities of that agency.

6. Information may be disclosed to the Department of Interior for administration of the Social Security Act in the Trust Territory of the Pacific Islands through services and facilities of that agency.

7. Information may be disclosed to the American Institute in Taiwan for administration of the Social Security Act in Taiwan through services and facilities of that agency.

8. Information may be disclosed to DOJ for:

(a) Investigating and prosecuting violations of the Act to which criminal penalties attach,

(b) Representing the Secretary, and

(c) Investigating issues of fraud or violations of civil rights by officers or employees of SSA.

9. Information about an individual may be disclosed to the Office of the President for responding to an inquiry received from that individual or from a third party acting on that individual's behalf.

10. Information may be disclosed to DVA for the shared administration of that Department's and SSA's representative payee programs.

11. Information may be disclosed to contractors and other Federal Agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement to obtain assistance in accomplishing an SSA function relating to this system of records.

12. Information may be disclosed to a third party such as a physician, social worker, or community service worker, who has, or is expected to have, information which is needed to evaluate one or both of the following:

(a) The claimant's capability to manage or direct the management of his/her affairs.

(b) Any case in which disclosure aids investigation of suspected misuse of benefits, abuse or fraud, or is necessary for program integrity, or quality appraisal activities.

13. Information pertaining to the identity of a payee or payee applicant, the fact of the person's application for or service as a payee, and, as necessary, the identify of the beneficiary, may be disclosed to a third party where necessary to obtain information on employment, sources of income, criminal justice records, stability of residence and other information relating to the qualifications and suitability of representative payees or representative payee applicants to serve as representative payees or their use of the benefits paid to them under section 205(j) or section 1631(a) of the Act.

14. Information pertaining to the address of a representative payee applicant or a selected representative payee may be disclosed to a claimant or other individual authorized to act on his/her behalf when this information is needed to pursue a claim for recovery of misapplied or misused benefits.

15. Information may be disclosed to the Railroad Retirement Board (RRB) for the administration of RRB's representative payment program.

16. Information may be disclosed to the Office of Personnel Management for the administration of that Office's representative payee programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records will be stored in magnetic media (e.g., magnetic tape and disc).

RETRIEVABILITY:

Data are retrieved from the system by the name, SSN or EIN, and the ZIP code (in a situation where the representative payee is an institution) of the representative payee, or the name or SSN of the beneficiary/recipient.

SAFEGUARDS:

For computerized records electronically transmitted between Central Office and Field Office locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal-oriented transaction matrix, and an audit trail. All microfilm and paper files are accessible only by authorized personnel who have a need for the information in performing their official duties. Magnetic tapes are in secured storage areas accessible only to authorized personnel.

RETENTION AND DISPOSAL:

The magnetic media are updated periodically. Out-of-date tapes are erased.

SYSTEM MANAGER(S) AND ADDRESSES:

Associate Commissioner, Office of Program Benefits Policy, Room 760 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains data about him/her by writing to the system manager at the address shown above and providing his/her name, address and SSN or EIN. An individual requesting notification via mail must submit sufficient evidence (i.e., the individual's notarized signature or a signed statement that he/she is the individual to whom the record pertains and that he/she understands that there are criminal penalties for making a knowing and willful request for access to records concerning another individual under false pretenses) to establish identity. An individual requesting notification of data in person need not furnish any special documents of identity. Documents he/she would normally carry on his/her person would be sufficient (e.g., credit cards, driver's license, or voter registration card). An individual requesting notification via telephone must furnish a minimum of his/her name, SSN or EIN, date of birth and address in order to establish identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures above. Also, a requester should reasonably identify and specify the information he/she is attempting to obtain. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above. Also, an individual contesting records in the system should identify the record, specify the information he/she is contesting, state the corrective action sought, and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant.

RECORD SOURCE CATEGORIES:

Data in this system are obtained from representative payee applicants and representative payees, the SSA Office of Inspector General, and other SSA systems of records (e.g., Claims Folder System (09–60–0089), Master Beneficiary Record (09–60–0090), Supplemental Security Income Record (09–60–0103), Master Files of SSN Holders (09–60–0058), Recovery, Accounting for Overpayments (09–60–0094)).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 96– 12712 Filed 5–21–96; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 2393; Delegation of Authority No. 145–13]

Delegation of Authority

Pursuant to the Arms Export Control Act as amended (22 U.S.C. 2778 *et seq.*); section 504 and 508 of the FREEDOM Support Act (Public Law 102–511); Executive Order 11958, January 18, 1977, 42 FR 4311, as amended; the President's Memorandum Delegation of Authority dated April 21, 1994; and Section 1(a)(4) of the State Department Basic Authorities Act, as amended, State Department Delegation of Authority No. 145 of February 4, 1990, 45 FR 11655, as amended, is further amended as follows:

(a) Section 1(a)(3) is amended:

(1) by striking the word "and" at the end of subparagraph (B);

(2) by striking the period at the end of subparagraph (C) and inserting in lieu thereof: ", and"; and

(3) by adding the following new subparagraph:

(D) Section 1324(a) of Title XIII of the Defense Authorization Act, 1996 (Public Law 104–106).

(b) Section 1(a)(8) is amended by striking "The functions specified in section 504 of the FREEDOM Support Act (22 U.S.C. 5801)" and inserting in lieu thereof: "The functions specified in sections 504 and 508 of the FREEDOM Support Act (22 U.S.C. 5801 *et seq.*)".

This delegation of authority shall be published in the **Federal Register**.

Dated: May 16, 1996.

Warren Christopher,

Secretary of State.

[FR Doc. 96–12875 Filed 5–21–96; 8:45 am]

BILLING CODE 4710–10–M

TENNESSEE VALLEY AUTHORITY

Chickamauga Dam—Navigation Lock Project

AGENCY: Tennessee Valley Authority.

ACTION: Issuance of record of decision.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations and with TVA's procedures implementing the National Environmental Policy Act. TVA has decided to adopt the preferred alternative identified in TVA's final environmental impact statement (EIS) made available to the public on March 26, 1996. A Notice of Availability of the final EIS was published in the **Federal Register** on April 5, 1996 (61 FR 15252). The preferred alternative is to construct a new 110 x 600 foot lock to replace the existing lock at Chickamauga Dam. Because of structural problems and safety concerns caused by concrete growth, the existing lock at Chickamauga Dam has a limited life expectancy, at most 10 years. TVA will continue to monitor the existing lock and make the necessary repairs to keep the lock in operation until the new lock is available for service. Design and construction of the new lock, subject to available funding, are expected to begin five years prior to closure of the existing lock. This will allow the new lock to be operational before the existing lock is closed, thereby maintaining navigation on the upper Tennessee River.

FOR FURTHER INFORMATION CONTACT: W. Gary Brock, Manager, Water Resources Projects and Planning, Tennessee Valley Authority, West Tower 10C–432, Knoxville, Tennessee 37902, or by calling (423) 632–8877.

SUPPLEMENTARY INFORMATION: The Tennessee River is formed at the confluence of the Holston and French Bread Rivers near Knoxville in eastern Tennessee. From this confluence, the river flows 652 miles through Tennessee, northern Alabama, northeastern Mississippi, and western Kentucky to enter the Ohio River near Paducah, Kentucky. Along most of its counsel, the river falls gradually for a total of 515 feet except in the Muscle Shoals, Alabama, area where a drop of 100 feet occurs in less than 20 miles.

The existing navigation system on the Tennessee River consists of nine multipurpose dams and lock projects with a total of 13 navigation locks. The system creates a series of navigation pools that provide a nine foot navigable channel along the entire length of the river except for a three mile stretch at Knoxville where, in periods of low water, the depth diminishes to seven feet and the channel width diminishes to about 200 feet. Navigation locks on the Tennessee River range in size from 110 x 1000 foot lock at Pickwick Dam to 60 x 300 foot double lift auxiliary lock at Wilson Dam.

The upper Tennessee River navigation system begins at Chickamauga Dam, river mile 471, and extends 181 upstream to the confluence of the Holston and French Broad Rivers. The system consists of four navigation locks located at Chickamauga, Watts Bar, Fort Loudoun, and Melton Hill dams. The four locks were constructed in 1937, 1941, 1942 and 1963 respectively. The predominant commodities trafficked on the upper Tennessee River system are asphalt, grains, ores and minerals, and forest products.

TVA's Chickamauga Dam and Navigation Lock Project is located in Hamilton County, Tennessee, approximately 13 miles northeast of downtown Chattanooga, Tennessee. Chickamauga Lock currently has a traffic level of about 2.1 million tons per year.

TVA and the United States Army Corps of Engineers (USACE) began studying navigation problems on the upper Tennessee River in 1987. The study results were published in 1988 by the Nashville District of the USACE in a report entitled, Commodity Traffic and Benefit Study for Navigation Improvements on the Upper Tennessee River. Both agencies agreed that the small and aging locks on the upper Tennessee River—Chickamauga, Watts Bar, Fort Loudoun—were constraints to navigation and that concrete growth at Chickamauga lock threatened its continued operation. Concrete growth was not a problem at Watts Bar and Fort Loudoun because of the type of cement and aggregate used to construct the projects.

The 1988 study examined the feasibility of increasing the existing locks to 110 x 600 feet size in order to bring the upper Tennessee navigation locks into conformance with locks below Chickamauga on the lower Tennessee River. The study concluded, however, that the benefits would not justify the cost of three new locks on the upper Tennessee River, and that TVA transportation planners should concentrate on improvements at Chickamauga and Watts Bar Locks.

The results of the study of lock improvement benefits at Chickamauga and Watts Bar Dams were presented in a USACE report entitled Upper Tennessee River Navigation Improvement Study Navigation System Analysis (1993) which was produced under contract for TVA. The focus of this study was to estimate benefits that would accrue from a new 110 x 600 foot lock at Chickamauga which would be constructed before the existing lock was closed for an 18 month rehabilitation. At that time, engineering data indicated that the lock could be rehabilitated to function as an auxiliary lock. The study concluded that if any capacity constraints occurred at Watts Bar Lock, nonstructural measures could be used to

control the situation. TVA will continue to evaluate Watts Bar and Fort Loudoun projects. However, TVA has no planned upgrades of these facilities in the foreseeable future.

Because of structural problems and safety concerns TVA continued to perform engineering analyses of the Chickamauga Lock and Dam using new methodology referred to as finite element analysis. The finite element analysis completed in 1995, revealed that because of concrete growth the lock could not be rehabilitated and that, at best, could function for another ten years. At some point, the lock would have to be closed to form a permanent water barrier at the dam. To close the lock, a concrete plug would be poured into the lock chamber to form a permanent water barrier.

Extensive structural repairs and maintenance activities to alleviate problems resulting from concrete continue to be made at Chickamauga Lock. Instrumentation was installed to monitor structural movements and internal stresses.

In its evaluation of alternatives to replace the existing lock at Chickamauga Dam, plugging the lock was defined as TVA's no action alternative. At this time, the alternative of taking absolutely no action is not acceptable because of the deteriorating nature of the lock and potential consequences of dam safety and navigation.

TVA issued a draft EIS on May 10, 1995, that considered the alternative of continued operation of the existing lock. The final EIS does not consider the alternative of rehabilitating the lock because of information described above that became available after release of the draft EIS.

Alternatives Considered

The following four alternatives were considered by TVA in its final EIS in attempting to address the structural problems and safety concerns caused by concrete growth at the Chickamauga Lock.

Alternative 1. Construct a new 110 x 600 foot lock (preferred alternative).

Alternative 2. Permanently close existing lock (no action alternative).

Alternative 3. Construct new 60 x 360 foot lock (replacement in-kind).

Alternative 4. Construct new 75 x 400 foot lock.

The environmental impacts of these alternatives were evaluated in the final EIS. Because of the structural problems and safety concerns, all construction alternatives include plugging the existing lock after the new lock is completed.

Under the no action alternative, the existing lock would have been plugged and no replacement lock built in its place. This would have eliminated navigation through Chickamauga Dam. Upstream industries dependent upon barge transportation would be forced to shift to truck or rail transport of commodities, and recreational boaters and commercial tour operator would not be able to move between Chickamauga and Nickajack Reservoirs. Plugging the existing lock at a cost of $6.8 million to form a permanent water barrier at the dam would have been the least cost alternative for solving the structural problems at the lock.

The 110 x 600 foot lock represents the general standard for locks on the lower Tennessee River and thus, is well suited for barges in general use today. Lock capacity for the 110 x 600 foot lock has been rated at 35.7 million tons. Construction of the 110 x 600 foot lock is estimated to cost $225 million. Total cost of the new lock, including $6.8 million for closure of the existing lock, is $231.8 million in 1995 dollars. Construction of the 60 x 360 and 75 x 400 foot locks would have cost $135 million and $160 million respectively.

Basis for the Decision

TVA decided to adopt Alternative 1, that is, construct a new 110 x 600 foot lock, to address the structural problems at Chickamauga Lock based on environmental, social, economic, recreational, and engineering and public safety considerations. Alternative 1 was chosen as the preferred alternative because it would maintain navigation on the upper Tennessee River and represents the general standard for locks on the lower Tennessee River and, thus is well suited for barges in general use today.

Overall benefits include (1) economies related to a more efficient lock at Chickamauga, (2) a cheaper competitive barge alternative to overland transportation, and (3) construction of a reliable lock at Chickamauga.

Among the three lock sizes considered in this EIS, the benefit cost ratio (4.3) for the 110 x 600 foot lock is higher than the benefit cost ratio (2.5) for the other two locks. The environmental impacts from the construction and operation of the smaller 60 x 360 and 75 x 400 foot locks would be similar to the impacts associated with the preferred 110 x 600 foot lock.

A new 110 x 600 foot lock is expected to generate 467 new jobs and $16.7 million in new income annually in the Hamilton County area over its five-year construction period. Of the 467 jobs, 267 would be directly created while 200 mostly commercial sector positions would be indirectly created. The $9.8 million directly generated income would also result in an additional $6.87 million in indirect monetary gain. While the bulk of these employment and income benefits would accrue to Hamilton County, the project would also have a positive impact on seven other counties identified in the project area.

Under alternative 2, plugging the lock would result in the abandonment of 297 miles of navigable inland waterway and the public's investment in three navigation locks (Watts Bar, Fort Loudoun, and Melton Hill) above Chickamauga. The loss of commercial traffic on the upper Tennessee River is estimated to cost the nation $25 million annually. Additionally, having a lock in place at Chickamauga Dam provides shippers in east Tennessee, North Carolina, Virginia, and South Carolina a competitive alternative to overland transportation modes and a low cost source of certain commodities. For these reasons, the no action alternative is unacceptable to TVA.

TVA also considered the use of portage facilities around Chickamauga Dam to support upstream barge use without the construction of a new lock. However, because this alternative was not economically feasible, it was not evaluated in detail.

Construction of a new lock would result in the loss of some specimen of the endangered pink mucket during dredging for channel improvements. Other potential adverse environmental impacts from construction of a new lock can be substantially avoided or minimized through mitigation measures. By comparison, the no action alternative of plugging the lock without replacing it would stop navigation between Chickamauaga and Nickajack reservoirs, isolate the upper from the lower Tennessee River, and block the potential upstream movement of spawning migratory species such as sauger and buffalo. TVA has therefore concluded that there is no clear environmentally preferable alternative for the Chickamauga Dam—Navigation Lock Project.

Environmental Consequences and Commitments

Environmental consequences associated with construction of a new 110 x 600 foot lock are set out in the final EIS. Environmental impacts include minor loss of aquatic habitat and resident population of freshwater mussels, included one listed endangered species (pink mucket, *Lampsillis orbiculata*) These losses would be mitigated by relocating the mussels and possibly by other means to be determined during consultation with the United States Fish and Wildlife Service. Disposal sites would be landscaped and vegetated, and potential impacts to a federally endangered plant (Mountain skullcap, *Scutellaria montana*) located adjacent to a disposal site will be mitigated through maintenance of a contiguous 250-foot forest buffer zone. Shoreline restoration downstream will be performed so as to offset erosion and improve riverine wetlands downstream of the project. Fugitive dust would be reasonably controlled through periodic wetting of construction road surfaces or as required by local and state air regulations. No chemical agents, such as oils, will be used to control fugitive dust. Construction of a new lock will have an impact on the existing historic dam complex and will require a Section 106 review. No potential adverse effects on archaeological or cultural resources are anticipated. Temporary high noise levels and navigation traffic congestion would be expected during construction.

Environmental impacts associated with the operation of the new lock include socioeconomic benefits associated with the continuation of commercial and recreation lockages and the loss of four spillway bays. Loss of four spillways bays will not adversely impact TVA's ability to control flooding up to a 5500 year flood event. Further, through appropriate design of discharge structures, TVA will attempt to minimize potential impact on the upstream migration of certain fish species, such as sauger and buffalo.

The construction and operational environmental impacts for the smaller 60 × 360 and 75 × 400 foot locks would be similar to the impacts associated with the proposed 110 × 600 foot lock.

Environmental impacts associated with the no action alternative of plugging the lock without replacing it, include blocking the potential upstream movement of spawning migratory fishes, such as sauger and buffalo. Additionally, navigation through Chickamauga Dam would cease, causing significant economic impact to industry and recreation and would isolate the upper Tennessee River from the lower river system for commercial navigation. This would result in a shift to land transport of goods shipped through Chickamauga Lock which would have adverse impact on air quality from increased truck and rail traffic. Further, separation of the National Oak Ridge Laboratory and other industry from access to barge transportation could result in lost opportunities for industrial expansion, and at Oak Ridge, the inability to move certain national defense equipment there for maintenance and repair.

Additionally, a number of mitigation and monitoring requirements will be incorporated in construction and operational permits needed for the Chickamauga Dam—Navigation Lock Project.

Dated: May 13, 1996.

Kathryn J. Jackson,

Senior Vice President, Resource Group.

[FR Doc. 96–12815 Filed 5–21–96; 8:45 am]

BILLING CODE 8120–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 61 FR 22078 (May 13, 1996).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m. (CDT), Wednesday, May 15, 1996.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: TVA Customer Service Center, 310 Research Boulevard, Starkville, Mississippi.

CHANGES IN THE MEETING: Each member of the TVA Board of Directors has approved the addition of the following items to the previously announced agenda:

F—Unclassified

1. Board approval of a 1996 Funding Plan for nuclear plant decommissionings.

For more information, contact TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: May 17, 1996.

William L. Osteen,

Associate General Counsel and Assistant Secretary.

[FR Doc. 96–13023 Filed 5–20–96; 1:15 pm]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Security Measures; Hellenikon International Airport, Athens, Greece

Summary

The Secretary of Transportation has now determined that Hellenikon International Airport, Athens, Greece, maintains and carries out effective security measures.

Notice

By notice published on March 28, 1996, I announced that I had determined that Hellenikon International Airport, Athens, Greece, did not maintain and carry out effective security measures and that, pursuant to 49 U.S.C. 44907(d), I was providing public notification of that determination. I now find that Hellenikon International Airport maintains and carries out effective security measures. My determination is based on a recent Federal Aviation Administration (FAA) assessment which reveals that security measures used at the airport now meet or exceed the Standards and Recommended Practices established by the International Civil Aviation Organization.

I have directed that a copy of this notice be published in the **Federal Register** and that the news media be notified of my determination. In addition, as a result of this determination, the FAA will direct that signs posted in U.S. airports relating to my March 21, 1996, determination be removed, and U.S. and foreign air carriers will no longer be required to provide notice of that determination to passengers purchasing tickets for transportation between the United States and Athens, Greece.

Dated: May 15, 1996.

Federico Peña,

Secretary of Transportation.

[FR Doc. 96–12800 Filed 5–21–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the information collection request described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The FAA is requesting an emergency clearance by June 3, 1996, in accordance with 5 CFR § 1320.13. The following information describes the nature of the information collection and its expected burden.

SUPPLEMENTARY INFORMATION:

TITLE: Application for Employment with the Federal Aviation Administration.

The collection of information is an application for employment with the Federal Aviation Administration. Applicants will have to complete a number of background questions to determine their basic eligibility for Federal employment and also answer specific occupation-related questions to determine their qualifications.

NEED: P.L. 104–50 authorized the Federal Aviation Administration to establish its own personnel system outside most of the requirements of Title 5. The only provisions related to hiring that will continue to apply are those dealing with veteran's preference. One of the recommendations of our personnel reform task forces, and in keeping with reengineered business processes under the National Performance Review, we are attempting to centralized and automate some of our application, evaluation and hiring processes. This application is a part of that effort.

We propose to utilize the information collected to make determinations on applicant's eligibility for Federal employment as well as determining their qualifications for employment and certifying the name of qualified applicants to line managers who will make hiring decisions.

RESPONDENTS: The likely respondents will be the general public who are interested in employment with this agency. We estimate that the average number of respondents on an annual basis to be 5,000, each applying one time. The submission of this information is completely voluntary on the part of the applicant.

FREQUENCY: The frequency is based on the respondent, however, we estimate one time per respondent.

BURDEN: The estimated reporting burden is 5,000 hours annually.

Copies of the proposed collection of information may be obtained from: The Federal Aviation Administration, Office of Human Resource Management, Room 515, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may be submitted to the agency at the address above or to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Issued in Washington, DC on May 15, 1996.

Steve Hopkins,

Manager, Corporate Information Division.

[FR Doc. 96–12803 Filed 5–21–96; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–96–25]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 10, 1996.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT:

Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on May 16, 1996.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No: 28469.
Petitioner: Neptune, Inc.
Sections of the FAR Affected: 14 CFR 137.53(b)(2).
Description of Relief Sought: To permit appropriately trained pilots employed by Neptune, who have less than 100 hours of flight experience as pilot in command in dispensing agriculture materials or chemicals, to conduct aerial firefighting operations over congested areas.

Docket No.: 28503.
Petitioner: Mr. Kenneth R. Pearce.
Sections of the FAR Affected: 14 CFR 91.109 (a) and (b)(3).
Description of Relief Sought: To allow Mr. Pearce to provide recurrent flight training and simulated instrument flight training in Beechcraft Bonanza, Baron, and Travel Air aircraft equipped with a functioning throwover control wheel for the purpose of meeting recency of experience requirements contained in §§ 61.56 (a), (c), (e), (g), and 61.57(e)(2).

Docket No.: 28512.
Petitioner: Mr. Robert P. Lavery.
Sections of the FAR Affected: 14 CFR 91.109 (a) and (b)(3).
Description of Relief Sought: To allow Mr. Lavery to conduct recurrent flight training in Beechcraft Bonanza, Baron, and Travel Air aircraft; and recurrent flight training in simulated instrument flight in Beechcraft Baron and Travel Air aircraft, when those aircraft are equipped with a functioning throwover control wheel in place of functioning dual controls.

Docket No.: 28514.
Petitioner: Mr. Henry D. Canterbury.
Sections of the FAR Affected: 14 CFR 91.109 (a) and (b)(3).
Description of Relief Sought: To allow Mr. Canterbury to conduct recurrent flight training in Beechcraft Bonanza, Baron, and Travel Air aircraft; and recurrent flight training in simulated instrument flight in Beechcraft Baron and Travel Air aircraft, when those aircraft are equipped with a functioning throwover control wheel in place of functioning dual controls.

Docket No.: 28515.
Petitioner: Mr. Kenneth L. Fossler.
Sections of the FAR Affected: 14 CFR 91.109 (a) and (b)(3).
Decription of Relief Sought: To allow Mr. Fossler to conduct recurrent flight training in Beechcraft Bonanza, Baron, and Travel Air aircraft; and recurrent flight training in simulated instrument flight in Beechcraft Baron and Travel Air aircraft, when those aircraft are equipped with a functioning throwover control wheel in place of functioning dual controls.

Docket No.: 28517.
Petitioner: Mr. Samuel D. James.
Sections of the FAR Affected: 14 CFR 91.109 (a) and (b)(3).
Decription of Relief Sought: To allow Mr. James to conduct recurrent flight training in Beechcraft Bonanza, Baron, and Travel Air aircraft; and recurrent flight training in simulated instrument flight in Beechcraft Baron and Travel Air aircraft, when those aircraft are equipped with a functioning throwover control wheel in place of functioning dual controls.

Docket No.: 28530.
Petitioner: Mr. John A. Porter.
Sections of the FAR Affected: 14 CFR 91.109 (a) and (b)(3).
Decription of Relief Sought: To allow Mr. Porter to conduct recurrent flight training in Beechcraft Bonanza, Baron, and Travel Air aircraft; and recurrent flight training in simulated instrument flight in Beechcraft Baron and Travel Air aircraft, when those aircraft are equipped with a functioning throwover control wheel in place of functioning dual controls.

Docket No.: 28533.
Petitioner: Tradewind Turbines Corp.
Sections of the FAR Affected: 14 CFR 21.19.
Decription of Relief Sought: To permit Tradewind Turbines Corp., to apply for a supplemental type certificate rather than a new type certificate for a design change that would replace two piston engines with one turbine engine on the Beechcraft 58P Baron.

Docket No.: 28536.
Petitioner: Mr. Kenneth W. Brown.
Sections of the FAR Affected: 14 CFR 91.109 (a) and (b)(3).
Decription of Relief Sought: To allow Mr. Brown to conduct recurrent flight training in Beechcraft Bonanza, Baron, and Travel Air aircraft; and recurrent flight training in simulated instrument flight in Beechcraft Baron and Travel Air aircraft, when those aircraft are equipped with a functioning throwover control wheel in place of functioning dual controls.

Docket No.: 28538.
Petitioner: Mr. John M. Hirsch.
Sections of the FAR Affected: 14 CFR 91.109 (a) and (b)(3)
Decription of Relief Sought: To allow Mr. Hirsch to conduct recurrent flight training in Beechcraft Bonanza, Baron, and Travel Air aircraft; and recurrent flight training in simulated instrument flight in Beechcraft Baron and Travel Air aircraft, when those aircraft are equipped with a functioning throwover control wheel in place of functioning dual controls.

Dispositions of Petitions

Docket No.: 133CE.
Petitioner: Pilatus Aircraft LTD.
Sections of the FAR Affected: 14 CFR 23.562(c)(5).
Description of Relief Sought/Disposition: To allow Pilatus Aircraft LTD to continue delivering aircraft while they solve the problem of meeting the requirements of § 25.562(c)(5) with a customer acceptable solution.
Partial Grant, April 23, 1996, Exemption No. 6429.

Docket No.: 28370.
Petitioner: Cessna Aircraft Company.
Sections of the FAR Affected: 14 CFR 25.562.
Description of Relief Sought/Disposition: To permit the Cessna Aircraft Company exemption from the emergency landing dynamic conditions of § 25.562 for multiple-occupancy, side-facing divans in the Cessna Model 750 airplane.
Partial Grant, April 25, 1996, Exemption No. 6432.

Docket No.: 28463.
Petitioner: Cessna Aircraft Company.
Sections of the FAR Affected: 14 CFR 25.161(d).
Description of Relief Sought/Disposition: To permit the Cessna Aircraft Company exemption from the engine-out-lateral/directional trim requirements of § 25.161(d) of the FAR.
Grant, April 26, 1996, Exemption No. 6431.

[FR Doc. 96–12805 Filed 5–21–96; 8:45 am]

BILLING CODE 4910–13–M

Airport Capital Improvement Program National Priority System; Comment Request

AGENCY: Federal Aviation Administration (FAA), (DOT).

ACTION: Notice of Airport Capital Improvement Program (ACIP) National Priority System; opportunity to comment.

SUMMARY: The FAA is clarifying details of the ACIP National Priority System. Comments and recommendations for improving the effectiveness of the ACIP National Priority System are solicited.

DATES: Comments and/or recommendations must be submitted on or before July 22, 1996.

ADDRESSES: Comments may be delivered or mailed to the FAA, Airports Financial Assistance Division, Programming Branch, APP–520, Room 615, 800 Independence Ave, SW, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Stan Lou, Manager, Programming Branch, Airports Financial Assistance Division, Office of Airport Planning and Programming, APP–520, on (202) 267–8809.

SUPPLEMENTARY INFORMATION: FAA Order 5100.39, "Airport Capital Improvement Plan" describes procedures that are intended to guide the distribution of Airport Improvement Program (AIP) funds to the highest priority projects nationally. In order to implement the ACIP Order, a standard database has been established. This database (NPIAS–CIP) provides a common data structure to compile and analyze airport development needs. A key element of this process is the determination of objective priority ratings for items of work.

The National Priority is a numerical, computer-generated system for prioritizing work items in accordance with agency goals. The ACIP is used as a vehicle to evaluate requests for AIP funded airport development in an airport's five year Capital Improvement Program (CIP).

The ACIP uses a national priority calculation as prescribed by Order 5100.39. Priority numbers are calculated based on the size and type of airport (service level) and the type of project (as described by the NPIAS–CIP project codes). The national priority calculation:

- Provides a standard means to sort projects from high to low priority.
- Is used to measure how well funding plans (the ACIP) address the highest priority needs.
- Imitates the existing AIP priority system.
- Is not intended to be the sole gauge for project approval.

The national priority calculation is as follows:

(P*(APT+C+1)+T)*10+APT

Where:

P=Purpose Points (0 to 5 pts)
  Safety/Security=0 pt.
  Reconstruction=1 pt.
  Standards=2 pts.
  Environment=1pt.
  Upgade=3 pts.
  Capacity=3 pts.
  New Airport (Community)= 5 pts.
  New Airport (Capacity)=3 pts.
  Planning=1 pt.
C=Component Points (1 to 6 pts)
  Land=3 pts.
  Runway=1 pt.
  Taxiway=3 pts.
  Apron=4 pts.

Lighting=3 pts.
Approach Aids=2 pts.
Terminal=5 pts.
Access=5 pts.
Planning=1 pt.
Equipment=3 pts.
Other=3 pts.
T=Type Points (1 to 3 points), and
Access=2 pts.
Acquire Airport=2 pts.
Terminal Building Bond=2 pts.
Runway Centerline Lights=1 pt.
Construction=2 pts.
Land for Development=2 pts.
Extension/Expansion=2 pts.
Runway Friction=1 pt.
Gates=2 pts.
Grooving=1 pt.
Helicopter Landing=2 pts.
High Intensity Runway Lights=1 pt.
Improvements=1 pt.
Mass Transit/Master Plan=2 pts.
Metropolitan Planning=2 pts.
Medium Intensity Runway Lights=1 pt.
Miscellaneous=3 pts.
Noise Barrier=2 pts.
Landscaping For Noise=2 pts.
Noise Plan/Suppression=2 pts.
Soundproofing=2 pts.
Obstruction Removal=2 pts.
Parking=3 pts.
Partial Instrument=2 pts.
Relocation Assistance (Non-Noise)=2 pts.
ARFF Vehicle=1 pt.
Relocation Assistance (Noise)=2 pts.
Rehab Runway Lights=1 pt.
Rehab Taxiway Lights=2 pts.
Saftety Related Building=2 pts.
Sealcoat=2 pts.
Security Improvement=1 pt.
Runway Safety Area=1 pt.
Service Road Improvement=3 pts.
Snow Removal Equipment=2 pts.
Runway Sensors =2 pts.
Safety Zone=1 pt.
Terminal=2 pts.
Visual Approach Aids=2 pts.
Construct V/TOL Runway/Vertical Plan=2 pts.
Weather Reporting=2 pts.
Runway/Taxiway Signs=1 pt.
Taxiway Sensors/State Planning =2 pts.
Air Navigation Facilities=2 pts.
Deicing Facilities=1 pt.
Fuel Farm Development=3 pts.
Utility Development=3 pts.
APT=Airport Points (1, 2, 3, or 6 pts). Airport Points are calculated as follows:
Primary and Reliever Airports
Large and Medium Hub=1 pt.
Small and Non Hub=2 pts.
Commercial Service Airports=3 pts.
General Aviation Airports
Aircraft/Operations
100 or 50,000=1 pt.
50 or 20,000=2 pts.
20 or 8,000=3 pts.
<20 of <8,000=6 pts.

The ACIP is used to help make AIP fund allotment decisions for each airport/development type. Funds are allotted to regions through two mechanisms: Commitments and Priorities. Commitments are projects that are believed to merit funding regardless of their relative priority calculation. These projects typically include Letters of Intend (LOI) and "phased" projects where it is important to complete a development program to derive an acceptable level of benefit for both the airport and the national system. Funds for Commitment projects are "set aside" for each airport/development category. The remainder of the available discretionary funds are distributed to the highest priority projects which remain unfunded in the ACIP. Priority distribution uses a priority "cut-off" for each airport/development category.

Issued in Washington, D.C. on May 2, 1996.

Stan Lou,

Manager, Programming Branch.

FR Doc. 96–12813 Filed 5–21–96; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Noise Certification Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss noise certification issues.

DATES: The meeting will be held on June 12, 1996, at 9 a.m. Arrange for oral presentations by May 31, 1996.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, suite 801, 1400 K Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Carolina Forrester, Federal Aviation Administration, Office of Rulemaking (ARM–206), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9690; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on June 12, 1996, at the General Aviation Manufacturers Association, Suite 801, 1400 K Street, NW, Washington, DC 20005. The agenda will include:

- Opening Remarks.
- Committee administration.
- Presentation of Work Plan by the FAR/JAR Harmonization Working Group for Helicopters.
- Presentation of Work Plan by the FAR/JAR Harmonization Working Group for Propeller-Driven Small Airplanes.
- Presentation of Work Plan by the FAR/JAR Harmonization Working Group for Subsonic Transport Category Large Airplanes and Subsonic Turbo jet Powered Airplanes.
- A discussion of future meeting dates, activities, and plans.
- Adjourn.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by May 31, 1996, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on May 15, 1996.

Paul R. Dykeman,

Assistant Executive Director for Noise Certification Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 96–12804 Filed 5–21–96; 8:45 am]

BILLING CODE 4910–03–M

RTCA, Inc.; Government/Industry Free Flight Steering Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for an RTCA Government/Industry Free Flight Steering Committee meeting to be held June 13, 1996, starting at 1:30 p.m. The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, in Conference Room 8ABC (8th floor).

The agenda will be as follows: (1) Welcome/Opening Remarks; (2) Review Summary of April 11 Meeting; (3) FAA Presentation of National Airspace System Architecture; (4) Program Management Team Presentation of Recommended Government/Industry Free Flight Action Plan

(Responsibilities, Priorities, Milestones); (5) Free Flight Steering Committee Discussion (Guidance and Direction; Plans for August 14 Meeting); (6) Closing Remarks.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 17, 1996.

Janice L. Peters,

Designated Federal Officer.

[FR Doc. 96–12840 Filed 5–21–96; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 159 Working Group 4; Minimum Operational Performance Standards For Airborne Navigation Equipment Using Global Positioning System (GPS); Precision Approach and Landing (Cat II/III)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159 Working Group 4 meeting to be held June 3–5, 1996, starting at 9:00 a.m. This is less than 15 days notice due to increased emphasis on this group's work effort and the need to begin this process immediately. The meeting will be held at the Holiday Inn Solomons, 155 Holiday Drive, Solomons, MD, 20688, phone (800) 356–2009/(410) 326–6311; Mr. Glenn Colby, host, (301) 342–4441 (phone), (301) 342–2626 (fax).

The agenda will include presentations on CAT II/III requirements, technology and test results, and a review of the status of the draft CAT II/III Minimum Aviation System Performance Standards (MASPS) document; discussion of a paper on user differential range error, planned for June 4 at 9:00 a.m.; circulation of the changes to RTCA/DO–217, MASPS DGNSS Instrument Approach System: Special Category I (SCAT–I), for final action by the Special Committee 159 plenary on July 12; and topics for discussion at the Working Group 4 meeting to be held at RTCA July 9–11.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact Mr. Keith McDonald, Chair of Working Group 4, at (703) 578–0700; Dr. George Ligler, Co-Chair of Working Group 4A, at (301) 983–4388; or Mr. Harold Moses, RTCA Program Director, at (202) 833–9339. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 17, 1996.

Janice L. Peters,

Designated Federal Officers.

[FR Doc. 96–12841 Filed 5–21–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Request To Amend an Approved Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Miami International Airport, Miami, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on a Request to Amend an Approved Application.

SUMMARY: The FAA proposes to rule and invites public comment on the request to amend the approved application to impose and use the revenue from a PFC at Miami International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before June 21, 1996.

ADDRESSES: Comments on this request may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gary Dellapa, Director of the Dade County Aviation Department at the following address: P.O. Box 592075, Miami, Florida 33159.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Dade County Aviation Department under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Bart Vernace, Plans & Programs Manager, 9677 Tradeport Drive, Suite 130, Orlando, Florida, 32827, 407–648–6583, extension 27. The request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to amend the application to impose and use the revenue from a PFC at Miami International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 7, 1996, the FAA received the request to amend the application to impose and use the revenue from a PFC submitted by the Dade County Aviation Department within the requirements of Section 158.37(b) of Part 158. The FAA will approve or disapprove the amendment, in whole or in part, no later than September 4, 1996.

The following is a brief overview of the request. Proposed increase in total estimated PFC revenue: From $28,637,000 to $76,386,000.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may inspect the request in person at the Dade County Aviation Department.

Issued in Orlando, Florida on May 14, 1996.

Charles E. Blair,

Manager, Orlando Airports District Office Southern Region.

[FR Doc. 96–12806 Filed 5–21–96; 8:45 am]

BILLING CODE 4910–13–M

MARITIME ADMINISTRATION

[Docket No. M–017]

Information Collection Available for Public Comments and Recommendations

AGENCY: Maritime Administration.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before July 22, 1996.

FOR FURTHER INFORMATION CONTACT: Linda C. Somerville, Division of Vessel Transfer and Disposal, Maritime Administration, MAR–631, Room 7324,

400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5821 or fax 202–366–3889. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Trustee's Supplemental Certification.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0015.

Form Number: MA–580.

Expiration Dote of Approval: August 31, 1996.

Summary of Collection of Information: Provide for approval of banks and trust companies to act as Trustees under certain ship financing trusts and provide a procedure for assuring the validity and preferred status of mortgages on U.S. flag vessels and certain mortgages requiring Secretarial approval. The approved bank or trust company is required to furnish its supplemental certification every five years in order to remain on the Roster of Approved Trustees. The processing fee for this application is $215.00 per filing.

Need and Use of the Information: Information collection provides information that will be used by the Maritime Administration to determine whether the bank or trust company continues to meet the statutory requirements to serve as Trustees.

Description of Respondents: Banks and trust companies.

Annual Responses: 68.

Annual Burden: 51 hours.

Comments: Send all comments regarding this information collection to Joel C. Richard, Department of Transportation, Maritime Administration, MAR–120, Room 7210, 400 Seventh Street, SW., Washington, DC 20590. Send comments regarding whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected.

By Order of the Maritime Administrator.

Dated: May 16, 1996.

Joel C. Richard,

Secretary.

[FR Doc. 96–12798 Filed 5–21–96; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Modification of Exemption From the Vehicle Theft Prevention Standard; General Motors Corporation

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for modification of a previously approved antitheft device.

SUMMARY: On April 9, 1991, this agency granted in part General Motors Corporation's (GM) petition for exemption from the parts-marking requirements of the vehicle theft prevention standard for the Buick Park Avenue car line. This notice grants in full GM's petition for modification of the previously approved antitheft device for that line. The agency grants this petition because it has determined, based on substantial evidence, that the modified antitheft device described in GM's petition to be placed on the car line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, S.W., Washington, DC 20590. Ms. Proctor's telephone number is (202)366–1740. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: In April 1991, NHTSA published in the **Federal Register** a notice granting in part the petition from General Motors Corporation (GM) for an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the model year 1992 Buick Park Avenue car line. (See 56 FR 14413, April 9, 1991). The agency determined that the PASS-Key antitheft device, which GM intended to install on the Buick Park Avenue car line as standard equipment, was likely to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements of the Theft Prevention Standard. The agency decided based on the information available at that time that a full exemption was not appropriate and granted a partial exemption, which required that the engine and transmission on this line continue to be marked. The agency limited the exemption because the antitheft device lacked both an audible and a visual alarm to call attention to unauthorized entry of the vehicle. The lack of such a warning device made the agency uncertain whether the device would be as effective as parts marking in deterring theft of this vehicle.

On February 16, 1996, GM submitted its petition for modification to its previously approved PASS-Key antitheft device. The petition also asked that the line be granted a full rather than partial exemption. GM's submittal is considered a complete petition, as required by 49 CFR Part 543.9(d), in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6. GM requested confidential treatment for some of the information and attachments submitted in support of its petition for modification. In a letter to GM dated March 1, 1996, the agency granted the petitioner's request for confidential treatment.

In its petition for MY 1992, GM included a detailed description of the identity, design and location of the components of the PASS-Key antitheft device, including diagrams of components and their location in the vehicle. GM described the PASS-Key antitheft device installed as standard equipment as passively activated. The PASS-Key antitheft device utilizes an ignition key, an ignition lock cylinder and a decoder module.

GM stated that for MY 1997, the PASS-Key III antitheft device will utilize more advanced technology than the PASS-Key or PASS-Key II devices. The PASS-Key III device will add new features and refinements to some of the previous PASS-Key/PASS-Key II components. As with the PASS-Key and PASS-Key II antitheft devices, the PASS-Key III device will remain fully functional once the ignition has been turned off and the key has been removed. No operator action will be required other than removing the key. The PASS-Key III will also use a special ignition key and decoder module. The conventional mechanical key unlocks and releases the steering wheel and transmission lever. However, before the vehicle can be operated, the key's electrical code must be sensed by the key cylinder and properly decoded by the decoder module.

GM stated that the transponder, now embedded in the head of the key for the PASS-Key III device, is stimulated by a coil surrounding the key cylinder. The transponder in the key then emits a modulated signal at a specified radio frequency. The identity of the key is an integral and unique code within the modulated signal. The PASS-Key III device has the potential for four trillion or more unique electrical key codes. The key cylinder coil receives and sends the modulated signal to the decoder. When the decoder module recognizes a valid key code, it sends an encoded message to the Powertrain Control Module (PCM) to enable fuel flow and starter operation. If an invalid key is detected, the PASS-Key III decoder module will transmit a different password to the PCM to disable fuel flow and starter operation.

The PASS-Key II device was designed to shut down for three to four minutes if an invalid key was detected, preventing further attempts at starting the vehicle during that shutdown. However, GM believes that the time-consuming task of attempting to defeat the device having over four trillion key codes by a trial-and-error method eliminates the need for such an extensive shutdown period. Therefore, with the PASS-Key III device, a shut-down period occurs only if someone is attempting to program a new electronically coded key. Shut-down occurs for ten seconds with a valid key and thirty minutes with a non-valid key. As an additional security measure, GM will provide the MY 1997 Buick Park Avenue owner/operator with a "valet" version of the PASS-Key III ignition key that will be modified to prevent the ten-second code-duplication possible with the normal ignition key.

The PASS-Key III decoder module and antenna will be located in the steering column for MY 1997. GM stated that the device cannot be defeated by removing and then subsequently reapplying vehicle power. Additionally, GM stated that replacement of the decoder module will not defeat the device because of its decoder module password.

Upon starting the vehicle, the ignition switch will enable power to the PASS-Key III device causing the decoder module to illuminate a "security" light on the instrument cluster. GM states that this "bulb check" sequence will last for five seconds and then the light will return to the normal state ("off") for a valid key. Any attempts to start the vehicle with an electronically invalid key will cause the "security" light to turn on. Should an error arise during normal operation, the "security" light is enabled, signaling to the operator that a fault has been detected in the PASS-Key III device. According to GM, the vehicle will continue to operate despite the fault, however, vehicle security may be compromised.

GM stated that the PASS-Key III device has been designed to enhance the functionality and theft protection of the first and second-generation PASS-Key and PASS-Key II devices. However, as in the first and second-generation PASS-Key devices, the PASS-Key III device does not provide an alarm, either audible or visual to attract the attention to the efforts of an unauthorized person to enter or move the vehicle by means other than a key (49 CFR § 543.6(a)(3)(ii).) To substantiate its belief that an alarm system is not a necessary feature to effectively deter the theft of a vehicle, GM compared the reduction in thefts for Corvettes equipped with a passive antitheft device *with* an audible/visible alarm feature (24% reduction), and the Chevrolet Camaro and Pontiac Firebird car lines equipped with a passive antitheft device *without* an alarm feature (66% and 69% reduction).

The following GM car lines have the "PASS-Key" device as standard equipment and have been exempted in part from the requirements of 49 CFR Part 541: the Chevrolet Camaro and Pontiac Firebird, beginning with MY 1990 (See 54 FR 3365, August 15, 1989); the Cadillac DeVille/Fleetwood and Oldsmobile 98, beginning with MY 1991 (See 55 FR 17854, April 27, 1990); and the Pontiac Bonneville and Buick Park Avenue, beginning with MY 1992 (See 56 FR 14413, April 9, 1991). NHTSA has also granted exemptions in part for the following GM car lines that have PASS-Key II as standard equipment: the Oldsmobile 88 Royale and Buick LeSabre, beginning with MY 1993 (See 57 FR 10517, March 26, 1992) and the Cadillac Eldorado and Cadillac Seville, beginning with MY 1994 (see 58 FR 11659, February 26, 1993).

The agency had granted partial, rather than full exemptions for the car lines listed above because neither the PASS-Key nor PASS-Key II antitheft devices included an audible or visual alarm system. As such, the GM systems lack, as standard equipment, an important feature that the agency has defined in its rulemaking on Part 543 as one of several attributes which contribute to the effectiveness of an antitheft device: automatic activation of the device; an audible or visual signal that is connected to the hood, doors, and trunk, and draws attention to vehicle tampering; and a disabling mechanism designed to prevent a thief from moving a vehicle under its own power without a key.

Since deciding those petitions, however, the agency has become aware that theft data show declining theft rates for GM vehicles equipped with either version of the PASS-Key device. A comparison of theft data for car lines incorporating the PASS-Key and PASS-Key II devices does not show that the lack of an audible or visual alarm system detracts from the effectiveness of the PASS-Key and PASS-Key II devices. The agency believes that the data show that over time, despite the absence of an audible or visual alarm system, the PASS-Key and PASS-Key II devices, when placed on car lines as standard equipment, are as likely to be as effective in deterring and reducing motor vehicle theft as compliance with the parts-marking requirements.

Based on this information, the agency has granted two GM petitions for full exemptions for car lines equipped with the PASS-Key II antitheft device. Those lines are the Chevrolet Lumina and Buick Regal car lines (See 60 FR 25938, May 15, 1995) and the Buick Riviera and Oldsmobile Aurora car lines (See 58 FR 44872, August 25, 1993). In both of those instances, the agency concluded that a full exemption was warranted because the PASS-Key II device had shown itself to be as likely as parts marking to be effective protection against theft despite the absence of a visual or audible alarm. Because the PASS-Key III device to be used in the Buick Park Avenue beginning in MY 1997 is an improved version of these systems, the agency concludes that a full exemption is appropriate for this car line as well.

To ensure reliability and durability of the device, GM stated that it conducted tests based on its own specified standards. GM provided the test results for the PASS-Key III device showing that the device complied with the specified performance requirements of each test. GM stated that the PASS-Key III device complied with it standards for power temperature cycling, high and low temperature storage, humidity, salt fog, drop, dust, thermal shock, frost, altitude, shock, random vibration and potential contaminants.

To substantiate its beliefs as to the effectiveness of the PASS-Key III antitheft device, GM compared its MY 1997 antitheft modification to similar devices that have previously been granted exemptions by the agency. GM provided data on the Chevrolet Camaro, Pontiac Firebird, Cadillac DeVille/ Fleetwood, Cadillac Seville and Cadillac Eldorado car line theft rates for MYs 1986 through 1991. PASS-Key was made standard on the Camaro, Firebird, Seville and Eldorado beginning with MY 1989 and on the DeVille/ Fleetwood beginning with MY 1990. The data provided by GM were reported by the Federal Bureau of Investigation's National Crime Information Center (NCIC), which is NHTSA's official source of theft data (See 50 FR 46666,

November 12, 1985). The NCIC receives reports on all thefts.

The NCIC data reported by GM showed that the Camaro, Firebird, DeVille/Fleetwood, Seville and Eldorado theft rates (per thousand vehicles) by Model Year were: For MY 1986, 29.49 for the Camaro, 27.83 for the Firebird, 7.11 for the DeVille/Fleetwood, 1.71 for the Seville and 2.27 for the Eldorado; for MY 1987, 26.03 for the Camaro, 30.14 for the Firebird, 6.16 for the DeVille/Fleetwood, 9.24 for the Seville and 3.90 for the Eldorado; for MY 1988, 25.74 for the Camaro, 29.39 for the Firebird, 7.91 for the DeVille/Fleetwood, 9.54 for the Seville and 3.16 for the Eldorado; for MY 1989, 8.69 for the Camaro, 9.00 for the Firebird, 5.57 for the DeVille/Fleetwood, 8.31 for the Seville and 2.35 for the Eldorado; for MY 1990, 9.04 for the Camaro, 8.04 for the Firebird, 3.85 for the DeVille/Fleetwood, 9.43 for the Seville and 2.44 for the Eldorado; for MY 1991, 7.80 for the Camaro, 6.37 for the Firebird, 4.06 for the DeVille/Fleetwood, 7.95 for the Seville and 2.83 for the Eldorado.

GM believes that based on the reduced theft rates of its PASS-Key and PASS-Key II equipped car lines and the proven theft-deterrence success of transponder electronics security, the PASS-Key III device to be introduced on the MY 1997 Buick Park Avenue is likely to be more effective in reducing and deterring motor vehicle theft than compliance with the parts marking requirements of 49 CFR Part 541.

The agency believes that there is substantial evidence indicating that the modified antitheft device to be installed as standard equipment on the MY 1997 Buick Park Avenue car line will likely be as effective in reducing and deterring motor vehicle theft as compliance with the requirements of the Theft Prevention Standard (49 CFR Part 541). This determination is based on the information that GM submitted with its petition and on other available information. The agency believes that the modified device will continue to provide the types of performance listed in Section 543.6(a)(3): promoting activation; attracting attention to unauthorized entries; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 CFR Section 543.6(a)(4), the agency also finds that GM has provided adequate reasons for its belief that the modified antitheft device will reduce and deter theft. This conclusion is based on the information GM provided on its PASS-Key III device. This information included a description of reliability and functional tests conducted by GM for the PASS-Key III antitheft device and its components.

For the foregoing reasons, the agency hereby exempts the Buick Park Avenue car line, which is the subject of this notice, in whole, from the requirements of 49 CFR Part 541.

Section 543.9(h)(2)(i), specifically reads, "* * * an exemption under this section takes effect on the first day of the model year following the model year in which NHTSA issued the modification decision." Therefore, since the agency is issuing its decision on the General Motors Corporation modification during model year 1996, the modification for the Buick Park Avenue car line becomes effective beginning with Model Year 1997.

If, in the future, GM decides not to use the exemption for the car line that is the subject of this notice, it should formally notify the agency. If such a decision is made, the car line must be fully marked according to the requirements under 49 CFR Section 541.5 and Section 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if GM wishes in the future to modify the device on which this exemption is based, it may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Section 543.9(c)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which section 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: May 17, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–12842 Filed 5–21–96; 8:45 am]

BILLING CODE 4910–59–P

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions form the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follow: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before (30 days after publication).

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application	Applicant	Regulations(s) affected	Nature of exemption thereof
1167–N	Chaparral, Inc., Lubbock, TX	49 CFR 171.11, 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107 Appendix B.	To authorize the transportation in commerce of Division 1 explosives presently forbidden or in quantities greater than those authorized for shipment by air. (Mode 4.)
11678–N	Air Transport Association, Washington, DC.	49 CFR 172.200, 172.201, 172.202, 172.203, 172.204, 172.300, 172.301, 172.415, 172.600–604, 173.29 & 175.33.	To authorize the transportation in commerce of DOT approved cylinders, not to exceed 7.5 cu. ft., used in connection with calibration devices for alcohol testing units for flight crews, containing Division 2.2. material to be transported without required marking, labelling, shipping paper, and notification of pilot in command. (Modes 4, 5.)
11679–N	Dorbyl Engineering, Container Division (DHE), Republic of South Africa.	49 CFR 178.245–1(b)	To authorize the manufacture, mark and sale of non-DOT specification portable tanks, mounted in ISO frames, to be used for the transportation in commerce of Division 2.1., 2.2 and 2.3 material. (Modes 1, 2, 3.)
11680–N	Citergaz SA, 86 400 Civray, FR	49 CFR 178.245–1(b)	To authorize the manufacture, mark and sale of non-DOT specification portable tank containers similar DOT specification 51 equipped with openings in areas other than on the top or at the end for use in transporting gases in Division 2.1 and 2.2. (Modes 1, 2, 3.)
11681–M	Citergaz SA, 86 400 Civray, FR	49 CFR 178.245–1(b)	To authorize the manufacture, mark and sale of non-DOT specification portable tank comparable to DOT Specification 51, except for the location of the openings to be used for the transportation in commerce of certain Division 2.1 and 2.2 gases. (Modes 1, 2, 3.)
11682–N	Cryolor, Argancy, 57365 Ennery—France.	49 CFR 178.338–2 (a)&(e)	To authorize the transportation in commerce of a vacuum insulated, non-DOT specification portable tank permanently fitted within an ISO frame for the use in transporting certain refrigerated liquid, Division 2.2. (Modes 1, 2, 3.)
11686–N	Bridgeview, Inc., Morgantown, PA	49 CFR 171.8, 172.101(8.c), 173.197	To authorize the transportation in commerce of regulated medical waste in plastic bags in non-DOT specification steel roll-off containers as outer packaging. (Mode 1.)
11687–N	Tri-Tank Corp., Syracuse, NY	49 CFR 178.245–6	To authorize the transportation in commerce of non-DOT specification 51 cargo tank with specification plate located on the sideshell for use in transporting Class 8 material. (Mode 1.)
11690–N	CP Industries, Inc., McKeesport, PA	49 CFR 178.45–2(b)	To authorize the manufacture, mark and sale of 3T cylinder in sizes smaller than 1000 lbs. capacity for use in transporting various non-liquefied and liquefied compressed gases Division 2.1 and 2.2. (Mode 1.)
11691–N	PepsiCo International, Valhalla, NY	49 CFR 176.331, 176.800(a), 176.83(d).	To authorize the transportation in commerce of various classes of hazardous materials and foodstuffs to be exempt from segregation requirements during vessel stowage. (Mode 3.)
11692–N	SCM Technologies, Tilbury, OR	49 CFR 173.301, 173.302, 173.304, 175.3, 178.45.	To authorize the manufacture, mark and sale of a non-DOT specification cylinder similar to DOT 3T, except with a lower minimum allowable wall thickness for use in transporting certain Division 2.1, 2.2, and 2.3 material. (Modes 1, 2, 3, 4.)
11693–N	Kemin Industries, Inc., Des Moines., IA.	49 CFR 173.218(c)	To authorize the bulk transportation by vessel, in freight containers, of fishmeal treated with NATUROX instead of ethoxyqui, Division 4.2. (Mode 3.)
11697–N	Department of Defense, Falls Church, VA.	49 CFR 176.116	To authorize an alternative stowage method for MSC chartered LASH type vessels to carry Division 1 explosives in LASH barges within 10 feet of machinery spaces under certain conditions. (Mode 3.)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on May 15, 1996.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 96–12801 Filed 5–21–96; 8:45 am]

BILLING CODE 4910–60–M

Office of Hazardous Materials Safety, Notice of Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before (15 days after publication).

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
9413–M	EM Science, Cincinnati, OH (See Footnote 1).	9413
9926–M	Implementos Agricolas, Gomez Palacio, DGO, MX (See Footnote 2).	9926
10798–M	Olin Corp., Stamford, CT (See Footnote 3).	10798
11227–M	Western Atlas International, Houston, TX (See Footnote 4).	11227
11658–M	AFR Arbel Fauvet Rail, Douai, France (See Footnote 5).	11658
11661–M	AFR Arbel Fauvet Rail, (See Footnote 6).	11661

(1) To modify the exemption to provide for rail as an additional mode of transportation for use in transporting chemical kits.

(2) To modify the exemption to increase the service pressure to 2200 psi for non-DOT specification cylinders manufactured in accordance with DOT–39 specification except for material of construction.

(3) To modify the exemption to provide for the unloading of several additional classes of hazardous material from tank cars while connections are attached when no product is being transferred.

(4) To modify the exemption to provide for an additional power device, Division 1.4C, in specially designed vehicles and offshore tool pallets.

(5) To reissue exemption originally issued on an emergency basis to authorize the transportation in commerce of certain Division 2.1 and 2.2 gases in non-DOT specification IMO Type 5 portable tanks which are comparable to DOT specification 51 except the tank has bottom outlets.

(6) To reissue the exemption originally issued on an emergency basis to authorize the manufacture, marking and sale of non-DOT specification portable tanks for the transportation of refrigerant gases. Tanks meet DOT Specification 51 except for location of openings.

Application No.	Applicant	Parties to exemption
7835–P	Praxair Distribution, Inc., Austin, TX.	7835
8451–P	Action Manufacturing Company, Philadelphia, PA.	8451
8554–P	Evenson Explosives, LLC, Morris, IL.	8554
9275–P	SmithKline Beecham, King of Prussia, PA.	9275
9275–P	Ohmeda, Inc., Liberty Corner, NJ.	9275
9273–P	Seacoast Ocean Services, Incorporated, Portland, ME.	9723
9769–P	Laidlaw Environmental Svcs. de Mexico, SA de C.V., Columbia, SC.	9769
9769–P	Laidlaw Environmental Services (Quebec), Ltd., Columbia, SC.	9769
9769–P	Laidlaw Environmental Services, Ltd., Columbia, SC.	9769
9769–P	Laidlaw Environmental Services (Recovery), Inc., Columbia, SC.	9769
9769–P	Laidlaw Environmental Services of South Carolina, Columbia, SC.	9769
9769–P	Laidlaw Environmental Services of Bartow, Inc., Columbia, SC.	9769
9769–P	Laidlaw Environmental Services (WT), Inc., Columbia, SC.	9769
9769–P	Laidlaw Environmental Services of Chattanooga, Columbia, SC.	9769
9769–P	Municipal Services Corportion, Inc., Columbia, SC.	9769
9769–P	Solvent Service Company, Inc., Columbia, SC.	9769
9769–P	Masters Wash Products, Inc., Columbia, SC.	9769
9769–P	Clean Venture, Inc., Elizabeth, NJ.	9769
9769–P	Chemical Conservation Corporation, Orlando, FL.	9769
10001–P	Tristate Airgas, Inc. d/b/a Randall-Graw Co., Inc., La Crosse, WI.	10001
10441–P	Superior Special Services, Inc., Port Washington, WI.	10441
10441–P	Environmental Options, Inc., Rocky Mount, VA.	10441
10751–P	Austin Powder Company Cleveland, OH.	10751
10933–P	Environmental Options, Inc., Rocky Mount, VA.	10933
10933–P	Hydrocarbon Recyclers, Inc., Columbia, SC.	10933
10996–P	Luna Tech, Inc., Owens Cross Roads, AL.	10996
11043–P	Superior Special Services. Inc., Port Washington, WI.	11043
11043–P	Chemical Conservation Corporation, Orlando, FL.	11043
11055–P	Superior Special Services, Inc., Port Washington, WI.	11055

Application No.	Applicant	Parties to exemption
11153–P	Chemical Conservation Corporation, Orlando, FL.	11153
11156–P	Buckley Powder Co. of Oklahoma, Inc., Mill Creek, OK.	11156
11373–P	P.B. & S. Chemical Company, Inc., Henderson, KY.	11373
11458–P	American Home Food Products, Inc., Milton, PA.	11458
11458–P	Prestone Products Corporation, Danbury, CT.	11458
11458–P	Sherwin-Williams Diversified Brands, Inc., Solon, Oh.	11458
11472–P	Industrial Solid Propulsion, Inc., Las Vegas, NV.	11472
11472–P	Aero Tech, Inc., Las Vegas; NV.	11472
11588–P	American Type Culture Collection, Rockville, MD.	11588
11588–P	Culver Enterprises, Inc., Salisbury, MD.	11588
11588–P	Safety Disposal System, Inc., Opa Locka, FL.	11588
11588–P	Health Care Incinerators, Fargo, ND.	11588
11588–P	GRP & Associates, Inc., Clear Lake, IA.	11588

This notice of receipt of applications for modification of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on May 15, 1996.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 96–12802 Filed 5–21–96; 8:45 am]

BILLING CODE 4910–60–M

Surface Transportation Board [1]

[STB Finance Docket No. 32938]

Bootheel Regional Rail Corporation and Bootheel Rail Properties, Inc.—Acquisition and Operation Exemption—Burlington Northern Santa Fe Corporation

Bootheel Regional Rail Corporation (BRRC) and Bootheel Rail Properties, Inc. (BRPI), noncarriers, have filed a verified notice of exemption under 49 CFR 1150.31 for BRPI to acquire and BRRC to operate a 26.63-mile rail line (together with incidental and appendent branch line rights-of-way, now discontinued, and spur tracks) from the Burlington Northern Santa Fe Railroad as follows: (1) Branch Line between Hayti, MO, (milepost 212.73), and Kennett, MO, (milepost 230.00); (2) discontinued Branch Line right-of-way from Kennett, MO, (milepost 230.00), to Holcomb, MO, (milepost 233.15); (3) discontinued Branch Line right-of-way from Kennett, MO, (milepost 230.00), to Senath, MO, (milepost 233.52); (3) discontinued Piggott Stub Branch Line right-of-way, (milepost 222.19 to milepost 223.40); and (4) discontinued Branch Line from Hayti, MO, (milepost 212.90), to Caruthersville, MO, (milepost 214.38).

The transaction was to be consummated on or after May 8, 1996.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32938, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Allan A. Maki, Jr., Esq., 1563 Grandview Drive, Cape Girardeau, MO 63701–2223.

Decided: May 16, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–12830 Filed 5–21–96; 8:45 am]

BILLING CODE 4915–00–P

Surface Transportation Board [1]

[STB Finance Docket No. 32941]

Livonia, Avon & Lakeville Railroad Corp.—Acquisition and Operation Exemption—Steuben County Industrial Development Agency (19492)

Livonia, Avon & Lakeville Railroad Corp. (LAL), a Class III common carrier by rail, has filed a verified notice under 49 CFR 1180.2(d)(2) to acquire the exclusive right to operate over Steuben County Industrial Development Authority's rail line (Subject Line) between milepost ±8.68 at Hammondsport and milepost ±0.85 at Bath,[2] and from that point (which is also designated as milepost ±285.10) to milepost ±311.30 at Wayland, a distance of approximately 34.03 route miles.

Consummation of the transaction was expected to occur on May 8, 1996, or soon thereafter.

LAL owns and operates a line of railroad between Rochester and Lakeville, NY. This transaction is exempt from the prior approval requirements of 49 U.S.C. 11323 because LAL states that: (1) The Subject Line does not connect with the existing rail lines of LAL; (2) the proposed transaction is not part of a series of anticipated transactions that would connect LAL's existing lines with the Subject Line; and (3) the transaction does not involve a Class I carrier.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32941, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on

---

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323.

[2] At the time the Steuben County Industrial Development Agency (SCIDA) obtained approval from the ICC to acquire the Subject Line, it did not seek the requisite authority to obtain that portion of the Subject Line between Bath and Hammondsport. *See Steuben County Industrial Development Agency and Chompaigne Railroad, Inc.—Acquisition and Operation Exemption—Line of Consolidated Rail Corporation*, Finance Docket No. 32133 (ICC served Dec. 23, 1992). LAL indicates that SCIDA will be seeking a retroactive exemption for this acquisition in the near future.

Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, N.W., Suite 400, Washington, DC 20036–6015.

Decided: May 14, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–12828 Filed 5–21–96; 8:45 am]

BILLING CODE 4915–00–P

Surface Transportation Board [1]

[STB Finance Docket No. 32891]

Norfolk Southern Railway Company—Corporate Family Transaction Exemption—Southern Railway-Carolina Division

Norfolk Southern Railway Company (NSR), a Class I common carrier by railroad, and Southern Railway-Carolina Division (SRCD), a Class III common carrier railroad, have jointly filed a verified notice of exemption. The exempt transaction is a merger of SRCD with and into NSR.[2]

The transaction is expected to be consummated on or after June 1, 1996.

The proposed merger will eliminate SRCD as a separate corporate entity, thereby simplifying the corporate structure of NSR and the NSR system, and eliminating costs associated with separate accounting, tax, bookkeeping and reporting functions.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant oerational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to this exemption, any employees adversely affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32891, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on James A. Squires, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

Decided: May 16, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–12831 Filed 5–21–96; 8:45 am]

BILLING CODE 4915–00–P

Surface Transportation Board [1]

[STB Docket No. AB–55 (Sub-No. 529X)]

CSX Transportation, Inc.—Abandonment Exemption—in Cincinnati, Hamilton County, OH

CSX Transportation, Inc. (CSXT) filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 1.5 miles of its line of railroad between Valuation Station 1+82.8 near Smith Street and Valuation Station 81+12 near Mill Creek, in Cincinnati, Hamilton County, OH.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 21, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 [4] must be filed by June 3, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 11, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Charles M. Rosenberger, Senior Counsel, 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 24, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

---

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323–24.

[2] SRCD is a wholly owned, direct subsidiary of NSR with authorized capital stock of 77,987 shares of Common Stock, 41,762 of which are issued and outstanding and owned by NSR. NSR has leased and operated the properties of SRCD since approximately 1902. The proposed agreement and plan of merger states that any outstanding shares of SRCD's capital stock will be canceled and retired, and no consideration will be paid in respect of such shares.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to the Board's jurisdiction pursuant to 49 U.S.C. 10903.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 15, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–12829 Filed 5–21–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 637

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 637, Application for Registration (For Certain Excise Tax Activities).

DATES: Written comments should be received on or before July 22, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Registration (For Certain Excise Tax Activities).

OMB Number: 1545–0014.

Form Number: Form 637.

Abstract: Form 637 is used to apply for excise tax registration. The registration applies to a person required to be registered under Internal Revenue Code section 4101 for purposes of the federal excise tax on taxable fuel imposed under Code sections 4041 and 4081; and to certain manufacturers or sellers and purchasers that must register under Code section 4222 to be exempt from the excise tax on taxable articles. The data is used to determine if the applicant qualifies for the exemption. Taxable fuel producers are required by Code section 4101 to register with the Service before incurring any tax liability.

Current Actions: Part III of Form 637 is revised and expanded to let taxpayers enter the required information directly on the form instead of on attachments. Lines 1 through 6 of Part III are for the general information required by all applicants. Lines 7 through 14 of Part III are generally for fuel applicants only. All of the information requested in Part III as revised was previously requested in the instructions of Form 637 and reported by taxpayers on attachments to the form.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations and not-for-profit institutions.

Estimated Number of Respondents: 2,000.

Estimated Time per Respondent: 9 hrs. 22 min.

Estimated Total Annual Burden Hours: 18,720.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Approved: May 15, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–12752 Filed 5–21–96; 8:45 am]

BILLING CODE 4830–01–U

Office of Thrift Supervision

[AC–32; OTS No. 3667]

Algiers Homestead Association, New Orleans, Louisiana; Approval of Conversion Application

Notice is hereby given that on May 13, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Algiers Homestead Association, New Orleans, Louisiana, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039–2010.

Dated: May 16, 1996.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 96–12769 Filed 5–21–96; 8:45 am]

BILLING CODE 6720–01–P

[AC–33; OTS No. 5201]

The Dime Savings Bank of Williamsburgh, Brooklyn, New York; Approval of Conversion Application

Notice is hereby given that on May 14, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of The Dime Savings Bank of Williamsburg, Brooklyn, New York, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: May 16, 1996.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 96–12770 Filed 5–21–96; 8:45 am]

BILLING CODE 6720–01–P

[AC–34; OTS No. 1437]

Ocean Federal Savings Bank, Brick, New Jersey; Approval of Conversion Application

Notice is hereby given that on May 14, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Ocean Federal Savings Bank, Brick, New Jersey, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of

Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: May 16, 1996.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 96–12771 Filed 5–21–96; 8:45 am]

BILLING CODE 6720–01–P

federal register

Wednesday
May 22, 1996

Part II

Department of Justice

Civil Rights Division

Disability Rights Section; The Americans With Disabilities Act Technical Assistance Grants To Promote Voluntary Compliance With the Act; Notice

DEPARTMENT OF JUSTICE

Civil Rights Division

Disability Rights Section; The Americans With Disabilities Act Technical Assistance Grants To Promote Voluntary Compliance With the Act

AGENCY: Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

ACTION: Notice of availability of funds and of solicitation for grant applications.

PURPOSE: The Disability Rights Section of the Civil Rights Division, United States Department of Justice (DOJ), announces the availability of up to $500,000 to fund projects under the ADA Technical Assistance Program. The program seeks to inform and educate covered entities and persons with disabilities about their responsibilities and rights under title II and title III of the Americans with Disabilities Act of 1990 (ADA). The term "covered entities" refers to businesses, commercial properties, institutions, State and local governments or their agencies, and other organizations or enterprises that have responsibilities under title II or title III of the ADA. The primary objective of this program is to encourage and facilitate voluntary compliance with titles II and III of the ADA and the Department's implementing regulations through education and information sharing.

This year, the Department is seeking grant applications in the following two (2) priority areas:

(1) Statewide projects to educate small businesses about the basic requirements of title III of the ADA. The projects, utilizing local business and professional organizations, will make businesses aware of the ADA and the ADA resources available locally, within the State, and from the Federal government; and promote the exchange of ideas and information on successful compliance efforts within their communities. The Department anticipates funding projects in larger States in amounts up to $100,000 and projects in smaller States in amounts up to $50,000.

(2) Projects to conduct statewide ADA information-sharing conferences for State and local government officials. These conferences will provide information on the requirements of title II of the ADA and the ADA resources available locally, within the State, regionally, and from the Federal government; and promote the exchange of ideas and information on successful compliance efforts within the State. The Department anticipates that projects will be funded in amounts up to $40,000 each.

Detailed information regarding these specific priorities may be found in the *Program Priorities* section of this solicitation. Proposals not responsive to the established priority areas will not be considered.

Grants will be awarded to selected applicants who propose cost-effective and efficient methods for carrying out projects related to this year's priorities. The Department is particularly interested in receiving proposals that: reflect an ability to begin project activities in an expedited manner; demonstrate an ability to reach and work effectively with established business, professional, trade, or municipal organizations; utilize materials already developed by Federal agencies and their grantees or contractors; draw on people within the State who have ADA expertise; represent long-term joint ventures between business, professional, trade, or municipal organizations and organizations that represent persons with disabilities; and specifically address how members of minority communities will be included within the population targeted by the applicant for receipt of technical assistance.

ELIGIBLE APPLICANTS: This grant competition is open to non-profit organizations, including trade and professional associations or their subsidiaries, organizations representing State and local governments or their employees, other organizations representing entities covered by the ADA, State and local government agencies, organizations representing persons with disabilities, and individuals. Preference will be given to the specific types of organizations described under Priority 1 and Priority 2 in the *Program Priorities* section of this solicitation.

GRANT PERIOD AND AWARD AMOUNT: The period of performance will be twelve months from the date of the grant award. An October 1, 1996 project start date is anticipated. A total of up to $500,000 is available for this solicitation. It is anticipated that Priority 1 grants will be awarded in amounts up to $100,000 in larger States and up to $50,000 in smaller States. Priority 2 grants will be awarded in amounts up to $40,000. However, the estimated funding level announced in this notice does not bind the Department of Justice to make any awards or to any specific number of awards or funding levels.

APPLICATION DEADLINE: Applications must be received by the close of business (5:30 p.m. EST) on July 22, 1996, at the Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 1425 New York Ave., NW., Room 4039, Washington, DC 20005 (overnight, express, or hand deliveries) or P.O. Box 66738, Washington, DC 20035–6738 (U.S. Postal Service mail). Applications may not be sent by facsimile. Applications received after 5:30 p.m. on July 22, 1996, will not be considered for award, even if the application was postmarked before that date. Incomplete applications will not be considered for award. In order to be considered complete, one bound original and two unbound copies of the application packet described in the *Application Requirements* section of this solicitation must be submitted.

FOR FURTHER INFORMATION CONTACT: Ruth Hall Lusher, ADA Technical Assistance Program Manager, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, DC 20035–6738. Grant application packages may be ordered by calling 1–800–514–0301 (Voice) or 1–800–514–0383 (TTY), 24 hours a day, seven days a week. This Notice and other related information, with the exception of standard forms, are available in alternate formats, e.g., large print, braille, audiotape, and computer disk. With the exception of standard forms, this information may also be accessed through the Disability Rights Section's electronic bulletin board at (202) 514–6193.

Background and Program Description

On January 26, 1992, the major provisions of titles II and III of the Americans with Disabilities Act (ADA) went into effect. The ADA prohibits discrimination against individuals with disabilities by employers, public accommodations and commercial facilities, State and local governments, transportation providers, and telecommunications services. Title III prohibits discrimination on the basis of disability in a broad range of public accommodations, commercial facilities and certain transportation services. Title II prohibits discrimination on the basis of disability in State and local government programs, activities, and services, including transportation and employment. The employment provisions (title I), most transportation provisions (title II, Subpart B), and telecommunications provisions (title IV) of the ADA are regulated by other Federal agencies and are not the subject of this Notice.

Section 506 of the ADA requires the Department of Justice to provide technical assistance to entities and individuals that have responsibilities or rights under title II (subtitle A, State and local government services) and title III (public accommodations and commercial facilities) of the ADA.

Pursuant to this requirement, the Department provides a variety of ADA-related services and information, including:

—A toll-free ADA Information Line (for voice and TTY callers) through which the public may obtain free publications and answers to questions about how the ADA applies to their own unique situation. The line, which fields up to 2,000 calls per week, also provides on-line service for Spanish-speaking callers;

—An ADA speakers bureau providing speakers from the Civil Rights Division to address a variety of ADA topics;

—Development and distribution of technical assistance materials, including the Department's regulations implementing titles II and III, technical assistance manuals for titles II and III, a series of ADA questions and answers publications, and other technical assistance materials targeted toward businesses, State and local government officials, professionals, and the general public. These materials may also be obtained through the Disability Rights Section's electronic bulletin board and through FedWorld on the Internet; and

—An outreach program to identify, inform, and work with covered entities and persons with disabilities, including disseminating information about the ADA and the Department's ADA Information Line to 6 million businesses through the IRS quarterly mailing, distributing television and radio Public Service Announcements on the ADA featuring the Attorney General to broadcast stations, and disseminating ADA information and technical assistance materials to other targeted audiences including mayors of large cities, 11,000 law enforcement programs and national advocacy and service organizations representing people with disabilities, African Americans, and Hispanics, among others.

Under section 506(d) of the Act, the Department has authority to award grants to non-profit entities and individuals for the purpose of supplementing the Department's technical assistance efforts. The Technical Assistance Grant Program is designed to develop and implement cost effective strategies to disseminate information about the responsibilities or rights of covered entities and individuals under titles II and III of the ADA and to provide practical information on effective ways to achieve compliance with the ADA. Through this program, the Department works with organizations and individuals representing the many constituencies affected by the ADA to develop and deliver educational programs and materials targeted to these audiences nationwide. The goal of the program is to foster voluntary compliance with the ADA.

Because the grant program is educational in nature, the Department does not fund projects to research or resolve issues that are outside the scope of the Department's current ADA regulations and court interpretations. The program is not intended to fund or support site-specific compliance implementation (e.g., funding to make specific facilities more accessible), or to fund or support inspections, reviews, or tests to determine whether an entity is meeting its compliance obligations.

Since the initiation of the grant program in 1991, the Department has awarded over 50 grants to non-profit organizations and State government entities. Previous recipients have included a wide range of groups conducting a variety of projects.

Title III projects have been directed toward educating owners and operators of hotels and motels, retail stores, grocery stores, restaurants and bars, professional offices, recreation and fitness centers, museums and other places of public display or collection, travel and tour agents, hospitals and health care providers, service providers for elderly persons, day care centers, small shops and stores, and large commercial properties.

Title II projects have worked toward educating mayors of medium and large cities and small towns, law enforcement personnel, 911/emergency response operators, officers of State courts, State social service agencies, persons involved in testing for licensure and certification purposes, and members and staff of local historic preservation commissions.

Other projects have been directed toward persons who can assist others in complying with the ADA, including professors and students in architecture, interior design, industrial design, and landscape architecture schools and programs; State and local building code officials; disability advocates; librarians; local historic preservation commissions; community and professional mediators; and building contractors and construction tradespeople. Simple, easy to understand materials about the ADA have been translated into Spanish and other languages.

The Department has undertaken other initiatives to ensure that materials developed by the Department and those developed under the grant program are available in localities across the country. An ADA Information File, which contains more than 60 ADA technical assistance documents, has been placed in 15,000 libraries throughout the country. Additional materials will be added to the ADA Information File in the coming months. The Department also disseminated similar informational packets to 6,000 Chambers of Commerce nationwide. As a result, a wealth of resources and educational information exists today in local communities. (A listing of materials contained in the ADA Information File will be included in the Grant Application Packet.)

The Department of Justice and other agencies have also taken steps to ensure that ADA technical assistance is available nationally, regionally, and locally. The Department, the Equal Employment Opportunity Commission (EEOC), and the Architectural and Transportation Barriers Compliance Board (Access Board) all operate toll-free ADA Information Lines to provide direct technical assistance to the public. The Department and the EEOC jointly funded a project to create the ADA Training and Implementation Network, a network of approximately 400 individuals who completed an intensive ADA training course. Members of the Network are currently located in every State in the country to serve as local resources for businesses, governments, and persons with disabilities. The U.S. Department of Education funds ten Regional Disability and Business Technical Assistance Centers (DBTACs) to provide technical assistance to covered entities and individuals with disabilities at the local, State, and regional level.

Despite these efforts and the availability of ADA information and resources, the Department has learned—through calls to its ADA Information Line, meetings with the public, Congressional inquiries, and studies conducted by the Government Accounting Office and by Louis Harris & Associates, Inc. for the National Organization on Disability—that:

—Many people continue to be unaware of what the ADA requires and how easy it can be to comply;

—Many people still believe that the ADA's requirements are more stringent than they are, or are unaware of cost-effective solutions for achieving compliance with the ADA;
—Some people who are trying in good faith to comply with the ADA are making needless and costly mistakes; and
—This lack of understanding can lead people to resist making efforts to comply, or make them vulnerable to hard-sell tactics by individuals who would profiteer from their lack of knowledge.

For these reasons, under its fiscal year 1995 grant program, the Department funded sixteen (16) organizations to conduct statewide pilot projects to work with and educate both small businesses and State and local government officials. Title III projects for small businesses were conducted in the States of Alaska, California, Louisiana, Michigan, Nebraska, Nevada, New York, Pennsylvania, South Dakota, and Texas. Title II projects for State and local government officials were conducted in Arizona, Connecticut, Kansas, Massachusetts, New Hampshire, and North Carolina.

These pilot projects, although not all of them have been completed, have already reached thousands of small business owners and State and local government officials at the local level, resulting in the identification of available community resources and the means for continuing, long term exchange of ideas and information. Because the pilot projects have been successful, the Department will fund additional statewide outreach and educational projects, as described in the following section.

Program Priorities

For fiscal year 1996, the Department is again establishing absolute funding priorities and will fund multiple statewide projects under each priority. The objectives of funding priorities one and two are (1) to increase awareness of the ADA; (2) to increase knowledge of existing materials and resources available locally, within the State, regionally, and from the Federal government to assist people in understanding and complying with titles II and III of the ADA; and (3) to promote the exchange of ideas and information on successful compliance efforts. The Department will not consider proposals for funding that are duplicative of projects funded in individual States in 1995 (see list of funded projects and States in *Background and Program Description*).

The Department is soliciting proposals that address the following two (2) specific priority areas:

Priority 1: Statewide pilot projects to educate small businesses about the basic requirements of title III of the ADA.

The ADA provides a general framework to eliminate discrimination against people with disabilities while providing flexibility to address the unique circumstances of the estimated 6 million businesses in the United States. While this flexibility allows business owners and managers to make their own decisions about exactly how they can comply, many do not know where to turn for accurate, practical information and assistance within their own communities. Business owners and managers may attempt to comply and yet not be successful, or they may be reluctant to implement any kind of strategy for compliance.

Studies show that business owners can comply with the ADA easily and reasonably if provided with adequate information and support. These projects are intended to use existing business and professional organizations to increase awareness of the ADA and the availability of ADA resources, and to engage members of local business communities in helping each other find practical, successful ways to comply with the ADA.

Preference will be given to state-based organizations that demonstrate an established relationship with the business community across that particular State. Examples include, but are not limited to, state-based private, non-profit professional and trade organizations (e.g., a State association of small business owners, a State Chamber of Commerce, a statewide retail or hospitality association, etc.), or State government agencies that work with the business community (e.g., Departments of Resource and Economic Development, Small Business Development Centers, a State Bureau of Travel or Tourism, etc.).

Applications will be considered only from organizations located within the state of the defined target audience. Applications submitted by organizations not meeting this requirement will not be considered.

Proposed projects must work with established local business and professional organizations using their regularly scheduled meetings, local and regional ADA resources and individuals with ADA expertise, and ADA publications and materials available free from the Department of Justice to reach and educate small businesses, non-profit groups, and others who must comply with title III of the ADA.

Project activities must be conducted in all regions of the State, reach a diverse representation of title III entities statewide, and represent a joint venture with organizations representing people with disabilities.

It is not anticipated that projects funded under this priority will develop new technical assistance material. Projects must use existing ADA material developed by the Department, other Federal agencies, or grantees, and approved by the Department. Grantees may not use non-approved material in conducting the project.

Statewide projects to educate small businesses about the basic requirements of title III of the ADA shall include the following major components:

—Conduct ADA educational programs in all regions of the State, working with established local business and professional organizations using their regularly scheduled meetings. A minimum of 50 programs must be conducted in larger States and a minimum of 25 programs must be conducted in smaller States. Letters of commitment from groups such as Merchant Associations, Jaycees, Kiwanis, Lions, Rotary Clubs, or similar organizations to utilize their existing meetings to conduct the project must be included with the grant application (proposals not based on using the regularly scheduled meetings of these organizations will not be considered);
—Programs must provide: basic information on the requirements of title III of the ADA using approved technical assistance materials available from the Department of Justice, including the "Open for Business" videotape, the Americans with Disabilities Act Guide for Small Businesses (publication date: 7/96), the Checklist for Readily Achievable Barrier Removal, the ADA Questions and Answers booklet, the IRS Tax Credit form, etc.; a list of technical assistance resources available locally, within the State, and from the Federal government that participants may use to obtain technical assistance at a later time; and time for local businesses to discuss issues, share ideas, and identify practical, cost-effective solutions that they have used successfully to comply with the ADA. An outline of a model program (one to two hours in length) must be included with the grant application;
—Use local, State, and regional ADA resources and individuals knowledgeable about the ADA for assistance to conduct the educational programs. It is anticipated that speakers and presenters will voluntarily provide their services. Grant funds may be used to reimburse individual travel expenses, but may not be used to provide honoraria for speakers. Letters of cooperation or support from groups such as the regional Disability and Business Technical Assistance Center (DBTAC) or local DBTAC affiliates, Independent Living Centers, other organizations representing people with disabilities, or members of the ADA Training and Implementation Network must be included with the grant application;
—Develop a marketing pamphlet or flyer that can be easily tailored, reproduced, and used by local business groups hosting the programs;
—Ensure that businesses owned or operated by people who are members of racial and ethnic minority groups will be included within the audiences reached;
—In carrying out the project, the grant recipient must use existing ADA publications and materials reviewed by the Federal government that are available from the Department and other agencies.
—Provide a brief final report on the project, including an identification of the strengths and weaknesses of the project, the number and types of participants involved, examples of known positive changes that may have occurred as a result of the project, and suggestions for improvement for the Department.

Priority 2: Statewide ADA information-sharing conferences for government officials.

In the United States today, an estimated 86,000 units of State, county, and municipal governments are working to understand and meet their obligations under title II of the ADA. The ADA provides the general framework to eliminate discrimination against people with disabilities, but also the flexibility to address the unique circumstances encountered by State and local government programs and activities. While this allows State and local government officials with ADA compliance responsibilities to decide exactly how to comply, many may not know where to turn for accurate, practical information and assistance within their own communities and may be reluctant to take needed action.

While many State and local governments have been successful in making their programs and activities accessible to people with disabilities, misinformation about the requirements of the ADA continues to exist, making voluntary compliance more confusing and burdensome for some than it need be. For example, many believe the ADA requires that all buildings must be accessible, when, in fact, the ADA actually requires that a public entity make its programs accessible to people with disabilities through means such as relocation of programs to an accessible location, structural modifications, or other alternatives. For those State and local government officials having the authority and the responsibility for developing and implementing ADA compliance strategies, access to information and other assistance is paramount if compliance efforts are to be successful. Yet, the significant resources that exist at the State and local level are often overlooked and underutilized, including other State and local governments that have already successfully resolved compliance issues.

One of the Department's primary roles and responsibilities is to assist local communities, both small and large, to understand the ADA's requirements through education and technical assistance. To accomplish this, the Department will fund projects to conduct statewide ADA information-sharing conferences for State and local government officials. These conferences will provide information on the requirements of title II the ADA, the ADA resources available locally, regionally and from the Federal government, and promote the exchange of ideas and information on successful compliance efforts within the State.

Proposed projects should target participants with decision making authority over programs that serve the public, particularly those with responsibility for ADA compliance activities. Preference will be given to State agencies or state-based organizations that demonstrate the existence of an established relationship with the target audience across that particular State. Examples include, but are not limited to, a State office on accessibility and ADA compliance, a State building code council, or state-based organizations that represent or work with local and State government officials such as a State municipal association, association of counties, association of cities or towns, council of mayors or city managers, etc.

Applications will be considered only from organizations located within the state of the defined target audience. Applications submitted by organizations not meeting this requirement will not be considered.

Proposed projects must bring State and local government officials from across the State together with individuals knowledgeable about the ADA from local, regional, and Federal sources, use approved ADA publications and materials available free from the Department or other sources, and provide a mechanism for the continuing exchange of information and ideas among the conference participants.

The statewide conference must reach a diverse representation of title II entities statewide.

It is not anticipated that projects funded under this priority will develop new technical assistance material. Projects must use existing ADA material developed by the Department, other Federal agencies, or grantees, and approved by the Department. Grantees may not use non-approved material in conducting the project.

Projects to conduct a statewide ADA information-sharing conferences for local and State government officials shall include the following major components:

—Working with State and local government agencies, officials, and employees, plan and promote the ADA conference to ensure representation from local and State agencies and programs from around the State. Letters of cooperation or support from such organizations must be included with the grant application;
—An outline plan for promoting the conference and its goals, including use of the media, must be included with the grant application;
—Identify and develop a list of local, State, regional, and Federal ADA resources that serve the State (e.g., regional DBTAC and local DBTAC affiliates, Centers for Independent Living, other organizations representing people with disabilities, members of the ADA Training and Implementation Network, local and State officials with ADA expertise, Federal ADA information lines, electronic bulletin boards, the ADA Information File in local libraries, etc.);
—Plan and conduct one statewide conference that will provide: information on the requirements of title II of the ADA specifically tailored to the needs of the targeted audience; information about technical assistance resources available locally, within the State, and from the Federal government; a variety of workshops or break-out sessions tailored to address specific issues and to enable

participants to discuss issues, share ideas, and learn of practical, cost-effective solutions that have been used successfully to comply with the ADA; and a mechanism for the continuing exchange of information and ideas among the conference participants (such as distributing lists of ADA resources and the names and addresses of conference participants to all conference attendees). A detailed outline of the proposed agenda for the conference must be included with the grant application;

—In carrying out the conference, the grant recipient must use existing ADA publications and materials reviewed by the Federal government that are available from the Department and other agencies, and the local, State, regional, and Federal ADA resources that serve the State, as described above. Letters of cooperation or support from groups or individuals who will be participating as speakers must be included with the grant application;

—Provide a final report on the project, including an identification of the strengths and weaknesses of the project, the number and types of participants involved, examples of known positive changes that may have occurred as a result of the project, and suggestions for improvement for the Department.

Selection Criteria

Applicants will be evaluated in each of the following four selection criteria areas for a total of 100 points:

Project Strategy and Plan of Action (50 Points)

Applicants must demonstrate a thorough understanding of the grant proposal priority, including the background, intended audience, and intended approach. Applicants must be located within the State in which the project will be conducted and also demonstrate the ability to reach as diverse a segment of the target audience as possible in a cost-efficient manner. Project goals and expected outcomes should be clearly articulated. Clarity, quality; and appropriateness of the plans, methodologies, and procedures to achieve the goals listed in the application will be carefully considered. Proposals should reflect the involvement of State and local business and government organizations with local, State, and regional organizations that provide ADA technical assistance and organizations that represent people with disabilities. Proposals must include letters of commitment as previously described under each program priority.

The plan of action must be sound and well-reasoned, with evidence of the ability to implement the plan immediately and complete the project within the period of performance. Project strategy must include a plan for documenting known positive changes that may occur as a result of the project and for evaluating the strengths and weaknesses of the project, as previously described under each program priority.

Staff Capability (25 Points)

Applicants must provide evidence of qualified personnel to undertake the project. The application must contain necessary position description(s), resume(s), and assurances of the timely availability of key staff (salaried or contract staff) with appropriate competencies and experience. Duties outlined for grant-funded position(s) must be clearly appropriate to the scope of the work being carried out under the project.

Organizational Capability and Management Plan (20 Points)

Applicants must demonstrate the ability to reach and work effectively with the targeted audience and offer evidence of proven organizational ability to provide high quality results utilizing appropriate key personnel. Applications must include a management plan that provides evidence of project control by management, efficient and timely use of staff and other resources, and effective quality control mechanisms.

Resources/Facilities/Equipment (5 Points)

Applicants must demonstrate the availability and appropriateness of resources (other than personnel), physical facilities, and equipment proposed to be used to carry out the project.

General Requirements for Grant Recipients

The following general grant program requirements should be considered by each applicant in developing both its project timeline and budget. Successful applicants must adhere to all conditions as specified; any deviation from the requirements in this section must be negotiated with DOJ.

Coordination with Other Agencies and Organizations. Grantees are expected to coordinate their project activities with the Department of Justice, and, where appropriate, with other Federally sponsored ADA technical assistance activities, such as the Department of Education's Disability and Business Technical Assistance Centers (DBTACs). Grantees must utilize existing technical assistance materials developed by the Department, its grantees, other Federal agencies and their grantees.

Grantee Orientation and Post-Award Monitoring. The Department intends to provide grant recipients with the maximum amount of post-award guidance and technical assistance possible within budget and staff constraints. Within approximately one month of the grant award, the Department will conduct a mandatory one-day orientation session on the ADA and grant management procedures. Each grant recipient will be invited to send one staff person to this session. Funds for travel to Washington, D.C. for this orientation session may be included in the proposed grant budget. Applicants are advised that DOJ staff may make periodic site visits to provide grant recipients with guidance and technical assistance and to monitor the progress of the grant. The Office of Justice Programs (OJP), a component of the Department of Justice, will provide financial management and other services in support of the Disability Rights Section in the administration of this program. Applicants are advised that copies of both the quarterly progress reports and quarterly financial reports sent to OJP must also be sent to the Disability Rights Section.

DOJ Review of Grantee Materials. All materials used or developed by grant recipients must be approved by DOJ in advance of use. This includes all media releases, scripts, program outlines/agendas, and handouts. However, it is not anticipated that grant recipients will develop new technical assistance materials under these priorities.

Availability of Existing Materials. Publications and resource lists that are currently available to the public from the Department of Justice (DOJ) will be provided, in bulk, to grant recipients free of charge, as resources permit. Grantees are not responsible for the duplication of DOJ materials. If an applicant wishes to use materials produced by previous DOJ grant recipients or recipients of grants from other Federal agencies, including the National Institute on Disability and Rehabilitation Research, it should coordinate such requests with DOJ.

Copyrights. The grantor agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal government purposes: (1) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (2) any rights of copyright to which a grantee, subgrantee, or a contractor purchases ownership with grant support.

Program Income. Grantee recipients may charge for grant-related activities and products (e.g., new materials developed and disseminated, conference registration fees), as long as all income derived from such activities and products is added to funds committed to the grant and its activities. Specifically, this program income (gross income earned by the grantee, during the funding period, as a direct result of the grant award or its activities) must be used "to further the eligible project or program objectives" or "to finance the non-Federal share of the project or program" (e.g., obtaining equipment or other assets required for the project). Program income may not be used to support or further a grantee's general organization, its programs or its services.

Costs associated with the provision of refreshments may not be paid for with grant funds. It is anticipated that speakers and presenters will voluntarily provide their services. Grant funds may be used to reimburse individual travel and accommodation expenses, but may not be used to provide honoraria for speakers. Fees charged by grantees (if any) must be nominal and there shall be no charge for materials provided to audience participants.

Alternate Formats (Print and Audiovisual). All materials produced in standard print must also be produced in large print, in Braille, and on audiotape in proportion to anticipated demand by persons with vision impairments in the targeted population(s). Audiotapes of lengthy materials must be voice- or tone-indexed.

Effective Communication and Accessibility Requirements. Applicants who plan to list a voice telephone number on correspondence or promotional materials concerning the grant activities, or on materials produced under the grant, must also list a telephone number for TTY users. Applicants who plan to use an automated telephone information system to respond to voice calls concerning grant activities must provide comparable service for TTY users. The cost of establishing an automated TTY information system or purchasing a TTY may not be included in the proposed project budget.

All grant activities must be held in accessible facilities. All programs must be accessible to attendees with communication disabilities.

Materials to be Provided to DOJ. Twenty-five (25) copies of each media release, marketing flyer, or other materials developed to promote the project must be provided to DOJ.

If grant project activities are videotaped, one copy must be submitted to DOJ. If videotapes are intended for commercial use, all must be captioned.

A copy of the final text of each document or videotape script produced must be provided to DOJ on computer disk in ASCII or Wordperfect.

Application Requirements

Under Section 506(d) of the Americans with Disabilities Act, the Department is authorized to award grants to individuals and non-profit organizations to supplement its ADA technical assistance efforts. All applicants must submit, in the order given, one bound original and two unbound copies of the following information:

1. A signed SF 424 and SF 424A (Rev. 4/88) application form and a signed Form 4000/3 (Assurances—Attachment to SF–424). The grant priority number under which the applicant is submitting the proposal must be clearly identified in box number 11 on form SF 424.

2. A one-page Abstract that summarizes the goals of the project, the nature and size of the population(s) to be reached through the project, and the project strategy. Applicants should state explicitly the number of people expected to be served in the course of the project's activities.

3. A Project Strategy and Plan of Action (maximum length 15 pages) that:

—Addresses each major component identified in the program priority for which applicant is applying;

—Describes major activities and events;

—Provides a description of the applicant's plan for working with other local, State, regional, and Federal ADA resources; and

—Provides a plan for evaluating the effectiveness of the project, as described under the program priorities.

4. A Management Plan that includes a timeline for completion of all project objectives, activities, events, and products.

5. A Budget Narrative required by the SF 424 (Rev. 4/88), which includes the basis for all costs presented in the budget.

6. A brief statement identifying the facilities, equipment, and other resources available for carrying out the project.

7. Job description(s) for key position(s) that are proposed to be funded under the grant.

8. Resume(s) or qualification(s) of the key individual(s) who will fill the grant position(s), including consultants, if any (maximum length 3 pages each).

9. Letters of commitment from organizations and/or individuals that will be involved in the project. (Letters of reference are not required and, if submitted, will not be considered.)

10. A signed certification regarding lobbying, debarment, suspension, other responsibility matters, and drug-free workplace requirements, OJP Form 4061/6.

11. A disclosure of lobbying activities, SF LLL.

(**Please Note:** Non-profit applicants who have not previously received Federal financial assistance from the Department of Justice may also be required to submit a disclosure of financial capability statement or other documentation prior to the grant award.)

Dated: May 16, 1996.

Deval L. Patrick,

Assistant Attorney General, Civil Rights Division.

[FR Doc. 96–12779 Filed 5–21–96; 8:45 am]

BILLING CODE 4410–01–P

OL
1
SS
1
0
0
MY
2
996
MI

federal register

Wednesday
May 22, 1996

Part III

Department of Housing and Urban Development

Availability of Additional Units for the Housing Finance Agency Risk-Sharing Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4064–N–01]

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Availability of Additional Units for the Housing Finance Agency Risk-Sharing Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of the Availability of Additional Units for the Housing Finance Agency Risk-Sharing Program.

SUMMARY: This Notice announces the availability of an additional 10,000 units for the Housing Finance Agency Risk-Sharing program and invites qualified Housing Finance Agencies (HFAs) that are not yet approved to participate in the program (new applicants) to apply for approval to participate in the program. HFAs that are currently approved to participate in the program will be notified by certified mail that they may request additional units by letter to the Department.

The Housing Finance Agency Risk-Sharing program is authorized under section 542(c) of the Housing and Community Development Act of 1992, as amended. Section 8 of the Housing Opportunity Program Extension Act of 1996 extends section 542(c) by authorizing the Secretary to enter into HUD mortgage insurance commitments processed by State and local HFAs for an additional 12,000 multifamily units for Fiscal Year 1996. Ten thousand of those units are being made available by this invitation. The balance of the 12,000 new units (2,000) are being retained by HUD Headquarters to meet the immediate needs of current risk-sharing participants so that they can maintain essential risk-sharing operations and staff resources.

APPLICATION DEADLINE: The deadline for receipt of applications from new applicants to participate in this program is 4:00 pm, Eastern Daylight Savings Time on July 22, 1996. Applications received after the date and time stated herein will not be accepted and will be returned to the sender. HFAs are encouraged to submit applications prior to the end of the 60-day period, as applications will be reviewed and approved as they are received. Applicants should obtain a copy of the program handbook (Handbook 4590.01 REV–1) and the program regulations at 24 CFR part 266 to become familiar with program requirements. If there are differences between the handbook and this Notice, the requirements of this Notice shall prevail. Qualified agencies may call Jane Luton at 202–708–2556 for a copy of the handbook and regulations. This is not a toll-free number. Hearing- or speech-impaired persons may access that number by calling toll-free the Federal Information Relay Service at (800) 877–8339.

ADDRESS FOR SUBMISSION: Applications for participation in the program must be identified on the envelope or wrapper and be submitted as follows: Director, Office of Multifamily Housing Development, Application for Housing Finance Agency Risk-Sharing Program, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6142, Washington, DC 20410.

HFAs shall submit an original and three copies (a FAX copy is NOT acceptable) of the application to the above address by the application deadline.

Note: Any new applicant that is not a HUD-approved mortgagee at the time of its application to participate in the program (see 2.(ii) under Application Requirements below) must submit an Application for Approval as a HUD-Approved Mortgagee. Such applications must be identified on the envelope or wrapper as such and submitted by the application deadline to the following address: Director, Office of Lender Activities and Land Sales Registration, Application for Housing Finance Agency Risk-Sharing Program, U.S. Department of Housing and Urban Development, Room 9156, Washington, DC 20410.

APPLICATION FEE: New applicants must submit an application fee of $10,000 through FEDWIRE. The Federal Deposit System offers individual and corporate remitters the ability to move funds electronically from their bank account to the Treasury. The remitter identifies the payment and the Department of Housing and Urban Development as the government agency to be credited on the funds transfer message. Instructions for your bank to follow to complete a FEDWIRE are listed in Attachment A.

FOR FURTHER INFORMATION CONTACT: Jane Luton, Director, New Products Division, Office of Multifamily Housing Development, Room 6142, U.S. Department of Housing and Urban Development, Washington, D.C. 20410. Telephone: (202) 708–2556; (This number is not toll-free.) Hearing- or speech-impaired persons may access that number by calling toll-free the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this Notice have been approved by the Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB Control Number 2502–0500. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Purpose and Program Summary

Section 542(c) of the Housing and Community Development Act of 1992 authorized the Department to implement a multifamily mortgage insurance risk-sharing pilot program with qualified State and local Housing Finance Agencies (HFAs). On December 3, 1993, the Department promulgated interim regulations implementing the pilot program, the purpose of which was to demonstrate the effectiveness of providing new forms of Federal credit enhancement for the development of affordable multifamily housing by State and local HFAs. On December 5, 1994, the Department promulgated final regulations for the program. To date, the Department has allocated 30,000 units which were available for Fiscal Years 1993, 1994, and 1995 to 31 participating HFAs. These HFAs have received HUD Firm Approval Letters (notifications that units have been reserved for proposed projects) for over 14,000 units.

The program has been designed to increase the supply of affordable multifamily housing through partnerships between HUD and State and local housing finance agencies. Qualified HFAs are authorized to originate, underwrite, and close loans for multifamily housing projects requiring new construction and substantial rehabilitation as well as certain acquisitions and refinancings. HUD will endorse such loans for full mortgage insurance upon presentation of appropriate certifications. HFAs will be responsible for the full range of loan management, servicing, and property disposition activities associated with these projects.

Through a Risk-Sharing Agreement between HUD and the HFA, the HFA contracts to assume a portion of the risk on each loan it underwrites. HUD, in turn, commits to pay 100 percent of the outstanding principal mortgage balance upon default of the loan and filing of a claim. The HFA will issue a debenture for the amount of the claim pending the final settlement of the loss. HUD and the HFA will share in any loss in accordance with the amount of risk assumed by each under the Risk-Sharing Agreement.

HFAs will be approved on one of the following three levels: (1) Level I; (2) Level II; or (3) a combination of Level I and Level II. The primary distinction between Level I and Level II is in the level of risk apportionment an HFA agrees to accept. HFAs participating at Level I are those that will assume 50 percent or more of the risk associated with a loan default. These HFAs may use their own underwriting standards and loan terms and conditions without further approval from HUD. HFAs participating at Level II will assume less than 50 percent of the risk and must have their underwriting standards and loan terms and conditions approved by HUD.

This document contains information concerning: (a) Deadline and address for submission of applications; (b) eligibility requirements; (c) allocation of units; (d) application requirements; (e) establishment of dedicated account; (f) application review procedures; (g) approval of applications; and, (h) authorization to use the unit set-aside.

Eligibility

To participate in the program, an HFA must meet the qualifications set forth in 24 CFR 266.100 and the requirements in 24 CFR 266.105 (a).

Allocation of Units

HUD will set aside units for approved HFAs as follows:

(1) *Unit set-aside.* Each approved HFA will receive a set-aside of units based upon an assessment of their previous multifamily housing experience, their current capacity to utilize the number of units requested, the population size of the HFA's jurisdiction in comparison to other new applicants and participating HFAs, and the number of units requested by the HFA. The unit set-aside will be reserved in a Risk-Sharing Agreement executed by the HFA and HUD.

(2) *Headquarters reserve.* HUD may hold back a small portion of the 10,000 units for future use in FY 1996 to meet unforeseen needs of current and new HFA participants.

(3) *Credit subsidy.* The set-aside of units will be subject to the availability of credit subsidy which will be obligated and allocated in accordance with outstanding Department instructions.

Application Requirements

New applicants must submit an application containing the following information:

(1) *Name, title, telephone and fax numbers.* Provide the name, title, telephone and fax numbers of the person most familiar with the material contained in the application in case HUD needs to contact the HFA for clarification and/or further information.

(2) *Evidence of eligibility.* The HFA must provide evidence that it meets the following:

(i) Be a HUD-approved mortgagee in good standing;

(**Note:** HFAs that are not HUD-approved mortgagees at the time of their application to participate in this program must submit, concurrently, separate applications for approval to participate in this program and for approval to operate as a HUD-approved mortgagee. An application for approval to operate as a HUD-approved mortgagee must be submitted to HUD in accordance with the requirements established under 24 CFR 202.10 through 202.19);

(ii) Has at least five years experience in multifamily underwriting; and

(iii) Carries the designation of "top tier" or its equivalent, as evaluated by Standard and Poors or any other nationally recognized rating agency; OR

(iv) Has a current overall rating of "A" for its general obligation bonds from a nationally recognized rating agency; OR

(v) For HFAs not qualifying as (iii) or (iv), the Housing Finance Agency Questionnaire (Attachment B to this Notice)

(3) *Application fee.* Evidence that the application fee of $10,000 has been wire-transferred to the U.S. Treasury. This fee will not be refunded once the application has been accepted for review.

(4) *Units requested.* A statement indicating the number of units the HFA is requesting as well as the number of units the HFA proposes to process to firm approval letter by September 30, 1997.

(5) *Risk-sharing arrangement.* HFA declaration of the risk-sharing arrangement it has selected, i.e., Level I, Level II or both Level I and Level II.

(6) *Legal opinion.* A letter from the HFA's legal counsel providing its opinion, after careful review of the HFA's program, that the HFA has the necessary powers and ability to comply with all program requirements. The opinion for an HFA with an overall rating of "A" on its general obligation bonds must also state that the general obligation will extend to the HFA's responsibilities under the Risk-Sharing Agreement and any debenture issued by the HFA to the Commissioner. If the opinion of counsel does not include this statement, the HFA must establish a dedicated reserve account in the amount of $500,000 in accordance with the requirements in 24 CFR 266.110 (b).

(7) *Underwriting procedures, loan terms and conditions, investment policies and business and financial practices.* A description of the following: (i) The manner in which the HFA will process mortgage loans, including its underwriting procedures and loan terms and conditions as follows: (A) The approval process and fee schedule, (B) maximum mortgage term, (C) minimum debt service coverage, (D) maximum loan-to-value ratio, (E) maximum loan amount, (F) minimum equity requirement, (G) minimum income-to-expense ratio, (H) prepayment requirements, (I) title requirements, (J) escrow and reserves (including replacement reserves), and (K) hazard insurance requirements; (ii) loan management, loan servicing and property disposition activities; (iii) the manner in which the HFA's and mortgagor's reserves and escrows (including letters of credit) will be established and controlled; and (iv) a description of the HFA's investment policies and overall business practices.

(8) *Underwriting staff.* Identification, background description and years of experience of individuals with final underwriting approval authority (e.g., chief underwriter) and the individual responsible for project management, loan servicing and property disposition (e.g., asset manager). These functions may not be contracted out by the HFA.

(9) *Default history.* A description of the default history (including workouts) for all HFA-financed multifamily projects.

(10) *Oversight.* A description of oversight by State or local government agencies.

(11) *Financial statements.* Copies of audited financial statements for the HFA's last three fiscal years.

(12) *Certification.* A certification (Attachment C to this Notice) signed by an authorized official from the HFA that certifies to the following:

(i) The HFA will at all times comply with the financial requirements of 24 CFR 266.110 and, where applicable, maintain required reserves in a dedicated account in liquid funds (i.e., cash, cash equivalents, or readily marketable securities) in a financial institution acceptable to HUD;

(ii) The Department of Justice has not brought a civil rights suit against the Agency and no suit is pending;

(iii) There has not been an adjudication of a civil rights violation in a civil action brought against the Agency by a private individual, unless the Agency is operating in compliance with a court order, or implementing a HUD-approved compliance agreement designed to correct the areas of non-compliance; and,

(iv) There are no outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations as a result of formal administrative procedures, or the Secretary of HUD has not issued a charge against the Agency under the Fair Housing Act, unless the Agency is operating under a compliance agreement designed to correct the areas of noncompliance.

(13) Sample debenture form issued by the HFA.

(14) The Housing Finance Agency Questionnaire (Attachment B) The Questionnaire is to be completed only by HFAs that do *not* carry the designation "top-tier" or its equivalent, or do *not* currently receive an overall rating of "A" for their general obligation bonds from a nationally recognized rating agency.

Establishment of Dedicated Account

Prior to execution of the Risk-Sharing Agreement, HFAs that do not have a top-tier rating, have not received an overall rating of "A" on their general obligation bonds or those whose opinion of legal counsel (required above) did not state that the general obligation will extend to the HFA's responsibilities under the Risk-Sharing Agreement and any debenture issued by the HFA to the Commissioner must establish a specifically identified dedicated account (see Attachment D). This account must consist entirely of liquid assets (i.e., cash, cash equivalents, or readily marketable securities) and be located in a financial institution acceptable to HUD. Such an institution has assets of not less than $100,000,000; is organized under the laws of the United States or a State thereof; and is regulated and examined by the Comptroller of the Currency, Federal Deposit Insurance Corporation or the Federal Reserve Board, has a long-term bank deposit rating of "A–1" or better by Moody's Investors Service or "A+" rating by Standard and Poors. Reserve requirements are set forth in 24 CFR 266.110 of the regulations.

Application Review Procedures

1. *Additional Information.* If HUD requires additional data from a new applicant, the new applicant will have 5 business days from the date of notification to submit such data to the appropriate HUD official. (If notification is by mail, an HFA will be presumed to receive notification five business days from the date of such notification.)

2. *Review Criteria.* HUD will review each application to determine if the applicant meets all the requirements of the regulation and this Notice and demonstrates the ability to underwrite, originate, process, close, service, manage, and dispose of multifamily loans in a prudent manner.

3. *Acceptability Standards.* HUD will review the submissions of HFAs which do not have a top-tier rating or have not received an overall rating of "A" on their general obligation bonds in accordance with the above Review Criteria and the standards set forth below:

(i) Demonstrated capability to carry out program responsibilities, including: (A) continuity of management; (B) staff qualifications and experience; and (C) the HFA's established track record of performing multifamily loan processing, servicing, loan management (including capability to enforce regulatory agreements and to perform workouts), and property disposition for the types of loans eligible under this program.

(ii) Adequacy of the HFA's administrative capabilities to ensure sound underwriting and loan management.

(iii) Soundness of the HFA's multifamily portfolio, including default experience.

(iv) Strength of the relationship between the HFA and the State or local government.

(v) The HFA's fiscal soundness, including (A) amounts and sources of revenues for housing activities and its investment policies for fund balances (if any); (B) how it proposes to meet any monetary obligations required under this program; and (C) the adequacy of funding to commit to the level requested in the application.

Approval of Applications

1. *Notification.* HUD will notify new applicants of approval or disapproval within 60 days of the deadline for applications.

2. *Approval Levels.* HFAs will be approved to operate under one of three requested risk-sharing arrangements as follows:

(i) Level I—the HFA is approved to originate, service and dispose of multifamily mortgages using its own underwriting standards and loan terms and conditions. The HFA assumes 50 to 90 percent of the risk in increments of 10 percent.

(ii) Level II—the HFA is approved to originate, service and dispose of multifamily mortgages where the HFA uses underwriting standards and loan terms and conditions approved by HUD, and

A. When the loan-to-replacement cost ratio for new construction and substantial rehabilitation projects or the loan-to-value ratio for existing projects are greater than or equal to 75 percent, the HFA shall assume at least 25 percent of the risk.

B. When the loan-to-replacement cost ratio for new construction and substantial rehabilitation projects or the loan-to-value ratio for existing projects are less than 75 percent, the HFA shall assume 10 percent or 25 percent of the risk, at the HFA's option.

(iii) Combined Levels I/II—For HFAs which plan to use Level I and Level II process, the underwriting standards and loan terms and conditions to be used on Level II loans must be approved by HUD as described in (ii), above.

3. *Risk-Sharing Agreement.* When an HFA is determined by HUD to be qualified to participate in the program, the Department will grant tentative approval to the HFA and forward the Risk-Sharing Agreement (similar to that shown in Attachment E) to the HFA for signature. The Risk-Sharing Agreement will set aside the number of units for the HFA. It will also set forth other obligations of the HFA. The HFA must return the executed document, along with evidence that the dedicated reserve account has been established (where appropriate).

Authorization to Use Unit Set-Aside

After receipt of the signed Risk-Sharing Agreement, HUD will return a copy of the Risk-Sharing Agreement executed on behalf of the Department and notify the HFA that it may begin using its unit set-aside. No HFA will be authorized to process loans for mortgage insurance until it has received HUD-approved mortgagee status, been approved under the Risk-Sharing program, has executed a Risk-Sharing Agreement and, where required, provided evidence to the Department that it has established a dedicated reserve account.

Other Matters

Environmental Finding. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410.

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies and procedures contained in this Notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the Notice is not subject to review under the Order.

Executive Order 12606, The Family. The General Counsel, as the Designated Official for Executive Order 12606, *The Family*, has determined that this Notice will likely have a beneficial impact on family formation, maintenance and general well-being. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

Accountability in the Provision of HUD Assistance. The Department has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department. On January 16, 1992, the Department published at 57 FR 1942, additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation, public access, and disclosure requirements of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this Notice as follows:

(1) *Documentation and Public Access.* The Department will ensure that documentation and other information regarding each application submitted pursuant to this Notice are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this Notice in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(2) *HUD Responsibilities—Disclosures.* The Department will make available to the public for five years all applicant disclosure reports (Form HUD–2880) submitted in connection with this Notice. Update reports (also Form HUD–2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports, both applicant disclosures and updates, will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, Subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Prohibition Against Advance Information on Funding Decisions. HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics (202) 708–3815. Hearing- or speech-impaired individuals may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339. (With the exception of the "800" number, these are not toll-free numbers.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Prohibition against Lobbying Activities. The use of assistance under this Notice is subject to the disclosure requirements and prohibitions of section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352)(the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Catalog of Federal Domestic Assistance Program. The Catalog of Federal Domestic Assistance program title and number is 14.188, Housing Finance Agency Risk-Sharing Program.

Authority: Section 542(c) of the Housing and Community Development Act of 1992, as amended, 12 U.S.C. 1707.

Dated: May 16, 1996.

Stephanie A. Smith,

Acting General Deputy Assistant Secretary for Housing, Federal Housing Commissioner.

BILLING CODE 4210–27–P

ATTACHMENT A

FEDWIRE INSTRUCTIONS

INSTRUCTIONS FOR COMPLETING REQUEST TO TRANSFER FUNDS BY FEDWIRE

ITEM 1 - RECEIVER-DFI#: The Treasury Department's ABA number for deposit messages is 021030004. This number should be entered by the sending bank for all deposit messages sent to the Treasury.

ITEM 2 - TYPE-SUBTYPE-CD: The type and subtype code will be provided by the sending bank.

ITEM 3 - SENDER-DFI#: This number will be provided by the sending bank.

ITEM 4 - SENDING-REF#: The sixteen character reference number is inserted by the sending bank at its option.

ITEM 5 - AMOUNT: The transfer amount must be punctuated with commas and decimal points; use of the "$" is optional. This item will be provided by the depositor.'

ITEM 6 - SENDER-DFI-NAME: This information is automatically inserted by the Federal Reserve Bank.

ITEM 7 - RECEIVER-DFI-NAME: The Treasury Department's name for deposit messages is "TREAS NYC". This name should be entered by the sending bank.

ITEM 8 - PRODUCT CODE: A product code of "CTR" for customer transfer should be the first data in the RECEIVER - TEXT field. Other values may be entered, if appropriate, using the ABA's options. A slash must be entered after the product code.

ITEM 9 - AGENCY LOCATION CODE: THIS ITEM IS OF CRITICAL IMPORTANCE. IT MUST APPEAR ON THE FUNDS TRANSFER DEPOSIT MESSAGE IN THE PRECISE MANNER AS STATED TO ALLOW FOR THE AUTOMATED PROCESSING AND CLASSIFICATION OF THE FUNDS TRANSFER MESSAGE TO THE AGENCY LOCATION CODE OF THE APPROPRIATE AGENCY. The agency's unique code must be specified in the funds transfer message in order for the funds to be correctly classified to the respective agency. The ALC identification sequence includes the beneficiary code field tag, BNF=, and identifier code, "/AC", followed by the appropriate ALC number. This component must be in the following format:

BNF=/AC-86090300

The ALC identification sequence can, if necessary, begin on one line and end on the next line; however, the field tag "BNF=" must be one line and cannot contain any spaces.

ITEM 10 THIRD PARTY INFORMATION: This contains the appropriate information to identify the reason for the funds transfer. The Originator to Beneficiary information field tag "OBI=" is used to signify the beginning of the free-form third party text. The field tag "OBI=" must be on the same line and cannot contain any spaces. The field tag is placed following the ALC identification sequence and preceded by a space. An example of this data line is as follows:

BNF=/AC-86090300 OBI=Housing Finance Agency Risk-Sharing Program for MF Project Loans

(1) 021030004	(2)	
(3)	(4)	(5) $10,000.00
(6)		
(7) (8) TREAS NYC/CTR/		
(9) BNF=/AC-86090300 OBI=	(10)	
HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR MF PROJECT LOANS		

BILLING CODE 4210-27-C

Attachment B—Housing Finance Agency Questionnaire

Responses to this questionnaire fulfill the documentation requirements pursuant to 24 CFR 266.10(d)(4)(iii). All Housing Finance Agencies (HFAs) seeking approval to participate in the HFA Risk-Sharing program who do not have "top-tier" designation or an overall rating of "A" on their general obligation bonds from one of the nationally recognized rating agencies must complete this questionnaire.

The questionnaire addresses 5 different aspects of the HFA and are consistent with conditions set forth in Section 542(d)(2) of the Housing and Community Development Act of 1992. Applicants should be careful to craft responses so that they clearly address the issues set forth in the body of this Notice. Responses should represent a summary of the detailed information that may be found in the HFA's operating, administrative and quality control manuals or guidelines. In order to ensure that the Department can expeditiously review and approve applications, ALL NARRATIVE RESPONSES ARE LIMITED TO 15 PAGES. Responses to questions related to the portfolio (item II) may be presented in tabular form, where appropriate, and attached as exhibits to the 15 page narrative responses. The Department encourages HFAs to prepare responses in a manner similar to that which might be used for the HFAs Annual Reports and reports to the Board of Directors.

I. Organizational History

Describe the history and organizational background of the HFA. Indicate how long it has been in existence, when it began to finance multifamily loans, and an overall description of its multifamily lending activities.

Describe the HFA's relationship to the State or local government, as appropriate. Clearly indicate whether or not State or local government officials serve on the HFA's board of directors and describe, if any, the role State or local officials play in the HFA's program operations.

Discuss any State or local appropriations for the past 5 years and any anticipated appropriations over the next 3 years to support the HFA's multifamily housing goals.

II. Portfolio Information

Indicate how many multifamily loans have been financed within the past 10 years (dates specified), by year. Include the number and type of projects (family, elderly, assisted living, cooperative, etc.) and units in each, type of loan (first mortgage, second, gap loan, credit support, new construction, rehabilitation, refinancing with or without repairs, etc.) and original mortgage amounts, outstanding principal balances, status (current, default, foreclosed, workout) and location (urban/suburban/central city/rural).

For the multifamily loans currently in the HFA's portfolio, indicate how many are HFA owned, owned by other public agencies, nonprofit organizations, privately owned and other ownership types.

III. Stoff Capacity

Describe general background and indicate years of experience of individual responsible for the overall underwriting decision (e.g., chief underwriter) and for project management, loan servicing and property disposition (e.g., Director of Asset Management). Note that these functions may not be contracted out by the HFA.

IV. Operating Procedures

A. Cost Certification

Describe the HFA's cost certification process. Explain how it will prevent fraud and misrepresentation, ensure legitimate costs and completion of repairs prior to acceptance of certification. Describe how mortgage excesses and mandatory prepayments will be handled.

B. Loan Approval

Describe the loan approval process. Describe circumstances if any, under which the chief underwriter's recommendations can be overridden.

Describe any situations where loans are not referred to a committee, what they are and to whom they are referred.

C. Loan Servicing

Describe the HFA's overall loan servicing system and the procedures for enforcing the Regulatory Agreement.

Describe the computerization of its portfolio, project audits/reviews and procedures for resolving deficiencies.

D. Workout Procedures

State the number of workout plans developed by the HFA over the last five years, elements of the agreement and current status. If there is no previous experience with workouts, describe plans, tools or strategies proposed to establish workout agreements.

V. Financial Capability

Describe the amount and sources of funds the HFA has available to support multifamily housing programs. If funds are earmarked for specific projects or programs, or otherwise have a contingent liability, indicate how much and for what purpose. Indicate how much of the funds are unrestricted, how those funds are governed (e.g., approval of the board of directors or state or local government) and the eligible uses of these funds. Identify any funding sources available to supplement less than break-even projects.

Indicate the overall percentage of total unrestricted funds to total debt and the percentage of liquid unrestricted funds to total mortgages outstanding.

Describe the collateral the HFA will use if it does not have the authority to pledge its full faith and credit to back debentures issued against claims.

Describe how the HFA intends to fund the dedicated account, its procedures for ensuring required balances are in place at all times and that the amounts are increased at each loan closing. Describe the funding source (all funds in the account must be liquid) for the dedicated account and identify the financial institution in which the HFA proposes to maintain these funds.

Describe the circumstances or conditions under which other governmental entities or public bodies have access to the HFA's funds.

Describe briefly, the types of financial and quality control audits performed on the HFA. Indicate the State or local HFA or authority that has responsibility for conducting the annual financial audit and when that audit is conducted.

Describe the mechanism for disposing/resolving audit findings.

Identify any periodic reports required for the board of directors and/or other organizational oversight body.

Describe the procedures in place to generate financial reports, changes in fund balances, and changes in financial position. Describe procedures in place for the prompt notification to HUD of negative changes in the HFA's financial position.

Attachment C—Certifications Housing Finance Agency Letterhead

I _____ (name of authorized official) hereby certify that I am the _____ (title) of the _____ (name of housing finance agency) _____ "the Agency", and that I am authorized to make the certifications set forth below on behalf of the Agency.

I hereby certify that:

(1) The Agency will at all times comply with the financial requirements of 24 CFR 266.110 of the Risk-Sharing Program and, where applicable, maintain required reserves in a dedicated account in liquid funds (i.e., cash, cash equivalents, or readily marketable securities) in a financial institution acceptable to HUD.

(2) The Department of Justice has not brought a civil rights suit against the Agency and no suit is pending;

(3) There has not been an adjudication of a civil rights violation in a civil action brought against the Agency by a private individual, unless the Agency is operating in compliance with a court order, or implementing a HUD-approved compliance agreement designed to correct the areas of noncompliance; and

(4) There are no outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations as a result of formal administrative procedures, or the Secretary of HUD has not issued a charge against the Agency under the Fair Housing Act, unless the Agency is operating under a compliance agreement designed to correct the areas of non-compliance.

Dated: _____

_____

Name of Agency

By: _____

Title: _____

Attachment D—Housing Finance Agency Risk-Sharing Program Section 542(C)

Dedicated Reserve Account

The following information is required to evidence establishment of a dedicated reserve account in an initial amount of $500,000 to be used solely in connection with the Housing Finance Agency (HFA) Risk-Sharing Program. Thereafter, the HFA shall make additional deposits at each loan closing in accordance with 24 CFR 266.110.

Duplicate originals of the attached agreement and one copy must be forwarded by the HFA to a financial institution with whom it intends to establish a Dedicated Reserve Account. In each of the attached agreements and on the copy, such financial institution will certify to the existence of the dedicated reserve account by inserting the date the account was established, the account number, and the account balance. Upon completion of the certification, the financial institution shall sign and return an original and one copy to the HFA which, in turn, will forward the original to HUD. The HFA should retain a duplicate copy for its records. This information must be submitted to Linda D. Cheatham, Director, Office of Multifamily Housing Development, Room 6134, 451 Seventh Street, S.W., Washington, D. C. 20410 prior to the HFA's approval to participate in the program.

Agreement for HFA's Dedicated Reserve Account

HFA Name _____

Address _____

(Street Number)

_____

(City, State and Zip Code)

Date _____

_____

(Name of Institution)

_____

(Street)

_____

(City, State, and Zip Code)

You are authorized and requested to establish a Reserve Account to be specifically designated *"(HFA Name)/HUD Risk-Sharing"*. This account may be drawn upon by the Department of Housing and Urban Development (hereinafter "HUD") and may be used by the HFA only with the prior written approval of HUD for the purpose of meeting the HFA's risk-sharing obligations under this program.

This letter is submitted to you in duplicate originals. Please execute the duplicate originals of the certification below, acknowledging the existence of such account, so that we may present an original signed by you to HUD. Specimen signatures of HFA representatives and identification of authorized HUD signatory positions are enclosed.

_____

(Signature of HFA authorized official)

To Be Completed By the Financial Institution

To: The Department of Housing and Urban Development

The undersigned institution certifies to HUD that the above account was established on _____ in the amount of _____ in this institution under account number _____ and agrees with the HFA named above and HUD to honor withdrawals from the account as set forth above and agrees to send quarterly statements regarding the account to both HUD and the HFA. The financial institution further certifies that it:

(1) has assets of not less than $100,000,000;

(2) is organized under the laws of the United States or a State thereof;

(3) is regulated and examined by the Comptroller of the Currency, Federal Deposit Insurance Corporation or the Federal Reserve Board; and

(4) has a long-term bank deposit rating of "A-1" or better by Moody's Investors Service or "A+" by Standard and Poor's.

_____

(Name of Institution)

By: _____

Title: _____

Date: _____

Authorized HUD Signatory Positions

Persons in the following positions are authorized to withdraw from the HFA/HUD Risk-Sharing Account on behalf of HUD and/or approve on behalf of HUD, the withdrawal of funds from the Account by the HFA:

Director, Office of Multifamily Housing Development

Deputy Director, Office of Multifamily Housing Development

Director, Office of Multifamily Asset Management and Disposition

Associate Director for Program Management, Office of Multifamily Asset Management and Disposition

Associate Director for Program Operations, Office of Multifamily Asset Management and Disposition

Specimen Signatures of HFA Authorized Officials

Based upon prior approval from HUD, the following individuals are authorized to withdraw funds from the HFA/HUD Risk-Sharing Account on behalf of the HFA:

(Name) _____

(Title) _____

(Name) _____

(Title) _____

Attachment E—Sample Risk-Sharing Agreement and Addendum

(subject to revision)

This Risk-Sharing Agreement (hereinafter referred to as "Agreement") is entered into on this _____ day of _____, 19_____, by and between _____ whose address is _____ and its successors (hereinafter referred to as "HFA") and the undersigned Secretary of Housing and Urban Development and his/her successors and assigns acting by and through the Assistant Secretary for Housing-Federal Housing Commissioner (hereinafter referred to as "Commissioner").

WHEREAS, the Housing and Community Development Act of 1992 authorizes, under Section 542(c) thereof, the development of a Risk-Sharing Pilot Program under which the Commissioner will enter into Risk-Sharing Agreements with qualified housing finance agencies and provide for full mortgage insurance through the Federal Housing Administration of loans for affordable housing originated by the qualified housing finance agencies;

WHEREAS Section 8 of the Housing Opportunity Program Extension Act of 1996 extends Section 542(c) through the end of Fiscal Year 1996;

WHEREAS, under the authority of Section 542(c), the Commissioner has published implementing regulations at 24 CFR Part 266.

WHEREAS, the HFA seeks to participate in the Risk-Sharing Program, in accordance with Section 542(c), the regulations issued pursuant thereto and the terms set forth herein, in order to obtain full insurance on loans made by the HFA for affordable multifamily housing for persons in its community;

WHEREAS, the Commissioner seeks to enter into this Agreement with the HFA in order to test the effectiveness of Federal credit enhancement for loans for affordable multifamily housing through a system of risk-sharing agreements with the HFA; and

NOW THEREFORE, in consideration of the foregoing, the parties agree as follows:

Article I—Allocation/Credit Subsidy

In furtherance of this Agreement,

A. The Commissioner has set aside _____ units of affordable multifamily housing to be originated by the HFA.

B. The Commissioner reserves the right to modify the number of units set forth in this Agreement to: (1) Allocate additional units in excess of the number set aside above, or (2) to reduce such allocation based on the Commissioner's review of the HFA's use of its prior set-aside(s). Any such changes shall be incorporated by an addendum to this Agreement.

C. Credit subsidy is required for all insured projects, including projects insured pursuant to this Agreement. Credit subsidy is subject to availability in accordance with the Commissioner's outstanding instructions. The HFA shall be notified that the Firm Approval Letter will be delayed if credit subsidy has been exhausted.

Article II—Definitions

As used in this Agreement the term:

"Addendum" means that document attached to this Agreement, which shall be used for reserving units and establishing the risk share percentage for specific projects, modifying the number of units set aside to the HFA and for other purposes.

"Amendment" means a modification of the terms and conditions of this Agreement requiring the consent of both the Commissioner and the HFA or a modification by HUD to 24 CFR Part 266.

"Contract of Insurance" means the agreement evidenced by the endorsement of the Commissioner upon the credit instrument given in connection with a mortgage, incorporating by reference the regulations in 24 CFR Part 266 and the applicable provisions of Section 542(c).

"Credit Subsidy" means the cost of a direct loan or loan guarantee under the Federal Credit Reform Act of 1990 as defined in Subpart B of Title 13 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508, approved November 5, 1990).

"Dedicated Account" means an account maintained in a financial institution acceptable to the Commissioner which consists entirely of liquid assets (i.e., cash or cash equivalents or readily marketable securities.)

"Exhibit" means a document which provides names, titles and/or specimen signatures of principal staff of the HFA.

"Firm Approval Letter" means a letter issued by the Commissioner or his/her designee to an HFA upon the positive completion of the HUD-retained reviews described in 24 CFR Section 266.210. The letter will apportion units and obligate credit subsidy to the property and provide that, so long as the HFA complies with any conditions included therein or attached

thereto, is in good standing, makes the required certifications at the time of the HUD closing, and absent fraud or misrepresentation by the HFA, the Commissioner shall endorse the property mortgage for insurance.

"Mortgage" means such single first lien upon the real estate as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the jurisdiction where the real estate is situated, together with the credit instrument, if any, secured thereby.

"Mortgagee" refers to the original lender under a Mortgage and its successors approved by the Commissioner.

"Project" means the mortgaged property and all assets wherever situated, used in or owned by the owner of the Mortgaged property in the business conducted on the Mortgaged property.

"Reservation" means the number of units from an HFA's set-aside committed upon issuance of a Firm Approval Letter. The number of units reserved may be adjusted upon endorsement, for a specific project to be insured under Section 542(c).

"Set-aside" includes the total number of units allocated for use by an HFA under Section 542(c) which allocation may be increased or decreased from time to time by the Commissioner in accordance with the Commissioner's administrative instructions.

Article III—Certifications

In consideration of the endorsement for full insurance by the Commissioner of loans covering the units set aside in Article I, Paragraph A of this Agreement, and in order to comply with the requirements of the risk-sharing program established by Section 542(c) and the regulations adopted by the Commissioner pursuant thereto, the HFA agrees and certifies for itself, and its successors, that in connection with any mortgage insured under Section 542(c) and so long as the Commissioner is obligated to insure mortgages pursuant to this Agreement that:

A. The HFA has been approved by the Commissioner as a Level I ____ and/or Level II____ (check one or both, as appropriate) Participant as defined in 24 CFR Sections 266.5 and 266.100(b).

B. The individuals (principal staff) employed by the HFA as the persons responsible for the overall underwriting decision and for project management, loan servicing and property disposition with respect to loans insured or to be insured under Section 542(c) are listed in Exhibit A to this Agreement. The HFA agrees to notify the Commissioner promptly in writing any time the HFA changes principal staff.

C. The individuals, whose names, titles and specimen signatures appear in Exhibit B have authority to sign loan documents on behalf of the HFA and otherwise commit the HFA under the Section 542(c) Risk-Sharing Program. The HFA agrees to notify the Commissioner promptly in writing of any changes of individuals authorized to sign loan documents on behalf of the HFA and provide the Commissioner with specimen signatures of such new individuals.

D. The HFA shall allow periodic auditing and review by the Commissioner, the Inspector General and the General Accounting Office or their duly authorized agents regarding the HFA's participation in the risk-sharing program.

E. The HFA shall permit an inspection and examination of its financial records and records associated with loans insured under Section 542(c) by the Commissioner and/or his duly authorized agents upon reasonable notice.

F. The HFA has fully disclosed and provided copies of all of its underwriting standards and procedures, loan terms and conditions to the Commissioner, and, if the HFA operates as, or originates or processes any loans as a Level II agency, it has obtained the Commissioner's prior written approval to utilize such underwriting standards and procedures, loan terms and conditions. The HFA's originating, underwriting, closing, project management, servicing and property disposition procedures utilized in processing and servicing the loans insured or to be insured under Section 542(c) are incorporated herein by reference and made a part hereof.

G. The HFA shall notify the Commissioner before implementing any amendment to the HFA's underwriting standards and procedures, loan terms and conditions and will provide the Commissioner with copies of any amendments within ____ business days before implementation of such amendments by the HFA. If the HFA operates as, or originates or processes any loans as a Level II agency, it shall also obtain the prior written approval of the Commissioner before implementing any amendment to its underwriting standards and procedures, loan terms and conditions.

H. If the HFA (a) does not meet the qualification requirements of 24 CFR 266.110(a) (i.e., top-tier rating or equivalent designation or has an overall "A" rating on its general obligation bonds), or (b) has an overall "A" rating but cannot provide the necessary legal opinion of counsel requisite to participation in the risk-sharing program, it has established a specifically identified Dedicated Account (meeting the requirements of 24 CFR 266.110(b) and the administrative requirements of the Commissioner) in _____ (insert name of financial institution) a financial institution which has assets of not less than $100,000,000, is organized under the laws of the United States or a State thereof and is regulated and examined by the Comptroller of the Currency, Federal Deposit Insurance Corporation or the Federal Reserve Board, and has a long term bank deposit rating of "A–1" or better by Moody's Investors Service or "A+" by Standard and Poor's. The Commissioner may determine that higher levels of reserves may be necessary.

I. If at any time the HFA loses the designation or rating, as applicable, set forth in 24 CFR 266.110(a), or can no longer provide the legal opinion requisite to participation in the program, it shall, within 5 business days, provide the Commissioner with notice of the loss of its designation or rating or of its inability to provide the statement noted above. Within 15 business days after the loss of the HFA's designation or rating or its inability to provide the requisite legal opinion, the HFA shall establish a Dedicated Account funded in accordance with Paragraph H above. The HFA must calculate the deposits to this Dedicated Account in accordance with the requirements of 24 CFR 266.110(b) so that the account reflects all loans in the HFA's portfolio insured under Section 542(c).

J. Within 90 days following the end of its fiscal year, the HFA shall furnish the Commissioner with a complete annual financial audit based upon an examination of the books and records of the HFA prepared and certified in accordance with the requirements of the State or locality in which the HFA is located.

K. The HFA shall at all times comply with the financial requirements of the Section 542(c) program and it shall notify the Commissioner of any pending or actual changes in its financial status that would adversely affect the HFA's operating or financial status within 5 business days after becoming aware of such pending or actual changes.

L. Within 90 days following the end of its fiscal year, the HFA shall furnish the Commissioner, along with a copy of the audit specified in Paragraph J above, a certification signed by an authorized official of the HFA that there have been no changes that would adversely affect the HFA's organization, business activities, financial status and other information submitted with its application to participate in the Section 542(c) program and that the HFA has complied with all eligibility requirements for participation in the program during the past year. If there has been a change in information submitted with the HFA's application relating to the HFA's organization, business activities, financial status or other information submitted with its application, the certification will state the nature of the change.

M. The HFA shall comply with the Fair Housing Act, as implemented by 24 CFR Part 100; titles II and III of the Americans with Disabilities Act of 1990, as implemented by 28 CFR Part 35; Section 3 of the Housing and Urban Development Act of 1968, (12 U.S.C. Section 1701u), implemented by 24 CFR Part 135, the Equal Credit Opportunity Act, implemented by 12 CFR Part 202; Executive Order 11063, as amended, and implemented by 24 CFR Part 107; Executive Order 11246, as implemented by 41 CFR Part 60; other applicable Federal laws and regulations issued pursuant to these authorities; and applicable State and local fair housing and equal opportunity laws. In addition, the HFA shall require that mortgagors which receive Federal financial assistance must also certify to the HFA that, so long as the mortgage is insured under Section 542(c), it shall comply with title VI of the Civil Rights Act of 1964, as implemented by 24 CFR Part 1; the Age Discrimination Act of 1975, as implemented by 24 CFR 146; and section 504 of the Rehabilitation Act of 1973, as implemented by 24 CFR Part 8.

N. During the period that the Commissioner is the insurer of any mortgage endorsed under Section 542(c), the HFA shall remain the mortgagee of record and shall perform all functions in connection with loans originated under the 542(c) program including loan servicing (including workouts), property management and property disposition functions. The Commissioner shall have no obligation to recognize or deal with anyone other than the HFA in its role as mortgagee of record with respect to the rights and obligations of the HFA under the contract of mortgage insurance and this agreement.

O. The HFA shall retain records pertaining to origination and servicing of all mortgages insured under Section 542(c) for as long as the mortgage insurance remains in effect. In the event of a default and mortgage insurance claim, all records pertaining to the insured mortgage, the mortgage default and insurance claim shall be retained three (3) years after the date of final settlement as final settlement is described in 24 CFR Section 266.654.

P. The HFA shall maintain a Lender's Fidelity Bond/Surety Bond and Errors and Omissions Insurance in a form and amount satisfactory to the Commissioner.

Q. The HFA shall issue Debentures as defined in 24 CFR Section 266.638 acceptable to the Commissioner as collateral for the full amount of its risk-sharing obligation under this agreement pending final settlement of any insurance claim. The Debentures shall be backed by the full faith and credit of the HFA. If the HFA operates as a department or division of the State in which it is located, or as a unit of local government, and the HFA cannot pledge the full faith and credit of the HFA, the HFA shall collateralize its obligation through a letter of credit, reinsurance, or other form of credit acceptable to the Commissioner.

R. Any reinsurance obtained by the HFA to cover its portion of the risk shall: (i) Be subordinate to the HUD-insured mortgage; (ii) not affect reimbursement to the Commissioner, notwithstanding the timing of the actual settlement between the HFA and the reinsurer; (iii) not be used to reduce any reserve or fund balance requirements established by the Commissioner; and (iv) not result in the Federal Government incurring any liability as a result of the reinsurance agreement.

S. With respect to any project mortgage endorsed for insurance under Section 542(c), the HFA shall furnish to the Commissioner project information in a format specified by the Commissioner in HUD Handbook 4590.01. Basic underwriting and closing information shall accompany the initial and final closing dockets submitted for each project. Information relating to project management, servicing and disposition shall be submitted to the Commissioner on a periodic basis after endorsement in accordance with the requirements set forth in Handbook 4590.01.

T. The HFA shall enforce the Regulatory Agreement between the HFA and mortgagor and take action against the mortgagor for violation of any provision(s) thereof.

U. The HFA shall perform annual physical inspections of all projects insured under Section 542(c) and shall submit a copy of the inspection report to the Commissioner (i.e., showing and certifying that the project is in safe and sanitary condition). If a project is not in safe and sanitary condition, the HFA will provide the Commissioner with a summary of required actions, with target dates, to correct unresolved findings.

V. The HFA shall analyze the project's annual audit and within 30 days of the date of the audit, provide the Commissioner with a summary of unresolved findings disclosed in the audit and a summary of actions planned, with target dates, to correct unresolved findings. The HFA shall analyze the project's annual audit and within 6 months of the date of the audit, provide the Commissioner with a summary of unresolved findings disclosed in the audit and a summary of actions planned, with target dates, to correct unresolved fundings.

W. The HFA shall submit semi-annual reports to the Commissioner for all projects insured under Section 542(c) setting forth the original mortgage amounts and outstanding principal balances on mortgages the HFA has underwritten, the status of all projects (e.g., whether current, in default, acquired, under workout agreement, in bankruptcy, etc.). For projects where the mortgagor has declared bankruptcy, the HFA will submit information containing the date the bankruptcy was filed and the date the HFA requested the Court to dismiss the bankruptcy proceedings.

X. All appraisal functions will be completed by Certified General Appraisers licensed in the state in which the property is located, and all appraisal functions will be completed in accordance with the Uniform Standards of Professional Appraisal Practice.

Y. In the event of a default on a multifamily mortgage insured under Section 542(c) which results in the Commissioner having to pay a claim under a Contract of Insurance to the HFA, the HFA will, upon determination of the loss, assume the percentage of loss specified in an Addendum to this Agreement (such Addendum being made a part of this Agreement) and in the endorsement panel of the mortgage note, and reimburse the Commissioner, pursuant to administrative instructions of the Commissioner, the amount based on that percentage pursuant to 24 CFR Section 266.654. (The HFA's percentage of loss specified in the Addendum for a particular project must be consistent with the percentage of loss associated with the HFA's approval level specified in Paragraph A of Article III of this Agreement. A loan which refinances an HFA-financed loan which was in monetary default (as that term is defined in 24 CFR Section 266.626) 12 months prior to the application for refinancing hereunder, the HFA's percentage of loss specified in the Addendum shall be at least 50 percent of the risk). An HFA-financed loan which goes into default after the submission of an application for refinancing of such loan under Section 542(c) will not be eligible for insurance under Section 542(c).

Z. The HFA shall require that the mortgagor keep the improvements now existing or hereafter erected on the mortgaged property insured against loss by fire and such other hazards, casualties, and contingencies, as may be stipulated by the Commissioner upon the insurance of the mortgage and other hazards as may be required from time to time by the HFA. All such insurance shall be evidenced by a standard Fire and Extended Coverage Insurance Policy or policies, in amounts not less than necessary to comply with the applicable coinsurance clause percentage, but in no event shall the amounts of coverage be less than eighty per centum (80%) of the actual cash value of the insurable improvements and equipment of the project, and in default thereof the HFA shall have the right to obtain such insurance in accordance with the mortgage. Such hazard insurance policies shall be endorsed with the standard mortgagee clause with loss payable to the HFA. The hazard insurance policy shall be deposited with the HFA.

AA. The HFA shall ensure that loans insured hereunder shall be on properties which comply with the affordable housing requirements defined in 24 CFR 266.5.

Article IV—Mortgage Insurance Endorsement

Absent fraud or material misrepresentation on the part of the HFA, the Commissioner shall endorse any mortgage presented for mortgage insurance by the HFA in accordance with the provisions of Section 542(c), subject to the Commissioner's right to adjust the amount of mortgage insurance in accordance with 24 CFR Section 266.417, so long as the HFA is in good standing with the Commissioner, has been issued a Firm Approval Letter pursuant to 24 CFR Section 266.300(c) and/or Section 266.305(c), and complies with any conditions therein or attached thereto, and submits with each loan to be endorsed a closing docket in accordance with 24 CFR Section 266.420(b) and written certifications that:

a. The property covered by the mortgage is free from all liens other than the lien of the FHA insured mortgage, except that the property may be subject to such inferior lien or liens, as approved by the HFA, as long as the insured mortgage has first priority for payment.

b. All contractual obligations in connection with the mortgage transaction, including the purchase of the property and the improvements to the property, have been paid. An exception is made for obligations that are approved by the HFA and determined by the HFA to be inferior to the lien of the insured mortgage.[1]

c. The property owner has submitted and the HFA has approved an Affirmative Fair Housing Marketing Plan which complies with the provisions set forth in 24 CFR Part 200, Subpart M.

d. Equal employment requirements were followed by the property owner pursuant to Executive Order 11246 as implemented by 41 CFR Part 60.

e. The property owner has executed the regulatory agreement which complies with the provisions set forth in 24 CFR Section 266.505.

f. The property has been processed, prudently underwritten (including a determination that a market exists for the project), cost certified (if the loan is being submitted for final endorsement) and closed in full compliance with the HFA's standards and requirements and are in full compliance with HUD standards established in connection with approval of advances for

[1] Pursuant to 24 CFR Section 266.415(b), this certification is made at final closing only.

insurance and cost certification. (**Note:** For mortgages originated under Level II, the certification will state "in full compliance with the underwriting standards and loan terms and conditions as approved by the Commissioner.") Further, the loan shall be serviced and the property managed in accordance with procedures disclosed and made a part of this Agreement.

g. For periodic advances cases, that each advance made was proportionate to construction progress as evidenced by HFA inspection prior to approval of the advance.

h. The HFA's Dedicated Account, if required, has been established and has been increased by the amounts required pursuant to 24 CFR Section 266.110(b).

i. For properties subject to Davis-Bacon requirements under 24 CFR Section 266.225, laborers and mechanics employed in the construction of the project have been paid not less than the prevailing wages determined by the Secretary of Labor in accordance with 24 CFR Section 266.225(a).

Article V—Sanctions

Upon a violation of any of the provisions of this Agreement by the HFA, or upon commission of any violation cited in 24 CFR Section 266.120, or of the administrative requirements established by the Commissioner for the Section 542(c) program, the Commissioner or his designee may declare a default under this agreement and impose any of the sanctions set forth at 24 CFR Section 266.125. Any sanction imposed by the Commissioner will be in accordance with the provisions of 24 CFR Section 266.125(d). Any sanction involving a suspension or withdrawal of the HFA's participation in the Section 542(c) program will not affect any mortgage insurance endorsement in effect on the date of the suspension or withdrawal action.

Article VI—Amendments/Modificotions

A. This Agreement shall not be modified or amended without the consent of both parties hereto, except for changes made by the Commissioner to items covered by Article VII, and amendments or modifications that may be made by the Commissioner as set forth in the attached Addendum to this Agreement which: (1) Specify the number of units set aside to the HFA, and (2) other changes that conform to statutory or regulatory amendments. No such modification or amendment will adversely affect the interest of a HFA for any project for which a Firm Approval letter has been issued.

B. The HFA hereby agrees that its written consent to an Addendum executed by the Commissioner which modifies this Agreement to list: (1) Changes in its principal staff or individuals with authority to sign loan documents; (2) changes to existing HFA underwriting standards and procedures, loan terms and conditions; and/or (3) a change in the financial institution in which the Dedicated Account is deposited, will not be necessary if such change(s) was requested by the HFA in writing.

Article VII—Incorporation of Regulations

The regulations set forth in 24 CFR Part 266 are incorporated into this Agreement by reference and made a part hereof. The HFA shall, at all times, comply with the applicable regulations and with all other applicable Federal laws, rules and regulations.

Article VIII—Warranty

The HFA warrants that it has not, and will not, execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement and the regulations set forth in 24 CFR Part 266 and any administrative requirements established by the Commissioner are paramount and controlling as to the rights and obligations set forth herein and supersede any other requirements in conflict herewith.

Article IX—Miscellaneous

The Article headings set forth in this Agreement are not intended to be a limitation on what materials are included within each Article.

This Agreement shall bind, and the benefits shall inure to, the parties, their successors and assigns so long as any Contract of Insurance remains in full force and effect.

The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions hereof.

In witness hereof, the undersigned have caused this Agreement to be duly executed as of the date and year first written above.

Department of Housing and Urban Development

By: _____

Name: _____

Title: _____

Housing Finance Agency

By: _____

Name: _____

Title: _____

Warning: U.S. Criminal Code, Section 1001, Title 18 U.S.C., "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully * * * makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

Addendum to Risk-Sharing Agreement

HQ [ ]

FO [ ]

Number _____

This addendum modifies the Risk-Sharing Agreement, and/or any addendum thereto, by and between _____ (HFA) whose address is _____ and the Assistant Secretary for Housing—Federal Housing Commissioner (the Commissioner) dated the ____ day of _____, 199____.

The purpose of this addendum is to [check one]:

A. ( ) Reserve units and to establish the risk-share percentage between the HFA and Commissioner for Project Number _____ located at _____.
Units reserved _____
Risk-share apportionment
HUD _____/HFA _____

B. ( ) Modify the present set-aside of units. The number of units presently set-aside is _____, which is ( ) increased by _____ units, ( ) decreased by _____ units to a total of _____ units.

C. ( ) New principal staff or individuals with authority to sign loan documents or commit the HFA under the Section 542(c) program are:

D. ( ) New provisions, or changes to existing, HFA underwriting standards and procedures, loan terms and conditions are incorporated by reference into the Risk-Sharing Agreement and are as follows:

E. ( ) The name and address of the new financial institution in which dedicated account is deposited is:

_____

(Name of Financial Institution)

_____

(Address)

F. [Reserved for other purposes.]

Department of Housing and Urban Development

_____

Authorized Agent

Date _____

Exhibit A

The following individuals (principal staff) are employed by the HFA as the persons responsible for the overall underwriting decision and for project management, loan servicing and property disposition with respect to loans insured or to be insured under Section 542(c):

_____

(Name and Title)

_____

(Name and Title)

Exhibit B

The following individuals, whose names, titles and specimen signatures appear below, have the authority to sign loan documents on behalf of the HFA and otherwise commit the HFA under the Section 542(c) Risk-Sharing Program.

_____

(Name and Title)

_____

(Signature)

_____

(Name and Title)

_____

(Signature)

[FR Doc. 96–12795 Filed 5–21–96; 8:45 am]

BILLING CODE 4210–27–P

federal register

Wednesday
May 22, 1996

Part IV

The President

Proclamation 6897—National Safe Boating Week, 1996

Proclamation 6898—Death of Admiral Jeremy M. Boorda

Proclamation 6899—World Trade Week, 1996

Executive Order 13004—Establishing an Emergency Board To Investigate Disputes Between Certain Railroads Represented by the National Railway Labor Conference and Their Employees Represented by Certain Labor Organizations

Federal Register
Vol. 61, No. 100
Wednesday, May 22, 1996

Presidential Documents

Title 3—

The President

Proclamation 6897 of May 17, 1996

National Safe Boating Week, 1996

By the President of the United States of America

A Proclamation

Each year, more Americans choose recreational boating as a means of appreciating our Nation's scenic lakes, beautiful rivers, and vast ocean waterways. Boating is a leisure activity that can be enjoyed by people of all ages and abilities, offering a unique perspective on an unparalleled variety of natural landscapes. This pastime is not without risk, however, and a thorough knowledge of water safety techniques and equipment is an essential part of being a responsible boater.

Studies show that in more than 77 percent of the fully documented recreational boating fatalities that occur every year, the victim was not wearing a life jacket. Falling overboard and capsizing are the leading causes of these deaths, and more than half of all boating accidents are alcohol-related—facts that clearly illustrate the importance of not mixing alcohol and boating, and of properly using personal flotation devices. Skippers, crew members, passengers, and all those who participate in nautical sports should wear safety equipment every time they take to the water.

I commend the United States Coast Guard and the many State and local recreational boating organizations that are working with Government agencies and volunteers across the country to promote the use of life jackets and to educate the public about other lifesaving measures. As we look forward to the summer months and spending time with family and friends on America's waterways, such efforts are vital to ensuring our citizens' health and safety.

In recognition of the value of safe boating practices, the Congress, by joint resolution approved June 4, 1958 (36 U.S.C. 161), as amended, has authorized and requested the President to proclaim annually the seven day period prior to the Memorial Day Weekend as "National Safe Boating Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 18 through May 24, 1996, as National Safe Boating Week. I encourage the Governors of the 50 States and the Commonwealth of Puerto Rico, and officials of other areas subject to the jurisdiction of the United States, to join in observing this occasion. I urge all Americans to practice safe boating habits during this week and throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of May, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 96–13054
Filed 5–21–96; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 6898 of May 17, 1996

Death of Admiral Jeremy M. Boorda

By the President of the United States of America

A Proclamation

As a mark of respect for the memory of Admiral Jeremy M. Boorda, Chief of Naval Operations, I hereby order, by the authority vested in me as President of the United States of America by section 175 of title 36 of the United States Code, that the flag of the United States shall be flown at half-staff upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset on the day of interment. I also direct that the flag shall be flown at half-staff for the same period at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of May, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twentieth.

William J Clinton

[FR Doc. 96–13080
Filed 5–21–96; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 6899 of May 20, 1996

World Trade Week, 1996

By the President of the United States of America

A Proclamation

International commerce is vital to domestic economic growth—perhaps more so now than at any other time in recent U.S. history. Our Nation's prosperity depends in large part on our ability to develop and produce high-quality products, identify and open markets, and promote American goods and services across the globe. The U.S. jobs supported by exports are increasingly important, paying an average of 13 percent more than other positions and accounting for nearly one out of ten American workers and one in five of those in the manufacturing sector. The theme of this year's World Trade Week, "Winning with Exports," is an invitation and a challenge to U.S. firms to reap the benefits of doing business abroad.

My Administration has developed a National Export Strategy that places special emphasis on helping small- and medium-sized companies seize trade opportunities. As part of this plan, we have created a country-wide network of U.S. Export Assistance Centers to provide information and capital to businesses seeking to expand. The results speak for themselves; in 1995, actions taken by Centers like those in Chicago and Baltimore dramatically increased the number of U.S. firms entering new markets and boosting export sales.

Trade is also a means of fostering understanding and stability around the world, helping our Nation to build partnerships founded on mutual prosperity. American commerce and investments are strengthening new democracies whose viability depends on economic growth and raised standards of living. From South Africa, to Central Europe, the Baltic States, Russia, Ukraine, and the Newly Independent States, exporting is allowing our country to play a pivotal role in settling and solidifying crucial foreign markets. Trade is also essential to troubled regions such as the Middle East, Northern Ireland, and Bosnia, where job creation and economic improvements play an important role in efforts to achieve peace.

As we observe World Trade Week, 1996, let us strive to give our Nation's exporters every opportunity to sell products freely and fairly and help our companies to meet the challenge of exploring markets abroad. Their efforts to maintain efficient, high-quality production and to promote American goods and services to an international clientele will lead to a stronger economy and a brighter future for us all.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 19 through May 25, 1996, as World Trade Week. I call upon the people of the United States to observe this week with ceremonies, activities, and programs that celebrate the potential of international trade.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of May, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 96–13102
Filed 5–21–96; 10:58 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13004 of May 17, 1996

Establishing an Emergency Board To Investigate Disputes Between Certain Railroads Represented by the National Railway Labor Conference and Their Employees Represented by Certain Labor Organizations

Disputes exist between certain railroads represented by the National Railway Labor Conference and their employees represented by certain labor organizations. The railroads and labor organizations involved in these disputes are designated on the attached lists, which are made a part of this order.

These disputes have not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (45 U.S.C. 151 *et seq.*) (the "Act").

In the judgment of the National Mediation Board, these disputes threaten substantially to interrupt interstate commerce to a degree that would deprive a section of the country of essential transportation service.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States, including section 10 of the Act (45 U.S.C. 160), it is hereby ordered as follows:

Section 1. *Establishment of Emergency Board ("Board").* There is established effective May 17, 1996, a Board of three members to be appointed by the President to investigate the disputes. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any railroad carrier. The Board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* The Board shall report to the President with respect to the dispute within 30 days of its creation.

Sec. 3. *Maintaining Conditions.* As provided by section 10 of the Act, from the date of the creation of the Board and for 30 days after the Board has made its report to the President, no change, except by agreement of the parties, shall be made by the railroads or the employees in the conditions out of which the disputes arose.

Sec. 4. *Records Maintenance.* The records and files of the Board are records of the Office of the President and upon the Board's termination shall be maintained in the physical custody of the National Mediation Board.

Sec. 5. *Expiration.* The Board shall terminate upon the submission of the report provided for in sections 2 and 3 of this order.

William J. Clinton

THE WHITE HOUSE,
May 17, 1996.

RAILROADS

Alameda Belt Line Railway
Alton & Southern Railroad
American Refrigerator Transit Company
Arkansas Memphis Bridge Company
Atchison, Topeka and Santa Fe Railway Company
Bangor and Aroostook Railroad Company
Belt Railway Company of Chicago
Brownsville & Matamoros Bridge Company
Burlington Northern Railroad Company
  Allouez Taconite Facility
  Brainerd Timber Treating Plant
  Western Fruit Express Company
Camas Prairie Railroad Company
Canadian National North America
Central California Traction Company
Chicago Heights Terminal Railroad
Chicago Heights Terminal Transfer Railroad
Chicago and North Western Railway Company
Chicago South Shore and South Bend Railroad
Consolidated Rail Corporation
CSX Transportation, Inc.
  The Baltimore and Ohio Railroad Company (former)
  The Chesapeake and Ohio Railway Company (former)
  Louisville and Nashville Railroad Company (former)
  Seaboard Coast Line Railroad Company (former)
Houston Belt and Terminal Railway
Joint Railroad Agency - National Stock Yards
The Kansas City Southern Railway Company
  CP-Kansas City Southern Joint Agency
Kansas City Terminal Railway Company
Lake Superior & Ishpeming Railroad Company
Los Angeles Junction Railroad Company
Missouri Pacific Railroad
New Orleans Public Belt Railroad
Norfolk and Portsmouth Belt Line Railroad Company
Norfolk Southern Corporation
Norfolk Southern Railway Company
  The Alabama Great Southern Railroad Company
  Atlantic & East Carolina Railway Company
  Central of Georgia Railroad Company
  The Cincinnati, New Orleans and Texas Pacific Railway Company
  Georgia Southern and Florida Railway Company
  Norfolk & Western Railway Company
  Tennessee, Alabama and Georgia Railway Company

Northern Indiana Commuter Transportation District
Peoria and Pekin Union Railway Company
The Pittsburgh, Chartiers & Youghiogheny Railway Company
Port Terminal Railroad Association
Portland Terminal Railroad Company
Spokane International Railroad
Terminal Railroad Association of St. Louis
Texarkana Union Station Trust Company
Union Pacific Fruit Express
Union Pacific Railroad
  Galveston, Houston and Henderson Railroad
  Missouri-Kansas-Texas Railroad
  Oklahoma, Kansas & Texas Railroad
Western Pacific Railroad
Wichita Terminal Association

LABOR ORGANIZATIONS

Brotherhood of Railroad Signalmen
International Association of Machinists & Aerospace Workers, AFL-CIO
International Brotherhood of Electrical Workers
Sheet Metal Workers International Association

[FR Doc. 96–13081
Filed 5–21–96; 8:45 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 61, No. 100

Wednesday, May 22, 1996

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Public inspection announcement line	523–5215
Laws	
Public Laws Update Services (numbers, dates, etc.)	523–6641
For additional information	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: 301–713–6905

FEDERAL REGISTER PAGES AND DATES, MAY

19155–19502	1
19503–19804	2
19805–20116	3
20117–20418	6
20419–20700	7
20701–21046	8
21047–21360	9
21361–21946	10
21947–24204	13
24205–24432	14
24433–24664	15
24665–24874	16
24875–25134	17
25135–25388	20
25389–25548	21
25549–25774	22

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6889 19503
6890 19803
6891 20419
6892 21045
6893 21047
6894 24661
6895 24663
6896 25129
6897 25765
6898 25767
6899 25769

Executive Orders:
11216 (See EO 13002) 24665
13001 21943
13002 24665
13003 25131
13004 25771

Administrative Orders:
Memorandums:
April 26, 1996 19505
April 26, 1996 24667
April 26, 1996 24877
April 28, 1996 19507

4 CFR

Proposed Rules:
21 19205

5 CFR

Ch. LXIX 20117
300 19509
410 21947
532 20701
831 21953
842 21953

7 CFR

28 19511
51 20702
52 25549
53 19155
54 19155
225 25550
226 25550
272 19155
273 19155
301 20877
319 24433
800 24669
810 24669
900 20717
915 19512
916 19160
917 19160
946 20119
956 20121
959 24877
979 20718
980 25551
985 20122
1002 20719
1004 20719
1007 20124
1280 ..... 19514, 21049, 21053
1485 24205
1841 21361
1843 21361
1845 21361
1903 21361
1945 21361
1980 21361
2054 21361
3403 25366

Proposed Rules:
51 24247
911 20754
924 20756
944 ..... 20754, 20756
958 20188
1005 19861
1007 19861
1011 19861
1046 19861
1160 20759

8 CFR

3 ..... 19976, 21065, 21228
242 ..... 19976, 21065, 21228

9 CFR

50 25135
77 25135
78 19976
130 ..... 20421, 25513

Proposed Rules:
92 ..... 20189, 20190, 21389
93 20190
94 20190
95 20190
96 20190
98 20190
301 19564
304 19578
308 19578
317 ..... 19564, 19578
318 ..... 19564, 19578
319 19578
320 19564
381 ..... 19564, 19578

10 CFR

20 24669
30 24669
40 24669
61 24669
70 24669
72 24669

Proposed Rules:
26 ..... 21105, 24731
72 24249

11 CFR

110 24533

12 CFR

5.....19524
19.....20330
20.....19524
25.....21362
28.....19524
205.....19662, 19678
211.....24439
220.....20386
228.....21362
229.....25389
250.....19805
263.....20338
308.....20344
345.....21362
509.....20350
563e.....21362
614.....20125

Proposed Rules:

207.....20399
215.....19863
220.....20399
221.....20399
330.....25596
614.....24907

13 CFR

Proposed Rules:

121.....20191

14 CFR

21.....20696
25.....24208, 24213
27.....21904
29.....21894, 21904
31.....20877
39.....19540, 19807, 19808, 19809, 19811, 19813, 19815, 20125, 20127, 20616, 20636, 20638, 20639, 20641, 20643, 20644, 20646, 20668, 20669, 20671, 20672, 20674, 20676, 20677, 20679, 20681, 20682, 21066, 21068, 21070, 21071, 24206, 24214, 24216, 24218, 24220, 24675, 24684, 24686, 24688, 24690, 24691, 24878, 24881, 24883, 24884, 25557, 15558
43.....19498
71.....19541, 19542, 19816, 19817, 21364, 21365, 21953, 24222, 24223
73.....20127
91.....24430
97.....25138. 25139, 25141
159.....19784
205.....19164
323.....19164
385.....19166

Proposed Rules:

29.....20760
39.....20192, 20194, 20762, 20764, 21146, 21979, 21980, 21982, 24250, 25417, 25418, 25598
71.....19590, 19591, 19592, 19593, 21910, 21984, 24533, 25157, 25600
91.....24582
121.....21149, 24582, 24533
127.....24582
135.....24582
158.....25420

15 CFR

902.....19171, 21926
981.....21073

Proposed Rules:

946.....19594

16 CFR

405.....25560
1500.....19818

Proposed Rules:

254.....19869
1210.....20503

17 CFR

1.....19177, 19830
3.....20127
5.....19830
10.....21954
31.....19830
140.....21954
200.....20721, 25652
228.....25652
229.....25652
230.....21356, 25652
231.....24644
232.....25652
239.....25652
240.....21354, 25652
241.....24644
249.....21354
270.....25652
271.....24644
274.....25652
276.....24644

Proposed Rules:

1.....19869
156.....19869
230.....25601
240.....25601
250.....25601
270.....25601
275.....25601

18 CFR

35.....21940
37.....21737
385.....21940
1300.....20117

Proposed Rules:

35.....21847
161.....19211
250.....19211
284.....19211, 19832
346.....19878

19 CFR

10.....19834, 24887
12.....24888
103.....19835
145.....24888
161.....24888

Proposed Rules:

101.....19834

20 CFR

200.....25390
345.....20070
601.....19982
617.....19982
626.....19982
658.....19982
702.....19982

21 CFR

2.....25390
5.....24223
101.....20096, 21074
173.....25392
201.....20096
310.....25142
341.....25142
369.....20096
500.....19542
501.....20096
510.....21075, 24440
520.....24441, 24443
522.....21075, 24440
556.....24440, 24441
558.....21075, 24443, 24694
582.....19542
589.....19542
600.....24227
601.....24227
740.....20096
801.....20096

Proposed Rules:

Ch. 1.....21392
25.....19476
101.....25421
102.....19220
130.....19220
131.....19220
133.....19220
135.....19220
136.....19220
137.....19220
139.....19220
145.....19220
146.....19220
150.....19220
152.....19220
155.....19220
156.....19220
158.....19220
160.....19220
161.....19220
163.....19220
164.....19220
165.....19220
166.....19220
168.....19220
169.....19220
210.....20104
211.....20104
328.....21392
530.....25118
589.....24253

22 CFR

126.....19841
514.....20437

24 CFR

0.....19187
201.....19788
290.....19188
585.....25124
941.....19708
970.....19708

Proposed Rules:

206.....21910
888.....20982
901.....20358
3500.....21394

25 CFR

Proposed Rules:

144.....24731
250.....19600
291.....25604
525.....21394

26 CFR

1.....19188, 19189, 19544, 19546, 21366, 21955
301.....19189
602.....19189

Proposed Rules:

1.....20503, 20766, 20767, 21985, 21988
31.....20767
32.....20767
35a.....20767
301.....20503, 21989

27 CFR

1.....20721
4.....20721
7.....20721
16.....20721
19.....20721
20.....20721
21.....20721
22.....20721
24.....20721, 21076
25.....20721
53.....20721
55.....20721
71.....20721
170.....20721
178.....20721
179.....20721
194.....20721
197.....20721
200.....20721
250.....20721
251.....20721
252.....20721
270.....20721
275.....20721
285.....20721
290.....20721
296.....20721

28 CFR

58.....24889
501.....25120
550.....25120

Proposed Rules:

90.....24526
100.....21396

29 CFR

1.....19982
2.....19982
4.....19982
5.....19982
6.....19982
7.....19982
8.....19982
22.....19982
24.....19982
32.....19982
96.....19982
500.....24694
504.....19982
507.....19982
508.....19982
530.....19982
1601.....21370
1910.....19547, 21228
1978.....19982
2619.....21228, 24444, 25513
2627.....24694
2676.....24444

Proposed Rules:

Ch. XIV.....20768

4.....19770
102.....25158

30 CFR

75.....20877
250.....25147

Proposed Rules:

Ch. II.....21977, 25160
202.....25421
206.....25421
211.....25421
256.....24466
901.....20768
902.....20768
904.....19881, 20768
913.....20768
914.....20768
915.....20768
916.....20768
917.....20768
918.....20768
920.....20768
934.....25425
936.....25426
946.....19885
950.....20773

31 CFR

12.....25396
361.....20437
585.....24696

Proposed Rules:

356.....25164

32 CFR

324.....25561

33 CFR

52.....24233
100.....19192, 20132, 21959, 21960, 21961, 21962, 25149
110.....25149
117.....24235, 25149
165.....19192, 19841, 21963, 24697, 24698, 24699, 24701, 24892
401.....19548

34 CFR

361.....24390
685.....24446

Proposed Rules:

100.....20196, 21998, 21999, 22001
117.....22002
154.....20084
155.....20084

36 CFR

292.....20726
1228.....19552, 24702

Proposed Rules:

7.....20775
100.....19220
117.....19223

37 CFR

Proposed Rules:

Ch. II.....20197, 22004
1.....19224, 20877

38 CFR

2.....20133, 20437
3.....20438, 20726
4.....20438, 20440
9.....20134
17.....21964, 24236
19.....20447
20.....20447
21.....20727, 24237

Proposed Rules:

3.....24910
17.....25428

39 CFR

3001.....24447

Proposed Rules:

233.....21404

40 CFR

50.....25566
52.....19193, 19555, 20136, 20139, 20142, 20145, 20147, 20453, 20455, 20458, 20730, 20732, 24239, 24457, 24702, 24706, 24709, 24712
55.....25149
110.....25149
117.....25149
60.....20734, 21080
63.....21370, 25397
70.....20150, 24457, 24715
75.....25580
80.....20736
81.....20458, 21372, 24239, 24242
82.....25585
89.....20738
90.....20738
123.....20972
131.....20686
141.....24354
167.....25151
180.....19842, 19845, 19847, 19849, 19850, 19852, 19854, 19855, 20742, 20743, 20745, 21378, 24893, 25152
185.....25153
300.....20473, 24720, 24894
355.....20473
421.....24242

Proposed Rules:

Ch. I.....19432
51.....19231
52.....19233, 19601, 20199, 20200, 20201, 20504, 21405, 21412, 24467, 24737, 24738
55.....25173
61.....20775
63.....19887, 21414
70.....20202
80.....20779
81.....19233, 21415
82.....25604
89.....20738
90.....20738
170.....19889
148.....21418
180.....19233, 20780, 20781, 24738, 24911
185.....20780
186.....10780, 20781, 24911
261.....21418, 25175
268.....21418
271.....21418
300.....19889, 20202, 20785, 21422, 22004, 22006, 24261

41 CFR

50–203.....19982
60–1.....19982, 25516
60–30.....19982
60–60.....25516
60–250.....19366, 19982
60–741.....19336, 19982

42 CFR

405.....19722
412.....21969
486.....19722

Proposed Rules:

84.....24740, 25513

43 CFR

11.....20560

44 CFR

61.....19197
62.....24462
64.....19857
65.....25400, 25402, 25403
67.....25405
206.....19197

Proposed Rules:

67.....25429, 25435

45 CFR

Proposed Rules:

1311.....24467
2400.....25612

46 CFR

Ch. I.....24464
10.....19858
15.....19858
30.....25272
31.....25272
32.....25272
33.....25272
35.....25272
70.....25272
71.....25272
75.....25272
77.....25272
78.....25272
90.....25272
91.....25272
94.....25272
96.....25272
97.....25272
107.....25272
108.....25272
109.....25272
114.....20556
116.....20556
117.....20556
118.....20556
119.....20556
120.....20556
121.....20556
122.....20556
125.....25272
133.....25272
167.....25272
168.....25272
170.....20556, 24464
171.....24464
173.....20556, 24464
175.....20556
176.....20556
177.....20556
178.....20556
179.....20556
180.....20556
181.....20556
182.....20556
183.....20556
185.....20556
188.....25272
189.....25272
192.....25272
195.....25272
196.....25272
199.....25272
298.....21302
381.....24895
403.....21081
404.....21081

47 CFR

3.....20155
21.....25594
22.....21380
64.....20746, 24897
73.....20490, 20747, 21384, 21385, 21973, 24262, 24263, 24465, 25594
90.....21380
97.....21385

Proposed Rules:

Ch. I.....22008
0.....21151
1.....19236, 20505, 24743, 25183
2.....19236
15.....24473, 24749
21.....19236
22.....24470
24.....24470
64.....25184
73.....19601, 20206, 20207, 20505, 20789, 21425, 24262, 24263, 25183
80.....21151
90.....25185
94.....19236

48 CFR

Ch. 1.....24263
209.....25408
231.....21973
242.....25409
243.....25408
570.....24720
801.....20491
803.....20491
804.....20491
805.....20491
806.....20491
808.....20491
810.....20491
812.....20491
813.....20491
815.....20491
816.....20491
820.....20491
822.....20491
828.....20491
833.....20491
834.....20491
836.....20491
837.....20491
846.....20491
871.....20493
904.....21975
906.....21975
911.....21975
912.....21975
913.....21975
915.....21975
919.....21975
925.....21975
926.....21975

933 21975
950 21975
952 21975
970 21975
2401 19468
2402 19468
2404 19468
2405 19468
2406 19468
2409 19468
2411 19468
2412 19468
2413 19468
2414 19468
2415 19468
2416 19468
2417 19468
2419 19468
2420 19468
2426 19468
2428 19468
2429 19468
2432 19468
2434 19468
2436 19468
2437 19468
2442 19468
2452 19468
2453 19468

Proposed Rules:

Ch. 1 22010
Ch. 2 22010
52 24473
901 19891
905 19891
906 19891
908 19891
915 19891
916 19891
917 19891
922 19891
928 19891
932 19891
933 19891
935 19891
936 19891
942 19891
945 19891
952 19891
971 19891
1515 25440
1552 25440

49 CFR

18 21386
37 25409
38 25409
90 21386
107 21084
171 ..... 21084, 24904
172 20747
173 ..... 20747, 21084, 24904
174 20747
176 20747
178 21084
180 24904
195 24244
228 20494
397 20496
533 25595
564 20497
571 ..... 19201, 19202, 19560, 19561, 20170, 20172, 20497
604 19562
609 19562
639 25088
1051 19859
1053 19859
1164 21387
1311 21387
1312 19859
1330 024722

Proposed Rules:

219 21149
382 21149
537 22010
571 ..... 19602, 24263, 24265
653 21149
654 21149
1002 20877
1100 19236
1101 19236
1102 19236
1103 19236
1104 19236
1105 19236
1106 19236
1107 19236
1108 19236
1109 19236
1110 19236
1111 19236
1112 19236
1113 19236
1114 19236
1115 19236
1116 19236
1117 19236
1118 19236
1119 19236
1120 19236
1121 19236
1122 19236
1123 19236
1124 19236
1125 19236
1126 19236
1127 19236
1128 19236
1129 19236
1130 19236
1131 19236
1132 19236
1133 19236
1134 19236
1135 19236
1136 19236
1137 19236
1138 19236
1139 19236
1140 19236
1141 19236
1142 19236
1143 19236
1144 19236
1145 19236
1146 19236
1147 19236
1148 19236
1149 19236
1185 22014
1300 21153
1305 24474
1312 19902

50 CFR

17 24722
91 25155
216 21926
222 21926
253 19171
255 19171
620 20175
658 24728
661 20175
663 21102
672 ..... 19976, 21104, 24729
675 ..... 19976, 24730, 24905, 25595
678 21978

Proposed Rules:

16 24267
17 ..... 19237, 21426, 25618
246 25443
280 25443
281 25443
282 25443
298 25443
299 25443
300 25443
301 25443
371 25443
380 25443
600 19390
601 19390
602 19390
603 19390
605 19390
611 19390
619 19390
620 19390
621 19390
625 20506
628 20789
641 24267
649 20207
650 ..... 20207, 21431
651 20207
655 25185
652 19604
672 ..... 24475, 24750
673 ..... 19902, 21431
675 ..... 24475, 24750
676 24475
695 25443

REMINDERS

The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Dairy products; grading, inspection, and standards:
- Nonfat dry milk; spray process; published 4-22-96

Winter pears grown in Oregon, Washington, and California; published 4-22-96

ENVIRONMENTAL PROTECTION AGENCY

Air programs:
- Ambient air quality standards, national--
  - Sulfur oxides (sulfur dioxide); published 5-22-96

Clean Air Act:
- Acid rain program--
  - Continuous emission monitoring; correction; published 5-22-96

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:
- Virginia; published 5-22-96

FEDERAL TRADE COMMISSION

Trade regulation rules:
- Waist belts, leather content; misbranding and deception; CFR part removed; published 5-22-96

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:
- Port of New York and New Jersey; safety zone; published 5-16-96

TRANSPORTATION DEPARTMENT

Civil Aeronautics Board, public meetings; release of internal staff memoranda; published 4-22-96

Medals of Honor; award clarification; published 4-22-96

National security information; CFR part removed; published 4-22-96

Official seal; use; published 4-22-96

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Engineering and traffic operations:
- Design standards for highways--
  - Geometric design of highways and streets; published 4-22-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
- Horses; vesicular stomatitis; comments due by 5-31-96; published 4-1-96

Interstate transportation of animals and animal products (quarantine):
- Brucellosis in cattle and bison--
  - Brucella vaccine approval; comments due by 5-31-96; published 4-1-96

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:
- Pear crop provisions; comments due by 5-28-96; published 4-25-96

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:
- Processed meat and poultry products; nutrient content claim and general definition and standard of identity; comment period extension; comments due by 5-28-96; published 2-27-96

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Atlantic golden crab fishery, etc.; comments due by 5-28-96; published 4-11-96
- Northeast multispecies, Atlantic sea scallop, and American lobster; comments due by 5-30-96; published 5-6-96
- Ocean salmon off coasts of Washington, Oregon, and California; comments due by 5-31-96; published 5-6-96

International fisheries in U.S. Exclusive Economic Zone and on high seas; regulations consolidation; comments due by 5-30-96; published 5-21-96

Magnuson Act provisions; regulations consolidation and update; comments due by 5-31-96; published 5-1-96

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Contractor overhead certification; comments due by 5-28-96; published 3-29-96

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; standards of performance for new stationary sources:
- Volatile organic compound (VOC) emissions--
  - Automobile refinish coatings; comments due by 5-30-96; published 4-30-96

Air quality implementation plans:
- Preparation, adoption, and submittal--
  - Volatile organic coumpound definition; HFC 43-10mee and HCFC 225ca and cb exclusion; comments due by 5-31-96; published 5-1-96

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 5-30-96; published 4-30-96
- Florida; comments due by 5-28-96; published 4-25-96
- Kansas and Missouri; comments due by 5-28-96; published 4-25-96
- Wisconsin; comments due by 5-29-96; published 4-29-96

Hazardous waste program authorizations:
- Alabama; comments due by 5-28-96; published 4-25-96
- Kentucky; comments due by 5-28-96; published 4-26-96
- North Carolina; comments due by 5-28-96; published 4-25-96
- South Carolina; comments due by 5-28-96; published 4-26-96

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Aluminum tris (O-ethylphosphonate); comments due by 5-28-96; published 4-26-96
- Dicofol, etc.; comments due by 5-30-96; published 3-1-96
- Quizalofop ethyl; comments due by 5-28-96; published 4-26-96

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Microwave relocation for C, D, E, and F blocks; voluntary negotiation period shortening, etc.; comments due by 5-28-96; published 5-15-96

Communications equipment:
- Radio frequency devices--
  - Vehicle radar systems and radio astronomy operations; protection from interference; use of frequency bands above 40 GHz restricted; comments due by 5-28-96; published 3-29-96

Television broadcasting:
- Telecommunications Act of 1996--
  - Cable reform provisions; comments due by 5-28-96; published 4-30-96

FEDERAL ELECTION COMMISSION

Reports by political committees:
- Electronic filing of reports; comments due by 5-28-96; published 3-27-96

GENERAL ACCOUNTING OFFICE

Practice and procedure:
- Personnel Appeals Board--
  - Reductions in force, comments due by 5-31-96; published 3-7-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare and Medicaid:
- Prepaid health care organizations; physician incentive plans requirements; comments due by 5-28-96; published 3-27-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Inspector General Office, Health and Human Services Department

Medicare and Medicaid:

Prepaid health care organizations; physician incentive plans requirements; comments due by 5-28-96; published 3-27-96

INTERIOR DEPARTMENT

Fish and Wildlife Service

Migratory bird hunting:

Migratory bird harvest information program; participating States; comments due by 5-29-96; published 4-29-96

INTERIOR DEPARTMENT

Tribal government:

Self-governance program; awarding negotiation and planning grants; procedure establishment; comments due by 5-31-96; published 4-23-96

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:

Immigrant petitions--

Battered or abused spouses and children; classification as immediate relative of U.S. citizen or preference immigrant; self-petitioning; comments due by 5-28-96; published 3-26-96

JUSTICE DEPARTMENT

Prisons Bureau

Inmate control, custody, care, etc.:

Inmate personal property; authorized personal property lists

standardization and transportation procedures; comments due by 5-31-96; published 4-1-96

POSTAL SERVICE

International Mail Manual:

International package consignment service implementation; comments due by 5-31-96; published 3-28-96

SECURITIES AND EXCHANGE COMMISSION

Securities:

Odd-lot tender offers by issuers; comments due by 5-28-96; published 4-25-96

SMALL BUSINESS ADMINISTRATION

Small business size standards:

Nonmanufacturer rule; waivers--

Purified terephthalic acid ground and unground; comments due by 5-29-96; published 5-6-96

Tabulating paper (computer forms, manifold or continuous); comments due by 5-29-96; published 5-6-96

TRANSPORTATION DEPARTMENT

Coast Guard

Merchant marine officers and seamen:

Electronic records of shipping articles and certificates of discharge; comments due by 5-28-96; published 3-28-96

Tankermen and persons in charge of dangerous liquids and liquefied gases transfers; qualifications; comment period reopening; comments due by 5-28-96; published 3-26-96

Regattas and marine parades:

Harborwalk Boat Race; comments due by 5-28-96; published 3-26-96

Suncoast Kilo Run et al.; comments due by 5-31-96; published 5-1-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 5-28-96; published 4-15-96

AlliedSignal, Inc.; comments due by 5-28-96; published 3-26-96

Beech; comments due by 5-28-96; published 4-15-96

CFM International; comments due by 5-28-96; published 3-26-96

McDonnell Douglas; comments due by 5-31-96; published 4-19-96

Airworthiness standards:

Special conditions--

Cessna model 425 airplanes; comments due by 5-30-96; published 4-30-96

Class E airspace; comments due by 5-30-96; published 4-30-96

Jet routes; comments due by 5-30-96; published 4-16-96

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Motor carrier safety standards:

Commercial Driver's License and Physical Qualification Requirements Negotiated Rulemaking Advisory Committee--

Intent to establish; comments due by 5-29-96; published 4-29-96

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Railroad contracts:

Specified rail services provision under specified rates and conditions; comment due date extended; comments due by 5-28-96; published 4-22-96

TREASURY DEPARTMENT

Customs Service

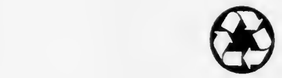
Organization and functions; field organization, ports of entry, etc.:

Columbus, OH; port limits extension; comments due by 5-31-96; published 5-3-96

TREASURY DEPARTMENT

Fiscal Service

Treasury certificates of indebtedness, notes, and bonds; State and local government series; comments due by 5-30-96; published 4-30-96



Printed on recycled paper

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

5–23–96
Vol. 61

No. 101

federal register

Thursday
May 23, 1996

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 96 R
UMI
SERIALS ACQUISITIONS
PO BOX 1346
ANN ARBOR MI 48106

5–23–96
Vol. 61 No. 101
Pages 25775–26068

federal register

Thursday
May 23, 1996

Briefings on How To Use the Federal Register
For information on briefings in Chicago, IL, and Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $494, or $544 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $433. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 61 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243
For other telephone numbers, see the Reader Aids section at the end of this issue.

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

CHICAGO, IL

WHEN: June 11, 1996 at 9:00 am
WHERE: Metcalfe Federal Building, Conference Room 328, 77 West Jackson, Chicago, Illinois 60604
RESERVATIONS: 1–800–688–9889

WASHINGTON, DC

[Two Sessions]

WHEN: June 18, 1996 at 9:00 am, and June 25, 1996 at 9:00 am
WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 61, No. 101
Thursday, May 23, 1996

Agency for Toxic Substances and Disease Registry
NOTICES
Superfund program:
Hazardous substances priority list (toxicological profiles)
Minimum risk levels, 25873–25882

Agriculture Department
See Forest Service
See Rural Utilities Service
RULES
Organization, functions, and authority delegations:
Under Secretary for Farm and Foreign Agricultural Services et al., 25775–25776
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 25842

Air Force Department
NOTICES
Base realignment and closure:
Surplus Federal property—
George AFB, CA, 25850

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
National Automobile Dealers Association, 25891–25895
National cooperative research notifications:
Fastcast Consortium, 25891

Appalachian States Low-Level Radioactive Waste Commission
NOTICES
Meetings, 25845

Army Department
NOTICES
Environmental statements; availability, etc.:
Base realignment and closure—
Tooele Army Deport, UT, 25850–25851

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Coast Guard
RULES
Federal regulatory reform:
Inspected and uninspected commercial vessels industry standards; miscellaneous amendments, 25984–26013
PROPOSED RULES
Ports and waterways safety:
San Diego Bay, CA; security zone, 25838–25839
Regattas and marine parades:
First Coast Guard District fireworks displays, 25835–25838

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Export visa requirements; certification, waivers, etc.:
Pakistan, 25847

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
New York Mercantile Exchange—
Alberta natural gas futures and options contracts, 25847–25848

Consumer Product Safety Commission
NOTICES
Commission agenda and priorities; public hearing, 25848
Settlement agreements:
Sandy Starkman Co., 25848–25850

Customs Service
RULES
Organization and functions; field organization, ports of entry, etc.:
International airport status for customs services and ports of entry for aliens arriving by aircraft; revocations and designation, 25777–25778

Defense Department
See Air Force Department
See Army Department
See Navy Department

Drug Enforcement Administration
NOTICES
Schedules of controlled substances; production quotas:
Schedules I and II—
1996 proposed aggregate, 25895–25897
Applications, hearings, determinations, etc.:
Ansys Inc., 25895
Lonza Riverside, 25895

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 25851–25852
Submission for OMB review; comment request, 25852

Employment and Training Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 25898–25899

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
North Carolina, 25789–25791
Washington, 25791–25794
Hazardous waste program authorizations:
Kentucky, 25799–25801
Tennessee, 25794–25799

PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
North Carolina, 25840–25841
Washington, 25841

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness standards:
Special conditions—
Dassault Aviation model Falcon 900EX airplane, 25778–25780
Standard instrument approach procedures, 25780–25784
PROPOSED RULES
Air carrier certification and operation:
Radar beacon system and Mode S transponder requirements in national airspace system, 26036–26040
NOTICES
Passenger facility charges; applications, etc.:
Metropolitan Oakland International Airport, CA, 25933
Miami International Airport, FL, 25933–25934
Palm Beach International Airport et al., FL, 25934–25935
San Angelo Mathis Field, TX, 25935

Federal Communications Commission
RULES
Common carrier services:
Personal communications services—
Bid withdrawal payment provisions; waiver, 25807–25808
Broadband PCS; audited financial statements and general applications requirements; waiver, 25808–25810
Radio services, special:
Bid withdrawal payment provisions; waiver, 25810–25813
Maritime services—
Great Lakes Agreement ships; inspection, 25804–25807
PROPOSED RULES
Radio stations; table of assignments:
Texas, 25841
NOTICES
Agency information collection activities:
Proposed collection; comment request, 25866–25868
Submission for OMB review; comment request, 25868

Federal Deposit Insurance Corporation
NOTICES
Bank investments; leeway securities investment; policy statement rescinded, 25869
Capital forbearance; policy statement rescinded, 25869–25870

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
Texas et al., 25802–25804
NOTICES
Disaster and emergency areas:
Illinois, 25870–25871
Montana, 25870

Federal Energy Regulatory Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 25852–25853
Electric rate and corporate regulation filings:
Municipal Electric Authority of Georgia et al., 25858–25859
UtiliCorp United Inc. et al., 25859–25863
Environmental statements; availability, etc.:
Georgia Power Co., 25863
Tennessee Gas Pipeline Co. et al., 25863–25865
Natural gas certificate filings:
Northwest Pipeline Corp. et al., 25865–25866
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 25853
Cenerprise, Inc., 25853–25854
Colorado Interstate Gas Co., 25854
Colorado Interstate Gas Co. et al., 25854
El Paso Natural Gas Co., 25854
Mid Continent Market Center, Inc., et al., 25854–25855
NorAm Gas Transmission Co., 25855
Northern Border Pipeline Co., 25855–25856
Northern Natural Gas Co., 25856
Pacific Gas & Electric Co., 25856–25857
South Georgia Natural Gas Co., 25857–25858
Texas Gas Transmission Corp., 25858
Transok, Inc., 25858

Federal Labor Relations Authority
NOTICES
Federal service labor-management relations statute:
Collective bargaining; comment solicitation for policy statement, 25871–25872

Federal Maritime Commission
NOTICES
Investigations, hearing, petitions, etc.:
Haewoo Shipping Co., Ltd., 25872–25873

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
Everest Reinsurance Co., 25936–25937

Fish and Wildlife Service
RULES
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Effective date extended, 25785–25787
Endangered and threatened species:
California red-legged frog, 25813–25833
NOTICES
Agency information collection activities:
Proposed collection; comment request, 25884–25885, 25889–25890

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Tolazoline hydrochloride injection, 25784–25785
NOTICES
Committees; establishment, renewal, termination, etc.:
Science Board, 25882

Investigational biological product trials; monitor clinical hold process
Investigational biological product trials; procedure to monitor clinical hold process; review committee, 25882–25883

Foreign Claims Settlement Commission
NOTICES
Claims against:
Iraq; registration, 25897–25898

Forest Service
RULES
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Effective date extended, 25785–25787
NOTICES
Environmental statements; availability, etc.:
Medicine Bow/Routt National Forest, CO, 25842–25843
Meetings:
Southeast Alaska Federal Subsistence Regional Advisory Council, 25843

General Accounting Office
NOTICES
Meetings:
Federal Accounting Standards Advisory Board, 25873

General Services Administration
RULES
Federal travel:
Privately owned vehicle mileage reimbursement, 25802

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health

Health Care Financing Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 25873, 25883–25884

Immigration and Naturalization Service
RULES
Organization, functions, and authority delegations:
International airport status for customs services and ports of entry for aliens arriving by aircraft; revocations and designation, 25777–25778

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

Internal Revenue Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 25937–25938

International Trade Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 25845–25846

Justice Department
See Antitrust Division
See Drug Enforcement Administration
See Foreign Claims Settlement Commission
See Immigration and Naturalization Service
NOTICES
Federal procurement; affirmative action reforms proposal, 26042–26063
Pollution control; consent judgments:
AM International, Inc., et al., 25890
Keystone Sanitation Co., Inc., et al., 25890–25891

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration
See Pension and Welfare Benefits Administration
NOTICES
Meetings:
Child labor abusive or exploitative; imported goods produced in U.S., 25898

Land Management Bureau
NOTICES
Closure of public lands:
New Mexico, 25885
Meetings:
New Mexico land use plans; grazing management and rangeland health standards and guidelines, 25886
Southwest Colorado Resource Advisory Council, 25886–25887
Realty actions; sales, leases, etc.:
Utah, 25887
Wyoming, 25887–25888
Resource management plans, etc.:
Big Dry Resource Area, MT, 25888
Survey plat filings:
California, 25888
Idaho, 25888–25889
Withdrawal and reservation of lands:
New Mexico, 25889

Library of Congress
PROPOSED RULES
Procedures and services:
Library materials acquisition by non-purchase means and surplus library materials disposition, 25839–25840

Maritime Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 25935–25936
War risk insurance, 25936
Applications, hearings, determinations, etc.:
American President Lines, Ltd., 25936

Mine Safety and Health Administration
NOTICES
Petitions for safety standard modifications; summary of affirmative decisions, 25913–25918

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities:
Proposed collection; comment request, 25919–25920

National Institutes of Health
NOTICES
Agency information collection activities:
Proposed collection; comment request, 25884

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Mexico reef fish; correction, 25833
NOTICES
Meetings:
Atlantic Offshore Fisheries Take Reduction Team, 25846–25847

National Science Foundation
NOTICES
Meetings:
Bioengineering and Environmental Systems Special Emphasis Panel, 25920
Cross Disciplinary Activities Special Emphasis Panel, 25920
Elementary, Secondary and Informal Education Special Emphasis Panel, 25920
Information, Robotics and Intelligent Systems Special Emphasis Panel, 25920–25921
Materials Research Special Emphasis Panel, 25921
Science and Technology Infrastructure Special Emphasis Panel, 25921
Social, Behavioral and Economic Sciences Advisory Committee, 25921

Navy Department
NOTICES
Meetings:
Chief of Naval Operations Executive Panel, 25851

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Commonwealth Edison Co., 25921–25923
Meetings:
Reactor Safeguards Advisory Committee, 25923–25924
Organization, functions, and authority delegations:
Local public document room relocation and establishment—
San Onofre Nuclear Station, CA; temporary closing, 25923
Protecting identity of allegers and confidential sources; policy statement, 25924–25928

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Blue Cross and Blue Shield of Virginia et al., 25899–25909
RREEF USA Fund et al., 25909–25912
Meetings:
Employee Welfare and Pension Benefit Plans Advisory Council, 25912–25913, 25918, 25919

Personnel Management Office
RULES
Health benefits, Federal employees:
Legal actions; CFR correction, 25775

Postal Service
NOTICES
Meetings; Sunshine Act, 25928

Presidential Documents
PROCLAMATIONS
Special observances:
Maritime Day, National (Proc. 6900), 26067
ADMINISTRATIVE ORDERS
Anti-Economic Discrimination Act of 1994; suspending prohibitions on certain sales and leases (Presidential Determination No. 96–23 of April 30, 1996), 26029
Korean Peninsula Energy Development Organization; U.S. contribution (Presidential Determination 96–21 of April 4, 1996), 26021–26026
National Defense Authorization Act for Fiscal Year 1996; delegation of authorities to Secretary of State (Memorandum of April 1, 1996), 26017
Palestine Liberation Organization; suspending restrictions on U.S. relations (Presidential Determination No. 96–20 of April 1, 1996), 26019
Soviet Nuclear Threat Reduction Act of 1991; delegation of authority to Secretary of State (Memorandum of May 10, 1996), 26033
Soviet Union, New Independent States of the Former; foreign assistance (Presidential Determination No. 96–24 of May 9, 1996), 26031
Yugoslavia, former; refugee and migration assistance (Presidential Determination No. 96–22 of April 18, 1996), 26027

Public Health Service
See Agency for Toxic Substances and Disease Registry
See Food and Drug Administration
See National Institutes of Health

Railroad Retirement Board
NOTICES
Agency information collection activities:
Proposed collection; comment request, 25928–25929
Submission for OMB review; comment request, 25929

Research and Special Programs Administration
RULES
Hazardous materials:
Cylinder specification requirements restructuring; Federal regulatory reform, 25940–25982

Rural Utilities Service
NOTICES
Environmental statements; notice of intent:
Alabama Electric Cooperative, 25844
Dairyland Power Cooperative et al., 25844–25845

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 25932
Applications, hearings, determinations, etc.:
New York Localities Legal Obligations Cash ACCESS Trust, 25929–25930
Public utility holding company filings, 25930–25932

Small Business Administration
NOTICES
License surrenders:
Bethela Capital Corp., 25932

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Coast Guard

See Federal Aviation Administration
See Maritime Administration
See Research and Special Programs Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 25932–25933

Treasury Department
See Customs Service
See Fiscal Service
See Internal Revenue Service

Veterans Affairs Department
RULES
Adjudication; pensions, compensation, dependency, etc.:
Disability or death resulting from hospitalization, treatment, examination, or vocational rehabilitation; compensation, 25787–25789

Separate Parts In This Issue

Part II
Department of Transportation, Research and Special Programs Administration, 25940–25982

Part III
Department of Transportation, Coast Guard, 25984–26013

Part IV
The President, 26017–26033

Part V
Department of Transportation, Federal Aviation Administration, 26036–26040

Part VI
Department of Justice, 26042–26063

Part VII
The President, 26067

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6900 26067
Administrative Orders:
Memorandums:
April 1, 1996 26017
May 10, 1996 26033
Presidential Determinations:
No. 96–20 of April 1, 1996 26019
No. 96–21 of April 4, 1996 26021
No. 96–22 of April 18, 1996 26027
No. 96–23 of April 30, 1996 26029
No. 96–24 of May 9, 1996 26031

5 CFR
890 25775

7 CFR
2 25775

8 CFR
100 25777

14 CFR
25 25778
97 (3 documents) 25780, 25781, 25783
Proposed Rules:
121 26036
135 26036

19 CFR
122 25777

21 CFR
522 25784

33 CFR
Proposed Rules:
100 25835
165 25838

36 CFR
242 25785
Proposed Rules:
701 25839

38 CFR
3 25787

40 CFR
52 (2 documents) 25789, 25791
271 (3 documents) 25794, 25796, 25799
Proposed Rules:
52 (2 documents) 25840, 25841

41 CFR
301–4 25802

44 CFR
64 25802

46 CFR
15 25984
26 25984
31 25984
32 25984
34 25984
35 25984
38 25984
54 25984
56 25984
58 25984
61 25984
72 25984
76 25984
77 25984
78 25984
92 25984
95 25984
96 25984
97 25984
108 25984
109 25984
153 25984
160 25984
162 25984
164 25984
167 25984
168 25984
169 25984
189 25984
190 25984
193 25984
196 25984

47 CFR
0 25804
24 (3 documents) 25807, 25808, 25810
30 25804
90 25809
Proposed Rules:
73 25841

49 CFR
171 25940
173 25940
178 25940

50 CFR
17 25813
100 25785
641 25833

Rules and Regulations

Federal Register
Vol. 61, No. 101
Thursday, May 23, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Federal Employees Health Benefits Program

CFR Correction

In title 5 of the Code of Federal Regulations, parts 700 to 1199, revised as of January 1, 1996, on page 371, the second § 890.107 entitled "Legal actions" should be removed.

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department to make corrections and add delegations of authority.

EFFECTIVE DATE: May 23, 1996.

FOR FURTHER INFORMATION CONTACT: Robert L. Siegler, Deputy Assistant General Counsel, Research and Operations Division, Office of the General Counsel, Department of Agriculture, Room 2321–S, Washington, D.C. 20250, telephone 202–720–6035.

SUPPLEMENTARY INFORMATION: On November 8, 1995, USDA published in the **Federal Register** (60 FR 56392–56465) a revision of the delegations of authority appearing in 7 CFR Part 2 due to a reorganization of the Department. The revised delegations effectuated the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Pub. L. No. 103–354. This document makes correction and adds delegations of authority that were omitted in that **Federal Register** document. In the **Federal Register** document published on December 27, 1995 (60 FR 66713), the authority citation was revised. The authority citation continues to read as it was published in that document.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12778 and 12866. Finally, this action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), and, thus is exempt from the provisions of that Act. The delegations of authority are revised to delete references to section 610 of the Agricultural Act of 1970, and the National Wool Act of 1954, since those provisions were repealed; to delegate to the Under Secretary for Farm and Foreign Agricultural Services and the Administrator, Foreign Agricultural Service, the authority to carry out various commodity research and promotion acts which were omitted from their delegations; and to make corresponding changes to the delegations of authority to the Assistant Secretary for Marketing and Regulatory Programs and the Administrator, Agricultural Marketing Service, since those officials administer portions of the same commodity research and promotion acts. Accordingly, 7 CFR Part 2 is revised as set forth below.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 212(a), Pub. L. 103–354, 108 Stat. 3210, 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR, 1949–1953 Comp., p. 1024.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

2. Section 2.16 is amended by removing and reserving paragraph (a)(1)(xi) and by revising paragraph (a)(3)(x) to read as follows:

§ 2.16 Under Secretary for Farm and Foreign Agricultural Services.

(a) * * *
(1) * * *
(xi) [Reserved]
* * * * * *
(3) * * *

(x) Plan and carry out programs and activities under the foreign market promotion authority of the Wheat Research and Promotion Act (7 U.S.C. 1292 note); the Cotton Research and Promotion Act (7 U.S.C. 2101–2118); the Potato Research and Promotion Act (7 U.S.C. 2611–2627); the Egg Research and Consumer Information Act of 1974 (7 U.S.C. 2701–2718); the Beef Research and Information Act, as amended (7 U.S.C. 2901–2918); the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417); the Floral Research and Consumer Information Act of 1981 (7 U.S.C. 4301–4319); subtitle B of title I of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4513); the Honey Research, Promotion, and Consumer Information Act of 1984, as amended (7 U.S.C. 4601–4612); the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819); the Watermelon Research and Promotion Act, as amended (7 U.S.C. 4901–4916); the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013); the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112); the Lime Research, Promotion, and Consumer Information Act of 1990 (7 U.S.C. 6201–6212); the Soybean Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6301–6311); the Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417); the Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act (7 U.S.C. 6801–6814); and the Sheep Promotion, Research, and Information Act of 1994 (7 U.S.C. 7101–7111). This authority includes determining the programs and activities to be undertaken and assuring that they are coordinated with the overall departmental programs to develop

foreign markets for U.S. agricultural products.

* * * * *

3. Section 2.22 is amended by revising paragraphs (a)(1)(viii) (H), (FF), (GG), (II), (PP), (UU), and (VV), by removing and reserving paragraph (a)(1)(viii)(V), and by adding paragraph (a)(1)(viii)(WW) to read as follows:

§ 2.22 Assistant Secretary for Marketing and Regulatory Programs.

(a) * * *

(1) * * *

(viii) * * *

(H) Cotton Research and Promotion Act (7 U.S.C. 2101–2118), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

* * * * *

(V) [Reserved]

* * * * *

(FF) The Watermelon Research and Promotion Act (7 U.S.C. 4901–4916), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(GG) The Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4612), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

* * * * *

(II) The Floral Research and Consumer Information Act (7 U.S.C. 4301–4319), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

* * * * *

(PP) Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

* * * * *

(UU) The International Carriage of Perishable Foodstuffs Act (7 U.S.C. 4401–4406);

(VV) The Sheep Promotion, Research, and Information Act (7 U.S.C. 7101–7111), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x); and

(WW) The Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act (7 U.S.C. 6801–6814), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x).

* * * * *

Subpart F—Delegations of Authority by the Under Secretary for Farm and Foreign Agricultural Services

§ 2.42 [Amended]

4. Section 2.42 is amended by removing and reserving paragraph (a)(13).

5. Section 2.43 is amended by revising paragraph (a)(24) to read as follows:

§ 2.43 Administrator, Foreign Agricultural Service.

(a) * * *

(24) Plan and carry out programs and activities under the foreign market promotion authority of the Wheat Research and Promotion Act (7 U.S.C. 1292 note); the Cotton Research and Promotion Act (7 U.S.C. 2101–2118); the Potato Research and Promotion Act (7 U.S.C. 2611–2627); the Egg Research and Consumer Information Act of 1974 (7 U.S.C. 2701–2718); the Beef Research and Information Act, as amended (7 U.S.C. 2901–2918); the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417); the Floral Research and Consumer Information Act of 1981 (7 U.S.C. 4301–4319); subtitle B of title I of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4513); the Honey Research, Promotion, and Consumer Information Act of 1984, as amended (7 U.S.C. 4601–4612); the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819); the Watermelon Research and Promotion Act, as amended (7 U.S.C. 4901–4916); the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013); the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112); the Lime Research, Promotion, and Consumer Information Act of 1990 (7 U.S.C. 6201–6212); the Soybean Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6301–6311); the Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417); the Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act (7 U.S.C. 6801–6814); and the Sheep Promotion, Research, and Information Act of 1994 (7 U.S.C. 7101–7111). This authority includes determining the programs and activities to be undertaken and assuring that they are coordinated with the overall departmental programs to develop foreign markets for U.S. agricultural products.

* * * * *

Subpart N—Delegations of Authority by the Assistant Secretary for Marketing and Regulatory Programs

6. Section 2.79 is amended by revising paragraphs (a)(8) (ix), (xl), (xli), (xliii), (l), (lv), (lvi), by removing and reserving paragraph (a)(8)(XXIX), and by adding paragraph (lvii) to read as follows:

§ 2.79 Administrator, Agricultural Marketing Service.

(a) * * *

(8) * * *

(ix) Cotton Research and Promotion Act (7 U.S.C. 2101–2118), except as specified in § 2.43(a)(24);

* * * * *

(xxix) [Reserved]

* * * * *

(xl) The Watermelon Research and Consumer Information Act (7 U.S.C. 4901–4616), except as specified in § 2.43(a)(24);

(xli) The Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4612), except as specified in § 2.43(a)(24);

* * * * *

(xliii) The Floral Research and Consumer Information Act (7 U.S.C. 4301–4319), except as specified in § 2.43(a)(24);

* * * * *

(l) Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417), except as specified in § 2.43(a)(24);

* * * * *

(lv) the International Carriage of Perishable Foodstuffs Act (7 U.S.C. 4401–4406);

(lvi) the Sheep Promotion, Research, and Information Act (7 U.S.C. 7101–7111), except as specified in § 2.43(a)(24); and

(lvii) the Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act (7 U.S.C. 6801–6814), except as specified in § 2.43(a)(24).

* * * * *

For Subpart C:

Dated: May 13, 1996.

Don Glickman,

Secretary of Agriculture.

For Subpart F:

Dated: April 1, 1996.

Eugene Moos,

Under Secretary for Farm and Foreign Agricultural Services.

For Subpart N:

Dated: Arpil 3, 1996.

Michael V. Dunn,

Assistant Secretary for Marketing and Regulatory Services.

[FR Doc. 96–12852 Filed 5–22–96; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 100

[INS No. 1677–94]

RIN 1115–AD84

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 122

[T.D. 96–44]

RIN 1515–AB64

Customs/INS Field Organizations; Revocations and Designation of International Airport Status for Customs Services and Ports of Entry for Aliens Arriving by Aircraft

AGENCIES: Immigration and Naturalization Service, Justice; Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the regulations of both the Customs Service (Customs) and the Immigration and Naturalization Service (the Service) pertaining to their respective field organizations. The document removes Eagle Pass Municipal Airport located in Eagle Pass, Texas, as an international airport for Customs purposes and as a port of entry for aliens arriving by vessel or by land transportation for Service purposes. This document also designates Maverick County Airport located in Maverick County, Texas, as a new international airport for Customs purposes and as a port of entry for aliens arriving by vessel, land transportation, or by aircraft for Service purposes. These changes will assist both agencies in their continuing efforts to achieve more efficient use of their personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.

EFFECTIVE DATE: June 24, 1996.

FOR FURTHER INFORMATION CONTACT:

At Customs Service—Priscilla Frink, Passenger Operations Division, Office of Field Operations, (202) 927–1323;

At Immigration and Naturalization Service—Andrea Sickler, Assistant Chief Inspector, Office of Inspections, Immigration and Naturalization Service, 425 I Street, N.W., Room 7228, Washington, D.C. 20536, (202) 616–7993.

SUPPLEMENTARY INFORMATION:

Background

On March 27, 1995, the Customs Service (Customs) and the Immigration and Naturalization Service (the Service) published a joint notice of proposed rulemaking in the **Federal Register** (60 FR 15703) that solicited comments concerning proposals to amend their respective regulations regarding their field organizations. Customs proposed amending § 122.13 of the Customs Regulations (19 CFR 122.13), which lists international airports, to reflect (1) The revocations of international airport designations for Ranier International Seaplane Base located in Ranier, Minnesota, and Eagle Pass Municipal Airport located in Eagle Pass, Texas, and (2) the designation of Maverick County Airport located in Maverick County, Texas, as an international airport. Similarly, the Service proposed amending 8 CFR 100.4(c)(2) and (3) which pertain to ports of entry for aliens arriving by vessel, land transportation, or by aircraft, to reflect (1) The removal of the same two ports of entry (Ranier International Seaplane Base in the Service District of St. Paul, Minnesota, and Eagle Pass Municipal Airport in the Service District of San Antonio, Texas), and (2) the designation of Maverick County Airport as a port of entry for the processing of aliens arriving by vessel, land transportation, or by aircraft.

At the time of drafting the joint notice of proposed rulemaking it was believed that the proposed changes to the field organizations of the two agencies would not result in any significant reduction in Customs/Immigration services in those areas. Future Minnesota transactions were to be handled at either Sky Harbor Airport or Crane Lake Seaplane Base, both landing rights airports. Future Texas transactions were to be handled at Maverick County Airport, also a landing rights airport, which was to be designated as an international airport for Customs purposes and a port of entry for Service purposes. The public comment period for the proposed amendments closed May 26, 1995.

Discussion of Comments

Ranier

Two comments were received, both protesting the revocation/withdrawal of the international airport/port of entry designation for Ranier International Seaplane Base located in Ranier, Minnesota. Both comments stated that revocation of the Ranier International Seaplane Base would be inappropriate because the facility was important to the commercial and private seaplane traffic crossing at the Ontario and Northern Minnesota borders. Accordingly, after further consideration of the matter and discovering that the community has taken action to improve the inspection facilities at the Seaplane Base and to eliminate unsafe working conditions, Customs and the Service have decided to withdraw their proposal regarding the revocation/withdrawal of international airport/port of entry status for Ranier International Seaplane Base, Minnesota.

Eagle Pass/Maverick

No comments were received regarding the: (1) Revocation/withdrawal of the international airport/port of entry status for Eagle Pass Municipal Airport, Texas, and the (2) designation of Maverick County Airport, Texas, as an international airport/port of entry. Accordingly, after further consideration of this matter, Customs and the Service have decided to proceed with the final rule respecting this change in their field organization. However, it will not be necessary to amend 8 CFR 100.4(c)(3) to remove "Eagle Pass, TX, Eagle Pass Airport" as a port of entry for aliens arriving by aircraft, since this action has already been accomplished by the Service in a final rule published on November 14, 1995, at 60 FR 57165.

Conclusion

Accordingly, Customs and the Service are amending their respective regulations regarding the: (1) Revocation/withdrawal of the international airport/port of entry status for Eagle Pass Municipal Airport, Texas, and the (2) designation of Maverick County Airport, Texas, as an international airport/port of entry. The International Seaplane Base located in Ranier, Minnesota, will continue to provide Customs and Immigration services.

Authority

This change is proposed under the authority of 5 U.S.C. 301, 8 U.S.C. 1103, and 19 U.S.C. 2, 66, and 1624.

Inapplicability of the Regulatory Flexibility Act and Executive Orders 12606, 12612, and 12866

Although the joint notice of proposed rulemaking published solicited public comments, because these regulatory amendments relate to agency management and organization matters, pursuant to the provisions of 5 U.S.C. 553(a)(2), they are not subject to the notice and public procedure requirements. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Pursuant to the provisions of E.O. 12606, the Commissioners of Customs and the Immigration and Naturalization Service certify that they have assessed these amendments in light of the criteria

set forth in that E.O., and determined that this regulation will not have a significant impact on family formation, maintenance, and general well-being.

Pursuant to the provisions of E.O. 12612, it is certified that this regulation has been assessed in light of the principles, criteria, and requirements specified in that E.O. and that they will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the preparation of a Federalism Assessment is not warranted.

This document does not meet the criteria for a "significant regulatory action" as defined in E.O. 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Office of Regulations and Rulings, U.S. Customs Service; however, personnel from other offices and agencies participated in its development.

List of Subjects

8 CFR Part 100

Administrative practice and procedure, Organizations and functions (Government agencies).

19 CFR Part 122

Administrative practice and procedure, Air carriers, Aircraft, Airports, Air transportation, Baggage, Customs duties and inspection, Drug traffic control, Imports, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, part 100 of chapter I of title 8 of the Code of Federal Regulations and part 122 of chapter I of title 19 of the Code of Federal Regulations are amended as follows:

Title 8—Aliens and Nationality

PART 100—STATEMENT OF ORGANIZATION

1. The authority citation for part 100 continues to read as follows:

Authority: 8 U.S.C. 1103; 8 CFR part 2.

§ 100.4 [Amended]

2. In § 100.4, paragraph (c)(2) is amended by:

a. Removing "Eagle Pass, TX" from the Class A listing under District No. 14—San Antonio, Texas; and by

b. Adding, in proper alphabetical sequence, "Maverick, TX" to the Class A listing under District No. 14—San Antonio, Texas.

3. In § 100.4, paragraph (c)(3) is amended by adding, in proper alphabetical sequence, "Maverick, TX, Maverick County Airport" to the Class A listing under District No. 14—San Antonio, Texas.

Title 19—Customs Duties

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1623, 1624, 1644,; 49 U.S.C. app. 1509.

§ 122.13 [Amended]

2. In § 122.13, the list of international airports is amended by removing "Eagle Pass, Tex.—Eagle Pass Municipal Airport" and adding, in appropriate alphabetical order, "Maverick, Tex.—Maverick County Airport".

Approved: May 2, 1996.

George J. Weise,

Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

April 12, 1996.

Doris Meissner,

Commissioner of Immigration and Naturalization Service.

[FR Doc. 96–12883 Filed 5–22–96; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–125; Special Conditions No. 25–ANM–115]

Special Conditions: Dassault Aviation Model Falcon 900EX Airplane; High-Intensity Radiated Fields

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Dassault Aviation Model Falcon 900EX airplane. This airplane is a derivative of the Model Mystere-Falcon 900, which is itself derived from the Mystere-Falcon 50, and will utilize new avionics/electronic systems that provide critical data to the flightcrew. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is May 14, 1996. Comments must be received on or before June 24, 1996.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–125, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–125. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Thomas Groves, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (206) 227–1503; facsimile (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–125." The postcard will be date stamped and returned to the commenter

Background

On March 3, 1993, Dassault Aviation, B.P 24—33701 Merignac CEDEX, France, applied for an amendment to type certificate A46EU to include the Model Falcon 900EX airplane. The Falcon 900EX is a modified version of the Model Mystere-Falcon 900, which is itself a derivative of the Model Mystere-Falcon 50. The Falcon 900EX is intended to be used as a twelve passenger executive airplane with a maximum takeoff weight of 49,000 pounds and a maximum operating altitude of 51,000 feet.

Type Certification Basis

Under the provisions of § 21.101, Dassault Aviation must show that the Model Falcon 900EX meets the applicable provisions of the regulations incorporated by reference in Type Certificate A46EU, or the applicable regulations in effect on the date of application for change to the Model Mystere-Falcon 900. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A46EU are as follows: 14 CFR part 25, as amended by Amendments 25–1 through 25–34, and certain special conditions and later amended sections of part 25 that are not relevant to these special conditions. These special conditions will form an additional part of the type certification basis. In addition, the certification basis may include other special conditions that are not relevant to these special conditions.

In addition to the applicable airworthiness regulations and special conditions, the Falcon 900EX must comply with the fuel vent and exhaust emission requirements of part 34 and the noise certification requirements of part 36.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Model Falcon 900EX because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with Title 14 CFR § 11.49 after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be further amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model Falcon 900EX incorporates new avionic/electronic installations, including a digital Electronic Flight Instrument System (EFIS), Air Data Computers, Autothrottle, Engine Instrument Display (EID), Bleed Air System Computer (BASC), and a Digital Electronic Engine Control (DEEC) system that controls critical engine parameters. These systems may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Model Falcon 900EX, which require that new technology electrical and electronic systems, such as the EFIS, DEEC, etc., be designed and installed to preclude component damage and interruption of function due to both the direct ant indirect effects of HIRF.

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz—100 KHz	50	50
100 KHz—500 KHz	60	60
500 KHz—2000 KHz	70	70
2 MHz—30 MHz	200	200
30 MHz—100MHz	30	30
100 MHz—200 MHz	150	33
200 MHz—400 MHz	70	70
400 MHz—700 MHz	4,020	935
700 MHz—1000 MHz	1,700	170
1 GHz—2 GHz	5,000	990
2 GHz—4GHz	6,680	840
4 GHz—6 GHz	6,850	310
6 GHz—8 GHz	3,600	670
8 GHz—12 GHz	3,500	1,270
12 GHz—18 GHz	3,500	360
18 GHz—40 GHz	2,100	750

As discussed above, these special conditions are applicable initially to the Dassault Aviation Model Falcon 900EX. Should Dassault Aviation apply at a later date for further amendment to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on the Dassault Aviation Model Falcon 900EX airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting this special condition immediately. Therefore, this special condition is being made effective upon issuance. The FAA is requesting comments to allow

interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the administrator, the following special conditions are issued as part of the type certification basis for the Dassault Aviation Model Falcon 900EX series airplanes.

1. *Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on May 14, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 96–13026 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No 28583; Amdt. No. 1729]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identified the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on May 17, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97— STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS; MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective June 20, 1996*

Gulf Shores, AL, Jack Edwards, VOR or GPS–A, Amdt 2
Anchorage, AK, Anchorage Intl, ILS/DME RWY 14, Orig
Sand Point, AK, Sand Point, MLS RWY 13, Orig
Rome, GA, Richard B. Russell, LOC/DME RWY 1, Amdt 3, CANCELLED
Rome, GA, Richard B. Russell, ILS/DME RWY 1, Orig
Wichita, KS, Beech North, VOR OR GPS–D, Orig, CANCELLED
New Ulm, MN, New Ulm Muni, NDB or GPS RWY 15, Amdt 1
New Ulm, MN, New Ulm Muni, NDB or GPS RWY 33, Amdt 1
Blanding, UT, Blanding Muni, GPS RWY 35, Orig

** * * Effective July 18, 1996*

Georgetown, DE, Sussex County, GPS RWY 4, Orig
Douglas, GA, Douglas Muni, VOR–A, Amdt 6, CANCELLED
Houma, LA, Houma-Terrebonne, GPS RWY 18, Orig
Norfolk, NE, Karl Stefan Memorial, VOR OR GPS RWY 1, Amdt 7
Painesville, OH, Concord Airpark, VOR/DME or GPS–A, Amdt 1, CANCELLED
Painesville, OH, Concord Airpark, VOR or GPS–A, ORIG
York, PA, York, GPS RWY 34, Orig
George West, TX, Live Oak County, GPS RWY 13, Orig
Lufkin, TX, Angelina County, GPS RWY 25, Orig

** * * Effective August 15, 1996*

Oceanside, CA, Oceanside Muni, GPS RWY 6, Orig
Bartow, FL, Bartow Muni, GPS RWY 9L, Orig
Indianapolis, IN, Greenwood Muni, GPS RWY 19, Orig
Bardstown, KY, Samuels Field, GPS RWY 20, Orig
Jennings, LA, Jennings, GPS RWY 8, Orig
Nantucket, MA, Nantucket Memorial, GPS RWY 33, Orig
Willmar, MN, Willmar Muni-John L. Rice Field, GPS RWY 10, Orig
Portsmouth, NH, Pease International Tradeport, GPS RWY 16, Orig
Belen, NM, Alexander Muni, GPS RWY 21, Orig
Lovington, NM, Lea County-Zip Franklin Memorial, GPS RWY 3, Orig
Lovington, NM, Lea County-Zip Franklin Memorial, GPS RWY 21, Orig
Monongahela, PA, Rostraver, GPS RWY 25, Orig
Shamokin, PA, Northumberland County, GPS RWY 26, Orig
Washington, PA, Washington County, GPS RWY 9, Orig
North Kingstown, RI, Quonset State, GPS RWY 34, Orig
Andrews, TX, Andrews County, GPS RWY 15, Orig
Fort Stockton, TX, Fort Stockton-Pecos County, GPS RWY 12, Orig
Hondo, TX, Hondo Muni, GPS RWY 17L, Orig
Nacogdoches, TX, A L Mangham Jr. Regional, GPS RWY 15, Orig
Pleasanton, TX, Pleasanton Muni, GPS RWY 34, Orig

[FR Doc. 96–13034 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28584; Amdt. No. 1730]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:.

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPS, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available

for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on May 17, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * Effective Upon Publication

FDC date	State	City	Airport	FDC No.	SIAP
04/19/96	MS	McComb	McComb-Pike County-John E. Lewis Field.	6/2335	NDB OR GPS RWY 15, AMDT 4... THIS REPLACES '96–11
05/02/96	FL	Fort Pierce	St Lucie County Intl	6/2673	ILS RWY 9 ORIG...
05/02/96	FL	Vero Beach	Vero Beach Muni	6/2670	NDB RWY 11R AMDT 2B...
05/02/96	KY	Bowling Green	Bowling Green-Warren County Regional.	6/2652	VOR/DME OR GPS RWY 21, AMDT 7...
05/02/96	KY	Bowling Green	Bowling Green-Warren County Regional.	6/2653	VOR OR GPS RWY 3, AMDT 14...
05/02/96	KY	Bowling Green	Bowling Green-Warren County Regional.	6/2656	IL RWY 3, ORIG...
05/03/96	KS	McPherson	McPherson	6/2720	VOR/DME RWY 36 AMDT 5...
05/03/96	MI	Lansing	Capital City	6/2699	ILS RWY 10R AMDT 9...
05/03/96	NE	Crete	Crete Muni	6/2712	NDB RWY 17 AMDT 1...
05/03/96	NE	Crete	Crete Muni	6/2714	NDB RWY 35 AMDT 1...
05/03/96	NE	Crete	Crete Muni	6/2715	VOR/DME OR GPS RWY 17 AMDT 2...
05/03/96	NE	Crete	Crete Muni	6/2716	VOR/DME OR GPS RWY 35 AMDT 2...
05/03/96	TX	Houston	May	6/2695	VOR/DME OR GPS–A ORIG...
05/07/96	IA	Marshalltown	Marshalltown Muni	6/2790	NDB RWY 12, AMDT 6...

FDC date	State	City	Airport	FDC No.	SIAP
05/07/96	IA	Waterloo	Waterloo Muni	6/2792	VOR RWY 6, AMDT 2...
05/08/96	IA	Marshalltown	Marshalltown Muni	6/2819	VOR OR GPS RWY 12, AMDT 7...
05/08/96	WA	Everett	Snohomish County/Paine Field	6/2831	NDB OR GPS RWY 16R AMDT 12...
05/09/96	WI	Cable	Cable Union	6/2862	NDB OR GPS–B, AMDT 9...
05/09/96	WI	Hayward	Hayward Muni	6/2864	VOR RWY 20, AMDT 5...
05/09/96	WI	Hayward	Hayward Muni	6/2872	NDB OR GPS RWY 20, AMDT 11...
05/09/96	WI	Madison	Dane County Regional-Truax Field	6/2866	VOR OR TACAN OR GPS RWY 13, AMDT 23...
05/10/96	GA	Atlanta	Fulton County Airport Brown Feild	6/2894	ILS RWY 8 AMDT 15B...
05/10/96	GA	Atlanta	Fulton County Airport/Brown Field	6/2895	NDB OR G PS RWY 8 AMDT 2...
05/10/96	KY	Bowling Green	Bowling Green-Warren County Regional.	6/2893	NDB RWY 3 ORIG...
05/10/96	MO	Rolla	Rolla Down-Town	6/2892	VOR/DME–A, AMDT 2...
05/10/96	WI	Marschfield	Marshfield	6/2886	NDB OR GPS RWY 16 AMDT 9...
05/10/96	WI	Marshfield	Marshfield Muni	6/2887	NDB OR GPS RWY 4 AMDT 13...
05/10/96	WI	Marshfield	Marshfield Muni	6/2888	SDF RWY 34 AMDT 6...
05/11/96	WA	Everett	Snohomish County/Paine Field	6/2911	ILS RWY 16R, AMDT 18...
05/14/96	LA	Alexandria	Alexandria Esler Regional	6/2983	LOC BC RWY 8, AMDT 10...
05/14/96	MS	Greenwood	Greenwood-Leflore	6/2978	ILS RWY 18 AMDT 4...
05/14/96	MS	Grenada	Grenada Muni	6/2979	ILS RWY 13 ORIG...
05/14/96	NM	Hobbs	Lea County	6/2984	LOC/DME BC RWY 21, AMDT 5...
05/14/96	NV	Las Vegas	McCarran Intl	6/2967	ILS RWY 25R AMDT 16...
05/16/96	WI	Cable	Cable Union	6/3015	NDB OR GPS–B AMDT 9A...

[FR Doc. 96–13035 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28585; Amdt. No. 1731]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 2, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue. SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) established, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim

publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include "or GPS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove "or GPS" from these non-localizer, non-precision instrument approach procedure titles.) Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on May 17, 1996

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective June 20, 1995*

Bartow, FL, Bartow Muni, VOR/DME or GPS RWY 9L, Amdt 1A Cancelled
Bartow, FL, Bartow Muni, VOR/DME RWY 9L, Amdt 1A
Blanding, UT, Blanding Muni, NDB or GPS RWY 35, Amdt 7 Cancelled
Blanding, UT, Blanding Muni, NDB RWY 35, Amdt 7

[FR Doc. 96–13033 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Tolazoline Hydrochloride Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Lloyd, Inc. The NADA provides for intravenous use of tolazoline hydrochloride injection in horses when it is desirable to reverse the effects of sedation and analgesia caused by xylazine.

EFFECTIVE DATE: May 23, 1996.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1616.

SUPPLEMENTARY INFORMATION: Lloyd, Inc., 604 W. Thomas Ave., Shenandoah, IA 51601, filed NADA 140–994, which provides for intravenous use of Tolazine™ Injection (each milliliter contains tolazoline hydrochloride equivalent to 100 milligrams of base activity) in horses when it is desirable to reverse the effects of sedation and analgesia caused by xylazine. The drug is limited to use on or by the order of a licensed veterinarian. The NADA is approved as of April 19, 1996, and the regulations are amended in part 522 (21 CFR part 522) by adding new § 522.2474 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for a 5-year period of marketing exclusivity beginning April 19, 1996, because no active ingredient (including any ester or salt of the active ingredient) has been approved in any other application under section 512(b)(1) of the act.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 522.2474 is added to read as follows:

§ 522.2474 Tolazoline hydrochloride injection.

(a) *Specifications.* Each milliliter of sterile aqueous solution contains tolazoline hydrochloride equivalent to 100 milligrams of base activity.

(b) *Sponsor.* See No. 061690 in § 510.600(c) of this chapter.

(c) *Conditions of use.* It is used as follows:

(1) *Horses—(i) Amount.* Administer slowly by intravenous injection 4 milligrams per kilogram of body weight or 1.8 milligrams per pound (4 milliliters per 100 kilograms or 4 milliliters per 220 pounds).

(ii) *Indications for use.* For use in horses when it is desirable to reverse the effects of sedation and analgesia caused by xylazine.

(iii) *Limitations.* The safety of Tolazine™ has not been established in pregnant mares, lactating mares, horses intended for breeding, foals, or horses with metabolically unstable conditions. The safety of Tolazine™ has not been evaluated for reversing xylazine used as a preanesthetic to a general anesthetic. This drug is for use in horses only and not for use in food-producing animals. Users with cardiovascular disease (for example, hypertension or ischemic heart disease) should take special precautions to avoid accidental exposure to this product. Accidental spillage on the skin should be washed off immediately with soap and water. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) [Reserved]

Dated: May 15, 1996.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 96–12876 Filed 5–22–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AC82

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Subsistence Taking of Fish and Wildlife Regulations; Extension

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Final rule; extension of effective date.

SUMMARY: This rule amends the Subsistence Management Regulations for Public Lands in Alaska implementing the subsistence priority for rural residents of Alaska under Title VIII of the Alaska National Interest Lands Conservation Act of 1980 by extending the effective date of 50 CFR 100.25 and 36 CFR 242.25 (Subsistence taking of wildlife) (60 FR 31542). The regulations, now set to expire on June 30, 1996, are extended through July 31, 1996, to ensure continuity of the subsistence hunting and fishing seasons until the 1996–1997 season regulations can be issued in final form.

EFFECTIVE DATE: Effective June 30, 1996, the effective date of 50 CFR 100.25 and 36 CFR 242.25 (Subsistence taking of wildlife) which were added at 60 FR 31553 is extended from July 1, 1996, through July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3864. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Manager, USDA—Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802; telephone (907) 586–7921.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability which are consistent with ANILCA, and which provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA, The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute, and therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). Consistent with Subparts A, B, and C of these regulations, a Federal Subsistence Board was established to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Area Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies have participated in development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

On June 15, 1995, the 1995–1996 Seasons and Bag Limits for Subsistence Management Regulations for Public Lands in Alaska ware published in the **Federal Register** (60 FR 31542–31594). Those regulations included the section on the taking of wildlife, scheduled to expire June 30, 1996.

The Federal Subsistence Management Program initiates a process each fall with a proposed rule (60 FR 42085–42130) to provide the public with an opportunity to propose changes to the subsistence regulations. The proposals that are received are reviewed by the public and analyzed by a regional team, staff anthropologists, and biologists. The

Regional Councils then meet in public forum and develop recommendations to the Federal Subsistence Board on each proposal. Because of the Federal furloughs occurring in November and later in December and January, the public review process and the proposal analysis process were delayed. This consequently resulted in scheduling delays for the Regional Council meetings and the Federal Subsistence Board meeting. As a result, implementation of the 1996–1997 Subsistence Management Regulations for Public Lands in Alaska will be delayed until August 1, 1996.

This rule effectively extends the existing regulations through July 31, 1996.

The Board finds that public notice and comment requirements under the Administrative Procedures Act (APA) for this extension are impracticable, unnecessary, and contrary to the public interest. A lapse in regulatory control after July 1 could seriously affect the continued viability of wildlife populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive the public notice and comment procedures prior to publication of this extension.

The Board also finds good cause for the existing rule to be extended through July 31, 1996. This July 31 date is consistent with the anticipated Regional Council and Board actions to implement the 1996–1997 Federal Subsistence Management Regulations for Public Lands in Alaska scheduled for August 1, 1996. The Board therefore finds good cause under 5 U.S.C. 553(d)(3) to make this extension effective upon publication.

Conformance with Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964) implements the Federal Subsistence Management Program and includes a framework for an annual cycle for subsistence hunting and fishing regulations.

Compliance with Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appears in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but it does not appear that the program may significantly restrict subsistence uses.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d), the U.S. Fish and Wildlife Service has received approval for this collection of information, with approval number 1018–0075, with the expiration date of July 31, 1996.

The collection of information will be achieved through the use of the Federal Subsistence Hunt Permit Application. This collection information will establish whether the applicant qualifies to participate in a Federal subsistence hunt on public land in Alaska and will provide a report of harvest and location of harvest.

The likely respondents to this collection of information are rural Alaska residents who wish to participate in specific subsistence hunts on Federal land. The collected information is necessary to determine harvest success and harvest location in order to make management decisions relative to the conservation of healthy wildlife populations. The annual burden of reporting and recordkeeping is estimated to average 0.25 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under the correcting amendments is less than 50, yielding a total annual reporting and recordkeeping burden of 13 hours or less.

Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0075), Washington, D.C. 20503. Additional information collection requirements may be imposed if Local Advisory Committees subject to the Federal Advisory Committee Act are established under subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

Economic Effects

This rule was not subject to OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

As of the 1990 census there are 163,000 rural Alaskans qualified to participate in subsistence hunting or fishing. Although some of the subsistence users may conduct their activities on State or private lands, it is likely that a large portion of the 163,000 rural Alaskans utilize Federal lands to some extent.

These regulations do not meet the threshold criteria of "Federalism Effects" as set forth in Executive Order 12612. Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no significant takings implication relating to any property rights as outlined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

Drafting Information

These regulations were drafted by William Knauer under the guidance of Thomas H. Boyd, Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Peggy Fox, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch, Alaska Regional Office, National Park Service; John Borbridge, Alaska Area Office, Bureau of Indian Affairs; and Ken Thompson, USDA—Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National Forests, Public Lands, Reporting and record keeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, Public Lands, Reporting and recordkeeping requirements, Subsistence, Wildlife.

Words of Issuance

For the reasons set out in the preamble, Title 36, Part 242, and Title 50, Part 100, of the Code of Federal Regulations, are amended as set forth below.

PART_____—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. Effective June 30, 1996, the effective date for 36 CFR 242.25 and 50 CFR 100.25 which were added at 60 FR 31553 is extended from July 1, 1996 through July 31, 1996.

Dated: April 3, 1996.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Dated: April 15 1996.

John C. Capp,

Acting Regional Forester, USDA—Forest Service.

[FR Doc. 96–12833 Filed 5–22–96; 8:45 am]

BILLING CODE 3410–11–M and 4310–55–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AH44

Compensation for Disability Resulting From Hospitalization, Treatment, Examination, or Vocational Rehabilitation

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule with minor, nonsubstantive changes an interim rule amending Department of Veterans Affairs (VA) adjudication regulations concerning compensation for disability or death resulting from VA hospitalization, medical or surgical treatment, or examination. Before the interim rule, to establish entitlement to compensation for adverse results of medical or surgical treatment, the regulations required that VA be at fault or that an accident occur. In order to conform the regulations to a recent United States Supreme Court decision, the interim rule deleted the fault-or-accident requirement and instead provided that compensation is not payable for the necessary consequences of proper treatment to which the veteran consented.

EFFECTIVE DATE: This final rule is effective July 22, 1996.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 1151 provides for the payment of disability or dependency and indemnity compensation for additional disability or death resulting from an injury or aggravation of an injury suffered as the result of VA hospitalization, medical or surgical treatment, examination, or pursuit of a course of vocational rehabilitation under 38 U.S.C. ch. 31. VA had long interpreted the statute to require a showing of fault on the part of VA or the occurrence of an accident to establish entitlement to § 1151 compensation for adverse consequences of VA medical treatment. This interpretation was codified at 38 CFR 3.358(c)(3).

In a recent decision, *Brown* v. *Gardner*, 115 S. Ct. 552 (1994), upholding a lower court decision, the U.S. Supreme Court held that the fault-or-accident requirement in former 38 CFR 3.358(c)(3) was inconsistent with the plain language of 38 U.S.C. 1151 and that no fault requirement was implicit in the statute. The Supreme Court determined that the statutory language simply requires a causal connection between an injury or aggravation of an injury and VA hospitalization, medical or surgical treatment, examination, or vocational rehabilitation, but that compensation is not payable for the necessary consequences of treatment to which a veteran consented.

In the **Federal Register** of March 16, 1995 (60 FR 14222), VA published an interim rule amending 38 CFR 3.358(c) in order to implement 38 U.S.C. 1151 as interpreted in that decision of the Supreme Court. Interested persons were invited to submit written comments on or before May 15, 1995. We received comments from the Paralyzed Veterans of America and from a concerned individual.

One commenter, observing that VA may provide disability examinations for beneficiaries of the British Imperial and Canadian governments and for pensioners of other nations allied with the U.S. during World War I and World War II, and that VA may conduct examinations for other Federal agencies (e.g., Office of Personnel Management, Railroad Retirement Board), asked whether VA intends to cover under 38 U.S.C. 1151 those examinees. Since the plain language of 38 U.S.C. 1151 provides for payment of benefits only for a veteran, VA has no authority to award § 1151 benefits for anyone who is not a veteran.

The same commenter suggested substituting the term "veteran" for the

terms "beneficiary" and "claimant" in 38 CFR 3.358 (b)(1) and (c)(5) respectively if VA's intention was to restrict payment of compensation under 38 U.S.C. 1151 for veterans only. Since the statute authorizes the payment of benefits only for veterans, we have made the suggested changes. These changes are not substantive; they merely conform the regulation's terms to the statute's terms.

One commenter stated that because VA changed the regulation as a result of the Supreme Court's decision in *Brown* v. *Gardner*, which he contends found that the relevant portions of VA's prior regulations were void *ab initio*, the effective date of the regulatory change should be the date the legislation now codified as 38 U.S.C. 1151 was originally enacted rather than November 25, 1991, the date of the Court of Veterans Appeals decision that invalidated former § 3.358(c)(3).

We make no change in the effective date of the interim rule based on this comment. In our opinion, choosing November 25, 1991, as the effective date is rational. Furthermore, it is consistent with VA policies concerning the finality of decided claims and the application of court decisions invalidating VA regulations or statutory interpretations.

VA's General Counsel, in a precedent opinion issued March 25, 1994 (VAOPGCPREC 9–94) (*see* 59 FR 27307, May 26, 1994), held that decisions of the Court of Veterans Appeals invalidating VA regulations or statutory interpretations do not have retroactive effect in relation to prior finally adjudicated claims, but should be given retroactive effect as they relate to claims still open on direct review. In reaching this conclusion, the General Counsel quoted the following passage from the U.S. Supreme Court's opinion in *Harper* v. *Virginia Dept. of Taxotion*, 113 S. Ct. 2510 (1993):

> When this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule.

Id. at 2517. That General Counsel precedent opinion is binding on VA and requires that VA apply the courts' interpretation of 38 U.S.C. 1151 to claims still open on direct review on November 25, 1991, the date of the Court of Veterans Appeals decision, but not to prior finally adjudicated claims.

By being effective from the date of the Court of Veterans Appeals decision invalidating former § 3.358(c)(3), the new rule will be applied just as VAOPGCPREC 9–94 requires the court decision to be applied. With an effective date of November 25, 1991, the new rule will apply to all claims still open on direct review on that date, whether by an agency of original jurisdiction or the Board of Veterans' Appeals. Moreover, the effective date of any award based on the new rule's application to such a claim will be in accordance with 38 U.S.C, 5110. However, the new rule will not retroactively apply to claims already finally decided as of November 25, 1991. Although those claims can be reopened with new and material evidence or administratively reviewed under the liberalized provisions of the new rule, no award based on the new rule's application to such a claim will be effective before that date.

In the absence of new and material evidence to reopen a claim or another reason to reconsider a Board of Veterans' Appeals decision, a finally decided claim remains final unless it involved clear and unmistakable or obvious error. By being effective from November 25, 1991, the new rule will also be consistent with this policy of finality. Claims pending on that date will receive the benefit of the new, more liberal interpretation of 38 U.S.C. 1151. Claims finally decided by that date, although decided under the old, subsequently invalidated rule, in the absence of new and material evidence to reopen or another reason to reconsider, will remain final unless they involved clear and unmistakable or obvious error. Moreover, we do not consider the application of the old rule before November 25, 1991, to have been clear and unmistakable or obvious error. *See* 38 CFR 3.105; VAOPGCPREC 25–95 (December 6, 1995).

The same commenter also objected to using 38 U.S.C. 1151 as the authority citation for paragraph (c)(6). In addition to containing information relating to 38 U.S.C. 1151, this paragraph contains information relating to 38 U.S.C. 1720 (non-VA nursing home care). Therefore, we are changing the authority citation to include both 38 U.S.C. 1151 and 1720.

Before the interim rule, 38 CFR 3.358(c)(4) provided that compensation would be payable for disability resulting from transportation while in a hospitalized status only if injury or death proximately resulted from VA's fault. The interim rule removed former paragraph (c)(4). A commenter suggests adding language to 38 CFR 3.358(a) expressly providing for 38 U.S.C. 1151 coverage where additional disability results from transportation while in a hospitalized status.

As was true before the courts invalidated VA's former interpretation of 38 U.S.C. 1151, claims based on additional disability or death resulting from an injury suffered as a result of transportation while in a hospitalized status are held to the same standard as claims based on additional disability or death resulting from an injury otherwise suffered as a result of hospitalization. Former paragraph (c)(4) was added to the regulation because of a decision of the Administrator of Veterans' Affairs holding that injuries suffered while being transported in a hospitalized status could give rise to eligibility under the predecessor provisions of 38 U.S.C. 1151. Transportation while hospitalized can still give rise to eligibility even though the old fault-or-accident standard is no longer valid. However, since the rule's general term "hospitalization" encompasses the particular circumstances of transportation while in a hospitalized status, we see no need to specify a provision for transportation while in a hospitalized status.

The Office of Management and Budget has reviewed this regulatory action under Executive Order 12866.

The Catalog of Federal Domestic Assistance program number is 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: February 7, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, the interim rule amending 38 CFR Part 3, which was published at 60 FR 14222 on March 16, 1995, is adopted as a final rule with the following changes:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.358, paragraph (b)(1) introductory text is amended by removing "beneficiary's" and adding, in its place, "veteran's"; paragraph (c)(4) is amended by removing "claimant's" and "claimants" and adding, in their respective places, "veteran's" and "veterans"; and an authority citation is added immediately following paragraph (c)(6) to read as follows:

§ 3.358 Determinations for disability or death from hospitalization, medical or surgical treatment, examinations or vocational rehabilitation training (§ 3.800).

* * * * *

(Authority: 38 U.S.C. 1151, 1720.)

[FR Doc. 96–12924 Filed 5–22–96; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC–80–1–9619a & 81–1–9620a; FRL–5505–4]

Approval and Promulgation of Implementation Plans North Carolina: Approval of Revisions to the Forsyth County Local Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 29, 1995, the Forsyth County Board of Commissioners, through the North Carolina Department of Environment, Health and Natural Resources, submitted revisions to the Forsyth County Local Implementation Plan (LIP). These revisions include the adoption of new air quality rules and amendments to existing air quality rules that were the subject of public hearings held on May 16, 1995. A second submittal concerning these revisions was forwarded to EPA on December 28, 1995. This second submittal was the subject of a public hearing on September 26, 1995.

These revisions adopt three source-specific volatile organic compound rules; Thread Bonding Manufacturing, Glass Christmas Ornament Manufacturing, Commercial Bakeries, delete textile coating, Christmas ornament manufacturing, and bakeries from the list of sources that must follow interim standards, define di-acetone alcohol as a non-photochemically reactive solvent, and place statutory requirements for adoption by reference for referenced ASTM methods into a single rule rather than each individual rule that references ASTM methods.

DATES: This action is effective July 22, 1996 unless notice is received by June 24, 1996 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments should be addressed to:

Randy Terry, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365

Copies of the material submitted by the NCDEHNR may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365

North Carolina Department of Environment, Health and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604

FOR FURTHER INFORMATION CONTACT: Randy Terry, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 ex 4212.

SUPPLEMENTARY INFORMATION: On November 29, and December 28, 1995, the Forsyth County Board of Commissioners, through the North Carolina Department of Environment, Health and Natural Resources, submitted revisions to the Forsyth County Local Implementation Plan (LIP). These revisions were approved into the North Carolina State Implementation Plan (SIP) in a previous document (61 FR 3588) and have been adopted by the Forsyth County Board of Commissioners. These revisions affect several sections in the ozone regulations. EPA is approving the revisions to sections Subchapter 3D .0104 Incorporation by Reference, .0501 Compliance With Emission Control Standards, .0516 Sulfur Dioxide Emissions From Combustion Sources, .0518 Miscellaneous Volatile Organic Compound Emissions, .0530 Prevention of Significant Deterioration, .0531 Sources in Nonattainment Areas, .0902 Applicability, .0907 Compliance Schedules for Sources in Nonattainment Areas, .0909 Compliance Schedules for Sources in New Nonattainment Areas, .0910 Alternative Compliance Schedules, .0911 Exception from Compliance Schedules, .0950 Interim Standards for Certain Source Categories, .0952 Petition for Alternative Controls, .0954 Stage II Vapor Recovery, .0955 Thread Bonding Manufacturing, .0956 Glass Christmas Ornament Manufacturing, and .0957 Commercial Bakeries because these revisions are consistent with the requirements of the Clean Air Act and EPA guidance.

EPA is approving the following new rules and revisions of existing rules in the Forsyth County LIP. These new rules and revisions are consistent with the requirements of the Clean Air Act and EPA guidance.

.0104, Incorporation by Reference

These amendments involve the placement of statutory requirements for adoption by reference for referenced American Society for Testing and Materials methods (ASTM) into a single rule rather than each individual rule that references ASTM methods.

.0501 Compliance With Emission Control Standards

This rule was amended to clarify the appropriate compliance methodology.

.0516 Sulfur Dioxide Emissions From Combustion Sources

This rule was amended to include an additional reference rule number.

.0518 Miscellaneous Volatile Organic Compounds Emissions

This rule was amended to clarify that diacetone alcohol and perchloroethylene are not considered to be photochemically reactive and to delete a repeated phrase.

.0530 Prevention of Significant Deterioration

This rule was amended to update the latest date of amendment of the CFR references.

.0531 Sources in Nonattainment Areas

This rule has been amended to add paragraph (k), which requires using the UAM model, by new or major modifications, at sources to predict effect on the ozone level and attainment status.

.0902 Applicability

Forsyth County did not adopt paragraph (e), which pertains to other counties in North Carolina, of the State rule because those areas are not in Forsyth County's jurisdiction.

.0909 Compliance Schedules for Sources in New Attainment Areas

This rule has been amended to correctly identify the appropriate paragraph references.

.0950 Interim Standards for Certain Source Categories

This section, is being revised to delete textile coating, bakeries and Christmas ornament manufacturing from the list of

sources that are required to follow the interim standards. The sources removed have had permanent rules adopted and are now subject to those requirements. The final revision in this section adds a sentence that defines di-acetone alcohol and perchloroethylene as a non-photochemically reactive solvent for these interim standards.

The permanent rules adopted were *SUBCHAPTER 3D .0955 THREAD BONDING MANUFACTURING, .0956 GLASS CHRISTMAS ORNAMENT MANUFACTURING,* and *.0957 COMMERCIAL BAKERIES.* These sections adopted rules to reduce the emission level by requiring at least a 95% reduction by weight and/or by installing a thermal incinerator with a temperature of at least 1600 F and a residence time of at least 0.75 seconds.

In addition to the above revisions EPA is approving a revision applicable to the following Sections: Subchapter 3D .0907, .0910, .0911, .0952, and .0954. This revision is an adjustment of the final compliance dates for VOC's from May 15, 1995 to May 15, 1997.

The submitted revisions also included amendments to Subchapter 3D .1401–.1415; Reasonably Available Control Technology for Sources of Nitrogen Oxides (Nox RACT); .1501–.1504 Transportation Conformity; and .1601–.1603; General Conformity. These revisions are being addressed in separate **Federal Register** documents.

Final Action

In this document, EPA is approving the revisions to the Forsyth County regulations listed above. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective on July 22, 1996. However, if notice is received by June 24, 1996 that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent documents will be published before the effective date. One document will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under Section 307(b)(1) of the CAA, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 22, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2) of the Act, 42 U.S.C. 7607 (b)(2)).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. Section 7410(a)(2).

Unfunded Mandates

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain duties. To the extent that the rules being approved by this action will impose any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon Monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: March 21, 1996.

Phyllis P. Harris,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart II—North Carolina

2. Section 52.1770, is amended by adding paragraph (c)(90) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(90) The VOC regulations and other miscellaneous revisions to the Forsyth County Local Implementation Plan which were submitted on December 28, 1995, and November 29, 1995.

(i) Incorporation by reference.

(A) Amendments to Forsyth County regulations Subchapter 3D .0104(a), .0531 (e)–(k), .0902 (a)–(h), .0907 (a)–(c), .0909 (a, c, d, e, and g), .0910 (a)–(d), .0911, .0950 (a and b), .0952 (a)–(c) and .0954 (f, h, k) adopted into the Air Quality Control Technical Code on November 13, 1995.

(B) Amendments to Forsyth County regulations Subchapter 3D .0501 (a)–(h), .0516 (a and b), .0518 (a)–(g), and .0530 (a)–(s), adopted into the Air Quality Control Technical Code on August 14, 1995.

(C) Subchapter 3D .0955, .0956, and .0957 adopted into the Air Quality Control Technical Code on August 14, 1995.

(ii) Other material. None.

[FR Doc. 96–12890 Filed 5–22–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[WA48–7121a; FRL–5506–3]

Approval and Promulgation of Implementation Plans: Washington

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving in part, and disapproving in part, the Energy Facility Site Evaluation Council Regulations (EFSEC) as revisions to the Washington State Implementation Plan (SIP). These revisions were submitted to EPA by the Director of the Washington Department of Ecology (WDOE) on November 29, 1995 and in accordance with the requirements of Title I Section 110 and part D of the Clean Air Act (hereinafter referred to as the Act). EPA is taking no action on a number of the submitted provisions which are unrelated to the purposes of the implementation plan.

DATES: This action is effective on July 22, 1996 unless adverse or critical comments are received by June 24, 1996. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101; and, the State of Washington, Department of Ecology, 4550 Third Avenue SE, Lacey, Washington 98504.

FOR FURTHER INFORMATION CONTACT: Ed Jones, Office of Air Quality (OAQ–107), EPA, Seattle, Washington 98101, (206) 553–1743.

SUPPLEMENTARY INFORMATION

I. Background

The Energy Facility Site Evaluation Council (EFSEC) amended Chapter 463–39 of the Washington Administrative Code (WAC) on September 21, 1995. The Washington Department of Ecology (WDOE), on behalf of the Governor, submitted the amended regulations to EPA on November 29, 1995 as a revision to the Washington SIP. The amended regulations pertain to General and Operating Permit Regulations for Air Pollution Sources administered by EFSEC, and adopt by reference various other state regulations. Some of the regulations adopted by reference have been the subject of previous EPA actions on the SIP.

II. This Action

The state of Washington's November 29, 1995 request for SIP revision included fifteen regulations contained in Chapter 463–39 of the WAC. Certain of these regulations are amendments to those currently contained in the SIP; others are entirely new additions. As part of the submittal the state also requested that particular outdated WAC 463–39 regulations, currently in the approved SIP, be removed.

A. *Unchanged.* EPA approves two Chapter 463–39 regulations currently in the SIP, and unchanged by the November 29, 1995 revisions. These are WAC 463–39–135 and –170.

B. *Modifications.* EPA approves, with minor exception, the modification of five amended Chapter 463–39 regulations currently in the SIP. These are: WAC 463–39–010, –020, –030, –100, and –120. The language in three of these regulations—WAC 463–39–010 "Purpose," 463–39–020 "Applicability," and 463–39–100 "Registration"—has been modified only slightly over that used in versions currently in the SIP.

WAC 463–39–030 "Additional Definitions" has been modified to eliminate the listing of specific terms and their regulatory meanings. The modified regulation is brief and states that in addition to the definitions provided in WAC 173–400–030, 173–401–200, and 173–406–101, "ecology" and "authority" shall be synonymous with EFSEC. WAC 173–400–030 has been previously approved for inclusion in the SIP, and EPA approves the use of these definitions for the purposes of defining terms in Chapter 463–39.

WAC 463–39–120 "Monitoring and Special Report" modifies language contained in the regulation so that: (a) Ecology may authorize a designee for operating its surveillance program; (b) the surveillance program must be in accord with Chapter 173–400 regulations; and, (c) subparts 2–7 of the previous regulation (concerning "investigation of conditions", "source testing", etc.) are removed. Although these six subparts are removed, however, they are substantively found in WAC 173–400–105 and –107, both of which are contained in the approved SIP, and adopted by reference in 463–39–005.

In approving the modifications noted above, it must be noted that reference to Chapter 173–401 is made in four of the amended regulations: WAC 463–39–020, –030, –100, and –120. Chapter 173–401 concerns Title V "Operating Permit Regulation" and regulations in this Chapter have not been included in the SIP. In addition, reference is made to: Chapter 173–406 "Acid Rain Regulation" in WAC 463–39–020, –030, and –120; and, Chapter 173–460 "Controls for New Sources of Toxic Air Pollutants" in WAC 463–39–020 and –120. These regulations are also not a part of the approved SIP. As a consequence, EPA is not taking action on the particular Chapter 173–401, 173–406, and 173–460 references embodied within the four regulations noted.

C. *Additions.* The state of Washington has requested that eight new Chapter 463–39 regulations be added to the SIP. These are: WAC 463–39–005, –070, –090, –095, –105, –115, –140, and –230.

New regulation WAC 463–39–005 "Adoption by Reference" adopts twenty-four of the state's Chapter 173–400 regulations. On June 2, 1995 EPA approved, disapproved, and took no action on various state regulations contained in Chapter 173–400, submitted by the state for the purpose of inclusion in the implementation plan (60 FR 28726). The rationale for EPA's decisions on these regulations is described in the February 22, 1995 **Federal Register** (60 FR 9802) proposing the rulemaking. Of the twenty-four Chapter 173–400 regulations referenced in WAC 463–39–005, thirteen are presently contained, in whole, in the approved SIP. These are: WAC 173–400–030 "Definitions," –060 "Emission Standards for General Process Units,"

–081 "Startup and Shutdown," –091 "Voluntary Limits on Emissions," –105 "Records, Monitoring, and Reporting," –107 "Excess Emissions," –110 New Source Review," –151 "Retrofit Requirements for Visibility Protection," –161 Compliance Schedules," –171 "Public Involvement," –190 "Requirements for Nonattainment Areas," –200 "Creditable Stack Height and Dispersion Techniques," and –205 "Adjustment for Atmospheric Conditions." Four others are contained in the SIP, but are qualified with exceptions (i.e., not all parts of the regulations are included within the implementation plan). These are: WAC 173–400–040, –050, –112, and –113. Five of the adopted 173–400 regulations are regulations disapproved from SIP inclusion in EPA's June 2, 1995 action. These are: WAC 173–400–120 "Bubble Rules," –131 "Issuance of Emission Reduction Credits," –136 "Use of Emission Reduction Credits," –141 "Prevention of Significant Deterioration," and –180 "Variance." Of the remainder, one regulation (WAC 173–400–114 "Requirements for Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source") was not previously submitted by the state for inclusion into the SIP, and the other (WAC 173–400–075 "Emission Standards for Sources Emitting Hazardous Air Pollutants"), though submitted, was not acted upon by EPA.

As noted above, four state regulations were previously only partially approved for inclusion into the SIP. Portions of WAC 173–400–040 "General Standards for Maximum Emissions," adopted by reference in 463–39–005 to replace WAC 463–390–040, were excluded from the SIP. Specifically, provisions (1)(c) and (1)(d), exceptions to meeting the opacity standard; provision (2), regarding fallout of PM; provision (4), regarding odor generation; and, the second paragraph of provision (6), regarding SO2, were all excluded. Similarly, WAC 463–39–050 "Minimum Emission Standards for Combustion and Incineration Sources" was replaced by reference to WAC 173–400–050 "Emission Standards for Combustion and Incineration Sources" (again, adopted in 463–39 005). The exception to the use of the oxygen correction factor in 173–400–050(3), however, was excluded from the SIP. Finally, section (8) of WAC 173–400–112 "Requirements for New Sources in Nonattainment Areas" and section (5) of 173–400–113 "Requirements for New Sources in Attainment or Unclassifiable Areas" were also not approved by EPA for inclusion in the SIP.

In approving WAC 463–39–005, therefore, EPA notes the same exceptions noted in the previous rulemaking. That is, only those Chapter 173–400 regulations and portions of regulations, approved in earlier EPA actions which are adopted by reference within WAC 463–39–005, are hereby approved for the purposes of the implementation plan. As a consequence, WAC 173–400–075, –114, –120, –131, –136, –141, and –180 are disapproved, and 173–400–040, –050, –112, and –113 are only approved in part.

Besides referencing Chapter 173–400, regulation WAC 463–39–005 also adopts numerous Chapter 173–401, 173–406, and 173–460 regulations. As previously explained, none of these regulations is currently in the implementation plan. Since EPA has taken no action on these provisions, corresponding paragraphs (2), (3), and (4) of WAC 463–39–005 are not approved for inclusion in the implementation plan.

EPA approves with exception WAC 463–39–095 "Permit Issuance." This provision requires that permits be attached to site certification agreements, and that permits become effective upon the governor's approval and upon execution of the site certification agreement. In approving WAC 463–39–095 EPA excepts those references to WAC regulations not contained in the SIP. Specifically, WAC 463–39–095 refers to Permits issued in accord with Chapters 173–401, 173–406, and 173–460; EPA is not taking action on these particular references.

EPA also approves WAC 463–39–230 "Regulatory Actions" into the SIP. This regulation, though new, modifies and expands upon language contained in WAC 463–39–130 (which has subsequently been repealed), previously approved for inclusion in the SIP.

EPA is taking no action on new regulation WAC 463–39–070 "Radioactive Emissions." This provision is not related to the criteria pollutants regulated under the SIP.

EPA is taking no action on new regulation WAC 463–39–105 "Fees." The regulation asserts that fees shall be assessed to recover various operating-permit program costs. Since the focus of the provision is on Title V programs, its requirements are unrelated to the SIP.

EPA is also taking no action on WAC 463–39–090 "Permit Application Form" and –140 "Appeals Procedure." The substantive requirements of both of these regulations depend on references to other state regulations which have not been included in the SIP. WAC 463–39–090 refers to Chapters 173–401 and 173–406; WAC 463–39–140 refers to WAC 463–54–070.

Finally, EPA is taking no action on WAC 463–39–115 "Standards of Performance for New Stationary Sources." This provision implements provisions of section 111 of the Act and is unrelated to the SIP.

D. *Deletions.* EPA approves the deletion of seven repealed Chapter 463–39 regulations currently in the SIP. These are: WAC 463–39–040, –050, –060, –080, –110, –130, and –150. Five of these regulations have been replaced by similar Chapter 173–400 regulations, adopted by reference in WAC 463–39–005, and approved (at least in part) for inclusion into the SIP. Specifically, WAC 463–39–040 "General Standards for Maximum Permissable Emissions" has been superceded by WAC 173–400–040 "General Standards for Maximum Emissions," WAC 463–39–050 "Maximum Emission Standards for Combustion and Incineration Sources" by WAC 173–400–050 "Emission Standards for Combustion and Incineration Units," WAC 463–39–060 "Maximum Emission Standards for General Process Sources" by WAC 173–400–060 "Emission Standards for General Process Units," WAC 463–39–080 "Compliance Schedules" by WAC 173–400–161 of the same name, and WAC 463–39–110 "New Source Review" by WAC 173–400–110 of the same name.

WAC 463–39–150 "Variance" has been replaced by reference to WAC 173–400–180 (of the same name), but the latter was previously disapproved for inclusion into the SIP in EPA's June 2, 1995 action (60 FR 28726). WAC 463–39–130 "Regulatory Actions," as noted above, has been replaced by WAC 463–39–230 of the same name.

In summary, then, EPA approves without exception the inclusion of the following Chapter 463–39 regulations into the SIP: amended –010, new –230, –135, and –170. The latter two regulations have been approved previously, have not been modified, and will remain in the implementation plan. EPA approves the inclusion of new WAC 463–39–005(1) with the exception of those Chapter 173–400 regulations, or portions of regulations, adopted by reference in -005(1) which themselves are not contained in the SIP. EPA also approves the inclusion of amended WAC 463–39–020, amended -030, new -095, amended -100, and amended -120 with the exception of requirements within those six regulations which refer to other Chapter 173 or 463 state regulations not contained in the SIP.

Certain repealed Chapter 463–39 regulations will, as part of this action, be removed from the SIP. These are: WAC 463–39–040, -050, -060, -080, –110, –130, and –150. EPA is taking no action on new WAC 463–39–005(2)-(4), new -070, new -090, new –105, –115, and new –140.

III. Administrative Review

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective July 22, 1996 unless, by June 24, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective July 22, 1996.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 22, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Note: Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: May 6, 1996.

Jane S. Moore,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52— [AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(60) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(60) On November 29, 1995 the Director of WDOE submitted to the Regional Administrator of EPA the Energy Facility Site Evaluation Council Regulations (EFSEC) as a revision to the Washington State Implementation Plan (SIP).

(i) Incorporation by reference.

(A) The November 29, 1995 letter from WDOE to EPA submitting requests for revisions to the Washington SIP to include the Energy Facility Site Evaluation Council Regulations; EFSEC Regulation Chapter 463–39 Washington Administrative Code General and Operating Permit Regulations for Air Pollution Sources, (excluding the following sections: 005 (2) through (4); –070; –090; –105; –115; –140; those portions of –005(1), –020, –030, –095, –100, and –120 containing any reference to regulations or provisions of regulations in Chapters 173–400, 173–

401, 173–406, 173–460, or 463–58a) adopted on November 16, 1995.

[FR Doc. 96–12892 Filed 5–22–96; 8:45 am]
BILLING CODE 6560–60–P

40 CFR Part 271

[FRL–5508–3]

Tennessee; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Tennessee has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Tennessee's revisions consist of the provisions contained in certain rules promulgated between February 21, 1991, and September 30, 1992, which fall within RCRA Clusters I–III. These requirements are listed in Section B of this notice. The Environmental Protection Agency (EPA) has reviewed Tennessee's application and has made a decision, subject to public review and comment, that Tennessee's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Tennessee's hazardous waste program revisions. Tennessee's application for program revisions is available for public review and comment.

DATES: Final authorization for Tennessee's program revisions shall be effective July 22, 1996, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Tennessee's program revision application must be received by the close of business, June 24, 1996.

ADDRESSES: Copies of Tennessee's program revision application are available during normal business hours at the following addresses for inspection and copying: Tennessee Department of Environment and Conservation, 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535; U.S. EPA Region 4, Library, 345 Courtland Street NE., Atlanta, Georgia 30365; (404) 347–4216. Written comments should be sent to Al Hanke at the address listed below.

FOR FURTHER INFORMATION CONTACT: Al Hanke, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365; (404) 347–3555 vmx 2018.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–268 and 124 and 270.

B. Tennessee

Tennessee initially received final authorization for its base RCRA program effective on February 8, 1985. Tennessee has received authorization for revisions to its program on August 11, 1987, October 1, 1991, November 6, 1991, July 31, 1992, and July 7, 1995. On December 5, 1994, Tennessee submitted a program revision application for additional approvals. Today, Tennessee is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Tennessee's application and has made an immediate final decision that Tennessee's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Tennessee. The public may submit written comments on EPA's immediate final decision up until June 24, 1996.

Copies of Tennessee's application for these program revisions are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Tennessee's program revisions shall become effective July 22, 1996, unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period.

If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Tennessee is today seeking authority to administer the following Federal requirements promulgated on February 21, 1991, through September 30, 1992.

Checklist	Federal requirement	FR Reference	FR Promulgation date	State authority
85	Burning of Hazardous Waste in Boilers and Industrial Furnaces.	56 FR 7134	2/21/91	TCA 68–212–104(7); TCA 68–212–106(a)(1); TCA 68–212–107(a), (d)(1), (3)&(4); TRC 1200–1–11–.01(2)(a)&(b)1; .02(1)(b); .02(1)(d)1(x); .02(1)(d)3(ii)(I–IV); .02(1)(f); .06(7)(a); .06(15)(a); .05(7)(a); .05(15)(a); .09(1)(a); .07(5)(b); .07(9)(c)5; .07(10)(a); .07(1)(j); .07(3)(a).

Checklist	Federal requirement	FR Reference	FR Promulgation date	State authority
94	Burning of Hazardous Waste in Boilers and Industrial Furnaces; Corrections and Technical Amendments I.	56 FR 32688	7/17/91	TCA 68–212–107(a),(d)(3,4,&6); TRC 1200–1–11–.02(1)(c)3(ii)(II)II; .02(1)(f)1; .05(16)(a)1; .11(1)(a); .09(8)(a)1; .09(9)(a)1; .07(5)(b)12; .07(9)(c)5; .07(1)(j)1; .07(3)(a)1.
96	Burning of Hazardous Waste in Boilers and Industrial Furnaces, Technical Amendments II.	56 FR 42504	8/27/91	TCA 68–212–104(7); TCA 68–212–106(a)(1); TCA 68–212–107(a)(d)(3,4,&6); TRC 1200–1–11–.02(1)(b)1; .05(7)(a)1; .09(8)(a)1; .09(9)(a)1.
98	Coke Ovens Administrative Stay.	56 FR 43874	9/5/91	TCA 68–212–104(7&15); TCA 68–212–106(a)(1); TCA 68–212–107(a)(d)(1,3,4,&6); TRC 1200–1–11–.09(8)(a)1.
111	Boilers and Industrial Furnaces; Technical Amendment III.	57 FR 38558	8/25/92	TCA 68–212–104(7); TCA 68–212–106(a)(1); TCA 68–212–107(a) & (d)(1)–(3); TCA 68–211–105(c); TCA 68–211–106(a)(1)&(2); TCA 68–211–107(a); TCA 68–211–111(d); TCA 68–211–1001 *et.seq.*; TCA 68–212–111(d); TRC 1200–1–11–.01(2)(a); .01(3)(a)1; .02(1)(b); .06(1)(b)2(ii–iii); .09(1)(a).
114	Boilers and Industrial Furnaces; Technical Amendment IV.	57 FR 44999	9/30/92	TCA 68–211–105(c); TCA 68–211–106(a)(1)&(2); TCA 68–211–107(a); TCA 68–211–111(d); TCA 68–211–1001 *et.seq.*; TCA 68–211–104(7); TCA 68–212–106(a)(1); TCA 68–212–107(a), (d)(1) & (d)(3); TRC 1200–1–11–.09(1)(a).

C. Decision

I conclude that Tennessee's application for these program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Tennessee is granted final authorization to operate its hazardous waste program as revised.

Tennessee now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Tennessee also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Section 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year. EPA does not anticipate that the approval of Tennessee's hazardous waste program referenced in today's notice will result in annual costs of $100 million or more.

EPA's approval of state programs generally has a deregulatory effect on the private sector because once it is determined that a state hazardous waste program meets the requirements of RCRA section 3006(b) and the regulations promulgated thereunder at 40 CFR Part 271, owners and operators of hazardous waste treatment, storage, or disposal facilities (TSDFs) may take advantage of the flexibility that an approved state may exercise. Such flexibility will reduce, not increase compliance costs for the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that small governments may own and/or operate TSDFs that will become subject to the requirements of an approved state hazardous waste program. However, such small governments which own and/or operate TSDFs are already subject to the requirements in 40 CFR Parts 264, 265, and 270. Once EPA authorizes a state to administer its own hazardous waste program and any revisions to that program, these same small governments will be able to own and operate their TSDFs with increased levels of flexibility provided under the approved state program.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Tennessee's

program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental Protection Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Dated: May 14, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 96–12864 Filed 5–22–96; 8:45 am]

BILLING CODE 5560–50–P

40 CFR Part 271

[FRL–5508–4]

Tennessee; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Tennessee has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Tennessee's revisions consist of the provisions contained in rules promulgated between November 8, 1984, and June 30, 1987, otherwise known as HSWA Cluster I. These requirements are listed in Section B of this notice. The Environmental Protection Agency (EPA) has reviewed Tennessee's application and has made a decision, subject to public review and comment, that Tennessee's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Tennessee's hazardous waste program revisions. Tennessee's application for program revisions are available for public review and comment.

DATES: Final authorization for Tennessee's program revisions shall be effective July 22, 1996, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Tennessee's program revision application must be received by the close of business, June 24, 1996.

ADDRESSES: Copies of Tennessee's program revision application are available during normal business hours at the following addresses for inspection and copying: Tennessee Department of Environment and Conservation, 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535; U.S. EPA Region 4, Library, 345 Courtland Street, NE, Atlanta, Georgia 30365; (404) 347–4216. Written comments should be sent to Al Hanke at the address listed below.

FOR FURTHER INFORMATION CONTACT: Al Hanke, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365; (404) 347–2234.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–268 and 124 and 270.

B. Tennessee

Tennessee initially received final authorization for its base RCRA program effective on February 5, 1985. Tennessee has received authorization for revisions to its program on August 11, 1987, October 1, 1991, July 31, 1992, and October 23, 1995. On August 14, 1995, Tennessee submitted a program revision application for additional program approvals. Today, Tennessee is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Tennessee's application and has made an immediate final decision that Tennessee's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Tennessee. The public may submit written comments on EPA's immediate final decision up until June 24, 1996.

Copies of Tennessee's application for these program revisions are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of Tennessee's program revisions shall become effective July 22, 1996, unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period.

If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Tennessee is today seeking authority to administer the following Federal requirements promulgated on November 8, 1984–June 30, 1987.

Checklist	Federal requirement	FR reference	FR promulgation date	State authority
14	Dioxin Waste Listing and Management Standards.	50 FR 1978	1/14/85	TCA 68–212–106(a)(1); 68–212–107(d)(3); TRC 1200–1–11–.02(1)(e) & (g); .02(4)(a); .02(5)(a); .06(9)(a); .06(10)(a); .06(11)(a); .06(12)(a); .06(13)(a); .06(14)(a); .06(15)(a); .05(1)(c)1(i); .05(15)(a)4; .05(16)(a)4; .07(5)(a)&(b).
16	Paint Filter Test	50 FR 18370	4/30/85	TCA 68–212–106(a)(1); 68–212–107(d)(1); TRC 1200–1–11–.06(2)(a); .06(5)(a)1; .06(14)(a)1; .05(2)(a)1; .06(5)(a)1; .05(14)(a).
17A	Small Quantity Generators	50 FR 28702	7/15/85	TCA 68–212–104(7); 68–212–106(a)(1); 68–212–107(d)(1); TRC 1200–1–11–.02(1)(e).
17C	Household Waste	50 FR 28702	7/15/85	TCA 68–212–104(7); 68–212–106(a)(1); 68–212–107(d)(1); TRC 1200–1–11–.02(1)(d)(2)(i).
17D	Waste Minimization	50 FR 28702	7/15/85	TCA 68–212–107(d)(3); 68–212–107(d)(4); 68–212–107(d)(6); TRC 1200–1–11–.03(5)(b)1(iv)–(vi); .03(3)(a); .06(5)(a); .07(8)(a)10(ii); .07(3)(a).
17E	Location Standards for Salt Domes, Salt Beds, Underground Mines and Caves.	50 FR 28702	7/15/85	TCA 68–212–107(d)(3); 68–212–107(d)(9); TRC 1200–1–11–.06(2)(a)1.
17F	Liquids In Landfills	50 FR 28702	7/15/85	TCA 68–212–107(d)(3); TRC 1200–1–11–.06(14)(a); .07(5)(b).
17G	Dust Suppression	50 FR 28702	7/15/85	TCA 68–212–106(a)(2); 68–212–106(a)(3); 68–212–107(d)(3); TRC 1200–1–11–.09(1)(a).
17H	Double Liners	50 FR 28702	7/15/85	TCA 68–212–107(d)(3); TRC 1200–1–11–.06(11)(a); .06(14)(a); .05(11)(a); .05(12)(a); .05(14)(a).
17I	Ground-Water Monitoring	50 FR 28702	7/15/85	TCA 68–212–107(d)(3); 68–212–108(a)(2); TRC 1200–1–11–.06(6)(a); .06(11)(a); .06(12)(a); .06(14)(a)1.
17J	Cement Kilns	50 FR 28702	7/15/85	TCA 68–212–104(15); 68–212–105(2); 68–212–107(d)(3); TRC 1200–1–11–.02(1)(f); .02(4)(a); .09(1)(a).
17K	Fuel Labeling	50 FR 28702	7/15/85	TCA 68–212–104(15); 68–212–105(2); 68–212–107(d)(3); TRC 1200–1–11–.09(1)(a).
17M	Pre-Construction Ban	50 FR 28702	7/15/85	TCA 68–212–107(d)(3); 68–212–107(d)(4); TRC 1200–1–11–.07(2)(c)1; .07(2)(c)4.
17N	Permit Life	50 FR 28702	7/15/85	TCA 68–212–107(d)(3); 68–212–107(d)(4); TRC 1200–1–11–.07(9)(c)3(xiii); .07(8)(c)4.
17O	Omnibus Provision	50 FR 28702	7/15/85	TCA 68–212–107(d)(3); 68–212–107(d)(4); 68–212–108(a)(1); TRC 1200–1–11–.07(8)(b).
17P	Interim Status	50 FR 28702	7/15/85	TCA 68–212–107(d)(3); 68–212–107(d)(4); 68–212–107(d)(9); 68–212–108(a)(1); TRC 1200–1–11–.07(2)(a)1–3; .07(2)(b)1; .07(2)(b)5; .07(8)(a)10(ii); .07(3)(a).
17Q	Research and Development Permits.	50 FR 28702	7/15/85	TCA 68–212–107(d)(3)&(4); 68–212–108(a)(1)&(b); TRC 1200–1–11–.07(2)(a)1; .07(1)(g).
17R	Hazardous Waste Exports	50 FR 28702	7/15/85	TCA 68–212–107(d)(5); TRC 1200–1–11–.03(6)(a)1.
17S	Exposure Information	50 FR 28702	7/15/85	TCA 68–212–107(d)(4); TRC 1200–1–11–.07(2)(a)3; .07(2)(f).
18	Listing of TDI, TDA, DNT	50 FR 42936	10/23/85	TCA 68–212–104(7); 68–212–106(a)(1); 68–212–107(d)(1); TRC 1200–1–11–.02(4)(a); .02(5)(a)1.
19	Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces.	50 FR 49164	11/29/85	TCA 68–212–106(a)(1); 68–212–107(d)(1); 68–212–107(d)(3); TRC 1200–1–11–.02(1)(c)3(ii)(II)II; .02(1)(e); .02(1)(f); .06(15)(a); .05(15)(a)1.
20	Listing of Spent Solvents	50 FR 53315	12/31/85	TCA 68–212–104(7); 68–212–106(a)(1); 68–212–107(d)(1); TRC 1200–1–11–.02(4)(a).
21	Listing of EDB Waste	51 FR 5327	2/13/86	TCA 68–212–104(7); 68–212–106(a)(1); 68–212–107(d)(1); TRC 1200–1–11–.02(4)(a); .02(5)(a).
22	Listing of Four Spent Solvents	51 FR 6537	2/25/86	TCA 68–212–104(7); 68–212–106(a)(1); 68–212–107(d)(1); TRC 1200–1–11–.02(4)(a)
23	Generators of 100 to 1000 kg Hazardous Waste.	51 FR 10146	3/24/86	TCA 68–212–104(7); 68–212–106(a)(1); 68–212–107(d)(1); TRC 1200–1–11–.01(2)(a); .02(1)(a); .02(1)(e); .02(4)(a); .03(3)(a); .03(4)(e)2,6–8; .03(5)(d); .04(3)(a); .07(1)(b)4(i); .07(2)(B)1(iii).
25	Codification Rule; Technical Correction.	51 FR 19176	5/28/86	TCA 68–212–106(a)(1); 68–212–107(d)(1); TRC 1200–1–11–.05(14)(a).
30	Biennial Report; Correction	51 FR 28556	8/8/86	TCA 68–212–107(d)3,4,&6; 68–212–105(4); TRC 1200–1–11–.06(5)(b)7–9; .05(5)(a)5(vi)&(viii).
31	Exports of Hazardous Waste	51 FR 28664	8/8/86	TCA 68–212–107(d)5;

Checklist	Federal requirement	FR reference	FR promulgation date	State authority
				TRC 1200–1–11–.02(1)(e)&(f); .03(5)(b)1; .03(5)(b)1(iii)(III)I–III; .03(5)(b)3; .03(6)(a)1; .03(7)(a)1; .03(1)(a)7; .03(3)(a); .04(3)(a).
32	Standards for Generators; Waste Minimization Certifications.	51 FR 35190	10/1/86	TCA 68–212–104(7)–(8); 68–212–106(a)(1)&(3); 68–212–107(d)(1)–(4)&(6); TRC 1200–1–11–.03(3)(a).
33	Listing of EBDC	51 FR 37725	10/24/86	TCA 68–212–104(7); 68–212–106(a)(1); 68–212–107(d)(1); TRC 1200–1–11–.02(4)(a); .02(5)(a).
34	Land Disposal Restrictions	51 FR 40572	11/7/86	TCA 68–212–106(a)(1); 68–212–107(d); TRC 1200–1–11–.01(1)(a)&(b); .01(2)(a); .01(3)(a)1; .02(1)(a); .02(1)(d)3(i); .02(1)(d)4(i); .02(1)(e)–(g); .02(3)(a); .02(4)(a); .03(1)(b); .04(1)(c); .06(1)(b)7; .06(2)(a); .06(5)(a); .05(1)(b)1; .05(2)(a)1; .05(5)(a)1; .10(1)(a)1–5; .10(2)(a); .10(3)(a); .10(3)(a)4; .10(4)(a); .10(5)(a); .07(5)(a)1; .07(8)(b); .07(9)(c)5.
SR2	Variance under §3005(j) (2)–(9) and (13).	HSWA §3005(j) (2)–(9)		TCA 68–212–104(7); 68–212–106(a)(1)&(2); 68–212–107(a); 68–212–107(d)(3)&(9); TRC 1200–1–11–.01(2)(a); .02(1)(c)1(ii)(III); .02(1)(c)3(ii)(II)III; .02(1)(c)6; .02(1)(c)6(i); .02(1)(c)6(ii); .03(4)(e)2(i)(III); .03(4)(e)2(i)(III)II; .03(4)(e)2(i)(IV); .03(4)(e)2(i)(IV)I; .03(4)(e)2(i)(IV)II; .03(4)(e)2(ii); .06(7)(a); .06(8)(a); .06(8)(c); .06(32)(a); .05(7)(a); .05(8)(a); .05(8)(c); .05(11)(a); .05(30)(a); .10(1)(a); .10(1)(a)4; .10(1)(a)5; .10(1)(a)9; .10(1)(b)2; .10(2)(a); .10(3)(a); .10(4)(a); .10(5)(a); .07(4)(a)15; .07(5)(a); .07(9)(c)5; .07(10)(a); .07(3)(a).
BB	Exceptions to the Burning and Blending of Hazardous Waste.	HSWA §3004(q)(2)(A) §3004(r) (2) & (3)		TCA 68–212–104(7); 68–212–106(a)(1); 68–212–107(d)(1); TRC 1200–1–11–.01(2)(a); .01(3)(a)1; .02(1)(b); .06(1)(b)2(ii); .05(1)(b)2(iii); .09(1)(a)
CP	Hazardous and Used Oil Fuel Criminal Penalties.	HSWA §3006(h) §3008(d) §3014		TCA 68–212–106(a)(1); 68–212–107(d)(1)&(3).

C. Decision

I conclude that Tennessee's application for these program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Tennessee is granted final authorization to operate its hazardous waste program as revised.

Tennessee now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Tennessee also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Sections 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year. EPA does not anticipate that the approval of Tennessee's hazardous waste program referenced in today's notice will result in annual costs of $100 million or more.

EPA's approval of state programs generally have a deregulatory effect on the private sector because once it is determined that a state hazardous waste program meets the requirements of RCRA section 3006(b) and the regulations promulgated thereunder at 40 CFR Part 271, owners and operators of hazardous waste treatment, storage, or disposal facilities (TSDFs) may take advantage of the flexibility that an approved state may exercise. Such flexibility will reduce, not increase compliance costs for the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that small governments may own and/or operate TSDFs that will become subject to the requirements of an approved state hazardous waste program. However, such small governments which own and/or operate TSDFs are already subject to the requirements in 40 CFR Parts 264, 265, and 270. Once EPA authorizes a state to administer its own hazardous waste program and any revisions to that program, these same small governments will be able to own and operate their TSDFs with increased levels of flexibility provided under the approved state program.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Tennessee's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Dated: May 14, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 96–12886 Filed 5–22–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 271

[FRL–5508–2]

Kentucky; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Kentucky has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Kentucky's revisions consist of the provisions contained in certain rules promulgated between July 1, 1987, through June 30, 1992, which fall within HSWA Cluster II, Non-HSWA Cluster VI, and RCRA Clusters I and II. These requirements are listed in Section B of this notice. The Environmental Protection Agency (EPA) has reviewed Kentucky's application and has made a decision, subject to public review and comment, that Kentucky's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Kentucky's hazardous waste program revisions. Kentucky's application for program revisions is available for public review and comment.

DATES: Final authorization for Kentucky's program revisions shall be effective July 22, 1996, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Kentucky's program revision application must be received by the close of business, June 24, 1996.

ADDRESSES: Copies of Kentucky's program revision application are available during normal business hours at the following addresses for inspection and copying: Kentucky Department for Environmental Protection, Division of Waste Management, Fort Boone Plaza, Building 2, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564–6716; U.S. EPA Region 4, Library, 345 Courtland Street NE., Atlanta, Georgia 30365; (404) 347–4216. Written comments should be sent to Al Hanke at the address listed below.

FOR FURTHER INFORMATION CONTACT: Al Hanke, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365; (404) 347–3555 vmx 2018.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–268 and 124 and 270.

B. Kentucky

Kentucky initially received final authorization for its base RCRA program effective on January 31, 1985. Kentucky has received authorization for revisions to its program on March 13, 1995, December 19, 1988, March 20, 1989, May 15, 1989, and November 30, 1992. In August 1994, Kentucky submitted a program revision application for additional program approvals. Today, Kentucky is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Kentucky's application and has made an immediate final decision that Kentucky's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Kentucky. The public may submit written comments on EPA's immediate final decision up until June 24, 1996.

Copies of Kentucky's application for these program revisions are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of Kentucky's program revisions shall become effective July 22, 1996, unless an adverse comment

pertaining to the State's revisions discussed in this notice is received by the end of the comment period.

If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Kentucky is today seeking authority to administer the following Federal requirements promulgated between July 1, 1987, and June 30, 1992.

Checklist	Federal requirement	FR promulgation date	HSWA or FR reference	State authority
42	Exception Reporting for Small Quantity Generators of Hazardous Waste.	9/23/87	52 FR 35894	KRS 224.46–570; 401 KAR 32:040§ 3(1)–(2).
44A	Permit Application Requirements Regarding Corrective Action.	12/1/87	52 FR 45788	KRS 224.46–520; 401 KAR 38:100§ 2–3.
44B	Corrective Action Beyond Facility Boundary.	12/1/87	52 FR 45788	KRS 224.46–520; KRS 224.46–530(1)(e),(f),(h), (i),(2); 401 KAR 34:060§ 11(5)(a)–(b); 12(3).
44C	Corrective Action for Injection Wells.	12/1/87	52 FR 45788	KRS 224.46–520; KRS 224.46–530(1)(e), (f), (h), (i), (2); 401 KAR 35:010; 401 KAR 38:060;§ 1(2)(c)1; 1(2)(c)2.
44D	Permit Modification	12/1/87	52 FR 45788	KRS 224.46–520(1)&(2); KRS 224.46–530(1)(g)&(2); 401 KAR 38:040§ 2(1)(c).
44E	Permit as a Shield Provision	12/1/87	52 FR 45788	KRS 224.46–520(1)&(2); KRS 224.46–530(1)(a)–(c); 401 KAR 38:010§ 3(1).
44F	Permit Conditions to Protect Human Health and the Environment.	12/1/87	52 FR 45788	KRS 224.46–305; KRS 224.46–520(1)(b)–(c), (2) & (4); KRS 224.46–530(1)(f),(h) & (2); 401 KAR 38:070§ 10.
44G	Post Closure Permits	12/1/87	52 FR 45788	KRS 224.46–520; KRS 224.46–530; 401 KAR 38:010§ 1(2).
67	Testing and Monitoring Activities	9/29/89	54 FR 40260	KRS 224.46–510(3); KRS 224.46–530; 401 KAR 30:010§ 3; 401 KAR 31:120§ 1(4).
68	Reportable Quantity Adjustment	10/6/89	54 FR 41402	KRS 224.46–510(3); KRS 224.46–530(1)(n); 401 KAR 31:030§ 1(2), 2(2), 3(2), 4(2); 401 KAR 31:040§ 2(1), 3 & 4(5); 401 KAR 31:120§ 1(4); 401 KAR 31:160§ 1; 401 KAR 31:170§ 1.
72	Modifications of F019 Listing	2/14/90	55 FR 5340	KRS 224.46–510(3); KRS 224.46–530(1)(n); 401 KAR 31:030§ 1(2),2(2),3(2),4(2); 401 KAR 31:040§ 2(1), 3 & 4(5); 401 KAR 31:120§ 1(4); 401 KAR 31:160§ 1; 401 KAR 31:170§ 1.
73	Testing and Monitoring Activities; Technical Corrections.	3/9/90	55 FR 8948	KRS 224.46–510(3); KRS 224.46–530; 401 KAR 30:010§ 3; 401 KAR 30:120§ 1(4).
75	Listing of 1, 1-Dimethylhydrazine Production Wastes.	5/2/90	55 FR 18496	KRS 224.46–510(3); KRS 224.46–530(1)(n); 401 KAR 31:030§ 1(2),2(2),3(2),4(2); 401 KAR 31:040§ 2(1), 3, & 4(5); 401 KAR 31:120§ 1(4); 401 KAR 31:160§ 1; 401 KAR 31:170§ 1.
76	Criteria for Listing Toxic Wastes; Technical Amendment.	5/4/90	55 FR 18726	KRS 224.46–510(3); 401 KAR 31:020§ 2(1)(c).
77	HSWA Codification Rule; Double Liners; Correction.	5/9/90	55 FR 19262	KRS 224.46–520; KRS 224.46–530(1)(f), (h), & (i); 401 KAR 34:200§ 2(3); 401 KAR 34:230§ 2(4).
80	Toxicity Characteristic; Hydrocarbon Recovery Operations (HSWA).	10/5/90	55 FR 40834	KRS 224.46–510(3); 401 KAR 31:010§ 4(2)(k).
81	Petroleum Refinery Primary and Secondary Oit/Water/Solids Separation Sludge Listings (F037 and F038).	11/2/90	55 FR 46354	KRS 224.46–510(3); KRS 224.46–530; 401 KAR 31:040§ 2(2).
84	Toxicity Characteristic; Chlorofluorocarbon Refrigerants.	2/13/91	56 FR 5910	KRS 224.46–510(3); KRS 224.46–530(1)(n) & (2); 401 KAR 31:010§ 4(2)(1).
86	Removal of Strontium Sulfide from the List of Hazardous Waste; Technical Amendment.	2/25/91	56 FR 7567	KRS 224.46–510(3); KRS 224.46–530(1)(n); 401 KAR 31:030§ 1(2),2(2),3(2) & 4(2); 401 KAR 31:040§ 2(1), 3, & 4(5); 401 KAR 31:120§ 1(4); 401 KAR 31:160§ 1; 401 KAR 31:170§ 1.
88	Administrative Stay for K069 Listing.	5/1/91	56 FR 19951	KRS 224.46–510(3); KRS 224.46–530(1)(n); 401 KAR 31:030§ 1(2),2(2),3(2) & 4(2); 401 KAR 31:040§ 2(1), 3, & 4(5); 401 KAR 31:120§ 1(4); 401 KAR 31:160§ 1; 401 KAR 31:170§ 1.
89	Revision to F037 and F038 Listings.	5/13/91	56 FR 21955	KRS 224.46–510(3); KRS 224.46–530(1)(n); 401 KAR 31:030§ 1(2),2(2),3(2) & 4(2); 401 KAR 31:040§ 2(1), 3, & 4(5); 401 KAR 31:120§ 1(4); 401 KAR 31:160§ 1; 401 KAR 31:170§ 1.
97	Exports of Hazardous Waste; Technical Correction.	9/4/91	56 FR 43704	KRS 224.46–510(a), (d)–(g); 401 KAR 32:050§ 4(2), & 7(2).

Checklist	Federal requirement	FR promulgation date	HSWA or FR reference	State authority
99	Amendments to Interim Status Standards for Downgradient Ground-Water Monitoring Well Locations.	12/23/91	56 FR 66365	KRS 224.46–520(1); KRS 224.46–530(1)(h)–(i) & 2; 401 KAR 35:060§ 2(1)(c).
104	Used Oil Filter Exclusion	5/20/92	57 FR 21524	KRS 224.46–510(3); KRS 224.46–530(1)(n); 401 KAR 31:010§ 4(2)(m).
105	Recycled Coke By-Product Exclusion.	6/22/92	57 FR 27880	KRS 224.46–510(3); KRS 224.46–530(1)(n); 401 KAR 31:010§ 4(1)(j).

C. Decision

I conclude that Kentucky's application for these program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Kentucky is granted final authorization to operate its hazardous waste program as revised.

Kentucky now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Kentucky also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Section 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year. EPA does not anticipate that the approval of Kentucky's hazardous waste program referenced in today's notice will result in annual costs of $100 million or more.

EPA's approval of state programs generally has a deregulatory effect on the private sector because once it is determined that a state hazardous waste program meets the requirements of RCRA section 3006(b) and the regulations promulgated thereunder at 40 CFR Part 271, owners and operators of hazardous waste treatment, storage, or disposal facilities (TSDFs) may take advantage of the flexibility that an approved state may exercise. Such flexibility will reduce, not increase compliance costs for the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that small governments may own and/or operate TSDFs that will become subject to the requirements of an approved state hazardous waste program. However, such small governments which own and/or operate TSDFs are already subject to the requirements in 40 CFR Parts 264, 265, and 270. Once EPA authorizes a state to administer its own hazardous waste program and any revisions to that program, these same small governments will be able to own and operate their TSDFs with increased levels of flexibility provided under the approved state program.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Kentucky's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Dated: May 14, 1996.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 96–12887 Filed 5–22–96; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301–4

[FTR Amendment 48]

RIN 3090–AF88

Federal Travel Regulation; Privately Owned Vehicles Mileage Reimbursement

AGENCY: Office of Policy, Planning and Evaluation, GSA.

ACTION: Final rule.

SUMMARY: This final rule increases the mileage reimbursement rates for use of a privately owned vehicle (POV) on official travel to reflect current costs of operation as determined in cost studies conducted by the General Services Administration (GSA). The governing regulation is revised to increase the mileage allowance for advantageous use of a privately owned automobile from 30 cents to 31 cents per mile and the cost of a privately owned motorcycle from 24.5 cents to 25 cents per mile, and decrease the cost of operating a privately owned airplane from 88.5 cents to 85 cents per mile.

DATES: *Effective date:* This final rule is effective June 7, 1996.

Applicability date: The privately owned vehicle (POV) mileage reimbursement rates apply for official travel performed on or after June 7, 1996.

FOR FURTHER INFORMATION CONTACT: Vella Cloyd, General Services Administration, Travel and Transportation Management Policy Division (MTT), Washington, DC 20405, telephone 202–501–1538.

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993. This final rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

List of Subjects in 41 CFR Part 301–4

Government employees, Travel, Travel allowances, Travel and transportation expenses.

For the reasons set out in the preamble, 41 CFR part 301–4 is amended as follows:

PART 301–4—REIMBURSEMENT FOR USE OF PRIVATELY OWNED CONVEYANCES

1. The authority citation for part 301–4 continues to read as follows:

Authority: 5 U.S.C. 5701–5709; E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

2. Section 301–4.2 is amended by revising paragraph (a)(1) through (a)(3) to read as follows:

§ 301–4.2 When use of a privately owned conveyance is advantageous to the Government.

(a) * * *

(1) For use of a privately owned automobile: 31 cents per mile.

(2) For use of a privately owned airplane: 85 cents per mile

(3) For use of a privately owned motorcycle: 25 cents per mile.

* * * * *

Dated: April 30, 1996.

David J. Barram,

Acting Administrator of General Services.

[FR Doc. 96–12785 Filed 5–22–96; 8:45 am]

BILLING CODE 6820–24–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7641]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/Location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
Texas: Angelina County, unincorporated areas	480007	Mar. 29, 1996	May 22, 1979.
Indiana: Jay County, unincorporated areas	180440	Apr. 9, 1996	Jan. 6, 1978.
Texas:			
Goliad County, unincorporated areas	480827	Apr. 19, 1996.	
Justin, city of, Denton County	480778	.....do	June 3, 1977.
North Dakota: Maddock, city of, Benson County	380004	.....do.	
Michigan: Middle Branch, township of, Osceola County	260952	Apr. 26, 1996.	
New Eligibles—Regular Program			
Ohio: Swanton, village of, Fulton and Lucas Counties	390632	Apr. 9, 1996	Feb. 15, 1984.
Arkansas: Bethel Heights, city of, Benton County	050386	Apr. 19, 1996	Aug. 16, 1995.
Texas:			
New Hope, town of, Collin County	480138	.....do	Jan. 19, 1996.
Weir, city of, Williamson County [1]	481674	.....do.	
Reinstatements			
Pennsylvania: Osborne, borough of, Allegheny County	420061	Feb. 16, 1973, Emerg; Nov. 15, 1979, Reg; Oct. 4, 1995, Susp; Apr. 12, 1996, Rein.	Oct. 4, 1995.
New York:			
Adams, town of, Jefferson County	360324	Sept. 1, 1978, Emerg; June 5, 1985, Reg; Nov. 4, 1992, Susp; Apr. 19, 1996, Rein.	June 5, 1985.
Wirt, town of, Allegany County	361597	Dec. 21, 1978, Emerg; June 25, 1982, Reg; Nov. 4, 1992, Susp; Apr. 19, 1996, Rein.	June 25, 1982.
New York:			
Stony Creek, town of, Warren County	360880	Dec. 29, 1980, Emerg; Aug. 24, 1984, Reg; Nov. 4, 1992, Susp; Apr. 26, 1996, Rein.	Aug. 24, 1984.
Lapeer, town of, Cortland County	361326	Nov. 4, 1976, Emerg; July 20, 1984, Reg; Nov. 4, 1992, Susp; Apr. 26, 1996, Rein.	July 20, 1984.
Regular Program Conversions			
Region III			
Delaware:			
Middletown, town of, New Castle County	100024	Apr. 17, 1996, Suspension Withdrawn	Apr. 17, 1996
New Castle, city of, New Castle County	100026	.....do	do.
New Castle County, unincorporated areas	105085	.....do	do.
Newark, city of, New Castle County	100025	.....do	do.
Newport, town of, New Castle County	100054	.....do	do.
Wilmington, city of, New Castle County	100028	.....do	do.
Region V			
Ohio:			
Fairfield County, unincorporated areas	390158	.....do	do.
Kenton, city of, Hardin County	390253	.....do	do.
Region VI			
Texas: Hardin County, unincorporated areas	480284	.....do	do.

[1] The City of Weir has adopted Williamson County's Flood Insurance Rate Map (FIRM) dated September 27, 1991 and Flood Insurance Study (FIS) for floodplain management and insurance purposes, (Panels 125 and 250; Williamson County's Community Identification Number is 481079).

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: May 16, 1996.

Richard W. Krimm,

Acting Associate Director, Mitigation Directorate.

[FR Doc. 96–13017 Filed 5–22–96; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 80

[CI Docket No. 95–54, 96–195]

Inspection of Great Lakes Agreement Ships

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has issued a *Report and Order* which adopts rules to require vessel operators on the Great Lakes subject to the annual inspection requirements of the Agreement between the United States and Canada for the Promotion of Safety on the Great Lakes by Means of Radio (Great Lakes Agreement) to have the inspection performed by an FCC-licensed technicians holding an FCC General Radiotelephone Operator License, a GMDSS Radio Maintainer's License, a Second Class Radiotelegraph Operator's Certificate, or a First Class Radiotelegraph Operator's Certificate instead of by Commission staff. The Commission took this action to reduce economic burdens on the public and the Commission. The intended effect of these rule changes is increase the availability of competent, private sector inspectors to conduct Great Lakes Agreement inspections without adversely affecting safety and, thus, provide greater convenience for the maritime industry.

EFFECTIVE DATE: June 24, 1996.

FOR FURTHER INFORMATION CONTACT: George R. Dillon of the Compliance and Information Bureau at (202) 418–1100.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, CI Docket No. 95–54, FCC 96–195, adopted April 25, 1996, and released, April 26, 1996. The full text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239) 1919 M Street, NW, Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Services, 2100 M Street NW, Washington, DC 20037, telephone (202) 857–3800.

Summary of Report and Order

1. In this *Report and Order*, we adopt rules that require owners and operators of ships subject to the annual inspection requirements of the Agreement between the United States and Canada for the Promotion of Safety on the Great Lakes by Means of Radio (Great Lakes Agreement) to have the inspection performed by an FCC General Radiotelephone Operator License, a GMDSS Radio Maintainer's License, a Second Class Radiotelegraph Operator's Certificate, or a First Class Radiotelegraph Operator's Certificate instead of by Commission staff. These changes will reduce economic burdens on the public and the Commission by allowing mariners to arrange for an inspection at their convenience. Because the United States is required by the Great Lakes Agreement to fully guarantee the completeness and efficiency of the inspection, we are adopting rules to require two independent certifications that the ship has passed an inspection. One certification from the inspecting technician that the vessel has passed an inspection and another certification that the vessel owner, operator, or ship's master is satisfied that the inspection was satisfactory. We have also concluded that it is important to the integrity of this ship inspection program that the inspectors be independent of the vessel owners and operators. We are, therefore, providing that the vessel's owner, operator, master, employees or their affiliates may not conduct the required inspections.

2. The Great Lakes Agreement is intended to promote safety of life and property on the Great Lakes by means of radio. It dates back to 1952 and requires, among other things, that all vessels over 20 meters (65 feet), most towing vessels, and vessels carrying more than six passengers for hire be equipped with a marine VHF radiotelephone installation. The Great Lakes Agreement requires that these installations be inspected at least once each year. The Great Lakes Agreement requires that the inspections be carried out by officers of the Contracting Governments or by either persons nominated for that purpose or organizations recognized by the Contracting Government. In other words, the Great Lakes Agreement provides specific authority allowing the United States to entrust the annual inspection to either persons or organizations other than the Commission.

3. Additionally, the Great Lakes Agreement requires that these vessels be inspected while the vessel is in active service or within one month before the date the vessel is placed in service. Because almost all vessels on the Great Lakes must be taken out of service over the winter and operators do not wish to interrupt shipping schedules after the shipping season begins, there is a very busy period in the spring when these vessels are being put back in service.

4. The Commission inspects approximately 490 vessels subject to the Great Lakes Agreement each year. Commission inspectors test the output power, frequency tolerance and availability of reserve power, and conduct an operational radio check of the radiotelephone installation during the inspection. Any failure of these critical items results in the vessel failing the annual inspection and not receiving a safety certificate until the failure is corrected. An integral part of the annual inspection is to examine the connecting transmission lines, electrical cabling and control circuitry that make up the entire radiotelephone installation to ensure that the individual components operate satisfactorily when connected together.

5. Although the inspections are relatively simple and generally take no more than an hour to complete, they are conducted to ensure that Great Lakes Agreement ships have a reliable means of distress communications in an emergency. We note, however, that improvements in the reliability of radiotelephone equipment and the industry practice of preinspection examinations have resulted in an inspection failure rate for Great Lakes Agreement vessels of only one per cent.

6. We believe in the principle that government should be responsive to user needs and began this proceeding to promote flexibility, remove unnecessary and inimical regulations and, most importantly, provide better service to the public.

Final Regulatory Flexibility Analysis

7. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared a Final Regulatory Flexibility Analysis of the expected impact on small entities of the rules adopted in this Report and Order.

8. Need for and purpose of this action. The rules we adopt in this proceeding will permit the owners and operators of Great Lakes Agreement vessels to arrange for an inspection by an FCC-licensed operator instead of requiring that all inspections be conducted by FCC personnel. This change will improve the speed and convenience of service to the owners and operators of such vessels, many of which are small businesses and will conserve scarce government resources.

9. Summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis. There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

10. Significant alternatives considered. We proposed limiting the inspection of subject vessels to classification societies and requested specific comments on our proposal. Commenters overwhelmingly opposed limiting the inspections solely to classification societies and suggested that we permit anyone with an FCC license to inspect the vessels.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies)

47 CFR Part 80

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 0 and 80 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.311 is amended by adding a new paragraph (i) to read as follows:

Compliance and Information Bureau

§ 0.311 Authority delegated.

* * * * *

(i) The Chief of the Compliance and Information Bureau is authorized to rely on reports, documents or log entries made by the holder of an FCC General Radiotelephone Operator License, GMDSS Radio Maintainer's License, Second Class Radiotelegraph Operator's Certificate, or First Class Radiotelegraph Operator's Certificate as certification that the vessel complies with requirements of Articles XI, XII, and XIII of the Great Lakes Agreement. The Chief, Compliance and Information Bureau is authorized to delegate this authority.

3. Section 0.314 is amended by revising paragraph (l) to read as follows:

§ 0.314 Additional authority delegated.

* * * * *

(l) For inspection or periodical survey as required by Article XII of the Great Lakes Agreement and certification prescribed by Article XIII thereof. The District Director may require that the inspection be conducted by an FCC-licensed technician holding an FCC General Radiotelephone Operator License, GMDSS Radio Maintainer's License, Second Class Radiotelegraph Operator's Certificate, or First Class Radiotelegraph Operator's Certificate.

* * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

4. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

5. Section 80.59 is amended by revising the section heading, and paragraphs (a) and (b) to read as follows:

§ 80.59 Compulsory ship inspections.

(a) Application for inspection of ships subject to the Communications Act or the Safety Convention. FCC Form 801, including documentation that the appropriate inspection fees have been paid, must be used to apply for inspection and certification for ships subject to Part II or Part III of Title III of the Communications Act or the Safety Convention. An inspection of the bridge-to-bridge radio stations on board vessels subject to the Vessel Bridge-to-Bridge Radiotelephone Act will be conducted when the vessels are additionally subject to any of the laws and treaties mentioned in the previous sentence.

(1) Applications for inspections of ships subject to Part II or Part III of Title III or the Safety Convention must be submitted to the Commission in sufficient time to reach the FCC field office serving the port where the ship is to be inspected at least three days prior to the proposed inspection date.

(2) If the inspection described in paragraph (a)(1) of this section is to be scheduled on a Sunday, national holiday or during other than established working hours on any other day, the applicant must additionally submit FCC Form 808 to the FCC field office serving the port where the ship is to be inspected at least three days prior to the inspection.

(b) Inspection and certification of a ship subject to the Great Lakes Agreement. The FCC will not inspect Great Lakes Agreement vessels. An inspection and certification of a ship subject to the Great Lakes Agreement must be made by a technician holding one of the following: an FCC General Radiotelephone Operator License, a GMDSS Radio Maintainer's License, a Second Class Radiotelegraph Operator's Certificate, or a First Class Radiotelegraph Operator's Certificate. The certification required by § 80.953 must be entered into the ship's log. The technician conducting the inspection and providing the certification must not be the vessel's owner, operator, master, or an employee of any of them. Additionally, the vessel owner, operator, or ship's master must certify that the inspection was satisfactory. There are no FCC prior notice requirements for any inspection pursuant to § 80.59(b).

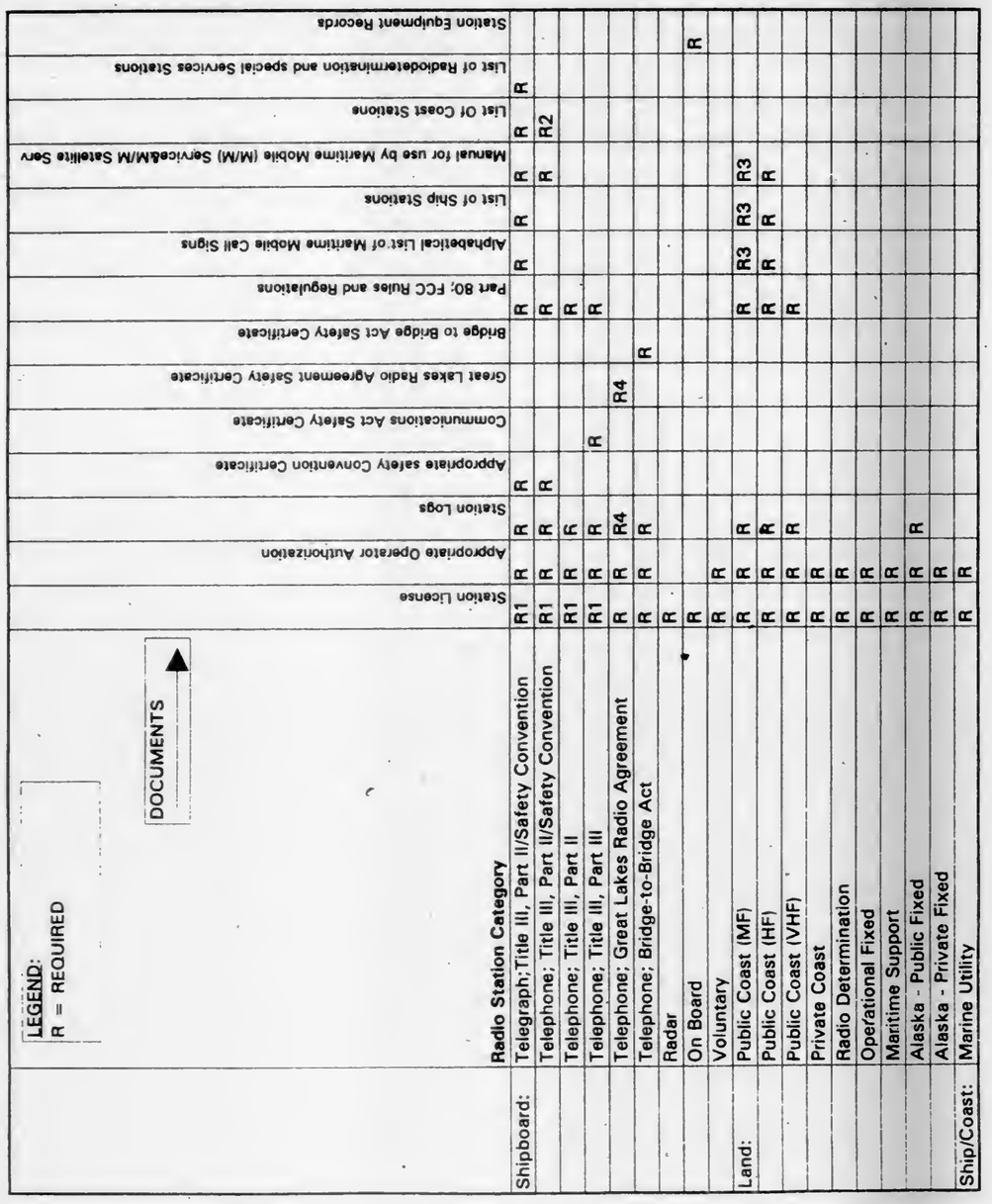
* * * * *

6. Section 80.401 is revised to read as follows:

§ 80.401 Station documents requirement.

Licensees of radio stations are required to have current station documents as indicated in the following table:

BILLING CODE 6712–01–P



BILLING CODE 6712-01-C

Notes:

1. The expired station license must be retained in the station records until the first Commission inspection after the expiration date.

2. Alternatively, a list of coast stations maintained by the licensee with which communications are likely to be conducted, showing watchkeeping hours, frequencies and charges, is authorized.

3. Required only if station provides a service to oceangoing vessels.

4. Certification of a Great Lakes Agreement inspection may be made by either a log entry or issuance of a Great Lakes Agreement certificate. Radiotelephone logs containing entries certifying that a Great Lakes Agreement inspection has been conducted must be retained and be available for inspection by the FCC for 2 years after the date of the inspection.

7. Section 80.409 is amended by adding a new sentence at the end of paragraph (b)(2), and revising paragraph (f)(2) to read as follows:

§ 80.409 Station logs.

* * * * *

(b) * * *

(2) * * * Additionally, logs required by paragraph (f) of this section must be retained on board the vessel for a period of 2 years from the date of the last inspection of the ship radio station.

(f) * * *

(2) Radiotelephony stations subject to the Great Lakes Agreement and the Bridge-to-Bridge Act must record entries indicated by paragraphs (e) (1), (5), (6), (7), (8), (9), (11) and (12) of this section. Additionally, the radiotelephone log must provide an easily identifiable, separate section relating to the required inspection of the ship's radio station. Entries must be made in this section giving at least the following information:

(i) The date the inspection was conducted;

(ii) The date by which the next inspection needs to be completed;

(iii) The inspector's printed name, address and class of FCC license (including the serial number);

(iv) The results of the inspection, including any repairs made;

(v) The inspector's signed and dated certification that the vessel meets the requirements of the Great Lakes Agreement and the Bridge-to-Bridge Act contained in Subparts T and U of this part and has successfully passed the inspection; and

(vi) The vessel owner, operator, or ship's master's certification that the inspection was satisfactory.

* * * * *

8. Section 80.411 is amended by adding a new sentence to the end of paragraph (b) to read as follows:

§ 80.411 Vessel certification or exemption.

* * * * *

(b) * * * Ships subject to the Great Lakes Agreement may, in lieu of a posted certificate, certify compliance in the station log required by section 80.409(f).

9. Section 80.953 is revised to read as follows:

§ 80.953 Inspection and certification.

(a) Each U.S. flag vessel subject to the Great Lakes Agreement must have an inspection of the required radiotelephone installation at least once every 13 months. This inspection must be made while the vessel is in active service or within not more than one month before the date on which it is placed in service.

(b) An inspection and certification of a ship subject to the Great Lakes Agreement must be made by a technician holding one of the following: a General Radiotelephone Operator License, a GMDSS Radio Maintainer's License, a Second Class Radiotelegraph Operator's Certificate, or a First Class Radiotelegraph Operator's Certificate. Additionally, the technician must not be the vessel's owner, operator, master, or an employee of any of them. The results of the inspection must be recorded in the ship's radiotelephone log and include:

(1) The date the inspection was conducted;

(2) The date by which the next inspection needs to be completed;

(3) The inspector's printed name, address, class of FCC license (including the serial number);

(4) The results of the inspection, including any repairs made; and

(5) The inspector's signed and dated certification that the vessel meets the requirements of the Great Lakes Agreement and the Bridge-to-Bridge Act contained in Subparts T and U of this part and has successfully passed the inspection.

(c) The vessel owner, operator, or ship's master must certify that the inspection required by paragraph (b) was satisfactory.

(d) The ship's log must be retained on-board the vessel for at least two years from the date of the inspection.

10. Section 80.1005 is amended by adding two new sentences at the end of the section to read as follows:

§ 80.1005 Inspection of station.

* * * An inspection of the bridge-to-bridge station on a Great Lakes Agreement vessel must normally be made at the same time as the Great Lakes Agreement inspection is conducted by a technician holding one of the following: a General Radiotelephone Operator License, a GMDSS Radio Maintainer's License, a Second Class Radiotelegraph Operator's Certificate, or a First Class Radiotelegraph Operator's Certificate. Additionally, the technician must not be the vessel's owner, operator, master, or an employee of any of them. Ships subject to the Bridge-to-Bridge Act may, in lieu of an endorsed certificate, certify compliance in the station log required by section 80.409(f).

[FR Doc. 96–12270 Filed 5–22–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 24

[DA 96–706]

Waiver of Bid Withdrawal Payment Provisions

AGENCY: Federal Communications Commission.

ACTION: Final rule; waiver.

SUMMARY: On March 6, 1995, Georgia Independent PCS Corporation (Georgia) filed a request for waiver of the bid withdrawal payment provisions applicable to the broadband PCS C block auction. Under the Commission's rules, the amount of the bid withdrawal payment is equal to the difference between the withdrawn bid amount and the amount of the subsequent winning bid, if the subsequent winning bid is lower. No withdrawal payment is assessed if the subsequent winning bid exceeds the withdrawn bid. The Order reduces Georgia's bid withdrawal payment to the minimum bid increment for License B–076 (Chattanooga, TN) in Round 37 of the broadband Personal Communications Services (PCS) C block auction, or $569,898.

EFFECTIVE DATE: May 6, 1996.

FOR FURTHER INFORMATION CONTACT: James Hedlund at 202–418–0660.

SUPPLEMENTARY INFORMATION: This Order, adopted May 6, 1996 and released May 6, 1996, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037 (202) 857–3800.

Order

1. The Wireless Telecommunications Bureau has before it a Request for Waiver of Section 24.704(a)(1) of the Commission's rules filed by Georgia

Independent PCS Corporation ("Georgia"). By this Order, we hereby resolve Georgia's request. Specifically, this Order reduces Georgia's bid withdrawal payment to the minimum bid increment for License B–076 (Chattanooga, TN) in Round 37 of the broadband Personal Communications Services (PCS) C block auction, or $569,898.

2. *Background.* On March 6, 1995, Georgia filed a request for waiver of the bid withdrawal payment provisions applicable to the broadband PCS C block auction. Under the Commission's rules, the amount of the bid withdrawal payment is equal to the difference between the withdrawn bid amount and the amount of the subsequent winning bid, if the subsequent winning bid is lower. No withdrawal payment is assessed if the subsequent winning bid exceeds the withdrawn bid.

3. On May 3, 1996, the Commission issued an Order partially waiving the bid withdrawal payment provisions applicable to the 900 MHz Specialized Mobile Radio (SMR) and broadband PCS C block auctions. The Order resolved the waiver requests of two applicants who submitted erroneous bids which were later withdrawn. The Order also delegated authority to resolve requests for waiver of the bid withdrawal payment provisions involving similar factual circumstances to the Wireless Telecommunications Bureau ("Bureau"). The Order indicated that for a party to be eligible for such a waiver, it must submit a request for waiver accompanied by a sworn declaration attesting to the veracity of the factual circumstances surrounding the erroneous bid submission. In addition, the Bureau was directed to consider such requests on a case-by-case basis.

4. *Georgia Waiver Request.* In its request, Georgia alleges that due to a clerical or typographical error, it submitted a bid of $119,720,000 for License B–076 (Chattanooga, TN) in Round 37 of the broadband PCS C block auction. Georgia further alleges that the error may have been due in part to a "flaw" in the Commission's remote bidding software. Georgia states that it intended to submit the minimum accepted bid for that round and license, or $11,972,000. Georgia attempted to withdraw its $119,972,000 bid during the bid withdrawal period for Round 37 by contacting the FCC telephonically. Due in part to technical problems with the FCC's wide-area network, Georgia claims it was not able to withdraw its erroneous bid until Round 38. The final high bid on this market at the close of the auction was $21,288,000. Consequently, if the bid withdrawal payment requirement were fully enforced, Georgia would be subject to a bid withdrawal payment of $73,824,000. Affidavits by A.J. Paserella, and Robert L. Swearingen, Jr., two of Georgia's authorized bidders, and Mr. Swearingen's secretary, Wanda Queen, describe the events surrounding the erroneous bid submission.

5. Georgia argues that imposition of the bid withdrawal payment for its erroneous bid would be unduly burdensome and contrary to the public interest. Georgia contends that there is established case law governing mistaken bids that prohibit the requirement of any payment for bids resulting from typographical or clerical errors. It observes that Section 24.822 of the Commission's rules allows for the correction of typographical errors on applicants' short-form applications (FCC Form 175s) and that the Auctions Division has granted waiver requests to other C block applicants which sought to correct clerical or typographical errors. Finally, Georgia argues that the most that the Commission should require from bidders who submit erroneous bids is the forfeiture of a single activity rule waiver.

6. *Decision.* In the May 3, 1996, Order, the Commission considered the same issues presented here and indicated that full application of the bid withdrawal payment provisions in instances of erroneous bids would cause an extreme and unnecessary hardship on most bidders. On the other hand, the Commission also indicated that a full waiver of these provisions could threaten the economic efficiency of the auction process. The Commission therefore decided to reduce the bid withdrawal payments substantially, taking into consideration the round and stage in which the mistaken bids were submitted and withdrawn.

7. Among other things, the Commission decided specifically that if a mistaken bid is withdrawn in the same round in which it was submitted, the withdrawal payment should be the greater of (a) the minimum bid increment during the round in which it was submitted or (b) the standard bid withdrawal payment calculated as if the bidder had made a bid at the minimum accepted bid. The Commission applied this calculation to reduce the bid withdrawal payment of MAP Wireless, L.L.C., who withdrew its erroneous bid in the same round in which it was submitted.

8. Under the facts presented, Georgia has demonstrated that it submitted an erroneous bid of $119,720,000 for License B–076 (Chattanooga, TN) in Round 37 of the broadband PCS C block auction. Georgia has further demonstrated that it attempted to withdraw its erroneous bid in Round 37. Georgia submitted a request for waiver accompanied by sworn affidavits attesting to the veracity of the factual circumstances surrounding the erroneous bid. We find that full enforcement of the bid withdrawal payment against Georgia in this instance would not serve the purpose of this rule and would be contrary to the public interest. In accordance with the Commission's May 3 Order, we find that a partial waiver of Section 24.704(a)(1)(v) of the Commission's rules is warranted. Specifically, because Georgia attempted to withdraw its erroneous bid in the same round in which it was submitted, we will reduce Georgia's required bid withdrawal payment to the minimum bid increment for License B–076 in Round 37 of the broadband PCS C block auction, or $569,898.

9. Accordingly, *it is ordered* that the waiver request submitted by Georgia Independent PCS Corporation is granted to the extent indicated above.

10. *It is further ordered* that Georgia Independent PCS Corporation is subject to a bid withdrawal payment requirement of $569,898.

Federal Communications Commission.

Michele C. Farquhar,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 96–12945 Filed 5–22–96; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 24

[DA 96–705]

Waiver of Audited Financial Statements and General Application Requirements for the Broadband Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; waiver.

SUMMARY: Several parties have filed requests for waiver of Sections 24.720 (f) and (g) of the Commission's rules with respect to the long-form applications (FCC Form 600) to be filed for broadband Personal Communications Service (PCS) C block licenses. The parties argued that the requirement that gross revenues and total assets figures disclosed on the long-form applications be evidenced by audited financial statement is unduly burdensome. The Commission granted the waivers and on our own motion extended the waiver to all broadband PCS C block applicants subject to the requirements of Sections 24.720 (f) and (g) of the rules. In addition, on our own motion, we waived certain ownership information disclosure requirements of Section 24.813(a) (1), and (2) of the Commission's rules for all successful broadband PCS C block bidders filing long-form applications.

EFFECTIVE DATE: May 8, 1996.

FOR FURTHER INFORMATION CONTACT: James Hedlund at 202–418–0660.

SUPPLEMENTARY INFORMATION: This Order, adopted May 8, 1996 and released May 8, 1996, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street NW., Washington D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street NW., Suite 140, Washington D.C. 20037 (202) 857–3800.

Order

By the Chief, Wireless Telecommunications Bureau:

1. Several parties have filed requests for waiver of Sections 24.720 (f) and (g) of the Commission's rules with respect to the long-form applications (FCC Form 600) to be filed for broadband Personal Communications Service (PCS) C block licenses. *See, e.g.,* Covington and Burling Request for Waiver on behalf of unnamed investors in C block applicants, filed January 26, 1996. The following applicants (many of which are no longer active bidders in the C block auction) filed requests for waiver of Section 24.720 (f) and (g) along with their short-form applications (FCC Form 175) on November 6, 1995: Adilia M. Aguilar; AirLink, L.L.C.; Airwave Telecommunications, Inc.; BC&D Partners II, L.L.C.; CHPCS, Inc.; B&P PCS, Inc.; CDL Communications, Inc.; Horsetooth Communications, Inc.; Glenn Ishihara; Global Information Technologies, Inc.; James Communications Partners, GP; Lubbock Radio Paging Service, Inc.; Mid-State Systems, Inc.; New Dakota Investment Trust; Overland Company, Inc.; PCS Spectrum Partners, L.P.; R&S PCS, Inc.; Reserve Telephone Company, Inc.; Shawn Capistrano; SPD CableTel, Inc.; South Central Communications Corporation; Teltrust PCS of the Intermountain States, Inc.; Teltrust PCS of Utah, Inc.; USA Microcellular, Inc.; Virginia PCS Alliance Consortium; Whidbey Telephone Company; William Ingram; Windkeeper Communications, Inc.; and Wireless PCS, Inc. Generally, the parties argue that the requirement that gross revenues and total assets figures disclosed on the long-form applications be evidenced by audited financial statements is unduly burdensome. Pursuant to delegated authority, we grant the waivers and on our own motion extend this waiver to all broadband PCS C block applicants subject to the requirements of Sections 24.720 (f) and (g) of the Commission's rules. In addition, on our own motion, we waive certain ownership information disclosure requirements of Sections 24.813(a) (1) and (2) of the Commission's rules for all successful broadband PCS C block bidders filing long-form applications.

2. Section 24.709(c)(2)(i) of the Commission's rules provides that each applicant submitting a long-form application shall in an exhibit:

> (i) Disclose separately and in the aggregate the gross revenues and total assets, computed in accordance with paragraphs (a) and (b) of this section, for each of the following: the applicant; the applicant's affiliates; the applicant's control group members; the applicant's attributable investors; and affiliates of its attributable investors.

Sections 24.720 (f) and (g) of the Commission's rules require that gross revenues and total assets be evidenced by audited financial statements under most circumstances:

(f) Gross Revenues. Gross revenues shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (e.g., cost of goods sold), as evidenced by audited financial statements for the relevant number of calendar years preceding January 1, 1994, or, if audited financial statements were not prepared on a calendar-year basis, for the most completed fiscal years preceding the filing of the applicant's short-form application (Form 175). For applications filed after December 31, 1995, gross revenues shall be evidenced by audited financial statements for the preceding relevant number of calendar or fiscal years. If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate.

(g) Total assets. Total assets shall mean the book value (except where generally accepted accounting principles (GAAP) require market valuation) of the property owned by an entity, whether real or personal, tangible or intangible, as evidenced by the most recent audited financial statements.

3. Although these rules do not require applicants to file audited financial statements with their long-form applications, they do require gross revenues and total assets reported on the applications to be supported by audited financial statements obtained by the applicants. Several parties contend that for small businesses with limited resources, obtaining audited financial statements would cause an extreme financial hardship.

4. We agree that requiring broadband PCS C block applicants with limited resources to obtain audited financial statements solely for the purpose of supporting the long-form applications is excessively burdensome. Thus, we waive the audited financial statements requirement of Sections 24.720 (f) and (g) of the Commission's rules. With respect to the filing of long-form applications, we believe that this waiver will enable the Commission to continue to obtain timely financial data while providing applicants with some degree of flexibility in their financial reporting practices. We emphasize, however, that applicants and their affiliates shall continue to be required to certify the accuracy of all gross revenue and total assets figures submitted. We also reserve the right to require licensees to provide audited financial statements as required by Sections 24.720 (f) and (g) of the Commission's rules at a later date.

5. Section 24.813(a) of the Commission's rules provides that broadband PCS auction winners filing the long-form application shall include in an exhibit, inter alia:

> (1) A list of any business five percent or more of whose stock, warrants, options or debt securities are owned by the applicant or an officer, director, attributable stockholder or key management personnel of the applicant. This list must include a description of each such business's principal business and a description of each such business's relationship to the applicant.
>
> (2) A list of the party which holds a five percent or more interest (or a ten percent interest or more interest for institutional investors as defined in Sec. 24.720(h)) in the applicant, or an entity in which a five percent or more interest (or a ten percent interest or more interest for institutional investors as defined in Sec. 24.720(h)) is held by another party which holds a five percent or more interest (or a ten percent interest or more interest for institutional investors as defined in Sec. 24.720(h)) in the applicant (*e.g.,* If company A owns 5% of Company B (the applicant) and 5% of Company C, then Companies A and C must be listed on Company B's application).

6. The former Private Radio Bureau, acting on delegated authority, waived some of the information disclosure requirements of Section 24.813(a)(1) and 24.813(a)(2) for the short-form applications (FCC Form 175s) filed for the auction of the broadband PCS A and

B block licenses. The Wireless Telecommunications Bureau ("Bureau") later waived the same provisions for the long-form applications for the auction of the broadband PCS A and B block licenses. These same provisions also were waived for the short-form applications filed for the auction of the broadband PCS C block licenses. We find that the public interest would be served by waiving certain ownership information disclosure requirements for the long-form applications filed by the block winning bidders. Specifically, our rules require applicants to list in their long-form applications all businesses in which each attributable stockholder owns at least five percent. This requirement necessitates reporting of interests in firms with no relation to the licenses auctioned. For many companies, particularly investment firms with diverse holdings, compliance with this requirement is extremely burdensome, especially when calculating indirect ownership interests in outside firms. We believe that, for purposes of long-form application processing, requiring stockholders in applicants to report all firms in which they hold an interest of five percent or more is overly burdensome.

7. The purpose of the PCS ownership disclosure requirements is to allow the Commission to determine who is the real party in interest, to determine compliance with the anti-collusion rules, the applicable spectrum caps, certain ownership restrictions such as the multiple and cross ownership rules, and the alien ownership restrictions. All applicants already must certify that they are in compliance with these regulations, and the applicants themselves should be able to supply the bulk of the information required by Section 24.813(a) without significant burden.

8. Consequently, we waive the information disclosure requirement of Sections 24.813(a)(1) and 24.813(a)(2) of the Commission's rules with respect to other, outside ownership interests of attributable stockholders of applicants, except that outside interests of five percent or more in other land mobile services (i.e., Commercial Mobile Radio Service licensees or applicants or Private Mobile Radio Service licensees or applicants) shall be disclosed. Also, all direct or indirect interests in the applicant that amount to five percent or more must be reported. All indirect interests held in the applicant should be computed in accordance with the multiplier approach set forth in 47 CFR § 24.204(d)(viii). Institutional investors need only disclose direct or indirect interests of ten percent or more in the applicant, and need to report all outside business interests of five percent or more in CMRS or PMRS businesses. We reserve the right to ask applicants for any additional information required by Section 24.813 of the Commission's rules at a later date. All other long-form reporting requirements will continue to apply.

9. This Order is not subject to the general notice and comment requirement of the Administrative Procedure Act, because it concerns procedural rules, and we are relieving applicants of an administrative burden as opposed to imposing a reporting burden on them. In addition, good cause for the waiver is shown. The waiver will expedite the Commission's ability to process broadband PCS C block applications, thus expediting the delivery of service to the public.

10. Accordingly, *it is ordered* That the requirements of Sections 24.720(f) and 24.720(g) of the Commission's rules, 47 CFR §§ 24.720(f) and 24.720(g), are waived to the extent described here with respect to long-form applications (FCC Form 600) for broadband PCS C block licenses.

11. *It is further ordered* That the requirements of Sections 24.813(a)(1) and 24.813(a)(2), 47 CFR §§ 24.813(a)(1) and 24.813(a)(2), are waived to the extent described here with respect to long-form applications (FCC Form 600) for broadband PCS C block licenses.

Federal Communications Commission.

Michele C. Farquhar,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 96–12943 Filed 5–22–96; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Parts 24 and 90

[FCC 96–203]

Waiver of Bid Withdrawal Payment Provisions

AGENCY: Federal Communications Commission.

ACTION: Final rule; waiver.

SUMMARY: The Commission has before it requests for waiver of the rules governing bid withdrawal payments associated with spectrum auctions. On December 18, 1995, ATA filed a request for waiver of the bid withdrawal payment applicable to the 900 MHz SMR auction. On January 24, 1996, MAP filed a request for waiver of the bid withdrawal payment applicable to the broadband PCS C block auction. This Order reduces ATA's bid withdrawal payment to two times the minimum bid increment for license 11P in Round 9 of the 900 MHz SMR auction, or $45,594. In addition, this Order reduces MAP's withdrawal payment to the minimum bid increment for license B–380 in Round 10 of the broadband PCS C block auction, or $206,400.

EFFECTIVE DATE: May 3, 1996.

FOR FURTHER INFORMATION CONTACT: James Hedlund at 202–418–0660.

SUPPLEMENTARY INFORMATION: This Order, adopted May 2, 1996, and released May 3, 1996, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street NW., Washington D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington D.C. 20037 (202) 857–3800.

ORDER

I. Introduction

1. The Commission has before it Requests for Waiver of its rules filed by Atlanta Trunking Associates, Inc. ("ATA") and MAP Wireless, L.L.C ("MAP"). Specifically, ATA and MAP request waivers of the rules governing bid withdrawal payments associated with spectrum auctions. By this Order, we hereby resolve ATA's and MAP's Requests. Specifically, this Order reduces ATA's bid withdrawal payment to two times the minimum bid increment for license 11P in Round 9 of the 900 MHz SMR auction, or $45,594. In addition, this Order reduces MAP's withdrawal payment to the minimum bid increment for license B–380 in Round 10 of the broadband PCS C block auction, or $206,400.

II. Background

2. *Waiver Requests.* On December 18, 1995, ATA filed a request for waiver of the bid withdrawal payment applicable to the 900 MHz SMR auction. Under our rules, the amount of the bid withdrawal payment is equal to the difference between the withdrawn bid amount and the amount of the subsequent winning bid, if the subsequent winning bid is lower. No withdrawal payment is assessed if the subsequent winning bid exceeds the withdrawn bid.

3. In its request, ATA alleges it erroneously submitted a bid of $125,025,000 for license 11P (Atlanta, GA) in Round 9 of the 900 MHz SMR auction. Pursuant to our auction procedures, the minimum acceptable bid for that license in Round 9 was $121,000. According to ATA, it had intended to submit a bid of $125,025, but inadvertently added three extra zeroes to its bid. ATA immediately reported the error after Round 9 had closed and withdrew its bid in Round 10. When the SMR auction closed, the winning bid for license 11P was $531,000. A declaration by L. Harold Josey, ATA's vice-president and one of its authorized bidders, describes the events surrounding the erroneous bid submission. ATA states that it cannot explain how the typographical error occurred, but suggests that the error may be due to a function of the Commission's bidding software.

4. ATA claims that the public interest will not be served by strict enforcement of the bid withdrawal payment rule in this instance. ATA notes that the error occurred early in the auction and hence there was no harm to the integrity of the auction or other bidders. Because imposition of the full bid withdrawal payment would be a significant burden on ATA, it claims that the "equities demonstrate that ATA should be provided relief from the Commission's rules as it relates to this typographical error."

5. On January 24, 1996, MAP filed a request for waiver of the bid withdrawal payment applicable to the broadband PCS C block auction. Under our rules, the amount of the bid withdrawal payment is equal to the difference between the withdrawn bid amount and the amount of the subsequent winning bid, if the subsequent winning bid is lower. No withdrawal payment is assessed if the subsequent winning bid exceeds the withdrawn bid.

6. In its request, MAP alleges that due to a typographical error, it submitted a bid of $22,680,020 for license B–380 (Rockford, IL) in Round 10 of the broadband PCS C block auction. Pursuant to our auction procedures, the minimum accepted bid for that round and license was $2,267,000. MAP states that it intended to submit a bid of $2,268,002, slightly higher than the minimum accepted bid. MAP withdrew its $22,680,020 bid during the bid withdrawal period for Round 10. As of Round 170, the standing high bid on license B–380 was $14,433,000. A declaration and statement by Christopher O. Mantle, one of MAP's authorized bidders, describes the events surrounding the erroneous bid submission. MAP alleges that the error was attributable to a "quirk" in the Commission's bidding software. MAP claims that the error occurred because the bidding software places a zero on each bid entry line, which does not disappear when a bid is entered unless it is manually removed. As a result, MAP's bid for that round and license was ten times greater than its intended bid. According to MAP, the only error attributable to it is "failing to notice and delete the extraneous zero caused by the bidder's software format."

7. MAP argues that imposition of the bid withdrawal payment for its erroneous bid would be inequitable and contrary to the public interest. It observes that the Auctions Division has granted waiver requests to other C block applicants which sought to correct clerical or typographical errors. Finally, MAP argues that Commission precedent and principles of administrative law require that parties be allowed to correct typographical errors when dealing with governmental agencies.

8. *Public Notice.* On February 7, 1996, the Wireless Telecommunications Bureau ("Bureau") released a Public Notice seeking comment on requests for waiver of the Commission's bid withdrawal payment provisions, including the requests of ATA and MAP. See Public Notice, DA 96–145, "Comment Sought on Requests to Waive Bid Withdrawal Payments and General Enforcement Guidelines" (rel. February 7, 1996). The waiver requests were filed by ATA, MAP and PCS 2000, L.P. We note that we are deferring action on the request filed by PCS 2000 until a later date. In addition, the Bureau sought comment on proposals to reduce the bid withdrawal payment requirement in cases of erroneous bids attributed to inadvertent or typographical mistakes. The Bureau proposed reducing the bid withdrawal payment in such circumstances to the greater of the upfront payment amount for the market for which the bid was submitted, or five percent of that market's winning bid. Alternatively, the Bureau proposed to treat a mistaken bid that is withdrawn in the same round as if it were made at the minimum accepted bid (if there are no other bids for that round), or at the second highest bit (if there are other bids above the minimum accepted bid). The required payment would be the difference between this amount and the subsequent winning bid. Finally, the Bureau sought comment on whether any circumstances should warrant a complete waiver of the bid withdrawal payment (*e.g.*, a bidding error clearly attributable to a mistake by the Commission, its staff or contractors).

9. *Comments.* In total, 20 parties submitted Comments, and six parties submitted Reply Comments, concerning the waiver requests and the Bureau's proposed enforcement guidelines. Six parties, all participants in the broadband PCS C block auction, submitted comments urging the Commission to deny the various waiver requests and strictly adhere to the applicable bid withdrawal payment provisions. Generally, these commenters argue that a waiver of the bid withdrawal payment provisions would distort the auction process and prejudice other bidders. For example, Quantum claims that if the Commission grants any of these waivers, it would undermine the integrity of the auctions by announcing to bidders that they may strategically place "erroneous" bids and withdraw them with impunity. These commenters also note that the bidding software contains numerous safeguards which are designed to encourage bidders to verify their bids prior to submission. PCS One claims that these safeguards have been effective, as bidders in the broadband PCS C block auction have reported only three mistaken bids out of the approximately 11,500 bids submitted as of February 9, 1996. They further note that the Commission staff clearly explained the bid withdrawal provisions as well as the safeguards built in to the bidding software prior to the commencement of the auction.

10. Eight parties, including participants in the broadband PCS C block auction and the 900 MHz SMR auction, urge the Commission to grant the waiver requests and impose no bid withdrawal payment requirement when it is clear that an erroneous bid is the result of an honest typographical or clerical mistake. Some of these commenters note that the Commission adopted the bid withdrawal payment provisions to deter insincere bidding. They further note that in adopting these provisions, the Commission did not contemplate the possibility that bidders might submit erroneous bids, resulting from typographical or clerical errors. Several commenters also argue that alleged problems with the Commission's bidding software necessitate granting the waiver requests at issue. For example, MAP claims that its erroneous bid resulted from an "irregularity" in the "Go to Market" function of its competitive bidding software. MAP notes that after it filed its request for waiver, the Wireless Telecommunications Bureau released a Public Notice which stated that "when a bidder begins keying in a bid amount, the zero remains in the bid column as the bid amount's final digit." Wilderness claims that the fact that "several diligent bidders" have submitted erroneous bids with an extra zero four times indicates that the Commission's software is "far from fool proof."

11. Antigone suggests that there is an established body of case law governing mistaken bids that result from clerical or

arithmetic errors. According to Antigone, these cases hold that when a bidder demonstrates that its bid was the result of clerical or arithmetic errors, the government agency holding the auction cannot require a forfeiture. Antigone relies particularly on *Ruggiero* v. *United States* for the proposition that once a factual determination is made that a bidder made a clerical error, equitable principles compel the remission of any bid withdrawal penalty. Similarly, PCS 2000 relies on the practice under certain provisions of the Federal Acquisition Regulation (FAR) for the proposition that bidders who submit erroneous bids may be permitted to withdraw without paying any forfeiture.

12. In addition, several parties submitted comments on our proposed alternatives to the enforcement of the bid withdrawal payment provisions in cases of erroneous bids caused by inadvertent, typographical mistakes. One commenter, Auction Strategy Inc. (ASI), favors the Commission's second proposal, but with some modification. ASI describes how a bidder can "game" the second proposal so as to find out critical information concerning a competitor's bidding strategy without being subject to any bid withdrawal payment. ASI proposes modifications which it claims would reduce the bid withdrawal payment for erroneous bids without encouraging bidders to make strategic "mistakes."

III. Discussion

13. The Commission established a bid withdrawal payment requirement in order to discourage insincere bidding. Insincere bidding, whether purely frivolous or strategic, distorts the price information generated by the auction process and reduces efficiency.

14. The bid withdrawal payment provisions are silent on how to address erroneous bids which result from typographical or clerical errors. In cases in which the erroneous bid exceeds the intended bid by factors of 10 or more, full application of the bid withdrawal payment provisions could impose an extreme and unnecessary hardship on most bidders. We believe, however, that it may be extremely difficult for the Commission to distinguish between "innocent" erroneous bids and "strategic" erroneous bids. Furthermore, we are mindful of the negative impact that erroneous bids may have on the integrity of the auction. In particular, an erroneous bid distort the price information generated by the auction process and reduce efficiency. Such distortion and inefficiency may result regardless of whether the bid was the result of an innocent error or was strategically placed. Consequently, we have strongly urged bidders to exercise great caution when submitting their bids.

15. A waiver of the bid withdrawal payment provisions applicable to the 900 MHz SMR auction and to the broadband PCS C block auction is appropriate when a petitioner demonstrates that special circumstances warrant a deviation from the rule and such deviation will serve the public interest. *Northeast Cellular Telephone Company* v. *FCC*, 897 F.2d 1164, 1166 (D.C. Cir., 1990), citing *Wait Radio* v. *FCC*, 418 F.2d 1153 (D.C. Cir. 1969). On the facts before us, we believe that ATA and MAP have demonstrated that waivers of the applicable bid withdrawal payment provisions are appropriate. ATA and MAP have shown that they submitted erroneous bids which exceeded their intended bids by factors of ten or more. Under these circumstances, full imposition of the bid withdrawal payment provisions would impose an extreme and unnecessary financial hardship. As noted above, these provisions were adopted to discourage insincere bidding. They were not adopted to impose financial hardship on bidders who submit mistaken bids. Full enforcement of the bid withdrawal payment provisions would not serve the underlying purpose of these provisions, nor would it serve the public interest. For these reasons, we believe that ATA and MAP are entitled to a partial waiver of the applicable bid withdrawal payment provisions.

16. In cases of erroneous bids, some relief from the bid withdrawal payment requirement appears necessary. We are concerned, however, that a complete waiver of these provisions could threaten the economic efficiency of the auction process. Such a precedent would encourage future bidders who are uncertain about how much more to bid on a particular license to submit "mistaken" bids intentionally so as to gain insight into competitors' valuation of licenses. As ASI points out, accurate bids are essential to the integrity of the auction process. In this regard, we believe that the cases and the practice under certain provisions of the Federal Acquisition Regulation (FAR) cited by Antigone and PCS 2000 are inapposite because of the unique auction methodology employed here (e.g., simultaneous multiple round bidding). We also disagree with MAP's contention that because the Auctions Division has previously granted waivers allowing applicants to correct typographical or clerical errors in their short-form applications (FCC Form 175s), MAP should be entitled to correct the typographical or clerical error which resulted in its erroneous bid. The waivers MAP cites allowed for changes to be made to the applicant's FCC Form 175s. These waivers were granted prior to the commencement of the auction where concerns about strategic manipulation of the bidding process were non-existent. Furthermore, Commission precedent allowed for changes to short-form applications to be made, whereas the Commission has never allowed a bidder to change its bids without being subject to the bid withdrawal payment provisions.

17. Therefore, we intend to partially waive these provisions in a manner which is fair to bidders and which preserves the economic efficiency of the auction process. For those instances in which bidders submit an erroneous bid, we generally agree that the approach proposed by ASI, which is a modification of our second proposal contained in the Public Notice, is most appropriate. In determining an appropriate bid withdrawal payment, we will take into consideration the round and stage in which a mistaken bid is withdrawn. In general, the approach described below follows the guidelines suggested by ASI and is designed to eliminate the strategic benefit of purposely submitting mistaken bids.

18. Specifically, if at any point during an auction a mistaken bid is withdrawn in the same round in which it was submitted, the bid withdrawal payment should be the greater of (a) the minimum bid increment for that license and round, or (b) the standard bid withdrawal payment calculated as if the bidder had made a bid at the minimum accepted bid. If a mistaken bid is withdrawn in the round immediately following the round in which it was submitted, and the auction is in Stage I or Stage II, the withdrawal payment should be the greater of (a) two times the minimum bid increment during the round in which the mistaken bid was submitted or (b) the standard withdrawal payment calculated as if the bidder had made a bid at one bid increment above the minimum accepted bid. If the mistaken bid is withdrawn two or more rounds following the round in which it was submitted, the bidder should not be eligible for any reduction in the bid withdrawal payment. Similarly, during Stage III of an auction, if a mistaken bid is not withdrawn during the round it was submitted, the bidder should not be eligible for any reduction in the bid withdrawal payment.

Example: Bidder X wishes to place the minimum accepted bid for Market 1. The standing high bid for this market after Round 19 of the auction is $1 million. The minimum bid increment is set at ten percent. Thus, the minimum accepted bid for Market 1 in Round 20 would be $1.1 million. In Round 20, Bidder X erroneously submits a bid of $110 million. If Bidder X withdraws it erroneous bid during the bid withdrawal period for Round 20, it would be subject to a bid withdrawal payment of the minimum bid increment for Round 20, $100,000, or the difference between $1.1 million and the subsequent winning bid, whichever is greater. If Bidder X does not withdraw its bid until Round 21, and the auction is in Stage I or Stage II, it would be subject to a bid withdrawal payment of two times the minimum bid increment, $200,000, or the difference between $1.2 million and the subsequent winning bid, whichever is greater. If Bidder X waits until Round 22 or later to withdraw its erroneous bid, it would be subject to the standard bid withdrawal payment. Similarly, if the auction is in Stage III, and Bidder X fails to withdraw its erroneous bid in Round 20, it would be subject to the standard bid withdrawal payment.

19. Under this approach, the required bid withdrawal payment would be substantial enough to discourage strategic placement of erroneous bids without being so severe as to impose an untenable burden on bidders. In addition, the payment is tailored to the size of the license and the point in the auction when the mistaken bid was submitted. For example, if a mistaken bid is submitted early in a simultaneous, multiple round auction, the potential damage to the economic efficiency of the auction is lower than if it were submitted during the later stages of the auction, and the required bid withdrawal payment would be correspondingly lower. As an auction progresses, however, the potential gain from a strategically-placed erroneous bid is higher, and the potential damage to the efficiency of the auction process is higher. In other words, erroneous bids cause greater damage to the economic efficiency of the auction process as market prices approach their final valuation. Thus, the cost of submitting an erroneous bid during the later stages of an auction is higher than it would be if it were submitted earlier in an auction.

20. We have decided to grant ATA and MAP relief from full enforcement of the bid withdrawal payment rules. Specifically, we will utilize the approach described above to reduce ATA's bid withdrawal payment to two times the minimum bid increment for license 11P in Round 9, or $45,594. Similarly, we will utilize the approach described above to reduce MAP's bid withdrawal payment to the minimum bid increment for license B–380 in Round 10 of the broadband PCS C block auction, or $206,400.

21. We delegate to the Wireless Telecommunications Bureau (the "Bureau") the authority to resolve similar requests for waiver of the Commission's bid withdrawal provisions. In order for a party to be eligible for such a waiver, it must submit a request for waiver accompanied by a sworn declaration attesting to the veracity of the factual circumstances surrounding the erroneous bid submission. We will continue to evaluate these requests on a case-by-case basis. We caution that relief will not be available to bidders if there is evidence that they have engaged in insincere or frivolous bidding or have otherwise acted in bad faith. We consider all allegations of bidder misconduct very seriously.

IV. Ordering Clauses

22. Accordingly, *it is ordered* That the waiver request submitted by Atlanta Trunking Associates, Inc. is granted to the extent indicated above.

23. *It is further ordered* That Atlanta Trunking Associates, Inc. is subject to a bid withdrawal payment requirement of $45,594.

24. *It is further ordered* That the waiver request submitted by MAP Wireless, L.L.C. is granted to the extent indicated above.

25. *It is further ordered* That MAP Wireless, L.L.C. is subject to a bid withdrawal payment requirement of $206,400.

26. *It is further ordered* That we delegate to the Wireless Telecommunications Bureau the authority to resolve bid withdrawal payment waiver requests involving factual circumstances similar to those presented here.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–12967 Filed 5–22–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC 34

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the California Red-Legged Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines threatened status for the California red-legged frog (*Rana aurora draytonii*) pursuant to the Endangered Species Act of 1973, as amended (Act). The Service originally proposed to list the California red-legged frog as endangered, but information obtained during the comment period suggests that this taxon is found in more localities within its current range than previously identified. The California red-legged frog is now found primarily in wetlands and streams in coastal drainages of central California. It has been extirpated from 70 percent of its former range. The California red-legged frog is threatened within its remaining range by a wide variety of human impacts, including urban encroachment, construction of reservoirs and water diversions, introduction of exotic predators and competitors, livestock grazing, and habitat fragmentation. This rule implements the Federal protection and recovery provisions afforded by the Act for this species.

EFFECTIVE DATE: June 24, 1996.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1803, Sacramento, CA 95825–1846.

FOR FURTHER INFORMATION CONTACT: Karen J. Miller, at the above address (916 979–2725).

SUPPLEMENTARY INFORMATION:

Background

The California red-legged frog (*Rana aurora draytonii*) is one of two subspecies of the red-legged frog (*Rana aurora*) found on the Pacific coast. *Rana a. draytonii* was first described by Baird and Girard in 1852 from specimens collected at or near the City of San Francisco in 1841 (Storer 1925, Cochran 1961). The California red-legged frog is the largest native frog in the western United States (Wright and Wright 1949),

ranging from 4 to 13 centimeters (cm) (1.5 to 5.1 inches (in.)) in length (Stebbins 1985). The abdomen and hind legs of adults are largely red; the back is characterized by small black flecks and larger irregular dark blotches with indistinct outlines on a brown, gray, olive, or reddish background color. Dorsal spots usually have light centers (Stebbins 1985). Dorsolateral folds are prominent on the back. Larvae (tadpoles) range from 14 to 80 millimeters (mm) (0.6 to 3.1 in.) in length and the background color of the body is dark brown and yellow with darker spots (Storer 1925).

The historical range of the California red-legged frog extended coastally from the vicinity of Point Reyes National Seashore, Marin County, California, and inland from the vicinity of Redding, Shasta County, California, southward to northwestern Baja California, Mexico (Jennings and Hayes 1985, Hayes and Krempels 1986). The northern red-legged frog (*Rana aurora aurora*) ranges from Vancouver Island, British Columbia, Canada, south along the Pacific coast west of the Cascade ranges to northern California (northern Del Norte County). Red-legged frogs found in the intervening area (southern Del Norte to northern Marin County) exhibit intergrade characteristics of both *R. a. aurora* and *R. a. draytonii* (Hayes and Krempels 1986). Systematic relationships between the two subspecies are not completely understood (Hayes and Miyamoto 1984, Green 1985a, Green 1986, Hayes and Krempels 1986). However, significant morphological and behavioral differences between the two subspecies suggest that they may actually be two species in secondary contact (Hayes and Krempels 1986).

Northern Marin County represents the approximate dividing line between *R. a. draytonii* and the intergrade zone along the coastal range (Mark Jennings, National Biological Service, pers. comm., 1993). California red-legged frogs found in Nevada (Linsdale 1938, Green 1985b) were introduced. This rule does not extend the Act's protection to any *R. aurora* in (1) The State of Nevada; (2) Humboldt, Trinity, and Mendocino counties, California; (3) Glenn, Lake, and Sonoma counties, California, west of the Central Valley Hydrological Basin; or (4) Sonoma and Marin counties north and west of the Napa River, Sonoma Creek, and Petaluma River drainages, which drain into San Francisco Bay, and north of the Walker Creek drainage, which drains to the Pacific Ocean.

Several morphological and behavioral characteristics differentiate California red-legged frogs from northern red-legged frogs. Adult California red-legged frogs are significantly larger than northern red-legged frogs by 35 to 40 mm (1.4 to 1.6 in.) (Hayes and Miyamoto 1984). Dorsal spots of northern red-legged frogs usually lack light centers common to California red-legged frogs (Stebbins 1985), but this is not a strong diagnostic character. California red-legged frogs have paired vocal sacs and call in air (Hayes and Krempels 1986), whereas northern red-legged frogs lack vocal sacs (Hayes and Krempels 1986) and call underwater (Licht 1969). Female California red-legged frogs deposit egg masses on emergent vegetation so that the egg mass floats on the surface of the water (Hayes and Miyamoto 1984). Northern red-legged frogs also attach their egg masses to emergent vegetation, but the mass is submerged (Licht 1969).

California red-legged frogs breed from November through March with earlier breeding records occurring in southern localities (Storer 1925). Northern red-legged frogs breed in January to March soon after the ice melts (Nussbaum *et al.* 1983). California red-legged frogs found in coastal drainages are rarely inactive (Jennings *et al.* 1992), whereas those found in interior sites may hibernate (Storer 1925).

The California red-legged frog occupies a fairly distinct habitat, combining both specific aquatic and riparian components (Hayes and Jennings 1988, Jennings 1988b). The adults require dense, shrubby or emergent riparian vegetation closely associated with deep (>0.7 meters (m)) still or slow moving water (Hayes and Jennings 1988). The largest densities of California red-legged frogs are associated with deep-water pools with dense stands of overhanging willows (*Salix* spp.) and an intermixed fringe of cattails (*Typha latifolia*) (Jennings 1988b). Well-vegetated terrestrial areas within the riparian corridor may provide important sheltering habitat during winter. California red-legged frogs estivate in small mammal burrows and moist leaf litter (Jennings and Hayes 1994b). California red-legged frogs have been found up to 30 m (98 feet (ft)) from water in adjacent dense riparian vegetation for up to 77 days (Rathbun *et al.* 1993, Galen Rathbun, National Biological Service, *in litt.*, 1994). Rathbun (*in litt.*, 1994) found that the use of the adjacent riparian corridor was most often associated with drying of coastal creeks in mid to late summer.

California red-legged frogs disperse upstream and downstream of their breeding habitat to forage and seek estivation habitat. Estivation habitat is essential for the survival of California red-legged frogs within a watershed. Estivation habitat, and the ability to reach estivation habitat can be limiting factors in California red-legged frog population numbers and survival.

Estivation habitat for the California red-legged frog is potentially all aquatic and riparian areas within the range of the species and includes any landscape features that provide cover and moisture during the dry season within 300 feet of a riparian area. This could include boulders or rocks and organic debris such as downed trees or logs; industrial debris; and agricultural features, such as drains, watering troughs, spring boxes, abandoned sheds, or hay-ricks. Incised stream channels with portions narrower than 18 inches and depths greater than 18 inches may also provide estivation habitat.

Egg masses that contain about 2,000 to 5,000 moderate-sized (2.0 to 2.8 mm (0.08 to 0.11 in.) in diameter), dark reddish brown eggs are typically attached to vertical emergent vegetation, such as bulrushes (*Scirpus* spp.) or cattails (*Typha* spp.) (Jennings *et al.* 1992). California red-legged frogs are often prolific breeders, laying their eggs during or shortly after large rainfall events in late winter and early spring (Hayes and Miyamoto 1984). Eggs hatch in 6 to 14 days (Jennings 1988b). In coastal lagoons, the most significant mortality factor in the pre-hatching stage is water salinity (Jennings *et al.* 1992). One hundred percent mortality occurs in eggs exposed to salinity levels greater than 4.5 parts per thousand (Jennings and Hayes 1990). Larvae die when exposed to salinities greater than 7.0 parts per thousand (Mark Jennings, National Biological Service, *in litt.*, 1994). Larvae undergo metamorphosis 3.5 to 7 months after hatching (Storer 1925, Wright and Wright 1949, Jennings and Hayes 1990). Of the various life stages, larvae probably experience the highest mortality rates, with less than 1 percent of eggs laid reaching metamorphosis (Jennings *et al.* 1992). Sexual maturity normally is reached at 3 to 4 years of age (Storer 1925, Jennings and Hayes 1985), and California red-legged frogs may live 8 to 10 years (Jennings *et al.* 1992).

The diet of California red-legged frogs is highly variable. Larvae probably eat algae (Jennings *et al.* 1992). Hayes and Tennant (1985) found invertebrates to be the most common food items of adult frogs. Vertebrates, such as Pacific tree frogs (*Hyla regilla*) and California mice (*Peromyscus californicus*), represented over half of the prey mass eaten by larger frogs (Hayes and Tennant 1985). Hayes and Tennant (1985) found juvenile frogs to be active diurnally and nocturnally, whereas adult frogs were largely nocturnal. Feeding activity likely occurs along the shoreline and on the surface of the water (Hayes and Tennant 1985).

The California red-legged frog has sustained a 70 percent reduction in its geographic range in California as a result of several factors acting singly or in combination (Jennings *et al.* 1992). Habitat loss and alteration, overexploitation, and introduction of exotic predators were significant factors in the California red-legged frog's decline in the early to mid 1900s. It is estimated that California red-legged frogs were extirpated from the Central Valley floor before 1960. Remaining aggregations (assemblages of one or more individuals, not necessarily a viable population) of California red-legged frogs in the Sierran foothills became fragmented and were later eliminated by reservoir construction, continued expansion of exotic predators, grazing, and prolonged drought. Within the Central Valley hydrographic basin, only 14 drainages on the Coast Ranges slope of the San Joaquin Valley and one drainage in the Sierran foothills are actually known to support or may support California red-legged frogs, compared to over 60 historic locality records for this basin (a 77 percent reduction). The pattern of disappearance of California red-legged frogs in southern California is similar to that in the Central Valley, except that urbanization and associated roadway, large reservoir (introduction of exotic predators), and stream channelization projects were the primary factors causing population declines. In southern California, California red-legged frogs are known from only five locations south of the Tehachapi Mountains, compared to over 80 historic locality records for this region (a reduction of 94 percent).

California red-legged frogs are known to occur in 243 streams or drainages in 22 counties, primarily in the central coastal region of California. The current number of occupied drainages represents information obtained during the public comment period and re-evaluation of Service records. This re-evaluation resulted in the compilation of a threat matrix for all drainages known to support California red-legged frogs (U.S. Fish and Wildlife Service 1995). The term "drainage" will be used to describe named streams, creeks, and tributaries from which California red-legged frogs have been observed. For purposes of this final rule, a single occurrence of California red-legged frog is sufficient to designate a drainage as occupied by, or supporting California red-legged frogs. Monterey (32), San Luis Obispo (36), and Santa Barbara (36) counties support the greatest number of currently occupied drainages. Historically the California red-legged frog was known from 46 counties, but the taxon is now extirpated from 24 of those counties (a 52 percent reduction in county occurrences). In seven of the 22 occupied counties (32 percent), California red-legged frogs are known from a single occurrence. The most secure aggregations of California red-legged frogs are found in aquatic sites that support substantial riparian and aquatic vegetation and lack exotic predators (e.g., bullfrogs (*Rana catesbeiana*), bass (*Micropterus* spp.), and sunfish (*Lepomis* spp.)). Only three areas within the entire historic range of the California red-legged frog may currently support more than 350 adults, Pescardero Marsh Nature Preserve (San Mateo County), Point Reyes National Seashore (Marin County), and Rancho San Carlos (Monterey County). The San Francisco Airport drainage location, identified in the proposed rule as containing over 350 individuals, is now thought to be nearly extirpated. Threats, such as expansion of exotic predators, proposed residential development, and water storage projects, occur in the majority of drainages known to support California red-legged frogs.

Previous Federal Action

On January 29, 1992, the Service received a petition from Drs. Mark R. Jennings and Marc P. Hayes, and Mr. Dan Holland to list the California red-legged frog (*Rana aurora draytonii*). The petition specified endangered or threatened status by distinct drainages (watersheds) within the range of the species. On October 5, 1992, the Service published a 90-day petition finding (57 FR 45761) that substantial information had been presented indicating the requested action may be warranted. Public comments were requested and a review of the species' status was initiated. The California red-legged frog had been included as a Category 1 candidate species in the Service's November 21, 1991, Animal Notice of Review (56 FR 58804). Category 1 candidates (now known simply as candidates) are species for which the Service has sufficient information on biological vulnerability and threat to support proposals to list them as endangered or threatened. On July 19, 1993, the Service published a 12-month finding on the petitioned action (58 FR 38553). This finding indicated that listing of the California red-legged frog was warranted and that a proposed rule would be published promptly. On February 2, 1994 (59 FR 4888), the Service published a proposal to list the California red-legged frog as an endangered species. Based on new information received during the comment period on the proposed rule, the Service now determines the California red-legged frog to be a threatened species.

Summary of Comments and Recommendations

In the February 2, 1994 proposed rule (58 FR 4888) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to development of a final rule. Appropriate State agencies and representatives, County and City governments, Federal agencies and representatives, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the San Francisco Chronicle on February 9, 1994, and the Sacramento Bee on February 10, 1994, both of which invited public comment.

The Service received eight written requests for a public hearing. Three requests came from the Mosquito and Vector Control Districts of Glenn, Sutter/Yuba, and Butte counties. Additional requests came from William Hazeltine, a private consultant; the California Cattlemen's Association; the Cambria Community Services District; the United Residential Lot Owners of Cambria, Inc.; and Price, Postel, and Parma, a Santa Barbara law firm. As a result, the Service published a notice of public hearing on April 8, 1994 (59 FR 16792), and reopened the comment period until May 27, 1994. Appropriate State agencies and representatives, County and City governments, Federal agencies and representatives, scientific organizations, and other interested parties were contacted regarding the hearing. A newspaper notice of the public hearing was published in the Sacramento Bee on April 25, 1994, which invited general public comment. A public hearing was conducted at the Radisson Hotel in Sacramento, California on May 12, 1994. Testimony was taken from 6:00 p.m. to 8:00 p.m. Seventeen individuals testified at the hearing.

During the comment periods, the Service received 72 comments (i.e., letters and oral testimony) from 57 individuals or agencies. Of the 31 commenters that stated a position, 22 (71 percent) supported listing and 9 (29 percent) did not.

Support for the listing was expressed by one State agency (California

Department of Parks and Recreation) and 18 other interested parties. Three commenters recommended listing the California red-legged frog as threatened. Opposition to the listing was expressed by two mosquito abatement or vector control districts and seven other interested parties. Of the 26 respondents indicating no position on the listing, several expressed concern regarding the impact of listing.

Written comments and oral statements obtained during the public hearing and comment periods are combined in the following discussion. Opposing comments and other comments questioning the rule can be placed in 10 general groups based on content. These categories of comment, and the Service's response to each, are listed below.

Issue 1: Insufficiency of Scientific Data

Comment: Several commenters stated that insufficient data are available to warrant listing of the California red-legged frog. They suggested that the distribution of the California red-legged frog is more widespread and that many more sites may exist than were reported in the proposed rule because surveying within the historic range of the taxon has not been complete. One commenter suggested that only easily accessible areas on the coast seemed to have been surveyed and if a watershed approach had been taken, the range of the species would be greater than 30 percent of its historical range. Another commenter suggested that many surveys were done in drought years, which would bias the data.

Service Response: The Service mapped the current range of the California red-legged frog based on survey results. Wherever a watershed was known to support California red-legged frogs, the entire watershed was included as being within the species' current range. The only watersheds that were not included in their entirety are those in the Sierra Nevada where the upper reaches are too high in elevation to provide habitat for the California red-legged frog, and portions of watersheds located on the Central Valley floor. In the Coast Ranges, watersheds lacking information on California red-legged frogs were included within the current range of the California red-legged frog from Marin County south to Ventura County.

Over the last 15 years, the petitioners have conducted multiple surveys, visiting each survey site a minimum of three times, to determine the status of the California red-legged frog throughout its entire range. The petitioners rechecked 75 percent of the historic sites in the coastal region of the range of the California red-legged frog and all suitable habitat within the species historic range in the Central Valley and Sierra Nevada foothills including all but one of the historic sites. This site was surveyed by another herpetologist, Dave Martin (Jennings, pers. comm., 1995). In surveying suitable habitat, access to some areas was denied by private landowners. Even so, surveyors were able to obtain access to all major drainages within their survey area (Jennings, pers. comm., 1995). Many of the surveys were conducted between 1986 and 1990, which were considered drought years. However, in the majority of cases reasons other than drought were considered responsible for the absence of frogs (Jennings, pers. comm., 1995). Where drought was thought to be the case, repeat surveys were performed in subsequent wet years (Jennings, pers. comm., 1995). Approximately half of the sites surveyed were along roadsides and easily accessible. The remaining sites were difficult to access, often requiring strenuous hikes (Jennings, pers. comm., 1995). Surveying by the petitioners and others is ongoing in many portions of the State.

Surveys conducted by other researchers support the conclusions of the petitioners. Extensive surveying has been conducted in years with and without drought conditions in Sierran national forests by David Martin (University of California, Santa Barbara,, pers. comm., 1994); Santa Clara County and the foothills of the western Sierra Nevada between Modesto and Fresno by the Coyote Creek Riparian Station (*in litt.*, 1993); the Sacramento Valley, San Joaquin Valley and inner Coast Ranges by the University of California at Davis (H. Bradley Shaffer, University of California, Davis, *in litt.*, 1994); Santa Cruz County by the University of California at Santa Cruz (Nauman 1992); Santa Cruz and San Mateo counties (Mike Westphal, Coyote Creek Riparian Station, 1995), and the Point Reyes Peninsula by the National Park Service (Gary Fellers, National Biological Service, *in litt.*, 1994).

As a result of these surveys and additional information received during the public comment period following publication of the proposed rule, 54 new localities of California red-legged frogs were identified. The majority of these sightings, however, are within the current range of the California red-legged frog as identified in the proposed rule. The exceptions are the discovery of California red-legged frogs in the Sierran foothills (Butte County, Pinkard Creek), the Transverse mountain range (Los Angeles county near Palmdale), Sulphur Springs Creek in Solano County, and Mine Creek in Fresno County; the latter two representing minor range extensions to the east. The Service is confident that the Central Valley floor, Sierra Nevada foothills, and southern California (south of the Tehachapi Mountains) have been surveyed sufficiently to draw the conclusion that California red-legged frogs have been extirpated or nearly extirpated from these regions. These three regions comprise over 70 percent of the California red-legged frog's historic range.

Section 4(b)(1)(A) of the Act requires that a listing determination be based on the best scientific and commercial data available. The Service bases this listing determination on data collected over a period of 15 years by the petitioners and numerous other qualified herpetologists. All data indicate a downward trend in the range of the California red-legged frog and a preponderance of small, fragmented aggregations of frogs. The viability of the remaining California red-legged frog aggregations is threatened by numerous factors which are discussed in detail in this rule. The Service maintains, therefore, that sufficient data are available to warrant listing the California red-legged frog. However, because the Service received significant additional information on locations of California red-legged frog aggregations within their current range during the comment period, listing the taxon as threatened rather than endangered is deemed more appropriate.

Comment: Another commenter stated that the conclusion in the proposed rule that 75 percent of the species' remaining range is threatened by one or more factors has no basis in scientific fact and is not supported by any substantial scientific evidence.

Service Response: The proposed rule stated that the California red-legged frog has been extirpated from 75 percent of the historic range of the taxon. Because of the inclusion of 54 additional streams or drainages known to support California red-legged frogs, the final rule has been revised to state that extirpation has occurred in 70 percent of the historic range. The commenter misinterpreted the information in the proposed rule. The estimate of extirpated range is based on information published in the literature and presented to the Service by the petitioners and other herpetologists, survey biologists, and consultants.

Comment: One commenter stated that an article in the March 1, 1994, San Ramon Valley Times reported that the East Bay Regional Park District had not surveyed for frogs on its properties. Given that the District comprises over 75,000 acres, the commenter believed that this lack of information was a significant data gap.

Service Response: East Bay Regional Park District biologists and private consultants in 1990, 1993, and 1994 surveyed an estimated 95 percent of District properties that could contain California red-legged frog habitat (Joseph DiDonato, East Bay Regional Park District, pers. comm. and *in litt.*, 1994; Karen Swaim, LSA Associates, Inc.,.*in litt.*, 1994). California red-legged frogs were found in 5 of 53 District parks. Included in the survey results were 8 streams or drainages not previously known to be inhabited by California red-legged frogs.

Comment: One commenter stated that the information on California red-legged frog locations in Alameda County is probably not complete. The commenter contended that California red-legged frogs are probably not as rare in Alameda County as purported in the proposed rule.

Service Response: California red-legged frogs are known from 21 drainages in the county. Many other drainages in the county that have been surveyed by the East Bay Regional Park District and LSA Associates, Inc. harbor only bullfrogs. Of the 22 counties known to support aggregations of California red-legged frogs, Alameda County ranks ninth in total number of drainages supporting the taxon. Over half of the known frog aggregations in the county, however, are threatened by various factors including exotic predators, urban development, off-road vehicles, and grazing. While it is possible that some California red-legged frog locations have yet to be discovered, the Service believes it is unlikely that California red-legged frogs inhabit more than the 21 known drainages in Alameda County.

Comment: One commenter stated that the Service's data on locations of California red-legged frogs does not match information contained in the California Department of Fish and Game Natural Diversity Database (NDDB).

Service Response: The researchers who petitioned the Service to list this species and the Service have reviewed all data available from the NDDB regarding locations of California red-legged frogs. The NDDB currently contains approximately 122 records of California red-legged frogs. The petitioners have determined current and historic range of the taxon from 1,205 museum records and 250 records from other sources coupled with extensive field checking of records. All locations identified in the NDDB prior to 1992 were field checked by the petitioners. All new locations identified in the NDDB from 1992 to the present have been added to the Service's analysis of the current range of the California red-legged frog. These additional records have not appreciably extended the currently known range of the taxon.

Comment: Several commenters noted that the proposed rule indicated uncertainty in biology, life cycle, habitat requirements, and predators of the California red-legged frog, including identifying where frogs overwinter, where post-metamorphic frogs feed, what larvae eat, and site specific predators. The commenters believed that listing of the taxon was not warranted until these data gaps were filled.

Service Response: The Service has relied on the best available scientific and commercial data in making this listing determination. The Service concurs that many aspects of the biology, predator-prey interactions, and microhabitat requirements of the California red-legged frog are not completely understood. This is true for most species of wildlife, including common species that have been studied extensively. Sufficient knowledge of the biology and habitat requirements of the California red-legged frog exists to identify suitable habitats for the taxon, and document population sizes, threats, and its status over time. It is this latter information along with the scientific and commercial information that is used in determining whether or not to list a species under section 4(a) of the Act. A complete understanding of the biology and microhabitat requirements of a listed species are most important in the recovery process. However, a significant delay in listing a species due to large, long-term biological or ecological research efforts could compromise the survival of the California red-legged frog.

Comment: Several commenters stated that the proposed rule cites livestock grazing as a major factor in the decline of the California red-legged frog, but fails to offer site-specific examples of habitat degradation and "take" of the species as a result of grazing. One commenter thought that the Service, therefore, could not restrict grazing practices in any way if the species is listed.

Service Response: The proposed rule includes livestock grazing as one of many factors affecting the California red-legged frog, and ranks it as a contributing factor, rather than as a major factor. No site specific studies have been done that document the decline and disappearance of California red-legged frogs once grazing is introduced into an area. Most evidence on the effects of grazing on the California red-legged frog is circumstantial. However, extensive research has been done on the effects of livestock grazing on the aquatic environment. As stated in the proposed rule, the petitioners found that grazing occurred at all historic sites known to support California red-legged frogs in the Central Valley hydrologic basin. Combining this information with information about the habitat preferences of the California red-legged frog leads to the logical conclusion that grazing, where it has dramatically altered California red-legged frog habitat, has played a role in the decline of this taxon.

Comment: One commenter stated that the petition to list the California red-legged frog relies heavily on personal observations, personal communications, and unpublished data. Although the Service is required to base listings on the "best available data", the commenter believed that such information did not meet the definition of scientific data because they would be impossible to verify. Three commenters recommended that the proposed listing action be halted and a comprehensive, unbiased scientific review of the status of the California red-legged frog be initiated and published.

Service Response: The researchers who petitioned the Service to list the California red-legged frog are acknowledged experts on this taxon as evidenced by numerous peer reviewed publications on the subject. The majority of the personal observations cited in the petition refer to specific aspects of California red-legged frog biology, which is relevant to the species' management, but less important in determining species' status. Many of the references to unpublished data in the petition refer to distribution and status information that had been collected by the petitioners as part of their ongoing research to follow the status of the California red-legged frog. Much of their status information is supported by surveys conducted by numerous other qualified herpetologists. The Service, therefore, finds that the data presented by the petitioners are credible and have been verified by other experts in the field.

Comment: Several commenters requested that prior to listing the California red-legged frog, the Service quantify impacts to the various life stages of the frog caused by storm damage repair, flood control efforts, reservoir creation, diking and ditching,

regular road maintenance, disease, livestock grazing, off-road vehicle use, timber harvest, predation by native and non-native predators, competition, ultraviolet radiation, water quality, agricultural practices, recreation, reproductive interference, drought, wildfires, flooding, and natural population fluctuations.

Service Response: Section 4(a)(1) of the Act requires the Service to evaluate threats to the species. The Service is unable to quantify how each of the above individual threats has impacted the California red-legged frog. Many threats work synergistically to cause population declines. Thus, the effect of each threat cannot be quantified separately. The above factors are believed to contribute to significant population declines. Completing research in all these areas prior to listing the California red-legged frog could seriously compromise its survival because of lengthy time periods needed to quantify impacts. Further research in these areas, however, would aid the Service in future recovery actions for this species.

Comment: One commenter recommended that the Service delineate the current range and habitat locations of the California red-legged frog in San Joaquin County prior to listing.

Service Response: The Service has delineated the current range and specific habitat locations of California red-legged frogs in San Joaquin County. Two locations of the California red-legged frog occur in San Joaquin County, both in western portions of the county. The distribution map for the California red-legged frog includes all portions of western San Joaquin County that lie on the east slope of the coast range, west of Highway 580.

Comment: One commenter recommended that the Service quantify California red-legged frog population numbers in lotic and lentic habitat and establish management and recovery programs for each habitat type prior to listing the taxon.

Service Response: A recovery plan will be prepared for the California red-legged frog after the taxon is listed. Completion of the above recommended research would be most appropriate during the recovery process for the California red-legged frog.

Issue 2: Causes for California Red-Legged Frog Decline

Comment: Several commenters suggested that ultraviolet-B (UV–B) radiation or estrogen mimics, which have been implicated in the current observed worldwide decline in amphibians, may be significant causes of observed declines in the range and numbers of California red-legged frogs.

Service Response: The Service has reviewed the paper by Blaustein *et al.* (1994) regarding the possible effect of UV–B radiation on the eggs of three amphibian species, the Pacific treefrog (*Pseudacris regilla*), western toad (*Bufo boreas*), and Cascade frog (*Rana cascadae*). Our review focused on results reported for the Cascade frog, because this species is most closely related to the California red-legged frog. Results of tests on Cascade frog eggs from two sites showed mixed results. One site showed that hatching success of *R. cascadae* was greater under sunlight lacking UV–B than under unfiltered sunlight. At the second site, however, the hatching success under UV–B blocking filters was not significantly different from success under unfiltered sunlight. Thus, these data do not present sufficient evidence of a correlation between UV–B radiation and hatching success in the related Cascade frog.

Because UV–B radiation would have greater adverse effects at higher elevations, the Cascade frog, which is a higher elevation species than the California red-legged frog, would be expected to be more severely affected by UV–B radiation, if indeed this is an important factor. Also, because the California red-legged frog attaches its egg masses to aquatic vegetation and prefers aquatic habitats with overhanging vegetation, the effects of UV–B radiation would be expected to be less than for the Cascade frog, whose eggs are typically laid in shallow open water (Nussbaum *et al.* 1983). In addition, the majority of the observed decline in the California red-legged frog occurred prior to the late 1970's, which is when noticeable declines in amphibian species began in western North America (M. Jennings, pers. comm, 1994).

A number of recent studies address certain contaminants that disrupt biological processes by mimicking the effects of naturally produced hormones, such as the female hormone estrogen (Raloff 1994). This phenomenon has been implicated in the recent worldwide decline in amphibians. Several studies have been done on reptiles, including the American alligator (*Alligator mississippiensis*) and red-eared slider turtle (*Pseudemys scripta elegans*). To our knowledge, no studies have been done on amphibians. The potential effects of estrogen mimics on California red-legged frogs are unknown. In addition, the majority of the observed decline in the California red-legged frog occurred prior to the late 1970's, which is when noticeable declines in amphibian species began in western North America (M. Jennings, pers. comm, 1994).

Comment: Several commenters stated that evidence suggesting mosquitofish (*Gambusia affinis*) are significant predators of California red-legged frog larvae is not strong. The commenters stated that infrequent co-occurrence of fish and frogs does not explain potential causation. Other factors may be involved in population decline including microhabitat features of wetlands, which cannot be successfully duplicated in a laboratory setting. Also in a natural setting, the vulnerable stage for California red-legged frog tadpoles (February through April) normally does not coincide with the time of year when mosquitofish numbers are high. Microhabitat usage may not overlap. The commenters pointed out that there are sites where mosquitofish and California red-legged frogs coexist. One commenter objected to the mosquitofish being included as a verified predator of California red-legged frogs and especially as an organism more harmful than introduced centrarchid fishes or bullfrogs.

Service Response: The Service is aware of only one study that has indicated that in laboratory settings mosquitofish prey on the larvae of California red-legged frogs (Schmieder and Nauman 1994). However, there is a strong correlation between the absence of California red-legged frogs and the presence of mosquitofish in the field. The Service is aware of several sites where mosquitofish and California red-legged frogs are currently coexisting. This evidence suggests that the relationship between mosquitofish and California red-legged frogs is complex. Additional research clearly is needed to more fully understand how these two species interact. The final rule has been revised to reflect current knowledge on this issue. The Service cannot determine whether mosquitofish are harmful to California red-legged frogs.

Comment: Several commenters disagreed that mosquitofish could be significant predators of California red-legged frogs. They cited observations in mosquitofish ponds of mosquitofish numbers decreasing as a result of infestations by bullfrogs. These commenters noted that no predation of bullfrog tadpoles by mosquitofish was observed.

Service Response: Mosquitofish would not be expected to prey on larval bullfrogs because of the apparent olfactory rejection (unpalatability) of bullfrog larvae by predatory fish (Kruse and Francis 1977). California red-legged frogs lack this olfactory rejection effect, and, therefore, cannot be compared to bullfrogs (Schmieder and Nauman 1994).

Comment: One commenter pointed out that widespread, large scale use of mosquitofish in California began in the mid to late 1970's, and therefore, could not be responsible for the extirpation of California red-legged frogs from the Central Valley floor because frogs were extirpated from this region before 1960.

Service Response: The Service concurs that mosquitofish were not a major factor in the decline and disappearance of California red-legged frogs from the Central Valley floor. The proposed and final rules point to overharvest combined with the loss of over 3,800,000 acres of wetlands as the major reasons for extirpation of California red-legged frogs from the valley floor (Frayer, *et al.* 1989). However, significant introductions of mosquitofish began in the Central Valley as early as 1922 (Moyle 1976). Thus it is possible that mosquitofish played a role in the decline of California red-legged frogs on the Central Valley floor.

Comment: Two commenters stated that mosquitofish are not significant predators of California red-legged frogs because the two species coexist in wetlands in Shasta and Colusa counties.

Service Response: California red-legged frogs were extirpated from Shasta and Colusa counties before 1960 (Jennings *et al.* 1992).

Comment: Several commenters provided more specific or additional information on threats to California red-legged frogs within their current range. Several commenters provided information regarding potential threats, including road kills, current harvesting of California red-legged frogs for food, construction activities, and poor management of flood control basins.

Service Response: These comments have been noted and included in this final rule.

Comment: One commenter stated that massive predation by introduced predators, not grazing, is in large part responsible for any observed population declines in the California red-legged frog. Similarly, another commenter stated that the decline and disappearance of California red-legged frogs in the foothill portions of Madera, Fresno, and Mariposa counties were due to dispersal of bullfrogs into stock ponds, and not due to grazing. The commenter stated that California red-legged frogs coexisted with grazing until about 1940, when bullfrogs were introduced into the San Joaquin Valley.

Service Response: Of the identified threats facing the California red-legged frog, introduced predators, including bullfrogs, are considered to be a significant and widespread threat. Over 50 percent of streams and drainages inhabited by California red-legged frogs are known to support bullfrogs or other exotic predators in some portion of that drainage. Grazing, however, can threaten the California red-legged frog where grazing pressure results in dramatic changes in riparian and wetland habitat. As discussed in this final rule, California red-legged frogs generally prefer densely-shaded wetland habitats, whereas bullfrogs prefer more open wetland habitats. Overgrazing in riparian areas, therefore, exacerbates the threat of bullfrog expansion by creating habitat bullfrogs prefer.

Comment: One commenter stated that profitable livestock operations and high quality riparian habitat areas are not mutually exclusive. The commenter points to Point Reyes National Seashore as an example of where cattle grazing and California red-legged frogs successfully coexist. The commenter stressed that livestock grazing is the only economic activity in the region that provides large contiguous areas of open space.

Service Response: The Service concurs that properly managed livestock grazing can be compatible with preservation of California red-legged frog populations. California red-legged frogs and cattle grazing are able to coexist at Point Reyes National Seashore because the National Park Service maintains tight control over grazing pressure (Gary Fellers, National Biological Service, pers. comm., 1994). The Service acknowledges that preservation and proper management of open space, especially in riparian areas, is a fundamental requirement in the survival and recovery of the California red-legged frog.

Comment: One commenter stated that the single most devastating change in wildlife habitat in California in the last 200 years has been urbanization. The commenter thought that the proposed rule had not given this factor proper recognition, but instead condemned activities such as livestock grazing.

Service Response: The proposed rule and this final rule do not single out livestock grazing as the greatest threat to the California red-legged frog, but instead discusses all factors known or likely to threaten California red-legged frog populations. The proposed and final rules list numerous proposed developments that threaten remaining populations of California red-legged frogs. The Service believes urbanization, as well as agriculture, have caused substantial changes in wildlife habitat in California. This is especially the case in the Central Valley, which historically was the stronghold of the California red-legged frog.

Comment: Several commenters stated that climatic conditions (i.e., drought and above average rainfall events) were more to blame for California red-legged frog declines than human activities, including timber harvest and historic commercial harvest of the California red-legged frog itself. One commenter noted that dramatic declines in historic frog harvest information could indicate that the species is subject to wide variation in population numbers due to climatic conditions rather than an indication of overharvest. The commenter requested that an historical survey of the variations in population numbers due to climatic changes be undertaken prior to publication of a final rule.

Service Response: The rule includes a discussion of natural factors, such as drought and heavy rainfall events, that are known to adversely affect California red-legged frog populations. It is difficult to separate the effects of natural events from human activities when attempting to determine the cause for a population's decline in a particular area. A single factor is seldom the cause of the decline of a species. Many of the factors discussed in the proposed rule and this final rule work synergistically. Regardless of which factors resulted in historic population declines, California red-legged frog populations in the Central Valley and Sierra Nevada, in particular, could not rebound from this decline because at the same time their wetland and riparian habitat was being converted to agricultural land and urban areas.

Populations of most species are cyclic in nature, responding to such natural factors as weather events, disease, and predation. Natural events, however, including long-term drought or extreme rainfall, have less of a negative effect overall on a species when that species is widely and continuously distributed. Where populations are small, fragmented, or isolated by various human-related factors including habitat loss, water development, and water diversion, these populations are more vulnerable to extirpation by stochastic or random events and cumulative effects.

It is likely that over time, California red-legged frogs experienced wide variations in population size as a result of climatic events. A historical survey dating back to the early 1900's focusing on the variation in frog population

numbers due to climatic changes is not possible because no range wide population information was collected on the California red-legged frog dating back that far. If such data existed, conclusions drawn from such an historical survey would be tenuous. The many adverse human factors that have contributed to California red-legged frog population declines since 1900 would cloud any analysis of the effects of drought or high rainfall events.

Comment: One commenter disagreed with the conclusion that pre-1900 overharvesting of the California red-legged frog in the Central Valley led to their decline. The commenter stated that other known historical factors were not cited in the proposed rule.

Service Response: No studies were conducted in the late 1800's or early 1900's documenting the cause or causes of declines in California red-legged frog populations in the Central Valley. Extremely high numbers of California red-legged frogs reported in the San Francisco markets followed by a collapse of the market around the turn of the century strongly suggests that commercial harvesting had a significant effect on California red-legged frog numbers. The Central Valley, and particularly the San Joaquin Valley, were reported at the time to be prime habitat for the California red-legged frog. The proposed rule and this final rule reported all known historical factors that may have contributed to the decline of California red-legged frogs in the Central Valley. Overharvesting was certainly not the only factor impacting California red-legged frog populations. Conversion of over 3,800,000 acres of wetland and riparian habitats in the Central Valley to agricultural land and urban areas began during the same period, resulting in the elimination of California red-legged frogs from the valley floor before 1960.

Comment: Several commenters stated that many of the urban development projects referred to in the proposed rule in the Central Coast region may or may not be constructed during the next 5 or 10 years.

Service Response: The Service recognizes that all projects proposed are not necessarily completed. This may be due to lack of proper permits necessary for construction, or interruption of planning efforts. The fact that projects have been proposed presents a future threat to California red-legged frog aggregations in the central coast region, especially if these projects result in direct or indirect riparian habitat degradation.

Comment: One commenter stated the proposed rule incorrectly includes the Cambria Meadows drainage as an area where California red-legged frog habitat has been directly degraded through stream reductions to accommodate new urban growth.

Service Response: This final rule states that proposed urban and/or recreational development could degrade or eliminate California red-legged frog habitat in Cambria Meadows Creek.

Comment: One commenter thought that support of the proposed listing appeared to rely heavily on conditions reported for the north coast of San Luis Obispo County.

Service Response: Neither the proposed rule nor this final rule rely heavily on conditions reported for the north coast of San Luis Obispo County in determining the need to list the California red-legged frog. San Luis Obispo County contains the third highest number of drainages known to support California red-legged frogs. Although California red-legged frog aggregations in streams in the county are threatened by a variety of factors, many other counties have comparable threats that are reported in the proposed and final rule.

Comment: Several commenters were concerned about the accuracy of the conclusions drawn by Rathbun *et al.* (1991) as cited in the proposed rule regarding the combined effects of water extraction and drought on populations of California red-legged frogs in lower Santa Rosa Creek. Numerous commenters presented data both to support and refute the hypothesis that water extractions from Santa Rosa Creek have significantly changed its hydrology.

Service Response: The Service recognizes that controversy exists regarding the environmental effects of water extraction from Santa Rosa Creek. The information and data presented by the many commenters on this subject will be thoroughly reviewed by Service field biologists during recovery planning efforts and when consulting on any proposed projects that could adversely affect California red-legged frogs in Santa Rosa Creek.

Ground water and surface water supplies in Santa Rosa Creek are finite. Unchecked water extraction may exceed input and significantly reduce the availability of riparian and aquatic habitat for California red-legged frogs in the future. Drought accentuates the effect, and if not considered in water planning, overallocation of stream flows and overdraft of groundwater resources combined with long-term drought could result in permanent elimination of California red-legged frogs from all or a large part of the drainage.

Comment: Several commenters pointed out that although California red-legged frogs were absent from lower Santa Rosa Creek during the drought (Rathbun *et al.* 1991), red-legged frogs have been sighted in recent years in the lower reaches of the creek, presumably because of the above average rainfall in the winter of 1992–1993. California red-legged frogs, which were known to inhabit upper reaches of the creek during the drought years, were presumed to have traveled downstream to reoccupy former habitat. One commenter suggested that the Service should study an entire watershed prior to concluding that the California red-legged frog is threatened in that watershed.

Service Response: The Service is aware that California red-legged frogs occur in the upper reaches of Santa Rosa Creek. Santa Rosa Creek is one of 32 drainages in San Luis Obispo County known to provide habitat for the California red-legged frog. Neither the Service nor Rathbun et al. (1991) have concluded that California red-legged frogs have disappeared from Santa Rosa Creek. Rathbun *et al.* (1991) refers only to conditions in the lower portions of the creek and lagoon.

The Service recognizes that the California red-legged frog is capable of repopulating former habitat when rainfall returns. However, other factors, including overallocation of water, may exacerbate the effects of drought through loss of riparian habitat or increased salinity in coastal lagoons. Where appropriate riparian or wetland habitat is degraded over the long-term by these hydrologic modifications, repopulation by California red-legged frogs in altered portions of the drainage is not possible regardless of whether red-legged frogs occur in upstream reaches. As portions of the drainage become unsuitable habitat for California red-legged frogs, isolated aggregations of frogs become more susceptible to stochastic extinction. The Service is not basing this listing determination on the status of the California red-legged frog in any one specific watershed, but rather on the continuing population decline and threats to the remainder of its range.

Comment: One commenter noted that California red-legged frogs persist in upstream portions of Carmel River despite the fact that bullfrogs are found in the lower river and two reservoirs. The commenter felt that this evidence refuted the assertion that California red-legged frog populations usually disappear from a drainage within 5 years after a reservoir is built.

Service Response: The proposed rule and this final rule state that California red-legged frogs generally are extirpated from downstream portions of a drainage 1 to 5 years after filling of a reservoir. Hayes and Jennings (1988), which is cited as the source of this information, does not present this cause and effect relationship as an absolute. The authors state that this relationship depends on the size of the drainage. In larger drainages, isolated populations can persist upstream. This final rule has been revised to clarify this point.

Comment: One commenter thought that too much emphasis was given to the negative impacts of salinity levels in coastal lagoons. Natural overwash of salt water into coastal lagoons makes these areas unreliable habitat for California red-legged frogs.

Service Response: The Service acknowledges that coastal lagoons provide unreliable habitat for California red-legged frogs because of natural salinity changes caused by wave overwash. However, large populations of California red-legged frogs do occur in coastal lagoons, with Pescadero Marsh supporting one of the largest remaining populations. Therefore, the larger lagoon systems should not be discounted. Overallocation of stream water resources intensifies the effect of drought on coastal lagoon populations, which over the long-term could result in changes in lagoon vegetation and hydrology that are unfavorable to California red-legged frogs.

Comment: One commenter suggested that competition with tree frogs and foothill yellow-legged frogs (*Rana boylii*) may be a contributing factor in the decline of California red-legged frog.

Service Response: No evidence exists in the literature to support the theory that competition between California red-legged frogs and Pacific tree frogs or foothill yellow-legged frogs resulted in California red-legged frog declines.

Issue 3: Economic and Environmental Effects of Listing

Comment: Several commenters stated that listing of the California red-legged frog may act to limit or curtail existing uses of private property, and therefore, a takings implication assessment should be made prior to taking any final action.

Service Response: Regarding Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, the Attorney General has issued guidelines to the Department of the Interior (Department) on implementation of the Executive Order. Under these guidelines, a special rule applies when an agency within the Department is required by law to act without exercising its usual discretion—that is, to act solely upon specified criteria that leave the agency no discretion.

In this context, the Service might be subject to legal challenge if it considered or acted upon economic data. In these cases, the Attorney General's guidelines state that Takings Implications Assessments (TIAs) shall be prepared after, rather than before, the agency makes the decision upon which its discretion is restricted. The purpose of TIAs in these special circumstances is to inform policy makers of areas where unavoidable taking exposures exist. Such TIAs shall not be considered in the making of administrative decisions that must, by law, be made without regard to their economic impact. In enacting the Act, Congress required the Department to list species based solely upon scientific and commercial data indicating whether or not they are in danger of extinction. The Act does not allow the Service to withhold a listing based on concerns regarding economic impact. The provisions of the guidelines relating to nondiscretionary actions clearly are applicable to the determination of threatened status for the California red-legged frog.

Comment: Several commenters expressed concern about an adverse effect of listing the California red-legged frog on the economy. Another commenter stated that the economic impact of listing the California red-legged frog would be devastating to an already sluggish State economy.

Service Response: Under section 4(b)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to "ensure" that listing decisions are "* * * based solely on biological criteria and to prevent nonbiological considerations from affecting such decisions * * *" H. R. Rep. No. 97–835, 97th Cong., 2d Sess. 19 (1982). As further stated in the legislative history, "* * * economic considerations have no relevance to determinations regarding the status of species * * *" *Id.* at 20. Because the Service is specifically precluded from considering economic impacts, either positive or negative, in a final decision on a proposed listing, the Service need not evaluate or consider the economic impacts of listing this species.

Comment: One commenter suggested that the researchers who petitioned the Service to list this species were using the Endangered Species Act as a method of furthering their personal agenda to remove livestock from public and private rangeland.

Service Response: The Service is unaware that the researchers who petitioned the Service to list the California red-legged frog have a personal agenda to remove livestock from public and private rangeland. Management of livestock on rangelands is one of many possible alternatives available to address adverse effects of grazing on California red-legged frog populations. For example, minor alterations in management practices and fencing of key riparian areas are two alternatives that preserve grazing opportunities while protecting California red-legged frogs.

Comment: Numerous commenters stated that the Service should consider the human health implications of eliminating the use of mosquitofish, draining of wetlands, and insecticides to control mosquitos.

Service Response: California red-legged frogs require still or slow-moving water with dense emergent and overhanging riparian vegetation for survival. Sites with these habitat attributes are often at great distances from urban areas and are not regularly stocked with mosquitofish or otherwise managed to control mosquitos. Therefore, at the majority of remaining sites inhabited by California red-legged frogs, mosquito control is not likely to be an issue. Where mosquitos are an issue, other biological control methods are available and may be more appropriate in California red-legged frog habitat. These methods include application of several species of bacteria (*Bacillus* sp.), and more recently, application of a fungus (*Lagenidium giganteum*), which apparently attacks and kills only mosquitos. The Service is willing to work with mosquito and vector control districts to minimize conflicts between public health and the California red-legged frog.

The Service concludes that listing the California red-legged frog as a threatened species is not likely to hinder efforts of any Mosquito and Vector Control Districts to control mosquitos in California.

Comment: One commenter stated that cessation or curtailment of water releases from reservoirs to accommodate the California red-legged frog could adversely impact other species, including several species of anadromous fish.

Service Response: If changes in reservoir release schedules are needed, the Service, in conjunction with the California Department of Fish and Game, will consider the needs of all

species that could be affected as recommendations are made.

Issue 4: Designation of Critical Habitat

Comment: Several commenters recommended that the Service designate critical habitat for the California red-legged frog so that it would be easier for interested parties to locate known and additional populations of the species, and thus, contribute to an accurate determination of the need for protection. One commenter recommended designation of critical habitat as an additional way to protect California red-legged frogs on private land. One commenter stated that an economic analysis should be conducted prior to designating critical habitat.

Service Response: The Service has determined that designation of critical habitat for the California red-legged frog would be more detrimental than beneficial to the species. Concern for the potential "take" of the species (as defined in the Act) through acts of vandalism has been expressed by the petitioners and other parties (see further discussion in "Summary of Factors Affecting the Species" (Factor B) and "Critical Habitat" sections, below). Revealing of the precise locations of California red-legged frog habitat, as required through critical habitat designation, would make the species more vulnerable to vandalism and unauthorized takings. The Service has determined that designation of critical habitat is not prudent for the California red-legged frog, therefore, preparation of an economic analysis is not required. However, the Service has identified recovery units for the species.

Designation of critical habitat would not necessarily provide additional protection for California red-legged frog aggregations on private land. Critical habitat legally applies only to Federal lands or activities on non-federal lands regulated, sponsored, or funded by a Federal agency. For example, designation of critical habitat on private grazing lands would not provide added protection against the impacts of grazing on California red-legged frog habitat because there is no federal nexus. Conversely, activities on private lands that are authorized, funded or carried out by a Federal agency, such as permit actions authorized under section 404 of the Clean Water Act, would require consultation with the Service if the activity was expected to adversely affect a Federally listed endangered or threatened species. This would apply regardless of whether critical habitat was designated or not.

Issue 5: National Environmental Policy Act

Comment: Several commenters stated that the proposal to list the California red-legged frog requires preparation of an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA). Another commenter stated that an Environmental Assessment may be necessary to determine the effects of the listing on other native species, disease-producing organisms, and humans.

Service Response: The Service need not prepare environmental assessments or environmental impacts statements pursuant to the National Environmental Policy Act (NEPA) for reasons outlined in the **Federal Register** on October 25, 1983 (48 FR 49244). Basically the listing of a species is exempt as a matter of law from NEPA review. Listing decisions are based on biological, not sociological or economic considerations. This view was upheld in the court case *Pacific Legal Foundation* v. *Andrus*, 657 F. 2d 829 (1981).

Issue 6: Alternate Listing Status Recommended

Comment: Several commenters recommended that the California red-legged frog be listed as a threatened rather than an endangered species in various watersheds because measures are already being taken through Federal, State, and/or private efforts to protect California red-legged frog habitat, or because the numbers of California red-legged frogs in these watersheds are greater and the threats less than in other watersheds within the California red-legged frog's distribution. One commenter provided examples of specific streams including—(1) Sespe Creek, where 31 miles within the Forest Service's Sespe Wilderness Area have been designated as Wild and Scenic, and a portion of Sespe Creek is included within the Sespe Condor Sanctuary; and (2) Piru Creek, where flow releases have been modified to protect the Arroyo southwestern toad (*Bufo microscaphus californicus*), an endangered species.

Service Response: Additional information received during the public comment period regarding new locations of California red-legged frogs confirmed that the taxon is more widespread within its current range than previously thought. The existence of 54 new drainage localities, and some drainages with non-imminent threats, indicates that listing as a threatened rather than an endangered species is presently more appropriate for the California red-legged frog. The species is not now in danger of extinction throughout all or a significant portion of its range in the near future, however, evidence does indicate that it may become endangered.

The Service acknowledges that a portion of Sespe Creek is designated as "Wild and Scenic" under the Wild and Scenic River Act, 16 U.S.C. 1271 *et seq.*, and that activities such as reservoir development or channelization, may be prohibited in this area. The Service also recognizes that the portion of the creek within the Sespe Condor Sanctuary may be protected in certain ways. However, designation as such does not eliminate all potential threats to the California red-legged frog. For example, designation as Wild and Scenic does not protect against invasion of bullfrogs or other exotic predators, which are known to occur in other portions of Sespe Creek. Planned reservoir development downstream of the Wild and Scenic portion of Sespe Creek increases the likelihood that bullfrogs and introduced fishes could disperse into upstream protected portions of the creek. Also, the Wild and Scenic designation does not eliminate recreational uses of the creek, including such activities as fishing, camping, mountain biking, and horseback riding. The Sespe Creek portion of the Sespe Condor Sanctuary is not closed to recreational use by the public.

On Piru Creek, studies suggest that modified water releases from Lake Pyramid over the last four years have resulted in increased Arroyo southwestern toad populations (Cat Brown, Fish and Wildlife Service, pers. comm., 1994). No research has been conducted to document the effect of these flow releases on California red-legged frogs.

Although the status of the California red-legged frog is not uniform throughout its range, the overall picture is one of a threatened species. Recovery planning and consultations under section 7 of the Act will take into account the status of the California red-legged frog within recovery units of its range (see "Available Conservation Measures" section).

Comment: One commenter from Santa Barbara County recommended that the California red-legged frog be listed as a threatened species because the current range of the California red-legged frog is broad and includes most of its historic range. Another commenter thought that the current range of the California red-legged frog, which is 300 miles north to south, did not fit the definition of an endangered species.

Service Response: Section 3(20) of the Act defines a threatened species as one which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Although the current range of the California red-legged frog encompasses less than 30 percent of its historic distribution, new information received during the public comment period suggests that California red-legged frogs are more widespread within their current range than previously believed. For this reason and the fact that 17 percent of the remaining drainages occupied by frogs are not known to be imminently threatened, the Service has concluded that the California red-legged frog more appropriately meets the definition of a threatened species.

Comment: Several commenters requested that California red-legged frogs in specific drainages of the Central Coast or the entire Central Coast be exempt from endangered species status because California red-legged frogs seem to be adequately managed in this area, have not shown population declines, or have fewer exotic species problems.

Service Response: Section 3(16) the Act defines the term "species" to include any subspecies of fish, wildlife, or plants, and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature. California red-legged frog aggregations in certain drainages of the central coast of California or in the entire central coast region do not constitute distinct vertebrate population segments. The Service cannot exclude these areas and intends to list the taxon as threatened throughout its range.

Issue 7: Research and Education Needs

Comment: Several commenters recommended the following research topics be explored in relation to conservation of the California red-legged frog: (1) Seasonal utilization of patchy habitats for breeding, refugia and estivation; (2) migration timing; (3) estivation timing; (4) surveying methodology in marginal habitat; and (5) the effects of pesticide and herbicide runoff.

Service Response: These comments have been noted and will be considered during preparation of a recovery plan for the California red-legged frog.

Comment: One commenter committed to assisting the Service with cooperative research on mosquitofish/California red-legged frog interactions.

Service Response: The Service concurs fully with the need for further research in this area and acknowledges the commenter's commitment to this effort.

Comment: One commenter asked if a program could be developed that would allow for variable treatment/management of California red-legged frog habitat that was found to produce significant numbers of mosquitoes.

Service Response: Because California red-legged frog habitat is variable, it is likely that management programs for mosquitoes will also be variable and depend on the situation under review. Research into the effects of various methods of mosquito control on California red-legged frogs should aid the Service in any recovery planning undertaken for the taxon.

Comment: One commenter recommended a number of ways to educate the general public regarding listed species and elicit their support, including publishing information in trade journals, posting signs at storm drains to discourage dumping of contaminants, reevaluating the need for channelized creeks, educating the public regarding the effects of bullfrogs on native amphibians, teaching classes in grade schools, starting riparian revegetation projects, and encouraging participation of landowners by providing incentives.

Service Response: The comments have been noted. The Service welcomes recommendations from the public on how to further the purposes of the Endangered Species Act. The Service has implemented many of these recommendations in regard to other listed species and will give them due consideration in public education programs related to recovery of the California red-legged frog.

Issue 8: Systematic Relationships Between Red-legged Frog Subspecies

Comment: Several commenters questioned the Service's exclusion of the intergrade zone between the northern red-legged frog (*Rana aurora aurora*) and the California red-legged frog (*Rana aurora draytonii*) in northwestern California. They argued that this segment of the subspecies' range does not constitute a distinct population segment and, therefore, cannot be excluded from the listing package. One commenter suggested that the Service excluded this segment of the subspecies' range to make the subspecies distribution seem smaller and in greater need of protection.

Another commenter suggested that the two subspecies are actually different populations of the same species displaying morphological differences due to climatic and habitat variations. In this case, the population numbers and distribution of the species would be much greater and the need for listing nonexistent.

Service Response: The California red-legged frog is a recognized subspecies of the red-legged frog (Storer 1925, Cochran 1961, Stebbins 1985). As discussed in the background section of this rule, the range of the California red-legged frog is the vicinity of Point Reyes National Seashore, Marin County, California, coastally and from the vicinity of Redding, Shasta County, California, inland southward to northwestern Baja California, Mexico (Jennings and Hayes 1985, Hayes and Krempels 1986). Red-legged frogs found in the intergrade zone from northern Marin County to southern Del Norte County are not considered a population segment of the California red-legged frog. At this time, researchers have not assigned the intergrade zone to either subspecies.

Among other differences, red-legged frogs within the intergrade zone are distinct morphologically from either subspecies of *Rana aurora*. The California red-legged frog possesses paired vocal sacs whereas the northern red-legged frog lacks vocal sacs. Most red-legged frogs found in the intergrade zone from northern Marin County to southern Del Norte County possess only one vocal sac. Based on this pronounced morphological difference in red-legged frogs in the intergrade zone, some researchers have concluded that the California and northern red-legged frogs may be two distinct species, and that the intergrade zone represents a zone of secondary contact or hybridization between the two species (Hayes and Krempels 1986). Genetic research has been proposed to clarify systematic relationships (i.e., to determine if *R. a. aurora* and *R. a draytonii* should be classified as two species or should remain as subspecies) and allow a more precise identification of the northern limits of the geographic distribution of the California red-legged frog (Jennings *et al.* 1992). In addition, habitat within the majority of the intergrade zone (moist evergreen/hardwood forest) is more indicative of habitat preferred by the northern red-legged frog. Thus, if the Service were to assign the intergrade zone to either subspecies based on habitat preference alone, the intergrade zone would be more appropriately placed within the range of the northern red-legged frog.

Comment: One commenter noted that the California Academy of Sciences has 66 specimens identified as *Rana aurora draytonii* that were collected from Redwood National Park in Humboldt County between 1911 and 1940. The commenter stated that more specific identification of herpetological subspecies would be needed to

determine the boundary of California red-legged frogs as far north as Del Norte County.

Service Response: The specimens referred to by the commenter were identified as *R. a. draytonii* in the 1940's based on size, skin characteristics, and prominence of dorsolateral folds as described by Camp (1917). More recent research (see Hayes and Miyamoto 1984, Hayes and Krempels 1986), has identified vocal sac condition as a distinct morphological characteristic differentiating the two subspecies. Using these new findings, the researchers who petitioned the Service to list the species have reviewed the specimens in question and found that they should have been identified as intergrades between *R. a. aurora* and *R. a. draytonii*. As discussed above, research currently underway is designed to further refine the northern boundary of the California subspecies' range.

Comment: Another commenter suggested that the listing package should only consider red-legged frogs at the species level, and, therefore, if red-legged frogs were temporarily eliminated from some part of their range in California, frogs from other areas would recolonize suitable habitat.

Service Response: Section 3(15) of the Endangered Species Act defines a species to include "any subspecies of fish or wildlife or plants* * *". Therefore, listing of a recognized subspecies is authorized in the Act.

The ability of red-legged frogs to migrate from one drainage to another would be dependent upon the distance, topography and habitat type through which the frogs would be required to migrate. Considering the Mediterranean climate in California, with its seasonal dryness, it is unlikely that red-legged frogs could very successfully migrate long distances to repopulate formerly occupied habitat.

Issue 9: Existing Regulatory Mechanisms

Comment: Several commenters believed that existing regulations (i.e., Clean Water Act, California Environmental Quality Act) and monitoring by several Federal agencies are providing adequate protection for the California red-legged frog, and, therefore, listing is not needed.

Service Response: The Service believes that existing regulatory mechanisms do not currently provide adequate protection for the California red-legged frog. A discussion of existing regulations can be found below in Factor D of the "Summary of Factors Affecting the Species" section and the "Available Conservation Measures" section.

Issue 10: Miscellaneous

Comment: One commenter pointed out that the Cambria Community Services District acts responsibly in protecting Santa Rosa and San Simeon Creek, including reductions in pumping during drought periods, promoting retrofit programs to reduce water usage, research into desalination alternatives and reverse osmosis treatment of wastewater, and approval of riparian habitat improvements.

Service Response: The Service acknowledges the District's efforts to protect stream flows and the natural environment of Santa Rosa and San Simeon Creeks. However, the Service has identified threats in these drainages and other drainages as well.

Comment: One commenter indicated that mosquito abatement districts have modified their mosquitofish planning protocol to carefully consider the introduction of mosquitofish in areas inhabited by listed species.

Service Response: The Service acknowledges the program modifications made by many mosquito abatement districts to protect listed species and their habitat.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the California red-legged frog should be listed as a threatened species. Procedures found at section 4 of the Act (16 U.S.C. 1533 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the California red-legged frog (*Rana aurora draytonii*) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. Herpetologists have noted the decline or extirpation of California red-legged frogs from the San Francisco Bay area (Sean J. Barry, University of California, Davis, *in litt.*, 1992; Robert C. Stebbins, University of California, Berkeley, *in litt.*, 1993; John S. Applegarth, herpetologist, *in litt.*, 1993; Ed Ely, herpetologist, *in litt.*, 1993), the Salinas River drainage (Lawrence E. Hunt, University of California, Santa Barbara, *in litt.*, 1993), the San Luis Obispo, Santa Barbara, and Ventura County area (Aryan I. Roest, California Polytechnic State University, San Luis Obispo, *in litt.*, 1993; Samuel S. Sweet, University of California, Santa Barbara, *in litt.*, 1993), southern California (Patrick McMonagle, herpetologist, *in litt.*, 1993; John D. Goodman, zoologist, *in litt.*, 1992; Robert B. Sanders, San Bernardino County Museum, *in litt.*, 1992; John Stephenson, U.S. Forest Service, *in litt.*, 1993; Michael C. Long, Eaton Canyon Park Nature Center, *in litt.*, 1992; Joseph F. Copp, herpetologist, *in litt.*, 1993; Glenn R. Stewart, California Polytechnic University, Pomona, *in litt.*, 1993; Robert Fisher, University of California, Davis, *in litt.*, 1993), central California (Martin R. Brittan, California State University, Sacramento, *in litt.*, 1993), and the northern and southern Sierra Nevada foothills (Jay Wright, Feather River College, Quincy, *in litt.*, 1993; Alan M. McCready, California State University, Sacramento, *in litt.*, 1992).

These observations from herpetologists and data provided by the researchers who petitioned the Service to list the species indicate that the California red-legged frog has sustained a reduction of over 70 percent in its historic geographic range in California. Large aggregations of greater than 350 adults have been documented from only four areas. These areas included Pescadero Marsh Natural Preserve in coastal San Mateo County, Point Reyes National Seashore in Marin County, canals west of San Francisco International Airport in the San Francisco Bay area (Jennings *et al.* 1992), and Rancho San Carlos in Monterey County (Jeff Froke, Rancho San Carlos, *in litt.*, 1994). The aggregation west of San Francisco International Airport is now thought to be extirpated (U.S. Fish and Wildlife Service, 1995; David Mullen, private consultant, pers. comm., 1994).

Habitat loss and alteration are the primary factors that have negatively affected the California red-legged frog throughout its range. For example, in the Central Valley of California, over 90 percent of historic wetlands have been diked, drained, or filled primarily for agricultural development and secondarily for urban development (U.S. Fish and Wildlife Service, 1978). Wetland alterations, clearing of vegetation, and water diversions that often accompany agricultural development make aquatic sites unsuitable for California red-legged frogs. Urbanization with its associated roadway, stream channelization, and large reservoir construction projects has significantly altered or eliminated California red-legged frog habitat, with the greatest impact occurring in

southern California. The majority of extant localities are isolated and fragmented remnants of larger historical populations.

Current and future urbanization poses a significant threat to the California red-legged frog. Sixty-five drainages (27 percent of the known occurrences) are associated with urbanization threats (U.S. Fish and Wildlife Service, 1995). Proposed urban developments include the East County Area Plan in Alameda County, which involves development of up to 52,000 acres, and projects currently proposed in the Ruby Hills/Arroyo Del Valle watershed and south Livermore Valley; Reservoir Canyon ponds in Santa Clara County; Alamo, Shadow, and Brookside Creeks in Contra Costa County; the Carmel River in Monterey County; and the Santa Ynez River in Santa Barbara County. In Santa Cruz County, a proposed commuter rail project linking Santa Cruz to Watsonville could increase urban development in southern portions of the county (Patricia O'Keefe, R.A.I.L.S., *in litt.*, 1994). In San Luis Obispo County, one of three counties with numerous drainages supporting California red-legged frogs, proposed residential and/or recreational development adjacent to San Simeon, Santa Rosa, San Juan, and Cambria Meadows Creeks and Estrella and Salinas Rivers could degrade or eliminate California red-legged frog habitat. Updates to area plans for the North Coast, San Luis Obispo, and Paso Robles/Atascadero areas in San Luis Obispo County propose rezoning of over 240,000 acres primarily for urban development. Between the cities of Ventura and San Luis Obispo, development already has eliminated California red-legged frogs from at least eight drainages along the coast (G. Rathbun and M. Jennings, *in litt.*, 1993).

Loss of habitat and decreases in habitat quality will occur as a result of on-site degradation of the stream environment and/or riparian corridor, or through modification of instream flow. Where streams or wetlands occur in urban areas, the quality of California red-legged frog habitat is degraded by a variety of factors. Among these factors are introduction of exotic predators, elimination of streambank vegetation, collecting, and loss of upland habitat.

Water projects, which accompany urban and agricultural growth, have had a negative effect on California red-legged frogs and their habitat. The construction of large reservoirs, such as Lake Oroville, Whiskeytown Reservoir, Don Pedro Reservoir, Lake Berryessa, San Luis Reservoir, Lake Silverwood, Lake Piru, Pyramid Lake, and Lower Otay Lake, have eliminated California red-legged frog habitat or fragmented remaining aggregations (Jennings *et al*,. 1992).

The timing and duration of water releases from reservoirs, particularly on the central California coast, can render a stream unsuitable for California red-legged frog reproduction (M. Jennings, *in litt.*, 1993) and maintain populations of exotic predators in downstream areas that would normally be dry in summer (S. Sweet, *in litt.*, 1993). Reservoirs are typically stocked with predatory species of fish and bullfrogs. These species often disperse into surrounding California red-legged frog habitat disrupting natural community dynamics. Hayes and Jennings (1988) found that California red-legged frogs generally were extirpated from downstream portions of a drainage 1 to 5 years after filling of a reservoir. In some larger drainages, however, isolated California red-legged frog populations have persisted upstream. A discussion of exotic predators appears below in Factor C: "Disease or predation."

A variety of proposed water projects threaten remaining California red-legged frog aggregations. Construction of major reservoirs is proposed on Los Banos Creek (Merced County), with Orestimba Creek (Stanislaus County) as an alternative reservoir site (California Department of Water Resources and the U.S. Bureau of Reclamation, 1990), and on Kellogg Creek (Contra Costa County) (Contra Costa Water District, 1993). These drainages represent three of 14 sites remaining in the Central Valley hydrographic basin with known or potential localities of California red-legged frogs. On the Salinas River along the central coast, raising the height of Salinas Dam (Santa Margarita Lake) is proposed in San Luis Obispo County. Reservoir construction at this site may allow exotic predators access to formerly secure aggregations of California red-legged frogs isolated in upper portions of the watershed (L. Hunt, *in litt.*, 1993). Other large reservoir projects proposed in California red-legged frog habitat include the Upper Nacimiento River Project and Arroyo Seco Dam Project in Monterey County. In Santa Barbara and Ventura counties, proposed dams on the Santa Ynez River, Sisquoc River, and Sespe Creek also would eliminate or degrade California red-legged frog habitat (Sam Sweet, pers. comm., 1993).

Water diversions, groundwater well development, and stock pond or small reservoir construction projects degrade or eliminate habitat. Diverting water from natural habitats to these projects disrupts the natural hydrologic regime. During periods of drought, reduced availability of water within natural drainages combined with drawdown from the impoundments, disrupts reproduction, foraging, estivation and dispersal (U.S. Fish and Wildlife Service, 1995) (see Factor E, "Other natural or man-made factors affecting its continued existence" below for additional discussion of the effects of drought). Proposed or existing water diversions on the central coast potentially affect the following drainages: San Simeon, Santa Rosa, Van Gordon, Villa, San Luis Obispo, Pico, and Little Pico Creeks, Arroyo del Puerta, and Arroyo Laguna in San Luis Obispo County; the Carmel and Salinas Rivers in Monterey County; and Canada del Refugio in Santa Barbara County. Most waterways on the south coast of Santa Barbara County are diverted to agriculture and other uses, leaving some completely desiccated (Brian Trautwein, Santa Barbara Urban Creeks Council, *in litt.*, 1994). Stock ponds and small reservoirs also support populations of exotic fishes and bullfrogs (G. Rathbun and M. Jennings, *in litt.*, 1993). The proposed coastal branch of the State Water Project is likely to result in a number of adverse effects to California red-legged frogs in many of the 24 areas receiving State water. These effects include, (1) altered water regimes in existing and any proposed delivery facilities of individual water districts, (2) spills, leaks, malfunctions, and operational errors that lead to introduction of exotic predators into isolated stream segments currently occupied by California red-legged frogs, and (3) indirect effects associated with expanded urbanization.

Storm damage repair and flood control maintenance on streams are current threats to California red-legged frogs. Routine flood control maintenance includes vegetation removal, herbicide spraying, shaping of banks to control erosion, and desilting of the creek, all of which degrade California red-legged frog habitat. In San Luis Obispo and Santa Barbara counties, maintenance work is planned for 14 and 11 drainages, respectively. All 25 drainages are known to be inhabited by California red-legged frogs and represent 35 percent of the occupied drainages in these two counties (U.S. Fish and Wildlife Service 1995). In Santa Barbara County, a larger channel maintenance project is proposed for a 4.5-mile stretch of the Santa Ynez River near Lompoc and a 10-mile segment of San Antonio Creek, both of which support California red-legged frog habitat.

Management of water bodies for flood control also has the potential to adversely impact California red-legged

frog localities. In San Mateo County, poorly timed releases of storm water from Horse Stable Pond at Sharp Park in February 1992, resulted in exposure and desiccation of 62 California red-legged frog egg masses (Todd Steiner, Earth Island Institute, *in litt.*, 1994). Channel maintenance at San Francisco International Airport may have contributed to extirpation of one of the four largest remaining aggregations of the California red-legged frog.

Routine road maintenance, trail development, and facilities construction activities associated with parks in or adjacent to California red-legged frog habitat can result in increased siltation in the stream. If this siltation occurs during the breeding season, asphyxiation of eggs and small California red-legged frog larvae can result. On the upper Santa Ynez River and Sespe Creek in Los Padres National Forest, Sweet (pers. comm., 1993) observed California red-legged frog egg masses smothered with silt. Construction activities in or adjacent to streams at Butano and Portola State Parks in San Mateo County; Big Basin, Wilder Ranch, and Henry Cowell State Parks in Santa Cruz County; and Mt. Diablo State Park in Contra Costa County have the potential to adversely affect California red-legged frogs inhabiting downstream reaches (Coyote Creek Riparian Station, *in litt.*, 1993).

Placer mining may threaten California red-legged frog habitat. Jennings (pers. comm., 1994) observed heavy siltation in late spring and summer in portions of Piru Creek known to support California red-legged frogs. The siltation resulted from upstream gold mining. Deep holes in streams created by instream placer mining also may provide habitat for exotic predatory fish (Jennings, pers. comm., 1994). Creeks, streams and rivers are open to suction dredging throughout the year in 13 of 22 counties within the current range of the California red-legged frog (State of California 1994).

Road-killed California red-legged frogs have been documented at several locations in San Mateo and Santa Cruz Counties (Coyote Creek Riparian Station, *in litt.*, 1993; Mike Westphal, Coyote Creek Riparian Station, *in litt.*, 1995). Road kills may deplete frog aggregations in borderline habitat and otherwise protected areas. Where roads cross or lie adjacent to California red-legged frog habitat, they may act as barriers to seasonal movement and dispersal.

Livestock grazing is another form of habitat alteration that is contributing to declines in the California red-legged frog. Numerous studies, summarized in Behnke and Raleigh (1978) and Kauffman and Krueger (1984), have shown that livestock grazing negatively affects riparian habitat. Cattle have an adverse affect on riparian and other wetland habitats because they tend to concentrate in these areas, particularly during the dry season (Marlow and Pogacnik 1985). Cattle trample and eat emergent and riparian vegetation, often eliminating or severely reducing plant cover (Gunderson 1968, Duff 1979). Loss of riparian vegetation results in increased water temperatures (Van Velson 1979), which encourage bullfrog reproduction. Riparian vegetation loss due to cattle grazing includes the loss of willows (Duff 1979), which are associated with the highest densities of California red-legged frogs (Hayes and Jennings 1988, Jennings 1988b). Cattle grazing also results in increased erosion in the watershed (Lusby 1970, Winegar 1977), which accelerates the sedimentation of deep pools (Gunderson 1968) used by California red-legged frogs and adversely affects aquatic invertebrates (Cordone and Kelley 1961). Aquatic invertebrates are common prey items of California red-legged frogs.

Behnke and Zarn (1976) identified livestock grazing as the greatest threat to the integrity of stream habitat in the western United States. Numerous symposia and publications have documented the detrimental effects of livestock grazing on streams and riparian habitats (Johnson and Jones 1977; Meehan and Platts 1978; Behnke and Raleigh 1979; Bowers *et al.* 1979; Cope 1979; Platts 1981; Ohmart and Anderson 1982 and 1986; Peek and Dalke 1982; Kauffman *et al.* 1983; Menke 1983; Kauffman and Krueger 1984; Johnson *et al.* 1985; GAO 1988; Clary and Webster 1989; Gresswell *et al.* 1989; Kinch 1989; Minshall *et al.* 1989; Chaney *et al.* 1990 and 1993). These effects include nutrient loading, reduction of shade and cover with resultant increases in water temperature, increased intermittent flows, changes in stream channel morphology, and the addition of sediment due to bank degradation and off-site soil erosion. Indirect effects of increased water temperatures can be lethal to aquatic species and include: creating a more favorable environment for introduced species, changing the food chain, degrading water quality through decreased dissolved oxygen, increased production of algae, and increased pH and ammonia.

Various studies have shown that water temperatures have been reduced when streambank vegetative cover is protected from grazing. Storch (1979) found that daily fluctuations of water temperatures in late August and early September averaged 27° F outside an exclosure on Camp Creek, Oregon that was ungrazed for 10 years, compared to 13° F inside the exclosure. Also, maximum water temperatures outside the exclosure averaged 11° F higher than inside the exclosure. Van Velson (1979) reported that average water temperatures in Otter Creek, Nebraska, decreased 3° F after livestock were excluded for 1 year.

Grazing effects are not limited to riparian areas. Improper grazing of upland vegetation can expose soils to erosive impacts of rain drops, reduce water infiltration, and accelerate runoff. This can erode topsoil and cut rills and gullies, concentrating runoff, deepening gullies, lowering water tables, and increasing sediment production (Chaney *et al.* 1993). Sediment introduced into streams can alter primary productivity and food supply, fill interstitial spaces in stream bed material, impeding water flow, reducing dissolved oxygen levels, and restricting waste removal (Chapman 1988). Suspended sediments reduce light penetration to plants and reduce oxygen carrying capacity of the water (Ohmart and Anderson 1982). Reduction in photosynthesis and primary production decreases productivity of the entire ecosystem (Minshall *et al.* 1989).

Livestock grazing can cause a nutrient loading problem (due to urination and defecation) in areas where cattle are concentrated near the water (Doran *et al.* 1981), but in other areas it can reduce nutrients through removal of riparian vegetation (Fisher 1972). Riparian vegetation provides organic material for approximately 50 percent of a stream's nutrient energy (Cummins 1974). Detritus from such plants is a principal source of food for aquatic invertebrates (Minshall 1967; Meehan *et al.* 1977). Streamside vegetation also provides habitat for terrestrial insects, another important dietary component for other aquatic or riparian associated species.

Jennings *et al.* (1992) found livestock grazing to occur at all known historic locations of the California red-legged frog in the Central Valley hydrographic basin. Livestock grazing also has been implicated as a contributing factor in the decline and disappearance of California red-legged frogs from the lower Salinas River (L. Hunt, *in litt.*, 1993) and the San Francisco peninsula (S. Barry, *in litt.*, 1992). Two of the 14 remaining aggregations of California red-legged frogs in the Central Valley hydrographic basin (Corral Hollow Ecological Reserve and Frank Raines Regional Park) are threatened by

sedimentation of aquatic habitats either directly or indirectly caused by livestock grazing and off-road vehicle use (Jennings *et al.* 1992). Galen Rathbun (National Biological Service, pers. comm., 1993) reports that grazing is adversely altering California red-legged frog habitat on Pico, Van Gordon, San Simeon, Santa Rosa, Cambria Meadows, and Cayucos Creeks in San Luis Obispo County. Grazing practices can, however, be modified to minimize impacts to California red-legged frogs. Five-fold increases in California red-legged frog populations on Rancho San Carlos in Monterey County may be attributable in part to modifications of grazing programs (J. Froke, *in litt.*, 1994).

In addition to cattle, feral pigs (*Sus scrofa*) also disturb the riparian zone through their rooting, wallowing and foraging behavior in the shallow margins of water bodies. Feral pigs disturb and destroy vegetative cover, trample plants and seedlings, and cause erosion. At Pinnacles National Monument, soil compaction and possible disturbance of frog eggs caused by feral pigs have been noted in California red-legged frog habitat (Stanley Albright, National Park Service, *in litt.*, 1994).

Off-road vehicle use adversely affects California red-legged frogs in ways similar to livestock grazing and feral pig disturbance. Off-road vehicles damage riparian vegetation, increase siltation in pools, disturb the water in stream channels and crush eggs, larvae, juveniles, and adults. California red-legged frogs were eliminated in part by off-road vehicle activities at the Mojave River above Hesperia, at Rincon Station on the west fork of the San Gabriel River, and in Piru Creek above Pyramid Lake (M. Jennings, pers. comm., 1993).

Heavy recreational use of parks (e.g., fishing, hiking, exploring) also can degrade habitat for the California red-legged frog. At Big Basin Redwood Park in Santa Cruz County, heavy recreational use may have contributed to the disappearance of California red-legged frogs from Opal Creek (Coyote Creek Riparian Station, *in litt.*, 1993).

Timber harvest threatens California red-legged frogs through loss of riparian vegetation and increased erosion in the watershed, which fills pools with sediment and smothers egg masses. In Santa Cruz County, timber harvest is proposed adjacent to Adams Creek (Celia Scott, private citizen, pers. comm., 1993), Whitehouse Creek (U.S. Fish and Wildlife Service 1995) and occurs periodically on a tributary of Blooms Creek (Coyote Creek Riparian Station, *in litt.*, 1993). The proposed timber harvests would occur in three of 18 streams in the County that support California red-legged frogs. In Pescadero Creek at Portola State Park (San Mateo County), erosion and siltation caused by severe winter storms and upstream logging operations may have been the cause of the disappearance of California red-legged frogs from this portion of the stream (Coyote Creek Riparian Station, *in litt.*, 1993).

B. Overutilization for commercial, recreational, scientific, or educational purposes. Records of harvesting California red-legged frogs for human consumption date back to an account by Lockington (1879) of the commercial harvest of this species for San Francisco fish markets. From 1890 to 1900, the California red-legged frog supported a significant commercial harvest (Smith 1895) of about 80,000 frogs annually (Jennings and Hayes 1984). Counties surrounding San Francisco Bay provided the bulk of the frog harvest in the early to mid 1890s, with the Sacramento and San Joaquin Valleys increasing in importance by the end of the decade (Chamberlain 1898, Jennings and Hayes 1985). By 1900, harvest figures for California red-legged frogs fell dramatically, indicating that overharvesting may have occurred. Jennings and Hayes (1985) hypothesized that this rapid decline in the California red-legged frog population was the result of selective harvesting of the larger females. Introduction of the bullfrog in California in 1896 was probably in response to the dwindling California red-legged frog population (Jennings and Hayes 1985). Continued harvesting of California red-legged frogs for food by local individuals has been reported for the Central Coast region (Coyote Creek Riparian Station, *in litt.*, 1993). California red-legged frogs reportedly taste better than bullfrogs, a statement first made by Dickerson (1906).

Prior to 1950, California red-legged frogs were used sporadically for research in high schools and universities. At present, the California red-legged frog is available commercially from suppliers located outside California in the pet trade. Because the State of California prohibits possession of wild California red-legged frogs without a permit, frogs sold in the pet trade presumably are reared in captivity (M. Jennings, pers. comm., 1993).

C. Disease or predation. There have been no documented instances of disease adversely affecting the California red-legged frog.

Few data are available on the effect of native predators on the California red-legged frog. Bitterns (*Botaurus lentiginosus*) and black-crowned night herons (*Nycticorax nycticorax*) are likely predators of adult frogs (Jennings and Hayes 1990). Juvenile California red-legged frogs, which are more active diurnally and less wary than adults, may be more susceptible to predation by diurnal predators, such as the great blue heron (*Ardea herodias*) and several species of garter snakes (*Thamnophis* spp.) (Fitch 1940, Fox 1952), including the endangered San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) (Barry 1978, Wharton *et al.* 1986). Recent postmetamorphs also may be particularly vulnerable to predation by garter snakes, as was found in other species of ranid frogs by Arnold and Wassersug (1978). Raccoons (*Procyon lotor*), which are abundant in urban settings, were the likely predator of eight radio-tagged California red-legged frogs in the riparian corridor of Pico and San Simeon Creeks in San Luis Obispo County (Rathbun, *in litt.*, 1994). Other possible, but undocumented mammalian predators include striped skunks (*Mephitis mephitis*), spotted skunks (*Spilogale putorius*), and red fox (*Vulpes fulva*). Larvae may be preyed upon by aquatic beetles and damsel fly naiads (Karl Malamud-Roam, Contra Costa County Mosquito and Vector Control District, *in litt.*, 1994).

Introduced predators of particular concern are the bullfrog, red swamp crayfish (*Procambarus clarkii*), signal crayfish (*Pacifastacus leniusculus*), and several species of fish, including bass, catfish (*Ictalurus* spp.), sunfish, and mosquitofish (Moyle 1973; Hayes and Jennings 1986, 1988). All species were introduced into California in the late 1800s and early 1900s, and through range expansions, reintroductions, and transplants have become established throughout most of the State (Riegel 1959, Bury and Luckenbach 1976, Moyle 1976).

Several researchers in central California have noted the decline and eventual disappearance of California red-legged frogs once bullfrogs become established at the same site (L. Hunt, in litt, 1993; S. Barry, *in litt.*, 1992; S. Sweet, *in litt.*, 1993). Joseph DiDonato (East Bay Regional Park District, pers. comm., 1994) has observed the disappearance of California red-legged frogs from Pleasanton Ridge in Alameda County within the last ten years. Today, all former California red-legged frog habitat on Pleasanton Ridge is occupied by bullfrogs. Moyle (1973) attributed the disappearance of California red-legged frogs from the San Joaquin Valley and Sierran foothill region primarily to a combination of bullfrog predation and

competition. All sites in the Sierra Nevada foothills that supported California red-legged frogs in the 1970s now are inhabited by bullfrogs (M. Jennings, *in litt.*, 1993). Over the last decade, Jennings (*in litt.*, 1993) has observed bullfrogs moving upstream and/or downstream into formerly pristine California red-legged frog habitat in a number of drainages, including streams in Ventura, Santa Barbara, San Luis Obispo, Merced, Stanislaus, and San Mateo counties. Bullfrogs are introduced into drainages by stocking of reservoirs and stock ponds, dispersal and colonization, conveyance of project water from other streams inhabited by these exotics, and releases by individuals. At The Nature Conservancy's Santa Rosa Plateau Reserve in Riverside County (the only site south of the Santa Clara River drainage supporting California red-legged frogs), a docent found a school teacher attempting to introduce bullfrog tadpoles into the preserve in the 1980s (M. Jennings, *in litt.*, 1993). Additional bullfrogs were removed from the preserve in 1989 after apparent introductions from a nearby frog jumping contest (M. Jennings, *in litt.*, 1994). Once established, it is extremely difficult to eliminate bullfrogs (M. Jennings, *in litt.*, 1993; Cecil Schwalbe, National Park Service, Tuscon, Arizona, pers. comm., 1993; Frank Slavens, Woodland Park Zoological Gardens, Seattle, Washington, pers. comm., 1993). Over 60 percent of the streams or drainages currently known to support California red-legged frogs also are inhabited by bullfrogs, either in association with California red-legged frogs or in other portions of the drainage (U.S. Fish and Wildlife Service 1995). Based on documented rates of local extinction, the Service concludes that eventually California red-legged frogs will be locally extirpated from these 149 streams.

Bullfrogs prey on California red-legged frogs (S. Sweet, *in litt.*, 1993), other ranid frogs (Twedt 1993) and other amphibians and aquatic reptiles (Schwalbe and Rosen 1988). Twedt (1993) documented four juvenile northern red-legged frogs among the contents of 22 adult bullfrog stomachs. He also found a subadult bullfrog in one of the adult bullfrog stomachs. This prey item was between the size of an adult male (approximately 80 mm (3.1 in.)) and adult female (approximately 85 mm (3.3 in.)) red-legged frog, indicating that bullfrogs could prey on subadult red-legged frogs. Stuart and Painter (1993) found evidence of cannibalistic behavior in bullfrogs. A stomach content analysis revealed 87 percent of total volume by weight was composed of newly-metamorphosed and larval Rana. Bullfrogs may have a competitive advantage over California red-legged frogs because of their (1) larger size, (2) generalized food habits (Bury and Whelan 1984), (3) extended breeding season (Storer 1933), which allows for production of two clutches of up to 20,000 eggs during a breeding season (Emlen 1977), and (4) larvae being unpalatable to predatory fish (Kruse and Francis 1977). Bullfrogs also interfere with red-legged frog reproduction. Several researchers have noted male red-legged frogs in amplexus with (mounted on) both male and female bullfrogs (Jennings and Hayes 1990; Twedt 1993; M. Jennings, *in litt.*, 1993; Stebbins *in litt.*, 1993). However, the extent to which bullfrog predation, competition, and reproductive interference adversely affects red-legged frogs has not been studied in the field (Hayes and Jennings 1986). Habitat alterations, including removal of riparian or aquatic vegetation, reduced stream flows, and sedimentation of pools, often provide conditions detrimental to red-legged frogs but favorable to bullfrogs (Hayes and Jennings 1986; Jennings 1988b; Jennings, pers. comm., 1993).

Hayes and Jennings (1986, 1988) found a negative correlation between the abundance of introduced fish species and California red-legged frogs. These authors noted that aquatic sites where introduced fishes were abundant rarely had native ranids, and when present, ranid populations were small. A similar negative correlation was reported by Hunt (*in litt.*, 1993) for California red-legged frogs in the Salinas River drainage, by DiDonato (*in litt.*, 1994) on East Bay Regional Park District properties in the San Francisco Bay area, by Shaffer (*in litt.*, 1994) for the inner coast range, and by Moyle (1973) for the foothill yellow-legged frog. These references suggest that the observed negative correlation between California red-legged frogs and non-native fish is a general principal. Of 32 streams examined by Hayes and Jennings (1988), introduced fishes were found in 44 percent.

Results of a recent study in artificial ponds showed that mosquitofish and bluegill (*Lepomis macrochirus*) were significant predators of California red-legged frog larvae (Schmieder and Nauman 1994). However, California red-legged frogs have been found in association with mosquitofish in Corral Hollow Creek (Alameda and San Joaquin counties) (T. Strange, pers. comm., 1994) and in three waterbodies on East Bay Regional Park properties in Contra Costa County (K. Swaim, *in litt.*, 1994). Malamud-Roam (*in litt*, 1994) reported that mosquitofish occur in at least four streams in Contra Costa County known to support California red-legged frogs. Mosquitofish also may compete with California red-legged frogs by consuming aquatic insects that are potential food sources for postmetamorphic frogs. Mosquitofish have become established statewide and are stocked routinely by mosquito abatement districts as a mosquito control measure (Moyle 1976).

D. The inadequacy of existing regulatory mechanisms. Although the California red-legged frog is classified as a "Species of Special Concern" by the State of California (Steinhart 1990) and may not be taken without an approved scientific collecting permit, this designation provides no special, legally mandated protection of the species and its habitat. In 1972, the California Fish and Game Commission amended its sport fishing regulations to prohibit take or possession of California red-legged frogs (Bury and Stewart 1973). However, because of the rarity of the California red-legged frog and similarity to the more common bullfrog, protection of this taxon by State wardens and rangers may be compromised (Coyote Creek Riparian Station, *in litt.*, 1993).

Section 1603 of the California Fish and Game Code authorizes the Department of Fish and Game (CDFG) to regulate streambed alteration. The Department must be notified and approve any work that substantially diverts, alters, or obstructs the natural flow or substantially changes the bed, channel or banks of any river, stream, or lake. If an existing fish or wildlife resource may be substantially adversely affected by a project, CDFG must submit proposals to protect the species within 30 days. However, if the Department does not respond within 30 days of notification, the applicant may proceed with the work.

Section 404 of the Clean Water Act is the primary Federal law that potentially provides some protection for aquatic habitats of the California red-legged frog, if the habitats are determined by the U.S. Army Corps of Engineers (Corps) to be jurisdictional areas (i.e., waters of the United States). Under section 404, nationwide permits, which undergo minimal public and agency review, can be issued for projects involving less than 10 acres of wetlands above the headwaters (i.e., streams with less than five cubic feet per second (cfs) mean annual flow) or for isolated waters, unless a listed species may be adversely affected. Many aggregations of

California red-legged frogs occur in isolated wetlands and coastal streams that may have mean annual flows less than five cfs. Individual permits, which are subject to more extensive review, could be required for projects that have more than minimal impacts to waters of the United States. The Clean Water Act does not afford any special protection for candidate species. However, when the California red-legged frog is listed, the Corps will be required by section 7 of the Act to consult and obtain the concurrence of the Service prior to the authorization of any section 404 permit affecting California red-legged frog habitat.

Additionally and equally important, the upland habitats adjacent to riparian zones are not provided any protection by Section 404 of the Clean Water Act. Upland areas provide estivation and dispersal habitats for this species.

Federal lands, including those of the Forest Service, National Park Service, Bureau of Land Management, Bureau of Reclamation, and Department of Defense, encompass approximately 10 percent of the current known range of the California red-legged frog. Multiple land use management, as currently practiced by the Forest Service, Bureau of Land Management, and National Park Service, does not provide long-term protection for the California red-legged frog. State, County, and Regional Park lands provide some protection from some threats, however, these parks are managed for multiple uses.

The National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) require an intensive environmental review of projects that may adversely affect a Federally listed species. However, project proponents are not required to avoid impacts to non-listed species, and proposed mitigation measures are frequently not adequately implemented. As with section 404 permits, the Service's comments through these environmental review processes are only advisory. The Service is aware of a proposed recreational development in Santa Cruz County undergoing environmental review that is expected to extirpate an estimated 10 percent of the total remaining numbers of the California red-legged frog (Westphal *in litt.* 1995).

The California Coastal Act regulates the approval of developments within the costal zone. Although a significant slowing in wetland losses has occurred, the continued loss and degradation of coastal wetlands since the California Coastal Act was enacted in 1974 attests to the limitations of this legislation.

E. Other natural or man-made factors affecting its continued existence. Six consecutive years of drought (1986–1992) in California severely affected remaining California red-legged frogs in the Sierran foothills. Many sites in intermittent streams that held California red-legged frogs before the drought were completely dry during field surveys conducted between 1985 to 1992 (Jennings *et al.* 1992). Sites still holding pools of water had water levels so low that access by predators was enhanced. Livestock grazing at many sites exacerbated effects of the drought by limiting or preventing riparian habitat regeneration (Jennings *et al.* 1992). Long-term survival of California red-legged frogs may be compromised by the elimination of refuge areas during times of the year when the stream is dry (Rathbun, *in litt.*, 1994). However, California red-legged frog populations are undoubtedly capable of recovering from drought, provided other factors have not irreparably degraded their habitat, or California red-legged frogs have not been completely extirpated from the drainage.

Drought also may play a role in decreased California red-legged frog reproduction where frogs occur in coastal lagoons. High salinities in the Pescadero Marsh (San Mateo County) have been attributed to drought conditions in the watershed. At the Pescadero Marsh Natural Preserve, Jennings and Hayes (1990) found many dead egg masses in a portion of the marsh that were killed by excessive (>4.5 parts per thousand) salinity levels. Rathbun *et al.* (1991) speculated that the absence of California red-legged frogs in lower Santa Rosa Creek and lagoon in San Luis Obispo County was due to long-term drought exacerbated by instream flow withdrawals. Since the end of the drought California red-legged frog numbers reportedly have increased in lower Santa Rosa Creek (Rathbun *in litt.* 1994; G. Schmitt, United Residential Lot Owners of Cambria, Inc. *in litt.* 1994) probably as a result of increased rainfall in the winter of 1992–1993. Increased salinities were recorded in several other coastal lagoons during the drought years (C. Swift and K. Worcester, pers. comm. *in* Jennings *et al.* 1992). Increased salinity could also result from periodic overtopping of the beach bar during high tides or by storm waves (D. Asquith, private consultant, *in litt.* 1994). In 1993, Jennings (pers. comm., 1993) reported the loss of California red-legged frog egg masses from increased salinity and unusual flooding in Arroyo Laguna in San Luis Obispo County. Because significant numbers of California red-legged frogs occur in coastal lagoons on the central California coast, drought has the potential to severely reduce production of California red-legged frogs over a significant portion of their remaining range.

The overall effect of contaminants on California red-legged frogs has not been studied. Only one incident of California red-legged frog mortality is known from a diesel and gasoline spill in a tributary of Blooms Creek (Santa Cruz County) (Coyote Creek Riparian Station, *in litt.*, 1993).

Periodic wildfires may adversely affect California red-legged frogs by causing direct mortality, destroying streamside vegetation, or eliminating vegetation that protects the watershed. The 1991 Lions Fire on upper Sespe Creek in the Los Padres National Forest destroyed known California red-legged frog habitat (S. Sweet, pers. comm., 1993). Following the fire, extensive erosion in the watershed also negatively affected California red-legged frogs and their habitat (S. Sweet, pers. comm., 1993).

Extensive flooding has been cited by Jennings and Hayes (1994a) as a significant contributing factor in the extirpation of the California red-legged frog from desert drainages of southern California. For example, in the Mojave River drainage, no verifiable records or sightings exist of California red-legged frogs after 1968 (Jennings and Hayes 1994a). The disappearance of this species from the drainage coincided with a catastrophic flood event in the Mojave River in the winters of 1968 and 1969. Extensive flooding in other portions of the California red-legged frog range may have combined with other factors to eliminate California red-legged frog aggregations (Richard Seymour, Coyote Creek Riparian Station, *in litt.*, 1993; D. Martin, pers. comm., 1994).

A considerable amount of occupied California red-legged habitat exists in the form of isolated patches along stream courses. These patches of suitable habitat represent mere remnants of a much larger historical habitat that once covered whole drainages. Fragments of formerly extensive populations of California red-legged frogs are now isolated from other populations. Populations isolated in habitat fragments are vulnerable to extinction through random environmental events or anthropogenic catastrophes. With only three of 243 known creeks or drainages supporting populations of over 350 adults, all remaining occurrences are considered vulnerable to these threats. Once a local

extinction event occurs in an isolated habitat fragment, the opportunity for recolonization from a source population is reduced. Thus, local extinctions via stochastic processes, coupled with habitat fragmentation may represent a substantial threat to the continued existence of the California red-legged frog over much of its range.

The Service has carefully assessed the best scientific and commercial data available regarding the past, present, and future threats faced by the California red-legged frog in determining to make this final decision. Based on this evaluation, the preferred action is to list the California red-legged frog (*Rana aurora draytonii*) as threatened. This taxon has been extirpated from 70 percent of its former range. Although California red-legged frogs are now known to be found in more locations within their present range than previously thought, factors adversely affecting the California red-legged frog are known to exist in 83 percent of the drainages supporting the taxon (U.S. Fish and Wildlife Service 1995). These factors include but are not limited to (1) urban encroachment, (2) construction of large and small reservoirs, water diversions and well development, (3) flood control maintenance, (4) road maintenance, (5) placer mining, (6) livestock grazing and feral pigs, (7) off-road vehicle use, and (8) introduction or presence of exotic predators and competitors. The remaining 17 percent of occupied drainages, the majority located in Monterey, Santa Barbara, and San Luis Obispo counties, currently are not known to be subject to the above threats. The California red-legged frog, therefore, more appropriately fits the definition of a threatened species. For the reasons discussed below, critical habitat has not been proposed.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (I) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the California red-legged frog at this time, Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

As discussed under Factor B in the "Summary of Factors Affecting the Species" section, the California red-legged frog has been and continues to be threatened by taking, an activity difficult to control. Listing of the frog may result in an increase in the threat of vandalism, a concern expressed by the petitioners and other experts (M. Jennings, S. Sweet, pers. comm., 1993; D. Martin, pers. comm., 1994). California red-legged frogs occur in isolated and fragmented wetland habitat on private property and are at risk from vandalism. Publication of specific localities, which would be required in proposing critical habitat, would reveal precise locality data and thereby make the species more vulnerable to acts of vandalism, and increase the difficulties of enforcement. Martin (pers. comm., 1994) has observed acts of vandalism by private landowners once they learned of the presence of Yosemite toads (*Bufo canorus*), on their property. The Yosemite toad is a species of concern to the Service (former category 2 species, 59 FR 58995).

In addition, a significant market exists in California for frog meat, with bullfrogs as the primary species sold. In 1993, the California Department of Fish and Game arrested a number of individuals involved in illegal collection and sale of large numbers of bullfrogs to San Francisco fish markets (California Department of Fish and Game 1993). To the untrained eye, the California red-legged frog looks very similar to a bullfrog and could be accidentally taken for the market. California red-legged frogs also could be taken intentionally as they are reported to be more palatable (Coyote Creek Riparian Station, *in litt.*, 1993; Jennings, pers. comm., 1994). The California red-legged frog would be more vulnerable to collection for market consumption if precise locality data were published for this species Protection of California red-legged frog habitat will be addressed in the recovery process and through the section 7 consultation process. Therefore, due to the serious potential for increased, unauthorized take, the Service has determined that designation of critical habitat for the California red-legged frog is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agencies that may be involved as a result of this final rule are the Bureau of Reclamation, Bureau of Land Management, National Park Service, Forest Service, and the Departments of the Army, Navy and Air Force. At several parks, the National Park Service has conducted or is planning to conduct status surveys for California red-legged frogs (Daphne A. Hatch, National Park Service, *in litt.*, 1993; James Sleznick, National Park Service, *in litt.*, 1992;

Gary Fellers, National Park Service, pers. comm., 1993). The Forest Service has conducted and has ongoing amphibian surveys in many National Forests within the historic range of the California red-legged frog (J. Stephenson, pers. comm., 1993; D. Martin, pers. comm., 1993; Maeton Freel, U.S. Forest Service, pers. comm., 1994). In Los Padres National Forest, the Forest Service, in a cooperative effort with other Federal and State agencies, has altered flow regimes in Piru Creek between Lake Pyramid Lake and Lake Piru to benefit the endangered arroyo southwestern toad. Although no specific studies have been done, these flow regime changes also may benefit the California red-legged frog (Frederick Gientke, United Water Conservation District, *in litt.*, 1994). The Forest Service has also designated more than 31 miles of Sespe Creek in Los Padres National Forest as "Wild and Scenic" under the National Wild and Scenic Rivers Act of 1968.

The Contra Costa Water District is constructing a large reservoir construction project (Los Vaqueros Reservoir) on Kellogg Creek, Contra Costa County (Contra Costa Water District 1993). The Bureau of Reclamation's role in this project is to amend water service contracts and modify water rights to facilitate project construction (Penny Howard, U.S. Bureau of Reclamation, *in litt.*, 1994). A mitigation and monitoring program is proposed to compensate for California red-legged frog habitat losses at Los Vaqueros. The mitigation plan includes a bullfrog and exotic fish control program to be carried out for the life of the reservoir project (Contra Costa Water District 1993). The potential for success of the mitigation plan is unknown. In addition, Bureau of Reclamation projects, including small loan projects in Monterey County, the Cachuma project in Santa Barbara County, the San Felipe project in San Benito and Santa Clara counties, and the Solano project in Solano County, involve water contract renewals as well as road maintenance activities and grazing leases, all of which may affect California red-legged frogs. The U.S. Army Corps of Engineers would be involved in many of these projects through their permitting authority under section 404 of the Clean Water Act.

Any of the above mentioned Federal agencies would be required to consult with the Service if any action they fund, authorize, or carry out may affect the California red-legged frog. To the extent that their habitats overlap in lagoon areas, efforts made to conserve and recover the tidewater goby (*Eucyclogobius newberryi*), a Federally listed endangered species, may also help to conserve and recover the California red-legged frog.

The Service is currently involved in the development of two Habitat Conservation Plans (HCP's) that could potentially protect three localities of California red-legged frogs. The Kern County Valley Floor HCP will protect a minimum of 75 percent of the existing California red-legged frog habitat in the Bitterwater Creek drainage. The San Joaquin County multispecies HCP may also protect two localities, Corral Hollow Creek and Lone Tree Creek. Although the development of these HCP's will not preclude the need to list the California red-legged frog, these plans, if implemented, will protect habitat for the taxon.

The Ventura Field Office is assisting with the Santa Clara River Enhancement and Management Plan, which is progressing but is not finalized at this time. A similar plan for Rancho San Carlos (in the Carmel River drainage) is also underway. Early planning efforts are beginning for the Ventura and Santa Ynez rivers. None of these planning efforts preclude the need to list the species, but will provide future protection of habitat for the species.

One known California red-legged frog locality in Riverside County and any newly discovered localities in the historic range of the species could be protected by ongoing ecosystem-based planning efforts in southern California. In 1991, the State of California established the Natural Communities Conservation Planning (NCCP) Program to address conservation needs of natural ecosystems throughout the State. The initial focus of the program is the coastal sage scrub community in southern California, however, riparian habitats will also be addressed. Several regional plans, including the Multi-species Conservation Plan (MSCP) and the Multi-habitat Conservation Plan (MHCP) of San Diego County, the Southern and Central Coastal Subregional NCCP/Habitat Conservation Plans (Southern/Central/Coastal NCCP) of Orange County, and the Riverside County Stephens Kangaroo rat HCP and San Bernardino County MSCP are under development by a consortium of county and municipal governments and other parties, including the California Department of Fish and Game and the Service. Though no plans have been completed to date, protection could be provided if the California red-legged frog occurs in any of the planning areas. The one known extant population occurs on the Santa Rosa Plateau Reserve managed by The Nature Conservancy.

The Service establishes the following recovery units within the historical range of the California red-legged frog: (1) The western foothills and Sierran foothills to 5,000 feet in elevation in the Central Valley Hydrographic Basin; (2) the central coast ranges from San Mateo and Santa Clara counties south to Ventura and Los Angeles counties; (3) the San Francisco Bay/Suisun Bay hydrologic basin; (4) southern California, south of the Tehachapi Mountains; and (5) the northern coast range in Marin and Sonoma counties. These five units are essential to the survival and recovery of the California red-legged frog. Designation of recovery units assists the Service and other agencies in identifying priority areas for conservation planning under the consultation (section 7) and recovery (section 4) programs.

The Act and implementing regulations found at 50 CFR 17.32 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife not covered by a special rule. With respect to the California red-legged frog, these prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. The Service believes that, based on the best available information, the following

actions will not result in a violation of section 9:

(1) Road-kills or injuries caused by vehicles operated lawfully on designated public roads;

(2) Light to moderate carefully managed livestock grazing that prevents or minimizes the excessive trampling of riparian and wetland habitat;

(3) Possession of legally acquired California red-legged frogs;

(4) Unintentional hooking of a frog or tadpole during otherwise lawful engagement in fishing, and;

(5) Federally approved projects that involve activities such as, discharge of fill material, draining, ditching, tiling, pond construction stream channelization or diversion, or alteration of surface or ground water into or out of a wetland (i.e., due to roads, impoundments, discharge pipes, storm water detention basins, etc.), when such activity is conducted in accordance with any reasonable and prudent measures given by the Service in accordance with section 7 of the Act.

Activities that the Service believes could potentially harm the California red-legged frog and result in "take", include, but are not limited to:

(1) Unauthorized collecting or handling of the species;

(2) Introduction of exotic species such as fish or other species of frogs directly into, or within dispersal distance of, known California red-legged frog habitat;

(3) Unauthorized destruction/alteration of the species' habitat such as discharge of fill material, draining, ditching, tiling, pond construction, diversion or alteration of stream channels or surface or ground water flow into or out of a wetland (i.e., due to roads, impoundments, discharge pipes, storm water detention basins, etc.), operation of any vehicles within the stream channel;

(4) Violation of discharge permits;

(5) Burning, cutting or mowing of wetland or riparian vegetation, if conducted in an untimely or inappropriate manner (e.g., when California red-legged frogs would be killed or injured, or their occupied habitat would be degraded or rendered unsuitable);

(6) Pesticide applications in violation of label restrictions;

(7) Discharges or dumping of toxic chemicals, silt, or other pollutants (i.e., sewage, oil and gasoline) into waters, or riparian and upland habitats supporting the species;

(8) Interstate and foreign commerce (commerce across State lines and international boundaries) and import/export (as discussed earlier in this section) without prior obtainment of an endangered species permit. Permits to conduct these activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Sacramento Field Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon, 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

Author

The primary authors of this final rule are Karen J. Miller, Alison Willy, Sheila Larsen, and Steven Morey, Sacramento Field Office (see **ADDRESSES** section), telephone 916/978–4866.

List of Subjects in 50 CFR Part 17

Endangered and threatened species; Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 10080 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under AMPHIBIANS, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
AMPHIBIANS							
Frog, California red-legged.	*Rana aurora draytonii*	U.S.A. (CA).	Entire (excluding Del Norte, Humboldt, Trinity, & Mendocino Cos., CA; Glenn, Lake, & Sonoma Cos., CA, west of the Central Valley Hydrologic Basin; Sonoma & Marin Cos., CA, west & north of San Francisco Bay drainages and Walker Creek drainage; and NV).	T		NA	NA

Dated: May 17, 1996

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 96–12901 Filed 5–22–96; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 951221305–6038–02; I.D. 020296B]

Reef Fish Fishery of the Gulf of Mexico; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction to emergency interim rule.

SUMMARY: This document corrects the delay of effective date in an emergency interim rule published on February 29, 1996 (61 FR 7751). The emergency interim rule delayed indefinitely the effective date for implementation of the red snapper Individual Transferable Quota (ITQ) system for the Gulf of Mexico, previously scheduled to begin April 1, 1996.

EFFECTIVE DATE: The delay of effective date published February 29, 1996 (61 FR 7751) for amendments originally published on November 29, 1995 (60 FR 61202) is corrected as of February 23, 1996, to extend through May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Robert A, Sadler, Fishery Management Specialist, Southeast Regional Office, 813–570–5305.

SUPPLEMENTARY INFORMATION:

Background

In issuing an emergency interim rule on February 29, 1996, NMFS inadvertently indicated that the scheduled April 1, 1996, effective date for the Gulf of Mexico red snapper ITQ system, implemented under FMP Amendment 8 (60 FR 61200, November 29, 1995), would be delayed indefinitely. Because an emergency interim rule issued under section 305(c) of the Magnuson Fishery Conservation and Management Act can amend a fishery management plan or plan amendment and its implementing rule only for the emergency period (limited to 90 days), the indefinite delay was in error.

Need for Correction

Accordingly, this action corrects the emergency interim rule to specify the correct ending date for the delay in the effective date for the final rule implementing the ITQ system. As published, the effective date section and amendatory instruction 2 are incorrect and need to be changed.

Correction of Publication

The publication on February 29, 1995, of the emergency interim rule (I.D. 020296B), which was the subject of FR DOC. 96–4432, is corrected as follows:

On page 7751, in the third column, under the preamble caption **EFFECTIVE DATES**, in the last paragraph, the phrase "are delayed indefinitely." is corrected to read "is delayed through May 29, 1996."

On page 7753, in the third column, on the last line of the introductory text of the amendatory instruction 2, the word "indefinitely" is corrected to read "through May 29, 1996."

Dated: May 15, 1996.

Richard H. Schaefer,

Acting, Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96–12786 Filed 5–22–96; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 101
Thursday, May 23, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–96–011]

RIN 2115–AE46

Special Local Regulation: Fireworks Displays Within the First Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations for annual fireworks displays that occur throughout the First Coast Guard District. This regulation is necessary to control vessel traffic within the immediate vicinity of the fireworks launch sites and to ensure the safety of life and property during each event.

DATES: Comments must be received on or before June 6, 1996.

ADDRESSES: Comments should be mailed to Commander (b), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, MA 02110–3350, or may be hand delivered to Room 428 at the same address, between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) Benjamin M. Algeo, Chief, Boating Affairs Branch, First Coast Guard District, (617) 223–8311.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Each person submitting comments should include their name and address, identify this notice (CGD01–96–011), the specific section of the proposal to which each comment applies, and give the reason for each comment. Comments and attachments should be submitted on 8½" x 11" unbound paper in a format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons requesting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. All comments received during the comment period will be considered by the Coast Guard and may change this proposal.

The Coast Guard has no plans to hold a public hearing. Persons may request a public hearing by writing to Commander (b), First Coast Guard District at the address under **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If the Coast Guard determines that oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register.** Good cause exists for providing a comment period of less than 30 days. Due to the date final information was available concerning these events, the Coast Guard was unable to publish this NPRM in time to provide a longer comment period. Due to the need to establish regulations providing for the safety of these events, which start on Memorial Day weekend, additional notice would be impracticable, unnecessary, and contrary to the public interest.

Discussion of Proposed Amendments

Each year, organizations in the First District sponsor fireworks displays in the same location during the same general time period. The Coast Guard proposes to establish a special local regulation that creates a regulated area surrounding the launch platform used during each fireworks display listed in Table 1 of the new regulation. Table 1 provides dates and locations for the annual fireworks events. Each event listed in Table 1 will use a barge or on-shore site as the fireworks launch platform. Given the concentration of explosives at the launch site, it is necessary to establish special local regulations to control vessel movement within a 500 yard radius around the launch platform to ensure the safety of persons and property at these events. Coast Guard personnel on-scene may allow vessels within the 500 yard radius should conditions permit. The Coast Guard will publish a notice in the **Federal Register** each year which provides the exact dates and times for these events.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). Due to the short duration of each fireworks display, the advance notice provided to the marine community, and the small size of each regulated area, the Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact, on small entities, of a rule for which a general notice of proposed rulemaking is required. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons mentioned in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

This proposal contains no collection of information requirements under the

Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impacts of this proposal and concluded that, under paragraph 2.B.2.e.34(h) of COMDTINST 16475.1B, (as revised by 61 FR 13564, March 27, 1996) this proposal is a special local regulation issued in conjunction with annual regattas or marine parades and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Records and recordkeeping requirements, Waterways.

Proposed Regulation

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows.

Authority: 33 USC 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new section, § 100.114, is added to read as follows:

§ 100.114 First Coast Guard District Fireworks.

(a) *Regulated area.* That area within 500 yards of the launch platform for each fireworks display listed in Table 1 of this section.

Table 1—Fireworks Displays

1. Shooters Independence Day
Sponsor: Shooters Waterfront Cafe USA
Date: July 4
Location: Providence River off India Point Park, Providence, RI
2. Salute to Summer
Sponsor: Naval Education and Training Center
Date; Friday of Weekend preceding Labor Day holiday weekend
Location: Narragansett Bay, East Passage, off Coasters Harbor Island, Newport, RI
3. Yarmouth-Dennis Fireworks
Sponsor: Yarmouth-Dennis Chamber of Commerce
Date: Independence Day holiday weekend
Location: Nantucket Sound, east of channel entrance to Bass River, Yarmouth, MA
4. Edgartown Fireworks
Sponsor: Edgartown Firefighters Association
Date: Independence Day holiday weekend
Location: Edgartown Harbor, Edgartown, MA
5. City of New Bedford Fireworks
Sponsor: City of New Bedford
Date: Independence Day holiday weekend
Location: New Bedford Harbor, New Bedford, MA
6. Falmouth Fireworks
Sponsor: Falmouth Fireworks Committee
Date: July 4
Location: Falmouth Harbor, .25 nm east of buoy #16, Falmouth, MA
7. Bristol 4th of July Fireworks
Sponsor: Bristol Fourth of July Committee
Date: Independence Day holiday weekend
Location: Bristol Harbor, Bristol, RI
8. Oyster Harbor Club Fourth of July Festival
Sponsor: Oyster Harbor Club, Inc
Date: Independence Day holiday weekend
Location: Tim's Cove, North Bay, Osterville, RI
9. Town of Barnstable Fireworks
Sponsor: Town of Barnstable
Date: Independence Day holiday weekend
Location: Dunbar Point/Kalmus Beach, Barnstable, MA
10. Onset Fireworks
Sponsor: Prudential Commerce Onset Fire District
Date: Independence Day holiday weekend
Location: Onset Harbor, Onset, MA
11. Tiverton Waterfront Festival
Sponsor: Tiverton Waterfront Festival Committee
Date: Independence Day holiday weekend
Location: Grinnel's Beach, Sakonnet River, Tiverton, RI
12. Marion Fireworks
Sponsor: Town of Marion Fireworks Committee
Date: Independence Day holiday weekend
Location: Silver Shell Beach, Marion, MA
13. Wellfleet Fireworks
Sponsor: Wellfleet Fireworks Committee
Date: Independence Day holiday weekend
Location: Indian Neck Jetty, Wellfleet, MA
14. Oaks Bluff Fireworks
Sponsor: Oaks Bluff Fireman's Civic Association
Date: Last two weeks in August
Location: Oaks Bluff Beach, Oaks Bluff, MA
15. Anniversary Fireworks
Sponsor: Town of Chilmark
Date: Weekend in September
Location: Menemsha Beach, Chilmark, MA
16. Fall River Celebrates America Fireworks
Sponsor: Fall River Chamber of Commerce
Date: Second Saturday in August
Location: Taunton River, vicinity of buoy #17, Fall River, MA
17. Fireworks on the Navesink
Sponsor: Red Bank Fireworks Committee
Date: Independence Day holiday weekend
Location: Navesink River, 4 nm WSW Oceanic Bridge, Red Bank, NJ
18. Staten Island's 4th of July
Sponsor: Borough of Staten Island
Date: Independence Day holiday weekend
Location: Raritan Bay, vicinity of federal anchorages 44 and 45, Ward Point Bend, NY/NJ
19. Brick Founders Day Fireworks
Sponsor: Brick Township Chamber of Commerce
Date: First weekend in June
Location: Metedeconk River, Windward Beach, Brick Township, NJ
20. Brick Summerfest Fireworks
Sponsor: Brick Township Chamber of Commerce
Date: Independence Day holiday weekend
Location: Metedeconk River, Windward Beach, Brick Township, NJ
21. First Night Fireworks
Sponsor: First Night Inc.
Date: January 1, upon the stroke of midnight
Location: Boston Inner Harbor, Boston, MA
22. Boston Harborfest Fireworks
Sponsor: Harborfest Committee
Date: Harborfest Week Celebration in June or first week in July
Location: Boston Inner Harbor, Boston, MA
23. Weymouth 4th of July Fireworks
Sponsor: Town of Weymouth Harbormaster
Date: Independence Day holiday weekend
Location: Weymouth Fore River, Weymouth, MA
24. Gloucester Fireworks
Sponsor: Gloucester Chamber of Commerce
Date: Labor Day holiday weekend
Location: Gloucester Harbor, Gloucester, MA
25. Walsh's Fireworks
Sponsor: Mr. Patrick Walsh

Date: Independence Day holiday weekend
Location: Union River Bay, ME
26. Belfast Fireworks
Sponsor: Belfast Bay Festival Committee
Date: Third Saturday in July
Location: Belfast Bay, ME
27. Bangor Fireworks
Sponsor: Bangor 4th of July Corporation
Date: Independence Day holiday weekend
Location: Bangor/Brewer waterfront, ME
28. Bar Harbor Fireworks
Sponsor: Bar Harbor Chamber of Commerce
Date: Independence Day holiday weekend
Location: Bar Harbor/Bar Island, ME
29. Summer Music Fireworks
Sponsor: Summer Music Inc.
Date: Weekend during month of August
Location: Niantic River, Harkness Park, Waterford, CT
30. Montauk Independence Day
Sponsor: Montauk Chamber of Commerce
Date: Independence Day holiday weekend
Location: Montauk Town Beach, Montauk, NY
31. Koch Industrial Fireworks
Sponsor: Koch Industries
Date: Last weekend in August or first weekend in September
Location: Shinnecock Bay, South Hampton, NY
32. Norwich Harbor Day Fireworks
Sponsor: Harbor Day Committee
Date: Last Sunday in August
Location: Norwich Harbor, off American Wharf Marina, Norwich, CT
33. City of Norwalk Fireworks
Sponsor: Norwalk Recreation and Parks Department
Date: Independence Day holiday weekend
Location: Calf Pasture Beach, Long Island Sound, Norwalk, CT
34. Boys Harbor Fireworks Extravaganza
Sponsor: Boys Harbor Inc.
Date: Second or third weekend in July
Location: Three Mile Harbor, East Hampton, NY
35. Taste of Italy
Sponsor: Italian Heritage Committee
Date: Weekend following Labor Day holiday weekend
Location: Norwich Harbor, off Norwich Marina, Norwich, CT
36. Hartford Riverfest
Sponsor: July 4th Riverfest, Inc.
Date: Independence Day holiday weekend
Location: Connecticut River, Hartford, CT
37. Fairfield Aerial Fireworks
Sponsor: Fairfield Park Commission
Date: Independence Day holiday weekend
Location: Jennings Beach, Long Island Sound, Fairfield, CT
38. Middletown Fireworks
Sponsor: City of Middletown
Date: Independence Day holiday weekend
Location: Connecticut River, Middletown, CT
39. Thames River Fireworks
Sponsor: Town of Groton
Date: Weekend following Independence Day holiday weekend
Location: Thames River, off Electric Boat, Groton, CT
40. Stratford Fireworks
Sponsor: Town of Stratford
Date: Independence Day holiday weekend
Location: Short Beach, Stratford, CT
41. Hartford Riverfront Regatta
Sponsor: Riverfront Recapture Inc.
Date: First or second weekend in August
Location: Connecticut River, Hartford, CT
42. Subfest Fireworks
Sponsor: U.S. Naval Submarine Base
Date: Independence Day holiday weekend
Location: Thames River, Groton, CT
43. Old Lyme Fireworks
Sponsor: Mr. James R. Rice
Date: Independence Day holiday weekend
Location: Sound View Beach, Long Island Sound, Old Lyme, CT
44. Norwich American Wharf Fireworks
Sponsor: American Wharf Marina
Date: Independence Day holiday weekend
Location: Norwich Harbor, Norwich, CT
45. Wesport P.A.L. Fireworks
Sponsor: Westport Police Athletic League
Date: Independence Day holiday weekend
Location: Compo Beach, Westport, CT
46. Stamford Fireworks
Sponsor: City of Stamford
Date: Date within first two weeks of July
Location: Westcott Cove, Stamford, CT
47. First Night Mystic
Sponsor: Mystic Community Center
Date: December 31
Location: Mystic River, Mystic, CT
48. Cow Harbor Day Fireworks
Sponsor: Village of Northport Harbor
Date: Date within last two weekends of September
Location: Sand Pit, Northport Harbor, Northport, NY
49. Jones Beach State Park Fireworks
Sponsor: Long Island State Park Administration Headquarters
Date: Independence Day holiday weekend
Location: Fishing Pier, Jones Beach State Park, Wantagh, NY
50. Change Fireworks
Sponsor: Change, Medford, NY
Date: Date within first two weekends of August
Location: Short Beach, Nissequogue, NY
51. Devon Yacht Club Fireworks
Sponsor: Devon Yacht Club, Amagansett, NY
Date: Date within the first week of July
Location: Devon Yacht Club, Amagansett, NY
52. Hempstead Fireworks
Sponsor: Town of Hempstead, NY
Date: Date within the first week of July
Location: Point Lookout, Hempstead, NY
53. Town of Babylon Fireworks
Sponsor: Town of Babylon, NY
Date: Date within the first two weeks of July
Location: Nezeras Island, Babylon, NY
54. American Legion Post 83 Fireworks
Sponsor: Town of Branford American Legion Post 83
Date: Date within the first week of July
Location: Branford Point, Branford, CT
55. U.S. Open Fireworks
Sponsor: Barons Cove Inn, Sag Harbor, NY
Date: Date within the middle two weeks of June
Location: Barons Cove, Sag Harbor, NY
56. Bayville Crescent Club Fireworks
Sponsor: Bayville Crescent Club, Bayville, NY
Date: Independence Day holiday weekend
Location: Cooper Bluff, Cove Neck, NY
57. Yampol Family Fireworks
Sponsor: Azurite Corp. LTD., Fort Lauderdale, FL
Date: Date within the last weekend of May
Location: Barons Cove, Sag Harbor, NY

(b) *Special Local Regulations.*

(1) The Coast Guard patrol commander may delay, modify, or cancel the fireworks display as conditions or circumstances require.

(2) No person or vessel may enter, transit, or remain within the regulated area during the effective period of regulation unless authorized by the Coast Guard patrol commander.

(3) Vessels encountering emergencies which require transit through the regulated area should contact the Coast Guard patrol commander on VHF Channel 16. In the event of an emergency, the Coast Guard patrol commander may authorize a vessel to transit through the regulated area with a Coast Guard designated escort.

(4) All persons and vessels shall comply with the instructions of the Coast Guard on-scene patrol commander. On-scene patrol personnel may include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon hearing five or more short

blasts from a U.S. Coast Guard vessel, the operator of a vessel shall proceed as directed. Members of the Coast Guard Auxiliary may also be present to inform vessel operators of this regulation and other applicable laws.

(c) *Effective dates.* This section is in effect for each event listed in Table 1 on dates and times specified in a **Federal Register** notice.

Dated: May 10, 1996.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 96–12867 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–14–M

Coast Guard

33 CFR Part 165

[COTP San Diego 96–002]

RIN 2115–AA97

Security Zone; San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Secret Service, the Coast Guard proposes to establish a temporary security zone within San Diego Bay adjacent to the San Diego Convention Center. The security zone is needed to ensure the security of those attending the Republican National Convention by securing the nearby Marriott Marina and any adjacent vessels, waterfront facilities, or waters. Authorized vessels will be permitted to enter or remain within the security zone.

DATES: Comments must be received on or before July 8, 1996. Two public meetings will be held: one meeting on June 1, 1996 at 10 a.m. and the second meeting on July 2, 1996 at 7 p.m.

ADDRESSES: Comments may be mailed to LTJG John V. Reinert, Marine Safety Office San Diego, 2716 N. Harbor Dr., San Diego, CA 92101. Comments may also be delivered between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments will be available for inspection and copying at this address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The June 1, 1996 public meeting will be held at the San Diego Marriott and Marina, 385 West Harbor Drive, San Diego, CA. The July 2, 1996 public meeting will be held at Building "I", Coast Guard Activities San Diego, 2710 North Harbor Drive, San Diego, CA.

FOR FURTHER INFORMATION CONTACT: LTJG John V. Reinert, Marine Safety Office, 2716 N. Harbor Dr., San Diego, CA 92101 (619) 683–6486.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rule making by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (COTP San Diego 96–002) and the specific section of the proposal to which their comments apply. Reasons should be given for each comment. The regulations may be changed in view of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken. The receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The Captain of the Port San Diego plans to hold two public meetings in San Diego, CA on this proposed rule. The first meeting will be June 1, 1996 at 10 a.m. at the San Diego Marriott and Marina. The second meeting will be held at 7 p.m. at Building "I" Coast Guard Activities San Diego.

Discussion of Proposed Regulations

The Republican National Convention will be held at the San Diego Convention Center in San Diego, CA from August 11 through 15, 1996. The Secret Service requested that the Coast Guard establish the proposed security zone to ensure the security of those attending the Republican National Convention by securing the nearby Marriott Marina and any adjacent vessels, waterfront facilities, or waters. Expected attendees at the Convention may include former U.S. presidents and their spouses, high ranking U.S. government officials and the Republican presidential and vice-presidential nominees.

The security zone will be in effect from 8 a.m. PDT on August 11, 1996 until 11 p.m PDT on August 15, 1996. The security zone will encompass the entrance to the Marriott Marina, and includes the following water and land area: starting at a point along the waterfront between Marriott Marina finger piers "F" and "G" at a point 32°42′26″N, 117°09′56″W, extending southwesterly to the south end of North Embarcadero Park at a point 32°42′20″N, 117°10′01″W, continuing 500 feet southwesterly toward channel buoy "23" at a point 32°42′16″N, 117°10′07″W, then southeasterly following the South Embarcadero Park shoreline so a point where it intersects with the easterly side of navigable channel at 32°42′13″N, 117°10′02″W, proceeding along the channel edge 100 feet past the southernmost point of South Embarcadero Park to a point 32°42′09″N, 117°09′50″, then northeasterly until it intersects with the shoreline at a point 32°42′16″N, 117°09′42″W, then along shoreline to the point of beginning.

Pursuant to the Coast Guard's authority in 33 U.S.C. 1223; 50 USC 191, and the general regulations governing security zones in 33 CFR 165.33 and 33 CFR 6.04, no vessel will be allowed to enter or remain in this zone unless specifically authorized by the Captain of the Port (COTP). The COTP may grant permission for a vessel to enter or remain within the security zone if the vessel owner or operator first consents to a search of the vessel by the U.S. Secret Service, U.S. Coast Guard, or other authorities for the purpose of finding explosives, weapons, or other articles which may pose a threat to the Marriott Marina or any adjacent vessels, waterfront facilities, or waters. The owner or operator of a vessel entering the security zone must also provide the COTP with a list of persons on board and destination slip number. Vessels whose owners or operators do not consent to a search of their vessels or who refuse to provide any information requested by the COTP will not be granted permission to enter or remain within the security zone. While the security zone is in effect, no person will be granted permission by the COTP to remain on any vessel within the security zone between the hours of 10 p.m. and 8 a.m.

The COTP may grant permission for a vessel in the mooring at the Marriott Marina to remain within the security zone if the owners or operators consent to a search of the vessel. If a vessel leaves its mooring and exits the security zone, its reentry will be conditioned on consent to be searched. Additionally, the owner or operator of the vessel will be required to provide the COTP with a list of persons on board the vessel when transiting the security zone and an estimated time of return to moorings within the security zone.

Under the authority granted the COTP in 33 CFR 6.04–8 to control the movement of any vessel within the territorial waters of the United States under his jurisdiction, vessels within the security zone will not be allowed to move on August 15, 1996 from 2 p.m. to 11 p.m. The COTP will not grant permission for any vessel to enter the security zone during that time period. Additionally, during this time period, under the authority in 33 CFR 6.04–7, the COTP will not allow any person to remain on vessels moored at Marriott Marina finger piers G, H, I, and J.

The COTP, working with the Secret Service and other law enforcement authorities during this operation, may impose other restrictions within the security zone if circumstances dictate. Restrictions imposed by the COTP will be tailored to impose the least impact on maritime interests while ensuring the security of the Marriott Marina or any adjacent vessels, waterfront facilities, or waters.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under 5 U.S.C. 601 *et seq.*, known as the Regulatory Flexibility Act, the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the small Business Act (15 U.S.C. 632). The Captain of the Port may grant permission for vessels to enter or remain in the security zone, subject to the conditions discussed previously. Costs incurred by vessel owners and commercial entities within the security zone are expected to be minimal. Any such costs are greatly outweighed by the need to ensure the security of those attending the Republican National Convention by securing the nearby Marriott Marina and any adjacent vessels, waterfront facilities, or waters. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b), that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and this action does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

This proposed rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475. 1B, as revised in 59 FR 38654, July 29, 1994. A Categorical Exclusion Determination and Environmental Analysis Checklist are included in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements. Security measures, Waterways.

Proposed Regulations

In consideration of the foregoing, 33 CFR part 165 is proposed to be amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C.1231; 50 U.S.C. 191: 33 CFR 1.05–1(g), 6.04–6 and 160.5; 49 CFR 1.46.

2. A new section 165.T11–030 is added to read as follows:

§ 165.T11–030 Security Zone; San Diego Bay, San Diego, CA.

(a) *Location.* The following area is a security zone: the water and land area adjacent to the San Diego Convention Center, San Diego, CA, described as follows:

Beginning at 32°42′26″N, 117°09′56″W; then southwest to 32°42′20″N, 117°10′01″W; then southwest to 32°42′16″N, 117°10′07″W; then southeast to the outer channel line to 32°42′13″N, 117°10′02″W; then continuing along the outer channel line to 32°42′09″N, 117°09′50″W; then northwest to point of land at 32°42′16″N, 117°09′42″W; then along shoreline to the point of beginning. (Datum: NAD 83)

(b) *Effective dates.* This section is in effect from 8 a.m. PDT on August 11, 1996 until 11 p.m. PDT on August 15, 1996.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33, entry into this zone is prohibited except as authorized by the Captain of the Port.

(2) The COTP may grant permission for a vessel to enter or remain within the security zone if the owners or operators consent to a search of their vessel for the purpose of locating explosives, weapons, or other articles or things which could pose a threat to the security of the Marriott Marina, adjacent vessels, waterfront facilities, or waters.

(3) All persons and vessels within the security zone shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Upon being hailed via siren, radio, flashing light, or other means, the operator of a vessel shall follow the instructions of the patrol personnel.

(4) The Captain of the Port will notify the public of the status of this security zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

Dated: April 26, 1996.

J.A. Watson,

Commander, U.S. Coast Guard, Captain of the Port, San Diego.

[FR Doc. 96–13041 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–14–M

LIBRARY OF CONGRESS

36 CFR Part 701

[Docket No. LOC 96–2]

Acquisition of Library Materials by Non-purchase Means and Disposition of Surplus Library Materials

AGENCY: Library of Congress.

ACTION: Proposed rule.

SUMMARY: The Library of Congress is proposing to revise its policy on the transfer of surplus library materials to reduce the volume and type of materials it receives from Federal agencies. The Library wishes to eliminate the transfer of all bound and unbound serials and restrict all other transfers to certain specific categories.

DATES: Comments should be received on or before June 24, 1996.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail to: Library of Congress, Mail Code 1050, Washington, D.C. 20540. If delivered by hand, copies should be brought to: Office of the General Counsel, James Madison Memorial Building, Room LM–601, First and Independence Avenue, S.E.,

Washington, D.C. 20540–1050, (202) 707–6316.

FOR FURTHER INFORMATION CONTACT: Johnnie M. Barksdale, Regulations Officer, Office of the General Counsel, Library of Congress, Washington, D.C. 20540–1050. Telephone No. (202) 707–1593.

SUPPLEMENTARY INFORMATION: Under 2 U.S.C. 131, 136, and 149, the Librarian of Congress has general and specific authority for the administration and disposition of Library materials; it pertains to the organization and handling of duplicate materials and to the exchange and transfer operations of the Library, sale, donation to domestic educational institutions and public bodies, and the disposition of materials not needed for any of these uses. In order to enhance these operations and to fill gaps in its permanent collections, the Library of Congress has encouraged libraries and other agencies of the Federal Government to send to the Library's Exchange and Gift Division all library materials that are surplus to their needs. For several decades this program benefitted the Library, the Federal library community and the general public. Because of reductions in staffing levels, due to budgetary constraints, and reduced demand in some categories, the Library can no longer fully utilize these materials. In analyzing the costs and benefits to the Federal Government, the Library found that the expenses to administer the current program far outweigh the benefits. By implementing this regulation, the Library will be able to redirect its remaining fiscal and human resources to efficiently administer a reduced, but more focused, program. Other Federal agencies will achieve considerable savings in labor and postage by not having to handle and ship unwanted materials to the Library of Congress. The proposed replacement text for 36 CFR 701.33(a)(4) is revised to set forth the general policy on the transfer of surplus library materials to reduce the volume and type of materials it receives from Federal agencies.

List of Subjects in 36 CFR Part 701

Libraries, Seals and insignias.

Proposed Regulations

In consideration of the foregoing the Library of Congress proposes to amend 36 CFR part 701 as follows:

PART 701—PROCEDURES AND SERVICES

1. The authority citation for part 701 will continue to read as follows:

Authority: 2 U.S.C. 131, 136 & 149.

2. Section 701.33(a)(4) is revised to read as follows:

§ 701.33 Acquisition of library materials by non-purchase means and disposition of surplus library materials.

* * * * *

(4) Transfer. Libraries and other agencies of the Federal Government are encouraged to send to the Library for disposition soft or hard-bound books that are surplus to their needs in the following categories: Novels and Reference works (e.g. encyclopedias, directories, guides, such as Encyclopedia of Associations, The World of Learning, The Statesman's Yearbook, Books in Print, etc.) not older than three years. And not older than five years in: Humanities (art, music, belles lettres etc.); History and area studies; Social sciences (economics, politics, etc.); Education; and Science (agriculture, medicine, computer science, mathematics, physics, etc.). Such transferred materials are needed to fill gaps in the Library's holdings, for exchanges, to transfer to other Federal agencies, and to make available through the Surplus Books Program to qualified recipients. The Library's Exchange and Gift Division (E&G) requests notification at the earliest possible date of any government libraries that are scheduled to close or be substantially reduced. The Library also requests that shipments of 1,000 pounds or more be cleared with E&G in advance. The Library does not accept bound and unbound serials. Federal agencies should dispose of surplus serials, and other surplus library materials not specified above, in accordance with their agency's regulations governing the disposal of surplus materials.

* * * * *

Dated: May 16, 1996.
Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 96–12895 Filed 5–22–96; 8:45 am]

BILLING CODE 1410–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC–80–1–9619b & NC–81–1–9620b; FRL–5505–5]

Approval and Promulgation of Implementation Plans; Forsyth County: Approval of Revisions to the Forsyth County Local Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On November 29, and December 28, 1995, the State of North Carolina, through the North Carolina Department of Environment, Health and Natural Resources, submitted revisions to the North Carolina State Implementation Plan (SIP). These revisions include the adoption of three source-specific volatile organic compound rules; Subchapter 3D .0955, Thread Bonding Manufacturing, .0956, Glass Christmas Ornament Manufacturing, and .0957 Commercial Bakeries, the deleting of textile coating, Christmas ornament manufacturing, and bakeries from the list of sources that must follow interim standards, the defining of di-acetone alcohol as a non-photochemically reactive solvent, and the placement of statutory requirements for adoption by reference for referenced ASTM methods into a single rule rather than each individual rule that references ASTM methods.

Revisions to Subchapter 3D .1401–.1415; Reasonably Available Control Technology for Sources of Nitrogen Oxides (No_x RACT); .1501–.1504 Transportation Conformity; and .1601–.1603; General Conformity are being addressed in separate **Federal Register** documents.

In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by June 24, 1996.

ADDRESSES: Written comments on this action should be addressed to Mr. Randy Terry at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 443, 401 M Street, SW., Washington DC 20460.
Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.
North Carolina Department of Environmental, Health, and Natural Resources, Division of Environmental Management, Raleigh, North Carolina 27626–0535.

FOR FURTHER INFORMATION CONTACT: Mr. Randy Terry, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides, and Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365. The telephone number is 404/347–3555, extension 4212.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: March 21, 1996.

Phyllis P. Harris,

Acting Regional Administrator.

[FR Doc. 96–12891 Filed 5–22–96; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 52

[WA48–7121b; FRL–5506–4]

Approval and Promulgation of State Implementation Plans: Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Washington for the purpose of updating regulations administered by the Energy Facility Site Evaluation Council (EFSEC). The SIP revision was submitted by the State to satisfy Federal Clean Air Act requirements contained in 40 CFR Part 52. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received in writing by June 24, 1996.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. U.S. Environmental Protection Agency, Region 10, Office of Air Quality (OAQ–107), 1200 6th Avenue, Seattle, WA 98101. The State of Washington, Department of Ecology, 4550 Third Avenue SE., Lacey, Washington 98504.

FOR FURTHER INFORMATION CONTACT: Ed Jones, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–1743.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: May 6, 1996.

Jane S. Moore,

Acting Regional Administrator.

[FR Doc. 96–12893 Filed 5–22–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–83; RM–8634]

Radio Broadcasting Services; Littlefield, Wolfforth and Tahoka, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is issuing a *Request for Supplemental Information* regarding the proposal filed by 21st Century Radio Ventures, Inc., permittee of Station KAIQ(FM), Channel 238C3, Littlefield, Texas, proposing the reallotment of Channel 238C3 from Littlefield to Wolfforth, Texas, and the modification of Station KAIQ(FM)'s construction permit to specify Wolfforth as its community of license. To accommodate this reallotment, 21st Century also proposed either the deletion or substitution of the Channel 237A allotment at Tahoka, Texas. *See Notice of Proposed Rule Making*, 10 FCC Rcd 6598 (1995). We request that 21st Century submit information sufficient to show that Wolfforth is deserving of a first local service preference using the Commission's three factors enumerated in *RKO General (KFRC)* and *Faye and Richard Tuck*. The Request for Supplemental Information does not afford any parties an opportunity to file counterproposals.

DATES: Comments must be filed on or before July 8, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James L. Primm, 21st Century Radio Ventures, Inc., 713 Broadway, Santa Monica, California 90401 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Request for Supplemental Information*, MM Docket No. 95–83, adopted May 8, 1996, and released May 17, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–12969 Filed 5–22–96; 8:45 am]

BILLING CODE 6712–01–F

Notices

Federal Register
Vol. 61, No. 101
Thursday, May 23, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 17, 1996.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Department Clearance Officer, USDA, OIRM, Ag Box 7630, Washington, D.C. 20250–7630. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

National Agricultural Statistics Service

- *Title:* June Agricultural Survey.

Summary: The June Agricultural Survey collects information on planted acreage for major crops, livestock inventories, and on-farm grain stocks. The June crops data establishes the base for estimating crop production and value for the remainder of the crop year.

Need and Use of the Information: Indications from this survey are used to estimate the major crops grown, livestock inventories, on-farm grain stocks and agricultural land values and rents. Estimates are used throughout government and agriculture in policy, production, and marketing decisions.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 110,300.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 19,691.

Forest Service

- *Title:* Special Use Administration.

Summary: Information is needed from these parties who seek special-use authorizations to conduct private or commercial operations on National Forest System land, or from those who are currently utilizing National Forest System lands for private or public use.

Need and Use of the Information: There is a basic obligation of the Forest Service to ensure that the use of Federal lands is in the public interest; is compatible with the mission of the Forest Service; and that environmental and social impacts are identified and mitigated and that a fee based on fair market value is received. This evaluation can only be accomplished with the cooperation and information furnished by the applicant or permit holder.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 45,075.

Frequency of Responses: Reporting: On occasion; Quarterly; Annually.

Total Burden Hours: 66,363.

National Agricultural Statistics Service

- *Title:* Agricultural Labor Survey.

Summary: The agricultural labor survey provides data to estimate number of farm workers, hours worked, and wage rates.

Need and Use of the Information: The 1938 Agricultural Adjustment Act requires wage rate data for computation of an index component. This component is used in calculation of parity prices. The Department of Labor needs agricultural labor data for the administrations of the "H–2A" program and for setting "adverse effect wage rates".

Description of Respondents: Farms.

Number of Respondents: 12,815.

Frequency of Responses: Reporting: Quarterly; Annually.

Total Burden Hours: 10,878.

Animal and Plant Health Inspection Service

- *Title:* Application for Veterinary Accreditation.

Summary: The veterinary accreditation program certifies qualified veterinary practitioners to participate in certain Federal or Federal/State regulatory animal health programs.

Need and Use of the Information: The program accredits and thereby authorizes private veterinary practitioners to work cooperatively with APHIS and the animal health officials to carry out regulatory programs and activities that assure the health of the nations livestock and poultry.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 56,024.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 60,210.

Donald Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 96–12902 Filed 5–22–96; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Williams Mountain Project Area, Medicine Bow/Routt National Forest, Grand County, CO

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement on a proposal to manage forest vegetation within the Williams Mountain Project Area on the Medicine Bow/Routt National Forest within Grand County, Colorado.

The Forest Serve invites comments and suggestions on the scope of the analysis to be included in the Draft Environmental Impact Statement (DEIS). In addition, the Forest Service gives notice that it is beginning a full environmental analysis of this proposal and that interested or affected people may participate and contribute to the final decision. Issues raised will help establish the scope of the environmental analysis and develop the range of alternatives to be considered. The Forest Service welcomes any public or agency comments on this proposal.

DATES: Comments concerning the scope of the analysis should be received by June 24, 1996. Comments may be either written or oral.

ADDRESSES: Send written comments to Larry W. Ross, District Ranger, Parks District, P.O. Box 158, Walden, Colorado 80480–0158. Oral comments will be considered as well and can be made by calling (970) 723–8204.

FOR FURTHER INFORMATION CONTACT: John Natvig, Williams Mountain Project Area Interdisciplinary Team Leader, (970) 723–8204.

SUPPLEMENTARY INFORMATION: The Routt National Forest Land and Resource Management Plan (Forest Plan) provides a blueprint for a Desired Future Condition (DFC) on public lands administered by the Medicine Bow/Routt National Forest. In addition the Forest Plan establishes resource goals and outputs needed to manage the resources while achieving the DFC. The nature and scope of the proposed action includes a combination of prescribed fire and silvicultural treatments to create vegetation patterns consistent with those created through natural process and cycles in order to optimize habitat capability for a range of wildlife management indicator species (Forest Plan, III–125). Treatments and associated activities being considered include timber harvest, road construction, and prescribed fire. Management activities would also be implemented to maintain structural diversity (Forest Plan, III–12), manage aspen for retention (Forest Plan, III–13), prevent or suppress epidemic insect and disease populations (Forest Plan, III–79), and decrease fuel conditions to permit fire suppression forces to meet fire protection objectives for the area (Forest Plan, III–78).

The decision to be made is whether or not to proceed with the vegetation treatments and associated road construction activities. A range of alternative actions will be developed based on public and agency issues raised during the scoping process.

The Forest Service manages the land within the analysis area under "Management Prescriptions 2B, 4B, and 5B." The proposed action is consistent with the Routt National Forest Plan.

The following are preliminary issues and concerns which have been identified: (1) Prescribed fire and/or prescribed natural fire should be considered as a tool to meet management needs. (2) Management activities need to be analyzed in regard to effects on wildlife management indicator species. (3) Management activities should emulate natural processes, their function, and result in a landscape pattern similar to natural disturbance. (4) Management activities may have negative effects on adjacent private lands. (5) Management activities may have a negative effect on visual quality. (6) The unroaded character of the area should be maintained.

The Responsible Official will be Larry W. Ross, Parks District Ranger, Medicine Bow/Routt National Forest and Thunder Basin National Grasslands, 612 5th Street, PO Box 158, Walden, Colorado, 80480.

The Draft Environmental Impact Statement is expected to be available in October 1996 and the Final Environmental Impact Statement available in January 1997.

A 45-day public comment period on the Draft Environmental Impact Statement will commence on the day the Environmental Protection Agency publishes a "Notice of Availability" in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contents. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningful consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on this Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.) Please note that comments you make on this Draft Environmental Impact Statement will be regarded as public information.

Dated: May 14, 1996.

Larry W. Ross,

Parks District Ranger, Medicine Bow/Routt National Forest.

[FR Doc. 96–12980 Filed 5–22–96; 8:45 am]

BILLING CODE 3410–11–M

Southeast Alaska Federal Subsistence Regional Advisory Council; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southeast Alaska Federal Subsistence Regional Advisory Council will meet in Juneau, Alaska, on June 4 and 5, 1996, at the Juneau City Council Chambers. The public is invited to attend the meeting, observe the proceedings, and provide oral testimony on two agenda items: (1) The advance notice of proposed rulemaking published April 4, 1996, in the **Federal Register** (61 FR 15014) concerning modifications to Federal Subsistence Management Regulations for Public Lands in Alaska, at Title 36, Code of Federal Regulations, part 242, and 50 CFR part 100, and (2) revision of the Tongass National Forest Land and Resource Management Plan (61 FR 18587).

DATES: The meeting will be held June 4 and 5, 1996, from 9 a.m. to 5:30 p.m. Oral testimony will be taken from 2 p.m. to 5:30 p.m. on June 5.

ADDRESSES: The meeting will be held at the Juneau City Council Chambers, 155 S. Seward Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Fred P. Clark, Council Coordinator, (907) 586–7895).

SUPPLEMENTARY INFORMATION: The Southeast Alaska Federal Subsistence Regional Advisory Council is one of the councils established in each subsistence resource region by the Federal Subsistence Board, to provide regional forums for the collection and expression of opinions and recommendations on matters related to subsistence taking and uses of fish and wildlife resources on public lands and to provide for public participation in the Federal regulatory process. The councils operate in accordance with the Federal Advisory Committee Act and have been established in accordance with the Alaska National Interest Lands Conservation Act.

Dated: May 17, 1996.

Kimberly Evart Bown,

Acting Deputy Regional Forester for Resources, USDA Forest Service, Alaska Region—Region 10.

[FR Doc. 96–12944 Filed 5–22–96; 8:45 am]

BILLING CODE 3410–11–M

Rural Utilities Service

Alabama Electric Cooperative; Notice of Intent

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent to hold scoping meeting and prepare an environmental assessment and/or environmental impact statement.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR part 1794) may prepare an Environmental Assessment and/or an Environmental Impact Statement (EIS) for its Federal action related to a proposal by Alabama Electric Cooperative to construct two combustion turbines at the site of their existing McIntosh Power Plant located in McIntosh, Alabama. RUS may provide financing assistance to Alabama Electric Cooperative for project construction costs.

MEETING INFORMATION: RUS will conduct a scoping meeting in an open house forum on June 27, 1996, from 6 p.m. until 8 p.m. at the McIntosh Power Plant located on the west side of Highway 43 at mile marker 41 in McIntosh, Alabama.

FOR INFORMATION CONTACT: Lawrence R. Wolfe, Senior Environmental Protection Specialist, Engineering and Environmental Staff, RUS, Ag. Box 1571, South Agriculture Building, Washington, DC 20250, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: Alabama Electric Cooperative proposes to construct two 113 megawatt (MW) combustion turbine generators adjacent to its existing McIntosh Power Plant. This power plant is located just west of U.S. Highway 43 near the center of Section 1, Township 3 north, Range 1 west in Washington County, Alabama, just south of McIntosh.

Alternatives to be considered by RUS and Alabama Electric Cooperative to Alabama Electric Cooperative constructing the generation facility proposed include: (a) No action, (b) purchase of peaking capacity from independent power producers, co-generators, and other electric utilities, and (c) constructing the proposed generation facilities at alternative site locations.

To be presented at the public scoping meeting will be an alternative evaluation and siting-study prepared by Alabama Electric Cooperative. The alternative evaluation and siting study is available for public review at RUS at the address provided in this notice or at Alabama Electric Cooperative, U. S. Highway 29 North, Andalusia, Alabama 36420. It can also be reviewed at the libraries in McIntosh and Chatom, Alabama.

Government agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed project. Representatives from RUS and Alabama Electric Cooperative will be available to discuss RUS's environmental review process, describe the project and alternatives under consideration, discuss the scope of environmental issues to be considered, answer questions, and accept oral and written comments. Written comments will be accepted for at least 30 days after the June 27th public scoping meeting. Written comments should be sent to RUS at the address provided in this notice.

From information provided in the alternative evaluation and siting study, input that may be provided by government agencies, private organizations, and the public, Alabama Electric Cooperative will prepare an environmental analysis to be submitted to RUS for review. If significant impacts are not evident based on a review of the environmental analysis and other relevant information, RUS will prepare an environmental assessment to determine if the preparation of an EIS is warranted.

Should RUS determine that the preparation of an EIS is not warranted, it will prepare a finding of no significant impact (FONSI). The FONSI will be made available for public review and comment for 30 days. RUS will not take its final action related to the project prior to the expiration of the 30-day period.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental procedures as prescribed by CEQ and RUS environmental policies and procedures.

Dated: May 17, 1996.

Adam M. Golodner,

Deputy Administrator—Program Operations.

[FR Doc. 96–12998 Filed 5–22–96; 8:45 am]

BILLING CODE 3410–15–P

Dairyland Power Cooperative; Notice of Intent

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of intent to conduct scoping meetings and prepare an environmental assessment and/or an environmental impact statement.

SUMMARY: The Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR Parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR Part 1794) intends to hold public scoping workshops and prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) for a transmission project proposed by Dairyland Power Cooperative (Dairyland) and Northern States Power (NSP). RUS may provide financing assistance to Dairyland for project construction costs.

MEETING INFORMATION: RUS will conduct four scoping meetings in an open house forum as follows: on June 24, 1996, from 2 p.m. until 8 p.m. at the Lake Woods Resort, in Cable, Wisconsin; on June 25, 1996, from 2 p.m. until 8 p.m. at the Hotel Chequamegon, located on Lakeshore Drive West, in Ashland, Wisconsin; on June 26, 1996, from 2 p.m. until 8 p.m. at the Dalles House Restaurant located at the junction of Highways 35 and 8 in St. Croix Falls, Wisconsin; and on June 27, 1996, from 2 p.m. until 8 p.m. at the Lent Township Townhall located on 3355 Hemmingway Road in Stacy, Minnesota.

FOR INFORMATION CONTACT:

Mr. Lawrence R. Wolfe, Senior Environmental Protection Specialist, Engineering and Environmental Staff, RUS, Ag. Box 1571, South Agriculture Building, Washington, DC 20250, telephone (202) 720–1784, or

Mr. Chuck Thompson, Dairyland Power Cooperative, 3200 East Avenue South, P.O. Box 817, La Crosse, Wisconsin 54602–0817, telephone (608) 788–1432.

SUPPLEMENTARY INFORMATION: Dairyland, in conjunction with NSP, proposes to construct approximately 35 miles of 230 kV transmission line from the Chisago Substation near Lent, Minnesota, to the Apple River Substation, in Polk County, Wisconsin, and 50 miles of 161 kV transmission line from the Stone Lake Substation, near Hayward, Wisconsin, to the Bayfront Substation in Ashland, Wisconsin.

Alternatives to be considered by RUS include no action, demand side management, local generation, system alternatives, transmission alternatives, and alternative routes.

Government agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed project. Representatives from RUS, Dairyland, and NPS will be available to discuss RUS's environmental review process, describe the project and alternatives under consideration, explain the need for the project, discuss the scope of environmental issues to be considered, answer questions, and accept oral and written comments. An Alternative Evaluation and Macro-Corridor Study (Study) to be prepared by Dairyland, and its consultant, will be presented for review and comment at the public scoping meetings. The Study will be made available for review and comment following the public scoping meetings at a convenient location to be announced at the public scoping meetings and in public and legal notices placed in newspapers with a circulation in the project area. Written comments will be accepted at the addresses provided in this notice within 30 days after the June 27 public scoping meeting.

Based on the Study and input from Federal, State and local agencies, private organizations, and the public, Dairyland will prepare an Environmental Analysis to be submitted to RUS for review. If significant impacts are not evident based on RUS's independent review of the Environmental Analysis (EVAL) and other relevant information, RUS will prepare an EA to determine if the preparation of an EIS is warranted. If the EVAL or the EA indicates that significant impacts may occur due to project construction, RUS will prepare an EIS.

Should RUS determine that the preparation of an EIS is not warranted, it will prepare a Finding of No Significant Impact (FONSI). The FONSI will be made available for public review and comment for 30 days. RUS will not take its final action related to the project prior to the expiration of the 30-day period.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by CEQ and RUS Environmental Policies and Procedures.

Dated: May 17, 1996.

Adam M. Golodner,

Deputy Administrator—Program Operations.

[FR Doc. 96–12997 Filed 5–22–96; 8:45 am]

BILLING CODE 3410–15–P

APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMMISSION

Notice of Meeting

AGENCY: Appalachian States Low-Level Radioactive Waste Commission.

ACTION: Annual meeting.

SUMMARY: The Appalachian States Low-Level Radioactive Waste Commission will hold an annual meeting on June 19, 1996. The meeting is open to the public. An executive session will be held from 9:15 am to 10:30 am which will be closed to the public.

DATES: June 19, 1996, 9:00 am–4:00 pm.

ADDRESSES: Harrisburg Hilton and Towers, One North Second Street, Harrisburg, Pennsylvania.

FOR FURTHER INFORMATION CONTACT:

Marc S. Tenan, Executive Director, 207 State Street, Harrisburg, PA 17101, 717–234–6295.

SUPPLEMENTARY INFORMATION: The Appalachian States Low-Level Radioactive Waste Commission (Commission) was established by the Appalachian States Low-Level Radioactive Waste Compact Consent Act (Public Law 100–319, May 19, 1988). The Commission represents the states of Delaware, Maryland and West Virginia, and the Commonwealth of Pennsylvania to assist in the establishment of a regional low-level radioactive waste disposal facility as required by the Low-Level Radioactive Waste Policy Amendments Act (Public Law 99–240, January 15, 1986).

The primary purpose of this meeting is to: consider a revised budget for 1996–97; consider a proposed budget for 1997–98; elect officers; and hear a status report on the siting of a regional LLRW disposal facility. A draft agenda can be obtained by contacting the Commission at 717–234–6295.

Marc S. Tenan,

Executive Director.

[FR Doc. 96–12953 Filed 5–22–96; 8:45 am]

BILLING CODE 0000–00–M

DEPARTMENT OF COMMERCE

International Trade Administration

Trade Fair Privatization Application; Proposed Collection

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2) (A)).

DATES: Written comments must be submitted on or before July 22, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Paul Bucher, Manager, Trade Fair Certification, tel. (202) 482–2525.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Trade Fair Certification (TFC) program is a service of the U.S. Department of Commerce (Commerce) that provides Commerce endorsement and support for high-quality international trade fairs which are organized by private-sector firms. The TFC program seeks to broaden the base of U.S. firms, particularly new-to-market companies by introducing them to key international trade fairs where they can achieve their export objectives. Those objectives include one or more of the following: direct sales, identification of local agents or distributors, market research and exposure, and joint venture and licensing opportunities for their products and services.

The objective of the application is to make a determination that the trade fair organizer is qualified to organize and manage U.S. exhibitions at a foreign trade show.

II. Method of Collection

The collection is by mail. Applicants mail the applications to the U.S. Department of Commerce.

III. Data

OMB Number: 0625–0222.

Form Number: Agency—ITA–4134P.
Type of Review: Renewal—Regular submission.
Affected Public: Business and other for profit and non-profit entities in the United States.
Estimated Number of Respondents: 50.
Estimated Time per Response: average 12 hours per response.
Estimated Total Annual Burden Hours: 600.
Estimated Total Annual Cost: $21,000—Respondents will not need to purchase equipment or materials to respond to this collection.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 20, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–13044 Filed 5–22–96; 8:45 am]

BILLING CODE 3510–FP–P

National Oceanic and Atmospheric Administration

[I.D. 051796B]

Atlantic Offshore Fisheries Take Reduction Team Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Take Reduction Team (TRT) to address bycatch of Atlantic offshore cetaceans in the U.S. Atlantic large pelagics pair trawl fishery, the U.S. Atlantic longline fishery, and the U.S. Atlantic large pelagic drift gillnet fishery will hold its first meeting to develop a Take Reduction Plan (TRP) as described in the Marine Mammal Protection Act (MMPA) focusing on reducing bycatch in these fisheries.

DATES: The meeting will be held on May 29–30, 1996, from 8:30 a.m. to 5:30 p.m.

ADDRESSES: The TRT meeting will be held at the Government Center Holiday Inn, Boston, MA 20010.

FOR FURTHER INFORMATION CONTACT: Douglas Beach, (508) 281–9254, or Victoria Cornish, (301) 713–2322.

SUPPLEMENTARY INFORMATION: On April 30, 1994, the 1994 Amendments to the MMPA were signed into law. Section 117 of the MMPA requires that NMFS complete stock assessment reports for all marine mammal stocks within U.S. waters. Each stock assessment report is required to categorize the status of the stock as one that either has a level of human-caused mortality and serious injury that is not likely to cause the stock to be reduced below its optimum sustainable population; or is a strategic stock, with a description of the reasons therefore; and estimate the potential biological removal (PBR) level for the stock, describing the information used to calculate it, including the recovery factor. Stock Assessment Reports and the calculated PBR were published by NMFS in July 1995.

The MMPA defines a "strategic stock" as a marine mammal stock for which the level of direct human-caused mortality exceeds the PBR level; which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 (ESA) within the foreseeable future; which is listed as a threatened species or endangered species under the ESA, or is designated as depleted under the MMPA. The MMPA further defines the term "potential biological removal," or PBR, as "the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population."

The U.S. Atlantic large pelagics pair trawl fishery, the U.S. Atlantic longline fishery, and the U.S. Atlantic large pelagic drift gillnet fishery interact with several strategic marine mammal stocks including: Long-finned and short-finned pilot whales, common dolphins, Atlantic spotted dolphins, and the offshore stock of bottlenose dolphin. The U.S. Atlantic large pelagic drift gillnet fishery also interacts with three species of endangered large whales; the humpback whale, the northern right whale, and the sperm whale (supporting documentation at 60 FR 67063, December 28, 1995).

These stocks are considered strategic under the MMPA because they are either listed as an endangered or threatened species under the ESA or because the level of human-caused mortality is greater than their PBR levels.

Section 118(f) of the MMPA requires NMFS to establish a TRT to prepare a draft TRP designed to assist in the recovery or prevent the depletion of each strategic marine mammal stock that interacts with certain fisheries. Section 118(f)(6)(C) requires that members of the TRTs have expertise regarding the conservation or biology of the marine mammal species that the TRP will address, or the fishing practices that result in the incidental mortality and serious injury of such species. The MMPA further specifies that members of the TRT shall include representatives of Federal agencies, each coastal state with fisheries that interact with the species or stock, appropriate Regional Fishery Management Councils, interstate fisheries commissions, academic and scientific organizations, environmental groups, all commercial and recreational fisheries groups and gear types which incidentally take the species or stock, Alaska Native organizations, or Indian tribal organizations, and others as deemed appropriate.

As a result of stock assessment reports developed under section 117 of the MMPA, and an extended interview process conducted by a NMFS-contracted facilitator, NMFS, through a letter dated April 15, 1996, has asked the following individuals to be a member of the TRT, which will focus on reducing bycatch of the strategic marine mammals stocks taken as bycatch in the U.S. Atlantic large pelagics pair trawl fishery, the U.S. Atlantic longline fishery, and the U.S. Atlantic large pelagic drift gillnet fishery:

Douglas Beach, National Marine Fisheries Service; Nelson Biederman, Blue Water Fishermen's Association; Joe DeAlteris, Rhode Island Sea Grant; Pete Dupuy, Ocean Pacific Seafood; Cliff Goudy, Massachusetts Institute of Technology Sea Grant; John Hoey, National Fisheries Institute; Thomas Hoff, Mid-Atlantic Fishery Management Council; Gail Johnson, Maine Fishermen's Wives Association; Bob Kenney, University of Rhode Island; Fred Mattera, Northeast Atlantic Swordfish Netters Association; Hans Neuhauser, Georgia Land Trust; Ralph Owen, Great Circle Fisheries; Mark Phillips, F/V ILLUSION; Andrew Read, Duke University Marine Laboratory; John Reiner, Offshore Resource Management Corporation; Sharon Young, Humane Society of the United States; Nina Young, Center for Marine Conservation; April Valliere, Rhode Island Division of Fish and Wildlife; and Billy Gell, Northeast Atlantic Swordfish Netters Association. Other individuals from NMFS, state and Federal agencies may be present as observers or for their scientific expertise. The TRT will be facilitated by Susan Podziba and Associates, Brookline, MA.

NMFS fully intends to convene a TRT process in a way that provides for national consistency yet accommodates the unique regional needs and characteristics of any one team. TRTs are not subject to the Federal Advisory Committee Act (5 App. U.S.C.). Meetings are open to the public.

Authority: 16 U.S.C. 1387.

Dated: May 17, 1996.

Patricia A. Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–12925 Filed 5–22–96; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa Requirements for Certain Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

May 17, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: June 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Effective on June 1, 1996, for goods produced or manufactured in Pakistan and exported from Pakistan on and after June 1, 1996, part-category visas will be required for Categories 666–P, 666–S and 666–O. During the period June 1, 1996 through June 30, 1996, textile products in Category 666 may be visaed as Category 666 or the correct part category. Goods in Category 666 exported on and after July 1, 1996 shall be denied entry if not visaed as 666–P, 666–S or 666–O.

See 48 FR 25257, published on June 6, 1983; and 52 FR 21611, published on June 8, 1987.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 17, 1996.

Commissioner of Customers
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 27, 1983, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directs you to prohibit entry of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Pakistan which were not properly visaed by the Government of Pakistan.

Effective on June 1, 1996, goods produced or manufactured in Pakistan and exported from Pakistan on and after June 1, 1996, in Category 666 shall required a 666–P,[1] 666–S[2] and 666–O[3] visa. During the period June 1, 1996 through June 30, 1996, you are directed to accept shipments visaed as 666, 666–P, 666–S and 666–O. Goods in Category 666 exported on and after July 1, 1996 shall be denied entry if not visaed as part-Categories 666–P, 666–S or 666–O.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–13045 Filed 5–22–96; 8:45 am]

BILLING CODE 3510–DR–F

[1] Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

[2] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

[3] Category 666–O: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020 (Category 666–P); 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040 (Category 666–S).

COMMODITY FUTURES TRADING COMMISSION

Applications of the New York Mercantile Exchange for Designation as a Contract Market in Alberta Natural Gas Futures and Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The New York Mercantile Exchange (NYMEX or Exchange) has applied for designation as a contract market in futures and futures options on Alberta natural gas. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before June 24, 1996.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581. Reference should be made to the NYMEX Alberta natural gas contract futures and option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Joseph Storer of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, Washington, DC, 20581, telephone 202–418–5282.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5097.

Other materials submitted by the NYMEX in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to

confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the NYMEX, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on May 17, 1996.

Blake Imel,

Acting Director.

[FR Doc. 96–12996 Filed 5–22–96; 8:45 am]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Commission Agenda and Priorities; Public Hearing

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public hearing.

SUMMARY: The Commission will conduct a public hearing to receive views from all interested parties about its agenda and priorities for Commission attention during fiscal year 1998, which begins October 1, 1997. Participation by members of the public is invited. Written comments and oral presentations concerning the Commission's agenda and priorities for fiscal year 1998 will become part of the public record.

DATES: The hearing will begin at 10 a.m. on June 25, 1996. Written comments and requests from members of the public desiring to make oral presentations must be received by the Office of the Secretary not later than June 18, 1996. Persons desiring to make oral presentations at this hearing must submit a written text of their presentations not later than June 18, 1996.

ADDRESSES: The hearing will be in room 420 of the East-West Towers Building, 4330 East-West Highway, Bethesda, Maryland. Written comments, requests to make oral presentations, and texts of oral presentations should be captioned "Agenda and Priorities" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: For information about the hearing or to request an opportunity to make an oral presentation, call or write Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800; telefax (301) 504–0127.

SUPPLEMENTARY INFORMATION: Section 4(j) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2053(j)) requires the Commission to establish an agenda for action under the laws it administers, and, to the extent feasible, to select priorities for action at least 30 days before the beginning of each fiscal year. Section 4(j) of the CPSA provides further that before establishing its agenda and priorities, the Commission shall conduct a public hearing and provide an opportunity for the submission of comments.

The Office of Management and Budget requires all Federal agencies to submit their budget requests 13 months before the beginning of each fiscal year. The Commission is formulating its budget request for fiscal year 1998, which begins on October 1, 1997.

Accordingly, the Commission will conduct a public hearing on June 25, 1996, to receive comments from the public concerning its agenda and priorities for fiscal year 1998. The Commissioners desire to obtain the views of a wide range of interested persons including consumers; manufacturers, importers, distributors, and retailers of consumer products; members of the academic community; consumer advocates; and health and safety officers of state and local governments.

The Commission is charged by Congress with protecting the public from unreasonable risks of injury associated with consumer products. The Commission enforces and administers the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*); the Federal Hazardous Substances Act (15 U.S.C. 1261 *et seq.*); the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*); the Poison Prevention Packaging Act (15 U.S.C. 1471 *et seq.*); and the Refrigerator Safety Act (15 U.S.C. 1211 *et seq.*). Standards and regulations issued under provisions of those statutes are codified in the Code of Federal Regulations, title 16, chapter II.

While the Commission has broad jurisdiction over products used by consumers in or around their homes, in schools, in recreation, and other settings, its staff and budget are limited. Section 4(j) of the CPSA expresses Congressional direction to the Commission to establish an agenda for action each fiscal year and, if feasible, to select from that agenda some of those projects for priority attention.

When the Commission selects priorities, it does so in accordance with its policy statement governing establishment of priorities codified at 16 CFR 1009.8. That policy statement includes the following factors to be considered by the Commission when selecting its priorities:

- Frequency and severity of injuries.
- Causality of injuries.
- Chronic illness and future injuries.
- Costs and benefits of Commission action.
- Unforeseen nature of a risk of injury.
- Vulnerability of the population at risk.
- Probability of exposure to hazard.

The order of listing of these criteria does not indicate their relative importance.

Persons who desire to make oral presentations at the hearing on June 25, 1996, should call or write Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, telephone (301) 504–0800, telefax (301) 504–0127, not later than June 18, 1996.

Presentations should be limited to approximately ten minutes. Persons desiring to make presentations must submit the written text of their presentations to the Office of the Secretary not later than June 18, 1996. The Commission reserves the right to impose further time limitations on all presentations and further restrictions to avoid duplication of presentations. The hearing will begin at 10 a.m. on June 25, 1996, and will conclude the same day.

Written comments on the Commission's agenda and priorities for fiscal year 1998, should be received in the Office of the Secretary not later than June 18, 1996.

Dated: May 17, 1996.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 96–12881 Filed 5–22–96; 8:45 am]

BILLING CODE 6355–01–P

[CPSC Docket No. 96–C0005]

In the Matter of Shrdlu, d/b/a/ The Sandy Starkman Co., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR section 1605.13. Published below is a provisionally-accepted Settlement Agreement with Shrdlu Corporation, d/b/a/ The Starkman Co., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by June 7, 1996.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 96–C0005, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Melvin I. Kramer, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: May 17, 1996.

Sadye E. Dunn,

Secretary.

Consent Order Agreement

Shrdlu Corp., d/b/a The Sandy Starkman Co. (hereinafter "Respondent" or "Starkman"), a corporation, enters into this Consent Order Agreement (hereinafter, "Agreement") with the staff of the Consumer Product Safety Commission ("the staff") pursuant to the procedures set forth in section 1605.13 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Flammable Fabrics Act (FFA), 16 CFR 1605.

This Agreement and Order are for the purpose of settling allegations of the staff that Respondent imported and sold 100% rayon, double layer skirts, style #73451, in commerce, which skirts failed to comply with the Standard for the Flammability of Clothing Textiles, 16 CFR 1610 (the "standard").

Respondent and the Staff Agree

1. The Consumer Product Safety Commission ("Commission") is an independent regulatory agency of the United States Government. The Commission has jurisdiction over this matter under the Consumer Product Safety Act, 15 U.S.C. §§ 2051 *et seq.* (CPSA), the Flammable Fabrics Act, 15 U.S.C. §§ 1191 *et seq.* (FFA) and the Federal Trade Commission Act (15 U.S.C. §§ 41 *et seq.* (FTCA).

2. Respondent is a corporation organized and existing under the laws of the State of New York with principal corporate offices at 10 Grand Blvd., Deer Park, New York 11729.

3. Respondent is now, and has been engaged in one or more of the following activities: the manufacture for sale, the sale, or the offering for sale, in commerce, or the importation, delivery for introduction, transportation in commerce, or the sale or delivery after sale or shipment in commerce, of women's wearing apparel subject to the standard.

4. This Agreement is for the purpose of settling the allegations in the accompanying Complaint. This Agreement does not constitute an admission by Respondent that it knowingly violated the law. The Agreement becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon Respondent.

5. The parties agree that this Consent Order Agreement resolves the allegations of the Complaint and the Commission shall not initiate any other criminal, civil or administrative action against the firm for those alleged violations based on the information currently known to the staff.

6. Respondent waives any rights to a formal hearing, and any findings of fact and conclusions of law regarding the allegations set forth in the Complaint. Respondent waives any right to seek judicial review or otherwise challenge or contest the validity of the Commission's Order.

7. The Commission may disclose the terms of this Consent Order Agreement to the public consistent with section 6(b) of the CPSA.

8. This Agreement, and the Complaint accompanying the Agreement, may be used in interpreting the Order. Agreements, understandings, representations or interpretations made outside of this Consent Order Agreement may not be used to vary or contradict its terms.

Upon acceptance of this Agreement, the Commission shall issue the following order:

Peter Goodman,

Shrdlu Corporation d/b/a The Sandy Starkman Co.

Melvin I. Kramer,

Trial Attorney, Division of Administrative Litigation Office of Compliance.

Eric L. Stone,

Acting Director, Division of Administrative Litigation, Office of Compliance.

David Schmeltzer,

Assistant Executive Director, Office of Compliance, U.S. Consumer Product Safety Commission.

Complaint

The staff of the Consumer Product Safety Commission ("staff") contends that Shrdlu Corporation, d/b/a/ The Sandy Starkman Co., a corporation ("Respondent"), is subject to the Consumer Product Safety Act, 15 U.S.C. 2051, *et seq.* (CPSA); the Flammable Fabrics Act, 15 U.S.C. 1191 *et seq.* (FTCA); and, the Standard for the Flammability of clothing textiles, 16 C.F.R. § 1610, ("the standard").

Based upon the information provided to the Commission by the staff, the Commission determined that it is in the public interest to issue this Complaint. Therefore, by virtue of the authority vested in the Commission by section 30(b) of the CPSA, 15 U.S.C. 2079(b); sections 3 and 5 of the FFA, 15 U.S.C. 1192 and 1194; and section 5 of the FTCA, 15 U.S.C. 45; and in accordance with the Commission's Rules of Practice of Adjudicative Proceedings, 16 CFR Part 1025, the Commission hereby issues this Complaint and states the staff's charges as follows:

1. Respondent is a corporation organized and existing under the laws of the State of New York with principal corporate offices at 1410 Broadway, Suite 801, New York, New York 10018.

2. Respondent is and has been engaged in one or more of the following activities: the manufacture for sale, the sale, or the offering for sale, in commerce, or the importation, delivery for introduction, transportation in commerce, or the sale or delivery after sale or shipment in commerce, of women's wearing apparel subject to the standard.

3. Between October 26, 1993 and the end of January 1994, Respondent imported and/or sold in commerce items of women's wearing apparel, namely 900 100% rayon, double layers skirts, style #73451. It was subsequently discovered, through testing by the purchaser, that the skirts failed to comply with the flammability requirements of the standard.

4. As a result of this failure to comply with the standard, Respondent manufactured for sale, sold, or offered for sale, in commerce, or imported, delivered for introduction, transported in commerce, or sold or delivered after sale or shipment in commerce, a significant number of garments that failed to comply with the FFA.

Relief Sought

Wherefore, the staff requests the Commission to issue an Order requiring Respondent to cease and desist from the manufacture for sale, the sale, or the offering for sale, in commerce, or the importation, delivery for introduction, transportation in commerce, or the sale or delivery after sale or shipment in commerce, of any item of wearing apparel subject to the standard that fails to comply with the standard.

Wherefore, the premises considered, the Commission hereby issues this Complaint on the _____ day of _____ 199 .

By Direction of the Commission:

David Schmeltzer,

Assistant Executive Director, Office of Compliance and Enforcement.

Order

I

It is hereby ordered that Respondent, its successors and assigns agents, representatives and employees, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality, do forthwith cease and desist from selling or offering for sale, in commerce, or manufacturing for sale, in commerce, or importing into the United States or introducing, delivering

for introduction, transporting or causing to be transported, in commerce, any item of wearing apparel that fails to comply with the flammability requirements of the Standard for Flammability of clothing textiles, 16 C.F.R. part 1610.

II

It is further ordered that Respondent pay to the United States Treasury a civil penalty of $5,000.00 no later than March 20, 1996 or within 20 days after service upon the Respondent of the Final Order, whichever comes later.

III

It is further ordered that for a period of three years following the service upon Respondent of the Final Order in this matter, Respondent notify the Commission with in 30 days following the consummation of the sale of a majority of its stock or following a change in any of its corporate officers responsible for compliance with the terms of this Consent Agreement and Order.

By direction of the Commission, this Consent Order Agreement is provisionally accepted pursuant to 16 CFR Section 1605.13, and shall be placed on the public record, and the Secretary is directed to publish the provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the **Federal Register.**

So ordered by the Commission, this 17th day of May 1996.

Sadye E. Dunn,

Secretary, U.S. Consumer Product Safety Commission.

By direction of the Commission, this Consent Order Agreement is hereby finally accepted and issued as an Order of the Consumer Product Safety Commission.

[FR Doc. 96–12880 Filed 5–22–96; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Record of Decision (ROD) for the Disposal and Reuse of George Air Force Base (AFB), CA

On April 10, 1996, the Air Force signed the Supplemental Record of Decision (ROD) for the Disposal and Reuse of George AFB, CA. The decisions included in this Supplemental ROD have been made in consideration of, but not limited to, the information contained in the Final Environmental Impact Statement (FEIS) for the Disposal and Reuse of George AFB, filed with the Environmental Protection Agency in March 1992.

George AFB closed on December 15, 1992, pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (BCRA) (Public Law 100–526), and the recommendations of the Defense Secretary's Commission for Base Realignment and Closure. This Supplemental ROD modifies certain previous decisions made in the initial ROD executed on January 14, 1993, and first supplemented September 21, 1993. This Supplemental ROD documents the decisions made by the Air Force on the division of parcels, the method by which parcels are to be conveyed or transferred, and the mitigation measures to be adopted.

The previous decisions making Parcels B, D, H, J, Primary Roads, Railroad right-of-way, Gas, and Telephone utility systems, available for disposal by negotiated or public sale is modified to provide for the disposal of such property by Economic Development Conveyance (EDC) under the provisions of Public law No. 103–160, the Pryor Amendments. Previous decisions making Parcels F and G available for disposal by negotiated or public sale is modified to provide for the disposal of such property under the EDC, consistent with the provisions of Pub. L. No. 103–421, the Base Closure Community Redevelopment and Homeless Assistance Act. Parcel D is modified by the withdrawal of approximately 1.5 acres of fee land improved with the electrical substation. The withdrawn acreage is designated as Parcel SS. Consistent with the Air Force's previous decision, the electrical substation and distribution system will be disposed of by negotiated sale to the authorized franchise holder. In all other respects, previous decisions regarding such parcels are unchanged. The decisions in this document, coupled with those in the previous ROD, complete the disposal decisions for George AFB.

The implementation of the closure and reuse action and associated mitigation measures will proceed with minimal adverse impact to the environment. This action conforms with applicable Federal, State and local statutes and regulations, and all reasonable and practical efforts have been incorporated to minimize harm to the local public and the environment.

Any questions regarding this matter should be directed to Mr. John E. B. Smith or Ms. De Carlo Ciccel at (703) 696–5540. Correspondence should be sent to: AFBCA/DE, 1700 North Moore Street, Suite 2300, Arlington, VA 22209–2802.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–12963 Filed 5–22–96; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF THE DEFENSE

Department of the Army

Record of Decision on the Final Environmental Impact Statement on the Disposal and Reuse of the Tooele Army Depot Base Realignment and Closure (BRAC) Parcel

AGENCY: Department of the Army, DOD.

ACTION: Notice of Availability.

SUMMARY: The Department of the Army announced its Record of Decision (ROD) on the Final Environmental Impact Statement (FEIS) for the disposal and reuse of the 1,700-acre BRAC parcel at Tooele Army Depot, Tooele, Utah. In accordance with the Defense Base Closure and Realignment Act of 1990, Pub. L. 101–510, as amended.

Under the Act, the Secretary of the Army has been delegated the authority to dispose of excess real property and facilities located at a military installation being closed or realigned. The Army is required to comply with the National Environmental Policy Act during the process of property disposal and must prepare appropriate analyses of the impacts of disposal and, indirectly, of the reuse of the property on the environment. The ROD and the FEIS satisfy requirements of the law to examine the environmental impacts of disposal and reuse of the Tooele BRAC parcel.

Encumbered disposal involves the transfer of property to others with use restrictions imposed by the Army. The ROD concludes that surplus property will be conveyed, subject to restrictions identified in the FEIS, that relate to the following: measures to protect ground water quality, utilities interdependencies, and remedial activities. The Army will impose reservations or deed restrictions, as necessary and appropriate, to protect human health, the environment, and public safety.

The Army has taken all practicable measures to avoid or minimize environmental harm associated with its preferred alternative of encumbered property disposal. The Army will continue to work with individual future owners to avoid, reduce, or compensate for adverse impacts that might occur as a result of disposal. Mitigation measures for reuse activities are identified in the FEIS.

ADDRESSES: A copy of the ROD may be obtained by writing Mrs. Shirley Barnett at the U.S. Army Materiel Command, ATTN: AMCSO, 5001 Eisenhower Avenue, Alexandria, VA 22333–0001 or by calling (703) 617–8172.

Dated: May 16, 1996.

Raymond J. Fatz,

Acting Deputy Assistant Secretary of the Army, (Environmental, Safety and Occupational Health) OASA (IL&E).

[FR Doc. 96–12986 Filed 5–22–96; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Chief Of Naval Operations Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet on June 25, 1996 from 2:30 to 4 p.m. in Room 4E630, Pentagon, Washington, DC. This session will be closed to the public.

The purpose of this meeting is to conduct discussions on the Planning, Programming and Budgeting Process, Navy modernization strategies, resource allocation, and manpower issues. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Janice Graham, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, Telephone (703) 681–6205.

Dated: May 14, 1996.

M.A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–12987 Filed 5–22–96; 8:45 am]

BILLING CODE 3810–FF–P

Chief Of Naval Operations Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet on June 27, 1996 from 9:30 to 11 a.m. at the Office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000. This session will be closed to the public.

The purpose of this meeting is to conduct the final briefing of the Naval Support to the Land Battle Task Force to the Chief of Naval Operations. These matters consititue classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c) (1) of title 5, United States Code.

For further information concerning this meeting, contact Janice Graham, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, Telephone (703) 681–6205.

Dated: May 14, 1996.

M.A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–12988 Filed 5–22–96; 8:45 am]

BILLING CODE 3810–FF–P

Chief Of Naval Operations Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet on July 11, 1996 from 2:30 to 4:00 p.m. at the Office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000. This session will be closed to the public.

The purpose of this meeting is to conduct the final briefing of the Information Assurance Task Force to the Chief of Naval Operations. These matters constitue classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c) (1) of title 5, United States Code.

For further information concerning this meeting, contact Janice Graham, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, Telephone (703) 681–6205.

Dated: May 14, 1996.

M.A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–12989 Filed 5–22–96; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Acting Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 22, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Group publishes this notice containing

proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 17, 1996.

Arthur F. Chantker,

Acting Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: New.

Title: National Assessment of Educational Progress (NAEP)—Assessment of Reading, Writing, Civics and the Arts.

Frequency: One-time.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 87,500.

Burden Hours: 45,953.

Abstract: The NAEP, known as the Nation's Report Card, is the only national representative assessment of student achievement. It collects nationally comparable assessment results which are linked to student's background characteristics, characteristics of schools and teachers. This clearance request is clearance for the 1997 field test and for the 1998 full scale study which will focus on achievement in reading, writing, and civics. In the arts, the small scale but nationally representative sample of eighth grade students will be assessed using materials which were tested in the 1995 field testing.

[FR Doc. 96–12929 Filed 5–22–96; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 24, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: May 17, 1996.

Arthur F. Chantker,

Acting Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: Indian Education Formula Grant Program Application.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs and LEAs.

Annual Reporting and Recordkeeping Burden:

Responses: 1,275.

Burden Hours: 38,450.

Abstract: Application for funding under the Indian Education Formula Grant Program to Local Educational Agencies is used to determine eligibility and amount of award for projects funded.

[FR Doc. 96–12930 Filed 5–22–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC–510]

Information Collection Submitted for Review and Request for Comments

May 17, 1996.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: In compliance with the requirements of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is submitting a collection of information listed in this notice to OMB for review under the provisions of the Act.

DATES: Comments regarding this collection of information are best assured of having their full effect if received within 30 days of this notification.

ADDRESSES: Copies of the collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael P. Miller, Information Services Division, ED–12.4, 888 First Street N.E., Washington, D.C. 20426. Comments should also be addressed to: Desk Officer, Federal Energy Regulatory Commission, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: *Abstract:* The information collected under the requirements of FERC–510 "Application for the Surrender of a Hydropower License" (OMB No. 1902–0068) is used by the Commission to implement the statutory provisions of Part 1, Sections 4(e), 6 and 13 of the Federal Power Act, 16 U.S.C. 797(e), 799 and 806. Section 4(e) gives the Commission the authority to issue licenses for the purpose of constructing, operating and maintaining dams, water conduits, reservoirs, powerhouses, transmission lines or other project works necessary or convenient for developing and improving navigation, transmission and utilization of power over which Congress has jurisdiction. Section 6 gives the Commission the authority to prescribe the conditions of the licenses including the revocation and/or surrender of the license. Section 13 defines the Commission's authority to delegate time periods for when a license must be terminated if project construction has not begun. Surrender of a license may be desired by a licensee when a licensed project is retired or not constructed. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Sections 6.1 through 6.4.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
10	1	10 hours	100 hours.

Estimated cost burden to respondents: 100 hours/2,087 hours per year×$102,000 per year=$4,887.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12917 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–182–005]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 17, 1996.

Take notice that on May 15, 1996, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective May 1, 1996:

Fourth Revised Sheet No. 90
Original Sheet No. 90A
Second Revised Sheet No. 103
Third Revised Sheet No. 112
Third Revised Sheet No. 119
Third Revised Sheet No. 120
Third Revised Sheet No. 121
Third Revised Sheet No. 122
Original Sheet No. 122A
Second Revised Sheet No. 123
Third Revised Sheet No. 153
First Revised Sheet No. 153A

ANR states that the above-referenced tariff sheets are being filed pursuant to the Commission's April 25, 1996 "Order Accepting and Suspending Compliance Filing, Subject to Condition" in the captioned proceeding. ANR states that the revised tariff sheets address directed changes to ANR's tariff provisions regarding the segmentation of capacity.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.209 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12907 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–998–000]

Cenerprise, Inc.; Notice of Filing

May 17, 1996.

Take notice that on March 25, 1996, Cenerprise, Inc. tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214

of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 23, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12921 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP96–289–000, CP96–335–000, CP96–506–000, CP96–288–000]

Colorado Interstate Gas Company, Trailblazer Pipeline Company Wyoming Interstate Gas Company, Ltd.; Notice of Technical Conference

May 17, 1996.

Take notice that a technical conference has been scheduled in the above-captioned proceeding for 10:00 a.m. on June 13, 1996, at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. The purpose of the conference is to discuss matters of interest and concern relating to the parties' proposals to construct and operate new and/or additional compression facilities, as well as Colorado Interstate Gas Company's proposal to acquire and hold capacity on Trailblazer Pipeline Company and Wyoming Interstate Gas Company, Ltd. All interested parties are invited to attend. For additional information, interested parties may call Michael J. McGehee at (202) 208–2257.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12914 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–190–002]

Colorado Interstate Gas Company; Notice of Tariff Compliance Filing

May 17, 1996.

Take notice that on May 15, 1996, Colorado Interstate Gas Company (CIG), tendered for filing revised tariff sheets and to withdraw tariff sheets filed May 10, 1996, to its FERC Gas Tariff, First Revised Volume No. 1.

CIG states that the new tariff sheets are filed to correct errors in the sheets filed May 10, 1996 and to comply with Ordering Paragraph (C) of the Order issued April 15, 1996 in Docket No. RP96–190–000. CIG discovered that the May 10, 1996 filed tariff sheets erroneously included two paragraphs at the end of Substitute Original Sheet No. 380 and some other minor wording errors and is filing herein to withdraw those tariff sheets (Substitute First Revised Sheet No. 379 and Substitute Original Sheet No. 380. CIG is filing herein corrected tariff sheets.

CIG states that the tariff sheets filed May 10, 1996 were filed in accordance with the April 25, 1996 Order. Article 38 of the General Terms and Conditions of the Tariff was revised to state that new and existing Shippers that pay the maximum recourse rates have the same right to capacity as a Shipper willing to pay the higher negotiated rate. In addition, the revised tariff sheets state that negotiated rates do not apply as the price cap for capacity release transactions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.209 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12916 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–363–006]

El Paso Natural Gas Company; Notice of Filing

May 17, 1996.

Take notice that on May 14, 1996, El Paso Natural Gas Company (El Paso) submitted schedules in support of the proposed fuel charge percentages to be assessed for transportation services on its mainline system. El Paso requested that upon approval and implementation of its proposed Settlement, the Commission promptly issue an order accepting the fuel charges proposed therein so that El Paso may implement such charges not later than January 1, 1997.

El Paso states that Article VIII, Fuel, of its Stipulation and Agreement in Settlement of Rate and Related Proceedings (Settlement) provides for the periodic adjustment of El Paso's system-wide fuel charge during the term of the Settlement. Specifically, paragraph 8.2 provides that not later than 60 days after filing the Settlement, El Paso will file to adjust its fuel charges based on actual fuel usage experienced on its system during the calendar years 1994 and 1995, to be effective not later than January 1, 1997.

El Paso states that copies of the filing were served upon all interstate pipeline system transportation customers of El Paso and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12906 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–270–001]

Mid Continent Market Center, Inc., Complainant v. Panhandle Eastern Pipe Line Company, Respondent; Notice of Amended Complaint

May 17, 1996.

Take notice that on May 13, 1996, Mid Continent Market Center, Inc. (Mid Continent), P.O. Box 889, 818 Kansas Avenue, Topeka, Kansas, 66601, filed an amended complaint in Docket No. Rules of Practice and Procedure. Mid Continent charges Panhandle Eastern Pipe Line Company (Panhandle) with undue discrimination and anticompetitive behavior for its failure to timely agree to interconnect facilities and its apparent improper classification of the proposed receipt point in Panhandle's Field Zone rather than in Panhandle's Market Zone. The details of Mid Continent's allegations are more fully set forth in the amended complaint which is on file with the Commission and open to public inspection.

The Commission previously issued a Notice of Complaint in Docket No. CP96–270–000 on April 18, 1996, (61 *FR* 18132, April 24, 1996) describing Mid Continent's operations and the facilities which are the subject of this amended complaint. Mid Continent now alleges that certain assumptions upon which it based its initial complaint have been proven wrong. However it still believes the Panhandle is unnecessarily delaying an agreement with Mid Continent to interconnect. Further, Mid Continent says that the delay is a continuation of anticompetitive behavior on Panhandle's part.

Mid Continent says that the purpose of the amended complaint is to raise a new issue—Panhandle's apparent improper classification of the proposed receipt point in Panhandle's Field Zone, rather than in Panhandle's Market Zone. The existing facilities which Mid Continent intends to buy from KN Interstate Gas Transmission Company (KN's Haven Line) are already connected to Panhandle. Mid Continent says that KN's Haven Line is connected to Panhandle at Panhandle's Haven Compressor Station, which is the dividing line between Panhandle's Field Zone and Panhandle's Market Zone. Mid Continent claims that various Commission orders and filings show that KN's Haven Line is connected to the discharge side of Panhandle's Haven Compressor Station, thus in Panhandle's Market Zone. However, Mid Continent says that Panhandle now "considers" that KN's Haven Line to be connected to Panhandle at the suction side of Panhandle's Haven Compressor Station, thus in Panhandle's Field Zone.

Mid Continent asks that the Commission to rule that KN's Haven Line is connected to Panhandle in Panhandle's Market Zone and to require Panhandle to give Mid Continent a written statement about the operating conditions Mid Continent will be required to meet to inject gas into Panhandle's system on the discharge side of Panhandle's Haven Compressor Station. Mid Continent seek expeditious relief so that Panhandle does not unduly benefit from further delays, Absent the above requested relief, Mid Continent seeks a full evidentiary hearing on an expedited basis.

Any person desiring to be heard or to make protest with reference to the amended complaint should on or before June 10, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. (Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Answers to the amended complaint are also due on or before June 10, 1996. Any person which filed a motion to intervene in Docket No. CP96–270–000 need not file again to become a party to the amended complaint.)

Lois D. Cashell,

Secretary.

[FR Doc. 96–12918 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–518–000]

NorAm Gas Transmission Co.; Notice of Request Under Blanket Authorization

May 17, 1996.

Take notice that on May 13, 1996, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP96–518–000 a request pursuant to Section 157.205 and 157.211 of the Commission's regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate certain facilities in the State of Arkansas. NGT makes such request, under its blanket certificate issued in Docket Nos. CP82–384–000 and CP82–348–001, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, NGT is proposing to construct and operate a 1-inch tap and 1-inch first-cut regulator on NGT's Line J in Craighead County, Arkansas. NGT indicates that the proposed facilities will be constructed within NGT's existing right-of-way. NGT declares that the facilities will be used to deliver gas to ARKLA, which is a distribution division of NorAm Energy Corp. It is estimated that approximately 640 MMBtu annually will be delivered to this delivery tap, and approximately 8 MMBtu on a peak day. NGT implies that the volumes proposed to be delivered are within ARKLA's existing entitlements.

NGT estimates the construction cost of this project to be $2,700, and states that ARKLA has agreed to reimburse NGT for those cost. NGT indicates that ARKLA will construct a 1½ inch U-Shape meter and convey it to NGT. It is further stated that NGT will own and operate the tap, first-cut regulator and meter.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12920 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–237–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 17, 1996.

Take notice that on May 15, 1996, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective July 1, 1996:

Seventh Revised Sheet Number 156
Eighth Revised Sheet Number 157

Northern Border states that it proposes to increase the Maximum Rate from 4.203 cents per 100 Dekatherm-Miles to 4.224 cents per 100 Dekatherm-Miles and to increase the Minimum Revenue Credit from 2.088 cents per 100 Dekatherm-Miles to 2.198 cents per 100 Dekatherm-Miles. The revised Maximum Rate and Minimum Revenue Credit are being filed in accordance with Northern Border's Tariff provisions under Rate Schedule IT–1.

Northern Border asserts that the herein proposed changes do not result in a change in Northern Border's total revenue requirement.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888

First Street, N.E., Washington, DC 20426, in accordance with Section 385.214 and Section 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12904 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–521–000]

Northern Border Pipeline Company; Notice of Request Under Blanket Authorization

May 17, 1996.

Take notice that on May 15, 1996, Northern Border Pipeline Company (NBPC), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP96–521–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a delivery point to Minnesota Corn Processors (MCP) in Lyons County, Minnesota, under NBPC's blanket certificate issued in Docket No. CP84–420–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NBPC proposes to install 120 feet of 8-inch yard piping and associated valves and fittings at the site of its Marshall Measurement Station located in Lyons County, Minnesota. The estimated cost of the facility is $126,000. MCP will reimburse NBPC for the actual installed cost of the proposed facilities. NBPC will deliver to MCP up to 20,000 Mcf on a peak day and an estimated 4,015,000 Mcf annually.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12912 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–336–001]

Northern Natural Gas Company; Notice of Amendment to Application

May 17, 1996.

Take notice that on May 14, 1996, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP96–336–001 an amendment to its application pursuant to Section 7(c) of the Natural Gas Act for authorization to operate two existing compressor units at their design NEMA horsepower level, all as more fully set forth in the amendment that is on file with the Commission and open to public inspection.

Northern proposes to operate compressor Units #1 and #2 at its Galena compressor station, on the East Leg of its mainline system, at their rated NEMA horsepower. Northern states that the proposal would involve operating the two units at 3,800 horsepower each, instead of at 3,500 horsepower which is currently authorized, and would result in maintaining reliable service while resulting in greater operational efficiencies and flexibility of the compressor station.

Northern explains that its original application provided not only for the above proposal, but also for the replacement of compressor Unit #2 since it was of the same age and comparable condition to compressor Unit #1 which failed in February 1996 and was replaced pursuant to § 2.55 of the Commission's Regulations. However, Northern states that, on or about April 30, 1996, compressor Unit #2 also failed and it too has been replaced under the provisions of § 2.55.[1] Consequently, Northern has amended its application to reflect that the proposal no longer involves an abandonment or replacement of facilities, and, consistent therewith, Northern is withdrawing Exhibits K, N, P, and Y that were submitted with its original application.

Any person desiring to be heard or to make any protest with reference to said amendment to the application should on or before June 7, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on the amended application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12913 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR96–8–000]

Pacific Gas and Electric Company; Notice of Petition for Rate Approval

May 17, 1996.

Take notice that on May 1, 1996, Pacific Gas and Electric Company (Pacific Gas and Electric) filed, pursuant to Section 284.123(b)(2) of the Commission's Regulations, a petition for rate approval requesting that the Commission approve, as fair and equitable, the following rates for certain interstate parking and lending services, as described below, performed under Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA):

Parking:
- Minimum Daily Rate ($/Dth): $0.00
- Maximum Daily Rate ($/Dth): $0.1071
- Maximum Annual Transaction Charge ($/Dth): $0.6083

Lending:
- Minimum Daily rate ($/Dth): $0.00
- Maximum Daily Rate ($/Dth): $0.1071
- Maximum Annual Transaction Charge ($/Dth): $0.6083

Pacific Gas and Electric's mailing address is 77 Beale Street, mail Code B30A, San Francisco, CA 94105.

Pacific Gas and Electric's petition states it is a Hinshaw pipeline within the meaning of Section 1 (c) of the Natural Gas Act (NGA), transporting and distributing gas throughout large portions of northern and central California to numerous residential, industrial, and agricultural gas consumers. On June 21, 1994, the Commission issued Pacific Gas and Electric a limited jurisdiction blanket certificate under Part 284.224 of the regulations to engage in the sale, transportation, and assignment of natural gas subject to the NGA in the same manner that intrastate pipelines are authorized to engage in such activity.

This petition is intended to establish rates for new interruptible parking and lending services on Pacific Gas and Electric's pipeline system within its service territory. These services will be designated as "market center" or "hub" services as part of its newly created Golden Gate Market Center. Parking provides customers with temporary storage of gas on an interruptible basis. Lending provides interruptible temporary loans of gas from Pacific Gas and Electric's system. These services will be offered at the points Pacific Gas and Electric's system interconnects with interstate pipelines, and at its Kern River Station. Pacific Gas and Electric proposes an effective date of June 1, 1996.

Any person desiring to participate in this rate proceeding must file a motion to intervene with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington D.C. 20426, in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before June 3, 1996. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12908 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[1] The cost of the activities will be accounted for pursuant to § 2.55.

[Project No. 2019–000]

Pacific Gas and Electric Co.; Notice of Authorization for Continued Project Operation

May 17, 1996.

On May 5, 1994, Pacific Gas and Electric Company, licensee for the Utica Project No. 2019, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2019 is located on the North Fork Stanislaus River and Silver, Beaver, Mill, and Angels Creeks in Calaveras. Toulumne, and Alpine Counties, California.

The license for Project No. 2019 was issued for a period ending May 8, 1996. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2019 is issued to Pacific Gas and Electric Company for a period effective May 9, 1996, through May 8, 1997, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before May 8, 1997, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Pacific Gas and Electric Company is authorized to continue operation of the Utica Project No. 2019 until such time as the Commission acts on its application for subsequent license.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12910 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–116–001]

South Georgia Natural Gas Company; Notice of Revised Refund Report

May 17, 1996.

Take notice that on April 15, 1996, South Georgia Natural Gas Company (South Georgia) tendered for filing with the Federal Energy Regulatory Commission a revised refund report of the interruptible transportation (IT) revenues from the 1994–95 winter season. South Georgia states that the revised refund report is in compliance with the Commission's order issued March 14, 1996, in Docket No. RP96–116–000.

South Georgia states that the report reflects a one-time adjustment of the IT revenue credits to South Georgia's firm shippers, with the Municipal Gas Authority and its member cities being treated as a single entity when determining the allocation of the IT revenue credits. South Georgia states that upon the Commission's approval of the revised refund calculation, South Georgia will make adjustments to each affected shipper's bill.

South Georgia states that a copy of the revised refund report was sent to each of South Georgia's affected shippers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.21). All such motions or protests must be filed on or before May 24, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12905 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–238–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 17, 1996.

Take notice that on May 15, 1996, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, the tariff sheets listed on Appendix A attached to the filing and requests the tariff sheets to be effective June 15, 1996.

Texas Gas states that this filing is being made to clean up Texas Gas's FERC Gas Tariff, First Revised Volume No. 1, to reflect various revisions that include: policies established by Order No. 582; correction of typographical errors and housekeeping items; updates since the initial issuance of Volume No. 1, and clarifications or minor changes specifying the company's current practices which have developed since the implementation of Order No. 636 in November, 1993.

Texas Gas states that copies of the filing have been served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12903 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR96–7–000]

Transok, Inc.; Notice of Petition for Rate Approval

May 17, 1996.

Take notice that on May 1, 1996, Transok, Inc. (Transok), filed pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable rates for interruptible transportation services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA) on Transok's Oklahoma Anadarko System.

Transok proposes a new system-wide maximum rate for interruptible service of $0.2541 per MMBtu delivered. Transok will also charge each shipper the shipper's pro rate share of actual compressor fuel plus 0.5 percent per volumes delivered for system losses. Transok proposes an effective date of May 1, 1996.

Transok states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and it owns and operates two intrastate pipeline systems in the State of Oklahoma (the Anadarko System and the Traditional System), and one system in the State of Louisiana. Transok here proposes rates for the Anadarko System only.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All motions must be filed with the Secretary of the Commission on or before June 3, 1996. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12909 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL96–52–000, et al.]

Municipal Electric Authority of Georgia v. Georgia Power Company, et al.; Electric Rate and Corporate Regulation Filings

May 15, 1996.

Take notice that the following filings have been made with the Commission:

1. Municipal Electric Authority of Georgia v. Georgia Power Company

[Docket No. EL96–52–000]

Take notice that on May 10, 1996, the Municipal Electric Authority of Georgia (MEAG) filed a Complaint and Motion for Expedited Relief against Georgia Power Company (GPC) under Section 205 and 206 of the Federal Power Act. MEAG is seeking early termination of the obligations between MEAG and GPC arising from GPC's partial requirements tariff and related agreements on the grounds that said agreements are unjust and unreasonable. MEAG is also seeking refunds from GPC for violations of the filed rate doctrine and for the improper accounting practices utilized by GPC in applying the formulary rate set forth in the tariff.

Comment date: June 14, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Union Electric Company

[Docket No. ER95–487–000]

Take notice that on May 6, 1996, Union Electric Company tendered for filing an Interchange Agreement dated June 10, 1994, between the United States of America, as represented by the Administrator, Southwestern Power Administration (SPA) and Union Electric Company (UE). UE asserts that the agreement provides for the exchange of power and energy between the parties.

Comment date: May 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. NORSTAR Energy Limited Partnership

[Docket No. ER96–10–001]

Take notice that on May 9, 1996, NORSTAR Energy Limited Partnership tendered for filing its compliance filing in the above-referenced docket.

Comment date: May 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Orange and Rockland Utilities, Inc., Rockland Electric Company and Pike County Light & Power Company

[Docket No. ER96–1059–000]

Take notice that on May 9, 1996, Orange and Rockland Utilities, Inc., on behalf of itself and its wholly-owned subsidiaries Rockland Electric Company and Pike County Light & Power Company (collectively "Orange and Rockland") tendered for filing a compliance filing in the above referenced docket.

Comment date: May 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Montana Power Company

[Docket No. ER96–1437–000]

Take notice that on May 7, 1996, the Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission an amendment to its original filing in the above referenced docket.

Comment date: May 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Boroughs of Lansdale Blakely Catawissa, Duncannon, Ephrata, Hatfield, Kutztown, Lehighton, Mifflinburg, Olyphant, Perkasie, Quakertown, St. Clair, Schuylkill Haven, Watsontown and Weatherly, Pennsylvania

[Docket No. TX96–9–000]

On May 9, 1996, the Boroughs of Lansdale, Blakely, Catawissa, Duncannon, Ephrata, Hatfield, Kutztown, Lehighton, Mifflinburg, (Olyphant, Perkasie, Quakertown, St. Clair, Schuylkill Haven, Watsontown and Weatherly, Pennsylvania (Pennsylvania Boroughs" or "Boroughs") filed with the Federal Energy Regulatory Commission an application requesting that the Commission order Pennsylvania Power & Light Company (PP&L) to provide transmission services to the Boroughs without seeking to assess any stranded investment costs, pursuant to Sections 211 and 212 of the Federal Power Act.

In their application, the Boroughs seek to obtain a ruling as to whether PP&L can impose a future stranded investment charge on the Boroughs as a condition for using PP&L's transmission system to obtain alternate sources of power upon the termination of the existing supply contracts between PP&L and the Boroughs.

Comment date: June 17, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12922 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER96–1725–000, et al.]

UtiliCorp United Inc., et al.; Electric Rate and Corporate Regulation Filings

May 16, 1996.

Take notice that the following filings have been made with the Commission:

1. UtiliCorp United Inc.

[Docket No. ER96–1725–000]

Take notice that on May 3, 1996, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy Kansas, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with *Wisconsin Public Service Corporation*. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to *Wisconsin Public Service Corporation* pursuant to the tariff.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Wisconsin Public Service Corporation*.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. UtiliCorp United Inc.

[Docket No. ER96–1726–000]

Take notice that on May 3, 1996, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy-Colorado, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 11, with *Wisconsin Public Service Corporation*. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Colorado to *Wisconsin Public Service Corporation* pursuant to the tariff.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Wisconsin Public Service Corporation*.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. UtiliCorp United Inc.

[Docket No. ER96–1727–000]

Take notice that on May 3, 1996, UtiliCorp United Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with *Wisconsin Public Service Corporation*. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to *Wisconsin Public Service Corporation* pursuant to the tariff.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *Wisconsin Public Service Corporation*.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Western Resources, Inc.

[Docket No. ER96–1728–000]

Take notice that on May 3, 1996, Western Resources, Inc., tendered for filing revised Exhibits 4A to the Transmission Agreement with Kansas Gas and Electric Company, WestPlains Energy, a division of UtiliCorp United, Inc., and Missouri Public Service, a division of UtiliCorp United, Inc. Western Resources states that the revised exhibits reflect updated loss amounts associated with transmission services rendered to each party with respect to each party's ownership in the Jeffrey Energy Center under various load conditions. Western Resources has requested that the revised exhibits become effective on June 1, 1996.

Copies of the filing were served upon Kansas Gas and Electric Company, WestPlains Energy, a division of UtiliCorp United, Inc., Missouri Public Services, a division of UtiliCorp United, Inc., and the State Corporation Commission of the State of Kansas.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Milford Power Limited Partnership

[Docket No. ER96–1729–000]

Take notice that on May 3, 1996, Milford Power Limited Partnership submitted for filing under § 205 of the Federal Power Act (16 U.S.C. 824d) and Part 35 of the Commission's Regulations (18 CFR Part 35) an Amended and Restated Power Purchase Agreement between New England Power Company and Milford Power Limited Partnership (Exhibit A) and certain earlier amendments to that Power Purchase Agreement. Copies of the filing have been served on the Massachusetts Department of Public Utilities and New England Power Company.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Houston Lighting & Power Company

[Docket No. ER96–1730–000]

Take notice that on May 3, 1996, Houston Lighting & Power Company (HL&P), tendered for filing executed transmission service agreements (TSAs) under HL&P's FERC Electric Tariff, Original Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. The filing consists of economy energy and emergency power TSAs with (1) Koch Power Services, Inc. (Koch) and (2) Federal Energy Sales, Inc. (FES) providing for the transmission of energy to be scheduled over the East HVDC Interconnection. HL&P has requested an effective date of May 3, 1996.

Copies of the filing were served on Koch, FES and the Public Utility Commission of Texas.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Engineered Energy Systems Corporation

[Docket No. ER96–1731–000]

Take notice that on May 6, 1996, Engineered Energy Systems Corporation (EESCOR), petitioned the Commission for (1) blanket authorization to sell electricity at market-based rates; (2) a disclaimer of jurisdiction over EESCOR's power brokering activities; (3) acceptance of EESCOR's Rate Schedule FERC No. 1; (4) waiver of certain Commission Regulations; and (5) such other waivers and authorizations as have been granted to other power marketers, all as more fully set forth in EESCOR's petition on file with the Commission.

EESCOR states that it intends to engage in electric power transactions as a broker and as a marketer. In transactions where EESCOR acts as a marketer, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with purchasing parties.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. MidAmerican Energy Company

[Docket No. ER96–1732–000]

Take notice that on May 6, 1996, MidAmerican Energy Company (MidAmerican), 106 East Second Street, Davenport, Iowa 52801, filed with the Commission Firm Transmission Service Agreements with Utilicorp United Inc. (Utilicorp) dated April 5, 1996, Western Power Services, Inc. (Western Power) dated April 22, 1996, and Illinova Power Marketing, Inc. (Illinova) dated April 26, 1996, and Non-Firm Transmission Service Agreements with Utilicorp dated April 5, 1996, Western Power dated April 22, 1996, and Illinova dated April 26, 1996, entered into pursuant to MidAmerican's Point-to-Point Transmission Service Tariff, FERC Electric Tariff, Original Volume No. 4.

MidAmerican requests an effective date of April 5, 1996 for the Agreements with Utilicorp, April 22, 1996 for the Agreements with Western Power, and April 26, 1996 for the Agreements with Illinova, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Utilicorp, Western Power, Illinova, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Power and Light Company

[Docket No. ER96–1733–000]

Take notice that on May 6, 1996, Wisconsin Power and Light Company (WP&L), tendered for filing a Joint Operating and Maintenance Agreement between itself and Madison Gas and Electric Company (MG&E).

The Agreement documents the procedures for constructing, operating, and maintaining transmission and distribution facilities in Dane County. The parties request an effective date of February 14, 1996 and accordingly seek waiver of the Commission's notice requirements.

Copies of this filing have been served upon MG&E and the Public Service Commission of Wisconsin.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Company of Colorado

[Docket No. ER96–1734–000]

Take notice that on May 6, 1996, Public Service Company of Colorado (Public Service), tendered for filing a Letter Agreement to its Power Supply Agreement (PSA) with Holy Cross Electric Association, Inc. (Holy Cross) designated as Public Service Rate Schedule FERC No. 52. This Letter Agreement allows Public Service and Holy Cross to use the loss percentage specified in Schedule 2 of the Network Transmission Service Tariff designated as Public Service's FERC Electric Tariff, Original Volume No. 4. Public Service requests that this filing be made effective January 1, 1996.

Copies of the filing were served upon Holy Cross Electric Association, Inc., the Colorado Public Utilities Commission, and the Colorado Office of Consumer Counsel.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. GDK Corporation

[Docket No. ER96–1735–000]

Take notice that on May 6, 1996, GDK Corporation (GDK), tendered for filing, pursuant to Rule 207 of the Commission's Rules and Regulations, 18 CFR 385.207, a Petition for Order Approving Rate Schedule and Granting Waivers. GDK requests that its proposed FERC Rate Schedule No. 1 be made effective July 1, 1996.

The proposed rate schedule would allow GDK to charge market-based rates for the sales it intends to make to purchasers for resale. GDK also asks the Commission to waive certain of its regulatory and reporting requirements.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Kansas City Power & Light Company

[Docket No. ER96–1736–000]

Take notice that on May 6, 1996, Kansas City Power & Light Company (KCPL), tendered for filing Amendatory Agreement No. 2 to Wholesale Firm Power Agreement between KCPL and the Missouri Public Service, a division of Utilicorp United, Inc., dated April 22, 1996, and associated Service Schedule. KCPL states that the Amendatory Agreement revises the Agreement pursuant to KCPL's Open Season.

KCPL request waiver of the Commission's notice requirements.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. South Carolina Electric & Gas Company

[Docket No. ER96–1737–000]

Take notice that on May 6, 1996, South Carolina Electric & Gas Company, tendered for filing proposed Contract for Purchases and Sales of Power and Energy between South Carolina Electric & Gas Company and NORAM Energy Services, Inc. (NORAM).

Under the proposed contract, the parties will purchase and sell electric energy and power between themselves. South Carolina Electric & Gas Company also requested waiver of notice in order that the contract be effective on May 15, 1996.

Copies of this filing were served upon NORAM Energy Services, Inc.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Northeast Utilities Service Company

[Docket No. ER96–1738–000]

Take notice that on May 6, 1996, Northeast Utilities Service Company (NU), on behalf of Public Service Company of New Hampshire (PSNH) and the other Northeast Utilities system operating companies (NU System Companies), tendered for filing with the Federal Energy Regulatory Commission rate schedules in connection with a two-year program initiated by the New Hampshire Public Utilities Commission (NHPUC), known as the New Hampshire Retail Competition Pilot Program.

NUSCO requests an effective date for the rate schedules of May 28, 1996, or such other later date that is consistent with Section 11 of a Joint Recommendation between PSNH and the Staff of the NHPUC. NUSCO requests that the Commission waive the 60-day notice requirement in § 205 of the Federal Power Act as necessary to permit these rate schedules to be placed into effect on such date.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services, Inc.

[Docket No. ER96–1739–000]

Take notice that on May 6, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated April 1, 1996 between Cinergy, CG&E, PSI and Eastex Power Marketing, Inc. (EPMI).

The Interchange Agreement provides for the following service between Cinergy and EPMI:

1. Exhibit A—Power Sales by EPMI
2. Exhibit B—Power Sales by Cinergy

Cinergy and EPMI have requested an effective date of May 13, 1996.

Copies of the filing were served on Eastex Power Marketing, Inc., the Texas Public Utility Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Cinergy Services, Inc.

[Docket No. ER96–1740–000]

Take notice that on May 7, 1996, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated April 15, 1996 between Cinergy, CG&E, PSI and DuPont Power Marketing, Inc. (DuPont).

The Interchange Agreement provides for the following service between Cinergy and DuPont:

1. Exhibit A—Power Sales by DuPont
2. Exhibit B—Power Sales by Cinergy

Cinergy and DuPont have requested an effective date of May 13, 1996.

Copies of the filing were served on DuPont Power Marketing, Inc., the Texas Public Utility Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Montaup Electric Company

[Docket No. ER96–1741–000]

Take notice that on May 7, 1996, Montaup Electric Company (Montaup), filed (1) an Exhibit A for Montaup's transmission of a short-term energy purchase by Taunton Municipal Lighting Plant (Taunton) from Central Vermont Public Service Corporation and (2) Notices of Cancellation of service agreements under Original Volume No. 2 which have expired by their terms.

The Taunton transaction became effective on March 16, 1996 and terminated on March 31, 1996. The Exhibit A was filed pursuant to Montaup's service agreement with Taunton under Montaup's FERC Electric Tariff, Original Volume No. 2.

Montaup requests waiver of the 60-day notice requirement so that the Exhibit A may be allowed to become effective March 16, 1996. Montaup seeks such waiver on the ground that the filing provides for terms and conditions of a transaction pursuant to a service agreement.

Montaup requests that the Notices of Cancellation by allowed to become effective upon the expiration dates of the agreements stated in the Notices. Future service is available under Montaup's open access tariffs which became effective April 21, 1996.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Long Island Lighting Company

[Docket No. ER96–1743–000]

Take notice that on May 7, 1996, Long Island Lighting Company (LILCO), tendered for filing service agreements entered into as of the following dates by LILCO and the following parties:

Date	Purchaser
2/8/96 ...	Enron Power Marketing, Inc.
2/13/96	Coastal Electric Services Company
2/13/96	New York Power Authority
2/23/96	CNG Power Services Corporation
2/23/96	PECO Energy Company—Power Team
2/23/96	Phibro, Inc.
2/23/96	KCS Power Marketing, Inc.
2/29/96	Sonat Power Marketing Inc.
3/4/96 ...	Aquila Power Corporation
3/4/96 ...	Maine Public Service Company
3/26/96	LG&E Power Marketing Inc.
3/27/96	Rainbow Energy Marketing Corporation
3/28/96	KN Marketing, Inc.
4/10/96	Village of Greenport
4/19/96	Inc. Village of Rockville Centre
5/1/96 ...	Vitol Gas & Electric LLC

These service agreements supplement a Power Sales umbrella tariff accepted for filing on April 4, 1996 and made effective August 11, 1995 by the Commission in Docket No. ER95–1518–000.

In accordance with the policy set forth in *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,081 (1993), LILCO requests the Commission to make the Agreements effective as of April 10, 1996, because service will be provided under an umbrella tariff and each service agreement is filed within 30 days after the commencement of service. In accordance with 18 CFR 35.11, LILCO has requested waiver of the sixty-day notice period in 18 CFR 35.2(e).

A copy of this filing was provided to the customers involved and to the New York State Public Service Commission.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Indeck Pepperell Power Associates, Inc.

[Docket No. ER96–1744–000]

Take notice that on May 7, 1996, Indeck Pepperell Power Associates, Inc. (Indeck Pepperell) submitted for filing an Amendment (Amendment) to the April 17, 1996 Short-Term Power Purchase Contract between New England Power Company (NEP) and Indeck Pepperell.

Indeck Pepperell states that its filing is in accordance with Part 35 of the Commission's regulations. Indeck Pepperell requests a waiver of the Commission's notice requirements so that the Amendment may become effective on May 8, 1996.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER96–1745–000]

Take notice that on May 8, 1996, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 10 to add two (2) new Customers to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis. Allegheny Power requests a waiver of notice requirements to make service available as of May 1, 1996 to The Cleveland Electric Illuminating Company and Toledo Edison Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Allegheny Power Service Corporation, on behalf of Monongahela Power Company The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER96–1746–000]

Take notice that on May 8, 1996, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Service Agreements to add Federal Energy Sales, Inc. and IGM, Inc. as Customers under Allegheny Power's Point-to-Point Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission. Allegheny Power proposes to make service available to Federal Energy Sales, Inc. and IGM, Inc. as of May 1, 1996.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. New England Power Pool

[Docket No. ER96–1747–000]

Take notice that on May 8, 1996, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by ANP Energy Direct company (ANP), Multi-Energies U.S.A., Inc. (Multi-Energies) and Working Assets Funding Service, Inc. (Working Assets). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature pages would permit ANP, Multi-Energies and Working Assets to join the approximately 80 Participants that already participate in the Pool. NEPOOL further states that the filed signature pages do not change the NEPOOL Agreement in any manner, other than to make ANP, Multi-Energies and Working Assets Participants in the Pool. NEPOOL requests an effective date on or before May 28, 1996 for commencement of participation in the Pool by ANP, Multi-Energies and Working Assets.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Portland General Electric Company

[Docket No. ER96–1750–000]

Take notice that on May 7, 1996, Portland General Electric Company (PGE), tendered for filing under FERC Electric Tariff, Original Volume No. 5, an executed Service Agreement between PGE and Eugene Water & Electric Board.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1995 (Docket NO. PL93–2–002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed Service Agreement to become effective April 9, 1996.

Copies of this filing were served upon Eugene Water & Electric Board.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. Illinois Power Company

[Docket No. ER96–1751–000]

Take notice that on May 8, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which Bridgestone Firestone, Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of May 1, 1996.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. Illinois Power Company

[Docket No. ER96–1752–000]

Take notice that on May 8, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm transmission agreements under which Caterpillar, Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of May 1, 1996.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–1753–000]

Take notice that on May 8, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an agreement with KCS Power Marketing, Inc. (KCS) to provide for the sale of energy and capacity. For energy the ceiling rate is 100 percent of the incremental energy cost plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per KWhr when the SIC in the hour reflects a purchased power resource). The ceiling rate for capacity is $7.70 per megawatt hour. Energy and capacity sold by KCS will be at market-based rates.

Con Edison states that a copy of this filing has been served by mail upon KCS.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

27. Duke Power Company

[Docket No. ER96–1755–000]

Take notice that on May 8, 1996, Duke Power Company (Duke), tendered for filing a Schedule MR Transaction Sheet under Service Agreement No. 3 of Duke's FERC Electric Tariff, Original Volume No. 3.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

28. Duke Power Company

[Docket No. ER96–1756–000]

Take notice that on May 8, 1996, Duke Power Company (Duke), tendered for filing a Schedule MR Transaction Sheet supplementing the Service Agreement for Market Rate (Schedule MR) Sales between Duke and Entergy Services, Inc. under Duke's FERC Electric Tariff, Original Volume No. 3.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

29. Duke Power Company

[Docket No. ER96–1757–000]

Take notice that on May 8, 1996, Duke Power Company (Duke), tendered for filing a Service Agreement for Market Rate (Schedule MR) Sales between Duke and LG&E Power Marketing Inc. and a Schedule MR Transaction Sheet thereunder.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

30. Duke Power Company

[Docket No. ER96–1758–000]

Take notice that on May 8, 1996, Duke Power Company (Duke), tendered for filing a Schedule MR Transaction Agreement and Transaction Sheet under Service Agreement No. 4 of Duke's FERC Electric Tariff, Original Volume No. 3.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

31. NRG Generating (Parlin) Cogeneration Inc.

[Docket No. ES96–27–000]

Take notice that on May 9, 1996, NRG Generation (Parlin) Cogeneration Inc. filed an application, under § 204 of the Federal Power Act, seeking authorization to issue a term note in an aggregate principal amount not to exceed $155 million and debt service line of credit notes in an aggregate principal amount not to exceed $5 million at any one time outstanding. The final maturity would be fifteen (15) years from the date of initial issuance of the term note.

Comment date: June 4, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12923 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 1951–036]

Georgia Power Company; Notice of Availability of Environmental Assessment

May 17, 1996.

An environmental assessment (EA) is available for public review. The EA is for an application to grant a permit to Mr. Peter Lenzenhuber for dredging at the Sinclair Project, FERC No. 1951. The project is located on Lake Sinclair in Putnam County, Georgia. The primary purpose of the dredging would be to increase recreational access to a proposed subdivision, Edgewater Point Estates.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed at the Commission's Reference and Information Center, Room 2A, 888 First Street, N.E., Washington, D.C., 20426. Copies can also be obtained by calling the project manager, Heather Campbell at (202) 219–3097.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12911 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP96–164–000 and CP96–254–000]

Tennessee Gas Pipeline Company and Distrigas of Massachusetts Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Tennessee Domac Projects; Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

May 17, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Tennessee DOMAC Projects.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the projects.

Summary of the Proposed Projects

Tennessee Gas Pipeline Company (Tennessee) wants to expand the capacity of its existing facilities to transport up to 90,000 dekatherms of natural gas per day on a firm basis for Distrigas of Massachusetts Corporation (DOMAC). Tennessee requests Commission authorization, in Docket No. CP96–164–000, to construct, operate, and abandon upon the termination of Tennessee's contractual obligations to DOMAC, the following facilities needed to transport those volumes:

- 7.56 miles of 20-inch-diameter natural gas pipeline in Saugus, Revere, Malden, and Everett, Massachusetts;
- One valve station at the northern end of the proposed pipeline in Saugus, Massachusetts; and
- A new meter station and odorization system at the southern end of the proposed pipeline at DOMAC's existing liquefied natural gas (LNG) facility in Everett, Massachusetts.

DOMAC wants to construct additional facilities at its LNG facility in Everett, Massachusetts to increase reliability and meet the anticipated need for increased vaporization capacity. DOMAC requests Commission authorization, in Docket No. CP96–254–000, to construct and operate the following facilities:

- Two vaporization trains, each with a nominal capacity rating of 75 million cubic feet per day;

[1] Tennessee Gas Pipeline Company's and Distrigas of Massachusetts Corporation's applications were filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

• About 0.1 mile of natural gas sendout pipeline; and

• Auxiliary equipment located in separate buildings required to operate the vaporization trains, including boilers, water circulation pumps, electrical switchgear, and a distributed control system.

DOMAC stated in its application that although the proposed vaporization facilities are necessary to deliver vaporized LNG into Tennessee's proposed pipeline, its need for additional vaporization capacity is independent of Tennessee's proposal. Therefore, DOMAC proposes to construct the vaporization facilities regardless of Tennessee's action. The Commission staff has elected to analyze the two proposals in the same EA because the Tennessee and DOMAC facilities would be physically connected and would be built within the same general timeframe.

The location of the proposed facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of Tennessee's facilities would require about 67.8 acres of land. About 90 percent of this land is within existing Conrail, Massachusetts Bay Transportation Authority (MBTA), or New England Power Company (NEPCO) rights-of-way. The railroad rights-of-way range in width from 42.5 feet to 122 feet. Tennessee proposes to use all available space in these rights-of-way during construction. The NEPCO right-of-way is about 150 feet wide in the project area. In this area, and where the proposed pipeline would be outside existing rights-of-way, Tennessee proposes to use a 55-foot-wide construction right-of-way. In addition, temporary extra work spaces would be required at various locations adjacent to the construction right-of-way.

Following construction, about 15.0 acres, nearly all of which is within existing rights-of-way, would be maintained as new permanent right-of-way for the pipeline or aboveground facilities. The width of the permanent easement within the railroad rights-of-way would be determined based on negotiations with the MBTA and Conrail. Tennessee proposes to maintain a 30-foot-wide permanent easement within the NEPCO right-of-way and where the pipeline is outside existing rights-of-way. The remaining land would be restored and allowed to revert to its former use. DOMAC's proposed facilities would be constructed within the existing fence lien of DOMAC's LNG facility.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues it will address in the EA. The staff also requests public comments on its decision to evaluate Tennessee's and DOMAC's proposed facilities in the same EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed projects under these general headings:

- Geology and soils.
- Water resources and wetlands.
- Vegetation and wildlife.
- Threatened and endangered species.
- Land use.
- Cultural resources.
- Public safety.
- Air quality and noise.

We will also evaluate possible alternatives to the proposed projects or portions of the projects, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, newspapers, libraries, and the Commission's official service list, and those groups and individuals that have expressed an interest in these proceedings. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the projects.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities; our attendance at the Massachusetts Energy Facility Siting Board public hearings in Saugus, Revere, Malden, and Everett; and the environmental information provided by Tennessee and DOMAC. This is a preliminary list of issues and may be added to, subtracted from, or changed based on your comments and our analysis. Issues are:

- Effects of blasting on water wells, structures, septic systems, and natural gas pipelines;
- Crossing of 9 streams and 11 wetlands;
- Crossing of Rumney Marsh, a state-designated Area of Critical Environmental Concern;
- Clearing of trees and disturbance of wildlife habitat;
- Effects of construction on traffic, noise levels, and air quality (particularly, dust);
- Duration of construction;
- Construction near residences along the construction right-of-way and effects on existing and future land uses;
- Right-of-way maintenance;
- Crossing of a Coastal Zone Management Area;
- Crossing of Conservation Land in the Town of Saugus;
- Protection of cultural resources and historic properties;
- Potential to expose contaminated soils;
- Potential increase in shipping of LNG into, and trucking of LNG out of the DOMAC LNG facility;
- Public safety; and
- Cumulative effect of the projects when combined with other developments in the area.

Public Participation and Scoping Meeting

You can make a difference by sending a letter addressing your specific comments or concerns about the projects. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative pipeline routes), and measures to avoid or lessen environmental impact. The more specific your comments the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426;
- Reference Docket Nos. CP96–164–000 and/or CP96–254–000;
- Send a *copy* of your letter to: Ms. Lauren O'Donnell, EA Project Manager, Federal Energy Regulatory Commission, 888 First Street, NE, Room 72–57, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before June 21, 1996.

If you wish to receive a copy of the EA, you should request one from Ms. O'Donnell at the above address.

Beyond asking for written comments, we invite you to attend our public scoping meeting that will be held on June 11, 1996, at 7:00 p.m., at the Saugus High School, Pierce Street, Saugus, Massachusetts. This public meeting will provide you with more detailed information and another opportunity to offer your comments on the proposals. We will also be visiting the project location on June 11 and 12, 1996.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceedings or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

- The date for filing of timely motions intervene in these proceedings has passed. Therefore, parties now seeking to file late interventions show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed projects is available from Ms. Lauren O'Donnell, EA Project Manager, at (202) 208–0325.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12915 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–M

[2] The appendices referenced in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 888 First Street, NE, Room 2A, Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

[Docket No. CP96–501–000, et al.]

Northwest Pipeline Corporation, et al.; Natural Gas Certificate Filings

May 15, 1996.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP96–501–000]

Take notice that, on May 6, 1996, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed an abbreviated application in Docket No. CP96–501–000, pursuant to section 7(b) of the Natural Gas Act and Section 157.7(a) of the Commission's regulations, for authorization to remove its previously abandoned in-place, 10-inch diameter South Seattle Lateral crossing and adjacent 10-inch diameter lateral loop line crossing of Madsen Creek, in Section 26, T23N, R5E, King County, Washington, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Northwest states that it relocated and replaced the above referenced 175-foot long Madsen Creek crossing segments in 1993, pursuant to its blanket certificate authority in Docket No. CP82–433 (20 FERC ¶ 62,412), but did not remove the two replaced and exposed pipeline segments. Instead, these pipeline segments were abandoned in-place in order to avoid further damage to the Madsen Creek ravine.

Northwest states that (as reported in Docket No. CP82–433) it intended to remove these pipeline segments in 1994, as part of the project area restoration, but the planned restoration was not completed and the pipeline segments were not removed, due to Northwest's prolonged negotiations with King County over plans for the restoration and bank stabilization of the Madsen Creek ravine. According to Northwest, it has reached agreement with King County regarding the restoration and bank stabilization plans for the Madsen Creek ravine, and now plans to remove the two exposed pipeline segments in July of 1996. Northwest states that (consistent with the plans negotiated with King County) it seeks the requisite Commission approvals to remove the previously abandoned pipeline segments, and estimates that the project will cost approximately $45,000.

Comment date: June 5, 1996, in accordance with Standard Paragraph F at the end of this notice.

2. K N Interstate Gas Transmission Company

[Docket No. CP96–509–000]

Take notice that on May 7, 1996, K N Interstate Transmission Company (K N Interstate), P. O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP96–509–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install and operate nineteen new delivery taps and appurtenant facilities located in Colorado, Kansas, Nebraska and Wyoming under K N Interstate's blanket certificate issued in Docket No. CP83–140–000 et. al. pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

K N Interstate states that the proposed delivery points would be located on its main transmission system in Colorado, Kansas, Nebraska and Wyoming. The counties involved are Phillips and Yuma Counties in Colorado; Norton and Scott Counties in Kansas; Adams, Clay, Franklin, Hall, Harlan, Keith, Phelps, Stanton, Thayer and Webster Counties in Nebraska; and Goshen and Platte Counties in Wyoming. These proposed taps will be added as delivery points under an existing transportation service agreement between K N Interstate and K N Energy, Inc. (K N) and will be used by K N to facilitate natural gas delivery to direct retail customers.

K N Interstate states that these new delivery facilities are not prohibited by its existing tariff and that it has sufficient capacity to accomplish deliveries without detriment or disadvantage to other customers. The proposed delivery facilities will not have an effect on K N Interstate's peak day and annual deliveries and the total volumes delivered will be within the current maximum transportation quantities set forth in K N Interstate's transportation service agreement with K N.

Comment date: July 1, 1996, in accordance with Standard Paragraph G at the end of this notice.

3. NorAm Gas Transmission Company

[Docket No. CP96–513–000]

Take notice that on May 8, 1996, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP96–513–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct

and operate certain facilities in Texas under NGT's blanket certificate issued in Docket No. CP82–384–000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposes to design, install, construct and operate a dual 6 inch meter and appurtenant facilities, 1.5 miles of 8-inch pipeline and a high pressure tap and valve assembly necessary to deliver gas. The proposed delivery lateral will interconnect with NGT's line AM–47 in Russell Survey, Marion County, Texas. This subject line, AM–199, will be used to deliver natural gas to Southwestern Electric Power Company's electric generating plant near Avinger, Texas. The estimated volumes to be delivered to this delivery tap are approximately 12,000 MMBtu per day or an estimated 4,380,000 MMBtu on an annual basis. The subject delivery lateral will be constructed at an estimated cost of approximately $500,985.

Comment date: July 1, 1996, in accordance with Standard Paragraph G at the end of this notice.

4. Williams Natural Gas Company

[Docket No. CP96–515–000]

Take notice that on May 8, 1996, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP96–515–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon certain facilities originally installed for the receipt of transportation gas in Logan, Creek and Payne Counties, Oklahoma under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG proposes to abandon by removal measuring and appurtenant facilities originally installed for receipt of transportation gas from Associated Gas, Inc. located in Logan County, Oklahoma; Engasco, Inc. and PanEnergy Field Services, Inc. located in Creek County, Oklahoma; and TAG Petroleum, Inc. located in Payne County, Oklahoma. WNG states that the subject facilities are no longer needed. WNG estimates the total abandonment cost to be approximately $4,900 with a salvage value of $650.

Comment date: July 1, 1996, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–12919 Filed 5–22–96; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review

May 15, 1196.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. The Commission has requested an emergency OMB review of the collection with an approval by June 15, 1996.

DATES: Persons wishing to comment on this information collection should submit comments on or before June 3, 1996.

ADDRESS: Direct all comments to Timothy Fain, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3561 or via internet at fain_t@a1.eop.gov, and Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: New Collection.

Title: Antenna Registration Number Required as Supplement to Application Forms.

Form No.: N/A.

Type of Review: Emergency Collection.

Resopondents: Individuals or households; Businesses or other for-profit; State, Local or Tribal Government; Not-for-profit institutions; Farms; Federal Government.

Number of Respondents: 516,000.

Estimated Time Per Response: 5 minutes.

Total Annual Burden: 43,344 hours.

Needs and Uses: Effective July 1, 1996, the current antenna clearance procedures are replaced with a uniform registration procedure that applies to antenna structure owners. Structure owners will receive an Antenna Structure Registration Number which is a unique number that identifies an antenna structure. Once obtained, this number must be used on all filings related to the antenna structure.

Collecting the Registration Number will enable the Commission to efficiently maintain a Registration Database, as well as process the applications without unnecessary delay related to antenna structure discrepancies. By entering the Registration Number in the database, FCC's tower clearance processors can immediately locate the information provided by the structure owner regarding the antenna site and ensure the validity and accuracy of the data provided. Without the Registration Number, the FCC's tower clearance processors would be "guessing" the structure registration number using coordinates and other date supplied by the applicant, thereby decreasing the integrity of the new Registration database.

The Commission released a Report and Order on November 30, 1995, WT Docket No. 95–5, adopting these new rules to streamline the Commission's antenna structure clearance process. While the Report and Order contained information relative to the Antenna Structure Registration Number requirement, it did not address the necessary notification of additional burden to collect the Registration Number prior to revision of the FCC's application forms.

The Commission is requesting an Emergency clearance by June 15, 1996 to collect the Registration Number with application forms for licensing, effective July 1, 1996.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–12968 Filed 5–22–96; 8:45 am]

BILLING CODE 6712–01–F

Notice of Public Information Collections being Reviewed by the Federal Communications Commission; Comments Requested

May 16, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 22, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: New Collections.

Title: Antenna Registration Number Required as Supplement to Application Forms.

Form No.: N/A.

Type of Review: New Collection.

Resopondents: Individuals or households; Businesses or other for-profit; State, Local or Tribal Government; Not-for-profit institutions; Farms; Federal Government.

Number of Respondents: 516,000.

Estimated Time Per Response: 5 minutes.

Total Annual Burden: 43,344 hours.

Needs and Uses: Effective July 1, 1996, the current antenna clearance procedures are replaced with a uniform registration procedure that applies to antenna structure owners. Structure owners will receive an Antenna Structure Registration Number which is a unique number that identifies an antenna structure. Once obtained, this number must be used on all filings related to the antenna structure. The Commission will require this Registration Number to be submitted with any of the applications for licensing.

Collecting the Registration Number will enable the Commission to efficiently maintain a Registration Database, as well as process the applications without unnecessary delay related to antenna structure discrepancies. By entering the Registration Number in the database, FCC's tower clearance processors can immediately locate the information provided by the structure owner regarding the antenna site and ensure the validity and accuracy of the data provided. Without the Registration Number, the FCC's tower clearance processors would be "guessing" the structure registration number using coordinates and other date supplied by the applicant, thereby decreasing the integrity of the new Registration database.

The Commission released a Report and Order on November 30, 1995, WT Docket No. 95–5, adopting these new rules to streamline the Commission's antenna structure clearance process. While the Report and Order contained information relative to the Antenna Structure Registration Number requirement, it did not address the necessary notification of additional burden to collect the Registration Number prior to revision of the FCC's application forms.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 96–12970 Filed 5–22–96; 8:45 am]
BILLING CODE 6712–01–F

Notice of Public Information Collections Submitted to OMB for Review and Approval

May 17, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 24, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or fain_t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060-0441.

Title: Section 90.621(b)(4) Selection and assignment of frequencies.

Form No.: N/A.

Type of Review: Revision to an existing collection.

Respondents: Businesses or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 33.

Estimated Time Per Response: 1.5 hours per respondent; however the Commission estimates 75% of the respondents will contract out the burden of responding. It will take these respondents approximately 30 minutes to obtain these services.

Total Annual Burden: 25 hours.

Estimated Cost Per Respondent: The Commission estimates 75% of the applicants will file this information electronically. These respondents will incur approximately $69 for on-line filing charges. Respondents filing manually, will incur approximately $1.15 in postal charges. Respondents hiring an attorney or engineer to prepare the information will incur approximately $300 in charges.

Needs and Uses: Applicants wish to locate co-channel systems less than 70 miles from an existing system operating on the same channel may do so upon specific request. If the request falls under a Table provided in the rule, certain information about the co-channel station is required. In this instance no waiver of the short spacing rule is required. If the request is for distances less than those prescribed in the table, a waiver of the short spacing rule is required. The Commission uses the information to determine whether to grant licenses to applicants whose systems do not satisfy mileage separation requirements.

OMB Number: 3060-0110.

Title: Application for Renewal of License for AM, FM, TV Translator or LPTV Station.

Form Number: FCC 303-S.

Respondents: Business or other for-profit.

Type of Review: Revision of an existing collection.

Number of Respondents: 4,658.

Estimated Time Per Response: 2 - 5.5 hours.

Total Annual Burden: 6,230.

Estimated Cost Per Respondent: The Commission estimates 50% of the AM/FM/FM Translator radio broadcast licensees and 75% of the TV/TV translator broadcast licensees will use a communications attorney to complete and file the FCC Form 303–S. This will cost approximately $200 per hour. Licensees must also submit a $115 application fee for each commercial application by a AM/FM/TV broadcast station. The fee for each FM/TV Translator Broadcast station application is $45. Additionally, AM, FM TV or LPTV licensee must give local public notice of the filing of the renewal application. AM/FM/TV stations that are off-the-air must give local public notice by publishing an announcement 6 times in a newspaper of general circulation in the community or area being served. FM/TV Translator stations must give local public notice by publishing an announcement once in a newspaper of general circulation. The cost of this publication is estimated to be $226 per publication.

Needs and Uses: On February 8, 1996, President Clinton signed into law the Telecommunications Act of 1996. Section 204 of this Act directs the Commission to collect new information from commercial and noncommercial television station licensees filing their renewal applications after May 1, 1995. These renewal applicants must submit an Exhibit summarizing the written comments and suggestions received from the public that "comment on the applicant's programming, if any, and that are characterized by the commenter as constituting violent programming." Until the FCC 303-S is revised, the Commission will use a supplement to solicit the required information. FCC Form 303-S is used in applying for renewal of license for a commercial or noncommercial AM, FM or TV broadcast station and FM translator, TV translator or Low Power TV broadcast stations. It can also be used in seeking the joint renewal of licenses for an FM or TV translator station and its co-owned primary FM, TV or LPTV station. The data is used by FCC staff to assure that the necessary reports connected with the renewal application have been filed and that licensee continues to meet basic statutory requirements to remain a licensee of a broadcast station. The data collected with respect to violent programming will be used by the Commission in determining what, if any, changes in the Commission's policies and regulations are required.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 96–12966 Filed 5–22–96; 8:45 am]
BILLING CODE 6712–01–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Investment in Leeway Securities; Rescission of Statement of Policy

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Rescission of Statement of Policy.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC is rescinding its policy statement concerning bank investments under state leeway laws (Statement). The Statement indicates that the FDIC will not criticize investments of a civic or community nature if they meet reasonable limits set out in the Statement. The FDIC is rescinding the Statement because it is now outmoded. The rescission does not reflect any substantive change in the FDIC's supervisory attitude toward this type of investment.

EFFECTIVE DATE: This Statement is rescinded effective May 23, 1996.

FOR FURTHER INFORMATION CONTACT: Robert W. Walsh, Manager, Division of Supervision (202) 898–6911; Gerald J. Gervino, Senior Attorney, (202) 898–3723, Legal Division, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI (12 U.S.C. 4803(a)) requires each federal banking agency to streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires each federal banking agency to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies.

As part of this review, the FDIC has determined that the Statement is outmoded, and that the FDIC's written policies can be streamlined by its elimination.

The Statement was published on August 4, 1972, 37 FR 16228 and amended on March 7, 1974, 39 FR 8956. The Statement was designed to clarify the FDIC's position with regard to bank investments under state leeway laws. Leeway laws were adopted by many states to give depository institutions a way to make direct investments in civic or community related projects that would otherwise be prohibited under the standard bank or thrift charter. It was felt that financial institutions were receiving inconsistent messages from their regulators. While community beneficial projects were encouraged by state agencies, the credit quality of the related investments was being criticized. The FDIC did not want to inhibit banks from making investments that were primarily of a civic or community nature. Therefore the Statement indicated that FDIC examiners would not criticize these leeway investments provided they were made within reasonable limits established by state law and aggregated no more than 10 percent of capital and surplus, whichever was less.

Section 24 of the Federal Deposit Insurance Act, 12 U.S.C. 1831a, prohibits equity investments by an insured state bank if the investment is not of a type and in an amount that is permissible for a national bank. 12 CFR part 362 implements this statutory provision. Both the statute and the regulation contain exceptions for investments as a limited partner in a partnership, the sole purpose of which is the acquisition, rehabilitation or new construction of qualified housing projects. In addition, the National Bank Act was amended since the last amendment to the Statement in 1974 to expressly provide authority for a national bank to make investments that are designed to primarily promote the public welfare. Such investments can be made up to a maximum of 10 percent of unimpaired capital and surplus. (12 U.S.C. 24 (Eleventh). Finally, community welfare investments are encouraged under the FDIC's regulations implementing the Community Reinvestment Act which was enacted by Congress subsequent to the adoption of the agency's Statement. Consistent with that Act and the FDIC's regulations, the FDIC will generally not criticize commercially viable community welfare investment. Thus, the rescission of the Statement does not signal any change in the manner in which the FDIC evaluates investments which are the subject of the current Statement. In view of this current statutory and regulatory direction, the Statement is no longer necessary.

For the above reasons, the Statement is hereby rescinded.

By Order of the Board of Directors.

Dated at Washington, D.C., this 14th day of May, 1996.

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 96–12927 Filed 5–22–96; 8:45 am]
BILLING CODE 6714–01–P

Capital Forbearance; Rescission of Policy Statement

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Rescission of policy statement.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC is rescinding its Guidelines for Implementing a Policy of Capital Forbearance (Policy Statement). The Policy Statement provided guidelines for certain well-managed viable banks to apply to the FDIC for capital forbearance. The FDIC is rescinding the Policy Statement because it is now outmoded.

EFFECTIVE DATE: This Policy Statement is rescinded May 23, 1996.

FOR FURTHER INFORMATION CONTACT: Robert W. Walsh, Manager, (202) 898–6911, Division of Supervision; Jamey Basham, Counsel, (202) 898–7265, Legal Division, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: The FDIC is conducting a systematic review of its regulations and written policies under section 303(a) of the CDRI (12 U.S.C. 4803(a)) requires each federal banking agency to streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires each federal banking agency to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies.

As part of this review, the FDIC has determined that the Policy Statement is outmoded, and that the FDIC's written policies can be streamlined by its elimination.

The FDIC adopted the Policy Statement on July 7, 1987. 52 FR 26182 (July 13, 1987). The Policy Statement provided guidelines under which certain banks, which were well-managed, solvent and viable but were having difficulty raising needed capital because they served an inadequately diversified economic sector caught in a severe downturn, could apply to the FDIC for capital forbearance. Since all capital improvement plans established under the Policy Statement were required by the Policy Statement's terms to assure capital restoration by January 1, 1995, the Policy Statement serves no further purpose.

Moreover, as part of the Federal Deposit Insurance Corporation

Improvement Act of 1991, Pub. L. 102–242, 105 Stat. 2236, 2253, Congress adopted the prompt corrective action provisions codified in section 38 of the Federal Deposit Insurance Act, 12 U.S.C. 1831o, establishing a statutory structure for addressing insured depository institutions with declining capital. This statutory structure does not allow capital forbearance as contemplated in the Policy Statement.

For the above reasons, the Policy Statement is hereby rescinded.

By Order of the Board of Directors.

Dated at Washington, D.C., this 14th day of May, 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 96–12926 Filed 5–22–96; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1105–DR]

Montana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Montana (FEMA–1105–DR), dated February 23, 1996, and related determinations.

EFFECTIVE DATE: May 7, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 29, 1996.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–13038 Filed 5–22–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1112–DR]

Illinois; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA–1112–DR), dated May 6, 1996, and related determinations.

EFFECTIVE DATE: May 6, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 6, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Illinois, resulting from severe storms and flooding on April 28, 1996 and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ron Sherman of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Illinois to have been affected adversely by this declared major disaster:

Franklin and St. Clair Counties for Individual Assistance, Public Assistance, and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–13014 Filed 5–22–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1112–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois, (FEMA–1112–DR), dated May 6, 1996, and related determinations.

EFFECTIVE DATE: May 10, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Illinois, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 1996:

Lawrence County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–13015 Filed 5–22–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1112–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois, (FEMA–1112–DR), dated May 6, 1996, and related determinations.

EFFECTIVE DATE: May 9, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Illinois, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 1996:

Madison and Monroe Counties for Individual Assistance, Public Assistance, and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96–13016 Filed 5–22–96; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL LABOR RELATIONS AUTHORITY

Notice of Oral Argument and Opportunity To Submit Amicus Curiae Briefs

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of oral argument and opportunity to submit briefs as amici curiae in a proceeding before the Federal Labor Relations Authority in which the Authority is required to interpret and apply 5 U.S.C. 7116(a) (1) and (3).

SUMMARY: The Federal Labor Relations Authority gives notice that it is scheduling oral argument and providing an opportunity, pursuant to 5 CFR 2429.9 and .26, for all interested persons to submit briefs as amici curiae on significant issues arising in a case pending before the Authority. The Authority is considering this case pursuant to its responsibilities under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101–7135 (1994) and its regulations set forth at 5 CFR part 2423 (1996). The proceeding concerns the extent to which an agency is obligated to furnish facilities and services, under 5 U.S.C. 7116(a) (1) and (3), to a labor organization that is seeking to represent the agency's employees.

ORAL ARGUMENT: The Authority will hold oral argument at 10:00 a.m. on Wednesday, July 10, 1996, in the Second Floor Agenda Room, 607 14th Street, NW., Washington, D.C. 20424–0001. Only the parties to the case will be provided an opportunity to be heard at oral argument, and attendance at the oral argument will be limited because of space constraints. Persons interested in attending the oral argument should notify the Office of Case Control by 5 p.m. on Friday, July 5, 1996. Telephone: FTS or Commercial (202) 482–6540.

BRIEFS: Briefs submitted in response to this notice will be considered if received by mail or personal delivery in the Authority's Office of Case Control by 5 p.m. on Friday, June 28, 1996. Placing submissions in the mail by this deadline will not be sufficient. Extensions of time to submit briefs will not be granted.

ADDRESSES: Mail or deliver briefs to James H. Adams, Acting Director, Case Control Office, Federal Labor Relations Authority, 607 14th Street, NW., Suite 415, Washington, D.C. 20424–0001.

FORMAT: All briefs shall be captioned "Social Security Administration, Baltimore, Maryland, Case No. 3–CA–10859, Amicus Brief" and shall contain separate, numbered headings for each issue discussed. An original and four (4) copies of each brief must be submitted, with any enclosures, on 8½×11 inch paper. Briefs must include a signed and dated statement of service that complies with the Authority's regulations showing service of one copy of the brief on all counsel of record or other designated representatives. 5 CFR 2429.27 (a) and (c). The designated representatives are: Elaine Kaplan, National Treasury Employees Union, 901 E Street, NW., Washington, D.C. 20004; Laurence Evans, Office of the General Counsel, Federal Labor Relations Authority, 1525 22nd Street NW., Suite 400, Washington, D.C. 20037; Charles A. Hobbie, American Federation of Government Employees, AFL–CIO, 80 F Street, NW., Washington, D.C. 20001; and Ed Novak, Social Security Administration, West High Rise Building, Room G–I–10, 6401 Security Boulevard, Baltimore, MD 21235.

FOR FURTHER INFORMATION CONTACT: James H. Adams, Acting Director, Case Control Office, Federal Labor Relations Authority, 607 14th Street, NW., Suite 415, Washington, D.C. 20424–0001, Telephone: FTS or Commercial (202) 482–6540.

SUPPLEMENTARY INFORMATION: The case presenting the issues on which oral argument will be heard and amicus briefs are being solicited is before the Authority on remand from the United States Court of Appeals for the District of Columbia Circuit. The Authority's decision that was reviewed by the court is Social Security Administration, 45 FLRA 303 (1992). The court's decision is *NTEU* v. *FLRA*, 986 F.2d 537 (D.C. Cir. 1993). Copies of these decisions will be provided, upon request, by mail or facsimile. However, the following summary is offered.

Non-employee organizers of the National Treasury Employees Union (NTEU) sought a permit from the Social Security Administration (SSA) to distribute literature on the public sidewalks of SSA's headquarters complex at Woodlawn, Maryland. The headquarters complex, including the sidewalks, is the property of the General Services Administration (GSA) but, pursuant to a delegation of authority, is managed by SSA. At the time of its permit request, NTEU had not filed a petition seeking to represent any of SSA's employees at the Woodlawn complex. SSA denied the request. NTEU alleged that, by the denial, SSA violated 5 U.S.C. 7116(a) (1) and (3).

The Authority determined that SSA, whose employees were exclusively represented by the American Federation of Government Employees, did not violate either 5 U.S.C. 7116(a)(3) or, in turn, 5 U.S.C. 7116(a)(1), when it denied NTEU's request for a permit. Instead, the Authority concluded that SSA would have violated 5 U.S.C. 7116(a)(3) if it had granted the permit.

The court found that the Authority's application of section 7116(a)(3) raised Constitutional concerns. Accordingly, the court remanded the case to the Authority to consider whether an alternative construction of the Statute can be fashioned that avoids the First Amendment implications raised by the Authority's original decision. In particular, the court directed the Authority to determine whether the sidewalks and other outside areas of SSA's Woodlawn complex constitute SSA's "facilities," within the meaning of section 7116(a)(3). Following the court's remand, the Authority remanded the case to the Regional Director for development of a sufficient record. Social Security Administration, 47 FLRA 1376 (1993), reconsideration denied, 48 FLRA 539 (1993).

In light of the court's order on remand, the Authority invites interested persons to address, *inter alia*, the following questions. Certain of the questions (1–3) are based specifically on the court's decision remanding the case. In view of the court's more general direction that the Statute be construed to avoid Constitutional concerns, question 4 examines whether and how the approach suggested by the court would apply to hypothetical cases varying certain facts presented in this case. Questions 5 and 6 concern alternative approaches to the one suggested by the court to resolve the issues present in this case. Questions 7 and 8 pose more general questions regarding the correct interpretation of section 7116(a)(3). The last question asks how resolution of the issues under section 7116(a)(3) affects whether SSA also violated section 7116(a)(1) of the Statute by interfering with rights of non-employee organizers to conduct organizing activity.

Interested persons are invited to respond to any or all of the following questions:

1. If the Authority were to conclude, as the court suggests, that SSA was not

acting as an employer but instead was acting as GSA's "building manager" when it denied NTEU's request for a permit, then what, if any, would be the effect of Authority precedent holding that a non-employer agency can be found to have interfered with protected rights on the issue of whether SSA violated the Statute? See Headquarters, Defense Logistics Agency, Washington, D.C., 22 FLRA 875, 883–84 (1986).

2. Is it relevant and, if so, how is it relevant whether non-labor organizations have been granted access to the areas for which NTEU sought the permit?

3. Is it relevant and, if so, how is it relevant that the "facilities" to which NTEU sought access were external, quasi-public areas?

4. If GSA were the employing agency at the Woodlawn complex and NTEU were seeking a permit for purposes of organizing GSA employees, how would the Constitutional concerns identified by the court be avoided by the "facilities" analysis it suggested?

5. The Authority, relying on the ruling announced in Department of the Army, United States Army Natick Laboratories, Natick, Mass., 3 A/SLMR 193 (1973) (Natick), has interpreted section 7116(a)(3) as prohibiting an agency from allowing a rival union, lacking equivalent status to an incumbent labor organization, access to the agency's facilities and services. How and why would such access always constitute unlawful sponsorship, control, or assistance under section 7116(a)(3)?

6. Is the approach used by the predecessor to the Authority, the Federal Labor Relations Council, to resolve similar issues under Executive Order 11491, as amended, more consistent with the Statute than the approach set forth in Natick? The Council's approach analyzed whether the agency conduct constituted control of, or interference with a union's independence. See Grissom AFB, 6 FLRC 406 (1978).

7. Is the portion of section 7116(a)(3) that refers to furnishing customary and routine services and facilities an exception to the prohibition on sponsorship, control, or assistance of a labor organization or are there any situations where it creates a requirement that such services and facilities be furnished? For example, in order to avoid "sponsoring" an incumbent labor organization, would an agency be required under any circumstances to furnish ordinary facilities and services to a rival?

8. What meaning should be attributed to the phrase "having equivalent status" in section 7116(a)(3)?

a. Should this term be applied differently depending upon whether the employees in the agency from whom assistance is sought are represented by a labor organization?

b. Does an agency violate section 7116(a)(3) by furnishing, or failing to furnish, facilities and services to all nonincumbent labor organizations on an impartial basis?

c. Should the Authority reconsider its precedent that "a petitioning union acquires equivalent status for the purposes of section 7116(a)(3) when an appropriate Regional Director determines, and notifies the parties, that the petition includes a prima facie showing of interest and merits further processing[]"? U.S. Department of Defense Dependents School, Panama Region, 44 FLRA 419, 425 (1992).

9. If the Authority were to conclude on remand that section 7116(a)(3) did not require SSA to reject NTEU's request for a permit, would:

a. Section 7116(a)(3) require that SSA grant NTEU's permit request?

b. SSA's denial of the permit to NTEU's non-employee organizers violate 5 U.S.C. 7116(a)(1)?

c. it result in manifest injustice to hold SSA liable for a violation of either section 7116(a)(3) or section 7116(a)(1) based on approaches not previously articulated?

Dated: May 20, 1996.

For the Authority.

James H. Adams,

Acting Director, Case Control Office.

[FR Doc. 96–13043 Filed 5–22–96; 8:45 am]

BILLING CODE 6727–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 96–11]

Haewoo Air & Shipping Co., Ltd. (d/b/a Haewoo Shipping Co., Ltd.); Possible Violations of Section 10(b)(1) of the Shipping Act of 1984; Order of Investigation

Haewoo Air & Shipping Co., Ltd. d/b/a Haewoo Shipping Co., Ltd. ("Haewoo") is a non-vessel-operating common carrier located in Seoul, Korea. Haewoo maintains a tariff on file with the Commission which provides for service between various Asian countries and the United States.

A review of Haewoo's tariff showed that it contained only one commodity rate in addition to Cargo, N.O.S. rates. A review of invoices and freight payments for shipments moving under Haewoo bills of lading from June 5, 1994, to January 19, 1995, indicated that Haewoo did not charge the rates contained in its tariff. On February 3, 1995, additional commodity rates were filed by Haewoo in its tariff.

Section 10(b)(1) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1709(b)(1), provides that no common carrier may charge, demand, collect, or receive greater, less, or different compensation for the transportation of property or for any service in connection therewith than the rates and charges in its tariffs. In regard to the activities of Haewoo, it appears that Haewoo charged less than its applicable tariff rates for the transportation of at least 36 shipments between June 5, 1994, and January 19, 1995, in violation of section 10(b)(1) of the 1984 Act.

Section 11 of the 1984 Act, 46 U.S.C. app. 1710, sets forth the Commission's authority to investigate violations of the 1984 Act. In the event violations are found, section 13 of the 1984 Act, 46 U.S.C. app. 1712, provides that the Commission may assess civil penalties and suspend tariffs as remedies for violations of section 10(b)(1). Section 14(a) of the 1984 Act, 46 U.S.C. app. 1713(a), empowers the Commission to issue orders relating to violations of the 1984 Act.

Now therefore it is ordered, that pursuant to sections 10, 11, 13 and 14 of the 1984 Act, an investigation is hereby instituted to determine:

1. Whether Haewoo violated section 10(b)(1) of the 1984 Act by charging, demanding, collecting, or receiving greater, lesser, or different compensation for the transportation of property or for any service in connection therewith than the rates and charges that are shown in its tariffs;

2. Whether, in the event Haewoo violated the 1984 Act, civil penalties should be assessed against Haewoo and, if so, the amount of such penalties;

3. Whether, in the event violations are found, an appropriate cease and desist order should be issued; and

4. Whether, in the event violations are found, Haewoo's tariff should be suspended for a period of time not to exceed 12 months.

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge ("Presiding Officer") of the Commission's Office of Administrative Law Judges in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The Hearing shall include oral testimony and cross-examination at the discretion of the Presiding Officer only after consideration has been given by the parties and the Presiding Officer to the use of alternative forms of dispute resolution, and upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

It is further ordered, That Haewoo Air & Shipping Co., Ltd. d/b/a Haewoo Shipping Co., Ltd. is designated Respondent in this proceeding;

It is further ordered, That the Commission's Bureau of Enforcement is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served on parties of record;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, and comply with Subpart H of the Commission's Rules of Practice and Procedure, 46 CFR 502.111–119, and shall be served on parties of record; and

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61, the initial decision of the Administrative Law Judge shall be issued by January 20, 1997, and the final decision of the Commission shall be issued by May 20, 1997.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–13056 Filed 5–22–96; 8:45 am]

BILLING CODE 6730–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Meeting

AGENCY: General Accounting Office.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will meet on Thursday, May 30, 1996, from 9 a.m. to 4 p.m. in room 7C13 of the General Accounting Office, 441 G St., NW., Washington, DC.

The purpose of the meeting is to discuss and review the (1) *Accounting for Natural Resources* document, (2) JFMIP Cost Accounting Systems and Reporting project, (3) *Invitation for Views: Accounting for the cost of Capital* document, and (4) Rule 203 of the AICPA's Code of Ethics.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Executive Staff Director, 750 First St., NE., Room 1001, Washington, DC. 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: May 20, 1996.

[FR Doc. 96–13040 Filed 5–22–96; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA 317]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health and Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* State Medicaid Eligibility Quality Control Sampling Plan; *Form No.:* HCFA–317; *Use:* The State MEQC sampling plan is necessary for HCFA to monitor the States' operation of the MEQC system. The sampling plan includes all data involved in the States' sample selection process—population sizes and sample frame lists, sample sizes, sample selection procedures, and claims collection procedures; *Frequency:* Annually; *Affected Public:* State, local, or tribal government; *Number of Respondents:* 55; *Total Annual Responses:* 110; *Total Annual Hours:* 2,640.

To request copies of the proposed paperwork collection referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: May 16, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–12962 Filed 5–22–96; 8:45 am]

BILLING CODE 4120–03–P

Agency for Toxic Substances and Disease Registry

[ATSDR–110]

Minimal Risk Levels for Priority Substances and Guidance for Derivation

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9604 et seq.), as amended by the Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499), requires that

ATSDR develop jointly with the U.S. Environmental Protection Agency (EPA), in order of priority, a list of hazardous substances most commonly found at facilities on the CERCLA National Priorities List (NPL) (42 U.S.C. 9604(i)(2)); prepare toxicological profiles for each substance included on the priority list of hazardous substances, and to ascertain in the toxicological profiles, significant human exposure levels (SHELs) for hazardous substances in the environment, and the associated acute, subacute, and chronic health effects (42 U.S.C. 9604(i)(3)); and assure the initiation of a research program to fill identified data needs associated with the substances (42 U.S.C. 9604(i)(5)). The ATSDR Minimal Risk Levels (MRLs) were developed in response to the mandate for SHELs and to provide screening levels for health assessors and other responders to identify contaminants and potential health effects that may be of concern at hazardous waste sites and releases.

This notice announces the internal guidance for derivation of MRLs for priority hazardous substances by ATSDR. The guidance represents the agency's current approach to deriving MRLs and reflects the most current scientific assessment. Comments from the public on the process of deriving MRLs are welcome. The MRLs for a particular substance are published in the toxicological profile for that substance. A listing of the current published MRLs is provided at the end of the notice.

ADDRESSES: Comments on this notice should bear the docket control number ATSDR–110 and should be submitted to: Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Dr. Selene Chou, Division of Toxicology, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–29, Atlanta, Georgia 30333, telephone (404)639–6308 or FAX (404)639–6315.

SUPPLEMENTARY INFORMATION: CERCLA requires that ATSDR prepare toxicological profiles for priority hazardous substances, and to ascertain significant human exposure levels for these substances in the environment, and the associated acute, subacute, and chronic health effects (42 U.S.C. 9604(i)(3)). Minimal Risk Levels (MRLs) were developed as an initial response to the mandate. Following discussions with scientists within the HHS and the EPA, ATSDR chose to adopt a practice similar to that of the EPA's Reference Dose (RfD) and Reference Concentration (RfC) for deriving substance-specific levels. An MRL is an estimate of the daily human exposure to a hazardous substance that is likely to be without appreciable risk of adverse noncancer health effects over a specified duration of exposure. These substance- specific estimates, which are intended to serve as screening levels, are used by ATSDR health assessors and other responders to identify contaminants and potential health effects that may be of concern at hazardous waste sites and releases. It is important to note that MRLs are not intended to define clean-up or action levels for ATSDR or other Agencies.

The toxicological profiles include an examination, summary, and interpretation of available toxicological information and epidemiologic evaluations of a hazardous substance. During the development of toxicological profiles, MRLs are derived when ATSDR determines that reliable and sufficient data exist to identify the target organ(s) of effect, or the most sensitive health effect(s) for a specific exposure duration for a given route of exposure to the substance. MRLs are based on noncancer health effects only and are not based on a consideration of cancer effects. Inhalation MRLs are exposure concentrations expressed in units of parts per million (ppm) for gases and volatiles, or milligrams per cubic meter (mg/m3) for particles. Oral MRLs are expressed as daily human doses in units of milligrams per kilogram per day (mg/kg/day).

ATSDR uses the no-observed-adverse-effect-level/uncertainty factor approach to derive MRLs for hazardous substances. The MRLs are set below levels that, based on current information, might cause adverse health effects in the people most sensitive to such substance-induced effects (Barnes and Dourson 1988; EPA 1990). MRLs are derived for acute (1–14 days), intermediate (15–364 days), and chronic (365 days and longer) exposure durations and for the oral and inhalation routes of exposure. Currently, MRLs for the dermal route of exposure are not derived because ATSDR has not yet identified a method suitable for this route of exposure. MRLs are generally based on the most sensitive substance-induced end point considered to be of relevance to humans. ATSDR does not use serious health effects (such as irreparable damage to the liver or kidneys, or birth defects) as a basis for establishing MRLs. Exposure to a level above the MRL does not mean that adverse health effects will occur.

MRLs are intended to serve as a screening tool to help public health professionals decide where to look more closely. They may also be viewed as a mechanism to identify those hazardous waste sites or other hazardous substance exposures that are not expected to cause adverse health effects. Most MRLs contain some degree of uncertainty because of the lack of precise toxicological information on the people who might be most sensitive (e.g., infants, elderly, and nutritionally or immunologically compromised) to the effects of hazardous substances. ATSDR uses a conservative (i.e., protective) approach to address these uncertainties, consistent with the public health principle of prevention. Although human data are preferred, MRLs often must be based on results of animal studies because relevant human studies are lacking. In the absence of evidence to the contrary, ATSDR assumes that humans are more sensitive than animals to the effects of hazardous substances, and that certain persons may be particularly sensitive. Thus, the resulting MRL may be as much as a hundredfold below levels shown to be nontoxic in laboratory animals.

Proposed MRLs undergo a rigorous review process. They are reviewed by the Health Effects/MRL Workgroup within the Division of Toxicology; an expert panel of peer reviewers; the agency wide MRL Workgroup, with participation from other federal agencies, including EPA; and are submitted for public comment through the toxicological profile public comment period. Each MRL is subject to change as new information becomes available concomitant with updating the toxicological profile of the substance. MRLs in the most recent toxicological profiles supersede previously published levels. A listing of the current published MRLs is provided at the end of this notice.

Categories Used to Derive MRLs

The following health effect end points can be used to derive MRLs:

Systemic
- Respiratory
- Cardiovascular
- Gastrointestinal
- Hematological
- Musculoskeletal
- Hepatic
- Renal
- Endocrine
- Dermal
- Ocular
- Metabolic
- Body weight change
- Other systemic effects
- Immunological and Lymphoreticular
- Neurological
- Reproductive

Developmental

To provide a better analysis of the toxic potential of the profiled substance, the same effect can be considered under more than one system category; for example, behavioral effects in the offspring can be either neurological or developmental. However, only one system category per exposure route and duration should be chosen as the basis for deriving the MRL. If two different effects within two different systems would result in the same MRL value, the MRL should be derived from the one that is best supported by data from all exposure routes and durations.

Classification of End Points as NOAELs, Less Serious LOAELs or Serious LOAELs

MRLs are derived from no-observed-adverse-effect levels (NOAELs). In the absence of NOAELs, MRLs can be derived from less serious lowest-observed-adverse-effect levels (LOAELs). MRLs are not derived from serious LOAELs. In its 1986–1988 Biennial Report Volume II, ATSDR defines an adverse health effect as a harmful or potentially harmful change in the physiologic function, psychologic state, or organ structure that may result in an observed deleterious health outcome. Adverse health effects may be manifested in pathophysiologic changes in target organs, psychologic effects, or overt disease. This definition is interpreted to indicate that any effect that enhances the susceptibility of an organism to the deleterious effects of other chemical, physical, microbiological, or environmental influences should be considered adverse.

ATSDR acknowledges that a considerable amount of judgement is required in this process and that, in some cases, there will be insufficient data to decide whether or not an effect will lead to significant dysfunction. ATSDR generally will not derive an MRL if no adverse health effect has been reported in the published peer reviewed literature in any target organ (e.g., all free standing NOAELs) for a given duration. However, data from other durations and routes of exposure may lend support for selecting an appropriate end point to derive an MRL.

Deciding whether an end point is a NOAEL or a LOAEL depends in part upon the toxicity that occurs at other doses in the studies evaluated, and in part upon knowledge regarding the mechanism of toxicity of the substance. The distinction between less serious and serious LOAEL is intended to help the users of the toxicological profiles see at what levels of exposure "major" effects begin to appear, and whether the less serious effects occur at approximately the same levels as serious effects or at substantially lower levels of exposure. In general, a dose that evokes failure in a biological system and can lead to morbidity or mortality (e.g., acute respiratory distress or death) is referred to as a serious LOAEL. A more specific classification scheme is as follows.

No Adverse Effects

- Weight loss or decrease in body weight gain of less than 10%.
- Changes in organ weight of nontarget organ tissues not associated with abnormal morphologic or biochemical changes.
- Increased mortality over controls that is not statistically significant ($p > 0.05$).
- Some adaptive responses.

Less Serious Adverse Effects

- Reversible cellular alterations at the ultrastructural level (e.g., dilated endoplasmic reticulum) and at the light-microscopy level (e.g., cloudy swelling, fatty change).
- Necrosis (dependent upon location, distribution, reversibility or the degree of associated dysfunction), metaplasia, or atrophy with no apparent decrement of organ function.
- Serum chemistry changes, e.g., moderate elevations of serum aspartate aminotransferase (SGOT), serum alanine aminotransferase (SGPT).
- Weight loss or decrease in body weight gain of 10%–19%.
- Some adaptive responses.

Serious Effects

- Death
- Clinical effects of significant organ impairment (e.g., convulsions, icterus, cyanosis).
- Morphologic changes in organ tissues that potentially could result in severe dysfunction (e.g., marked necrosis of hepatocytes or renal tubules).
- Weight loss or decrease in body weight gain of 20% or greater.
- Serum chemistry changes (e.g., major elevations of SGOT, SGPT)
- Major metabolic effects (e.g., ketosis, acidosis, alkalosis).
- Cancer effects.

Additional guidance on the assessment of end-point-specific health effects is available upon request.

The Adequacy of Database for Derivation of an MRL

It is difficult to provide strict rules governing this determination. Each profiled substance presents its own unique situation. The following key points should be considered:

- Good quality human data are generally preferred over animal data.
- Only one MRL is derived per exposure period (acute, intermediate, or chronic) for each route of exposure.
- The MRL is generally based on the highest NOAEL (that does not exceed a LOAEL) or the lowest LOAEL for the most sensitive end point for that route and exposure period.
- Although not a preferred end point for MRL derivation, decreased body weight gain can be used when the decrease is greater than 10% and when the study provides some indication that weight loss is due to a systemic effect of toxicant and not reduced food and/or water intake.
- It is preferable to derive MRLs using data for each exposure duration. However, when this is not possible because of limitations of the database for a given duration, an MRL derived for one duration may sometimes be applicable to MRL(s) for other duration(s) of the same route based on consideration of the overall database.

Selection of Most Sensitive Effect

- The MRLs are based on the concept that a threshold level of exposure exists below which no noncancer health effect is likely to occur, and, therefore, an exposure level protective against the most sensitive effect would also be protective against all other effects. The most sensitive effect is the first adverse effect that occurs or is expected to occur in humans as dose increases. However, information on the mechanisms of action should be considered when assessing the significance of the effects. Where the target organ of effect is not clearly identified, an MRL is usually not derived. However, the lack of quantitative data for a particular system category does not preclude derivation of an MRL if other evidence, such as information from human case studies, toxicokinetics, and other exposure routes, indicates that this system would not be expected to be most sensitive to the substance for the exposure route and duration of concern.

Toxicokinetics data enter into consideration when comparing information across species, routes, and durations for determination of the most sensitive effect. Comparison of the metabolism of the compound exhibiting the toxic effect in animals with its metabolism in humans may affect the choice of the most sensitive end point. Toxicokinetic differences among species and for various chemical forms of the compound may help to explain an apparent inconsistency among studies.

Differences across routes of exposure can also be explained by different rates of absorption, metabolism (both detoxication and activation), and excretion.

Selection of a Representative, Quality Study for MRL Derivation

ATSDR emphasizes its preference for using data from humans whenever such data are reliable and appropriate for MRL derivation. However, human studies must be of sufficient duration and contain an adequate number of documented exposed individuals to be useful in risk assessment. In the absence of adequate human studies, animal studies are used. The author(s) of the study must provide enough information on the oral dose or inhalation exposure concentration administered to the treated animals to allow for estimation of an equivalent human oral dose or inhalation exposure. For both oral and inhalation studies, the data presented in the study should at least include the air, water, or food concentration, the duration of exposure, the frequency of exposure (i.e., per day and per week), the age of the animals, and evidence that the food and water consumption rates were not abnormal (e.g., from weight gain data) for an animal of similar age.

Background documents on general factors that ATSDR considers in evaluating the quality of a study are available upon request. Other general principles that have been accepted in practice when evaluating studies include:

- Considerations to the exposure scenario more likely to occur in environmental exposures. For example, drinking water or feeding studies are preferred over gavage oil studies for oral exposures.
- Determination whether the study data show a dose-response consistent with other studies.

The following effects are not used for MRL derivation:

- Increased incidence of mortality.
- Serious LOAELs.
- Health effects that occur in test species as a result of mechanisms, or metabolic processes that are not found in humans (e.g., α2μ-globulin nephropathy in male rats).
- Spontaneously occurring disorders that are species and gender related (e.g., chronic progressive nephropathy in male rats).
- Effects of unknown biological significance, based on mechanism of action, that do not affect known target organs.
- Cancer effects.

Computation of Inhalation MRLs

1. Extrapolating From Animals to Humans

When animal data is used in the absence of adequate quantitative human data, exposure concentrations should be converted to human equivalent concentrations by using dosimetry adjustment in accordance with EPA (1990), "Interim Methods for Development of Inhalation Reference Doses" (EPA/600/8–90/066A, August 1990). Standard reference values should be obtained from EPA (1988): "Recommendations for and Documentation of Biological Values for Use in Risk Assessment" (EPA 600–6–87/008, February, 1988).

For inhalation exposures to gases or vapors, it may be necessary to convert to human equivalent exposures for respiratory effects (e.g., using the regional gas dose ratio for the targeted region of the respiratory tract) or extra-respiratory effects (e.g., using the blood to air partition coefficient ratio).

For inhalation exposure to particles, it may also be necessary to convert to human equivalent exposures for respiratory effects (e.g., using the regional deposited dose ratio for the targeted region of the respiratory tract), or extrarespiratory effects (e.g., using the regional deposited dose ratio and uptake from the entire respiratory system).

2. Adjusting From Intermittent to Continuous Dosing

ATSDR defines an MRL as "an estimate of the daily human exposure to a hazardous substance that is likely to be without appreciable risk of adverse noncancer health effects over a specified duration of exposure". The ideal study would involve continuous dosing over the course of the study. If a study did not involve continuous dosing over the entire exposure period, an adjustment is usually made. The "intermittent exposure dose" (either the NOAEL or LOAEL of the critical effect selected to be used for MRL derivation) is multiplied by correction factors to adjust for full day and week exposures. For example, in intermediate (longer than 14 days) or chronic (longer than 364 days) studies in which the experimental animals were dosed for 6 hours a day for 5 days a week, the estimated "adjusted dose" becomes:

Adjusted dose = Intermittent dose × (6 hours/24 hours) × (5 days/7 days)

Intermediate and chronic duration inhalation studies are usually dose-adjusted for day and week exposures; acute duration inhalation studies can be duration adjusted from intermittent exposures to 24 hours continuous exposure, but are not adjusted to 1 week. For example, acute studies in which animals were exposed for 6 hours/day for 3 days can be adjusted as follows:

Adjusted dose = Intermittent dose × (6 hours/24 hours)

However, making duration adjustments may not be appropriate in every instance. The toxicokinetics and mechanism of action should be examined to the fullest extent possible before a determination is made to adjust for intermittent exposures. The following are some factors to consider in adjusting for dose and duration.

- When the critical effects are mainly dependent on the exposure concentrations and the substance being tested is rapidly metabolized and/or excreted, dose adjustment is inappropriate.
- If the effects being examined are mainly duration dependent (e.g., longer periods of exposure increase the severity of the effects being studied) and metabolism/excretion is moderate to slow, or the study identifies a cumulative effect, duration adjustment may be appropriate.

3. Converting From Salt to Parent Substance

Salt concentrations or doses are converted to equivalent concentrations or doses of the parent substance by multiplying by the molecular weight ratio of parent to salt.

Computation of Oral MRLs

1. Converting From Concentration to Dose

For feeding studies, the equation for the conversion from food concentrations is:

(ppm in food) × (f/kg body weight) = mg/kg/day

The food consumption factor (f) is kg of food consumed per day. Unless the food consumption rate and body weights are available, standard reference values should be obtained from EPA (1988).

For drinking water studies, the equation for conversion from water concentrations is:

(ppm in water) × (C/kg body weight) = mg/kg/day

The water consumption rate (C) is liters of water consumed per day. Unless C and body weights are provided in the study, standard reference values should be obtained from EPA (1988) or EPA (1986), as appropriate.

2. Converting From Intermittent to Daily Dosing

By definition an MRL is "an estimate of the daily human exposure to a hazardous substance that is likely to be without an appreciable risk of adverse noncancer health effects over a specified duration of exposure". If the principal study did not involve daily dosing over the entire exposure period, an adjustment is usually made. The "intermittent dose" is multiplied by the fraction of the study days over which the test animals were actively dosed. Acute oral studies are not adjusted to 1 week; intermediate and chronic oral studies are usually dose-adjusted to full week exposures. For example, for animals orally dosed weekly 5 days a week, the estimated "continuous dose" becomes:

adjusted dose = intermittent dose × (5 days/7 days)

Uncertainty factors and modifying factor

When sufficient human data are not available to allow an accurate assessment of noncancer health risks, ATSDR may extrapolate from available information using uncertainty factors (UFs) to account for different areas of uncertainty in the database to derive MRLs. In addition, a modifying factor (MF) may be applied to reflect additional scientific judgement on the database.

MRLs are derived from human equivalent no-observed-adverse-effect levels and are calculated as follows:

$MRL = (NOAEL)_{HEC} / (UF \times MF)$

When an appropriate NOAEL does not exist, the lowest LOAEL should be used and a UF is applied for the use of a LOAEL. Additional uncertainty factors for human variability to protect sensitive subpopulations, for interspecies extrapolation when animal studies are used for derivation of MRLs, and for extrapolation across exposure durations are also used.

The default value for each individual UF is 10; if complete certainty in data exists, a value of one can be used; and an intermediate value is three. By multiplying these individual uncertainty factors, a combined UF is obtained.

The use of UFs and MFs should be based on scientific judgement on a case-by-case basis. General guidelines are as follows:

Intrahuman variation

An UF of 10 is generally used to account for intrahuman variation. However, a UF of 3 or 1 may be applied when a large epidemiologic study or a study of the sensitive population was used.

Interspecies Extrapolation

In the absence of adequate human data, animal data are used; a UF of 10 is generally used to account for extrapolation from animals to humans. However, a UF of 3 or 1 may also be used when comparative toxicological data indicate that similar effects are expected in humans at comparable exposure levels. For inhalation MRLs, when dosimetry adjustment is made for converting animal exposure levels to human equivalent concentrations, a UF of 3 is generally applied to account for any remaining uncertainty (Jarabek and Segal 1994).

LOAEL to NOAEL Extrapolation

MRLs are derived from NOAELs. In the absence of a NOAEL, the lowest LOAEL that causes less serious adverse health effects is used, and a UF of 10 is generally applied. When the less serious LOAEL approaches the threshold level, that is, only minimal effects are observed representing an early indication of toxicity, the effect level is considered to be a minimal LOAEL, and a UF of 3 may be used.

Extrapolation Across Durations

It is preferable to derive MRLs using data for each exposure duration. However, when the database supports extrapolation across acute, intermediate, or chronic exposure durations, a UF may be applied based on scientific judgement. For example, the chronic inhalation MRL for chlordane was derived from the intermediate inhalation MRL with an additional UF of 10 to account for across duration extrapolation; the chronic inhalation MRL was supported by the limited data on chronic exposure as well as the data on oral exposure.

Modifying Factor (MF)

An MF greater than zero and up to 10 may be applied to reflect additional concerns about the database not covered by the UFs. The default value for MF is 1. An example is the use of an MF of 3 to account for the incomplete database in deriving the chronic oral MRL for 4,4'-methylenebis(2-chloroaniline). Another possible consideration is that if a test substance is known to bioaccumulate, some studies may overestimate the dose needed to cause effects. In such cases, a modifying factor may be applied.

EPA RfDs and ATSDR MRLs

The current approach for MRL derivation by ATSDR is similar to the methods used by EPA to derive Reference Doses (RfDs) and Reference Concentrations (RfCs) for chronic exposures. The following table shows the difference in methodology used by ATSDR and EPA in deriving MRLs and RfDs/RfCs respectively.

As with RfD methodology, in deriving MRLs, ATSDR uses UFs and MFs to account for extrapolation from animals to humans, from LOAEL to NOAEL, for intraspecies variation, for across duration extrapolation, and for professional judgement on the database. In addition, EPA uses a UF for an incomplete database (EPA 1990) whereas ATSDR incorporates scientific judgement, including an incomplete database in the MF. However, ATSDR does not extrapolate across route of exposure at this time. It is recognized that the EPA derives RfDs as part of its regulatory decision-making process. Extrapolation across route of exposure (most commonly using data from inhalation studies to estimate levels by the oral route) is sometimes used to develop an RfD where there is inadequate route-specific information.

Because MRLs may be based on more recent data and are derived using a slightly different methodology, or because MRLs are derived as a result of different scientific judgement, MRLs and RfDs (or RfCs) for the same substance are not necessarily of the same value.

	MRL	RfD/RfC
Exposure duration.	Acute Intermediate Chronic	Chronic.
Route of exposure.	Oral	Oral.
	Inhalation	Inhalation.
UFs used:		
Human variability.	Yes	Yes.
Interspecies extrapolation.	Yes	Yes.
LOAEL to NOAEL.	Yes	Yes.
Extrapolation across duration.	Yes	Yes.
Incomplete database.	No	Yes.
Across route extrapolation.	No	Yes.
MF	Yes	Yes.

MRLs for Essential Trace Elements

Since many nutritionally essential elements have been found to be

common contaminants at some toxic waste sites, consideration was given to both essentiality and toxicity when deriving MRLs for these substances. Special reference was given to background levels and levels that have been published as Recommended Dietary Allowances (RDA) or Estimated Safe and Adequate Daily Dietary Intakes (ESADDIs) by the Food and Nutrition Board of the National Research Council. MRLs should not be in conflict with the corresponding RDAs and should be protective for all age groups.

MRLs vs. Ambient Levels

Since MRLs serve as screening tools for health assessors, it is important to compare MRLs with ambient levels reported in environmental monitoring studies. When MRLs are lower than ambient levels, the relevance of the MRLs is in question, and special consideration is warranted.

Future Approaches

ATSDR is considering the application of physiologically based pharmacokinetic (PBPK) modeling to enhance understanding of dose and across-route extrapolations. In addition, ATSDR is evaluating the utility of Benchmark Dose modelling, to obtain low-incidence response exposure levels calculated from mathematically fitted dose-response curves, as an adjunct to the current NOAEL/LOAEL approach in deriving MRLs.

References

Barnes DG and Dourson M (1988). Reference Dose (RfD): Description and Use in Health Risk Assessments. Regulatory Toxicology and Pharmacology 8:471–486.

EPA (1986). Research and Development: Reference Values for Risk Assessment. (ECAO–CIN–477 September 1986).

EPA (1988). Recommendations for and Documentation of Biological Values for Use in Risk Assessment. (EPA 600–6–87/008 February 1988).

EPA (1990). Interim Methods for Development of Inhalation Reference Concentrations. (EPA/600/8–90/066A August 1990).

Jarabek AM and Segal SA. (1994). Noncancer Toxicity of Inhaled Air Pollutants: Available Approaches for Risk Assessment and Risk Management. In: Patrick DR, ed. Toxic Air Pollution Handbook. New York: Van Nostrand Reinhold, pp. 529–541.

Dated: May 17, 1996.

Claire V. Broome,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

ATSDR MINIMAL RISK LEVELS (MRLS) FOR HAZARDOUS SUBSTANCES

[March 1996]

Substance name	CAS No.	Route	Duration	Value	Factors	End point
ACENAPHTHENE	000083–32–9	ORAL	INTERMEDIATE	0.6 mg/kg/day	300	Hepatic.
ACETONE	000067–64–1	INHALATION	ACUTE	26 ppm	9	Neurological.
		INHALATION	INTERMEDIATE	13 ppm	100	Neurological.
		INHALATION	CHRONIC	13 ppm	100	Neurological.
		ORAL	INTERMEDIATE	2 mg/kg/day	100	Hematological.
ACROLEIN	000107–02–8	INHALATION	ACUTE	0.00005 ppm	100	Ocular.
		INHALATION	INTERMEDIATE	0.000009 ppm	1000	Respiratory.
		ORAL	CHRONIC	0.0005 mg/kg/day	100	Hematological.
ACRYLONITRILE	000107–13–1	INHALATION	ACUTE	0.1 ppm	10	Neurological.
		ORAL	ACUTE	0.1 mg/kg/day	100	Developmental.
		ORAL	INTERMEDIATE	0.01 mg/kg/day	1000	Reproductive.
		ORAL	CHRONIC	0.04 mg/kg/day	100	Hematological.
ALDRIN	000309–00–2	ORAL	ACUTE	0.002 mg/kg/day	1000	Developmental.
		ORAL	CHRONIC	0.00003 mg/kg/day	1000	Hepatic.
AMMONIA	007664–41–7	INHALATION	ACUTE	0.5 ppm	100	Respiratory.
		INHALATION	CHRONIC	0.3 ppm	10	Respiratory.
		ORAL	INTERMEDIATE	0.3 mg/kg/day	100	Other.
ANTHRACENE	000120–12–7	ORAL	INTERMEDIATE	10 mg/kg/day	100	Hepatic.
ARSENIC	007440–38–2	ORAL	CHRONIC	0.003 mg/kg/day	3	Dermal.
BENZENE	000071–43–2	INHALATION	ACUTE	0.05 ppm	300	Immunological.
BIS (2-CHLORO-ETHYL) ETHER.	000111–44–4	INHALATION	INTERMEDIATE	0.02 ppm	1000	Body Weight.
BIS (CHLORO-ETHYL) ETHER.	000542–88–1	INHALATION	INTERMEDIATE	0.0003 ppm	100	Respiratory.
BORON	007440–42–8	ORAL	INTERMEDIATE	0.01 mg/kg/day	1000	Developmental.
BROMODICHLOROME-THANE.	000075–27–4	ORAL	ACUTE	0.04 mg/kg/day	1000	Hepatic.
		ORAL	CHRONIC	0.02 mg/kg/day	1000	Renal/Urinary
BROMOFORM	000075–25–2	ORAL	ACUTE	0.6 mg/kg/day	100	Nurological.
		ORAL	CHRONIC	0.2 mg/kg/day	100	Hepatic.
BROMOMETHANE	000074–83–9	INHALATION	ACUTE	0.05 ppm	100	Neurological.
		INHALATION	INTERMEDIATE	0.05 ppm	100	Neurological.
		INHALATION	CHRONIC	0.005 ppm	100	Neurological.
		ORAL	INTERMEDIATE	0.003 mg/kg/day	100	Gastrointestinal.
CADMIUM	007440–43–9	INHALATION	CHRONIC	0.0002 mg/m³	10	Renal/Urinary.
		ORAL	CHRONIC	0.007 mg/kg/day	3	Renal/Urinary.
CARBON DISULFIDE	000075–15–0	INHALATION	CHRONIC	0.3 ppm	30	Neurolgical.
		ORAL	ACUTE	0.01 mg/kg/day	300	Hepatic.
CARBON TETRA-CHLORIDE.	000056–23–5	INHALATION	ACUTE	0.2 ppm	300	Hepatic.
		INHALATION	INTERMEDIATE	0.05 ppm	100	Hepatic.
		ORAL	ACUTE	0.02 mg/kg/day	300	Hepatic.
		ORAL	INTERMEDIATE	0.007 mg/kg/day	100	Hepatic.
CHLORDANE	000057–74–9	INHALATION	INTERMEDIATE	0.0002 mg/m³	100	Hepatic.
		INHALATION	CHRONIC	0.00002 mg/m³	1000	Hepatic.
		ORAL	ACUTE	0.001 mg/kg/day	1000	Developmental.

ATSDR MINIMAL RISK LEVELS (MRLS) FOR HAZARDOUS SUBSTANCES—Continued

[March 1996]

Substance name	CAS No.	Route	Duration	Value	Factors	End point
		ORAL	INTERMEDIATE	0.0006 mg/kg/day	100	Hepatic.
		ORAL	CHRONIC	0.000 mg/kg/day	100	Hepatic.
CHLORFENVINPHOS	000470–90–6	ORAL	ACUTE	0.002 mg/kg/day	1000	Neurological.
		ORAL	INTERMEDIATE	0.002 mg/kg/day	1000	Lymphoreticular.
		ORAL	CHRONIC	0.002 mg/kg/day	1000	Neurological.
CHLOROBENZENE	000108–90–7	ORAL	INTERMEDIATE	0.4 mg/kg/day	100	Hepatic.
CHLORODIBROMOME-THANE.	000124–48–1	ORAL	ACUTE	0.04 mg/kg/day	1000	Renal/Urinary.
		ORAL	CHRONIC	0.03 mg/kg/day	1000	Hepatic.
CHLOROETHANE	000075–00–3	INHALATION	ACUTE	1300 ppm	10	Neurological.
		INHALATION	INTERMEDIATE	76 ppm	100	Body Weight.
CHLOROFORM	000067–66–3	INHALATION	ACUTE	1 ppm	30	Hepatic.
		INHALATION	INTERMEDIATE	0.05 ppm	100	Hepatic.
		INHALATION	CHRONIC	0.02 ppm	100	Hepatic
		ORAL	ACUTE	0.3 mg/kg/day	100	Hepatic.
		ORAL	INTERMEDIATE	0.1 mg/kg/day	100	Hepatic.
		ORAL	CHRONIC	0.01 mg/kg/day	1000	Hepatic.
CHLOROMETHANE	000074–87–3	INHALATION	ACUTE	0.5 ppm	100	Neurological.
		INHALATION	INTERMEDIATE	0.4 ppm	100	Body Weight.
		INHALATION	CHRONIC	0.4 ppm	100	Body Weight.
CHLORPYRIFOS	002921–88–2	ORAL	ACUTE	0.003 mg/kg/day	10	Neurological.
		INHALATION	CHRONIC	0.00002 mg/m³	10	Respiratory.
CHROMIUM, HEXAVALENT.	018540–29–9	INHALATION	INTERMEDIATE	0.00002 mg/m³	10	Respiratory.
		INHALATION	CHRONIC	0.00002 mg/m³	10	Respiratory.
COBALT	007440–48–4	INHALATION	INTERMEDIATE	0.00003 mg/m³	1000	Respiratory.
CRESOL, META-	000108–39–4	ORAL	ACUTE	0.05 mg/kb/day	100	Respiratory.
CRESOL, ORTHO-	000095–48–7	ORAL	ACUTE	0.05 mg/kg/day	100	Neurological.
CRESOL, PARA-	000106–44–5	ORAL	ACUTE	0.05 mg/kg/day	100	Neurological.
CYANIDE	000057–12–5	ORAL	INTERMEDIATE	0.05 gm/kg/day	100	Reproductive.
CYCLOTETRAMETHYL-ENE TETRANITRAMINE.	002691–41–0	ORAL	ACUTE	0.1 mg/kg/day	1000	Neurological.
		ORAL	INTERMEDIATE	0.05 mg/kg/day	1000	Hepatic.
CYCLOTRIMETHY LENETRINITRAMINE (RDX).	000121–82–4	ORAL	ACUTE	0.06 mg/kg/day	100	Neurological.
		ORAL	INTERMEDIATE	0.03 mg/kg/day	300	Reproductive.
DDT, P,P'-	000050–29–3	ORAL	ACUTE	0.0005 mg/kg/day	1000	Developmental.
		ORAL	INTERMEDIATE	0.0005 mg/kg/day	100	Hepatic.
DI(2-ETHYLHEXYL) PHTHALATE.	000117–81–7	ORAL	ACUTE	1 mg/kg/day	100	Reproductive.
		ORAL	INTERMEDIATE	0.4 mg/kg/day	100	Developmental.
DI-N-BUTYL PHTHAL-ATE.	000084–74–2	ORAL	INTERMEDIATE	0.6 mg/kg/day	100	Developmental .
DI-N-OCTYL PHTHAL-ATE.	000117–84–0	ORAL	ACUTE	2 mg/kg/day	1000	Hepatic.
DIAZINON	000333–41–5	ORAL	INTERMEDIATE	0.0002 mg/kg/day	1000	Developmental.
DICHLORVOS	000062–73–7	INHALATION	ACUTE	0.002 ppm	100	Neurological.
		INHALATION	INTERMEDIATE	0.0003 ppm	100	Neurological.
		INHALATION	CHRONIC	0.00006 ppm	100	Neurological.
		ORAL	ACUTE	0.004 mg/kg/day	1000	Neurological.
		ORAL	INTERMEDIATE	0.003 mg/kg/day	10	Neurological.
DIELDRIN	000060–57–1	ORAL	ACUTE	0.00007 mg/kg/day	1000	Immunological.
		ORAL	CHRONIC	0.00005 mg/kg/day	100	Hepatic.
DIETHYL PHTHALATE	000084–66–2	ORAL	ACUTE	7 mg/kg/day	300	Reproductive.
		ORAL	INTERMEDIATE	6 mg/kg/day	300	Hepatic.
DISULFOTON	000298–04–4	INHALATION	ACUTE	0.006 mg/m³	30	Neurological.
		INHALATION	INTERMEDIATE	2E–4 mg/m³	30	Neurological.
		ORAL	ACUTE	0.001 mg/kg/day	100	Neurological.
		ORAL	INTERMEDIATE	9E–5 mg/kg/day	100	Developmental.
		ORAL	CHRONIC	6E–5 mg/kg/day	1000	Neurological.
ENDOSULFAN	000115–29–7	ORAL	INTERMEDIATE	0.002 mg/kg/day	100	Immunological.
		ORAL	CHRONIC	0.002 mg/kg/day	100	Hepatic.
ENDRIN	000072–20–8	ORAL	INTERMEDIATE	0.002 mg/kg/day	100	Neurological.
		ORAL	CHRONIC	0.0003 mg/kg/day	100	Neurological.
EHTYL BENZENE	000100–41–4	INHALATION	INTERMEDIATE	0.3 ppm	100	Developmental.
ETHYLENE GLYCOL	000107–21–1	ORAL	CHRONIC	2 mg/kg/day	100	Renal/Urinary.
ETHYLENE OXIDE	000075–21–8	INHALATION	INTERMEDIATE	0.09 ppm	100	Renal/Urinary.
FLUORANTHENE	000206–44–0	ORAL	INTERMEDIATE	0.4 mg/kg/day	300	Hepatic.
FLUORENE	000086–73–7	ORAL	INTERMEDIATE	0.4 mg/kg/day	300	Hepatic.

ATSDR MINIMAL RISK LEVELS (MRLS) FOR HAZARDOUS SUBSTANCES—Continued

[March 1996]

Substance name	CAS No.	Route	Duration	Value	Factors	End point
FUEL OIL NO. 2	068476–30–2	INHALATION	ACUTE	0.02 mg/m³	1000	Neurological.
HEXACHLOROBENZENE.	000118–74–1	ORAL	ACUTE	0.008 mg/kg/day	300	Developmental.
		ORAL	INTERMEDIATE	0.0003 mg/kg/day	300	Reproductive.
		ORAL	CHRONIC	0.00002 mg/kg/day	1000	Developmental.
HEXACHLOROBUTADIENE.	000087–68–3	ORAL	INTERMEDIATE	0.0002 mg/kg/day	1000	Renal/Urinary.
HEXACHLOROCYCLOHEXANE, BETA-.	000319–85–7	ORAL	INTERMEDIATE	0.0003 mg/kg/day	300	Hepatic.
HEXACHLOROCYCLOHEXANE, GAMMA-.	000058–89–9	ORAL	ACUTE	0.01 mg/kg/day	300	Neurological.
		ORAL	INTERMEDIATE	0.00004 mg/kg/day	300	Immunological.
HEXACHLOROETHANE	000067–72–1	INHALATION	ACUTE	0.5 ppm	100	Neurological.
		INHALATION	INTERMEDIATE	0.09 ppm	100	Respiratory.
		ORAL	ACUTE	0.1 mg/kg/day	100	Hepatic.
		ORAL	INTERMEDIATE	0.01 mg/kg/day	100	Hepatic.
HYDRAZINE	000302–01–2	INHALATION	INTERMEDIATE	0.0002 ppm	1000	Hepatic.
ISOPHORONE	000078–59–1	ORAL	INTERMEDIATE	3 mg/kg/day	100	Other.
		ORAL	CHRONIC	0.2 mg/kg/day	1000	Hepatic.
JP–4 JET FUEL	050815–00–4	INHALATION	INTERMEDIATE	9 mg/m³	300	Hepatic.
JP–7 JET FUEL	HZ0600–22–T	INHALATION	CHRONIC	0.3 mg/m³	300	Hepatic.
KEPONE	000143–50–0	ORAL	ACUTE	0.01 mg/kg/day	100	Neurological.
		ORAL	INTERMEDIATE	0.0005 mg/kg/day	100	Renal/Urinary.
		ORAL	CHRONIC	0.0005 mg/kg/day	100	Renal/Urinary.
KEROSENE	008008–20–6	INHALATION	INTERMEDIATE	0.01 mg/m³	1000	Hepatic.
M–XYLENE	000108–38–3	ORAL	INTERMEDIATE	0.6 mg/kg/day	1000	Hepatic.
MANGANESE	007439–96–5	INHALATION	CHRONIC	0.0003 mg/m³	100	Neurological.
MERCURY, INORGANIC	HZ0900–19–T	ORAL	ACUTE	0.007 mg/kg/day	100	Renal/Urinary.
		ORAL	INTERMEDIATE	0.002 mg/kg/day	100	Renal/Urinary.
MERCURY, METALLIC	007439–97–6	INHALATION	ACUTE	0.00002 mg/m³	100	Developmental.
		INHALATION	CHRONIC	0.000014 mg/m³	100	Neurological.
METHOXYCHLOR	000072–43–5	ORAL	ACUTE	0.02 mg/kg/day	1000	Reproductive.
		ORAL	INTERMEDIATE	0.02 mg/kg/day	1000	Reproductive.
METHYL PARATHION	000298–00–0	ORAL	CHRONIC	0.0003 mg/kg/day	100	Neurological.
METHYL-T-BUTYL ETHER.	001634–04–4	INHALATION	ACUTE	2 ppm	100	Neuorlogical.
		INHALATION	INTERMEDIATE	0.7 ppm	100	Neurological.
		INHALATION	CHRONIC	0.7 ppm	100	Renal/Urinary.
		ORAL	ACUTE	0.4 mg/kg/day	100	Neurological.
		ORAL	INTERMEDIATE	0.3 mg/kg/day	300	Hepatic.
METHYLENE CHLORIDE.	000075–09–2	INHALATION	ACUTE	0.4 ppm	100	Neurological.
		INHALATION	INTERMEDIATE	0.03 ppm	1000	Hepatic.
		ORAL	CHRONIC	0.06 mg/kg/day	100	Hepatic.
METHYLMERCURIC CHLORIDE.	000115–09–3	ORAL	ACUTE	0.00012 mg/kg/day	10	Developmental.
		ORAL	INTERMEDIATE	0.00012 mg/kg/day	10	Developmental.
MIREX	002385–85–5	ORAL	CHRONIC	0.0008 mg/kg/day	100	Hepatic.
N-NITROSODI-N-PROPYLAMINE.	000621–64–7	ORAL	ACUTE	0.095 mg/kg/day	100	Hepatic.
NAPHTHALENE	000091–20–3	INHALATION	CHRONIC	0.002 ppm	1000	Neurological.
		ORAL	ACUTE	0.05 mg/kg/day	1000	Neurological.
		ORAL	INTERMEDIATE	0.02 mg/kg/day	300	Hepatic.
NICKEL	007440–02–0	INHALATION	INTERMEDIATE	0.00004 mg/m³	100	Respiratory
P-XYLENE	000106–64–3	ORAL	ACUTE	1 mg/kg/day	100	Neurological.
PENTACHLOROPHENOL.	000087–86–5	ORAL	ACUTE	0.005 mg/kg/day	1000	Developmental.
		ORAL	INTERMEDIATE	0.001 mg/kg/day	1000	Hepatic.
PHENOL	000108–95–2	ORAL	ACUTE	0.6 mg/kg/day	100	Developmental.
POLYBROMINATED BIPHENYLS.	067774–32–7	ORAL	ACUTE	0.01 mg/kg/day	100	Endocrine.
POLYCHLORINATED BIPHENYLS.	001336–36–3	ORAL	CHRONIC	0.00002 mg/kg/day	300	Immunological.
PROPYLENE GLYCOL DINITRATE.	006423–43–4	INHALATION	ACUTE	0.003 ppm	10	Neurological.
		INHALATION	INTERMEDIATE	0.00004 ppm	1000	Hematological.
		INHALATION	CHRONIC	0.00004 ppm	1000	Hematological.
SELENIUM	007782–49–2	ORAL	CHRONIC	0.002 mg/kg/day	10	Dermal.
SODIUM FLUORIDE	007681–49–4	ORAL	CHRONIC	0.05 mg/kg/day	10	Musculoskeletal.
STYRENE	000100–42–5	INHALATION	CHRONIC	0.06 ppm	100	Neurological.
		ORAL	INTERMEDIATE	0.2 mg/kg/day	1000	Hepatic.

ATSDR MINIMAL RISK LEVELS (MRLS) FOR HAZARDOUS SUBSTANCES—Continued

[March 1996]

Substance name	CAS No.	Route	Duration	Value	Factors	End point
TETRACHLOROETHYLENE TETRACHLOROETHYLENE.	000127–18–4	INHALATION	ACUTE	0.2 ppm	10	Neurological.
		INHALATION	CHRONIC	0.04 PPM	100	Neurological.
		ORAL	ACUTE	0.5 mg/kg/day	1000	Development.
TITANIUM TETRACHLORIDE.	007550–45–0	INHALATION	CHRONIC	0.001 mg/m³	90	Respiratory.
TOLUENE	0001108–88–3	INHALATION	ACUTE	3 ppm	30	Neurological.
		INHALATION	CHRONIC	1 ppm	30	Neurological.
		ORAL	ACUTE	0.8 mg/kg/day	300	Neurological.
		ORAL	INTERMEDIATE	0.02 mg/kg/day	300	Neurological.
TOTAL XYLENES	001330–20–7	INHALATION	ACUTE	1 ppm	100	Neurological.
		INHALATION	INTERMEDIATE	0.7 ppm	300	Development.
		INHALATION	CHRONIC	0.1 ppm	100	Neurological.
		ORAL	INTERMEDIATE	0.2 mg/kg/day	1000	Renal/Urinary.
TOXAPHENE	008001–35–2	ORAL	ACUTE	0.005 mg/kg/day	1000	Hepatic.
		ORAL	INTERMEDIATE	0.001 mg/kg/day	100	Hepatic.
TRICHLOROETHYLENE	000079–01–6	INHALATION	ACUTE	2 ppm	30	Neurological.
		INHALATION	INTERMEDIATE	0.1 ppm	300	Neurological.
		ORAL	ACUTE	0.5 mg/kg/day	100	Development.
		ORAL	INTERMEDIATE	0.002 mg/kg/day	100	Development.
VANADIUM	007440–62–2	INHALATION	ACUTE	0.0002 mg/m³	100	Respiratory.
		ORAL	INTERMEDIATE	0.003 mg/kg/day	100	Renal/Urinary.
VINYL ACETATE	000108–05–4	INHALATION	INTERMEDIATE	0.01 ppm	100	Respiratory.
VINYL, CHLORIDE	000075–01–4	INHALATION	ACUTE	0.5ppm	100	Development.
		INHALATION	INTERMEDIATE	0.03 ppm	300	Hepatic.
		ORAL	CHRONIC	0.00002 mg/kg/day	1000	Hepatic.
ZINC	007440–66–6	ORAL	INTERMEDIATE	0.3 mg/kg/day	3	Hematological.
		ORAL	CHRONIC	0.3 mg/kg/day	3	Hematological.
1,1,1-TRICHLOROETHANE.	000071–55–6	INHALATION	ACUTE	2 ppm	100	Neurological.
		INHALATION	INTERMEDIATE	0.7 ppm	100	Neurological.
1,1,2,2-TETRACHLORO-ETHANE.	000079–34–5	INHALATION	ACUTE	1 ppm	10	Neurological.
		INHALATION	INTERMEDIATE	0.4 ppm	300	Hepatic.
		ORAL	ACUTE	0.3 mg/kg/day	100	Hepatic.
		ORAL	INTERMEDIATE	0.3 mg/kg/day	300	Body Weight.
		ORAL	CHRONIC	0.3 mg/kg/day	300	Body Weight.
1,1,2-TRI-CHLORO-ETHANE.	000079–00–5	ORAL	ACUTE	0.3 mg/kg/day	100	Neurological.
		ORAL	INTERMEDIATE	0.04 mg/kg/day	100	Hepatic.
1,1-DI-CHLORO-ETHENE.	000075–35–4	INHALATION	INTERMEDIATE	0.02 ppm	100	Hepatic.
		ORAL	CHRONIC	0.009 mg/kg/day	1000	Hepatic.
1,1-DI-METHYL-HYDRAZINE.	000057–14–7	INHALATION	INTERMEDIATE	0.000009 ppm	1000	Hepatic.
		INHALATION	CHRONIC	0.000009 ppm	1000	Hepatic.
1,2,3-TRI-CHLORO-PROPANE.	000096–18–4	INHALATION	ACUTE	0.0003 ppm	100	Respiratory.
		ORAL	INTERMEDIATE	0.06 mg/kg/day	100	Hepatic.
1,2-DI-BROMO-3-CHLORO-PRO-PANE.	000096–12–8	INHALATION	INTERMEDIATE	0.0002 ppm	100	Reproductive.
		ORAL	INTERMEDIATE	0.002 mg/kg/day	1000	Reproductive.
1,2-DI-CHLORO-ETHANE.	000107–06–2	INHALATION	ACUTE	0.2 ppm	100	Immunological.
		INHALATION	CHRONIC	0.2 ppm	300	Hepatic.
		ORAL	INTERMEDIATE	0.2 mg/kg/day	300	Renal/Urinary.
1,2-DI-CHLORO-ETHENE, CIS-.	000156–59–2	ORAL	ACUTE	1 mg/kg/day	100	Hematological.
		ORAL	INTERMEDIATE	0.3 mg/kg/day	100	Hematological.
1,2-DI-CHLORO-ETHENE, TRANS-.	000156–60–5	INHALATION	ACUTE	0.2 ppm	1000	Hepatic.
		INHALATION	INTERMEDIATE	0.2 ppm	1000	Hepatic.
		ORAL	INTERMEDIATE	0.2 mg/kg/day	100	Hepatic.
1,2-DI-CHLORO-PROPANE.	000078–87–5	INHALATION	ACUTE	0.05 ppm	1000	Respiratory.
		INHALATION	INTERMEDIATE	0.007 ppm	1000	Respiratory.
		ORAL	ACUTE	0.1 mg/kg/day	1000	Neurological.
		ORAL	INTERMEDIATE	0.07 mg/kg/day	1000	Hematological.
		ORAL	CHRONIC	0.09 mg/kg/day	1000	Hepatic.
1,2-DI-METHYL-HYDRAZINE.	000540–73–8	ORAL	INTERMEDIATE	0.0008 mg/kg/day	1000	Hepatic.

ATSDR MINIMAL RISK LEVELS (MRLs) FOR HAZARDOUS SUBSTANCES—Continued

[March 1996]

Substance name	CAS No.	Route	Duration	Value	Factors	End point
1,3-DI-CHLORO-PROPENE.	000542–75–6	INHALATION	INTERMEDIATE	0.003 ppm	100	Respiratory.
		INHALATION	CHRONIC	0.002 ppm	100	Respiratory.
1,3-DI-NITRO-BENZENE	000099–65–0	ORAL	ACUTE	0.008 mg/kg/day	100	Reproductive.
		ORAL	INTERMEDIATE	0.0005 mg/kg/day	1000	Hematological.
1,4-DI-CHLORO-BENZENE.	000106–46–7	INHALATION	INTERMEDIATE	0.2 ppm	100	Hepatic.
		ORAL	INTERMEDIATE	0.1 mg/kg/day	100	Hepatic.
1-METHYLNAPHTHALENE.	000090–12–0	ORAL	CHRONIC	0.07 mg/kg/day	1000	Respiratory.
2,3,4,7,8-PENTACHLORO-DI-BENZOFURAN.	057117–31–4	ORAL	ACUTE	0.000001 mg/kg/day	3000	Immunological.
		ORAL	INTERMEDIATE	0.00000003 mg/kg/day.	3000	Hepatic.
2,3,7,8-TETRACHLORO-DIBENZO-P-DIOXIN.	001746–01–6	ORAL	ACUTE	0.0000001 mg/kg/day	1000	Hepatic.
		ORAL	INTERMEDIATE	0.000000001 mg/kg/day.	1000	Reproductive.
		ORAL	CHRONIC	0.000000001 mg/kg/day.	1000	Reproductive.
2,4,6-TRI-CHLORO-PHENOL.	000088–06–2	ORAL	INTERMEDIATE	0.04 mg/kg/day	100	Reproductive.
2,4,6-TRI-NITROTOLUENE.	000118–96–7	ORAL	INTERMEDIATE	0.0005 mg/kg/day	1000	Hepatic.
2,4-DI-NITRO-PHENOL	000051–28–5	ORAL	ACUTE	0.01 mg/kg/day	100	Body Weight.
2,4-DI-NITRO-TOLUENE	000121–14–2	ORAL	ACUTE	0.06 mg/kg/day	1000	Hematological.
		ORAL	INTERMEDIATE	0.05 mg/kg/day	100	Reproductive.
		ORAL	CHRONIC	0.002 mg/kg/day	100	Hematological.
2,6-DI-NITRO-TOLUENE	000606–20–2	ORAL	INTERMEDIATE	0.04 mg/kg/day	100	Neurological.
4,4°-METHYL-ENE-BIS (2-CHLOROANILINE).	000101–14–4	ORAL	CHRONIC	0.003 mg/kg/day	3000	Hepatic.
4,6-DI-NITRO-O-CRESOL.	000534–52–1	ORAL	ACUTE	0.004 mg/kg/day	100	Neurological.
		ORAL	INTERMEDIATE	0.004 mg/kg/day	100	Neurological.

[FR Doc. 96–12991 Filed 5–22–96; 8:45 am]
BILLING CODE 4163–70–P

Food and Drug Administration

Advisory Committee; Science Board to the Food and Drug Administration; Formation of a Subcommittee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the formation of a subcommittee to the Science Board to the Food and Drug Administration (Science Board). This subcommittee has been established to address issues related to science and research in FDA. The subcommittee's preliminary recommendations will be presented to the FDA Science Board for full public discussion at a future Science Board meeting.

FOR FURTHER INFORMATION CONTACT: Susan A. Homire, Office of Science (HIF–33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3340.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) is announcing the formation of a subcommittee to the Science Board to the Food and Drug Administration. This subcommittee has been established to address issues related to science and research in FDA. The subcommittee will meet several times over the next 6 to 9 months to develop preliminary recommendations for the Science Board on a process for review of research programs within FDA. During this period there will be opportunities for public comment; these opportunities will be announced in the **Federal Register** at least 15 days prior to each scheduled public meeting. The subcommittee's preliminary recommendations will be presented to the Science Board for full public discussion at a future Science Board meeting. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463 (5 U.S.C. app. 2)).

Dated: May 16, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–12877 Filed 5–22–96; 8:45 am]
BILLING CODE 4160–01–F

Investigational Biological Product Trials; Procedure to Monitor Clinical Hold Process; Meeting of Review Committee and Request for Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a meeting of the clinical hold review committee, which reviews the clinical hold orders that the Center for Biologics Evaluation and Research (CBER) has placed on certain investigational biological product trials. FDA is inviting any interested biological product company to use this confidential mechanism to submit to the committee for its review the name and number of any investigational biological product trial placed on clinical hold during the past 12 months that the company wants the committee to review.

DATES: The meeting will be held in August 1996. Biological product companies may submit review requests for the August meeting by June 28, 1996.

ADDRESSES: Submit clinical hold review requests to Amanda Bryce Norton, FDA Chief Mediator and Ombudsman, Office of the Commissioner (HF–7), Food and Drug Administration, 5600 Fishers Lane, rm. 14–105, Rockville, MD 20857, 301–827–3390.

FOR FURTHER INFORMATION CONTACT: Joy A. Cavagnaro, Center for Biologics Evaluation and Research (HFM–4), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0379.

SUPPLEMENTARY INFORMATION: FDA regulations in part 312 (21 CFR part 312) provide procedures that govern the use of investigational new drugs and biologics in human subjects. If FDA determines that a proposed or ongoing study may pose significant risks for human subjects or is otherwise seriously deficient, as discussed in the investigational new drug regulations, it may order a clinical hold on the study. The clinical hold is one of FDA's primary mechanisms for protecting subjects who are involved in investigational new drug or biologic trials. FDA regulations in § 312.42 describe the grounds for ordering a clinical hold.

A clinical hold is an order that FDA issues to a sponsor to delay a proposed investigation or to suspend an ongoing investigation. The clinical hold may be ordered on one or more of the investigations covered by an investigational new drug application (IND). When a proposed study is placed on clinical hold, subjects may not be given the investigational drug or biologic as part of that study. When an ongoing study is placed on clinical hold, no new subjects may be recruited to the study and placed on the investigational drug or biologic and patients already in the study should stop receiving therapy involving the investigational drug or biologic unless FDA specifically permits it.

When FDA concludes that there is a deficiency in a proposed or ongoing clinical trial that may be grounds for ordering a clinical hold, ordinarily FDA will attempt to resolve the matter through informal discussions with the sponsor. If that attempt is unsuccessful, a clinical hold may be ordered by or on behalf of the director of the division that is responsible for the review of the IND.

FDA regulations in § 312.48 provide dispute resolution mechanisms through which sponsors may request reconsideration of clinical hold orders. The regulations encourage the sponsor to attempt to resolve disputes directly with the review staff responsible for the review of the IND. If necessary, the sponsor may request a meeting with the review staff and management to discuss the clinical hold.

CBER began a process to evaluate the consistency and fairness of practices in ordering clinical holds by instituting a review committee to review clinical holds (61 FR 1033, January 11, 1996). CBER held its first clinical hold review committee meeting on May 17, 1995. It will meet quarterly or semiannually. The committee last met in May 1996. The review procedure of the committee is designed to afford an opportunity for a sponsor who does not wish to seek formal reconsideration of a pending clinical hold to have that clinical hold considered "anonymously." The committee consists of senior managers of CBER, a senior official from the Center for Drug Evaluation and Research, and the FDA Chief Mediator and Ombudsman.

Clinical holds to be reviewed will be chosen randomly. In addition, the committee will review some of the clinical holds proposed for review by biological product sponsors. In general, a biological product sponsor should consider requesting review when it disagrees with FDA's scientific or procedural basis for the decision.

Requests for committee review of a clinical hold should be submitted to the FDA Chief Mediator and Ombudsman, who is responsible for selecting clinical holds for review. The committee and CBER staff, with the exception of the FDA Chief Mediator and Ombudsman, are never advised, either in the review process or thereafter, which of the clinical holds were randomly chosen and which were submitted by sponsors. The committee will evaluate the selected clinical holds for scientific content and consistency with FDA regulations and CBER policy.

The meetings of the review committee are closed to the public because committee discussions deal with confidential commercial information. Summaries of the committee deliberations, excluding confidential commercial information, may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. If the status of a clinical hold changes following the committee's review, the appropriate division will notify the sponsor.

FDA invites biological product companies to submit to the FDA Chief Mediator and Ombudsman the name and IND number of any investigational biological product trial that was placed on clinical hold during the past 12 months that they want the committee to review at its August 1996 meeting. Submissions should be made by June 1, 1996, to Amanda B. Pedersen, FDA Chief Mediator and Ombudsman (address above).

Dated: May 17, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–13042 Filed 5–22–96; 8:45 am]
BILLING CODE 4160–01–F

Health Care Financing Administration

[HCFA 301]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Request:* Revision of a currently approved collection; *Title of Information Collection:* Certification of Medicaid Eligibility Quality Control (MEQC) Payment Error Rates; *Form No.:* HCFA–301; *Use:* This certification is the new form by which States will report their MEQC payment error rate findings. This form represents aggregate data which were formerly collected through the Integrated Review Schedule; *Frequency:* Semi-annually; *Affected Public:* State, local, or tribal government; *Number of Respondents:*

51; *Total Annual Responses:* 102; *Total Annual Hours:* 22,515.

To request copies of the proposed paperwork collection referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: Linda Mansfield, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 16, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–12961 Filed 5–22–96; 8:45 am]

BILLING CODE 4120–03–M

National Institutes of Health

Submission for OMB Review; Comment Request; "Screen for Alcohol Problems in the Elderly" Study

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Institute on Alcohol Abuse and Alcoholism (NIAAA), National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously in the **Federal Register** on February 27, 1996, and allowed 60 days for public comment. There were seven (7) requests for additional information about this data collection activity, but no public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

The NIH may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after September 28, 1997, unless it displays a currently valid OMB control number.

PROPOSED COLLECTION: *Title:* Screening for Alcohol Problems in the Elderly. *Type of Information Collection request:* NEW. Need and Use of Information Collection: The information proposed for collection will be used by the NIAAA to develop an alcohol problem screening instrument suitable for use with the population age 65 and over and that can be administered in health care settings. The prevalence of alcohol problems among older persons is not well established. The instruments used for assessment are often not sensitive to alcohol abuse and dependence in this population, and many alcohol-related problems go undetected.

Frequency of Response: On occasion. *Affected Public:* Individuals and small businesses. *Type of Respondents:* The elderly (65 and older) and physicians. *Estimated Number of Respondents:* 636. *Estimated Number of Responses per Respondent:* 1. *Average Burden Hours per Response:* .281. *And Estimated Total Annual Burden Hours Requested:* 89.2. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

The annual burden estimates are as follows:

Type and number of respondents	Responses per respondent	Total responses	Hours	Total hours
Patients/500	1	500	.3340	167
Physicians/136	1	136	.0835	11.4

Total Number of Respondents: 636 (318 per year).
Total Number of Responses: 636 (318 per year).
Total Hours: 178.4 (89.2 per year).

REQUEST FOR COMMENTS: Comments are invited on: (a) whether the proposed collection is necessary, including whether the information has practical use; (b) ways to enhance the clarity, quality, and use of the information to be collected; (c) the accuracy of the agency estimate of burden of the proposed collection; and (d) ways to minimize the collection burden of the respondents. Send written comments to Dr. Gayle Boyd, Prevention Research Branch, Division of Clinical and Prevention Research (CPR), NIAAA, NIH, Willco Building 6000, Room 505, 6000 Executive Boulevard, Bethesda, Maryland 20892–7003.

DIRECT COMMENTS TO OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans, contact Dr. Gayle Boyd, Prevention Research Branch, Division of Clinical and Prevention Research (CPR), NIAAA, NIH, 6000 Willco Building, Room 505, 6000 Executive Boulevard, Bethesda, Maryland 20892–7003, or call non-toll-free number (301) 443–8766.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before June 24, 1996.

Dated: May 10, 1996.

Martin K. Trusty,

Executive Officer, NIAAA.

[FR Doc. 96–12932 Filed 5–22–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection for Renewal

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Fish and Wildlife Services (Service) is planning to submit the collection of information requirement described below to the Office of Management and Budget (OMB) for continuing approval under the provisions of the Paperwork Reduction Act. Copies of the information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. The Service is soliciting comments and suggestions on the requirement as described below.

DATES: Comments must be submitted on or before July 22, 1996.

ADDRESSES: Information Collection Clearance Officer, U.S. Fish and Wildlife Service; Mail Stop 224—Arlington Square; 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Phyllis H. Cook, Service Information Collection Clearance Officer, 703/358–1943; 703/358–2269 (fax).

SUPPLEMENTARY INFORMATION:

Title: Certification of Hunting and Fishing License Holders and Amendment.

OMB Approval Number: 1018–0007.

Abstract: The Federal Aid in Fish Restoration Act and the Federal Aid in Wildlife Restoration Act provide that funds are apportioned to the States in accordance with a prescribed formula. One factor in the apportionment formula for each Act is the number of paid fishing/hunting license holders in each state. The acts require State Fish and Game Departments to certify the number of paid hunting and sport/recreational fishing license holders prior to the fiscal year for which the apportionment is made. The information collected is used by the Service to compute the apportionment of grant funds available to each State as provided by the statutory formulae. The information on license sales is made available to the public through a news release. It is used by the Service and the public as indicators of trends in sport hunting and fishing and has been compiled and distributed for many years.

Service Form Number(s): Form 3–154a (Certification of Hunting/Fishing License Holders); Form 3–154b (Summary of Hunting and Sport Fishing Licenses Issued).

Frequency: Annually.

Description of Respondents: State and Local governments.

Completion Time: The reporting burden is estimated to be 1 hour.

Annual Responses: 50.

Annual Burden Hours: 50.

Dated: May 16, 1996.

Daniel M. Ashe,

Assistant Director—External Affairs.

[FR Doc. 96–12978 Filed 5–22–96; 8:45 am]

BILLING CODE 4310–55–M

Information Collection Request for Reinstatement Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Fish and Wildlife Service (Service) is planning to submit the collection of information requirement described below to the Offices of Management and Budget (OMB) for reinstatement approval under the provisions of the Paperwork Reduction Act. Copies of the collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. The Service is soliciting comment and suggestions on the requirement as described below.

DATES: Comments must be submitted on or before July 22, 1996.

ADDRESSES: Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Mail Stop 224–Arlington Square, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Phyllis H. Cook, Service Information Collection Clearance Officer, 704/358–1943; 703/358–2269 (fax).

SUPPLEMENTARY INFORMATION:

Title: Grant Agreement and Grant Amendment.

OMB Approval Number: 1018–0048.

Abstract: The Service administers several grant programs authorized by the Federal Aid in Wildlife Restoration Act, the Federal Aid in Sport Fish Restoration Act, the Anadromous Fish Conservation Act, the Endangered Species Act and the Coastal Wetlands Planning, Protection and Restoration Act. The Service uses the information collected to make awards, including determining if the estimated cost is reasonable, the cost sharing is consistent with the applicable program statutes, and whether sufficient Federal funds are available for obligation. The State uses the forms to request funds and identify proposed cost sharing. An amendment to the Grant Agreement is initiated by the grantee (State) to request a change to a previously approved Grant Agreement. The information is used to revise a previous funding obligation or document the approval of revisions requested.

Service Form Number(s): 3–1552 (Grant Agreement); 3–1591 (Amendment to Grant Agreement).

Frequency: Annually.

Description of Respondents: State and Territorial governments.

Completion Time: The reporting burden is estimated to be 1 hour for each form per respondent.

Annual Responses: 56 (It is estimated that 56 State and/or Territorial governments will submit an average of 26 grant agreements and/or amendments and that ½ of such grants will be amended.)

Annual Burden House: 1,456.

Dated: May 16, 1996.

Daniel M. Ashe,

Assistant Director—External Affairs.

[FR Doc. 96–12979 Filed 5–22–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[(4810–32) (602)]

Closure of Public Lands, Roswell District, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Closure Notice of Public Lands.

SUMMARY: Notice is hereby given that the public lands within the Department of Treasury, Federal Law Enforcement Training Center (FLETC) withdrawal request are closed to all uses and publics except those having prior authorization. This closure is intended to protect the public.

DATES: The closure will become effective on May 23, 1996.

FOR FURTHER INFORMATION CONTACT: Gary Bowers, Carlsbad Resource Area Office at 620 E. Greene, Carlsbad, NM 88220, (505) 887–6544.

SUPPLEMENTARY INFORMATION: The Department of Treasury, FLETC, has filed a withdrawal application for the following public lands to facilitate a multipurpose firearms training range and safety fan. This notice closes the lands to all uses and publics except those with prior authorization.

New Mexico Principal Meridian

T. 16 S., R. 25 E.,
Sec. 27, N½, SW¼, and W½SE¼;
Sec. 28: SE¼SE¼.
T. 17 S., R. 25 E.,
Sec. 03, lots 3, 4, S½NW¼ and N½N½ S½.

The lands described aggregate 802.96 acres in Eddy County, New Mexico. The authority for this closure is 43 CFR 8364.1. Penalties for any person failing to comply with this closure are a fine not to exceed $1000 and/or imprisonment not to exceed 12 months.

Dated: May 13, 1996.

Leslie M. Cone,

District Manager.

[FR Doc. 96–12956 Filed 5–26–96; 8:45 am]

BILLING CODE 4310–FB–M

[NM–930–06–1020–00]

Scoping Meetings on the Development of Standards for Rangeland Health and Guidelines for Grazing Management in New Mexico, Modify Land Use Plans, and Prepare National Environmental Policy Act (NEPA) Analysis Pursuant to the Planning Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of scoping meetings.

SUMMARY: The Bureau of Land Management (BLM) in New Mexico intends to develop statewide Standards for Rangeland Health and Guidelines for Grazing Management as provided in the BLM's new grazing regulations (43 CFR Part 4100) and modify all existing Land Use Plans (LUP) in the State. Draft Standards and Guidelines were prepared by the New Mexico Resource Advisory Council, formed last year, and assigned the task of developing Standards and Guidelines for New Mexico. The appropriate National Environmental Policy Act (NEPA) analysis will be prepared in accordance with the Planning Regulations (43 CFR Part 1600) for the adoption of statewide Standards for Rangeland Health and Guidelines for Grazing management. This notice invites public input on the development of Standards and Guidelines for New Mexico, on issues to be addressed and on alternatives to be considered in the NEPA analysis. To assist the public in making comments, a scoping packet for this project has been prepared. A packet can now be obtained at any Bureau of Land Management Office in New Mexico. Scoping packets will also be given out at the Scoping Meetings to be held throughout New Mexico.

DATES: Comments will be accepted at the Public Scoping Meetings listed below. In addition written comments will be accepted through June 28, 1996. This will end the comment period that was announced in the Vol. 61, No 21, Wednesday January 31, 1996, page 3457, **Federal Register** Notice of Intent.

ADDRESSES: Any comments or requests to be placed on the mailing list should be sent to Rangeland Health Project (93100), Bureau of Land Management, P.O. Box 27115, Santa Fe, NM, 87502–0115. If you attend and sign in at a Scoping Meeting or send in comments you will be placed on the mailing list.

FOR FURTHER INFORMATION CONTACT: J.W. Whitney at (505) 438–7438.

SUPPLEMENTARY INFORMATION: A total of sixteen public Scoping Meetings (open houses) will be held. Location and schedule for the meetings are:

June 10, 1996 at 7:00 pm, at the County Commission Chamber, 300 Shakespeare, Lordsburg, NM.

June 12, 1996 at 7:00 pm, at the Sierra County Civic Center, 400 West 4th Street, Truth or Consequences, NM.

June 12, 1996 at 7:00 pm, at the BLM Albuquerque District Office, 435 Montano Road NE, Albuquerque, NM.

June 13, 1996 at 7:00 pm, at the Cuba High School Cafetorium, 50 County Road 13, Cuba, NM.

June 13, 1996 at 7:00 pm, at the BLM Socorro Resource Area Office, 198 Neel Ave, Socorro, NM.

June 17, 1996 at 7:00 pm, at the BLM New Mexico State Office, 1474 Rodeo Road, Santa Fe, NM.

June 18, 1996 at 7:00 pm, at the BLM Taos Resource Area Office, 226 Cruz Alta Road, Taos, NM.

June 18, 1996 at 7:00 pm, at Morgan Hall, 109 E. Pine, Deming, NM.

June 18, 1996 at 7:00 pm, at the Crownpoint Institute of Technology, Multi-Purpose Room, Lower Point Road, Crownpoint, NM.

June 19, 1996 at 7:00 pm, at the Alamogordo City Civic Center, Rooms A & B, 800 First Street, Alamogordo, NM.

June 19, 1996 at 7:00 pm, at the Antonito Chamber of Commerce, 112 Main Street, Antonito, CO.

June 19, 1996 at 7:00 pm, at the BLM Farmington District Office, 1235 La Plata Highway, Farmington, NM.

June 20, 1996 at 7:00 pm, at the BLM Las Cruces District Office, 1800 Marquess Street Las Cruces, NM.

June 24, 1996 at 7:00 pm, at the Rural Events Center, Glencoe, NM.

June 25, 1996 at 7:00 pm, at the Carlsbad Library Annex, 101 S. Halaguena, Carlsbad, NM.

June 26, 1996 at 7:00 pm, at Pearson Auditorium, New Mexico Military Institute, Roswell, NM.

Public Input Requested

This notice invites public input on the development of Standards and Guidelines for New Mexico, on issues to be addressed and on alternatives to be considered in the NEPA analysis. Refer to the Vol. 61, No 21, Wednesday January 31, 1996, page 3457, **Federal Register** Notice of Intent for additional supplementary information including a description of possible alternatives and anticipated issues.

Dated: May 16, 1996.

Gil Lucero,

Associate State Director

[FR Doc. 96–12934 Filed 5–22–96; 8:45 am]

BILLING CODE 4310–FB–M

[CO–030–06–1610–00–1784]

Southwest Colorado Resource Advisory Council Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Resource Advisory Council meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 USC), notice is hereby given that the Southwest Colorado Resource Advisory Council (SW RAC) will meet on Thursday, June 13, 1996, at the Gunnison County Electric Association conference room, 37250 US Highway 50, Gunnison, Colorado, and on Thursday, July 11, 1996, at the Silverton Visitor Center, 414 Greene, Silverton, Colorado.

DATES: The meetings will be held on Thursday, June 13, 1996, and on Thursday, July 11, 1996. Both meetings will begin at 9:00 a.m. and end at 4:30 p.m.

ADDRESSES: For further information, contact Roger Alexander, Bureau of Land Management, Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado 81401; Telephone 970–249–7791; TDD 970–249–4639.

SUPPLEMENTARY INFORMATION: The June 13, 1996, meeting is scheduled to begin at 9:00 a.m. in the Gunnison County Electric Association conference room, 37250 US Highway 50, approximately two and one-half miles west of Gunnison, Colorado. The agenda will focus on internal resource advisory council business, including future meeting schedules, issue identification, and overall RAC direction, and an evaluation of the past year's meetings. Time will be provided for public comments.

The Thursday, July 11, 1996, is scheduled to begin at 9:00 a.m. at the Silverton Visitors Center, 414 Greene, Silverton, Colorado. The agenda will focus on off-highway vehicle and other recreational use, historical resources, and the clean-up of the Animas River. Time will be provided for public comments.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the Montrose District Manager.

Summary minutes for the Council meeting will be maintained in the Montrose District Office and will be

available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: May 13, 1996.

Mark W. Stiles,

District Manager.

[FR Doc. 96–12896 Filed 5–22–96; 8:45 am]

BILLING CODE 4310–JB–P

[Ut–050–1430–01–24–1A]

Realty Action; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands in Sanpete County, Utah have been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA). The land will not be offered for sale until at least 60 days after the date of this notice. Salt Lake Meridian, Utah. T. 19 S., R. 2 E. Section 19, Lot 8 and Section 30, Lots 5 and 8, containing 10.2 acres.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register**, the lands described above will be segregated from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

The land is being offered to Mr. A.C. Robertson and Mr. Douglas Bjerregaard of Mayfield, Utah, at not less than the appraised fair market value. All minerals in the lands would be reserved to the United States. Detailed information concerning the sale will be available to interested parties from the Richfield District Office, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the sale of the lands to the District Manager, Richfield District at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Jerry W. Goodman,

District Manager, Richfield District.

[FR Doc. 96–12898 Filed 5–22–96; 8:45 am]

BILLING CODE 4310–DQ–P

[WY–060–06–1430–01; WYW–106581]

Realty Action; Direct Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, direct sale of public lands in Crook County.

SUMMARY: The following public surface estate has been determined to be suitable for disposal by direct sale under Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976, (90 STAT. 2750; 43 U.S.C. 1713). The Bureau of Land Management (BLM) is required to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest in the land for sale if the sale would not be consistent with FLPMA or other applicable law.

Sixth Principal Meridian

Parcel Number 1

T. 56 N., R. 62 W.,
Sec. 6, lot 16.
49.26 acres.

Parcel Number 2

T. 56 N., R. 63 W.,
Sec. 1, lot 17
44.83 acres.

Parcel Number 3

T. 57 N., R. 62 W.,
Sec. 30, lots 15, 16, 17;
Sec. 31, lot 8.
161.97 acres.

Parcel Number 4

T. 57 N., R. 63 W.,
Sec. 13, NE¼SW¼;
40.00 acres.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Area Manager, Bureau of Land Management, Newcastle Resource Area, 1101 Washington Blvd., Newcastle, Wyoming 82701, 307–746–4453.

SUPPLEMENTARY INFORMATION: This sale is consistent with Bureau of Land Management policies and the Newcastle Management Framework Plan. The purpose of this sale is to dispose of four isolated parcels of public lands. The fair market values, planning document, and environmental assessment covering the proposed sale will be available for review at the Bureau of Land Management, Newcastle Resource Area, Newcastle, Wyoming.

The parcels will be offered by direct sale to the adjoining private landowner. The adjoining landowner will be required to submit proof of adjoining land ownership before a bid can be accepted. The publication of this Notice of Realty Action in the **Federal Register** shall segregate the above public lands from appropriation under the public land laws, including the mining laws. Any subsequent application shall not be accepted, shall not be considered as filed and shall be returned to the applicant if the Notice segregates the land from the use applied for in the application. The segregative effect of this Notice will terminate upon issuance of a conveyance document, 270 days, or when a cancellation Notice is published, whichever occurs first.

Sale Procedures

1. All bidders must be U.S. citizens, 18 years of age or older, corporations authorized to own real estate in the State of Wyoming, a state, state instrumentality or political subdivision authorized to hold property, or an entity legally capable of conveying and holding land or interests in Wyoming.

2. Sealed bidding is the only acceptable method of bidding. A bid must be received in the Newcastle Resource Area Office by 11:00 a.m., July 24, 1996, at which time the sealed bid envelopes will be opened and the high bid announced. The bidder will be notified in writing within 30 days whether or not the BLM can accept the bid. The sealed bid envelope must be marked on the front lower left-hand corner with the words "Public Land Sale (W–106581), Sale held July 24, 1996."

3. All sealed bids must be accompanied by a payment of not less than 10 percent of the total bid. Each bid and final payment must be accompanied by certified check, money order, bank draft, or cashier's check made payable to: Department of the Interior—BLM.

4. Failure to pay the remainder of the full bid price within 180 days of the sale will disqualify the bidder and the deposit shall be forfeited and disposed of as other receipts of the sale.

Patent Terms and Conditions

Any patent issued will be subject to all valid existing rights. Specific patent reservations include:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals will be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated into the patent document, is available for review at the BLM Newcastle Resource Area Office.

3. Excepting and Reserving to the United States: All archaeological resources within the land described as: NW¼ of lot 15, NW¼ of lot 17, sec. 30; NE¼ of lot 8, sec. 31, T. 57 N., R. 62 W., Sixth Principal Meridian, together with the right of ingress, egress, and temporary occupancy needed to identify, monitor, preserve, protect, mitigate, and remove any archaeological resources within or from the described property. Such right may be exercised by the United States or by any person or organization expressly authorized by the United States to conduct archaeological resource investigations on the described property.

For a period of 45 days from the date of this notice published in the **Federal Register**, interested parties may submit comments to the BLM, District Manager, Casper District Office, 1701 East "E" Street, Casper, Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become final.

Dated: May 14, 1996.

Don L. Hinrichsen,

District Manager.

[FR Doc. 96–12959 Filed 5–22–96; 8:45 am]

BILLING CODE 4310–22–M

[MT–024–1610–00]

Notice of Availability

AGENCY: Bureau of Land Management, Montana, Miles City District, Interior.

ACTION: Notice.

SUMMARY: In accordance with Section 202 of the Federal Land Policy and Management Act of 1976 and 40 CFR 1505.2, the Record of Decision has been prepared for the Big Dry Resource Area. The Record of Decision approves decisions for management of approximately 1.7 million federal surface acres and 7.6 million federal mineral acres managed by the Bureau of Land Management. These federal acres are located in all or portions of Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Valley and Wibaux counties.

EFFECTIVE DATE: The Record of Decision was signed in April, 1996 by Montana State Director, Larry Hamilton.

ADDRESSES: Reading copies of the Record of Decision are available at each public library for the counties listed above. Public reading copies will also be available at the following Bureau of Land Management locations:

External Affairs Office, Montana State Office, 222 North 32nd Street, Billings, MT

Miles City District Office, 111 Garryowen Road, Miles City, MT

FOR FURTHER INFORMATION CONTACT: Mary Bloom, RMP/EIS Team Leader, Miles City District Office, 111 Garryowen Road, Miles City, MT, 406–232–4331.

SUPPLEMENTARY INFORMATION: The Record of Decision approves the decisions made in the 1995 Proposed Big Dry Resource Management Plan (RMP) and Final Environmental Impact Statement (EIS), with one exception, management of Calypso Trail.

The Proposed Big Dry RMP and Final EIS was issued in February, 1995. Thirteen letters protesting the plan, some with multiple signatures, were received by the Director. Further planning was needed before approving the decision for Calypso Trail and a separate Record of Decision will be made available for that decision. The remaining protests did not result in any changes to the resource management plan.

Dated: May 10, 1996.

David D. Swogger,

Acting District Manager.

[FR Doc. 96–12894 Filed 5–22–96; 8:45 am]

BILLING CODE 4310–DN–P

[CA–942–5700–00]

Filing of Plats of Survey; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATE: Unless otherwise noted, filing was effective at 10:00 a.m. on the next federal work day following the plat acceptance date.

FOR FURTHER INFORMATION CONTACT: Clifford A. Robinson, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2800 Cottage Way, Room E–2845, Sacramento, CA 95825, 916–979–2890.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office of the Bureau of Land Management in Sacramento, CA.

Mount Diablo Meridian, California

T. 46 N., R. 7 W.,

—Dependent and Independent Resurvey, (Group 1037) accepted April 4, 1996, to meet certain administrative needs of the U.S. Forest Service, Klamath National Forest.

T. 5 N., R. 12 E.,

—Supplemental plat of the NE¼ of sec. 23 and the N½ of sec. 24, accepted April 25, 1996, to meet certain administrative needs of the BLM, Folsom Resource Area.

All of the above listed survey plats are now the basic record for describing the lands for all authorized purposes. The survey plats have been placed in the open files in the BLM, California State Office, and are available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: May 9, 1996.

Clifford A. Robinson,

Chief, Branch of Cadastral Survey.

[FR Doc. 96–12958 Filed 5–22–96; 8:45 am]

BILLING CODE 4310–40–M

[ID–957–1110–00]

Idaho: Filing of Plats of Survey

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., May 13, 1996.

The plat representing the dependent resurvey of portions of the subdivisional lines and the subdivision of sections 20 and 21, and describing and correcting the function of certain corners in sections 20 and 21, T. 9 S., R. 28 E., Boise Meridian, Idaho, Group No. 920, was accepted, May 13, 1996.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706–2500.

Dated: May 13, 1996.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 96–12975 Filed 5–22–96; 8:45 am]

BILLING CODE 4310–GG–M

[ID–957–1430–00]

Idaho: Filing of Plats of Survey

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. May 13, 1996.

The plat representing the dependent resurvey of portions of the subdivisional lines and the survey of tracts 37 and 38, T. 4 N., R. 2 E., Boise Meridian, Idaho, Group No. 911, was accepted, May 13, 1996.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706–2500.

Dated: May 13, 1996.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 96–12976 Filed 5–22–96; 8:45 am]

BILLING CODE 4310–GG–M

[ID–957–1430–00]

Idaho: Filing of Plats of Survey; Idaho

The plats of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. May 14, 1996.

The plat representing the dependent resurvey of portions of the subdivisional lines and a metes-and-bounds survey in section 24, T. 6 N., R. 35 E., Boise Meridian, Idaho, Group No. 923, was accepted, May 14, 1996.

The plat, in two sheets, representing the dependent resurvey of portions of the west and north boundaries, and subdivisional lines, and a metes-and bounds survey in sections 3, 10, 15, 19, 20, 21, and 22, T. 6 N., R. 36 E., Boise Meridian, Idaho, Group No. 923, was accepted, May 14, 1996.

These surveys were executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706–2500.

Dated: May 14, 1996.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 96–12977 Filed 5–22–96; 8:45 am]

BILLING CODE 4310–GG–M

[(NMNM–95884) (4810–32) (603)]

Notice of Proposed Withdrawal and Opportunity for Public Meeting: New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Proposed Withdrawal and Opportunity for Public Meeting: New Mexico.

SUMMARY: The United States Department of Treasury, Federal Law Enforcement Training Center (FLETC), has filed an application to withdraw 802.96 acres of public land and an additional 480.26 acres of Federally reserved mineral estate underlying reconveyed surface estate lands (Department of Treasury, FLETC). The publication of this notice in the **Federal Register** will segregate the public lands from all forms of appropriation under the public land laws, including location and entry under the general mining laws for up to two (2) years. The lands have been and remain open to mineral leasing.

DATES: Comments or requests for meeting should be received on or before August 21, 1996.

ADDRESSES: Comments and meeting requests should be sent to the New Mexico State Director, BLM, P.O. Box 27115, Santa Fe, NM 87502–7115.

FOR FURTHER INFORMATION CONTACT: Gary Bowers, Carlsbad Resource Area Office at 620 E. Greene, Carlsbad, NM 88220, (505) 887–6544.

SUPPLEMENTARY INFORMATION: On April 10, 1996, the United States Department of Treasury filed an application to withdraw the following described lands from location and entry under the United States mining laws and all forms of appropriation under the public land laws, subject to valid existing rights. The purpose of this withdrawal is to facilitate a multipurpose firearms training range and safety fan to protect the public.

New Mexico Principal Meridian

T. 16 S., R. 25 E.,
Sec. 27, N½, SW¼, and W½SE¼;
Sec. 28, SE¼SE¼.
T. 17 S., R. 25 E.,
Sec. 03, lots 3, 4, S½NW¼, and N½N½S½.

The lands described aggregate 802.96 acres in Eddy County, New Mexico.

The area described below is Federally reserved mineral interests underlying reconveyed surface estate lands (Department of Treasury, FLETC). This notice closes the land to mining.

New Mexico Principal Meridian

T. 16 S., R. 25 E.,
Sec. 33, SE¼;
Sec. 34, SW¼.
T. 17 S., R. 25 E.,
Sec. 04, lots 1, 2, and S½NE¼.

The land described contains 480.26 acres in Eddy County, New Mexico.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the New Mexico State Director, BLM, P.O. Box 27115, Santa Fe, NM 87502–6544.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. Public meeting requests must be submitted in writing to the New Mexico State Director, BLM, within 90 days from the date of publication of this notice.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied, canceled, or the land withdrawal is approved prior to that date. The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

Dated: May 13, 1996.

Leslie M. Cone,

District Manager.

[FR Doc. 96–12957 Filed 5–22–96; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Information Collection Request for Renewal/Reinstatement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Fish and Wildlife Service (Service) is planning to submit the following proposal for the collection of information listed below to the Office of Management and Budget (OMB) for reinstatement approval under the provisions of the Paperwork Reduction Act. Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. The Service is soliciting comments and suggestions on the requirement as described below.

DATES: Comments must be submitted on or before July 22, 1996.

ADDRESSES: Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Mail Stop 224—Arlington Square, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Phyllis H. Cook, Service Information Collection Clearance Officer, 703/358–1943; 703/358–2269 (fax).

SUPPLEMENTARY INFORMATION:

Title: Sandhill Crane Harvest Questionnaire.

OMB Approval Number: 1018–0023.

Abstract: The Migratory Bird Treaty Act and the Fish and Wildlife Act of 1956 designates the Department of the Interior as the key agency responsible for the wise management of migratory bird populations frequenting the United States and for setting hunting regulations that allow appropriate harvest that allow for the populations' well being. Beginning in 1960, hunting seasons have been allowed for sandhill cranes in portions, or in all, of nine midwestern states—Colorado, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Wyoming and Kansas. The information collected will be used to estimate the magnitude, geographical and temporal distribution of sandhill crane harvest and the portion it constitutes of the total population. Also, data collected will be used to determine the effects on harvests of daily bag limits to preclude over-harvests, and assist in determining if changes in hunting dates and the areas of States open to hunting are warranted.

Service Form Number(s): 3–530; 3–530A.

Frequency: Annually.

Description of Respondents: Individuals and households.

Completion Time: The reporting burden is estimated to average 5 minutes per respondent.

Annual Responses: Recent Service experience indicates that about 3,600 hunters will respond to the questionnaire each year. This is a decrease of about 4,400 respondents. The number of hunters contacted annually has decreased due to a change in sampling rates. A recent Service evaluation of sampling rates indicated that sampling rates could be reduced without compromising the utility of survey results for population management purposes.

Annual Burden Hours: 299.

Dated: May 3, 1996.

Robert G. Streeter,

Assistant Director—Refuges and Wildlife.

[FR Doc. 96–12974 Filed 5–22–96; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed settlement agreement In re AM International, Inc., et al., Case No. 82–B–04922 (Bktcy. N.D. Ill.) and In re AM International, Inc., et al., Case No. 93–582 (Bktcy. Del.), was lodged on May 13, 1996 with the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division. The proofs of claim in these actions seek to recover, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 et seq., response costs incurred and to be incurred by the U.S. Environmental Protection Agency ("EPA") at the Fisher Calo Chemical Superfund Site near LaPorte, Indiana ("Site").

The proposed settlement agreement embodies an agreement with AM International Inc. ("AM"): (1) to pay $43,384 to the Hazardous Substances Superfund for partial reimbursement of EPA's past and future response costs at the Site; and (2) to pay $1,800 to the U.S. Department of the Interior ("DOI") to resolve potential claims for natural resources damages in connection with the Site.

The proposed settlement agreement also provides AM with releases for civil liability under Section 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973, for EPA's past and future response cost and for natural damages at the Site for resources under the trusteeship of the Secretary of the Interior and the Secretary of Commerce, through the National Oceanic and Atmospheric Administration.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed settlement agreement. Comments should be addressed to the Assistant Attorney General for the Environmental and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044–7611, and should refer to In re AM International, Inc., et al, DOJ Ref. No. 90–7–1–23D. In addition, pursuant to Section 7003(d) of RCRA, 42 U.S.C. 6973(d), any member of the public who desires a public meeting in the area affected by the proposed settlement agreement in order to discuss the proposed settlement agreement prior to its final entry by the court may request that such a meeting be held. Any such request for a public meeting should be submitted within fifteen (15) days from the date of this publication and sent to the same address and bear the same reference as indicated above for submission of comments.

The proposed settlement agreement may be examined at the Office of the United States Attorney, Northern District of Illinois, Dirkson Building, Room 1200, 219 South Dearborn Street, Chicago, Illinois 60604; the Region V Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, Attn: Andrew Warren; and at the Consent Decree Library, 1120 G Street, N.W., Fourth Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed settlement agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, Fourth Floor, N.W., Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $2.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–12983 Filed 5–22–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Consent Decree in Comprehensive Environmental Response, Compensation and Liability Action

In accordance with the Departmental Policy, 28 CFR 50.7, notice is hereby given of the proposed addition of 73 parties to Consent Decree in *United States* v. *Keystone Sanitation Company, Inc., et al.*, Civil Action No. 1:CV–93–1482.

On September 27, 1993, the United States filed a complaint pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9607(a) against the owners and operators, and certain parties who arranged for disposal or treatment of hazardous substances at the Keystone Sanitation Landfill Superfund Site (the "Site") in Union Township, Adams County, PA. Several of the defendants sued approximately 180 third-party defendants, who in turn sued approximately 600 fourth-party defendants, including the third and fourth-party defendants proposed for addition to the Consent Decree.

A Consent Decree was lodged with the United States District Court for the Middle District of Pennsylvania for public comment on April 5, 1996. 61 FR 18411 (April 25, 1996). The proposed Decree, entered into under Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), resolves the liability of parties determined by EPA to be "de micromis", which for purposes of this Site means that they contributed less than 1800 cubic yards of municipal solid waste, and within such amount, less than 55 gallons or 100 pound of materials contain hazardous substances. With the April 5th lodging, the United States solicited pubic comment upon the proposed Decree's resolution of 95 third and fourth-party Defendants' liability for response costs incurred and to be incurred at the Site. The defendants will pay $1 each. With today's notice, the United States seeks comment on its addition of 73 more parties to this Decree.

The Department of Justice will accept written comments relating to the proposed addition of parties to the Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *UnitedStates* v. *Keystone Sanitation Company, Inc. et al.*, DOJ No. 90–11–2–656A.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Middle District of Pennsylvania, Federal Building and Courthouse, 228 Walnut Street, Room 217, Harrisburg, Pennsylvania, 17108; Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202) 624–0892. A copy of the proposed Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. When requesting a coy of the proposed Consent Decree, please enclose a check in the amount of $1.75 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

In addition, copies of the Decree, as well as the record supporting EPA's eligibility determinations regarding the present 73 defendants proposed for addition to the Decree, as well as for the first 95 settlors, are available at the following record repositories established by EPA near the Site pursuant to Section 117(d) of CERCLA, 42 U.S.C. 9617(d):

U.S. EPA, Region III (address above), Contact: Anna Butch, 215–597–3037

Hanover Public Library, 301 Carlisle St. Hanover PA 17331, Contract: Priscilla McFarrin, 717–632–5183

St. Mary's Church of Christ, 1441 East Mayberry Road Westminster MD 21157, Contact: Jeanne Bechtel, 301–346–7977

The Decree and record are also available at Filias & McLucas, 4309 Linglestown Road, Harrisburg, PA 17112, the repository created to house documents produced during discovery in the present litigation. Persons wishing to view documents at Filias & McLucas should call 717–845–6418 to arrange an appointment.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 96–12981 Filed 5–22–96; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993 Fastcast Consortium

Notice is hereby given that, on April 15, 1996, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Fastcast Consortium ("Fastcast") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to § 6(b) of the Act, the identities of the parties are: Accelerated Technologies, Inc., Austin, TX; Compression Engineering, Indianapolis, IN; DTM Corporation, Austin, TX; The Goodyear Tire & Rubber Company, Akron, OH; Komtek, Worcester, MA; Kovatch Castings, Inc., Uniontown, OH; Laser Fare Advanced Technology Group, Narragansett, RI; Laserform, Inc., Auburn Hills, MS; Manufacturing Sciences Corporation, Oak Ridge, TN; Osteonics Corporation, Allendale, NJ; Plynetics Corporation, San Leandro, CA; Solidform, Inc., Fort Worth, TX; TexCast, Inc., Inc., Houston, TX; 3D Systems Corporation, Valencia CA; Truecast Precision Castings, Inc., Louisville, KY; and Walworth Foundaries, Inc., Darien, WI.

Fastcast's area of planned activity is research and development for the purpose of advancing the state of the art of investment casting in the United States.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–12982 Filed 5–22–96; 8:45 am]

BILLING CODE 4410–01–M

[Civil Action No. 95–1804 (HHG), D.D.C.]

United States v. National Automobile Dealers Association; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h), the United States publishes below the comments received on the proposed Final Judgment in *United States* v. *National Automobile Dealers Association*, Civil Action 95–1804 (HHG), United States District Court for the District of Columbia, together with the response of the United States to the comments.

Copies of the response and the public comments are available on request for inspection and copying in Room 200 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC 20530, and for inspection at the Office of the Clerk of the United States District Court for the District of Columbia, United States Courthouse, Third Street and Constitution Avenue, NW., Washington, DC 20001.

Rebecca P. Dick,

Deputy Director of Operations, Antitrust Division.

In the United States District Court for the District of Columbia

United States of America, Plaintiff, v. National Automobile Dealers Association, Defendant.

[Civil Action No. 95–1804 (HHG)]

United States' Response to Public Comments

Pursuant to Section 2(d) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d) (the "APPA" or "Tunney Act"), the United States responds to public comments on the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

This action began on September 20, 1995, when the United States filed a Complaint charging that the National Automobile Dealers Association

("NADA") had entered into agreements intended to lessen competition in the retail automobile industry in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The first count of the Complaint alleges that the NADA agreed to orchestrate a group boycott of automobile manufacturers to coerce the manufacturers to decrease the discounts offered to large volume buyers and to eliminate consumer rebates.

The second count of the Complaint alleges that the NADA agreed to urge its dealer members to maintain new vehicle inventories at levels equal to 15–30 days' supply. The third count of the Complaint alleges that the NADA solicited and obtained agreements from member dealers not to engage in advertising that revealed the dealers' invoice cost, or cost of buying the vehicle from the manufacturer. Finally, the fourth count of the Complaint alleges that the NADA agreed to urge its members not to do business with automobile brokers.

The Complaint seeks injunctive relief that would prevent the NADA from continuing or renewing the alleged practices and agreements, or engaging in other practices or agreements that would have a similar purpose or effect.

Simultaneous with the filing of the Complaint, the United States filed a proposed Final Judgment, a Competitive Impact Statement ("CIS"), and a stipulation signed by the NADA for entry of the decree. The proposed Final Judgment contains a general prohibition against any agreements by the NADA with dealers to fix, stabilize or maintain prices at which motor vehicles may be sold or offered in the United States to any consumer. The proposed Final Judgment also prohibits the NADA from urging, encouraging, advocating or suggesting that dealers adopt specific prices, specific margins, specific discounts or specific policies relating to the advertising of prices or dealer costs of motor vehicles. Similarly, the decree prohibits the NADA from discouraging dealers from adopting specific pricing systems or specific policies relating to the advertising of prices or dealer cost of motor vehicles. The proposed decree further prohibits the NADA from urging dealers to reduce their business with particular types of persons or to do business with particular persons only on specific terms. It will also prohibit the NADA from terminating the membership of any dealer for reasons relating to that dealer's pricing or advertising of prices or dealer costs.

As required by the Antitrust Procedures and Penalties Act, the NADA filed with this Court on October 11, 1995 a description of written and oral communications on their behalf pursuant to the reporting requirements of Section 16(g) of the APPA. A summary of the terms of the proposed Final Judgment and CIS, and directions for the submission of written comments relating to the proposed decree, were published in the Washington Post for eight days over a period beginning September 30, 1995. The proposed Final Judgment and CIS were published in the **Federal Register** on October 2, 1995. 60 Fed. Reg. 51,491.

The 60-day period for public comments commenced October 2, 1995 and expired on December 5, 1995. The United States received one comment on the proposed Final Judgment, a letter from Mr. Harold E. Kohn, Esquire, representing Potamkin Auto Center, Ltd. As required by 15 U.S.C. 16(b), this comment is being filed with this response. (Exhibit A). The United States sent Mr. Kohn a letter individually responding to his inquiry. That correspondence is also being filed with this response. (Exhibit B).

In his comment, Mr. Kohn proposed that the notification that the NADA is required to provide its members include an additional statement that group activities by competitors designed to restrict price competition are illegal, even when those activities are not sanctioned by the trade association. He also raised concerns about a policy recently adopted by an automobile manufacturer prohibiting its dealers from selling automobiles to third-party resellers. Finally, Mr. Kohn requested an opportunity to be heard before this Court before the final decree is entered.

The Department has carefully considered Mr. Kohn's comment. Nothing in this comment has altered the United States' conclusion that the proposed Final Judgment is in the public interest. The decree is fully adequate to prevent continuation or recurrence of the violations on the part of the NADA that were alleged in the complaint. Because the complaint does not address the activities of dealers acting independently of the NADA and they are not defendants, it would be inappropriate to impose on them the additional notification provisions suggested by Mr. Kohn. Mr. Kohn's concerns regarding conduct by an automobile manufacturer and its dealers also involve entities that are not parties to this case and activities beyond the scope of the conduct alleged in the complaint. The main issue before the Court in this Tunney Act proceeding is whether the remedies provided in the proposed Final Judgment are "so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'" *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995). Nothing submitted by Mr. Kohn suggests that the proposed Final Judgment does not satisfy this standard. Accordingly, the Department urges the Court to enter the proposed Final Judgment without further proceedings.

Dated: May 8, 1996.

Respectfully submitted,

Robert J. Zastrow,

Assistant Chief, Civil Task Force, Antitrust Division, U.S. Department of Justice, 325 7th Street, N.W., Room 300, Washington, D.C. 20530.

Certificate of Service

I hereby certify that I cause a copy of the foregoing to be mailed, first class, postage prepaid, this 8th day of May, 1996, to:

Glenn A. Mitchell, Esq., Stein, Mitchell & Mezines, 1100 Connecticut Avenue, N.W., Washington, D.C. 20036

Arthur Herold, Webster, Chamberlin & Bean, 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006

Robert J. Zastrow.

December 1, 1995.

Mary Jean Moltenbrey, *Chief, Civil Task Force II, U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Room 300, Washington, D.C. 20004*

Re: *United States of America v. National Automobile Dealers Association*, Civil Action No. 1:95CV01804

Dear Ms. Moltenbrey: Potamkin Auto Center, Ltd. submits this Comment to address the Proposed Final Judgment ("PFJ") between the United States of America (the "Government") and the National Automobile Dealers Association ("NADA") in the above-reference civil action. This Comment focuses upon provisions of the PFJ directed toward eliminating the practice of boycotting of automobile brokers by dealers, or by manufacturers at dealers' urging.

Potamkin Auto Center, Ltd. ("Potamkin") owns and operates auto centers in Westbury, Brooklyn, Manhattan and Nanuet, New York. The auto centers compete with franchised dealerships for sales and leases of new automobiles by purchasing multiple brands of new automobiles from franchised dealers at discounted prices and then selling directly to the public at highly competitive prices. As such, Potamkin may be considered an "automobile broker" as that term is used in the Complaint and Competitive Impact Statement filed with the PFJ in this case.

EXHIBIT A—Civil Action No. 95–1804

The NADA's published encouragement to its dealer-members to "[r]efuse to do business with brokers or buying services" was intended to eliminate price competition by automobile brokers. Potamkin therefore supports the provisions of the PFJ that enjoin the NADA from advocating that dealers "refuse to do business with particular persons or types of persons." PFJ at ¶ IV.D.

Potamkin believes that the NADA's advocacy of group boycott activity has had and continues to have substantial anti-competitive effects on the market for sales and leasing of new automobiles, resulting in higher prices for consumers.

For example, on November 1, 1995, American Honda Motors Co., Inc., having "been made aware that some Authorized Honda Dealers are transferring Honda vehicles to intermediaries which retail or lease the vehicles," implemented a policy that prohibits all Honda dealers in the United States from transferring new automobiles to certain third party resellers or leasing companies who operate showrooms for and/or advertise the sale or leases of new Honda automobiles. A copy of Honda's July 24, 1995 announcement and policy statement is attached hereto as "Exhibit A." Potamkin believes that this policy represents Honda's joinder in the dealers' agreement to eliminate price competition from automobile brokers.

As the Government states in the Competitive Impact Statement: An agreement by a trade association or its members not to do business with other competitors or customers for purposes of restricting price competition is a *per se* violation of the Sherman Act.

Competitive Impact Statement at 7

Potamkin urges that this statement (or a similarly worded statement) should be included in the written notification that NADA must publish and send to its dealer-members. These dealer-members should be informed clearly that group activities by competitors designed to restrict price competition are illegal, whether or not such group activities are officially sanctioned by the trade association.

Potamkin respectfully requests an opportunity to appear before the Court and be heard on this issue, and to present additional evidence of concerted anti-competitive activities by automobile dealers and manufacturers.

Potamkin also requests that the Antitrust Division expand its investigation to include practices such as those in which Honda has engaged.

Respectfully submitted,

Harold E. Kohn,

KOHN, SWIFT & GRAF, P.C., 1101 Market Street, Suite 2400, Philadelphia, PA 19107–2924, (215) 238–1700.

Attorneys for Potamkin Auto Center, Ltd.

Via Certified Mail Return Receipt Requested

To: All Honda Automobile Dealers
Date: July 24, 1986
Subject: AHM'S Wholesaling Policy

Enclosed is a copy of the Wholesaling Policy (the "Policy"). Beginning November 1, 1995, the Honda Division of American Honda Motor Co., Inc., ("AHM") will enforce the Policy in order to ensure that each Honda dealer complies with AHM's Honda Automobile Dealer Sales and Service Agreement (the "Dealer Agreement"). Although advance notification is hereby provided AHM's position is that applicable law does not require any advance notice prior to the adoption, implementation and enforcement of the Policy.

While AHM's position is that the Policy is not a modification of your Dealer Agreement and that AHM is not required to file the Policy with State agencies, we have, in an abundance of caution and to the extent such filing may be deemed to be required, also filed a copy of the Policy with any appropriate State agencies. If the Policy is deemed to be a modification to your Dealer Agreement, you may believe you have certain rights, under applicable state law to contest the Policy. To the extent required, you are hereby notified of the existence of such potential rights.

All questions pertaining to this letter and the Policy should be addressed to AHM's Wholesale Policy Administrator which position is currently held by Richard Szamborski, Assistant Vice President Market Operations, Honda Division.

Please acknowledge receipt of this letter and the Policy of signing and dating the attached Dealer Acknowledgment and returning the Dealer Acknowledgment to your Zone Sales Office within ten days of the date of this letter.

Very truly yours,

Richard Coiliver,

Senior Vice President, Auto Sales.

Attachments

To: All Honda Automobile Dealers in the United States.
Date: July 24, 1996.
Subject: AHM's Wholesaling Policy.

The Honda Division of American Honda Motor Co., Inc. ("AHM") has been made aware that some Authorized Honda Dealers are transferring Honda vehicles to intermediaries which retail or lease the vehicles. AHM believes that such wholesaling is inconsistent with AHM's Automobile Dealer Sales and Service Agreement (the "Dealer Agreement"), which limits Authorized Honda Dealers to retail sales and retail leases from the Authorized Honda Dealers' premises and prohibits the creation of additional dealership locations. AHM also believes that transfers to intermediaries are detrimental to the best interests of AHM's success in the market, impair the ability of AHM to provide the highest level of customer satisfaction, create situations that tarnish the reputation of Honda and Honda's Authorized Dealers for quality automobiles and service and lead to lost sales.

Accordingly, Honda adopts the following policy with respect to transfers of Honda Automobiles by Authorized Honda Dealers to intermediaries.

1. Definitions

1.1 As used herein, "Wholesaling" and "Wholesale Sales" shall mean the sale or lease and delivery of new Honda Automobiles to persons other than (1) the ultimate end user of such vehicles, or (2) leasing companies that do not operate unauthorized dealerships (as described more fully below), or (3) another Authorized Honda Dealer (Transfers of Honda Automobiles between and among Authorized Honda Dealers are permitted as long as AHM is timely notified of each transfer *and* such transfer is consistent with both Authorized Honda Dealers' obligations to provide appropriate market representation and accurate reporting to AHM. For allocation purposes any such transfer will be attributed to the Authorized Honda Dealer who makes the sale or leases to the ultimate end user). By way of example, Wholesaling shall include:

(a) *Transfer to third-party resellers who sell or lease that new Honda Automobiles to end user as new vehicles.*

(b) *Transfers to third-party leasing companies that operate (1) showrooms and/or (2) otherwise engage in sales lease or service activities typically done by Authorized Honda Dealers.*

Included in this classification would be, by way of example, third-party leasing companies that display new Honda Automobiles on their premises or hold new Honda Automobiles in stock, advertise for sale or lease new Honda Automobiles from their premises, or accessorize new Honda Automobiles for sale or lease to end users.

(c) By way of example, Wholesaling does NOT include (1) Transfers to third-parties who are and users and are NOT resellers or lessons of new vehicles, (2) Transfer of used vehicles to any party for any purpose, (3) Transfers to leasing companies that do NOT operate showrooms or otherwise engage in sales, advertising and/or service activities typically done by Authorized Honda Dealers. The sole function of such leasing companies is to lease cars to end users who do not wish to lease directly from an Authorized Honda Dealer. Such companies do NOT display new Honda Automobiles on their premises, do NOT hold new Honda Automobiles in stock, do NOT advertise for sale or lease new Honda Automobiles from their premise and do NOT accessorize new Honda Automobiles. Instead, such leasing companies are approached by an end user seeking to lease a specific, full-equipped new Honda Automobile, acquire such a new Honda Automobile from an Authorized Honda Dealer and lease said new Honda Automobile to such end user, and/or (4) Transfers of title to financial institutions in cases in which delivery of the Honda Automobile is made by the Authorized Honda Dealer directly to the ultimate end user and the transfer of title to the financial institution is scary for the purpose of financing sale or lease of the Honda Automobile.

1.2 As used Herein, "Honda Automobiles" is used as defined in Sections 12 B of the Dealer Agreement.

1.3 As used Herein, "Policy" refers to the Wholesaling Policy.

2. Restriction on Wholesaling

Effective November 1, 1995, AHM will strictly enforce the Dealer Agreement and require that Authorized Honda Dealers not engage in Wholesaling of Honda Automobiles.

3. Enforcement of Wholesaling Policy

3.1 *Submission of Reports.*

Pursuant to Section 7.3 of the Dealer Agreement, the Authorized Honda Dealer shall submit to AHM reports on a daily basis, which include the following information:

(a) The Vehicle Identification Number of each Honda Automobile transferred, sold or leased by the Authorized Honda Dealer.

(b) The name and address of the person (whether an individual or business) who has purchased or leased each such Honda Automobile (by Vehicle Identification Number) in accordance with AHM's reporting requirements in place at the time of the sale or lease.

(c) The calendar date of delivery to the transfers, purchaser or leaser of each such Honda Automobile, and

(d) Upon reasonable notice to the Authorized Honda Dealer such additional information may be required by AHM.

Refusal by the Authorized Honda Dealer to submit such reports constitutes breach of the Dealer Agreement. In case of such refusal, addition to the remedy set forth herein, AHM reserves the right to exercise all remedies permitted by Honda Dealer Agreement for a material breach thereof.

3.2 Audit of Authorized Honda Dealers.

Pursuant to Section 7.4 of the Dealer Agreement, AHM will conduct periodic audits of its Authorized Honda Dealers to verify the accuracy of reports submitted AHM pursuant to Section 3.1 hereof. Audits will be initiated on either of the following basis:

(a) AHM, in its sole discretion may conduct random audits of Authorized Honda Dealer, no more frequently than once every month,

(b) If AHM receives information from which it reasonably believes that an Authorized Honda Dealer is engaged in Wholesaling. AHM will audit the Authorized Honda Dealer's records to determine whether such information is correct.

Refusal by an Authorized Honda Dealer to permit AHM to conduct the audits described herein constitutes a breach of the Dealer Agreement. In case of such refusal, in addition to the remedies set forth herein, AHM reserves the right to exercise all remedies permitted by the Dealer Agreement for a material breach thereof.

3.3 *Preliminary Finding of a Wholesaling Violation.*

AHM shall issue to the Authorized Honda Dealer a preliminary finding of a violation of this Policy when one or more of the following events occurs:

(a) The Authorized Honda Dealer makes either an oral or written refusal to submit the reports described in Section 3.1 hereof,

(b) After written request from AHM, the Authorized Honda Dealer neglects to submit the reports described in Section 3.1 hereof.

(c) The Authorized Honda Dealer refuses to submit to the audit describe in Section 3.2 thereof.

(d) Upon audit by AHM pursuant to Section 3.2 hereof, it is determined that reports submitted by the Authorized Honda Dealer to AHM are substantially inaccurate in that the Authorized Honda Dealer has inaccurately identified (by Vehicle Identification Number) the person (whether an individual or business) who has purchased or leased one or more Honda Automobiles from said Authorized Honda Dealer.

(e) Upon audit by AHM pursuant to Section 3.2 hereof, AHM has reason to believe that the Authorized Dealer has engaged in Wholesaling, or

(f) Upon other reliable evidence (which evidence will be described to the Authorized Honda Dealer, AHM has reason to believe that the Authorized Honda Dealer has engaged in Wholesaling.

AHM will notify the Authorized Honda Dealer in writing of any preliminary finding of a Wholesaling violation. Such notice will include a brief description of the basis for the preliminary finding.

3.4 *The Authorized Honda Dealer Response to Preliminary Finding Final Finding.*

The Authorized Honda Dealer will have fourteen (14) days from notification of any such preliminary finding to contest AHM's finding in writing by submission of sales data and/or other information that disproves said finding. Should the Authorized Honda Dealer fail to contest such finding within (14) days or should, AHM find that the Authorized Honda Dealers submission does not disprove such finding, then AHM will issue a final finding detailing the Authorized Honda Dealer's violation of this Policy.

4. AHM's Remedies in the Event of a Violation

In the event of a final finding by AHM that the Authorized Honda Dealer has violated the Policy.

4.1 For purposes of allocating vehicles, AHM will adjust the Authorized Honda Dealer's sales history to exclude retail sales credit earned on transfers found to violate the Policy.

4.2 AHM will charge-back all incentives paid by AHM related to translate of Honda Automobiles to violate the Policy; and

4.3 AHM will reduce marketing allowances available to the Automobile Honda Dealer pursuant to the current AHM marketing programs and proportionate to the number of Honda Automobiles which have been found to violate the Policy and/or charge-back all Dealer Marketing Allowance amounts (or similar payments) paid by AHM related to transfer of such Honda Automobiles.

4.4 Should AHM issue a second final finding of a violation of the Policy, then, in addition to the steps state above, AHM will,

(a) Not consider that Authorized Honda Dealer eligible for additional Honda Automobiles in excess of the standard allocation for one (1) year thereafter; and

(b) Not consider that Authorized Honda Dealer for any additional AHM dealership location(s) for five (5) years thereafter.

in the event that AHM issues more than two final findings of violations of the Policy against an Authorized Honda Dealer, then the remedies so forth in (a) and (b) of this subparagraph shall be made permanent.

4.5 Notwithstanding the above, AHM consider *any* Wholesaling to be inconsistent with the Dealer Agreement and AHM reserves its rights to take appropriate action to prevent such Wholesaling. Moreover, AHM will hold the Authorized Honda Dealer liable for any expenses or losses that AHM may incur as a result of any Wholesaling by that Authorized Honda Dealer, including, without limitation, expenses or losses resulting from (a) AHM's inability to notify customers of product recalls or other service information and product liability claims resulting therefrom and (b) consumer claims including claims in connection with intermediaries installing non-Honda equipment, providing inadequate service, or making misrepresentations.

May 8, 1996.

Harold E. Kohn, *Esquire, Kohn, Swift & Graf, P.C., 1101 Market Street, Suite 2400, Philadelphia, PA 19107–2924*

Dear Mr. Kohn: This responds to your letter of December 1, 1995, on behalf of your client, Potamkin Auto Center, Ltd. ("Potamkin"), concerning the proposed consent decree between the Department of Justice and the National Automobile Dealers Association ("NADA"). The proposed decree settles a civil antitrust suit in which the Department alleged that the NADA, through its officers and directors, conspired to lessen competition in the retail automobile industry.

Your letter addresses the notification that NADA must publish and send to its members to inform them of the decree's requirements. You ask that it include an additional statement that group activities by competitors designed to restrict price competition are illegal, whether or not such group activities are officially sanctioned by the trade association.

We have carefully considered your comment and have determined that the decree, along with its notification provisions, is fully adequate to prevent continuation or recurrence of the violations alleged in the complaint. The complaint alleged that the NADA engaged in conduct intended to limit price competition in the retail automobile sales industry. Accordingly, the prohibitions of the decree apply to the NADA, its officers, directors, employees and other persons acting on its behalf. Because the decree does not apply to the activities of dealers acting independently of the NADA, we have concluded that additional provisions directed at such actions would not be appropriate.

Your letter also raises concerns about a recent policy implemented by American Honda Motors Co., Inc. ("Honda") that prohibits all Honda dealers in the United States from transferring new automobiles to certain third party resellers, a group that would include Potamkin. You ask that the Antitrust Division expand its investigation to include these and other related practices.

Your letter states that Honda's policy represents Honda's joinder in a dealers' agreement to eliminate price competition from automobile brokers. Based on the evidence available at the time the complaint was filed, the Department did not initiate a suit against any automobile manufacturer, and did not allege that any automobile manufacturer had entered into agreements with the NADA or automobile dealers. You do not provide evidence that the dealers had such an agreement or that Honda's action was part of such a conspiracy. Moreover, unilateral action on Honda's part, unless it constitutes monopolization or attempted monopolization, is not prohibited by the antitrust laws. If you have additional information about Honda or other manufacturers, the Department would of course consider it.

Finally, you request the opportunity to appear before the Court to be heard regarding the decree's notification provisions and to present additional evidence of concerted activities by automobile dealers and manufacturers. Under Section 2 of the Antitrust Procedures and Penalties Act (the "Tunney Act"), 15 U.S.C. § 16(b), which governs proposed final judgments such as this one, the Court may hold a hearing in order to make its determination as to whether the proposed decree is in the public interest, but is not required to do so. As discussed above, we believe that the decree fully redresses the violations alleged in the complaint and that the addition you propose to the decree's notification provisions would apply to activities not covered by that decree. Moreover, a Tunney Act hearing is an inappropriate forum to consider evidence of alleged concerted conduct that is not addressed in the complaint. *See* U.S. v. Microsoft, 56 F.3d 1448 (D.C. Cir 1995). If you are aware of any such evidence, we encourage you to bring it to our attention. While we do not believe the hearing you request is appropriate, we will provide a copy of your letter, along with this response, to the Court when we file our response to public comments.

I hope this letter responds to your concerns. Thank you for your interest in this matter and in the enforcement of the antitrust laws.

Sincerely yours,

Mary Jean Moltenbrey,

Chief, Civil Task Force.

[FR Doc. 96–12775 Filed 5–22–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 2, 1996, and published in the **Federal Register** on February 13, 1996, (61 FR 5570), Ansys Inc., 2 Goodyear, Irvine, California 92718, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Heroin (9200)	I
Phencyclidine (7471)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Levorphanol (9220)	II

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Ansys Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 16, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–12971 Filed 5–22–96; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Notice of Registration

By Notice dated March 27, 1996, and published in the **Federal Register** on April 4, 1996, (61 FR 15119), Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Lonza Riverside to import phenylacetone is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: May 16, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–12972 Filed 5–22–96; 8:45 am]

BILLING CODE 4410–09–M

[DEA No. 150P]

Controlled Substances: Notice of Proposed 1996 Aggregate Production Quotas

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed revised aggregate production quotas for 1996.

SUMMARY: This notice proposes revised 1996 aggregate production quotas for controlled substances in Schedules I and II, as required under the Controlled Substances Act of 1970.

DATES: Comments or objections should be received on or before June 24, 1996.

ADDRESSES: Send comments or objections to the Administrator, Drug Enforcement Administration, Washington, D.C. 20537, Attn: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA pursuant to § 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator of the DEA by section 0.104 of Title 28 of the Code of Federal Regulations.

On November 21, 1995, a notice of the 1996 established aggregate production quotas was published in the **Federal Register** (60 FR 57808). The notice stipulated that the Deputy Administrator of the DEA would adjust the quotas in early 1996 as provided for in Title 21, Code of Federal Regulations, Section 1303.23(c). Subsequently, the DEA revised 1996 aggregate production quotas for amobarbital, heroin and hydromorphone as published in the **Federal Register** (61 FR 19090 and 61 FR 14336). Those revised figures are included with the proposed 1996 revised aggregate production quotas below. These proposed aggregate production quotas represent those amounts of controlled substances that may be produced in the United States in 1996 and do not include amounts which may be imported for use in industrial processes.

The proposed revisions are based on a review of 1995 year-end inventories, 1995 disposition data submitted by quota applicants, estimates of the medical needs of the United States submitted to the DEA by the Food and Drug Administration and other information available to the DEA.

Therefore, under the authority vested in the Attorney General by section 306 of the CSA of 1970 (21 U.S.C. 826), delegated to the Administrator by Section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator by Section 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administrator of the DEA hereby proposes the following 1996 aggregate production quotas for the listed controlled substances, expressed in grams of anhydrous acid or base.

Basic class	Previously established 1996 aggregate production quotas	Proposed revised 1996 aggregate production quotas
Schedule I:		
Acetylmethadol	7	7
Alphacetylmethadol	7	7
Aminorex	7	7
Cathinone	9	9
Difenoxin	14,000	14,000
Dihydromorphine	7	7
2, 5-Dimethoxyamphetamine	10,650,000	10,650,000
Dimethylamphetamine	7	7
Ethylamine analog of Phencyclidine	5	5
N-Ethylamphetamine	7	7
Heroin	5	5
Lysergic acid diethylamide	58	58
Mescaline	7	7
Methaqualone	17	17
Methcathinone	9	9
4-Methoxyamphetamine	17	17
4-Methylaminorex	2	2
3,4-Methylenedioxyamphetamine	17	17
3,4-Methylenedioxy-N-ethylamphetamine	27	27
3,4-Methylenedioxymethamphetamine	42	42
3-Methylfentanyl	14	14
Normethadone	7	7
Normorphine	7	7
Psilocybin	2	2
Psilocyn	2	2
Tetrahydrocannabinols	55,100	55,100
Schedule II:		
Alfentanil	8,500	8,500
Amobarbital	301,000	301,000
Amphetamine	1,863,200	2,280,000
Cocaine	550,040	550,040
Codeine (for sale)	58,395,000	47,000,000
Codeine (for conversion)	16,632,000	17,519,000
Desoxyephedrine	1,044,000	1,044,000
(1,000,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product and 44,000 grams for methamphetamine)		
Dextropropoxyphene	118,066,000	118,066,000
Dihydrocodeine	116,000	214,000
Diphenoxylate	1,063,000	1,002,000
Ecgonine (for conversion)	650,100	650,100
Ethylmorphine	12	12
Fentanyl	120,100	143,000
Hydrocodone (for sale)	10,575,000	12,145,000
Hydrocodone (for conversion)	2,800,000	2,800,000
Hydromorphone	718,000	718,000
Isomethadone	12	12
Levo-alpha-acetylmethadol	200,000	200,000
Levorphanol	14,300	14,300
Meperidine	10,822,000	10,822,000
Methadone	4,551,000	4,551,000
Methadone (for conv)	364,000	364,000
Methadone Int. (for conv)	5,534,000	5,534,000
Methamphetamine (for conv)	723,000	723,000
Methylphenidate	10,291,000	11,090,000
Morphine (for sale)	12,450,000	12,450,000
Morphine (for conv)	76,735,000	76,735,000
Noroxymorphone (for sale)	2,000	2,000
Noroxymorphone (for conv)	3,400,000	3,400,000
Opium	1,226,000	714,000
Oxycodone (for sale)	5,571,000	5,571,000
Oxycodone (for conv)	37,300	37,300
Oxymorphone	11,200	11,200
Pentobarbital	15,100,000	15,100,000
Phencyclidine	40	40
Phenylacetone (for conv)	5,280,000	10
1-Phenylcyclohexylamine	10	10
1-Piperidinocyclohexanecarbonitrile	12	12
Secobarbital	400,000	400,000
Sufentanil	1,000	1,000
Thebaine	9,217,000	9,387,000

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Deputy Administrator finds warrant a hearing, the Deputy Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

The Office of Management and Budget has determined that notice of aggregate production quotas are not subject to centralized review under Executive Order 12866.

Rules establishing aggregate production quotas for controlled substances in Schedules I and II are required by statute, fulfill United States obligations under the Single Convention on Narcotic Drugs, 1961, and other international treaties, and are essential to a criminal law enforcement function of the United States. Without the periodic establishment and adjustment of aggregate production quotas, pharmaceutical manufacturers in the United States could not lawfully produce a wide variety of medically necessary pharmaceutical drugs.

These actions have been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this matter raises no Federalism implications which would warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment and revision of annual production quotas for Schedules I and II controlled substances is mandated by law and by the international obligations of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: May 15, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–12899 Filed 5–22–96; 8:45 am]

BILLING CODE 4410–09–M

Foreign Claims Settlement Commission

Registration of Potential Claims Against Iraq

AGENCY: Foreign Claims Settlement Commission; Justice.

ACTION: Notice.

SUMMARY: The Foreign Claims Settlement Commission announces the establishment of an Iraq Claims Registration Program for registration of potential claims of United States nationals (individuals U.S. citizens, corporations and other legal entities) against the Government of Iraq.

DATES: The deadline for registration of claims is June 28, 1996.

FOR FURTHER INFORMATION CONTACT: David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission of the United States, 600 E Street, N.W., Suite 6002, Washington, DC 20579. Tel. (202) 616–6975; FAX (202) 616–6993.

Notice of Commencement of Claims Registration Program, and of Program Completion Date

This year marks the fifth anniversary of the Persian Gulf War. As a result of that conflict and related events, thousands of United States nationals (individual U.S. citizens, corporations and other legal entities) suffered injuries, losses and damages. Many claims arising directly out of Iraq's invasion and occupation of Kuwait are being heard by the United States Compensation Commission ("UNCC") in Geneva. However, at present there is no viable forum for the estimated $5 billion in outstanding claims against Iraq which fall outside the UNCC's jurisdiction ("non-UNCCC claims").

The Foreign Claims Settlement Commission of the United States (FCSC), an independent, quasi-judicial agency within the U.S. Department of Justice, has begun a program for United States nationals (private citizens, corporations, and other legal entities) to register these non-UNCC claims against the Government of Iraq for breach of contract, loss of and damage to property, physical injury or illness, and other losses and damages.

Claims to be registered in this program are claims against the Government of Iraq (and its subdivisions and controlled entities) that are not within the UNCC's jurisdiction. The UNCC's jurisdiction is defined by relevant United Nations Security Council resolutions (particularly 687 and 692) and the decisions of the UNCC Governing Council.

The claims covered by this Registration Program include: (1) All claims which arose prior to Iraq's August 2, 1990, invasion of Kuwait; (2) all claims of U.S. military personnel or their survivors which arose out of Desert Shield and Desert Storm (other than claims for inhumane treatment of prisoners of war, which are compensable by the UNCC); and (3) all claims arising out of Iraq's 1987 attack on the U.S.S. Stark (other than wrongful death claims, which have been compensated by Iraq).

The information collected in the FCSC Iraq Claims Registration Program will be used to compile an accurate and comprehensive Registry of claimants and claims against Iraq, in preparation for the adjudication of those claims upon enactment of authorizing legislation. If such legislation is not enacted, the information will be used to ensure that all claims are taken into account in connection with any future claims settlement negotiations with Iraq.

This Claims Registration Program will update and supplement the information on such claims compiled by the Treasury Department in 1991. (56 FR 5636, Feb. 11, 1991) Potential claimants who registered previously with the Treasury Department should also file in this new Registration Program.

Requests for claim registration forms should be directed to the following address: Foreign Claims Settlement Commission, Attn: Iraq Claims Registration, Washington, DC 20579.

Forms also may be requested in person at the offices of the Foreign Claims Settlement Commission, 600 E

Street, Northwest, Suite 6002, Washington, DC, or by telephone at 202–616–6975 or fax at 202–616–6993.

The deadline for filing a Registration Form is June 28, 1996.

Note: The registration of a claim in this program will *not* constitute the filing of a formal claim against Iraq. In the event legislation is passed authorizing the Commission to adjudicate these claims against Iraq, instructions for the formal filing of claims will be forwarded to all those registered in this Iraq Claims Registration Program.

Approval has been obtained from the Office of Management and Budget for the collection of this information. Approval No. 1105–0067.

David E. Bradley,

Chief Counsel.

[FR Doc. 96–13088 Filed 5–22–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Notice of Public Hearings

This document is a notice of public hearings to be held by the Department of Labor for the purpose of gathering information regarding the use of abusive or exploitative child labor in the production of goods imported into the United States. The hearing will be held on Friday, June 28, 1996, at the Department of Labor, room N–3437, beginning at 9 a.m. The hearing will be open to the public. The Department of Labor is now accepting requests from all interested parties to provide oral or written testimony at the hearing. Each presentation will be limited to ten minutes. The Department is not able to provide financial assistance to those wishing to travel to attend the hearing. Those unable to attend the hearing are invited to submit written testimony. Parties interested in testifying at the international child labor hearing should call (202) 219–7867 to be put on the roster.

The Department of Labor is currently undertaking a third Congressionally-mandated review of international child labor practices (pursuant to the 1996 Omnibus Appropriations Act, P.L. 104–134). Information provided at the hearing will be considered by the Department of Labor in preparing its report to Congress. Testimony should be confined to the specific topic of the study.

Specifically, the international child labor study of the Bureau of International Labor Affairs is seeking written and oral testimony on the topics noted below:

1. Efforts of U.S. companies and nongovernmental agencies aimed at eliminating the use of abusive and exploitative child labor in the production of goods imported into the United States. Such efforts could include, but are not limited to, labeling, consumer information campaigns, codes of conduct, guidelines for subcontractors, and the establishment of educational facilities.

2. Codes of conduct in the garment industry. We are required to identify the top 20 U.S. garment importers, their subsidiaries, contractors, and their subcontractors' codes of conduct regarding the use of abusive and exploitative child labor in the production of goods imported to the United States. We are seeking information about the nature, adequacy and effectiveness of any such codes of conduct.

3. The necessary components of an effective code of conduct and its enforcement.

4. International and U.S. laws that might be used to encourage the elimination of child labor exploitation, including in the production of items imported into the United States, and any appropriate changes to such laws.

5. Items that are likely to be produced with abusive and exploitative child labor and imported into the United States.

DATES: The hearing is scheduled for Friday, June 28, 1996. The deadline for being placed on the roster for oral testimony is 5 p.m., June 21, 1996. Presenters will be required to submit five (5) written copies of their oral testimony to the Child Labor Study office by 5 p.m., June 26. The record will be kept open for additional written testimony until 5 p.m., July 5, 1996.

ADDRESSES: Written testimony should be addressed to the International Child Labor Study, Bureau of International Labor Affairs, Room S–1308, U.S. Department of Labor, Washington, DC 20210, fax: (202) 219–4923.

FOR FURTHER INFORMATION CONTACT: Teresa Estrada-Berg, International Child Labor Study, Bureau of International Labor Affairs, Room S–1308, U.S. Department of Labor, Washington, DC 20210, telephone: (202) 219–7867; fax (202) 219–5980. Persons with disabilities who need special accommodations should contact Ms. Estrada-Berg by June 17, 1996.

All written or oral comments submitted pursuant to the public hearing will be made part of the record of review referred to above and will be available for public inspection.

Signed at Washington, DC this 15th day of May, 1996.

Andrew J. Samet,

Associate Deputy Under Secretary.

[FR Doc. 96–13013 Filed 5–22–96; 8:45 am]

BILLING CODE 4510–28–M

Employment and Training Administration

Disaster Unemployment Assistance (DUA), Program Operating Forms

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed one year extension of previous approval by OMB of the attached DUA Program Operating Forms (ETA 81, ETA 81A, ETA 82, ETA 83 and ETA 84). A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before July 22, 1996.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarify of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSEE: Mary Ann Wyrsch, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room S4231, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone number (202) 219–7831 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Public Law 100–707 (Sections 410 and 423) provide for benefit assistance to "any individual unemployed as a result of a major disaster." SESA's, through agreements between the States and the Secretary of Labor, act as agents of the Secretary for the purpose of providing assistance to applicants in the various States who are unemployed as a result of a major disaster. The forms in Chapters III through VII of the Disaster Unemployment Assistance Handbook are used in connection with the provision of this benefit assistance. (Previously cleared for use thru OMB by ETA under OMB No. 1205–0051.)

Form ETA 81 is an application form which is required to be completed by every applicant for Disaster Unemployment Assistance (DUA); DUA Form ETA 81A is a supplemental form to be completed by self-employed (or self employed prior to the disaster) applicants only; Form ETA 82 is used by the State agency in making a determination of each applicant's entitlement to DUA and to notify the applicant of the determination; Section A of Form ETA 83 is completed by the applicant each time (weekly or bi-weekly) he/she continues to request assistance to ensure continued entitlement, and Section B is completed by the State agency to notify the applicant of his/her current eligibility status; and Form ETA 84 is used by the State agency to notify overdrawn participants in the DUA program of the weeks and the cause of overpayment. These forms are prescribed by the Secretary under 20 CFR 625.8 and 625.9 and are all necessary to the operation of the program.

II. Current Actions

The forms (described above) are used by SESA's in operating the program and are not reports per se. The continuation of this existing use of these forms by SESA's is essential to the operation of the DUA program. Because time is of the essence in making benefit payments due as a result of a major disaster, application data relating to the disaster are requested by State agencies through a number of appropriate forms. As previously indicated, if data were requested less frequently, determinations as to eligibility would be much more erratic, and the overall monitoring of the program as required by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, in order to insure adequate administration—yet expeditious administration—would be greatly impaired. Effective accounting of disaster unemployment assistance benefits and other emergency expenditures would also be hampered.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Disaster Unemployment Assistance (DUA) Program Operating Forms.

OMB Number: 1205–0051.

Agency Number(s): ETA 81, ETA 81A, ETA 82, ETA 83, and ETA 84.

Affected Public: Individuals/State Government.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (hours)	Burden in hours
ETA 81	11,000	Annually	11,000	⅓	3,666
ETA 81A	3,800	Annually	3,800	¼	950
ETA 82	11,000	Annually	11,000	¼	2,750
ETA 83	11,000	Annually	66,000	¼	16,500
ETA 84	235	Annually	235	½	117
Totals	11,000		92,035		23,983

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintaining): $148,922.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 15, 1996.

Mary Ann Wyrsch,

Director, Unemployment Insurance Service, Employment and Training Administration.

[FR Doc. 96–13008 Filed 5–22–96; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Application No. D–09990, et al.

Proposed Exemptions; Blue Cross and Blue Shield of Virginia

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state

the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Blue Cross and Blue Shield of Virginia (the Company), Located in Richmond, VA

[Application No. D–09990]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the proposed receipt of cash and/or common stock (the Stock) of Trigon Healthcare, Inc. (Trigon), the Company's sole owner, by any employee benefit plan policyholder of the Company (the Plan), other than an employee benefit plan sponsored by the Company or its affiliates, in exchange for such policyholder's membership interest in the Company, in accordance with the terms of a plan of reorganization (the Demutualization; the Demutualization Plan) adopted by the Company and implemented pursuant to the insurance laws of the State of Virginia.

This proposed exemption is subject to the conditions set forth below in Section II.

Section II. General Conditions

(a) The Demutalization Plan is implemented in accordance with procedural and substantive safeguards that are imposed under Virginia law and is subject to the review and supervision by the Virginia State Corporation Commission (the Commission).

(b) The Commission reviews the terms of the options that are provided to certain policyholders of the Company (the Eligible Members), as part of such Commission's review of the Demutualization Plan, and the Commission only approves the Demutualization Plan following a determination that such Demutualization Plan is fair and equitable to all Eligible Members.

(c) Each Eligible Member has an opportunity to comment on the Demutualization Plan and decide whether to vote to approve such Demutualization Plan after full written disclosure is given such Eligible Member by the Company, of the terms of the Demutualization Plan.

(d) Any election by an Eligible Member to receive cash and/or Trigon Stock pursuant to the terms of the Demutualization Plan is made by one or more independent fiduciaries (the Independent Fiduciaries) of such Plan and neither the Company nor any of its affiliates exercises any discretion or provides investment advice with respect to such election.

(e) After an Eligible Member entitled to receive stock is allocated at least 16 shares of Trigon Stock for each vote, additional consideration is allocated to an Eligible Member who owns a participating policy based on actuarial formulas that take into account each participating policy's contribution to the equity (the Equity Contribution) of the Company which formulas have been approved by the Commission.

(f) All Eligible Members participate in the transactions on the same basis within their class groupings as other Eligible Members that are not Plans.

(g) No Eligible Member pays any brokerage commissions or fees in connection with their receipt of Trigon Stock or in connection with the implementation of the commission-free sales program.

(h) All of the Company's policyholder obligations remain in force and are not affected by the Demutualization Plan.

Section III. Definitions

For purposes of this proposed exemption:

(a) The term "Company" means Blue Cross and Blue Shield of Virginia and any affiliate of the Company as defined in paragraph (b) of this Section III.

(b) An "affiliate" of the Company includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Company. (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term "Effective Date" means the date on which the certificate of merger is issued by the Commission and the Demutualization occurs.

(d) The term "Eligible Member" means a member which will receive a distribution of Trigon Stock in the Demutualization. A "Member" is a policyholder which has a policy of insurance directly from the Company, which policy entitles the policyholder to vote. To be eligible for a distribution of Trigon Stock, the Member must have had a policy in effect on May 31, 1995, on the Effective Date, and at all times between those dates.

[1] For purposes of this exemption, reference to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(e) The term "Record Date" is the date on which the determination of an Eligible Member's status for voting on the Demutualization is made.

Summary of Facts and Representations

1. The Company is a mutual insurance corporation organized under the laws and regulations of the Commonwealth of Virginia. It is a member of the national organization, Blue Cross and Blue Shield Association (Blue Cross and Blue Shield). Blue Cross and Blue Shield, as part of its efforts to promote the Blue Cross and Blue Shield name, licenses to each member, the exclusive right to use the Blue Cross and Blue Shield service marks within restricted geographic areas. Except for a small part of Northern Virginia, Blue Cross and Blue Shield is the exclusive licensee of the Blue Cross and Blue Shield service marks in Virginia. The Company maintains its headquarters in Richmond, Virginia.

The Company is obligated to make basic health insurance available to all individuals in its service areas through a system of open enrollment. On December 31, 1994, the Company had total assets in excess of $1 billion. The Company's main sources of income are the sale of health insurance policies to employee benefit plans, employers and individuals (the Members) and the generation of investment income. As of March 30, 1995, the Company had approximately 20,000 policies in force and 725,000 Members which were Plans covered by the Act.

As a mutual health care insurance company, the Company's policyholders have certain rights as Members. These rights, which are referred to as membership interests, include the right to vote on matters submitted to a vote of the Members.

2. The Company represents that it has been successful in offering health care insurance to its Members at affordable rates. However, it notes that there has been an increase in the level of competition. To maintain its position in the industry, the Company believes that it must expand and, in so doing, it will require an infusion of funds. As a mutual insurance company, the Company states that it is precluded from obtaining funds from the capital markets. Therefore, the Company proposes to convert from a mutual insurance company to a stock insurance company because it believes that demutualization is the most effective means of accessing the capital markets. The Company also believes that access to the capital markets will enhance its ability to grow, remain competitive and provide essential insurance to its Members.

In addition, the Company represents that its Members would derive benefits from the Demutualization. One of these benefits is that Members would receive cash and/or shares of Trigon Stock which would be publicly-traded. The Company represents that the Demutualization would not have any effect on the rights of the Members as insureds. In this regard, all policies in effect before the Demutualization would remain in force after the Demutualization.

Accordingly, on June 20, 1995, the Board of Directors of the Company formally decided to proceed with the Demutualization by authorizing the filing of the Demutualization Plan with the Virginia State Corporation Commission. The actual filing of the Demutualization Plan with the Commission occurred on June 27, 1995. The actual procedures that will be followed in implementing the Demutualization Plan are described below.

3. Under Virginia law, insurance companies are primarily regulated by the Bureau of Insurance (the BOI) which is part of the Commission. The Commission is charged with the duty to ensure that licensed insurance companies comply with the requirements of law under its jurisdiction. The Commission will conduct an extensive review and analysis of the Demutualization Plan and make required findings under Virginia law before the Demutualization can be accomplished. In this regard, the Demutualization must comply with four provisions in the Virginia statutes which relate to—

(a) The Conversion from a Mutual Insurance Company to a Stock Company. According to Va. Stat. § 38.2–1005.1, a mutual insurance company may convert to a stock insurer under a plan of conversion approved by the Commission. In addition, the Commission shall approve the plan of conversion if it determines that the following conditions are met:

(1) The terms and conditions of the plan are fair and equitable to the policyholders of the issuer; (2) the plan is approved by more than two-thirds of the votes cast at a meeting of the members of the insurer at which a quorum is present; (3) the entire stock ownership interests or other consideration is distributed to policyholders, except as expressly otherwise provided; (4) for a mutual insurer that converted from a health services plan in existence prior to December 31, 1987, the Virginia State Treasurer is allocated stock or cash equal to the surplus on December 31, 1987 plus ten million dollars (Virginia may also be entitled to stock or cash as a policyholder. This condition will apply to Trigon.); and (5) immediately after the conversion, the insurer will have the required amounts of fully paid capital stock and surplus.

(b) A Change in Control as Part of the Demutualization. Contemporaneous with the Demutualization, there will be an acquisition of control of the Company through the creation of a holding company. Va. Stat. § 38.2–1323A provides that—

No person shall acquire or attempt to acquire, through merger or otherwise, control of any domestic insurer, or any person controlling a domestic insurer, unless the person has previously filed with the Commission and has sent to the insurer an application for approval of acquisition of control of the insurer, and the Commission has issued an order approving the application.

The Commission's standard of review for an acquisition of control of an insurance company is set forth in Va. Stat. § 38.2–1326. These provisions require the Commission to review the following issues and deny the application if the Commission makes any of the following findings: (1) after the change of control, the insurer would not satisfy the requirements for the issuance of a license; (2) the acquisition of control would lessen competition substantially or tend to create a monopoly in insurance in Virginia; (3) the financial condition of the acquiring person might jeopardize the financial stability of the insurer, or prejudice the interest of the policyholders; (4) any plans or proposals of the acquiring party to make any material change in the company's business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and are not in the public interest; (5) the competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the acquisition of control; or (6) after the change of control, the insurer's surplus to policyholders would not be reasonable in relation to its outstanding liabilities and adequate to its financial needs.

(c) The Treatment of the Demutualization as a Material Transaction. The Commission must approve the Demutualization as a "material transaction" as defined in the Va. Stat. § 38.2–1322. The Commission, in reviewing any material transaction, will consider whether the material transaction complies with the standards set forth below and whether it may adversely affect the interest of

policyholders. (Va. Stat. § 38.2–1331C). These standards are that: (1) the terms of the transaction are fair and reasonable to the companies; (2) charges of fees for services performed will be reasonable; (3) expenses incurred and payments received will be allocated to the insurer in conformity with customary insurance accounting practices consistently applied; (4) the books, accounts and records of each party shall disclose clearly and accurately the precise nature and details of the transactions; and (5) the insurer's surplus to policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

4. Although the Company has finalized the Demutualization Plan, it still must be approved by the Commission and the Company's Members. The Commission will conduct a public hearing on the Demutualization Plan. Interested Members and other parties will be given an opportunity to present their views about the Demutualization Plan. The Commission will then make a finding as to the approval or disapproval of the Demutualization Plan. At present, the dates for the hearing and the special Member meeting have not been established.

5. For purposes of approving the Demutualization Plan, a Member who is the owner of the policy is entitled to vote. In general, the owner of an individual insurance policy is the person specified in the policy or contract as the owner or contract holder. The owner of a group policy of insurance is the person or persons specified in the group policy as the holder (usually the employer who has entered into the group policy to provide for health care insurance for its employees).

Members will vote on the Demutualization Plan at a special meeting. On matters submitted to a vote of the Members, the number of votes that a Member has depends on the type of policy. Each Member who has an individual group policy of insurance is entitled to as many votes as there are employees or other persons primarily insured under the policy. To be approved, the Demutualization Plan must receive two-thirds of the votes that are cast at the meeting in person or by proxy.

Notice of the special meeting to vote on the Demutualization Plan will be provided to Members with health insurance policies in force on the Record Date. In addition to receiving advance notice of the special meeting, Members will receive a comprehensive informational packet about the Demutualization. The contents of the informational packet will be reviewed by the BOI.

6. In conjunction with receiving required approvals from the Members and the Commission, the Company contemplates that several corporate transactions have or will occur. In this regard, the Company has formed Trigon as a Virginia stock corporation and a wholly owned subsidiary of the Company. In addition, the Company has formed Trigon Merger Sub, Inc. (TMSI) as a wholly owned subsidiary of Trigon. The final step in the Demutualization process is for the Commission to issue a certificate of merger to effectuate the corporate merger needed to complete the conversion. The date on which the Commission issues the certificate of merger will be the Effective Date.

7. On the Effective Date, the following events will occur simultaneously under the Demutualization Plan:

(a) Merger of TMSI into the Company. TMSI will merge into the Company and the Company will be the survivor. As a result, the Company will become a wholly owned subsidiary of Trigon.

(b) Change of the Company's Name. The Company will then change its name to "Trigon Insurance Company" and become a Virginia stock corporation when its Restated Articles of Incorporation and New Bylaws are adopted by operation of the Demutualization Plan.

(c) Cancellation of Membership Interests in the Company. In accordance with the Demutualization Plan, all membership interests which Members had in the Company will be cancelled and converted into common stock of Trigon and/or cash for all Eligible Members. In addition, all issued and outstanding shares of capital stock which the Company owned in Trigon will be cancelled.

The Demutualization Plan provides that all elections by Eligible Members which are Plans to receive cash and/or shares of Trigon Stock will be made by Independent Fiduciaries. Neither the Company nor any of its affiliates will exercise any discretion nor provide investment advice with respect to such elections by the Independent Fiduciaries. In addition, no Eligible Members will be required to pay any brokerage fees or commissions in connection with the receipt of Trigon Stock.[2]

(d) The Initial Public Offering (the IPO). The Company will conduct an IPO of the shares of Trigon Stock. The Demutualization Plan provides that the maximum size of the IPO will be such that 49 percent of the Trigon Stock outstanding after the IPO will have been issued in the IPO.[3]

8. The Company has hired the international accounting firm of KPMG Peat Marwick to prepare the actuarial calculations for the Demutualization Plan. The purpose of the actuarial calculations is to provide a reasonable and fair allocation of the Trigon Stock to the Eligible Members. The Company has been working with its actuaries to formulate the allocation methodology for the Demutualization Plan. The Members and the Commission will have to approve the final allocation among the Members.

The allocation of the Trigon Stock will be based on two components—voting rights (Voting Rights) and the Equity Contribution by the policies. Under the proposed Demutualization Plan, 15 percent of the Trigon Stock will be allocated based on the Voting Rights of the Members.[4] This portion of the Trigon Stock will be allocated based on the proportion of each Eligible Member's vote or votes compared to the total votes. It is anticipated that there will be 743,300 votes. Based on an allocation of 9,600,000 shares for Voting Rights, it is currently anticipated that each Eligible Member will receive 16 shares for each vote.

The remaining 85 percent of the Trigon Stock will be allocated based on the Equity Contribution of the policies. In this regard, the Demutualization Plan assigns each policy to a strategic business unit (SBU) (e.g., Major Accounts, Regional Business, etc.) and a major product line (MPL) under that SBU (e.g., Partially Self-Insured, Experience Rated, etc.). The Demutualization Plan divides the Eligible Members into 4 SBUs and 11 MPLs that could receive an allocation of Trigon Stock. In this regard, all Eligible Members will be treated the same within their class groupings.

9. The Company has provided a hypothetical example to illustrate the manner in which shares of Trigon Stock would be calculated for an Eligible Member. The Company notes that the example does not take into consideration such factors as the actual experience of an Eligible Member, the MPL or the total experience of the Company. The example is presented as follows:

Assume that an Eligible Member's group policy was in force from 1985 until 1995. Thus, the first step in the allocation methodology is to compute the Voting Rights allocation. The second step in the allocation methodology is to determine the Equity Contribution allocation.

Voting Rights Allocation. Assume that the policy has a total of 30 votes as of the Record Date. At a rate of 16 shares per vote, the Voting Rights allocation would be 480 shares of Trigon Stock.

30 votes × 16 shares of Trigon Stock = 480 shares of Trigon Stock

Equity Contribution Allocation. The following table represents the number of covered lives and the Equity Contribution Factor (the ECF)[5] derived for the Eligible Member's MPL for each year.

Period	Covered lives		ECF	Equity contribution
Pre-1989	22	×	$50	$1,100
1989	22	×	60	1,320
1990	30	×	60	1,800
1991	28	×	40	1,120
1992	35	×	70	2,450
1993	35	×	60	2,100
1994	40	×	80	3,200
Future	40	×	60	2,400
Total Equity Contribution				$15,490

Assume that the total Equity Contribution for all Eligible Members is 500,000,000 and the total number of shares of Trigon Stock to be allocated for Equity Contributions is 50,000,000. The Eligible Member's allocation of Equity Contribution Shares would be 1,549 and is calculated as follows:

$15,490/$500,000,000 × 50,000,000 shares = 1,549 Equity Contribution Shares.

The total number of shares of Trigon Stock that will be received by the Eligible Member is the sum of the Voting Rights Shares and the Equity Contribution Shares.

480 + 1549 = 2,029 Total Shares Received.

10. It is represented that the Company is a party in interest with respect to many Plans affected by the Demutualization because the Company provides a variety of services to Plans, some of which may constitute fiduciary services. In this regard, it is represented that a substantial portion of the policies in certain of the Company's SBUs are part of employee welfare benefit plans or employee pension benefit plans. Therefore, the Company requests an administrative exemption from the Department that would cover the receipt of cash and/or Trigon Stock by Eligible Members with respect to their membership interest in the Company as it existed in the form of a mutual insurance company.

11. As stated above, the form of distribution that will be made by the Company to Eligible Members is currently intended to be cash and/or shares of Trigon Stock in exchange for such Members' membership interests in the Company. The cash or stock will be paid to Eligible Members as soon as possible after the Effective Date. The form of payment and all other procedures with respect to the Demutualization will be the same for Plans as for other Members. The Company currently estimates that approximately 70 percent of the Trigon Stock will be distributed to Plans which participate with other Eligible Members in many of the SBUs.[6]

Although the Demutualization Plan provides that all Eligible Members may elect to receive their consideration in cash rather than in Trigon Stock, it is possible that certain Eligible Members will receive both forms of consideration. Certain Eligible Members, referred to as "Mandatory Cash Members," will receive cash in lieu of Trigon Stock once the value of such stock can be established.[7] Trigon Stock allocated to this class of Eligible Members is termed "Mandatory Cash Shares."

Other Eligible Members may also be provided with cash instead of Trigon Stock or, with a combination of both. Eligible Members in this category who elect to receive cash are called "Preferred Cash Members"[8] and the Trigon Stock otherwise allocable to them is termed "Preferred Cash Shares." To the extent that cash is less than the full consideration payable to the Eligible Member, shares of Trigon Stock will also be issued to such Eligible Member as the remaining consideration.

The amount of cash which a Mandatory Cash Member or a Preferred Cash Member will receive in lieu of Trigon Stock will equal the number of shares of Trigon Stock multiplied by the initial stock price (the ISP). The ISP means the proceeds per share of Trigon Stock obtained by Trigon from the sale of Trigon Stock to the public in the IPO minus all underwriting discounts, costs and expenses incurred in connection with the IPO, divided by the number of shares of Trigon Stock sold in the IPO.

On or immediately preceding the Effective Date, Trigon will determine the amount of cash available to pay all Eligible Members who are required or permitted to receive cash. If the amount of cash is insufficient to pay all of the Mandatory Cash Members and all of the Preferred Cash Members, then the cash available will be allocated in the following manner: First, the cash will be used to pay all Mandatory Cash Members. Second, any remaining cash

---

[2] The Company represents that an insurance policy that provides benefits under an employee benefit plan typically designates the employer that sponsors the plan, or a trustee acting on behalf of the plan, as the policyholder. With respect to insurance policies that designate the employer or trustee as policyholder, the Company asserts that, as required under the Demutualization Plan, the Company will make distributions to the employer or trustee with one exception. Where a group policy has been issued to the Company providing coverage for its own employees under a welfare benefit plan, the company will ensure that the distribution is made to an independent fiduciary acting on behalf of the Company's plan or will be distributed directly to participants.

In general, it is the Department's view that, if an insurance policy is purchased with assets of an employee benefit plan, and if there exist any participants covered under the plan (as defined at 29 CFR 2510.3–3) at the time when the Company incurs the obligation to distribute Trigon Stock, then such consideration would constitute an asset of the plan. Under these circumstances, the appropriate plan fiduciaries must take all necessary steps to safeguard the assets of the plan in order to avoid engaging in a violation of the fiduciary responsibility provisions of the Act.

[3] The Company projects that there will be a total of 64 million shares of Trigon Stock available for distribution to Eligible Members as part of the Demutualization. However, the Company notes that exact number of shares offered may be subject to further adjustment.

[4] The right to vote on the proposal to approve the Demutualization Plan is based on a voting Member's status on the Record Date for the special meeting. Voting Members are those Members holding an individual or group policy issued by the Company which is in force on the Record Date. To date, the Record Date has not been established.

[5] The ECF is determined by dividing the Equity Contribution of the MPL by the total number of covered lives. For example, assume that in 1989, an MPL had an Equity Contribution of $10 million and 50,000 covered lives. The 1989 ECF for that MPL would be $200 (i.e., $10 million divided by 50,000).

[6] The applicant represents that there is no alternative available if an Eligible Member decides not to participate in the Demutualization since it is governed by Virginia law. However, as discussed in Representation 7, there are several opportunities for an Eligible Member to receive cash instead of shares of Trigon Stock under the Demutualization Plan.

In addition, as noted in Representation 13, at the end of each Lockup Period, shares of Trigon Stock will be automatically distributed to Eligible Members. If the Eligible Member cannot be located, the stock will be returned to the Trigon transfer agent and held for the benefit of the Eligible Member. Assuming however the Eligible Member refuses to accept the Trigon Stock when it is distributed at the end of the Lockup Period, the applicant represents that it will continue to be held in the Eligible Member's name, possibly until the shares become abandoned property under Virginia escheat laws.

[7] The criteria for being a Mandatory Cash Member are the same for all Eligible Members. The classification of a Mandatory Cash Member is (a) an Eligible Member whom the Company knows is subject to a lien or bankruptcy proceeding or whose consideration for the shares will be subject to a lien or bankruptcy proceeding; (b) an Eligible Member with a mailing address outside the District of Columbia or any State of the United States of America; or (c) an Eligible Member with a mailing address within a state in which there are fewer than 10 Eligible Members and the total stock allocated to such Eligible Members is less than 2,000 shares, if the Company determines that the issuance of shares to these Eligible Members would result in unreasonable delay or excessive hardship or delay.

[8] A Preferred Cash Member is simply an Eligible Member, other than a Mandatory Cash Member, who has affirmatively elected, on a form that has been furnished and returned to the Company, to receive cash in lieu of Trigon Stock.

will be used to pay all Preferred Cash Members who are Odd Lot Holders.[9] If the cash is insufficient to pay all Odd Lot Holders in full, the cash available will be divided among the Odd Lot Holders *pro rata* based on the total number of shares allocated to each Odd Lot Holder. Third, any remaining cash will be used to pay all Preferred Cash Members who are not Odd Lot Holders. If the cash remaining is insufficient, the cash available will be divided among the Preferred Cash Members *pro rata* based on the total number of shares allocated to each non- Odd Lot Member. Then, the remaining amount that is not paid in cash will be distributed in the form of Trigon Stock.

12. After Demutualization, the Company will become a wholly owned subsidiary of Trigon. Persons holding policies of insurance issued by the Company will cease to be Members of the Company and will become stockholders of Trigon. As stated above, this change will not affect the rights and privileges of the Members in their insurance contracts. All policies in effect before the Demutualization will continue in force after the Demutualization. All Members will continue to receive health care insurance through Trigon.

Trigon will seek a listing for Trigon Stock on a major national stock exchange. The majority of the stockholders of Trigon will consist of Eligible Members who received shares of stock in Trigon in the Demutualization.

13. To protect the interest of all Eligible Members and to ensure the orderly trading and value of Trigon Stock after the IPO, the Demutualization Plan includes limitations on the sales of such stock issued to Eligible Members in the form of a Lockup. All shares of Trigon Stock that are issued to Eligible Members will be subject to the Lockup during two Lockup Periods. During each Lockup Period, Trigon Stock issued to an Eligible Member will be registered in uncertificated form on the books of Trigon as beneficially owned by the Eligible Member. A Trigon transfer agent will have computerized records that will show the amount of Trigon Stock, if any, that is available for each Eligible Member. Although the Eligible Member will not have physical custody of the Trigon Stock certificate, at all times during the Lockup Period, the Eligible Member will have the right to vote the shares and be entitled to receive all dividends or any other distributions relating to the Trigon Stock issued to such Eligible Member.

As soon as practicable after the expiration of each Lockup Period, a certificate for Trigon Stock will be issued to Eligible Members or their permitted transferors. Eligible Members who are Odd Lot Holders may request a certificate from Trigon's transfer agent.

The first Lockup Period will end on the six month anniversary date of the Effective Date. Upon the termination of the first Lockup Period, one-half of the Trigon Stock will be freely-tradeable by Eligible Members and may be disposed of on a stock exchange at the public market price or in any manner that the Eligible Member wishes, subject to applicable securities laws.[10] The second Lockup Period will terminate on the twelve month anniversary of the Effective Date. At that time, the remaining one-half of Trigon Stock issued to Eligible Members will again be freely-tradeable.[11]

14. Prior to the ending of the first Lockup Period, Trigon will establish a commission-free sales and round-up program for small holders of Trigon Stock (the Small Holders Program). The purpose of the Small Holders Program is to allow certain Eligible Members either to sell all of their shares of Trigon Stock or to purchase sufficient shares of Trigon Stock that will enable such Eligible Members to round-up their holdings to 100 shares of Trigon Stock. The Small Holders Program will continue for 90 days unless otherwise extended.

Trigon will determine the maximum number of shares (not to exceed 99) that will entitle an Eligible Member to participate in the Small Holders Program. All purchases and sales under the Small Holders Program will be at prevailing market prices and free of brokerage commissions or other administrative or similar expenses.

15. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Demutualization Plan will be implemented in accordance with procedural and substantive safeguards that are imposed under Virginia law and will be subject to the review and supervision by the Commission.

(b) The Commission will review the terms of the options that are provided to Eligible Members of the Company as part of such Commission's review of the Demutualization Plan, and will approve the Demutualization Plan following a determination that such Demutualization Plan is fair and equitable to all Eligible Members.

(c) Each Eligible Member will have an opportunity to comment orally or in writing on the Demutualization Plan and decide whether to vote to approve in writing such Demutualization Plan after full written disclosure is given such policyholder by the Company, of the terms of the Demutualization Plan.

(d) Any election by an Eligible Member which is a Plan to receive shares of Trigon Stock pursuant to the terms of the Demutualization Plan will be made by one or more Independent Fiduciaries of such Plan and neither the Company nor any of its affiliates will exercise any discretion or provides investment advice with respect to such election.

(e) After each Eligible Member is allocated at least 16 shares of Trigon Stock, additional consideration allocated to Eligible Members who own participating policies will be based on actuarial formulas that take into account each participating policy's contribution to the surplus of the Company which formulas have been approved by the Director.

(f) All Plans that are Eligible Members will participate in the transactions on the same basis within their class groupings as other Eligible Members that are not Plans.

(g) No Eligible Member will pay any brokerage commissions or fees in connection with such Eligible Member's receipt of Trigon Stock or in connection with the implementation of the commission-free sales program.

(h) All of the Company's policyholder obligations will remain in force and will not be affected by the Demutualization Plan.

Notice to Interested Persons

The Company will provide notice of the proposed exemption to all Eligible Members which are Plans within 35 days of the publication of the notice of pendency in the **Federal Register**. Such notice will be provided to interested persons by first class mail and will include a copy of the notice of proposed exemption as published in the **Federal Register** as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on the proposed exemption. Comments with respect to the notice of proposed exemption are due within 65 days after the date of publication of this exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Smith Barney, Located in New York, New York

[Application No. D–10126]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the lending of securities, under certain "exclusive borrowing" arrangements, to Smith Barney, and to any affiliate of Smith Barney who is a U.S. registered broker-dealer or a government securities broker or dealer (Affiliates; collectively Smith Barney), by employee benefit plans (Plans) with respect to which Smith Barney is a party in interest, provided that the following conditions are satisfied:

(a) For each Plan, neither Smith Barney nor its Affiliates has discretionary authority or control over the Plan's investment in the securities available for loan, nor do they render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(b) Smith Barney directly negotiates an exclusive borrowing agreement (Borrowing Agreement) with a Plan fiduciary which is independent of Smith Barney;

(c) In exchange for granting Smith Barney the exclusive right to borrow certain securities, the Plan either (i) Receives a reasonable fee, which is specified in the Borrowing Agreement for each category of securities available for loan and is a flat fee, a set percentage rate, or a percentage rate established by reference to an objective formula, or (ii) has the opportunity to derive compensation through the investment of cash collateral posted by Smith Barney;

(d) Any change in the rate that Smith Barney pays to the Plan with respect to any securities loan requires the prior written consent of the independent fiduciary, except that consent is presumed where the rate changes pursuant to an objective formula specified in the Borrowing Agreement and the independent fiduciary is notified at least 24 hours in advance of such change and does not object in writing thereto, prior to the effective time of such change;

(e) On or before the day the loaned securities are delivered, the Plan receives from Smith Barney (by physical delivery, book entry in a securities depository, wire transfer, or similar means) collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies, irrevocable bank letters of credit issued by persons other than Smith Barney or its Affiliates, or other collateral permitted under PTCE 81–6, as it may be amended or superseded;[12]

(f) The market value of the collateral initially equals at least 102 percent of the market value of the loaned securities and, if the market value of the collateral at any time falls below 100 percent, Smith Barney delivers additional collateral on the following day to bring the level of the collateral back to 102 percent;

(g) Before entering into a Borrowing Agreement, Smith Barney furnishes to the Plan the most recent publicly available audited and unaudited statements of its financial condition, as well as any publicly available information which it believes is necessary for the independent fiduciary to determine whether the Plan should enter into or renew the Borrowing Agreement;

(h) The Borrowing Agreement contains a representation by Smith Barney that as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished financial statements;

(i) The Plan receives the equivalent of all distributions made during the loan period, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of tax withholdings)[13] had it remained the record owner of the securities;

(j) The Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty, whereupon Smith Barney returns any borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within five business days of written notice of termination;

(k) In the event that Smith Barney fails to return the borrowed securities, Smith Barney indemnifies the Plan with respect to the difference, if any, between the replacement cost of the borrowed securities and the market value of the collateral on the date the loan is declared in default, together with expenses not covered by the collateral plus applicable interest at a reasonable rate;

(l) All procedures regarding the securities lending activities, at a minimum, conform to the applicable provisions of PTCE 81–6, as it may be amended or superseded;

(m) Only Plans, which together with related Plans,[14] having assets with an aggregate market value in excess of $50 million may lend securities to Smith Barney under an exclusive borrowing arrangement; and

(n) Prior to any Plan's approval of the lending of its securities to Smith Barney, a copy of this exemption, if granted, (and the notice of pendency) are provided to the Plan, and Smith Barney informs the independent fiduciary that Smith Barney is not acting as a fiduciary of the Plan in connection with its borrowing securities from the Plan.[15]

EFFECTIVE DATE: The proposed exemption, if granted, will be effective as of September 25, 1995.

---

[9] An Odd Lot Holder is an Eligible Member who will receive more than 0 and less than 100 shares of Trigon Stock.

[10] It should be noted that there is no provision in the Demutualization Plan requiring Trigon to purchase any of the shares of Trigon Stock from an Eligible Member at the end of a Lockup Period.

[11] In general, Trigon will not recognize most sales, pledges or other transfers by any Eligible Member of any rights or interest in the Trigon Stock or other distributions subject to the Lockup. Because of special circumstances, however, the Demutualization Plan will permit certain limited transfers. One of these special circumstances will allow an Eligible Member to transfer Trigon Stock to a trust created under a Plan. After the transfer to the trust, the Trigon Stock would continue to be subject to the same Lockup restrictions as described above.

Notwithstanding the foregoing, the Department notes, however, that the applicant has not requested, nor is the Department providing, exemptive relief with respect to the transfer of Trigon Stock by an Eligible Member to a Plan to the extent that the transaction violates the provisions of section 406 of the Act.

[12] PTCE 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) provides an exemption under certain conditions from section 406(a)(1) (A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to certain broker-dealers or banks which are parties in interest.

[13] The Department notes the applicant's representation that dividends and other distributions on foreign securities payable to a lending Plan are subject to foreign tax withholdings and that Smith Barney will always put the Plan back in at least as good a position as it would have been in had it not loaned the securities.

[14] The Department notes the applicant's representation that the term "related Plans" refers to plans within the jurisdiction of Title I of the Act that are maintained by an entity or its affiliates, as "affiliate" is defined in section 407(d)(7) of the Act.

[15] The Department notes the applicant's representation that, under the proposed exclusive borrowing arrangements, Smith Barney will not perform the functions of a securities lending agent, nor will Smith Barney perform any services ancillary to securities lending, such as monitoring the level of collateral and the value of the loaned securities.

Summary of Facts and Representations

1. Smith Barney is an investment services firm which is a member of the New York Stock Exchange and other principal securities exchanges in the United States and a member of the National Association of Securities Dealers. Smith Barney is one of the largest investment services firms in the United States, with $44 billion in assets and $3 billion in stockholders' equity.

2. Smith Barney, acting as principal, actively engages in the borrowing and lending of securities. Smith Barney utilizes borrowed securities either to satisfy its own trading requirements or to re-lend to other broker-dealers and entities which need a particular security for a certain period of time. As described in the Federal Reserve Board's Regulation T, borrowed securities are often used in short sales or in the event of a failure to receive securities that a broker-dealer is required to deliver.

3. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee while continuing to enjoy the benefits of owning the securities, (e.g., from the receipt of any interest, dividends, or other distributions due on those securities and from any appreciation in the value of the securities). The lender generally requires that the securities loan be fully collateralized, and the collateral usually is in the form of cash or high quality liquid securities, such as U.S. Government or Federal Agency obligations or irrevocable bank letters of credit. When cash is the collateral, the lender invests the cash and rebates a previously agreed upon amount to the borrower. The "fee" received by the lender as compensation for the loan of its securities then consists of the excess, if any, of the earnings on the collateral over the amount of the rebate. When the collateral consists of obligations other than cash, the borrower pays a fee directly to the lender.

4. Smith Barney requests an exemption for the lending of securities, under certain exclusive borrowing arrangements, by Plans with respect to which Smith Barney is a party in interest, for example, by virtue of its providing fiduciary, custodial, or other services to such Plans. For each Plan, neither Smith Barney nor its Affiliates will have discretionary authority or control over the Plan's investment in the securities available for loan, nor will they render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.[16] However, because Smith Barney, by exercising its contractual rights under the proposed exclusive borrowing arrangements, will have discretion with respect to whether there is a loan of particular Plan securities to Smith Barney, the lending of securities to Smith Barney may be outside the scope of relief provided by PTCE 81–6.

5. For each Plan, Smith Barney will directly negotiate a Borrowing Agreement with a Plan fiduciary which is independent of Smith Barney. Under the Borrowing Agreement, Smith Barney will have exclusive access for a specified period of time to borrow certain securities of the Plan pursuant to certain conditions. The Borrowing Agreement will specify all material terms of the agreement, including the basis for compensation to the Plan under each category of securities available for loan. The Borrowing Agreement will also contain a requirement that Smith Barney pay all transfer fees and transfer taxes relating to the securities loans.

6. By the close of business on or before the day the loaned securities are delivered, the Plan will receive from Smith Barney (by physical delivery, book entry in a securities depository, wire transfer, or similar means) collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies, irrevocable bank letters of credit issued by persons other than Smith Barney or its Affiliates, or other collateral permitted under PTCE 81–6, as it may be amended or superseded. The market value of the collateral on the preceding day will be at least 102 percent of the market value of the loaned securities. The independent fiduciary will monitor the level of the collateral daily and, if its market value falls below 100 percent, Smith Barney will deliver additional collateral by the close of business on the following day to bring the level of the collateral back to 102 percent. If the market value of the collateral exceeds 104 percent, Smith Barney may require the Plan to return sufficient collateral to reduce the market value of the collateral to 102 percent.

7. Before entering into a Borrowing Agreement, Smith Barney will furnish to the Plan the most recent publicly available audited and unaudited statements of its financial condition, as well as any publicly available information which it believes is necessary for the independent fiduciary to determine whether the Plan should enter into or renew the Borrowing Agreement. Further, the Borrowing Agreement will contain a representation by Smith Barney that as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently furnished financial statements.

8. In exchange for granting Smith Barney the exclusive right to borrow certain securities, the Plan will either (i) receive a reasonable fee which is a flat fee, a set percentage rate, or a percentage rate established by reference to an objective formula, or (ii) have the opportunity to derive compensation through the investment of cash collateral posted by Smith Barney. Smith Barney proposes that different fee structures apply to different securities or groups of securities, depending upon various factors affecting their lending value, such as the time of year, the country of origin, and supply and demand. The fees with respect to any prospective or outstanding securities loan may be set or reset periodically pursuant to an objective formula agreed upon by Smith Barney and the independent fiduciary of the Plan at the time the parties enter into the Borrowing Agreement. Such formula may not be changed without the prior written consent of the independent fiduciary. If the rate that Smith Barney pays to the Plan for borrowing securities changes under a formula, Smith Barney will notify the independent fiduciary at least 24 hours in advance of such change, which may be implemented only if the independent fiduciary does not object in writing thereto, prior to the effective time of such change. No change may be made to rates not established pursuant to a formula, unless Smith Barney notifies the independent fiduciary at least 24 hours in advance of any change and obtains the prior written consent of the independent fiduciary.

Under this fee arrangement, earnings generated by non-cash collateral will be returned to Smith Barney. The Plan will be entitled to the equivalent of all distributions made to holders of the borrowed securities during the loan period, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities that the plan would have received (net of tax withholdings in the case of foreign securities), had it remained the record owner of the securities.

9. The Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty. Upon termination of any securities loan, Smith Barney will return the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within five business days of written notice of termination. If Smith Barney fails to return the securities or the equivalent thereof within the designated time, the Plan will have certain rights under the Borrowing Agreement to realize upon the collateral. If the collateral is insufficient to satisfy Smith Barney's obligation to return the Plan's securities, Smith Barney will indemnify the Plan with respect to the difference between the replacement cost of the securities and the market value of the collateral on the date a loan is declared to be in default, together with expenses incurred by the Plan plus applicable interest at a reasonable rate.

10. All the procedures under the Borrowing Agreement will, at a minimum, conform to the applicable provisions of PTCE 81–6, as it may be amended or superseded. In addition, in order to insure that the independent fiduciary representing a Plan has the experience, sophistication, and resources necessary to adequately review the Borrowing Agreement and the fee arrangements thereunder, only Plans which, together with related Plans, having assets with an aggregate market value in excess of $50 million may lend securities under an exclusive borrowing arrangement to Smith Barney.

The applicant represents that the opportunity for the Plans to enter into exclusive borrowing arrangements with Smith Barney under the flexible fee structures described herein is in the interests of the Plans because the Plans will then be able to choose among an expanded number of competing exclusive borrowers, as well as maximizing the volume of securities lent and the return on such securities.

11. In summary, the applicant represents that the described transactions satisfy the statutory criteria of section 408(a) of the Act because: (a) Smith Barney will directly negotiate a Borrowing Agreement with an independent fiduciary of each Plan; (b) the Plans will be permitted to lend to Smith Barney, a major securities borrower who will be added to an expanded list of competing exclusive borrowers, enabling the Plans to earn additional income from the loaned securities on a secured basis, while continuing to enjoy the benefits of owning the securities; (c) in exchange for granting Smith Barney the exclusive right to borrow certain securities, the Plan will either (i) Receive a reasonable fee, which is specified in the Borrowing Agreement for each category of securities available for loan and is a flat fee, a set percentage rate, or a percentage rate established by reference to an objective formula, or (ii) have the opportunity to derive compensation through the investment of cash collateral posted by Smith Barney; (d) any change in the rate that Smith Barney pays to the Plan with respect to any securities loan will require the prior written consent of the independent fiduciary, except that consent will be presumed where the rate changes pursuant to an objective formula specified in the Borrowing Agreement and the independent fiduciary is notified at least 24 hours in advance of such change and does not object in writing thereto, prior to the effective time of such change; (e) Smith Barney will provide sufficient information concerning its financial condition to a Plan before a Plan lends any securities to Smith Barney; (f) the collateral posted with respect to each loan of securities to Smith Barney initially will be at least 102 percent of the market value of the loaned securities and will be monitored daily by the independent fiduciary; (g) the Borrowing Agreement and/or any securities loan outstanding may be terminated by either party at any time without penalty, whereupon Smith Barney will return any borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within five business days of written notice of termination; (h) neither Smith Barney nor its Affiliates will have discretionary authority or control over the Plan's investment in the securities available for loan; (i) the Plan size requirement will insure that the Plans will have the resources necessary to adequately review and negotiate all aspects of the exclusive borrowing arrangements; and (j) all the procedures will, at a minimum, conform to the applicable provisions of PTCE 81–6, as it may be amended or superseded.

Notice to Interested Persons

Notice of the proposed exemption will be given to the independent fiduciary of any Plan which is interested in lending securities to Smith Barney. Such notice will be delivered by hand or first-class mail. Comments are due within 45 days of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

VVP America, Inc. Incentive Savings Plan (the Plan), Located in Memphis, Tennessee

[Application No. D–10141]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 F.R. 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sales by the Plan to VVP America, Inc. (the Employer), the sponsor of the Plan, of universal life insurance policies (the Policies) issued by the Confederation Life Insurance Company (CLI); provided that the following conditions are satisfied:

(A) All terms and conditions of the transactions are at least as favorable to the Plan as those which the Plan could obtain in arm's-length transactions with unrelated parties;

(B) The Plan receives cash purchase prices for the Policies of no less than the greater of (1) the fair market value of each Policy as of the sale date, or (2) each Policy's cash surrender value (as described below) as of the sale date; and

(C) The Plan does not incur any expenses or suffer any loss with respect to the transactions.

Summary of Facts and Representations

1. The Plan is a defined contribution 401(k) plan with 1,637 participants and total assets of $26,210,617 as of June 30, 1995. The Plan is sponsored by the Employer, VVP America, Inc., which is a Delaware corporation engaged in the distribution and sale of various glass products. The trustee of the Plan is Dean Witter Trust Company (the Trustee), located in Jersey City, New Jersey.

2. The Plan provides for individual participant accounts (the Accounts) and participant-directed investment of the Accounts. The Accounts are invested pursuant to participant directions among investment options selected and made available by the Trustee (the Options). In addition to the Plan assets invested in the Options, 67 Accounts are invested in universal life insurance policies issued by Confederation Life Insurance Company (CLI), a Canadian corporation doing business in the

[16] Condition 1 of PTCE 81–6 requires, in part, that neither the borrower nor an affiliate of the borrower may have discretionary authority or control over the investment of the plan assets involved in the transaction.

United States through branches in Michigan and Georgia. The Employer represents that a universal life policy is a flexible-premium individual life insurance contract maintainable for the insured's entire life, the premiums of which fund two components: (a) a protection component, providing a death benefit defined under the policy, and (b) an investment component, which earns interest on the premiums invested and which is debited with withdrawals and administration charges.

The Plan assets include the CLI universal life policies as the result of the Employer's 1992 acquisition of the Binswanger Glass Company (Binswanger). The Employer adopted Binswanger's 401(k) plan (the Predecessor Plan), which the Employer restated and renamed as the Plan. The Predecessor Plan had included among its investment options a universal life insurance option whereby participants could direct the purchase of individual universal life policies issued by CLI. Outstanding CLI policies purchased on behalf of Predecessor Plan participants became assets of the Plan when the Predecessor Plan was adopted by the Employer and renamed as the Plan. Plan participants are no longer able to direct the investment of their Accounts in universal life policies because the Options available to the Accounts in the Plan do not include a universal life insurance option. Of the approximately 250 CLI policies originally acquired by the Predecessor Plan, only 67 policies continue to be held by the Plan (the Policies), due to retirements and terminations of affected participants. The Employer represents that as of June 30, 1995, the Policies had a combined cash surrender value of $227,336.[17]

3. The Employer represents that on August 11, 1994, the Canadian insurance regulatory authorities placed CLI in receivership, and on August 12, 1994, the insurance authorities of Michigan instituted legal rehabilitation proceedings (the Proceedings) against CLI. During the Proceedings, CLI is prohibited from payment of certain contractual obligations under life insurance policies outstanding. The Employer states that although the Proceedings do not affect CLI's ability to pay death benefits under the Policies, the Proceedings prohibit access to the cash surrender values of the Policies, and the Trustee is unable to cash in any of the Policies to fund the payment of termination benefits to affected participants who separate from service with the Employer while the Proceedings continue (Separated Participants). The Employer represents that the Policies of Separated Participants remain in force and continue to be held in their respective Accounts even though the cash surrender values of the Policies remain inaccessible, and that neither the Trustee nor the Separated Participants may gain access to the cash values of the Policies. The Employer represents that because the Accounts of the Separated Participants no longer receive employer/employee contributions, premiums are no longer paid on those Policies, and administrative charges are being debited against those Policies' cash surrender values. The Employer represents that among active Plan participants whose Accounts are invested in Policies, premiums continue to be paid on the Policies in the Accounts of those active participants who have so directed. The Employer states that six active participants have elected to discontinue having contributions allocated to the payment of premiums on Policies in their Accounts, and these Policies will continue to experience decline in cash values as administrative charges are debited against those values.

5. The Employer represents that it is unable to determine when or to what extent the Trustee will be able to have access to the Policies' cash surrender values to pay termination benefits of Separated Participants. Accordingly, until such time as access to the cash surrender values of the Policies is restored pursuant to the Proceedings, the Employer desires the ability to purchase Policies from the Accounts of Plan participants who have separated from service since the Proceedings commenced and those participants who separate from service in the future. To enable these purchase transactions, the Employer is requesting an exemption, as proposed herein.

6. The Employer proposes only to purchase Policies from the Accounts of separating Plan participants who specifically desire the cash liquidation of their Policies, and any participant who prefers to retain the Policy in his Account would be able to do so.[18] For each Policy which the Employer purchases from the Account of a Separated Participant, the Employer will pay such Account cash for the Policy in the amount of the cash surrender value of the Policy as of the date of the purchase, according to the most recent statement of such value provided by CLI. The Trustee has obtained an opinion as to the fair market values of the Policies from the accounting firm of Coopers & Lybrand, L.L.P. In an opinion letter dated August 4, 1995, Judy A. Faucett, F.S.A., a principal with Coopers & Lybrand, stated that the cash surrender values of the Policies represents a premium purchase price for the Policies since the Plan currently is not able to surrender the Policies to CLI to realize the Policies' cash values. The Employer will bear any expenses which may be incurred with respect to the proposed transactions. The Employer represents that the proposed transactions are necessary to enable the affected participants to receive the full accrued benefits in their Accounts by eliminating future decreases in cash surrender values of the Policies of Separated Participants. The Employer also maintains that the proposed transactions will enable the affected participants to avoid any risk associated with the continued holding of the Policies, due to the uncertainties surrounding the Proceedings.

7. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (a) The Accounts of affected participants will receive cash for the Policies in the amount of the Policies' cash surrender value as of the sale date; (b) The transaction will enable the Accounts of affected participants to avoid risk of loss associated with continued holding of the Policies, and to avoid future decreases in cash surrender value of the Policies; (c) A principal of Coopers & Lybrand has determined that the proposed purchase price for the Policies represents a premium for the Policies; and (d) The Plan will not incur any expenses with respect to the transactions.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202)219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 20th day of May 1996.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 96–12985 Filed 5–22–96; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 96–38; Exemption Application No. D–09410, et al.]

Grant of Individual Exemptions; RREEF USA Fund

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

RREEF USA Fund—I (The Trust), Located in San Francisco, California

[Prohibited Transaction Exemption 96–38; Exemption Application No. D–09410]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the receipt by RREEF America L.L.C., the investment manager of the Trust (the Manager), of a certain performance compensation fee (the Performance Fee) in connection with the liquidation of the Trust, provided that the following conditions are satisfied:

(a) The terms and the payment of the Performance Fee shall be approved in writing, through approval of an amendment to the Group Trust Agreement, by independent fiduciaries of the plans that participate in the Trust (the Participating Plans);

(b) The terms of the Performance Fee shall be at least as favorable to the Participating Plans as those obtainable in an arm's-length transaction between unrelated parties;

(c) The total fees paid to the Manager by the Participating Plans that have invested in the Trust, shall constitute no more than reasonable compensation;

(d) The Performance Fee will be payable only when all of the assets of the Trust have been completely liquidated;

(e) The Performance Fee received by the Manager will be based on distributions, adjusted for inflation and present value, and will be calculated using two real hurdle rates of return. The Performance Fee will equal 10% after the Participating Plans have earned a 5% real return on the initial value of their investment and 20% after the Participating Plans have earned an 8% real return on the initial value of their investment;

(f) In the event of the Manager's resignation or termination as the investment manager to the Trust, the Investment Management Agreement would also terminate[1] and the Manager will not receive a Performance Fee;

(g) The Manager or its affiliates shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (2) of this Section (g) to determine whether the conditions of this exemption have been met, except that:

(1) (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Manager or its affiliates, the records are lost or destroyed prior to the end of the six year period; and (b) no party in interest, other than the Manager, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code if the records are not

---

[17] The Department notes that the decisions to offer and maintain Account investments in the Policies are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department herein is not proposing relief for any violations of Part 4 which may have arisen or may arise as a result of offering or maintaining the Account investments in the Policies.

[18] For example, a terminated Plan participant whose Account holds one of the Policies may have become uninsurable since the original acquisition of the Policy and may chose to continue holding the Policy rather than acquiring its cash surrender value.

[1] Unless termination was in bad faith wherein the Manager may seek legal recourse.

maintained or are not available for the examinations required from (2) below.

(2) (a) Except as provided in paragraph (3) and notwithstanding any provisions of section 504 (a)(2) and (b) of the Act, the records referred to in paragraph (1) of this Part (g) shall be unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) Any fiduciary of a Participating Plan or any duly authorized employee or representative of such fiduciary;

(iii) Any contributing employer to a Participating Plan or any duly authorized employee or representative of such employer; and

(iv) Any participant or beneficiary of a Participating Plan or any duly authorized employee or representative of such participant or beneficiary.

(3) None of the persons described above in paragraph (2)(a)(ii)–(iv) shall be authorized to examine the trade secrets of the Manager and its affiliates or any commercial or financial information which is privileged or confidential.

EFFECTIVE DATE: This exemption will be effective as of January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan, U.S. Department of Labor, telephone (202) 219–8883. (This is not a toll-free number.)

Timberland Investment Group, Inc. (Timberland) and Wachovia Bank of Georgia, N.A. (the Investment Manager), Located in Atlanta, GA

[Prohibited Transaction Exemption 96–39; Exemption Application Nos. D–09969 and D–09970]

Exemption

Section I. Covered Transaction

The restrictions of section 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to the payment of an incentive fee (the Incentive Fee) by Timberland, a special purpose corporation which holds plan assets from the American Telephone and Telegraph Master Trust (the AT&T Trust) and the BellSouth Master Pension Trust (the BellSouth Trust),[2] to the Investment Manager of Timberland, a party in interest with respect to the Trusts.

This exemption is conditioned upon the requirements set forth below in Section II.

[2] The AT&T Trust and the BellSouth Trust are collectively referred to herein as the Trusts.

Section II. General Conditions

(a) The investment of the assets of each Trust in Timberland, including the terms and payment of the Incentive Fee, is approved in writing by a Trust fiduciary who is independent of the Investment Manager and its affiliates (the Independent Fiduciary).

(b) Each Trust participating in Timberland has total assets that are in excess of $50 million and no Trust has invested more than one percent of its assets in Timberland.

(c) The terms of the Trusts' investment management agreements for Timberland, including the Incentive Fee, are at least as favorable to the Trusts as those obtainable in an arm's length transaction with an unrelated party.

(d) Prior to investing in Timberland, each Independent Fiduciary entered into an agreement with the Investment Manager disclosing all material facts concerning the purpose, structure and operation of Timberland including the fee arrangements.

(e) With respect to its ongoing participation in Timberland, each Trust receives the following written documentation from the Investment Manager:

(1) Audited financial statements of Timberland prepared by independent, qualified public accountants on an annual basis, which disclose the fees that are paid to the Investment Manager and its affiliates.

(2) Quarterly valuations, transmitted routinely to the Trusts, which indicate the fair market value of Timberland's assets as established by appraisers who are independent of the Investment Manager and its affiliates.

(3) Upon request, valuations performed by independent appraisers at three year intervals which determine the underlying land value of Timberland.

(4) Upon request, a timber inventory valuation of Timberland performed every five years by independent, registered consulting foresters in order to determine timber volume and growth rates.

(f) The total fees paid to the Investment Manager constitute no more than reasonable compensation.

(g) The Incentive Fee is payable to the Investment Manager upon the complete liquidation of the Trusts' account in Timberland (the Timberland Account) and only if the Trusts recover distributions equal to their initial investments in Timberland.

(h) In the event that the Investment Manager resigns or is removed prior to the complete liquidation of the Timberland Account,

(1) The Trusts will appoint a successor Investment Manager to effect the liquidation of such account.

(2) The Incentive Fee will not be paid to the former Investment Manager until the complete liquidation of the Timberland Account takes place.

(3) The Incentive Fee will only be paid to the former Investment Manager if it represents the lowest of three fee amounts.

(i) The Investment Manager maintains, for a period of six years, the records necessary to enable the persons described in paragraph (i) of this Section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Investment Manager and/or its affiliates, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than the Investment Manager shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (i) below.

(i)(1) Except as provided in section (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (i) of this Section shall be unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service (the Service);

(B) Any fiduciary of a plan (the Plan) participating in the Trusts or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any Plan participating in the Trusts or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any Plan participating in the Trusts, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (B)–(D) of this paragraph (i) shall be authorized to examine the trade secrets of the Investment Manager or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption:

(a) An "affiliate" of the Investment Manager includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Investment Manager. (For purposes of this subsection, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director, employee, relative of, or partner of any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) An "Independent Fiduciary" is a Trust fiduciary which is independent of the Investment Manager and its affiliates.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 8, 1995 at 60 FR 63065.

Written Comments

The Department received 54 written comments with respect to the notice of proposed exemption and no requests for a public hearing. The written comments were submitted by participants in the BellSouth Trust and were essentially the same, with the commentators expressing their concern that the granting of the exemption would somehow jeopardize the security of the participants' pension rights under Plans investing in the BellSouth Trust.

In response to these concerns, the Investment Manager represented that participants' pension rights would not be adversely affected by the granting of the exemption because the estimated annualized rate of return attributed to assets of the Trusts invested in Timberland, net of expenses, would be 11.02 percent if the Incentive Fee was imposed and 10.49 percent if the exemption was not granted. The Investment Manager noted that these estimates were based on both actual and estimated earnings generated by the timberland under its management to date.

The Investment Manager noted that if the value of any remaining timberland held by Timberland was to decline significantly before the liquidation of Timberland was completed, the rate of return to the Trusts also would be reduced. Such a reduction, according to the Investment Manager, would occur whether or not the exemption was granted. If the exemption was granted, the Investment Manager stated that it would receive a lower Incentive Fee assuming the investment return to the Trusts was reduced.

Thus, after giving full consideration to the entire record, the Department has decided to grant the subject exemption. The comment letters have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Herzog, Heine, Geduld, Inc., Located in New York, New York

[Prohibited Transaction Exemption 96–40; Exemption Application No. D–10018]

Exemption

The sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the extension of credit between Herzog, Heine, Geduld, Inc. (HHG) and various individual retirement accounts for which HHG serves as passive trustee or custodian (the HHG IRA or HHG IRAs) resulting from the in-kind transfer to HHG IRAs at the direction of the owners of such HHG IRAs of certain senior subordinated notes (the Notes) issued by HHG, and thereafter the holding of such Notes by the HHG IRAs; provided that: (1) officers, directors, and employees in HHG who are also owners of HHG IRAs do not participate in the transactions; (2) the owners of the HHG IRAs have exclusive responsibility and control over the investment of the assets of such accounts; (3) HHG has no discretionary authority or control with respect to the investment of the assets of the HHG IRAs involved in the transactions, nor does HHG render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets; (4) a separate accounting of the assets in the HHG IRAs, including the Notes which have been acquired by such accounts, will be maintained by HHG; (5) the value of the Notes in each HHG IRA will at no time exceed 25 percent (25%) of the value of the assets of each HHG IRA; (6) the HHG IRAs will pay no fees or commissions in connection with the transactions; and (7) the combined total of all fees received by HHG for the provision of services to the HHG IRAs is not in excess of "reasonable compensation" within the meaning of section 4975(d)(2) of the Code.[3]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on March 22, 1996 at 61 FR 11892.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

The Buchanan Broadcasting Co., Inc. Profit Sharing Plan and Trust (the Plan), Located in Birmingham, AL

[Prohibited Transaction Exemption 96–41; Exemption Application Nos. D–10133 and D–10134]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the leasing of certain office space in a building (the Property) by the individual account of Robert M. Buchanan, Jr. (the Account) in the Plan to Buchanan Broadcasting Co., Inc. (Buchanan Broadcasting) and to Westwood Square, Ltd. (Westwood Square), both parties in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The terms and conditions of the leases are and continue to be at least as favorable to the Account as those the Account could obtain in comparable arm's length transactions with unrelated parties;

(b) The rent charged by the Account under the leases is and continues to be no less than the fair market rental value of the Property, as established every three years by the independent property manager;

(c) At all times, the fair market value of the leased premises represents no more than 25 percent of the total assets of the Account;

(d) Mr. Buchanan is the only participant of the Plan to be affected by the proposed transactions; and

(e) Within 90 days of the publication in the **Federal Register** of a notice granting this proposed exemption, both Buchanan Broadcasting and Westwood Square file Form 5330 with the Internal Revenue Service (the Service) and pay

[3] Pursuant to 29 CFR 2510.3–2(d), the HHG IRAs are not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

all excise taxes applicable under section 4975(a) of the Code that are due by reason of certain prior prohibited lease transactions.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 4, 1996 at 61 FR 15142.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

James Flynn & Associates, Ltd. Pension Plan (the Plan), Located in Scottsdale, Arizona

[Prohibited Transaction Exemption 96–42; Exemption Application No. D–10164]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) the transfer of a parcel of real property (Lot 1) to the Plan by James T. and Britt Marie Flynn (the Flynns), disqualified persons with respect to the Plan, together with a cash payment by the Flynns to the Plan of $29,000, and (2) the transfer of a parcel of real property (Lot 2) by the Plan to the Flynns, provided the following conditions are satisfied: (a) the Plan receives not less than the fair market value of Lot 2 as of the date of the transfers; (b) the fair market values of Lots 1 and 2 are determined by a qualified, independent appraiser; and (c) the Flynns are the only participants in the Plan to be affected by the transactions, and they both desire that the transactions be consummated.[4]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 4, 1996 at 61 FR 15144.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

[4] Since Mr. Flynn is the sole stockholder of JFA and the Flynns are the only participants in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3 (b) and (c). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Pierre W. Mornell, M.D., A Sole Proprietorship, Defined Benefit Plan (the Plan), Located in Mill Valley, California

[Prohibited Transaction Exemption 96–43; Exemption Application No. D–10170]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of certain unimproved real property located in Mill Valley, California (the Property) by the Plan to Pierre W. Mornell and Linda C. Mornell, parties in interest with respect to the Plan; provided that the following conditions are satisfied:

(A) All terms and conditions of the transaction are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The Plan receives a cash purchase price for the Property in the amount of the fair market value of the Property; and

(C) The Plan does not incur any expenses or suffer any loss with respect to the transaction.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on March 22, 1996 at 61 FR 11894.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 20th day of May, 1996.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 96–12984 Filed 5–22–96; 8:45 am]

BILLING CODE 4510–29–P

Advisory Council on Employee Welfare and Pension Benefits Plans; Full Council Meeting Notice

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a full council meeting of the Advisory Council on Employee Welfare and pension Benefit Plans will be held on June 19, 1996, in Room N3437 C&D, U.S. Department of Labor building, Third and Constitution Avenue NW., Washington, D.C. 20210.

The purpose of the meeting, which will be from 3:30 until 4:30 p.m., is to hear progress being made by the three working groups of the council.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before May 27, 1996, to Sharon Morrissey, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue NW., Washington, D.C. 20210. Individuals or representatives or organizations wishing to address the Advisory Council should forward their request to the Acting Executive Secretary of telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by May 27 at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Acting Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before May 27, 1996.

Signed at Washington, DC this 20th day of May, 1996.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 96–13009 Filed 5–22–96; 8:45 am]

BILLING CODE 4510–29–M

Mine Safety and Health Administration

Summary of Decisions Granting In Whole or In Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the **Federal Register.** Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons, and a field investigation of the conditions at the mine. MSHA has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances, the decisions are conditioned upon compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION CONTACT: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations, and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Contact Barbara Barron at 703–235–1910.

Dated: May 14, 1996.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–93–024–C.
FR Notice: 58 FR 13805.
Petitioner: Peabody Coal Company.
Reg Affected: 30 CFR 77.900.
Summary of Findings: Petitioner's proposal to use a magnetic motor starter instead of tripping a circuit breaker for ground phase protection and undervoltage protection, use a circuit breaker for short circuit protection, and use the magnetic motor starter and circuit breaker for overload protection for serving portable or mobile phase alternating current equipment considered acceptable alternative method. Granted Hawthorn Mine with conditions.

Docket No.: M–93–087–C.
FR Notice: 58 FR 39236.
Petitioner: Neumeister Coal Company.
Reg Affected: 30 CFR 75.360(b)(5).
Summary of Findings: Petitioner's proposal to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal, to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section and physically examine the entire length of the slope once a month considered acceptable alternative method. Granted for No. 2 Slope Mine with conditions for examinations of seals in the intake air haulage slope of this mine.

Docket No.: M–93–089–C.
FR Notice: 58 FR 39236.
Petitioner: Neumeister Coal Company.
Reg Affected: 30 CFR 75.1002–1(a).
Summary of Findings: Petitioner's proposal to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.25 percent, either during operation or a preshift examination considered acceptable alternative method. Granted for No. 2 Slope Mine with conditions for the use of nonpermissible electric drags and associated nonpermissible electric components located within 150 feet from pillar workings.

Docket No.: M–93–090–C.
FR Notice: 58 FR 39236.
Petitioner: Neumeister Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for No. 2 Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–93–091–C.
FR Notice: 58 FR 39236.
Petitioner: Neumeister Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for No. 2 Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–092–C.
FR Notice: 58 FR 39236.
Petitioner: Neumeister Coal Company.
Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for No. 2 Slope Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–93–099–C.
FR Notice: 58 FR 39237.
Petitioner: E & E Fuels Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for Orchard Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–93–100–C.
FR Notice: 58 FR 39237.
Petitioner: E & E Fuels Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet

intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for Orchard Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–101–C.
FR Notice: 58 FR 39237.
Petitioner: E & E Fuels Coal Company.
Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for Orchard Slope Mine with conditions for annual revisions and supplements of the mine maps.

Docket No.: M–93–109–C.
FR Notice: 58 FR 39238.
Petitioner: Wenrich Coal Company.
Reg Affected: 30 CFR 75.360(b)(5).
Summary of Findings: Petitioner's proposal to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal, to test for the quantity and quality of air at the intake air split locations off the slop in the gangway portion of the working section, and to physically examine the entire length of the slope once a month considered acceptable alternative method. Granted for Buck Mountain Slope Mine with conditions for examinations of seals in the intake air haulage slope of this mine.

Docket No.: M–93–111–C.
FR Notice: 58 FR 39238.
Petitioner: Wenrich Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for Buck Mountain Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–93–119–C.
FR Notice: 58 FR 39239.
Petitioner: R. and D. Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for Buck Mountain Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of miner above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–120–C.
FR Notice: 58 FR 39239.
Petitioner: R. and D. Coal Company.
Reg Affected: 30 CFR 1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for Buck Mountain Slope Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–93–124–C.
FR Notice: 58 FR 39240.
Petitioner: Kintzel Coal Company.
Reg Affected: 30 CFR 75.360(b)(5).
Summary of Findings: Petitioner's proposal to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken inby the intake portal, to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section, and to physically examine the entire length of the slope once a month considered acceptable alternative method. Granted for Lykens No. 6 Mine with conditions for examinations of seals in the intake air haulage slope of this mine.

Docket No.: M–93–127–C.
FR Notice: 58 FR 39240.
Petitioner: Kintzel Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for Lykens No. 6 Mine with conditions for firefighting equipment in the working section.

Docket No.: M–93–128–C.
FR Notice: 58 FR 39240
Petitioner: Kintzel Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for Lykens No. 6 Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–129–C.
FR Notice: 58 FR 39240.
Petitioner: Kintzel Coal Company.
Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for Lykens No. 6 Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–93–134–C.
FR Notice: 58 FR 39241.
Petitioner: M & S Coal Company.
Reg Affected: 30 CFR 75.1002–1(a).
Summary of Findings: Petitioner's proposal to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.25 percent, either during operation or a preshift examination considered acceptable alternative method. Granted for Buck Mountain Slope Mine with conditions for the use of nonpermissible electric drags and associated nonpermissible electric components located within 150 feet from pillar workings.

Docket No.: M–93–135–C.
FR Notice: 58 FR 39241.
Petitioner: M & S Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for Buck Mountain Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–93–136–C.
FR Notice: 58 FR 39241.
Petitioner: M & S Coal Company.

Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for Buck Mountain Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–138–C.
FR Notice: 58 FR 39241.
Petitioner: Jeff Coal Company.
Reg Affected: 30 CFR 75.1002–1(a).
Summary of Findings: Petitioner's proposal to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.25 percent, either during operation or a preshift examination considered acceptable alternative method. Granted for Tracy Vein Slope Mine with conditions for use of nonpermissible battery-powered locomotives located within 150 feet from pillar workings.

Docket No.: M–93–139–C.
FR Notice: 58 FR 39241.
Petitioner: Jeff Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for Tracy Vein Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–93–140–C.
FR Notice: 58 FR 39242.
Petitioner: Jeff Coal Company.
Reg Affected: 30 CFR 1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for Tracy Vein Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–141–C.
FR Notice: 58 FR 39242.
Petitioner: Jeff Coal Company.
Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for Tracy Vein Slope Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–93–155–C.
FR Notice: 58 FR 39570.
Petitioner: Little Rock Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for No. 1 Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–156–C.
FR Notice: 58 FR 39570.
Petitioner: Little Rock Coal Company.
Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for No. 1 Slope Mine with conditions for annual revisions and supplement of the mine map.

Docket No.: M–93–163–C.
FR Notice: 58 FR 41295.
Petitioner: Nowacki Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for Nowacki Coal Company Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–93–164–C.
FR Notice: 58 FR 41295.
Petitioner: Nowacki Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for Nowacki Coal Company Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–165–C.
FR Notice: 58 FR 41295.
Petitioner: Nowacki Coal Company.
Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for Nowacki Coal Company Slope Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–93–169–C.
FR Notice: 58 FR 41295.
Petitioner: Tito Coal.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for White Vein Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–93–170–C.
FR Notice: 58 FR 41296.
Petitioner: Tito Coal.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being

mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for White Vein Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–171–C.
FR Notice: 58 FR 41296.
Petitioner: Tito Coal.
Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for White Vein Slope Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–93–176–C.
FR Notice: 58 FR 41296.
Petitioner: Little Buck Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for No. 2 Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–93–177–C.
FR Notice: 58 FR 41296.
Petitioner: Little Buck Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for No. 2 Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–178–C.
FR Notice: 58 FR 41296.
Petitioner: Little Buck Coal Company.
Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative method. Granted for No. 2 Slope Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–93–184–C.
FR Notice: 58 FR 41297.
Petitioner: Primrose Coal Company.
Reg Affected: 30 CFR 75.1002–1.
Summary of Findings: Petitioner's proposal to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.25 percent, either during operation or a preshift examination considered acceptable alternative method. Granted for Primrose Slope Mine with conditions for use of nonpermissible battery-powered locomotives located within 150 feet from pillar workings.

Docket No.: M–93–185–C.
FR Notice: 58 FR 41297.
Petitioner: Primrose Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for Primrose Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–93–186–C.
FR Notice: 58 FR 41297.
Petitioner: Primrose Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for Primrose Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–194–C.
FR Notice: 58 FR 41298.
Petitioner: Brookside Coal Company.
Reg Affected: 30 CFR 1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for Four Foot Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–93–203–C.
FR Notice: 58 FR 44700.
Petitioner: Sunset Coal Company.
Reg Affected: 30 CFR 75.360(b)(5).
Summary of Findings: Petitioner's proposal to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken inby the intake portal, to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section, and to physically examine the entire length of the slope once a month considered acceptable alternative method. Granted for Orchard Slope Mine with conditions for examinations of seals in the intake air haulage slope of this mine.

Docket No.: M–93–205–C.
FR Notice: 58 FR 44700.
Petitioner: Sunset Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for Orchard Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–93–206–C.
FR Notice: 58 FR 44701.
Petitioner: Sunset Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for Orchard Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–218–C.
FR Notice: 58 FR 46219.
Petitioner: Rhen Coal Company.
Reg Affected: 30 CFR 75.360(b)(5).
Summary of Findings: Petitioner's proposal to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken inby the intake portal, to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section, and to physically examine the entire length of the slope once a month considered acceptable alternative method. Granted for Skidmore Slope Mine with conditions for examinations of seals in the intake air haulage slope of this mine.

Docket No.: M–93–220–C.
FR Notice: 58 FR 46219.
Petitioner: Rhen Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for Skidmore Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–93–221–C.
FR Notice: 58 FR 46219.
Petitioner: Rhen Coal Company.
Reg Affected: 30 CFR 1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for Skidmore Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–232–C.
FR Notice: 58 FR 46221.
Petitioner: S & M Coal Company.
Reg Affected: 30 CFR 75.360(b)(5).
Summary of Findings: Petitioner's proposal to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken inby the intake portal, to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section, and to physically examine the entire length of the slope once a month considered acceptable alternative method. Granted for Buck Mountain Slope Mine with conditions for examinations of seals in the intake air haulage slope of this mine.

Docket No.: M–93–234–C.
FR Notice: 58 FR 46221.
Petitioner: S & M Coal Company.
Reg Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal to use only portable fire extinguishers where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for Buck Mountain Slope Mine with conditions for firefighting equipment in the working section.

Docket No.: M–93–235–C.
FR Notice: 58 FR 46221.
Petitioner: S & M Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for Buck Mountain Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–236–C.
FR Notice: 58 FR 46221.
Petitioner: S & M Coal Company.
Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative. Granted for Buck Mountain Slope Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–93–263–C.
FR Notice: 58 FR 57626.
Petitioner: B & B Anthracite Coal Company.
Reg Affected: 30 CFR 75.1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for Rock Ridge No. 1 Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–264–C.
FR Notice: 58 FR 57626.
Petitioner: B & B Anthracite Coal Company.
Reg Affected: 30 CFR 1200 (d), (h), and (i).
Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for Rock Ridge Slope Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–285–C.
FR Notice: 58 FR 57626.
Petitioner: International Anthracite Corp.
Reg Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative. Granted for B & M Tunnel Mine with conditions for annual revisions and supplements of the mine map.

Docket No.: M–93–289–C.
FR Notice: 58 FR 58567.
Petitioner: R S & W Coal Company, Inc.
Reg Affected: 30 CFR 75.360(b)(5).
Summary of Findings: Petitioner's proposal to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken inby the intake portal, to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section, and to physically examine the entire length of the slope once a month considered acceptable alternative method. Granted for R S & W Drift Mine with conditions for examinations of seals in the intake air haulage slope of this mine.

Docket No.: M–93–291–C.
FR Notice: 58 FR 58567.

Petitioner: R S & W Coal Company, Inc.

Reg Affected: 30 CFR 75.1002–1(a).

Summary of Findings: Petitioner's proposal to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.25 percent, either during operation or a preshift examination considered acceptable alternative method. Granted for R S & W Drift Mine with conditions for use of nonpermissible battery-powered locomotives located within 150 feet from pillar workings.

Docket No.: M–93–292–C.

FR Notice: 58 FR 58568.

Petitioner: R S & W Coal Company, Inc.

Reg Affected: 30 CFR 75.1100–2(a)(2).

Summary of Findings: Petitioner's proposal to use only portable fire extinguishers where rock dust, water cars, and other water storage are not practical considered acceptable alternative method. Granted for R S & W Drift Mine with conditions for fire-fighting equipment in the working section.

Docket No.: M–93–293–C.

FR Notice: 58 FR 58568.

Petitioner: R S & W Coal Company, Inc.

Reg Affected: 30 CFR 75.1200 (d), (h), and (i).

Summary of Findings: Petitioner's proposal to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels considered acceptable alternative method. Granted for R S & W Drift Mine with conditions for the use of cross-sections, in lieu of contour lines, limiting the mapping of mines above or below this mine to those within 100 feet of the vein being mined.

Docket No.: M–93–294–C.

FR Notice: 58 FR 58568.

Petitioner: R S & W Coal Company, Inc.

Reg Affected: 30 CFR 75.1202–1(a).

Summary of Findings: Petitioner's proposal to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations considered acceptable alternative. Granted for R S & W Drift Mine with conditions for annual revisions and supplements of the mine map.

[FR Doc. 96–12973 Filed 5–22–96; 8:45 am]

BILLING CODE 4510–43–P

Pension and Welfare Benefits Administration

Working Group on the Impact of Alternative Tax Proposals on ERISA Employer-Sponsored Plans, Advisory Council on Employee, Welfare and Pension Benefits Plans; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on the Impact of Alternative Tax Proposals on ERISA Employer-Sponsored Plans of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on June 19, 1996, in Room N3437 C&D, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, DC 20210.

The purpose of the meeting, which will be held in two sessions from 9:30 a.m. to noon and from 1 to 3:30 p.m., is to take public testimony on various federal tax reform proposals and the impact they may have on employer-sponsored plans, with the primary focus being on retirement plans.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before May 27, 1996, to Sharon Morrissey, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, N.W., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group on the Impact of Alternative Tax Proposals on ERISA Employer-Sponsored Plans should forward their request to the Acting Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by May 27 at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Acting Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record or the meeting if received on or before May 27, 1996.

Signed at Washington, DC this 20th day of May, 1996.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 96–13011 Filed 5–22–96; 8:45 am]

BILLING CODE 4510–29–M

Working Group on Service Providers, Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Service Providers of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on June 18, 1996, in Room N–3437 C&D, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, DC 20210.

The purpose of the meeting, which will run from 9:30 a.m. to noon, is to begin taking testimony on the need to offer assistance to plans in determining how best to select and monitor service providers.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before May 27, 1996 to Sharon Morrissey, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, N.W., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group on Service Providers should forward their request to the Acting Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by May 27, 1996, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Acting Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before May 27.

Signed at Washington, DC this 20th day of May, 1996.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 96–13010 Filed 5–22–96; 8:45 am]

BILLING CODE 4510–29–M

Pension and Welfare Benefit Administration

Working Group for Protections for Benefit Plan Participants, Advisory Council on Employee, Welfare and Pension Benefits Plans; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Protections for Benefit Plan Participants of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on June 18, 1996, in Room N3437 B&C, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the meeting, which will be held from 1 to 3:30 p.m., is to begin taking testimony on protection issues relating to plan assets.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before May 27, 1996 to Sharon Morrissey, Acting Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group on Protections for Benefit Plan Participants of the Advisory Council should forward their request to the Acting Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by May 27 at the address indicated in the notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Acting Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before May 27, 1996.

Signed at Washington, DC this 20th day of May, 1996.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 96–13012 Filed 5–22–96; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum Services

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Institute of Museum Services.

ACTION: Notice.

SUMMARY: This notice announces that the agency requests comment on a proposed information collection prior to submitting it to the Office of Management and Budget for review. The collection is entitled "Status of Educational Programming Between Museums and Schools."

DATES: Comments must be submitted on or before July 22, 1996.

ADDRESS: Submit written comments to: Rebecca Danvers, Program Director, Institute of Museum Services, 1100 Pennsylvania Avenue NW., Washington, DC 20506. Comments may also be submitted by e–mail to Imsinfo@ims.fed.us.

FOR FURTHER INFORMATION CONTACT: Submit requests for more information, including copies of the proposed collection of information and supporting documentation, to IMS Program Office, Institute of Museum Services, Room 609, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION:

I. Information Collection Request

IMS is seeking comments on the following Information Collection Request.

Title: "Status of Educational Programming Between Museums and Schools."

Affected Entities: Parties affected by this information collection are museum educators.

Abstract: IMS supports museum school partnerships for K–12 school children through the Museum Leadership Initiative program. In the fall of 1995, IMS sponsored a conference on museum school partnerships. Information about the projects IMS has supported and on selected conference proceedings will be published and disseminated widely to the museum and school communities. IMS also intends to collect, analyze and disseminate data to document the current status of educational programming activity between museums and schools.

Currently, no body of data exists to identify how museums are interacting with schools to advance the education of the nation's school age population. Therefore, we propose to survey a portion of the museum community with a brief questionnaire to collect this information. The data collection is intended to provide the basis of statistical conclusions about the nature and level of educational programming between museums and schools, but rather is to illustrate the current status and the possibilities for further development.

Burden Statement: For this collection, the estimated average burden hours is .5 and the frequency of response is once. The number of respondents is 500.

II. Request for Comments

IMS solicits comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(ii) Evaluate the accuracy of the agency's estimates of the burden of the proposed collection of information.

(iii) Enhance the quality, utility, and clarity of the information to be collected.

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies of other forms of information technology, e.g., permitting electronic submission of responses.

III. Public Inspection

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by IMS without prior notice. All comments, written and printed versions of electronic comments, not including any information claimed as CBI, are available for inspection from 8:00 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays, in Rm. 510, Institute of Museum Services, 1100 Pennsylvania Ave., NW., Washington, DC.

List of Subjects

Museums and Information collection requests.

Dated: May 17, 1996.

Diane B. Frankel,

Director, Institute of Museum Services.

[FR Doc. 96–12933 Filed 5–22–96; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (No. 1189).

Date and Time: June 12, 1996; 8:30 am–5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 565, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: William A. Weigand, Program Director, Biochemical Engineering, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the 1996 Group proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 20, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–13005 Filed 5–22–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Cross Disciplinary Activities; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 920463, as amended), the Nationals Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross Disciplinary Activities (#1193).

Date and Time: June 13, 1996 8:30 am to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Room 1150, 1120, 1105.17, 1105.05.

Contact Person(s): Drs. Merrill Patrick and Robert Voigt, Program Director, CISE/Directorate, Room 1105, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Telephone: (703) 306–1900.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CISE Academic Research Infrastructure proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated May 20, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–13004 Filed 5–22–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Elementary, Secondary and Informal Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Elementary, Secondary and Informal Education (#59).

Date and Time: Wednesday, June 12, 1996, 6:00 p.m. to 9:00 p.m.; Thursday, June 13, 1996, 8:00 a.m. to 6:00 p.m.; Friday, June 14, 1996, 8:00 a.m. to 3:00 p.m.

Place: Latham Hotel, 3000 M Street NW., Washington, DC

Type of Meeting: Closed.

Contact Person: Dr. Janice Earle, Program Director, Division of Elementary, Secondary and Informal Education, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1620

Purpose of Meeting: To provide advice and recommendations concerning proposals for the Middle School Science Teachers Enhancement's Program submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 20, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–13000 Filed 5–22–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information, Robotics and Intelligent Systems (#1200).

Date and time: June 12–13, 1996 8:30 a.m. to 5:30 p.m.

Place: Holiday Inn 4610 North Fairfax Drive, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Maria Zemankova, Deputy Division Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1929.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Robotics and Machine Intelligence proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 20, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–13003 Filed 5–22–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information, Robotics and Intelligent Systems (#1200).

Date and Time: June 10, 1996, 8:30 a.m. to 5:30 p.m.

Place: Holiday Inn 4610 North Fairfax Drive, Arlington, VA 22203.

Type of Meeting: Closed.

Contact Person: Dr. Maria Zemankova, Deputy Division Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1929.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Robotics and Machine Intelligence proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 20, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–13007 Filed 5–22–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Materials Research will be holding panel meetings for the purpose of reviewing proposals submitted to the Office of Multidisciplinary Activities in the area of Optical Science and Engineering. In order to review the large volume of proposals, panel meetings will be held on June 12–14, 1996 (2). All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, from 8:00 a.m. to 5:00 p.m. each day.

Contact Person: Dr. John Weiner, Head, Office of Multidisciplinary Activities, Office of the Assistant Director for Mathematical and Physical Sciences, National Science Foundation, Room 1005, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1800.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 20, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–13006 Filed 5–22–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Science and Technology Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Science and Technology Infrastructure (#1373).

Date and Time: June 9, 1996; 7:30 p.m.–10:00 p.m.. June 10–12, 1996, 8:30 a.m.–5:00 p.m.

Place: Rooms 375 & 380, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; Gallery 1, Renaissance Hotel, 950 North Stafford Street, Arlington, VA 22203.

Type of Meeting: Closed.

Contact Person: Dr. Nathaniel G. Pitts, Director, Office of Science and Technology Infrastructure, Room 1270, 4201 Wilson Blvd., Arlington, VA 22230; Telephone (703) 306–1040.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Facilities component of the Academic Research Infrastructure Program.

Reason for Closing: The meeting is closed to the public because the Panel is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. These matters are exempt under 5 U.S.C. 552B(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 20, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–13002 Filed 5–22–96; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Social, Behavioral & Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Advisory Committe for Social, Behavioral & Economic Sciences (#1171).

Date and Time: June 6–7, 1996; 900 a.m. to 5:00 p.m.

Place: Room 920 & 310, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Steven J. Breckler, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1731.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Social Psychology Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Reason for Late Notice: Difficulty in arranging for a suitable meeting time for the full committee.

Dated: May 20, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–13001 Filed 5–22–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Company; Zion Nuclear Power Station, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. DPR–39 and DPR–48, issued to Commonwealth Edison Company (ComEd, the licensee), for operation of Zion Nuclear Power Station, Units 1 and 2, located in Lake County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow the licensee to utilize American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code) Case N–514, "Low Temperature Overpressure Protection" to determine its low temperature overpressure protection (LTOP) setpoints and is in accordance with the licensee's application for exemption dated March 19, 1996. The proposed action requests an exemption from certain requirements of 10 CFR 50.60, "Acceptance Criteria for Fracture Prevention Measures for Lightwater Nuclear Power Reactors for Normal Operation," to allow application of an alternate methodology to determine the LTOP setpoints for Zion Nuclear Power Station, Units 1 and 2. The proposed alternate methodology is consistent with guidelines developed by the ASME Working Group on Operating Plant Criteria (WGOPC) to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure relieving devices used for LTOP. These guidelines have been incorporated into Code Case N–514, "Low Temperature Overpressure Protection," which has been approved by the ASME Code Committee. The content of this Code Case has been incorporated into

Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI. However, 10 CFR 50.55a, "Codes and Standards," and Regulatory Guide 1.147, "Inservice Inspection Code Case Acceptability" have not been updated to reflect the acceptability of Code Case N–514.

The philosophy used to develop Code Case N–514 guidelines is to ensure that the LTOP limits are still below the pressure/temperature (P/T) limits for normal operation, but allow the pressure that may occur with activation of pressure relieving devices to exceed the P/T limits, provided acceptable margins are maintained during these events. This philosophy protects the pressure vessel from LTOP events, and still maintains the Technical Specifications P/T limits applicable for normal heatup and cooldown in accordance with 10 CFR Part 50, Appendix G and Sections III and XI of the ASME Code.

The Need for the Proposed Action

Pursuant to 10 CFR 50.60, all lightwater nuclear power reactors must meet the fracture toughness requirements for the reactor coolant pressure boundary as set forth in 10 CFR Part 50, Appendix G. 10 CFR Part 50, Appendix G, defines P/T limits during any condition of normal operation including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime. It is specified in 10 CFR 50.60(b) that alternatives to the described requirements in 10 CFR Part 50, Appendix G, may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent transients that would produce excursions exceeding the 10 CFR Part 50, Appendix G, P/T limits while the reactor is operating at low temperatures, the licensee installed an LTOP system. The LTOP system includes pressure relieving devices in the form of Power Operated Relief Valves (PORVs) that are set at a pressure below the LTOP enabling temperature that would prevent the pressure in the reactor vessel from exceeding the P/T limits of 10 CFR Part 50, Appendix G. To prevent these valves from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump starting and shifting operating charging pumps) with the reactor coolant system in a solid water condition, the operating pressure must be maintained below the PORV setpoint.

In addition, to prevent damage to reactor coolant pump seals, the operator must maintain a minimum differential pressure across the reactor coolant pump seals. Hence, the licensee must operate the plant in a pressure window that is defined as the difference between the minimum required pressure to start a reactor coolant pump and the operating margin to prevent lifting of the PORVs due to normal operating pressure surges. The 10 CFR Part 50, Appendix G, safety margin adds instrument uncertainty into the LTOP setpoint. The licensee's current LTOP analysis indicates that using this 10 CFR Part 50, Appendix G, safety margin to determine the PORV setpoint would result in an operating window between the LTOP setpoint and the minimum pressure required for reactor coolant pump seals which is too small to permit continued operation. Operating with these limits could result in the lifting of the PORVs or damage to the reactor coolant pump seals during normal operation. Using Code Case N–514 would allow the licensee to recapture most of the operating margin that is lost by factoring in the instrument uncertainties in the determination of the LTOP setpoint. The net effect of using Code Case N–514 is that the setpoint will not change significantly with the next setpoint analysis. Therefore, the licensee proposed that in determining the PORV setpoint for LTOP events for Zion, the allowable pressure be determined using the safety margins developed in an alternate methodology in lieu of the safety margins required by 10 CFR Part 50, Appendix G. The alternate methodology is consistent with ASME Code Case N–514. The content of this Code Case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI.

An exemption from 10 CFR 50.60 is required to use the alternate methodology for calculating the maximum allowable pressure for LTOP considerations. By application dated March 19, 1996, the licensee requested an exemption from 10 CFR 50.60 to allow it to utilize the alternate methodology of Code Case N–514 to compute its LTOP setpoints.

Environmental Impacts of the Proposed Action

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) using a safety factor of two on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one quarter (¼) of the vessel wall thickness and a length of six (6) times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Zion reactor vessel material.

In determining the PORV setpoint for LTOP events, the licensee proposed the use of safety margins based on an alternate methodology consistent with the proposed ASME Code Case N–514 guidelines. ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel will not exceed 110% of the P/T limits of the existing ASME Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, use of the proposed criteria will provide adequate margins of safety to the reactor vessel during LTOP transients.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Zion Nuclear Power Station, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on April 22, 1996, the staff consulted with the Illinois State official, Mr. Frank Niziolek; Head, Reactor Safety Section; Division of Engineering; Illinois Department of Nuclear Safety; regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 19, 1996, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the local public document room located at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 16th day of May 1996.

For the Nuclear Regulatory Commission.

Clyde Y. Shiraki,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–12947 Filed 5–22–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–206, 50–361 and 50–362]

Southern California Edison Company and San Diego Gas and Electric Company, San Onofre Nuclear Station; Notice of Temporary Closing of Local Public Document Room

Notice is hereby given that the Main Library, University of California, Irvine, California, which serves as the Nuclear Regulatory Commission (NRC) local public document room (LPDR) for the Southern California Edison Company's and San Diego Gas and Electric Company's San Onofre Nuclear Station, will close on June 15, 1996, for seismic upgrades to the library building. The library is scheduled to reopen in January 1997.

During this period, every effort will be made to meet the informational needs of LPDR patrons. NRC records from mid-1996 forward will be available on microfiche in the Science Library, University of California, Irvine, California. The locations of other LPDRs that maintain records on San Onofre can be obtained by contacting the NRC LPDR staff. Their toll-free telephone number is (800) 638–8081. Requests for records may also be addressed to the NRC's Public Document Room (PDR), 2120 L Street NW., Lower Level, Washington, DC 20555–0001. The PDR's toll-free telephone number is (800) 397–4209.

Persons interested in using the San Onofre LPDR collection while the Main Library is closed are asked to contact the NRC LPDR staff at their toll-free telephone number listed above.

Questions concerning the NRC's LPDR program or the availability of agency documents in the Irvine area should be addressed to Ms. Jona L. Souder, LPDR Program Manager, Freedom of Information/Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone number (800) 638–8081.

Dated at Rockville, Maryland, this 17th day of May, 1995.

For the Nuclear Regulatory Commission.

Carlton C. Kammerer,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 96–12948 Filed 5–22–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards Joint Meeting of the ACRS Subcommittees on Individual Plant Examinations and on Probabilistic Risk Assessment

The ACRS Subcommittees on Individual Plant Examinations and on Probabilistic Risk Assessment will hold a joint meeting on June 11–12, 1996, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, June 11, 1996—8:30 a.m. until the conclusion of business

Wednesday, June 12, 1996—8:30 a.m. until 12:00 Noon

The Subcommittees will discuss the Individual Plant Examination (IPE) Insights Report (June 11, 1996), and the staff's research program related to probabilistic risk assessment (June 12, 1996).

The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineers, Mr. Michael T. Markley (telephone 301/415–6885) or Mr. Brian Hughes (telephone 301/415–5767) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact one of the above named individuals one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: May 16, 1996.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 96–12949 Filed 5–22–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards; Joint Meeting of the ACRS Subcommittees on Probabilistic Risk Assessment and on Westinghouse Standard Plant Designs

The ACRS Subcommittees on Probabilistic Risk Assessment and on Westinghouse Standard Plant Designs will hold a joint meeting on June 5, 1996, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance with the exception of a portion that may be closed to discuss Westinghouse proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Wednesday, June 5, 1996—8:30 a.m. until the conclusion of business

The Subcommittees will discuss the Level 1 probabilistic risk assessment, and low-power and shutdown risk assessment related to the Westinghouse AP600 design. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineers named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, Westinghouse Electric Corporation, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineers, Mr. Noel Dudley (telephone 301/415–6888) or Mr. Brian Hughes (telephone 301/415–5767) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact one of the above named individuals one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: May 16, 1996.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 96–12950 Filed 5–22–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards Joint Meeting of the ACRS Subcommittees on Materials and Metallurgy and on Severe Accidents

The ACRS Subcommittees on Materials and Metallurgy and on Severe Accidents will hold a joint meeting on June 3–4, 1996, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, June 3, 1996—8:30 a.m. until the conclusion of business

Tuesday, June 4, 1996—8:30 a.m. until the conclusion of business

The Subcommittees will discuss operating experience, technical issues, and rulemaking efforts associated with steam generator performance. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff and the Nuclear Energy Institute, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Noel F. Dudley (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: May 16, 1996.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 96–12951 Filed 5–22–96; 8:45 am]

BILLING CODE 7590–01–P

Protecting the Identity of Allegers and Confidential Sources; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Final policy statement.

SUMMARY: This revision is an update of the Commission's policy for protecting the identity of an individual who has been granted confidentiality. This revision reflects the changes in the organization of the NRC and the agency's practices concerning confidentiality, including informing individuals of the availability of confidentiality, circumstances under which confidentiality will be granted, and circumstances under which the identity of confidential sources will be revealed. The revision also describes the measures taken by the NRC to protect the identity of all individuals who bring safety concerns to the agency, regardless of whether the individual is granted confidentiality. This statement of policy is not a major rule as defined in Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996.

EFFECTIVE DATE: May 23, 1996.

FOR FURTHER INFORMATION CONTACT: Edward T. Baker, Agency Allegation Advisor, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC. 20555–0001; telephone: (301) 415–8529.

SUPPLEMENTARY INFORMATION:

Background

On November 25, 1985 (50 FR 48506), the Nuclear Regulatory Commission (NRC or Commission) issued a Statement of Policy to provide a clear, agency-wide policy on the granting of confidentiality to persons who provide information to the NRC concerning licensee activities. The Commission is revising the policy statement to reflect changes in the NRC organization and criteria for disclosing the identity of confidential sources. The policy statement also describes the measures taken to protect the identity of any individual who brings safety concerns to the NRC and the circumstances under which the individual's identity may be disclosed. The Commission's inspection and investigatory programs rely in part on people voluntarily coming forward with information. Some individuals will come forward only if they are confident that their identities will be protected from public disclosure. Therefore, safeguarding the identities of these individuals is a significant factor in ensuring the future voluntary flow of this information. The Commission will make all reasonable efforts to protect the identity of anyone who brings safety concerns to the NRC. This policy statement applies to all NRC offices except the Office of the Inspector General (OIG).

The Commission's policy statement on confidentiality has not been revised since 1985. Since then, changes in the NRC's organizational structure and agency practice concerning confidentiality and protecting the identity of allegers and confidential sources have occurred that are not reflected in the existing policy statement. Additionally, the review team for reassessing the NRC program for protecting allegers recommended in NUREG–1499, "Reassessment of the NRC's Program for Protecting Allegers Against Retaliation," that the policy statement be revised.

The existing policy statement specifically discusses the role of the Office of Inspector and Auditor, which was abolished following creation of the OIG in 1989. The OIG has established its own procedures on confidentiality in accordance with the Inspector General Act of 1978. The agency's practice concerning protecting the identity of allegers, informing them of the availability of confidentiality, and disclosing the identity of confidential sources has changed in the intervening period. In order to reflect those changes and the NRC staff's experience in dealing with confidentiality, the existing policy statement is being revised in the following respects:

(1) On March 22, 1995, the Commission approved the disclosure of the identity of a confidential source based on the existence of an overriding safety concern. The existing policy statement does not speak to disclosure in this circumstance.

(2) The existing policy statement restricts NRC employees from initiating a discussion of confidentiality except in the following circumstances:

(a) It is apparent that an individual is not providing information because of fear that his/her identity may be disclosed; or

(b) It is apparent from the surrounding circumstances that the individual wishes his/her identity to remain confidential.

On August 22, 1994, after notifying the Commission, the Office of the Executive Director for Operations (EDO) issued guidance to the NRC staff that an alleger who has not requested to be a confidential source be clearly informed that he or she is not considered a confidential source. If the allegation is received during a phone call, the NRC staff is required to tell the alleger of this position during the initial call. This position is also stated in the letter sent to an alleger acknowledging receipt of the allegation and documenting the NRC staff's understanding of the alleger's concerns. The NRC staff has adopted this position to avoid misperceptions by allegers as to whether they are considered confidential sources.

(3) The existing policy statement does not specifically address the problem of investigating discrimination when confidentiality has been granted to the individual who alleges that he or she was the victim of discrimination.[1] In practice, individuals who allege that they are victims of discrimination and who request confidentiality are informed of the difficulty of performing an investigation of this type of concern without revealing the name of the subject of the discrimination. These individuals are told the NRC will not normally investigate the discrimination aspects of their allegation if confidentiality is granted.

(4) In addition, a change to the disclosure criteria allows the Office of Investigations (OI) to disclose the identity of a confidential source, on a need-to-know basis, to either the U.S. Department of Justice (DOJ) or to another law enforcement agency. This disclosure would occur without seeking prior Commission approval or notifying the confidential source. Under the existing policy statement, the NRC is required to contact the confidential source before releasing his or her identity. If the confidential source agrees to the release, the EDO or the Director, OI, is authorized to release the identity. If the confidential source objects to the release or cannot be reached, the agency may not release the identity without specific Commission approval.

It is common practice in the law enforcement community for investigative agencies and prosecutors' offices to share the identity of confidential sources if there is a legitimate need-to-know. Traditionally, in the interest of preserving the integrity of any ongoing investigation or prosecution, the sources are not informed that their identities have been shared. Additionally, DOJ and other law enforcement agencies appreciate the sensitivity with which they need to treat the identity of confidential sources. The ability to share the identity of confidential sources in this manner will enhance the sense of partnership in pursuing wrongdoing investigations.

(5) A provision has been added to allow the NRC official who granted the confidentiality to withdraw it without further approval, provided the confidential source has made such a request in writing and the NRC official has confirmed that the requesting individual is the same person that was granted confidentiality.

In addition to these changes to the Commission's policy on confidentiality, this revision describes the basic protection afforded individuals who bring safety concerns to the NRC but have not been formally granted confidentiality, that is, allegers.

The primary differences between the protection afforded confidential sources and allegers are:

- An NRC office director or regional administrator may approve the disclosure of the identity of an alleger, while the approval of the Commission, the EDO, or the Director of the Office of Investigations (OI) is necessary for disclosure of the identity of a confidential source;
- There is a formal, signed agreement between a confidential source and the NRC that sets forth the protection afforded and the circumstances in which a confidential source's identity may be revealed; and
- OI may disclose the identity of an alleger outside the agency during the pursuit of a wrongdoing investigation at their discretion without the knowledge or consent of the alleger. For confidential sources, OI may only disclose the identity to DOJ or another law enforcement agency without the confidential source's knowledge or consent.

This revised final policy statement provides a comprehensive statement of the Commission's position and reflects agency practice concerning confidentiality and the addition of the protection afforded all individuals who bring safety concerns to the NRC.

Small Business Regulatory Enforcement Fairness Act

The NRC has consulted with the Office of Management and Budget and concluded that this policy statement is not a major rule as defined in 5 U.S.C. 804(2).

[1] In this policy statement, the term "discrimination" includes allegations of harassment and intimidation.

Statement of Policy

The Commission's investigative and inspection programs rely in part on individuals coming forward with information about safety concerns or perceived wrongdoing. All individuals should feel free to communicate to the NRC any safety or wrongdoing concerns.[2] It is NRC's responsibility to communicate fully with individuals raising the concerns, to provide the status and details of NRC review of the concerns, to address the concerns and respond to the individual in a timely manner, and to protect the identity of the individual to the greatest degree possible. The NRC recognizes that routine public release of the identities of those who come forward with this information could lead to reprisals against those individuals. Reprisals may involve not only physical harm to the individual, but may take other forms such as employment-related discrimination, including blacklisting, economic duress, or ostracism. Obviously, these actions would deter others from coming forward with information and could jeopardize the effectiveness of the NRC's oversight activities. Both Congress and the Commission have recognized this concern. Section 211 of the Energy Reorganization Act of 1974, as amended (42 U.S.C. 5851) and the Commission's related employee protection regulations are designed to protect those who assist the NRC in carrying out its safety responsibilities from discrimination by their employers. In addition, the Commission has developed procedures for protecting the identity of individuals who bring safety concerns to the NRC (allegers), and for protecting the identity of individuals who have been granted confidentiality (confidential sources).

Identity Protection for Allegers

In resolving allegers' concerns, the NRC intends to make all reasonable efforts not to disclose the identity of an alleger outside the agency. NRC staff personnel who receive an allegation are required to forward all information to an NRC allegation coordinator. The allegation coordinator provides the identity of an alleger only to NRC staff who have a need to know an alleger's identity, e.g., an inspector or investigator assigned to interview an alleger. In addition, documents containing the identity of allegers are stored in locked cabinets with controlled access and are not placed in the NRC's public document rooms.

However, the NRC may reveal the identity of an alleger outside the agency under the following circumstances:

- The alleger clearly states that he or she has no objection to being identified;
- The NRC determines that disclosure of the alleger's identity is necessary to protect the public because of an overriding safety issue identified based on the alleger's concerns;
- Disclosure of the alleger's identity is necessary to respond to a request from Congress or State or Federal agencies in the furtherance of NRC responsibilities under law or public trust;
- Disclosure is necessary pursuant to a court order or an NRC adjudicatory board order;
- The alleger takes an action that is inconsistent with and overrides the purpose of protecting his or her identity;
- Disclosure is necessary to pursue a wrongdoing investigation; or
- Disclosure is necessary to support a hearing on an enforcement action.

In addition, if the NRC is investigating an allegation that the alleger was a victim of discrimination because he or she raised a safety concern, it would be extremely difficult to investigate such an allegation without naming the individual who was the subject of discrimination. NRC Management Directive 8.8, "Management of Allegations," contains additional information concerning protecting the identity of allegers and the circumstances when the identity may be disclosed.

Confidentiality

The protective measures and disclosure circumstances described above apply to all allegers. If the individual is granted confidentiality, as described below, the individual is considered a confidential source. The Commission's regulations in 10 CFR 2.790(a)(7) authorize withholding the identities of confidential sources from public release. Further, 10 CFR 21.2(d) provides that, "as authorized by law", the identity of individuals "not subject to the regulations in this part" who report certain nuclear safety-related problems "will be withheld from disclosure." Additionally, under 10 CFR 19.16(a) if a worker requesting an inspection requests that his or her name not be included in the copy of the request given to the licensee, the name of the worker and the name of individuals referred to in the request must be withheld. The following discussion explains the Commission's general policy regarding confidentiality.

1. Circumstances Under Which Confidentiality May Be Granted

Although the Commission recognizes the importance of confidentiality, it does not believe that confidentiality should be granted to all individuals who provide information to the NRC or that confidentiality it should be granted routinely, particularly in light of the protection afforded all allegers. The Commission believes that confidentiality should be granted only when necessary to acquire information related to the Commission's responsibilities or when warranted by special circumstances. For instance, confidentiality should ordinarily not be granted when the individual is willing to provide the information without being given confidentiality.

If it becomes apparent that an individual is not providing information because of a fear that his or her identity will be disclosed, an authorized NRC employee may suggest a grant of confidentiality. Similarly, an authorized NRC employee may suggest confidentiality in the absence of a request when it is apparent from the surrounding circumstances that the individual wishes his or her identity to remain confidential. This could be the case if an individual sets up an interview in a secretive manner.

The Commission recognizes that some individuals who desire confidentiality may not request it because of an erroneous belief that the identities of everyone providing information to the NRC are kept in confidence. Some individuals may not provide information because they do not know that confidentiality is available. Therefore, the Commission has decided to adopt a policy that requires an individual to explicitly request confidentiality. In the initial contact with the NRC, the extent to which the NRC can protect an alleger's identity will be explained. If the individual does not request confidentiality, the individual will be informed that he or she is not considered a confidential source. If the individual asks about confidentiality, the differences between identity protection for allegers and confidential sources will be explained. If the individual then requests confidentiality, the NRC staff will evaluate the request and inform the individual if confidentiality was granted.

2. The Manner and Form in Which Confidentiality Should Be Granted and Disseminated Within the NRC

The Commission has delegated authority to the Executive Director for Operations (EDO) and the Director, Office of Investigations (OI), to designate those persons within their organizations who will be authorized to grant confidentiality. Confidentiality will be granted only when an NRC employee authorized to grant confidentiality and the individual requesting confidentiality sign a standard NRC Confidentiality Agreement, unless it is impossible to sign the agreement at the time the information is obtained. The agreement will explain the conditions to which the NRC will adhere when it grants confidentiality, as set forth in this policy statement. When it is impossible to sign a Confidentiality Agreement at the time the information is obtained, such as when the information is obtained over the telephone, confidentiality may be given verbally pending the signing of the Confidentiality Agreement, which must be done within a reasonable time. If confidentiality is granted verbally, it must be fully documented. If the Confidentiality Agreement is not signed within a reasonable time, the EDO or Director, OI, as appropriate, will determine if confidentiality should be continued.

After confidentiality is granted, the individual's name should be divulged to NRC employees only on a need-to-know basis. Each NRC employee with access to a confidential source's identity should take all necessary steps to ensure that the identity remains confidential. The EDO and the Director, OI, will ensure that consistent procedures are developed throughout the agency for implementing this requirement that should prevent inadvertent or unauthorized disclosures.

3. Circumstances Under Which Identity of a Confidential Source Will Be Divulged

The Commission stresses the importance of protecting the identity of a confidential source. However, there are six circumstances under which the identity of a confidential source may be released outside the NRC by the Commission or by certain NRC staff officials as described below. The Commission emphasizes that in each of these cases it will attempt to limit disclosure to the minimum necessary and that it expects disclosure to occur only rarely.

(1) The first category involves disclosure to a licensee because of an overriding safety issue. There are conceivable circumstances when public health and safety require the NRC to divulge the identity of a confidential source to allow a licensee to correct an immediate safety concern. If this situation occurs, which we expect to be infrequent, the NRC will try to limit the disclosure to the licensee's senior management.

In most circumstances, the agency will be able to give a licensee sufficient information to correct an immediate safety issue without divulging the name of a confidential source. However, the Commission believes individuals should be aware their identity could be divulged if this situation occurs.

(2) The second category involves disclosure pursuant to a court order. It is conceivable that a licensee or other entity could obtain a court order requiring the NRC to divulge the identity of a confidential source. If that happens, the NRC will seek to keep the disclosure limited to the minimum necessary through protective orders or other means.

(3) The third category of circumstances when a confidential source's identity might be disclosed outside the NRC involves disclosure during an NRC adjudicatory proceeding. The Commission, in a separate Statement of Policy on Investigations, Inspections, and Adjudicatory Proceedings published on September 13, 1984 (49 Fed. Reg. 36032), has provided that any licensing board decision to order disclosure of the identity of a confidential source shall automatically be certified to the Commission for review. Therefore, the only adjudicatory board within the NRC with the actual authority to require that the identity of a confidential source be revealed is the Commission. The Commission will follow current judicial standards in determining whether to disclose the identity of a confidential source.

(4) The fourth circumstance when the identity of a confidential source might be released is in response to a request by Congress. Section 303 of the Atomic Energy Act of 1954, as amended, requires the NRC to keep congressional committees with jurisdiction over the NRC "fully and currently informed with respect to the activities* * * of the Commission." That section also requires "[a]ny Government agency [to] furnish any information requested by [congressional] committees with appropriate jurisdiction." The Commission may have to release the identity of a confidential source in response to a congressional request. Although any such request will be handled on an individual case-by-case basis, the Commission will disclose the identity of a confidential source only if the request is in writing. The Commission will make its best efforts to have any such disclosure limited to the extent possible.

(5) The fifth circumstance when the identity of a confidential source may be revealed is in response to a request from a Federal or State agency. The Commission recognizes its responsibility to assist other agencies in their functions. However, the Commission also recognizes that providing the identities of confidential sources to other agencies could adversely affect the flow of information to the Commission. The Commission has decided to balance these two considerations as follows. If the requesting agency demonstrates that it requires the identity in furtherance of its statutory responsibilities and agrees to provide the same protection to the source's identity that the NRC promised when it granted confidentiality, the NRC will make a reasonable effort to contact the source to determine if he or she objects to the release. If the source can be reached and does not object, the EDO or his designee, or the Director, OI, are authorized to provide that identity to the requesting agency.

If the source either objects to the release of his or her identity, or cannot be reached, the EDO or his designee, or the Director, OI, may not release the source's identity, except as noted in (6) below, but shall advise the requesting agency of the situation. The requesting agency may then ask the Commission to release the identity. Although ordinarily the source's identity will not be provided to another agency over the source's objection or without contacting the individual, in extraordinary circumstances when furtherance of the public interest requires release, the Commission may release the identity of a confidential source to another agency despite the objections of that source or without being able to contact the person. However, even in those cases the requesting agency must agree to provide the same protection to the source's identity that was promised by the NRC.

(6) As an exception to (5) above, when OI and the U.S. Department of Justice (DOJ) are pursuing the same matter or when OI is working with another law enforcement agency, the EDO or the Director, OI may reveal the identity of a confidential source to DOJ or the other law enforcement agency, as needed, without notifying the individual or consulting with the Commission.

It is common practice in law enforcement and when conducting criminal prosecutions for agencies to share the names of confidential sources if there is a need to know. One of the primary reasons for these exchanges of

[2] The Commission expects licensees and contractors to create and maintain an environment conducive to employees raising safety concerns. See "Statement of Policy on Freedom of Employees in the Nuclear Industry to Raise Safety and Compliance Concerns Without Fear of Retaliation." (61 FR 24366; May 14, 1996)

sensitive information is the protection of the confidential source. It is essential that the investigating and prosecuting parties know the identity of a confidential source to physically protect the source during the course of investigative activities and to prevent compromising the source's identity through some inadvertent action by one of the outside investigators or prosecutors. Because it is inappropriate for a source to know the investigative or prosecutorial activities, strategies, or tactics, it is also inappropriate to notify the source that his or her identity is being shared.

4. Circumstances Under Which Confidentiality May Be Revoked

A decision to revoke a grant of confidentiality can only be made by (1) the Commission, (2) the EDO, or (3) the Director, OI. However, the Commission emphasizes that a grant of confidentiality will be revoked only in the most extreme cases. Generally, confidentiality will be revoked only when a confidential source personally takes some action so inconsistent with the grant of confidentiality that the action overrides the purpose behind the confidentiality. For instance, this can happen when the source discloses information in a public forum that reveals his or her status as a confidential source or when he or she has intentionally provided false information to the NRC. Before revoking confidentiality, the Commission will attempt to notify the confidential source of its intent and provide the individual an opportunity to explain why their identity should not be disclosed.

5. Withdrawal of Confidentiality

The NRC official granting confidentiality may withdraw confidentiality without further approval if the confidential source has made such a request in writing and the NRC official has confirmed that the requesting individual is the same person who was granted confidentiality.

6. Conclusion

The Commission views protecting the identity of allegers and confidential sources as an important adjunct to investigative and inspection programs. Therefore, the Commission places great emphasis on protecting the identity of individuals who bring safety concerns to the NRC. However, the Commission recognizes there are limited circumstances when the identity of an alleger or confidential source will be divulged outside the NRC. In those circumstances the Commission will attempt to limit disclosure to the extent possible.

Dated at Rockville, MD, this 17th day of May, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 96–12952 Filed 5–22–96; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 10:00 a.m. on Monday, June 3, 1996, and at 9:00 a.m. on Tuesday, June 4, 1996, in Philadelphia, Pennsylvania.

The June 3 meeting is closed to the public (see 61 FR 24341, May 14, 1996). The June 4 meeting is open to the public and will be held at the Four Seasons Hotel, One Logan Square, in the Washington Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Thomas J. Koerber, at (202) 268–4800.

Agenda

Monday Session

June 3—10:00 a.m. (Closed)

1. Consideration of a Filing with the Postal Rate Commission on Classification Reform of Special Services. (John H. Ward, Vice President, Marketing Systems)

Tuesday Session

June 4—9:00 a.m. (Open)

1. Minutes of the Previous Meeting, May 6–7, 1996.
2. Remarks of the Postmaster General/Chief Executive Officer. (Marvin Runyon)
3. Consideration of the Semiannual Report of the Postal Inspection Service. (Chairman Tirso del Junco)
4. Consideration of Amendments to BOG Bylaws. (Chairman Tirso del Junco)
5. Capital Investments.
   a. Terre Haute, Indiana, Processing & Distribution Center. (Rudolph K. Umscheid, Vice President, Facilities)
   b. 42 Tray Management Systems. (William J. Dowling, Vice President, Engineering)
   c. Flats Forwarding Terminal. (William J. Dowling, Vice President, Engineering)
   d. Associate Office Infrastructure—Deployment Phase I. (Richard D. Weirich, Vice President, Information Systems)
   e. Point of Service ONE—Stage 1 Deployment. (Patricia M. Gibert, Vice President, Retail)
   f. Corporate Call Management—Prototype National Service Center. (Francia C. Morhardt, Manager, Customer Service Management)
6. Report on Allegheny Area Operations. (Mr. Steele)
7. Tentative Agenda for the July 1–2, 1996, meeting in Washington, D.C.

Thomas J. Koerber,

Secretary.

[FR Doc. 96–13145 Filed 5–21–96; 12:47 pm]

BILLING CODE 7710–12–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of information collection:

Medical Reports: OMB 3220–0038.

Under Sections 2(a)(1)(iv), 2(a)(2) and 2(a)(3) of the Railroad Retirement Act (RRA), annuities are payable to qualified railroad employees whose physical or mental condition is such that they are unable to (1) work in their regular occupation (occupational disability); or (2) work at all (permanent total disability). The requirements for establishment of disability and proof of continuance of disability are prescribed in 20 CFR 220. Under Sections 2(c) and 2(d) of the RRA, annuities are also payable to qualified spouses, widows or widowers who have in their care a qualified child who is under a disability which began before age 22; widows or widowers age 50–59 who are under a disability; and remarried widows and surviving divorced wives who would also be entitled under Sections 202(e) and 202(f) of the Social Security Act.

For entitlement under Section 2(d)(v) of the RRA, the individual must have an impairment which is so severe that, in accordance with the regulations of the Social Security Administration, any gainful activity would be precluded. The Railroad Retirement Board (RRB) also determines entitlement to a period of disability or early Medicare entitlement for qualified claimants.

To enable the RRB to determine the eligibility of an applicant or annuitant for disability benefits under the RRA, the RRB requests supportive medical evidence from railroad employers, personal physicians, private hospitals and state agencies. The RRB currently utilizes Forms G–3EMP, G–250, G–250a, G–260, GL–12, RL–11b, and RL–11d to obtain the necessary medical evidence. Completion is voluntary. One response is requested of each respondent.

ESTIMATE OF RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–3EMP	3,800	10	633
G–250	13,500	37	8,325
G–250a	23,500	20	7,833
G–260	50	25	21
GL–12	10	40	7
RL–11b	9,800	10	1,633
RL–11d	250	10	42
Total	50,910		18,494

The RRB proposes minor editorial changes to all of the forms in the collection, primarily to provide respondents the option of responding by facsimile machine and to incorporate language required by the Paperwork Reduction Act of 1995.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 96–12964 Filed 5–22–96; 8:45 am]

BILLING CODE 7905–01–M

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Employee Noncovered Service Pension Questionnaire.

(2) *Form(s) submitted:* G–209.

(3) *OMB Number:* 3220–0154.

(4) *Expiration date of current OMB clearance:* July 31, 1996.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 500.

(8) *Total annual responses:* 500.

(9) *Total annual reporting hours:* 55.

(10) *Collection description:* Under Section 3 of the Railroad Retirement Act, the Tier I portion of an employee annuity may be subjected to a reduction for benefits received based on work not covered under the Social Security Act or Railroad Retirement Act. The questionnaire obtains the information needed to determine if the reduction applies and the amount of such reduction.

Additional Information or Comments

Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 96–12897 Filed 5–22–96; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 21962; 811–3673]

New York Localities Legal Obligations Cash ACCESS Trust; Notice of Application

May 17, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: New York Localities Legal Obligations Cash ACCESS Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on January 26, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 11, 1996, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington , DC 20549. Applicant, 380 Madison Avenue, Suite 2300, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or David M. Goldenberg, Branch Chief at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified management investment company, organized as a business trust under the laws of the Commonwealth of Massachusetts. On February 25, 1983, applicant registered under the Act and filed a registration statement under the Securities Act of 1933. Applicant's registration statement was declared effective on March 9, 1984, but applicant has made no public offering of its shares.

2. On January 22, 1993, the applicant distributed all of its assets to its sole and initial shareholder.

3. Applicant has no shareholders, liabilities, or assets. Applicant is not a party to any litigation or administrative proceeding.

4. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

5. Applicant has terminated its legal existence as a Massachusetts business trust.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13025 Filed 5–22–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26518]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

May 17, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 10, 1996, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Southern Company Services, Inc., et al. (70–8821)

Southern Company Services, Inc. ("SCS"), 64 Perimeter Center East, Atlanta, Georgia 30346, a wholly-owned subsidiary service company of The Southern Company ("Southern"), a registered holding company, and five electric utility subsidiary companies of Southern ("Operating Companies")—Alabama Power Company, 600 North 18th Street, Birmingham, Alabama 35291; Georgia Power Company, 333 Piedmont Avenue, N.E., Atlanta, Georgia 30308; Gulf Power Company, 500 Bayfront Parkway, Pensacola, Florida 32501; Mississippi Power Company, 2992 West Beach, Gulfport, Mississippi 39501; and Savannah Electric and Power Company, 600 Bay Street East, Savannah, Georgia 31401—have filed an application under sections 9(a) and 10 of the Act and rule 54 thereunder for authorization to engage in brokering and marketing activities relative to electric power and energy commodities ("Activities").

Through the Operating Companies, Southern provides retail electric service in much of Georgia and Alabama and in parts of Florida and Mississippi. Southern also provides firm wholesale service to municipalities and rural electric cooperatives within the territories served by the Operating Companies. The Operating Companies buy and sell wholesale electric power in transactions with other electric utility companies that are directly interconnected with one or more Operating Companies ("Tier 1 Utilities") or electric utility companies that are directly interconnected with Tier 1 Utilities ("Tier 2 Utilities") within a defined region ("Sales Region"), which includes the territories served by the Operating Companies.[1] On occasion, the Operating Companies also engage in wholesale electric power transactions outside the Sales Region.

When the Operating Companies have excess electric power generation, SCS, as agent for the Operating Companies, attempts to market this surplus to other customers. SCS, as agent for the Operating Companies, also seeks out the most economic sources of electric power. These transactions often involve base load capacity purchases and sales. In the course of these activities, SCS and the Operating Companies have developed extensive knowledge about the loads and resources of other electric power sources throughout and outside the Sales Region.

The Activities would include (i) brokering of electric power by SCS between third-party sellers and buyers ("Power Brokering"); (ii) marketing of electric power, largely within the Sales Region, in transactions that do not involve Southern system generation or Southern system transmission ("Power Marketing"); and (iii) marketing and brokering of other forms of energy commodities by SCS or the Operating Companies ("Commodities Transactions").

With respect to Power Brokering, there would be no price exposure or significant financial risk for SCS because SCS would neither buy nor sell electric power. Power Brokering would be incidental to its principal business of centralized administrative and management services to Southern system companies.

Power Brokering would be carried on by personnel employed by SCS who engage in the day-to-day power marketing and system supply activities on behalf of the Operating Companies. Revenues derived from Power Brokering will be credited entirely to reduce the cost of operation of SCS, which will, in turn, reduce its cost of service to the Operating Companies and other system subsidiaries.

With respect to Power Marketing, SCS, as agent for one or more of the Operating Companies, would enter into separate contracts with prospective electric power suppliers and customers, either or both of which usually are located within the Sales Region.[2]

With respect to Commodities Transactions, SCS and the Operating Companies would, in connection with the sale of electric power, serve as a single source of gas, oil or coal as well. SCS and the Operating Companies would not broker or market other energy commodities except in conjunction with making an electricity sale.

All of the Activities would be carried on by personnel employed by SCS who engage in the day-to-day power marketing and fuel procurement activities of the Southern system. Except in the case of Power Brokering, SCS would act as agent for the account of those Operating Companies that are directly related to the customer involved and will therefore have no beneficial interest in the revenues from the Activities. The Operating Companies would act as principals and would hold the beneficial interest in the electric power subject of the arrangement. All Power Marketing opportunities would be associated with one or more of the Operating Companies, which would therefore be credited with all revenues from, and would bear all costs and risks associated with, such transactions.

SCS personnel engaged in the Activities would account for their time through the regular Southern system time accounting system and would thus charge their time to specific "activity codes" established for the affected Southern companies. Overheads and ancillary expenses would be similarly charged. The Operating Companies may also engage directly in the Activities for their own account, individually or in cooperation with other Operating Companies, and with or without the assistance of SCS.

The Operating Companies do not anticipate the need for financial support from Southern or independent sources of capital to engage in the Activities. SCS would be indemnified by the Operating Companies for claims or losses that result from its involvement, as agent for the Operating Companies, in the Activities.

It is anticipated that in the ordinary course of business the Operating Companies would take appropriate steps to hedge risk through the purchase of options, puts, futures and other similar risk management measures. In addition, the Operating Companies may offset price risk exposure under a purchase or sale contract through an opposite position to that purchase or sale. Similarly, in a portfolio of purchase and sales contracts, risk may also be limited through an appropriate mix of long-term and short-term contracts. SCS, as agent for the Operating Companies, would negotiate the terms of such instruments and manage overall portfolio risk.

[1] The Tier 1 and Tier 2 Utilities include all member utilities of the Southeastern Electric Reliability Council, the Entergy Corporation system, and certain other utility systems to the west and northwest of the Southern system.

[2] Southern, through Southern Energy Marketing, Inc. ("SEMI"), an "exempt wholesale generator" under section 32 of the Act, engages in wholesale electric power marketing to unaffiliated third parties. SEMI also is authorized to engage through other indirect subsidiaries in electric power marketing and brokering transactions. HCAR No. 26468 (Feb. 2, 1996). However, SCS and the Operating Companies may not provide to other Southern marketing subsidiaries non-public information on actual or potential wholesale customers or on prices or other terms of electric power to such wholesale customers. This prohibition is part of the "Codes of Conduct" filed with FERC that are applicable to SCS, the Operating Companies and other Southern subsidiaries. Southern Company Services, Inc., 72 FERC ¶ 61,324 (1995), order in reh'g, 74 FERC ¶ 61,141 (1996).

General Public Utilities Corporation (70–8843)

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, has filed a declaration under sections 6(a), 7, 32 and 33 of the Act and rules 53 and 54 thereunder.

GPU proposes to issue and sell for cash from time to time through December 31, 2001 up to $300,000,000 aggregate principal amount of unsecured debentures (the "Debentures"). The debentures will be issued under an indenture to be entered into with United States Trust Company of New York, as trustee, and will have terms ranging from one year to up to 40 years. In addition, the Debentures may be subject to optional and/or mandatory redemption, in whole or in part, by GPU at par or at various premiums above the principal amount thereof. The Debentures may also be entitled to mandatory or optional sinking fund provisions.

GPU will utilize the net proceeds (after deduction of commissions and expenses) from the sale of the debentures to (a) fund the acquisition of interests, and to make investments, in exempt wholesale generators, foreign utility companies and qualifying facilities, (b) make cash capital contributions to its electric operating subsidiaries, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company ("Operating Subsidiaries"), (c) to repay outstanding GPU indebtedness, (d) for other GPU corporate purposes, and (e) reimburse GPU's treasury for funds previously expended for such purposes.

The Operating Subsidiaries will use proceeds of the proposed issuance of Debentures contributed to them (a) to repay outstanding indebtedness, (b) to redeem outstanding senior securities in accordance with the optional redemption provisions thereof or reacquire such securities in open market transactions (c) for construction purposes, (d) for other corporate purposes, and (e) to reimburse their treasuries for funds previously expended for such purposes.

Southwestern Electric Power Company, (70–8847)

Southwestern Electric power Company ("SWEPCO"), 428 Travis Street, Shreveport, Louisiana 71101, an electric utility subsidiary company of Central and South West Corporation, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(d) of the Act and rules 44 and 54 promulgated thereunder.

SWEPCO proposes, through December 31, 1999, to incur obligations in connection with the issuance by Sabine River Authority of Texas ("Sabine" or "Issuer"), in one or more series, of up to $131.7 million aggregate principal amount of Pollution Control Revenue Bonds in connection with the Southwestern Electric Power Company Project. Of this amount, up to $81.7 million aggregate principal amount may be Pollution Control Revenue Refunding Bonds ("Refunding Bonds") and up to $50 million aggregate principal amount may be new money Revenue Bonds ("New Money Bonds" and, together with the Refunding Bonds, the "New Bonds"). The issuance of New Money Bonds may be combined with the issuance of Refunding Bonds.

The purpose of the Refunding Bonds is to reacquire all or a portion of Sabine's $81.7 million of outstanding Series 1986, 8.20% Pollution Control Revenue Refunding Bonds, maturing on July 1, 2014 ("Old Bonds"). The purpose of the New Money Bonds is to reimburse SWEPCO for expenditures that qualify for tax-exempt financing or to provide for current solid waste expenditures.

SWEPCO also seeks authorization to manage interest rate risk or lower its interest costs through the use of forward refinancing techniques and the use of hedging products, including interest rate swaps, forward swaps, caps, collars and floors during the life of the Old Bonds and/or New Bonds. SWEPCO requests authority to enter into the foregoing types of transactions from time-to-time either in connection with the Old Bonds or New Bonds.

It is anticipated that any interest rate swap agreement entered into would provide that redemption, reacquisition or maturation of the corresponding Old Bonds and/or New Bonds would terminate SWEPCO's obligations to the counterparty under the swap agreement for a corresponding notional amount. If an interest rate swap with automatic termination is not available or economically appropriate, SWEPCO will enter into a swap permitting termination at SWEPCO's option and it would exercise such option for a corresponding notional amount upon the redemption, reacquisition or maturation of the corresponding Old Bonds and/or New Bonds. SWEPCO further requests authorization to enter into reverse (or offsetting) interest rate swap agreements, or other contractual arrangements, in order to limit the impact of anticipated movements in interest rates or offset the effect of an existing interest rate swap agreement.

SWEPCO and the Issuer entered into an installment sale agreement ("Sale Agreement") for the issuance of the Old Bonds. In connection with the issuance of the New Bonds, SWEPCO will amend the Sale Agreement, enter into agreements with substantially the same terms as the Sale Agreement and/or enter into new installment sales agreements (collectively "Amended Sales Agreements").

The New Bonds will bear interest at a fixed or floating rate, may be secured with first mortgage bonds and will mature in not more than forty years. The interest rate, redemption provisions and other terms and conditions applicable to

the New Bonds will be determined by negotiations between SWEPCO and one or more investment banking firms or other entities that will purchase or underwrite the New Bonds ("Purchasers").

SWEPCO anticipates that the New Bonds will be redeemable at its option upon the occurrence of various events specified in the Amended Sales Agreements and the Indentures, which may be amended or supplemented ("Supplemental Indentures"), or a new indenture ("New Indenture"). The New Bonds will be subject to optional redemption with premiums to be determined by negotiations between SWEPCO and the Purchasers and will be subject to mandatory redemption if the interest on the New Bonds become subject to federal income tax.

SWEPCO may obtain a credit enhancement for the New Bonds, which could include bond insurance, a letter of credit or a liquidity facility. SWEPCO anticipates it may be required to provide credit enhancement if it issues floating rate bonds. A premium or fee would be paid for the credit enhancement, which would still result in the net benefit through a reduced interest rate on the New Bonds. SWEPCO will not provide credit enhancement unless it is economically beneficial.

SWEPCO also seeks authority to issue first mortgage bonds as security for the New Bonds, subject to applicable indenture restrictions under its Mortgage Indenture dated February 1, 1940 to the Continental Bank, National Association and M.J. Kruger ("Mortgage Indenture"). The First Mortgage Bonds will be held by the Trustee for the New Bonds for the benefit of the New Bond holders and will not be transferable, except to a successor trustee. The First Mortgage Bonds will be issued in the exact amount and have substantially the same terms as the New Bonds. The Supplemental Indenture or New Indenture for the New Bonds may provide that the New Bonds will cease to be secured by First Mortgage Bonds when all other First Mortgage Bonds have been retired. To the extend payments in respect of the New Bonds are made in accordance with their terms, corresponding payment obligations under the First Mortgage Bonds will be deemed satisfied.

The proceeds of the offering of the New Bonds will be used to redeem the Old Bonds pursuant to the terms of the Indentures ("Redemption") and reimburse SWEPCO for expenditures made that qualify for tax-exempt financing or to provide for current solid waste expenditures. The proceeds of any offering may also be used to reimburse SWEPCO for Old Bonds previously acquired. Additional funds required to pay for the Redemption and the cost of issuance of the New Bonds will be provided by SWEPCO from internally generated funds and short-term borrowings.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13024 Filed 5–22–96; 8:45 am]

BILLING CODE 8010–01–M

Sunshine Act Meeting; Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [To Be Published]

STATUS: Open Meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: To Be Published.

CHANGE IN THE MEETING: Time Change.

The time for the open meeting scheduled for Thursday, May 23, 1996, at 10:00 a.m., has been changed to 9:30 a.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: May 20, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–13144 Filed 5–21–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Notice of Closure of Receivership and Surrender of Licensee

Notice is hereby given that Bethela Capital Corporation ("Bethela"), has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended. Bethela was licensed by the Small Business Administration on May 9, 1980.

Pursuant to a Final Order dated October 30, 1995, the receivership was terminated. The surrender of the license was accepted on March 20, 1996, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 15, 1996.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 96–13067 Filed 5–22–96; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's (DOT) intention to request an extension for a currently approved information collection.

DATES: Comments on this notice must be received by July 22, 1996.

ADDRESSES: Comments should be sent to the Executive Secretariat, Office of the Secretary, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590–0002.

FOR FURTHER INFORMATION CONTACT: Mrs. Roberta Fede, Committee Management Officer, Executive Secretariat, Office of the Secretary, Department of Transportation, at the address listed above. Telephone: (202) 366–9764.

SUPPLEMENTARY INFORMATION:

Title: Advisory Committee Candidate Biographical Information Request, DOT F1120.1.

OMB Control Number: 2105–0009.

Expiration Date: August 31, 1996.

Type of Request: Extension for a currently approved information collection.

Abstract: The collection of information obtained by the Advisory Committee Candidate Biographical Information Request form enables Departmental officials to review the qualifications of individuals who wish to serve on Department-sponsored advisory committees and the qualifications of persons who have been recommended to serve. The collection provides uniform data for each individual and enables DOT to comply with the Federal Advisory Committee Act (Pub. L. 92–463) (5 U.S.C. App.) which requires that advisory committee membership be balanced.

A number of DOT's advisory committees were created by statute, and have statutory requirements for education, experience, or expertise. The data collection enables DOT to comply with such statutory membership requirements, by providing information from which officials may determine which individuals meet specific qualification standards for particular advisory committees and for particular positions within a committee. In fact, some statutory committees require very narrow and specific expertise for each position on the committee, which can be ascertained by reviewing the Advisory Committee Candidate Biographical Information Request form.

Finally, the data collection allows officials to retain a file of interested applicants. As vacancies occur on specific advisory committees, the applications and qualifications can be reviewed for possible placement.

In the absence of the data collection, officials would have to contact by telephone or by letter each person who expressed an interest or who was recommended for an advisory committee position, to determine his/her interest, education, experience, or expertise. This would be a more time-consuming and costly data collection effort which would have to be repeated if the individual were to be considered at a later time for vacancies on other advisory committees.

Respondents: Individuals who have contacted DOT to indicate an interest in appointment to an advisory committee and individuals who have been recommended for membership on an advisory committee. Only one collection is expected per individual.

Estimated Number of Respondents per Year: 100.

Average Annual Burden per Respondent: 15 minutes.

Estimated Total Burden on Respondents Per Year: 25 hours.

This information collection is available for inspection at the Office of the Executive Secretariat, Room 10205, Office of the Secretary, DOT, at the above address.

Comments are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, (b) the accuracy of the Department's estimate of the burden of the proposed information collection; and (c) ways to minimize the burden and enhance the quality of the collection.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC, on May 20, 1996.

Judith Burrell,

Director, Executive Secretariat.

[FR Doc. 96–13036 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Notice of Intent To Rule on Application, Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Metropolitan Oakland International Airport, Oakland, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at metropolitan Oakland International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before June 24, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA. 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Charles Foster, Executive Director of the Port of Oakland, at the following address: Post Office Box 2064, Oakland, California 94604–2064. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Port of Oakland under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph R. Rodriguez, Supervisor, Planning and Programming Section, Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA. 94010–1303, Telephone: (415) 876–2805. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from metropolitan Oakland International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 1, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Port of Oakland was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 31, 1996. The following is a brief overview of the impose and use application number AWP–95–06–C–00–OAK.

Level of proposed PFC: $3.00.

Charge effective date: October 1, 1996.

Estimated charge expiration date: December 31, 1996.

Total estimated PFC revenue: $4,138,541.

Brief description of impose and use projects: Seismic Upgrade of Building M101, Construct Second Jetway at the International Arrivals Building, Purchase Two 3,000 Gallon ARFF Trucks, Overlay Runway 27L/9R, Replace Normal Power Breakers in Building M102, and Upgrade M104 Switchgear, Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA form 1800–31.

Any person may inspect the application in person at the FAA office listed above under FOR FURTHER INFORMATION CONTACT and at the FAA Regional Airports division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd. Lawndale, CA. 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Port of Oakland.

Issued in Hawthorne, California, on May 3, 1996.

Herman C. Bliss,

Manager, Airports Division, Western Pacific Region.

[FR Doc. 96–13029 Filed 5–29–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Miami International Airport, Miami, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a

PFC at Miami International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before June 24, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gary Dellapa, Director of the Dade County Aviation Department at the following address: P.O. Box 592075, Miami, Florida 33159.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Dade County Aviation Department under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Bart Vernace, Plans & Programs Manager, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827, 407–648–6586. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Miami International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 15, 1996, the FAA determined that the application to use the revenue from a PFC submitted by the Dade County Aviation Department was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 4, 1996.

The following is a brief overview of PFC Application No. 96–02–U–00–MIA.

Level of the proposed PFC: $3.00

Proposed charge effective date: October 1, 1996.

Proposed charge expiration date: May 1, 1998.

Total estimated PFC revenue: $42,034,000.

Brief description of proposed project(s): Concourse A Expansion Phase 2. Concourse A Phase 2 Apron & Utilities.

Class or classes of air carriers which the public agency has requested to be required to collect PFCs: Air taxi and commercial operators filing FAA form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Dade County Aviation Department.

Issued in Orlando, Florida, on May 15, 1996.

Charles E. Blair,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 96–13028 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Palm Beach International Airport, West Palm Beach, FL and Use the Revenue From a PFC at the Palm Beach International Airport, West Palm Beach, FL and at the North County General Aviation Airport, Jupiter, Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a passenger facility charge (PFC) at Palm Beach International Airport, West Palm Beach, Florida and use the revenue from a PFC at the Palm Beach International Airport, West Palm Beach, Florida and at the North County General Aviation Airport, Jupiter, Florida under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 24, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bruce V. Pelly, Director of Airports of the Palm Beach County Department of Airports at the following address: Palm Beach International Airport, Building 846, West Palm Beach, Florida 33406–1491.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Palm Beach County Department of Airports under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Bart Vernace, Airport Plans & Programs Manager, 9677 Tradeport Drive, Suite 130, Orlando, Florida, 32827, 407–648–6583, extension 27. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a passenger facility charge (PFC) at Palm Beach International Airport, West Palm Beach, Florida and use the revenue from a PFC at the Palm Beach International Airport, West Palm Beach, Florida and at the North County General Aviation Airport, Jupiter, Florida under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 15, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Palm Beach County Department of Airports was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 29, 1996.

The following is a brief overview of PFC Application No. 96–02–C–00–PBI.

Level of the proposed PFC: $3.00.

Proposed charge effective date: August 1, 1996.

Proposed charge expiration date: November 15, 2002.

Total estimated PFC revenue: $26,135,564.

Brief description of proposed project(s):

West Enplane Roadway Baggage Improvements
Land Acquisition (Project 95B)
Install ILS, VOR and DME at North County Airport
Land Acquisition (Project 96B)
ARFF Vehicle Replacement
Land Acquisition (Development)
Construct Outer Perimeter Road South Phase 2
Reconstruct Aprons B, D and E
Itnermodal Transportation Study

Class or classes of air carriers which the public agency has requested to be required to collect PFCs: Air Taxi and Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Palm Beach County Department of Airports.

Issued in Orlando, Florida on May 15, 1996.

Charles E. Blair,

Manager, Orlando Airports District Office Southern Region.

[FR Doc. 96–13027 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at San Angelo Mathis Field, San Angelo, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at San Angelo Mathis Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comment must be received on or before June 24, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Arboth A. Rylant, Airport Manager of San Angelo Mathis Field at the following address: Mr. Arboth A. Rylant, Airport Manager, San Angelo Mathis Field, 8618 Terminal Circle, San Angelo, Texas 76904.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at San Angelo Mathis Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of Federal Aviation Regulations (14 CFR part 158).

On May 8, 1996, the FAA determined that the application to use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 23, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Charge effective date: May 1, 1993.

Proposed charge expiration date: March 1, 1998.

Total estimated PFC revenue: $770,752.00.

PFC application number: 96–02–U–00–SJT.

Brief description of proposed project(s):

Projects to Use PFC's

Perimeter Road,

Extend Runway 36 and Taxiway P (Phase I),

Replace/Relocate ALS Runway 3, and

Security Upgrade.

Proposed class or classes of air carriers to be exempted from collecting PFC's: Air Charter operators who operated aircraft with a seating capacity of less than 10 passengers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Staff, ASW–610D, 2601 Meacham Boulevard, Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at San Angelo Mathis Field.

Issued in Fort Worth, Texas on May 8, 1996.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 96–13031 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–14–M

Maritime Administration

[Docket No. M–018; OMB NO: 2133–0504]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before July 22, 1996.

FOR FURTHER INFORMATION CONTACT: Crawford Ellerbe, Office of Maritime, Labor, Training, and Safety, Maritime Administration, MAR–250, Room 7302, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone 202–366–5755 or fax 202–493–2288. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Regulations for Making Excess or Surplus Federal Property Available to the U.S. Merchant Marine Academy, The State Maritime Academies, and Approved Nonprofit Maritime Training Institutions.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0504.

Form Number: None.

Expiration Date of Approval: June 30, 1996.

Summary of Collection of Information: 46 U.S.C. 1295g states that excess or surplus property can only be made available to approved maritime training institutions for specific purposes. The information collected is a statement of need/justification for the desired property.

Need and Use of the Information: Information collection provides a justification and the intended use of the property by the requester and permits determination of compliance with the statutory requirements.

Description of Respondents: Maritime training institutions interested in acquiring the excess or surplus property from MARAD.

Annual Responses: 120.

Annual Burden: 120 hours.

Comments: Send all comments regarding this information collection to Joel C. Richard, Department of Transportation, Maritime Administration, MAR–120, Room 7210, 400 Seventh Street, S.W., Washington,

D.C. 20590. Send comments regarding whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretory.

[FR Doc. 96–12879 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–81–P

[Docket S–937]

American President Lines, Ltd.; Notice of Application for Amendment of Existing Waiver of Section 804(a) of the Merchant Marine Act, 1936, as Amended

American President Lines, Ltd. (APL), by application dated May 9, 1996, requests a change in an existing waiver of the provisions of section 804(a) of the Merchant Marine Act, 1936, as amended, for foreign-flag operations of APL, under Operating-Differential Subsidy Agreement, Contract MA/MSB–417.

APL has authority, under a previous section 804 waiver, dated August 10, 1994, to charter slots on Transportacion Maritima Mexicana S.A. de C.V. (TMM) vessels that serve between Mexico, California and the Far East. While the preponderant use by APL of those slots has been for Mexico-Far East cargoes, APL has been using its allocation of slots on TMM vessels to carry a small volume of U.S. commerce cargo between California and the Far East, pursuant to the 804 waiver.

In its May 9, 1996, application, APL states that TMM is in the process of restructuring its Far East service to add larger and faster ships, a result that significantly increases the capacity of the service. The new service, which TMM has already commenced, will be operated with six vessels with an effective capacity of up to 2,800 TEUs on an itinerary Mazanillo-San Pedro-Ykohama-Kobe-Hong Kong-Koahsiung-Kobe-Yokohama-San Pedro-Manzanillo.

APL states that due to the increased TMM vessel capacity, it is applying for an amendment to its August 10, 1994, waiver to increase from 50 FEU to 195 FEU, both inbound and outbound, the number of weekly slots on the TMM vessels that APL may use for the carriage of U.S. commerce cargo.

APL indicates that its primary focus in a slot charter arrangement with TMM has been and continues to be the Mexico-Asia market. APL points out that direct service to Mexico ports is a far more efficient and less costly way for APL to serve the Mexico-Asia market than intermodally by a combination of all-water service between California and Asia and relay overland service between California and Mexico. However, APL states that the Mexico/Asia market is not large enough for APL to dedicate its own vessels to that trade. Accordingly, APL asserts that the charter of slots on TMM vessels is a necessary vehicle for APL to provide direct all-water service to the Mexico market.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7210, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on May 30, 1996. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

By Order of the Maritime Administrator.

Dated: May 16, 1996.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 96–12878 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–81–P

War Risk Insurance

The Office of Inspector General of the Department of Transportation conducted an audit of the Maritime Administration's (MARAD) Financial Statement as of September 30, 1994 (Report No: AD–MA–5–006). Section II: AUDIT REPORT stated that MARAD needed to clarify the participating shipowners' responsibility for losses under the Title XII war risk interim binder program. MARAD had not specifically stated in program documents that losses incurred during the 30 day binder period would be fully recovered through the premiums assessed to participating shipowners.

The purpose of this Notice is to clarify the arrangements for the funding of losses under the binder program, if and when it is ever activated. It remains the intent of this program that all losses will be paid through the assessment of premiums to the shipowners enrolled in the program. Rates will be fixed promptly upon the activation of the program. Should there be any claims and any shortfall in the Title XII War Risk Insurance Fund, additional premiums would be assessed to enrolled shipowners on a mutual basis. Such assessments will be based on this formula: Each participating shipowner's values for its vessels (numerator) *over* total stated values for all vessels (denominator) *times* the shortfall. This assessment procedure will be incorporated on revised Form MA–942, which may be obtained from MARAD or from the American War Risk Agency, which is incorporated by reference in 46 CFR 308.3(a), as revised (61 FR 1130; Jan. 16, 1996). For further information contact: Edmond J. Fitzgerald, Director, Office of Subsidy and Insurance, Maritime Administration, Washington, DC 20590 or telephone (202) 366–2400.

By order of the Maritime Administrator.

Dated: May 16, 1996.

Joel C. Richard,

Secretary.

[FR Doc. 96–13037 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Cir. 570, 1995—Rev., Supp. No. 15]

Surety Companies Acceptable on Federal Bonds; Change of Name; Prudential Reinsurance Co.

Prudential Reinsurance Company, a Delaware corporation, has formally changed its name to Everest Reinsurance Company, effective April 2, 1996. The Company was last listed as an acceptable surety on Federal bonds at 60 FR 34446, June 30, 1995.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under sections 9304 to 9308 to Title 31 of the United States Code, to Everest Reinsurance Company, Dover, Delaware. This new certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $44,245,000 established for the Company as of July 1, 1995, remains unchanged until June 30, 1996.

Cerificates of Authority expire on June 30, each year, unless revoked prior to that dated. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1995 Revision, at page 34446 to reflect this change.

The Circular may be viewed or downloaded by calling the U.S. Department of the Treasury, Financial Management Service, computerized public bulletin board system (FMS Inside Line) at (202) 874–6817/7034/6953/6872. A hard copy may be purchased from the Government Printing Office (GPO), Washington, DC, telephone (202) 512–0132. When ordering the Circular from GPO, use the following stock number: 048–000–00489–0.

Questions concerning this notice may be directed to the U.S. Department of the Treasury. Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, telephone (202) 874–6765.

Dated: May 15, 1996.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 96–12990 Filed 5–22–96; 8:45 am]

BILLING CODE 4810–35–M

Internal Revenue Service

Proposed Collection; Comment Request for Form 1040

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, P.L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning revisions to Form 1040, U.S. Individual Income Tax Return, and Schedules C, EIC, and F.

DATES: Written comments should be received on or before July 22, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Individual Income Tax Return.

OMB Number: 1545–0074.

Form Number: 1040.

Abstract: Form 1040 and its schedules are used by individuals to report their income subject to tax and compute their correct tax liability. The information is used to verify that the items reported on the forms and schedules are correct, and is also for general statistical use.

Current Actions:

Changes to Form 1040

1. Lines 60b, c, and d, requesting direct deposit information, were added to page 2. This will increase the number of taxpayers electing direct deposit, and relieve taxpayers from the burden of having to attach Form 8888, Direct Deposit of Refund. Form 8888 will become obsolete.

2. Line 33b, which had indicated that the taxpayer could be claimed as a dependent on someone else's return, was deleted to make room for the direct deposit information.

3. Line 38 was revised and lines 39 and 40 were deleted. In addition to making room for the direct deposit lines, this change reduces taxpayer burden by removing checkboxes and entry spaces.

4. Line 62b was added to facilitate processing of returns when payment is made using Form 1040–V.

5. Line 49, recapture taxes, was deleted due to low usage. Those taxes are now reported on line 51, total tax.

6. Most of the page references to the instructions were deleted because information will not be on the same pages in the instructions sent to some taxpayers. Instead, page references are indicated on pages 2 and 3 of the instructions.

7. The checkbox on line 52, indicating Form 1099 Federal Income Tax Withheld was included on that line, was deleted to reduce taxpayer burden.

8. The exemption area on Form 1040, page 1, was revised to reduce taxpayer burden. Columns 3 and 4 on line 6c, which were for the dependent's relationship, and the number of months lived in the taxpayer's home, were deleted. Line 6c, column 2, was revised to reflect section 742(c)(2)(B) of PL 103–465 which, for 1996, exempts taxpayers who have a dependent born after November 30, 1996, from the requirement to report the dependent's social security number. The entry spaces to the right of line 6c were revised and line 6d, which dealt with pre-1985 custody agreements, was deleted.

Changes to Schedule C

Questions G and H that were on page 1 of the 1995 schedule were moved to Part III, Cost of Goods Sold (new lines 33 and 34) and the remaining questions were relettered. This will reduce taxpayer burden because only those taxpayers with inventory will have to consider these questions.

Changes to Schedule EIC

The line 4 text on page 2 was revised to reflect section 742(c)(2)(B) of Pub. L. 103–465 which, for 1996, exempts taxpayers claiming the EIC from reporting a social security number for an individual born after November 30, 1996. Changes to Schedule F

Line 14 was revised by deleting "Attach Form 8645" and adding "(see page F–4)." Form 8645 will be obsolete for 1996. The instructions for line 14 were expanded to explain that an approved conservation plan is required to take this deduction.

The instructions will be revised to reflect the changes made to Form 1040 and its schedules.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 66,244,569.

Estimated Time Per Respondent: Varies.

Estimated Total Annual Burden Hours: 1,128,204,754.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Approved: May 15, 1996.
Garrick R. Shear,
IRS Reports Clearance Officer.
[FR Doc. 96–13032 Filed 5–22–96; 8:45 am]
BILLING CODE 4830–01–U

federal register

Thursday
May 23, 1996

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171, et al.
Restructuring of Cylinder Specifications Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173, and 178

[Docket HM–220B; Admt. Nos. 171–142, 173–250, and 178–114]

RIN 2137–AC81

Restructuring of Cylinder Specifications Requirements

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is amending the Hazardous Materials Regulations (HMR) by restructuring the cylinder specification requirements in its regulations on Specifications for packagings. The intended effect of this rulemaking is to reduce the size of the HMR through consolidation of repetitive requirements and other formatting changes. This action eliminates approximately 45 pages of regulations from the Code of Federal Regulations without substantially changing the regulatory requirements or affecting safety. It is in response to President Clinton's March 4, 1995 Regulatory Reinvention Initiative memorandum to heads of departments and agencies calling for a review of all agency regulations. RSPA is also making corresponding reference changes throughout the HMR.

DATES: *Effective date:* October 1, 1996.

Incorporation by reference date: The incorporation by reference of certain publications listed in these amendments has been approved by the Director of the Federal Register as of October 1, 1996.

FOR FURTHER INFORMATION CONTACT: John A. Gale, (202) 366–8553; Office of Hazardous Materials Standards, RSPA, Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On March 4, 1995, President Clinton issued a Regulatory Reinvention Initiative memorandum to heads of departments and agencies calling for a review of all agency regulations and elimination or revision of those regulations that are outdated or in need of reform. RSPA has performed an extensive review of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) and associated procedural rules (49 CFR Parts 106 and 107) in response to the President's directive.

The President also directed that front line regulators "* * * get out of Washington and create grassroots partnerships" with people affected by agency regulations. On April 4, 1995, RSPA published in the **Federal Register** (60 FR 17049) a Notice of Public Meetings and request for comment on its hazardous materials safety program. Comments were requested on ways to improve the HMR and the kind and quality of services its customers want. RSPA held seven public meetings and received over 50 comments in response to the notice. On July 28, 1995, RSPA published a second Notice of Public Meetings in the **Federal Register** (60 FR 38888) which announced five more public meetings that were held from September 1995 through January 1996.

One area identified by RSPA in its review of the HMR was the need to reform the cylinder specifications in 49 CFR Part 178. On March 4, 1996 (61 FR 8328), RSPA proposed to amend the HMR by restructuring the cylinder specifications in Part 178. RSPA estimates that by consolidating duplicative requirements in 23 cylinder specifications, that it will eliminate at least 45 pages from the CFR. By reformatting the specifications, RSPA proposes to eliminate over 450 sections from Part 178 of Title 49. The combined effect of these changes will be to make the regulations shorter and easier to use and help RSPA move toward its goal of issuing the HMR in one volume of the Code of Federal Regulations, rather than two.

This rulemaking also serves as the model for a comprehensive rulemaking, being developed by RSPA in cooperation with the Compressed Gas Association, for which a notice of proposed rulemaking is anticipated later this year. In this latter rulemaking, under Docket HM–220, RSPA intends to propose substantive changes to the cylinder specifications to accommodate contemporary manufacturing techniques, eliminate obsolete requirements, contemporize regulatory language and make safety enhancements to the regulations.

II. Summary of Amendments

RSPA received approximately 10 comments to the NPRM. All of the comments were in support of the proposal. One commenter stated that the changes proposed under Docket HM–220B are a valuable contribution to simplification of the cylinder specifications. Another commenter stated that it strongly supports the amendments proposed in Docket HM–220B to simplify and update existing regulations and to reduce the size of the HMR by consolidation of the text. Several commenters also raised concerns that were beyond the scope of the proposed rule; however, they may be considered in future rulemakings.

In this final rule, RSPA is revising the HMR by restructuring the cylinder specification requirements in 49 CFR Part 178. This restructuring of the cylinder specifications: (1) consolidates similar sections; (2) reformats subpart C of Part 178 for consistency with the format of the rest of Part 178; and (3) revises section references throughout the HMR to correspond to the revised sections. RSPA intends to streamline the cylinder specification requirements without making substantive changes to them.

Sections that have been consolidated are the sections of each specification addressing compliance, authorized inspectors, duties of the inspector, the inspector's report, record retention, defects, safety relief devices, and marking. These sections have been consolidated into a new § 178.35. Section 178.35, entitled "General requirements for specification cylinders" prescribes the general requirements for all DOT specification cylinders. However, because some of the duties of the inspector and marking requirements are specific to individual cylinder designs, some specifications have additional marking and inspector requirements remaining in their sections.

For the inspector's report, RSPA has adopted the inspector report formats in Compressed Gas Association (CGA) Pamphlet C–11, "Recommended Practices for Inspection of Compressed Gas Cylinders at Time of Manufacture." The report formats can be modified to represent the inspection of specific cylinders. Additional information may be required as stated in each specification. In order to help facilitate transition into the new reports, RSPA is allowing inspectors an additional year, until October 1, 1997, to use the old report format required by the HMR.

Those sections remaining in each specification have been consolidated into a single section. Presently, each specification is set forth in approximately 22 different sections. Under this final rule, there is only one section for each specification. For example, Specification 3B was set forth in 24 sections, §§ 178.38 through 178.38–23. In this final rule, Specification 3B is set forth in one section, § 178.38, and some of its requirements are relocated in § 178.35. Sixteen of the old sections are converted to paragraphs (a) through (o) of § 178.38. As an aid to the reader, the regulatory

text in this final rule includes all of the requirements for cylinders in the current Subpart C of part 178, even though not all of the requirements are changed.

In response to comments, RSPA has made several changes to the original proposal. RSPA has corrected the minimum service pressure for the DOT Specification 4E cylinder to 225 psig. In the NPRM, RSPA incorrectly proposed the minimum service pressure for the 4E cylinder at 250 psig.

In the NPRM, RSPA proposed to revise the marking requirements for the DOT Specification 39 to indicate that the highest monetary penalty under the Federal hazardous materials transportation law was $500,000 and not $25,000. One commenter, citing the costs of updating silk-screens, requested that RSPA not adopt this change. RSPA has not adopted this commenter's suggestion because the marking should accurately reflect the requirements of the Federal hazardous materials transportation law. However, RSPA is adding a "grandfather" provision for those containers marked prior to October 1, 1996.

In § 178.35(b)(2), RSPA is adding a reference to the DOT Specification 3E. RSPA had inadvertently left reference of that specification out of that section.

The purpose of this rulemaking action is to reduce the size of the HMR and make it easier to use. It is not intended to make substantive changes to regulatory requirements and no adverse impacts are anticipated on the regulated community.

III. Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). The economic impact of this rule is minimal to the extent that the preparation of a regulatory evaluation is not warranted.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Federal hazardous materials transportation law (49 U.S.C. 5101–5127) contains an express preemption provision that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) the designation, description, and classification of hazardous material;

(ii) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) the preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of such documents;

(iv) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(v) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

The Federal hazardous materials transportation law provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. 49 U.S.C. 5125(b)(2). That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined the effective date of Federal preemption for these requirements is October 1, 1996. This final rule deals with the packaging of compressed gases. Because RSPA lacks discretion in this area, preparation of a federalism assessment is not warranted.

Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule does not impose any new requirements on persons subject to the HMR.

Paperwork Reduction Act

This final rule does not propose any new information collection requirements.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor carrier safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 171, 173, and 178 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.7(a)(3), in the table, under the entry "Aluminum Standards and Data, Seventh Edition, June 1982", the section reference "178.65–5" is revised to read "178.46 and 178.65", under the entry *National Institute of Standards and Technology* the entry for "USDC, NBS Handbook H–28" is amended by adding a section reference to read "; 178.46", under the entry *American Society for Testing and Materials* the entries for ASTM A 240–82, and ASTM B 557–84 are revised and two new entries are added in appropriate alpha-numerical order, and under the entry *Compressed Gas Association, Inc.*, the entries for CGA Pamphlet C–3 and CGA Pamphlet C–12 are revised and a new entry is added in alpha-numerical order to read as follows:

§ 171.7 Reference material.

(a) * * *

(3) * * *

Source and name of material	49 CFR reference
American Society for Testing and Materials	
ASTM A 240–82 Standard Specification for Heat-Resisting Chromium and Chromium-Nickel Stainless Steel Plate, Sheet and Strip for Fusion-Welded Unfired Pressure Vessels, Revision A.	178.57; 178.358; 179.100; 179.200; 179.201; 179.220; 179.400.
ASTM B 557–84 Tension Testing Wrought and Cast Aluminum and Magnesium-Alloy Products	178.46; 178.251.
ASTM E 112–88 Standard Test Methods for Determining Average Grain Size	178.44.
ASTM E 290–92 Standard Test Method for Semi-Guided Bend Test for Ductility of Metallic Materials.	178.46.
Compressed Gas Association, Inc.,	
CGA Pamphlet C–3, Standards for Welding and Brazing on Thinned Walled Containers, 1975	178.47; 178.50; 178.51; 178.53; 178.54; 178.56; 178.57; 178.58; 178.59; 178.60; 178.61; 178.65; 178.68.
CGA Pamphlet C–11, Recommended Practices for Inspection of Compressed Gas Cylinders at Time of Manufacture, 1993.	178.35.
CGA Pamphlet C–12, Qualification Procedure for Acetylene Cylinder Design, 1994	173.34; 173.303; 178.59; 178.60.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 173.34 [Amended]

4. In § 173.34, paragraph (h) is amended by:

a. Removing, in the first sentence, the phrase "§§ 178.36–9(a), 178.37–9(a), 178.38–9(a), and 178.40–9(a)" and replacing it with the phrase "§ 178.36(e), 178.37(e), 178.38(e), and 178.40(e)".

b. Removing, in the fourth sentence, the phrase "§ 178.36–9(a), § 178.37–9(a), § 178.38–9(a), or § 178.40–9(a)" and replacing it with the phrase "§ 178.36(e), 178.37(e), 178.38(e), or 178.40(e)".

§ 173.316 [Amended]

5. In § 173.316, in paragraph (a)(8), the section reference "178.57–20(a)(4)" is revised to read "178.35" and in paragraph (c)(3)(ii) the section reference "178.57–20" is revised to read "178.35".

PART 178—SPECIFICATIONS FOR PACKAGINGS

6. The authority citation for Part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

7. Subpart C of Part 178 is revised to read as follows:

Subpart C—Specifications for Cylinders

Sec.
178.35 General requirements for specification cylinders.
178.36 Specification 3A and 3AX seamless steel cylinders.
178.37 Specification 3AA and 3AAX seamless steel cylinders.
178.38 Specification 3B seamless steel cylinders.
178.39 Specification 3BN seamless nickel cylinders.
178.42 Specification 3E seamless steel cylinders.
178.44 Specification 3HT seamless steel cylinders for aircraft use.
178.45 Specification 3T seamless steel cylinders.
178.46 Specification 3AL seamless aluminum cylinders.
178.47 Specification 4DS welded stainless steel cylinders for aircraft use.
178.50 Specification 4B welded or brazed steel cylinders.
178.51 Specification 4BA welded or brazed steel cylinders.
178.53 Specification 4D welded steel cylinders for aircraft use.
178.55 Specification 4B240ET welded or brazed cylinders.
178.56 Specification 4AA480 welded steel cylinders.
178.57 Specification 4L welded insulated cylinders.
178.58 Specification 4DA welded steel cylinders for aircraft use.
178.59 Specification 8 steel cylinders with porous fillings for acetylene.
178.60 Specification 8AL steel cylinders with porous fillings for acetylene.
178.61 Specification 4BW welded steel cylinders with electric-arc welded longitudinal seam.
178.65 Specification 39 non-reusable (non-refillable) cylinders.
178.68 Specification 4E welded aluminum cylinders.

Subpart C—Specifications for Cylinders

§ 178.35 General requirements for specification cylinders.

(a) *Compliance.* Compliance with the requirements of this subpart is required in all details.

(b) *Inspections and analyses.* Chemical analyses and tests as specified must be made within the United States unless otherwise approved in writing by the Associate Administrator, in accordance with § 173.300b of this subchapter. Inspections and verifications must be performed by—

(1) An independent inspection agency approved in writing by the Associate Administrator, in accordance with § 173.300a of this subchapter; or

(2) For DOT Specifications 3B, 3BN, 3E, 4B, 4BA, 4D (water capacity less than 1,100 cubic inches), 4B240ET, 4AA480, 4L, 8, 8AL, 4BW, 39 (marked service pressure 900 p.s.i.g. or lower) and 4E manufactured in the United States, a competent inspector of the manufacturer.

(c) *Duties of inspector.* The inspector shall determine that each cylinder made is in conformance with the applicable specification. Except as otherwise specified in the applicable specification, the inspector shall perform the following:

(1) Inspect all material and reject any not meeting applicable requirements. For cylinders made by the billet-piercing process, billets must be inspected and shown to be free from pipe, cracks, excessive segregation and other injurious defects after parting or, when applicable, after nick and cold break.

(2) Verify the material of construction meets the requirements of the applicable specification by—

(i) Making a chemical analysis of each heat of material;

(ii) Obtaining a certified chemical analysis from the material manufacturer for each heat of material (a ladle analysis is acceptable); or

(iii) If an analysis is not provided for each heat of material by the material manufacturer, by making a check analysis of a sample from each coil, sheet, or tube.

(3) Verify compliance of cylinders with the applicable specification by—

(i) Verifying identification of material is proper;

(ii) Inspecting the inside of the cylinder before closing in ends;

(iii) Verifying that the heat treatment is proper;

(iv) Obtaining samples for all tests and check chemical analyses;

(v) Witnessing all tests;

(vi) Verify threads by gauge;

(vii) Reporting volumetric capacity and tare weight (see report form) and minimum thickness of wall noted; and

(viii) Verifying that each cylinder is marked in accordance with the applicable specification.

(4) Furnish complete test reports required by this subpart to the maker of the cylinder and, upon request, to the purchaser. The test report must be retained by the inspector for fifteen years from the original test date of the cylinder.

(d) *Defects.* A cylinder may not be constructed of material with seams, cracks, laminations, or other injurious defects.

(e) *Safety devices.* Safety devices and protection for valves, safety devices, and other connections, if applied, must be as required or authorized by the appropriate specification, and as required in §§ 173.34 and 173.301 of this subchapter.

(f) *Markings.* Markings on a DOT Specification cylinder must conform to applicable requirements.

(1) Each cylinder must be marked with the following information:

(i) The DOT specification marking must appear first, followed immediately by the service pressure. For example, DOT–3A1800.

(ii) The serial number must be placed just below or immediately following the DOT specification marking.

(iii) A symbol (letters) must be placed just below, immediately before or following the serial number. Other variations in sequence of markings are authorized only when necessitated by a lack of space. The symbol and numbers must be those of the manufacturer. The symbol must be registered with the Associate Administrator; duplications are not authorized.

(iv) The inspector's official mark and date of test (such as 5–95 for May 1995) must be placed near the serial number. This information must be placed so that dates of subsequent tests can be easily added. An example of the markings prescribed in this paragraph (f)(1) is as follows:

DOT–3A1800
1234
XY
AB 5–95
Or;
DOT–3A1800–1234–XY
AB 5–95
Where:
DOT–3A=specification number
1800=service pressure
1234=serial number
xy=symbol of manufacturer
AB=inspector's mark
5–95=date of test

(2) Additional required marking must be applied to the cylinder as follows:

(i) The word "spun" or "plug" must be placed near the DOT specification marking when an end closure in the finished cylinder has been welded by the spinning process, or effected by plugging.

(ii) As prescribed in specification 3HT (§ 178.44) or 3T (§ 178.45), if applicable.

(3) Marking exceptions.

(i) A DOT 3E cylinder is not required to be marked with the inspector mark.

(ii) An identifying lot number may be marked on the cylinder in place of a serial number for cylinders not over 2 inches outside diameter or for cylinders with a volumetric capacity not exceeding 60 cubic inches. Each lot shall not have over 500 cylinders.

(4) Unless otherwise specified in the applicable specification, the markings on each cylinder must be stamped plainly and permanently on the shoulder, top head, or neck.

(5) The size of each marking must be at least 0.25 inch or as space permits.

(6) Other markings are authorized provided they are made in low stress areas other than the side wall and are not of a size and depth that will create harmful stress concentrations. Such marks may not conflict with any DOT required markings.

(g) *Inspector's report.* Each inspector shall prepare a report containing, at a minimum, the applicable information listed in CGA Pamphlet C–11 or, until October 1, 1997, in accordance with the applicable test report requirements of this subchapter in effect on September 30, 1996. Any additional information or markings that are required by the applicable specification must be shown on the test report. The signature of the inspector on the reports certifies that the processes of manufacture and heat treatment of cylinders were observed and found satisfactory.

(h) *Report retention.* The manufacturer of the cylinders shall retain the reports required by this subpart for 15 years from the original test date of the cylinder.

§ 178.36 Specification 3A and 3AX seamless steel cylinders.

(a) *Type size and service pressure.* In addition to the requirements of § 178.35, cylinders must conform to the following:

(1) A DOT–3A cylinder is a seamless steel cylinder with a water capacity (nominal) not over 1,000 pounds and a service pressure of at least 150 pounds per square inch.

(2) A DOT–3AX is a seamless stainless steel cylinder with a water capacity not less than 1,000 pounds and a service pressure of at least 500 pounds per square inch, conforming to the following requirements:

(i) Assuming the cylinder is to be supported horizontally at its two ends only and to be uniformly loaded over its entire length consisting of the weight per unit of length of the straight cylindrical portion filled with water and compressed to the specified test pressure; the sum of two times the maximum tensile stress in the bottom fibers due to bending, plus that in the same fibers (longitudinal stress), due to hydrostatic test may not exceed 80

percent of the minimum yield strength of the steel at such maximum stress. Wall thickness must be increased when necessary to meet the requirement.

(ii) To calculate the maximum longitudinal tensile stress due to bending, the following formula must be used:

$S=Mc/I$

(iii) To calculate the maximum longitudinal tensile stress due to hydrostatic test pressure, the following formula must be used:

$S=A_1P/A_2$

where:

S=tensile stress—p.s.i.;
M=bending moment-inch pounds—$(wl^2)/8$;
w=weight per inch of cylinder filled with water;
l=length of cylinder-inches;
c=radius (D)/(2) of cylinder-inches;
I=moment of inertia—0.04909 (D^4-d^4) inches fourth;
D=outside diameter-inches;
d=inside diameter-inches;
A_1=internal area in cross section of cylinder-square inches;
A_2=area of metal in cross section of cylinder-square inches;
P=hydrostatic test pressure-p.s.i.

(b) *Steel.* Open-hearth or electric steel of uniform quality must be used. Content percent may not exceed the following: Carbon, 0.55; phosphorous, 0.045; sulphur, 0.050.

(c) *Identification of material.* Material must be identified by any suitable method, except that plates and billets for hot-drawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No fissure or other defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. If not originally free from such defects, the surface may be machined or otherwise treated to eliminate these defects. The thickness of the bottoms of cylinders welded or formed by spinning is, under no condition, to be less than two times the minimum wall thickness of the cylindrical shell; such bottom thicknesses must be measured within an area bounded by a line representing the points of contact between the cylinder and floor when the cylinder is in a vertical position.

(e) *Welding or brazing.* Welding or brazing for any purpose whatsoever is prohibited except as follows:

(1) Welding or brazing is authorized for the attachment of neckrings and footrings which are non-pressure parts and only to the tops and bottoms of cylinders having a service pressure of 500 pounds per square inch or less. Cylinders, neckrings, and footrings must be made of weldable steel, the carbon content of which may not exceed 0.25 percent except in the case of 4130X steel which may be used with proper welding procedures.

(2) As permitted in paragraph (d) of this section.

(3) Cylinders used solely in anhydrous ammonia service may have a ½ inch diameter bar welded within their concave bottoms.

(f) *Wall thickness.* For cylinders with service pressure less than 900 pounds, the wall stress may not exceed 24,000 pounds per square inch. A minimum wall thickness of 0.100 inch is required for any cylinder over 5 inches outside diameter. Wall stress calculation must be made by using the following formula:

$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$

Where:

S=wall stress in pounds per square inch;
P=minimum test pressure prescribed for water jacket test or 450 pounds per square inch whichever is the greater;
D=outside diameter in inches;
d=inside diameter in inches.

(g) *Heat treatment.* The completed cylinder must be uniformly and properly heat-treated prior to tests.

(h) *Openings in cylinders and connections (valves, fuse plugs, etc.) for those openings.* Threads are required on openings.

(1) Threads must be clean cut, even, without checks, and to gauge.

(2) Taper threads, when used, must be of length not less than as specified for American Standard taper pipe threads.

(3) Straight threads having at least 6 engaged threads are authorized. Straight threads must have a tight fit and calculated shear strength of at least 10 times the test pressure of the cylinder. Gaskets, adequate to prevent leakage, are required.

(i) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test, as follows:

(1) The test must be by water-jacket, or other suitable methods, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy of either 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus the test pressure cannot be maintained the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower.

(3) Permanent, volumetric expansion may not exceed 10 percent of the total volumetric expansion at test pressure.

(4) Each cylinder must be tested to at least ⅔ times service pressure.

(j) *Flattening test.* A flattening test must be performed on one cylinder taken at random out or each lot of 200 or less, by placing the cylinder between wedge shaped knife edges having a 60° included angle, rounded to ½-inch radius. The longitudinal axis of the cylinder must be at a 90-degree angle to knife edges during the test. For lots of 30 or less, flattening tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(k) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material as follows:

(1) The test is required on 2 specimens cut from 1 cylinder taken at random out of each lot of 200 or less. For lots of 30 or less, physical tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(2) Specimens must conform to the following:

(i) Gauge length of 8 inches with a width of not over 1½ inches, a gauge length of 2 inches with a width of not over 1½ inches, or a gauge length of at least 24 times thickness with width not over 6 times thickness is authorized when cylinder wall is not over 3/16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within 1 inch of each end of the reduced section.

(iii) When size of cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard E8.

(ii) In using the "extension under load" method, the total strain (or "extension under load") corresponding to the stress at which the 0.2-percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch and the strain indicator reading must be set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(l) *Acceptable results for physical and flattening tests.* Either of the following is an acceptable result:

(1) An elongation at least 40 percent for a 2-inch gauge length or at least 20 percent in other cases and yield strength not over 73 percent of tensile strength. In this instance, the flattening test is not required.

(2) An elongation at least 20 percent for a 2-inch gauge length or 10 percent in other cases and a yield strength not over 73 percent of tensile strength. In this instance, the flattening test is required, without cracking, to 6 times the wall thickness.

(m) *Leakage test.* All spun cylinders and plugged cylinders must be tested for leakage by gas or air pressure after the bottom has been cleaned and is free from all moisture subject to the following conditions and limitations:

(1) Pressure, approximately the same as but no less than service pressure, must be applied to one side of the finished bottom over an area of at least 1/16 of the total area of the bottom but not less than ¾ inch in diameter, including the closure, for at least 1 minute, during which time the other side of the bottom exposed to pressure must be covered with water and closely examined for indications of leakage. Except as provided in paragraph (n) of this section, a cylinder that is leaking must be rejected.

(2) A spun cylinder is one in which an end closure in the finished cylinder has been welded by the spinning process.

(3) A plugged cylinder is one in which a permanent closure in the bottom of a finished cylinder has been effected by a plug.

(4) As a safety precaution, if the manufacturer elects to make this test before the hydrostatic test, the manufacturer should design the test apparatus so that the pressure is applied to the smallest area practicable, around the point of closure, and so as to use the smallest possible volume of air or gas.

(n) *Rejected cylinders.* Reheat treatment is authorized for rejected cylinders. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair by welding or spinning is not authorized. Spun cylinders rejected under the provisions of paragraph (m) of this section may be removed from the spun cylinder category by drilling to remove defective material, tapping and plugging.

§ 178.37 Specification 3AA and 3AAX seamless steel cylinders.

(a) *Type, size and service pressure.* In addition to the requirements of § 178.35, cylinders must conform to the following:

(1) A DOT–3AA cylinder is a seamless steel cylinder with a water capacity (nominal) of not over 1,000 pounds and a service pressure of at least 150 pounds per square inch.

(2) A DOT–3AAX cylinder is a seamless steel cylinder with a water capacity of not less than 1,000 pounds and a service pressure of at least 500 pounds per square inch, conforming to the following requirements:

(i) Assuming the cylinder is to be supported horizontally at its two ends only and to be uniformly loaded over its entire length consisting of the weight per unit of length of the straight cylindrical portion filled with water and compressed to the specified test pressure; the sum of two times the maximum tensile stress in the bottom fibers due to bending, plus that in the same fibers (longitudinal stress), due to hydrostatic test pressure may not exceed 80 percent of the minimum yield strength of the steel at such maximum stress. Wall thickness must be increased when necessary to meet the requirement.

(ii) To calculate the maximum tensile stress due to bending, the following formula must be used:

$S=Mc/I$

(iii) To calculate the maximum longitudinal tensile stress due to hydrostatic test pressure, the following formula must be used:

$S=A^1P/A^2$

Where:

S=tensile stress-p.s.i.;
M=bending moment-inch pounds $(wl^2)/8$;
w=weight per inch of cylinder filled with water;
l=length of cylinder-inches;
c=radius (D)/(2) of cylinder-inches;
I=moment of inertia-0.04909 (D^4-d^4) inches fourth;
D=outside diameter-inches;
d=inside diameter-inches;
A^1=internal area in cross section of cylinder-square inches;
A^2=area of metal in cross section of cylinder-square inches;
P=hydrostatic test pressure-p.s.i.

(b) *Authorized steel.* Open-hearth, basic oxygen, or electric steel of uniform quality must be used. A heat of steel made under the specifications in Table 1 of this paragraph (b), check chemical analysis of which is slightly out of the specified range, is acceptable, if satisfactory in all other respects, provided the tolerances shown in Table 2 of this paragraph (b) are not exceeded. When a carbon-boron steel is used, a hardenability test must be performed on the first and last ingot of each heat of steel. The results of this test must be recorded on the Record of Chemical Analysis of Material for Cylinders required by § 178.35. This hardness test must be made 5/16-inch from the quenched end of the Jominy quench bar and the hardness must be at least Rc 33 and no more than Rc 53. The following chemical analyses are authorized:

TABLE 1.—AUTHORIZED MATERIALS

Designation	4130X (percent) (see Note 1)	NE–8630 (percent) (see Note 1)	9115 (percent) (see Note 1)	9125 (percent) (see Note 1)	Carbon-boron (percent)	Inter- mediate manganese (percent)
Carbon	0.25/0.35	0.28/0.33	0.10/0.20	0.20/0.30	0.27–0.37	0.40 max.

TABLE 1.—AUTHORIZED MATERIALS—Continued

Designation	4130X (percent) (see Note 1)	NE–8630 (percent) (see Note 1)	9115 (percent) (see Note 1)	9125 (percent) (see Note 1)	Carbon-boron (percent)	Inter- mediate manganese (percent)
Manganese	0.40/0.90	0.70/0.90	0.50/0.75	0.50/0.75	0.80–1.40	1.35/1.65.
Phosphorus	0.04 max	0.04 max	0.04 max	0.04 max	0.035 max	0.04 max.
Sulfur	0.05 max	0.04 max	0.04 max	0.04 max	0.045 max	0.05 max.
Silicon	0.15/0.35	0.20/0.35	0.60/0.90	0.60/0.90	0.3 max.	0.10/0.30.
Chromium	0.80/1.10	0.40/0.60	0.50/0.65	0.50/0.65.		
Molybdenum	0.15/0.25	0.15/0.25				
Zirconium			0.05/0.15	0.05/0.15		
Nickel		0.40/0.70.				
Boron					0.0005/0.003.	

NOTE 1: This designation may not be restrictive and the commercial steel is limited in analysis as shown in this Table.

TABLE 2.—CHECK ANALYSIS TOLERANCES

Element	Limit or maximum specified (percent)	Tolerance (percent) over the maximum limit or under the minimum limit	
		Under minimum limit	Over maximum limit
Carbon	To 0.15 incl	0.02	0.03
	Over 0.15 to 0.40 incl	.03	.04
Manganese	To 0.60 incl	.03	.03
	Over 0.60 to 1.15 incl	0.04	0.04
	Over 1.15 to 2.50 incl	0.05	0.05
Phosphorus[1]	All ranges		.01
Sulphur	All ranges		.01
Silicon	To 0.30 incl	.02	.03
	Over 0.30 to 1.00 incl	.05	.05
Nickel	To 1.00 incl	.03	.03
Chromium	To 0.90 incl	.03	.03
	0.90 to 2.90 incl	.05	.05
Molybdenum	To 0.20 incl	.01	.01
	Over 0.20 to 0.40	.02	.02
Zirconium	All ranges	.01	.05

[1] Rephosphorized steels not subject to check analysis for phosphorus.

(c) *Identification of material.* Material must be identified by any suitable method except that plates and billets for hot-drawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No fissure or other defects is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. If not originally free from such defects, the surface may be machined or otherwise treated to eliminate these defects. The thickness of the bottoms of cylinders welded or formed by spinning is, under no condition, to be less than two times the minimum wall thickness of the cylindrical shell; such bottom thicknesses must be measured within an area bounded by a line representing the points of contact between the cylinder and floor when the cylinder is in a vertical position.

(e) *Welding or brazing.* Welding or brazing for any purpose whatsoever is prohibited except as follows:

(1) Welding or brazing is authorized for the attachment of neckrings and footrings which are non-pressure parts, and only to the tops and bottoms of cylinders having a service pressure of 500 pounds per square inch or less. Cylinders, neckrings, and footrings must be made of weldable steel, the carbon content of which may not exceed 0.25 percent except in the case of 4130X steel which may be used with proper welding procedure.

(2) As permitted in paragraph (d) of this section.

(f) *Wall thickness.* The thickness of each cylinder must conform to the following:

(1) For cylinders with a service pressure of less than 900 pounds, the wall stress may not exceed 24,000 pounds per square inch. A minimum wall thickness of 0.100 inch is required for any cylinder with an outside diameter of over 5 inches.

(2) For cylinders with service pressure of 900 p.s.i. or more the minimum wall must be such that the wall stress at the minimum specified test pressure may not exceed 67 percent of the minimum tensile strength of the steel as determined from the physical tests required in paragraphs (k) and (l) of this section and must be not over 70,000 p.s.i.

(3) Calculation must be made by the formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

Where:

S=wall stress in pounds per square inch;
P=minimum test pressure prescribed for water jacket test or 450 pounds per square inch whichever is the greater;
D=outside diameter in inches;
d=inside diameter in inches.

(g) *Heat treatment.* The completed cylinders must be uniformly and properly heat treated prior to tests. Heat treatment of cylinders of the authorized analyses must be as follows:

(1) All cylinders must be quenched by oil, or other suitable medium except as provided in paragraph (g)(5) of this section.

(2) The steel temperature on quenching must be that recommended for the steel analysis, but may not exceed 1750 °F.

(3) All steels must be tempered at a temperature most suitable for that steel.

(4) The minimum tempering temperature may not be less than 1000 °F except as noted in paragraph (1)(vi) of this section.

(5) Steel 4130X may be normalized at a temperature of 1650 °F instead of being quenched and cylinders so normalized need not be tempered.

(6) Intermediate manganese steels may be tempered at temperatures not less than 1150 °F., and after heat treating each cylinder must be submitted to a magnetic test to detect the presence of quenching cracks. Cracked cylinders must be rejected and destroyed.

(7) Except as otherwise provided in paragraph (g)(6) of this section, all cylinders, if water quenched or quenched with a liquid producing a cooling rate in excess of 80 percent of the cooling rate of water, must be inspected by the magnetic particle, dye penetrant or ultrasonic method to detect the presence of quenching cracks. Any cylinder designed to the requirements for specification 3AA and found to have a quenching crack must be rejected and may not be requalified. Cylinders designed to the requirements for specification 3AAX and found to have cracks must have cracks removed to sound metal by mechanical means. Such specification 3AAX cylinders will be acceptable if the repaired area is subsequently examined to assure no defect, and it is determined that design thickness requirements are met.

(h) *Openings in cylinders and connections (valves, fuse plugs, etc.) for those openings.* Threads are required on openings.

(1) Threads must be clean cut, even, without checks, and to gauge.

(2) Taper threads, when used, must be of a length not less than as specified for American Standard taper pipe threads.

(3) Straight threads having at least 6 engaged threads are authorized. Straight threads must have a tight fit and a calculated shear strength of at least 10 times the test pressure of the cylinder. Gaskets, adequate to prevent leakage, are required.

(i) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy of either 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) Each cylinder must be tested to at least 5/3 times the service pressure.

(j) *Flattening test.* A flattening test must be performed on one cylinder taken at random out of each lot of 200 or less, by placing the cylinder between wedge shaped knife edges having a 60° included angle, rounded to ½-inch radius. The longitudinal axis of the cylinder must be at a 90-degree angle to knife edges during the test. For lots of 30 or less, flattening tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(k) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material as follows:

(1) The test is required on 2 specimens cut from 1 cylinder taken at random out of each lot of 200 or less. For lots of 30 or less, physical tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to the same heat treatment as the finished cylinder.

(2) Specimens must conform to the following:

(i) Gauge length of 8 inches with a width of not over 1½ inches, a gauge length of 2 inches with a width of not over 1½ inches, or a gauge length of at least 24 times the thickness with width not over 6 times thickness when the thickness of the cylinder wall is not over 3/16 inch.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within 1 inch of each end of the reduced section.

(iii) When size of cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard E8.

(ii) In using the "extension under load" method, the total strain (or "extension under load") corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch, the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed 1/8 inch per minute during yield strength determination.

(l) *Acceptable results for physical and flattening tests.* An acceptable result for physical and flattening tests is elongation at least 20 percent for 2 inches of gauge length or at least 10 percent in other cases. Flattening is required without cracking to 6 times the wall thickness of the cylinder.

(m) *Leakage test.* All spun cylinders and plugged cylinders must be tested for leakage by gas or air pressure after the bottom has been cleaned and is free from all moisture. Pressure, approximately the same as but no less than the service pressure, must be applied to one side of the finished bottom over an area of at least 1/16 of the total area of the bottom but not less than ¾ inch in diameter, including the closure, for at least one minute, during which time the other side of the bottom exposed to pressure must be covered with water and closely examined for indications of leakage. Except as provided in paragraph (n) of this section, a cylinder must be rejected if there is any leaking.

(1) A spun cylinder is one in which an end closure in the finished cylinder has been welded by the spinning process.

(2) A plugged cylinder is one in which a permanent closure in the bottom of a finished cylinder has been effected by a plug.

(3) As a safety precaution, if the manufacturer elects to make this test before the hydrostatic test, the manufacturer should design the test apparatus so that the pressure is applied to the smallest area practicable, around the point of closure, and so as to use the smallest possible volume of air or gas.

(n) *Rejected cylinders.* Reheat treatment is authorized for rejected cylinders. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair by welding or spinning is not authorized. Spun cylinders rejected under the provision of paragraph (m) of this section may be removed from the spun cylinder category by drilling to remove defective material, tapping and plugging.

§ 178.38 Specification 3B seamless steel cylinders.

(a) *Type, size, and service pressure.* A DOT 3B cylinder is seamless steel cylinder with a water capacity (nominal) of not over 1,000 pounds and a service pressure of at least 150 to not over 500 pounds per square inch.

(b) *Steel.* Open-hearth or electric steel of uniform quality must be used. Content percent may not exceed the following: carbon, 0.55; phosphorus, 0.045; sulphur, 0.050.

(c) *Identificotion of material.* Material must be identified by any suitable method except that plates and billets for hot-drawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No fissure or other defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. If not originally free from such defects, the surface may be machined or otherwise treated to eliminate these defects. The thickness of the bottoms of cylinders welded or formed by spinning is, under no condition, to be less than two times the minimum wall thickness of the cylindrical shell; such bottom thicknesses to be measured within an area bounded by a line representing the points of contact between the cylinder and floor when the cylinder is in a vertical position.

(e) *Welding or brazing.* Welding or brazing for any purpose whatsoever is prohibited except as follows:

(1) Welding or brazing is authorized for the attachment of neckrings and footrings which are non-pressure parts, and only to the tops and bottoms of cylinders having a service pressure of 500 pounds per square inch or less. Cylinders, neckrings, and footrings must be made of weldable steel, carbon content of which may not exceed 0.25 percent except in the case of 4130X steel which may be used with proper welding procedure.

(2) As permitted in paragraph (d) of this section.

(f) *Wall thickness.* The wall stress may not exceed 24,000 pounds per square inch. The minimum wall thickness is 0.090 inch for any cylinder with an outside diameter of 6 inches. Calculation must be made by the following formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

Where:

S=wall stress in pounds per square inch;
P=at least two times service pressure or 450 pounds per square inch, whichever is the greater;
D=outside diameter in inches;
d=inside diameter in inches.

(g) *Heat treatment.* The completed cylinders must be uniformly and properly heat-treated prior to tests.

(h) *Openings in cylinders and connections (valves, fuse plugs, etc.) for those openings.* Threads, conforming to the following, are required on all openings:

(1) Threads must be clean cut, even, without checks, and to gauge.

(2) Taper threads when used, must be of a length not less than as specified for American Standard taper pipe threads.

(3) Straight threads having at least 4 engaged threads are authorized. Straight threads must have a tight fit, and calculated shear strength at least 10 times the test pressure of the cylinder. Gaskets, adequate to prevent leakage, are required.

(i) *Hydrostatic test.* Cylinders must successfully withstand a hydrostatic test, as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy either of 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to insure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) Cylinders must be tested as follows:

(i) Each cylinder; to at least 2 times service pressure; or

(ii) 1 cylinder out of each lot of 200 or less; to at least 3 times service pressure. Others must be examined under pressure of 2 times service pressure and show no defect.

(j) *Flattening test.* A flattening test must be performed on one cylinder taken at random out or each lot of 200 or less, by placing the cylinder between wedge shaped knife edges having a 60° included angle, rounded to ½-inch radius. The longitudinal axis of the cylinder must be at a 90-degree angle to knife edges during the test. For lots of 30 or less, flattening tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(k) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material, as follows:

(1) The test is required on 2 specimens cut from 1 cylinder taken at random out of each lot of 200 or less. For lots of 30 or less, physical tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(2) Specimens must conform to the following:

(i) Gauge length of 8 inches with a width of not over 1½ inches; or a gauge length of 2 inches with a width of not over 1½ inches; or a gauge length at least 24 times the thickness with a width not over 6 times thickness is authorized when a cylinder wall is not over 3/16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section.

(iii) When size of cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with record of

physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard E8.

(ii) In using the "extension under load" method, the total strain (or "extension under load") corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch, and the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(l) *Acceptable results for physical and flattening tests.* Either of the following is an acceptable result:

(1) An elongation of at least 40 percent for a 2-inch gauge length or at least 20 percent in other cases and yield strength not over 73 percent of tensile strength. In this instance, the flattening test is not required.

(2) An elongation of at least 20 percent for a 2-inch gauge length or 10 percent in other cases and yield strength not over 73 percent of tensile strength. Flattening is required, without cracking, to 6 times the wall thickness.

(m) *Leakage test.* All spun cylinders and plugged cylinders must be tested for leakage by gas or air pressure after the bottom has been cleaned and is free from all moisture, subject to the following conditions and limitations:

(1) Pressure, approximately the same as but no less than service pressure, must be applied to one side of the finished bottom over an area of at least 1/16 of the total area of the bottom but not less than ¾ inch in diameter, including the closure, for at least one minute, during which time the other side of the bottom exposed to pressure must be covered with water and closely examined for indications of leakage. Except as provided in paragraph (n) of this section, a cylinder must be rejected if there is any leaking.

(2) A spun cylinder is one in which an end closure in the finished cylinder has been welded by the spinning process.

(3) A plugged cylinder is one in which a permanent closure in the bottom of a finished cylinder has been effected by a plug.

(4) As a safety precaution, if the manufacturer elects to make this test before the hydrostatic test, he should design his apparatus so that the pressure is applied to the smallest area practicable, around the point of closure, and so as to use the smallest possible volume of air or gas.

(n) *Rejected cylinders.* Reheat treatment of rejected cylinders is authorized. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair by welding or spinning is not authorized. Spun cylinders rejected under the provisions of paragraph (m) of this section may be removed from the spun cylinder category by drilling to remove defective material, tapping and plugging.

(o) *Marking.* Markings may be stamped into the sidewalls of cylinders having a service pressure of 150 psi if all of the following conditions are met:

(1) Wall stress at test pressure may not exceed 24,000 psi.

(2) Minimum wall thickness must be not less than 0.090 inch.

(3) Depth of stamping must be no greater than 15 percent of the minimum wall thickness, but may not exceed 0.015 inch.

(4) Maximum outside diameter of cylinder may not exceed 5 inches.

(5) Carbon content of cylinder may not exceed 0.25 percent. If the carbon content exceeds 0.25 percent, the complete cylinder must be normalized after stamping.

(6) Stamping must be adjacent to the top head.

§ 178.39 Specification 3BN seamless nickel cylinders.

(a) *Type, size and service pressure.* A DOT 3BN cylinder is a seamless nickel cylinder with a water capacity (nominal) not over 125 pounds water capacity (nominal) and a service pressure at least 150 to not over 500 pounds per square inch.

(b) *Nickel.* The percentage of nickel plus cobalt must be at least 99.0 percent.

(c) *Identification of material.* The material must be identified by any suitable method except that plates and billets for hot-drawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. Cylinders closed in by spinning process are not authorized.

(e) *Welding or brazing.* Welding or brazing for any purpose whatsoever is prohibited except that welding is authorized for the attachment of neckrings and footrings which are nonpressure parts, and only to the tops and bottoms of cylinders. Neckrings and footrings must be of weldable material, the carbon content of which may not exceed 0.25 percent. Nickel welding rod must be used.

(f) *Wall thickness.* The wall stress may not exceed 15,000 pounds per square inch. A minimum wall thickness of 0.100 inch is required for any cylinder over 5 inches in outside diameter. Wall stress calculation must be made by using the following formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

Where:

S=wall stress in pounds per square inch;
P=minimum test pressure prescribed for water jacket test or 450 pounds per square inch whichever is the greater;
D=outside diameter in inches;
d=inside diameter in inches.

(g) *Heat treatment.* The completed cylinders must be uniformly and properly heat-treated prior to tests.

(h) *Openings in cylinders and connections (valves, fuse plugs, etc.) for those openings.* Threads conforming to the following are required on openings:

(1) Threads must be clean cut, even, without checks, and to gauge.

(2) Taper threads, when used, to be of length not less than as specified for American Standard taper pipe threads.

(3) Straight threads having at least 6 engaged threads are authorized. Straight threads must have a tight fit and a calculated shear strength of at least 10 times the test pressure of the cylinder. Gaskets, adequate to prevent leakage, are required.

(i) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test, as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy either of 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer

to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) Each cylinder must be tested to at least 2 times service pressure.

(j) *Flattening test.* A flattening test must be performed on one cylinder taken at random out or each lot of 200 or less, by placing the cylinder between wedge shaped knife edges having a 60° included angle, rounded to ½-inch radius. The longitudinal axis of the cylinder must be at a 90-degree angle to knife edges during the test. For lots of 30 or less, flattening tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(k) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material, as follows:

(1) The test is required on 2 specimens cut from 1 cylinder taken at random out of each lot of 200 or less. For lots of 30 or less, physical tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(2) Specimens must conform to the following:

(i) A gauge length of 8 inches with a width of not over 1½ inches, a gauge length of 2 inches with a width of not over 1½ inches, or a gauge length of at least 24 times the thickness with a width not over 6 times thickness is authorized when a cylinder wall is not over 3/16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section.

(iii) When size of cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard E8.

(ii) In using the "extension under load" method, the total strain (or "extension under load") corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch, and the strain indicator reading must be set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(l) *Acceptable results for physical and flattening tests.* Either of the following is an acceptable result:

(1) An elongation of at least 40 percent for a 2 inch gauge length or at least 20 percent in other cases and yield point not over 50 percent of tensile strength. In this instance, the flattening test is not required.

(2) An elongation of at least 20 percent for a 2 inch gauge length or 10 percent in other cases and a yield point not over 50 percent of tensile strength. Flattening is required, without cracking, to 6 times the wall thickness.

(m) *Rejected cylinders.* Reheat treatment is authorized for rejected cylinders. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair by welding is not authorized.

§ 178.42 Specification 3E seamless steel cylinders.

(a) *Type, size, and service pressure.* A DOT 3E cylinder is a seamless steel cylinder with an outside diameter not greater than 2 inches nominal, a length less than 2 feet and a service pressure of 1,800 pounds per square inch.

(b) *Steel.* Open-hearth or electric steel of uniform quality must be used. Content percent may not exceed the following: Carbon, 0.55; phosphorus, 0.045; sulphur, 0.050.

(c) *Identification of steel.* Materials must be identified by any suitable method.

(d) *Manufacture.* Cylinders must be manufactured by best appliances and methods. No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. The thickness of the spun bottom is, under no condition, to be less than two times the minimum wall thickness of the cylindrical shell; such bottom thickness must be measured within an area bounded by a line representing the points of contact between the cylinder and floor when the cylinder is in a vertical position.

(e) *Openings in cylinders and connections (valves, fuse plugs, etc.) for those openings.* Threads conforming to the following are required on openings.

(1) Threads must be clean cut, even, without checks, and to gauge.

(2) Taper threads, when used, must be of length not less than as specified for American Standard taper pipe threads.

(3) Straight threads having at least 4 engaged threads are authorized. Straight threads must have a tight fit and a calculated shear strength of at least 10 times the test pressure of the cylinder. Gaskets, adequate to prevent leakage, are required.

(f) *Hydrostatic test.* Cylinders must be tested as follows:

(1) One cylinder out of each lot of 500 or less must be subjected to a hydrostatic pressure of 6,000 pounds per square inch or higher.

(2) The cylinder referred to in paragraph (f)(1) of this section must burst at a pressure higher than 6,000 pounds per square inch without fragmenting or otherwise showing lack of ductility, or must hold a pressure of 12,000 pounds per square inch for 30 seconds without bursting. In which case, it must be subjected to a flattening test without cracking to six times wall thickness between knife edges, wedge shaped 60 degree angle, rounded out to a ½ inch radius. The inspector's report must be suitably changed to show results of latter alternate and flattening test.

(3) Other cylinders must be examined under pressure of at least 3,000 pounds per square inch and not to exceed 4,500 pounds per square inch and show no defect. Cylinders tested at a pressure in excess of 3,600 pounds per square inch must burst at a pressure higher than 7,500 pounds per square inch when tested as specified in paragraph (f)(2) of this section. The pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete examination.

(g) *Leakage test.* All spun cylinders and plugged cylinders must be tested for leakage by gas or air pressure after the bottom has been cleaned and is free from all moisture subject to the following conditions and limitations:

(1) A pressure, approximately the same as but not less than the service pressure, must be applied to one side of the finished bottom over an area of at least 1/16 of the total area of the bottom but not less than ¾ inch in diameter, including the closure, for at least one minute, during which time the other side of the bottom exposed to pressure must be covered with water and closely examined for indications of leakage. Accept as provided in paragraph (h) of this section, a cylinder must be rejected if there is any leakage.

(2) A spun cylinder is one in which an end closure in the finished cylinder has been welded by the spinning process.

(3) A plugged cylinder is one in which a permanent closure in the bottom of a finished cylinder has been effected by a plug.

(4) As a safety precaution, if the manufacturer elects to make this test before the hydrostatic test, the manufacturer shall design the test apparatus so that the pressure is applied to the smallest area practicable, around the point of closure, and so as to use the smallest possible volume of air or gas.

(h) *Rejected cylinders.* Reheat treatment is authorized for rejected cylinders. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair by welding or spinning is not authorized. Spun cylinders rejected under the provisions of paragraph (g) of this section may be removed from the spun cylinder category by drilling to remove defective material, tapping and plugging.

(i) *Marking.* Markings required by § 178.35 must be stamped plainly and permanently on the shoulder, top head, neck or sidewall of each cylinder.

§ 178.44 Specification 3HT seamless steel cylinders for aircraft use.

(a) *Type, size and service pressure.* A DOT 3HT cylinder is a seamless steel cylinder with a water capacity (nominal) of not over 150 pounds and a service pressure of at least 900 pounds per square inch.

(b) *Authorized steel.* Open hearth or electric furnace steel of uniform quality must be used. A heat of steel made under the specifications listed in Table 1 in this paragraph (b), check chemical analysis of which is slightly out of the specified range, is acceptable, if satisfactory in all other respects, provided the tolerances shown in Table 2 in this paragraph (b) are not exceeded. Grain size 6 or finer according to ASTM E 112. Steel of the following chemical analysis is authorized:

TABLE 1.—AUTHORIZED MATERIALS

Designation	AISI 4130 (percent)
Carbon	0.28/0.33
Manganese	0.40/0.60
Phosphorus	0.040 maximum
Sulfur	0.040 maximum
Silicon	0.15/0.35
Chromium	0.80/1.10
Molybdenum	0.18/0.25

TABLE 2.—CHECK ANALYSIS TOLERANCES

Element	Limit or maximum specified (percent)	Tolerance (percent) over the maximum limit or under the minimum limit	
		Under minimum limit	Over maximum limit
Carbon	Over 0.15 to 0.40 incl	.03	.04
Manganese	To 0.60 incl	.03	.03
Phosphorus[1]	All ranges	.....	.01
Sulphur	All ranges	.....	.01
Silicon	To 0.30 incl	.02	.03
	Over 0.30 to 1.00 incl	.05	.05
Chromium	To 0.90 incl	.03	.03
	Over 0.90 to 2.10 incl	.05	.05
Molybdenum	To 0.20 incl	.01	.01
	Over 0.20 to 0.40 incl	.02	.02

[1] Rephosphorized steels not subject to check analysis for phosphorus.

(c) *Identification of material.* Material must be identified by any suitable method. Steel stamping of heat identifications may not be made in any area which will eventually become the side wall of the cylinder. Depth of stamping may not encroach upon the minimum prescribed wall thickness of the cylinder.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No fissure or other defect is permitted that is likely to weaken the finished container appreciably. The general surface finish may not exceed a roughness of 250 RMS. Individual irregularities such as draw marks, scratches, pits, etc., should be held to a minimum consistent with good high stress pressure vessel manufacturing practices. If the cylinder is not originally free of such defects or does not meet the finish requirements, the surface may be machined or otherwise treated to eliminate these

defects. The point of closure of cylinders closed by spinning may not be less than two times the prescribed wall thickness of the cylindrical shell. The cylinder end contour must be hemispherical or ellipsoidal with a ratio of major-to-minor axis not exceeding two to one and with the concave side to pressure.

(e) *Welding or brazing.* Welding or brazing for any purpose whatsoever is prohibited, except that welding by spinning is permitted to close the bottom of spun cylinders. Machining or grinding to produce proper surface finish at point of closure is required.

(f) *Wall thickness.* (1) Minimum wall thickness for any cylinder must be 0.050 inch. The minimum wall thickness must be such that the wall stress at the minimum specified test pressure may not exceed 75 percent of the minimum tensile strength of the steel as determined from the physical tests required in paragraph (m) of this section and may not be over 105,000 psi.

(2) Calculations must be made by the formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

Where:

S=Wall stress in pounds per square inch;
P=Minimum test pressure prescribed for water jacket test;
D=Outside diameter in inches;
d=Inside diameter in inches.

(3) Wall thickness of hemispherical bottoms only permitted to 90 percent of minimum wall thickness of cylinder sidewall but may not be less than 0.050 inch. In all other cases, thickness to be no less than prescribed minimum wall.

(g) *Heat treatment.* The completed cylinders must be uniformly and properly heated prior to tests. Heat treatment of the cylinders of the authorized analysis must be as follows:

(1) All cylinders must be quenched by oil, or other suitable medium.

(2) The steel temperature on quenching must be that recommended for the steel analysis, but may not exceed 1750 °F.

(3) The steel must be tempered at a temperature most suitable for the particular steel analysis but not less than 850 °F.

(4) All cylinders must be inspected by the magnetic particle or dye penetrant method to detect the presence of quenching cracks. Any cylinder found to have a quenching crack must be rejected and may not be requalified.

(h) *Openings in cylinders and connections (valves, fuse plugs, etc.) for those openings.* Threads conforming to the following are required on openings:

(1) Threads must be clean cut, even, without cracks, and to gauge.

(2) Taper threads, when used, must be of length not less than as specified for National Gas Tapered Thread (NGT) as required by American Standard Compressed Gas Cylinder Valve Outlet and Inlet Connections.

(3) Straight threads having at least 6 engaged threads are authorized. Straight threads must have a tight fit and a calculated shear stress of at least 10 times the test pressure of the cylinder. Gaskets, adequate to prevent leakage, are required.

(i) *Hydrostatic test.* Each cylinder must withstand a hydrostatic test, as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. Pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy either of 1 percent of 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, which ever is the lower.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) Each cylinder must be tested to at least ⅔ times service pressure.

(j) *Cycling tests.* Prior to the initial shipment of any specific cylinder design, cyclic pressurization tests must have been performed on at least three representative samples without failure as follows:

(1) Pressurization must be performed hydrostatically between approximately zero psig and the service pressure at a rate not in excess of 10 cycles per minute. Adequate recording instrumentation must be provided if equipment is to be left unattended for periods of time.

(2) Tests prescribed in paragraph (j)(1) of this section must be repeated on one random sample out of each lot of cylinders. The cylinder may then be subjected to a burst test.

(3) A lot is defined as a group of cylinders fabricated from the same heat of steel, manufactured by the same process and heat treated in the same equipment under the same conditions of time, temperature, and atmosphere, and may not exceed a quantity of 200 cylinders.

(4) All cylinders used in cycling tests must be destroyed.

(k) *Burst test.* One cylinder taken at random out of each lot of cylinders must be hydrostatically tested to destruction.

(l) *Flattening test.* A flattening test must be performed on one cylinder taken at random out or each lot of 200 or less, by placing the cylinder between wedge shaped knife edges having a 60° included angle, rounded to ½-inch radius. The longitudinal axis of the cylinder must be at a 90-degree angle to knife edges during the test. For lots of 30 or less, flattening tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(m) *Physical tests.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material, as follows:

(1) Test is required on 2 specimens cut from 1 cylinder taken at random out of each lot of cylinders.

(2) Specimens must conform to the following:

(i) A gauge length of at least 24 times the thickness with a width not over six times the thickness. The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section. When size of cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with the record of physical tests detailed information in regard to such specimens.

(ii) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length.

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard E8.

(ii) In using the "extension under load" method, the total strain (or "extension under load") corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch, the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(n) *Magnetic particle inspection.* Inspection must be performed on the inside of each container before closing and externally on each finished container after heat treatment. Evidence of discontinuities, which in the opinion of a qualified inspector may appreciably weaken or decrease the durability of the cylinder, must be cause for rejection.

(o) *Leakage test.* All spun cylinders and plugged cylinders must be tested for leakage by dry gas or dry air pressure after the bottom has been cleaned and is free from all moisture, subject to the following conditions and limitations:

(1) Pressure, approximately the same as but not less than service pressure, must be applied to one side of the finished bottom over an area of at least 1/16 of the total area of the bottom but not less than ¾ inch in diameter, including the closure, for at least one minute, during which time the other side of the bottom exposed to pressure must be covered with water and closely examined for indications of leakage. Except as provided in paragraph (q) of this section, a cylinder must be rejected if there is leakage.

(2) A spun cylinder is one in which an end closure in the finished cylinder has been welded by the spinning process.

(3) A plugged cylinder is one in which a permanent closure in the bottom of a finished cylinder has been effected by a plug.

(4) As a safety precaution, if the manufacturer elects to make this test before the hydrostatic test, the manufacturer should design the test apparatus so that the pressure is applied to the smallest area practicable, around the point of closure, and so as to use the smallest possible volume of air or gas.

(p) *Acceptable results of tests.* Results of the flattening test, physical tests, burst test, and cycling test must conform to the following:

(1) Flattening required without cracking to ten times the wall thickness of the cylinder.

(2) Physical tests:

(i) An elongation of at least 6 percent for a gauge length of 24 times the wall thickness.

(ii) The tensile strength may not exceed 165,000 p.s.i.

(3) The burst pressure must be at least 4/3 times the test pressure.

(4) Cycling-at least 10,000 pressurizations.

(q) *Rejected cylinders.* Reheat treatment is authorized for rejected cylinders. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair by welding or spinning is not authorized. For each cylinder subjected to reheat treatment during original manufacture, sidewall measurements must be made to verify that the minimum sidewall thickness meets specification requirements after the final heat treatment.

(r) *Marking.* (1) Cylinders must be marked by low stress type steel stamping in an area and to a depth which will insure that the wall thickness measured from the root of the stamping to the interior surface is equal to or greater than the minimum prescribed wall thickness. Stamping must be permanent and legible. Stamping on side wall not authorized.

(2) The rejection elastic expansion (REE), in cubic centimeters (cc), must be marked on the cylinder near the date of test. The REE for a cylinder is 1.05 times its original elastic expansion.

(3) Name plates are authorized, provided that they can be permanently and securely attached to the cylinder. Attachment by either brazing or welding is not permitted. Attachment by soldering is permitted provided steel temperature does not exceed 500 °F.

(s) *Inspector's report.* In addition to the requirements of § 178.35, the inspector's report must indicate the rejection elastic expansion (REE), in cubic centimeters (cc).

§ 178.45 Specification 3T seamless steel cylinder.

(a) *Type, size, and service pressure.* A DOT 3T cylinder is a seamless steel cylinder with a minimum water capacity of 1,000 pounds and a minimum service pressure of 1,800 p.s.i. Each cylinder must have integrally formed heads concave to pressure at both ends. The inside head shape must be hemispherical, ellipsoidal in which the major axis is two times the minor axis, or a dished shape falling within these two limits. Permanent closures formed by spinning are prohibited.

(b) *Material, steel.* Only open hearth, basic oxygen, or electric furnace process steel of uniform quality is authorized. The steel analysis must conform to the following:

ANALYSIS TOLERANCES

Element	Ladle analysis	Check Analysis	
		Under	Over
Carbon	0.35 to 0.50	0.03	0.04
Manganese	0.75 to 1.05	0.04	0.04
Phosphorus (max)	0.035		0.01
Sulphur (max)	0.04		0.01
Silicon	0.15 to 0.35	0.02	0.03
Chromium	0.80 to 1.15	0.05	0.05
Molybdenum	0.15 to 0.25	0.02	0.02

(1) A heat of steel made under the specifications in the table in this paragraph (b), the ladle analysis of which is slightly out of the specified range, is acceptable if satisfactory in all other aspects. However, the check analysis tolerances shown in the table in this paragraph (b) may not be exceeded except as approved by the Department.

(2) Material with seams, cracks, laminations, or other injurious defects is not permitted.

(3) Material used must be identified by any suitable method.

(c) *Manufacture.* General manufacturing requirements are as follows:

(1) Surface finish must be uniform and reasonably smooth.

(2) Inside surfaces must be clean, dry, and free of loose particles.

(3) No defect of any kind is permitted if it is likely to weaken a finished cylinder.

(4) If the cylinder surface is not originally free from the defects, the surface may be machined or otherwise treated to eliminate these defects provided the minimum wall thickness is maintained.

(5) Welding or brazing on a cylinder is not permitted.

(d) *Wall thickness.* The minimum wall thickness must be such that the wall stress at the minimum specified test pressure does not exceed 67 percent of the minimum tensile strength of the steel as determined by the physical tests required in paragraphs (j) and (k) of this section. A wall stress of more than 90,500 p.s.i. is not permitted. The minimum wall thickness for any cylinder may not be less than 0.225 inch.

(1) Calculation of the stress for cylinders must be made by the following formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

Where:

S=Wall stress in pounds per square inch;
P=Minimum test pressure, at least 5/3 service pressure;
D=Outside diameter in inches;
d=Inside diameter in inches.

(2) Each cylinder must meet the following additional requirement which assumes a cylinder horizontally supported at its two ends and uniformly loaded over its entire length. This load consists of the weight per inch of length of the straight cylindrical portion filled with water compressed to the specified test pressure. The wall thickness must be increased when necessary to meet this additional requirement:

(i) The sum of two times the maximum tensile stress in the bottom fibers due to bending (see paragraph (d)(2)(ii) of this section), plus the maximum tensile stress in the same fibers due to hydrostatic testing (see paragraph (d)(2)(iii) of this section) may not exceed 80 percent of the minimum yield strength of the steel at this maximum stress.

(ii) The following formula must be used to calculate the maximum tensile stress due to bending:

$$S=Mc/I$$

Where:

S=Tensile stress in pounds per square inch;
M=Bending moment in inch-pounds $(wl^2/8)$;
I=Moment of inertia=0.04909 (D^4-d^4) in inches fourth;
c=Radius (D/2) of cylinder in inches;
w=Weight per inch of cylinder filled with water;
l=Length of cylinder in inches;
D=Outside diameter in inches;
d=Inside diameter in inches.

(iii) The following formula must be used to calculate the maximum longitudinal tensile stress due to hydrostatic test pressure:

$$S=A_1P/A_2$$

Where:

S=Tensile stress in pounds per square inch;
A_1=Internal area in cross section of cylinder in square inches;
P=Hydrostatic test pressure in pounds per square, inch;
A_2=Area of metal in cross section of cylinder in square inches.

(e) *Heat treatment.* Each completed cylinder must be uniformly and properly heat treated prior to testing, as follows:

(1) Each cylinder must be heated and held at the proper temperature for at least one hour per inch of thickness based on the maximum thickness of the cylinder and then quenched in a suitable liquid medium having a cooling rate not in excess of 80 percent of water. The steel temperature on quenching must be that recommended for the steel analysis, but it must never exceed 1750 °F.

(2) After quenching, each cylinder must be reheated to a temperature below the transformation range but not less than 1050 °F., and must be held at this temperature for at least one hour per inch of thickness based on the maximum thickness of the cylinder. Each cylinder must then be cooled under conditions recommended for the steel.

(f) *Openings.* Openings in cylinders must comply with the following:

(1) Openings are permitted on heads only.

(2) The size of any centered opening in a head may not exceed one half the outside diameter of the cylinder.

(3) Openings in a head must have ligaments between openings of at least three times the average of their hole diameter. No off-center opening may exceed 2.625 inches in diameter.

(4) All openings must be circular.

(5) All openings must be threaded. Threads must be in compliance with the following:

(i) Each thread must be clean cut, even, without any checks, and to gauge.

(ii) Taper threads, when used, must be the American Standard Pipe thread (NPT) type and must be in compliance with the requirements of NBS Handbook H–28, Part II, Section VII.

(iii) Taper threads conforming to National Gas Taper thread (NGT) standards must be in compliance with the requirements of NBS Handbook H–28, Part II, Sections VII and IX.

(iv) Straight threads conforming with National Gas Straight thread (NGS) standards are authorized. These threads must be in compliance with the requirements of NBS Handbook H–28, Part II, Sections VII and IX.

(g) *Hydrostatic test.* Each cylinder must be tested at an internal pressure by the water jacket method or other suitable method, conforming to the following requirements:

(1) The testing apparatus must be operated in a manner that will obtain accurate data. Any pressure gauge used must permit reading to an accuracy of one percent. Any expansion gauge used must permit reading of the total expansion to an accuracy of one percent.

(2) Any internal pressure applied to the cylinder after heat treatment and before the official test may not exceed 90 percent of the test pressure.

(3) The pressure must be maintained sufficiently long to assure complete expansion of the cylinder. In no case may the pressure be held less than 30 seconds.

(4) If, due to failure of the test apparatus, the required test pressure cannot be maintained, the test must be repeated at a pressure increased by 10 percent or 100 p.s.i., whichever is lower or, the cylinder must be reheat treated.

(5) Permanent volumetric expansion of the cylinder may not exceed 10 percent of its total volumetric expansion at the required test pressure.

(6) Each cylinder must be tested to at least 5/3 times its service pressure.

(h) *Ultrasonic examination.* After the hydrostatic test, the cylindrical section of each vessel must be examined in accordance with ASTM Standard A–388–67 using the angle beam technique. The equipment used must be calibrated to detect a notch equal to five percent of the design minimum wall thickness. Any discontinuity indication greater than that produced by the five percent notch must be cause for rejection of the cylinder unless the discontinuity is repaired within the requirements of this specification.

(i) *Basic requirements for tension and Charpy impact tests.* Cylinders must be subjected to a tension and Charpy impact as follows:

(1) When the cylinders are heat treated in a batch furnace, two tension specimens and three Charpy impact specimens must be tested from one of the cylinders or a test ring from each batch. The lot size represented by these tests may not exceed 200 cylinders.

(2) When the cylinders are heat treated in a continuous furnace, two tension specimens and three Charpy impact specimens must be tested from one of the cylinders or a test ring from each four hours or less of production. However, in no case may a test lot based on this production period exceed 200 cylinders.

(3) Each specimen for the tension and Charpy impact tests must be taken from the side wall of a cylinder or from a ring which has been heat treated with the finished cylinders of which the specimens must be representative. The axis of the specimens must be parallel to the axis of the cylinder. Each cylinder or ring specimen for test must be of the same diameter, thickness, and metal as the finished cylinders they represent. A test ring must be at least 24 inches long with ends covered during the heat treatment process so as to simulate the heat treatment process of the finished cylinders it represents.

(4) A test cylinder or test ring need represent only one of the heats in a furnace batch provided the other heats in the batch have previously been tested and have passed the tests and that such tests do not represent more than 200 cylinders from any one heat.

(5) The test results must conform to the requirements specified in paragraphs (j) and (k) of this section.

(6) When the test results do not conform to the requirements specified, the cylinders represented by the tests may be reheat treated and the tests repeated. Paragraph (i)(5) of this section applies to any retesting.

(j) *Basic conditions for acceptable physical testing.* The following criteria must be followed to obtain acceptable physical test results:

(1) Each tension specimen must have a gauge length of two inches with a width not exceeding one and one-half inches. Except for the grip ends, the specimen may not be flattened. The grip ends may be flattened to within one inch of each end of the reduced section.

(2) A specimen may not be heated after heat treatment specified in paragraph (d) of this section.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gage length.

(i) This yield strength must be determined by the "offset" method or the "extension under load" method described in ASTM Standard E8.

(ii) For the "extension under load" method, the total strain (or extension under load) corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gage length under appropriate load and adding thereto 0.2 percent of the gage length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. However, when the degree of accuracy of this method is questionable the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set with the specimen under a stress of 12,000 p.s.i. and the strain indicator reading set at the calculated corresponding strain.

(iv) The cross-head speed of the testing machine may not exceed ⅛ inch per minute during the determination of yield strength.

(4) Each impact specimen must be Charpy V-notch type size 10 mm x 10 mm taken in accordance with paragraph 11 of ASTM Standard A–333–67. When a reduced size specimen is used, it must be the largest size obtainable.

(k) *Acceptable physical test results.* Results of physical tests must conform to the following:

(1) The tensile strength may not exceed 155,000 p.s.i.

(2) The elongation must be at least 16 percent for a two-inch gage length.

(3) The Charpy V-notch impact properties for the three impact specimens which must be tested at 0 °F may not be less than the values shown as follows:

Size of specimen (mm)	Average value for acceptance (3 specimens)	Minimum value (1 specimen only of the 3)
10.0x10.0	25.0 ft. lbs.	20.0 ft. lbs.
10.0x7.5	21.0 ft. lbs.	17.0 ft. lbs.
10.0x5.0	17.0 ft. lbs.	14.0 ft. lbs.

(4) After the final heat treatment, each vessel must be hardness tested on the cylindrical section. The tensile strength equivalent of the hardness number obtained may not be more than 165,000 p.s.i. (Rc 36). When the result of a hardness test exceeds the maximum permitted, two or more retests may be made; however, the hardness number obtained in each retest may not exceed the maximum permitted.

(l) *Rejected cylinders.* Reheat treatment is authorized for rejected cylinders. However, each reheat treated cylinder must subsequently pass all the prescribed tests. Repair by welding is not authorized.

(m) *Markings.* Marking must be done by stamping into the metal of the cylinder. All markings must be legible and located on a shoulder.

(n) *Inspector's report.* In addition to the requirements of § 178.35, the inspector's report for the physical test report, must indicate the average value for three specimens and the minimum value for one specimen for each lot number.

§ 178.46 Specification 3AL seamless aluminum cylinders.

(a) *Size and service pressure.* A DOT 3AL cylinder is a seamless aluminum cylinder with a maximum water capacity of 1000 pounds and minimum service pressure of 150 psig.

(b) *Authorized material and identification of material.* The material of construction must meet the following conditions:

(1) Starting stock must be cast stock or traceable to cast stock.

(2) Material with seams, cracks, laminations, or other defects likely to weaken the finished cylinder may not be used.

(3) Material must be identified by a suitable method that will identify the alloy, the aluminum producer's cast number, the solution heat treat batch number and the lot number.

(4) The material must be of uniform quality. Only the following heat treatable aluminum alloys in Table 1 and 2 are permitted as follows:

TABLE 1.—CHEMICAL COMPOSITION LIMITS

[Chemical composition (in weight percent)]

Aluminum Assoc. alloy designation No.	Si	Fe	Cu	Mn	Mg	Cr	Zn	Ti	Pb	Bi	Other [1]		Al
											Each	Total	
6351	0.7–1.3	0.50	0.10	0.40–0.80	0.40–0.80	.....	0.20	0.20	0.01	0.01	0.05	0.15	Remainder.
6061	0.40–0.80	0.70	0.15–0.40	0.15	0.80–1.20	0.04–0.35	0.25	0.15	0.01	0.01	0.05	0.15	Remainder.

[1] Analysis is regularly made only for the elements for which specific limits are shown, except for unalloyed aluminum. If, however, the presence of other elements is suspected to be, or in the course of routine analysis is indicated to be in excess of specified limits, further analysis is made to determine that these other elements are not in excess of the amounts specified. (Aluminum Association Standards and Data.)

TABLE 2.—MECHANICAL PROPERTY LIMITS

Alloy and temper	Tensile strength—PSI		Elongation—percent minimum for 2" or 4D [1] size specimen
	Ultimate—minimum	Yield—minimum	
6351–T6	42,000	37,000	[2]14
6061–T6	38,000	35,000	[2]14

[1] "D" represents specimen diameters. When the cylinder wall is greater than 3/16 inch thick, a retest without reheat treatment using the 4D size specimen is authorized if the test using the 2 inch size specimen fails to meet elongation requirements.

[2] When cylinder wall is not over 3/16-inch thick, 10 percent elongation is authorized when using a 24t x 6t size test specimen.

(5) All starting stock must be 100 percent ultrasonically inspected, along the length at right angles to the central axis from two positions at 90° to one another. The equipment and continuous scanning procedure must be capable of detecting and rejecting internal defects such as cracks which have an ultrasonic response greater than that of a calibration block with a 5/64-inch diameter flat bottomed hole.

(6) Cast stock must have uniform equiaxed grain structure not to exceed 500 microns maximum.

(7) Any starting stock not complying with the provisions of paragraphs (b)(1) through (b)(6) of this section must be rejected.

(c) *Manufacture.* Cylinders must be manufactured in accordance with the following requirements:

(1) Cylinder shells must be manufactured by the backward extrusion method and have a cleanliness level adequate to ensure proper inspection. No fissure or other defect is acceptable that is likely to weaken the finished cylinder below the design strength requirements. A reasonably smooth and uniform surface finish is required. If not originally free from such defects, the surface may be machined or otherwise conditioned to eliminate these defects.

(2) Thickness of the cylinder base may not be less than the prescribed minimum wall thickness of the cylindrical shell. The cylinder base must have a basic torispherical, hemispherical, or ellipsoidal interior base configuration where the dish radius is no greater than 1.2 times the inside diameter of the shell. The knuckle radius may not be less than 12 percent of the inside diameter of the shell. The interior base contour may deviate from the true torispherical, hemispherical or ellipsoidal configuration provided that—

(i) Any areas of deviation are accompanied by an increase in base thickness;

(ii) All radii of merging surfaces are equal to or greater than the knuckle radius;

(iii) Each design has been qualified by successfully passing the cycling tests in this paragraph (c); and

(iv) Detailed specifications of the base design are available to the inspector.

(3) For free standing cylinders, the base thickness must be at least two times the minimum wall thickness along the line of contact between the cylinder base and the floor when the cylinders are in the vertical position.

(4) Welding or brazing is prohibited.

(5) Each new design and any significant change to any acceptable design must be qualified for production by testing prototype samples as follows:

(i) Three samples must be subjected to 100,000 pressure reversal cycles between zero and service pressure or 10,000 pressure reversal cycles between zero and test pressure, at a rate not in excess of 10 cycles per minute without failure.

(ii) Three samples must be pressurized to destruction and failure may not occur at less than 2.5 times the marked cylinder service pressure. Each cylinder must remain in one piece. Failure must initiate in the cylinder sidewall in a longitudinal direction. Rate of pressurization may not exceed 200 psi per second.

(6) In this specification "significant change" means a 10 percent or greater change in cylinder wall thickness, service pressure, or diameter; a 30 percent or greater change in water capacity or base thickness; any change in material; over 100 percent increase in size of openings; or any change in the number of openings.

(d) *Wall thickness.* The minimum wall thickness must be such that the wall stress at the minimum specified test pressure will not exceed 80 percent of the minimum yield strength nor exceed 67 percent of the minimum ultimate tensile strength as verified by physical tests in paragraph (i) of this section. The minimum wall thickness for any cylinder with an outside diameter greater than 5 inches must be 0.125 inch. Calculations must be made by the following formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

Where:

S=Wall stress in pounds per square inch;

P=Prescribed minimum test pressure in pounds per square inch (see paragraph (g) of this section);

D=Outside diameter in inches; and

d=Inside diameter in inches.

(e) *Openings.* Openings must comply with the following requirements:

(1) Openings are permitted in heads only.

(2) The size of any centered opening in a head may not exceed one-half the outside diameter of the cylinder.

(3) Other openings are permitted in the head of a cylinder if:

(i) Each opening does not exceed 2.625 inches in diameter, or one-half the outside diameter of the cylinder; whichever is less;

(ii) Each opening is separated from each other by a ligament; and

(iii) Each ligament which separates two openings must be at least three times the average of the diameters of the two openings.

(4) All openings must be circular.

(5) All openings must be threaded. Threads must comply with the following:

(i) Each thread must be clean cut, even, without checks, and to gauge.

(ii) Taper threads, when used, must conform to one of the following:

(A) American Standard Pipe Thread (NPT) type, conforming to the requirements of Federal Standard H–28, Section 7;

(B) National Gas Taper Thread (NGT) type, conforming to the requirements of Federal Standard H–28, Sections 7 and 9; or

(C) Other taper threads conforming to other standards may be used provided the length is not less than that specified for NPT threads.

(iii) Straight threads, when used, must conform to one of the following:

(A) National Gas Straight Thread (NGS) type, conforming to the requirements of Federal Standard H–28, Sections 7 and 9;

(B) Unified Thread (UN) type, conforming to the requirements of Federal Standard H–28, Section 2;

(C) Controlled Radius Root Thread (UN) type, conforming to the requirements of Federal Standard H–28, Section 4; or

(D) Other straight threads conforming to other recognized standards may be used provided that the requirements in paragraph (e)(5)(iv) of this section are met.

(iv) All straight threads must have at least 6 engaged threads, a tight fit, and a factor of safety in shear of at least 10 at the test pressure of the cylinder. Shear stress must be calculated by using the appropriate thread shear area in accordance with Federal Standard H–28, Appendix A5, Section 3.

(f) *Heat treatment.* Prior to any test, all cylinders must be subjected to a solution heat treatment and aging treatment appropriate for the aluminum alloy used.

(g) *Hydrostatic test.* Each cylinder must be subjected to an internal test pressure using the water jacket equipment and method or other suitable equipment and method and comply with the following requirements:

(1) The testing apparatus must be operated in a manner so as to obtain accurate data. The pressure gauge used must permit reading to an accuracy of one percent. The expansion gauge must permit reading the total expansion to an accuracy of either one percent or 0.1 cubic centimeter.

(2) The test pressure must be maintained for a sufficient period of time to assure complete expansion of the cylinder. In no case may the pressure be held less than 30 seconds. If, due to failure of the test apparatus, the required test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 psi, whichever is lower. If the test apparatus again fails to maintain the test pressure, the cylinder being tested must be rejected. Any internal pressure applied to the cylinder before any official test may not exceed 90 percent of the test pressure.

(3) The minimum test pressure is the greatest of the following:

(i) 450 psi regardless of service pressure;

(ii) Two times the service pressure for cylinders having service pressure less than 500 psi; or

(iii) Five-thirds times the service pressure for cylinders having a service pressure of at least 500 psi.

(4) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(h) *Flattening test.* One cylinder taken at random out of each lot must be subjected to a flattening test as follows:

(1) The test must be between knife edges, wedge shaped, having a 60° included angle, and rounded in accordance with the following table. The longitudinal axis of the cylinder must be at an angle 90° to the knife edges during the test. The flattening test table is as follows:

TABLE 3.—FLATTENING TEST TABLE

Cylinder wall thickness in inches	Radius in inches
Under .150	.500
.150 to .249	.875
.250 to .349	1.500
.350 to .449	2.125
.450 to .549	2.750
.550 to .649	3.500
.650 to .749	4.125

(2) An alternate bend test in accordance with ASTM E 290 using a mandrel diameter not more than 6 times the wall thickness is authorized to qualify lots that fail the flattening test of this section without reheat treatment. If used, this test must be performed on two samples from one cylinder taken at random out of each lot of 200 cylinders or less.

(3) Each test cylinder must withstand flattening to nine times the wall thickness without cracking. When the alternate bend test is used, the test specimens must remain uncracked when bent inward around a mandrel in the direction of curvature of the cylinder wall until the interior edges are at a distance apart not greater than the diameter of the mandrel.

(i) *Mechanical properties test.* Two test specimens cut from one cylinder, representing each lot of 200 cylinders or less must be subjected to the mechanical properties test, as follows:

(1) The results of the test must conform to at least the minimum acceptable mechanical property limits for aluminum alloys as specified in paragraph (b) of this section.

(2) Specimens must be 4D bar or gauge length 2 inches with width not over 1½ inch taken in the direction of extrusion approximately 180° from each other; provided that gauge length at least 24 times thickness with width not over 6 times thickness is authorized, when cylinder wall is not over 3/16 inch thick. The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section. When the size of the cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold by pressure only, not by blows. When such specimens are used, the inspector's report must show that the specimens were so taken and prepared. Heating of specimens for any purpose is forbidden.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length.

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard B–557.

(ii) In using the "extension under load" method, the total strain (or "extension under load") corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 10,000,000 psi. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 6,000 psi, the strain indicator reading

being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(j) *Rejected cylinder.* Reheat treatment of rejected cylinders is authorized one time. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable.

(k) *Duties of inspector.* In addition to the requirements of § 178.35, the inspector shall:

(1) Verify compliance with the provisions of paragraph (b) of this section by:

(i) Performing or witnessing the performance of the chemical analyses on each melt or cast lot or other unit of starting material; or

(ii) Obtaining a certified chemical analysis from the material or cylinder manufacturer for each melt, or cast of material; or

(iii) Obtaining a certified check analysis on one cylinder out of each lot of 200 cylinders or less, if a certificate containing data to indicate compliance with the material specification is obtained.

(2) The inspector shall verify ultrasonic inspection of all material by inspection or by obtaining the material producer's certificate of ultrasonic inspection. Ultrasonic inspection must be performed or verified as having been performed in accordance with paragraph (c) of this section.

(3) The inspector must also determine that each cylinder complies with this specification by:

(i) Selecting the samples for check analyses performed by other than the material producer;

(ii) Verifying that the prescribed minimum thickness was met by measuring or witnessing the measurement of the wall thickness; and

(iii) Verifying that the identification of material is proper.

(4) Prior to initial production of any design or design change, verify that the design qualification tests prescribed in paragraph (c)(6) of this section have been performed with acceptable results.

(l) *Definitions.* (1) In this specification, a "lot" means a group of cylinders successively produced having the same:

(i) Size and configuration;

(ii) Specified material of construction;

(iii) Process of manufacture and heat treatment;

(iv) Equipment of manufacture and heat treatment; and

(v) Conditions of time, temperature and atmosphere during heat treatment.

(2) In no case may the lot size exceed 200 cylinders, but any cylinder processed for use in the required destructive physical testing need not be counted as being one of the 200.

(m) *Inspector's report.* In addition to the information required by § 178.35, the record of chemical analyses must also include the alloy designation, and applicable information on iron, titanium, zinc, magnesium and any other applicable element used in the construction of the cylinder.

§ 178.47 Specification 4DS welded stainless steel cylinders for aircraft use.

(a) *Type, size, and service pressure.* A DOT 4DS cylinder is either a welded stainless steel sphere (two seamless hemispheres) or circumferreentially welded cylinder both with a water capacity of not over 100 pounds and a service pressure of at least 500 but not over 900 pounds per square inch.

(b) *Steel.* Types 304, 321 and 347 stainless steel are authorized with proper welding procedure. A heat of steel made under the specifications in Table 1 in this paragraph (b), check chemical analysis of which is slightly out of the specified range, is acceptable, if satisfactory in all other respects, provided the tolerances shown in Table 2 in this paragraph (b) are not exceeded, except as approved by Associate Administrator. The following chemical analyses are authorized:

TABLE 1.—AUTHORIZED MATERIALS

	Stainless steels		
	304 (percent)	321 (percent)	347 (percent)
Carbon (max)	0.08	0.08	0.08
Manganese (max)	2.00	2.00	2.00
Phosphorus (max)	.030	.030	.030
Sulphur (max)	.030	.030	.030
Silicon (max)	.75	.75	.75
Nickel	8.0/11.0	9.0/13.0	9.0/13.0
Chromium	18.0/20.0	17.0/20.0	17.0/20.0
Molybdenum			
Titanium		(1)	
Columbium			(2)

[1] Titanium may not be more than 5C and not more than 0.60%.
[2] Columbium may not be less than 10C and not more than 1.0%.

TABLE 2.—CHECK ANALYSIS TOLERANCES

Element	Limit or maximum specified (percent)	Tolerance (percent) over the maximum limit or under the minimum limit	
		Under minimum limit	Over maximum limit
Carbon	To 0.15 incl	0.01	0.01
Manganese	Over 1.15 to 2.50 incl	0.05	0.05
Phosphorus[1]	All ranges		.01
Sulphur	All ranges		.01
Silicon	Over 0.30 to 1.00 incl	.05	.05
Nickel	Over 5.30 to 10.00 incl	.10	.10
	Over 10.00 to 14.00 incl	.15	.15

TABLE 2.—CHECK ANALYSIS TOLERANCES—Continued

Element	Limit or maximum specified (percent)	Tolerance (percent) over the maximum limit or under the minimum limit	
		Under minimum limit	Over maximum limit
Chromium	Over 15.00 to 20.00 incl	.20	.20
Titanium	All ranges	.05	.05
Columbium	All ranges	.05	.05

[1] Rephosphorized steels not subject to check analysis for phosphorus.

(c) *Identification of material.* Materials must be identified by any suitable method.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to weaken the finished cylinder appreciably, a reasonably smooth and uniform surface finish is required. No abrupt change in wall thickness is permitted. Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3. All seams of the sphere or cylinder must be fusion welded. Seams must be of the butt type and means must be provided for accomplishing complete penetration of the joint.

(e) *Attachments.* Attachments to the container are authorized by fusion welding provided that such attachments are made of weldable stainless steel in accordance with paragraph (b) of this section.

(f) *Wall thickness.* The minimum wall thickness must be such that the wall stress at the minimum specified test pressure may not be over 60,000 psi. A minimum wall thickness of 0.040 inch is required for any diameter container. Calculations must be made by the following formulas:

(1) Calculation for sphere must be made by the formula:

$S=PD/4tE$

Where:

S=Wall stress in pounds per square inch;

P=Test pressure prescribed for water jacket test, i.e., at least two times service pressure, in pounds per square inch;

D=Outside diameter in inches;

t=Minimum wall thickness in inches;

E=0.85 (provides 85 percent weld efficiency factor which must be applied in the girth weld area and heat zones which zone must extend a distance of 6 times wall thickness from center of weld); E=1.0 (for all other areas).

(2) Calculation for a cylinder must be made by the formula:

$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$

Where:

S=Wall stress in pounds per square inch;

P=Test pressure prescribed for water jacket test, i.e., at least two times service pressure, in pounds per square inch;

D=Outside diameter in inches;

d=Inside diameter in inches.

(g) *Heat treatment.* The seamless hemispheres and cylinders may be stress relieved or annealed for forming. Welded container must be stress relieved at a temperature of 775° F +/– 25° after process treatment and before hydrostatic test.

(h) *Openings in container.* Openings must comply with the following:

(1) Each opening in the container must be provided with a fitting, boss or pad of weldable stainless steel securely attached to the container by fusion welding.

(2) Attachments to a fitting, boss, or pad must be adequate to prevent leakage. Threads must comply with the following:

(i) Threads must be clean cut, even, without checks, and tapped to gauge.

(ii) Taper threads to be of length not less than as specified for American Standard taper pipe threads.

(iii) Straight threads having at least 4 engaged threads, to have tight fit and calculated shear strength at least 10 times the test pressure of the container; gaskets required, adequate to prevent leakage.

(i) *Process treatment.* Each container must be hydraulically pressurized in a water jacket to at least 100 percent, but not more than 110 percent, of the test pressure and maintained at this pressure for a minimum of 3 minutes. Total and permanent expansion must be recorded and included in the inspector's report.

(j) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test as follows:

(1) The test must be by water-jacket, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy either of 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) Each container must be tested to at least 2 times service pressure.

(5) Container must then be inspected. Any wall thickness lower than that required by paragraph (f) of this section must be cause for rejection. Bulges and cracks must be cause for rejection. Welded joint defects exceeding requirements of paragraph (k) of this section must be cause for rejection.

(k) *Radiographic inspection.* Radiographic inspection is required on all welded joints which are subjected to internal pressure, except that at the discretion of the disinterested inspector, openings less than 25 percent of the container diameter need not be subjected to radiographic inspection. Evidence of any defects likely to seriously weaken the container is cause for rejection. Radiographic inspection must be performed subsequent to the hydrostatic test.

(l) *Burst test.* One container taken at random out of 200 or less must be hydrostatically tested to destruction. Rupture pressure must be included as part of the inspector's report.

(m) *Flattening test.* A flattening test must be performed as follows:

(1) For spheres the test must be at the weld between parallel steel plates on a press with welded seam at right angles to the plates. Test one sphere taken at random out of each lot of 200 or less after the hydrostatic test. Any projecting appurtenances may be cut off (by mechanical means only) prior to crushing.

(2) For cylinders the test must be between knife edges, wedge shaped, 60° angle, rounded to ½-inch radius. Test one cylinder taken at random out of each lot of 200 or less, after the hydrostatic test.

(n) *Acceptable results for flattening and burst tests.* Acceptable results for flattening and burst tests are as follows:

(1) Flattening required to 50 percent of the original outside diameter without cracking.

(2) Burst pressure must be at least 3 times the service pressure.

(o) *Rejected containers.* Repair of welded seams by welding prior to process treatment is authorized. Subsequent thereto, containers must be heat treated and pass all prescribed tests.

(p) *Duties of inspector.* In addition to the requirements of § 178.35, the inspector must verify that all tests are conducted at temperatures between 60 °F and 90 °F.

(q) *Marking.* Markings must be stamped plainly and permanently on a permanent attachment or on a metal nameplate permanently secured to the container by means other than soft solder.

§ 178.50 Specification 4B welded or brazed steel cylinders.

(a) *Type, size, and service pressure.* A DOT 4B is a welded or brazed steel cylinder with longitudinal seams that are forged lap-welded or brazed and with water capacity (nominal) not over 1,000 pounds and a service pressure of at least 150 but not over 500 pounds per square inch. Cylinders closed in by spinning process are not authorized.

(b) *Steel.* Open-hearth, electric or basic oxygen process steel of uniform quality must be used. Content percent may not exceed the following: Carbon, 0.25; phosphorus, 0.045; sulphur, 0.050.

(c) *Identification of material.* Material must be identified by any suitable method except that plates and billets for hotdrawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. Exposed bottom welds on cylinders over 18 inch long must be protected by footrings. Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3. Seams must be made as follows:

(1) *Welded or brazed circumferential seams.* Heads attached by brazing must have a driving fit with the shell, unless the shell is crimped, swedged, or curled over the skirt or flange of the head, and be thoroughly brazed until complete penetration by the brazing material of the brazed joint is secured. Depth of brazing from end of shell must be at least four times the thickness of shell metal.

(2) *Longitudinal seams in shells.* Longitudinal seams must be forged lap welded, by copper brazing, by copper alloy brazing, or by silver alloy brazing. Copper alloy composition must be: Copper, 95 percent minimum; Silicon, 1.5 percent to 3.85 percent; Manganese, 0.25 percent to 1.10 percent. The melting point of the silver alloy brazing material must be in excess of 1000° F. When brazed, the plate edge must be lapped at least eight times the thickness of plate, laps being held in position, substantially metal to metal, by riveting or electric spot-welding; brazing must be done by using a suitable flux and by placing brazing material on one side of seam and applying heat until this material shows uniformly along the seam of the other side.

(e) *Welding or brazing.* Only the attachment of neckrings, footrings, handles, bosses, pads, and valve protection rings to the tops and bottoms of cylinders by welding or brazing is authorized. Such attachments and the portion of the container to which they are attached must be made of weldable steel, the carbon content of which may not exceed 0.25 percent except in the case of 4130X steel which may be used with proper welding procedure.

(f) *Wall thickness.* The wall thickness of the cylinder must comply with the following requirements:

(1) For cylinders with outside diameters over 6 inches the minimum wall thickness must be 0.090 inch. In any case, the minimum wall thickness must be such that calculated wall stress at minimum test pressure (paragraph (i)(4) of this section) may not exceed the following values:

(i) 24,000 pounds per square inch for cylinders without longitudinal seam.

(ii) 22,800 pounds per square inch for cylinders having copper brazed or silver alloy brazed longitudinal seam.

(iii) 18,000 pounds per square inch for cylinders having forged lapped welded longitudinal seam.

(2) Calculation must be made by the formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

Where:

S=wall stress in pounds per square inch;
P=minimum test pressure prescribed for water jacket test or 450 pounds per square inch whichever is the greater;
D=outside diameter in inches;
d=inside diameter in inches.

(g) *Heat treatment.* Cylinder body and heads, formed by drawing or pressing, must be uniformly and properly heat treated prior to tests.

(h) *Opening in cylinders.* Openings in cylinders must conform to the following:

(1) Each opening in cylinders, except those for safety devices, must be provided with a fitting, boss, or pad, securely attached to cylinder by brazing or by welding or by threads. Fitting, boss, or pad must be of steel suitable for the method of attachment employed, and which need not be identified or verified as to analysis except that if attachment is by welding, carbon content may not exceed 0.25 percent. If threads are used, they must comply with the following:

(i) Threads must be clean cut, even without checks, and tapped to gauge.

(ii) Taper threads to be of length not less than as specified for American Standard taper pipe threads.

(iii) Straight threads, having at least 4 engaged threads, to have tight fit and calculated shear strength at least 10 times the test pressure of the cylinder; gaskets required, adequate to prevent leakage.

(iv) A brass fitting may be brazed to the steel boss or flange on cylinders used as component parts of hand fire extinguishers.

(2) The closure of a fitting, boss, or pad must be adequate to prevent leakage.

(i) *Hydrostatic test.* Each cylinder must withstand a hydrostatic test as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy either of 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) Cylinders must be tested as follows:

(i) At least one cylinder selected at random out of each lot of 200 or less must be tested as outlined in paragraphs (i)(1), (i)(2), and (i)(3) of this section to at least two times service pressure.

(ii) All cylinders not tested as outlined in paragraph (i)(4)(i) of this section must be examined under pressure of at least two times service pressure and show no defect.

(j) *Flattening test.* After the hydrostatic test, a flattening test must be performed on one cylinder taken at random out or each lot of 200 or less, by placing the cylinder between wedge shaped knife edges having a 60° included angle, rounded to ½-inch radius. The longitudinal axis of the cylinder must be at a 90-degree angle to knife edges during the test. For lots of 30 or less, flattening tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(k) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material as follows:

(1) The test is required on 2 specimens cut from 1 cylinder, or part thereof heat-treated as required, taken at random out of each lot of 200 or less. For lots of 30 or less, physical tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to same heat treatment as the finished cylinder.

(2) Specimens must conform to the following:

(i) A gauge length of 8 inches with a width of not over 1½ inches, a gauge length of 2 inches with a width of not over 1½ inches, or a gauge length at least 24 times the thickness with a width not over 6 times the thickness is authorized when a cylinder wall is not over 3/16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section.

(iii) When size of cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard E8.

(ii) In using the "extension under load" method, the total strain (or "extension under load") corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch, and strain indicator reading must be set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(l) *Acceptable results for physical and flattening tests.* Either of the following is an acceptable result:

(1) An elongation of at least 40 percent for a 2-inch gauge length or at least 20 percent in other cases and yield strength not over 73 percent of tensile strength. In this instance, a flattening test is not required.

(2) When cylinders are constructed of lap welded pipe, flattening test is required, without cracking, to 6 times the wall thickness. In such case, the rings (crop ends) cut from each end of pipe, must be tested with the weld 45° or less from the point of greatest stress. If a ring fails, another from the same end of pipe may be tested.

(m) *Rejected cylinders.* Reheat treatment is authorized for rejected cylinder. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair of brazed seams by brazing and welded seams by welding is authorized.

(n) *Markings.* Markings must be stamped plainly and permanently in any of the following locations on the cylinder:

(1) On shoulders and top heads when they are not less than 0.087-inch thick.

(2) On side wall adjacent to top head for side walls which are not less than 0.090 inch thick.

(3) On a cylindrical portion of the shell which extends beyond the recessed bottom of the cylinder, constituting an integral and non-pressure part of the cylinder.

(4) On a metal plate attached to the top of the cylinder or permanent part thereof; sufficient space must be left on the plate to provide for stamping at least six retest dates; the plate must be at least 1/16-inch thick and must be attached by welding, or by brazing. The brazing rod must melt at a temperature of 1100 °F. Welding or brazing must be along all the edges of the plate.

(5) On the neck, neckring, valve boss, valve protection sleeve, or similar part permanently attached to the top of the cylinder.

(6) On the footring permanently attached to the cylinder, provided the water capacity of the cylinder does not exceed 25 pounds.

§ 178.51 Specification 4BA welded or brazed steel cylinders.

(a) *Type, size, and service pressure.* A DOT 4BA cylinder is a cylinder, either spherical or cylindrical in shape, with a water capacity of 1,000 pounds or less and a service pressure of at least 225 and not over 500 pounds per square inch. Closures made by the spinning process are not authorized.

(1) Spherical type cylinders must be made from two seamless hemispheres joined by the welding of one circumferential seam.

(2) Cylindrical type cylinders must be of circumferentially welded or brazed construction.

(b) *Steel.* The steel used in the construction of the cylinder must be as specified in Table 1 of Appendix A to this part.

(c) *Identification of material.* Material must be identified by any suitable method except that plates and billets for hotdrawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. Exposed bottom welds on cylinders over 18 inches long must be protected by footrings.

(1) Seams must be made as follows:

(i) Minimum thickness of heads and bottoms must be not less than 90 percent of the required thickness of the side wall.

(ii) Circumferential seams must be made by welding or by brazing. Heads must be attached by brazing and must have a driving fit with the shell, unless the shell is crimped, swedged or curled

over the skirt or flange of the head and must be thoroughly brazed until complete penetration by the brazing material of the brazed joint is secured. Depth of brazing from end of the shell must be at least four times the thickness of shell metal.

(iii) Longitudinal seams in shells must be made by copper brazing, copper alloy brazing, or by silver alloy brazing. Copper alloy composition must be: Copper 95 percent minimum, Silicon 1.5 percent to 3.85 percent, Manganese 0.25 percent to 1.10 percent. The melting point of the silver alloy brazing material must be in excess of 1,000 °F. The plate edge must be lapped at least eight times the thickness of plate, laps being held in position, substantially metal to metal, by riveting or by electric spot-welding. Brazing must be done by using a suitable flux and by placing brazing material on one side of seam and applying heat until this material shows uniformly along the seam of the other side. Strength of longitudinal seam: Copper brazed longitudinal seam must have strength at least ½ times the strength of the steel wall.

(2) Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

(e) *Welding and brazing.* Only the welding or brazing of neckrings, footrings, handles, bosses, pads, and valve protection rings to the tops and bottoms of cylinders is authorized. Provided that such attachments and the portion of the container to which they are attached are made of weldable steel, the carbon content of which may not exceed 0.25 percent except in the case of 4130× steel which may be used with proper welding procedure.

(f) *Wall thickness.* The minimum wall thickness of the cylinder must meet the following conditions:

(1) For any cylinder with an outside diameter of greater than 6 inches, the minimum wall thickness is 0.078 inch. In any case the minimum wall thickness must be such that the calculated wall stress at the minimum test pressure may not exceed the lesser value of any of the following:

(i) The value shown in Table I of Appendix A to this part, for the particular material under consideration;

(ii) One-half of the minimum tensile strength of the material determined as required in paragraph (j) of this section;

(iii) 35,000 pounds per square inch; or

(iv) Further provided that wall stress for cylinders having copper brazed longitudinal seams may not exceed 95 percent of any of the above values. Measured wall thickness may not include galvanizing or other protective coating.

(2) Cylinders that are cylindrical in shape must have the wall stress calculated by the formula:

$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$

Where:

S=wall stress in pounds per square inch;
P=minimum test pressure prescribed for water jacket test;
D=outside diameter in inches;
d=inside diameter in inches.

(3) Cylinders that are spherical in shape must have the wall stress calculated by the formula:

$S=PD/4tE$

Where:

S=wall stress in pounds per square inch;
P=minimum test pressure prescribed for water jacket test;
D=outside diameter in inches;
t=minimum wall thickness in inches;
E=0.85 (provides 85 percent weld efficiency factor which must be applied in the girth weld area and heat affected zones which zone must extend a distance of 6 times wall thickness from center line of weld);
E=1.0 (for all other areas).

(4) For a cylinder with a wall thickness less than 0.100 inch, the ratio of tangential length to outside diameter may not exceed 4.1.

(g) *Heat treatment.* Cylinders must be heat treated in accordance with the following requirements:

(1) Each cylinder must be uniformly and properly heat treated prior to test by the applicable method shown in Table I of Appendix A to this Part. Heat treatment must be accomplished after all forming and welding operations, except that when brazed joints are used, heat treatment must follow any forming and welding operations, but may be done before, during or after the brazing operations.

(2) Heat treatment is not required after the welding or brazing of weldable low carbon parts to attachments of similar material which have been previously welded or brazed to the top or bottom of cylinders and properly heat treated, provided such subsequent welding or brazing does not produce a temperature in excess of 400° F in any part of the top or bottom material.

(h) *Openings in cylinders.* Openings in cylinders must comply with the following requirements:

(1) Any opening must be placed on other than a cylindrical surface.

(2) Each opening in a spherical type cylinder must be provided with a fitting, boss, or pad of weldable steel securely attached to the container by fusion welding.

(3) Each opening in a cylindrical type cylinder must be provided with a fitting, boss, or pad, securely attached to container by brazing or by welding.

(4) If threads are used, they must comply with the following:

(i) Threads must be clean-cut, even, without checks and tapped to gauge.

(ii) Taper threads must be of a length not less than that specified for American Standard taper pipe threads.

(iii) Straight threads, having at least 4 engaged threads, must have a tight fit and a calculated shear strength of at least 10 times the test pressure of the cylinder. Gaskets, adequate to prevent leakage, are required.

(i) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test, as follows:

(1) The test must be by water jacket, or other suitable method, operated so as to obtain accurate data. A pressure gauge must permit reading to an accuracy of 1 percent. An expansion gauge must permit reading of total expansion to an accuracy of either 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat treatment and previous to the official test may not exceed 90 percent of the test pressure.

(3) Permanent volumetric expansion may not exceed 10 percent of the total volumetric expansion at test pressure.

(4) Cylinders must be tested as follows:

(i) At least one cylinder selected at random out of each lot of 200 or less must be tested as outlined in paragraphs (i)(1), (i)(2), and (i)(3) of this section to at least two times service pressure.

(ii) All cylinders not tested as outlined in paragraph (i)(4)(i) of this section must be examined under pressure of at least two times service pressure and show no defect.

(j) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material, as follows:

(1) The test is required on 2 specimens cut from one cylinder or part thereof having passed the hydrostatic test and heat-treated as required, taken at random out of each lot of 200 or less. Physical tests for spheres are required on 2 specimens cut from flat representative sample plates of the same heat taken at random from the steel used to produce the spheres. This flat steel from which 2 specimens are to be cut must receive the same heat treatment as the spheres themselves. Sample plates must be taken from each lot of 200 or less spheres.

(2) Specimens must conform to the following:

(i) A gauge length of 8 inches with a width not over 1½ inches, or a gauge length of 2 inches with a width not over 1½ inches, or a gauge length at least 24 times the thickness with a width not over 6 times the thickness is authorized when a cylinder wall is not over 3/16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section.

(iii) When size of the cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard E8.

(ii) In using the "extension under load" method, the total strain (or "extension under load"), corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain reference must be set while the specimen is under a stress of 12,000 pounds per square inch, and the strain indicator reading must be set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(k) *Elongation.* Physical test specimens must show at least a 40 percent elongation for a 2-inch gauge length or at least 20 percent in other cases. Except that these elongation percentages may be reduced numerically by 2 for 2-inch specimens, and by 1 in other cases, for each 7,500 pounds per square inch increment of tensile strength above 50,000 pounds per square inch to a maximum of four such increments.

(l) *Tests of welds.* Except for brazed seams, welds must be tested as follows:

(1) *Tensile test.* A specimen must be cut from one cylinder of each lot of 200 or less, or welded test plate. The welded test plate must be of one of the heats in the lot of 200 or less which it represents, in the same condition and approximately the same thickness as the cylinder wall except that in no case must it be of a lesser thickness than that required for a quarter size Charpy impact specimen. The weld must be made by the same procedures and subjected to the same heat treatment as the major weld on the cylinder. The specimen must be taken from across the major seam and must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3. Should this specimen fail to meet the requirements, specimens may be taken from two additional cylinders or welded test plates from the same lot and tested. If either of the latter specimens fail to meet the requirements, the entire lot represented must be rejected.

(2) *Guided bend test.* A root bend test specimen must be cut from the cylinder or welded test plate, used for the tensile test specified in paragraph (l)(1) of this section. Specimens must be taken from across the major seam and must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3.

(3) *Alternate guided-bend test.* This test may be used and must be as required by CGA Pamphlet C–3. The specimen must be bent until the elongation at the outer surface, adjacent to the root of the weld, between the lightly scribed gage lines a to b, must be at least 20 percent, except that this percentage may be reduced for steels having a tensile strength in excess of 50,000 pounds per square inch, as provided in paragraph (k) of this section.

(m) *Rejected cylinders.* Reheat treatment is authorized for rejected cylinders. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair of brazed seams by brazing and welded seams by welding is authorized.

(n) *Markings.* Markings must be stamped plainly and permanently in one of the following locations on the cylinder:

(1) On shoulders and top heads not less than 0.087 inch thick.

(2) On side wall adjacent to top head for side walls not less than 0.090 inch thick.

(3) On a cylindrical portion of the shell which extends beyond the recessed bottom of the cylinder constituting an integral and non-pressure part of the cylinder.

(4) On a plate attached to the top of the cylinder or permanent part thereof; sufficient space must be left on the plate to provide for stamping at least six retest dates; the plate must be at least 1/16 inch thick and must be attached by welding, or by brazing at a temperature of at least 1100 °F., throughout all edges of the plate.

(5) On the neck, neckring, valve boss, valve protection sleeve, or similar part permanently attached to the top of the cylinder.

(6) On the footring permanently attached to the cylinder, provided the water capacity of the cylinder does not exceed 25 pounds.

§ 178.53 Specification 4D welded steel cylinders for aircraft use.

(a) *Type, size, and service pressure.* A DOT 4D cylinder is a welded steel sphere (two seamless hemispheres) or circumferentially welded cylinder (two seamless drawn shells) with a water capacity not over 100 pounds and a service pressure of at least 300 but not over 500 pounds per square inch. Cylinders closed in by spinning process are not authorized.

(b) *Steel.* Open-hearth or electric steel of uniform and weldable quality must be used. Content may not exceed the following: Carbon, 0.25; phosphorus, 0.045; sulphur, 0.050, except that the following steels commercially known as 4130X and Type 304, 316, 321, and 347 stainless steels may be used with proper welding procedure. A heat of steel made under Table 1 in this paragraph (b), check chemical analysis of which is slightly out of the specified range, is acceptable, if satisfactory in all other respects, provided the tolerances shown in Table 2 in this paragraph (b) are not exceeded, except as approved by the Associate Administrator. The following chemical analyses are authorized:

TABLE 1.—4130X STEEL

4130X	Percent
Carbon	0.25/0.35.
Manganese	0.40/0.60.
Phosphorus	0.04 max.
Sulphur	0.05 max
Silicon	0.15/0.35.
Chromium	0.80/1.10.
Molybdenum	0.15/0.25.
Zirconium	None.
Nickel	None.

TABLE 2.—AUTHORIZED STAINLESS STEELS

	Stainless steels			
	304 (percent)	316 (percent)	321 (percent)	347 (percent)
Carbon (max)	0.08	0.08	0.08	0.08
Manganese (max)	2.00	2.00	2.00	2.00
Phosphorus (max)	.030	.045	.030	.030
Sulphur (max)	.030	.030	.030	.030
Silicon (max)	.75	1.00	.75	.75
Nickel	8.0/11.0	10.0/14.0	9.0/13.0	9.0/13.0
Chromium	18.0/20.0	16.0/18.0	17.0/20.0	17.0/20.0
Molybdenum	.....	2.0/3.0	.....	.....
Titanium	.....	.....	[1]	.....
Columbium	.....	.....	.....	[2]

[1] Titanium may not be less than 5C and not more than 0.60%.
[2] Columbium may not be less than 10C and not more than 1.0%.

TABLE 3.—CHECK ANALYSIS TOLERANCES

Element	Limit or maximum specified (percent)	Tolerance (percent) over the maximum limit or under the minimum limit	
		Under minimum limit	Over maximum limit
Carbon	To 0.15 incl	0.01	0.01
	Over 0.15 to 0.40 incl	.03	.04
Manganese	To 0.60 incl	.03	.03
	Over 1.15 to 2.50 incl	.05	.05
Phosphorus [1]	All ranges	.....	.01
Sulphur	All ranges	.....	.01
Silicon	To 0.30 incl	.02	.03
	Over 0.30 to 1.00 incl	.05	.05
Nickel	Over 5.30 to 10.00 incl	.10	.10
	Over 10.00 to 14.00 incl	.15	.15
Chromium	To 0.90 incl	.03	.03
	Over 0.90 to 2.10 incl	.05	.05
	Over 15.00 to 20.00 incl	.20	.20
Molybdenum	To 0.20 incl	.01	.01
	Over 0.20 to 0.40 incl	.02	.02
	Over 1.75 to 3.0 incl	.10	.10
Titanium	All ranges	.05	.05
Columbium	All ranges	.05	.05

[1] Rephosphorized steels not subject to check analysis for phosphorus.

(c) *Identification of material.* Material must be identified by any suitable method except that plates and billets for hotdrawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to weaken the finished container appreciably. A reasonably smooth and uniform surface finish is required. Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

(e) *Wall thickness.* The wall stress at the minimum test pressure may not exceed 24,000 pounds per square inch, except where steels commercially known as 4130X, types 304, 316, 321, and 347 stainless steels are used, stress at the test pressures may not exceed 37,000 pounds per square inch. The minimum wall thickness for any container having a capacity of 1,100 cubic inches or less is 0.04 inch. The minimum wall thickness for any container having a capacity in excess of 1,100 cubic inches is 0.095 inch. Calculations must be done by the following:

(1) Calculation for a "sphere" must be made by the formula:

$$S=PD/4tE$$

Where:

S=wall stress in pounds per square inch;
P=test pressure prescribed for water jacket test, i.e., at least two times service pressure, in pounds per square inch;
D=outside diameter in inches;
t=minimum wall thickness in inches;
E=0.85 (provides 85 percent weld efficiency factor which must be applied in the girth weld area and heat affected zones which zone must extend a distance of 6 times wall thickness from center line of weld);
E=1.0 (for all other areas).

(2) Calculation for a cylinder must be made by the formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^{T12})$$

Where:

S=wall stress in pounds per square inch;
P=test pressure prescribed for water jacket test, i.e., at least two times service pressure, in pounds per square inch;
D=outside diameter in inches;
d=inside diameter in inches.

(f) *Heat treatment.* The completed cylinders must be uniformly and properly heat-treated prior to tests.

(g) *Openings in container.* Openings in cylinders must comply with the following:

(1) Each opening in the container, except those for safety devices, must be provided with a fitting, boss, or pad, securely attached to the container by brazing or by welding or by threads. If threads are used, they must comply with the following:

(i) Threads must be clean cut, even, without checks, and tapped to gauge.

(ii) Taper threads must be of a length not less than that specified for American Standard taper pipe threads.

(iii) Straight threads, having at least 4 engaged threads, must have a tight fit and calculated shear strength of at least 10 times the test pressure of the container. Gaskets, adequate to prevent leakage, are required.

(2) Closure of a fitting, boss, or pad must be adequate to prevent leakage.

(h) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test, as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. A pressure gauge must permit a reading to an accuracy of 1 percent. An expansion gauge must permit reading of total expansion to an accuracy of either 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower.

(3) Permanent volumetric expansion may not exceed 10 percent of the total volumetric expansion at test pressure.

(4) Containers must be tested as follows:

(i) Each container to at least 2 times service pressure; or

(ii) One container out of each lot of 200 or less to at least 3 times service pressure. Others must be examined under pressure of 2 times service pressure and show no defects.

(i) *Flattening test for spheres and cylinders.* Spheres and cylinders must be subjected to a flattening test as follows:

(1) One sphere taken at random out of each lot of 200 or less must be subjected to a flattening test as follows:

(i) The test must be performed after the hydrostatic test.

(ii) The test must be between parallel steel plates on a press with a welded seam at right angles to the plates. Any projecting appurtenances may be cut off (by mechanical means only) prior to crushing.

(2) One cylinder taken at random out of each lot of 200 or less must be subjected to a flattening test, as follows:

(i) The test must be performed after the hydrostatic test.

(ii) The test must be between knife edges, wedge shaped, 60° angle, rounded to ½ inch radius. For lots of 30 or less, physical tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to the same heat treatment as the finished cylinder.

(j) *Physical test and specimens for spheres and cylinders.* Spheres and cylinders must be subjected to a physical test as follows:

(1) Physical test for spheres are required on 2 specimens cut from a flat representative sample plate of the same heat taken at random from the steel used to produce the sphere. This flat steel from which the 2 specimens are to be cut must receive the same heat-treatment as the spheres themselves. Sample plates must be taken for each lot of 200 or less spheres.

(2) Specimens for spheres must have a gauge length 2 inches with a width not over 1½ inches, or a gauge length at least 24 times the thickness with a width not over 6 times the thickness is authorized when a wall is not over 3/16 inch thick.

(3) Physical test for cylinders is required on 2 specimens cut from 1 cylinder taken at random out of each lot of 200 or less. For lots of 30 or less, physical tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to the same heat treatment as the finished cylinder.

(4) Specimens for cylinders must conform to the following:

(i) A gauge length of 8 inches with a width not over 1½ inches, or a gauge length of 2 inches with a width not over 1½ inches, or a gauge length at least 24 times the thickness with a width not over 6 times the thickness is authorized when a cylinder wall is not over 3/16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within 1 inch of each end of the reduced section. Heating of the specimen for any purpose is not authorized.

(5) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard E8.

(ii) In using the "extension under load" method, the total strain (or "extension under load") corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch and the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(k) *Acceptable results for physical and flattening tests.* Either of the following is an acceptable result:

(1) An elongation of at least 40 percent for a 2 inch gauge length or at least 20 percent in other cases and yield strength not over 73 percent of tensile strength. In this instance, the flattening test is not required.

(2) An elongation of at least 20 percent for a 2 inch gauge length or 10 percent in other cases. Flattening is required to 50 percent of the original outside diameter without cracking.

(l) *Rejected cylinders.* Reheat-treatment is authorized for rejected cylinders. Subsequent thereto, containers must pass all prescribed tests to be acceptable. Repair of welded seams by welding prior to reheat-treatment is authorized.

(m) *Marking.* Marking on each container by stamping plainly and permanently are only authorized where the metal is at least 0.09 inch thick, or on a metal nameplate permanently secured to the container by means other than soft solder, or by means that would not reduce the wall thickness.

§ 178.55 Specification 4B240ET welded or brazed cylinders.

(a) *Type, spinning process, size and service pressure.* A DOT 4B240ET cylinder is a brazed type cylinder made from electric resistance welded tubing. The maximum water capacity of this cylinder is 12 pounds or 333 cubic inches and the service must be 240 pounds per square inch. The maximum outside diameter of the shell must be

five inches and maximum length of the shell is 21 inches. Cylinders closed in by a spinning process are authorized.

(b) *Steel.* Open-hearth, basic oxygen, or electric steel of uniform quality must be used. Plain carbon steel content may not exceed the following: Carbon, 0.25; phosphorus, 0.045; sulfur, 0.050. The addition of other elements for alloying effect is prohibited.

(c) *Identification of material.* Material must be identified by any suitable method.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. Heads may be attached to shells by lap brazing or may be formed integrally. The thickness of the bottom of cylinders welded or formed by spinning is, under no condition, to be less than two times the minimum wall thickness of the cylindrical shell. Such bottom thicknesses must be measured within an area bounded by a line representing the points of contact between the cylinder and the floor when the cylinder is in a vertical position. Seams must conform to the following:

(1) Circumferential seams must be by brazing only. Heads must be attached to shells by the lap brazing method and must overlap not less than four times the wall thickness. Brazing material must have a melting point of not less than 1000° F. Heads must have a driving fit with the shell unless the shell is crimped, swedged, or curled over the skirt or flange of the head and be thoroughly brazed until complete penetration of the joint by the brazing material is secured. Brazed joints may be repaired by brazing.

(2) Longitudinal seams in shell must be by electric resistance welded joints only. No repairs to longitudinal joints is permitted.

(3) Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

(e) *Welding or brazing.* Only the attachment, by welding or brazing, to the tops and bottoms of cylinders of neckrings, footrings, handles, bosses, pads, and valve protection rings is authorized. Provided that such attachments and the portion of the container to which they are attached are made of weldable steel, the carbon content of which may not exceed 0.25 percent.

(f) *Wall thickness.* The wall stress must be at least two times the service pressure and may not exceed 18,000 pounds per square inch. The minimum wall thickness is 0.044 inch. Calculation must be made by the following formula:

$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$

Where:

S=wall stress in pounds per square inch;
P=2 times service pressure;
D=outside diameter in inches;
d=inside diameter in inches.

(g) *Heat treatment.* Heads formed by drawing or pressing must be uniformly and properly heat treated prior to tests. Cylinders with integral formed heads or bases must be subjected to a normalizing operation. Normalizing and brazing operations may be combined, provided the operation is carried out at a temperature in excess of the upper critical temperature of the steel.

(h) *Openings in cylinders.* Openings in cylinders must comply with the following:

(1) Each opening in cylinders, except those for safety devices, must be provided with a fitting, boss, or pad, securely attached to the cylinder by brazing or by welding or by threads. A fitting, boss, or pad must be of steel suitable for the method of attachment employed, and which need not be identified or verified as to analysis, except that if attachment is by welding, carbon content may not exceed 0.25 percent. If threads are used, they must comply with the following:

(i) Threads must be clean cut, even without checks, and tapped to gauge.

(ii) Taper threads to be of length not less than as specified for American Standard taper pipe threads.

(iii) Straight threads, having at least 4 engaged threads, to have tight fit and calculated shear strength at least 10 times the test pressure of the cylinder; gaskets required, adequate to prevent leakage.

(2) Closure of a fitting, boss, or pad must be adequate to prevent leakage.

(i) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy of either 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) Cylinders must be tested as follows:

(i) At least one cylinder selected at random out of each lot of 200 or less must be tested as outlined in paragraphs (i)(1), (i)(2), and (i)(3) of this section to at least two times service pressure.

(ii) All cylinders not tested as outlined in paragraph (i)(4)(i) of this section must be examined under pressure of at least two times service pressure and show no defect.

(5) Each 1000 cylinders or less successively produced each day must constitute a lot. One cylinder must be selected from each lot and hydrostatically tested to destruction. If this cylinder bursts below five times the service pressure, then two additional cylinders must be selected and subjected to this test. If either of these cylinders fails by bursting below five times the service pressure then the entire lot must be rejected. All cylinders constituting a lot must be of identical size, construction heat-treatment, finish, and quality.

(j) *Flattening test.* Following the hydrostatic test, one cylinder taken at random out of each lot of 200 or less, must be subjected to a flattening test that is between knife edges, wedge shaped, 60° angle, rounded to ½ inch radius.

(k) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material, as follows:

(1) The test is required on 2 specimens cut from 1 cylinder, or part thereof heat-treated as required, taken at random out of each lot of 200 or less in the case of cylinders of capacity greater than 86 cubic inches and out of each lot of 500 or less for cylinders having a capacity of 86 cubic inches or less.

(2) Specimens must conform to the following:

(i) A gauge length of 8 inches with a width not over 1½ inches, a gauge length of 2 inches with a width not over 1½ inches, or a gauge length at least 24 times the thickness with a width not over 6 times the thickness is authorized when a cylinder wall is not over 3/16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section.

(iii) When size of cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard E8.

(ii) In using the "extension under load" method, the total strain (or "extension under load") corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch and the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(l) *Acceptable results for physical and flattening tests.* Acceptable results for the physical and flattening tests are an elongation of at least 40 percent for a 2 inch gauge length or at least 20 percent in other cases and a yield strength not over 73 percent of tensile strength. In this instance the flattening test is required, without cracking, to six times the wall thickness with a weld 90° from the direction of the applied load. Two rings cut from the ends of length of pipe used in production of a lot may be used for the flattening test provided the rings accompany the lot which they represent in all thermal processing operations. At least one of the rings must pass the flattening test.

(m) *Leakage test.* All spun cylinders and plugged cylinders must be tested for leakage by gas or air pressure after the bottom has been cleaned and is free from all moisture, subject to the following conditions:

(1) Pressure, approximately the same as but no less than service pressure, must be applied to one side of the finished bottom over an area of at least 1/16 of the total area of the bottom but not less than ¾ inch in diameter, including the closure, for at least 1 minute, during which time the other side of the bottom exposed to pressure must be covered with water and closely examined for indications of leakage. Except as provided in paragraph (n) of this section, cylinders which are leaking must be rejected.

(2) A spun cylinder is one in which an end closure in the finished cylinder has been welded by the spinning process.

(3) A plugged cylinder is one in which a permanent closure in the bottom of a finished cylinder has been effected by a plug.

(4) As a safety precaution, if the manufacturer elects to make this test before the hydrostatic test, he should design his apparatus so that the pressure is applied to the smallest area practicable, around the point of closure, and so as to use the smallest possible volume of air or gas.

(n) *Rejected cylinders.* Repairs of rejected cylinders is authorized. Cylinders that are leaking must be rejected, except that:

(1) Spun cylinders rejected under the provisions of paragraph (m) of this section may be removed from the spun cylinder category by drilling to remove defective material, tapping, and plugging.

(2) Brazed joints may be rebrazed.

(3) Subsequent to the operations noted in paragraphs (n)(1) and (n)(2) of this section, acceptable cylinders must pass all prescribed tests.

(o) *Marking.* Markings on each cylinder must be by stamping plainly and permanently on shoulder, top head, neck or valve protection collar which is permanently attached to the cylinders and forming an integral part thereof, provided that cylinders not less than 0.090 inch thick may be stamped on the side wall adjacent to top head.

§ 178.56 Specification 4AA480 welded steel cylinders.

(a) *Type, size, and service pressure.* A DOT 4AA480 cylinder is a welded steel cylinder having a water capacity (nominal) not over 1,000 pounds water capacity and a service pressure of 480 pounds per square inch. Closures welded by spinning process not permitted.

(b) *Steel.* The limiting chemical composition of steel authorized by this specification must be as shown in Table I of Appendix A to this part.

(c) *Identification of material.* Material must be identified by any suitable method except that plates and billets for hotdrawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. Exposed bottom welds on cylinders over 18 inches long must be protected by footrings. Minimum thickness of heads and bottoms may not be less than 90 percent of the required thickness of the side wall. Seams must be made as follows:

(1) Circumferential seams must be welded. Brazing is not authorized.

(2) Longitudinal seams are not permitted.

(3) Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

(e) *Welding.* Only the welding of neckrings, footrings, bosses, pads, and valve protection rings to the tops and bottoms of cylinders is authorized. Provided that such attachments are made of weldable steel, the carbon content of which does not exceed 0.25 percent.

(f) *Wall thickness.* The wall thickness of the cylinder must conform to the following:

(1) For cylinders with an outside diameter over 5 inches, the minimum wall thickness is 0.078 inch. In any case, the minimum wall thickness must be such that the calculated wall stress at the minimum test pressure (in paragraph (i) of this section) may not exceed the lesser value of either of the following:

(i) One-half of the minimum tensile strength of the material determined as required in paragraph (j) of this section; or

(ii) 35,000 pounds per square inch.

(2) Calculation must be made by the formula:

$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$

Where:

S=wall stress in pounds per square inch;
P=minimum test pressure prescribed for water jacket test;
D=outside diameter in inches;
d=inside diameter in inches.

(3) The ratio of tangential length to outside diameter may not exceed 4.0 for cylinders with a wall thickness less than 0.100 inch.

(g) *Heat treatment.* Each cylinder must be uniformly and properly heat

treated prior to tests. Any suitable heat treatment in excess of 1100° F is authorized except that liquid quenching is not permitted. Heat treatment must be accomplished after all forming and welding operations. Heat treatment is not required after welding weldable low carbon parts to attachments of similar material which have been previously welded to the top or bottom of cylinders and properly heat treated, provided such subsequent welding does not produce a temperature in excess of 400 °F., in any part of the top or bottom material.

(h) *Openings in cylinders.* Openings in cylinders must conform to the following:

(1) All openings must be in the heads or bases.

(2) Each opening in the cylinder, except those for safety devices, must be provided with a fitting boss, or pad, securely attached to the cylinder by welding or by threads. If threads are used they must comply with the following:

(i) Threads must be clean-cut, even without checks and cut to gauge.

(ii) Taper threads to be of length not less than as specified for American Standard taper pipe threads.

(iii) Straight threads having at least 6 engaged threads, must have a tight fit and a calculated shear strength at least 10 times the test pressure of the cylinder. Gaskets, adequate to prevent leakage, are required.

(3) Closure of a fitting, boss or pad must be adequate to prevent leakage.

(i) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test as follows:

(1) The test must be by water jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy of either 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds or sufficiently longer to assure complete expansion. Any internal pressure applied after heat-treatment and before the official test may not exceed 90 percent of the test pressure. If, due to failure of test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is lower.

(3) Permanent volumetric expansion may not exceed 10 percent of the total volumetric expansion at test pressure.

(4) Cylinders must be tested as follows:

(i) At least one cylinder selected at random out of each lot of 200 or less must be tested as described in paragraphs (i)(1), (i)(2), and (i)(3) of this section, to at least two times service pressure. If a selected cylinder fails, then two additional specimens must be selected at random from the same lot and subjected to the prescribed test. If either of these fails the test, then each cylinder in that lot must be so tested; and

(ii) Each cylinder not tested as prescribed in paragraph (i)(4)(i) of this section must be examined under pressure of at least two times service pressure and must show no defect. A cylinder showing a defect must be rejected unless it may be requalified under paragraph (m) of this section.

(j) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material, as follows:

(1) The test is required on 2 specimens cut from one cylinder having passed the hydrostatic test, or part thereof heat-treated as required, taken at random out of each lot of 200 or less.

(2) Specimens must conform to the following:

(i) A gauge length of 8 inches with a width not over 1½ inches, a gauge length of 2 inches with a width not over 1½ inches, or a gauge length at least 24 times the thickness with a width not over 6 times thickness is authorized when the cylinder wall is not over 3/16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section.

(iii) When size of cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard E8.

(ii) In using the "extension under load" method, the total strain (or "extension under load"), corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain reference must be set while the specimen is under a stress of 12,000 pounds per square inch and the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(k) *Elongation.* Physical test specimens must show at least a 40 percent elongation for 2-inch gauge lengths or at least a 20 percent elongation in other cases. Except that these elongation percentages may be reduced numerically by 2 for 2-inch specimens and by 1 in other cases for each 7,500 pounds per square inch increment of tensile strength above 50,000 pounds per square inch to a maximum of four such increments.

(l) *Tests of welds.* Welds must be tested as follows:

(1) *Tensile test.* A specimen must be cut from one cylinder of each lot of 200 or less, or a welded test plate. The welded test plate must be of one of the heats in the lot of 200 or less which it represents, in the same condition and approximately the same thickness as the cylinder wall except that it may not be of a lesser thickness than that required for a quarter size Charpy impact specimen. The weld must be made by the same procedures and subjected to the same heat treatment as the major weld on the cylinder. The specimens must be taken across the major seam and must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3. Should this specimen fail to meet the requirements, specimens may be taken from two additional cylinders or welded test plates from the same lot and tested. If either of the latter specimens fail to meet the requirements, the entire lot represented must be rejected.

(2) *Guided bend test.* A root bend test specimen must be cut from the cylinder or a welded test plate, used for the tensile test specified in paragraph (l)(1) of this section. Specimens must be taken from across the major seam and must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3.

(3) *Alternate guided-bend test.* This test may be used and must be as required by CGA Pamphlet C–3. The specimen must be bent until the elongation at the outer surface, adjacent to the root of the weld, between the lightly scribed gage lines-a to b, is at least 20 percent, except that this percentage may be reduced for steels having a tensile strength in excess of 50,000 pounds per square inch, as provided in paragraph (k) of this section.

(m) *Rejected cylinders.* Reheat treatment of rejected cylinders is authorized. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair of welded seams by welding is authorized.

(n) *Markings.* Markings must be stamped plainly and permanently in one of the following locations on the cylinder:

(1) On shoulders and top heads not less than 0.087 inch thick.

(2) On neck, valve boss, valve protection sleeve, or similar part permanently attached to top end of cylinder.

(3) On a plate attached to the top of the cylinder or permanent part thereof: sufficient space must be left on the plate to provide for stamping at least six retest dates: the plate must be at least 1/16 inch thick and must be attached by welding or by brazing at a temperature of at least 1100° F, throughout all edges of the plate.

(4) Variations in location of markings authorized only when necessitated by lack of space.

§ 178.57 Specification 4L welded insulated cylinders.

(a) *Type, size, service pressure, and design service temperature.* A DOT 4L cylinder is a fusion welded insulated cylinder with a water capacity (nominal) not over 1,000 pounds water capacity and a service pressure of at least 40 but not greater than 500 pounds per square inch conforming to the following requirements:

(1) For liquefied hydrogen service, the cylinders must be designed to stand on end, with the axis of the cylindrical portion vertical.

(2) The design service temperature is the coldest temperature for which a cylinder is suitable. The required design service temperatures for each cryogenic liquid is as follows:

Cryogenic liquid	Design service temperature
Argon	Minus 320 °F or colder.
Helium	Minus 452 °F or colder.

Cryogenic liquid	Design service temperature
Hydrogen	Minus 42 3°F or colder.
Neon	Minus 411 °F or colder.
Nitrogen	Minus 320 °F or colder.
Oxygen	Minus 320 °F or colder.

(b) *Material.* Material use in the construction of this specification must conform to the following:

(1) *Inner containment vessel (cylinder).* Designations and limiting chemical compositions of steel authorized by this specification must be as shown in Table 1 in paragraph (o) of this section.

(2) *Outer jacket.* Steel or aluminum may be used subject to the requirements of paragraph (o)(2) of this section.

(c) *Identification of material.* Material must be identified by any suitable method.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart and to the following requirements:

(1) No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. The shell portion must be a reasonably true cylinder.

(2) The heads must be seamless, concave side to the pressure, hemispherical or ellipsoidal in shape with the major diameter not more than twice the minor diameter. Minimum thickness of heads may not be less than 90 percent of the required thickness of the sidewall. The heads must be reasonably true to shape, have no abrupt shape changes, and the skirts must be reasonably true to round.

(3) The surface of the cylinder must be insulated. The insulating material must be fire resistant. The insulation on non-evacuated jackets must be covered with a steel jacket not less than 0.060-inch thick or an aluminum jacket not less than 0.070 inch thick, so constructed that moisture cannot come in contact with the insulating material. If a vacuum is maintained in the insulation space, the evacuated jacket must be designed for a minimum collapsing pressure of 30 psi differential whether made of steel or aluminum. The construction must be such that the total heat transfer, from the atmosphere at ambient temperature to the contents of the cylinder, will not exceed 0.0005 Btu per hour, per Fahrenheit degree differential in temperature, per pound of water capacity of the cylinder. For hydrogen, cryogenic liquid service, the total heat transfer, with a temperature differential of 520 Fahrenheit degrees, may not exceed that required to vent 30 SCF of hydrogen gas per hour.

(4) For a cylinder having a design service temperature colder than minus 320 °F, a calculation of the maximum weight of contents must be made and that weight must be marked on the cylinder as prescribed in § 178.35.

(5) Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3. In addition, an impact test of the weld must be performed in accordance with paragraph (l) of this section as part of the qualification of each welding procedure and operator.

(e) *Welding.* Welding of the cylinder must be as follows:

(1) All seams of the cylinder must be fusion welded. A means must be provided for accomplishing complete penetration of the joint. Only butt or joggle butt joints for the cylinder seams are authorized. All joints in the cylinder must have reasonably true alignment.

(2) All attachments to the sidewalls and heads of the cylinder must be by fusion welding and must be of a weldable material complying with the impact requirements of paragraph (l) of this section.

(3) For welding the cylinder, each procedure and operator must be qualified in accordance with the sections of CGA Pamphlet C–3 that apply. In addition, impact tests of the weld must be performed in accordance with paragraph (l) of this section as part of the qualification of each welding procedure and operator.

(4) Brazing, soldering and threading are permitted only for joints not made directly to the cylinder body. Threads must comply with the requirements of paragraph (h) of this section.

(f) *Wall thickness.* The minimum wall thickness of the cylinder must be such that the calculated wall stress at the minimum required test pressure may not exceed the least value of the following:

(1) 45,000 pounds per square inch.

(2) One-half of the minimum tensile strength across the welded seam determined in paragraph (l) of this section.

(3) One-half of the minimum tensile strength of the base metal determined as required in paragraph (j) of this section.

(4) The yield strength of the base metal determined as required in paragraph (l) of this section.

(5) Further provided that wall stress for cylinders having longitudinal seams may not exceed 85 percent of the above value, whichever applies.

(6) Calculation must be made by the following formula:

$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$

where:

S=wall stress in pounds per square inch;
P=minimum test pressure prescribed for pressure test in pounds per square inch;
D=outside diameter in inches;
d=inside diameter in inches.

(g) *Heat treatment.* Heat treatment is not permitted.

(h) *Openings in cylinder.* Openings in cylinders must conform to the following:

(1) Openings are permitted in heads only. They must be circular and may not exceed 3 inches in diameter or one third of the cylinder diameter, whichever is less. Each opening in the cylinder must be provided with a fitting, boss or pad, either integral with, or securely attached to, the cylinder body by fusion welding. Attachments to a fitting, boss or pad may be made by welding, brazing, mechanical attachment, or threading.

(2) Threads must comply with the following:

(i) Threads must be clean-cut, even, without checks and cut to gauge.

(ii) Taper threads to be of a length not less than that specified for NPT.

(iii) Straight threads must have at least 4 engaged threads, tight fit and calculated shear strength at least 10 times the test pressure of the cylinder. Gaskets, which prevent leakage and are inert to the hazardous material, are required.

(i) *Pressure test.* Each cylinder, before insulating and jacketing, must be examined under a pressure of at least 2 times the service pressure maintained for at least 30 seconds without evidence of leakage, visible distortion or other defect. The pressure gauge must permit reading to an accuracy of 1 percent.

(j) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, and elongation as follows:

(1) The test is required on 2 specimens selected from material of each heat and in the same condition as that in the completed cylinder.

(2) Specimens must conform to the following:

(i) A gauge length of 8 inches with a width not over 1½ inches, a gauge length of 2 inches with width not over 1½ inches, or a gauge length at least 24 times thickness with a width not over 6 times thickness (authorized when cylinder wall is not over 1/16 inch thick).

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within one inch of each end of the reduced section.

(iii) When size of the cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold by pressure only, not by blows. When specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard E8.

(ii) In using the "extension under load" method, the total strain (or "extension under load"), corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic expansion of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on the elastic modulus of the material used. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain reference must be set while the specimen is under a stress of 12,000 pounds per square inch and the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(k) *Acceptable results for physical tests.* Physical properties must meet the limits specified in paragraph (o)(1), Table 1, of this section, for the particular steel in the annealed condition. The specimens must show at least a 20 percent elongation for a 2-inch gage length. Except that the percentage may be reduced numerically by 2 for each 7,500 pounds per square inch increment of tensile strength above 100,000 pounds per square inch to a maximum of 5 such increments. Yield strength and tensile strength must meet the requirements of paragraph (o)(1), Table 1, of this section.

(l) *Tests of welds.* Welds must be tested as follows:

(1) *Tensile test.* A specimen must be cut from one cylinder of each lot of 200 or less, or welded test plate. The welded test plate must be of one of the heats in the lot of 200 or less which it represents, in the same condition and approximately the same thickness as the cylinder wall except that it may not be of a lesser thickness than that required for a quarter size Charpy impact specimen. The weld must be made by the same procedures and subjected to the same heat treatment as the major weld on the cylinder. The specimen must be taken across the major seam and must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3. Should this specimen fail to meet the requirements, specimens may be taken from two additional cylinders or welded test plates from the same lot and tested. If either of the latter specimens fails to meet the requirements, the entire lot represented must be rejected.

(2) *Guided bend test.* A "root" bend test specimen must be cut from the cylinder or welded test plate, used for the tensile test specified in paragraph (l)(1) of this section and from any other seam or equivalent welded test plate if the seam is welded by a procedure different from that used for the major seam. Specimens must be taken across the particular seam being tested and must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3.

(3) *Alternate guided-bend test.* This test may be used and must be as specified in CGA Pamphlet C–3. The specimen must be bent until the elongation at the outer surface, adjacent to the root of the weld, between the lightly scribed gage lines a to b, is at least 20 percent, except that this percentage may be reduced for steels having a tensile strength in excess of 100,000 pounds per square inch, as provided in paragraph (c) of this section.

(4) *Impact tests.* One set of three impact test specimens (for each test) must be prepared and tested for determining the impact properties of the deposited weld metal—

(i) As part of the qualification of the welding procedure.

(ii) As part of the qualification of the operators.

(iii) For each "heat" of welding rodor wire used.

(iv) For each 1,000 feet of weld made with the same heat of welding rod or wire.

(v) All impact test specimens must be of the Charpy type, keyhole or milled U-notch, and must conform in all respects to Figure 3 of ASTM E–23–60. Each set of impact specimens must be taken across the weld and have the notch located in the weld metal. When the cylinder material thickness is 2.5 mm or thicker, impact specimens must be cut from a cylinder or welded test plate used for the tensile or bend test specimens. The dimension along the axis of the notch must be reduced to the largest possible of 10 mm, 7.5 mm, 5 mm or 2.5 mm, depending upon cylinder thickness. When the material in the cylinder or welded test plate is not of sufficient thickness to prepare 2.5 mm impact test specimens, 2.5 mm specimens must be prepared from a welded test plate made from ⅛ inch thick material meeting the requirements specified in paragraph (o)(1), Table 1, of this section and having a carbon analysis of .05 minimum, but not necessarily from one of the heats used in the lot of cylinders. The test piece must be welded by the same welding procedure as used on the particular cylinder seam being qualified and must be subjected to the same heat treatment.

(vi) Impact test specimens must be cooled to the design service temperature. The apparatus for testing the specimens must conform to the requirements of ASTM Standard E–23–60. The test piece, as well as the handling tongs, must be cooled for a length of time sufficient to reach the service temperature. The temperature of the cooling device must be maintained within a range of plus or minus 3° F. The specimen must be quickly transferred from the cooling device to the anvil of the testing machine and broken within a time lapse of not more than six seconds.

(vii) The impact properties of each set of impact specimens may not be less than the values in the following table:

Size of specimen	Minimum impact value required for avg. of each set of three specimens (ft.-lb.)	Minimum impact value permitted on one only of a set of three (ft.-lb.)
10 mm×10 mm	15	10
10 mm×7.5 mm	12.5	8.5
10 mm×5 mm	10	7.0
10 mm×2.5 mm	5	3.5

(viii) When the average value of the three specimens equals or exceeds the minimum value permitted for a single specimen and the value for more than one specimen is below the required average value, or when the value for one specimen is below the minimum value permitted for a single specimen, a retest of three additional specimens must be made. The value of each of these retest specimens must equal or exceed the required average value. When an erratic result is caused by a defective specimen, or there is uncertainty in test procedure, a retest is authorized.

(m) *Radiographic examination.* Cylinders must be subject to a radiographic examination as follows:

(1) The techniques and acceptability of radiographic inspection must conform to the standards set forth in CGA Pamphlet C–3.

(2) One finished longitudinal seam must be selected at random from each lot of 100 or less successively produced and be radiographed throughout its entire length. Should the radiographic examination fail to meet the requirements of paragraph (m)(1) of this section, two additional seams of the same lot must be examined, and if either of these fail to meet the requirements of (m)(1) of this section, only those passing are acceptable.

(n) *Rejected cylinders.* Reheat treatment of rejected cylinders is authorized. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Welds may be repaired by suitable methods of fusion welding.

(o) *Authorized materials of construction.* Authorized materials of construction are as follows:

(1) *Inner containment vessel (cylinder).* Electric furnace steel of uniform quality must be used. Chemical analysis must conform to ASTM A240, Type 304 Stainless Steel. A heat of steel made under Table 1 and Table 2 in this paragraph (o)(1) is acceptable, even though its check chemical analysis is slightly out of the specified range, if it is satisfactory in all other respects, provided the tolerances shown in Table 3 in this paragraph (o)(1) are not exceeded. The following chemical analyses and physical properties are authorized:

TABLE 1.—AUTHORIZED MATERIALS

Designation	Chemical analysis, limits in percent
Carbon [1]	0.08 max.
Manganese	2.00 max.
Phosphorus	0.045 max.
Sulphur	0.030 max.
Silicon	1.00 max.
Nickel	8.00–10.50.
Chromium	18.00–20.00.
Molybdenum	None.
Titanium	None.
Columbium	None.

[1] The carbon analysis must be reported to the nearest hundredth of one percent.

TABLE 2.—PHYSICAL PROPERTIES

	Physical properties (annealed)
Tensile strength, p.s.i. (minimum)	75,000
Yield strength, p.s.i. (minimum)	30,000
Elongation in 2 inches (minimum) percent	30.0
Elongation other permissible gauge lengths (minimum) percent	15.0

TABLE 3.—CHECK ANALYSIS TOLERANCES

Elements	Limit or specified range (percent)	Tolerance over the maximum limit or under the minimum limit
Carbon	To 0.030, incl	0.005
	Over 0.30 to 0.20, incl	0.01
Manganese	To 1.00 incl	.03
	Over 1.00 to 3.00, incl	0.04
Phosphorus [1]	To 0.040, incl	0.005
	Over 0.040 to 0.020 incl	0.010
Sulphur	To .40 incl	0.005

TABLE 3.—CHECK ANALYSIS TOLERANCES—Continued

Elements	Limit or specified range (percent)	Tolerance over the maximum limit or under the minimum limit
Silicon	To 1.00, incl	0.05
Nickel	Over 5.00 to 10.00, incl	0.10
	Over 10.00 to 20.00, incl	0.15
Chromium	Over 15.00 to 20.00, incl	0.20

[1] Rephosphorized steels not subject to check analysis for phosphorus.

(2) *Outer jacket.* (i) Nonflammable cryogenic liquids. Cylinders intended for use in the transportation of nonflammable cryogenic liquid must have an outer jacket made of steel or aluminum.

(ii) Flammable cryogenic liquids. Cylinders intended for use in the transportation of flammable cryogenic liquid must have an outer jacket made of steel.

(p) *Markings.* (1) Markings must be stamped plainly and permanently on shoulder or top head of jacket or on a permanently attached plate or head protective ring.

(2) The letters "ST", followed by the design service temperature (for example, ST–423F), must be marked on cylinders having a design service temperature of colder than minus 320° F only. Location to be just below the DOT mark.

(3) The maximum weight of contents, in pounds (for example, "Max. Content 51 #"), must be marked on cylinders having a design service temperature colder than minus 320° F only. Location to be near symbol.

(4) Special orientation instructions must be marked on the cylinder (for example, THIS END UP), if the cylinder is used in an orientation other than vertical with openings at the top of the cylinder.

(5) If the jacket of the cylinder is constructed of aluminum, the letters "AL" must be marked after the service pressure marking. Example: DOT–4L150 AL.

(6) Except for serial number and jacket material designation, each marking prescribed in this paragraph (p) must be duplicated on each cylinder by any suitable means.

(q) *Inspector's report.* In addition to the information required by § 178.35, the inspector's reports must contain information on:

(1) The jacket material and insulation type;

(2) The design service temperature (°F); and

(3) The impact test results, on a lot basis.

§ 178.58 Specification 4DA welded steel cylinders for aircraft use.

(a) *Type, size, and service pressure.* A DOT 4DA is a welded steel sphere (two seamless hemispheres) or a circumferentially welded cylinder (two seamless drawn shells) with a water capacity not over 100 pounds and a service pressure of at least 500 but not over 900 pounds per square inch.

(b) *Steel.* Open-hearth or electric steel of uniform quality must be used. A heat of steel made under Table 1 in this paragraph (b), check chemical analysis of which is slightly out of the specified range, is acceptable, if satisfactory in all other respects, provided the tolerances shown in Table 2 in this paragraph (b) are not exceeded except as approved by the Associate Administrator. The following chemical analyses are authorized:

TABLE 1.—AUTHORIZED MATERIALS

4130	Percent
Carbon	0.28/0.33.
Manganese	0.40/0.60.
Phosphorus	0.040 max.
Sulfur	0.040 max.
Silicon	0.15/0.35.
Chromium	0.80/1.10.
Molybdenum	0.15/0.25.

TABLE 2.—CHECK ANALYSIS TOLERANCES

Element	Limit or maximum specified (percent)	Tolerance (percent) over the maximum limit or under the minimum limit	
		Under minimum limit	Over maximum limit
Carbon	Over 0.15 to 0.40 incl	.03	.04
Manganese	To 0.60 incl	.03	.03
Phosphorus[1]	All ranges		.01
Sulphur	All ranges		.01
Silicon	To 0.30 incl	.02	.03
	Over 0.30 to 1.00 incl	.05	.05
Chromium	To 0.90 incl	.03	.03
	Over 0.90 to 2.10 incl	.05	.05
Molybdenum	To 0.20 incl	.01	.01

TABLE 2.—CHECK ANALYSIS TOLERANCES—Continued

Element	Limit or maximum specified (percent)	Tolerance (percent) over the maximum limit or under the minimum limit	
		Under minimum limit	Over maximum limit
	Over 0.20 to 0.40, incl	.02	.02

[1] Rephosphorized steels not subject to check analysis for phosphorus.

(c) *Identification of material.* Materials must be identified by any suitable method except that plates and billets for hot-drawn containers must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured in accordance with the following requirements:

(1) By best appliances and methods. No defect is acceptable that is likely to weaken the finished container appreciably. A reasonably smooth and uniform surface finish is required. No abrupt change in wall thickness is permitted. Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

(2) All seams of the sphere or cylinders must be fusion welded. Seams must be of the butt or joggle butt type and means must be provided for accomplishing complete penetration of the joint.

(e) *Welding.* Attachments to the container are authorized by fusion welding provided that such attachments are made of weldable steel, the carbon content of which may not exceed 0.25 percent except in the case of 4130 steel.

(f) *Wall thickness.* The minimum wall thickness must be such that the wall stress at the minimum specified test pressure may not exceed 67 percent of the minimum tensile strength of the steel as determined from the physical and burst tests required and may not be over 70,000 p.s.i. For any diameter container, the minimum wall thickness is 0.040 inch. Calculations must be made by the formulas in (f)(1) or (f)(2) of this section:

(1) Calculation for a sphere must be made by the following formula:

$S=PD/4tE$

Where:

S=wall stress in pounds per square inch;
P=test pressure prescribed for water jacket test, i.e., at least 2 times service pressure, in pounds per square inch;
D=outside diameter in inches;
t=minimum wall thickness in inches;
E=0.85 (provides 85 percent weld efficiency factor which must be applied in the girth weld area and heat affected zones which zone must extend a distance of 6 times wall thickness from center line of weld);
E=1.0 (for all other areas).

(2) Calculation for a cylinder must be made by the following formula:

$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$

Where:

S=wall stress in pounds per square inch;
P=test pressure prescribed for water jacket test, i.e., at least 2 times service pressure, in pounds per square inch;
D=outside diameter in inches;
d=inside diameter in inches.

(g) *Heat treatment.* The completed containers must be uniformly and properly heat-treated prior to tests. Heat-treatment of containers of the authorized analysis must be as follows:

(1) All containers must be quenched by oil, or other suitable medium except as provided in paragraph (g)(4) of this section.

(2) The steel temperature on quenching must be that recommended for the steel analysis, but may not exceed 1,750° F.

(3) The steel must be tempered at the temperature most suitable for the analysis except that in no case shall the tempering temperature be less than 1,000° F.

(4) The steel may be normalized at a temperature of 1,650° F instead of being quenched, and containers so normalized need not be tempered.

(5) All cylinders, if water quenched or quenched with a liquid producing a cooling rate in excess of 80 percent of the cooling rate of water, must be inspected by the magnetic particle or dye penetrant method to detect the presence of quenching cracks. Any cylinder found to have a quench crack must be rejected and may not be requalified.

(h) *Openings in container.* Openings in the container must comply with the following requirements:

(1) Each opening in the container must be provided with a fitting, boss, or pad of weldable steel securely attached to the container by fusion welding.

(2) Attachments to a fitting, boss, or pad must be adequate to prevent leakage. Threads must comply with the following:

(i) Threads must be clean cut, even, without checks, and tapped to gauge.

(ii) Taper threads to be of length not less than as specified for American Standard taper pipe threads.

(iii) Straight threads, having at least 4 engaged threads, to have tight fit and calculated shear strength at least 10 times the test pressure of the container; gaskets required, adequate to prevent leakage.

(i) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to accuracy either of 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent or 100 pounds per square inch, whichever is the lower.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) Each container must be tested to at least 2 times service pressure.

(j) *Burst test.* One container taken at random out of 200 or less must be hydrostatically tested to destruction. The rupture pressure must be included as part of the inspector's report.

(k) *Flattening test.* Spheres and cylinders must be subjected to a flattening test as follows:

(1) *Flattening test for spheres.* One sphere taken at random out of each lot of 200 or less must be subjected to a flattening test as follows:

(i) The test must be performed after the hydrostatic test.

(ii) The test must be at the weld between the parallel steel plates on a

press with a welded seam, at right angles to the plates. Any projecting appurtenances may be cut off (by mechanical means only) prior to crushing.

(2) *Flattening test for cylinders.* One cylinder taken at random out of each lot of 200 or less, must be subjected to a flattening test as follows:

(i) The test must be performed after the hydrostatic test.

(ii) The test must between knife edges, wedge shaped, 60° angle, rounded to ½ inch radius; test

(l) *Radiographic inspection.* Radiographic examinations is required on all welded joints which are subjected to internal pressure, except that at the discretion of the disinterested inspector, openings less than 25 percent of the sphere diameter need not be subjected to radiographic inspection. Evidence of any defects likely to seriously weaken the container must be cause for rejection.

(m) *Physical test and specimens for spheres and cylinders.* Spheres and cylinders must be subjected to a physical test as follows:

(1) A physical test for a sphere is required on 2 specimens cut from a flat representative sample plate of the same heat taken at random from the steel used to produce the sphere. This flat steel from which the 2 specimens are to be cut must receive the same heat-treatment as the spheres themselves. Sample plates to be taken for each lot of 200 or less spheres.

(2) Specimens for spheres have a gauge length of 2 inches with a width not over 1½ inches, or a gauge length at least 24 times thickness with a width not over 6 times thickness is authorized when wall of sphere is not over 3/16 inch thick.

(3) A physical test for cylinders is required on 2 specimens cut from 1 cylinder taken at random out of each lot of 200 or less.

(4) Specimens for cylinder must conform to the following:

(i) A gauge length of 8 inches with a width not over 1½ inches, a gauge length of 2 inches with a width not over 1½ inches, a gauge length at least 24 times thickness with a width not over 6 times thickness is authorized when a cylinder wall is not over 3/16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within 1 inch of each end of the reduced section.

(iii) Heating of a specimen for any purpose is not authorized.

(5) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard E8.

(ii) In using the "extension under load" method, the total strain (or "extension under load") corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 percent offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch and the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(n) *Acceptable results for physical, flattening, and burst tests.* The following are acceptable results of the physical, flattening and burst test:

(1) Elongation must be at least 20 percent for a 2-inch gauge length or 10 percent in other cases.

(2) Flattening is required to 50 percent of the original outside diameter without cracking.

(3) Burst pressure must be at least 3 times service pressure.

(o) *Rejected containers.* Reheat-treatment of rejected cylinders is authorized. Subsequent thereto, containers must pass all prescribed tests to be acceptable. Repair of welded seams by welding prior to reheat-treatment is authorized.

(p) *Marking.* Markings on each container must be stamped plainly and permanently on a permanent attachment or on a metal nameplate permanently secured to the container by means other than soft solder.

§ 178.59 Specification 8 steel cylinders with porous fillings for acetylene.

(a) *Type and service pressure.* A DOT 8 cylinder is a seamless cylinder with a service pressure of 250 pounds per square inch. The following steel is authorized:

(1) A longitudinal seam if forge lap welded;

(2) Attachment of heads by welding or by brazing by dipping process; or

(3) A welded circumferential body seam if the cylinder has no longitudinal seam.

(b) *Steel.* Open-hearth, electric or basic oxygen process steel of uniform quality must be used. Content percent may not exceed the following: Carbon, 0.25; phosphorus, 0.045; sulphur, 0.050.

(c) *Identification of steel.* Materials must be identified by any suitable method except that plates and billets for hot-drawn cylinders must be marked with the heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is acceptable that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

(e) *Exposed bottom welds.* Exposed bottom welds on cylinders over 18 inches long must be protected by footrings.

(f) *Heat treatment.* Body and heads formed by drawing or pressing must be uniformly and properly heat treated prior to tests.

(g) *Openings.* Openings in the cylinders must comply with the following:

(1) Standard taper pipe threads are required;

(2) Length may not be less than as specified for American Standard pipe threads; tapped to gauge; clean cut, even, and without checks.

(h) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy of either 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) One cylinder out of each lot of 200 or less must be hydrostatically tested to at least 750 pounds per square inch. Cylinders not so tested must be examined under pressure of between 500 and 600 pounds per square inch and show no defect. If hydrostatically tested cylinder fails, each cylinder in the lot may be hydrostatically tested and those passing are acceptable.

(i) *Leakage test.* Cylinders with bottoms closed in by spinning must be subjected to a leakage test by setting the interior air or gas pressure to not less than the service pressure. Cylinders which leak must be rejected.

(j) *Physical test.* A physical test must be conducted as follows:

(1) The test is required on 2 specimens cut longitudinally from 1 cylinder or part thereof taken at random out of each lot of 200 or less, after heat treatment.

(2) Specimens must conform to a gauge length of 8 inches with a width not over 1½ inches, a gauge length of 2 inches with width not over 1½, or a gauge length at least 24 times thickness with a width not over 6 times thickness is authorized when a cylinder wall is not over 3/16 inch thick.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard E8.

(ii) In using the "extension under load" method, the total strain (or "extension under load") corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch and the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per-minute during yield strength determination.

(4) Yield strength may not exceed 73 percent of tensile strength. Elongation must be at least 40 percent in 2 inch or 20 percent in-other cases.

(k) *Rejected cylinders.* Reheat treatment of rejected cylinder is authorized. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair by welding is authorized.

(l) *Porous filling.* (1) Cylinders must be filled with a porous material in accordance with the following:

(i) The porous material may not disintegrate or sag when wet with solvent or when subjected to normal service;

(ii) The porous filling material must be uniform in quality and free of voids, except that a well drilled into the filling material beneath the valve is authorized if the well is filled with a material of such type that the functions of the filling material are not impaired;

(iii) Overall shrinkage of the filling material is authorized if the total clearance between the cylinder shell and filling material, after solvent has been added, does not exceed ½ of 1 percent of the respective diameter or length, but not to exceed ⅛ inch, measured diametrically and longitudinally;

(iv) The clearance may not impair the functions of the filling material;

(v) The installed filling material must meet the requirements of CGA Pamphlet C–12; and

(vi) Porosity of filling material may not exceed 80 percent except that filling material with a porosity of up to 92 percent may be used when tested with satisfactory results in accordance with CGA Pamphlet C–12.

(2) When the porosity of each cylinder is not known, a cylinder taken at random from a lot of 200 or less must be tested for porosity. If the test cylinder fails, each cylinder in the lot may be tested individually and those cylinders that pass the test are acceptable.

(3) For filling that is molded and dried before insertion in cylinders, porosity test may be made on a sample block taken at random from material to be used.

(4) The porosity of the filling material must be determined. The amount of solvent at 70° F for a cylinder:

(i) Having shell volumetric capacity above 20 pounds water capacity (nominal) may not exceed the following:

Percent porosity of filler	Maximum acetone solvent percent shell capacity by volume
90 to 92	43.4
87 to 90	42.0
83 to 87	40.0
80 to 83	38.6
75 to 80	36.2
70 to 75	33.8
65 to 70	31.4

(ii) Having volumetric capacity of 20 pounds or less water capacity (nominal), may not exceed the following:

Percent porosity of filler	Maximum acetone solvent percent shell capacity by volume
90 to 92	41.8
83 to 90	38.5
80 to 83	37.1
75 to 80	34.8
70 to 75	32.5
65 to 70	30.2

(m) *Tare weight.* The tare weight is the combined weight of the cylinder proper, porous filling, valve, and solvent, without removable cap.

(n) *Duties of inspector.* In addition to the requirements of § 178.35, the inspector is required to—

(1) Certify chemical analyses of steel used, signed by manufacturer thereof; also verify by, check analyses of samples taken from each heat or from 1 out of each lot of 200 or less, plates, shells, or tubes used.

(2) Verify compliance of cylinder shells with all shell requirements; inspect inside before closing in both ends; verify heat treatment as proper; obtain all samples for all tests and for check analyses; witness all tests; verify threads by gauge; report volumetric capacity and minimum thickness of wall noted.

(3) Prepare report on manufacture of steel shells in form prescribed in § 178.35. Furnish one copy to manufacturer and three copies to the company that is to complete the cylinders.

(4) Determine porosity of filling and tare weights; verify compliance of marking with prescribed requirements; obtain necessary copies of steel shell reports; and furnish complete reports required by this specification to the person who has completed the manufacture of the cylinders and, upon request, to the purchaser. The test reports must be retained by the inspector for fifteen years from the original test date of the cylinder.

(o) *Marking.* (1) Marking on each cylinder must be stamped plainly and permanently on or near the shoulder, top head, neck or valve protection collar which is permanently attached to the cylinder and forming integral part thereof.

(2) Tare weight of cylinder, in pounds and ounces, must be marked on the cylinder.

(3) Cylinders, not completed, when delivered must each be marked for identification of each lot of 200 or less.

§ 178.60 Specification 8AL steel cylinders with porous fillings for acetylene.

(a) *Type and service pressure.* A DOT 8AL cylinder is a seamless steel cylinder with a service pressure of 250 pounds per square inch. However, the attachment of heads by welding or by brazing by dipping process and a welded circumferential body seam is authorized. Longitudinal seams are not authorized.

(b) *Authorized steel.* The authorized steel is as specified in Table I of Appendix A to this part.

(c) *Identification of steel.* Material must be identified by any suitable method except that plates and billets for hot-drawn cylinders must be marked with heat number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

(e) *Footrings.* Exposed bottom welds on cylinders over 18 inches long must be protected by footrings.

(f) *Welding or brazing.* Welding or brazing for any purpose whatsoever is prohibited except as follows:

(1) The attachment to the tops or bottoms of cylinders of neckrings, footrings, handlers, bosses, pads, and valve protecting rings is authorized provided that such attachments and the portion of the container to which they are attached are made of weldable steel, the carbon content of which may not exceed 0.25 percent.

(2) Heat treatment is not required after welding or brazing weldable low carbon parts to attachments, specified in paragraph (f)(1) of this section, of similar material which have been previously welded or brazed to the top or bottom of cylinders and properly heat treated, provided such subsequent welding or brazing does not produce a temperature in excess of 400° F in any part of the top or bottom material.

(g) *Wall thickness; wall stress.* The wall thickness/wall stress of the cylinder must conform to the following:

(1) The calculated wall stress at 750 pounds per square inch may not exceed 35,000 pounds per square inch, or one-half of the minimum ultimate strength of the steel as determined in paragraph (l) of this section, whichever value is the smaller. The measured wall thickness may not include galvanizing or other protective coating.

(i) Calculation of wall stress must be made by the formula:

$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$

Where:

S=wall stress in pounds per square inch;
P=750 pounds per square inch (minimum test pressure);
D=outside diameter in inches;
d=inside diameter in inches.

(ii) Either D or d must be calculated from the relation D = d + 2t, where t = minimum wall thickness.

(2) Cylinders with a wall thickness less than 0.100 inch, the ratio of straight side wall length to outside diameter may not exceed 3.5.

(3) For cylinders having outside diameter over 5 inches, the minimum wall thickness must be 0.087 inch.

(h) *Heat treatment.* Each cylinder must be uniformly and properly heat treated, prior to tests, by any suitable method in excess of 1100° F. Heat treatment must be accomplished after all forming and welding operations, except that when brazed joints are used, heat treatment must follow any forming and welding operations but may be done before, during, or after the brazing operations. Liquid quenching is not authorized.

(i) *Openings.* Standard taper pipe threads required in all openings. The length of the opening may not be less than as specified for American Standard pipe threads; tapped to gauge; clean cut, even, and without checks.

(j) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy of either 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat-treatment and previous to the official test may not exceed 90 percent of the test pressure.

(3) Permanent volumetric expansion may not exceed 10 percent of total volumetric expansion at test pressure.

(4) One cylinder out of each lot of 200 or less must be hydrostatically tested to at least 750 pounds per square inch. Cylinders not so tested must be examined under pressure of between 500 and 600 pounds per square inch and show no defect. If a hydrostatically tested cylinder fails, each cylinder in the lot may be hydrostatically tested and those passing are acceptable.

(k) *Leakage test.* Cylinders with bottoms closed in by spinning must be leakage tested by setting the interior air or gas pressure at not less than the service pressure. Any cylinder that leaks must be rejected.

(l) *Physical test.* A physical test must be conducted as follows;

(1) The test is required on 2 specimens cut longitudinally from 1 cylinder or part thereof taken at random out of each lot of 200 or less, after heat treatment.

(2) Specimens must conform to a gauge length of 8 inches with a width not over 1½ inches, a gauge length 2 inches with a width not over 1 ½ inches, or a gauge length at least 24 times thickness with a width not over 6 times thickness is authorized when a cylinder wall is not over 3/16 inch thick.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "offset" method or the "extension under load" method as prescribed in ASTM Standard E 8.

(ii) In using the "extension under load" method, the total strain (or "extension under load") corresponding to the stress at which the 0.2 percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2 offset.

(iii) For the purpose of strain measurement, the initial strain must be set while the specimen is under a stress of 12,000 pounds per square inch, the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(m) *Elongation.* Physical test specimens must show at least a 40 percent elongation for a 2 inch gauge length or at least a 20 percent elongation in other cases. Except that these elongation percentages may be reduced numerically by 2 for 2 inch specimens and 1 in other cases for each 7,500 pounds per square inch increment of tensile strength above 50,000 pounds per square inch to a maximum of four such increments.

(n) *Weld tests.* Specimens taken across the circumferentially welded seam must be cut from one cylinder taken at random from each lot of 200 or less cylinders after heat treatment and must pass satisfactorily the following tests:

(1) *Tensile test.* A specimen must be cut from one cylinder of each lot of 200 or less, or welded test plate. The specimen must be taken from across the major seam and must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3. Should this specimen fail to meet the requirements, specimens may be taken from two additional cylinders or welded test plates from the same lot and tested. If either of the latter specimens fail to meet the requirements, the entire lot represented must be rejected.

(2) *Guided bend test.* A root bend test specimen must be cut from the cylinder or welded test plate, used for the tensile test specified in paragraph (n)(1) of this section. Specimens must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3.

(3) *Alternate guided-bend test.* This test may be used and must be as required by CGA Pamphlet C–3. The specimen must be bent until the elongation at the outer surface, adjacent to the root of the weld, between the lightly scribed gage lines-a to b, must be at least 20 percent, except that this percentage may be reduced for steels having a tensile strength in excess of 50,000 pounds per square inch, as provided in paragraph (m) of this section.

(o) *Rejected cylinders.* Reheat treatment of rejected cylinders is authorized. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair by welding is authorized.

(p) *Porous filling.* (1) Cylinders must be filled with a porous material in accordance with the following:

(i) The porous material may not disintegrate or sag when wet with solvent or when subjected to normal service;

(ii) The filling material must be uniform in quality and free of voids, except that a well drilled into the filling material beneath the valve is authorized if the well is filled with a material of such type that the functions of the filling material are not impaired;

(iii) Overall shrinkage of the filling material is authorized if the total clearance between the cylinder shell and filling material, after solvent has been added, does not exceed ½ of 1 percent of the respective diameter or length but not to exceed ⅛ inch, measured diametrically and longitudinally;

(iv) The clearance may not impair the functions of the filling material;

(v) The installed filling material must meet the requirements of CGA Pamphlet C–12; and

(vi) Porosity of filling material may not exceed 80 percent except that filling material with a porosity of up to 92 percent may be used when tested with satisfactory results in accordance with CGA Pamphlet C–12.

(2) When the porosity of each cylinder is not known, a cylinder taken at random from a lot of 200 or less must be tested for porosity. If the test cylinder fails, each cylinder in the lot may be tested individually and those cylinders that pass the test are acceptable.

(3) For filling that is molded and dried before insertion in cylinders, porosity test may be made on sample block taken at random from material to be used.

(4) The porosity of the filling material must be determined; the amount of solvent at 70° F for a cylinder:

(i) Having shell volumetric capacity above 20 pounds water capacity (nominal) may not exceed the following:

Percent porosity of filler	Maximum acetone solvent percent shell capacity by volume
90 to 92	43.4
87 to 90	42.0
83 to 87	40.0
80 to 83	38.6
75 to 80	36.2
70 to 75	33.8
65 to 70	31.4

(ii) Having volumetric capacity of 20 pounds or less water capacity (nominal), may not exceed the following:

Percent porosity of filler	Maximum acetone solvent percent shell capacity by volume
90 to 92	41.8
83 to 90	38.5
80 to 83	37.1
75 to 80	34.8
70 to 75	32.5
65 to 70	30.2

(q) *Tare weight.* The tare weight is the combined weight of the cylinder proper, porous filling, valve, and solvent, but without removable cap.

(r) *Duties of inspector.* In addition to the requirements of § 178.35, the inspector shall—

(1) Certify chemical analyses of steel used, signed by manufacturer thereof; also verify by check analyses, of samples taken from each heat or from 1 out of each lot of 200 or less plates, shells, or tubes used.

(2) Verify compliance of cylinder shells with all shell requirements, inspect inside before closing in both ends, verify heat treatment as proper; obtain all samples for all tests and for check analyses, witness all tests; verify threads by gauge, report volumetric capacity and minimum thickness of wall noted.

(3) Report percentage of each specified alloying element in the steel. Prepare report on manufacture of steel shells in form prescribed in § 178.35. Furnish one copy to manufacturer and three copies to the company that is to complete the cylinders.

(4) Determine porosity of filling and tare weights; verify compliance of marking with prescribed requirements; obtain necessary copies of steel shell reports prescribed in paragraph (b) of this section; and furnish complete test reports required by this specification to the person who has completed the manufacturer of the cylinders and, upon request, to the purchaser. The test reports must be retained by the inspector for fifteen years from the original test date of the cylinder.

(s) *Marking.* (1) Tare weight of cylinder, in pounds and ounces, must be marked on the cylinder.

(2) Cylinders, not completed, when delivered must each be marked for identification of each lot of 200 or less.

(3) Markings must be stamped plainly and permanently in locations in accordance with the following:

(i) On shoulders and top heads not less than 0.087 inch thick; or

(ii) On neck, valve boss, valve protection sleeve, or similar part permanently attached to the top end of cylinder; or

(iii) On a plate of ferrous material attached to the top of the cylinder or permanent part thereof; the plate must be at least 1/16 inch thick, and must be attached by welding, or by brazing at a temperature of at least 1,100 °F throughout all edges of the plate. Sufficient space must be left on the plate to provide for stamping at least four (4) retest dates. *§ 178.61 Specification 4BW welded steel cylinders with electric-arc welded longitudinal seam.*

(a) *Type, size and service pressure.* A DOT 4BW cylinder is a welded type steel cylinder with a longitudinal electric-arc welded seam, a water capacity (nominal) not over 1,000 pounds and a service pressure at least 225 and not over 500 pounds per square inch gauge. Cylinders closed in by spinning process are not authorized.

(b) *Authorized steel.* Steel used in the construction of the cylinder must conform to the following:

(1) The body of the cylinder must be constructed of steel conforming to the limits specified in Table I of Appendix A to this part.

(2) Material for heads must meet the requirements of paragraph (a) of this section or be open hearth, electric or basic oxygen carbon steel of uniform quality. Content percent may not exceed the following: Carbon 0.25, Manganese 0.60, Phosphorus 0.045, Sulfur 0.050. Heads must be hemispherical or ellipsoidal in shape with a maximum ratio of 2.1. If low carbon steel is used, the thickness of such heads must be determined by using a maximum wall stress of 24,000 p.s.i. in the formula described in paragraph (f)(1) of this section.

(c) *Identification of material.* Material must be identified by any suitable method.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart and the following:

(1) No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface is required. Exposed bottom welds on cylinders over 18 inches long must be protected by footrings. Minimum thickness of heads may not be less than 90 percent of the required thickness of the sidewall. Heads must be concave to pressure.

(2) Circumferential seams must be by electric-arc welding. Joints must be butt with one member offset (joggle butt) or lap with minimum overlap of at least four times nominal sheet thickness.

(3) Longitudinal seams in shells must conform to the following:

(i) Longitudinal electric-arc welded seams must be of the butt welded type. Welds must be made by a machine process including automatic feed and welding guidance mechanisms. Longitudinal seams must have complete joint penetration, and must be free from undercuts, overlaps or abrupt ridges or valleys. Misalignment of mating butt edges may not exceed 1/8 of nominal sheet thickness or 1/32 inch whichever is less. All joints with nominal sheet thickness up to and including 1/8 inch must be tightly butted. When nominal sheet thickness is greater than 1/8 inch, the joint must be gapped with maximum distance equal to one-half the nominal sheet thickness or 1/32 inch whichever is less. Joint design, preparation and fit-up must be such that requirements of this paragraph (d) are satisfied.

(ii) Maximum joint efficiency must be 1.0 when each seam is radiographed completely. Maximum joint efficiency must be 0.90 when one cylinder from each lot of 50 consecutively welded cylinders is spot radiographed. In addition, one out of the first five cylinders welded following a shut down of welding operations exceeding four hours must be spot radiographed. Spot radiographs, when required, must be made of a finished welded cylinder and must include the girth weld for 2 inches in both directions from the intersection of the longitudinal and girth welds and include at least 6 inches of the longitudinal weld. Maximum joint efficacy of 0.75 must be permissible without radiography.

(4) Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

(e) *Welding of attachments.* The attachment to the tops and bottoms only of cylinders by welding of neckrings, footrings, handles, bosses, pads and valve protection rings is authorized provided that such attachments and the portion of the container to which they are attached are made of weldable steel, the carbon content of which may not exceed 0.25 percent.

(f) *Wall thickness.* For outside diameters over 6 inches the minimum wall thickness must be 0.078 inch. For a cylinder with a wall thickness less than 0.100 inch, the ratio of tangential length to outside diameter may not exceed 4 to1 (4:1). In any case the minimum wall thickness must be such that the wall stress calculated by the formula listed in paragraph (f)(4) of this section may not exceed the lesser value of any of the following:

(1) The value referenced in paragraph (b) of this section for the particular material under consideration.

(2) One-half of the minimum tensile strength of the material determined as required in paragraph (m) of this section.

(3) 35,000 pounds per square inch.

(4) Stress must be calculated by the following formula:

$$S=[2P(1.3D^2+0.4d^2)]/[E(D^2-d^2)]$$

where:

S=wall stress, p.s.i.;
P=service pressure, p.s.i.;
D=outside diameter, inches;
d=inside diameter, inches;
E=joint efficiency of the longitudinal seam (from paragraph (d) of this section).

(g) *Heat treatment.* Each cylinder must be uniformly and properly heat treated prior to test by the applicable method referenced in paragraph (b) of this section. Heat treatment must be accomplished after all forming and welding operations. Heat treatment is not required after welding or brazing of weldable low carbon parts to attachments of similar material which have been previously welded to the top or bottom of cylinders and properly heat treated, provided such subsequent welding or brazing does not produce a temperature in excess of 400° F in any part of the top or bottom material.

(h) *Openings in cylinders.* Openings in the cylinder must conform to the following:

(1) All openings must be in the heads or bases.

(2) Openings in cylinders must be provided with adequate fittings, bosses, or pads, integral with or securely attached to the cylinder by welding.

(3) Threads must comply with the following:

(i) Threads must be clean cut and to gauge.

(ii) Taper threads must be of length not less than as specified for American Standard Taper Pipe threads.

(iii) Straight threads, having at least 4 engaged threads, to have tight fit and calculated shear strength at least 10 times the test pressure of the cylinder; gaskets required, adequate to prevent leakage.

(4) Closure of fittings, boss or pads must be adequate to prevent leakage.

(i) *Hydrostatic test.* Cylinders must withstand a hydrostatic test, as follows:

(1) The test must be by water-jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit readings to an accuracy of 1 percent. The expansion gauge must permit readings of total volumetric expansion to an accuracy either of 1 percent or 0.1 cubic centimeter.

(2) Pressure must be maintained for at least 30 seconds and sufficiently longer to ensure complete expansion. Any internal pressure applied after heat treatment and previous to the official test may not exceed 90 percent of the test pressure.

(3) Permanent volumetric expansion may not exceed 10 percent of the total volumetric expansion at test pressure.

(4) Cylinders must be tested as follows:

(i) At least 1 cylinder selected at random out of each lot of 200 or less must be tested as outlined in paragraphs (i)(1), (i)(2), and (i)(3) of this section to at least two times service pressure.

(ii) All cylinders not tested as outlined in paragraph (i)(4)(i) of this section must be examined under pressure of at least two times service pressure and show no defect.

(5) One finished cylinder selected at random out of each lot of 500 or less successively produced must be hydrostatically tested to 4 times service pressure without bursting.

(j) *Physical tests.* Cylinders must be subjected to a physical test as follows:

(1) Specimens must be taken from one cylinder after heat treatment and chosen at random from each lot of 200 or less, as follows:

(i) Body specimen. One specimen must be taken longitudinally from the body section at least 90 degrees away from the weld.

(ii) Head specimen. One specimen must be taken from either head on a cylinder when both heads are made of the same material. However, if the two heads are made of differing materials, a specimen must be taken from each head.

(iii) If due to welded attachments on the top head there is insufficient surface from which to take a specimen, it may be taken from a representative head of the same heat treatment as the test cylinder.

(2) Specimens must conform to the following:

(i) A gauge length of 8 inches with a width not over 1½ inches, a gauge length of 2 inches with a width not over 1½ inches, or a gauge length at least 24 times thickness with a width not over 6 times thickness is authorized when a cylinder wall is not over 3/16 inch thick.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within 1 inch of each end of the reduced section.

(iii) When size of the cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows when specimens are so taken and prepared, the inspector's report must show in connection with record of physical tests detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by either the "off-set" method or the "extension under load" method as prescribed in ASTM Standard E8.

(ii) In using the "extension under load" method, the total strain (or "extension under load"), corresponding to the stress at which the 0.2-percent permanent strain occurs may be determined with sufficient accuracy by calculating the elastic extension of the gauge length under appropriate load and adding thereto 0.2 percent of the gauge length. Elastic extension calculations must be based on an elastic modulus of 30,000,000. In the event of controversy, the entire stress-strain diagram must be plotted and the yield strength determined from the 0.2-percent offset.

(iii) For the purpose of strain measurement, the initial strain reference must be set while the specimen is under a stress of 12,000 pounds per square inch and the strain indicator reading being set at the calculated corresponding strain.

(iv) Cross-head speed of the testing machine may not exceed 1/8 inch per minute during yield strength determination.

(k) *Elongation.* Physical test specimens must show at least a 40 percent elongation for a 2-inch gauge length or at least a 20 percent elongation in other cases. Except that these elongation percentages may be reduced numerically by 2 for 2-inch specimens and by 1 in other cases for each 7,500 pounds per square inch increment of tensile strength above 50,000 pounds per square inch to a maximum of four increments.

(l) *Tests of welds.* Welds must be subjected to the following tests:

(1) *Tensile test.* A specimen must be cut from one cylinder of each lot of 200 or less. The specimen must be taken from across the longitudinal seam and must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3.

(2) *Guided bend test.* A root test specimen must be cut from the cylinder used for the tensile test specified in paragraph (l)(1) of this section. Specimens must be taken from across the longitudinal seam and must be prepared and tested in accordance with and must meet the requirements of CGA Pamphlet C–3.

(3) *Alternate guided bend test.* This test may be used and must be as required by CGA Pamphlet C–3. The specimen must be bent until the elongation at the outer surface, adjacent to the root of the weld, between the lightly scribed gauge lines a to b, must be at least 20 percent, except that this percentage may be reduced for steels having a tensile strength in excess of 50,000 pounds per square inch, as provided in paragraph (k) of this section.

(m) *Radiographic examination.* Welds of the cylinders must be subjected to a radiographic examination as follows:

(1) Radiographic inspection must conform to the techniques and acceptability criteria set forth in CGA Pamphlet C–3. When fluoroscopic inspection is used, permanent film records need not be retained.

(2) Should spot radiographic examination fail to meet the requirements of paragraph (m)(1) of this section, two additional welds from the same lot of 50 cylinders or less must be examined, and if either of these fail to meet the requirements, each cylinder must be examined as previously outlined; only those passing are acceptable.

(n) *Rejected cylinders.* (1) Unless otherwise stated, if a sample cylinder or specimen taken from a lot of cylinders fails the prescribed test, then two additional specimens must be selected from the same lot and subjected to the prescribed test. If either of these fails the test, then the entire lot must be rejected.

(2) Reheat treatment of rejected cylinders is authorized. Subsequent thereto, cylinders must pass all prescribed tests to be acceptable. Repair of welded seams by welding is authorized provided that all defective metal is cut away and the joint is rewelded as prescribed for original welded joints.

(o) *Markings.* Markings must be stamped plainly and permanently in any of the following locations on the cylinder:

(1) On shoulders and top heads when they are not less than 0.087-inch thick.

(2) On a metal plate attached to the top of the cylinder or permanent part thereof; sufficient space must be left on the plate to provide for stamping at least six retest dates; the plate must be at least 1/16-inch thick and must be attached by welding, or by brazing. The brazing rod is to melt at a temperature of 1100°F Welding or brazing must be along all the edges of the plate.

(3) On the neck, valve boss, valve protection sleeve, or similar part permanently attached to the top of the cylinder.

(4) On the footring permanently attached to the cylinder, provided the water capacity of the cylinder does not exceed 25 pounds.

(p) *Inspector's report.* In addition to the information required by § 178.35, the inspector's report must indicate the type and amount of radiography.

§ 178.65 Specification 39 non-reusable (non-refillable) cylinders.

(a) *Type, size, service pressure, and test pressure.* A DOT 39 cylinder is a seamless, welded, or brazed cylinder with a service pressure not to exceed 80 percent of the test pressure. Spherical pressure vessels are authorized and covered by references to cylinders in this specification.

(1) *Size limitation.* Maximum water capacity may not exceed: (i) 55 pounds (1,526 cubic inches) for a service pressure of 500 p.s.i.g. or less, and (ii) 10 pounds (277 cubic inches) for a service pressure in excess of 500 p.s.i.g.

(2) *Test pressure.* The minimum test pressure is the maximum pressure of contents at 130° F or 180 p.s.i.g. whichever is greater.

(3) *Pressure of contents.* The term "pressure of contents" as used in this specification means the total pressure of all the materials to be shipped in the cylinder.

(b) *Material; steel or aluminum.* The cylinder must be constructed of either steel or aluminum conforming to the following requirements:

(1) *Steel.* (i) The steel analysis must conform to the following:

	Ladle analysis	Check analysis
Carbon, maximum percent	0.12	0.15
Phosphorus, maximum percent	.04	.05
Sulfur, maximum percent	.05	.06

(ii) For a cylinder made of seamless steel tubing with integrally formed ends, hot drawn, and finished, content percent for the following may not exceed: Carbon, 0.55; phosphorous, 0.045; sulfur, 0.050.

(iii) For non-heat treated welded steel cylinders, adequately killed deep drawing quality steel is required.

(iv) Longitudinal or helical welded cylinders are not authorized for service pressures in excess of 500 p.s.i.g.

(2) *Aluminum.* Aluminum is not authorized for service pressures in excess of 500 p.s.i.g. The analysis of the aluminum must conform to the Aluminum Association standard for alloys 1060, 1100, 1170, 3003, 5052, 5086, 5154, 6061, and 6063 as specified in its publication entitled "Aluminum Standards and Data".

(3) Material with seams, cracks, laminations, or other injurious defects not permitted.

(4) Material used must be identified by any suitable method.

(c) *Manufacture.* (1) General manufacturing requirements are as follows:

(i) The surface finish must be uniform and reasonably smooth.

(ii) Inside surfaces must be clean, dry, and free of loose particles.

(iii) No defect of any kind is permitted if it is likely to weaken a finished cylinder.

(2) Requirements for seams:

(i) Brazing is not authorized on aluminum cylinders.

(ii) Brazing material must have a melting point of not lower than 1,000 °F.

(iii) Brazed seams must be assembled with proper fit to ensure complete penetration of the brazing material throughout the brazed joint.

(iv) Minimum width of brazed joints must be at least four times the thickness of the shell wall.

(v) Brazed seams must have design strength equal to or greater than 1.5 times the minimum strength of the shell wall.

(vi) Welded seams must be properly aligned and welded by a method that provides clean, uniform joints with adequate penetration.

(vii) Welded joints must have a strength equal to or greater than the minimum strength of the shell material in the finished cylinder.

(3) Attachments to the cylinder are permitted by any means which will not be detrimental to the integrity of the cylinder. Welding or brazing of attachments to the cylinder must be completed prior to all pressure tests.

(4) Welding procedures and operators must be qualified in accordance with CGA Pamphlet C–3.

(d) *Wall thickness.* The minimum wall thickness must be such that the wall stress at test pressure does not exceed the yield strength of the material of the finished cylinder wall. Calculations must be made by the following formulas:

(1) Calculation of the stress for cylinders must be made by the following formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

Where:

S=Wall stress, in p.s.i.;
P=Test pressure;
D=Outside diameter, in inches;
d=Inside diameter, in inches.

(2) Calculation of the stress for spheres must be made by the following formula:

$$S=PD/4t$$

Where:

S=Wall stress, in p.s.i.;
P=Test pressure;
D=Outside diameter, in inches;
t=Minimum wall thickness, in inches.

(e) *Openings and attachments.* Openings and attachments must conform to the following:

(1) Openings and attachments are permitted on heads only.

(2) All openings and their reinforcements must be within an imaginary circle, concentric to the axis of the cylinder. The diameter of the circle may not exceed 80 percent of the outside diameter of the cylinder. The plane of the circle must be parallel to the plane of a circumferential weld and normal to the long axis of the cylinder.

(3) Unless a head has adequate thickness, each opening must be reinforced by a securely attached fitting, boss, pad, collar, or other suitable means.

(4) Material used for welded openings and attachments must be of weldable quality and compatible with the material of the cylinder.

(f) *Pressure tests.* (1) Each cylinder must be tested at an internal pressure of at least the test pressure and must be held at that pressure for at least 30 seconds.

(i) The leakage test must be conducted by submersion under water or by some other method that will be equally sensitive.

(ii) If the cylinder leaks, evidences visible distortion, or any other defect, while under test, it must be rejected (see paragraph (h) of this section).

(2) One cylinder taken from the beginning of each lot, and one from each 1,000 or less successively produced within the lot thereafter, must be hydrostatically tested to destruction. The entire lot must be rejected (see paragraph (h) of this section) if:

(i) A failure occurs at a gage pressure less than 2.0 times the test pressure;

(ii) A failure initiates in a braze or a weld or the heat affected zone thereof;

(iii) A failure is other than in the sidewall of a cylinder longitudinal with its long axis; or

(iv) In a sphere, a failure occurs in any opening, reinforcement, or at a point of attachment.

(3) A "lot" is defined as the quantity of cylinders successively produced per production shift (not exceeding 10 hours) having identical size, design, construction, material, heat treatment, finish, and quality.

(g) *Flattening test.* One cylinder must be taken from the beginning of production of each lot (as defined in paragraph (f)(3) of this section) and subjected to a flattening test as follows:

(1) The flattening test must be made on a cylinder that has been tested at test pressure.

(2) A ring taken from a cylinder may be flattened as an alternative to a test on a complete cylinder. The test ring may not include the heat affected zone or any weld. However, for a sphere, the test ring may include the circumferential weld if it is located at a 45 degree angle to the ring, +/−5 degrees.

(3) The flattening must be between 60 degrees included-angle, wedge shaped knife edges, rounded to a 0.5 inch radius.

(4) Cylinders and test rings may not crack when flattened so that their outer surfaces are not more than six times wall thickness apart when made of steel or not more than ten times wall thickness apart when made of aluminum.

(5) If any cylinder or ring cracks when subjected to the specified flattening test, the lot of cylinders represented by the test must be rejected (see paragraph (h) of this section).

(h) *Rejected cylinders.* Rejected cylinders must conform to the following requirements:

(1) If the cause for rejection of a lot is determinable, and if by test or inspection defective cylinders are eliminated from the lot, the remaining cylinders must be qualified as a new lot under paragraphs (f) and (g) of this section.

(2) Repairs to welds are permitted. Following repair, a cylinder must pass the pressure test specified in paragraph (f) of this section.

(3) If a cylinder made from seamless steel tubing fails the flattening test described in paragraph (g) of this section, suitable uniform heat treatment must be used on each cylinder in the lot. All prescribed tests must be performed subsequent to this heat treatment.

(i) *Markings.* (1) The markings required by this section must be durable and waterproof. The requirements of § 173.24(c)(1) (ii) and (iv) of this subchapter and § 178.35(h) do not apply to this section.

(2) Required markings are as follows:

(i) DOT–39.

(ii) NRC.

(iii) The service pressure.

(iv) The test pressure.

(v) The registration number (M****) of the manufacturer.

(vi) The lot number.

(vii) The date of manufacture if the lot number does not establish the date of manufacture.

(viii) With one of the following statements:

(A) For cylinders manufactured prior to October 1, 1996: "Federal law forbids transportation if refilled-penalty up to $25,000 fine and 5 years imprisonment (49 U.S.C. 1809)" or "Federal law forbids transportation if refilled-penalty up to $500,000 fine and 5 years imprisonment (49 U.S.C. 5124)."

(B) For cylinders manufactured on or after October 1, 1996: "Federal law forbids transportation if refilled-penalty up to $500,000 fine and 5 years imprisonment (49 U.S.C. 5124)."

(3) The markings required by paragraphs (i)(2)(i) through (i)(2)(v) of this section must be in numbers and letters at least ⅛ inch high and displayed sequentially. For example:

DOT–39 NRC 250/500 M1001.

(4) No person may mark any cylinder with the specification identification "DOT–39" unless it was manufactured in compliance with the requirements of this section and its manufacturer has a registration number (M****) from the Associate Administrator.

§ 178.68 Specification 4E welded aluminum cylinders.

(a) *Type, size and service pressure.* A DOT 4E cylinder is a welded aluminum cylinder with a water capacity (nominal) of not over 1,000 pounds and a service pressure of at least 225 to not over 500 pounds per square inch. The cylinder must be constructed of not more than two seamless drawn shells with no more than one circumferential weld. The circumferential weld may not be closer to the point of tangency of the cylindrical portion with the shoulder than 20 times the cylinder wall thickness. Cylinders or shells closed in by spinning process and cylinders with longitudinal seams are not authorized.

(b) *Authorized material.* The cylinder must be constructed of aluminum of uniform quality. The following chemical analyses are authorized:

TABLE 1.—AUTHORIZED MATERIALS

Designation	Chemical analysis—limits in percent 5154 [1]
Iron plus silicon	0.45 maximum.
Copper	0.10 maximum.
Manganese	0.10 maximum.
Magnesium	3.10/3.90.
Chromium	0.15/0.35.
Zinc	0.20 maximum.
Titanium	0.20 maximum.
Others, each	0.05 maximum.
Others, total	0.15 maximum.
Aluminum	remainder.

[1] Analysis must regularly be made only for the elements specifically mentioned in this table. If, however, the presence of other elements is indicated in the course of routine analysis, further analysis should be made to determine conformance with the limits specified for other elements.

(c) *Identification.* Material must be identified by any suitable method that will identify the alloy and manufacturer's lot number.

(d) *Manufacture.* Cylinders must be manufactured using equipment and processes adequate to ensure that each cylinder produced conforms to the requirements of this subpart. No defect is permitted that is likely to weaken the finished cylinder appreciably. A reasonably smooth and uniform surface finish is required. All welding must be by the gas shielded arc process.

(e) *Welding.* The attachment to the tops and bottoms only of cylinders by welding of neckrings or flanges, footrings, handles, bosses and pads and valve protection rings is authorized. However, such attachments and the portion of the cylinder to which it is attached must be made of weldable aluminum alloys.

(f) *Wall thickness.* The wall thickness of the cylinder must conform to the following:

(1) The minimum wall thickness of the cylinder must be 0.140 inch. In any case, the minimum wall thickness must be such that calculated wall stress at twice service pressure may not exceed the lesser value of either of the following:

(i) 20,000 pounds per square inch.

(ii) One-half of the minimum tensile strength of the material as required in paragraph (m) of this section.

(2) Calculation must be made by the following formula:

$$S=[P(1.3D^2+0.4d^2)]/(D^2-d^2)$$

Where:

S=wall stress in pounds per square inch;
P=minimum test pressure prescribed for water jacket test;
D=outside diameter in inches;
d=inside diameter in inches.

(3) Minimum thickness of heads and bottoms may not be less than the minimum required thickness of the side wall.

(g) *Opening in cylinder.* Openings in cylinders must conform to the following:

(1) All openings must be in the heads or bases.

(2) Each opening in cylinders, except those for safety devices, must be provided with a fitting, boss, or pad, securely attached to cylinder by welding by inert gas shielded arc process or by threads. If threads are used, they must comply with the following:

(i) Threads must be clean-cut, even, without checks and cut to gauge.

(ii) Taper threads to be of length not less than as specified for American Standard taper pipe threads.

(iii) Straight threads, having at least 4 engaged threads, to have tight fit and

calculated shear strength at least 10 times the test pressure of the cylinder; gaskets required, adequate to prevent leakage.

(3) Closure of a fitting, boss, or pad must be adequate to prevent leakage.

(h) *Hydrostatic test.* Each cylinder must successfully withstand a hydrostatic test, as follows:

(1) The test must be by water jacket, or other suitable method, operated so as to obtain accurate data. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit a reading of the total expansion to an accuracy either of 1 percent or 0.1 cubic centimeter.

(2) Pressure of 2 times service pressure must be maintained for at least 30 seconds and sufficiently longer to insure complete expansion. Any internal pressure applied previous to the official test may not exceed 90 percent of the test pressure. If, due to failure of the test apparatus, the test pressure cannot be maintained, the test may be repeated at a pressure increased by 10 percent over the pressure otherwise specified.

(3) Permanent volumetric expansion may not exceed 12 percent of total volumetric expansion at test pressure.

(4) Cylinders having a calculated wall stress of 18,000 pounds per square inch or less at test pressure may be tested as follows:

(i) At least one cylinder selected at random out of each lot of 200 or less must be tested in accordance with paragraphs (h)(1), (h)(2), and (h)(3) of this section.

(ii) All cylinders not tested as provided in paragraph (h)(4)(i) of this section must be examined under pressure of at least 2 times service pressure and show no defect.

(5) One finished cylinder selected at random out of each lot of 1,000 or less must be hydrostatically tested to 4 times the service pressure without bursting. Inability to meet this requirement must result in rejection of the lot.

(i) *Flattening test.* After hydrostatic testing, a flattening test is required on one section of a cylinder, taken at random out of each lot of 200 or less as follows:

(1) If the weld is not at midlength of the cylinder, the test section must be no less in width than 30 times the cylinder wall thickness. The weld must be in the center of the section. Weld reinforcement must be removed by machining or grinding so that the weld is flush with the exterior of the parent metal. There must be no evidence of cracking in the sample when it is flattened between flat plates to no more than 6 times the wall thickness.

(2) If the weld is at midlength of the cylinder, the test may be made as specified in paragraph (i)(1)(i) of this section or must be made between wedge shaped knife edges (60° angle) rounded to a ½ inch radius. There must be no evidence of cracking in the sample when it is flattened to no more than 6 times the wall thickness.

(j) *Physical test.* A physical test must be conducted to determine yield strength, tensile strength, elongation, and reduction of area of material as follows:

(1) The test is required on 2 specimens cut from one cylinder or part thereof taken at random out of each lot of 200 or less.

(2) Specimens must conform to the following:

(i) A gauge length of 8 inches with a width not over 1½ inches, a gauge length of 2 inches with a width not over 1½ inches.

(ii) The specimen, exclusive of grip ends, may not be flattened. Grip ends may be flattened to within 1 inch of each end of the reduced section.

(iii) When size of cylinder does not permit securing straight specimens, the specimens may be taken in any location or direction and may be straightened or flattened cold, by pressure only, not by blows; when specimens are so taken and prepared, the inspector's report must show in connection with record of physical test detailed information in regard to such specimens.

(iv) Heating of a specimen for any purpose is not authorized.

(3) The yield strength in tension must be the stress corresponding to a permanent strain of 0.2 percent of the gauge length. The following conditions apply:

(i) The yield strength must be determined by the "offset" method as prescribed in ASTM Standard E8.

(ii) Cross-head speed of the testing machine may not exceed ⅛ inch per minute during yield strength determination.

(k) *Acceptable results for physical tests.* An acceptable result of the physical test requires an elongation to at least 7 percent and yield strength not over 80 percent of tensile strength.

(l) *Weld tests.* Welds of the cylinder are required to successfully pass the following tests:

(1) *Reduced section tensile test.* A specimen must be cut from the cylinder used for the physical tests specified in paragraph (j) of this section. The specimen must be taken from across the seam, edges must be parallel for a distance of approximately 2 inches on either side of the weld. The specimen must be fractured in tension. The apparent breaking stress calculated on the minimum wall thickness must be at least equal to 2 times the stress calculated under paragraph (f)(2) of this section, and in addition must have an actual breaking stress of at least 30,000 pounds per square inch. Should this specimen fail to meet the requirements, specimens may be taken from 2 additional cylinders from the same lot and tested. If either of the latter specimens fails to meet requirements, the entire lot represented must be rejected.

(2) *Guided bend test.* A bend test specimen must be cut from the cylinder used for the physical tests specified in paragraph (j) of this section. Specimen must be taken across the seam, must be 1½ inches wide, edges must be parallel and rounded with a file, and back-up strip, if used, must be removed by machining. The specimen must be bent to refusal in the guided bend test jig illustrated in paragraph 6.10 of CGA Pamphlet C–3. The root of the weld (inside surface of the cylinder) must be located away from the ram of the jig. No specimen must show a crack or other open defect exceeding ⅛ inch in any direction upon completion of the test. Should this specimen fail to meet the requirements, specimens may be taken from each of 2 additional cylinders from the same lot and tested. If either of the latter specimens fail to meet requirements, the entire lot represented must be rejected.

(m) *Rejected cylinders.* Repair of welded seams is authorized. Acceptable cylinders must pass all prescribed tests.

(n) *Inspector's report.* In addition to the information required by § 178.35, the record of chemical analyses must also include applicable information on iron, titanium, zinc, and magnesium used in the construction of the cylinder.

Issued in Washington, DC on May 8, 1996, under authority delegated in 49 CFR Part 1.

Rose McMurray,

Acting Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 96–12029 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–60–P

federal register

Thursday
May 23, 1996

Part III

Department of Transportation

Coast Guard

46 CFR Part 15, et al.

Adoption of Industry Standards; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 15, 26, 31, 32, 34, 35, 38, 54, 56, 58, 61, 72, 76, 77, 78, 92, 95, 96, 97, 108, 109, 153, 160, 162, 164, 167, 168, 169, 189, 190, 193 and 196

[CGD 95–027]

RIN 2115–AF09

Adoption of Industry Standards

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Pursuant to the ongoing Presidential Regulatory Reform Initiative, the Coast Guard is modifying its regulations for both inspected and uninspected commercial vessels by removing or revising obsolete and unnecessary provisions and incorporating industry standards and practices.

The Coast Guard expects these amendments to reduce the regulatory burden to the maritime industry, reduce the administrative burden to government and industry, reduce government printing costs, and provide a more concise and useful Title 46, Code of Federal Regulations.

DATES: This final rule is effective on June 24, 1996. The Director of the Federal Register approves as of June 24, 1996, the incorporation by reference of certain materials listed in this rule.

ADDRESSES: Unless otherwise indicated, documents referred to in this rulemaking are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

A copy of the material listed in "Incorporation by Reference" of this rulemaking is available for inspection at Room 1300, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: LCDR R. K. Butturini, Project Manager; LTJG J.M. Twomey, Project Engineer; Ms. Shereen Bell, Project Assistant—telephone (202) 267–2206.

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 20, 1995, The Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Adoption of Industry Standards" in the **Federal Register** (60 FR 65988). The Coast Guard received seven written comments on the proposal. A public meeting was held at Coast Guard Headquarters on February 9, 1996, to discuss the NPRM.

Background and Purpose

This final rule has been sparked by several recent calls for regulatory review and reform. For example, on March 4, 1995, the President issued a memorandum calling on executive agencies to review regulations with the goals of—

(1) Cutting obsolete regulations;

(2) Focusing on results instead of process and punishment;

(3) Convening meetings with the regulated community; and

(4) Expanding efforts to promote consensual rulemaking.

The President's memorandum coincides with U.S. maritime industry requests for greater alignment of Coast Guard regulations with international marine safety standards to reduce cost disadvantages incurred by the U.S. maritime industry and, thereby, improve the competitiveness of the U.S. industry. The ongoing National Performance Review effort, which stresses reducing red tape and maximizing results, provides further justification for identifying excessive requirements in Coast Guard regulations and for streamlining government processes. Also, the Coast Guard recognized the need to explore regulatory reform where it provides an opportunity to reprogram Coast Guard resources to focus more attention on human factors and port state control activities to ensure that other nations are conscientiously implementing international safety agreements.

The Coast Guard held a public meeting on April 20, 1995, announced in the March 30, 1995 **Federal Register** (60 FR 16423), to discuss the Coast Guard's regulatory development process and the President's Regulatory Review Initiative. During the public meeting, the Coast Guard announced its goals of purging obsolete and outdated regulations and eliminating any Coast Guard induced differences between requirements that apply to U.S. vessels in international trade and those that apply to similar vessels in international trade that fly the flag of other responsible foreign nations. In the May 31, 1995 **Federal Register** (60 FR 28376), the Coast Guard reiterated its intention to harmonize Coast Guard regulations with international safety standards.

To accomplish all of these goals, the Coast Guard under the general rulemaking authority it holds pursuant to 14 U.S.C. 2, is considering alternative compliance methods, examining ways to make existing regulations more efficient, and comparing U.S. marine safety regulations with American Bureau of Shipping (ABS) Rules and the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS '74). An initial rulemaking removing or amending obsolete and unnecessary provisions was published in the September 18, 1995 **Federal Register** (60 FR 48044). That rulemaking focused on regulations for which no adverse public comment was expected, such as removal of the requirements for nuclear vessels, ocean incinerator ships, and ocean thermal energy conversion facilities and plantships. This final rule removes or amends obsolete or unnecessary regulations of a more significant nature and incorporates industry consensus standards and practices.

In compiling the list of CFR sections affected by this final rule, the Coast Guard did not consider parts of title 46 of the Code of Federal Regulations (46 CFR) that are under review as part of other, ongoing regulatory projects.

In this final rule, sections of the CFR were identified for removal or revision by comparing the section subject matter to the following list of selection criteria:

(a) Equipment discussed in a section is no longer manufactured or used;

(b) Requirements imposed by a section are repeated in another section;

(c) Requirements imposed by a section make a negligible contribution to shipboard safety;

(d) An appropriate industry consensus standard or practice exists which can be referenced instead of publishing detailed requirements in a regulation; or

(e) The text of a regulation merely repeats statutory language.

Discussion of Comments and Changes

In response to the notice of proposed rulemaking, seven comment letters were received. Additionally, a public meeting was held on February 9, 1996, to discuss the NPRM. Numerous comments were received regarding the proposed amendments at the public hearing.

Part 15—Authority Citation

The Coast Guard notes that the authority citation for part 15 is outdated. Updating the authority citation for part 15 is merely an editorial change and does not affect the proposals of the NPRM. Therefore, the final rule adopts revisions to the authority citation in part 15.

Subparts 32.40, 72.40, 92.20, 167.50, 168.15, and 190.20—Accommodations

One written comment and a participant at the public meeting noted that the language used in the NPRM to revise the accommodations regulations differed among the various subchapters and suggested that the revised text be made consistent among the subchapters for ease in comparing requirements. The proposed changes to the accommodations regulations in the NPRM were written to be consistent with the style and tone of the individual subchapters. For example, subchapter D on tank vessels is older than subchapters H, Passenger Vessels; I, Cargo and Miscellaneous Vessels; and U, Oceanographic Research Vessels, and, therefore, reads differently. The proposed changes were written to read like the remaining text in subchapter D while containing the same information and requirements as the other subchapters. However, the Coast Guard agrees that comparing requirements among subchapters is easier when the text is identical.

Revising the regulatory text for accommodations to be identical among the subchapters is merely an editorial change and is not a substantive change to the NPRM. Therefore, except for text concerning existing vessels particular to each subchapter, the final rule revises the original proposals in the NPRM by making the regulations for accommodations in each subchapter identical.

Two written comments and two participants at the public meeting objected to the proposed changes to the provisions for crew comfort and suggested provisions for crew comfort be retained in the regulations as currently written because the International Labour Office Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) (ILO 147) only provides for minimum requirements in this area. For example, ILO 147 requires that accommodations be "adequately heated", while current Coast Guard regulations specify that accommodation areas be maintained at 68°F or 70°F, depending on the subchapter. The commenters noted that as "adequately" is a relative term, vessel owners and operators could meet the technical requirements of ILO 147 and the proposed changes without actually providing adequate accommodations.

The proposed regulations were drafted with the intent of achieving a balance among the need to remove unnecessary or excessive regulations, the necessity of retaining the mandated provisions of ILO 147 and 46 U.S.C. 11101 (the statute which describes minimum requirements for accommodations), and the Coast Guard's desire to promote more autonomy for the marine industry. As a result, some of the provisions for crew comfort in the existing regulations were removed or revised in the NPRM.

The Coast Guard recognizes that some aspects of crew comfort are directly related to safety issues. One such example, pointed out in the comments, regards adequate heating and cooling of crew accommodations. The Coast Guard agrees that heating and cooling accommodations to provide a comfortable living area environment may directly affect crewmembers' ability to obtain sufficient rest. However, the Coast Guard notes that not all of the provisions for crew comfort in current regulations which were proposed for removal or revision directly affect safety. For instance, other examples of provisions for crew accommodations removed or revised in the NPRM and protested by the commenters concern bunk dimensions, separation of accommodations between watches or departments, and acceptable methods of preventing the admission of insects. The Coast Guard does not consider the minor revisions in these areas to be significant to shipboard safety.

Therefore, this final rule is retaining the specification that the heating and cooling system of a vessel be able to maintain the temperature of accommodations at 70°F, but adopts the rest of the proposals relating to accommodations in the NPRM.

Subparts 78.20, 97.17, and 196.17 and §§ 32.05–5 and 167.65–30—Rudder Orders

Two written comments and two participants at the public meeting objected to the proposed deletion of the requirement that "Right rudder" and "Left rudder" be used for rudder commands on U.S. inspected vessels, arguing that this command convention is necessary for safe navigation because the common practice of using "Port" and "Starboard" on foreign vessels sometimes causes confusion with pilots. The Coast Guard disagrees with the underlying assumption of the comments that retaining the current command convention of "Right rudder" and "Left rudder" on U.S. ships will alleviate confusion due to the use of a different command convention on foreign ships.

It is a well-established principle of maritime safety that the helmsman and deck officer or pilot have a shared responsibility to ensure that rudder orders are understood and properly executed, and that problems affecting the execution of steering orders are reported immediately. A helmsman who does not understand a rudder command is duty bound to advise the deck officer or pilot that the command is not clear and cannot be executed. As good communication among bridge personnel is crucial to safe navigation, potential terminology problems between the helmsman and deck officer or pilot must be resolved before maneuvering begins. That is, the person directing the movement of the vessel must inform the helmsman of the commands to be used to order rudder changes. Although the helmsman is generally not expected to question the deck officer's or pilot's choice of convention, the relationship between the helmsman and the deck officer or pilot should allow for agreement on a command convention that minimizes the potential for confusion. When bridge personnel interact effectively, no rudder command convention is necessary.

One commenter also noted that the Coast Guard's commitment to focusing on human factors in maritime safety should dictate that a standard convention for rudder commands is retained in the regulations. The Coast Guard disagrees with this conclusion. Standardizing rudder commands, as in current regulations, ignores the human factors involved in vessel maneuvering by relying on every helmsman, deck officer, and pilot to assume that all mariners will use the same convention. Personal preference, training, experience, and regional customs in the choice of rudder commands are thus not recognized and the important working relationship between the person directing the movement of the vessel and the helmsman is trivialized when a convention is specified in the regulations.

Therefore, the final rule adopts the proposal to remove the specification of "Right rudder" and "Left rudder" for rudder commands.

§ 35.20–30—Blinding Lights

Two participants at the public meeting suggested retaining the section prohibiting shining lights into other vessels' bridges. The coast Guard notes that the suggestion stems from a misunderstanding of the intent in the proposed rules. In the NPRM, Coast Guard regulations that contain phrases describing the liability of the crew, for not complying with the underlying requirements of the regulations, were grouped into a single category for revision. Section 35.20–30, which prohibits the shining of lights into another vessel's bridge, was included in

this category because it states that a person who flashes blinding lights, or allows blinding lights to be flashed, into another vessel's bridge is liable under suspension and revocation proceedings. The Coast Guard notes that the proposed revision did not remove the actual prohibition against blinding lights, but removed the phrase imposing liability on officers and crew. The Coast Guard considers this reference to liability to be inconsistent with the President's desire to focus on process rather than punishment and with the Coast Guard's commitment to forging greater government/industry partnerships. Additionally, the liability of officers and crew for failure to comply with the provisions of 46 CFR is contained in 46 CFR, part 5 and need not be repeated.

Therefore, the final rule adopts the proposal to remove references to liability regarding the shining of blinding lights into another vessel's bridge.

§§ 35.20–40, 78.21–1, 97.19–1 and 196.19–1—Posting Maneuvering Information

One written comment suggested that the Coast Guard retain the requirement to post maneuvering information contained in 46 CFR instead of removing the requirement and inserting a reference to a similar section in title 33 of the Code of Federal Regulations (33 CFR), as proposed. The comment noted that the proposed revisions would make the affected sections, which also discuss validation of maneuvering information, harder to use. The Coast Guard agrees with the comment. The sections addressing posted maneuvering information in 46 CFR were originally identified for revision because 33 CFR contains similar requirements. However, the Coast Guard agrees that the proposed revisions would be counterproductive.

Therefore, the final rule does not adopt the proposal to remove the requirement for posted maneuvering information.

§§ 61.05–5 and 61.30–5—Preparing Machinery for Inspections

One written comment and two participants at the public meeting objected to the removal of the regulation requiring the chief engineer to prepare machinery for inspection, arguing that the chief engineer is ultimately responsible for the machinery and, therefore, only the chief engineer should prepare machinery for inspection. The Coast Guard disagrees with these comments. The proposed revision does not undermine the important role of the chief engineer in vessel operations and Coast Guard inspections, nor does the proposal affect the chief engineer's responsibilities for vessel machinery. The proposed revision merely recognizes that specifying the chief engineer prepare machinery for inspection is not necessary.

With increased reliance on reduced manning, many companies use shore-maintenance personnel for tasks traditionally performed by the vessel's crew. Specifying that the chief engineer prepare machinery for inspection may undermine the owner's prerogatives in a way that is not intended by the regulations. Additionally, under the current regulations, the chief engineer's responsibility is not to personally prepare machinery for inspection but to ensure that the task is performed competently. The intent of the regulations would be met if another, qualified member of the crew was assigned to prepare machinery for inspection under the chief engineer's direction. Also, the failure to prepare machinery for inspection has little actual consequence except to delay the inspection.

Therefore, the final rule adopts the proposal to remove the requirement for the chief engineer to prepare machinery for inspection.

§ 56.30—Gasketed Mechanical Couplings

One written comment and one participant at the public meeting suggested that, in addition to incorporating the American Society for Testing and Materials (ASTM) standard F 1476–93 (Performance of Gasketed Mechanical Couplings for Use in Piping Applications) the Coast Guard also incorporate ASTM F 1548–94 (Performance of Fittings for Use with Gasketed Mechanical Couplings Used in Piping Applications). This suggestion was made because ASTM F 1548–94 was developed specifically to supplement ASTM F 1476–93 and only applies to gasketed mechanical couplings manufactured in accordance with ASTM F 1476–93. The Coast Guard agrees with the recommendation especially in light of the fact that, though ASTM F 1548–94 is a companion standard to ASTM F 1476–93, it is not referenced in ASTM F 1476–93 because it was developed a year later. Incorporating ASTM F 1548–94 is a logical consequence of incorporating ASTM F 1476–93.

Therefore, the final rule adopts incorporation of ASTM F 1548–94 in addition to incorporating ASTM F 1476–93.

Another comment suggested the Coast Guard also incorporate the American Waterworks Association (AWWA) standard C–606 (Grooved and Shouldered Type Joints) into the same regulations for gasketed mechanical couplings mentioned previously because AWWA C–606 is referenced in ASTM F 1476–93. The Coast Guard disagrees with this recommendation. Industry consensus standards typically reference one another. However, when the regulatory language and an industry standard being incorporated into the regulations provide sufficient guidance to the class affected by the regulations, incorporation of secondary referenced standards is not necessary.

Compliance with the provisions of AWWA C–606 is mandatory under ASTM F 1476–93. Therefore, incorporating AWWA C–606 by reference, in addition to ASTM F 1476–93, is not necessary because ASTM F 1476–93 provides sufficient guidance and the regulatory language ensures enforceability.

Therefore, the final rule does not adopt the incorporation of AWWA C–606 by reference.

§ 56.30–40—Mechanically Attached Fittings

One written comment and one participant at the public meeting suggested that ASTM standard F 1387–93 (Performance of Mechanically Attached Fittings) be incorporated into § 56.30–25, Flared, flareless, and compression joints, instead of into § 56.30–40, Flexible pipe couplings of the compression or slip-on type, as originally proposed, because § 56.30–40 is a confusing section containing requirements that should apply to gasketed mechanical couplings instead of mechanically attached fittings. The Coast Guard agrees with the recommendation. The current regulations for mechanically attached fittings in § 56.30–40 have shown to be confusing because they do not adequately distinguish the differences between gasketed mechanical couplings and mechanically attached fittings. Gasketed mechanical couplings and mechanically attached fittings both employ a compressive force to seal the pipe joint. However, the mechanism to achieve compression is different for each type of fitting. For example, gasketed mechanical couplings typically employ threaded fasteners to compress a resilient gasket around the pipe joint. Conversely, mechanically attached fittings employ a compressive force to become attached to the pipe. The terms "compression joint" and "couplings of the compression type" refer to the type of compression used in mechanically attached fittings rather than the compression of a resilient material used in gasketed mechanical couplings.

Moving requirements for mechanically attached fittings to § 56.30–25 instead of § 56.30–40, as originally proposed in the NPRM, is an editorial reorganization of changes and is within the scope of the NPRM. Therefore, the final rule incorporates ASTM F 1387–93 into § 56.30–25 and moves provisions in the existing § 56.30–40, which apply to gasketed mechanical couplings, into § 56.30–35.

§§ 56.60–1, 56.60–10, 56.60–15, 56.60–20, 58.30–5, 58.30–15, and 58 30–17—Ductile Iron

One written comment and a participant at the public meeting noted that, contrary to the current provisions of § 56.60–1, Acceptable materials and specifications, ASTM F 1476–93, proposed for incorporation by reference, allows the use of ductile iron conforming to ASTM standard A 536–83 (Ductile Iron Castings) and suggested A 536–83 ductile iron be added to the list of acceptable materials in § 56.60–1 to remedy this problem. The Coast Guard agrees with the recommendation. As mentioned above, incorporation of a secondary referenced industry standard is not necessary when the regulatory language and the primary standard provide sufficient guidance and the regulations ensure enforceability. In the case of A 536–83 ductile iron, merely incorporating ASTM F 1476–93 would create a conflict with other provisions in the regulations regarding the use of A 536–83 ductile iron. Thus, it is necessary to add A 536–83 ductile iron to the list of acceptable materials to avoid a conflict with other provisions and to ensure the regulations provide sufficient guidance.

Therefore, the final rule adopts a revision to the list of acceptable piping materials in § 56.60–1 regarding the use of A 536–83 ductile iron.

As a result of adding A 536–83 ductile iron to the list of acceptable materials, the Coast Guard is also updating the testing and acceptance criteria for ferrous cast materials used in hydraulic system components addressed in §§ 58.30–5, 58.30–15, and 58.30–17. The current regulations require ferrous cast materials to either exhibit 15 percent elongation in 50 millimeters (2 inches) under a tensile test or pass an impact shock test in order to be considered as ductile iron (as opposed to cast iron) acceptable for use in hydraulic system components. By comparison, ABS considers ferrous cast material exhibiting 12 percent elongation in 50 millimeters (2 inches) as ductile iron without the option for an impact shock test. The Coast Guard considers the elongation requirement to be an important distinction between ductile iron and cast iron and prefers to harmonize the acceptance criteria for ductile iron with ABS. The final rule revises § 56.60–15, Ductile Iron, to reference the requirements of § 56.60–10, Cast Iron, for those materials that do not exhibit at least 12 percent elongation in 50 millimeters (2 inches) under a tensile test. Additionally, as § 58.30–15, Pipe, tubing, valves, fittings, pumps, and motors, references the materials requirements of §§ 56.60–1 and 56.60–2, and therefore the elongation and impact shock testing requirements in § 56.60–15, the elongation and impact shock testing requirements in § 58.30–15 are no longer needed. Removing the previously mentioned testing requirements from § 58.30–15 also necessitates removing references to § 58.30–15 included in §§ 56.60–10, 56.60–20, and 58.30–5 and the impact shock test procedures included in § 58.30–17.

Section 58.30–15 also contains testing requirements for cast aluminum alloys used in hydraulic components. Under current regulations a cast aluminum alloy intended for use in hydraulic components must exhibit 10 percent elongation in 50 millimeters (2 inches) under a tensile test or pass the same impact shock test previously mentioned for ferrous cast materials. Numerous valve and pipe fitting designs employing cast aluminum alloys exhibiting elongation characteristics much lower than 10 percent in 50 millimeters (2 inches) have been accepted on the basis of the impact shock test results and have demonstrated satisfactory service. Additionally, ABS has no similar testing requirements for cast aluminum alloys and has also found that valve and pipe fittings manufactured with cast aluminum alloys having elongation characteristics lower than 10 percent in 50 millimeters (2 inches) have demonstrated satisfactory service.

Revising the testing and acceptance criteria for ferrous cast materials and cast aluminum alloys would harmonize the regulations with industry practices, simplify the regulations, complete the steps necessary to incorporate ASTM F 1476–93 by reference and, therefore, is within the scope of the NPRM.

Therefore, the final rule adopts a revision to the NPRM by updating the testing and acceptance criteria for ferrous cast materials and cast aluminum alloys used in hydraulic system components.

Subpart 162.027 and §§ 34.10–10, 34.10–90, 76.10–10, 76.10–90, 95.10–10, 95.10–90, 108.425, 167.45–40, 193.10–10 and 193.10–90—Firehose Nozzles

One written comment noted that testing firehose nozzles in accordance with ASTM F 1546–94 (Firehose Nozzles) proposed for incorporation by reference, is cost prohibitive and suggested that testing costs may become more reasonable if the Coast Guard recognized previous tests performed on identical materials or components. This comment stems from a misunderstanding of the role of independent laboratories when testing equipment required to be approved by the Coast Guard. Under the proposed revisions to subpart 162.027, nozzles would be considered approved by the Coast Guard if the nozzles successfully pass the tests specified in ASTM F 1546–94 when tested by an independent laboratory accepted by the Coast Guard. The Coast Guard does not prohibit accepted independent laboratories from applying the results of previous testing to subsequent, required testing of identical materials or components. The determination to do so is up to the individual independent laboratory, unless otherwise stated in Coast Guard regulations. The Coast Guard uses oversight processes and field inspection reports to determine whether manufacturing and independent laboratory testing consistently result in products that meet the requirements and intent of the regulations.

As the Coast Guard does not dictate to independent laboratories whether previous test may be used to satisfy an incorporated industry consensus standard, the incorporation of ASTM F 1546–94 into Coast Guard regulations will not add any additional Coast Guard induced economic burden on manufacturers. Therefore, while the Coast Guard notes this comment, the comment does not directly affect the overall proposal to incorporate ASTM F 1546–94 into the regulations for firehose nozzles.

Another commenter asserted that the operator-protection test in ASTM F 1546–94 is costly and unnecessary given the other tests and provisions in ASTM F 1546–94. The Coast Guard disagrees with this comment. The Coast Guard interviewed firefighters, fire fighting trainers, and fire department maintenance personnel to gain an understanding of the operational and maintenance factors that should be considered in an ASTM standard for fire hose nozzles. The Coast Guard then worked with nozzle manufacturers in the development of ASTM F 1546–94.

keeping in mind the information obtained from professional firefighters. The operator-protection test is the only test in ASTM F 1546–94 that measures a nozzle's effectiveness in protecting the nozzle operator from a sudden heat rise. The test is essential to determining whether the nozzle, when operated properly, can provide a firefighter with sufficient time to escape an unexpected fire hazard.

Additionally, ASTM F 1546–94 has undergone a rigorous review and balloting process through ASTM and the provisions of ASTM F 1546–94 have been accepted by both the Coast Guard and industry. Given this Coast Guard/industry consensus on the provisions of ASTM F 1546–94, constructively changing the standard via regulatory requirements would be inconsistent with the Coast Guard's committment to fostering Coast Guard/industry partnerships and the goals of incorporating industry consensus standards by reference. Proposed revisions to ASTM F 1546–94 are outside the scope of this rulemaking and must be considered through the normal industry consensus standard process.

Therefore, while the Coast Guard notes the comment, the Coast Guard does not agree that the provisions of ASTM F 1546–94 should be modified through the final rule.

Another participant at the public meeting disagreed with the Coast Guard's proposal to incorporate the provisions of ASTM F 1546–94 pertaining to firehose nozzles that are suitable for use only in fresh water. The commenter argued that the regulations should prohibit firehose nozzles intended only for fresh water service in accordance with ASTM F 1546–94, because the nozzles might be placed on vessels operating in salt water service and, as a result, the nozzles may not function properly when needed. The Coast Guard disagrees with this comment. As previously mentioned, the Coast Guard helped firehose nozzle manufacturers develop ASTM F 1546–94 with the specific intention of incorporating this standard into the regulations to replace the detailed specifications in subpart 162.027 and to make an improved fire fighting product available to the marine industry. Nozzles manufactured of aluminum alloys are currently the only type specifically mentioned in ASTM F 1546–94 (sections 6.1.2, 9.8.1 and 12) as unsuitable for salt water service. Most shoreside fire fighting organizations, including those in coastal, salt air locations, use firehose nozzles constructed of anodized aluminum with fresh water drawn from municipal water supplies. The anodized aluminum nozzle is rugged, reliable and lighter than similar brass nozzles, which are currently the only type of nozzle approved by the Coast Guard. Whereas brass nozzles are suitable for any service, the aluminum nozzle is not suitable for service in a salt water environment because, if the anodized coating is damaged, the aluminum nozzle body is susceptible to salt water corrosion, which may render the nozzle inoperable.

To protect against aluminum nozzles being placed on vessels in salt water service, the Coast Guard ensured that ASTM F 1546–94 contained provisions for marking firehose nozzles manufactured of aluminum alloys with "F.W. Only" to indicate suitability only for fresh water service.

It is true, as argued by the commenter, that without mindfulness in the marine industry, it is possible that nozzles intended only for fresh water service may be placed on vessels operating in salt water. However, only allowing nozzles suitable for both fresh and salt water service on vessels would needlessly penalize the owners and operators of vessels operating exclusively in fresh water by prohibiting the lighter and more common anodized aluminum nozzles. Additionally, firehose nozzles are examined at each Coast Guard inspection and owners and operators would be required to replace unsuitable nozzles.

Therefore, the final rule incorporates all of the provisions in ASTM F 1546–94 regarding firehose nozzles intended for fresh or salt water service.

After further review of the proposed revisions to subpart 162.027, the Coast Guard is making editorial changes to the regulatory language. Specifically, the provisions related to testing conducted by a recognized laboratory in the proposed § 162.027–3, Approval procedures, have been moved to § 162.027–2, Design, construction, testing, and marking requirements.

These revisions represent an editorial reorganization of the proposals in the NPRM and do not affect the scope or intent of the NPRM. Therefore, the final rule revises the proposals in the NPRM by including the previously mentioned editorial changes.

§§ 35.07–5, 35.07–15, 78.37–3, 97.35–3, 97.35–10, 196.35–3, and 196.35–10—Logbooks

Several written comments were received about logbooks on merchant vessels. One comment noted that the proposed rules suggest that the Coast Guard will no longer gratuitously provide the official logbooks required by the regulations. The comment also noted that the current version of the official logbook (CG–706) contains outdated references to sections of the U.S. Code. The Coast Guard agrees that the regulations should explicitly continue to explain that official logbooks may be obtained gratuitously from any Officer in Charge, Marine Inspection. Also, the Coast Guard agrees that updating the official logbook form to reference current statutes is necessary. The Coast Guard is currently revising the logbook form to include updated references.

Therefore, the final rule revises the proposals of the NPRM by retaining text to explain that official logbooks may be obtained gratuitously from any Officer in Charge, Marine Inspection.

Another written comment suggested that the Coast Guard should issue additional regulations regarding logbook requirements for uninspected towing vessels arguing that requiring logbook entries is the best way of enforcing applicable requirements for uninspected towing vessels. The Coast Guard disagrees with this suggestion. Title 46 of the United States Code, section 11301 (46 U.S.C. 11301) requires all U.S. vessels on a foreign voyage, or, of at least 100 gross tons and on a voyage from a port in the Atlantic Ocean to a port in the Pacific Ocean to maintain an official logbook and describes the information to be recorded in the official logbook. The Coast Guard does not currently require uninspected towing vessels not otherwise subject to 46 U.S.C. 11301 to maintain official logbooks.

While the Coast Guard is concerned about violations of safety regulations on uninspected towing vessels, it is beyond the scope of this rulemaking to address these issues. Therefore, the final rule does not adopt new requirements concerning logbooks on uninspected towing vessels.

§§ 32.05–5, 35.40–40, 78.47–67, 97.35–45, 167.55–5, 169.742 and 196.37–45—Equipment Marking

The Coast Guard proposed in the NPRM to remove the requirement to mark fire axes and firehoses with the vessel's name as these items do not float and would not aid in identifying debris from a sunked vessel. However, this proposal is also included in another rulemaking regarding lifesaving and firefighting equipment. Therefore, the proposal to remove the requirement to mark fire axes and fire hoses with the vessel's name is withdrawn from the final rule.

One written comment suggested removing the requirement to mark life jackets with the vessel's name on all inland vessels. The commenter reasoned that the need to identify debris after an accident is less critical on inland vessels than on oceangoing vessels because inland commercial vessels are often on dedicated routes. While the Coast Guard considers this suggestion to be consistent with the spirit of the final rule, it would be a substantive change to Coast Guard requirement for which prior public comment is preferred.

Therefore, the final rule adopts the original proposals of the NPRM regarding marking emergency equipment. The suggestion to remove the requirements for marking life jackets with the vessel's name on all inland vessels will be considered for future rulemaking.

§§ 108.611, 108.613, 108.615, 108.659, 109.529, 109.531, 109.533, 109.535, 109.537 and 109.539—Mobile Offshore Drilling Units.

Several written comments were received about proposed changes to the regulations for mobile offshore drilling units (MODU). One comment pointed out that if § 108.613, regarding requirements for power-operated industrial trucks on MODUs, was being removed, then related §§ 108.611 and 108.615 should also be removed. The Coast Guard agrees with this comment. It was the Coast Guard's intention to remove all sections regarding power-operated industrial trucks as the Coast Guard considers regulations for power-operated industrial trucks to be no longer needed. The removal of sections 108.611 and 108.613, as well as, §§ 109.529 through 109.539 was inadvertently omitted from the NPRM.

As the preamble to the NPRM discussed the removal of all regulations for power-operated industrial trucks, removal of additional, inadvertently omitted regulations for power-operated industrial trucks is within the scope of the NPRM. Therefore, the final rule removes §§ 108.613, 108.615, and 109.529 through 109.539 in addition to adopting the original proposals of the NPRM regarding power-operated industrial trucks on MODUs.

Another comment suggested that regulations for breeches buoy instructions, proposed for removal from other subchapters by the NPRM, be removed from the requirements for MODUs as breeches buoys are no longer used for lifesaving purposes on MODUs. The Coast Guard agrees with this suggestion. It was the Coast Guard's intention to removal all requirements for breeches buoy instructions from title 46 CFR. The sections requiring breeches buoy instructions on MODUs were inadvertently omitted from the NPRM.

As removing all requirements for breeches buoy instructions was discussed in the NPRM, removing additional, inadvertently omitted requirements for breeches buoy instructions is within the scope of the NPRM. Therefore, the final rule removes requirements for breeches buoy instructions in § 108.659 in addition to adopting the original proposals of the NPRM regarding breeches buoy instructions.

A separate comment suggested removing the requirement in § 108.637 for marking hand-portable fire extinguishers and their associated stations on MODUs because a similar requirement is not included in other subchapters of 46 CFR. The Coast Guard disagrees with this suggestion because it stems from a misunderstanding of the requirements for marking emergency equipment in the other subchapters of 46 CFR. A requirement for marking hand-portable fire extinguishers and their associated stations is included in the equipment marking provisions for tank vessels, passenger vessels and cargo vessels in §§ 37.40–25, 78.47–30 and 97.37–23, respectively. Also, the ability to match hand-portable fire extinguishers with their stations is an effective method to ensure that extinguishers are available as expected in a vessel's approved fire control plan.

Therefore, the final rule does not adopt the suggestion to remove the requirements for marking hand-portable extinguishers and their associated stations.

Another comment suggested removing the reference to 46 CFR part 147 concerning vessel stores in § 109.558, which addresses hazardous vessel stores, because it is redundant to the applicability section of part 147. The Coast Guard agrees with this comment. One of the goals of the final rule is to remove provisions that are repeated in another section when removal of the provision does not make the regulations confusing or hard to use. Therefore, as the requirement is duplicative with another section in the CFR and the removal of the reference to 46 CFR part 147 in § 109.558 is not a substantive change, the final rule adopts the suggestion to remove the reference to 46 CFR part 147 in § 109.558.

The following discussion summarizes the changes being made by this final rule to 46 CFR.

1. *The requirement addresses equipment thot is no longer manufactured or used.* The following sections are being removed or revised because they impose requirements for equipment that is no longer manufactured, is technologically obsolete, or is no longer used in the marine industry.

Seciton 31.10–15(a) of title 46 CFR contains requirements for nuclear vessels. This section was inadvertently omitted from an earlier rulemaking entitled Removal of Obsolete and Unnecessary Regulations (60 FR 48044), which focused on removing regulations for nuclear vessels, ocean incinerator vessels, and ocean thermal energy conversion facilities and plantships. Therefore, this section which pertains to nuclear vessels is being removed.

Section 34.05–5 and subparts 34.13, 76.13, and 95.13 of 46 CFR contain requirements for steam smothering systems used for fire fighting purposes. The Coast Guard has prohibited installation of steam smothering systems on vessels since 1962. Existing steam smothering systems may be retained as long as they are kept in good condition to the satisfaction of the Officer in Charge, Marine Inspection. As no new installations of steam smothering systems are allowed and the designs of existing installations have already been approved, the design requirements for steam smothering systems are no longer necessary and are being removed. The Coast Guard is retaining the regulations pertaining to testing and inspection of installed systems.

Subparts 35.70, 78.80, 97.70, and §§ 76.83–1, 97.70–1, 108.611, 108.613, 108.615, 109.529, 109.531, 109.533, 109.535, 109.537 and 109.539 of title 46 CFR contain requirements for power-operated industrial trucks. Power-operated industrial trucks have been used historically on break-bulk vessels for handling cargo in the holds. Only 66 U.S. flag break-bulk ships are currently inspected by the Coast Guard. Well over half of these vessels are maintained by the Maritime Administration (MARAD), but are not operating. Of MARAD's vessels, only 7 will eventually carry power-operated industrial trucks as ship's equipment. On the remaining, privately owned break-bulk vessels, few trucks are still carried as vessel's equipment because dockside trucks are readily available. Trucks are also used on mobile offshore drilling units (MODUs) to move palletized stores such as bagged cement. Efficient cargo handling systems are increasingly replacing trucks aboard MODUs for this purpose. The demand for faster loading methods and the evolution of container vessels, lighter-abroad vessels (LASH) and roll-on/roll-off (RORO) vessels has also reduced the use of power-operated industrial trucks. Additionally, there have been no reported accidents

involving power-operated industrial trucks in the last 15 years. Therefore, regulations for power-operated industrial trucks are no longer necessary and are being removed.

Sections 32.15–10, 77.27–1, 96.27–1, and 167.40–20 of 46 CFR contain requirements for sounding equipment, including deep-sea hand leads. Reliable, inexpensive electronic sounding equipment and position fixing equipment are available from numerous manufacturers. It is unlikely that a hand lead would be necessary to determine the water depth. Therefore, the requirements for deep sea hand leads are not necessary and are being removed.

Section 32.02–5 and subparts 78.35, 97.33, and 196.33 require cable travelers between fore and aft deck houses separated by more than 46 meters (150 feet) to protect crossing the weather decks. Cable travelers have been replaced by raised fore and aft bridges and side tunnels as safer means of moving between the deckhouses. Additionally, modern vessel designs have abandoned the two deckhouse arrangement in favor of a single deckhouse. Therefore, these sections are being revised to remove the requirement for installation of cable travelers between separated deckhouses and merely require a fixed means of facilitating movement between both ends of the vessel.

Sections 34.05–15, 76.05–30, 95.05–20, 167.45–40, 193.05–20 and subpart 34.55 of 46 CFR require sand, sawdust impregnated with soda or other appropriate dry materials, and a scoop or shaker for distribution, to be located in the machinery spaces for fire fighting purposes. Sand is inferior to other common fire fighting means such as portable extinguishers, which makes this burdensome requirement inappropriate. Therefore, regulations requiring sand in the engineroom are being removed.

Subparts 35.12, 78.53, 97.43, 196.43 and § 167.65–50 of 46 CFR require instructions for the use of breeches buoys. Modern communications and lifesaving equipment have made the use of breeches buoys for lifesaving purposes obsolete. Therefore, the requirement for an instruction placard for the use of breeches buoys is no longer necessary and these sections are being revised.

Sections 35.30–45, 72.05–60, 167.40–35, and 169.321 and subparts 78.75, 97.60, and 196.60 of 46 CFR contain requirements for motion picture film, principally designed to prevent fires. Subpart 78.75 also contains a requirement that motion picture projectors comply with the requirements in the electrical engineering regulations. With the exception of large passenger vessels, which use motion picture projectors in their movie theaters, video cassette recorders and televisions have replaced motion picture projectors on most vessels. Slow-burning film is the only type of film currently available in reel format for use with movie projectors. Section 111.89–1 of 46 CFR requires all motion picture projectors to meet Article 540 of he National Electrical Code. Therefore, as the risks previously associated with motion picture film no longer exist, the regulations for motion picture film are not necessary and are being removed.

Sections 108.403 and 167.45–55 of 46 CFR allow the installation of water spray systems for fire fighting purposes in boiler spaces of MODUs and public nautical school ships. Other fire fighting media, such as carbon dioxide, have proven more effective, reliable and practical than water spray systems. In addition, there are currently no MODUs or public nautical school ship using a water spray system in a boiler space for fire fighting purposes. Therefore, these provisions are not necessary and are being removed.

Subpart 160.018 of 46 CFR contains specifications for rigid liferafts. Rigid liferafts are no longer manufactured for use in the marine industry. Therefore, the specifications for rigid liferafts in 46 CFR 160.018 are no longer necessary and are being removed.

Subpart 160.034 of 46 CFR contains specifications for lifeboat hand-propelling gear. Hand-propelled lifeboats have largely been replaced by reliable, engine-driven lifeboats and are no longer manufactured for use in the marine industry. Therefore, the specifications for hand-propelling gear in 46 CFR 160.034 are no longer necessary and are being removed.

Section 164.016 of 46 CFR contains specifications for microcellular nylon used in the construction of lifesaving equipment. Microcellular nylon has been replaced by more effective materials and is no longer manufactured for use in Coast Guard approved lifesaving equipment. Therefore, the specifications for microcellular nylon are no longer needed and are being removed.

The following table lists the sections that affected by the removal or revision of regulations pertaining to equipment that is no longer used.

Cite (46 CFR)	CFR change	Subject addressed by regulation
Part 15	Revision	Authority citation.
§ 31.10–15	Revision	Nuclear vessels.
§ 32.02–5	Revision	Cable traveler.
§ 32.15–10	Revision	Deep-sea hand leads.
§ 34.05–5	Revision	Steam smothering systems.
§ 34.05–15	Removal	Sand in the engineroom.
Subpart 34.13	Revision	Steam smothering systems.
Subpart 34.55	Removal	Sand in the engineroom.
Subpart 35.12	Revision	Breeches buoy placard.
§ 35.30–45	Removal	Motion picture film.
Subpart 35.70	Removal	Power-operated industrial trucks.
§ 72.05–60	Removal	Motion picture film.
§ 76.05–20	Revision	Fixed fire fighting systems.
§ 76.05–30	Removal	Sand in the engineroom.
Subpart 76.13	Revision	Steam smothering systems.
§ 77.27–1	Revision	Deep-sea hand leads.
Subpart 78.35	Revision	Cable traveler.
Subpart 78.53	Revision	Breeches buoy placard.
Subpart 78.75	Removal	Motion picture film.
Subpart 78.80	Removal	Power-operated industrial trucks.
§ 78.83–1	Revision	Power-operated industrial trucks.
§ 95.05–10	Revision	Fixed fire fighting systems.
§ 95.05–20	Removal	Sand in boiler rooms.

Cite (46 CFR)	CFR change	Subject addressed by regulation
Subpart 95.13	Revision	Steam smothering systems.
§ 96.27–1	Revision	Deep-sea hand leads.
Subpart 97.33	Revision	Cable traveler.
Subpart 97.43	Revision	Breeches buoy placard.
Subpart 97.60	Removal	Motion picture film.
Subpart 97.70	Removal	Power-operated industrial trucks.
§ 97.80–1	Revision	Power-operated industrial trucks.
§ 108.403	Revision	Water spray systems.
§ 108.611	Removal	Power-operated industrial trucks.
§ 108.613	Removal	Power-operated industrial trucks.
§ 108.615	Removal	Power-operated industrial trucks.
§ 108.659	Revision	Breeches buoy placard.
§ 109.529	Removal	Power-operated industrial trucks.
§ 109.531	Removal	Power-operated industrial trucks.
§ 109.533	Removal	Power-operated industrial trucks.
§ 109.535	Removal	Power-operated industrial trucks.
§ 109.537	Removal	Power-operated industrial trucks.
§ 109.539	Removal	Power-operated industrial trucks.
Subpart 160.018	Removal	Rigid liferafts.
Subpart 160.034	Removal	Lifeboat hand propelling gear.
Subpart 164.016	Removal	Microcellular nylon.
§ 167.40–20	Revision	Deep-sea hand leads.
§ 167.40–35	Removal	Motion picture film.
§ 167.45–40	Revision	Sand in enginerooms.
§ 167.45–55	Removal	Water spray systems.
§ 167.65–50	Revision	Breeches Buoy placard.
§ 169.321	Removal	Motion picture film.
§ 193.05–20	Removal	Sand in boiler rooms.
Subpart 196.33	Revision	Cable traveler.
Subpart 196.43	Revision	Breeches buoy placard.
Subpart 196.60	Removal	Motion picture film.

2. *The requirement is repeated in another section.* The following provisions are being removed or revised because the requirements are repeated in other, more useful locations in 33 CFR or 46 CFR.

Subparts 32.95, 78.85, 97.75, 196.18, and 196.75 and Section 109.583 of Title 46 CFR contain identical language regarding the requirement that certain vessels operate in accordance with the requirements of the Federal Water Pollution Control Act (FWPCA), as amended, the Oil Pollution Act (OPA), 1961, as amended and parts 151, 155, and 156 of 33 CFR. However, each of the requirements cited contain language regarding their applicability. Therefore, the sections of 46 CFR that merely restate the applicability of the FWPCA, OPA, and 33 CFR are not necessary and are being revised.

Sections 35.20–25 and 167.65–10 and subparts 78.25, 97.23, and 196.23 of 46 CFR prohibit carrying any light not required by law that will interfere with distinguishing signal lights. However, rule 20 of both the Inland and International Rules of the Road published in 33 U.S.C. 2020, contains the same requirement. It is more logical to retain requirements pertaining to signal lights in the Rules of the Road. Therefore, the sections of 46 CFR that prohibit carrying lights that interfere with signal lights are not necessary and are being removed.

Section 56.50–100 of 46 CFR contains a one sentence reference to subpart 58.30 of 46 CFR for fluid power and control system requirements. Subpart 58.30—Fluid Power and Control Systems contains the detailed requirements. Therefore, § 56.50–100 is not necessary and is being removed.

Sections 92.01–13 and 190.01–13 of 46 CFR contain requirements for the design and operation of sliding watertight door assemblies on cargo and miscellaneous vessels and oceanographic research vessels. Section 170.270 of the subdivision and stability regulations in 46 CFR contains identical requirements. The requirements for sliding watertight doors included in part 170 apply to all vessels inspected under 46 CFR, including cargo and miscellaneous vessels and oceanographic research vessels.

Therefore, repeating the requirements for the design and operation of sliding watertight door assemblies in §§ 92.01–13 and 109.01–13 is not necessary and these provisions are being removed.

Section 109.558 of 46 CFR contains a one-sentence reference to part 147 for labeling, stowing and using hazardous vessel's stores. The other subchapters for tank vessels, passenger vessels, and cargo and miscellaneous vessels do not contain a similar reference. Therefore, merely referencing part 147 for the labeling, stowing, and use of hazardous vessel's stores without adding additional information is not necessary and § 109.558 is being removed.

In the following list of sections being removed or revised, the citation to the sections where duplicate requirements are being retained is indicated in square brackets below the section being removed or revised.

Cite (46 CFR)	CFR change	Subject addressed by regulation
Subpart 32.95 [33 CFR Subchapter O]	Removal	Oil pollution.
§ 35.20–25 [33 CFR 81 and 33 U.S.C. 2020]	Removal	Unauthorized lights.
§ 56.50–100 [§ 58.30]	Removal	Fluid power and control systems.
Subpart 78.25 [33 CFR 81 and 33 U.S.C. 2020]	Removal	Unauthorized lights.
Subpart 78.85 [33 CFR Subchapter O]	Removal	Pollution prevention.
§ 92.01–13 [46 CFR Subchapter S, Subpart H] [33 CFR 164.35]	Removal	Watertight doors.

Cite (46 CFR)	CFR change	Subject addressed by regulation
Subpart 97.23 [33 CFR 81 and 33 U.S.C. 2020]	Removal	Unauthorized lights.
Subpart 97.75 [33 CFR Subchapter O]	Removal	Pollution prevention.
§ 109.558 [46 CFR Part 147]	Removal	Hazardous vessel's stores.
§ 109.583 [33 CFR Subchapter O]	Removal	Pollution Prevention.
§ 167.65–10 [33 CFR 81 and 33 U.S.C. 2020]	Removal	Unauthorized lights.
§ 190.01–13 [46 CFR Subchapter S, Subpart H]	Removal	Watertight doors.
Subpart 196.18 [33 CFR Subchapter O]	Removal	Pollution prevention.
Subpart 196.23 [33 CFR 81 and 33 U.S.C. 2020]	Removal	Unauthorized lights.
Subpart 196.75 [33 CFR Subchapter O]	Removal	Pollution prevention.

3. *The requirement does not improve shipboard safety.* The following sections are being removed or revised because they make no significant contribution to shipboard safety. This list includes provisions that are typically exceeded by industry voluntarily, regulations that have outlived their usefulness and requirements that result in inefficient administrative procedures.

Section 35.01–5 and subparts 32.40, 72.20, 92.20, 167.50, 168.15, and 190.20 of 46 CFR contain requirements for on-board crew accommodations. In some cases, the requirements contained in these sections are unnecessarily detailed or exceed the requirements of the U.S. Code or the International Labor Office Merchant Shipping (Minimum Standards) Convention, 1976 (ILO 147) to which the United States is signatory.

As discussed above, the changes in this rulemaking remove or revise those sections of the regulations that are unnecessarily detailed or exceed the requirements of the U.S. Code or ILO 147 in order to make the regulations more concise and consistent with the international standard for on-board crew accommodations. Provisions that affect shipboard safety are not being removed or revised.

Sections 35.10–5 and 35.20–30 of 46 CFR discuss the officer in command's responsibility to conduct drills and the prohibitions against unauthorized lights, flashing blinding lights and unauthorized whistling. Sections 35.25–1 of 46 CFR discusses the chief engineer's responsibility to examine the boilers and report their condition. Additionally, §§ 78.57–1, 97.47–1, and 167.65–15 of 46 CFR require mariners to strictly comply with routing instructions issued by competent naval authorities. Each of these sections include phrases to indicate that the master or other licensed officers of a vessel may be held liable against their licenses in suspension and revocation proceedings for failure to comply with the provisions of the these sections. Phrases of this type are inconsistent with the President's memorandum of March 4, 1995, directing federal agencies to focus on results rather than process and punishment and do not contribute to shipboard safety. The authority to proceed in suspension and revocation proceedings against licensed or certificated mariners that fail to obey a law or regulation is explained in part 5 of this chapter. Reiterating a mariner's liability in other subchapters is not necessary. Therefore, to meet the Coast Guard's goal of focusing on results instead of process and punishment, this final rule removes or revises sections that restate mariners' liability for failure to obey laws or regulations, while retaining the prohibition against the underlying conduct.

Sections 35.20–15, and 167.65–30 and subparts 78.20, 97.17 and 196.17 of 46 CFR specify that the words "Right rudder" and "Left rudder" be used when it is intended that the wheel, rudder blade and the head of the vessel move to the right or left, respectively. Specifying the direction of the wheel, rudder or vessel intended by the commands "Right rudder" and "Left rudder" is a detail that is not necessary for professional seamen. It is the shared responsibility of the helmsman and the deck officer or pilot to ensure that terminology and orders are understood. Specifying commands in the regulations does not diminish that responsibility. Therefore, these regulations are not necessary and are being removed.

Sections 61.04–5 and 61.30–5 of 46 CFR assign responsibilities to the chief engineer to prepare the boilers and thermal fluid heaters for inspection. Preparing machinery for inspection reduces the time needed to conduct the required inspections and determine the condition of the machinery. As discussed above, it is a matter of convenience for the vessel and the attending marine inspectors or classification society surveyors to have the machinery prepared in advance, but is not a significant safety issue. It is doubtful that a deck officer or other person not familiar with machinery would be assigned to prepare machinery for inspection because of the great potential for costly delays. Also, other sections in the regulations impart ultimate responsibility for the vessel's machinery to the chief engineer. Therefore, regulations assigning the responsibility to prepare machinery for inspection to the chief engineer are being removed.

Sections 54.01–1, 54.01–3, and 54.01–5 and table 54.01–5 of 46 CFR reference the standards of the Tubular Exchanger Manufacturers Association (TEMA) and the American Society of Mechanical Engineers (ASME) Code for Boilers and Pressure Vessels (ASME Code) for the construction of heat exchangers. Comments received from heat exchanger manufacturers and shipyards indicate that referencing both the TEMA and ASME standards has create confusion. The ASME Code is the primary industry standard for pressure vessels of all types and is extensively referenced in the regulations. The ASME Code is comprehensive and includes updated requirements for design and construction of the heat exchanger components for which a reference to TEMA standards was previously necessary. The ASME Code requirements are equivalent to TEMA requirements. Heat exchangers built solely in accordance with the ASME Code have demonstrated their suitability for shipboard use. Referencing only the ASME Code will result in simplified regulations and less confusion. Therefore, the regulations referencing the TEMA standards are not longer necessary and are being removed.

Part 153 of 46 CFR contains the requirements for issuance of a Certificate of Compliance (COC) and Subchapter O Endorsement (SOE). Under the existing regulations, a COC and SOE are issued by the Coast Guard to a foreign chemical tanker registered with a nation signatory to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78). Issuance of the COC and SOE is based primarily on a review of he vessel's plans and possession of a valid Certificate of Fitness (COF) issued by the flag state or an authorized third party.

The process to obtain a COC and SOE is initiated when a series of documents

are submitted to the Coast Guard for review. The required submission of these documents to both the Coast guard's Marine safety Center (MSC) and the cognizant Officer in Charge, Marine Inspection (OCMI) often results in unnecessary delays in obtaining a COC and SOE. Also, under current practices, after the COC and SOE have been issued, if a Coast Guard marine inspector discovers that the COF has been reissued by the flag state or its authorized third party, the COC becomes invalid and cargo operations have to be stopped until the MSC reviews the new COF and issues a new SOE.

The new procedure will make the Coast Guard's regulations more consistent with actual practice. Due to the large number of cargoes typically authorized under a COF, currently the MSC does not conduct a detailed review of the majority of a vessel's plans. Instead, the MSC concentrates on identifying cargoes prohibited from bulk carriage in U.S. waters and those cargoes for which the U.S. has special requirements. The MSC accepts a valid COF issued by the flag state or its authorized third part as documentation that he vessel complies with the applicable international codes for carriage of bulk chemicals. These codes are the Bulk Chemical Code (BCH Code) and the International Bulk Chemical Code (IBC Code) developed by the International Maritime Organization. Compliance with these codes is mandatory for any vessel whose flag state is signatory to MARPOL 73/78. Under this rule, only those chemical tankers whose flag state is not signatory to MARPOL 73/78 will require a detailed plan review by the MSC to be issued an SOE. Following the plan review, the MSC will issue an SOE to these vessels with the notation that the flag state is not signatory to MARPOL 73/78.

Therefore this final rule amends the review and issuance process found in 46 CFR part 153 to allow the OCMI to issue the COC and SOE without the MSC's involvement for those vessels whose flag states are signatory to MARPOL 73/78. This final rule also allows the SOE to remain valid as long as the COF is valid even if the COF is revised.

The following table lists the sections that are affected by the removal or revision of redundant information or inefficient administrative procedures.

Cite (46 CFR)	CFR change	Subject addressed by regulation
Tank Vessels:		
Subpart 32.40	Revision	Accomodations.
§ 35.01–5	Revision	Accommodations.
§ 35.10–5	Revision	Emergency drills.
§ 35.20–15	Removal	Steering orders.
§ 35.20–30	Revision	Blinding lights.
§ 35.20–35	Revision	Unnecessary whistling.
§ 35.25–1	Revision	Examination of boilers and machinery by engineer.
Pressure Vessels:		
§ 54.01–1	Revision	Heat exchangers.
§ 54.01–3	Removal	Heat exchangers.
§ 54.01–5	Revision	Heat exchangers.
Inspections and Examinations:		
§ 61.05–5	Revision	Preparing boilers for inspection.
§ 61.30–5	Revision	Preparing thermal fluid heater for inspection.
Passenger Vessels:		
Subpart 72.20	Revision	Accommodations.
Subpart 78.20	Removal	Steering orders.
§ 78.57–1	Revision	Routing instructions.
Cargo and Miscellaneous Vessels:		
Subpart 92.20	Revision	Accommodations.
Subpart 97.17	Removal	Steering orders.
§ 97.47–1	Revision	Routing instructions.
Hazardous Cargoes:		
Part 153	Revision	Certificate of Compliance procedures.
Public School Ships:		
§ 167.65–15	Revision	Routing instructions.
§ 167.65–30	Removal	Steering orders.
Civilian Nautical School Ships:		
Subpart 168.15	Revision	Accommodations.
Oceanographic Research Vessels:		
Subpart 190.20	Revision	Accommodations.
Subpart 196.17	Removal	Steering orders.

4. *An appropriate industry standard or practice exists which can be referenced instead of publishing detailed requirements in the regulations.* The Coast Guard has been systematically replacing detailed specifications in the regulations with industry consensus standards for over 20 years. To date, over 250 regulatory provisions have been replaced with adopted industry standards. Incorporation of industry standards saves time and resources for both the Coast Guard and industry by streamlining the shipboard equipment acceptance process.

Sections 34.10–10, 34.10–90, 76.10–10, 76.10–90, 95.10–10, 95.10–90, 108.425, 167.45–40, 193.10–10, and 193.10–90 of 46 CFR contain requirements for firehose nozzles that are approved under 46 CFR 162.027. In 1994, as discussed above, the Coast Guard helped U.S. nozzle manufacturers develop an ASTM standard for fire fighting nozzles—ASTM F 1546–94, Fire Hose Nozzles. The standard was developed for modern variable-flow or variable-pressure nozzles with the expectation that it would eventually be incorporated into the regulations. Testing conducted by the Coast Guard Research and Development Center in

1988 demonstrated that these nozzles are superior to the currently approved all-purpose nozzles. Two of the tested models were issued Coast Guard approvals in 1990. Variable-flow or variable-pressure nozzles are used by virtually every shoreside fire department in the United States. Incorporation of this standard will make a superior product with a long, successful service history available to the marine industry.

Therefore, this final rule replaces the current specifications for firehose nozzles contained in subpart 162.027 with a reference to ASTM F 1546–94 and allows the use of nozzles that meet the new subpart 162.027 in addition to nozzles previously approved under subpart 162.027.

Section 38.25–10 of 46 CFR contains the inspection requirements for safety relief valves installed on pressure vessel type cargo tanks used in the carriage of liquefied petroleum gas. Under the current regulations, safety relief valves must be tested and adjusted, if necessary, every 4 years. The ABS rules require testing and adjustment every 5 years. The ABS rules with the longer testing interval, have proven to be adequate by the satisfactory performance of safety relief valves on non-U.S. vessels classed by ABS. The Coast Guard has amended the inspection intervals for vessel drydockings and for various pieces of shipboard equipment to agree with the inspection intervals in international standards and ABS rules. These amendments have been made to allow major pieces of equipment to be tested on a cycle that coincides with the normal drydock schedule for the convenience of the vessel owner, class society and the Coast Guard when shipboard safety is not affected. Therefore, this final rule changes the testing interval for safety valves installed on pressure vessel type cargo tanks from 4 years to 5 years to be consistent with international standards and classification society rules.

Sections 56.30–25, 56.30–35, and 56.30–40 of 46 CFR contain regulations for gasketed mechanical couplings and mechanically attached fittings. In 1993, as discussed above, the Coast Guard and ASTM developed ASTM standards F 1387–93 (Performance of Mechanically Attached Fittings) and F 1476–93 (Performance of Gasketed Mechanical Couplings for Use in Piping Applications) with the expectation that they would eventually be incorporated into the regulations. Also, in 1994, ASTM F 1548–94 (the Performance of Fittings for Use with Gasketed Mechanical Couplings Used in Piping Applications) was developed as a companion standard for ASTM F 1476–93. This final rule incorporates ASTM F 1387–93 into § 56.35–30 and both ASTM F 1476–93 and ASTM F 1548–94 into § 56.35–25, and clarifies the requirements for mechanically attached fittings and gasketed mechanical couplings used in piping applications.

As discussed above, § 56.60–1 describes acceptable materials for shipboard piping systems. Specifically, table 56.60–1(a) prohibits the use of ductile iron conforming to ASTM standard A 536–83. However, the specific grades of A 536–83 ductile iron referenced in ASTM F 1476–93 have a successful service history and have proven to be suitable for shipboard use. Therefore, table 56.60–1(a) is revised to allow the use of A 536–83 ductile iron for pipe fittings and valves. Additionally, § 56.60–15, which addresses the use of ductile iron in piping systems, is being revised to allow the use of A 536–83 ductile iron.

Sections 58.30–5, 58.30–15, and 58.30–17 contain requirements for the use of ferrous cast materials in hydraulic systems. Under the current regulations, ferrous cast materials must exhibit at least 15 percent elongation in 50 millimeters (2 inches) when subjected to a tensile test or pass an impact shock test to be considered ductile iron and acceptable for use in hydraulic system components. As previously mentioned, the Coast Guard prefers to retain an elongation requirement for ductile iron while harmonizing with ABS requirements. Therefore, the final rule revise § 56.60–15 to include a requirement that ductile irons exhibit 12 percent elongation in 50 millimeters (2 inches) under a tensile test without the option to pass an impact shock test. As § 58.30–15 references the requirements for ductile iron in § 56.60–2 and § 56.60–15, the elongation and impact shock testing provisions in § 58.30–15 are no longer needed and are removed in the final rule. The final rule also removes the references to § 58.30–15 included in §§ 56.60–10, 56.60–20, and 58.30–5 and the procedures for impact shock testing in § 58.30–17.

Section 58.30–15 also contains elongation and impact shock testing requirements for cast aluminum alloys. As previously mentioned, experience has shown that testing requirements for cast aluminum alloys used in hydraulic components are no longer needed. Additionally, removal of the testing requirements for cast aluminum alloys would harmonize the regulations with ABS rules.

As a result of removing the testing requirements for cast aluminum alloys in § 58.30–15, footnote 16 of table 56.60–2(a), which references the testing requirements of § 58.30–15 and § 58.30–17 is also being removed.

Section 61.20–17 of 46 CFR contains the requirements for tailshaft examination intervals. The current requirements for tailshaft examination intervals are based on the type of lubricant used in the bearing lubrication system. With some exceptions, water-lubricated tailshafts must be drawn and examined at each drydocking. Oil-lubricated bearings need not be drawn and examined if the bearing clearances are taken during drydocking, the inboard seals are examined, the lubricating oil is analyzed, and nondestructive testing is conducted on the connection between the propeller to the tailshaft. The differences in the scope and frequency of inspection are due to the non-corrosive properties of oil. Consequently, the use of an oil-lubricated tailshaft can translate into substantial savings during drydock periods. However, a potential drawback is liability for oil released from leaky seals. As a result, industry demand has spurred development of water-miscible, environmentally safe, non-corrosive lubricants.

The Coast Guard supports the development and use of non-polluting lubricants and has evaluated means for a manufacturer to demonstrate a lubricant's equivalency to oil, based on the lubricant's non-corrosive properties, for purposes of the tailshaft inspection interval. Under this final rule, a water-miscible lubricant tested in accordance with ASTM D 665–92 (Standard Test Method for Rust-Preventing Characteristics of Inhibited Mineral Oil in the Presence of Water) may be considered equivalent to oil for the purposes of the tailshaft inspection interval. Therefore, this final rule incorporates ASTM D 665–92 into the regulations and adds appropriate text into § 61.20–17 explaining the procedures for accepting water-miscible lubricants as equivalent to oil. Additionally, this final rule clarifies the purpose of the tailshaft lubricating oil analysis by explaining that the analysis is to determine the presence of bearing material or other contaminants.

The following table lists the sections that are affected by the removal or the revision of regulations that make a negligible contribution to shipboard safety.

Cite (46 CFR)	CFR change	Subject addressed by regulation
§ 34.10–10	Revision	Firehose nozzles.
§ 34.10–90	Revision	Firehose nozzles.
§ 38.25–10	Revision	Safety relief valves.
§ 56.01–2	Revision	Incorporation by reference.
§ 56.30–25	Revision	Flared, flareless and compression joints.
§ 56.30–35	Revision	Gasketed mechanical couplings.
§ 56.30–40	Removal	Mechanically attached fittings.
§ 56.60–1	Revision	Piping materials.
§ 56.60–2	Revision	Piping materials.
§ 56.60–10	Revision	Cast iron.
§ 56.60–15	Revision	Ductile iron.
§ 56.60–20	Revision	Nonferrous materials.
§ 58.30–5	Revision	Impact shock testing.
§ 58.30–15	Revision	Cast materials.
§ 58.30–17	Removal	Impact shock testing.
Subpart 61.03	New	Incorporation by reference.
§ 61.20–17	Revision	Tailshaft inspections.
§ 76.10–10	Revision	Firehose nozzles.
§ 76.10–90	Revision	Firehose nozzles.
§ 95.10–10	Revision	Firehose nozzles.
§ 95.10–90	Revision	Firehose nozzles.
§ 108.425	Revision	Firehose nozzles.
Subpart 162.027	Revision	Firehose nozzles.
§ 167.45–40	Revision	Firehose nozzles.
§ 193.10–10	Revision	Firehose nozzles.
§ 193.10–90	Revision	Firehose nozzles.

5. *Statutory language repeated.* The regulatory text of the following provisions repeats language or restates requirements from self-executing statutes without any additional regulatory provisions.

Section 26.15–1 of 46 CFR repeats the statutory language of 46 U.S.C. 527e authorizing the Coast Guard to board numbered, uninspected commercial vessels. however, section 527e of 46 U.S.C. was repealed on August 10, 1971 (Pub. L. 92–75, 85 Stat. 228). The authority for the Coast Guard to conduct boardings on uninspected vessels remains in Title 14 U.S.C. 89 and need not be repeated in the regulations. Therefore, § 26.15–1 is revised to remove the cite to the repealed authorizing statute.

Sections 35.07–5, 35.07–15, 78.37–3, 97.35–3, 97.35–10, 196.35–3, and 196.35–10 of 46 CFR either repeat statutory language or paraphrase statutory requirements for making logbook entries. Subparts 78.03, 97.03, and 196.03 of 46 CFR repeat the possible consequences of a violation of the provisions of 46 CFR and mariners' liability under the suspension and revocation proceedings. Sections 167.65–3 and 196.27–10 of 46 CFR repeat the statutory language regarding negligent operations of a vessel. Regulations that do not add meaning or additional requirements to self-executing statutes are not useful. Therefore, regulations that only repeat language or summarize requirements from self-executing statutes are not necessary and are being removed or revised.

The following table lists the sections that are affected by the removal or revision of regulations that repeat statutory language.

Cite (46 CFR)	CFR change	Subject addressed by regulation
§ 26.15–1	Revision	Boarding by Coast Guard.
§ 35.07–5	Revision	Logbook entries.
§ 35.07–15	Removal	Logbook entries.
Subpart 78.03	Removal	Statutory penalties.
§ 78.37–3	Revision	Logbook entries.
Subpart 97.03	Removal	Statutory penalties.
§ 97.35–3	Revision	Logbook entries.
§ 97.35–10	Removal	Logbook entries.
§ 167.65–3	Removal	Negligent operations.
Subpart 196.03	Removal	Statutory penalties.
§ 196.27–10	Removal	Negligent operations.
§ 196.35–3	Revision	Logbook entries.
§ 196.35–10	Removal	Logbook entries.

Incorporation by Reference

The Director of the Federal Register has approved the material in §§ 56.01–2, 61.03–1, and 162.027–1 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The material is available as indicated in these sections.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order, nor has it been reviewed by the Office of Management and Budget. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11004, February 26, 1979). The Coast

Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Although this final rule is intended to reduce regulatory burden by eliminating redundancy and clarifying compliance requirements, it will not have a significant economic impact on a substantial number of small entities because it amends portions of regulations that—

(1) Are purely administrative;

(2) Do not reflect common marine industry practice;

(3) Do not have general applicability; or

(4) Are repeated in other sections.

Additionally, any equipment previously approved under provisions of the regulations being amended by this rule is still considered as approved and need not obtain new approvals.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule contains no new requirements for collection-of-information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

46 CFR Part 26

Marine safety, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 32

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 34

Cargo vessels, Fire prevention, Marine safety.

46 CFR Part 35

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 38

Cargo vessels, Fire prevention, Gases, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 54

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 56

Reporting and recordkeeping requirements, Vessels, Incorporation by reference.

46 CFR Part 58

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 61

Reporting and recordkeeping requirements, Vessels, Incorporation by reference.

46 CFR Part 72

Fire prevention, Marine safety, Occupational safety and health, Passenger vessels, Seamen.

46 CFR Part 76

Fire prevention, Marine safety, Passenger vessels.

46 CFR Part 77

Marine safety, Navigation (water), Passenger vessels.

46 CFR Part 78

Marine safety, Navigation (water), Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 92

Cargo vessels, Fire prevention, Marine safety, Occupational safety and health, Seamen.

46 CFR Part 95

Cargo vessels, Fire prevention, Marine safety.

46 CFR Part 96

Cargo vessels, Marine safety, Navigation (water).

46 CFR Part 97

Cargo vessels, Marine safety, Navigation (water), Reporting and recordkeeping requirements.

46 CFR Part 108

Fire prevention, Marine safety, Occupational safety and health, Oil and gas exploration, Vessels.

46 CFR Part 109

Marine safety, Occupational safety and health, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 153

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 160

Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 162

Fire prevention, Marine safety, Oil pollution, Reporting and recordkeeping requirements, Incorporation by reference.

46 CFR Part 164

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 167

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Seamen, Vessels.

46 CFR Part 168

Occupational safety and health, Schools, Seamen, Vessels.

46 CFR Part 169

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

46 CFR Part 189

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

46 CFR Part 190

Fire prevention, Marine safety, Occupational safety and health, Oceanographic research vessels.

46 CFR Part 193

Fire prevention, Marine safety, Oceanographic research vessels.

46 CFR Part 196

Marine safety, Oceanographic research vessels, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR parts 15, 26, 31, 32, 34, 35, 38, 54, 56, 58, 61, 72, 76, 77, 78, 92, 95, 96, 97, 108, 109, 153, 160, 162, 164. 167, 168, 169, 189, 190, 193, and 196 as follows:

PART 15—MANNING REQUIREMENTS

1. The authority citation for part 15 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3703, 8101, 8102, 8104, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 9102; 49 CFR 1.45 and 1.46.

PART 26—OPERATIONS

2. The authority citation for part 26 continues to read as follows:

Authority: 46 U.S.C. 3306, 4104, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

3. In § 26.15–1, paragraphs (a) and (b) are removed, paragraph (c) is redesignated as paragraph (b), and a new paragraph (a) is added to read as follows:

§ 26.15–1 May board at any time.

(a) To facilitate the boarding of vessels by the commissioned, warrant, and petty officers of the U.S. Coast Guard in the exercise of their authority, every uninspected vessel, as defined in 46 U.S.C. 2101(43), if underway and upon being hailed by a Coast Guard vessel, must stop immediately and lay to, or must maneuver in such a way to permit the Coast Guard boarding officer to come aboard. Failure to permit a Coast Guard boarding officer to board a vessel or refusal to comply will subject the operator or owner of the vessel to the penalties provided in law.

* * * * *

PART 31—INSPECTION AND CERTIFICATION

4. The authority citation for part 31 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46; Section 31.10–21a also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

§ 31.10–15 [Amended]

5. In § 31.10–15, paragraph (a) is amended by removing the words "and in the case of nuclear vessels, at least once every year".

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

6. The authority citation for part 32 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subpart 32.59 also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

7. Section 32.02–5 is revised to read as follows:

§ 32.02–5 Communication between deckhouses—TB/OCLB.

On all tank vessels where the distance between deckhouses is more than 46 meters (150 feet), a fixed means of facilitating communication between both ends of the vessel, such as a raised fore and aft bridge or side tunnels, must be provided. Previously approved arrangements may be retained so long as they are maintained in satisfactory condition to the satisfaction of the Officer in Charge, Marine Inspection.

8. Section 32.15–10 is revised to read as follows:

§ 32.15–10 Sounding machines—T/OCL.

All mechanically propelled vessels in ocean or coastwise service of 500 gross tons and over, and all mechanically propelled vessels in of 500 gross tons and over and certificated for service on the River St. Lawrence eastward of the lower exit of the St. Lambert Lock at Montreal, Canada, must be fitted with an efficient electronic deep-sea sounding apparatus.

9. Subpart 32.40 is revised to read as follows:

Subpart 32.40—Accommodations for Officers and Crew

Sec.

32.40–1 Application—TB/ALL.
32.40–5 Intent—T/ALL.
32.40–10 Location of crew spaces—T/ALL.
32.40–15 Construction—T/ALL.
32.40–20 Sleeping accommodations—T/ALL.
32.40–25 Washrooms and toilet rooms—T/ALL.
32.40–30 Messrooms—T/ALL.
32.40–35 Hospital space—T/ALL.
32.40–40 Other spaces—T/ALL.
32.40–45 Lighting—T/ALL.
32.40–50 Heating and cooling—T/ALL.
32.40–55 Insect screens—T/ALL.
32.40–60 Crew accommodations on tankships of less than 100 gross tons and manned tank barges—T/ALL.
32.40–65 Crew accommodations on tankships constructed before June 15, 1987—T/ALL.

Subpart 32.40—Accommodations for Officers and Crew

§ 32.40–1 Application—TB/ALL.

(a) The provisions of this subpart, except § 32.40–60 and § 32.40–65, apply to all tankships of 100 gross tons and over constructed on or after June 15, 1987.

(b) Tankships of less than 100 gross tons and manned tank barges must meet the requirements of § 32.40–60.

(c) Tankships of 100 gross tons and over constructed prior to June 15, 1987, must meet the requirements of § 32.40–65.

§ 32.40–5 Intent—T/ALL.

The accommodations provided for officers and crew on all vessels must be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged and insulated from undue noise, heat and odors.

§ 32.40–10 Location of crew spaces—T/ALL.

(a) Crew quarters must not be located farther forward in the vessel than a vertical plane located at 5 percent of the vessel's length abaft the forward side of the stem at the designed summer load water line. However, for vessels in other than ocean or coastwise service, this distance need not exceed 8.5 meters (28 feet). For the purposes of this paragraph, the vessel's length must be as defined in § 43.15–1 of subchapter E (Load Lines) of this chapter. Unless approved by the Commandant, no section of the deck head of the crew spaces may be below the deepest load line.

(b) There must be no direct communication, except through solid, close fitted doors or hatches between crew spaces and chain lockers, or machinery spaces.

§ 32.40–15 Construction—T/ALL.

All crew spaces are to be constructed and arranged in a manner suitable to the purpose for which they are intended and so that they can be kept in a clean, workable and sanitary condition:

§ 32.40–20 Sleeping accommodations—T/ALL.

(a) Where practicable, each licensed officer shall be provided with a separate stateroom.

(b) Sleeping accommodations for the crew must be divided into rooms, no one of which may berth more than 4 persons.

(c) Each room must be of such size that there is at least 2.78 square meters

(30 square feet) of deck area and a volume of at least 5.8 cubic meters (210 cubic feet) for each person accommodated. The clear head room must not be less than 190 centimeters (75 inches). In measuring sleeping accommodations any furnishings contained therein for the use of the occupants are not to be deducted from the total volume or from the deck area.

(d) Each person shall have a separate berth and not more than one berth may be placed above another. The berth must be composed of materials not likely to corrode. The overall size of a berth must not be less than 68 centimeters (27 inches) wide by 190 centimeters (75 inches) long, except by special permission of the Commandant. Where two tiers of berths are fitted, the bottom of the lower berth must not be less than 30 centimeters (12 inches) above the deck. The berths must not be obstructed by pipes, ventilating ducts, or other installations.

(e) A locker must be provided for each person accommodated in a room.

§ 32.40–25 Washrooms and toilet rooms—T/ALL.

(a) At least 1 toilet, 1 washbasin, and 1 shower or bathtub must be provided for each 8 members or portion thereof in the crew who do not occupy sleeping accommodations to which private or semi-private facilities are attached.

(b) The toilet rooms and washrooms must be located convenient to the sleeping quarters of the crew to which they are allotted but must not open directly into such quarters except when they are provided as private or semi-private facilities.

(c) All washbasins, showers, and bathtubs must be equipped with adequate plumbing, including hot and cold running water. All toilets must be installed with adequate plumbing for flushing.

(d) At least 1 washbasin must be fitted in each toilet room, except where private or semi-private facilities are provided and washbasins are installed in the sleeping rooms.

(e) Where more than 1 toilet is located in a space or compartment, each toilet must be separated by partitions.

§ 32.40–30 Messrooms—T/ALL.

(a) Messrooms must be located as near to the galley as is practicable except where the messroom is equipped with a steam table.

(b) Each messroom must seat the number of persons expected to eat in the messroom at one time.

§ 32.40–35 Hospital space—T/ALL.

(a) Each vessel which in the ordinary course of its trade makes voyages of more than 3 days duration between ports and which carries a crew of 12 or more, must be provided with a hospital space. This space must be situated with due regard to the comfort of the sick so that they may receive proper attention in all weathers.

(b) The hospital must be suitably separated from other spaces and must be used for the care of the sick and for no other purpose.

(c) The hospital must be fitted with berths in the ratio of 1 berth to every 12 members of the crew or portion thereof who are not berthed in single occupancy rooms, but the number of berths need not exceed 6.

(d) The hospital must have a toilet, washbasin, and bathtub or shower conveniently situated. Other necessary suitable equipment such as a clothes locker, a table, and a seat must be provided.

§ 32.40–40 Other spaces—T/ALL.

Each vessel must have—

(a) Sufficient facilities where the crew may wash and dry their own clothes, including at least 1 sink supplied with hot and cold fresh water;

(b) Recreation spaces; and

(c) A space or spaces of adequate size available on an open deck to which the crew has access when off duty.

§ 32.40–45 Lighting—T/ALL.

Each berth must have a light.

§ 32.40–50 Heating and cooling—T/ALL.

(a) All manned spaces must be adequately heated and cooled in a manner suitable to the purpose of the space.

(b) The heating and cooling system for accommodations must be capable of maintaining a temperature of 21 °C (70 °F) under normal operating conditions without curtailing ventilation.

(c) Radiators and other heating apparatus must be so placed and shielded, where necessary, to avoid risk of fire, danger or discomfort to the occupants. Pipes leading to radiators or heating apparatus must be insulated where those pipes create a hazard to persons occupying the space.

§ 32.40–55 Insect screens—T/ALL.

Provisions shall be made to protect the crew quarters against the admission of insects.

§ 32.40–60 Crew accommodations on tankships of less than 100 gross tons and manned tank barges—TB/ALL.

(a) The crew accommodations on all tankships of less than 100 gross tons and all manned tank barges must have sufficient size and equipment, and be adequately constructed to provide for the protection of the crew in manner practicable for the size, facilities, and service of the tank vessel.

(b) The crew accommodations must be consistent with the principles underlying the requirements for crew accommodations of tankships of 100 gross tons or more.

§ 32.40–65 Crew accommodations on tankships constructed before June 15, 1987—T/ALL.

All tankships of 100 gross tons and over constructed before June 15, 1987, may retain previously accepted or approved installations and arrangements so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

Subpart 32.95 (§ 32.95–1)—[Removed]

10. Subpart 32.95 consisting of § 32.95–1 is removed.

PART 34—FIRE FIGHTING EQUIPMENT

11. The authority citation for part 34 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

12. In § 34.05–5, paragraphs (a), (a)(1), (a)(1), (a)(2) (a)(3) and (a)(4) are revised to read as follows:

§ 34.05–5 Fire extinguishing systems—T/ALL.

(a) Approved fire extinguishing systems must be installed on all tankships in the following locations. Previously approved installations may be retained as long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(1) *Dry cargo compartments.* A carbon dioxide or water spray system must be installed for the protection of all dry cargo compartments. Where such compartments are readily accessible by means of doors such spaces need be protected only by the fire main system.

(2) *Cargo tanks.* A deck foam system must be installed for the protection of all cargo tank spaces. Where a deck foam system is installed, an approved inert gas, steam or other system may also be installed for the purposes of fire prevention or inerting of cargo tanks. For vessels under 100 feet in length, the semiportable equipment required by footnote 1 of table 34.05–5(a) will be considered as meeting the requirements of this subparagraph.

(3) *Lamp and paint lockers and similar spaces.* A carbon dioxide or water spray system must be installed in all lamp and paint lockers, oil rooms, and similar spaces.

(4) *Pumprooms.* A carbon dioxide, inert gas, foam or water spray system must be installed for the protection of all pumprooms.

* * * * *

§ 34.05–15 [Removed]

13. Section 34.05–15 is removed.

14. In § 34.10–10, paragraphs (e), (e–1) and (n) are removed, table 34.10–10(E–1) is redesignated as table 34.10–(10)(E), paragraphs (f) through (m) are redesignated as paragraphs (g) through (n), respectively, and new paragraphs (e), (f) and (o) are added to read as follows:

§ 34.10–10 Fire station hydrants, hose, and nozzles—T/ALL.

* * * * *

(e) Each fire station hydrant must have at least 1 length of firehose. Each firehose on the hydrant must have a combination solid stream and water spray firehose nozzle that meets the requirements in subpart 162.027 of this chapter. Firehose nozzles previously approved under subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. A suitable hose rack or other device must be provided. Hose racks on weather decks must be located to afford protection from heavy seas. The hose must be stored in a location that is readily visible.

(f) Each combination firehose nozzle previously approved under subpart 162.027 of this chapter in the locations listed in table 34.10–10(E) must have a low-velocity water spray applicator also previously approved under subpart 162.027 of this chapter that is of the length listed in that table.

* * * * *

(o) Each low-velocity water spray applicator under paragraph (f) of this section must have fixed brackets, hooks, or other means for stowing next to the hydrant.

15. In § 34.10–90, paragraphs (a)(12) and (a)(13) are removed, paragraph (a)(14) is redesignated as (a)(12) and paragraphs (a)(10), (a)(11) and (b)(2) are revised to read as follows:

§ 34.10–90 Installations contracted for prior to May 26, 1965—T/ALL.

(a) * * *

(10) Each fire station hydrant on a tankship of 500 gross tons or more must have at least 1 length of firehose. Each firehose on the hydrant must have a combination solid stream and water spray firehose nozzle that meets the requirements of subpart 162.027. Firehose nozzles previously approved under subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(11) On each tankship of 1000 gross tons or more, the firehose nozzle required by paragraph (a)(10) of this section on each of the following hydrants must have a low-velocity water-spray applicator that was previously approved under subpart 162.027 and that connects to that nozzle when the nozzle itself was previously approved under subpart 162.027—

(i) At least two hydrants in the Machinery and boiler spaces; and

(ii) At least 25 percent of other hydrants.

* * * * *

(b) * * *

(2) Each fire station hydrant must have at least 1 length of firehose. Each firehose on the hydrant must have a combination solid stream and water spray firehose nozzle that meets the requirements of subpart 162.027. Firehose nozzles previously approved under subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. If the firehose nozzles were previously approved under subpart 162.027, each of the number of hydrants in the locations listed in table 34.10–10(E) must have a low-velocity water spray applicator that—

(i) Was previously approved under subpart 162.027 of this chapter;

(ii) Is the length listed in table 34.10–10(E); and

(iii) Meets § 34.10–10(o).

16. Subpart 34.13 consisting of § 34.13–1 is revised to read as follows:

Subpart 34.13—Steam Smothering Systems

§ 34.13–1 Application—T/ALL.

Steam smothering fire extinguishing systems are not permitted on vessels contracted for on or after January 1, 1962. Previously approved installations may be retained as long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

Subpart 34.55 (§§ 34.55–1, 34.55–5 and 34.55–10)—[Removed]

17. Subpart 34.55 consisting of §§ 34.55–1, 34.55–5 and 34.55–10 is removed.

PART 35—OPERATIONS

18. The authority citation for part 35 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

§ 35.01–5 [Amended]

19. In § 35.01–5, paragraphs, (b) and (c) are removed and the paragraph designation "(a)" is removed from paragraph (a).

20. Section 35.07–5 is revised to read as follows:

§ 35.07–5 Logbooks and records—TB/ALL.

(a) The master or person in charge of a vessel that is required by 46 U.S.C. 11301 to have an official logbook shall maintain the logbook on form CG–706. The official logbook is available free to masters of U.S.-flag vessels from the officer in Charge, Marine Inspection, as form CG–706B or CG–706C, depending on the number of persons employed in the crew. When the voyage is completed, the master or person in charge shall file the logbook with the Officer in Charge, Marine Inspection.

(b) The master or person in charge of a vessel that is not required by 46 U.S.C. 11301 to have an official logbook, shall maintain, on board, an unofficial logbook or record in any form desired for the purposes of making entries therein as required by law or regulations in this subchapter. Such logs or records are not filed with the Officer in Charge, Marine Inspection, but must be kept available for review by a marine inspector for a period of 1 year after the date to which the records refer. Separate records of tests and inspections of fire fighting equipment must be maintained with the vessel's logs for the period of validity of the vessel's certificate of inspection.

§ 35.07–15 [Removed]

21. Section 35.07–15 is removed.

§ 35.10–5 [Amended]

22. In § 35.10–5, paragraph (g) is removed and paragraphs (h) and (i) are redesignated as paragraphs (g) and (h), respectively.

23. Subpart 35.12 consisting of §§ 35.12–1 and 35.12–5 is revised to read as follows:

Subpart 35.12—Placaid of Lifesaving Signals

Sec.

35.12–1 Application—T/OCLB.
35.12–5 Availability—T/OCLB.

Subpart 35.12—Placard of Lifesaving Signals

§ 35.12–1 Application—T/OCLB.

The provisions of this subpart apply to all vessels on an international voyage, and all other vessels of 150 gross tons or over in oceans, coastwise, or Great Lake service.

§ 35.12–5 Availability—T/OCLB.

On all vessels to which this subpart applies there must be readily available to the deck officer of the watch a placard containing instructions for the use of the lifesaving signals set forth in regulations 16, chapter V, of the International Convention for Safety of Life at Sea, 1974. These signals must be used by vessels or persons in distress when communicating with lifesaving stations and maritime rescue units.

§ 35.20–15 [Removed]

24. Section 35.20–15 is removed.

§ 35.20–25 [Removed]

25. Section 35.20–25 is removed.

26. Section 35.20–30 is revised to read as follows:

§ 35.20–30 Flashing the rays of a searchlight or other blinding light—T/ALL.

No person shall flash, or cause to be flashed, the rays of a search light or other blinding light onto the bridge or into the pilothouse of any vessel under way.

27. Section 35.20–35 is revised to read as follows:

§ 35.20–35 Whistling—T/All.

The unnecessary sounding of a vessel's whistle is prohibited within any harbor limits of the United States.

28. Section 35.25–1 is revised to read as follows:

§ 35.25–1 Examination of boilers and machinery by engineer—T/ALL.

It shall be the duty of an engineer when assuming charge of the boilers to examine the same forthwith and thoroughly. If any part thereof is found in bad condition, the engineer shall immediately report the facts to the master, owner, or agent, and to the nearest Officer in Charge, Marine Inspection.

§ 35.30–45 [Removed]

29. Section 35.30–45 is removed.

Subpart 35.70 (§ 35.70–1—35.70–35)—[Removed]

30. Subpart 35.70 consisting of §§ 35.70–1 through 35.70–35 is removed.

PART 38—LIQUEFIED FLAMMABLE GASES

31. The authority citation for part 38 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. 5101, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

32. In § 38.25–10, paragraph (b) is revised to read as follows:

§ 38.25–10 Safety relief valves—TB/ALL.

* * * * *

(b) The safety relief valve discs must be lifted from their seats in the presence of a marine inspector by either liquid, gas, or vapor pressure at least once every 5 years to determine the accuracy of adjustment and, if necessary, must be reset.

PART 54—PRESSURE VESSELS

33. The authority citation for part 54 continues to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 54.01–1 [Amended]

34. In § 54.01–1, paragraph (b) is amended by removing the incorporation by reference entry for the Tubular Exchanger Manufacturers Association.

§ 54.01–3 [Removed]

35. Section 54.01–3 is removed.

§ 54.01–5 [Amended]

36. In § 54.01–5, paragraph (d)(5) is amended by adding the word "and" after the semicolon, paragraph (d)(6) is removed, paragraph (d)(7) is designated as paragraph (d)(6) and footnote 8 is removed from table 54.01–5(b).

PART 56—PIPING SYSTEMS AND APPURTENANCES

37. The authority citation for part 56 continues to read as follows:

Authority: 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

38. In § 56.01–2, paragraph (b) is amended by adding in numerical order of the standards incorporated by reference from the American Society for Testing and Materials (ASTM) the following additional standards:

§ 56.01–2 Incorporation by reference.

* * * * *

(b) * * *

ASTM F 1387–93 Standard Specification for Performance of Mechanically Attached Fittings, including supplementary requirements and annex—56.30–25

ASTM F 1476–93 Standard Specification for Performance of Gasketed Mechanical Couplings for Use in Piping Applications, including annex—56–30–35

ASTM F 1548–94 Standard specification for Performance of Fittings for Use with Gasketed Mechanical Couplings for Use in Piping Applications—56.30–35

* * * * *

39. Section 56.30–25 is revised to read as follows:

§ 56.30–25 Flared, flareless, and compression fittings.

(a) This section applies to pipe fittings that are mechanically connected to pipe by such means as ferrules, flared ends, swaging, elastic strain preload, crimping, bite-type devices, and shape memory alloys. Fittings to which this section applies must be designed, constructed, tested, and marked in accordance with ASTM F 1387–93. Previously approved fittings may be retained as long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(b) Flared, flareless and compression fittings may be used within the service limitations of size, pressure, temperature, and vibration recommended by the manufacturer and as specified in this section.

(c) Flared, flareless, and compression type tubing fittings may be used for tube sizes not exceeding 50 millimeters (2 inches) outside diameter within the limitations of applicable standards and specifications listed in this section and § 56.60–1 of this part.

(d) Flareless fittings must be of a design in which the gripping member or sleeve must grip or bite into the outer surface of the tube with sufficient strength to hold the tube against pressure, but without appreciably distorting the inside tube diameter or reducing the wall thickness. The gripping member must also form a pressure seal against the fitting body.

(e) For fluid services, other than hydraulic systems, using a combustible fluid as defined in § 30.10–15 of this chapter and for fluid services using a flammable fluid as defined in § 30.10–22 of this chapter, flared fittings must be used; except that flareless fittings of the nonbite type may be used when the tubing system is of steel, nickel cooper, or copper zinc alloy. When using copper or copper-zinc alloy, flared fittings are required. (See also § 56.50–70 for gasoline fuel systems, § 56.60–75 for diesel fuel systems, and § 58.25–20 for hydraulic systems for steering gear.)

40. Section 56.30–35 is revised to read as follows:

§ 56.30–35 Gasketed mechanical couplings.

(a) This section applied to pipe fittings that form a seal by compressing a resilient gasket onto the pipe joint primarily by threaded fasteners and where joint creep is only restricted by such means as machined grooves, centering pins, or welded clips. Fittings to which this section applies must be designed, constructed, tested, and marked in accordance with ASTM F 1476–93 and ASTM F 1548–94. Previously approved fittings may be retained as long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(b) Gasketed mechanical couplings may be used within the service limitations of pressure, temperature and vibration recommended by the manufacturer, except that gasketed mechanical couplings must not be used in—

(1) Any location where leakage, undetected flooding or impingement of liquid on vital equipment may disable the vessel; or

(2) In tanks where the liquid conveyed in the piping system is not chemically compatible with the liquid in the tank.

(c) Gasketed mechanical couplings must not be used as expansion joints. Positive restraints must be included, where necessary, to prevent the coupling from creeping on the pipe and uncovering the joint. Bite-type devices do not provide positive protection against creep and are generally not accepted for this purpose. Machined grooves, centering pins, and welded clips are considered positive means of protection against creep.

§ 56.50–100 [Removed]

41. Section 56.50–100 is removed.

§ 56.60–1 [Amended]

42. In § 56.60–1, table 56.60–(a), the table's heading is revised and an entry for ASTM A 536–83 ductile iron and footnote [20] are added to "Castings [13] iron:" to read as follows:

Table 56.60–1(a)—ADOPTED SPECIFICATIONS AND STANDARDS (REPLACES TABLE 126.1)

* * * * *

A 536 Ductile iron—See footnote 20—([20]).

* * * * *

[20] Limited to pipe fittings and valves. See § 56.60–15(d) for additional information.

§ 56.60–2 [Amended]

43. In § 56.60–2, table 56.60–2(a), footnote 16 and the references to footnote 16 for B26 and B85 castings are removed.

§ 56.60–10 [Amended]

44. In § 56.60–10, paragraph (d) is removed.

45. In § 56.60–15, paragraph (b) introductory text, is revised and a new paragraph (d) is added to read as follows:

§ 56.60–15 Ductile iron.

* * * * *

(b) Ductile iron castings conforming to ASTM A 395 may be used in hydraulic systems at pressures in excess of 7500 kilopascals (1000 pounds per square inch) gage, provided the following:

* * * * *

(d) Ductile iron castings exhibiting less than 12 percent elongation in 50 millimeters (2 inches) when subjected to a tensile test must meet the requirements for cast iron in this part.

§ 56.60–20 [Amended]

46. In § 56.60–20, paragraph (b) is removed, the designation "(a)" is removed from paragraph (a), and paragraphs (a)(1) through (a)(4) are redesignated as paragraphs (a) through (d).

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

47. The authority citation for part 58 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

48. In § 58.30–5, paragraph (a) is revised to read as follows:

§ 58.30–5 Design requirements.

(a) The requirements of part 56 are also applicable to piping and fittings in fluid power and control systems listed in § 58.30–1 of this part, except as modified herein. The designer should consider the additional pressure due to hydraulic shock and should also consider the rate of pressure rise caused by hydraulic shock.

* * * * *

§ 58.30–15 [Amended]

49. In § 58.30–15, paragraph (f) is removed and paragraph (g) is redesignated as paragraph (f).

§ 58.30–17 [Removed]

50. Section 58.30–17 is removed.

PART 61—PERIODIC TESTS AND INSPECTIONS

51. The authority citation for part 61 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46

52. Subpart 61.03, consisting of § 61.03–1, is added to read as follows:

Subpart 61.03—Incorporation of Standards

§ 61.03–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material available for inspection at the Office of the Federal Register, 800 North Capital Street NW., suite 700, Washington, DC and at the U.S. Coast Guard, Design and Engineering Standards Division (G–MMS), 2100 Second Street SW., Washington, DC and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are as follows:

American Society for Testing and Materials (ASTM) 1916 Race Street, Philadelphia, PA 19103

ASTM D 665–92, Standard Test Method for Rust-Preventing Characteristics of Inhibited Mineral Oil in the Presence of Water, 1992—61.20–17

§ 61.05–5 [Amended]

53. In § 61.05–5, paragraph (a) is removed and paragraphs (b) and (c) are redesignated as paragraphs (a) and (b), respectively.

54. Section 61.20–17 is revised to read as follows:

§ 61.20–17 Examination intervals.

(a) A lubricant that demonstrates the corrosion inhibiting properties of oil when tested in accordance with ASTM D 665–92 is considered to be equivalent to oil for the purposes of the tailshaft examination interval.

(b) Except as provided in paragraphs (c) through (f) of this section, each tailshaft on a vessel must be examined twice within any 5 year period. No more than 3 years may elapse between any 2 tailshaft examinations.

(c) Tailshafts on vessels fitted with multiple shafts must be examined once every 5 years.

(d) Tailshafts with inaccessible portions fabricated of materials resistant to corrosion by sea water, or fitted with a continuous liner or a sealing gland which prevents sea water from contacting the shaft, must be examined once every 5 years if they are constructed or fitted with a taper, keyway, and propeller designed in accordance with the American Bureau of Shipping standards to reduce stress concentrations or are fitted with a flanged propeller. Accessible portions of tailshafts must be examined visually during each drydock examination.

(e) Tailshafts with oil lubricated bearings, including bearings lubricated with a substance considered to be equivalent to oil under the provisions of paragraph (a) of this section need not be drawn for examination—

(1) If tailshaft bearing clearance readings are taken whenever the vessel undergoes a drydock examination or underwater survey;

(2) If the inboard seal assemblies are examined whenever the vessel undergoes a drydock examination or underwater survey;

(3) If an analysis of the tailshaft bearing lubricant is performed semiannually in accordance with the lubrication system manufacturer's recommendations to determine bearing material content or the presence of other contaminants; and

(4) If—

(i) For tailshafts with a taper, the propeller is removed and the taper and the keyway (if fitted) are nondestructively tested at intervals not to exceed 5 years; or

(ii) For tailshafts with a propeller fitted to the shaft by means of a coupling flange, the propeller coupling bolts and flange radius are nondestructively tested whenever they are removed or made accessible in connection with overhaul or repairs.

(f) Tailshafts on mobile offshore drilling units are not subject to examination intervals under paragraphs (b) through (d) of this section if they are—

(1) Examined during each regularly scheduled drydocking; or

(2) Regularly examined in a manner acceptable to the Commandant (G-MCO).

§ 61.30–5 [Amended]

55. In § 61.30–5, paragraph (a) is removed and the paragraph designation "(b)" is removed from paragraph (b).

PART 72—CONSTRUCTION AND ARRANGEMENT

56. The authority citation for part 72 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 72.05–60 [Removed]

57. Section 72.05–60 is removed.

58. Subpart 72.20 is revised to read as follows:

Subpart 72.20—Accomodations for Officers and Crew

Sec.

72.20–1 Application.
72.20–5 Intent.
72.20–10 Location of crew spaces.
72.20–15 Construction.
72.20–20 Sleeping accommodations.
72.20–25 Washrooms and toilet rooms.
72.20–30 Messrooms.
72.20–35 Hospital space.
72.20–40 Other spaces.
72.20–45 Lighting.
72.20–50 Heating and cooling.
72.20–55 Insect screens.
72.20–90 Vessels contracted for prior to November 19, 1952.

Subpart 72.20—Accommodations for Officers and Crew

§ 72.20–1 Application.

The provisions of this part, except § 72.20–90, apply to all vessels contracted for after November 18, 1952. Vessels contracted for before November 19, 1952, must meet the requirements of § 72.20–90.

§ 72.20–5 Intent.

Accomodations provided for officers and crew on all vessels shall be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and insulated from undue noise, heat, and odors.

§ 72.20–10 Location of crew spaces.

(a) Crew quarters must not be located farther forward in the vessel than a vertical plane located at 5 percent of the vessel's length abaft the forward side of the stem at the designed summer load water line. However, for vessels in other than ocean or coastwise service, this distance need not exceed 8.5 meters (28 feet). For the purpose of this paragraph, the vessel's length must be as defined in § 43.15–1 of subchapter E (Load Lines) of this chapter. Unless approved by the Commandant, no section of the deck head of the crew spaces may be below the deepest load line.

(b) There must be no direct communication, except through solid, close fitted doors or hatches between crew spaces and chain lockers, or machinery spaces.

§ 72.20–15 Construction.

All crew spaces are to be constructed and arranged in a manner suitable to the purpose for which they are intended and so that they can be kept in a clean, workable, and sanitary condition.

§ 72.20–20 Sleeping accommodations.

(a) Where practicable, each licensed officer shall be provided with a separate stateroom.

(b) Sleeping accommodations for the crew must be divided into rooms, no one of which shall berth more than 4 persons.

(c) Each room shall be of such size that there is at least 2.78 square meters (30 square feet) of deck area and a volume of at least 5.8 cubic meters (210 cubic feet) for each person accommodated. The clear head room shall be not less than 190 centimeters (75 inches). In measuring sleeping accommodations any furnishings contained therein for the use of the occupants are not to be deducted from the total volume or from the deck area.

(d) Each persons shall have a separate berth and not more than one berth may be placed above another. The berth must be composed of materials not likely to corrode. The overall size of a berth must not be less than 68 centimeters (27 inches) wide by 190 centimeters (75 inches) long, except by special permission of the Commandant. Where two tiers of berths are fitted, the bottom of the lower berth must not be less than 30 centimeters (12 inches) above the deck. The berths must not be obstructed by pipes, ventilating ducts, or other installations.

(e) A locker must be provided for each person accommodated in a room.

§ 72.20–25 Washrooms and toilet rooms.

(a) There must be at least 1 toilet, 1 washbasin, and 1 shower or bathtub for each 8 members or portion thereof in the crew who do not occupy sleeping accommodations to which private or semi-private facilities are attached.

(b) The toilet rooms and washrooms shall be located convenient to the sleeping quarters of the crew to which they are allotted but must not open directly into such quarters except when they are provided as private or semi-private facilities.

(c) All washbasins, showers, and bathtubs must be equipped with adequate plumbing, including hot and cold running water. All toilets must be installed with adequate plumbing for flushing.

(d) At least 1 washbasin must be fitted in each toilet room, except where private or semi-private facilities are provided and washbasins are installed in the sleeping rooms.

(e) Where more than 1 toilet is located in a space or compartment, each toilet must be separate by partitions.

§ 72.20–30 Messrooms.

(a) Messrooms must be located as near to the galley as practicable except where the messroom is equipped with a steam table.

(b) Each messroom must seat the number of persons expected to eat in the messroom at one time.

§ 72.20–35 Hospital space.

(a) Each vessel which in the ordinary course of its trade makes voyages of more than 3 days duration between ports and which carries a crew of 12 or more, must be provided with a hospital space. This space must be situated with due regard to the comfort of the sick so that they may receive proper attention in all weathers.

(b) The hospital must be suitably separated from other spaces and must be used for the care of the sick and for no other purpose.

(c) The hospital must be fitted with berths in the ratio of 1 berth to every 12 members of the crew, or portion thereof, who are not berthed in single occupancy rooms, but the number of berths need not exceed 6.

(d) The hospital must have a toilet, washbasin, and bathtub or shower conveniently situated. Other necessary suitable equipment such as a clothes locker, a table, and a seat must be provided.

§ 72.20–40 Other spaces.

Each vessel must have—

(a) Sufficient facilities where the crew may wash and dry their own clothes, including at least 1 sink supplied with hot and cold fresh water;

(b) Recreation spaces; and

(c) A space or spaces of adequate size on an open deck to which the crew has access when off duty.

§ 72.20–45 Lighting.

Each berth must have a light.

§ 72.20–50 Heating and cooling.

(a) All manned spaces must be adequately heated and cooled in a manner suitable to the purpose of the space.

(b) The heating and cooling system for accommodations must be capable of maintaining a temperature of 21°C (70°F) under normal operating conditions without curtailing ventilation.

(c) Radiators and other heating apparatus must be so placed and shielded, where necessary, to avoid risk of fire, danger or discomfort to the occupants. Pipes leading to radiators or heating apparatus must be insulated where those pipes create a hazard to persons occupying the space.

§ 72.20–55 Insect screens.

Provisions must be made to protect the crew quarters against the admission of insects.

§ 72.20–90 Vessels contracted for prior to November 19, 1952.

(a) Vessels of 100 gross tons and over, contracted for prior to March 4, 1915, must meet the requirements of this paragraph.

(1) Existing structure, arrangements, materials, and facilities, previously approved will be considered satisfactory so long as they are maintained in a suitable condition to the satisfaction of the Officer in Charge, Marine Inspection.

(2) Minor repairs and alterations may be made to the same standard as the original construction provided that in no case will a greater departure from the standards of §§ 72.20–5 through 72.20–55 be permitted than presently exists.

(b) Vessels of 100 gross tons and over, contracted for on or after March 4, 1915, but prior to January 1, 1941, must meet the following requirements:

(1) Existing structure, arrangements, materials, and facilities, previously accepted or approved will be considered satisfactory so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and alterations may be made to the same standard as the original construction.

(2) Where reasonable and practicable, a minimum of 1 toilet, shower, and washbasin must be provided for each 10 members of the crew or fraction thereof.

(3) Crew spaces must have a volume of at least 3.4 cubic meters (120 cubic feet) and a deck area of at least 1.5 square meters (16 square feet) for each person accommodated.

(4) Each crewmember shall have a separate berth, and berths may not be placed more than 2 high.

(5) Each vessel, which in the ordinary course of its trade makes a voyage of more than 3 days duration between ports and which carries a crew of 12 or more persons, must be provided with a suitable hospital space for the exclusive use of the sick or injured. Berths must be provided in the ratio of 1 berth for each 12 members of the crew or fraction thereof, but the number of berths need not exceed 6.

(6) The crew spaces must be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, and arranged, and, where practicable, must be insulated from undue noise and odors.

(c) Vessels of 100 gross tons and over, contracted for on or after January 1, 1941, but prior to November 19, 1952, must meet the requirements of this paragraph.

(1) Existing structure, arrangements, materials, and facilities, previously accepted or approved will be considered satisfactory so long as they are maintained in good condition to the satisfaction of the Office in Charge, Marine Inspection. Minor repairs and alterations may be made to the same standard as the original construction.

(2) There must be a minimum of 1 toilet, 1 shower, and 1 washbasin for each 8 members of the crew or fraction thereof who are not accommodated in rooms having attached private or semi-private facilities. Washbasins, showers, and bathtubs, if substituted for showers, must be equipped with adequate plumbing, including hot and cold running water.

(3) Crew spaces must have a volume of at least 3.4 cubic meters (120 cubic feet) and a deck of at least 1.5 square meters (16 square feet) for each person accommodated.

(4) Each crewmember shall have a separate berth, and berths may not be placed more than two high.

(5) Each vessel, which in the ordinary course of its trade makes a voyage of more than 3 days duration between ports and which carries a crew of 12 or more persons, must be provided with a suitable hospital space for the exclusive use of the sick or injured. Berths must be provided in the ratio of 1 berth for each 12 members of the crew or fraction thereof, but the member of berths need not exceed 6.

(6) The crew spaces must be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, and arranged, and, where practicable, must be insulated from undue noise heat, and odors.

PART 76—FIRE PROTECTION EQUIPMENT

59. The authority citation for part 76 continues to read as follows:

Authority: 46 U.S.C. 3306, E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

60. Section 76.05–20 is revised to read as follows:

§ 76.05–20 Fixed fire extinguishing systems.

Approved fire extinguishing systems must be installed, as required by table 76.05–1(a) on all self-propelled vessels and on all barges with sleeping accommodations for more than subpart persons. Previously approved installations may be retained as long as they are maintained in good condition

to the satisfaction of the Officer in Charge, Marine Inspection.

§ 76.05–30 [Removed]

61. Section 76.05–30 is removed.

62. In § 76.10–10, paragraphs (j–1), (j–2), and (l) are removed, paragraph (k) is redesignated as paragraph (m), paragraph (j) is revised, and new paragraphs (k), (l), and (n) are added to read as follows:

§ 76.10–10 Fire hydrants and hose.

* * * * *

(j) Each firehose on each hydrant must have a combination solid stream and water spray firehose nozzle that meets the requirements in subpart 162.027 of this chapter. Firehose nozzles previously approved under subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(k) Firehose nozzles previously approved under subpart 162.027 of this chapter must have low-velocity water spray applicators also previously approved under subpart 162.027 of this chapter as follows—

(1) In accommodation and service areas—two firehoses; and

(2) In each propulsion machinery space containing an oil-fired boiler, internal combustion machinery, or oil fuel unit on a vessel on an international voyage or of 1000 gross tons or more—each firehose. The length of each applicator must be not more than 1.8 meters (6 feet).

(l) Fixed brackets, hooks, or other means for stowing an applicator must be next to each fire hydrant that has an applicator under paragraph (k) of this section.

* * * * *

(n) Firehose and couplings must be as follows:

(1) Couplings must be of brass, bronze, or other equivalent metal. National Standard firehose coupling threads must be used for the 38 millimeters (1½ inch) and 64 millimeters (2½ inch) sizes.

(2) Each section of firehose must be lined commercial firehose that conforms to Underwriters' Laboratories, Inc. Standard 19 or Federal Specification ZZ–H–451E, Hose that bears the label of Underwriters' Laboratories, Inc. as lined firehose is accepted as conforming to this requirement.

63. In § 76.10–90, paragraph (a)(7) is removed and paragraph (a)(6) is revised to read as follows:

§ 76.10–90 Installations contracted for prior to May 26, 1995.

(a) * * *

(6) Firehose nozzles and low-velocity spray applicators must meet the requirements of §§ 76.10–10(j), 76.10–10(k), and 76.10–10(l)

64. Subpart 76.13 consisting of § 76.13–1 is revised to read as follows:

Subpart 76.13—Steam Smothering Systems

§ 76.13–1 Application.

Steam smothering systems are not permitted on vessels contracted for on or after January 1, 1962. Previously approved installations may be retained as long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

PART 77—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

65. The authority citation for part 77 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

66. Section 77.27–1 is revised to read as follows:

§ 77.27–1 When required.

All mechanically propelled vessels of 500 gross tons and over to ocean or coastwise service, and all mechanically propelled vessels of 500 gross tons and over in Great Lakes service and certificated for service on the River St. Lawrence eastward of the lower exit of the St. Lambert Lock at Montreal, Canada, must be fitted with an efficient electronic deep-sea sounding apparatus.

PART 78—OPERATION

67. The authority citation for part 78 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

Subpart 78.03 (§ 78.03–1)—[Removed]

68. Subpart 78.03 consisting of § 78.03–1 is removed.

Subpart 78.20 (§ 78.20–1)—[Removed]

69. Subpart 78.20 consisting of § 78.20–1 is removed.

Subpart 78.25 (§ 78.25–1)—[Removed]

70. Subpart 78.25 consisting of § 78.25–1 is removed.

71. Subpart 78.35 consisting of § 78.35–1 is revised to read as follows:

Subpart 78.35—Communication Between Deckhouses

§ 78.35–1 When required.

On all vessels navigating in other than protected waters, where the distance between deckhouses is more than 46 meters (150 feet) a fixed means of facilitating communication between both ends of the vessel, such as a raised fore and aft bridge or side tunnels, must be provided. Previously approved arrangements may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

72. Section 78.37–3 is revised to read as follows:

§ 78.37–3 Logbooks and records.

(a) The master or person in charge of a vessel that is required by 46 U.S.C. 11301 to have an official logbook shall maintain the logbook on form CG–706. When the voyage is completed, the master or person in charge shall file the logbook with the Officer in Charge, Marine Inspection.

(b) The master or person in charge of a vessel that is not required by 46 U.S.C. 11301 to have an official logbook, shall maintain, on board, an unofficial logbook or record in any form desired for the purposes of making entries therein as required by law or regulations in this subchapter. Such logs or records are not filed with the Officer in Charge, Marine Inspection, but must be kept available for review by a marine inspector for a period of 1 year after the date to which the records refer. Separate records of tests and inspections of fire fighting equipment must be maintained with the vessel's logs for the period of validity of the vessel's certificate of inspection.

§ 78.47–67 [Removed]

73. Section 78.47–67 is removed.

74. Subpart 78.53 consisting of 78.53–1 and 78.53–5 is revised to read as follows:

Subpart 78.53—Placard of Lifesaving Signals

Subpart 78.53—Placard of Lifesaving Signals

Sec.
78.53–1 Application.
78.53–5 Availability.

§ 78.53–1 Application.

The provisions of this subpart apply to all vessels on an international voyage, and all other vessels of 150 gross tons or over in ocean, coastwise or Great Lakes service.

§ 78.53–5 Availability.

On all vessels to which this subpart applies there must be readily available to the deck officer of the watch a placard containing instructions for the use of the lifesaving signals set forth in regulation 16, chapter V, of the International Convention for Safety of Life at Sea, 1974. These signals must be used by vessels or persons in distress when communicating with lifesaving stations and maritime rescue units.

75. Section 78.57–1 is revised to read as follows:

§ 78.57–1 All personnel must comply.

All licensed masters, officers, and certificated seamen on United States vessels shall strictly comply with routing instructions issued by competent naval authority.

Subpart 78.5 (§ 78.75–1)—[Removed]

76. Subpart 78.75 consisting of § 78.75–1 is removed.

Subpart 78.80 (§ 78.80–1—78.80–35)—[Removed]

77. Subpart 78.80 consisting of § 78.80–1 through78.80–35 is removed.

§ 78.83–1 [Amended]

78. In § 78.83–1, paragraph (a) is amended by removing the phrase, "(other than power-operated industrial trucks when subject to subpart 78.80 of this part)".

Subpart 78.85 (§ 78.85–1)—[Removed]

79. Subpart 78.85 consisting of § 78.85–1 is removed.

PART 92—CONSTRUCTION AND ARRANGEMENT

80. The authority citation for part 92 continues to read as follows:

Authority: 46 U.S.C. 3306; 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 92.01–13 [Removed]

81. Section 92.01–13 is removed.

82. Subpart 92.20 is revised to read as follows:

Subpart 92.20—Accommodations for Officers and Crew

Sec.
92.20–1 Application.
92.20–5 Intent.
92.20–10 Location of crew spaces.
92.20–15 Construction.
92.20–20 Sleeping accommodations.
92.20–25 Washrooms and toilet rooms.
92.20–30 Messrooms.
92.20–35 Hospital space.
92.20–40 Other spaces.
92.20–45 Lighting.
92.20–50 Heating and cooling.
92.20–55 Insect screens.
92.20–90 Vessels contracted for prior to November 19, 1952.

Subpart 92.20—Accommodations for Officers and Crew

§ 92.20–1 Application.

(a) The provisions of this subpart apply to all vessels of 100 gross tons and over contracted for on or after November 19, 1952. Vessels of 100 gross tons and over contracted for prior to November 19, 1952 must meet the requirements of § 92.20–90.

(b) Vessels of less than 100 gross tons must meet the applicable requirements of this subpart insofar as is reasonable and practicable.

§ 92.20–5 Intent.

It is the intent of this subpart that the accommodations provided for officers and crew on all vessels must be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and insulated from undue noise, heat, and odors.

§ 92.20–10 Location of crew spaces.

(a) Crew quarters must not be located farther forward in the vessel than a vertical plane located at 5 percent of the vessel's length abaft the forward side of the stem at the designed summer load water line. However, for vessels in other than ocean or coastwise service, this distance need not exceed 8.5 meters (28 feet). For the purposes of this paragraph, the vessel's length must be as defined in § 43.15-1 of subchapter E (Load Lines) of this chapter. Unless approved by the Commandant, no section of the deck head of the crew spaces may be below the deepest load line.

(b) There must be no direct communication, except through solid, close fitted doors, or hatches between crew spaces and chain lockers, or machinery spaces.

§ 92.20–15 Construction.

All crew spaces are to be constructed and arranged in a manner suitable to the purpose for which they are intended and so that they can be kept in a clean, workable, and sanitary condition.

§ 92.20–20 Sleeping accommodations.

(a) Where practicable, each licensed officer must be provided with a separate stateroom.

(b) Sleeping accommodations for the crew must be divided into rooms, no one of which shall berth more than 4 persons.

(c) Each room must be of such size that there is at least 2.78 square meters (30 square feet) of deck area and a volume of at least 5.8 cubic meters (210 cubic feet) for each person accommodated. The clear head room must be not less than 190 centimeters (75 inches). In measuring sleeping accommodations, any furnishings contained therein for the use of the occupants are not to be deducted from the total volume or from the deck area.

(d) Each person shall have a separate berth and not more than one berth may be placed above another. The berth must be composed of materials not likely to corrode. The overall size of a berth must not be less than 68 centimeters (27 inches) wide by 190 centimeters (75 inches) long, except by special permission of the Commandant. Where 2 tiers of berths are fitted, the bottom of the lower berth must not be less than 30 centimeters (12 inches) above the deck. The berths must not be obstructed by pipes, ventilating ducts, or other installations.

(e) A locker must be provided for each person accommodated in a room.

§ 92.20–25 Washrooms and toilet rooms.

(a) There must be provided at least 1 toilet, 1 washbasin, and 1 shower or bathtub for each 8 members or portion thereof in the crew who do not occupy rooms to which private or semi-private facilities are attached.

(b) The toilet rooms and washrooms must be located convenient to the sleeping quarters of the crew to which they are allotted but must not open directly into such quarters except when they are provided as private or semi-private facilities.

(c) All washbasins, showers, and bathtubs shall be equipped with adequate plumbing, including hot and cold running water. All toilets must be installed with adequate plumbing for flushing.

(d) At least 1 washbasin must be fitted in each toilet room, except where private or semi-private facilities are provided and washbasins are installed in the sleeping rooms.

(e) Where more than 1 toilet is located in a space or compartment, each toilet must be separated by partitions.

§ 92.20–30 Messrooms.

(a) Messrooms must be located as near to the galley as is practicable except where the messroom is equipped with a steam table.

(b) Each messroom must seat the number of persons expected to eat in the messroom at one time.

§ 92.20–35 Hospital space.

(a) Each vessel which in the ordinary course of its trade makes voyages of more than 3 days duration between ports and which carries a crew of 12 or

more, must be provided with a hospital space. This space must be situated with due regard to the comfort of the sick so that they may receive proper attention in all weathers.

(b) The hospital must be suitably separated from other spaces and must be used for the care of the sick and for no other purpose.

(c) The hospital must be fitted with berths in the ratio of 1 berth to every 12 members of the crew or portion thereof who are not berthed in single occupancy rooms, but the number of berths need not exceed 6.

(d) The hospital must have a toilet, washbasin, and bathtub or shower conveniently situated. Other necessary suitable equipment such as a clothes locker, a table, and a seat shall be provided.

(e) On vessels in which the crew is berthed in single occupancy rooms, a hospital space will not be required, provided that one room is designated and fitted for use as a treatment or isolation room. This room must meet the following standards:

(1) The room must be available for immediate medical use; and

(2) A washbasin with hot and cold running water must be installed either in or immediately adjacent to the space and other required sanitary facilities must be conveniently located.

§ 92.20–40 Other spaces.

Each vessel must have—

(a) Sufficient facilities where the crew may wash and dry their own clothes, inducing at least 1 sink supplied with hot and cold fresh water;

(b) Recreation spaces; and

(c) A space or spaces of adequate size on an open deck to which the crew has access when off duty.

§ 92.20–45 Lighting.

Each berth must have a light.

§ 92.20–50 Heating and cooling.

(a) All manned spaces must be adequately heated and cooled in a manner suitable to the purpose of the space.

(b) The heating and cooling system for accommodations must be capable of maintaining a temperature of 21° C (70° F) under normal operating conditions without curtailing ventilation.

(c) Radiators and other heating apparatus must be so placed and shielded, where necessary, to avoid risk of fire, danger, or discomfort to the occupants. Pipes leading to radiators or heating apparatus must be insulated where those pipes create a hazard to persons occupying the space.

§ 92.20–55 Insect screens.

Provisions must be made to protect the crew quarters against the admission of insects.

§ 92.20–90 Vessels contracted for prior to November 19, 1952.

(a) Vessels of less than 100 gross tons, contracted for prior to November 19, 1952, must meet the general intent of § 92.20–5 and in addition must meet the following requirements:

(1) Existing structure, arrangements, materials, and facilities, previously accepted or approved will be considered satisfactory so long as they are maintained in a suitable condition to the satisfaction of the Officer in Charge, Marine Inspection.

(2) Minor repairs and alterations may be made to the same standard as the original construction.

(b) Vessels of 100 gross tons and over, contracted for prior to March 4, 1915, must meet the following requirements:

(1) Existing structure, arrangements, materials, and facilities, previously approved will be considered satisfactory so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(2) Minor repairs and alterations may be made to the same standard as the original construction, provided that in no case will a greater departure from the standards of §§ 92.20–5 through 92.20–55 be permitted than presently exists.

(c) Vessels of 100 gross tons and over, contracted for on or after March 4, 1915, but prior to January 1, 1941, must meet the following requirements:

(1) Existing structure, arrangements, materials, and facilities, previously approved will be considered satisfactory so long as they are maintained in a suitable condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and alterations may be made to the same standard as the original construction.

(2) Each vessel, which in the ordinary course of its trade makes a voyage of more than 3 days duration between ports and which carries a crew of 12 or more persons, must be provided with a suitable hospital space for the exclusive use of the sick or injured.

(3) The crew spaces must be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and insulated from undue noise, heat, and odors.

(d) Vessels of 100 gross tons and over, contracted for on or after January 1, 1941, but prior to November 19, 1952, must meet the following requirements:

(1) Existing structure, arrangements, materials, and facilities, previously approved will be considered satisfactory so long as they are maintained in a suitable condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and alterations may be made to the same standard as the original construction.

(2) Washbasins, showers, and bathtubs if substituted for showers, must be equipped with adequate plumbing including hot and cold running water.

(3) Each crewmember must have a separate berth, and berths may not be placed more than 2 high.

(4) Each vessel, which in the ordinary course of its trade makes a voyage of more than 3 days duration between ports and which carries a crew of 12 or more persons, must be provided with a suitable hospital space for the exclusive use of the sick or injured. Berths shall be provided in the ratio of 1 berth for each 12 members of the crew or fraction thereof, but the number of berths need not exceed 6.

(5) The crew spaces must be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and insulated from undue noise, heat, and odors.

PART 95—FIRE PROTECTION EQUIPMENT

83. The authority citation for part 95 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

84. In § 95.05–10, paragraph (g) is removed and paragraphs (a), introductory text, (b) and (c) are revised to read as follows:

§ 95.05–10 Fixed fire extinguishing systems.

(a) Approved fire extinguishing systems may be used or required in locations delineated in this section on the following vessels. Previously approved installations may be retained as long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

* * * * *

(b) A fixed carbon dioxide or other approved system must be installed in all cargo compartments and tanks for combustible cargo; except for vessels engaged exclusively in the carriage of coal or grain in bulk. For cargo compartments and tanks fitted with a fixed carbon dioxide or other approved system a deck foam system is not required, instead of the carbon dioxide system or other approved system, the following systems may be used or required in special cases:

(1) A fixed foam system may be used in cargo tanks.

(2) A water sprinkling system may be required, and the details of such system will be subject to special approval, in cases where a cargo is normally accessible and is considered to be a part of the working or living quarters.

(3) Spaces "specially suitable for vehicles" must be fitted with an approved carbon dioxide system. Alternately, the Commandant may permit the installation of an approved water sprinkler system or other suitable system.

(c) On vessels other than motorboats, a fixed carbon dioxide or other approved system must be installed in all lamp and paint lockers, oil rooms, and similar spaces.

* * * * *

§ 95.05–20 [Removed]

85. Section 95.05–20 is removed.

86. In § 95.10–10, paragraphs (i–1), (i–2), and (l) are removed, paragraphs (j) and (k) are redesignated as paragraphs (l) and (m), respectively, paragraph (i) is revised and new paragraphs (j), (k), and (n) are added to read as follows:

§ 95.10–10 Fire hydrants and hose.

* * * * *

(i) Each firehose on each hydrant must have a combination solid stream and water spray firehose nozzle approved under subpart 162.027 of this chapter. Firehose nozzles previously approved under subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(j) In each propulsion machinery space containing an oil fired boiler, internal combustion machinery, or oil fuel unit on a vessel on an international voyage or of 1000 gross tons or more, each firehose having a combination nozzle previously approved under subpart 162.027 of this chapter must have a low-velocity water spray applicator that is also previously approved under subpart 162.027 of this chapter. The length of the applicator must be less than 1.8 meters (6 feet).

(k) Fixed brackets, hooks, or other means for stowing an applicator must be next to each fire hydrant that has an applicator under paragraph (j) of this section.

* * * * *

(n) Firehose and couplings must be as follows:

(1) Couplings shall be of brass, bronze, or other equivalent metal. National Standard firehose coupling threads must be used for the 38 millimeters (1 ½ inch) and 64 millimeters (2 ½ inch) sizes.

(2) Where 19 millimeters (¾ inch) hose is permitted by table 95.10–5(a), the hose and couplings shall be of good commercial grade.

(3) Each section of firehose must be lined commercial firehose that conforms to Underwriters' Laboratories, Inc. Standard 19 or Federal Specification ZZ–H–451E. Hose that bears the label of Underwriters' Laboratories, Inc. as lined firehose is accepted as conforming to this requirement.

87. In § 95.10–90, the designation "(a)" is removed from paragraph (a), paragraphs (a)(5) and (a)(6) are removed, paragraphs (a)(1) through (a)(4) are redesignated as paragraphs (a) through (d), respectively, and new paragraph (e) is added to read as follows:

§ 95.10–90 Installations contracted for prior to May 26, 1965.

* * * * *

(e) Firehose nozzles and low-velocity spray applicators must meet the requirements of 95.10–10(i), 95.10–10(j), and 95.10–10(k).

88. Subpart 95.13 consisting of § 95.13–1 is revised to read as follows:

Subpart 95.13—Steam Smothering Systems

§ 95.13–1 Application.

Steam smothering systems are not permitted on vessels contracted for on or after January 1, 1962. Previously approved installations may be retained as long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

PART 96—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

89. The authority citation for part 96 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

90. Section 96.27–1 is revised to read as follows:

§ 96.27–1 When required.

All mechanically propelled vessels of 500 gross tons and over in ocean or coastwise service and all mechanically propelled vessels of 500 gross tons and over in Great Lakes service and certificated for service on the River St. Lawrence eastward of the lower exit of the St. Lambert Lock at Montreal, Canada, must be fitted with an efficient electronic sounding apparatus.

PART 97—OPERATIONS

91. The authority citation for part 97 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

Subpart 97.03 (§ 97.03–1)—[Removed]

92. Subpart 97.03 consisting of § 97.03–1 is removed.

Subpart 97.17 (§ 97.17–1)—[Removed]

93. Subpart 97.17 consisting of § 97.17–1 is removed.

Subpart 97.23 (§ 97.23–1)—[Removed]

94. Subpart 97.23 consisting of § 97.23–1 is removed.

95. Subpart 97.33 consisting of § 97.33–1 is revised to read as follows:

Subpart 97.33—Communication Between Deckhouses

§ 97.33–1 When required.

On all vessels navigating in other than protected waters, where the distance between deckhouses is more than 46 meters (150 feet) a fixed means facilitating communication between both ends of the vessel, such as a raised fore and aft bridge or side tunnels, must be provided. Previously approved arrangements may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

96. Section 97.35–3 is revised to read as follows:

§ 97.35–3 Logbooks and records.

(a) The master or person in charge of a vessel that is required by 46 U.S.C. 11301 to have an official logbook shall maintain the logbook on form CG–706. When the voyage is completed, the master or person in charge shall file the logbook with the Officer in Charge, Marine Inspection.

(b) The master or person in charge of a vessel that is not required by 46 U.S.C. 11301 to have an official logbook, shall maintain, on board, an unofficial logbook or record in any form desired for the purposes of making entries therein as required by law or regulations in this subchapter. Such logs or records are not filed with the Officer in Charge, Marine Inspection, but must be kept available for review by a marine inspector for a period of 1 year after the date to which the records refer. Separate records of tests and inspections of fire fighting equipment must be maintained with the vessel's logs for the period of

validity of the vessel's certificate of inspection.

§ 97.35–10 [Removed]

97. Section 97.35–10 is removed.

§ 97.37–45 [Removed]

98. Section 97.37–45 is removed.

99. Subpart 97.43 consisting of §§ 97.43–1 and 97.43–5 is revised to read as follows:

Subpart 97.43—Placard of Lifesaving Signals

Sec.
97.43–1 . Application.
97.43–5 Availability.

Subpart 97.43—Placard of Lifesaving Signals

§ 97.43–1 Application.

The provisions of this subpart apply tc all vessels on an international voyage, and all other vessels of 150 gross tons or over in ocean, coastwise or Great Lakes service.

§ 97.43–5 Availability.

On all vessels to which the subpart applies there must be readily available to the deck officer of the watch a placard containing instructions for the use of the lifesaving signals set forth in regulation 16, chapter V, of the International Convention for Safety of Life at Sea, 1974. These signals must be used by vessels or persons in distress when communicating with lifesaving stations and maritime rescue units.

100. Section 97.47–1 is revised to read as follows:

§ 97.47–1 All persons must comply.

All licensed masters, officers, and certificated seamen on U.S. vessels must strictly comply with routing instructions issued by competent naval authority.

Subpart 97.60 (§ 97.60–1)—[Removed]

101. Subpart 97.60 consisting of § 97.60–1 is removed.

Subpart 97.70 (§ 97.70–1—97.70–35)—[Removed]

102. Subpart 97.70 consisting of §§ 97.70–1 through 97.70–35 is removed.

Subpart 97.75 (§ 97.75–1)—[Removed]

103. Subpart 97.75 consisting of § 97.75–1 is removed.

§ 97.80–1 [Amended]

104. In § 97.80–1, paragraph (a) is amended by removing the phrase, "(other than power-operated industrial trucks when subject to subpart 97.70 of this part)".

PART 108—DESIGN AND EQUIPMENT

105. The authority citation for part 108 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3102, 3306, 5115; 49 CFR 1.46.

§ 108.403 [Amended]

106. In § 108.403, paragraph (b) is amended by removing the words "water spray,".

107. In § 108.425, paragraph (c) and the introductory text of paragraph (d) are revised as follows:

§ 103.425 Firehoses and associated equipment.

* * * * *

(c) Each nozzle for a firehose in a fire main system must be a combination solid stream and water spray firehose nozzle that is approve under subpart 162.027. Combination solid stream and water spray nozzles previously approved under subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(d) A combination solid stream and water spray firehose nozzle previously approved under subpart 162.027 of this chapter, must have a low-velocity water spray applicator also previously approved under subpart 162.027 of this chapter when installed in—

* * * * *

108. The heading of subpart F is revised to read as follows:

Subpart F—Cranes

§ 108.611 [Removed]

109. Section 108.611 is removed.

§ 108.613 [Removed]

110. Section 108.613 is removed.

0108.615 [Removed]

111. Section 108.615 is removed.

112. Section 108.659 is revised to read as follows:

§ 108.659 Lifesaving signal instructions.

On all vessels to which this subpart applies, there must be readily available to the offshore installation manager, master, or person in charge a placard containing instructions for the use of the lifesaving signals set forth in regulation 16, chapter V, of the International Convention for Safety of Life at Sea, 1974. These signals must be used by vessels or persons in distress when communicating with lifesaving stations and maritime rescue units.

PART 109—OPERATIONS

113. The authority citation for part 109 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306, 5115, 6101, 10104; 49 CFR 1.46.

114. The heading of Subpart F is revised to read as follows:

Subpart F—Cranes

§ 109.529 [Removed]

115. Section 109.529 is removed.

§ 109.531 [Removed]

116. Section 109.531 is removed.

§ 109.533 [Removed]

117. Section 109.533 is removed.

§ 109.535 [Removed]

118. Section 109.535 is removed.

§ 109.537 [Removed]

119. Section 109.537 is removed.

§ 109.539 [Removed]

120. Section 109.539 is removed.

§ 109.558 [Removed]

121. Section 109.558 is removed.

§ 109.583 [Removed]

122. Section 109.583 is removed.

PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

123. The authority citation for part 153 continues to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46. Section 153.40 issued under 49 U.S.C. 5103. Sections 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903(b).

124. In § 153.9, footnote 1 is removed and the introductory text of paragraph (a) is revised to read as follows:

§ 153.9 Foreign flag vessel endorsement application.

(a) *Application for a vessel whose flag administration is signatory to MARPOL 73/78 and issues IMO Certificates.* A person who desires a Certificate of Compliance endorsed to carry a cargo in table 1 of this part, as described in § 153.900 of this part, must request the endorsement from the cognizant Officer in Charge, Marine Inspection and have aboard the vessel copies of IMO Certificates issued by the vessel's administration and—

* * * * *

§ 153.16 [Amended]

125. In § 153.16, the introductory text is amended by replacing "Certificate of Compliance endorsed with the name of a cargo" with "Certificate of Compliance endorsed to carry a cargo".

§ 153.808 [Amended]

126. Section 153.808 is amended by replacing "Certificate of Compliance endorsed with the name of a cargo," with "Certificate of Compliance endorsed to carry a cargo".

127. Section 153.809 is revised to read as follows:

§ 153.809 Procedures for having the Coast Guard examine a vessel for a Certificate of Compliance.

The owner of a foreign flag vessel wishing to have the Coast Guard conduct a Certificate of Compliance examination, as required by § 153.808, must proceed as follows:

(a) Notify the Officer in Charge, Marine Inspection of the port where the vessel is to be inspected at least 7 days before the vessel arrives and arrange the exact time and other details of the examination. This notification is in addition to any other pre-arrival notice to the Coast Guard required by other regulations, but may be concurrent with the endorsement application in § 153.9, and must include—

(1) The name of the vessel's first U.S. port of call;

(2) The date that the vessel is scheduled to arrive;

(3) The name and telephone number of the owner's local agent; and

(4) The names of all cargoes listed in table 1 of this part that are on board the vessel.

(b) Before the examination required by § 153.808 is begun, make certain that the following plans are on board the vessel and available to the Marine Inspector. These plans include—

(1) A general arrangement (including the location of fire fighting, safety, and lifesaving gear);

(2) A capacity plan;

(3) A schematic diagram of cargo piping on deck and in tanks (including the location of all valves and pumps); and

(4) A schematic diagram of cargo tank vent piping (including the location of relief valves and flame screens).

128. In § 153.902, paragraphs (b) and (c) are revised to read as follows:

§ 253.902 Expiration and invalidation of the Certificate of Compliance.

* * * * *

(b) The endorsement of a Certificate of Compliance under this part is invalid if the vessel does not have a valid IMO Certificate of Fitness.

(c) The endorsement on a Certificate of Compliance invalidated under paragraph (b) of this section, becomes valid again once the ship has the IMO Certificate of Fitness revalidated or reissued.

PART 160—LIFESAVING EQUIPMENT

129. The authority citation for part 160 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703, and 4302; E.O. 12234, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart 160.018 §§ 160.018–1—160.018–9—[Removed]

130. Subpart 160.018 consisting of §§ 160.018–1 through 160.018–9 is removed.

Subpart 160.034 §§ 160.034–1—160.034–5—[Removed]

131. Subpart 160.034 consisting of §§ 160.034–1 through 160.034–5 is removed.

PART 162—ENGINEERING EQUIPMENT

132. The authority citation for part 162 continues to read as follows:

Authority: 33 U.S.C. 1321(j), 1903; 46 U.S.C. 3306, 3703, 4104, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 39 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

133. Subpart 162.027 consisting of §§ 162.027–1 through 162.027–3 is revised to read as follows:

Subpart 172.027—Combination Solid Stream and Water Spray Firehose Nozzles

Sec.
162.027–1 Incorporation by reference.
162.027–2 Design, construction, testing and marking requirements.
162.027–3 Approval procedures.

Subpart 162.027—Combination Solid Stream and Water Spray Firehose Nozzles

§ 162.027–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC and at the U.S. Coast Guard, Design and Engineering Standards Division (G–MMS), 2100 Second Street SW, Washington, DC and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are as follows:

American Society for Testing and Materials (ASTM)
1916 Race Street, Philadelphia, PA 19103
ASTM F 1546–94, Standard Specification for Firehose Nozzles—162.027–2; 162.027–3

§ 162.027–2 Design, construction, testing and marking requirements.

(a) Each combination solid stream and water spray firehose nozzle required to be approved under the provisions of this subpart must be designed, constructed, tested, and marked in accordance with the requirements of ASTM F 1546–94.

(b) All inspections and tests required by ASTM F 1546–94 must be performed by an independent laboratory accepted by the Coast Guard under subpart 159.010 of this chapter. A list of independent Laboratories accepted by the Coast Guard as meeting subpart 159.010 of this chapter may be obtained by contacting the Commandant (G–MMS).

(c) The independent laboratory shall prepare a report on the results of the testing and shall furnish the manufacturer with a copy of the test report upon completion of the testing required by ASTM F 1546–94.

§ 162.027–3 Approval procedures.

(a) Firehose nozzles designed, constructed, tested, and marked in accordance with ASTM F 1546–94 are considered to be approved under the provisions of this chapter.

(b) Firehose nozzles designed, constructed, tested and marked in accordance with the provisions of this subpart in effect prior to June 24, 1996, are considered to be approved under the provisions of this chapter.

PART 164—MATERIALS

134. The authority citation for part 164 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart 164.016 § 164.016–1—164.016–5—[Removed]

135. Subpart 164.016 consisting of §§ 164.016–1 through 164.016–5 is removed.

PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

136. The authority citation for part 167 continues to read as follows:

Authority: 46 U.S.C. 3306, 6101, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 167.40–20 [Amended]

137. In § 167.40–20, the words "in addition to the ordinary deep-sea hand lead" are removed.

§ 167.40–35 [Removed]

138. Section 167.40–35 is removed.

139. In § 167.45–40, paragraphs (c–1) and (c–2) are removed and paragraphs (a), (b) and (c) are revised to read as follows:

§ 167.45–40 Fire fighting equipment on nautical school ships using oil as fuel.

(a) In each boiler room and in each of the machinery spaces of a nautical school ship propelled by steam, in which a part of the fuel-oil installation is situated, 2 or more approved fire extinguishers of the foam type of not less than 9.5 liters (2½ gallons) each or 2 or more approved fire extinguishers of the carbon dioxide type of not less than 33 kilograms (15 pounds) each must be placed where accessible and ready for immediate use. On a nautical school ship of 1,000 gross tons and under, only 1 of the fire extinguishers may be required.

In boiler and machinery spaces, at least 2 fire hydrants must have a firehose of a length that allows each part of the boiler and machinery spaces to be reached by water from a combination solid stream and water spray firehose nozzle.

(c) Each firehose under paragraph (b) of this section must have a combination solid stream and water spray firehose nozzle that meets subpart 162.027 of this chapter. Combination nozzles and low-velocity water spray applicators previously approved under subpart 162.027 of this chapter may remain so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

* * * * *

§ 167.45–55 [Removed]

140. Section 167.45–55 is removed.

§ 167.65–3 [Removed]

141. Section 167.65–3 is removed.

§ 167.65–10 [Removed]

142. Section 167.65–10 is removed.

143. Section 167.65–15 is revised to read as follows:

§ 167.65–15 Routing instructions; strict compliance with.

All licensed masters, officers, and certificated seamen on nautical school ships must strictly comply with routing instructions issued by competent naval authority.

§ 167.65–30 [Removed]

144. Section 167.65–30 is removed.

145. Section 167.65–50 is revised to read as follows:

§ 167.65–50 Posting placards of lifesaving signals.

On all vessels to which this subpart applies there must be readily available to the deck officer of the watch a placard containing instructions for the use of the life saving signals set forth in regulation 16, chapter V, of the International Convention for Safety of Life at Sea, 1974. These signals must be used by vessels or persons in distress when communicating with lifesaving stations and maritime rescue units.

PART 168—CIVILIAN NAUTICAL SCHOOL VESSELS

146. The authority citation for part 168 is revised to read as follows:

Authority: 46 U.S.C. 3305, 3306; 49 CFR 1.46.

147. Subpart 168.15 is revised to read as follows:

Subpart 168.15—Accommodations

Sec.

168.15–1 Intent.
168.15–5 Location of crew spaces.
168.15–10 Construction.
168.15–15 Size.
168.15–20 Equipment.
168.15–25 Washrooms.
168.15–30 Toilet rooms.
168.15–35 Hospital space.
168.15–40 Lighting.
168.15–45 Heating and cooling.
168.15–50 Ventilation.
168.15–55 Insect screens.
168.15–60 Inspection.

§ 168.15–1 Intent.

The accommodations provided for members of the crew, passengers, cadets, students, instructors or any other persons at any time quartered on board a vessel to which this part applies must be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged and insulated from undue noise, heat and odors.

§ 168.15–5 Location of crew spaces.

(a) Quarters must be located so that sufficient fresh air and light are obtainable compatible with accepted practice or good arrangement and construction.

(b) Unless approved by the Commandant, quarters, must not be located forward of the collision bulkhead, nor may such section or sections of any deck head occupied by quarters be below the deepest load line.

§ 168.15–10 Construction.

(a) The accommodations provided must be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and insulated from undue noise, heat, and odors.

(b) All accommodations must be constructed and arranged so that they can be kept in a clean, workable, and sanitary condition.

§ 168.15–15 Size.

(a) Sleeping accommodations must be divided into rooms, no one of which may berth more than subpart persons. The purpose for which each space is to be used and the number of persons it may accommodate, must be marked outside the space.

(b) Each room must be of such size that there is at least 1.8 square meters (20 square feet) of deck area and a volume of at least 4.2 cubic meters (150 cubic feet) for each person accommodated. In measuring sleeping quarters, any furnishings contained therein are not to be deducted from the total volume or from the deck area.

§ 168.15–20 Equipment.

(a) Each person shall have a separate berth and not more than 1 berth may be placed above another. The berths must be of metal framework. The overall size of a berth must not be less than 68 centimeters (27 inches) wide by 190 centimeters (75 inches) long. Where 2 tiers of berths are fitted, the bottom of the lower berth must not be less than 30 centimeters (12 inches) above the deck, and the bottom of the upper must not be less than 76 centimeters (30 inches) from both the bottom of the lower and from the deck overhead. The berths must not be obstructed by pipes, ventilating ducts, or other installations.

(b) A metal locker must be provided for each person accommodated in a room.

§ 168.15–25 Washrooms.

(a) There must be provided 1 shower for each 10 persons or fraction thereof and 1 wash basin for each subpart persons or fraction thereof for all persons who do not occupy rooms to which private or semi-private facilities are attached.

(b) All wash basins and showers must be equipped with adequate plumbing, including hot and cold running fresh water.

§ 168.15–30 Toilet rooms.

(a) There must be provided 1 toilet for each 10 persons or fraction thereof to be accommodated who do not occupy rooms to which private facilities are attached.

(b) The toilet rooms must be located convenient to the sleeping quarters of the persons to which they are allotted but must not open directly into such quarters except when they are provided as private or semiprivate facilities.

(c) Where more than 1 toilet is located in a space or compartment, each toilet must be separated by partitions.

§ 168.15–35 Hospital space.

(a) Each vessel must be provided with a hospital space. This space must be situated with due regard for the comfort of the sick so that they may receive proper attention in all weather.

(b) The hospital must be suitably separated from other spaces and must be used for the care of the sick and for no other purpose.

(c) The hospital must be fitted with berths in the ratio of 1 berth to every 12 persons, but the number of berths need not exceed 6.

(e) The hospital must have a toilet, wash basin, and bathtub or shower conveniently located. Other necessary suitable equipment of a sanitary type such as a clothes locker, a table and a seat must be provided.

§ 168.15–40 Lighting.

All quarters, including washrooms, toilet rooms, and hospital spaces, must be adequately lighted.

§ 168.15–45 Heating and cooling.

All quarters must be adequately heated and cooled in a manner suitable to the purpose of the space.

§ 168.15–50 Ventilation.

(a) All quarters must be adequately ventilated in a manner suitable to the purpose of the space and route of the vessel.

(b) When mechanical ventilation is provided for sleeping rooms, washrooms, toilet rooms, hospital spaces, and messrooms, these spaces must be supplied with fresh air equal to at least 10 times the volume of the room each hour.

§ 168.15–55 Screening.

Provision must be made to protect the quarters against the admission of insects.

§ 168.15–60 Inspection.

The Officer in Charge, Marine Inspection, shall inspect the quarters of every such vessel at least once in each month or at such time as the vessel enters an American port and shall satisfy himself that such vessel is in compliance with the regulations in this part.

PART 169—SAILING SCHOOL VESSELS

148. The authority citation for part 169 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.45, 1.46; § 169.117 also issued under the authority of 44 U.S.C. 3507.

§ 169.321 [Removed]

149. Section 169.321 is removed.

§ 169.742 [Removed]

150. Section 169.742 is removed.

PART 189—INSPECTION AND CERTIFICATION

151. The authority citation for part 189 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; 49 CFR 1.46.

§ 189.60–30 [Removed]

152. Section 189.60–30 is removed.

PART 190—CONSTRUCTION AND ARRANGEMENT

153. The authority citation for part 190 continues to read as follows:

Authority: 46 U.S.C. 2113, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 190.01–13 [Removed]

154. Section 190.01–13 is removed.

155. Subpart 190.20 is revised to read as follows:

Subpart 190.20—Accommodations for Officers, Crew, and Scientific Personnel

Sec.

190.20–1 Application.
190.20–5 Intent.
190.20–10 Location of crew spaces.
190.20–15 Construction.
190.20–20 Sleeping accommodations.
190.20–25 Washrooms and toilet rooms.
190.20–30 Messrooms.
190.20–35 Hospital space.
190.20–40 Other spaces.
190.20–45 Lighting.
190.20–50 Heating and cooling.
190.20–55 Insect screens.
190.20–90 Vessels contracted for prior to March 1, 1968.

Subpart 190.20—Accomodations for Officers, Crew, and Scientific Personnel

§ 190.20–1 Application.

(a) Except as noted below, the provisions of this subpart apply to all vessels contracted for on or after March 1, 1968.

(b) Vessels contracted for prior to March 1, 1968, must meet the requirements of § 190.20–90.

§ 190.20–5 Intent.

(a) The accommodations provided for officers, crew, and scientific personnel on all vessels must be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and, where practicable, shall be insulated from undue noise, heat, and odors.

(b) Provided the intent of this subpart is met, consideration may be given by the Officer in Charge, Marine Inspection to relax the requirements relating to the size and separation of accommodations for scientific personnel.

§ 190.20–10 Location of crew spaces.

(a) Crew quarters must not be located farther forward in the vessel than a vertical plane located at 5 percent of the vessel's length abaft the forward side of the stem at the designated summer load water line. However, for vessels in other than ocean or coastwise service, this distance need not exceed 8.5 meters (28 feet). For purpose of this paragraph, the vessel's length shall be as defined in § 43.15–1 of subchapter E (Load Lines) of this chapter. Unless approved by the Commandant, no section of the deck head of the crew spaces may be below the deepest load line.

(b) There must be no direct communication, except through solid, close fitted doors or hatches between crew spaces and chain lockers, or machinery spaces.

§ 190.20–15 Construction.

All crew spaces are to be constructed and arranged in a manner suitable to the purpose for which they are intended and so they can be kept in a clean, workable and sanitary condition.

§ 190.20–20 Sleeping accommodations.

(a) Where practicable, each licensed officer must be provided with a separate stateroom.

(b) Sleeping accommodations for the crew must be divided into rooms, no one of which must berth more than 4 persons.

(c) Each room must be of such size that there are at least 2.78 square meters (30 square feet) of deck area and a volume of at least 5.8 cubic meters (210 cubic feet) for each person accommodated. The clear head room must be not less than 190 centimeters (75 inches). In measuring sleeping accommodations any furnishings contained therein for the use of the occupants are not to be deducted from the total volume or from the deck area.

(d) Each person shall have a separate berth and not more than one berth may be placed above another. The berth must be composed of materials not likely to corrode. The overall size of a berth must not be less than 68 centimeters (27 inches) wide by 190 centimeters (75 inches) long, except by special permission of the Commandant. Where two tiers of berths are fitted, the bottom of the lower berth must not be less than 30 centimeters (12 inches) above the deck. The berths must not be obstructed by pipes, ventilating ducts, or other installations.

(e) A locker must be provided for each person accommodated in a room.

§ 190.20–25 Washrooms and toilet rooms.

(a) There must be provided at least 1 toilet, 1 washbasin, and 1 shower or bathtub for each 8 members or portion thereof in the crew to be accommodated who do not occupy rooms to which private or semi-private facilities are attached.

(b) The toilet rooms and washrooms must be located convenient to the sleeping quarters of the crew to which they are allotted but must not open directly into such quarters except when they are provided as private or semi-private facilities.

(c) All washbasins, showers, and bathtubs must be equipped with adequate plumbing, including hot and cold running water. All toilets must be installed with adequate plumbing for flushing. Where more than 1 toilet is located in a space or compartment, each toilet must be separated by partitions.

§ 190.20–30 Messrooms.

(a) Messrooms must be located as near to the galley as is practicable except where the messroom is equipped with a steam table.

(b) Each messroom must seat the number of persons expected to eat in the messroom at one time.

§ 190.20–35 Hospital space.

(a) Except as specifically modified by paragraph (f) of this section, each vessel which in the ordinary course of its trade makes voyages of more than 3 days duration between ports and which carries a crew of 12 or more, must be provided with a hospital space. This space must be situated with regard to the comfort of the sick so that they may receive proper attention in all weather.

(b) The hospital must be suitably separated from other spaces and must be used for the care of the sick and for no other purpose.

(c) The hospital must be fitted with berths in the ratio of 1 berth to every 12 members of the crew or portion thereof who are not berthed in single occupancy rooms, but the number of berths need not exceed 6. Where all single occupancy rooms are provided, the requirement for a separate hospital may be withdrawn, provided that 1 stateroom is fitted with a bunk accessible from both sides.

(e) The hospital must have a toilet, washbasin, and bathtub or shower conveniently situated. Other necessary suitable equipment such as a clothes locker, a table and a seat must be provided.

(f) On vessels in which the crew is berthed in single occupancy rooms, a hospital space will not be required, provided that 1 room must be designated and fitted with use as a treatment or isolation room. This room must meet the following standards:

(1) The room must be available for immediate medical use; and

(2) A washbasin with hot and cold running water must be installed either in or immediately adjacent to the space and other required sanitary facilities must be conveniently located.

§ 190.20–40 Other spaces.

Each vessel shall have—

(a) Sufficient facilities where the crew may wash and dry their own clothes, including at least 1 sink supplied with hot and cold fresh water;

(b) Recreation spaces; and

(c) A space or spaces of adequate size on the open deck to which the crew has access when off duty.

§ 190.20–45 Lighting.

Each berth must have a light.

§ 190.20–50 Heating and cooling.

(a) All manned spaces must be adequately heated and cooled in a manner suitable to the purpose of the space.

(b) Radiators and other heating apparatus must be so placed and shielded, where necessary, to avoid risk of fire, danger or discomfort to the occupants. Pipes leading to radiators or heating apparatus must be insulated where those pipes create a hazard to persons occupying the space.

§ 190.20–55 Insect screens.

Provisions must be made to protect the crew quarters against the admission of insects.

§ 190.20–60 Vessels contracted for prior to March 1, 1968.

Existing structures, arrangements, materials, and facilities previously approved will be considered satisfactory so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs and alterations may be made to the same standards as the original construction, provided that in no case will a greater departure from the standards of §§ 190.20–5 through 190.20–55 be permitted than presently exists.

PART 193—FIRE PROTECTION EQUIPMENT

156. The authority citation for part 193 continues to read as follows:

Authority: 46 U.S.C. 2213, 3102, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 193.05–20 [Removed]

157. Section 193.05–20 is removed.

158. In § 193.10–10, paragraphs (j) and (k) are redesignated as paragraphs (l) and (m), respectively, paragraphs (i–1) and (i–2) are removed, paragraphs (d) and (i) are revised, and new paragraphs (j) and (k) are added to read as follows:

§ 193.10–10 Fire hydrants and hose.

* * * * *

(d) Fire hydrants must be of sufficient number and so located that any part of the vessel, other than main machinery spaces, may be reached with at least 2 streams of water from separate outlets, at least one of which must be from a single length of hose. In main machinery spaces, all portions of such spaces must be capable of being reached by at least 2 streams of water, each of which must be from a single length of hose from separate outlets; however, this requirement need not apply to shaft alleys containing no assigned space for the stowage of combustibles. Fire hydrants must be numbered as required by § 196.37–15 of this subchapter.

* * * * *

(i) Each fire hydrant must have at least 1 length of firehose. Each firehose must have a combination solid stream and water spray nozzle that is approved under subpart 162.027 of this subchapter, except 19 millimeters (3/4 inch) hose may have a garden hose nozzle that is bronze or metal with strength and corrosion resistance equivalent to bronze. Combination solid stream and water spray nozzles previously approved under subpart 162.027 of this chapter may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

(j) When the firehose nozzle in the below locations was previously approved under subpart 162.027 of this chapter, a low-velocity water spray applicator, also previously approved under subpart 162.027, of this chapter must be installed as follows:

(1) At least 1 length of firehose on each fire hydrant outside and in the immediate vicinity of each laboratory;

(2) Each firehose in each propulsion machinery space containing oil-fired boiler, internal combustion machinery, or oil fuel unit on a vessel of 1000 gross tons or more—the length of each applicator must be 1.2 meters (4 feet).

(k) Fixed brackets, hooks, or other means for stowing an applicator must be next to each fire hydrant that has an applicator under paragraph (j) of this section.

* * * * *

159. Section 193.10–90 is revised to read as follows:

§ 193.10–90 Installations contracted for prior to March 1, 1968.

Installations contracted for prior to March 1, 1968, must meet the following requirements:

(a) Except as specifically modified by this paragraph, vessels must comply with the requirements of §§ 193.10–5 through 193.10–15 insofar as the number and general type of equipment is concerned.

(b) Existing equipment, except firehose nozzles and low-velocity water spray applicators, previously approved but not meeting the applicable requirements of §§ 193.10–5 through 193.10–15, may be continued in service so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. Minor repairs, alterations, and replacements may be permitted to the same standards as the original installations. However, all new installations or major replacements must meet the applicable requirements in this subpart for new installations.

(c) Vessels must comply with the general requirements of § 193.10–5 (c) through (g), § 193.10–10 (d) through (m), and § 193.10–15 insofar as is reasonable and practicable.

(d) Each firehose nozzle must meet § 193.10–10(i), and each low-velocity water spray applicator must meet § 193.10–10(j).

PART 196—OPERATIONS

160. The authority citation for part 196 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2113, 3306, 5115, 6101; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart 196.03 (§ 196.03–1)—[Removed]

161. Subpart 196.03 consisting of § 196.03–1 is removed.

Subpart 196.17 (§ 196.17–1)—[Removed]

162. Subpart 196.17 consisting of § 196.17–1 is removed.

Subpart 196.18 (§ 196.18–1)—[Removed]

163. Subpart 196.18 consisting of § 196.18–1 is removed.

Subpart 196.23 (§ 196.23–1)—[Removed]

164. Subpart 196.23 consisting of § 196.23–1 is removed.

§ 196.27–10 [Removed]

165. Section 196.27–10 is removed.

166. Subpart 196.33 consisting of § 196.33–1 is revised to read as follows:

Subpart 196.33—Communication Between Deckhouses

§ 196.33–1 When required.

On all vessels navigating in other than protected waters, where the distance between deckhouses is more than 46 meters (150 feet) a fixed means of facilitating communication between both ends of the vessel, such as a raised fore and aft bridge or side tunnels, must be provided. Previously approved arrangements may be retained so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

167. Section 196.35–3 is revised to read as follows:

§ 196.35–3 Logbooks and records.

(a) The master or person in charge of an oceanographic research vessel that is required by 46 U.S.C. 11301 to have an official logbook may maintain the logbook on form CG–706 or in the owner's format for an official logbook. Such logs must be kept available for a review for a period of 1 year after the date to which the records refer, or for the period of validity of the vessel's current certificate of inspection, whichever is longer. When the voyage is completed, the master or person in charge shall file the logbook with the Officer in Charge, Marine Inspection.

(b) The master or person in charge of a vessel that is not required by 46 U.S.C. 11301 to have a official logbook, shall maintain, on aboard, an unofficial logbook or record in any form desired for the purposes of making entries therein as required by law or regulations in this subchapter. Such logs or records are not filed with the Officer in Charge, Marine Inspection, but must be kept available for review by a marine inspector for a period of 1 year after the date to which the records refer. Separate records of tests and inspections of fire fighting equipment must be maintained with the vessel's logs for the period of validity of the vessel's certificate of inspection.

§ 196.35–10 [Removed]

168. Section 196.35–10 is removed.

§ 196.37–45 [Removed]

169. Section 169.37–45 is removed.

170. Subpart 196.43 consisting of §§ 196.43–1 and 196.43–5 is revised to read as follows:

Subpart 196.43—Placard of Lifesaving Signals

Sec.
196.43–1 Application.
196.43–5 Availability.

Subpart 196.43—Placard of Lifesaving Signals

§ 196.43–1 Application.

The provisions of this subpart apply to all vessels on an international voyage, and all other vessels of 150 gross tons or over in ocean, coastwise, or Great Lakes service.

§ 196.43–5 Availability.

On all vessels to which this subpart applies there must be readily available to the deck officer of the watch a placard containing instructions for the use of the lifesaving signals set forth in regulation 16, chapter V, of the International Convention for Safety of Life at Sea, 1974. These signals must be used by vessels or persons in distress when communicating with lifesaving stations and maritime rescue units.

Subpart 196.60 (§ 196.60–1)—[Removed]

171. Subpart 196.60 consisting of § 196.60–1 is removed.

Subpart 196.75 (§ 196.75–1)—[Removed]

172. Subpart 196.75 consisting of § 196.75–1 is removed.

Dated: May 10, 1996.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Marine Safety and Environmental Protection.

[FR Doc. 96–12428 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–14–M

OL
1
SS
1
0
1
IY
: 3
996
MI

federal register

Thursday
May 23, 1996

Part IV

The President

Presidential Determination No. 96–20 of April 1, 1996
Presidential Determination No. 96–21 of April 4, 1996
Presidential Determination No. 96–22 of April 18, 1996
Presidential Determination No. 96–23 of April 30, 1996
Presidential Determination No. 96–24 of May 9, 1996
Memorandum of April 1, 1996
Memorandum of May 10, 1996

Federal Register
Vol. 61, No. 101
Thursday, May 23, 1996

Presidential Documents

Title 3—

The President

Memorandum of April 1, 1996

Delegation of Responsibilities Under Section 1208 of Title XII of Public Law 104–106

Memorandum for the Secretary of State [and] the Secretary of Defense

By the authority vested in me by the Constitution and the laws of the United States of America, including section 301 of Title 3 of the United States Code, I hereby delegate to the Secretary of State the authorities and duties vested in the President under Section 1208 of Title XII of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106), to be exercised in consultation with the Secretary of Defense.

Any reference in this memorandum to any Act or delegation of authority shall be deemed to be a reference to such Act or delegation of authority as amended from time to time.

The functions delegated by this memorandum may be redelegated within the Department of State, as appropriate.

The Secretary of State is authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, April 1, 1996.

[FR Doc. 96–12935
Filed 5–22–96; 8:45 am]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 96–20 of April 1, 1996

Suspending Restrictions on U.S. Relations With the Palestine Liberation Organization

Memorandum for the Secretary of State

Pursuant to the authority vested in me by the Middle East Peace Facilitation Act of 1995, title VI, Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996, Public Law 104–107, ("the Act"), I hereby:

(1) Certify that it is in the national interest to suspend the application of the following provisions of law until June 15, 1996:

(A) Section 307 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2227), as it applies with respect to the Palestine Liberation Organization or entities associated with it;

(B) Section 114 of the Department of State Authorization Act, Fiscal Years 1984 and 1985 (22 U.S.C. 287e note), as it applies with respect to the Palestine Liberation Organization or entities associated with it;

(C) Section 1003 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 5202); and

(D) Section 37, Bretton Woods Agreement Act (22 U.S.C. 286w), as it applies to the granting to the Palestine Liberation Organization of observer status or other official status at any meeting sponsored by or associated with the International Monetary Fund.

(2) certify that the Palestine Liberation Organization, the Palestinian Authority, and successor entities are abiding by the commitments described in section 604(b)(4) of the Act.

(3) certify that funds provided pursuant to the exercise of this authority and the authorities under section 583(a) of Public Law 103–236 and section 3(a) of Public Law 102–125 have been used for the purposes for which they were intended.

You are authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, April 1, 1996.

[FR Doc. 96–12936
Filed 5–22–96; 8:45 am]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 96–21 of April 4, 1996

Determination Under the Heading "International Organizations and Programs" in Title IV of the Foreign Operations Appropriations Act for FY 1996: U.S. Contribution to the Korean Peninsula Energy Development Organization (KEDO)

Memorandum for the Secretary of State

Pursuant to the requirements set forth under the heading "International Organizations and Programs" in Title IV of the Foreign Operations Appropriations Act, 1996 (Public Law 104–107), I determine and certify that:

(a) in accordance with Section 1 of the Agreed Framework, KEDO has designated a Republic of Korea company, corporation or entity for the purpose of negotiating a prime contract to carry out construction of the light water reactors provided for in the Agreed Framework;

(b) the Democratic People's Republic of Korea (DPRK) is maintaining the freeze on its nuclear facilities as required in the Agreed Framework; and

(c) the United States is taking steps to assure that progress is made on (1) the North-South dialogue, including efforts to reduce barriers to trade and investment, such as removing restrictions on travel, telecommunications services and financial transactions; and (2) implementation of the January 1, 1992, Joint Declaration on the Denuclearization of the Korean Peninsula.

You are authorized and directed to report these determinations and certifications to the Congress and to publish them in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, April 4, 1996.

MEMORANDUM OF JUSTIFICATION FOR DETERMINATIONS AND CERTIFICATIONS UNDER THE HEADING "INTERNATIONAL ORGANIZATIONS AND PROGRAMS" IN TITLE IV OF THE FOREIGN OPERATIONS APPROPRIATIONS ACT, 1996 IN CONNECTION WITH THE U.S. CONTRIBUTION TO THE KOREAN PENINSULA ENERGY DEVELOPMENT ORGANIZATION (KEDO)

Pursuant to the requirements set forth under the heading "International Organizations and Programs" in Title IV of the Foreign Operations Appropriations Act, 1996 (P.L. 104–107), I have determined that:

(a) in accordance with Section 1 of the Agreed Framework, KEDO has designated a Republic of Korea company, corporation or entity for the purpose of negotiating a prime contract to carry out construction of the light water reactors provided for in the Agreed Framework; and

(b) the Democratic People's Republic of Korea (DPRK) is maintaining the freeze on its nuclear facilities as required in the Agreed Framework; and

(c) the United States is taking steps to assure that progress is made on (1) the North South dialogue, including efforts to reduce barriers to trade and investment, such as removing restrictions on travel, telecommunications services and financial transactions; and (2) implementation of the January 1, 1992, Joint Declaration on the Denuclearization of the Korean Peninsula.

The justification for these determinations is set forth below.

(a)—Designation of ROK Company

In section I of the Agreed Framework between the United States of America and the Democratic People's Republic of Korea (DPRK), signed in Geneva on October 21, 1994, the two parties stated that they would cooperate in replacing the DPRK's graphite-moderated reactors and related facilities with light-water reactor (LWR) power plants. The U.S. further stated that it would undertake to make arrangements for the provision of the LWR project to the DPRK, including organizing under its leadership an international consortium to finance and supply the project. This organization, the Korean Peninsula Energy Development Organization (KEDO), was created on March 9, 1995, by agreement of the U.S., Japan, and the ROK. These parties have agreed that the ROK will assume the central role in financing and building the LWR project.

On june 13, 1995, in Kuala Lumpur, the United States and the DPRK issued a joint statement providing that KEDO will select both the LWR reactor model and the prime contractor to carry out the project. (These points were confirmed in the LWR supply agreement between KEDO and the DPRK, signed December 15, 1995 in New York City.) On the same date as the Kuala Lumpur statement (June 13, 1995), the KEDO Executive Board decided by Board resolution that an ROK reactor model (Ulchin ¾) would be built in the DPRK by an ROK firm. The Executive Board resolution designated the Korean Electric Power Corporation (KEPCO) as the firm with which KEDO would begin negotiating a prime contract for the light-water reactor project. These negotiations are under way.

(b)—DPRK Maintenance of the freeze

Section I(3) of the U.S.-DPRK Agreed Framework provides for the immediate freeze and eventual dismantlement of all graphite-moderated reactors and related facilities in the DPRK. Within this context, the DPRK agreed to implement the freeze on its nuclear facilities within one month after the signing of the Agreed Framework and to allow the International Atomic Energy Agency (IAEA) to monitor the freeze on its facilities, with the full cooperation of the DPRK. In addition, the U.S. and DPRK agreed to cooperate in finding a method to store safely the spent fuel from the DPRK's 5 MW(e) experimental reactor during the construction of the LWR project, and to dispose of the fuel in a safe manner that does not involve reprocessing in the DPRK.

Since November 1994, all of North Korea's graphite-moderated nuclear facilities have been frozen. Specifically, this means no refueling or operation of the 5MW research reactor; no construction on the 50 and 200 MW reactors; no reprocessing and sealing of the reprocessing facility; no operation of the fuel fabrication plant; and no construction of new graphite-moderated reactors or related facilities. The IAEA has maintained a continuous presence at the Nyongbyon nuclear facility and has continued with inspection activities related to verifying and monitoring the freeze in the DPRK according to the terms of the Agreed Framework. In addition to IAEA monitoring activities, the United States continues to monitor the freeze through National Technical Means.

With the successful conclusion of the December 15, 1995 agreement on the supply of light-water reactors (LWRs) to the DPRK, signed between the DPRK and KEDO in New York City, the IAEA will resume ad hoc and routine inspections under the DPRK's safeguards agreement with the IAEA with respect to the facilities not subject to the freeze. The IAEA and DPRK meet periodically to discuss any outstanding safeguards issues that arise, most recently on January 22, 1996. During this meeting, both sides agreed to measures for safely storing the DPRK's spent nuclear fuel from its 5 MW(e) research reactor. When the first LWR unit is completed, the IAEA will have oversight over the dismantlement of the DPRK's nuclear facilities which will be completed when the second LWR unit is completed.

In January 1995, the U.S. and DPRK agreed on the method for safely storing the DPRK's spent nuclear fuel as an interim step before it is shipped out of the DPRK, as defined in the Agreed Framework. U.S. technical experts have been in the DPRK since July 1995 preparing the fuel for canning in a cooperative joint effort with the DPRK. Actual canning is expected to commence soon and will last approximately three months.

(c)—North-South Dialogue and the Joint Declaration

The U.S.-DPRK Agreed Framework provides that "the DPRK will engage in North-South dialogue." Since then, the U.S. has taken steps to support South Korean initiatives toward the North and to encourage the DPRK to fulfill its commitment to engage in dialogue as soon as possible. In all of our bilateral contacts with the DPRK, the U.S. has made clear that improvement in North-South relations is the key to peace and security on the Korean peninsula, and a requirement if U.S.-DPRK bilateral relations are to continue to move forward. Ambassador Robert L. Gallucci, during his tenure as Chairman of the Senior Steering Committee on Korea, had frequent occasion to raise the issue of North-South relations in his correspondence with his North Korean counterpart; First Vice Minister of Foreign Affairs Kang Sok Ju. Deputy Assistant Secretary of State Thomas Hubbard raised the North-South issue repeatedly during the May-June 1995 negotiations with the North Koreans in Kuala Lumpur on the LWR supply agreement. Most recently, Mr. Hubbard raised this issue when he met with North Korean Ambassador-at-Large Ho Jung in December 1995. Finally, working level officials have repeatedly stressed to their North Korean counterparts the importance of the DPRK improving relations with the South. Over the last year, these points have been made at all three rounds of U.S.-DPRK negotiations on the opening of liaison offices, and repeatedly in contacts with officials of the DPRK Mission to the UN.

In support of ROK initiatives, we have conveyed South Korean positions—and U.S. support for those positions—to the DPRK and others. At South Korea's request we have raised several particular issues with the DPRK, sometimes with positive effect. The South Korean government has expressed its appreciation for these U.S. efforts. During this period North and South Korea held a series of bilateral meetings in Beijing that produced an agreement whereby the South provided 150,000 tons of rice to the North as a grant. In December 1995, the DPRK released the crew of a South Korean

fishing vessel which strayed into North Korean waters earlier in the year, a step which the ROK had been urging the DPRK to take.

On January 1, 1992, the Republic of Korea and the Democratic People's Republic of Korea issued the Joint Declaration of the Denuclearization of the Korean Peninsula. The provisions of the Joint Declaration state that the North and South:

—shall not test, manufacture, produce, receive, possess, store, deploy or use nuclear weapons;

—shall use nuclear energy solely for peaceful purposes;

—shall not possess nuclear reprocessing and uranium enrichment facilities, and;

—in order to verify the denuclearization of the Korean Peninsula, shall conduct inspections of the objects selected by the other side and agreed upon between the two sides, in accordance with procedures and methods to be determined by the South-North Nuclear Control Commission which shall be established within one month of the effectuation of this joint declaration.

The DPRK and the ROK held a series of South-North Joint Nuclear Control Commission meetings in early 1992 as specified in the Joint Declaration, but these were discontinued as relations between the two Korean states worsened and the DPRK threatened to withdraw from the Nuclear Non-Proliferation Treaty (NPT) and refused to cooperate with the IAEA. As a result, the absence of sustained governmental talks between the ROK and DPRK has delayed further implementation of the Denuclearization Declaration.

The United States has, however, taken steps to encourage DPRK compliance with the Joint Declaration by encouraging North-South dialogue and ensuring DPRK implementation of the Agreed Framework. The Agreed Framework, as a step towards full implementation of the Denuclearization Declaration, has succeeded in illiciting positive DPRK movement on key provisions of the Declaration. Specifically, North Korea's willingness to freeze immediately and eventually dismantle its graphite-moderated nuclear reactors and related facilities has halted activities which would, had they not been stopped, given the DPRK a nuclear weapons capability. Such a capability would have been a threat to peace and security on the Korean Peninsula as well as to Northeast Asia. The DPRK agreement to forego reprocessing under the Agreed Framework and to replace its existing nuclear reactors with proliferation-resistant LWRs represents a major step toward assuring the DPRK will not test, manufacture, produce, store, deploy or possess nuclear weapons. In addition, by agreeing to allow a continuous IAEA inspector presence on the ground and to come into full compliance with its IAEA safeguards obligations, including taking all steps that may be deemed necessary by the IAEA with regard to verifying the accuracy and completeness of the DPRK's initial report on all nuclear material in the DPRK, the DPRK has not only gone beyond its NPT and IAEA safeguards obligations but also is taking steps related to the inspection objectives set forth in the Denuclearization Declaration.

MEMORANDUM OF JUSTIFICATION UNDER SECTION 614 OF THE FOREIGN ASSISTANCE ACT TO PROVIDE U.S. CONTRIBUTIONS TO THE KOREAN PENINSULA ENERGY DEVELOPMENT ORGANIZATION (KEDO)

The Administration proposes that up to $22.0 million in FY 1996 International Organizations and Programs (IO&P) funds be used for a U.S. contribution to the Korean Peninsula Energy Development Organization (KEDO), an international consortium established to implement the Agreed Framework signed between the United States and the Democratic People's Republic of Korea (DPRK) on October 21, 1994. This funding level for U.S. contributions to KEDO was specified in the Administration's congressional presentation documents for the Foreign Operations Appropriations Act, 1996 (P.L. 104–107). KEDO would be permitted to use the U.S. contribution to help cover the FY 1996 administrative and heavy fuel oil shipment expenses.

In order to make available the funds appropriated for this contribution, the President intends to exercise his authority under section 614(a)(1) of the Foreign Assistance Act of 1961, as amended, to authorize the voluntary contribution to KEDO without regard to applicable statutory restrictions within the scope of this section, including any restrictions in sections 307, 620A, 620(f), or 530 of the Foreign Assistance Act or sections 507, 516, 523, or 527A of the Foreign Operations Appropriations Act.

The Agreed Framework addresses U.S. and international concerns about the DPRK's nuclear weapons program and, if fully implemented, will lead ultimately to the complete dismantlement of North Korea's current nuclear program. Under the U.S.—DPRK Agreed Framework, the U.S. represented that it would "organize under its leadership an international consortium to finance and supply the light-water reactor (LWR) project to be provided to the DPRK." In order to meet this pledge, the U.S., South Korea (ROK) and Japan agreed on the creation of an international organization, KEDO, to implement the reactor project, the annual delivery of 500,000 metric tons of heavy fuel oil delivery to North Korea and other possible projects called for in the Agreed Framework (*e.g.*, the transfer of spent fuel out of the DPRK for ultimate disposition). The U.S., ROK and Japan have played and will continue to play leading roles in KEDO.

KEDO's purpose is to coordinate cooperation among interested parties in the international community and to facilitate the financing and execution of projects needed to implement the Agreed Framework. KEDO members have agreed to cooperate in taking the steps necessary to implement the Agreed Framework consistent with the Charter of the United Nations, the Treaty on the Nonproliferation of Nuclear Weapons, the North-South Declaration on the Denuclearization of the Korean Peninsula, and the Statute of the International Atomic Energy Agency. Moreover, KEDO will obtain assurances that nuclear materials, equipment, or technology transferred to the DPRK in connection with projects undertaken by KEDO will be used exclusively for such projects, only for peaceful purposes, and in a manner that ensures the safe use of nuclear energy. The continued funding of KEDO is critical to the success of the specific objectives of the Agreed Framework, the general goals of international nuclear nonproliferation, and the aim of maintaining peace and security on the Korean Peninsula.

KEDO is located in New York and is directed by an Executive Board consisting of representatives of the original member countries—the U.S., Japan, and the ROK. Other members may participate in its activities by serving on advisory committees covering the organization's projects, attending the KEDO General Conference, participating in ad hoc technical meetings relating to KEDO projects and, in some cases, sending technical experts to serve in the KEDO secretariat. The day-to-day operations of KEDO are directed by Executive Director Stephen Bosworth, former U.S. Ambassador to the Philippines, assisted by two Deputy Executive Directors (one from Japan and one from the ROK). KEDO is seeking to contract with private firms for the bulk of the legal, technical, and financial expertise required to oversee the LWR project and other projects. It will have a secretariat consisting of approximately 30 people to carry out its functions.

The U.S. contribution to KEDO will help fund: 1) KEDO's FY 1996 costs for office space, office supplies, communications, consulting costs and legal services, and employee remuneration for a staff of thirty people, including the Executive Director, the two Deputy Directors, and support personnel; and 2) a portion of the estimated $50 million worth of heavy fuel oil due to be shipped in 1996. These funds are essential to KEDO's ability to meet the terms of the U.S.-DPRK Agreed Framework regarding the provision of heavy fuel oil. Should KEDO fail to meet these deliveries, the

DPRK might renege on its Agreed Framework obligations, including possibly breaking the freeze on its nuclear program. Hence, early transfer of these funds is essential to meeting our nonproliferation objectives in the DPRK.

[FR Doc. 96–12937
Filed 5–22–96; 8:45 am]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 96–22 of April 18, 1996

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $22 million be made available from the United States Emergency Refugee and Migration Assistance Fund to meet the urgent needs of refugees and victims of conflict from the former Yugoslavia. These funds may be used as necessary to provide U.S. contributions in response to the appeals of international and nongovernmental organizations for funds to meet the urgent and unforeseen humanitarian needs of victims of conflict from the former Yugoslavia.

You are authorized and directed to inform the appropriate committees of the Congress of the determination and the obligation of funds under this authority and to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, April 18, 1996.

[FR Doc. 96–12938
Filed 5–22–96; 8:45 am]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 96–23 of April 30, 1996

Suspending Prohibitions on Certain Sales and Leases Under the Anti-Economic Discrimination Act of 1994

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 564 of the Foreign Relations Authorization Act ("the Act"), Fiscal Years 1994 and 1995, Public Law 103–236, as amended, I hereby:

(1) determine and certify that the following countries do not currently maintain a policy or practice of sending letters to United States firms requesting compliance with, or soliciting information regarding compliance with, the Arab League secondary or tertiary boycott of Israel:

Jordan and Mauritania;

(2) determine that extension of suspension of the application of Section 564(a) of the Act to the following countries until May 1, 1997, will promote the objectives of Section 564:

Algeria, Bahrain, Bangladesh, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, and the United Arab Emirates.

You are authorized and directed to report this determination to the appropriate committees of the Congress and to publish it in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, April 30, 1996.

[FR Doc. 96–12939
Filed 5–22–96; 8:45 am]
Billing Code 4710–10–M

Presidential Documents

Presidential Determination No. 96–24 of May 9, 1996

Assistance Program for the New Independent States of the Former Soviet Union

Memorandum for the Secretary of State

Pursuant to subsection (o) under the heading "Assistance for the New Independent States of the Former Soviet Union" in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996 (Public Law 104–107) and section 301 of title 3, United States Code, I hereby determine that it is important to the national security interest of the United States to make available funds appropriated under that heading without regard to the restriction in that subsection.

You are authorized and directed to notify the Congress of this determination and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, May 9, 1996.

[FR Doc. 96–12940
Filed 5–22–96; 8:45 am]
Billing code 4710–10–M

Presidential Documents

Memorandum of May 10, 1996

Delegation of Responsibilities Under Section 211(c) of Title II of Public Law 102–228

Memorandum for the Secretary of State [and] the Secretary of Defense

By the authority vested in me by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to the Secretary of State the authority and duty vested in the President under section 211(c) of the Soviet Nuclear Threat Reduction Act of 1991 (title II of Public Law 102–228), as amended.

The Secretary of State is authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, May 10, 1996.

[FR Doc. 96–12941
Filed 5–22–96; 8:45 am]
Billing code 4710–10–M

OL
1
SS
1
0
1
IY
3
996
MI

federal register

Thursday
May 23, 1996

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121 and 135

Air Traffic Control Radar Beacon System and Mode S Transponder Requirements in the National Airspace System; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 28586; Notice No. 96–5]

RIN 2120–AE81

Air Traffic Control Radar Beacon System and Mode S Transponder Requirements in the National Airspace System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to rescind the Mode S transponder requirement for all aircraft operations under part 135 and certain aircraft operations under part 121 of the Federal Aviation Regulations (14 CFR parts 121 and 135). For part 121 operators, this amendment would affect only those aircraft not required to have Traffic Alert and Collision Avoidance System II (TCAS II). The initial mandate for Mode S equipage was based on the assumption that Mode S would provide the sole method for air traffic control data link. The FAA's revised strategy of multiple air-ground data links managed through an Aeronautical Telecommunications net work removes this requirement. Further, operational experience with the Mode S ground sensors has shown that most surveillance enhancements can be achieved by the Mode S ground sensors with the present mixed population of airborne transponders. In addition, the use of Mode S transponders for aircraft, other than those required to have TCAS II, does not offer, nor is it expected to offer, any significant safety advantage in the current or future airspace environment. Therefore, requiring all aircraft at this time to have Mode S transponders when those aircraft are not required to have TCAS II is not essential for a safe and efficient National Airspace System. In the current airspace operational environment, the public interest does not require that all transponders newly installed in certain aircraft operated under part 121 and all aircraft operated under part 135 after January 1, 1992, be Mode S transponders.

DATES: Comments must be received on or before July 22, 1996.

ADDRESSES: Comments on this NPRM should be mailed, in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28537, 800 Independence Avenue, SW., Washington, DC 20591. Comments may also be sent electronically to the Rules Docket by using the following Internet address: nprmcmt@mail.hq.faa.gov. Comments must be marked Docket No. 28586. Comments may be examined in the Rules Docket in Room 915G on weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel V. Meier Jr., Air Carrier Operations Branch (AFS–220), Air Transportation Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3749.

SUPPLEMENTARY INFORMATION:

Comments Invited

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9677. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future FAA NPRM's should request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes application procedures.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone 202–512–1661). Internet users may reach the FAA's web page at http://www.faa.gov or the **Federal Register**'s webpage at http://www:access.gpo.gov/su_docs for access to recently published rulemaking documents.

Availability of NPRM's

Any person may obtain a copy of this NRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9677. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Distribution System, which describes the application procedure.

History

In 1982, the FAA announced a comprehensive plan to modernize and improve air traffic control and airway facilities. One part of the comprehensive plan included introducing the Mode S system. In an advance notice of proposed rulemaking, the FAA stated that improved surveillance reliability and accuracy would be a central objective of the Mode S system (48 FR 48364, October 18, 1983). Mode S transponders were considered an integral link in the system, furnishing accurate, reliable, and positive air traffic control information on aircraft identity, position, and altitude. The plan envisioned that all groundbased secondary radars would be replaced by Mode S stations, and that Mode S would provide the exclusive medium for an air/ground data link. At that time, the first 137 Mode S ground sensors were expected to be on-line by 1991. Therefore, the Mode S transponder requirement was promulgated with a final rule published February 3, 1987 (Amendment Nos. 121–190 and 135–22; 52 FR 3380). This final rule provided that any transponder newly installed in aircraft used for operations under parts 121 and 135 of Title 14, Code of Federal Regulations (14 CFR 121 and 135), before January 1, 1992, could be a Mode A transponder provided the transponder was manufactured prior to January 1, 1990; only Mode S transponders could be newly installed in these aircraft after January 1, 1992.

Mode A and Mode S Transponders

The two kinds of aircraft equipment addressed by this rulemaking are the Mode A and the Mode S transponders. They are the airborne portion of the secondary radar system, which is not a true radar system but rather an interrogate/respond system used to establish aircraft position and identity.

The Mode A transponder consists of a radio transceiver that responds to a coded train of pulses from ground sensors (known as Air Traffic Control Radar Beacon Interrogators (ATCBI)). The Mode A transponder response encodes one of 4,096 discrete codes (set by the pilot) in response to a Mode A interrogation from the ground sensor. The ground sensor receives the reply message, and processors extract the aircraft's position and identity for display on the controller's radar scope. An enhanced transponder is capable of responding to Mode C interrogations from the ground station by reporting the aircraft's altitude derived from a suitable encoding altimeter.

The Mode S transponder is an advanced version of the Mode A transponder which responds to conventional Mode A and Mode C interrogations, but it is also capable of responding to a Mode S interrogation with a unique code based on the aircraft's tail number. When used in conjunction with Mode S ground sensors, a system of nearly interference-free radar transmission and reception will exist. This system provides for improved target information to be display on the controller's radar screen and enables the various air traffic control computers (ATC) to detect conflict and control aircraft flow. In addition, the Mode S ground station recognizes a conventional Mode A transponder and reverts to conventional ATCBI operation for that aircraft.

The Mode S System

The Mode S system was designed to rectify limitations in the current radar system. The limitations include synchronous garble, loss of target and altitude integrity, and restrictions on traffic management caused by the limited number of discrete beacon codes. Of the two components in the Mode S system (i.e., the ground sensor and the transponder), the ground sensor provides most of the capability to ameliorate these limitations.

Synchronous garble occurs when the ground sensor interrogating two aircraft near one another cannot distinguish between their respective replies. In this situation, the data cannot be reconstructed; the ATC computer will either not display information or display erroneous information on the air traffic controller radar scope. When this condition can occur any time aircraft are in proximity, it is most likely to hamper air traffic services in areas of high density aircraft activity such as Classes B and C airspace areas. Improved processing capabilities found in the latest monopulse secondary radars are able to resolve many garble situations without Mode S transponder equipage by the aircraft. Operational experience with the currently deployed Mode S systems indicates that the garble resolution provided with the current transponder population is sufficient to provide assured separation using today's separation standards.

Target and altitude integrity expresses the ability of the radar system to distinguish between transmissions received from two different aircraft. The ATCBI secondary radar system transmits interrogation signals, and all transponder-equipped aircraft receiving the signal reply with a distinct code and, if so equipped, report the aircraft's altitude. As described earlier, the ability of the current system to distinguish between two signals is affected by the proximity of the aircraft to each other. Terrain, signal strength of the aircraft transponder equipment, and environmental factors can also derogate the ability of the ground sensor to determine the position and altitude of an aircraft.

Azimuth accuracy is improved with the Mode S system. To illustrate, when two aircraft are equal distances from a sensor in the existing system, they must be at least .23° of azimuth apart before both targets are displayed. With the Mode S system, those same aircraft need only be apart by .06° of azimuth to be displayed. A 1976 FAA-sponsored study postulated that a homogeneous Mode S environment (Mode S ground sensors and transponders) would increase integrity to more than 99 percent. Recent FAA tests and operational experience with the Mode S ground sensors have verified these figures.

If the number of aircraft operating in the National Airspace System continues to increase, the number of codes needed may eventually exceed the current limit of 4,096 discrete codes. Controllers assign these discrete codes, used to track aircraft position and altitude, to aircraft receiving air traffic services. The unique code assigned by the Mode S reduces the controller's workload and computer processing burden, allowing positive identification of an aircraft as it passes from one air traffic facility to another, and as data link messages are associated with surveillance targets. However, without a nationwide network of Mode S ground sensors in place and enhanced ATC computers with complementary software, these productivity benefits cannot be fully achieved.

Although the Mode S system improves accuracy in the surveillance of aircraft position and reduces interference in identify reports transmitted to air traffic controllers, which allows for clear surveillance of aircraft that are minimally separated, studies with the Precision Runway Monitor show that a multitude of procedural, pilot training, and other issues must be addressed before a relaxation in aircraft separation standards may be approved. Therefore the capacity benefits envisioned initially from Mode S are not primarily dependent on improved surveillance capability.

In addition to surveillance, the initial strategy for Mode S deployment includes a data-link capability. All secondary radar ground stations were to be converted to Mode S, which was to be the sole data link used for critical ATC messages. The FAA has adopted a new data link strategy with two principle thrusts: (1) a second FAA data link will be deployed as part of the next-generation air-ground VHF radios; and (2) private data link services will be considered if they meet FAA performance requirements. The message itself will be routed through an Aeronautical Telecommunications Network (ATN), which will automatically select the best air-ground media based on the nature of the message. This strategy provides a much more flexible and market-driven approach, which allows the FAA to work with the aviation community to use the best available evolving technology.

The new data link strategy means that nationwide Mode S ground station deployment is no longer required to establish the air-ground link. Further, mandatory Mode S transponder equipage by aircraft is not required to achieve widespread data link equipage in aircraft. The number of Mode S ground stations will now be determined by surveillance requirements and the marginal benefit of the increased air-ground data link capability.

Mode S capability is an integral part of the Traffic Alert and Collision Avoidance System II (TCAS II) required by § 121.356 14 CFR for certain aircraft operating under part 121. This regulation requires such aircraft having a passenger seating configuration of more than 30 seats to be equipped with an approved TCAS II and appropriate Mode S transponder by December 30, 1993. Used with TCAS II, Mode S provides air-to-air data exchange between TCAS-equipped aircraft making coordinated, complementary resolution advisories (recommended escape maneuvers) possible. A TCAS II system is rendered ineffective unless a Mode S transponder is installed with the TCAS II component.

Traffic Alert and Collision Avoidance System I (TCAS I) does not require data from Mode S transponders to function. This system is intended for use by aircraft with passenger seating configuration between 10 and 30 seats that are operated under parts 121 and 135. TCAS I provides proximity warning only to assist a pilot in the visual acquisition of intruder aircraft.

The FAA has determined that the requirement to install Mode S transponders after January 1, 1992, in aircraft not required to be equipped with TCAS II exceeds the requirements of the present and immediate future for a safe and efficient National Airspace System. Studies and analysis are being

conducted on advanced methods of aircraft separation to support the FAA's goal of "free flight." Free flight is an operational vision that will allow aircraft to cooperatively plan and execute their optimal flight paths with minimal interference from ground-based controllers. The overall infrastructure improvements to the airspace system (including surveillance) required to achieve operational benefits are being defined, and public comment will be sought on the benefits, procedures, and any new avionics requirements before they are implemented. The FAA further invites comment on whether future equipage of Mode S transponders should be mandatory for certain areas of operation.

Except for aircraft equipped with TCAS II, the presence of Mode S transponder capability on part 135 aircraft would not enhance the safety of flight in today's airspace environment. If the demand for air traffic services continues to increase, A mode S transponder may be necessary for aircraft operating under parts 121 and 135 to increase efficiency in some areas of the national airspace system.

The Proposed Rule

The FAA proposes to rescind the Mode S transponder requirement for aircraft operating under part 135 of the FAR and those aircraft operating under part 121 that are not required to have TCAS II.

Paperwork Reduction Act

This proposed rulmaking would rescind an agency regulation and would not change any reporting requirements. Therefore, no review or approval under the Paperwork Reduction Act is required.

Regulatory Evaluation Summary

The FAA has determined that this rulemaking is not a "significant regulatory action" as defined by Executive Order 12866 (Regulatory Planning and Review). The anticipated costs and benefits associated with this NPRM are summarized below. (A detailed discussion of costs and benefits is contained in the full regulatory evaluation contained in the docket for this NPRM.)

Overview

Although this proposal applies to operators under parts 121 and 135, the benefits and costs sections of this evaluation will only focus on part 135 operators. Of the part 121 operators, only those not required to install TCAS II would be affected by this proposed rule. The FAA is not able, at this time, to determine the number of these operators because there is no information readily available. For this reason, only the potential impact on part 135 operators will be analyzed in this evaluation. The FAA solicits comments from the aviation community as to the number of part 121 operators not required to have TCAS II.

This proposed Mode S rescission would apply to all part 135 operators regardless of what kind of transponder (remote-mounted or panel-mounted) they would purchase. For this evaluation, however, the FAA will consider only those part 135 operators who would install remote-mounted transponders. When the FAA estimated the benefits of the Mode S rescission for part 91 operators, it counted all of the panel mounted Mode S transponders since those transponders are predominantly installed in part 91 aircraft. The FAA has since learned that some panel-mounted transponders are also installed in part 135 aircraft, especially those with less than 10 seats. Thus, the FAA has not estimated the number of panel-mounted transponders that are being operated in part 135 aircraft for this proposed rule. The FAA has not estimated this number for two reasons. First, the proportion of new panel-mounted transponders that are installed in part 135 aircraft is very difficult to estimate. Second, even if that proportion could be estimated, it could not be used to calculate the benefits for the proposed rule since they were already used to calculate the benefits of rescinding the Mode S requirement for part 91 operators. Consequently, the benefits of the proposed rule are underestimated.

Benefits

The benefits of this proposed rule are the cost-savings to aircraft operators who would be allowed to purchase Mode A transponders instead of Mode 2 transponders. The FAA estimates the cost-savings to be approximately $10 million over the next 10 years. The present value of these cost-savings would be $7 million (discounted, 7 percent, 1992 dollars).

To estimate the potential cost-savings of this proposed rule, the FAA estimated the number of remote-mounted transponders that would be installed in part 135 aircraft with 10 to 29 seats. The FAA estimates that 780 such aircraft are being operated in the United States. These aircraft make up the vast majority of aircraft that would be affected by the proposed rule to rescind the Mode S requirements.

The potential benefits would be the cost-savings that these operators would realize when they replace an existing remote-mounted Mode A transponder. The proposed rule would allow them to purchase and install another remote-mounted Mode A transponder instead of a new remote-mounted Mode S transponder. To estimate these potential benefits, the FAA surveyed several transponder manufacturers, fixed-based operators, and regional airlines in an effort to ascertain information on the frequency of Mode A transponder replacement. According to these industry sources, a part 135 operator would purchase a new transponder, on average, once every 10 years. Thus, over the next 10 years, on average, each part 135 operator would have purchased a new Mode S transponder.

Currently, an estimated 780 part 135 aircraft would potentially be affected by this proposed rule. Therefore, the population of part 135 aircraft that would be affected by this proposed rule annually would be approximately 78 (780/10). This translates into approximately 78 remote-mounted Mode S transponders that would be sold annually over the next 10 years.

The difference in price (including installation) between the average remote-mounted Mode A transponder and the average remote-mounted Mode S transponder is $12,800. This price represents the average cost-savings that a part 135 operator could realize as a result of the proposed rule to rescind Mode S requirements. Multiplying this cost-savings estimate of $12,800 by the number of transponders expected to be sold over the next 10 years would result in total potential benefits of $10 million (or $7 million discounted).

Costs

The proposed rule would impose an estimated cost of $910,000 (or $640,000 discounted) over the next 10 years. This cost impact would only affect Mode S manufacturers and would be the reduction in profit earned from Mode S sales. (Sales from Mode S exports would not be affected by the NPRM.) This proposed rule would not impose costs in the form of either reduced aviation safety or operational efficiency. The expected aviation safety and operational efficiency benefits of the Mode S rule have not been realized because the ground sensors were never installed and tested. This assessment is based on the following analysis of each of the potential cost components.

Aviation Safety and Operational Efficiency

Rescinding the Mode S requirement would not decrease operational efficiency in the air traffic control system. In addition, the rescission would not decrease safety to aircraft operators and the flying public. While areas of high density air traffic may benefit from the improved target and altitude integrity of the Mode S system, the benefit will derive primarily from the ground sensor component; the limited benefit expected from the transponder component by itself would appear not to warrant the current Mode S transponder requirement for part 135 aircraft. Since those potential benefits have never been realized, neither aviation safety nor operational efficiency would decrease as a result of this proposed rule.

Mode S Transponder Manufacturers

Another potential cost impact of this proposed rule would be the additional costs incurred by manufacturers of Mode S transponders in lost profits. The manufacturers of remote-mounted Mode S transponders have made investments in designing and developing such products. The potential costs to those manufactures would be: (1) The initial investment to develop Mode S transponders for part 135 aircraft and (2) the potential lost profit on each remote-mounted Mode S transponder sold in the future. In terms of the initial development cost, there would be no loss due to this proposed rule. These manufacturers have incurred costs for developing remote-mounted Mode S transponders in response to the Mode S rule. Such costs, which are in excess of $4 million (undiscounted), are sunk and cannot be considered as part of the proposed rule. Once an investment is made and cannot be altered, it is called a sunk cost. For this reason, sunk costs are not considered when evaluating the costs of regulatory actions.

In terms of profits on Mode S transponders sold in the future, the proposed rule would impose a cost. The proposed Mode S rescission would decrease the demand for remote-mounted Mode S transponders by part 135 operators; hence, the cost to manufacturers would be lost profit. This lost profit would represent the difference in profit earned from sales of Mode A rather than Mode S transponders over the next 10 years. Due to the proprietary nature of such information, the FAA was unable to ascertain specific rates of profit that manufacturers earn on the sale of Mode S transponders. However, the FAA did receive information that indicates the profit earned on the sale of Mode A transponders is 10 percent. The FAA contends that this rate is also a fair representation for Mode S transponders as well, since they are similar products installed in the same type of aircraft and purchased by the same part 135 operators.

The amount of potential lost profit (LP) is the amount of revenue (R) that would be earned from the sale of Mode S transponders (instead of Mode A transponders) less the cost (C) of manufacturing Mode S transponders (instead of Mode A transponders). The revenue is equivalent to the cost-savings incurred by aircraft operators, which is $7 million (discounted) over the next 10 years. The cost of manufacturing Mode S tranponders can be estimated based on the relationship between the rate of profit, the revenue and the manufacturing cost. In general terms, this relationship can be represented as R=C×P. In this instance, revenue is $7 million and profit is 1.10. To estimate the potential lost profit, the following calculation is made:

R=C×P=$7M
C=$7M/1.10=$6.36M
LP=R−C=$640,000

As shown in the above calculation, the estimate of $640,000 represents the present value lost profit from selling Mode A instead of Mode S transponders over the next 10 years. The FAA recognizes that there is some uncertainty in the accuracy of the rate of profit on transponder sales for manufacturers. This uncertainty is due, in large part, to the fact that the rate of profit varies among manufacturers of remote-mounted Mode S transponders. As the result of this uncertainty, the FAA solicits comments from manufacturers of remote-mounted Mode S transponders as to the accuracy of the 10 percent rate of profit estimate.

Conclusion

The potential cost-relieving benefits of this proposed rule are estimated to be $7 million (discounted). The potential costs are estimated to be $640,000 (discounted). Based on this assessment, the FAA has determined that this proposed rule is cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily burdened by government regulations. The RFA requires agencies to review rules that may have a "significant economic impact on a substantial number of small entities."

According to the FAA's *Regulatory Flexibility Criteria and Guidance (2100.14A)*, a substantial number of small entities means a number that is not less than 11 and that is more than one third of the small entities subject to the proposed rule. The small entities that this proposed rule would potentially affect are aircraft flight instrument manufacturers that produce no more than 250 units annually. The FAA has identified the three manufacturers that produce remote mounted Mode S transponders. On average, these three manufacturers combined sell approximately 2,200 transponders annually. Each of the three manufacturers sell, on average, approximately 730 (2,200/3) Mode S transponders annually. Since 730 exceeds the annual size threshold of 250, none of the U.S. Mode S transponder manufacturers are considered to be small. Thus, this proposed rule would not impose a significant economic impact on a substantial number of small entities. For this reason, a regulatory flexibility analysis is not required.

International Trade Impact Assessment

The Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. This proposed rule would not have a competitive trade disadvantage on foreign companies that sell foreign aviation products or services in the United States. This proposed rule also would not have a competitive trade disadvantage on domestic companies that sell U.S. products or services in foreign countries. This assessment is based on the belief that the number and type of transponders sold to foreign operators by U.S. manufacturers would not change as a result of this proposed rescission. The FAA was not able to identify any foreign manufacturers that sell transponders in the United States. Based on this information, the FAA contends that there would be no impact on them. However, the FAA solicits any comments on the international trade impact.

Federalism Implications

The proposed rescission of the regulation herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in this preamble and based on the findings in

the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that the proposed rescission of this regulation is not significant under Executive Order 12866. In addition,the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered not significant under DOT Regulatory Policies and Procedures (44 FR 111034; February 26, 1979). A regulatory evaluation of the regulation, including a Regulatory Flexibility Determination, and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Charter flights, Transportation.

14 CFR Part 135

Air taxis, Aircraft, Aviation safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 121 and 135 of Title 14, Code of Federal Regulations (14 CFR parts 121 and 135) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

2. Section 121.345(c) is revised to read as follows:

§ 121.345 Radio equipment.

* * * * *

(c) ATC transponder equipment installed after January 1, 1992, must meet the performance and environmental requirements of the following TSO's:

(1) For aircraft not required to be equipped with an approved TCAS II traffic alert and collision avoidance system pursuant to § 121.356, any class of TSO–C74b or TSO–C74c, as appropriate, or the appropriate class of TSO–C112 (Mode S).

(2) For aircraft required to be equipped with an approved TCAS II traffic alert and collision avoidance system pursuant to § 121.356, the appropriate class of TSO–C112 (Mode S).

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATIONS

1. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

2. Section 135.143(c) is revised to read as follows:

§ 135.143 General requirements.

* * * * *

(c) ATC transponder equipment installed after January 1, 1992, must meet the performance and environmental requirements of any class of TSO–C74b or TSO–C74c, as appropriate, or the appropriate class of TSO–C112 (Mode S).

Issued in Washington, DC on May 15, 1996.

William J. White,

Acting Director, Flight Standards Service.

[FR Doc. 96–13030 Filed 5–22–96; 8:45 am]

BILLING CODE 4910–13–M

federal register

Thursday
May 23, 1996

Part VI

Department of Justice

Federal Procurement; Proposed Reforms to Affirmative Action; Notice

DEPARTMENT OF JUSTICE

Proposed Reforms to Affirmative Action in Federal Procurement

AGENCY: Department of Justice.

ACTION: Public notice and invitation for reactions and views.

SUMMARY: The proposal set forth herein to reform affirmative action in federal procurement has been designed to ensure compliance with the constitutional standards established by the Supreme Court in *Adarand Constructors, Inc. v. Peña*, 115 S. Ct. 2097 (1995). The proposed structure, which has been developed by the Justice Department, will form a model for amending the affirmative action provisions of the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

DATES: Comment Date: Reactions and views on the proposed model must be submitted in writing to the address below by July 22, 1996.

ADDRESSES: Interested parties should submit written comments to Mark Gross, Office of the Assistant Attorney General for Civil Rights, P.O. Box 65808, Washington, D.C. 20035–5808, telefax (202) 307–2839.

FOR FURTHER INFORMATION CONTACT: Mark Gross, Office of the Assistant Attorney General for Civil Rights, P.O. Box 65808, Washington, D.C. 20035–5808, telefax (202) 307–2839.

Introduction

In *Adarand*, the Supreme Court extended strict judicial scrutiny to federal affirmative action programs that use racial or ethnic criteria as a basis for decisionmaking. In procurement, this means that any use of race in the decision to award a contract is subject to strict scrutiny. Under strict scrutiny, any federal programs that make race a basis for contract decisionmaking must be narrowly tailored to serve a compelling government interest.

Through its initial authorization of the use of section 8(a) of the Small Business Act to expand opportunities for minority-owned firms and through reenactments of this and other programs designed to assist such businesses, Congress has repeatedly made the judgment that race-conscious federal procurement programs are needed to remedy the effects of discrimination that have raised artificial barriers to the formation, development and utilization of businesses owned by minorities and other socially disadvantaged individuals. In repeated legislative enactments, Congress has, among other measures, established goals and granted authority to promote the participation of Small Disadvantaged Businesses (SDBs) in procurement for the Department of Defense, NASA and the Coast Guard. It also enacted the Surface Transportation Assistance Act of 1982, the Surface Transportation and Uniform Relocation Assistance Act of 1987 and the Intermodal Surface Transportation Efficiency Act of 1991, each of which successively authorized a goal for participation by Disadvantaged Business Enterprises. Congress also included similar provisions in the Airport and Airway Improvement Act of 1982 with respect to procurement regarding airport development and concessions. Under Section 15(g) of the Small Business Act, 15 U.S.C. 644(g), Congress has established goals for SDB participation in agency procurement. Finally, in 1994, Congress enacted the Federal Acquisition Streamlining Act (FASA), which extended generally to federal agencies authority to conduct various race-conscious procurement activities. The purpose of this measure was to facilitate the achievement of goals for SDB participation established for agencies pursuant to Section 15(g) of the Small Business Act.

Based upon these congressional actions, the legislative history supporting them, and the evidence available to Congress, this congressional judgment is credible and constitutionally defensible. Indeed, the survey of currently available evidence conducted by the Justice Department since the *Adarand* decision, including the review of numerous specific studies of discrimination conducted by state and local governments throughout the nation, leads to the conclusion that, in the absence of affirmative remedial efforts, federal contracting would unquestionably reflect the continuing impact of discrimination that has persisted over an extended period. For purposes of these proposed reforms, therefore, the Justice Department takes as a constitutionally justified premise that affirmative action in federal procurement is necessary, and that the federal government has a compelling interest to act on that basis in the award of federal contracts.[1]

Subject to certain statutory limitations (that are discussed below), Congress has largely left to the executive agencies the determination of how to achieve the remedial goals that it has established. The Court in *Adarand* made clear that, even when there is a constitutionally sustainable compelling interest supporting the use of race in decisionmaking, any such programs must be narrowly tailored to meet that interest. We have focused, therefore, on ensuring that the means of serving the congressionally mandated interest in this area are narrowly tailored to meet that objective. This task must be taken very seriously. *Adarand* made clear that Congress has the authority to use race-conscious decisionmaking to remedy the effects of past and present discrimination but emphasized that such decisionmaking must be done carefully. This Administration is committed to ensuring that discriminatory barriers to the opportunity of minority-owned firms are eliminated and the maximum opportunities possible under the law are maintained. Our focus, therefore, has been on creating a structure for race-conscious procurement that will meet the congressionally determined objective in a manner that will survive constitutional scrutiny.

In giving content to the narrow tailoring prong of strict scrutiny, courts have identified six principal factors: (1) Whether the government considered race neutral alternatives and determined that they would prove insufficient before resorting to race-conscious action; (2) the scope of the program and whether it is flexible; (3) whether race is relied upon as the sole factor in eligibility, or whether it is used as one factor in the eligibility determination; (4) whether any numerical target is reasonably related to the number of qualified minorities in the applicable pool; (5) whether the duration of the program is limited and whether it is subject to periodic review; and (6) the extent of the burden imposed on nonbeneficiaries of the program. Not all of these factors are relevant in every circumstance and courts generally consider a strong showing with respect to most of the factors to be sufficient. This proposal, however, responds to all six factors.

The Department of Defense (DoD), which conducts a substantial majority of the federal government's procurement, was the focus of initial post-*Adarand* compliance actions by the federal government. In particular, DoD, acting pursuant to authority granted by 10 U.S.C. § 2323,[2] had developed through

[1] Set forth as an appendix to this notice is a preliminary survey of evidence establishing the compelling interest for affirmative action in federal procurement.

[2] Section 2323 establishes a five percent goal for DoD contracting with small disadvantaged businesses ("SDBs") and authorizes DoD to "enter into contracts using less than full and open competitive procedures * * * and partial set asides for [SDBs]." Section 2323 states that the cost of using such measures may not exceed fair market price by more than ten percent. It authorizes the Secretary of Defense to adjust the applicable percentage "for any industry category if available information clearly indicates that nondisadvantaged small business concerns in such industry category are generally being denied a reasonable opportunity to compete for contracts because of the use of that percentage in the application of this paragraph."

[3] 10 U.S.C. 2323 incorporates by explicit reference the language of section 8(d) of the Small Business Act, which states that members of designated racial or ethnic groups are presumed to be socially and economically disadvantaged. Participants in the 8(a) program are also presumed to be SDBs.

[4] FASA states that in order to achieve goals for SDB participation in procurement negotiated with the Small Business Administration, an "agency may enter into contracts using—(A) less than full and open competition by restricting the competition for such awards to small business concerns owned and controlled by socially and economically disadvantaged individuals described in subsection (d)(3)(C) of section 8 of the Small Business Act (15 U.S.C. 637); and (B) a price evaluation preference not in excess of 10 percent when evaluating an offer received from such a small business concern as the result of an unrestricted solicitation."

[5] This proposal addresses only affirmative action in the federal government's own direct procurement. It does not address affirmative action in procurement and contracting that is undertaken by states and localities pursuant to programs in which such entities receive funds from federal agencies (*e.g.*, the Disadvantaged Business Enterprise program that the Department of Transportation administers pursuant to the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102–240, section 1003(b), 105 Stat. 1919–1922, and the Airport and Airway Improvement Act of 1982, 49 U.S.C. 47101, *et seq.*).

regulation a practice known as the "rule of two." Pursuant to the rule of two, whenever a contract officer could identify two or more SDBs that were qualified to bid on a project at a price within 10% of fair market price, the officer was required to set the contract aside for bidding exclusively by SDBs. Under section 2323, firms owned by individuals from designated racial minority groups are presumed to be SDBs.[3] Others may enter the program by establishing that they are socially and economically disadvantaged. After consultation with the Department of Justice, DoD suspended use of the rule of two in October 1995.

Congress in 1994 extended the affirmative action authority granted DoD by section 2323 to all agencies of the federal government through enactment of the Federal Acquisition Streamlining Act (FASA), Public Law No. 103–355, sec. 7102, 108 Stat. 3243, 15 U.S.C. 644 note.[4] Because of *Adarand* and the effort to review federal affirmative action programs in light of that decision, regulations to implement the affirmative action authority granted by FASA have been delayed. See 60 Fed. Reg. 448258, 48259 (Sept. 18, 1995). This proposal provides the basis for those regulations.

The proposed structure will necessarily affect a wide range of measures that promote minority participation in government contracting through race-conscious means. Taking DoD as an example, approximately one-sixth of contracting with minority-owned firms in 1994 resulted from use of the rule of two. The majority of dollars to minority firms was awarded by DoD through other means: direct competitive awards, the Small Business Administration's (SBA) section 8(a) program, subcontracting pursuant to section 8(d) of the Small Business Act, and a price credit applied pursuant to section 2323. With the exception of direct competitive awards (which do not take race into account), activities pursuant to all of these methods will be affected by the proposed reforms.[5]

The 8(a) program merits special mention at the outset. This program serves a purpose that is distinct from that served by general SDB programs. The 8(a) program is designed to assist the development of businesses owned by socially and economically disadvantaged individuals. To this end, the program is targeted toward concerns that are more disadvantaged economically than other SDBs (e.g. the standard for economic disadvantage for entry into 8(a) is an owner's net worth of $250,000 compared to $750,000 for SDB programs). Participants in the program are required to establish business development plans and are eligible for technical, financial, and practical assistance, and may compete in a sheltered market for a limited time before graduating from the program. Each of these aspects of the program is designed to assist the business in developing the technical and practical experience necessary to become viable without assistance. By contrast, the general SDB program is a procurement program, designed to assist the government in finding firms capable of providing needed services, while, at the same time, helping to address the traditional exclusion of minority-owned firms from contracting opportunities.

The operation of the 8(a) program will become subject to the overall limitations in the measures described below. In addition, the SBA is working to strengthen safeguards against fraud and to ensure that the 8(a) program serves its purpose of assisting the development of businesses owned by individuals who are socially and economically disadvantaged.

Because the proposed reforms are broad and cover a number of different subjects related to affirmative action in federal procurement, the Justice Department is seeking comments on each of the aspects of the proposal. Comments will be taken into account in the formulation of revised procurement regulations.

Overview of Structure

The SDB reform outlined herein involves five major topics: (1) Certification and eligibility; (2) benchmark limitations; (3) mechanisms for increasing minority opportunity; (4) the interaction of benchmark limitations and mechanisms; and (5) outreach and technical assistance. The proposed structure incorporates these elements into a system that furthers the President's commitment to ensuring equal opportunity in contracting, responds to the courts' narrow tailoring requirements, and is faithful to statutory authority.

I. Eligibility and Certification

At present, while a concern must have its eligibility certified by the SBA to participate in the 8(a) program, there is no similar certification requirement for participation in SDB programs. Under current practice, firms simply check a box to identify themselves as SDB's when bidding for federal contracts or 8(d) subcontracts. Reform of this certification process is needed to assure that programs meet constitutional and statutory objectives. While the basic elements of eligibility under these programs are statutorily determined, agencies have discretion to impose significant additional controls and to establish mechanisms to assure that the statutory criteria are in fact met.

The SBA will continue as the sole agency with authority to certify firms for the 8(a) program. The following discussion, therefore, concerns only certification of SDB's that are not participants in the 8(a) program.

Each bid that an SDB submits to an agency, or to a prime contractor seeking to fulfill 8(d) subcontracting obligations, will have to be accompanied by a form certifying that the concern qualifies as a small disadvantaged business under eligibility standards that will be published by the SBA. The standards and certification form will allow 8(a) participants to qualify automatically for SDB programs. Others will be required to establish their eligibility by submitting required statements and documentation.

When a concern has been certified by an agency as eligible for SDB programs, its name will be entered into a central on-line register to be maintained by SBA. That certification will be valid for a period of up to three years during which time registered firms will have only to complete a portion of the form confirming the continued validity of that certification to participate in SDB

programs at any agency. A full application will have to be submitted to an agency every three years to maintain eligibility.

A. Social and Economic Disadvantage

Members of designated minority groups seeking to participate in SDB and 8(d) programs will continue to fall within the statutorily mandated presumption of social and economic disadvantage.[6] This presumption is rebuttable as to both forms of disadvantage. The form will ask the applicant to identify the group identification triggering a presumption of social and economic disadvantage.[7] In addition, the form will enumerate the objective criteria constituting economic disadvantage according to SBA standards and advise the applicant that the presumption of such disadvantage is rebuttable and any challenge to the individual's SDB status will be resolved on the basis of these criteria. Challenges would be processed through existing SBA challenge mechanisms.

Individuals who do not fall within the statutory presumption will be required to establish social and economic disadvantage by answering a series of questions demonstrating such disadvantage. Questions regarding social disadvantage will be included in the standard certification form. Pursuant to current practice, individuals who do not fall within a presumption must prove their social disadvantage by clear and convincing evidence. That standard will be changed to permit proof by a preponderance of the evidence.

The SBA currently has criteria for evaluating social disadvantage. SBA will conduct training seminars designed to instruct personnel from other agencies on the procedures for making eligibility determinations. Individuals who do not fall within the statutory presumption will also be required to demonstrate that they are economically disadvantaged according to the criteria established by SBA.

Agencies will have discretion to decide which official within the agency will have authority to determine whether "non-presumed" individuals are socially and economically disadvantaged.[8] In most instances, the contracting officer should not have final authority to make the determination; the procedure must, however, facilitate quick decisions so that the procurement process will not be delayed and applicants will have a fair opportunity to compete. An agency may wish to assign this responsibility to its Office of Small and Disadvantaged Business Utilization. The SBA will answer inquiries regarding eligibility determinations and the procuring agency will retain the ability to refer applications to the SBA for final eligibility determinations through the protest procedures now in place. In the alternative, an agency may enter into an agreement with SBA to have SBA make all determinations, including the initial determination of eligibility.

B. Ownership and Control

In addition to submitting the form described above, every applicant will be required to submit with each bid a certification that the business is owned and controlled by the designated socially and economically disadvantaged individuals as those terms are defined by the SBA's standards for ownership and control at 13 C.F.R. 124.103 and 124.104.[9] Such a certification must come from an SBA approved organization, a list of which will be maintained by the SBA. In order to be approved by the SBA to certify ownership and control, (1) the entity must certify ownership and control according to the standards established by the SBA for the 8(a) program (13 C.F.R. 124.103 and 124.104); (2) the entity's certifications must have been accepted by a state or local government or a major private contractor; and (3) the entity must not have been disqualified by any government authority from making certifications within the past five years. Such entities may include private organizations, the SBA (*i.e.* through the 8(a) program), entities that provide certifications for participation in the Department of Transportation's disadvantaged business enterprise ("DBE") program, or states or localities, so long as the certification addresses the standards for ownership and control promulgated by the SBA.

This procedure is intended to take advantage of the extensive network of certifying entities already in existence. At present, firms may have to obtain several different certifications as they pursue a mix of private and public contracts. While it is clear that a control mechanism is needed to protect against fraud, it makes little sense to create a new federal bureaucracy to perform work that is already being done and to erect another hurdle that an SDB must clear before qualifying for a federal contract. The limited resources of the federal government and of SDBs make creation of such a bureaucracy counterproductive.

To police the quality of certifications, SBA will conduct periodic audits of certifying organizations. Any entity may submit information to the SBA in an effort to persuade the agency to initiate such an audit.

As a means of ensuring that the identified socially and economically disadvantaged individuals retain ownership and control of a firm, a certification of ownership and control will be valid for a maximum of three years from the date it was issued. Certified firms will be required to recertify their eligibility by submitting a full application, including an updated certification of ownership and control, every three years.

C. Challenges

Where an SDB is the apparent successful offeror on a contract, the name of that firm and of the entity that certified its ownership and control will be a matter of public record. SBA regulations currently allow any concern that submitted an offer to protest the eligibility of an SDB that receives a contract through an SDB program. The procuring agency or SBA may also protest the eligibility of an SDB. Individuals or organizations that did not submit a bid for the contract in question may submit information to the procuring agency in an effort to convince the agency to initiate a protest.[10] The SBA's Division of Program Certification and Eligibility will process any protest that contains specific factual allegations that the concern is not eligible for the program.

Grounds for an eligibility protest may include, but are not limited to, evidence that:

- The owners of the firm are not in fact socially or economically disadvantaged;
- The firm is not owned and controlled by the individuals who meet the definition of social and economic disadvantage;
- The disadvantaged firm has acted, or is acting, as a front company by failing to complete required percentages of the work contracted to the concern.[11]

Upon receiving a protest supported by specific factual information, the SBA will make an eligibility determination by examining documentation from the SDB including, for example, personal and business financial statements, business records, ownership certifications, and other information deemed necessary to permit a determination as to the eligibility of the firm. Current regulations require the SBA to make a determination concerning the eligibility of the firm within 15 days of the filing of the challenge or notify the contracting officer of any delay.

D. Enforcement

Finally, there must be a concerted effort to enforce the law against individuals who present fraudulent information to the government. The existence of a meaningful threat of prosecution for falsely claiming SDB status, or for fraudulently using an SDB as a front in order to obtain contracts, will do much to ensure that the program benefits those for whom it is designed. To this end, there will be an enhanced effort by SBA and the Department of Justice to identify and pursue individuals fraudulently misrepresenting information in order to obtain contracts through an SDB program. Any individual may forward specific factual information suggesting such a misrepresentation to the procuring agency contracting officer or the agency's inspector general. Similarly, the Inspector General of SBA will refer evidence of misrepresentation that emerges through the challenge procedure or otherwise to the Department of Justice. In its enforcement, the Department of Justice will ensure that it pursues to the extent permitted by law all of the parties responsible for fraudulent or sham transactions.

Penalties for misrepresentations in this area were increased by the Business Opportunity Development and Reform Act of 1988 and include:

(1) A fine of up to $500,000, imprisonment of up to 10 years, or both;

(2) Suspension and debarment from Federal contracting (48 C.F.R. pt. 9.4);

(3) Ineligibility to participate in any program or activity conducted under the authority of the Small Business Act or the Small Business Investment Act of 1958 for a period of up to three years; and

(4) Administrative remedies prescribed by the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812).

Knowing and willful fraudulent statements or representations may subject an individual to criminal penalties, including imprisonment for up to five years, pursuant to 18 U.S.C. 1001. In addition, knowing misrepresentations to obtain payment from the federal government may violate the False Claims Act, 31 U.S.C. 3729, and subject the claimant to civil penalties and treble damages.

II. Benchmark Limits

Although Congress has made the judgment that affirmative race-conscious measures are needed in federal contracting, the use of race must be narrowly tailored. The federal government operates under a general statutory mandate to achieve the "maximum practical opportunity" for SDB participation and that overall mandate is translated into specific agency-by-agency goals. Some specific programs operate under statutorily prescribed goals.[12] To the extent that race-conscious measures (going beyond outreach and technical assistance) are utilized to obtain these objectives, limitations must be established to comply with narrow tailoring requirements.

To this end, the proposal relies on development of a set of specific guidelines to limit, where appropriate, the use of race-conscious measures in specific areas of federal procurement. The limits, or "benchmarks", will be set for each industry for the entire government. The Department of Commerce, in consultation with the General Services Administration (GSA) and SBA, will establish appropriate benchmark limitation figures for each industry and report them to the Office of Federal Procurement Policy (OFPP), which will publish and disseminate the final benchmark figures. Each industry benchmark limitation will represent the level of minority contracting that one would reasonably expect to find in a market absent discrimination or its effects. Benchmark limitations will provide the basis for comparison with actual minority participation in procurement in that industry (and, where appropriate, in a region).

In establishing the benchmark limitations, the first step is to define whether industries operate according to regional or national markets. In general, industries will be defined according to two-digit Standard Industrial Classification (SIC) codes. Based on the evidence, it appears that most federal contracting is conducted on a national basis. We also start from the view, reflected in a variety of federal policies, that federal contracting should encourage the development of national markets wherever feasible. Where data indicate, however, that an industry operates regionally, the benchmark limitations will be established by region.

After identifying the markets, the system will then measure, using primarily census data, the capacity of firms operating in each market that are owned by minorities. In estimating capacity, a number of factors will be examined. Most significant, of course, will be the number of minority SDBs available and qualified to perform government contracts.[13] In general, it appears appropriate to look at the industry in question and identify the smallest firm that has won a government contract in that industry in the last three years. Firms that are significantly smaller would be presumed to be unqualified to perform government contracts in that industry. While keeping in mind that capacity is not fixed, it will also be important to look at measures such as the number of employees and amount of revenues.

In addition to calculating the capacity of existing minority firms, the proposed system will examine evidence, if any, demonstrating that minority business formation and operation in a specific industry has been suppressed by

[6] Both FASA and 10 U.S.C. 2323 incorporate by explicit reference the definition of social and economic disadvantage contained in section 8(d) of the Small Business Act. Pursuant to section 8(d), members of designated groups are presumed to be both socially and economically disadvantaged; those presumptions are rebuttable. By contrast, for the 8(a) program, members of identified groups are rebuttably presumed to be socially disadvantaged, but must establish that they are economically disadvantaged.

[7] Members of minority groups do not have to participate in the SDB program in order to bid on federal contracts.

[8] The form that such individuals are to complete will ask whether they previously have applied for SDB certification and been rejected or accepted. A rejected firm will not be permitted to re-apply for certification for one year after rejection, unless it can show changed circumstances.

[9] The standard certification form will accommodate one eligibility criterion peculiar to the DoD's SDB program under 10 U.S.C. 2323—that the majority of earnings must directly accrue to the socially and economically disadvantaged individuals that own and control the concern. The standard certification form will accommodate this criterion by including a DoD-specific section requiring the concern to attest that the majority of the firm's earnings do flow in this manner.

[10] The protests contemplated in the discussion here relate only to certification and eligibility. The discussion does not relate to protests to other features of the proposed reforms that might be raised through existing bid protest procedures or through actions under the Administrative Procedure Act.

[11] The basis for such a challenge would be 48 C.F.R. 19.506, which requires completion of a minimum percentage of contract activities by the firm awarded a contract through a small business set aside or the 8(a) program. A clause must be inserted in such contracts that limits the amount of work that can be subcontracted. 48 C.F.R. 52.219–14. These requirements will be expanded to include contracts awarded through the reformed SDB program as well.

[12] See, *e.g.*, 10 U.S.C. 2323 (5% goal for DoD contracting with SDBs); Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102–240, 105 Stat. 1914 (10% goal for highway construction projects carried out directly by the Department of Transportation).

[13] For these purposes, the calculation of the number of minority-owned firms will not include corporations owned by federally-recognized Native American tribes and Alaskan Native villages. Bidding credits for such corporations are not subject to the *Adarand* strict scrutiny standard.

discrimination. This evidence may include direct evidence of discrimination in the private and public sectors in such areas as obtaining credit, surety guarantees and licenses. It may also include evidence of discrimination in pricing and contract awards. In addition, the evidence may include the results of regression analysis techniques similar to those used in state studies of discrimination in procurement. That form of analysis holds constant a variety of variables that might affect business formation so that the effect of race can be isolated.

The combination of existing minority capacity and, where applicable, the estimated effect of race in suppressing minority business activity in the industry will form the benchmark limitation. Although there is no absolutely precise way to calculate the impact of discrimination in various markets, the benchmark limitations represent a reasonable effort to establish guidelines to limit the use of race-conscious measures and to meet the requirement that such measures be narrowly tailored to accomplish the compelling interest that Congress has identified in this area.

Benchmark limitations will be adjusted every five years, as new data regarding minority firms are made available by the Census Bureau. Generally, census regions will be used in defining the scope of regional markets.

III. Mechanisms for Increasing Minority Opportunity

Under the reformed structure, the federal government will generally have authority, subject to the limitations discussed in the next section, to use several race-conscious contracting mechanisms: SBA's 8(a) program: a bidding credit for SDB prime contractors; and an evaluation credit for non-minority prime contractors that use SDBs in subcontracting. In addition, at all times, agencies must engage in a variety of outreach and technical assistance activities designed to enhance contracting opportunities for SDBs (but that are not subject to strict scrutiny). Those efforts will be expanded as described more fully below.

The 8(a) program will continue to provide for sole source contracting and sheltered competition for 8(a) firms. However, the program will be monitored; and where the benchmark limitations described more fully below warrant adjustments to the SDB program, corresponding adjustments will be made to the 8(a) program to ensure that its operation is subject to those limitations.

A second available race-conscious measure will be a bidding credit in prime contracting for SDBs. Statutory authority for the use of such a credit exists for DoD in 10 U.S.C. 2323 and for the remainder of the government in FASA. Each statute permits use of such a credit so long as the final price does not exceed a fair market price by more than 10%.

The use of the term "credit" is not meant to restrict utilization by agencies of this mechanism to contracts where price is the primary factor in selecting the successful bidder. Where the successful bidder is selected based on other factors—such as the ability to produce a contract that provides the "best value" to the agency—agencies may build the value of increasing the participation of SDB contractors into the evaluation of offers. For some contracts, a numerical credit may be appropriate; in others, some form of nonnumerical assignment may make more sense to the agency. This proposal does not restrict such options. However, regardless how it operates, any bidding credit will be subject to the overall limitations on race-conscious mechanisms described herein.

Pursuant to 10 U.S.C. 2323 and FASA, agencies will also be permitted to use, as a third race-conscious mechanism, an evaluation credit with respect to the utilization by nonminority prime contractors of SDBs as subcontractors. Such goals would be set by the agency for each prime contract based on the availability of minority firms to perform the work. The award of evaluation credits for prime contractors that use SDBs as subcontractors will supplement the existing statutory SDB subcontracting requirements in Section 8(d) of the Small Business Act.[14] In order to certify their eligibility as SDBs, subcontractors will submit the same certification form to the prime contractor that is described in the certification section of this proposal.

Such an evaluation credit can take a number of different forms, depending on the circumstances of a solicitation.[15] For example, where it is practical for bidders to secure enforceable commitments from SDB subcontractors prior to the submission of bids, agencies should establish an SDB subcontracting goal for the contract, and award an evaluation credit to bidders who demonstrate that they have entered into such commitments as a means of achieving the goal. Where that is not practical, agencies can award an evaluation credit to a bidder that specifically identifies in a subcontracting plan those SDB subcontractors that it intends to use to achieve the agency's SDB subcontracting goal.[16] Agencies may also award an evaluation credit based on demonstrable evidence of a bidder's past performance in using SDB subcontractors. Agencies may also grant bonus awards to prime contractors to encourage the use of SDB subcontractors.[17] This proposal is not intended to limit agencies in developing or using additional mechanisms to increase SDB subcontracting, but any such mechanism will be subject to the limitations on race-conscious mechanisms described herein.

In applying these bidding and evaluation credits, race will simply be one factor that is considered in the decision to award a contract—in contrast to programs in which race is the sole factor.

IV. Interaction of Benchmark Limits and Mechanisms

In determining how benchmark limitations will be used to measure the appropriateness of various forms of race-conscious contracting, the objective has been to develop a system that can operate with a sufficient degree of clarity, consistency and simplicity over the range of federal agencies and contracting activities. Where the use of all available tools, including direct competition and race-neutral outreach and recruitment efforts, results in minority participation below the benchmark, race-based mechanisms will remain available. Their scope, however, will vary and be recalculated depending on the extent of the disparity between capacity and participation. Where participation exceeds the benchmark, and can be expected to continue to do so with reduced race-conscious efforts, adjustments will be made.

[14] For certain types of procurement, Section 8(d) requires agencies to negotiate an SDB subcontracting plan with the successful bidder for the prime contract. The statute provides that each such plan shall include percentage goals for the utilization of SDB subcontractors.

[15] As was the case with respect to the use of the term "credit" in connection with bids from SDBs as prime contractors, the use of that term here in connection with SDB subcontracting is not intended to restrict the utilization of this mechanism to the evaluation of prime contract bids for which price is the primary factor in selecting the successful bidder.

[16] In either case, a successful prime contractor should notify the contracting officer of any substitution of a non-SDB subcontractor for an SDB firm with which the prime contractor had entered into enforceable commitments or that had been specifically identified in the prime contractor's subcontracting plan.

[17] See e.g., Department of Transportation Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns, 48 C.F.R. 52 219–10.

At the close of each fiscal year, the Department of Commerce will review data collected by its GSA's Federal Procurement Data Center for the three preceding fiscal years to determine the percentage of contracting dollars that has been awarded to minority-owned SDBs in each two-digit SIC code. Commerce will analyze minority SDB participation for all transactions that exceed $25,000. This review will include minority-owned SDBs participating through direct contracting (including full and open competition), the 8(a) program, and SDB prime and subcontracting programs.[18] Data regarding minority participation will be reviewed annually, but will include the past three fiscal years of experience. Examining experience over three year stretches should produce a more accurate picture of minority participation, given short-term fluctuations and the fact that the process of bidding and awarding a contract may span more than a single fiscal year.

Commerce will analyze the data and, after consultation with SBA, report to OFPP regarding which mechanisms should be available in each industry and the size of the credits that can be applied. OFPP will publish and disseminate the mechanisms that can be used by the agencies in the upcoming year.

Pursuant to 15 U.S.C. 644(g), each agency now negotiates goals for SDB participation with SBA for each year. Commerce would inform SBA and agencies of the appropriate benchmark limits for the industries in which the agency contracts and of the mechanisms available.

Where Commerce determines that participation by SDB's in government contracting in an industry is below the relevant benchmark limitation, it may report to OFPP that agencies should be authorized to grant credit to SDB bidders and to prime contractors for SDB subcontracting. Commerce will set a percentage cap of up to ten percent on the amount the credit can allow the price of a contract to deviate from the fair market price. That percentage will represent the maximum credit that each agency may use in the evaluation of bids from SDBs and prime contractors who commit to subcontracting with SDBs. The size of the credit will depend, in part, on the extent of the disparity between the benchmark limitations and minority SDB participation in federal procurement and industry. It also will depend on an assessment of pricing practices within particular industries to indicate the effect of credits within that industry. Commerce's determinations would be published and disseminated by OFPP.

Where the bidding and evaluation credits have been used in an industry and the percentage of dollars awarded to SDBs in that industry exceeds the benchmark limit, Commerce, in consultation with SBA, must estimate the effect of curtailing the use of race-conscious contracting mechanisms and report to OFPP. If Commerce determines that the minority participation rate would fall substantially below the benchmark limit in the absence of race-conscious measures,[19] it need not require agencies to stop using such measures, but may, as described below, require agencies to adjust their use.

Agencies will report the number of contracts that were awarded using a bidding or evaluation credit as well as the amount of those credits. These figures will allow an estimate of the effect on SDB participation of adjusting or removing the credit. In the absence of that objective measure, Commerce will have to estimate and report to OFPP how much minority contracting resulted from the application of these race-conscious measures. One indication may be the success of minorities in winning contracts through direct competition in which race is not used in the decision to award a contract. It may also be useful to examine comparable experience in private industries operating without affirmative action programs.

Even when agencies are not required to terminate bidding and evaluation credits, they may be required to adjust their size in order to ensure that the credits do not lead to the award of a disproportionately large numbers of contracts to SDBs. Statutory authority for this adjustment exists in both FASA and section 2323. Because the size of credits will affect industries differently, it is impossible to prescribe a set of specific rules to govern adjustments. Responsibility will rest with Commerce to analyze the impact of credits by industry category and make adjustments where appropriate, which would then be published and disseminated by OFPP.

In addition, in some circumstances, an agency may use *less* than the authorized bidding or evaluation credit where necessary to ensure that use of the credits by a specific agency does not unfairly limit the opportunities of non-SDB contractors seeking contracts from that agency. While the size of the maximum credits will be determined on an industry-wide basis and apply across all agencies, it remains important to maintain flexibility at the agency level to ensure against any undue concentrations of SDB contracting and unnecessary use of race-conscious credits. Thus, for example, where an agency has been particularly successful in reaching out to SDB contractors, it may find its use of the full credits unnecessary to achieve its goals, in which event it could, subject to approval by Commerce, depart downward from the authorized credits. The exercise of this discretion will be particularly important to avoid geographic concentrations of SDB contracting that unduly limit opportunities for non-SDBs.

When Commerce concludes that the use of race-conscious measures is not justified in a particular industry (or region), the use of the bidding credit and the evaluation credit will cease. Suspending the use of race-conscious means will not affect the continued use of race-neutral contracting measures. The limits imposed by the benchmarks also would not affect the applicability of statutorily mandated goals, but would limit the extent to which race-conscious means could be used to achieve those goals. For example, DoD would retain its five percent overall statutory goal and would continue to exhort prime contractors to achieve goals for subcontracting with SDB's. Prime contractors, however, would no longer receive credit in evaluation of their bids for signing up or identifying SDB subcontractors. Likewise, outreach and technical assistance efforts would continue and minority bidders on prime contracts would continue to seek and win competitive awards; but there would no longer be any bidding credit for minority firms.

It should be emphasized that the benchmarks are not a limit on the level

[18] In order to measure accurately SDB subcontracting participation, it will be necessary to have information regarding SDB subcontracting participation by two-digit SIC code. At the same time, however, it is important to minimize the amount of new record-keeping and reporting that these reforms may require. Prime contractors such as commercial vendors that report SDB participation through company-wide annual subcontracting plans will continue to be able to use this reporting method, with some modification that serves to facilitate SIC code reporting. Under one approach, prime contractors could require all subcontractors to identify their primary SIC code and then track, as most primes do now, the amount of dollars that flows to each subcontractor.

[19] More than three "standard deviations" will generally be viewed as "substantial" for these purposes. Under applicable Supreme Court decisions, a disparity in the range of two or three standard deviations is strong evidence of a prima facie case of discrimination in the employment context. A standard deviation is a measure of the departure from the level of activity that one would expect in the absence of discrimination.

of minority contracting in any industry that may be achieved without the use of race-conscious measures. Conversely, there is, of course, no assurance that minority participation in particular industries will reach the benchmark limitations through the available race conscious measures. Minority participation will depend on the availability of qualified minority firms that successfully win contracts through open competition, subcontracting, the 8(a) program or through the application of price or evaluation credits. The system described herein is a good faith effort to remedy the effect of discrimination, but it is not a guarantee of any particular result.

The affirmative action structure described herein does not utilize the statutory authorization under FASA to allow federal agencies (or in the case of DoD its direct authorization under 10 U.S.C. 2323) to set contracts aside for bidding exclusively by SDBs. If federal agencies use race-conscious measures in the manner outlined above, together with concerted race-neutral efforts at outreach and technical assistance as described below, we believe the use of this additional statutory authority should be unnecessary. Following the initial two-year period of the reformed system's operation (and at regular intervals thereafter), however, Commerce, SBA and DoD will evaluate the operation of the system and determine whether this statutory power to authorize set-asides should be invoked. In making that determination, those agencies will take into account whether persistent and substantial underutilization of minority firms in particular industries or in government contracting as a whole is the result of the effects of past or present discriminatory barriers that are not being overcome by this system.

Such periodic reviews should also consider whether, based on experience, further limitation of the use of race-conscious measures is appropriate beyond those outlined herein. In that regard, it should be noted that the reformed structure is inherently and progressively self-limiting in the use of race-conscious measures. As barriers to minority contracting are removed and the use of race-neutral means of ensuring opportunity succeeds, operation of the reformed structure will automatically reduce, and eventually should eliminate, the use of race in decisionmaking. In addition, the statutory authority upon which the use of bidding and evaluation credits is based expires at the end of fiscal year 2000. Congress will determine whether that authority should be extended. See 10 U.S.C. 2323; FASA, § 7102.

Section 8(a) Program

Contracts obtained by minority firms through the 8(a) program will count toward the calculation whether minority participation has reached or exceeded the benchmark in any industry.[20] The Administrator of SBA will be under an obligation to monitor the use of the 8(a) program in relation to the benchmark limits. Thus, where Commerce advises that the use of race-conscious measures must be curtailed in a specific industry on the basis of the benchmarks, the Administrator would take appropriate action to limit the use of the program through one or more of the following techniques: (1) Limiting entry into the program in that industry; (2) accelerating graduation for firms that do not need the full period of sheltered competition to satisfy the goals of the program; and (3) limiting the number of 8(a) contracts awarded in particular industries or geographic areas.

These same techniques should be used by the Administrator in carrying out existing authority to ensure that 8(a) contracting is not concentrated unduly in certain regions. Even where a market is defined as national in scope, and 8(a) is being used within applicable national benchmark limits, efforts should be made to guard against excessive use of 8(a) contracting in a limited region.

As noted earlier, the 8(a) program is distinct from the general SDB program in that it is animated by its own distinct purpose—to assist socially and economically disadvantaged individuals to overcome barriers that have suppressed business formation and development. Consistent with its unique nature, the 8(a) program has features that already reflect some of the factors that make up the narrow tailoring requirement. Unlike other SDB's, individuals seeking admission to the 8(a) program must establish economic disadvantage without the benefit of any presumption. The Small Business Act defines economically disadvantaged individuals as "those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged." Furthermore, SBA employs objective criteria to measure whether an individual is economically disadvantaged. In this sense, the statute and regulations are targeted toward victims of discrimination; the SBA is proposing to clarify the regulations implementing the program to emphasize this fact. In addition, individuals are admitted to the 8(a) program for a limited period—nine years—and their performance is reviewed throughout. An individual may be required to leave the program prior to the nine year graduation period if the review reveals that the individual is no longer economically disadvantaged or the firm meets other graduation criteria determined by the SBA.

SBA has under consideration additional program changes designed to ensure that the 8(a) program focuses on its central mission of assisting businesses to develop and concentrates it resources on its intended beneficiaries. These changes would further ensure that the 8(a) program is narrowly tailored to serve the compelling interest for which it was enacted by Congress.

V. Outreach and Technical Assistance

At present, agencies undertake a variety of activities designed to make minority firms aware of contracting opportunities and to help them take advantage of those opportunities. As a general proposition, these activities are not subject to strict scrutiny. The structure outlined above for the use of race-conscious measures assumes that agencies will continue such outreach and technical assistance efforts at all times, so that race-conscious measures will be used only to the minimum extent necessary to achieve legitimate objectives. Our review indicates that, while there are a variety of good programs of this nature operated by various federal agencies, there is a lack of consistency and sustained energy and direction to these efforts.

SBA operates several assistance programs that are targeted toward minority firms, but are also available to qualifying nonminority firms. Notably, pursuant to section 7(j) of the Small Business Act, SBA provides financial assistance to public and private organizations to provide technical and management assistance to qualifying individuals. 13 CFR 124.403, 404. SBA also operates a program to provide assistance to socially and economically disadvantaged businesses in preparing loan applications and obtaining pre-qualification from SBA for loans. See 13 CFR 120. SBA also operates a surety bond program pursuant to which it provides up to a 90% guarantee for bonds required of small contractors.

[20] As with calculation of the benchmark limitations, see n. 13, *supra*, corporations owned by federally-recognized Native American tribes and Alaskan Native villages will not be included in this calculation.

The Department of Commerce, through the Minority Business Development Administration, sponsors several programs to provide information, training and research that are targeted toward minority-owned businesses. These programs include Minority Business Development Centers around the country to provide hands on assistance to minority businesses.

DoD has operated since 1990 the Mentor-Protege Pilot Program, which provides incentive for DoD prime contractors to furnish SDB's with technical assistance. See 10 U.S.C. 2301. Mentor firms provide a variety of assistance, including progress payments, advance subcontract payments, loans, providing technical and management assistance and awards of subcontracts on a noncompetitive basis to the protege. DoD reimburses the mentor firm for its expenses. The award of subcontracts under this program is subject to strict scrutiny, but other portions of the program are not.

The following are among the efforts that should be actively pursued:

1. A race-neutral version of the mentor-protege program (that does not guarantee the award of subcontracts on a non-competitive basis) should be encouraged at all agencies.

2. DoD has proposed—and other agencies should follow DoD's lead—eliminating the impact of surety costs from bids. Because SDB's generally incur higher bond costs, this race-neutral change would assist SDB's and address one of the most frequently cited barriers to minority success in contracting. In this regard, agencies should also examine the use of irrevocable letters of credit in lieu of surety bonds.

3. Where agencies use mailing lists, a minimum goal should be set for inclusion of SDB's on agency mailing lists of bidders.

4. The function of the Procurement Automated Source System (PASS), currently maintained by SBA, should be continued. The system provides contracting officers with a continuously updated list of SDB firms, classified by interest and region.

5. A uniform system for publishing agency procurement forecasts on SBA Online should be established. In addition, SBA should develop a systematic means for publishing upcoming subcontracting opportunities.

6. Agencies should target outreach and technical assistance efforts, including mentor-protege initiatives, toward industries in which SDB participation traditionally has been low. Agencies should continue to pursue strategies in which minority-owned firms are encouraged to become part of joint ventures or form strategic alliances with non-minority enterprises.

7. The SBA should enhance its technical assistance initiatives to enhance the ability of SDBs to use the tools of electronic commerce.

8. Pursuant to Executive Order 12876, which directs agencies to seek to enter into contracts with Historically Black Colleges and Universities, agencies should attempt to increase participation by such institutions in research and development contracts as means of assisting the development of business relationships between the institutions and SDB's.

9. Each agency should review its contracting practices and its solicitations to identify and eliminate any practices that disproportionately affect opportunities for SDBs and do not serve a valid and substantial procurement purpose.

The foregoing is merely a partial list of possible measures. What is required—both as a matter of policy and constitutional necessity—is a systematic and continuing government-wide focus on encouraging minority participation through outreach and technical assistance. It is proposed in contracting, therefore, that agencies should report annually to the President on their outreach and technical assistance practices. These reports should present the actual practices and experiences of federal agencies and include recommendations as to approaches that can and should be adopted more broadly. The maximum use of such race-neutral efforts will reduce to a minimum the use of race-conscious measures under the benchmark limits described above.

Conclusion

The structure outlined above has been crafted with regard for each of the six factors that courts have identified as relevant in determining whether race-based decisionmaking is narrowly tailored to meet an identified compelling interest. While courts have identified these six factors as relevant in determining whether a measure is narrowly tailored, they have not required that race-conscious enactments satisfy each element or satisfy any particular element to any specific degree. The structure proposed herein for SDB procurement, however, measures up favorably with respect to each of the six factors.

The proposal requires that agencies at all times use race-neutral alternatives to the maximum extent possible. An annual review mechanism is established to ensure maximum use of such race-neutral efforts. Only where those efforts are insufficient to overcome the effects of past and present discrimination can race-conscious efforts be invoked.

The system is flexible in that race will be relied on only when annual analysis of actual experience in procurement indicates that minority contracting falls below levels that would be anticipated absent discrimination. Moreover, the extent of any credit awarded will be adjusted annually to ensure that it is closely matched to the need for a race-based remedial effort in a particular industry.

Race will not be relied upon as the sole factor in SDB procurement decisions. The use of credits (instead of set-asides) ensures that all firms have an opportunity to compete and that in order to obtain federal contracts minority firms will have to demonstrate that they are qualified to perform the work.[21]

Application of the benchmark limits ensures that any reliance on race is closely tied to the best available analysis of the relative capacity of minority firms to perform the work in question—or what their capacity would be in the absence of discrimination.

The duration of the program is inherently limited. As minority firms are more successful in obtaining federal contracts, reliance on race-based mechanisms will decrease automatically. When the effects of discrimination have been eliminated, as demonstrated by minority success in obtaining procurement contracts, reliance on race will terminate automatically. The system as a whole will be reexamined by the executive branch at the end of two years and at regular intervals thereafter. In addition, the principal enactments that this proposal implements, FASA and the Department of Defense Authorization Act, expire at the end of the fiscal year 2000. Congress will have to examine the functioning of this system and make a determination whether to extend the authority to continue its operation.

Finally, the proposal avoids any undue burden on nonbeneficiaries of the program. As a practical matter, the overwhelming percentage of federal procurement money will continue to flow, as it does now, to nonminority businesses. Furthermore,

[21] The SBA's 8(a) program contains a variety of elements that help to target the program on firms in need of special assistance, including a requirement that applicants affirmatively demonstrate economic disadvantage. Furthermore, the program is not limited to minority-owned firms. These features of the program ensure that race is not the sole factor in determining entry into the program.

implementation of the benchmark limitations will ensure that race-based decisionmaking cannot result in concentrations of minority contracting in particular industries or regions and will thereby limit the impact on nonminorities.

The structure of affirmative action in contracting set forth herein will not be simple to implement and will undoubtedly be improved through further refinement. Agencies will have to make judgments and observe limitations in the use of race-conscious measures, and make concentrated race-neutral efforts that are not required under current practice. The Supreme Court, however, has changed the rules governing federal affirmative action. This model responds to principles developed by the Supreme Court and lower courts in applying strict scrutiny to race-based decisionmaking. The challenge for the federal government is to satisfy, within these newly-applicable constitutional limitations, the compelling interest in remedying the effects of discrimination that Congress has identified.

Michael C. Small,

Deputy Associate Attorney General.

Appendix—The Compelling Interest for Affirmative Action in Federal Procurement: A Preliminary Survey

Under the Supreme Court's ruling last year in *Adarand Constructors, Inc.* v. *Peña*, 115 S. Ct. 2097 (1995), strict scrutiny applies to federal affirmative action programs that provide for the use of racial or ethnic criteria as factors in procurement decisions in order to benefit members of minority groups. Such programs satisfy strict scrutiny if they serve a "compelling interest," and are "narrowly tailored" to the achievement of that interest. Strict scrutiny is the most exacting standard of constitutional review. It is the same standard that courts apply when reviewing laws that discriminate against minority groups. The Supreme Court in *Adarand* did not decide whether a compelling interest is served by the procurement program at issue in the case (or by any other federal affirmative action program), and remanded the case to the lower courts, which had not applied strict scrutiny.[1] Nevertheless, a strong majority of the Court—led by Justice O'Connor, who wrote the majority opinion—admonished that even under strict scrutiny, affirmative action by the federal government is constitutional in appropriate circumstances.[2] Without spelling out in precise terms what those circumstances are, the Court stated that the government has a compelling interest in remedying "[t]he unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country." 115 S. Ct. at 2117.

At bottom, after *Adarand*, the compelling interest test centers on the nature and weight of evidence of discrimination that the government needs to marshal in order to justify race-conscious remedial action. It is clear that the mere fact that there has been generalized, historical societal discrimination in the country against minorities is an insufficient predicate for race-conscious remedial measures; the discrimination to be remedied must be identified more concretely. The federal government would have a compelling interest in taking remedial action in its procurement activities, however, if it can show with some degree of specificity just how "the persistence of both the practice and the lingering effects of racial discrimination"—to use Justice O'Connor's phrase in *Adarand*—has diminished contracting opportunities for members of racial and ethnic minority groups.[3]

In coordinating the review of federal affirmative action programs that the President directed agencies to undertake in light of *Adarand*, the Justice Department has collected evidence that bears on that inquiry. The evidence is still being evaluated, and further information remains to be collected. As set forth below, that evidence indicates that racially discriminatory barriers hamper the ability of minority-owned businesses to compete with other firms on an equal footing in our nation's contracting markets. In short, there is today a compelling interest to take remedial action in federal procurement.[4]

The purpose of this memorandum is to summarize the evidence that has been assembled to date on the compelling interest question. Part I of the memorandum provides an overview of the long legislative record that underpins the acts of Congress that authorize affirmative action measures in procurement—a record that is entitled to substantial deference from the courts, given Congress' express constitutional power to identify and redress, on a nationwide basis, racial discrimination and its effects. The remaining sections of the memorandum survey information from various sources: (1) Congressional hearings and reports that bear on the problems that discrimination poses for minority opportunity in our society, but that are not strictly related to specific legislation authorizing affirmative action in government procurement; (2) recent studies from around the country that document the effects of racial discrimination on the procurement opportunities of minority-owned businesses at the state and local level; and (3) works by social scientists, economists, and other academic researchers on the manner in which the various forms of discrimination act together to restrict business

[1] *Adarand* involved a constitutional challenge to a Department of Transportation ("DOT") program that compensates prime contractors if they hire subcontractors certified as small businesses controlled by "socially and economically disadvantaged" individuals. The legislation on which the DOT program is based, the Small Business Act, establishes a government-wide goal for participation of such concerns at "not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year." 15 U.S.C. § 644(g)(1). The Act further provides that members of designated racial and ethnic minority groups are presumed to be socially and economically disadvantaged. *Id.* § 637(a)(5)(6), § 637(d)(2),(3). In *Adarand*, the Supreme Court stated that the presumption constitutes race-conscious action, thereby triggering application of strict scrutiny. 115 S. Ct. at 2105.

[2] *Adarand*, 115 S. Ct. at 2117. The Court emphasized that point in order to "dispel the notion that strict scrutiny is 'strict in theory, but fatal in fact.'" *Id.* Seven of the nine justices of the Court embraced the principle that it is possible for affirmative action by the federal government to meet strict scrutiny. This group included: (i) Justice O'Connor and two other justices in the majority, Chief Justice Rehnquist and Justice Kennedy; and (ii) the four dissenting justices (Stevens, Souter, Ginsburg, and Breyer). Only Justices Scalia and Thomas, both of whom concurred in the result in the case, advocated a position that approaches a near blanket constitutional ban on affirmative action.

[3] *Adarand* did not alter the principle that the government may take race-conscious remedial action in the absence of a formal judicial or administrative determination that there has been discrimination against individual members of minorities groups (or minorities as a class). The test is whether the government has a "strong basis in evidence" for the conclusion that such action is warranted. *City of Richmond* v. *J.A. Croson Co.*, 488 U.S. 469, 500 (1989). *Adarand* also did not alter the principle that the beneficiaries of race-conscious remedial measures need not be limited to those individuals who themselves demonstrate that they have suffered some identified discrimination. See *Local 28, Sheet Metal Workers' Int'l Ass'n* v. *EEOC*, 478 U.S. 421, 482 (1986); *Wygant* v. *Jackson Bd. of Educ.*, 476 U.S. 267, 277–78 (1986) (plurality opinion); *id.* at 287 (O'Connor, J., concurring).

[4] The term "federal procurement" refers to goods and services that the federal government purchases directly for its own use. This is to be distinguished from programs in which the federal government provides funds to state and local governments for use in their procurement activities. As part of those programs, Congress has authorized recipients of federal funds to take remedial action in procurement. Those programs are not the focus of this memorandum. However, much of the evidence discussed herein that supports the use of remedial measures in the federal government's own procurement also supports the use of congressionally-authorized remedial measures in state and local procurement.

opportunities for members of racial and ethnic minority groups.[5]

All told, the evidence that the Justice Department has collected to date is powerful and persuasive. It shows that the discriminatory barriers facing minority-owned businesses are not vague and amorphous manifestations of historical societal discrimination. Rather, they are real and concrete, and reflect ongoing patterns and practices of exclusion, as well as the tangible, lingering effects of prior discriminatory conduct.[6]

It is important to emphasize that, even though the government has a compelling interest in taking race-conscious remedial measures in its procurement, their use must be limited. Under the requirements of the "narrow tailoring" prong of strict scrutiny, the federal government may only employ such measures to the extent necessary to serve the compelling interest in remedying the impact of discrimination on minority contracting opportunity. The Justice Department's proposed reforms to affirmative action in federal procurement (to which this memorandum is attached) are intended to target race-conscious remedial measures to markets in which the evidence indicates that discrimination continues to impede the participation of minority firms in contracting. Thus, the proposal seeks to ensure that affirmative action in federal procurement operates in a flexible, fair, limited, and careful manner, and hence will satisfy the requirements of narrow tailoring.

I. Survey of the Legislative Record

In evaluating the evidentiary predicate for affirmative action in federal procurement, it is highly significant that the measures have been authorized by Congress, which has the unique and express constitutional power to pass laws to ensure the fulfillment of the guarantees of racial equality in the Thirteenth and Fourteenth Amendments.[7] These explicit constitutional commands vest Congress with the authority to remedy discrimination by private actors, as well as state and local governments.[8] Congress may also exercise its constitutionally grounded spending and commerce powers to ensure that discrimination in our nation is not inadvertently perpetuated through government procurement practices.[9] In exercising its remedial authority, Congress need not target only deliberate acts of discrimination. It may also strive to eliminate the effects of discrimination that continue to impair opportunity for minorities, even in the absence of ongoing, intentional acts of discrimination.[10] Furthermore, in combatting discrimination and its effects, Congress has the latitude to develop national remedies for national problems. Congress need not make findings of discrimination with the same degree of precision as do state or local governments. Nor is it obligated to make findings of discrimination in every industry or region that may be affected by a remedial measure.[11]

Congress has repeatedly examined the problems that racial discrimination poses for minority-owned businesses. A complete discussion of the entire record of Congress in this area is beyond the scope of this memorandum.[12] The

[5] It is well-established that the factual predicate for a particular affirmative action measure is not confined to the four corners of the legislative record of the measure. See, e.g., *Concrete Works* v. *City and County of Denver*, 36 F.3d 1513, 1520–22 (10th Cir. 1994), cert. denied, 115 S. Ct. 1315 (1995); *Contractors Ass'n* v. *City of Philadelphia*, 6 F.3d 990, 1004 (3d Cir. 1993); *Coral Constr. Co.* v. *King County*, 941 F.2d 910, 920 (9th Cir. 1991), cert. denied, 502 U.S. 1033 (1992).

[6] Congress has also adopted affirmative action measures in federal procurement, as well as in programs that fund the procurement activities of state and local governments, that are intended to assist women-owned businesses. At present, such measures are subject to intermediate scrutiny, not the *Adarand* strict scrutiny standard. Therefore, they have not been the focus of the post-*Adarand* review that the Justice Department is coordinating. However, some of the evidence collected by the Justice Department bears on the constitutional justification for affirmative action programs for women in government procurement. See, *e.g.*, Interagency Committee on Women's Business Enterprise, *Expanding Business Opportunities for Women* (1996); National Foundation for Women Business Owners and Dunn & Bradstreet Information Services, *Women-Owned Businesses. A Report on the Progress and Achievement of Women-Owned Enterprises—Breaking the Boundaries* (1995); *Problems Facing Minority and Women-Owned Small Businesses in Procuring U.S. Government Contracts: Hearing Before the Subcomm. on Commerce, Consumer and Monetary Affairs of the House Comm. on Government Operations*, 103d Cong., 2d Sess. (1994).

[7] See *Croson*, 488 U.S. at 488 (plurality opinion); *Fullilove* v. *Klutznick*, 448 U.S. 448, 483 (1980) (plurality opinion); *id.* at 500 (Powell, J., concurring); see also *Adarand*, 115 S. Ct. at 2114; *Metro Broadcasting, Inc.* v. *FCC*, 497 U.S. 547, 563 (1990); *id.* at 605–06 (O'Connor, J., dissenting); cf. *Seminole Tribe of Florida* v. *Florida*, 116 S. Ct. 1114, 1125 (1996) (reaffirming that broad grant of remedial power under Section 5 of the Fourteenth Amendment enables Congress to override state sovereign immunity).

[8] See *Croson*, 488 U.S. at 490 (plurality opinion); *Fullilove*, 448 U.S. at 476–78 (plurality opinion); *id.* at 500 (Powell, J., concurring); *Runyon* v. *McCrary*, 427 U.S. 160, 179 (1976); see also *Adarand*, 115 S. Ct. at 2126 (Stevens, J., dissenting); *Metro Broadcasting*, 497 U.S. at 605 (O'Connor, J., dissenting).

[9] See *Croson*, 488 U.S at 492 (plurality opinion) ("It is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice."); see also *Metro Broadcasting*, 497 U.S. at 563–64; *Fullilove*, 448 U.S at 473–76 (plurality opinion).

[10] See *Adarand*, 115 S. Ct. at 2117 (Congress may adopt affirmative action to remedy "both the practice and the lingering effects of discrimination"). Accord *id.* at 2133 (Souter, J., dissenting) (government may act to redress effects of discrimination "that would otherwise persist and skew the operation of public systems even in the absence of current intent to practice any discrimination").

[11] *Croson*, 488 U.S. at 490, 504; *Fullilove*, 448 U.S. at 502–03 (Powell, J., concurring).

[12] Congressional hearings on the subject from 1980 to the present include the following: *The Small Business Administration's 8(a) Minority Business Development Program: Hearing Before the Senate Comm. on Small Business*, 104th Cong., 1st Sess. (1995); *Discrimination in Surety Bonding: Hearing Before the Subcomm. on Minority Enterprise, Finance and Urban Development of the House Comm. on Small Business*, 103d Cong., 1st Sess. (1993); *Department of Defense: Federal Programs to Promote Minority Business Development: Hearing Before the Subcomm. on Minority Enterprise, Finance and Urban Development of the House Comm. on Small Business*, 103d Cong., 1st Sess. (1993); *SBA's Minority Business Development Program: Hearing Before the House Comm. on Small Business*, 103d Cong., 1st Sess. (1993); *Problems Facing Minority and Women-Owned Small Businesses in Procuring U.S. Government Contracts: Hearing Before the Subcomm. on Commerce, Consumer and Monetary Affairs of the House Comm. on Government Operations*, 103d Cong., 1st Sess. (1993); *Fiscal Economic and Social Crises Confronting American Cities: Hearings Before the Senate Comm. on Banking, Housing and Urban Affairs*, 102d Cong., 2d Sess. (1992); *Small Disadvantaged Business Issues: Hearing Before the Investigations Subcomm. of the House Comm. on Armed Services*, 102d Cong., 1st Sess. (1991); *Federal Minority Business Programs: Hearing Before the House Comm. on Small Business*, 102d Cong., 1st Sess. (1991); *To Amend the Civil Rights Act of 1964: Permitting Minority Set-Asides: Hearing Before the Senate Comm. on Governmental Affairs*, 101st Cong., 2d Sess. (1990); *City of Richmond v. J.A. Croson: Impact and Response: Hearing Before the Subcomm. on Urban and Minority-Owned Business Development of the Senate Comm. of Small Business*, 101st Cong., 2d Sess. (1990); *Minority Business Set-Aside Programs: Hearing Before the House Comm. on the Judiciary*, 101st Cong., 1st Sess. (1990); *Minority Construction Contracting: Hearing Before the Subcomm. on SBA, the General Economy and Minority Enterprise Development of the House Comm. on Small Business*, 101st Cong., 1st Sess. (1989); *Surety Bonds and Minority Contractors: Hearing Before the Subcomm. on Commerce, Consumer Protection and Competitiveness of the House Comm. on Energy and Commerce*, 100th Cong., 2d Sess. (1988); *Twenty Years after the Kerner Commission: The Need for a New Civil Rights Agenda: Hearing Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 100th Cong., 2d Sess. (1988); *Disadvantaged Business Set-Asides in Transportation Construction Projects: Hearings Before the Subcomm. on Procurement, Innovation and Minority Enterprise Development of the House Comm. on Small Business*, 100th Cong., 2d Sess. (1988); *Barriers to Full Minority Participation in Federally Funded Highway Projects: Hearings Before a Subcomm. of the House Comm. on Government Operations*, 100th Cong., 2d Sess. (1988); *The Small Business Competitiveness Demonstration Program Act of 1988: Hearings on S. 1559 Before the Senate Comm. on Small Business*, 100th Cong., 2d Sess. (1988); *Small Business Problems: Hearings Before the House Comm. on Small Business*, 100th Cong., 1st Sess. (1987);

Continued

theme that emanates from this record is unequivocal: Congress has adopted race-conscious remedial measures in procurement directly in response to its findings that "widespread discrimination, especially in access to financial credit, has been an impediment to the ability of minority-owned business to have an equal chance at developing in our economy." [13] Furthermore, Congress has recognized that expanding opportunities for minority-owned businesses in government procurement helps to bring into mainstream public contracting networks firms that otherwise would be excluded as a result of discriminatory barriers. In light of Congress' expansive remedial charter, it is a fundamental principle that courts must accord a significant degree of deference to those findings and the attendant judgment of the Congress that remedial measures in government procurement are warranted.[14]

The relevant congressional findings encompass a broad range of problems confronting minority-owned businesses. They include "deficiencies in working capital, inability to meet bonding requirements, disabilities caused by an inadequate 'track record,' lack of awareness of bidding opportunities, unfamiliarity with bidding procedures, pre-selection before the formal advertising process, and the exercise of discretion by government procurement officers to disfavor minority businesses." [15]

For example, in a report that led to the legislation that created what has become known as the "8(a)" program at the Small Business Administration,[16] and that established goals for participation in procurement at each federal agency by firms owned and controlled by socially and economically disadvantaged individuals (SDB's),[17] a congressional committee found that the difficulties facing minority-owned businesses were "not the result of random chance." Rather, the committee stated; "past discriminatory systems have resulted in present economic inequities." [18] In connection with the same legislation, another committee concluded that a pattern of discrimination "continues to deprive racial and ethnic minorities * * * of the opportunity to participate fully in the free enterprise system." [19] Eventually, when it adopted the 8(a) legislation, Congress found that minorities "have suffered the effects of discriminatory practices or similar invidious circumstances over which they have no control," and that "it is in the national interest to expeditiously ameliorate" the effects of this discrimination through increased opportunities for minorities in government procurement.[20]

When revamping the 8(a) program in the late 1980s, Congress again found that "discrimination and the present effects of past discrimination" continued to hinder minority business development. Congress concluded that the program required bolstering so that it would better "redress the effects of discrimination on entrepreneurial endeavors." [21]

In the same vein are congressional findings that underpin legislation that sets agency-specific goals for participation by disadvantaged businesses—including minority-owned firms—in procurement and grant programs administered by those agencies. For instance, in recommending the continued use of such goals as part of programs through which the Department of Transportation provides funds to state and local governments for use in highway and transit projects, a congressional committee observed that it had considered extensive testimony and evidence, and determined that this action was "necessary to remedy the discrimination faced by socially and economically disadvantaged persons attempting to compete in the highway industry and mass transit construction industry." [22]

Congress has also established goals for SDB participation in procurement at the Defense Department, and authorized that agency to use specific forms of remedial measures to achieve the goals.[23] The Defense Department program too is predicated on findings that opportunities for minority-owned businesses had been impaired.[24] More fundamentally, in establishing the program, Congress recognized that fostering contracting opportunities for minority-owned businesses at the Defense Department is crucial, because that agency alone typically accounts for more than two-thirds of the federal government's procurement activities. Therefore, affirmative action efforts at the Defense Department enable minority-owned businesses to demonstrate their capabilities to contracting officers at that important procuring agency and to the vast number of nonminority firms that provide goods and services to the Pentagon. In turn, minority-owned businesses can begin to break into the contracting networks from which they typically have been excluded.[25]

Opportunities for minority-owned businesses to participate in Defense Department procurement increased following the introduction of the affirmative action program there in the late 1980s. However, the effects of discrimination were still felt in federal procurement generally. Based on information it obtained through a 1993 hearing, a congressional committee reported the following year that this "lack of opportunity results primarily from discriminatory or economic conditions," and that "improving access to government contracts and procurement offers a significant opportunity for business development in many industry sectors." [26] In the Federal Acquisition Streamlining Act of 1994, Congress saw fit to make available to all agencies the remedial tools that previously had been granted to the Defense Department, in order to "improv[e] access to contracting opportunities for * * * minority-owned small businesses." [27]

Through its recurring assessments of the implications of discrimination against minority-businesses, Congress has concluded that, standing alone, legislation that simply proscribes racial discrimination is an inadequate remedy. Congress also has attempted to redress the problems facing minority businesses through race-neutral assistance to all small businesses.[28] Congress has determined, however, that those remedies, by themselves, are "ineffectual in eradicating the effects of past discrimination," [29] and that race-conscious measures are a necessary supplement to race-neutral ones.[30] Finally, based on its understanding of what happens at the state and local level when use of affirmative action is severely curtailed or suspended outright, Congress has concluded that minority participation in government procurement tends to fall dramatically in the absence of at least some kind of remedial measures, the result of which is to perpetuate the discriminatory barriers that have kept minorities out of the mainstream of public contracting.[31]

Minority Business Development Act: Hearing Before the Subcomm. on Procurement, Innovation and Minority Enterprise Development of the House Comm. on Small Business, 100th Cong., 1st Sess. (1987); *A Bill to Reform the Capital Ownership Development Program: Hearings on H.R. 1807 Before the Subcomm. on Procurement, Innovation and Minority Enterprise Development of the House Comm. on Small Business*, 100th Cong., 1st Sess. (1987); *To Present and Examine the Result of a Survey of the Graduates of the Small Business Administration Section 8(a) Minority Business Development Program: Hearings Before the Senate Comm. on Small Business*, 100th Cong., 1st Sess. (1987); *Minority Enterprise and General Small Business Problems: Hearings Before the Subcomm. on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems of the Senate Comm. on Small Business*, 99th Cong., 2d Sess. (1986); *The State of Hispanic Small Business in America: Hearings Before the Subcomm. on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems of the House Comm. on Small Business*, 99th Cong., 1st Sess. (1985); *Federal Contracting Opportunities for Minority and Women-Owned Businesses: An Examination of the 8(d) Subcontracting Program: Hearings Before the Senate Comm. on Small Business*, 98th Cong., 1st Sess. (1983); *Minority Business and Its Contribution to the United States Economy: Hearing Before the Senate Comm. on Small Business*, 97th Cong., 2d Sess. (1982); *Small Business and the Federal Procurement System: Hearings Before the Subcomm. on General Oversight of the House Comm. on Small Business*, 97th Cong., 1st Sess. (1981); *Small and Minority Business in the Decade of the 1980's (Part 1): Hearings Before the House Comm. on Small Business*, 97th Cong., 1st Sess. (1981); *Small Business and the Federal Procurement System: Hearings Before the Subcomm. on General Oversight of the House Comm. on Small Business*, 97th Cong., 1st Sess. (1981); *To Amend the Small Business Act to Extend the Current SBA 8(a) Pilot Program: Hearings on H.R. 5612 Before the Senate Select Comm. on Small Business*, 96th Cong., 2d Sess. (1980).

[13] *Affirmative Action Review. Report to the President* 55 (1995).

[14] See *Croson*, 488 U.S. at 488–90 (plurality opinion); *Fullilove*, 448 U.S. at 472–73 (plurality opinion); *id.* at 508–10 (Powell, J., concurring); see also *Metro Broadcasting*, 497 U.S. at 563; *id.* at 605–07 (O'Connor, J., dissenting). This principle was not disturbed by the Supreme Court's ruling in *Adarand*; thus, it continues to have force, even under strict scrutiny. See *Adarand*, 115 S. Ct. at 2114; *id.* at 2126 (Stevens, J., dissenting); *id.* at 2133 (Souter, J., dissenting).

[15] *Fullilove*, 448 U.S. at 467 (plurality opinion).

[16] That program targets federal procurement opportunities for small firms owned and controlled by individuals who are socially and economically disadvantaged. See 15 U.S.C. § 637(a). Members of certain minority groups are presumed to be socially disadvantaged. 13 C.F.R. Pt. 124.

[17] 15 U.S.C. § 644(g).

[18] H.R. Rep. No. 468, 94th Cong., 1st Sess. 2 (1975).

[19] S. Rep. No. 1070, 95th Cong., 2d Sess. 14 (1978). See also H.R. Rep. No. 949, 95th Cong., 2d Sess. 8 (1978).

[20] Pub. L. No. 95–507, § 201, 92 Stat. 1757, 1760 (1978). See 124 Cong. Rec. 35,204 (1978) (statement of Sen. Weicker) (commenting on the introduction of the conference report on the 8(a) legislation and observing that the report recognizes the existence of a "pattern of social and economic discrimination that continues to deprive racial and ethnic minorities of the opportunity to participate fully in the free enterprise system"). In the same year it passed the 8(a) legislation, Congress considered an additional bill that sought to target federal assistance to minority-owned firms. In introducing that measure, Senator Dole remarked that "minority businessmen can compete equally when given equal opportunity. One of the most important steps this country can take to insure equal opportunity for its hispanic, black and other minority citizens is to involve them in the mainstream of our free enterprise system." 124 Cong. Rec. 7681 (1978).

[21] H.R. Rep. No. 460, 100th Cong., 1st Sess. 16, 18 (1987). See 133 Cong. Rec. 37,814 (1987) (statement of Sen. Bumpers) (discussing proposed revisions to 8(a) program and commenting that minorities "continue to face discrimination in access to credit and markets"); *id.* at 33,320 (statement of Rep. Conte) (discussing proposed revisions to 8(a) program and commenting that effects of discrimination continued to be felt, and that 8(a) amendments were needed to "create a workable mechanism to finally redress past discriminatory practices"). See generally S. Rep. No. 394, 100th Cong., 2d Sess. (1988); *The Small Business Competitiveness Demonstration Program Act of 1988: Hearings on S. 1559 Before the Senate Comm. on Small Business*, 100th Cong., 2d Sess. (1988); *Small Business Problems: Hearings Before the House Comm. on Small Business*, 100th Cong., 1st Sess. (1987); *Minority Business Development Act: Hearing Before the Subcomm. on Procurement, Innovation and Minority Enterprise Development of the House Comm. on Small Business*, 100th Cong., 1st Sess. (1987); *A Bill to Reform the Capital Ownership Development Program: Hearings on H.R. 1807 Before the Subcomm. on Procurement, Innovation and Minority Enterprise Development of the House Comm. on Small Business*, 100th Cong., 1st Sess. (1987); *To Present and Examine the Result of a Survey of the Graduates of the Small Business Administration Section 8(a) Minority Business Development Program: Hearings Before the Senate Small Business Comm.*, 100th Cong., 1st Sess. (1987); *Minority Enterprise and General Small Business Problems: Hearings Before the Subcomm. on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems of the Senate Comm. on Small Business*, 99th Cong., 2d Sess. (1986); *The State of Hispanic Small Business in America: Hearings Before the Subcomm. on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems of the House Comm. on Small Business*, 99th Cong., 1st Sess. (1985).

[22] S. Rep. No. 4, 100th Cong., 1st Sess. 11 (1987). The DoT goals were initially established in the Surface Transportation Assistance Act of 1982, Pub. L. No. 97–424, § 105(f), 96 Stat. 2097 (1982). They were continued in the Surface Transportation and Uniform Relocation Assistance Act of 1987 ("STURAA"), Pub. L. No. 100–17, § 106(c)(1), 101 Stat. 132, 145 (1987). Congress held further hearings on the subject after passage of STURAA. See *Minority Construction Contracting: Hearing Before the Subcomm. on SBA, the General Economy and Minority Enterprise Development of the House Comm. on Small Business*, 101st Cong., 1st Sess. (1989); *Disadvantaged Business Set-Asides in Transportation Construction Projects: Hearings Before the Subcomm. on Procurement, Innovation and Minority Enterprise Development of the House Comm. on Small Business*, 100th Cong., 2d Sess. (1988); *Barriers to Full Minority Participation in Federally Funded Highway Construction Projects: Hearing Before a Subcomm. of the House Comm. on Government Operations*, 100th Cong., 2d Sess. (1988). Congress subsequently reauthorized the goals in the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102–240, § 1003(b), 105 Stat. 1914, 1919 (1991). See 137 Cong. Rec. S7571 (June 12, 1991) (statement of Sen. Simpson) (expressing support for continuation of disadvantaged business program at Transportation Department).

Congress has established comparable initiatives to encourage disadvantaged business participation in grant programs administered by the Environmental Protection Agency (EPA). For example, recipients of grants awarded by EPA under the Clean Air Act are required to set disadvantaged business goals. See 42 U.S.C. § 7601 note; see also 42 U.S.C. § 4370d (establishing an SDB goal for recipients of EPA funds used in support of certain environmental-related projects); H.R. Rep. No. 226, 102 Cong., 1st Sess. 48 (1991).

[23] 10 U.S.C. § 2323.

[24] See H.R. Rep. No. 332, 99th Cong., 1st Sess. 139–40 (1985) (if disadvantaged firms had been able to "participate in the 'early' development of major Defense systems, they would have had an opportunity to gain the expertise required to bid on such contracts"); see also H.R. Rep. No. 450, 99th Cong., 1st Sess. 179 (1985); 131 Cong. Rec. 17,445–17,448 (1985); H.R. Rep. No. 1086, 96th Cong., 2d Sess. 100–01 (1984).

[25] See 131 Cong. Rec. 17,447 (1985) (statement of Rep. Conyers) (affirmative action needed to break down "buddy-buddy contracting" at the Defense Department, "which has the largest procurement program in the Federal Government"); *id.* (statement of Rep. Schroeder) (an "old boy's club" in Defense Department contracting excludes many minorities from business opportunities); see also *Department of Defense: Federal Programs to Promote Minority Business Development: Hearing Before the Subcomm. on Minority Enterprise, Finance and Urban Development of the House Comm. on Small Business*, 103d Cong., 1st Sess. 49 (1993) (statement of Rep. Roybal-Allard) ("Old attitudes and old habits die hard * * *. Defense contracting has, traditionally, been a closed shop. Only a select few need apply. Since the passage of the minority contracting opportunity law, some progress has been made."); H.R. Rep. No. 1086, 98th Cong., 2d Sess. 100–101 (1984) (low level of participation by disadvantaged firms in Defense Department contracting indicated a need to expand procurement opportunities at that agency for such firms).

[26] H.R. Rep. No. 870, 103d Cong., 2nd Sess. 5 (1994).

[27] 140 Cong. Rec. H9242 (Sept. 20, 1994) (statement of Rep. Dellums).

[28] Beginning with the Small Business Act of 1953, Congress has authorized numerous programs to "aid, counsel, assist, and protect * * * the interests of small-business concerns" and "insure that a fair proportion of the total purchases and contracts for supplies and services for the government be placed with small-business enterprises." Pub. L. No. 163, § 202, 67 Stat. 232 (1953). After recognizing in the 1960s the specific problems facing minority owned businesses, Congress attempted to address them through race-neutral measures. For example, in 1971, Congress amended the Small Business Investment Act to create a surety bond guarantee program to assist small businesses that have trouble obtaining traditional bonding. In 1972, Congress created a new class of small business investment companies to provide debt and equity capital to small businesses owned by socially and economically disadvantaged individuals. And over the years, Congress has continuously reviewed and strengthened programs to assist all small businesses through the Small Business Act. See e.g. Pub. L. No. 93–386, 88 Stat. 742 (1974); Pub. L. No. 94–305, 90 Stat. 663 (1976); Pub. L. No. 95–89, 91 Stat. 553 (1977).

[29] *Croson*, 488 U.S. at 550 (Marshall, J., dissenting). Accord *Fullilove*, 448 U.S. at 467 (plurality opinion); *id.* at 511 (Powell, J., concurring); see also *City of Richmond v. J.A. Croson: Impact and Response: Hearing Before the Subcomm. on Urban and Minority-Owned Business Development of the Senate Comm. on Small Business*, 101st Cong., 2d Sess. 48 (1990) (statement of Ray Marshall); H.R. Rep. No. 468, 94th Cong., 1st Sess. 32 (1975).

[30] It bears emphasizing that race-neutral programs for small businesses are important and necessary components of an overall congressional strategy to enhance opportunity for small businesses owned by minorities. For example, Congress has authorized contracting set asides for small businesses generally—minority and nonminority alike—as well as a host of bonding, lending, and technical assistance programs that are open to all small businesses. See 15 U.S.C. § 631 *et seq.*

[31] *The Meaning and Significance for Minority Businesses of the Supreme Court Decision in the City of Richmond v. J.A. Croson Co.: Hearing Before the Legislation and National Security Subcomm. of the House Comm. on Government Operations*, 101st Cong., 2d Sess. 57, 62–90 (1990); *City of Richmond v. J.A. Croson: Impact and Response: Hearing Before the Subcomm. on Urban and Minority-Owned Business Development of the Senate Comm. on Small Business*, 101st Cong., 2d Sess. 39–44 (1990) (statement of Andrew Brimmer).

The foregoing is just a sampling from the legislative record of congressionally-authorized affirmative action in government procurement. The remainder of the memorandum surveys evidence from other sources regarding the impact of discrimination on the ability of minority-owned businesses to compete equally in contracting markets. This evidence confirms Congress' determination that race-conscious remedial action is needed to correct that problem.

II. Discriminatory Barriers to Minority Contracting Opportunities

Developing a business that can successfully compete for government contracts depends on many factors. To begin with, technical or professional experience, which is typically attained through employment and trade union opportunities, is an important prerequisite to establishing any business. Second, obtaining financing is necessary to the formation of most businesses. The inability to secure the twin building blocks of experience and financing may prevent a business from ever getting off the ground. Some individuals overcome these initial obstacles and are able to form businesses. However, they subsequently may be shut out from important contracting and supplier networks, which can hinder their ability to compete effectively for contract opportunities. And further barriers may be encountered when a business tries to secure bonding and purchase supplies for projects—critical requirements for many major government contracts.

While almost all new or small businesses find it difficult to overcome these barriers and become successful, these problems are substantially greater for minority-owned businesses. Empirical studies and reports issued by congressional committees, executive branch commissions, academic researchers, and state and local governments document the widespread and systematic impact of discrimination on the ability of minorities to carry out each of the steps that are required for participation in government contracting. This evidence of discrimination can be grouped into two categories:

(i) evidence showing that discrimination works to preclude minorities from obtaining the experience and capital needed to form and develop a business, which encompasses discrimination by trade unions and employers and discrimination by lenders;

(ii) evidence showing that discriminatory barriers deprive existing minority firms of full and fair contracting opportunities, which encompasses discrimination by private sector customers and prime contractors, discrimination by business networks, and discrimination by suppliers and bonding providers.

The following provides an overview of both categories of evidence.

A. Effects of Discrimination on the Formation and Development of Minority Businesses

A primary objective of affirmative action in procurement is to encourage and support the formation and development of minority-owned firms as a remedy to the "racism and other barriers to the free enterprise system that have placed a heavier burden on the development and maturity of minority businesses."[32] That these efforts are necessary is evident from the recent findings by the U.S. Commission on Minority Business Development, appointed by President Bush. The Commission amassed a large amount of evidence demonstrating the marginal position that minority-owned businesses hold in our society:

- Minorities make up more than 20 percent of the population; yet, minority-owned businesses are only 9 percent of all U.S. businesses and receive less than 4 percent of all business receipts.[33]
- Minority firms have, on average, gross receipts that are only 34% of that of nonminority firms.[34]
- The average payroll for minority firms with employees is less than half that of nonminority firms with employees.[35]

President Bush's Commission undertook an extensive analysis of the barriers that face minority-owned business formation and development. It concluded that "minorities are not underrepresented in business because of choice or chance. Discrimination and benign neglect is the reason why our economy has been denied access to this vital resource."[36] Further evidence of the effect of discrimination on minority business development is revealed in recent studies showing that minorities are significantly less likely than whites to form their own business—even after controlling for income level, wealth, education level, work experience, age and marital status.[37] These findings strongly indicate that minorities "face barriers to business entry that nonminorities do not face."[38]

Since the inception of federal affirmative action initiatives in procurement, policy makers have recognized that there are two principal barriers to the formation and development of minority-owned businesses: limited technical experience and limited financial resources. President Nixon's Advisory Council on Minority Business Enterprise identified these barriers in 1973 when it reported that "a characteristic lack of financial and managerial resources has impaired any willingness to undertake enterprise and its inherent risk."[39] Two decades later, a congressional committee found that minorities continue to have "fewer opportunities to develop business skills and attitudes, to obtain necessary resources, and to gain experience, which is necessary for the success of small businesses in a competitive environment."[40] Discrimination in two sectors of the national economy accounts, at least in part, for the diminished opportunity: discrimination by trade unions and employers, which has prevented minorities from garnering crucial technical skills; and discrimination by lenders, which has prevented minorities from garnering needed capital.

1. Discrimination by Trade Unions and Employers

President Nixon's Advisory Council on Minority Business Enterprise determined that "the lack of opportunity to participate in managerial technical training has severely restricted the supply of [minority] entrepreneurs,

[32] *Small and Minority Business in the Decade of the 1980's (Part 1): Hearings Before the House Comm. on Small Business*, 97th Cong., 1st Sess. 4 (1981). See also H.R. Rep. No. 870, 103d Cong., 2d Sess. 5 (1994).

[33] United States Commission on Minority Business Development, *Final Report* 2–6 (1992). These statistics are based on 1987 census data, the most recent full data available regarding the status of minority-owned businesses. Preliminary reports from 1992 census data reveal that the status of minority firms has not significantly improved. For instance, African Americans are 12 percent of the population but, in 1992, owned only 3.6% of all businesses (up from 3.1% in 1987) and received just 1 percent of all U.S. business receipts (which is the same level as in 1987).

[34] *Id.* at 3.

[35] *Id.* at 4.

[36] *Id.* at 60.

[37] See Division of Minority and Women's Business Development, *Opportunity Denied: A Study of Racial and Sexual Discrimination Related to Government Contracting in New York State*, Appendix D, 53–75 (1992) (finding that minorities in New York were 20% less likely to enter self-employment than similarly situated whites); Timothy Bates, *Self-employment Entry Across Industry Groups*, Journal of Business Venturing, Vol. 10, at 143–56 (1995).

[38] Timothy Bates, *Self-employment Entry Across Industry Groups*, Journal of Business Venturing, Vol. 10, 149 (1995).

[39] Samuel Doctors & Anne Huff, *Minority Enterprise and the President's Council* 4–6 (1973) (quoted in Tuchfarber *et al., City of Cincinnati: Croson Study* 150 (1992)).

[40] H.R. Rep. No. 870, 103d Cong., 2d Sess. 5 (1994).

managers and technicians."[41] A history of discrimination by unions and employers helps to explain this unfortunate phenomenon.

Prior to the civil rights accomplishments of the 1960s, labor unions and employers were virtually free to practice overt racial discrimination. Minorities were segregated into menial, low wage positions, leaving no minority managers or white collar workers in most sectors of our economy. Trade unions, which controlled training and job placement in many skilled trades, commonly barred minorities from membership. As a result, "whole industries and categories of employment were, in effect, all-white, all-male."[42] These practices left minorities unable to gain the experience needed to operate all but the smallest businesses, primarily consisting of small "mom and pop" stores with no employees, minimal revenue, located in segregated neighborhoods, and serving an exclusively minority clientele.[43]

Discrimination by unions has been recognized as a major factor in preventing minorities from obtaining employment opportunities in the skilled trades. Title VII of the Civil Rights Act of 1964 (prohibiting employment discrimination) was passed, in part, in response to Congress's desire to halt "the persistent problems of racial and religious discrimination or segregation * * * by labor unions and professional, business, and trade associations."[44] Even after Title VII went on the books, however, unions precluded minorities from membership through a host of discriminatory policies, including the use of "tests and admissions criteria which [have] no relation to on-the-job skills and which [have] a differential impact" on minorities;[45] discriminating in the application of admission criteria;[46] and imposing admission conditions, such as requiring that new members have a family relationship with an existing member, that locked minorities out of membership opportunities.[47] As a result, unions remained virtually all-white for some time after the enactment of Title VII:

- In 1965, the President's Commission on Equal Opportunity found that out of 3,969 persons selected for skilled trade union apprenticeships in 30 southern cities, only 26 were black.[48]
- In 1967, blacks made up less than 1 percent of the nation's mechanical union members (i.e. sheet metal workers, boilermakers, plumbers, electricians, ironworkers and elevator constructors).[49]
- In 1969, only 1.6 percent of Philadelphia construction union members were minorities.[50]

Even when minorities were admitted to unions, discriminatory hiring practices and seniority systems often were used to foreclose job opportunities to them.[51] These actions were the subject of numerous civil rights suits, leading the Supreme Court to declare in 1979 that "judicial findings of exclusion from crafts on racial grounds are so numerous as to make such exclusion a proper subject for judicial notice."[52] Well into the 1980s, courts, committees of Congress, and administrative agencies continued to identify the "inability of many minority workers to obtain jobs" through unions because of "slavish adherence to traditional preference practices [and] also from overt discrimination."[53]

The discriminatory conduct that was the subject of the Supreme Court's decision in *Local 28, Sheet Metal Workers v. EEOC*,[54] is illustrative of the pattern of racial exclusion by trade unions and its consequences for minorities. The union local operated an apprenticeship training program designed to teach sheet metal skills. Apprentices enrolled in the program received class-room training, as well as on-the-job work experience. As the Supreme Court described it, successful completion of the program was the principal means of attaining union membership. But by excluding minorities from the apprenticeship program through "pervasive and egregious discrimination,"[55] the local effectively excluded minorities from the

[41] Samuel Doctors & Anne Huff, *Minority Enterprise and the President's Council* 4–6 (1973) (quoted in Tuchfarber *et al., City of Cincinnati: Croson Study* 150 (1992)).

[42] *Affirmative Action Review: Report to the President* 7 (1995).

[43] See, *e.g.*, Joseph Pierce, *Negro Business and Business Education* (1947); Andrew Brimmer, *The Economic Potential of Black Capitalism*, Public Policy Vol. 19, No. 2, at 289–308 (1971); Kent Gilbreath, *Red Capitalism: An Analysis of the Navajo Economy* (1973).

[44] S. Rep. No. 872, 88th Cong., 1st Sess. 1 (1964). See, *e.g.*, Brimmer & Marshall, *Public Policy and Promotion of Minority Economic Development: City of Atlanta and Fulton County, Georgia*, Pt. VII, 11–17 (1990) (in 1963, minorities were prohibited from joining Atlanta unions representing plumbers, electricians, steel workers and bricklayers); TEM Associates, *Minority/Women Business Study: Revised Final Report, Phase I, Volume I 3–13* ("In 1963, not one of the 1,000 persons in apprenticeship training in Dade County was Black, and the Miami Sheet Metal Workers local, like most other trade unions, was all white.").

[45] *United States v. Iron Workers Local 86*, 443 F.2d 544, 548 (9th Cir.) cert. denied, 404 U.S. 984 (1971). See also *Hameed v. International Ass'n of Bridge, Structural & Ornamental Iron Workers*, 637 F.2d 506 (8th Cir. 1980) (selection criteria, including aptitude test, and the requirement of a high school diploma as a condition of eligibility were discriminatory).

[46] *United States v. Iron Workers Local 86*, 443 F.2d 544, 548 (9th Cir.) (differential application and admissions requirements between whites and blacks; spurious reasons given for rejections of blacks), cert. denied, 404 U.S. 984 (1971); *Sims v. Sheet Metal Workers Int'l Ass'n*, 489 F.2d 1023 (6th Cir. 1973) (union waived requirements for white applicants).

[47] *United States v. United Bhd. of Carpenters and Joiners of America*, 457 F.2d 210, 215 (7th Cir.) cert. denied, 409 U.S. 851 (1972) (family relation requirement excluded minorities from Carpenters trade); *United States v. International Ass'n of Bridge, Structural and Ornamental Iron Workers*, 438 F.2d 679, 683 (7th Cir.) (requiring family relationships between new and existing members "effectively precluded non-white membership") cert. denied, 404 U.S. 830 (1971); *Asbestos Workers, Local 53 v. Vogler*, 407 F.2d 1047 (5th Cir. 1969) (rule restricting membership to sons or close relatives of current members perpetuated the effect of past exclusion of minorities).

[48] Jaynes Associates, *Minority and Women's Participation in the New Haven Construction Industry: A Report to the City of New Haven* 24 (1989) (citing findings of President's Commission on Equal Opportunity).

[49] Steve Askin & Edmund Newton, *Blood, Sweat and Steel*, Black Enterprise, Vol. 14, at 42 (1984).

[50] Department of Labor Memorandum from Arthur Fletcher to All Agency Heads (1969) (cited in *Affirmative Action Review: Report to the President* 11 (1995)) (introducing the "Philadelphia Plan" requiring the use of affirmative action goals and timetables in construction, Secretary Fletcher noted that "equal employment opportunity in these trades in the Philadelphia area is still far from a reality. * * * We find, therefore, that special measures are required to provide equal opportunity in these seven trades").

[51] See *Pennsylvania v. Operating Eng'rs, Local 542*, 469 F. Supp. 329, 339 (E.D. Pa. 1978) (unions hold liable for racial discrimination in employee referral procedures and practices); Waldinger & Bailey, *The Continuing Significance of Race: Racial Conflict and Racial Discrimination in Construction*, Politics and Society, Vol. 19, No. 3, at 299 (1991) ("Despite rules and formal procedures, informal relationships still dominate the union sector's employment processes."); Edmund Newton, *Steel, The Union Fiefdom*, Black Enterprise, Vol. 14, at 46 (1984) (discrimination in operation of hiring halls "operated as impenetrable barriers" to minority job seekers). See generally Barbara Lindeman Schlei & Paul Grossman, *Employment Discrimination Law* 619–28 (1983).

[52] *United Steelworkers of Am. v. Weber*, 443 U.S. 193, 198 n. 1 (1979).

[53] *Taylor v. United States Dept. of Labor*, 552 F. Supp. 728, 734 (E.D. Pa. 1982). See *Minority Business Participation in Department of Transportation Projects: Hearing Before a Subcomm. of the House Comm. on Government Operations*, 99th Cong., 1st Sess. 201 (1985) (testimony of James Haughton) (minority contractors continue to "suffer[] heavily because they have been victims to that discrimination as practiced by the unions"); Division of Minority and Women's Business Development, *Opportunity Denied!: A Study of Racial and Sexual Discrimination Related to Government Contracting in New York State* 41 (1992) ("At least seven reports were issued by federal, state and city commissions and agencies between 1963 and 1982 documenting the pattern of racial exclusion from New York's skilled trade unions by constitution and by-law provisions, member sponsorships rules, subjective interview tests and other techniques, as well as the complicity of construction contractors and the acquiescence of government agencies in those practices.").

[54] 478 U.S. 421 (1986)

[55] *Id.* at 476.

union for decades. Such exclusion continued notwithstanding the passage of Title VII and a series of administrative and judicial findings in the 60s and 70s that the local had engaged in blatant discrimination in shutting minorities out of the program. Indeed, even into the 80s, the local persisted in violating court orders to open up the program to minorities.[56]

More recently, a Yale University economist prepared a report documenting the history of discrimination by New Haven unions that "confirms the nationwide pattern of discrimination."[57] Prior to the passage of the Civil Rights Act of 1964, New Haven's unions prohibited minority membership, and minority workers were almost completely segregated into jobs that whites would not take because they required working under conditions of extreme heat or discomfort.[58] After passage of the Civil Rights Act, minorities were prevented from entering unions by a rule requiring that at least three current members sponsor the application of any new member.[59] Although the policy was race-neutral on its face, "it was almost impossible to find three members who would nominate a minority [and] stand up for him in a closed meeting when other members would undoubtedly attack the candidate and his sponsors."[60] This and other discriminatory policies prevented all but five African Americans from joining the 1,216 white members of the highest paid skilled trade unions in 1967, and throughout the mid-70s, unions and apprenticeship programs remained virtually all-white.[61] The report concluded that the history of "blocked access to the skilled trades is the most important explanation of the low numbers of minority and women construction contractors today."[62]

There is no doubt that trade unions have put much of the discriminatory past behind them, and they now provide an important source of opportunity for minorities. Some barriers to full opportunity remain, however.[63]

A parallel history of discriminatory treatment by employers has prevented minorities from rising into the private sector management positions that are most likely to lead to self-employment. In 1972, Congress found that only 3.5 percent of minorities held managerial positions compared to 11.4 percent of white employees.[64] Congress attributed this underrepresentation to continued discriminatory conduct by "employers, labor organizations, employment agencies and joint labor-management committees."[65] Evidence derived from caselaw and academic studies shows a variety of discriminatory employment practices, including promoting white employees over more qualified minority employees;[66] relying on word-of-mouth recruiting practices that exclude minorities from vacancy announcements;[67] and creating promotion systems that lock minorities into inferior positions.[68]

A study published earlier this year surveyed a broad range of current labor market evidence and concluded that employment discrimination is "not a thing of the past."[69] Rather, race still matters when it comes to determining access to the best employment opportunities.[70] Progress has been made, of course. Yet, "more than three decades after the passage of the Civil Rights Act, segregation by race and sex continues to be the rule rather than the exception in the American workplace, and discrimination still reduces the pay and prospects of workers who are not white or male."[71] The exclusionary conduct frequently is not deliberate, and the people on top—who are mostly white and male—often believe that they are behaving fairly. But old habits die hard: reliance on outmoded stereotypes and group reputations, and the persistence of "invisible biases" work to perpetuate a system that creates disadvantages in employment for minorities today.[72]

The results of recent "testing" studies—in which equally matched

[56] *Id.* at 433–34.

[57] Jaynes Associates, *Minority and Women's Participation in the New Haven Construction Industry: A Report to the City of New Haven* 25–26 (1989).

[58] *Id.* at 26–27.

[59] *Id.* at 28.

[60] *Id.* at 28.

[61] *Id.* at 33; New Haven Board of Aldermen, Minority and Women Business Participation in the New Haven Construction Industry: Committee Report 7 (1990).

[62] Jaynes Associates, *Minority and Women's Participation in the New Haven Construction Industry: A Report to the City of New Haven* 34 (1989). Comparable conclusions about the impact of trade union discrimination have been reached in studies from other jurisdictions around the country. See, e.g., D.J. Miller & Associates, *et al., The Disparity Study for Memphis Shelby County Intergovernmental Consortium* 11–46 (Oct. 1994) ("In Memphis, trade unions have historically discriminated against African Americans."); *Report of the Blue Ribbon Panel to the Honorable Richard M. Daley, Mayor of the City of Chicago* 43 (March 1990) ("The Task Force specifically notes the exclusion of minorities and women from the building trades."); National Economic Research Associates, *et al., Availability and Utilization of Minority and Women-Owned Business Enterprises at the Massachusetts Water Resources Authority* 72 (Nov. 1990) ("A number of M/WBE owners complain that problems caused by unions are exacerbated by state bidding requirements that make it difficult or impossible for non-union firms to bid."); Coopers & Lybrand, *et al., State of Maryland Minority Business Utilization Study* 9 (Feb. 1990) (discussing discriminatory union practices).

[63] See BPA Economics, *et al., MBE/WBE Disparity Study of the City of San Jose* I–34 (1990) ("When trying to join unions, minorities may face testing and experience requirements that are waived in the case of relatives of current union members."); Waldinger & Bailey, *The Continuing Significance of Race: Racial Conflict and Racial Discrimination in Construction*, Politics and Society, Vol. 19, No. 3, at 296–97 (1991) ("In 1987, blacks averaged less than 80 percent of parity for all skilled trades with even lower levels of representation in the most highly paid crafts like electricians and plumbers."); *The Meaning and Significance for Minority Businesses of the Supreme Court Decision in the City of Richmond v. J.A. Croson Co.: Hearing Before the Legislation and National Security Subcomm. of the Comm. on Government Operations*, 101st Cong., 2d Sess. 111–15 (1990).

[64] H.R. Rep. No. 238, 92d Cong., 2d Sess. 3 (1972).

[65] *Id.* at 7.

[66] See, *e.g., Winbush v. Iowa*, 69 FEP Cases 1348 (8th Cir. 1995) (evidence was "overwhelming" that employer had engaged in disparate treatment with respect to promotion of black employees); (*United States v. N.L. Industries, Inc.*, 479 F.2d 354 (8th Cir. 1973) (99 percent white management structure caused, in part, by promoting lesser qualified white employees over more qualified minorities).

[67] See, *e.g., EEOC v. Detroit Edison Co.*, 515 F.2d 301, 313 (6th Cir. 1975), vacated and remanded on other grounds, 431 U.S. 951 (1977) (finding discrimination in "the practice of relying on referrals by a predominantly white work force"); *Long v. Sapp*, 502 F.2d 34, 41 (5th Cir. 1974) (word-of-mouth recruitment serves to perpetuate all-white work force); *Thomas v. Washington County Sch. Bd.*, 915 F.2d 922 (4th Cir. 1990). See also Univ. of Mass., *Barriers to the Employment and Work-Ploce Advancement of Latinos: A Report to the Glass Ceiling Commission* 52 (Aug. 1994) (word-of-muth recruiting methods that rely on social networks are a significant "exclusionary barrier" to employment opportunities for minorities); Roosevelt Thomas, *et al., The Impact of Recruitment, Selection, Promotion and Compensation Policies and Practices on the Glass Ceiling*, submitted to U.S. Department of Labor Glass Ceiling Commission, 14 (April 1994) (noting that "recruitment practices primarily consist[ing] of word-of-mouth and employee referral networking * * * promote the filling of vacancies almost exclusively from within. If the environment is already homogenous, which many are, it maintains this same 'home-grown' environment"); Gertrude Ezorsky, *Racism and Justice: The Case for Affirmative Action* 14–18 (1991); U.S. Commission on Civil Rights, *Affirmative Action in the 1980s: Dismantling the Process of Discrimination* 8 (1981); Barbara Lindeman Schlei & Paul Grossman, *Employment Discrimination Law* 571 (1983).

[68] See, *e.g., Poxton v. Union Notional Bank*, 688 F.2d 552, 565–566 (8th Cir. 1982), cert. denied, 460 U.S. 1083 (1983); *Sears v. Bennett*, 845 F.2d 1365 (10th Cir. 1981) (system requiring that porters, all of whom were black, forfeit seniority when changing jobs designed to prevent promotion of black employees), cert. denied, 456 U.S. 964 (1982); *Terrell v. U.S. Pipe and Foundry Co.*, 644 F.2d 1112 (5th Cir. 1981) (seniority system created for clearly discriminatory purposes), vacated on other grounds, 456 U.S. 955 (1982). See also Ella Bell & Stella Nkomo, *Barriers to Workplace Advancement Experienced by African Americans* 3 (1994) ("African Americans * * * are functionally segregated into jobs less likely to be on the path to the top levels of management.").

[69] Barbara Bergmann, *In Defense of Affirmative Action* 32–33 (1996).

[70] *Id.* at 33.

[71] *Id.* at 62.

[72] *Id.* at 63–82.

minorities and nonminorities seek the same job—are but one source of evidence supporting this conclusion. These studies show, for instance, that white males receive 50 percent more job offers than minorities with the same characteristics applying for the same jobs.[73] As Justice Ginsburg described them, the testing studies make it abundantly clear that "[j]ob applicants with identical resumes, qualifications, and interview styles still experience different receptions, depending on their race."[74]

Even when minorities are hired today, a "glass ceiling" tends to keep them in lower-level positions. This problem was recognized by Senator Dole who, in 1991, introduced the Glass Ceiling Act on the basis of evidence "confirming * * * the existence of invisible, artificial barriers blocking women and minorities from advancing up the corporate ladder to management and executive level positions."[75] That Act created the Federal Glass Ceiling Commission, which subsequently completed an extensive study of the opportunities available to minorities and women in private sector employment, and concluded that "at the highest levels of business, there is indeed a barrier only rarely penetrated by women or persons of color."[76] Evidence released by the Commission paints the following picture:

- 97 percent of the senior level managers in the nation's largest companies are white.[77]
- Black and Hispanic men are half as likely as white men to be managers or professionals.[78]
- In the private sector, most minority managers and professionals are tracked into areas of the company—personnel, communications, affirmative action, public relations—that are not likely to lead to advancement to the highest levels of experience.[79]
- Because private sector opportunities are so limited, most minority professionals and managers work in the public sector.[80]

In light of the evidence that it considered, the Commission concluded that, "in the private sector, equally qualified and similarly situated citizens are being denied equal access to advancement on the basis of gender, race, or ethnicity."[81]

In sum, there are two central means to gaining the experience needed to operate a business. One is to be taught by a parent, passing on a family-owned business. But the long history of discrimination and exclusion by unions and employers means there are very few minority parents with any such business to pass on.[82] The second avenue is to learn the skills needed through private employment. But the effects of employment and trade union discrimination have posed a constant barrier to that entryway into the business world.[83]

2. Discrimination by Lenders

Without financing, a business cannot start or develop. There are two main methods for a new business to raise capital. One is to solicit investments from the public by selling stock in the company (public credit); the other is to solicit investments from banks or other lenders (private credit). Congress has heard evidence that "since small businesses have very limited or no access to public credit markets, it is critically important that these entities, especially minority-owned small businesses, have adequate access to bank credit on reasonable terms and conditions."[84] The rub is that small businesses owned by minorities find it much more difficult than small firms owned by nonminorities to secure capital. Indeed, this is often cited as the single largest factor suppressing the formation and development of minority-owned businesses.[85] The sad fact is that, through countless hearings, Congress has learned that lending discrimination plays a major role in this regard.[86]

Over and over again, studies show that minority applicants for business loans are more likely to be rejected and,

[73] Cross *et al., Employer Hiring Practices: Differential Treatment of Hispanic and Anglo Job Seekers* (1990); Turner *et al., Opportunities Denied, Opportunities Diminished: Discrimination in Hiring* (1991).

[74] *Adarand*, 115 S. Ct. at 2135 (Ginsburg, J., dissenting).

[75] Federal Glass Ceiling Commission, *Good for Business: Making Full Use of the Nation's Human Capital* iii (1995) (citing 1991 statement by Senator Dole regarding 1991 Department of Labor *Report on the Glass Ceiling Initiative*).

[76] *Id.* at iii.

[77] *Id.* at 9.

[78] *Id.* at iv–vi.

[79] *Id.* at 15–16.

[80] *Id.* at 13.

[81] *Id.* at 10–11.

[82] See, *e.g., The Meaning and Significance for Minority Business of the Supreme Court Decision in the City of Richmond v. J.A. Croson: Hearing Before the Legislative and National Security Subcomm. of the House Comm. on Government Operations*, 100th Cong., 2d Sess. 111 (1990) (statement of Manuel Rodriguez) ("[few (minorities) today have families from whom they can inherit" a business); H.R. Rep. No. 870, 103d Cong., 2d Sess. 15 n. 36 (1994) ("[T]he construction industry is * * * family dominated. Many firms are in their second or third generation operating structures."); New Haven Board of Aldermen, *Minority and Women Business Participation in the New Haven Construction Industry* 10 (1990) ("The exclusion of minorities from construction trades employment before the 1970s resulted in an absence of a parent or family member owning a construction business.").

[83] National Economic Research Associates, *et al., The Utilization of Minority and Women-Owned Businesses Enterprises by Alameda County* 176–77 (June 1992) ("A number of witnesses identified historic union discrimination as a major limitation to the formation and success of minority firms."); Jaynes Associates, *Minority and Women's Participation in the New Haven Construction Industry: A Report to the City of New Haven* 34 (1989) (discrimination has prevented minorities from "gain[ing] experience and skills" necessary to operate a business and therefore has "kept the pool of potential minority * * * contractors artificially small").

[84] *Availability of Credit to Minority and Women-Owned Small Businesses: Hearing Before the Subcomm. on Financial Institutions Supervision, Regulation and Deposit Insurance of the House Comm. on Banking*, 103d Cong., 2d Sess. 6 (1994) (statement of Andrew Hove). One reason that minorities starting small businesses are especially reliant on bank lending is because they traditionally lack personal wealth or access to other sources of private credit, such as loans from family or friends. See generally Oliver & Shapiro, *Black Wealth/White Wealth* (1993).

[85] See *The Wall Street Journal Reports: Black Entrepreneurship* R.1 (1992) (Roper Organization poll of 472 minority business owners listed access to capital as the primary barrier to their business development); United States Commission on Minority Business Development, *Final Report* 12 (1992) ("One of the most formidable stumbling blocks to the formation and development of minority businesses is the lack of access to capital.").

[86] See *Availability of Credit to Minority and Women Owned Small Businesses: Hearing Before the Subcomm. on Financial Institutions Supervision, Regulation and Deposit Insurance of the House Comm. on Banking*, 103d Cong., 2d Sess. 27 (1994) (statement of Wayne Smith) (while perhaps more subtle than discrimination in mortgage lending, discrimination in business lending exists); H.R. Rep. No. 870, 103d Cong., 2d Sess. 7 (1994) ("There is a widespread reluctance on the part of the commercial banking * * * and capital markets to take the same risks with a [minority] entrepreneur that they would readily do with a white one."); *Disadvantaged Business Set-Asides in Transportation Construction Projects: Hearing Before the Subcomm. on Procurement, Innovation, and Minority Enterprise Development of the House Comm. on Small Business*, 100th Cong., 2d Sess. 26 (1988) (statement of Joann Payne) ("[b]ecause of the ethnic and sex discrimination practiced by lending institutions, it was very difficult for minorities and women to secure bank loans."); *The Disadvantaged Business Enterprise Program of the Federal-Aid Highway Act: Hearing Before the Subcomm. on Transportation of the Senate Comm. on Environment and Public Works*, 99th Cong. 1st Sess. 363 (1985) (statement of James Laducer) (North Dakota banks "refuse to lend monies to minority businesses from nearby Indian communities"); see also *Fiscal Economic and Social Crises Confronting American Cities: Hearings Before the Senate Comm. on Banking, Housing, and Urban Affairs*, 102d Cong., 2d Sess. (1992); *Federal Minority Business Programs: Hearing Before the House Comm. on Small Business*, 102d Cong., 1st Sess. (1991); *City of Richmond v. J.A. Croson: Impact and Response: Hearing Before the Subcomm. on Urban and Minority-Owned Business Development of the Senate Comm. on Small Business*, 101st Cong., 2d Sess. (1990); *Minority Construction Contracting: Hearing Before the Subcomm. on SBA, the General Economy and Minority Enterprise Development of the House Comm. on Small Business*, 101 Cong., 1st Sess. (1989).

when accepted, receive smaller loan amounts than nonminority applicants with *identical* collateral and borrowing credentials:

- The typical white-owned business receives three times as many loan dollars as the typical black-owned business with the same amount of equity capital.[87] In construction, white-owned firms receive *fifty* times as many loan dollars as black-owned firms with identical equity.[88]
- Minorities are approximately 20 percent less likely to receive venture capital financing than white firm owners with the same borrowing credentials.[89]
- All other factors being equal, a black business owner is approximately 15 percent less likely to receive a business loan than a white owner.[90]
- The average loan to a black-owned construction firm is $49,000 less than the average loan to an equally matched nonminority construction firm.[91]

A comparable pattern of disparity appears in the most recent study on lending to minority firms, which was released earlier this year. That study surveyed 407 business owners in the Denver area. It found that African Americans were 3 times more likely to be rejected for business loans than whites.[92] The denial rate for Hispanic owners was 1.5 times as high as white owners.[93] Disparities in the denial rate remained significant even after controlling for other factors that may affect the lending rate, such as the size and net worth of the business.[94] The study concluded that "despite the fact that loan applicants of three different racial/ethnic backgrounds in this sample (Black, Hispanic and Anglo) were not appreciably different as businesspeople, they were ultimately treated differently by the lenders on the crucial issue of loan approval or denial."[95]

In sum, capital is a key to operating a business. Without financing, no business can form. Once formed, restricted access to capital impedes investments necessary for business development. Minority-owned firms face troubles on both fronts. And in large part, those troubles stem from lending discrimination.[96] As President Bush's Commission on Minority Business Development explained, the result is a self-fulfilling prophecy:

> Our nation's history has created a "cycle of negativity" that reinforces prejudice through its very practice; restraints on capital availability lead to failures, in turn, reinforce a prejudicial perception of minority firms as inherently high-risks, thereby reducing access to even more capital and further increasing the risk of failure.[97]

B. Discrimination in Access to Contracting Markets

Even when minorities are able to form and develop businesses, discrimination by private sector customers, prime contractors, business networks, suppliers, and bonding companies raises the costs for minority firms, which are then passed on to their customers. This restricts the competitiveness of minority firms, thereby impeding their ability to gain access to public contracting markets.

1. Discrimination by Prime Contractors and Private Sector Customers

In the private sector, minority business owners face discrimination that limits their opportunities to work for prime contractors and private sector customers. All too often, contracting remains a closed network, with prime contractors maintaining long-standing relationships with subcontractors with whom they prefer to work.[98] Because minority owned firms are new entrants to most markets, the existence and proliferation of these relationships locks them out of subcontracting opportunities. As a result, minority-owned firms are seldom or never invited to bid for subcontracts on projects that do not contain affirmative action requirements.[99] In addition, when minority firms are permitted to bid on subcontracts, prime contractors often resist working with them. This sort of exclusion is often achieved by white firms refusing to accept low minority bids or by sharing low minority bids with another subcontractor in order to allow that business to beat the bid (a practice known as "bid shopping").[100] These exclusionary practices have been the subject of extensive testimony in congressional hearings.[101]

An Atlanta study revealed evidence of the effect of discrimination by private sector customers and prime contractors on minority contracting opportunities. The study found that 93 percent of the revenue received by minority-owned firms came from the public sector and only 7 percent from the private sector. In sharp contrast, the study found that nonminority firms receive only 20 percent of their revenue from the public sector and 80 percent from the private sector.[102] In addition, the study reported that nearly half of the black-owned firms worked primarily for minority customers, and minority firms rarely worked in a joint venture with a white-owned firm.[103]

Customer prejudices are sometimes graphically expressed. African American business owners have reported arriving at job cites to find signs saying "No Niggers Allowed,"[104] and "Nigger get out of here."[105] Other potential customers have simply refused to work with a business after discovering that its owner is a minority. In a recent encounter, a black business owner arriving at a home-site was told to leave by a white customer, who commented "you didn't tell me you were black and you don't sound black."[106]

2. Discrimination by Business Networks

> Contrary to the common perception, contracting is not a "meritocracy" where the low bidder always wins. "(B)eneath the complicated regulations and proliferation of collective bargaining contracts lies a different reality, one dominated mainly by personal contacts and informal networks."[107] These networks can yield competitive advantages, because they serve as conduits of information about upcoming job opportunities and facilitate access to the decisionmakers (e.g., contracting officers, prime contractors, lenders, bonding agents and suppliers). Simply put, in contracting, access to information is a ticket to success; lack of information can be a passport to failure. Networks and contacts can help a business find the best price on supplies, facilitate a quick loan, foster a relationship with a prime contractor, or yield information about an upcoming contract for which the firm can prepare—all of which serve to make the firm more competitive.

What transforms the mere existence of established networks into barriers for minority-owned businesses is the extent to which they operate to the exclusion of minority membership. It has been recognized in Congress that private sector business networks frequently are off-limits to minorities: "institutional wall(s)," and "old-boy network(s) * * * make( ) it exceedingly difficult for minority firms to break into the private commercial sector."[108] Parallel descriptions appear in numerous state and local studies.[109] Ultimately,

---

[87] Timothy Bates, *Commercial Bank Financing of White and Black Owned Small Business Start-ups*, Quarterly Review of Economics and Business, Vol. 31, No. 1, at 79 (1991) ("The findings indicate that black businesses are receiving smaller bank loans than whites—not because they are riskier, but, rather, because they are black-owned businesses.").

[88] Grown & Bates, *Commercial Bank Lending Practices and the Development of Black-Owned Construction Companies*, Journal of Urban Affairs, Vol. 14, No. 1, at 34 (1992).

[89] Bradford & Bates, *Factors Affecting New Firms Success and their Use in Venture Capital Financing*, Journal of Small Business Finance, Vol. 2, No. 1, at 23 (1992) ("The venture capital market * * * differentially restricts minority entrepreneurs from obtaining venture capital.").

[90] Faith Ando, *Capital Issues and the Minority-Owned Business*, The Review of Black Political Economy, Vol. 16, No. 4, at 97 (1988).

[91] Grown & Bates, *Commercial Bank Lending Practices and the Development of Black-Owned Construction Companies*, Journal of Urban Affairs, Vol. 14, No. 1, at 34 (1992).

[92] The Colorado Center for Community Development, University of Colorado at Denver, *Survey of Small Business Lending in Denver* v. (1996). See Michael Selz, *Race-Linked Gap is Wide in Business-Loan Rejections*, Wall St. J., May 6, 1996, at B2.

[93] The Colorado Center for Community Development, University of Colorado at Denver, *Survey of Small Business Lending in Denver* v. (1996).

[94] *Id.*

[95] *Id.*

[96] There is also evidence that minorities face discrimination in mortgage lending. See Munnell *et al., Mortgage Lending In Boston: Interpreting the HMDA Data*, 86 Am. Econ. Rev. 25 (1996) (finding that minority applicants were 60 percent more likely to be rejected for a mortgage loan than white males with identical characteristics, including age, income, wealth, and education). This serves to aggravate the problems that minorities face in seeking business loans, because an important source of collateral for such loans to a new firm is the home of the owner of the firm. Thus, mortgage discrimination that impedes the ability of minorities to obtain loans to purchase homes (or drives them to purchase less valuable homes than they otherwise would) diminishes their ability to post collateral for business loans.

[97] United States Commission on Minority Business Development, Final Report 6 (1992). While the nation has made great strides in overcoming racial bias, the Commission's apt characterization of the debilitating effects of lending discrimination mirrors the description of the problem in a landmark monograph written over one-half century ago:

> The Negro Businessman encounters greater difficulties than whites in securing credit. This is partially due to the marginal position of negro business. It is also partially due to prejudicial opinions among whites concerning business ability and personal reliability of Negroes. In either case a vicious circle is in operation keeping Negro business down.

Gunnar Myrdal, *An American Dilemma: The Negro and Modern Democracy* 308 (6th ed. 1944).

[98] See New Haven Board of Aldermen, *Minority and Women Business Porticipation in the New Haven Construction Industry* 10 (1990) ("The construction industry in New Haven remains to a large extent a closed network of established contractors and subcontractors who have close long-term relationships and are highly resistant to doing business with 'outsiders.'"); Brimmer & Marshall, *Public Policy and Promotion of Minority Economic Development: City of Atlanta and Fulton County, Georgia*, Pt. II, 61 (1990) (member of trade association testified that "contractors develop good working relationships with certain subcontractors and tend to use them repeatedly, even in a few cases when their prices are just a little bit higher than other subcontractors").

[99] See National Economic Research Associates, *The State of Texas Disparity Study: A Report to the Texas Legislature as Authorized by H.B. 2626, 73rd Legislature* 148 (1994) ("African American owner * * * told by an employee of a prime contractor that the contractor prefers to work with [nonminority-owned firms] and works with [minority-owned firms] only when required to do so."); D.J. Miller & Associates, *Disparity Study for Memphis/Shelby County Intergovernmental Consortium* VII–10 (1994) ("Majority companies will not do business with [minority-owned businesses] because they lack confidence in [them] and are not willing to go beyond those businesses with whom they have a 10 to 15 year relationship."); Brown, Botz & Coddington, *Disparity Study: City of Phoenix* VIII–10 (July 1993) ("From the responses of a number of MBE/WBEs, another form of marketplace discrimination that severely hampers their access to the marketplace is denial of the opportunity to bid. This may occur in a variety of ways, including, but not limited to, the use of non-competitive procurement and selection procedures, as well as intentional acts of rejection."); National Economic Research Associates, *The Utilization of Minority and Woman-Owned Businesses by Contra Costa County: Final Report* ix, xiii (1992) (70 percent of minority-owned firms reported seldom or never being used for contracts that do not contain affirmative action requirements); National Economic Research Associates, *The Availability and Utilization of Minority-Owned Business Enterprises at the Massachusetts Water Resources Authority* 74 (1992) (55 percent of minority-owned construction firms reported that prime contractors that use their firms on contracts with affirmative action requirements seldom or never used their firms on projects that do not contain such requirements); *A Study to Identify Discriminatory Practices in the Milwaukee Construction Marketplace* 125 (Feb. 1990) ("Only 18% of black contractors currently have private sector contracts with primes with which they have worked on public sector contracts with MBE requirements."); see also *Coral Constr. Co. v. King County*, 941 F.2d 910, 916 (9th Cir. 1991), cert. denied, 502 U.S. 1033 (1992) (noting reports that nonminority firms in the county refused to work with minority firms); *Cone Corp. v. Hillsborough County*, 908 F.2d 908, 916 (11th Cir.), cert. denied, 498 U.S. 983 (1990) (noting reports that when minority contractors in the county "approached prime contractors, some prime contractors either were unavailable or would refuse to speak to [the minority contractors]").

[100] See *Associated Gen. Contractors v. Coalition for Economic Equity*, 950 F.2d 1401, 1416 (9th Cir. 1991), cert. denied, 503 U.S. 985 (1992) (noting reports that local minority firms were "denied contracts despite being the low bidder," and "refused work even after they were awarded the contracts as low bidder"); *Cone Corp. v. Hillsborough County*, 908 F.2d 908, 916 (11th Cir.), cert. denied, 498 U.S. 983 (1990) ("[c]ontrary to their practices with non-minority subcontractors," local prime contractors would take minority subcontractors' bids "around to various non-minority subcontractors until they could find a non-minority to underbid [the minority firm]"); BBC Research and Consulting, *Regional Disparity Study: City of Las Vegas* IX–12 (1992) (low bidding Hispanic contractor told that he was not given subcontract because the prime contractor "did not know him" and that the prime "had problems with minority subs in the past"); BPA Economics, *MBE/WBE Disparity Study for the City of San Jose (Vol. 1)* III–1 (1990) (describing practices contributing to low utilization in construction contracts as including "bid shopping, insufficient distribution of notices of contracts (and) insufficient lead time to prepare bids"); BBC Research and Consulting, *The City of Tucson Disparity Study* IX–9–IX–11 (June 1994) (same).

[101] See, *e.g., How State and Local Governments Will Meet the Croson Standard: Hearing Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 100th Cong., 1st Sess. 54 (1989) (statement of Marc Bendick) ("[t]he same prime contractor who will use a minority subcontractor on a city contract and will be terribly satisfied with the firm's performance, will simply not use that minority subcontractor on a private contract where the prime contractor is not forced to use a minority firm."); *The Meaning and Significance for Minority Businesses of the Supreme Court Decision in the City of Richmond v. J.A. Croson Co.: Hearing Before the Legislation and National Security Subcomm. of the Comm. on Government Operations*, 101st Cong., 2d Sess. 57 (1990) (statement of Gloria Molina); *id.* at 100–101 (statement of E.R. Mitchell); *id.* at 113 (statement of Manuel Rodriguez); *A Bill to Reform the Capitol Ownership Development Program: Hearings on H.R. 1807 Before the Subcomm. on Procurement, Innovation and Minority Enterprise Development of the House Comm. on Small Business*, 100th Cong., 1st Sess. 593 (1987) (statement of Edward Irons); *Small Disadvantaged Business Issues: Hearings Before the Investigations Subcomm. of the House Comm. on Armed Services*, 100th Cong., 1st Sess. 19–23 (1991) (statement of Parren Mitchell).

[102] Brimmer & Marshall, *Public Policy and Promotion of Minority Economic Development: City of Atlanta and Fulton County, Georgia*, Pt. I, 9–10 (1990). See also D.J. Miller & Associates, *City of Dayton: Disparity Study* 183 (1991) ("A small percentage of Black firms' revenues come from private sector projects.").

[103] Brimmer & Marshall, *Public Policy and Promotion of Minority Economic Development: City of Atlanta and Fulton County, Georgia*, Pt. III, 15, 34 (1990).

[104] New Haven Board of Aldermen, *Minority and Women Participation in the New Haven Construction Industry* 10 (1990).

[105] National Economic Research Associates, *The Utilization of Minority and Women-Owned Businesses by the City of Hayward* 6–23 (1993).

[106] See BBC Research and Consulting, *City of Tuscon Disparity Study* IX–23 (1994).

[107] Bailey & Waldinger, *The Continuing Significance of Race: Racial Conflict and Racial Discrimination in Construction*, Politics and Society, Vol. 19, No. 3, 298 (1991). See Brimmer & Marshall, *Public Policy and Promotion of Minority Economic Development: City of Atlanta and Fulton County, Georgia*, Pt. II, 35 (1990) ("(M)ost job seekers find their jobs through informal channels. So too it is with construction markets, especially in the private sector.").

[108] *Minority Business Development Program Reform Act of 1987: Hearings on S. 1993 and H.R. 1807 Before the Senate Comm. on Small Business*, 100th Cong., 2d Sess. 127 (1988) (statement of Parren Mitchell). See H.R. Rep. No. 870, 103d Cong., 2d Sess. 15 n.36 ("The construction industry is close-knit; it is family dominated (and reflects an) old buddy network. Minorities and women, unless they are part of construction families, have been and will continue to be excluded whenever possible."); *Minorities and Franchising: Hearings Before the House Comm. on Small Business*, 102d Cong., 1st Sess. 54 (1991) (statement of Rep. LaFalce) (discussing "problems relating to exclusion of minorities or groups of minorities from franchise systems"); 131 Cong. Rec. 17,447 (1985) (statement of Rep. Schroeder) (an "old boy's club" excludes many minorities from business opportunities).

[109] See, *e.g., Associated Gen. Contractors v. Coalition for Economic Equity*, 950 F.2d 1401, 1414 (1991) (municipal study showed that there "continued to operate an 'old boy network' in awarding contracts, thereby disadvantaging (minority firms)"), cert. denied, 503 U.S. 985 (1992); BBC Research & Consulting, *The City of Tuscon Disparity Study* 202 (1994) (citing "numerous detailed examples of the exclusionary operation of good old boy networks"); National Economic Research Associates, *The Utilization of Minority and Women Owned Business Enterprises by the Southeastern Pennsylvania Transportation Authority* 107 (1993) (exclusion from 'old-boy'

Continued

exclusion from business networks "isolate(s minorities) from the 'web of information' which flows around opportunities" thereby putting them at a distinct disadvantage relative to nonminority firms.[110] In government contracting, this disadvantage can be fatal: "(government) vendors who do get contracts, experts agree, have obtained vital bits of information their competitors either ignored or couldn't find. * * * (O)nly the well connected survive."[111]

Restricted access to business networks can particularly disadvantage minorities in the planning stages of government procurement. In designing contracts for public bidding, agencies commonly consult businesses to make sure that specifications match available services. Only bidders who meet the specifications may compete for the contract and the exclusion of minority-owned businesses from planning and consultations can lead to specifications that are written so narrowly as to exclude minority bidders.[112] In addition, the failure to consult minority-owned businesses during the planning stages of procurement prevents them from mobilizing resources for the upcoming competition. As a committee of Congress recently reported, "(m)inorities and women are always left out in any kind of design or planning phase for these projects, and that is why when (they) first know about them * * * it is traditionally too late to get (their) forces and resources together to react."[113]

3. Discrimination in Bonding and By Suppliers

The competitiveness of bids on public and private contracts is not determined solely by the bidder's resources. Rather, competitiveness often hinges on the ability of the bidding company to obtain quality services from bonding companies and suppliers at a fair price. Here too, discrimination places minority firms at a disadvantage.

All contractors on federal construction, maintenance, and repair contracts valued at over $100,000 are required to secure a surety bond guaranteeing the performance of the contract.[114] To obtain bonding, most surety companies require that a firm present a record of experience to substantiate its ability to perform the job. This mandate often lands minorities in the middle of a vicious circle. Since a history of discrimination has prevented many minority companies from gaining experience in contracting, they cannot get bonding. And since they cannot get bonding, they cannot get experience. As Congress has recognized, this dilemma "serves to preclude equitable minority business participation in federal construction contracts."[115]

Congress also has realized that minorities are disadvantaged by their exclusion from business networks that facilitate bonding, because "firms tend to give performance and payment bonds to people they already know and not to the new business person, especially if the small business owner is a woman or of a racial or ethnic minority."[116] Furthermore, Congress has considered evidence indicating that bonding agents, like lenders, inject racial biases into the bonding process.[117] Evidence of discrimination in bonding also has been accumulated in a number of state and local studies.[118] These problems have made minority businesses significantly less able to secure bonding on equal terms with white-owned firms with the same experience and credentials. For example:

- A Louisiana study found that minority firms were nearly twice as likely to be rejected for bonding, three times more likely to be rejected for bonding for over $1 million, and on average were charged higher rates for the same bonding policies than white firms with the same experience level.[119]
- An Atlanta study found that 66 percent of minority-owned construction firms had been rejected for a bond in the last three years, 73 percent of those firms limited themselves exclusively to contracts that did not require bonding, and none of them had unlimited bonding capacity. By contrast, less than 20 percent of nonminority firms had unlimited bonding capacity.[120]

Another factor restricting the ability of minority-owned businesses to compete in both private and public contracting is discrimination allowing "non-minority subcontractors and contractors [to get] special prices and discounts from suppliers which [are] not available to [minority] purchasers."[121] This drives up anticipated costs, and therefore the bid, for minority-owned businesses. A recent survey reported that 56 percent of black business owners, 30 percent of Hispanic owners, and 11 percent of Asian business owners had experienced known instances of discrimination in the form of higher quotes from suppliers.[122] Numerous other state and local studies have reported similar findings.[123]

In one glaring case, a firm in Georgia began sending white employees to purchase supplies posing as owners of a white-owned company. The "white-front" routinely received quotes on supplies that were two thirds lower than those quoted to the minority-owned parent company.[124] Another firm entered into a joint venture with a white firm and each obtained quotes from the same supplier for the same project. When the two firms compared the quotes, they discovered that those given to the minority-owned firm were so much higher than those given to his white joint venture partner that they would have added 40 percent to the final contract price.[125]

C. Evidence of the Impact of Discriminatory Barriers on Minority Opportunity in Contracting Markets: State and Local Disparity Studies

In recent years, many state and local governments have undertaken formal studies to determine whether there is evidence of racial discrimination in their relevant contracting markets that would justify the use of race-conscious remedial measures in their procurement activities. These studies—many of which have been cited in the previous sections of this memorandum—typically contain extensive statistical analyses that have revealed gross disparities between the availability of minority-owned businesses and the utilization of such businesses in state and local government procurement. Under the rules established by the Supreme Court in its 1989 *Croson* decision, which held that affirmative action at the state and local level is subject to strict scrutiny, such disparities can give rise to an inference of discrimination that can serve as the foundation of race-conscious remedial measures in procurement.[126] The studies also generally contain anecdotal evidence and expert opinion, developed in hearings, surveys, and reports, that bring the statistical evidence to life and vividly illustrate the effects of discrimination on procurement opportunities for minorities.

The federal government obviously purchases some goods and services that state and local governments do not (*e.g.*, space shuttles, naval warships). For the most part, though, the federal government does business in the same contracting markets as state and local governments. Therefore, the evidence in state and local studies of the impact of discriminatory barriers to minority opportunity in contracting markets throughout the country is relevant to the question whether the federal government has a compelling interest to take remedial action in its own procurement activities.[127] Accordingly, the Justice Department asked the Urban Institute (UI) to analyze the statistical findings in the studies. On the strength of the findings in 39 studies that it considered, UI has reached the following conclusions:[128]

- The studies show underutilization by state and local governments of African American, Latino, Asian and Native American-owned businesses. The pattern of disparity across industries varies with racial and ethnic groups. However, the median disparity figures calculated by UI demonstrate disparities for all ethnic groups in every industry.[129]
- Minority-owned businesses receive on average only 59 cents of state and local expenditures that those firms

---

networks "was the most frequently cited problem" of minority and women-owned firms); National Economic Research Associates, *The Utilization of Minority and Women-Owned Business Enterprises by the City of Hayward* 6–14 (1993) ("75 percent of the witnesses cited problems breaking into established 'old-boy' networks".).

[110] *United States v. Georgia Power Co.*, 474 F.2d 906 (5th Cir. 1973) (finding that district court's "failure to order (word-of-mouth recruitment practices) to be supplemented by affirmative action * * * was clearly an abuse of power"). See National Economic Research Associates, *Availability and Utilization of Minority and Women Owned Business Enterprises of the Massachusetts Water Resources Authority* 74 (1990) (finding that minorities "need to spend much more time and money on marketing because they do not have established networks and reputations"); Minority Business Enterprise Legal Defense and Education Fund, *An Examination of Marketplace Discrimination in Durham County* 16 (1991) (citing "numerous allegations that black contractors * * * learned of bid opportunities much later than their white competitors that are tied into the 'good old boy' network").

[111] Kevin Thompson, *Taking the Headache Out of Government Contracts*, Black Enterprise 219 (1993).

[112] This is accomplished by, for example, specifying that bidders must use certain brand-name products available only to several companies, specifying a depth of contract experience that minority-owned firms can rarely provide, and bundling projects into large contracts that small minority-owned companies cannot perform. See, *e.g.*, H.R. Rep. No. 870, 103d Cong., 2d Sess. 14 (1994) (citing recommendation that agencies separate "contracts into smaller parts, so that M&WOSB's would be able to participate in those opportunities"); Mason Tillman Associates, *Sacramento Municipal Utility District: M/WBE Disparity Study* 146 (1992) (noting that, in many instances, contract specifications are written so narrowly that there are only a few firms that can do the job); Tuchfarber *et al.*, *City of Cincinnati: Croson Study* 153 (1992) ("Products specified in the Request for Proposals were so narrow that only one company that had exclusive distribution of the product specified could satisfy the contract.").

[113] H.R. Rep. No. 870, 103d Cong., 2d Sess. 13 (1994).

[114] 40 U.S.C. §§ 270a–270e.

[115] United States Congress, *Federal Compliance to Minority Set-Asides: Report to the Speaker, U.S. House of Representatives, by the Congressional Task Force on Minority Set-Asides* 29 (1988). See also H.R. Rep. No. 870, 103d Cong., 2d Sess. 14 (1994) ("inability to obtain bonding is one of the top three reasons that new minority small businesses have difficulty procuring U.S. Government contracts."); *Minority Business Participation in Department of Transportation Projects: Hearing Before a Subcomm. of the House Comm. on Government Operations*, 99th Cong., 1st Sess. 159 (1985) (statement of Sherman Brown) ("Virtually everyone connected with the minority contracting industry * * * apparently agrees that surety bonding is one of the biggest obstacles in the development of minority firms.").

[116] H.R. Rep. No. 870, 103d Cong. 2d Sess. 15 (1994).

[117] See *Discrimination in Surety Bonding: Hearing Before the Subcomm. on Minority Enterprise, Finance and Urban Development of the House Comm. on Small Business*, 103d Cong., 1st Sess. 2 (1993) (statement by Rep. Kweisi Mfume) ("Similarities between a banker's ability to makn arbitrary credit decisions and a surety producer or an underwriter's capability of injecting personal prejudice into the bonding process are compelling indeed."); *City of Richmond v. J.A. Croson: Impact and Response: Hearing Before the Subcomm. on Urban and Minority-Owned Business Development of the Senate Comm. on Small Business*, 101st Cong., 2d Sess. 40 (1990) (statement of Andrew Brimmer); id. at 165–66 (statement of Edward Bowen); *Disadvantaged Business Set-Asides in Transportation Construction Projects: Hearings Before the Subcomm. on Procurement, Innovation and Minority Enterprise Development of the House Comm. on Small Business*, 100th Cong., 2d Sess. 107 (1988) (statement of Marjorie Herter) ("Discrimination against women and minorities in the bonding market is quite prevalent").

[118] See Division of Minority and Women's Business Development, *Opportunity Denied! A Study of Racial and Sexual Discrimination Related to Government Contracting in New York State*, Executive Summary 57 (1992) (noting that 47 witnesses reported "specific incidents of racial discrimination * * * in attempting to secure performance bonds"); National Economic Research Associates, *The Utilization of Minority and Women-Owned Business Enterprises by Alameda County* 202, 212 (June 1992) (nearly 50 percent of minority businesses reported experiencing bonding discrimination); National Economic Research Associates, *The Utilization of Minority and Women-Owned Businesses Enterprises by Costa County* 231, 241 (May 1992) (noting evidence of bonding discrimination); Board of Education of the City of Chicago, *Report Concerning Consideration of the Revised Plan for Minority and Women Business Enterprise Economic Participation* 316 (1991) ("Bonding is selectively and capriciously provided or denied with the decision being 85 percent subjective."); Mason Tillman Associates, *Sacramento Municipal Utility District, M/WBE Disparity Study* 119, 135–43 (1990) (noting evidence of bonding discrimination).

[119] D.J. Miller & Associates, *State of Louisiana Dispority Study* Vol. 2, pp. 35–57 (June 1991).

[120] Brimmer & Marshall, *Public Policy and Promotion of Minority Economic Development: City of Atlanta and Fulton County, Georgia*, Pt. III, 131–38 (1990).

[121] *Cone Corp. v. Hillsborough County*, 908 F.2d 908, 916 (11th Cir.) cert. denied, 498 U.S. 983 (1990). Evidence of pricing discrimination outside the contracting setting indicates that the problem cuts across the economy. For example, a recent testing study of automobile purchases showed that, on average, black men were charged nearly $1,000 more for cars than white men. Ian Ayres, *Fair Driving: Gender and Race Discrimination in Retail Car Negotiations*, 104 Harv. L. Rev. 817 (1991).

[122] National Economic Research Associates, *The Utilization of Minority and Woman-Owned Businesses by the Regional Transportation District (Denver Colorado): Final Report* 16–23 (1992).

[123] See National Economic Research Associates, *The State of Texas Disparity Study: A Report to the Texas Legislature* as Authorized by H.B. 2626, 73rd Legislature 148 (1994) (Hispanic business owner denied credit by supplier who told him that "we only sell on a cash basis to people of your kind"); D.J. Miller & Associates, *Disparity Study for Memphis/Shelby County Intergovernmental Consortium* 117 (1994) ("Other frequent complaints pertaining to informal barriers included being completely stopped by suppliers' discriminatory practices."); BBC Research Associates, *Disparity Study for the City of Fort Worth* IX–20 (1993) (citing evidence that suppliers discriminate against minorities by "refus[ing] to sell or sell[ing] at higher prices than [to] whites"); Division of Minority and Women's Business Development, *Opportunity Denied! A Study of Racial and Sexual Discrimination Related to Government Contracting in New York State*, Executive Summary, 53 (1992) (53 witnesses reported "specific incidents of racial discrimination * * * where materials or equipment suppliers would not extend the same payment terms and discounts to them as they knew were being made available to white male owned contractors with the same financial histories"); National Economic Research Associates, *The Utilization of Minority and Women-Owned Business Enterprises by Alameda County* 187 (1992) (41% of minority-owned business respondents reported experiencing discrimination in quotes from suppliers); *City of Dayton, Disparity Study* 101 (1991) (citing evidence of discriminatory pricing); D.J. Miller & Associates, *City of St. Petersburg Disparity Study* 39–40 (1990) ("Discrimination by suppliers has also prevented [minority-owned businesses] from entering successful bids."); Mason Tillman Associates, *Sacramento Municipal Utility District, M/WBE Disparity Study* 135–43 (1990).

[124] Brimmer & Marshall, *Public Policy and Promotion of Minority Economic Development: City of Atlanta and Fulton County, Georgia* Pt. II, 76 (1990).

[125] BBC Research and Consulting, *Regional Disparity Study: City of Las Vegas* IX–20 (1992).

[126] In describing what it takes for the government to establish a remedial predicate in procurement, the Court in *Croson* said that "[w]here there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the [government] or the [government's] prime contractors, an inference of discriminatory exclusion could arise." 488 U.S. at 509.

[127] The studies are also of particular relevance in assessing the compelling interest for congressionally-authorized affirmative action measures in programs that provide federal funds to state and local governments for use in their procurement.

[128] To date, UI has evaluated 56 of the studies. Ultimately, UI excluded 17 of the 56 studies from its analysis, on the grounds that those studies do not present disparity ratios; do not present tests of statistical significance or number of contracts; do not present separate results by industry; or do not present disparity ratios based on government contracting.

[129] UI's findings of underutilization are predicated on two different measures: the median disparity ratio across all studies and the percent of studies reporting substantial underutilization (defined as a disparity ratio of less than 0.8). A disparity ratio is the proportion of government contracting received by minority-owned firms to the proportion of available firms that are minority-owned. Thus, a disparity ratio of 0.8 indicates that businesses owned by members of a minority group received only 80 cents of every dollar expected to be allocated to them based on their availability. UI's findings of disparity do not change substantially when analysis is limited to studies with either a large number of contracts or high availability. In fact, in most instances, the disparity between availability and utilization was greater in studies that involve large numbers of contracts.

would be expected to receive, based on their availability. The median disparities vary from 39 cents on the dollar for firms owned by Native Americans to 60 cents on the dollar for firms owned by Asian-Americans.

• Minority firms are underutilized by state and local governments in all of the industry groups examined: Construction, construction subcontracting, goods, professional services and other services. The largest disparity between availability and utilization was seen in the category of "other services," where minority firms receive 51 cents for every dollar they were expected to receive. The smallest disparity was in the category of construction subcontracting, where minority firms still receive only 87 cents for every dollar they would be expected to receive.

An important corollary to UI's findings is the experience following the Supreme Court's 1989 ruling in *Croson*. In the immediate aftermath of that case, state and local governments scaled back or eliminated altogether affirmative action programs that had been adopted precisely to overcome discriminatory barriers to minority opportunity and to correct for chronic underutilization of minority firms. As a result of this retreat from affirmative action, minority participation in state and local procurement plummeted quickly. To cite just a few examples:

• After the court of appeals decision in *Croson* invalidating the City of Richmond's minority business program in 1989, minority participation in municipal construction contracts dropped by 93 percent.[130]

• In Philadelphia, public works subcontracts awarded to minority and women-owned firms declined by 97 percent in the first full month after the city's program was suspended in 1990.[131]

• Awards to minority-owned businesses in Hillsborough County, Florida, fell by 99 percent after its program was struck down by a court.[132]

• After Tampa suspended its program, participation in city contracting decreased by 99 percent for African American-owned businesses and 50 percent for Hispanic-owned firms.[133]

• The suspension of San Jose's program in 1989 resulted in a drop of over 80 percent in minority participation in the city's prime contracts.[134]

Together, the information in the state and local studies, and the impact of the cut-back in affirmative action at the state and local level after *Croson*, provide strong evidence that further demonstrates the compelling interest for affirmative action measures in federal procurement. The information documents that the private discrimination discussed previously in part II of this memorandum—discrimination by trade unions, employers, lenders, suppliers, prime contractors, and bonding providers—substantially impedes the ability of minorities to compete on an equal footing in public contracting markets. And it these same discriminatory barriers that impair minority opportunity in federal procurement. The information also indicates that, without affirmative action, minorities would tend to remain locked out of contracting markets.

The information also helps to illuminate what it is that Congress is seeking to redress—and hence what interests are served—through remedial action in federal procurement. First, Congress has a compelling interest in exercising its constitutional power to remedy the impact of private discrimination on the ability of minority businesses to compete in contracting markets that is reflected in the studies. Second, Congress has a compelling interest in exercising its constitutional power to redress the statistical disparities reflected in the studies that give rise to an inference of discrimination by state and local governments, or at minimum suggest that those governments are compounding the impact of private discrimination through ostensibly neutral procurement practices that perpetuate barriers to minority contracting opportunity.[135] Finally, Congress has a compelling interest in ensuring that expenditures by the federal government do not inadvertently subsidize the discrimination by private and public actors that is reflected in the studies.[136] Were that to occur, the federal government would itself become a participant in that discrimination through procurement practices that serve to sustain impediments to minority opportunity in national contracting markets.

III. Conclusion

As a nation, we have made substantial progress in fulfilling the promise of racial equality. In contracting markets throughout the country, minorities now have opportunities from which they were wholly sealed off only a generation ago. Affirmative action measures have played an important part in this story. However, the information compiled by the Justice Department to date demonstrates that racial discrimination and its effects continue to impair the ability of minority-owned businesses to compete in the nation's contracting markets.

The evidence shows that the federal government has a compelling interest in eradicating the effects of two kinds of discriminatory barriers: first, discrimination by employers, unions, and lenders that has hindered the ability of members of racial minority groups to form and develop businesses as an initial matter; second, discrimination by prime contractors, private sector customers, business networks, suppliers, and bonding companies that raises the costs of doing business for minority firms once they are formed, and prevents them from competing on an equal playing field with nonminority businesses. This discrimination has been, in many instances, deliberate and overt. But it also can take a more subtle form that is inadvertent and unconscious. Either way, the discrimination reflects practices that work to maintain barriers to equal opportunity.

The tangible effects of the discriminatory barriers are documented in scores of studies that reveal stark disparities between minority availability and minority utilization in state and local procurement. In turn, the disparities show that state and local governments themselves are tangled in this web through ostensibly neutral procurement actions that perpetuate the discriminatory barriers. The very same discriminatory barriers that block contracting opportunities for minority-owned businesses at the state and local levels also operate at the federal level. Without affirmative action in its procurement, the federal government might well become a participant in a cycle of discrimination.

Affirmative action in federal procurement is not the cure-all that will eliminate all the obstacles that racial discrimination presents for minority businesses. No one remedial tool can completely address the full dimension of this problem. Laws proscribing discrimination and general race-neutral assistance to small businesses are critical to the achievement of these ends. But the evidence demonstrates that such measures cannot pierce the many layers of discrimination and its effects that hinder the ability of minorities to compete in our nation's contracting markets. Thus, there remains today a compelling interest for race-conscious affirmative action in federal procurement.

[FR Doc. 96–13123 Filed 5–22–96; 8:45 am]

BILLING CODE 4410–01–P

---

[130] United States Commission on Minority Business Development, *Final Report* 99 (1992).

[131] *Id.*

[132] *Id.*

[133] Id.

[134] BPA Economics, *et al., MBE/WBE Disparity Study for the City of San Jose*, Vol. III, 118–19 (1990).

[135] The role of state and local governments in impeding contracting opportunities for minority firms is most directly addressed through federal programs that authorize recipients of federal funds to take affirmative action in their procurement activities. Those programs plainly are examples of the exercise of Congress' power under the Fourteenth Amendment to remedy discrimination by state and local governments. See *Adarand*, 115 S. Ct. at 2126 & n.9 (Stevens, J., dissenting). Since that same state and local conduct constitutes an impediment to minority opportunity in contracting markets in which the federal government does business, it also serves as a basis for affirmative action measures in the federal government's own procurement. Therefore, those measures too entail an exercise of Congress' authority under the Fourteenth Amendment. See *id.* at 2132 n.1 (Souter, J., dissenting) (for purposes of exercise of Congress' power under the Fourteenth Amendment, there is no difference between programs in which "the national government makes a construction contract directly" and programs in which "it funnels construction money through the states").

[136] See *Croson*, 488 U.S. at 492.

OL
1
SS
1
0
1
MY
2 3
996
MI

federal register

Thursday
May 23, 1996

Part VII

The President

Proclamation 6900—National Maritime Day, 1996

Federal Register
Vol. 61, No. 101
Thursday, May 23, 1996

Presidential Documents

Title 3—

The President

Proclamation 6900 of May 21, 1996

National Maritime Day, 1996

By the President of the United States of America

A Proclamation

The men and women of the United States Merchant Marine stand prepared to help our Nation in times of crisis. Their outstanding professionalism and performance have been manifest throughout America's proud history, most recently in the Persian Gulf, Haiti, and Somalia. Today, these brave individuals continue to bring honor to the maritime community and to our country through their steadfast service to our troops in Bosnia.

Those working on and in support of U.S. vessels play another important role by strengthening our economy. Every day, merchant ships carry the Nation's domestic and foreign commerce, acting as an integral part of our seamless transportation system. Those aboard go to sea to move American goods and materials, to help provide aid and comfort to others around the world, and, when necessary, to defend our interests and to seek international peace.

The Maritime Security Program legislation currently before the Congress will preserve a strong sealift capability so that critical military cargoes can reach American troops and our allies abroad as they strive to fulfill their peacekeeping and humanitarian missions. It will protect American jobs and foster our efforts to expand international trade. In standing behind this important measure, we affirm our commitment to maintaining a strong U.S.-flag presence on the high seas for our continued national security and economic growth.

In recognition of the importance of the U.S. Merchant Marine, the Congress, by a joint resolution approved May 20, 1933, has designated May 22 of each year as "National Maritime Day" and has authorized and requested the President to issue annually a proclamation calling for its observance.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 22, 1996, as National Maritime Day. I urge all Americans to observe this day with appropriate ceremonies, activities, and programs and by displaying the flag of the United States at their homes and in their communities. I also request that all ships sailing under the American flag dress ship on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of May, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 96–13204
Filed 5–22–96; 8:45 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 61, No. 101

Thursday, May 23, 1996

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Public inspection announcement line	523–5215
Laws	
Public Laws Update Services (numbers, dates, etc.)	523–6641
For additional information	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: 301–713–6905

FEDERAL REGISTER PAGES AND DATES, MAY

19155–19502 1
19503–19804 2
19805–20116 3
20117–20418 6
20419–20700 7
20701–21046 8
21047–21360 9
21361–21946 10
21947–24204 13
24205–24432 14
24433–24664 15
24665–24874 16
24875–25134 17
25135–25388 20
25389–25548 21
25549–25774 22
25775–26068 23

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6889 19503
6890 19803
6891 20419
6892 21045
6893 21047
6894 24661
6895 24663
6896 25129
6897 25765
6898 25767
6899 25769
6900 26067

Executive Orders:
11216 (See EO 13002) 24665
13001 21943
13002 24665
13003 25131
13004 25771

Administrative Orders:

Memorandums:
April 1, 1996 26017
April 26, 1996 19505
April 26, 1996 24667
April 26, 1996 24877
April 28, 1996 19507
May 10, 1996 26033

Presidential Determinations:
No. 96–20 of April 1, 1996 26019
No. 96–21 of April 4, 1996 26021
No. 96–22 of April 18, 1996 26027
No. 96–23 of April 30, 1996 26029
No. 96–24 of May 9, 1996 26031

4 CFR

Proposed Rules:
21 19205

5 CFR

Ch. LXIX 20117
300 19509
410 21947
532 20701
831 21953
842 21953
890 25775

7 CFR

2 25775
28 19511
51 20702
52 25549
53 19155
54 19155
225 25550
226 25550
272 19155
273 19155
301 20877
319 24433
800 24669
810 24669
900 20717
915 19512
916 19160
917 19160
946 20119
956 20121
959 24877
979 20718
980 25551
985 20122
1002 20719
1004 20719
1007 20124
1280 ..... 19514, 21049, 21053
1485 24205
1841 21361
1843 21361
1845 21361
1903 21361
1945 21361
1980 21361
2054 21361
3403 25366

Proposed Rules:
51 24247
911 20754
924 20756
944 ..... 20754, 20756
958 20188
1005 19861
1007 19861
1011 19861
1046 19861
1160 20759

8 CFR

3 ..... 19976, 21065, 21228
100 25777
242 ..... 19976, 21065, 21228

9 CFR

50 25135
77 25135
78 19976
130 ..... 20421, 25513

Proposed Rules:
92 ..... 20189, 20190, 21389
93 20190
94 20190
95 20190
96 20190
98 20190
301 19564
304 19578
308 19578
317 ..... 19564, 19578

318.....19564, 19578
319.....19578
320.....19564
381.....19564, 19578

10 CFR

20.....24669
30.....24669
40.....24669
61.....24669
70.....24669
72.....24669

Proposed Rules:

26.....21105, 24731
72.....24249

11 CFR

110.....24533

12 CFR

5.....19524
19.....20330
20.....19524
25.....21362
28.....19524
205.....19662, 19678
211.....24439
220.....20386
228.....21362
229.....25389
250.....19805
263.....20338
308.....20344
345.....21362
509.....20350
563e.....21362
614.....20125

Proposed Rules:

207.....20399
215.....19863
220.....20399
221.....20399
330.....25596
614.....24907

13 CFR

Proposed Rules:

121.....20191

14 CFR

21.....20696
25.....24208, 24213, 25778
27.....21904
29.....21894, 21904
31.....20877
39.....19540, 19807, 19808, 19809, 19811, 19813, 19815, 20125, 20127, 20616, 20636, 20638, 20639, 20641, 20643, 20644, 20646, 20668, 20669, 20671, 20672, 20674, 20676, 20677, 20679, 20681, 20682, 21066, 21068, 21070, 21071, 24206, 24214, 24216, 24218, 24220, 24675, 24684, 24686, 24688, 24690, 24691, 24876, 24881, 24883, 24884, 25557, 15558
43.....19498
71.....19541, 19542, 19816, 19817, 21364, 21365, 21953, 24222, 24223
73.....20127
91.....24430
97.....25138, 25139, 25141, 25780, 25781, 25783
159.....19784
205.....19164
323.....19164
385.....19166

Proposed Rules:

29.....20760
39.....20192, 20194, 20762, 20764, 21146, 21979, 21980, 21982, 24250, 25417, 25418, 25598
71.....19590, 19591, 19592, 19593, 21910, 21984, 24533, 25157, 25600
91.....24582
121.....21149, 24582, 24533, 26036
127.....24582
135.....24582, 26036
158.....25420

15 CFR

902.....19171, 21926
981.....21073

Proposed Rules:

946.....19594

16 CFR

405.....25560
1500.....19818

Proposed Rules:

254.....19869
1210.....20503

17 CFR

1.....19177, 19830
3.....20127
5.....19830
10.....21954
31.....19830
140.....21954
200.....20721, 25652
228.....25652
229.....25652
230.....21356, 25652
231.....24644
232.....25652
239.....25652
240.....21354, 25652
241.....24644
249.....21354
270.....25652
271.....24644
274.....25652
276.....24644

Proposed Rules:

1.....19869
156.....19869
230.....25601
240.....25601
250.....25601
270.....25601
275.....25601

18 CFR

35.....21940
37.....21737
385.....21940
1300.....20117

Proposed Rules:

35.....21847
161.....19211
250.....19211
284.....19211, 19832
346.....19878

19 CFR

10.....19834, 24887
12.....24888
103.....19835
122.....25777
145.....24888
161.....24888

Proposed Rules:

101.....19834

20 CFR

200.....25390
345.....20070
601.....19982
617.....19982
626.....19982
658.....19982
702.....19982

21 CFR

2.....25390
5.....24223
101.....20096, 21074
173.....25392
201.....20096
310.....25142
341.....25142
369.....20096
500.....19542
501.....20096
510.....21075, 24440
520.....24441, 24443
522.....21075, 24440, 25784
556.....24440, 24441
558.....21075, 24443, 24694
582.....19542
589.....19542
600.....24227
601.....24227
740.....20096
801.....20096

Proposed Rules:

Ch. 1.....21392
25.....19476
101.....25421
102.....19220
130.....19220
131.....19220
133.....19220
135.....19220
136.....19220
137.....19220
139.....19220
145.....19220
146.....19220
150.....19220
152.....19220
155.....19220
156.....19220
158.....19220
160.....19220
161.....19220
163.....19220
164.....19220
165.....19220
166.....19220
168.....19220
169.....19220
210.....20104
211.....20104
328.....21392
530.....25118
589.....24253

22 CFR

126.....19841
514.....20437

24 CFR

0.....19187
201.....19788
290.....19188
585.....25124
941.....19708
970.....19708

Proposed Rules:

206.....21910
888.....20982
901.....20358
3500.....21394

25 CFR

Proposed Rules:

144.....24731
250.....19600
291.....25604
525.....21394

26 CFR

1.....19188, 19189, 19544, 19546, 21366, 21955
301.....19189
602.....19189

Proposed Rules:

1.....20503, 20766, 20767, 21985, 21988
31.....20767
32.....20767
35a.....20767
301.....20503, 21989

27 CFR

1.....20721
4.....20721
7.....20721
16.....20721
19.....20721
20.....20721
21.....20721
22.....20721
24.....20721, 21076
25.....20721
53.....20721
55.....20721
71.....20721
170.....20721
178.....20721
179.....20721
194.....20721
197.....20721
200.....20721
250.....20721
251.....20721
252.....20721
270.....20721
275.....20721
285.....20721
290.....20721
296.....20721

28 CFR

58.....24889
501.....25120
550.....25120

Proposed Rules:

90.....24526
100.....21396

29 CFR

1.....19982
2.....19982
4.....19982
5.....19982

6.....19982
7.....19982
8.....19982
22.....19982
24.....19982
32.....19982
96.....19982
500.....24694
504.....19982
507.....19982
508.....19982
530.....19982
1601.....21370
1910.....19547, 21228
1978.....19982
2619.....21228, 24444, 25513
2627.....24694
2676.....24444

Proposed Rules:

Ch. XIV.....20768
4.....19770
102.....25158

30 CFR

75.....20877
250.....25147

Proposed Rules:

Ch. II.....21977, 25160
202.....25421
206.....25421
211.....25421
256.....24466
901.....20768
902.....20768
904.....19881, 20768
913.....20768
914.....20768
915.....20768
916.....20768
917.....20768
918.....20768
920.....20768
934.....25425
936.....25426
946.....19885
950.....20773

31 CFR

12.....25396
361.....20437
585.....24696

Proposed Rules:

356.....25164

32 CFR

324.....25551

33 CFR

52.....24233
100.....19192, 20132, 21959, 21960, 21961, 21962, 25149
110.....25149
117.....24235, 25149
165.....19192, 19841, 21963, 24697, 24698, 24699, 24701, 24892
401.....19548

Proposed Rules:

100.....25835
165.....25838

34 CFR

361.....24390
685.....24446

Proposed Rules:

100.....20196, 21998, 21999, 22001
117.....22002
154.....20084
155.....20084

36 CFR

242.....25785
292.....20726
1228.....19552, 24702

Proposed Rules:

7.....20775
100.....19220
117.....19223
701.....25839

37 CFR

Proposed Rules:

Ch. II.....20197, 22004
1.....19224, 20877

38 CFR

2.....20133, 20437
3.....20438, 20726, 25787
4.....20438, 20440
9.....20134
17.....21964, 24236
19.....20447
20.....20447
21.....20727, 24237

Proposed Rules:

3.....24910
17.....25428

39 CFR

3001.....24447

Proposed Rules:

233.....21404

40 CFR

50.....25566
52.....19193, 19555, 20136, 20139, 20142, 20145, 20147, 20453, 20455, 20458, 20730, 20732, 24239, 24457, 24702, 24706, 24709, 24712, 25789, 25791
55.....25149
60.....20734, 21080
63.....21370, 25397
70.....20150, 24457, 24715
75.....25580
80.....20736
81.....20458, 21372, 24239, 24242
82.....25585
89.....20738
90.....20738
110.....25149
117.....25149
123.....20972
131.....20686
141.....24354
167.....25151
180.....19842, 19845, 19847, 19849, 19850, 19852, 19854, 19855, 20742, 20743, 20745, 21378, 24893, 25152
185.....25153
271.....25794, 25796, 25799
300.....20473, 24720, 24894
355.....20473
421.....24242

Proposed Rules:

Ch. I.....19432
51.....19231
52.....19233, 19601, 20199, 20200, 20201, 20504, 21405, 21412, 24467, 24737, 24738, 25840, 25841
55.....25173
61.....20775
63.....19887, 21414
70.....20202
80.....20779
81.....19233, 21415
82.....25604
89.....20738
90.....20738
148.....21418
170.....19889
180.....19233, 20780, 20781, 24738, 24911
185.....20780
186.....10780, 20781, 24911
261.....21418, 25175
268.....21418
271.....21418
300.....19889, 20202, 20785, 21422, 22004, 22006, 24261

41 CFR

50-203.....19982
60-1.....19982, 25516
60-30.....19982
60-60.....25516
60-250.....19366, 19982
60-741.....19336, 19982
301-4.....25802

42 CFR

405.....19722
412.....21969
486.....19722

Proposed Rules:

84.....24740, 25513

43 CFR

11.....20560

44 CFR

61.....19197
62.....24452
64.....19557, 25802
65.....25400, 25402, 25403
67.....25405
206.....19197

Proposed Rules:

67.....25429, 25435

45 CFR

Proposed Rules:

1311.....24467
2400.....25612

46 CFR

Ch. I.....24464
10.....19858
15.....19858, 25984
26.....25984
30.....25272
31.....25272, 25984
32.....25272, 25984
33.....25272
34.....25984
35.....25272, 25984
38.....25984
54.....25984
56.....25984
58.....25984
61.....25984
70.....25272
71.....25272
72.....25984
75.....25272
76.....25984
77.....25272, 25984
78.....25272, 25984
90.....25272
91.....25272
92.....25984
94.....25272
95.....25984
96.....25272, 25984
97.....25272, 25984
107.....25272
108.....25272, 25984
109.....25272, 25984
114.....20556
116.....20556
117.....20556
118.....20556
119.....20556
120.....20556
121.....20556
122.....20556
125.....25272
133.....25272
153.....25984
160.....25984
162.....25984
164.....25984
167.....25272, 25984
168.....25272, 25984
169.....25984
170.....20556, 24464
171.....24464
173.....20556, 24464
175.....20556
176.....20556
177.....20556
178.....20556
179.....20556
180.....20556
181.....20556
182.....20556
183.....20556
185.....20556
188.....25272
189.....25272, 25984
190.....25984
192.....25272
193.....25984
195.....25272
196.....25272, 25984
199.....25272
298.....21302
381.....24895
403.....21081
404.....21081

47 CFR

0.....25804
3.....20155
21.....25594
22.....21380
24.....25807, 25808 25810
64.....20746, 24897
73.....20490, 20747, 21384, 21385, 21973, 24262, 24263, 24465, 25594
80.....25804
90.....21380, 25810
97.....21385

Proposed Rules:

Ch. I.....22008
0.....21151

1 .....19236, 20505, 24743, 25183
2.....19236
15.....24473, 24749
21.....19236
22.....24470
24.....24470
64.....25184
73 .....19601, 20206, 20207, 20505, 20789, 21425, 24262, 24263, 25183, 25841
80.....21151
90.....25185
94.....19236

48 CFR

Ch. 1.....24263
209.....25408
231.....21973
242.....25409
243.....25408
570.....24720
801.....20491
803.....20491
804.....20491
805.....20491
806.....20491
808.....20491
810.....20491
812.....20491
813.....20491
815.....20491
816.....20491
820.....20491
822.....20491
828.....20491
833.....20491
834.....20491
836.....20491
837.....20491
846.....20491
871.....20493
904.....21975
906.....21975
911.....21975
912.....21975
913.....21975
915.....21975
919.....21975
925.....21975
926.....21975
933.....21975
950.....21975
952.....21975
970.....21975
2401.....19468
2402.....19468
2404.....19468
2405.....19468
2406.....19468
2409.....19468
2411.....19468
2412.....19468
2413.....19468
2414.....19468
2415.....19468
2416.....19468
2417.....19468
2419.....19468
2420.....19468
2426.....19468
2428.....19468
2429.....19468
2432.....19468
2434.....19468
2436.....19468
2437.....19468
2442.....19468
2452.....19468
2453.....19468

Proposed Rules:

Ch. 1.....22010
Ch. 2.....22010
52.....24473
901.....19891
905.....19891
906.....19891
908.....19891
915.....19891
916.....19891
917.....19891
922.....19891
928.....19891
932.....19891
933.....19891
935.....19891
936.....19891
942.....19891
945.....19891
952.....19891
971.....19891
1515.....25440
1552.....25440

49 CFR

18.....21386
37.....25409
38.....25409
90.....21386
107.....21084
171.....21084, 25940
172.....20747
173 .....20747, 21084, 25940
174.....20747
176.....20747
178.....21084, 25940
195.....24244
228.....20494
397.....20496
533.....25595
564.....20497
571 .....19201, 19202, 19560, 19561, 20170, 20172, 20497
604.....19562
609.....19562
639.....25088
1051.....19859
1053.....19859
1164.....21387
1311.....21387
1312.....19859
1330.....024722

Proposed Rules:

171.....24904
173.....24904
180.....24904
219.....21149
382.....21149
537.....22010
571 .....19602, 24263, 24265
653.....21149
654.....21149
1002.....20877
1100.....19236
1101.....19236
1102.....19236
1103.....19236
1104.....19236
1105.....19236
1106.....19236
1107.....19236
1108.....19236
1109.....19236
1110.....19236
1111.....19236
1112.....19236
1113.....19236
1114.....19236
1115.....19236
1116.....19236
1117.....19236
1118.....19236
1119.....19236
1120.....19236
1121.....19236
1122.....19236
1123.....19236
1124.....19236
1125.....19236
1126.....19236
1127.....19236
1128.....19236
1129.....19236
1130.....19236
1131.....19236
1132.....19236
1133.....19236
1134.....19236
1135.....19236
1136.....19236
1137.....19236
1138.....19236
1139.....19236
1140.....19236
1141.....19236
1142.....19236
1143.....19236
1144.....19236
1145.....19236
1146.....19236
1147.....19236
1148.....19236
1149.....19236
1185.....22014
1300.....21153
1305.....24474
1312.....19902

50 CFR

17.....24722, 25813
91.....25155
100.....25785
216.....21926
222.....21926
253.....19171
255.....19171
620.....20175
641.....25833
658.....24728
661.....20175
663.....21102
672 .....19976, 21104, 24729
675 .....19976, 24730, 24905, 25595
678.....21978

Proposed Rules:

16.....24267
17 .....19237, 21426, 25618
246.....25443
280.....25443
281.....25443
282.....25443
298.....25443
299.....25443
300.....25443
301.....25443
371.....25443
380.....25443
600.....19390
601.....19390
602.....19390
603.....19390
605.....19390
611.....19390
619.....19390
620.....19390
621.....19390
625.....20506
628.....20789
641.....24267
649.....20207
650.....20207, 21431
651.....20207
655.....25185
652.....19604
672.....24475, 24750
675.....19902, 21431
675.....24475, 24750
676.....24475
695.....25443

REMINDERS

The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

AGRICULTURE DEPARTMENT
Forest Service
National recreation areas:
- Smith River National Recreation Area, CA; mineral operations; published 5-8-96

AGRICULTURE DEPARTMENT
Agricultural Trade Development and Assistance Act:
- Agricultural commodities; commercial sales financing; published 4-23-96

Organization, functions, and authority delegations:
- Under Secretary for Farm and Foreign Agricultural Services et al.; published 5-23-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
- Tolazoline hydrochloride injection; published 5-23-96

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Nixon administration presidential historical materials; preservation, protection, and access procedures; published 4-23-96

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
- Airbus; published 4-18-96
- Boeing; published 4-23-96
- Saab; published 4-23-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
- Horses; vesicular stomatitis; comments due by 5-31-96; published 4-1-96

Interstate transportation of animals and animal products (quarantine):
- Brucellosis in cattle and bison--
  - Brucella vaccine approval; comments due by 5-31-96; published 4-1-96

AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
- Pear crop provisions; comments due by 5-28-96; published 4-25-96

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
- Processed meat and poultry products; nutrient content claim and general definition and standard of identity; comment period extension; comments due by 5-28-96; published 2-27-96

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
- Atlantic golden crab fishery, etc.; comments due by 5-28-96; published 4-11-96
- Northeast multispecies, Atlantic sea scallop, and American lobster; comments due by 5-30-96; published 5-6-96
- Ocean salmon off coasts of Washington, Oregon, and California; comments due by 5-31-96; published 5-6-96

International fisheries in U.S. Exclusive Economic Zone and on high seas; regulations consolidation; comments due by 5-30-96; published 5-21-96

Magnuson Act provisions; regulations consolidation and update; comments due by 5-31-96; published 5-1-96

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
- Contractor overhead certification; comments due by 5-28-96; published 3-29-96

ENVIRONMENTAL PROTECTION AGENCY
Air pollution; standards of performance for new stationary sources:
- Volatile organic compound (VOC) emissions--
  - Automobile refinish coatings; comments due by 5-30-96; published 4-30-96

Air quality implementation plans:
- Preparation, adoption, and submittal--
  - Volatile organic compound definition; HFC 43-10mee and HCFC 225ca and cb exclusion; comments due by 5-31-96; published 5-1-96

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 5-30-96; published 4-30-96
- Florida; comments due by 5-28-96; published 4-25-96
- Kansas and Missouri; comments due by 5-28-96; published 4-25-96
- Wisconsin; comments due by 5-29-96; published 4-29-96

Hazardous waste program authorizations:
- Alabama; comments due by 5-28-96; published 4-25-96
- Kentucky; comments due by 5-28-96; published 4-26-96
- North Carolina; comments due by 5-28-96; published 4-25-96
- South Carolina; comments due by 5-28-96; published 4-26-96

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Aluminum tris (O-ethylphosphonate); comments due by 5-28-96; published 4-26-96
- Dicofol, etc.; comments due by 5-30-96; published 3-1-96
- Quizalofop ethyl; comments due by 5-28-96; published 4-26-96

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
- Microwave relocation for C, D, E, and F blocks; voluntary negotiation period shortening, etc.; comments due by 5-28-96; published 5-15-96

Communications equipment:
- Radio frequency devices--
  - Vehicle radar systems and radio astronomy operations; protection from interference; use of frequency bands above 40 GHz restricted; comments due by 5-28-96; published 3-29-96

Television broadcasting:
- Telecommunications Act of 1996--
  - Cable reform provisions; comments due by 5-28-96; published 4-30-96

FEDERAL ELECTION COMMISSION
Reports by political committees:
- Electronic filing of reports; comments due by 5-28-96; published 3-27-96

GENERAL ACCOUNTING OFFICE
Practice and procedure:
- Personnel Appeals Board--Reductions in force; comments due by 5-31-96; published 3-7-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare and Medicaid:
- Prepaid health care organizations; physician incentive plans requirements; comments due by 5-28-96; published 3-27-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Inspector General Office, Health and Human Services Department
Medicare and Medicaid:
- Prepaid health care organizations; physician incentive plans requirements; comments due by 5-28-96; published 3-27-96

INTERIOR DEPARTMENT
Fish and Wildlife Service
Migratory bird hunting:
- Migratory bird harvest information program; participating States; comments due by 5-29-96; published 4-29-96

INTERIOR DEPARTMENT
Tribal government:
- Self-governance program; awarding negotiation and planning grants; procedure establishment; comments due by 5-31-96; published 4-23-96

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Immigration:

Immigrant petitions–
Battered or abused spouses and children; classification as immediate relative of U.S. citizen or preference immigrant; self-petitioning; comments due by 5-28-96; published 3-26-96

JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Inmate personal property; authorized personal property lists standardization and transportation procedures; comments due by 5-31-96; published 4-1-96

POSTAL SERVICE
International Mail Manual:
International package consignment service implementation; comments due by 5-31-96; published 3-28-96

SECURITIES AND EXCHANGE COMMISSION
Securities:
Odd-lot tender offers by issuers; comments due by 5-28-96; published 4-25-96

SMALL BUSINESS ADMINISTRATION
Small business size standards:
Nonmanufacturer rule; waivers–
Purified terephthalic acid ground and unground; comments due by 5-29-96; published 5-6-96
Tabulating paper (computer forms, manifold or continuous); comments due by 5-29-96; published 5-6-96

TRANSPORTATION DEPARTMENT
Coast Guard
Merchant marine officers and seamen:
Electronic records of shipping articles and certificates of discharge; comments due by 5-28-96; published 3-28-96
Tankermen and persons in charge of dangerous liquids and liquefied gases transfers; qualifications; comment period reopening; comments due by 5-28-96; published 3-26-96
Regattas and marine parades:
Harborwalk Boat Race; comments due by 5-28-96; published 3-26-96
Suncoast Kilo Run et al.; comments due by 5-31-96; published 5-1-96

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 5-28-96; published 4-15-96
AlliedSignal, Inc.; comments due by 5-28-96; published 3-26-96
Beech; comments due by 5-28-96; published 4-15-96
CFM International; comments due by 5-28-96; published 3-26-96
McDonnell Douglas; comments due by 5-31-96; published 4-19-96
Airworthiness standards:
Special conditions–
Cessna model 425 airplanes; comments due by 5-30-96; published 4-30-96
Class E airspace; comments due by 5-30-96; published 4-30-96
Jet routes; comments due by 5-30-96; published 4-16-96

TRANSPORTATION DEPARTMENT
Federal Highway Administration
Motor carrier safety standards:
Commercial Driver's License and Physical Qualification Requirements Negotiated Rulemaking Advisory Committee–
Intent to establish; comments due by 5-29-96; published 4-29-96

TRANSPORTATION DEPARTMENT
Surface Transportation Board
Railroad contracts:
Specified rail services provision under specified rates and conditions; comment due date extended; comments due by 5-28-96; published 4-22-96

TREASURY DEPARTMENT
Customs Service
Organization and functions; field organization, ports of entry, etc.:
Columbus, OH; port limits extension; comments due by 5-31-96; published 5-3-96

TREASURY DEPARTMENT
Fiscal Service
Treasury certificates of indebtedness, notes, and bonds; State and local government series; comments due by 5-30-96; published 4-30-96

LIST OF PUBLIC LAWS

This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

S. 641/P.L. 104–146

Ryan White CARE Act Amendments of 1996 (May 20, 1996; 110 Stat. 1346)

Last List May 20, 1996

Public Laws

104th Congress, 2nd Session, 1996

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregulary upon enactment, for the 104th Congress, 2nd Session, 1996.

Individual laws also may be purchased from the Superintendent of Documents, Washingrton,DC 20402–9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws.)

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
*** 6216**

Charge your order. It's Easy! MasterCard VISA

☐ **YES**, enter my subscription(s) as follows:

Fax your orders (202) 512–2233
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 104th Congress, 2nd Session, 1996 for $160 per subscription.

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Orser No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐☐–☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) (1/96)

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

Microfiche Editions Available...



Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

Microfiche Subscription Prices:

Federal Register:

One year: $433.00
Six months: $216.50

Code of Federal Regulations:

Current year (as issued): $264.00

Superintendent of Documents Subscription Order Form

Order Processing Code:
* 5419

Charge your order. It's easy! MasterCard VISA

To fax your orders (202) 512–2233

☐ **YES**, enter the following indicated subscriptions in 24x microfiche format:

___ **Federal Register** (MFFR) ❑ One year at $433 each ❑ Six months at $216.50

___ **Code of Federal Regulations** (CFRM5) ❑ One year at $264 each

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

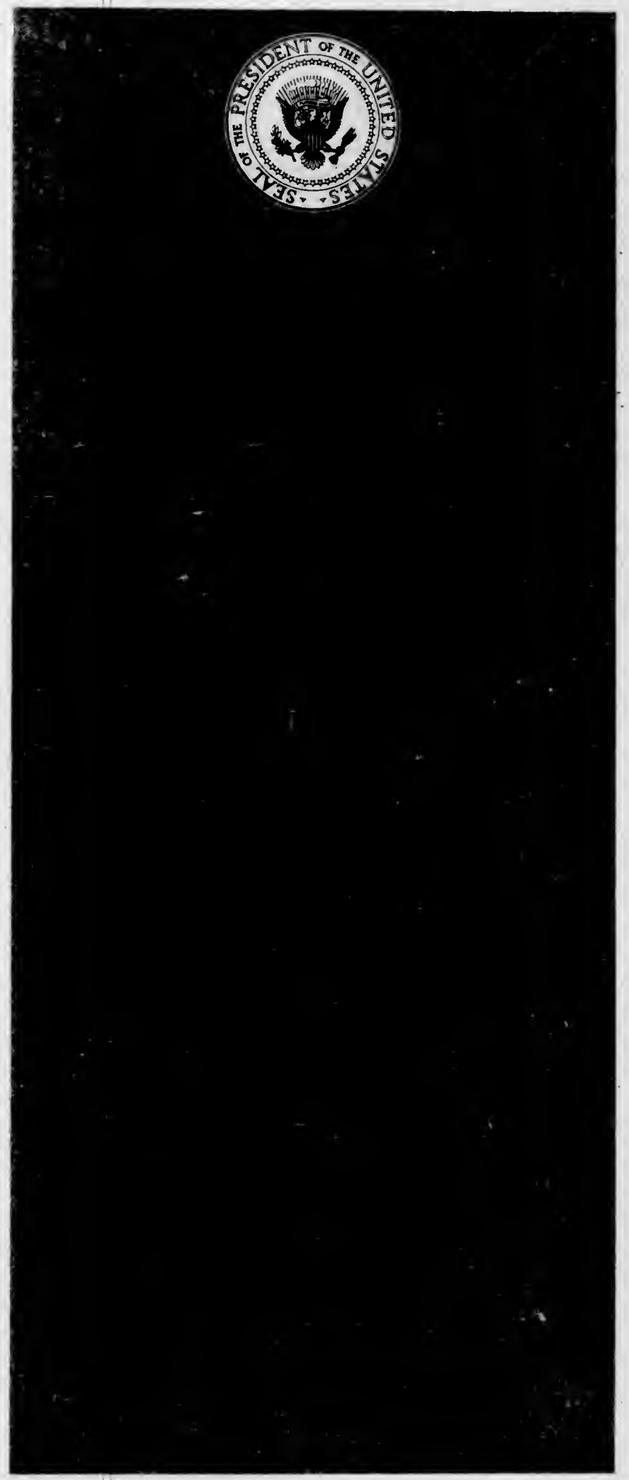
For privacy, check box below:
❑ Do not make my name available to other mailers

Check method of payment:
❑ Check payable to Superintendent of Documents
❑ GPO Deposit Account ☐☐☐☐☐☐ – ☐
❑ VISA ❑ MasterCard ☐☐☐☐ (expiration)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Authorizing signature) 10/94

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Public Papers of the Presidents of the United States

Annual volumes containing the public messages and statements, news conferences, and other selected papers released by the White House.

Volumes for the following years are available; other volumes not listed are out of print.

George Bush		William J. Clinton	
1991 (Book II)	$44.00	1993 (Book I)	$51.00
1992 (Book I)	$47.00	1993 (Book II)	$51.00
1992–93 (Book II)	$49.00	1994 (Book I)	$56.00
		1994 (Book II)	$52.00

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

(Rev. 5-96)

Order Now!

The United States Government Manual 1995/96

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to contact about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix C, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

$33.00 per copy



Superintendent of Documents **Publications** Order Form

Order Processing Code.
* 7784

Charge your order. It's easy! MasterCard VISA

To fax your orders (202) 512–2250

☐ **YES,** please send me _____ copies of the **The United States Government Manual, 1995/96**
S/N 069–000–00063–1 at $33 ($41.25 foreign) each.

The total cost of my order is $_____. Price includes regular domestic postage and handling and is subject to change.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

Please choose method of payment:
❑ Check payable to the Superintendent of Documents
❑ GPO Deposit Account ☐☐☐☐☐☐–☐
❑ VISA ❑ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing signature) (Rev. 9/95)

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Printed on recycled paper

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

5–24–96
Vol. 61

No. 102

Friday
May 24, 1996

federal register

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 96 R
UMI
SERIALS ACQUISITIONS
PO BOX 1346
ANN ARBOR MI 48106

5–24–96
Vol. 61 No. 102
Pages 26069–26422

Friday
May 24, 1996

Briefings on How To Use the Federal Register
For information on briefings in Chicago, IL, and Washington, DC, see announcement on the inside cover of this issue.

federal register

166-997 95 – 1

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $494, or $544 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $433. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 61 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243
For other telephone numbers, see the Reader Aids section at the end of this issue.

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

CHICAGO, IL

WHEN: June 11, 1996 at 9:00 am
WHERE: Metcalfe Federal Building, Conference Room 328, 77 West Jackson, Chicago, Illinois 60604
RESERVATIONS: 1–800–688–9889

WASHINGTON, DC

[Two Sessions]

WHEN: June 18, 1996 at 9:00 am, and June 25, 1996 at 9:00 am
WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 61, No. 102
Friday, May 24, 1996

Agricultural Marketing Service
RULES
Nectarines and peaches grown in California
Correction, 26073

Agriculture Department
See Agricultural Marketing Service
See Forest Service
See Rural Housing Service
See Rural Utilities Service

Alcohol, Tobacco and Firearms Bureau
RULES
Alcoholic beverages:
Basic permit requirements, spirits and wine nonindustrial use, and distilled spirits bulk sales and bottling; Federal regulatory reform, 26096–26102

Architectural and Transportation Barriers Compliance Board
NOTICES
Committees; establishment, renewal, termination, etc.:
Telecommunications Access Advisory Committee, 26155–26156

Army Department
See Engineers Corps
NOTICES
Military traffic management:
Transloading shipments of arms, ammunition, and explosives, 26167–26168

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Census Bureau
NOTICES
Meetings:
Agriculture Statistics Census Advisory Committee, 26157

Coast Guard
RULES
Ports and waterways safety:
Boston Harbor, MA; regulated navigation area, 26105–26106
Regattas and marine parades:
First District local regulations event notification; Federal Register publication requirement eliminated, 26104–26105
Quonst Open House, 26102–26103
Swim the Bay, 26103–26104
NOTICES
Committees; establishment, renewal, termination, etc.:
Lower Mississippi River Waterway Safety Advisory Committee, 26245–26246

Commerce Department
See Census Bureau
See Foreign-Trade Zones Board
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
RULES
Grants and cooperative agreements to State and local governments; cost principles for state, local and indian tribal governments (OMB A-87), 26095–26096
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 26156–26157

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 26166–26167

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Macedonia, 26165–26166

Commodity Futures Trading Commission
RULES
Practice and procedures:
Ethics training for registrants
Correction, 26253

Consumer Product Safety Commission
RULES
Hazardous substances:
Multiple tube mine and shell fireworks devices; stability performance test requirement, 26096

Defense Department
See Army Department
See Engineers Corps
See Navy Department
RULES
Gifts from foreign Governments: CFR part removed, 26102

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Chang, Ying-Ming, M.D., 26207–26208
Gunderson, Jeffrey Patrick, M.D., 26208–26211

Education Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 26168–26169
Grants and cooperative agreements; availability, etc.:
Elementary and secondary education—
Foreign language assistance program; local educational agencies, 26372–26393
Foreign language assistance program; State educational agencies, 26372–26393
Meetings:
Student Financial Assistance Advisory Committee, 26169

Employment and Training Administration
NOTICES
Adjustment assistance:
Bates of Maine, Inc., 26220
Breed Technologies, Inc., 26220
Cole Haan, 26220
Geomartec, 26220
Jeld-Wen of Bend/Bend Millwork, 26220–26221
Pyke Manufacturing Co., 26221
Red Kap Industries et al., 26221–26222
Rhubarb Fashions, 26222
Superior Garments Inc., 26222
Winona Knitting Mills, Inc., 26222–26223
Adjustment assistance and NAFTA transitional adjustment assistance:
U.S. Can Co. et al., 26218–26220
NAFTA transitional adjustment assistance:
A.H. Schreiber Co., Inc., et al., 26223–26224
Winona Knitting Mills, Inc., 26224

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 26224–26225

Energy Department
See Energy Research Office
See Federal Energy Regulatory Commission
See Western Area Power Administration
NOTICES
Meetings:
Federal Advisory Committee to Develop On-Site Innovative Technology, 26169–26170

Energy Research Office
NOTICES
Meetings:
Basic Energy Sciences Advisory Committee, 26170

Engineers Corps
RULES
Danger zones and restricted areas:
Albemarle and Pamlico Sounds; Harvey Point, Perquimans County, NC
Correction, 26107

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Maleic hydrazide, etc., 26118–26120
Oxo-alkyl acetates, 26117–26118
PROPOSED RULES
Clean Air Act:
State operating permits programs—
Vermont, 26145–26149
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Metolachlor, 26149–26152
Water programs:
Pollutants analysis test procedures; guidelines—
Oil and grease and total petroleum hydrocarbons; comment period reopening, 26149
NOTICES
Clean Air Act:
Acid rain provisions—
Opt-in permits; comment request, 26175–26176
Citizens suits; proposed settlements—
Sierra Club Legal Defense Fund, 26176
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 26177
Weekly receipts, 26177–26178
Pesticide, food, and feed additive petitions:
BASF Corp., 26178
Reports; availability, etc.:
Self Certification of Acute Toxicity Studies, 26178–26179

Executive Office of the President
See Management and Budget Office
See Presidential Documents

Export-Import Bank
NOTICES
Meetings:
Advisory Committee, 26179

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 26179

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus, 26091–26094
de Havilland, 26089–26090
Learjet, 26090–26091
Class D and E airspace
Correction, 26094–26095
Restricted areas, 26095
NOTICES
Committees; establishment, renewal, termination, etc.:
Aviation Rulemaking Advisory Committee, 26246–26247
Passenger facility charges; applications, etc.:
Port Columbus International Airport, OH, 26247–26248

Federal Communications Commission
RULES
Radio services; special:
Vessel traffic services (VTS) system frequencies, 26120–26121
PROPOSED RULES
Telecommunications Act of 1996; implementation:
Common carrier services—
Local competition provisions; video programming services local exchange provision, costs allocation, 26152–26153

Federal Deposit Insurance Corporation
RULES
Assessments:
Bank Insurance Fund—
Rate schedule adjustment, 26078–26082
Savings Association Insurance Fund; rate schedule retention, 26083–26088
PROPOSED RULES
Securities transactions; recordkeeping and confirmation requirements, 26135–26140
NOTICES
Meetings; Sunshine Act, 26179–26180

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
PanEnergy Lake Charles Generation, Inc., et al., 26171–26174

Applications, hearings, determinations, etc.:
Cambridge Electric Light Co., 26170
Kansas City Power & Light Co., 26170–26171

Federal Maritime Commission
NOTICES
Casualty and nonperformance certificates:
Disney Cruise Line, Inc., 26180
Freight forwarder licenses:
Intrepid Overseas Shipping Corp. et al., 26180

Federal Railroad Administration
RULES
State safety participation regulations:
Federal regulatory reform, 26124–26125

Federal Reserve System
PROPOSED RULES
Truth in lending (Regulation Z):
Creditor-liability rules for closed-end loans secured by real property or dwellings (consummated on or after September 30, 1995), 26126–26135
NOTICES
Banks and bank holding companies:
Change in bank control, 26180
Formations, acquisitions, and mergers, 26180–26181
Permissible nonbanking activities, 26181–26182
Meetings; Sunshine Act, 26182

Fish and Wildlife Service
RULES
Endangered and threatened species:
Marbled murrelet—
Critical habitat designation, 26256–26320
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
Forest County, MS; gopher tortoise, 26201–26202

Food and Drug Administration
PROPOSED RULES
Medical devices:
Latex condoms; expiration date; labeling requirements, 26140–26145
NOTICES
Animal drugs, feeds, and related products:
Bioequivalence guidance availability, 26182–26186
Medical devices; premarket approval:
Epitope, Inc.; OraSure HIV-1 oral specimen collection device, 26187
Meetings:
Advisory committees, panels, etc., 26187–26191
Compressed medical gas industry; public workshop, 26191
Pediatric use supplements; content and format; industry guidance, 26191–26192

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
California
Minnesota Mining & Manufacturing Co. (3M); pharmaceutical products manufacturing facility, 26157

Forest Service
NOTICES
Meetings:
Willamette Provincial Interagency Executive Committee Advisory Committee, 26154

Health and Human Services Department
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 26182

Housing and Urban Development Department
NOTICES
Grant and cooperative agreement awards:
Public and Indian housing—
Tenant opportunities program, 26193–26197
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 26197–26199
Fair housing initiatives program, 26362–26369
Organization, functions, and authority delegations:
Deputy Assistant Secretary for Enforcement and Investigations et al., 26199–26201

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

International Trade Administration
NOTICES
Antidumping:
Color television receivers from—
Korea, 26158–26159
Cut-to-length carbon steel plate from—
Germany, 26159–26160
Industrial phosphoric acid from—
Belgium, 26160–26162
Antidumping and countervailing duties:
Administrative review requests, 26158
Countervailing duties:
Bricks from—
Mexico, 26162–26163
Cotton shop towels from—
Pakistan, 26163
Leather wearing apparel from—
Mexico, 26163–26164
Oil country tubular goods from—
Argentina, 26164

International Trade Commission
NOTICES
Import investigations:
Neodymium-iron-boron magnets, magnet alloys, and articles containing same, 26206–26207

Judicial Conference of the United States
NOTICES
Meetings:
Judicial Conference Advisory Committee on—
Appellate Procedure Rules, 26207
Practice and Procedure Rules, 26207

Justice Department
See Drug Enforcement Administration
See Justice Statistics Bureau

Justice Statistics Bureau
NOTICES
Grants and cooperative agreements; availability, etc.:
National criminal history improvement program, 26212–26218

Labor Department
See Employment and Training Administration
See Employment Standards Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Meeting:
Wyoming Resource Advisory Council, 26202–26203
Motor vehicle use restrictions:
Linn County, OR, 26203
Resource management plans, etc.:
Caballo Resource Area, NM, 26203–26204

Legal Services Corporation
NOTICES
Grants and cooperative agreements; availability, etc.:
1997 competitive grant funds, 26225

Management and Budget Office
NOTICES
Budget rescissions and deferrals, 26226–26229
Cumulative reports, 26230–26234

National Institute of Standards and Technology
NOTICES
Meetings:
Malcolm Baldrige National Quality Awards—Panel of Judges, 26165

National Institutes of Health
NOTICES
Meetings:
Research Grants Division special emphasis panels, 26192

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Ocean salmon off coasts of Washington, Oregon, and California, 26125
NOTICES
Permits:
Marine mammals, 26165

National Park Service
NOTICES
Concession contract negotiations:
Acadia National Park, MA; restaurant, gift shops, stable, and carriage rides, 26204–26205
Environmental statements; availability, etc.:
Redwood National and State Parks, CA, 26205
Native American human remains and associated funerary objects:
Hubbell Trading Post National Historic Site, AZ; Navajo hide pollen bag, stone fetishes, etc., 26205–26206
Olmsted County Historical Society, MN; birchbark scroll with mnemonic symbols, 26206

Navy Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26168

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Northern States Power Co., 26225–26226

Occupational Safety and Health Administration
RULES
Shipyard employment safety and health standards:
Personal protective equipment, 26322–26360

Office of Management and Budget
See Management and Budget Office

Presidential Documents
EXECUTIVE ORDERS
Federal facilities; locating on historic properties in central cities (EO 13006), 26071–26072
Federal procurement; empowerment contracting (EO 13005), 26071–26072

Public Health Service
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Research and Special Programs Administration
RULES
Pipeline safety:
Voluntary specifications and standards, etc.; periodic updates; Federal regulatory reform, 26121–26124
PROPOSED RULES
Hazardous materials:
Intrastate shippers and carriers; regulations compliance Correction, 26253

Rural Housing Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26154–26155

Rural Utilities Service
RULES
Telecommunications standards and specifications:
Materials, equipment, and construction—
Aerial service wires specifications, 26073–26078

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 26239–26243
Philadelphia Depository Trust Co., 26243–26244
Applications, hearings, determinations, etc.:
Franklin Templeton Fund Manager et al., 26235–26237
National Equity Trust, 26237–26239

Small Business Administration
NOTICES
Disaster loan areas:
Illinois, 26244
New Mexico et al., 26244

Substance Abuse and Mental Health Services Administration
NOTICES
Meetings; advisory committees:
June, 26192

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Claussen, H. Peter, et al., 26248
CSX Transportation, Inc., 26249–26250
Lexington & Ohio Railroad Co., Inc., 26250–26251

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Railroad Administration
See Research and Special Programs Administration
See Surface Transportation Board
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 26245
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 26245

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 26251–26252

Veterans Affairs Department
RULES
Organization, functions, and authority delegations:
General Counsel et al.; decision on discrimination complaint, 26107
Vocational rehabilitation and education:
Veterans education—
Miscellaneous amendments, 26107–26117

Western Area Power Administration
NOTICES
Environmental statements; availability, etc.:
Sierra Nevada Region 2004 power marketing program, 26174–26175

Separate Parts In This Issue

Part II
Department of Interior, Fish and Wildlife Service, 26256–26320

Part III
Department of Labor, Occupational Safety and Health Administration, 26322–26360

Part IV
Department of Housing and Urban Development, 26362–26369

Part V
Department of Education, 26372–26393

Part VI
Department of Education, 26396–26419

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Executive Orders
11593 (see EO 13006).....26071
12072 (see EO 13006).....26071
13005.....26069
13006.....26071

7 CFR
916.....26073
917.....26073
1755.....26073

12 CFR
327 (2 documents).....26078, 26083

Proposed Rules:
226.....26126
344.....26135

14 CFR
39 (3 documents).....26089, 23090, 23091
71.....26094
73.....26095

15 CFR
24.....26095

16 CFR
1500.....26096
1507.....26096

17 CFR
3.....26253

21 CFR
Proposed Rules:
801.....26140

27 CFR
1.....26096
2.....26096
3.....26096

29 CFR
1915.....26322

32 CFR
95.....26102

33 CFR
100 (3 documents).....26102, 26103, 26104
165.....26105
334.....26107

38 CFR
2.....26107
21.....26107

40 CFR
180 (2 documents).....26117, 26118

Proposed Rules:
70.....26145
136.....26149
180.....26149

47 CFR
80.....26120

Proposed Rules:
Ch. 1.....26152
64.....26152

49 CFR
171.....26418
173.....26418
192.....26121
193.....26121
195.....26121
212.....26124

Proposed Rules:
171.....26253
173.....26253
180.....26253

50 CFR
17.....26256
661.....26125

Federal Register
Vol. 61, No. 102
Friday, May 24, 1996

Presidential Documents

Title 3—

The President

Executive Order 13005 of May 21, 1996

Empowerment Contracting

In order to promote economy and efficiency in Federal procurement, it is necessary to secure broad-based competition for Federal contracts. This broad competition is best achieved where there is an expansive pool of potential contractors capable of producing quality goods and services at competitive prices. A great and largely untapped opportunity for expanding the pool of such contractors can be found in this Nation's economically distressed communities.

Fostering growth of Federal contractors in economically distressed communities and ensuring that those contractors become viable businesses for the long term will promote economy and efficiency in Federal procurement and help to empower those communities. Fostering growth of long-term viable contractors will be promoted by offering appropriate incentives to qualified businesses.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States, including section 486(a) of title 40, United States Code, and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Policy.* The purpose of this order is to strengthen the economy and to improve the efficiency of the Federal procurement system by encouraging business development that expands the industrial base and increases competition.

Sec. 2. *Empowerment Contracting Program.* In consultation with the Secretaries of the Departments of Housing and Urban Development, Labor, and Defense; the Administrator of General Services; the Administrator of the National Aeronautics and Space Administration; the Administrator of the Small Business Administration; and the Administrator for Federal Procurement Policy, the Secretary of the Department of Commerce shall develop policies and procedures to ensure that agencies, to the extent permitted by law, grant qualified large businesses and qualified small businesses appropriate incentives to encourage business activity in areas of general economic distress, including a price or an evaluation credit, when assessing offers for government contracts in unrestricted competitions, where the incentives would promote the policy set forth in this order. In developing such policies and procedures, the Secretary shall consider the size of the qualified businesses.

Sec. 3. *Monitoring and Evaluation.* The Secretary shall:

(a) monitor the implementation and operation of the policies and procedures developed in accordance with this order;

(b) develop a process to ensure the proper administration of the program and to reduce the potential for fraud by the intended beneficiaries of the program;

(c) develop principles and a process to evaluate the effectiveness of the policies and procedures developed in accordance with this order; and

(d) by December 1 of each year, issue a report to the President on the status and effectiveness of the program.

Sec. 4. *Implementation Guidelines.* In implementing this order, the Secretary shall:

(a) issue rules, regulations, and guidelines necessary to implement this order, including a requirement for the periodic review of the eligibility of qualified businesses and distressed areas;

(b) draft all rules, regulations, and guidelines necessary to implement this order within 90 days of the date of this order; and

(c) ensure that all policies and procedures and all rules, regulations, and guidelines adopted and implemented in accordance with this order minimize the administrative burden on affected agencies and the procurement process.

Sec. 5. *Definitions.* For purposes of this Executive order:

(a) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10).

(b) "Area of general economic distress" shall be defined, for all urban and rural communities, as any census tract that has a poverty rate of at least 20 percent or any designated Federal Empowerment Zone, Supplemental Empowerment Zone, Enhanced Enterprise Community, or Enterprise Community. In addition, the Secretary may designate as an area of general economic distress any additional rural or Indian reservation area after considering the following factors:

(1) Unemployment rate;

(2) Degree of poverty;

(3) Extent of outmigration; and

(4) Rate of business formation and rate of business growth.

(c) "Qualified large business" means a large for-profit or not-for-profit trade or business that (1) employs a significant number of residents from the area of general economic distress; and (2) either has a significant physical presence in the area of general economic distress or has a direct impact on generating significant economic activity in the area of general economic distress.

(d) "Qualified small business" means a small for-profit or not-for-profit trade or business that (1) employs a significant number of residents from the area of general economic distress; (2) has a significant physical presence in the area of general economic distress; or (3) has a direct impact on generating significant economic activity in the area of general economic distress.

(e) "Secretary" means the Secretary of Commerce.

Sec. 6. *Agency Authority.* Nothing in this Executive order shall be construed as displacing the agencies' authority or responsibilities, as authorized by law, including specifically other programs designed to promote the development of small or disadvantaged businesses.

Sec. 7. *Judicial Review.* This Executive order does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

William J. Clinton

THE WHITE HOUSE,
May 21, 1996.

[FR Doc. 96–13306
Filed 5–23–96; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13006 of May 21, 1996

Locating Federal Facilities on Historic Properties in Our Nation's Central Cities

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Historic Preservation Act (16 U.S.C. 470 *et seq.*) and the Public Buildings Cooperative Use Act of 1976 (90 Stat. 2505), and in furtherance of and consistent with Executive Order No. 12072 of August 16, 1978, and Executive Order No. 11593 of May 13, 1971, it is hereby ordered as follows:

Section 1. *Statement of Policy.* Through the Administration's community empowerment initiatives, the Federal Government has undertaken various efforts to revitalize our central cities, which have historically served as the centers for growth and commerce in our metropolitan areas. Accordingly, the Administration hereby reaffirms the commitment set forth in Executive Order No. 12072 to strengthen our Nation's cities by encouraging the location of Federal facilities in our central cities. The Administration also reaffirms the commitments set forth in the National Historic Preservation Act to provide leadership in the preservation of historic resources, and in the Public Buildings Cooperative Use Act of 1976 to acquire and utilize space in suitable buildings of historic, architectural, or cultural significance.

To this end, the Federal Government shall utilize and maintain, wherever operationally appropriate and economically prudent, historic properties and districts, especially those located in our central business areas. When implementing these policies, the Federal Government shall institute practices and procedures that are sensible, understandable, and compatible with current authority and that impose the least burden on, and provide the maximum benefit to, society.

Sec. 2. *Encouraging the Location of Federal Facilities on Historic Properties in Our Central Cities.* When operationally appropriate and economically prudent, and subject to the requirements of section 601 of title VI of the Rural Development Act of 1972, as amended (42 U.S.C. 3122), and Executive Order No. 12072, when locating Federal facilities, Federal agencies shall give first consideration to historic properties within historic districts. If no such property is suitable, then Federal agencies shall consider other developed or undeveloped sites within historic districts. Federal agencies shall then consider historic properties outside of historic districts, if no suitable site within a district exists. Any rehabilitation or construction that is undertaken pursuant to this order must be architecturally compatible with the character of the surrounding historic district or properties.

Sec. 3. *Identifying and Removing Regulatory Barriers.* Federal agencies with responsibilities for leasing, acquiring, locating, maintaining, or managing Federal facilities or with responsibilities for the planning for, or managing of, historic resources shall take steps to reform, streamline, and otherwise minimize regulations, policies, and procedures that impede the Federal Government's ability to establish or maintain a presence in historic districts or to acquire historic properties to satisfy Federal space needs, unless such regulations, policies, and procedures are designed to protect human health and safety or the environment. Federal agencies are encouraged to seek the assistance of the Advisory Council on Historic Preservation when taking these steps.

Sec. 4. *Improving Preservation Partnerships.* In carrying out the authorities of the National Historic Preservation Act, the Secretary of the Interior, the Advisory Council on Historic Preservation, and each Federal agency shall seek appropriate partnerships with States, local governments, Indian tribes, and appropriate private organizations with the goal of enhancing participation of these parties in the National Historic Preservation Program. Such partnerships should embody the principles of administrative flexibility, reduced paperwork, and increased service to the public.

Sec. 5. *Judicial Review.* This order is not intended to create, nor does it create, any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

William J. Clinton

THE WHITE HOUSE,
May 21, 1996.

[FR Doc. 96–13305
Filed 5–23–96; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 61, No. 102
Friday, May 24, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV95–916–5C]

Nectarines and Peaches Grown in California; Relaxation of Quality Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule published on May 1, 1996 concerning nectarines and peaches grown in California.

EFFECTIVE DATES: May 2, 1996.

FOR FURTHER INFORMATION CONTACT: Kenneth Johnson, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–2861; or Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California, 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION:

Background

This rule establishes a "CA Utility" quality requirement, based on minimum quality standards established under the California Agriculture Code, with a limitation on the amount of fruit meeting U.S. No. 1 or higher grade requirements that may be contained in the utility pack. This final rule also requires that containers of nectarines and peaches meeting the "CA Utility" quality requirement be clearly marked "CA Utility."

Need for Correction

In the final rule, FR Doc. 96–10758, published May 1, 1996, the last sentence in section (a)(1)(ii) was inadvertently omitted, therefore, the existing language may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, in FR Doc. 96–10758, page 19164, second column section 916.356, paragraph (a)(1)(ii) is corrected to read as follows:

§ 916.356 [Corrected]

(a) * * *

(ii) Free from serious damage due to skin breaks, cuts, growth cracks, bruises, or other causes. Damage to any nectarine is serious when it causes a waste of 10 percent or more, by volume, of the individual nectarine.

* * * * *

Dated: May 20, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–13085 Filed 5–23–96; 8:45 am]
BILLING CODE 3410–02–M

Rural Utilities Service

7 CFR Part 1755

RUS Specification for Aerial Service Wires

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) amends its regulations on Telecommunications Standards and Specifications for Materials, Equipment and Construction, by codifying the RUS Specification for Aerial Service Wires. The new specification sets forth the engineering and technical standards that are required by RUS in outside plant environments.

DATES: Effective date: June 24, 1996.

Compliance date: Borrowers may purchase aerial wire service products already produced or currently in the process of manufacturing under previous Bulletin 345–36 until February 24, 1997.

Incorporation by reference: Incorporation by reference of certain publications listed in this final rule is approved by the Director of the Federal Register as of June 24, 1996.

FOR FURTHER INFORMATION CONTACT: Charlie I. Harper, Jr., Chief, Outside Plant Branch, Telecommunications Standards Division, Rural Utilities Service, room 2844, AG Box 1598, South Building, U.S. Department of Agriculture, Washington, DC 20250–1598, telephone number (202) 720–0667.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant and therefore has not been reviewed by the Office of Management and Budget.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. If adopted, this final rule will not:

(1) Preempt any State or local laws, regulations, or policies;

(2) Have any retroactive effect; and

(3) Require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule involves standards and specifications, which may increase the direct short-term costs to RUS borrowers. However, the long-term direct economic costs are reduced through greater durability and lower maintenance cost over time.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in the final rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) under control number of 0572–0059.

Send questions or comments regarding this burden or any other aspect of these collections of information, including suggestions for reducing the burden, to F. Lamont Heppe, Jr., Deputy Director, Program Support Staff, Rural Utilities Service, Ag Box 1522, Washington, DC 20250–1522.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.851, Rural Telephone Loans and Loan Guarantees; and No. 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS and RTB loans and loan guarantees, and RTB bank loans, to governmental and nongovernmental entities from coverage under this Order.

Background

RUS issues publications titled "Bulletin" which serve to guide borrowers regarding already codified policy, procedures, and requirements needed to manage loans, loan guarantee programs, and the security instruments which provide for and secure RUS financing. RUS issues standards and specifications for the construction of telephone facilities financed with RUS loan funds. RUS Bulletin 345–36, "RUS Specification for Parallel Conductor Drop Wire," PE–7, dated January 25, 1983, presently contains the engineering and technical requirements for aerial service wires that are considered necessary for satisfactory performance in outside plant environments. Because of the technological advancements made in aerial service wire designs over the past eleven years, RUS is rescinding Bulletin 345–36 and codifying these standards in 7 CFR part 1755.700 through 7 CFR part 1755.704, RUS Specification for Aerial Service Wires.

The specification allows aerial service wire designs consisting of one pair through six pairs. The specification also allows aerial service wire designs containing copper coated steel and nonmetallic reinforcing members.

The specification contains mechanical, electrical, and environmental requirements, and test methods for evaluation of these aerial service wire designs.

This action establishes RUS requirements for a wider range of aerial service wires without affecting current designs or manufacturing techniques. This wider selection of aerial service wires will afford RUS telephone borrowers the opportunity to increase subscriber services in an economical and efficient manner through enhanced wire designs brought about by technological advancements made during the past eleven years.

On December 29, 1995, RUS published a proposed rule (60 FR 67340) to codify the RUS Specification for Aerial Service Wires. Comments on this proposed rule were due January 29, 1996. No comments were received by this due date.

List of Subjects in 7 CFR Part 1755

Incorporation by reference, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For the reasons set out in the preamble, RUS amends chapter XVII of title 7 of the Code of Federal Regulations as follows:

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION

1. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

2. Section 1755.98 is amended by adding a new entry to the table in numerical order to read as follows:

§ 1755.98 List of telephone standards and specifications included in other 7 CFR parts.

* * * * *

Section	Issue date	Title
. . .	. . .	. . .
1755.700 through 1755.704	June 24, 1996	RUS Specification for Aerial Service Wires.
. . .	. . .	. . .

3. Sections 1755.700 through 1755.704 are added to read as follows:

§ 1755.700 RUS specification for aerial service wires.

§§ 1755.701 through 1755.704 cover the requirements for aerial service wires.

§ 1755.701 Scope.

(a) This section covers the requirements for aerial service wires intended for aerial subscriber drops.

(b) The aerial service wires can be either copper coated steel reinforced or nonmetallic reinforced designs.

(c) For the copper coated steel reinforced design, the reinforcing members are the conductors.

(1) The conductors are solid copper-covered steel wires.

(2) The wire structure is completed by insulating the conductors with an overall extruded plastic insulating compound.

(d) For the nonmetallic reinforced design, the conductors are solid copper individually insulated with an extruded solid insulating compound.

(1) The insulated conductors are either laid parallel (two conductor design only) or twisted into pairs (a star-quad configuration is permitted for two pair wires).

(2) The wire structure is completed by the application of nonmetallic reinforcing members and an overall plastic jacket.

(e) All wires sold to RUS borrowers for projects involving RUS loan funds under §§ 1755.700 through 1755.704 must be accepted by RUS Technical Standards Committee "A" (Telecommunications). For wires manufactured to the specification of §§ 1755.700 through 1755.704, all design changes to an accepted design must be submitted for acceptance. RUS will be the sole authority on what constitutes a design change.

(f) Materials, manufacturing techniques, or wire designs not specifically addressed by §§ 1755.700 through 1755.704 may be allowed if accepted by RUS. Justification for acceptance of modified materials, manufacturing techniques, or wire designs must be provided to substantiate product utility and long term stability and endurance.

§ 1755.702 Copper coated steel reinforced (CCSR) aerial service wire.

(a) *Conductors.* (1) Each conductor shall comply with the requirements specified in the American National Standard Institute/Insulated Cable Engineers Association, Inc. (ANSI/ICEA) S–89–648–1993, paragraphs 2.1 through 2.1.5. The ANSI/ICEA S–89–648–1993 Standard For Telecommunications Aerial Service Wire, Technical Requirements (approved by ANSI July 11, 1994) is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ANSI/ICEA S–89–648–1993 are available for inspection during normal business hours at RUS, room 2845, U.S. Department of Agriculture, Washington, DC 20250–1500 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies are available from ICEA, P. O. Box 440, South Yarmouth, MA 02664, telephone number (508) 394–4424.

(2) Factory joints in conductors shall comply with the requirement specified in ANSI/ICEA S–89–648–1993, paragraph 2.1.6.

(b) *Conductor insulation.* (1) The raw materials used for the conductor insulation shall comply with the requirements specified in ANSI/ICEA S–89–648–1993, paragraph 3.1.1.

(2) The raw materials shall be accepted by RUS prior to their use.

(3) The finished conductor insulation shall be free from holes, splits, blisters, or other imperfections and shall be as smooth as is consistent with best commercial practice.

(4) The finished conductor insulation shall comply with the requirements specified in ANSI/ICEA S–89–648–1993, paragraphs 3.1.5 through 3.1.5.4.

(5) The insulation shall have a minimum spot thickness of not less than 0.9 millimeters (mm) (0.03 inches (in.)) at any point.

(c) *Wire assembly.* (1) The two conductors shall be insulated in parallel to form an integral configuration.

(2) The finished wire assembly shall be either a flat or a notched oval. Other finished wire assemblies may be used provided that they are accepted by RUS prior to their use.

(3) The overall dimensions of the finished wire assembly shall be in accordance with the following requirements:

Diameter	Dimensions	
	Minimum mm (in.)	Maximum mm (in.)
Major	5.5 (0.22)	8.0 (0.31)
Minor	3.0 (0.12)	5.0 (0.19)

(d) *Conductor marking.* The insulated conductors of a finished wire shall be marked in accordance with the requirements specified in ANSI/ICEA S–89–648–1993, paragraph 3.1.4.

(e) *Electrical requirements.* (1) *Conductor resistance.* The direct current (dc) resistance of each conductor in a completed CCSR aerial service wire shall comply with the requirement specified in ANSI/ICEA S–89–648–1993, paragraph 7.1.2.

(2) *Wet mutual capacitance.* The wet mutual capacitance of the completed CCSR aerial service wire shall comply with the requirement specified in ANSI/ICEA S–89–648–1993, paragraph 7.1.3.

(3) *Wet attenuation.* The wet attenuation of the completed CCSR aerial service wire shall comply with the requirement specified in ANSI/ICEA S–89–648–1993, paragraph 7.1.4.

(4) *Wet insulation resistance.* The wet insulation resistance of the completed CCSR aerial service wire shall comply with the requirement specified in ANSI/ICEA S–89–648–1993, paragraph 7.1.5.

(5) *Dielectric strength.* (i) The wet dielectric strength between conductors and between each conductor of the completed CCSR aerial service wire and the surrounding water shall comply with the requirement specified in ANSI/ICEA S–89–648–1993, paragraph 7.1.6.

(ii) The dry dielectric strength between conductors of the completed CCSR aerial service wire shall comply with the requirement specified in ANSI/ICEA S–89–648–1993, paragraph 7.1.7.

(6) *Fusing coordination.* The completed CCSR aerial service wire shall comply with the fusing coordination requirement specified in ANSI/ICEA S–89–648–1993, paragraph 7.1.8.

(7) *Insulation imperfections.* Each length of completed CCSR aerial service wire shall comply with the requirement specified in ANSI/ICEA S–89–648–1993, paragraph 7.1.9.

(f) *Mechonical requirements.* (1) *Impact test.* (i) All CCSR aerial service wires manufactured in accordance with this section shall comply with the unaged impact test specified in ANSI/ICEA S–89–648–1993, paragraph 8.1.2.

(ii) All CCSR aerial service wires manufactured in accordance with this section shall comply with the aged impact test specified in ANSI/ICEA S–89–648–1993, paragraph 8.1.3.

(2) *Abrasion resistance test.* All CCSR aerial service wires manufactured in accordance with this section shall comply with the abrasion resistance test specified in ANSI/ICEA S–89–648–1993, paragraph 8.1.4.

(3) *Static load test.* All CCSR aerial service wires manufactured in accordance with this section shall comply with the static load test specified in ANSI/ICEA S–89–648–1993, paragraph 8.1.5.

(4) *Plasticizer compatibility test.* All CCSR aerial service wires manufactured in accordance with this section shall comply with the plasticizer compatibility test specified in ANSI/ICEA S–89–648–1993, paragraph 8.1.8.

(g) *Environmental requirements.* (1) *Cold temperature handling test.* (i) All CCSR aerial service wires manufactured in accordance with this section shall comply with the unaged cold temperature handling test specified in ANSI/ICEA S–89–648–1993, paragraph 8.2.1.

(ii) All CCSR aerial service wires manufactured in accordance with this section shall comply with the aged cold temperature handling test specified in ANSI/ICEA S–89–648–1993, paragraph 8.2.2.

(2) *Light absorption test.* All CCSR aerial service wires manufactured in accordance with this section shall comply with the light absorption test specified in ANSI/ICEA S–89–648–1993, paragraph 8.2.3.

(3) *Low temperature separation test.* All CCSR aerial service wires manufactured in accordance with this section shall comply with the low temperature separation test specified in ANSI/ICEA S–89–648–1993, paragraph 8.2.4.

(4) *Flammability test.* All CCSR aerial service wires manufactured in accordance with this section shall comply with the flammability test specified in ANSI/ICEA S–89–648–1993, paragraph 8.3.

(5) *Wire listing.* All CCSR aerial service wires manufactured in accordance with this section shall comply with the listing requirements specified in ANSI/ICEA S–89–648–1993, paragraph 8.4.

(h) *Identification marker.* Each length of CCSR aerial service wire shall be identified in accordance with ANSI/ICEA S–89–648–1993, paragraph 9.1.4. When surface marking is employed, the color of the initial marking shall be either white or silver.

(i) *Length marking (optional).* (1) Sequentially numbered length marking of the completed CCSR aerial service

wire may be used at the option of the manufacturer unless specified by the end user.

(2) When sequentially numbered length markings are used, the length markings shall be in accordance with ANSI/ICEA S–89–648–1993, paragraph 9.1.5. The color of the initial marking shall be either white or silver.

(j) *Durability of marking.* The durability of the marking of the CCSR aerial service wire shall comply with the requirements specified in ANSI/ICEA S–89–648–1993, paragraph 9.1.6.

§ 1755.703 Nonmetallic reinforced (NMR) aerial service wire.

(a) *Conductors.* (1) Each conductor shall comply with the requirements specified in ANSI/ICEA S–89–648–1993, paragraphs 2.2 and 2.2.1. The ANSI/ICEA S–89–648–1993 Standard For Telecommunications Aerial Service Wire, Technical Requirements (approved by ANSI July 11, 1994) is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ANSI/ICEA S–89–648–1993 are available for inspection during normal business hours at RUS, room 2845, U.S. Department of Agriculture, Washington, DC 20250–1500 or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies are available from ICEA, P. O. Box 440, South Yarmouth, MA 02664, telephone number (508) 394–4424.

(2) Factory joints made in the conductors during the manufacturing process shall comply with the requirement specified in ANSI/ICEA S–89–648–1993, paragraph 2.2.2.

(b) *Conductor insulotion.* (1) The raw materials used for the conductor insulation shall comply with the requirements specified in ANSI/ICEA S–89–648–1993, paragraphs 3.2 through 3.2.2.

(2) The finished conductor insulation shall comply with the requirements specified in ANSI/ICEA S–89–648–1993, paragraph 3.2.3.

(3) The dimensions of the insulated conductors shall comply with the requirements specified in ANSI/ICEA S–89–648–1993, paragraph 3.2.3.1.

(4) The colors of the insulation shall comply with the requirements specified in ANSI/ICEA S–89–648–1993, paragraph 3.2.3.2.

(5) A permissible overall performance level of faults in conductor insulation shall comply with the requirement specified in ANSI/ICEA S–89–648–1993, paragraph 3.2.4.6. The length count and number of faults shall be recorded. The information shall be retained for a period of 6 months and be available for review by RUS when requested.

(6) Repairs to the conductor insulation during manufacture are permissible. The method of repair shall be accepted by RUS prior to its use. The repaired insulation shall comply with the requirement specified in ANSI/ICEA S–89–648–1993, paragraph 3.2.3.3.

(7) All repaired sections of insulation shall be retested in the same manner as originally tested for compliance with paragraph (b)(5) of this section.

(8) The colored insulating material removed from or tested on the conductor, from a finished wire shall comply with the requirements specified in ANSI/ICEA S–89–648–1993, paragraphs 3.2.4 through 3.2.4.5.

(c) *Identification of pairs and layup of pairs.* (1) The insulation shall be colored coded to identify:

(i) The tip and ring conductor of each pair; and

(ii) Each pair in the completed wire.

(2) The colors to be used in the pairs together with the pair numbers shall be in accordance with the table specified in ANSI/ICEA S–89–648–1993, paragraph 4.1.1.

(3) The insulated conductors shall be either layed parallel (two conductor design only) or twisted into pairs.

(4) When using parallel conductors for the two conductor design, the parallel conductors shall be designed to enable the wire to meet the electrical requirements specified in paragraph (g) of this section.

(5) When twisted pairs are used, the following requirements shall be met:

(i) The pair twists shall be designed to enable the wire to meet the electrical requirements specified in paragraph (g) of this section; and

(ii) The average length of pair twists in any pair in the finished wire, when measured on any 3 meter (10 foot) length, shall not exceed the requirement specified in ANSI/ICEA S–89–648–1993, paragraph 4.1.

(6) An alternative method of forming the two-pair wire is the use of a star-quad configuration.

(i) The assembly of the star-quad shall be such as to enable the wire to meet the electrical requirements specified in paragraph (g) of this section.

(ii) The star-quad configuration shall be assembled in accordance with ANSI/ICEA S–89–648–1993, paragraph 4.1.2.

(iii) The average length of twist for the star-quad in the finished wire, when measured on any 3 meter (10 foot) length, shall not exceed the requirement specified in ANSI/ICEA S–89–648–1993, paragraph 4.1.

(iv) The color scheme used to provide identification of the tip and ring conductors of each pair in the star-quad shall comply with the table specified in ANSI/ICEA S–89–648–1993, paragraph 4.1.2.

(d) *Strength members.* The strength members shall comply with the requirements specified in ANSI/ICEA S–89–648–1993, paragraphs 6.1 and 6.1.1.

(e) *Wire jacket.* (1) The jacket shall comply with the requirements specified in ANSI/ICEA S–89–648–1993, paragraphs 5.1 and 5.1.1.

(2) The jacket raw materials shall be accepted by RUS prior to their use.

(f) *Wire assembly.* The finished wire assembly shall be in accordance with ANSI/ICEA S–89–648–1993, paragraph 5.1.3 and Figure 5–1.

(g) *Electrical requirements.* (1) *Conductor resistance.* The dc resistance of each conductor in a completed NMR aerial service wire shall comply with the requirement specified in ANSI/ICEA S–89–648–1993, paragraph 7.2.2.

(2) *Resistonce unbalance.* (i) The dc resistance unbalance between the two conductors of any pair in a completed NMR aerial service wire and the average resistance unbalance of all pairs in a Quality Control Lot shall comply with the requirements specified in ANSI/ICEA S–89–648–1993, paragraph 7.2.3.

(ii) The resistance unbalance between tip and ring conductors shall be random with respect to the direction of unbalance. That is, the resistance of the tip conductors shall not be consistently higher with respect to the ring conductors and vice versa.

(3) *Dry mutual capacitance.* The dry mutual capacitance of the completed NMR aerial service wire shall comply with the requirements specified in ANSI/ICEA S–89–648–1993, paragraph 7.2.4, Type 1.

(4) *Pair-to-pair capacitance unbalance.* The pair-to-pair capacitance unbalance as measured on the completed NMR aerial service wire shall comply with the requirements specified in ANSI/ICEA S–89–648–1993, paragraph 7.2.5.

(5) *Attenuation.* (i) The dry attenuation of the completed NMR aerial service wire shall comply with the requirement specified in ANSI/ICEA S–89–648–1993, paragraph 7.2.7.

(ii) The wet attenuation of the completed NMR aerial service wire shall comply with the requirement specified in ANSI/ICEA S–89–648–1993, paragraph 7.2.8.

(6) *Insulation resistance.* (i) The dry insulation resistance of the completed NMR aerial service wire shall comply with the requirement specified in ANSI/ICEA S–89–648–1993, paragraph 7.2.9.

(ii) The wet insulation resistance of the completed NMR aerial service wire shall comply with the requirement specified in ANSI/ICEA S–89–648–1993, paragraph 7.2.10.

(7) *Wet Dielectric strength.* The wet dielectric strength between conductors and between each conductor of the completed NMR aerial service wire and the surrounding water shall comply with the requirement specified in ANSI/ICEA S–89–648–1993, paragraph 7.2.11.

(8) *Fusing coordination.* The completed NMR aerial service wire shall comply with the fusing coordination requirement specified in ANSI/ICEA S–89–648–1993, paragraph 7.2.13.

(9) *Crosstolk loss.* (i) The output-to-output far-end crosstalk loss (FEXT) for any pair of completed NMR aerial service wire shall comply with the requirement specified in ANSI/ICEA S–89–648–1993, paragraph 7.2.14.

(ii) The input-to-input near-end crosstalk loss (NEXT) for any pair of completed NMR aerial service wire shall comply with the requirement specified in ANSI/ICEA S–89–648–1993, paragraph 7.2.14.

(h) *Mechonical requirements*—(1) *Impact test.* (i) All NMR aerial service wires manufactured in accordance with this section shall comply with the unaged impact test specified in § 1755.702(f)(1)(i).

(ii) All NMR aerial service wires manufactured in accordance with this section shall comply with the aged impact test specified in § 1755.702(f)(1)(ii).

(2) *Abrasion resistance test.* All NMR aerial service wires manufactured in accordance with this section shall comply with the abrasion resistance test specified in § 1755.702(f)(2).

(3) *Static load test.* All NMR aerial service wires manufactured in accordance with this section shall comply with the static load test specified in § 1755.702(f)(3).

(4) *Elongation test.* All NMR aerial service wires manufactured in accordance with this section shall comply with the elongation test specified in ANSI/ICEA S–89–648–1993, paragraph 8.1.7.

(5) *Plosticizer compatibility test.* All NMR aerial service wires manufactured in accordance with this section shall comply with the plasticizer compatibility test specified in § 1755.702(f)(4).

(i) *Environmental requirements.* (1) *Cold temperature handling test.* (i) All NMR aerial service wires manufactured in accordance with this section shall comply with the unaged cold temperature handling test specified in § 1755.702(g)(1)(i).

(ii) All NMR aerial service wires manufactured in accordance with this section shall comply with the aged cold temperature handling test specified in § 1755.702(g)(1)(ii).

(2) *Light absorption test.* All NMR aerial service wires manufactured in accordance with this section shall comply with the light absorption test specified in § 1755.702(g)(2).

(3) *Flammability test.* All NMR aerial service wires manufactured in accordance with this section shall comply with the flammability test specified in § 1755.702(g)(4).

(4) *Wire listing.* All NMR aerial service wires manufactured in accordance with this section shall comply with the listing requirements specified in § 1755.702(g)(5).

(j) *Ripcord (optional).* (1) A ripcord may be used in the NMR aerial service wire structure at the option of the manufacturer unless specified by the end user.

(2) When a ripcord is used it shall comply with the requirements specified in ANSI/ICEA S–89–648–1993, paragraphs 4.2 through 4.2.3.

(k) *Identification marker.* Each length of NMR aerial service wire shall be identified in accordance with ANSI/ICEA S–89–648–1993, paragraphs 9.1 through 9.1.4. When surface marking is employed, the color of the initial marking shall be either white or silver.

(l) *Length marking (optional).* (1) Sequentially numbered length marking of the completed NMR aerial service wire may be used at the option of the manufacturer unless specified by the end user.

(2) When sequentially numbered length markings are used, the length markings shall be in accordance with in accordance with § 1755.702(i)(2).

(m) *Durability of marking.* The durability of the marking of the NMR aerial service wire shall comply with the requirements specified in § 1755.702(j).

§ 1755.704 Requirements applicable to both CCSR and NMR aerial service wires.

(a) *Acceptance testing.* (1) The tests described in §§ 1755.700 through 1755.704 are intended for acceptance of wire designs and major modifications of accepted designs. What constitutes a major modification is at the discretion of RUS. These tests are intended to show the inherent capability of the manufacturer to produce wire products having long life and stability.

(2) For initial acceptance, the manufacturer shall:

(i) Certify that the product fully complies with each paragraph in §§ 1755.700 through 1755.704;

(ii) Agree to periodic plant inspections by RUS;

(iii) Certify whether the product complies with the domestic origin manufacturing provisions of the "Buy American" requirements of the Rural Electrification Act of 1938 (7 U.S.C. 903 note), as amended (the "REA Buy-American provision");

(iv) Submit at least three written user testimonials concerning field performance of the product; and

(v) Provide any other nonpropriety data deemed necessary by the Chief, Outside Plant Branch (Telecommunications).

(3) In order for RUS to consider a manufacturer's request that a product be requalified, the manufacturer shall certify not later than June 30 of the year in which requalification is required, that the product:

(i) Fully complies with each paragraph in §§ 1755.700 through 1755.704; and

(ii) Does or does not comply with the domestic origin manufacturing provisions of the REA Buy American provisions.The required certifications shall be dated within 90 days of the submission.

(4) Initial and requalification acceptance requests should be addresses to: Chairman, Technical Standards Committee "A" (Telecommunications), Telecommunications Standards Division, Rural Utilities Service, AG Box 1598, Washington, DC 20250–1598.

(b) *Extent of testing*—(1) *Tests on 100 percent of completed wire.* (i) Each conductor in the completed CCSR and NMR aerial service wire shall be tested for continuity in accordance with ANSI/ICEA S–89–648–1993, paragraphs 7.1.1 and 7.2.1, respectively. The ANSI/ICEA S–89–648–1993 Standard For Telecommunications Aerial Service Wire, Technical Requirements (approved by ANSI July 11, 1994) is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ANSI/ICEA S–89–648–1993 are available for inspection during normal business hours at RUS, room 2845, U.S. Department of Agriculture, Washington, DC 20250–1500 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies are available from ICEA, P. O. Box 440, South Yarmouth, MA 02664, telephone number (508) 394–4424.

(ii) Each conductor in the completed CCSR and NMR aerial service wire shall be tested for shorts in accordance with ANSI/ICEA S–89–648–1993, paragraphs 7.1.1 and 7.2.1, respectively.

(iii) Each length of completed CCSR and NMR aerial service wire shall be

tested for insulation imperfections in accordance with § 1755.702(e)(7) and § 1755.703(b)(5), respectively.

(2) *Capability tests.* Tests on a quality assurance basis shall be made as frequently as is required for each manufacturer to determine and maintain compliance with:

(i) Performance of the conductors;

(ii) Performance of the conductor insulation and jacket material;

(iii) Sequential marking and lettering;

(iv) Mutual capacitance, capacitance unbalance, attenuation, and crosstalk;

(v) Conductor resistance, resistance unbalance, and insulation resistance;

(vi) Dielectric strength and fusing coordination;

(vii) Impact, abrasion, static load, elongation, and plasticizer compatibility tests; and

(viii) Cold temperature handling, light absorption, low temperature separation, and flammability tests.

(c) *Summary of records of electrical and physical tests.* (1) Each manufacturer shall maintain suitable summary records for a period of at least 3 years of all electrical and physical tests required on completed wire as set forth in paragraph (b) of this section. The test data for a particular lot of aerial service wire shall be in a form such that it may be readily available to the purchaser or to RUS upon request.

(2) Measurements and computed values shall be rounded off to the number of places or figures specified for the requirement according to ANSI/ICEA S–89–648–1993, paragraph 1.3.

(d) *Manufacturing irregularities.* (1) Repairs to the insulation of CCSR aerial service wires are not permitted in wires supplied to end users under §§ 1755.700 through 1755.704.

(2) Repairs to the jacket of NMR aerial service wires are not permitted in wires supplied to end users under §§ 1755.700 through 1755.704.

(e) *Splicing.* Splicing of completed CCSR and NMR aerial service wires shall comply with the requirement specified in ANSI/ICEA S–89–648–1993, paragraph 8.1.1.

(f) *Preparation for shipment.* (1) CCSR and NMR aerial service wire shall be shipped either in coils or on reels.

(2) When CCSR and NMR aerial service wires are shipped on reels the following provisions shall apply:

(i) The diameter of the drum shall be large enough to prevent damage to the wire from reeling or unreeling. The reels shall be substantial and so constructed as to prevent damage to the wire during shipment and handling;

(ii) A waterproof corrugated board or other suitable means of protection accepted by RUS prior to its use may be applied to the reel. If the waterproof corrugated board or other suitable material is used for protection, it shall be suitably secured in place to prevent damage to the wire during storage and handling. The use of the waterproof corrugated board or other suitable means of protection shall be at the option of the manufacturer unless specified by the end user;

(iii) The outer end of the wire shall be securely fastened to the reel head so as to prevent the wire from becoming loose in transit. The inner end of the wire shall be securely fastened in such a way as to make it readily available if required for electrical testing. Spikes, staples, or other fastening devices which penetrate the conductor insulation of the CCSR aerial service wire and the jacket of the NMR aerial service wire shall not be used. The method of fastening the wire ends shall be accepted by RUS prior to their use;

(iv) Each length of wire shall be wound on a separate reel;

(v) Each reel shall be plainly marked to indicate the direction in which it should be rolled to prevent loosening of the wire on the reel; and

(vi) Each reel shall be stenciled or labeled on either one or both sides with the following information:

(A) Customer order number;

(B) Manufacturer's name and product code;

(C) Factory reel number and year of manufacture;

(D) Gauge of conductors and pair size of wire;

(E) Length of wire; and

(F) RUS designation letter "K."

(3) When CCSR and NMR aerial service wires are shipped in coils the following provisions shall apply:

(i) The diameter of the coil shall be large enough to prevent damage to the wire from coiling or uncoiling;

(ii) The nominal length of the wire in a coil shall be 305 meters (1,000 feet). No coil shall be less than 290 meters (950 feet) long or more than 460 meters (1,500 feet) long; however, 25 percent of the total number of coils may be less than 305 meters (1,000 feet);

(iii) The coils of wire shall be wound securely with strong tape in four separate evenly spaced places;

(iv) The coils may be protected from damage by wrapping the coil with heavy paper, burlap, or other suitable material accepted by RUS prior to its use. The use of the heavy paper, burlap, or other suitable means of protection shall be at the option of the manufacturer unless specified by the end user; and

(v) Each coil shall be tagged with the following information:

(A) Customer order number;

(B) Manufacturer's name and product code;

(C) Year of manufacture;

(D) Gauge of conductors and pair size of wire;

(E) Length of wire; and

(F) RUS designation letter "K."

(4) In lieu of wrapping the coil with heavy paper, burlap, or other suitable material, the coil may be packaged in a moisture resistant carton.

(5) When the coils are shipped in moisture resistant cartons, each carton shall be marked with the information specified in paragraphs (f)(3)(v)(A) through (f)(3)(v)(F) of this section.

(6) Other methods of shipment may be used if accepted by RUS prior to their use.

(7) When NMR aerial service wire is shipped, the ends of the wire shall be sealed in accordance with ANSI/ICEA S–89–648–1993, paragraph 9.2.

Dated: May 10, 1996.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 96–12834 Filed 5–23–96; 8:45 am]

BILLING CODE 3410–15–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

Assessments; Continuation of Adjusted Rate Schedule for BIF-Assessable Deposits

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Continuation of adjusted rate schedule.

SUMMARY: On May 14, 1996, the Board of Directors of the FDIC (Board) adopted a resolution to continue in effect the current downward adjustment to the assessment rate schedule applicable to deposits assessable by the Bank Insurance Fund (BIF). The continuation of the downward adjustment will apply to the semiannual assessment period beginning July 1, 1996. As a result, the BIF assessment rates will continue to range from 0 to 27 basis points. This rate schedule will result in an estimated average annual assessment rate of approximately 0.29 basis points; the estimated annual revenue produced by this rate schedule will be $72 million.

EFFECTIVE DATE: July 1, 1996, through December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Frederick S. Carns, Assistant Director, Division of Insurance, (202) 898–3930; Christine E. Blair, Financial Economist, Division of Research and Statistics, (202) 898–3936; James R. McFadyen, Senior Financial Analyst, Division of Research and Statistics, (202) 898–7027; Christopher L. Hencke, Counsel, Legal Division, (202) 898–8839; Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C., 20429.

SUPPLEMENTARY INFORMATION:

I. Continuation of Adjustment to Rate Schedule 2

Section 7(b) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(b), provides that the Board shall set semiannual assessments for insured depository institutions. On August 8, 1995, the Board adopted a new assessment rate schedule for deposits subject to assessment by the BIF. 60 FR 42680 (August 16, 1995). The new schedule was codified as Rate Schedule 2 at 12 CFR 327.9(a). This schedule provided for an assessment-rate range of 4 to 31 basis points and became effective retroactively on June 1, 1995, the beginning of the month following the month in which the BIF reached its designated reserve ratio (DRR) of 1.25 percent of total estimated insured deposits.

In adopting Rate Schedule 2, the Board also amended the FDIC's assessment regulations to permit the Board to make limited adjustments to the schedule without notice-and-comment rulemaking. Any such adjustments can be made as the Board deems necessary to maintain the BIF reserve ratio at the DRR and can be accomplished by Board resolution. Under this provision, codified at 12 CFR 327.9(b), any such adjustment must not exceed an increase or decrease of 5 basis points and must be uniform across the rate schedule.

The amount of an adjustment adopted by the Board under 12 CFR 327.9(b) is to be determined by the following considerations: (1) the amount of assessment revenue necessary to maintain the reserve ratio at the DRR; and (2) the assessment schedule that would generate such amount of assessment revenue considering the risk profile of BIF members. In determining the relevant amount of assessment revenue, the Board is to consider BIF's expected operating expenses, case resolution expenditures and income, the effect of assessments on BIF members' earnings and capital, and any other factors the Board may deem appropriate.

Having considered all of these factors, the Board decided on November 14, 1995, to adopt an adjustment factor of 4 basis points for the semiannual assessment period beginning January 1, 1996, with a resulting adjusted schedule ranging from 0 to 27 basis points. 60 FR 63400 (December 11, 1995). The Board has now decided to adopt the same adjustments to Rate Schedule 2 for the upcoming semiannual period from July 1, 1996 to December 31, 1996. The adjusted rate schedule is set forth below.

BIF Rate Schedule as Adjusted for the Second Semiannual Period of 1996

Capital group	Supervisory subgroup		
	A	B	C
1	[1]0	3	17
2	3	10	24
3	10	24	27

[1] Subject to a statutory minimum assessment of $1,000 per semiannual period (which also applies to all other assessment risk classifications).

The basis for the Board's decision is discussed below.

II. Basis for the Adjustment

A. Maintaining at the Designated Reserve Ratio

In adopting a rate adjustment under 12 CFR 327.9(b), as mentioned above, the Board must consider the following: (1) the amount of assessment revenue necessary to maintain the reserve ratio at the DRR; and (2) the assessment schedule that would generate such amount of assessment revenue considering the risk profile of BIF members.

The BIF reserve ratio stood at 1.30 percent as of December 31, 1995, the latest date for which complete data are available. Assuming that insured deposit growth during the first half of 1996 falls within the range of 2 percent shrinkage to 6 percent growth annually, and assuming that insurance losses remain moderate as expected, the BIF ratio will range from 1.29 to 1.34 percent at midyear 1996 (Table 1).

For the second half of 1996, insurance losses and operating expenses are expected to total under $350 million, while assessments plus investment income will exceed $650 million.

Insured deposit growth for 1996 is subject to considerable uncertainty, as recent experience has been mixed. From 1991 through early 1995, the growth rate of BIF-insured deposits was essentially zero but, for the year ending in December 1995, BIF-insured deposits grew by 3 percent, with much of this growth occurring in the fourth quarter. In light of the 1995 experience, as well as considerable volatility in deposit growth experienced during the 1980s, the FDIC must consider the possibility that BIF-insured deposits could grow at a 6 percent annual rate throughout 1996.

Table 1 indicates the year-end 1996 range for the BIF reserve ratio, assuming a 6 percent upper bound for annual deposit growth in 1996 and assuming that the values of other variables affecting the reserve ratio in the second semiannual period will fall within their historical ranges. While the lower bound on the year-end BIF reserve ratio is below the 1.25 percent target, this presumes an unexpected increase in insurance losses/provisions of $600 million. Such an increase is consistent with the historical experience of the FDIC, but it must be viewed as a remote possibility in light of the current economic environment and the near-term outlook.

The stronger possibility is that insured-deposit growth rates could exceed forecasts based upon historical experience. While the 6 percent upper bound for deposit growth included in Table 1 is high relative to the experience of the 1990s, the FDIC cannot rule out such a rate of growth in response to the dramatic reductions in BIF assessment rates that were effected in the second half of 1995.

Moreover, given the prospect of a continuing, large premium differential between the insurance funds, there is a realistic possibility of substantial deposit migration from the SAIF to the BIF. Though the law imposes constraints on at least some forms of deposit-shifting from one fund to another, such constraints may be countered by adaptations in the marketplace. The relatively low rate of migration to date is not likely to be indicative of the rate to be expected going forward, given that many market participants may have delayed any plans to migrate deposits in anticipation of a legislative solution. In the absence of a legislative solution to date, the FDIC believes that there is a realistic possibility of a significant increase in deposit migration. However, the precise timing and ultimate magnitude of any increase is uncertain.

For illustration, Table 2 examines the impact on the year-end BIF reserve ratio of alternative deposit migration rates during the second semiannual period of 1996. Columns 2 through 4 of the table indicate the impact of deposit migration rates under three different assumptions concerning "normal" growth of BIF-insured deposits (growth that is not due to migration) for 1996. For example, the ratios in the third column are derived under the assumption that normal deposit growth is 2 percent for 1996 (full year); assuming also that no deposit migration occurs during the year, the

year-end BIF ratio would be 1.32 percent (the assumed values for all nondeposit factors affecting the reserve ratio are constant across columns 2–4). Table 2 indicates that, in general, each 5 percent increase in the annual rate of migration during the second half of 1996 (to a maximum annual rate of 30 percent) would reduce the year-end 1996 BIF ratio by approximately 1 basis point. If 30 percent annual migration in the second half of 1996 were to occur along with 6 percent "normal" growth of BIF-insured deposits, the BIF ratio at year end would be 1.23 percent under the assumptions of Table 2.

Given the uncertainties reviewed above, the possibility of a large increase in BIF-insured deposit growth during 1996 should be considered seriously. Despite this concern, it is the judgment of the Board that BIF assessment rates should not be changed at this time; rather, deposit flows and trends in deposit growth rates should be closely monitored in preparation for future decisions regarding BIF assessment rates.

In summary, for the reasons discussed above, the Board believes that the assessment schedule for the current semiannual period will generate the revenue necessary to maintain the reserve ratio at the DRR in the next semiannual period.

B. The Long-Term Outlook

The Board believes that an important consideration in setting rates is the long-term revenue needs of the BIF. A balance should exist between long-term BIF revenues and long-term BIF expenses (where expenses include monies needed to prevent dilution due to deposit growth). In August of 1995, the FDIC determined that an effective average BIF assessment rate of 4 to 5 basis points would be appropriate to achieve such balance. This determination was based on a thorough historical analysis of FDIC experience and consideration of recently enacted statutory provisions that may moderate deposit insurance losses going forward. 60 FR 42680 (August 16, 1995).

The Board has not altered its view that, in setting rates, it should look beyond the immediate time frame in estimating the revenue needs of the BIF. Moreover, the Board continues to believe that an average annual assessment rate of 4 to 5 basis points would be appropriate to achieve a long-term balance between BIF revenues and expenses. As discussed in the preceding section, however, the current balance in the BIF also is directly relevant to determining the appropriate assessment level. In light of the favorable existing conditions and outlook for the next several months, it is anticipated that the current rate structure (with an assessment rate of zero for the least-risky institutions) will provide adequate assessment revenue over the near term to maintain the BIF reserve ratio at or above the target ratio of 1.25 percent.

C. Other Considerations

In continuing the current adjustments to the assessment rate schedule, the Board has considered the effect on members' earnings and capital. In light of the fact that these adjustments represent a reduction in the rates set forth in Rate Schedule 2, the Board does not believe that the schedule will produce unwarranted adverse effects on members. Indeed, the rate for many institutions will be zero (with a minimum semiannual assessment of $1,000 mandated by the Federal Deposit Insurance Act).

Another consideration is the statutory requirement under the Federal Deposit Insurance Act for a risk-based assessment system. To be effective, this system must incorporate a range of rates that provides an incentive for institutions to control risk-taking behavior while at the same time covering the long-term costs of the obligations borne by the deposit insurer. In the judgment of the Board, these goals will be achieved for the upcoming semiannual period by retaining the current spread of 27 basis points between the highest- and lowest-rated institutions.

For the reasons discussed above, the Board has decided to continue in effect the current adjustment to the BIF assessment rate schedule with a range of 0 to 27 basis points for the semiannual period from July 1, 1996 through December 31, 1996.

By order of the Board of Directors.

Dated at Washington, DC, this 14th day of May, 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

BILLING CODE 6714–01–P

Table 1

BIF Assessment Rates Factors to be Considered

Second Semiannual Assessment Period, 1996

BIF Ratio at June 30, 1996 (Percent) (1)	1.29 to 1.34
Expected Income ($Millions)	644 to 701
Assessment Income ($Millions)	36
Interest Income ($Millions) (2)	608 to 665
Expected Insurance Losses and Change in Provisions for Future Losses ($Millions) (3)	-100 to 600
Expected Operating Expenses ($Millions)	204
Estimated BIF-Insured Deposits at December 31, 1996 ($Billions) (4)	1,913 to 2,070
BIF Ratio at December 31, 1996 (Percent) (5)	1.24 to 1.38

(1) Range reflects annual insured deposit growth rate of +6 percent versus -2 percent for first half of 1996.

(2) Range reflects interest earnings of 5.5 versus 6 percent annually.

(3) Range based on FDIC experience, as reviewed in *Federal Register* notice of August 16, 1995 (12 CFR Part 327).

(4) Lower bound assumes annual growth of insured deposits of -2 percent for 1996; upper bound assumes annual growth of 6 percent. Range based on quarterly volatility evidence from 1984:Q2 to 1995:Q1. The SAIF/BIF premium differential creates a potential for substantial deposit migration from SAIF to BIF. See Table 2 for the effects of alternative migration rates on the year-end 1996 BIF ratio.

(5) Reflects ranges for all preceding items in Table 1.

Prepared by: Division of Insurance, FDIC

Table 2

Effect of SAIF Migration on BIF Reserve Ratio at December 31, 1996

Annual Rate of non-Oakar Deposit Migration from SAIF to BIF During Second Half of 1996*	BIF Ratio at December 31, 1996 (Percent) with "Normal" Growth of** -2%	+2%	+6%
(1)	(2)	(3)	(4)
0%	1.38	**1.32**	1.27
5%	1.37	1.31	1.26
10%	1.36	1.31	1.26
15%	1.35	1.30	1.25
20%	1.34	1.29	1.24
30%	1.33	1.28	**1.23**

* Reflects the percent of the non-Oakar assessment base that migrates to the BIF. Because most BIF-member Oakars own a relatively small proportion of SAIF-assessable deposits, they are less likely to pursue a migration strategy. Assessment savings typically would be small relative to the costs and complexities of establishing new affiliates, encouraging depositors to switch accounts, placing greater reliance on non-deposit funding, and pursuing other avoidance mechanisms. Migration, therefore, is likely to come from the non-Oakar portion of the SAIF assessment base. Note that zero migration is assumed for the first half of 1996.

** We refer to "normal" growth as deposit growth that is not due to migration. Growth rates in columns 2 through 4 are for the full year 1-1-96 through 12-31-96. Values for all other variables affecting the reserve ratio are constant across columns in Table 2, and are as follows:

(1) Assessment income is assumed to be $36 million per semiannual period

(2) Interest and other income is assumed to be $690 million per semiannual period

(3) The sum of insurance losses, provisions for future losses, and operating expenses is assumed to be $250 million per semiannual period

Given these benchmark values, the BIF reserve ratio as of June 30, 1996 is assumed to be 1.34% for column 2, 1.32% for column 3, and 1.29% for column 4. For the three rates of normal growth, the table traces the implications of different rates of second-half 1996 migration for the year-end 1996 BIF reserve ratio. The table is presented for illustrative purposes only.

Prepared by: Division of Insurance, FDIC

12 CFR Part 327

Assessments; Retention of Existing Assessment Rate Schedule for SAIF-Member Institutions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Confirmation of assessment rate.

SUMMARY: On May 14, 1996, the Board of Directors of the FDIC (Board) adopted a resolution to retain the existing assessment rate schedule applicable to members of the Savings Association Insurance Fund (SAIF) for the semiannual period beginning July 1, 1996. As a result of this action, the SAIF assessment rates to be paid by depository institutions whose deposits are subject to assessment by the SAIF will continue to range from 23 cents per $100 of assessable deposits to 31 cents per $100 of assessable deposits, depending on risk classification.

EFFECTIVE DATE: July 1, 1996, through December 31, 1996.

FOR FURTHER INFORMATION CONTACT: James R. McFadyen, Senior Financial Analyst, Division of Research and Statistics, (202) 898–7027; Christine E. Blair, Financial Economist, Division of Research and Statistics, (202) 898–3936; Christopher L. Hencke, Counsel, Legal Division, (202) 898–8839; Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, D.C., 20429.

SUPPLEMENTARY INFORMATION:

I. Confirmation of Assessment Rate

Section 7(b) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(b), provides that the Board shall set semiannual assessments for insured depository institutions. For members of the undercapitalized SAIF, the Board must set assessment rates to increase the reserve ratio of the SAIF to the designated reserve ratio (DRR) of 1.25 percent of estimated insured deposits. 12 U.S.C. 1817(b)(2)(A)(i). The Board must consider SAIF's expected operating expenses, case resolution expenditures and income, the effect of assessments on members' earnings and capital, and any other factors that the Board may deem appropriate. 12 U.S.C. 1817(b)(2)(A)(ii).

The minimum semiannual assessment for each member is $1,000. 12 U.S.C. 1817(b)(2)(A)(iii). Moreover, the total amount raised by SAIF assessments must not be less than the total amount that would be raised by a rate of 18 basis points. 12 U.S.C. 1817(b)(2)(E). The assessment revenue is subject to a priority claim by the Financing Corporation (FICO). 12 U.S.C. 1817(b)(2)(D).

In accordance with the statutory requirements above, the Board adopted the SAIF assessment rate schedule codified at 12 CFR 327.9(d)(1). The Board has applied this schedule in previous assessment periods as well as the current period from January 1, 1996 through June 30, 1996. 60 FR 63406 (December 11, 1995). The Board has now decided to retain this schedule for the upcoming semiannual period from July 1, 1996 through December 31, 1996.

II. Basis for Confirmation

In setting assessment rates, the Board must increase the reserve ratio of the SAIF to the DRR of 1.25 percent of estimated insured deposits. On December 31, 1995, the SAIF had a balance of nearly $3.4 billion and a reserve ratio of 0.47 percent of insured deposits, about $5.5 billion below the amount needed to meet the DRR. The SAIF reserve ratio continues to rise, but the rate of progress is slowed by the diversion of assessment revenues to other statutory purposes. Since the inception of the SAIF in 1989, these diversions have totaled $7.7 billion. Without these diversions, the SAIF would be fully capitalized today. Some of these demands on the SAIF have been fully satisfied, but FICO continues to have an annual draw of up to $793 million against SAIF assessments, until 2019.

The SAIF grew by $1.4 billion in 1995, but a large share of that growth—$321 million—stemmed from the reduction in loss reserves for anticipated failures. These reductions in loss reserves reflect recent improvements in the health of the thrift industry and a decline in projected thrift failures. Further reductions in reserves of this magnitude will not happen again because the remaining loss reserves are now only approximately $111 million.

At the present pace and under reasonably optimistic conditions, the SAIF is not expected to meet the DRR until 2001, which is slightly ahead of the capitalization date projected last year. The acceleration of the capitalization date is attributable to lower-than-expected loss experience in 1995 and the lowering of loss projections for 1996 and 1997. The thrift industry is healthy today, and no large thrifts are expected to fail in the near future. Thrifts earned record profits of $7.6 billion in 1995, and the number and assets of "problem" thrifts continue to decline. Presently, 88 percent of all SAIF members qualify for the lowest premium under the FDIC's risk-based assessment system. However, it is not known how much longer the present favorable conditions can continue, and it would be prudent for the SAIF to be fully capitalized as quickly as possible to be prepared for future uncertainties.

The Board has the option of lowering SAIF assessment rates to a minimum average annual assessment rate of 18 basis points until January 1, 1998, at which time rates must return to a minimum average annual assessment rate of 23 basis points until the DRR is attained. However, the lowering of rates for this 18-month period would delay the SAIF from reaching full capitalization and could result in a FICO default in 1997.

Other developments have threatened the stability of the SAIF. Given the recapitalization of the Bank Insurance Fund (BIF) in 1995, the Board subsequently lowered BIF premiums to an average of just 0.3 basis points, compared to the average SAIF premium of 23.4 basis points. This disparity between BIF and SAIF premiums of about 23 basis points provides powerful economic incentives for SAIF-insured institutions to reduce their SAIF-assessable deposits. Despite a general ban on conversions between insurance funds, thrifts have developed and are pursuing means to transfer deposits from SAIF to BIF insurance or otherwise reduce their reliance on SAIF-assessable deposits. During 1995, for example, one large SAIF member shifted an estimated $3.4 billion in deposits to a BIF-member affiliate, and another thrift took advantage of an Oakar accounting anomaly that caused $3.3 billion of SAIF deposits to be reclassified as BIF deposits following the sale of BIF-insured deposits.

The migration of deposits out of the SAIF deposit base would accelerate the capitalization of the SAIF (see Table 2), but it would exacerbate the problems facing the SAIF by reducing the fund's ability to diversify its risks. It is likely to be the stronger SAIF members that will be successful in shifting deposits to the BIF. As a result, weaker thrifts and the banks that own SAIF deposits would be more exposed to the losses of an insurance fund that will have a higher risk profile.

If the Board were to lower SAIF assessment rates to 18 basis points, it would reduce the premium disparity from 23 basis points to 18 basis points, but it is unlikely that a temporary reduction of 5 basis points would temper the existing incentives to reduce reliance on SAIF-assessable deposits. Moreover, a reduction in assessment rates, in combination with a shrinking assessment base, would hasten a FICO shortfall (see Tables 3 and 4).

In recommending that SAIF assessment rates remain unchanged, the Board has considered the impact on the earnings and capital of SAIF members and found no unwarranted adverse effects. As discussed earlier, the earnings and capital of SAIF members are satisfactory though the Board has recognized that the full impact of the premium disparity may not yet be realized.

Pending enactment of a comprehensive legislative solution to the problems facing the SAIF, the FDIC must operate within the existing statutory framework. For the reasons discussed above, the Board has decided to retain the current SAIF assessment rate schedule of 23 to 31 basis points in order to enable the SAIF to reach full capitalization as quickly as possible. The schedule to be applied for the semiannual period from July 1, 1996, through December 31, 1996, is codified at 12 CFR 327.9(d)(1).

By order of the Board of Directors.

Dated at Washington, D.C., this 14th day of May, 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

BILLING CODE 6714-01-P

Table 1

SAIF Assessment Rates
(basis points)

Capital Category	Supervisory Subgroup A	B	C
1	23	26	29
2	26	29	30
3	29	30	31

SAIF Assessment Base Distribution
Deposits as of December 31, 1995
Supervisory and Capital Ratings in Effect January 1, 1996

Capital Category		Supervisory Subgroup A		B		C	
Well	Number	1,514	87.7%	127	7.4%	19	1.1%
	Base ($bill)	667.4	90.9%	39.9	5.4%	2.3	0.3%
Adequate	Number	17	1.0%	20	1.2%	25	1.4%
	Base ($bill)	7.1	1.0%	9.2	1.3%	7.3	1.0%
Under	Number	0	0.0%	0	0.0%	5	0.3%
	Base ($bill)	0.0	0.0%	0.0	0.0%	1.1	0.2%

Note: "Number" reflects the number of SAIF members; "Base" reflects the SAIF–assessable deposits of SAIF members and of BIF–member Oakar banks.

Annual assessment revenue	1.7	billion
Assessment base	734.3	billion
Average assessment rate	23.4	basis points

Table 2

Projected 12/31/96 SAIF Reserve Ratio Based on The Migration of Non–Oakar Insured Deposits (billions of dollars)

- Under reasonably optimistic conditions, the SAIF reserve ratio is expected to approach 0.61 percent by year–end 1996.
- However, the migration of deposits from the SAIF to the BIF would accelerate the SAIF's capitalization.
- Because most BIF–member Oakars own a relatively small proportion of SAIF–assessable deposits, they are less likely to pursue a migration strategy.
- Migration, therefore, is likely to come from the non–Oakar portion of the SAIF assessment base.
- If the non–Oakar portion of the SAIF assessment base were to shrink by 30 percent, the SAIF reserve ratio could increase to 0.75 percent by year–end 1996.

	Annual Migration Rate	Non–Oakar Insured Deposits	BIF–Member Oakar Deposits	Total Insured Deposits	SAIF Balance	Reserve Ratio
12/31/95 Actual	––	492	219	711	3.358	0.47%
12/31/96 Projected	0%	479	227	706	4.299	0.61%
	5%	454	227	681	4.292	0.63%
	10%	429	227	656	4.285	0.65%
	15%	405	227	632	4.279	0.68%
	20%	380	227	607	4.272	0.70%
	25%	355	227	582	4.265	0.73%
	30%	341	227	568	4.258	0.75%

Table 3

SAIF Assessment Base Available to Pay FICO (billions of dollars)

- The FICO claim is payable only out of assessments paid by SAIF–member savings associations. This excludes SAIF assessments paid by "Oakar" and "Sasser" banks.
- The FICO–available assessment base is shrinking 11 percent per year, on average.
- Shrinkage of the FICO base slowed in 1995 as deposit growth partially offset additional Oakar purchases.

	Total Assessment Base	Less: Oakars	Less: Sassers	FICO–Available Base	Change From Prior Year–End	Average Assessment Rate [1]	FICO–Required Base [2]	FICO "Cushion" [3]
1995	734.4	218.7	56.4	459.3	–4.4%	23.7	329.1	130.2
1994	714.1	181.7	52.0	480.4	–10.7%	24.4	319.7	160.7
1993	720.8	139.9	42.8	538.0	–16.8%	25.0	312.0	226.0
1992	755.3	80.5	28.4	646.3	–11.5%	23.0	339.1	307.2
1991	811.7	69.8	11.9	730.1	–12.4%	23.0	339.1	391.0
1990	870.0	34.0	2.8	833.3	–11.4%	20.8	375.0	458.3
1989	942.8	2.1	0.0	940.6	––	20.8	375.0	565.6
					Annual average:	–11.2%		

[1] Basis points (100 basis points equals 1 percent).
[2] Assessment base required to generate $780 million at the average rates in effect, by year. During the first half of 1996, the average SAIF assessment fell to 23.4 basis points, raising the FICO–required base to $333 billion.
[3] The FICO cushion is the amount by which the FICO–available base exceeds the FICO–required base.

Table 4

Impact on FICO of SAIF Assessment Base Shrinkage

- On 12/31/95, the FICO–available assessment base was $459 billion.
- At the current average SAIF assessment rate of 23.4 basis points, FICO requires an assessment base of at least $333 billion to generate an annual payment of $780 million.
- The FICO base declined at an average annual rate of 11 percent from 1989 through 1995. A 27.4 percent decline from the year–end 1995 level could lead to a FICO default.
- The current 23–basis point disparity between BIF and SAIF assessment rates is likely to accelerate the shrinkage of SAIF–assessable deposits.
- The following table shows the year in which a shortfall would occur at various annual rates of assessment base shrinkage.

Shrinkage Rate	Shortfall Year
– 5%	2002
–10%	1999
–11% [1]	1998
–15%	1997
–20%	1997
–25%	1997
–30%	1996

[1] Historical rate of shrinkage.

[FR Doc. 96–12884 Filed 5–23–96; 8:45 am]
BILLING CODE 6714–01–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–110–AD; Amendment 39–9631; AD 96–11–06]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC–7 series airplanes, that requires modification of the emergency lights circuitry. This amendment is prompted by reports of the emergency lights turning on inadvertently due to voltage spikes from other equipment; and reports that the existing emergency light switch arrangement allows the flight compartment and flight attendant's panel switches to override each other. The actions specified by this AD are intended to prevent such failures of the emergency light systems, which could prevent the use of the emergency lights in the event of an emergency.

DATES: Effective June 28, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 28, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wing Chan, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7511; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–7 series airplanes was published in the **Federal Register** on January 9, 1996 (61 FR 636). That action proposed to require modification of the emergency lights circuitry.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Two commenters support the proposed rule.

Request To Include an Additional Modification Requirement

One commenter requests that proposed rule be revised to include a requirement to install Modification 7/2622. This modification is described in de Havilland Service Bulletin 7–33–23 and also affects the emergency lighting system. The commenter mentions that this modification is mandated by Canadian airworthiness directive CF 95–03. The commenter states that, by including a requirement in the proposal to install Modification 7/2622, safety would be enhanced and unnecessary requests for alternate means of compliance would be avoided.

The FAA does not concur with the commenter's request to revise this AD action to require installation of Modification 7/2622. The FAA finds that, although the unsafe condition that prompted the Transport Canada airworthiness action to mandate that modification concerns the failure of the emergency lighting systems, the cause of that failure is different from the causes of failure addressed in this AD. Additionally, the modification affects some airplanes other than those identified in the applicability of this AD.

However, the FAA is considering separate rulemaking action to address the installation of Modification 7/2622 on applicable airplanes.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 14 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $6,720, or $480 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–11–06 De Havilland, Inc.: Amendment 39–9631. Docket 95–NM–110–AD.

Applicability: Model DHC–7 series airplanes, serial numbers 3 through 27 inclusive, on which de Havilland Modification No. 7/1697 has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the emergency lighting system due to voltage spikes from other equipment or due to inadvertent override of the emergency lighting switches, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the emergency lights circuitry by accomplishing de Havilland Modification No. 7/1697 (Emergency Lights-Revised Switching Logic), in accordance with the Accomplishment Instructions of de Havilland Service Bulletin No. 7–33–7, dated October 17, 1980.

(b) As of the effective date of this AD, no person shall install an emergency light switch, part number MS24659–21A, on any airplane subject to this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The modification shall be done in accordance with de Havilland Service Bulletin No. 7–33–7, dated October 17, 1980. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, , Valley Stream, New York 11581; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 28, 1996.

Issued in Renton, Washington, on May 15, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–12729 Filed 5–23–96; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 39

[Docket No. 95–NM–197–AD; Amendment 39–9632; AD 96–11–07]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 31 and 35A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Learjet Model 31 and 35A airplanes, that requires replacement of two segments of 16 American Wire Gauge (AWG) wire with 8 AWG wire at the connector that is connected to the auxiliary cabin heater relay box. This amendment is prompted by a report that two segments of the 16 AWG wire in the auxiliary cabin heater that were spliced during production do not provide adequate current-carrying capacity. The actions specified by this AD are intended to prevent electrical arcing and a subsequent fire hazard that could result from wiring with inadequate current-carrying capacity.

DATES: Effective June 28, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 28, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dale Bleakney, Aerospace Engineer, Flight Test Branch, ACE–117W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; telephone (316) 946–4135; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Learjet Model 31 and 35A airplanes was published in the **Federal Register** on March 7, 1996 (61 FR 9119). That action proposed to require replacement of two segments of 16 AWG wire with 8 AWG wire at the P190 connector that is connected to the E33 auxiliary cabin heater relay box.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 52 Learjet Model 31 and 35A airplanes of the affected design in the worldwide fleet. The FAA estimates that 44 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $10,560, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–11–07 Learjet, Inc.: Amendment 39–9632. Docket 95–NM–197–AD.

Applicability: Model 31 airplanes having serial numbers 31–002 through 31–029 inclusive, and Model 35A airplanes having serial numbers 35–647 through 35–670 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing and subsequent fire hazard, accomplish the following:

(a) Within 6 months after the effective date of this AD, replace two segments of 16 American Wire Gauge (AWG) wire with 8 AWG wire at the P190 connector that is connected to the E33 auxiliary cabin heater relay box, in accordance with Learjet Service Bulletin SB 31–21–10, dated August 11, 1995 (for Model 31 airplanes), or Learjet Service Bulletin SB 35–21–24, dated August 11, 1995 (for Model 35A airplanes), as applicable.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacement shall be done in accordance with Learjet Service Bulletin SB 31–21–10, dated August 11, 1995, or Learjet Service Bulletin SB 35–21–24, dated August 11, 1995, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, Small Airplane Directorate, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 28, 1996.

Issued in Renton, Washington, on May 15, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–12730 Filed 5–23–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–85–AD; Amendment 39–9630; AD 96–11–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Industrie Model A300, A300–600, and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300, A300–600, and A310 series airplanes, that requires inspections to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, and repair, if necessary. This amendment is prompted by reports that fatigue cracking has been found on the lower spar of the pylon. The actions specified by this AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of the lower spar of the pylon.

DATES: Effective June 28, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 28, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A300, A300–600, and A310 series airplanes was published in the **Federal Register** on March 6, 1996 (61 FR 8892). That action proposed to require inspections to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the

making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule.

Request To Revise Compliance Threshold for Inspection

One commenter requests that the inspection threshold specified in paragraph (h) of the proposal be revised from 14,500 landings to 17,000 landings for consistency with the threshold provided in Airbus Service Bulletin A300–54–6014, Revision 1, dated March 28, 1994.

The FAA concurs with the commenter's request. The FAA's intent is that the inspection threshold and repetitive inspection interval specified in paragraph (h) of this AD parallel the threshold and interval recommended in the Airbus service bulletin. The FAA has revised paragraph (h) of the final rule to specify an inspection threshold of 17,000 landings. The repetitive inspection interval of 14,500 landings, which was recommended in the Airbus service bulletin, remains unchanged in this final rule.

Correction of Service Bulletin Number

The FAA has revised the reference to a service bulletin number that appeared in paragraph (i) of the proposed AD as Airbus Industrie Service Bulletin A300–54–2017. The correct service bulletin number is A310–54–2017.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 99 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $47,520, or $480 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator of a Model A300 series airplane elect to accomplish the optional modification that is provided by this AD action, it will take approximately 100 work hours to accomplish, at an average labor rate of $60 per work hour. The cost of required parts will be approximately $1,500 per airplane. Based on these figures, the cost impact of the optional modification for Model A300 series airplanes is estimated to be $7,500 per airplane.

Should an operator of a Model A300–600 or A310 series airplane elect to accomplish the optional modification that is provided by this AD action, it will take approximately 110 work hours to accomplish, at an average labor rate of $60 per work hour. The cost of required parts will be approximately $1,500 per airplane. Based on these figures, the cost impact of the optional modification for Model A300–600 and A310 series airplanes is estimated to be $8,100 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–11–05 Airbus Industrie: Amendment 39–9630. Docket 95–NM–85–AD.

Applicability: Model A300, A300–600, and A310 series airplanes; as listed in Airbus Industrie Service Bulletins A300–54–0073, A300–54–6014, and A310–54–2017, all Revision 1, all dated March 28, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (k) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the lower spar, accomplish the following:

(a) For Model A300 series airplanes equipped with General Electric CF6–50C engines, and having pylons that have not been modified in accordance with Airbus Industrie Service Bulletin A300–54–0080, Revision 1, dated January 16, 1995: Prior to the accumulation of 10,900 total landings, or within 500 landings after the effective date of this AD, whichever occurs later, perform an internal eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–0073, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 6,700 landings.

(2) If any crack is found that is less than 35 mm, prior to further flight, stop-drill the crack in accordance with the procedures specified in Section 51–41–10 of the Structural Repair Manual (SRM). Thereafter, prior to the accumulation of 250 landings after crack discovery, repair in accordance with the service bulletin. Prior to the accumulation of 17,900 landings after accomplishing the repair, perform an eddy current inspection to detect cracks at the stiffener ends, ribs 6 and 7, at the edge of the holes made during the repair and on the fasteners located at the edge of the doubler, in accordance with the service bulletin.

(i) If no crack is found, repeat the inspection required by paragraph (a)(2) of this AD thereafter at intervals not to exceed 15,000 landings.

(ii) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(3) If any crack is found that is greater than or equal to 35 mm, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(b) For Model A300 series airplanes equipped with General Electric CF6–50C engines, and having pylons that have been modified in accordance with Airbus Industrie Service Bulletin A300–54–0080, Revision 1, dated January 16, 1995: Prior to the accumulation of 30,300 landings since installation of the modification, or within 500 landings after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–0073, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the eddy current inspection thereafter at intervals not to exceed 21,300 landings.

(2) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(c) For Model A300 series airplanes equipped with Pratt & Whitney JT9D–59A engines, and having pylons that have not been modified in accordance with Airbus Industrie Service Bulletin A300–54–0080, Revision 1, dated January 16, 1995: Prior to the accumulation of 8,600 total landings, or within 500 landings after the effective date of this AD, whichever occurs later, perform an internal eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–0073, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 5,700 landings.

(2) If any crack is found that is less than 35 mm, prior to further flight, stop-drill the crack in accordance with the procedures specified in Section 51–41–10 of the SRM. Thereafter, prior to the accumulation of 250 landings after crack discovery, repair in accordance with the service bulletin. Prior to the accumulation of 14,200 landings after accomplishing the repair, perform an eddy current inspection to detect cracks at the stiffener ends, ribs 6 and 7, at the edge of the holes made during the repair and on the fasteners located at the edge of the doubler, in accordance with the service bulletin.

(i) If no crack is found, repeat the inspection required by paragraph (c)(2) of this AD thereafter at intervals not to exceed 12,800 landings.

(ii) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(3) If any crack is found that is greater than or equal to 35 mm, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(d) For Model A300 series airplanes equipped with Pratt & Whitney JT9D–59A engines, and having pylons that have been modified in accordance with Airbus Industrie Service Bulletin A300–54–0080, Revision 1, dated January 16, 1995: Prior to the accumulation of 24,000 landings since installation of the modification, or within 500 landings after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–0073, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the eddy current inspection thereafter at intervals not to exceed 18,200 landings.

(2) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(e) For Model A300–600 series airplanes equipped with General Electric CF6–80C2 engines, and having pylons that have not been modified in accordance with Airbus Industrie Service Bulletin A300–54–6020, dated February 22, 1994: Prior to the accumulation of 9,400 total landings, or within 500 landings after the effective date of this AD, whichever occurs later, perform an internal eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–6014, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 6,100 landings.

(2) If any crack is found that is less than or equal to 35 mm, prior to further flight, stop-drill the crack in accordance with the procedures specified in Section 51–41–10 of the SRM. Thereafter, prior to the accumulation of 250 landings after crack discovery, repair in accordance with the service bulletin. Prior to the accumulation of 15,600 landings after accomplishing the repair, perform an eddy current inspection to detect cracks at the stiffener ends, ribs 6 and 7, at the edge of the holes made during the repair and on the fasteners located at the edge of the doubler, in accordance with the service bulletin.

(i) If no crack is found, repeat the inspection required by paragraph (e)(2) of this AD thereafter at intervals not to exceed 13,600 landings.

(ii) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(3) If any crack is found that is greater than or equal to 35 mm, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(f) For Model A300–600 series airplanes equipped with General Electric CF6–80C2 engines, and having pylons that have been modified in accordance with Airbus Industrie Service Bulletin A300–54–6020, dated February 22, 1994: Prior to the accumulation of 26,400 landings since installation of the modification, or within 500 landings after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–6014, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the eddy current inspection thereafter at intervals not to exceed 19,400 landings.

(2) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(g) For Model A300–600 series airplanes equipped with Pratt & Whitney JT9D–7R4 or PW 4000 engines, and having pylons that have not been modified in accordance with Airbus Industrie Service Bulletin A300–54–6020, dated February 22, 1994: Prior to the accumulation of 5,700 total landings, or within 500 landings after the effective date of this AD, whichever occurs later, perform an internal eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–6014, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 4,400 landings.

(2) If any crack is found that is less than 35 mm, prior to further flight, stop-drill the crack in accordance with the procedures specified in Section 51–41–10 of the SRM. Thereafter, prior to the accumulation of 250 landings after crack discovery, repair in accordance with the service bulletin. Prior to the accumulation of 10,100 landings after accomplishing the repair, perform an eddy current inspection to detect cracks at the stiffener ends, ribs 6 and 7, at the edge of the holes made during the repair and on the fasteners located at the edge of the doubler, in accordance with the service bulletin.

(i) If no crack is found, repeat the inspection required by paragraph (g)(2) of this AD thereafter at intervals not to exceed 10,000 landings.

(ii) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(3) If any crack is found that is greater than or equal to 35 mm, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(h) For Model A300–600 series airplanes equipped with Pratt & Whitney JT9D–7R4 or PW 4000 engines, and having pylons that have been modified in accordance with Airbus Industrie Service Bulletin A300–54–6020, dated February 22, 1994: Prior to the accumulation of 17,000 landings since installation of the modification, or within 500 landings after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A300–54–6014, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the eddy current inspection thereafter at intervals not to exceed 14,500 landings.

(2) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(i) For Model A310 series airplanes equipped with General Electric CF6–80C2, or Pratt & Whitney JT9D–7R4, or Pratt & Whitney PW4000 engines: Prior to the accumulation of 36,700 total landings, or within 500 landings after the effective date of this AD, whichever occurs later, perform an internal eddy current inspection to detect cracks in the lower spar axis of the pylons between ribs 6 and 7, in accordance with Airbus Industrie Service Bulletin A310–54–2017, Revision 1, dated March 28, 1994.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 15,000 landings.

(2) If any crack is found that is less than 35 mm, prior to further flight, stop-drill the crack in accordance with the procedures specified in Section 51–41–10 of the SRM. Thereafter, prior to the accumulation of 250 landings after crack discovery, repair in accordance with the service bulletin. Prior to the accumulation of 40,000 landings after accomplishing the repair, perform an eddy current inspection to detect cracks at the stiffener ends, ribs 6 and 7, at the edge of the holes made during the repair and on the fasteners located at the edge of the doubler, in accordance with the service bulletin.

(i) If no crack is found, repeat the inspection required by paragraph (i)(2) of this AD thereafter at intervals not to exceed 33,000 landings.

(ii) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(3) If any crack is found that is greater than or equal to 35 mm, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113.

(j) For Model A310 series airplanes equipped with General Electric CF6–80C2, or Pratt & Whitney JT9D–7R4, or Pratt & Whitney PW4000 engines: Accomplishment of the modification specified in Airbus Industrie Service Bulletin A310–54–2023, dated October 15, 1993, constitutes terminating action for the inspections required by paragraph (i) of this AD.

(k) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(l) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(m) The actions shall be done in accordance with the following Airbus Industrie service bulletins, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
A300–54–0073, Revision 1, March 28, 1994	1,5	1	Mar. 28, 1994.
	2–4, 6–36	Original	Oct. 15, 1993.
A300–54–6014, Revision 1, March 28, 1994	1–4, 13	1	Mar. 28, 1994.
	5–12, 14–44	Original	Oct. 15, 1993.
A310–54–2017, Revision 1, March 28, 1994	1, 5,	1	Mar. 28, 1994.
	2–4, 6–48	Original	Oct. 15, 1993.
A310–54–2023, October 15, 1993	1–38	Original	Oct. 15, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(n) This amendment becomes effective on June 28, 1996.

Issued in Renton, Washington, on May 15, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–12731 Filed 5–23–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–ANE–60]

Amendment to Class D and Class E Airspace; New England Region; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This action corrects an error in the description of the Class E airspace areas at Beverly, MA (BVY), contained in final rule published in the **Federal Register** on February 15, 1996 (61 FR 5935), Airspace Docket No. 95–ANE–60. That final rule modified certain Class D and Class E airspace areas in the New England Region.

EFFECTIVE DATE: May 24, 1996.

FOR FURTHER INFORMATION CONTACT: Raymond Duda, Operations Branch, ANE–530.3, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7533; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 96–3492, Airspace Docket 95–ANE–60, published on February 15, 1996, (61 FR 5935) reduced the lateral limits of the Class D airspace areas at Beverly, MA (BVY); Bedford, MA (BED); Danbury, CT (DXR); Norwood, MA (OWD); Lebanon, NH (LEB); and Nashua, (ASH); and, as a consequence to those changes, made the necessary changes to the associated Class E airspace areas at Beverly (BVY), Lebanon (LEB), and Nashua (ASH). The description of the Class E airspace area at BVY, however, did not contain a geographic position for the Topfield non-directional beacon (NDB). This action corrects that error by including in the airspace description for the Class E airspace area at BVY, the geographic position of the Topfield NDB.

Correction to the Final Rule.

Accordingly, pursuant to the authority delegated to me, the description of class E airspace area at Beverly, MA, as published in the **Federal Register** on February 15, 1996 (61 FR 5935), **Federal Register** Document 96–3492; page 5937, column 1), and the description in FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1, is corrected to read as follows:

§ 71.1 [Corrected]

Subpart E—Class E Airspace

* * * * *

ANE MA E4 Beverly, MA [Corrected]

Beverly Municipal Airport, MA
(lat. 42°53'03" N, long. 70°54'59" W)
Topsfield NDB
(lat. 42°37'10" N, long. 70°57'25" W)

That airpace extending upward from the surface within 3.2 miles on each side of the Topsfield NDB 317° bearing extending from a 4.1-mile radius of Beverly Municipal Airport to 7 miles northwest of the Topsfiled NDB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Burlington, MA on May 17, 1996.

David J. Hurley,

Manager, Air Traffic Division, New England Region.

[FR Doc. 96–13157 Filed 5–23–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 73

[Airspace Docket No. 95–AEA–8]

Revocation of Restricted Area R–5202, Gardiner's Island, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes Restricted Area R–5202, Gardiner's Island, NY. The U. S. Navy has determined that this restricted airspace area is no longer necessary to support Department of Defense missions.

EFFECTIVE DATE: 0901 UTC, August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Pete Magarelli, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–3075.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations revokes Restricted Area R–5202, Gardiner's Island, NY. The U.S. Navy has determined that the restricted area airspace is no longer required to support Department of Defense missions. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.52 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8C dated June 29, 1995.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action is not subject to environmental assessments and procedures under FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts," and the National Environmental Policy Act.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 73.52 [Amended]

2. Section 73.52 is amended as follows:

R–5202 Gardiner's Island, NY [Removed]

Issued in Washington, DC, on May 13, 1996.

Harold W. Becker,

Acting Program Director for Air Traffic, Airspace Management.

[FR Doc. 96–13156 Filed 5–23–96; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

15 CFR Part 24

RIN 0605–AA10

Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

AGENCY: Department of Commerce.

ACTION: Announcement regarding Grant and Cooperative Agreement Cost Principles for State, Local and Indian Tribal Governments.

SUMMARY: The Department of Commerce (Department) is announcing the applicability of the revised Office of Management and Budget (OMB) Circular A–87, "Cost Principles for State, Local and Indian Tribal Governments," (60 FR 26484, May 17, 1995). This Circular establishes principles for determining the allowable costs incurred by State, local, and federally-recognized Indian tribal governments (governmental units) under grants, cost reimbursement contracts, and other agreements with the Federal Government.

DATES: This announcement is effective May 24, 1996.

FOR FURTHER INFORMATION CONTACT: John J. Phelan, III, Director, Office of Executive Assistance Management, Room 6020, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Telephone Number 202–482–4115.

SUPPLEMENTARY INFORMATION: On March 11, 1988, the Department joined other agencies in the Federal government in publishing in the **Federal Register** a final rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," (53 FR 8048) which was codified at 15 CFR Part 24 for the Department. Part 24.22 established OMB Circular A–87 as the cost principles used by the Department for determining allowable costs of State and local governments under grants and cooperative agreements with the Department. In addition, recipients of the Department's financial assistance awards are given actual notice of which cost principles apply to the award on the face page of the award document, Commerce Department Form CD–450, "Financial Assistance Award."

On May 17, 1995 the Office of Management and Budget (OMB) published a Final Revision to OMB Circular A–87, "Cost Principles for State, Local and Indian Tribal Governments," and directed agencies to

issue codified regulations to implement the provisions of the Circular. This announcement notifies the public that the provisions of OMB Circular A–87 as published in the **Federal Register** on May 17, 1995 (60 FR 26484) are applicable to 15 CFR Part 24.22.

Executive Orders 12866 and 12875

This announcement has been determined to be "not significant" for purposes of Executive Order 12866, "Regulatory Planning and Review." In addition, it has been determined that, consistent with the requirements of Executive Order 12875, "Enhancing Intergovernmental Partnership," this announcement will not impose any unfunded mandates upon State, local, and tribal governments.

Administrative Procedures Act and Regulatory Flexibility Act

Because notice and comment, and delayed effective date are not required under 5 U.S.C. 553, or any other law, for this announcement relating to public property, loans, grants, benefits, or contracts (5 USC 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this announcement. As stated above, this announcement is based on the revised OMB Circular A–87 that was developed by an interagency task force and received extensive public comment. OMB has stipulated that Federal agencies responsible for administering programs that involve cost reimbursement contracts, grants, and other agreements with governmental units shall issue codified regulations to implement the provisions of OMB Circular A–87 and its attachments.

Executive Order 12612 (Federalism Assessment)

This action has been reviewed in accordance with the principles and criteria contained in Executive Order 12612. It has been determined that this proposal does not have sufficient Federalism implications to warrant a full Federalism Assessment under the principles and criteria contained in Executive Order 12612.

Paperwork Reduction Act

This announcement does not contain any information collection requirements under the Paperwork Reduction Act.

Catalog of Federal Domestic Assistance

This announcement affects all of the grant and cooperative agreement programs administered by DOC under which State, local, and Indian tribal governments may participate.

List of Subjects in 15 CFR Part 24

Accounting, Grant programs, Grant administration, Insurance Reporting and recordkeeping requirements.

Sonya G. Stewart,

Director for Executive Budgeting and Assistance Management.

[FR Doc. 96–13107 Filed 5–23–96; 8:45 am]

BILLING CODE 3510–FA–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1500 and 1507

Large Multiple-tube Fireworks Devices; Affirmation of Final Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Affirmation of final rule.

SUMMARY: The Commission announces that it has received no objections to its final rule amending its fireworks regulations under the Federal Hazardous Substances Act that was published on March 26, 1996 (61 FR 13084). Accordingly, the rule will go into effect on March 26, 1997, as originally provided. This final rule will require that large multiple-tube fireworks devices that have any tube with an inner diameter of 1.5 inches (3.8 cm) or greater pass a performance test for stability.

EFFECTIVE DATE: The rule published March 26, 1996 (61 FR 13084) is effective March 26, 1997.

FOR FURTHER INFORMATION CONTACT: Samuel B. Hall, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207–0001; telephone (301) 504–0400, ext. 1371.

SUPPLEMENTARY INFORMATION: On March 26, 1996, the Commission issued a final rule amending its fireworks regulations under the Federal Hazardous Substances Act. 61 FR 13084, corrected 61 FR 18245 (April 25, 1996). This final rule will require that large multiple-tube fireworks devices that have any tube with an inner diameter of 1.5 inches (3.8 cm) or greater pass a performance test for stability. Under the test, these devices may not tip over when inclined at an angle of 60 degrees from the horizontal. This requirement is intended to reduce the risk of injury posed when these fireworks devices tip over during firing. If they tip over, subsequent tubes may discharge in the direction of spectators or others in the vicinity.

A proceeding to classify a substance as a banned hazardous substance under section 2(q)(1) of the FHSA is governed by sections 3(f)–(i) of the FHSA, and by sections 701(e)–(g) of the Federal Food, Drug, and Cosmetic Act ("FDCA"), 21 U.S.C. 371(e)–(g). See 15 U.S.C. 1261(q)(2). These procedures provide that once the Commission issues a final rule, persons who would be adversely affected by the rule have 30 days in which to file objections with the Commission stating the grounds therefor, and to request a public hearing on those objections. 21 U.S.C. 371(e). This period for objections expired on April 25, 1996.

The Commission is required to publish a notice in the **Federal Register** specifying any parts of the regulation that have been stayed by the filing of proper objections or, if no objections have been filed, stating that fact. By this notice, the Commission states that no objections to the final rule were filed in this proceeding. Accordingly, the rule will go into effect on March 26, 1997, as originally provided. The rule will apply to the subject multiple-tube fireworks devices that first enter interstate commerce or are imported on or after the effective date.

Dated: May 20, 1996.

Sadye E. Dunn,

Secretory, Consumer Product Safety Commission.

[FR Doc. 96–13046 Filed 5–23–96; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 1, 2, and 3

[T.D. ATF–373]

RIN 1512–AB43

Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits (95R–023P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final Rule, Treasury decision.

SUMMARY: As part of a regulatory reform initiative, the Bureau of Alcohol, Tobacco and Firearms (ATF) is revising and recodifying the regulations covering the basic permit requirements, the nonindustrial use of spirits and wine, and the bulk sales and bottling of distilled spirits under the Federal Alcohol Administration Act. Changes include consolidating 27 CFR parts 1, 2, and 3 into a single part 1 for ease of use and minor technical corrections.

EFFECTIVE DATE: May 24, 1996.

FOR FURTHER INFORMATION CONTACT: David Brokaw, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 27 CFR parts 1, 2, and 3 implement various provisions of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 201 *et seq.* The regulations in part 1 govern the issuance, amendment, denial, revocation, suspension, automatic termination, and annulment of basic permits. These regulations implement sections 103 and 104 of the FAA Act, 27 U.S.C. 203 and 204, which requires basic permits of persons engaged in business as importers, producers, or wholesalers of distilled spirits, wine, or malt beverages. The FAA Act defines the terms "distilled spirits" and "wine" to include only products for "nonindustrial" use. The regulations in part 2 specify the uses of distilled spirits and wine that are deemed "nonindustrial," as that term is used in section 117 of the FAA Act, 27 U.S.C. 211(a) (5) and (a) (6). Finally, section 106 of the FAA Act, 27 U.S.C. 206, provides that bulk distilled spirits may only be sold to certain classes of persons, including distillers, winemakers for the fortification of wine, operators of class 8 Customs bonded warehouses, and agencies of the United States or any State. The regulations in part 3 implement these provisions.

On February 21, 1995, President Clinton announced a regulatory reform initiative. As part of this initiative, each Federal agency was instructed to conduct a page by page review of all agency regulations to identify those which are obsolete or burdensome and those whose goals could be better achieved through the private sector, self-regulation or State and local governments. In cases where the agency's review disclosed regulations which should be revised or eliminated, the agency would, as soon as possible, propose administrative changes to the regulations. In addition, on April 13, 1995, the Bureau published Notice No. 809 (60 FR 18783), which requested comments from the public regarding which ATF regulations could be improved or eliminated.

ATF did not receive any specific comments from the public regarding 27 CFR parts 1, 2, and 3. However, in keeping with the President's regulatory reform initiative, the Bureau has decided to consolidate parts 1, 2, and 3 into a single part 1 for ease of use. This consolidation will eliminate some of the duplicative material, such as definitions of terms under the FAA Act which may be found in more than one part.

ATF is also making certain minor technical corrections in the new part 1. References to sections of the FAA Act have been corrected to reflect the changes in section numbering arising out of the enactment of the Alcoholic Beverage Labeling Act of 1988, Pub.L. 100–690. Definitions of the terms "distilled spirits" and "wine" which refer to sections of the FAA Act have been clarified by adding citations to Title 27 of the United States Code. Conforming changes to the regulations which define the "nonindustrial" uses of distilled spirits and wines have been made to reflect technical amendments to the sections of the Internal Revenue Code of 1986 which set forth the conditions under which distilled spirits and wines may be withdrawn free of tax. *See* 26 U.S.C. 5214 (a) (2) and 5362 (c) (9). Finally, references in section 1.30 to the form for executing a power of attorney have been updated to refer to Form 5000.8 (1534), to reflect the new number for that form. ATF is making several other minor technical changes in the regulations.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this rule because no new requirement to collect information is imposed.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action because it will not, (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Administrative Procedures Act

Because this final rule merely makes technical amendments and conforming changes to improve the clarity of the regulations, it is unnecessary to issue this final rule with notice and public procedure under 5 U. S. C. 553(b). Similarly, it is unnecessary to subject this final rule to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal author of this document is David W. Brokaw, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects in 27 CFR Part 1

Administrative practices and procedures, Alcohol and alcoholic beverages, Authority delegations, Imports, Liquors, Warehouses, and Wine.

Authority and Issuance

PARTS 2 AND 3—[REMOVED]

Paragraph 1. Title 27 Code of Federal Regulations parts 2 and 3 are removed and part 1 is revised as follows:

PART 1—BASIC PERMIT REQUIREMENTS UNDER THE FEDERAL ALCOHOL ADMINISTRATION ACT, NONINDUSTRIAL USE OF DISTILLED SPIRITS AND WINE, BULK SALES AND BOTTLING OF DISTILLED SPIRITS

Subpart A—Scope

Sec.
1.1 General.
1.2 Territorial extent.
1.3 Forms prescribed.

Subpart B—Definitions

1.4 Meaning of terms.

Subpart C—Basic Permits

When Required

1.20 Importers.
1.21 Domestic producers, rectifiers, blenders, and warehousemen.
1.22 Wholesalers.
1.23 State agencies.

Persons Entitled to Basic Permits

1.24 Qualifications of applicants.

Applications for Permits

1.25 General.
1.26 Incomplete or incorrectly executed applications.
1.27 Change in ownership, management, or control of the applicant.
1.29 Individual plant or premises.
1.30 Power of attorney; Form 5000.8 (1534).
1.31 Denial of permit applications.

Authorization

1.35 Authority to issue, amend, deny, suspend, revoke, or annul basic permits.

Amendment and Duration of Basic Permits

1.40 Change of name.
1.41 Change of address.
1.42 Change in ownership, management, or control of business.
1.43 Duration of permits.
1.44 Automatic termination of permits.

Revocation, Suspension, or Annulment of Basic Permits

1.50 Revocation or suspension.
1.51 Annulment.
1.52 Disposition of stocks of alcoholic beverages upon revocation, annulment, or automatic termination of basic permit.

Miscellaneous

1.55 Recalling permits for correction.
1.56 Oaths and affirmations.
1.57 Procedure.
1.58 Filing of permits.
1.59 Public information as to applications acted upon.

Subpart D—Nonindustrial Use of Distilled Spirits and Wine

Uses Regarded as Industrial

1.60 Use of distilled spirits.
1.61 Use of wine.
1.62 Use of distilled spirits or wine for experimental purposes and in manufacture of nonbeverage products.

Uses Classed as Nonindustrial

1.70 General.
1.71 Distilled spirits in containers of a capacity of one gallon or less.

Subpart E—Bulk Sales and Bottling of Distilled Spirits

Bulk Sales and Bottling

1.80 Sales of distilled spirits in bulk.
1.81 Importation of distilled spirits in bulk.
1.82 Acquiring or receiving distilled spirits in bulk for redistillation, processing, rectification, warehousing, or warehousing and bottling.
1.83 Acquiring or receiving distilled spirits in bulk for addition to wine.
1.84 Acquisition of distilled spirits in bulk by Government agencies.

Warehouse Receipts

1.90 Distilled spirits in bulk.
1.91 Bottled distilled spirits.

Sales of Distilled Spirits for Industrial Use

1.95 General.

Authority: 27 U.S.C. 203, 204, 206, 211 unless otherwise noted.

Subpart A—Scope

§ 1.1 General.

(a) The regulations in this part relate to requirements governing the issuance, amendment, denial, revocation, suspension, automatic termination, and annulment of basic permits and the duration of permits, except that the provisions of part 200, Rules of Practice in Permit Proceedings, of this chapter are hereby made applicable to administrative proceedings with respect to the application for, and to the suspension, revocation, or annulment of, basic permits under the Federal Alcohol Administration Act.

(b) The regulations in this part also specify what uses of distilled spirits and wine are "nonindustrial," as that term is used in section 117 of the Federal Alcohol Administration Act (27 U.S.C. 211). Finally, this part, in accordance with section 106 of the Federal Alcohol Administration Act (27 U.S.C. 206), contains the substantive requirements relative to bulk sales and bottling of distilled spirits under the Federal Alcohol Administration Act, including the terms of warehouse receipts for distilled spirits in bulk. No procedural requirements are prescribed.

§ 1.2 Territorial extent.

The provisions of this part are applicable to the several States of the United States, the District of Columbia and Puerto Rico.

§ 1.3 Forms prescribed.

(a) The Director is authorized to prescribe all forms required by this part. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part.

(b) Requests for forms should be mailed to the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22153–5950

Subpart B—Definitions

§ 1.4 Meaning of terms.

As used in this part, unless the context otherwise requires, terms shall have the meaning ascribed in this part.

Act. The Federal Alcohol Administration Act.

Alcohol. Ethyl alcohol distilled at or above 190° proof.

Applicant. Any person who has filed with the regional director (compliance) an application for a basic permit under the Federal Alcohol Administration Act.

ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration and enforcement of this part.

Basic permit. A formal document issued under the Act in the form prescribed by the Director, authorizing the person named therein to engage in the activities specified at the location stated.

Brandy. Brandy or wine spirits for addition to wines as permitted by internal revenue law.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Distilled spirits. Section 117(a) of the Federal Alcohol Administration Act (27 U.S.C. 211(a)) defines "distilled spirits" as ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof for nonindustrial use.

In bulk. Distilled spirits in containers having a capacity in excess of one wine gallon.

Other term. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the same meaning assigned to it by the Act.

Permittee. Any person holding a basic permit issued under the Federal Alcohol Administration Act.

Person. Any individual, partnership, joint-stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent.

Regional director (compliance). The principal ATF regional official responsible for administering regulations in this part.

Resale at wholesale. A sale to any trade buyer.

Trade buyer. Any person who is a wholesaler or retailer of distilled spirits, wine, or malt beverages.

Wine. Section 117(a) of the Federal Alcohol Administration Act (27 U.S.C. 211(a)) defines "wine" as:

(a) Wine as defined in section 610 and section 617 of the Revenue Act of 1918 (26 U.S.C. 5381–5392), as now in force or hereafter amended, and

(b) Other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry, and sake; in each instance, only if containing not less than 7 percent and not more than 24 percent of alcohol by volume, and if for nonindustrial use.

Wine gallon. The liquid measure equivalent to the volume of 231 cubic inches.

Subpart C—Basic Permits

When Required

§ 1.20 Importers.

No person, except pursuant to a basic permit issued under the Act, shall:

(a) Engage in the business of importing into the United States distilled spirits, wine, or malt beverages; or

(b) While so engaged, sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so imported.

§ 1.21 Domestic producers, rectifiers, blenders, and warehousemen.

No person, except pursuant to a basic permit issued under the Act, shall:

(a) Engage in the business of distilling distilled spirits, producing wine, rectifying or blending distilled spirits or wine, or bottling, or warehousing and bottling, distilled spirits; or

(b) While so engaged, sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits or wine so distilled, produced, rectified, blended, or bottled, or warehoused and bottled.

§ 1.22 Wholesalers.

No person, except pursuant to a basic permit issued under the Act, shall:

(a) Engage in the business of purchasing for resale at wholesale, distilled spirits, wine, or malt beverages; or,

(b) While so engaged, receive, sell, offer or deliver for sale, contract to sell, or ship in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so purchased.

§ 1.23 State agencies.

This subpart shall not apply to any agency of a State or political subdivision thereof or to any officer or employee of any such agency, and no such agency or officer or employee thereof shall be required to obtain a basic permit under this subpart.

Persons Entitled to Basic Permits

§ 1.24 Qualifications of applicants.

The application of any person shall be granted and the permit issued by the regional director (compliance) if the applicant proves to the satisfaction of the regional director (compliance) that:

(a) Such person (or in case of a corporation, any of its officers, directors, or principal stockholders) has not, within 5 years prior to the date of application, been convicted of a felony under Federal or State law, and has not, within 3 years prior to date of application, been convicted of a misdemeanor under any Federal law relating to liquor, including the taxation thereof; and

(b) Such person, by reason of the person's business experience, financial standing or trade connections, is likely to commence operations as a distiller, warehouseman and bottler, rectifier, wine producer, wine blender, importer, or wholesaler, as the case may be, within a reasonable period and to maintain such operations in conformity with Federal law; and

(c) The operations proposed to be conducted by such person are not in violation of the law of the State in which they are to be conducted.

Applications for Permits

§ 1.25 General.

Applications for basic permits to engage in any of the operations set forth in §§ 1.20 to 1.22 shall be made on the appropriate form prescribed by the Director, verified as required by § 1.56, and shall be accompanied by such affidavits, documents, and other supporting data, as the Director or the regional director (compliance) shall require. All data, written statements, affidavits, documents, or other evidence submitted in support of the application, or upon hearing thereon, shall be deemed to be a part of the application. All applications shall be filed by mailing or delivering the same to the office of the regional director (compliance).

§ 1.26 Incomplete or incorrectly executed applications.

Incomplete or incorrectly executed applications will not be acted upon, but the applicant shall be entitled to file a new application without prejudice, or to complete the application already filed.

§ 1.27 Change in ownership, management, or control of the applicant.

In the event of any change in the ownership, management, or control of the applicant (in case of a corporation, any change in the officers, directors, or persons holding more than 10 percent of the corporate stock), after the date of filing of any application for a basic permit and prior to final action on such application, the applicant shall notify the regional director (compliance) immediately of such change.

§ 1.29

Individual plant or premises.

An application for a basic permit must be filed, and permit issued, to cover each individual plant or premises where any of the businesses specified in section 103 of the Act is engaged in, such application to be filed with and permit issued by the regional director (compliance) for the region wherein such plant or premises is located.

§ 1.30 Power of attorney; Form 5000.8 (1534).

If the application and other documents in support of such application are signed by an attorney in fact of an individual, partnership, association, or corporation, or by one of the members of a copartnership or association, or, in the case of a corporation by an officer or other person not authorized by the corporation's bylaws or by its board of directors to sign such applications and supporting documents, the applications must be supported by a duly authenticated copy of the power of attorney conferring authority upon the person signing the documents to execute the same. Such powers of attorney will be executed on Form 5000.8 (1534), in triplicate, and submitted to the regional director (compliance).

(Approved by the Office of Management and Budget under control number 1512–0079)

§ 1.31 Denial of permit applications.

If, upon examination of any application for a basic permit, the regional director (compliance) has reason to believe that the applicant is not entitled to such a permit, the regional director (compliance) shall institute proceedings for the denial of the application in accordance with the procedure set forth in part 200 of this chapter.

Authorization

§ 1.35 Authority to issue, amend, deny, suspend, revoke, or annul basic permits.

The authority and power of issuing, amending, or denying basic permits, or amendments thereof, is conferred upon the Director and (except as to agency initiated curtailment) upon the regional director (compliance). The authority and power of suspending, revoking, or annulling basic permits is conferred upon the Director, and upon the administrative law judges referred to in part 200 of this chapter. The Director, upon consideration of appeals on petitions for review, may order the regional director (compliance) to issue, deny, suspend, revoke, or annul basic permits.

Amendment and Duration of Basic Permits

§ 1.40 Change of name.

In the event of any change in the name (trade or corporate name) of a permittee, or, in the event a permittee desires to engage in operations under an additional trade name, such permittee must file application Form 5100.18 (1643), with the regional director (compliance), for an amended basic

permit, which application must be approved, and amended permit issued, before operations may be commenced under the new name.

(Approved by the Office of Management and Budget under control number 1512–0090)

§ 1.41 Change of address.

In the event of a change in address the permittee must file application Form 5100.18 (1643), with the regional director (compliance), for an amended basic permit.

§ 1.42 Change in ownership, management, or control of business.

In the event of any change in the ownership, management, or control of any business operated pursuant to a basic permit (if the permittee is a corporation, if any change occurs in the officers, directors, or persons owning or controlling more than 10 percent of the voting stock of said corporation) the permittee shall immediately notify the regional director (compliance) of such change, giving the names and addresses of all new persons participating in the ownership, management, or control of such business, or in the case of a corporation, the names and addresses of such new officers, directors, or persons owning or controlling more than 10 percent of the voting stock. Notice to the regional director (compliance) of any such change shall be accompanied or supplemented by such data in reference to the personal or business history of such persons as the regional director (compliance) may require.

§ 1.43 Duration of permits.

A basic permit shall continue in effect until suspended, revoked, annulled, voluntarily surrendered, or automatically terminated, as provided in the Act and in this part.

§ 1.44 Automatic termination of permits.

No basic permit shall be leased, sold, or otherwise voluntarily transferred, and, in the event of such lease, sale, or other voluntary transfer, such basic permit shall automatically terminate thereupon. If any basic permit is transferred by operation of law or if actual or legal control of the permittee is acquired, directly or indirectly whether by stock ownership or in any other manner, by any person, then such permit shall be automatically terminated at the expiration of 30 days thereafter: Provided, That if within such 30-day period application for a new basic permit is made by the transferee or permittee, respectively, then the outstanding basic permit shall continue in effect until such time as the application is finally acted upon.

Revocation, Suspension, or Annulment of Basic Permits

§ 1.50 Revocation or suspension.

Whenever the regional director (compliance) has reason to believe that any permittee has willfully violated any of the conditions of the permittee's basic permit or has not engaged in the operations authorized by the permit for a period of more than two years, the regional director (compliance) shall institute proceedings for the revocation or suspension of such permit, in accordance with the procedure set forth in part 200 of this chapter, which part is made applicable to such proceedings.

§ 1.51 Annulment.

Whenever the regional director (compliance) has reason to believe that any basic permit was procured through fraud, or misrepresentation or concealment of material fact, the regional director (compliance) shall institute proceedings for the annulment of such permit in accordance with the procedure set forth in part 200 of this chapter, which part is made applicable to such proceedings.

§ 1.52 Disposition of stocks of alcoholic beverages upon revocation, annulment, or automatic termination of basic permit.

In the event of the revocation or annulment of a basic permit, pursuant to part 200 of this chapter, or in the event such permit is automatically terminated by operation of law (27 U.S.C. 204(g) and § 1.44 of this part), the regional director (compliance) may authorize the orderly disposition of stocks of distilled spirits, wines, or malt beverages then held by the permittee or former permittee upon such conditions as may be considered proper.

Miscellaneous

§ 1.55 Recalling permits for correction.

Whenever it shall be discovered that any basic permit has been issued authorizing acts, or combinations of acts, which may not properly, under the law and regulations, as of now or hereafter in force, be authorized, or that any material mistake has occurred in the issuance thereof, the holder of such permit shall forthwith surrender the same for correction or amendment upon demand of the regional director (compliance).

§ 1.56 Oaths and affirmations.

Any document required by regulations or instructions of the Director to be verified, shall be so verified upon oath or affirmation taken before a person authorized by the laws of the United States or by State or local law to administer oaths or affirmations in the jurisdiction wherein such document is to be executed.

§ 1.57 Procedure.

The procedures prescribed by the rules of practice in permit proceedings (part 200 of this chapter) are applicable to administrative proceedings for the issuance, amendment, denial, revocation, suspension, or annulment of basic permits, the issuance of subpoenas and the taking of depositions under the Act.

§ 1.58 Filing of permits.

Every person receiving a basic permit under the provisions of this part must file the same, at the place of business covered by the basic permit, so that it may be examined by ATF officers.

§ 1.59 Public information as to applications acted upon.

The regional director (compliance) shall cause to be maintained currently in the regional director's (compliance) office for public inspection, until the expiration of one year following final action on the application, the following information with respect to each application for basic permit filed:

(a) The name, including trade name or names, if any, and the address of the applicant; the kind of permit applied for and the location of the business; whether the applicant is an individual, a partnership or a corporation; if a partnership, the name and address of each partner; if a corporation, the name and address of each of the principal officers and of each stockholder owning 10 percent or more of the corporate stock.

(b) The time and place set for any hearing on the application.

(c) The final action taken on the application. In the event a hearing is held upon an application for a basic permit, the regional director (compliance) shall make available for inspection at the regional director's (compliance) office, upon request therefor: The transcript of the hearing, a copy of the administrative law judge's recommended decision, a copy of the regional director's (compliance) decision and, in the event of an appeal to the Director, the decision on appeal with the reasons given in support thereof.

Subpart D—Nonindustrial Use of Distilled Spirits and Wine

Uses Regarded as Industrial

§ 1.60 Use of distilled spirits.

The following uses of distilled spirits are regarded as "industrial" and will be excluded from any application of the term "nonindustrial use." The use of distilled spirits:

(a) Free of tax by, and for the use of, the United States or any governmental agency thereof, any State, any political subdivision of a State, or the District of Columbia, for nonbeverage purposes; or

(b) Free of tax for nonbeverage purposes and not for resale or use in the manufacture of any product for sale:

(1) For the use of any educational organization described in 26 U.S.C. 170(b)(1)(A)(ii) which is exempt from income tax under 26 U.S.C. 501(a), or for the use of any scientific university or college of learning;

(2) For any laboratory for use exclusively in scientific research;

(3) For use at any hospital, blood bank, or sanitarium (including use in making analysis or test at such hospital, blood bank, or sanitarium), or at any pathological laboratory exclusively engaged in making analyses, or tests, for hospitals or sanitariums; or

(4) For the use of any clinic operated for charity and not for profit (including use in compounding of bona fide medicines for treatment outside of such clinics of patients thereof); or

(c) Free of tax, after denaturation of such spirits in the manner prescribed by law for:

(1) Use in the manufacture of ether, chloroform, or other definite chemical substance where such distilled spirits are changed into some other chemical substance and do not appear in the finished product; or

(2) Any other use in the arts and industries (except for uses prohibited by 26 U.S.C. 5273 (b) or (d)) and for fuel, light, and power.

§ 1.61 Use of wine.

The following uses of wine are regarded as "industrial" and will be excluded from any application of the term "nonindustrial". The use of wine:

(a) Without payment of tax for use in the production of vinegar; or

(b) Free of tax for experimental or research purposes by any scientific university, college of learning, or institution of scientific research; or

(c) Free of tax for use by the United States or any agency thereof, and for use for analysis, testing, research, or experimentation by the governments of the several States and the District of Columbia or of any political subdivision thereof or by any agency of such governments; or

(d) Which has been rendered unfit for beverage use.

§ 1.62 Use of distilled spirits or wine for experimental purposes and in manufacture of nonbeverage products.

The use of distilled spirits or wine for experimental purposes and in the manufacture of (a) medicinal, pharmaceutical, or antiseptic products, including prescriptions compounded by retail druggists; (b) toilet preparations; (c) flavoring extracts, syrups, or food products; or (d) scientific, chemical, mechanical, or industrial products, provided such products are unfit for beverage use, is regarded as "industrial," and will be excluded from any application of the term "nonindustrial use."

Uses Classed as Nonindustrial

§ 1.70 General.

All uses of distilled spirits and wines, except as provided in §§ 1.60, 1.61, and 1.62 of this part, are regarded as "nonindustrial." Such "nonindustrial" use shall include, but not be limited to, distilled spirits or wine used for beverage purposes, or in the manufacture, rectification, or blending of alcoholic beverages; or in the preparation of food or drink by a hotel, restaurant, tavern, or similar establishment; or for sacramental purposes; or as a medicine.

§ 1.71 Distilled spirits in containers of a capacity of one gallon or less.

Distilled spirits in containers of a capacity of one wine gallon or less, except anhydrous alcohol and alcohol which may be withdrawn free of tax under the internal revenue laws, will be deemed to be for nonindustrial use.

Subpart E—Bulk Sales and Bottling of Distilled Spirits

Bulk Sales and Bottling

§ 1.80 Sales of distilled spirits in bulk.

It is unlawful for any person to sell, offer to sell, contract to sell, or otherwise dispose of distilled spirits in bulk, for nonindustrial use, except for export or to the classes of persons enumerated in §§ 1.82, 1.83, and 1.84.

§ 1.81 Importation of distilled spirits in bulk.

It is unlawful for any person to import distilled spirits in bulk, for nonindustrial use, except for sale to or for use by the classes of persons enumerated in §§ 1.82, 1.83 and 1.84.

§ 1.82 Acquiring or receiving distilled spirits in bulk for redistillation, processing, rectification, warehousing, or warehousing and bottling.

(a) *Proprietors of distilled spirits plants.* Persons holding basic permits (issued under subpart B of this part) authorizing the distilling, processing, rectifying, or warehousing and bottling of distilled spirits, or operating permits (issued under § 19.157 and succeeding sections of this chapter) may acquire or receive in bulk and redistill, warehouse, or process distilled spirits, so far as permitted by law.

(b) *Proprietors of class 8 customs bonded warehouses.* If the permittee operates a class 8 customs bonded warehouse, the permittee may acquire or receive in bulk, and warehouse and bottle, imported distilled spirits, so far as permitted by the customs laws.

(26 U.S.C. 7805 (68A Stat. 917, as amended); 27 U.S.C. 205 (49 Stat. 981, as amended))

§ 1.83 Acquiring or receiving distilled spirits in bulk for addition to wine.

Persons holding permits as producers and blenders of wine, may, pursuant to such permit, acquire or receive in bulk alcohol or brandy for addition to wines.

§ 1.84 Acquisition of distilled spirits in bulk by Government agencies.

Any agency of the United States, or of any State or political subdivision thereof, may acquire or receive in bulk, and warehouse and bottle, imported and domestic distilled spirits in conformity with the internal revenue laws.

Warehouse Receipts

§ 1.90 Distilled spirits in bulk.

By the terms of the Act (27 U.S.C. 206), all warehouse receipts for distilled spirits in bulk must require that the warehouseman shall package such distilled spirits, before delivery, in bottles labeled and marked in accordance with law, or deliver such distilled spirits in bulk only to persons to whom it is lawful to sell or otherwise dispose of distilled spirits in bulk.

§ 1.91 Bottled distilled spirits.

The provisions of the Act, which forbid any person to sell, offer to sell, contract to sell, or otherwise dispose of warehouse receipts for distilled spirits in bulk, do not apply to warehouse receipts for bottled distilled spirits.

Cross Reference: For labeling of distilled spirits, see part 5 of this chapter.

Sales of Distilled Spirits for Industrial Use

§ 1.95 General.

Distillers, rectifiers, and other permittees engaged in the sale or other disposition of distilled spirits for nonindustrial use shall not sell or otherwise dispose of distilled spirits in bulk (other than alcohol) for industrial use, unless such distilled spirits are

shipped or delivered directly to the industrial user thereof.

Bradley A. Buckles,

Acting Director.

Approved: April 29, 1996.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 96–12965 Filed 5–23–96; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 95

[DoD Directive 1005.13]

Gifts From Foreign Governments; Removal of Part

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document removes the Department of Defense's rule concerning gifts from foreign governments. The part has served the purpose for which it was intended for the Code of Federal Regulations, and is no longer necessary.

EFFECTIVE DATE: May 24, 1996.

FOR FURTHER INFORMATION CONTACT:

Mr. R. Kennedy, 703–697–1142.

SUPPLEMENTARY INFORMATION: Paper copies of DoD Directive 1005.13 are available, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. The Directive is also available on the World-Wide Web at URL address: http:\\www.dtic.mil/adm.

List of Subjects in 32 CFR Part 95

Foreign relations; Government employees; Government property.

PART 95—[REMOVED]

Accordingly, by the authority of 10 U.S.C. 301, 32 CFR Part 95 is removed.

Dated: May 21, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–13148 Filed 5–23–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–96–017]

RIN 2115–AE46

Special Local Regulation; Quonset Open House, North Kingstown, RI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for an airshow known as the Quonset Open House. The Quonset Open House will be held on June 1 and 2, 1996, off Quonset Point, North Kingstown, RI. This regulation is needed to protect the boating public from the hazards associated with low flying aircraft in the vicinity of the airstrip.

EFFECTIVE DATE: This rule is effective on June 1 and 2, 1996, from 9 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) Benjamin M. Algeo, Chief, Boating Affairs Branch, First Coast Guard District, (617) 223–8311.

SUPPLEMENTARY INFORMATION:

Regulatory History

As authorized by 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this section effective less than 30 days after **Federal Register** publication. The application for the event was received less than 30 days prior to the event date. Publishing a NPRM and delaying the event would be contrary to the public interest because the airshow is intended for viewing by the public. The sponsor was unable to provide more leadtime due to the difficulties in scheduling the participating aircraft.

Background and Purpose

The Quonset Open House is a local, traditional airshow sponsored by the Rhode Island National Guard. Participating aircraft take off and land from an airstrip located on Quonset Point, North Kingstown, RI. Due to the aircrafts' low flight paths, close proximity to spectator vessels, and other water related events, a regulated area is needed to protect life and property during the event.

This section establishes a regulated area in the West Passage of Rhode Island Sound, off Quonset Point. It prohibits vessels from entering the regulated area during the event. In emergency situations, provisions may be made to establish safe escort by a Coast Guard or designated Coast Guard vessel for vessels requiring transit through the regulated area.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review of the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. The effect of this section will not be significant for several reasons: the regulated area includes less than half of one square nautical mile of Narragansett Bay; entry into the regulated area is restricted for a short duration; vessels may transit around the regulated area; and the extensive advance advisories which will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impacts of this rule and concluded that, under paragraph 2.B.2.e.34(h) of COMDTINST 16475.1B, (as revised by 61 FR 13563, March 27, 1996) this is a regulation issued in conjunction with a regatta or marine parade and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard proposes to temporarily amend 33 CFR Part 100 as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section, 100.T01–017, is added to read as follows:

§ 100.T01–017 Quonset Open House, North Kingstown, RI

(a) *Regulated area.* The regulated area includes all waters of the West Passage of Rhode Island Sound within the following points (NAD 83):

Latitude	*Longitude*
41°35′10″ N	071°24′29″ W
41°34′54″ N	071°23′29″ W
41°35′07″ N	071°23′29″ W
41°36′42″ N	071°24′29″ W

(b) *Special local regulations.* (1) The Coast Guard patrol commander may delay, modify, or cancel the event as conditions or circumstances require.

(2) No person or vessel may enter, transit, or remain in the regulated area unless participating in the event or unless authorized by the Coast Guard patrol commander.

(3) Vessels encountering emergencies which require transit through the regulated area should contact the Coast Guard patrol commander on VHF Channel 16. In the event of an emergency, the Coast Guard patrol commander may authorize a vessel to transit through the regulated area with a Coast Guard designated escort.

(4) All persons and vessels shall comply with the instructions of the Coast Guard on-scene patrol commander. On-scene patrol personnel may include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon hearing five or more short blasts from a U.S. Coast Guard vessel, the operator of a vessel shall proceed as directed. Members of the Coast Guard Auxiliary may also be present to inform vessel operators of this regulation and other applicable laws.

(c) *Effective period.* This section is effective on June 1 and 2, 1996, from 9 a.m. to 4:30 p.m.

Dated: May 10, 1996.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 96–13162 Filed 5–23–96; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD01–95–170]

RIN 2115–AE46

Special Local Regulation: Swim the Bay, Narragansett Bay, Narragansett, RI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent special local regulation for a swimming competition know as Swim the Bay. The event will be held on July 27, 1996, and each year thereafter on a date and times published in a **Federal Register** document. This regulation is needed to protect the participants from vessel traffic during the swimming competition.

EFFECTIVE DATE: This rule is effective on June 24, 1996.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) Benjamin M. Algeo, Chief, Boating Affairs Branch, First Coast Guard District, (617) 223–8311.

SUPPLEMENTARY INFORMATION:

Regulatory History

A Notice of Proposed Rulemaking (NPRM) was published on March 20, 1996, (61 FR 11353) proposing the establishment of a permanent special local regulation for the annual swimming competition Swim the Bay. The NPRM proposed to restrict vessels from approaching within 200 feet of any participating swimmer to ensure the safety of participants during the event. No comments were received and no hearing was requested.

Background and Purpose

The annual Swim the Bay competition is a local, traditional event that has been held for many years in the East Passage of Narragansett Bay, Jamestown/Newport, RI. In the past, the Coast Guard has promulgated individual regulations for each year's race. Given the recurring nature of the event, the Coast Guard is establishing a permanent regulation. This rule establishes a regulated area in the East Passage of Narragansett Bay and provides specific guidance to control vessel movement during the race. This rule restricts vessels from approaching within 200 feet of participating competition swimmers.

The event consists of two heats of approximately 100 swimmers racing 1.7 miles from Coasters Harbor Island beach, Newport, RI, to Potters Cove, Jamestown, RI. There will be approximately 25–30 support boats on scene to augment a Coast Guard patrol to alert boating traffic of the presence of the swimmers. The time period for the event is dictated by tidal conditions. Subject to Coast Guard approval, the sponsor selects a Saturday in July or August that most closely exhibits low tide 40 minutes after 8 a.m. Spectator craft are authorized to watch the race from any area as long as they remain 200 feet away from any participating swimmer. In emergency situations, provisions may be made to establish safe escort by a Coast Guard or Coast Guard designated vessel for vessels requiring transit within 200 feet of participating swimmers. This final rule varies from the NPRM in that it provides the exact date and times for this year's race and provides for the effective date and times for subsequent year's events to be published in a **Federal Register** document.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). Due to the short duration of the event and its limited restriction on vessel traffic transiting the East Passage of Narragansett Bay, the Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation, under

paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less the 50,000.

For the reasons discussed in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impacts of this rule and concluded that, under paragraph 2.B.2.e.34(h) of COMDTINST 16475.1B, (as revised by 61 FR 13563, March 27, 1996) this rule is a regulation issued in conjunction with a regatta or marine parade and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Final Regulation

For reasons set out in the preamble, the Coast Guard is amending 33 CFR Part 100 as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.112 is added to read as follows:

§ 100.112 Swim the Bay, Narragansett Bay, Narragansett, RI.

(a) *Regulated area.* All waters of the East Passage of Narragansett Bay within 200 feet of participating competition swimmers.

(b) *Special local regulations.* (1) The Coast Guard patrol commander may delay, modify, or cancel the race as conditions or circumstances require.

(2) No person or vessel may enter, transit, or remain in the regulated area unless participating in the event or unless authorized by the Coast Guard patrol commander.

(3) Vessels encountering emergencies which require transit through the regulated area should contact the Coast Guard patrol commander on VHF Channel 16. In the event of an emergency, the Coast Guard patrol commander may authorize a vessel to transit through the regulated area with the Coast Guard designated escort.

(4) All persons and vessels shall comply with the instructions of the Coast Guard on-scene patrol commander. On-scene patrol personnel may include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon hearing five or more short blasts from a U.S. Coast Guard vessel, the operator of a vessel shall proceed as directed. Members of the Coast Guard Auxiliary may also be present to inform vessel operators of this regulation and other applicable laws.

(c) *Effective period.* This section is effective on July 27, 1996, from 10:30 a.m. to 12:30 p.m., and each year thereafter on a date and times published in a **Federal Register** document.

Dated: May 13, 1996.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 96–13163 Filed 5–23–96; 8:45 am]

BILLING CODE 4910–14–M

---

33 CFR Part 100

[CGDO1–96–016]

RIN 2115–AE46

Special Local Regulation: Revision to Special Local Regulations, 33 CFR Part 100

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is permanently amending a number of special local regulations governing marine events in the First Coast Guard District. This rule provides the effective dates for these events in 1996 and provides that the effective dates for the following years will be published in a **Federal Register** notice.

EFFECTIVE DATE: This section is effective on June 24, 1996.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) Benjamin M. Algeo, Chief, Boating Affairs Branch, First Coast Guard District, (617) 223–8311.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking (NPRM) was published on March 22, 1996, (61 FR 11796) in the **Federal Register** proposing a permanent change to a number of special local regulations governing marine events in the First Coast Guard District. No comments were received and no hearing was requested.

Background and Purpose

The Coast Guard is permanently amending 33 CFR Part 100, sections 100.103—National Sweepstakes Regatta, 100.107—Windjammer Days, 100.108—Great Kennebec River Whatever Race, 100.111—Stonington Lobster Boat Races, 100.505—New Jersey Offshore Grand Prix, and removing section 100.109—Whatever Festival Hydroplanes. This final rule provides the effective dates for the 1996 events and eliminates the need to undergo the rulemaking process for each event annually by allowing the dates and times for events in later years to be published in a **Federal Register** notice. This rule varies from the NPRM in that it provides notice of the dates and times of the 1996 events, requires annual notice in the **Federal Register** rather than a Coast Guard Notice to Mariners, and provides rain dates for the Great Kennebec River Whatever Race, the Stonington Lobster Boat Races, and the New Jersey Offshore Grand Prix. It also removes section 100.109, the Whatever Festival Hydroplanes race, which has been canceled subsequent to the published NPRM.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that no substantive changes are being made to the special local regulations and that notice of the events by a **Federal Register** notice and Coast Guard Notice to Mariners will provide sufficient notice to waterways users.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impacts of this rule and concluded that, under paragraph 2.B.2.e.34(h) of COMDTINST 16475.1B (as revised by 61 FR 13563, March 27, 1996), this rule modifies special local regulations issued in conjunction with regattas or marine parades and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR part 100 as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.103 is amended by revising paragraph (b) as follows:

§ 100.103 National Sweepstakes Regatta, RedBank, NJ.

* * * * *

(b) *Effective period.* This section is in effect from 8 a.m. to 6 p.m. on July 20 and 21, 1996, and each year thereafter on dates and times specified in a **Federal Register** notice.

* * * * *

3. Section 100.107 is amended by revising paragraph (c) as follows:

§ 100.107 Windjammer Days, Boothbay Harbor, ME.

* * * * *

(c) *Effective period.* This section is in effect from 2 p.m. to 10 p.m. on June 26 and 27, 1996, and each year thereafter on dates and times specified in a **Federal Register** notice.

4. Section 100.108 is amended by revising paragraph (c) as follows:

§ 100.108 Great Kennebec River Whatever Race.

* * * * *

(c) *Effective period.* This section is in effect from 6 a.m. to 6 p.m. on June 30, 1996, and each year thereafter on a date and times specified in a **Federal Register** notice. If the event is canceled due to weather, this section is effective the following day.

§ 100.109 [Removed]

5. Section 100.109 is removed.

6. Section 100.111 is amended by revising paragraph (c) as follows:

§ 100.111 Stonington Lobster Boat Races, Stonington, ME.

* * * * *

(c) *Effective period.* This section is in effect from 10 a.m. to 4 p.m. on August 3, 1996, and each year thereafter on a date and times specified in a **Federal Register** notice. If the event is canceled due to weather, this section is effective the following day.

7. Section 100.505 is amended by revising paragraph (b) as follows:

§ 100.505 New Jersey Offshore Grand Prix.

* * * * *

(b) *Effective period.* This section is in effect from 8 a.m. to 5 p.m. on July 17, 1996, and each year thereafter on a date and times specified in a **Federal Register** notice. If the event is canceled due to weather, this section is effective the following day.

* * * * *

Dated: May 13, 1996.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 96–13164 Filed 5–23–96; 8:45 am]

BILLING CODE 4910–14–M

---

33 CFR Part 165

[CGD01–96–033]

RIN 2115–AE84

Regulated Navigation Area: Boston Harbor, Long Island Bridge, Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule with request for comments.

SUMMARY: The Coast Guard is establishing a temporary Regulated Navigation Area (RNA) in the waters surrounding the Long Island Bridge, Boston Harbor, Boston, MA. Maintenance and repair work is being conducted to ensure bridge integrity. This RNA will increase safety by requiring all vessels in the regulated area to operate at a no-wake speed.

EFFECTIVE DATES: This temporary final rule is effective May 7, 1996, until October 31, 1996, Monday through Friday from 9:30 a.m. until 3:30 p.m. Comments must be received on or before July 10, 1996.

ADDRESSES: Comments should be mailed to Commanding Officer, U.S. Coast Guard Marine Safety Office, 455 Commercial Street, Boston, MA 02109–1045.

FOR FURTHER INFORMATION CONTACT: LTJG John Buckley, Vessel Division, Coast Guard Captain of the Port Boston, 455 Commercial Street, Boston, MA 02109–1045, (617) 233–3000.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD01–96–033) and the specific section of the rule to which their comments apply, and give reasons for each comment. Persons wanting

acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period and may change this section in view of the comments. The Coast Guard plans no public hearing; however, a public hearing may be requested by an interested person by writing to the Project Manager at the address under **ADDRESSES**. If it is determined that the opportunity for oral presentations at a public meeting will aid this rulemaking, the Coast Guard will hold such a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

PEER Consultants, P.C. is conducting repairs and maintenance on the Long Island Bridge, Boston Harbor, Boston, MA. Contract work is being conducted to ensure bridge integrity by replacing/repairing selected structural members of the Long Island Bridge. In order to provide for the safe repair and maintenance of the Long Island Bridge, the Coast Guard deems an RNA necessary.

Discussion of the Rule

The RNA includes all waters of Boston Harbor within a 600 × 200 yard rectangle bound by the following coordinates: 42°18′26″ N, 070°59′12″ W; 42°18′35″ N, 070°58′51″ W; 42°18′31″ N, 070°58′49″ W; 42°18′23″ N, 070°59′09″ W. [Datum: NAD 1983]. A barge mooring area will be located on the northwestern side of the bridge within the RNA boundaries. Also, several work boats and barges will be operating in the RNA. Vessels in the regulated area will be required to operate at a no-wake speed to protect contract workers aboard the work boats and barges. The repair work is scheduled to take place from May 7, 1996, until October 31, 1996. Repair work will be conducted from 9:30 a.m. to 3:30 p.m., Monday through Friday.

Good cause exists for publishing a temporary final rule without notice and prior to opportunity for comment and without a delayed effective date because immediate action is needed to regulate traffic in the construction area. However, the Coast Guard is providing an opportunity for comment so that changes can be made to this final rule. It is in the public interest to have the Long Island Bridge repaired and to have a no-wake zone around the bridge during construction. Delaying this rule to provide for a notice and comment period would be impracticable, unnecessary, and contrary to the public interest. Other then commuter boats, this area receives minimal vessel traffic. Since repair work will commence at 9:30 a.m. and conclude at 3:30 p.m., Monday through Friday, commuter boat schedules will not be significantly effected. All commuter boat operators have been notified of the regulation.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this section to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The waters in the vicinity of the Long Island Bridge are used by commuter vessels, commercial fishing vessels, commercial lobster vessels and recreational vessels. Due to the minimal time delay caused by the requirement to proceed at a no-wake speed, this regulation is not expected to have a significant impact on these vessels.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and (2) governmental jurisdictions with populations of less than 50,000.

For reasons set forth in the above Regulatory Evaluation, this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2(e)(34)(g) of Commandant Instruction M16475.1B, (as amended by 59 FR 38654, July 29, 1994), this rule is a Regulated Navigation Area and is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination and checklist are included in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary Section, § 165.T01–033, is added to read as follows:

§ 165.T01–033 Regulated Navigation Area; Long Island Bridge, Boston Harbor, Boston, MA.

(a) *Location.* The following area is a Regulated Navigation Area: All waters surrounding the Long Island Bridge, Boston Harbor, Boston, MA bound by the following coordinates: 42°18°26″ N, 070°59′12″ W; 42°18′35″ N, 070°58′51″ W; 42°18′31″ N, 070°58′49″ W; 42°18′23″ N, 070°59′09″ W. [Datum: NAD 1983]

(b) *Effective date.* This section is effective Monday through Friday from 9:30 a.m. until 3:30 p.m., May 7, 1996, to October 31, 1996.

(c) *Regulations.* All vessels shall operate at no-wake speed while with the Regulated Navigation Area.

Dated: May 7, 1996.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 96–13165 Filed 5–23–96; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

33 CFR Part 334

Albemarle Sound, Pamlico Sound, and adjacent waters, North Carolina; danger zones/restricted areas for naval aircraft operations.

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule which was published Tuesday, February 27, 1996 (61 FR 7214). The effective date was February 27, 1996. This rule re-established a danger zone as a restricted area in the waters off of Harvey Point, Perquimans County, North Carolina. This is an editorial correction and will not affect the restrictions placed on entry into the area.

DATES: Effective May 24, 1996.

ADDRESS: HQUSACE, CECW–OR, Washington, D.C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Yelverton of the Corps Wilmington District at (910) 251–4480, or Mr. Ralph Eppard, Regulatory Branch, CECW–OR at (202) 761–1783.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps promulgated a regulation under 33 CFR 334.412 which re-established an area that was previously a danger zone, as a restricted area in the waters off of Harvey Point, Albemarle Sound, North Carolina.

Need for Correction

As published, the final rules in Sec. 334.412(a) contain an incorrect bearing listed as "southwesterly to latitude 36° 04′18″, which should have read "northwesterly to latitude 36° 04′18″"

Correction of Publication

Accordingly, the publication on February 27, 1996, of the final rule, which was the subject of 61 FR 7214–7215, is corrected as follows:

§ 334.412 [Corrected]

On page 7215, in § 334.412 in the second column, second line, remove "southwesterly" and replace it with "northwesterly".

Dated: May 6, 1996.

Approved;

Stanley G. Genega,

Major General, USA, Director of Civil Works.

[FR Doc. 96–13090 Filed 5–23–96; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 2

RIN 2900–AI12

Delegations of Authority Concerning Discrimination or Reprisal

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document sets forth delegations of authority to the General Counsel and certain subordinates to make the final decision on a complaint of discrimination on grounds of race, color, religion, sex, national origin, age, disability, or reprisal brought by an employee of the Department of Veterans Affairs or an applicant for employment. The effect of this action is to clarify and expand CFR material to specify all delegations of authority already made concerning this subject matter.

EFFECTIVE DATE: May 24, 1996.

FOR FURTHER INFORMATION CONTACT: Neal C. Lawson, Assistant General Counsel (024), Office of General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6384.

SUPPLEMENTARY INFORMATION: This final rule consists of delegations of authority and, therefore, is not subject to the notice and comment and effective date provisions of 5 U.S.C. 553.

The Secretary hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule merely sets forth delegations of authority.

There is no Catalog of Federal Domestic Assistance program number for this regulation.

List of Subjects in 38 CFR Part 2

Authority delegations (government agencies).

Approved: May 17, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 2 is amended as set forth below:

PART 2—DELEGATIONS OF AUTHORITY

1. The authority citation for part 2 is revised to read as follows:

Authority: 5 U.S.C. 302; 38 U.S.C. 501,512; 44 U.S.C. 3702.

2. In § 2.6, paragraph (e)(6) is revised to read as follows:

§ 2.6 Secretary's delegations of authority to certain officials (38 U.S.C. 512).

* * * * *

(e) * * *

(6) Authority is delegated to the General Counsel and Deputy General Counsel and to the Assistant General Counsel and Deputy Assistant General Counsel of Professional Staff Group IV to make the final decision on a complaint of discrimination on grounds of race, color, religion, sex, national origin, age, disability, or reprisal brought by an employee of the Department of Veterans Affairs or an applicant for employment.

(Authority: 38 U.S.C. 512)

* * * * *

[FR Doc. 96–13079 Filed 5–23–96; 8:45 am]

BILLING CODE 8320–01–P

38 CFR Part 21

RIN 2900–AH60

Veterans and Dependents Education: Miscellaneous

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the educational assistance regulations. It removes "sunsetted" provisions that had been authorized by the Vietnam Era GI Bill. Under the Vietnam Era GI Bill, no benefits can be authorized for training that occurred after December 31, 1989, and no educational loans can be authorized for training that occurred after December 31, 1991. Consequently, the provisions concerning such educational assistance are removed because they are no longer of any effect. This document also amends the educational assistance regulations by placing virtually all of the provisions relating solely to benefits under the Survivors' and Dependents' Educational Assistance program in one subpart, 38 CFR Part 21, Subpart C. Further, this document removes regulations in 38 CFR Part 21, Subpart E concerning civil rights matters since they are duplicative of provisions in 38 CFR Parts 18, 18a, and 18b. In addition, this document removes 38 CFR Part 21, Subpart F–2 concerning special benefits for certain

former military officers since the deadline for applying for such benefits has expired and no further benefits can be paid. The educational assistance regulations are further amended by removing a number of other provisions that no longer apply or otherwise have no substantive effect and by making changes for purposes of clarification.

EFFECTIVE DATE: May 24, 1996.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: This document affects 38 CFR part 21, subparts B, C, D, E, F, F–2, and K. It removes provisions that are obsolete, duplicative, or without substantive effect; moves provisions from one subpart to another; and makes changes for clarification. This document makes no substantive changes. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C 601–612. This final rule makes no substantive changes. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance numbers for the programs affected by these regulations are 64.117 and 64.124.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 13, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 21 is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart B—Claims and Applications for Educational Assistance

1. The authority citation for subpart B is revised to read as follows:

Authority: 38 U.S.C. 501(a), ch. 51, unless otherwise noted.

2. The heading for subpart B is revised to read as set forth above.

3. The undesignated center heading preceding § 21.1020, §§ 21.1020 through 21.1022, § 21.1025, the undesignated center heading preceding § 21.1040, and §§ 21.1040 through 21.1045 are removed.

Subpart C—Survivors' and Dependents' Educational Assistance under 38 U.S.C. Chapter 35

4. The authority citation for subpart C is revised to read as follows:

Authority: 38 U.S.C. 501(a), 512, 3500–3566, unless otherwise noted.

5. Sections 21.3001 and 21.3002 are added, to read as follows:

§ 21.3001 Delegation of authority.

Except as otherwise provided, authority is delegated to the Under Secretary for Benefits and to supervisory or administrative personnel within the jurisdiction of the Education Service, Veterans Benefits Administration, designated by him or her to make findings and decisions under 38 U.S.C. chapter 35 and the applicable regulations, precedents and instructions, as to the program authorized by this subpart.

(Authority: 38 U.S.C. 512(a))

§ 21.3002 Administration of Survivors' and Dependents' Educational Assistance Program.

Subpart D of this part applies to the Survivors' and Dependents' Educational Assistance Program; unless the provisions of a section in that subpart are explicitly limited to one or more of the other educational assistance programs VA administers.

(Authority: 38 U.S.C. 501, 3501–3566)

6. In § 21.3021, paragraphs (h), (i), (j), and (k) are added prior to the cross references, to read as follows:

§ 21.3021 Definitions.

* * * * *

(h) *Program of education.* The term *program of education* means any curriculum or any combination of unit courses or subjects pursued at an educational institution which is generally accepted as necessary to fulfill the requirements for the attainment of a predetermined and identified educational, professional, or vocational objective.

(Authority: 38 U.S.C. 3501(a)(5))

(i) *Educational objective.* An educational objective is one that leads to the awarding of a diploma, degree, or certificate which reflects educational attainment.

(Authority: 38 U.S.C. 3501(a)(5))

(j) *Professional or vocational objective.* A professional or vocational objective is one that leads to an occupation. It may include educational objectives essential to prepare for the chosen occupation. When a program consists of a series of courses not leading to an educational objective, such courses must be directed toward attainment of a designated professional or vocational objective.

(Authority: 38 U.S.C. 3501(a)(5))

(k) *Additional definitions.* The definitions in § 21.4200 apply to subpart C of this part.

(Authority: 38 U.S.C. 501, 3501)

* * * * *

7. Section 21.3025 is revised to read as follows:

§ 21.3025 Nonduplication; Federal programs.

Payment of subsistence allowance and special training allowance is prohibited to an otherwise eligible person—

(a) Who is on active duty and is pursuing a course of education which is being paid for by the Armed Forces (or by the Department of Health and Human Services in the case of the Public Health Service); or

(b) For a unit course or courses which are being paid for under 5 U.S.C. chapter 41.

(Authority: 38 U.S.C. 3681(a))

§ 21.3032 [Amended]

8. In § 21.3032, paragraph (a)(2) is amended by removing "§ 21.4105" and adding, in its place, "§ 21.3104".

9. In § 21.3040, an authority citation is added following paragraph (d), to read as follows:

§ 21.3040 Eligibility; child.

* * * * *

(d) * * *

(Authority: 38 U.S.C. 3512(a))

§ 21.3041 [Amended]

10. In § 21.3041, paragraph (d)(9)(iii) is amended by removing "eligibility" and adding, in its place "eligibility" and by removing "§ 21.4135(z)" and adding, in its place, "§ 21.3135(g)".

11. In § 21.3042, paragraph (d) is removed; and paragraph (a) is revised to read as follows:

§ 21.3042 Service with Armed Forces.

(a) No educational assistance under 38 U.S.C. chapter 35 may be provided an otherwise eligible person during any period he or she is on duty with the Armed Forces. See § 21.3021 (e) and (f). This does not apply to brief periods of active duty for training. See § 21.3135(f).

(Authority: 38 U.S.C. 3501(d))

* * * * *

§ 21.3044 [Amended]

12. In § 21.3044, paragraph (c)(1) is amended by removing "§ 21.4237(d)" and adding, in its place, "§ 21.3344(d)".

§ 21.3045 [Amended]

13. In § 21.3045, the introductory text of paragraph (b)(1) and the introductory text of paragraph (b)(2) are amended by removing "21.4235 of this part" each time it appears and adding, in its place, "21.3344"; and paragraph (b)(2)(i) is amended by removing "21.4137(a)" and adding, in its place, "21.3131(a)".

14. An undesignated center heading and §§ 21.3100, 21.3102, 21.3103, 21.3104, and 21.3105 are added to read as follows:

Counseling

§ 21.3100 Counseling.

(a) *Purpose of counseling.* The purpose of counseling is to assist:

(1) In selecting an educational or training objective;

(Authority: 38 U.S.C. 3520)

(2) In developing a suitable program of education or training;

(Authority: 38 U.S.C. 3520)

(3) In selecting an educational institution or training establishment appropriate for the attainment of the educational or training objective;

(Authority: 38 U.S.C. 3561(a))

(4) In resolving any personal problems which are likely to interfere with successful pursuit of a program;

(Authority: 38 U.S.C. 3561(a))

(5) In selecting an employment objective for the eligible person that would be likely to provide the eligible person with satisfactory employment opportunities in light of his or her circumstances.

(Authority: 38 U.S.C. 3520, 3561(a))

(b) *Availability of counseling.* Counseling assistance is available for—

(1) Identifying and removing reasons for academic difficulties which may result in interruption or discontinuance of training; or

(2) In considering changes in career plans, and making sound decisions about the changes.

(Authority: 38 U.S.C. 3520, 3561(a))

(c) *Provision of counseling.* VA shall provide counseling as needed for the purposes identified in paragraphs (a) and (b) of this section upon the request of the eligible person.

(Authority: 38 U.S.C. 3520, 3561(a))

§ 21.3102 Required counseling.

(a) *Child.* The VA counseling psychologist will provide counseling and assist in preparing the educational plan only if the eligible child or his or her parent or guardian requests assistance, except that counseling is required for an eligible child if—

(1) The eligible child may require specialized vocational training or special restorative training; or

(2) The eligible child has reached the compulsory school attendance age under State law, but has neither reached his or her 18th birthday, nor completed secondary schooling. See § 21.3040(a).

(b) *Spouse or surviving spouse.* Counseling is required for a spouse or surviving spouse only if he or she desires specialized vocational training.

(Authority: 38 U.S.C. 3520, 3536, 3541, 3561)

§ 21.3103 Failure to cooperate.

VA will not act further on an eligible person's application for assistance under 38 U.S.C. chapter 35 when counseling is required for him or her and the eligible person—

(a) Fails to report;

(b) Fails to cooperate in the counseling process; or

(c) Does not complete counseling to the extent required under § 21.3102.

(Authority: 38 U.S.C. 3536, 3541, 3561(a))

§ 21.3104 Special training.

(a) *Initial counseling.* A counseling psychologist in the Vocational Rehabilitation and Counseling Division will counsel a disabled child, spouse, or surviving spouse before referring the case to the Vocational Rehabilitation Panel (established under § 21.60) for consideration as to the child's, spouse's or surviving spouse's need for a course of specialized vocational training or the child's need for special restorative training. After consulting with the panel, and considering the panel's report, the counseling psychologist will determine if the disabled child, spouse, or surviving spouse needs a course of specialized vocational training or the disabled child needs special restorative training, and where need is found to exist will prescribe a course which is suitable to accomplish the goals of 38 U.S.C. chapter 35.

(Authority: 38 U.S.C. 3536, 3540–3543, 3561(a))

(b) *Counseling after special restorative training.* When an eligible child completes or discontinues a course of special restorative training without having selected an objective and a program of education, a counseling psychologist in the Vocational Rehabilitation and Counseling Division will provide additional counseling to assist the child in selecting a program of education suitable to accomplish the purposes of 38 U.S.C. chapter 35.

(Authority: 38 U.S.C. 3561)

§ 21.3105 Travel expenses.

(a) *General.* VA shall determine and pay the necessary expense of travel to and from the place of counseling for an eligible person who is required to receive counseling as provided under 38 U.S.C. 111 (a), (d), (e), and (g).

(Authority: 38 U.S.C. 111 (a), (d), (e), and (g))

(b) *Restriction.* VA will not pay the necessary cost of travel to and from the place of counseling when counseling is not required, but is provided as a result of a voluntary request by the eligible person.

(Authority: 38 U.S.C. 111)

15. Sections 21.3130 and 21.3131 are added following the undesignated center heading that precedes § 21.3145, to read as follows:

§ 21.3130 Educational assistance.

(a) *Approval of a program of education.* VA will approve a program of education selected by an eligible person if:

(1) The program is described in § 21.3021 (h) and (i) or (j);

(2) The individual is not already qualified for the objective of the program of education;

(3) The proposed educational institution or training establishment is in compliance with all the requirements of 38 U.S.C. chapters 35 and 36; and

(4) It does not appear that the enrollment in or pursuit of such person's program of education would violate any provision of 38 U.S.C. chapters 35 and 36.

(Authority: 38 U.S.C. 3521)

(b) *Payments.* VA will pay educational assistance at the rate specified in § 21.3131 (subject to the reductions required by § 21.3132) while the eligible person is pursuing an approved program of education or training.

(Authority: 38 U.S.C. 3521, 3532)

(c) *No payment for excessive training.* (1) VA will make no payment for:

(i) Training in an apprenticeship or other on-job training program in excess of the number of hours approved by the State approving agency or VA; or

(ii) Lessons completed in a correspondence course in excess of the number approved by the State approving agency.

(2) A school's standards of progress may permit a student to repeat a course or portion of a course in which he or she has done poorly. VA considers the repeated courses to be part of the program of education. VA will make no payment for courses or training if the courses or training are not part of the eligible person's program of education.

(Authority: 38 U.S.C. 3501(a)(5), 3521)

(d) *Courses precluded.* VA may not pay educational assistance:

(1) For pursuit of a course if approval of the enrollment in the course is precluded by § 21.4252;

(2) For training in a foreign country unless the training is in the Philippines or is approved pursuant to the provisions of § 21.4260; or

(3) For pursuit of a course offered by open-circuit television, unless the eligible person's pursuit meets the requirements of § 21.4233(c).

(Authority: 38 U.S.C. 3523)

(e) *Commencing date.* In determining the commencing date of an award of educational assistance, VA will apply the provisions of § 21.4131.

(Authority: 38 U.S.C. 5113)

§ 21.3131 Rates—educational assistance allowance—38 U.S.C. chapter 35.

(a) *Rates.* Except as provided in § 21.3132, educational assistance allowance is payable at the following rates effective January 1, 1990:

Type of courses	Monthly rate
Institutional:	
Full time	$404
¾ time	304
½ time	202
Less than ½ but more than ¼ time[3].	202
¼ time or less[3]	101
Cooperative (other than farm cooperative) (Full time only).	$327
Apprentice or On-Job (full time only, but see footnote [1])	
First six months	$294
Second six months	220
Third six months	146
Fourth six months and thereafter.	73
Farm Cooperative:	
Full time	$327
¾ time	245
½ time	163
Correspondence	55 percent of the established charge for the number of lessons completed by the eligible spouse or surviving spouse and serviced by the school—Allowance paid quarterly.[2]

[1] See footnote 5 of § 21.4270(c) for measurement of full time and § 21.3132(c) for proportionate reduction in award for completion of less than 120 hours per month.

[2] Established charge means the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency or the actual cost to the eligible spouse or surviving spouse, whichever is the lesser. VA considers the continuity of an enrollment broken when there are more than 6 months between the servicing of the lessons.

[3] If an eligible person under chapter 35 pursuing independent study on a less than one-half-time basis completes his or her program before the designated completion time, his or her award will be recomputed to permit payment of tuition and fees not to exceed $202 or $101 as appropriate, per month, if the maximum allowance is not initially authorized.

(Authority: 38 U.S.C. 3532, 3686)

(b) *Less than half time.* The monthly rate for an eligible person who is pursuing an institutional course on less than one-half time basis may not exceed the monthly rate of the cost of the course computed on basis of the total cost for tuition and fees which the school requires similarly circumstanced individuals enrolled in the same course to pay. "Cost of the course" does not include the cost of books or supplies which the student is required to purchase at his or her own expense.

(Authority: 38 U.S.C. 3532(a)(2))

(c) *Courses leading to a secondary school diploma or equivalency certificate.* The monthly rate of Survivors' and Dependents' Educational Assistance payable for an eligible person enrolled in a course leading to a secondary school diploma or equivalency certificate shall be the rate for institutional training stated in paragraph (a) of this section.

(Authority: 38 U.S.C. 3532(d), 3533)

(d) *Payments made to eligible persons in the Republic of the Philippines or to certain Filipinos.* When the eligible person is pursuing training at an institution located in the Republic of the Philippines or when an eligible child's entitlement is based on the service of a veteran in the Philippine Commonwealth Army, or as a Philippine Scout as defined in § 3.8 (b), (c), or (d) of this chapter, payments of educational assistance allowance made after December 31, 1994, will be made at the rate of 50 cents for each dollar authorized.

(Authority: 38 U.S.C. 3532(d), 3565)

§ 21.4137 [Redesignated as § 21.3132]

§ 21.3132 [Amended]

16. Section 21.4137 is redesignated as § 21.3132; paragraphs (d) through (g) are removed; paragraph (h) is redesignated as paragraph (d); newly redesignated paragraph (d)(4) is amended by removing "106" and adding, in its place, "1606"; newly redesignated paragraphs (d)(4) and (d)(5) are amended by removing "(h)(1)(ii)" in each place it appears and adding, in its place, "(d)(1)(ii)"; paragraphs (i) through (o) are removed; and the section heading is revised, introductory text is added, and paragraphs (a) through (c) are revised, to read as follows:

§ 21.3132 Reductions in Survivors' and Dependents' Educational Assistance.

The monthly rates established in § 21.3131 shall be reduced as stated in this section whenever the circumstances described in this section arise.

(a) *No educational assistance allowance for some incarcerated eligible persons.* VA will pay no educational assistance allowance to an eligible person who:

(1) Is incarcerated in a Federal, State, or local penal institution for conviction of a felony; and

(2) Is enrolled in a course:

(i) For which there are no tuition or fees, or charges for books, supplies, and equipment; or

(ii) For which tuition and fees are being paid by a Federal program (other than one administered by VA) or by a State or local program, and the eligible person is incurring no charge for the books, supplies, and equipment necessary for the course.

(Authority: 38 U.S.C. 3532(e))

(b) *Reduced educational assistance allowance for some incarcerated eligible persons—felony conviction.* (1) VA will pay a reduced educational assistance allowance to an eligible person who:

(i) Is incarcerated in a Federal, State, or local penal institution for conviction of a felony; and

(ii) Is enrolled in a course:

(A) For which the eligible person pays some (but not all) of the charges for tuition and fees; or

(B) For which a Federal program (other than one administered by VA) or a State or local program pays all the charges for tuition and fees, but which requires the eligible person to pay for books, supplies, and equipment.

(2) The monthly rate of educational assistance allowance payable to such an eligible person who is pursuing a course on a half-time or greater basis shall be the lesser of the following:

(i) The monthly rate of the portion of the tuition and fees that the eligible person must pay plus the monthly rate of the charge to the eligible person for the cost of necessary supplies, hooks, and equipment; or

(ii) The monthly rate stated in § 21.3131.

(3) The monthly rate of educational assistance payable to such an eligible person who is pursuing the course on a less than half-time basis or on a one quarter-time basis shall be the lowest of the following:

(i) The monthly rate of the tuition and fees charged for the course;

(ii) The monthly rate of tuition and fees which the eligible person must pay plus the monthly rate of the charge to the eligible person for the cost of necessary supplies, books, and equipment; or

(iii) The monthly rate stated in § 21.3131.

(Authority: 38 U.S.C. 3482(g))

(c) *Reduction in training assistance allowance.* (1) For any month in which an eligible person pursuing an apprenticeship or on-job training program fails to complete 120 hours of training, VA shall reduce the rate specified in § 21.3131(a) proportionally. In this computation VA shall round the number of hours worked to the nearest multiple of eight.

(2) For the purpose of this paragraph *hours worked* include only:

(i) The training hours the eligible person worked; and

(ii) All hours of the eligible person's related training which occurred during the standard workweek and for which the eligible person received wages.

(Authority: 38 U.S.C. 3687(b)(3))

* * * * *

17. Section 21.3133 is added to read as follows:

§ 21.3133 Payment procedures.

(a) *Release of payments and payment procedures.* In determining whether payments of educational assistance allowance may be made in a lump sum, in advance, for an interval or if a certification is required from an eligible person before a payment may be made, VA will apply the provisions of § 21.4138.

(Authority: 38 U.S.C. 3680)

(b) *Payee.* (1) VA will pay an educational assistance allowance to the eligible person if he or she has attained majority and has no known legal disability.

(2) If an eligible person has not attained majority, VA will pay an educational assistance allowance directly to an eligible person, a relative, or some other person for the use and benefit of the eligible person notwithstanding a legal disability on the part of the eligible person when VA determines:

(i) The best interest of the eligible person would be served;

(ii) Undue delay in payment would be avoided; or

(iii) Payment would otherwise not be feasible.

(Authority: 38 U.S.C. 3501(a)(4), 3501(c), 3531(a), 5502)

(c) *Payment of accrued benefits.* Educational assistance remaining due and unpaid at the date of the eligible person's death is payable under the provisions of § 3.1000 of this chapter.

(Authority: 38 U.S.C. 5121)

(d) *Tutorial assistance.* An individual who is otherwise eligible to receive benefits under the Survivors' and Dependents' Educational Assistance program may receive supplemental monetary assistance to provide tutorial services. In determining whether VA will pay the individual this assistance, VA will apply the provisions of § 21.4236.

(Authority: 38 U.S.C. 3492, 3533(b))

(e) *Offsets: 38 U.S.C. chapter 35, compensation, pension and dependency and indemnity compensation.* Payment of dependents' educational assistance will be subject to offset of amounts of pension, compensation or dependency and indemnity compensation paid over the same period on behalf of a child based on school attendance.

(Authority: 38 U.S.C. 3562)

(f) *Final payment.* VA may withhold final payment until VA receives proof of continued enrollment and adjusts the eligible person's account.

(Authority: 38 U.S.C. 3680)

18. Section 21.3135 is added to read as follows:

§ 21.3135 Reduction or discontinuance dates for awards of educational assistance allowance.

The reduction or discontinuance date of an award of educational assistance will be as stated in this section. If more than one basis for reduction or discontinuance is involved, the earliest date will control.

(a) *Ending date of course.* Educational assistance allowance will be discontinued on the ending date of the course or period of enrollment as certified by the school.

(Authority: 38 U.S.C. 3531, 3680(a))

(b) *Ending date of eligibility.* Educational assistance allowance will be discontinued on the ending date of the eligible person's eligibility as determined by § 21.3041, § 21.3042, § 21.3043, or § 21.3046.

(Authority: 38 U.S.C. 3512)

(c) *General reduction or discontinuance dates.* Educational assistance allowance will be reduced or discontinued on the date specified in § 21.4135.

(Authority: 38 U.S.C. 3482(g), 3531, 3671(g), 3672(a), 3680, 3683, 3690, 5112, 5113, 6103, 6104, 6105)

(d) *Divorce.* If the veteran and eligible spouse divorce, the discontinuance date for the eligible spouse's award of educational assistance will be:

(1) The end of the quarter or semester if the school is operated on a quarter or semester system, and the divorce was without fault on the eligible spouse's part;

(2) The end of the course or a 12-week period, whichever is earlier, if the school does not operate on a quarter or semester system, and the divorce was without fault on the eligible spouse's part; or

(3) In all other instances, the date the divorce decree becomes final.

(Authority: 38 U.S.C. 3501(a)(1)(D), 3511(b))

(e) *Remarriage or other relationship of spouse or surviving spouse.* (1) If an eligible surviving spouse remarries, the date of discontinuance of his or her award of educational assistance allowance will be the last date of attendance before remarriage.

(2) If a spouse or surviving spouse begins a relationship by living with another person and holding himself or herself out openly to the public to be the spouse of the other person, the date of discontinuance of his or her award of educational assistance allowance will be the last date of the month before the spouse's or surviving spouse's relationship began.

(Authority: 38 U.S.C. 101(3), 3501(a)(1)(B))

(f) *Entrance on active duty (§ 21.3042).* If an eligible person enters on active duty, VA will terminate his or her educational assistance allowance on the day before the day of entrance on active duty. Brief periods of active duty for training, if the school permits such an absence without interruption of

training, will not result in termination of the allowance under this paragraph.

(Authority: 38 U.S.C. 3501(d))

(g) *Eligible child ceases to be a stepchild.* When an eligible child loses eligibility because he or she ceases to be the stepchild of the veteran, VA will discontinue the dependent's educational assistance allowance on the last day of the child's eligibility as determined by § 21.3041(d)(9).

(Authority: 38 U.S.C. 101(4)(A), 3501)

(h) *Veteran no longer rated permanently and totally disabled.* (1) If the veteran on whose service an eligible person's eligibility is based is no longer permanently and totally disabled, VA will discontinue the educational assistance allowance—

(i) On the last date of the quarter or semester during which VA rated the veteran as no longer permanently and totally disabled if the eligible person's educational institution is organized on a quarter or semester basis; or

(ii) On the earlier of the following dates when the eligible person's educational institution is not organized on a quarter or semester basis:

(A) The last date of the course;

(B) The end of a 12-week period beginning on the date VA rated the veteran as being no longer permanently and totally disabled.

(Authority: 38 U.S.C. 3511(b), 3512(a)(6)(A))

(i) Serviceperson is removed from "missing status" listing. (1) If the serviceperson on whose service an eligible person's eligibility is based is removed from the "missing status" listing, VA will discontinue the educational assistance allowance—

(i) On the last date of the quarter or semester during which the serviceperson was removed from the "missing status" listing if the eligible person's educational institution is organized on a quarter or semester basis; or.

(ii) On the earlier of the following dates when the eligible person's educational institution is not organized on a quarter or semester basis:

(A) The last date of the course;

(B) The end of a 12-week period beginning on the date the serviceperson was removed from the "missing status" listing.

(Authority: 38 U.S.C. 3512(a)(6)(A))

§ 21.3145 [Removed]

19. Section 21.3145 is removed.

20. In § 21.3330, paragraph (a) is amended by removing "§ 21.4139" and adding, in its place, "§ 21.3133(b)"; and paragraph (c) is revised to read as follows:

§ 21.3330 Payments.

* * * * *

(c) The provisions of § 21.3133(e) apply to the payment of special restorative training allowance.

(Authority: 38 U.S.C. 3562)

§ 21.3331 [Amended]

21. Section 21.3331 is amended by removing "§ 21.4131", and adding, in its place, "§ 21.3130(c)".

§ 21.3332 [Amended]

22. Section 21.3332 is amended by removing "§ 21.4135", and adding, in its place, "§ 21.3130(d)".

23. An undesignated center heading and § 21.3344 are added to read as follows:

Special Assistance and Training

§ 21.3344 Special assistance for the educationally disadvantaged.

(a) *Enrollment.* VA may approve the enrollment of an eligible person in an appropriate course or courses at the secondary school level. This approval may be made only if the eligible person—

(1) Has not received a secondary school diploma (or an equivalency certificate);

(2) Needs additional secondary school education, remedial, refresher, or deficiency courses, to qualify for admission to an appropriate educational institution in a State in order to pursue a program of education; and

(3) Is to pursue the course or courses in a State.

(Authority: 38 U.S.C. 3491(a), 3533)

(b) *Measurement.* VA will measure remedial, deficiency, or refresher courses offered at the secondary school level as provided in §§ 21.4270(a)(2) and 21.4272(k).

(Authority: 38 U.S.C. 3533)

(c) *Educational assistance.* VA will authorize educational assistance at the monthly rates specified in § 21.3131.

(Authority: 38 U.S.C. 3491(a), 3533)

(d) *Entitlement charge.* The provisions of § 21.3045 will determine whether VA will make a charge against the period of the entitlement of the eligible person because of enrollment in a course under the provisions of this section.

(Authority: 38 U.S.C. 3533)

(e) *Certifications.* (1) Certifications of the eligible person's need for deficiency or remedial courses in basic English language skills and mathematics skills may be made by:

(i) A VA counseling psychologist in the Vocational Rehabilitation and Counseling Division;

(ii) The educational institution administering the course; or

(iii) The educational institution where the student has applied for admission.

(2) Certification of need for other refresher, remedial or deficiency course requirements are to be made by the educational institution—

(i) Administering the course which the eligible person is planning to enter; or

(ii) Where the eligible person has applied for admission.

(Authority: 38 U.S.C. 3533)

(f) *Basic skills.* Basic English language courses or mathematics courses will be authorized when it is found by accepted testing methods that the eligible person is lacking in basic reading, writing, speaking, or essential mathematics.

(Authority: 38 U.S.C. 3533)

Subpart D—Administration of Educational Assistance Programs

24. The authority citation for subpart D is revised to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

25. The heading for subpart D is revised to read as set forth above.

§ 21.4001 [Amended]

26. In § 21.4001, paragraph (a) is amended by removing "Chief Benefits Director" and adding, in its place, "Under Secretary for Benefits"; by removing "Vocational Rehabilitation and"; and by removing "34, 35," and adding, in its place, "34"; paragraph (b) is amended by removing "Chief, Benefits Director" and adding, in its place, "Under Secretary for Benefits"; and by removing "Vocational Rehabilitation and"; paragraph (c) introductory text is amended by removing "Vocational Rehabilitation and"; paragraph (d) is amended by removing "Chief Benefits Director" and adding, in its place, "Under Secretary for Benefits", and by adding "his or her" immediately preceding "designee"; paragraph (e) is amended by removing "Chief Benefits Director" and adding, in its place, "Under Secretary for Benefits"; paragraph (f) is amended by removing "Chief Benefits Director" and adding, in its place, "Under Secretary for Benefits"; and paragraph (g) is amended by removing "Education" and adding, in its place, "Counseling".

§ 21.4009 [Amended]

27. In § 21.4009, paragraph (a)(2)(i) is amended by removing "excessive absences from a course or"; and by removing "veteran" and adding, in its place, "veteran, reservist".

§ 21.4022 [Amended]

28. In § 21.4022, the heading for paragraph (a) is removed; paragraph (b) is removed; and paragraph (a) introductory text and paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), and (a)(9) are redesignated as introductory text and paragraphs (a), (b), (c), (d), (e), (f), (g), (h), and (i), respectively.

§ 21.4025 [Removed]

29. Section 21.4025 is removed.

§§ 21.4100 through 21.4105 and 21.4130 [Removed].

30. The undesignated center heading which precedes § 21.4100, and §§ 21.4100 through 21.4105 and § 21.4130 are removed.

§ 21.4131 [Amended]

31. In § 21.4131, paragraphs (e) and (j) are removed and reserved; the heading for paragraph (g) is amended by removing "(§§ 21.1042(b), 21.3042(b))"; paragraph (g) is amended by removing "veteran" and adding, in its place, "veteran or eligible person"; the authority citation for paragraph (g) is amended by removing "3462(b)" and adding, in its place, "3462(b), 3501(d)"; and paragraph (h), introductory text, is amended by removing "§ 21.4136 (n), (o), (p), or (r) § 21.4137 (j) or (l)" and adding, in its place, "§ 21.3132(a) or (b) or § 21.5139".

§ 21.4132 [Removed]

32. Section 21.4132 is removed.

33. In § 21.4135, paragraphs (b), (c), (d), (n), (o), (v), and (z) are removed and reserved; paragraph (e)(2) introductory text is amended by removing "as provided in § 21.4136(k) or 21.4137(h),"; paragraph (m)(1) is amended by removing "§ 21.4136(n), (o), (p), or (r) or § 21.4137(j) or (l)" and adding, in its place, "§ 21.3132(a) or (b) or § 21.5139"; and in paragraph (e), the heading and paragraph (e)(1) are revised, to read as follows:

§ 21.4135 Discontinuance dates.

* * * * *

(e) *Course discontinued; course interrupted; course terminated; course not satisfactorily completed or withdrawn from.* (1) If the individual receives all nonpunitive grades, or withdraws from all courses other than because of being ordered to active duty, and no mitigating circumstances are found, VA will terminate the individual's educational assistance allowance effective the first date of the term in which the withdrawal occurs.

* * * * *

34. In § 21.4136, paragraphs (a) through (j) are removed; paragraph (k) heading, paragraph (k)(1) introductory text, paragraphs (k)(1)(i), (k)(1)(ii) introductory text, (k)(1)(ii)(A), (k)(1)(ii)(B), (k)(1)(ii)(C), and (k)(2) through (k)(5) are redesignated as paragraph (a) heading, paragraph (a) introductory text, paragraphs (a)(1), (a)(2) introductory text, (a)(2)(i), (a)(2)(ii), (a)(2)(iii), and (b) through (e), respectively; newly redesignated paragraphs (a)(2)(ii) and (a)(2)(iii) are amended by removing "veteran" wherever it appears and adding, in its place, "individual"; paragraphs (l) through (t) and the cross reference at the end of the section are removed; and the section heading, the heading and introductory text of newly redesignated paragraph (a), the authority citation at the end of newly redesignated paragraph (a), and newly redesignated paragraph (a)(1) and paragraphs (b) through (e) are revised to read as follows:

§ 21.4136 Withdrawals or nonpunitive grades may result in nonpayment.

(a) *General.* VA will not pay benefits to an individual for a course from which the individual withdraws or receives a nonpunitive grade which is not used in computing the requirements for graduation unless:

(1) The individual withdraws because he or she is ordered to active duty; or

* * * * *

(Authority: 38 U.S.C. 3680(a))

(b) *Representative mitigating circumstances.* The following circumstances, which are not all inclusive, are representative of those that VA considers to be mitigating provided they prevent the individual from pursuing the program of education continuously:

(1) An illness of the individual;

(2) An illness or death in the individual's family;

(3) An unavoidable geographical transfer resulting from the individual's employment;

(4) An unavoidable change in the individual's conditions of employment;

(5) Immediate family or financial obligations beyond the control of the individual that require him or her to suspend pursuit of the program of education to obtain employment;

(6) Discontinuaoce of the course by the school;

(7) Unanticipated active duty for training;

(8) Unanticipated difficulties in caring for the individual's child or children.

(Authority: 38 U.S.C. 3680(a))

(c) *Failure to complete a course for the educationally disadvantaged.* If the individual fails to satisfactorily complete a course under 38 U.S.C. 3491(a) without fault, VA will consider the circumstances that caused the failure to be mitigating. This will be the case even if the circumstances were not so severe as to preclude continuous pursuit of a program of education.

(d) *Withdrawals after May 31, 1989.* In the first instance of a withdrawal after May 31, 1989, from a course or courses for which the individual received educational assistance under 38 U.S.C. chapter 32, VA will consider that mitigating circumstances exist with respect to courses totaling not more than six semester hours or the equivalent, and paragraphs (a)(2)(ii) and (a)(2)(iii) of this section will not apply.

(Authority: 38 U.S.C. 3680(a)(3))

(e) *Withdrawals during a drop-add period.* If the individual withdraws from a course during a drop-add period, VA will consider the circumstances that caused the withdrawal to be mitigating, and paragraphs (a)(2)(ii) and (a)(2)(iii) of this section will not apply.

(Authority: 38 U.S.C. 3680(a))

§§ 21.4139 through 21.4141 [Removed]

35. Sections 21.4139 through 21.4141 are removed.

36. In § 21.4145, paragraph (b) is amended by removing "veteran" wherever it appears, and adding, in its place, "veteran, reservist, or eligible person", and by removing "veteran's" and adding, in its place, "veteran's, reservist's, or eligible person's"; paragraph (c) introductory text is amended by removing "Veteran-student" and adding, in its place, "Work-study"; the heading of paragraph (g) is amended by removing "*Veteran*" and adding, in its place, "*Veteran, reservist, or eligible person*"; paragraphs (g) and (h) are amended by removing "veteran" wherever it appears, and adding, in its place, "veteran, reservist, or eligible person"; paragraph (i) is amended by removing "veterans" and adding, in its place, "veterans, reservists, or eligible persons"; and the section heading and paragraphs (a), (c)(3), (c)(4), (d), (e), and (f) are revised, and paragraph (c)(5) is added, to read as follows:

§ 21.4145 Work-study allowance.

(a) *Eligibility.* (1) A veteran or reservist pursuing a program of education under either 38 U.S.C. chapter 30 or 32 or 10 U.S.C. chapter 1606 at a rate of three-quarter time or full time is eligible to receive a work-study allowance.

(2) An eligible person is eligible to receive a work-study allowance when-

(i) The eligible person is pursuing a program of education under 38 U.S.C. chapter 35 on at least a three-quarter-time basis;

(ii) The eligible person is pursuing a program of education in a State; and

(iii) The eligible person is not pursuing a program of special restorative training.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3485, 3537)

* * * * *

(c) * * *

(3) Hospital and domiciliary care and medical treatment at VA facilities;

(4) For a reservist training under 10 U.S.C. chapter 1606, activities relating to the administration of 10 U.S.C. chapter 1606 at Department of Defense facilities, Coast Guard facilities, or National Guard facilities; and

(5) Any other appropriate activity of VA.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3485, 3537)

(d) *Rate of payment.* In return for the veteran's, reservist's, or eligible person's agreement to perform services for VA totaling not more than 25 hours times the number of weeks contained in an enrollment period, VA will pay an allowance in an amount equal to the higher of:

(1) The hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)) times the number of hours the veteran, reservist, or eligible person has agreed to work; or

(2) The hourly minimum wage under comparable law of the State in which the services are to be performed times the number of hours the veteran, reservist, or eligible person has agreed to work.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3485, 3537)

(e) *Payment in advance.* VA will pay in advance an amount equal to the lesser of the following:

(1) 40 percent of the total amount payable under the contract; or

(2) An amount equal to 50 times the applicable minimum hourly wage in effect on the date the contract is signed.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3485, 3537)

(f) *Veteran, reservist, or eligible person reduces rate of training.* In the event the veteran, reservist, or eligible person reduces his or her training to less than three-quarter-time before completing an agreement, the veteran, reservist, or eligible person, with the approval of the Director of the VA field station, or designee, may be permitted to complete the portions of an agreement in the same or immediately following term, quarter, or semester in which the veteran, reservist, or eligible person ceases to be a three-quarter-time student.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3485, 3537)

* * * * *

§ 21.4146 [Amended]

37. In § 21.4146, paragraph (a) is amended by removing "Chapters 34, 35 and 36, Title 38, U.S.C." and adding, in its place, "38 U.S.C. chapters 30, 32, 35, or 36, or 10 U.S.C. chapter 1606"; and paragraph (f) is removed.

38. In § 21.4153, paragraph (b) is amended by removing "Chief Benefits Director" and adding, in its place, "Under Secretary for Benefits"; and by removing "Vocational Rehabilitation and"; paragraph (c)(2)(i)(B) is amended by removing "Vocational Rehabilitation and"; and paragraph (c)(3) is revised, to read as follows:

§ 21.4153 Reimbursement of expenses.

* * * * *

(c) *Reimbursable expenses.* * * *

(3) *Administrative expenses.* In determining the allowance for administrative expenses for which payment may be authorized, VA will apply the provisions of 38 U.S.C. 3674(b). In making that application, VA will determine reimbursable salary cost pursuant to paragraph (c)(1) of this section.

* * * * *

39. In § 21.4200, paragraph (v) is revised to read as follows:

§ 21.4200 Definitions.

* * * * *

(v) *Reservist.* The term *reservist* means a member of the Selected Reserve of the Ready Reserve of any of the reserve components (including the Army National Guard of the United States and the Air National Guard of the United States) of the Armed Forces who is eligible to receive educational assistance under 38 U.S.C. chapter 30 or 10 U.S.C. chapter 1606.

(Authority: 38 U.S.C. 3002)

§ 21.4201 [Amended]

40. In § 21.4201, paragraph (g)(6) is amended by removing "in a course either before December 1, 1976 or after November 30, 1976,".

§ 21.4204 [Amended]

41. In § 21.4204, paragraph (b)(2) is removed; and paragraphs (b)(3), (b)(4), (b)(5), and (b)(6) are redesignated as paragraphs (b)(2), (b)(3), (b)(4), and (b)(5), respectively.

§ 21.4205 [Removed]

42. Section 21.4205 is removed.

§ 21.4209 [Amended]

43. Section 21.4209 is amended in the heading of paragraph (c) by removing "Below college level" and adding, in its place, "Noncollege degree"; in paragraph (c) by removing "veterans or" and adding, in its place, "veterans, servicemembers, reservists, and/or"; by removing "or courses which do" and adding, in its place, "that does"; and by removing "which has enrolled veterans under Chapter 34 or eligible persons under Chapter 35" and adding, in its place, "that has enrolled veterans under 38 U.S.C. chapter 30 or 32, reservists under 10 U.S.C. chapter 1606, or eligible persons under 38 U.S.C. chapter 35"; and, immediately after paragraph (c), by adding an authority citation to read "(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3690(c))".

§ 21.4230 [Removed]

44. Section 21.4230 is removed.

§ 21.4235 [Removed]

45. Section 21.4235 is removed.

46. In § 21.4236, the section heading, the authority citation following paragraph (b), and paragraphs (c) and (d) are revised, to read as follows:

§ 21.4236 Tutorial assistance.

* * * * *

(b) * * *

(Authority: 10 U.S.C. 16131(h); 38 U.S.C. 3019, 3234, 3492, 3533(b))

(c) *Limits on tutorial assistance.* (1) VA will authorize the cost of tutorial assistance in an amount not to exceed $100 per month.

(2) The total amount of all tutorial assistance provided under this section will not exceed $1200.

(Authority: 38 U.S.C. 3019, 3492, 3533(b))

(d) *Entitlement charge.* VA will make no charge against the veteran's or eligible person's entitlement to educational assistance for any amount of tutorial assistance authorized.

(Authority: 38 U.S.C. 3019, 3492, 3533(b))

§ 21.4237 [Removed]

47. Section 21.4237 is removed.

§ 21.4252 [Amended]

48. In § 21.4252, the authority citation for paragraph (b)(3) is amended by removing "3473(a), 3523(a)" and adding, in its place, "3523(a), 3680A(b)"; paragraph (c)(1) is amended by removing "training under Chapter 34." and adding, in its place, "training; or"; paragraph (c)(2) is removed; paragraph (c)(3) is redesignated as paragraph (c)(2); and the authority citation for paragraph (c) is amended by removing "Sec. 2003, Pub. L. 97–35" and adding, in its place, "10 U.S.C. 16131(g); 38 U.S.C. 3034(d), 3241(b), 3523(b), 3680A(b)".

§ 21.4260 [Amended]

49. In § 21.4260, paragraph (c)(1)(i) is amended by removing "§§ 21.1040 through 21.1045," and paragraph (c)(1)(ii) is amended by removing "21.4230 or § 21.5230" and adding, in its place, "21.3021(h) or § 21.5021(q)".

§ 21.4264 [Amended]

50. In § 21.4264, paragraph (b) is amended by removing "a veteran or" and adding, in its place, "an"; and paragraph (d)(1) introductory text is amended by removing "veterans,".

§ 21.4266 [Amended]

51. In § 21.4266, paragraph (c)(1)(iii) is amended by removing "21.4203, 21.4204 and 21.4205"; and adding, in its place, "21.4203 and 21.4204".

§ 21.4276 [Removed]

52. Section 21.4276 is removed.

Subpart E—[Removed]

53. Subpart E is removed.

Subpart F—Education Loans

54. The authority citation for subpart F is revised to read as follows:

Authority: 38 U.S.C. 501, 3537, 3698, 3699, unless otherwise noted.

55. In § 21.4500, paragraph (b) is amended by removing "Veteran or person" and adding, in its place, "spouse or surviving spouse", and by removing "section 3698, Title 38, U.S.C." and adding, in its place, "38 U.S.C. 3512(f) and 3698."; paragraph (d)(2) introductory text is amended by removing "a veteran or eligible person" and adding, in its place, "an eligible spouse or surviving spouse"; the authority citation following paragraph (d)(2) introductory text is amended by removing "3698" and adding, in its place, "3512(f), 3698"; paragraph (d)(2)(ii) is amended by removing "Vocational Rehabilitation and" in each place it appears; the authority citation for paragraph (d) is amended by removing "3698(c)" and adding, in its place, "3512(f), 3698(c)"; paragraph (e)(1) is amended by removing "the veteran or other eligible person" and adding, in its place, "the eligible spouse or surviving spouse"; paragraph (e)(2) is amended by removing "the veteran or other eligible person" and adding, in its place, "the eligible spouse or surviving spouse"; paragraph (e)(3) is amended by removing "the veteran or other eligible person" and adding, in its place, "the eligible spouse or surviving spouse"; paragraph (e)(4) is amended by removing "the veteran or other eligible person under section 3231, 3461, or subchapter II of Chapter 35, Title 38 U.S.C., which applies solely to the veteran or eligible person" and adding, in its place, "the eligible spouse or surviving spouse under 38 U.S.C. chapter 35"; paragraph (e)(5) is amended by removing "veteran or other eligible person" and adding, in its place, "eligible spouse or surviving spouse"; paragraph (e)(6) is amended by removing "veteran under section 3485, Title 38 U.S.C." and adding, in its place, "eligible spouse or surviving spouse under 38 U.S.C. 3537"; paragraph (g) is amended by removing "a veteran or eligible person" and adding, in its place, "an eligible spouse or surviving spouse"; and by removing "Effective January 1, 1975, the" and adding, in its place, "The"; the authority citation following paragraph (h) is amended by removing "3698(b)" and adding, in its place, "3512(f), 3698(b)"; and paragraph (f) is revised to read as follows:

§ 21.4500 Definitions.

* * * * *

(f) *Actual cost of attendance.* The term *actual cost of attendance* means:

(1) The actual charge per student for tuition, fees, and books;

(2) An allowance for commuting (this allowance will be based on 22.5¢ per mile for distances not exceeding normal commuting distance);

(3) An allowance for other expenses reasonably related to attendance at the institution at which the eligible spouse or surviving spouse is enrolled; and

(4) A room and board allowance that shall be determined as follows:

(i) If the educational institution actually provides the eligible spouse or surviving spouse with room and board, the allowance shall equal the actual charges to him or her for room and board;

(ii) If the educational institution provides some students with room and board, but does not provide room and board for the eligible spouse or surviving spouse, the room and board allowance shall equal either the actual expenses incurred by the eligible spouse or surviving spouse for room and board, or the amount for room and board that the educational institution would have charged the eligible spouse or surviving spouse, had the educational institution provided him or her with room and board, whichever is less; and

(iii) If the educational institution does not provide any students with room and board, the room and board allowance shall equal either the actual expenses incurred by the eligible spouse or surviving spouse for room and board or the amount the eligible spouse or surviving spouse would have been charged for room and board had he or she been provided room and board by the nearest State college or State university that provides room and board, whichever is less.

* * * * *

56. Section 21.4501 is revised to read as follows:

§ 21.4501 Eligibility.

(a) *General.* Any eligible spouse or surviving spouse shall be eligible to receive an education loan if he or she meets the criteria of this section.

(Authority: 38 U.S.C. 3512(f), 3698)

(b) *Eligibility criteria.* To qualify for an education loan—

(1) The eligible spouse's or surviving spouse's delimiting period as determined by § 21.3046 (a), (b), or (d) must have expired;

(2) The eligible spouse or surviving spouse must—

(i) Have financial resources that may reasonably be expected to be expended for education needs and which are insufficient to meet the actual costs of attendance;

(ii) Execute a promissory note payable to the Department of Veterans Affairs, as provided by § 21.4504;

(iii) Have unused entitlement provided under 38 U.S.C. 3511;

(iv) During the term, quarter, or semester for which the loan is granted, be enrolled on a full-time basis in pursuit of the approved program of education in which he or she was enrolled on the date his or her eligibility expired under § 21.3046 (a), (b), or (d); and

(v) Have been enrolled in a program of education on a full-time basis—

(A) On the date his or her period of eligibility expired under § 21.3046 (a), (b), or (d); or

(B) On the last date of the ordinary term, semester or quarter preceding the date his or her eligibility expired under § 21.3046 (a), (b), or (d), if the delimiting date fell during a school break or summer term.

(Authority: 38 U.S.C. 3512(f), 3698)

(c) *Limitations.* The period for which a loan may be granted shall not extend beyond the earliest of the following dates:

(1) Two years after the expiration of the period of eligibility as determined by § 21.3046(a), (b), or (d);

(2) The date on which the eligible spouse's or surviving spouse's entitlement is exhausted; or

(3) The date on which the eligible spouse or surviving spouse completes the approved program of education which he or she was pursuing on the date the delimiting period determined by § 21.3046 (a), (b), or (d) expired.

(Authority: 38 U.S.C. 3512(f), 3698)

(d) *Exclusions.* No eligible spouse or surviving spouse shall be authorized an education loan if he or she has defaulted on a previous education loan and there is a remaining unliquidated payment due VA.

(Authority: 38 U.S.C. 3512(f), 3698)

§ 21.4502 [Amended]

57. In § 21.4502, paragraph (a) is amended by removing "veteran or other eligible person" and adding, in its place, "spouse or surviving spouse"; paragraph (b)(2) is amended by removing "veteran or other eligible person" and adding, in its place, "eligible spouse or surviving spouse"; paragraph (b)(3) is amended by removing "veteran or other eligible person" and adding, in its place, "eligible spouse or surviving spouse"; and paragraph (b)(4) is amended by removing "veteran or other eligible person" wherever it appears, and adding, in its place, "eligible spouse or surviving spouse".

58. In § 21.4503, paragraph (a)(1) is amended by removing "veteran or other eligible person" and adding, in its place, "eligible spouse or surviving spouse"; paragraphs (b)(4), (b)(5), (b)(10), and (b)(11) are removed; paragraphs (b)(6), (b)(7), (b)(8), and (b)(9) are redesignated as paragraphs (b)(4), (b)(5), (b)(6), and (b)(7), respectively; the authority citation following newly redesignated paragraph (b)(4) is amended by removing "3698(b)" and adding, in its place, "3512(f), 3698(b)"; newly redesignated paragraph (b)(5) is amended by removing "veteran or other eligible person" and adding, in its place, "eligible spouse or surviving spouse"; newly redesignated paragraph (b)(7) is amended by removing "veteran or other eligible person" and adding, in its place, "spouse or surviving spouse"; and paragraph (b)(2) and newly redesignated paragraph (b)(6) are revised to read as follows:

§ 21.4503 *Determination of loan amount.*

* * * * *

(b) *Amount.* * * *

(2) The aggregate of the amounts any eligible spouse or surviving spouse may borrow for an education loan may not exceed $2,500 in any one academic year. It also may not exceed an amount determined by multiplying the number of months of educational assistance to which the eligible spouse or surviving spouse would be entitled were it not for the expiration of his or her delimiting period under 38 U.S.C. 3511 times $376.

(Authority: 38 U.S.C. 3512(f), 3698)

* * * * *

(6) An eligible spouse or surviving spouse may receive more than one loan covering separate loan periods, subject to paragraphs (b)(3) and (b)(7) of this section.

* * * * *

59. In § 21.4504, paragraph (d) is amended by removing "veteran or other eligible person" each place it appears, and adding, in its place, "spouse or surviving spouse" and by removing "veteran's or eligible person's" and adding, in its place, "eligible spouse's or surviving spouse's"; paragraph (e) is amended by removing "veteran or eligible person" and adding, in its place, "spouse or surviving spouse"; paragraph (f) is amended by removing "veteran or eligible person" each place it appears, and adding, in its place, "spouse or surviving spouse"; paragraph (g) is amended by removing "A veteran or eligible person" and adding, in its place, "An eligible spouse or surviving spouse"; and paragraph (a) introductory text and paragraph (a)(3)(ii) are revised to read as follows:

§ 21.4504 *Promissory note.*

(a) *General.* The agreement by VA to loan money pursuant to 38 U.S.C. 3512(f) and 3698 to any eligible spouse or surviving spouse shall be in the form of a promissory note which shall include:

* * * * *

(3) * * *

(ii) For loans of less than $600, 1 year and 7 months after such date for the first $50 of the loan plus 1 additional month for each additional $5 of the loan.

* * * * *

§ 21.4505 [Amended]

60. In § 21.4505, paragraph (a) is amended by removing "veteran or eligible person" each place it appears, and adding, in its place, "eligible spouse or surviving spouse"; paragraph (b)(1) is amended by removing "veteran or eligible person" and adding, in its place, "eligible spouse or surviving spouse"; paragraph (b)(2) introductory text is amended by removing "veterans and other eligible persons", and adding, in its place, "spouses or surviving spouses"; and the authority citation following paragraph (b) is amended by removing "3698" and adding, in its place, "3512(f), 3698".

§ 21.4507 [Amended]

61. In § 21.4507, paragraph (a) is amended by removing "persons" and adding, in its place, "spouses and surviving spouses"; paragraph (b) is amended by removing "veterans and other eligible persons" and adding, in its place, "spouses and surviving spouses"; and the authority citation is amended by removing "3696" and adding, in its place, "3512(f), 3696".

Subpart F–2—[Removed]

62. Subpart F–2 is removed.

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

63. The authority citation for subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

64. The heading for subpart K is revised to read as set forth above.

65. In § 21.7000, paragraph (b) is revised to read as follows:

§ 21.7000 Establishment of educational assistance program.

* * * * *

(b) *Purpose.* The purpose of this program is as stated in 38 U.S.C. 3001.

(Authority: 38 U.S.C. 3001)

66. In § 21.7044, the section heading and paragraphs (a)(1) and (b)(1) are revised to read as follows:

§ 21.7044 Persons with eligibility under 38 U.S.C. chapter 34.

* * * * *

(a) *Eligibility based solely on active duty.* * * *

(1) The individual must have met the requirements of 38 U.S.C. chapter 34, as in effect on December 31, 1989, establishing eligibility for educational assistance allowance under that chapter;

* * * * *

(b) *Eligibility based on combined active duty service and service in the Selected Reserve.* * * *

(1) The individual must have met the requirements of 38 U.S.C. chapter 34, as in effect on December 31, 1989, establishing eligibility for educational assistance allowance under that chapter;

* * * * *

§ 21.7135 [Amended]

67. In § 21.7135, paragraph (f)(3) is amended by removing "21.7140(b) of this part" and adding, in its place, "21.7140(d)"; paragraph (i) is amended by removing "of this part" wherever it appears; paragraphs (j)(1), (k)(1), (n), and (o) are amended by removing "of this part"; paragraph (p) is amended by removing "of this part" each place it appears; paragraph (r) is amended by removing "of this part" each place it appears; and paragraph (t) is amended by removing "of this part".

§ 21.7140 [Amended]

68. In § 21.7140, paragraph (c)(1)(i) is amended by removing "of this part"; paragraph (c)(2) introductory text is amended by removing "after-" and adding, in its place, "after—"; paragraph (c)(2)(i) is amended by removing "of this part"; paragraph (c)(2)(ii) is amended by removing "worked" and adding, in its place, "worked."; paragraph (d)(1) is amended by removing "of this part" wherever it appears; paragraphs (d)(2)(i) and (d)(2)(ii) are amended by removing "Vocational Rehabilitation and" wherever it appears; and paragraph (e)(2) is amended by removing "of this part".

69. Section 21.7141 is revised to read as follows:

§ 21.7141 Tutorial assistance.

An individual who is otherwise eligible to receive benefits under the Montgomery GI Bill - Active Duty may receive supplemental monetary assistance to provide tutorial services. In determining whether VA will pay the individual this assistance, VA will apply the provisions of § 21.4236.

(Authority: 38 U.S.C. 3019, 3492)

§ 21.7145 [Removed]

70. Section 21.7145 is removed.

§ 21.7154 [Amended]

71. In § 21.7154, paragraph (b) is removed, and paragraph (c) is redesignated as paragraph (b).

§ 21.7158 [Amended]

72. In § 21.7158, paragraph (b)(1) is amended by removing "21.744(b)" and adding, in its place, "21.7144(b)".

[FR Doc. 96–12548 Filed 5–23–96; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300412A; FRL–5359–4]

RIN 2070–AB78

Oxo-Alkyl Acetates; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document exempts from the requirements of a tolerance residues of a group of chemicals known as oxo-alkyl acetates [oxo-hexyl acetate (CAS Reg. No. 88230–35–7), oxo-heptyl acetate (CAS Reg. No. 90438–79–2), oxo-octyl acetate (CAS Reg. No. 108419–32–5), oxo-nonyl acetate (CAS Reg. No.108419–34–7), oxo-decyl acetate (CAS Reg. No. 108419–33–6), and oxo-tridecyl acetate (CAS Reg. No. 108419–35–8)] when used as a solvent in pesticide formulations. This regulation was requested by Exxon Chemical Co., Performance Products Group.

EFFECTIVE DATE: May 24, 1996.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP–300412A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300412A]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Amelia M. Acierto, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 2800 Crystal Drive, North Tower, Arlington, VA, 703–308–8375; e-mail: acierto.amelia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 14, 1996 (61 FR 5728), Exxon Chemical Co., Performance Products Group, Linden, NJ 07036, submitted pesticide petition (PP) 3E04267 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for oxo-alkyl acetates [oxo-hexyl acetate (CAS Reg. No. 88230–35–7), oxo-heptyl acetate (CAS Reg. No. 90438–79–2), oxo-octyl acetate (CAS Reg. No. 108419–32–5), oxo-nonyl acetate (CAS Reg. No. 108419–34–7), oxo-decyl acetate (CAS Reg. No. 108419–33–6), and oxo-tridecyl acetate (CAS Reg. No. 108419–35–8)] when used as solvents in pesticide formulations applied to growing crops only.

There were no comments received in response to the proposed rule.

Based upon an evaluation of the toxicological data which shows no evidence of mutagenicity (Ames Test), and no significant acute and subchronic or developmental toxicity of the branched alkyl acetates in this molecular weight range (C_8-C_{13} alkyl acetates), the Agency concludes that this chemical poses no significant risks under the conditions of use and that no further data are required.

Based upon the toxicological data evaluated, the physico-chemical properties of oxo-alkyl acetates and information regarding their use, the Agency has found that, when used in accordance with good agricultural practice, these ingredients are useful and a tolerance is not necessary to protect the public health. Therefore, EPA is exempting oxo-alkyl acetates from the requirement of a tolerance as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions

of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

EPA has established a record for this rulemaking under docket number [OPP–300401A] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

The Office of Management and Budget has exempted this proposed rule from the requirements of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: May 10, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:
Authority: 21 U.S.C. 346a and 371.

2. In § 180.1001(d) the table is amended by adding alphabetically the following inert ingredients, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
. . .	. . . .	
Oxo-decyl acetate (CAS reg. No. 108419–33–6)		Solvent
Oxo-heptyl acetate (CAS Reg. No. 90438–79–2)		Solvent
Oxo-hexyl acetate (CAS Reg. No. 88230–35–7)		Solvent
Oxo-nonyl acetate (CAS Reg. No. 108419–34–7)		Solvent
Oxo-octyl acetate (CAS Reg. No. 108419–32–5)		Solvent
Oxo-tridecyl acetate (CAS Reg. No. 108419–35–8)		Solvent
. . .	. . . .	

[FR Doc. 96–13019 Filed 5–23–96; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300405A; FRL–4996–1]

RIN 2070–AB78

Maleic Hydrazide, Oryzalin, Hexazinone, Streptomycin; Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a final tolerance rule for maleic hydrazide, oryzalin, hexazinone, and streptomycin. EPA has completed the reregistration process and issued a Reregistration Eligibility Decision (RED). In the reregistration process, all information to support a pesticide's continued registration is reviewed for adequacy and, when needed, supplemented with new scientific studies. Based on the RED tolerance assessments for the pesticide chemicals subject to this rule, EPA is revoking various tolerances for maleic hydrazide, oryzalin, and hexazinone. This rule also deletes as surplusage the term "negligible" from a regulation on streptomycin.

EFFECTIVE DATES: This regulations is effective June 24, 1996.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP–300405A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington , DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electronic mail (e-mail) to:opp-docket@epamail.epa.gov.

Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP–300405A] . No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Jeff Morris, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location: Special Review Branch, Crystal Station #1, 3rd Floor, 2800 Crystal Drive, Arlington, VA 22202. Telephone: (703)–308–8029; e-mail: morris.jeffrey@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 6, 1995 (60 FR 62361), EPA issued a proposed rule that gave notice that EPA intended to revoke various tolerances for maleic hydrazide, oryzalin, and hexazinone. EPA also proposed to delete as surplusage the term "negligible" from a regulation on streptomycin.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted with the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances are not needed to protect the public health. Therefore, the tolerances are being removed as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

EPA has established a record for this rulemaking under docket number [OPP–300405A] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

This final rule contains no Federal mandates under Title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, for State, local, or tribal governments or the private sector, because it would not impose enforceable duties on them.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: May 14, 1996.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.175 [Amended]

2. In § 180.175 *Maleic hydrazide; tolerances for residues*; by removing and reserving paragraph (b).

§ 180.245 [Amended]

3. By amending § 180.245 *Streptomycin; tolerances for residues*; by removing the term "negligible" from the text.

§ 180.304 [Amended]

4. In § 180.304 *Oryzalin; tolerances for residues*; by amending paragraph (a) in the table therein by removing the entries for "cottonseed," "grain, barley," "grain, wheat," "peas (succulent)," "potatoes," and "soybeans."

§ 180.396 [Amended]

5. In § 180.396 *Hexazinone; tolerances for residues*; by amending paragraph (a) in the table therein by removing the entries for "eggs," "poultry, fat," "poultry, mbyp," "poultry, meat," "pineapple, fodder," and "pineapple, forage."

[FR Doc. 96–13021 Filed 5–23–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[WT Docket No. 94–153; FCC 96–202]

Vessel Traffic Services (VTS)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has added Prince William Sound to the United States Coast Guard (Coast Guard) designated radio protection areas for mandatory VTS and establish marine VHF Channel 11 as the VTS frequency for Prince William Sound. This action is in response to a request from the Coast Guard. The designation of Prince William Sound as a VTS area will allow the Coast Guard to manage vessel traffic in a more efficient manner.

EFFECTIVE DATE: June 24, 1996.

FOR FURTHER INFORMATION CONTACT: James Shaffer, (202) 418–0680, Private Radio Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 96–202, adopted May 2, 1996, and released May 9, 1996. The full text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, Suite 140, Washington, D.C. 20037, telephone (202) 857–3800.

Summary of Report and Order

1. The Coast Guard filed a petition (RM–8199), Public Notice No. 1932, requesting that the Commission amend Part 80 of the Rules, 47 CFR Part 80, to add Prince William Sound to the Coast Guard designated radio protection areas for mandatory VTS and establish marine VHF Channel 11 (156.550 MHz) as the VTS frequency for Prince William Sound.

2. As a result of the Oil Pollution Act of 1990, Public Law 101–380, 104 Stat. 484, the Coast Guard plans to implement a mandatory Automated Dependent Surveillance (ADS) system for cargo ships, *e.g.* oil tankers, that operate in Prince William Sound. The ADS will operate as part of the proposed VTS system and is scheduled to begin operation in July 1994. An ADS system works as follows: the vessel determines its position using a highly accurate differential GPS receiver and automatically transmits its position, identification and the time of the position to the Coast Guard using digital selective calling (DSC) techniques on VHF marine Channel 70 (156.525 MHz). The Coast Guard needs Channel 11 to supplement Channel 70 ADS use and for voice VTS communications in support of vessel traffic control operations.

3. Designating Prince William Sound as a VTS area will allow the Coast Guard to manage vessel traffic in that area more efficiently and protect the marine environment by preventing vessel collisions and groundings. Therefore, we are adding Prince William Sound to the Commission's list of designated radio protection areas for VTS systems specified in Section 80.383. The radio protection area will be defined as "The rectangle between North latitudes 61 degrees 17 minutes and 59 degrees 22 minutes and West longitudes 149 degrees 39 minutes and 145 degrees 36 minutes."

4. Additionally, we will permit private coast stations currently authorized to operate on Channel 11 within the Prince William Sound VTS area to continue operation until the end of their current license terms on a noninterference basis. The staff will help affected licensees find suitable alternative channels. No fee will be charged for affected stations that apply for modification for an alternative channel before their next renewals.

List of Subjects in 47 CFR Part 80

Communications equipment, Marine safety.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rules Changes

Title 47 of the Code of Federal Regulations, Part 80, is amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.383 is amended by revising the entry for 156.550 MHz in the table in paragraph (a), removing the final word "and" in paragraph (b)(4), removing the final "." and adding in its place "; and" in paragraph (b)(5), and adding a new paragraph (b)(6) to read as follows:

§ 80.383 Vessel Traffic Services (VTS) system frequencies.

* * * * *

(a) * * *

VESSEL TRAFFIC CONTROL FREQUENCIES

Carrier frequencies (MHz)	Geographic areas
. . . . .	. . . . .
156.550	New York, New Orleans,[1] Houston, Prince William Sound.[3]
. . . . .	. . . . .

[1] Until further notice, this frequency is available for use as permitted by § 80.373(f), notwithstanding the provisions of footnote 3, that are applicable to the VTS system. Availability is a result of the closure of the VTS system for the port area of New Orleans. If the United States Coast Guard re-establishes this system, the Commission may require operations pursuant to such conditional licenses for this frequency to cease, or may choose not to renew such conditional licenses. All licenses for this frequency will be expressly conditioned upon the continued availability of the frequency for non-VTS use.

* * * * *

[3] Private coast station licenses for the use of this frequency in this area will expire at the end of the current license term or five years after the adopted date of the final rule, whichever comes first. Continued use until expiration must be on a noninterference basis to Coast Guard VTS communications.

(b) * * *

(6) *Prince William Sound.* The rectangle between North latitudes 61 degrees 17 minutes and 59 degrees 22 minutes and West longitudes 149 degrees 39 minutes and 145 degrees 36 minutes.

* * * * *

[FR Doc. 96–13100 Filed 5–23–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192, 193, and 195

[Docket No. PS–143]

RIN 2137–AC74

Periodic Updates to the Pipeline Safety Regulations

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule updates the references to voluntary specifications and standards to reflect more recently published editions of each document. This final rule enables pipeline operators to utilize current technology, materials, and practices, thereby reducing costs and enhancing economic growth. In addition, this final rule eliminates the requirements for odorization of hydrogen in transmission lines in instances where the hydrogen is intended for use as a feedstock in a manufacturing process. This eliminates a requirement that is costly, but not needed for safety. This final rule is consistent with the President's goals of regulatory reinvention and improvement of customer service.

EFFECTIVE DATE: June 24, 1996.

FOR FURTHER INFORMATION CONTACT: Eben M. Wyman, (202) 366–0918, regarding the subject matter of this Notice; or the Dockets Unit, (202) 366–4453, for copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

In a March 1995 memorandum, President Clinton directed Federal regulatory agencies to, among other things, conduct a page-by-page review of all agency regulations, cutting or revising those that were obsolete, intrusive, or better handled by parties other than the Federal government (i.e., private business, State, or local government).

In response to the President's directive, RSPA issued a Notice of Proposed Rulemaking (NPRM) in this docket on March 4, 1996 (61 FR 8213). The NPRM proposed updating the references to voluntary specifications and standards and proposed elimination of the requirement to odorize hydrogen transmission pipelines.

Eight parties submitted written comments on the NPRM.

Commenters consisted of seven pipeline operators, two of which are hydrogen pipeline operators, and a standard setting organization. Comments were generally supportive of RSPA's efforts, although some commenters made additional suggestions.

Incorporation by Reference

RSPA is adopting the proposal to incorporate by reference all or portions of over 40 different documents containing practices, codes, standards, and specifications developed and published by technical organizations, including the American Petroleum Institute, American Gas Association, American Society of Mechanical Engineers, American Society of Civil Engineers, American Concrete Institute, American Society for Testing and Materials, International Conference of Building Officials, Manufacturers Standardization Society of the Valve and Fittings Industry, and National Fire Protection Association. Many editions previously referenced in 49 CFR Parts 192, 193, and 195 are out of print or obsolete. Later published editions of these documents focus on up-to-date technology. Pipeline operators could be unnecessarily burdened with design and construction requirements that are referred to in earlier editions.

To avoid these burdens and allow operators to benefit from technological improvements in materials and methods, this final rule updates those references for which the latest editions have been reviewed and accepted by OPS.

All six commenters on the proposed updates of the voluntary consensus standards were supportive of the initiative. However, one commenter suggested that the regulatory language in Section 192.63 should not make reference to the year of the latest edition of the standard in order to maintain consistency throughout the regulations. RSPA sees merit in this comment, and therefore has revised the final rule to cite the standard without reference to the year of the latest edition.

One commenter suggested that RSPA eliminate the use of specific editions and dates for the referenced standards and refer instead to "the latest edition" of each standard. This commenter believed that in some cases operators are burdened with unnecessary delays and additional costs to obtain pipe or components manufactured to an out-of-date standard.

RSPA will not adopt this proposal to revise the pipeline safety regulations to permanently reference "the latest edition" of the incorporated consensus standards. Before adopting any updated consensus standard RSPA first reviews the standard to determine whether it should be incorporated by reference into the regulations. RSPA then proposes to accept the document(s) through a **Federal Register** Notice, providing the public with an opportunity to comment on the proposal. It would be inconsistent with the Administrative Procedure Act for RSPA to announce that the latest editions of these documents will be accepted without RSPA review or opportunity for public comment.

Three commenters suggested that RSPA review the standards at least annually. RSPA understands the benefits to operators of periodically updating the referenced standards. RSPA will try to revise them annually, as this will lessen burdens on pipeline operators.

Requirement to Odorize Hydrogen Transmission Pipelines

In support of the President's goal to eliminate obsolete and unnecessary regulations, this final rule adopts the proposal to amend 49 CFR 192.625 to eliminate the odorization requirement for hydrogen transmission lines in cases where its intended use is as a feedstock in a manufacturing process. Hydrogen pipelines that were operating without an odorant before May 5, 1975, were

already exempt from the odorization requirement.

When used as an industrial feedstock, the hazard from hydrogen pipeline leaks is minimal. Hydrogen is much less dense than air and thus tends to dissipate rapidly. In addition, hydrogen has relatively low energy content for a given volume compared to natural gas. The ignition energy of hydrogen is so low that even static electricity can ignite the gas, making a build-up of gas to dangerous levels unlikely.

Moreover, the costs of deodorization are substantial. Odorization renders hydrogen unfit for most of its industrial uses, as it can reduce the reactivity of catalysts, make the end product unfit for the purpose for which it is intended, or reduce the percentage completion of a chemical reaction. This means that the odorant needs to be removed, an expensive process, prior to its use in manufacture.

Three commenters discussed RSPA's proposal to eliminate the requirements for odorization of hydrogen transmission pipelines. All comments were in full support of this initiative, and one commenter noted that the revised language in Section 192.625 is consistent with the President's goals of RRI, as it "will serve to effectively eliminate a regulatory requirement that is both unnecessary and economically burdensome on industry."

Advisory Committees.

The Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) have been established by statute to evaluate proposed pipeline safety regulations. The committees are required to report on the technical feasibility, reasonableness, and practicability of the proposals.

The NPRM was sent by mail to the committees for consideration. The proposal was unanimously accepted by 11 members of the THLPSSC. The comments of the TPSSC supported the proposal and generally were consistent with written comments filed by other commenters discussed above. Written comments of the TPSSC were similar, but a few members requested further information regarding the hydrogen transmission pipelines that would no longer be subject to the odorization requirement. A TPSSC member asked where these lines are located, and whether they would be tested or surveyed more extensively than other pipelines that are required to use odorant.

The bulk of hydrogen transmission pipelines are operated by two companies and are located primarily in Texas and Louisiana. For the reasons discussed earlier in this final rule, relieving operators of hydrogen pipelines from the odorization requirement will not sacrifice safety and thus no additional testing or monitoring is needed.

Because only 6 members of the TPSSC responded to the mail ballot, the TPSSC considered the proposal at its May 7, 1996 meeting. All twelve TPSSC members present voted in favor of the proposal.

Corrections

In the NPRM, RSPA provided an incorrect address for the American Society for Testing and Materials (ASTM). The correct town is "West Conshohocken, PA, " not "Conshohocken, PA," as noted in the NPRM. Thus, the correct address for ASTM is 100 Barr Harbor Drive, West Conshohocken, PA, 19428. The NPRM also incorrectly named the latest edition of NFPA–59A as the 1994 edition. The latest edition is the 1996 edition. This information is incorporated in the final rule where appropriate. Finally, Section 192.189 is corrected to reflect the appropriate nomenclature of ANSI/NFPA 70 as the "National Electrical Code," not "National Electric Code" as named in the NPRM.

Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget (OMB). The final rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Executive Order 12612

The final rule has been analyzed with the principles and criteria in Executive Order 12612 ("Federalism"), and does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

Regulatory Flexibility Act

Based on the facts available, I certify that this final rule will not, have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

There are no new information collection requirements in this final rule.

List of Subjects

49 CFR Part 192

Incorporation by reference, Natural gas, Pipeline Safety.

49 CFR Part 193

Incorporation by reference, Liquefied natural gas (LNG), Pipeline safety.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Incorporation by reference, Petroleum, Pipeline safety.

In consideration of the foregoing, RSPA to amends 49 CFR Parts 192, 193, and 195 as follows:

PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60118; 49 CFR 1.53

2. Paragraph (a)(1) of section 192.63 is revised to read as follows:

§ 192.63 Marking of materials.

(a) * * *

(1) As prescribed in the specification or standard to which it was manufactured, except that thermoplastic fitting must be marked in accordance with ASTM D 2513; or

* * * * *

3. Paragraph (c) of section 192.189 is revised to read as follows:

§ 192.189 Vaults: Drainage and waterproofing.

* * * * *

(c) Electrical equipment in vaults must conform to the applicable requirements of Class 1, Group D, of the National Electrical Code, ANSI/NFPA 70.

4. Section 192.625 is amended by revising paragraphs (b)(2)(iv)(C) and (b)(3) and by adding paragraph (b)(4) to read as follows:

§ 192.625 Odorization of gas.

* * * * *

(b) * * *

(2) * * *

(iv) * * *

(C) Reduces the percentage completion of a chemical reaction;

(3) In the case of a lateral line which transports gas to a distribution center, at least 50 percent of the length of that line is in a Class 1 or Class 2 location; or

(4) The combustible gas is hydrogen intended for use as a feedstock in a manufacturing process.

* * * * *

5. Appendix A of Part 192 is amended by revising paragraphs *I.* D, *II.* A (1), (3) and (4), II. B, *II.* C (3)–(6), and II. E to read as follows:

Appendix A to Part 192—Incorporated by Reference

I. List of organizations and addresses.

* * * * *

D. American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428.

* * * * *

II. Documents incorporated by reference. (Numbers in parentheses indicate applicable editions.)

A. * * *

(1) API Specification 5L "Specification for Line Pipe (41st edition, 1995).

* * * * *

(3) API Specification 6D "Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves)" (21st edition, 1994).

(4) API Standard 1104 "Welding of Pipelines and Related Facilities" (18th edition, 1994).

B. American Society for Testing and Materials (ASTM):

(1) ASTM Designation: A53 "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless" (A53–95a).

(2) ASTM Designation A 106 "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service" (A 106- 94a).

(3) ASTM Designation: A 333/A 333M "Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service" (A 333/A 333M–94).

(4) ASTM Designation: A 372/A 372M "Standard Specification for Carbon and Alloy Steel Forgings for Thin-Walled Pressure Vessels" (A 372/A 372M–95).

(5) ASTM Designation: A 381 "Standard Specification for Metal-Arc-Welded Steel Pipe for Use With High-Pressure Transmission Systems— (A 381–93).

(6) ASTM Designation: A 671 "Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures" (A 671–94).

(7) ASTM Designation: A 672 "Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures" (A 672–94).

(8) ASTM Designation A 691 "Standard Specification for Carbon and Alloy Steel Pipe, Electric-Fusion-Welded for High-Pressure Service at High Temperatures" (A 691–93).

(9) ASTM Designation D 638 "Standard Test Method for Tensile Properties of Plastics" (D 638–95).

(10) ASTM Designation D 2513 "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing and Fittings" (D 2513–87 edition for § 192.63(a)(1), otherwise D2513–95c).

(11) ASTM Designation D 2517 "Standard Specification for Reinforced Epoxy Resin Gas Pressure Pipe and Fittings" (D 2517–94).

C. * * *

(3) ASME Boiler and Pressure Vessel Code, Section I "Power Boilers" (1995 edition with 1995 Addenda).

(4) ASME Boiler and Pressure Vessel Code, Section VIII, Division 1 "Pressure Vessels" (1995 edition with 1995 Addenda).

(5) ASME Boiler and Pressure Vessel Code, Section VIII, Division 2 "Pressure Vessels: Alternative Rules" (1995 edition with 1995 Addenda).

(6) ASME Boiler and Pressure Vessel Code, Section IX "Welding and Brazing Qualifications" (1995 edition with 1995 Addenda).

* * * * *

E. National Fire Protection Association (NFPA):

(1) ANSI/NFPA 30 "Flammable and Combustible Liquids Code" (1993).

(2) ANSI/NFPA 58 "Standard for the Storage and Handling of Liquefied Petroleum Gases" (1995).

(3) ANSI/NFPA 59 "Standard for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants" (1995).

(4) ANSI/NFPA 70 "National Electrical Code" (1996).

PART 193—[AMENDED]

1. The authority citation for Part 193 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60103, 60104, 60108, 60109, 60110, 60113, 60118; 49 CFR 1.53

2. Appendix A to Part 193 is amended by revising paragraphs *II.* C, *II* D (1) and (3), *II.* E, *II.* F, and *II.* G, to read as follows:

Appendix A to Part 193—Incorporation by Reference

* * * * *

II. Documents Incorporated by Reference. (Numbers in Parentheses Indicate Applicable Editions.)

* * * * *

C. American Society of Civil Engineers (ASCE):

1. ASCE 7–95 "Minimum Design Loads for Buildings and Other Structures" (1995)

D. * * *

1. API Specification 6D "Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves)" (21st edition, 1994).

2. * * *

3. API Standard 1104 "Welding of Pipelines and Related Facilities" (18th edition, 1994).

E. American Society of Mechanical Engineers (ASME):

1. ASME/ANSI B31.3 "Chemical Plant and Petroleum Refinery Piping" (1993 edition with ASME/ANSI B31.3a–1993, B31.b–1994 and B31.c–1995 Addenda).

2. ASME/ANSI B31.5 "Refrigeration Piping" (1992 edition with ASME B31.5a–1994 Addenda).

3. ASME/ANSI B31.8 "Gas Transmission and Distribution Piping Systems" (1995).

4. ASME Boiler and Pressure Vessel Code, Section I "Power Boilers" (1995 edition with 1995 Addenda).

5. ASME Boiler and Pressure Vessel Code, Section IV, "Heating Boilers" (1995 edition with 1995 Addenda).

6. ASME Boiler and Pressure Vessel Code, Section VIII, Division 1 "Pressure Vessels" (1995 edition with 1995 Addenda).

7. ASME Boiler and Pressure Vessel Code, Section VIII, Division 2, "Pressure Vessels: Alternative Rules" (1995 edition with 1995 Addenda).

8. ASME Boiler and Pressure Vessel Code, Section IX, "Welding and Brazing Qualifications" (1995 edition with 1995 Addenda).

F. International Conference of Building Officials (ICBU):

1. "Uniform Building Code" (UBC) (1994).

G. National Fire Protection Association (NFPA):

1. ANSI/NFPA 30 "Flammable and Combustible Liquids Code" (1993)

2. ANSI/NFPA 37 "Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines" (1994).

3. ANSI/NFPA 51B "Standard for Fire Prevention in Use of Cutting and Welding Processes" (1994).

4. ANSI/NFPA 59A "Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)" (1972 edition for § 193.2005(c), otherwise 1996 edition).

5. ANSI/NFPA 70 "National Electrical Code" (1996).

* * * * *

PART 195—[AMENDED]

1. The authority citation for Part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; 49 CFR 1.53.

2. Section 195.3 is amended by revising paragraph (b)(6) and paragraphs (c) introductory text and (c) (2) through (5) to read as follows:

195.3 Matter incorporated by reference.

* * * * *

(b) * * *

(6) American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Conshohocken, PA 19428.

* * * * *

(c) The full title for the publications incorporated by reference in this part are as follows. Numbers in parentheses indicate applicable editions:

* * * * *

(2) American Petroleum Institute (API):

(i) API Specification 5L "Specification for Line Pipe" (41st edition, 1995).

(ii) API Specification 6D "Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves)" (21st Edition, 1994).

(iii) API Specification 1104 "Welding of Pipelines and Related Facilities" (18th edition, 1994).

(3) American Society of Mechanical Engineers (ASME):

(i) ASME/ANSI B16.9 "Factory-Made Wrought Steel Buttwelding Fittings" (1993).

(ii) ASME/ANSI B31.4 "Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols" (1992 edition with ASME B31.4a–1994 Addenda).

(iii) ASME/ANSI B31.8 "Gas Transmission and Distribution Piping Systems" (1995)

(iv) ASME/ANSI B31G "Manual for Determining the Remaining Strength of Corroded Pipelines" (1991).

(v) ASME Boiler and Pressure Vessel Code, Section VIII, Division 1 "Pressure Vessels" (1995 edition with 1995 Addenda).

(vi) ASME Boiler and Pressure Vessel Code, Section IX "Welding and Brazing Qualifications" (1995 edition with 1995 Addenda).

(4) Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS):

(i) MSS SP–75 "Specification for High Test Wrought Butt Welding Fittings" (1993).

(ii) [Reserved]

(5) American Society for Testing and Materials (ASTM):

(i) ASTM Designation: A 53 "Standard specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless" (A 53–95a).

(ii) ASTM Designation: A 106 "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service" (A 106–94a).

(iii) ASTM Designation: A 333/A 333M "Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service"(A 333/A 333M–94).

(iv) ASTM Designation: A 381 "Standard Specification for Metal-Arc-Welded Steel Pipe for Use With High-Pressure Transmission Systems" (A 381–93).

(v) ASTM Designation: A 671 "Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures" (A 671–94).

(vi) ASTM Designation: A 672 "Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures" (A 672–94).

(vii) ASTM Designation: A 691 "Standard Specification for Carbon and Alloy Steel Pipe Electric-Fusion-Welded for High- Pressure Service at High Temperatures" (A 691–93).

Issued in Washington, DC on May 16, 1996.

Rose A. McMurray,

Acting Deputy Administrator.

[FR Doc. 96–12843 Filed 5–23–96; 8:45 am]

BILLING CODE 4910–60–P

Federal Railroad Administration

49 CFR Part 212

[FRA Docket No. RSSP–3, Notice No. 5]

RIN AB08

State Safety Participation Regulations; Federal Regulatory Reform

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: In connection with the President's Regulatory Reform Initiative, the FRA has reviewed all of its existing regulations. This review identified a portion of the regulation governing state participation in the Federal Rail Safety Program that can be removed. FRA expects that this final rule will reduce the administrative burden to government and industry, reduce government printing costs, and provide a more concise and useful Title 49, Code of Federal Regulations.

EFFECTIVE DATE: The rule becomes effective June 24, 1996.

FOR FURTHER INFORMATION CONTACT: Cynthia Walters, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–0621 or Mike Calhoun, Transportation Safety Program Specialist, Region 5 Hurst Regional Office, FRA, 8701 Bedford-Euless Rd. Suite 425, Hurst, TX 76053, (817) 284–8142.

SUPPLEMENTARY INFORMATION: On March 4, 1995, the President issued a memorandum directing the heads of federal departments and agencies to conduct a page-by-page review of all agency regulations now in force and eliminate or revise those that are outdated or otherwise in need of reform. FRA has conducted a page-by-page review of all of its regulations and identified the following portion of FRA's state participation regulation, 49 CFR Part 212, Subpart D—Grants in Aid, and corresponding appendices for removal:

FRA's Grants-in-Aid Program, 49 CFR Part 212, Subpart D, was established as part of the State Participation program by the Federal Railroad Safety Act of 1970. The State Participation Program allows states to conduct investigative and surveillance activities to enforce federal railroad safety regulations in conjunction with federal inspection efforts. The Grants in Aid program was intended to provide a transition to a uniform pattern of rail safety regulation and to provide a continuing state role in rail safety regulation. As originally conceived, the program allowed participating states to obtain federal reimbursement of up to 50 percent of a state's allowable cost.

Once the goal of uniform rail safety regulation was realized, Congress elected to eliminate funding. Specifically, FRA's federal funding share of the program declined from the maximum of 50 percent in fiscal year 1985 to 39 percent in fiscal year 1986, 24 percent in fiscal year 1987, and 16 percent in fiscal year 1988, due to dwindling federal resources. There has been no federal funding available for the Grants-in-Aid program, since fiscal year 1989. Despite the lack of federal funds for the program, the State Participation has actually grown. In 1989, there were 110 participating state inspectors and currently there are 137 state inspectors participating in the program. In general, states have continued to participate as active partners in the program.

Appendices A, B, and C are being removed, as well, because they were previously used to determine the levels of inspection effort and reimbursement for Track Safety Standards, Freight Car Safety Standards, and Operating Practices respectively.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies

This final rule has been evaluated in accordance with existing regulatory policies. The regulatory document is considered to be a nonsignificant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. This rulemaking has been reviewed under DOT Regulatory Policies and Procedures [44 FR 11034, February 26, 1979] and found to be a nonsignificant rule.

In its regulatory analysis, FRA has determined that this rulemaking presents no substantive issue which it could reasonably expect would produce meaningful public comment since it is merely removing, pursuant to Presidential directive, obsolete regulations, retention of which could serve no useful purpose. Accordingly, pursuant to 5 U.S.C. 553(c) and (d), the Administrative Procedure Act, FRA finds good cause exists to publish this as a final rule without opportunity for public comment.

Federalism

FRA has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. In reviewing the economic impact of the rule, FRA concluded that it will not have any measurable impact on small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations. Therefore, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

Paperwork Reduction Act

This rulemaking contains no reporting requirements that are subject to OMB approval under 5 CFR Part 1320, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

Environmental Assessment

This final rule meets the criteria that establish this as a non-major action for environmental purposes.

List of Subjects in 49 CFR Part 212

Railroad safety, State participation—Grants in aid and corresponding appendices.

Accordingly, for the reasons set forth above, and under the authority of 49 U.S.C. 20103, 20105, 20106, and 20113 (formerly secs. 202, 205, 206, and 208, of the Federal Railroad Safety Act of 1970, and amended (45 U.S.C. 431, 434, 435, and 436); and 49 CFR 1.49, FRA is taking the following action:

PART 212—[AMENDED]

Part 212, is amended by deleting § 212.301 Grant authority; § 212.303 Annual funding process; § 212.305 Reports; § 212.307 Maximum reimbursement levels; and Appendices A, B, and C in their entirety.

Issued in Washington, D.C. on May 16, 1996.

Jolene M. Molitoris,

Administrator, Federal Railroad Administration.

[FR Doc. 96–13047 Filed 5–23–96; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 960126016–6121–04; I.D. 051796A]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Cape Arago, OR, to Oregon-California Border

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment.

SUMMARY: NMFS announces that the commercial salmon fishery in the area from Cape Arago, OR, to the Oregon-California border was opened 7 days a week effective midnight, May 18, 1996. This adjustment is intended to provide additional fishing opportunity to commercial fishermen.

DATES: Effective 2400 hours local time, May 18, 1996, through 2400 hours local time, June 30, 1996. Comments will be accepted through June 7, 1996.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700–Bldg. 1, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the Director, Northwest Region, NMFS (Regional Director).

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206–526–6140.

SUPPLEMENTARY INFORMATION: In the annual management measures for ocean salmon fisheries (61 FR 20175, May 6, 1996), NMFS announced that the 1996 commercial fishery in the area between Cape Arago, OR, and the Oregon-California border would open on May 1 and fishing would follow a cycle of 4 days open and 3 days closed. The fishery would close the earlier of June 30 or attainment of the 5,300–chinook salmon quota. The open/closure cycle could be modified inseason as necessary to manage the fishery.

The best available information on May 15 indicated that the commercial catch and effort rates were low during the first two open periods (May 1–4 and May 8–11), with catches totaling less than 200 chinook salmon. The preseason objective for the open/closure cycle was to monitor catch levels. Opening the fishing season to 7 days per week would provide additional fishing opportunity to commercial fishermen without exceeding the share allocated to the commercial fishery in this area. Modification of the fishing season is authorized by the annual management measures and the regulations at 50 CFR 661.21(b)(1)(i). All other restrictions that apply to this fishery remain in effect as announced in the annual management measures.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the Oregon Department of Fish and Wildlife regarding this adjustment. The State of Oregon will manage the commercial fishery in state waters adjacent to this area of the exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this action was given prior to midnight, May 18, 1996, by telephone hotline number 206–526–6667 or 800–662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. Because of the need for immediate action to provide commercial fishermen with additional fishing opportunity, NMFS has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment.

Classification

This action is authorized by 50 CFR 661.21 and 661.23 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 20, 1996.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Services Division.

[FR Doc. 96–13154 Filed 5–23–96; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 102
Friday, May 24, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–0927]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment proposed revisions to Regulation Z (Truth in Lending). The revisions would implement the Truth in Lending Act Amendments of 1995 (1995 Amendments), which establish new creditor-liability rules for closed-end loans secured by real property or dwellings consummated on or after September 30, 1995. The 1995 Amendments create several tolerances for accuracy in disclosing the amount of the finance charge, and creditors have no civil or administrative liability if the finance charge or affected disclosures are within the applicable tolerances. The amendments also clarify how lenders must disclose certain fees connected with mortgage loans. In addition, the Board is proposing a new rule regarding the treatment of fees charged in connection with debt cancellation agreements, which would be similar to the existing rule regarding credit insurance premiums, and provide for more uniform treatment of these fees.

DATES: Comments must be received on or before June 24, 1996.

ADDRESSES: Comments should refer to Docket No. R–0927, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT: James A. Michaels, Senior Attorney, or Natalie E. Taylor or Michael L. Hentrel, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) only, please contact Dorothea Thompson at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA) (15 U.S.C. 1601 *et seq.*) is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The act requires creditors to disclose credit terms and the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (the APR). The TILA requires additional disclosures for loans secured by a consumer's home and permits consumers to rescind certain transactions that involve their principal dwelling. The act is implemented by the Board's Regulation Z (12 CFR Part 226).

II. Proposed Regulatory Provisions

On September 30, 1995, the Congress enacted the Truth in Lending Act Amendments of 1995 (1995 Amendments), Public Law 104–29, 109 Stat. 271. The 1995 Amendments address the concerns of mortgage lenders stemming from a 1994 court decision, *Rodash* v. *AIB Mortgage Co.*, 16 F.3d 1142 (11th Cir. 1994). In that case, the U.S. Court of Appeals affirmed a district court opinion that allowed a consumer to rescind a mortgage loan and recover all fees and finance charges that had been paid, based in part on errors in the creditor's TILA disclosures. Subsequently, a number of class action lawsuits were filed, involving thousands of mortgage loans, alleging similar violations and seeking the remedy of rescission.

In May 1995, in response to mortgage lenders' concerns about their potential liability for finance charge violations that they viewed as minor, the Congress enacted a temporary moratorium on such litigation. The moratorium expired on October 1, 1995, and has been replaced by the 1995 Amendments, which establish new liability rules for loans consummated both before and after September 30. The Board is proposing regulations only regarding loans made after September 30, 1995.

Remarks by the Congressional sponsors, made after enactment of the amendments, reflect their intent to apply the new rules only to closed-end loans secured by real property or dwellings (including manufactured or mobile homes). 141 Cong. Rec. E1918 (daily ed. Oct. 11, 1995) (Statement of Rep. McCollum and Rep. Gonzalez). The 1995 Amendments contain several provisions, however, stating that they apply to any consumer credit transaction.

Sections 2 and 3 of the 1995 Amendments amend section 106 of the TILA, concerning the determination of the finance charge to clarify how creditors must disclose certain fees connected with mortgage loans. The proposed regulation would incorporate the statutory amendments without substantive change. For the most part, the treatment of these fees under the revised regulation is consistent with existing Board interpretations. The only significant departure from current law concerns mortgage broker fees. Under the revised regulation—as mandated by the statutory amendments—all fees charged by a mortgage broker would be included in the finance charge unless it is the type of fee that would be excluded when it is charged by the creditor. Presently, fees charged by a mortgage broker are only included if the creditor requires the use of the broker or retains any part of the fee.

Section 3 of the 1995 Amendments provides that disclosures regarding per diem interest charges will be considered accurate so long as they are based on information known to the creditor when the disclosures are prepared, even if the actual charges differ by the time disclosures are provided to the consumer. This provision would be incorporated in the regulation without change.

The 1995 Amendments also establish several tolerances for accuracy in disclosing the finance charge in connection with closed-end loans secured by real property or dwellings. Previously, the TILA contained no tolerance for finance charge errors, although Regulation Z contains a de

minimis $10 tolerance that will continue to apply to non-mortgage loans. For mortgage loans, the proposed regulation contains a general $100 tolerance for finance charge disclosures. Three separate finance charge tolerances would apply in determining whether a consumer may rescind a mortgage loan on the grounds that the creditor failed to provide accurate disclosures; the tolerance varies depending on the type of loan, amount of credit extended and whether foreclosure proceedings have been initiated.

Sections 5 and 8 of the 1995 Amendments revise section 125 of the TILA, which allows consumers to rescind certain mortgage loans and requires that they receive notice of their rescission rights. Section 5 clarifies that a creditor will not be liable for the form of notice given to the consumer if the creditor has used the appropriate form published by the Board or a comparable notice. Section 8 establishes special rules that apply when the consumer seeks to rescind the loan after foreclosure proceedings have been initiated. The proposed regulation would incorporate these provisions.

While the 1995 Amendments do not explicitly amend the existing tolerance for the annual percentage rate (APR) disclosures, the proposed regulation would establish additional APR tolerances in mortgage transactions where the disclosed APR results from a finance charge that is understated or overstated but within the tolerance established under the amendments. Accordingly, the APR would be considered accurate if it results from a finance charge that would also be considered accurate, even if the disclosed APR falls outside of the existing TILA tolerance of one-fourth or one-eighth of one percent.

The proposed regulation would also provide an additional tolerance for mortgage transactions, to avoid creditor liability for a disclosed APR that is incorrect but is closer to the actual APR than the APR that would be considered accurate under the new statutory tolerance. The purpose of this tolerance is to reduce or eliminate litigation over disclosure errors that are less serious than the errors allowed under the new finance charge tolerance.

The Board is also proposing amendments to Regulation Z regarding the treatment of fees charged in connection with debt cancellation agreements, which provide similar benefits to credit insurance. Public comment was solicited last fall regarding the treatment of these fees under the existing rules, in connection with proposed changes to the Official Staff Commentary (60 FR 62764, December 7, 1995). The comments, mostly from creditors or their trade associations, expressed concern about the need under the current rule to determine, on a state-by-state basis, whether debt cancellation fees should be treated as insurance premiums. In response to the commenters' concerns, the proposed interpretation was withdrawn based on the belief that the issues raised by the commenters would be better addressed in the context of a regulatory amendment (61 FR 14952, April 4, 1996). The proposed revisions to Regulation Z would provide uniform treatment for the disclosure of debt cancellation fees under the TILA, consistent with the existing rule for credit life, health, and accident insurance.

Finally, the Board is proposing a technical amendment to the definition of "business day." The revision clarifies that for purposes of the Board's rules implementing the Home Ownership and Equity Protection Act of 1994 in Subpart E of Regulation Z, the term "business day" has the same meaning as in the rules regarding rescission.

The Board expects to adopt a final rule in September 1996. Under the 1995 Amendments, the new rule regarding the treatment of mortgage broker fees will become effective on September 30, 1996, or 60 days after the Board issues a final regulation, whichever is earlier. The other provisions of the 1995 Amendments became effective upon their enactment on September 30, 1995, and the Board believes that its proposed changes to Regulation Z do not impose any additional disclosure requirements beyond those already required under the statute. Accordingly, the Board expects the proposed revisions to Regulation Z (other than the provision regarding the treatment of mortgage broker fees) to become effective 30 days after the final regulation is issued.

III. Section-by-Section Analysis

Subpart A—General

Section 226.2—Definitions and Rules of Construction

2(a) Definitions

2(a)(6)

The definition of the term "business day" in paragraph 2(a)(6) would be revised to clarify that for purposes of the rules implementing the Home Ownership and Equity Protection Act of 1994 in Subpart E of Regulation Z, the term "business day" has the same meaning as in the rescission rules in sections 226.15 and 226.23. The proposed revision also updates the list of legal public holidays to include the Birthday of Martin Luther King, Jr.

Section 226.4—Finance Charge

4(a)(1) Charges by Third Parties

Proposed paragraph 4(a)(1) reflects the general rule for third party charges currently contained in comment 4(a)–3 of the Official Staff Commentary.

4(a)(2) Special Rule; Closing Agent Charges

Proposed paragraph 4(a)(2) incorporates the substance of section 2(a) of the 1995 Amendments, which excludes from the finance charge, any fees charged by third-party closing agents provided that the creditor does not require the imposition of the charge or provision of the services, and does not retain any portion of the charge. The amendment is consistent with the existing interpretation in comment 4(a)–4 of the Official Staff Commentary.

4(a)(3) Special Rule; Mortgage Broker Fees

Proposed paragraph 4(a)(3) contains a new rule regarding the treatment of mortgage broker fees, to implement section 106(a)(6) of the TILA (15 U.S.C. § 1605(a)(6)). The rule requires that *all* fees charged by a mortgage broker and paid by the consumer be included in the finance charge, without regard to whether the fee is paid to the broker or to the lender for delivery to the broker. A fee charged by a mortgage broker will be excluded from the finance charge only if it is the type of fee that would also be excluded when it is charged by the creditor. Fees paid by the funding party to a broker as a "yield spread premium," that are already included in the finance charge, either as interest or as points, should not be double counted.

4(b) Example of Finance Charge

4(b)(10) Debt Cancellation Fees

Proposed paragraph 4(b)(10) clarifies that fees charged by creditors in connection with debt cancellation agreements are considered finance charges. The conditions under which voluntary debt cancellation fees may be excluded from the finance charge are set forth in proposed paragraph 4(d)(3).

4(c) Charges Excluded From the Finance Charge

4(c)(7) Real-Estate Related Fees

4(c)(7)(ii)

Paragraph 4(c)(7)(ii) would be revised to implement the amendment to section 106(e)(2) of the TILA (15 U.S.C. 1605(e)(2)). Formerly, the TILA excluded fees for preparation of a "deed, settlement statement, or other

documents" from the finance charge, and the existing regulation clarified that the exclusion applied only to the preparation of "similar documents." The regulation would be revised to reflect the new statutory language, which further clarifies that the documents must be "loan-related." The Board believes that the amendment does not represent a substantive change from the current rule.

4(c)(7)(iii)

Paragraph 4(c)(7)(iii) would be revised by deleting the reference to appraisal fees, which would be addressed separately in revised paragraph 4(c)(7)(iv).

4(c)(7)(iv)

Paragraph 4(c)(7)(iv) would be redesignated as 4(c)(7)(v). Paragraph 4(c)(7)(iv) would be revised consistent with section 106(e)(5) of the TILA (15 U.S.C. 1605(e)(5)), which clarifies that fees related to property inspections conducted prior to closing, in order to check for pest infestation or flood hazards, may be excluded from the finance charge. The proposed revision is consistent with comment 4(c)(7)–3 of the Official Staff Commentary, which states that excluded fees are those charged solely in connection with the initial decision to extend credit. The exclusion does not apply to fees for services to be performed periodically during the term of the loan.

4(d) Insurance and Debt Cancellation Agreements

The Board proposes to amend Regulation Z by adding a provision regarding the requirements for disclosing the cost of debt cancellation agreements, which provide consumers with benefits similar to credit insurance. Under these agreements, generally in return for a fee, the creditor agrees to cancel all or part of any remaining debt in the event of a certain occurrence, such as the death, disability or unemployment of the consumer or the destruction or theft of goods securing the loan. The creditor may or may not purchase insurance to cover this risk.

During the past year, the Board received a significant number of inquiries concerning the proper treatment of fees paid for a form of debt cancellation agreement known as guaranteed automobile protection or "GAP," which is sold in connection with motor vehicle loans. GAP agreements cancel the remaining debt when the vehicle securing the loan is stolen or destroyed and the settlement payment made by the consumer's primary automobile insurance is insufficient to pay the loan balance.

Debt cancellation fees are not specifically addressed in the existing regulation; however, under the current rules they would not receive uniform treatment in Truth in Lending disclosures. For example, in some states, charges for debt cancellation agreements may be considered credit insurance premiums. Regulation Z currently allows such fees to be excluded from the finance charge only if the agreement insures against the death, disability or loss of income of the borrower and certain disclosures are provided. On the other hand, fees for GAP coverage offered by a creditor, which does not protect against the types of risk covered in sections 226.4(d) (1) and (2), are always included in the finance charge, as are other types of debt cancellation fees in states where the agreements are not considered to be insurance.

Pursuant to its authority under section 105 of the TILA, the Board is proposing a rule that would specifically address debt cancellation fees and provide uniform treatment for their disclosure. The proposed rule would exclude debt cancellation fees from the finance charge if the consumer's purchase of the product is voluntary, the extension of credit is not conditioned on the purchase, and specified disclosures are provided to the consumer. This is consistent with the existing rule for credit life, health, and accident insurance.

4(d)(1) Voluntary Credit Insurance Premiums

Paragraph 4(d)(1)(i) would be modified consistent with existing comment 4(d)–1 of the Official Staff Commentary, to clarify that a disclosure that insurance coverage is not required by the creditor must be in writing.

4(d)(3) Debt cancellation fees

Proposed paragraph 4(d)(3) addresses the treatment of fees paid for GAP coverage and other debt cancellation agreements. The new provision closely follows the existing rule pertaining to credit insurance in section 226.4(d)(1), and would exclude fees for debt cancellation from the finance charge if the specified conditions are met. The provision would apply without regard to whether the debt cancellation agreement is considered to be insurance under state law.

Fees for GAP coverage must be disclosed according to this rule rather than the provisions in paragraph 4(d)(2). Even though GAP coverage is triggered by the loss of or damage to property, GAP agreements do not insure against such loss or damage. Instead they insure against the credit risk that remains if there is a balance due on the obligation after traditional property insurance benefits are exhausted.

4(e) Certain Security-interest Charges

4(e)(3) Taxes on Security Instruments

Proposed paragraph 4(e)(3) would be added consistent with section 106(d)(3) of the TILA (15 U.S.C. § 1605(d)(3)). The new provision would provide that taxes levied on security instruments or on documents evidencing indebtedness ("intangible property taxes"), that must be paid in order to record the security instrument, are excluded from the finance charge. The 1995 Amendments and proposed rule are consistent with existing comment 4(e)–1(i) of the Official Staff Commentary.

Subpart C—Closed-End Credit

Section 226.17—General Disclosure Requirements

17(a) Form of Disclosures

17(a)(1)

Footnote 38 in paragraph 17(a)(1) would be revised to include the disclosures relating to debt cancellation agreements among those that may be made together with or separately from the other required disclosures.

17(c) Basis of Disclosures and Use of Estimates

17(c)(2)

Paragraph 17(c)(2) would be redesignated as 17(c)(2)(i) and modified slightly to reflect the general rule that disclosures must be based on the best information reasonably available to the creditor at the time the disclosures are provided to the consumer. This is consistent with existing comment 17(c)(2)–1 of the Official Staff Commentary, which would be redesignated as comment 17(c)(2)(i)–1.

17(c)(2)(ii)

Proposed paragraph 17(c)(2)(ii) reflects the 1995 amendment to section 121(c) of the TILA (15 U.S.C. 1631(c)), which deals with the disclosure of per diem interest charges collected upon loan consummation.

Per diem interest, also known as "odd-days interest," is the interest that will accrue between consummation and the first regularly-scheduled payment. Previously, the general requirement that TILA disclosures must be accurate at the time the disclosures are provided to consumers applied to the disclosure of per diem interest. Under the 1995 Amendments, a disclosure with respect to the amount of per diem interest to be collected at consummation will be considered accurate if the disclosure is based on the information actually known to the creditor at the time the disclosure is prepared, even if the actual charges differ by the time disclosures are provided to the borrower. Creditors should exercise reasonable diligence in ascertaining the necessary information when preparing disclosures. This change is intended to eliminate the need to revise the TILA disclosures if a change in the closing date also changes the amount of the per diem interest that is paid at closing.

The 1995 Amendments state that this provision applies to "any consumer credit transaction," although remarks by the Congressional sponsors suggest that it may have been intended to apply only to closed-end mortgage loans. The Board proposes to limit the provision to closed-end loans; the provision does not appear relevant to open-end lines of credit. Accordingly, the amended regulation would apply the new rule to any closed-end loan involving per diem interest charges. Comment is solicited on whether the statutory provision would have any applicability in open-end credit transactions.

17(f) Early Disclosures

Paragraph 17(f) would be revised for clarification and divided into paragraphs 17(f) (1) and (2). As revised, the rule more clearly reflects the interpretation presently contained in comment 17(f)–1 of the Official Staff Commentary. The revisions also clarify that the creditor's duty to provide new disclosures is determined by comparing the APR disclosed under section 226.18(e) with the APR disclosed in the consummated transaction, even though the actual APR determined in accordance with Regulation Z may differ.

Also, a new footnote 41 has been added to cross reference and distinguish this rule from the rule on redisclosures contained in section 226.19(a)(2). Section 226.19(a)(2), which only applies to certain residential mortgage transactions, provides additional leeway by allowing a creditor to make the new disclosures prior to consummation or settlement, whichever occurs later.

Section 226.18—Content of Disclosures

18(d) Finance Charge

Section 106(f) of the TILA (15 U.S.C. § 1605(f)) establishes a new tolerance for accuracy in disclosing the finance charge for closed-end loans secured by real property or dwellings. Section 226.18(d) has been revised and reorganized to incorporate this change.

18(d)(1) Mortgage Loans

Proposed paragraph 18(d)(1) provides a new finance charge tolerance applicable to mortgage loans consummated on or after September 30, 1995. For covered transactions, the disclosed finance charge will be considered accurate if it is understated by $100 or less or if the finance charge is overstated. The new tolerance applies to the disclosed finance charge as well as any disclosure affected by the finance charge, including the annual percentage rate (APR). The effect of the new finance charge tolerance on the disclosed APR is explained in more detail in connection with the proposed revisions to section 226.22(a).

18(d)(2) Other Credit

The existing tolerance for finance charge disclosures, currently in footnote 41, continues to apply to all other closed-end loans consummated on or after September 30, 1995, and has been moved into proposed paragraph 18(d)(2).

18(n) Insurance and Debt Cancellation Agreements

Paragraph 18(n) would be revised to include disclosures made in connection with debt cancellation agreements.

Section 226.19—Certain Residential Mortgage and Variable Rate Transactions

19(a)(2) Rediscosure Required

Paragraph 19(a)(2) would be revised to make it consistent with the revision made to section 226.17(f)(2). The change clarifies that a creditor's duty to provide new disclosures is determined by comparing the APR that was disclosed under section 226.18(e) with the APR disclosed in the consummated transaction.

Section 226.22—Determination of Annual Percentage Rate

22(a) Accuracy of Annual Percentage Rate

Paragraph 22(a) would be revised to add new paragraphs (a)(4) and (a)(5). The TILA contains tolerances for the APR, which are either one-quarter or one-eighth of one percent, depending on the type of transaction. These existing statutory APR tolerances are not altered by the 1995 Amendments, although the amendments create a tolerance for the finance charge disclosed for mortgage loans as well as "*any disclosure affected by the finance charge.*" Although this language could be viewed as applying only to numerical amounts for which there is no statutory tolerance (such as the amount financed) the Board is of the view that the 1995 Amendments should be interpreted broadly to include the APR as one of the "affected disclosures." Otherwise, transactions in which the disclosed finance charge is misstated but considered accurate under the new tolerance might be subject to legal challenge based on the disclosed APR, which seems inconsistent with the legislative intent. For closed-end loans secured by real property or dwellings, the proposed revisions would establish two additional tolerances for accuracy in disclosing the APR when the disclosed finance charge is within the tolerances established by the 1995 Amendments.

22(a)(4) Mortgage Loans

Proposed paragraph 22(a)(4) provides an additional tolerance for APR disclosures in transactions where the finance charge is understated or overstated but is considered accurate under the 1995 Amendments. For example, in a secured home-improvement loan, if a creditor improperly omits a $100 fee from the finance charge, the understated finance charge would now be considered accurate under section 226.18(d)(1). Under paragraph 22(a)(4), the APR resulting from the understated finance charge would also be considered accurate, even if the disclosed APR falls outside of the existing tolerance of one-eighth of one percent provided under section 107(c) of the TILA. For purposes of determining a borrower's right to rescind a mortgage loan, an APR resulting from a finance charge that is considered accurate in accordance with the applicable rule in section 226.23(g) or (h)(2), would also be considered accurate.

22(a)(5) Additional Tolerance for Mortgage Loans

In light of the new APR tolerance established under the 1995 Amendments, the Board proposes to adopt an additional APR tolerance (not required by the statute), in section 226.22(a)(5). The purpose would be to avoid the anomalous result of imposing liability on a creditor for a disclosed APR that is incorrect but is *closer* to the actual APR than the APR that would be considered accurate under the statutory tolerance in paragraph 22(a)(4).

For instance, if the omission of a $100 fee from the finance charge would result in understatement of the finance charge and a disclosed APR that is understated by one-half of one percent, that APR would be considered accurate under

paragraph 22(a)(4), even though it is outside of the existing APR tolerance of one-eighth of one percent. Under proposed paragraph 22(a)(5), the disclosed APR would also be considered accurate if it is understated by *less* than one-half of one percent. Thus, if the actual APR in this example was 9.00 percent and the $100 omission would result in an APR of 8.50 that would be considered accurate under paragraph 22(a)(4), a disclosed APR of 8.75 percent would be within the tolerance in paragraph 22(a)(5). Similarly, if an overstated finance charge results in an overstated APR, the creditor would not be liable for an overstatement that is closer to the actual APR.

Under section 105 of the TILA, the Board is authorized to adopt exceptions to the TILA that will facilitate compliance. Proposed paragraph 22(a)(5) would treat as accurate, a disclosed APR that is more accurate than the one resulting from a misstated finance charge that is considered accurate under the 1995 Amendments. The Board believes that this rule will facilitate compliance with the TILA, and prevent disputes over errors that have no greater effect on consumers beyond the effects already contemplated by the statutory tolerances. The Board recognizes that this rule might allow a creditor to disclose an inaccurate APR that is not derived from either the actual or the disclosed finance charge. Presumably, this situation would not be common. On balance, however, the Board believes the proposed rule is consistent with the intent of the 1995 Amendments.

Section 226.23—Right of Rescission

23(b) Notice of Right To Rescind

Proposed paragraph 23(b)(2) implements amendments to TILA section 125 (15 U.S.C. 1635). Under the 1995 amendments, creditors will not be liable for the form of rescission notice they give to the consumer if the creditor uses the appropriate form published by the Board or a comparable notice. Proposed paragraph 23(b)(2) requires proper use of the model form approved by the Board or a comparable form. Creditors properly completing the appropriate form in Appendix H would be deemed in compliance with the regulation for those disclosures. The model form in Appendix H–9 has been revised slightly to ease compliance and clarify that it may be used in loan refinancings with the original creditor, without regard to whether the creditor is the holder of the note at the time of refinancing.

23(g) Tolerances for Accuracy

Proposed paragraph 23(g) would implement section 106(f)(2) of the TILA (15 U.S.C. § 1605(f)(2)), which creates separate finance charge tolerances that apply in determining whether a consumer may rescind a loan based on inaccurate TILA disclosures. These tolerances are intended to limit rescission as a remedy available to consumers for TILA disclosure violations. Under the rescission tolerances, the finance charge and other disclosures affected by the finance charge are deemed accurate if they do not vary from the actual finance charge by more than a certain amount; either one-half of one percent of the total amount of credit extended, or one percent of the total amount of credit extended, depending on the type of transaction.

The Board proposes to apply the rescission in section 106(f)(2) in addition to, rather than in lieu of, the general tolerances in section 106(f)(1). The Board believes that it is unlikely that the Congress intended to allow the rescission remedy to be invoked when the disclosures would otherwise be considered accurate under the general tolerance rules. As a result, when the rescission tolerance based on a percentage of the amount of credit extended is less than $100, the general $100 tolerance in section 106(f)(1) would apply. For example, in the case of a small home improvement loan, the one-half of one percent rescission tolerance would be less than $100 for loans under $20,000. In such cases, the $100 tolerance would apply in determining the borrower's right to rescind the transaction. The Board also proposes to apply the general rule in section 106(f)(1)(B), that overstated finance charges of any amount shall be treated as accurate, as the applicable rule in determining whether a consumer may rescind a loan.

The Board also proposes in paragraph (g), to interpret the statutory phrase "total amount of credit extended" to be the "face amount of the note" for purposes of calculating the rescission tolerances. For purposes of paragraph (g)(2), the Board interprets the statutory language "no new consolidation" to mean that this tolerance applies where the transaction does not involve the consolidation of an existing loan. The Board believes that this promotes ease of compliance and consistency.

23(h) Special Rules for Foreclosures

Proposed paragraph 23(h) implements section 125(i)(2) of the TILA (15 U.S.C. § 1635(i)(2)), which provides special rescission rules after a foreclosure action has been initiated. The Board interprets this provision in its context to apply only to closed-end credit; there does not appear to be any basis for applying it to open-end lines of credit. For example, the 1995 Amendments allow a consumer to rescind a loan in foreclosure if a mortgage broker fee was not properly disclosed; broker fees, however, are not generally associated with open-end lines of credit.

The special tolerances applicable to foreclosures are intended to provide additional consumer protection in light of the new finance charge tolerance that generally limits the consumer's right to rescind a closed-end mortgage loan. Once foreclosure is initiated, the consumer may rescind the loan if the finance charge is understated by more than $35, even though a larger tolerance would apply before foreclosure. Because open-end home equity loans currently have no tolerance for finance charge errors, applying the $35 foreclosure tolerance to open-end loans would result in less protection for consumers. The Board believes this result would be inconsistent with the intent of the special foreclosure rules.

Subpart E—Special Rules for Certain Mortgage Transactions

Section 226.31—General Rules

31(d) Basis of Disclosures and Use of Estimates

Paragraph 31(d) would be revised and reorganized, consistent with the revisions made to section 226.17(c).

31(d)(3)

Proposed paragraph 31(d)(3) would incorporate the new rule regarding the disclosure of per diem interest charges, consistent with the proposed amendment in section 226.17(c)(2)(ii). Under the 1995 Amendments, a disclosure with respect to per diem interest charges collected upon loan consummation will be considered accurate if the disclosure is based on the information actually known to the creditor at the time the disclosure is prepared. In preparing disclosures, creditors are expected to exercise reasonable diligence in ascertaining the necessary information. Proposed paragraph 31(d)(3) would clarify that the same rule applies to a disclosure made pursuant to Subpart E (such as the APR) that would be affected by the per diem interest charge.

31(g) Accuracy of Annual Percentage Rate

Paragraph 31(g) would be revised to clarify that a creditor may rely on the APR tolerances provided in section 226.22 for purposes of determining whether a transaction is covered under section 226.32(a) and making the disclosures required by section 226.32(c).

Appendix H to Part 226—Closed-end Model Forms and Clauses

H–9 Rescission Model Form

The 1995 Amendments clarify that creditors will not be liable for the form of rescission notice they give to the consumer if the creditor uses the appropriate form published by the Board or a comparable notice. In order to ease compliance, model form H–9 has been revised slightly to clarify that it may be used in loan refinancings with the original creditor, without regard to whether the original creditor is the holder of the note at the time of refinancing. Creditors may, however, continue to use the original forms H–8 and H–9 as appropriate.

Supplement I—Official Staff Interpretations

The proposed revisions would conform the Official Staff Commentary consistent with the proposed amendments to Regulation Z.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R–0927 and, when possible, should use a standard Courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format.

The comment period ends on June 24, 1996. Normally, the Board provides a 60-day comment period, in keeping with the Board's policy statement on rulemaking (44 FR 3957, January 19, 1979). The proposed regulatory revisions implement changes in the law made by the 1995 Amendments and with the exception of one provision related to mortgage broker fees, the statutory amendments are already in effect. The amendments regarding the disclosure of mortgage broker fees will become effective on or before September 30, 1996. The Board believes that an abbreviated comment period is desirable to ensure that a final rule is in place as soon as possible to provide guidance to creditors affected by the new rules.

V. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. § 603), the Board's Office of the Secretary has reviewed the proposed amendments to Regulation Z. Overall, the amendments are not expected to have any significant impact on small entities. The proposed regulatory revisions required to implement the 1995 Amendments clarify the existing disclosure requirements and ease compliance by providing new tolerances. Under the existing rules, fees charged in connection with debt cancellation agreements are generally treated as finance charges; the proposed rule allows creditors to exclude these fees from the finance charge if additional disclosures are provided to the consumer. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501 *et seq.*), the Board has reviewed the proposed amendments under the authority delegated to the Board by the Office of Management and Budget. 5 CFR 1320 Appendix A.1. Comments on the collection or disclosure of information associated with this regulation should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The respondents are individuals or businesses that regularly offer or extend consumer credit. The purpose of the TILA and Regulation Z is to promote the informed use of consumer credit by requiring creditors to disclose its terms and cost. Records must be retained by creditors for 24 months. The revisions to the requirements in this proposed regulation are found in 12 CFR 226.2, 226.4, 226.17, 226.18, 226.19, 226.22, 226.23, and 226.31.

The Board's Regulation Z applies to all types of creditors, not just state member banks. Under the Paperwork Reduction Act, however, the Federal Reserve accounts for the paperwork burden associated with Regulation Z only for state member banks. Any estimates of paperwork burden for institutions other than state member banks that would be affected by the proposed amendments would be provided by the federal agency or agencies that supervise those lenders.

The proposed changes are not expected to increase the ongoing annual burden of Regulation Z. There are 1,042 state member banks with an average frequency of 136,294 responses per bank each year. The current estimated burden for Regulation Z ranges from 5 seconds per response (for disclosures prior to opening a credit card account) to 30 minutes per response (for inclusion of information in an advertisement). The combined annual burden for all state member banks under Regulation Z is estimated to be 1,975,600 hours; based on an hourly cost of $20, the combined annual cost is estimated to be $39.5 million (an average of $37,920 per state member bank). Using the same hourly cost, the Federal Reserve estimates that there would be associated start up cost in the amount of $160 per respondent for changing disclosures (or disclosure-producing software) to include disclosures relating to voluntary debt cancellation agreements.

The disclosures made by creditors to consumers under Regulation Z are mandatory. Since the Federal Reserve does not collect any information, no issue of confidentiality arises. Disclosures relating to specific transactions or accounts are not publicly available.

Comments are invited on: (a) whether the proposed revision to Regulation Z is necessary for the proper performance of the Federal Reserve's functions; including whether the disclosed information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed disclosures, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information disclosures; and (d) ways to minimize the burden of information disclosures on respondents, including through the use of automated techniques or other forms of information technology.

An agency may not collect or sponsor the collection or disclosure of information, and an organization is not required to collect or disclose information unless a currently valid OMB control number is displayed. The OMB control number for Regulation Z is 7100–0199

List of Subjects in 12 CFR Part 226

Advertising, Banks, banking, Consumer protection, Credit, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions to the regulation. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR Part 226 as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. Section 226.2 would be amended by revising paragraph (a)(6) to read as follows:

§ 226.2 Definitions and rules of construction.

(a) *Definitions.* * * *

* * * * *

(6) *Business day* means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under §§ 226.15 and 226.23, ►and for purposes of § 226.31,◄ the term means all calendar days except Sundays and the legal public holidays specified in 5 USC 6103(a), such as New Year's Day, ►the Birthday of Martin Luther King, Jr.,◄ Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

* * * * *

3. Section 226.4 would be amended as follows:

a. Paragraph (a) would be revised;

b. New paragraph (b)(10) would be added;

c. A heading would be added to paragraph (c)(7), paragraph (c)(7) introductory text would be republished, paragraphs (c)(7)(ii) and (c)(7)(iii) would be revised, paragraph (c)(7)(iv) would be redesignated as paragraph (c)(7)(v) and republished, and a new paragraph (c)(7)(iv) would be added;

d. Paragraph (d) heading would be revised, paragraph (d)(1) heading and introductory text and paragraph (d)(1)(i) would be revised, and a new paragraph (d)(3) would be added.

e. A new paragraph (e)(3) would be added.

The revisions and additions would read as follows:

§ 226.4 Finance charge.

(a) *Definition.* The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

►(1) *Charges by third parties.* The finance charge includes fees and amounts charged by someone other than the creditor (unless otherwise excluded under this section) if the creditor requires the use of the third party as a condition of or incident to the extension of credit (even if the consumer can choose the third party) or retains the charge.

(2) *Special rule; closing agent charges.* Fees charged by a third-party closing agent are finance charges only if the creditor requires the particular services for which the consumer is charged or requires the imposition of the charge, or retains any portion of the charge.

(3) *Special rule; mortgage broker fees.* Fees charged by a mortgage broker (including fees paid directly to the broker or paid to the creditor for delivery to the broker) are finance charges even if the creditor does not require the consumer to use a mortgage broker and the creditor does not retain any portion of the charge.◄

(b) *Example of finance charge* * * *

* * * * *

►(10) *Debt cancellation fees.* Premiums or other charges paid in connection with a debt cancellation agreement, without regard to whether the agreement is insurance under applicable law.◄

(c) *Charges excluded from the finance charge.* * * *

* * * * *

(7) ►*Real-estate related fees.*◄ The following fees in a transaction secured by real property or in a residential mortgage transaction, if the fees are bona fide and reasonable in amount:

* * * * *

(ii) Fees for preparing ►loan-related documents, such as◄ deeds, mortgages, and reconveyance[,] ►or◄ settlement [, and similar] documents.

(iii) Notary [, appraisal,] and credit report fees.

(iv) ►Property appraisal fees, including fees related to any pest infestation or flood hazard inspections conducted prior to closing.◄

►(v)◄ Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge.

* * * * *

(d) *Insurance ►and debt cancellation agreements◄.* (1) ►*Voluntary credit insurance premiums.*◄ Premiums for credit life, accident, health or loss of income insurance may be excluded from the finance charge if the following conditions are met:

(i) The insurance coverage is not required by the creditor, and this fact is disclosed ►in writing◄.

* * * * *

►(3) *Debt cancellation fees.* Charges or premiums paid in connection with an agreement that provides for cancellation of all or part of the debtor's liability for amounts exceeding the value of the collateral securing the debtor's obligation, or in connection with any other debt cancellation agreement, may be excluded from the finance charge, without regard to whether the agreement is insurance, if the following conditions are met:

(i) The agreement or coverage is not required by the creditor, and this fact is disclosed in writing.

(ii) The fee or premium for the initial term of coverage is disclosed. If the term of coverage is less than the term of the credit transaction, the term of coverage also shall be disclosed. The fee or premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under 226.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(iii) The consumer signs or initials an affirmative written request for the coverage after receiving the disclosures specified in this paragraph. Any consumer in the transaction may sign or initial the request.◄

(e) *Certain security interest charges.* * * *

* * * * *

►(3) *Taxes on security instruments.* Any tax levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a precondition for recording the instrument securing the evidence of indebtedness.◄

* * * * *

4. Section 226.17 would be amended as follows:

a. In paragraph (a)(1), footnote 38 would be revised;

b. Paragraph (c)(2) would be redesignated as paragraph (c)(2)(i) and revised, and paragraph (c)(2)(ii) would be added;

c. Paragraph (f) would be revised.

The revisions and additions would read as follows:

§ 226.17 General disclosure requirements.

(a) *Form of disclosures.* (1)

* * *[38] * * *

* * * * *

(c) *Basis of disclosures and use of estimates.* * * *

(2)►(i)◄ If any information necessary for an accurate disclosure is unknown to the creditor, it shall make the disclosure based on the best information reasonably available ►at the time the disclosure is provided to the consumer,◄ and shall state that the disclosure is an estimate.

►(ii) For a transaction in which a portion of the interest is determined on a per diem basis and collected upon consumption, any disclosure with respect to the per diem interest shall be deemed to be accurate if the disclosure is based on information actually known to the creditor at the time that the disclosure documents are prepared for consumption of the transaction.◄

* * * * *

(f) *Early disclosures.* If disclosures are given before the date of consumption of a transaction and a subsequent event makes them inaccurate, ►before consumption[39]◄ the creditor shall disclose [the changed terms before consumption]

►(1) any changed term that was not based on an estimate in accordance with § 226.17(c)(2) and labelled as such;

(2) all changed terms,◄ if the annual percentage rate ►disclosed◄ in the consummated transaction varies from the annual percentage rate disclosed under § 226.18(e) by more than ⅛ of 1 percentage point in a regular transaction, or more than ¼ of 1 percentage point in an irregular transaction, as defined in § 226.22(a).

* * * * *

5. Section 226.18 would be amended as follows:

a. Footnote 41 in paragraph (d) would be removed and paragraph (d) introductory text would be republished;

b. New paragraphs (d)(1) and (d)(2) would be added;

c. Footnotes 39 and 40 in paragraph (c) would be redesignated as footnotes 40 and 41 respectively; and

d. Paragraph (n) would be revised.

The revisions and additions would read as follows:

[38] The following disclosures may be made together ►with◄ or separately from other required disclosures: the creditor's identity under § 226.18(a), the variable rate example under § 226.18(f)(4), insurance ►or debt cancellation agreements◄ under § 226.18(n), and certain security interest charges under § 226.18(o).

►[39] For certain residential mortgage transactions, § 226.19(a)(2) permits rediscosure no later than consummation or settlement, whichever is later.◄

§ 226.18 Content of disclosures.

* * * * *

(d) *Finance charge.* The *finance charge*, using that term, and a brief description such as "the dollar amount the credit will cost you." [41]

►(1) *Mortgage loans.* In a transaction secured by real property or a dwelling, the disclosed finance charge and other disclosures affected by the disclosed finance charge (such as the amount financed and the annual percentage rate) shall be treated as accurate if the amount disclosed as the finance charge:

(i) is greater than the amount required to be disclosed; or

(ii) is understated by no more than $100.

(2) *Other credit.* In any other transaction, the amount disclosed as the finance charge shall be treated as accurate if it is not more than $5 above or below the amount required to be disclosed in a transaction involving an amount financed of $1,000 or less, or not more than $10 above or below the amount required to be disclosed in a transaction involving an amount financed of more than $1,000.◄

* * * * *

(n) *Insurance ►and debt cancellation agreements◄.* The items required by § 226.4(d) in order to exclude certain insurance premiums ►and debt cancellation fees◄ from the finance charge.

* * * * *

6. Section 226.19 would be amended by revising paragraph (a)(2) to read as follows:

§ 226.19 Certain residential mortgage and variable-rate transactions.

(a) * * *

(2) *Redisclosure required.* If the annual percentage rate ►disclosed◄ in the consummated transaction varies from the annual percentage rate disclosed under § 226.18(e) by more than ⅛ of 1 percentage point in a regular transaction or more than ¼ of 1 percentage point in an irregular transaction, as defined in § 226.22, the creditor shall disclose the changed terms no later than consummation or settlement.

* * * * *

7. Section 226.22 would be amended by adding new paragraphs (a)(4) and (a)(5) to read as follows:

[41] The finance charge shall be considered accurate if it is not more than $5 above or below the exact finance charge in a transaction involving an amount financed of $1,000 or less, or not more than $10 above or below the exact finance charge in a transaction involving an amount financed of more than $1,000.]

§ 226.22 Determination of annual percentage rate.

(a) *Accuracy of annual percentage rate.* * * *

* * * * *

►(4) *Mortgage loans.* If the annual percentage rate disclosed in a transaction secured by real property or a dwelling varies from the actual rate determined in accordance with paragraph (a)(1) of this section, the disclosed annual percentage rate shall be considered accurate if:

(i) It is the rate resulting from the disclosed finance charge; and

(ii) The disclosed finance charge would be considered accurate under § 226.18(d)(1) or § 226.23 (g) or (h).

(5) *Additional tolerance for mortgage loans.* In a transaction secured by real property or a dwelling, if the disclosed finance charge is calculated incorrectly but considered accurate under § 226.18(d)(1) or § 226.23 (g) or (h), the disclosed annual percentage rate shall be considered accurate:

(i) If the disclosed finance charge is understated, and the disclosed annual percentage rate is also understated but is closer to the actual annual percentage rate than the rate that would be considered accurate under paragraph (a)(4) of this section;

(ii) If the disclosed finance charge is overstated, and the disclosed annual percentage rate is also overstated but is closer to the actual annual percentage rate than the rate that would be considered accurate under paragraph (a)(4) of this section.◄

* * * * *

8. Section 226.23 would be amended as follows:

a. Paragraphs (b)(1) through (b)(5) would be redesignated as paragraphs (b)(1)(i) through (b)(1)(v);

b. Paragraph (b) would be redesignated as paragraph (b)(1) and republished;

c. A new paragraph (b)(2) would be added; and

d. New paragraphs (g) and (h) would be added.

The revisions and additions would read as follows:

§ 226.23 Right of rescission.

* * * * *

(b) ►(1)◄ *Notice of right to rescind.* In a transaction subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind. The notice shall be on a separate document that identifies the transaction and shall clearly and conspicuously disclose the following:

[(1)]►(i)◄ The retention or acquisition of a security interest in the consumer's principal dwelling.

[(2)]►(ii)◄ The consumer's right to rescind the transaction.

[(3)]►(iii)◄ How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.

[(4)]►(iv)◄ The effects of rescission, as described in paragraph (d) of this section.

[(5)]►(v)◄ The date the rescission period expires.

►(2) *Proper form of notice.* To satisfy the disclosure requirements of paragraph (b)(1) of this section, the creditor shall provide a notice that conforms with the model forms in Appendix H of this part, as appropriate, or a notice that is substantially similar.◄

* * * * *

►(g) *Tolerances for accuracy.* (1) Except as provided in paragraphs (g)(2) and (h)(2) of this section, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge is:

(i) Greater than the amount required to be disclosed; or

(ii) Understated by no more than ½ of one percent of the face amount of the note or $100, whichever is greater.

(2) In a refinancing of a residential mortgage transaction (other than a transaction covered by § 226.32) with a creditor where no new money is advanced and there is no consolidation of an existing loan; the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge is:

(i) Greater than the amount required to be disclosed; or

(ii) Understated by no more than one percent of the face amount of the note or $100, whichever is greater.

(h) *Special rules for foreclosures*—(1) *Right to rescind.* After the initiation of a foreclosure on the consumer's principal dwelling which secures the credit obligation, the consumer shall have the right to rescind the transaction if:

(i) A mortgage broker fee was not included in the finance charge, if required by the laws and regulations in effect at the time of consummation; or

(ii) The creditor did not provide the appropriate form of notice, in accordance with Appendix H of this part, or a substantially similar notice.

(2) *Tolerance for disclosures.* After the initiation of foreclosure, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge is:

(i) Greater than the amount required to be disclosed; or

(ii) Understated by no more than $35.◄

9. Section 226.31 would be amended by revising paragraphs (d) and (g) as follows:

§ 226.31 General rules.

* * * * *

(d) *Basis of disclosures and use of estimates.* ►(1)◄ Disclosures shall reflect the terms of the legal obligation between the parties.

►(2)◄ If any information necessary for accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at ► the time the disclosures are provided ◄and shall state clearly that the disclosure is an estimate.

►(3) For a transaction in which a portion of the interest is determined on a per diem basis and collected upon consummation, any disclosure with respect to the per diem interest shall be deemed to be accurate if the disclosure is based on the information actually known to the creditor at the time that the disclosure documents are prepared for consummation of the transaction.◄

* * * * *

(g) *Accuracy of annual percentage rate.* For purposes of § 226.32, the annual percentage rate shall be considered accurate►, and may be used in determining whether a transaction is covered by § 226.32,◄ if it is accurate according to the requirements and within the tolerances set forth in § 226.22.

10. In Part 226, Appendix H is amended by revising the entry for H–9 Rescission Model Form in the contents listing at the beginning of the appendix and the H–9 Rescission Model Form to read as follows:

Appendix H to Part 226—Closed-end Model Forms and Clauses

* * * * *

H–9—Rescission Model Form (Refinancing[)] ► with Original Creditor]◄ (§ 226.23)

* * * * *

H–9—Rescission Model Form (Refinancing[)] ► with Original Creditor)◄

Notice of Right To Cancel

Your Right To Concel

You are entering into a new transaction to increase the amount of credit provided to you. [We acquired a [mortgage/lien/security interest] [on/in] your home under the original transaction and will retain that [mortgage/lien/security interest] in the new transaction.] ►Your home is the security for this new transaction.◄ You have a legal right under federal law to cancel the new transaction, without cost, within three business days from whichever of the following events occurs last:

(1) The date of the new transaction, which is _____; or

(2) The date you received your new Truth in Lending disclosures; or

(3) The date you received this notice of your right to cancel.

If you cancel the new transaction, your cancellation will apply only to the increase in the amount of credit. It will not affect the amount that you presently owe or the [mortgage/lien/security interest] we already have [on/in] your home. If you cancel, the [mortgage/lien/security interest] as it applies to the increased amount is also cancelled. Within 20 calendar days after we receive your notice of cancellation of the new transaction, we must take the steps necessary to reflect the fact that our [mortgage/lien/security interest] [on/in] your home no longer applies to the increase of credit. We must also return any money you have given to us or anyone else in connection with the new transaction.

You may keep any money we have given you in the new transaction until we have done the things mentioned above, but you must then offer to return the money at the address below. If we do not take possession of the money within 20 calendar days of your offer, you may keep it without further obligation.

How To Cancel

If you decide to cancel the new transaction, you may do so by notifying us in writing, at (creditor's name and business address).

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of _____ (date) (or midnight of the third business day following the latest of the three events listed above).

If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I Wish to Cancel

_____

Consumer's Signature

_____

Date

Supplement I—[Amended]

11. In Supplement I to Part 226, under *Section 226.4—Finance Charge*, under *4(a) Definition*, paragraph 3. ii. would be removed.

12. In Supplement I to Part 226, under *Section 226.17—General Disclosure Requirements*, under *17(c) Basis of disclosures and use of estimates*, *Paragraph 17(c)(2)* would be redesignated as *Paragraph 17(c)(2)(i)*:

Supplement I—Official Staff Interpretations

* * * * *

Section 226.17—General Disclosure Requirements

* * * * *

17(c) Basis of Disclosures and Use of Estimates

* * * * *

Paragraph 17(c)(2)►(i).◄

* * * * *

13. In Supplement I to Part 226, under *Section 226.18—Content of Disclosures*, under *18(d) Finance charge*, paragraph 2 would be removed.

14. In Supplement I to Part 226, under *Section 226.23—Right of Rescission*, under *23(b) Notice of right to rescind*, the first sentence of paragraph 3 would be revised to read as follows:

* * * * *

Section 226.23—right of rescission

* * * * *

23(b) Notice of right to rescind.

* * * * *

3. *Content.* The notice must include all of the information outlined in Section 226.23(b)(1)►(i) through (v)◄ [through 5]. * * *

* * * * *

By order of the Board of Governors of the Federal Reserve System, May 15, 1996.

William W. Wiles,

Secretary of the Board

[FR Doc. 96–12685 Filed 5–23–96; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 344

RIN 3064–AB74

Recordkeeping and Confirmation Requirements for Securities Transactions

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is considering whether and how to amend its regulations governing recordkeeping and confirmation requirements for securities transactions by state nonmember banks. The agency's present regulation was adopted in 1979 and has remained essentially unchanged since that time. The FDIC is undertaking a review of this regulation with the goal of modernizing its requirements to, among other things, reflect the supervisory role played by other Federal agencies charged with supervision of securities transactions. The agency is soliciting comment on a number of issues that have been identified. The responses will be used to aid the FDIC in developing a proposed amendment for public comment.

DATES: Comments must be received by June 24, 1996.

ADDRESSES: Comments should be directed to Jerry L. Langley, Executive Secretary, Attention: Room F–402, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. Comments may be delivered to room F–402, 1776 F Street, NW, Washington, DC 20429, on business days between 8:30 am and 5:00 pm or sent by facsimile transmission to FAX number 202/898–3838. Internet: Comments@FDIC.gov. Comments will be available for inspection and photocopying in the FDIC Public Information Center, room 100, 801 17th Street, NW, Washington, DC 20429, between 9:00 am and 5:00 pm on business days.

FOR FURTHER INFORMATION CONTACT: Curtis Vaughn, Examination Specialist, Division of Supervision, (202) 898–6759; John Harvey, Review Examiner (Trust), Division of Supervision (202) 898–6762; Patrick J. McCarty, Counsel, Legal Division (202) 898–8708; or Gerald Gervino, Senior Attorney, Legal Division (202) 898–3723. Federal Deposit Insurance Corporation, 550 17th St., N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Background

Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act)

The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI Act (12 U.S.C. 4803(a)) requires that each Federal banking agency review its regulations to streamline them to improve efficiency, reduce unnecessary costs and eliminate unwarranted constraints on credit availability. Section 303(a) also requires the Federal banking agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. As part of the section 303 process, the FDIC published in December of 1995 a notice in the **Federal Register** describing the section 303 requirements and inviting the general public and interested parties to comment on FDIC regulations and policy statements. 60 FR 62345 (December 6, 1995).

On July 24, 1979 the FDIC and the other Federal banking agencies promulgated regulations addressing recordkeeping and confirmation requirements for securities transactions effected by banks. See 44 FR 43261 (July 24, 1979) (FDIC), 44 FR 43252 (July 24, 1979 (OCC) and 44 FR 43258 (July 24, 1979) (FRB). These regulations were, and are, virtually identical. With the exception of two amendments, the FDIC's part 344 has remained unchanged since it was promulgated in 1979. See 45 FR 12777 (February 27, 1980), 60 FR 7111 (February 7, 1995).

The FDIC wishes to review its recordkeeping and confirmation requirements for securities transactions in part 344 with the purposes of section 303 of the CDRI in mind. The Office of the Comptroller of the Currency (OCC) and the Board of Governors of the Federal Reserve System (FRB) have already proposed amendments to their regulations concerning recordkeeping and confirmation requirements for securities transactions by national and state member banks, respectively. See 60 FR 66517 (December 22, 1995) and 60 FR 66759 (December 26, 1995). Before drafting and publishing a proposed regulation, the FDIC wishes to receive public comment on several basic issues underlying the purposes of part 344. The FDIC requests comments at this stage of regulatory review to assist development of a specific proposal.

Summary of Concerns

Part 344 sets forth the recordkeeping and confirmation requirements with respect to securities transactions effected for the customers of state nonmember banks. State nonmember banks are required to keep four types of records (1) Chronological records of original entry containing an itemized daily record of all purchases and sales, (2) Account records for each customer, (3) Separate order tickets for each transaction, and (4) A record of all broker/dealers used and the commissions paid. Section 344.3(a) through (d). Banks must keep these records for at least three years. Section 344.3.

Part 344 addresses both the "form" and "timing" of notification to customers for whom the bank has effected a securities transaction. Sections 344.4 through 344.5. Banks may provide one of two different types of notification forms to the customer. Both notification forms are required to contain such basic information as the name of the customer, the identity, price and number of shares or units of the security purchased or sold by the customer, the source and amount of any remuneration to be received by the broker/dealer and the bank (unless such remuneration is determined by a prior written agreement between the bank and the customer), and the name of the broker/dealer used. Banks are again required to retain copies of the notification form which is provided to customers for at least three years. Id.

As a general rule, banks are required to mail the notification form to customers within five business days of the transaction. Section 344.5. If a broker/dealer is used, the bank has 5 business days from the date of receipt of the broker/dealer's confirmation to mail notification to the customer. Id. Banks are permitted, however, to use alternate time of notification procedures depending upon the type of account involved. Section 344.5(a) through (e). The time of notification periods vary greatly from "as promptly as possible" after the transaction for periodic plans to annual statements for collective investment funds. Section 344.5(e) and (d), respectively.

Part 344 also requires banks effecting securities transactions for customers to establish written policies and procedures regarding securities trading. Section 344.6 Such policies and procedures must address supervision of officers and employees who place orders and execute transactions, allocation of securities and prices to accounts when orders are received at approximately the same time, the crossing of buy/sell orders, and the reporting of personal securities transactions by bank officers and employees who participate in or make investment recommendations or decisions for customer accounts.

The purpose of the FDIC implementing recordkeeping and confirmation requirements for securities transactions is to ensure that purchasers of securities in transactions effected by an insured nonmember bank are provided adequate information concerning the transactions. The regulations also are designed to ensure that insured nonmember banks maintain adequate records and controls with respect to securities transactions for their customers.

As the financial marketplace has grown, new delivery systems for bank customer's securities transactions have emerged. This array of delivery systems has led to the overlap of jurisdiction between the Federal banking agencies and the Federal securities regulators. The FDIC supports minimizing overlapping jurisdiction through a concept referred to as "functional regulation". In order for functional regulation to work properly, it is important that securities transactions do not go unregulated and leave customers unprotected. As currently written, part 344 overlaps existing securities regulation in certain areas. Although this overlap ensures that securities transactions for bank customers are adequately covered in relation to confirmation and recordkeeping requirements, it can create a competitive imbalance for banks, create customer confusion, regulatory uncertainty and additional costs to banks.

Delivery Systems

There are a variety of ways in which banks play a role in delivering securities brokerage services to their customers. Customers of banks may engage in securities transactions by either dealing directly with the bank or by dealing with a third party who has contracted with the bank to conduct securities transactions for, or through, the bank. Third parties may operate on bank premises using their own employees, or use persons who are dual employees of the bank and the third party. Third party providers may operate both on and off the bank's premises with the bank receiving remuneration for transactions originating from the bank. Other third party providers operate solely off bank premises. The bank may or may not receive remuneration for referring customers to the provider.

Categories of third party providers also vary by whether or not the provider is affiliated with the bank and the type of affiliation. Third party providers may be owned by the bank, while in other situations the bank and third party provider are commonly owned or have common officers or directors. In other cases, the bank may be an advisor to a mutual fund sponsored by a third party.

Within the bank itself, the institution may be engaged in retail recommendation and sale of securities, or the bank may be engaging in accommodation transactions only for customers of the bank. A limited number of banks operate municipal and government securities dealer departments separately registered under government securities regulations or regulations of the Municipal Securities Rulemaking Board (MSRB). Where there is sufficient demand, banks may engage in private banking for their higher income customers. In areas where capital markets are not well established, banks may engage in the sale of their own stock or the stock of their affiliates.

Historically banks have been most commonly involved in securities transactions through their Trust Departments. These transactions occur both when the bank has some fiduciary responsibility and when the bank is acting as an agent or custodian. A bank may have no investment discretion, partial investment discretion or full investment discretion over its trust accounts. Trust Departments often sponsor collective investment funds for their customers. They may also act as the customers' agent under a periodic investment plan, such as a stock-purchase plan or a dividend reinvestment plan. Each situation presents different customer needs relative to confirmation and recordkeeping requirements related to securities transactions.

Request for Comment

The FDIC is seeking comment from interested parties concerning the applicability of part 344 to securities transactions conducted under each of these delivery systems. Specifically, if the transactions under a specific delivery system are covered by another regulatory system, what coverage should an FDIC regulation provide, if any? Additionally, the FDIC seeks comment on whether other delivery systems, i.e., dedicated phone lines to broker/dealers and mutual fund complexes, or internet sites, should be considered in deciding on the scope of coverage of part 344. Commenters are asked to identify types of securities transactions which by their unique characteristics should be exempted, either completely or in part, from the requirements of part 344. The OCC and FRB proposals do not approach the delivery systems and regulatory coverage issues in the same manner as the FDIC.

Effecting a Transaction

The recordkeeping and confirmation requirements of part 344 are generally triggered when a bank effects a securities transaction on behalf of a customer. The regulation does not define the term "effecting a securities transaction". The term was borrowed from the Federal Securities laws, where it is quite common but also not defined. See Securities and Exchange Act of 1934, 15 U.S.C. 78o(a)(1), (c)(1)(A) through (B), Government Securities Act, 15 U.S.C. 78o–5(a)(1)(B)(i), (a)(4) and (b)(1), and SEC Rule 10b–10(a), 12 CFR 240.10b–10(a). The FDIC has taken a broad view of the term to include not only those situations in which securities transactions are effected by bank employees but also those situations in which third parties who are located on bank premises conduct the transactions for the bank and the bank receives transaction based compensation in connection with the transactions. This is so even if the transaction takes place off bank premises. The FDIC is considering various alternatives in defining the term "effecting a securities transaction" and seeks comment as to how the term should be defined. If securities transactions are conducted by third parties, should such transactions be excluded from the definition? If so, how should such exclusion/exemption be drawn? If specific bank activities or certain types of delivery systems should be exempted from the definition, what factors should be considered in determining which bank activities and delivery systems should be exempted? The OCC and FRB proposals do not address the definition or scope of the term "effecting a securities transaction" issue.

Retail Sales Through Trust Departments

As noted above, historically banks have been involved in securities activities through their Trust Departments. Trust Departments have accounting systems, internal controls and investment expertise with respect to securities transactions due to their investment management activities for trust clients. Banks may, however, be directing customers with retail securities transactions to their Trust Departments, even though such customers have no formal trust agreement with the bank. The FDIC specifically requests comment on whether this situation is commonplace in the industry and to what extent the requirements of part 344 should apply to such retail securities transactions for nontrust customers. The OCC and FRB proposals do not specifically address the retail sales through bank Trust Department issue.

Disclosure of the Source and Amount of Remuneration

Members of the public, including bank customers, normally pay commissions or sales loads when buying or selling securities through a registered broker/dealer which has no association with a bank. The securities transactions effected by the bank may be somewhat different in that the bank may share in that commission or load or the bank may charge a fee in addition to the usual commission or load. In order to make this difference clear to those customers who purchase or sell securities through their bank, part 344 requires that the bank disclose the source and amount of its remuneration. The regulation does not distinguish between those commissions or loads which the bank shares with another party (but the total cost to the customers remains the same) and fees which may be added by the bank to those commissions or loads.

As banks have become more heavily involved in effecting securities transactions for their customers, it has come to the FDIC's attention that there are practical problems concerning the timely disclosure of the source and amount of the bank's remuneration. Many insured nonmember banks have entered into what are commonly known as "networking agreements" with registered broker/dealers. Under these agreements the broker/dealer typically leases space on the bank's premises to sell securities. In some instances banks receive a fixed monthly payment plus a portion of the commissions which varies depending upon the volume of sales over a given period. The result is that in some situations banks are unable to determine and disclose the total amount of their remuneration within the general 5 business day time frame provided for under § 344.5.

On March 21, 1995, the FDIC Board of Directors granted a limited waiver of the remuneration disclosure requirement contained in § 344.4 based on the timing problem identified above. The waiver extends to any insured state nonmember bank which receives transaction-based compensation on a regular basis with respect to securities transactions effected for customers. The waiver is subject to the provisos that (1) no additional fees are added by the bank other than those described in the prospectus (if the securities are sold under a prospectus); (2) the sale is made by a registered broker/dealer subject to rules and supervision of the National Association of Securities Dealers (NASD) and the Securities and Exchange Commission (SEC); and (3) the sale is conducted in a fashion which meets the requirements of the NASD and SEC. The waiver does not relieve banks of the obligation to disclose the source of their remuneration. Nor does the waiver apply in the case of (1) services provided in a fiduciary capacity, or (2) services for which a flat fee has been paid which includes securities brokerage.

At the time the waiver was granted, the FDIC committed to working with the other Federal banking agencies to find an acceptable solution to the timing of the remuneration disclosure problem. The FDIC's current waiver differs from the position reflected in the OCC's proposal in that the FDIC continues to require that banks disclose the source of their remuneration and that the FDIC waiver extends to all securities transactions and not just to mutual fund transactions.

In attempting to keep customers who purchase securities on the premises of a bank informed of potential conflicts of interest, the FDIC has taken the position that the customer should be aware of the fact that the bank has a financial interest in the transaction. Thus, the FDIC has concluded that in all cases, the source of the remuneration should be disclosed. The timing of that disclosure may be important in determining how much burden this requirement places on the bank.

We note that the SEC's position regarding the disclosure of the source and amount of remuneration is much more limited than that under which the FDIC is currently operating. Pursuant to SEC Rule 10b–10, broker/dealers are required to disclose the source and amount of remuneration at or before completion of a transaction only when the broker/dealer is (1) participating in the distribution of a securities issuance or (2) participating in a tender offer. See 17 CFR 240.10b–10(a)(7)(iv). Otherwise, the broker/dealer is required to provide only a notice which states that the source and amount of other remuneration will be furnished "upon the written request of the customer." Id. With respect to the sale of mutual funds, the SEC is considering changing a long standing no action position on the broker/dealer disclosure of source and remuneration. See Investment Company Institute, SEC No-Action Letter, 1994 WL 131068 (S.E.C.) (March 16, 1994).

Since 1979 the SEC's position has been that a broker/dealer does not need to disclose on confirmations the source and amount of remuneration received on the sale of open end management company shares if a prospectus with current fees, loads and expenses is provided to the customer. See Investment Company Institute, SEC No-Action Letter, [1979] Fed. Sec. L. Rep. (CCH) P82,041 (Mar. 19, 1979). Should the SEC change its position, broker/dealers would be required to provide confirmations which disclose both the source and amount of remuneration received on confirmations rather than relying upon the disclosure provided in the prospectus.

The FDIC specifically requests comments concerning the need for disclosure of the source of remuneration and, if necessary, when that disclosure should be made. In addition, the FDIC requests comment on the circumstances under which a bank should disclose the amount of the remuneration and, if necessary, the timing of these disclosures. If disclosures concerning the amount of remuneration are made, should there be a differentiation concerning disclosure of the bank's portion of loads and commissions normally charged and those fees which may be charged in excess of normal commissions and loads? If FDIC mandated disclosures are necessary, how should these disclosures interrelate with similar disclosures required under the Federal Securities laws? The OCC and FRB proposals do not address all of the issues raised herein.

Definition of Security

In part 344, the term "security" is defined in order to determine the scope of the regulation's coverage. Section 344.2(e). The definition is crafted specifically for the purposes of this regulation and does not mirror the definition of "security" in the Federal Securities laws. Specifically, there are eight exemptions to the definition of "security":

(1) A deposit or share account in a federally insured depository institution;

(2) A loan participation;

(3) A letter of credit or other form of bank indebtedness incurred in the ordinary course of business;

(4) Currency;

(5) Any note, draft, bill of exchange, or bankers acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited;

(6) Units of a collective investment fund;

(7) Interests in a variable amount (master) note of a borrower of prime credit; and

(8) U.S. Savings Bonds.

The FDIC specifically requests comment on the adequacy of the definition of the term "security" currently used in part 344 and if there are other exceptions which should be made to the definition. Comment is invited concerning the practicability of using the definition of "security" which is used in the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(10).

Other Definitions

The OCC and FRB proposals add definitions of "asset-backed security", "completion of the transaction", "crossing of buy and sell orders", "debt security", "government security" and "municipal security" to their respective regulations. The new definitions are based on definitions contained in the Federal Securities laws and the SEC's confirmation rule, Rule 10b–10, 17 CFR 240.10b–10, and are necessary for applying the proposed confirmation disclosure and three day settlement requirements. Rule 15c6–1, 17 CFR 240.15c6–1. The definitions of the above terms contained in the OCC and FRB proposals are:

"Asset-backed security" shall mean a security that is serviced primarily by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the security holders.

"Completion of the transaction effected by or through a bank" shall mean:

(1) For purchase transactions, the time when the customer pays the bank any part of the purchase price (or the time when the bank makes the book entry for any part of the purchase price, if applicable), however, if the customer pays for the security prior to the time payment is requested or becomes due, then the transaction shall be completed when the bank transfers the security into the account of the customer; and

(2) For sale transactions, the time when the bank transfers the security out of the account of the customer or, if the security is not in the bank's custody, then the time when the security is delivered to the bank, however, if the customer delivers the security to the bank prior to the time delivery is requested or becomes due then the transaction shall be completed when the bank makes payment into the account of the customer.

"Crossing of buy and sell orders" shall mean a security transaction in which the same banks acts as agent for both the buyer and the seller.

"Debt security" shall mean any security, such as a bond, debenture, note or any other similar instrument which evidences a liability of the issuer (including any security of this type that is convertible into stock or similar security) and fractional or participation interests in one or more of any of the foregoing; provided, however, that securities issued by an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 *et seq.*, shall not be included in this definition.

"Government security" shall mean:

(1) A security that is a direct obligation of, or obligation guaranteed as to principal and interest by, the United States;

(2) A security that is issued or guaranteed by a corporation in which the United States has a direct or indirect interest and which is designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors;

(3) A security issued or guaranteed as to principal and interest by any corporation whose securities are designated, by statute specifically naming the corporation, to constitute exempt securities within the meaning of the laws administered by the SEC; or

(4) Any put, call, straddle, option, or privilege on a security as described in paragraph (1), (2), or (3) of this definition other than a put, call, straddle, option, or privilege that is traded on one or more national securities exchanges, or for which quotations are disseminated through an automated quotation system operated by a registered securities association.

"Municipal security" shall mean a security which is a direct obligation of, or obligation guaranteed as to principal or interest by a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond.

The FDIC is considering using identical definitions in revising part 344 and requests comment concerning these definitions. Specifically, the FDIC wishes to know if these definitions should be expanded in any manner or if they exclude transactions which should be covered by the scope of the definition. The FDIC proposal is consistent with the OCC and FRB proposals on the new definitions.

Exceptions

Under the current regulation, certain requirements concerning recordkeeping and securities trading policies and procedures do not apply to banks having an average of less than 200 securities transactions per calendar year for customers over the prior three-calendar-year period, exclusive of transactions in U.S. Government and Federal agency obligations. Section 344.7(a). The FDIC specifically requests comment concerning the continued appropriateness of this exemption and whether the current 200 transaction limit should be raised, and if so, what transaction or dollar limit should be adopted. Commenters are requested to address whether any increase in the threshold would (1) result in any material diminution in the protections to investors, and (2) how the applicability of and compliance with the Department of Treasury's Government Securities Dealer regulations would be affected. The OCC and FRB proposals do not address all the Government Securities trading issues raised herein.

Since part 344 was originally implemented, regulation of government securities has changed as a result of the enactment of the Government Securities Act of 1986 (Government Securities Act). 15 U.S.C. 78o–5. Under this statute, the Department of the Treasury has authority over government securities transactions (including United States Treasury securities and securities issued or guaranteed by Federal government agencies and government-sponsored enterprises). State nonmember banks which are government securities brokers and dealers are not required to follow certain recordkeeping requirements established by the Department of the Treasury regulations because they are subject to part 344. Consistent with the requirements of the Government Securities Act, state nonmember banks that conduct fewer than 500 government securities brokerage transactions per year would not have to comply with certain recordkeeping requirements of part 344 if the exemption contained in the Government Securities Act is carried over to the FDIC's regulation. See 17 CFR 401.3(a). The FDIC specifically requests comment if there is a need to adopt this exemption in its regulations. The FDIC proposal is consistent with the OCC and FRB proposals on this issue.

Safe and Sound Operations

As noted above, both the FRB and the OCC have issued proposed amendments to their regulations relating to recordkeeping and confirmation requirements for securities transactions. Those proposed amendments include a provision concerning safe and sound operations. See proposed § 208.24(h) of the FRB's regulations and § 12.1(c)(3) of the OCC's regulations. The provisions would require that a bank maintain effective systems of records and controls regarding customer securities transactions that reflect accurate information and are sufficient to provide an adequate basis for an audit of the information. The provisions are intended to emphasize the importance of effective internal controls with respect to all securities transactions. The FDIC requests comment on the desirability of adding this type of provision to its regulation.

Settlement of Securities Transactions

In October 1993, the SEC adopted a securities settlement rule, effective June 7, 1995, requiring the payment of funds and delivery of most securities by the third business day after the date of the contract (T+3). Rule 15c6–1, 17 CFR 240.15c6–1. Many banks effecting customer securities transactions use a clearing broker which would be subject to the T+3 rule. In these situations securities transactions for bank customers would routinely settle within three days. However, some banks may clear and settle their securities trades directly. For this reason, the FDIC is considering revising part 344 to include a separate T+3 settlement requirement that tracks the language of the SEC's securities settlement rule. Alternatively, the FDIC could cross-reference the language of the SEC rule.

The FDIC seeks comment on the need for and the effect of adopting the T+3 securities settlement requirement and specifically invites comment on the feasibility of alternate approaches to implement the T+3 settlement cycle. The FDIC's position is consistent with the OCC and FRB proposals on this issue.

Securities Transactions for Banks

The FDIC seeks comment on how part 344 affects small banks which use the services of other banks to buy and sell securities for their own account. Small banks are active buyers and sellers of U.S. Government and Municipal securities for their own accounts. It is not clear what effect, if any, part 344's recordkeeping, disclosure and settlement requirements have had on the banks which are the securities customers of other banks. The FDIC solicits comments from the banks which are consumers of other bank's securities services on what concerns they have and what improvements can be made to part 344. The OCC and FRB proposals do not address the bank as customer issues raised herein.

Sweep Accounts and Confirmations

It has now become commonplace for banks to offer "sweep accounts" to retail, commercial and trust customers. These "sweep accounts" are cash management services which permit customers to earn interest on otherwise idle cash balances. Sweep accounts automatically "sweep" excess cash out of a checking or non interest bearing deposit account into a money market mutual fund as frequently as every day after the close of business at the bank. The "sweep" is triggered by the amount of cash in the deposit account, which can be set by the depositor. The "sweep" may also be reversed so that shares in the money market mutual fund are redeemed and cash is deposited into the checking or non interest bearing account at certain times or when certain dollar limits are reached. Banks receive a fee for the "sweep" service.

The FDIC notes that "sweep accounts" bear some similarities to "periodic plans," which is a defined term under part 344. See § 344.1(d). Under the current part 344, banks which are effecting securities transactions under periodic plans are required to provide confirmations to customers "as promptly as possible after each transaction. * * *" See § 344.5(e). The SEC permits broker/dealers, under certain conditions, to send confirmations for sweep transactions out of brokerage accounts into money market mutual funds to be provided on a quarterly basis. See 12 CFR § 240.10b–10(b). The OCC and FRB have proposed amending their regulations to permit banks to provide confirmations for periodic plan transactions on a quarterly basis. The FDIC supports such a change, as it will reduce regulatory burden for banks and will harmonize securities and banking regulation.

The FDIC requests comment on whether the definition of "periodic plans" in part 344 needs to be revised to specifically include "sweep accounts" or whether the term and activity is sufficiently distinct to warrant its own definition. In addition, the FDIC solicits comment regarding whether all "sweep accounts" should receive such treatment or just "sweep accounts" which invest in certain types of securities, e.g., money market mutual funds, and under certain conditions, e.g., no sales commission is charged for either purchases or sales. The FDIC also requests comment on whether "sweep

accounts" raise any issues peculiar to bank Trust Departments. The OCC and FRB proposals do not specifically address the "sweep account" issues identified herein.

Reporting of Personal Trading

Part 344 currently requires certain bank officers and bank employees engaged in or aware of the investment decisions or recommendations for customer accounts to provide quarterly reports regarding their personal trading of securities. Section 344.6(d). The regulation does not require reporting of personal trading where the securities transactions aggregate $10,000 or less during the calendar quarter. The SEC has a similar reporting requirement for principal underwriters and investment advisers of registered investment companies under the Investment Company Act of 1940. See SEC Rule 17j–1, 12 CFR 270.17j–1. The SEC Rule does not provide an exemption for securities transactions involving in the aggregate $10,000 or less. The FDIC requests comments on whether the exemption from reporting personal trading by bank officers and employees engaged in or aware of the investment decisions or recommendations for customer accounts in section 344.6(d) is appropriate. Additionally, the FDIC requests comment on whether all bank directors, as opposed to just those bank directors who are also officers or employees of the bank, should be required to report on their personal trading. The OCC and FRB proposals do not address the personal trading issues raised herein.

Additional Comment

The FDIC is interested in receiving any additional comments regarding part 344 which the public feels should be taken into account as the agency undertakes to modernize the regulation.

By Order of the Board of Directors.

Dated at Washington, DC, this 14th day of May, 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 96–12928 Filed 5–23–96; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 95N–0374]

RIN 0910–AA32

Latex Condoms; User Labeling; Expiration Dating

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a proposed regulation that would require the labeling of latex condoms to contain an expiration date based upon physical and mechanical testing performed after exposing the product to varying conditions that age latex. Studies show that latex condoms degrade over time. Such degradation has a significant effect on the product's ability to provide a barrier to sexually transmitted disease (STD) agents, including the human immunodeficiency virus (HIV). This requirement is being proposed in order to provide consumers with essential information regarding the safe use of these products.

DATES: Written comments on this proposed rule by August 22, 1996. Written comments on the information collection requirements should be submitted by June 24, 1996. FDA proposes that any final rule that may be issue based on this proposal become effective 180 days after the date of its publication in the **Federal Register**.

ADDRESSES: Submit written comments on this proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Donald E. Marlowe, Center for Devices and Radiological Health (HFZ–150), Food and Drug Administration, 12200 Wilkins Ave., Rockville, MD 20852, 301–443–7003.

SUPPLEMENTARY INFORMATION:

I. Background

It is estimated that over 1 million persons in the United States are infected with HIV (Ref. 1). HIV is transmitted primarily through sexual contact; however, nonsexual transmission has occurred in health care settings as a result of contact with infected blood. Additionally, HIV has been isolated from other body fluids in addition to blood. With the prevalence of HIV infection and the risk of transmission of other infections, the importance of the quality of an effective barrier to the transmission of infection is crucial.

Numerous studies in the scientific literature, including the proceedings of a conference on "Latex as a Barrier Material" sponsored by FDA in 1989, have addressed and overwhelmingly supported the use of latex membranes, such as condoms and medical gloves, as effective barriers against the transmission of various disease agents, including hepatitis, HIV, and other infections (Ref. 2). The Centers for Disease Control and Prevention (CDC) and the Surgeon General of the Public Health Service have recommended, on the basis of evidence that latex provides a barrier against the transmission of STD's, that latex condoms should be used according to instructions with every act of intercourse for maximum protection against STD's (Ref. 3). Two recent studies involving serodiscordant heterosexual couples (i.e., one partner is HIV positive, the other HIV negative) indicate that using latex condoms substantially reduces the risk of HIV transmission (Refs. 4 and 5). In one study, none of the 123 partners who used condoms consistently became infected while 12 (10 percent) of 122 partners who used condoms inconsistently became infected (Ref. 4). In the second study, 3 (2 percent) of the 171 consistent condom users became infected compared to 8 (15 percent) of 55 inconsistent condom users (Ref. 5).

The effectiveness of latex condoms as a barrier, however, is dependent upon the integrity of the latex material. Degradation of latex film products (e.g., the embrittlement of the latex film, an increase in the porosity of the membrane, or other loss of physical properties) occurs when latex is exposed to various types of environmental conditions (such as elevated temperature, fluorescent lights, or ozone) normally experienced in product use, shipment, or storage situations. Exposure to these environmental conditions degrades the film progressively over time, and may result in bursts, rips, tears or seepage that allows the transmission of infectious agents.

To understand the effects of aging and other storage conditions on latex properties, the State of Washington's Board of Pharmacy initiated an FDA-sponsored study of the material integrity

of latex condoms (the FDA/Washington study) in July 1989 (Ref. 6). This study was designed to investigate the effects of aging on latex condoms by studying burst pressure, burst volume, tensile strength, and elongation at breakage, after storage over different periods of time at varying temperatures. The study examined dry (nonlubricated) condoms and various types of lubricated condoms, produced by the major domestic condom manufacturers. The study consisted of two parts--laboratory testing, which ran for 3 years, and field testing, which is an ongoing study of normal condom aging at eight sites representing varying temperatures, elevations, and humidity conditions.

At the laboratories of the FDA/Washington study, packaged and unpackaged latex condoms were exposed to temperatures of 20 and 30 °C (representing room temperature) for up to 5 years. In order to represent exposure to the upper extreme of environmental temperatures, condoms were exposed for 100 days to a temperature of 45 °C. Also, to accelerate the aging process of the latex, condoms were exposed to temperatures of 70 and 85 °C for up to 100 days (Refs. 7 through 9). The study revealed that exposed condoms (i.e., condoms not protected by packaging) degraded to the point of being unusable within 1 year at room temperature, and at higher temperatures in as little as 10 days. The FDA/Washington study further shows that latex condoms stored in intact plastic packages also degrade over time, though at a much slower rate. The results of the FDA/Washington study demonstrate that aging and other conditions can significantly affect the integrity, strength, and quality of latex essential to maintaining a barrier against the transmission of disease.

At a meeting with the agency, condom manufacturers and FDA agreed that, based upon the American Society for Testing and Materials (ASTM) standards and the FDA/Washington study, two accelerated aging test conditions (i.e., storage for 7 days at 70 °C and storage for 90 days at 40 to 50 °C) properly evaluate aging properties of latex films. Given the evidence that aging affects the latex barrier properties of condoms that prevent the transmission of infectious agents, the agency believes latex condoms should not be used after aging has compromised latex barrier properties. Accordingly, FDA believes that such products should bear expiration dates, based upon appropriate testing, that will inform the user when these products should no longer be used. FDA is therefore proposing that latex condoms bear expiration dates.

Proposed § 801.435(c) would require an expiration date to appear on the primary packaging (i.e., the individual package), as well as higher levels of labeling, such as the case containing individually packaged products to ensure visibility.

To establish the expiration date, FDA is proposing to require manufacturers to subject their products to certain aging condition environments prior to conducting physical and mechanical testing that will demonstrate the product will maintain its barrier properties during the labeled shelf life of the product. The accelerated aging conditions would be based on data and test protocols proposed by the industry, and supported by existing condom standards (Ref. 10), and the findings of the Mandel and FDA/Washington studies (Refs. 7 and 6).

Specifically, FDA in proposed § 801.435(d) would require that a manufacturer, before performing tests on products that demonstrate physical and mechanical integrity of the product, subject products from three discrete and random lots to each of the following conditions: (1) Storage unpackaged for the maximum amount of time the manufacturer allows the product to remain unpackaged after manufacture, followed by storage of the packaged product at 70 °C (plus or minus 2 °C) for 7 days; (2) storage unpackaged for the maximum amount of time the manufacturer allows the product to remain unpackaged after manufacture, followed by storage of the packaged product at 40 to 50 °C (plus or minus 2 °C) for 90 days; and (3) storage unpackaged for the maximum amount of time the manufacturer allows the product to remain unpackaged after manufacture, followed by storage of the packaged product at 15 to 30 °C for the stated shelf life of the product.

Under proposed § 801.435(e), if the latex barrier properties are adequate (i.e., pass the manufacturer's reasonable physical and mechanical integrity tests) after undergoing the 70 °C /7-day and 40 to 50 °C/90-day tests, the product may be labeled with an expiration date of up to 5 years. If the product, after storage at either 7- or 90-day test conditions, fails to meet the manufacturer's physical or mechanical integrity tests, the labeled shelf life of the product would be required to be demonstrated by real-time storage data at 15 to 30 °C. Products that pass the 7- and 90-day test conditions, would be required to undergo confirmation tests after the product has been stored at 15 to 30 °C for the stated shelf life. If the product fails the 15 to 30 °C confirmation test, the product would be required to be relabeled to represent the actual shelf life supported by real time data.

Although FDA would not require manufacturers of currently marketed products to submit new 510(k) submissions prior to marketing condoms with expiration dates, all testing data must be retained in each company's files as required by 21 CFR 820.180, and remain available for FDA inspection. New 510(k) submissions should include data to establish labeled expiration dates.

The agency believes that the proposed 180-day time period between the publication date of the final rule and the effective date of the final rule would be sufficient time to conduct the required tests and ensure that all latex condoms being initially introduced into interstate commerce will bear an expiration date. Latex condoms introduced into interstate commerce after the effective date of a final rule based on this proposal, which do not bear appropriate expiration dates would be considered to be misbranded under sections 201(n), 502(a) and (f)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(n), 352(a) and (f)(1)) in that their labeling fails to contain facts material to the consequences of their use, and fails to bear adequate directions for use.

II. Statement of Law

Section 701(a) of the act (21 U.S.C. 371(a)) authorizes FDA to issue substantive binding regulations for the efficient enforcement of the act. *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609 (1973); see also *Weinberger* v. *Bentex Pharmaceuticals, Inc.*, 412 U.S. 645, 653 (1973); *National Ass'n of Pharmaceutical Manufacturers* v. *FDA*, 637 F.2d 877 (2d Cir. 1981); *National Confectioners Ass'n* v. *Califano*, 569 F.2d 690 (D.C. Cir 1978); *National Nutritional Foods Ass'n* v. *Weinberger*, 512 F.2d 688 (2d Cir.) *cert. denied*, 423 U.S. 825 (1975).

Under the proposed rule, any latex condom that is not labeled as required and that is introduced or delivered for introduction into commerce after the effective date of a final rule would be misbranded under sections 201(n) and 502(a) and (f)(1) of the act (21 U.S.C. 321(n) and 352(a) and (f)(1)). Section 502(a) of the act provides that a device is misbranded if "its labeling is false or misleading in any particular." Section 201(n) of the act provides that, in determining whether labeling of a regulated article (such as a device) is misleading:

* * * there shall be taken into account * * * not only representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling * * * fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling * * * relates * * *.

The shelf life of latex condoms is material information that consumers need in order to safely use latex products. The omission of shelf life would constitute an omission of a material fact and would render latex condoms without an expiration date misbranded within the meaning of section 502(a) of the act. The courts have upheld FDA's authority to prevent false and misleading labeling by promulgating regulations requiring label warnings and other affirmative disclosures, see, e.g., *Cosmetic, Toiletry and Fragrance Association* v. *Schmidt*, 409 F. Supp. 57 (D.D.C. 1976), *aff'd without opinion*, Civil No. 75–1715 (D.C. Cir. August 19, 1977), even in the absence of a proven cause and effect relationship between product usage and harm, *Council for Responsible Nutrition* v. *Goyan*, Civil No. 80–1124 (D.D.C. August 1, 1980).

Section 502(f)(1) of the act provides that a device is also misbranded unless its labeling bears adequate directions for use. Adequate directions for use means adequate directions under which a layperson can use a device safely and for the purpose for which it is intended (see 21 CFR 801.4 and 801.5). Information concerning latex condom shelf life is necessary to allow lay users to use these products safely by avoiding use of products that may have degraded. Failure to include such information would render the products misbranded under section 502(f)(1) of the act.

FDA may impose testing requirements in a labeling regulation issued under its general rulemaking authority. See, e.g., *American Frozen Food Inst.* v. *Mathews*, 413 F. Supp. 548 (D.D.C. 1976), *aff'd per curiam sub nom. American Frozen Food Inst.* v. *Califano*, 555 F.2d 1059 (D.C. Cir 1977); see also *National Nutritional Foods Ass'n* v. *Weinberger*, supra. Thus, FDA may require that all latex condom manufacturers use the same conditions to test aging to ensure that the expiration date reflects the period of time a product can be used safely. A similar requirement is imposed in 21 CFR 801.430(f) for absorbency tests for menstrual tampons, and in 21 CFR 801.420(c)(4) on hearing aid manufacturers and distributors who must determine and state technical data values for hearing aid labeling in accordance with specified test procedures. The hearing aid regulation has been upheld. *American Speech and Hearing Ass'n* v. *Califano*, Medical Devices Report (CCH) No. 77–1327 §§ 15004, 15007 (D.D.C. August 23, 1977), *aff'd* No. 77–1327 (D.C. Cir. Dec. 19, 1977). Food regulations issued under section 701(a) of the act also impose many such specific testing requirements (see, e.g., 21 CFR 113.40 (tests for low-acid canned foods); 21 CFR 155.190(b)(2)(i) (test for determining drained weight of canned tomatoes); 21 CFR 161.190 (method for determining color designation of tuna)).

Consumers must be aware of the potential for degradation of latex condoms in order to safely use such products to provide a barrier from infectious agents. Accordingly, FDA believes that the shelf life is a material fact to the consequences of use of latex condoms. FDA also believes that a shelf life is necessary to provide the consumer with adequate directions for use. After the effective date of the final regulation, FDA will consider latex condoms that do not provide this information to be misbranded under sections 201(n), 502(a) and (f)(1) of the act because they fail to contain facts material to the consequences of their use, and fail to bear adequate directions for use.

III. Preemption

FDA advises that any labeling requirement based upon this proposal would, under section 521(a) of the act (21 U.S.C. 360k(a)), preempt any State or local requirement that is different from, or in addition to, FDA's labeling requirement. Section 521(a) of the act provides that no State or local government may establish any requirement applicable under the act if such requirement is different from, or in addition to, a requirement which is applicable to the device under the act.

In 1991, the State of Washington requested an advisory opinion regarding the preemption of its State requirement that condom labels bear a 3-year expiration date. One condom manufacturer had objected to the State law, on the grounds that its 510(k) clearance included labeling for a 5-year shelf life. The agency determined that the State requirement was not preempted by section 521(a) of the act because, at that time, there was no counterpart Federal requirement with respect to expiration date labeling for condoms. FDA's "General Guidance for Modifying Condom Labeling to Include Shelf Life" (Ref. 11) provided premarket notification procedures for manufacturers who choose voluntarily to affix shelf life dates to their condom packages. That document did not establish a "requirement" within the meaning of section 521(a) of the act. This proposed rule, when final, however, would constitute a requirement which will preempt any State or local requirement regarding the expiration date labeling of latex condoms which is different from, or in addition to, the final regulation.

IV. Labeling For Other Latex-Film Products

The agency recognizes that the unique packaging of latex condoms (i.e., product sealed individually in air-tight packages) makes it difficult to extrapolate the data relating to latex condoms to other latex-film medical devices that have packaging which may provide a different level of protection from environmental conditions. Given the evidence that aging affects the integrity of latex films, FDA believes that medical devices containing or composed of a latex film should provide information regarding the age of the latex film. In order to address this issue, FDA is initiating a study to determine at what rate latex gloves degrade under various environmental conditions.

Until the agency compiles sufficient data to propose an expiration date for latex devices other than condoms, the agency is considering whether to require devices containing or consisting of latex films, other than latex condoms, to be labeled with the date of manufacture (i.e., the date the latex film was formed by dipping). Although the date of manufacture provides no information about the expected life of the product, it will provide age information. Based upon such age information, consumers may make a more informed choice regarding the use of the product.

Furthermore, as shown in the FDA/Washington study cited above, latex films are far more stable in intact packages than when exposed. Because the normal use of some products (such as nonsterile examination gloves, sold in dispenser boxes of 100), includes storage in opened packages, FDA is also considering additional labeling information requirements for products normally dispensed in open containers, including the statement "Heat and light accelerate the degradation of latex films. Store opened containers away from heat and light."

FDA invites advance comments on these issues. Meanwhile, FDA encourages manufacturers to voluntarily provide information to consumers regarding the age of latex film devices, and additional educational materials and ancillary information regarding the stability and best storage conditions of such products, as appropriate.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. This proposed regulation would require physical and mechanical integrity tests. Because condom manufacturers routinely conduct such tests on their products, the required testing would affect manufacturers only by establishing storage conditions prior to testing such products. This proposed rule would also require a labeling change. The proposed 180-day time period between the publication date and effective date of the final rule based upon this proposal would allow most manufacturers to exhaust their existing supply of labels. Accordingly, for the above-stated reasons, the agency certifies that the proposed rule will not have a significant economic impact on small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VII. Paperwork Reduction Act of 1995

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Labeling Requirements for Latex Condoms—Expiration Date Labeling.

Description: These information collection requirements apply to condom manufacturers. This proposed rule expands the labeling of latex condoms to contain an expiration date. The expiration date must be supported by data from quality control tests demonstrating physical and mechanical integrity of three random lots of the same product which were stored under accelerated and real time conditions. Quality control testing under accelerated conditions must include tests of: (1) Unpackaged bulk product for the maximum amount of time the manufacturer allows the product to remain unpackaged; (2) packaged product stored at a specified temperature for 7 days; and (3) packaged product stored at a specified temperature for 90 days. Quality control testing must also be done under real time conditions, i.e., on packaged product at a specified temperature for the entire expiration period (up to 5 years).

The recording of shelf life testing by condom manufacturers is used to support the inclusion of expiration dating on the labeling of latex condoms. Information concerning latex condom shelf life is necessary to allow lay users to use these products safely by avoiding use of products that may have degraded. The effectiveness of latex condoms as a barrier to the transmission of infectious agents is dependent upon the integrity of the latex material. The shelf life of latex condoms is material information that consumers need in order to safely use latex products.

Condom manufacturers will use the information collected from the testing to establish the expiration date to be printed on the labeling and purchasers will use the information collected to determine likely effectiveness.

Section 510(h) of the act (21 U.S.C. 360(h)) requires that condom manufacturers as device manufacturers be inspected at least once in a 2-year period. During that inspection, FDA inspectors will review the test records used to support the expiration date in order to ensure that the expiration date is accurate.

Description of Respondents: Businesses or other for profit organizations.

Estimated Annual Recordkeeping Burden

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours	Total Capital Costs	Total Operating and Maintenance Costs
801.435(d)	58	1	58	120[1]	6,960[1]	$9,280[2]	$125,280[1]

[1] The annual burden reported here represents a year in which a manufacturer would have conducted testing at 0 days, 7 days, 90 days, and 5 years (in support of a labeled expiration period of 5 years). However, FDA expects that testing at 0 days, 7 days, and 90 days would be conducted during 1 year to justify a 5-year expiration period, and that testing on 5-year-old product would be conducted in another year.

[2] Capital costs are one time start-up costs and consist of a revision of policies and procedures.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, FDA has submitted the collections of information contained in the proposed rule to OMB for review. Other organizations and individuals should submit comments on the information collection requirements by June 24, 1996, and should direct them to the

Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

VIII. Comments

Interested persons may, on or before August 22, 1996, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Center for Disease Control and Prevention, "HIV Prevalence Estimates and AIDS Case Projections for The United States: Report Based Upon a Workshop," *Morbidity and Mortality Weekly Report*, vol. 39/No. RR–16, November 30, 1990.

2. Conference on Latex as a Barrier Material, University of Maryland, (sponsored by FDA), May 1989.

3. Center for Disease Control, "Update: Barrier Protection Against HIV Infection and Other Sexually Transmitted Diseases," *Morbidity and Mortality Weekly Report*, vol. 42/No. 30, August 6, 1993.

4. DeVincenzi, L., European Study Group on Heterosexual Transmission of HIV, Heterosexual Transmission of HIV in a European Cohort of Couples (abstract No. WSCO2–1), vol.1, IXth International Conference on AIDS/HIV STD World Congress. Berlin, 83, June 9, 1993.

5. Saracco, A., M. Musicco,-A. Nicolosi, et al., "Man-to-Woman Sexual Transmission of HIV: Longitudinal Study of 343 Steady Partners of Infected Men," *Journal of Acquired Immune Deficiency Syndrome*, 6:497–502, 1993.

6. Final Report: Lubricated Latex Condoms—Study of the Effects of Environmental Parameters on Deterioration: Program for Appropriate Technology in Health (PATH), FDA Contract No. 223–88–4285, October 1993.

7. Mandel, J. et al., "Measurement of the Aging of Rubber Vulcanizates" *Journal of Research of the Notional Bureau of Standards*, vol. 63C, No. 2, October-December, 1959.

8. Barker, L. R., Accelerated and Long-Term Ageing of Natural Rubber Vulcanisates: *Journal of Natural Rubber Research*, vol. 2, No. 4, pp. 201–213 (1987).

9. Barker, L. R., Accelerated Long-Term Ageing of Natural Rubber Vulcanisates, Part 2: Results From Ageing Tests at 40 C. *Journal of Natural Rubber Research*, vol. 5, No. 3, pp. 266–274, 1990.

10. ASTM D 3492, Standard Specification for Rubber Contraceptives (Condoms), American Society for Testing and Materials, Philadelphia, PA.

11. "General Guidance for Modifying Condom Labeling to Include Shelf Life," Division of Small Manufacturers Assistance, Center for Devices and Radiological Health, Rockville, MD.

List of Subjects in 21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 801 be amended as follows:

PART 801—LABELING

1. The authority citation for 21 CFR part 801 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 507, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 357, 360i, 360j, 371, 374).

2. New § 801.435 is added to subpart H to read as follows:

§ 801.435 User labeling for latex condoms.

(a) This section applies to the subset of condoms as identified in § 884.5300 of this chapter, and condoms with spermicidal lubricant as identified in § 884.5310, which products are formed from latex films.

(b) Data show that the material integrity of latex condoms degrades over time. To protect the public health and minimize the risk of device failure, latex condoms must bear an expiration date which is supported by testing as described in paragraph (d) of this section.

(c) The expiration date, as demonstrated by testing procedures described in paragraph (d) of this section, must be displayed prominently and legibly on the primary packaging (e.g., individual package), and higher levels of packaging (e.g., boxes of condoms), in order to ensure visibility of the expiration date.

(d) The expiration date must be supported by data from reasonable quality control tests demonstrating the physical and mechanical integrity of the product after three discrete and random lots of the same product have been subjected to each of the following conditions:

(1) Storage of unpackaged bulk product for the maximum amount of time the manufacturer allows the product to remain unpackaged, followed by storage of the packaged product at 70 °C (plus or minus 2 °C) for 7 days;

(2) Storage of unpackaged bulk product for the maximum amount of time the manufacturer allows the product to remain unpackaged, followed by storage of the packaged product at a selected temperature between 40 and 50 °C (plus or minus 2 °C) for 90 days; and

(3) Storage of unpackaged bulk product for the maximum amount of time the manufacturer allows the product to remain unpackaged, followed by storage of the packaged product at a monitored or controlled temperature between 15 and 30 °C for the lifetime of the product (real-time storage).

(e) If a product fails the manufacturer's reasonable quality control tests for physical and mechanical integrity after the completion of the accelerated storage tests described in paragraphs (d)(1) and (d)(2) of this section, the product expiration date must be demonstrated by real-time storage conditions described in paragraph (d)(3) of this section. If all of the products tested after storage at temperatures as described in paragraphs (d)(1) and (d)(2) of this section pass the manufacturer's reasonable physical and mechanical integrity tests, the manufacturer may label the product with an expiration date of up to 5 years from the date of product packaging. If the extrapolated expiration date, under paragraphs (d)(1) and (d)(2) of this section, is used, the labeled expiration date must be confirmed by reasonable physical and mechanical integrity tests performed at the end of the stated expiration period as described in paragraph (d)(3) of this section. If the data from tests following real-time storage described in paragraph (d)(3) of this section fails to confirm the extrapolated expiration date, the manufacturer must, at that time, relabel the product to reflect the actual shelf life.

(f) The time period upon which the expiration date is based shall start with the date of packaging.

(g) All testing data must be retained in each company's files, as required by § 820.180 of this chapter, and shall be made available, upon request, for inspection by FDA.

(h) Any latex condom not labeled with an expiration date as required by paragraph (c) of this section, and delivered for introduction into interstate commerce after the effective date of this regulation is misbranded under sections 201(n) and 502(a) and (f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(n), 352(a) and (f)).

Dated: May 17, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–13174 Filed 5–23–96; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD–FL–5510–2]

Clean Air Act Interim Approval of Operating Permits Program; Delegation of Section 112 Standards; State of Vermont

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes interim approval of the Operating Permits Program submitted by Vermont for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources. EPA is also approving Vermont's authority to implement hazardous air pollutant requirements.

DATES: Comments on this proposed action must be received in writing by June 24, 1996.

ADDRESSES: Comments should be addressed to Donald Dahl, Air Permits, CAP, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203–2211. Copies of the State's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 1, One Congress Street, 11th floor, Boston, MA 02203–2211.

FOR FURTHER INFORMATION CONTACT: Donald Dahl, CAP, U.S. Environmental Protection Agency, Region 1, JFK Federal Building, Boston, MA 02203–2211, (617) 565–4298.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act ("the Act")), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) Part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

B. Federal Oversight and Sanctions

If EPA were to finalize this proposed interim approval, it would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, the State of Vermont would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a Federal permits program for the State of Vermont. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the 3-year time period for processing the initial permit applications [1].

Following final interim approval, if the State of Vermont failed to submit a complete corrective program for full approval by the date 6 months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If the State of Vermont then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would apply sanctions as required by section 502(d)(2) of the Act, which would remain in effect until EPA determined that the State of Vermont had corrected the deficiency by submitting a complete corrective program. If, six months after application of the first sanction, the State of Vermont still has not submitted a corrective program that EPA finds complete, a second sanction will be required.

If, following final interim approval, EPA were to disapprove the State of Vermont's complete corrective program, EPA would be required under section 502(d)(2) to apply sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State of Vermont had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval. If, six months after EPA applies the first sanction, the State of Vermont has not submitted a revised program that EPA has determined corrected the deficiencies that prompted disapproval, a second sanction will be required.

Moreover, if EPA has not granted full approval to the State of Vermont's program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for the State of Vermont upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State Submission

The analysis contained in this document focuses on specific elements of Vermont's title V operating permits program that must be corrected to meet the minimum requirements of 40 CFR part 70. The full program submittal, technical support document (TSD), dated April 19, 1996 entitled "Technical Support Document—Vermont Operating Permits Program", which contains a detailed analysis of the submittal, and other relevant materials are available for inspection as part of the public docket. The docket may be viewed during regular business hours at the address listed above.

1. Title V Program Support Materials

Vermont's title V program was submitted by the State on April 28, 1995 (PROGRAM). The submittal was found to be administratively complete on June 12, 1995. The PROGRAM consisted of a Governor's letter, program description, Attorney General's legal opinion, permitting regulations and enabling legislation, and permitting program documentation. Included with the PROGRAM submittal was a draft implementation agreement which will be finalized by EPA and Vermont. The

[1] Note that states may require applications to be submitted earlier than required under section 503(c). See Subchapter X, Section 5–1005 of Vermont's rules.

agreement outlines procedures for EPA oversight, the state's administration of the PROGRAM, and state commitments for implementing future air toxic regulations. On March 6, 1996, Vermont submitted a supplement to their PROGRAM, which included a revised Attorney General Opinion, a revised permit form, and a letter of intention for delegation of standards under sections 111 and 112 of the Clean Air Act.

2. Title V Operating Permit Regulations and Implementation

Vermont's regulations implementing Part 70 include Environmental Protection Regulations, Air Pollution Control Chapter V, Definitions (§ 5–101) and Subchapter X (§§ 5–1001–1016, Operating Permits). The Vermont PROGRAM, including the operating permit regulations, substantially meets the requirements of 40 CFR part 70, including §§ 70.2 and 70.3 with respect to applicability, §§ 70.4, 70.5 and 70.6 with the respect to permit content and operational flexibility, §§ 70.7 and 70.8 with respect to public participation and review by affected states and EPA, and § 70.11 with respect to requirements for enforcement authority. Although the regulations substantially meet Part 70 requirements, there are program deficiencies that are outlined in section II.B. below as Interim Approval issues. Those Interim Approval issues are more fully discussed in the TSD. The "Issues" section of the TSD also contains a detailed discussion of elements of Part 70 that are not explicitly contained in Vermont's regulation, but which are satisfied by other elements of Vermont's program submittal and/or other Vermont State law. Also discussed in the TSD are certain elements of Vermont's title V regulation that are in need of a legal interpretation and which EPA is interpreting to be consistent with Part 70 with the understanding that Vermont shares such interpretation. Those elements include: (1) the absence of the language "[a]ny national ambient air quality standard or increment or visibility requirement under Part C of title I of the Act, but only as It would apply to temporary sources permitted pursuant to section 504(e) of the Act" in Vermont's definition of "applicable requirement"; (2) Section 5–1014 of Vermont's rule relating to "off-permit" changes; (3) Vermont's treatment of "insignificant activities" under Sections 5–1002 and 5–1006; (4) Vermont's authority to make applicability determinations in Section 5–1003; (5) Vermont's treatment of the stringency of compliance schedules contained in permits as required by 40 CFR 70.5(8)(iii)(C); (6) Vermont's treatment of certain permit content elements required by 40 CFR 70.6; (7) Vermont's method for providing adequate, streamlined, and reasonable procedures for expeditiously processing permit modifications; and (8) Vermont's requirements for the time frames and detailed contents of compliance certifications. EPA understands that Vermont will implement its program consistent with these interpretations, and will base this interim approval on these interpretations unless Vermont comments to the contrary.

Variances. Vermont's Air Quality Variance Board has the authority to issue a variance from requirements imposed by State law. See 10 V.S.A. § 561. The EPA regards Vermont's variance provisions as wholly external to the program submitted for approval under Part 70 and consequently is proposing to take no action on these provisions of State law. The EPA has no authority to approve provisions of State law that are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable Part 70 permit, except where such relief is granted through procedures allowed by Part 70. A Part 70 permit may be issued or revised (consistent with Part 70 procedures), to incorporate those terms of a variance that are consistent with applicable requirements. A Part 70 permit may also incorporate, via Part 70 permit issuance or revision procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based."

3. Permit Fee Demonstration

Section 502(B)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permit program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that the fees collected exceed $25 per ton of actual emissions per year, adjusted from the August, 1989 consumer price index ("CPI"). The $25 per ton was presumed by Congress to cover all reasonable direct and indirect costs to an operating permit program. This minimum amount is referred to as the "presumptive minimum."

Vermont has opted to make a presumptive fee demonstration. Vermont has demonstrated that actual emissions emitted from their title V sources was 5079 tons, excluding carbon monoxide. Vermont's permit fee legislation requires that each title V source pay an annual fee based on $800 per facility and $30 per ton. Therefore Vermont will collect $219,375. Using Vermont's application and emission fees, the State will collect $43.19 per ton annually which is above the presumptive minimum adjusted by the CPI.

Therefore, Vermont has demonstrated that the State will collect sufficient permit fees to meet EPA's presumptive minimum criteria. For more information, see section VII of Vermont's title V program documentation.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or Commitments for Section 112 Implementation

Vermont has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in Vermont's enabling legislation, regulatory provisions defining "applicable requirements," and the requirement that a title V permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow Vermont to issue permits that assure compliance with all section 112 requirements and to carry out all section 112 activities. In addition, given Vermont's commitments regarding implementation of the State's title V program, EPA has determined that the State will issue permits that assure compliance with all section 112 requirements, and will carry out all section 112 activities. For further discussion of this subject, please refer to the Technical Support Document, referenced above, and the April 13, 1993 guidance memorandum titled "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz, Director of the Office of Air Quality Planning and Standards.

b. Implementation of 112(g) Upon Program Approval

On February 14, 1995, EPA published an interpretive notice (see 60 FR 8333) that postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing the

requirements of that provision. The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow States time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of the effective date of section 112(g), Vermont must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations for section 112(g) requirements. EPA believes that Vermont can utilize its preconstruction permitting program to serve as a procedural vehicle for implementing the section 112(g) rule and making these requirements Federally enforceable between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations for section 112(g). For this reason, EPA is proposing to approve Vermont's preconstruction permitting program found in 10 V.S.A. § 5–501 under the authority of title V and Part 70 solely for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations.

Since the approval would be for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval would be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. Also, since the approval would be for the limited purpose of allowing the State sufficient time to adopt regulations, EPA proposes to limit the duration of the approval to 18 months following promulgation by EPA of its section 112(g) rule.

c. Program for Straight Delegation of Sections 111 and 112 Standards

The part 70 requirements for approval of a State operating permit program, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of the hazardous air pollutant program General Provisions, Subpart A, of 40 CFR parts 61 and 63, promulgated under section 112 of the Act, and MACT standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that a State's program contain adequate legal authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under Part 70. The Vermont Department of Environmental Conservation provided a supplemental request on March 6, 1996, for non-part 70 sources which contained information regarding adequate legal authorities, adequate resources for implementation, and an expeditious compliance schedule. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of Vermont's mechanism for receiving delegation of section 112 standards for both major and area sources, that are unchanged from the Federal standards as promulgated (straight delegation) and section 112 infrastructure programs such as those programs authorized under sections 112(i)(5), 112(g), 112(j), and 112(r). In addition, EPA is reconfirming the delegation of 40 CFR part 60 standards currently delegated to Vermont as indicated in Table I. Please note EPA has withdrawn delegation of Subpart XX, "Bulk Gas Terminals" per Vermont's request. Vermont requested the withdrawal because there currently are no Subpart XX sources in the State.

EPA is proposing to delegate all applicable future 40 CFR parts 60, 61, and 63 standards pursuant to the following mechanism unless otherwise requested by Vermont.[2] Vermont will accept future delegation of standards by checking the appropriate boxes on a standardized checklist. The EPA Regional Office will forward a checklist listing the applicable regulations to Vermont, and Vermont will accept the Federal standard as promulgated by checking the appropriate box and returning it to EPA. The details of this delegation mechanism are set forth in the March 6, 1996 letter containing a Memorandum of Agreement between EPA and Vermont. This program will apply to both existing and future standards. The original delegation agreement between EPA and Vermont was set forth in a letter to Brendan J. Whittaker dated September 30, 1982. In addition, Vermont has indicated that for some section 112 standards it may choose to submit a more stringent State rule or program through section 112(l). EPA will need to take public notice and comment for any section 112 delegation other than straight delegation.

Vermont is implementing this delegation by issuing permits to both major and area/minor sources. Permits issued to area/minor sources are not title V permits and therefore may not be federally enforceable.

d. Implementation of Title IV of the Act

Vermont has stated in Section 5–1008(g) of Subchapter X that the "Secretary shall implement the requirements and provisions of Title IV of the federal Clean Air Act."

B. Proposed Action

The scope of Vermont's Part 70 program covers all Part 70 sources within the state of Vermont, except any sources of air pollution over which an Indian Tribe has jurisdiction. See, *e.g.*, 59 FR 55813, 55815–18 (Nov. 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources and non-part 70 sources. As discussed above, Vermont's submittal meets the requirements for EPA approval of delegation of section 112 standards. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's mechanism for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. Vermont will be issuing permits containing section 112 standards to both major and area/minor sources; therefore, EPA is delegating authority to implement these standards for all sources subject to the standards, not just for part 70 sources.

The EPA is proposing to grant interim approval to the operating permits program submitted by Vermont on April 28, 1995. If promulgated, the State must make the following changes to receive full approval:

[2] The radionuclide National Emission Standards for Hazardous Air Pollutant (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of "major source" for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under Part 70 for another reason, thus requiring a Part 70 permit. The EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

1. Vermont does not allow for "section 502(b)(10)" changes at a title V source. In an August 29, 1994 (59 FR 44572) rulemaking proposal, EPA proposed to eliminate section 502(b)(10) changes as a mechanism for implementing operational flexibility. However, the Agency solicited comment on the rationale for this proposed elimination. If EPA should conclude, during a final rulemaking, that section 502(b)(10) changes are no longer required as a mechanism for operational flexibility, then Vermont will not be required to address 502(b)(10) changes in its rule.

2. In Sections 5–1014 and 5–1015(a)(11), the program regulation implementing operational flexibility requirements allows the State the *discretion* to incorporate emission trades into a permit, and does not require that the emissions involved in such trades be quantifiable. EPA's rule states that when a permitting authority agrees to establish an emissions cap in a title V permit independent of otherwise applicable requirements, the permitting authority *must* include emission trading provisions for complying with that cap requested by the permit applicant, as long as those provisions are quantifiable and include the compliance requirements of 40 CFR 70.6 (a) and (c). EPA's rule also requires that the emissions involved in such trades be quantifiable before a title V permit can provide for the trades. See § 70.4(b)(12)(iii). However, if a source requests an emission trade that could violate an underlying state requirement, the State has the discretion to limit any emission trading consistent with the state requirement when issuing the operating permit.

Vermont must therefore adopt regulatory language *requiring* the State to include, upon request by a source, emission trading provisions in a title V permit for the purpose of complying with an emissions cap established in the permit, provided that the emissions involved in such trades are quantifiable. Vermont retains the option to include language in its regulation that would require all such trades to be consistent with state requirements as well as applicable requirements.

3. In Section 5–1008(e)(1), the program regulation states that Vermont has the *discretion* to reopen and reissue a title V permit for cause. In Section 5–1008(e)(4) (i)–(vi), the program regulation enumerates the conditions which would potentially cause Vermont to reopen a permit. EPA's rule *requires* a permitting authority to reopen and reissue a permit when certain conditions exist (or "for cause" as defined by the regulation). See 40 CFR 70.7(f). Thus, Vermont must change the word "may" to "shall" in Section 5–1008(e)(1). Vermont must also include a provision in its rule requiring the State to reopen and reissue a permit (with a remaining term of 3 or more years) *within 18 months* of a source's becoming subject to an additional applicable requirement. See § 70.7(f)(1)(i).

4. Vermont must adopt provisions in Subchapter X which would require that every permit contain certain terms and conditions as specified in section 70.6. Vermont's current permit content section, found at Section 5–1015 of Subchapter X, does not contain all of the terms and conditions in § 70.6. Section 5–1015 of the program rule requires permit terms which generally address applicable requirements, emission monitoring and reporting, and compliance plans. Vermont will need to add the following missing requirements of section 70.6: (a) a source's obligation to report promptly any permit deviations (section 70.6(a)(3)(iii)(B)); (b) a source's obligation to maintain a record when switching between operating scenarios (section 70.6(a)(9)(i)); (c) the State's obligation to separate in a title V permit those permit terms which are enforceable by the State only (and to specifically designate them as such) from those which are enforceable by both the State and EPA (sections 70.6(b) (1) and (2)); and (d) the State's obligation to indicate in a title V permit the origin and authority of all permit terms and conditions, and identify any difference in form as compared to the applicable requirement upon which a permit term or condition is based (section 70.6(a)(1)(i)).

There are several ways Vermont could revise its rule to address the separation of federal and state requirements. One option suggested by EPA's recent "White Paper Number 2," dated March 5, 1996, is to clarify which state requirements are not federally-enforceable in the Findings of Fact section of the draft permit. This separation would identify for all concerned parties the federal applicable requirements and the requirements based solely on State law. If Vermont proposed to consolidate the State and federal requirements in the permit terms and conditions, Vermont would then have to use the most stringent limit as the permit condition in the draft permit. If an applicant objected during the public comment period to the consolidation of federal and State requirements, Vermont would have to separate the permit conditions within the enforceable terms and conditions section of the final permit. Vermont's regulation must clearly provide the permit applicant the authority to require the State to separate out State-only permit terms and conditions.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) to serve as the administrative record in the event of judicial review. The EPA will consider any comments received by June 24, 1996.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 6, 1996.

John P. DeVillars,

Regional Administrator, Region I.

Table I to the Preamble

Reconfirmation of Part 60 and 61 Delegations

Part 60	*Subpart Categories*
Da	ELECTRIC UTILITY STEAM GENERATORS
Dc	SMALL INDUSTRIAL-COMMERCIAL-INSTITUTIONAL STEAM GENERATING UNITS
E	INCINERATORS
I	ASPHALT CONCRETE PLANTS
RR	TAPE AND LABEL SURFACE COATINGS
OOO	NONMETALLIC MINERAL PROCESSING PLANTS
UUU	CALCINERS AND DRYERS IN MINERALS INDUSTRY

Part 61	*Subpart Categories*
M	ASBESTOS

[FR Doc. 96–13151 Filed 5–23–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 136

[FRL–5509–7]

Guidelines Establishing Test Procedures for the Analysis of Oil and Grease and Total Petroleum Hydrocarbons: Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; reopening of comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is reopening the comment period for the proposal to amend the Guidelines Establishing Test Procedures under section 304(h) of the Clean Water Act to replace existing gravimetric test procedures for the conventional pollutant "oil and grease" with EPA Method 1664, which was published in the **Federal Register** on January 23, 1996 (61 FR 1730). The public comment period for the proposed rule ended on March 25, 1996.

EPA has received several requests for an extension of time to comment on the proposed rule, on the grounds that several issues that the rule addresses require additional time for a proper evaluation. The Agency has determined that an extension of time is in the public interest, and that an additional 60 days to comment on the proposed rule is reasonable.

DATES: Comments on this proposal will be accepted until July 23, 1996.

ADDRESSES: Send written comments on the proposed rule to "Method 1664" Comment Clerk; Water Docket MC–4101; Environmental Protection Agency; 401 M Street, S.W.; Washington, D.C. 20460. Commenters are requested to submit any references cited in their comments. Commenters are also requested to submit an original and 3 copies of their written comments and enclosures. Commenters who want receipt of their comments acknowledged should include a self addressed, stamped envelope. All comments must be postmarked or delivered by hand by July 23, 1996. No facsimiles (faxes) will be accepted.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Honaker, Engineering and Analysis Division (4303), USEPA Office of Science and Technology, 401 M Street, S.W., Washington, D.C., 20460, or call (202) 260–2272.

SUPPLEMENTARY INFORMATION: On January 23, 1996, EPA published a proposed rule at 61 FR 1730 to replace existing gravimetric procedures for the conventional pollutant "oil and grease" (40 CFR 401.16) with EPA Method 1664 as part of EPA's effort to reduce dependency on the use of chlorofluorocarbons (CFCs). Method 1664 uses normal hexane (n-hexane) as the extraction solvent in place of 1,1,2-trichloro-1,2,2-trifluoroethane (CFC–113). This proposal would withdraw approval of EPA Method 413.1 and Standard Methods Method 5520B, which use CFC–113 as the extraction solvent. In an effort to provide for the use and depletion of existing laboratory stocks of CFC–113, EPA plans to implement the required use of Method 1664 no sooner than six months after the final rule is published in the **Federal Register**. Method 1664 was also proposed for the determination of total petroleum hydrocarbons.

This extension of time for comment neither represents any modification of the proposed rule, nor indicates a change in the Agency's interpretation of the existing requirements. The extension of time for receipt of comments simply provides those interested parties an additional 60 days to provide comments to the Agency on the proposed rule. All other requirements stipulated in the initial proposal for receipt of comments still apply.

All written comments submitted in accordance with the instructions in the Notice of Proposed Rulemaking and received by July 23, 1996, including those received between the close of the comment period on March 25, 1996, and the publication of this notice, will be entered into the public record and considered by EPA before promulgation of the final rule.

Dated: May 17, 1996.

Robert Perciasepe,

Assistant Administrator for Water.

[FR Doc. 96–13087 Filed 5–23–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP4E4420 and 6E4638/P656; FRL–5370–2]

RIN 2070–AC18

Metolachlor; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish time-limited tolerances for residues of the herbicide metolachlor and its metabolites in or on the raw agricultural commodities pepper, and forage and hay of the grass forage, fodder and hay crop group (excluding Bermudagrass). The proposed regulation to establish maximum permissible levels for residues of the herbicide was requested in petitions submitted by the Interregional Research Project No. 4 (IR-4). The tolerances would expire on December 31, 1998.

DATES: Comments, identified by the docket number [PP 4E4420 and 6E4638/P656], must be received on or before June 24, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Comments and data may also be submitted to OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 4E4420 and 6E4638/P656]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in the "SUPPLEMENTARY INFORMATION" section of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information"(CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a .m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8783; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petitions (PP) 4E4420 and 6E4638 to EPA on behalf of the named Agricultural Experiment Stations. These petitions request that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.368 by establishing tolerances for combined residues (free and bound) of the herbicide metolachlor [2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide), and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino)-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, in or on certain raw agricultural commodities as follows:

1. PP 4E4420. Petition submitted on behalf of the Experimental Stations of Arkansas, Florida, Georgia, Oklahoma, South Carolina, and Texas proposing a time-limited tolerance for pepper at 0.5 part per million (ppm).

IR-4 also proposed that the established tolerances for combined residues of metolachlor and its metabolites on bell pepper at 0.1 ppm, chili pepper at 0.5 ppm, Cubanelle pepper at 0.1 ppm, and tabasco pepper at 0.5 ppm be removed. The established metolachlor tolerances for these varieties of pepper are no longer needed, since the proposed tolerance for pepper will apply to all varieties of pepper. The commodity term "pepper" is defined in 40 CFR 180.1(h) to include all varieties of pepper.

2. PP 6E4638. Petition submitted on behalf of the Experimental Station of Oregon proposing time-limited tolerances for forage at 10 ppm and hay at 0.2 ppm of the grass forage, fodder and hay crop group (excluding Bermudagrass). IR-4 proposed the tolerances in support of regional registration for use of metolachlor on grass grown for seed in Idaho, Oregon and Washington. The use of metolachlor on grass grown for seed will be limited to production areas in Idaho, Oregon, and Washington based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above. EPA is establishing these tolerances with an expiration date of December 31, 1998, to allow IR-4 time to submit additional residue data in support of permanent tolerances for pepper and the grass forage, fodder, and hay crop group (excluding Bermudagrass). IR-4 has agreed to provide magnitude of residue data from three additional field trials for bell pepper, and five additional field trials for grass forage and hay.

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include:

1. A 1–year feeding study with dogs fed diets containing 0, 100, 300, or 1,000 ppm (equivalent to 3.5, 9.7 or 32.7 mg/kg/day for males and 3.6, 9.7 or 33.0 mg/kg/day for females) with a systemic no-observed effect level (NOEL) of 300 ppm (9.7 mg/kg/day) based on decreased body weight in females.

2. A 2–year feeding/carcinogenicity study with rats fed diets containing 0, 30, 300, 1,000, or 3,000 ppm (equivalent to 0, 1.5, 15, 50, or 150 mg/kg/day) with a compound related increase in liver adenomas and combined adenomas/carcinomas in female rats at the high dose level. This study, which was performed by Industrial Biotest, was classified as supplemental data due to inadequate clinical chemistry determination and dietary preparation records.

3. A 2–year feeding/carcinogenicity study with rats fed diets containing 0, 30, 300, or 3,000 ppm (equivalent to 0, 1.5, 15, or 150 mg/kg/day) with a systemic NOEL of 300 ppm based on decreased body weight at the 3,000 ppm dose level. A statistically significant increase in liver neoplasia was found in female rats at the 3,000 ppm dose level.

4. A 2–year carcinogenicity study in mice fed diets containing 0, 300, 1,000 and 3,000 ppm (highest dose level equivalent to 428 mg/kg/day) with no treatment related carcinogenic effects observed under the conditions of the study.

5. A second 2–year carcinogenicity study in mice fed diets containing 0, 300, 1,000 or 3,000 ppm with no treatment related carcinogenic effects observed under the conditions of the study.

6. A 2–generation reproduction study in rats fed diets containing 0, 30, 300 or 1,000 ppm with a reproductive NOEL of 300 ppm (equivalent to 23.5 to 26 mg/kg/day) based on reduced pup weights in the F1a and F2a litters at the 1,000 ppm dose level (equivalent to 75.8 to 85.7 mg/kg/day). The NOEL for parental toxicity is equal to or greater than the 1,000 ppm dose level.

7. A developmental toxicity study in rabbits given gavage doses at 0, 36, 120 or 360 mg/kg/day on gestation days 6 through 18. The NOEL for maternal toxicity was established at 120 mg/kg/day based on lacrimation, miosis, reduced food consumption and body weight gain. There was no developmental toxicity observed under the conditions of the study.

8. A second developmental toxicity study in rats given gavage doses of 0, 30, 100, 300, or 1,000 mg/kg/day on gestation days 6-15. The NOEL's for maternal and developmental toxicity were established at 300 mg/kg/day. The NOEL for maternal toxicity was based on deaths, salivation, lacrimation, convulsions, reduced body weight and food consumption at the 1,000 mg/kg/day dose level. The NOEL for developmental toxicity was based on

reduced mean fetal body weight, reduced number of implantations/dam with resulting decreased litter size, and a slight increase in resorptions/dam with resulting increase in post-implantation loss.

9. Metolachlor was not found to be mutagenic in any tests. Mutagenicity data include gene mutation assays in Salmonella and mouse lymphoma cells; structural chromosome aberration tests including an *in vivo* micronucleus assay in Chinese hamsters and a dominant lethal assay in mice; and other genotoxic activity tests including DNA damage/repair assays in rat hepatocytes and in human fibroblasts, and an *in-vivo/in vitro* unscheduled DNA synthesis assay.

10. Several metabolism studies have been performed with metolachlor and the available data indicate the compound is readily absorbed after oral dosing and excreted in approximately equal amounts in urine and feces.

Metolachlor was evaluated by the Office of Pesticide Programs' Health Effects Division, Carcinogenicity Peer Review Committee (CPRC) in 1991 and classified as a Group C (possible carcinogen) with a recommendation for the quantification of estimated potential human risk using a linearized low-dose extrapolation (Q*). This recommendation was based on the finding of liver tumors in female rats at the 3,000 ppm dose level in both rat studies and the apparent induction of a small number of nasal turbinate tumors in both sexes of rats at the 3,000 ppm dose level. Nasal turbinate tumors have also been associated with dietary administration of acetochlor and alachlor, structurally related herbicides that are classified as Group B2 carcinogens (probable human carcinogens).

The Carcinogenicity Peer Review Committee's decision was presented to the FIFRA Scientific Advisory Panel on September 18, 1991. The Panel concluded that liver tumors were benign and hyperplasia were evident in rats of both sexes. The Panel also concluded that the occurrence of nasal turbinate tumors in rats was low and not statistically significant, but of concern since metolachlor is structurally related to acetochlor and alachlor. The Panel considered the carcinogenicity evidence to be minimal but sufficient for the classification of metolachlor as a Group C carcinogen.

The CPRC met on July 27, 1994, to revaluate the weight-of-the-evidence on metolachlor, with particular reference to its carcinogenicity, based on newly submitted metabolism and mutagenicity studies. The registrant submitted data to show that the metabolism of metolachlor is substantially different from the metabolism of acetochlor and alachlor. Metolachlor does not metabolize to form a reactive quinone imine, which is presumed to be the carcinogenic metabolite of acetochlor and alachlor. There was also no evidence for mutagenic potential of metolachlor. Based on these data and in consideration of the full weight-of-the-evidence, the CPRC concluded that the classification of metolachlor should remain as a Group C carcinogen, but recommended that the Reference Dose (RfD) should be used for quantification of human risk.

The RfD is established at 0.1 mg/kg of body weight (bwt)/day, based on a NOEL of 9.7 mg/kg/day from the 1–year feeding study with dogs and an uncertainty factor of 100. Available information on anticipated residues and/or percent of crop treated were used to estimate the Anticipated Residue Contribution (ARC) from residues of metolachlor in the human diet. The ARC from established tolerances and the proposed tolerances for pepper and forage and hay of the grass, forage, fodder and hay group is estimated at 0.0006 mg/kg bwt/day and utilizes 0.6 percent of the RfD for the U.S. population. The ARC for non-nursing infants (the subgroup most highly exposed) utilizes 2 percent of the RfD. EPA generally has no concern for exposures below 100 percent of the RfD and concludes that the proposed uses of metolachlor on pepper and grass grown for seed pose negligible dietary cancer risks to humans.

Adequate analytical methods are available for enforcement purposes. The methods are listed in the Pesticide Analytical Manual, Vol. II (PAM II). The qualitative nature of the residues in plants and animals is adequately understood. The established tolerances for milk and meat, fat, kidney, liver and meat byproducts of livestock are adequate to cover secondary residues resulting from the proposed use on grass grown for seed. There are no livestock feed commodities associated with pepper.

There are presently no actions pending against the continued registration of this chemical. The pesticide is considered useful for the purpose for which the tolerances are sought.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 would - protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the docket number [PP 4E4420 and 6E4638/P656].

A record has been established for this rulemaking under docket number [PP 4E4420 and 6E4638/P656] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100

million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

This action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub.L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement explaining the factual basis for this determination was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 10, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.368, by removing "peppers, bell" from the table in paragraph (a), by revising the table in paragraph (c) and by adding a new paragraph (d) to read as follows:

§ 180.368 Metolachlor; tolerances for residues.

* * * * *

(c)* * *

Commodity	Parts per million	Expiration date
Onions, dry bulb	1.0	
Grass forage, fodder and hay group (excluding Bermudagrass), forage	10	December 31, 1998
Grass forage, fodder and hay group (excluding Bermudagrass), hay	0.2	December 31, 1998

(d) A time-limited tolerance is established for the combined residues (free and bound) of the herbicide metolachlor [2-chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl)acetamide], and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound in or on the following raw agricultural commodity:

Commodity	Parts per million	Expiration date
Pepper	0.5	December 31, 1998

[FR Doc. 96–13022 Filed 5–23–96; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I and Part 64

[CC Docket No. 96–98; CC Docket No. 96–112; DA 96–753]

Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Allocation of Costs Associated With Local Exchange Provision of Video Programming Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Common Carrier Bureau released a public notice inviting parties filing comments or reply comments on the Notice of Proposed Rulemaking in CC Docket No. 96–98, regarding implementation of the local competition provisions in the Telecommunications Act of 1996, and the Notice of Proposed Rulemaking in CC Docket No. 96–112, regarding allocation of costs associated with local exchange provision of video programming services, to submit proposed language for rules that the Commission could adopt in these proceedings. Such proposed language will not be counted against the page limits set forth in those notices.

DATES: Comment dates in CC Docket No. 96–98 are May 16, 1996, with reply comments due May 30, 1996, and also May 20, 1996, with reply comments due June 3, 1996. Comments in CC Docket No. 96–112 are due May 28, 1996; reply comments are due June 7, 1996.

ADDRESSES: Comments must be filed with the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D. C. 20554. The complete text of the Notice released by the Commission is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D. C. 20554.

FOR FURTHER INFORMATION CONTACT: Paul Gallant (202/418–1941), Policy and Program Planning Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION:

Synopsis of Public Notice

On April 19, 1996, the Commission released a Notice of Proposed Rulemaking in CC Docket No. 96–98 to implement the local competition provisions of the Telecommunications Act of 1996. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Notice of Proposed Rulemaking, FCC 96–182 (Local Competition NPRM) (61 FR 18311, April 25, 1996). Parties are hereby invited to submit, in conjunction with their comments or reply comments, proposed text for rules that the Commission could adopt in this proceeding. Specific rule proposals should be filed as an appendix to a party's comments or reply comments, and will not be counted against the page limits set forth in paragraph 291 of the Local Competition NPRM or the Order released May 7, 1996, modifying those page limits. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Order, DA 96–700. Such appendices may include only proposed text for rules that would implement proposals set forth in the parties' comments and reply comments in this proceeding, and may not include any comments or arguments. Proposed rules should be provided in the format used for rules in the Code of Federal Regulations, and should otherwise conform to the Comment Filing Procedures set forth in the Local Competition NPRM.

On May 10, 1996, the Commission released a Notice of Proposed Rulemaking in CC Docket No. 96–112. Allocation of Costs Associated with Local Exchange Carrier Provision of Video Programming Services, Notice of Proposed Rulemaking, FCC 96–214 (LEC Video Programming NPRM) (61 FR 25184, May 20, 1996). Parties are hereby invited to submit, in conjunction with their comments or reply comments, proposed text for rules that the Commission could adopt in this proceeding. Specific rule proposals should be attached as an appendix to a party's comments or reply comments, and will not be counted against the page limits set forth in paragraph 66 of the LEC Video Programming NPRM. Such appendices may include only proposed text for rules that would implement proposals set forth in the parties' comments and reply comments in this proceeding, and may not include any comments or arguments. Proposed rules should be provided in the format used for rules in the Code of Federal Regulations, and should otherwise conform to the Comment Filing Procedures set forth in the LEC Video Programming NPRM.

Accordingly, *it is ordered* That parties may file proposed language for rules in this proceeding consistent with the procedures set forth above.

Federal Communications Commission.

Regina M. Keeney,

Chief, Common Carrier Bureau.

[FR Doc. 96–13101 Filed 5–23–96; 8:45 am]
BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 61, No. 102
Friday, May 24, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Willamette Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Willamette PIEC Advisory Committee will meet on Wednesday, June 19 and Thursday June 20, 1996. The meeting on June 20th will be held in Conference Room "A' of the Grand Manor Inn, 971 Kurse Way (just off Gateway Street); Springfield, Oregon 97477; phone (541) 726–4769 or 1–800–626–1900. The meeting is scheduled to begin at 1:00 p.m. and conclude at approximately 4:00 p.m. Topics tentatively scheduled on the agenda include: (1) Advisory Committee involvement in flood assessment and restoration, (2) Update on activities by agency managers, and (3) a public forum.

The meeting is open to the public and opportunity will be available to address the Advisory Committee during the public forum. Time allotted for individual presentations to the committee will be limited to 3–5 minutes each. Written comments are encouraged and can be submitted prior to the meeting.

On Thursday, June 20th, the Advisory Committee will tour areas on the Eugene District Bureau of Land Management (BLM) and Willamette National Forest. The trip will begin at the Eugene District of the BLM, 2890 Chad Drive; Eugene, Oregon 97401; at 7:45 a.m. and will end at the BLM District Office at about 4:00 p.m. Focus of the field trip will be on watershed restoration projects, impacts of the February flooding, and watershed analysis. Citizens are also welcome to join the June 20th field review but must provide their own transportation. Travel will be on double- and single-lane paved and improved-gravel roads.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Neal Forrester, Designated Federal Official; Willamette National Forest, 211 East Seventh Avenue; Eugene, Oregon 97401; (541) 465–6924.

Dated: May 20, 1996.

Marsha Scutvick,

Administration Officer.

[FR Doc. 96–13126 Filed 5–23–96; 8:45 am]

BILLING CODE 3410–11–M

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: The Rural Housing Service, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of the program for "Self-Help Technical Assistance Grants" (FmHA Instruction 1944–I).

DATE: Comments on this notice must be received by July 23, 1996 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: David J. Adams, Senior Loan Specialist, Single Family Housing Processing Division, RHS, U.S. Department of Agriculture, Ag Box 0783, Washington, D.C. 20250, Telephone (202) 720–1532.

SUPPLEMENTARY INFORMATION:

Title: Self-Help Technical Assistance Grants.

OMB Number: 0575–0043.

Expiration Date of Approval: November 30, 1996.

Type of Request: Extension of a currently approved information collection.

Abstract: This subpart set forth the policies and procedures and delegate authority for providing Technical Assistance funds to eligible applicants to finance programs of technical and supervisory assistance for self-help housing, as authorized under Section 523 of the Housing Act of 1949 loan program under U.S.C. 42, Section 1472. This financial assistance may pay part of all of the cost of developing, administering, or coordinating program of technical and supervisory assistance to aid very low- and low-income families in carrying our self-help housing efforts in rural areas. The primary purpose is to fund organizations that are willing to locate and work with families that otherwise do not qualify as homeowners, are below the 50 percent of median incomes, and living in substandard housing.

RHS will be collecting information from non-profit organizations to enter into grant agreements. These non-profit organizations will give technical and supervisory assistance, and in doing so, they must develop a final application for Section 523 grant funds. This application contain Agency forms that contain essential information for making a determination of eligibility.

Estimate of Burden: Public reporting for this collection of information is estimated to average 1.13 per response.

Respondents: Individual or households.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondents: 22.9.

Estimated Total Annual Burden of respondents: 2,640.

Copies of this information can be obtained from the Director, Regulations and Paperwork Management Division at (202) 720–9725.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to the Director, Regulations and Paperwork Management Division, U.S. Department of Agriculture, Rural Development, Ag Box 0743, Washington, D.C. 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 11, 1996.

Maureen Kennedy,

Administrator, Rural Housing Service.

[FR Doc. 96–13137 Filed 5–23–96; 8:45 am]

BILLING CODE 3410–07–M

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of the program for "Rural Housing Loans and Grants" (FmHA Instruction 1944–J).

DATES: Comments on this notice must be received by July 23, 1996 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: David J. Adams, Senior Loan Specialist, Single Family Housing Processing Division, RHS, U.S. Department of Agriculture, Ag Box 0783, Washington, D.C. 20250, Telephone (202) 720–1532.

SUPPLEMENTARY INFORMATION:

Title: Rural Housing Loans and Grants.

OMB Number: 0575–0062.

Expiration Date of Approval: May 31, 1996.

Type of Request: Extension of a currently approved information collection.

Abstract: The rural housing loan program under Section 504 of the Housing Act of 1949, 42 U.S.C. Section 1472, enables very low-income owner/occupants of homes to repair homes in rural areas. The repairs may be used to remove health and safety hazards. Grants are available to owner/occupants 62 years or older.

RHS will be collecting information from owner/occupants of homes in rural areas in need of funds to remove hazards from their home. At this time this information is collected and evaluated by the local RHS County Office. This information is needed by RHS to determine if owner/occupants of homes in rural areas, qualify for a rural housing loan and/or grant. This information is collected for all requests for this type of assistance. The information collected is required for the Agency to make a determination of eligibility. If the information is not collected, RHS would be usable to make an objective determination of eligibility for owner/occupants of homes in rural areas.

Estimate of Burden: Public reporting for this collection of information is estimated to average .08 per response.

Respondents: Individual or households.

Estimated Number of Respondents: 13,000.

Estimated Number of Responses per Respondents: 1.40.

Estimated Total Annual Burden of Respondents: 1,464.

Copies of this information can be obtained from the Director, Regulations and Paperwork Management Division at (202) 720–9725.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to the Director, Regulations and Paperwork Management Division, U.S. Department of Agriculture, Rural Development, Ag Box 0743, Washington, D.C. 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 11, 1996.

Maureen Kennedy,

Administrator, Rural Housing Service.

[FR Doc. 96–13138 Filed 5–23–96; 8:45 am]

BILLING CODE 3410–07–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Telecommunications Act Accessibility Guidelines for Telecommunications Equipment and Customer Premises Equipment

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of appointment of advisory committee members and notice of first meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) is announcing the appointment of members to its Telecommunications Access Advisory Committee (Committee). The Committee will make recommendations to the Access Board on accessibility guidelines for telecommunications equipment and customer premises equipment. These recommendations will be used by the Access Board to develop accessibility guidelines under section 255 (e) of the Telecommunications Act of 1996. The Committee is composed of representatives of manufacturers of telecommunications equipment and customer premises equipment; organizations representing the access needs of individuals with disabilities; telecommunications providers and carriers; and other persons affected by the guidelines. This notice also announces the time and place of the first Committee meeting, which will be open to the public.

DATES: The first meeting of the Committee is scheduled for Wednesday, June 12, 1996 through Friday, June 14, 1996, beginning at 9:30 a.m. each day. Decisions with respect to future meetings will be made at the first meeting and from time to time thereafter. Notices of future meetings will be published in the **Federal Register**.

ADDRESSES: The first meeting of the Committee will be held at the American Speech-Language and Hearing Association offices, 10801 Rockville Pike, Rockville, MD 20852. Persons attending the meetings are strongly encouraged to use public transportation since parking is extremely limited. The American Speech-Language and Hearing Association offices are located north of the Grosvenor Metro subway station. Persons who must drive should call Dennis Cannon at the Access Board. The facility is accessible to individuals with disabilities. Sign language interpreters, assistive listening systems and real time transcription will be available.

Subsequent meetings will be held at locations to be announced.

FOR FURTHER INFORMATION CONTACT: Dennis Cannon, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, D.C. 20004–1111. Telephone number (202) 272–5434 extension 35 (Voice); (202) 272–5449 (TTY). Electronic mail address: cannon@access-board.gov. This document is available in alternate formats (cassette tape, braille, large print, or computer disc) upon request.

SUPPLEMENTARY INFORMATION: On March 28, 1996, the Access Board published a notice of intent to establish an advisory committee to make recommendations to the Access Board on accessibility guidelines for telecommunications equipment and customer premises equipment. 61 FR 13813 (March 28, 1996). Under section 255 (e) of the Telecommunications Act of 1996, the Access Board is responsible for developing these guidelines, in conjunction with the Federal Communications Commission. The notice requested nominations for membership on the Committee from manufacturers of telecommunications equipment and customer premises equipment; manufacturers and developers of peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access; organizations representing the access needs of individuals with disabilities affecting hearing, vision, movement, manipulation, speech, and interpretation of information; telecommunications providers and carriers; developers of telecommunications software; and other persons affected by these accessibility guidelines.

Over 60 nominations were submitted. For the reasons stated in the notice of intent, the Access Board has determined that establishing the Committee is necessary and in the public interest. The Access Board has appointed members to the Committee from the following organizations:

AT&T American Council of the Blind
American Foundation for the Blind
Arkenstone
Bay Area Multi Media Technology Consortium
Cellular Telecommunications Industry Association
Consumer Action Network
Consumer Electronics Manufacturers Association
The Council of Organizational Representatives
Deaf and Disabled Telecommunications Program
Digital Equipment Corporation
The Ericsson Corporation
Gallaudet University
Inclusive Technologies
Lucent Technologies
Massachusetts Assistive Technology Partnership Center
NCR Project Freedom
National Association for State Relay Administration
National Federation of the Blind
Northern Telecom
NYNEX Corporation
Pacific Bell
Pennsylvania Citizens Consumer Council
Personal Communications Industry Association
RESNA
Self Help for Hard of Hearing People, Inc.
Siemens Rolm Communications, Inc.
Telecommunications Industry Association
Trace Research and Development Center
United Cerebral Palsy Associations, Inc.
U.S. Society for Augmentative and Alternative Communication
United States Telephone Association
World Institute on Disability

The Access Board regrets being unable to accommodate all requests for membership on the Committee. There were several factors which were important in the Access Board's decision not to add more members. In order to keep the Committee to a size that can be effective, it is necessary to limit membership. It is also desirable to have balance among members of the Committee representing different clusters of interest, such as disability organizations and the telecommunications industry. In addition, it is not essential that every concerned organization is represented, so long as every interest is represented by an appropriate organization. The Committee membership identified above provides representation for each interest affected by issues to be discussed.

Committee meetings will be open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have an opportunity to address the Committee on issues of interest to them and the Committee. Members of groups or individuals who are not members of the Committee may also have the opportunity to participate with subcommittees of the Committee. The Access Board believes that participation of this kind can be very valuable for the advisory committee process.

Additionally, all interested persons will have the opportunity to comment when the proposed accessibility guidelines for telecommunications equipment and customer premises equipment are issued in the **Federal Register** by the Access Board.

Judith E. Heumann,

Chairman, U.S. Architectural and Transportation Barriers Compliance Board.

[FR Doc. 96–13149 Filed 5–23–96; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted the following collection requirement to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. An emergency clearance is being requested with a response date of no later than May 31, 1996, from OMB.

Agency: International Trade Administration (ITA).

Title: Best Global Practices Award.

Agency Number: None.

OMB Number: None.

Type of Request: New Collection—EMERGENCY PROCESSING REQUESTED. Clearance requested by May 31, 1996.

Burden: 1,000 hours.

Number of Respondents: 50.

Avg Hours Per Response: 20 hours.

Needs and Uses: The Department of Commerce is establishing a "Best Global Practices Award" to recognize the programs of U.S. companies exhibiting extraordinary leadership and accomplishment in corporate citizenship in overseas activities. The purposes of this information collection is to accept nominations and evaluate candidates.

Affected Public: Businesses or other for-profit institutions, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required in order to be considered for this Award.

OMB Desk Officer: Victoria Wassmer, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC's Acting Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Victoria Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: May 20, 1996

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–13074 Filed 5–23–96; 8:45 am]

BILLING CODE 3510–DR–P

Bureau of the Census

Census Advisory Committee on Agriculture Statistics; Notice of Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409), we are giving notice of a meeting of the Census Advisory Committee on Agriculture Statistics. The meeting will be held on June 13, 1996 in the Francis Amasa Walker Conference Center at the U.S. Bureau of the Census, Suitland, Maryland.

The Committee advises the Director, Bureau of the Census, on the conduct of periodic censuses of agriculture and related surveys, and the kind of information that should be obtained from respondents about agriculture production and operations; prepares recommendations regarding the conduct of agriculture data programs and the contents of agriculture reports; and presents the views of major suppliers and users of agriculture statistics on agriculture data programs and products.

The Committee is composed of 21 members. Twenty members are appointed by the presidents of the nonprofit organizations having representatives on the Committee, and one member is a representative from the Department of Agriculture.

The June 13 meeting will begin at 9 a.m. and adjourn at 4:30 p.m. The meeting agenda is: (1) call to order and introduction; (2) introductory remarks by the Director, Bureau of the Census; (3) USDA perspective; (4) status update—Census of Agriculture program, transfer from Census-National Agriculture Statistics Service (NASS); (5) plans for the 1997 Census of Agriculture; (6) mail list development; (7) public questions and comments; (7) Committee recommendations; and (8) election of a chairperson for 1997.

This meeting is open to the public and a brief period is set aside for public comments and questions. Persons with extensive questions or statements must submit them in writing to the Census Bureau official named below at least three days before the meeting.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Census Bureau official named below in advance of the meeting.

Persons wishing additional information regarding this meeting or who wish to submit written statements may contact Ms. Maxine Anderson-Brown, Committee Liaison Officer, Conference Services Office, Bureau of the Census, Room 3039, Federal Building 3, Suitland, Maryland. (Mailing address: Washington, D.C. 20233) Telephone (301) 457–2308—TDD (301) 457–2540, FAX (301) 457–3682.

Dated: May 20, 1996.

Bryant Benton,

Deputy Director, Bureau of the Census.

[FR Doc. 96–13147 Filed 5–23–96; 8:45 am]

BILLING CODE 3510–07–P

Foreign-Trade Zones Board

[Docket 41–96]

Foreign-Trade Zone 202; Los Angeles, CA; Application for Subzone; Minnesota Mining & Manufacturing Company (3M) (Pharmaceutical Products), Los Angeles, CA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Harbor Commissioners of the City of Los Angeles, grantee of FTZ 202, requesting special-purpose subzone status for the pharmaceutical manufacturing facility of the Minnesota Mining & Manufacturing Company (3M), in Los Angeles, California. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 15, 1996.

3M is a global manufacturer of a wide variety of products including tapes, adhesives, abrasives, specialty chemicals, electronic and communications products, medical imaging systems, data storage products, traffic and personal safety products, and health care products. Its 3M Pharmaceuticals Division will operate the proposed subzone site.

The 3M plant (12 buildings/121,000 mfg. sq. ft. on 32.5 acres) is located at 19901 Nordhoff Street, Los Angeles (Los Angeles County), California. The facility (400 employees) primarily produces solid-dose pharmaceutical products such as: antacids, appetite suppressants, muscle relaxants, and products for the treatment of arthritis, skeletal muscle pain, cardiac arrhythmia, asthma and urinary tract infections; controlled-dose inhalers for the treatment of bronchial asthma and vascular headaches; and transdermal patches for hormonal replacement and the treatment of angina pain. The materials for certain products are sourced abroad (accounting for some 30 percent of total material value) and include, aluminum bottles, valves, valve parts and plastic actuators for aerosol delivery systems, orphenadrine citrate, antacid capsules and tablets, epinephrine, flecanide acetate, methenamine hippurate, pirbuterol acetate, theophylline anhydrous, and ethyl oleate. Some 40 percent of production is exported.

Zone procedures would exempt 3M from Customs duty payments on foreign materials used in production for export. On domestic shipments, the company would be able to choose the duty rates that apply to the finished products (duty-free) instead of the rates otherwise applicable to the foreign materials (duty-free to 7.7%). The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 23, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 7, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Room 9200, 11000 Wilshire Blvd., Los Angeles, CA 90024.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: May 16, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–13170 Filed 5–23–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and requests for revocation in part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with April anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke one antidumping duty order in part.

EFFECTIVE DATE: May 24, 1996.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 C.F.R. 353.22(a) and 355.22(a)(1994), for administrative reviews of various antidumping and countervailing duty orders and findings with April anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on certain fresh cut flowers from Mexico

Initiation of Reviews

In accordance with sections 19 C.F.R. 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. The Department is not initiating an administrative review of any exporters and/or producers who are not named in a review request because such exporters and/or producers were not specified as required under section 353.22(a) and 355.22(a) (19 CFR 353.22(a) and 355.22(a)). We intend to issue the final results of these reviews not later than April 30, 1997.

	Period to be reviewed
Antidumping Duty Proceedings:	
BANDGLADESH: Shop Towels [1] A–538–802	3/1/95–2/29/96
Greyfab (Bangladesh) Ltd., Khaled Textile Mills, Ltd., Shabnam Textiles, Hashem International	
Brazil: Ferrosilicon A–351–820	3/1/95–2/29/96
Companhia Brasileria Carbureto De Calcio [1]	
Japan: Calcium Hypochlorite A–588–401	4/1/95–3/31/96
Nankai Chemical Industry Co., Ltd., Tohoku Tosoh Chemical Co., Ltd.	
Japan: 3.5″ Microdisks and Coated Media Thereof A–588–802	4/1/95–3/31/96
Fuji Photo Film	
Japan: Roller Chain, Other than Bicycle A–588–028	4/1/95–3/31/96
Daido Kogyo, Enuma Chain, Hitachi Metals, Izumi, Pulton Chain, RK Excel (Takasago).	
Mexico: Certain Fresh Cut Flowers A–201–601	4/1/95–3/31/96
Rancho Guacatay, Rancho del Pacifico.	
Taiwan: Color Television Receivers A–583–009	4/1/95–3/31/96
Proton Electronics Industrial Company, Ltd.	
Countervailing Duty Proceedings:	
None.	

[1] Inadvertently omitted from previous initiation notice.

If requested within 30 days of the date of publication of this notice, the Department will determine whether antidumping duties have been absorbed by an exporter or producer subject to any of these reviews if the subject merchandise is sold in the United States through an importer which is affiliated with such exporter or producer.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(l) and 355.22(c)(l).

Dated: May 16, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–13153 Filed 5–23–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–580–008]

Color Television Receivers From the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty-administrative review.

SUMMARY: In response to a request from Samsung Electronics Co., Ltd. (Samsung), respondent in this proceeding, the Department of Commerce (the Department) is conducting an administrative review of the antidmuping duty order on color television receivers (CTVs) from the Republic of Korea. The review covers Samsung and the period April 1, 1994, through March 31, 1995.

We have preliminarily determined that Samsung made no-sales or shipments of subject merchandise to the Untied States during the period of review. Furthermore, because the Department may not revoke an order based on a review in which there were no sales or shipments, we have preliminarily determined to deny Samsung's request for partial revocation.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 24, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Zev Primor, Office of Antidumping Compliance, Import Administration, International trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On April 30, 1984, the Department published in the **Federal Register** (49 FR 18336) the antidumping duty order on CTVs from the Republic of Korea (the order). On April 4, 1995, the Department published (60 FR 17052) a notice of "Opportunity to Request an Administrative Review" of the order for the period April 1, 1994, through March 31, 1995 (twelfth review). We received a timely request for review and partial revocation of the order from Samsung.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Scope of the Review

Imports covered by this review include CTVs, complete and incomplete, from the Republic of Korea. This merchandise is currently classified under item numbers 8528.10.08, 8528.10.11, 8528.10.13, 8528.10.17, 8528.10.19, 8528.10.24, 8528.10.28, 8528.10.34, 8528.10.38, 8528.10.44, 8528.10.48, 8528.10.54, 8528.10.58, 8528.10.61, 8528.10.63, 8528.10.67, 8528.10.69, 8528.10.71, 8528.10.73, 8528.10.77, 8528.10.79, 8529.90.03, 8529.90.06, and 8540.11.10 of the Harmonized Tariff Schedule (HTS). Since the order covers all CTVs regardless of HTS classification, the HTS subheadings are provided for convenience and for the U.S. Customs Service purposes. Our written description of the scope of the order remains dispositive. The period of review is April 1, 1994, through March 31, 1995.

Request for Revocation

On April 28, 1995, Samsung submitted, along with its request for an administrative review, a request that the rider be revoked as it applies to Samsung. In its letter, Samsung certified that it did not sell subject merchandise during the twelfth review at less than normal value, and that it will not in the future sell such merchandise at less than normal value. Additionally, Samsung attached to its letter a certificate agreeing to the immediate reinstatement of the order if Samsung is subsequently found to have sold CTVs at less than normal value.

We have preliminarily determined that, because Samsung made no sales of subject merchandise during the period of review, the criteria necessary to revoke an order based on an absence of dumping have not been met. Pursuant to section 353.25(a) of the Department's regulations, we may revoke an order in part if the subject merchandise has been sold at not less than normal value for a period of at least three consecutive years and it is not likely that future sales of the subject merchandise will be made at less than normal value.

Because Samsung did not sell the subject merchandise during the period of review, we have determined that the regulatory requirements listed in sections 353.25 (a) and (b) have not been met. Accordingly, we have preliminarily determined to deny Samsung's request for partial revocation.

Preliminary Results of Review

Sansung reported, and the Department verified through the U.S. Customs Service, that it made no sales or shipments of subject merchandise to the United States during the period of review. Therefore, we preliminarily determine to maintain Samsung's current cash deposit rate. This rate is zero percent because the margin assigned to Samsung in the most recent final results of review in which it made shipments was a *de minimis* rate (0.47 percent).

Furthermore, the following deposit requirements will be effective for all shipments of CTVs entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for Samsung will remain zero percent, the rate established in the last review in which it made shipments; (2) For previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) If the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rates will be 13.90 percent, the "all others" rate established in the LTFV investigation (49 FR 18336). These deposit requirements will remain in effect until publication of the final results of the next administrative review.

Parties to the proceeding may request disclosure within five days of the date of publication of this notice, and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first work day thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument: (1) a statement of the issue; and (2) a brief summary of the argument. The Department will published the final results of this administrative review, including the results of its analysis of issues raised in any such written arguments.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act.

Dated: May 17, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–13172 Filed 5–23–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–428–814, A–428–816]

Certain Cut-To-Length Carbon Steel Plate From Germany: Amendment to Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amendment to Final Results of Antidumping Duty Administrative Review.

SUMMARY: On March 28, 1996, the Department of Commerce published the final results of its administrative review

of the antidumping duty order on certain cut-to-length carbon steel plate from Germany. The review covered one manufacturer/exporter and the period February 4, 1993, through July 31, 1994. Based on the correction of a ministerial error, we are amending the final results.

EFFECTIVE DATE: May 24, 1996.

FOR FURTHER INFORMATION CONTACT: Nancy Decker or Linda Ludwig, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 1996, the Department of Commerce (the Department) published in the **Federal Register** the final results of its administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Germany (61 FR 13834). The review covered one manufacturer/exporter, AG der Dillinger Huttenwerke (Dillinger), and the period February 4, 1993, through July 31, 1994.

After publication of our final results, we received a timely allegation from petitioners (Bethlehem Steel Corporation, U.S. Steel Company, a Unit of USX Corporation, Inland Steel Industries, Inc., Geneva Steel, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, and Lukens Steel Company) that the Department had made a ministerial error in calculating the final results for plate from Germany sold by Dillinger. The respondent filed a timely rebuttal to petitioners' ministerial error allegation.

Petitioners allege that the Department incorrectly applied Dillinger's actual-to-theoretical weight conversion factor in the conversion of gross unit price. The petitioners state that the gross unit price should have been divided, rather than multiplied, by the weight conversion factor. The respondent argues that the error alleged by petitioners does not qualify as a ministerial error under Section 353.28(d) of the Department's regulations (19 CFR 353.28(d) (1995)). Respondent also argues that if the Department, nevertheless, decides to change its methodology, it should also make changes to the conversions of expense related data (conversions of home market inland freight, home market other expenses, home market global credits and debits, and home market credit) to be consistent.

As defined by section 751(f) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1675(f) (1988)), the term "ministerial error" includes errors "in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the [Department] considers ministerial."

We agree with petitioners' allegation that we should have divided, rather than multiplied, gross unit price by the conversion factor. This type of unintentional error meets the definition of ministerial error contained in the Act. We also agree with respondent's rebuttal that, to be consistent, we should also likewise change the conversions of expense related data (home market inland freight, home market other expenses, home market global credits and debits, and home market credit). We have therefore corrected our analysis to divide (rather than multiply) the following by the applicable weight conversion factor: gross unit price, home market inland freight, home market other expenses, home market global credits and debits, and home market credit.

Amended Final Results of Review

As a result of our correction of the ministerial error, we have determined the following margin exists for the period February 4, 1993, through July 31, 1994:

Manufacturer/exporter	Margin
AG der Dillinger Hüttenwerke	2.61

We will direct the Customs Service to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of this review (61 FR 13834), as amended by this determination.

These deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a reminder to importers of their responsibility under 19 CFR 353.26 of file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period.

Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice is published in accordance with section 751(f) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(f)) and 19 CFR 353.28(c).

Dated: May 17, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–13178 Filed 5–23–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–423–602]

Industrial Phosphoric Acid From Belgium; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from FMC Corporation and Monsanto Company (petitioners), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on industrial phosphoric acid (IPA) from Belgium. The review covers exports by one manufacturer, Société Chimique Prayon-Rupel (Prayon), during the period August 1, 1994 through July 31, 1995.

We have preliminarily determined that sales have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties equal to the difference between the United States price (USP) and the NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: May 24, 1996.

FOR FURTHER INFORMATION CONTACT: David Genovese or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–5253.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

The Department published in the **Federal Register** the antidumping duty order on IPA from Belgium on August 20, 1987 (52 FR 31439). The Department published in the **Federal Register** a notice of "Opportunity To Request an Administrative Review" of the antidumping duty order on IPA from Belgium covering the period August 1, 1994 through July 31, 1995, on August 1, 1995 (60 FR 39150). On August 25, 1995, petitioners requested that the Department conduct an administrative review of sales by Prayon. We initiated the review on September 15, 1995 (60 FR 47930). The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this review include shipments of IPA from Belgium. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2809.20. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

United States Price

We based our margin calculations on export price (EP), as defined in section 772(a) of the Act, because the merchandise was sold to unaffiliated U.S. purchasers prior to the date of importation. We based EP on the delivered price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions for inland and marine insurance, brokerage and handling costs and freight expenses incurred to deliver the merchandise to the first unaffiliated customer in the United States. No other adjustments to EP were claimed or allowed.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Prayon's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because Prayon's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV for Prayon, pursuant to section 773(a)(1)(B) of the Act.

Pursuant to section 777A(d)(2), we compared the EPs of individual transactions to the monthly weighted-average price of sales of the foreign like product. We based NV on the delivered or ex-works price at which the foreign like product is first sold to unaffiliated purchasers for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade, and to the extent practicable, at the same level of trade as the export price, as defined by section 773(a)(1)(B)(i) of the Act.

We excluded from our analysis of NV sales to an affiliated home market customer because the weighted-average sales price to the affiliated party was less than the weighted-average sales price to unaffiliated parties.

We reduced NV by freight costs, including inland insurance costs, incurred in the home market, in accordance with section 773(a)(6)(B)(ii). We made a circumstance of sale adjustment to NV to account for any differences between EP and NV due to differences in credit expenses, rebates, and commissions in accordance with 773(a)(6)(C)(iii) of the Act.

Because sales commissions incurred in the home market were paid to an affiliated party, and there is no information on the record to establish that these commissions were at arm's-length, we offset U.S. commissions with the weighted-average of home market indirect selling expenses up to the amount of the commissions paid on U.S. sales in accordance with 19 CFR 353.56(b)(1).

No other adjustments were claimed or allowed.

Preliminary Results

As a result of this review, we preliminarily determine that a margin of 11.36 percent exists for Prayon for the period August 1, 1994, through July 31, 1995.

Parties to this proceeding may request disclosure within five days of publication of this notice and any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs no later than 30 days after the date of publication. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed no later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. The Department will publish a notice of the final results of the administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Individual differences between USP and NV may vary from the percentage stated above. Upon completion of this review, the Department will issue appraisement instructions directly to Customs.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of IPA from Belgium entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Prayon will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original LTFV investigation or a previous review, the cash deposit will continue to be the rate established for the most recent perind for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 14.67 percent, the all-others rate established in the LTFV investigation.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26(b) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act.

Dated: May 17, 1996.

Paul L. Joffe.

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–13173 Filed 5–23–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–201–017]

Bricks From Mexico; Amended Revocation of the Countervailing Duty Order and Amended Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amended Revocation of the Countervailing Duty Order and Amended Final Results of Countervailing Duty Administrative Review.

SUMMARY: On September 6, 1995, the Court of Appeals for the Federal Circuit (the CAFC) held in *Ceramica Regiomontana* v. *United States*, Court No. 95–1026 (Fed. Cir., Sept. 6, 1995) (*Ceramica*) that the Department of Commerce (the Department) lacks statutory authority to impose countervailing duties on dutiable goods imported by Mexico after April 23, 1985, absent an injury determination. On April 18, 1996, pursuant to the *Ceramica* decision, the Court of International Trade (CIT) remanded to the Department the case *Productos De Barro Industrializados, S.A. de C.V.* (Court No. 88–10–00808), which was stayed pending the *Ceramica* decision. In the remand, the court ordered the Department to (1) revoke the countervailing duty order on bricks from Mexico effective April 23, 1985, the date Mexico was designated as a "country under the Agreement"; and (2) instruct the U.S. Customs Service to refund any estimated countervailing duties at issue in this case that were deposited during the period April 23, 1985 through December 31, 1986. In accordance with the CIT's order, we are hereby amending the revocation of the countervailing duty order on bricks from Mexico to be effective April 23, 1985, instead of August 24, 1986 (54 FR 53163; December 27, 1989).

In addition, pursuant to *Ceramica S.A.* v. *United States*, Slip Op. 96–74, Court No. 59–06–00323 (May 5, 1994), the CIT ordered the Department to recalculate the country-wide rate for entries of bricks from Mexico exported by Productos de Barro Industrializados, S.A. de C.V. (Productos de Barro) that were entered between July 1, 1984 and April 22, 1985, by weight-averaging the benefits received by all companies by their proportion of exports to the United States, inclusive of zero rate firms and *de minimis* firms as well as all other firms with significantly different rates. In accordance with the CIT's remand, we are hereby amending the final results of the countervailing duty administrative review. The recalculated rate applicable to unliquidated entries exported by Productos de Barro is 2.92 percent *ad valorem* for the period July 1, 1984 through December 31, 1984 and 3.10 percent *ad valorem* for the period January 1, 1985 through April 22, 1985.

EFFECTIVE DATE: May 24, 1996.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill at the Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 1989 (53 FR 38314), the Department published the final results of administrative review of the countervailing duty order on bricks from Mexico, covering the review period July 1, 1984, through December 31, 1985. For purposes of the final results, the Department calculated the "all others" countervailing duty rate by weight averaging the benefits received by companies, excluding zero rate and *de minimis* firms. The resultant countervailing duty rate applicable to non-*de minimis* firms was 3.32 percent *ad valorem* during July 1, 1984 through December 31, 1984, and 4.21 percent *ad valorem* during January 1, 1985 through December 31, 1985.

On December 27, 1989, the Department published the final results of changed circumstances countervailing duty administrative review and revocation of the countervailing duty order on bricks from Mexico revoking the countervailing duty order as of August 24, 1986.

The respondents challenged the Department's final results of the administrative review in the CIT with respect to (1) the calculation of the country-wide countervailing duty rate, and (2) the effective date of the revocation of the countervailing duty order on bricks from Mexico. The CIT stayed these cases pending the resolution of the identical issues raised in *Ceramica*, a case involving the countervailing duty order on ceramic tile from Mexico.

On September 6, 1995, the CAFC ruled in *Ceramica* that, absent an injury determination by the ITC, the Department may not assess countervailing duties under section 1303(a)(1) on entries from Mexico of dutiable merchandise which occurred on or after April 23, 1985, the date Mexico was designated as a "country under the Agreement" for purposes of 19 U.S.C. § 1671. On February 21, 1996, the Department implemented the CAFC's ruling in the case of Mexican ceramic tile. (61 FR 6630) On April 18, 1996, the CIT ordered the Department to apply the CAFC's decision in *Ceramica* to bricks from Mexico. Accordingly, the CIT ordered that the Department (1) Amend the effective date of the revocation of the order on bricks from Mexico to April 23, 1985, and (2) recalculate "the countervailing duty rate for plaintiff's entries of bricks from Mexico that were entered between July 1, 1984 and April 22, 1985, by weight-averaging the benefits received by all companies by their proportion of exports to the United States, inclusive of zero rate firms and *de minimis* firms as well as all other firms with significantly different rates" pursuant to the methodology set forth in *Ipsco* v. *United States*, 899 F.2d 1192 (Fed. Cir. 1990)."

Amended Revocation and Final Remand Results

Pursuant to the CIT's order of April 18, 1996, the Department is hereby amending the revocation of the countervailing duty order on bricks from Mexico to be effective for all entries made on or after April 23, 1985. We will instruct the U.S. Customs Service to liquidate all unliquidated entries of the subject merchandise entered or withdrawn from warehouse, for consumption on or after April 23, 1985, without regard to countervailing duties. We will instruct the U.S. Customs Service to refund with interest any estimated countervailing duties collected with respect to those entries. We note that the requirements for a cash deposit of estimated countervailing duties were previously terminated in conjunction with the revocation under section 751 (b) and (c) of the Act.

Furthermore, the Department has complied with the CIT's order and recalculated the "all others" countervailing duty rates applicable to entries exported by Productos de Barro by weight-averaging the benefits received by all of the companies, including the *de minimis* or zero rate firms as well as companies with significantly different rates, that were subject to the review covering the period July 1, 1984 through December 31, 1985. The resultant rate for Productos de Barro for the period July 1, 1984 through December 31, 1984 is 2.92 percent *ad valorem*, and for the period January 1, 1985 through December 31, 1985 is 3.10 percent *ad valorem*. Accordingly, we are hereby amending the final results of the administrative review for the period July 1, 1984 through December 31, 1985. However, as discussed above, we will order assessment only on entries through April 22, 1985, the date prior to the effective date of the revocation.

The Department shall determine, and the Customs Service shall assess, countervailing duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

This notice is in accordance with section 516(a)(e) of the Act.

Dated: May 17, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–13169 Filed 5–23–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–535–001]

Cotton Shop Towels From Pakistan; Termination of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) is terminating the administrative review of the countervailing duty order on shop towels from Pakistan initiated on April 25, 1996.

EFFECTIVE DATE: May 24, 1996.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Maria MacKay, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 27, 1996, Milliken & Company (Milliken), a domestic producer of shop towels, requested an administrative review of the countervailing duty order on cotton shop towels from Pakistan for the period January 1, 1995 through December 31, 1995, for the producer/resellers Anwar Corporation, Bita Textile Corporation, Eastern Textiles (Pvt) Ltd., Fine Fabrico, Hilal Corporation (Pvt) Ltd., Jawad Brothers, Mehtabi Towel Mills (Pvt) Ltd., Mohain Brothers, Pakistan Textile Corporation (Pvt) Ltd., Quality Linen Supply Corporation, Salimah International, Shaheen Textiles, Shahi Textiles, Sultex Industries, The Khans, and United Towel Exporters. No other interested party requested a review.

On April 25, 1996, the Department published a notice initiating the administrative review for that period with respect to those producers/resellers (61 FR 18378). On May 7, 1996, Milliken withdrew its request for review of the same producer/exporters.

Section 355.22(a)(3) of the Department's regulations provides that the Department may permit a party that requests a review to withdraw its request not later than 90 days after the date of publication of the notice of initiation of the review. Since the withdrawal of Milliken's request was timely submitted, we are accepting Milliken's withdrawal and terminating this review.

This notice is published in accordance with 19 CFR 355.22(a)(3).

Dated: May 16, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–13171 Filed 5–23–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–201–001]

Leather Wearing Apparel From Mexico; Notice of Termination of the Countervailing Duty Administrative Review and Amendment to the Revocation of the Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of the countervailing duty administrative review and amendment to the revocation of the countervailing duty order.

SUMMARY: On March 29, 1996, the Department of Commerce (the Department) published in the **Federal Register** its notice of intent to terminate the countervailing duty administrative review and notice of intent to amend the revocation of the countervailing duty order on leather wearing apparel from Mexico, 61 FR 14076, as a result of the decision by the Court of Appeals for the Federal Circuit (CAFC) in *Ceramica Regiomontana* v. *United States*, Court No. 95–1026 (Fed. Cir., Sept. 6, 1995) (*Ceramica*). In *Ceramica*, the CAFC ruled that absent an injury determination by the International Trade Administration (ITC), the Department may not assess countervailing duties under section 1303(a)(1) on entries of dutiable merchandise which occurred on or after April 23, 1985, the effective date of Mexico's Bilateral Agreement with the United States. Since we received no comments on our notice of intent, we are hereby terminating this administrative review, which covers the period January 1, 1994 through December 31, 1994, and amending the date of the revocation of the countervailing duty order to be effective April 23, 1985.

EFFECTIVE DATE: May 24, 1996.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Cameron Cardozo, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

The countervailing duty order on leather wearing apparel from Mexico was issued on April 10, 1981 pursuant to section 303 of the Tariff Act of 1930, as amended (the Act). No injury determination was required for cases conducted pursuant to section 303. In the Uruguay Round Agreements Act of 1994 (URAA), which amended the Act, section 303 was repealed because the new Agreement on Subsidies and Countervailing Measures (SCM Agreement) prohibits the assessment of countervailing duties on imports from a member of the World Trade Organization without an affirmative injury determination. The URAA added section 753 to the Act, which provided domestic interested parties an opportunity to request an injury investigation for orders that had been issued pursuant to section 303.

Because no domestic interested parties exercised their right under section 753(a) of the Act to request an injury investigation on Mexican leather wearing apparel, the ITC made a negative injury determination with respect to this order, pursuant to section 753(b)(4) of the Act. As a result, the Department revoked this countervailing duty order, effective January 1, 1995, pursuant to section 753(b)(3)(B) of the Act. *Revocation of Countervailing Duty Orders*, 60 FR 40,568 (August 9, 1995).

However, administrative reviews of periods prior to January 1, 1995 could still be conducted and on April 28, 1995 an administrative review of this order was requested for the period January 1, 1994 through December 31, 1994. 60 FR 25885 (May 15, 1995).

On September 6, 1995, in a case involving the countervailing duty order on ceramic tile from Mexico, *Ceramica*, the CAFC ruled that, absent an injury determination by the ITC, the Department may not assess countervailing duties under section 1303(a)(1) on entries from Mexico of dutiable merchandise which occurred on or after April 23, 1985, the effective date of Mexico's Bilateral Agreement with the United States. On February 21, 1996, the Department implemented the CAFC's ruling in the case of Mexican ceramic tile and amended the effective date of the revocation from January 1, 1995 to April 23, 1985. 61 FR 6630. Because the order on leather wearing apparel is a Mexican order and involves the same set of pertinent facts (i.e., the ITC did not make an injury determination), the CAFC's decision applies to the order on leather wearing apparel from Mexico.

As a result, on March 29, 1996, the Department of Commerce (the Department) published in the **Federal Register** its notice of intent to terminate the countervailing duty administrative review and to amend the revocation of the countervailing duty order on leather wearing apparel from Mexico to be effective April 23, 1985. We invited interested parties to comment but received no comments. Accordingly, we are terminating the instant review of this countervailing duty order. Also, we are amending the previous revocation of this order, which affects all unliquidated entries, to be effective April 23, 1985, rather than January 1, 1995, in recognition of the *Ceramica* decision.

Scope of the Review

Imports covered by this review are shipments of Mexican leather wearing apparel. These products include leather coats and jackets for men, boys, women, girls, and infants, and other leather apparel products including leather vests, pants, and shorts. Also included are outer leather shells and parts and pieces of leather wearing apparel. This merchandise is currently classifiable under *Harmonized Tariff Schedule* (HTS) item numbers 4203.10.4030, 4203.10.4060, 4203.10.4085 and 4203.10.4095. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Notice of Termination of the Countervailing Duty Administrative Review and Amendment of the Revocation of the Countervailing Duty Order

This notice serves as notification to the public of our termination of the instant administrative review, covering the period January 1, 1994 through December 31, 1994, and amendment of the revocation of the countervailing duty order on Mexican leather wearing apparel to be effective April 23, 1985. This revocation applies to all unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after April 23, 1985.

We will instruct the U.S. Customs Service to terminate the suspension of liquidation as of the date of publication of this notice and to liquidate all unliquidated entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after April 23, 1985, without regard to countervailing duties. We will instruct the U.S. Customs Service to refund with interest any estimated countervailing duties collected with respect to those entries. We note that the requirement for a cash deposit of estimated countervailing duties was previously terminated in conjunction with the section 753 determination.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 17, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–13167 Filed 5–23–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–357–403]

Oil Country Tubular Goods From Argentina; Extension of Time Limit for Countervailing Duty Administrative Review

May 20, 1996.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for preliminary and final results of the 1994 administrative review of the countervailing duty order on oil country tubular goods from Argentina. This extension is made pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (hereinafter, "the Act").

EFFECTIVE DATE: May 24, 1996.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Rick Herring, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W. Washington, D.C., 20230; telephone: (202) 482–2786.

POSTPONEMENT: Under the Act, the Department may extend the deadline for completion of the preliminary results of an administrative review if it determines that it is not practicable to complete those results within the statutory time limit of 245 days. The Department finds that it is not practicable to complete the preliminary results of the 1994 administrative review of oil country tubular goods from Argentina within this time limit. *See* Memorandum to the File dated May 9, 1996.

In accordance with section 751(a)(3)(A) of the Act, the Department will extend the time for completion of the preliminary results of this review from a 245-day period to no later than a 365-day period.

Dated: May 20, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–13168 Filed 5–23–96; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a closed meeting of the Judges Panel of the Malcolm Baldrige National Quality Award on Tuesday, June 11, 1996. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Director of the National Institute of Standards and Technology. The purpose of this meeting is to begin the review process of the 1996 Award applicants to be recommended as Award winners. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene June 11, 1996, at 8:30 a.m. and adjourn at 4:00 p.m. on June 11, 1996. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 29, 1996, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, P.L. 94–409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: May 17, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–13131 Filed 5–23–96; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 042996E]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of photography permit no. 993 (P597).

SUMMARY: Notice is hereby given that Mr. Michael Kundu, Arcturus Adventure Communications, 1026–A 56th Street SE, Everett, WA 98203, has been issued a permit to take by Level B harassment several species of non-threatened, non-endangered marine mammals for purposes of commercial photography.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221); and

Director, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–6150).

SUPPLEMENTARY INFORMATION: On November 15, 1995, notice was published in the **Federal Register** (60 FR 57400) that the above-named applicant had submitted a request for a permit to take several species of marine mammals by Level B harassment during the course of commercial photographic activities. The requested permit has been issued, under the authority of section 104(c)(6) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*).

Dated: May 8, 1996.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–13155 Filed 5–23–96; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of an Import Limit for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

May 21, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: May 28, 1996.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Pursuant to section 204 of the Agricultural Act of 1956, as amended, the Government of the United States is extending the current limit on Category 434 for an additional one-year period beginning on May 26, 1996 and extending through May 25, 1997 at a level of 8,391 dozen.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 57853, published on November 22, 1995.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 21, 1996.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May

28, 1996, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 434, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the twelve-month period beginning on May 26, 1996 and extending through May 25, 1997, in excess of 8,391 dozen.

Imports charged to Category 434 for the period May 26, 1995 through May 25, 1996 shall be charged against that level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–13182 Filed 5–23–96; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 24, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Commodities

Stepladder, Fiberglass
5440–01–415–1238
5440–01–415–1240
5440–01–415–1241
NPA: The Oklahoma League for the Blind, Oklahoma City, Oklahoma.

Ribbon, Typewriter
7510–01–219–2309
(40% of the Government's requirement)
NPA: Charleston Vocational Rehabilitation Center, Charleston Heights, South Carolina

Services

Janitorial/Custodial, U.S. Army Armament Research, Development and Engineering Command, Buildings 162 North & South, Picatinny Arsenal, New Jersey.
NPA: Occupational Training Center of Morris County, Cedar Knolls, New Jersey

Janitorial/Custodial, Naval and Marine Corps Reserve Center, 3190 Gilbert Avenue, Cincinnati, Ohio.
NPA: Cincinnati Restoration, Inc. Cincinnati, Ohio.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–13185 Filed 5–23–96; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: June 24, 1996.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On February 23, March 29 and April 5, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 F.R. 6977, 14088 and 15225) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Plastic Sheets
8135–00–579–6487
8135–00–579–6489
8135–00–579–6491
8135–00–584–0610
8135–00–584–0619
8135–00–618–1783

Services

Food Service, U.S. Naval Home, Gulfport, Mississippi.

Janitorial/Grounds Maintenance, Department of Energy, Western Area Power Administration, 114 Parkshore Drive, Folsom, California.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–13186 Filed 5–23–96; 8:45 am]

BILLING CODE 6353–01–P

Procurement List Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 24, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will result in authorizing small entities to furnish the commodity to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity has been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Flag, National, Interment
8345–00–656–1432
(Additional 20% of the Government's requirement)
NPA: Huntsville Rehabilitation Foundation, Huntsville, Alabama
Goodwill Industries of South Florida, Inc., Miami, Florida
North Bay Rehabilitation Services, Inc., San Rafael, California

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–13187 Filed 5–23–96; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Transloading Arms, Ammunition, and Explosives

AGENCY: Military Traffic Management Command (MTMC), DOD.

ACTION: Notice.

SUMMARY: This notice supplements the notices published on November 24, 1995 (**Federal Register**, Vol. 60, No. 226, page number 58054) and published on December 20, 1995 (**Federal Register**, Vol. 60, No. 244, page number 65640). Both MTMC Freight Traffic Rules Publication No. 1A, Item 48, and MTMC Guaranteed Traffic Rules Publication No. 50, Item 145, are changed as follows:

"Transloading shipments of Division 1.1, 1.2, and 1.3 ammunition and explosives will be conducted as follows:

a. Truckload shipments will not be off-loaded or transferred to another vehicle enroute, except in emergencies (as defined in 49 CFR 390.5).

b. Loading and unloading of less-than-truckload (LTL) shipments of Division 1.1, 1.2, and 1.3 ammunition and explosives will be accomplished only in a carrier terminal. For the purposes of this rule, a carrier terminal is defined as one which is equipped to handle safely the loading and unloading of Division 1.1, 1.2, and 1.3 ammunition and explosives from a commercial motor vehicle. In addition, when the transloading of Divisions 1.1, 1.2, and 1.3 ammunition and explosives occurs at a carrier terminal other than at that of the carrier of record, as indicated on the Government Bill of Lading, prior written approval must be received from a company official or the carrier terminal manager. All Federal, State, and local guidelines for handling Divisions 1.1, 1.2, and 1.3 ammunition and explosives will apply when transloading occurs. The carrier accepts liability for the integrity of the shipments, to include proper blocking and bracing, equal to or exceeding the standard used by the shipper.

c. Transloading of ammunition and explosives shipments on a military installation must be approved by the installation commander."

DATES: Effective July 23, 1996.

ADDRESSES: Headquarters, Military Traffic Management Command, ATTN: MTOP–T–SR, 629 NASSIF Building, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mr. Julian Jolkovsky, MTOP–T–SR, (703) 681–3440.

SUPPLEMENTARY INFORMATION: MTMC received comments from one motor carrier, the U.S. Army Industrial Operations Command, and the Naval Ordnance Center. One comment requests clarification of this rule as it pertains to interlining; this clarification is not necessary because interlining does not apply to this rule in today's environment. Another comment is that this rule will give carriers too much latitude while failing to enhance shipment safety and security; this rule does not give carriers any more latitude than necessary to deliver military cargo safely, securely, and efficiently. Because MTMC is responsible to ensure that transloading will be accomplished in the safest manner possible, transloading

is limited to locations that are capable and equipped to deal with these types of shipments. The same comment feels that this rule will invalidate the Motor Vehicle Inspection, DD Form 626. DD Form 626 represents the condition of the equipment at the time of inspection at the origin activity and allows the Government to compare the origin inspection with the destination inspection to establish liability. Once the carrier equipment leaves the activity, the potential for change to the equipment remains, regardless of whether the shipment is transloaded. With this rule, the carrier accepts liability for shipment integrity, to include blocking and bracing. Another comment suggests requiring carriers to notify both origin and destination activities of seal changes. The rules publications allow adequate notification by requiring carriers to annotate seal changes on the Government Bill of Lading. To comply with another comment that this rule should clarify the meaning of "proper blocking and bracing," MTMC will add to the end of the rule the words "equal to or exceeding the standard used by the consignor." MTMC expects that in transloading a shipment, the carrier maintains shipment integrity at a level that is the same as or better than the consignor's. Transloading less-than-truckload shipments is an accepted practice. MTMC has considered all comments carefully and decided to implement the proposed change to its transloading procedures. If there are concerns regarding these procedures, the consignor has the option to select Exclusive Use of Vehicle service.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–13097 Filed 5–23–96; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Notice of Proposed Collection; Headquarters, U.S. Marine Corps

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Marine Corps announces the proposed extension of a previously approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 23, 1996.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Commandant of the Marine Corps, (Code OR), Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Gunnery Sergeant Hudson at (703) 614–1017.

TITLE, ASSOCIATED FORM, AND OMB NUMBER: Personal Information Questionnaire; NAVMC 10064; OMB Control Number 0703–0012.

NEEDS AND USES: The Personal Information Questionnaire is used to provide Headquarters, U.S. Marine Corps with a standardized method in rating officer program applicants in the areas of character, leadership, ability, and suitability for a service as a commissioned officer.

Affected Public: Individuals; *Annual Burden Hours:* 8,350.

Number of Respondents: 16,700; *Responses per Respondent:* 1.

Average Burden per Response: 30 minutes; *Frequency:* On occasion.

SUPPLEMENTARY INFORMATION: The Personal Information Questionnaire (PIQ) is used by the Marine Corps as a standardized method in assisting Officer Selection Officers, a Board of Officers at District Headquarters and a Board of Officers at Headquarters Marine Corps in determining the personal characteristics of applicants for all Reserve officer programs. The questionnaire is sent to at least six persons to be named by the applicant, for completion and return. All PIQs will be included with the application, and is an attempt to gather specific information about the applicant's character and background. This form provides the Marine Corps with precise data on personal characteristics of applicants which will ensure selection of the highest quality commissioned officer for the Corps. While some objective evaluations can be made from academic records, test results, and employment records, such intangible qualities as personal characteristics can best be evaluated by the objective ratings of those persons who have personal knowledge of the candidate.

Dated May 16, 1996.

M.A. Waters,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–13193 Filed 5–23–96; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 24, 1996.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: May 20, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: New.

Title: William D. Ford Federal Direct Loan Program Statutory Forbearance Forms.

Frequency: On occasion.

Affected Public: Individuals or households

Annual Reporting and Recordkeeping Hour Burden:

Responses: 10,000.

Burden Hours: 2,000.

Abstract: Qualified borrowers in the William D. Ford Federal Direct Loan Program will use these forms to request statutory forbearances on their loans.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Goals 2000 Parental Assistance Program Performance Report.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 28.

Burden Hours: 980.

Abstract: Recipients of grants under the Parental Assistance Program must submit an annual performance report that establishes substantial progress toward meeting their project objectives in order to receive a continuation award.

[FR Doc. 96–13089 Filed 5–23–96; 8:45 am]

BILLING CODE 4000–01–P

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets for the schedule and proposed agenda of a forthcoming meeting sponsored by the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. This document is intended to notify the general public.

DATES AND TIMES: Monday, June 10, 1996, beginning at 9:00 a.m. and ending at approximately 5:00 p.m. and Tuesday, June 11, 1996, beginning at 8:30 a.m. and ending at approximately 12:00 noon.

ADDRESSES: The Ritz-Carlton Hotel, Pentagon City, in Salon I, 1250 South Hayes Street, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, 1280 Maryland Avenue, S.W., Suite 601, Washington, D.C. 20202–7582 (202) 708–7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters including providing technical expertise with regard to systems of need analysis and application forms, making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students, conducting a study of institutional lending in the Stafford Student Loan Program and an in-depth study of student loan simplification. The Advisory Committee fulfills its charge by conducting objective, nonpartisan, and independent analyses of important student aid issues. As a result of passage of the Omnibus Budget Reconciliation Act (OBRA) of 1993, Congress assigned the Advisory Committee the major task of evaluating the Ford Federal Direct Loan Program (FDLP) and the Federal Family Education Loan Program (FFELP). The Committee will report to the Secretary and Congress on not less than an annual basis on the operation of both programs and submit a final report by January 1, 1997.

The Advisory Committee will meet in Arlington, Virginia on June 10, 1996, from 9:00 a.m. to approximately 5:00 p.m. and on June 11, from 8:30 a.m. to approximately 12:00 noon.

The proposed agenda will consist of member and panel discussion sessions on the Advisory Committee's activities pertaining to the year two evaluation of the Ford Federal Direct Loan Program (FDLP) and the Federal Family Education Loan Program (FFELP). In addition, other Committee business will be addressed. Space is limited and you are encouraged to register early if you plan to attend. To register, please fax you name, title, affiliation, complete address (including Internet and E-Mail—if available), telephone number, and fax number to the Advisory Committee staff office at (202) 401–3467. If you are unable to fax, please mail your registration information or contact the Advisory Committee staff office at (202) 708–7439. Also, you may register through Internet at Tracy_Jones@ED.Gov or ADV_COMSFA@ED.Gov.The registration deadline is Thursday, June 6, 1996.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, 1280 Maryland Avenue, S.W., Suite 601, Washington, D.C. from the hours of 9:00 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: May 21, 1996.

Dr. Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 96–13146 Filed 5–23–96; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Advisory Committee To Develop On-Site Innovative Technology

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following Advisory Committee Meeting: Federal Advisory Committee to Develop On-Site Innovative Technology (DOIT).

DATES: Saturday, June 22, 1996; 3:00 pm–4:00 pm.

ADDRESSES: Red Lion Inn, (Room To Be Determined), 1616 Dodge Street, Omaha, Nebraska 68102.

FOR FURTHER INFORMATION CONTACT: Dr. CW Frank, DOIT—Designated Federal Officer, Office of Science and Technology (Mail Stop: EM–50), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6382.

SUPPLEMENTARY INFORMATION: The purpose of the DOIT Committee is to make recommendations to the USDOE, USDOD, USDOI, USEPA, and Western States on processes to identify collaborative approaches to save time and money in cleaning up federal sites in the West.

Purpose of the meeting: Review final DOIT Report; adopt final recommendations to expedite the cleanup of federal waste sites through the use of innovative technologies.

Tentative Agenda

June Meeting Topic Order

- (3:00 pm) Call To Order/Welcome: Governor Nelson (Nebraska): Chair DOIT Committee.
- Opening Remarks: Dr. C.W. Frank (USDOE: Office of Science and Technology): DOIT Host Agency Designated Federal Officer.
- DOIT Committee Principals Discuss Final DOIT Report.
- DOIT Committee Principals Finalize DOIT Recommendations.
- Public Comment Period.
- (4:00 pm) Meeting Adjourn.

There will be a media availability of some DOIT Principals following the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Dr. CW Frank at the address or telephone number listed above. Requests must be received five (5) days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five (5) minues to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avneue, SW, Washington, DC 20585, between 9:00 am and 4:00 pm, Monday through Friday, except Federal holidays. Minutes will also be available by contacting Dr. CW Frank, DOIT—Designated Federal Officer, Office of Science and Technology (Mail Stop: EM–50), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6382.

Issued at Washington, DC on May 21, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–13124 Filed 5–23–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Research

Basic Energy Sciences Advisory Committee; Notice of Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is given of a meeting of the Basic Energy Sciences Advisory Committee.

DATES: Thursday, June 27, 1996—9:00 a.m.–5:00 p.m.; Friday, June 28, 1996—9:00 a.m.– 2:00 p.m.

ADDRESS: Hampton Inn, 20260 Goldenrod Lane, Germantown, MD 20876.

FOR FURTHER INFORMATION CONTACT: Dr. Patricia M. Dehmer, Basic Energy Sciences Advisory Committee, U. S. Department of Energy, ER–10, GTN, 19901 Germantown Road, Germantown, MD 20874–1290, Telephone: (301)-903–3081.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting*: The Committee will provide advice and guidance with respect to the basic energy sciences research program.

Tentative Agenda

June 27, 1996

Introduction of Committee Members and Guests
Overview of the Programs and Activities of the Office of Basic Energy Sciences
Update on Neutron Source Upgrades
Public Comment (10 minute rule)

June 28, 1996

Receipt and Discussion of the BESAC Panel Report on the Value of Basic Science
Discussion on the BESAC Charge for 1996–97
Public Comment (10 minute rule).

Public Participation

The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact Patricia Dehmer at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

Issued in Washington, D.C. on May 21, 1996.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–13122 Filed 5–23–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. ER96–1461–000 and EL96–49–000]

Cambridge Electric Light Company; Notice of Initiation of Proceeding and Refund Effective Date

May 20, 1996.

Take notice that on May 17, 1996, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL96–49–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL96–49–000 will be 60 days after publication of this notice in the **Federal Register.**

Lois D. Cashell,

Secretary.

[FR Doc. 96–13069 Filed 5–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1101–002]

Kansas City Power & Light Company; Notice of Filing

May 20, 1996.

Take notice that on January 23, 1996, Kansas City Power & Light Company tendered for filing a letter containing the revised service schedule in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 29, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13070 Filed 5–23–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG96–69–000, et al.]

PanEnergy Lake Charles Generation, Inc., et al.; Electric Rate and Corporate Regulation Filings

May 17, 1996.

Take notice that the following filings have been made with the Commission:

1. PanEnergy Lake Charles Generation, Inc.

[Docket No. EG96–69–000]

On May 15, 1996, PanEnergy Lake Charles Generation, Inc. ("Applicant"), 5400 Westheimer Court, Houston, Texas 77056, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant is an indirect, wholly-owned subsidiary of PanEnergy Corp. Applicant intends to purchase a portion of a generating facility (the "Facility") with a nominal capacity of 32 megawatts located in the vicinity of Lake Charles, Louisiana. Applicant's portion of the Facility is an eligible facility as defined under Section 32(a)(2) of the Public Utility Holding Company Act of 1935.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Western Systems Power Pool, InterCoast Power Marketing, Co., Vitol Gas & Electric, LLC, Rainbow Energy Marketing Corp., Equitable Power Services Company, Destec Power Services, Inc., Western States Power Providers, Inc.

[Docket No. ER91–195–023, Docket No. ER94–6–003, Docket No. ER94–155–013, Docket No. ER94–1061–008, Docket No. ER94–1539–009, Docket No. ER94–1612–007, Docket No. ER95–1459–003 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On April 30, 1996, Western Systems Power Pool filed certain information as required by the Commission's April 23, 1991 order in Docket No. ER91–195–000.

On April 22, 1996, InterCoast Power Marketing, Company filed certain information as required by the Commission's August 19, 1994 order in Docket No. ER94–6–000.

On May 1, 1996, Vitol Gas & Electric LLC filed certain information as required by the Commission's January 14, 1994 order in Docket No. ER94–155–000.

On May 1, 1996, Rainbow Energy Marketing Corporation filed certain information as required by the Commission's June 10, 1994 order in Docket No. ER94–1061–000.

On April 30, 1996, Equitable Power Services Company filed certain information as required by the Commission's September 8, 1994 order in Docket No. ER94–1539–000.

On April 30, 1996, Destec Power Services, Inc. filed certain information as required by the Commission's January 20, 1995 order in Docket No. ER94–1612–000.

On April 10, 1996, Western States Power Providers, Inc. filed certain information as required by the Commission's October 10, 1995 order in Docket No. ER95–1459–000.

3. Boston Edison Company

[Docket No. ER93–150–008]

Take notice that on April 22, 1996, Boston Edison Company tendered for filing its refund report in the above-referenced docket.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. LG&E Power Marketing Inc.

[Docket No. ER94–1188–011]

Take notice that on May 1, 1996, LG&E Power Marketing Inc. (LPM) filed a notice of change in status to reflect its intention to sell power at retail to potential customers participating in Illinois Power Company's Direct Energy Access Service program.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Carolina Power & Light Company

[Docket No. ER95–1139–001]

Take notice that on May 13, 1996, Carolina Power & Light Company tendered for filing copies of its refund compliance report required by the Commission's order in this proceeding issued on April 11, 1996.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Company of Colorado

[Docket No. ER95–1269–002]

Take notice that on April 15, 1996, Public Service Company of Colorado tendered for filing a revised version of the Statement of Policy and Code of Conduct in the above-referenced docket.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Northeast Utilities Service Company

[Docket No. ER96–496–002]

Take notice that on May 6, 1996, Northeast Utilities Service Company tendered for filing copies of its revised compliance filing in the above-referenced docket.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER96–780–000]

Take notice that on May 15, 1996, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company filed revised Codes of Conduct as required by the Commission's order issued April 30, 1996 in Docket No. ER96–780–000.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power & Light Company

[Docket No. ER96–861–000]

Take notice that on May 10. 1996, Florida Power & Light Company filed Supplement No. 1 to Contract for

Purchases and Sales of Power and Energy between FPL and KN Marketing, Inc. FPL requests an effective date of February 1, 1996.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Orange and Rockland Utilities, Inc.

[Docket No. ER96–1059–001]

Take notice that on May 9, 1996, Orange and Rockland Utilities, Inc. tendered for filing its compliance filing in the above-referenced docket.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Florida Power & Light Company

[Docket No. ER96–1160–000]

Take notice that on May 10, 1996, Florida Power & Light Company (FPL) filed Supplement No. 1 to Contract for Purchases and Sales of Power and Energy between FPL and Valero Power Services Company. FPL requests an effective date of March 4, 1996.

Comment date: May 30, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Lisco, Inc.

[Docket No. ER96–1406–000]

Take notice that on April 25, 1996, Lisco, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Company of New Mexico

[Docket No. ER96–1462–000]

Take notice that on May 7, 1996 and May 10, 1996, Public Service Company of New Mexico tendered for filing amendments in the above-referenced docket.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Ohio Edison Company

[Docket No. ER96–1562–000]

Take notice that on May 3, 1996, Ohio Edison Company tendered for filing an amendment in the above-referenced docket.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Pacific Power Solutions, LLC

[Docket No. ER96–1599–000]

Take notice that on May 8, 1996, Pacific Power Solutions, LLC tendered for filing written notice of the ownership of Pacific Power Solutions, LLC.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Electric and Gas Company

[Docket No. ER96–1676–000]

Take notice that on April 29, 1996, the Public Power Association of New Jersey (PPANJ) submitted an executed, uncontested Offer of Settlement between PPANJ and Public Service Electric and Gas Company dated April 29, 1996, and an Explanatory Statement in Support of the Offer of Settlement.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Northern States Power Company

[Docket No. ER96–1696–000]

Take notice that on May 7, 1996, Northern States Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Florida Power Corporation

[Docket No. ER96–1712–000]

Take notice that on May 1, 1996, Florida Power Corporation (FPC) tendered for filing an Agreement for Sale and Purchase of capacity and energy between FPC and Seminole Electric Cooperative, Inc. dated October 12, 1995.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Boston Edison Company

[Docket No. ER96–1749–000]

Take notice that on May 2, 1996, Boston Edison Company tendered for filing an executed Settlement Agreement with Massachusetts Municipal.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Portland General Electric Company

[Docket No. ER96–1759–000]

Take notice that on May 8, 1996, Portland General Electric Company (PGE), tendered for filing under FERC Electric Tariff, 1st Revised Volume No. 2, executed Service Agreements for Federal Energy Sales Inc. and Global Petroleum Corporation.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL93–2–002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed Service Agreement to become effective May 1, 1996.

A copy of this filing was served upon Federal Energy Sales Inc. and Global Petroleum Corporation.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Union Electric Company

[Docket No. ER96–1760–000]

Take notice that on May 8, 1996, Union Electric Company (UE), tendered for filing an Interchange Agreement dated May 3, 1996, between UE and Alabama Electric Cooperative, Inc. UE asserts that the purpose of the Agreement is to set out specific rates, terms, and conditions for the types of power and energy to be exchanged.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER96–1761–000]

Take notice that on May 8, 1996, Ohio Edison Company, tendered for filing on behalf of itself and Pennsylvania Power Company, an Agreement for Power Transactions with Western Power Services, Inc. This initial rate schedule will enable the parties to purchase and sell capacity and energy in accordance with the terms of the Agreement.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Houston Lighting & Power Company

[Docket No. ER96–1762–000]

Take notice that on May 8, 1996, Houston Lighting & Power Company (HL&P), tendered for filing executed transmission service agreements (TSAs) under HL&P's FERC Electric Tariff, Original Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. The filing consists of economy energy and emergency power TSAs with (1) Entergy Power, Inc. (EPT) and (2) Entergy Power Marketing Group (EPMG) providing for the transmission of energy to be scheduled over the East HVDC Interconnection. HL&P has requested an effective date of May 8, 1996.

Copies of the filing were served on EPI and EPMG and the Public Utility Commission of Texas.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. Central Illinois Public Service Company

[Docket No. ER96–1763–000]

Take notice that on May 8, 1996, Central Illinois Public Service Company (CIPS), submitted a Service Agreement dated May 2, 1996, establishing QST Energy Trading Inc. (QST) as a customer under the terms of CIPS' Coordination Sales Tariff CST–1 (CST–1 Tariff).

CIPS requests an effective date of May 2, 1996, for the service agreement and the revised Index of Customers. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon QST and the Illinois Commerce Commission.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. Cinergy Services, Inc.

[Docket No. ER96–1764–000]

Take notice that on May 8, 1996, Cinergy Services, Inc. (Cinergy), on behalf of its affiliate, The Union Light, Heat and Power Company (Union), tendered for filing an amendment to Union's Rate WS–S, Original Volume No. 1, Thirteenth Revised Sheet No. 4 with the City of Williamstown, Kentucky (Williamstown). The amendment would reduce Union's rates to Williamstown in conformance with the Settlement Agreement in Docket No. ER95–625 and EL95–39.

Cinergy requests that the rate decrease filing take effect immediately upon its acceptance for filing by the Commission. A copy of the filing has been served upon the City of Williamstown, Kentucky.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. Mississippi Power Company

[Docket No. ER96–1765–000]

Take notice that on May 9, 1996, Mississippi Power Company, tendered for filing two Service Delivery Point Contracts with East Mississippi Electric Power Association. The contracts were taken pursuant to Mississippi's Electric Tariff, First Revised Volume No. 1. The contracts will permit Mississippi Power to provide wholesale, all-requirements electric service to East Mississippi Electric Power Association at two service delivery points to be known as "Meridian No. 2" and "Briarwood Primary."

Copies of the filing were served upon East Mississippi Electric Power Association, the Mississippi Public Service Commission, and the Mississippi Public Utilities Staff.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

27. Louisville Gas and Electric Company

[Docket No. ER96–1766–000]

Take notice that on May 9, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Enron Power Marketing, Inc. under Rate GSS.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

28. Pacific Gas and Electric Company

[Docket No. ER96–1768–000]

Take notice that on May 9, 1996, Pacific Gas and Electric Company (PG&E), tendered for filing, both for itself and on behalf of Southern California Edison Company (Edison), and San Diego Gas & Electric Company (SDG&E) Ruling No. 14. The Ruling tendered for filing was agreed upon by PG&E, Edison and SDG&E in the course of administering the California Power Pool Agreement, dated July 20, 1964. That Agreement has been filed with the Commission as PG&E Rate Schedule FPC No. 27, Edison Rate Schedule FPC No. 24, and SDG&E Rate Schedule FPC No. 13. The purpose of this Ruling is to provide new procedures for the use of operating reserves in partial fulfillment of spinning reserve requirements.

Copies of this filing have been served upon the parties on the service list including the California Public Utilities Commission.

Edison and SDG&E have both provided Certificates of Concurrence to this filing.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

29. Virginia Electric and Power Company

[Docket No. ER96–1769–000]

Take notice that on May 9, 1996, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between South Carolina Public Service Authority and Virginia Power, dated February 15, 1996, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to South Carolina Public Service Authority under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission Regulatory Commission.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

30. The Dayton Power and Light Company

[Docket No. ER96–1772–000]

Take notice that on May 9, 1996, The Dayton Power and Light Company (Dayton), tendered for filing an executed Master Electric Interchange Agreement between Dayton and Morgan Stanley Capital Group (MSCG).

Pursuant to the rate schedules attached as Exhibit B to the Agreement, Dayton will provide to MSCG power and/or energy for resale.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

31. New York State Electric & Gas Corporation

[Docket No. ER96–1773–000]

Take notice that on May 9, 1996, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.13 of the Federal Energy Regulatory Commission's Regulations, 18 CFR 35.13, a Supplement to its September 28, 1993, Marcy-South 345 Kv Transmission Facilities Transmission Reinforcement Agreement (Agreement) with the New York Power Authority (NYPA), designated NYSEG Rate Schedule FERC No. 112. The proposed changes would decrease revenues for the twelve month period ending June 30, 1997.

This rate filing is made pursuant to Article No. 2 of the Agreement. The annual charges associated with other taxes, operating expenses, maintenance expenses, working capital, and associated revenue taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve months ended December 31, 1995.

NYSEG requests an effective date of July 1, 1996, and, therefore, requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the New York Power Authority and on the Public Service Commission of the State of New York.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

32. Growth Unlimited Investments, Inc.

[Docket No. ER96–1774–000]

Take notice that on May 9, 1996, Growth Unlimited Investments, Inc. (GUI, Inc.), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waiver and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1.

GUI, Inc. intends to engage in electric power and energy transactions as marketer and a broker. In transactions where GUI, Inc. sells electric energy it proposes to make such sales on rates, term and conditions to be mutually agreed to with the purchasing party. GUI, Inc. is not in the business of generating, transmitting, or distributing electric power.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

33. Illinois Power Company

[Docket No. ER96–1775–000]

Take notice that on May 9, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which InterCoast Power Marketing Company will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of May 6, 1996.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

34. Illinois Power Company

[Docket No. ER96–1776–000]

Take notice that on May 9, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Wisconsin Electric Power Company will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of April 24, 1996.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

35. Illinois Power Company

[Docket No. ER96–1777–000]

Take notice that on May 9, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Rainbow Energy Marketing Corporation will take service under Illinois Power Company's Power Sales Tariff. The agreement is based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of April 24, 1996.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

36. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–1778–000]

Take notice that on May 9, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an agreement to provide interruptible transmission service for Pan Energy Power Services, Inc. (Pan).

Con Edison states that a copy of this filing has been served by mail upon Pan.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

37. Central Power and Light Company West Texas Utilities Company Public Service Company of Oklahoma) Southwestern Electric Power Co.)

[Docket No. ER96–1780–000]

Take notice that on May 9, 1996, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, the CSW Operating Companies), tendered for filing unexecuted service agreements to certain transmission customers under which they will provide transmission service to certain transmission customers under their point-to-point transmission service tariffs accepted for filing in Docket No. ER96–1046–000. The transmission customers named in such service agreements previously took transmission service under transmission service tariffs that were superseded by the point-to-point transmission service tariffs filed in Docket No. ER96–1046–000.

The CSW Operating Companies state that a copy of the filing has been served on each such transmission customer and on the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Arkansas Public Service Commission and the Louisiana Public Service Commission.

Comment date: May 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13068 Filed 5–23–96; 8:45 am]

BILLING CODE 6717–01–P

Western Area Power Administration

Sierra Nevada Region 2004 Power Marketing Program Draft Environmental Impact Statement

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Availability and Notice of Public Hearing.

SUMMARY: Western Area Power Administration's (Western) Sierra Nevada Customer Service Region announces that its 2004 Power Marketing Program Draft Environmental Impact Statement (draft EIS) is available for public review and comment. The Sierra Nevada Region will hold a public hearing to receive formal comments on the draft EIS at its Folsom, California office. The Sierra Nevada Region markets approximately 1,480 megawatts (MW) of power from the Central Valley Project (CVP) in California and other sources, and available nonfirm energy from the Washoe Project. All existing long-term CVP power sales contracts expire on December 31, 2004. The Sierra Nevada Region needs to (1) determine the level and character of capacity, energy, and other services that will be marketed beyond 2004, and (2) establish eligibility and allocation criteria for the allocations of electric power resources to be marketed under contracts that will replace those expiring in 2004. The draft EIS has been prepared in compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, et seq.), the Council on Environmental Quality regulations for implementing NEPA (40 CFR Parts 1500–1508), and the DOE regulations for compliance with NEPA (10 CFR Part 1021) to describe the potential environmental consequences of the range of reasonable marketing plan alternatives.

The Sierra Nevada Region will accept written and oral comments during the public hearing, and a court reporter will record the proceedings. Those wishing to make oral comments will be asked to register at the door prior to the beginning of the hearing. The Sierra Nevada Region will respond to comments in the final EIS. There will be an informal public information session before the hearing to describe the results of the analysis outlined in the draft EIS. Interested persons can discuss aspects of the draft EIS with Sierra Nevada Region representatives at this session.

DATES AND ADDRESSES: The public information session and hearing will be held on June 13, 1996, at the Sierra Nevada Customer Service Region, 114 Parkshore Drive, Folsom, California. The public information session will begin at 9 a.m., and the public hearing will begin an hour later at 10 a.m.

Copies of the draft EIS have been distributed to interested parties on the EIS mailing list and to various reading rooms. Copies of the draft EIS and supporting documents are available for public review at the locations listed below:

Shasta County Public Library, Reference Desk, 1855 Shasta Street, Redding, CA 96001

Sacramento Public Library, Central Branch, Reference Desk, 828 "I" Street, Sacramento, CA 95814

Fresno Public Library, Reference Desk, 2420 Mariposa Street, Fresno, CA 93721

University of California, Berkeley, General Library, Berkeley, CA 94720

Washoe Public Library, Reference Desk, 301 South Center Street, Reno, NV 89501

California State Library, Sacramento Branch, 914 Capital Mall, Sacramento, CA 95814

San Francisco Public Library, Civic Center (Main Library), Reference Desk, 100 Larkin Street, San Francisco, CA 94102

Copies of the draft EIS and supporting documents are also available for public review at Western's offices at:

Sierra Nevada Region, 114 Parkshore Drive, Folsom, CA 95630

Corporate Services Office, 1627 Cole Boulevard, Building 19, Room 175, Golden, CO 80401

U.S. Department of Energy, Forrestal Building, Reading Room 1E–190, 1000 Independence Avenue SW, Washington, DC 20585

Referenced material is contained in the official project file located at the Sierra Nevada Regional Office at the above-listed address.

FOR FURTHER INFORMATION CONTACT: The Sierra Nevada Region maintains a mailing list of those interested in the 2004 Power Marketing Program EIS. For further information, to submit written comments, or to request a copy of the draft EIS, please call or write: Jerry W. Toeynes, Project Manager, Western Area Power Administration, Sierra Nevada Customer Service Region, 114 Parkshore Drive, Folsom, CA 95630–4710, (916) 353–4455.

Written comments on the draft EIS may be sent to the Project Manager by July 31, 1996.

For general information on DOE's NEPA review process, or for status on the review of a specific project, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue SW. Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: The Sierra Nevada Region currently markets about 1,480 MW of long-term power to approximately 80 preference customers in northern and central California. Sources for this power include CVP powerplants, the Washoe Project powerplant at Stampede Dam, and other suppliers. Washoe Project power is sold as nonfirm energy. On December 31, 2004, all of the Sierra Nevada Region's long-term CVP power sales contracts will expire, along with its current resource integration and transmission contract with Pacific Gas and Electric Company. The Sierra Nevada Region is developing a 2004 Power Marketing Plan to analyze options for replacing the expiring contracts.

The Sierra Nevada Region's power resources are also subject to change. Determination of the electric capacity and energy to be marketed will be influenced by expected generation at reservoirs which have water storage and releases controlled by the Bureau of Reclamation. Pursuant to Title 34 of Public Law 102–575, the CVP Improvement Act of 1992, the Department of the Interior is preparing a programmatic EIS addressing water facilities and potential changes in CVP water operations and allocations.

On August 10 and 13, 1993, Western announced in the **Federal Register** (58 FR 42536 and 43105) its intent to prepare an EIS on the Sierra Nevada Region's electric power marketing activities extending beyond the year 2004. Following extensive public involvement and analysis, the draft EIS was prepared to analyze and describe the environmental consequences of a range of marketing plan alternatives. The Sierra Nevada Region developed four alternatives for analysis in the draft EIS that are structured around operations of the CVP hydroelectric system. The four alternatives are identified as No Action, Maximize Hydropower Peaking, Baseload, and Renewable Resource Acquisition. Each alternative includes possible power purchase and power cost analysis options. Also, an analysis of allocations to customer groups was done under each alternative to determine the range of impacts that may result from changing the quantity of resources available to different customer groups. The draft EIS evaluates the potential impacts of these alternatives, including no action, on water resources (water quality, temperature, pool fluctuation), biological resources, recreation, cultural resources, socioeconomic resources, air resources, solid wastes, and land use.

The Sierra Nevada Region is actively seeking public input on the draft EIS in order to make a decision on a preferred alternative. No preferred alternative is identified in the draft EIS for this reason. A decision on a preferred alternative will be made after considering comments on the draft EIS, and that alternative will be recommended in the final EIS.

Issued at Golden, Colorado, May 16, 1996.

J.M. Shafer,

Administrator.

[FR Doc. 96–13125 Filed 5–23–96; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5509–9]

Acid Rain Program: Draft Opt-In Permits and Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft opt-in permits and public comment period.

SUMMARY: The U.S. Environmental Protection Agency is issuing for comment two draft opt-in permits: one for the DuPont-Johnsonville Plant facility (Dupont) in Tennessee and one for the Warrick Power Plant facility (Warrick) in Indiana, in accordance with the Acid Rain Permits and Opt-in regulations (40 CFR parts 72 and 74, respectively).

DATES: Comments on the draft opt-in permits must be received no later than

June 24, 1996 or 30 days after the publication date of a similar notice in local newspapers.

ADDRESSES: Administrative Records. The administrative records for the draft opt-in permits, except information protected as confidential, may be viewed during normal operating hours at the following locations:

For Dupont: EPA Region 4 Library, EPA Region 4, 345 Courtland Street NE, Atlanta, GA 30365.

For Warrick: EPA Region 5, Ralph H. Metcalfe Federal Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

Comments. Send comments to the following addresses:

For Dupont: Winston Smith, Director, Air, Pesticides and Toxics Management Division, EPA Region 4 (address above).

For Warrick: David Kee, Director, Air and Radiation Division, EPA Region 5 (address above).

Submit comments in duplicate and identify the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of the units covered by the permits. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 and issues not relevant to the permits.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting the draft permits.

FOR FURTHER INFORMATION CONTACT: For Dupont: Jenny Jachim, (404) 347–3555, extension 4166, EPA Region 4; for Warrick: Cecilia Mijares, (312) 886–0968, EPA Region 5.

SUPPLEMENTARY INFORMATION: The Opt-in Program, as part of the Acid Rain Program, is designed to allow certain non-utility units that are otherwise not obligated to participate in the Acid Rain Program ("unaffected" units) to voluntarily elect to become affected and subject to the requirements of the Acid Rain Program. As such, opt-in units must hold allowances to account for sulfur dioxide emissions, monitor emissions in the same way that other affected sources do, and apply for and obtain an opt-in permit. The U.S. Environmental Protection Agency is issuing for comment draft opt-in permits for the DuPont and Warrick facilities in accordance with the Acid Rain Permits and Opt-in regulations (40 CFR parts 72 and 74, respectively). The draft permit for DuPont specifies the following allowances to be allocated annually by EPA to each boiler (unit) at DuPont: 889 for 1996 and 1,778 for each year 1997 through 1999 to unit JVD–1; 889 for 1996 and 1,778 for each year 1997 through 1999 to unit JVD–2; 889 for 1996 and 1,777 for each year 1997 through 1999 to unit JVD–3; 888 for 1996 and 1,777 for each year 1997 through 1999 to unit JVD–4. These allowances will be transferred annually from the EPA Allowance Tracking System (ATS) accounts for DuPont-Johnsonville Plant, units JVD–1, JVD–2, JVD–3 and JVD–4, into the ATS accounts for Tennessee Valley Authority (TVA)-Johnsonville Plant, units 1, 2, 3, and 4, because the TVA-Johnsonville units are replacing the thermal energy formerly produced at the Dupont-Johnsonville Plant, as specified in the opt-in permit application and Thermal Energy Plan between DuPont-Johnsonville Plant and TVA-Johnsonville Plant in the draft permit. The allowance transfer will be adjusted according to the actual level of replacement documented in the opt-in source's and the replacement units' annual compliance certification report.

The draft permit for Warrick specifies the following allowances to be allocated annually by EPA to each boiler (unit) at Warrick: 15,272 for 1996 and 30,372 for each year 1997 through 1999 to unit 1; 15,895 for 1996 and 30,732 for each year 1997 through 1999 to unit 2; 13,777 for 1996 and 27,668 for each year 1997 through 1999 to unit 3. The 1996 allowance allocation for Warrick units 1–3 is contingent upon the successful completion of monitor system certification under 40 CFR part 75 no later than June 30, 1996.

These opt-in permits do not affect the responsibility of units at DuPont-Johnsonville, TVA-Johnsonville, or Warrick to meet all other existing local, state, and federal requirements related to sulfur dioxide. The designated representatives are J. Michael Edenfield for DuPont-Johnsonville facility, Joseph W. Dickey for TVA-Johnsonville facility, and J. Gordon Hurst for Warrick facility.

Dated: May 20, 1996.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 96–13152 Filed 5–23–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL 5508–7]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement; Request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended, ("Act"), notice is hereby given of a proposed partial consent decree, which was lodged with the United States District Court for the District of Columbia by the United States Environmental Protection Agency ("EPA") on May 9, 1996, in a lawsuit filed by the Sierra Club Legal Defense Fund. This lawsuit, which was filed pursuant to section 304(a) of the Act, 42 U.S.C. § 7604(a), concerns, among other things, EPA's alleged failure to meet a mandatory deadline under section 112(g) of the Clean Air Act. The proposed partial consent decree provides that EPA shall promulgate the guidance identified in section 112(g) of the CAA, with respect to constructions and reconstructions of major sources of hazardous air pollutants, no later than December 15, 1996.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed partial consent decree from persons who were not named as parties to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed partial consent decree if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, following the comment period, that consent is inappropriate, the final partial consent decree will establish a deadline for the promulgation of the guidance provided for in § 112(g).

A copy of the proposed partial consent decree was lodged with the Clerk of the United States District Court for the District of Columbia on May 9, 1996. Copies are also available from Sonja Lee, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (703) 235–5330. Written comments should be sent to Jan M. Tierney at the address above and must be submitted on or before June 24, 1996.

Dated: May 10, 1996.

Scott C. Fulton,

Acting General Counsel.

[FR Doc. 96–13086 Filed 5–23–96; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–5469–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 06, 1996 Through May 10, 1996 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 05, 1996 (61 FR 15251).

Draft EISs

ERP No. D–DOE–A09827–00

Rating EC2, Programmatic EIS—Storage and Disposition of Weapon-Usable Fissile Materials, Implementation, Storage of all Plutonium and Highly Enriched Uranium and the Disposition of Surplus Plutonium, Sites Considered: Hanford Site, Idaho National Engineering Lab., Nevada Test Site, Oak Ridge Reservation, Pantex Plant and Savannah River Site.

Summary: EPA requested that DOE provide additional information and clarity concerning several issues common to all the alternatives including accident risk analysis, cumulative impacts, and environmental justice.

ERP No. D–MMS–A02239–00

Rating EC2, Gulf of Mexico and Offshore Alaska Outer Continental Shelf (OCS) Oil and Gas Leasing Program 1997 to 2002 for 16 Lease Sales on Five-Year Leasing Program.

Summary: EPA's review identified potentially signifcant environmental impacts that should be avoided in order to adequately protect the environment, in particular related to the need to include commitments in the EIS to situations to ensure the protection by mitigation for important resources, i.e., live bottom, topographic features, archaeological resources and military areas. EPA also found that the draft does not contain sufficient information to fully assess environmental impacts in such areas as impacts to Canada, environmental justice concerns, and leasing proposals included in one alternative.

ERP No. D–MMS–L02010–AK

Rating LO, 1997 Outer Continental Shelf Oil and Gas Lease Sale 158, Yakutat Planning Area, Implementation, Gulf of Alaska, AK.

Summary: EPA had no objections to the preferred alternative as described in the EIS. No formal comment letter was sent to the preparing agency.

Final EISs

No. F–AFS–K65175–CA

Pilot Creek Watershed Land Management Plan, Inplementation, Hayfork Adaptive Management Area, Six Rivers National Forest, Mad River Ranger District, Humboldt and Trinty Counties, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–L60102–OR

Tucker Hill Perlite Quarry Project, Implementation, Mining Plan of Operation, Approval, Town of Lakeview, Lake County, OR.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–L61205–OR

Bal'diyaka Interpretive Center Construction and Operation to Present the Natural History of Oregon's Southern Coast; the Cultural Heritage of the Coos, Lower Umpqua and Siuslaw Indians and Local U.S. Coast Guard History, Implementation, Coos Bay District, Gregory Point, Coos County, OR.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–DOE–L05210–00

Resource Contingency Program, Construction and Operation, Site Specific, Hermiston Power Project, Umattilla County, OR.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–DOE–L09804–00

Delivery of the Canadian Entitlement by the United States Entity of Power Benefits, Implementation, WA, OR, ID, MI, WY, CA, NV, AZ and British Columbia.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–GSA–K80037–CA

San Diego—United States Courthouse, Site Selection and Construction within a portion of the Central Business District (CBD), City of San Diego, San Diego County, CA.

Summary: Review of the final EIS was not deemed necessry. No formal comment letter was sent to the preparing agency.

ERP No. F–MMS–L02024–AK

Cook Inlet Planning Area, Alaska Outer Continental Shelf Oil and Gas Sale 149, Leasing Offering, AK.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–SFW–K99027–CA

Stephens' Kangaroo Rat (SKR) Authorization for Incidental Take and Implementation of a Long-Term Habitat Conservation Plan, Western Riverside County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Dated: May 21, 1996

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–13183 Filed 5–23–96; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–5469–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167, or (202) 564–7153.

Weekly receipt of Statements Filed May 13, 1996 Through May 17, 1996 Pursuant to 40 CFR 1506.9;

EIS No. 960230, Final Supplement, COE, IL, Sugar Creek Municipal Water Supply Reservoir Construction, Additional Information, COE Section 404 Permit Issuance, City of Marion, Williamson and Johnson Counties, IL, Due: June 17, 1996, Contact: Ronny Sadri (502) 582–5452.

The above EIS should have appeared in the May 17, 1996 **Federal Register**. The 30 day Wait Period is Calculated from the Intended **Federal Register** Date of May 17, 1996.

EIS No. 960231, Draft EIS, NPS, CA, Santa Rosa Island Resources Management Plan, Improvements of Water Quality and Conservation of Rare Species and their Habitats, Channel Islands National Park, Santa Barbara County, CA, Due: July 23, 1996, Contact: Allen Schmierer (415) 744–3971.

EIS No. 960232, Draft EIS, FHW, NY, Stutson Street BIN–3317120 Over

Genesee River (PIN 4751.05.121), from the Interchange of the Lake Ontario State Parkway and Latta Road to Lake Shore Boulevard, COE Section 10 and 404 Permit, Bridge and Coast Guard Permits, in the City of Rochester, Towns of Greece and Irondequoit, Monroe County, NY, Due: July 08, 1996, Contact: Harold J. Brown (518) 431–4127.

EIS No. 960233, Final EIS, DOE, WA, Plutonium Finishing Plant (PFP) Stabilization, To Safely Reduced Radiation Exposure to Workers and Environment, Hanford Site, Richland, Benton County, WA, Due: June 24, 1996, Contact: Ben Burton (888) 946–3700.

EIS No. 960234, Draft EIS, FTA, MD, Georgetown Branch Transitway/Trail Corridor, Transportation Improvements, between Bethesda and Silver Spring Central Business Districts (CBDs), Major Investment Study, Montgomery County, MD, Due: July 26, 1996, Contact: Ms. Sandra Balmir (215) 656–6900.

EIS No. 960235, Final EIS, AFS, ID, Salmon River Corridor, Implementation, Sawtooth National Recreation Area (SNRA), Sawtooth Forest Land and Resource Management Plan (FLRMP), Custer County, ID, Due: June 24, 1996, Contact: Lisa Stoeffler (208) 774–3001.

EIS No. 960236, Final Supplement, AFS, CO, Illinois Creek Timber Sale, Timber Harvesting, Implementation, Amended Land and Resource Management Plan, Grand Mesa, Uncompahgre and Gunnison National Forests, Taylor River/Cebolla Ranger District, Gunnison County, CO, Due: June 24, 1996, Contact: Arthur Haines (970) 641–0471.

EIS No. 960237, Draft Supplement, AFS, OR, Eagle Creek Timber Sale and Road Construction, Additional and Updated Information, Implementation, Mt. Hood National Forest, Zigzag and Estacada Ranger District, Clackama County, OR, Due: July 08, 1996, Contact: Janet Anderson (503) 630–6861.

EIS No. 960238, Final EIS, IBR, CA, South Bay Water Recycling Program (SBWRP), Development and Construction, Funding and COE Section 404 Permit, Golden Triangle Area, City of San Jose, Santa Clara County, CA, Due: June 24, 1996, Contact: Mona Jefferies-Soniea (916) 979–2297.

EIS No. 960239, Draft EIS, FTA, NY, Wassaic Extension Project, Expand Metro-North, Funding and Right-of-Way, Dutchess and Litchfield Counties, NY, Due: July 08, 1996, Contact: Anthony Carr (212) 264–8162.

EIS No. 960240, Draft EIS, DOE, NV, CA, Sierra Nevada Region 2004 Power Marketing Program, Implementation, 1,480 megawatts (MW) Power from the Central Valley and Washoe Project, NV and CA, Due: July 08, 1996, Contact: Jerry Toenyes (916) 353–4418.

Dated: May 21, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–13184 Filed 5–23–96; 8:45 am]

BILLING CODE 6560–50–U

[PP 1F3953/PF653; FRL–5367–3]

BASF Corporation; Withdrawal of Pesticide Petition for Sodium Acifluorfen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that BASF Corporation has withdrawn its petition to establish tolerances for Sodium acifluorfen on dry beans and sunflower seed.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Product Manager (PM) 23, Registration Division, (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 2801 Jefferson Davis Highway, Arlington, VA 22202, 703–305–6224; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA announced in a notice of filing published in the **Federal Register** of April 3, 1991 (56 FR 13641)(PF–544; FRL–3882–5) the filing of pesticide petition (PP) 1F3953 by the BASF Corporation proposing to establish a tolerance for residues of sodium acifluorfen (sodium 5-[2-chloro-4-(trifluoromethyl) phenoxy]-2-nitrobenzoic acid and its metabolites (the corresponding acid, methy ester, and amino analogues) in or on dry beans and sunflower seed at 0.05 parts per million. The BASF Corporation has withdrawn that pesticide petition.

List of subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 136a.

Dated: May 13, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–13020; Filed 5–23–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–00426; FRL–5350–4]

Self Certification of Acute Toxicity Studies; Notice of Availability and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting comments on a proposed policy developed in a draft Pesticide Regulation (PR) Notice entitled "Self Certification of Acute Toxicity Studies." Interested parties may request this document as described in the ADDRESSES unit of this notice.

DATES: Written comments, identified by the docket number "OPP–00426" must be received on or before July 23, 1996.

ADDRESSES: The PR Notice is available from Jim Jones: By mail: Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 6th Floor, CS-1, 2800 Crystal Drive North, Arlington, VA, (703) 308–8358, e-mail: jones.jim@epamail.epa.gov.

Submit written comments to: By mail: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number "OPP–00426." No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under the SUPPLEMENTARY INFORMATION unit of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Jones at the telephone number, office location, or e-mail address listed under the ADDRESSES unit of this document.

SUPPLEMENTARY INFORMATION: EPA is soliciting comments on a proposed policy developed in a draft PR Notice entitled "Self Certification of Acute Toxicity Studies." EPA is proposing to allow registrants to self-certify the results of acute toxicity tests for pesticide products in toxicity categories III and IV. The draft PR Notice describes the eligibility requirements and the conditions of this program. This **Federal Register** notice announces the availability of the draft PR Notice and solicits comment on the proposed policy. After reviewing public comments received, EPA may make changes to the Policy and revise the draft PR Notice prior to release.

A record has been established for this action docket number "OPP–00426" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this action, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: May 14, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–13018 Filed 5–23–96; 8:45 am]

BILLING CODE 6560–50–F

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the Export-Import Bank of the United States

SUMMARY: The Advisory Committee was established by P.L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

TIME AND PLACE: Thursday, June 13, 1996, at 9:30 a.m. to 12:00 noon. The meeting will be held at EX-IM Bank in Room, 1143, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

AGENDA: The meeting agenda will include a discussion of the following: Export-Import Bank's Charter Renewal, Competitiveness Report will be presented and other topics.

PUBLIC PARTICIPATION: The meeting will be open to public participation; and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joyce Herron, Room 1220, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3503, not later than June 1, 1996. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to June 1, 1996, Joyce Herron, Room 1215, 811 Vermont Avenue, N.W., Washington, DC 20571, Voice: (202) 565–3955 or TDD (202) 565–3377.

FOR FURTHER INFORMATION: For further information, contact Joyce Herron, Room 1215, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3503.

Kenneth Hansen,

General Counsel.

[FR Doc. 96–13071 Filed 5–23–96; 8:45 am]

BILLING CODE 6690–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the June 13, 1996 regular meeting of the Farm Credit Administration Board (Board) will not be held and that a special meeting of the Board is scheduled for Tuesday, June 25, 1996 at 9:00 a.m. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: May 21, 1996.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 96–13232 Filed 5–22–96; 9:15 am]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Tuesday, May 21, 1996, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) reports of the Office of Inspector General, and (2) matters relating to the Corporation's supervisory, corporate, and personnel activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of

Thrift Supervision), concurred in by Director Joseph H. Neely (Appointive), Susan Krause acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii) and (c)(10) of the "Government in the Sunshine Act" (5 U.S.c. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii) and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: May 21, 1996.
Federal Deposit Insurance Corporation.
Valerie J. Best,
Assistant Executive Secretary.
[FR Doc. 96–13302 Filed 5–22–96; 8:45 am]
BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public, Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended: Disney Cruise Line, Inc., 210 Celebration Place, Celebration, Florida 34747.

Vessels: Disney Magic and Disney Wonder.

Dated: May 21, 1996.
Joseph C. Polking,
Secretary.
[FR Doc. 96–13189 Filed 5–23–96; 8:45 am]
BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Intrepid Overseas Shipping Corporation, 440 Benmar Drive, Suite 1030, Houston, TX 77060, Officer: James N. Ortego, Director

Neotrade, Inc. d/b/a Dandan, Driscoll & Assoc., 1010 Jorie Blvd., Suite 310, Oak Brook, IL 60521, Officers: Nabil Dandan, President, Eileen Driscoll, Secretary

Tober Group, Inc., 1948 Troutman Street, Ridgewood, NY 11385, Officer: Yonathan Benhaim, President

Dated: May 21, 1996.
Joseph C. Polking,
Secretary.
[FR Doc. 96–13188 Filed 5–23–96; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 7, 1996.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Mary G. Clark Revocable Trust and Mary Gene Clark, as Trustee, both of Windom, Minnesota; to acquire a total of 25.51 percent of the voting shares of Windom State Investment Company, Windom, Minnesota, and thereby indirectly acquire Southwest State Bank, Windom, Minnesota.

Board of Governors of the Federal Reserve System, May 20, 1996.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 96–13132 Filed 5–23–96; 8:45 am]
BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 17, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Fortress Bancshares, Inc., Cresco, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Fortress Bank of Cresco, Cresco, Iowa (in organization).

Board of Governors of the Federal Reserve System, May 20, 1996.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 96–13133 Filed 5–23–96; 8:45 am]
BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 7, 1996.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. KeyCorp, Cleveland, Ohio; to acquire 100 percent of the voting shares of Key Bancorp of New Hampshire, Inc., Albany, New York, and thereby indirectly acquire Key Bank, Bedford, New Hampshire, a *de novo* bank.

In connection with this application Key Bancorp of New Hampshire, Inc., Albany, New York; has applied to become a bank holding company by acquiring 100 percent of the voting shares of Key Bank, Bedford, New Hampshire, a *de novo* bank.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Chester County Bancshares, Inc., Henderson, Tennessee; to acquire 100 percent of the voting shares of Southwest Tennessee Bancshares, Inc., Adamsville, Tennessee, and thereby indirectly acquire Farmers & Merchants Bank, Adamsville, Tennessee.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Lindoe, Inc., Ordway, Colorado; to acquire 10 percent of the voting shares of Pueblo Bancorporation, Inc., Pueblo, Colorado, and thereby indirectly acquire Pueblo Bank and Trust Company, Pueblo, Colorado.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. California Community LLC, Los Angeles, California; to become a bank holding company by acquiring up to 83.3 percent of the voting shares of First Coastal Bank, N.A., El Segundo, California.

Board of Governors of the Federal Reserve System, May 20, 1996.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 96–13134 Filed 5–23–96; 8:45 am]
BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 7, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Middle Georgia Bankshares, Inc., Unadilla, Georgia; to engage *de novo* through its subsidiary, ProImage, Inc., Macon, Georgia, in a joint venture with First Macon Bank & Trust, Macon, Georgia (First Macon Bank and Trust is not an affiliate of Applicant), and Provesa, Inc., Macon, Georgia, and

thereby engage in data processing activities, pursuant to § 225.25(b)(7) of the Board's Regulation Y. Specifically, ProImage, Inc., will provide check imaging and item processing services to banks.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to engage *de novo* through its subsidiary, Real Estate Financial, Palm Harbor, Florida, in a joint venture, and thereby engage in residential mortgage lending business, pursuant to § 225.25(b)(1) of the Board's Regulation Y. The co-venturers will be Norwest Ventures, Inc., and First in Real Estate Corporate Center, Inc., Palm Harbor, Florida.

Board of Governors of the Federal Reserve System, May 20, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–13135 Filed 5–23–96; 8:45 am]

BILLING CODE 6210–01–F

Board of Governors; Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, May 29, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 22, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–13241 Filed 5–22–96; 10:16 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary, publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Alternative Models of Personal Assistance Services—NEW—The Office of the Assistant Secretary for Planning and Evaluation is planning a data collection which will compare modes of service delivery used to provide personal care services to the frail, elderly, and disabled persons of all ages. The three main provider modes to be compared are consumer-directed independent providers, supported independent providers, and contract or agency providers. The comparison is intended to further knowledge of the advantages and disadvantages of the alternative provider modes. Respondents: Individuals or households; state or local governments, business or other for-profit, not-for-profit institutions. Burden Information for Client Questionnaire—Responses: 1230; Burden per Responso: 45 minutes; Total Burden: 923 hours—Burden for Provider Questionnaire—Responses: 530; Burden per Response: 40 minutes; Total Burden: 353 hours—Burden Information for Case Manager Questionnaire—Responses: 100; Burden per Response: 60 minutes; Total Burden: 100 hours—Burden Information for Client Qualitative Interview—Responses: 100; Burden per Response: 60 minutes; Total Burden: 100 hours—Burden Information for Provider Qualitative Interview—Responses: 150; Burden per Response: 55 minutes; Total Burden: 137 hours—Burden Information for Family Qualitative Interview—Responses: 150; Burden per Response: 45 minutes; Total Burden: 113 hours—Total Burden for Project: 1,726 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street N.W., Washington, D.C. 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington DC, 20201. Written comments should be received within 30 days of this notice.

Dated: May 15, 1996.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 96–13055 Filed 5–23–96; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 94D–0401]

Bioequivalence Guidance, 1996; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the revised guidance document entitled "Bioequivalence Guidance, 1996" prepared by the Center for Veterinary Medicine (CVM). The availability of a draft guideline entitled "Bioequivalence Guideline (Draft) 1994" was announced in the **Federal Register** of March 1, 1995 (60 FR 11097) (hereinafter referred to as the 1994 draft guideline). The 1994 draft guideline was a revision of the 1990 version and covered the following areas: General considerations, blood level studies, pharmacologic endpoints, clinical endpoints, and human food safety. The guidance is intended to assist sponsors of new animal drug applications (NADA's) in the design and analysis of in vivo bioequivalence studies. This notice addresses comments submitted on the 1994 draft guideline.

DATES: Written comments on the guidance document may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled "Bioequivalence Guidance, 1996" to the Communications and Education Branch (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1755. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the guidance document and received comments may be seen at the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of the revised guidance entitled "Bioequivalence Guidance, 1996". The guidance may be used by sponsors of NADA's for the design and analysis of in vivo bioequivalence studies.

In a notice published in the **Federal Register** of March 1, 1995 (60 FR 11097), FDA announced the availability of the 1994 draft guideline entitled "Bioequivalence Guideline (Draft) 1994". The 1994 draft guideline was based on an April 1990 bioequivalence guidance and reports from panel presentations at the 1993 Veterinary Drug Bioequivalence Workshop held in Rockville, MD. New topics addressed in the 1994 draft guideline included: Bioequivalence overdose studies, testing for multiple strength solid oral dosage forms, assay considerations, area under the curve and maximum blood concentration as pivotal parameters, and blood level studies with good laboratory practice tissue residue depletion studies for generic products for food animals. Interested persons were given until May 30, 1995, to comment on the 1994 draft guideline.

Comments on the 1994 draft guideline were received from a pharmaceutical company and an industry group. The 1994 draft guideline has been revised as a result of these comments and from internal discussions within CVM. In the following section on received comments and CVM responses, the page numbers and sections refer to those found in the 1994 draft guideline.

1. Section II.E. Dose Selection. The comment objected to the use of the term "overdose bioequivalence study" since "overdose" has toxicological connotations.

CVM accepts the comments and will change the wording from "overdose" to "higher than approved dose."

2. Section II.F. Multiple Strengths of Solid Oral Dosage Forms. One comment asked for the rationale for requiring two bioequivalence studies in order to obtain approval when there are more than three strengths of exactly proportional formulations.

CVM accepts the comment and has modified the guidance to allow more flexibility in the determination of the need for more than one bioequivalence study for multiple strengths of solid oral dosage forms. The guidance has been modified to read as follows:

The generic sponsor should discuss with CVM the appropriate *in vivo* bioequivalence testing and *in vitro* dissolution testing to obtain approval for multiple strengths (or concentrations) of solid oral dosage forms.

CVM will consider the ratio of active to inactive ingredients and the *in vitro* dissolution profiles of the different strengths, the water solubility of the drug, and the range of strengths for which approval is sought.

One *in vivo* bioequivalence study with the highest strength product may suffice, if the multiple strength products have the same ratio of active to inactive ingredients and are otherwise identical in formulation.

In vitro dissolution testing should be conducted, using an FDA approved method, to compare each strength of the generic product to the corresponding strength of the reference product.

3. Section II.G. Manufacturing of Pilot Batch ("Biobatch"). One comment requested that terms such as 'pilot' and 'biobatch' need to be precisely defined in this document or reference made to the manufacturing guidelines.

CVM refers the reader to CVM's "Animal Drug Manufacturing Guidelines, 1994" for definition of terms.

4. Section III.A. Assay Considerations. One comment requests that CVM should adopt the same guidance as established in the joint industry/academia conference on "Analytical Methods Validation: Bioavailability, Bioequivalence, and Pharmacokinetics Studies" published in several journals including the *Journal of Pharmaceutical Sciences*, 81(3), 309–312, 1992.

CVM does not agree with this comment. The substance of CVM's guidance does not differ substantially from those used by CDER. Any difference is the result of CVM's interest in maintaining consistency among its analytical criteria for drug residues in the edible tissues. Drug residue measurement in edible tissues is specific to animal drugs and is not applicable to CDER (human drugs).

5. Section III.C.6.a. Area Under the Curve (AUC) Estimates. One comment questioned whether AUC by the linear trapezoidal rule is the preferred method to estimate AUC, and noted that the method is subject to substantial error when data points are widely spaced (e.g., during the terminal exponential disposition phase).

CVM accepts the comment and will modify the wording in the guidance to acknowledge that methods other than the linear trapezoidal rule may be used for estimating AUC, but the alternative method should be accompanied by appropriate references.

6. Section III.C.6.a. One comment questioned the reason to equate AUC over a dosing interval at steady-state to single-dose AUC zero to infinity. The comment stated that this relationship only holds if pharmacokinetics are linear over the relevant dose range and one of the prime reasons for doing a multiple-dose bioequivalence study is when kinetics are nonlinear.

CVM has modified the guidance to read as follows:

Under steady state conditions, $AUC_{0\text{-}t}$ equals the full extent of bioavailability of the individual dose ($AUC_{0\text{-}INF}$), assuming linear kinetics. For drugs which are known to follow nonlinear kinetics, the sponsor should consult with CVM to determine the appropriate parameters for the bioequivalence determination.

7. Section III.C.6.c. Determination of Product Bioequivalence. One comment requested that the sponsor should be allowed to extend the range of acceptable bioequivalence limits for drugs exhibiting highly variable pharmacokinetics, if adequate justification is provided.

CVM accepts the comment and has modified the guidance to include the following statement:

The sponsor and CVM should agree to the acceptable bounds for the confidence limits for the particular drug and formulation during protocol development. If studies or literature demonstrate that the pioneer drug product exhibits highly variable kinetics, then the generic drug sponsor may propose alternatives to the generally acceptable bounds for the confidence limits.

8. One comment requested that the repeated references to flip-flop kinetics should be replaced by the more general term "prolonged absorption."

CVM accepts the comment and has replaced the term "flip-flop kinetics" with "sustained or prolonged absorption."

9. One comment requested that the Bioequivalence Guidance provide more detail on evaluation of Production Drugs and Short Term Therapeutic Treatments in Feed (Staff Manual Guide 1240.4145).

CVM does not agree with the request to elaborate on combination drugs for use in feed. The focus of the Bioequivalence Guidance is the approval of generic animal drugs, although many of the principles may be applied to blood level studies conducted for other purposes. CVM considers it beyond the scope and intent of this guidance to discuss combination approvals for feeds.

10. Page 1, section I. INTRODUCTION, fifth paragraph. One

comment requested insertion of the following paragraph:

Tissue residue studies will not normally be required if blood concentration curve shape and depletion time through the reference product's withdrawal time are the same for generic and reference products. Tissue residue studies will normally be required where the blood levels cannot be measured prior to the elapse of the reference product's withdrawal period.

CVM does not agree with the change proposed by this comment. The pivotal parameters for the drug concentration versus time curve are AUC and C_{MAX}. CVM does not intend to evaluate curve shape and depletion time as pivotal parameters. For clarity, however, the guidance has been modified to read as follows:

The Center has concluded that the tissue residue depletion of the generic product is not adequately addressed through bioequivalence studies. Therefore, ANADA's for drug products for food-producing animals will generally be required to include bioequivalence and tissue residue studies. A tissue residue study will generally be required to accompany clinical end-point and pharmacologic end-point bioequivalence studies, and blood level bioequivalence studies that can not quantify the concentration of the drug in blood throughout the established withdrawal period.

11. Page 2, section II.A. Selection of Reference Product for Bioequivalence Testing, second paragraph. One comment suggested that the paragraph should read "but remains eligible to be copied, then the first approved *and available* generic copy of the pioneer should be used * * *."

CVM accepts the comment and has reworded the paragraph.

12. Page 5, first full paragraph. One comment suggests that multiple bioequivalence studies at different doses should only be required if the pharmacokinetics are not linear.

CVM accepts the recommendation and has modified the guidance to read as follows:

For products labeled for multiple claims involving different pharmacologic actions at a broad dose range (*e.g.*, therapeutic and production claims), a single bioequivalence study at the highest approved dose will usually be adequate. However, multiple bioequivalence studies at different doses may be needed if the drug is known to follow nonlinear kinetics. The sponsor should consult with CVM to discuss the bioequivalence study or studies appropriate to a particular drug.

13. Page 6, section III.A.1. Concentration Range and Linearity. One comment proposed that "at least 5–8 concentrations" is vague and suggested "at least 5 concentrations."

CVM accepts the comment and has changed the wording to "at least 5 concentrations."

14. Page 7, section III.A.4. Specificity. One comment requested that CVM provide further detail on statistical methods for demonstrating "parallelism and superimposability." Analysis of variance is used to compare means but could be used to compare slopes in this case. This is computationally straightforward for linear curves but nonlinear curves (e.g., microbiological assays) pose unique problems.

CVM's response is that the type of statistical procedure used to process data demonstrating parallelism and superimposability of curves depends on the nature of the experimental data. CVM is allowing the sponsor the flexibility to determine the algorithm used to evaluate data. Whatever statistical procedure is used should be justified by the sponsor.

The use of microbiological assays for drug analysis will be addressed in a future CVM guidance.

15. Page 8, sections III.A.5. Accuracy (Recovery) and III.A.6. Precision. One comment requested that "replicate injections" be changed to "replicates."

CVM accepts the comment.

16. Page 8, section III.A.6. Precision. One comment stated that the suggested coefficient of variation of ± 10 percent for concentrations at or above 0.1 micrograms per milliliter (mL) is too stringent. The comment suggested ±15 percent as an alternative coefficient of variation to target.

CVM does not agree with this comment. In light of today's analytical technology, ±10 percent coefficient of variation is not unreasonable and is consistent with CVM policy in other analytical areas. In addition, CVM does not believe anything is gained by a detailed analysis of the sources of variation in analytical results.

17. Page 8, section III.A.7. Analyte Stability, second paragraph. One comment recommended that stability samples at only two concentrations are necessary, rather than three as suggested in the 1994 draft guideline. It is critically important to validate the assay before conduct of the bioequivalence study. However, analyte stability cannot be done without the use of more animals than required by the bioequivalence study so as to have a valid method in place prior to study initiation. It is impossible to store and begin analyzing stability samples throughout the duration of the bioequivalence study analysis phase unless the method has been validated prior to that study's initiation.

CVM does not agree with this comment. No study should be undertaken until the analytical methods that will be used to develop the data are properly validated and shown to be operating in a state of control in the laboratory. This means that after the method is validated, the laboratory intending to use the method for a study, must practice with the method to assure full familiarization with technical details. CVM does not make any recommendation on how much practice is required. This depends on the complexity of the method and on the experience of the laboratory.

18. Page 8, section III.A.8. Analytical System Stability. One comment stated that it was unclear how the use of standards (of multiple concentrations) repetitively run to assure analytical system stability differs from quality control methods of assuring the same thing.

CVM accepts the comment that the wording on the use of standards may be unclear. The guidance section on "Assay Considerations" has been extensively reworded for clarity.

19. Page 9, section III.B.1. Dosing by Labeled Concentration. One comment asked how the assay prior to study will be used to ensure specifications. What actions can the sponsor take if the pioneer assays at -5 percent while the generic assays at +5 percent.

CVM's response is that the pioneer and generic products should be assayed to determine that the particular lots are within specifications. No action can be taken if the pioneer assays at -5 percent while the generic assays at +5 percent.

For clarity, the guidance has been reworded to read as follows: "To maximize the ability to demonstrate bioequivalence, the Center recommends that the potency of the pioneer and generic lots should differ by no more than ±5% for dosage form products."

20. Page 10, section III.B.2. Single Dose vs Multiple Dose Studies. One comment questioned whether documentation of flip-flop kinetics is necessary.

CVM agrees with this comment and has modified the guidance to read as follows:

A multiple dose study may also be needed when assay sensitivity is inadequate to permit drug quantitation out to 3 terminal elimination half-lives beyond the time when maximum blood concentrations (C_{max}) are achieved, or in cases where prolonged or delayed absorption[2] exist. The determination of prolonged or delayed absorption (*i.e.*, flip-flop kinetics) may be made from pilot data, from the literature, or from the CVM database on the particular drug or family of drugs.

21. Page 11, section III.B.4. Fed vs Fasted State, last paragraph. One comment stated that it was unclear whether studies in both the fed and fasted states should be required for enteric-coated or sustained release oral products. If the referenced product is limited to administration either in the fed or the fasted state, then the test formulation should also be administered in the same situation conforming to the reference product's label.

CVM agrees with this comment and has modified the guidance as follows:

If a pioneer product label indicates that the product is limited to administration either in the fed or fasted state, then the bioequivalence study should be conducted accordingly. If the bioequivalence study parameters pass the agreed upon confidence intervals, then the single study is acceptable as the basis for approval of the generic product.

However, for certain product classifications or drug entities, such as enteric coated and oral sustained release products, demonstration of bioequivalence in both the fasted and fed states may be necessary, if the drug is highly variable under feeding conditions, as determined from the literature or from pilot data. A bioequivalence study conducted under fasted conditions may be necessary to pass the confidence intervals. A second smaller study may be necessary to examine meal effects. CVM will evaluate the smaller study with respect to the means of the pivotal parameters (AUC, C_{MAX}). The sponsor should consult with CVM prior to conducting the studies.

22. Page 12, section III.C.2. Protein Binding. One comment stated that it is not clear from the 1994 draft guideline to what extent the protein binding must be nonlinear within the therapeutic dosing range, nor how determination of linearity is to be conducted. If it is a judgment and not a statistical criterion, then the parameters within which that judgment is made need to be determined prior to embarking upon the abbreviated NADA. In addition, the type of blood protein to which the drug binds is only pertinent in very unique situations (i.e., low capacity protein binding situations). These determinations of the type of blood protein to which the drug binds are very tedious, time-consuming and expensive technical studies that may only rarely be relevant, whereas the magnitude of protein binding is critical. The type of blood protein to which the drug binds is only a consideration if prior data indicate it is a concern. There are numerous instances where CVM requires additional studies "if _____ is known to occur." What are the criteria for knowing? This general statement could lead to intractable situations. Specifically for this section, the wording allows CVM to require protein binding studies for all approvals. A proposal would be to first evaluate the blood profiles observed in the pilot studies to see if there is evidence of such binding (multicompartment phenomena). If not, then eliminate the need for further studies. For combination approvals, the necessary fractionation and assessment of matrix effects using micro methods would be a formidable task.

CVM notes that the Bioequivalence Guidance is not intended to address combination drug approvals. The issue of protein binding for generic approvals would be addressed only if literature or pilot data indicate that protein binding is significant to the drug in question. For clarity, however, the guidance has been modified to read as follows:

However, if nonlinear protein binding is known to occur within the therapeutic dosing range (as determined from literature or pilot data), then sponsors may need to submit data on both the free and total drug concentrations for the generic and pioneer products.

23. Page 14, section III.C.4. Cross-over and Parallel Design Considerations, last sentence. One comment proposed that the pilot data be used in support of alternative study designs during discussions with CVM.

CVM agrees with the comment. The guidance statement has been modified to read as follows: "The use of alternative study designs should be discussed with CVM prior to conducting the bioequivalence study. Pilot data or literature may be used in support of alternative study designs."

24. Page 15, top paragraph. One comment regarding the duration of washout time was that prolonged tissue binding may not be a consequence if drug concentrations in plasma are less than the limit of detection. The onus is on the sponsor for having a sufficiently long washout period to allow the second period of the cross-over study to be applicable in the statistical analysis. If sequence effects are noted, it must be emphasized that at the very minimum the same data from the first period alone can be evaluated as a parallel design study.

CVM agrees with the comments and has modified the paragraph in the guidance to read as follows:

The washout period should be sufficiently long to allow the second period of the cross-over study to be applicable in the statistical analysis. However, if sequence effects are noted, the data from the first period may be evaluated as a parallel design study.

25. Page 15, section III.C.6.a., AUC Estimate. One comment stated that it is implied from the discussions regarding AUC and C_{MAX} that ratio testing (the ratio of the test versus the reference product) is considered to be the more appropriate comparison rather than the difference between the test and the reference product. This is not universally accepted as the case. The responsibility for whether the difference between the two is used or the ratio of the two is used should be placed upon the sponsor and should be concurred with by CVM prior to conduct of the study.

CVM does not agree with nor completely understand the comment's interpretation of the guidance. CVM has, however, changed the word "ratio" to "comparison" in the following sentence:

The comparison of the test and reference product value for this noninfinity estimate provides the closest approximation of the measure of uncertainty (variance) and the relative bioavailability estimate associated with $AUC_{0\text{-}INF}$ the full extent of product bioavailability.

26. Page 15, section III.C.6.a. One comment stated that $AUC_{0\text{-}INF}$ is an estimated value and questioned how CVM intends this to be derived using "model independent methods?"

CVM has added the following statement to the guidance: "The method for estimating the terminal elimination phase should be described in the protocol and the final study report."

27. Page 16, section III.C.6.b. Rate of Absorption. One comment requested that the revised guidance define C_{MIN}. The 1994 draft guideline stated that three successive C_{MIN} values should be provided. The comment proposes that to determine a steady state concentration, the values should be regressed over time and the resultant slope should be tested as being different from zero.

CVM agrees with the comment and has modified the guidance to read as follows:

When conducting a steady-state investigation, data on the minimum drug concentrations (trough values) observed during a single dosing interval (C_{MIN}) should also be collected. Generally, three successive C_{MIN} values should be provided to verify that steady-state conditions have been achieved. Although C_{MIN} most frequently occurs immediately prior to the next successive dose, situations do occur with C_{MIN} observed subsequent to dosing. To determine a steady state concentration, the C_{MIN} values should be regressed over time and the resultant slope should be tested for its difference from zero.

28. Page 16, section III.C.6.c. Determination of Product Bioequivalence. One comment states that for multiple dose studies, C_{MAX} and $AUC_{0\text{-}t}$ are applicable only if done at steady state. It is not clear from the current description that these must be steady state values to have the appropriate interpretation for bioequivalence testing.

CVM does not agree with the comment because a multiple dose bioequivalence study could be conducted with a drug that never achieves steady-state. However, the pioneer and generic products C_{MAX} and

AUC_{0-t} should be equivalent at any dosing interval whether or not steady-state is achieved.

29. Page 17, section III.D. Statistical Analysis, second paragraph. The choice of whether to use untransformed data should be made by the sponsor based on whether transformation is necessary to allow for homogeneity of variance. It should not be determined prior to the study because the data should dictate which transformation, if any, is required.

CVM does not agree with this recommendation. The sponsor has the option to use untransformed or log transformed data, but the decision should be made prior to conducting the study.

30. Page 19, section III.D., second from the last paragraph relating to selection of confidence interval. One comment noted that CVM states that in general the confidence interval for untransformed data should be 80 to 120. Firstly, percent should be specified. Secondly, emphasis should be added that these are general rather than the adamant and steadfast specifications of CVM. The opinion of many statisticians with considerable experience in this field is that the ±20 percent interval is entirely too restrictive. In the animal health market, the potential cost to evaluate generics or combinations may be so great as to preclude bringing a useful drug/combination to the market.

CVM has made the requested editorial changes. However, CVM will continue to accept ±20 percent as the acceptable confidence interval for the pivotal parameters. CVM invites sponsors to submit data to justify broadening the confidence interval for a particular drug.

31. Page 20, section IV.B. Statistical Analysis. One comment noted that for pharmacologic endpoint studies as described, it appears that these studies described are evaluating significant differences rather than statistical equivalence. As such, these pharmacological endpoint studies are not as rigorously designed from a statistical standpoint as classic bioequivalence plasma level studies, inasmuch as differences are being evaluated rather than equivalence. The comment suggested that pharmacological endpoint studies should also be evaluating statistical equivalence, rather than significant differences. In fact, a comparable equivalence testing is alluded to on page 22 regarding clinical endpoint studies, studies which would be expected to be less able to prove equivalence than pharmacologic endpoint studies.

CVM agrees with the comment and has modified the guidance to read as follows:

For parameters which can be measured over time, a time *vs* effect profile is generated, and equivalence is determined with the method of statistical analysis essentially the same as for the blood level bioequivalence study.

For pharmacologic effects for which effect vs time curves can not be generated, then alternative procedures for statistical analysis should be discussed with CVM prior to conducting the study.

32. Page 23, section VI. Human Food Safety Considerations. One comment asked if there is a need for determining a full depletion profile for the generic? The sponsor proposed that a single point tissue residue study completed out to the withdrawal time of the pioneer would be sufficient.

The Center does not agree with the use of a single point tissue residue study at the withdrawal time of the pioneer as a general practice.

A traditional tissue residue depletion study has always been required for generic products where bioequivalence is determined with a pharmacological or clinical endpoint study. The need for a traditional tissue residue depletion profile is expanded in the revised guidance to include blood level bioequivalence studies, because the Center has concluded that, with the exception of those examples listed in section VI. of the guidance, the tissue residue depletion of the generic product is not adequately addressed through bioequivalence studies.

The use of the traditional tissue residue depletion study provides the Center with the data needed to compute a withdrawal period for the drug product in question, using our statistical tolerance limit model, whereby the 99th percentile is calculated with 95 percent confidence. Use of a single point tissue residue study ordinarily would not provide the data needed to use our current model, since the single-point study would not contain sufficient information regarding the variability of the residue depletion profile. Additionally, since the analytical methods approved for regulatory purposes can rarely measure the marker residue at the withdrawal time, a single point residue study at the pioneer withdrawal time would be limited by the efficiency of the regulatory analytical method at the drug concentrations typically seen at the pioneer withdrawal time. When the tissue residue values include negative or zero values (i.e., values below the limit of quantitation for the assay), the number of animals needed in the study will depend on the method variance and the number of zero values, and will vary from drug to drug. It is not possible to predict, a priori, the number of animals that will be needed to provide data of sufficient confidence for a single point tissue residue depletion study to obtain the confidence similar to that seen for the pioneer drug using our traditional residue depletion study design.

The Center will consider the use of a single point tissue residue depletion study in those cases where the regulatory analytical method can be validated and demonstrated to measure reliably residues in the treated animals at the pioneer withdrawal time so that a 99th percentile statistical tolerance limit with 95 percent confidence can be calculated.

A person may follow the guidance or may choose to follow alternate procedures or practices. If a person chooses to use alternate procedures or practices, that person may wish to discuss the matter further with the agency to prevent an expenditure of money and effort on activities that may later be determined to be unacceptable to FDA. Although this guidance document does not bind the agency or the public, and it does not create or confer any rights, privileges, or benefits for or on any person, it represents FDA's current thinking on bioequivalence testing for animal drugs. When a guidance document states a requirement imposed by statute or regulation, the requirement is law and its force and effect are not changed in any way by virtue of its inclusion in the guidance.

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments on the document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The documents and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 17, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–13106 Filed 5–23–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0212]

Epitope, Inc.; Premarket Approval of OraSure® HIV–1 Oral Specimen Collection Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Epitope, Inc., Beaverton, OR, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the OraSure® HIV–1 Oral Specimen Collection Device. FDA's Center for Biologics Evaluation and Research (CBER) notified the applicant, by letter of December 23, 1994, of the approval of the application. A revised approval letter was issued on October 18, 1995.

DATES: Petitions for administrative review by June 24, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sukza Hwangbo, Center for Biologics Evaluation and Research (HFM–380), 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3524.

SUPPLEMENTARY INFORMATION: On May 9, 1991, Epitope, Inc., Beaverton, OR 97008, submitted to CBER an application for premarket approval of the OraSure® HIV–1 Oral Specimen Collection Device. The device is intended for use in the collection of oral fluid specimens by properly trained individuals for the purpose of testing for the presence of antibodies to human immunodeficiency virus Type 1 (HIV–1). The OraSure® HIV–1 Oral Specimen Collection Device consists of both an absorbent cotton fiber pad treated with a proprietary salt solution and gelatin affixed to a plastic stick, and a preservative solution supplied in a plastic container. OraSure® HIV–1 oral fluid specimens are intended to be used only with the Oral Fluid Vironostika HIV–1 Microelisa System screening test manufactured by Organon Teknika Corp. The device is intended for use with subjects 13 years of age or older.

On December 19, 1992, the premarket approval application (PMA) was referred to the Blood Products Advisory Committee, an FDA advisory committee, for review and recommendation. On June 22, 1994, the PMA was referred to the same advisory committee for discussion of post-approval requirements for surveillance studies.

On December 23, 1994, CBER approved the application by a letter to the applicant from the Acting Director, Office of Blood Research and Review, CBER. In response to additional discussions between the manufacturer and FDA, a revised approval letter was issued on October 18, 1995.

FDA has determined that, to ensure safe and effective use, the device is restricted within the meaning of section 520(e) of the act (21 U.S.C. 360j(e)) under the authority of section 515(d)(1)(B)(ii) of the act (21 U.S.C. 360e(d)(1)(B)(ii)) insofar as: (1) Before shipping the device to any customer, Epitope, Inc., must have on file a "Letter of Agreement for Physician" signed by the physician who agrees to assume the outlined responsibilities on behalf of the customer; (2) the administration of the device is restricted to individuals who have been trained in the use of the device according to approved labeling; (3) testing of OraSure® samples for HIV–1 antibodies is restricted to the Oral Fluid Vironostika HIV–1 Microelisa System screening test manufactured by Organon Teknika Corp.; (4) the device is not to be provided to subjects for home use; (5) the device is not to be used to screen blood donors; and (6) prior to specimen collection, a test subject must receive a copy of the subject information sheet. The sale, distribution, and use of the device must not violate sections 502(q) and (r) of the act (21 U.S.C. 352(q) and 352(r)).

A summary of the safety and effectiveness data on which CBER based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CBER's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CBER's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 24, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.53).

Dated: May 17, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–13176 Filed 5–23–96; 8:45 am]

BILLING CODE 4160–01–F

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current

information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Science Board to the Food and Drug Administration

Date, time, and place. June 13, 1996, 8:30 a.m., Sheraton—Crystal City, Ballroom A, 1800 Jefferson Davis Hwy., Arlington, VA.

Type of meeting and contact person. Open committee discussion, 8:30 a.m. to 2:30 p.m.; open public hearing, 2:30 p.m. to 3:30 p.m., unless public participation does not last that long; open committee discussion, 3:30 p.m. to 5 p.m.; Susan Homire, Office of Science (HF–33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3340, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Science Board to the Food and Drug Administration, code 12603. Please call the hotline for information concerning any possible changes.

General function of the board. The board shall provide advice primarily to the agency's Senior Science Advisor, and, as needed, to the Commissioner and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in industry and academia. Additionally, the board will provide advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science; on formulating an appropriate research agenda; and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of agency-sponsored intramural and extramural scientific research programs.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the board. Those desiring to make formal presentations must notify the contact person before June 6, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, and the names and addresses of proposed participants. Each presenter will be limited in time and not all requests to speak may be able to be accommodated. All written statements submitted in a timely fashion will be provided to the board.

Open board discussion. The board will continue its discussions related to FDA's approach to toxicity, carcinogenicity and biomaterials testing.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 20, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–13105 Filed 5–23–96; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Ear, Nose, and Throat Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. June 11, 1996, 8:30 a.m., Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD. A limited number of overnight accommodations have been reserved at the Marriott Courtyard Hotel, 2500 Research Blvd., Rockville, MD. Attendees requiring overnight accommodations may contact the hotel at 301–670–6700 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should notify the contact person listed below. The availability of special accommodations cannot be assured unless prior written notification is received.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:45 a.m., unless public participation does not last that long; open committee discussion, 9:45 a.m. to 4 p.m.; closed committee deliberations, 4 p.m. to 5 p.m.; Marilyn N. Flack, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2080, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Ear, Nose, and Throat Devices Panel, code 12522. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 29, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application that seeks to substantiate the safety and effectiveness of a bronchoscope device utilizing autofluorescence to aid in detection of abnormal lung tissue.

Closed committee deliberations. FDA staff will present to the committee trade secret and/or confidential commercial information regarding present and future FDA issues. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Oncologic Drugs Advisory Committee

Date, time, and place. June 13 and 14, 1996, 8:30 a.m., Holiday Inn—Gaithersburg, Walker and Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open public hearing, June 13, 1996, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4:30 p.m.; open committee discussion, June 14, 1996, 8:30 a.m. to 1 p.m.; closed committee deliberations, 1 p.m. to 3:30 p.m.; Jannette O'Neill-Gonzalez, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Oncologic Drugs Advisory Committee, code 12542. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in treatment of cancer.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 7, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On June 13, 1996, the committee will discuss: (1) New drug application (NDA) 20–571 Camptosar™ (irinotecan hydrochloride injection, The Upjohn Co.), indicated for the treatment of patients with metastatic carcinoma of the colon or rectum whose disease has recurred or progressed following 5–FU-based therapy; and (2) NDA 20–036/S–011 Aredia® (pamidronate disodium for injection, Ciba-Geigy Corp.), indicated for use in conjunction with standard antineoplastic therapy for treatment of osteolytic bone metastases. On the morning of June 14, 1996, the committee will discuss NDA 20–637, Gliadel Wafer® (polifeprosan 20 with carmustine, Guilford Pharmaceuticals), indicated for use as an adjunct to surgery to prolong survival in patients with a malignant glioma.

Closed committee deliberations. On the afternoon of June 14, 1996, the committee will review trade secret and/or confidential commercial information relevant to pending investigational new drug applications and NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Blood Products Advisory Committee

Date, time, and place. June 20 and 21, 1996, 8 a.m., Holiday Inn—Bethesda, Versailles Ballrooms II and III, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open committee discussion, June 20, 1996, 8 a.m. to 11 a.m.; open public hearing, 11 a.m. to 11:30 a.m., unless public participation does not last that long; open committee discussion, 11:30 a.m. to 1:30 p.m.; closed committee deliberations, 1:30 p.m. to 2:30 p.m.; open committee discussion, 2:30 p.m. to 3:30 p.m.; open public hearing, 3:30 p.m. to 4 p.m., unless public participation does not last that long; open committee discussion, 4 p.m. to 5:30 p.m.; open committee discussion, June 21, 1996, 8 a.m. to 10:30 a.m.; open public hearing, 10:30 a.m. to 11:30 a.m., unless public participation does not last that long; open committee discussion, 11:30 a.m. to 2:30 p.m.; open public hearing, 2:30 p.m. to 3 p.m., unless public participation does not last that long; open committee discussion, 3 p.m. to 4 p.m.; Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3514, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Blood Products Advisory Committee, code 12388. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 14, 1996, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On the morning of June 20, 1996, updates on relevant public health issues will be presented and an overview of draft reviewer guidance for blood establishment computer software will be presented and discussed. In the afternoon, there will be discussion of use of hemoglobin solutions in fluid rescuscitation from hemorrhagic shock; in particular, issues in clinical trials. On the morning of June 21, 1996, proposed revisions to the human immunodeficiency virus (HIV) re-entry algorithm will be reviewed and discussed. In the afternoon, the Calypte Laboratories test for anti-HIV in urine will be presented and discussed.

Closed committee deliberations. On June 20, 1996, the committee will review trade secret and/or confidential commercial information relevant to current or pending products. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 20, 1996.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 96–13177 Filed 5–23–96; 8:45 am]

BILLING CODE 4160–01–F

Compressed Medical Gas Industry; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) (Office of Regulatory Affairs, Office of the Southeast Region, and the Center for Drug Evaluation and Research) is announcing a free public workshop on FDA regulatory requirements for the compressed medical gas industry. The workshop is designed to assist the industry in complying with regulations for manufacturing and repacking medical gases.

DATES: The public workshop will be held on Tuesday, June 4, 1996, from 8:30 a.m. to 4 p.m.

ADDRESSES: The public workshop will be held at the Rural Development Center, UGA Cooperative Extension Service, U.S. 41 North and I–75 (exit 21), Tifton, GA.

FOR FURTHER INFORMATION CONTACT: Douglas B. Brogden or Jackie M. Douglas, FDA Atlanta District Office, 225 Tift Ave., rm. 107, Tifton, GA 31794, 912–382–5963, FAX 912–386–9610. Those persons interested in attending this meeting should FAX their registration including name(s), firm name, address, telephone and FAX numbers, and any specific questions about the workshop to Douglas B. Brogden or Jackie M. Douglas (address above) by May 15, 1996. There is no registration fee for this workshop. Advance registration is required. Space is limited and all interested parties are encouraged to register early.

SUPPLEMENTARY INFORMATION: FDA's survey of the medical gas industry shows that many medical gas firms are either unaware of applicable regulations and guidelines or not in compliance with applicable requirements. This workshop is designed to assist the medical gas industry in complying with regulations for manufacturing and repacking medical gases. This workshop is free of charge to attendees.

Dated: May 17, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–13104 Filed 5–23–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96D–0133]

Guidance for Industry; The Content and Format for Pediatric Use Supplements; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Guidance for Industry; The Content and Format for Pediatric Use Supplements." This guidance was prepared by the Pediatric Subcommittee of the Medical Policy Coordinating Committee (MPCC) of the Center for Drug Evaluation and Research (CDER) in collaboration with the Center for Biologics Evaluation and Research (CBER). The availability of this document is intended to provide guidance on the format and content of "pediatric use" labeling supplements to approved applications for drugs and licensed biological products. This labeling information is intended to provide practitioners with sufficient "pediatric use" information upon which to base a decision to prescribe a drug for use in pediatric patients.

DATES: Written comments on the guidance may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the guidance entitled "Guidance for Industry; The Content and Format For Pediatric Use Supplements" to the Division of Communications Management, Center for Drug Evaluation and Research (HFD–210), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855 or to the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send two self-addressed adhesive labels to assist that office in processing your requests. Persons with access to the INTERNET may request that the guidance document be sent by "bounce back e-mail" using the following address: GDEPED@a1.CBER.FDA.GOV. The guidance document may also be obtained through the INTERNET via File Transfer Protocol (FTP). Requesters should connect to the CDER FTP server at "CDVS2.CDER.FDA.GOV" and change to the "guidance" directory. The "READ.ME" file in that subdirectory describes the available documents that may be available as an ASCII text file (*.TXT), or a WordPerfect 5.1 document (*.w51), or both. Further, the guidance document is available via the World Wide Web (WWW) and Gopher. To obtain the guidance document via the WWW requesters should connect to the FDA home page at "WWW.FDA.GOV" and go to the CDER "Human Drugs" icon. To obtain the guidance document via Gopher requesters should connect to CDER's Gopher server at "GOPHER.CDER.FDA.GOV" and select the "Industry Guidance" menu option. Finally, the guidance document is available via FAX by calling the Center for Biologics Evaluation and Research Voice Information System at 1–800–835–4709.

Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Regarding human drugs: Terry Martin, Center for Drug Evaluation and Research (HFD–6), Food and Drug Administration, 1451 Rockville Pike, Rockville, MD 20852, 301–594–5460.

Regarding biological products: Elaine Esber, Center for Biologics Evaluation and Research (HFM–30), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–827–0641.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guidance entitled "Guidance for Industry; The Content and Format For Pediatric Use Supplements." The guidance is intended to provide sponsors with format and content information for submitting "pediatric use" labeling supplements to approved applications for drugs or licensed biological products. The guidance provides a general description of the information that should be submitted in a "pediatric use" supplement, including draft revised labeling and a marked-up copy of the current labeling, clearly showing all revisions; the appropriate paragraph of § 201.57(f)(9) (21 CFR 201.57(f)(9)) that applies and a justification for the paragraph; a basis for concluding that the course of the disease and the effects of the drug are similar in the pediatric and adult population if changes in labeling fall under § 201.57(f)(9)(iv); the age categories for which pediatric data are being submitted; identification of the kind of pediatric data submitted within

each age category; a summary of the information submitted to support the pediatric labeling statements and an integrated summary of the pediatric safety data with a risk/benefit assessment; and presentation of the data.

Although this guidance does not create or confer any rights for or on any person and does not operate to bind FDA, it does represent the agency's current thinking on how to prepare "pediatric use" labeling supplements for submission to FDA.

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments on the guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. If written comments demonstrate that changes to the guidance are appropriate, such changes to the guidance will be made.

Dated: May 17, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–13175 Filed 5–23–96; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Clinical Sciences.
Date: May 30, 1996.
Time: 8:30 a.m.
Place: NIH, Natcher Bldg., Bethesda, MD.
Contact Person: Dr. Ronald Suddendorf, Scientific Review Administrator, 6000 Executive Blvd., Room 409, Bethesda, Maryland 20892, (301) 443–2926.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: Biological and Physiological Sciences.
Date: June 4, 1996.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 5146, Telephone Conference.
Contact Person: Dr. Ramesh Nayak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5146, Bethesda, Maryland 20892, (301) 435–1026.

Name of SEP: Biological and Physiological Sciences.
Date: June 17, 1996.
Time: 8:00 a.m.
Place: Bethesda Marriott Hotel, Bethesda, MD.
Contact Person: Dr. Nabeeh Mourad, Scientific Review Administrator, 6701 Rockledge Drive, Room 5110, Bethesda, Maryland 20892, (301) 435–1168.

Name of SEP: Clinical Sciences.
Date: June 19–20, 1996.
Time: 8:00 a.m.
Place: Residence Inn, Bethesda, MD.
Contact Person: Dr. Josephine Pelham, Scientific Review Administrator, 6701 Rockledge Drive, Room 4106, Bethesda, Maryland 20892, (301) 435–1786.

Name of SEP: Behavioral and Neurosciences.
Date: July 10, 1996.
Time: 8:30 a.m.
Place: Holiday Inn, Bethesda, MD.
Contact Person: Dr. Carl Banner, Scientific Review Administrator, 6701 Rockledge Drive, Room 5182, Bethesda, Maryland 20892, (301) 435–1251.

Name of SEP: Clinical Sciences.
Date: October 23–24, 1996.
Time: 8:00 a.m.
Place: Residence Inn, Bethesda, MD.
Contact Person: Dr. Josephine Pelham, Scientific Review Administrator, 6701 Rockledge Drive, Room 4106, Bethesda, Maryland 20892, (301) 435–1786.

Purpose/Agenda: To review Small Business Innovation Research.
Name of SEP: Multidisciplinary Sciences.
Date: June 5, 1996.
Time: 1:00 p.m.
Place: Rosslyn Westpark Holiday Inn, Arlington, VA.
Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, Maryland 20892, (301) 435–1171.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 14, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–13166 Filed 5–23–96; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Special Emphasis Panel II

Pursuant to Pub. L. 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel II in June.

A summary of the meeting may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA Office of Extramural Activities Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: (301) 443–4783.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual contract proposals. These discussions could reveal personal information concerning individuals associated with the proposals and confidential and financial information about an individual's proposal. The discussion may also reveal information about procurement activities exempt from disclosure by statute and trade secrets and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c) (3), (4), and (6) and 5 U.S.C. App. 2, section 10(d).

Committee Name: SAMHSA Special Emphasis Panel II.
Meeting Date: June 3, 1996.
Place: Parklawn Building—Conference Room "O", 5600 Fishers Lane, Rockville, Maryland 20852.
Closed: June 3, 1996, 10:30 a.m.–12:30 p.m.
Contact: Ferdinand W. Hui, Ph.D., Room 17–89, Parklawn Building, Telephone: (301) 443–9912 and FAX: (301) 443–3437.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: May 20, 1996.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 96–13103 Filed 5–23–96; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–3669–N–03]

Public and Indian Housing Tenant Opportunities Program Technical Assistance Announcement of Funding Awards for FY 1994

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for Public and Indian Housing Tenant Opportunities Program Technical Assistance Program. This announcement contains the names and addresses of the awardees and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Christine Jenkins or Barbara J. Armstrong, Office of Community Relations and Involvement, Department of Housing and Urban Development, room 4112, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3611 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Public and Indian Housing Tenant Opportunities Program Technical Assistance Program is authorized by section 20, United States Housing Act of 1937 (42 U.S.C. 1437r); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

The Fiscal Year 1994 competition was announced in a NOFA published in the **Federal Register** on May 13, 1994 (59 FR 25248). The NOFA announced the availability of $25 million to provide assistance to resident grantees, including Resident Councils, Resident Management Corporations, Resident Organizations, National Resident Organizations, Statewide Resident Organizations, to fund training and other tenant opportunities, such as the formation of such entities, identification of the relevant social support needs, and securing of such support for residents of public and Indian housing. Applications were scored and selected for funding based on criteria contained in the Notice.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is hereby publishing the names and addresses of the awardees that received funding under the NOFA, and the amount of funds awarded to each. This information is provided in Appendix A to this document.

Dated: May 21, 1996.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

APPENDIX A.—FISCAL YEAR 1994 PUBLIC AND INDIAN HOUSING

Program Name: Tenant Opportunities Program Technical Assistance Grant; Statute: Public Law 100–42, February 5, 1988 NOFA Date: May 13, 1994

Funding recipient (name and address); applicant, name, contact	Amount awarded
Angel Hampton, Valley Residents for Improvement, Inc., 89 Tacoma St. Worcester, MA 01605, (508) 798–4500	$100,000
Dorothy Harrison, Curwin Circle Resident Council, 174 S. Common, Lynn, MA 01905, (617) 586–9676	60,000
Jackie Finman, Meadow Gardens Tenant Union, 49 Meadow Street, Norwalk, CT 06854, (203) 255–1264	100,000
Angel Williams, Washington Village Tenant Union, 707 Water Street, Norwalk, CT 06854, (203) 853–7569	100,000
Carmen Lozada, Charter Oak Terrace Tenant Association, 32 Golden Age Drive, Hartford, CT 06106, (203) 275–8410	98,500
Mellanee Bennett, Stowe Village Tenant Association, 66 Hampton Street, Hartford, CT 06112, (203) 278–2829	99,100
Janis Mitchell, Dutch Point Tenant Association, 51–A Dutch Point, Hartford, CT 06106, (203) 560–7824	96,400
Mae Riddick, Voices for Residents of City-Wide Public Housing, 61 Webster St., New Haven, CT 06511, (203) 789–0053	100,000
Janine Sheehan, Traverse Square Tenants Association, 35 Traverse Square, Middletown, CT 06457, (203) 347–8145	100,000
Gena Privott, Long River Village Tenants Association, 13 MacArthur Court, Middletown, CT 06457, (203) 347–3647	100,000
Beverly Epps, Winthrop Residents Organization, 48 Crystal Avenue, New London, CT 06320, (203) 443–2640	92,000
Dorothy Waters, Codding Court Resident Management Corporation, 74 Lester Street 1–D, Providence, RI 02907, (401) 273–9795	60,000
Arthur Goodrum, Tenant Leadership Council, Inc., 20 Rensselaer St. 7B, Albany, NY 12202–1637, (518) 426–7780	100,000
Deborah Scarborough, Yates Village Resident Association, E–35 Yates Village, Schenectady, NY 12308, (518) 372–5524	96,000
Beatrice Byrd, Red Hook West Tenants Association, 40 Centre Mall Apt 1A, Brooklyn, NY 11231, (718) 643–0079	98,000
Abigail Javier, Thomas Jefferson Houses Tenant Association, 2205 2nd Avenue, New York, NY 10029, (212) 348–3022	100,000
Bessie Canty, Lehman Village Houses Tenant Association, 70 East 108th Street, New York, NY 10029, (212) 534–8747	100,000
Ruby Kitchen, Martin Luther King Jr. Towers Tenant Association, 41 West 112th, New York, NY 10029, (212) 369–3767	100,000
Sylvia Valesquez, Dewitt Clinton Houses Tenant Association, 1485 Park Avenue Apt. 7A, New York, NY 10029, (212) 722–5576	100,000
Peggy Thomas, Hammel Houses Tenants Association, 81–10 Rockaway Beach, Far Rockaway, NY 11692, (718) 945–4717	100,000
Maria Guzman, WSURA Brownstones' Tenants Association, 19 West 90 St, #3A, New York, NY 10024, (212) 305–9042	100,000
Gwendolyn Hall, United Tenants Council, 345 Main St, 5G, New Rochelle, NY 10801–4029, (914) 632–3995	98,000
Emma Richardson, Tenants Association of Pioneer Homes, 205 Second Street, Elizabeth, NJ 07202–2690, (908) 965–2400	99,835
Dolores Noble, Christopher Columbus Family Development RC, 160 Ward Street, Paterson, NJ 07505–1998, (201) 345–5080	100,000
Jennifer Burton, Schwartz-Robeson Tenants Association, P.O. Box 110, New Brunswick, NJ 08903–1368, (908) 745–5147	99,658
Rosalie Johnson, 101 Union Avenue Tenants Association, 101 Union Avenue, Irvington, NJ 07111–2302, (201) 375–2121	100,000
Bernice Bryant, West Side Court Tenant Association, 205 Seventh Street, Salem, NJ 08079–1040, (609) 935–5022	96,652
Rudoloph Gibson, Salem Garden Tenants Association, 205 Seventh Street Salem, NJ 08079–1040, (609) 935–5022	96,652
Barbara Taylor, Orchard Manor Resident Management Corporation, 907 Griffin Dr. #19, Charleston, WV 25312, (304) 345–8768	60,000
James Deshields, Compton Towers Resident Council, 325 E. 5th St., Wilmington, DE 19801, (302) 654–6432	100,000
Verna Johnson, Resident Council of Eastlake, 920 E. 26th St., Wilmington, DE 19802, (302) 654–2976	100,000
Mattie Flynn, Thomas Herlihy, Jr., Resident Council, 320 E. 5th St. Wilmington, DE 19801, (302) 658–6326	100,000
David Knowland, Electra Arms Resident Council, 1800 N. Broom St., Wilmington, DE 19802, (302) 659–4442	100,000
Virginia Ellegood, Lincoln Towers Resident Council, 1625 Gilpin Ave., Wilmington, DE 19806 (302) 427–9399	100,000
Edralene Williams, Crestview Resident Council, 2700 N. Market, Wilmington, DE 19807, (302) 764–4409	100,000
Martha Berryman, Wilmington Family Resident Council, 2800 Tatnall St., Wilmington, DE 19801, (302) 764–4536	60,000

APPENDIX A.—FISCAL YEAR 1994 PUBLIC AND INDIAN HOUSING—Continued

Program Name: Tenant Opportunities Program Technical Assistance Grant; Statute: Public Law 100–42, February 5, 1988 NOFA Date: May 13, 1994

Funding recipient (name and address); applicant, name, contact	Amount awarded
Gladys Blackwell, Emlen Arms Resident Council, 6733 Emlen St., Philadelphia, PA 19119, (215) 684–5671	100,000
Mary Darby, Norman Blumberg Tenant Council, 2326 W. Oxford St., Philadelphia, PA 19121, (215) 978–5653	100,000
Rosemary Trice, Cambridge Plaza Tenant Council, 1039 Cambridge Mall, Philadelphia, PA 19123, (215) 236–8420	100,000
Lillie Mathies, Glenside Homes Community Services, Inc., 1203 Avenue D, Reading, PA 19601	100,000
Theresa West, Cole Crest Pride Organization, 919 Wood Street, Steelton, PA 17113	100,000
Charles Gennaro, Vine Manor/Vine West Resident Councils, 320 W. Mine St., Hazleton, PA 18201–6193	89,400
Irene Battle, Allegheny Dwellings Tenant Council, 1817 Letche St., #67, Pittsburgh, PA 15210	96,205
Mary Iesulauro, Richard S. Caliguiri/Allentown Tenant Council, 803 Warrington Ave., Pittsburgh, PA 15219	100,000
Erma Johnson, Addison Terrace Resident Council, 2024 Grove Place, Pittsburgh, PA 15219–2068	100,000
Fannie Goodman, Pennsylvania Bidwell High Rise Council, 1014 Sheffield Street, Pittsburgh, PA 15219	100,000
Martha Winterhatter, Daniel Pietragallo, Carrick Regency, 2129 Brownsville Rd., Pittsburgh, PA 15210	100,000
Olivia Doswell, Homewood North Tenant Council, 1208 Nolan Court, Pittsburgh, PA 15208	100,000
Linda Brown, Arlington Heights Tenant Council, 3257 Arlington Ave., Pittsburgh, PA 15210	100,000
Marie Jackson, Kelly St. High Rise Tenant Council, 7030 Kelly Street, Pittsburgh, PA 15219	100,000
Ruth Pittrell, Bedford Dwellings Tenant Management Corp., Inc., 2305 Bedford Avenue, Rearsburgh, PA 15219	100,000
Inez McDonald, Glen Hazel Tenants Council, 895 Johnson Avenue, Pittsburgh, PA 15219	100,000
Bernice Windom, South Hills Terrace Tenant Organization, 119 South Hills Ter, Brownsville, PA 15417	60,900
Ayisha Muhammad, Aqueduct Resident Council, 13228 Aqueduct Dr. #5, Newport News, VA 23602	100,000
Mary Barrett, Arthur Capper Family Resident Council, 909 3d St. SE, Washington, DC 20003	100,000
Dorothea Ferrell, Barry Farm Resident Council, 1326 Stevens Rd. SE, Washington, DC 20020	100,000
Joyce Mallory, Carrollsburg Resident Council, 308 K St. SE, Washington, DC 20003	100,000
Evelyn Brown, East Capitol Resident Council, 12 60th St.,NE, Washington, DC 20019	100,000
Ivory Walters, Eastgate Gardens Resident Council, 5014 Street, SE., Washington, DC 20019	100,000
Martha Barner, Edgewood Terrace Family Resident Council, 425 Edgewood St., NE #C13 Washington, DC 20017	100,000
Wilbur Boone, Edgewood Senior Resident Council, 635 Edgewood St., NE, Washington, DC 20017	100,000
Florence Bean, Fort Lincoln Resident Council, 2855 Bladensburg NE, #304 Washington, DC 20018	100,000
Rosemary Akinmboni, Garfield Terrace Resident Council, 22341 11th St. NW, Washington, DC 20001	100,000
Mary Sessoms, Greenleaf Senior Resident Council, 1200 Delaware Ave. SW, #612 Washington, DC 20024	100,000
Sharon Marbury, Hopkins Apartment Resident Council, 1011 14th St., SE, Washington, DC 20003	100,000
Mary Green, Horizon House Resident Council, 1150 12th St. NW #708, Washington, DC 20005	100,000
Phyllis Martin, James Creek Resident Council, 1263 Half St., SW, Washington, DC 20024	100,000
Mildred Bristol, Kelly Miller/Ledroit Family Resident Council, 233 V Street., NW, Washington, DC 20001	100,000
Valerie Stewart, Kentucky Courts Resident Council, 251 14th St. SE, #12, Washington, DC 20003	100,000
Amanda Green, Knox Hill Senior Resident Council, 2700 Jasper St. SE, Washington, DC 20020	100,000
Geneva Barr, Montana Terrace Resident Council, 1609 Montana Ave. NE, Washington, DC 20019	100,000
Marie Whitfield, Park Morton Resident Council, 615 Morton St. NW #11, Washington, DC 20010	100,000
Thelma Russell, Potomac Gardens Senior Resident Council, 12298 G St. SE. #520, Washington, DC 20003	100,000
Eleanor White, Richardson Resident Council,5524 Banks Place NW, Washington, DC 20019	100,000
Shirley Lambert, Scattered Sites I Resident Council, 740 Princeton Pl. NW, Washington, DC 20010	100,000
Anne Clark, Sibley Plaza Resident Council, 1140 N. Capitol St. #824, Washington, DC 20002	100,000
Viola King, Sursum Corda Resident Council, 55 K St., NW, Washington, DC 20001	100,000
Tracy Hooks, Syphax Gardens Resident Council, 45 P St., SW, # 21, Washington, DC 20024	100,000
Angeline Watson, Woodland Terrace Resident Council, 2770 Bruce Place SE, Washington, DC 20020	100,000
Rebecca Mitchell, Patterson Terrace Residents Association, 323 Lewis Drive, Savannah, GA 31406	100,000
Sallie Long, Georgia Avenue Senior Highrise, 739 W. Peachtree, NE, Atlanta, GA 30365	100,000
Herman Ingber, Marian Road Senior Highrise Resident Association, 760 Sidney Marcus Blvd., Atlanta, GA 30324	100,000
Patricia Tucker, Leila Valley Resident Association, 2425 Leila Lane—Apt 51, Atlanta, GA 30315	100,000
Ruby Alexander, U-Rescue Villa Resident Association, 366 Linden Ave.—#130, Atlanta, GA 30308	100,000
Eva Davis, East Lake Meadows Resident Association, 256 Meadow Lake Dr., Atlanta, GA 30317	100,000
Carl Tolbert, Palmer House Resident Association, 430 Techwood Dr., Atlanta, GA 30313	100,000
Geneva Hill, Westminster Apartments Resident Association, 1422 Piedmont Ave., Atlanta, GA 30309	100,000
Hattie Harrison, Martin Street Plaza Resident Association, 600 Martin St.—Apt L–2, Atlanta, GA 30312	100,000
Renate Kirchgessner, Piedmont Road Resident Association, 3601 Piedmont Rd. #121, Atlanta, GA 30305	100,000
Christine Williams, Jonesboro South Resident Association, 2475 Jonesboro Rd. #160, Atlanta, GA 30315	100,000
Bernice Miller, John O. Chiles Resident Association, 435 Asby St. #1017., Atlanta, GA 30310	100,000
Mary Vaughn, East Lake Meadows SHR Resident Association, 380 East Lake Blvd., Atlanta, GA 30317	100,000
Diane Wright, Hollywood Courts Resident Association, 2530 Hollywood Ct. #53, Atlanta, GA 30318	100,000
Sandra Gates, McDaniel-Glenn Resident Association, 14 Wells Court #1651, Atlanta, GA 30312	100,000
Mary Sanford, Perry Homes Resident Association, 1537 Drew Dr. #982, Atlanta, GA 30318	100,000
James Bradfield, MLK Memorial Senior Resident Association, 525 Whitehall Ter., Atlanta, GA 30367	100,000
Brenda Green, Thomasville Heights Resident Association, 1130 Henry Thomas Dr, Atlanta, GA 30315	100,000
Sabriah Shakoor, Jonesboro North Resident Association, 2291 Jonesboro Rd., Atlanta, GA 30315	100,000
Elenor Jennings, Marietta Road Senior Highrise Resident Association, 2295 Marietta Road, Atlanta, GA 30318	100,000
Elaine Allen, Kimberly Courts Resident Association, 1401 Kimberly Way, Atlanta, GA 30331	100,000
Grant Hallman, Cosby Spear Towers Resident Association, 365 North Ave. #B511, Atlanta, GA 30308	100,000
Christine Hall, Hightower Manor Senior Highrise Resident Association, 2610 MLK Dr. #604, Atlanta, GA 30311	100,000
Johnnie Keith, Grady Homes/Grave Annex Resident Association, 110 Hilliard St #408, Atlanta, GA 30312	100,000
Laurie Johnson, Peachtree Road Resident Association, 2240 Peachtree Rd., Atlanta, GA 30309	100,000
Cherly Laurendeau, Cheshire Bridge Road SR Highrise Resident Assoc., 2170 Cheshire Bridge, Atlanta, GA 30324	100,000

APPENDIX A.—FISCAL YEAR 1994 PUBLIC AND INDIAN HOUSING—Continued

Program Name: Tenant Opportunities Program Technical Assistance Grant; Statute: Public Law 100–42, February 5, 1988 NOFA Date: May 13, 1994

Funding recipient (name and address); applicant, name, contact	Amount awarded
Muriel Franklin, Barge Road Senior Highrise Resident Association, 2440 Barge Road, Atlanta, GA 30331	100,000
Laura Lawson, Herndon Homes Resident Management Corporation, 499 John St. #242, Atlanta, GA 30318	60,000
Thelma Beck, Gilbert Gardens Resident Association, 304 Flynn Rd. #95, Atlanta, GA 30351	100,000
Ola Smith, Roosevelt House Senior HR Resident Association, 582 Techwood Dr #707, Atlanta, GA 30313	100,000
Verna Mobley, University/John Hope Homes, 669 Larkin St. #499, Atlanta, GA 30314	59,000
Ozie Wardrick, Capitol Homes Resident Council, 56 Memorial Dr. #4, Atlanta, GA 30312	100,000
Darryl Turner, Dixi Manor Resident Management Corporation, 3993 Sharon Church R, Pinson, AL 35126	64,670
Vonnie Thomas, Tuskegee HA Resident Council Executive Board, 301–A Gautier Street, Tuskegee, AL 36083	100,000
Patricia Price, Resident Executive Council of the Columbia HA, 205 St. Andrews Ter., Columbia, SC 29210	100,000
Martha Curlee, Southside, Helen Caple, Eastview Terrace (SHE), 1 Jamaica Drive, Lexington, NC 27292	100,000
Joann Shirer, Chapel Hill-Carrboro Resident Council, 345 S. Estes Drive, Chapel Hill, NC 27514	100,000
Thelma McClendon, Monroe Housing Authority Resident Council, 504 Hough Street, Monroe, NC 28112	95,000
Deborah Jackson, Fernwood Resident Council, Ferwood Place #56, Biloxi, MS 39531–3520	100,000
Mary Ann Bishop, Resident Council of the Starkville P.H. Community, 169 Long Street, Starkville, MS 39759	100,000
Linda Hodges, Friendly City Resident Council, 1802 14th Avenue No., Columbus, MS 39701	100,000
Geneva Townsend, South Delta Regional HA Resident Council, Inc., P. O. Box 4563, Greenville, MS 38701	37,400
Leshia McLemore, Turnkey Resident Council, P. O. Box 192, Lumberton, MS 39455	100,000
Veronica Sledge, Ramona Park Resident Management Corporation, Inc., 6750 Ramona Blvd., Jacksonville, FL 32205	100,000
Genaro Molina, Ramon Marin Sola Resident Council, Constitution Ave., Arecibo, PR 00612–0000	92,500
Edwin Velazquez, Padre Rivera Resident Council, Building 1 Apt 10, Humacao, PR 00792–0000	92,500
Milagros Medina Rosado, Hogares de Portugues Resident Council, Bldng H Apt 81, Ponce, PR 00917–0000	92,500
Wanda Mendez, Santiago Iglesias RC, Bldng 28 Apt 231, Ponce, PR 00731–0000	92,500
Brunilda Rodriguez, Villa Navarro Resident Council, Apt 1, Maunabo, PR 00707–0000	98,000
Jose Santiago, Turabo Heights Resident Council, Bldng 16 Apt 1–A, Caguas, PR 00725–0000	98,000
Ada Rodriguez, Dr. Pila Resident Council Extension I, Bldg 15–7 Apt 88, Ponce, PR 00731–0000	92,500
Hector Sanchez Castillo, Villa Evangelina Resident Council, Street 2 #L 107, Manati, PR 00674–0000	100,000
Ruth Gutierrez, Jardines de Montellano Resident Council, Bldg A Apt 326, Cayey, PR 00736–0000	98,000
Jose Silva Gonzalez, Magnolia Gardens Resident Council, Bldg 12 Apt A–1, Bayamon, PR 00956–0000	92,500
Hector Carruib Padin, La Meseta Resident Council, Bldg 2 Apt 52, Arecibo, PR 00612–0000	92,500
Maria De L De Jesus, Cidra Housing Resident Council, 8th St. Apt L–9, Cidra, PR 00739–0000	98,000
Maria Roque, Dr. Pila Resident Council Extension II, Dr. Pila Bldg. 3 Apt 38, Ponce, PR 00731	92,500
Rita Rivera-Ramirez, Lideres Independiente, Pro-Bienestar de Llorens To, Loiza Ave. Apt. 1642, Santurce, PR 00913	99,765
Pedro Ruiz, Extension Caguax Resident Council, Inc., Bldg. 3, Apt. 5 Caguax Caguas, PR 00725	98,000
Carmen Arroyo, Bella Vista Heights Inc., Resident Council, Bldg. G–12, Apt. 3 Bayamon, PR 00957	92,500
Ivonne San-Antonio, Campo Verde Resident Council, Street 2, C–17 Bayamon, PR 00960	92,500
Alfonso Reyes, Dr. Pedro J. Palou Housing Resident Council, Bldg. 3 Apt. 4, Humacao, PR 00792–0000	92,500
Maria del Carmen Nunez-Sierra, Lideres Voluntarios Resident Council, Bldg. 6 Apt. 135, Bayamon, PR 00959	92,500
Noraida Rosado, Virgillo Davila Resident Council, State Rd. 12, Bayamon, PR 00956	92,500
Willie Burrell, Northeast Scattered Sites Resident Mgmt. Corp., 4700 N. Magnolia, Chicago, IL 60640	100,000
Evelyn Hernandez, It's Time for a Change Resident Management, 862 N Sedgewick #304, Chicago, IL 60610	40,000
Eunice McClain, Acting Scattered Sites Resident Council, 100 S SHERIDAN RD, Peoria, IL 61605–3905	100,000
Cynthia Rivers, Warner Homes Resident Council, 814 W. Brotherson Peoria, IL 61605	100,000
Elizabeth Murphy, Manor Homes Resident Council, 706 26th Avenue, Rock Island, IL 61201	100,000
Diann Houston-Johnson, Valley Homes Resident Council, 1003 25th Street #27, Rock Island, IL 61201	100,000
Andranette Trice, Lebanon Resident Council, 503 S. Plum—Ste A, Lebanon, IL 62254	60,000
Judith Archibold, Bridgewood Resident Council, 702 Bridgewood Lane, Murphysboro, IL 62966	100,000
Jay Arrington, Carver Park Estates Local Advisory Council, 4712 Quincy Ave #2217, Cleveland, OH 44104	100,000
Nell Petite, Woodhill Homes Estate Local Advisory Council, 2474 Baldwin Rd., #E, Cleveland, OH 44106	100,000
Pearlie LeSure, King Kennedy Estates Mothers of Renaissance, 2580 Park Midway #1, Cleveland, OH 44104	100,000
Hattie Jackson, Outhwaite Homes Estates Local Advisory Council, 4461 Woodland #1070, Cleveland, OH 44104	100,000
Julia Kay, Wade Park Apartments Local Advisory Council, 9500 Wade Park #706, Cleveland, OH 44106	100,000
Glennie Patterson, Trumbull Homes, Tenant Organization, 2226 S.Project Dr. S.E., Warren, OH 44484	100,000
Etta McCree, Highland Terrace Tenant Organization, 471 Lane Dr. S.W., Warren, OH 44484	100,000
Sandra Henry, Bardmoor, Estates Resident Council, 6101 Bardmoore, Ashtabula, OH 44004	100,000
William Ross, Bonniewood Resident Council, 3128 Johnson Court, Ashtabula, OH 44004	100,000
Cathy Downton, Allen County Tenant Council, 600 S. Main St., Lima, OH 45804	100,000
Byrd Hall, Logan County Housing Improvement Association, 116 N Everett St., Bellefontaine, OH 43311	100,000
Lois Williams, Edward J. Jeffries Homes Resident Council, 2211 Orleans, Detroit, MI 48207–2780	100,000
Lena Bivens, Brewster-Douglas Resident Council, 2211 Orleans, Detroit, MI 48207–2780	100,000
Louis Harvey, Jr., State Fair Resident Council, 2211 Orleans, Detroit, MI 48207–2780	100,000
Betty Cole, Parkside Homes Resident Council, 2211 Orleans, Detroit, MI 48207–2780	100,000
Cornell Preston, Woodland Resident Council, 2211 Orleans, Detroit, MI 48207–2780	100,000
Helen Smith, Smith Homes Resident Council, 2211 Orleans, Detroit, MI 48207–2780	100,000
Elizabeth Butler, Forest Park Place Resident Council, 2211 Orleans, Detroit, MI 48207–2780	100,000
Thelma Simpson, Diggs Homes Resident Council, 2211 Orleans, Detroit, MI 48207–2780	100,000
Mishelle Kennedy, Sojourner Truth Homes Resident Council, 2211 Orleans, Detroit, MI 48207–2780	100,000
Evelyn Bradshaw, Herman Gardens Resident Council, 2211 Orleans, Detroit, MI 48207–2780	100,000
Betty Scott, Sheridan II Resident Council, 2211 Orleans, Detroit, MI 48207–2780	100,000
Aruby Brown, Warren West Resident Council, 2211 Orleans, Detroit, MI 48207–2780	100,000

APPENDIX A.—FISCAL YEAR 1994 PUBLIC AND INDIAN HOUSING—Continued

Program Name: Tenant Opportunities Program Technical Assistance Grant; Statute: Public Law 100–42, February 5, 1988 NOFA Date: May 13, 1994

Funding recipient (name and address); applicant, name, contact	Amount awarded
Ann Flow, Sheridan I Resident Council, 2211 Orleans, Detroit, MI 48207–2780	100,000
Clara Shoots, Conner-Waveney Resident Council, 2211 Orleans, Detroit, MI 48207–2780	100,000
Doretha Porter, Saginaw Tenant Organization, 2811 Davenport St., Saginaw, MI 48602–3747	86,000
Jackie McGowan, Mount Clemens Family Housing Resident Council, 50 Church Street, Mt. Clemens, MI 48043–2253	100,000
Patricia Brown, Lansing City-Wide Housing Commission, 310 Seymour Avenue, Lansing, MI 48933	100,000
VI Scott, Hillside Terrace, 637 West Cherry St., Milwaukee, WI 53202	100,000
Alan Moore, Sr., Lac du Flambeau Resident Organization, 554 Chicog Street, P.O. B, Lac du Flambeau, WI 54538	84,700
Gale White, Ho-Chunk Resident Organization, P.O. Box 605, Black River Falls, WI 54615	89,274
Mary Wayka, Menominee Housing Resident Organization, P.O. Box 261, Keshena, WI 54135	60,500
Mary Jane Halpern, Sunset Village Resident Council, 2816 Louden #2, Las Vegas, NM 87701	100,000
Robin Vargas, Vista del Cerro Family Resident Council, 410 Tingley, #26, Truth or Consequence, NM 87901	40,000
Raymond Martinez, Turquoise Trail Resident Council, 111 Sierra Pl. North, Santa Fe, NM 87505	100,000
Maria Vega, Camino De Jacobo Resident Council, 70 Camino De Jacobo, Santa Fe, NM 87505	100,000
Richard Coleman, Waxahachie Resident Council, 208 Patrick # 19, Waxahachie, TX 75165–2918	100,000
Sheila Smith, Irvinton Village Resident Council, 2901 Fulton, Houston, TX 77009	100,000
Bettye Archibald, Bellerive Resident Council, 7225 Bellerive, Houston, TX 77036	100,000
Florence Burleson, 75 Lyerly Resident Council, 75 Lyerly, Houston, TX 77022	100,000
Patsy Cooper, Oleander Homes Resident Council, 5228 Broadway #4C, Galveston, TX 77550	100,000
Patricia Hypolite, Cedar Terrace Resident Council, 724–33rd St. #12–C, Galveston, TX 77550	100,000
Eulalia Watson, Holland House Resident Council, 2810–61st St. #416, Galveston, TX 77550	100,000
Ida Green, Arthur Robinson Resident Council, 516 Burton, Orange, TX 77630	100,000
Illene Pierce, Vidor Complex Resident Council, 125 Vidor Dr. #58, Vidor, TX 77662	100,000
Delois Cole, Sunset Terrace Resident Council, 2800 S. Summit, Little Rock, AR 72202	89,000
Ira Bass, High Rise Developments Joint Resident Councils, 311 East Eighth St., Little Rock, AR 72202	88,000
Theatrice Collier, Highland Park Resident Council, 4801 West 12th St., Little Rock, AR 72202	88,000
Fannie McKnight, St. Thomas Resident Council, 739 St. Andrew St., New Orleans, LA 70130	100,000
Desiree Williams, Florida Resident Council, 2601 Alvar Street, New Orleans, LA 70130	100,000
Pamela Jenkins, Capital Square Resident Council, 700 North 17th St., Baton Rouge, LA 70806–3422	45,190
David Osborn, Phoenix Resident Council, 111 Randolph St., Seminole, OK 74868	100,000
Cindy Curtis, Norman Housing Authority Resident Council, Inc., 700 N. Berry Rd., Norman, OK 73069–0000	60,000
Tommie Martinez, Kingsville Housing Authority Resident Association, 1616 Connell Villa, Kingsville, TX 78363	100,000
Debra Emarthle, New Edition Resident Organization, 2107 Neva, Seminole, OK 74868	100,000
Cindy Anderson, South Side Development Resident Council, 1841 27th Avenue, S., Clinton, IA 52732	34,275
Sue Hayes, Central Iowa Regional Advisory Council, Inc., 402 N. Water St., #3, Madrid, IA 50156	60,000
Alecia Williams, United Presidents Council of Kansas City, Kansas, 1124 North 9th St., Kansas City, KS 66101–2197	76,090
Emily Wallace, Public Housing Resident Council, 405 Paseo, Kansas City, MO 64106–2608	100,000
Stella Brown, Central Resident Council, Bx 4305,Santa Fe Sta, Denver, CO 80204	60,000
Roy Edwards, Hope Resident Council, Boulder County, CO, 450 S Carr, Lafayette, CO 80026	60,000
Tammy Schneider, Rock Springs Resident Council, 2145 Century Blvd., Rock Springs, WY 82901	100,000
Warren Matte, Ft. Belknap RMC, PO Box 1190, Harlem, MT 59526	100,000
John Other Medicine, Crow RO, PO Box 427, Crow Agency, MT 59022	100,000
Harley Texx Lone Bear, Like-A-FishHook Resident Consortium, PO Box 310, New Town, ND 80202–3607	100,000
Harold Tiger, Chante RO, PO Box 611, Eagle Butte, SD 57625	99,640
Zona Loans Arrow, Fort Yates RO, PO Box 484, Fort Yates, ND 58538	99,950
Gary Ortley, Rock Creek RO, PO Box 126, Bullhead, SD 57621	100,000
Richard Howard, Kenel RO, HC1 Box 33, McLaughlin, SD 57642	60,000
Sandra Welch, Bear Soldier, Bos 271, McLaughlin, SD 57642	100,000
Darlene Williamd, Toka Nuwan RO, PO Box 237, Waubay, SD 57273	100,000
Jabez (Jay) Bryce, Wahiawa Terrace Tenants Association, 345–4 Palm Street, Wahiawa, HI 96786	72,555
Valeria Tariq, Carmelitos Tenants Association, 851 Via Carmelitos, Long Beach, CA 90805	60,000
Luz Tafolla, San Fernando Gardens Resident Advisory Council, 10909 Lehigh Ave, Pacoima, CA 91331	94,000
John Semanas, Siler Homes Resident Council, Inc., P.O. Box 1387, Flagstaff, AZ 86002–1387	60,000
Jim Hoag, A Step Up Resident Organization, 626 I Street #1006, Sacramento, CA 95814	100,000
Hardin Hayes, Comstock/Suttersview Resident Organization, 1725 K Street #501, Sacramento, CA 95814	100,000
Robert Lor, Conway Homes Resident Council, 840 Dallas Avenue, Stockton, CA 95206	100,000
Bonita Perez, Tracy Homes Resident Council, 921 West 9th Street, Tracy, CA 95376	100,000
Demetria Martinez, United Housing Council of Biggs, P.O. Box 738, Biggs, CA 95917	100,000
Juan Ramirez, Chico Housing Council, 13 La Lieta Ct., Chico, CA 95928	100,000
Susana Madera, Independent Residents of Gridley Housing Dev., 1057 Ash Street, Chico, CA 95948	100,000
Theresa Coleman, Ujamaa Westbrook/Hunter's Point Resident Mgmt Cunl, One Harbor Road, San Francisco, CA 94124	100,000
Mary Jones, Westside Courts Tenants' Association, 1414 Baker St. #317, San Francisco, CA 94115	100,000
Willie Carter, Jr., Hunter's View Resident Management Council, Inc., P.O.Box 880577, San Francisco, CA 94188	60,000
Chang Lee, Ping Yuen Resident Improvement Association, 711 Pacific Ave. #14, San Francisco, CA 94133	100,000
Eva Mae Williams, Robert B. Pitts Tenants' Association, 1150 Scott Street, San Francisco, CA 94115	60,000
Freda Moon, Peralta Village Resident Council, 1340 10th Street, Oakland, CA 94607	100,000
David Thompson, Essex Manor Resident Council, 7760 Carlyle Drive, Reno, NV 89506	100,000
Susan Porter, Stead Manor Resident Council, 4960 Cocoa Avenue, Reno, NV 89506	100,000
Janice Mayo, Ernie Cragin Annex #3 Resident Council, 3920 Dake Street, Las Vegas, NV 89110	99,399
George Werito,Bluffview Village Resident Organization, P.O. Box 170, Farmington, NM 87499	100,000

APPENDIX A.—FISCAL YEAR 1994 PUBLIC AND INDIAN HOUSING—Continued

Program Name: Tenant Opportunities Program Technical Assistance Grant; Statute: Public Law 100–42, February 5, 1988 NOFA Date: May 13, 1994

Funding recipient (name and address); applicant, name, contact	Amount awarded
Julia Johnson, T'iis Nit'i', P.O. Box 308, Window Rock, AZ 86515	98,600
Leroy Mitchell, West Mesa, P.O. Box 308, Window Rock, AZ 86515	70,000
Gloria Yazzie, Bittersprings Resident Organization, P.O. Box 308, Window Rock, AZ 86515	70,000
Ronnie Lyons, Gila River Tenant Advisory Council, P.O. Box 528, Sacaton, AZ 85247	100,000
Ricardo Tapia, PY Neighborhood Asso., 7474 S. Camino de, Tucson, AZ 85746	100,000
Shan Paipa, Campo Resident Organization, 36810 Hwy. 94, Campo, CA 91906	31,426
Evelyn Calvert, San Juan Residence Committee, P.O. Box 1336, San Juan Pueblo, NM 87566	100,000
Kathy Kotongan, Park View Manor Residents, Inc., 801 Karluck, #202, Anchorage, AK 99501–0000	40,000
Susan Franks, Columbia Villa/Tamarack Residents Association, 9009 N. Dana, Portland, OR 97203	60,000
Pauline McKinney, Westpark Resident Council, 76 Russell Road, Bremerton, WA 98312	100,000
Cathy Schindler, Resident Council of the HA of Snohomish County, 3425 Broadway, Everett, WA 98201	73,270
Donna Quijance, Seldovia Tenant Council, 350 Alder Street, Seldovia, AK 99663	60,000
Darrel Olsen, Totem Place Townhouse Resident Council, P.O. Box 969 Lake Avenue, Cordova, AK 99574	44,494
Leila Spencer, Umatilla Tribe Housing RC, P.O. Box 1638, Pendleton, OR 97801	100,000

1994 NATIONAL, REGIONAL AND STATEWIDE ORGANIZATIONS

Applicant, name, contact	Amount awarded
Pamela Francis, c/o Pleasant Point Housing Authority, Eastern Indian Housing Authority Association, P.O. Box 339, Perry, Maine 04667	$100,000
Jack Cooper, Massachusetts Union of Public Housing Tenants, Inc., 784 Washington Street, Suite 504, Boston, MA 02124	100,000
George Latham, New York State Association of Public and Subsidized Residents, Inc., 680 Central Avenue, Albany, New York 12206	100,000
Franceine Ferguson, New Jersey Association of Public and Subsidized Housing Resident, Inc., 303–309 Washington Street, Suite 300, Newark, New Jersey 07102	100,000
Jerry Jones, The Acorn Tenant Union, 739 Eighth Street, SE, Washington, DC 20003	100,000
Rex L. LaMore/Nancy Radtke, Michigan State University, Center for Urban Affairs, 1801 W. Main Street, Lansing, MI 48915–1097	100,000
Luis Ortiz Mojica, Advance En Puerto Rico, PMB Depto. 484–HC–01, Box 29030, Caguas, PR 00725–8900	100,000
Richard Coleman, South-Central Acorn Tenant Union, 4415 San Jacinto, Dallas County, Dallas, TX 75204	100,000
Tom McKay, Blackfeet Resident Organization, Box 1209, Browning, Montana 59417	100,000
Ray Wayne Fox, Southern California Resident Management and Initiatives Corporation, 1145 Via Wanda Street, Building 57, Long Beach, CA 90805	100,000

[FR Doc. 96–13181 Filed 5–23–96; 8:45 am]

BILLING CODE 4210–33–P

[Docket No. FR–3778–N–86]

Office of the Assistant Secretary for Community Planning and Development; Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the

opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Transportation: Mr. Ronald D. Keefer, Director of Administrative Services and Property Management, Department of Transportation, 400 7th Street, SW., Room 10319, Washington, DC 20590; (202) 366–4246; Navy: Mr. John Kane, Deputy Division Director, Department of the Navy, Real Estate Operations, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; Air Force: Ms. Barbara Jenkins, Air Force Real Estate Agency, Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184; COE: Mr. Bob Swieconek, Army Corps of Engineers, Civilian Facilities, Pulaski Building, Room 4224, 20 Massachusetts Avenue, NW., Washington, DC 20314–1000; (202) 761–1753; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; Energy: Ms. Marsha Penhaker, Department of Energy, Facilities Planning and Acquisition Branch, Room 6H–058, Washington, DC 20585; (202) 586–1191; (These are not toll-free numbers).

Dated: May 17, 1996.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 05/24/96

Suitable/Available Properties

Buildings (by State)

California

Bldg. 1
Fruit & Vegetable Chemistry Lab
263 South Chester Ave.
Pasadena Co: Los Angeles CA 91106–3108
Landholding Agency: GSA
Property Number: 549610015
Status: Excess Comment: 16,500 sq. ft., most recent use—ofc/library/lab
GSA Number: 9–A–CA–1469.

Bldg. 2
Fruit & Vegetable Chemistry Lab
263 South Chester Ave.
Pasadena Co: Los Angeles CA 91106–3108
Landholdong Agency: GSA
Property Number: 549610016
Status: Excess
Comment: 828 sq. ft., most recent use—isolation operation bldg.
GSA Number: 9–A–CA–1469.

Bldg. 3
Fruit & Vegetable Chemistry Lab
263 South Chester Ave.
Pasadena Co: Los Angeles CA 91106–3108
Landholding Agency: GSA
Property Number: 549610017
Status: Excess
Comment: 624 sq. ft., most recent use—boiler rm/garage/pit house
GSA Number: 9–A–CA–1469.

Bldg. 4
Fruit & Vegetable Chemistry Lab
263 South Chester Ave.
Pasadena Co: Los Angeles CA 91106–3108
Landholding Agency: GSA
Property Number: 549610018
Status: Excess
Comment: 146 sq. ft., most recent use—solvent storage
GSA Number: 9–A–CA–1469.

Bldg. 5
Fruit & Vegetable Chemistry Lab
263 South Chester Ave.
Pasadena Co: Los Angeles CA 91106–3108
Landholding Agency: GSA
Property Number: 549610019
Status: Excess
Comment: 2212 sq. ft., most recent use—green house
GSA Number: 9–A–CA–1469.

Bldg. 6
Fruit & Vegetable Chemistry Lab
263 South Chester Ave.
Pasadena Co: Los Angeles CA 91106–3108
Landholding Agency: GSA
Property Number: 549610020
Status: Excess
Comment: 200 sq. ft., most recent use—secure transformer bldg.
GSA Number: 9–A–CA–1469.

Bldgs. 1406, 1407
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 779620030
Status: Excess
Comment: 4800 sq. ft. & 2600 sq. ft. modular bldgs., presence of asbestos/lead paint, most recent use—combined research lab, off-site use only.

Colorado

Motor Pool Facility
3720 Walnut St.
Boulder Co: Boulder CO 80306–
Landholding Agency: GSA
Property Number: 549610013
Status: Excess
Comment: 2520 sq. ft., most recent use—automotive maintenance facility, Colorado zoning restrictions
GSA Number: 7–G–CO–633.

Illinois

Bldg. 33
Argonne National Lab
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 419620001
Status: Unutilized
Comment: 2280 sq. ft., needs major rehab, presence of asbestos, most recent use—office, off-site use only.

Bldgs. 481 & 481A
Argonne National Lab
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 419620002
Status: Unutilized
Comment: 4710 sq. ft., needs major rehab, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 828
Argonne National Lab
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 419620003
Status: Unutilized
Comment: 240 sq. ft., metal, needs major rehab, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 825–7121030057
Argonne National Lab
Argonne CO DuPage IL 60439–
Landholding Agency: Energy
Property Number' 419620004
Status: Unutilized
Comment: 440 sq. ft., needs major rehab, presence of asbestos, most recent use—boiler house, off-site use only.

Missouri

District 2 Flag Quarters
16 Chaminade
Creve Coeur Co: St. Louis MO 63141–
Landholding Agency: GSA
Property Number: 54920003
Status: Excess
Comment: 2320 sq. ft. residence
GSA Number: 7–U–MO–0629.

Utah

House
North Utah Highway 16
Randolph Co: Rich UT 84064–
Landholding Agency: GSA
Property Number: 549620001
Status: Excess
Comment: 1148 sq. ft. wooden frame, most recent use—office, septic system on private land
GSA Number: 7–A–UT–0498A.

Land (by State)

Indiana

Portion
Bureau of Prisons Vigo Farm
Linden Twp Co: Vigo IN
Landholding Agency: GSA
Property Number: 549620002
Status: Excess
Comment: 17.65 acres, most recent use—agriculture
GSA Number: 2–J–IN–507C.

Maine

Remote Center Air
Ground Communication Facility
Westford Hill Road
Hodgdon Co: Aroostook ME 04730–
Landholding Agency: GSA
Property Number: 549610014
Status: Excess
Comment: 0.91 acre with 554 sq. ft. bldg and tower, most recent use—unmanned communications facility
GSA Number: 1–ME–624.

Unsuitable Properties

Buildings (by State)

California

Bldg. 893
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189620028
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 3193
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189620029
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 9350
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189620030
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 13003
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189620031
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 13222
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189620032
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 16197
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189620033
Status: Unutilized
Reason: Extensive deterioration.

Missouri

Barn, Longview Lake
Kansas City Co: Jackson MO 64134–
Landholding Agency: COE
Property Number: 319620001
Status: Excess
Reason: Extensive deterioration.

Montana

Bldg. 547
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189620025
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Bldg. 1709
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189620026
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Bldg. 1897
Malmstrom AFB
MalmstromAFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189620027
Status: Unutilized
Reason: Secured Area.

New York

Bldg. 222
Fort Wadsworth
Staten Island Co: Richmond NY 10305–
Landholding Agency: DOT
Property Number: 879620003
Status: Unutilized
Reason: Secured Area.

Bldg. 223
Fort Wadsworth
Staten Island Co: Richmond NY 10305–
Landholding Agency: DOT
Property Number: 879620004
Status: Unutilized
Reason: Secured Area.

Bldg. 205
Fort Wadsworth
Staten Island Co: Richmond NY 10305–
Landholding Agency: DOT
Property Number: 879620005
Status: Unutilized
Reason: Secured Area.

North Carolina

Bldg. 080, Camp Lejeune
Greater Sandy Run Training Area
Camp Lejeune Co: Onslow NC 28542–
Landholding Agency: Navy
Property Number: 779620023
Status: Unutilized
Reason: Extensive Deterioration.

Virginia

Bldg. 380B
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 779620022
Status: Unutilized
Reason: Secured Area.

Wyoming

Bldg. 386
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189620021
Status: Unutilized
Reason: Secured Area.

Bldg. 831
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189620022
Status: unutilized
Reason: Secured Area.

Bldg. 832
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189620023
Status: Unutilized
Reason: Secured Area.

Bldg. 833
F.E. Warren AFB
Bheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 189620024
Status: Unutilized
Reason: Secured Area.

[FR Doc. 96–12868 Filed 5–23–96; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. FR–4082–D–01]

Office of the Assistant Secretary for Fair Housing and Equal Opportunity; Revocation and Redelegation of Authority Under Section 504 of the Rehabilitation Act of 1973

AGENCY: Office of Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of revocation and redelegation of authority.

SUMMARY: This redelegation concerns the Department of Housing and Urban Development's (HUD's) enforcement of Section 504 of the Rehabilitation Act of 1973 (the Act), which prohibits discrimination on the basis of disability in programs and activities receiving Federal financial assistance.

Under this Notice, the Assistant Secretary for Fair Housing and Equal

Opportunity redelegates certain authority, to act as the "responsible civil rights official" under HUD regulations at 24 CFR Part 8, from the Assistant Secretary for Fair Housing and Equal Opportunity to the Deputy Assistant Secretary for Enforcement and Investigations, the Director of the Office of Program Compliance and Disability Rights, the Director of the Office of Program Standards and Evaluation, the Directors of the Fair Housing Enforcement Centers (FHECs), and the Directors of the Program Operations and Compliance Centers (POCCs).

This redelegation supersedes the redelegations of authority at 56 FR 12302, dated March 22, 1991; at 56 FR 12303, dated March 22, 1991; at 56 FR 56420, dated November 4, 1991; and at 56 FR 56421, dated November 4, 1991. In those documents, certain authority to act as the "responsible civil rights official" under 24 CFR Part 8 was redelegated to the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity, the Deputy Assistant Secretary for Enforcement and Compliance, the Regional Office Directors of Fair Housing and Equal Opportunity, the Director of the Office of Investigations, and the Director of the Office of Program Compliance.

EFFECTIVE DATE: May 2, 1996.

FOR FURTHER INFORMATION CONTACT: Cheryl Kent, Director, Disability Rights Division, Office of Program Compliance and Disability Rights, Office of Fair Housing and Equal Opportunity, Room 5240, 451 Seventh Street SW., Washington, D.C. 20410, telephone number (202) 708–2333 (voice), (202) 708–1734 (TTY). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: In a notice published on March 22, 1991, at 56 FR 12302, the Secretary of Housing and Urban Development delegated all authority to act as "the responsible civil rights official" under 24 CFR Part 8, to the Assistant Secretary for Fair Housing and Equal Opportunity. That notice also permitted the Assistant Secretary to redelegate the authority.

On March 22, 1991, at 56 FR 12302, and on November 4, 1991, at 56 FR 56420, the Assistant Secretary for Fair Housing and Equal Opportunity redelegated certain powers and authorities to act as the "responsible civil rights official" under 24 CFR Part 8, to the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity, the Deputy Assistant Secretary for Enforcement and Compliance, and the Directors of the Regional Offices of Fair Housing and Equal Opportunity. On March 22, 1991, at 56 FR 12303, the Deputy Assistant Secretary for Enforcement and Compliance further redelegated limited powers under 24 CFR Part 8 to the Director of the Office of Program Compliance. On November 4, 1991, at 56 FR 56421, the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity further redelegated limited powers under 24 CFR Part 8 to the Director of the Office of Investigations. The present document revokes all of those redelegations.

In 1994, the Assistant Secretary for Fair Housing and Equal Opportunity reorganized the Offices of Fair Housing and Equal Opportunity located in the Department's Field Offices. The Fair Housing Enforcement Centers (FHEC) replace the former Regional Offices of Fair Housing and Equal Opportunity. The Large Program Operations and Compliance Centers (POCC) replace the former Program Operations Divisions in the Regional Offices of Fair Housing and Equal Opportunity. The Small Program Operations and Complaint Centers replace the former Office of Fair Housing and Equal Opportunity Divisions in Category A Field Offices.

Under the reorganization of HUD's Field Offices, the Fair Housing Enforcement Centers have responsibility for conducting investigations of complaints. Therefore, within the present redelegation, the Assistant Secretary is redelegating to the Directors of the Enforcement Centers, to the Directors of the Large Program Operations and Compliance Centers, and to the Director of the Office of Program Compliance and Disability Rights, the authority to investigate complaints and to issue findings of compliance and noncompliance under Section 504 of the Rehabilitation Act of 1973. Further, the Assistant Secretary is redelegating to the Directors of the Fair Housing Enforcement Centers, the Directors of the Large Program Operations and Compliance Centers, and to the Director, Office of Program Compliance and Disability Rights the authority to issue Letters of Determination where no party to the complaint requests a review of the Letter of Findings. When any party to a complaint requests a review of the Letter of Findings, the Assistant Secretary is redelegating to the Deputy Assistant Secretary for Enforcement and Investigations the authority to issue the Letter of Determination.

The Assistant Secretary is, in this document, redelegating to the Directors of the Large Program Operations and Compliance Centers, to the Director of the Office of Program Compliance and Disability Rights, and to the Director of the Office of Program Standards and Evaluation the authority to conduct compliance reviews and to issue compliance and noncompliance Letters of Findings and Letters of Determination. The Assistant Secretary does not anticipate assigning compliance reviews to the Director of the Office of Program Standards and Evaluation; the authority to conduct compliance reviews, therefore, is granted primarily so that authority may be further redelegated to the Directors of the Small Program Operations and Compliance Centers to conduct specific compliance reviews on a case-by-case basis, as directed by Headquarters officials. Within the present document, the Assistant Secretary directly redelegates to the Directors of the Small Operations and Compliance Centers only the authority to investigate to determine compliance with 24 CFR 8.25(c) with regard to needs assessments, transition plans, and extensions for the completion of structural changes required to provide accessible dwelling units to persons with disabilities.

Accordingly, the Assistant Secretary for Fair Housing and Equal Opportunity redelegates authority as follows:

Section A. Authority Redelegated

The Assistant Secretary retains and redelegates to the Directors of the Fair Housing Enforcement Centers, to the Directors of the Large Program Operations and Compliance Centers, and to the Director of the Office of Program Compliance and Disability Rights the authority in conducting complaint investigations to act as "the responsible civil rights official" to:

1. Request, receive, and evaluate the documents maintained by recipients in accordance with 24 CFR 8.51(b).
2. Request, receive and evaluate compliance reports in accordance with 24 CFR 8.55(b).
3. Obtain access to sources of information in accordance with 24 CFR 8.55(c).
4. Waive the time limit for filing a complaint in accordance with 24 CFR 8.56(c)(3).
5. Notify the complainant and the recipient of Federal financial assistance of HUD's receipt of a complaint under 24 CFR 8.56(d); process a complaint in accordance with 24 CFR 8.56(e); and dismiss a complaint under 24 CFR 8.56(f).
6. Investigate complaints and issue Letters of Findings under 24 CFR 8.56 (b) and (g).
7. Resolve a matter through informal means at any stage of processing through a Voluntary Compliance Agreement in accordance with 24 CFR 8.56(j).
8. Issue a Letter of Determination when no party to the complaint has filed a timely request for review of the Letter of Findings in accordance with 24 CFR 8.56(h)(4).

Section B. Authority Redelegated

The Assistant Secretary retains and redelegates to the Deputy Assistant Secretary for Enforcement and Investigations all authority needed, in conducting complaint investigations, to act as "the responsible civil rights official" to issue a Letter of Determination when a party to the complaint has filed a timely request for review of the Letter of Findings in accordance with 24 CFR 8.56(h).

Section C. Authority Redelegated

The Assistant Secretary retains and redelegates to the Director of the Office of Program Compliance and Disability Rights, the Director of the Office of Program Standards and Evaluation, and the Directors of the Large Program Operations and Compliance Centers, the authority in conducting compliance reviews to act as "the responsible civil rights official" to:

1. Conduct compliance reviews in accordance with 24 CFR 8.56(a).
2. Request, receive, and evaluate the documents maintained by recipients in accordance with 24 CFR 8.51(b).
3. Request, receive and evaluate compliance reports submitted by recipients and subrecipients in accordance with 24 CFR 8.55(b).
4. Obtain access to sources of information in accordance with 24 CFR 8.55(c).
5. Issue Letters of Findings and Letters of Determination with regard to compliance reviews conducted in accordance with 24 CFR 8.56 (a) and (b).
6. Resolve a matter through informal means at any stage of processing through a Voluntary Compliance Agreement, in accordance with 24 CFR 8.56(j).

Section D. Authority Redelegated

The Assistant Secretary retains and redelegates, to the Directors of Small Program Operations and Compliance Centers, the authority to act as the "responsible civil rights official" to:

1. In order to determine compliance with 24 CFR 8.25(c) with regard to needs assessments, transition plans, and extensions of time for the completion of structural changes, conduct an investigation pursuant to 24 CFR 8.56(a) and issue a Letter of Findings.
2. In a matter involving compliance with 24 CFR 8.25(c) with regard to needs assessments, transition plans, and/or extensions of time for the completion of structural changes, resolve the matter through informal means at any stage of processing through a Voluntary Compliance Agreement in accordance with 24 CFR 8.56(j).

Section E. Limited Authority To Further Redelegate

The authority redelegated, to the Directors of the Fair Housing Enforcement Centers, the Directors of the Program Operations and Compliance Centers, the Director of the Office of Program Compliance and Disability Rights, and the Director of the Office of Program Standards and Evaluation, under this redelegation may not be further delegated except as specified in this Notice. The Director, Office of Program Compliance and Disability Rights and the Director, Office of Program Standards and Evaluation may jointly redelegate in writing to the Directors of the Small Program Operations and Compliance Centers all authority specified under Section C, above, to conduct specific compliance reviews. The Deputy Assistant Secretary for Enforcement and Investigations retains the right to redelegate in writing the authority granted to him or her within this redelegation.

Section F. Supersedure

This redelegation supersedes and revokes the following redelegations of authority published in the **Federal Register**: 56 FR 12302, dated March 22, 1991; 56 FR 12303, dated March 22, 1991; 56 FR 56420, dated November 4, 1991; and 56 FR 56421, dated November 4, 1991.

Authority: Section 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Dated: May 2, 1996.

Elizabeth K. Julian,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 96–13072 Filed 5–23–96; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Surface Mining in Forest County, Mississippi by Perry County Sand and Gravel, Inc.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Perry County Sand and Gravel, Inc. (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a)(1)(B) of the Endangered Species Act (Act). The permit would authorize the incidental take, for a period of 6 years, the federally listed threatened gopher tortoise (Gopherus polyphemus) during the expansion of an existing surface mining operation in Forest County, Mississippi.

The Service also announces the availability of an Environmental Assessment (EA) and Habitat Conservation Plan (HCP) for the incidental take application. The Applicant's HCP describes Gopherus polyphemus conservation measures to be employed to address the anticipated level of incidental take. The EA prepared by the Service describes the environmental consequences of issuing or denying the Applicant's request for an incidental take permit. As stated in the EA, the Service proposes to issue the requested permit. This proposal is based on a preliminary determination that the Applicant has satisfied the requirements for permit issuance and that the HCP provides conservation benefits to Gopherus polyphemus. This notice also advises the public that the Service has made a preliminary determination that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The finding of No Significant Impact is based on information contained in the EA and HCP. The final determination will be no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Endangered Species Act, as amended, and National Environmental Policy Act (NEPA) regulations (40 CFR 1506.6).

DATES: Written comments on the permit application must be received on or before June 24, 1996.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Persons wishing to review the EA or HCP may obtain a copy by writing the Regional Office or the Jackson, Mississippi, Field Office. Requests must be in writing to be processed. Documents will also be available for public inspection, by appointment, during normal business hours at the Regional Office or the Field Office. Written data or comments

concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit number PRT–814979 in such comments:

Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia (fax 404–679–7081).

Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. (fax 601–965–4340).

FOR FURTHER INFORMATION CONTACT: Theresa Jacobson, Mississippi Field Office (601–965–4900) or Rick Gooch at the Atlanta, Georgia Regional Office (404–679–7110).

SUPPLEMENTARY INFORMATION:

Background

The gopher tortoise is listed as a threatened species in the western part of its range, from the Tombigbee and Mobile Rivers in Alabama west to southeastern Louisiana. As a native burrowing species of the fire maintained longleaf pine ecosystem, typical gopher tortoise habitat consists of frequently burned longleaf pine or longleaf pine/scrub oak uplands on moderately well drained to xeric soils. About 80 percent of the original habitat for gopher tortoises has been lost due to urbanization and agriculture. Forest management practices involving dense pine stands and infrequent prescribed fire have reduced or eliminated the open forest and sunny forest floor with grasses and forbs that tortoises need for burrowing, nesting, and feeding. Though gopher tortoises are widely distributed in south Mississippi, most populations are fragmented, small in size, and functionally non-viable.

Section 9 of the Act, and implementing regulations, prohibits the take of threatened and endangered species. Take, in part, is defined as an activity that kills, injures, harms, or harasses a listed threatened or endangered species. Section 10(a)(1)(B) of the Act provides an exemption, under certain circumstances, to the Section 9 prohibition if the taking is incidental to, and not the purpose of otherwise lawful activities.

Fourteen tortoise burrows were located and four tortoises are known to inhabit the 89-acre proposed mining site. A tortoise population of up to five tortoises are estimated to reside on the property. The operation of heavy mining equipment can directly kill or injure tortoises by running over them above ground, or by crushing or entombing them in their burrows, or by excavation.

The EA considers the environmental consequences of four alternatives. One alternative, the proposed action, is the issuance of the incidental take permit based upon submittal of the HCP as proposed. The HCP describes measures the Applicant will take to avoid and mitigate such taking. The Applicant plans to relocate all tortoises in the mining area to an 8-acre habitat conservation area. Suitable habitat for gopher tortoises consists of less than 60 percent canopy cover, a sparse understory, and tortoise browse of grasses and forbs. As part of the HCP, the Applicant will maintain and improve the habitat conservation area by thinning and by the use prescribed fire. Without such management, particularly the use of prescribed fire, gopher tortoise habitat would deteriorate via natural succession. The HCP provides for funding all of the mitigation and minimization efforts for the proposed action. Another alternative is no-action, or deny the request for authorization to incidentally take the gopher tortoises. The third alternative is similar to the proposed alternative except the tortoises would be relocated to a smaller, 3-acre conservation habitat area. The last alternative involves relocating all tortoises off the mining site and onto private property owned by the Applicant elsewhere. All surface mining operations and reclamation procedures are regulated and permitted by the Bureau of Geology, Mississippi Department of Environmental Quality.

As stated above, the Service has made a preliminary determination that the proposed action, e.g., issuance of the incidental take permit, is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102 (2)(C) of the National Environmental Policy Act of 1969, as amended. This preliminary information may be adjusted due to public comment received in response to this notice and is based on information contained in the EA and HCP. An appropriate excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

1. Issuance of the incidental take permit will not appreciably reduce the likelihood of survival and recovery of the affected species in the wild or result in the adverse modification of designated critical habitat. This decision is based upon and considers the cumulative impacts of past, present and future issuance of incidental take permits within the historic and current range of each species affected in the permit action.

2. Issuance of an incidental take permit would not have significant effects on the human environment in the project area.

3. The proposed take is incidental to an otherwise lawful activity.

4. The Applicant has ensured that adequate funding will be provided to implement the measures proposed in the submitted HCP.

5. Other than impacts to endangered and threatened species as outlined in the documentation of this decision, the indirect impacts which may result from issuance of the incidental take permit are addressed by other regulations and statutes under the jurisdiction of other government entities. The validity of the Service's incidental take permit is contingent upon the Applicant's compliance with the terms of the permit and all other laws and regulations under the control of State, local, and other Federal governmental entities.

Dated: May 17, 1996.

Noreen K. Clough,

Regional Director, Region 4.

[FR Doc. 96–13121 Filed 5–23–96; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[WY–985–06–0777–72]

Resource Advisory Council Meeting, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the Wyoming Resource Advisory Council.

SUMMARY: This notice sets forth the schedule and agenda for a meeting of the Wyoming Resource Advisory Council (RAC).

DATES: June 24, 1996, from 1:00 p.m. until 5 p.m. and June 25, 1996, from 8:30 a.m. until 12 p.m.

ADDRESSES: Pronghorn Lodge, Monarch Room, 150 East Main, Lander, WY 82520.

FOR FURTHER INFORMATION CONTACT: Terri Trevino, RAC Coordinator, Wyoming Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003, (307) 775–6020.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Status of Green River Basin Advisory Committee
2. Finalize draft goals and guidelines on rangelands
3. Public Comment

This meeting is open to the public. Interested persons may make oral statements to the Council or file written statements for the council's consideration. Anyone wishing to make an oral statement should notify the RAC Coordinator, at the above address by June 17, 1996.

Depending on the number of persons wishing to make oral statements, a time limit, per person, may be established by the Chair of the Resource Advisory Council.

Jerry Jessen,

Acting State Director.

[FR Doc. 96–11994 Filed 5–23–96; 8:45 am]

BILLING CODE 4310–22–M

[OR–084–6310–04–FLOD: GP6–0164]

Emergency Use Restriction on Public Access Road; Linn County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency use restriction on public access road in Linn County, Oregon.

SUMMARY: Notice is hereby given that all forms of public travel, except travel by foot, on Quartzville Access Road east of Trout Creek in Linn County, Oregon, are temporarily restricted from May 20, 1996, through September 30, 1996. This emergency use restriction is made under the authority of 43 CFR 8364.1.

The public road affected by this emergency use restriction is specifically identified as follows: Quartzville Access Road with a beginning point in Section 9, T. 12 S., R. 3 E., Willamette Meridian (Trout Creek crossing) and an ending point in Section 29, T. 11 S., R. 4 E., Willamette Meridian (Canal Creek crossing). The portion of Quartzville Access Road where public use is temporarily restricted under this emergency restriction order will be posted with signs at both the Trout Creek and Canal Creek crossings.

The purpose of this emergency use restriction is to provide for visitor safety while major repairs are made to flood-damaged roads and structures.

EXEMPTIONS: The following persons, operating within the scope of their official duties, are exempt from the provisions of this use restriction order: Bureau of Land Management (BLM) and Forest Service employees; federal, state and local law enforcement and fire protection personnel; the holders of BLM road use permits that include roads accessed by Quartzville Access Road east of Trout Creek; and purchasers of BLM timber accessed by Quartzville Access Road east of Trout Creek, and their employees and subcontractors. Other persons may be allowed to travel Quartzville Access Road east of Trout Creek, by means other than foot, but such use must be approved in advance in writing by the Authorized Officer.

PENALTIES: Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed $1,000.00 and/or imprisonment not to exceed 12 months, as well as the penalties provided under Oregon State law.

EFFECTIVE DATE: This use restriction order is effective from May 20, 1996 through September 30, 1996.

ADDRESSES: Copies of the use restriction order and maps showing the location of that portion of Quartzville Access Road where use is restricted are available from the Salem District Office, 1717 Fabry Road S.E., Salem, OR 97306.

FOR FURTHER INFORMATION CONTACT: Richard C. Prather, Area Manager, Cascades Resource Area, Salem District Office, at (503) 375–5646.

Dated: May 14, 1996.

Scott S. Abdon,

Area Manager (Acting), Cascades Resource Area.

[FR Doc. 96–13136 Filed 5–23–96; 8:45 am]

BILLING CODE 4310–33–P

[NM–030–06–1610–00]

Otero County Areas of Environmental Concern (ACECs) for the Caballo Resource Area, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Availability and 60-day comment period.

SUMMARY: The BLM, Las Cruces District, Caballo Resource Area announces the availability of a draft Resource Management Plan (RMP) Amendment/preliminary Finding of No Significant Impact and supporting Environmental Assessment (EA). The document discusses the designation of five new ACECs and revision of one existing ACEC in Otero County, south-central New Mexico. Approximately 19,520 acres are identified for designation. In addition to designation, the plan amendment, when approved, will guide BLM programs and management practices within the ACECs.

DATES: Written comments relating to the designation of ACECs, management activities within the ACECs, and the EA will be taken for the next 60 days. Comments must be postmarked on or before July 23, 1996.

ADDRESSES: Comments should be sent to Area Manager, BLM Caballo Resource Area, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Timothy M. Murphy, Area Manager, BLM, Caballo Resource Area at (505) 525–4372, or Mike Howard, Team Leader, Caballo Resource Area at (505) 525–4348, email mhoward @nm0151wp.nmso.nm.blm.gov.

SUPPLEMENTARY INFORMATION: ACECs are land designations unique to the BLM. The purpose of ACECs is to recognize, protect, and manage unique or sensitive resources or potential hazards to the public. Each area receives management or protection based on its unique needs, in consultation and coordination with the public. The Caballo Resource Area has completed an inventory of areas containing unique or sensitive biological resources suitable for designation as ACECs. In addition, the Resource Area has received nominations both internally and from the public to consider several areas as ACECs based on visual, cultural, and biological values.

The draft document discusses three alternatives. Alternative A is the No Action Alternative. Alternative B is BLM's proposal to designate and manage the five proposed ACECs, and redesignate one existing ACEC. These management proposals represent the highest levels of resource protection and continued public use. Alternative B is BLM's preferred alternative. Alternative C contains a lower level of protection designed to address less restrictive management measures for protection of the resources of concern in each proposed ACEC. Some specific proposals in Alternative C may be more restrictive. The following is a summary of the management actions in Alternative B, the BLM preferred alternative, for each proposed ACEC.

The *Three Rivers Petroglyph Site ACEC* is located 30 miles north of Alamogordo, New Mexico. The area was nominated to protect and manage cultural resources. The total area to be considered is approximately 1,036 acres. Management actions proposed in the Preferred Alternative include: acquisition of State trust land through a cooperative land exchange, acquisition of private subsurface mineral estate from a willing seller, issuance of realty actions subject to protective stipulations, closure to mineral entry, improvement and protection of riparian areas, improvement of recreation facilities, limiting offroad vehicle use to existing roads and trails, closing of county road B031, except for

administrative and ranch access following relinquishment by Otero County, management of fire for maximum fire suppression and use of prescribed fire, and fencing of the ACEC boundary.

The *Sacramento Escarpment ACEC* is located 2 miles south of Alamogordo, New Mexico along the west face of the Sacramento Mountains. This area is currently a designated ACEC for the management of visual resources. This RMP Amendment proposes to expand the area to provide for increased protection and management of visual resources and an endangered and sensitive plant community. The existing ACEC would be expanded to encompass 5,245 acres. Management actions proposed in the Preferred Alternative include: limitations or exclusion of new realty actions (2920 permits), exclusion of rights-of-way, acquisition of access easements and private land inholdings within the ACEC from a willing seller, closure to all forms of mineral development, improvement and protection of riparian areas, permitting of existing spring developments, management under Visual Resource Management Classes I and II, limitation of off-road vehicle use to designated roads and trails, closure of approximately 5 miles of redundant roads and trails (including closure of approximately ¼ mile of road in San Andres Canyon, except for administrative and ranch pipeline maintenance access), management of fire for conditional least-cost suppression with no surface disturbance in Visual Class I or arroyo areas. Prescribed fire could be used for vegetation management, if needed.

Cornudas Mountain is located 60 miles southeast of Alamogordo, New Mexico and near the Texas border. The area was nominated to protect and manage visual resources, cultural resources, and sensitive plants. The total area to be considered is approximately 850 acres. Management activities proposed in the Preferred Alternative include: exclusion of the area from authorization of rights-of-way, permitting of other realty actions subject to protective stipulations, closure to all forms of mineral development, closure to vegetation sales, management of barbary sheep, designation of a BLM sensitive species, management as Visual Resource Management Class I, limitation of off-road vehicle use to designated roads and trails, allowing public access to portions of the ACEC by permit, closure to camping, closure to the establishment of new roads and trails, fire management for conditional least-cost suppression with no surface disturbance and no use of slurry or blading in certain areas.

Alamo Mountain is located 61 miles southeast of Alamogordo, New Mexico and near the Texas border. The area was nominated to protect and manage visual and cultural resources. The total area to be considered is approximately 2,210 acres. Management actions proposed in the Preferred Alternative include: exclusion of the area from authorization of rights-of-way, permitting of other realty actions subject to protective stipulations, closure to all forms of mineral development, closure to vegetation sales, management of barbary sheep, designation of a BLM sensitive species, management as Visual Resource Management Class I, closure of the area to off-road vehicle use, establishment of a vehicle parking area, closure to camping in portions of the ACEC, fire management for conditional least-cost suppression with no surface disturbance and no use of slurry or blading in certain areas.

Wind Mountain is located 64 miles southeast of Alamogordo, New Mexico and near the Texas border. The area was nominated to protect and manage visual resources, cultural resources, and unique and sensitive plants and animals. Total area to be considered is approximately 2,706 acres. Management actions proposed in the Preferred Alternative include: exclusion of the area from authorization of rights-of-way, permitting of other realty actions subject to protective stipulations, closure to all forms of mineral development (subject to valid existing rights), closure to vegetation sales, management of barbary sheep, designation of a BLM sensitive species, management as Visual Resource Management Class I, limitation of off-road vehicle use to existing roads and trails, fire management for conditional least-cost suppression with no surface disturbance and no use of slurry or blading in certain areas.

The *Alkali Lakes* area is located 80 miles southeast of Alamogordo, New Mexico and near the Texas border. This area was nominated to protect and manage endangered and sensitive plants and the plant community in which they occur. The total area considered is approximately 6,359 acres. Management actions proposed in the Preferred Alternative include: exclusion of the area from authorization of rights-of-way, permitting of other realty actions subject to protective stipulations, acquisition of State trust land through a cooperative land exchange, closure to all forms of mineral development, closure to vegetation sales, continued management as Visual Resource Management Class IV, limitation of off-road vehicle use to within 30 feet of the center line of designated roads and trails, closure to camping and the use of campfires, fire management for conditional least-cost suppression with no surface disturbance and no use of vehicular equipment off of established roads and trails.

Public participation has occurred throughout the RMP Amendment process. A Notice of Intent was filed in the **Federal Register** (Vol. 59, No. 73, Page 18151–18152) on April 15, 1994. Since that time, several public meetings, mail-outs, and group briefings were conducted to solicit comments and ideas, or familiarize various groups with the proposal and the BLM planning process. Comments presented throughout the process have been considered in the analysis. Comments received during this 60-day comment period will be considered in preparation of the Proposed White Sands RMP Amendment and supporting EA. Single copies of the draft White Sands RMP Amendment/preliminary FONSI and supporting EA for the Otero County ACECs may be obtained from the BLM Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005. Public reading copies are available for review at the BLM State Office, 1474 Rodeo Rd., Santa Fe, New Mexico, and public and university libraries in Las Cruces, Santa Fe, and Albuquerque, New Mexico, and El Paso, Texas.

Dated: May 20, 1996.

Josie Banegas,

Acting District Manager, Las Cruces.

[FR Doc. 96–13094 Filed 5–23–96; 8:45 am]

BILLING CODE 4310–VC–P

National Park Service

Notice of Intention To Extend Existing Concession Contracts

SUMMARY: Notice is hereby given that the National Park Service intends to extend the following concession contract and permit for a period of approximately two (2) years through December 31, 1998:

Concessioner	Park	Service provided	Contract expiration
Acadia Corporation	Acadia National Park	Full-service restaurant and gift shops	12/31/96
Kentucky Carriage & Livery	Acadia National Park	Stable, carriage rides	12/31/96

SUPPLEMENTARY INFORMATION: The National Park Service does not intend to renew these contracts for an extended period until sufficient planning can be conducted to determine the future direction for concession services at this site. The necessary planning may affect the future of these operations, and may take as long as 2 years to complete. Until planning is completed, it is not in the best interest of the National Park Service to enter into long term concession contracts for these operations. These extensions may be for a lesser period should planning issues be resolved and a renewal process conducted which results in the award of new long term concession contracts. The existing concessioners have performed their obligations to the satisfaction of the Secretary and, pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20) are entitled to preference in the extension of their contracts. This means that the extension will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concessioner agrees to match the best offer, then the extension will be awarded to the existing concessioner. If the existing concessioner does not agree to the terms of the extension, the right of preference shall be considered to have been waived, and the extension will then be awarded to the party submitting the best responsive offer.

Because of the limited term of the proposed extensions, the National Park Service is not encouraging the submission of offers by anyone but the incumbents in response to this proposal, but plans to do so at the time the contracts are renewed for a longer term. However, as required by law, the National Park Service will consider and evaluate all offers received in response to this notice. Anyone interested in obtaining further information about the proposed extensions should contact: Lynne Koser, National Park Service, 15 State Street, Boston, MA 02190; Telephone (617) 223–5209 no later than 15 days following publication of this notice to obtain a prospectus outlining the requirements of the proposed extension.

Dated: May 7, 1996.

Chrysandra L. Walter,

Acting Field Director Northeast Field Area.

[FR Doc. 96–13049 Filed 5–23–96; 8:45 am]

BILLING CODE 4310–70–M

Redwood National and State Parks Environmental Impact Statement/ General Management Plan

SUMMARY: In accordance with § 102(2)(C) of the National Environmental Policy Act of 1969 (Public Law 91–190), the Redwood National and State Parks are initiating environmental impact analysis processes to identify and assess potential impacts of alternative management concepts for future management of the four Redwood National and State Park units that comprise this park complex. Notice is hereby given that the National Park Service will prepare a draft environmental impact statement and general management plan (DEIS/GMP).

The National Park Service has invited California Department of Parks and Recreation (CDPR) to be a cooperating agency in the DEIS/GMP effort. Following publication of this Notice, CDPR will issue a Notice of Preparation to initiate a complementary draft environmental impact report (EIR) effort. The official responsible for the EIR is Donald W. Murphy, Director, California Department of Parks and Recreation.

The Redwood National and State Parks will jointly identify and analyze a range of alternatives so as to evaluate differing management options for resource protection, visitor use, access, operations, facility development, and land protection for the area. As a conceptual framework for formulating these alternatives, the purposes of the parks and associated significant cultural and natural resources, major visitor experiences, and management objectives will be specified.

COMMENTS: All interested persons, organizations, and agencies wishing to provide initial scoping comments or suggestions on the DEIS/GMP may send such information to the Superintendents, Redwood National and State Parks, 1111 Second Street, Crescent City, CA 95531. All such comments should be received no later than July 23, 1996. All persons who respond will be provided timely information about the complementary California State Park EIR efforts.

In addition, several public scoping sessions will be held after publication of this Notice, affording an additional early comment opportunity. Dates for these meetings (and locations) are: June 17 (Brookings), June 18 (Crescent City), June 19 (Klamath), June 20 (Eureka), and June 21 (Orick). Full details on times and locations of these sessions may be obtained by contacting the Superintendents at the above address or via telephone at (707) 464–6101.

DECISION: The subsequent availability of both the DEIS/GMP and EIR will be announced by formal Notice and via local and regional news media. The DEIS/GMP is anticipated to be completed and available for public review in 1998. The final environmental impact statement and general management plan (FEIS/GMP) are expected to be completed approximately one year later. A Record of Decision will be published in the **Federal Register** not sooner than thirty (30) days after distribution of the FEIS/GMP documents. The responsible official is Stanley T. Albright, Field Director, Pacific West Area, National Park Service.

Dated: May 10, 1996.

Patricia Neubacher,

Acting Field Director, Pacific West Area.

[FR Doc. 96–13048 Filed 5–23–96; 8:45 am]

BILLING CODE 4310–70–P

Notice of Intent to Repatriate Cultural Items in the Possession of the Hubbell Trading Post National Historic Site, National Park Service, Ganado, AZ

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005 (a)(2), of the intent to repatriate cultural items in the possession of the Hubbell Trading Post National Historic Site, National Park Service, Ganado, AZ which meet the definition of "sacred objects" under Section 2 of the Act.

The nineteen items consist of one hide pollen bag; three stone fetishes;

one velvet fetish cover, two projectile points; one crystal; one fossilized shell; one pipe with center hole; two prayer stones; two polished stones; two prayer sticks; two stone figures bundled with yarn and feathers attached; and one coiled Navajo ceremonial basket.

In 1965, the estate of Mr. Ramon Hubbell donated these items to the Hubbell Trading Post National Historic Site. Mr. Hubbell had originally requested the items for his Night Way Chant in 1925 at which he was consecrated to care for and use the items.

Mr. Sherwin Curley, Ramon Hubbell's grandson, has identified the items as necessary for the continued practice of traditional Navajo religion by present-day adherents and has claimed them as a lineal descendent. Representatives of the Navajo Nation and traditional Navajo religious leaders confirm that these items are needed by Ramon Hubbell's descendents for on-going ceremonial and religious traditions.

Based on the above-mentioned information, officials of the National Park Service have determined that, pursuant to 25 U.S.C. 3001 (3)(C), these nineteen cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the National Park Service have also determined, pursuant to 25 U.S.C. 3005 (a)(5)(A), that Mr. Sherwin Curley is the direct lineal descendant of the individual who owned these sacred objects.

This notice has been sent to Mr. Sherwin Curley and officials of the Navajo Nation. Any other lineal descendent who believes him or herself to be culturally affiliated with these objects should contact Nancy Stone, Superintendent, Hubbell Trading Post National Historic Site, National Park Service, P.O. Box 150, Ganado, AZ 86505, telephone (520) 755–3475 before June 24, 1996. Repatriation of these objects to Mr. Sherwin Curley may begin after that date if no additional claimants come forward.

Dated: May 20, 1996.

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeology and Ethnography Program.

[FR Doc. 96–13095 Filed 5–23–96; 8:45 am]

BILLING CODE 4310–70–F

Notice of Intent to Repatriate a Cultural Item in the Possession of the Olmsted County Historical Society, Rochester, MN

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005 (a)(2), of the intent to repatriate a cultural item in the possession of the Olmsted County Historical Society, Rochester, MN, which meets the definition of "sacred object" under Section 2 of the Act.

The cultural item is a birchbark scroll with mnemonic symbols.

In 1949, this scroll was donated by Dr. A.U. Desjardins to the Olmsted County Historical Society. Accession records indicate this scroll was made by the Midewiwin Lodge at Cass Lake, on the Leech Lake Reservation, MN. There is no further information regarding Dr. Desjardins' acquisition of this scroll.

Representatives of the Leech Lake Band of Chippewa have stated that this scroll is needed by traditional Native American religious leaders for the practice of traditional Ojibwe religion by present-day adherents.

Based on the above-mentioned information, officials of the Olmsted County Historical Society have determined that, pursuant to 25 U.S.C. 3001(3)(C), this cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Olmsted County Historical Society have also determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between these items and the Leech Lake Band of Chippewa.

This notice has been sent to officials of the Leech Lake Band of Chippewa. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Margot L. Ballard, Curator, Olmsted County Historical Society, 1195 County Road 22 SW, Rochester, MN 55902, telephone (507) 282–9447 before June 24, 1996. Repatriation of these objects to the Leech Lake Band of Chippewa may begin after that date if no additional claimants come forward.

Dated: May 16, 1996.

Francis P. McManamon,

Departmentol Consulting Archeologist.

Chief, Archeology and Ethnography Program.

[FR Doc. 96–13096 Filed 5–23–96; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–372]

Certain Neodymium-Iron-Boron Magnets, Magnet Alloys, and Articles Containing Same; Notice of Institution of Formal Enforcement Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has instituted a formal enforcement proceeding relating to the consent order issued in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Lyle B. Vander Schaaf, Fsq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3107.

SUPPLEMENTARY INFORMATION: In October 1995, the Commission issued a consent order in the above-captioned investigation. The consent order provides that respondents San Huan New Materials High Tech, Inc., Ningbo Konit Industries, Inc., and Tridus International, Inc. (the "San Huan respondents"):

shall not sell for importation, import into the United States or sell in the United States after importation or knowingly aid, abet, encourage, participate in, or induce the sale for importation, importation into the United States or sale in the United States after importation of neodymium-iron-boron magnets which infringe any of claims 1–3 of the '439 patent, or articles or products which contain such magnets, except under consent or license from Crucible.

On March 4, 1996, complainant Crucible Materials Corporation (Crucible) filed a complaint seeking institution of formal enforcement proceedings against the San Huan respondents for alleged violations of the consent order. On March 12 and 28, 1996, the San Huan respondents filed letters objecting, *inter alia*, to institution of a formal enforcement proceeding and requesting instead institution of an informal enforcement proceeding.

The Commission, having examined all documents filed with respect to the complaint for formal enforcement proceeding, and having found that the complaint complies with the requirements for institution of a formal enforcement proceeding, determined to institute a formal enforcement proceeding to determine whether San Huan New Materials High Tech, Inc., Ningbo Konit Industries, Inc., and Tridus International, Inc. are in violation of the Commission consent order issued in the above-captioned investigation and what if any enforcement measures are appropriate.

The following were named as parties to the formal enforcement proceeding: (1) Crucible Materials Corporation, State Fair Boulevard, P.O. Box 977, Syracuse, New York 13201–0977 (complainant in the above-captioned investigation and requester of the formal enforcement proceeding); (2) San Huan New Materials High Tech, Inc., No. 8 South 3rd Street, Zhong Guan Cun Road, Beijing, Peoples Republic of China 100080 (enforcement proceeding respondent); (3) Ningbo Konit Industries, Inc., Ningbo Economic and Technical Development Zone, Zhejiang Province, People's Republic of China (enforcement proceeding respondent); (4) Tridus International, Inc., 8527 Alondra Boulevard, Suite 205, Paramount California 90723 (enforcement proceeding respondent); and (5) a Commission investigative attorney to be designated by the Director, Office of Unfair Import Investigations.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and section 210.75 of the Commission's Rules of Practice and Procedure (19 CFR 210.75).

Copies of the Commission's order and all other nonconfidential documents filed in connection with this enforcement proceeding are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Issued: May 16, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–13127 Filed 5–23–96; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial conference of the United States, Committee on Rules of Practice and Procedure.

ACTION: Notice of Open Meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a three-day meeting. The meeting will be open to public observation but not participation.

DATES: June 19–21, 1996.

TIME:

June 19, 1:00 p.m.–5:00 p.m.
June 20, 8:30 a.m.–5:00 p.m.
June 21, 8:30 a.m.–5:00 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Federal Judicial Center Classrooms, Concourse Level, One Columbus Circle, N.E., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: May 17, 1996.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 96–13082 Filed 5–23–96; 8:45 am]

BILLING CODE 2210–55–M

Hearings of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Appellate Procedure.

ACTION; Notice of two open hearings.

SUMMARY: The Advisory Committee on Rules of Appellate Procedure is requesting comments to: Preliminary Draft of Proposed Revision of the Federal Rules of Appellate Procedure Using Guidelines for Drafting and Editing Court Rules and Preliminary Draft of Proposed Amendments to Appellate Rules 27, 28, and 32.

Two public hearings will be held on these proposals in: Washington, D.C. on July 8, 1996, at the Thurgood Marshall Federal Judiciary Building, Fourth Floor Conference Room, One Columbus Circle, N.E.; and Denver, Colorado on August 2, 1996, at the Byron White United States Courthouse, Ceremonial Courtroom, 1823 Stout Street.

The Judicial Conference Committee on Rules of Practice and Procedure submits both the proposed revision and the proposed amendments for public comment. All comments and suggestions with respect to them must be placed in the hands of the Secretary at least 30 days before each hearing.

Anyone interested in testifying should write to Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, D.C., at least 30 days before each hearing.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

A copy of the proposed revision and proposed amendments can be obtained by contacting John K. Rabiej.

Dated: May 17, 1996.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 96–13083 Filed 5–23–96; 8:45 am]

BILLING CODE 2210–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 95–32]

Ying-Ming Chang, M.D., Revocation of Registration

On February 23, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Ying-Ming Chang, M.D., (Respondent), of San Diego, California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, BC0495122, under 21 U.S.C. 824(a)(4) and deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f), for the reason that his continued registration was inconsistent with the public interest.

The Respondent filed a timely request for a hearing, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. After a lengthy delay at the request of the Respondent, the hearing was scheduled to commence on March 12, 1996. However, prior to that date, the Government filed a Motion for Summary Disposition, noting that the Respondent's license to practice medicine had been revoked by the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs, State of California (Board) by final order effective October 9, 1995, a copy of which was attached to the motion. The Respondent filed a response on October 27, 1995, noting that he had challenged the Board's final order in a pending Writ of Mandamus action in the Superior Court of California, San Diego, California. The Respondent then argued that the Board's final order should not be the basis for granting the motion for summary disposition. The Respondent also argued that an issue of fact remained for determination; whether the Board's

decision was proper. Therefore, he concluded summary disposition of this matter would not be appropriate. However, the Respondent did not deny that his state Physician's and Surgeon's Certificate had been revoked, or that he was, therefore, without authority to hand controlled substances in the State of California.

On November 15, 1995, Judge Bittner issued her Opinion and Recommended Decision, (1) finding that the Board had revoked the Respondent's Physician's and Surgeon's Certificate and that, therefore, the Respondent was without authority to handle controlled substances in California, (2) granting the Government's Motion for Summary Disposition, and (3) recommending that the Respondent's DEA Certificate of Registration be revoked. On December 18, 1995, the Respondent filed a Petition for Reconsideration of Recommendation of Administrative Law Judge to Revoke Respondent's DEA Certificate of Registration, and by ruling dated December 21, 1995, Judge Bittner denied his petition. On January 11, 1996, Judge Bittner transmitted the record of these proceedings and her opinion to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that the parties do not dispute that (1) the Board revoked the Respondent's Physician's and Surgeon's Certificate by an order effective October 9, 1995, and (2) consequently, the Respondent is without authority to handle controlled substances in the State of California.

The Drug Enforcement Administration does not have statutory authority under the Controlled Substances Act to register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See Dominick A. Ricci, M.D., 58 FR 51,104 (1993); James H. Nickens, M.D., 57 FR 59,847 (1992); Roy E. Hardman, M.D., 57 FR 49,195 (1992); Myong S. Yi, M.D., 54 FR 30,618 (1989); Bobby Watts, M.D., 53 FR 11,919 (1988).

Further, the Deputy Administrator finds that Judge Bittner properly granted the Government's motion for summary disposition. Here, the parties did not dispute that the Respondent was unauthorized to handle controlled substances in California.Therefore, it is well-settled that when no question of fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See Dominick A. Ricci, M.D., 58 FR at 51,104 (finding it well-settled that where there is no question of material fact involved, a plenary, adversarial administrative hearing was not required.); see also Phillip E. Kirk, M.D., 48 FR 32,887 (1983), aff'd sub nom *Kirk v. McMullen*, 749 F. 2d 297 (6th Cir. 1984); Alfred Tennyson Smurthwaite, M.D., 43 FR 11,873 (1978); *NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977).

Also, the Deputy Administrator finds that Judge Bittner appropriately denied the Respondent's petition for reconsideration. The Respondent asserted that, since he was licensed to practice medicine in Hawaii, the "issue of whether [his] DEA registration should be revoked is not moot," and that the hearing in this matter should proceed as scheduled. However, as Judge Bittner noted, the Order to Show Cause proposed to revoke the Respondent's registration to handle controlled substances at his California place of business, and thus, the status of the Respondent's licenses in other jurisdictions has no bearing on the pending matter. On that basis, Judge Bittner denied the Respondent's petition, and the Deputy Administrator concurs with her decision.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BC0495122, issued to Ying-Ming Chang, M.D., be, and it hereby is, revoked, and any application to renew this registration is hereby denied. This order is effective June 24, 1996.

Dated: May 17, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–13050 Filed 5–23–96; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 94–36]

Jeffrey Patrick Gunderson, M.D.; Revocation of Registration

On March 11, 1994, the Deputy Assistant Administrator (then Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Jeffrey Patrick Gunderson, M.D., (Respondent) of Brunswick, Georgia, notifying him of an opportunity to show cause as to why DEA should not revoke his Certificate of Registration, BG1368516, under 21 U.S.C. 824(a), and deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f), for the following reasons:

(1) On August 3, 1992, the Respondent was arrested in St. Paul, Minnesota, for felony possession of LSD, a Schedule I controlled substance, and, at the time of his arrest, he had in his possession LSD, marijuana, and Didrex;

(2) On September 9, 1992, the Respondent pled guilty in state court to a felony charge of possession of a controlled substance, and was convicted of this offense in November of 1992;

(3) In April of 1993, the Respondent was observed inhaling cocaine several hours prior to reporting for duty as an emergency room physician;

(4) On several occasions during 1993, the Respondent discussed plans to purchase and distribute cocaine with confidential informants; and

(5) During recent undercover operations, the Respondent was in possession of cocaine and LSD.

On April 15, 1994, the Respondent, through counsel, filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Atlanta, Georgia, on October 26, 1994, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and introduced documentary evidence, and after the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. On October 31, 1995, Judge Bittner issued her Opinion and Recommended Ruling, recommending that the Respondent's DEA Certificate of Registration be revoked and any pending applications for registration be denied. On December 1, 1995, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator, after noting that neither party had filed timely exceptions to her decision. However, on December 20, 1995, Judge Bittner transmitted the Respondent's request for consideration of exceptions filed on December 18, 1995. A copy of Judge Bittner's letter and the Respondent's exceptions were transmitted to Government counsel, who did not respond.

The Deputy Administrator has considered the record in its entirety, including the Respondent's exceptions, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Findings of Fact Conclusions of Law, and Recommended Ruling of the Administrative Law Judge his adoption is in no matter diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that, pursuant to stipulations made by the parties before Judge Bittner, the following facts are not in dispute: (1) Lysergic acid diethylamide (LSD) is a Schedule I hallucinogenic substance pursuant to 21 CFR 1308.11; (2) Marijuana is a Schedule I hallucinogenic substance pursuant to 21 CFR 1308.11; and (3) Didrex is the trade name for a stimulant containing benzphetamine hydrochloride, a Schedule III substance pursuant to 21 CFR 1308.13.

The Deputy Administrator also finds that the Respondent is primarily an emergency room physician, and that at the time of the events at issue, he lives and worked on St. Simons Island, Georgia. He is licensed to practice his specialty in the State of Georgia. The Respondent is registered with DEA as a practitioner, and he has been assigned DEA registration number BG1368516.

It is undisputed that the Respondent was arrested early in the morning on August 18, 1992, in St. Paul, Minnesota. The relevant portions of the arrest report state that: (1) The arresting officer followed the Respondent because he made a turn over the center median after driving out of a Denny's Restaurant parking lot; (2) the arresting officer noted that when the Respondent got out of his car, his eyes were red and his speech was slurred; (3) arresting officer asked the Respondent to sit in the patrol car because the Respondent had stated he was lost, could not find his hotel, and did not have his driver's license; (4) when the arresting officer asked the Respondent what was in his pockets, the Respondent pulled out, among other things, a bag containing marijuana and a piece of tin foil containing a white sheet of paper with 43 "hits" of LSD; and (5) when the arresting office asked what the sheet of paper was, the Respondent replied, "something I'm not supposed to have," and that "it's some kind of psychedelic drug." The Respondent was arrested and charged with felony possession of a controlled substance.

Also, at the time of his arrest, the Respondent had in his possession a prescription bottle containing Didrex with a label noting that the prescription had been written by the Respondent for a third party, LW. The Respondent later explained that LW was his girlfriend, that he had used her suitcase for his trip to St. Paul, and that the prescription bottle was in her suitcase when he borrowed it.

Before Judge Bittner, the Respondent, testified that at the time of his arrest, he was in Minnesota for a reunion of his college football team, that he had been to a party and then to a restaurant, and that he was on his way back to his hotel to get his luggage and to leave for the airport. The Respondent stated that he had found the LSD and the marijuana while cleaning out the rental car prior to turning it in at the airport, that he had put it in his pocket, and that he was arrested with the substances in his pocket. He also testified that the prescription bottle had fallen out of his girlfriend's suitcase, that he had found the bottle while cleaning out the truck of the car, and that he had put it in his pocket.

On September 9, 1992, the Respondent pled guilty to possession of LSD in state court. On November 17, 1992, pursuant to a state statute permitting a stay of adjudication, the Respondent was sentenced to five years' probation, fined more than $4,200.00, and ordered (1) to verify completion of chemical treatment; (2) to abstain from (the consumption of) non-prescription drugs; and (3) to follow all recommendations of the Georgia Professional Licensing Board.

The Respondent testified before Judge Bittner that, after his arrest in Minnesota, he had returned to Georgia and had reported for work. After about a week at work, he told his supervisor and other supervisory hospital staff about his arrest, and he agreed with them that he should voluntarily submit to a screening procedure. The Respondent stated that he went to Willingway Hospital (Willingway) for an evaluation, and that the was advised on the first day of the evaluation that he had a drinking problem and should enter the hospital's twenty-eight day treatment program. The Respondent entered the program and was discharged on October 18, 1992. However, the Respondent testified that after a lengthy delay, Willingway Hospital submitted an inaccurate evaluation report to the Georgia Board of Medical Examiners (Board) in December of 1992.

By letter dated July 15, 1993, the Georgia Department of Law advised the Respondent that the Georgia Attorney General took the position that state statutes required the suspension of his medical license for at least three months because of his entry of a guilty plea for possession of LSD in Minnesota. Further, the letter noted that the Impaired Physician's Committee recommended that the Respondent's license be placed on probation with the usual terms and conditions for an impaired physician. As an alternative, the letter provided that, if the Respondent voluntarily submitted to an evaluation at Anchor Hospital (Anchor), and if Anchor concluded that the Respondent was not impaired, then the Board would not require a probationary period.

According to a discharge summary, the Respondent was evaluated at Anchor from August 30, 1993, until September 2, 1993. The summary concluded that "no definitive diagnosis of alcohol or substance dependence can be made."

After notice and a hearing, the Board issued a final decision on July 11, 1994, finding that the Respondent had entered a plea to a felony charge of possession of LSD and was sentenced in Minnesota. The hearing officer noted that pursuant to Minnesota law pertinent to the Board's proceedings, "conviction" includes entering a "plea of guilty * * * regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon * * *." Thus, the Respondent's entry of a guilty plea provided grounds for the Board's sanction. Consequently, the Board suspended the Respondent's license to practice medicine in Georgia for three months and then placed his license on probation for four years following the suspension. Also, as part of the terms of the probation, the Respondent (1) was to be subject to random drug screening at the request of the Board, and (2) was to abide by all State and Federal laws relating to drugs. The Respondent testified before Judge Bittner that he was still fulfilling these probationary requirements.

A DEA task force officer (Officer) testified before Judge Bittner, stating that in the Spring of 1993, the Brunswick, Georgia, Police Department initiated an investigation of the Respondent, and that she participated in an undercover capacity. She testified that she had been assigned to the task force for approximately three and a half years. Specifically, the Officer testified that on April 21, 1993, she accompanied

a confidential informant (CI) to a tavern on St. Simon's Island to meet the Respondent, and that several hours later the CI, the Respondent, and the Officer went to the Respondent's residence. The Officer testified that, while there, she observed the Respondent use cocaine approximately two or three times, and she observed him search for some LSD, which he told her he had placed on his kitchen counter. The Officer testified that she saw the Respondent take "the cocaine out of a plastic bag, pour it into his hand and snort it out of his hand * * *" She stated she knew the substance was cocaine "just from the appearance of it, through my experience; the way it was consumed. Also the fact that (the Respondent) did kiss me on the lips and it number out my face." Regarding the LSD, the Officer testified that on April 29, 1993, the CI telephone the Respondent, and in that taped conversation, the Respondent stated that he had found the LSD.

The Officer further testified that on July 21, 1993, the CI, wearing a recording device, went to another residence owned by the Respondent, under the surveillance of the Officer and other law enforcement personnel. According to the transcript of this transaction with the Respondent, the CI asked the Respondent if he would be interested in some "kilos" for "17 a key," and the Respondent replied that he did not have that much money, and that his friends in the police department had warned him "to be real careful" because the police were watching him. The CI said that his source wanted a down payment of $4,000.00, to which the Respondent answered, "Damn! I wish! I could (sic) I need to make some money, somewhere," and that he would think about it. The Respondent also said, "I know four people that have been busted. I don't know who's turning everybody in but somebody is * * *. I don't do it around nobody anymore." The Respondent also informed the CI that he would be in Savannah, Georgia, the next weekend because his son was playing in a baseball game, and he suggested getting together with the CI on Friday night to "party up there." However, before Judge Bittner, the Respondent testified that he did not agree to be involved "in a kilogram deal * * * of controlled substances with the CI."

The Officer further testified that on July 23, 1993, the Respondent met with the CI and another informant (Informant), at the Radisson Hotel in Savannah. The transcript of the tape recording made during that meeting revealed that, among other things, the Informant said he had recently "got a pretty big * * * shipment from Columbia," and that the Respondent replied "we may be able to do something," but that he would have to talk to a "friend," and "I'd like to make some money myself." Later, the Respondent expressed concern, stating "I just can's deal with it with my job and stuff. You know I don't have time to do too much * * *. But, uh, I certainly would like to * * *." The Respondent also stated that, "I'm certainly, uh, not opposed to making some money." The respondent also stated that he had connections in Minnesota through his high school and college friends, and he asked the Informant if he would "be around tonight" for a drink.

Finally, the Officer testified that in August of 1993, the CI visited the Respondent, and in the course of that conversation, he asked the Respondent if he was going to buy cocaine from the Informant. The Officer testified that the Respondent replied that "his connection was retired, that he thought he could get cocaine distributed through, and he was no longer in the drug business. And so he had no way of getting rid of the cocaine." Significantly, Judge Bittner wrote that "[the] Officer appeared candid and to exhibit good recall[,] and I therefore credit her testimony."

The Respondent testified before Judge Bittner, stating that he first met the Officer on April 23, 1993, that he had not seen the CI for almost a year, and that he had invited the CI to his home in the hope of getting him to repay a loan. The Respondent denied using cocaine that evening.

The Respondent also testified that, when he knew the CI before, "he never talked about drugs * * *" but "all of a sudden every time [the CI] called me * * * He was just, I mean, continually talking about drugs and * * * I didn't know if he had just changed or what was going on." The Respondent also testified concerning the July 23, 1993 conversation, stating that he thought the CI was going to repay a loan, but that, when the Respondent went to the CI's room, he "realized the position [he] was in—I mean, standing here with some Columbian [the Informant] and I didn't know if he had a gun or what else, he was talking about selling me drugs—all I wanted to do was to get out of the room." However, the Respondent testified that later that evening, he went in a cab to a bar with the Informant, and that after the Informant became inebriated, the Respondent left him in the bar. Later the same evening, the Respondent invited the Informant up to his room. The Respondent testified that, while the Informant was in his room, he was trying to "grab" his girlfriend, and then the Respondent testified that "I told him specifically, word for word, I said, I don't know what [the CI] told you why I'm here. I said, I'm here to see my son play baseball and to get the $400.00 from [the CI] and then I threw [the Informant] out of my room."

Finally, the Respondent testified that in August of 1993, he called a local police officer and told him that the CI had continued to call him and talk about drugs. Also in the record is an affidavit from a sergeant of the Brunswick Police Department, which corroborated the Respondent's testimony concerning his call to the police. The Respondent also testified that from August 18, 1992, until the date of the hearing, he had not purchased, sold, or used any controlled substances.

However, the Deputy Administrator notes Judge Bittner's statement that:

> At the outset, I note that I did not find (the) Respondent to be a credible witness. He did not appear forthright or candid, portions of his testimony are contradicted by the documentary evidence (,) and he appeared primarily concerned with tailoring his testimony to suit his defense. As noted above, I found [the] Officer ( ) to be a credible witness. Consequently, where (the) Respondent's testimony conflicts with that of (the) Officer ( ), I credit the latter.

The Respondent also offered into evidence letters from colleagues, attesting to his professional credentials, and his exemplary abilities as an emergency room physician. Other physicians who had monitored his practice also wrote, stating that he was complying with his conditions of probation. One of these letters was from the medical director of the Respondent's physicians' group, who wrote that "at *no time* do I feel that (the Respondent) has ever been in an impaired position." He also noted that the Respondent had negative drug test results on November 6, 1993, November 19, 1993, January 7, 1994, and February 21, 1994.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending application for registration as a practitioner, if he determines that the continued registration would be inconsistent with the public interest. Further 21 U.S.C. 824(a)(2) provides that conviction of a felony relating to any controlled substance is also grounds for revoking a DEA registration.

First, as to the Respondent's "conviction", the Respondent argued that he should not be considered "convicted" because, pursuant to his plea bargain, and under Minnesota law, if he successfully completes his probation, the case will be dismissed. However, the Deputy Administrator agrees with Judge Bittner, who wrote, "that provision of State law does not determine what is a "conviction" within the meaning of the Controlled Substances Act. This agency has previously held that a guilty plea is a conviction for purpose of these proceedings. Eric A. Baum, M.D., 53 Fed. Reg. 47272 (DEA 1988). I therefore find that (the) Respondent's conviction constitutes grounds for revoking his DEA registration pursuant to 21 U.S.C. 824(a)(2)."

Judge Bittner also found that the Respondent's continued registration was contrary to the public interest. In determining the public interest, Section 823(f) provides that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety. These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16422 (1989).

In this case, the Deputy Administrator finds relevant factors one, four, and five in determining whether continuing the Respondent's registration would be inconsistent with the public interest. As to factor one, "recommendation of the appropriate State licensing board," the record contains no direct recommendation from the Board to the DEA on this matter. However, it is significant that, after notification of the Respondent's entry of a guilty plea to possession of LSD in Minnesota, the Board suspended the Respondent's medical license for three months and placed it on probation for an additional four years.

As the factor four, the Respondent's "(c)ompliance with applicable State, Federal, or local laws relating to controlled substances," and factor five, "(s)uch other conduct which may threaten the public health or safety," the Deputy Administrator agrees with Judge Bittner's finding, given her credibility assessment of the Respondent and the Officer, that the Government has shown, by a preponderance of the evidence, that the Respondent consumed cocaine and searched for LSD in the presence of the officer on April 21, 1993. Although the Respondent argued that he would not engage in such conduct, given that he was providing random urine samples for drug screening, the Deputy Administrator finds his argument unpersuasive. The record shows that the first negative drug screening result was reported on November 6, 1993, and that the Board did not even issue its decision ordering random screening until July 11, 1994. Thus, there was no evidence of record showing that the Respondent was required to participate, or was voluntarily participating in, random drug testing on April 21, 1993.

Next, the Respondent testified that he was an unwilling participant in the CI's plan to distribute cocaine. However, the Deputy Administrator finds that the record supports an opposite conclusion. The transcripts of the Respondent's conversation with the CI and the Informant indicate the Respondent's actual desire to participate in the plan. The Respondent's reply to the CI's information concerning the 17 kilogram of cocaine transaction was "I wish! * * * I need some money * * *" Such a response showed his willingness to participate, if he had had the resources for the downpayment needed to obtain the controlled substance. Further, the Respondent's conversation with the Informant indicated that he did not participate in this proposed transaction because of a lack of means to distribute the controlled substance. The Deputy Administrator agrees with Judge Bittner's conclusion, that "(t)hese statements are not those of someone who is uncertain as to why he is a party to a drug-related conversation."

As to rehabilitation, the Deputy Administrator acknowledges the Respondent's evidence of his professional competency as an emergency room physician. Also, the Deputy Administrator notes that the Respondent argued that rehabilitative evidence exists, such as (1) a lack of positive urinalysis results, (2) the fact that he had never been in trouble before his illegal conduct in Minnesota, (3) the lack of substantiation of the allegations of drug or alcohol abuse, and (4) the Respondent's report of the CI's conduct to the local police. However, the Deputy Administrator also notes Judge Bittner's credibility finding, after observing the Respondent testify before her. Also, although the more recent drug testing evidence may show that the Respondent, while on probation and subject to random drug screening tests, has abstained from personal consumption of illegally obtained controlled substances, the Deputy Administrator is still concerned about the Respondent's willingness to participate in conversations concerning illegal drug transactions to others. Further, the Respondent showed no remorse concerning his prior documented misconduct. Rather, in his testimony before Judge Bittner, the Respondent continued to deny any intentional wrongdoing. In previous cases, when a Respondent failed to admit to the full extent of his involvement in documented misconduct involving controlled substances, the Deputy Administrator has then doubted such a Respondent's commitment to compliance with the Controlled Substances Act in future practice. See, e.g., Prince George Daniels, D.D.S., 60 FR 62,884 (1995). Given the totality of the circumstances in this case, the Deputy Administrator agrees with Judge Bittner's conclusion that he "Respondent is not in a position to accept the responsibilities inherent in a DEA registration, and that his continued registration would be inconsistent with the public interest."

The Respondent filed exceptions to Judge Bittner's opinion, taking exception with her finding concerning a felony "conviction" in Minnesota. The Deputy Administrator notes the Respondent's concern and made findings accordingly in this order. The remaining exceptions are of record and require no further comment.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823, and 28 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BG1368516, previously issued to the Respondent, be, and it hereby is, revoked, and that any pending applications to renew the same are hereby denied. This order is effective June 24, 1996.

Dated: May 17, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–13051 Filed 5–23–96; 8:45 am]

BILLING CODE 4410–09–M

Bureau of Justice Statistics

[OJP No. 1080]

RIN 1121–ZA34

National Criminal History Improvement Program ("NCHIP")

AGENCY: Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

ACTION: Notice of program plan.

SUMMARY: The Bureau of Justice Statistics (BJS) is publishing this notice to announce the continuation of the National Criminal History Improvement Program (NCHIP) in Fiscal Year 1996. The program implements the grant provisions of the Brady Handgun Violence Prevention Act (Brady Act), Pub. L. No. 103–159, 107 Stat. 1536 (1993), codified as amended at 18 U.S.C. 921 *et seq.*, the National Child Protection Act of 1993 (Child Protection Act), Pub. L. No. 103–209, 107 Stat. 2490 (1993), codified as amended at 42 U.S.C. 3759, 5101 note, 5119, 5119a, 5119b, 5119c, those provisions of the Omnibus Crime Control and Safe Streets Act of 1968 (Omnibus Act), Pub. L. No. 90–351, 82 Stat. 197 (1968), codified as amended at 42 U.S.C. 3711 *et seq.*, as amended, and the Violent Crime Control and Law Enforcement Act of 1994 (Violent Crime Control Act), Pub. L. No. 103–322, 108 Stat. 1796 (1994), codified as amended at 42 U.S.C. 13701 *et seq.* which pertain to the establishment, maintenance, or use of criminal history records and criminal record systems.

Under NCHIP, States were asked to submit three year plans in FY 1995. Every State received an award in 1995. Most States received partial funding last year. This program will provide additional funds in FY 1996 to assist States in continuing implementation of their multi-year programs and to address the Child Protection and National Stalker and Domestic Violence Reduction initiatives authorized under the new appropriation. Since the NCHIP program was designed as a multi-year effort, 1996 applications will be less comprehensive than applications in 1995. Applicants are encouraged to use portions of last year's application when appropriate, or to reference the application by topic and page number.

This program announcement describes procedures for awards which will be made under the NCHIP program with FY 1996 funds. Awards may be for up to 12 months. States will have the flexibility to begin activities under the award as early as September 1, 1996 and as late as the summer of 1997. Activities must be completed by June 1, 1998.

Updated guidelines governing use of Byrne Formula funds pursuant to the 5% set-aside established under section 509 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, were issued on February 23, 1995 by the Bureau of Justice Assistance (BJA), in consultation with BJS. The Byrne Guidelines should be considered together with this program announcement in developing a State's program to meet the goals of the Brady Act and the Child Protection Act.

DATES: Eligible states must submit applications on or before July 29, 1996.

ADDRESSES: Applications should be sent to Application Coordinator, the Bureau of Justice Statistics, 633 Indiana Avenue, N.W., 11th Floor, Washington, D.C. 20531.

FOR FURTHER INFORMATION CONTACT: Carol G. Kaplan, Chief, Criminal History Improvement Programs, (202) 307–0759. The BJS fax number is (202) 307–5846.

SUPPLEMENTARY INFORMATION:

The National Criminal History Improvement Program

Program Goals

The goal of the NCHIP grant program is to improve the nation's public safety by:

- Facilitating the accurate and timely identification of persons who are ineligible to purchase a firearm;
- Ensuring that persons with responsibility for child care, elder care, or care of the disabled do not have disqualifying criminal records;
- Improving access to protection orders and records of people wanted for stalking and domestic violence; and
- Enhancing the quality, completeness and accessibility of the nation's criminal history record systems.

More specifically, NCHIP is designed to assist States:

- To meet timetables for criminal history record completeness and participation in the Federal Bureau of Investigations (FBI) Interstate Identification Index (III) established for each State by the Attorney General;
- To improve the level of criminal history record automation, accuracy, completeness, and flagging;
- To expand and enhance participation in the FBI's III and the National Instant Criminal Background Check System (NICS);
- To develop and implement procedures for accessing records of persons other than felons who are ineligible to purchase firearms;
- To identify (through interface with the National Incident-Based Reporting System [NIBRS] where necessary) records of crimes involving use of a handgun and/or abuse of children, elderly, or disabled persons;
- To identify, classify, collect, and maintain (through interface with the National Crime Information Center (NCIC) and the III where necessary) protection orders, warrants, arrests, and convictions of persons violating protection orders intended to protect victims of stalking and domestic violence; and
- To ensure that States develop the capability to monitor and assess State progress in meeting legislative and programmatic goals.

To ensure that all NCHIP-funded efforts support the development of the national criminal record system, the program will be closely coordinated with the FBI, BJA, and the Bureau of Alcohol, Tobacco and Firearms (BATF).

Funding under the NCHIP program is available to both those States which are subject to the 5-day waiting period (Brady States) and those States which are operating under an alternative system pursuant to approval of BATF (Brady Alternative States).

Legislative Background

Section 106(b) of the Brady Act, provides that:

> The Attorney General, through the Bureau of Justice Statistics, shall, subject to appropriations and with preference to States that as of the date of enactment of this Act have the lowest percent currency of case dispositions in computerized criminal history files, make a grant to each State to be used (A) for the creation of a computerized criminal history record system or improvement of an existing system; (B) to improve accessibility to the national instant criminal background system; and (C) upon establishment of the national system, to assist the State in the transmittal of criminal records to the national system.

The provisions of 18 U.S.C. 922 (g) and (n), as amended by the Violent Crime Control Act, prohibit the sale of firearms to an individual who—

(1) Is under indictment for, or has been convicted in any court, of a crime punishable by imprisonment for a term exceeding one year;

(2) Is a fugitive from justice;

(3) Is an unlawful user of, or addicted to, any controlled substance;

(4) Has been adjudicated as a mental defective or been committed to a mental institution;

(5) Is an alien who is illegally or unlawfully in the United States;

(6) Was discharged from the Armed Forces under dishonorable conditions;

(7) Has renounced his United States citizenship; or

(8) Is subject to a court order restraining them from harassing, stalking, or threatening an intimate partner or child.

The latter category was added as part of the Violent Crime Control Act.

The Brady Act, enacted in November 1993 and effective in February 1994, requires that licensed firearm dealers request a presale check on all potential handgun purchasers by the chief law enforcement officer in the purchaser's residence community to determine, based on available records, if the individual is legally prohibited from purchase of the firearm under the provisions of 18 U.S.C. 922 or State law. The sale may not be completed for 5 days unless the dealer receives an approval before that time. The 5 day waiting period requirement terminates by 1998, at which time presale inquiries for all firearms will be made only to the National Instant Criminal Background Check System (NICS). Section 103 of the Brady Act provides that NICS will supply information on "whether receipt of a firearm * * * would violate (18 U.S.C. 922) or State law." As noted above, section 106 (b) of the Brady Act establishes a grant program to assist States in upgrading criminal record systems and in improving access to, and, interface with, the NICS system.

In addition, section 106 (a) of the Brady Act amended section 509 (d) of the Omnibus Act to specifically provide that funds from the 5% set-aside under the Byrne Formula grant program may be spent for "the improvement of State record systems and the sharing * * * of records * * * for the purposes of implementing * * * (the Brady Act)."

The Child Protection Act, as amended by the Violent Crime Control Act, requires that records of abuse against children be transmitted to the FBI's national record system. The Child Protection Act also encourages States to adopt legislation requiring background checks on individuals prior to assuming responsibility for care of children, the elderly, or the disabled. Section 4 of the Act establishes a grant program to assist States in upgrading records to meet the requirements of the Act. Under the definition set forth in section 5 (3) of the Act, "child abuse crimes" include crimes under any law of the State and are not limited to felonies.

Both the Brady and Child Protection Acts required the Attorney General to survey the status of State criminal history records and develop timetables for States to achieve complete and automated records. The survey was conducted during March 1994, and Governors were advised of timetables by the Attorney General in letters of May and June 1994. The letters indicated that compliance with timetable goals assumed availability of grant funds under each Act.

The National Stalker and Domestic Violence Reduction program (Stalker Reduction), section 40602 of the Violence Against Women Act (VAWA) Pub. L. No. 103–322, 108 Stat. 1902–1955 (1994), codified as amended at 42 U.S.C. 14031 which was included in the Violent Crime Control Act, authorized a program to assist States in entering data on stalking and domestic violence into local, State, and national data-bases. The Act emphasizes the importance of ensuring that data on convictions for these crimes are included in databases being developed with Federal funds.

Section 40606 of VAWA authorized technical assistance and training in furtherance of the purposes of the Stalker Reduction program. This section also allows for the evaluation of programs that receive funds under this provision.

The NCHIP program implements the requirements of the programs established in the Brady Act, Child Protection Act, and the Stalker Reduction provision of VAWA.

Appropriation

Section 106 (b) of the Brady Act authorized $200 million for the grant program; the Child Protection Act authorized $20 million; Section 40603 of the Violent Crime Control Act authorized a total of $6 million over three years for the Stalker Reduction program included in VAWA.

An appropriation of $100 million was made to implement section 106(b) of the Brady Act for FY 1995, to be available until expended. No appropriation was made for Child Protection or Stalker Reduction activities in FY 1995.

An appropriation of $25 million was made in FY 1996 to continue implementation of section 106(b) of the Brady Act and to implement section 4 (b) of the Child Protection Act. In addition, an appropriation of $1.5 million was made in FY 1996 for Stalker Reduction. In light of the overlap between Brady, Child Protection, and Stalker Reduction goals, these appropriations are combined under NCHIP.

Program Strategy

The 1995 NCHIP program covered criminal history records improvements. The 1996 program includes criminal history records improvements and expands to incorporate serious misdemeanors against children, the elderly, and the disabled, and improving access to domestic violence protection orders.

The 1996 NCHIP program also permits funds to be used to assist States in providing rapid, inexpensive, reliable background checks on individuals who wish to work with sensitive populations. This will include assisting States in identifying people who commit felony and serious misdemeanor offenses against children, the elderly, and/or the disabled. It also includes supporting background checks, and improving access to domestic violence protection orders.

Consistent with section 40602, the Stalker Reduction program, BJS is allowing funds to be used to help State and local governments improve the process for classifying and entering data regarding stalking and domestic violence into local, State, and national crime information databases.

Application and Award Process

Eligibility Requirements

Only one application will be accepted from each State. The application must be submitted by the agency previously designated by the Governor or by a successor agency designated by the Governor in writing to BJS. A State may, however, choose to submit its application as part of a multi-state consortium or other entity. In such case, the application should include a statement of commitment from each State and be signed by an individual designated by the Governor of each participating State. The application should also indicate specific responsibilities, and include a separate budget, for each State. States may receive successive awards over time, assuming availability of funds.

A grant will be made to each State with funds from the 1996 appropriation. States other than "priority States" are eligible to receive funds for criminal records improvement, Child Protection, and Stalker Reduction activities. Priority States, which received three-year awards in FY 1995 for criminal records improvements, should apply for Child Protection and Stalker Reduction activities only.

States may submit an application even though funds remain unexpended under the 1995 award. Applications must contain a start date and end date which fall between September 1, 1996 and June 1, 1998. FY 1996 projects may overlap with FY 1995 projects or the projects may run consecutively.

Program Narrative

In addition to the requirements set forth in Appendix A, the NCHIP

application should include the following four parts:

Part I. Background

This section should include a short update of current efforts relating to criminal history record improvement funded under the BJS NCHIP, Advanced State Award Program (ASAP), and Criminal History Record Improvements (CHRI) programs, and the BJA Byrne 5% set-aside or with State funds over the past year. The discussion should specify the amount of funds received under the BJS and Byrne programs and the funds remaining at the time of application. The section should also briefly describe accomplishments with these funds and the relationship to proposed FY 1996 NCHIP activities.

Part II. Identification of Needs

This part should discuss any recent evaluative efforts undertaken to identify the key areas of weakness in the State's criminal record system. Applications should include a short discussion of the State's ability to identify ineligible firearm purchasers, persons ineligible to hold positions involving children, the elderly, or the disabled, and data on protection orders and people wanted, arrested, or convicted of stalking and/or domestic violence. Among other things, this section may include areas that were either eligible for funds last year, but did not receive funding, or that were not eligible for funds because of the wording of the FY 1995 appropriation. Proposals described in your 1995 NCHIP application may be used or cited.

Part III. NCHIP Effort

This section should describe the activities to be undertaken with NCHIP funds over the 12 month period. Specifically, each application should indicate the activities proceeding, how these activities relate to efforts funded under the 1995 award, and the results that will be achieved from 1996 funding.

Part III of the application should also describe any efforts to be supported to monitor State compliance with legislative or programmatic goals through ongoing audits or other means such as statistical analysis, comparison between Computerized Criminal History (CCH) records and NIBRS or Uniform Crime Reporting (UCR) data. Studies relating to handgun use or sales approval, if proposed, should be described in this section.

In furtherance of the Child Protection Act and the Stalker Reduction program, up to $6.5 million of the funds appropriated in FY 1996 for Brady, Child Protection, and Stalker Reduction may go towards the following Child Protection and Stalker Reduction activities:

- Capturing domestic violence and/or stalking protection orders;
- Flagging of child abuse records and crimes against children, the elderly and the disabled, convictions for domestic violence and/or stalking, and domestic violence protection orders;
- Incorporating serious misdemeanor offenses against children, the elderly and the disabled into existing criminal history records;
- Offsetting the cost to volunteers for background checks, including development and implementation of technological and procedural advances;
- Improving processes for entering data regarding stalking and domestic violence into local, State, and national crime information data bases.

Section 4(b) of the Child Protection Act requires preference to be given to States that have in computerized criminal history files the lowest percentages of charges and dispositions of identifiable child abuse cases as of December 20, 1993. In accordance with this section of the Child Protection Act, the five "priority States" with the lowest percentages of charges and dispositions in their computerized criminal history files will be awarded a total of $1 million to be used for the Child Protection and Stalker Reduction activities listed above.

Section 40602(b) of the Violent Crime Control Act states that in order to be eligible to receive a grant under the Stalker Reduction program, a State shall certify that it has or intends to establish a program that enters into the National Crime Information Center the following records:

- Warrants for the arrest of persons violating protection orders intended to protect victims from stalking or domestic violence;
- Arrests or convictions of persons violating protection or domestic violence orders; and
- Protection orders for the protection of persons from stalking or domestic violence.

The Bureau of Justice Statistics will coordinate the Stalker Reduction portion of NCHIP with the Violence Against Women Office (VAWO) at the Department of Justice.

Because funds are limited for FY 1996, not every State which requests funds for Child Protection and/or Stalker Reduction activities may receive funds for these purposes.

In light of the importance of complete and nationally accessible criminal records for the NICS instant check, Child Protection background checks, and to protect society against stalkers and domestic violence offenders, BJS, in reviewing applications requesting funds for Child Protection and Stalker Reduction tasks, will consider the extent to which the State has progressed in developing its State criminal records system and taken steps to achieve participation in the national system.

In order to permit assessment of State progress in meeting grant goals, Part III of all applications should set forth measurable benchmarks or goals for each proposed activity.

Part IV. Coordination Between NCHIP and the Byrne 5% Set-Aside Program

Funds under the Byrne Formula 5% set-aside program are available to support the improvement of record systems and to meet the goals of the Brady and Child Protection Acts.

The Bureau of Justice Statistics and the Bureau of Justice Assistance have jointly agreed that close and continuing coordination between the NCHIP and Byrne 5% set-aside program is critical to meeting the goals of the Brady Act, and the National Child Protection Act. Such coordinated efforts are also necessary to ensure the development of an effective interstate criminal history record system to meet the needs of law enforcement, the criminal justice community and the increasing number of non-criminal justice users of criminal history record information. To achieve this goal, BJS and BJA prepared Guidelines governing use of the Byrne 5% set-aside funds. The Guidelines were issued February 23, 1995, to State Administrative Agencies that receive and distribute Byrne formula grant funds.

BJS expects that program plans for projects to be funded under NCHIP and the Byrne 5% set-aside will be coordinated by the State agencies responsible for these programs in order to avoid overlap and maximize funding effectiveness. Where costs of a proposed activity exceed NCHIP available funds or are unallowable under NCHIP, the State might, for example, use Byrne funds to fill remaining needs. This joint effort, we believe, will maximize the effectiveness of both of these programs.

Award Period

The application may be for up to 12 months. States will have the flexibility to begin activities under the award as early as September 1, 1996 and as late as the summer of 1997. Activities must be completed by June 1, 1998. The budget should provide details for expenses in required categories and by individual task (see Appendix A, Application content). The application should identify those agencies to receive direct funding and indicate the fiscal arrangements to accomplish fund transfer.

Application Submission and Due Dates

Applications may be submitted at any time after publication of this announcement. Applications must be received by July 29, 1996, to be eligible for FY 1996 funding.

States that submitted applications with multiple year budgets for FY 1995 NCHIP funds and received funding for the first year (extended to two years on February 8, 1996), may re-submit the parts of their proposals which did not receive funds in 1995.

Allocation of Funds

All fifty States, including the District of Columbia, Puerto Rico, American Samoa, and Guam, received NCHIP FY 1995 awards. Certain III States received ASAP FY 1995 awards to assist in the identification of persons other than felons who are prohibited from purchasing firearms. Funds may be available in future years to implement those activities.

Awards under this program announcement may be made from the Brady, Child Protection, and Stalker Reduction appropriations, and from residual FY 1995 funds. The 1996 appropriation is 26.5 percent of the FY 1995 amount. Up to $6.5 million will go for Child Protection and Stalker Reduction activities.

Review Criteria

States should understand that full funding may not be possible for all proposed activities. Allocation of funds will be based on the amount requested and the following factors:

(1) The extent to which the proposed activities will enable the State to meet the timetables established for the State by the Attorney General;

(2) The extent to which improvements in the State system, by virtue of record numbers, levels of technical development, or operating procedures, will have a major impact on availability of records throughout the national system;

(3) The proposed use or enhancement of innovative procedures which may be of value to other jurisdictions;

(4) The technical feasibility of the proposal and the extent to which the proposal appears reasonable in light of the State's current level of system development and statutory framework;

(5) Amount awarded under FY 1995 NCHIP program, including whether the State received funds as a priority State;

(6) Prior activity of the State with funds under the NCHIP, ASAP, Byrne, and CHRI programs;

(7) State commitment to the national record system as evidenced by membership in III, and participation in the FBI's National Fingerprint File (NFF), Felon Identification in Firearms Sales (FIFS) programs, etc., and the current status of development of its CCH;

(8) Reasonableness of the budget;

(9) Evidence of State progress in meeting record improvement and background check goals as measured in terms of audits, and data collection relating to presale firearm checks and background checks on persons seeking positions involving children, the aged and the disabled;

(10) Appropriate focus on criminal history data improvement regarding protection orders and crimes against children, the elderly, and the disabled;

(11) Documentation of a program or intention to establish a system to enter protection orders, and warrants, arrests, and convictions of people violating protection orders intended to protect victims from stalking or domestic violence (for States applying for Stalker Reduction activities);

(12) Nature of the proposed expenditures;

(13) The extent to which the plan reflects constructive interface between relevant components of the State organization and/or multi-state systems; and

(14) The reasonableness of the relationship between the proposed activities and the current status of the State system, in terms of technical development, legislation, current fiscal demands, and future operating costs.

The program does not require either "hard" (cash) or "soft" (in-kind) match. Indications of State support, however, may be interpreted as expressions of commitment by the State to the program.

All applicants must agree to participate in evaluations sponsored by the federal government. Applicants must also agree to provide data relating to Brady Act activity to the Firearm Inquiry STatistics (FIST) program in the format designated by the FIST program.

Allowable Costs

Allowable expenses are detailed below. All expenses are allowable only to the extent that they directly relate to programs described in the application's program narrative.

(1) Participation in III: This is a key goal, and costs should be related to achieving full participation. Covered costs include, but are not limited to, costs associated with automation of the database (see limitations in (4) below), synchronization of records between State and FBI, and development of necessary software and hardware enabling electronic access on an intrastate or interstate basis.

(2) Database enhancement: Improving the quality, completeness and accuracy of criminal history records is a key goal of the NCHIP effort. Allowable costs include the costs associated with implementing improved record capture procedures, establishing more effective accuracy controls, and ensuring that records of all criminal events that start with an arrest or indictment are included in the database. In addition to felony records, limited funds may be used to capture data on serious misdemeanors, and to ensure that data on persons wanted, arrested, and convicted of stalking and/or domestic abuse are included in the database. Use of funds for capture of data on misdemeanors and persons convicted of stalking will only be approved where the state has, or is actively undertaking efforts to upgrade, the basic elements of the criminal history record system.

(3) Improved disposition capture: Automated interface between the criminal history repository and the courts, prosecutors, and/or corrections agencies is encouraged. Funds provided to courts or prosecutors for these purposes are allowable only to the extent that the function to be supported is related to the capture of disposition or other data relating to the offender record (for example, full costs associated with establishment of court MIS systems are not allowable under the NCHIP program).

(4) Record automation: These are allowable costs only with respect to records where the subject has been arrested, indicted, convicted, or released from confinement within 5 years of the date of automation. As appropriate, allowable costs also include costs associated with system design in States with non-automated systems or in States proposing to enhance system operation to include access to non-CCH databases.

(5) Flagging of records: Upgrading the accessibility of records, through flagging, for presale and preemployment checks is an important activity. Allowable costs include costs of flagging, or algorithms used for flagging, felony records and records of persons with convictions for crimes involving children, the elderly, and/or the disabled, and persons convicted of crimes involving domestic violence and/or stalking. Costs may include the cost of technical record flagging as well as the costs associated with

identification of records to be flagged (see (7) below regarding interface with NIBRS).

(6) AFIS/livescan: Automated Fingerprint Identification System (AFIS)/livescan equipment for local law enforcement agencies is allowable to improve the level of arrest and disposition reporting, but only where—

(1) The State repository system is automated, participating or looking toward participation in III, and has in place the technical capability to accept AFIS transmissions, and

(2) Sufficient traffic can be demonstrated to justify the cost, possibly through the use of regional systems,

AFIS/livescan in squad cars is not allowable since field inquiries are not a factor in checks under either the Brady Act or the Child Protection Act. Additionally, since data are not generally input to the system by the field unit, AFIS in the squad car would not support record improvement or completeness. AFIS/livescan for use in courts is allowable to support record completeness. The same conditions regarding repository capability and levels of traffic are also applicable to costs in this category.

Costs associated with AFIS/livescan communication from the repository to the FBI national system (IAFIS) are allowable but only where the State can demonstrate adequate levels of record completeness (both arrest and disposition) and current membership in III.

States should understand that Byrne 5% set-aside funds are available for AFIS/livescan, and that, accordingly, use of NCHIP funds for AFIS or livescan will only be allowable when justified as appropriate given the overall status of the State system, its participation in the national system and its planned use of Byrne 5% set-aside funds. This is particularly relevant with respect to State proposals to use NCHIP funds to cover costs of local livescan equipment.

(7) Interface with NIBRS: Funds may be used to interface with any State data system which is compatible with NIBRS for purposes of identifying persons convicted of crimes against children, the elderly, or the disabled, involving domestic violence and/or stalking, and/or identification of records involving firearm crimes for operational or research purposes. NCHIP funds are not available, however, to develop the NIBRS database.

(8) Research, evaluation, monitoring, and audits: Costs associated with research or evaluation efforts are allowable to the extent that they are directly associated with a project approved in the application. Costs associated with monitoring State compliance with legislative or programmatic goals, through ongoing or periodic audits or other procedures, are allowable and encouraged. The purchase of equipment such as modems and the necessary communications and data software for storing and transmitting evaluative data between States and to BJS or other designated federal agencies is an allowable expense.

(9) Conversion of juvenile records to the adult system: The Attorney General has recently amended Federal Regulations to allow the FBI to accept juvenile records if submitted by the State or local arresting agency. Expenditures to interface juvenile and adult records are allowable if consistent with relevant State law and undertaken to further the goals of the NCHIP program.

(10) Missing dispositions backlog reduction: These costs are allowable to improve the level of disposition reporting but only where limited to records with arrests within the past 5 years. States must also propose a strategy to prevent future backlogs from developing.

(11) Equipment upgrades: Upgrade costs are allowable where related to improving availability of data and where appropriate given the level of data completeness, participation in III, etc. Replacement costs will be considered but States are encouraged to contribute some portion of the total costs.

(12) Training, participation in seminars and meetings: Limited funds may be used to cover costs of training and participation in State, regional, or national seminars or conferences (including travel, where necessary).

(13) Expenditures related to presale handgun background checks: Funds are allowable to cover costs incurred by a governmental agency for equipment or development of capability required to conduct presale background checks. This "governmental agency" limitation may be waived in a very limited number of cases where the State has implemented a functioning background check system and can demonstrate that the vast preponderance of inquiries are made by a limited number of dealers, that technical and procedural safeguards have been established to protect the privacy of potential purchasers, and that the equipment to be provided to dealers would be of use for operation under the permanent system. Waivers will only be considered in States which are participants in III and which have achieved high levels of automation and record completeness. NCHIP funds may not be used to cover costs of conducting presale background checks.

(14) Reducing cost of background checks: States may use funds to develop and implement technologies that lower costs of conducting background checks. These funds may also be used to pay all or part of the cost to the State of conducting background checks on persons who are employed by or volunteer with a public, not-for-profit, or other voluntary organization to reduce the amount of fees charged for such background checks.

The Bureau of Justice Statistics is conducting parallel efforts to develop standard definitions of domestic violence and child abuse. States proposing to use funds for flagging or to interface with NIBRS to identify convictions for domestic violence and/or stalking, domestic violence protection orders, or crimes against children must coordinate their efforts with BJS.

Appendix A—Application and Administrative Requirements

Application Content

All applicants must submit:

* Standard Form 424, Application for Federal Assistance
* Standard Form 424A, Budget Information
* OJP Form 4000/3 (Rev. 1–93), Program Narrative and Assurances
* OJP Form 4061/6 Certifications
* OJP Form 7120/1 (Rev. 1–93), Accounting System and Financial Capability Questionnaire (to be submitted by applicants who have not previously received Federal funds).

Applicants are requested to submit an original and two copies of the application and certifications to the following address: Application Coordinator, Bureau of Justice Statistics, 633 Indiana Avenue, NW, Washington, DC 20531, Phone: (202) 616–3500.

Standard Form 424 (SF–424). The SF–424, a one page sheet with 18 items, serves as a cover sheet for the entire application. This form is required for every application for Federal assistance. No application can be accepted without a completed, signed original SF–424. Directions to complete each item are included on the back of the form.

Standard Form 424A (SF–424A). All applications must include SF–424A, Budget Information for all years of project activity. Applicants should ensure that all appropriate columns and rows balance. Directions to complete this form are found on page 3 of SF–424A.

Detailed budget. Applicants must provide a detailed justification for all costs including the basis for computation of these costs. For example, the detailed budget would include the salaries of staff involved in the project and the portion of those salaries to be paid from the award; fringe benefits paid to each staff person; travel costs related to the project; equipment to be purchased with the award funds; and supplies required to complete the project.

Budget narrative. The budget narrative closely follows the content of the detailed budget. The narrative should relate the items budgeted to specific tasks and allowable cost categories and should provide a justification and explanation for the budgeted items including the criteria and data used to arrive at the estimates for each budget category. Please note applications that include noncompetitive contracts for the provision of specific services must contain a sole source justification for any procurement in excess of $100,000.

The budget narrative should indicate amounts to be made available to agencies other than the grant recipient (for example, the agency with responsibility for CCH, the courts, local agencies.)

Applicants for grants must submit a budget narrative on separate sheets. The budget narrative should detail by budget category for Federal and non-Federal (in-kind and cash) share. The purpose of the budget narrative is to relate items budgeted to project activities and to provide justification and explanation for budget items, including criteria and data used to arrive at the estimates for each budget category. The following information is provided to assist the applicant in developing the budget narrative.

a. *Personnel Category.* List each position by title (and name of employee if available), show annual salary rate and percentage of time to be devoted to the project by the employee. Compensation paid for employees engaged in Federally-assisted activities must be consistent with that paid for similar work in other activities of the applicant.

b. *Fringe Benefits Category.* Indicate each type of benefit included and explain how the total cost allowable for employees assigned to the project is computed.

c. *Travel Category.* Itemize travel expenses of project personnel by purpose (e.g., faculty to training site, field interviews, advisory group meetings, etc.) and show basis or computation (e.g., "Five trips for 'x' purpose at $80 average cost—$50 transportation and two days per diem at $15" or "Six people to 30 day meeting at $70 transportation and $45 subsistence."). In training projects where travel and subsistence for trainees is included, this should be separately listed indicating the number of trainees and the unit costs involved.

(1) Identify the tentative location of all training sessions, meetings, and other travel.

(2) Applicants should consult such references as the Official Airline Guide and the Hotel and Motel Redbook in projecting travel costs to obtain competitive rates.

d. *Equipment.* List each type of equipment to be purchased or rented with unit or monthly costs.

e. *Supplies.* List items within this category by major type (office supplies, training materials, research forms, postage) and show basis for computation. Provide unit or monthly estimates.

f. *Contractual Category.* State the selection basis for any contract or subcontract or prospective contract or subcontract (including construction services and equipment).

For individuals to be reimbursed for personal services on a fee basis, list by name or type of consultant or service the proposed fee (by day, week, or hour) and the amounts of time to be devoted to such services.

For construction contracts and organization (including professional associations and education institutions performing professional services), indicate the type of service to be performed and the estimated contract cost data.

g. *Construction Category.* Describe construction or renovation which will be accomplished using grant funds and the method used to calculate cost.

h. *Other Category.* Include under "other" such items as rent, reproduction, telephone, and janitorial or security services. List items by major type with basis of computation shown. (Provide square footage and cost per square foot for rent—provide local and long distance telephone charges separately.)

i. *Indirect Charges Category.* The Agency may accept an indirect cost rate previously approved for an applicant by a Federal agency. Applicants must enclose a copy of the approved rate agreement with the grant application.

j. *Program Income.* If applicable, provide a detailed estimate of the amount of program income to be generated during the grant period and its proposed application (to reduce the cost of the project or to increase the scope of the project). Also, describe the source of program income, listing the rental rates to be obtained, sale prices of publications supported by grant funds, and registration fees charged for particular sessions. If scholarships (covering, for example, registration fees) are awarded by the organization to certain conference attendees, the application should identify the percentage of all attendees that are projected as "scholarship" cases and the precise criteria for their selection.

Program narrative. All applications must include a program narrative which fully describes the expected design and implementation of the proposed program. OJP Form 4000/3 (Rev. 1–93) provides additional detailed instructions for preparing the program narrative.

The narrative should include a time line of activities indicating, for each proposed activity, the projected duration of the activity, expected completion date, and any products expected.

The application should include a description of the roles and responsibilities of key organizational and/or functional components involved in project activities; and a list of key personnel responsible for managing and implementing the major elements of the program.

Assurances. OJP Form 4000/3 (Rev 1–93) must be included in the application submission. If submitting this form separate from the SF–424, the applicant must sign and date the form to certify compliance with the Federal statutes, regulations, and requirements as cited.

Certification Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace. Applicants should refer to the regulations cited in OJP Form, 4061/6 to determine the certification to which they are required to attest. A copy of OJP Form 4061/6 can be obtained from the BJS Application Coordinator. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 28 C.F.R. part 69, "New Restrictions on Lobbying," and 28 CFR part 67, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the U.S. Department of Justice determines to award the covered transaction, grant, or cooperative agreement.

Financial and Administrative Requirements

Discretionary grants are governed by the provisions of OMB Circulars applicable to financial assistance. The circulars, with additional information and guidance, are contained in the "Financial and Administrative Guide for Grants," Office of Justice Programs, Guideline Manual, M7100, available from the Office of Justice Programs. This guideline manual, provided upon request, is intended to assist grantees in the administration of funds and includes information on allowable costs, methods of payment, Federal rights of access to records, audit requirements, accounting systems, and financial records.

Complete and accurate information is required relative to the application, expenditure of funds, and program performance. The consequences of failure to comply with program guidelines and requirements will be determined at the discretion of the Department.

Civil Rights Obligations

All applicants for Federal financial assistance must sign Certified Assurances that they are in compliance with the Federal laws and regulations which prohibit discrimination in any program or activity that receives such Federal funds. Section 809(c), Omnibus Crime Control & Safe Streets Act of 1968, provides that:

No person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, or denied employment in connection with any program or activity funded in whole or in part with funds made available under this title.

Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans With Disabilities Act prohibit discrimination on the basis of disability. The applicant agency must discuss how it will ensure nondiscriminatory practices as they relate to:

(1) Delivery of services or benefits—to ensure that individuals will not be denied access to services or benefits under the program or activity on the basis of race, color, religion, national origin, gender, age, or disability;

(2) Employment practices—to ensure that its personnel in the program or activity are selected for employment without regard to race, color, religion, national origin, gender, age, or disability; and

(3) Program participation—to ensure members of any planning, steering or advisory board, which is an integral part of the program or activity, are not excluded from participation on the basis of race, color, religion, national origin, gender, age or disability; and to encourage the selection of such members who are reflective of the diversity in the community to be served.

Audit Requirement

In October 1984, Congress passed the Single Audit Act of 1984. On April 12; 1985, the Office of Management and Budget issued Circular A–128, "Audits of State and Local Governments" which establishes regulations to implement the Act. OMB Circular A–128, "Audits of State and Local Governments," outlines the requirements for organizational audits which apply to BJS grantees.

Disclosure of Federal Participation

Section 8136 of the Department of Defense Appropriations Act (Stevens Amendment), enacted in October 1988, requires that, "when issuing statements, press releases for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including but not limited to State and local governments, shall clearly state (1) the percentage of the total cost of the program or project which will be financed with Federal money, and (2) the dollar amount of Federal funds for the project or program."

Intergovernmental Review of Federal Programs

Federal Executive Order 12372, "Intergovernmental Review of Federal Programs," allows States to establish a process for reviewing Federal programs in the State, to choose which programs they wish to review, to conduct such reviews, and to make their views known to the funding Federal agency through a State "single point of contact."

If the State has established a "single point of contact," and if the State has selected this program to be included in its review process, the applicant must send a copy of its letter or application to the State "single point of contact" at the same time that it is submitted to BJS. The letter or application submitted to BJS must indicate that this has been done. The State must complete its review within 60 days. The review period will begin on the date that the letter or application is officially received by BJS. If BJS does not receive comments from the State's "single point of contact" by the end of the review period, this will be interpreted as a "no comment" response.

If the State has not established a "single point of contact," or if it has not selected the BJS statistics development or criminal history improvement programs in its review process, this must be stated in the letter or application.

Jan M. Chaiken,

Director, Bureau of Justice Statistics.

[FR Doc. 96–13091 Filed 5–23–96; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of May, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–31, 984; U.S. Can Co., Saddlebrook, NJ
TA–W–32, 026; Cassemco, Inc. Cookeville, TN
TA–W–32, 022; Campbell & Dann Mfg Co., Inc., Tullahoma, TM
TA–W–32, 125; AT&T Corp., NCR Corp., Viroqua, WI
TA–W–32, 112; E.I. Dupont De Nemours & Co., Inc., Chambers Works Div., Deepwater, NJ

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–32, 096; Kinney Shoe Corp., Beaver Spring, PA
TA–W–32, 010; Northrop Grumman Corp., El Segundo, CA
TA–W–32, 017; SBS Contracting Corp., Long Island City, NY
TA–W–32, 014; ABB Power T & D Co., Inc., Protective Equipment & Medium Voltage Outdoor Equipment Div., Bloomington, IN

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–32, 258; National Refurbishing Center, Sony Electronics, Inc., Carol Stream, IL

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination reference the impact date for all workers for such determination.

TA–W–32, 236; Salvatric Soe, Inc., Blackshear, GA: March 29, 1995.
TA–W–32, 221; J.C. Decker Co., Inc., Montgomery, PA: March 28, 1995.
TA–W–32, 317; Ampolex (USA), Inc., Denver, CO: April 29, 1995.
TA–W–32, 212; Montana Power Co., Colstrip Project Div., Colstrip, MT: March 27, 1995.
TA–W–32, 054; Norminjil Sportswear Corp., Luzerne, PA: March 1, 1995.
TA–W–32, 029; Western Reserve Products, Visador Div., Jasper, TN: February 27, 1995.
TA–W–32, 001; Royal Mills, Carteret, NJ: February 10, 1995.
TA–W–32, 194; McGill Electric Switch Product Group, A Div. of Therm-O-Disc, Inc., Valaporaiso, IN: April 3, 1995.
TA–W–32, 218; Connors Footwear, Lisbon, NH: March 28, 1995.
TA–W–32, 225; Movie Star, Inc., Sanmark-Stardust & Cinema Etoile Divisions, New York, NY: March 15, 1995.
TA–W–32, 207; Dolphin International Ltd. The Dalles, OR: April 1, 1995.
TA–W–32, 044; Forest Oil Corp., Denver, CO: February 9, 1995.
TA–W–32, 011; C & C Garment Finishers, Sparta, TN: February 20, 1995.
TA–W–32, 283; Apparel Creations of America, Inc., Notasulga, AL: April 15, 1995.
TA–W–31, 943 &A, B, C, D; Doran Textiles, Inc., Salem, NC, Shelby, NC, Esther Mill, Shelby, NC, Doran Yarn Mill Plant #2, Cherryville, NC, Dover Yarn Mill, Clover, SC: January 18.
TA–W–32, 233; Dataproducts Corp., Norcross, GA: April 1, 1995.
TA–W–32, 297; Tedmar, Inc., Newark, NJ: April 18, 1995.
TA–W–32, 106; ABTco, Inc., Hardboord Div., Alpino, MI: March 7, 1995.
TA–W–32, 089; Paper Converting Machine Co., Green Bay, WI: March 3, 1995.
TA–W–32, 120; Kellogg Co., Battle Creek, MI: March 20, 1995.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of May, 1996.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada or articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the Investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations.

There was not shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–00904; Steele Manufacturing Co., Steele, MO
NAFTA–TAA–00953; L. Chessler Co., Philadelphia, PA
NAFTA–TAA–00927; Ogden Atlantic Design Poughkeepsie, NY
NAFTA–TAA–00958; Fox Point Sportswear, Inc., Ironwood, MI
NAFTA–TAA–00902; Kinney Shoe Corp., Beaver Springs, PA
NAFTA–TAA–01019; E.I. Dupont De Nemours & Co., Inc., Chambers Works, Deepwater, NJ
NAFTA–TAA–00920; AT&T Corp., NCR Corp., Viroqua, WI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–00921; General Electric Appliances, Little Rock Distribution Center, Little Rock, AR
NAFTA–TAA–00967; CTS Corporation, Brownsville, TX
NAFTA–TAA–00965; Sony Electronics, National Refurbishing Center—Sony Service Operations, Corol Stream, IL
NAFTA–TAA–00961; Fashion Development Center, Inc., El Paso, TX

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–00926; Palm Beach Co., A Div. of Plaid Holding Co., Knoxville, TN; March 14, 1995.
NAFTA–TAA–00968; Hummingbird Communications Ltd. (Formerly Beame & Whiteside, Inc.), Production & Technical Support Div., Raleigh, NC
NAFTA–TAA–00952; Scotts Hill Leisurewear, Inc., A Wholly Owned Subsidiary of I. Appel Corp., Scotts Hill, TN: March 28.
NAFTA–TAA–00957; Cargill, Inc., Beaumont, TX: March 27, 1995.
NAFTA–TAA–00949; Salvatrice Shoe, Inc., Blackshear, GA: March 29, 1995.
NAFTA–TAA–00943; J.C. Decker Co., Inc., Montgomery, PA: March 27, 1995.

NAFTA–TAA–00946; Montana Power Co., Colstrip Project Div., Colstrip, MT, OR: April 1, 1995.

NAFTA–TAA–00929; Elf Atochem North America, Inc., Fine Chemicals—Organic Peroxides, Town of Tonawonda, NY: March 22, 1995.

NAFTA–TAA–00982; Cambridge Industries, Inc., Commercial Truck Group, Ionia, MI: April 9, 1995.

NAFTA–TAA–00997; Thomas & Betts Corp., Amerace Electronic Components, Punta Gorda, AL: April 11, 1995.

NAFTA–TAA–00978; EMC Motor Co., Clearfield, UT: April 12, 1995.

NAFTA–TAA–00937; Eagle Garment Finishing, Inc., El Paso, TX: March 18, 1995.

NAFTA–TAA–00944; Dataproducts Corp., Norcross, GA: April 1, 1995.

I hereby certify that the aforementioned determinations were issued during the month of May 1996. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 16, 1996.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–13108 Filed 5–23–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,172]

Bates of Maine, Incorporated Lewiston, Maine; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 8, 1996 in response to a worker petition which was filed on March 27, 1996 on behalf of workers at Bates of Maine, Inc., Lewiston, Maine.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C., this 14th day of May, 1996

Russel T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–13111 Filed 5–23–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,101]

Breed Technologies, Inc. Breed Automotive, L.P. Brownsville, Texas; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of April 26, 1996, one of the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers of the subject firm. The denial notice was signed on March 28, 1996, and published in the **Federal Register** on April 9, 1996 (61 FR 15832).

The petitioner presents evidence that the worker group did not provide a service, but instead produced a product.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C. this 3rd day of May 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–13117 Filed 5–23–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,100; TA–W–32,100A]

Cole Haan Manufacturing Division, Lewiston, Maine and Livermore Falls Location, Livermore, Maine; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 25, 1996, applicable to all workers of Cole Haan, Cole Haan Manufacturing Division, Lewiston, Maine. The notice was published in the **Federal Register** on April 9, 1996 (61 FR 15833).

At the request of State Trade Coordinator, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations have occurred at the subject firms' Livermore, Maine location. The workers are engaged in the production of moccasins for Cole Haan manufacturing facilities.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of moccasins. Accordingly, the Department is amending the certification to cover the workers of Cole Haan, Livermore Falls location, Livermore, Maine.

The amended notice applicable to TA–W–32,100 is hereby issued as follows:

"All workers of Cole Haan, Cole Haan Manufacturing Division, Lewiston, Maine (TA–W–32,100), and Cole Haan, Livermore Falls location, Livermore, Maine (TA–W–32,100A) engaged in employment related to the production of moccasins who became totally or partially separated from employment on or after March 11, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 10th day of May 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–13110 Filed 5–23–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,050]

GEOMARTEC, Houston, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 18, 1996 in response to a worker petition which was filed on February 26, 1996 on behalf of workers of Geomartec, Houston, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 9th day of May, 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–13115 Filed 5–23–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,356; TA–W–31,356F]

Jeld-Wen of Bend/Bend Millwork Including Pozzi Window and Bend Door Company, Bend, Oregon and Jeld-Wen of Arizona, Flagstaff, Arizona; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on September 21, 1995, applicable to all workers of Jeld-Wen of Bend/Bend Millwork, Bend, Oregon. The notice was published in the **Federal Register** on October 5, 1995 (60 FR 52213). The worker certification was amended October 24, 1995, to include workers at Pozzi Window and Bend Door Company, also located in Bend, Oregon. The amended notice was published in the **Federal Register** on November 7, 1995, (60 FR 56172).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New finding show that worker separations have occurred at other production facilities of the subject firm in Flagstaff, Arizona. The workers at the Flagstaff plant also produce commodity millwork.

The intent of the Department's certification is to include all workers of Jeld-Wen of Arizona, Flagstaff, Arizona, who were adversely affected by increased imports. Accordingly, the Department is again amending the certification to include all workers of Jeld-Wen of Arizona, Flagstaff, Arizona.

The amended notice applicable to TA–W–31,356 is hereby issued as follows:

"All workers of Jeld-Wen of Bend/Bend Millwork, including Pozzi Window and Bend Door Company, Bend, Oregon (TA–W–31,356), and Jeld–Wen of Arizona, Flagstaff, Arizona (TA–W–31,356F), who became totally or partially separated from employment on or after August 9, 1994, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 7th day of May, 1996.

Russell T. Kile,

Acting Program Manger, Office of Trade Adjustment Assistance.

[FR Doc. 96–13120 Filed 5–23–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30, 593; TA–W–30,593F]

Pyke Manufacturing Company; Salt Lake City, Utah, New York, New York; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued an Amended Certification of Eligibility to Apply for Worker Adjustment Assistance on April 5, 1995, applicable to all workers at Pyke Manufacturing, located in Salt Lake City, Utah. The notice was published in the **Federal Register** on April 18, 1995 (60 FR 19416).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The State reports that sales staff of Pyke Manufacturing in New York City were excluded from the worker certification. Accordingly, the Department is amending the worker certification to include workers of the subject firm located in New York, New York.

The intent of the Department's certification is to include all workers of Pyke Manufacturing Company adversely affected by imports.

The amended notice applicable to TA–W–30, 593 is hereby issued as follows:

"All workers of Pyke Manufacturing Company, Salt Lake City, Utah (TA–W–30, 593), and New York, New York (TA–W–30, 593) who became totally or partially separated from employment on or after December 13, 1993, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 9th day of May 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–13112 Filed 5–23–96; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than June 3, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than June 3, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210.

Signed at Washington, DC this 6th day of May, 1996.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 05/06/96]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,289	Red Kap Industries (Wkrs)	Vienna, GA	04/07/96	Work Apparel—Coveralls, Outerwear.
32,290	Keystone Powdered Metal (Wkrs)	St. Marys, PA	04/18/96	Powdered Metal Automotive Parts.
32,291	Swanknit, Inc (UNITE)	Cohoes, NY	04/26/96	Layettes for Infants.
32,292	Quaker State Corp. (Wkrs)	Belpre, OH	04/18/96	Oil and Gas.
32,293	A.H. Schreiber (UNITE)	Cinnaminson, NJ	04/22/96	Bathing Suits.
32,294	Holston Garment Mfg. Co (Co.)	Bristol, TN	04/19/96	Nuns Habits (Blouses & Skirts).
32,295	Mariners Astubeco, Inc. (Wkrs)	Edgewater, NJ	04/08/96	Tubing & Pipes for the Boilers.
32,296	Isenberg Enterprises, Inc (Co.)	Salt Lake City, UT	04/19/96	Ladies' Active Sportswear.

APPENDIX—Continued
[Petitions Instituted on 05/06/96]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,297	Tedmar, Inc. (UNITE)	Newark, NJ	04/23/96	Ladies', Men's Coats.
32,298	Tampa Mill Div (Wkrs)	Tampa, FL	04/22/96	Concrete Reinforcing Steel Bars.
32,299	New Trend Sportswear (Wkrs)	Selinsgrove, PA	04/23/96	Ladies' Sweatshirts, Children's Shorts.
32,300	Mallory and Church Corp. (Wkrs)	Chula Vista, CA	04/26/96	Men's Silk Ties.
32,301	Thorngate LTD (UNITE)	Chaffee, MO	04/24/96	Men's Dress Slacks & Suit Pants.
32,302	Elwell Parker Electric Co (IBEW)	Cleveland, OH	04/25/96	Industrial Lift Trucks.
32,303	Shaw Industries, Inc (Wkrs)	Trenton, SC	04/18/96	Carpet Fiber.
32,304	Lanz, LLC (Wkrs)	Culver City, CA	04/10/96	Ladies' Dresses & Sportswear.
32,305	LTNY, Inc. (Wkrs)	Miami, FL	04/17/96	Children's Sportswear.
32,306	B. Braun Medical, Inc. (Co.)	Plymouth, MN	04/25/96	Disposable Plastic Medical Products.
32,307	Nabors Drilling Co. (Wkrs.)	Oklahoma City, OK	04/18/96	Provide Services—Petroleum Industries.
32,308	Hanover II (Co.)	Pawtucket, RI	04/16/96	Costume Jewelry.
32,309	Cominco American, Inc. (USA)	Spokane, WA	03/26/96	Fertilizer & Indust. Chemical Warehouse.
32,310	Crown Pacific (TAMAW)	Oldtown, ID	04/22/96	Lumber & Lumber By Products.
32,311	United Technologies Auto (Wkrs)	El Paso, TX	04/19/96	Electrical Harnesses.
32,312	Cambridge Industries (IUE)	Ionia, MI	04/09/96	Automotive Plastic Parts.
32,313	Therm-O-Disc (Wkrs)	Newaygo, MI	03/20/96	Electric Components.
32,314	Madeira Twin Fashions (UNITE)	New Bedford, MA	04/23/96	Ladies' Coats & Raincoats.
32,315	Poughkeepsie Finishing (Wkrs)	Paterson, NJ	04/24/96	Dying of Fabrics.

[FR Doc. 96–13116 Filed 5–23–96; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–32,060; TA–W–32,060A]

Rhubarb Fashions, Jersey City, New Jersey and New York, New York; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 18, 1996, applicable to all workers at Rhubarb Fashions, located in Jersey City, New Jersey. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New findings show that workers at the showroom of Rhubarb Fashions in New York, New York were inadvertently excluded from the certification. Accordingly, the Department is amending the worker certification to include workers of the subject firm located in New York, New York.

The intent of the Department's certification is to include all workers of Rhubarb Fashions adversely affected by imports.

The amended notice applicable to TA–W–32,060 is hereby issued as follows:

"All workers of Rhubarb Fashions, Jersey City, New Jersey (TA–W–32,060), and New York, New York (TA–W–32,060A) who became totally or partially separated from employment on or after February 28, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 10th day of May 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–13109 Filed 5–23–96; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–32, 092]

Superior Garments Inc., Winder, GA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 25, 1996 in response to a worker petition which was filed on February 29, 1996 on behalf of workers at Superior Garments Inc., Winder, Georgia.

All workers were separated from the subject firm on February 2, 1996 more than one year prior to the date of the petition. Section 223 of the Acts specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 13th day of May, 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–13113 Filed 5–23–96; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–32,025]

Winona Knitting Mills, Inc. Berwick Knitwear (Formerly Komar & Sons Berwick Knitwear) Berwick, Pennsylvania; Notice of Revised Determination on Reconsideration

On April 27, 1996, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice will soon be published in the **Federal Register**.

Investigation findings show that the workers produced sweaters. The workers were denied TAA because the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met.

New investigation findings on reconsideration show that the articles manufactured by Winona Knitting Mills have been impacted importantly by the high penetration of imports into this market. U.S. import statistics for men's and boys', and women's and girls' sweaters show that the ratio of imports to U.S. shipments was more than 200% in both 1994 and 1995.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers of Winona Knitting Mills, Inc. of Berwick, Pennsylvania were adversely affected by increased imports of articles like or directly competitive with sweaters produced at the subject firm.

"All workers of Winona Knitting Mills, Inc., Berwick Knitwear, Formerly Komar & Sons Berwick Knitwear, Berwick Pennsylvania who became totally or partially separated from employment on or after February 26, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 3rd day of May 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–13118 Filed 5–23–96; 8:45 am]
BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility to Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Program Manager of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment of after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Program Manager of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C. provided such request is filed in writing with the Program Manager of OTAA not later than June 3, 1996.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Program Manager of OTAA at the address shown below not later than June 3, 1996.

Petitions filed with the Governors are available for inspection at the Office of the Program Manager, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 14th day of May, 1996.

Russell T. Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received at governor's office	Petition no.	Articles produced
A.H. Schreiber Company, Inc. (UNITE)	Cinnaminson, NJ	04/24/96	NAFTA–00998	Bathing Suits.
Zena Enterprises (Wkrs)	New York, NY	04/16/96	NAFTA–00999	Jeans.
American Olean Tile (USWA)	Lansdale, PA	04/30/96	NAFTA–01000	Ceramic wall tile.
UNISYS; Midwest Operations (IBEW)	Roseville, MN	04/29/96	NAFTA–01001	Computer Sub-Assembly for Mid & Main fram computers
J.P. Apparel, Inc. (Co.)	Hardyville, KY	05/02/96	NAFTA–01002	Ladies Pants.
ASARCO (Co.)	Omaha, NE	05/01/96	NAFTA–01003	Refined lead, bismuth, silver, gold and antimony.
Telex Communications, Inc. (Wkrs)	LeSueur, MN	04/30/96	NAFTA–01004	Audio Equipment.
Lanz, LLC, Inc. (Wkrs)	Culver City, CA	05/03/96	NAFTA–01005	Materials for clothing.
Kenting Apollo Drilling, Inc. (Wkrs)	Mills, WY	05/03/96	NAFTA–01006	Oil and Gas Contractor.
Alcoa Fujikara (Wkrs)	Dearborn Height, MI.	04/16/96	NAFTA–01007	Protoype electrical harnessee.
Big J. Apparel (Co.)	Waco, TX	04/29/96	NAFTA–01008	Blue Jean pants.
Shaw Industries Workers	Dalton, GA	05/06/96	NAFTA–01009	Fibers for carpet.
Mallory and Church Corp. (Wkrs)	Seattle, WA	05/06/96	NAFTA–01010	Ties.
Allied Signal, Inc. (Co.)	Greenville, AL	04/08/96	NAFTA–01011	Seat belt and air bag assembly components.
Red Kap Industries (Wkrs)	Vienna, GA	04/25/96	NAFTA–01012	Coveralls.
Greenfield Research, Inc. (Co.)	Greenfield, OH	05/07/96	NAFTA–01013	Automotive Seat Covers.
VDO Yazaki Corporation (Co.)	Winchester, VA	05/03/96	NAFTA–01014	Automotive Instrumentation.
AUX (Wkrs)	Myrle Beach, SC	05/09/96	NAFTA–01015	Leaded parts.
Thomas and Betts (IUC)	Strongsville, OH	05/03/96	NAFTA–01016	Electrical Construction and Maintenance Components.
PBB USA, Inc. (Wkrs)	Buffalo, NY	05/09/96	NAFTA–01017	Computer software and hardware.
Johnson Controls, Inc.; Systems and Service Division (IAMAW).	Milwaukee, WI	05/08/96	NAFTA–01018	Valve Actuator Assembly.
E.I. DuPont; Chambers Works (CWA)	Deepwater, NJ	03/15/96	NAFTA–01019	Various chemicals.
OZ's Apparel, Inc. (Co.)	Pacoima, CA	05/07/96	NAFTA–01020	Garment.
Bel Aire Bridal, Inc. (Wkrs)	Torrance, CA	05/08/96	NAFTA–01021	Womens apparel, dresses.

[FR Doc. 96–13144 Filed 5–23–96; 8:45 am]
BILLING CODE 4510–30–M

[NAFTA–00838]

Winona Knitting Mills, Inc. Berwick Knitwear (Formerly Komar & Sons Berwick Knitwear) Berwick, Pennsylvania; Notice of Revised Determination On Reconsideration

On April 27, 1996, The Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration for workers of Winona Knitting Mills, Inc., Berwick Knitwear, Formerly Komar & Sons Berwick Knitwear, Berwick, Pennsylvania, to apply for NAFTA-Transitional Adjustment Assistance (NAFTA–TAA). The notice will soon be published in the **Federal Register**.

Investigation findings show that the workers produced sweaters. The workers were denied NAFTA–TAA because criteria (3) and (4) of the group eligibility requirements in paragraph (a)(1) of Section 250 of the Trade Act of 1974, as amended, were not met. Investigation findings showed that Winona Knitting Mills did not import sweaters from Mexico or Canada, nor did Winona shift production of sweaters to Mexico or Canada.

New investigation findings on reconsideration shows that the articles manufactured by Winona Knitting Mills have been impacted importantly by imports of sweaters from Mexico and Canada. U.S. import statistics for sweaters from Mexico and Canada show imports increased significantly during the time period relevant to the investigation. The quantity of U.S. imports of sweaters increased 65% from 1993 to 1994, and by almost 125% from 1994 to 1995.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers of Winona Knitting Mills, Inc. of Berwick, Pennsylvania were adversely affected by increased imports from Mexico and Canada of articles like or directly competitive with sweaters produced at the subject firm.

"All workers of Winona Knitting Mills, Inc., Berwick Knitwear, Formerly Komar & Sons Berwick Knitwear, Berwick Pennsylvania who became totally or partially separated from employment on or after February 26, 1995 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, DC this 8th day of May 1996.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–13119 Filed 5–23–96; 8:45 am]
BILLING CODE 4510–30–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good causes is hereby found for not utilizing notice and public comment procedure theron prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rate and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State:

Volume I

Maine
ME960042 (MAY 24, 1996)

Volume IV

Indiana
IN960059 (MAY 24, 1996)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Maine
ME960020 (MARCH 15, 1996)
New York
NY960009 (MARCH 15, 1996)

Volume II

Pennsylvania
PA960005 (MARCH 15, 1996)

Volume III

Florida
FL960009 (MARCH 15, 1996)

Volume IV

Illinois
IL960018 (MARCH 15, 1996)
Indiana
IN960016 (MARCH 15, 1996)

Volume V

Iowa
IA960005 (MARCH 15, 1996)
Texas
TX960005 (MARCH 15, 1996

Volume VI

North Dakota
ND960004 (MARCH 15, 1996)
Wyoming
WY960005 (MARCH 15, 1996)

Note: The dates of publications of general wage determinations reflected in the **Federal Register** of May 8, 1996 were shown as May 10, 1996. That date should have been March 15, 1996 in every instance.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C., this 17th day of May 1996.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 96–12808 Filed 5–23–96; 8:45 am]
BILLING CODE 4510–27–M

LEGAL SERVICES CORPORATION

Notice of Availability of 1997 Competitive Grant Funds

AGENCY: Legal Services Corporation.

ACTION: Solicitation for Proposals for the Provision of Civil Legal Services.

SUMMARY: The Legal Services Corporation (LSC or Corporation) is the national organization charged with administering federal funds provided for civil legal services to the poor. Congress has adopted legislation requiring LSC to utilize a system of competitive bidding for the award of grants and contracts for calendar year 1997.

The Corporation hereby announces the availability of competitive grant funds and is soliciting grant proposals from interested parties who are qualified to provide effective, efficient, and high quality civil legal services to eligible clients in the fifty states, the District of Columbia, Guam, Micronesia, Puerto Rico, and the U.S. Virgin Islands. Currently, the amount of available funds and the date, terms and conditions of their availability have not been determined.

DATES: Request for Proposals (RFP) will be available after June 21, 1996. Grant proposals must be received at LSC offices by 5:00 p.m. EST, August 21, 1996.

ADDRESSES: Legal Services Corporation—Competitive Grants, 750 First Street NE, 10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Merceria L. Ludgood, Director, Office of Program Services, (202) 336–8800.

SUPPLEMENTARY INFORMATION: LSC is seeking proposals from recipients, other non-profit organizations that have as a purpose the furnishing of legal assistance to eligible clients, private attorneys, groups of private attorneys, or law firms, State or local governments, and substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials.

The solicitation package, containing the grant application, guidelines, proposal content requirements, and specific selection criteria, is available by contacting the Corporation by letter, phone or FAX. In addition, the solicitation package will be available "on-line" and from Handsnet and the LSC Bulletin Board. LSC will not FAX the solicitation package to interested parties; however, solicitation packages may be requested by FAX. The Corporation may be contacted at: (202) 336–8900; FAX (202) 336–7272; HANDSNET: HN 3555; LSC BBS: (202) 336–8950.

Date Issued: May 21, 1996.

Merceria L. Ludgood,

Director, Office of Program Services.

[FR Doc. 96–13139 Filed 5–23–96; 8:45 am]
BILLING CODE 7050–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–263, 50–282, 50–306 and 72–10]

Northern States Power Co.; Monticello Nuclear Generating Plant, Prairie Island Nuclear Generating Plant, Units 1 and 2, and Prairie Island Independent Spent Fuel Storage Instaliation; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering approval of the transfer of, and issuance of amendments to Facility Operating Licenses Nos. DPR–22, DPR–42, DPR–60, and SNM–2506 issued to Northern States Power Company, (the licensee), for operation of the Monticello Nuclear Generating Plant, located in Wright County, Minnesota, and the Prairie Island Nuclear Generating Plant, Units 1 and 2, and the Prairie Island Independent Spent Fuel Storage Installation (ISFSI) located in Goodhue County, Minnesota.

Environmental Assessment

Identification of the Proposed Actions

The proposed actions would consent to the transfer of control of the operating licenses, and amend them to reflect the transfer of control of the licenses for the Monticello Nuclear Generating Plant, the Prairie Island Units 1 and 2 Nuclear Generating Plants, and the Prairie Island Independent Spent Fuel Storage Installation facility, held by Northern States Power Company (NSP). Following a series of transactions, NSP

will become a wholly owned subsidiary of Wisconsin Energy Corporation (WEC), the parent company of Wisconsin Electric Power Company (WEPCO). WEC will be renamed Primergy Corporation (Primergy) and will own two operating utility subsidiaries: (1) Northern States Power Company, which will be reincorporated in Wisconsin and merged with a newly formed WEC/Primergy subsidiary, and (2) WEPCO, which will be named Wisconsin Energy Company. The merged NSP will continue to operate the same facilities above in the same locations. The proposed action is in accordance with NSP's applications dated October 20, 1995, and December 6, 1995.

The Need for the Proposed Actions

The proposed actions are required to approve and reflect the transfer of control of the licenses discussed above. The transfer and amendments reflecting the transfer of control will have minimal impact on the operation of the facilities by NSP. The transfer and amendment will not affect the facilities' Technical Specifications or license conditions.

Environmental Impacts of the Proposed Actions

The Commission has completed its evaluation of the proposed transfer of control of the licenses and related license amendments and concludes that there will be no changes to the Monticello, Prairie Island Units 1 and 2, and Prairie Island ISFSI facilities, or to the environment as a result of these actions. The transfer of control of the licenses and the associated license amendments will not affect the qualifications or organizational affiliation of the personnel who operate the facilities, as NSP will continue to be responsible for the operation of the Monticello and Prairie Island facilities.

The Commission has evaluated the environmental impact of the proposed actions and has determined that the probability or consequences of accidents would not be increased by the transfer of control and issuance of related amendments, and that post-accident radiological releases would not be greater than previously determined. Further, the Commission has determined that the transfer of control and issuance of related amendments would not affect routine radiological plant effluents and would not increase occupational radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed actions.

With regard to potential nonradiological impacts, the transfer of control and related amendments would not affect nonradiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed actions.

Alternative to the Proposed Actions

Since the Commission has concluded that the environmental effects of the proposed actions are not significant, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative would be to deny the requested approvals. Denial of the applications would result in no change in current environmental impacts. The environmental impacts of the proposed actions and the alternative action are identical.

Alternative Use of Resources

These actions do not involve the use of any resources not previously considered in the Final Environmental Statements for the Monticello Nuclear Generating Plant dated November 22, 1972, the Prairie Island Nuclear Generating Plant dated May 1973, and the Prairie Island ISFSI dated April 1991.

Agencies and Persons Contacted

In accordance with its stated policy, the NRC staff consulted with the Minnesota State official, Mr. Michael McCarthy of the Department of Public Services, on May 6, 1996, regarding the environmental impact of the proposed actions. Mr. McCarthy had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed actions will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed actions.

For further details with respect to the proposed actions, see the licensee's submittals dated October 20 and December 6, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Md., this 17 day of May 1996.

For the Nuclear Regulatory Commission,

Mark Reinhart,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–13098 Filed 5–23–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To The Congress of The United States:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report one revised deferral of budgetary resources, totaling $1.4 billion. The deferral affects the International Security Assistance program.

William J. Clinton

The White House,

May 14, 1996.

BILLING CODE 3110–01–M

CONTENTS OF SPECIAL MESSAGE

(in thousands of dollars)

Deferral No.	ITEM	Budgetary Resources
	Funds Appropriated to the President:	
	International Security Assistance:	
D96-4A	Foreign military financing program	1,385,166
	Total, deferral	1,385,166

BILLING CODE 3110–01–C

Supplemental Report—Report Pursuant to Section 1014(c) of Public Law 93–344

This report updates Deferral No. D96–4, which was transmitted to Congress on February 23, 1996.

This revision increases by $25,853 the previous deferral of $1,385,140,000 in the International Security Assistance, Foreign military financing program, resulting in a total deferral of $1,385,165,853. This increase results from the deferral of funds made available from reimbursements.

BILLING CODE 3110–01–M

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... $ 3,208,390,000 (P.L. 104- 107)
BUREAU: International Security Assistance	Other budgetary resources... $ * 55,853
Appropriations title and symbol: Foreign military financing program (FMF) 1/ 1161082	Total budgetary resources.... $ 3,208,445,853
	Amount to be deferred: Part of year..... $ * 1,385,165,853 Entire year..... _____
OMB identification code: 11-1082-0-1-152	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [X] Yes [ ] No	[ ] Other _____
Type of account or fund: [X] Annual [ ] Multi-year: _____ (expiration date) [ ] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

JUSTIFICATION: The President is authorized by the Arms Export Control Act to sell or finance by credit, loan guarantees, or grants, articles and defense services to friendly countries to facilitate the common defense. Under Section 2 of the Act, the Secretary of State, under the direction of the President, is responsible for sales made under this Act. Executive Order 11958 further requires the Secretary of State to obtain prior concurrence of the Secretaries of Defense and Treasury, respectively, regarding consistency of transactions with national security and financial policies.

This action defers funds pending review of specific grants to eligible countries by the Departments of State, Treasury, and Defense. The review process will ensure that in each proposed program the proposed recipients are qualified and that the limits of available funds are not exceeded. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1995 (D95-2).

[FR Doc. 96–13053 Filed 5–23–96; 8:45 am]
BILLING CODE 3110–01–M

Cumulative Report on Rescissions and Deferrals

May 1, 1996.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of May 1, 1996, of 24 rescission proposals and six deferrals contained in six special messages for FY 1996. These messages were transmitted to Congress on October 19, 1995; and on February 21, February 23, March 5, March 13, and April 12, 1996.

Rescissions (Attachments A and C)

As of May 1, 1996, 24 rescission proposals totaling $1.4 billion had been transmitted to the Congress. Congress approved eight of the Administration's rescission proposals in Public Law 104–134. A total of $963.4 million of the rescissions proposed by the President was rescinded by that measure. Attachment C shows the status of the FY 1996 rescission proposals.

Deferrals (Attachments B and D)

As of May 1, 1996, $2,693.2 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1996.

Information From Special Message

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the editions of the **Federal Register** cited below:

60 FR 55154, Friday, October 27, 1995
61 FR 8691, Tuesday, March 5, 1996
61 FR 10812, Friday, March 15, 1996
61 FR 13350, Tuesday, March 26, 1996
61 FR 17915, Tuesday, April 23, 1996

Alice M. Rivlin,
Director.

BILLING CODE 3110–01–M

ATTACHMENT A

STATUS OF FY 1996 RESCISSIONS
(in millions of dollars)

	Budgetary Resources
Rescissions proposed by the President.....	1,425.9
Rejected by the Congress.....	-0.1
Amounts rescinded by P.L. 104-134.....	-963.4
Currently before the Congress.....	462.4

ATTACHMENT B

STATUS OF FY 1996 DEFERRALS
(in millions of dollars)

	Budgetary Resources
Deferrals proposed by the President.....	3,689.6
Routine Executive releases through May 1, 1996..... (OMB/Agency releases of $996.6 million, partially offset by cumulative positive adjustment of $4 thousand.)	-996.4
Overturned by the Congress.....	---
Currently before the Congress.....	2,693.2

ATTACHMENT C
Status of FY 1996 Rescission Proposals - As of May 1, 1996
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF AGRICULTURE								
Cooperative State Research, Education, and Extension Service								
Buildings and facilities	R96-8	12,000		3-5-96	12,000	5-6-96		
DEPARTMENT OF DEFENSE								
Procurement								
Aircraft procurement, Army	R96-11	140,000		4-12-96				
Procurement of ammunition, Army	R96-12	47,200		4-12-96				
Other procurement, Army	R96-13	5,800		4-12-96				
Procurement of ammunition, Navy and Marine Corps	R96-15	10,000		4-12-96				
Shipbuilding and conversion, Navy	R96-14	9,200		4-12-96				
Missile procurement, Air Force	R96-1		310,000	2-21-96			310,000	P.L. 104-134
Other procurement, Air Force	R96-2		265,000	2-21-96			265,000	P.L. 104-134
National guard and reserve equipment	R96-16	13,600		4-12-96				
Research, Development, Test, and Evaluation								
Research, development, test, and evaluation								
Army	R96-4		19,500	2-23-96			19,500	P.L. 104-134
	R96-17	9,600		4-12-96				
Research, development, test, and evaluation								
Navy	R96-5		35,000	2-23-96			35,000	P.L. 104-134
	R96-18	39,800		4-12-96				
Research, development, test, and evaluation								
Air Force	R96-3		245,000	2-21-96			245,000	P.L. 104-134
	R96-6		44,900	2-23-96			44,900	P.L. 104-134
	R96-19	58,000		4-12-96				

1/ Funds never withheld from obligation.

ATTACHMENT C
Status of FY 1996 Rescission Proposals - As of May 1, 1996
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF DEFENSE - Continued								
Research, development, test, and evaluation								
Defense-wide	R96-7		40,600	2-23-96			40,600	P.L. 104-134
	R96-20	67,200		4-12-96				
Military Construction								
Military contruction, Army	R96-21	10,000		3-13-96				
Military contruction, Navy	R96-22	8,000		3-13-96				
Military contruction, Air Force	R96-23	15,000		3-13-96				
Military contruction, Defense-wide	R96-24	13,000		3-13-96				
Military contruction, Air National Guard	R96-25	4,000		3-13-96				
GENERAL SERVICES ADMINISTRATION								
Real Property Activities								
Federal buildings fund	R96-9	3,500		3-5-96	1/		3,400	P.L. 104-134
TOTAL RESCISSIONS		465,900	960,000		12,000		963,400	

1/ Funds never withheld from obligation.

ATTACHMENT D
Status of FY 1996 Deferrals - As of May 1, 1996
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 5-1-96
FUNDS APPROPRIATED TO THE PRESIDENT								
International Security Assistance								
Economic support fund and international Fund for Ireland	D96-1	75,000				10-19-95		1,127,257
	D96-1A		1,942,076	889,823		2-23-96	4	2,693,228
Foreign military financing program	D96-4	1,385,140				2-23-96		1,385,140
Foreign military financing loan program	D96-5	64,400				2-23-96		64,400
Agency for International Development								
International disaster assistance, Executive	D96-6	124,625		84,000		2-23-96		40,625
DEPARTMENT OF STATE								
Other								
United States emergency refugee and migration assistance fund	D96-3	40,486		22,546		10-19-95		68,486
	D96-3A		50,545			3-5-96		
SOCIAL SECURITY ADMINISTRATION								
Limitation on administrative expenses	D96-2	7,321				10-19-95		7,321
TOTAL, DEFERRALS		1,696,972	1,992,621	996,369			4	05/08/96

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 21964; 812–9860]

Franklin Templeton Fund Manager, et al.; Notice of Application

May 20, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment. Company Act of 1940 (the "Act").

APPLICANTS: Franklin Templeton Fund Manager ("FTFM"); Franklin Gold Fund; Franklin Premier Return Fund; Franklin Equity Fund; AGE High Income Fund, Inc.; Franklin Custodian Funds, Inc.; Franklin Money Fund; Franklin California Tax-Free Income Fund, Inc.; Franklin Federal Money Fund; Franklin Tax-Exempt Money Fund; Franklin New York Tax-Free Income Fund, Inc.; Franklin Federal Tax-Free Income Fund; Franklin Tax-Free Trust; Franklin California Tax-Free Trust; Franklin New York Tax-Free Trust; Franklin Investors Securities Trust; Institutional Fiduciary Trust; Franklin Value Investors Trust; Franklin Tax-Advantaged International Bond Fund; Franklin Tax-Advantaged High Yield Securities Fund; Franklin Tax-Advantaged U.S. Government Securities Fund; Franklin Strategic Mortgage Portfolio; Franklin Municipal Securities Trust; Franklin Managed Trust; Franklin Strategic Series; Adjustable Rate Securities Portfolios; The Money Market Portfolios; Midcap Growth Portfolio; The Portfolios Trust; Franklin International Trust; Franklin Real Estate Securities Trust; Franklin Templeton Money Fund Trust; Franklin Valuemark Funds; Franklin Government Securities Trust; Franklin Templeton Global Trust (collectively, the "Franklin Funds"); Franklin Templeton Japan Fund; Templeton Variable Products Series Fund; Templeton Growth Fund, Inc.; Templeton Funds, Inc.; Templeton Smaller Companies Growth Fund, Inc.; Templeton Income Trust; Templeton Real Estate Securities Fund; Templeton Global Investment Trust; Templeton Global Opportunities Trust; Templeton American Trust, Inc.; Templeton Institutional Funds, Inc.; Templeton Developing Markets Trust (collectively, the "Templeton Funds") (the Franklin Funds and the Templeton Funds are collectively referred to as the "Franklin Templeton Group of Funds"); any future open-end investment companies for which Franklin Advisers, Inc. (or any entities controlling, controlled by or under common control with Franklin Advisers, Inc.), Franklin Institutional Services Corporation (or any entities controlling, controlled by or under common control with Franklin Institutional Services Corporation), Templeton, Galbraith & Hansberger Ltd. (or any entities controlling, controlled by or under common control with Templeton, Galbraith & Hansberger Ltd.), Templeton Investment Counsel, Inc. (or any entities controlling, controlled by or under common control with Templeton Investment Counsel, Inc.), or Templeton Investment Management (Singapore) Pte. Ltd. (or any entities controlling, controlled by or under common control with Templeton Investment Management (Singapore) Pte. Ltd.) acts as investment adviser or for which Franklin/Templeton Distributors, Inc. (or any entities controlling, controlled by or under common control with Franklin/ Templeton Distributors, Inc.) acts as principal underwriter (the Franklin Funds, the Templeton Funds and such future funds are collectively referred to herein as the "Funds" which reference, unless hereinafter designated otherwise, is intended to include series of shares with different investment portfolios offered by such investment companies); and Franklin Advisers, Inc. ("FAI"), Franklin Institutional Services Corporation ("FISCO"), Templeton, Galbraith & Hansberger Ltd., Templeton Investment Counsel, Inc., Templeton Investment Management (Singapore) Pte. Ltd. (collectively, "Templeton Advisers") (FAI, FISCO and the Templeton Advisers are collectively referred to as the "Advisers" and each is individually referred to as an "Adviser") and Franklin/Templeton Distributors, Inc. ("FTDI" or "Distributor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act from section 12(d)(1) of the Act, and under sections 6(c) and 17(b) of the Act from section 17(a) of the Act.

SUMMARY OF APPLICATION: The requested order would permit series of the Franklin Templeton Fund Manager, which will be registered as an open-end management investment company, to invest substantially all of their assets in a combination of Franklin Funds and Templeton Funds.

FILING DATES: The application was filed on November 29, 1995, and amended on March 25, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 14, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Deborah R. Gatzek, Senior Vice President-Legal, Franklin Resources, Inc., 777 Mariners Island Boulevard, San Mateo, CA 94404.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenless, Senior Counsel, at (202) 942–0581, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. FTFM is a newly formed Delaware Business Trust that will be registered under the Act as an open-end management investment company. FTFM intends to offer shares in three open-end series, designated as Series I, II and III (the "Asset Allocation Series" or "Series"). Each Series intends to invest substantially all of its assets in a combination of Franklin Funds and Templeton Funds, each of which is an open-end management investment company, or series thereof (the "Underlying Funds"). While the Asset Allocation Series currently intends to invest in the Funds listed herein, the Series may also invest in any Fund in the Franklin Templeton Group of Funds currently existing or to be organized in the future.

2. The Asset Allocation Series will be designed for investors who wish to achieve their investment objectives of long-term total return in excess of the inflation rate by investing in one mutual fund that provides for professional asset allocation of investments among various Franklin Funds and Templeton Funds. Such asset allocation and, consequently, the percentage investment in the Underlying Funds, will be related to the investor's specific long-term investment goals.

3. Series I will be targeted to investors with shorter time horizons, including

those in or approaching retirement. Series II will be targeted to investors with medium-term horizons, including employees in mid-career. Series III will be targeted to investors with long-term horizons, including employees in their early career years. The Series would be marketed to both tax-exempt (*i.e.*, 401(k) Plans and IRAs) and taxable accounts as a vehicle for meeting specified investment planning goals, including, in particular, retirement funding.

4. The Underlying Funds are currently offered in a classes structure, either with Class I and Class II shares, or with a single class of shares subject to a pricing structure resembling that of Class I. With the exception of certain Templeton Funds which offer shares with a maximum front-end sales charge of 5.75%, most Class I shares, or shares of Funds offering only one class of shares, carry a maximum front-end sales charge of 4.50% for equity Funds and 4.25% for fixed income funds. The majority of Class I shares, or shares of funds offering only one class of shares, are offered with a Rule 12b–1 fee of a maximum of 0.25% for equity funds, 0.15% for taxable fixed income funds and 0.10% for tax-free fixed income funds, and a limited contingent deferred sales charge ("CDSC") for certain large purchases.

5. Class II shares carry a 1.00% front-end sales charge, a servicing fee of 0.15% for fixed income funds and 0.25% for equity funds and an asset-based sales charge of 0.50% for fixed income funds and 0.75% for equity funds. In addition, Class II shares carry a CDSC of 1.00% if shares are redeemed within the first eighteen months after purchase.

6. Applicant proposes that the Asset Allocation Series will invest in a third class of shares to be created for each Underlying Fund that currently offers two classes of shares (and a second class to be created for each Underlying Fund that currently offers only one class of shares) (collectively referred to herein as "Class III shares"). Such Class III shares would be sold to and redeemed by the Asset Allocation Series at net asset value without the imposition of any front-end or deferred sales charge, or redemption fee. In addition, Class III shares would not be subject to distribution fees under a rule 12b–1 plan.

7. It is proposed that the Asset Allocation Series would be created with a classes structure which mirrors the classes structure for the equity Underlying Funds; namely, each Asset Allocation Series would offer Class I and Class II shares, largely as described above. Class I shares of the Asset Allocation Series would be subject to rule 12b–1 distribution fees with a maximum charge of 0.25%. Class II shares of the Asset Allocation Series would be subject to rule 12b–1 plan fees with a servicing fee of 0.25% and an asset-based sales charge of 0.75%.

8. The Asset Allocation Series will bear all of their own expenses and, indirectly, their proportionate share of the expenses of each Underlying Fund. Generally, it is expected that the total expenses of the Asset Allocation Series, both direct and indirect, expressed as a percentage of net assets, will be slightly higher than what a shareholder would pay if he or she invested directly in the same mix of Underlying Funds, but within the range of total expenses incurred by equity funds in the Franklin Templeton Group of Funds.

9. FAI intends to provide advisory services, which include asset allocation advice, to the Asset Allocation Series, and will also provide the Series with administrative services. While the general investment advisory and administrative services will be furnished without charge, it is anticipated that FAI will charge an asset allocation fee of no more than 0.25% of average daily net assets of each Asset Allocation Series. Such fee will be for services that are in addition to, rather than duplicative of, advisory services being provided to the Underlying Funds. If FAI determines to charge an advisory fee for other advisory services, it will do so only in conformity with the requirements of the conditions to the requested order.

10. Franklin Templeton Investor Services, Inc. ("FTISTI") will serve as the shareholder servicing and transfer agent of the Asset Allocation Series. Bank of New York ("BONY") likely will serve as the custodian for the Asset Allocation Series. FTISI currently provides such shareholder servicing and transfer agency services to the Underlying Funds.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 6(c) provides that the SEC may exempt persons or transactions if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an order under section 6(c) exempting them from section 12(d)(1) to permit the Asset Allocation Series to invest in the Underlying Funds in excess of the percentage limitations of that section.

3. Section 12(d)(1) was intended to mitigate or eliminate actual or potential abuses which might arise when one investment company acquires shares of another investment company. These abuses include the acquiring fund imposing undue influence over the management of the acquired funds through the threat of large-scale redemptions, the acquisition by the acquiring company of voting control of the acquired company, the layering of sales charges, advisory fees, and administrative costs, and the creation of a complex pyramidal structure which may be confusing to investors. Applicants believe that none of these potential or actual abuses are present in their proposed fund of funds structure.

4. FAI would charge only a small asset allocation fee to the Asset Allocation Series. Such fee would be of services that are in addition to and not duplicative of the investment advisory services that are being furnished to the Underlying Funds. Thus, while shareholders of the Asset Allocation Series would pay indirectly their proportional share of the advisory fees paid by the Underlying Funds, applicants believe that there would be no duplication or layering of fees.

5. While the Asset Allocation Series will carry a front-end and deferred load structure, the Class III shares of the Underlying Funds selling to the Asset Allocation Series will not have any sales charges, front-end or deferred or redemption fee. Investors in the Asset Allocation Series, therefore, will not be subject to a "sales load on a sales load."

6. Applicants' proposal does not contemplate any duplicative distribution expenses. The Class III shares of the Underlying Funds that will sell their shares to the Asset Allocation Series will not carry Rule 12b–1 distribution fees. The Asset Allocation Series' Class I shares and Class II shares will be subject to Rule 12b–1 fees, in accordance with the normal equity fund Rule 12b–1 fees for funds in the Franklin Templeton Group of Funds. Thus, at all times, there will be no duplication of distribution fees paid by shareholders of FTFM.

7. Applicants assert that redemption threats and a concomitant risk of lost advisory fees are not a problem in the context of a fund of funds structure in which all of the funds are members of the same fund family. FTFM would be part of the same fund complex as the Underlying Funds and will only acquire shares of the Underlying Funds. Because the investment advisers to the Underlying Funds, as well as the Asset Allocation Series, would be affiliated, a redemption by an Asset Allocation Series from one Underlying Fund would simply lead to the placing of the proceeds into another Underlying Fund.

8. In addition to not containing the actual and potential abuses which led to the enactment of section 12(d)(1), applicants believe that the structure of the Asset Allocation Series would provide a number of benefits to its shareholders, including: (a) expense ratios only slightly higher than the weighted average of the expense ratios which an investor would pay were he or she to invest the same amount in a combination of Underlying Funds; (b) immediate and broad diversification resulting from the Asset Allocation Series' shareholders access to the existing investment portfolios of the Underlying Funds; and (c) efficient trading practices resulting from the Underlying Funds' ability to engage in block trading, which would enable them to acquire securities at more favorable prices than would smaller transactions.

B. Section 17(a)

1. Section 17(a) makes it unlawful for an affiliated person of a registered investment company, or an affiliated person of such person, to sell securities to, or purchase securities from, the company. The Asset Allocation Series and the Underlying Funds may be considered affiliated persons because they share common officers and/or directors/trustees. An Underlying Fund's issuance of its shares to the Asset Allocation Series may be considered a sale prohibited by section 17(a).

2. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general provisions of the Act. Applicants believe that the proposed transactions meet the standards of sections 6(c) and 17(b).[1]

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. FTFM and each Underlying Fund will be part of the same "group of investment companies," as defined in rule 11a–3 under the Act.

2. No Underlying Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

3. A majority of the trustees of FTFM will not be "interested persons," as defined in section 2(a)(19) of the Act.

4. Before approving any advisory contract under section 15 of the Act, the Board of Trustees of FTFM, including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19), shall find that advisory fees charged under such contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contact. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of FTFM.

5. Any sales charges or service fees charged with respect to securities of the Asset Allocation Series, when aggregated with any sales charges or service fees paid by the Asset Allocation Series with respect to shares of the Underlying Funds, shall not exceed the limits set forth in Article III, section 26, of the Rules of Fair Practice of the National Association of Securities Dealers, Inc.

6. Applicants agree to provide the following information, in electronic format, to the Chief Financial Analyst of the SEC's Division of Investment Management: monthly average total assets for each FTFM portfolio and each of its Underlying Funds; monthly purchases and redemptions (other than by exchange) for each FTFM portfolio and each of its Underlying Funds; monthly exchanges into and out of each FTFM portfolio and each of its Underlying Funds; month-end allocations of each FTFM portfolio's assets among its Underlying Funds; annual expense ratios for each FTFM portfolio and each of its Underlying Funds; and a description of any vote taken by the shareholders of any Underlying Funds, including a statement of the percentage of votes cast for and against the proposal by FTFM and by the other shareholders of the Underlying Funds. Such information will be provided as soon as reasonably practicable following each fiscal year-end of FTFM (unless the Chief Financial Analyst shall notify applicants in writing that such information need no longer be submitted).

[1] Section 17(b) applies to specific proposed transactions, rather than an ongoing series of future transactions. *See* Keystone Custodian Funds, 21 S.E.C. 295, 298–99 (1945). Section 6(c) frequently is used to grant relief from section 17(a) to permit an ongoing series of future transactions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13142 Filed 5–23–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21965; 812–10094]

National Equity Trust; Notice of Application

May 20, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: National Equity Trust.

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from section 12(d)(3) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order on behalf of itself and subsequently established series (the "Series") to permit each Series to invest up to 10% of its total assets in securities of an issuer that derives more than 15% of its gross revenues in its most recent fiscal year from securities related activities.

FILING DATE: The application was filed on April 22, 1996.

HEARING OR NOTIFICATION OF HEARING; An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 14, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature

of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o Prudential Securities Incorporated, One New York Plaza, New York, New York 10292, Attn: Richard R. Hoffmann.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or David M. Goldenberg, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Each Series will be a series of applicant, a unit investment trust registered under the Act. Prudential Securities Incorporated is applicant's depositor (the "Sponsor"). The Sponsor currently intends (but is not obligated) to offer a new Series at about the beginning of each calendar quarter.

2. Each Series' investment objective is to provide total return through a combination of potential capital appreciation and current dividend income. Each Series will invest approximately 10%, but in no event more than 10.5%,[1] of the value of its total assets in each of the ten common stocks in the Dow Jones Industrial Average (the "DJIA") with the highest dividend yields (the "Selected Ten"). Dividend yields will be calculated by annualizing the last quarterly or semiannual ordinary dividend distributed on a security and dividing the result by the market value of the security at the close of the New York Stock Exchange either on or shortly before such Series' initial date of deposit.

3. The DJIA comprises 30 widely-held common stocks listed on the New York Stock Exchange which are chosen by the editors of *The Wall Street Journal*. The DJIA is the property of Dow Jones & Company, Inc., which is not affiliated with any Series or the Sponsor, and does not participate in any way in the creation of any series or the selection of its stocks.

4. The securities deposited in each Series will be chosen solely according to the formula described above, and will not necessarily reflect the research opinions or buy or sell recommendations of the Sponsor. The Sponsor has no discretion as to which securities are purchased. Securities deposited in a Series may include securities of issuers that derived more than 15% of their gross revenues in their most recent fiscal year from securities related activities.

5. During the 90-day period following the initial date of deposit, the Sponsor may deposit additional securities while maintaining to the extent practicable the original proportionate relationship among the number of shares of each stock in the portfolio. Deposits made after this 90-day period must replicate exactly (subject to certain limited exceptions) the proportionate relationship among the number of shares of the securities comprising the portfolio at the end of the initial 90-day period, whether or not a stock continues to be among the Selected Ten.

6. A Series' portfolio will not be actively managed. Sales of portfolio securities will be made in connection with redemptions and at termination of the trust. The Sponsor has no discretion as to when securities will be sold except that it is authorized to direct the trustee to sell securities upon failure of the issuer of a security in the trust to declare or pay anticipated cash dividends, institution of certain materially adverse legal proceedings, default under certain documents materially and adversely affecting future declaration or payment of dividends, or the occurrence of other market or credit factors that, in the opinion of the Sponsor, would make retention of such securities in the trust detrimental to the interests of the unit holders, and to pay any deferred sales charge. The adverse financial condition of an issuer will not necessarily require the sale of its securities from a Series' portfolio.

Applicant's Legal Analysis

1. Section 12(d)(3) prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1(b) exempts from section 12(d)(3) purchases by an investment company of securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities related activities, provided that, among other things, immediately after such acquisition, the acquiring company has invested not more than 5% of the value of its total assets in securities of the issuer. Notwithstanding the above, rule 12d3–1(c) prohibits any registered investment company from acquiring any security issued by that company's investment adviser, promoter, or principal underwriter, or any affiliated person of such investment adviser, promoter, or principal underwriter.

2. Applicant seeks an exemption under section 6(c) from the provisions of section 12(d)(3) to permit any Series to invest up to approximately 10%, but in no event more than 10.5%, of the value of its total assets in securities of an issuer that derives more than fifteen percent of its gross revenues from securities related activities. Applicant and each Series will comply with all of the provisions of rule 12d3–1, except for the 5% limitation on the amount of assets that may be invested in securities of issuers that derived more than 15% of their gross revenues from securities related activities in their most recent fiscal year.

3. Applicant asserts that section 12(d)(3) was intended to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses, to prevent potential conflicts of interest, and to eliminate certain reciprocal practices between investment companies and securities related businesses.

4. One potential conflict discussed by applicant could occur if an investment company purchased securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares. Applicant believes that this concern does not arise in connection with its application because neither applicant nor the Sponsor has discretion in choosing the securities or percentage amount purchased. The security must first be included in the DJIA, which is unaffiliated with applicant or the Sponsor, and must also qualify as one of the Selected Ten as calculated by the objective formula.

5. Applicant also states that the effect of a Series' purchase on the stock of parents of broker-dealers would be *de minimis*. Applicant asserts that the common stocks of securities related issuers represented in the DJIA are widely held, have active markets, and that potential purchases by any Series would represent an insignificant amount of the outstanding common stock and the trading volume of any of these issues. Accordingly, applicant believes that it is highly unlikely that purchases of these securities by a Series would have any significant impact on the market value of any such securities.

6. Another potential conflict of interest discussed by applicant could occur if an investment company directed brokerage to a broker-dealer in which the company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though the broker-dealer may not offer the best price and execution. To preclude this type of conflict, applicant and each Series agree, as a condition of this application, that no company held in the portfolio of a Series nor any affiliate thereof will act as broker for any Series in the purchase or sale of any security for its portfolio.

7. Applicant states that the requested relief is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant's Condition

Applicant agrees that the requested exemptive order may be conditioned upon no company held in the portfolio of a Series nor any affiliate thereof, acting as broker for any Series in the purchase or sale of any security for the Series' portfolio.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13141 Filed 5–23–96; 8:45 am]

BILLING CODE 8010–01–M

[1] The Sponsor will attempt to purchase equal values of each of the ten common stocks for a Series' portfolio and may purchase the securities in odd lots in order to achieve this goal. However, it is more efficient if securities are purchased in 100 share lots and 50 share lots. As a result, the Sponsor may choose to purchase securities of a securities related issuer which represent over 10%, but in no event more than 10.5%, of a Series' assets on the initial date of deposit to the extent necessary to enable the Sponsor to meet its purchase requirements and to obtain the best price for the securities.

[Release No. 34–37223; File No. SR–NASD–96–17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Definitions of Bona Fide Independent Market and Bona Fide Independent Market Maker

May 17, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 24, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of The Proposed Rule Change

The NASD is herewith filing a proposed rule change to Rule 2720 of the NASD's Conduct Rules to amend the definitions of "Bona fide independent market" and "Bona fide independent market maker." Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Conduct Rules

2000. Business Conduct

* * * * *

2700. Securities Distributions

2720. Distribution of Securities of Members and Affiliates—Conflicts of Interest

(a) General

(1) No member or person associated with a member shall participate in the distribution of a public offering of debt or equity securities issued or to be issued by the member, the parent of the member, or an affiliate of the member and no member or parent of a member shall issue securities except in accordance with this Rule.

(2) No member or persons associated with a member shall participate in the distribution of a public offering of debt or equity securities issued or to be issued by a company if the member and/or its associated persons, parent or affiliates have a conflict of interest with the company, as defined herein, except in accordance with this Rule.

(b) Definitions

For purposes of this Rule, the following words shall have the stated meanings:

(1) and (2) No change.

(3) Bona fide independent market—a market in a security which:

(A) Is registered pursuant to the provisions of Sections 12(b) or 12(g) of the Act or issued by a company subject to Section 15(d) of such Act, unless exempt from those provisions;

[(B) Has an aggregate trading volume for the 12 months immediately preceding the filing of the registration statement of at least 100,000 shares;]

[(C) Has outstanding for the entire 12 month period immediately preceding the filing of the registration statement, a minimum of 250,000 publicly held shares; and]

[(D) In the case of over-the-counter securities, has had at least three bona fide independent market makers for a period of at least 30 days immediately preceding the filing of the registration statement and the effective date of the offering.]

(B) Has a market price as of the close of trading on the trade date immediately preceding filing of the registration statement or offering circular of five dollars or more per share, and which has traded at a price of five dollars or more per share in at least 20 of the 30 trading days immediately preceding the filing of the registration statement or offering circular; and

(C) For at least 90 calendar days immediately preceding the filing of the registration statement or offering circular with the Department:

(i) Has been listed on and is in compliance with the requirements for continued listing on a national securities exchange; or

(ii) Has been listed on and is in compliance with the requirements for continued listing on The Nasdaq Stock Market and has had at least two bona fide independent market makers for a period of at least 30 trading days immediately preceding the filing of the registration statement and the effective date of the offering; and

(D) For the 90 calendar day period immediately preceding the filing of the registration statement or offering circular:

(i) Has an aggregate trading volume of at least 500,000 shares; or

(ii) Has outstanding a minimum of 5,000,000 publicly held shares.

(4) Bona fide independent market maker—a market maker which:

[(A) Continually maintains net capital as determined by Rule 15c3–1 under the Act, of $50,000 or $5,000 for each security in which it makes a market, whichever is less;]

[(B) Regularly publishes bona fide competitive bid and offer quotations in a recognized interdealer quotation system;]

[(C) Furnishes bona fide competitive bid and offer quotations to other brokers and dealers on request; and]

((D) Stands ready, willing and able to effect transactions in reasonable amounts, and at his quoted prices, with other brokers and dealers.)

(A) Is registered as a Nasdaq market maker in the security to be distributed pursuant to this Schedule;

(B) Is not an affiliate of the entity issuing securities pursuant to paragraph (c) of this Schedule and, together with its associated persons, does not in the aggregate beneficially own, at the time of the filing of the registration statement and at the commencement of the distribution, five percent or more of the outstanding voting securities of such entity which is a corporation or beneficially own a partnership interest

in five percent or more of the distributable profits or losses of such entity which is a partnership; and

(C) Is not a recipient of any of the net proceeds of the offering.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Introduction and Background

Rule 2720 of the NASD's Conduct Rules (the "Rule") (formerly, Schedule E to the NASD's By-Laws) addresses the concern that public investors be adequately protected against conflicts of interest regarding the conduct of due diligence and pricing of securities when investing in securities issued by an NASD member, its parent or an affiliate of a member that is going public or by an issuer with which the member has a conflict of interest ("Rule 2720 offering"). The Rule prohibits a member from underwriting or participating in the underwriting or distribution of a Rule 2720 offering of equity or debt unless the price of the equity offering is established no higher, or the yield of the debt offering is established no lower, than the price recommended by a qualified independent underwriter, who shall also participate in the preparation of the registration statement and prospectus, offering memorandum, or similar document, and exercise usual standards of "due diligence" regarding the offering. Rule 2720 provides an exception from the qualified independent underwriter requirement for offerings of equity securities for which a bona fide independent market exists. Rule 2720 defines a bona fide independent market as a market in a security which has, among other things, at least three bona fide independent market makers.

The NASD has reviewed the definitions of bona fide independent market and bona fide independent market maker, which were part of the original version of Rule 2720 when it was adopted as Schedule E in 1972. The NASD is proposing to revise the definitions to incorporate new requirements for listing, public float, trading volume, price, number of bona fide independent market makers, and limitations on the relationship of the bona fide independent market maker to the issuer that will significantly improve the criteria used for determining that a market of sufficient depth and duration exists to constitute an efficient pricing mechanism for the securities to be distributed. The NASD believes that the proposed new definitions will permit members, in appropriate situations, to conduct a secondary offering without the burden and expense of engaging a qualified independent underwriter, while ensuring the public that the added protection of a qualified independent underwriter will be required in situations where the market cannot be relied on to price the securities appropriately.

Description of Proposed Amendments

Bona Fide Independent Market Definition

Registration Requirement

The proposed rule change retains the current requirement in the definition of bona fide independent market that it must be a market in a security which is registered pursuant to Sections 12(b) or 12(g) of the Act or issued by a company subject to Section 15(d) of that Act.

Price Requirement

The current definition of bona fide independent market does not contain a price requirement. The NASD is concerned that a public float requirement, as set forth below, without a corresponding standard for the market price of the securities does not establish a valid benchmark for a bona fide independent market. Therefore, the NASD is proposing to adopt a new provision in the definition of a bona fide independent market that would require that the security have a market price of at least $5 a share as of the close of trading on the day immediately preceding the filing of the registration statement or offering circular, and have traded at a price of $5 or more per share on at least 20 of the 30 trading days immediately preceding the date on which the offering circular or registration statement was filed.

Listing and Market Maker Requirement

The current definition of bona fide independent market does not contain a listing requirement. The NASD believes that a listing on a national securities exchange or The Nasdaq Stock Market indicates that the security trades in an efficient, regulated, and active market and would bring to the definition of bona fide independent market the qualitative standards of a regulated trading environment, such as quote transparency and real-time transaction reporting. Therefore, the NASD is proposing to adopt as one of the requirements for the definition of a bona fide independent market that the security, for at least 90 calendar days immediately preceding the filing of the registration statement or offering circular, have been listed on, and is in compliance with, the requirements for continued listing on (i) a national securities exchange, or (ii) The Nasdaq Stock Market so long as such Nasdaq listing has two bona fide independent market makers for a period of at least 30 trading days immediately preceding the filing of the registration statement or offering circular and the effective date of the offering. Securities quoted on the NASD OTC Bulletin Board service and those traded in the general over-the-courter market, such as the "pink sheets," cannot rely on this requirement.

The proposed requirement that the security have at least two bona fide independent market makers for listings on the Nasdaq Stock Market would replace the current requirement of at least three bona fide independent market makers. Given that a security is permitted to be listed on the Nasdaq Stock Market with two market makers, the NASD believes that two market makers are sufficient to demonstrate the presence of a bona fide independent market away from any Rule 2720 affiliate that may also be making a market in the issuer's securities.

Trading Volume and Public Float Requirement

The current definition of bona fide independent market contains independent requirements for trading volume and public float. Under the current rule, a security is considered to have a bona fide independent market if, for the 12 months immediately preceding the filing of the registration statement, it has *both* an aggregate trading volume of at least 100,000 shares *and* a minimum of 250,000 publicly held shares. Under the proposed rule change, the requirements for trading volume and public float will be in the alternative. That is, for a bona fide independent market to exist, the proposed rule would require a security to have for the 90 calendar day period immediately preceding the filing of the registration statement or offering circular *either* an aggregate trading volume of at least 500,000 shares *or* a minimum of 5,000,000 publicly held shares outstanding.

The NASD believes that raising the current aggregate 12-months trading volume requirement of 100,000 shares to 500,000 shares in the 90-calendar-day period before the filing of the registration statement or offering circular provides a criterion that is more indicative of an active, current and, therefore, efficient market. Such greater price efficiency establishes a better benchmark for justifying an exemption from the requirement that a qualified independent underwriter establish the price of the offering.

The NASD considers the alternative requirement of a five-million-share public float as the minimum necessary to assure that the market for an issuer's securities will not suffer undue volatility from the dilution that occurs when a large number of shares is offered to the public. In this regard, the NASD notes that a typical "follow-on" offering[1] of a company's stock adds between one- and two-million shares to the public float, which is equal to a 40 percent dilution at the five-million-share level.

Bona Fide Independent Market Maker Definition

The Rule currently defines a bona fide independent market maker as one which meets certain net capital requirements, publishes bona fide bid and ask quotations in a recognized interdealer quotation system, furnishes such quotes to other brokers and dealers on request, and stands ready, willing and able to effect transactions at quoted prices with other brokers and dealers. The current standards of the definition were developed at the time the Rule was adopted in 1972 as Schedule E and applied to all securities in the over-the-counter market.

The NASD believes that the current standards for the definition of bona fide independent market maker are no longer necessary in light of the proposed requirement of the definition of bona fide independent market that the security be listed on The Nasdaq Stock Market. Market makers for securities listed on The Nasdaq Stock Market are required to meet certain net capital standards, publish bona fide bid and ask quotations in Nasdaq, which is a recognized interdealer quotation system, furnish quotes to other brokers and dealers on request, and stand ready, willing and able to effect transactions at quoted prices with other brokers and dealers. Therefore, the NASD is proposing that the current requirements be incorporated into a single standard requiring that the market maker be registered as a Nasdaq market maker.

The NASD believes that the definition of bona fide independent market maker should also provide investors with greater assurance that the market maker's activities are independent of any influences that may arise when the issuer's ownership of securities or interest in the offering becomes material. Therefore, the NASD is also proposing to adopt as part of the new definition that a bona fide independent market maker (i) must not be a recipient of any of the net proceeds of the offering, (ii) must not be an affiliate of the entity issuing the securities, and, (iii) together with its associated persons, does not in the aggregate beneficially own, at the time of the filing of the registration statement or offering circular, five percent or more of the outstanding voting securities of the entity issuing the securities, if a corporation, or a five percent or more partnership interest in the distributable profits or losses of the entity, if a partnership.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[2] which require that the Association adopt and amend its rules to promote just and equitable principles of trade, and generally provide for the protection of customers and the public interest in that the proposed rule change, by amending the requirements to qualify for the exception to the qualified independent underwriter requirement for an equity security with a bona fide independent market, significantly improves the criteria used for determining the presence of a bona fide independent market for Rule 2720 offerings and reinforces the standard that a bona fide independent market should be stringent enough to assure the public that a market of sufficient depth and duration exists to constitute an efficient pricing mechanism for the securities to be distributed.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in Notice to Members 95–44 (June, 1995) ("NTM 95–44"). Three (3) comment letters were received in response. All 3 commenters were in favor of the proposed rule change; one commenter suggested substantive changes to the proposed rule change.

Sullivan and Cromwell ("S&C") suggested revisions to clarify the meanings of the definitions of both "bona fide independent market" and "bona fide independent market maker" and to ease compliance with these requirements.

Bona Fide Independent Market Definition

The term "listing requirements" in the version of the definition of "bona fide independent market" published for comment in NTM 95–44 would have required compliance with listing requirements on a national securities exchange or the Nasdaq Stock Market. S&C stated it presumed that this requirement referred to maintenance criteria rather than original listing standards since the definition would otherwise exclude various issuers currently in compliance with appropriate maintenance criteria for continued listing but who, for various reasons, no longer meet initial listing standards.

The NASD agrees that the proposed definition of "bona fide independent market" was not intended to require continuous satisfaction of initial listing requirements of the Nasdaq Stock Market or national securities exchanges. Therefore, the proposed rule language has been amended to specifically require compliance with the requirements for continued listing on The Nasdaq Stock Market or a national securities exchange.

The NASD also agrees with S&C that the parenthetical "(Trading Volume Test)" in Section 2(c)(4)(i) should be deleted since the term is not used again in the rule language.

S&C also stated that the definition of "bona fide independent market" appears to require compliance with "listing requirements" only on the filing date of the registration statement and not throughout the preceding 90 calendar days. The NASD believes that the literal language of the proposed rule is clear that compliance with the listing requirements is required throughout the 90 calendar days preceding the filing of the registration statement.

[1] The term "follow-on" offering refers to a secondary offering of shares by the issuer.

[2] 15 U.S.C. 78*o*–3.

Bona Fide Independent Market Maker Definition

In the version of the proposed rule change published for comment in NTM 95–44, "bona fide independent market maker" was defined, in part, as a market maker who is not affiliated with the issuer and, together with its associated persons, does not in the aggregate beneficially own, at the time of the filing of the registration statement, 5% or more of the issuer's outstanding voting securities, common equity, preferred equity, or subordinated debt ("five percent requirement"). The NASD stated in NTM 95–44 that the proposed new standards for the definition of bona fide independent market maker were largely drawn from the current definition of qualified independent underwriter in the Rule and from the current definition of qualified independent underwriter in the Rule and from the reporting requirements imposed on beneficial owners by Section 13 of the Act. S&C objected to the five percent requirement on a number of grounds.

First, S&C stated that there is a fundamental difference between qualified independent underwriters and bona fide independent market makers that makes it inappropriate to apply the same standards to each. In particular, a qualified independent underwriter directly participates in the offering process and is usually a party to an agreement with the issuer outlining each party's responsibilities under the Rule. A registered market maker for a Nasdaq-listed stock, however, might not be a participant in the distribution and thus not a party to any agreement with either the issuer or the managing underwriter. Thus, a market maker could not be compelled, contractually or otherwise, to divulge the information needed for the issuer and managing underwriter to determine whether the market maker qualifies under the five percent requirement as a bona fide independent market maker.

Second, S&C stated that, contrary to the suggestion in NTM 95–44, the issuer and managing underwriter cannot necessarily obtain the required information from filings made by market makers under Section 13 of the Act. Section 13 (d) and (g) filing requirements apply only to acquisitions of equity securities that are "voting securities" and do not provide information regarding a market maker's investment in an issuer's non-convertible preferred stock or subordinated debt. Additionally, under Exchange Act Rule 13d–1(b)(1), many market makers which beneficially own more than five percent (but less than ten percent) of an issuer's outstanding voting securities will not be required to file any related disclosure statement under Section 13, thus eliminating the need to file a Schedule 13 regarding registered equity securities acquired by them in the ordinary course of business and not with the purpose or effect of changing or influencing the control of the issuer.

Third, S&C noted that the five percent requirement prohibits a bona fide independent market maker from holding a five percent securities position *either* at the filing date or at the commencement of the distribution. S&C stated that a market maker not participating in the distribution, who would otherwise qualify as a bona fide independent market maker on the filing date, might very well refuse to provide any undertakings to the issuer regarding the securities positions it will hold on the commencement date. Consequently, an issuer may be unable to ensure that a broker-dealer who qualifies as a bona fide independent market maker on the filing date will remain so qualified on the commencement date.

Finally, S&C noted that the definition of bona fide independent market maker proposed in NTM 95–44 requires that securities ownership by the member's associated persons and immediate family members, parents, and affiliates be aggregated for purposes of the five percent limitation, whereas the current definition of qualified independent underwriter does not require such aggregation. S&C stated that it is odd to include such an aggregation requirement in view of the fact that NTM 95–44 stated that the proposed definition of bona fide independent market maker is intended, in part, to conform to the current definition of qualified independent underwriter.

S&C recommended that the NASD either delete the five percent ownership requirement entirely or at least that element of the five percent requirement that requires aggregation of "associated persons and their immediate family, parents and affiliates."

The NASD agrees that the nature of Section 13 filing requirements appears to make such reporting an inadequate substitute source of information for ensuring compliance with the definition of bona fide independent market maker proposed in NTM 95–44. Therefore, the NASD has eliminated the requirement that a bona fide independent market maker have no more than a five percent beneficial ownership position in the *non-voting* securities of an issuer including common equity, preferred equity, and subordinated debt, but has retained the five percent ownership requirement with respect to the issuer's *voting* securities. The NASD believes that if a market of sufficient depth and liquidity exists to meet the other stringent requirements of the definition of a bona fide independent market, then the integrity of the pricing of the offering is preserved regardless of whether one or more market makers hold positions in the issuer's non-voting securities.

The NASD also agrees that the requirements for a bona fide independent market maker proposed in NTM 95–44 are more stringent than the current requirements imposed on a qualified independent underwriter under the Rule. Therefore, the NASD has eliminated the requirement to aggregate the ownership of the immediate family, parents and affiliates of the member and its associated persons with any direct ownership by the market maker and its associated persons. However, when a bona fide independent market maker and its associated persons "beneficially own" voting securities of the same issuer, the NASD considers aggregation of ownership to be appropriate.[3]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by June 14, 1996.

[3] "Beneficial Ownership" is defined in the Rule to mean the right to the economic benefits of a security.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13143 Filed 5–23–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37229; File No. SR–PHILADEP–95–12]

Self-Regulatory Organizations; The Philadelphia Depository Trust Company; Notice of Filing of a Proposed Rule Change Seeking To Establish a Centralized Office Processing System

May 20, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 19, 1995, the Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–PHILADEP–95–12), which Philadep amended on March 20, March 27, March 28, and April 1, 1996,[2] as described in Items I, II, and III below, which items have been prepared primarily by Philadep. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Philadep proposes of offer to its participants a customer name safekeeping and branch receive processing service known as the Centralized Office Processing Service ("COPS").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Philadep included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

COPS is a customer name[4] safekeeping and branch receive processing service that Philadep proposes to offer to interested participants for both depository eligible and ineligible securities provided that all such securities have a valid CUSIP number. The primary objective of COPS is to allow Philadep participants to utilize Philadep as a custodial agent for customer name securities.

COPS is designed to offer broker-dealers the opportunity to eliminate a labor intensive, low profit service from the broker-dealers' operations. Philadep believes COPS will serve several functions including relieving Philadep participants from the processing and auditing responsibilities associated with receiving customer name securities, reducing the costs Philadep participants bear in connection with maintaining safekeeping for physical certificates, and centralizing more securities certificates in a depository environment.

Under COPS, deliveries of customer name certificates from Philadep participants will be deposited into Philadep's vault for safekeeping.[5] Upon an appropriate instruction from the submitting participant to withdrawn positions held in customer name or if a participant's customer wishes to sell the securities, Philadep may either (i) send these certificates to the participant or (ii) if the securities are depository eligible and possess all necessary endorsements and stock or bond powers, forward them to the transfer agent for reregistration into Philadep's nominee name and subsequently deposit them into the participant's general Philadep account.[6]

As proposed, COPS also will permit Philadep participants to collect, process, and forward certificates and related documentation directly to Philadep from their branch offices. This enables Philadep to operate as the participants' central processing office. Thus, COPS will eliminate steps in the ordinary certificates routing process by allowing participants' branch offices to forward these documents directly to Philadep. The branch receive processing facility will apply to both customer name safekeeping positions and to ordinary deposits that participants will forward to the depository to be placed in Philadep's nominee name.

The COPS program will require Philadep participants utilizing the new service to send their securities to Philadep through Philadep's Automated Deposit System ("ADS"). This will allow Philadep participants to report their deliveries to Philadep in advance of the physical delivery.[7] Philadep will verify the contents of the incoming deliveries and will provide intraday reconciliation through computer-to-computer capabilities. Philadep will endeavor to resolve with the delivering participant any discrepancies between the ADS transmission and the contents of the packages. If the participant does not properly reconcile its submissions with Philadep or supply the proper instructions regarding these items within thirty days, Philadep will automatically send these exception items back to the respective participant's branch or central office. Philadep has not established fees for COPS; therefore, prior to its implementation, Philadep will file a proposed rule change with the Commission setting forth the fees for COPS.

In connection with providing the COPS service, Philadep believes that it operates as a control location for securities deposited into COPS within the meaning of Section 15(c) of the Act and Rule 15c3–3(c)(5) promulgated thereunder. In accordance with 15c3–3(c)(5), Philadep states (i) it qualifies as

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letters from J. Keith Kessel, Esq., Compliance Officer, Philadep, to Peter R. Geraghty, Esq., Senior Counsel, Division of Market Regulation, Commission (March 20, March 22, March 28, and April 1, 1996).

[3] The Commission has modified the text of the summaries submitted by PHILADEP.

[4] Customer name securities refer to securities that are registered in the name of the beneficial owner.

[5] Philadep will segregate all customer name certificates from nominee name certificates in its vault.

[6] For customer name securities that are not depository eligible at the time a transfer request is made, Philadep will perform all necessary due diligence on such securities to make them depository eligible so that the securities can be registered in Philadep's nominee name and subsequently available for book-entry delivery into the participant's general Philadep account.

[7] In addition to reporting incoming deposits prior to physical delivery, ADS will check securities against Philadep's certificate master file to ascertain whether the securities possess a valid CUSIP number.

a bank within the meaning of Section 3(a)(6) of the Act because it is a member of the Federal Reserve System, (ii) COPS is a custody business designed to hold securities in a depository "free" position, which will not require payment to return the securities to brokers and dealers, and (iii) securities deposited into COPS will not be subject to any right, charge, security interest, lien, or claim in favor of Philadep or any of its creditors.

Philadep believes the proposed COPS service complies with Section 17A of the Act insofar as it is contemplated to protect investors and the public interest, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and to further assure the safeguarding of securities which are in the custody and control of Philadep.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Philadep believes that COPS will foster competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change. However, Philadep has received several oral comments from its participants which support Philadep in developing the services contemplated by the proposed rule change. These comments focus of the benefits of cost reduction and Philadep participants' opportunity costs.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Philadep consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of Philadep. All submissions should refer to the file number SR–PHILADEP–95–12 and should be submitted by June 14, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13140 Filed 5–23–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2852; (Amendment #1]

Illinois Declaration of Disaster Loan Area

In accordance with notices from the Federal Emergency Management Agency dated May 9 and May 10, 1996, the above-numbered Declaration is hereby amended to include Lawrence, Madison, and Monroe Counties in the State of Illinois as a disaster area due to damages caused by severe storms and flooding beginning on April 28, 1996 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Bond, Crawford, Jersey, Macoupin, Montgomery, Richland, and Wabash in Illinois; Jefferson, St. Charles, and Ste. Genevieve Counties in Missouri; and Knox and Sullivan Counties in Indiana may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the termination date for filing applications for physical damage is July 5, 1996, and for loans for economic injury the deadline is February 6, 1997.

The economic injury number for the State of Indiana is 888900.

[8] 17 CFR 200.30–3(a)(12) (1995).

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 16, 1996.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96–13065 Filed 5–23–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2853]

New Mexico (and Contiguous Counties in Colorado); Declaration of Disaster Loan Area

Taos County and the contiguous counties of Colfax, Mora, and Rio Arriba in the State of New Mexico, and Conejos and Costilla Counties in the State of Colorado constitute a disaster area as a result of damages caused by a wildfire that occurred May 5 through May 10, 1996. Applications for loans for physical damage may be filed until the close of business on July 15, 1996 and for economic injury until the close of business on February 18, 1997 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, Texas 76155, or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	7.625
Homeowners without credit available elsewhere	3.875
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 285305 for New Mexico and 285405 for Colorado. For economic injury the numbers are 889000 for New Mexico and 889100 for Colorado.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 16, 1996.

Philip Lader,

Administrator.

[FR Doc. 96–13066 Filed 5–23–96; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending 5/17/96

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–96–1367.
Date filed: May 13, 1996.
Parties: Members of the International Air Transport Association.
Subject: COMP Telex—Reso 024f, Currency Fare Changes—Namibia, Intended effective date: June 1, 1996.

Docket Number: OST–96–1383.
Date filed: May 17, 1996.
Parties: Members of the International Air Transport Association.
Subject:
TC Reso/P 1940 dated May 10, 1996 r1–6
TC2 Reso/P 1041 dated May 10, 1996 r7
TC2 Reso/P 1943 dated May 10, 1996 r8–17
TC2 Reso/P 1944 dated May 10, 1996 r18–21
TC2 Reso/P 1947 dated May 10, 1996 r22–38
TC2 Reso/P 1948 dated May 10, 1996 r39–52
TC2 Reso/P 1949 dated May 10, 1996 r53–61
Within Europe Expedited Resolutions (A summary is attached.)
Intended effective date: expedited June 15/July 1/July 15, 1996.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–13180 Filed 5–23–96; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending May 17, 1996

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–96–1371.
Date filed: May 14, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 11, 1996.
Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Sections 41101 and 41108 and Subpart Q of the Regulations, applies for renewal of its Certificate of Public Convenience and Necessity for Route 178, Segment 5, as issued by Order 91–10–54, authorizing Delta to engage in foreign air transportation of persons, property and mail between the terminal point Atlanta, Georgia, via the intermediate points the Azores and Lisbon, Portugal, and the coterminal points Madrid, Barcelona, Malaga and Palma de Mallorca, Spain. Delta's certificate for Route 178, Segment 5 expires on November 28, 1996. Delta requests renewal of its certificate for a term of five years.

Docket Number: OST–96–1384.
Date filed: May 17, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 14, 1996.
Description: Application of United Parcel Service Co., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, requesting a certificate of public convenience and necessity authorizing it to engage in interstate charter air transportation of persons, property and mail.

Docket Number: OST–96–1385.
Date filed: May 17, 1996.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 14, 1996.
Description: Application of United Parcel Service Co., pursuant to 49 U.S.C. Section 41102, Subpart Q of the Regulations, requesting a certificate of public convenience and necessity authorizing it to engage in charter foreign air transportation of persons, property and mail.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–13179 Filed 5–23–96; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[CGD08–96–012]

Lower Mississippi River Waterway Safety Advisory Committee; Solicitation for Membership

AGENCY: Coast Guard, DOT.

ACTION: Notice of solicitation for members.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Lower Mississippi River Waterway Safety Advisory Committee.

DATES: Request for applications should be received no later than June 30, 1996. Completed applications should be returned no later than July 15, 1996.

ADDRESSES: Persons interested in applying should write to Commander, Eighth Coast Guard District (oan), Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396.

FOR FURTHER INFORMATION CONTACT: Mr. Monty Ledet, USCG, Recording Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander Eighth Coast Guard (oan) Room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686).

SUPPLEMENTARY INFORMATION: The Committee shall consist of twenty-four members, who have particular expertise, knowledge, and experience regarding the transportation, equipment, and techniques that are used to ship cargo and to navigate vessels on the waters of the Lower Mississippi River.

(1) Five members representing River Port Authorities between Baton Rouge, Louisiana, and the head of passes of the Lower Mississippi River, of which one member shall be from the Port of St. Bernard and one member from the Port of Plaquemines.

(2) Two members representing vessel owners or ship owners domiciled in the State of Louisiana.

(3) Two members representing organizations which operate harbor tugs or barge fleets in the geographical area covered by the Committee.

(4) Two members representing companies which transport cargo or passengers on the navigable waterways in the geographical area covered by the Committee.

(5) Three members representing State Commissioned Pilot organizations, with one member each representing the New Orleans/Baton Rouge Steamship Pilots Association, the Crescent River Port Pilots Association, and the Associated Branch Pilots Association.

(6) Two at-large members who utilize water transportation facilities located in the geographical area covered by the Committee.

(7) Three members representing consumers, shippers, or importers/exporters that utilize vessels which utilize the navigable waterways covered by the Committee.

(8) Two members representing those licensed merchant mariners, other than pilots, who perform shipboard duties on those vessels which utilize navigable waterways covered by the Committee.

(9) One member representing an organization that serves in a consulting or advisory capacity to the maritime industry.

(10) One member representing an environmental organization.

(11) One member representing the general public.

To achieve the balance of membership required by the Federal advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women.

The purpose of the committee is to provide local expertise on such matters as communications, surveillance, traffic control, anchorages, aids to navigation, and other related topics dealing with navigation safety in the Lower Mississippi River area as required by the Coast Guard. The committee normally meets four times a year. Members serve voluntarily, without compensation from the Federal Government for salary, travel, or per diem. Term of membership will be from October 1, 1996 to October 1, 1998.

Dated: May 16, 1996.

R.C. North,

Rear Admiral, U.S. Coast Guard Commander, Eight Coast Guard District.

[FR Doc. 96–13161 Filed 5–23–96; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of a new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given a new task assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Stewart R. Miller, Manager, Transport Standards Staff, ANM–110, FAA, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Ave. SW., Renton, WA 98055–4056, telephone (206) 227–2190, fax (206) 226–1320.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

One area ARAC deals with is Transport Airplane and Engine issues. These issues involve the airworthiness standards for transport category airplanes in 14 CFR parts 25, 33, and 35 of the FAR and parallel provisions in 14 CFR parts 121 and 135 of the FAR. The corresponding European airworthiness standards for transport category airplanes are contained in Joint Aviation Requirements (JAR)–25, JAR–E, and JAR–P, respectively. The corresponding Canadian Standards are contained in Chapters 525, 533 and 535 respectively.

The Task

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendation on the following harmonization task:

System Design and Analysis Harmonization and Technology Update. Review § 25.1309, JAR paragraph 25.1309, the associated Advisory Circular 25.1309–1A, and Advisory Circulars Joint Numbers 1 through 8. In light of this review, recent experience in applying §/paragraph 25.1309 of the FAR and of the JAR, and the implications of new technology, harmonize §/paragraph 25.1309 and revise the associated guidance material in Advisory Circular 25.1309–1A, Advisory Material Joint 25.1309, and Advisory Circulars Joint Numbers 1 through 8 as necessary. In addition to the general task of harmonizing the wording and application of §/paragraph 25.1309, attention should be given to airplane level safety assessment, instructions for continued airworthiness of fault tolerant systems, use of operational factors in the safety assessment process, and acceptable methods for showing compliance with §/paragraph 25.1309. Review wording and application of §/paragraph 25.1301 and revise if necessary, such that non-safety related equipment, such as passenger entertainment devices, etc. are not required to meet their specifications for intended function.

The FAA has also asked that ARAC determine if rulemaking action (e.g., NPRM, supplemental MPRM, final rule, withdrawal) should be taken, or advisory material should be issued or revised. If so, ARAC has been asked to prepare the necessary documents, including economic analysis, to justify and carry out its recommendation(s).

ARAC Acceptance of Task

ARAC has accepted this task and has chosen to assign it to the existing Systems Design and Analysis Harmonization Working Group. The working group will serve as staff to ARAC to assist ARAC in the analysis of the assigned task. Working group recommendations must be reviewed and approved by ARAC. IF ARAC accepts the working group's recommendations, it forwards them to the FAA as ARAC recommendations.

Working Group Activity

The System Design and Analysis Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommended a work plan for completion of the tasks, including rationale supporting such a plan, for consideration at the meeting of ARAC to consider Transport Airplane and Engine Issues held following publication of this notice.

2. Give a detailed conceptual presentation of the proposed recommendations, prior to proceeding with the work stated in items 3 below.

3. For each task, draft appropriate regulatory documents with supporting economic and other required analyses, and/or any other related guidance material or collateral documents the working group determines to be appropriate; or, if new or revised requirements or compliance methods are not recommended, a draft report stating the rationale for not making such recommendations.

4. Provide a status report at each meeting of ARAC held to consider Transport Airplane and Engine Issues.

Participation in the Working Group

The Systems Design and Analysis Harmonization Working Group is composed of experts having an interest in the assigned task. A working group member need not be a representative of a member of the full committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the tasks, and stating the expertise he or she would bring to the working group. The request will be reviewed by the assistant chair, the assistant executive director, and the working group chair, and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Systems Design and Analysis Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on May 14, 1996.

Chris Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 96–13158 Filed 5–23–96; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of a new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of a new task assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Stewart R. Miller, Manager, Transport Standards Staff, ANM–110, FAA, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Ave. SW., Renton, WA 98055–4056, telephone (206) 227–2190, fax (206) 226–1320.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

One area ARAC deals with is Transport Airplane and Engine issues. These issues involve the airworthiness standards for transport category airplanes in 14 CFR parts 25, 33, and 35 of the FAR and parallel provisions in 14 CFR parts 121 and 135 of the FAR. The corresponding European airworthiness standards for transport category airplanes are contained in Joint Aviation Requirements (JAR)–25, JAR–E and JAR–P, respectively. The corresponding Canadian Standards are contained in Chapters 525, 533 and 535 respectively.

The Task

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendation on the following harmonization task:

Fuselage Doors. Review the current standards of § 25.783 and corresponding JAR–25.783 concerning doors and any related advisory material. Review also any relevant service experience, National Transportation Safety Board recommendations A–89–092, A–89–093, A–89–094 and A–92–21, and recommendations made by the Air Transport Association door review team. In light of this review, recommend changes to harmonize § 25.783 and JAR–25.783, recommend new harmonized standards, and develop related advisory material as necessary.

The FAA has also asked that ARAC determine if rulemaking action (e.g., NPRM, supplemental NPRM, final rule, withdrawal) should be taken, or advisory material should be issued or revised. If so, ARAC has been asked to prepare the necessary documents, including economic analysis, to justify and carry out its recommendation(s).

ARAC Acceptance of Task

ARAC has accepted this task and has chosen to assign it to the existing General Structures Harmonization Working Group. The working group will serve as staff to ARAC to assist ARAC in the analysis of the assigned task. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepts the working group's recommendations, it forwards them to the FAA as ARAC recommendations.

Working Group Activity

The General Structures Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the tasks, including the rationale supporting such a plan, for consideration at the meeting of ARAC to consider Transport Airplane and Engine Issues held following publication of this notice.

2. Give a detailed conceptual presentation of the proposed recommendations, prior to proceeding with the work stated in item 3 below.

3. For each task, draft appropriate regulatory documents with supporting economic and other required analyses, and/or any other related guidance material or collateral documents the working group determines to be appropriate; or, if new or revised requirements or compliance methods are not recommended, a draft report stating the rationale for not making such recommendations.

4. Provide a status report at each meeting of ARAC held to consider Transport Airplane and Engine Issues.

Participation in the Working Group

The General Structures Harmonization Working Group is composed of experts having an interest in the assigned task. A working group member need not be a representative of a member of the full committee.

An individual who has expertise in the subject matter with wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the tasks, and stating the expertise he or she would bring to the working group. The request will be reviewed by the assistant chair, the assistant executive director, and the working group chair, and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the General Structures Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on May 14, 1996.

Chris Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 96–13159 Filed 5–23–96; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Port Columbus International Airport, Columbus, OH

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of intent to rule on applications.

SUMMARY: The FAA proposes to rule and invites public comment on the

application to impose and use the revenue from a PFC at Port Columbus International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before June 24, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Larry Hedrick, Executive Director of the Columbus Municipal Airport Authority at the following address: Port Columbus International Airport, 4600 International Gateway, Columbus, Ohio 43219.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Columbus Municipal Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Mary W. Jagiello, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (313) 487–7296. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Port Columbus International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 14, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by Columbus Municipal Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 21, 1996.

The following is a brief overview of the application.

PFC Application No.: 96–05–C–00–CMH

Level of the PFC: $3.00

Actual charge effective date: October 1, 1992

Proposed charge expiration date: September 1, 1997

Total estimated PFC revenue: $9,437,955

Brief description of proposed project(s): Runway 10L–28R Improvements

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application at the Columbus Municipal Airport Authority.

Issued in Des Plaines, Illinois on May 17, 1996.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 96–13160 Filed 5–23–96; 8:45 am]

BILLING CODE 4910–13–M

Surface Transportation Board [1]

[STB Finance Docket No. 32901]

H. Peter Claussen and Linda C. Claussen—Continuance in Control Exemption—Lexington & Ohio Railroad Co., Inc.

H. Peter Claussen and Linda C. Claussen, noncarrier individuals (Applicants), have filed a notice of exemption to continue in control of Lexington & Ohio Railroad Co., Inc. (L&O), upon L&O's becoming a Class III rail carrier.

The transaction was expected to be consummated on or after May 10, 1996.

This proceeding is related to *Lexington & Ohio Railroad Co., Inc.—Acquisition and Operation Exemption—Norfolk Southern Railway Company*, STB Finance Docket No. 32900, wherein L&O seeks to acquire and operate certain rail lines from the Norfolk Southern Railway Company.

Applicants own and control eight existing Class III common carriers by rail: Live Oak, Perry & Georgia Railroad Company, Inc., operating in Florida and Georgia; Georgia & Florida Railroad, Co., Inc., operating in Florida and Georgia; Albany Bridge Company, operating in Georgia; Gulf & Ohio Railways, Inc., operating under the trade name of Mississippi Delta Railroad in Mississippi and under the trade name of Atlantic & Gulf Railroad in Georgia; Wiregrass Central Railroad Company, Inc., operating in Alabama; H&S Railroad, Inc., operating in Alabama; Piedmont & Atlantic Railroad, Inc., operating in North Carolina; and Rocky Mount & Western Railroad Co., Inc., operating in North Carolina.

Applicants state that: (i) The railroads will not connect with each other or any railroad in their corporate family; (ii) the acquisition of control is not part of a series of anticipated transactions that would connect the nine railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32901, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423: In addition, a copy of each pleading must be served on Paul C. Oakley, Weiner, Brodsky, Sidman & Kider, P.C., Suite 800, 1350 New York Avenue, N.W., Washington, DC 20005–4797.

Decided: May 17, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–13129 Filed 5–23–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323–24.

Surface Transportation Board [1]

[STB Finance Docket No. 32905]

CSX Transportation, Inc.—Acquisition—Certain Rail Lines of Indiana Hi-Rail Corporation In Henderson, KY, and Evansville, IN

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of acceptance of application.

SUMMARY: The Board accepts for consideration the application filed April 25, 1996, by CSX Transportation, Inc. (CSXT), and Indiana Hi-Rail Corporation (IHRC) (collectively referred to as applicants) for CSXT to acquire from IHRC approximately 8.2 miles of rail line located in Indiana and Kentucky.[2] In accordance with 49 CFR 1180.4(b)(2)(iv), the Board finds that this is a minor transaction as described in 49 CFR 1180.2(c).

DATES: This decision is effective on May 24, 1996. Written comments, including comments from the Secretary of Transportation and the Attorney General of the United States, must be filed with the Board no later than June 24, 1996. The Board will issue a service list shortly thereafter. Copies of the comments must be served on all parties of record within 10 days after the Board issues the service list and must be confirmed by certificate of service filed with the Board indicating that all designated individuals and organizations on the service list have been properly served. Applicants' reply is due July 15, 1996.

ADDRESSES: Send an original and 10 copies of pleadings referring to STB Finance Docket No. 32905 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, send one copy of all pleadings to applicants' representatives: (1) Paul R. Hitchcock, 500 Water St.-J150, Jacksonville, FL 32202; and (2) Charles H. White, Galland, Kharasch, Morse & Garfinkle, P.C., Canal Square, 1054 Thirty-First Street, N.W., Washington, DC 20007–4492.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–7513. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Applicants seek approval under 49 U.S.C. 11323–25 for CSXT to acquire certain rail lines of IHRC and, as part of the transaction, for IHRC to discontinue certain trackage rights over portions of CSXT track, all in Indiana and Kentucky.

Applicants state that this is a minor transaction as defined in 49 CFR part 1180, the regulations that implemented former 49 U.S.C. 11343–45. The ICCTA revised those statutory provisions and reenacted them as 49 U.S.C. 11323–25. Because the proposed transaction does not involve the merger or control of two Class I railroads, it is subject to the standards of 49 U.S.C. 11324(d). Also, as discussed below, because we have determined that the transaction is not of regional or national significance, the procedural schedule set out at 49 U.S.C. 11325(d) applies. Under section 204(a) of the ICCTA, all ICC rules in effect on the date of enactment of the ICCTA "shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Board * * * or operation of law." While the standards and procedures of former sections 11343–45 and current sections 11323–25 are substantially similar, insofar as minor transactions are concerned, the procedures of current section 11325(d) differ slightly from those at 49 CFR 1180.4 and shall govern. Otherwise, the use of the regulations at 49 CFR part 1180 for this proceeding appears proper.

CSXT, a Class I rail carrier wholly owned by CSX Corporation (a noncarrier), operates approximately 19,000 miles of track in 19 states, the District of Columbia, and Ontario, Canada. IHRC, a Class III rail carrier, operates eight rail lines, comprising approximately 283 miles of track, in Indiana, Illinois, Ohio, and Kentucky. CSXT proposes to purchase from IHRC approximately 7.8 miles of branch line and 0.4 miles of siding track, for a total of 8.2 miles, as follows: (1) A 5.8-mile line segment, located in Henderson, KY, extending from CSXT milepost H–312.63 to the end of IHRC's track, the site of the Henderson County Port Authority; (2) a 1-mile line segment, located in Henderson, extending from CSXT milepost H–312.90 to the end of IHRC's track;[3] and (3) a 1-mile line segment, located in Evansville, IN, extending from CSXT milepost OZA–285.22 to the end of IHRC's track.[4] IHRC will also transfer its one-half ownership interest in two unused siding tracks, No. 277 and No. 279, that are jointly owned with CSXT; they are located at CSXT milepost H–312.79, and each is approximately 0.2 mile in length.

Additionally, as part of this transaction, IHRC will discontinue its trackage rights between Evansville and Henderson over CSXT's main service lane connecting Chicago, IL, and Nashville, TN.[5] Also, IHRC's trackage rights over a portion of CSXT track in Evansville (the "Evansville Belt" and the "running track") will be discontinued.

IHRC is in bankruptcy. The U.S. Bankruptcy Court, Southern District of Indiana, Indianapolis Division, has approved the transaction subject only to our approval. In an order dated March 5, 1996, in Case No. IP94–08502–RLB–11, the court authorized the sale and approved the closing of the transaction in escrow, with Board approval as the basic condition to take the transaction out of escrow.

Applicants maintain that the proposed transaction will not result in any substantial lessening of competition in any affected market or region. Only 8.2 miles, or 2% of IHRC's track, are involved, and, for the most part, the track is used for switching operations. Instead of lessening competition, applicants argue that the proposed transaction will serve the public interest by reducing their costs, improving the quality and competitiveness of rail service, and strengthening IHRC's ability to provide rail service on the remainder of its system.

The line segments connect with CSXT's system and assertedly fit well into its network. On the other hand, IHRC can only reach the three Henderson line segments via the trackage rights over CSXT's main line. Thus, traffic originating or terminating on these line segments must be handled in interchange service, which is

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions to the Surface Transportation Board (Board). This notice relates to a railroad acquisition that is subject to Board jurisdiction pursuant to 49 U.S.C. 11323–25.

[2] CSXT seeks to acquire from IHRC and operate 8.2 miles of track, and the application is styled accordingly. However, we note that CSXT does not require separate authority to operate. When a rail carrier sought to purchase a rail line from another rail carrier in a transaction governed by former 49 U.S.C. 11343 of the Interstate Commerce Act, the ICC would approve or exempt the operation of the line, if requested, but the authority or exemption to operate was not necessary. The purchaser's status as a carrier, coupled with the acquisition of the line, constituted sufficient authority to conduct operations. Similarly, a purchase by a carrier of a line under current 49 U.S.C. 11323–25 provides the purchaser with the authority to conduct rail service over the line.

[3] The application identifies three rail-served industries on this line segment, CPS, J-Ron, and Bakery Feeds.

[4] The operating plan and map accompanying the application identify one rail-served industry (Modern Maid) on the Evansville line segment.

[5] The trackage rights include a single-track bridge over the Ohio River, seemingly a point of congestion.

inherently more costly and results in delay to shippers.

Moreover, the trackage rights operations place schedules at risk and otherwise threaten significant disruptions with a line characterized by applicants as "the backbone of CSXT's Chicago to Nashville Service Lane * * * one of CSXT's heaviest trafficked lines on its system." Operations over this line reportedly are conducted using a highly successful corridor concept that decentralizes many aspects of operational management and instead emphasizes scheduled operations based on a preexisting plan that accounts for essential operational inputs by time and location.

Overall, applicants maintain the proposed transaction will result in rail service becoming even more competitive with motor carriage in the affected area. By replacing the bankrupt IHRC with CSXT, applicants contend that the shippers served by these line segments will receive improved rail service. Also, they state that service reliability will improve for hundreds of other customers shipping via CSXT's Chicago-Nashville main line. The uncertainty engendered by IHRC's trackage rights will be eliminated, giving CSXT the greater measure of control it seeks over operations in this service-critical corridor.

Additionally, applicants state that the proposed transaction will help IHRC to restructure for its future survival, and the shipping public will benefit as a result. By enabling IHRC to retire a substantial amount of debt, they contend that the transaction will reduce IHRC's monthly fixed costs and strengthen both its financial situation and its ability to serve customers on its remaining lines.

Applicants state that the proposed transaction will have only a slight effect on employees. Additional work, switching cars to industries located on the line segments, will be created for CSXT employees, and only two IHRC train crewmen, the ones who operate the line segments for IHRC, will be affected. The IHRC employees have system-wide seniority, and the Trustee anticipates that they will be reassigned to other work on IHRC's system. An implementing agreement has already been negotiated with their representatives, and applicants anticipate that employees will be protected under the conditions set forth in *New York Dock Ry.—Control—Brooklyn East. Dist.*, 360 I.C.C. 60 (1979), as clarified in *Wilmington Terminal RR, Inc. Co.—Pur. & Lease—CSX Transp., Inc.*, 6 I.C.C.2d 799 (1990), modified, 7 I.C.C.2d 60 (1990), *aff'd sub nom. Rail Labor Executives' Ass'n v. ICC*, 930 F.2d 511 (6th Cir. 1991).

Under 49 CFR part 1180, we must determine whether a proposed transaction is major, significant, or minor. The proposed transaction, which involves the purchase by a single Class I carrier of only short line segments belonging to a bankrupt Class III carrier, has no regional or national significance and will clearly not have any anticompetitive effects. Accordingly, we find the proposal to be a minor transaction under 49 CFR 1180.2(c), as now defined under 49 U.S.C. 11325(a). Because the application substantially complies with the applicable regulations governing minor transactions, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Board in Washington, DC. In addition, they may be obtained upon request from applicants' above named representatives.

Interested persons, including government entities, may participate in this proceeding by submitting written comments. Any person who files timely comments will be considered a party of record if the person so requests. No petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(a) the docket number and title of the proceeding;

(b) the name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) the commenting party's position, i.e., whether it supports or opposes the proposed transaction;

(d) a statement whether the commenting party intends to participate formally in the proceeding, or merely comment on the proposal;

(e) if desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can be resolved only at a hearing; and

(f) a list of all information sought to be discovered from the applicant carriers.

Because we have determined that this proposal is a minor transaction, no responsive applications will be permitted. The time limits for processing this transaction are set forth at 49 U.S.C. 11325(d).

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This application is accepted for consideration under 49 U.S.C. 11323–25 as a minor transaction under 49 CFR 1180.2(c).

2. The parties shall comply with all provisions stated above.

3. This decision is effective on May 24, 1996.

Decided: May 20, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–13130 Filed 5–23–96; 8:45 am]

BILLING CODE 4915–00–P

Surface Transportation Board[1]

[STB Finance Docket No. 32900]

Lexington & Ohio Railroad Co., Inc.—Acquisition and Operation Exemption—Norfolk Southern Railway Company

Lexington & Ohio Railroad Co., Inc. (L&O), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 14.9 miles of rail line owned by Norfolk Southern Railway Company from milepost 23.9LL in Lexington, KY, to milepost 9.0LL in Versailles, KY, in Fayette and Woodford Counties, KY.

The transaction was expected to be consummated on or after May 10, 1996.

This proceeding is related to *H. Peter Claussen and Linda C. Claussen—Continuance in Control Exemption—Lexington & Ohio Railroad Co., Inc.*, STB Finance Docket No. 32901, wherein H. Peter Claussen and Linda C. Claussen have concurrently filed a verified notice to continue to control L&O, upon its becoming a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32900, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Paul C. Oakley, Weiner, Brodsky, Sidman & Kider, P.C., Suite 800, 1350 New York Avenue, N.W., Washington, DC 20005–4797.

Decided: May 17, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–13128 Filed 5–23–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

May 14, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0803.
Form Number: IRS Form 5074.
Type of Review: Extension.
Title: Low-Income Housing Credit for Federally-Assisted Buildings.
Description: Form 5074 is used by U.S. citizens or residents as an attachment to Form 1040 when they have $50,000 income from U.S. sources and $5,000 from Guam or Northern Mariana Islands. The data is used by IRS to allocate income tax due to Guam or CNMI as required by 26 U.S.C. 7654.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 50
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hr., 57 min.
Learning about the law or the form—7 min.
Preparing the form—42 min.
Copying, assembling, and sending the form to the IRS—17 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 203 hours.
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340 Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–13075 Filed 5–23–96; 8:45 am]

BILLING CODE 4830–01–U

Submission for OMB Review; Comment Request

May 14, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Special Request: In order to begin the survey described below by the May 29, 1996 start-up date, the Department of Treasury is requesting Office of Management and Budget (OMB) review and approve this information collection by May 21, 1996. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: MS:PC:V 96–013–G.
Type of Review: Revision.
Title: Internal Revenue Service 1996 Survey of "On-Line Filing" Users.
Description: This survey will allow IRS to determine the level of satisfaction with various elements of the On-Line Filing Program process; the overall level of satisfaction with the survey; areas for improvement; and where it should devote resources in making the largest gains in customer satisfaction.
Respondents: Individuals or households.
Estimated Number of Respondents: 1,335.
Estimated Burden Hours Per Respondent:

Type of contact	Time per contact	Total minutes
Advance Letter	2	2,670
Initial Mailing:		
—Intro Letter	2	2,670
—Questionnaire	10	7,350
Postcard Reminder	1	600
Second Mailing:		
—Intro Letter	2	1,200
—Questionnaire	10	3,330

Frequency of Response: Other.
Estimated Total Reporting Burden: 297 hours.
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–13076 Filed 5–23–96; 8:45 am]

BILLING CODE 4830–01–U

Submission for OMB Review; Comment Request

May 16, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Departmental Office/Office of Foreign Assets Control

OMB Number: 1505–0143.
Form Number: None.
Type of Review: Extension.
Title: Federal Republic of Yugoslavia (Serbia and Montenegro) and Bosnian Serb-Controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations.
Description: Regulation of financial transactions and trade involving the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Bosnia Serbs. Submissions provide USG with information to be used in administering and enforcing sanctions against these parties.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 100.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 100 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–13077 Filed 5–23–96; 8:45 am]

BILLING CODE 4810–25–P

Submission to OMB for Review; Comment Request

May 16, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0879.

Regulation ID Number: IA–195–78 Final.

Type of Review: Extension.

Title: Certain Returned Magazines, Paperbacks, or Records.

Description: The regulations provide rules relating to an exclusion from gross income for certain returned merchandise. The regulations provide that in addition to physical return of the merchandise, a written statement listing certain information may constitute evidence of the return. Taxpayers who receive physical evidence of the return may, in lieu of retaining physical evidence, retain documentary evidence of the return. Taxpayers in the trade or business of selling magazines, paperbacks, or records, who elect to use a certain method of accounting, are affected.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 19,500.

Estimated Burden Hours Per Recordkeeper: 25 minutes.

Frequency of Response: Other.

Estimated Total Recordkeeping Burden: 8,125 hours.

OMB Number: 1545–1393.

Regulation ID Number: EE–14–81 NPRM.

Type of Review: Extension.

Title: Deductions and Reductions in Earnings and Profits (or Accumulated Profits) with respect to Certain Foreign Deferred Compensation Plans Maintained by Certain Foreign Corporations or by Foreign Branches of Domestic Corporations.

Description: The regulation provides guidance regarding the limitations on deductions and adjustments to earnings and profits (or accumulated profits) for certain foreign deferred compensation plans. Respondents will be multinational corporations.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 1.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 1 hour.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 96–13078 Filed 5–23–96; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 61, No. 102

Friday, May 24, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

Ethics Training for Registrants

Correction

In rule document 96–10730, beginning on page 20127, in the issue of Monday, May 6, 1996, make the following correction:

On page 20128, in the first column, under **EFFECTIVE DATE:** "applicable date shall be August 6, 1996." should read "applicable date shall be July 5, 1996.".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173 and 180

Correction

Proposed rule document 96-12454, beginning on page 24904 in the issue of Friday, May 17, 1996, was inadvertently published in the Rules and Regulations section. It should have appeared in the Proposed Rule section.

BILLING CODE 1505–01–D

OL
1
SS
1
0
2
Y
4
996
MI

federal register

Friday
May 24, 1996

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for the Marbled Murrelet; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC33

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for the Marbled Murrelet

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service originally proposed to designate critical habitat for the marbled murrelet (*Brachyramphus marmoratus marmoratus*) in Washington, Oregon, and California on January 27, 1994 (59 FR 3811). Based on comments received on the original proposal and additional information, the Service published a supplemental proposed designation of critical habitat for the marbled murrelet on August 10, 1995 (60 FR 40892).

The marbled murrelet is listed as a threatened species under the Endangered Species Act (Act). It is a small seabird of the Alcidae family that forages in the near-shore marine environment and nests in large trees in coniferous forests. Located primarily on Federal land, and to a lesser extent on State, county, city, and private lands, this final critical habitat rule would provide additional protection requirements under section 7 of the Act with regard to activities that are funded, authorized, or carried out by a Federal agency. Section 4 of the Act requires the Service to designate critical habitat for listed species on the basis of the best scientific information available and to consider the economic and other relevant impacts of including particular areas in the designation.

EFFECTIVE DATE: June 24, 1996.

ADDRESSES: The complete file for this rule is available at the U.S. Fish and Wildlife Service, Oregon State Office, 2600 S.E. 98th Avenue, Suite 100, Portland, Oregon 97266. The file for this rule will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Russell D. Peterson, State Supervisor, U.S. Fish and Wildlife Service, see ADDRESSES section or telephone 503–231–6179 or FAX 503–231–6195.

SUPPLEMENTARY INFORMATION:

Background

Previous Federal Actions

On January 15, 1988, the U.S. Fish and Wildlife Service (Service) received a petition to list the North American subspecies of the marbled murrelet (*Brachyramphus marmoratus marmoratus*) in Washington, Oregon, and California as a threatened species under the Endangered Species Act. On October 17, 1988, the Service published a finding that the petition had presented substantial information to indicate that the requested action may be warranted (53 FR 40479). Because of the increased research effort and new information available, the status review period was reopened, with the concurrence of the petitioners, from March 5, 1990, through May 31, 1990 (55 FR 4913).

On June 20, 1991, the Service published a proposal to list the marbled murrelet in Washington, Oregon, and California as a threatened species (56 FR 28362). The comment period was reopened for 30 days on January 30, 1992, to gather the most updated information about the species (57 FR 3804). On October 1, 1992, following an order by the U.S. District Court for the Western District of Washington denying a 6-month extension, the Service published the final rule listing the marbled murrelet in Washington, Oregon, and California as a threatened species (57 FR 45328). In February 1993, the Service appointed a Recovery Team to develop a recovery plan for the marbled murrelet.

On November 2, 1993, the U.S. District Court for the Western District of Washington granted a motion by the plaintiffs in *Marbled Murrelet v. Babbitt* to compel a proposed designation of critical habitat. In the ruling, the court ordered the Secretary of the Interior to propose designating critical habitat for the marbled murrelet no later than January 21, 1994, and to make a final designation of critical habitat as soon as reasonably possible under applicable law.

On January 27, 1994, the Service published a proposed rule for the designation of critical habitat for the marbled murrelet (59 FR 3811). Public comment was due by April 27, 1994. On March 14, 1994, the Service received a request for a public hearing. To allow additional comment, the public comment period was reopened for 30 days on May 9, 1994. The public hearing was conducted on May 24, 1994, in North Bend, Oregon.

Based on comments received from the Marbled Murrelet Recovery Team, other commenters, and additional information, the Service significantly amended its proposed critical habitat designation and published a supplemental proposed rule on August 10, 1995 (60 FR 40892). The Service held five public hearings on the supplemental proposed rule in Washington, Oregon, and California during the public comment period. Public comment was accepted through October 10, 1995.

Based on the Service's interpretation of Public Law 104–6 as prohibiting the expenditure of funds for making a final determination of critical habitat, the record was closed and the comments archived at the end of the public comment period. On February 29, 1996, Judge Rothstein denied a motion to vacate her previous order on completion of the designation of critical habitat and ordered the Service to complete the final designation by May 15, 1996. This rule complies with that order.

Ecologicol Considerations

The marbled murrelet is a small seabird of the Alcidae family. The North American subspecies ranges from the Aleutian Archipelago in Alaska, eastward to Cook Inlet, Kodiak Island, Kenai Peninsula and Prince William Sound, south along the coast through the Alexander Archipelago of Alaska, British Columbia, Washington, and Oregon to central California. Some wintering birds are found in southern California. A separate subspecies (*Brachyramphus marmoratus perdix*) occurs in Asia. Though recent genetic analysis indicates that the two subspecies may warrant full specific status (Friesen *et al.* 1994), a status change has not yet been recognized.

Marbled murrelets spend most of their lives in the marine environment where they feed primarily on small fish and invertebrates in near-shore marine waters. They forage by pursuit diving in waters generally up to 80 meters (260 feet) deep and 0.3 to 2 kilometers (0.2 to 1.2 miles) off-shore. Pairs are often seen diving simultaneously, which researchers suggest may increase foraging efficiency (Strachan *et al.* 1995). Courtship behaviors have been observed at sea although copulation rarely has been witnessed. Marbled murrelets also aggregate, loaf, preen, and exhibit wing-stretching behaviors on the water.

Marbled murrelets nest inland in Washington, Oregon, and California, typically in large-diameter old-growth trees in low-elevation forests with multi-layered canopies (Hamer and Nelson 1995b). Marbled murrelets have been found occasionally on rivers and inland lakes (Carter and Sealy 1986; Strachan *et al.* 1995).

Dispersal mechanisms are not well understood, however, social interactions may play an important role. The presence of marbled murrelets in a forest stand may attract other pairs to currently unoccupied habitat within the vicinity. This may be one of the reasons marbled murrelets have been observed in habitat not currently suitable for nesting, but in close proximity to known nesting sites (Hamer and Cummins 1990, Hamer *et al.* 1991, Suddjian 1995). Although marbled murrelets appear to be solitary in their nesting habits, they are frequently detected in groups in the forest (Nelson and Peck 1995; USFWS 1995a). Two nests discovered in Washington during 1990 were located within 46 meters (150 feet) of each other (Hamer and Cummins 1990), and two nests discovered in Oregon during 1994 were located within 33 meters (100 feet) of each other (S. K. Nelson, Oregon Cooperative Wildlife Research Unit, pers. comm. 1995). Therefore, unoccupied habitat in the vicinity of occupied habitat may be more important for recovering the species than suitable habitat isolated from occupied habitat (USFWS 1995a). Similarly, murrelets are more likely to discover newly developing habitat in proximity to occupied sites.

Nesting occurs over an extended period from late March to late September (Carter and Sealy 1987; Hamer and Nelson 1995b). During the breeding period, the female marbled murrelet lays a single egg in a tree containing a suitable nesting platform (e.g., large or forked limbs, dwarf mistletoe (*Arceuthobium* spp.) infections, witches' brooms, deformities, etc. (Hamer and Nelson 1995b). Both sexes incubate the egg in alternating 24-hour shifts for approximately 30 days, and the young fledge after an additional 27 to 40 days (Simons 1980; Hirsch *et al.* 1981; Singer *et al.* 1991; Hamer and Nelson 1995a; Nelson and Hamer 1995a). Adults feeding young fly from ocean feeding areas to nest sites at all times of the day, but most often at dusk and dawn (Nelson and Hamer 1995a). Chicks are fed at least once a day. The adults usually carry only one fish at a time to the young (Hamer and Cummins 1991; Singer *et al.* 1992; Nelson and Hamer 1995a). The young are semi-precocial. Before leaving the nest, the young molt into a distinctive juvenile plumage. A fledgling's first flight is from the nest directly to the marine environment (Hamer and Cummins 1991).

Marbled murrelets have been observed at some inland sites during all months of the year (Paton *et al.* 1987; Naslund 1993). Attendance at breeding sites during the non-breeding season may enhance pair bond maintenance, facilitate earlier breeding, or reinforce familiarity with flight paths to breeding sites (Naslund and O'Donnell 1995; O'Donnell *et al.* 1995).

With respect to critical habitat, the Service considered two components of marbled murrelet habitat that are biologically essential—(1) terrestrial nesting habitat and associated forest stands, and (2) marine foraging habitat used during the breeding season. Forested areas with conditions that support nesting marbled murrelets are referred to as "suitable nesting habitat." Marine areas with conditions that support foraging marbled murrelets are referred to as "suitable foraging habitat." Because only terrestrial habitat is being designated as critical habitat, the primary focus of this description will be on the terrestrial environment.

Throughout the forested portion of the species' range, marbled murrelets typically nest in forested areas containing characteristics of older forests (Binford *et al.* 1975; Hamer and Cummins 1991; Quinlan and Hughes 1990; Kuletz 1991; Singer *et al.* 1991, 1992; Hamer *et al.* 1994; Hamer and Nelson 1995b; Ralph *et al.* 1995a). The marbled murrelet population in Washington, Oregon, and California nests in most of the major types of coniferous forests in the western portions of these states, wherever older forests remain inland of the coast. Although marbled murrelet nesting habitat characteristics are somewhat variable throughout the range of the species, some general habitat attributes are characteristic throughout its range, including the presence of nesting platforms, adequate canopy cover over the nest, landscape condition, and distance to the marine environment.

Individual tree attributes that provide conditions suitable for nesting include large branches (average of 32 centimeters (13 inches), range of 10 to 81 centimeters (4 to 32 inches) in Washington, Oregon, and California) or forked branches, deformities (e.g., broken tops), dwarf mistletoe infections, witches' brooms, or other structures large enough to provide a platform for a nesting adult murrelet (Hamer and Cummins 1991; Singer *et al.* 1991, 1992; Hamer and Nelson 1995b). These structures are typically found in old-growth and mature forests, but may be found in a variety of forest types including younger forests containing remnant large trees.

Northwestern forests and trees typically require 200 to 250 years to attain the attributes necessary to support marbled murrelet nesting, although characteristics of nesting habitat sometimes develop in younger coastal redwood (*Sequoia sempervirens*) and western hemlock (*Tsuga heterophylla*) forests. Forests with older residual trees remaining from previous forest stands may also develop into nesting habitat more quickly than those without residual trees. These remnant attributes can be products of fire, wind storms, or previous logging operations that did not remove all of the trees (Hansen *et al.* 1991; McComb *et al.* 1993). Other factors that may affect the time required to develop suitable nesting habitat characteristics include site productivity and microclimate.

Through the 1995 nesting season, at least 95 active or previously used tree nests had been located in North America, including 9 in Washington, 41 in Oregon, and 12 in California (S. K. Nelson, pers. comm. 1996; W. Ritchie, Washington Dept. of Fish and Wildlife, pers. comm. 1996; Binford *et al.* 1975; Quinlan and Hughes 1990; Hamer and Cummins 1990, 1991; Kuletz 1991; Singer *et al.* 1991, 1992; Hamer and Nelson 1995b). All of the nests for which data are available in Washington, Oregon, and California were in large trees that were more than 81 centimeters (32 inches) diameter at breast height (dbh) (Hamer and Nelson 1995b). Of the 37 nests for which data were available, 70 percent were on a moss substrate and 30 percent were on litter, such as bark pieces, conifer needles, small twigs, or duff. Fifty-nine percent of the nests were on large or deformed branches, 16 percent were on forked limbs, 6 percent were on a limb where it attached to the tree bole, 11 percent were on dwarf mistletoe, and 8 percent were on other structures (Hamer and Nelson 1995b; T. Hamer, Hamer Environmental, pers. comm. 1995).

More than 94 percent of the nests for which data were available were in the top half of the nest trees, which may allow easy nest access and provide shelter from potential predators and weather. Canopy cover directly over the nests was typically high (average 84 percent; range 5 to 100 percent) in Washington, Oregon, and California (Hamer and Nelson 1995b; T. Hamer, pers. comm. 1995). This cover may provide protection from predators and weather. Such canopy cover may be provided by trees adjacent to the nest tree, and/or by the nest tree itself. Canopy closure of the nest stand/site varied between 12 and 99 percent and averaged 48 percent (Hamer and Nelson 1995b; T. Hamer, pers. comm. 1995).

Nests have been located in forested areas dominated by coastal redwood, Douglas-fir (*Pseudotsuga menziesii*), mountain hemlock (*Tsuga mertensiana*), Sitka spruce (*Picea sitchensis*), western hemlock, and western redcedar (*Thuja plicata*) (Binford *et al.* 1975; Quinlan and Hughes 1990; Hamer and Cummins 1991; Singer *et al.* 1991, 1992; Hamer and Nelson 1995b). Individual nests in Washington, Oregon, and California have been located in Douglas-fir, coastal redwood, western hemlock, western redcedar, and Sitka spruce trees.

For nesting habitat to be accessible to marbled murrelets, it must occur close enough to the marine environment for murrelets to fly back and forth. The farthest inland distance for a known occupied site is 84 kilometers (52 miles) in Washington. The farthest known inland occupied sites in Oregon and California are 61 and 56 kilometers (38 and 35 miles), respectively. Occupied sites are defined as forest stands where marbled murrelets have been observed exhibiting behaviors associated with nesting. Additionally, detections (not occupied sites) have been documented farther inland in Oregon (S. K. Nelson, pers. comm. 1995) and California.

Marbled murrelet nests are difficult to locate for several reasons—(1) nests are generally located high in the canopy; (2) adults and juveniles have cryptic plumage during most of the nesting season; (3) adults are often (but not always) extremely quiet in the vicinity of nests (Nelson and Peck 1995); and (4) adults may show activity near the nest only once per day, usually under low light conditions. Therefore, identification of occupied sites and suitable nesting habitat are the best indicators of potential nest sites. Indicators of occupied habitat include active nests; egg shell fragments; young found on the forest floor; marbled murrelets seen flying through the forest beneath the canopy, landing in trees, circling above the canopy, and calling from a stationary perch; or large numbers of murrelets heard calling from in and around a forest stand.

Inland, marbled murrelets are generally easier to detect at high-use sites during the spring and late summer when breeding activities peak (Paton and Ralph 1988; Nelson 1989). Inland detections of the species are less frequent during the early fall when murrelets have presumably completed breeding and are undergoing a flightless molt at sea. Similarly, murrelets may be more difficult to detect in areas that support low numbers of reproducing pairs, perhaps because birds occurring in lower densities appear to be less vocal (Rodway *et al.* 1993; Dillingham *et al.* 1995).

Marbled murrelets spend most of their lives in the marine environment where they consume a diversity of prey species. Areas that support populations of prey species juxtaposed with nesting areas are essential to maintaining successfully reproducing marbled murrelet populations (Burkett 1995). Murrelets often aggregate near local food concentrations, resulting in a clumped distribution in the marine environment (Sealy and Carter 1984). Prey breeding areas (e.g., near-shore kelp beds, sand or gravel beaches, sand banks, etc.) and areas where prey may concentrate (e.g., near-shore upwellings, waters at the mouths of bays and coastal rivers, eddies in the vicinity of headlands, river mouths and associated plumes, and tidal rips, etc.) are likely the most important features determining murrelet foraging opportunities (Ainley *et al.* 1995; Hunt 1995). Human-caused disturbances (e.g., intense commercial or recreational fishing) may affect prey density or accessibility.

Most of the information available about prey species of marbled murrelets is from the Gulf of Alaska and British Columbia, and is summarized by Burkett (1995). Marbled murrelets generally forage in near-shore marine waters at distances of 0.3 to 2 kilometers (0.2 to 1.2 miles) from shore; however, they occur at distances up to 24 kilometers (14 miles) from shore in reduced numbers. Marine systems producing sufficient prey to support marbled murrelets provide suitable foraging habitat for the species.

Marbled murrelets have been reported feeding on a wide variety of small fish and invertebrates, indicating their flexibility and capability to use alternative prey sources. Prey include Pacific sandlance (*Ammodytes hexapterus*), Pacific herring (*Clupea harengus*), northern anchovy (*Engraulis mordax*), osmerids, sea perch (*Cymatogaster aggregata*), euphausiids (*Euphausia pacifica* and *Thysanoessa spinifera*), mysids (*Neomysis* spp.), and amphipods, among others (Sealy 1975; Sanger 1987; Sanger and Jones 1981; Carter and Sealy 1990; Strong *et al.* 1993; Burkett 1995). Fish are an important component of the diet during the summer, which coincides with the nestling and fledgling periods, while euphausiids, mysids, and amphipods seem to be more important in the winter and spring in some areas (Munro and Clemens 1931; Sealy 1975; Krasnow and Sanger 1982; Sanger 1983, 1987; Carter 1984; Carter and Sealy 1990; Vermeer 1992; Burkett 1995).

Prior to euroamerican settlement in the Pacific Northwest, nesting habitat for the marbled murrelet was well-distributed, particularly in the wetter portions of its range in Washington, Oregon, and California. This habitat was generally found in large, contiguous blocks (Ripple 1994) as described under the Management Considerations section of this rule. The Recovery Team and others (Ralph *et al.* 1995b) considered the loss of nesting habitat to be one of the primary factors limiting current population size from British Columbia to California.

Areas where marbled murrelets are concentrated at sea during the breeding season are likely determined by a combination of terrestrial and marine conditions. However, nesting habitat appears to be the most important factor affecting marbled murrelet distribution and numbers. Recent marine survey data confirm earlier conclusions (60 FR 40892) that marine observations of murrelets during the nesting season generally correspond to the largest remaining blocks of suitable forest nesting habitat (Nelson *et al.* 1992; Ralph *et al.* 1995b; Ralph and Miller 1995; Strong 1995; Varoujean *et al.* 1994). For example, suitable nesting habitat data from aggregated GIS databases (S. Holzman, U.S. Fish and Wildlife Service, pers. comm. 1996) were overlain on the aerial survey data provided by Varoujean *et al.* (1994) and the boat survey data provided by Strong (1995). Highest densities of murrelets seen in 1992, 1993, 1994, and 1995 closely corresponded with the presence of large blocks of suitable nesting habitat on the coasts of northern coastal Washington and central and southern coastal Oregon.

Consistent with Varoujean *et al.*'s (1994) 1993 and 1994 aerial surveys, Thompson (1996) found murrelets to be more numerous along Washington's northern outer coast and less abundant along the southern coast. He reported that this distribution appears to be correlated with (1) proximity of old growth forest, (2) the distribution of rocky shoreline/substrate versus sandy shoreline/substrate, and (3) abundance of kelp; his analysis of these variables is continuing. In British Columbia, Rodway *et al.* (1995) observed murrelets aggregating on the water close to breeding areas at the beginning of the breeding season and, for one of their two study areas, again in July as young were fledging. Burger (1995) reported that the highest at-sea murrelet densities in both 1991 and 1993 were seen immediately adjacent to two tracts of old-growth forest, while areas with very

low densities of murrelets were adjacent to heavily logged watersheds.

In contrast, where nesting habitat is limited in southwest Washington, northwest Oregon, and portions of California, few marbled murrelets are found at sea during the nesting season (Ralph and Miller 1995; Ralph *et al.* 1995b; Strong 1995; Varoujean and Williams 1995; Thompson 1996). The area between the Olympic Peninsula in Washington and Tillamook County in Oregon (160 kilometers (100 miles)) has few occupied sites or sightings at sea of marbled murrelets. In California, approximately 480 kilometers (300 miles) separate the large breeding populations to the north in Humboldt and Del Norte Counties from the southern breeding population in San Mateo and Santa Cruz Counties. Currently this reach contains few marbled murrelets during the breeding season; however, the area likely contained significant numbers of marbled murrelets before extensive logging (Paton and Ralph 1988, Larsen 1991).

In addition to the proximity of suitable nesting habitat, it is likely that marine factors such as prey abundance influence the local distribution of breeding murrelets (Ralph and Miller 1995; Strachen *et al.* 1995; Strong 1995). The influence of prey distribution and abundance on the distribution of other alcids has been well documented (Bradstreet and Brown 1985). In general, nesting murrelets, which must return to their nest at least once per day, must balance the energetic costs of foraging trips with the benefits for themselves and their young (Skutch 1979; Ydenberg 1989; USFWS 1995a). Therefore, breeding adults are energetically justified in taking relatively long foraging trips only when they can gain access to high quality foraging areas (Bradstreet and Brown 1985; Gaston 1985; Carter and Sealy 1990). Breeding murrelets are known to cover large areas at sea to take advantage of foraging opportunities (Carter and Sealy 1990; Ralph and Miller 1995; Rodway *et al.* 1995). Therefore, use of marine habitat is constrained during the breeding season by its distance from nesting habitat and the quality of forage resources available. This is consistent with the observed juxtaposition of suitable nesting habitat and distribution of murrelets during the breeding season described above, and it may explain the differences observed in marine distribution patterns between murrelets and other non-forest nesting seabirds (Varoujean *et al.* 1994). During years of low prey availability, the distance from nesting areas to adequate foraging areas is probably a critical determinant of reproductive success (USFWS 1995a).

Marbled murrelets can be adversely affected by impacts to their nesting habitat, marine foraging habitat, and food supply, as well as direct mortality from human activities such as oil spills and gillnet fisheries. These impacts, and the resulting decline from historical population levels, formed the basis for the listing of the species as threatened in 1992 (57 FR 45328). Based on an analysis of likely ranges of fecundity and survivorship of this species, Beissinger (1995) developed a population model that estimated that marbled murrelets in Washington, Oregon, and California may be declining at a rate between 4 and 6 percent per year. These results are consistent with the evidence of a long-term decline from historical populations.

This decline may be a result of several factors. In addition to habitat loss and fragmentation, which may reduce nesting success, declines may be exacerbated by high mortality rates of the young of the year prior to reaching the ocean, and high mortality rates of juveniles and adults in the marine and terrestrial environments.

Marbled murrelets are believed to be highly vulnerable to predation when on the nesting grounds, and the species has evolved a variety of morphological and behavioral characteristics indicative of selection pressures from predation (Ralph *et al.* 1995b). For example, plumage and eggshells exhibit cryptic coloration, and adults fly to and from nests by indirect routes and often under low-light conditions (Nelson and Hamer 1995a). Potential nest predators include the common raven (*Corvus corax*), Steller's jay (*Cyanocitta stelleri*), American crow (*Corvus brachyrhynchos*), gray jay (*Perisoreus canadensis*), great horned owl (*Bubo virginianus*), sharp-shinned hawk (*Accipiter striatus*), Cooper's hawk (*Accipiter cooperii*), northern goshawk (*Accipiter gentilis*), raccoon (*Procyon lotor*), marten (*Martes americana*), Townsend chipmunk (*Eutamias townsendii*), northern flying squirrel (*Glaucomys sabrinus*), Douglas squirrel (*Tamiosciurus douglasi*), and fisher (*Martes pennanti*) (Marzluff *et al.* 1996). Ravens, Steller's jays, and possibly great horned owls are known predators of eggs or chicks (Nelson and Hamer 1995b).

From 1974 through 1993, of those marbled murrelet nests in Washington, Oregon, and California where success/failure was documented, approximately 64 percent of the nests failed. Of those nests, 57 percent failed due to predation (Nelson and Hamer 1995b). The relatively high predation rate could be biased because nests near forest edges may be more easily located by observers and more susceptible to predation and because observers may attract predators. Hamer and Nelson (1995b) believed that researchers had minimal impacts on predation in most cases because the nests were monitored from a distance and relatively infrequently, and precautions were implemented to minimize predator attraction.

Several possible reasons exist for the high observed predation rates of marbled murrelet nests. The first possibility is that these high predation rates are normal, although it is unlikely that a stable population could have been maintained under the predation rates presently being observed (Beissinger 1995).

Another reason could be that populations of marbled murrelet predators such as corvids (jays, crows, and ravens) and great horned owls are increasing in the western United States, largely in response to habitat changes and food sources provided by humans (Robbins *et al.* 1986; Rosenberg and Raphael 1986; Johnson 1993; Marzluff *et al.* 1994, 1996; National Biological Service 1996), resulting in increased predation rates on marbled murrelets. It has also been proposed that creation of excessive forest edge habitat may increase the vulnerability of murrelet nests to predation and ultimately lead to higher rates of predation. Edge effects have been implicated in increased forest bird nest predation rates for other species of birds (Chasko and Gates 1982; Yahner and Scott 1988).

The potential relationship between forest fragmentation, edge, and adverse effects on forest nesting birds has received increased attention during the last few decades. In a comprehensive review of the many studies on this topic, Paton (1994) concluded that "strong evidence exists that avian nest success declines near edges." Small patches of habitat have a greater proportion of edge than do large patches of the same shape (Schieck *et al.* 1995). However, Paton (1994) noted that many of these studies involved lands where forests and agricultural or urban areas interface, or they involved experiments with ground nests that are not readily applicable to canopy nesters such as marbled murrelets. Paton (1994) therefore stressed the need for studies specific to forests fragmented by timber harvest in the Pacific Northwest and elsewhere.

Some research on this topic has been conducted in areas dominated by timber production and using nests located off the ground (Ratti and Reese 1988;

Rudnicky and Hunter 1993; Marzluff *et al.* 1996; Vander Haegen and DeGraaf in press). Vander Haegen and DeGraaf (in press) found that nests in shrubs less than 75 meters from an edge were three times as likely to be depredated than nests greater than 75 meters from an edge. Likewise, Rudnicky and Hunter (1993) found that shrub nests on the forest edge were depredated almost twice as much as shrub nests located in the forest interior. They also observed that shrub nests were taken primarily by avian predators such as crows and jays, which is consistent with the predators believed to be impacting murrelets, while ground nests were taken by large mammals such as raccoons and skunks. Ratti and Reese (1988) did not find the edge relationship documented by Rudnicky and Hunter (1993), Vander Haegen and DeGraaf (in press), and others cited in Paton (1994). However, Ratti and Reese (1988) did observe lower rates of predation near "feathered edges" compared to "abrupt" edges (e.g., clearcut or field edges), and suggested that the vegetative complexity of the feathered edge may better simulate natural edge conditions than do abrupt edges. These authors also concluded that their observations were consistent with Gates and Gysel's (1978) hypothesis that birds are poorly adapted to predator pressure near abrupt artificial edge zones.

Studies of artificial and natural nests conducted in Pacific Northwest forests also indicate that predation of forest bird nests may be affected by habitat fragmentation, forest management, and land development (Hansen *et al.* 1991; Vega 1993; Bryant 1994; C. Chambers, Oregon State University, pers. comm. 1994; Nelson and Hamer 1995b; Marzluff *et al.* 1996). Nelson and Hamer (1995b), in the only direct measure of marbled murrelet reproductive success, found that successful murrelet nests were further from edge than unsuccessful nests. Marzluff *et al.* (1996) are conducting the only experimental predation study that uses simulated marbled murrelet nests, and they have documented predation of artificial murrelet nests by birds and arboreal mammals. Although the study is still continuing, preliminary results indicate that proximity to human activity and landscape contiguity may interact to determine rate of predation (J. Marzluff, pers. comm. 1996). Interior forest nests in contiguous stands far from human activity appear to experience the least predation (Marzluff *et al.* 1996).

In addition to studies of edge effects, some research has been initiated to look at the importance of stand size. Among all Pacific Northwest birds, the marbled murrelet is considered to be one of the most sensitive to forest fragmentation (Hansen and Urban 1992). Murrelet nest stand size in Washington, Oregon, and California varied between 3 and 1,100 hectares (7 and 2,717 acres) and averaged 206 hectares (509 acres) (Hamer and Nelson 1995b). Nelson and Hamer (1995b) found that successful murrelets tended to nest in larger stands than did unsuccessful murrelets, but these results were not statistically significant. Miller and Ralph (1995) compared murrelet survey detection rates among four stand size classes in California. Recording a relatively consistent trend, they observed that a higher percentage of large stands (33.3 percent) had occupied detections when compared to smaller stands (19.8 percent), while a greater percentage of the smallest stands (63.9 percent) had no presence or occupancy detections when compared to the largest stands (52.4 percent) (Miller and Ralph 1995). However, these results were not statistically significant, and the authors did not conclude that murrelets preferentially select or use larger stands. The authors suggested the effects of stand size on murrelet presence and use may be masked by other factors such as stand history and proximity of a stand to other old-growth stands. Schieck *et al.* (1995) found that murrelet presence and abundance was positively correlated with old-growth stand size in British Columbia, but their data were not statistically significant. Rodway *et al.* (1993) recommended caution when interpreting murrelet detection data, such as that used by Miller and Ralph (1995) and Schieck *et al.* (1995), because numbers of detections at different sites may be affected by variation caused by weather, visibility, and temporal shifts.

In addition to stand size, general landscape condition may influence the degree to which marbled murrelets nest in an area. In Washington, marbled murrelet detections increased when old-growth/mature forests comprised more than 30 percent of the landscape (Hamer and Cummins 1990). Hamer and Cummins (1990) found that detections of marbled murrelets decreased in Washington when the percentage of clear-cut/meadow in the landscape increased above 25 percent. Additionally, Raphael *et al.* (1995) found that the percentage of old-growth forest and large sawtimber was significantly greater within 0.8-kilometer (0.5-mile) of sites (203-hectare (501-acre) circles) that were occupied by murrelets than at sites where they were not detected. Raphael *et al.* (1995) suggested tentative guidelines based on this analysis that sites with 35 percent old-growth and large sawtimber in the landscape are more likely to be occupied. In California, Miller and Ralph (1995) found that the density of old-growth cover and the presence of coastal redwood were the strongest predictors of murrelet presence.

Although ongoing research should shed more light on the specific factors that affect murrelet nest predation and stand size preferences, the best available information strongly suggests that marbled murrelet reproductive success may be adversely affected by forest fragmentation associated with certain land management practices. Based on this information, the Service concludes that the maintenance and development of suitable habitat in relatively large contiguous blocks as described in this rule and the draft Marbled Murrelet (Washington, Oregon, and California Population) Recovery Plan (draft Recovery Plan) (USFWS 1995a) will contribute to the recovery of the marbled murrelet. These blocks of habitat should contain the structural features and spatial heterogeneity naturally found at the landscape level, the stand level, and the individual tree level in Pacific Northwest forest ecosystems (Hansen *et al.* 1991; Hansen and Urban 1992; Ripple 1994; Bunnell 1995; Raphael *et al.* 1995; Schieck *et al.* 1995).

In addition to predation at the nest, adult and juvenile murrelets are vulnerable elsewhere in the terrestrial and marine environments. For example, in the terrestrial environment adult marbled murrelets have been preyed upon by sharp-shinned hawks, peregrine falcons (*Falco peregrinus*), bald eagles (*Haliaeetus leucocephalus*), and possibly merlins (*F. columbarius*) (Marks and Naslund 1994).

In the marine environment, oil spills and commercial net fisheries adversely affect marbled murrelets. Clean water is important for survival and completion of the murrelet's life cycle and for the conservation of the species. Clean, unpolluted water is essential for maintaining the health of individual marbled murrelets and prey species, and for providing areas for social interactions and other behaviors.

Marbled murrelets have a high vulnerability to oiling, and oil spills have had catastrophic effects when large spills have occurred in the vicinity of murrelet concentrations. Impacts have been particularly severe in Prince William Sound in Alaska, western Washington, and central California (Carter and Kuletz 1995). The 45 marbled murrelets recovered after the

Tenyo Maru spill in 1991 at the mouth of the Strait of Juan de Fuca in Washington was the greatest number of murrelets recovered in any oil spill, with the exception of the *Exxon Valdez* oil spill, and represented a significant portion of the local population (Carter and Kuletz 1995). Oil spills may also affect forage fish populations (Irons 1992; Oakley and Kuletz 1994; Piatt and Anderson In press), reduce reproductive success, and disrupt breeding activity (Carter and Kuletz 1995). Chronic oil pollution can cause mortality through oiling and ingestion of oil. Other forms of pollution may also affect birds directly through toxic effects on their food supply.

Mortality of marbled murrelets from entanglement and drowning in fishing nets has declined in recent years in Washington, Oregon, and California, as fishing effort has declined and regulations to reduce mortality have been implemented. However, mortality is still a concern, particularly in Washington. Gillnet fisheries are most significant as a threat to murrelets in the marine environment in Washington, although closures of some areas, specifically to protect marbled murrelets, were implemented in the 1995 season (USFWS 1995b, 1995c). Gillnet fisheries no longer occur in Oregon, with the exception of those in the Columbia River. In California, fishing regulations protect most murrelets from this type of mortality (Carter *et al.* 1995).

Gillnet fisheries may occur at the mouth of the Columbia River, in Willapa Bay, Grays Harbor, the Strait of Juan de Fuca, and Puget Sound, although fishing efforts in coastal fisheries have been greatly reduced because of depressed salmon (*Oncorhynchus* spp.) runs. An observer program in 1994 in the all-citizens and Tribal sockeye salmon (*Oncorhynchus nerka*) drift gillnet fishery of north Puget Sound, which is the most significant fishery in Puget Sound, estimated an entanglement of 15 murrelets, with a range of 2 to 59 murrelets (Pierce *et al.* 1996). A National Marine Fisheries observer program for marine mammals on the outer coast fisheries of Washington, where low numbers of marbled murrelets are present, did not document marbled murrelet mortality (Jeffries and Brown 1993). However, a number of entangled birds of the Alcidae family were not identified to species. Entanglement in other Washington drift net and set gillnet fisheries has also been documented (Speich and Wahl 1989; Craig and Cave 1994; BIA 1994; J. Grettenberger, USFWS, pers. comm. 1995). Observer programs in 1993 and 1994 in Puget Sound salmon purse seine fisheries indicated that entanglement rates of marbled murrelets were much lower with this gear type (Natural Resources Consultants 1995). To date, there has not been any documented murrelet mortalities from gillnet fisheries at the mouth of the Columbia River.

It is likely that marbled murrelets, like many other seabirds, are affected by fluctuations in marine environmental conditions such as El Niño events (USFWS 1995a). In general, increased mortality of adult seabirds and decreased reproductive efforts have been linked with El Niño episodes when food supplies are depressed (Schrieber and Schrieber 1984; Hodder and Graybill 1985; Boekelheide *et al.* 1990), although there may be marked differences in effects across regions and among species with different foraging styles (Hatch 1987). Marbled murrelets are relatively opportunistic foragers and probably have a great flexibility in prey choice (USFWS 1995a). This capability may enable them to respond, to some degree, to changes in prey availability caused by fluctuating environmental conditions (USFWS 1995a). In general, unfavorable conditions can result in adult mortality and reduced productivity. However, a seabird's relatively long life span is an adaptation which allows an individual to reproduce successfully despite adverse conditions during its lifetime. This life history strategy serves to maintain a population despite environmental fluctuations (USFWS 1995a). However, cumulative impacts (including nest habitat loss, oil spills, etc.), in addition to repeated El Niño events in localized areas over a short time period could cause serious population declines or extirpations (USFWS 1995a).

Management Considerations

Marbled murrelets are found in forests containing a variety of forest structure, which is in part the result of varied management practices and natural disturbance (Hansen *et al.* 1991; McComb *et al.* 1993). In many areas, management practices have resulted in fragmentation of the remaining older forests and creation of large areas of younger forests that have yet to develop habitat characteristics suitable for marbled murrelet nesting (Hansen *et al.* 1991). Past and current forest management practices have also resulted in a forest age distribution skewed toward younger even-aged stands at a landscape scale (Hansen *et al.* 1991; McComb *et al.* 1993).

In many portions of the range of the marbled murrelet during the last 50–70 years, forest management has concentrated on clear-cut logging (Hansen *et al.* 1991). After forests are clear-cut, the sites are traditionally replanted to a single or few tree species and maintained as even-aged stands for maximum wood-fiber production. Site-preparation and management activities may further decrease species diversity (Hansen *et al.* 1991). These methods include prescribed burning and the use of herbicides or mechanical methods to control competing vegetation.

Prior to the widespread application of clearcut timber harvest, historical logging practices in some portions of the species' range consisted of more selective timber harvest, leaving remnant patches of forests of varying ages with older forest characteristics. The uneven-aged management practices used in these areas usually resulted in more diverse forests that may currently provide some nesting habitat where a few trees containing suitable marbled murrelet nesting structure remain (Hansen *et al.* 1991).

Current and historic loss of marbled murrelet nesting habitat is generally attributed to timber harvest and land conversion practices, although, in some areas, natural catastrophic disturbances such as forest fires have caused losses (Hansen *et al.* 1991; Ripple 1994; Bunnell 1995). Reduction of the remaining older forest has not been evenly distributed in western Washington, Oregon, and California. Timber harvest has been concentrated at lower elevations and in the Coast Ranges (Thomas *et al.* 1990), generally overlapping the range of the marbled murrelet.

Habitat for marbled murrelets has been generally declining since the arrival of European settlers. Bolsinger and Waddell (1993) estimated that old-growth forest in Washington, Oregon, and California has declined by two-thirds statewide during the last five decades. Information specific to the range of the marbled murrelet is not available. Historic forest conditions have been estimated for western Washington and Oregon by several authors. Marbled murrelet habitat represents a significant portion of area included in these estimates; therefore, trends in habitat are assumed to follow the same general pattern identified for the larger area.

Although the extent of mature and old-growth forest before the 1800s is difficult to quantify, western Washington and Oregon are estimated to have been covered by approximately 9.7 to 12.8 million hectares (24 to 32 million acres) of forest at the time of euroamerican settlement in the early to

mid-1800s, of which about 5.6 to 7.9 million hectares (14 to 20 million acres) (60 to 70 percent) are estimated to have been old-growth (Society of American Foresters Task Force 1983; Spies and Franklin 1988; Morrison 1988; Norse 1988; Booth 1991; Ripple 1994). As of 1991, there were approximately 1.4 million hectares (3.4 million acres) of old-growth forest remaining in western Washington and Oregon, an 82 percent reduction from estimated prelogging levels (Booth 1991).

Estimates for a similar time period in northwestern California are not as precise, but suggest there were between 526,000 and 1.3 million hectares (1.3 and 3.2 million acres) of old-growth Douglas-fir/mixed conifer forest and approximately 890,000 hectares (2.2 million acres) of old-growth coastal redwood forest (Society of American Foresters Task Force 1983; Laudenslayer 1985; Fox 1988; California Department of Forestry and Fire Protection 1988; Morrison 1988). Currently there are approximately 28,000 hectares (70,000 acres) of old-growth coastal redwood forest remaining in California (Larsen 1991).

Some of the forests that were affected by past natural disturbances, such as forest fires and windthrow, currently provide suitable nesting habitat for marbled murrelets because they retain scattered individual or clumps of large trees that provide structure for nesting (Hansen *et al.* 1991; McComb *et al.* 1993; Bunnell 1995). This is particularly true in coastal Oregon where extensive fires occurred historically. Marbled murrelet nests have been found in remnant old-growth trees in mature forests in Oregon.

Forests providing suitable nesting habitat and nest trees generally require 200 to 250 years to develop characteristics that supply adequate nest platforms for marbled murrelets. This time period may be shorter in redwood and western hemlock forests and in areas where significant remnants of the previous stand remain. Intensively managed forests in Washington, Oregon, and California have been managed on average cutting rotations of 70 to 120 years (USDI 1984; USDA 1988). Cutting rotations of 40 to 50 years are common for some private lands. Timber harvest strategies on Federal lands and some private lands have emphasized dispersed clear-cut patches and even-aged management. Forest lands that are intensively managed for wood fiber production are generally prevented from developing the characteristics required for marbled murrelet nesting. Suitable nesting habitat that remains under these harvest patterns is highly fragmented.

Previous Management Efforts

Since 1990, several different approaches to management of older forests and their associated species (including marbled murrelets) have been developed through various Federal efforts. These include the Interagency Scientific Committee's Conservation Strategy for the Northern Spotted Owl (Thomas *et al.* 1990), the Scientific Panel on Late Successional Forest ecosystems commissioned by the U.S. House of Representatives (Johnson *et al.* 1991), the designation of spotted owl critical habitat by the Service (57 FR 1796), and the U.S. Forest Service's (Forest Service) Scientific Analysis Team Report (Thomas *et al.* 1993). All of these efforts would have provided some level of protection to marbled murrelets but most did not address murrelets specifically or provide a framework for a specific marbled murrelet management strategy.

In July 1993, the Service, Forest Service, U.S. Bureau of Land Management, National Park Service, National Marine Fisheries Service, and U.S. Environmental Protection Agency released the Report of the Forest Ecosystem Management Assessment Team (FEMAT Report) (USDA *et al.* 1993a). Information from this report was used in developing the Final Supplemental Environmental Impact Statement on Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl (USDA *et al.* 1993b) and the Record of Decision for Amendments to the Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl (ROD). This ROD is referred to as the Northwest Forest Plan (USDA and USDI 1994). The FEMAT report and ROD provide a specific marbled murrelet management strategy for Federal lands.

Within the range of the marbled murrelet, the Northwest Forest Plan designates a system of Late-Successional Reserves, which provides large areas expected to eventually develop into contiguous, unfragmented forest. In addition to Late-Successional Reserves, the Northwest Forest Plan designates a system of Adaptive Management Areas, where efforts focus on answering management questions, and matrix areas, where most forest production occurs. Administratively withdrawn lands, as described in the individual National Forest or Bureau of Land Management land use plans, are also part of the Northwest Forest Plan.

Specific measures in the Northwest Forest Plan protect *all* occupied murrelet sites on Federal lands outside of the Federal reserve system. These measures include surveys prior to activities that may affect habitat and protection of contiguous marbled murrelet nesting and recruitment habitat (stands capable of becoming suitable nesting habitat within 25 years) within 0.8-kilometer (0.5-mile) of areas occupied by murrelets.

An assessment of population viability of marbled murrelets was conducted by the FEMAT. The assessment group concluded that "We believe there is only about a 60 percent likelihood (with a range of 50 to 75 percent) that the marbled murrelet population on Federal lands would be stable and well distributed after 100 years, regardless of which option is selected." An additional assessment based only on the projected habitat condition at 100 years concluded that there was an 80 percent likelihood that nesting habitat would be well distributed on Federal lands at 100 years under the option most similar to the current Northwest Forest Plan.

The Service recognizes the value of the Northwest Forest Plan (USDA and USDI 1994) and acknowledges its integral role in marbled murrelet conservation. The Northwest Forest Plan complements this critical habitat designation by stressing the need for protection of large, unfragmented areas of suitable nesting habitat that are well-distributed throughout the species' range, with special emphasis on areas close to the marine environment.

Concurrently with the implementation of the Northwest Forest Plan, the Marbled Murrelet Recovery Team continues to work on a Recovery Plan that will outline a strategy for recovering the species. The Recovery Plan, which builds on the Northwest Forest Plan, also addresses management needs on non-Federal lands and in the marine environment.

The Marbled Murrelet Recovery Team is completing a final Recovery Plan that will outline a strategy for recovering the species. The draft Recovery Plan (USFWS 1995a) suggested the establishment of six Marbled Murrelet Conservation Zones where viable populations of murrelets should be maintained in Washington, Oregon, and California. The Recovery Team would designate the Marbled Murrelet Conservation Zones to address differing needs for recovery actions in portions of the marbled murrelet's range and to maintain well-distributed populations. The zones are generally described as follows: (1) the Puget Sound Conservation Zone includes all the waters of Puget Sound, the eastern waters of the Strait of Juan de Fuca and

associated inland habitat extending 80 km (50 miles) from eastern Puget Sound and bisecting of the Olympic Peninsula; (2) the Western Washington Coast Range Conservation Zone includes the outer coast of Washington, the western waters of the Strait of Juan de Fuca and associated inland habitat extending inland to the midpoint of the Olympic Peninsula and in southwest Washington as far as 80 km (50 miles) from the Pacific Ocean shoreline; (3) the Oregon Coast Range Conservation Zone includes most of the coastal waters of Oregon (between the Columbia River and Coos Bay) within 2 km (1.2 miles) of the shoreline and associated inland habitat extending inland a distance of 56 km (35 miles); (4) the Siskiyou Coast Range Conservation Zone includes a portion of the coastal waters of Oregon and California (between Coos Bay, Oregon and the southern boundary of Humboldt County, California) within 2 km (1.2 miles) of the shoreline and associated inland habitat extending inland a distance of 56 km (35 miles) from the Pacific Ocean shoreline; (5) the Mendocino Conservation Zone includes a portion of the California coastal waters (from the Humboldt County line to the mouth of San Francisco Bay) within 2 km (1.2 miles) of the shoreline and associated inland habitat extending inland a distance of up to 40 km (25 miles) from the Pacific Ocean shoreline; and (6) the Santa Cruz Mountains Conservation Zone includes a portion of the central California coastal waters (from the mouth of San Francisco Bay to Point Sur, Monterey County) within 2 km (1.2 miles) of the shoreline and associated inland habitat extending inland a distance of up to 24 km (15 miles) from the Pacific Ocean shoreline (USFWS 1995a).

In the marine environment, several laws apply that benefit murrelets directly or indirectly. The Oil Pollution Act of 1990 addresses the development of a national planning and response system for spills in marine and freshwater environments. A variety of planning efforts are underway that address responses to worst-case discharges of oil or hazardous substances, and mitigation or prevention of a substantial threat of discharge from a vessel, offshore facility, or onshore facility. Planning efforts include the development of a national contingency plan, regional area contingency plans, and local geographic response plans. The Service has worked extensively with the U.S. Coast Guard, industry representatives, local response communities, and other State, Federal, and Tribal natural resource trustees to develop area contingency plans and geographic response plans for Pacific coastal areas. These plans address mechanical recovery, use of dispersants, in-situ burning, shoreline cleanup, protection of sensitive areas, and protection, rescue, and rehabilitation of fish and wildlife. These planning efforts and associated spill exercises should help prevent or minimize the impact of spills on natural resources.

Several other marine laws address threats to murrelets. These include the Clean Water Act, which regulates the discharge of pollution into marine waters and establishes National Contingency plans to minimize damage from oil spills; the Coastal Zone Management Act, which establishes the Coastal Nonpoint Source Pollution Control Program; the Marine Protection, Research and Sanctuaries Act, which restricts ocean dumping of waste, including dredged materials, and establishes marine sanctuaries; and the Outer Continental Shelf Act, which regulates offshore oil development.

Mortality of marbled murrelets in commercial net fisheries in Washington is being addressed through changes in State and Tribal regulations. In 1995, the State of Washington and the Tribes instituted area closures in a number of areas with high densities of marbled murrelets to reduce the potential for entanglement. In 1995, the first year of a 2-year study to evaluate modified gillnets designed to reduce seabird entanglement was completed, and the initial results were encouraging (Melvin and Conquest 1996). Research was also conducted in 1995 to evaluate the extent of fisheries/murrelet overlap and factors that affect entanglement. Educational programs have been implemented that provide material to fishermen on marbled murrelet identification and distribution. As a result of section 7 consultation, observer programs were required in 1993 and 1994 to evaluate and quantify the extent of marbled murrelet mortality in purse seine and gillnet salmon fisheries (USFWS 1995b, 1995c).

Finally, the Forest Service published the "Ecology and Conservation of the Marbled Murrelet," a compilation of original studies and literature reviews that represents the most current treatise on marbled murrelets (Ralph *et al.* 1995a). The document is particularly valuable for management, because it has assembled and synthesized most of what is known about the marbled murrelet.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as "(i) the specific areas within the geographical area occupied by the species, at the time it is listed * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed * * * upon a determination * * * that such areas are essential for the conservation of the species." 16 U.S.C. 1532(5)(A). The term "conservation," as defined in section 3(3) of the Act, means "* * * to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary * * *" 16 U.S.C. 1532(3).

Role in Species Conservation

The use of the term "conservation" in the definition of critical habitat indicates that its designation would include habitat essential to a species' eventual recovery and delisting. However, when critical habitat is designated at the time a species is listed or before a recovery plan is completed, the Service frequently does not know all of the habitat areas that are essential for a species' recovery. Thus, the Act provides that critical habitat designations may be revised from time to time (16 U.S.C. 1533(a)(3)(B)).

The designation of critical habitat is only one of several measures available to contribute to the conservation of a listed species. Critical habitat helps focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements), thus alerting Federal agencies and the public to the importance of an area in the species' conservation. Critical habitat also identifies areas that may require special management or protection. The identification of these areas may be helpful in planning federally regulated land use activities. The added emphasis on these areas for conservation of the species may shorten the time needed to achieve recovery.

Critical habitat receives consideration under section 7 of the Act with regard to actions carried out, authorized, or funded by a Federal agency. As such, designation may affect non-Federal lands only where such a Federal nexus exists. Federal agencies must insure that their actions are not likely to result in destruction or adverse modification of critical habitat. Aside from this added consideration under section 7, the Act does not provide any additional protection to lands designated as critical

habitat. Designating critical habitat does not create a management plan for the areas; does not establish numerical population goals or prescribe specific management actions (inside or outside of critical habitat); and does not have a direct effect on areas not designated as critical habitat. Specific management recommendations for critical habitat are addressed in recovery plans, management plans, and in section 7 consultation.

In Washington, specific State Forest Practices rules are triggered by Federal critical habitat designation covering private lands. Under Forest Practices rules, a forest management activity within designated critical habitat is classified as a "Class IV—special" forest practice. The applicant for the forest practices permit must submit, in addition to the usual information for the Forest Practices permit, an environmental checklist under the State Environmental Policy Act (SEPA). This checklist covers all resources, not just the species or critical habitat in question. The Washington Department of Natural Resources (WDNR) then makes a threshold determination from this information. The WDNR may make a determination of nonsignificance, mitigated determination of nonsignificance, or a determination of significance. If a determination of nonsignificance or mitigated determination of nonsignificance is reached, the action can proceed. If a determination of significance is made, preparation of an Environmental Impact Statement is required. This includes public involvement, and may involve significant time delays and costs. However, the State Forest Practices Board has the option to exclude any Federal critical habitat from this designation under a Class IV special. State regulations exclude from critical habitat, and Class IV—Special review requirements, areas covered by a conservation plan and permit approved the Service. State agencies are required to conduct SEPA review on all State land projects, so the designation of critical habitat designation will have less effect on their process.

In Oregon, State laws and regulations do not recognize critical habitat. Therefore, no effect can be attributed to Federal critical habitat through Oregon State law for critical habitat designated on non-federal land.

In California, the California Endangered Species Act (CESA) contains a similar concept to critical habitat called essential habitat. The State does not necessarily designate essential habitat in terms of mapped and described areas, as does critical habitat. Laws and regulations do not specifically defer to or recognize Federal critical habitat. California Department of Fish and Game biologists, in their normal CESA and California Environmental Quality Act (CEQA) review of proposed activities, may be aware of critical habitat and consider it in lieu of essential habitat. However, there is no requirement to do so, nor any prescribed manner for treating critical habitat. In the absence of critical habitat, State biologists continue to consider the concept of essential habitat. While State biologists may use Federal critical habitat during CESA and CEQA reviews, the impact is not expected to exceed impacts under the above laws in the absence of critical habitat.

Primary Constituent Elements

A designation of critical habitat begins by identifying areas essential to conservation of a species. In determining which areas to designate as critical habitat, the Service considers those physical and biological features essential to a species' conservation and that may require special management considerations or protection. Such physical and biological features, as stated in 50 CFR 424.12, include, but are not limited to, the following:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The Service is required to base critical habitat designations on the best scientific data available (16 USC 1533(b)(2)). In designating critical habitat for the marbled murrelet in Washington, Oregon, and California, the Service has reviewed its overall approach to the conservation of the species. For a thorough discussion of the ecology and life history of this subspecies, see the Service's Biological Report (Marshall 1988); the final listing rule published in the **Federal Register** on October 1, 1992 (57 FR 45328); The Status and Conservation of the Marbled Murrelet in North America (Carter and Morrison 1992); the Biology of the Marbled Murrelet: Inland and at Sea (Nelson and Sealy 1995); the draft Recovery Plan (USFWS 1995a); the Ecology and Conservation of the Marbled Murrelet (Ralph *et al.* 1995a); and the Ecological Considerations section of this rule.

The Service has determined that the physical and biological habitat features (referred to as the primary constituent elements) associated with the terrestrial environment that support nesting, roosting, and other normal behaviors are essential to the conservation of the marbled murrelet and require special management considerations.

Within areas essential for successful marbled murrelet nesting, the Service has focused on the following primary constituent elements: (1) individual trees with potential nesting platforms, and (2) forested areas within 0.8 kilometers (0.5 miles) of individual trees with potential nesting platforms, and with a canopy height of at least one-half the site-potential tree height. This includes all such forest, regardless of contiguity. These primary constituent elements are essential to provide and support suitable nesting habitat for successful reproduction of the marbled murrelet.

Individual nest trees include large trees, generally more than 81 centimeters (32 inches) dbh with the presence of potential nest platforms or deformities such as large or forked limbs, broken tops, dwarf mistletoe infections, witches' brooms, or other formations providing platforms of sufficient size to support adult murrelets. Because marbled murrelets do not build nests, moss or detritus may be important to cushion or hold the egg. Platforms should have overhead cover for protection from predators and weather, which may be provided by overhanging branches, limbs above the nest area, or branches from neighboring trees. Based on current information from Washington, Oregon, and California, nests have been found in Douglas-fir, coastal redwood, western hemlock, western redcedar, or Sitka spruce (Hamer and Nelson 1995b).

On a landscape basis, forests with a canopy height of at least one-half the site-potential tree height in proximity to potential nest trees are likely to contribute to the conservation of the marbled murrelet. These forests may reduce the differences in microclimates associated with forested and unforested areas (Chen *et al.* 1992; Chen *et al.* 1993), reduce potential for windthrow during storms (Chen *et al.* 1992), and provide a landscape that has a higher probability of occupancy by marbled murrelets (Raphael *et al.* 1995). The site-potential tree height is the average maximum height for trees given the local growing conditions, and is based on species-specific site index tables. Nest trees may be scattered or clumped throughout the area. Potential nesting areas may contain fewer than one suitable nesting tree per acre.

Within the boundaries of designated critical habitat, only those areas that contain one or more primary constituent element are, by definition, critical habitat. Areas without any primary constituent elements are excluded by definition.

Criteria Used To Identify Critical Habitat

Several qualitative criteria were considered in the selection of specific areas for inclusion in critical habitat. These criteria are similar to criteria used in the development of several recent Federal management proposals, such as the Scientific Panel (Johnson *et al.* 1991) and Northwest Forest Plan (USDA and USDI 1994). The following is a description of the criteria considered:

Suitable Nesting Habitat: The presence of suitable nesting habitat as defined in the previous section. Suitable habitat was located through the use of specific site knowledge, GIS data, remote sensing data, and aerial photos.

Survey Data: Information about presence/absence and occupancy were used to indicate murrelet use areas. Critical habitat units include most of the known sites occupied by marbled murrelets on Federal, State, county, and private lands. However, known occupied sites may represent only a small portion of the population due to the limited coverage of past survey efforts.

Proximity to Marine Foraging Habitat: During the nesting season, marbled murrelets forage in the marine environment and return to the nest at least once daily carrying a prey item to their young. Foraging and nesting habitat areas must be juxtaposed within the flight capabilities and energetic limits of the species. Critical habitat units were designated taking into account the distance of murrelet detections from the marine environment in a given area.

Large, Contiguous Blocks of Nesting Habitat: In response to the problems of fragmentation of suitable habitat, potential increases in predation, and reduced reproductive success, the Service concentrated on defining critical habitat units in terms of large, contiguous blocks of late-successional forest. The Service used the Late-Successional Reserve system identified in the Northwest Forest Plan (USDA and USDI 1994) to the extent possible to provide large blocks of habitat. Marbled murrelet locations and habitat were considered in the development of these reserves. State, county, private, and city lands were included where large blocks of Federal reserve areas were insufficient or not available, but where critical habitat was crucial to retaining distribution of the species.

Rangewide Distribution: To maintain the current distribution of the species and reduce the impact of catastrophic losses of habitat or murrelets, critical habitat units were identified throughout the range of the species in the three states. Well distributed critical habitat reduces the probability that a natural or human-caused catastrophe would threaten the survival or recovery of the species in Washington, Oregon, and California. Catastrophes that might threaten the species include wildfires, windstorms or oil spills. Given the intense site fidelity of many alcid species, maintaining rangewide distribution may also be needed to provide potential source populations for the recolonization of future habitat.

Adequacy of Existing Protection and Management: The Service considered the existing legal status of lands in designating areas as critical habitat. Areas with permanent legal protection of wildlife, such as congressionally designated wilderness areas, National Parks, and National Wildlife Refuges are not proposed unless specific threats were identified that are not addressed by existing management and protection. State park regulations vary, but are often more recreation oriented, and less restrictive or protective of wildlife.

Designated Areas Identified by Applying Criteria

Application of the foregoing criteria and consideration of comments and information received as a result of the supplemental proposal has resulted in the designation of most of the Late-Successional Reserves (LSR), as described in the Northwest Forest Plan, on Federal lands within the range of the marbled murrelet in Washington, Oregon, and California. These areas, as managed under the Northwest Forest Plan, should develop into large blocks of suitable murrelet nesting habitat given sufficient time. However, LSRs are plan-level designations with less assurance of long-term persistence than areas designated by Congress. Designation of LSRs as critical habitat compliments and supports the Northwest Forest Plan and helps to ensure persistence of this management directive over time. In some areas, these large blocks of Federal land can provide the necessary contribution for recovery of the species. In other areas, Federal ownership is limited and Federal lands alone cannot meet recovery needs to reverse the current population decline in marbled murrelets and maintain a well-distributed population.

The FEMAT report recognized the limited ability of Federal agencies to recover this species on Federal lands alone. "Although the Forest Ecosystem Management Assessment was designed to address only Federal lands within the range of the northern spotted owl, the marbled murrelet is an example of a species whose life history requirements cannot be accommodated only on Federal lands. The marbled murrelet is a seabird that nests inland and therefore is influenced by both the marine and terrestrial environments. Its nesting range in the three-state area includes land that is south of the range of the northern spotted owl. In addition, several areas that are considered key to the recovery of the marbled murrelet involve private and state lands" (FEMAT Report at IV–151 and IV–152, USDA *et al.* 1993a).

Based on information provided in public comments, including the recommendations of the Marbled Murrelet Recovery Team in the draft Recovery Plan (USFWS 1995a), the Service is designating selected non-Federal lands that meet the requirements identified in the Criteria for Identifying Critical Habitat section, where Federal lands alone are insufficient to provide suitable nesting habitat for the recovery of the species.

Non-Federal lands are designated as critical habitat where Federal lands are limited or nonexistent, and where non-Federal lands are essential for maintaining marbled murrelet populations and nesting habitat. State lands are particularly important in southwestern Washington, northwestern Oregon, and California south of Cape Mendocino. Small segments of county lands are also included in northwestern Oregon and central California. This is consistent with the Memorandum of Understanding between the Service and the State of California signed in 1991.

Some private lands are being designated as critical habitat because they provide essential elements and occur where Federal lands are very limited, although habitat availability on private land is typically much more limited than on public lands. These areas include the Arlecho Basin, which supports occupied sites in the lowlands of northern Washington; land supporting known occupied sites in southwestern Washington and in the Siletz River drainage in Oregon; nesting habitat and occupied sites for the at-sea murrelet population in the southern portion of the Draft Recovery Plan's proposed Marbled Murrelet Conservation Zone 4 in California,

including the Headwaters Forest area; and nesting habitat for the central California population. State, county, city, and private lands contain the last remnants of nesting habitat for the southern-most population of murrelets, which is the smallest, most isolated, and most susceptible to extirpation.

Areas Not Designated

Not all suitable nesting habitat is included in the designated critical habitat units. Emphasis has been placed on those areas considered most essential to the species' conservation in terms of habitat, distribution, and ownership. That does not mean that lands outside of designated critical habitat units are not important to the marbled murrelet. Some Federal lands outside of designated critical habitat will receive additional protection from the marbled murrelet conservation measures outlined in the Northwest Forest Plan. Under the ROD, *all* marbled murrelet habitat will be surveyed prior to removal or degradation of habitat, and *all* occupied sites will be protected. The Adaptive Management Areas, matrix lands, and administratively withdrawn lands contain areas of occupied habitat that would be protected from timber harvest.

Some areas outside this critical habitat designation may prove to contain elements important to the recovery of the species. This includes several areas recommended in public comment (see Issue 26). However, under the Administrative Procedure Act (5 U.S.C. 553), the Service cannot finally designate areas which were not included in a proposed rule; and the Service was under court order to finalize this designation by May 15, 1996. The Service will consider these areas for potential inclusion in any future revisions of marbled murrelet critical habitat.

In considering whether tribal lands would be designated as critical habitat, the Service gave particular attention to the Federal government's trust responsibilities to Native Americans. The Hoopa Valley Indian Reservation (Reservation) was considered but not designated as critical habitat because no occupied sites have been documented after 3 years of surveys on various portions of the Reservation. The Reservation contains only a small quantity of fragmented marbled murrelet habitat and is surrounded by Federal lands. Some of those Federal lands contain high quality habitat supporting occupied sites and are either designated as critical habitat or protected as a Congressionally Withdrawn Area.

Three other areas of Tribal land were considered for inclusion in critical habitat, including portions of the Quinault and Makah Indian Reservations in Washington and lands owned by the Siletz Tribe in Oregon. The Makah Indian Reservation was not designated because little suitable habitat remains in this area. The Siletz lands support marbled murrelets and contain suitable habitat. However, because these parcels are small, isolated, and relatively few, they have limited ability to contribute to recovery, especially considering the proximity of Federal land in the area. Many of these tribal lands contain murrelet occupied sites and activities on these areas undergo section 7 consultation through the Bureau of Indian Affairs, providing an option for achieving essential conservation contributions. Therefore, the Siletz lands were not included in the supplemental proposed rule, for any future revisions to critical habitat for the marbled murrelet.

The Quinault lands are considered important to the conservation of the marbled murrelet. The North Boundary Area of the Quinault Indian Reservation contains large blocks of contiguous, old-growth habitat. Much of this habitat currently supports marbled murrelets. However, the Quinault lands were not included in the supplemental proposed rule after consideration of the Federal government's trust responsibilities and the options for achieving essential conservation contributions through other alternatives. The Service is still considering the appropriateness of designating critical habitat on Quinault lands, for any future revisions to critical habitat for the marbled murrelet.

The Service considered including five marine areas in critical habitat. Clean water and accessible foraging opportunities are important life history requirements for the marbled murrelet. These five areas support the highest concentrations of murrelets during the breeding season in Washington, Oregon, and California. One area consisted of the waters of Puget Sound and the Strait of Juan de Fuca in Washington, including the waters surrounding the San Juan Islands. The Service also considered near shore waters (within 2 km (1.2 mi) of the shore) along the Pacific coast from Cape Flattery to Point Grenville in Washington, from Newport Bay to Coos Bay in Oregon, from the California State border to Cape Mendocino in northern California, and from Pillar Point to Davenport in central California.

While these marine areas are very important to the conservation of marbled murrelets, the Service does not believe that they require special management consideration or protection at this time beyond that provided by the existing Federal laws and regulations discussed in the Previous Management Efforts section. These laws and regulations specifically address reducing the threats identified in the marine environment.

While the draft Recovery Plan clearly indicates that marine habitat is important to the survival of marbled murrelets, it also indicates that the primary concern with respect to declining murrelet populations is loss of nesting habitat. The Service's evaluation of the effects of actions in the terrestrial environment focuses on the impacts to the species' nesting habitat, although take of murrelets is also addressed. With respect to the marine environment the Service is primarily concerned with mortality issues.

Activities or events that adversely affect marbled murrelets at sea seem to be more associated with the mortality of individual birds than with long-term destruction or adverse modification of habitat. For example, gillnet fisheries result in incidental capture of murrelets, but may not significantly adversely affect the prey base. Murrelets appear to forage opportunistically on available fish, and are likely able to respond to minor changes in fish abundance and location.

Murrelets are also adversely affected by spills of oil and other pollutants. Although these events undoubtedly harm the murrelet prey base, their principal adverse impact is the death of birds in the area of the event. The effects of these events on the murrelet prey base are somewhat more difficult to predict than are the effects on any murrelets that happen to be in the area. The Service's assessments of these events typically relies upon an assessment of the mortality issue rather than an assessment of habitat issues such as prey base.

Many of the threats specifically result in the loss of individuals through death or injury. Such effects related to projects authorized, funded, or carried out by a Federal agency can and should be considered under section 7 of the Act. The Service will continue to monitor marine threats and may propose marine critical habitat in the future if warranted.

Changes From the Supplemental Proposal

The Service reviewed public comments, information on forest stands provided by landowners during the public comment period, aerial photographs, and updated GIS data. The Service dropped areas and corrected

area descriptions accordingly. Generally, the corrections were relatively minor adjustments to boundary lines.

A number of proposed units in southwest Washington on private and State lands were reduced in size if it was determined that: (1) primary constituent elements were not present or, (2) the area removed was not considered necessary for the conservation of the species. The north portion of Capital Forest (WA–04–a) was removed because of the lack of primary constituent elements, coupled with high levels of motorized recreational use that further reduce habitat potential.

In Oregon, the Elliott State Forest was originally proposed for designation as critical habitat. The State of Oregon has since completed the Elliott State Forest Habitat Conservation Plan that includes provisions for the marbled murrelet and received an incidental take permit. This permit describes how the area will be managed for murrelets. Therefore, the Service has removed this area from the final designation.

On Federal lands in Oregon, the Service included approximately 100 acres and deleted approximately 300 acres of land on the Siuslaw National Forest at the request of the Forest Service. This change reflects a land exchange intended to protect marbled murrelet occupied sites. The Service deleted areas managed by the Siskiyou National Forest (portions of subunits OR–07–e and OR–07–f); and the Eugene, Roseburg and Medford Districts of the Bureau of Land Management (subunits OR–04–h, and portions of subunits OR–06–d, OR–04–f, and OR–04–I) based on survey information provided by the agencies during the public comment period. Survey information included the location and results (positive and negative) of murrelet surveys in the eastern portion of these areas. The survey locations were based on planned timber sales and habitat-based surveys in many areas, rather than a statistically designed study to determine the inland distribution of marbled murrelets. Therefore, the Service was only able to utilize the survey information in critical habitat units where the survey effort was greatest. The Service interprets lack of detections or occupied sites, when coupled with habitat information, to indicate that these areas are currently likely to support much lower densities of murrelets than areas closer to the coast. The Service does not consider these survey data to be sufficient at this time to define the full inland distribution of murrelets in these areas and does not propose to change the murrelet zones used in the Northwest Forest Plan.

In California, some portions of proposed critical habitat on private and Federal lands in the Siskiyou Coast Range Zone (unit CA–10–b and the east half of unit CA–10–a) and on city and state lands in the Santa Cruz Mountains Zone were dropped based on information provided by the landowners and land management agencies or other new information available to the Service. These areas were dropped because the Service determined that they did not contain the primary constituent elements or were not considered essential to the conservation of the species. All of Golden Gate National Recreation Area was dropped based on information provided by the National Park Service indicating that the Federal government owns the timber rights to any potentially suitable murrelet habitat within the area. After reviewing this information, the Service has determined that Federal lands within the Golden Gate National Recreation Area do not require special management.

Portions of primary constituent element (3) from the supplemental rule (forested areas of at least one-half the site-potential tree height regardless of the presence of potential nest platforms) have been incorporated into primary constituent element (2) in the final rule, and the remainder dropped. Forested areas surrounding nest trees were retained because they likely contribute to successful reproductive efforts by providing the microclimate suitable for maintaining nest tree characteristics and potentially reducing predation. The contribution of forested areas to successful reproduction likely decreases with increasing distance from the nest tree and at some distance the contribution becomes indistinguishable. Raphael *et al.* (1995) found an increased chance of occupancy in landscape conditions with increased amounts of large saw timber and old growth components within a 0.8 km (0.5 mile) radius circle. Specific studies are lacking to document the value of forested conditions to marbled murrelet nesting beyond the 0.8 km (0.5 mile) radius. Therefore, until these studies are completed, it is the best professional judgement of Service biologists that forested conditions within 0.8 km (0.5 mile) of a potential nest tree contribute more significantly to successful reproduction than those beyond this area and the Service has changed the primary constituent elements accordingly.

Congressionally Withdrawn Areas

Congressionally Withdrawn Areas (e.g., wilderness areas and national parks) are limited in the range of the marbled murrelet in Washington, Oregon, and California. Few wilderness areas are within the flight distance of marbled murrelets from the marine environment, although those that are provide crucial contributions to the conservation of the species. Wilderness areas and national parks contain approximately 302,000 hectares (747,000 acres) of marbled murrelet nesting habitat, representing 29 percent of the suitable nesting habitat on Federal lands in the range of the marbled murrelet. However, a substantial portion of the remainder of these areas is incapable of producing marbled murrelet nesting habitat because of forest composition, lack of forest cover, elevation, and other constraints. By themselves, Congressionally Withdrawn Areas are incapable of supporting stable and interactive populations of marbled murrelets.

Marbled murrelet habitat in congressionally designated wilderness areas, national parks, national monuments (natural areas), and national wildlife refuges is generally managed by statutory requirements to protect natural ecosystems and for the benefit of wildlife. Thus, habitat in these areas does not require special management consideration or protection. For example, a potential highway realignment through the Redwood National Park in northern California could result in the removal of occupied habitat. The Park's statutory authority and general management goals, however, are considered adequate to conserve the species without the additional designation of critical habitat.

However, not all Congressionally Withdrawn Areas are managed in this manner. For example, some national recreation areas may not be managed to maintain older forest habitats or may face external actions (e.g., outside ownership of mineral or timber rights) which may threaten marbled murrelet habitat within the area. One congressionally withdrawn area in California, the Golden Gate National Recreation Area, was proposed for designation. Area staff indicated that potential marbled murrelet habitat within the area might still be subject to timber harvest and loss, because the National Park Service does not control rights to the standing timber on some parts of the recreation area. During the public comment period the National

Park Service was able to verify that any lands where timber rights may not be secure do not contain potentially suitable marbled murrelet habitat. Therefore the Recreation Area was dropped from designation because murrelet habitat within the area no longer needs special management consideration or protection beyond the area's existing statutory requirements.

Several other congressionally designated areas were considered important to recovery of the marbled murrelet because of their location within the range of the species and presence of suitable nesting habitat, but are not designated because they do not require special management in light of their existing statutory requirements. These include: (1) North Cascades, Olympic, and Mount Rainier National Parks; Willapa National Wildlife Refuge; Mount Saint Helens National Volcanic Monument; Mount Baker, Noisy Diobsud, Glacier Peak, Boulder River, Henry M. Jackson, Alpine Lakes, Clearwater, Norse Peak, Glacial View, Tatoosh, Buckhorn, The Brothers, Mount Skokomish, Wonder Mountain, and Colonel Bob Wilderness Areas in Washington; (2) Drift Creek, Cummins Creek, Rock Creek, Grassy Knob, Wild Rogue, and Kalmiopsis Wilderness Areas in Oregon; and (3) the Kalmiopsis, Siskiyou, and Trinity Wilderness Areas; Muir Woods National Monument and Point Reyes National Seashore in California. Portions of the Smith River National Recreation Area in California were not included because they did not contain high-quality nesting habitat. External threats in these areas are very limited, management goals are generally adequate to conserve the species, and these areas do not require special management consideration or protection beyond their individual statutory authorities.

Economic Analysis Summary

Section 1(b)(2) of the Act requires the Service to consider the economic and other relevant impacts of specifying any particular area as critical habitat. The Secretary may exclude areas from critical habitat if the benefits of exclusion outweigh the benefits of including the area in critical habitat, unless failure to designate a specific area would result in extinction of the species. The Service contracted with ECONorthwest, a consulting firm in Eugene, Oregon, to conduct an economic analysis of the potential economic effects of designating critical habitat for the marbled murrelet. As required by the Act, the report addresses only the incremental economic consequences of the proposed critical habitat. It does not address the consequences of listing the species or other actions that have been proposed or taken to protect marbled murrelets prior to this designation.

The habitat covered by the designation plays a complex role in the regional economy by producing multiple, valuable goods and services, including: the marbled murrelet itself; other species, including salmon; fresh water; recreational opportunities; and timber. The data regarding the designation's impacts on some of these goods and services are not sufficient to support a detailed conclusion about whether the proposed designation would result in net economic benefits or costs. Evidence indicates, however, that the designation's economic benefits largely offset, and may even outweigh, its economic costs. The overall net effect is expected to be close to zero.

The designation will have few immediate and direct impacts on the economy. The primary effect of critical habitat is through the section 7 requirement for Federal agencies to avoid the destruction or adverse modification of critical habitat through actions they fund, permit, or carry out. The Service, with information provided by the cooperating Federal agencies, has determined that the designation of critical habitat for the marbled murrelet is not likely to significantly restrict the activities of any Federal agency, whether on Federal or non-federal lands. In particular, although the designation will reinforce the efforts of the Forest Service and Bureau of Land Management to protect and enhance the terrestrial habitat of the marbled murrelet, it will not cause these agencies to manage Federal lands in a manner that will have immediate, direct impacts on the flow of timber and other goods and services from these lands.

For non-federal landowners with lands included in this designation, the primary potential for an impact of critical habitat will be on actions that require a Federal permit or involve Federal funding. One of these activities is the issuance of incidental take permits under section 10(a) of the Act. The Service works with landowners, at their request, in the development of the HCP required for issuance of the permit to allow activities to proceed while minimizing and mitigating for impacts to listed species. The Service consults under section 7 on the issuance of the permit, to ensure the permit will not jeopardize the species or adversely modify critical habitat. The Service has defined critical habitat for marbled murrelets to exclude lands covered by a legally-operative incidental take permit for the species, including marbled murrelet incidental take permits that may be issued subsequent to the designation. Other permitting or funding agencies have indicated that they do not expect critical habitat to have a significant effect on permits or funding.

The designation may, however, lead to changes in the actions of the Washington Department of Natural Resources (WDNR), which is required by State regulations to take Federal critical habitat designations into account when assessing applications for permits to conduct logging and other activities. These regulations require WDNR to scrutinize more thoroughly the potential impacts on all aspects of the environment—natural, recreational, cultural, and infrastructural—when a proposed activity will occur inside designated critical habitat. However, marbled murrelet critical habitat is defined to exclude areas covered by marbled murrelet incidental take permits. Washington State Forest Practices regulations exclude areas covered by a marbled murrelet incidental take permit from this requirement.

The economy most directly affected by the designation—western Washington, western Oregon, and northwestern California—is highly diversified and growing rapidly. Any potential loss of jobs should be compensated for by other employment opportunities as has happened over the last 15 years in this area. Markets are expected to respond quickly, whatever the designation's impacts on the timber industry. The designation is unlikely to cause any change in the prices of timber and derivative products.

Summary of the Exclusion Process

Under section 4(b)(2) of the Act, the Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusions outweigh the benefits of specifying such areas as part of the critical habitat, unless he determines that the failure to designate such areas will result in the extinction of the species concerned. To determine whether to include or exclude an area, the Service has analyzed the economic and conservation benefits of retaining or excluding critical habitat areas, and weighed those benefits.

The economic analysis focused on Federal agencies because the primary impact of critical habitat occurs through a Federal nexus. For the supplemental proposed rule, the Service contacted all Federal agencies operating within the range of the murrelet in Washington, Oregon, and California. The Service discussed the potential effects of critical habitat and the various regulatory activities of the agencies, to assist in determining whether the proposed designation would have a potential to affect the agency's actions, including funding and permitting activities on non-federal lands. Each agency contact was sent a questionnaire requesting information on the potential impacts of the designation on any projects or activities funded, permitted, or carried out by their agency, followed by personal contact. Follow-up contacts were made with the various agencies to answer any additional questions. For the final rule, updates were requested.

Several portions of critical habitat were dropped from the proposed rule due to new information made available to the Service during the public comment period. Because the effects of critical habitat designation vary by ownership and State regulation, the Service evaluated the effect of the designation on areas defined by state and ownership, beginning with critical habitat areas on Federal land in the three States. Federal lands are managed under the same requirements, through the Northwest Forest Plan. Therefore, potential effects of critical habitat are similar for all these lands. Baseline condition of Federal lands was established in the Northwest Forest Plan.

Within each state, the Service examined the potential effects of critical habitat on the various ownerships and areas defined by differences in the baseline condition. Effects examined included any potential effects where Federal permits or funding were involved. In addition, any effects of state regulations that tier to Federal critical habitat were examined.

Based on the impacts revealed by the economic analysis summarized above, and careful examination of the conservation benefits of the critical habitat units, the Service has determined that the overall conservation and other benefits to be gained from the designation outweigh the benefits of excluding any remaining areas. Therefore, the Service did not exclude any areas during this process and has made a final determination to designate critical habitat for the marbled murrelet. A copy of the economic analysis and description of the exclusion process with supporting documents are included in the Service's administrative record.

Effects of the Designation

This designation of critical habitat for the marbled murrelet identifies 32 critical habitat units encompassing approximately 1,573,340 hectares (3,887,800 acres) of Federal and non-Federal lands based on information available in the Interagency Geographic Information System (GIS). Twenty-two critical habitat units include State, county, city, or private lands. See Table 1.

TABLE 1.—DESIGNATED CRITICAL HABITAT BY STATE, OWNERSHIP, AND LAND ALLOCATION

	Hectares	Acres
Washington:		
Federal Lands:		
Congressionally Withdrawn Lands	740	1,800
Late-Successional Reserves	485,680	1,200,200
Non-Federal Lands:		
State Lands	172,720	426,800
Private Lands	1,020	2,500
Oregon:		
Federal Lands:		
Late-Successional Reserves	541,530	1,338,200
Non-Federal Lands:		
State Lands	70,880	175,100
County Lands	440	1,100
Private Lands	350	900
California (Northern):		
Federal Lands:		
Late-Successional Reserves	193,150	477,300
Non-Federal Lands:		
State Lands	71,040	175,500
Private Lands	16,360	40,400
California (Central):		
State Lands	14,080	34,800
County Lands	3,230	8,000
City Lands	400	1,000
Private Lands	1,720	4,200

Some small areas of naturally occurring or human-created unsuitable habitat (i.e., areas that have never been or will likely never be marbled murrelet nesting habitat, such as alpine areas, water bodies, serpentine meadows, lava flows, airports, roads, buildings, parking lots, etc.) are inside the boundaries of critical habitat units but are not affected by the designation because they do not contain primary constituent elements. Where possible, these areas were not included within the critical habitat boundaries and acreage totals were adjusted to reflect the exclusion of this non-suitable habitat. However, many of these areas are small and could not be physically identified on the GIS maps. Current mapping information does not allow precise identification of the location of all forest areas containing primary constituent elements. This is particularly true for potential nest trees. These trees are often a small component of the forest stands and are not recorded on many timber-oriented data systems. The Service used the best existing data to locate the forest areas most likely to contain the primary constituent elements. Where possible in the time frame available, the Service refined the boundaries of the critical habitat units to eliminate significant identified areas that do not contain one or more of the primary constituent elements based on the best data available.

Efforts by Federal agencies to survey for marbled murrelets have been concentrated in areas of proposed

timber sales or limited research locations. A small fraction of suitable nesting habitat has been surveyed to date, and surveys have not been uniformly spread throughout the range of the species. Therefore, known occupied sites provide only a partial indication of the areas used by the species. In addition, there are a significant number of known occupied sites within Redwood National Park that are not currently on the database and are therefore not reported here. The designated critical habitat includes 695 (86 percent) of the 807 known occupied sites on Federal lands.

The Service had limited information about the amount of suitable nesting habitat or habitat containing one or more of the primary constituent elements on non-Federal lands within the species' range. The Service relied on analysis of satellite imagery that does not identify small features such as potential nest trees. The Service is aware of at least 354 known occupied sites on non-Federal lands, of which 218 (61 percent) are included within critical habitat. Several of the occupied sites outside of critical habitat are within the Elliott State Forest, which is operating under an active incidental take permit for murrelets. The Service did receive specific and detailed information in the public comments from some non-Federal landowners relative to the forest condition on their lands. Based on this information, the Service has removed from the designation lands that are unlikely to contain either primary constituent element.

Available Conservation Measures

Two of the principal purposes of the Act, as stated in section 2(b), are to provide a means to conserve the ecosystems upon which endangered and threatened species depend and to provide a program for the conservation of listed species. The Act mandates the conservation of species through several different mechanisms, such as section 7 (requiring Federal agencies to ensure that their actions will not likely jeopardize the continued existence of the listed species or result in the destruction or adverse modification of critical habitat); section 9 (prohibition of taking of listed species); section 10 (habitat conservation plans); and section 6 (cooperative State and Federal grants).

Recovery Planning

Designation of critical habitat does not offer specific direction for managing marbled murrelet nesting or foraging habitat and does not provide a management or conservation plan for the species. Guidance for conservation is generally provided in recovery plans, which usually include management recommendations for designated critical habitat. The Service continues to work closely with the Marbled Murrelet Recovery Team relative to critical habitat.

Recovery planning is an "umbrella" that guides conservation activities under the Act and promotes a species' conservation. Recovery plans provide guidance, which may include population goals and identification of areas that are in need of protection or special management. Recovery plans also include management recommendations for areas proposed or designated as critical habitat. Critical habitat promotes recovery by highlighting areas that should be given additional consideration in local planning processes. Critical habitat helps focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements) and that may require special management or protection. Critical habitat complements recovery plans by providing a regulatory mechanism when a Federal nexus is present to increase immediate protection of primary constituent elements and essential areas and preserve options for the long-term conservation of the species.

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to destroy or adversely modify designated critical habitat. This Federal responsibility accompanies, and is in addition to, the requirement in section 7(a)(2) of the Act that Federal agencies insure that their actions are not likely to jeopardize the continued existence of any listed species. A Federal agency must consult with the Service if its proposed action may affect a listed species or critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402.

Destruction or adverse modification of critical habitat is defined as "* * * a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." 50 CFR 402.02. Jeopardy is defined at 50 CFR 402.02 as any action that would be expected to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild. The scope of analysis for evaluating the impacts of an activity on marbled murrelet critical habitat is the broadly defined unit and conservation zone, not each individual acre. The designation of critical habitat does not create de facto wilderness or prohibit all human activities within the boundaries. Many activities may take place in critical habitat without resulting in the destruction or adverse modification of the critical habitat.

Section 10 Incidental Take Permits (Habitat Conservation Plans)

Section 10(a) of the Act authorizes the Service to issue permits for the taking of listed species incidental to otherwise lawful activities. Incidental take permit applications must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. The issuance of an incidental take permit is a Federal action and is subject to the consultation requirements of section 7 of the Act. The Service cannot issue an incidental take permit if the HCP would jeopardize any listed species, or destroy or adversely modify any critical habitat.

The Service expects that critical habitat may be used as a tool to help identify areas within the range of the murrelet most critical for the conservation of the species and the Service will encourage development of HCPs for such areas on non-federal lands. The Service considers HCPs to be one of the most important methods through which non-Federal landowners can resolve endangered species conflicts. The Service provides technical assistance and works closely with applicants throughout the development of HCPs to help identify special management considerations for the murrelet. Several HCP efforts are currently underway in areas designated as murrelet critical habitat in Washington, Oregon, and California.

HCPs, coupled with Federal management under the Northwest Forest Plan, provide an opportunity to develop a package of sufficient management considerations that meet or enhance the conservation of the species. Thus, they may remove the need for special management consideration or protection, thereby removing the need to designate such areas as critical habitat. Therefore, any lands within critical habitat that are covered by a legally-operative incidental take permit for marbled murrelets based on an approved HCP that addresses conservation of the marbled murrelet are excluded from the critical habitat while the permit is active. The State of Oregon is currently operating under an incidental take permit for murrelets on the Elliott State Forest, therefore this area has been excluded from critical habitat.

Basis for Section 7 Analysis

Designation of critical habitat focuses on the primary constituent elements within the designated habitat units and their contribution to the species' survival and recovery. The evaluation of actions that may affect critical habitat for the marbled murrelet would consider the effects of a Federal action on any of the factors that were the basis for determining the habitat to be critical, including the primary constituent elements of potential nest trees and surrounding forest.

The range of the marbled murrelet has been subdivided by the Recovery Team into six Marbled Murrelet Conservation Zones (USFWS 1995a), as discussed in the Previous Management Efforts section. These subdivisions were not based on identification of separate populations of marbled murrelets, but rather on the need for potentially different recovery actions in various portions of the marbled murrelet's range, and the need to maintain well-distributed populations. Marbled murrelets within the conservation zones are likely to interact across zone boundaries at some level.

For a wide-ranging species such as the marbled murrelet, where multiple critical habitat units are desi[g]nated, each unit has a regional (conservation zone) and range-wide role in contributing to the conservation of the species. The basis for an adverse modification opinion would be whether a proposed action appreciably reduces the ability of critical habitat to function in achieving the regional conservation zone goals. In evaluating the effect of a proposed action, the Service will analyze the impacts to individual units in light of their overall contribution to the survival and recovery of murrelets in the conservation zone described in the Previous Management Efforts section, and the overall range of the marbled murrelet in Washington, Oregon, and California. Thus, an adverse modification finding would be based upon a broader inquiry than the mere assessment of adverse effects at the local unit level. The loss of populations throughout one or more conservation zones, or even a major part of a conservation zone, could lead to genetic and demographic isolation of parts of the population.

Examples of Proposed Actions

Section 4(b)(8) of the Act requires, for any proposed or final regulation concerning critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by the critical habitat designation. Regulations found at 50 CFR 402.02 define destruction or adverse modification of critical habitat as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

A variety of ongoing or proposed activities that disturb or remove primary constituent elements may adversely affect, though not necessarily "adversely modify" marbled murrelet critical habitat as that term is used in section 7 consultations. Examples of such activities include, but are not limited to, (1) forest management activities which greatly reduce stand canopy closure, appreciably alter the stand structure, or reduce the availability of nesting sites; (2) land disturbance activities such as mining, sand and gravel extraction, construction of hydroelectric facilities and road building, and (3) harvest of certain types of commercial forest products (e.g. moss). These activities have the following effects on the primary constituent elements of murrelet critical habitat:

(1) Removal or degradation of individual trees with potential nesting platforms, or the nest platforms themselves, that results in a significant decrease in the value of the trees for future nesting use. Moss may be an important component of nesting platforms in some areas.

(2) Removal or degradation of trees adjacent to trees with potential nesting platforms that provide habitat elements essential to the suitability of the potential nest tree or platform, such as trees providing cover from weather or predators.

(3) Removal or degradation of forested areas with a canopy height of at least one half the site-potential tree height and regardless of contiguity, within 0.8 km (0.5 mile) of individual trees containing potential nest platforms. This includes removal or degradation of trees currently unsuitable for nesting that contribute to the structure/integrity of the potential nest area (i.e., trees that contribute to the canopy of the forested area). These trees provide the canopy and stand conditions important for marbled murrelet nesting.

For a proposed action to result in the destruction or adverse modification of critical habitat, it must appreciably diminish the value of critical habitat for both the survival and recovery of a listed species in the affected conservation zone. Each proposed action requiring a section 7 consultation must be evaluated individually, in light of the baseline condition of the critical habitat unit and conservation zone, unique history of the area, and effect of the impact on the critical habitat unit in light of its regional and range-wide role in the conservation of the species. Activities that are acceptable in one critical habitat unit or conservation zone may cause serious effects in another, due to differences in current condition and conservation needs. Therefore, the Service cannot provide, in this rule, a detailed description of the threshold for future actions that would result in the destruction or adverse modification of critical habitat applicable throughout the range of the species.

A variety of activities would not affect the primary constituent elements and therefore would not adversely modify critical habitat. Such activities would include, but are not limited to, certain recreational use and personal-use commodity production (e.g., mushroom picking, Christmas tree cutting, rock collecting, recreational fishing along inland rivers) and certain commercial commodity production (e.g., mushroom picking, brush picking). Actions that affect forest stands not within 0.8 km (0.5 miles) of individual trees with potential nesting platforms (are not primary constituent elements) also would not adversely modify critical habitat, even if they are within the boundaries of the area designated as critical habitat.

Activities that do not affect the primary constituent elements in the forests are unlikely to be affected by the designation. However, even though an action may not adversely modify critical habitat, it may still affect marbled murrelets (e.g. through disturbance) and may, therefore, still be subject to consultation under section 7 of the Act.

Activities conducted according to the standards and guidelines for Late-Successional Reserves, as described in the ROD for the Northwest Forest Plan would be unlikely to result in the destruction or adverse modification of marbled murrelet critical habitat. Activities in these areas would be limited to manipulation of young forest stands that are not currently marbled murrelet nesting habitat. These forest management activities would be

conducted in a manner that would not slow the development of these areas into future nesting habitat, and should speed the development of some characteristics of older forest.

Summary of Comments and Recommendations on the Supplemental Proposed Rule

In the August 10, 1995, supplemental proposed rule for designation of marbled murrelet critical habitat, the Service requested all interested parties to submit information and comments concerning the proposal. Additional comments were received at five public hearings held on the supplemental proposed rule in Washington, Oregon, and California.

During the public comment period, the Service received 339 written comments. In addition, 60 people testified at the public hearings. All comments received are part of the record for this designation and are available for public review. Issues raised during the public comment period that were not addressed in the body of the final rule are discussed next.

Legal/Policy

Issue 1: Two commenters questioned whether the language of a temporary injunction granted by Judge Chesney of the United States District Court for the Northern District of California expanded the scope of activities subject to consultation under section 7 of the Act, and therefore the impact of critical habitat on non-federal lands.

Service Response: Judge Chesney ruled that there was a serious question as to whether the Service's advice to a timber company, that proposed logging would not result in take of the marbled murrelet in violation of section 9 of the Act, was an action subject to section 7 consultation. On May 7, 1996, the U.S. Court of Appeals for the Ninth Circuit reversed Judge Chesney's ruling and concluded that the Service's advice to a private entity on compliance with section 9 is not an action subject to section 7. *Marbled Murrelet* v. *Babbitt*, No. 95–16945 (9th Cir.).

A Federal nexus refers to a situation where a Federal agency authorizes, funds, or carries out an action.

Issue 2: One commenter questioned whether the acceptance of Federal funding for a project on a portion of a State forest would create a Federal nexus for all activities on the forest.

Service Response: The Federal nexus would apply only to the funded activity and related actions. Actions that are interrelated and interdependent with the federally-funded activity would be considered in the biological opinion and could be subject to modification. Any modifications suggested by the Service would, for a non-jeopardy/non-adverse modification action, be confined to "minor" changes which would still allow the goals and intent of the project to be met. Other unrelated actions would not be covered in the consultation.

Issue 3: Several commenters questioned the statement that critical habitat designation would not affect activities on State, local, or private lands unless there is a Federal permit, license, or funding involved, citing potential impacts of the designation through State laws.

Service Response: During the public comment period, the Service sought and received additional information on the potential impact of critical habitat designation resulting from State laws and regulations. The potential impacts vary by state. See the *Role in Species Conservation* section for a detailed discussion of the effects by state.

Issue 4: Several commenters recommended that the Service postpone issuing a final rule until additional studies are conducted and better information on the species' biology and threats is available. Other commenters suggested that the Service should seek new information before adopting a final rule.

Service Response: The Service is required to use the best available information in designating critical habitat. The Service is under court order to complete the designation of murrelet critical habitat by May 15, 1996. The Service did solicit new biological data and public participation during the comment period and public hearings on the revised proposed rule. The Service will continue to monitor and collect new information and may revise the critical habitat designation in the future if new information supports a change.

Issue 5: Several commenters raised issues already addressed in the supplemental proposed rule for the designation of critical habitat for the marbled murrelet (60 FR 40892). These include issues related to the listing of the species, the potential for critical habitat to result in the "take" of private lands, access across critical habitat, the need for an Environmental Impact Statement, and questions on the prehistorical condition of habitat in the Oregon Coast Ranges.

Service Response: The Service incorporates by reference its responses to these issues contained in the supplemental proposed rule (60 FR 40892). No new information was provided that would result in any significant changes to the responses in the supplemental proposed rule.

Issue 6: One commenter maintained that the Service failed to distinguish recovery objectives from the designation of critical habitat.

Service Response: In the revised proposed rule, the Service provided information on the link between recovery and critical habitat. The areas designated as murrelet critical habitat conform to the Act's requirements for critical habitat designations. Critical habitat includes the areas "essential to the conservation of the species" (16 USC 1532(5)(A)). Conservation is defined in the Act as actions necessary to promote recovery of the species (16 USC 1532(3)). Therefore, critical habitat is linked to recovery.

The commenter also confused the issuance of a "no jeopardy" biological opinion on the Northwest Forest Plan with conservation of the murrelet throughout three-state range. The biological opinion on the Northwest Forest Plan addressed only the impacts on Federal lands. Conservation of the murrelet has to be analyzed more broadly.

Issue 7: One commenter maintained that the Service failed to provide reasoned explanation for changes between the first and second proposals.

Service Response: The Service addressed the basis and rationale for the differences in the supplemental proposed rule (60 FR 40892). In the first proposal, the Service had indicated that some revisions might be necessary and had requested information to assist the Service in making changes.

Issue 8: One commenter suggested that the Service provide a method to correct legal descriptions without going through the formal rule-making process. Other commenters suggested that the Service specify that lands traded from public to private ownership be excluded from critical habitat once the trade is complete. Several commenters believed that failure to exclude traded areas would effectively halt the land exchanges.

Service Response: A rule designating critical habitat is required to contain a sufficient description of areas designated to allow persons to determine whether a particular segment of land is included or excluded. If corrections or clarifications become necessary, the Service will make them.

Areas were chosen because of their value to the conservation of the marbled murrelet. The Service conducts section 7 consultation on any land exchange that may affect critical habitat. During the consultation process, the Service considers the conservation value of the areas acquired, as well as the potential effects of the lands traded in determining whether the action as a whole would destroy or adversely modify critical habitat. Even in the event that a proposed exchange would result in the destruction or adverse modification of critical habitat, the Service will work with the action agency and any applicants to craft reasonable and prudent alternatives that would allow the action to proceed.

Changes in ownership do not by themselves change an area's status as critical habitat. If a portion of land is moved from Federal to non-Federal ownership, the effects of the designation may change. Regardless of the original ownership, activities on non-Federal lands are likely to be affected by the designation only when there is a Federal nexus or where State law is triggered by the Federal designation.

Issue 9: One commenter charged that the Service did not use the best scientific information. The commenter interpreted the Act to allow and require the use of only data, not theories or interpretations of the data.

Service Response: The Service believes it has used the best scientific information available, and will continue to review new information as it arises. The Service reviewed all information provided by commenters on the supplemental rule to determine if it supported alternative conclusions. Science involves not only the use of raw data, but the hypotheses, theories, and interpretations derived from those data. Failure to use such information would be contrary to good scientific practice and would not satisfy the Act's requirements. The commenter provided several specific examples, which have been addressed in the "Ecological Considerations" section as well as the Biological Issues in this section of the rule.

Issue 10: One commenter contends that the Service erred by designating areas not "occupied by murrelets at the time of listing." The commenter asserts that on September 28, 1992 (the time of listing), the species had completed nesting and were all on the ocean, therefore no nesting habitat could be considered occupied at the time of listing.

Service Response: The commenter's interpretation of "geographical areas occupied by the species at the time of listing" is erroneous. The commenter appears to have confused the definition of "occupied" in the Pacific Seabird Protocol (designed to determine potential breeding by birds located in a specific area in a specific year) with the biological determination of species occupancy. Biologists consider all areas used by members of a species, regardless of life stage or season, as within the occupied range of the species.

Issue 11: One commenter suggested that the legal descriptions of critical habitat in areas of intermingled Federal ownership should specifically exclude the non-Federal lands through description, rather than by definition.

Service Response: In the supplemental proposed rule, the Service specified the ownerships included in the designation for each area described. Within Federal LSRs, only Federal lands are included by definition, thereby excluding any non-federal lands. In addition, only lands that contain the primary constituent elements are included by definition. This approach satisfies the requirements of the Act. The Service continues to work on improving the descriptions of critical habitat units. We appreciate the specific information provided by private landowners on their ownerships within the Federal and State lands designated. However, in this court-ordered final designation, the Service has included and excluded areas by definition.

Issue 12: One commenter maintained that the Service had ignored the presence of marbled murrelet habitat in Congressionally-withdrawn areas, thereby increasing the area of non-Federal lands designated as critical habitat.

Service Response: The Service is cognizant of the murrelet habitat in lower-elevation, Congressionally-withdrawn areas, including Redwood National Park. The Service assumes these areas will retain murrelet habitat based on the statutory requirements applicable to these areas and considered this in its designation of murrelet critical habitat.

Issue 13: Several commenters suggested that the rationale for excluding Congressionally-withdrawn lands from designation as critical habitat should also apply to the Late-Successional Reserves under the Northwest Forest Plan because these areas were being managed to provide old-growth habitat.

Service Response: Congressionally-withdrawn lands are designated by statute, which secures their status. Any change to their management requires an act of Congress. Those areas designated for management in a manner consistent with murrelet conservation are expected to remain so. Therefore, there is no added value to designating them as critical habitat. In contrast, plan-level designations, such as Late-Successional Reserves, are reviewed and revised periodically (at least every 10–15 years), and therefore do not have the secure status of Congressionally-withdrawn areas. Critical habitat designation serves to remind future planners of the importance of these areas to the conservation of the marbled murrelet. Therefore, designation of these areas as critical habitat is valuable, even if current management is consistent with murrelet conservation.

Issue 14: Several commenters suggested that the explanation for the exclusion of Tribal lands, Congressionally-withdrawn areas, and marine habitat could also be applied to all terrestrial critical habitat.

Service Response: The Service discussed of the reasons for each of these exclusions in the final rule. A major consideration in the exclusion of Tribal lands were factors related to the Federal government's trust responsibilities and government to government relationships with Native American tribes. Congressionally-withdrawn lands have special and statutory designations that provide management protection for wildlife.

In examining the information provided on marine habitat, the Service identified two key components of the marine habitat that are essential to the conservation of the murrelet, clean water and food. Marine habitat is not generally subject to incremental and continuing losses or removal as terrestrial habitat is. Threats in the marine environment are often related to catastrophic events that cause loss of individuals, not habitat. The primary identified threats to marine murrelet habitat are pollution and toxic spills. Fishing does not appear to be a threat to habitat at this time. Several laws regulate activities that could result in pollution or toxic spills in the marine environment that have no counterparts in the terrestrial environment, and are briefly described in the Previous Management Efforts section. Other marine concerns, such as the effect of El Niño and ocean currents, are outside human control and would not be affected by the designation of critical habitat. The Service will continue to monitor the degree to which these and other regulatory measures ameliorate identified threats and the need for special management consideration or protection.

Issue 15: A number of commenters identified areas that they thought should not be designated as critical habitat.

Service Response: If site-specific documentation on a site was provided to the Service providing a rationale as to why an area should not be designated

critical habitat, that information was evaluated and a determination made as to whether modifications in the proposal were appropriate. For example, habitat maps were provided by State and private landowners in southwest Washington that allowed the Service to modify critical habitat boundaries due to the absence of primary constituent elements. Federal agencies in Oregon provided habitat and survey information that allowed the Service to modify boundaries.

Issue 16: Some commenters suggested that the Service was breaching the Memorandum of Understanding with the State of California signed in 1991 because the Service is designating non-Federal lands in California.

Service Response: The Service chose non-Federal lands on the basis of limited amounts of Federal lands in the vicinity that could support a well-distributed population of marbled murrelets and on the basis of the non-Federal land's contribution to recovery.

Issue 17: One commenter raised the question of the need to designate private lands when they would never provide the large, contiguous blocks of nesting habitat most desirable for marbled murrelets.

Service Response: The Service acknowledges that private lands in general do not have, nor will they probably have in the future, the large contiguous blocks of habitat most desirable for the conservation of the marbled murrelet. However, Federal lands, where large, contiguous blocks of habitat could be developed, are lacking in portions of the marbled murrelet's range. In these areas, critical habitat units have been designated because smaller blocks of suitable habitat on non-Federal lands are essential for maintaining the species' range-wide distribution and numbers.

Issue 18: One commenter requested that we be more specific about which, if any, gillnet fisheries create problems for marbled murrelets. The commenter specifically stated that the Columbia River gillnet fishery was not a fishery causing problems for marbled murrelets.

Service Response: The Service presently considers the Columbia River gillnet fishery a very minor threat to marbled murrelets relative to other fisheries, such as the Puget Sound commercial salmon fishery. This is in part because of the very limited effort which now occurs in this fishery. It is also because the Service recognizes that there are currently few marbled murrelets present in the vicinity of the mouth of the Columbia, although their historic presence in the area is well-documented. However, while the observer program conducted from 1991–1993 (Jeffries and Brown 1993) did not specifically describe any entanglement of marbled murrelets, significant numbers of unidentified alcids were entangled. Therefore, it cannot be stated conclusively that the Columbia River gillnet fishery does not pose a threat to marbled murrelets, particularly if fishing effort were to increase dramatically.

Issue 19: One commenter stated that the economic analysis was flawed because it failed to analyze the economic effects for each area separately.

Service Response: The economic analysis for this critical habitat designation is sufficient for consideration of the relevant impacts of specifying particular areas as critical habitat.

Issue 20: Several commenters expressed the opinion that the Service should consider the economic effects of critical habitat without adjusting for the effects of the listing or the Northwest Forest Plan.

Service Response: The economic analysis is conducted to allow informed consideration of the impacts of designating particular areas as critical habitat. Areas may be excluded from critical habitat if the benefits of excluding the area outweigh the benefits of including the area, so long as the exclusion does not lead to the extinction of the species. For this, the Service needs to determine the incremental increase in economic effects from the designation. In the absence of critical habitat, the listing of the species, other laws, and existing Federal land management plans remain in effect. Therefore, to determine the actual impact of a designation, the Service must determine the effect that will occur with the designation above and beyond the existing requirements. To attribute all economic effects of murrelet conservation to critical habitat alone would not provide an accurate assessment of the impacts of the designation.

Issue 21: Several commenters maintained that the removal of 4.4 million acres from the timber base would have severe economic impacts. Other commenters addressed individual areas in a similar manner, making the assumption that designation would stop all harvest.

Service Response: Critical habitat does not stop or prevent all timber harvest or other activities on designated lands. In the absence of a Federal nexus (funding, permitting, authorization, or action by a Federal agency) or State regulations tiered to a designation, there is no effect. Even with a Federal nexus, projects are not affected unless they would appreciably diminish the value of critical habitat for both the survival and recovery of the species. Whether a particular activity will appreciably diminish the value of critical habitat will depend on several factors, including the scope, magnitude, and location of the activities, as well as the condition of the critical habitat unit and the Marbled Murrelet Conservation Zone described by the Recovery Team (USFWS 1995a). If the critical habitat areas in a zone are generally in good condition, the potential for individual projects to diminish its value is lower than where critical habitat in a zone is in poor condition. Based on the application of previous designations, significant adverse impacts to individual critical habitat areas may not trigger the above threshold.

In addition, timber harvest in accordance with an approved HCP that addresses marbled murrelets should also be unaffected by the present determination of critical habitat, given the Service's intention to defer to the special management considerations for the murrelet under the HCP and the Service's exclusion of lands covered by an HCP from critical habitat.

Issue 22: Some commenters disagreed with the use of sites identified as occupied by marbled murrelets under the Pacific Seabird Group protocol as a criterion for critical habitat designation, because the commenters believe that some of the behaviors that resulted in occupied status were not indicative of nesting. One commenter suggested that "the 1994 protocol dropped circling behavior from the definition of occupied behaviors.

Service Response: The Service used all available information in the selection of areas for designation as critical habitat. Survey information was only one of the criteria considered in selecting areas for proposed critical habitat designation. Survey results (including occupied sites, marbled murrelet presence, and lack of detections) were used as indicators of the presence/absence of marbled murrelets in specific areas. However, survey efforts have been minimal in many areas, and coverage of areas is discontinuous. Such information was of limited use in designating critical habitat in portions of the range.

The 1994 protocol did not remove circling behavior from the definition of occupied behaviors. In fact, both the 1993 (p. 11) (Ralph *et al.* 1993) and 1994 (p. 12) (Ralph *et al.* 1994) versions of the protocol include it under criteria indicating occupancy. This relationship has been statistically analyzed and verified. Under "occupied stands" (p. 13 and again on pg. 21) in the 1994 protocol, Ralph *et al.* (1994) clearly state that birds circling above the canopy is a criterion indicating occupancy. This conclusion was affirmed in the March 8, 1995 addendum to the 1995 protocol (Ralph *et al.* 1995c), as well as in a signed declaration prepared by Dr. C.J. Ralph on September 27, 1995 (Ralph 1995).

Issue 23: Some commenters suggested that the Service designate additional habitat to compensate for the loss of high quality occupied murrelet nesting habitat that may be harvested as a consequence of timber sales released by the so-called "Salvage Rider" (Public Law 104–19, Section 2001).

Service Response: The government's position is that section 2001(k)(2) of P.L. 104–19 expressly forbids the harvest of identified nesting sites. The Federal District Court for the District of Oregon disagreed with the government's position and directed the government to release for harvest the majority of these sites. The Government has appealed this decision to the Ninth Circuit Court of Appeals, and as of this writing the harvest is temporarily stayed until the Ninth Circuit rules on the case. Therefore, the Service believes any compensatory designation of additional critical habitat is unwarranted at this time.

Issue 24: Several commenters expressed concern that critical habitat is a disincentive to landowners contemplating developing habitat conservation plans (HCPs) within designated areas.

Service Response: The Service does not intend to discourage HCPs with the designation of critical habitat. We expect that critical habitat may be used as a tool to help identify areas within the range of the murrelet more critical for the conservation of the species. The Service considers HCPs to be one of the most important methods by which non-Federal landowners can resolve endangered species conflicts.

All HCPs are reviewed to determine whether they are likely to jeopardize the continued existence of the species or cause adverse modification to designated critical habitat. In most cases, the Service provides technical assistance and works closely with the applicant throughout the development of the HCP to reduce the probability of the applicant developing an HCP that would not meet these criteria. Well developed HCPs should be able to meet the section 7 requirement to avoid adverse modification of critical habitat by providing sufficient special management considerations for the constituent elements identified for murrelet critical habitat. The Service does not anticipate that the designation of critical habitat for the marbled murrelet will affect ongoing negotiations for HCPs with landowners like the State of Washington or various large timber companies.

Issue 25: Several commenters disagreed with removing areas covered under an HCP from designation. Whereas in contrast, another commenter felt that planning approaches such as the development of multi-species HCPs were preferable to critical habitat designation.

Service Response: The Service recognizes that critical habitat is only one of many conservation measures for federally-listed species. HCPs are perhaps one of the most important tools for reconciling land use with the conservation of listed species on non-Federal lands. Since HCPs can provide an alternative means of addressing the special management considerations necessary for the constituent elements of marbled murrelet critical habitat, those areas covered by a legally-operative incidental take permit for marbled murrelets based on an approved HCP are excluded from critical habitat.

Consistent with this approach, the Service has not designated the Elliott State Forest in Oregon as critical habitat based on the State completing an HCP for that forest. Other areas without completed HCPs have been included in this designation. When those HCPs are completed and incidental take permits for marbled murrelets issued, critical habitat will be lifted.

Issue 26: Numerous commenters recommended that the Service designate marine critical habitat. Several commenters recommended addition of the following terrestrial areas as critical habitat:

In California, commenters recommended inclusion of private lands in Del Norte, Humboldt, Mendocino, Sonoma, San Mateo, and Santa Cruz Counties. One private property owner requested designation of her 60 acres in the Santa Cruz Mountains Zone. The Midpeninsula Regional Open Space District requested that the District's Purisima Creek Redwoods Open Space Preserve be designated in San Mateo County. Commenters also suggested inclusion of county parks along the Van Duzen River. State lands recommended for inclusion included Van Damme State Park and Navarro River Redwood State Park in the Mendocino Zone, and Nisene Marks State Park and Soquel State Demonstration Forest in the Santa Cruz Mountains Zone. In Washington, commenters recommended the inclusion of Washington Department of Natural Resource lands in the Clallam Bay block and the Chehalis State Forest, Deception Pass State Park, additional lands adjacent to Jim Creek, private lands in the Mineral block, and private lands with occupied sites in the north Cascades.

Service Response: Under the Administrative Procedures Act (5 U.S.C. 553), the Service cannot finally designate areas as critical habitat unless they were proposed for designation in a proposed rule. Further, the Service is under a court order to finalize this critical habitat designation by May 15, 1996. These recommendations will be considered in any future revisions of critical habitat for the marbled murrelet.

Biology

Issue 27: Commenters suggested that prey distribution and abundance, rather than inland forest conditions, may dictate murrelet distributions at sea.

Service Response: As described in the *Ecological Considerations* section, the Service agrees that prey distribution and abundance is an important ecological factor for murrelets at sea. However, particularly during the nesting season, marbled murrelets are found in high numbers in close proximity to areas where inland forested conditions are considered suitable for nesting throughout large portions of coastal Washington, Oregon, and California (Carter and Erickson 1992; Ralph and Miller 1995; Ralph *et al.* 1995b; Strong 1995, Varoujean and Williams 1995). Conversely, marine concentrations tend to be low where on-shore habitat is limited. Concentrations of other alcids during the nesting season in 1994 did not correspond closely to murrelet distribution patterns (Varoujean *et al.* 1994), which one would expect if prey distribution was the single or most important determinant of seabird distribution.

The distribution of marbled murrelets in the marine environment changes after the nesting season. This suggests that proximity to their nesting habitat is important for marbled murrelets during the breeding season even though food may be more abundant elsewhere (Ralph *et al.* 1995b). However, changes in prey distribution and abundance may sometimes occur coincidentally with the end of the nesting season. Marbled murrelets have been documented to use a variety of prey species, which suggests that they are capable of exhibiting flexibility regarding food resources available to them during the nesting season. Therefore, the Service believes

that the condition of inland nesting habitat is an important factor explaining distributions in the marine environment during the nesting season.

Issue 28: Some commenters disagreed with Service statements that marbled murrelets are found in high numbers at sea in close proximity to areas where inland forested conditions are considered suitable for nesting throughout large portions of coastal Washington, Oregon, and California. They contend that the 1994 and 1995 at-sea survey data did not support this assertion.

Service Response: As described in the *Ecological Considerations* section, the Service believes murrelet concentrations at sea are likely to be determined by a combination of terrestrial and marine conditions. However, we believe that recent at-sea survey data support our earlier conclusions that marine observations during the nesting season generally correspond to the largest remaining blocks of suitable forest nesting habitat (Nelson *et al.* 1992; Varoujean *et al.* 1994; Ralph and Miller 1995; Ralph *et al.* 1995b; Strong 1995).

Issue 29: One commenter stated that the proposed designation was premised on the incorrect assumption that the most important problem for marbled murrelet conservation was the availability of terrestrial nesting habitat. They stated that Beissinger's model, along with an additional modeling effort and other life-history information, shows that the marine environment is much more important than the terrestrial environment and, therefore, the Service should concentrate critical habitat designation on marine habitat features.

Service Response: The Service agrees that the marine environment is very important to the murrelet, as discussed both in the supplemental critical habitat proposal (60 FR 40892) and the draft Recovery Plan (USFWS 1995a). However, there are a number of reasons why critical habitat is only being designated in the terrestrial environment. Currently, factors affecting the marine environment and murrelets while at-sea can be addressed through existing laws and regulations as discussed in this final rule (see Areas Not Designated section). In addition, numerous sources have stated the importance of nesting habitat as a major limiting factor in murrelet recovery. Although adult mortality does occur at-sea, it also has been documented in the terrestrial environment. Therefore, the designation of critical habitat in the terrestrial environment is appropriate at this time.

Issue 30: Several commenters raised issues related to nest predation and predator numbers. These were primarily related to the effects of timber harvest and forest edge on predator numbers and marbled murrelet nest predation rates and the appropriateness of applying nest predation studies from other regions of the country to the Pacific Northwest. One commenter raised the potential use of predator control as a management tool. Several commenters suggested that predator numbers correlated with human use and therefore private lands may have fewer predators than public lands.

Service Response: The Service has amended the final rule to reflect the comments and to provide additional documentation on statements related to predation. However, as discussed in the *Ecological Considerations* section, the Service believes that existing data strongly suggest that nest predation may be significantly higher for some forest birds nesting near artificially created edges, even if the exact causal mechanisms that affect the predation rates are unclear. The Service agrees with Paton (1994) and the commenters that research addressing this issue in Pacific Northwest forests is needed, and the Service is currently supporting such efforts (e.g., Marzluff *et al.* 1996). However, the few completed studies addressing this issue in the Northwest or in commercial timberland areas elsewhere indicate the timber harvest in a forest can increase nest predation rates on forest birds under certain circumstances (Ratti and Reese 1988; Rudnicky and Hunter 1993; Vega 1993; Bryant 1994; Vander Haegen and DeGraaf, in press). In fact, Ratti and Reese (1988) found that abrupt forest edges created by commercial timber harvest could lead to increased nest predation rates, and they concluded that their data are consistent with the hypothesis that birds are poorly adapted to predator pressure near abrupt artificial edge zones.

Some commenters failed to distinguish between the studies that address ground nesting birds (e.g., Small and Hunter 1988), and those cited by the Service that concern species that nest above the ground like the marbled murrelet. Small and Hunter (1988) investigated predation rates on ground nests and concluded that distance from edge was not related to nest predation (although they did conclude that nests in smaller forest fragments were more vulnerable than nests located in larger forest stands). They felt their results were due to the relatively high numbers of ground predators (i.e., fox, raccoon, and skunk) compared to low numbers of bird predators (corvids). These findings are consistent with the more recent work of Vander Haegen and DeGraaf (in press) and Rudnicky and Hunter (1993). Both of these studies found no edge effect for ground nests but a two- to three-fold increase in predation for above-ground nests near edges when compared to above-ground nests in the forest interior. Although not completely representative of the high canopy nesting situation of murrelets, these results are significant because they more closely approximate the potential impacts of the avian predators believed to be affecting murrelets.

Predator control as a management tool to recover species has been used effectively only in very limited situations. It may serve as a short-term solution to address an immediate threat while long-term solutions are being formulated. The high cost, logistical difficulties and high probability that the predator control will be unsuccessful (Goodrich and Buskirk 1996), however, argue against the use of predator control for a wide-ranging species such as the marbled murrelet.

Regarding the issue that levels of human activity on public lands may result in predation rates which are higher than on private lands, the Service agrees that public lands that are easily accessible have higher levels of human use, with resultant activities that are attractive to corvids. However, corvids have also been shown to travel significant distances to urban centers, dumps, etc. which are often as close or closer to private lands than to public lands (Marzluff *et al.* 1996). The other factor which appears to increase predation rates is higher levels of landscape fragmentation (Marzluff *et al.* 1996), which is generally greater on private lands. Therefore, it is difficult to generalize about the relationship between land ownership and predation rates.

Issue 31: One commenter suggested that the Service ignored the findings of Raphael *et al.* (1995) that occupied murrelet sites had more complex patterns with more edge, greater variety of cover types, and more complex shapes than unoccupied sites. The commenter indicated that these conclusions seem to contradict statements made by the Service concerning forest edge and landscape patterns.

Service Response: The Service disagrees with this commenter's interpretation of Raphael *et al.* (1995). The most important and relevant conclusions of Raphael *et al.* (1995) (M. Raphael, pers. comm.), are: (1) proportions of old-growth and large saw timber were greater among sites occupied by murrelets compared to unoccupied sites, and (2) mean size of patches of old-growth and large saw timber were also greater among occupied sites compared to unoccupied sites. As Raphael *et al.* (1995) state, these findings are consistent with earlier research documenting the value of large old-growth stands to nesting murrelets.

These findings support, rather than contradict, the hypothesis that murrelets are preferentially selecting larger stands of older trees for breeding because these stands and trees have the specific structural features the birds require. That the murrelets occur more often in larger patches (i.e., less edge relative to area) of old-growth compared to smaller patches is also consistent with the edge-effect concerns expressed in this rule. The Service believes that resident marbled murrelets may be made more vulnerable to predation associated with the newly created edges when existing old-growth stands are further fragmented into smaller patches.

Issue 32: One commenter suggested that the Service conduct a population viability analysis (PVA) of the marbled murrelet before designating critical habitat.

Service Response: This final rule is directly related to management directives that preceded or were developed simultaneously with the critical habitat rule. Of greatest significance were the draft Recovery Plan (USFWS 1995a) and the marbled murrelet viability panels of the FEMAT process (USDA *et al.* 1993a). It is the Service's opinion that these efforts incorporate many of the concepts which should be considered when a formal PVA is not conducted (Ruggiero *et al.* 1994), and provide the best guidance for management. The function of a PVA is to incorporate what is known about population dynamics of a species, and to analyze the effects of stochastic events and changes in parameters, as well as to identify factors for study, management and monitoring (Lacey in Press). However, PVA's can be compromised because of a lack of natural history data (Minta and Kareiva 1994). Therefore, the Service believes that a PVA developed based on current knowledge of the marbled murrelet would be premature, and is not a suitable tool for determining critical habitat.

Issue 33: Several commenters suggested that the Service has dismissed natural marine phenomena as unimportant in affecting marbled murrelet population fluctuations and distributions. One commenter used the extinction of the Labrador duck (*Camptorhynchus labradorus*) as an example of how marine fluctuations can cause natural extinctions of marine birds, and suggested that the current decline of the marbled murrelet is analogous to the extinction of the Labrador duck.

Service Response: As stated in the *Ecological Considerations* section and elsewhere, the Service appreciates the role that natural marine fluctuations play in the demography of the marbled murrelet. The murrelet, like many other seabirds, is affected by stochastic factors such as gross water temperature changes and shifting patterns of prey abundance. Likewise, it is affected by terrestrial stochastic factors such as fire and windthrow. It is a generally accepted tenet of conservation biology that extinction for a declining species becomes more likely due to natural stochastic factors as a population becomes smaller and more fragmented. Maintenance of high quality nesting habitat in key areas will better enable the species to successfully endure marine and terrestrial stochastic events when they do occur. For example, Clark *et al.* (1990) found that limited availability of suitable nest sites hindered the population growth and recovery of red-tailed tropicbirds (*Phaethon rubricauda*) following catastrophic ocean events.

The Service disagrees with the commenter's assertion that the Labrador duck went extinct solely from natural causes, and that this so-called natural decline is analogous to natural forces acting to depress the marbled murrelet population. Although the Labrador duck was never very abundant, the best available information suggests that over-exploitation by humans caused the extinction of the species; the bird was hunted for market and for down, and its eggs were collected (Ehrlich *et al.* 1988; Terres 1980; Bellrose 1976).

Issue 34: Some commenters questioned the quality of the data that the Service used to determine critical habitat. One commenter questioned the Service's use of satellite imagery to identify critical habitat.

Service Response: The Act requires the Service to make biological decisions involving designation of critical habitat based on the best scientific and commercial data available. The Service utilized a number of sources to identify critical habitat including aerial photographs and personal knowledge. The Service maintains that sufficient data are available to warrant designation of critical habitat and that this final rule is based on the best information available.

Issue 35: Two commenters suggested exclusion of the proposed critical habitat units that contain Bishop pine.

Service Response: Two critical habitat units in California contain mature Bishop pine forests, Tomales Bay State Park and Salt Point State Park. These areas currently do not have any known records of murrelet detections; however, the Service is unaware of any surveys which have been conducted to determine if Bishop pine forests are used by marbled murrelets. The Service has determined that it is appropriate to designate these Bishop pine areas as critical habitat because of the lack of survey data, proximity of these areas to the ocean, availability of suitable nesting platforms, and high canopy cover. In the future, if surveys determine that murrelets are not nesting in these stands the boundaries of these critical habitat units may be revised.

National Environmental Policy Act

The Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in conjunction with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The final rule has been reviewed by the Office of Management and Budget under Executive Order 12866. The Department of the Interior finds that timely compliance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is impracticable in light of the emergency situation resulting from the court order requiring designation by May 15, 1996. Consequently, the completion of a Regulatory Flexibility Analysis is deferred at this time and will be completed within 180 days. Based on the information discussed in this final rule concerning public projects and private activities within critical habitat units, it is not clear whether significant economic impacts would result from the critical habitat designation. Also, no direct costs, enforcement costs, information collection, or record-keeping requirements would be imposed on small entities by this designation. Further, the rule contains no record-keeping requirements as defined by the Paperwork Reduction Act of 1980.

Finally, the Department has assessed the effects of this rule-making action on State, local, and tribal governments, and the private sector. The Service has determined and certifies pursuant to the Unfunded Mandates Act, 16 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

References Cited

A compete list of all references cited herein is available upon request from the State Supervisor, U.S. Fish and Wildlife Service, Oregon State Office, 2600 SE 98th Avenue, Suite 100, Portland, Oregon, 97266; telephone (503) 231–6179.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service hereby amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. Section 17.11(h) is amended by revising the "Critical habitat" entry for "Murrelet, marbled" under BIRDS to read: 17.95(b).

3. Section 17.95(b) is amended by adding critical habitat for the marbled murrelet, in alphabetical order, as follows.

§ 17.95 Critical habitat—fish and wildlife

* * * * *

(b) Birds

* * * * *

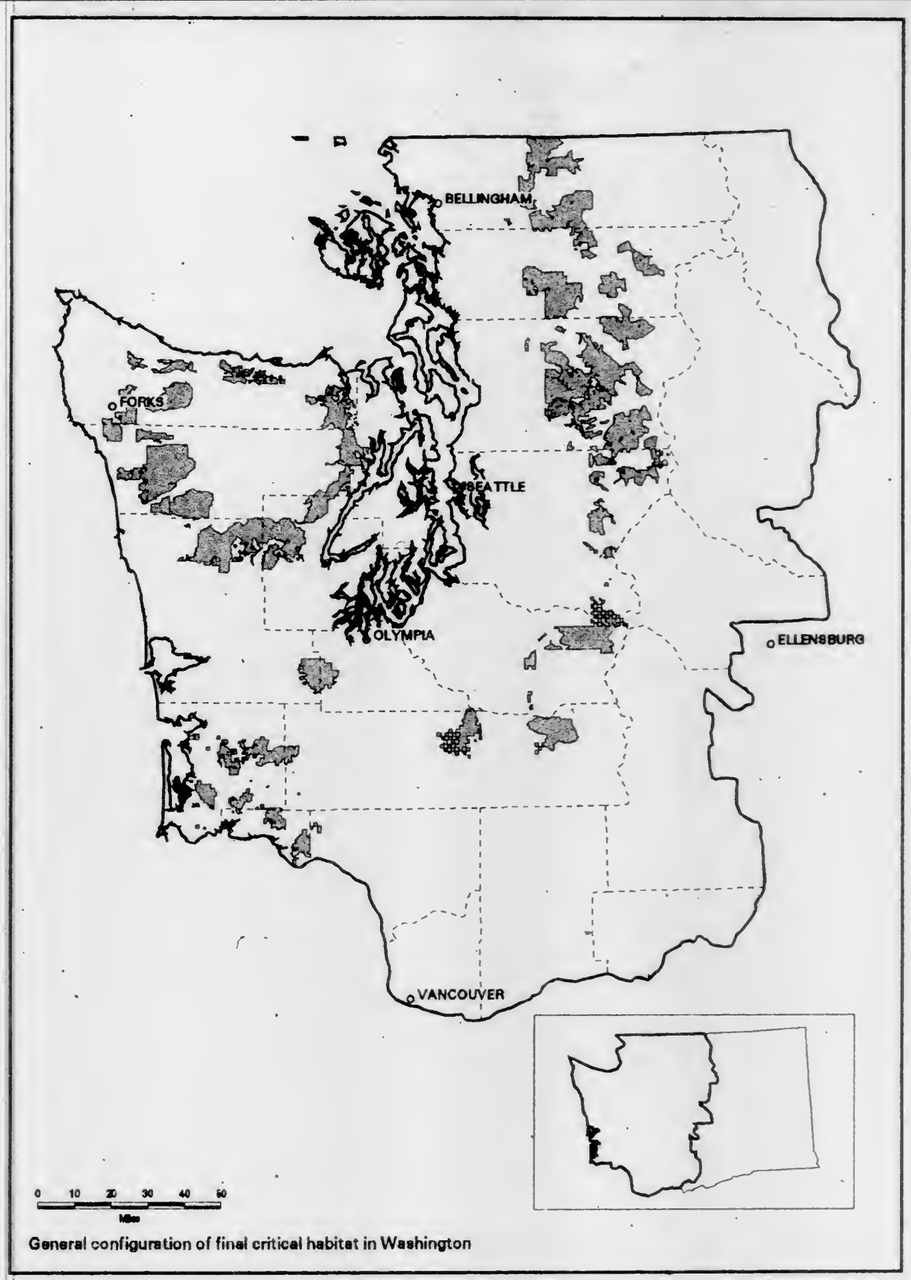
MARBLED MURRELET
(*Brachyramphus marmoratus marmoratus*)

1. Critical habitat units are depicted for the States of Washington, Oregon, and California on the maps below.

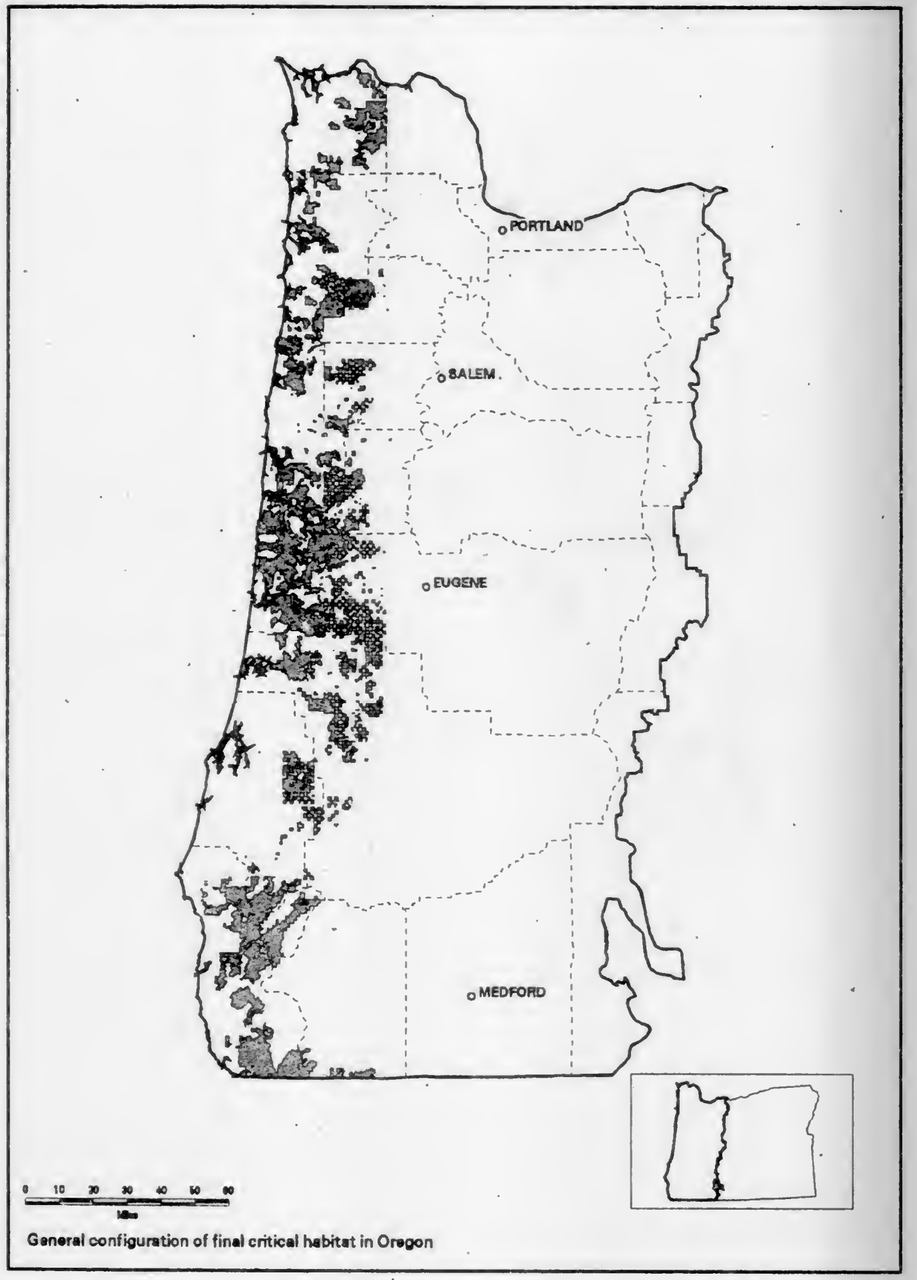
2. The primary constituent elements: individual trees with potential nest platforms and forest lands of at least one half site-potential tree height regardless of contiguity within 0.8 kilometers (0.5 miles) of individual trees with potential nesting platforms and that are used or potentially used by the marbled murrelet for nesting or roosting.

3. A description of the critical habitat units follows. Where a critical habitat unit includes Federal lands within the boundaries of a Late Successional Reserve established by the Northwest Forest Plan, those boundaries include any minor adjustments. Critical habitat units do not include non-federal lands covered by a legally operative incidental take permit for marbled murrelets issued under section 10(a) of the Act.

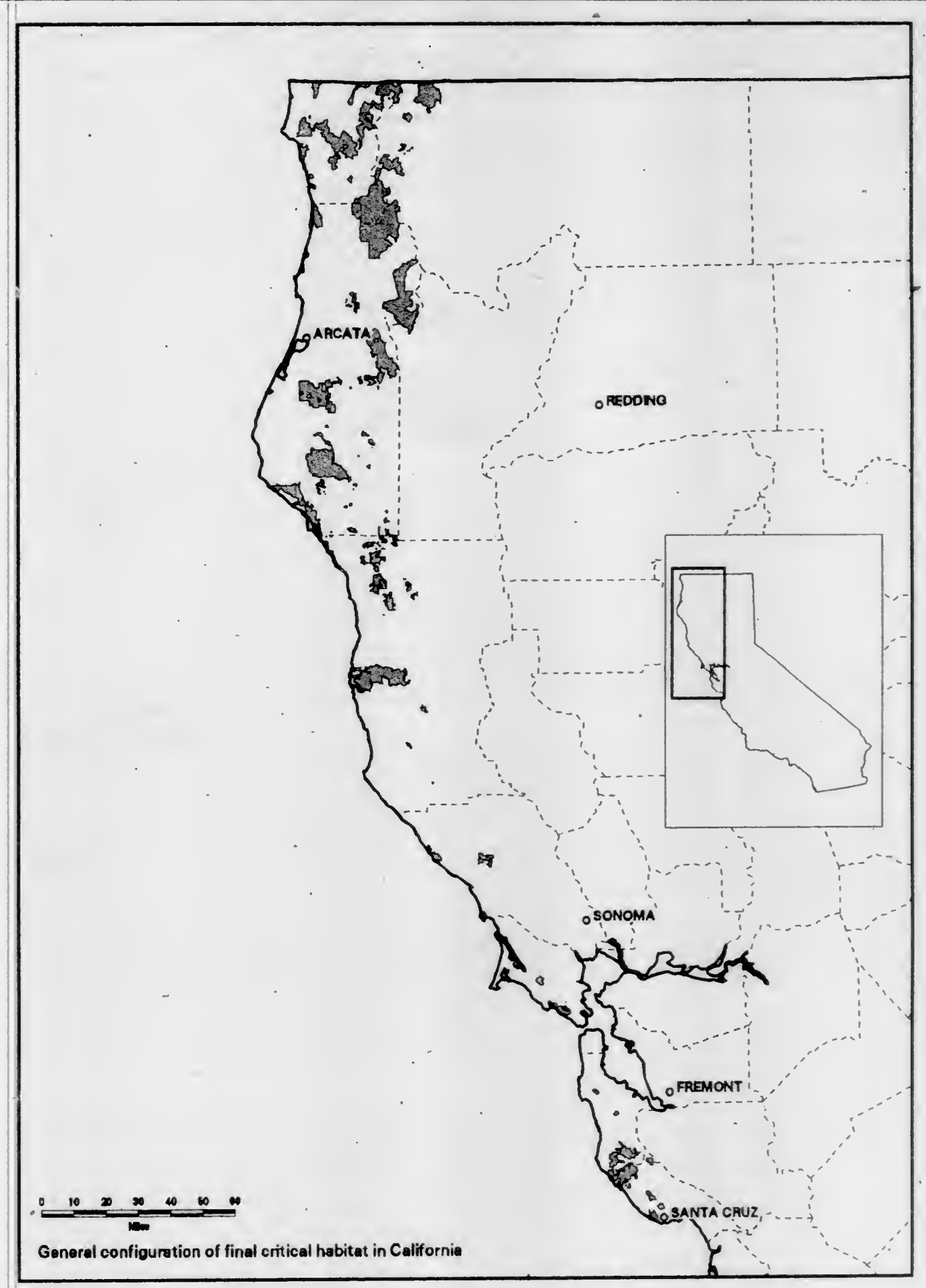
BILLING CODE 4310–55–P



General configuration of final critical habitat in Washington



General configuration of final critical habitat in Oregon



General configuration of final critical habitat in California

BILLING CODE 4310–55–P

Map and description of WA–01–a taken from United States Fish and Wildlife Service 1:100,000 map; Cape Flattery, Forks, and Port Angeles, Washington; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.28N., R.10W. Willamette Meridian: W½ W½ Section 1; Sections 2–8; NW¼, N½ SW¼, N½ NE¼, SW¼ NE¼ Section 9; N½ NW¼, NE¼ Section 10; W½ NW¼, NE¼ NW¼, N½ NE¼ Section 11; NW¼ NW¼ Section 12.

T.28N., R.11W. Willamette Meridian: Sections 1–5; S½ SW¼, SE¼, S½ NE¼, NE¼ NE¼ Section 6; Sections 7–12; N½ NW¼ Section 13; N½ Section 14; N½ N½ Section 15; N½ Section 16; N½, N½ SW¼ Section 17; N½ N½ Section 18.

T.28N., R.12W. Willamette Meridian: SW¼ SW¼ Section 1; SW ¼, S½ SE¼ Section 2; S½ SW¼, SE¼ Section 3; N½ N½ Section 10; N½ Section 11; Section 12 except SW¼ SW¼, N½ NE¼ Section 13.

T.29N., R.10W. Willamette Meridian: SW¼ NW¼, W½ SW¼, SE¼ SW¼ Section 1; Section 2 except N½ NE¼; Section 3 except N½ NE¼; Sections 4–5; SE¼ NW¼, SW¼ SW¼, E½ Section 6; Sections 7–24; Section 25 except SE¼ SE¼; Sections 26–35; NW¼, N½ SW¼, SW¼ SW¼, W½ NE¼ Section 36.

T.29N., R.11W. Willamette Meridian: SE¼ SW¼, SE¼, SE¼ NE¼ Section 12; Section 13; N½, N½ SW¼, SE¼ Section 14; E½ SE¼ Section 22; S½, NE¼ Section 23; Sections 24–27; S½, S½ NE¼ Section 28; SE¼ Section 29; SE¼ SE¼ Section 31; S½ SW¼, NE¼ SW¼, SE¼, S½ NE¼, NE¼ NE¼ Section 32; Sections 33–36.

T.30N., R.09W. Willamette Meridian: S½ SW¼ Section 18; N½ NW¼ Section 19.

T.30N., R.10W. Willamette Meridian: E½ NW¼, E½ SW¼, SW¼ SW¼, SE¼, SW¼ NE¼ Section 1; S½ SW¼, SW¼ SE¼ Section 2; Section 3 except NE¼; Section 4; E½ NW¼, S½ SW¼, NE¼ SW¼, E½ Section 5; S½ Section 6; Sections 7–12; Section 13 except SW¼ SW¼; NW¼ NW¼, NE¼ Section 14; Section 15; N½, N½ SE¼ Section 16; N½ Section 17; Section 18 except S½ SE¼; NW¼ NW¼ Section 19; SW¼ SW¼ Section 35.

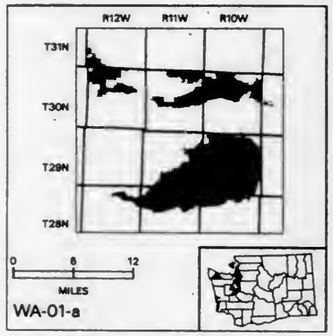
T.30N., R.11W. Willamette Meridian: Sections 1–2; Section 3 except S½ SW¼, SW¼ SE¼; Section 4 except S½ SW¼, SW¼ SE¼; NE¼ NE¼ Section 10; N½ NW¼, SE¼ SE¼, W½ NE¼, NE¼ NE¼ Section 11; NW¼ NW¼, S½, E½ NE¼ Section 12; Sections 13–14; S½, S½ NE¼ Section 15; S½ Section 17; SE¼ Section 18; N½ NW¼, SE¼ NW¼, NE¼ Section 20; N½, N½ SE¼ Section 21; N½, N½ S½ Section 22; N½, N½ SW¼ Section 23; NW¼, W½ NE¼, NE¼ NE¼ Section 24.

T.30N., R.12W. Willamette Meridian: NW¼ NW¼ Section 2; W½, N½ NE¼ Section 3; Section 4–5; Section 6 except W½ NW¼, NW¼, N½ SE¼, NE¼ Section 7; Section 8 except SW¼ SW¼; N½ N½, SE¼ SE¼ Section 9; S½ Section 10; S½ SW¼, SW¼ SE¼ Section 11; W½ NW¼ Section 13; N½, N½ SW¼ Section 14; N½, NE¼ SE¼ Section 15; Section 17 except NW¼ NW¼, SE¼ SE¼.

T.31N., R.12W. Willamette Meridian: Section 30 except NE¼; Section 31; Section 32 except NE¼; S½ SW¼ Section 33.

Critical Habitat includes only State or County lands described within the following areas:

T.30N., R.12W. Willamette Meridian: N½ Section 16.



Map and description of WA–01–b taken from United States Fish and Wildlife Service 1:100,000 map; Port Angeles, Washington; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.29N., R.07W. Willamette Meridian: N½ NW¼ Section 1; NE¼ Section 2.

T.30N., R.07W. Willamette Meridian: NW¼ SW¼, SW¼ SE¼, SW¼ NE¼ Section 26; S½ SW¼ Section 29; Section 30 except SE¼ NE¼, N½ NE¼; Section 31 except SW¼ SW¼; W½ W½, NE¼ NW¼ Section 32; W½ NW¼, N½ SW¼, SE¼ SW¼, N½ SE¼, S½ NE¼, NE¼ NE¼ Section 33; NW¼, N½ SE¼, W½ NE¼, SE¼ NE¼ Section 34; Sections 35–36.

T.30N., R.08W. Willamette Meridian: Section 25; Section 26 except NW¼ NE¼; Sections 27–29; N½ N½ Section 32; N½, NE¼ SE¼ Section 33; N½, N½ SW¼, SE¼ Section 34; N½, W½ SW¼, NE¼ SW¼, N½ SE¼ Section 35; N½, N½ S½ Section 36.

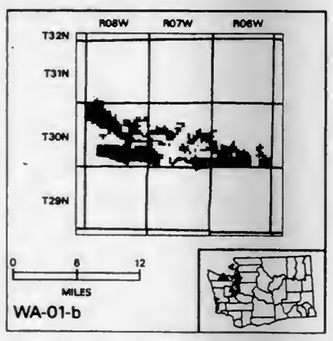
Critical Habitat includes only State or County lands described within the following areas:

T.30N., R.06W. Willamette Meridian: N½ SW¼, NW¼ SE¼ Section 18; NW¼ NW¼, SW¼, W½ SE¼ Section 19; SW¼ SW¼ Section 20; SW¼ SW¼, E½ SW¼ Section 21; SE¼ SE¼ Section 23; NW¼ NW¼, W½ SW¼, SE¼ SW¼ Section 25; E½ Section 26; SE¼ NW¼, S½ Section 27; Section 28 except SE¼ SW¼, NE¼ NE¼; Section 29; Section 30 except S½ SW¼; Sections 31–34; W½ W½, E½ E½ Section 35; Section 36.

T.30N., R.07W. Willamette Meridian: SE¼ SE¼ Section 9; S½ SW¼ Section 10; S½ S½, NE¼ SE¼ Section 13; SE¼ SW¼, SE¼, SE¼ NE¼ Section 14; SW¼ NW¼, NE¼ NW¼, NW¼ SW¼, SE¼ SE¼ Section 15; SW¼, S½ SE¼, NE¼ SE¼, S½ NE¼ Section 16; S½, S½ N½, NW¼ NE¼ Section 17; NW¼ NW¼, S½, E½ NE¼ Section 18; W½ NW¼, SE¼ NW¼, SW¼, N½ SE¼ Section 19; SW¼, SW¼ SE¼, E½ NE¼ Section 20; NW¼, SW¼ SW¼, NW¼ NE¼ Section 21; SE¼ SW¼, E½ E½ Section 22; S½ NW¼, NE¼ NW¼, SE¼, SE¼ SE¼, W½ NE¼, NE¼ NE¼ Section 23; N½, NW¼ SW¼, N½ SE¼, SE¼ SE¼ Section 24; S½ NW¼, NE¼ Section 25; N½, NW¼ SE¼ Section 27.

T.30N., R.08W. Willamette Meridian: S½ SW¼ Section 4; Section 5 except E½ NE¼; Section 6 except NW¼ NW¼; Section 7 except S½ SW¼; Section 8; Section 9 except NW¼ NE¼; SW¼ SW¼, SE¼ Section 10; W½ SW¼, SE¼ SW¼, SE¼, SE¼ NE¼ Section 11; SW¼ NW¼, N½ S½, SE¼ SE¼, S½ NE¼ Section 12; NW¼ NW¼, W½ SW¼, SE¼ SW¼, SE¼ SE¼, NE¼ NE¼ Section 13; Section 14; Section 15 except N½ SE¼, S½ NE¼; Section 16 except SW¼ SE¼; E½ NW¼, NW¼ NW¼, NE¼ Section 17; NE¼ NW¼, N½ NE¼, SW¼ NE¼ Section 20; N½ NW¼, SE¼ NW¼, SW¼ SE¼, E½ SW¼, NE¼ Section 22; W½, N½ SE¼, SW¼ NE¼ Section 23; SW¼ NW¼, NE¼ NW¼, N½ S½, N½ NE¼ Section 24.

T.31N., R.08W. Willamette Meridian: E½ SE¼ Section 31; W½ SW¼, SE¼ SW¼, SW¼ SE¼ Section 32.



Map and description of WA–02–a taken from United States Fish and Wildlife Service 1:100,000 map; Cape Flattery and Forks, Washington; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.28N., R.12W Willamette Meridian.: S½, S½ N½ Section 4; S½, S½ N½ Section 5; S½, NW¼, S½ NE¼, Section 6; Sections 7–9; Sections 16–21; Sections 28–33.

T.29N., R.12W. Willamette Meridian: S½ Section 7; SW¼, SW¼ SE¼ Section 8; S½ SW¼, SW¼ SE¼ Section 9; NW¼, W½ SW¼, W½ NE¼ Section 16; Section 17 except SE¼ SW¼, SW¼ SE¼; Section 18; Section 19 except W½ SE¼; W½ W½ Section 20; W½ Section 30.

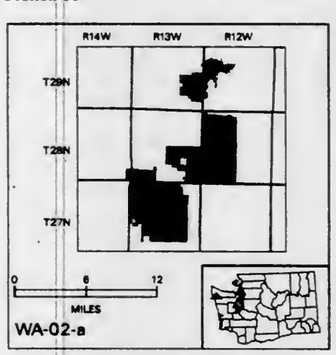
T.29N., R.13W. Willamette Meridian: S½ S½, NE¼ NE¼ Section 13; Section 23 except SW¼ SW¼; Sections 24–25; N½, N½ S½, SE¼ SE¼ Section 26, N½ N½ Section 36.

Critical Habitat includes only State or County lands described within the following areas:

T.27N., R.13W. Willamette Meridian: W½ NW¼, SE¼ NW¼, SW¼ Section 2; Sections 3–11; Sections 14–18; N½, NE¼ SW¼, NW¼ SE¼ Section 19; Sections 20–23; Sections 26–28; N½, W½ SW¼, E½ SE¼ Section 29.

T.28N., R.13W. Willamette Meridian: Sections 22–25; W½ NW¼, S½, E½ NE¼ Section 26; N½, N½ SE¼ Section 27; SW¼ SW¼ Section 28; Sections 31–32; W½ W½ Section 33; E½ E½, W½ SE1/4 Section 35; Section 36.

T.28N., R.14W. Willamette Meridian: E½ Section 36.



Map and description of WA–02–b taken from United States Fish and Wildlife Service 1:100,000 map; Forks and Mt Olympus, Washington; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.25N., R.10W. Willamette Meridian: Sections 29–30; Section 31 except SE¼ SE¼; N½ NW¼, SW¼ NW¼ Section 32.

Critical Habitat includes only State or County lands described within the following areas:

T.24N., R.11W. Willamette Meridian: N½ N½ Section 1; N½, N½ SW¼ Section 2; Sections 3–8; Section 9 except SE¼; N½ NW¼ Section 10; NW¼ Section 16; NW¼, NW¼ SW¼, W½ NE¼ Section 17; Section 18 except SE¼ SE¼; NW¼ NW¼ Section 19.

T.24N., R.12W. Willamette Meridian: NW¼ NW¼, S½ NW¼, SW¼, W½ SE¼, SE¼ SE¼, SW¼ NE¼ Section 1; SE¼, NW¼ NW¼, E½ NE¼ Section 2; W½ SE¼, NE¼ SE¼, S½ NE¼ Section 10; Section 11; Section 12 except NE¼ SE¼; W½, W½ NE¼, NE¼ NE¼ Section 13; N½, S½ SE¼, NE¼ SE¼ Section 14; NE¼ NW¼, N½ SE¼, NE¼ Section 23; N½, N½ SW¼ Section 24.

T.25N., R.09W. Willamette Meridian: NW¼, W½ SW¼, N½ NE¼, SW¼ NE¼ Section 6.

T.25N., R.10W. Willamette Meridian: Sections 1–11; W½ NW¼, NE¼ NW¼ Section 12; NW¼, N½ SW¼, N½ NE¼, NE¼ NE¼ Section 14; Section 15 except SE¼ SW¼, S½ SE¼; Sections 16–20; N½ Section 21.

T.25N., R.11W. Willamette Meridian: Section 1–19; Section 20 except NE¼ NW¼; Sections 21–36.

T.25N., R.12W. Willamette Meridian: Section 1 except N½ N½; Section 2 except NE¼ NE¼; Section 3 except NE¼ NW¼; E½ Section 4; SE¼ Section 5; SE¼ SW¼ Section 6; Section 7; N½ Section 8; Section 9; Section 10 except NE¼ NE¼; SE¼ NW¼, S½ Section 11; Section 12; Section 13 except S½ SW¼; W½ W½, E½ Section 14; Sections 15–16; W½ W½, SE¼ SW¼, S½ SE¼, NE¼ SE¼ Section 17; Section 18; E½ NW¼, N½ NE¼, SW¼ NE¼ Section 19; N½ N½ Section 20; N½ N½ Section 21; N½ N½ Section 22; NW¼ NW¼, NE¼ NE¼ Section 23; NE¼ NW¼, E½ SW¼, NE¼ Section 24; Section 25; Section 26 except W½ NW¼, NE¼ NW¼, NW¼ NE¼; Sections 35–36.

T.25N., R.13W. Willamette Meridian: Section 1 except NE¼ SE¼, N½ NE¼, SE¼ NE¼; Section 2 except NW¼; NE¼ NW¼, S½ S½, N½ NE¼, SE¼ NE¼ Section 11; Section 12; Section 13 except SW¼ SW¼; Section 14; N½ NW¼ Section 23; NE¼ NW¼, NW¼ NE¼ Section 24.

T.26N., R.09W. Willamette Meridian: S½ NW¼, SW¼, W½ SE¼, SE¼ SE¼, SW¼ NE¼ Section 19; W½ Section 29; Sections 30–31; W½ W½ Section 32.

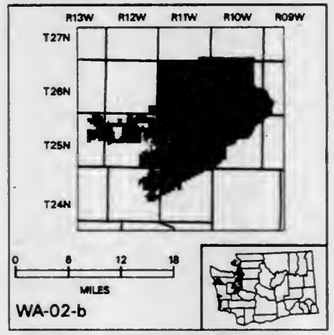
T.26N., R.10W. Willamette Meridian: Sections 2–11; W½ SW¼, SE¼ SW¼, SW¼ SE¼ Section 13; Sections 14–36.

T.26N., R.11W. Willamette Meridian: Sections 1–36.

T.26N., R.12W. Willamette Meridian: Section 36.

T. 27N., R. 10W. Willamette Meridian: S½ Section 31; S½ Section 32; S½ Section 33; S½ Section 34; S½ Section 35.

T. 27N., R. 11W. Willamette Meridian: SE¼ Section 35; S½ Section 36.



Map and description of WA–02–c taken from United States Fish and Wildlife Service 1:100,000 map; Forks and Mt Olympus, Washington; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T. 23N., R. 9W. Willamette Meridian: NW¼, NW¼ SW¼, NW¼ NE¼ Section 6.

T. 23N., R. 10W. Willamette Meridian: N½, N½ SW¼, SW¼ SW¼, N½ SE¼ Section 1; N½ N½, SE¼ NE¼ Section 2; NW¼, N½ NE¼, SW¼ NE¼ Section 3; E½ NW¼, NE¼ Section 4; N½, SW¼ SW¼, NE¼ SW¼, SE¼ SE¼, NE¼ SE¼ Section 15; S½ NW¼, NE¼ SW¼, SE¼, NW¼ NE¼, S½ NE¼ Section 16; NE¼ NE¼ Section 22.

T. 23N., R. 11W. Willamette Meridian: E½ NW¼, N½ SE¼, NE¼ Section 1.

T. 24N., R. 09W. Willamette Meridian: S½ N½, S½ Section 3; Sections 4–10; Section 15 except SE¼ SE¼, NE¼ NE¼; Sections 16–21; Sections 28–33.

T. 24N., R. 10W. Willamette Meridian: Sections 1–3; S½, NE¼ Section 4; S½ Section 5; S½ Section 6; Sections 7–30; N½, N½ S½, SE¼ SE¼ Section 31; Sections 32–36.

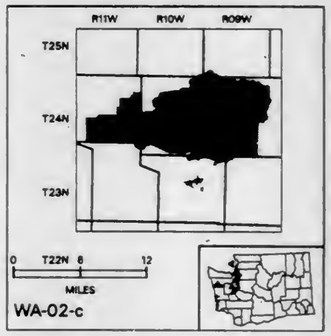
T. 24N., R. 10½W. Willamette Meridian: S½ SE¼ Section 1; Section 12 except W½ W½; Section 13; Section 14 except NW¼ NW¼; Sections 23–26; NW¼, N½ SW¼, N½ NE¼, SW¼ NE¼ Section 35; N½ NW¼, NE¼ Section 36.

T. 25N., R. 09W. Willamette Meridian: S½, SE¼ NW¼, S½ NE¼ Section 31; NW¼ SW¼, S½ SW¼ Section 32.

T. 25N., R. 10W. Willamette Meridian: S½ SE¼ Section 36.

Critical Habitat includes only State or County lands described within the following areas:

T. 24N., R. 11W. Willamette Meridian: S½ SW¼, NE¼ SW¼, SE¼ Section 12; Sections 13–14; SE¼ SE¼ Section 15; S½ S½ Section 20; S½ Section 21; E½ NE¼, S½ Section 22; Sections 23–29; Sections 32–36.



Map and description of WA–02–d taken from United States Fish and Wildlife Service 1:100,000 map; Forks, Washington; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

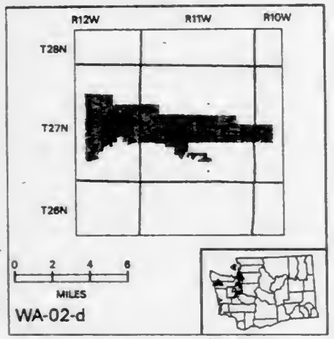
T.27N., R.11W. Willamette Meridian: N½ SW¼, SE¼ SW¼, SW¼ SE¼ Section 27; S½ NW¼, N½ SW¼, SW¼ SW¼, SE¼ Section 28; NE¼ SE¼, SE¼ NE¼ Section 29; SW¼ NE¼ Section 34.

Critical Habitat includes only State or County lands described within the following areas:

T.27N., R.10W. Willamette Meridian: Section 19.

T.27N., R.11W. Willamette Meridian: S½ Section 14; S½ Section 15; S½ Section 16; S½ Section 17; Sections 18–24; S½ SW¼ Section 27; N½ NW¼, NE¼ SW¼, NW¼ SE¼ Section 28; N½ N½ Section 29; NE¼ NE¼ Section 30.

T.27N., R.12W. Willamette Meridian: S½ Section 10; SW¼ Section 11; Sections 13–15; Section 22; Section 23 except SE¼ SE¼; Section 24; NE¼ NW¼, N½ NE¼ Section 25; N½ NW¼ Section 26; Section 27 except E½ SE¼.



Map and description of WA–03–a taken from United States Fish and Wildlife Service 1:100,000 map; Mt Olympus and Shelton, Washington; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.21N., R.07W. Willamette Meridian: N½ NW¼, SE¼ NW¼, NE¼ SW¼, W½ SE¼ Section 3.

T.21N., R.08W. Willamette Meridian: Sections 4–9; N½, SW¼, NW¼ SE¼ Section 16; Sections 17–18; NW¼ NW¼ Section 21.

T.21N., R.09W. Willamette Meridian: Section 1; Section 2 except NW¼ NW¼; Section 3 except SE¼, S½ NE¼, NE¼ NE¼; Section 4; E½ Section 5; N½ Section 6.

T.22N., R.07W. Willamette Meridian: Section 1; NE¼ NW¼, E½ SE¼, NW¼ SE¼, NE¼ Section 2; W½ Section 3; Sections 4–5; SE¼ NW¼, S½ SW¼, NE¼ SW¼, E½ Section 6; NW¼, N½ NE¼ Section 7; SE¼ NW¼, NE¼ SW¼, S½ SE¼, NE¼ SE¼, NW¼ NE¼, E½ NE¼ Section 8; Section 9; W½, W½ SE¼, SE¼ SE¼ Section 10; NE¼ SE¼, NE¼ Section 11; NW¼ NW¼, S½ NW¼, SW¼, W½ SE¼ Section 12; N½ NW¼, S½ SW¼, W½ SE¼, NE¼ SE¼, W½ NE¼ Section 13; SW¼ NW¼, SW¼, SW¼ SE¼ Section 14; Section 15 except SE¼ NW¼, NE¼ SW¼, SW¼ NE¼; Section 16; Section 17 except W½ NW¼, NE¼ NW¼; SW¼, E½ SE¼, NE1/4 NE1/4 Section 19; Section 20 except SE1/4; Section 21 except SE¼ SE¼; N½ Section 22; N½, E½ SW¼, W½ SE¼, NE¼ SE¼ Section 23; W½ NW¼, NE¼ NW¼ Section 24; NW¼ Section 26; S½ NW¼, SW¼, N½ SE¼, NE¼ Section 27; N½ NW¼ Section 28; NW¼, N½ NE¼ Section 29; SW¼ SW¼ Section 30; W½, N½ SE¼, W½ NE¼ Section 31; W½ Section 34.

T.22N., R.08W. Willamette Meridian: E½ SE¼ Section 1; N½ NW¼, W½ SW¼, NW¼ NE¼ Section 2; Sections 3–9; W½, W½ NE¼, NE¼ NE¼ Section 10; SE¼ NW¼, S½, S½ NE¼ Section 11; W½ SW¼, NE¼ NE¼ Section 12; NW¼ NW¼, SW¼ SE¼ Section 13; NE¼ NW¼, N½ NE¼ Section 14; Section 15 except E½ SE¼, NE¼; Sections 16–21; Section 22 except E½ SE¼, NE¼; E½ SE¼, NW¼ SE¼, NE¼ Section 24; SE¼ SE¼, NE¼ NE¼ Section 25; Section 27 except E½ E½; Sections 28–33; N½ NW¼, SW¼ NW¼, SE¼ SW¼, E½ SE¼, SW¼ SE¼, W½ NE¼ Section 34; Section 35 except NW¼ NW¼; SE¼ SW¼, S½ SE¼, NE¼ SE¼, NE¼ Section 36.

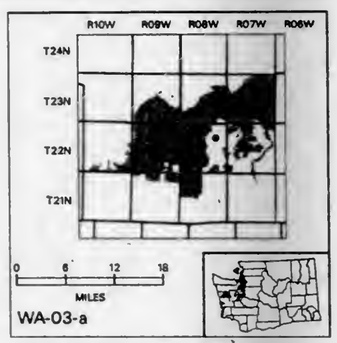
T.22N., R.09N. Willamette Meridian: Sections 1–5; E½, E½ W½ Section 6; E½, E½ W½ Section 7; Sections 8–25; Section 26 except SW¼; Sections 27–33; Section 34 except S½ SE¼; Section 35 except N½ NW¼, W½ SW¼.

T.22N., R.10W. Willamette Meridian: SE¼ Section 13; SE¼ NW¼, SW¼ SW¼, E½ SW¼, SE¼, E½ NE¼ Section 24; SE¼ NW¼, SW¼, E½ Section 25; W½ SW¼, SE¼ SE¼ Section 27; S½ SE¼, NE¼ SE¼ Section 31; SW¼ NW¼, E½ NW¼, S½, S½ NE¼ Section 32; NW¼ NW¼, S½ SW¼, SW¼ SE¼, NE¼ SE¼ Section 33; W½ NW¼, N½ SW¼, NW¼ SE¼, SE¼ SE¼, NE¼ NE¼ Section 34; Section 35 except SW¼ SW¼; Section 36.

T.23N., R.07W. Willamette Meridian: Sections 1–3; S½, S½ NE¼, NE¼ NE¼ Section 4; SW¼ SW¼ Section 7; SE¼ SW¼, SE¼, SE¼ NE¼ Section 8; Sections 9–17; Section 18 except N½ NE¼; Sections 19–30; N½, N½ SW¼, SE¼ Section 31; Section 32–33; Section 34 except S½ SE¼; Sections 35–36.

T.23N., R.08W. Willamette Meridian: S½ NW¼, N½ SW¼, SE¼ SW¼, SE¼, S½ NE¼ Section 11; Section 12 except N½ N½; Sections 13–14; S½, NE¼ Section 15; S½ SE¼, NE¼ SE¼ Section 16; SE¼ SE¼ Section 20; S½, NE¼ Section 21; Sections 22–29; W½ NW¼, SE¼ NW¼, S½, SE¼ NE¼ Section 30; Sections 31–34; Section 35 except E½ SE¼; N½, NE¼ SE¼ Section 36.

T.23N., R.09W. Willamette Meridian: E½ NW¼, SW¼, SW¼ SE¼, W½ NE¼ Section 15; S½ SE¼, NE¼ SE¼ Section 16; SE¼ SE¼ Section 19; S½, S½ NE¼, NE¼ NE¼ Section 20; Sections 21–22; W½ NW¼, SW¼, W½ SE¼, SE¼ SE¼ Section 23; SW¼ SW¼ Section 24; Sections 25–29; SW¼, SW¼, E½ SW¼, SE¼, S½ NE¼ NE¼ NE¼ Section 30; E½ W½, E½ Section 31; Sections 32–36.



Map and description of WA–03–b taken from United States Fish and Wildlife Service 1:100,000 map; Mt Olympus and Shelton, Washington; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

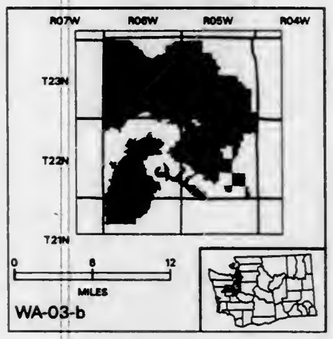
T.21N., R.06W. Willamette Meridian: W½, NW1/4 NE¼ Section 3; Sections 4–8; E½, NE¼ Section 9; N½ NW¼ Section 10.

T.22N., R.05W. Willamette Meridian: Sections 1–4; S½, SW¼ NW¼, E½ NW¼, NE¼ Section 5; Sections 6–10; Section 11 except SE¼ SE¼; W½ Section 14; N½ NW¼, W½ SW¼ Section 15; Sections 16–18; N½, W½ SW¼, N½ SE¼, SE¼ SE¼ Section 19; Sections 20–22; Section 26; Section 28 except SW¼ SW¼; N½ NW¼, NE¼ SE¼, N½ NE¼, SE¼ NE¼ Section 29; NW¼ NW¼, S½ SW¼, NE¼ SW¼, W½ SE¼, NE¼ SE¼, S½ NE¼ Section 30; N½ NW¼, SE¼ NW¼, N½ SE¼, SE¼ SE¼, NE¼ Section 31; W½, SE¼, S½ NE¼ Section 32; W½ SW¼, SE¼ SW¼ Section 33; NE¼ Section 34; W½ W½, NE¼ SW¼ Section 36.

T.22N., R.06W. Willamette Meridian: N½, E½ SE¼ Section 1; NW¼, N½ NE¼, SE¼ NE¼ Section 2; N½ NE¼ Section 3; NW¼, W½ SW¼, NE¼ SW¼, NW¼ SE¼, W½ NE¼, NE¼ NE¼ Section 5; Section 6 except S½ SE¼; N½ NW¼, S½ SE¼, NE¼ SE¼ Section 8; S½ Section 9; S½ NW¼, NE¼ NW¼, S½, W½ NE¼, SE¼ NE¼ Section 10; SW¼, SW¼ SE¼ Section 11; NE¼ SE¼, S½ SE¼ Section 12; Section 13; NW¼, N½ SW¼ Section 14; Sections 15–16; E½ Section 17; N½ SE¼, SE¼ SE¼, S½ NE¼, NW¼ NE¼ Section 19; Sections 20–21; W½ NW¼, NE¼ NW¼, W½ SW¼, E½ SE¼ Section 22; S½, SW¼ NE¼ Section 23; NE¼ NW¼, W½ SW¼, E½ SE¼, N½ NE¼, SE¼ NE¼ Section 24; S½ N½, NW¼ NW¼, N½ S½, SE¼ SE¼, NE¼ NE¼ Section 25; N½, SW¼ SW¼, NE¼ SE¼ Section 26; Section 27 except NW¼ NE¼; Sections 28–29; E½ Section 30; Section 31 except W½ NW¼; Sections 32–34; NW¼ Section 35.

T.23N., R.05W. Willamette Meridian: W½ W½ Section 4; S½ N½, S½ Section 5; S½ N½, S½ Section 6; Sections 7–9; W½ SW¼ Section 10; S½ SW¼, SW¼ SE¼ Section 14; NW¼, NW¼ SW¼, S½ SW¼, S½ SE¼ Section 15; Sections 16–22; Section 23 except SE¼ NE¼, N½ NE¼; NW¼ SW¼, S½ SW¼ Section 24; W½ Section 25; Sections 26–35; Section 36 except NE¼.

T.23N., R.06W. Willamette Meridian: SE¼ NW¼, S½, S½ NE¼ Section 1; E½ SE¼ Section 2; SW¼ NW¼, SW¼, W½ SE¼, SE¼ SE¼ Section 4; Sections 5–9; NW¼ NW¼, S½ N½, S½ Section 10; Sections 11–32; Section 33 except SE¼ SE¼; Section 34 except SW¼; Sections 35–36.



Map and description of WA–04–a taken from United States Fish and Wildlife Service 1:100,000 map; Shelton and Chehalis River, Washington; 1995.

Critical Habitat includes only State or County lands described within the following areas:

T.16N., R.03W. Willamette Meridian: NW¼, W½ SW¼, W½ NE¼ Section 4; Sections 5–7; NW¼, W½ SW¼, W½ NE¼, NE¼ NE¼ Section 8; NW¼ NW¼; NW¼ NW¼ Section 16; W½, NE¼ Section 17; Section 18; Section 19 except S½ SE¼.

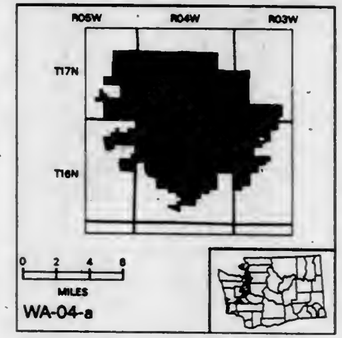
T.16N., R.04W. Willamette Meridian: Sections 1–17; Section 18 except SW¼; NE¼ Section 19; Section 20 except W½ SW¼; Sections 21–23; N½ NW¼ Section 26; Section 27 except E½ SE¼; N½ NW¼, S½ SE¼, NE¼ SE¼, NE¼ Section 28; N½ NW¼, W½ NE¼ Section 33.

T.16N., R.05W. Willamette Meridian: S½ SW¼, SE¼ Section 1; S½ SE¼, NE¼ SE¼ Section 2; N½, SW¼, NW¼ SE¼ Section 11; N½ Section 12; Section 13 except N½ NW¼, NW¼ NE¼.

T.17N., R.03W. Willamette Meridian: Section 19; Sections 30–32; Section 33 except SE¼ SE¼.

T.17N., R.04W. Willamette Meridian: Sections 14–36.

T.17N., R.05W. Willamette Meridian: Section 13; E½ Section 14; S½, NE¼ Section 23; Sections 24–25; NW¼ SW¼, S½ S½ Section 26; S½ SE¼, NE¼ SE¼, SE¼ NE¼ Section 27; Sections 35–36.



Map and description of WA–05–a taken from United States Fish and Wildlife Service 1:100,000 map; Chehalis River, Washington; 1995.

Critical Habitat includes only State or County lands described within the following areas:

T.12N., R.08W. Willamette Meridian: Section 2 except NE¼ NE¼; Sections 3–5; Section 9; Section 10 except NW¼ NW¼; W½, N½ NE¼, SW¼ NE¼ Section 11; W½, W½ NE¼ Section 14; Sections 15–16.

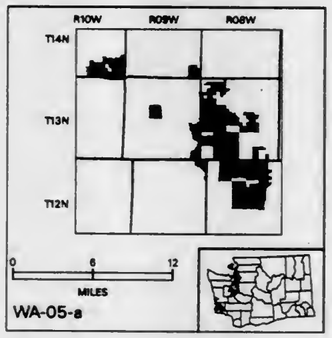
T.12N., R.09W. Willamette Meridian: N½, N½ SE¼, SE¼ SE¼ Section 1.

T.13N., R.08W. Willamette Meridian: SW¼ SW¼ Section 4; Section 5 except N½ NW¼, NW¼ NE¼; SE¼ NW¼, S½ SE¼, NE¼ SE¼, S½ NE¼ Section 6; Section 7 except SE¼ NW¼; NW¼ NW¼, W½ SW¼, W½ NE¼, NE¼ NE¼ Section 8; SW¼ Section 14; NE¼ SW¼, SE¼ Section 15; Sections 16–20; N½ Section 21; SW¼ NW¼, S½, S½ NE¼, NE¼ NE¼ Section 22; W½ NW¼, SE¼ NW¼, SW¼ Section 23; Section 28–29; Section 30 except N½ N½; Sections 32–33.

T.13N., R.09W. Willamette Meridian: Section 16; S½ N½, S½, NE¼ NE¼ Section 24; E½ NW¼, NW¼ SE¼, E½ SE¼, NE¼ Section 25; Section 36 except N½ NW¼.

T.14N., R.09W. Willamette Meridian: Section 36 except NE¼ NE¼.

T.14N., R.10W. Willamette Meridian: S½, S½ NE¼ Section 25; S½ Section 26; SE¼ Section 27; Section 34 except NW¼ NW¼; Section 35 except NW¼ NE¼, SE¼ NE¼; Section 36.



Map and description of WA–05–b taken from United States Fish and Wildlife Service 1:100,000 map; Astoria, Oregon-Washington; 1995.

Critical Habitat includes only State or County lands described within the following areas:

T.10N., R.09W. Willamette Meridian: N½, N½ SE¼, NE¼ SW¼ Section 3; N½ NE¼ Section 4.

T.11N., R.09W. Willamette Meridian: Sections 4–10; W½ Section 14; Sections 15–18; Section 19 except SW¼ SW¼; Sections 20–22; Sections 27–29; NW¼, E½ Section 33; Section 34 except SW¼.

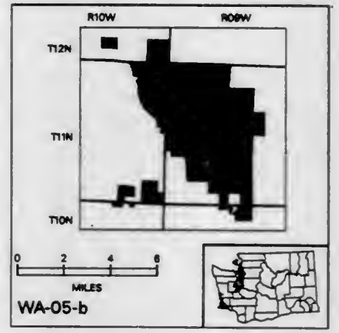
T.11N., R.10W. Willamette Meridian: Section 1; E½ NW¼, E½ Section 2; E½ E½ Section 11; Section 12; N½ NW¼, SE¼ NW¼, NW¼ SE¼, E½ SE¼, NE¼ Section 13; Section 36 except E½ NE¼.

T.12N., R.10W. Willamette Meridian: NW¼, E½ NE¼ Section 34; Section 36.

Critical Habitat includes only Private lands described within the following areas:

T.11N., R.10W. Willamette Meridian: S½ NW¼, N½ SW¼, SW¼ SW¼, that portion of the SE¼ SW¼ west of Ellsworth Creek, NW¼ SE¼, SW¼ NE¼ Section 35.

T.10N., R.10W. Willamette Meridian: NW¼ NW¼, NW¼ NE¼ Section 2; NE¼ NE¼ Section 3.



Map and description of WA–05–c taken from United States Fish and Wildlife Service 1:100,000 map; Astoria, Oregon-Washington; 1995.

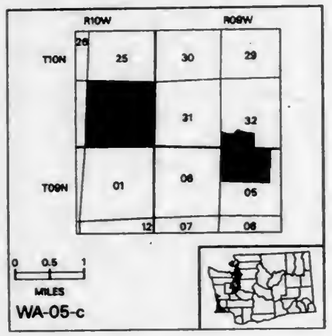
Critical Habitat includes only State or County lands described within the following areas:

T.10N., R.10W. Willamette Meridian: Section 36.

Critical Habitat includes only Private lands described within the following areas:

T.09N., R.09W. Willamette Meridian: NW1/4, W1/2 NE1/4 Section 5.

T.10N., R.09W. Willamette Meridian: That portion of the S1/2 SW1/4 Section 32 south of Bean Creek.



Map and description of WA–05–d taken from United States Fish and Wildlife Service 1:100,000 map; Cape Flattery, Washington; Astoria, Oregon-Washington; 1995.

Critical Habitat includes only State or County lands described within the following areas:

T. 10N., R. 06W. Willamette Meridian: Sections 2–5; N½ Section 6; S½ SE¼, NE¼ SE¼, N½ NE¼, SE¼ NE¼ Section 7; Sections 8–10; Sections 14–17; E½ Section 18; Section 19; SW¼ NW¼, SW¼, W½ NE¼, NE¼ NE¼ Section 20; Section 21–27; S½ NW¼, S½ Section 28; NE¼ Section 29; NW¼, W½ NE¼ Section 30; N½, N½ SW¼ Section 33; N½, W½ SE¼ Section 34; N½, SW¼, NW¼ SE¼ Section 35; N½, NW¼ SW¼, S½ SE¼, NE¼ SE¼ Section 36.

T. 10N., R. 08W. Willamette Meridian: N½ NW¼, NW¼ NE¼ Section 1; Section 2; NW¼ Section 10; E½ NW¼, N½ SE¼, NE¼ Section 11; W½ NW¼, SE¼ NW¼, SW¼ NE¼ Section 12.

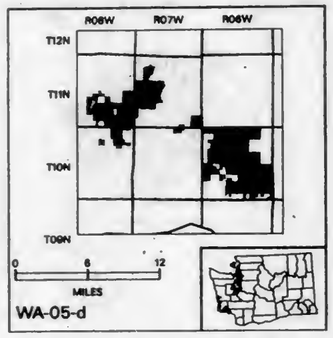
T. 11N., R. 07W. Willamette Meridian: N½, SW¼, W½ SE¼ Section 8; Section 16 except SE¼ SE¼; Sections 17–20; W½, SW¼ SE¼ Section 21; N½ Section 29; N½, SW¼ Section 30; N½ NW¼ Section 31; Section 36.

T. 11N., R. 08W. Willamette Meridian: S½, S½ NE¼ Section 21; NW¼ NW¼, S½ NW¼, SE¼ Section 22; Sections 24–28; E½ SE¼, NE¼ Section 33; N½, SE¼ Section 34; Sections 35–36.

Critical Habitat includes only Private lands described within the following areas:

T. 10N., R. 07W. Willamette Meridian: N½ NW¼, SW¼ NW¼ Section 2; NE¼ Section 3.

T. 11N., R. 07W. Willamette Meridian: S½ SW¼ Section 35.



Map and description of WA–05–e taken from United States Fish and Wildlife Service 1:100,000 map; Astoria, Oregon-Washington; 1995.

Critical Habitat includes only State or County lands described within the following areas:

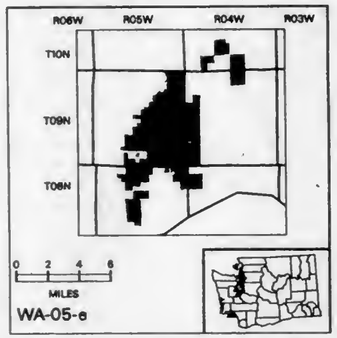
T. 08N., R. 04W. Willamette Meridian: S½ Section 6; N½ Section 7.

T. 08N., R. 05W. Willamette Meridian: Section 1; NE¼ Section 2; E½, W½ NE¼ Section 3; Section 4; N½ SE¼, SE¼ SE¼ Section 5; NW¼, SE¼, N½ NE¼ Section 9; SW¼ Section 10; NE¼ Section 12; Section 16; N½, N½ SE¼ Section 21.

T. 09N., R. 04W. Willamette Meridian: Section 3; SE¼ Section 7; Sections 18–19; Sections 30–31.

T. 09N., R. 05W. Willamette Meridian: Section 1; N½ SE¼, SE¼ SE¼, N½ NE¼, SE¼ NE¼ Section 2; SW¼ SE¼, E½ SE¼ Section 10; Section 11 except N½ NW¼; Sections 12–14; Section 15 except N½ NW¼; S½ SE¼ Section 16; SE¼, SE¼ NE¼ Section 21; Sections 22–28; SE¼ SE¼ Section 29; W½ NW¼, SW¼, W½ SE¼ SE¼ SE¼, E½ NE¼ Section 33; Section 34 except NW¼; Sections 35–36.

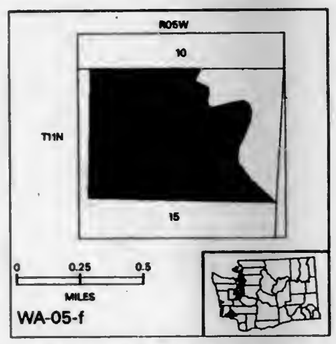
T. 10N., R. 04W. Willamette Meridian: Section 28 except NE¼ NE¼; W½, NE¼ Section 32; Section 34.



Map and description of WA–05–f taken from United States Fish and Wildlife Service 1:100,000 map; Astoria, Oregon-Washington; 1995.

Critical Habitat includes only Private lands described within the following areas:

T. 11N., R. 05W. Willamette Meridian: E½ NW¼, that portion of the NE¼ west of the East Fork Chehalis River Section 15.



Map and description of WA–05–g taken from United States Fish and Wildlife Service 1:100,000 map; Astoria, Oregon-Washington; 1995.

Critical Habitat includes only Private lands described within the following areas:

T. 11N., R. 06W. Willamette Meridian: N½ NW¼, SW¼ NW¼ Section 5; SE¼ NE¼ Section 6.

T. 12N., R. 07W. Willamette Meridian: N½ SW¼ Section 28.

Map and description of WA–05–h taken from United States Fish and Wildlife Service 1:100,000 map; Chehalis River, Washington; 1995.

Critical Habitat includes only State or County lands described within the following areas:

T. 12N, R. 05W. Willamette Meridian: NW¼ Section 6.

T. 12N, R. 06W. Willamette Meridian: NE¼ Section 1; N½, N½ S½ Section 3; N½ N½ Section 6.

T. 12N, R. 07W. Willamette Meridian: N½, N½ SW¼ Section 1; N½, N½ S½ Section 2, NE¼ Section 3.

T. 12N, R. 08W. Willamette Meridian: NE¼ Section 1.

T. 13N, R. 05W. Willamette Meridian: S½ S½ Section 7; NE¼ SW¼, S½ SW¼, SE¼ Section 8; S½ SW¼, NE¼ SW¼ Section 9; S½ Section 10; Sections 15–21; Section 22 except SE¼ SW¼, SW¼ SE¼, E½ E½; N½ NW¼, SW¼ NW¼ Section 27; NE¼ Section 28; Section 29–31; Section 32 except W½ SW¼.

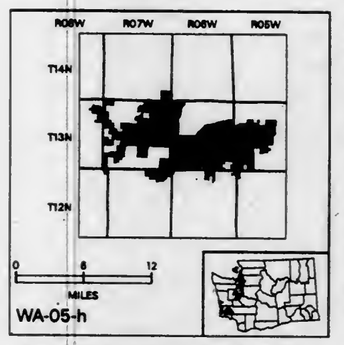
T. 13N, R. 06W. Willamette Meridian: NW¼, W½ SW¼, NE¼ SW¼, W½ NE¼ Section 5; Sections 6–7; W½ NW¼ Section 8; S½ SE¼ Section 10; S½ SW¼, SE¼ Section 11; S½ Section 12; Sections 13–15; SE¼ Section 16; Sections 18–33; Section 34 except SW¼ SW¼; Section 35; N½, SW¼ NW¼, SW¼ SW¼, E½ SE¼ Section 36.

T. 13N, R. 07W. Willamette Meridian: Sections 1–2; Section 3 except N½ NW¼; N½, W½ SW¼ Section 6; W½, SW¼ SE¼ Section 7; SE¼ NE¼, NE¼ SE¼ Section 9; Section 10 except NE¼; Sections 11–16; W½ SW¼, SE¼ SW¼, S½ SE¼, NE¼ SE¼, NE¼ Section 17; NW¼, E½ Section 18; S½ NW¼, S½, E½ NE¼ Section 19; N½, SE¼ Section 20; Sections 21–24; Section 27; Section 29 except W½ NW¼; S½ Section 30; W½ Section 31; NW¼, NW¼ NE¼, Section 32; Section 36.

T. 13N, R. 08W. Willamette Meridian: S½ Section 1; S½ SE¼ Section 2; N½ NW¼, SE¼ SW¼, E½ Section 12.

T. 14N, R. 06W. Willamette Meridian: SW¼ NW¼, W½ SW¼ Section 31.

T. 14N, R. 07W. Willamette Meridian: SE¼ SE¼ Section 34; SW¼ SW¼, SE¼ SE¼ Section 35; Section 36.



Map and description of WA–06–a taken from United States Fish and Wildlife Service 1:100,000 map; Port Angeles, Mt Olympus and Seattle, Washington; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T. 26N., R. 02W. Willamette Meridian: W½ SW¼, NE¼ SE¼, NE¼ Section 2; Section 3 except E½ NE¼; NW¼, E½ Section 4; W½, W½ SE¼, N½ NE¼ Section 5; Sections 6–7; W½, S½ SE¼ Section 8; S½ S½, NE¼ NE¼ Section 9; Section 10 except SW¼ NW¼; Section 14 except E½ SE¼; N½ NW¼, S½ SW¼, NE¼ SE¼, E½ NE¼, NW¼ NE¼ Section 15; Section 16–21; W½, SW¼ SE¼ Section 22; Section 27 except NE¼ NE¼.

T. 26N., R. 03W. Willamette Meridian: Sections 1–3; E½, E½ W½ Section 10; Sections 11–13; Section 14 except the SW¼ SW¼; S½ NW¼, NE¼ NW¼, SW¼, SW¼ SE¼, NE¼ Section 15; S½ Section 16; SE¼ SE¼ Section 17; S½ N½, N½ S½ Section 19; S½ NW¼, NE¼ NW¼, N½ SW¼, NE¼ Section 20; NE¼ Section 21; N½ NW¼, N½ SE¼, NE¼ Section 22; Section 23 except SW¼ SW¼, NE¼ SE¼; Section 24 except N½ SW¼.

T. 26N., R. 04W. Willamette Meridian: E½ NW¼, NE¼ SW¼, NE¼ Section 24.

T. 27N., R. 02W. Willamette Meridian: SW¼ SW¼ Section 5; Section 6 except NE¼ NE¼; Section 7; W½ W½ Section 8; W½, W½ SE¼ Section 17; Sections 18–19; Section 20 except the NE¼ NE¼; S½ NW¼, SW¼ Section 28; Sections 29–33; W½, N½ NE¼ Section 34; N½ NW¼, E½ Section 35.

T. 27N., R. 03W. Willamette Meridian: Sections 1–2; N½ SE¼, SE¼ SE¼, NE¼ Section 3; Section 11–13; Section 14 except SW¼ NW¼; SE¼ Section 15; E½, SE¼ SW¼ Section 22; Sections 23–26; Section 27 except NW¼ NW¼; S½ Section 28; E½ NW¼, NE¼ Section 33; N½ NW¼, SE¼ NW¼, S½ SW¼, NE¼ SW¼, E½ Section 34; Sections 35–36.

T. 28N., R. 02W. Willamette Meridian: N½ N½, SW¼ NE¼ Section 5; SW¼ SW¼ Section 7; S½ SW¼ Section 8; N½ NW¼, NW¼ SE¼, S½ SE¼ Section 17; NW¼, S½ NE¼ Section 18; NW¼, S½ SW¼ Section 20; SW¼ Section 28; NW¼, W½ NE¼ Section 29; SE¼ SW¼, S½ SE¼ Section 30; S½ NW¼, SW¼, W½ SE¼, N½ NE¼ Section 31.

T. 28N., R. 03W. Willamette Meridian: N½, W½ SE¼, NE¼ SE¼ Section 1; W½, SW¼ SE¼, NE¼ Section 2; Sections 3–10; W½, NW¼ SE¼, S½ SE¼ Section 11; S½ SW¼, NE¼ SW¼, SE¼, SE¼ NE¼ Section 12; Sections 13–23; N½, NW¼ SW¼, NE¼ SE¼ Section 24; N½ SW¼, W½ NW¼ Section 25; Sections 26–29; N½, N½ SW¼, SW¼ SW¼, N½ SE¼ Section 30; NE¼ NW¼, E½ Section 32; Section 33 except S½ SW¼, SW¼ SE¼; Section 34; Section 35 except NE¼ SE¼, SE¼ NE¼; SE¼ Section 36.

T. 28N., R. 04W. Willamette Meridian: NE¼ NE¼ Section 1; SE¼ SE¼, SE¼ NE¼ Section 12; S½ SW¼, NE¼ SW¼, SE¼, SW¼ NE¼, E½ NE¼ Section 13; E½ SE¼, SE¼ NE¼ Section 23; Sections 24–25; SE¼ SW¼, S½ SE¼, NE¼ SE¼, E½ NE¼ Section 26; E½ W½, E½ Section 35; NW¼, N½ SW¼, SW¼ SW¼, N½ NE¼, SW¼ NE¼ Section 36.

T. 29N., R. 02W. Willamette Meridian: W½ NW¼, SE¼ NW¼, S½, S½ NE¼ Section 30; SW¼ NW¼, W½ SW¼, NE¼ SE¼ Section 31; W½ NW¼, SE¼ NW¼, SW¼, W½ SE¼ Section 32.

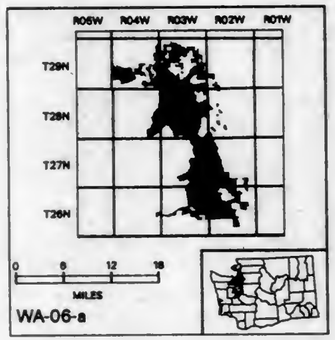
T. 29N., R. 03W. Willamette Meridian: Section 19; NW¼, W½ SW¼ Section 20; SE¼ SE¼ Section 22; SE¼ NW¼, S½, SW¼ NE¼, E½ NE¼ Section 23; Section 24 except NE¼ SE¼, SE¼ NE¼; Section 25; N½, N½ SW¼, E½ SE¼ Section 26; S½, SW¼ NE¼, E½ NE¼ Section 27; SE¼ NW¼, SW¼ Section 28; Section 29 except NE¼ NE¼; Sections 30–34; S½, SW¼ NW¼, NE¼ NE¼ Section 35; Section 36.

T. 29N., R. 04W. Willamette Meridian: S½, S½ NW¼, NW¼ NW¼, SW¼ NE¼ Section 19; S½ Section 20; S½ Section 21; E½ W½, SW¼ SW¼, W½ SE¼, NE¼ Section 22; E½ SW¼, NW¼ SW¼, E½, NW¼ NW¼ Section 23; Section 24; Section 25 except NW¼ NW¼; W½ NW¼, NE¼ SW¼, E½ Section 26; N½, N½ SE¼ Section 27; Sections 28–30; N½ Section 32; N½ NW¼, SW¼ NW¼, NW¼ NE¼ Section 33; E½ NE¼, SW¼ NE¼, NE¼ SW¼ Section 34; W½ NW¼, SE¼ NW¼, N½ SW¼, NE¼ SW¼, N½ SE¼, S½ NE¼, NE¼ NE¼ Section 35; Section 36 except SW¼ SW¼.

Critical Habitat includes only State or County lands described within the following areas:

T. 29N., R. 03W. Willamette Meridian: W½ SW¼, SE¼ SW¼, SW¼ SE¼ Section 4; S½ SW¼, SE¼, SW¼ NE¼ Section 5; SW¼ NW¼, W½ SW¼, S½ SE¼ Section 6; Section 7 except E½ NW¼; Sections 8–9; W½ NW¼, SE¼ NW¼, SW¼, NW¼ SE¼, NE¼ Section 10; NW¼, E½ SW¼, SE¼, SE¼ NE¼ Section 11; NW¼, E½ SW¼ Section 13; Section 14 except W½ NW¼, SE¼ NW¼, N½ SW¼, NE¼ SW¼, NW¼ NE¼, NW¼ SE¼ Section 16; Section 17; NW¼ NW¼, E½ NW¼, NE¼ SW¼, E½ Section 18; S½ NW¼, NE¼ SE¼, NE¼ Section 21; NE¼ NE¼ Section 28.

T. 29N, R. 04W. Willamette Meridian: E½ SE¼, SW¼ SE¼ Section 1; E½, SE¼ SW¼ Section 12; E½ NW¼, NE¼ SW¼, N½ SW¼, NE¼ SE¼, SW¼ SE¼, NE¼ Section 18.



Map and description of WA–06–b taken from United States Fish and Wildlife Service 1:100,000 map; Mt Olympus and Shelton, Washington; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.23N., R.04W. Willamette Meridian: NW¼, N½ NE¼ Section 3; Section 4 except SE¼ SE¼; Sections 5–6; N½ Section 7; N½ Section 8; NW¼ Section 9.

T.23N., R.05W. Willamette Meridian: E½ SW¼, SE¼ Section 3; NE¼ NW¼, NE¼ SE¼, NE¼ Section 10; S½ N½, N½ S½ Section 11; S½ NW¼, NE¼ NW¼, NE¼ Section 12.

T.24N., R.03W. Willamette Meridian: Sections 5–6; NW¼, NW¼ NE¼ Section 7.

T.24N., R.04W. Willamette Meridian: Sections 1–5; E½ E½ Section 8; Section 7 except NW¼ NW¼, SE¼ SE¼; Sections 8–16; SE¼ SW¼, E½ Section 17; N½ NW¼ Section 18; N½ SE¼, SE¼ SE¼, S½ NE¼, NE¼ NE¼ Section 19; Sections 20–24; Section 25 except SE¼ SE¼; Sections 26–29; SE¼, S½ NE¼, NE¼ NE¼ Section 30; Section 31 except NW¼ NW¼; Sections 32–35; N½ NW¼ Section 36.

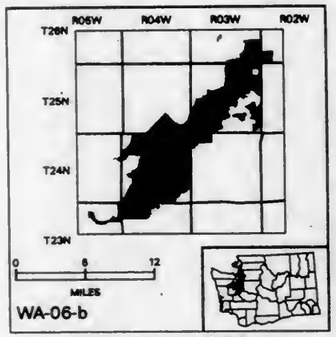
T.24N., R.05W. Willamette Meridian: SE¼ SE¼ Section 12; N½ NW¼, NE¼ Section 13.

T.25N., R.03W. Willamette Meridian: Section 1 except E½ SW¼, W½ SE¼; Sections 2–3; E½ E½ Section 4; E½ E½ Section 9; Sections 10–12; N½, N½ SE¼, SE¼ SE¼ Section 13; Sections 14–15; Section 16 except NW¼ NW¼; SE¼ NW¼, S½, S½ NE¼ Section 17; SE¼ SE¼ Section 18; E½ NW¼, S½ SW¼, NE¼ SW¼, E½ Section 19; Sections 20–21; Section 22 except S½ SE¼; SE¼ Section 23; S½ NW¼, S½ Section 24; Section 25; S½ NW¼, SW¼, E½ SE¼, SW¼ NE¼ Section 26; NW¼, N½ S½, S½ NE¼ Section 27; Sections 28–32; Section 33 except E½ E½, SW¼ SE¼; SE¼ NW¼, E½ SW¼; NW¼ SE¼, NE¼ Section 36.

T.25N., R.04W. Willamette Meridian: E½ E½, SW¼ SE¼ Section 25; SW¼ Section 26; S½, S½ NE¼ Section 27; S½, NE¼ Section 33; Sections 34–36.

T.26N., R.02W. Willamette Meridian: Section 31.

T.26N., R.03W. Willamette Meridian: Section 25; E½ Section 26; S½ Section 34; Section 35 except W½ NW¼; Section 36.



Map and description of WA–07–a taken from United States Fish and Wildlife Service 1:100,000 map; Bellingham and Mt. Baker, Washington; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.37N., R.06E. Willamette Meridian: NE¼ Section 1.

T.37N., R.07E. Willamette Meridian: W½, W½ E½ Section 3; Sections 4–5; N½, N½ SE¼ Section 6; NE¼ NW¼, N½ NE¼ Section 8; NE¼ NW¼, NW¼ NE¼ Section 10.

T.38N., R.06E. Willamette Meridian: Section 1; Sections 12–13; E½, E½ W½ Section 36.

T.38N., R.07E. Willamette Meridian: NW¼, N½ SW¼, SW¼ SW¼ Section 3; Sections 4–8; Section 9 except S½ SE¼; W½ NW¼ Section 10; NW¼ Section 16; Section 17 except E½ SE¼; Sections 18–19; NW¼, W½ NE¼, NW¼ SW¼ Section 20; SW¼, W½ SE¼ Section 27; E½ SE¼ Section 28; SW¼ SW¼ Section 29; Section 30 except NE¼ SE¼; Sections 31–33; W½ Section 34.

T.39N., R.06E. Willamette Meridian: Section 25; Section 36.

T.39N., R.07E. Willamette Meridian: Sections 1–4; Section 5 except SW¼ SW¼, SE¼ SE¼; E½ Section 8; Sections 9–12; Sections 14–15; N½, SE¼ Section 16; NE¼ Section 17; Section 21 except NW¼; W½ Section 22; NE¼ NW¼, N½ NE¼ Section 23; W½, SW¼ NE¼ Section 27; Section 28; W½ SW¼ Section 30; Sections 31–33; W½ Section 34.

T.39N., R.08E. Willamette Meridian: Sections 1–12; W½ Section 15; Sections 16–17; SE¼ SW¼, SE¼, S½ NE¼, NE¼ NE¼ Section 19; Sections 20–21; W½ Section 22.

T.39N., R.09E. Willamette Meridian: N½ NW¼, SW¼ NW¼, NW¼ SW¼, S½ SW¼, N½ NE¼ Section 3; Sections 4–8; Section 9 except SW¼ SE¼; Section 10 except E½ E½; SW¼ NW¼, NW¼ SW¼ Section 14; NE¼ NW¼, NE¼ SE¼, NE¼ Section 15; W½ Section 16; Section 17; NE¼, N½ SE¼, SE¼ SE¼ Section 18; NE¼ NW¼, NE¼ Section 20; NW¼, N½ SW¼, W½ NE¼ Section 21.

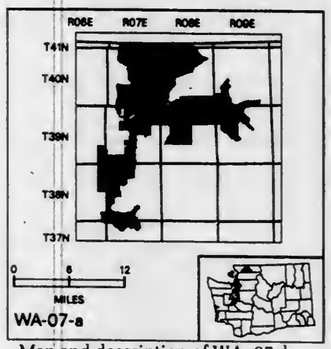
T.40N., R.07E. Willamette Meridian: Sections 1–4; E½, E½ W½ Section 5; E½ NW¼, N½ SE¼, NE¼ Section 8; Section 9 except SW¼ SW¼; Sections 10–15; E½ NW¼, E½ Section 16; SE¼, E½ SW¼ Section 20; SW¼, E½ Section 21; Sections 22–28; E½ W½, E½ Section 29; Sections 32–36.

T.40N., R.08E. Willamette Meridian: Section 2 except NE¼, NE¼ NW¼, NE¼ SE¼; Sections 3–10; Section 11 except S½ SE¼; NW¼ Section 12; NW¼, N½ SW¼, NW¼ SE¼, NE¼ Section 15; Sections 16–20; NW¼, W½ SW¼, NW¼ NE¼ Section 29; Sections 30–31; S½, W½ NW¼, S½ NE¼ Section 32; Section 33 except NW¼ NW¼; Sections 34–36.

T.40N., R.09E. Willamette Meridian: SE¼ SE¼ Section 19; S½ NW¼, SW¼, W½ E½ Section 20; Section 29 except E½ SE¼, SE¼ NE¼; S½ SW¼, NE¼ SW¼, S½ SE¼, NE¼ SE¼, E½ NE¼ Section 30; Sections 31–32; S½ S½, N½ SE¼ Section 33; Section 34 except N½ N½; S½ N½, SW¼, N½ SE¼, SW¼ SE¼ Section 35.

T.41N., R.07E. Willamette Meridian: Sections 32–36.

T.41N., R.08E. Willamette Meridian: Sections 31–34, W½ SW¼ Section 35.



Map and description of WA–07–b taken from United States Fish and Wildlife Service 1:100,000 map; Bellingham, Washington; 1995.

Critical Habitat includes only State or County lands described within the following areas:

T.37N., R.06E. Willamette Meridian: SW¼ SW¼ Section 20; NE¼ NE¼ Section 28.

Critical Habitat includes only Private lands described within the following areas:

T.37N., R.06E. Willamette Meridian: N½ SW¼, SE¼ SW¼, SE¼ Section 20; SW¼ Section 21; Section 28 except NE¼; N½ NE¼ Section 29; N½ NW¼ Section 33.

Map and description of WA–07–c taken from United States Fish and Wildlife Service 1:100,000 map; Mt Baker and Sauk River, Washington; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.35N., R.09E. Willamette Meridian: Sections 1–2; E½ W½, E½ Section 11; Section 12; NE¼ NE¼ Section 13; NE¼ NW¼, N½ NE¼ Section 14.

T.35N., R.10E. Willamette Meridian: W½ NW¼, SE¼ NW¼, SW¼, S½ SE¼ Section 6; Section 7; Section 8 except N½ NE¼; W½ SW¼ Section 9; N½ NW¼ Section 17; N½ NE¼, NW¼ Section 18.

T.36N., R.07E. Willamette Meridian: Section 1; E½ SE¼, NE¼ Section 2; Section 3; E½ E½ Section 4.

T.36N., R.08E. Willamette Meridian: Section 5; W½ W½ Section 6.

T.36N., R.09E. Willamette Meridian: Sections 1–4; E½ Section 5; Section 8 except S½ SE1/4; W½ NW¼, NW¼ SW¼, NE¼ NE¼ Section 9; N½ NW¼, N½ SE¼, SE¼ SE¼, NW¼ NE¼ Section 10; Section 11 except S½ NW¼, NE¼ NW¼; Sections 12–15; Sections 21–24; S½ NW¼ Section 26; Section 27 except SW¼ SW¼; Section 28 except SE¼ SE¼; S½, S½ NE¼, SE¼ NW¼ Section 33.

T.36N., R.10E. Willamette Meridian: SW¼ SW¼ Section 5; S½ S½ Section 6; Section 7; W½ W½ Section 8; W½, W½ SE¼ Section 17; Sections 18–20; SW¼ Section 21; W½ Section 28; Sections 29–30; N½, SW¼ Section 31; N½ N½ Section 32; N½ NW¼ Section 33.

T.37N., R.07E. Willamette Meridian: S½ SE¼ Section 9; S½, S½ NE¼ Section 10; S½, NE¼ Section 11; SW¼ NW¼, NW¼ SW¼ Section 12; W½ NW¼, W½ SW¼, SE¼ SW¼, S½ SE¼ Section 13; Sections 14–15; Section 16 except NW¼ NW¼; E½ SE¼ Section 17; NE¼ NE¼ Section 20; Sections 21–27; Section 28 except E½ E½, SE¼ SW¼; E½, NE¼ NW¼ Section 33; Sections 34–36.

T.37N., R.08E. Willamette Meridian: Sections 1–3; N½ NW¼, SE¼ NW¼, N½ SE¼ SE¼, NE¼ Section 4; NE¼ SW¼, SE¼, S½ NE¼ Section 7; S½ Section 8; Section 9 except N½ NW¼; Sections 10–16; N½, N½ SE¼ Section 17; SW¼ SW¼, NE¼ NE¼ Section 18; Section 19; Section 20 except NE¼ NE¼; Section 21 except NW¼ NW¼; Sections 22–36.

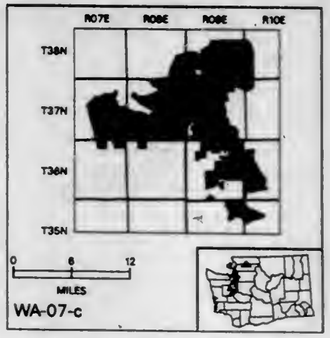
T.37N., R.09E. Willamette Meridian: Sections 1–10; N½ N½, SW¼ NW¼, W½ SW¼, SE¼ SW¼ Section 11; NE¼ NE¼ Section 12; N½ NW¼, W½ SW¼ Section 14; Sections 15–22; W½ W½, SE¼ SW¼ Section 23; SW¼ SW¼ Section 25; W½, SE¼ Section 26; Sections 27–29; Section 30 except SW¼ SW¼; Section 31 except NW¼ NW¼, S½ NW¼, SW¼ SW¼; Sections 32–35; W½ Section 36.

T.37N., R.10E. Willamette Meridian: Section 6; N½ NW¼, NW¼ NE¼ Section 7.

T.38N., R.08E. Willamette Meridian: E½ SE¼ Section 23; S½, S½ NE¼ Section 24; Section 25; E½, E½ SW¼ Section 26; S½ SW¼ Section 33; S½ S½ Section 34; Section 35 except W½ NW¼; Section 36.

T.38N., R.09E. Willamette Meridian: Sections 13–15; Section 16 except W½ NW¼; S½ SE¼ Section 17; Section 19 except N½ N½; Section 20 except N½ NW¼; Sections 21–31; Section 32 except NW¼; Sections 33–36.

T.38N., R.10E. Willamette Meridian: Section 18 except N½ NE¼; Section 19; Sections 30–31.



Map and description of WA–07–d taken from United States Fish and Wildlife Service 1:100,000 map; Cape Flattery, Mt Baker and Sauk River, Washington; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.34N, R.12E. Willamette Meridian: Sections 1–3; NE¼ NW¼, N½ NE¼ Section 10; N½ N½ Section 11; N½ NW¼, NW¼ NE¼ Section 12.

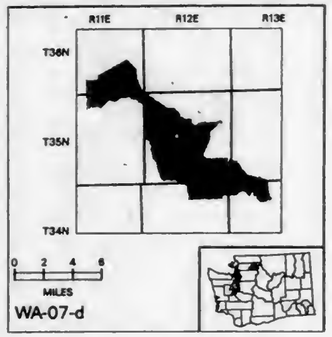
T.34N, R.13E. Willamette Meridian: W½ Section 4; Sections 5–6; N½ NW¼, N½ NE¼, SE¼ NE¼, NE¼ SE¼ Section 8; NW¼, W½ NE¼ Section 9.

T.35N, R.11E. Willamette Meridian: N½, N½ SE¼ Section 1; N½, NW¼ SW¼ Section 2; N½, N½ SW¼, SW¼ SW¼ Section 3; Section 4.

T.35N, R.12E. Willamette Meridian: S½ SW¼, NW¼ SW¼ Section 5; W½, SE¼, S½ NE¼ Section 6; Sections 7–8; Section 9 except NE¼, NE¼ SE¼, NE¼ NW¼; SW¼ SW¼ Section 10; N½ NW¼, SW¼ NW¼ Section 13; Section 14 except S½ SE¼; Sections 15–18; Section 19 except SW¼ NW¼, W½ SW¼; Sections 20–22; NW¼, N½ SW¼, SW¼ SW¼ Section 23; S½, S½ N½ Section 25; S½, S½ N½, NW¼ NW¼ Section 26; Sections 27–29; NE¼, E½ SE¼ Section 30; NE¼ NW¼ Section 31; Sections 32–36.

T.35N, R.13E. Willamette Meridian: SW¼, SW¼ SE¼ Section 30; Section 31 except NE¼ NE¼; SW¼, S½ SE¼ Section 32; S½ SW¼ Section 33.

T.36N, R.11E. Willamette Meridian: SE¼ SW¼, SE¼ Section 23; SW¼ SW¼ Section 24; W½ Section 25; Section 26; Section 27 except N½ NW¼, NW¼ NE¼; E½ SE¼ Section 28; Sections 33–35; Section 36 except E½ NE¼.



Map and description of WA–08–a taken from United States Fish and Wildlife Service 1:100,000 map; Bellingham, Mt. Baker and Sauk River, Washington; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.32N., R.08E. Willamette Meridian: N½ Section 1; N½ Section 3; NW¼ NW¼, S½ NW¼, NE¼ Section 4; N½ Section 5; N½ Section 6.

T.33N., R.08E. Willamette Meridian: Sections 1–30; Section 31 except S½ SE¼; Section 32; Section 33 except S½ SE¼; Section 34 except SE¼ SW¼; Section 35; Section 36 except N½ SE¼, SE¼ NE¼.

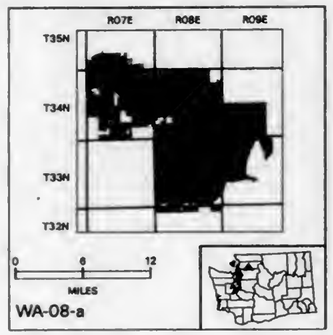
T.33N., R.09E. Willamette Meridian: W½, W½ E½ Section 2; Section 3 except S½ SW¼; Sections 4–8; Section 9 except E½ SE¼, SE¼ NE¼; E½ E½, NW¼ NE¼ Section 10; W½, NW¼ SE¼, W½ NE¼ Section 11; NW¼ NW¼ Section 14; NE¼ NE¼ Section 15; W½ Section 16; Sections 17–20; Section 21 except NE¼; S½ SW¼ Section 22; N½ NW¼ Section 29; NW¼, W½ SW¼, N½ NE¼ Section 30.

T.34N., R.07E. Willamette Meridian: Sections 1–6; Section 7 except N½ SE¼, SE¼ SE¼; Section 8 except SW¼ SW¼; Sections 9–15; Section 16 except W½ E½; Sections 17–21; Section 22 except SW¼; Sections 23–26; S½ Section 27; Sections 28–29; N½ NW¼, S½, NW¼ NE¼ Section 32; Section 33; Section 34 except SW¼ NE¼.

T.34N., R.08E. Willamette Meridian: Sections 2–11; Section 12 except N½ NW1/4; Sections 13–28; Section 29 except S½ NW¼, N½ SW¼; Section 30 except SE¼ NW¼, N½ SW¼, SW¼ NE¼; Sections 31–36.

T.34N., R.09E. Willamette Meridian: Sections 19–22; Sections 27–34.

T.35N., R.07E. Willamette Meridian: S½ SW¼, NE¼ SW¼ Section 27; S½ Section 28; Section 29 except NW¼ NW¼, NE¼; SE¼ SW¼, SE¼ Section 30; Sections 31–34; S½ Section 35.



Map and description of WA–08–b taken from United States Fish and Wildlife Service 1:100,000 map; Sauk River, Washington; 1995.

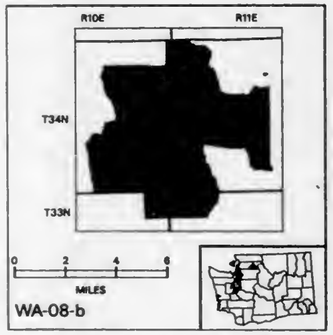
Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.33N., R.10E. Willamette Meridian: Section 1.

T.33N., R.11E. Willamette Meridian: Section 5 except E½ SE¼; Section 6.

T.34N., R.10E. Willamette Meridian: SE¼ NW¼, NE¼ SW¼, E½ Section 10; Sections 11–14; NW¼ NE¼, E½ E½ Section 15; E½ SE¼ Section 21; Section 22 except NW¼, NW¼ NE¼; Sections 23–27; NW¼ NE¼, E½ E½ Section 28; NE¼ SE¼, E½ NE¼ Section 33; Sections 34–36.

T.34N., R.11E. Willamette Meridian: Section 5 except N½ NE¼, NE¼ NW¼; Sections 6–8; W½ SW¼ Section 9; S½ SE¼, SE¼ SW¼ Section 10; SW¼ SW¼ Section 11; W½ W½ Section 14; Section 15 except NW¼ NW¼; Section 16 except N½ NE¼; Sections 17–22; W½ W½ Section 23; W½ W½ Sections 26–27 except W½ SW¼; N½ Section 28; W½, N½ NE¼, SE¼ NE¼, W½ SE¼ Section 29; Sections 30–31; Section 32 except NE¼ NE¼; NE¼ NW¼, N½ NE¼ Section 34; NW¼ NW¼ Section 35.

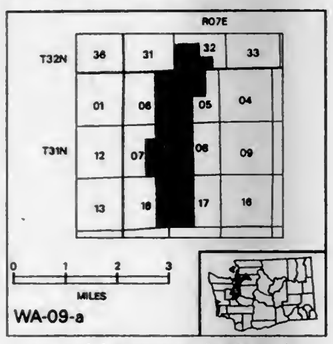


Map and description of WA–09–a taken from United States Fish and Wildlife Service 1:100,000 map; Sauk River, Washington; 1995.

Critical Habitat includes only Federal lands described within the following areas:

T.31N., R.07E. Willamette Meridian: W½, W½ NE¼ Section 5; E½ E½ Section 6; SE¼, S½ NE¼, NE¼ NE¼ Section 7; W½ Section 8; W½ Section 17; E½ E½ Section 18.

T.32N., R.07E. Willamette Meridian: SW¼, SW¼ SE¼ Section 32.



Map and description of WA–09–b taken from United States Fish and Wildlife Service 1:100,000 map; Sauk River, Washington; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.29N., R.09E. Willamette Meridian: Section 1; N½ Section 2; Sections 3–6; N½ Section 7; N½ Section 8; N½ Section 9; NW¼ Section 10.

T.29N., R.10E. Willamette Meridian: Sections 1–3; W½ Section 6; Sections 11–13.

T.29N., R.11E. Willamette Meridian: W½ NW¼ Section 2; NE¼, NE¼ NW¼ Section 3; NW¼ NW¼ Section 5; Sections 6–7; W½ NW¼, SW¼, S½ SE¼, NW¼ SE¼ Section 17; Section 18; N½ NW¼, SE¼ NW¼, NE¼, N½ SE¼ Section 19; N½, N½ SW¼, NW¼ SE¼ Section 20.

T.30N., R.08E. Willamette Meridian: Sections 1–3; N½ Section 4; N½ Section 5; N½, SE¼ Section 11; Sections 12–13; E½ Section 14; SW¼ Section 15; Sections 16–17; Section 18 except S½ NW¼, N½ SW¼; Sections 19–26; N½ Section 27; N½ Section 28; N½, SE¼ Section 35.

T.30N., R.09E. Willamette Meridian: NW¼, SE¼, N½ NE¼, SW¼ NE¼ Section 1; E½ NE¼ Section 2; W½, SW¼ SE¼, N½ NE¼ Section 6; Section 7; S½ NW¼, S½, SW¼ NE¼ Section 8; S½ SE¼ Section 9; S½ SW¼ Section 10; E½ NW¼, NE¼ Section 12; S½ NW¼, SW¼, W½ SE¼ Section 14; Section 15; Section 16 except NW¼ NW¼; SE¼, S½ NE¼ Section 17; W½ Section 18; Section 19 except W½ NE¼; Section 20 except NE¼ NW¼, SW¼; Sections 21–22; Section 23 except NE¼ NE¼; S½ NW¼, S½, SE¼ NE¼ Section 24; Sections 25–36.

T.30N., R.10E. Willamette Meridian: Sections 1–6; N½, NE¼ SE¼ Section 7; Sections 8–17; E½ Section 18; Sections 19–28; N½, N½ SE¼ Section 29; Section 30 except SE¼ SE¼; Section 31 except N½ NE¼; SW¼ NW¼, NW¼ SW¼ Section 32; NE¼, E½ NW¼, N½ SE¼, SE¼ SE¼ Section 33; Sections 34–36.

T.30N., R.11E. Willamette Meridian: SW¼ SE¼, S½ NW¼, SW¼ Section 5; Sections 6–8; SW¼ NW¼, NE¼ SW¼, SE¼ Section 9; Section 10 except N½ NW¼, SW¼ NW¼, NW¼ NE¼; Section 15 except SE¼ SE¼; Sections 16–22; NW¼ NW¼ Section 27; Section 28 except E½ SE¼, SE¼ NE¼; Sections 29–31; Section 32 except SE¼; Section 33 except SW¼ SW¼; Section 34 except NE¼, N½ NW¼, SE¼ NW¼, NE¼ SE¼.

T.31N., R.07E. Willamette Meridian: S½ SW¼, SW¼ SE¼ Section 1; Sections 12–13.

T.31N., R.08E. Willamette Meridian: W½ SW¼ Section 3; S½ Section 4; S½ Section 5; SE¼ SE¼ Section 6; Section 7; Section 8 except S½ SE¼; N½, NW¼ SW¼ Section 9; W½ NW¼ Section 10; W½, W½ SE¼ Section 17; Sections 18–21; Section 22 except NE¼ NE¼; S½ NW¼, SW¼, W½ SE¼ Section 23; Section 25 except N½ NE¼, SE¼ NE¼; Sections 26–36.

T.31N., R.09E. Willamette Meridian: Section 1; E½ E½, NW¼ NE¼ Section 2; E½, E½ SW¼ Section 3; E½ NW¼, NE¼ SW¼, W½ NE¼ Section 10; NE¼ NW¼, SE¼ SW¼, E½ Section 12; Section 13 except W½ NW¼; Section 23 except N½ NW¼; Sections 24–26; S½ Section 27; N½ SE¼, SE¼ SE¼, S½ NE¼ Section 28; W½, SW¼ SE¼ Section 31; N½ NW¼, E½ Section 35; Section 36.

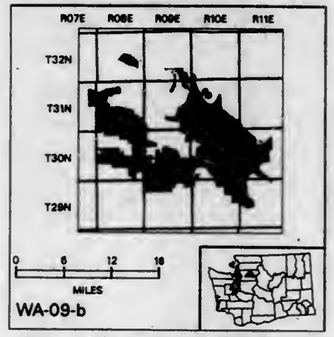
T.31N., R.10E. Willamette Meridian: Section 6 except E½ E½; Sections 7–8; W½ NW¼, SW¼, W½ SE¼ Section 9; SE¼ SW¼, SW¼ SE¼ Section 10; Section 15 except E½ E½; NW¼, S½ SE¼, NE¼ SE¼ Section 16; Sections 17–21; Section 22 except E½ NE¼; SW¼ SW¼ Section 23; SW¼, S½ SE¼, SW¼ NW¼ Section 25; Section 26 except NE¼ NE¼; Sections 27–36.

T.31N., R.11E. Willamette Meridian: W½ NW¼, SW¼ Section 31.

T.32N., R.08E. Willamette Meridian: SW¼ Section 14; S½ Section 15; E½ NE¼ Section 21; N½, N½ SW¼, SE¼ Section 22; Section 23 except NE¼ NE¼; W½ SW¼, NW¼ SE¼, SW¼ NE¼ Section 24; W½ NW¼ Section 25; N½ N½ Section 26.

T.32N., R.09E. Willamette Meridian: S½ Section 26; N½ SW¼, SE¼ SW¼, SE¼ Section 27; N½ SE¼ Section 28; E½ Section 34; E½, N½ NW¼, SE¼ NW¼, NE¼ SW¼ Section 35; Section 36 except NE¼, NE¼ SE¼.

T.32N., R.10E. Willamette Meridian: Section 31 except E½ E½, NW¼ NE¼, NE¼ NW¼.



Map and description of WA–09–c taken from United States Fish and Wildlife Service 1:100,000 map; Sauk River and Skykomish River, Washington; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.27N., R.09E. Willamette Meridian: E½ NW¼, NE¼ Section 1.

T.27N., R.10E. Willamette Meridian: N½ N½ Section 6.

T.28N., R.09E. Willamette Meridian: S½ S½ Section 23; S½ SW¼ Section 24; Section 25; Section 26 except N½, SW¼ SW¼; SE¼ SW¼, S½ SE¼, NE¼ SE¼, NE¼ NE¼ Section 36.

T.28N., R.10E. Willamette Meridian: S½ Section 19; Section 20 except NW¼ NW¼; SW¼ NW¼, W½ SW¼ Section 21; SE¼ SE¼ Section 23; S½ SW¼ Section 24; NW¼, N½ SW¼, W½ NE¼ Section 25; S½ NW¼, SW¼, W½ SE¼, NE¼ SE¼, NE¼ Section 26; S½ Section 27; NW¼, NW¼ NE¼ Section 29; N½, SW¼ Section 30; Section 31 except SW¼ NW¼; Section 32 except E½ E½.

T.29N., R.08E. Willamette Meridian: SE¼ SW¼, SW¼ SE¼ Section 22; NE¼ SE¼ Section 25; NW¼, N½ NE¼ Section 27; E½ NE¼ Section 28.

T.29N., R.09E. Willamette Meridian: Section 30 except N½ N½.

Critical Habitat includes only State or County lands described within the following areas:

T.27N., R.09E. Willamette Meridian: NW¼ NW¼, SW¼ Section 2; N½, NE¼ SW¼, SE¼ Section 3; NE¼ NE¼ Section 4; N½ NE¼, SE¼ NE¼ Section 10; NW¼, S½ SW¼, SE¼, S½ NE¼ Section 11; Section 12; Section 13 except SE¼ SE¼; N½ NW¼, N½ SE¼, NE¼ Section 14.

T.27N., R.10E. Willamette Meridian: Section 7; S½ Section 8; Section 9 except N½ NW¼; NW¼, N½ SW¼, SW¼ SW¼ Section 10; N½ NW¼ Section 16; N½, NW¼ SW¼ Section 17; Section 18 except W½ SW¼, SE¼ SE¼.

T.28N., R.08E. Willamette Meridian: Sections 1–2; Section 3 except N½ NW¼; Sections 4–5; W½ SW¼, SE¼ SW¼ Section 6; Section 7; E½ SE¼, NE¼ Section 8; SE¼ SW¼, E½ E½, SW¼ SE¼, NW¼ NE¼ Section 9; Sections 10–12; N½ N½, NW¼ SE¼, S½ NE¼ Section 13; N½ Section 14; Section 15; S½ S½, E½ NE¼, NE¼ SE¼ Section 16; Section 17 except NW¼ SW¼, NW¼; Section 18 except SW¼; W½ Section 20; N½ NW¼ Section 21; NE¼ NW¼, NE¼ Section 36.

T.28N., R.09E. Willamette Meridian: Sections 1–4; S½ Section 5; N½, SW¼ Section 6; W½, W½ E½ Section 7; NE¼ Section 8; Sections 9–11; Section 12 except S½ SE¼; S½ S½, NE¼ SE¼ Section 13; Sections 14–16; N1/2 NW¼, SE¼ NW¼, E½ Section 17; SW¼, W½ SE¼, SE¼ SE¼ Section 20; Section 21; Section 27; Section 28 except E½ SW¼; Section 29 except NW¼; N½ NW¼, N½ SE¼, NE¼ Section 31; N½ N½, S½ NW¼ Section 32; N½ NW¾, S½ Section 33; Section 34 except NE¼ SE¼; SW¼ Section 35.

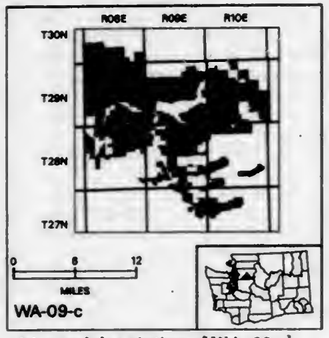
T.28N., R.10E. Willamette Meridian: W½ Section 2; Section 3; Section 4 except N½ NE¼, SW¼ NE¼; Sections 5–6; NW¼ Section 7.

T.29N., R.08E. Willamette Meridian: Sections 1–21; Section 22 except SE¼ SW¼, S½ SE¼; Section 23 except SW¼ SW¼; Section 24; N½ NW¼, SE¼ NW¼, NE¼, S½ S½ Section 25; SW¼ NW¼, SW¼, S½ SE¼, N½ NE¼ Section 26; Section 27 except NW¼, N½ NE¼; N½ NW¼, SE¼ Section 28; Sections 29–30; Sections 32–34; Section 35 except S½ SW¼; Section 36.

T.29N., R.09E. Willamette Meridian: S½ Section 2; S½ Section 7; S½ Section 8; S½ Section 9; S½, NE¼ Section 10; Sections 11–12; W½ NW¼, SE¼ SW¼, SE¼, E½ NE¼ Section 13; Sections 14–19; Section 20 except S½ SW¼; Section 21; Section 22 except S½ S½; Section 23 except S½ S½; NE¼ Section 24; Section 25; Section 26 except NW¼, N½ NE¼; SE¼ SW¼, S½ SE¼ Section 27; S½ SW¼, SW¼ SE¼ Section 29; N½ N½ Section 30; W½, NW¼ SE¼, W½ NE¼, NE¼ NE¼ Section 31; Section 32 except W½ NW¼, NW¼ SW¼; Section 33 except NE¼ NW¼, N½ NE¼; Section 34 except SW¼ NW¼, SW¼ SE¼; Sections 35–36.

T.29N., R.10E. Willamette Meridian: Section 4 except W½ SW¼; SE¼ SW¼, S½ SE¼, NE¼ SE¼ Section 6; Sections 7–8; S½ SW¼, SW¼ SE¼ Section 9; Section 10 except SE¼ SW¼; Section 14; Section 15 except N½ NW¼, NW¼ NE¼; Sections 16–24; Section 25 except SE¼ SE¼; Section 26 except NW¼ SW¼; Sections 28–33; SW¼ NW¼, W½ SW¼, SE¼ SW¼, S½ SE¼ Section 34; Section 36.

T.30N., R.10E. Willamette Meridian: S½ Section 27; S½ Section 28; Sections 29–34; SW¼ Section 35; Section 36.



Map and description of WA–09–d taken from United States Fish and Wildlife Service 1:100,000 map; Sauk River, Washington; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.29N., R.12E. Willamette Meridian: SW¼ Section 3; Section 4 except N½ NE¼; Section 5; Sections 8–10; SW¼, SW¼ SE¼ Section 11; Section 13 except E½, SE¼ SW¼; Sections 14–17; NE¼ SE¼ Section 18; NE¼ Section 20; N½, N½ N½ Section 21; N½, N½ SW¼ Section 22; N½ Section 23; NW¼ NW¼ Section 24.

T.30N., R.11E. Willamette Meridian: S½ SW¼, SE¼ Section 1; S½ S½ Section 2; Sections 11–12; N½ Section 13; N½ Section 14.

T.30N., R.12E. Willamette Meridian: S½ Section 6; Section 7; SW¼ NW¼, SW¼, SW¼ SE¼ Section 8; SW¼ NW¼, SW¼ Section 16; Sections 17–18; N½ NW¼, E½, SE¼ NW¼, NE¼ SW¼ Section 19; Section 20; NW¼, NW¼ SW¼, W½ NE¼ Section 21; Section 29 except E½ NE¼; N½ NW¼, E½ SW¼, E½ Section 32; W½ SW¼, SE¼ SW¼ Section 33.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.31N., R.11E. Willamette Meridian: N½ Section 1; N½ NW¼, SW¼ NW¼, SW¼, N½ NE¼ Section 2; Section 3; Section 4 except SE¼ SE¼; E½ NW¼, E½ Section 5; N½ NW¼, W½ NE¼ Section 9; E½ NW¼, E½ Section 10; W½, W½ SE¼ Section 11; W½, W½ NE¼, SE¼ Section 14; E½ SW¼, E½ Section 15; E½ NW¼, NE¼ Section 22; N½ N½ Section 23.

T.31N., R.12E. Willamette Meridian: N½ NE¼ Section 4; NW¼, W½ NE¼ Section 5; N½, N½ SE¼ Section 6.

T.32N., R.10E. Willamette Meridian: Sections 1–3; Sections 10–14; N½ N½, SE¼ NE¼ Section 15; Sections 23–25; N½, SE¼ Section 26; N½ NE¼ Section 36.

T.32N., R.11E. Willamette Meridian: NW¼ NW¼ Section 1; Section 2; E½ W½, E½ Section 3; Sections 5–8; W½ NW¼, S½ Section 9; Section 10 except NW¼ NW¼; Section 11; W½ NW¼, SE¼ SW¼, S½ SE¼ Section 12; Sections 13–30; N½, NE¼ SW¼, SE¼ Section 31; Section 32–36.

T.32N., R.12E. Willamette Meridian: S½ S½, NE¼ SE¼ Section 7; S½, S½ NE¼ Section 8; Section 9 except N½ N½; SW¼, S½ SE¼, NW¼ SE¼ Section 10; S½ SW¼ Section 13; W½, S½ SE¼ Section 14; Sections 15–16; Section 17 except SE¼ SE¼; Sections 18–19; Section 20 except NE¼ NE¼; Sections 21–23; Section 24 except NE¼ NE¼; NW¼, NW¼ SW¼, NW¼ NE¼ Section 25; Sections 26–33; N½, W½ SW¼, NE¼ SW¼ Section 34; N½ NW¼, SW¼ NW¼ Section 35.

T.33N., R.11E. Willamette Meridian: S½ SW¼, SW¼ SE¼ Section 15; E½ SW¼, SE¼ Section 16; Sections 21–22; S½ NW¼, SW¼, NW¼ SE¼, SW¼ NE¼ Section 23; W½, W½ E½ Section 25; Section 26 except NE¼ NE¼; Section 27; E½ NW¼, E½ SE¼, NE¼ Section 28; Section 34 except W½ SW¼; Section 35; NW¼, W½ SW¼ Section 36.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.26N., R.10E. Willamette Meridian: W½ W½ Section 4; NW¼ NW¼, E½ NW¼, N½ SE¼, NE¼ Section 5; Section 7 except NE¼ NE¼; S½ SW¼, SE¼ Section 8; Section 9 except N½ N½; W½ W½, SE¼ SW¼, S½ SE¼ Section 10; S½ SW¼ Section 11; S½ Section 13; Section 14 except N½ NE¼; Sections 15–19; N½ NW¼, E½ Section 20; Sections 21–23; Section 24 except E½ NW¼, NW¼ SW¼, NW¼ NE¼; N½ N½ Section 25; N½ N½ Section 26; N½ Section 27; N½ Section 28; N½ NE¼ Section 29; W½, W½ NE¼, NE¼ NE¼ Section 30.

T.26N., R.11E. Willamette Meridian: Section 2; Sections 4–7; NW¼, W½ SW¼, NE¼ SW¼, NW¼ NE¼ Section 8; NW¼, N½ SW¼, SE¼ SW¼, N½ NE¼ Section 18; E½ Section 19; SW¼ NW¼, W½ SW¼ Section 20; NW¼ NW¼ Section 29; N½ N½ Section 30.

T.27N., R.09E. Willamette Meridian: S½ SE¼ Section 19; Section 30 except NW¼ NW¼; Section 31; W½, NW¼ SE¼, W½ NE¼ Section 32.

T.27N., R.10E. Willamette Meridian: Section 1 except NW¼ NW ¼; E½ SE¼, SW¼ SE¼ Section 2; E½, E½ SW¼ Section 11; Sections 12–13; Section 14 except SW¼; E½ SE¼ Section 15; NE¼ NE¼ Section 22; N½, N½ SW¼, SE¼ Section 23; Section 24; N½ N½, SE¼ NE¼ Section 25; SW¼ SW¼, E½ SW¼, E½ Section 26; E½ NW¼, NE¼ SW¼, E½ Section 31; Section 32; Sections 35–36.

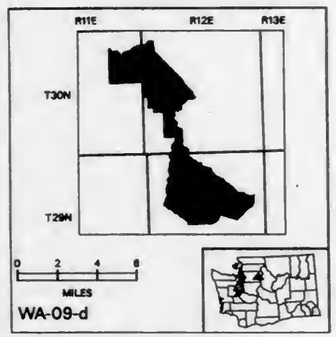
T.27N., R.11E. Willamette Meridian: Sections 1–20; W½ NW¼, N½ SW¼, SE¼ Section 21; Sections 22–36.

T.27N., R.12E. Willamette Meridian: SW¼ SW¼ Section 2; Section 3 except N½ NE¼; Sections 4–10; W½ W½, NW¼ SW¼ Section 11; N½ N½ Section 15; N½, W½ SW¼, NE¼ SW¼, NW¼ SE¼ Section 16; Sections 17–19; W½ Section 20; W½ Section 29; Sections 30–31; NW¼, N½ SW¼, SW¼ SW¼ Section 32.

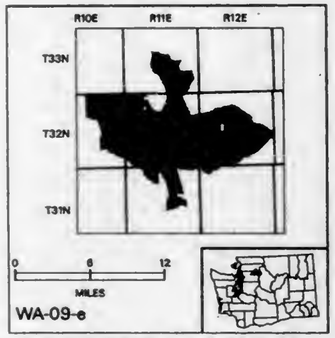
T.28N., R.10E. Willamette Meridian: SW¼ SE¼, E½ SE¼ Section 36.

T.28N., R.11E. Willamette Meridian: S½ SW¼, SW¼ SE¼ Section 10; E½ SW¼, SE¼ Section 12; Section 13 except W½ W½; Section 15 except NE¼ NE¼; Section 16; S½, SE¼ NW¼, S½ NE¼ Section 17; E½ SE¼ Section 18; E½ E½, SW¼ SE¼ Section 19; Sections 20–29; E½ Section 30; Section 31 except NW¼ NW¼; Sections 32–36.

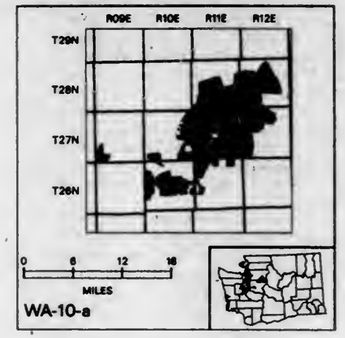
T.28N., R.12E. Willamette Meridian: S½ NW¼, SW¼, SW¼ SE¼ Section 3; SW¼ SE¼, E½ SE¼ Section 4; Section 7 except N½ N½; SW¼, W½ SE¼, SE¼ SE¼ Section 8; Section 9 except NW¼ NW¼; Section 10; SW¼ SW¼ Section 11; W½, W½ SE¼ Section 14; Sections 15–23; SW¼ NW¼ Section 25; N½ Section 26; N½ Section 27; W½, NE¼, SW¼ SE¼ Section 28; Sections 29–32; W½, W½ E½ Section 33.



Map and description of WA–09–e taken from United States Fish and Wildlife Service 1:100,000 map; Sauk River, Washington; 1995.



Map and description of WA–10-a taken from United States Fish and Wildlife Service 1:100,000 map; Skykomish River, Washington; 1995.



Map and description of WA–10–b taken from United States Fish and Wildlife Service 1:100,000 map; Skykomish River, Washington; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.25N., R.10E. Willamette Meridian: Sections 3–5; S½, SE¼ NE¼ Section 6; Sections 7–8; W½, W½ SE¼ Section 9; NE¼ Section 10; W½, S½ SE¼ Section 16; Section 17; N½, SE¼, NE¼ SW¼ Section 18; NE¼ Section 20; N½, N½ SE¼ Section 21; W½ NW¼, SE¼ NW¼, S½ Section 22; SW¼ SW¼ Section 23; W½ SW¼, SE¼ SW¼ Section 25; NW¼, N½ SW¼, SE¼ SW¼, SE¼, S½ NE¼, NW¼ NE¼ Section 26; NE¼ NW¼, N½ SE¼, NE¼ Section 27.

T.25N., R.11E. Willamette Meridian: Sections 1–4; Sections 9–12; N½, N½ S½ Section 13; N½, SW¼, N½ SE¼, SE¼ SE¼ Section 16; SE¼, SE¼ SW¼ Section 17; SE¼, S½ NE¼ Section 19; NW¼, NW¼ SW¼, N½ NE¼ Section 20; Section 22 except SW¼ SW¼; W½ W½ Section 23; NE¼ SW¼, NE¼ SE¼, N½ NE¼, SW¼ NE¼ Section 27.

T.25N., R.12E. Willamette Meridian: Sections 1–5; W½ Section 6; Section 7; Section 8 except NE¼ NW¼; Sections 9–13; N½ NW¼, N½ SE¼, NE¼ Section 14; Sections 16–20; NW¼, W½ SW¼, NE¼ SW¼, W½ NE¼, NE¼ NE¼ Section 21; W½ NW¼, NW¼ SW¼ Section 28; N½, N½ S½ Section 29; NE¼ SE¼, NE¼ Section 30.

T.25N., R.13E. Willamette Meridian: W½ W½ Section 6; W½ Section 7; W½, W½ SE¼, SW¼ NE¼ Section 18; W½ Section 19.

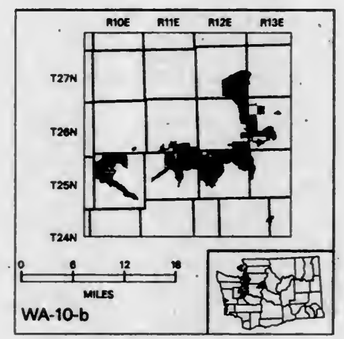
T.26N., R.11E. Willamette Meridian: S½ SW¼ Section 27; SE¼ SE¼ Section 28; S½ SW¼, E½ Section 32; N½ SW¼, NE¼ Section 33; Sections 34–35; S½ Section 36.

T.26N., R.12E. Willamette Meridian: Section 1; NW¼, E½ Section 2; N½ NE¼ Section 3; E½ E½ Section 11; Sections 12–13; E½ E½, NW¼ SE¼ Section 24; N½, N½ S½ Section 25; S½ NE¼ Section 34; Sections 35–36

T.26N., R.13E. Willamette Meridian: S½ S½, NE¼ SE¼ Section 6; Section 8; S½ Section 10; Sections 18–19; W½ W½, SE¼ SW¼, SW¼ SE¼, E½ SE¼ Section 20; S½, SE¼ NW¼, SW¼ NE¼ Section 21; W½ SW¼ Section 22; W½ Section 27; Section 28 except SW¼ SE¼; N½, NW¼ SW¼, S½ S½ Section 29; N½, SW¼ Section 30; E½ NE¼, NW¼ NE¼, NE¼ SE¼ Section 31; N½, N½ SW¼ Section 32.

T.27N., R.12E. Willamette Meridian: S½ S½ Section 13; NE¼ SW¼, S½ SW¼, SE¼ Section 22; Section 23 except NW¼ NW¼; Sections 24–27; Section 34 except SW¼ SW¼; Sections 35–36.

T.27N., R.13E. Willamette Meridian: SW¼ SW¼ Section 18; W½ Section 19; NW¼, W½ SW¼ Section 30.



Map and description of WA–10-c taken from United States Fish and Wildlife Service 1:100,000 map; Cape Flattery, Skykomish River and Snoqualmie Pass, Washington; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.20N., R.10E. Willamette Meridian: S½ N½, S½ Section 2.

T.21N., R.10E. Willamette Meridian: NE¼ NW¼, N½ NE¼ Section 36.

T.22N., R.09E. Willamette Meridian: S½ S½ Section 2; N½ NW¼, SE¼ NW¼, NE¼ Section 11; W½ NW¼, S½, NE¼ NW¼, SE¼ NE¼ Section 12.

T.22N., R.10E. Willamette Meridian: S½, NE¼, S½ NW¼ Section 13; S½, SE¼ NE¼ Section 14; W½, SE¼ Section 18; Section 20; S½ SE¼, NE¼ SE¼, E½ NE¼ Section 22; Sections 23–26; SE¼ Section 28; NE¼ NE¼ Section 34; N½ NW¼, NW¼ NE¼ Section 35; N½ N½ Section 36.

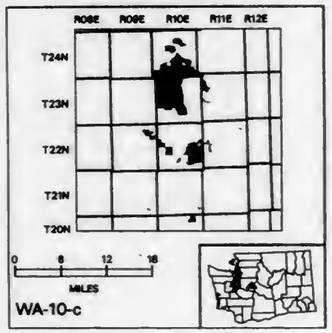
T.22N., R.11E. Willamette Meridian: S½ SW¼, SE¼ Section 18; W½ W½, NE¼ NW¼, SE¼ SW¼ Section 20.

T.23N., R.10E. Willamette Meridian: NW¼ NW¼ Section 2; W½, N½ NE¼, SW¼ NE¼ Section 3; Sections 4–9; W½, SW¼ SE¼ Section 10; W½, W½ E½ Section 15; Sections 16–21; Section 22 except NE¼ SE¼, E½ NE¼; Section 27; NW¼ NW¼, E½ SE¼, NE¼ Section 28; N½ N½ Section 29.

T.23N., R.11E. Willamette Meridian: Section 6 except E½ NE¼, NE¼ SE¼; Section 7; SW¼ Section 8; W½ NW¼ Section 17; N½ NE¼, SE¼ NE¼ Section 18.

T.24N., R.10E. Willamette Meridian: S½ SE¼, NE¼ SE¼, E½ NE¼ Section 9; N½, N½ SW¼, SE¼ Section 10; SW¼, SW¼ NW¼, SW¼ SE¼ Section 11; W½ W½, SE¼ SW¼, SW¼ SE¼, NE¼ NE¼ Section 15; N½, N½ SW¼, SE¼ Section 16; E½ NE¼, NE¼ SE¼ Section 17; SE¼ SW¼, SE¼ Section 21; Section 22 except NE¼ NE¼; SW¼, SW¼ NW¼, S½ SE¼ Section 23; SW¼ SW¼ Section 24; Section 25 except E½ SE¼, NE¼; NE¼ NW¼, S½, NE¼ Section 26; Section 27; Section 28 except NW¼; Section 29 except NW¼ NW¼; Sections 31–36.

T.24N., R.11E. Willamette Meridian: W½ SW¼, SE¼ SW¼, SW¼ SE¼ Section 31.



Map and description of WA–11–a taken from United States Fish and Wildlife Service 1:100,000 map; Snoqualmie Pass and Mt Rainier, Washington; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.17N., R.10E. Willamette Meridian: Sections 1–3; E½ E½ Section 4.

T.17N., R.11E. Willamette Meridian: W½ SW¼, SE¼ SW¼ Section 6; NE¼ NW¼ Section 7.

T.18N., R.08E. Willamette Meridian: Sections 1–2; NW¼, E½ Section 3; N½ Section 4; N½ NE¼, SE¼ NE¼ Section 10; Section 11 except S½ SW¼; Sections 12–13; S½ SW¼, NE¼ SW¼, E½ Section 14; E½ E½ Section 22; Sections 23–25; N½, N½ SE¼ Section 26; E½ NE¼ Section 27; SE¼ SW¼, SE¼ Section 36.

T.18N., R.09E. Willamette Meridian: Sections 1–30; Section 31 except NW¼ NW¼; Sections 32–36.

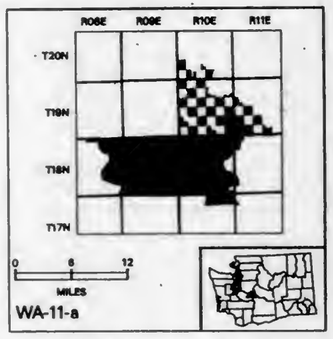
T.18N., R.10E. Willamette Meridian: Sections 1–12; NW¼, N½ SW¼, SW¼ SW¼, N½ NE¼, SW¼ NE¼ Section 13; Sections 14–23; SW¼ NW¼, NW¼ SW¼, S½ S½ Section 24; Sections 25–35; Section 36 except SE¼ NE¼.

T.18N., R.11E. Willamette Meridian: NW¼ NW¼ Section 2; N½ N½ Section 3; N½ NW¼ Section 4; N½ NE¼, SW¼ NW¼ Section 5; Section 6; NW¼, N½ SW¼, W½ NE¼ Section 7; W½ Section 30; N½ NW¼ Section 31.

T.19N., R.10E. Willamette Meridian: Section 4; Section 6; Section 8; W½, S½ SE¼ Section 10; S½ SW¼, SE¼ Section 12; Section 14; Section 16; Section 18; Section 20; Section 22; Sections 24–26; Section 28; W½, SE¼ Section 30; Section 32; W½, SE¼ Section 34; Section 36.

T.19N., R.11E. Willamette Meridian: W½, SE¼ Section 18; Section 20; Section 28; Sections 30–32, Section 34 except NW¼ NE¼.

T.20N., R.10E. Willamette Meridian: W½ SE¼, SE¼ SE¼ Section 28; Section 30; Section 32 except NW¼ SE¼, SW¼ NE¼, N½ NE¼; Section 34 except SE¼ SE¼.



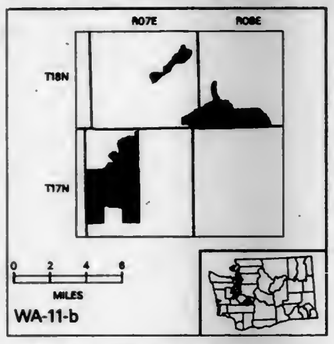
Map and description of WA–11–b taken from United States Fish and Wildlife Service 1:100,000 map; Snoqualmie Pass and Mt Rainier, Washington; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.17N, R.07E. Willamette Meridian: S½ N½, S½, NE¾ NE/14 Section 4; E½ SE¼ Section 5; Section 8 except W½ NW¼; Section 9; Sections 16–21; Section 28; N½ N½ Section 29; Section 30.

T.18N, R.07E. Willamette Meridian: SW¼, SW¼ SE¼ Section 12; NW¼, W½ NE¼ Section 13; SE¼ NW¼, SW¼, N½ SE¼, NE¾ Section 14; E½ NW¼, NE¼ SW¼, NW¼ SE¼, NE¼ Section 22; NW¼ NW¼ Section 23; Section 36 except W½ NW¼, NE¼ NW¼.

T.18N, R.08E. Willamette Meridian: SW¼ Section 20; S½ SW¼, SE¼ SW¼ Section 28; Section 29 except NE¼; S½ SW¼, NE¼ SW¼, SE¼ Section 30; Sections 31–34; SW¼ NW¼, W½ SW¼, SE¼ SW¼ Section 35.



Map and description of WA–11–c taken from United States Fish and Wildlife Service 1:100,000 map; Tacoma and Centralia, Washington; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

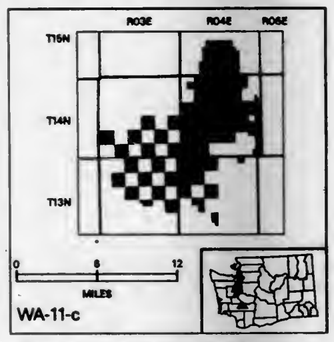
T.13N., R.03E. Willamette Meridian: Section 2; Section 4; Section 8; Section 10; Section 12; Section 14; Section 16; N½ NW¼, SE¼ NW¼, NE¼ Section 22; Section 24.

T.13N., R.04E. Willamette Meridian: NE¼ Section 2; Sections 4–8; Section 16; Section 18; N½, SE¼ Section 20; N½ SE¼, SE¾ SE¼, NE¼ Section 28.

T.14N., R.03E. Willamette Meridian: Section 22; Section 24; Section 26; Section 28; Section 30; Section 32; Section 34; Section 36.

T.14N., R.04E. Willamette Meridian: Sections 2–5; SE¼ Section 6; Sections 8–10; W½ Section 11; W½ SE¼, SE¼ SE¼ Section 12; Sections 13–23; Section 24 except NW¼; Section 25 except SW¼; N½ N½ Section 26; Sections 27–32; E½ SW¼, E½ Section 36.

T.15N., R.04E. Willamette Meridian: S½ Section 21; S½ Section 22; NW¼ NW¼, S½ NW¼, SW¼ Section 26; Sections 27–28; E½ E½ Section 29; E1/2 Section 32; Sections 33–34; W½ Section 35.



Map and description of WA–11–d taken from United States Fish and

Wildlife Service 1:100,000 map; Mt. Rainier, Washington; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.13N., R.07E. Willamette Meridian: Section 10; Section 12; Section 14; Section 22.

T.13N., R.08E. Willamette Meridian: Sections 1–8; Section 9 except SE¼ SE¼; N½ N½ Section 10; N½ NW¼ NE¼ SE¼, NE¼ Section 11; N½, NW¼ SW¼ Section 12; W½, NW¼ SE¼ Section 16; Section 17; Section 18 except S½ S½; N½ NW¼, SE¼ NW¼, N½ SE¼, NE¼ Section 20; NW¼, N½ SW¼ Section 21.

T.13N., R.09E. Willamette Meridian: NW¼ NW¼ Section 3; Section 4 except S½ SE¼; Sections 5–6; N½, N½ S½ Section 7; N½, N½ SW¼ Section 8; N½ NW¼ Section 9.

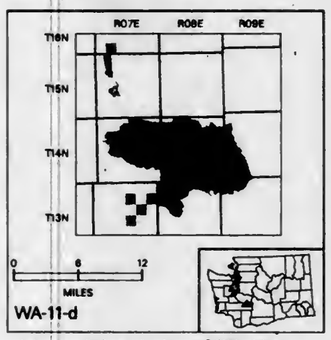
T.14N., R.07E. Willamette Meridian: SW¼ NW¼, S½ Section 1; Section 2 except N½ NE¼; Section 3; S½ SW¼, SE¼ Section 4; E½ SE¼ Section 7; S½, S½ N½ Section 8; Sections 9–17; N½ NE¼, SE¼ NE¼ Section 18; Section 20 except SW¼, S½ SE¼; N½, N½ SW¼, SE¼ Section 21; Sections 22–24; Section 25 except SW¼ SW¼; Section 26 except S½ S½; N½, N½ SE¼ Section 27; NE¼ NE¼ Section 28; NE¼ SE¼, NE¼ NE¼ Section 36.

T.14N., R.08E. Willamette Meridian: S½ SE¼ Section 2; SW¼, W½ SE¼ Section 3; Section 4; Section 5 except NW¼ NW¼; SW¼ NW¼, S½ Section 6; Sections 7–36.

T.14N., R.09E. Willamette Meridian: Section 7; W½ W½ Section 8; W½, SW¼ SE¼ Section 17; Sections 18–19; Section 20 except NE¼ NE¼; W½ SW¼ Section 21; W½, W½ SE¼ Section 28; Section 29–32; Section 33 except NE¼ NE¼; SW¼ SW¼ Section 34.

T.15N., R.07E. Willamette Meridian: W½, W½ SE¼ Section 5; E½ E½ Section 6; E½ E½ Section 7; W½, W½ E½ Section 8; SW¼ SW¼ Section 16; N½ NW¼, NW¼ NE¼, E½ SE¼ Section 17; S½ NW¼, N½ SW¼, SE¼ SW¼, E½ Section 20; W½ W½, SE¼ SW¼ Section 21; S½ S½ Section 34.

T.16N., R.07E. Willamette Meridian: Section 32.



Map and description of OR–01–a taken from United States Fish and Wildlife Service 1:100,000 map; Astoria, Nehalem River, Oregon; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.05N., R.07W. Willamette Meridian: S½ SE¼ Section 3; N½ NE¼ Section 10.

Critical Habitat includes only State lands described within the following areas:

T.08N., R.06W. Willamette Meridian: W½ SW¼, SW¼ NW¼ Section 17; Section 18 except NE¼ NE¼; Section 19; W½ W½ Section 20; W½ Section 28; E½ Section 29; NW¼, N½ SW¼ Section 30; W½ SW¼, SE¼ SW¼ Section 31; E½ Section 32; W½ Section 33.

T.08N., R.07W. Willamette Meridian: Section 13; E½ Section 14; Section 23 except NW¼; Section 24–26; Section 36.

T.07N., R.06W. Willamette Meridian: N½ SW¼, SE¼ SW¼ Section 2; W½ W½, SE¼ SW¼ Section 3; Section 4; Sections 9–11; Sections 13–14; Section 16; Sections 25–36.

T.07N., R.07W. Willamette Meridian: Sections 30–31; NW¼, S½ SW¼ Section 32.

T.07N., R.08W. Willamette Meridian: Section 22 except N½ N½; Section 23 except N½ NW¼; Section 24 except NE¼; Section 25; Section 26 except S½ SW¼; N½, N½ SW¼, SE¼ SW¼ Section 27; NE¼ Section 28; S½, NE¼ NW¼ Section 35; Section 36.

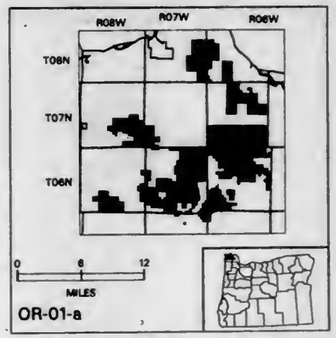
T.06N., R.06W. Willamette Meridian: Section 1 except N½ NE¼; Sections 2–6; NE¼ NE¼ Section 7; Sections 8–10; S½, NW¼ NW¼, S½ NW¼ Section 11; W½ SW¼ Section 12; Section 13 except SW¼, NE¼ NE¼; Section 14 except S½ SE¼, NW¼ SE¼; Section 15; Section 16 except SW¼ SE¼, SE¼ SW¼; Section 17 except N½ NW¼; SE¼ NE¼ Section 18; S½ SE¼, NE¼ SE¼, S½ SW¼ Section 19; E½ NE¼ Section 21; N½ N½ Section 22; N½ NW¼ Section 23; NE¼ NW¼, E½ Section 24; W½ Section 28; SW¼, W½ NW¼, E½ NE¼, SW¼ SE¼ Section 29; Sections 30–32; S½ NW¼, W½ SW¼, SW¼ NE¼ Section 33.

T.06N., R.07W. Willamette Meridian: Sections 1–3; N½ NE¼, NE¼ NW¼ Section 4; NW¼ NW¼ Section 5; N½ NE¼ Section 6; E½ SE¼ Section 9; Sections 10–15; NE¼ NE¼, S½ SW¼ Section 16; S½ S½ Section 17; W½ Section 18; S½, W½ NW¼ Section 19; Sections 20–23; W½ SW¼ Section 24; W½ NW¼, NW¼ SW¼, SE¼ SE¼ Section 25; Sections 26–28; S½, W½ NW¼ Section 29; Section 30; NE¼, N½ NW¼ Section 31; E½ SE¼, N½ Section 32; Section 33; NE¼, S½ SW¼, SE¼ SE¼ Section 34; N½ NE¼, SW¼ NE¼, E½ SW¼, SW¼ SW¼ Section 35; E½, SW¼ SW¼, E½ SW¼ Section 36.

T.06N., R.08W. Willamette Meridian: NE¼ Section 13; SE¼, E½ SW¼, S½ NE1/4 Section 24; E½ Section 25; SW¼ Section 27; Section 28 except NE¼; Section 29 except NW¼; E½ Section 32; Sections 33–34.

T.05N., R.06W. Willamette Meridian: N½ NW¼, SW¼ NW¼, NW¼ SW¼, NE¼ SW¼ Section 6.

T.05N., R.07W. Willamette Meridian: E½ NW¼, NW¼ NW¼, NE¼, N½ SE¼ Section 1; N½ NW¼ Section 3; NE¼ NE¼ Section 4.



Map and description of OR–01–b taken from United States Fish and Wildlife Service 1:100,000 map; Nehalem River, Oregon; 1995.

Critical Habitat includes only State lands described within the following areas:

T.03N., R.08W. Willamette Meridian: Sections 6–7; Sections 16–17; Section 18 south of Foss River; Sections 19–21; Sections 27–28.

T.03N., R.09W. Willamette Meridian: Section 1 except W½ NW¼; SE¼ SW¼, SE¼ Section 2; NW¼, W½ SW¼ Section 3; E½, S½ SW¼, NE¼ NW¼ Section 4; Section 5 except W½ NW¼; Section 8 except SW¼ NW¼, NW¼ SW¼; Sections 9–16; Section 21 except W½ NW¼, SE¼ NW¼; Section 23 lying N of Foss River; E½, NW¼ Section 24 lying N of Foss River; Section 28.

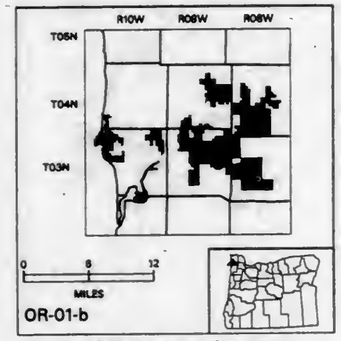
T.03N., R.10W. Willamette Meridian: W1/2 Section 1; Section 2 except NW¼; SW¼, S½ SE¼ Section 5; Section 6 except NW¼ NW¼, NE¼ NE¼; Section 7; N½ NE¼, SE¼ NE¼, NW¼ NW¼ Section 8; W½ NE¼ Section 11; Section 12 except E½ E½, W½ SW¼; NW¼ NE¼ Section 13; S½, E½ NE¼ Section 17; Section 18 except N½ NE¼, SE¼ NE¼.

T.03N., R.11W. Willamette Meridian: S1/2 Section 1; Section 12.

T.04N., R. 08W. Willamette Meridian: SW¼, S½ NW¼, NW¼ SE¼, S½ SE¼ Section 8; SE¼ Section 10; S½ S½, W½ NW¼, SE¼ NW¼ Section 14; Section 15 except NW¼; Section 17 except NW¼ SW¼; Sections 19–20; Section 21 except N½ NW¼; Section 22 except S½ NE¼, NW¼ NE¼; E½ NW¼, NW¼ NW¼, W½ NE¼ Section 23; Section 27–29; SE¼, N½ NE¼, SE¼ NE¼, NE¼ NW¼, E½ SW¼, SW¼ SW¼ Section 31; Sections 32–34.

T.04N., R.09W. Willamette Meridian Section 10 except NW1/4; SW¼ Section 11; Sections 13–14; NE¼, S½ SE¼, NE¼ SE¼ Section 15; NE¼, NW¼ SE¼ Section 22; Section 23 except S½ SE¼, NW¼ SE¼; N½, NW¼ SW¼, NW¼ SE¼ Section 24; SW¼ SW¼ Section 28; Section 32 except W½ W½, NE¼ NW¼; W½ W½, S½ SE¼, SE¼ SW¼ Section 33; Section 34 except N½, NE¼ SW¼; SW¼ SW¼ Section 35.

T.04N., R.10W. Willamette Meridian: S½ SW¼, SW¼ SE¼, SE¼ SE¼ Section 30; E½ W½, NW¼ NW¼, W½ SW¼ Section 31.



Map and description of OR–01–c taken from United States Fish and Wildlife Service 1:100,000 map; Nehalem River and Yamhill River, Oregon; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.01N., R.09W. Willamette Meridian: W½ SW¼, SE¼ SW¼, SW¼ NW¼ Section 25; SE¼, SE¼ SW¼, SE¼ NE¼ Section 26; E½ SE¼, SE¼ NE¼ Section 34; Section 35 except SW¼.

T.01S., R.08W. Willamette Meridian: Section 7 except E½ NE¼, SE¼; S½ Section 17; S½, SE¼ NE¼ Section 18; N½ N½, SW¼ NE¼, SE¼ NW¼, SE¼ SE¼ Section 19; N½ N½, NE¼ SW¼, SW¼ SW¼ Section 20; Section 21 except N½ NE¼, S½ SW¼; W½ Section 22; S½ SW¼, SE¼ NW¼, NE¼ SW¼, SW¼ NE¼, W½ SE¼ Section 27; S½ NW¼, S½ SE¼, N½ SW¼, SE¼ SW¼ Section 28; S½ NE¼, N½ SE¼, S½ SW¼, NE¼ SW¼ Section 29; NE¼, N½ NW¼, SW¼ NW¼, SE¼ SE¼ Section 30; N½ NE¼ Section 31.

T.01S., R.09W. Willamette Meridian: Section 1 except E½ E½; E½ E½, NW¼ NE¼ Section 2; N½ SW¼ Section 3; Section 4 except SE¼ SE¼; NE¼, N½ SE¼, E½ NW¼ Section 5; S½ NE¼, NW¼ NE¼, N½ NW¼, SE¼ NW¼, E½ SW¼, E½ SE¼ Section 9; S½, S½ NW¼, SW¼ NE¼ Section 10; Section 11 except N½ NE¼; NW¼, W½ SW¼, E½ NE¼, Section 12; E½ NW¼, SW¼ NE¼ Section 13; W½ NE¼, NW¼, NE¼ SW¼, SW¼ SW¼ Section 14; N½ NW¼, NE¼ NE¼ Section 15.

T.01S., R.11W. Willamette Meridian: SE¼ SE¼ Section 13.

Critical Habitat includes only State lands described within the following areas:

T.02N., R.09W. Willamette Meridian: Section 3; E½, NW¼ Section 7; S½ Section 16; Section 18 except SW¼ NW¼, N½ NW¼; Sections 19–22; Sections 29–32.

T.02N., R.10W. Willamette Meridian: E½ E½, NW¼ SE¼ Section 24; S½ SE¼ Section 25; Section 36 except NW¼ NW¼, NW¼ SW¼.

T.01N., R.09W. Willamette Meridian: Section 9; Section 16 except SW¼; SW¼, E½ SE¼ Section 19; Section 20 except NE¼ NE¼; S½ SW¼, NW¼ SW¼ Section 21; Section 26 except SE¼, SE¼ SW¼, SE¼ NE¼; Section 27; W½ Section 28; Section 29 except NW¼; Section 30; NE¼, N½ NW¼, NE¼ SE¼ Section 31; N½, S½ SE¼, NE¼ SE¼ Section 32; S½ SW¼, SE¼, N½ NW¼, SW¼ NW¼, NW¼ SW¼ Section 33; Section 34 except E½ SE¼, SE¼ NE¼, S½ SW¼, NW¼ SW¼, SW¼ NW¼; NW¼ NW¼ Section 35; Section 36.

T.01N., R.10W. Willamette Meridian: N½ NE¼ Section 1; SW¼ SW¼ Section 2; SE¼ SE¼ Section 3; E½ NE¼, NE¼ SE¼ Section 10; W½, SE¼ SE¼ Section 11; Section 13 except N½ NE¼; S½ SE¼ Section 14; SE¼, SE¼ NW¼, NE¼ SW¼ Section 22; Section 23 except W½ NW¼; Sections 24–26; E½, NW¼, E½ SW¼ Section 27; N½ NE¼ Section 34; NE¼, N½ SE¼ Section 35; NE¼ Section 36.

T.01S., R.08W. Willamette Meridian: N½ Section 6; SE¼ Section 7; SW¼ Section 16; N½ S½, SE¼ NW¼ Section 17; NW¼ NW¼, SE¼ NW¼, SW¼ NE¼, NW¼ SE¼ Section 18; Section 19 except SW¼, SW¼ NW¼, SE¼ NE¼, N½ SE¼, SW¼ SE¼; Section 20 except S½ S½, N½ N½, NE¼ SW¼; S½ SW¼, Section 21; N½ N½, SW¼ NE¼ Section 28.

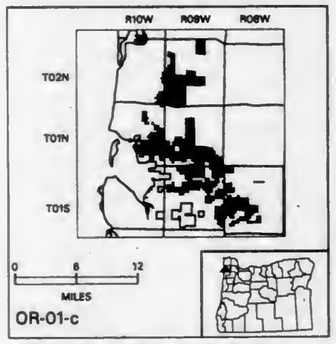
T.01S., R.09W. Willamette Meridian: E½ E½ Section 1; Section 3 except N½ SW¼; SE¼ SE¼ Section 4; S½ SE¼, NE¼ SE¼, SE¼ SW¼ Section 7; E½ SE¼ Section 8; W½ SW¼, W½ SE¼ Section 9; Section 13 except N½ NW¼, SE¼ NW¼, SW¼ NE¼; S½ SE¼, SE¼ SW¼ Section 14; N½ NE¼, NW¼ Section 16; N½, N½ SE¼ Section 17; NE¼, E½ NW¼ Section 18; NW¼, W½ NE¼ Section 23; S½ SW¼, NE¼ SE¼, S½ SE¼ Section 24; Section 25; NE¼, E½ NW¼, N½ SE¼ Section 36.

Critical Habitat includes only State owned and State managed lands described within the following areas:

NE¼, N½ SE¼, NW¼ SE¼, E½ NW¼ Section 13.

Critical Habitat includes only County lands described within the following areas:

T.01N., R.09W. Willamette Meridian: SW¼ Section 16; N½, SE¼, NE¼ SW¼ Section 21; E½ Section 28; NE¼ Section 33.



Map and description of OR–01–d taken from United States Fish and Wildlife Service 1:100,000 map; Nehalem River, Oregon; 1995.

Critical Habitat includes only State lands described within the following areas:

T.04N., R.06W. Willamette Meridian: W½ NW¼, NE¼ NW¼, NW¼ NE¼ Section 4; Section 5 except SW¼; Section 30 except NE¼; N½ NW¼, SW¼ NW¼, NW¼ NE¼ Section 31.

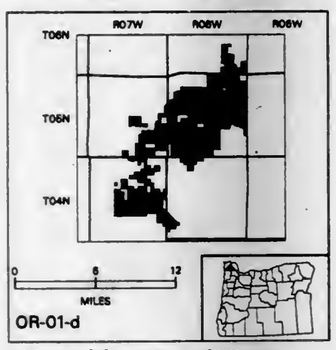
T.04N., R.07W. Willamette Meridian: SW¼, S½ NW¼ Section 1; Section 2 except NE¼, SW¼ NW¼; N½ N½, SE¼ NE¼, S½ NE¼ Section 3; SE¼, S½ NE¼, NW¼ SW¼ Section 9; N½ N½, S½ SW¼, SE¼ NE¼, SE¼ SE¼ Section 10; Section 11 except N½ NE¼, SE¼ NE¼, SW¼ SE¼, NW¼ SW¼; Section 13 except NW¼ NE¼, SE¼ SE¼; Section 14 except NW¼ NE¼; Section 15; Section 16 except E½ NE¼, NE¼ SE¼; Sections 21–22; Section 23 except S½ SE¼; Section 24 except E½ NE¼, SW¼ SW¼; NE¼, E½ NW¼, E½ SE¼ Section 25.

T.05N., R.06W. Willamette Meridian: Section 1 except NE¼; Sections 2–3; SE¼, S½ SW¼, S½ NE¼ Section 7; Sections 8–18; Section 19 except E½ NE¼; Section 20 except N½ NW¼; Sections 21–22; Section 23 except SE¼ SE¼; Section 24; E½ NE¼, NW¼ NE¼ Section 25; Sections 27–30; Section 31 except W½ W½; Sections 32–33; Section 34 except SE¼.

T.05N., R.07W. Willamette Meridian: E½ E½, SW¼ SE¼, SE¼ SW¼ Section 13; Section 22 except S½ S½; N½ SW¼ Section 23; Section 24 except NE¼, NW¼ NW¼; Sections 25–26; E½ SE¼, SE¼ NE¼ Section 27; SE¼ Section 33; E½ Section 34; Section 35 except N½ NE¼, NE¼ NW¼; N½ Section 36.

T.05N., R.08W. Willamette Meridian: S½ NW¼ Section 25; SE¼ NE¼ Section 26.

T.06N., R.06W. Willamette Meridian: S½ SW¼, SW¼ SE¼ Section 23; Section 26 except NE¼; Section 35 except SW¼ NE¼; Section 36 except N½ NW¼, SE¼ NW¼.



Map and description of OR–02–a taken from United States Fish and Wildlife Service 1:100,000 map; Yamhill River, Oregon; 1995.

Critical Habitat includes only State lands described within the following areas:

T.02S., R.09W. Willamette Meridian: SW¼, W½ SE¼, SW¼ NW¼ Section 3; S½, SW¼ NW¼, SE¼ NE¼, W½ NE¼; Section 4; E½ SE¼ Section 8; Section 9; Section 10 except N½ SE¼; NW¼ Section 15; N½ Section 16; S½ NW¼, N½ SW¼ Section 19; S½ SW¼ Section 32.

T.03S., R.10W. Willamette Meridian: SE¼, E½ SW¼, S½ NE¼ Section 22; Section 23 except N½ NW¼; S½, E½ NE¼, SW¼ NW¼ Section 24; W½ NW¼ Section 25; Section 26; Section 27 except SW¼ NE¼; E½, E½ W½ Section 28; Section 32 except N½ N½, W½ SW¼; Section 33; N½ NE¼, W½ SW¼, NW¼ Section 34; Section 35 except S½ S½, NW¼ SW¼.

T.04S., R.09W. Willamette Meridian: S½ SW¼, SW¼ SE¼ Section 4; W½, W½ E½, SE¼ SE¼ Section 5; Section 6 except W½ W½; Section 7 except W½ NW¼; Sections 8–9; SW¼, SW¼ SE¼, S½ NW¼ Section 10; NW¼, W½ NE¼ Section 15; N½, SE¼ Section 16; N½ Section 17; N½ Section 18.

T.04S., R.10W. Willamette Meridian: SW¼, S½ NW¼, NW¼ NW¼, W½ E½ Section 3; E½, N½ NW¼, SE¼ NW¼, SE¼ Section 4; N½, SW¼, W½ SE¼ Section 5; E½ SW¼, E½ Section 6; N½ NE¼, NE¼ NW¼ Section 7; NE¼ Section 9.

T.05S., R.09W. Willamette Meridian: SW¼ Section 5; SE¼, SW¼ NE¼, E½ SW¼ Section 6; Section 7; W½, S½ SE¼, NW¼ SE¼ Section 8; NW¼, SE¼ SW¼, W½ NE¼, N½ SW¼ Section 17; Section 18; N½ Section 19; NW¼ NW¼ Section 20.

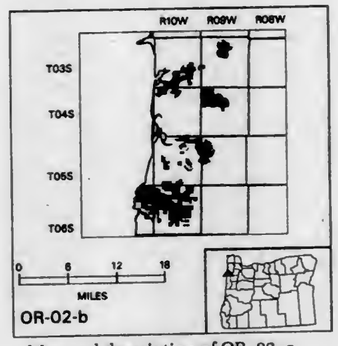
T.05S., R.10W. Willamette Meridian: Section 1; Section 2 except S½ S½, NE¼ NE¼; NE¼, E½ NW¼, SE¼ SW¼, SW¼ NW¼, SW¼ SE¼, NE¼ SW¼ Section 3; S½ NE¼ Section 4; N½ NE¼, E½ NW¼, NW¼ NW¼, SW¼ SE¼, SE¼ SW¼ Section 10; NW¼ NW¼, SE¼ NW¼, NW¼ SW¼ Section 11; E½, E½ NW¼, SW¼ NW¼, NE¼ SW¼ Section 12; NE¼ NW¼, E½ Section 13; SW¼ Section 14; SW¼, SW¼ NW¼ Section 17; Section 20 except W½ W½, SE¼ NE¼; NW¼, E½ SE¼ Section 22; SE¼ NW¼, NW¼ SE¼, SW¼ NE¼, SW¼ SW¼, SE¼ SE¼, NW¼ SE¼, N½ N½ Section 23; NW¼ NE¼, E½ NW¼ Section 24; N½ N½ Section 26; S½ Section 32; S½ S½, NE¼ SE¼, NW¼ SW¼, SW¼ NW¼, SE¼ NE¼ Section 33; W½ SE¼ Section 34.

T.06S., R.10W. Willamette Meridian: Section 2; W½ W½, SE¼ SE¼, NE¼ SW¼ Section 3; Section 4; N½ S½, N½ Section 5; W½ W½, E½ SW¼, E½ SE¼ Section 6; Section 7; Section 8 except N½ NE¼; Section 9 except NW¼ NW¼, SE¼ SW¼, S½ SE¼; Section 10; Section 11 except NE¼, SE¼ SE¼; SW¼ Section 12; S½, NW¼ NE¼ Section 14; W½, SE¼ Section 15; Section 16 except N½ NE¼; Section 17–18; NW¼, W½ SW¼, W½ E½ Section 19; W½ NE¼, E½ NW¼ Section 20; Sections 21–22; W½, W½ E½ Section 23; S½ NW¼, S½ SW¼ Section 26; W½ W½, NE¼, NE¼ NW¼, SE¼ SE¼ Section 27; Section 28 except SW¼ NW¼; NE¼, NW¼ SE¼ Section 30.

T.06S., R.11W. Willamette Meridian: Section 1–2; Section 11; Section 12; Section 13 except SE¼ NW¼, SW¼ NE¼; NE¼, N½ SE¼ Section 14; Section 24 except SE¼ SE¼, N½ NW¼.

Critical Habitat includes only State lands described within the following areas:

T.05S., R.10W. Willamette Meridian: S½ NE¼, E½ SE¼ Section 10; E½ SE¼, SE¼ NE¼ Section 11.



Map and description of OR–02–c taken from United States Fish and Wildlife Service 1:100,000 map; Yamhill River and Corvallis, Oregon; 1995.

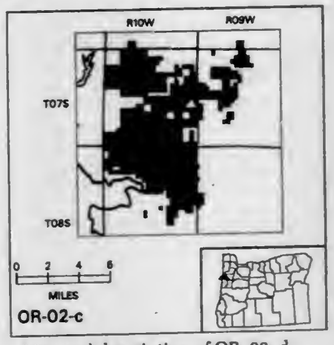
Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.06S., R.10W. Willamette Meridian: SE¼ Section 32.

T.07S., R.09W. Willamette Meridian: SW¼, W½ NW¼, SE¼ NW¼, SW¼ SE¼ Section 3; SE¼, E½ NE¼, SW¼ NE¼, NE¼ SW¼ Section 4; W½ NW¼ Section 5; Section 8 except S½ SW¼ SW¼ SE¼; Section 9 except N½ NE¼, SE¼ NE¼, NE¼ NW¼, SW¼ SE¼, SE¼ SW¼; Section 16 except E½ E½, NE¼ NW¼; S½, E½ NE¼ Section 17; Section 18 except NE¼ NE¼; SW¼, S½ NW¼ Section 19; NE¼, NW¼ SE¼ Section 20; W½ NW¼, NE¼ NW¼, S½ SW¼ Section 21; N½ NW¼, SW¼ NW¼ Section 28; SE¼ NE¼ Section 29; N½ NW¼ Section 30.

T.07S., R.10W. Willamette Meridian: SW¼, NW¼ SE¼ Section 3; Section 4 except E½ NE¼; Section 5; Sections 7–9; Section 10 except E½ NW¼, NE¼; N½ S½, E½ NE¼, SW¼ SE¼, SE¼ NE¼ Section 11; Section 12 except S½ NW¼, N½ SW¼, E½ NE¼; Section 13; Section 14 except N½ NW¼, SW¼ NW¼, W½ SW¼, NE¼ NE¼; Section 15 except S½ S½; Section 16 except SE¼ SE¼; Section 17; N½ Section 18; S½ S½ Section 20; NE¼, SW¼ Section 21; Sections 22–23; Section 24 except NW¼ SE¼, SW¼ NE¼, NE¼ SW¼; Section 25 except NW¼; Section 26 except NW¼; Sections 27–29; Section 31 except N½ NW¼, NW¼ NE¼; Sections 32–35.

T.08S., R.10W. Willamette Meridian: Sections 1–5; Section 6 except NW¼ SW¼, SW¼ NW¼; Section 7 except NW¼ SW¼, S½ SW¼, S½ SE¼ S½ NE¼; Section 8 except S½ S½; Sections 9–14; Section 15 except SE¼ SE¼; E½ E½, NW¼ NE¼, SW¼ SE¼ Section 16; SW¼ SE¼ Section 22; Sections 23 except SW¼ NW¼, NW¼ SW¼; Section 24 except SE¼ SE¼; NE¼ NW¼, NW¼ NE¼ Section 25; Section 26 except SE¼, E½ NE¼; W½ NE¼ Section 28.



Map and description of OR–02–d taken from United States Fish and Wildlife Service 1:100,000 map; Corvallis, Oregon; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.07S., R.06W. Willamette Meridian: SW¼ Section 4; Section 5 except N½ NE¼, NW¼ NW¼; Section 6 except NE¼, N½ NW¼, NW¼ SE¼; Section 7; S½ S½, NE¼ SW¼, N½ SE¼, SE¼ NE¼ Section 9; Section 17 except NW¼, W½ NE¼, NW¼ SW¼.

T.07S., R.07W. Willamette Meridian: Section 1 except N½ NE¼; Sections 2–3;

Section 4 except N½ NW¼, NW¼ NE¼; Section 5; Section 7; N½ Section 8; Section 9; Section 11 except SE¼ SW¼, SW¼ SE¼; Section 13 except NE¼ SE¼; Section 15; Section 17; N½ Section 18; Section 19; Section 21; Section 23; N½ Section 25; N½ Section 26; Section 27; Section 29; Section 31; Section 33; NW¼ Section 34.

T.07S., R.08W. Willamette Meridian: Section 1; SE¼ Section 12; Section 13; S½, S½ N½ Section 14; Section 15 except W½ W½; Section 17; Section 18 except W½ W½; Section 19 except W½ W½; W½ Section 20; Section 23; Section 25; Section 27; Section 28 except E½ SW¼, S½ NW¼; Section 29 except SE¼; Section 30 except W½ W½; Section 31 except W½ W½, E½ SE¼; Section 32 except NE¼; N½, N½ SW¼, NW¼ SE¼ Section 33; Section 35.

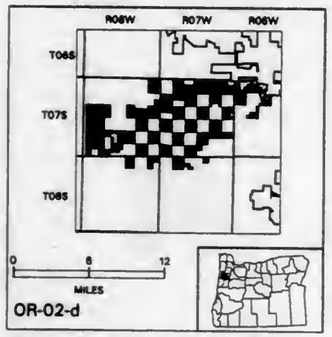
T.08S., R.07W. Willamette Meridian: NE¼ Section 3; SW¼ SE¼, N½ SW¼, SE¼ SW¼ Section 4; Section 5; NE¼ NE¼ Section 17.

T.08S., R.08W. Willamette Meridian: Section 1 except SE¼; Section 3 except W½ W½.

Description of Lands Using Protracted Public Land Survey Lines

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.07S., R.06W. Willamette Meridian: SE¼ SW¼, SW¼ SE¼ Section 4; E½ NW¼ Section 9.



OR-02-d

Map and description of OR–02–e taken from United States Fish and Wildlife Service 1:100,000 map; Yamhill River, Oregon; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.01S., R.05W. Willamette Meridian: Section 19 except NW¼.

T.02S., R.05W. Willamette Meridian: N½ N½ Section 3; SW¼ NE¼ Section 5; SW¼ SE¼, SE¼ NE¼ Section 7.

T.02S., R.06W. Willamette Meridian: S½ NW¼ Section 25; S½ NW¼, NE¼, S½ S½ Section 26; Section 35.

T.02S., R.08W. Willamette Meridian: Section 31 except W½ NW¼, E½ SE¼; NW¼, SW¼ NE¼, SE¼, N½ SW¼ Section 32; Section 33 except NW¼ NW¼; W½ NW¼, NW¼ SW¼ Section 34.

T.03S., R.06W. Willamette Meridian: N½ NW¼ Section 1; Section 7; SE¼, NE¼ SW¼ Section 13; S½ SW¼ Section 16; Sections 17–20; W½, W½ E½ Section 21; SE¼ SE¼ Section 27; SW¼, S½ NW¼, NW¼ SE¼, SW¼ NE¼ Section 28; Section 29; Section 30 except NE¼; Section 31; W½ Section 32; Section 33 except SW¼; SE¼ Section 36.

T.03S., R.07W. Willamette Meridian: S½ Section 5; Section 7; S½ NE¼, W½ NW¼, N½ SW¼, N½ SE¼, SE¼ SE¼ Section 8; Section 9; Section 10 except N½ NE¼, NW¼ NW¼; Section 11; Section 12 except E½ E½, SW¼ NE¼; Sections 13–15; S½ Section 16; Section 17; SW¼, N½ NE¼, W½ NW¼ Section 18; Section 19; Section 20 except W½ W½, SE¼ SW¼; Sections 21–25; E½ Section 26; Sections 27–29; E½ Section 30; Section 31; Section 32 except S½ SE¼, NE¼ SE¼; Section 33 except NW¼ NW¼, SW¼ SW¼; N½, SE¼ Section 34; Section 35; W½ Section 36.

T.03S., R.08W. Willamette Meridian: SW¼, S½ SE¼ Section 1; SW¼ SE¼ Section 2; Section 3; NW¼, S½ SE¼, W½ SW¼, SE¼ SW¼ Section 4; Section 5 except NW¼, SW¼ NE¼; N½ NW¼, SE¼ Section 6; Section 7 except N½ NE¼, SW¼ NE¼, E½ NW¼; Section 8 except S½ SE¼; Section 9; Section 10 except N½ NW¼, NW¼ NE¼; Section 11; Section 13; NE¼, N½ NW¼, SE¼ SW¼ Section 14; Section 15 except SW¼; W½ SW¼ Section 16; SW¼ SE¼, NW¼ NW¼ Section 17; Section 18 except S½ SE¼; Section 19 except N½ NE¼; NE¼ Section 20; Section 21 except NW¼, N½ NE¼; Section 22 except SW¼ NE¼, SE¼ NW¼; Section 23; Section 24 except N½ NE¼, SE¼ NE¼; Section 25 except NE¼ SW¼, SW¼ NE¼, NW¼ SE¼, SE¼ NW¼; N½ NE¼, NW¼ NW¼, SE¼ SE¼; Section 26; Section 27 except NE¼ SW¼, SW¼ NE¼, NW¼ SE¼, SE¼ NW¼; S½ S½, NW¼ NW¼ Section 29; S½, W½ NW¼ Section 31; Section 32 except SW¼, SW¼ NW¼, W½ SE¼; Sections 33–34; S½ Section 35; W½ NE¼ Section 36.

T.03S., R.09W. Willamette Meridian: Section 1 except S½ SE¼, NE¼ SE¼, SW¼ NW¼; SE¼ SE¼ Section 2; SE¼ SE¼ Section 10; Section 11 except NW¼; Section 12 except NE¼ NE¼; Section 13 except W½ NW¼, E½ NE¼; Section 14 except SW¼; NE¼ NE¼ Section 15; NE¼ Section 23; E½ NW¼, NE¼ Section 24.

T.04S., R05W. Willamette Meridian: NW¼ SE¼ Section 19.

T.04S., R.06W. Willamette Meridian: Section 5 except E½ E½, SW¼ SE¼; Sections 6–7; S½ SW¼, W½ SE¼ Section 18.

T.04S., R.07W. Willamette Meridian: Section 1 except NE¼; W½, N½ NE¼ Section 2; Section 3 except NW¼; E½ E½, NW¼ NE¼, NE¼ NW¼, SE¼ SW¼, SW¼ SE¼ Section 4; N½, E½ SE¼, SW¼ SW¼ Section 5; Section 6 except NE¼, W½ SE¼; Section 7; SW¼, NE¼ SE¼ Section 8; Section 9; N½ Section 10; Section 11; Section 12 except SE¼ SW¼; Section 13; Section 14 except N½ NW¼, S½ NE¼, E½ SE¼; Section 15 except SW¼ SW¼; E½ E½, NW¼ NE¼ Section 16; Section 17 except N½ S½; Section 18 except NW¼.

T.04S., R.08W. Willamette Meridian: SE¼ NE¼, SE¼, Section 1; NW¼ NE¼, N½ NW¼, E½ SW¼, SE¼ Section 2; N½ N½, S½ S½ Section 3; Section 4 except S½ SE¼, NE¼ SE¼, SE¼ SW¼; Sections 5–8; Section 9 except NW¼ NE¼, NE¼ NW1/4; Section 10; Section 11 except SE¼ NE¼, NE¼ SE¼; Section 12 except NE¼ SE¼, E½ NE¼; Sections 13–14; Section 15 except N½ NE¼; Section 16; Sections 17–25; Section 26 except W½ SW¼; Section 27 except E½ SE¼; Section 28–35; N½ Section 36.

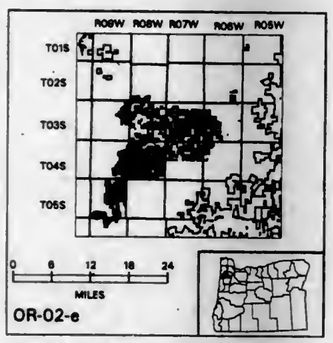
T.04S., R.09W. Willamette Meridian: SE¼, SE¼ NE¼ Section 1; SE¼, E½ SW¼ Section 11; Section 12 except NW¼; Section 13; E½, E½ NW¼ Section 14; SE¼ SE¼ Section 22; Section 23 except N½ NW¼, SW¼ NW¼; Sections 24–26; SE¼, E½ NE¼, SW¼ NE¼, SE¼ NW¼ Section 27; NE¼, SE¼ SE¼ Section 34; N½ N½, S½ S½, SW¼ NW¼, SE¼ NE¼, NE¼ SE¼ Section 35; Section 36.

T.05S., R.09W. Willamette Meridian: Sections 1–2; NE¼ NE¼, SW¼, SE¼, SW¼ NW¼ Section 3; Section 4 except N½ N½, SW¼ NW¼, W½ SW¼; W½, NE¼ NW¼ Section 9; Section 10–15; Section 16 except W½ W½, NE¼ NW¼; Section 21 except W½ W½, SE¼ SW¼ ¼; Section 22; Section 23 except SE¼, SW¼ NW¼; Section 24 except SW¼; NE¼ NE¼ Section 25; Section 26 except E½ E½; Section 27 except E½ NE¼, SW¼, NW¼ NW¼; Section 31 except N½ NW¼; Section 32; Section 33 except E½ E½; Section 34 except W½; Section 35.

T.06S., R.09W. Willamette Meridian: N½ SW¼, NW¼ NE¼, NW¼ Section 2; N½, N½ SW¼, SW¼ SW¼ Section 3; Section 4 except SE¼ SE¼, SW¼ NW¼, W½ SW¼; N½ Section 5; N½ N½ Section 6; NE¼, E½ NW¼ Section 9.

Critical Habitat includes only State lands described within the following areas:

T.03S., R.07W. Willamette Meridian: N½ Section 16.

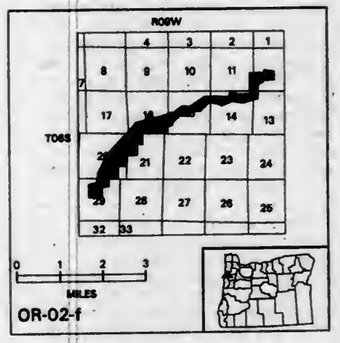


OR-02-e

Map and description of OR–02–f taken from United States Fish and Wildlife Service 1:100,000 map; Yamhill River, Oregon; 1995.

Critical Habitat includes only State lands described within the following areas:

T.06S., R.09W. Willamette Meridian: E½ SE¼ Section 11; N½ SW¼, SW¼ SW¼ Section 12; NW¼ NW¼ Section 13; N½ NE¼, NW¼ Section 14; S½ NE¼, S½ NW¼, N½ SW¼, NE¼ NE¼, SW¼ SW¼ Section 15; S½ SW¼, SE¼, NE¼ SW¼ Section 16; E½ NE¼, SW¼ NE¼, SE¼, SE¼ SW¼ Section 20; W½ NW¼, NE¼ NW¼ Section 21; W½ NE¼, E½ NW¼ Section 29.



OR-02-f

Map and description of OR–03–a taken from United States Fish and Wildlife Service 1:100,000 map; Corvallis, Oregon; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.09S., R.09W. Willamette Meridian: SE¼ SE¼ Section 33; SW¼ SW¼ Section 34.

T.10S., R.10W. Willamette Meridian: NW¼ SE¼ Section 2.

Critical Habitat includes only State lands described within the following areas:

T.09S., R.09W. Willamette Meridian: E½ SW¼, W½ SE¼, NE¼ SE¼ Section 34.

T.10S., R.09W. Willamette Meridian: NW¼, W½ NE¼ Section 16; N½ NE¼, NE¼ NW¼ Section 17.

Critical Habitat includes only County lands described within the following areas:

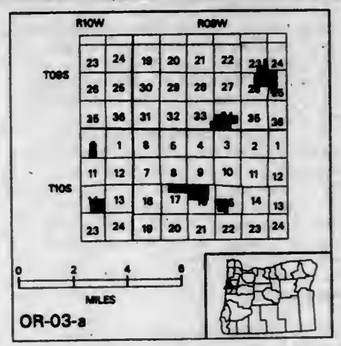
T.10S., R.10W. Willamette Meridian:SW¼ SE¼ Section 2.

Critical Habitat includes only Private lands described within the following areas:

T.09S., R.09W. Willamette Meridian: S½ SE¼, NE¼ SE¼ Section 23; W½ NW¼, NW¼ SW¼ Section 25; NE¼ Section 26; W½ SW¼ Section 34.

T.10S., R.09W. Willamette Meridian: SW¼ Section 15.

T.10S., R.10W. Willamette Meridian: SE¼ Section 14.



OR-03-a

Map and description of OR–03–b taken from United States Fish and Wildlife Service 1:100,000 map; Corvallis, Oregon; 1995.

Critical Habitat includes only State lands described within the following areas:

T.10S., R.06W. Willamette Meridian: W½ SW¼ Section 30.

T.10S., R.07W. Willamette Meridian: S½ Section 25; N½ Section 36.

T.11S., R.07W. Willamette Meridian: S½ N½, SE¼ Section 16; N½ Section 21; S½, NW¼ Section 29; Section 31; Section 32 except E½ SE¼, NE¼ SE¼.

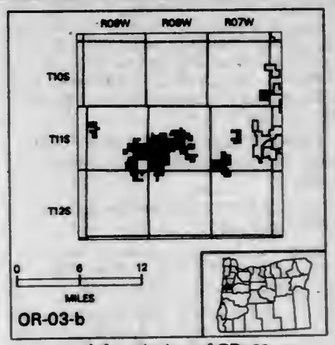
T.11S., R.08W. Willamette Meridian: W½ SW¼ Section 14; Section 15 except N½ NE¼; Section 16 except S½ SW¼; SW¼, W½ SE¼ Section 17; S½ SE¼, E½ SW¼ Section 18; Sections 19–21; W½, S½ SE¼, NE¼ SE¼, NE¼ NE¼ Section 22; SW¼, NW¼ NW¼ Section 23; SW¼, NW¼ SE¼, S½ N½ Section 26; Section 27 except SW¼, NE¼ NE¼; N½ NW¼ Section 28; Sections 29–31; Section 32 except SE¼; N½ NW¼ Section 35.

T.11S., R.09W. Willamette Meridian: S½ Section 7; NW¼ NW¼ Section 17; SE¼, S½ NE¼, NE¼ NE¼, SE¼ NW¼ Section 18; Section 23 except NW¼; S½, NW¼ NW¼ Section 24; Section 25; Section 26 except S½ NW¼, N½ SW¼; NE¼ Section 27; E½ SE¼, SE¼ NE¼ Section 34; Section 35.

T.12S., R.07W. Willamette Meridian: Section 5 except S½, SW¼ NW¼.

T.12S., R.08W. Willamette Meridian: NW¼ Section 5; E½ E½, SW¼ NE¼ Section 6.

T.12S., R.09W. Willamette Meridian S½ SW¼, N½ NW¼, SE¼ NW¼, NW¼ NE¼ Section 1; E½, E½ NW¼ Section 2.



OR-03-b

Map and description of OR–03–c taken from United States Fish and Wildlife Service 1:100,000 map; Corvallis, Oregon; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.08S., R.06W. Willamette Meridian: SE¼ NE¼, NE¼ NE¼, SW¼ NE¼, S½ NW¼, NW¼ NW¼, S½ SE¼, SW¼ Section 31; W½ NW¼ Section 33.

T.08S., R.07W. Willamette Meridian: Section 31 except S½ SE¼.

T.09S., R.06W. Willamette Meridian: N½ NE¼, NW¼ Section 5; NE¼, NW¼, N½ SE¼ Section 7.

T.09S., R.07W. Willamette Meridian: Section 1 except NW¼ NW¼; Section 3 except NE¼; Section 9 except SE¼ SE¼; Section 11; Section 13; W½, W½ NE¼, NW¼ SE¼ Section 15; SE¼, E½ SW¼ Section 17; NW¼, NW¼ SW¼ Section 21; E½ NE¼, NE¼ SE¼ Section 23; Section 29 except SE¼; Section 31; S½, SE¼ NW¼ Section 33; W½ W½, NE¼ NE¼ Section 35.

T.09S., R.08W. Willamette Meridian: N½ NW¼, SW¼ NW¼, W½ SW¼ Section 11; Section 27 except N½ NE¼; Section 35.

T.10S., R.05W. Willamette Meridian: SW¼ NE¼, W½ SE¼, SW¼, SE¼ NW¼ Section 29.

T.10S., R.07W. Willamette Meridian: N½ Section 1; W½ NW¼ Section 4; N½ Section 5.

Critical Habitat includes only State lands described within the following areas:

T.08S., R.07W. Willamette Meridian: SE¼ Section 11; SE¼ ¼ Section 12; N½, N½ SE¼ Section 13; E½, SW¼ Section 14.

T.09S., R.08W. Willamette Meridian: Section 28 except N½ N½; S½, NW¼, S½ NE¼ Section 29; SE¼ Section 32; NE¼ Section 33; Section 34 except NW¼; Section 36 except N½ N½.

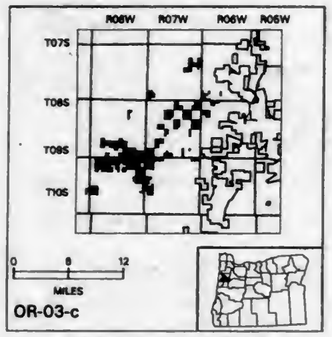
T.10S., R.07W. Willamette Meridian: Section 6; N½ N½ Section 7; NW¼, SW¼, SE¼ SE¼, NW¼ NE¼ Section 18; Section 19 except W½ SW¼.

T.10S., R.08W. Willamette Meridian: Section 1 except SE¼; Section 2; NE¼, NW¼, NW¼ SW1¼, SW¼ SW¼, NE¼ SE¼, NW¼ SE¼ Section 3; Section 4 except SW¼ SE¼, SE¼ SW¼; Section 5; E½

Section 6; NE¼ Section 7; NE¼, E½ NW¼, NW¼ NW¼ Section 8; NW¼, NE¼ NE¼ Section 9; NW¼, NE¼ Section 10; N½ N½ Section 11; Section 12; Section 13 except S½ SW¼, SW¼ SE¼; Section 19; E½ NE¼, N½ SE¼ Section 24.

Critical Habitat includes only Private lands described within the following areas:

T.09S., R.08W. Willamette Meridian: S½ SW¼ Section 29.



Map and description of OR–04–a taken from United States Fish and Wildlife Service 1:100,000 map; Corvallis, Waldport and Eugene, Oregon; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.11S., R.10W. Willamette Meridian: SE¼ SE¼ Section 35.

T.12S., R.09W. Willamette Meridian: N½ N½ Section 6; Section 7 except NW¼ NE¼; Section 8 except NE¼ NW¼, W½ NE¼, NE¼ NE¼; SE¼ SE¼ Section 14; S½ NW¼, SW¼, W½ SE¼ Section 15; S½, S½ N½ Section 16; Sections 17–18; Section 19 except W½ W½, NE¼ NE¼, SE¼ SW¼; Section 20 except SE¼ NW¼, S½ NE¼; Section 21; Section 22 except NE¼ NE¼; Section 23 except NW¼ NW¼; Section 26 except NE¼ NE¼, SE¼ SE¼; Sections 27–28; N½ NW¼, NW¼ NE¼ Section 29; W½ Section 33.

T.12S., R.10W. Willamette Meridian: Sections 1–2; Section 3 except E½ NW¼, S½ NE¼; Section 4; S½, E½ NE¼, SW¼ NW¼ Section 5; SE¼ SE¼ Section 6; Sections 7–8; N½, N½ SE¼ Section 9; N1½ Section 10; Section 11 except SW¼ SW¼; Section 12; W½ NE¼, E½ NW¼, NE¼ NE¼ Section 13; Sections 16–17; Section 18; Sections 19–21; Section 25 except S½ S½, N½ NW¼; S½ SE¼ Section 26; Section 28; Section 29 except SW¼, NW¼ SE¼; Section 30 except S½ S½; E½ SE¼ Section 31; Section 32 except W½ NW¼; Section 33 except SW¼ SE¼; N½ SE¼, NE¼ Section 35.

T.12S., R.11W. Willamette Meridian: S½ NW¼, S½ SW¼, NE¼ SW¼, W½ SE¼, SW¼ NE¼ Section 9; SE¼, S½ SW¼, SW¼ SW¼ Section 11; S½ Section 12; Section 13 except S½ S½; Section 14 except N½ SW¼, N½ SE¼, SE¼ SE¼; NE¼ Section 22; Sections 23–24; Section 25 except W½ SW¼, SW¼ NW¼; Section 26 except SE¼ NE¼; E½ Section 27; Section 35; Section 36 except E½ SE¼, SE¼ NE¼.

T.13S., R.09W. Willamette Meridian: Section 2 except SE¼; NE¼ Section 4; SW¼ Section 5; Section 6–7; W½ Section 8; Sections 18–19; N½ SW¼, E½ SE¼, NW¼ SE¼ Section 20; SW¼ SW¼ Section 21; Section 28 except N½ NE¼, NE¼ NW¼; Section 29 except NW¼ SW¼; Section 30; Section 31 except N½ SW¼, S½ NW¼; Section 32–33; W½ W½, E½ SW¼, SE¼ Section 34; SW¼ SE¼, SE¼ SW¼ Section 35.

T.13S., R.10W. Willamette Meridian: Section 1; Section 2; E½ E½ Section 3; S½ SW¼, SW¼ NE¼, W½ SE¼ Section 7; E½ SE¼ Section 9; Section 10 except SW¼ NW¼; Sections 11–15; Section 16 except N½ NW¼; Section 17 except N½, NW¼ SW¼; Section 18; Sections 19–25; Section 26 except SW¼ SW¼, SE¼ SE¼; N½ NE¼, SE¼ NE¼, Section 27; SE¼ SW¼, NW¼ Section 28; Section 29; N½, N½ SE¼, NE¼ SW¼, SW¼ SW¼ Section 30; S½, E½ NE¼ Section 31; E½ SE¼, S½ SW¼, NW¼ SW¼, NW¼, NW¼ NE¼ Section 32; W½ Section 33; E½ SE¼, NE¼ SE¼, NE¼ NE¼ Section 34; Section 35 except SE¼ NE¼, NE¼ NW¼.

T.13S., R.11W. Willamette Meridian: Section 1 except SE¼ SE¼; Section 2; Section 11 except W½ SW¼, SE¼ SW¼; NW¼, W½ NE¼, W½ SW¼, SE¼ SE¼ Section 12; Section 13 except W½ W½, NE¼ NW¼, S½ SE¼; N½ N½, SW¼ NW¼, S½ SW¼, SW¼ SE¼, SE¼ SW¼ Section 14; Section 15 except N½ NW¼, SW¼ NW¼, NW¼ SW¼; NE¼ NW¼, N½ NE¼ Section 22; NW¼, SW¼ NE¼ Section 23; S½ NE¼, S½, NW¼ NW¼ Section 24; Section 25 except S½ N½, N½ SE¼; S½ SW¼, NW¼ SW¼, SE¼ Section 26; E½, E½ W½ Section 34; Section 35; Section 36 except SE¼, E½ NE¼.

T.14S., R.09W. Willamette Meridian: Section 2 except NE¼ NE¼, S½ S½; Section 3 except S½ S½, N½ SW¼; Section 4 except S½ S½, N½ SE¼; Section 5 except S½ SE¼, N½ SW¼, SE¼ SW¼, NW¼ SE¼; E½, S½ SW¼ Section 6; Section 7 except S½ SW¼, NW¼ SE¼, NE¼ SW¼; N½ NW¼, SE¼, S½ SW¼, SE¼ NE¼ Section 8; Section 9 except NW¼ NW¼; Section 10 except N½ NE¼; Section 11 except N½ NW¼, NE¼, N½ SE¼, SW¼ SE¼; S½ S½ Section 12; SW¼, S½ SE¼, N½ NW¼, NW¼ NE¼ Section 13; Sections 14 except NW¼ NE¼, SE¼ NW¼, N½ SW¼, SE¼ SW¼; Sections 15–16; S½ NE¼, N½ SW¼, SE¼ NW¼, SW¼ SW¼ Section 18; N½ NW¼, NE¼, SW¼ NW¼, NE¼ SE¼, SE¼ SW¼ Section 19; S½ NW¼, NW¼ SW¼ Section 20; N½ NE¼, NE¼ NW¼ Section 21; NW¼ NW¼ Section 22; E½, E½ NW¼ Section 23; W½ W½ Section 24; W½, W½ E½ Section 25; E½ Section 26; S½ NW¼, NW¼ NW¼ Section 36.

T.14S., R.10W. Willamette Meridian: Section 1 except N½ SE¼, E½ NE¼; Section 2; Section 3 except SW¼; Section 4; Section 5 except W½ NE¼, SE¼ NW¼; Section 6; N½ Section 7; Section 8 except SW¼; Section 9 except S½ SW¼; Sections 10–13; Section 14; Section 15; N½, N½ SE¼, SE¼ SE¼, NE¼ SW¼ Section 16; Section 17 except N½ NW¼; N½ Section 20; E½, E½ NW¼, NW¼ SW¼ Section 23; Section 24 except E½ NE¼, NE¼ SE¼; NW¼ Section 25.

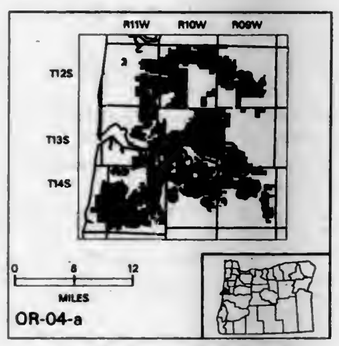
T.14S., R.11W. Willamette Meridian: Sections 1–2; SE¼ NW¼, SW¼ SE¼; Section 3; N½ NE¼, NE¼ NW¼, W½ NW¼ Section 4; S½ NW¼, NW¼ NW¼, SW¼ SE¼, NE¼, S½ SW¼ Section 5; NE¼, SE¼ NW¼ Section 6; Section 7; Section 8 except NE¼ NE¼; S½ SE¼, NE¼ SE¼, SW¼ NW¼, W½ SW¼ Section 9; Section 10 except W½ W½, NE¼ NW¼, NE¼ SW¼, NE¼ NE¼; Section 11; W½, NW¼ NE¼ Section 12; W½ W½, NE¼ NW¼ Section 13; Section 14; Section 15 except NW¼ NW¼; Section 17 except SE¼ NE¼; Sections 18–21; Section 22 except S½ N½, N½ SW¼, N½ NE¼; Section 23; Section 24 except NE¼; Section 25 except W½ NW¼; Section 26 except NE¼ NE¼, S½ SE¼, NE¼ SW¼; Sections 27–30; N½, NE¼ SW¼ Section 31; NW¼, N½ NE¼, N½ SW¼ Section 32; N½ Section 33; N½ N½, SW¼ NW¼ Section 34; N½ NW¼ Section 35.

T.14S., R.12W. Willamette Meridian: S½ SE¼, SE¼ SW¼ Section 1; Section 12 except W½ W½; Section 13 except NW¼ NW¼; E½ SE¼, SE¼ NE¼ Section 14; SE¼, E½ NE¼, W½ SW¼ Section 23; Sections 24–25.

Description of Lands Using Protracted Public Land Survey Lines

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.14S., R.09W. Willamette Meridian: E½ NW¼, W½ NE¼ Section 8.



Map and description of OR–04–b taken from United States Fish and Wildlife Service 1:100,000 map; Waldport, Eugene, Oregon; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.14S., R.09W. Willamette Meridian: SE¼, S½ SW¼, NW¼ SW¼, SW¼ NW¼ Section 28; Section 29 except N½ NE¼; S½, S½ N½ Section 30; Section 31; Section 32; Section 33 except SE¼ NE¼, NE¼ SW¼; Section 34 except W½ NW¼, W½ NE¼; S½ S½, SW¼ NW¼, E½ NW¼, N½ SW¼ Section 35.

T.14S., R.10W. Willamette Meridian: SE¼ NE¼, E½ SE¼ Section 25; Section 29 except NE¼ NE¼; Sections 30–32.

T.14S., R.11W. Willamette Meridian: SE¼, S½ SW¼ Section 35; Section 36 except NW¼, N½ NE¼.

T.15S., R.09W. Willamette Meridian: W½ W½ Section 1; Sections 2–5; Section 6 except S½ SW¼, SW¼ SE¼; E½ NE¼, SW¼ NE¼, SW¼, W½ SE¼, W½ NW¼ Section 7; N½ NW¼, NW¼ NE¼, E½ SE¼, SW¼ SE¼, SE¼ SW¼ Section 8; Section 9 except S½ SW¼; Section 10 except SE¼; Section 11; N½ SW¼, S½ NW¼, NW¼ NW¼ Section 12; E½, E½ SW¼, SW¼ SW¼, NW¼ NW¼, SE¼ NW¼ Section 13; Section 14 except NE¼ SE¼; Section 15; E½ NE¼, SW¼ NE¼, S½ NW¼, NW¼ NW¼, SE¼, E½ SW¼ Section 16; E½ NE¼, SW¼ NE¼, W½ SW¼ Section 17; Section 18 except NE¼ NE¼; Section 19; SE¼, NW¼ NW¼, S½ NE¼ Section 20; Section 21; Section 22 except E½ SW¼; Sections 23–26; E½, E½ SW¼, SW¼ SW¼, SE¼ NW¼ Section 27; Section 28; E½, E½ NW¼, SE¼ SW¼ Section 29; N½ NW¼, NW¼ NE¼ Section 30; Section 32 except W½ NW¼, NW¼ SW¼; Sections 33–36.

T.15S., R.10W. Willamette Meridian: Section 1 except N½ NW¼, SE¼ NW¼, NW¼ NE¼, SE¼; E½ SE¼ Section 2; W½ SW¼, SE¼ SW¼ Section 4; Sections 5–8; W½, W½ SE¼, SW¼ NE¼ Section 9; NE¼ NE¼ Section 11; NW¼, E½ Section 12; E½ NE¼, NW¼ NE¼, S½ SW¼ Section 13; SW¼, SW¼ NW¼, SE¼ SE¼ Section 14; SW¼ SW¼, E½ SW¼, E½ NW¼, E½ Section 15; S½ S½ Section 16; Sections 17–22; E½, SE¼ SW¼, NW¼ NW¼ Section 23; Section 24 except NE¼ NE¼, SW¼ SE¼; SW¼ Section 25; Section 26 except NE¼; Sections 27–34; E½, N½ NW¼, SE¼ NW¼, NE¼ SW¼ Section 35; NE¼ NW¼ Section 36.

T.15S., R.11W. Willamette Meridian: Section 1; N½ N½, SE¼ NE¼, SW¼ SW¼, SE¼ SE¼ Section 2; E½ SE¼, SW¼ SE¼, S½ SW¼ Sectio.. 3; Section 4 except N½ NW¼; NW¼ SW¼, SW¼ NW¼ Section 5; SW¼, W½ NW¼, SE¼ NW¼, S½ NE¼, SE¼ Section 6; W½ Section 7; NE¼, S½ NW¼, NE¼ SW¼, N½ SE¼, NE¼ NW¼ Section 8; Section 9 except SW¼ SW¼, NW¼ NE¼, NE¼ NW¼; Section 10–11; Section 12 except SE¼ SW¼; Section 13 except N½ NW¼, SE¼ NW¼; Section 14; Section 15 except SW¼; NE¼ NE¼ Section 16; E½ SE¼ Section 21; E½ E½, W½ SE¼, SW¼ Section 22; Sections 23–27; Section 28 except N½ N½; S½, SE¼ NE¼ Section 29; S½, S½ NW¼, SW¼ NE¼ Section 30; Section 31 except N½ NW¼, NW¼ NE¼, SE¼ NE¼; Section 32 except S½ N½, NE¼ SE¼; Section 33 except S½ SE¼; Section 34 except S½ S½, NE¼ SE¼, SE¼ NE¼; Section 35 except SW¼ NW¼, NW¼ NE¼, NW¼ SW¼, S½ SW¼; Section 36.

T.15S., R.12W. Willamette Meridian: Section 1 except NW¼; Section 2; E½, E½ NW¼ Section 3; N½ NE¼, SE¼ NE¼, NE¼ NW¼ Section 10; Section 11 except SE¼ SE¼; Section 12 except S½ S½; SE¼ Section 22; Section 25 except NE¼ NE¼; S½, NE¼, S½ NW¼ Section 26; E½ E½ Section 27; E½ Section 34; Section 35; Section 36 except N½ N½.

T.16S., R.09W. Willamette Meridian: Section 1 except N½ S½, SE¼ SE¼; Section 2 except E½ SE¼; Sections 3–5; Section 6 except N½ N½, SW¼ NE¼; Section 7 except E½ NE¼; Sections 8–15; Section 16 except SE¼; Section 17; Section 18 except SW¼ SW¼; Section 19; NW¼ NW¼, NW¼ SW¼, N½ NE¼ Section 20; Section 21 except SW¼ SW¼; Sections 22–24; N½ NW¼, NW¼ SW¼, W½ NE¼, SW¼ NW¼ Section 25; Section 26 except S½ SE¼; Sections 27–28; Section 29 except N½ NW¼, NW¼ NE¼; Section 30; W¼ Section 31; Sections 32–34; Section 35 except NE¼, S½ SW¼, E½ NW¼.

T.16S., R.10W. Willamette Meridian: SE¼, S½ NE¼ Section 1; SW¼ SE¼, SW¼ Section 2; Section 3 except E½ NE¼, NE¼ SE¼, NW¼ SW¼; SW¼, NW¼ NW¼, S½ SE¼, NE¼ NE¼ Section 4; Section 5 except SE¼ NE¼; Sections 6–9; Section 10 except SE¼ NE¼, SW¼ SW¼; N½, NW¼ SE¼, NE¼ SE¼, SW¼ SW¼ Section 11; Section 12 except SW¼ NE¼, NW¼; Section 13 except S½ SE¼, SE¼ SW¼; Section 14; Section 15 except W½ W½, SE¼ SW¼, NE¼ NW¼; Section 16 except N½ NE¼, S½ SE¼; Section 17–21; Section 22 except W½ E½, NE¼ NE¼; Section 23; Section 24 except NW¼ NE¼, E½ NW¼, NE¼ SW¼; N½ NW¼, NE¼ NE¼, E½ SE¼, W½ SW¼ Section 25; Section 26 except S½ SW¼, NW¼ SW¼; Section 27 except S½ NE¼, E½ SE¼, NW¼ SE¼; Section 28; Section 29 except SW¼ SE¼, SE¼ SW¼; Section 30 except NW¼ SE¼, NE¼ SW¼; Section 31; Section 32 except N½ N½; Section 33 except W½ NW¼, SE¼ NW¼, E½ NE¼, SW¼ NE¼; NW¼ NE¼, NW¼, W½ SW¼ Section 34; NE1/4 Section 35.

T.16S., R.11W. Willamette Meridian: E½, E½ NW¼ Section 1; Section 2 except SW¼ NW¼; W½ Section 3; Section 4–6; N½ N½, S½ NE¼ Section 8; N½ Section 9; Section 10 except SE¼ SE¼; Section 11 except S½ SW¼, SW¼ SE¼; Section 12 except NE¼ NW¼; Section 13; Section 14 except N½ NW¼; S½ NE¼, SE¼ Section 15; Section 19 except N½ N½, SE¼ NE¼, NE¼ SE¼; S½ SW¼, NE¼ SE¼, W½ SE¼ Section 20; S½ SE¼, SW¼ Section 21; Section 22 except NW¼ NW¼; Sections 23–27; Section 28 except NW¼ NW¼; Section 29 except NE¼ NE¼; Sections 30–36.

T.16S., R.12W. Willamette Meridian: Sections 1 except S½ S½; Section 2; E½ Section 3; NE¼, N½ SE¼, SW¼ SE¼, E½ SW¼ Section 10; N½ Section 11; S½ S½ Section 14; W½, SE¼ SE¼ Section 15; N½ NE¼ Section 22; Section 23 except N½ NE¼; Sections 24–26; Sections 35–36.

T.17S., R.08W. Willamette Meridian: N½ SE¼ Section 18.

T.17S., R.09W. Willamette Meridian: Section 1 except E½ SE¼, SW¼ SE¼; Section 2 except E½ W½, S½ NE¼; Section 3 except S½ SE¼, NE¼ SE¼, SE¼ NE¼; Section 4 except S½ SW¼, SW¼ SE¼; Section 5; Section 6 except NW¼; Section 7; Section 8; W½ Section 9; N½ NW¼, NW¼ NE¼ Section 10; W½ NE¼, E½ NW¼, NE¼ NE¼, S½ SW¼ Section 11; SE¼ SE¼ Section 14; W½ W½ Section 16; Section 17 except W½ SE¼, SE¼ SW¼; Sections 18–19; Section 20 except E½ E½, NW¼ NE¼; NW¼ NW¼ Section 21; S½ SW¼ Section 25; S½ SE¼ Section 26; W½ NW¼ Section 28; N½ Section 29; N½ N½, W½ SW¼, SW¼ NW¼, SE¼ SW¼ Section 30; Section 31 except S½ NE¼, NE¼ SE¼; E½ NE¼, NW¼ NE¼, S½ SE¼, SW¼ NW¼ Section 32; S½ SE¼ Section 33; S½ S½, N½ SE¼ Section 34; S½ SE¼, SE¼ SW¼ Section 35.

T.17S., R.10W. Willamette Meridian: SE¼ SE¼ Section 1; Section 3 except E½, NE¼ NW¼; Section 4; Section 5 except SW¼ NW¼; Section 6 except S½ NE¼, NW¼ SE¼; Section 7–9; N½, NW¼ SE¼, W½ SW¼ Section 10; SW¼ NW¼ Section 11; E½ E½, NE¼ NW¼, NW¼ NE¼, SW¼ SE¼, S½ SW¼ Section 12; Section 13; S½, SE¼ NE¼, SW¼ NW¼ Section 14; SE¼, NW¼ NW¼, SE¼ NE¼ Section 15; Section 16 except W½ NE¼, NE¼ SE¼; Sections 17–18; Section 19 except SW¼ NW¼, SW¼ SE¼, S½ SW¼; Section 20–21; Section 22 except N½ NW¼; Section 23 except N½ SW¼, S½ SE¼; NW¼, N½ NE¼, N½ SW¼ Section 24; Section 25 except N½ NE¼; Section 26; Section 27 except SW¼ SW¼, SW¼ NW¼, NE¼ NW¼; Section 28 except SE¼ SE¼; Section 29 except S½ SW¼; Sections 30–31; Section 32 except N½ NW¼, NE¼ NW¼ ; Section 33 except NE¼ NE¼; NE¼, SW¼, SW¼ NW¼, SW¼ SE¼, NE¼ SE¼, NE¼ NW¼ Section 34; Section 35 except SW¼ SW¼, SW¼ SE¼.

T.17S., R.11W. Willamette Meridian: Section 1 except SE¼ SW¼, S½ SE¼; Section 2; S½, E½ NE¼, NW¼ NW¼, S½ NW¼ Section 3; Sections 4–5; Section 6 except S½ SE¼; S½ NE¼, S½, NE¼ NW¼, S½ NW¼ Section 7; Sections 8–9; NW¼, NW¼ SW¼ Section 10; Section 11 except SE¼ NW¼, W½ NW¼, SW¼; Section 12; SE¼ NE¼, N½ N½ Section 13; NE¼ NE¼, SW¼ SE¼, E½ SW¼ Section 14; Section 16 except E½ E½; W½, S½ SE¼, NW¼ SE¼ Section 17; Section 18; Section 19 except NW¼ NW¼, SW¼ SW¼; Section 20; W½, SW¼ NE¼, NW¼ SE¼ Section 21; E½ NE¼ Section 22; NW¼, W½ NE¼, N½ S½ Section 23; SE¼ SE¼ Section 24; Section 25 except N½ NW¼; E½ SE¼ Section 26; W½ Section 28; Section 29; S½ NW¼, NE¼, N½ SE¼, E½ SW¼, NE¼ NW¼ Section 30; Section 31 except NW¼, NW¼ NE¼, NW¼ SW¼; Section 32; W½ Section 33; SE¼, SE¼ NE¼ Section 34; Section 35 except N½ NW¼, NW¼ NE¼; Section 36.

T.17S., R.12W. Willamette Meridian: Section 1; Section 2 except W½ NW¼; SE¼, NE¼ SW¼ Section 3; NE¼, NE¼ SE¼ Section 10; N½ Section 11; Section 12 except S½ SW¼, NW¼ SW¼; E½ Section 13; E½ NE¼, E½ SE¼, NW¼ SE¼ Section 24.

T.18S., R.09W. Willamette Meridian: W½ NE¼, E½ NW¼, NW¼ NW¼ Section 1; Section 2 except S½ SE¼, NE¼ SE¼, SE¼ NE¼; Section 3; Section 4 except W½ SW¼; N½ NE¼ Section 5; N½ NE¼, NE¼ SE¼, SE¼ NE¼ Section 7; Section 8 except S½ S½, N½ NW¼; N½ N½, SW¼ NE¼ Section 9; E½ NE¼, SW¼ NE¼ Section 10; NE¼ NW¼ Section 11.

T.18S., R.10W. Willamette Meridian: N½ NE¼, SW¼ NE¼, NE¼ NW¼ Section 4; N½ NE¼, NW¼, W½ SW¼ Section 5; Section 6; N½ NE¼ Section 7; NW¼ NW¼ Section 8.

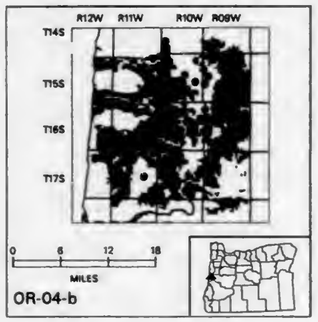
T.18S., R.11W. Willamette Meridian: Section 1 except SW¼ SW¼, SE¼ SE¼; N½, NW¼ SE¼ Section 2; NE¼, N½ SE¾, SE¼ SE¼ Section 3; NW¼ NW¼ Section 4; W½ NW¼, NE¼ NE¼, NE¼ NW¼ Section 5; Section 6 except SW¼ SW¼.

Critical Habitat includes only State lands described within the following areas:

T.17., R.08W. Willamette Meridian: S½ SE¼, NE¼ SE¼ Section 18; NE¼, NW¼ SE¼ Section 19.

T.17., R.09W. Willamette Meridian: N½ SW¼, SW¼ NE¼, S½ NW¼ Section 25; SE¼ NE¼, N½ SE¼ Section 26; Section 32 except N½ S½, E½ NE¼, SW¼ NW¼; S½ NW¼, NE¼ NW¼, NW¼ NE¼, NE¼ SW¼, S½ SW¼ Section 33.

T.18S., R.09W. Willamette Meridian: W½ SW¼ Section 4; SE¼, S½ NE¼, N½ NW¼ Section 5; N½ SE¼, SE¼ NE¼ Section 9.



Map and description of OR–04–c taken from United States Fish and Wildlife Service 1:100,000 map; Reedsport, Eugene and Cottage Grove, Oregon; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.18S., R.09W. Willamette Meridian: SE¼ Section 23; Section 25; S½ SW¼, NW¼ SW¼, SW¼ SE¼ Section 26; Section 27 except N½, NW¼ SW¼; S½ SE¼ Section 28; S½ Section 32; Section 33 except NW¼ NW¼; Sections 34–36.

T.18S., R.10W. Willamette Meridian: SE¼ SE¼ Section 8; Section 9 except NE¼ SE¼, N½; NW¼ NW¼ Section 10; Section 15 except N1/2 NE¼, SE¼ NE¼; SW¼ SW¼ Section 16; Section 17 except NE1/4 NE¼; Section 18; Sections 19–20; E½ NE¼, SW¼ NW¼ Section 21; Section 22 except E½ NE¼, NW¼ NE¼, NE¼ SE¼; Section 23 except NE¼, N½ NW¼, NW¼ SE¼; Section 25; Section 26; Section 27 except SE¼ SW¼, N½ SW¼; W½ W½, E½ E½ Section 28; Section 29–32; Section 33 except E½ W½, NW¼ SW¼, SW¼ SE¼; Section 34 except SW¼, NE¼ NW¼, S½ NW¼, NW¼ SE¼; Section 35 except NE¼ NW¼.

T.18S., R.11W. Willamette Meridian: S½ S½ Section 11; S½ S½ Section 12; Section 13; Section 14 except NW¼ NW¼; Section 22 except N½ NW¼, SW¼ SW¼; Sections 23–26; E½, E½ NW¼ Section 27; S½ SW¼, W½ SE¼ Section 28; SE¼, NE¼ NE¼, S½ NE¼ Section 29; NE¼ NE¼ Section 32; Section 33–36.

T.19S., R.09W. Willamette Meridian: Sections 1–2; Section 3 except S½ SW¼, NW¼ SW¼; Section 4; Section 5 except NE¼ SW¼; Section 6 except N½ NW¼, E½ SE¼, S½ SW¼; Section 7 except N½ NE¼, SE¼ NE¼, W½ SW¼; Sections 8–9; E½ Section 11; E½ NW¼, NE¼ Section 12; Section 13; Section 15; Section 17; Section 18 except W½ SW¼; Sections 19–23; Section 24 except S½ SE¼, NE¼ SE¼, SE¼ NE¼; Section 25; N1/2 N1/2, SW¼ NW¼, W½ SW¼, S½ SE¼ Section 26; Sections 27–33; N½ NE¼, W½ W½ Section 34; Section 35; Section 36 except E½ NW¼, W½ NE¼, NE¼ SW¼.

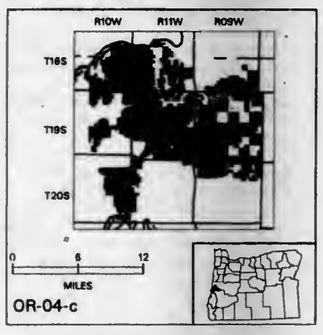
T.19S., R.10W. Willamette Meridian: Section 1; Section 2 except W½ SE¼, SE¼ NE¼; Section 3; Section 4 except S½ SE¼; Sections 5–8; Section 9 except E½ NE¼; Section 10 except N½ N½, SW¼ NW¼, SE¼ NE¼; Section 11 except N½ N½, SW¼ NW¼; Section 12 except E½ SE¼; Section 13 except S½ SE¼, NE¼ SE¼; Sections 14–23; Section 24 except N½ NE¼, NE¼ NW¼; Sections 25–26; Section 27 except SE¼ SE¼; Section 28; Section 29 except W½ SW¼; N½ Section 30; E½ SE¼ Section 31; Section 32 except S½ SE¼, SE¼ SW¼; Section 33–36.

T.19S., R.11W. Willamette Meridian: Section 1; N½ N½, W½ SW¼, SW¼ NW¼ Section 2; Section 3 except SW¼ SW¼; Section 4; Section 9 except E½ NE¼, S½ SW¼, NW¼ SW¼, SE¼, SE¼ SE¼; Section 10 except S½, W½ NW¼; Section 12 except N½ SW¼, SW¼ SW¼; Section 13; E½ SE¼, SW¼ SE¼ Section 14; SW¼ SE¼, SW¼ Section 15; SE¼ SE¼ Section 16; Section 21 except N½ NW¼; Section 22 except E½ NE¼; Section 23 except S1/2 SW¼; Section 24; NE¼, N½ NW¼ Section 25; NE¼ NE¼ Section 26; N½, W½ SW¼ Section 27; Section 28 except NE¼ SW¼; N½ NE¼, SE¼ NW¼, SW¼ NE¼, NW¼ SE¼, NE¼ SW¼ Section 33.

T.20S., R.09W. Willamette Meridian: Section 1 except SE¼ SW¼; Section 2 except SW¼ SW¼; Section 3 except S½ SE¼; Sections 4–6; Section 7 except W½ W½; Section 8; Section 9 except SE¼ SE¼; SE¼, S½ NW¼ Section 10; Section 11 except NW¼ NW¼; Section 12 except NE¼ NW¼, NW¼ SW¼; N½ NW¼, NW¼ NE¼ Section 13; NE¼ NW¼, N½ NE¼ Section 14.

T.20S., R.10W. Willamette Meridian: N½ Section 1; N½ NW¼ Section 5; Section 6 except NW¼ NW¼; W½, N½ NE¼, NW¼ SE¼, S½ SE¼ Section 7; Section 18 except SE¼ SW¼, E½ SE¼; SW¼, NW¼ SE¼, W½ NW¼, SE¼ NW¼; SW¼ NE¼ Section 19; W½ Section 30.

T.20S., R.11W. Willamette Meridian: Section 10 except S½ SW¼, NW¼ SW¼; Sections 11–14; E½ Section 15; NE¼ Section 22; Section 23 except SW¼; Section 24–25; NE¼, E½ SE¼ Section 26; N½ SE¼, S½ NE¼ Section 35; NW¼, N½ NW¼, N½ NE¼ Section 36.



Map and description of OR–04–d taken from United States Fish and Wildlife Service 1:100,000 map; Reedsport and Cottage Grove, Oregon; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.20S., R.10W. Willamette Meridian: S½ Section 11; W½ SW¼ Section 12; NW¼ SW¼ Section 13; NE¼, N½ SE¼, N½ NW¼ Section 14; SE¼ SE¼ Section 22; W½, S½ SE¼, NW¼ SE¼, W½ NE¼ Section 23; SW¼ NW¼ Section 25; Section 26; Section 27 except W½ W½, E½ SW¼; NE¼ Section 34; Section 35.

T.21S., R.09W. Willamette Meridian: S½ SW¼, NE¼ SW¼ Section 2; Section 3 except NW¼ NE¼; E½ E½, NE¼ SW¼, SW¼ SW¼ Section 5; SE¼, SW¼ NE¼, E½ SW¼, SE¼ NW¼ Section 6; Sections 7–8; Section 9 except S½ NE¼; SW¼, SE¼ NW¼ Section 10; Section 11; Section 14 except E½ E½; Section 15; Sections 17–19; NW¼ Section 20; Section 21; W½ NE¼ Section 22; Section 23; Section 29; Sections 31–33.

T.21S., R.10W. Willamette Meridian: Section 2–3; NE¼ NE¼ Section 4; SW¼, S½ SE¼, S½ NW¼ Section 6; Section 7; Section 8 except NE¼; W½ SW¼ Section 9; N½ E½ Section 10; Sections 11–14; Section 15 except W½ NW¼; NW¼ NW¼ Section 16; Sections 17–21; Section 22 except NW¼; Sections 23–35.

T.21S., R.11W. Willamette Meridian: SE¼ SE¼ Section 1; E½ NE¼ Section 12; S½ NE¼, S½ SW¼, NW¼, S½ SE¼, NE¼ SE¼ Section 23; Sections 24–25; Section 26 except N½ NW¼; Section 27 except N½ N½; Section 28 except N½ N½, N½ SW¼; NW¼, N½ NE¼, SW¼ NE¼ Section 33; N½, N½ SE¼ Section 34; Section 35 except S½ NW¼, SW¼, S½ SE¼; Section 36 except SW¼ SW¼.

T.22S., R.09W. Willamette Meridian: NE¼ NE¼, N½ NW¼, SW¼ NW¼, SW¼ Section 4; Section 5 except SW¼, S½ NW¼; Section 6 except SE¼, S½ NE ¼; Section 7 except E½ SE¼; Section 9 W½ SW¼; NW¼ SW¼, NW¼ NW¼ Section 17.

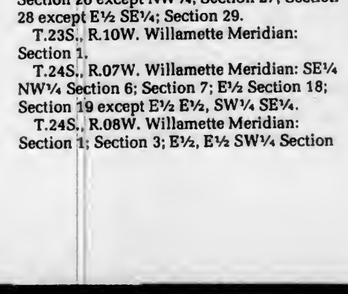
T.22S., R.10W. Willamette Meridian: Sections 1–5; E½ Section 6; Section 8 except W½ W½; Sections 9–12; N½ Section 13; N½ N½, SE¼ NE¼, SW¼ NW¼, NE¼ SE¼ Section 14; NW¼, W½ NE¼, NW¼ SW¼ Section 15; NE¼ Section 17.

T.22S., R.11W. Willamette Meridian: NE¼ Section 1.

Description of Lands Using Protracted Public Land Survey Lines

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.22S., R.11W. Willamette Meridian: SE¼ NE¼ Section 1.



Map and description of OR–04–e taken from United States Fish and Wildlife Service 1:100,000 map; Cottage Grove and Roseburg, Oregon; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.23S., R.08W. Willamette Meridian: Section 3 except NW¼ NW¼; Section 5; S½, SE¼ NE¼, SW¼ NW¼ Section 6; Section 7; Section 9; NW¼, S½ S½, NW¼ SW¼ Section 11; Section 13 except N½ NE¼; Section 14 except N½ NE¼, NE¼ NW¼, W½ SW¼, SE¼ SW¼, S½ SE¼; Section 15; Section 17–19; Section 20 except N½ NE¼, SE¼ NE¼, NE¼ SE¼; Section 21; Section 23 except S½ NE¼, SW¼ NW¼; Section 27; Section 28 except N½ NE¼, SE¼ NE¼, NE¼ NW¼; Sections 29–33; Section 35 except E½ NE¼.

T.23S., R.09W. Willamette Meridian: Section 3 except NE¼; Sections 7–8; Section 13 except NE¼ SW¼, NW¼ SE¼; Sections 14–17; Section 20 except S½ N½; Sections 21–22; N½ Section 23; Sections 24–25; Section 26 except NW¼; Section 27; Section 28 except E½ SE¼; Section 29.

T.23S., R.10W. Willamette Meridian: Section 1.

T.24S., R.07W. Willamette Meridian: SE¼ NW¼ Section 6; Section 7; E½ Section 18; Section 19 except E½ E½, SW¼ SE¼.

T.24S., R.08W. Willamette Meridian: Section 1; Section 3; E½, E½ SW¼ Section 9; Sections 10–11; Section 13; Section 15; SW¼ SW¼, NW¼ NW¼ Section 17; Section 20 except NW¼; Section 21; SE¼ Section 22; Section 23; Section 25; Sections 27–29; Section 33; Section 35.

T.25S., R.07W. Willamette Meridian: S½ S½, NW¼ SE¼ Section 6; S½ S½ Section 7; S½ SW¼ Section 9; NW¼ NW¼ Section 15; Section 17; Section 18 except W½ W½; Section 19; NE¼ NW¼ Section 20; S½ S½, NW¼ SE¼ NE¼ SW¼ Section 21; Section 27 except NE¼ NE¼, E½ SE¼; SW¼ Section 28; SE¼, S½ NE¼, NE¼ NE¼, E½ SW¼ Section 29; NW¼ NW¼ Section 30; E½, E½ SW¼ Section 31; W½ Section 32; W½, W½ NE¼, NE¼ NE¼, NW¼ SE¼ Section 33; NW¼ NW¼ Section 34.

T.25S., R.08W. Willamette Meridian: Section 1; Sections 3–4; E½ E½ Section 5; Section 8 except W½; Section 9; N½ NE¼, NE¼ NW¼, NW¼ SW¼ Section 10; Section 11; NE¼ NE¼ Section 12; Section 13; S½ SW¼, NE¼ NW¼ Section 14; N½ N½, SW¼, SW¼ NW¼, SE¼ SE¼ Section 15; Section 20; Section 23; Section 24 except SE¼, W½ NW¼; Section 25; Section 30 except SW¼, W½ NW¼; Section 32 except SE¼.

T.26S., R.07W. Willamette Meridian: Section 5; Section 6 except NW¼; Section 7 except NW¼ SW¼, SW¼ NW¼; N½ NE¼, SE¼ NE¼, E½ SE¼, N½ SW¼, NW¼ NW¼ Section 8; Section 9 except N½ NW¼.

T.26S., R.08W. Willamette Meridian: W½, E½ SE¼, SE¼ NE¼ Section 1; NW¼ SE¼, SE¼ NW¼ Section 12.

Map and description of OR–04–f taken from United States Fish and Wildlife Service 1:100,000 map; Cottage Grove and Roseburg, Oregon; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

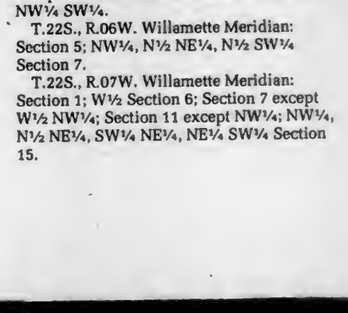
T.22S., R.06W. Willamette Meridian: S½, S½ NE¼ Section 17; Section 19; Section 21; Section 29; Section 30 except W½ NW¼, SE¼ NW¼, NW¼ SW¼; Section 31; NW¼ NE¼, NE¼ NW¼ Section 32.

T.23S., R.06W. Willamette Meridian: W½ W½ Section 4; Section 5; N½ NE¼, NE¼ NW¼ Section 8; NW¼ NW¼ Section 9; Section 19; Section 31; W½ NW¼, NW¼ SW¼ Section 32.

T.23S., R.07W. Willamette Meridian: N½ NW¼, S½ NE¼, N½ SW¼, NW¼ SE¼ Section 3; NE¼ NE¼ Section 4; SE¼ SE¼ Section 14; E½ NW¼, S½ NE¼, NE¼ SE¼ Section 15; Section 23 except N½ NW¼, SE¼ NW¼, W½ NE¼, SW¼ SW¼; Section 25; S½ S½ Section 27; S½ S½ Section 33.

T.24S., R.07W. Willamette Meridian: N½ NW¼ Section 2; S½ SW¼, NW¼ SW¼, SW¼ SE¼, SE¼ NE¼ Section 3; Section 11 except NE¼, NE¼ NW¼; N½ N½, W½ SW¼, SW¼ NW¼ Section 15; E½ SE¼, SE¼ NE¼, SW¼ SW¼ Section 21; Section 23; Section 25; Section 27 except SW¼, S½ NW¼; SE¼ SW¼, NW¼ SW¼, SW¼ NW¼ Section 28; Section 35.

T.25S., R.07W. Willamette Meridian: Section 1; NE¼ Section 2; Section 3; Section 11 except N½ NW¼; NW¼ SW¼ Section 12.



Map and description of OR–04–g taken from United States Fish and Wildlife Service 1:100,000 map; Cottage Grove, Oregon; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.21S., R.06W. Willamette Meridian: Section 31.

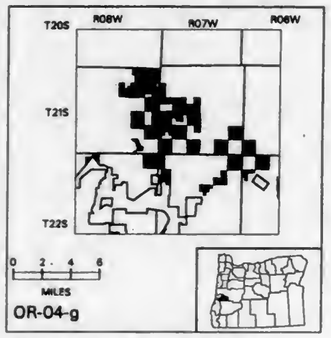
T.21S., R.07W. Willamette Meridian: W½ Section 7; Section 16 except NW¼; Section 17; N½ Section 18; Section 19; NW¼, N½ NE¼, SW¼ NE¼, NE¼ SW¼, NW¼ SE¼ Section 20; Section 21; Section 25; NE¼ Section 28; Section 29; N½, N½ SW¼, SW¼ SW¼, NE¼ SE¼ Section 30; Section 31; Section 33; Section 35.

T.21S., R.08W. Willamette Meridian: Section 1; Section 2 except W½ SW¼; Section 10 except N½ NE¼; Section 11; Section 12 except S½ SW¼, NE¼ NE¼; Section 13; Section 23; E½ Section 24; Section 25; N½ N½ Section 26; Section 35 except SW¼ NW¼, E½ NE¼, SE¼ SE¼, NW¼ SW¼.

T.22S., R.06W. Willamette Meridian: Section 5; NW¼, N½ NE¼, N½ SW¼ Section 7.

T.22S., R.07W. Willamette Meridian: Section 1; W½ Section 6; Section 7 except W½ NW¼; Section 11 except NW¼; NW¼, N½ NE¼, SW¼ NE¼, NE¼ SW¼ Section 15.

T.22S., R.08W. Willamette Meridian: Section 1; NE¼, S½ NW¼, N½ SW¼, SW¼ SW¼ Section 5; NE¼ SE¼ Section 12.



Map and description of OR–04–i taken from United States Fish and Wildlife Service 1:100,000 map; Eugene and Cottage Grove, Oregon; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.17S., R.06W. Willamette Meridian: SE¼ SE¼ Section 35; SW¼ SW¼ Section 36.

T.17S., R.07W. Willamette Meridian: Section 11; S½, SW¼ NW¼ Section 13; Section 15; NW¼, S½ S½, NW¼ NE¼ Section 19; SE¼ Section 25; Section 29 except E½ W½, W½ NE¼.

T.17S., R.08W. Willamette Meridian: Section 13 except N½ NW¼; Section 17 except SW¼, NE1/ 4 NE¼, NW¼ NW¼; Section 21; S½ SW¼, NW¼ NW¼ Section 22; Section 23; Section 25; Section 27; NE¼ SW¼ Section 28; E½ E½ Section 33; Section 35.

T.18S., R.06W. Willamette Meridian: Section 5 except SW¼ SW¼; SE¼ Section 11; Section 19; Section 21 except E½ SE¼, SE¼ NE¼; SW¼ Section 23; Section 27 except S½ NE¼; Section 31; NE¼, W½ SE¼, E½ SW¼ Section 35.

T.18S., R.07W. Willamette Meridian: Section 1; N½ Section 7; Section 17 except SE¼ SW¼, NW¼ SW¼; Section 19; Section 21; Section 25; Section 27; Section 29; Section 31; Section 33 except NE¼ SW¼, NW¼ SE¼; Section 35.

T.18S., R.08W. Willamette Meridian: E½ NW¼, NW¼ NE¼ Section 1; E½ NE¼ Section 2; Section 3; Section 4 except NE¼, NW¼ NW¼, N½ SE¼, SE¼ SE¼; Section 9; Section 11 except E½ SE¼, SW¼ SE¼, SE¼ SW¼; Section 13 except N½ NE¼, E½ NW¼, W½ SW¼; N½ N½, S½ SW¼, NE¼ SE¼, SE¼ NE¼, SW¼ NW¼ Section 15; Section 19; Section 21 except E½ NW¼, NW¼ SE¼; S½, SE¼ NE¼, SW¼ NW¼ Section 23; Section 25; Section 27; SE¼ Section 28; Section 29 except E½ NE¼; Section 31; NW¼ NE¼ Section 32; Section 33 except NE¼; Section 35 except S½ SW¼, SW¼ SE¼.

T.19S., R.06W. Willamette Meridian: Section 1 except N½ NW¼, SW¼ NW¼; Section 3; Section 5; Section 7 except N½ NE¼; NW¼ SW¼, W½ NW¼ Section 8; E½, S½ SW¼, SE¼ NW¼ Section 15; Section 17 except NE¼ NE¼, SW¼ NW¼; Section 19 except SE¼ SE¼; E½ NW¼, SW¼ NE¼ Section 20; Section 21; Section 23; Section 25; Section 27; Section 29; Section 31; Section 33; SE¼ NE¼ Section 34; Section 35.

T.19S., R.07W. Willamette Meridian: Section 1 except S½ SE¼, SE¼ SW¼; Section 3 except SW¼ SE¼, SW¼ SW¼; S½, E½ NE¼, NW¼ NW¼ Section 5; Section 7; Section 9 except N½ NW¼, SW¼ NW¼; Section 11 except N½ N½, SE¼ NW¼, SW¼ NE¼; Section 13; Section 15; Section 17; Section 19 except N½ SW¼; Section 21; Section 23; N½ NE¼, S½ SE¼ Section 25; Section 27; Section 29; S½, W½ NW¼ Section 30; Section 31; W½ NW¼ Section 32; Section 33; Section 35 except NW¼ NE¼.

T.19S., R.08W. Willamette Meridian: Section 1; Section 5; N½ NW¼ Section 6; Section 7; SW¼, W½ SE¼ Section 8; W½ Section 9; NE¼, E½ NW¼, NW¼ NW¼, NE¼ SE¼ Section 13; Section 17; N½ S½, SE¼ NE¼, NW¼ NW¼ Section 18; Section 19; Section 21; SE¼ SE¼ Section 22; Section 23; SE¼ SE¼ Section 24; Section 25; NW¼ Section 26; Section 27; SE¼ SE¼ Section 28; Section 29; SE¼, SW¼ SW¼ Section 30; Section 31; W½ W½ Section 32; Section 33; Section 35.

T.20S., R.06W. Willamette Meridian: Section 1 except S½ SW¼; Section 3 except E½ SW¼, SW¼ SW¼; SE¼ NE¼ Section 4; Section 5; S½ S½ Section 6; Section 7; Section 9; Section 11 except W½ NW¼, NW¼ SW¼, SE¼ NE¼; Section 13; Section 15; Section 17; W½ W½, E½ SE¼ Section 18; Section 19; Section 21; Section 23; N½ SE¼, SW¼ SE¼ Section 26; Section 27; Section 29; Section 31; E½ NE¼ Section 32; SE¼, NW¼, NW¼ NE¼, S½ NE¼, SE¼ SW¼ Section 33; Section 35 except S½ SW¼.

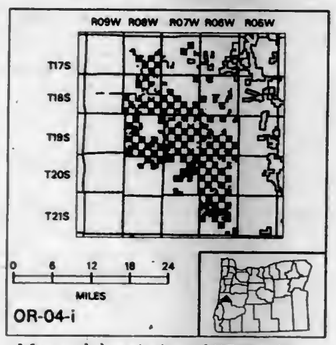
T.20S., R.07W. Willamette Meridian: Section 1; E½ E½ Section 2; Section 3 except NE¼ NW¼; Section 5; Section 6 except N½ N½; N½ N½ Section 7; Section 11; Section 12 except E½ E½, NW¼ SE¼, SW¼ NE¼; Section 13–15; Section 21; Section 22 except SE¼, SE¼ NE¼; Section 23 except W½ SW¼, SW¼ NW¼; Section 33 except E½ NE¼; SW¼ Section 34.

T.20S. R.08W. Willamette Meridian: Section 1; SW¼ Section 2; Section 3; SE¼ SE¼ Section 4; N½ NE¼ Section 6; E½ E½ Section 8; Section 9; Section 11; W½ W½ Section 12.

T.21S., R.06W. Willamette Meridian: Section 3; Section 5; W½ SW¼, SW¼ NW¼, SE¼ SW¼ Section 6; Section 7; Section 8 except SE¼; Section 9; Section 11; Section 14 except NE¼; Sections 15–17; Section 18 except NW¼ NW¼, S½ NW¼, NE¼, NW¼ SE¼, E½ SW¼, SW¼ SW¼; Section 19; NW¼ NE¼ Section 20; Section 21; S½ NE¼, N½ SE¼ Section 22; Section 23; Section 27.

Critical Habitat includes only State lands described within the following areas:

T.17S., R.08W. Willamette Meridian: SE¼ NW¼ Section 28.



Map and description of OR–04–j objective taken from United States Fish and Wildlife Service 1:100,000 map; Eugene, Oregon; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.13S., R.06W. Willamette Meridian: S½ Section 31.

T.14S., R.06W. Willamette Meridian: NW¼, W½ SW¼ Section 6; Section 7; W½ W½ Section 18; W½ W½ Section 19; W½ W½ Section 30; Section 31.

T.14S., R.07W. Willamette Meridian: Section 1; Section 9; Section 11 except E½ SE¼; Section 12 except S½ SW¼; Section 13 except SW¼, SW¼ SE¼; SE¼ SW¼ Section 14; Section 17; Section 19; Section 20 except NW¼ NW¼, E½ NW¼, NE¼, E½ SE¼; Section 21 except W½ NW¼, NE¼ NW¼; Section 23 except SW¼ SE¼; S½ SE¼, NE¼ SE¼, SE¼ NE¼ Section 24; Section 25; Section 26 except N½ N½, SE¼ SW¼; Section 27; S½ Section 28; Sections 29–34.

T.14S., R.08W. Willamette Meridian: Section 19 except N½ N½, SW¼ NE¼, NW¼ SE¼; E½ SE¼ Section 20; S½ SE¼, SW¼ Section 21; S½ SW¼, W½ SE¼ Section 22; S½ SW¼ Section 23; E½ SE¼, NE¼ Section 25; NW¼ Section 26; Section 27; E½ SW¼ Section 28; Section 29 except N½ N½; Section 30 except N½ NE¼, SE¼ NE¼, SE¼, NE¼ NW¼; Section 31 except N½ S½; Section 32; Section 33 except S½ S½; NW¼, N½ NE¼, NW¼ SW¼ Section 34.

T.15S., R.06W. Willamette Meridian: Section 29; Section 31; Section 33 except NE¼, E½ SE¼, SW¼ NW¼; SE¼ SE¼ Section 34; SW¼ SW¼ Section 35.

T.15S., R.07W. Willamette Meridian: Section 3 except SW¼ SW¼; Section 4 except E½ NE¼, N½ SE¼; Sections 5–6; Section 7 except S½ SW¼, N½ SE¼; NW¼ NE¼ Section 8; Sections 18–21; Section 25 except SE¼ NE¼; Section 27; Section 29; Section 31; Section 33 except NE¼; SE¼ NW¼, SE¼ NE¼, NE¼ SE¼, SW¼ SE¼ Section 35.

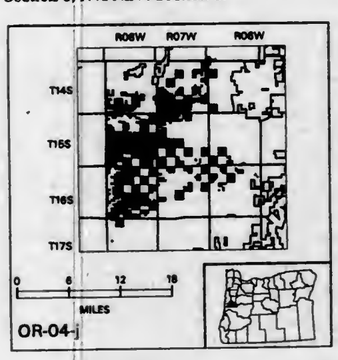
T.15S., R.08W. Willamette Meridian: Section 1; S½, NE¼ NE¼ Section 2; S½ SE¼ Section 3; SW¼ SW¼ Section 4; Section 5 except S½ NE¼, SE¼ NW¼, SW¼, N½ SE¼; Section 6 except SE¼ NW¼, SW¼ NE¼, SE¼; Section 7 except N½ N½, SE¼ NE¼, SW¼ NW¼, S½ SW¼, SW¼ NE¼, SE¼; Section 9 except E½ E½, SW¼ SE¼; Section 11; Sections 13–14; Section 15 except NW¼ NW¼; Sections 16–20; Section 21 except SW¼ NW¼; Sections 22–27; N½ Section 28; Sections 29–31; N½, W½ SW¼ Section 32; Section 33; Section 35; W½ Section 36.

T.16S., R.06W. Willamette Meridian: SE¼, E½ SW¼, NW¼ SW¼, SW¼ NW¼ Section 3; Section 5 except S½ SW¼, NW¼ SW¼, SW¼ NW¼; Section 7 except S½ SE¼, NE¼ SE¼; Section 9; SW¼ NE¼, NE¼ NW¼ Section 12; NW¼, N½ NE¼, W½ SE¼, SW¼ SW¼ Section 17; S½ S½ Section 33.

T.16S., R.07W. Willamette Meridian: Section 1; Section 3 except S½ SW¼; Section 5 except W½ SW¼; S½ SW¼ Section 6; Section 7 except NE¼, S½ NW¼, NE¼ SE¼; NE¼, N½ SE¼, SE¼ NW¼ Section 11; Section 13; E½, SW¼ Section 15; W½ NW¼ Section 18; S½ Section 19; Section 21.

T.16S., R.08W. Willamette Meridian: Section 1; Sections 3–4; Section 5 except S½ NW¼, SW¼ NE¼, NW¼ SW¼; NW¼, N½ SW¼, SW¼ SW¼, NW¼ NE¼ Section 6; Section 7 except W½, S½ NE¼, N½ SE¼; Sections 8–9; W½ W½ Section 10; Section 11; Section 13 except S½ SE¼; Section 15; Section 17 except SW¼ NW¼; Section 18 except NW¼, W½ E½, NE¼ NE¼, SE¼ SW¼; Section 19 except E½ SW¼, S½ NE¼, NW¼ NE¼, SE¼ NW¼; Section 20 except W½ SE¼, S½ SW¼; Sections 21–23; SW¼ SW¼, SW¼ SE¼ Section 24; Section 25; N½ Section 26; Section 27; Section 28 except S½ SE¼; Section 29 except NW¼ NW¼; S½ SE¼, SE¼ NE¼ Section 30; Section 31 except N½ NW¼; Section 32 except SE¼, Section 33; S½ Section 34; N½, NW¼ SE¼ Section 35.

T.17S., R.08W. Willamette Meridian: Section 5; N½ NE¼ Section 6.



Map and description of OR–04–k taken from United States Fish and Wildlife Service 1:100,000 map; Corvallis, Eugene, Oregon; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.12S., R.07W. Willamette Meridian: SE¼, S½ SW¼, S½ NE¼ Section 10; Section 11 except N½ N½; W½ W½ Section 13; Sections 14–15; Section 16 except NW¼ NW¼; Section 19 except N½ N½; Section 20 except SW¼ SW¼; Sections 21–23; W½, S½ SE¼ Section 24; Section 25; Section 26 except SW¼; Section 27; Section 28 except NE¼ NW¼; Sections 29–31; Section 32 except NW¼, NW¼ NE¼; Sections 33–35; W½ W½, NE¼ NW¼ Section 36.

T.12S., R.08W. Willamette Meridian: SW¼, SW¼ NW¼, S½ SE¼ Section 3; NE¼, N½ SW¼, S½ SE¼ Section 5; N½ SE¼ Section 8; Section 9 except NE¼ NE¼, W½ SW¼, SE¼ SW¼, W½ SE¼; SE¼, NE¼ NE¼ Section 10; Section 11 except N½ NE¼, SE¼ SE¼; S½ Section 12; E½, E½ SW¼ Section 13; N½ NW¼, NE¼, SE¼ SW¼ Section 15; N½ NE¼ Section 16; Section 17 except NW¼, NW¼ NE¼; SW¼, W½ SE¼, SW¼ NW¼ Section 18; W½, SW¼ SE¼ Section 19; S½ NE¼ Section 20; Section 21; Section 22 except NW¼ NW¼; SE¼, S½ SW¼ Section 23; W½ W½ Section 24; Section 25; N½ Section 26; Section 27; Section 29 except NE¼; W½ SW¼, N½ NW¼, NW¼ NE¼, NE¼ SE¼ Section 30; Section 31; Section 33 except SE¼, W½ NE¼; Section 35 except SW¼ NW¼, NW¼ SW¼.

T.12S., R.09W. Willamette Meridian: SE¼ SE¼ Section 13; E½ E½ Section 24.

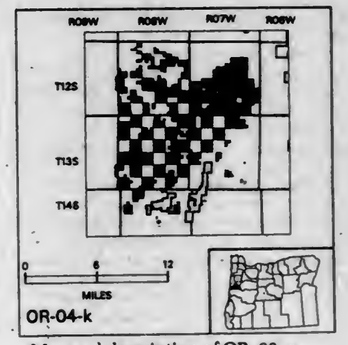
T.13S., R.07W. Willamette Meridian: Section 2 except N½ NE¼, NE¼ NW¼, SE¼ NE¼, NE¼ SE¼; Section 3; Section 5; W½ Section 6; Section 7; Section 9; N½ NW¼, SW¼ NW¼ Section 15; Section 17; SW¼ SW¼ Section 18; Section 19 except NE¼ SE¼; E½ NW¼, NE¼ SW¼, W½ NE¼ Section 21; S½ SE¼ Section 23; SW¼, W½ SE¼, SW¼ NW¼ Section 27; N½ SE¼, SE¼ NE¼, NW¼ NE¼, E½ NW¼ Section 35.

T.13S., R.08W. Willamette Meridian: Section 1; NE¼ Section 2; Section 3 except N½ NE¼, SW¼ NE¼; Section 5; S½ Section 6; Section 7; E½ SE¼ Section 8; Section 9 except NW¼ NE¼; W½ NW¼, SE¼ NW¼, E½ SE¼, NW¼ SE¼, SE¼ NE¼, NE¼ SW¼ Section 12; Section 13; E½, NE¼ SW¼ Section 14; Section 15; Section 17; Sections 19–21; Section 23; W½ W½, SE¼ NW¼, SE¼ NE¼ Section 24; Section 25; W½ SE¼, E½ SW¼, SW¼ SW¼ Section 26; Section 27; Section 29; NW¼, SW¼ SE¼ Section 30; Section 31; SE¼ SE¼, SW¼ NW¼ Section 32; Section 33; SW¼ NW¼ Section 34; Section 35 except E½ SE¼, SW¼ SE¼.

T.13S., R.09W. Willamette Meridian: E½ E½ Section 25.

T.14S., R.07W. Willamette Meridian: SW¼ SW¼ Section 5; NE¼ NE¼ Section 7.

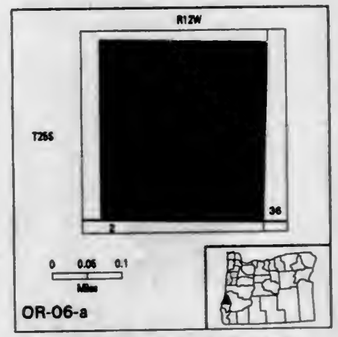
T.14S., R.08W. Willamette Meridian: N½ NE¼, NE¼ NW¼ Section 3; Section 5 except S½ SE¼; Section 7 except W½ W½, NE¼ NW¼, NE¼ NE¼; Section 11 except NW¼, NW¼ NE¼, N½ SW¼; N½ SW¼, W½ NW¼ Section 15.



Map and description of OR–06–a taken from United States Fish and Wildlife Service 1:100,000 map; Coos Bay, Oregon; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.25S., R.12W. Willamette Meridian: SE¼ SE¼ Section 35.



Map and description of OR–06–b taken from United States Fish and Wildlife Service 1:100,000 map; Roseburg, Oregon; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.25S., R.10W. Willamette Meridian: Section 31; Section 33.

T.26S., R.09W. Willamette Meridian: SE¼, E½ SW¼ Section 9; Section 10 except NE¼; Section 17; S½ S½ Section 18; Section 19; SW¼ Section 20; Section 21; N½ N½, S½ S½ Section 28; Section 29; Section 31 except N½ SW¼, SW¼ SW¼; SW¼, W½ SE¼, SE¼ NW¼ Section 32; Section 33.

T.26S., R.10W. Willamette Meridian: Sections 3–5; E½, SE¼ NW¼ Section 6; Section 7; SW¼, S½ NE¼ Section 8; Section 9; Section 11; Section 13; N½ Section 14; Sections 15–17; Section 19; SE¼ Section 20; N½ Section 21; W½ Section 22; Section 23; N½ N½, N½ S½ Section 24; Section 25; Section 27; NE¼ Section 28; Sections 29–31;

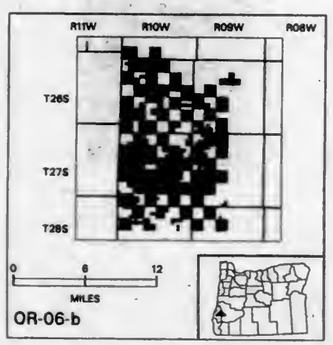
E½ Section 32; Section 33; Section 35 except SE¼.

T.27S., R.09W. Willamette Meridian: Sections 4–5; SE¼, NE¼ NE¼, SE¼ SW¼ Section 6; Section 7 except NW¼ SW¼; N½ NW¼, W½ SW¼ Section 8; Section 9; Section 17; Section 18 except SW¼, SE¼ SE¼; Sections 19–21; Sections 29–31; E½ SE¼, SW¼ SE¼ Section 33.

T.27S., R.10W. Willamette Meridian: E½ E½, W½ SE¼ Section 1; Section 3; W½ SW¼, SW¼ NW¼ Section 4; Section 5; S½ SE¼ Section 6; Sections 7–9; NE¼, SE¼ SE¼ Section 10; Section 11; S½ NW¼, W½ SW¼, SE¼ SE¼ Section 12; Sections 13–15; N½ Section 16; Sections 17–20; Sections 21–23; W½ NW¼, NW¼ SW¼ Section 24; Sections 25–29; NE¼, SW¼ SW¼ Section 30; Section 31; W½ W½, SE¼ NW¼, NE¼ SW¼ Section 32; Section 33; SW¼ NW¼ Section 34; Section 35.

T.28S., R.09W. Willamette Meridian: SE¼ SW¼ Section 4; Section 5; Section 7; Section 9.

T.28S., R.10W. Willamette Meridian: Section 1; Section 3 except E½ SE¼; N½ SE¼ Section 4; Section 5; N½ NE¼, NE¼ NW¼, SE¼ SE¼ Section 6; Section 7 except W½ NW¼, NW¼ SW¼; S½ N½, NE¼ NW¼ Section 8; Section 9 except NE¼; N½ NE¼, E½ NW¼, E½ SE¼ Section 11; NW¼ NW¼ Section 12.



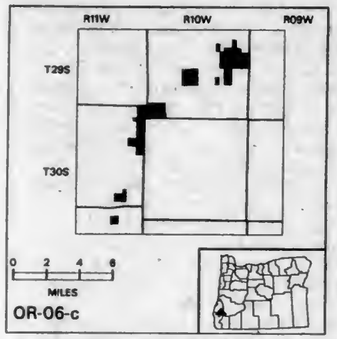
Map and description of OR–06–c taken from United States Fish and Wildlife Service 1:100,000 map; Roseburg and Canyonville, Oregon; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.29S., R.10W. Willamette Meridian: S½ SE¼, W½ SW¼ Section 11; SW¼ NW¼, W½ SW¼, SE¼ SW¼ Section 12; Section 13; E½ W½, E½ Section 14; NE¼ NE¼ Section 20; Section 21; E½, W½ SW¼ Section 23; Section 31.

T.30S., R.11W. Willamette Meridian: E½, SE¼ SW¼ Section 1; E½ Section 12; E½, NW¼ Section 13; N½ SE¼, S½ NE¼, NE¼ NE¼, NE¼ SW¼, SE¼ NW¼ Section 35.

T.31S., R.11W. Willamette Meridian: SW¼ Section 2.



Map and description of OR–06–d taken from United States Fish and Wildlife Service 1:100,000 map; Roseburg, Oregon; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

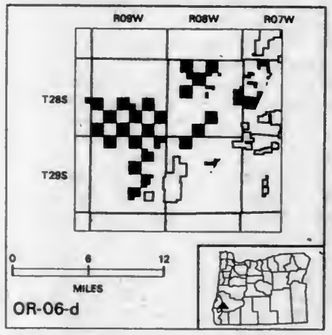
T.28S., R.08W. Willamette Meridian: Section 3; Section 5; NE¼ Section 8; Section 9; N½ NW¼ Section 10; NW¼ NW¼ Section 11; N½ NW¼, W½ NE¼, W½ SW¼ Section 15; Section 17; Section 27; Section 33.

T.28S., R.09W. Willamette Meridian: Section 19; Section 21; SW¼ Section 22; Section 23; Section 25; Section 27; Section 29; Section 31; Section 33; Section 35.

T.28S., R.10W. Willamette Meridian: NE¼ Section 24.

T.29S., R.08W. Willamette Meridian: Section 5.

T.29S., R.09W. Willamette Meridian: Section 1 except SE¼; Section 3; Section 5; Section 11 except N½ NE¼; Section 15; Section 23 except S½ SE¼, NE¼ SE¼, SE¼ NE¼; Section 27 except S½ SE¼.



Map and description of OR–07–a taken from United States Fish and Wildlife Service 1:100,000 map; Port Orford, Oregon; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.31S., R.12W. Willamette Meridian: N½ NW¼, SW¼ NW¼ Section 5; SE¼, E½ SW¼, SW¼ SW¼, NE¼ NW¼ Section 15; Section 21; Section 22 except SE¼; Section 23 except E½ NE¼, SW¼ NE¼; W½ NW¼ Section 25; Section 27.

T.32S., R.10W. Willamette Meridian: Section 2 except E½ E½; Section 3 except E½ NE¼, SW¼ NE¼, SW¼ SW¼; E½ SE¼, SE¼ NE¼ Section 4; S½ Section 7; SW¼ SW¼, E½ SE¼, NE¼ NE¼, S½ NE¼ Section 8; Section 9 except SE¼, S½ NE¼; Section 10; Section 11 except E½ E½, W½ SE¼, E½ SW¼; N½ NW¼, W½ SW¼, SW¼ NW¼ Section 15; Sections 16–17; Section 18 except E½ SE¼, SE¼ NE¼; Section 19 except S½ NW¼, NE¼ NW¼, NW¼ NE¼, E½ SE¼, SW¼ SE¼; Section 20–21; W½ NW¼ Section 22.

T.32S., R.11W. Willamette Meridian: SE¼ Section 1; N½ N½, SW¼ NW¼ Section 4; Section 5; N½, NE¼ SE¼ Section 6; NE¼ SE¼ Section 7; Section 8 except SW¼ NW¼; W½ Section 9; Section 12 except SW¼ SW¼; Section 13; SE¼, E½ SW¼ Section 14; W½ Section 16; Section 17; Section 18 except N½ NW¼, E½ SW¼, NW¼ SE¼; Section 19; Section 20 except S½ SE¼; SE¼ Section 22; Section 23 except SE¼ NE¼, NW¼ NW¼; Section 24 except S½ NW¼, N½ SW¼; Section 25 except E½ E½; Section 26; NE¼ Section 27; E½, NE¼ SW¼, S½ SW¼ Section 28; S½ S½, NW¼ NW¼, NW¼ SW¼ Section 29; Sections 30–34; Section 35 except NE¼ NE¼; W½ W½ Section 36.

T.32S., R.12W. Willamette Meridian: E½ NE¼, N½ SE¼, SW¼ SE¼ Section 1; W½ NW¼ Section 2; Section 3; Section 10; E½ SE¼, SE¼ NE¼ Section 13; W½, NW¼ NE¼ Section 15; Sections 19–20; W½, W½ NE¼ Section 21; SE¼ SE¼ Section 23; E½ E½, S½ SW¼ Section 24; Section 25; Section 26 except N½ NW¼; S½ S½, NE¼ SW¼ Section 27; SE¼ SE¼ Section 28; N½ NW¼, SW¼ NW¼ Section 29; Section 30 except SE¼ SE¼; W½, W½ E½, S½ SE¼ Section 31; E½, E½ SW¼ Section 33; Sections 34–36.

T.32S., R.13W. Willamette Meridian: Section 4 except N½ N½; S½ Section 5; S½, SE¼ NE¼ Section 6; N½ N½, SE¼ NE¼, S½ S½, NE¼ SE¼ Section 7; Section 8; Sections 22–23; S½, S½ N½ Section 24; Sections 25–27; E½ NE¼, NE¼ SE¼ Section 31; Sections 32–36.

T.32S., R.14W. Willamette Meridian: N½ Section 17; W½ SW¼, SE¼ SW¼ Section 19; NE¼, N½ SE¼ Section 22; Section 23 except S½ S½, NE¼ SE¼; Section 24 except W½ SW¼, NW¼ NE¼, NE¼ NW¼; E½ NE¼, NW¼ NE¼, NE¼ SE¼ Section 25; S½ Section 29; SE¼, SE¼ SW¼, SE¼ NE¼, NW¼ NW¼ Section 30; Section 31 except W½ W½, NE¼ SW¼, E½ NW¼; Section 32 except SE¼ SE¼.

T.33S., R.11W. Willamette Meridian: Sections 7–8; Section 9 except E½ NW¼, W½ NE¼; Sections 10–11; W½ Section 12; N½ NE¼ Section 13; Section 14 except SE¼, SE¼ SW¼; Sections 15–20; Section 21 except SE¼; Section 22 except SE¼ SE¼; W½ NW¼, NW¼ SW¼ Section 23; N½ NW¼, SW¼ NW¼ Section 27; S½ NE¼, N½ SE¼, SE¼ SW¼ Section 28; W½, N½ NE¼ Section 29; Sections 30–31; Section 32 except N½ NE¼; NW¼ NW¼ Section 33.

T.33S., R.12W. Willamette Meridian: Section 7 except W½ SW¼; Section 8; W½ SW¼, SE¼, W½ NW¼ Section 9; Section 10 except N½ NW¼; Sections 11–32; Section 33 except E½ SE¼; Section 34 except N½ SW¼; Sections 35–36.

T.33S., R.13W. Willamette Meridian: E½ Section 8; Sections 9–11; Section 12 except SE¼ SE¼; Section 13 except N½ NE¼, NE¼ NW¼, SW¼ NW¼, NW¼ SW¼; Section 14 except S½ S½, NE¼ SW¼; SW¼, E½ NE¼, NW¼ NW¼ Section 15; S½, S½ NW¼ Section 16; SE¼, SE¼ NE¼ Section 17; Sections 19–20; Section 21 except SE¼; E½ NE¼ Section 22; Section 23 except SW¼ SW¼, N½ NW¼, NW¼ NE¼; Sections 24–25; S½ SE¼, SE¼ SW¼ Section 26; NW¼ Section 28; Section 29 except S½ SW¼, SE¼; Section 30 except S½ SE¼; NW¼, N½ SW¼ Section 31; E½ NE¼, SE¼ Section 34; Sections 35–36.

T.33S., R.14W. Willamette Meridian: Section 7 except N½ N½, S½ NE¼, E½ SE¼, NW¼ SW¼, SW¼ NW¼; S½ SE¼ Section 13; SW¼ SW¼ Section 15; S½ SE¼, NW¼, NW¼ SW¼, NW¼ SE¼ Section 17; SE¼ Section 18; NW¼, N½ NE¼, SE¼ NE¼ Section 20; Section 21 except NW¼ NW¼, SW¼; Section 22 except SW¼, E½ NE¼; Section 23 except N½ N½, SW½ NE¼; Sections 24–28; Section 29 except NW¼; Sections 32–35; Section 36 except NW¼, E½ SE¼.

T.34S., R.11W. Willamette Meridian: NW¼, NW¼ NE¼ Section 4; Sections 5–6; Section 7 except NE¼ SE¼; NW¼ NW¼, E½ NE¼, SW¼ NE¼ Section 8; W½ NW¼ Section 9; NE¼ Section 18; N½ NW¼, SW¼ NW¼, NW¼ SW¼, SE¼ Section 19; NE¼, E½ NW¼ Section 30; W½ SW¼, SW¼ NW¼ Section 31.

T.34S., R.12W. Willamette Meridian: Sections 1–3; Section 4 except W½ SW¼; Section 5 except S½ S½; Section 6 except N½ NE¼; Section 7 except E½ NE¼, SE¼; SE¼ Section 8; Sections 9–36.

T.34S., R.13W. Willamette Meridian: Sections 1–2; NE¼, N½ SE¼, E½ NW¼ Section 3; Sections 11–14; E½ Section 15; SW¼, W½ SE¼ Section 17; Section 20 except NW¼ SW¼, S½ SW¼; Section 21 except NW¼ NW¼; Section 22 except NW¼ NE¼; Section 23 except NW¼ NW¼; Sections 24–26; N½, NE¼ SE¼ Section 27.

T.35S., R.11W. Willamette Meridian: SW¼, W½ NW¼ Section 6; NW¼ Section 7; S½ SW¼ Section 18; N½ NW¼, NE¼ SW¼ Section 19; Section 31; W½ Section 32.

T.35S., R.12W. Willamette Meridian: Sections 1–4; Section 5 except SW¼ SW¼, NE¼ SW¼; Section 6 except SE¼ SE¼, SW¼ SW¼; SE¼ SW¼, E½ Section 7; Sections 8–9; N½, NW¼ SW¼ Section 10; N½ N½, SW¼ NW¼, SW¼ SE¼ Section 11; NE¼ NE¼ Section 12; Section 13 except SE¼ NE¼, NE¼ SE¼, N½ N½; Section 14; Section 15 except NW¼; SE¼ SE¼, W½ NE¼, NW¼, N½ SW¼ Section 16; Sections 17–19; Section 20 except E½ NE¼, N½ SE¼; Section 21 except NW¼, NW¼ NE¼, NW¼ SW¼; Sections 22–28; Section 29 except N½ NW¼, SW¼ NW¼, W½ NE¼; Section 30 except SE¼ NE¼, SE¼, SE¼ SW¼; Section 32 except SW¼ SW¼; Sections 33–36.

Description of Lands Using Protracted Public Land Survey Lines

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.32S., R.13W. Willamette Meridian: Sections 18–21; Sections 28–29; N½, NW¼ SW¼ Section 30.

Map and description of OR–07–b taken from United States Fish and Wildlife Service 1:100,000 map; Port Orford and Gold Beach, Oregon; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.35S., R.12W. Willamette Meridian: Section 31 except E½ E½, N½ N½, SW¼ NW¼.

T.35S., R.13W. Willamette Meridian: NW¼, N½ NE¼, S½ SE¼, S½ SW¼, NW¼ SW¼ Section 31; N½ N½ Section 32; N½ Section 33; N½, NE¼ SE¼ Section 34; Section 35; W½, NW¼ NE¼ Section 36.

T.36S., R.12W. Willamette Meridian: Sections 1–4; NE¼, E½ SE¼, SE¼ NW¼, N½ NW¼, NW¼ SE¼ Section 5; E½ E½, W½ SE¼, SW¼ NE¼ Section 8; Sections 9–17; S½ SE¼ Section 18; NE¼, E½ SE¼ Section 19; Sections 20–23; Section 24 except SE¼ SE¼; N½ NW¼ Section 25; Section 26 except N1/2 SE1/4; Sections 27–29; NE¼, E½ SE¼, NW¼ SE¼, E½ NW¼ Section 30; SE¼, E½ SW¼, E½ NE¼, SW¼ SW¼ Section 31; Sections 32–35; SW¼, W½ NW¼ Section 36.

T.36S., R.13W. Willamette Meridian: S½ S½, E½ NE¼, NE¼ SE¼, N½ NW¼ Section 1; SW¼, S½ SE¼, NE¼ NE¼ Section 2; Section 3; NE¼, N½ SE¼, N½ NW¼ Section 4; Section 5; NW¼, SE¼, NE¼ SW¼, E½ NE¼, SW¼ NE¼ Section 6; N½, SW¼ SE¼, NW¼ SW¼ Section 7; Section 8 except SE¼ NE¼, NE¼ SE¼; Section 9 except NW¼ NE¼, NE¼ NW¼, SW¼ NW¼, NW¼ SW¼; Sections 10–11; Section 12 except E½ SE¼, SE¼ NE¼; Section 13 except SE¼, E½ SW¼; Section 14 except SW¼; Section 15 except W½ NW¼, NW¼ SW¼; N½ NE¼, SW¼, S½ SE¼ Section 17; E½, E½ SW¼ Section 18; E½ SE¼, NE¼, S½ SW¼, NE¼ NW¼ Section 19; NW¼, SW¼ NE¼ Section 20; E½, NE¼ SW¼ Section 22; Section 23; Section 24 except NE¼; Sections 25–26; Section 27 except N½ NW¼, SW¼ NW¼; SE¼ SE¼, NW¼ NW¼ Section 28; Sections 29–32; W½ W½, E½ E½ Section 33; Section 34; N½, W½ SW¼ Section 35; N½ N½ Section 36.

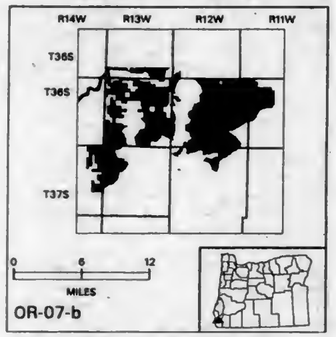
T.36S., R.12 ½W. Willamette Meridian: Section 1 except SE¼ NE¼, SE¼; S½, NW¼ Section 12; NW¼, N½ NE¼ Section 13; W½ Section 24; W½ Section 25; W½ NW¼ Section 36.

T.37S., R.12W. Willamette Meridian: NW¼ NW¼ Section 1; Section 2 except SE¼, SE¼ SW¼; Section 3 except NW¼ SW¼; Section 4 except NE¼ SE¼; N½ N½, S½ NW¼ Section 5; Section 6 except S½, SE¼ NW¼; NE¼, E½ SE¼, N½ NW¼ Section 9; W½, NW¼ NE¼ Section 10.

T.37S., R.13W. Willamette Meridian: W½, N½ NE¼ Section 5; Sections 6–8; W½ W½, NE¼ SW¼, SE¼ NW¼ Section 9; W½, W½ NE¼, NE¼ NE¼ Section 17; Section 18; N½ NE¼, NW¼, W½ SW¼ Section 19; NW¼ NW¼ Section 20; NW¼ NW¼ Section 30.

T.37S., R.14W. Willamette Meridian: Section 1 except SW¼ SW¼; E½ SE¼, NE¼ Section 2; E½ Section 11; Section 12 except W½ NW¼, N½ SW¼; SE¼, N½ N½ Section 13; Section 24 except NW¼ NE¼.

T.37S., R.12 ½W. Willamette Meridian: Section 1 except N½ NW¼, S½ SW¼.



Map and description of OR–07–c taken from United States Fish and Wildlife Service 1:100,000 map; Gold Beach, Oregon; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.37S., R.12W. Willamette Meridian: E½ SW¼, W½ SE¼, SE¼ SE¼ Section 17; SE¼ SE¼ Section 18; Section 19 except N½ NW¼; Section 20; W½ W½ Section 21; S½ SE¼, SW¼, NW¼, NW¼ SE¼ Section 28; Sections 29–33; W½, NW¼ SE¼, SW¼ NE¼ Section 34; S½ SE¼, SE¼ SW¼ Section 35.

T.37S., R.13W. Willamette Meridian: SE¼, E½ SW¼, S½ NE¼ Section 24; Section 25; Section 26 except NE¼ NW¼, NW¼ NE¼; E½ E½ Section 27; SE¼, E½ NE¼, E½ SW¼ Section 34; Sections 35–36.

T.37S., R.12 ½W. Willamette Meridian: Section 24 except NW¼ NW¼; Sections 24–25; Section 36.

T.37 ½S. R.11W. Willamette Meridian: W½ SW¼, SW¼ NW¼ Section 31.

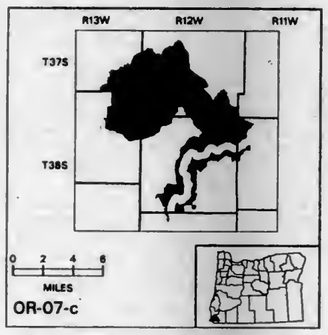
T.37 ½S. R.12.W. Willamette Meridian: Section 25 except E½; Section 26 except E½ NW¼; Sections 27–32; Section 33 except S½ SW¼; Sections 34–35; Section 36 except N½ NE¼.

T.38S., R.11W. Willamette Meridian: Section 6 except N½ NE¼, S½ SE¼, NE¼ SE¼; W½, W½ SE¼, Section 7; NW¼, W½ SW¾, NW¼ NE¼ Section 18.

T.38S., R.12W. Willamette Meridian: Sections 1–2; Section 3 except W½ SW¼, SE¼ SW¼; NE¼ NE¼ Section 4; NW¼, W½ NE¼ Section 5; Section 6; N½ NW¼ Section 7; S½ S½, NE¼, N½ SE¼, NE¼ SW¼ Section 9; Sections 10–12; N½ N½, S½ NE¼, NW¼ SE¼ Section 13; N½, N½ S½ Section 14; Sections 15–16; E½ SE¼ Section 17; E½ E½ Section 20; Section 21; W½ W½, NE¼ NW¼, NW¼ NE¼ Section 22; W½ Section 27; Section 28; Section 29 except NW¼ NW¼; S½ SE¼ Section 30; N½ NE¼ Section 31; Section 32; Section 33 except S½ SE¼; W½ NW¼, NW¼ SW¼ Section 34.

T.38S., R.13W. Willamette Meridian: Sections 1–2; SE¼ SE¼ Section 3; E½ E½, SW¼ SE¼ Section 10; Sections 11–13; Section 14 except S½ SW¼, SW¼ SE¼; NE¼ Section 15; N½ N½ Section 24.

T.39S., R.12W. Willamette Meridian: N½ NW¼, SE¼ NW¼, NE¼ SW¼, NE¼ NE¼ Section 5.



Map and description of OR–07–d taken from United States Fish and Wildlife Service 1:100,000 map; Gold Beach and Grants Pass, Oregon; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.38S., R.11W. Willamette Meridian: S½ SE¼, NE¼ SE¼, SE¼ NE¼ Section 31.

T.39S., R.11W. Willamette Meridian: SW¼, SW¼ SE¼ Section 4; S½, S½ NW¼ Section 5; E½, E½ W½ Section 6; Section 7 except NW¼ NW¼; Section 8 except SW¼ SW¼; Section 9; W½ W½, E½ SW¼ Section 10; NW¼, SW¼ SW¼ Section 15; Section 16 except NW¼ SW¼, SW¼ NW¼; N½ NE¼, SE¼ SW¼, S½ SE¼ Section 17; Section 18 except N½ NE¼; Sections 19–20; Section 21 except SE¼ SE¼; W½ NW¼ Section 22; NW¼ NW¼, W½ SW¼, SE¼ SW¼, SW¼ SE¼ Section 29; Sections 30–32; SW¼, S½ NW¼, W½ SE¼ Section 33.

T.39S., R.12W. Willamette Meridian: S½ S½ Section 1; S½ S½, N½ SE¼ Section 2; S½ Section 3; Section 10 except SE¼ SE¼; Section 11 except S½ SW¼; Section 12; Section 13 except SW¼, SW¼ NW¼; NE¼ NE¼ Section 14; W½, W½ E½, E½ SE¼ Section 19; S½, E½ NE¼ Section 20; Section 21; S½ S½, NW¼ SW¼, W½ NW¼, NE¼ SE¼ Section 22; S½, S½ N½ Section 23; Sections 24–36.

T.39S., R.13W. Willamette Meridian: Section 33.

T.40S., R.09W. Willamette Meridian: SW¼ Section 4; S½, S½ NW¼ Section 5; SE¼, SE¼ NE¼ Section 6; Section 7 except S½ SE¼; Section 8 except S½ S½; N½ NW¼, SW¼ NW¼ Section 9; W½ NW¼, NE¼ NW¼ Section 18; Section 19 except E½ NW¼, NE¼ SW¼; SW¼, S½ NW¼ Section 20; S½ SE¼ Section 21; Section 27 except NE¼ NE¼; Section 28; SE¼, SE¼ SW¼, SE¼ NE¼, NE¼ NW¼ Section 29; Section 30 except E½ SE¼, SE¼ NE¼, SW¼ SE¼, SE¼ SW¼; S½, W½ NW¼ Section 31; Section 32 except NW¼ NW¼; Section 33; Section 34 except E½ SE¼, SE¼ NE¼, SW¼ SE¼.

T.40S., R.10W. Willamette Meridian: SW¼ SW¼ Section 1; SE¼, S½ SW¼, E½ NE¼ Section 2; S½ SW¼ Section 3; SE¼ SE¼ Section 4; SE¼, S½ NE¼ Section 8; Section 9 except N½ NW¼; Sections 10–11; Section 12 except NW¼ NE¼; Sections 13–16; Section 17 except N½ NW¼, SW¼ NW¼; Section 19 except NW¼, NW¼ SW¼, NW¼ NE¼; Sections 20–36.

T.40S., R.11W. Willamette Meridian: N½ NW¼, SW¼ NW¼, NW¼ NE¼ Section 4; Sections 5–8; W½ NW¼, S½ SE¼, SW¼ Section 9; Section 16 except E½ E½; Sections 17–21; E½ SE¼, SW¼ SE¼ Section 25; Section 27 except E½, NE¼ NW¼; Sections 28–33; W½ Section 34; SE¼ SE¼, SE¼ NE¼ Section 35; Section 36.

T.40S., R.12W. Willamette Meridian: Sections 1–30; Section 31 except W½ SW¼, SW¼ NW¼; Sections 32–36.

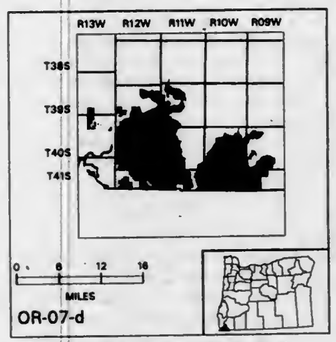
T.40S., R.13W. Willamette Meridian: Section 4 except SE¼ SE¼; W½, NW¼ NE¼, S½ SE¼, NE¼ SE¼ Section 9; W½, NE¼ Section 10; SE¼ SW¼ Section 12; N½ NW¼ Section 13.

T.41S., R.09W. Willamette Meridian: Sections 4–8; Sections 17–18.

T.41S., R.10W. Willamette Meridian: Sections 1–18.

T.41S., R.11W. Willamette Meridian: Section 1; Section 2 except NW¼ NE¼, NE¼ NW¼; Sections 3–15; Sections 17–18.

T.41S., R.12W. Willamette Meridian: Sections 1–4; Section 5 except W½, SW¼ SE¼; Section 7 except NW¼, W½ SW¼, NW¼ NE¼; W½, S½ SE¼ Section 8; Section 9 except S½ S½, NW¼ SW¼; Section 10; Section 11 except SE¼ SW¼, W½ SW¼; Sections 12–13; Section 14 except NE¼ NW¼, NW¼ NE¼; Section 15; Section 17; Section 18 except W½ W½.



Map and description of OR–07–f taken from United States Fish and Wildlife Service 1:100,000 map; Port Orford, Canyonville, Gold Beach and Grants Pass, Oregon; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.32S., R.09W. Willamette Meridian: Section 34.

T.32S., R.10W. Willamette Meridian: Section 25; E½, NE¼ NW¼, SE¼ SW¼ Section 26; Section 35 except W½ NW¼; Section 36 except SE¼ SW¼, SW¼ SE¼.

T.33S., R.09W. Willamette Meridian: Section 2; Sections 3–4; Section 5 except SE¼ NW¼, E½ SW¼; Section 6 except SE¼; Section 7 except E½ NW¼, W½ NE¼; Section 8 except NE¼ NW¼; Sections 9–10; Sections 17–19.

T.33S., R.10W. Willamette Meridian: Section 1 except NE¼, N½ SW¼, S½ NW¼; Section 2 except NE¼ SE¼; Section 3 except NW¼, N½ NE¼, SW¼ SW¼, N½ SW¼; Section 9 except W½, N½ NE¼, SW¼ SE¼; Section 10; Section 11 except NE¼ NW¼; Section 12 except NW¼, SE¼ NE¼; Sections 13–14; Section 15 except W½ SW¼; Section 21 except W½; Sections 22–24; Sections 26–27; Section 28 except N½ NW¼; Section 29 except NW¼ SW¼; SE¼ SE¼ Section 30; Section 31 except W½, W½ SE¼; Sections 32–34.

T.34S., R.10W. Willamette Meridian: Sections 4–5; Section 6 except NW¼ NE¼, N½ NW¼, SW¼ NW¼; Sections 7–8; Section 18.

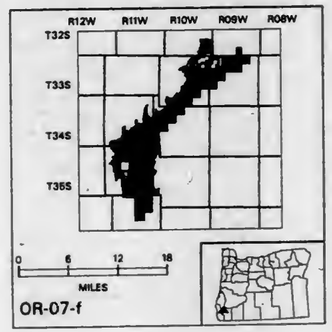
T.34S., R.10 ½W. Willamette Meridian: S½ Section 7; Section 18 except NW¼ NW¼; Sections 19; Sections 30–31.

T.34S., R.11W. Willamette Meridian: E½ SE¼, SE¼ NE¼ Section 11; Section 12 except E¼; Section 13 except NE¼; E½ E½, SW¼ SW¼ Section 14; SE¼ SE¼ Section 15; Section 21 except N½, E½ SE¼, NW¼ SW¼; Section 22 except NW¼, W½ NE¼, NW¼ SE¼, N½ SW¼, SW¼ SW¼; Section 23 except NE¼ NW¼, NW¼ NE¼; Sections 24–28; S½ NE¼, SE¼ Section 31; Section 32 except N½ NW¼; Sections 33–36.

T.35S., R.10 ½W. Willamette Meridian: Section 6; Section 7 except E½ E½, W½ SE¼, NE¼ SW¼; Section 18 except E½, E½ SW¼; NW¼, W½ SW¼, NW¼ NE¼ Section 19; W½ SW¼ Section 30; Section 31.

T.35S., R.11W. Willamette Meridian: Sections 1–4; Section 5 except SW¼ SW¼; E½ NE¼ Section 6; E½ E½ Section 7; Sections 8–15; Section 17; E½ NE¼, NW¼ NE¼ Section 18; Section 20 except SW¼ NW¼, W½ SW¼; Section 21 except SW¼ NE¼; Sections 22–28; NE¼ NW¼, E½ E½ Section 29; Section 33 except W½ SW¼; Sections 34–36.

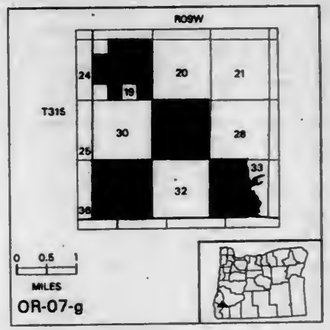
T.36S., R.11W. Willamette Meridian: Sections 2–3; N½ N½, SE¼ NE¼, E½ SE¼ Section 4; NE¼ NW¼, N½ NE¼ Section 5; E½ E½ Section 9; Sections 10–11; Section 15; E½ E½ Section 16.



Map and description of OR–07–g taken from United States Fish and Wildlife Service 1:100,000 map; Canyonville, Oregon; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.31S., R.09W. Willamette Meridian: Section 19 except NW¼ NW¼, SW¼ SW¼, SW¼ SE¼; Section 29; Section 31; Section 33 except NE¼ NE¼.

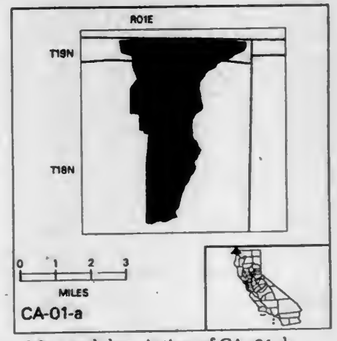


Map and description of CA–01–a taken from United States Fish and Wildlife Service 1:100,000 map; Grants Pass, Oregon; Crescent City and Happy Camp, California; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.18N., R.01E. Humboldt Meridian: NW¼ NW¼ Section 1; W½, NE¼, NW¼ SE¼ Section 2; Section 3; E½ Section 4; NE¼, E½ SE¼ Section 9; Section 10; W½ NE¼, NW¼, SW¼, Section 11; W½ Section 14; Section 15; NE¼ NE¼ Section 16; Section 22; NW¼, NW ¼ SW¼ Section 23; N½, N½ SW¼, NW¼ SE¼ Section 27.

T.19N., R.01E. Humboldt Meridian: Section 33 except W½ SW¼; Sections 34–35; Section 36 except SE¼ SE¼.



Map and description of CA–01–b taken from United States Fish and

Wildlife Service 1:100,000 map; Crescent City and Happy Camp, California; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.17N., R.02E. Humboldt Meridian: SW¼ SE¼, SE¼ SW¼ Section 29; Section 31 except N½ NW¼, SW¼ NW¼; W½, W½ NE¼ Section 32.

T.17N., R.01E. Humboldt Meridian: S½ SW¼ Section 35; SE¼, SE¼ SW¼ Section 36.

T.16N., R.03E. Humboldt Meridian: S½ SW¼, NW¼ SW¼, SW¼ SE¼ Section 17; SE¼, E½ SW¼, SW¼ SW¼, S½ NE¼, SE¼ NW¼ Section 18; Sections 19–20; SW¼, S½ NW¼, Section 21; W½ SW¼, SW¼ NW¼ Section 27; Section 28 except NE¼ NE¼; Sections 29–33; S½ NW¼, SW¼, W½ SE¼, SE¼ SE¼ Section 34.

T.16N., R.02E. Humboldt Meridian: W½, SW¼ SE¼ Section 5; Sections 6–8; W½ Section 9; W½ NW¼, SW¼, S½ SE¼ Section 16; Section 17; Section 18 except W½ NW¼, SE¼ NW¼; Sections 19–21; Section 22 except N½ NE¼, SE¼ NE¼; SW¼ SW¼ Section 23; S½, S½ NE¼, NE¼ NE¼ Section 25; Section 26 except NE¼ NE¼; Sections 27–29; N½ N½, SE¼ NE¼ Section 30; Section 32 except SW¼; Sections 33–36.

T.16N., R.01E. Humboldt Meridian: Sections 1–2; SE¼, E½ NE¼ Section 3; NE¼, SW¼ NW¼, NE¼ NW¼ Section 10; N½, SE½ SE¼, N½ S½ Section 11; Section 12; S½ SE¼ Section 13; NE¼ Section 24.

T.15N., R.03E. Humboldt Meridian: Sections 2–6; N½, N½ SW¼ Section 7; SE¼, S½ SW¼, NE¼ SW¼ Section 8; Sections 9–10; W½, W½ NE¼ Section 11; SW¼ SW¼ Section 13; Section 14 except N½ NE¼, SE¼ NE¼; Sections 15–17; Section 18 except NW¼, NW¼ SW¼; NE¼, NE¼ NW¼ Section 19; Section 20 except SW¼; Sections 21–23; W½ NW¼, NW¼ SW¼ Section 24; Section 27 except E½ E½, SW¼ SW¼; Section 28 except S½, SW¼ NE¼, SE¼ NW¼; NE¼, NW¼ SE¼, NE¼ SW¼, E½ NW¼ Section 29.

T.15N., R.02E. Humboldt Meridian: Sections 1–3; N½ NW¼, NE¼, E½ SE¼ Section 4; NE¼ NE¼ Section 5; Section 10 except W½ SW¼; Sections 11–12; Section 13 except E½ NE¼, SE¼; Section 14; NE¼, E½ SE¼, NW¼ SE¼ Section 15; E½ SE¼ Section 22; Section 23 except SE¼ NE¼, SW¼ SE¼; SW¼ Section 24; Section 25 except E½ NE¼; Section 26 except NE¼ NE¼; S½, S½ N½ Section 27; SE¼, SE¼ SW¼, S½ NE¼ Section 28; Section 33–34; Section 35 except E½ E½.

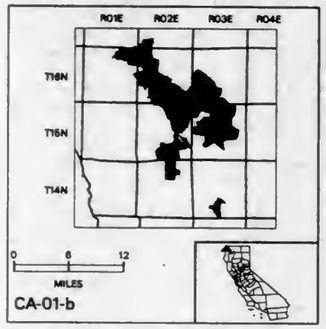
T.14N., R.02E. Humboldt Meridian: N½ NW¼, W½ W½, NW¼ NE¼ Section 2; Section 3; N½ N½, E½ E½ Section 4; E½ E½ Section 9; Section 10; NW¼, N½ SW¼, W½ NE¼, NW¼ SE¼ Section 11; NW¼ NW¼ Section 14; N½ N½ Section 15.

Description of Lands Using Protracted Public Land Survey Lines

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.14N., R.03E. Humboldt Meridian: SE¼ SE¼ Section 21; SW¼ SW¼ Section 22; W½ SW¼, W½ NE¼, NW¼ Section 27; Section 28 except NW¼; SE¼ SE¼ Section 29; E½ Section 33 except W½ W½, E½ SW¼, SW¼ SE¼; W½ W½ Section 34.

T.13N., R.03E. Humboldt Meridian: NW¼ NW¼ Section 3.



Map and description of CA–01–c taken from United States Fish and Wildlife Service 1:100,000 map; Happy Camp and Hoopa, California; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T. 11N., R.06E. Humboldt Meridian: N½ NW¼, SW¼ NW¼, W½ SW¼ Section 30.

T. 11N., R.05E. Humboldt Meridian: W½ NE¼, NW¼, E½ SW¼, W½ SE¼ Section 36.

Description of Lands Using Protracted Public Land Survey Lines

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T. 14N., R.05E. Humboldt Meridian: S½ Section 7; Section 18 except E½ SE¼, SE¼ NE¼; W½, NW¼ NE¼ Section 19; W½ SW¼, NW¼ NW¼ Section 30; Section 31 except NE¼, NE¼ NW¼; SW¼ SW¼ Section 32.

T. 14N., R.04E. Humboldt Meridian: SE¼, SE¼ SW¼ Section 12; Section 13 except W½ W½, Sections 24–25; E½ NE¼ Section 26; SE¼, E½ NE¼ Section 35; Section 36.

T. 13N., R.05E. Humboldt Meridian: SW¼, W½ NW¼, NE¼ NW¼, W½ SE¼ Section 5; Sections 6–7; Section 8 except NE¼, NE¼ SE¼; S½ S½ Section 9; E½ SW¼, SW¼ SW¼, W½ SE¼ Section 10; NW¼, N½ SW¼, W½ NE¼, NW¼ SE¼, SE¼ SE¼ Section 15; Section 16 except SE¼ SE¼; Sections 17–21; Section 22 except SE¼ SE¼; N½ NW¼ Section 27; N½ NW¼, NW¼ NE¼ Section 28; Section 29 except E½ SE¼; Sections 30–31, Section 32 except E½ NE¼; S½ SE¼ Section 35; SW¼, W½ SE¼, SE¼ SE¼ Section 36.

T. 13N., R.04E. Humboldt Meridian: Section 1; Section 2 except NW¼; S½ SE¼ Section 3; SE¼ SE¼ Section 9; Section 10 except NW¼ NW¼; Sections 11–15; E½ E½ Section 16; SE¼, S½ NE¼, NE¼ NE¼, S½ SW¼ Section 21; Sections 22–28; Section 29 except N½ N½; Section 30 except N½ N½; Sections 31–36.

T. 13N., R.03E. Humboldt Meridian: S½ Section 25; S½ SE¼ Section 26; Section 35 except W½ NW¼; Section 36.

T. 12N., R.06E. Humboldt Meridian: W1/2 SW¼ Section 6; SW¼ Section 7; W½, W½ SE¼ Section 18; N½ NW¼, NW¼ NE¼ Section 19.

T. 12N., R.05E. Humboldt Meridian: Section 1; Section 2 except NW¼, NW¼ SW¼; S½ S½, NW¼ SW¼ Section 3; Section 4 except N½ NE¼, SE¼ NE¼; Sections 5–11; Section 12 except S½ NE¼; Sections 13–23; Section 24 except E½ SE¼, SE¼ NE¼; Section 25 except E½ NE¼; Sections 26–36.

T. 12N., R.04E. Humboldt Meridian: Sections 1–36.

T. 12N., R.03E. Humboldt Meridian: Sections 1–2; Section 3 except NW¼, W½ SW¼, W½ NE¼, NE¼ NE¼; Section 10 except W½ W½, NE¼ NW¼; Sections 11–14, Section 15 except W½ W½, SE¼ SW¼, SW¼ SE¼; SW¼ SE¼ Section 22; Section 23 except SW¼ SW¼; Section 24; Section 25 except SW¼ SE¼; N½ NE¼, SE¼ NE¼ Section 26.

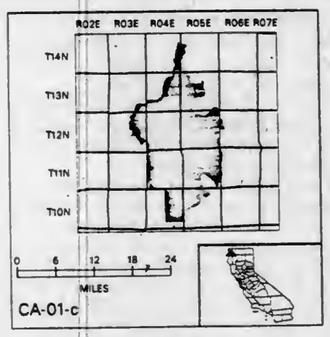
T. 11N., R.06E. Humboldt Meridian: SW¼, W½ NW¼, Section 6; W½ Section 7; NW¼ NW¼ Section 18; SW¼, SW¼ NW¼ Section 19.

T. 11N., R.05E. Humboldt Meridian: Sections 1–25; Section 26 except SW¼, SW¼ SE¼; NE¼ NE¼, Section 27; Section 28 except SE¼ SE¼; Sections 29–32; Section 33 except NE¼, E½ NW¼; W½ SW¼ Section 34.

T. 11N., R.04E. Humboldt Meridian: Sections 1–30, Section 31 except SW¼, S½ NW¼; Sections 32–36.

T. 10N., R.05E. Humboldt Meridian: W½ SW¼ Section 2; Section 3 except NE¼, Sections 4–9, Section 10 except S½, SW¼ NW¼; N½ NW¼ Section 11; Section 16 except SE¼, SE¼ SW¼; Section 17–18; Section 19 except SE¼, SE¼ SW¼, SE¼ NE¼; N½ NW¼ Section 20; W½ W½, SE¼ SW¼ Section 30.

T. 10N., R.04E. Humboldt Meridian: Sections 1–3; Sections 10–15; Sections 22–27.



Map and description of CA–01-d taken from United States Fish and Wildlife Service 1:100,000 map; Happy Camp California; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.17N., R.03E. Humboldt Meridian: NE¼, E½ SE¼ Section 24; E½ NE¼, SE¼, Section 25; N½, E½ SE¼ Section 36.

T.16N., R.03E. Humboldt Meridian: S½ SW¼, SE¼, NE¼ SW¼ Section 1; E½ E½ Section 11; Section 12; Section 13 except W½ SW¼, SW¼ NW¼; NE¼, E½ NW¼, E½ SE¼ Section 24; SE¼, SE¼ NE¼ Section 25; Section 36 except SW¼, NW¼ NW¼, W½ SE¼.

T.15N., R.07E. Humboldt Meridian: SW¼ NW¼, NW¼ SW¼ Section 7.

T.15N., R.06E. Humboldt Meridian: NW¼ Section 13.

T.15N., R.03E. Humboldt Meridian: E½ E½ Section 1; E½, SE¼ Section 12.

T.14N., R.06E. Humboldt Meridian: N½ NW¼, SW¼ NW¼, W½ SE¼ Section 4; Section 5; Section 8; SW¼, S½ NW¼, NW¼ NW¼ Section 9; W½ Section 16; Section 17; N½ Section 20; Section 21 except S½ SW¼, N½ NE¼ Section 21.

Description of Lands Using Protracted Public Land Survey Lines

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.18N., R.04E. Humboldt Meridian: SE¼ SW¼, SW¼ SE¼ Section 33; E½ SE¼ Section 35; SW¼, SW¼ SE¼, S½ NW¼ Section 36.

T.17N., R.06E. Humboldt Meridian: S½ SW¼, SW¼ SE¼ Section 14; S½ SW¼, NE¼ SE¼ Section 15; S½ SE¼ Section 16; E½ Section 21; Section 22; Section 23 except NE¼ NE¼; W½ SW¼ Section 24; Section 26 except E½ SE¼; Section 27 except SW¼, W½ SE¼, SE¼ NW¼; NE¼ NE¼ Section 28.

T.17N., R.05E. Humboldt Meridian: SW¼, SW¼ NW¼ Section 4; Section 5 except N½ N½, SW¼ NW¼; Section 6 except NE¼; Section 7 except S½ SE¼, SW¼ SE¼; Section 8 except SE¼ SE¼; W½ NW¼ Section 9.

T.17N., R.04E. Humboldt Meridian: Section 1 except SW¼, SW¼ NW¼; Section 2 except NE¼ NE¼, N½ NW¼, E½ SE¼; Section 3 except N½ N½; Section 4; SE¼ NE¼, SE¼ Section 5; Section 8 except NW¼; Sections 9–10; NE¼, NW¼, NW¼ SW¼ Section 11; NE¼ Section 12; Sections 16–17; W½, W½ E½ Section 20; SE¼, NE¼ SW¼ Section 21; S½, S½ N½ Section 22; S½, S½ N½ Section 23; W½ SW¼ Section 24; W½ NW¼, NW¼ SW¼ Section 25; Section 26; Section 27 except SW¼; NE¼, SW¼, SW¼ SE¼ Section 28; Section 29 except E½ NE¼; SW¼, W½ SE¼ Section 32; Section 33; N½ NE¼, SW¼, SE¼ Section 34; N½, N½ SE¼, SW¼ SW¼ Section 35.

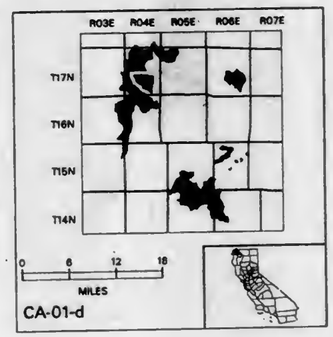
T.16N., R.04E. Humboldt Meridian: S½ SW¼, W½ SE¼ Section 1; Section 2 except NE¼; Sections 3–4; Section 5 except N½ NW¼; Section 8; W½ W½, NE¼ NE¼ Section 9; Section 10 except W½ SW¼; Section 11 except SE¼, S½ SW¼; S½ Section 12; E½ E½ Section 17; E½ E½ Section 20; Section 29 except SE¼, E½ NE¼; W½ Section 32.

T.15N., R.06E. Humboldt Meridian: W½ SW¼ Section 2; S½ Section 3; N½, E½ Section 4; SE¼ Section 9; Section 10 except W½ NW¼, E½ SE¼, S½ NW¼ Section 11; NE¼ SE¼, SE¼ NE¼ Section 12; NW¼ Section 13; SE¼ NW¼, SW¼ NE¼ Section 14; N½ NW¼ Section 15; NW¼, N½ SW¼, NW¼ NE¼ Section 16; NE¼ NE¼, N½ SE¼, NE¼, SE¼ NW¼ Section 17; SW¼, S½ NW¼, NW¼ SE¼ Section 29; S½ SW¼ Section 30.

T.15N., R.05E. Humboldt Meridian: SE¼ Section 20; S½ Section 21; S½ SW¼ Section 22; S½ NE¼, NE¼ SW¼, SE¼ Section 25; NW¼ Section 27; Section 28 except E½ SE¼; NW¼, NW¼ SW¼ Section 29; SE¼ SE¼ Section 30; E½ NE¼, SE¼ Section 31; Sections 32–33; Section 34 except N½ N½, E½ NE¼ Section 34; E½, SW¼ SW¼, E½ SW¼ Section 35; Section 36.

T.15N., R.04E. Humboldt Meridian: W½ Section 6; W½ NW¼ Section 7.

T.14N., R.05E. Humboldt Meridian: Sections 1–4; E½ SE¼, NE¼, N½ NW¼ Section 5; NE¼, E½ NW¼ Section 6; NE¼, NE¼ NW¼, N½ SE¼ Section 8; Section 9 except S½ SW¼, SW¼ SE¼; Section 10; Section 11 except S½ SE¼, SE¼ SW¼; Section 12 except W½ SW¼; W½, NE¼ NW¼ Section 13; N½ NE¼, NW¼ Section 15; NE¼ Section 24.



Map and description of CA–01–e taken from United States Fish and Wildlife Service 1:100,000 map; Grants Pass, Oregon; Happy Camp, California; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.41S., R.07W. Willamette Meridian: S½ SW¼, NW¼ SW¼ Section 6; N½ NW¼, SW¼ NW¼ Section 7; SE¼, S½ NE¼ Section 8; S½ SE¼, W½ Section 9; Section 16; E½ E½ Section 17.

T.41S., R.08W. Willamette Meridian: Section 1 except SE¼ NW¼, W½ SW¼; Section 2 except SE¼ SE¼; Section 4; Section 9 except W½ W½; Section 11 except NE¼ NE¼; Section 12 except E½ SE¼; Section 13 except NE¼; Sections 14–16; E½ SE¼, SE¼ NE¼ Section 17.

T.19N., R.06E. Humboldt Meridian: E½ SE¼, SW¼ SE¼ Section 31; Section 32 except NW¼ NW¼; NW ¼, W½ NE¼, N½ SW¼ Section 33.

T.19N., R.05E. Humboldt Meridian: Section 32 except S½ SW¼; Section 33; Section 34 except E½ SE¼; Section 35 except S½ SW¼; W½ NW¼ Section 36.

T.19N., R.04E. Humboldt Meridian: Sections 32–34; SW¼ SW¼ Section 35.

T.18N., R.05E. Humboldt Meridian: Section 5 except NW¼, W½ NE¼; SE¼, E½ SW¼ Section 6; Section 7 except S½ S½, NW¼ SW¼; Sections 16–17; SE¼, S½ N½, NW¼ NW¼, Section 18; N½ Section 19.

T.18N., R.04E. Humboldt Meridian: W½ NW¼ Section 2; Section 3 except SE¼ SE¼, Section 4; N½ N½, SW¼ NE¼ Section 9.

T.18N., R.03E. Humboldt Meridian: Section 1; SE¼, E½ NE¼, NE¼ NE¼, SE¼ SW¼ Section 2; SE¼ SE¼ Section 10; Section 11 except NW¼ NW¼; NW¼ NE¼, NE¼ NW¼ Section 12; W½ NW¼ Section 14; E½, E½ SW¼ Section 15; W½, NW¼ SE¼, N½ NE¼, SW¼ NE¼ Section 22; W½ Section 27; SE¼, S½ NE¼, NE¼ NE¼, E½ SW¼ Section 28; E½ SE¼, SE¼ NE¼ Section 32; Section 33; W½ Section 34.

T.17N., R.03E. Humboldt Meridian: NW¼, NW¼ SW¼ Section 3; Section 4 except S½ S½, NW¼ SW¼; NE¼ NE¼ Section 5.

Description of Lands Using Protracted Public Land Survey Lines

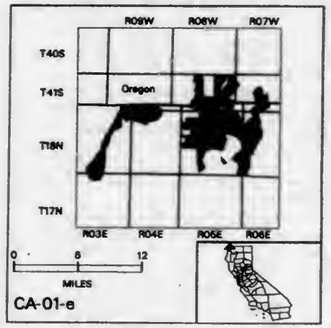
Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.18N., R.06E. Humboldt Meridian: Section 5 except E½ E½; E½ NE¼; SE¼ SW¼, SE¼ Section 6; Section 7; Section 8 except E½ NE¼; Section 17 except E½ SE¼; Sections 18–19; W½ NW¼, NE¼ NW¼, W½ SW¼ Section 20; Section 30 except E½ SE¼, SE¼ NE¼; Section 31 except E½ E½, SW¼ SE¼.

T.18N., R.05E. Humboldt Meridian: Section 1 except N½ NE¼; Sections 2–4; Sections 8–12; Section 13 except SW¼, SW¼ NW¼, SW¼ SE¼; Section 14 except SE¼, S½ NE¼; Section 15; Section 20 except S½ W¼; Section 21 except S½ SE ¼; Section 22 except SW¼ SE¼, S½ SW¼;

NW¼, NW¼ SW¼, SW¼ SW¼ Section 23; S½ SE¼, NE¼ SE¼, E½ NE¼ Section 24; Section 25 except S½ SW¼, NW¼ NW¼; W½ SW¼, NW¼, SE¼ SW¼ Section 28; E½ Section 29; E½ Section 32; NW¼, N½ SW¼ Section 33; E½, SE¼ SW¼ Section 36.

T.18N., R.04E. Humboldt Meridian: Section 5; N½ N½ Section 8.



Map and description of CA–02–a taken from United States Fish and Wildlife Service 1:100,000 map; Crescent City, California; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.14N., R.01E. Humboldt Meridian: S½ NE¼, S½, SE¼ NW¼ Section 21; W½ SW¼, SE¼ SW¼ Section 22; NW¼, NW¼, NW¼ SW¼ Section 27; Section 28 except W½ SW¼, SE¼ SW¼, S½ SE¼.

T.17N., R.01E. Humboldt Meridian: SW¼ SW¼ Section 21; W½ NW¼, NW¼ SW¼ Section 28; E½ NE¼ Section 29.

Critical Habitat includes only State lands described within the following areas:

T.14N., R.01W. Humboldt Meridian: Section 1 above Mean High Water (MHW).

T.14N., R.01E. Humboldt Meridian: W½ Section 6; W½ Section 7; Sections 18–19 above MHW.

T.15N., R.01E. Humboldt Meridian: S½ Section 7; W½ Section 8; NW¼, W½ NE¼ Section 17; Sections 18–19; W½, N½ NE¼ Section 30; W½ Section 31.

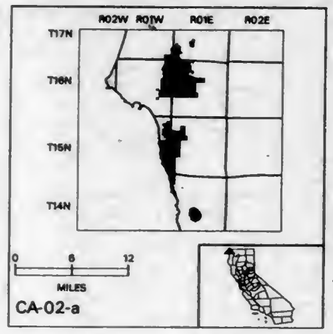
T.15N., R.01W. Humboldt Meridian: SE¼, S½ SW¼ Section 1; Section 12 except W½ NE¼; S½, NE¼, NE¼ NW¼ Section 13; Section 23 above MHW, Section 24, Sections 25–26 above MHW; Section 36 above MHW.

T.16N., R.01E. Humboldt Meridian: NW¼ Section 4; Sections 5–7; Section 8 except NE¼ SE¼; SW¼ NW¼ NW¼ SW¼ Section 9; NW¼ Section 15; W½, NE¼ Section 16; Sections 17–20; W½, W½ SE¼ Section 21.

T.16N., R.01W. Humboldt Meridian: Section 1; SE¼ SE¼ Section 2; E½ NE¼ Section 11; Sections 12–13; E½ E½ Section 14; SE¼, E½ NE¼, SW¼ NE¼, S½ NW¼ Section 23; Section 24.

T.17N., R.01E. Humboldt Meridian: SW¼, W½ SE¼ Section 30, Section 31 except E½ NE¼, NE¼ SE¼.

T.17N., R.01W. Humboldt Meridian: SE¼ SE¼ Section 25; S½, E½ NE¼ Section 36.



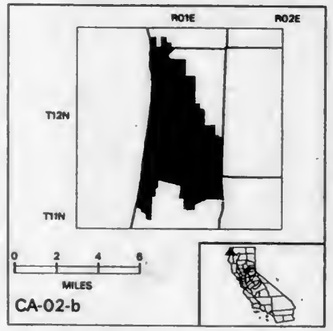
Map and description of CA–02–b taken from United States Fish and Wildlife Service 1:100,000 map; Orick and Hoopa, California; 1995.

Critical Habitat includes only State lands described within the following areas:

T.11N., R.01E. Humboldt Meridian: Sections 1–2 N½ N½ Section 3; Section 4 except E½ SE¼; Section 9 except E½ E½, SW¼ SW¼; N½ NE¼, SW¼ NE¼, E½ NW¼ Section 11; NW¼ NW¼ Section 12.

T.12N., R.01E. Humboldt Meridian: W½ NW¼, NE¼ NW¼, S½ Section 3; Section 4 above MHW; Section 9 above MHW; Section 10 except SE¼ NW¾; S½ NW¼, SW¼ Section 11; W½, NW¼ SE¼, S½ SE¼ Section 14; Section 15; Section 16 above MHW; Section 21 above MHW; Sections 22–23; SW¼ Section 24; Sections 25–27; Section 28 above MHW; Section 33 above MHW; Section 34–36.

T.13N., R.01E. Humboldt Meridian: SW¼, E½ SE¼ Section 33; SW¼ SW¼ Section 34.



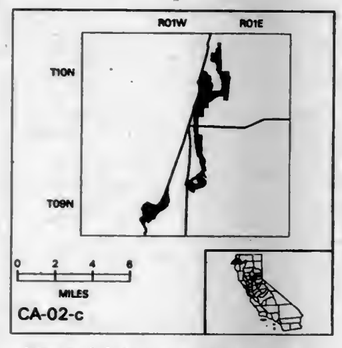
Map and description of CA–02–c taken from United States Fish and Wildlife Service 1:100,000 map; Orick, California; 1995.

Critical Habitat includes only State lands described within the following areas:

T.09N., R.01W. Humboldt Meridian: Section 23 above Mean High Water (MHW); Section 26 except SE¼, SE¼ SW¼; Section 27 above MHW; NE¼ Section 34; NW¼ NW¼ Section 35.

T.09N., R.01E. Humboldt Meridian: E½ NW¼, E½ SW¼, W½ SE¼ Section 6; W½ NE¼, E½ NW¼, W½ SE¼, SE¼ SE¼ Section 7; E½ NE¼, NE¼ SE¼ Section 18.

T.10N., R.01E. Humboldt Meridian: SW¼ SE¼, SE¼ SW¼ Section 8; W½ Section 17; Section 19 above MHW; E½ W½ W½ Section 20; Section 29 except SE¼, SW¼ NE¼, E½ SW¼, SW¼ SW¼; Section 30 above MHW; W½, N½ NE¼, E½ SW¼, SE¼ NW¼ Section 31.



Map and description of CA–03–a taken from United States Fish and Wildlife Service 1:100,000 map; Eureka and Hayfork, California; 1995.

Critical Habitat includes only Private lands described within the following areas:

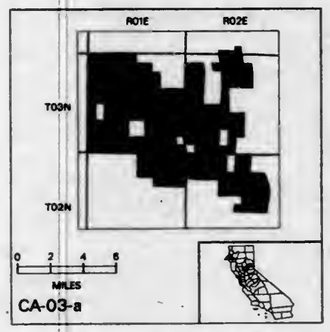
T.02N., R.01E. Humboldt Meridian: Section 1–3; N½ Section 10; Section 11–12.

T.02N., R.02E. Humboldt Meridian: Section 3; W½ Section 4; Section 5–6; N½ Section 7; N½ Section 8; Section 9–11; Section 14; Section 15 except SW¼; N½ Section 16; N½ Section 22; N½ Section 23.

T.03N., R.01E. Humboldt Meridian: S½ Section 3; Section 4–10; W½ Section 11; Section 13–18; W½ Section 19; Section 20–26; E½ Section 27; W½ Section 28; Section 29–35; Section 36 except NE¼.

T.03N., R.02E. Humboldt Meridian: Section 3 except NE¼; Section 4; SE¼ Section 5; S½ Section 6; Section 7; Section 9; Section 10; W½ Section 16; Section 18–20; Section 21 except NE¼; SW ¼ Section 22; W½ Section 27; Section 28 except SW¼; Section 29–30; Section 31 except SW¼; Section 32; Section 33 except NW¼.

T.04N., R.02E. Humboldt Meridian: S½ S½ Section 33; SW¼ Section 34.



Map and description of CA–04–a taken from United States Fish and Wildlife Service 1:100,000 map; Cape Mendocino and Garberville, California; 1995.

Critical Habitat includes only State lands described within the following areas:

T.01N., R.01E. Humboldt Meridian: SW¼ Section 23; S½ Section 24; SW¼ NW¼, N½ N½ Section 25; NE¼, E½ NW¼ Section 26.

T.01N., R.02E. Humboldt Meridian: E½ NE¼, NE¼ SE¼ Section 11; NW¼ Section 12; S½ Section 19; W½ W½ Section 29; N½, N½ SE¼, NE¼ SW¼ Section 30; NW¼ NW¼, S½ SE¼, E½ SW¼ Section 32.

T.01S., R.01E. Humboldt Meridian: S½ S½ Section 13; S½ NW¼, S½ Section 14; E½ SE¼ Section 15; E½ E½, SW¼ SE¼ Section 22; Sections 23–27; Section 28 except W½ NW¼; Section 33 except SW¼ NW¼, SW¼; Sections 34–36.

T.01S., R.02E. Humboldt Meridian: S½ NW¼, NW¼ SW¼, S½ SW¼, SW¼ SE¼ Section 3; Section 4 except SW¼ NW¼; NE¼ NE¼ Section 9; NW¼, W½ NE¼, E½ SE¼ Section 10; SW¼ SW¼ Section 11; W½ Section 14; SE¼, SW¼ SW¼ Section 15; S½ NW¼, SW¼, S½ SE¼ Section 16; S½, SE¼ NE¼ Section 17; S½ S½ Section 18; Sections 19–22; W½ Section 23; W½, SW¼ SE¼ Section 26; Sections 27–34; W½ NW¼, SE¼ NW¼, N½ SW¼, SW¼ SW¼, SW¼ NE¼, S½ SE¼, NW¼ SE¼ Section 35.

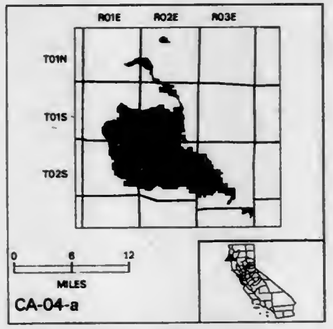
T.02S., R.01E. Humboldt Meridian: Sections 1–3; E½ E½ Section 4; E½ E½ Section 9; Sections 10–14; Section 15 except W½ SW¼, SW¼ NW¼; Section 22 except SW¼, W½ NW¼; Sections 23–25; Section 26 except, SW¼, S½ NW¼, SW¼ NE¼.

T.02S., R.02E. Humboldt Meridian: SW¼ Section 1; Section 2 except NE¼, E½ NW¼, NE¾ SE¼; Sections 3–24; Section 25 except SW¼ SW¼; N½ Section 26; Section 27 except S½ S½; Section 28 except S½ S½, NW¼ SW¼; Section 29 except NE¼ SE¼, S½ SE¼; Section 30 except S½ SW¼; NE¼ NW¼, N½ NE¼ Section 36.

T.02S., R.03E. Humboldt Meridian: Section 7 except N½; SW¼ SW¼ Section 8; Section 17 except NE¼, E½ SE¼; Sections 18–20; Section 21 except NW¼ NE¼, SE¼ NE¼, N½ SE¼, SE¼ SE¼; S½ S½, NW¼ SW¼, SW¼ NW¼ Section 27; Section 28 except NE¼ NE¼; Section 29 except W½ NW¼; Section 30 except SE¼ NE¼, NE¼ SE¼; Section 31 except S½ S½, NW¼ SE¼; Section 32 except SE¼ NE¼, S½; N½ NE¼, NE¼ NW¼ Section 33; E½, NW¼ Section 34; SE¼ NW¼, NW¼ NW¼ Section 35.

T.03S., R.03E. Humboldt Meridian: NW¼ Section 3; E½ NE¼ Section 11; N½, NW¼ SW¼, SE¼ Section 12; SE¼ SE¼, Section 13.

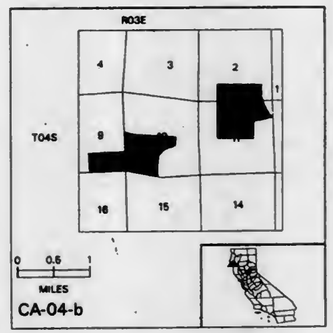
T.03S., R.04E. Humboldt Meridian: SW¼ SW¼ Section 18; NW¼, NW¼ SW¼ Section 30.



Map and description of CA–04–b taken from United States Fish and Wildlife Service 1:100,000 map; Garberville, California; 1995.

Critical Habitat includes only State lands described within the following areas:

T.04S., R.03E. Humboldt Meridian: SE¼ SW¼, S½ SE¼ Section 2; S½ SE¼ Section 9; SW¼, NW¼ SE¼ Section 10; E½ NW¼, SW¼ NE¼, N½ NE¼ Section 11.



Map and description of CA–05–a taken from United States Fish and Wildlife Service 1:100,000 map; Cape Mendocino, Garberville and Covelo, California; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.02S., R.02E. Humboldt Meridian: SE¼ SE¼ Section 31; S½ SW¼, SW¼ SE¼ Section 32.

T.03S., R.02W. Humboldt Meridian: SE¼ NW¼, E½ SW¼, S½ SE¼, NW¼ SE¼ Section 12; Sections 13–14; Section 15–16 East of Mean High Water (MHW); Section 22–23 East of MHW; Section 24 except SE¼; N½ NE¼ Section 26 East of MHW.

T.03S., R.01W. Humboldt Meridian: SW¼ SW¼ Section 9; NE¼ SE¼ Section 10; S½, SE¼ NE¼ Section 11; SW¼ NW¼, S½ Section 12; Sections 13–18; N½ NW¼, SW¼ NW¼ Section 19; N½ NW¼, SE¼ NW¼, NE¼, N½ SE¼, Section 20; Sections 21–26; N½, E½ SE¼ Section 27; N½ NE¼ Section 28; NE¼ NW¼, NW¼ NE¼ Section 35; N½ NW¼, NE¼, E½ SW¼ Section 36.

T.03S., R.01E. Humboldt Meridian: N½ SE¼, SE¼ SE¼, NE¼ SW¼ Section 12; N½ SE¼, SE¼ SE¼, SE¼ NE¼ Section 13; SW¼ NW¼, W½ SW¼ Section 18; W½ NW¼, SW¼, W½ SE¼ Section 19; SE¼ NE¼, NE¼ SE¼ Section 24; W½ SW¼ Section 29; Section 30 except NE¼ NE¼; Section 31; W½ W½, NE¼ NW¼, NE¼ SW¼ Section 32.

T.03S., R.02E. Humboldt Meridian: W½ SW¼, NW¼, SE¼ NE¼, SW¼ SE¼ Section 5; E½ SE¼, SW¼ SE¼ Section 6; Section 7 except SW¼ NW¼, SE¼ SE¼; W½ W½, SE¼ NW¼, SW¼, W½ NE¼, W½ SE¼, SE¼ SE¼ Section 8; S½ SW¼ Section 9; E½ SW¼ Section 18; NE¼ NW¼, SE¼ SW¼, SW¼ SE¼ Section 19; SE¼ NE¼ Section 20; NW¼ NE¼ Section 22; NW¼ NW¼ Section 28; NW¼ NE¼ Section 30.

T.04S., R.01W. Humboldt Meridian: S½ S½, Section 1; SE¼ SE¼ Section 2; SE¼ SE¼ Section 10; S½, NE¼ Section 11; N½, W½ SW¼ Section 12; Section 14 east of MHW.

T.04S., R.01E. Humboldt Meridian: SW¼, W½ SE¼, SE¼ SE¼, S½ NE¼ Section 4; Section 5; Section 6 except S½ SW¼; NE¼, E½ NW¼, NE¼ SE¼ Section 7; N½ Section 8; Section 9 except N½ NW¼, NE¼ NE¼; S½, E½ NE¼ Section 10; SW¼, SW¼ NW¼ Section 11; Section 15; Section 16 except SW¼ SW¼; S½ SW¼ Section 20; E½, S½ SW¼ Section 21; Sections 22–23; S½ NW¼, NW¼ NW¼, SW¼ Section 24; W½ Section 25; Section 26–27; Section 28 except NW¼ NW¼; N½, SE¼ SE¼ Section 29; N½ N½ Section 33; E½ Section 34; Section 35; W½ Section 36.

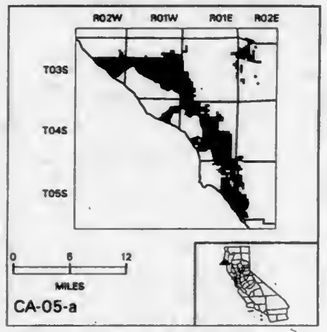
T.04S., R.02E. Humboldt Meridian: S½ SW¼, NE¼ SW¼, NW¼ SE¼ Section 31.

T.05S., R.01E. Humboldt Meridian: Section 1; Section 2 except N½ SW¼; E½ NE¼, SW¼ NE¼ Section 3; NE¼, S½ SE¼, NE¼ NW¼ Section 11; Section 12 except N½ NW¼, NE¼ SW¼; Section 13 except W½ NE¼, SE¼ NE¼, NE¼ SE¼; E½ Section 14; Section 23 East of MHW; Section 24; Section 25 East of MHW.

Description of Lands Using Protracted Public Land Survey Lines

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.05S., R.02E. Humboldt Meridian: Western ½ of the Western ½ of the Township T.05S., R.02E.



Map and description of CA–05–b taken from United States Fish and Wildlife Service 1:100,000 map; Covelo, California; 1995.

Critical Habitat includes only State lands described within the following areas:

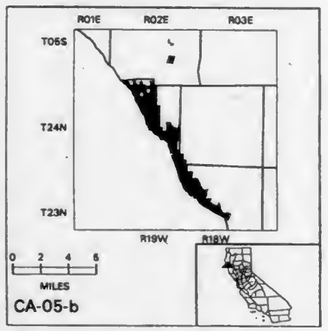
T.24N., R.19W. Mt. Diablo Meridian: W½ W½ Section 2; Section 3 except E½ NW¼; Section 4 except NE¼ NE¼; Section 5; Section 9 above MHW; Section 10; W½ W½, SE¼ SW¼ Section 11; W½ Section 14; Section 15 above MHW; Section 22 above MHW; Section 23 except NE¼, NE¼ SE¼; Section 24 except NE¼ NW¼, N½ NE¼; Section 25 except SW¼ SW¼; Section 26 above MHW; Section 36 above MHW.

T.24N., R.18W. Mt. Diablo Meridian: SW¼ NW¼, SE¼ SW¼, W½ SW¼ Section 31.

T.23N., R.19W. Mt. Diablo Meridian: Section 1 above MHW.

T.23N., R.18W. Mt. Diablo Meridian: Section 5; Section 6 except E½ NE¼ ; Section 7 above MHW; Section 8 except N½ NE¼, SE¼ NE¼, NE¼ SE¼; W½ SW¼, S½ SE¼ Section 15; Section 16 except NE¼ NW¼, NE¼, Section 21 above MHW; N½ Section 22.

T.05S., R.02E. Humboldt Meridian: NW¼ NW¼, SE¼ NW¼ Section 22; NE¼ Section 27.



Map and description of CA–06–a taken from United States Fish and Wildlife Service 1:100,000 map; Garberville and Covelo, California; 1995.

Critical Habitat includes only State lands described within the following areas:

T.05S., R.03E. Humboldt Meridian: SE¼ SE¼ Section 10; SW¼ SW¼ Section 11; Section 13 except NE¼; Section 14 except NW¼ NE¼; Section 15 except SW¼; NW¼ NE¼, NE¼ NW¼ Section 24.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.24N., R.15W. Mt. Diablo Meridian: SW¼ NW¼, W½ SE¼, SW¼ Section 4; Section 5 except W½ SW¼; S½ NE¼ Section 6.

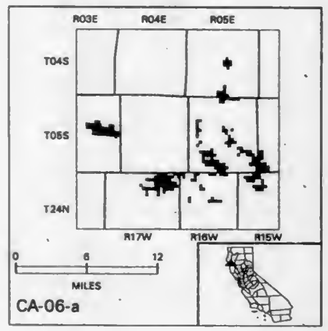
T.24N., R.16W. Mt. Diablo Meridian: N½ NE¼, NE¼ NW¼ Section 3; W½ NW¼, NW¼ SE¼, NE¼ NW¼, S½ SE¼, Section 5; SE¼ NE¼, N½ NW¼, Section 6; W½ SE¼ Section 7; SE¼ SW¼, W½ SE¼, SE¼ SE¼ Section 9; S½ SW¼ Section 10.

T.24N., R.17W. Mt. Diablo Meridian: Section 1 except S½ NE¼, NW¼ NW¼, SE¼ SE¼; Section 2 except SE¼ SW¼; S½ S½, NE¼ SE¼, S½ N½, NE¼ NE¼ Section 3; SE¼ SE¼, NW¼ SE¼ Section 4; W½ NW¼ Section 10; NW¼ NE¼, W½ NW¼ Section 11.

T.05S., R.05E. Humboldt Meridian: N½ NW¼ Section 2; N½ N½, SW¼ NW¼ Section 3; E½ NE¼ Section 4; SE¼ SE¼ Section 7; SW¼ SW¼ Section 8; SW¼ NW¼, N½ SW¼, SE¼ SW¼, NE¼ SE¼, Section 15; NW¼ SW¼ Section 17; E½ E½ Section 18; NE¼ NE¼, SE¼ SE¼ Section 19; NW¼ SW¼ Section 20; W½ NE¼, SE¼ NW¼, NE¼ SW¼, N½ SE¼, SW¼ SE¼ Section 22; NW¼ SW¼ Section 23; S½ NW¼, N½ SW¼, S½ SE¼, NW¼ SE¼ Section 25; NE¼ NW¼, NE¼ SW¼, W½ NE¼, SE¼ NE¼ Section 26; W½ W½, NE¼ SW¼ Section 28; S½ N½, E½ SW¼, N½ SE¼ Section 29; NE¼, NE¼ NW¼ Section 32; NW¼ NE¼, S½ NE¼, NW¼, NE¼ SW¼, SE¼ Section 33; SW¼ NW¼, N½ SW¼, SW¼ SW¼ Section 34; NE¼ NE¼ Section 36.

T.05S., R.06E. Humboldt Meridian: S½ NW¼, SW¼ Section 30; Section 31 except NE¼ NW¼, N½ NE¼, SE¼ NE¼.

T.04S., R.05E. Humboldt Meridian: SE¼ SW¼ Section 15; NW¼, W½ NE¼, NE¼ SW¼ Section 22; SE¼ Section 33; W½ W½, SE¼ SW¼ Section 34.



Map and description of CA–06–b taken from United States Fish and Wildlife Service 1:100,000 map; Covelo, California; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.21N., R.15W. Mt. Diablo Meridian: W½ NW¼ Section 5; Sections 6–7; NW¼ NE¼, N½ NW¼, SW¼ NW¼, N½ S½, SW¼ SW¼ Section 8; W½ W½, SE¼ SW¼, S½ SE¼ Section 17; Section 18.

T.21N., R.16W. Mt. Diablo Meridian: Section 1; N½ NE¼, NE¼ NW¼, SE¼ SE¼ Section 2; E½ NE¼ Section 11; Section 12 except NW¼ SW¼ and S½ SW¼; NE¼, NE¼ SE¼ Section 13.

T.22N., R.14W. Mt. Diablo Meridian: NW¼ SW¼, S½ SW¼ Section 6; Section 7; Section 18 except E½ SE¼; ; SE¼ SE¼ Section 20; SW¼ SW¼, NE¼ SE¼ Section 21; E½ NE¼, W½ NW¼, NE¼ SE¼ Section 28; NE¼, NE¼ NW¼, S½ NW¼, SW¼, NW¼ SE¼ Section 29; S½ NE¼, N½ NW¼, N½ SE¼ Section 32.

T.22N., R.15W. Mt. Diablo Meridian: SW¼ NE¼, S½ Section 1; N½ Section 12; E½ Section 13; NE¼ SW¼, S½ SW¼, W½ SE¼ Section 19; NW¼ NE¼ Section 24; SW¼ NE¼, W½ NW¼, SW¼, W½ SE¼ Section 30; SW¼ NE¼, NW¼ NW¼, S½ NW¼, S½ Section 31.

T.22N., R.16W. Mt. Diablo Meridian: SW¼, SW¼ NW¼, W½ W½ Section 3; Section 4; Section 5 except S½ SE¼, NE¼ SE¼, SE¼ NE¼; E½, E½ W½, S½ SW¼, NE¼ NW¼ Section 6; E½ NE¼, N½ NW¼, SE¼ SW¼, SE¼ Section 7; N½ NE¼, E½ W½, S½ SE¼, SW¼ SW¼ Section 8; Section 9 except N½ NW¼ and SE¼ NW¼; SW¼ NE¼, W½, NW¼ SE¼, S½ SE¼ Section 10; W½ Section 17; Section 18 except N½ NW¼, W½ SW¼; S½ NE¼, NW¼ NE¼ Section 19; NW¼ SW¼ Section 20; SE¼ SE¼ Section 21; S½ SW¼, SW¼ SE¼ Section 22; SE¼ SE¼ Section 23; Section 26; Section 27 except NE¼ NE¼, W½ SW¼, S½ SE¼, SE¼ SW¼; SE¼ Section 34; Section 35.

T.22N., R.17W. Mt. Diablo Meridian: NE¼ NE¼, SW¼ NE¼, SE¼ NW¼, NE¼ SW¼, W½ SE¼ Section 12; S½ SE¼ Section 13; N½ NE¼ Section 24.

T.23N., R.16W. Mt. Diablo Meridian: W½ NW¼ Section 3; NE¼ NE¼ Section 4; SE¼ SW¼, E½ NE¼, NW¼ SE¼ Section 5; W½ W½ Section 6; Section 7 except NW¼; NE¼ NW¼, SW¼ NW¼, SW¼ SW¼ Section 8; W½ Section 17; Section 18 except, N½ NW¼, SW¼ NW¼, W½ SW¼, SE¼ SW¼; S½ SE¼, S½ SW¼, NE¼ SE¼ Section 19; S½ SW¼, NE¼ SW¼, N½ SE¼, SE¼ SE¼ Section 20; NW¼ NW¼, S½ NW¼, SW¼, SW¼ SE¼ Section 28; Section 29; Section 30 except NW¼ NW¼; Section 31 except SW¼ SW¼; Section 32 except SE¼ NE¼, SW¼ SE¼, E½ SE¼; Section 33 except NE¼ NE¼, S½ NW¼; S½ NW¼, N½ SW¼ Section 34.

T.23N., R.17W. Mt. Diablo Meridian: Section 1 except S½ SW¼; NE¼ SE¼ Section 2.

T.24N., R.16W. Mt. Diablo Meridian: SE¼ NE¼, SE¼ NW¼, NW¼ SW¼, SE¼ SW¼, NE¼ SE¼ Section 17; W½ SE¼, E½ SW¼ Section 18; Section 19 except SW¼ SE¼; W½ NE¼, E½ NW¼ Section 20; S½ NW¼, SW¼ Section 27; Section 28 except N½ N½ and SE¼ SW¼; Section 29 except N½ NE¼, NW¼ NW¼; Section 30 except N½ NE¼; Section 31; Section 32 except SE¼ NE¼ and E½ SE¼; N½ NE¼, NW¼ NW¼ Section 33; NW¼ Section 34.

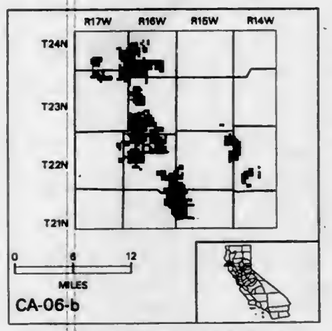
T.24N., R.17W. Mt. Diablo Meridian: NE¼ NE¼ Section 23; Section 24 except NE¼ NW¼, NW¼ NE¼; E½, E½ NW¼, NW¼ NW¼, SW¼ SW¼ Section 25, N½ SE ¼ Section 26, Section 36.

Critical Habitat includes only State lands described within the following areas:

T.21N., R.16W. Mt. Diablo Meridian: SW¼ NE¼, S½ NW¼ Section 26.

T.23N., R.17W. Mt. Diablo Meridian: N½ SW¼, S½ NW¼ Section 2; Section 3 except NE¼, S½ SE¼; E½ NW¼, SW¼ NW¼, NE¼ SE¼, NE¼ Section 4.

T.24N., R.17W. Mt. Diablo Meridian: Section 28 except SW¼ SW¼; NW¼ Section 27; W½ Section 33; SE¼ SW¼ Section 34.



Map and description of CA–07–a taken from United States Fish and Wildlife Service 1:100,000 map; Ukiah, California; 1995.

Critical Habitat includes only State lands described within the following areas:

T.17N., R.14W. Mt. Diablo Meridian: W½ SW¼, NE¼ SW¼ Section 6; W½ NW¼, NW¼ SW¼ Section 7.

T.17N., R.15W. Mt. Diablo Meridian: W½, SE¼ Section 2; Sections 3–8; Section 9 except SE¼ SE¼ ; Section 10 except S½ S½; Section 11; Section 12 except SW¼ SE¼; N½ NE¼ Section 14; Section 18 except SE¼, W½ SW¼.

T.17N., R.16W. Mt. Diablo Meridian: N½ N½ Section 1; Section 3 except W½ W½; Sections 4–6; NE¼, SW¼ Section 7; N½, N½ SW¼ Section 8; N½, N½ SE¼, SE¼ SE¼ Section 9; Section 10 except NE¼ NE¼; Section 18 except SE¼ SE¼; NW¼, W½ SW¼ Section 19; W½ NW¼ Section 30.

T.17N., R.17W. Mt. Diablo Meridian: Sections 1–3; NE¼, SW¼ NW¼, S½ Section 4; NE¼, N½ NW¼, SE¼ NW¼, NE¼ SE¼, S½ S½ Section 5; N½ NE¼ Section 6; Section 8 except W½ SW¼, SE¼ SW¼, SW¼ SE¼; Sections 9–15; SE¼ NE¼, N½ NE¼, NE¼ NW¼, S½ Section 16; S½ Section 17; S½, S½ NE¼ Section 18; NW¼ Section 19; N½ NE¼ Section 20; Section 21 except SE¼ SW¼; Section 22 except E½ SW¼ ; Section 23 except NW¼ SW¼; Section 24; NE¼ NW¼, NW¼ SW¼ Section 26; Section 27 except SW¼ NW¼, SE¼ SE¼, N½ NE¼; Section 28 except NE¼ NE¼, SW¼, S½ SE¼, W½ NW¼.

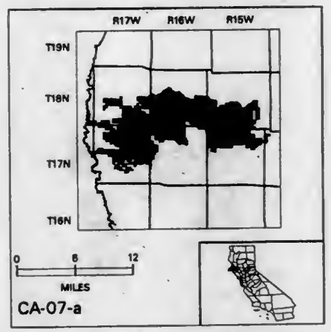
T.17N., R.18W. Mt. Diablo Meridian: SE¼ SE¼ Section 13.

T.18N., R.15W. Mt. Diablo Meridian: SW¼ Section 18; Section 19; SE¼ NE¼, NE¼ SW¼, S½ SW¼, SE¼ Section 20; Section 21; Section 22 except NE¼; Section 23 except N½ NW¼; W½ W½, SE¼ SW¼ Section 24; W½ Section 25; Section 26 except E½ E½; Sections 27–34; Section 35 except NE¼ SE¼.

T.18N., R.16W. Mt. Diablo Meridian: S½ Section 13; SE¼ Section 14; SW¼, W½ SE¼ Section 15; S½ N½, NW¼ NW¼, S½ Section 16; Section 17 except NW¼ NW¼; S½ Section 18; Sections 19–33; Section 34 except E½ SE¼; Section 35 except W½ SW¼, SE¼ SW¼; Section 36.

T.18N., R.17W. Mt. Diablo Meridian: Section 20 except N½ N½, SW¼ SW¼; Section 21 except NW¼ NE¼, N½ NW¼; NE¼, NE¼ SE¼, SW¼ SE¼ Section 23; Section 24; Section 25 except S½ S½, N½ SE¼ ; Section 26 except NW¼ NW¼; Section 27; NE¼ NE¼ Section 28; N½ NW¼, SW¼ NW¼ Section 29; NW¼ SW¼, NE¼ SE¼, S½ S½ Section 31; S½ NE¼, S½ Section 32; S½ N½, N½ S½, SE¼ SE¼ Section 33; Sections 34–36.

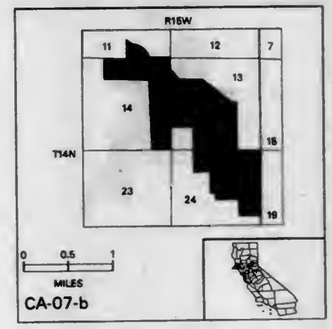
T.18N., R.18W. Mt. Diablo Meridian: SW¼ Section 25; W½, SE¼ Section 36.



Map and description of CA–07–b taken from United States Fish and Wildlife Service 1:100,000 map; Ukiah, California; 1995.

Critical Habitat includes only State lands described within the following areas:

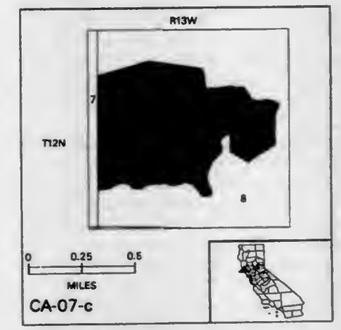
T.14N., R.15W. Mt. Diablo Meridian: E½ SW¼, SW¼ SE¼, SE¼ NW¼ Section 11; Section 13 except E½ E½, NE¼ NW¼, NW¼ NE¼; E½ E½, NE¼, NW¼, NW¼ NE¼ Section 14; NE¼, NE¼ NW¼, N½ SE¼ Section 24.



Map and description of CA–07–c taken from United States Fish and Wildlife Service 1:100,000 map; Point Arena, California; 1995.

Critical Habitat includes only State lands described within the following areas:

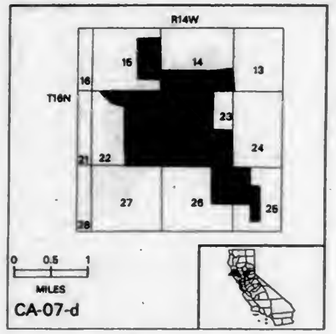
T.12N., R.13W. Mt. Diablo Meridien: S½ NW¼, SW¼, N½ SE¼, SW¼ SE¼, S½ NE¼ Section 8.



Map and description of CA–07–d taken from United States Fish and Wildlife Service 1:100,000 map; Ukiah, California; 1995.

Critical Habitat includes only State lands described within the following areas:

T.16N., R.14W. Mt. Diablo Meridian: S½ S½ Section 14; E½ SE¼, SE¼ NE¼ Section 15; E½ Section 22; Section 23 except E½ NE¼; W½ NW¼, SE¼ NW¼, NE¼ SW¼ Section 25; E½ NE¼ Section 26.



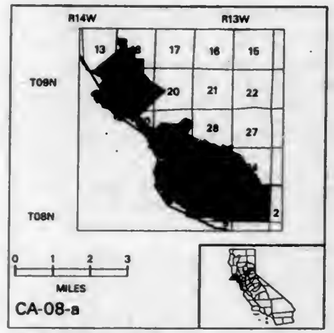
Map and description of CA–08–a taken from United States Fish and Wildlife Service 1:100,000 map; Point Arena, California; 1995.

Critical Habitat includes only State lands described within areas bounded by the following descriptions:

(a) starting at Station H–34 on the easterly line of the German Rancho, South 33° 50′ West for 3,200 feet, South 86° 20′ West for 1,927 feet, North 53° West for 1,372 feet, North 37° West for 1,550.5 feet, North 48° East for 1,720 feet, South 86° 45′ East for 2,203.5 feet, North 55° East for 1,110.1 feet, South 8° 50′ East for 653 feet; and (b) starting at the westernmost point of Kruse Rhododendron State Reserve proceeding North 48° East along the Kruse Rhododendron State Reserve boundary to the intersection with Kruse Ranch Road, west on Kruse Ranch Road to the intersection with State Highway 1, north on State Highway 1 to Cannon Gulch, northeast along Cannon Gulch to the Rancho de German Spanish Land Grant boundary, northwest along the Rancho de German Spanish Land Grant boundary to the western edge of Range 13 West, South 29° 30″ from this point to Mean High Water (MHW), southwest along the shoreline at MHW to the south boundary of the Rancho de German Spanish Land Grant, east along the Spanish Land Grant boundary to the southeast corner of the land grant, north on the eastern boundary of the land grant to the eastern corner of the Kruse Rhododendron State Reserve, south along the Kruse Rhododendron State Reserve boundary to the westernmost point of the reserve.

Critical Habitat includes only State lands described within the following areas:

T.09N., R.13W. Mt. Diablo Meridian: SW¼, SW¼ NW¼, SW¼ SE¼ Section 18; NW¼ Section 19.



Map and description of CA–08–b taken from United States Fish and Wildlife Service 1:100,000 map; Point Arena and Healdsburg, California; 1995.

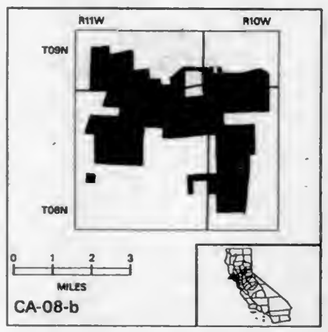
Critical Habitat includes only State lands described within the following areas:

T.08N., R.10W. Mt. Diablo Meridian: NW¼, S½ SW¼ Section 5; Section 6 except N½ SE¼; Section 7 except W½ W½; W½ W½ Section 8; W½ W½ Section 17; Section 18 except W½ SW¼.

T.08N., R.11W. Mt. Diablo Meridian: Section 1 except N½ NE¼; Section 2 except SW¼ SE¼; Section 3 except S½ NW¼, SW¼ NE¼; NE¼, N½ SE¼, E½ NW¼, NE¼ SW¼ Section 10; NW¼, N½ SW¼ Section 11; N½ NE¼, SW¼ NE¼ Section 13; NW¼ NW¼ Section 15.

T.09N., R.11W. Mt. Diablo Meridian: SW¼ SW¼ Section 27; SE¼ SE¼ Section 28; E½ E½ Section 33; Section 34; SW¼, S½ SE¼ Section 35.

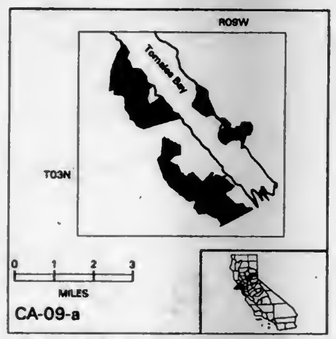
T.09N., R.10W. Mt. Diablo Meridian: SW¼, S½ SE¼ Section 31; SW¼ Section 32.



Map and description of CA–09–a taken from United States Fish and Wildlife Service 1:100,000 map; Napa, California; 1995.

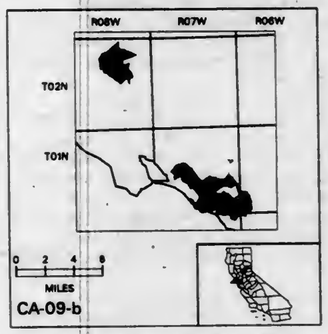
Critical Habitat includes only State lands bounded by the following descriptions:

(a) on the west by Point Reyes National Seashore, on the east by the shoreline of Tomales Bay at Mean High Water (MHW), on the south by a line beginning at the intersection of Pierce Point Road with Sir Francis Drake Highway proceeding North 75° 07′03″ East for 4,734.31 feet to the shoreline of Tomales Bay at MHW; (b) on the east and north by Sir Francis Highway, on the west by Point Reyes National Seashore, on the south by the southern boundary of the Punta De Los Reyes (Randall) Spanish Land Grant; (c) State lands within the Nicasio (Halleck) Spanish Land Grant west of State Highway 1 and east of the shoreline of Tomales Bay at MHW; and (d) State lands within the Nicasio (Frink and Reynolds) Spanish Land Grant.



Map and description of CA–09–b taken from United States Fish and Wildlife Service 1:100,000 map; Napa and San Francisco, California; 1995.

Critical Habitat includes only State lands bounded by the following descriptions: (a) portions of Ranchos Nicasio, San Geronimo, and Tomales Y Baulines Spanish Land Grants bounded on the north, west, and south by Golden Gate National Recreation Area and on the east by a line 122° 41′33″ West; and (b) portions of Ranchos Tomales Y Bolinas, Las Baulines, and Sausalito Spanish Land Grants bounded by a line starting at the intersection of the Rancho Las Baulines Spanish Land Grant boundary line with McKinnan Gulch, west along McKinnan Gulch to the Pacific Ocean, south east along the Pacific Ocean at Mean High Water (MHW) to the intersection with Cold Stream, east along Cold Stream to the intersection with State Highway 1, south on State Highway 1 to the intersection with the south end of the Panoramic Highway, following the Panoramic Highway to the intersection with Rattlesnake Creek, north along Rattlesnake Creek to the intersection with the Rancho Sausalito Spanish Land Grant line, southwest along the Spanish Land Grant boundary to the intersection with the Rancho Las Baulines Spanish Land Grant line, north along the Rancho Las Baulines Spanish Land Grant boundary to the intersection with McKinnan Gulch.



Map and description of CA–10–a taken from United States Fish and Wildlife Service 1:100,000 map; Grants Pass, Oregon; Happy Camp, California; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.17N., R.07E. Humboldt Meridian: Section 1; Section 2 except NW¼ SW¼, S½ SW¼; N½ Section 3; NE¼ NE¼ Section 4; NE¼ SW¼, E½ Section 11; N½ N½, SW¼ NW¼, W½ SW¼ Section 12; NW¼, NW¼ SW¼ Section 13; NE¼, N½ SE¼ Section 14.

T.17N., R.08E. Humboldt Meridian: Section 6 except E½ E½, SW¼ SE¼.

T.18N., R.07E. Humboldt Meridian: Section 30 except NW¼; NE¼, N½ NW¼, Section 31; N½, NW¼ SW¼ Section 32; Section 36.

T.18N., R.08E. Humboldt Meridian: Section 31 except SE¼ SE¼.

T.41S., R.06W. Willamette Meridian: Section 4 except N½ NE¼; Section 5 except N½ NW¼, NW¼ NE¼; SE¼, S½ SW¼ Section 6; Sections 7–8; Section 9 except N½ SW¼, SE¼ SE¼; NW¼ SW¼, W½ NW¼ Section 10; S½, NW¼ Section 16; Sections 17–18.

T.41S., R.07W. Willamette Meridian: Section 10 except W½ NW¼, NE¼ NE¼, NW¼ SW¼; Section 11 except NW¼; Section 12 except NE¼ NW¼, W½ NE¼; Sections 13–15.

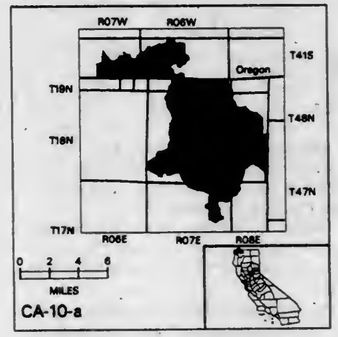
Description of lands using protracted Public Land Survey Lines

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.18N., R.07E. Humboldt Meridian: Section 1–4; E½ Section 5; NE¼, E½ SE¼ Section 8; Sections 9–16; E½ Section 17; SE¼ SE¼ Section 19; E½, S½ SW¼ Section 20; Sections 21–29; E½, N½ NW¼ Section 33; Sections 34–35.

T.18N., R.08E. Humboldt Meridian: SW¼, W½ NW¼, S½ SE¼ Section 6; Section 7; Section 8 except N½ NE¼, N½ NW¼; W½ SW¼ Section 9; W½, S½ SE¼ Section 16; Sections 17–21; Section 28; Section 29 except SW¼ SE¼; Section 30; NW¼ NW¼ Section 32; N½ NW¼, E½ Section 33.

T.19N., R.07E. Humboldt Meridian: E½ Section 32; Sections 33–36.



Map and description of CA–11–a taken from United States Fish and Wildlife Service 1:100,000 map; Hoopa and Hayfork, California; 1995.

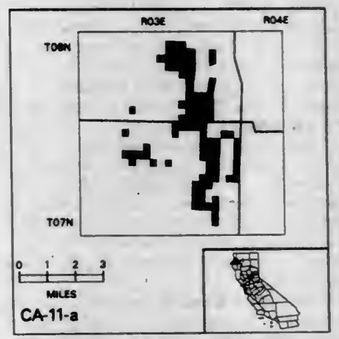
Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.07N., R.03E. Humboldt Meridian: E½ SE¼, W½ SW¼, SE¼ NW¼, SW¼ NE¼ Section 1; E½ NE¼, N½ NW¼, SE¼ Section 2; N½ NE¼, SW¼ NE¼ Section 3; SW¼ SE¼ Section 4; SE¼ NE¼ Section 5; NE¼ NE¼ Section 8; W½ NW¼, NE¼ NW¼, NW¼ NE¼, SE¼ NE¼ Section 9; SE¼ NW¼ Section 10; E½ E½, NW¼ NE¼, SW¼ SE¼ Section 11; W½ W½, E½ E½, SW¼ SE¼ Section 12; W½ SW¼ Section 13; E½ W½, W½ E½, NE¼ NE¼, SE¼ SE¼ Section 14; W½ NW¼ Section 24.

Description of Lands Using Protracted Public Land Survey Lines

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.08N., R.03E. Humboldt Meridian: SE¼, S½ NE¼, SE¼ NW¼, S½ SW¼, NE¼ SW¼ Section 22; SW¼, SW¼ NW¼, E½ SE¼ Section 23; W½, E½ SE¼ Section 26; NE¼ NW¼, N½ NE¼, SE¼ NE¼ Section 27; NW¼ SW¼ Section 33; SE¼ NE¼, SE¼ SE¼, Section 34; Section 35.



Map and description of CA–11–b taken from United States Fish and Wildlife Service 1:100,000 map; Hayfork, California; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.03N., R.02E. Humboldt Meridian: SE¼ NE¼, SW¼ NW¼, N½ N½ Section 1; NE¼, E½ NW¼, N½ SE¼ Section 2.

T.03N., R.03E. Humboldt Meridian: N½ NE¼, SE¼ NW¼, NE¼ SW¼, W½ SE¼, Section 6.

T.03N., R.04E. Humboldt Meridian: W½ NE¼, NW¼ Section 1; Section 2 except SE¼ SE¼; E½ NE¼, SE¼ SW¼, SE¼ Section 3; W½ NE¼, NW¼ Section 5; E½ NE¼ Section 6.

T.03N., R.05E. Humboldt Meridian: NE¼, N½ SE¼ Section 6; SW¼ NW¼, N½ SW¼, SW¼ SW¼ Section 7; NW¾ NW¼ Section 18.

T.04N., R.02E. Humboldt Meridian: S½ SE¼ Section 25.

T.04N., R.03E. Humboldt Meridian: S½ NW¼, NW¼ SE¼, SE¼ SE¼ Section 31.

T.04N., R.04E. Humboldt Meridian: NE¼ Section 1; E½ E½ Section 12; S½ Section 25; SE¼ NW¼, NW¼ SW¼, SE¼ Section 26; S½ NE¼, NW¼, N½ SE¼ Section 27; N½, S½ S½, NE¼ SW¼, NE¼ SE¼ Section 28; SW¼ NW¼ Section 29; S½ NE¼, SW¼, W½ SE¾ Section 30; W½ NE¼, NW¼, N½ SE¼, NW¼ SW¼ Section 31; SE¼ NW¼, SW¼ Section 32; N½ N½, SE¼ NE¼, SE¼ NW¼, NE¼ SE¼ Section 33; Section 34 except N½ NE¼, S½ SW¼; Section 35 except N½ N½.

T.04N., R.05E. Humboldt Meridian: Sections 1–7; S½ S½ Section 8; Sections 9–12; Section 13 except E½ NE¼, E½ SE¼; Section 14; Section 15 except W½ NW¼ and SW¼; NE¼ NW¼, NW¼ NE¼ Section 16; NW¼ SW¼ Section 17; N½, N½ SE¼ Section 18; Section 19 except W½ W½; Section 20; NE¼ NW¼, SW¼ Section 21; NE¼, N½ SE¼, E½ NW¼ Section 22; Section 23; Section 24 except SE¼ SE¼; N½ NW¼ Section 25; NW¼ NE¼, NW¼, NW¼ SW¼ Section 26; NW¼ NW¼ Section 28; Section 29 except S½ NE¼, N½ SE¼, SE¼ SE¼; Section 30; Section 31 except SW¼ SW¼; NW¼, W½ SW¼ Section 32.

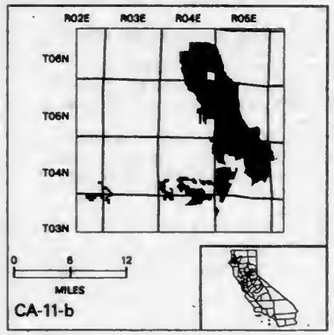
T.04N., R.06E. Humboldt Meridian: W½ W½ Section 6; W½ Section 7.

T.05N., R.04E. Humboldt Meridian: Sections 1–3; E½ NE¼ Section 4; NE¼, N½ NW¼, E½ E½ Section 10; Sections 11–13; Section 14 except SW¼, SW¼ NW¼; Section 23 except W½ SW¼, W½ SE¼; Section 24; N½ NW¼, S½ SE¼ Section 25; E½ NW¼ Section 26.

T.05N., R.05E. Humboldt Meridian: Section 4 except E½; Sections 5–8; Section 9 except E½; Section 16 except E½ E½; Sections 17–20; Section 21 except E½ NE¼; W½ SW¼ Section 22; W½ SW¼ Section 25; S½ Section 26; Section 27 except NE¼, N½ SE¼; Sections 28–35; W½ W½, S½ S½ Section 36.

T.06N., R.04E. Humboldt Meridian: Sections 13–15; Sections 21–27; Section 28 except SW¼ NW¼, NW¼ SW¼; Section 33 except W½ NW¼, SW¼; Sections 34–35.

T.06N., R.05E. Humboldt Meridian: W½, W½ SE¼ Section 18; Section 19 except E½ NE¼; SW¼ SW¼ Section 29; Sections 30–31; Section 32 except NE¼, NE¼ SE¼, NE¼ NW¼.



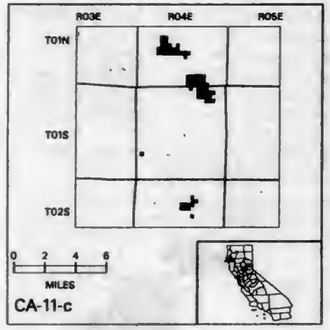
Map and description of CA–11–c taken from United States Fish and Wildlife Service 1:100,000 map; Garberville, California; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.02S., R.04E. Humboldt Meridian: E½ NE¼, SW¼, N½ SE¼, SW¼ SE¼ Section 10; SW¼ NW¼ Section 11; SE¼ NE¼ Section 15.

T.01S., R.04E. Humboldt Meridian: SW¼ NW¼, SW¼ SW¼ Section 1; Section 2 except NE¼ NE¼ and S½ SW¼; NW¼ NE¼ Section 3; SE¼ NW¼ Section 30.

T.01N., R.04E. Humboldt Meridian: S½ SE¼ Section 17; E½, E½ SW¼ Section 20; SW¼ NE¼, SW¼ NW¼, SW¼, NW¼ SE¼, S½ SE¼ Section 21; S½ SW¼ Section 22; SW¼ NW¼ Section 23; NW¼ NW¼ Section 27; S½ NE¼, SE¼ NW¼, E½ SW¼, SE¼ Section 34; S½ NW¼, SW¼, SW¼ SE¼ Section 35.



Map and description of CA–11–d taken from United States Fish and Wildlife Service 1:100,000 map; Hoopa and Hayfork, California; 1995.

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.07N., R.05E. Humboldt Meridian: N½ NE¼ Section 8; NE¼, E½ SE¼, NE¼ NW¼ Section 9; Section 24 except W½ W½; NW¼, NE¼ SE¼ Section 25 ; SW¼ NW¼, W½ SW¼, NW¼, NE¼ SE¼ Section 34.

Description of Lands Using Protracted Public Land Survey Lines

Critical Habitat includes only Federal lands designated as Late Successional Reserves described within the following areas:

T.06N., R.06E. Humboldt Meridian: W½ W½ Section 1; Sections 2–3; Section 4 except W½ SW¼, SE¼ SW¼; NE¼ NE¼ Section 9; SE¼, N½, SE¼ NE¼ Section 10; Section 11 except E½ E½, S½ SE¼; NW¼ NE¼, SW¼ SW¼, N½ SW¼, NW¼ Section 14; NE¼ NE¼, E½ SE¼ Section 15.

T.07N., R.05E. Humboldt Meridian: Sections 1–3; Section 4 except NW¼ NW¼; E½, Section 5; Sections 10–13; N½ N½, SE¼ NE¼ Section 14.

T.07N., R.06E. Humboldt Meridian: W½ NE¼, N½ SW¼ NW¼, NW¼ SE¼ Section 2; Section 3 except S½ SE¼, SE¼ SW¼; Sections 4–8; NW¼, S½ Section 9; SW¼, NW¼ SE¼, S½ SE¼ Section 10; SW¼ SW¼ Section 11; SE¼ SE¼ Section 12; Section 13 except NW¼ NW¼; Sections 14–23; Section 24 except SE¼ SE¼; Section 25 except SE¼ SE¼; Sections 26–30; E½ E½, NW¼ NE¼ Section 31; Section 32 except SE¼ SW¼; Sections 33–35; W½ SW¼, NW¼ Section 36.

T.07N., R.07E. Humboldt Meridian: SW¼ SE¼, SW¼ Section 6; SW¼, NW¼, W½ NE¼ Section 7.

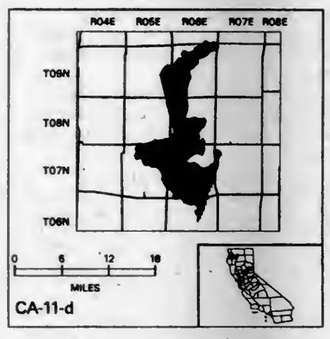
T.08N., R.05E. Humboldt Meridian: E½, E½ NW¼, NE¼ SW¼ Section 1; E½ E½, E½ NW¼ Section 12; NE¼ NE¼ Section 13; SE¼ SE¼ Section 25; SE¼ SE¼ Section 33; SE¼ NE¼, S½ Section 34; S½, S½ N½ Section 35; Section 36 except NW¼ NW¼.

T.08N., R.06E. Humboldt Meridian: W½ W½ Section 4; Sections 5–8; W½ W½ Section 9; S½ SW¼, SW¼ SE¼ Section 14; SW¼, S½ SE¼ Section 15; S½ Section 16; Sections 17–18; Section 19 except W½ W½; Sections 20–22; W½, W½ NE¼, NW¼ SE¼ Section 23; Sections 27–29; Section 30 except W½ NW¼; Sections 31–34; W½ SE¼, SE¼ NW¼, SW¼ Section 35.

T.09N., R.05E. Humboldt Meridian: Section 12; Section 13; E½ SE¼, SE¼ NE¼ Section 14; E½ E½, W½ NE¼, Sections 23–25; E½ NE¼ Section 26; Section 36 except SW¼ SW¼.

T.09N., R.06E. Humboldt Meridian: N½ SW¾ Section 1; Section 2 except SE¼ SE¼; Section 3 except N½ NW¼; N½ Section 4; SE¼, E½ SW¼ Section 5; SE¼, SE¼ NE¼, E½ SW¼ Section 7; Sections 8–9; N½ NE¼, SW¼ NE¼, W½ SE¼, W½ Section 10; Section 16 except SE¼; Sections 17–20; W½ E½, W½ Section 21; NW¼, W½ SW¼ Section 28; Sections 29–32; W½ W½ Section 33.

T.10N., R.06E. Humboldt Meridian: S½ S½, NE¼ SW¼, NW¼ SE¼ Section 35; S½ S½ Section 36.

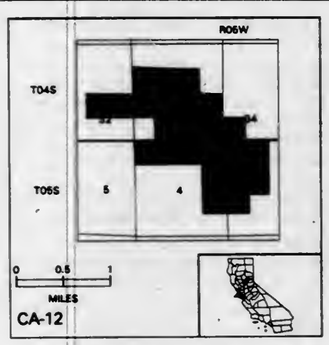


Map and description of CA–12 taken from United States Fish and Wildlife Service 1:100,000 map; California; 1995.

Critical Habitat includes only City lands described within the following areas:

T.04S., R.05W. Mount Diablo Meridian: N½ SE¼ Section 32; S½ NW¼, SE¼, SW¼ NE¼, N½ SW¼, SE¼ SW¼ Section 33; SW¼ SW¼ Section 34.

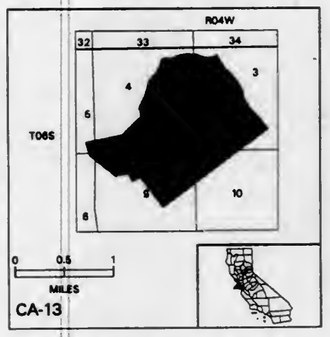
T.05S., R.05W. Mount Diablo Meridian: NW¼, NW¼ SW¼ Section 3; SE¼ NE¼, N½ N½, NE¼ SE¼ Section 4.



Map and description of CA–13 taken from United States Fish and Wildlife Service 1:100,000 map; California; 1995.

Critical Habitat includes only County lands bounded by the following description within Spanish Land Grant Canada de Raymundo:

Starting at the intersection of West Union Creek with the San Francisco State Fish and Game Refuge boundary, west along the San Francisco State Fish and Game Refuge boundary to the intersection with State Highway 35, southeast on State Highway 35 to the intersection with the San Francisco State Fish and Game Refuge boundary, southeast along the San Francisco State Fish and Game Refuge boundary to Woodside City boundary, northeast along Woodside City boundary to the intersection with Greer Road, northwest on Greer Road to the intersection with West Union Creek, north along West Union Creek to the intersection with the San Francisco State Fish and Game Refuge boundary.



Map and description of CA–14–a taken from United States Fish and Wildlife Service 1:100,000 map; California; 1995.

Critical Habitat includes only County lands described within the following areas:

T.07S., R.03W. Mount Diablo Meridian: S½, SE¼ NE¼ Section 31; W½ SW¼, SW¼ NW¼ Section 32.

T.07S., R.04W. Mount Diablo Meridian: S½ NE¼, SE¼ Section 22; S½ SW¼, NW¼ SW¼ Section 23; SW¼, W½ SE¼, S½ NW¼, SW¼ NE¼ Section 25; Section 26 except SW¼, NE¼ NE¼, S½ SE¼, W½ NW¼; E½, SE¼ NW¼ Section 33; S½, SW¼ NW¼ Section 34; Section 35 except N½ N½; Section 36 except E½ NE¼.

T.08S., R.03W. Mount Diablo Meridian: Sections 6–7; S½ S½ Section 8; SW¼ SW¼ Section 9; NW¼ Section 16; N½ N½, SW¼ NW¼ Section 17; N½, N½ SE¼ Section 18.

T.08S., R.04W. Mount Diablo Meridian: Sections 1–2; SE¼ Section 3; NE¼ NE¼, N½ NW¼ Section 10; NE¼, N½ NW¼ Section 11; Section 12 except SW¼ SW¼.

Critical Habitat includes only Private lands described within the following areas:

T.07S., R.04W. Mount Diablo Meridian: N½ NE¼ Section 35.

T.08S., R.04W. Mount Diablo Meridian: S½ Section 4; SE¼ Section 5; Sections 7–8; N½ Section 9; Section 16–18; Section 20 except NW¼, SE¼ SE¼; NW¼ Section 21.

Description of Lands Using Protracted Public Land Survey Lines

Critical Habitat includes only State lands described within the following areas:

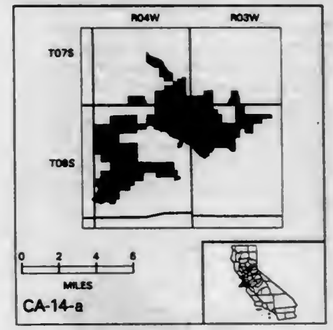
T.07S., R03W. Mount Diablo Meridian: W½ SE¼, SW¼, SE¼ NW¼, SW¼ NE¼ Section 33.

T.08S., R03W. Mount Diablo Meridian: N½ SW¼ Section 2; S½ Section 3; E½ Section 4; S½ NW¼, NW¼ NW¼, SW¼, W½ SE¼ Section 5; Section 8 except SW¼ SW¼; Section 9 except S½ SE¼, NE¼ SE¼, SE¼ NE¼; NW¼ Section 10.

T.08S., R04W. Mount Diablo Meridian: Section 19; S½ SE¼ Section 20; Section 21 except NW¼; Section 22 except SE¼, E½ SW¼; Section 23 except S½ S½; W½ SW¼ Section 24; NW¼, NW¼ NE¼ Section 28; Sections 29–30; N½ Section 32.

Critical Habitat includes only State lands within Rancho Punta del Ano Nuevo Spanish Land Grant bounded by the following description:

Starting at the intersection of Butano Park Road with Cloverdale Road, south along Cloverdale Road to the intersection with Gazos Creek Road, east along Gazos Creek Road to the intersection with Punta del Ano Nuevo Spanish Land Grant boundary, north along the Punta del Ano Nuevo Spanish Land Grant boundary to the intersection with Butano Park Road, west along Butano Park Road to the intersection of Butano Park Road with Cloverdale Road.



Map and description of CA–14–b taken from United States Fish and Wildlife Service 1:100,000 map; California; 1995.

Description of Lands Using Protracted Public Land Survey Lines

Critical Habitat includes only State lands described within the following areas:

T.08S., R.03W. Mount Diablo Meridian: SE¼ SW¼, S½ SE¼ Section 19; S½ SW¼ Section 20; NE¼ NE¼, SW¼ SE¼ Section 26, Section 29 ; Section 30 except NW¼ NW¼; Sections 31–33.

T.08S., R.04W. Mount Diablo Meridian: SE¼, S½ SW¼ Section 25; S½ Section 35; Section 36.

T.09S., R.03W. Mount Diablo Meridian: NW¼ Section 3; Sections 4–8; SE¼ NW¼, SW¼, N½ NE¼, SE¼ NE¼, N½ SE¼, SE¼ SE¼ Section 9; S½ SW¼, NW¼ SW¼, Section 10; NW¼ Section 15; NE¼, N½ SE¼ Section 16; W½ NW¼ Section 17; Section 18; N½ NW¼, SE¼ NW¼, N½ SW¼ Section 19; S½ NE¼, NW¼ SE¼, SE¼ SE¼ Section 30; S½ N½, NE¼ NE¼ Section 31.

T.09S., R.04W. Mount Diablo Meridian: Sections 1–2; Section 3 except N½ NW¼, E½ SW¼; NW¼ NE¼, SE¼ NE¼ Section 4; SE¼, S½ SW¼, NE¼ SW¼, S½ NE¼ Section 9; Section 10 except NW¼; Sections 11–12; Section 13 except SW¼ SE¼; Section 14; Section 15 except SE¼ SE¼; Section 16; NE¼ NE¼ Section 21; Section 22 except SW¼ SE¼, SE¼ SW¼; Section 23; Section 24; N½ NW¼, SE¼ SE¼, SE¼ SW¼ Section 25; W½, W½ E½ Section 26; Section 27 except NW¼ NW¼; Section 34; NE¼ NW¼, W½ W½ SE¼ SW¼ Section 35.

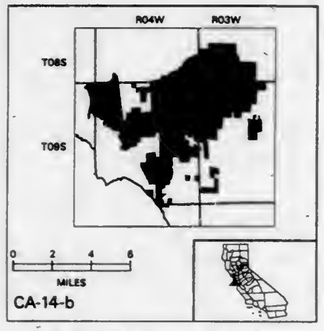
T.10S., R.04W. Mount Diablo Meridian: Sections 2–3.

Critical Habitat includes only Private lands described within the following areas:

T.09S., R.04W. Mount Diablo Meridian: Section 16; Section 21 except S½, E½ NE¼.

Critical Habitat includes only State lands bounded by the following description within Spanish Land Grant Punta de Ano Nuevo:

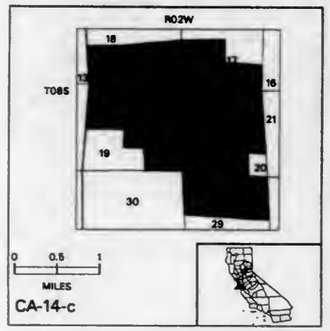
Starting at the intersection of the Spanish Land Grant boundary with Green Oaks Creek, north along the Spanish Land Grant boundary to the intersection with Gazos Creek, west along Gazos Creek to the intersection with State Highway 1, south on State Highway 1 to the intersection with Green Oaks Creek, and east along Green Oaks Creek to the Spanish Land Grant boundary.



Map and description of CA–14–c taken from United States Fish and Wildlife Service 1:100,000 map; California; 1995.

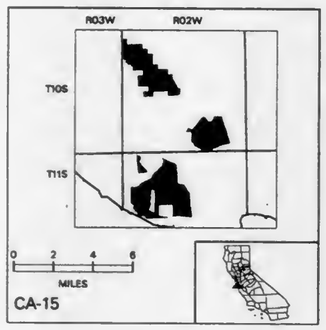
Critical Habitat includes only State lands described within the following areas:

T.08S., R.02W. Mount Diablo Meridian: SW¼, S½ SE¼ Section 17; S½ Section 18; Section 19 except S½ SW¼, NW¼ SW¼; Section 20 except SE¼ SE¼; N½ Section 29.



Map and description of CA–15 taken from United States Fish and Wildlife Service 1:100,000 map; California; 1995.

Critical Habitat includes only State lands described within the following areas:



* * * * *

T.10S., R.02W. Mount Diablo Meridian: S½ S½, NW¼ SW¼ Section 6; Section 7 except S½ SW¼, ; SW¼, S½ NW¼, SW¼ SE¼, NW¼ NW¼ Section 8; SW¼, S½ NW¼, NW¼ NW¼, S½ SE¼, NW¼ SE¼ Section 16; Section 17 except SW¼ SW¼; SE¼ NE¼, NE¼ SE¼ Section 18; N½ NW¼ Section 20; NE¼, E½ NW¼ Section 21.

Critical Habitat includes only State lands within the following area:

Spanish Land Grant Canada del Rincon en el Rio de San Lorenzo de Santa Cruz west of Graham Hill Road.

Critical Habitat includes only State lands bounded by the following description within Spanish Land Grant Rancho Refugio:

Starting at the intersection of State Highway 1 with the western boundary of the Rancho Refugio Spanish Land Grant, proceeding east on State Highway 1 to its intersection with Moore Creek, north along Moore Creek to the intersection with Empire Grade Road, northwest on Empire Grade Road to the intersection with the eastern boundary of the Rancho Refugio Spanish Land Grant, west and then southwest along the Rancho Refugio Spanish Land Grant boundary to the intersection with State Highway 1.

Dated: May 15, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–12647 Filed 5–23–96; 8:45 am]

BILLING CODE 4310–55–P

federal register

Friday
May 24, 1996

Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1915

Personal Protective Equipment for Shipyard Employment; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1915

[Docket No. S–045]

RIN 1218–AA74 (AB06)

Personal Protective Equipment for Shipyard Employment (PPE)

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final Rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is revising its standards for Personal Protective Equipment (PPE) for Shipyard Employment, 29 CFR part 1915, subpart I. The final rule updates, reorganizes, and simplifies shipyard employment PPE standards into a comprehensive framework that encompasses the shipbuilding, ship repair, and shipbreaking industries. Where appropriate, the final rule deletes existing specification-oriented provisions that limit employer innovation and incorporates performance-oriented language.

EFFECTIVE DATES: The final rule becomes effective August 22, 1996 except for §§ 1915.152(b), 1915.152(e), 1915.159(d), 1915.160(d), will not become effective until an Office of Management and Budget (OMB) Control number is received and displayed for these "collections of information" in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The incorporations by reference of certain publications listed in this final rule is approved by the Director of the Federal Register as of August 22, 1996.

Other Dates: Written comments on the paperwork requirements of this final rule must be submitted on or before July 23, 1996.

ADDRESSES: In compliance with 28 U.S.C. 2112(a), the Agency designates the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 for receipt of petitions for review of the standard.

Comments on the paperwork requirements of this final rule are to be submitted to the Docket Office, Docket No. S–045, U.S. Department of Labor, Room N–2625, 200 Constitution Ave., NW., Washington, DC 20210, telephone (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Ms. Anne C. Cyr, Acting Director, Office of Information, Division of Consumer Affairs, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210; Telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Workplace Hazards
III. Summary and Explanation of Final Rule
IV. Summary of Final Economic Analysis, Regulatory Flexibility Certification, and Environmental Impact Assessment
V. Paperwork Burden
VI. Statutory Considerations
VII. Federalism
VIII. State Plans
IX. Authority

I. Background

In May 1971, the Occupational Safety and Health Administration (OSHA), under authority granted by section 6(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), adopted Federal standards issued under section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), as standards applicable to ship repairing (29 CFR part 1915), shipbuilding (29 CFR part 1916), and shipbreaking (29 CFR part 1917) operations. OSHA also adopted other Federal standards and national consensus standards as general industry standards (29 CFR part 1910) and construction industry standards (29 CFR part 1926), which apply to shipyard hazards and working conditions not specifically covered by standards in parts 1915, 1916, or 1917.

On April 20, 1982 (47 FR 16984), the ship repairing, shipbuilding, and shipbreaking standards were consolidated into 29 CFR part 1915 "Occupational Safety and Health Standards for Shipyard Employment." The purpose of the consolidation was to eliminate duplicative provisions. The consolidation did not alter substantive requirements of these standards, nor did it affect the applicability of the general industry and construction standards in 29 CFR parts 1910 and 1926, respectively, to hazards or conditions in shipyard employment not addressed in the consolidated part 1915.

Later in 1982, the Shipbuilders Council of America (SCA) and the American Waterways Shipyard Conference (AWSC) requested that OSHA identify the specific provisions of the general industry standards that apply to shipyards and then consolidate them into the existing part 1915 provisions, making one set of shipyard employment standards. OSHA agreed that such consolidation was appropriate, and decided to begin work on a subpart-by-subpart basis.

As part of that effort, OSHA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** for subpart I of part 1915 (Personal Protective Equipment (PPE), November 29, 1988, 53 FR 48092). In particular, the proposed rule updated the pertinent references to national consensus standards, incorporated § 1910.134 (respiratory protection) by reference to replace the less comprehensive provisions in § 1915.152, and added requirements for hazard assessment, training, fall protection systems, and positioning device systems. OSHA received 10 comments in response to the NPRM. Those comments are discussed in the Summary and Explanation section of this document, below.

A short time after the November 1988 publication of the proposed rule on PPE, the Shipyard Employment Standards Advisory Committee (SESAC) was established. SESAC was chartered to provide OSHA with guidance in revising, consolidating, and modernizing the varying sets of regulations that were being applied in the shipyard industry to produce a truly vertical standard for all shipyard employment. The intended result of this activity was the development of a single set of occupational safety and health standards for shipyard employment that would cover vessels, vessel sections and related activities. The newly developed shipyard employment standards would apply to all shipyard employment. SESAC provided OSHA with comments on PPE-related issues, and their comments are discussed in the Summary and Explanation below.

Following publication of the proposed 1915 shipyard PPE standard, OSHA initiated two rulemakings to address General Industry Personal Protective Equipment (PPE) standards. The first of these PPE rulemakings (NPRM at 54 FR 33832, August 16, 1989) covered all PPE (such as eye, face, hand, and foot) other than respiratory protection, electrical protective equipment, personal protective systems, and positioning device systems. The Agency published the final rule for this rulemaking on April 6, 1994 (59 FR 16334). The Agency also initiated a second general industry rulemaking to add requirements for personal fall arrest systems and positioning systems to the general industry PPE standards (Docket S–057; NPRM at 55 FR 12323, April 10, 1990). This rulemaking had not yet been concluded.

The Agency determined that the information in the above-noted rulemaking records was relevant to the issues raised in the Shipyard PPE proposal. Accordingly, on July 6, 1994, OSHA reopened the Shipyard PPE rulemaking record (59 FR 34586) to incorporate the General Industry PPE dockets and to allow the public an opportunity to comment. The Agency indicated that it was considering more detailed guidance regarding: Adequate training requirements; verification of the proposed hazard assessment and training requirements through written certification; and prohibition of the use of body belts and non-locking snaphooks. OSHA subsequently revised its requirements for fall protection in construction (final rule at 59 FR 40672, August 9, 1994). The final rule, containing requirements for personal fall protection equipment similar to those in the shipyard PPE proposal, prohibited the use of body belts in personal fall arrest systems (PFAS) (§ 1926.502(d) introductory text) and the use of non-locking snaphooks in PFAS (§ 1926.502(d)(5)) and in positioning systems (§ 1926.502(e)(7)). Those prohibitions take effect on January 1, 1998.

The shipyard PPE reopening comment period ended August 22, 1994. OSHA received 13 comments, including one hearing request. Those comments are discussed in the Summary and Explanation section below.

In lieu of a hearing, OSHA agreed to hold an informal public meeting (59 FR 64173, December 13, 1994) to allow comments and testimony on the issues raised in the reopening. At the public meeting on January 25, 1995, there were five oral presentations and five written submissions, which are discussed in the Summary and Explanation section. The rulemaking record closed on February 28, 1995.

II. Workplace Hazards

OSHA has determined that employees in shipyards are exposed to a significant risk of injury from hazards that can be mitigated by the use of suitable personal protective equipment. OSHA has also concluded that compliance with the final standard will substantially reduce employee exposure to PPE-related hazards.

The shipyard industry has had one of the highest rates of injuries of any industry for many years. In 1992, the shipyard industry, SIC 3731, had an injury rate of 34.2 per 100 full-time employees ("Occupational Injuries and Illnesses: Counts, Rates, and Characteristics, 1992," published by the Bureau of Labor Statistics in April, 1995). Approximately half of these injuries were severe enough to result in lost time from work. These numbers mean that a shipyard employee has about a 1 in 3 chance (34 percent) of experiencing an injury at work *annually* and a 1 in 10 chance every year of being injured seriously enough to require time away from work to recuperate.

In comparison, the average annual risk of injury for all employees in the United States was about 9 per 100 full-time employees in 1992; for the manufacturing sector of the economy, the annual injury rate was about 11 per 100 full-time employees.

Table 1 presents estimates of lost-workday injuries by body part based on 1992 Bureau of Labor Statistics (BLS) data. These estimates are consistent with injury data from a Department of Transportation Maritime Administration survey and the Agency's analysis of OSHA 200 Forms (discussed further in the Benefits section of the summary of the Economic Analysis, presented later in this Preamble). Table 2 presents BLS lost workday injury data by nature of injury.

TABLE 1.—BLS ESTIMATES OF SHIPYARD INJURIES INVOLVING LOST WORKDAYS BY BODY PART

Body part	Number of 1992 injuries (a)	Number of extrapolated 1994 injuries (b)	Percent (%)
Head, unspecified	73	63	0.6
Ear(s)	0	0	0.0
Eyes(s)	1,080	925	9.4
Face	51	44	0.4
Scalp	91	78	0.8
Neck	350	300	3.0
Arm(s) unspecified	49	42	0.4
Elbow	265	227	2.3
Forearm	128	110	1.1
Wrist	478	409	4.1
Hand(s)	508	435	4.4
Finger(s)	720	617	6.2
Upper extremities, multiple	0	0	0.0
Trunk, unspecified	0	0	0.0
Abdomen	88	75	0.8
Back, unspecified	954	817	8.3
Back, lumbar	1,198	1,026	10.4
Back, thoracic	168	144	1.5
Chest	289	247	2.5
Hip	306	262	2.7
Shoulder(s)	601	515	5.2
Trunk, multiple parts	0	0	0.0
Lower extremities, unspecified	0	0	0.0
Leg(s), unspecified	59	51	0.5
Thighs	89	76	0.8
Knee(s)	1,073	919	9.3
Lower leg(s)	123	105	1.1
Leg(s), multiple	0	0	0.0
Ankle(s)	624	534	5.4
Foot/feet	488	418	4.2
Toe(s)	123	105	1.1
Lower extremities, multiple	0	0	0.0

TABLE 1.—BLS ESTIMATES OF SHIPYARD INJURIES INVOLVING LOST WORKDAYS BY BODY PART—Continued

Body part	Number of 1992 injuries (a)	Number of extrapolated 1994 injuries (b)	Percent (%)
Multiple body parts	674	577	5.8
Circulatory system	0	0	0.0
Digestive system	0	0	0.0
Excretory system	0	0	0.0
Nervous system	0	0	0.0
Respiratory system	0	0	0.0
Body parts, NEC	163	140	1.4
Not identified by body part	720	617	6.2
Total	11,533	9,876	100.0

(a) Bureau of Labor Statistics. Survey of Occupational injuries and illnesses, 1
(b) Extrapolation based on decline in shipyard employment of 14.4 percent bet 1992 and 1994.

TABLE 2.—BLS ESTIMATES OF SHIPYARD INJURIES INVOLVING LOST WORKDAYS, BY NATURE OF INJURY

Nature of injury	Number of 1992 injuries (a)	Number of extrapolated 1994 injuries (b)	Percent (%)
Amputation	0	0	0.0
Burn (heat)	410	351	3.6
Burn (chemical)	80	69	0.7
Concussion	0	0	0.0
Infective/parasitic disease	NA	NA	NA
Contusion/bruise	2,085	1,785	18.1
Cut/laceration/puncture	622	533	5.4
Dermatitis	0	0	0.0
Dislocation, unspecified	88	75	0.8
Electric shock	0	0	0.0
Fracture	558	478	4.8
Low temperature exposure	NA	NA	NA
Hearing loss or impairment	0	0	0.0
Inflammation of joints	114	98	1.0
Poisoning	114	98	1.0
Radiation effects	213	182	1.8
Scratches/abrasions	728	623	6.3
Sprains/strains, unspecified	5,044	4,319	43.7
Torn ligaments	NA	NA	NA
Sprains/strains, NEC	NA	NA	NA
Multiple injuries	308	264	2.7
Circulatory system condition	0	0	0.0
Eye diseases	0	0	0.0
Nervous system condition	255	218	2.2
Respiratory system condition	0	0	0.0
Ill-defined condition	0	0	0.0
Other injury, NEC	216	185	1.9
Not identified by nature	698	598	6.1
Total	11,533	9,876	100.0

(a) Bureau of Labor Statistics. Survey of Occupational Injuries and Illnesses, 19
(b) Extrapolation based on decline in shipyard employment of 14.4 percent between 1992 and 1994.
NA: Not applicable. Nature of injury category not incuded in BLS tabulations.

Shipyard employment typically involves fabrication and repair of large steel plates, beams, and pipes as well as painting and coating operations and other outfitting activities such as electrical work, ventilation and sheet metal work, and work on propulsion systems. Welding is a common production technology, requiring grinding and chipping of welds and accounting for many eye injuries. Employees also frequently work in awkward positions, out-of-doors throughout the year, on scaffolds, and in enclosed or confined spaces. The shipyard industry's relatively high employment turnover rate contributes to the high rates of injuries, because newly hired workers tend to be less well trained and have a higher frequency of accidents.

The Agency has concluded that PPE-related hazards pose a significant risk of serious injury to shipyard employees, and that compliance with the PPE standard is needed to substantially reduce that risk. The Agency has estimated that compliance with the final PPE regulation will significantly reduce the likelihood of an injury—from 34.2 to 21 per 100 full-time employees per year.

For a full discussion of the benefits of the final standard see the summary of the Economic Analysis presented below in this preamble or the full Economic Analysis, which is in the docket.

III. Summary and Explanation of Final Rule

In this section of the preamble, OSHA explains how the final rule relates to the proposed and existing standards, and how the comments and testimony presented on each provision influenced the drafting of the final rule. This section also addresses issues raised in the July 6, 1994, reopening notice and the December 13, 1994, public meeting notice. Except where otherwise indicated, proposed provisions that did not elicit comments are being promulgated as proposed, for reasons stated in the preamble to the proposed rule (53 FR 48151–48158).

As discussed above, on April 6, 1994, OSHA issued a final rule for its rulemaking on PPE used in general industry (59 FR 16334) (part 1910, subpart I, Docket S–060). That document updated the regulation of PPE for eye and face (§ 1910.133), head (§ 1910.135) and foot protection (§ 1910.136), and added provisions for hazard assessment, PPE selection, disposal and training (§ 1910.132 (d)–(f)), and hand protection (§ 1910.138). The proposed rule (54 FR 33832, August 16, 1989) was consistent with the corresponding proposed rule for shipyard PPE. However, based on the rulemaking record, OSHA revised the general industry proposal to address training and the documentation of compliance with the hazard assessment and training requirements in more detail. Given the similarity of the PPE used in general industry and shipyard employment, OSHA determined that the information generated in this general industry rulemaking was relevant to the drafting of the shipyard PPE standards, as well.

Also, proposed part 1910 subpart I, PPE (Fall Protection Systems) (55 FR 13423, April 10, 1990) set criteria for the proper selection, use and maintenance of personal fall arrest systems (§§ 1910.128, 1910.129, and 1910.131) and positioning device systems (§§ 1910.128 and 1910.130) in general industry. The part 1910 subpart I proposal relied heavily on the approach taken by the Agency in its final rule on Powered Platforms for Exterior Building Maintenance, § 1910.66 (54 FR 31456, July 28, 1989, Docket S–700A). In the Preamble to the 1910 subpart I proposal, OSHA determined that the requirements for personal fall arrest systems used by employees on powered platforms should be the same as those for personal fall arrest systems used by employees in other occupations (55 FR at 13430).

Based on the record developed for the general industry fall protection PPE rulemaking (Docket S–057), OSHA decided that it was appropriate to consider prohibiting the use of non-locking snaphooks in personal fall arrest and positioning device systems and to consider prohibiting the use of body belts in personal fall arrest systems. Recently, the Agency included such prohibitions in the final rule for fall protection in construction (59 FR 40672, August 9, 1994). As stated above, the Agency has determined that OSHA's fall protection PPE standards should be consistent with each other.

Therefore, based on its policy of promoting consistent regulation of PPE across industry lines, the Agency concluded that the information generated on PPE in general industry was relevant to the use of that PPE in shipyards, as well.

Accordingly, OSHA incorporated Dockets S–057 and S–060 into the shipyard PPE rulemaking record and reopened the comment period for part 1915 subpart I to provide an opportunity for public comment on the newly incorporated materials (59 FR 34586, July 6, 1994). The Agency provided additional opportunity for public input on these materials (59 FR 64173, December 13, 1995) at an informal public meeting on January 25, 1995.

In addition, OSHA has added certain personal fall arrest criteria, § 1910.159 (a)(4), (a)(5), (a)(7), (c)(2), (c)(3) and (c)(7) to the final rule, because the need for such requirements has been established through the corresponding General Industry and Construction rulemaking proceedings. These requirements are discussed further, below.

OSHA has concluded that the PPE needed in shipyard employment does not differ markedly from that needed in general industry or in construction, and that the standards covering PPE should not differ markedly either. The final rule reflects this determination and incorporates OSHA's review of the existing rulemaking record, including the materials incorporated from other PPE-related dockets.

Section 1915.151 Scope, Application, and Definitions Applicable to This Subpart

Final rule paragraph (a) sets forth the scope and application of Subpart I. This subpart applies to all work in shipyard employment, regardless of geographic location. This language is consistent with that in recently published part 1915 subpart B [§ 1915.11(a)][59 FR 37816, July 25, 1994].

Proposed paragraph (a)(1) stated that this subpart would cover PPE provided for and used by shipyard workplaces and operations (including shipbuilding, ship repairing, and shipbreaking), but would not apply to construction operations in shipyards covered by part 1926.

Newport News Shipbuilding (NNS) stated [Ex. 6–2] that the term "provided" should be changed to "made available" because the suggested language was consistent with that in existing § 1915.153 and with current industry practice. However, the Agency has deleted the proposed language, "personal protective equipment to be provided for and used by employees" because it believes that requirements for the provision and use of PPE are more appropriately addressed in § 1915.152, General Requirements.

The Shipbuilding Council of America (SCA) (Ex. 6–1) and NNS (Ex. 6–2) stated that part 1926 (OSHA's construction industry standards) should not apply to employees of shipyards who perform construction work since one of the objectives of the rulemaking was to bring uniformity to the workplace by providing employees and employers with one set of safety standards to govern their work. SCA suggested that part 1926 apply only to construction work performed in shipyards by outside contractors (non-shipyard employees). OSHA believes, however, that it is inappropriate to distinguish between shipyard employees and contractor employees when setting requirements for worker protection. Therefore, OSHA is not making the suggested change.

The Agency has consistently maintained that construction activities, such as the erection of building structures, are covered by the construction standards (29 CFR part 1926) and are not subject to the requirements of the shipyard standards (29 CFR part 1915). Furthermore, § 1926.30, *Shipbuilding and ship repairs*, explicitly provides that shipyard employment is covered exclusively by the shipyard standards. Accordingly, the proposed paragraph (a)(1) language regarding the application for part 1926 in unnecessary and has been deleted.

Proposed paragraph (a)(2) provided that subpart I of part 1910—except § 1910.134, Respiratory protection—would not apply to shipyard employment. Since OSHA has chosen to view respirators as a separate, full rulemaking [59 FR 58884 November 15, 1994] which will apply to shipyard employment as well as general industry, the final shipyard PPE standard will continue to reference existing § 1910.134 for respiratory PPE until the shipyard respirator rulemaking is complete. In all other respects, subpart I of part 1915 will be a self-contained set of PPE standards for shipyard employment. It will not be

supplemented through reference to the General Industry standards.

Paragraph (b), Definitions

Paragraph (b) defines the terms used in this standard.

The proposed definitions paragraph did not include a number of terms and definitions that OSHA has used, or proposed to use, in other standards that address fall protection PPE [e.g., Powered Platforms for Building Maintenance 29 CFR 1910.66 (July 28, 1989 54 FR 31408); Fall Protection in Construction part 1926, subpart M (51 FR 42718, Aug. 9, 1994); and General Industry PPE-Fall Protection, proposed 1910.128(b), subpart I (55 FR 13423 April 10, 1990)].

The new terms and definitions included in paragraph (b) are: anchorage, connector, deceleration distance, equivalent, free fall, free-fall distance, lanyard, lifeline, lower levels, rope grab, and self-retracting lifeline/lanyard. Newly defined terms, revised terms, and proposed terms that elicited comments are discussed below. OSHA has determined that the inclusion of these definitions is appropriate for the purpose of clarity and to provide guidance consistent with that set in corresponding standards. In addition, as discussed further below, OSHA is adding a definition for the term "qualified person."

The proposed term "capable person" will be replaced by the more familiar term "qualified person" in the final rule. SESAC also recommended using "qualified person" in the regulatory text (Tr. p. 84–85, SESAC meeting, November 20, 1991).

"Deceleration device." This term describes equipment such as a rope grab, ripstitch lanyard, specially woven lanyard, tearing or deforming lanyard, and automatic self-retracting lifeline/lanyard, that serves to dissipate a substantial amount of energy during a fall arrest or otherwise limit the energy imposed on an employee during fall arrest. The proposed definition simply required that the device dissipate more energy than does a standard line or strap-webbing lanyard. After a careful review of the proposed definition, OSHA has revised the definition to indicate the extent to which a deceleration device must dissipate the energy imposed on an employee during fall arrest.

"Personal fall arrest system." This term means a system used to stop an employee's fall. The proposed definition, which was effectively identical, did not elicit comments.

"Positioning device system." This is a body belt or body harness system rigged so that an employee can work on an elevated, vertical working surface with both hands free while leaning. The proposed definition has been rewritten for clarity. OSHA did not receive any comments on the proposed definition.

The proposed definition of "strength factor" has not been carried forward into the final rule because this term is not used in the final rule.

Section 1915.152 General Requirements

Paragraph (a) of the final rule, Provision and use of equipment, requires that employers provide and ensure that employees use personal protective equipment for eyes, face, head, extremities, torso, and respiratory system, including such PPE as protective clothing, protective shields and barriers, personal fall protection equipment, and life saving equipment, whenever such PPE is necessary for employee protection. Except for some editorial changes, this provision is identical to that in the proposed rule.

Paragraph (b) requires that employers assess the work activities in the shipyard to identify what hazards are present, or are likely to be present, which necessitate the use of PPE. OSHA is aware that many shipyard employers assess workplace hazards according to the trade or occupation of affected employees. The Agency believes that it is appropriate to allow employers flexibility in organizing their assessment efforts. Therefore, OSHA has added a note to the final rule which provides that a hazard assessment conducted according to the trade or occupation of affected employees will be considered to comply with paragraph (b), if the assessment addresses any PPE-related hazards to which employees are exposed in the course of their work activities.

Where any such hazards are identified, the employer shall select the appropriate PPE for each affected employee (both in terms of type of PPE and fit), communicate selection decisions to affected employees, and document that the hazard assessment has been performed. After the assessment has been done, the standard does not expressly require the employer to review the hazard assessment on any periodic basis. However, it is the Agency's intent that hazard assessments be conducted at the intervals and on a schedule dictated by the risks in the workplace. For example, when there is a change in technology, production operations, or an occupation's task that has the potential to affect PPE-related hazards, the employer must review the appropriateness of the existing hazard assessment and the PPE being used and update the hazard assessment as necessary.

In the proposal, this paragraph required that employers select PPE for their employees based on an assessment of workplace hazards. Commenters who responded to the July 6, 1994 notice (59 FR 3486) and participants at the January 25, 1995 public hearing stated that the term "workplace" that appeared in the requirement for hazard assessment in proposed section § 1915.152(b) was not appropriate. They suggested that OSHA instead use the term "trade" or "work activity."

For example, the South Tidewater Association of Ship Repairers, Inc. (Ex 9–3) recommended that OSHA change "workplace to "work activity" or "trade." Tampa Shipyards Incorporated (Ex. 9–8) stated:

> We would definitely agree that PPE used in general industry does not differ markedly from PPE used in the shipyards. We would point out the fact that work environment in shipyards is substantially and drastically different from general industry work environment. Most of the general industry work environment is a fixed work environment; manufacturing plant with assembly lines, consistent work processed, etc. The commercial shipyard work environment changes not only on a daily basis but sometimes on an hourly basis depending upon the size and configuration of a ship (or workplace) and the type of work to be accomplished on board that ship.

The Shipbuilders Council of America (Ex. 9–7) stated:

> We believe that standards should be based on generic and uniform nature of the duties performed by specific categories of employees, rather than solely by the workplace * * * shipyard workplace that is neither fixed, nor constant, nor readily quantifiable like workplaces in all other industries.

In addition, the Shipbuilders Council of America (Tr. pp. 8–9) testified that:

> The general industry standard is specifically targeted toward fixed facilities and processes, unlike commercial ship repair and ship building. Now the definition of workplace differs greatly from a manufacturing environment to a commercial ship repair facility. Workplace is used throughout the general industry PPE standard. By definition, workplace means, and I quote out of the Webster's dictionary, "a place, shop or factory where work is done."
>
> The commercial shipyard work environment changes not only on a daily basis * * * And from personal experience I can tell you it changes on an hourly basis and on a ship-to-shop basis which varies by size and configuration.

OSHA acknowledges that shipyard employees—unlike general industry employees—may work in several worksites during a shift. OSHA agrees with the commenters that the term "workplace" does not identify the appropriate source of PPE-related hazards in shipyards and believes that requiring hazard assessments by trade and related work activities effectively addresses the PPE-related risks in shipyards.

The proposal also required employers to select PPE that would protect employees from the particular occupational hazards they were likely to encounter, to communicate their selection decisions to employees who would be obtaining their own PPE, and to have employees who obtain their own PPE follow the employers' selection decisions.

The proposed rule assumed that some employees would be providing some of their own PPE. For that reason, OSHA specified, in the proposal, that employers would need to provide any such employees with PPE selection information and to make sure that their affected employees obtained the right PPE. This was intended to ensure that employees are properly protected by their PPE, regardless of who purchased it.

Subsequently, the Agency determined that it was appropriate to provide additional guidance regarding when employers would be expected to pay for PPE and when employees would be expected to pay. On October 18, 1994, OSHA issued a memorandum to its field offices which stated as follows:

> OSHA has interpreted its general PPE standard, as well as specific standards, to require employers to provide and to pay for personal protective equipment required by the company for the worker to do his or her job safely and in compliance with OSHA standards. Where equipment is very personal in nature and is usable by workers off the job, the matter of payment may be left to labor-management negotiations. Examples of PPE that would not normally be used away from the worksite include, but are not limited to: welding glasses, wire mesh gloves, respirators, hard hats, specialty glasses and goggles (designed for laser or ultraviolet radiation protection), specialty foot protection (such as metatarsal shoes and linemen's shoes with built in gaffs), face shields and rubber gloves, blankets and cover-ups and hot sticks and other live-line tools used by power generation workers. Examples of PPE that is personal in nature and often used away from the worksite include non-specialty safety glasses, safety shoes, and cold-weather outer wear of the type worn by construction workers. However, shoes or outer wear subject to contamination by carcinogens or other toxic or hazardous substances which cannot be safely worn off-site must be paid for by the employer. Failure of the employer to pay for PPE that is not personal and not used away from the job is a violation and shall be cited.

Although the equipment used in shipyard employment often differs from that mentioned in the October 18 memorandum, the same policy considerations apply in the Shipyard PPE context. Therefore, OSHA will apply the above-stated policy when determining who pays for the PPE required under § 1915.152(a).

In addition, the Agency has determined, after further consideration, that *all* affected employees need to be informed of PPE selection decisions in order to facilitate compliance with the standard. The proposed language that distinguishes between employees who pay for their own PPE and those who do not has been deleted and the provision has been revised accordingly. Paragraph (b) has also been editorially revised for clarity.

In the proposal, paragraph (b) did not specifically address documentation of the hazard assessment. The recently revised PPE standard for General Industry (§ 1910.132(d)(2)), however, requires employers to verify through a written certification that a required hazard assessment has been performed. OSHA explained its decision (59 FR 16336) to require such verification as follows:

> OSHA believes that some form of record is needed to provide OSHA compliance officers and affected employees with appropriate assurance that the required hazard assessment has been performed * * * It is not "necessary for employers to prepare and retain a formal written hazard assessment." Given the performance-oriented nature of this rulemaking, OSHA has determined that the generation and review of extensive documentation would be unnecessarily burdensome.
>
> The Agency has found that a written certification is a reasonable means by which to establish accountability for compliance.
>
> Therefore, the Agency has determined that employers can adequately verify compliance with § 1910.132(d) of the final rule through a written certification which identifies the workplace evaluated; the person certifying that the evaluation has been performed, the date(s) of the hazard assessment; and which identifies the document as a certification of hazard assessment.

Taking into account the similarities between PPE used in General Industry and that used in Shipyard employment, OSHA reopened the Shipyard PPE rulemaking record (59 FR 34586, July 6, 1994) to provide public notice that the Agency was considering a requirement for shipyard employers to verify their compliance with the hazard assessment provision through a written certification. The notice of reopening solicited comments on the need for and impact of a certification requirement.

The Preamble to the final rule for Fall Protection in Construction (part 1926, subpart M) (59 FR at 40721, August 9, 1994) underscored the flexibility employers have in complying with certification requirements, stating that a "certification record can be prepared in any format an employer chooses, including reprinted forms, computer generated lists, or 3×5 cards."

Commenters to the shipyard PPE record (Exs. 9–3 and 9–7) stated that any requirement for the certification of hazard assessment should be focused on employee "work activity" or "trade" rather than on the "workplace." For example, the South Tidewater Association of Ship Repairers (STASR)(Ex. 9–3) stated that "[t]here is a constant transition of trades moving among various shops and vessels as well as a rotation of vessels. It is not feasible for designated shipyard employees to monitor continuously a "workplace" in constant change." In addition, STASR observed that it would be advantageous to identify "a universal requirement for trade-specific PPE as opposed to {a} site-specific requirement, peculiar to one location." The SCA (Ex. 9–7) stated that shipyard work duties, unlike duties undertaken in a factory, are neither fixed, constant, nor readily quantifiable.

Three other commenters (Exs. 9–6, 9–8 and 9–9) were particularly concerned that compliance with the certification requirement under consideration would necessitate continuous or repeated hazard assessment. These commenters, along with several others (Exs. 9–1, 9–4, 9–5, 9–11 and 9–13), indicated that they have already implemented written programs to identify PPE needs, so that certifying performance of the hazard assessment would be redundant.

In addition, commenters (Exs. 9–10 and 9–14) suggested that OSHA accept any form of documentation which provides the information needed to verify compliance. In particular, General Dynamics Electric Boat Division (EBDiv.) (Ex. 9–10) stated "EBDiv. recommends that OSHA continue with its performance oriented approach and allow employers the flexibility in determining the most efficient and effective manner for documenting hazard assessments."

Based on the above-discussed comments, the notice of informal public meeting (59 FR 64173, December 13, 1994) solicited input regarding the means by which shipyard employers could adequately verify compliance with the requirement for hazard assessment. In particular, the notice stated that OSHA was "considering the

extent to which current hazard assessments performed by trade or occupation provide the necessary information for selection of appropriate PPE" and provided examples of trade-based formats (for welder and for yard maintenance worker) that the Agency might consider to be acceptable.

In response, commenters (Exs. 11–2, 11–3, 11–6 and 11–8) stated that the shipyard industry already adequately documents its hazard assessment activities. NNS (Ex. 11–6) also expressed concern that the use of the term "certify" was unnecessary, stating that certification "does not contribute to improved safety and health. We suggest that certification should be replaced by a signature." In addition, NNS testified (Tr. 28–29, January 25, 1995), as follows:

> We still don't understand why the word "certify" can't be left behind in favor of the word "document" or "signature" or some other type of verbiage. We think that the word "certify" carries with it some connotations that will thwart, if you will, the employee involvement efforts that we're stepping forward trying to initiate.

The SCA testified (Tr. 11–12) that:

> Where hazard assessment is already in place because of existing OSHA standards * * * we recommend that these assessments be allowed to meet the requirements of the portion of this standard.
>
> Where hazard assessment does not exist, and it would be hard for me to say where it doesn't in the shipyard industry, we'd recommend that an annual assessment be made of the affected craft, possibly of the machinery or pipefitting departments. Once the hazard assessment is conducted for these crafts, we recommend that the company safety representative be allowed to make these assessments and sign the assessment certifying his or her review and assessment. This assessment should be no more than listing the personal protective equipment required for that particular craft in all working circumstances.

The UBC Health and Safety Fund of North America (Ex. 12–4) stated as follows: "OSHA should require written certification of hazard assessment for employers to select the Personal Protective Equipment (PPE) that is necessary for work being performed by trades or occupations. This assessment should take into account the PPE necessary to protect employees performing specific work tasks."

OSHA has concluded that the documentation format described by commenters and meeting participants will provide adequate assurance that the required hazard assessment has been performed. The Agency agrees that a hazard assessment record which conveys the required information does not need to be called a "certification." Accordingly, the Agency will use the term "document" rather than the term "certification" to describe these minimal written record required under final rule § 1915.152(b)(4). Appendix A provides several acceptable ways of meeting the requirements, including some examples of the trade-based formats.

Final rule paragraph (c) requires employers to ensure that defective or damaged PPE is not used. The proposed paragraph was essentially identical. This provision does not preclude the repair and reuse of PPE. OSHA recognizes that there are many situations where PPE can be removed from service, repaired, and then returned to service. There were no comments on the proposed paragraph, and OSHA therefore promulgates this provision as proposed, except for minor editorial changes.

Final rule paragraph (d) requires that PPE that has been worn by workers and has become unsanitary be cleaned and disinfected before it is reissued. There were no comments on the proposed provision, and this paragraph is unchanged except for minor editorial changes.

Final paragraph (e) sets the training requirements for users of PPE. OSHA has consistently maintained that employees must be properly trained in order to benefit from the use of PPE. The proposed part 1910 and part 1915 PPE training provisions were identical, requiring simply that employees "be trained in the proper use of their personal protective equipment." As discussed in the part 1910 subpart I final rule preamble (59 FR 16337–40, April 6, 1994), OSHA divided the training into four training elements: what affected employees must understand about their PPE; what PPE-related skills those employees must have; when affected employees would need retraining; and what documentation of training was needed.

OSHA concluded that these training elements should also be considered for inclusion in the shipyard standard. Therefore, the July 6, 1994, shipyard PPE notice discussed the general industry training provisions and solicited comments. In order to clarify the requirements for the shipyard industry and provide clear guidance for enforcement, the Agency has revised this provision (paragraph (e)(2)) to read: "The employer shall ensure that each affected employee demonstrates the ability to use PPE properly before being allowed to perform work requiring the use of PPE." The Agency is not prescribing the means by which employers comply with this provision.

The general industry PPE standard, § 1910.132(f)(4), provides that: "[t]he employer shall verify that each affected employee has received and understood the required training through a written certification that contains the name of each employee trained, the date(s) of training and that identifies the subject of the certification."

The comments received in response to the July 6 notice opposed a requirement for a written certification of compliance. For example, STASR (Ex. 9–3) commented that:

> Every shipyard in the Hampton Roads area has a safety program and a safety office. Every shipyard mandates usage of safety equipment for all employees. Those who do not comply are often sent home. STASR shipyards have safety programs with many of the PPE standards already in place. The PPE training and recordkeeping requirements are, in some cases, redundant.
>
> When an employee is hired and undergoes initial training, that employee can be given a list of equipment to wear while performing a specific task. This is far preferable to sending a monitor to evaluate a worksite on a continuous basis. The shipyard may then certify that an individual has been given the necessary training and the employee will certify understanding of the safety requirements for his or her trade.

The SCA (Ex. 9–7) commented that:

> We support the general requirement for training as it does serve to enhance a safer working environment * * * we believe that training should be focused on trade specific duties of employees with the greatest emphasis being placed on orientation training at the outset. PPE serves a very useful purpose, and empirical data often establishes that causes of accident or occupational injuries are attributable to the fact that employees failed to comply with company PPE standards * * *. Additionally, documentation of all training should be in the form of training logs, which should be considered to be the equivalent of "written certification" in order to avoid the non value added redundance of record keeping.

Tampa Shipyards Incorporated (Ex. 9–8) stated that:

> We are already complying with this proposed standard and we suspect many other shipyards are also complying with this standard.
>
> Verification through written certification should not be required if an employer can produce training logs with the employee's name, the date the training took place, type of training conducted and the name of the instructor. Training logs should be interpreted under this standard as "written certification."

General Dynamics, Electric Boat Division (EBDiv) (Ex. 9–10) commented that:

> EBDiv agrees with OSHA that training is an essential element of a PPE program but does not agree that "training" as specified in the standard requires certification.
>
> EBDiv firmly believes training is a key and necessary component of safety and health programs. EBDiv provides extensive training to its employees on a variety of disciplines not mandated by OSHA in addition to training mandated by OSHA.

Based on these comments, OSHA raised the issue of the need for documentation of training in the December 13, 1994, meeting notice (59 FR 64173). AWH Corporation (Ex. 11–3) commented that training is provided when the employee is hired and at weekly "gangbox" safety meetings, and that training is periodically reinforced by including PPE as a topic at safety meetings.

NNS responded (Ex. 11–6) that "[t]he requirement to certify PPE training dictates recording specific information which can later be retrieved so as to prove training was conducted. We will provide samples of our existing system at the January 25 meeting." NNS provided copies of training documentation at the meeting (Ex. 12–2) and testified (Tr. 29–30) as follows:

> We've provided a recommended definition for the word "certify" * * *
>
> "Certify" means to evaluate subjectively, based on appearance and available information at that time. The certifying individual in a training session, for example, would verify that the trained individual was present during the stated training; he would ensure that required information was delivered to the target audience in what he believed to be an understandable fashion, and he would watch individuals perform activities which indicate that they have understood the training, and then use his judgment at that time to determine whether further instruction was needed or not.

The SCA testified (Tr. 13–14, January 25, 1995) as follows:

> We would request that training certification requirements be met in the following manner. Number one, documented new hire orientation * * *. Secondly, we request that training certification requirements be met as documented annual refresher training.
>
> We'd recommend this documentation be in the form of training logs which many of us already keep on the computer * * *
>
> Some of our members suggest * * * giving a new employee a list of all required safety equipment that he or she should wear at the time they go through new-hire orientation, just as a reminder * * * this is already being done in many of our yards.

In response to these submissions, OSHA emphasizes that any documentation of training that provides the specified information will provide adequate assurance that the training requirements have been satisfied. Therefore, § 1915.152(e)(4) of the final rule requires employers to verify that each affected employee has received the required training with documentation that includes: employee(s) name; the date(s) of training, and type of training the employee received. In the case of an employee who has already been trained (either prior to the effective date of this standard or by another employer), OSHA will accept documentation dated as of the time the current employer determines that the employee has the requisite proficiency.

As discussed above, the rulemaking record indicates that most shipyard employers are already documenting training in the form of a log, computer database, or some type of written document. Examples of acceptable documentation would be records of stand-up safety meetings and tool box meetings, or a tool room log (where an employee has checked out PPE such as safety glasses, hard hat, gloves, face shield). OSHA will accept any form of documentation that effectively communicates the required information.

Section 1915.153 Eye and Face Protection

Final rule paragraph (a) sets out requirements for eye and face PPE. Paragraph (a)(1) requires employers to ensure that employees use eye and face PPE when employees are exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, acid or caustic chemicals, chemical gases or vapors, or potentially injurious light radiation. This provision is based on the requirements in existing § 1915.151 (b)(1) and (c)(1). This provision is essentially unchanged from that proposed. OSHA did not receive any comments on this provision.

Final paragraph (a)(2) provides that front and side protection must be used when there is a hazard from flying objects. Detachable side protectors (for example clip-on or slide-on side shields) meeting the pertinent requirements of this section are acceptable.

OSHA has determined that detachable side shields that meet the pertinent criteria (ANSI Z87.1–1989, as referenced by final rule § 1915.153 (b)(1) and (b)(2)) will provide adequate protection from flying objects. Permitting detachable side shields will allow employers the flexibility to use this kind of protection when necessary, based on the working conditions at the employee's occupation or trade. The Agency has concluded that the same considerations that supported the adoption of such a requirement in other corresponding OSHA standards are relevant to shipyard employment.

Employers should be aware that some PPE could create new hazards to employees. For example, allowing employees to wear wire-frame glasses (plano or prescription safety glasses) around energized electrical parts would increase the potential for electric shock.

In the proposal, paragraph (a)(2) required that eye and face protective equipment properly fit employees. In the final rule § 1915.152(b)(3) already requires that *all* PPE properly fit employees, and OSHA has therefore not included proposed paragraph (a)(2) in the final rule.

Paragraph (a)(3) addresses appropriate eye PPE for employees who wear prescription lenses. This provision requires that employers provide each such employee either with eye protection that incorporates the prescription in its design or with PPE that can be worn over prescription lenses without disturbing the proper position of the lenses. The final provision, which is essentially the same as the proposed paragraph except for minor editorial changes, elicited no comments.

Proposed paragraph (a)(3) required that protectors with tinted or variable tinted lenses not be worn when an employee was required in the course of work to pass from a brightly lit area, such as outdoors, into a dimly lit area, such as a vessel section. The Agency proposed this requirement to reduce the potential for extreme changes in lighting to temporarily impair an employee's vision.

OSHA received four comments on this provision, all addressing the same point. The commenters (Exs. 6–5, 6–6, 6–9 and 6–10) opposed any prohibition on the use of tinted or variable tint lenses.

Colonna's Shipyard, for example, stated that:

> The use of the terms "well lighted" and "dimly lighted" are vague. Tinted lenses, that primarily reduce glare, may not appreciably reduce the amount of light passing through the lenses. As technology improves, variable tint lenses have been shown to reduce the time it takes for the lenses to change from full shading to minimal shading. In fact, employees coming from an interior location into brilliant sunlight can be temporarily blinded by the sun's glare.

In addition, two comments received on proposed subpart B of part 1915 (Doc. S–505) (Ex. 6–15, Bay Shipbuilding Corp. (BSC) and Ex. 6–36, Peterson Builders, Inc. (PBI)), addressed this proposed provision. BSC stated that: "Protectors with tinted or variable tint lenses should not be worn when an employee passes from a well lighted area into a dimly lighted area. Tinting over #2 shade is too dark, but #2 shade or under is felt to be acceptable and safe in most areas."

PBI stated that:

We need the use of tinted lenses to protect our employees from stray ultraviolet rays from weld arc. We presently limit our employees to a 1.7 tint on safety glasses. We are also in favor of the use of the variable tint lenses. This standard is in contradiction to 1915.153A1, which requires us to protect employees from injurious light radiation. This has not been a problem for us in causing accidents.

After evaluating the information in the record for this rulemaking (Doc. S–045), OSHA has concluded that the proposed requirement was too restrictive. The Agency has determined that the employer (for example, through the services of the company's safety professional) is in the best position to determine when tinted or variable tint lenses should be used, based on an awareness of working conditions. This approach is consistent with the current ANSI standard (ANSI Z87.1–1989, paragraph 6.5.2), which is (as discussed below) being incorporated by reference in the final rule. Accordingly, proposed paragraph (a)(3) has not been retained in the final rule.

Paragraph (a)(4) is essentially unchanged from the proposed paragraph. It requires employers to ensure that affected employees use equipment with filter lenses for protection against injurious light radiation and that the lenses have a shade number that is appropriate for the work being performed. Table I–1—*Filter Lenses for Protection Against Radiant Energy*—lists the necessary shade numbers for various operations. These provisions are consistent with other OSHA standards (existing § 1915.151(c)(1) and Table I–1 in § 1915.118).

In addition, a note to this provision states that, when goggle lenses and a helmet lens are worn together, the shade value of the two lenses can be summed to satisfy the shade requirements of Table I–1, § 1915.153. Bath Iron Works Corporation (BIWC) (Ex. 6–7) objected to this note, stating that the validity of the additive approach to filter lens selection has not been adequately demonstrated and violates accepted industry practice. OSHA disagrees with this view, because the technical experts responsible for the applicable consensus standard, ANSI Z87.1–1989, have indicated that the additive use of lenses is protective, provided that the combined values sum to the necessary value. Therefore, the note to Table I–1 has been retained.

Paragraph (b) sets performance criteria for eye and face PPE. Paragraph (b)(1) provides that protective eye and face devices purchased after August 22, 1996 shall comply with ANSI Z87.1–1989, "American National Standard Practice for Occupational and Educational Eye and Face Protection," which is incorporated by reference, or shall be demonstrated by the employer to be equally effective. PPE which satisfies the criteria set by subsequent editions of the pertinent ANSI standard will be considered to comply with paragraph (b)(1) if the updated ANSI criteria are substantively unchanged or provide equivalent protection.

In the proposal, this paragraph, which was designated paragraph (b)(1), required that the design of eye and face protection, in general, comply with the provisions of ANSI Z87.1–1979, while providing, in the alternative, that plano (non-prescription) spectacles comply with the performance-oriented criteria set out in proposed paragraph (b)(2). Shortly after the NPRM was issued, the 1979 edition of Z87.1 was superseded by the current 1989 edition. ANSI Z87.1–1989 is effectively identical to ANSI Z87.1–1979, except that the 1989 revision deleted design restrictive language that had limited the use of new technology in eye and face PPE. OSHA believes that performance-oriented regulatory language, such as that referenced from ANSI Z87.1–1989, will provide employers with appropriate flexibility to protect their employees while taking the particular circumstances of their workplaces into account. The Agency further believes that allowing employees to rely on the 1989 edition will facilitate compliance with the final rule, but will not prevent employers from using PPE that would have been allowed under proposed paragraph (b)(1).

Final rule paragraph (b)(2) requires that eye and face PPE purchased before August 22, 1996 comply with ANSI Z87.1–1979 or be demonstrated by the employer to be equally effective. OSHA has determined that it is appropriate to allow the continued use of such PPE in order to avoid imposing unreasonable burdens on employers. As noted above, the substantive provisions of the 1979 and 1989 editions are effectively identical, so employee safety would not be furthered by requiring that employers remove PPE tested under ANSI Z87.1–1979 from service. In this way existing stocks of PPE can be depleted, and any replacement PPE must satisfy the criteria referenced in ANSI Z87.1–1989.

Proposed paragraph (b)(2) would have set performance-oriented criteria for plano spectacles, addressing impact protection, optical requirements, flammability resistance and radiant energy protection. This paragraph was included in the proposal because OSHA had determined that the design provisions (such as for minimum lens thickness or frame design) of the consensus standard referenced by existing § 1915.151(a)(1) (ANSI Z2.1–1959) were outdated. The removal of the design restrictive language from ANSI Z87.1 when it was revised in 1989 eliminated the need to address this problem in the final rule. Accordingly, no such provision appears in the final rule.

Section 1915.154 Respiratory Protection

Final rule § 1915.154 incorporates existing § 1910.134, Respiratory protection, by reference, as was proposed. The shipyard industry has been complying for years with § 1910.134 with regard to its respiratory protection programs. The two comments received on proposed § 1915.154 (Exs. 6–1 and 6–2) agreed with OSHA's proposal to replace § 1915.152, the existing shipyard respirator standard, with § 1910.134. Both comments expressed the belief that § 1910.134 is more protective and certainly more current than § 1915.152.

OSHA has published a proposed revision of § 1910.134, Respiratory Protection, which covers general industry, construction and shipyard employment (59 FR 58884, Nov. 15, 1994). When the revised respiratory protection standard becomes a final rule, OSHA will apply that rule to shipyard employment.

Section 1915.155 Head Protection

Final rule paragraph (a) addresses the use of protective helmets. Paragraph (a)(1) requires employers to ensure that affected employees wear protective helmets when they are working in areas where there is a potential for head injury from falling objects. This requirement is essentially the same as current § 1915.153(a). The national consensus standard for protective headgear, ANSI Z89.1, referenced in final rule § 1915.155(b), deals only with the head injury hazards posed by falling objects and high-voltage electric shock and burn. Therefore, this section of the final rule addresses PPE that is used to protect the head from these hazards.

The proposed rule addressed the use of protective helmets where there was potential for injury to the head from falling or moving objects. The duty to protect employees from other hazards to the head, such as moving objects, may be invoked through the general requirements of final rule § 1915.152(a) when such hazards are identified by the hazard assessment.

Commenting on proposed subpart B of part 1915 (Doc. S–050, Ex. 6–15 of Docket #S–050), BSC stated: "The standard should reflect what is stated in the ANSI standard for head protection." As noted above, the ANSI standard addresses falling object, not moving object, hazards and proposed paragraph (a)(1) has been revised accordingly.

Paragraph (a)(2) requires that affected employees wear protective helmets designed to reduce electric shock hazards when working in areas containing potential electrical hazards or energized conductors. This provision is essentially identical to the proposed provision and to other corresponding OSHA standards.

Final rule paragraph (b) sets the performance criteria for protective helmets. This paragraph provides that protective helmets purchased after August 22, 1996 shall comply with ANSI Z89.1–1986, "Personnel Protection—Protective Headwear for Industrial Workers—Requirements," which has been incorporated by reference, or shall be demonstrated by the employer to be equally protective. PPE which satisfies the criteria set by subsequent editions of the pertinent ANSI standard will be considered to comply with paragraph (b) if the updated ANSI criteria are substantively unchanged or provide equivalent protection. The Agency believes that this performance-oriented approach will encourage innovation and the use of improved equipment. The proposed rule also referenced the 1986 edition of ANSI Z89.1.

The consensus standard (ANSI Z.2–1959) referenced by the existing rule (§ 1915.153(a)) has been superseded several times since the existing standards were adopted. OSHA does not expect that much, if any, head PPE which was produced to meet the 1959 requirements is still in use. Furthermore, the Agency has concluded that ANSI Z.2–1959 does not provide adequate guidance regarding the selection of appropriate head protection. Therefore, unlike final rule § 1915.153, this section does not explicitly "grandfather" PPE which complies with the existing rule. Employers can continue to have their employees use head PPE which was produced to comply with a pre-1986 edition of ANSI Z89.1 if the employer establishes that the equipment either satisfies the performance criteria of ANSI Z89.1–1986 or provides equivalent protection.

The 1969 and 1986 editions of ANSI Z89.1 set essentially the same requirements, except with regard to electric insulation for Class B helmets. The Agency has concluded that Class B helmets already in use which satisfied the criteria set by the 1969 edition would also satisfy the 1986 criteria. Accordingly, final rule paragraph (b)(2) allows employers to continue to use protective helmets purchased before the effective date of the standard being published today provided that such helmets meet the criteria of ANSI Z.89.1–1969. This means that employers will not be required to replace protective helmets currently in use if they meet these criteria.

Section 1915.156 Foot Protection

Final paragraph (a) requires that affected employees wear protective footwear when they are exposed to hazards from falling and rolling objects, electrical hazards, and objects that may pierce a shoe sole. This is consistent with requirements in other corresponding OSHA standards. This language, which is effectively identical to that in the proposal, differs from existing § 1915.153(d), which requires employers only to make safety shoes available and "encourage" their use. OSHA believes that requiring employers to have affected employees wear protective footwear is necessary to protect their feet from the risk of serious injury. The AWSC (Ex. 6–4) commented that it would impose a cost burden on employers if they were required to purchase safety shoes for their employees. Therefore, they recommended that OSHA not require the employer to pay for foot protection, stating as follows:

> The current regulatory language concerning foot protection of employees requires the employer to encourage the use of and make available appropriate foot protection. The new language states that the employer "shall ensure that employees wear protective footwear." AWSC does not object to the practice of wearing the correct protective footwear, and supports the use of this type of personal protective equipment. However, the new language indicates a dramatic shift from current shipyard operations.
>
> Shipyard facilities have instituted many different policies to provide protective footwear to the employee, including disallowing employees to work at the facility unless they are wearing the appropriate footwear and providing an allowance to purchase the footwear. Lists of available and appropriate suppliers are circulated to the employees as a guide.

OSHA also received a comment on this subject from PBI (Docket S–050, Ex. 6–36) that stated: "This requirement is going to be cost prohibitive. We presently recommend safety shoes and contribute to their purchase. However, this standard would practically make them mandatory throughout the shipyard. Our injury experience does not indicate a need for mandatory safety shoes."

As discussed above in reference to the provision for hazard assessment, subpart I requires employers to identify the hazards to which their employees may be exposed and have those employees equipped accordingly. Therefore, employees would be required to wear protective footwear only when such protection was appropriate. In addition, as discussed above in reference to OSHA's 1994 Memorandum on PPE, OSHA interprets the part 1915 subpart I requirements for employers to provide PPE to mean that employers pay for PPE required by the company for the worker to do his or her job safely and in compliance with OSHA standards. The above discussed policy memorandum specifically indicates that employers should expect to pay for specialty foot protection. On the other hand, OSHA policy also provides that payment for PPE which is personal in nature and useable away from the workplace (such as safety shoes) is left to labor-management negotiations.

Final rule paragraph (b) sets the performance criteria for protective footwear. Paragraph (b)(1) provides that protective footwear purchased after August 22, 1996 shall comply with ANSI Z41–1991, "American National Standard for Personal Protection-Protective Footwear," or shall be demonstrated by the employer to be equally protective.

In addition, paragraph (b)(2) allows protective footwear purchased before August 22, 1996 to continue to comply with ANSI Z41–1983, Personal Protection-Protective Footwear, or footwear that the employer can demonstrate to be equally protective. PPE which satisfies the criteria set by subsequent editions of the pertinent ANSI standard will be considered to comply with paragraph (b) if the updated ANSI criteria are substantively unchanged or provide equivalent protection. The Agency believes that this performance-oriented approach will encourage innovation and the use of improved equipment. Proposed paragraph (b) referenced the 1983 edition of ANSI Z41 for all protective footwear.

The 1991 edition of ANSI Z41, which has superseded the 1983 edition, imposes essentially the same requirements as the 1983 edition, except that the 1991 edition provides more specific performance requirements for resistance to compressive forces and standardizes the puncture resistance testing methods. OSHA believes that referencing ANSI Z41–1991 for shoes

purchased after August 22, 1996 provides appropriate and up-to-date criteria for employers and employees seeking to buy protective footwear.

OSHA has determined that it is appropriate to provide explicitly for the continued use of foot PPE purchased prior to the effective date of the final rule, as long as it complies with the pertinent provisions of the ANSI standard (ANSI Z41–1983) referenced by the proposed rule. In this way, the Agency avoids imposing unreasonable burdens on employers.

Section 1915.157 Hand and Body Protection

Final rule § 1915.157 addresses hand and body PPE. Paragraph (a) requires employers to ensure that affected employees use appropriate PPE when their hands or other parts of their bodies are exposed to hazards that could lead to injuries. The final rule identifies skin absorption of harmful substances, severe cuts or lacerations, severe abrasions, punctures, chemical burns, thermal burns, harmful temperature extremes, and sharp objects as examples of hazards that would require the use of PPE. The proposed provision was essentially identical to that in the final rule, except that it identified the hazards requiring protection in more general terms.

Final rule paragraph (b) requires employers to ensure that no employee wears clothing impregnated or covered in part with flammable or combustible materials (such as grease or oil) while engaged in hot work operations or working near an ignition source. This requirement is necessary to protect workers in hot work operations from fire hazards.

The proposed rule stated that employees shall not wear greasy clothing when performing hot work operations. Existing § 1915.153(e) provides that employees shall not be permitted to wear "excessively greasy" clothing while performing hot work operations.

The AWSC recommended (Ex. 6–4) that the word "excessively" be retained in the regulatory text of the final rule.

> Shipyard work by definition is not a clean activity. Employees' clothing will be dirty. However, the clothing may not be "greasy" or even excessively greasy. Deletion of the descriptive term "excessively" will create rather than diminish compliance problems. We do not advocate that employees wear excessively greasy clothes when performing hot work operations, but without a proper explanation by OSHA as to the rationale for deleting the term, we advocate retention of the word "excessively" in the proposed language.

In addition, BSC commented (Ex. 6–15 in Docket S–050) that the language of the proposed paragraph was unclear. BSC suggested that OSHA revise the proposed language to require that employees "not wear clothing impregnated with flammable or combustible materials when performing hot work operations."

OSHA believes that retention of the term "excessively," as suggested by the AWSC, could potentially complicate compliance because the Agency has not established a measurable, objective standard for determining what is excessive. Moreover, the risk of flammability exists when clothing is impregnated, or covered, even impart, with a flammable or combustible substance. Therefore, the Agency has concluded that it is appropriate to prohibit employees from wearing clothing impregnated or covered with a flammable or combustible substance during hot work operations. The Agency agrees with the BSC that the standard needs to address all flammable and combustible materials, not just grease, and that adding the term "impregnated" (in the sense of permeated, imbued, or saturated) will more clearly express OSHA's intent. The provision has been revised accordingly.

Final rule paragraph (c) requires that the employer have employees wear protective electrical insulating gloves and sleeves, or other rubber protective equipment that provides equivalent protection when the employees are exposed to electrical shock hazards while working on electrical equipment. The proposed rule was effectively identical, except that it did not provide for the use of "other electrical protective equipment." The Agency has determined that the addition of this performance-oriented revision will encourage innovation and facilitate compliance.

Section 1915.158 Lifesaving Equipment

This section sets requirements for lifesaving equipment used in shipyard employment. Some of the language in the final rule has been editorially revised to reflect the language used in the U.S. Coast Guard's standard for approved lifesaving equipment (46 CFR part 160). OSHA's existing § 1915.154(a) specifies that the above-cited U.S. Coast Guard requirements for this equipment shall be followed. The OSHA final rule provides clarification of acceptable personal flotation devices and uses terminology that is consistent with current Coast Guard requirements. Also, for Type IV PFDs, the U.S. Coast Guard regulations use the term "ring life buoys" rather than the term "life rings" as proposed by OSHA. Therefore, OSHA has replaced "life rings" with "ring life buoy" wherever the term appeared in the proposal. The proposed language did not elicit any comments.

Final rule paragraph (a)(1) requires that personal flotation devices (PFDs) worn by employees be approved by the U.S. Coast Guard as a Type I PFD, Type II PFD, Type III PFD, or Type V PFD, unless the employer provides employee worn equipment that is as effective as the types listed (e.g., a Coast Guard approved immersion suit). Any PFD which is U.S. Coast Guard approved and marked as a Type I PFD, Type II PFD or Type III PFD is acceptable to OSHA for use by employees. A Type V PFD, including Type V Hybrid PFDs, is acceptable to OSHA for use by employees if it is U.S. Coast Guard approved and marked for use as a work vest, for commercial use, or for use on vessels. The language of the proposed paragraph, which was based on existing § 1915.154(a), has been editorially revised and clarified in the final rule.

Final rule paragraph (a)(2), addressing the inspection of PFD's, was proposed by the Agency for deletion with the intent of covering defective PFD equipment under revised general requirements § 1915.152(c), "Defective and damaged equipment." After further consideration the Agency has concluded that a PFD is critical lifesaving equipment which requires specific inspection prior to each use for dry rot, chemical damage, or other defects (such as tears, punctures, missing or non-functioning components) which affect their strength and buoyancy. Therefore, the language of existing § 1915.154(b) is being retained in the final rule.

Paragraph (b) establishes requirements for ring life buoys and ladders. Paragraph (b)(1) requires that at least three 30-inch (0.78 m) U.S. Coast Guard approved ring life buoys with lines attached be kept in readily visible and accessible places when working on a floating vessel of 200 or more feet (61 meters). Ring life buoys must be located one forward, one aft, and one at the access to the gangway. Locating ring life buoys at these positions ensures that one will be readily available if a worker falls overboard at any point along the ship's length. This paragraph, which is based on existing § 1915.154(c)(1), is essentially identical to the proposed paragraph.

Paragraph (b)(2) requires floating vessels under 200 feet (61 m) in length to have at least one 30-inch (0.78 m) U.S. Coast Guard approved ring life buoy with line attached located at the gangway. The proposed paragraph, based on existing § 1915.154(c)(1), was essentially the same.

Paragraph (b)(3) requires that at least one 30-inch (0.78 m) U. S. Coast Guard approved ring life buoy with a line attached be located on each staging float alongside the floating vessels from which work is being performed. The proposed paragraph, which was based on existing § 1915.154(c)(2), is effectively identical to the final rule's provision.

Paragraph (b)(4) requires at least 90 feet (27 m) of line to be attached to each ring life buoy. The proposed requirement, which was based on existing § 1915.154(c)(3), was effectively identical to the final rule.

Paragraph (b)(5) requires that at least one portable or permanently installed ladder be in the vicinity of each floating vessel on which work is being performed. The provision further requires that the ladder(s) be of sufficient length to assist employees to reach safety in the event that they fall into the water. The proposed paragraph, which was based on existing § 1915.154(c)(4), was effectively identical to the final rule.

Section 1915.159 Personal Fall Arrest Systems

This section sets performance criteria and other requirements for the use of personal fall arrest systems.

The Agency has determined that the fall hazards encountered by shipyard employees correspond to those faced by employees in other industries, and that it is therefore appropriate for OSHA to consider the information generated in general industry fall protection PPE rulemakings when drafting the final rule for shipyard PPE. The fall protection PPE criteria in proposed § 1915.159 were very similar to those in the corresponding proposed general industry standard (proposed §§ 1910.128 and 1910.129).

The record for the general industry fall protection PPE rulemaking (Docket S–057) indicated that the Agency should consider revising the proposed rule to prohibit the use of non-locking snaphooks and to disallow the use of body belts in personal fall arrest systems. This record, in turn, is directly relevant as the Agency considers corresponding changes in proposed § 1915.159.

To provide the public with notice and an opportunity to comment on the need for such revisions to the shipyard PPE proposed rule, the Agency solicited input through the July 6, 1994 notice of reopening (59 FR 34586) and the December 13, 1994 meeting notice (59 FR 64173). The response to those notices is discussed below.

OSHA obtained evidence (Docket S–057) in the General Industry rulemaking that employees who fall while wearing body belts are not protected as well as they would be if the fall occurred while the employee was wearing a body harness, and that the use of body belts has resulted in injuries to falling employees. A large number of rulemaking participants (Exs. 9–9, 9–10, 11–7, Tr. p. 23, Tr. pp. 59–61) supported prohibiting the use of body belts in fall protection systems. For example, Atlantic Marine (Ex. 9–9) endorsed the use of body harnesses as a safer method for employees, stating: "While the cost of body harnesses is usually twice the amount of the body belts, the added safety factor to the employee is well worth the money, and in the long run, will save the company money in case of an accident."

General Dynamics, Electric Boat Division, (Ex. 9–10) stated that it utilizes body harnesses for all of its fall protection needs.

Bath Iron Works Corporation/Local S6 (BIWC/Local S6) (Ex. 11–7) commented that they use only body harnesses in fall arrest systems and use either body harnesses or body belts in positioning device systems. BIW/Local S6 stated that it "fully supports the implementation of the proposed changes to [part 1915] subpart I."

The SCA testified (Tr. 23) that its members support the use of body harnesses in personal fall arrest systems, stating "many of our yards already use them. We find them to be very effective, and everybody seems to certainly feel a lot safer with them."

In addition, the Engineering and Safety Service (E&S) testified (Tr. 59–61) that "body belts have no useful purpose in a personal fall arrest system. E&S believes that an effective personal fall arrest system must incorporate a full body harness to protect the worker from injury and to provide an opportunity for rescue."

However, NNS (Ex. 9–11) responded as follows:

> We reviewed all falls occurring at NNS since January 1, 1991. None of those occurring involved an injury which could have been prevented or mitigated by using a harness over a belt. NNS mostly uses belts with double acting clips. To replace all of our body belts with harnesses would cost in excess of $570,000. Clearly, this is another unwarranted cost adversely affecting our global competitiveness without enhancing the safety of our employees.

The December 13, 1994 notice (59 FR 64173) solicited input regarding the extent to which a phased in ban on the use of body belts in personal fall arrest systems would be appropriate for shipyard employment.

In their comments to this notice, NNS stated as follows:

> We now understand that OSHA will agree to a phased replacement of body belts to offset the initial cost of purchasing large quantities of body harnesses. We will provide life cycle and replacement information at the January 25 meeting which should help OSHA to determine what the phased replacement period should be.

NNS subsequently testified (Tr. 34–35):

> We see body harnesses coming, and we need a significant period of phase-in time for this to have a minimal financial impact on our operations. We've got 4,000 some-odd body belts either on issue or available for issue. Replacing all of those at once would cost use some $570,000 * * * [W]e'd like a reasonable period of time to phase the harnesses in, and that reasonable period of time, based on our inventory and our estimated useful life of a body belt, is seven years.

Based on the information in Docket S–057 and the shipyard industry input discussed above, OSHA has decided to bar the use of body belts in personal fall arrest systems. OSHA believes, however, that it is appropriate to allow a phase-out period, ending December 31, 1997, rather than to establish an immediate prohibition, so that shipyard employers can continue to use their body belts while they switch over to body harnesses. OSHA urges employers to phase out the use of body belts in personal fall arrest systems as soon as possible so that employees may be spared exposure to the increased risk of injuries from body belt use. It is important to note that body belts may continue to be used in positioning device systems even after they have been banned in fall arrest systems. OSHA has included paragraphs (b)(6)(i), (c)(1)(i), (c)(2), (c)(3), and (c)(8) in the final rule to provide criteria for any body belts that are used in personal fall arrest systems during the phase-out period.

In addition, OSHA has determined that it is appropriate, given the dangers related to "roll-out," to phase-out the use of non-locking connectors. The phase-out period will avoid imposing undue hardship on employers who currently use non-locking snaphooks. As discussed in the July 6, 1994 notice of reopening, the Agency has concluded that the same considerations which supported the adoption of such a requirement in other corresponding OSHA PPE standards apply to personal fall arrest system components used in shipyard employment. OSHA has

concluded that compliance with final rule paragraphs (a)(5) and (a)(6) will effectively minimize any problems related to the use of non-locking snaphooks during the phase-out period.

The input received in response to the July 6, 1994 reopening notice (59 FR 345860) and the December 13, 1994 meeting notice (59 FR 64173) indicated shipyard industry support for a ban on the use of non-locking snaphooks. For example, General Dynamics, Electric Boat Division (Ex. 9–10) stated that it "utilizes locking snaphooks and therefore takes no issue with the proposed * * * language."

NNS (Tr. 52) and the UBC Health and Safety Fund of North America (UBC) (Tr. 86) testified that OSHA should require the use of locking snaphooks. In particular, the UBC stated that "OSHA should prohibit the use of non-locking snap hooks because of the recognized danger of roll-out and the resulting possibility of employee falls." Accordingly, § 1915.159 of the final rule bans the use of non-locking snaphooks in fall arrest systems, effective January 1, 1998.

Final rule paragraph (a) sets criteria for connectors and anchorages used in personal fall arrest systems. Except where otherwise indicated, any final rule provisions which were not proposed have been added to the standard because the Agency has concluded that the same considerations which supported the adoption of such requirements in other corresponding PPE standards apply to personal fall arrest systems and components used in shipyard employment.

Paragraph (a)(1), proposed as paragraph (a)(7), requires that connectors be made of drop forged, pressed, or formed steel or materials equivalent in strength. The connectors used in personal fall arrest systems must be made of steel or equivalent materials to withstand failure under fall conditions. As discussed above in relation to the definitions (§ 1915.151(b)), OSHA has replaced the proposed term "hardware" with the term "connector." Otherwise, the proposed and final rule language are identical.

Final rule paragraph (a)(2), proposed as paragraph (a)(8), requires that connectors have a corrosion-resistant finish and that all surfaces and edges be smooth to prevent damage to the interfacing parts of the system. The only difference between the final rule's provision and the proposed provision is the use of the term "connector" instead of "hardware."

Final rule paragraph (a)(3), proposed as paragraph (a)(14), requires that D-rings and snaphooks used in these systems be capable of sustaining a minimum tensile load of 5,000 pounds (22.2 kN). No comments were received on this paragraph.

Final rule paragraph (a)(4), which is also a new provision, requires that D-rings and snaphooks be 100 percent proof tested to a minimum tensile load of 3,600 pounds (16 Kn) without cracking, breaking, or being permanently deformed. The provision is included to ensure the strength of all D-rings and snaphooks.

Paragraph (a)(5), which was not proposed, provides that snaphooks shall either be sized so as to prevent unintentional disengagement of the snaphook or shall be of a locking type which is designed and used to prevent disengagement of the snaphook. This provision has been added to prevent "rollout" conditions in a personal fall arrest system during the phase-out period for non-locking snaphooks.

Final rule paragraph (a)(6) requires that snaphooks, unless of a locking type designed and used to prevent disengagement from the following connections, must not be attached:

(i) Directly to webbing, rope, or wire rope;

(ii) To each other;

(iii) To a D-ring to which another snaphook or other connector is attached;

(iv) To a horizontal lifeline, or

(v) To any other object that is shaped incompatibly or dimensioned in relation to the snaphook such that the connected object could depress the snaphook keeper a sufficient amount for release.

Proposed paragraphs (a)(15), (a)(16), and (a)(17), which set similar requirements, have been clarified and consolidated in final rule paragraph (a)(6).

Final rule paragraph (a)(7), which is a new provision, requires that devices used for connection to the horizontal lifeline on suspended scaffolds, or to similar work platforms with horizontal lifelines that may become vertical lifelines, be capable of locking in any direction on the lifeline. Because a suspended scaffold or platform could lose its support at either end, the connection device must be able to lock on the lifeline regardless of which end goes down.

Final rule paragraph (a)(8), requires that anchorages used for the attachment of personal fall arrest equipment be independent of any anchorage being used to support or suspend platforms. Final rule paragraph (a)(9) requires that anchorages either be capable of supporting at least 5,000 pounds (22.2 Kn) per employee attached or be designed, installed, and used as part of a complete personal fall arrest system that maintains a safety factor of at least two, and is used under the direction and supervision of a qualified person. Both provisions are based on proposed paragraph (a)(10).

Proposed paragraph (a)(10) required that personal fall arrest systems be secured to an anchorage capable of supporting at least twice the potential impact load of an employee's fall. E&S testified (Tr. 63–64) that it was "concerned about the safety factor requirements for an anchorage in the proposed standard * * * [E&S] does not believe the average worker is capable of determining the safe limits of an anchorage." In the course of subsequent questioning (Tr. 70–71), E&S agreed that anchorages installed as part of a completely designed personal fall arrest system, and used under the supervision of a qualified person, would provide adequate support for employees. This approach, taken in the corresponding construction and general industry rulemakings, has been adopted in the shipyard PPE final rule. The final rule provisions, while reformatted for the sake of clarity, are essentially the same as the proposed provision.

Final rule paragraph (b) sets criteria for lifelines, lanyards, and personal fall arrest systems. Paragraph (b)(1) requires that each employee be provided with a separate lifeline when vertical lifelines are used. Proposed paragraph (a)(9), which elicited no comments, was essentially identical to this provision of the final rule.

Final rule paragraph (b)(2) requires vertical lifelines (droplines) and lanyards to have a minimum breaking strength of 5,000 pounds (22.2 Kn). This provision of the final rule consolidates the strength requirements contained in proposed paragraphs (a)(11) and (a)(13). The elements of proposed paragraph (a)(11), which addressed self-retracting lifelines, have been redesignated final rule paragraphs (b)(3) and (b)(4), as discussed below. The "exception" to the 5000-pound strength requirements contained in proposed paragraph (a)(13) appears in the final rule as a separate provision, paragraph (b)(3), to more clearly express the Agency's intent. OSHA received no comments on the proposed paragraphs relating to lifelines, lanyards, and personal fall arrest systems. The Agency has determined that reformatting the proposed requirements will facilitate compliance efforts for employers whose employees use vertical lifelines or lanyards.

Final rule paragraph (b)(3) requires that self-retracting lifelines and lanyards which automatically limit free fall to 2 feet (0.61 m) or less be capable of sustaining a minimum static tensile load of 3,000 pounds (13.3 Kn) applied to the device with the lifeline or lanyard in the fully extended position. Final rule paragraph (b)(4) requires that self-retracting lifelines and lanyards which do not limit free fall distances to 2 feet (0.61 m) or less (for example: ripstitch lanyards, tearing, and deforming lanyards) be capable of sustaining a minimum tensile load of 5,000 pounds (22.2 Kn) applied to the device (with the lifeline or lanyard in the fully extended position if such a condition can occur in use). As discussed above, final rule paragraphs (b)(3) and (b)(4), which are based on proposed paragraph (a)(11), have been included in the final rule as separate paragraphs for clarity.

Final rule paragraph (b)(5) (revised from proposed paragraph (a)(12)) requires that horizontal lifelines to be used as part of a complete personal fall arrest system be designed and installed under the supervision of a qualified person and have a safety factor of at least two. The proposed provision required that horizontal lifelines have sufficient strength to support a fall impact force of at least 5,000 pounds (22.2 Kn). As discussed above, the Agency has concluded that the same considerations which supported the adoption of such a requirement in the other corresponding OSHA standards apply to personal fall arrest system components used in shipyard employment. OSHA has revised the final rule accordingly.

Final rule paragraph (b)(6) sets the systems performance criteria for personal fall arrest systems. These are new requirements, so OSHA is making this provision effective November 20, 1996 in order to allow employers a reasonable amount of time to attain compliance. The note to final rule paragraph (b)(6) indicates that Non-mandatory Appendix B provides examples of criteria and protocols for designing and testing personal fall arrest systems that OSHA would consider to comply with the standard.

Proposed paragraph (a)(4) was similar to final rule paragraph (b)(6), except that the proposed rule set 1,800 pounds (rather than 900 pounds) as the maximum arresting force limit for systems that used body belts and required that a system have a strength factor of two (based on a design weight of 250 pounds per employee). Also, as discussed below, the proposed requirement that free fall be limited to six feet has been redesignated as a separate provision, final rule paragraph (b)(7), for the sake of clarity. The note to proposed paragraph (a)(4)(iv) is essentially identical to that which appears in the final rule, except for editorial revisions. As discussed above, in reference to the July 6, 1994 notice (59 FR 34586), the Agency has concluded that the same considerations which supported the adoption of such requirements in the other corresponding OSHA standards apply to personal fall arrest system components used in shipyard employment. OSHA has revised the proposed rule accordingly.

Final rule paragraph (b)(7), based on proposed paragraph (a)(4)(i), requires that personal fall arrest systems be rigged to prevent an employee from free falling more than 6 feet (1.8 m) or contacting any lower level.

Final rule paragraph (c) sets criteria for the selection, use and care of personal fall arrest systems and system components. Paragraph (c)(1) (proposed as paragraph (a)(5)) of the final rule requires that the attachment point of a body belt be located in the center of the wearer's back. The attachment point of a body harness must be in the center of the wearer's back near shoulder level or above the wearer's head. The proposed rule provided that the connection point must be either above the wearer's head or above the waist in the back. Comments in the other rulemaking records supported allowing an attachment point at the chest position for limited free fall distances. The final rule, as regards body harnesses, has been revised accordingly.

Paragraph (c)(2) of the final rule, which is a new provision, requires that ropes and straps (webbing) used in lanyards, lifelines, and strength components of body belts and body harnesses be made from synthetic fibers or wire rope. OSHA has determined, given the difficulty of evaluating the deterioration of natural fiber rope, that natural fiber rope is not reliable for use in a personal safety system.

Final rule paragraph (c)(3), also a new provision, requires ropes, belts, harnesses and lanyards to be compatible with all hardware used. The use of incompatible equipment may cause a fall, or, during arrest of a fall, allow arresting forces which cause injury.

Paragraph (c)(4), proposed as paragraph (a)(3), requires that lifelines and lanyards be protected against cuts, abrasions, burns from hot work operations, and deterioration by acids, solvents, and other chemicals. The proposed provision, which did not elicit comments, was identical.

Final rule paragraph (c)(5), proposed as paragraph (a)(18), requires that personal fall arrest systems be visually inspected prior to each use for mildew, wear, damage, and any other deterioration. This inspection need not involve testing or impact loading of the system. If there is a reasonable basis to believe that the strength or integrity of the fall arrest system has been weakened, the employer shall remove defective or damaged equipment from service. No comments were received on the proposed provision, which was identical to the provision in the final rule except for minor editorial changes.

Paragraph (c)(6), which was proposed as paragraph (a)(2), requires that personal fall arrest systems and components that have been subjected to impact loading be removed immediately from service and not be used again for employee protection until inspected and judged suitable for use by a qualified person. The proposed provision, which was effectively identical, elicited no comments and has been promulgated in the final rule with minor editorial changes.

Paragraph (c)(7) of the final rule, a new provision, requires that the employer provide for prompt rescue of employees in the event of a fall or ensure that employees who have fallen can rescue themselves. This provision also appears in the proposed general industry rule and in the final rule for construction. OSHA anticipates that employers will evaluate the potential consequences of falls in personal fall arrest systems in their work environments and choose an appropriate means of rescue. OSHA recognizes that the rescue requirements for employees wearing body harnesses and body belts will differ. For example, the Agency anticipates that self-rescue will be more difficult for employees using body belts and that the acceptable rescue time for such employees will be shorter, because falls in body belts typically result in the employee hanging in a jack-knifed position. When it is not possible to evaluate the self-rescue capacity of employees in advance, prudent employers should assume that employees will need rescue assistance and, accordingly, be prepared to offer it. Paragraph (c)(8), proposed as paragraph (a)(6), requires that body belts be at least 1.625 inches (4.1–cm) wide. OSHA has determined that this minimum width will be acceptable for any body belts that are used in personal fall arrest systems during the phase-out period. No comments were received on this provision.

Paragraph (c)(9), proposed as paragraph (a)(1), requires that personal fall arrest equipment be used exclusively for employee protection. For example, this equipment may not be used to hoist materials. This revision is intended to prevent the deterioration

potentially caused by improper uses and types of loads. The proposed provision, which was identical, elicited no comments.

Final rule paragraph (d), Training, proposed as paragraph (a)(19), requires that employees be trained to understand the application limits of the equipment and the proper hook-up, anchoring, and tie-off techniques, before using any personal fall arrest equipment. Affected employees must also be trained so that they can demonstrate the proper methods of use, inspection, and storage of the equipment. OSHA believes that employees must know how their fall arrest equipment works in order to get the appropriate protection from it. No comments were received on the proposed provision, which was effectively identical to the final rule.

Section 1915.160 Positioning Device Systems

Positioning device systems prevent falls by holding affected employees in place while they perform work on vertical surfaces at elevations. The provisions of proposed § 1915.159(b) have been moved to final rule § 1915.160, so there is a clear distinction between the requirements for personal fall arrest systems and those for positioning device systems.

Final rule paragraph (a) sets criteria for connectors and anchorages used in positioning device systems. For the same reasons as provided in the introductory discussion of final rule § 1915.159, the introductory text of final rule § 1915.160 provides that the use of non-locking snaphooks will not be acceptable in positioning device systems after December 31, 1997. OSHA has included paragraph (a)(4) in the final rule to address any non-locking snaphooks that may remain in use during the phase-out period.

Paragraph (a)(1), proposed as § 1915.159(b)1), requires that all hardware have a corrosion-resistant finish and that all surfaces and edges be smooth to prevent damage to the attached belt or connecting assembly. Corrosion resistance is essential to retain the integrity of the hardware, while smooth edges and surfaces prevent cuts, tears, or other damage to system components. The proposed provision was identical, except that the proposed term "hardware" has been replaced by the term "connector." As discussed above, OSHA has determined that it is appropriate to focus attention on the critical load-bearing hardware by adopting the term "connector."

Final rule paragraph (a)(2), proposed as § 1915.159(b)(2), provides that connecting assemblies, such as snaphooks or D-rings, have a minimum tensile strength of 5,000 pounds (22.2 Kn). The proposed provision, which did not elicit comments, was identical.

Final rule paragraph (a)(3), proposed as § 1915.159(b)(3), requires that anchorages for positioning device systems be capable of supporting twice the potential impact load of an employee's fall. The proposed provision, which did not elicit comments, was identical.

Final rule paragraph (a)(4), proposed as § 1915.159(b)(6)(i), provides that snaphooks, unless of a locking type designed and used to prevent disengagement, shall not be connected to each other. The proposed rule simply prohibited the connecting of snaphooks to each other. As discussed above, in reference to the introductory text of final rule § 1915.160, the use of non-locking snaphooks is prohibited after December 31, 1997.

Final rule paragraph (b) sets performance criteria for positioning device systems. Paragraph (b)(1), proposed as § 1915.159(b)(4), requires that restraint (tether) lines have a minimum breaking strength of 3,000 pounds (13.3–Kn). This breaking strength is necessary to ensure that the line will hold under fall arrest conditions. The proposed provision, which did not elicit comments, was identical.

Paragraph (b)(2), proposed as § 1915.159(b)(5), provides the system performance criteria for the different types of positioning device systems. These are new performance requirements that are not in OSHA's current shipyard standards. In order to allow employers a reasonable amount of time to ensure that their equipment meets these requirements, OSHA is making this provision effective November 20, 1996.

Final rule paragraph (b)(2)(i) provides that window cleaner's positioning systems must be capable of withstanding a drop test involving a 6 foot (1.83 m) drop of a 250 pound (113 kg) weight. These systems must withstand a more rigorous drop test than other positioning device systems because of their potential for greater free fall distances.

Final rule paragraph (b)(2)(ii) requires that all positioning device systems, other than window cleaners' positioning systems, be capable of withstanding a drop test of 4 feet (1.2 m) with a 250 pound (113 kg) weight. Positioning device systems which comply with the provisions of Section 2 of Appendix B will be deemed by OSHA to meet the requirements of this paragraph. The proposed provision, which elicited no comments, was identical.

Final rule paragraph (c) sets criteria for the use and care of positioning device systems. Final rule paragraph (c)(1), proposed as § 1915.159(b)(7), requires the inspection of positioning device systems before each workshift for mildew, wear, damage, and other deterioration. This provision further requires that defective components identified in such inspections be removed from service. The proposed language was nearly identical, except that it provided for removal of defective equipment "if their functions or strength may have been adversely affected." OSHA has determined that the deletion of that language will make the rule easier to understand, because employers will simply remove components from service that are identified as defective without having to make a specific determination about strength or function.

Final rule paragraph (c)(2), proposed as § 1915.159(b)(6)(ii), requires that positioning device systems or components subjected to impact loading be removed immediately from service and not be used again for employee protection, unless inspected and determined by a qualified person to be undamaged and suitable for reuse. This requirement is necessary to ensure that systems used for employee protection still meet the performance criteria for such systems before they are reused for this purpose. The proposed provision, which did not elicit comments, was identical.

Final rule paragraph (d), Training, proposed as § 1915.159(b)(6)(iii), provides that employees must be trained in the application limits, proper hook-up, anchoring, and tie-off techniques, methods of use, inspection, and storage of positioning device systems before they may use those systems. This provision emphasizes the importance of employee training in the safe use of positioning device systems; for these systems to provide employee protection, two elements are essential. The systems must be designed and used in accordance with stated performance criteria, and the employee(s) using the system must be adequately trained in the safe use of the system. The proposed provision, which did not elicit comments, was identical.

Incorporation by Reference

Another action in this document is the consolidation, within part 1915, of OSHA's Incorporation by Reference (IBR) statements of approval, which indicate clearance by the Office of the Federal Register, into a single section, § 1915.5. Existing section 1915.5 is being updated and revised to accomplish this consolidation. This approach is consistent with that taken by other Federal agencies. As amended, § 1915.5 contains the national consensus standard organizations' addresses and the IBR approval language. This approach saves text by cross-referencing from the regulatory text where an IBR is set out to the IBR section. Without such a section, the addresses of the standards organizations, the OSHA Docket Office address, and the IBR approval statement would need to be repeated with each incorporation by reference throughout the shipyard standards. A consolidated IBR Section will also be easier to update.

Appendices

OSHA is including two non-mandatory appendices to final part 1915 subpart I.

Appendix A

Appendix A provides suggested guidelines for complying with the requirements for hazard assessment for the selection of personal protection equipment.

In developing the final rule for this rulemaking, OSHA has determined that Appendix B of the corresponding General Industry standard (part 1910, subpart I) contains some useful information that would be helpful to shipyard employers. Therefore, OSHA has decided to add a detailed Appendix A to the shipyard PPE standard to provide some examples of guidelines which an employer may follow in complying with OSHA's performance-oriented final rule. Those guidelines include examples of hazard assessments performed by work activity.

Appendix B

Appendix B contains testing methods and other information to assist employers in complying with the performance-oriented criteria for personal fall arrest systems and positioning device systems contained in this standard. Many revisions have been made to this appendix based on the comments received during the powered platform rulemaking (Docket No. S–700A). These changes are intended to clarify and simplify the information presented. A complete discussion of the comments and reasons for the changes are included in the Powered Platforms for Building Maintenance final rule (54 FR 31452).

Amendments to Other Subparts of the Shipyard Standards

This final rule also revises cross references in subparts C and H of the shipyard standards, so that those provisions reference subpart I. The existing references would no longer identify the correct paragraphs in subpart I because of the reformatting of Subpart I. These revisions are editorial in nature and do not substantively change the current requirements in other subparts.

IV. Summary of Final Economic Analysis, Regulatory Flexibility Analysis, and Environmental Impact Assessment Summary

In accordance with Executive Order 12866, OSHA has developed a final economic analysis to support the final standard for personal protective equipment (PPE) in the shipyard industry. The Agency has also analyzed the standard's impact on small entities, as required by the Regulatory Flexibility Act, and its potential to cause adverse environmental impacts, as required by the National Environmental Policy Act. The final rule, which will be codified as subpart I of the shipyard employment standards (29 CFR 1915), covers the use of personal protective equipment for the head (e.g., hard hats), eyes (e.g., goggles), feet and hands (e.g., shoes and gloves), and body (e.g., chemical protective clothing), contains the respirator requirements that have been part of OSHA's shipyard standards since 1971, and adds requirements for personal fall protection systems and positioning device systems.

Injuries in the shipyard industry are frequent and severe. The shipyard industry (SIC 3731) has the second highest rate of lost workday injuries and illnesses (37.8 per 100 full-time workers), according to the BLS publication "Occupational Injuries and Illnesses: Counts, Rates, and Characteristics, 1992" (published in April 1995). The industry also has one of the highest average number of lost workdays per injury (more than 40 percent of lost workday injuries involve more than 10 days away from work, according to the same BLS publication).

To address those shipyard injuries that result from the failure to use PPE or from the use of inadequate PPE, and to raise the minimum standard of PPE use in the industry to the level of technology currently available, OSHA has developed this final rule. The rule requires employers to meet minimum specifications for PPE employed to protect the eyes and face, hands and body, and feet, as well as those for respiratory protection, lifesaving, and personal fall protection equipment. In addition, the final rule requires employers to conduct hazard assessments, include specific elements related to PPE in the training they provide to their workers, document training and hazard assessments, require the use of body harnesses in place of body belts after a phase-in period, and ensure the use of locking snaphooks on personal fall protection equipment. Rulemaking participants from the shipyard industry report that most employers in the industry are already in compliance with the requirements of the final standard. For example, one industry representative stated "* * * most shipyards require employees to wear personal protective equipment in all areas beyond the office doors. * * * We've already identified and protected our employees and our visitors because of the hazardous work environment" [January 25, 1995 public meeting, Transcript page 9].

The economic analysis identifies a number of benefits that employers and employees will experience as a result of compliance with the standard. For example, the Agency has concluded that the rule's requirements for body harnesses and locking snaphooks will reduce the risk of fatal falls, and these requirements will also reduce the severity of the injuries resulting from non-fatal falls. In addition, the final rule is estimated to prevent about 1,550 lost workday injuries annually and 12,650 non-lost workday injuries caused by the failure to use PPE or the use of inadequate PPE.

The Agency estimates that employers in the affected industry will incur estimated annual costs of compliance of $163,000. These costs, which average about $2 per covered employee, will not impose substantial economic impacts on affected firms in any size-class. OSHA has also evaluated the impacts of compliance costs on the average small shipyard and has determined that, even under a no cost pass through assumption, worst case impacts on such establishments will average no more than $100 annually. OSHA has therefore concluded that this standard will not impose an undue burden on small firms; in addition, the standard will not have an adverse effect on the environment.

Introduction

Executive Order 12866 requires the Agency to perform an analysis of the costs, benefits, and regulatory alternatives of its regulatory actions. If a regulation is deemed "significant" by the Administrator of OMB's Office of Information and Regulatory Affairs

(OIRA), OIRA reviews the regulation and OSHA's economic analysis. A regulatory action is considered significant if it imposes annual costs on the economy of $100 million or more or has an adverse effect on the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This final rule directly affects only one well-defined industry, the shipbuilding and ship repair industry, and the estimated costs of compliance are far below the $100 million threshold. OSHA has therefore concluded that the promulgation of this final standard for personal protective equipment in shipyard employment is not a significant action under the guidelines of E.O. 12866.

As required by the OSH Act and its judicial interpretations, the Agency must demonstrate that all of its regulations are both technologically and economically feasible, and specifically that this is the case for this rule. The Agency has concluded that this standard meets both tests of feasibility. A summary of the Agency's feasibility assessment of the final rule is presented in the following section of the Economic Analysis.

In addition, the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires federal agencies to determine whether a regulation will have a significant economic impact on a substantial number of small entities. The Agency must also review this standard in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and OSHA's DOL NEPA Procedures (29 CFR Part 11).

This summary of the economic analysis includes an overview of the affected industry and employees at risk, the estimated benefits of the rule, the technological feasibility of the standard, the estimated compliance costs shipyard employers will incur, the impact of those costs on firms in the shipyard industry, the results of the regulatory flexibility and economic analysis, and a discussion of regulatory and non-regulatory alternatives. The full text of the economic analysis is in the shipyard PPE docket (Docket S–045).

Industry Profile

The American shipyard industry has been in a long-term decline since 1981 when the federal government ended subsidies for commercial ship construction. In the period 1976–1980 the industry built an average of 64 merchant vessels per year. Only five commercial ships have been built since 1988. The decline in merchant vessel construction in the 1980's was partially offset by a large increase in military ship construction. However, the end of the military competition with the former U.S.S.R. has resulted in a sharp drop in military ships on order. The "bottom-up" review of the armed forces called for a major reduction in the number of active combat ships, and consequently has caused a drop in the number of future orders. U.S. Navy orders, which averaged 19 per year in the 1980's, are projected to fall to 8 per year during the period 1994–1999. Ship repair and construction of inland vessels and barges has remained constant during the past five years.

Recently American shipyards have received new orders for construction of commercial ships (Wall Street Journal Nov. 15, 1995). These orders result mainly from a new Federal loan guarantee program approved by Congress but also are due to exchange rates that have made American-made products cheaper relative to foreign-produced goods. Wage rates in American shipyards were already well below those of some important foreign competitors, such as Germany and Japan, whose governments heavily subsidize their shipbuilding industries. A new global trade accord that would end shipbuilding subsidies may be signed in the near future. This would allow American shipyards to compete internationally, increase commercial ship construction, and increase employment levels in the industry. The Agency estimates that employment in American shipyards will end its decline and level off or increase slightly for the next two to three years. Future employment levels depend on funding for the guaranteed loan program, exchange rates and the relative price of American versus foreign-built ships, foreign governments' level of subsidy to their shipyards, and the status and terms of a global accord to end subsidy programs.

Employment in the shipbuilding industry declined from 177,000 in 1984 to about 125,000 by 1987 and remained near that level until 1992. The Bureau of Labor Statistics estimates that employment in the industry was 106,000 by late 1993. The most recent BLS "Employment and Earnings" (May 1995) estimates the same level of employment and reports that about 79,000 of these employees are production workers. In 1994, the value of output from American shipyards was approximately $9.5 billion (1994 Industrial Outlook estimate). Based on Dun & Bradstreet's estimated mean return for the shipyard industry of 2.9 percent, the industry earned approximately $275 million in 1994.

The Agency estimates that there are approximately 500 firms in SIC 3731, and a majority of these have fewer than 50 employees. Employment in the shipyard industry is highly concentrated. The ten largest shipyards employ approximately 70 percent of all shipyard workers, and only the 100 largest firms have as many as 100 employees each. The Agency estimates that approximately 300 firms engaged in ship repair employ fewer than 20 employees. Many of these small firms perform contracting for larger firms; those that do so already follow the PPE guidelines of the employing shipyards.

Employees at Risk

Numerous sources confirm that about 75 percent of shipyard employees are production workers, including the *1987 Census of Manufactures* (Bureau of the Census 1990) and CONSAD Research Corporation (1986). The Agency thus concludes that an estimated 79,000 production workers in this industry are now exposed to workplace hazards that may require the use of PPE of the types covered by the final rule.

Technological Feasibility

Equipment to meet the final PPE standard, such as hard hats, gloves, and safety shoes, is readily available and widely used throughout the industry. Off-the-shelf safety programs that include guidance on the conduct of hazard assessments, as well as training program materials, are readily available, and these programs are also well established throughout the industry. "Hazard assessments are a standard practice at EBDiv. [Electric Boat Division]" [Ex. 9–10]. "Shipyards are safety conscious. Every shipyard in the Hampton Roads area has a safety program and a safety officer * * * STASR shipyards have safety programs with many of the PPE standards already in place. The [proposed standard's] PPE training and recordkeeping requirements are, in some cases, redundant" [South Tidewater Association of Ship Repairers, Ex. 9–3].

Training documentation is usually maintained by shipyard employers in a computer database. The Agency therefore concludes that the final PPE standard is technologically feasible. The performance-oriented criteria of the standard should also allow technological innovation to improve PPE protection in the future.

Costs

The preliminary cost estimates prepared by OSHA to support the proposed shipyard PPE standard published in 1988 included compliance costs that shipyard employers would incur to comply with a number of proposed requirements for respirator use. However, the final standard does not include any new respirator requirements, because the Agency expects to publish a final rule addressing respirator use in all industries in the near future. Thus, this final rule includes only those respirator provisions that have been included in OSHA's shipyard rules since 1971.

In response to the preliminary Regulatory Impact Analysis (1988), OSHA received only one comment on the costs of the proposed standard. Peterson Builders [Ex. 6–14], referring to the proposed requirement for foot protection in Section 1915.156, stated that buying protective footwear for all employees—which the commenter interpreted as being required by the proposed standard—would be costly and unnecessary. The Agency has recently clarified its policy on the purchase of PPE to make clear that employers do not have to purchase equipment that may also have personal use; OSHA believes that the costs of PPE will therefore be substantially less than this commenter expected. In addition, as noted above, OSHA's 1988 Preliminary Regulatory Impact Analysis (see Docket S–045) noted that the use of PPE in shipyards is already widespread.

On April 6, 1994 OSHA published a final standard for PPE in general industry (59 **Federal Register** No. 66). On July 6, 1994, the Agency reopened the record for the shipyard PPE standard to incorporate the general industry PPE docket into the shipyard PPE docket and to propose the addition of several elements from the general industry standard to the shipyard standard. These elements included requirements for: certification of workplace hazard assessments; certification of training; specification of training elements; the phasing out of body belts in favor of body harnesses; and the replacement of non-locking snaphooks with locking snaphooks. The Agency's intent in taking this action was to make the PPE standard consistent where possible in both shipyards and the general industries. Following the comment period, a **Federal Register** notice announcing a public meeting and containing additional discussion of some of the issues raised by the reopening was published on December 13, 1994. A public meeting was held on January 25, 1995 to hear testimony about the proposed changes to the shipyard standard introduced during the reopening of the record.

Representatives of the shipyard industry and industry associations opposed the new requirements for work place hazard assessments and the certification of such assessments. First, the industry asserted that job-related activities in shipyards are unique because a shipyard is not a fixed "workplace." Instead there is a constant shifting of trades between work locations as employees move among various shops and vessels; in addition, in ship repair and overhauling, the vessels being worked on constantly change. According to these commenters, it is not possible for designated shipyard employees to continuously assess the hazards of a "workplace" that is constantly changing. According to one participant, a better approach would be to perform hazard assessments by trade to determine the level of PPE required [South Tidewater Association of Ship Repairers, Ex. 9–3]. Numerous commenters agreed with this view [Exs. 9–1, 9–7 through 9–12].

As discussed above in relation to final rule § 1915.152(b), OSHA agrees that it is appropriate to allow employers flexibility in organizing their hazard assessment efforts. The Agency has underscored the performance-oriented nature of that provision by adding a note to the final rule which states that hazard assessments conducted according to the trade or occupation of affected employees are acceptable so long as they address any PPE-related hazards to which employees are exposed in the course of their work activities.

The shipyard industry also opposed the requirement for certification of hazard assessments because, in the opinion of commenters, certification would require employers to expend resources for new paperwork activities "for the convenience of the Agency" that would not result in additional safety for production workers [Ex. 9–11]. Industry commenters also were concerned that certification might increase their liability when injuries occur. Other shipyards that currently rely on worker involvement to analyze risks feared that certification would disrupt that process [January 25, 1995 public meeting transcript pages 28 and 41–47]. The shipyard industry also opposed the certification of hazard assessments on the grounds that these assessments would be redundant, since the industry already performs many PPE-related hazard assessments for individual health and safety standards such as hearing conservation, lead, confined spaces, respirator use, and other OSHA standards.

In its **Federal Register** notice on December 13, 1994 announcing a public meeting on shipyard PPE issues, the Agency asked for information on whether simple documentation would suffice in place of certification. In testimony at the public meeting and in comments submitted following the meeting, industry representatives stated that they did not oppose documentation of hazard assessments. In fact, they reported that it is routine in the industry to conduct such assessments and to document them:

> * * * hearing conservation, respiratory protection, hazard communication, lockout/tagout, lead abatement, blood-borne pathogens, medical surveillance programs * * * [are] programs that are already in place that [require] us to do hazard assessments of the workplace in order that we provide PPE * * * Where hazard assessment does not exist, and it would be hard for me to say where it doesn't in the shipyard industry, we'd recommend that an annual assessment be made. [Shipbuilders Council, January 25, 1995 public meeting transcript page 11].

Commenters within the shipyard industry also opposed the general industry PPE requirement to certify training, largely for the same reasons as those noted above for the certification of hazard assessments—the creation of potential new legal liability and unnecessary paperwork. In its December 13, 1994 announcement, the Agency suggested that simple documentation could be used in lieu of certification, and the final rule requires documentation rather than certification.

Commenters were generally supportive of the standard's training requirements and the specific elements of training mandated by the rule. Commenters stated that the PPE training elements proposed by the Agency were practiced throughout the shipyard industry, as was the maintenance of training logs—usually in the form of a computer database:

> We support the general requirement for training as it does serve to enhance a safer working environment [Shipbuilders' Council [Ex. 9–9]].
>
> We are already complying with this proposed standard [for training] and we suspect many other shipyards are also complying. * * * Our new hire orientation programs covers all areas of PPE and would meet the new requirements proposed in the standard [Tampa Shipyards, Ex. 9–8].
>
> We'd recommend this documentation [for training] be in the form of training logs, which most of us already keep on the computer [Shipbuilders' Council January 25, 1995 public meeting, Transcript page 13].

There was widespread support among industry commenters for the use of body harnesses in place of body belts:

Electric Boat Division utilizes body harnesses for all of its fall protection needs. * * * [Ex. 9–10].

BIW/Local S6 has implemented a policy which is consistent with the construction industry standard in that only body harnesses may be used in fall arrest systems and body belts may be used in positioning device systems [Bath Iron Works Ex. 11–7].

Without a doubt, the majority of our membership endorses the use of harnesses. Most of us already have those in place . [Shipbuilders' Council January 25, 1995 public meeting, Transcript page 14].

However, Newport News Shipbuilding (NNS), which employs about 20 percent of all shipyard employees, opposed the phase-out of body belts in favor of harnesses. NNS relies almost completely on body belts for fall protection, although the shipyard did report using a small number of harnesses. Several small yards also still rely on body belts for fall protection and questioned the utility of changing to body harnesses since they had experienced no injuries due to the use of body belts [Exs. 9–1, 9–3 and 9–11]. At the public meeting, NNS stated that replacing over 4,700 body belts would be a burden and therefore that a seven-year phase-in period would be needed to reduce the economic impact. The company reported that a review of several years' accident records failed to show that falls of employees using body belts resulted in any severe injuries. NNS did not introduce its data on falls into the record, however. A cost analysis presented by NNS at the hearing showed that body belts cost NNS $43 each and, on average, lasted 7 years; harnesses cost $140 and have a working lifetime of 3 years.

Most other shipyards and industry associations reported that they had switched to harnesses from belts. These commenters reported that, although harnesses cost more than belts, they provide greater protection and are cost effective.

We * * * endorse the use of body harnesses as a safety method for employees. While the cost of a body harness is usually twice the amount of body belts, the added safety factor to the employee is well worth the money, and in the long run will save the company money is case of an accident [Atlantic Marine Ex. 9–9].

In fact many of our yards already use them [harnesses]. We find them to be very effective, and everybody seems to certainly feel a lot safer with them [Shipbuilders' Council January 25, 1995 public meeting, Transcript page 23].

At the public meeting on January 25, 1995, representatives of the American Insurance Service [Tr. 59] stated that body harnesses would prevent injuries that could occur in falls involving employees wearing body belts. In addition, they said that it is difficult to rescue a worker in a body belt after a fall since he or she typically is hanging "nose to toes," or upside down. Several falls involving employees (in other industries) wearing body belts had resulted in fatalities when the fallen worker had slipped out of his/her body belt. The insurance representatives also asserted that the cost of harnesses should not preclude the inclusion of a harness requirement in the rule because industry has known that the change to harnesses was going to occur, body belts are usually "expense" items, and, if treated as a capital expense, will have been fully depreciated by the effective date of the regulation. The association did not provide any data demonstrating that the injuries associated with falls in body harnesses was less severe than those in belts. Belts were estimated to cost $35 each and harnesses $75 each. Harnesses were estimated to last an average of 2 to 4 years.

OSHA agrees with the assessment of most of the commenters from the shipyard industry and the insurance industry who supported the requirement for harnesses in lieu of belts, and the final rule thus contains such a requirement.

Many commenters endorsed the adoption of locking snaphooks over non-locking snaphooks on lifelines [Ex. 9–10 and January 25, 1995 public meeting, Transcript page 52]. Locking snaphooks are already in widespread use in shipyards. At the January 25, 1995 public meeting, representatives from the American Insurance Service demonstrated how, in a "roll-out" situation, lifelines can detach from non-locking snaphooks. Most industry commenters reported that snaphooks were used in their shipyard, and none opposed this change to the standard or raised it as a cost issue.

Based on the record for this rulemaking, the Agency has concluded that the only provisions of the final PPE standard that will impose other than negligible costs on shipyard employers are: the replacement of body belts with body harnesses; the documentation of hazard assessments; the development of training for body harnesses in shipyards not already employing harnesses; and employee training for body harnesses. Only Newport News Shipbuilding (NNS) and a number of small shipyards reported that they still rely on body belts. (Very small shipyards specialize in trades and may not use body harnesses or body belts at all). OSHA has taken the concerns of these commenters into account in the final rule. NNS stated that it currently uses about 4,700 body belts, although no information was available on the breakdown between belts used as positioning devices (this would not be affected by the final rule) and those used for fall protection. To the extent that some of these belts continue to be used for positioning devices, the 4700 figure overstates the number of harnesses to acquire. The Agency estimates that NNS will need to purchase no more than 3,000 harnesses (about 1 for every 5 production workers). The Agency estimates that, in addition to NNS, some smaller employers in the industry may need to buy harnesses to replace body belts, and the Agency estimates that 1,000 harnesses would be purchased by these employers. Based on evidence in the record and information from suppliers, the Agency estimates that body belts cost about $50 and harnesses $100. Body belts are estimated to last an average of 7 years and harnesses 3 years. Thus, body belts supply fall protection at a cost of roughly $7 per year ($50/7 years), while harnesses do so at $33 per year ($100/3 years). Harnesses therefore cost roughly $27 more per year than belts for each affected employee. Since body belts can still be used as positioning devices, the requirement that harnesses be used for fall protection will not end the useful life of these belts. Based on these estimates, OSHA concludes that replacing body belts with harnesses will result in a new annual cost to the industry of approximately $128,000 [(3,000 new harnesses for NNS+1,000 new harnesses for small shipyards)×$27]. Nevertheless, to allow additional time and reduce any potential impacts, the final rule permits shipyards to phase-in compliance with the body harness requirement over two years, which is consistent with the phase-out date in other OSHA standards.

The hazard assessment documentation required by the standard consists of a record, either paper or on a computer or other storage medium, with the date of the hazard assessment, name of person performing the assessment, occupation or operations covered, and a list of the PPE required. Shipyards report that they already incorporate some of this information in their current training materials. The Agency has estimated that it would take each shipyard about an hour to develop a computer-based record format for this documentation and approximately five minutes to record the hazard assessment for each occupation covered. Table 3 summarizes this information for the PPE standard. The total time expended by managers to document hazard assessments is estimated to be 781 hours, a one-time commitment of management resources.

TABLE 3.—ESTIMATE OF AMOUNT OF TIME TO DOCUMENT HAZARD ASSESSMENTS, DEVELOP TRAINING PROGRAMS FOR BODY HARNESSES, AND TRAIN IN USE OF BODY HARNESSES FOR OSHA'S STANDARD ON PPE IN SHIPYARDS

Firm Size (number of employees)	Number of firms in size category	Hazard assessment		Develop training for harnesses			Training		
		Number of hazard assessments (trades)	Time to document hazard assessments (hours)	Time to develop training per firm (hours)	Number of firms who must do so	Total time to develop program (hours)	Training sessions per firm	Management time (hours)	Number of employees trained (hours)
1000+	12	40	36	.....	none	0	150	150	3000
500–999	12	30	30	8	6	48	4	24	200
100–499	76	30	190	4	76	304	2	152	400
21–99	100	10	150	4	100	400	1	100	200
11–20	100	5	125	2	50	100	1	50	200
1–10	200	5	250	2	100	200	1	100	150
Subtotals (hours)	.....	.....	[1] 781	.....	.....	[1] 1052	.....	576	4150
Total one-time, or first year, management resources for hazard assessments and development of training	.....	.....	.....	.....	.....	.....	.....	.....	[2] 1,833
First year management resources to conduct training	.....	.....	.....	.....	.....	.....	.....	.....	[2] 576
Total management time	.....	.....	.....	.....	.....	.....	.....	.....	[2] 2,409
Total employee time	.....	.....	.....	.....	.....	.....	.....	.....	[2] 4,150

Source: Office of Regulatory Analysis.
[1] One-time.
[2] Hours.

The development of training materials for the use of personal fall arrest systems (body harnesses) imposes a one-time cost for shipyards that are not already using harnesses. Some of the very smallest shipyards who provide specialty trade work will not have or use any harnesses. All large shipyards already use harnesses to some extent, and the Agency has concluded that these shipyards also have developed training materials. Because training videos and written materials on the use of body harnesses are widely available, the Agency has concluded that the time required for establishing such a training program will be small. Table 3 presents the Agency's estimate of the time that firms will expend to develop training for the use of body harnesses; the estimate ranges from 8 hours for firms with more than 500 employees to 2 hours for the smallest employers. The total time required to develop training for body harnesses is estimated to be 1,052 hours of management time.

Firms that do not currently use body harnesses must also train their employees as harnesses are substituted over time for body belts. The cost of this training consists of management or trainers' time to provide training to employees as well as the value of employee wages foregone while training. The Agency estimates a training session will take approximately one hour and that as many as 10 to 20 employees can receive training in a single session. Table 3 presents the Agency's estimate of the number of sessions by firm size that will be necessary for training in body harnesses and the number of employees trained. The Agency estimates that a higher fraction (10 percent or more) of smaller firms' employees will have to be trained due to the nature of their business—cleaning tanks, repairs over the ship's side, painting and maintenance—which require the use of harnesses. Among large firms only NNS relies primarily on body belts and uses only a few body harnesses. The Agency estimates that all of NNS's body belts (4,700) will not have to be replaced with harnesses, since compared with smaller yards less work conducted at large shipyards or in new ship construction requires a body harness (rather than a body belt). The Agency has estimated that NNS will replace 3,000 body belts with harnesses. Data for the cost of body harness training is included in Table 6. The Agency estimates that 576 hours of management time and 4,150 hours of employee time will be required for training.

The total one-time cost for documenting hazard assessments, developing harness training materials, and providing training is 2,409 management hours and 4,150 employee hours. Average hourly employee wages for SIC 3731 are about $14.00 per hour ("Employment and Earnings" Bureau of Labor Statistics October, 1994). The Agency estimates that the cost of wages plus benefits is $20 per hour for production employees and $30 per hour for managers.

The total cost of these elements of the standard is approximately $155,000. Annualized over five years at 7 percent, this cost is about $35,000 per year. Added to the annual cost of body harnesses of $128,000, the Agency estimates that the total annualized cost of the PPE standard is $163,000 per year for the shipyard industry.

Economic Impacts

With industry revenues exceeding $9 billion and an estimated profit of $275 million in 1994, the annual estimated compliance costs associated with the standard ($163,000) will not cause a significant impact on the revenues or profits of firms in the shipyard industry.

Benefits

The final shipyard PPE standard will reduce the risk of injury or fatality confronting workers who fall while wearing body belts. After the phase-in period, shipyard workers who fall while wearing body harnesses will experience fewer fatalities or severe injuries as a result of these falls. Although industry and insurance representatives testified to the beneficial effects of harnesses, data in the record are not sufficiently detailed to quantify the magnitude of the reduced risk. Accordingly, OSHA has not quantified this risk reduction or the productivity gains associated with the use of harnesses compared with belts. In addition, the use of locking snaphooks, as required by the final rule, will prevent roll-out thus reducing the risk of fatality or severe injury.

The Agency has also analyzed the more typical PPE-related injuries of lesser severity. OSHA estimates that compliance with the final shipyard personal protective equipment rule will potentially prevent about 1,550 lost workday injuries (15 percent of all shipyard PPE-related lost workday injuries) and about 12,650 non-lost workday injuries (about 46 percent of all shipyard PPE-related non-lost workday injuries). To develop this estimate, the Agency analyzed a sample of over 1,700 shipyard injuries reported on OSHA Form 200's that were collected as part of recent OSHA survey efforts. For each injury or illness in the sample, OSHA judged whether the injury or illness was potentially preventable through the use of the appropriate type of protective equipment. These judgments were based on the injury and illness descriptions on the Form 200. OSHA considered the following types of PPE to be applicable: hard hats, safety glasses and goggles, welding goggles and helmets, face shields, safety shoes, work gloves and other forms of hand protection, and chemical protective gloves, aprons, and other clothing.

To develop its estimate, OSHA first divided the sample injuries and illnesses by severity and estimated the fraction of cases that were judged to be potentially preventable by PPE use. Next, OSHA applied these preventability rates to Bureau of Labor Statistics employment levels for 1994 for the shipyard industry and calculated the number of cases that might be prevented through PPE use. The results of this analysis are shown in Table 4. Of 27,317 shipyard injuries and illnesses without lost-workdays, 12,665 (46.4 percent) were estimated to be potentially preventable through proper use of PPE. Of 9,876 cases involving days away from work, OSHA estimated that 1,549 (15.7 percent) were potentially preventable through compliance with OSHA's PPE requirements. These estimates indicate that over 10 percent of all shipyard injuries (both lost-time and non-lost work time) are potentially preventable through the proper use of safety glasses, while 15 percent are potentially preventable through the use of work gloves or other appropriate forms of hand protection. This analysis of "typical" PPE injuries parallels the benefits analysis performed for the general industry PPE standard, with one exception. In this shipyard analysis, the Agency has reduced its estimate of the number of eye injuries that could be prevented by the use of safety glasses to 50 percent (a figure of about 99 percent was applied in the general industry analysis), because shipyard representatives and OSHA personnel report that the use of basic eye protection is standard practice in shipyards, which are widely recognized as being especially hazardous environments. The Agency concludes that fewer eye injuries occur in shipyards than general industry establishments because employees in shipyards, unlike those in general industry, are routinely required to wear safety glasses.

TABLE 4.—PREVENTABILITY OF SHIPYARD INJURIES BY TYPE OF PPE (1994)

Injury preventability/PPE type	Injuries without lost-workdays		Injuries with lost-workdays		All injuries	
	Number	Percent	Number	Percent	Number	Percent
Preventable:						
Hard hat	753	2.8	133	1.3	886	2.4
Safety glasses[1]	3,509	12.8	346	3.5	3,855	10.4
Safety goggles	422	1.5	88	0.9	510	1.4
Welding goggles/helmet	632	2.3	137	1.4	769	2.1
Face shield	1,024	3.7	33	0.3	1,057	2.8
Safety shoes (metatarsal guard)	392	1.4	237	2.4	628	1.7
Safety shoes (toe protection)	361	1.3	109	1.1	470	1.3
Safety shoes (sole protection)	151	0.6	0	0.0	151	0.4
Work gloves	5,120	18.7	406	4.1	5,526	14.9
Chemical protective gloves	0	0.0	48	0.5	48	0.1
Chemical protective clothing	301	1.1	13	0.1	314	0.8
Total preventable	12,665	46.4	1,549	15.7	14,214	38.2
Not Preventable	14,652	53.6	8,327	84.3	22,979	61.8
All injuries	27,317	100.0	9,876	100.0	37,193	100.0

[1] Rate for eye injuries preventable by safety glasses adjusted downward by 50.0% due to current high rate of safety glass use in shipyards.
Source: Bureau of Labor Statistics. 1992. Survey of Occupational Injuries and Illnesses; OSHA estimates based on analysis of Form 200 Shipyard Injury Database. Estimates of the number of 1992 injuries and illnesses extrapolated to 1994 based on decline in shipyard employment of 14.4 percent over this period.

OSHA also used data supplied by the BLS describing the distribution of shipyard lost-workday cases by body part injured to develop disaggregated estimates of the number of preventable injuries. These estimates are shown in Table 5. OSHA estimates that 90 percent of the head, scalp, and toe injuries are potentially preventable. OSHA also judged PPE to be effective, at lower rates, in preventing face, eye, foot, hand and finger injuries.

TABLE 5.—PREVENTABLE SHIPYARD INJURIES AND ILLNESSES BY SEVERITY AND BODY PART

Injury severity/body part	Number of 1992 injuries	Number of extrapolated 1994 injuries[3]	Share of injuries preventable[4] (percentage)	Number of injuries prevented
Injuries and illnesses without lost workdays[1]	31,900	27,317	46.4	12,665
Lost-workday injuries and illnesses:[2]				
Head, unspecified	73	63	100.0	63
Ear(s)	0	0	0.0	0
Eye(s)	1,080	925	[5]61.7	571
Face	51	44	75.0	33
Scalp	91	78	[6]90.0	70
Neck	350	300	0.0	0
Arm(s), Unspecified	49	42	0.0	0
Elbow	265	227	0.0	0
Forearm	128	110	0.0	0
Wrist	478	409	12.5	51
Hand(s)	508	435	38.9	169
Finger(s)	720	617	37.9	234
Upper extremities, multiple	0	0	0.0	0
Trunk, unspecified	0	0	[6]NE	0
Abdomen	88	75	0.0	0
Back, Unspecified	954	817	0.0	0
Back, lumbar	1,198	1,026	0.0	0
Back, thoracic	168	144	0.0	0
Chest	289	247	5.3	13
Hip	306	262	0.0	0
Shoulder(s)	601	515	0.0	0
Trunk, Multiple parts	0	0	0.0	0
Lower extremities, multiple	0	0	0.0	0
Leg(s), unspecified	59	51	0.0	0
Thighs	89	76	0.0	0
Knee(s)	1,073	919	0.0	0
Lower leg(s)	123	105	0.0	0
Leg(s), multiple	0	0	0.0	0
Ankle(s)	624	534	0.0	0
Foot/feet	488	418	60.0	251
Toe(s)	123	105	90.0	95
Lower extremities, multiple	0	0	0.0	0
Multiple body parts	674	577	0.0	0
Lost workday injuries continued:				
Circulatory system	0	0	0.0	0
Digestive system	0	0	[7]NE	0
Excretory system	0	0	0.0	0
Nervous system	0	0	0.0	0
Respiratory system	0	0	0.0	0
Body parts, NEC	163	140	[7]NE	0
Unclassifiable	720	617	0.0	0
Total lost-workday injury	11,533	9,876	15.7	1,549
All injuries and Illnesses	43,433	37,193	38.2	14,214

[1] Bureau of Labor Statistics. 1992 Survey of Occupational Injuries and Illnesses.
[2] Bureau of Labor Statistics. 1992 Survey of Occupational Injuries and Illnesses, unpublished data. Injury and illness data by body part available only for cases with lost workdays.
[3] Estimates of the number of 1992 injuries and illnesses extrapolated to 1994 based on decline in shipyard employment of 14.4 percent over this period.
[4] OSHA estimates based on analysis of Form 200 Shipyard Injury Database. Estimate of preventable share for non lost-workday injuries based on the overall ratio of preventable non-lost-workday cases in the Form 200 database.
[5] Rate for eye injuries preventable by safety glasses adjusted downward by 50.0% due to current high rate of safety glass use in shipyards.
[6] OSHA estimate. No observations for this injury category in Form 200 database.

Regulatory Alternatives

The Agency concludes that the proposed rule is the most cost-effective regulatory alternative for this industry. One alternative considered was to apply the general industry PPE standard to the shipyard industry. However, if the general industry PPE standard (29 CFR 1910.132) were applied to the shipyard industry in its entirety, it would impose unnecessary costs in the form of paperwork because it could require shipyards to adopt new training and documentation programs. Shipyards have long had both comprehensive and specialized safety programs and their own databases for maintaining training logs, accident data, and other information. The final rule builds on the tools the industry has already developed and thus avoids imposing unnecessary costs and other burdens on shipyard employers.

Regulatory Flexibility

As required by the Regulatory Flexibility Act of 1980 (as amended by Title II, Subtitle D of the Contract with America Advancement Act of 1996),

OSHA assessed the economic burden faced by small establishments in complying with this final rule. In comments to the record for this standard, no comments specifically addressed either the Regulatory Flexibility Analysis or its conclusion that the standard would impose no significant impact on small firms. In that analysis, the Agency identified the increased use of respirators as the main source of new costs for all shipyards, but this element has been dropped in the final standard.

The Agency has concluded that small shipyards in the industry have as much need of additional personal protective equipment as other shipyards. The industry has one of the highest injury and illness rates of any industry. Since the largest shipyards report injury and illness rates at or below the industry average, the Agency has concluded that the rate of preventable injuries and illnesses are at least as great in smaller yards. In addition, many of the production operations are the same for larger and smaller shipyards. Since the standard requires employers to identify and protect workers from risk by occupation or trade, the Agency concludes that the risks for each trade are similar irrespective of the size of the shipyard. The objectives of the standard are to reduce the risk of PPE-preventable injuries in shipyards.

Although no public comments were specifically addressed to issues in the Regulatory Flexibility Analysis, many of the comments applied to situations faced by smaller shipyards. However, the Agency believes that smaller yards are not impacted in a significantly different manner or scale than larger shipyards. The comments by smaller shipyards about feasibility were similar to the larger yards: questioning the utility of body harnesses rather than body belts and the need to certify hazard assessments and training.

The Agency considered applying the General Industry PPE standard as an alternative for small establishments in the shipyard industry, but testimony and comments in the docket support the Agency's decision that the final standard will more effectively meet the risk in shipyards at lowest cost.

As can be seen in Table 3, the Agency estimates that there are 200 firms in the shipyard industry with 10 or fewer employees, 100 firms with 11–20 employees, and 100 firms with 21–99 employees. The Agency believes that for the shipyard industry, firms with fewer than 100 employees is a "small" firm. Therefore, for purposes of this Regulatory Flexibility Analysis, the Agency estimates that there are approximately 400 "smaller" businesses with an estimated 8,000 employees. From data in Table 3, smaller firms will require 525 management hours to document hazard assessments, 250 management hours to develop training for body harnesses, and 250 management hours to provide training, and 550 employee hours for training. Costs for these elements, which are a one-time cost, total $38,450, which is equivalent to an $8,700 annual cost (annualized over 5 years at 7 percent). Other new annual costs for small firms are estimated at $13,500 for 500 body harnesses to replace body belts. Total annual costs for smaller shipyards are then an estimated $22,200, or an average of about $55 per smaller shipyard. The Agency has provided a phase-in period of two years to allow smaller shipyards time to accomplish this shift.

OSHA concludes that this standard will not impose a significant impact on a substantial number of small entities, and that the phase-in for body harnesses will further alleviate any impacts that do occur.

International Trade

In accordance with Executive Order 12866, OSHA assessed the effects of the final standard on international trade. The shipyard industry actively competes with foreign shipyards for ship repair and shipbuilding orders. If this OSHA regulation significantly increased the price of products and services of domestic shipyards, foreign shipyards could benefit. OSHA believes, however, that there will be virtually no effect on the prices of products or services as a result of this regulation.

Environmental Impact

The shipyard PPE standard has been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the regulations of the Council on Environmental Quality (CEQ) (40 CFR part 1500), and DOL NEPA Procedures (29 CFR part 11). There will be no additional incremental release quantities related to this standard. Releases of substances regulated under EPA's SARA Title III or EPA NESHAP standards are subject to reporting and control requirements.

Non-Regulatory Alternatives

The primary objective of OSHA's standard for PPE is to minimize the number of shipyard employee injuries and risk of fatalities. The Agency examined non-regulatory approaches for promoting PPE use, including (1) incentives created by workers' compensation programs or the threat of private suits, and (2) requirements of the U.S. Navy and U.S. Coast Guard. Following this review, OSHA determined that the need for government regulation arises from the significant risk of job-related injury or death. Private markets fail to provide enough safety and health resources due to the externalization of part of the social cost of worker injuries and deaths. Workers' compensation systems do not offer an adequate remedy because premiums do not reflect specific workplace risk and liability claims are restricted by statutes preventing employees from suing their employers. The U.S. Navy and U.S. Coast Guard require shipyards to follow safe procedures when performing work for them or when constructing merchant vessels; however, most firms do not come under this scrutiny. Thus, OSHA has determined that a federal standard is necessary.

References

1. U.S. Department of Commerce. International Trade Administration. *1994 U.S. Industrial Outlook.*
2. U.S. Department of Transportation. Maritime Administration. *Report on Survey of U.S. Shipbuilding and Repair Facilities, 1990.*
3. U.S. Department of Commerce. Bureau of the Census. Preliminary Report Industry Service 1987 Census of Manufactures: Shipbuilding and Repairing (Industry 3731). Washington, D.C.: Government Printing Office, 1990.
4. U.S. Department of Commerce. Bureau of the Census. Preliminary Report Industry Service 1987 Census of Manufactures: Shipbuilding and Repairing (Industry 3731). Washington, D.C.: Government Printing Office, 1989.
5. CONSAD Research Corp. Data to Support a Regulatory Analysis of the Proposed Standard for Shipbuilding and Repairing. Final Report. Prepared for the U.S. Department of Labor, Occupational Safety and Health Administration, under Contract No. J–9–F–4–0024. Pittsburgh: CONSAD, November 1985.
6. CONSAD Research Corp. Data to Support A Regulatory Analysis of the Proposed Standard for Shipbuilding and Repairing: Subpart B. Prepared for the U.S. Department of Labor, Occupational Safety and Health Administration, under Contract No. J–9–F–4–0024. Pittsburgh: CONSAD, June 1986.
7. Commission on Merchant Marine and Defense. First Report of the Commission of Merchant Marine and Defense, Appendices. Washington, D.C., September 30, 1987.
8. Dun and Bradstreet Financial Data. 1989, 1991, 1994.
9. Bureau of Labor Statistics, Employment and Earnings, May, 1995.
10. Executive Office of the President. OMB. *Standard Industrial Classification Manual.* 1987.
11. Main Hurdman/KGM. Profile of the Shipbuilding and Repairing Industry. Prepared for the U.S. Department of Labor, Occupational Safety and Health Administration. Washington, D.C., October 1984. 62 Pp.
12. Shipyard Council of America. "Merchant Shipbuilding" September, 1987; "Naval Shipbuilding" January, 1992; "Ship Construction Report" July, 1991.
13. American Waterways Shipyard Conference. 1989 and 1992 Annual Shipyard Survey. Arlington, Va.
14. Bureau of Labor Statistics, Occupational Injuries and Illnesses in the U.S. by Industry 1992.
15. Sulowski, Andrew, "Selecting Fall Arresting Systems," National Safety News, Oct. 1979.
16. Hearon, Bernard F. and Brinkley, James W., "Fall Arrest and Post-Fall Suspension: Literature Review and Direction for Further Research," Air Force Aerospace Medical Research Laboratory, Aerospace Medical Division, Air Force Systems Command, Wright-Patterson Air Force Base, Ohio.
17. United States Technical Advisory Group, Ex. 9–33 submitted to the Powered Platform rulemaking, Docket S–700A.

V. Paperwork Reduction Act

The Agency has estimated the paperwork burden of the shipyard PPE standard under the guidelines of the Paperwork Reduction Act of 1995. Under that Act, burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. The Agency has concluded that the following elements of the shipyard PPE standard potentially could create a paperwork burden for the shipyard industry:

For hazard assessments:
- performing a hazard assessment for each trade; documenting the hazard assessment;

For PPE training:
- developing training materials (or programs for PPE; training employees;
- documenting employee training.

For personal fall arrest system training:
- developing a training program;
- training employees.

For positioning device systems training:
- developing a training program;
- training employees.

For most of these potential sources of burden, shipyards are already performing these information collection or disclosure functions. For these elements, the final rule will not therefore require shipyards to expend additional resources on paperwork.

The Agency has concluded that only new burdens imposed specifically by new or revised provisions of a standard should be considered paperwork burdens attributable to that standard. In other words, it would be inappropriate to count as the burden actions that firms in the regulated community have already undertaken voluntarily.

The record shows that shipyards are already complying with all of the paperwork burden elements listed above, except for documenting hazard assessments, developing training for personal fall arrest systems (body harnesses), and providing training to employees for personal fall arrest systems. Among large shipyards, only Newport News Shipbuilding (NNS) reported that it relies primarily on body belts rather than body harnesses.

The hazard assessment documentation required by the standard consists of a record, either paper or on a computer or other storage medium, with the date of the hazard assessment, name of person performing the assessment, occupation or operations covered, and a list of the PPE required. Shipyards report that they already incorporate some of this information in their current training materials. The Agency has estimated that it would take each shipyard about an hour to develop a computer- based record format for this documentation and approximately five minutes to record the hazard assessment for each occupation covered. Table 6 summarizes this information for the PPE standard.

Development of training materials for the use of personal fall arrest systems (body harnesses) is the second potential burden element. All large shipyards report that they already use harnesses to some extent. Because training videos and written materials on the use of body harnesses are widely available, the Agency has concluded that the time required for establishing such a training program will be small. Table 6 presents the Agency's estimate of the time that firms will expend to develop training for the use of body harnesses; the estimate ranges from 8 hours for firms with more than 500 employees to 2 hours for the smallest employers.

Firms that do not currently use body harnesses must also train their employees as harnesses are substituted over time for body belts. The paperwork burden of this training consists of management or trainers' time to provide training to employees. The Agency estimates a training session will take approximately one hour and that as many as 10 to 20 employees can receive training in a single session. Table 6 presents the Agency's estimate of the number of sessions by firm size that will be necessary for training in body harnesses. The Agency estimates that a higher fraction (10 percent or more) of smaller firms' employees will have to be trained due to the nature of their business—cleaning tanks, repairs over the ship's side, painting and maintenance—which require the use of harnesses. Among large firms, only NNS reported that they used very few harnesses. The Agency estimates that all of NNS's body belts (4,700) will not have to be replaced with harnesses, since relatively less work at large shipyards and new ship construction require a body harness (rather than a body belt). The Agency has estimated that NNS will replace 3,000 body belts with harnesses. Data for the paperwork burden of providing training to employees are also presented in Table 6.

Table 6.—Estimate of Burden Hours to Document Hazard Assessments, to Develop Training Programs for Body Hamesses, and to Train in Use of Body Hamesses for OSHA's Page Standard on PPE in Shipyards.

Firm size [number of employees]	Number of firms in size category	Hazard assessment		Develop training for hamessess			Training	
		Number of hazard assessments [occupations]	Time of document hazard assessment's [hours]	Time develop training per firm [hours]	Number of firms who must do so	Total time to develop program	Training sessions per firm	Time to train [hours]
1000+	12	40	36	.....	0	0	150	150
500–999	12	30	30	8	6	48	4	24
100–499	76	30	190	4	76	304	2	152
21–99	100	10	150	4	100	400	1	100

Table 6.—ESTIMATE OF BURDEN HOURS TO DOCUMENT HAZARD ASSESSMENTS, TO DEVELOP TRAINING PROGRAMS FOR BODY HAMESSES, AND TO TRAIN IN USE OF BODY HAMESSES FOR OSHA'S PAGE STANDARD ON PPE IN SHIPYARDS.—Continued

Firm size [number of employees]	Number of firms in size category	Hazard assessment		Develop training for hamessess			Training	
		Number of hazard assessments [occupations]	Time of document hazard assessment's [hours]	Time develop training per firm [hours]	Number of firms who must do so	Total time to develop program	Training sessions per firm	Time to train [hours]
11–20	100	5	125	2	50	100	1	50
1–10	200	5	250	2	100	200	1	100
Subtotals (hours)	.....	.....	781	.....	.....	1052	.....	576
Total estimated burden (first-year, one-time) .... Estimated annual burden 300 hours.	.....	.....	.....	.....	.....	.....	.....	[1]2,409

Source: OSHA's Office of Regulatory Analysis.
[1] Hours.

The Agency estimates that the shipyard PPE standard will result in about 2,409 paperwork burden hours being imposed on the shipyard industry the first year, most of it due to developing training materials in the use of body harnesses. However, these 2,409 hours are only an estimate of the first-year burden, a one-time claim on resources, not an annual burden. The future annual burden beginning in the second year, is estimated to be approximately 300 hours per year, which represents managers' time to train new employees resulting from employee turnover in firms not currently training employees in the use of harnesses.

Collections of Information: Request for Comments

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95)(44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, OSHA is soliciting comments concerning the proposed approval for the paperwork requirements of 29 CFR 1915, subpart I, Personal Protective Equipment for Shipyard Employment (PPE). Written comments should:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Background

OSHA in its final rule for Personal Protective Equipment in Shipyard Employment is including two types of information collections. The first is a requirement for the employer to conduct a hazard assessment relative to PPE selection, and the second involves training requirements for PPE.

OSHA believes that the information collection and documentation of the hazard assessment as outlined in the final standard is necessary so that situations where PPE should be used for employee protection can be identified, and the proper PPE selected. In addition, OSHA believes that the training requirements and documentation in the final standard are essential in providing employees with the information and practical knowledge needed to effectively use PPE. Documentation can be used by the employer to ensure that all of its employees using PPE are properly trained.

Current Actions

This notice requests OMB approval of the paperwork requirements in Personal Protective Equipment for Shipyard Employment (29 CFR 1915, Subpart I).

Type of Review: New.

Agency: Occupational Safety and Health Administration, U.S. Department of Labor.

Title: Personal Protective Equipment for Shipyard Employment (29 CFR 1915, subpart I).

OMB Number: 1218–AA74

Agency: Docket No. S–045.

Frequency: On occasion.

Affected Public: Business or other for-profit, Federal government, State and Local governments.

Number of respondents: 500.

Estimated Time Per Respondent: Varies.

Total Estimated Cost: $72,270 (First year only), $9,000 annual.

Total Burden Hours: 2,409 (First year only), 300 annual, recurring.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request: they will also become a matter of public record.

VI. Statutory Considerations

Introduction

OSHA has described PPE-related hazards and the measures required to protect affected employees from those hazards in Section I, *Background;* Section II, *Hazards Involved;* and Section III, *Summary and Explanation of the Final Rule,* above. The Agency is providing the following discussion of the statutory mandate for OSHA rulemaking activity to explain the legal basis for its determination that the revised shipyard PPE standard, as promulgated, is reasonably necessary to protect affected employees from significant risks of injury and death.

Section 2(b)(3) of the Occupational Safety and Health Act authorizes "the Secretary of Labor to set mandatory *occupational safety and health standards* applicable to businesses affecting interstate commerce", and section 5(a)(2) provides that "[each] employer shall comply with *occupational safety and health standards* promulgated under this Act" (emphasis added). Section 3(8) of the OSH Act (29 U.S.C. § 652(8)) provides that "the term 'occupational safety and health standard' means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment."

In two recent cases, reviewing courts have expressed concern that OSHA's interpretation of these provisions of the OSH Act, particularly of section 3(8) as it pertains to safety rulemaking, could lead to overly costly or under-protective safety standards. In *International Union, UAW* v. *OSHA,* 938 F.2d 1310 (D.C. Cir. 1991), the District of Columbia Circuit rejected substantive challenges to OSHA's lockout/tagout standard and denied a request that enforcement of that standard be stayed, but it also expressed concern that OSHA's interpretation of the OSH Act could lead to safety standards that are very costly and only minimally protective. The reviewing court conducted further proceedings and subsequently held that the OSH Act provides adequate constraints on the exercise of OSHA's regulatory authority (938 F.3d 1310, D.C. Cir. 1994).

In *National Grain & Feed Ass'n* v. *OSHA,* 866 F.2d 717 (5th Cir. 1989), the Fifth Circuit concluded that Congress gave OSHA considerable discretion in structuring the costs and benefits of safety standards but, concerned that the grain dust standard might be under-protective, directed OSHA to consider adding a provision that might further reduce significant risk of fire and explosion.

OSHA rulemakings involve a significant degree of agency expertise and policy-making discretion to which reviewing courts must defer. (See, for example, *Building & Constr. Trades Dep't, AFL-CIO* v. *Brock,* 838 F.2d 1258, 1266 (D.C. Cir. 1988); *Industrial Union Dep't, AFL-CIO* v. *American Petroleum Inst.,* 448 U.S. 607, 655 n. 62 (1980).) At the same time, the Agency's technical expertise and policy-making authority must be exercised within discernable limits. The lockout/tagout and grain handling standard decisions sought clarification of the Agency's view of the scope of its expertise and authority. In light of those decisions, the preamble to this safety standard states OSHA's views regarding the limits of its safety rulemaking authority and explains why the Agency is confident that its interpretive views have in the past avoided regulatory extremes and continue to do so in this rule.

Stated briefly, the OSH Act requires that, before promulgating any occupational safety standard, OSHA demonstrate based on substantial evidence in the record as a whole that: (1) the proposed standard will substantially reduce a significant risk of material harm; (2) compliance is technologically feasible in the sense that the protective measures being required already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be developed; (3) compliance is economically feasible in the sense that industry can absorb or pass on the costs without major dislocation or threat of instability; and (4) the standard is cost effective in that it employs the least expensive protective measures capable of reducing or eliminating significant risk. Additionally, proposed safety standards must be compatible with prior Agency action, must be responsive to significant comment in the record, and, to the extent allowed by statute, must be consistent with applicable Executive Orders. These elements limit OSHA's regulatory discretion for safety rulemaking and provide a decision-making framework for developing a rule.

A. Congress concluded that OSHA regulations are necessary to protect workers from occupational hazards and that employers should be required to reduce or eliminate significant workplace health and safety threats. At section 2(a) of the OSH Act (29 U.S.C. § 651(a)), Congress announced its determination that occupational injury and illness should be eliminated as much as possible: "The Congress finds that occupational injury and illness arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments." Congress therefore declared "it to be its purpose and policy * * * to assure so far as possible every working man and woman in the Nation safe * * * working conditions [29 U.S.C. § 651(b)]."

To that end, Congress instructed the Secretary of Labor to adopt existing federal and consensus standards during the first two years after the OSH Act became effective and, in the event of conflict among any such standards, to "promulgate the standard which assures the greatest protection of the safety or health of the affected employees [29 U.S.C. § 655(a)]." Congress also directed the Secretary to set mandatory occupational safety standards [29 U.S.C. § 651(b)(3)], based on a rulemaking record and substantial evidence [29 U.S.C. § 655(b)(2)], that are "reasonably necessary or appropriate to provide safe * * * employment and places of employment." When promulgating permanent safety or health standards that differ from existing national consensus standards, the Secretary must explain "why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard [29 U.S.C. § 655(b)(8)]." Correspondingly, every employer must comply with OSHA standards and, in addition, "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees [29 U.S.C. § 654(a)]."

"Congress understood that the Act would create substantial costs for employers, yet intended to impose such costs when necessary to create a safe and healthful working environment. Congress viewed the costs of health and safety as a cost of doing business * * *. Indeed, Congress thought that the *financial costs* of health and safety problems in the workplace were as large as or larger than the *financial costs* of eliminating these problems [*American Textile Mfrs. Inst. Inc.* v. *Donovan,* 452 U.S. 490, 519–522 (1981) (*ATMI*); emphasis was supplied in original]." "[T]he fundamental objective of the Act [is] to prevent occupational deaths and serious injuries [*Whirlpool Corp.* v. *Marshall,* 445 U.S. 1, 11 (1980)]." "We know the costs would be put into consumer goods but that is the price we should pay for the 80 million workers in America (S. Rep. No. 91–1282, 91st Cong., 2d Sess. (1970); H.R. Rep. No. 91–1291, 91st Cong., 2d Sess. (1970), *reprinted in* Senate Committee on Labor and Public Welfare, *Legislative History of the Occupational Safety and Health Act of 1970,* (Committee Print 1971) ("Leg. Hist.") at 444 (Senator Yarborough)]." "Of course, it will cost a little more per item to produce a washing machine. Those of us who use

washing machines will pay for the increased cost, but it is worth it, to stop the terrible death and injury rate in this country [*Id.* at 324; see also 510–511, 517]."

> [T]he vitality of the Nation's economy will be enhanced by the greater productivity realized through saved lives and useful years of labor.
>
> When one man is injured or disabled by an industrial accident or disease, it is he and his family who suffer the most immediate and personal loss. However, that tragic loss also affects each of us. As a result of occupational accidents and disease, over $1.5 billion in wages is lost each year [1970 dollars], and the annual loss to the gross national product is estimated to be over $8 billion. Vast resources that could be available for productive use are siphoned off to pay workmen's compensation and medical expenses * * *.
>
> Only through a comprehensive approach can we hope to effect a significant reduction in these job death and casualty figures. [*Id.* at 518–19 (Senator Cranston)]

Congress considered uniform enforcement crucial because it would reduce or eliminate the disadvantage that a conscientious employer might experience where inter-industry or intra-industry competition is present. Moreover, "many employers—particularly smaller ones—simply cannot make the necessary investment in health and safety, and survive competitively, unless all are compelled to do so [Leg. Hist. at 144, 854, 1188, 1201]."

Thus, the statutory text and legislative history make clear that Congress conclusively determined that OSHA regulation is necessary to protect workers from occupational hazards and that employers should be required to reduce or eliminate significant workplace health and safety threats.

B. As construed by the courts and by OSHA, the OSH Act sets clear and reasonable limits for Agency rulemaking action. OSHA has long followed the teaching that section 3(8) of the OSH Act requires that, before it promulgates "*any* permanent health or safety standard, [it must) make a threshold finding that a place of employment is unsafe—in the sense that significant risks are present and can be eliminated or lessened by a change in practices [*Industrial Union Dep't, AFL–CIO* v. *American Petroleum Inst.*, 448 U.S. 607, 642 (1980) (plurality) (*Benzene*); emphasis was supplied in original]." Thus, the national consensus and existing federal standards that Congress instructed OSHA to adopt summarily within two years of the OSH Act's inception provide reference points concerning the least an OSHA standard should achieve (29 U.S.C. § 655(a)). As a result, OSHA is precluded from regulating insignificant risks or from issuing standards that do not at least lessen risk in a significant way.

The OSH Act also limits OSHA's discretion to issue overly burdensome rules, as the Agency also has long recognized that "any standard that was not economically or technologically feasible would *a fortiori* not be 'reasonably necessary or appropriate' under the Act. See *Industrial Union Dep't* v. *Hodgson*, [499 F.2d 467, 478 (D.C. Cir. 1974)) ('Congress does not appear to have intended to protect employees by putting their employers out of business.') [*American Textile Mfrs. Inst. Inc.*, 452 U.S. at 513 n. 31 (a standard is economically feasible even if it portends 'disaster for some marginal firms,' but it is economically infeasible if it 'threaten[s] massive dislocation to, or imperil[s] the existence of,' the industry)]."

By stating the test in terms of "threat" and "peril," the Supreme Court made clear in *ATMI* that economic unfeasibility begins short of industry-wide bankruptcy. OSHA itself has placed the line considerably below this level. (See for example, *ATMI*, 452 U.S. at 527 n. 50; 43 FR 27,360 (June 23, 1978). Proposed 200 µg/m³ PEL for cotton dust did not raise serious possibility of industry-wide bankruptcy, but impact on weaving sector would be severe, possibly requiring reconstruction of 90 percent of all weave rooms. OSHA concluded that the 200 µg/m³ level was not feasible for weaving and that 750 µg/m³ was all that could reasonably be required). See also 54 FR 29,245–246 (July 11, 1989); *American Iron & Steel Institute*, 939 F.2d at 1003. OSHA raised engineering control level for lead in small nonferrous foundries to avoid the possibility of bankruptcy for about half of small foundries even though the industry as a whole could have survived the loss of small firms.) All OSHA standards must also be cost-effective in the sense that the protective measures being required must be the least expensive measures capable of achieving the desired end (*ATMI*, at 514 n. 32; *Building and Constr. Trades Dep't, AFL–CIO* v. *Brock*, 838 F.2d 1258, 1269 (D.C. Cir. 1988)). OSHA gives additional consideration to financial impact in setting the period of time that should be allowed for compliance, allowing as much as ten years for compliance phase-in. (See *United Steelworkers of Am.* v. *Marshall*, 647 F.2d 1189, 1278 (D.C. Cir. 1980), *cert. denied*, 453 U.S. 913 (1981).) Additionally, OSHA's enforcement policy takes account of financial hardship on an individualized basis. OSHA's Field Inspection Reference Manual provides for setting a "reasonable abatement date," based on careful consideration of an employer's particular circumstances, by which time a violation must be corrected (CPL. 2.103, Chapter IV, paragraph A2, September 26, 1994).

To reach the necessary findings and conclusions, OSHA conducts rulemaking in accordance with the requirements of section 6 of the OSH Act. The rulemaking process enables the Agency to determine the qualitative and, if possible, the quantitative nature of the risk with (and without) regulation, the technological feasibility of compliance, the industry's profit history, the industry's ability to absorb costs or pass them on to the consumer, the impact of higher costs on demand, and the impact on competition with substitutes and imports. (See *ATMI* at 2501–2503; *American Iron & Steel Institute* generally.) Section 6(f) of the OSH Act further provides that, if the validity of a standard is challenged, OSHA must support its conclusions with "substantial evidence in the record considered as a whole," a standard that courts have determined requires fairly close scrutiny of agency action and the explanation of that action. (See *Steelworkers*, 647 F.2d at 1206–1207.)

OSHA's powers are further circumscribed by the independent Occupational Safety and Health Review Commission, which provides a neutral forum for employer contests of citations issued by OSHA for noncompliance with health and safety standards (29 U.S.C. §§ 659–661; noted as an additional constraint in *Benzene* at 652 n. 59). OSHA must also respond rationally to similarities and differences among industries or industry sectors. (See *Building and Constr. Trades Dep't, AFL–CIO* v. *Brock*, 838 F.2d 1258, 1272–73 (D.C. Cir. 1988).)

OSHA rulemaking is thus constrained first by the need to demonstrate that the standard will substantially reduce a significant risk of material harm, and then by the requirement that compliance is technologically capable of being done and not so expensive as to threaten economic instability or dislocation for the industry. Within these bounds, further constraints such as the need to find cost-effective measures and to respond rationally to all meaningful comment militate against regulatory extremes.

D. The revised PPE standard complies with the statutory criteria described above and is not subject to the additional constraints applicable to section 6(b)(5) standards.

Standards which regulate hazards that are frequently undetectable because they are subtle or develop slowly or after long latency periods, are frequently referred to as "health" standards. Standards that regulate hazards, such as falls, explosions or electrocutions, that cause immediately noticeable physical harm, are called "safety" standards. (See *National Grain & Feed Ass'n* v. *OSHA (NGFA II)*, 866 F.2d 717, 731, 733 (5th Cir. 1989). As noted above, section 3(8) provides that *all* OSHA standards must be "reasonably necessary or appropriate." In addition, section 6(b)(5) requires that OSHA set health standards which limit significant risk "to the extent feasible." OSHA has determined that the revised PPE standard is a safety standard, because the revised standard addresses hazards, such as flying particles, molten metal, electric shock, falling objects and falls from elevations that are immediately dangerous to life or health, not the longer term, less obvious hazards subject to section 6(b)(5).

The OSH Act and its legislative history clearly indicate that Congress intended for OSHA to distinguish between safety standards and health standards. For example, in section 2(b)(6) of the OSH Act, Congress declared that the goal of assuring safe and healthful working conditions and preserving human resources would be achieved, in part:

> * * * by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety.

The legislative history makes this distinction even clearer:

> [The Secretary] should take into account that anyone working in toxic agents and physical agents which might be harmful may be subjected to such conditions for the rest of his working life, so that we can get at something which might not be toxic now, if he works in it a short time, but if he works in it the rest of his life might be very dangerous; and we want to make sure that such things are taken into consideration in establishing standards. [*Leg. Hist.* at 502–503 (Sen. Dominick), quoted in *Benzene* at 648–49]

Additionally, Representative Daniels distinguished between "insidious 'silent killers' such as toxic fumes, bases, acids, and chemicals" and "violent physical injury causing immediate visible physical harm" (*Leg. Hist.* at 1003), and Representative Udall contrasted insidious hazards like carcinogens with "the more visible and well-known question of industrial accidents and on-the-job injury" (*Leg. Hist.* at 1004). (See also, for example, S. Rep. No. 1282, 91st Cong., 2d Sess 2–3 (1970), U.S. Code Cong. & Admin. News 1970, pp. 5177, 5179, reprinted in Leg. Hist. at 142–43, discussing 1967 Surgeon General study that found that 65 percent of employees in industrial plants "were potentially exposed to harmful physical agents, *such as severe noise or vibration*, or to toxic materials"; Leg. Hist. at 412; *id.* at 446; *id.* at 516; *id.* at 845; *International Union, UAW* at 1315.)

In reviewing OSHA rulemaking activity, the Supreme Court has held that section 6(b)(5) requires OSHA to set "the most protective standard consistent with feasibility" (*Benzene* at 643 n. 48). As Justice Stevens observed:

> The reason that Congress drafted a special section for these substances * * * was because Congress recognized that there were special problems in regulating health risks as opposed to safety risks. In the latter case, the risks are generally immediate and obvious, while in the former, the risks may not be evident until a worker has been exposed for long periods of time to particular substances. [*Benzene*, at 649 n. 54.]

Challenges to the grain dust and lockout/tagout standards included assertions that grain dust in explosive quantities and uncontrolled energy releases that could expose employees to crushing, cutting, burning or explosion hazards were harmful physical agents so that OSHA was required to apply the criteria of section 6(b)(5) when determining how to protect employees from those hazards. Reviewing courts have uniformly rejected such assertions. For example, the Court in *International Union, UAW* v. *OSHA*, 938 F.2d 1310 (D.C. Cir. 1991) rejected the view that section 6(b)(5) provided the statutory criteria for regulation of uncontrolled energy, holding that such a "reading would obliterate a distinction that Congress drew between 'health' and 'safety' risks." The Court also noted that the language of the OSH Act and the legislative history supported the OSHA position (*International Union, UAW* at 1314). Additionally, the Court stated: "We accord considerable weight to an agency's construction of a statutory scheme it is entrusted to administer, rejecting it only if unreasonable" (*International Union, UAW* at 1313, citing *Chevron U.S.A., Inc.* v. *NRDC*, 467 U.S. 837, 843 (1984)).

The Court reviewing the grain dust standard also deferred to OSHA's reasonable view that the Agency was not subject to the feasibility mandate of section 6(b)(5) in regulating explosive quantities of grain dust (*National Grain & Feed Association* v. *OSHA (NGFA II)*, 866 F.2d 717, 733 (5th Cir. 1989)). It therefore applied the criteria of section 3(8), requiring the Agency to establish that the standard is "reasonably necessary or appropriate" to protect employee safety.

As explained in Section I, *Background*, Section III, *Summary and Explanation of the Standard*, and in Section VI, *Summary of the Final Economic Analysis and Regulatory Flexibility Analysis*, above, OSHA has determined that the failure to protect employees from PPE-related hazards poses significant risks to employees and that the provisions of the final rule are reasonably necessary to protect affected employees from those risks. The Agency estimates that compliance with the revised PPE standard will cost $163,000 annually and will reduce the risk of the identified hazards, preventing 14,200 injuries annually (of which 1,550 would be lost workday injuries and 12,650 would be non-lost workday injuries). This constitutes a substantial reduction of significant risk of material harm for the exposed population of approximately 79,000 shipyard production employees.

The rulemaking record indicates that the measures required by the standard are already in general use throughout the shipyard industry. In addition, OSHA believes that compliance is economically feasible as documented in the Economic Analysis.

As detailed in Table 7, below, the standard's estimated costs, benefits, and compliance requirements are consistent with estimates of other OSHA safety standards, such as the Hazardous Waste Operations and Emergency Response (HAZWOPER) standard.

TABLE 7

Standard (CFR cite)	Final rule date (FR cite)	Number of deaths prevented annually	Number of injuries prevented annually	Annual cost first five yrs (mill)	Annual cost next five yrs (mill)
Grain handling (1910.272)	12–31–87 (52 FR 49622)	18	394	5.9 to 33.4	5.9 to 33.4.

TABLE 7

Standard (CFR cite)	Final rule date (FR cite)	Number of deaths prevented annually	Number of injuries prevented annually	Annual cost first five yrs (mill)	Annual cost next five yrs (mill)
Grain handling (1910.272)	12–31–87 (52 FR 49622)	18	394	5.9 to 33.4	5.9 to 33.4.
HAZWOPER (1910.120)	3–6–89 (54 FR 9311)	32	18,700	153	153.
Excavations (Subpt P)	10–31–89 (54 FR 45,954)	74	800	306	306.
Process Safety Mgmt (1910.119)	2–24–92 57 FR 6356	330	1,917	880.1	470.8.
Permit-Required Confined Spaces (1910.146).	1–14–93 58 FR 4462	54	5,041	202.4	202.4.

OSHA assessed employee risk by evaluating exposure to PPE- related hazards throughout the shipyard industry. The *Summary of the Final Economic Analysis and Regulatory Flexibility Analysis*, Section IV, above, presents OSHA's estimate of the costs and benefits of the revised PPE standard in terms of the Standard Industrial Classification (SIC) code for the industry regulated.

The record indicates clearly that employees in shipyard employment face significant risks related to PPE-related hazards, and that compliance with the revised PPE standard is reasonably necessary to protect affected employees from those risks.

OSHA has considered and responded to all substantive comments regarding the proposed Shipyard PPE standard on their merits in the Section III, *Summary and Explanation of the Standard*, earlier in this preamble. In particular, OSHA evaluated all suggested changes to the proposed rule in terms of their impact on worker safety, their feasibility, their cost effectiveness, and their consonance with the OSH Act.

VII. Federalism

This regulation has been reviewed in accordance with Executive Order 12612 (52 FR 41685, October 30, 1987) regarding Federalism. This Order requires that Agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions which would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of state law only if there is clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act) expresses Congress' clear intent to preempt state laws relating to issues on which federal OSHA has promulgated occupational safety and health standards. Under the OSH Act, a state can avoid preemption only if it submits, and obtains Federal approval of a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such states must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the federal standards. Where such standards are applicable to products distributed or used in interstate commerce, they may not burden commerce unduly and must be justified by compelling local conditions (see section 18(c)(2) of the OSH Act).

The Federal standard on personal protective equipment addresses hazards which are not unique to any one state or region of the country. Nonetheless, states with occupational safety and health plans approved under section 18, of the OSH Act, will be able to develop their own state standards to deal with any special problems which might be encountered in a particular state. Moreover, this standard is written in general, performance-oriented terms. There is considerable flexibility for methods of compliance which are appropriate to the working conditions covered by the standard.

In brief, this regulation addresses a clear national problem related to occupational safety and health in shipyard employment. Those states which have elected to participate under section 18, of the OSH Act are not preempted by this standard, and will be able to deal with any special conditions within the framework of the Federal Act, while ensuring that the state standards are at least as effective as that standard.

VIII. State Plan Standards

The 25 States and territories having OSHA-approved occupational safety and health plans which cover the issues of maritime safety and health must revise their existing standards within six months of the publication date of a final standard, or show OSHA why there is no need for action because an existing state standard covering this area is already "at least as effective" as the revised Federal standard. Currently five states (California, Minnesota, Oregon, Vermont, and Washington) have their own state plans which cover the private sector on-shore maritime activities.

Federal OSHA enforces maritime standards off shore in all states and provides on-shore coverage of maritime activities in Federal OSHA States and in the following State plan States and territories: Alaska, Arizona, Connecticut, (plan covers only State and local government employees), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Nevada, New Mexico, New York, (plan covers only State and local government employees), North Carolina, Puerto Rico, South Carolina, Tennessee, Utah, Virginia, Virgin Islands, and Wyoming are All States with State plans also must extend coverage to state and local government employees engaged in maritime activities.

List of Subjects in 29 CFR Part 1915

Eye protection, Face protection, Fall protection, Foot protection, Hazard assessment, Head protection, Hard hats, Incorporation by reference, Personal flotation devices, Marine safety, Occupational safety and health, Personal Fall Arrest Systems, Positioning Device Systems, Protective equipment, Respirators, Respiratory protection, Safety, Ship repair, Shipyards, Snaphooks, and Vessels.

IX. Authority

This document has been prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Accordingly, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); section 41, of the Longshore and Harbor Workers Compensation Act as amended (33 U.S.C. 941); Section 4 of the Administrative Procedure Act (5 U.S.C. 553); Secretary of Labor's Order No. 1–90 (55 FR 9033); and 29 CFR part 1911, 29 CFR part 1915 is amended as set forth below.

Signed at Washington, DC, this 15th day of April 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

PART 1915—[AMENDED]

1. The Authority citation for part 1915 continues to read as follows:

Authority: Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), Secretary of Labor's Order No. 8–76 (41 FR 25059), No. 9–83 (48 FR 35736), No. 1–90 (55 FR 9033), and 29 CFR part 1911.

2. Section 1915.32 is amended by revising paragraph (a)(3) to read as follows:

§ 1915.32 Toxic cleaning solvents.

(a) * * *

(3) Employees shall be protected against toxic vapors by suitable respiratory protective equipment in accordance with the requirements of subpart I of this Part and, where necessary, against exposure of skin and eye contact with toxic solvents and their vapors by suitable clothing and equipment.

* * * * *

3. Section 1915.33 is amended by revising paragraph (a) to read as follows:

§ 1915.33 Chemical paint and preservative removers.

(a) Employees shall be protected against skin contact during the handling and application of chemical paint and preservative removers and shall be protected against eye injury by goggles or face shields in accordance with the requirements of subpart I of this part.

* * * * * *

4. Section 1915.34 is amended by revising paragraphs (a)(1), (a)(4), (b)(1), (c)(3)(i), (c)(3)(ii), and (c)(3)(iii) to read as follows:

§ 1915.34 Mechanical paint removers.

(a) * * *

(1) Employees engaged in the removal of paints, preservatives, rusts, or other coatings by means of power tools shall be protected against eye injury by using goggles or face shields in accordance with the requirements of subpart I of this part.

* * * * * *

(4) In a confined space, mechanical exhaust ventilation sufficient to keep the dust concentration to a minimum shall be used, or employees shall be protected by respiratory protective equipment in accordance with the requirements of subpart I of this part.

(b) * * *

(1) Hardened preservative coatings shall not be removed by flame in enclosed spaces unless the employees exposed to fumes are protected by air line respirators in accordance with the requirements of subpart I. Employees performing such an operation in the open air, and those exposed to the resulting fumes shall be protected by a fume filter type respirator in accordance with the requirements of subpart I of this part.

* * * * * *

(c) * * *

(3) * * *

(i) Abrasive blasters working in enclosed spaces shall be protected by hoods and air line respirators, or by air helmets of a positive pressure type in accordance with the requirements of subpart I of this part.

(ii) Abrasive blasters working in the open shall be protected as indicated in paragraph (c)(3)(i) of this section except that when synthetic abrasive containing less than one percent free silica are used, filter type respirators approved jointly by the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration for exposure to lead dusts, used in conjunction with the proper eye, face and head protection, may be used in accordance with subpart I of this part.

(iii) Employees, other than blasters, including machine tenders and abrasive recovery men, working in areas where unsafe concentrations of abrasive materials and dusts are present shall be protected by eye and respiratory protective equipment in accordance with the requirements of subpart I of this part.

* * * * * *

5. Section 1915.35 is amended by revising paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), (a)(2), (b)(13), and (b)(14) to read as follows:

§ 1915.35 Painting.

(a) * * *

(1) * * *

(i) In confined spaces, employees continuously exposed to such spraying shall be protected by air line respirators in accordance with the requirements of subpart I of this part.

(ii) In tanks or compartments, employees continuously exposed to such spraying shall be protected by air line respirators in accordance with the requirements of subpart I. Where mechanical ventilation is provided, employees shall be protected by respirators in accordance with the requirements of subpart I of this part.

(iii) In large and well ventilated areas, employees exposed to such spraying shall be protected by respirators in accordance with the requirements of subpart I of this part.

(2) Where brush application of paints with toxic solvents is done in confined spaces or in other areas where lack of ventilation creates a hazard, employees shall be protected by filter respirators in accordance with the requirements of subpart I of this part.

* * * * * *

(b) * * *

(13) All employees continuously in a compartment in which such painting is being performed shall be protected by air line respirators in accordance with the requirements of Subpart I of this part and by suitable protective clothing. Employees entering such compartments for a limited time shall be protected by filter cartridge type respirators in accordance with the requirements of subpart I of this part.

(14) All employees doing exterior paint spraying with such paints shall be protected by suitable filter cartridge type respirators in accordance with the requirements of subpart I of this part and by suitable protective clothing.

6. Section 1915 would be amended by removing Table I–1 from § 1915.118.

7. Section 1915.134 is amended by revising paragraph (j) to read as follows:

§ 1915.134 Abrasive wheels.

* * * * * *

(j) All employees using abrasive wheels shall be protected by eye protection equipment in accordance with the requirements of Subpart I of this part except when adequate eye protection is afforded by eye shields which are permanently attached to the bench or floor stand.

8. Section 1915.135 is amended by revising paragraph (b)(9) to read as follows:

§ 1915.135 Powder actuated fastening tools.

* * * * * *

(b) * * *

(9) Employees using powder actuated fastening tools shall be protected by personal protective equipment in accordance with the requirements of subpart I of this part.

* * * * * *

9. Subpart I of Part 1915 is revised to read as follows:

Subpart I—Personal Protective Equipment (PPE)

Sec.

1915.151 Scope, application and definitions.
1915.152 General requirements.
1915.153 Eye and face protection.
1915.154 Respiratory protection.
1915.155 Head protection.
1915.156 Foot protection.
1915.157 Hand and body protection.
1915.158 Lifesaving equipment.

1915.159 Personal fall arrest systems (PFAS).
1915.160 Positioning device systems.
Appendix A to subpart I—Non-mandatory Guidelines for Hazard Assessment, Personal Protective Equipment (PPE) Selection, and PPE Training program.
Appendix B to subpart I— General Testing Conditions and Additional Guidelines for Personal Fall Protection Systems.

Subpart I—Personal Protective Equipment (PPE)

§ 1915.151 Scope, application and definitions.

(a) *Scope and application.* This subpart applies to all work in shipyard employment regardless of geographic location.

(b) *Definitions applicable to this subpart.*

Anchorage means a secure point of attachment for lifelines, lanyards, or deceleration devices.

Body belt means a strap with means for both securing it about the waist and attaching it to a lanyard, lifeline, or deceleration device.

Body harness means straps which may be secured about the employee in a manner that will distribute the fall arrest forces over at least the thighs, shoulders, chest and pelvis with means for attaching it to other components of a personal fall arrest system.

Connector means a device which is used to couple (connect) parts of a personal fall arrest system or parts of a positioning device system together. It may be an independent component of the system, such as a carabiner, or it may be an integral component of part of the system (such as a buckle or D-ring sewn into a body belt or body harness or a snaphook spliced or sewn to a lanyard or self-retracting lanyard).

Deceleration device means any mechanism, such as a rope grab, ripstitch lanyard, specially woven lanyard, tearing or deforming lanyard, or automatic self-retracting lifeline/lanyard, which serves to dissipate a substantial amount of energy during a fall arrest, or otherwise limit the energy imposed on an employee during fall arrest.

Deceleration distance means the additional vertical distance a falling employee travels, excluding lifeline elongation and free fall distance, before stopping, from the point at which the deceleration device begins to operate. It is measured as the distance between the location of an employee's body belt or body harness attachment point at the moment of activation (at the onset of fall arrest forces) of the deceleration device during a fall, and the location of that attachment point after the employee comes to a full stop.

Equivalent means alternative designs, materials, or methods to protect against a hazard which the employer can demonstrate will provide an equal or greater degree of safety for employees than the method or item specified in the standard.

Free fall means the act of falling before a personal fall arrest system begins to apply force to arrest the fall.

Free fall distance means the vertical displacement of the fall arrest attachment point on the employee's body belt or body harness between onset of the fall and just before the system begins to apply force to arrest the fall. This distance excludes deceleration distance, and lifeline/lanyard elongation, but includes any deceleration device slide distance or self-retracting lifeline/lanyard extension before the device operates and fall arrest forces occur.

Lanyard means a flexible line of rope, wire rope, or strap which generally has a connector at each end for connecting the body belt or body harness to a deceleration device, lifeline, or anchorage.

Lifeline means a component consisting of a flexible line for connection to an anchorage at one end to hang vertically (vertical lifeline), or for connection to anchorages at both ends to stretch horizontally (horizontal lifeline), and which serves as a means for connecting other components of a personal fall arrest system to the anchorage.

Lower levels means those areas or surfaces to which an employee can fall. Such areas or surfaces include but are not limited to ground levels, floors, ramps, tanks, materials, water, excavations, pits, vessels, structures, or portions thereof.

Personal fall arrest system means a system used to arrest an employee in a fall from a working level. It consists of an anchorage, connectors, body belt or body harness and may include a lanyard, a deceleration device, a lifeline, or a suitable combination of these. As of January 1, 1998, the use of a body belt for fall arrest is prohibited.

Positioning device system means a body belt or body harness system rigged to allow an employee to be supported at an elevated vertical surface, such as a wall or window, and to be able to work with both hands free while leaning.

Qualified person means a person who by possession of a recognized degree or certificate of professional standing, or who, by extensive knowledge, training, and experience, has successfully demonstrated the ability to solve or resolve problems related to the subject matter and work.

Restraint (tether) line means a line from an anchorage, or between anchorages, to which the employee is secured in such a way as to prevent the employee from walking or falling off an elevated work surface. Note: A restraint line is not necessarily designed to withstand forces resulting from a fall.

Rope grab means a deceleration device which travels on a lifeline and automatically, by friction, engages the lifeline and locks so as to arrest the fall of an employee. A rope grab usually employs the principle of inertial locking, cam/level locking or both.

§ 1915.152 General requirements.

(a) *Provision and use of equipment.* The employer shall provide and shall ensure that each affected employee uses the appropriate personal protective equipment (PPE) for the eyes, face, head, extremities, torso, and respiratory system, including protective clothing, protective shields, protective barriers, personal fall protection equipment, and life saving equipment, meeting the applicable provisions of this subpart, wherever employees are exposed to work activity hazards that require the use of PPE.

(b) *Hazard assessment and equipment selection.* The employer shall assess its work activity to determine whether there are hazards present, or likely to be present, which necessitate the employee's use of PPE.

Note 1 to paragraph (b): A hazard assessment conducted according to the trade or occupation of affected employees will be considered to comply with paragraph (b) of this section, if the assessment addresses any PPE-related hazards to which employees are exposed in the course of their work activities. If such hazards are present, or likely to be present, the employer shall:

(1) Select the type of PPE that will protect the affected employee from the hazards identified in the occupational hazard assessment;

(2) Communicate selection decisions to affected employees;

(3) Select PPE that properly fits each affected employee; and

(4) Verify that the required occupational hazard assessment has been performed through a document that contains the following information: occupation, the date(s) of the hazard assessment, and the name of the person performing the hazard assessment.

Note 2 to paragraph (b): Non-mandatory Appendix A to this subpart contains examples of procedures that will comply with the requirement for an occupational hazard assessment.

(c) *Defective and damaged equipment.* Defective or damaged PPE shall not be used.

(d) *Reissued equipment.* The employer shall ensure that all unsanitary PPE, including that which has been used by employees, be cleaned and disinfected before it is reissued.

(e) *Training.* (1) The employer shall provide training to each employee who is required, by this section, to use PPE (exception: training in the use of personal fall arrest systems and positioning device systems training is covered in Sections 1915.159 and 1915.160). Each employee shall be trained to understand at least the following:

(i) When PPE is necessary;

(ii) What PPE is necessary;

(iii) How to properly don, doff, adjust, and wear PPE;

(iv) The limitations of the PPE; and,

(v) The proper care, maintenance, useful life and disposal of the PPE.

(2) The employer shall ensure that each effected employee demonstrates the ability to use PPE properly before being allowed to perform work requiring the use of PPE.

(3) The employer shall retrain any employee who does not understand or display the skills required by paragraph (e)(2) of this section. Circumstances where retraining is required include, but are not limited to, situations where:

(i) Changes in occupation or work render previous training obsolete; or

(ii) Changes in the types of PPE to be used render previous training obsolete; or

(iii) Inadequacies in an affected employee's knowledge or use of assigned PPE indicate that the employee has not retained the requisite understanding or skill.

(4) The employer shall verify that each affected employee has received the required training through a document that contains the following information: name of each employee trained, the date(s) of training, and type of training the employee received.

§ 1915.153 Eye and face protection.

(a) *General requirements.* (1) The employer shall ensure that each affected employee uses appropriate eye or face protection where there are exposures to eye or face hazards caused by flying particles, molten metal, liquid chemicals, acid or caustic liquids, chemical gases or vapors, or potentially injurious light radiation.

(2) The employer shall ensure that each affected employee uses eye or face protection that provides side protection when there is a hazard from flying objects. Detachable side protectors (e.g., a clip-on or slide-on side shield) meeting the pertinent requirements of this section are acceptable.

(3) The employer shall ensure that each affected employee who wears prescription lenses while engaged in operations that involve eye hazards wears eye protection that incorporates the prescription in its design, unless the employee is protected by eye protection that can be worn over prescription lenses without disturbing the proper position of either the PPE or the prescription lenses.

(4) The employer shall ensure that each affected employee uses equipment with filter lenses that have a shade number that provides appropriate protection from injurious light radiation. Table I–1 is a listing of appropriate shade numbers for various operations. If filter lenses are used in goggles worn under a helmet which has a lens, the shade number of the lens in the helmet may be reduced so that the shade numbers of the two lenses will equal the value as shown in Table I–1, § 1915.153.

TABLE I–1.—FILTER LENSES FOR PROTECTION AGAINST RADIANT ENERGY

Operations	Electrode size 1/32 in.	Arc current	Minimum protective shade
Shielded metal arc welding	Less than 3	Less than	7
	3–5	60	8
	5–8	60–160	10
	More than 8	160–250	11
		250–550	
Gas metal arc welding and flux cored arc welding.		Less than	7
		60	10
		60–160	10
		160–250	10
		250–500	
Gas Tungsten arc welding		Less than	8
		50	8
		50–150	10
		150–500	
Air carbon	(Light)	Less than	10
Arc cutting	(Heavy)	500	11
		500–1000	
Plasma arc welding		Less than	6
		20	8
		20–	10
		100	11
		100–	
		400	
		400–	
		800	
Plasma arc cutting	(light)**	Less than 300	8
	(medium)**	300–400	9
	(heavy)**	400–800	10
Torch brazing			3
Torch soldering			2
Carbon Arc welding			14

** These values apply where the actual arc is clearly seen. Lighter filters may be used when the arc is hidden by the workpiece.

FILTER LENSES FOR PROTECTION AGAINST RADIANT ENERGY

Operations	Plate thickness— inches	Plate thickness— mm	Minimum* protective shade
Gas welding:			
Light	Under ⅛	Under 3.2	4
Medium	⅛ to ½	3.2 to 12.7	5
Heavy	Over ½	Over 12.7	6
Oxygen cutting			
Light	Under 1	Under 25	3
Medium	1 to 6	25 to 150	4
Heavy	Over 6	Over 150	5

* As a rule of thumb, start with a shade that is too dark to see the weld zone. Then go to a lighter shade which gives sufficient view of the weld zone without going below the minimum. In oxyfuel gas welding or cutting where the torch produces a high yellow light, it is desirable to use a filter lens that absorbs the yellow or sodium line in the visible light of the (spectrum) operation.

(b) *Criteria for Protective Eye and Face Devices*

(1) Protective eye and face devices purchased after (insert effective date of final rule) shall comply with the American National Standards Institute, ANSI Z87.1–1989, "Practice for Occupational and Educational Eye and Face Protection," which is incorporated by reference as specified in § 1915.5, or shall be demonstrated by the employer to be equally effective.

(2) Eye and face protective devices purchased before (insert effective date of final rule) shall comply with "American National Standard Practice for Occupational and Educational Eye and Face Protection, Z87.1 –1979," which is incorporated by reference as specified in § 1915.5, or shall be demonstrated by the employer to be equally effective.

§ 1915.154 Respiratory protection.

Respiratory protection for shipyard employment is covered by 29 CFR 1910.134.

§ 1915.155 Head protection.

(a) *Use.* (1) The employer shall ensure that each affected employee wears a protective helmet when working in areas where there is a potential for injury to the head from falling objects.

(2) The employer shall ensure that each affected employee wears a protective helmet designed to reduce electrical shock hazards where there is potential for electric shock or burns due to contact with exposed electrical conductors which could contact the head.

(b) *Criteria for protective helmets.* (1) Protective helmets purchased after August 22, 1996 shall comply with ANSI Z89.l–1986, "Personnel Protection—Protective Headwear for Industrial Workers-Requirements," which is incorporated by reference, as specified in § 1915.5, or shall be demonstrated by the employer to be equally effective.

(2) Protective helmets purchased before August 22, 1996 shall comply with the "American National Standard Safety Requirements for Industrial Head Protection, Z89.1–1969," which is incorporated by reference as specified in 1915.5, or shall be demonstrated by the employer to be equally effective.

§ 1915.156 Foot protection.

(a) *Use.* The employer shall ensure that each affected employee wears protective footwear when working in areas where there is a danger of foot injuries due to falling or rolling objects or objects piercing the sole.

(b) *Criteria for protective footwear.* (1) Protective footwear purchased after August 22, 1996 shall comply with ANSI Z41–1991, "American National Standard for Personal Protection-Protective Footwear," which is incorporated by reference, as specified in § 1915.5, or shall be demonstrated by the employer to be equally as effective.

(2) Protective footwear purchased before August 22, 1996 shall comply with the "American National Standard for Personal Protection- Protective Footwear Z41–1983," which is incorporated by reference, as specified in § 1915.5, or shall be demonstrated by the employer to be equally effective.

§ 1915.157 Hand and body protection.

(a) *Use.* The employer shall ensure that each affected employee uses appropriate hand protection and other protective clothing where there is exposure to hazards such as skin absorption of harmful substances, severe cuts or lacerations, severe abrasions, punctures, chemical burns, thermal burns, harmful temperature extremes, and sharp objects.

(b) *Hot work operations.* The employer shall ensure that no employee wears clothing impregnated or covered in full or in part with flammable or combustible materials (such as grease or oil) while engaged in hot work operations or working near an ignition source.

(c) *Electrical Protective Devices.* The employer shall ensure that each affected employee wears protective electrical insulating gloves and sleeves or other electrical protective equipment, if that employee is exposed to electrical shock hazards while working on electrical equipment.

§ 1915.158 Lifesaving equipment.

(a) *Personal flotation devices.* (1) Personal flotation devices (PFD) (life preservers, life jackets and work vests) worn by each affected employee shall be any United States Coast Guard (USCG) approved and marked Type I PFD, Type II PFD, or Type III PFD; or PFDs shall be a USCG approved Type V PFD which is marked for use as a work vest, for commercial use, or for use on vessels. USCG approval is pursuant to 46 CFR part 160, subpart Q, Coast Guard Lifesaving Equipment Specifications.

(2) Prior to each use, personal floatation devices shall be inspected for dry rot, chemical damage, or other defects which may affect their strength and buoyancy. Defective personal floatation devices shall not be used.

(b) *Ring life buoys and ladders.* (1) When work is being performed on a floating vessel 200 feet (61 m) or more in length, at least three 30-inch (0.76 m) U.S. Coast Guard approved ring life buoys with lines attached shall be located in readily visible and accessible places. Ring life buoys shall be located one forward, one aft, and one at the access to the gangway.

(2) On floating vessels under 200 feet (61 m) in length, at least one 30-inch (0.76 m) U.S. Coast Guard approved ring life buoy with line attached shall be located at the gangway.

(3) At least one 30-inch (0.76 m) U. S. Coast Guard approved ring life buoy with a line attached shall be located on each staging alongside of a floating vessel on which work is being performed.

(4) At least 90 feet (27 m) of line shall be attached to each ring life buoy.

(5) There shall be at least one portable or permanent ladder in the vicinity of each floating vessel on which work is being performed. The ladder shall be of sufficient length to assist employees to reach safety in the event they fall into the water.

§ 1915.159 Personal fall arrest systems (PFAS).

The criteria of this section apply to PFAS and their use. Effective January 1, 1998, body belts and non-locking snaphooks are not acceptable as part of a personal fall arrest system.

(a) Criteria for connectors and anchorages. (1) Connectors shall be made of drop forged, pressed, or formed steel or shall be made of materials with equivalent strength.

(2) Connectors shall have a corrosion-resistant finish, and all surfaces and edges shall be smooth to prevent damage to the interfacing parts of the system.

(3) D-rings and snaphooks shall be capable of sustaining a minimum tensile load of 5,000 pounds (22.2 Kn).

(4) D-rings and snaphooks shall be proof-tested to a minimum tensile load of 3,600 pounds (16 Kn) without cracking, breaking, or being permanently deformed.

(5) Snaphooks shall be sized to be compatible with the member to which they are connected to prevent unintentional disengagement of the snaphook caused by depression of the snaphook keeper by the connected member, or shall be of a locking type that is designed and used to prevent disengagement of the snap-hook by contact of the snaphook keeper by the connected member.

(6) Snaphooks, unless of a locking type designed and used to prevent disengagement from the following connections, shall not be engaged:

(i) directly to webbing, rope or wire rope;

(ii) to each other;

(iii) to a D-ring to which another snaphook or other connector is attached;

(iv) to a horizontal lifeline; or

(v) to any object that is incompatibly shaped or dimensioned in relation to the snaphook such that unintentional disengagement could occur by the connected object being able to depress the snaphook keeper and release itself.

(7) On suspended scaffolds or similar work platforms with horizontal lifelines that may become vertical lifelines, the devices used for connection to the horizontal lifeline shall be capable of locking in any direction on the lifeline.

(8) Anchorages used for attachment of personal fall arrest equipment shall be independent of any anchorage being used to support or suspend platforms.

(9) Anchorages shall be capable of supporting at least 5,000 pounds (22.2 Kn) per employee attached, or shall be designed, installed, and used as follows:

(i) as part of a complete personal fall arrest system which maintains a safety factor of at least two; and

(ii) under the direction and supervision of a qualified person.

(b) *Criteria for lifelines, lanyards, and personal fall arrest systems.*

(1) When vertical lifelines are used, each employee shall be provided with a separate lifeline.

(2) Vertical lifelines and lanyards shall have a minimum tensile strength of 5,000 pounds (22.2 Kn).

(3) Self-retracting lifelines and lanyards that automatically limit free fall distances to 2 feet (0.61 m) or less shall be capable of sustaining a minimum tensile load of 3000 pounds (13.3 Kn) applied to a self-retracting lifeline or lanyard with the lifeline or lanyard in the fully extended position.

(4) Self-retracting lifelines and lanyards which do not limit free fall distance to 2 feet (0.61 m) or less, ripstitch lanyards and tearing and deforming lanyards shall be capable of sustaining a minimum static tensile load of 5,000 pounds (22.2 Kn) applied to the device when they are in the fully extended position.

(5) Horizontal lifelines shall be designed, installed, and used under the supervision of a qualified person, and shall only be used as part of a complete personal fall arrest system that maintains a safety factor of at least two.

(6) Effective November 20, 1996, personal fall arrest systems shall:

(i) limit the maximum arresting force on a falling employee to 900 pounds (4 Kn) when used with a body belt;

(ii) limit the maximum arresting force on a falling employee to 1,800 pounds (8 Kn) when used with a body harness;

(iii) bring a falling employee to a complete stop and limit the maximum deceleration distance an employee travels to 3.5 feet (1.07 m), and

(iv) have sufficient strength to withstand twice the potential impact energy of an employee free falling a distance of 6 feet (1.8 m), or the free fall distance permitted by the system, whichever is less;

Note to paragraph (b)(6) of this section: A personal fall arrest system which meets the criteria and protocols contained in Appendix B, is considered to comply with paragraph (b)(6). If the combined tool and body weight is 310 pounds (140 kg) or more, systems that meet the criteria and protocols contained in Appendix B will be deemed to comply with the provisions of paragraphs (b)(6) only if they are modified appropriately to provide protection for the extra weight of the employee and tools.

(7) Personal fall arrest systems shall be rigged such that an employee can neither free fall more than 6 feet (1.8 m) nor contact any lower level.

(c) *Criteria for selection, use and care of systems and system components.* (1) Lanyards shall be attached to employees using personal fall arrest systems, as follows:

(i) The attachment point of a body harness shall be located in the center of the wearer's back near the shoulder level, or above the wearer's head. If the free fall distance is limited to less than 20 inches, the attachment point may be located in the chest position; and

(ii) The attachment point of a body belt shall be located in the center of the wearer's back.

(2) Ropes and straps (webbing) used in lanyards, lifelines and strength components of body belts and body harnesses shall be made from synthetic fibers or wire rope.

(3) Ropes, belts, harnesses, and lanyards shall be compatible with their hardware.

(4) Lifelines and lanyards shall be protected against cuts, abrasions, burns from hot work operations and deterioration by acids, solvents, and other chemicals.

(5) Personal fall arrest systems shall be inspected prior to each use for mildew, wear, damage, and other deterioration. Defective components shall be removed from service.

(6) Personal fall arrest systems and components subjected to impact loading shall be immediately removed from service and shall not be used again for employee protection until inspected and determined by a qualified person to be undamaged and suitable for reuse.

(7) The employer shall provide for prompt rescue of employees in the event of a fall or shall ensure that employees are able to rescue themselves.

(8) Body belts shall be at least one and five eighths inches (4.1 cm) wide.

(9) Personal fall arrest systems and components shall be used only for employee fall protection and not to hoist materials.

(d) *Training.* Before using personal fall arrest equipment, each affected employee shall be trained to understand the application limits of the equipment and proper hook-up, anchoring, and tie-off techniques. Affected employees shall also be trained so that they can demonstrate the proper use, inspection, and storage of their equipment.

§ 1915.160 Positioning device systems.

Positioning device systems and their use shall conform to the following provisions:

(a) *Criteria for connectors and anchorages.* (1) Connectors shall have a corrosion-resistant finish, and all surfaces and edges shall be smooth to prevent damage to interfacing parts of this system.

(2) Connecting assemblies shall have a minimum tensile strength of 5,000 pounds (22.2 Kn).

(3) Positioning device systems shall be secured to an anchorage capable of supporting at least twice the potential impact load of an employee's fall.

(4) Snaphooks, unless each is of a locking type designed and used to prevent disengagement, shall not be connected to each other. As of January 1, 1998, only locking type snaphooks shall be used in positioning device systems.

(b) *Criteria for positioning device systems.* (1) Restraint (tether) lines shall have a minimum breaking strength of 3,000 pounds (13.3 Kn).

(2) The following system performance criteria for positioning device systems are effective November 20, 1996:

(i) A window cleaner's positioning system shall be capable of withstanding without failure a drop test consisting of a 6 foot (1.83 m) drop of a 250 pound (113 kg) weight. The system shall limit the initial arresting force to not more than 2,000 pounds (8.89 Kn), with a duration not to exceed 2 milliseconds. The system shall limit any subsequent arresting forces imposed on the falling employee to not more than 1,000 pounds (4.45 Kn);

(ii) All other positioning device systems shall be capable of withstanding without failure a drop test consisting of a 4- foot (1.2 m) drop of a 250-pound (113 kg) weight.

Note to paragraph (b)(2) of this section: Positioning device systems which comply with the provisions of Section 2 of Non-mandatory Appendix B to this subpart shall be deemed to meet the requirements of this paragraph (b)(2).

(c) *Criteria for the use and care of positioning device systems.* (1) Positioning device systems shall be inspected before each use for mildew, wear, damage, and other deterioration. Defective components shall be removed from service.

(2) A positioning device system or component subjected to impact loading shall be immediately removed from service and shall not be used again for employee protection, unless inspected and determined by a qualified person to be undamaged and suitable for reuse.

(d) *Training.* Before using a positioning device system, employees shall be trained in the application limits, proper hook-up, anchoring and tie-off techniques, methods of use, inspection, and storage of positioning device systems.

Appendix A to Subpart I—Non-mandatory Guidelines for Hazard Assessment, Personal Protective Equipment (PPE) Selection, and PPE Training Program

This Appendix is intended to provide compliance assistance for hazard assessment, selection of personal protective equipment (PPE) and PPE training. It neither adds to or detracts from the employer's responsibility to comply with the provisions of this subpart.

1. Controlling hazards. Employers and employees should not rely exclusively on PPE for protection from hazards. PPE should be used, where appropriate, in conjunction with engineering controls, guards, and safe work practices and procedures.

2. Assessment and selection. Employers need to consider certain general guidelines for assessing the hazardous situations that are likely to arise under foreseeable work activity conditions and to match employee PPE to the identified hazards. The employer should designate a safety officer or some other qualified person to exercise common sense and appropriate expertise to assess work activity hazards and select PPE.

3. Assessment guidelines. In order to assess the need for PPE the following steps should be taken:

a. Survey. Conduct a walk-through survey of the area in question to identify sources of hazards.

Categories for Consideration:

(1) Impact
(2) Penetration
(3) Compression (roll-over)
(4) Chemical
(5) Heat
(6) Harmful dust
(7) Light (optical) radiation
(8) Drowning
(9) Falling

b. *Sources.* During the walk-through survey the safety officer should observe:

(1) Sources of motion; for example, machinery or processes where any movement of tools, machine elements or particles could exist, or movement of personnel that could result in collision with stationary objects.

(2) Sources of high temperatures that could result in burns, eye injury or ignition of protective equipment.

(3) Types of chemical exposures.

(4) Sources of harmful dust.

(5) Sources of light radiation, for instance, welding, brazing, cutting, heat treating, furnaces, and high intensity lights.

(6) Sources of falling objects or potential for dropping objects.

(7) Sources of sharp objects which might pierce or cut the hands.

(8) Sources of rolling or pinching objects which could crush the feet.

(9) Layout of work place and location of co-workers.

(10) Any electrical hazards.

(11) Review injury/accident data to help identify problem areas.

Organize data. Following the walk-through survey, it is necessary to organize the data and other information obtained. That material provides the basis for hazard assessment that enables the employer to select the appropriate PPE.

d. *Analyze data.* Having gathered and organized data regarding a particular occupation, employers need to estimate the potential for injuries. Each of the identified hazards (see paragraph 3.a.) should be reviewed and classified as to its type, the level of risk, and the seriousness of any potential injury. Where it is foreseeable that an employee could be exposed to several hazards simultaneously, the consequences of such exposure should be considered.

4. *Selection guidelines.* After completion of the procedures in paragraph 3, the general procedure for selection of protective equipment is to:

(a) become familiar with the potential hazards and the types of protective equipment that are available, and what they can do; for example, splash protection, and impact protection;

(b) compare the hazards associated with the environment; for instance, impact velocities, masses, projectile shapes, radiation intensities, with the capabilities of the available protective equipment;

(c) select the protective equipment which ensures a level of protection greater than the minimum required to protect employees from the hazards; and

(d) fit the user with the protective device and give instructions on care and use of the PPE. It is very important that users be made aware of all warning labels and limitations of their PPE.

5. *Fitting the device.* Careful consideration must be given to comfort and fit. The employee will be most likely to wear the protective device if it fits comfortably. PPE that does not fit properly may not provide the necessary protection, and may create other problems for wearers. Generally, protective devices are available in a variety of sizes and choices. Therefore employers should be careful to select the appropriate sized PPE.

8. *Devices with adjustable features.* (a) Adjustments should be made on an individual basis so the wearer will have a comfortable fit that maintains the protective device in the proper position. Particular care should be taken in fitting devices for eye protection against dust and chemical splash to ensure that the seal is appropriate for the face.

(b) In addition, proper fitting of hard hats is important to ensure that the hard hat will not fall off during work operations. In some cases a chin strap may be necessary to keep the hard hat on an employee's head. (Chin straps should break at a reasonably low force to prevent a strangulation hazard). Where manufacturer's instructions are available, they should be followed carefully.

7. *Reassessment of hazards.* Compliance with the hazard assessment requirements of § 1915.152(b) will involve the reassessment of work activities where changing circumstances make it necessary. a. The employer should have a safety officer or other qualified person reassess the hazards of the work activity area as necessary. This reassessment should take into account changes in the workplace or work practices, such as those associated with the installation of new equipment, and the lessons learned from reviewing accident records, and a reevaluation performed to determine the suitability of PPE selected for use.

8. *Selection chart guidelines for eye and face protection.* Examples of occupations for which eye protection should be routinely considered are carpenters, engineers, coppersmiths, instrument technicians, insulators, electricians, machinists, mobile equipment mechanics and repairers, plumbers and ship fitters, sheet metal workers and tinsmiths, grinding equipment operators, machine operators, welders, boiler workers, painters, laborers, grit blasters, ship fitters and burners. This is not a complete list of occupations that require the use of eye protection. The following chart provides general guidance for the proper selection of eye and face protection to protect against hazards associated with the listed hazard "source" operations.

EYE AND FACE PROTECTION SELECTION CHART

Source	Assessment of hazard	Protection
Impact:		
Chipping, grinding machining, masonry work, woodworking, sawing, drilling, chiseling, powered fastening, riveting, and sanding.	Flying fragments, objects, large chips, particles, sand, dirt, etc.	Spectacles with side protection, goggles, face shields. See notes (1), (3), (5), (6), (10). For severe exposure, use face shield.
Heat:		
Furnace operations, pouring, casting, hot dipping, and welding.	Hot sparks	Face shields, goggles, spectacles with side protection. For severe exposure use face shield. See notes (1), (2), (3).
	Splash from molten metals	Face shields worn over goggles. See notes (1), (2), (3).
	High temperature exposure	Screen face shields, reflective face shields. See notes (1), (2), (3).
Chemicals:		
Acid and chemicals handling, degreasing, plating.	Splash	Goggles, eyecup and cover types. For severe exposure, use face shield. See notes (3), (11).
	Irritating mists	Special-purpose goggles.
Dust:		
Woodworking, buffing, general dusty conditions	Nuisance dust	Goggles, eyecup and cover types. See note (8).
Light and/or Radiation:		
Welding: Electric arc	Optical radiation	Welding helmets or welding shields. Typical shades: 10–14. See notes (9), (12).
Welding: Gas	Optical radiation	Welding goggles or welding face shield. Typical shades: gas welding 4–8, cutting 3–6, brazing 3–4. See note (9).
Cutting, Torch brazing, Torch soldering	Optical radiation	Spectacles or welding face-shield. Typical shades, 1.5–3. See notes (3), (9).
Glare	Poor vision	Spectacles with shaded or special-purpose lenses, as suitable. See notes (9), (10).

Notes to Eye and Face Protection Selection Chart

(a) Care should be taken to recognize the possibility of multiple and simultaneous exposure to a variety of hazards. Adequate protection against the highest level of each of the hazards should be provided. Protective devices do not provide unlimited protection.

(b) Operations involving heat may also involve light radiation. As required by the standard, protection from both hazards must be provided.

(c) Face shields should only be worn over primary eye protection (spectacles or goggles).

(d) As required by the standard, filter lenses must meet the requirements for shade designations in § 1915.153(a)(4). Tinted and shaded lenses are not filter lenses unless they are marked or identified as such.

(e) As required by the standard, persons whose vision requires the use of prescription (Rx) lenses must wear either protective devices fitted with prescription (Rx) lenses or protective devices designed to be worn over regular prescription (Rx) eye wear.

(f) Wearers of contact lenses must also wear appropriate eye and face protection devices in a hazardous environment. It should be recognized that dusty and/or chemical environments may represent an additional hazard to contact lens wearers.

(g) Caution should be exercised in the use of metal frame protective devices in electrical hazard areas.

(h) Atmospheric conditions and the restricted ventilation of the protector can cause lenses to fog. Frequent cleansing may be necessary.

(i) Welding helmets or face shields should be used only over primary eye protection (spectacles or goggles).

(j) Non-side shield spectacles are available for frontal protection only, but are not acceptable eye protection for the sources and operations listed for "impact."

(k) Ventilation should be adequate, but well protected from splash entry. Eye and face protection should be designed and used so that it provides both adequate ventilation and protects the wearer from splash entry.

(l) Protection from light radiation is directly related to filter lens density. See note (d). Select the darkest shade that allows task performance.

9. *Selection guidelines for head protection.* (a) Hard hats are designed to provide protection from impact and penetration hazards caused by falling objects. Head protection is also available which provides protection from electric shock and burn. When selecting head protection, knowledge of potential electrical hazards is important. Class A helmets, in addition to impact and penetration resistance, provide electrical protection from low-voltage conductors. (They are proof tested to 2,200 volts.) Class B helmets, in addition to impact and penetration resistance, provide electrical protection from high-voltage conductors. (They are proof tested to 20,000 volts.) Class C helmets provide impact and penetration resistance. (They are usually made of aluminum, which conducts electricity and should not be used around electrical hazards.)

(b) Where falling object hazards are present, head protection must be worn. Some examples of exposure include: working below other workers who are using tools and materials which could fall; working around or under conveyor belts which are carrying parts or materials; working below machinery or processes which might cause material or objects to fall; and working on exposed energized conductors.

(c) Examples of occupations for which head protection should be considered are: carpenters, electricians, machinists, boilermakers, erectors, plumbers, coppersmiths, ship fitters, welders, laborers and material handlers.

10. *Selection guidelines for foot protection.* (a) Safety shoes and boots must meet ANSI Z41–1991 and provide impact and compression protection to the foot. Where necessary, safety shoes can be obtained which provide puncture protection. In some work situations, metatarsal protection should be provided, and in some other special situations electrical conductive or insulating safety shoes would be appropriate.

(b) Safety shoes or boots with impact protection would be required for carrying or handling materials such as packages, objects, parts or heavy tools, which could be dropped, and for other activities where objects might fall onto the feet. Safety shoes or boots with compression protection would be required for work activities involving skid trucks (manual material handling carts) around bulk rolls (such as paper rolls) and around heavy pipes, all of which could potentially roll over an employees' feet. Safety shoes or boots with puncture protection would be required where sharp objects such as nails, wire, tacks, screws, large staples, scrap metal etc., could be stepped on by employees, causing an injury.

(c) Some occupations (not a complete list) for which foot protection should be routinely considered are: shipping and receiving clerks, stock clerks, carpenters, electricians, machinists, boiler makers, plumbers, copper smiths, pipe fitters, ship fitters, burners, chippers and grinders, erectors, press operators, welders, laborers, and material handlers.

11. *Selection guidelines for hand protection.* (a) Gloves are often relied upon to prevent cuts, abrasions, burns, and skin contact with chemicals that are capable of causing local or systemic effects following dermal exposure. OSHA is unaware of any gloves that provide protection against all potential hand hazards, and commonly available glove materials provide only limited protection against many chemicals. Therefore, it is important to select the most appropriate glove for a particular application and to determine how long it can be worn, and whether it can be reused.

(b) It is also important to know the performance characteristics of gloves relative to the specific hazard anticipated, e.g., chemical hazards, cut hazards, and flame hazards. These performance characteristics should be assessed by using standard test procedures. Before purchasing gloves, the employer should request documentation from the manufacturer that the gloves meet the appropriate test standard(s) for the hazard(s) anticipated.

(c) other general factors to be considered for glove selection are:

(A) As long as the performance characteristics are acceptable, in certain circumstances, it may be more cost effective to regularly change cheaper gloves than to reuse more expensive types; and,

(B) The work activities of the employee should be studied to determine the degree of dexterity required, the duration, frequency, and degree of exposure to the hazard, and the physical stresses that will be applied.

(d) With respect to selection of gloves for protection against chemical hazards:

(A) The toxic properties of the chemical(s) must be determined; in particular, the ability of the chemical to cause local effects on the skin or to pass through the skin and cause systemic effects or both;

(B) Generally, any "chemical resistant" glove can be used for dry powders;

(C) For mixtures and formulated products (unless specific test data are available), a glove should be selected on the basis of the chemical component with the shortest breakthrough time, since it is possible for solvents to carry active ingredients through polymeric materials; and,

(D) Employees must be able to remove the gloves in such a manner as to prevent skin contamination.

12. *Cleaning and maintenance.* (a) It is important that all PPE be kept clean and be properly maintained. Cleaning is particularly important for eye and face protection where dirty or fogged lenses could impair vision.

(b) For the purposes of compliance, PPE should be inspected, cleaned, and maintained at regular intervals so that the PPE provides the requisite protection.

(c) It is important to ensure that contaminated PPE which cannot be decontaminated is disposed of in a manner that protects employees from exposure to hazards.

13. *Examples of work activities, trades and selection of basic PPE.*

Example 1: *Welder.* Based on an assessment of the work activity area hazards to which welders are exposed, the equipment listed below is the basic PPE required for this occupation. This does not take into account a job location in which additional PPE may be required, such as where the welder works from an elevated platform without guard rails. In this situation the welder must also wear the proper fall protection equipment, such as a body harness.

—Hard hat
—Welding Shield (Face)
—Welding Gloves
—Safety Glasses
—Safety Shoes
—Welding Sleeves (welding in the overhead position)
(Signed and dated)

Example 2: *Yard Maintenance Worker.* Based on an assessment of the workplace hazards to which shipyard maintenance workers are exposed, the equipment listed below is the basic PPE required for this occupation. Where maintenance workers are exposed to other hazards, such as asbestos, the insulation on a pipe is being repaired, maintenance workers must be provided with the appropriate supplemental PPE (requirements for asbestos PPE are set out in 1915.1001).

—Hard Hat
—Safety Glasses
—Work Gloves
—Safety Shoes
(Signed and Dated)

Example 3: *Chipper and Grinder Worker.* Based on an assessment of the workplace hazards to which shipyard chipper and grinder workers are exposed, the equipment listed below is the basic PPE required for this occupation. Where workers are exposed to other hazards, such as hazardous dust from chipping or grinding operations, chipper and grinder workers must be provided with the appropriate supplemental PPE.

—Safety Glasses
—Transparent Face Shields
—Hearing Protection
—Foot Protection
—Gloves
(Signed and Dated)

Example 4: *Painter.* Based on an assessment of the workplace hazards to which shipyard painters are exposed, the equipment listed below is the basic PPE required for this occupation. Where painters are exposed to other hazards, such as a fall from an elevation where no guardrails are present, painters must be provided with the appropriate supplemental PPE.

—Hard Hats
—Safety Glasses
—Disposable Clothing
—Gloves
—Respiratory Protection, including Airline Respirators when working in Confined Spaces
—Barrier Creams
(Signed and Dated)

Example 5: *Tank Cleaner.* Tank cleaning operations and the basic PPE required for them depend largely upon the type of cargo shipped in the tank. Therefore, the following example is given for a tank in which gasoline has been shipped. Based on an assessment of the workplace hazards to which shipyard tank cleaners are exposed, specifically benzene and flammability hazards, the equipment listed below is the basic PPE required for this situation. Other tank cleaning operations will require variations in the PPE listed below.

—Respiratory Protection, Airline Respirators for working in confined spaces or where personal exposure limits could be exceeded.
—Chemically resistant clothing
—Face Shields
—Chemically resistant boots
—Chemically resistant gloves
—Fall Protection
—Non sparking tools and equipment
—Explosion-proof Lighting
(Signed and Dated)

Appendix B to Subpart I—General Testing Conditions and Additional Guidelines for Personal Fall Protection Systems (Non-mandatory)

1. *Personal fall arrest systems*—(a) *General test conditions.* (1) Lifelines, lanyards, and deceleration devices should be attached to an anchorage and connected to the body-belt or body harness in the same manner as they would be when used to protect employees, except that lanyards should be tested only when connected directly to the anchorage, and not when connected to a lifeline.

(2) The anchorage should be rigid, and should not have a deflection greater than .04 inches (1 cm) when a force of 2,250 pounds (10 Kn) is applied.

(3) The frequency response of the load measuring instrumentation should be 100 Hz.

(4) The test weight used in the strength and force tests should be a rigid, metal cylindrical or torso-shaped object with a girth of 38 inches plus or minus 4 inches (96.5 cm plus or minus 10 cm).

(5) The lanyard or lifeline used to create the free fall distance should be the one supplied with the system, or in its absence, the least elastic lanyard or lifeline available to be used by the employee with the system.

(6) The test weight for each test should be hoisted to the required level and should be quickly released without having any appreciable motion imparted to it.

(7) The system's performance should be evaluated, taking into account the range of environmental conditions for which it is designed to be used.

(8) Following the test, the system need not be capable of further operation.

(b) *Strength test.* (1) During the testing of all systems, a test weight of 300 pounds plus or minus 5 pounds (136 kg plus or minus 2.27 kg) should be used. (See paragraph (a)(4) above.)

(2) The test consists of dropping the test weight once. A new unused system should be used for each test.

(3) For lanyard systems, the lanyard length should be 6 feet plus or minus 2 inches (1.83 m plus or minus 5 cm) as measured from the fixed anchorage to the attachment on the body belt or harness.

(4) For rope-grab-type deceleration systems, the length of the lifeline above the center line of the grabbing mechanism to the lifeline's anchorage point should not exceed 2 feet (0.61 m).

(5) For lanyard systems, for systems with deceleration devices which do not automatically limit free fall distance to 2 feet (0.61 m) or less, and for systems with deceleration devices which have a connection distance in excess of 1 foot (0.3 m) (measured between the centerline of the lifeline and the attachment point to the body belt or harness), the test weight should be rigged to free fall a distance of 7.5 feet (2.3 m) from a point that is 1.5 feet (46 cm) above the anchorage point, to its hanging location (6 feet (1.83 m) below the anchorage). The test weight should fall without interference, obstruction, or hitting the floor or the ground during the test. In some cases, a non-elastic wire lanyard of sufficient length may need to be added to the system (for test purposes) to create the necessary free fall distance.

(6) For deceleration device systems with integral lifelines or lanyards which automatically limit free fall distance to 2 feet (0.61 m) or less, the test weight should be rigged to free fall a distance of four feet (1.22 m).

(7) Any weight which detaches from the belt or harness should constitute failure for the strength test.

(c) *Force test general.* The test consists of dropping the respective test weight once. A new, unused system should be used for each test.

(1) For lanyard systems. (i) A test weight of 220 pounds plus or minus three pounds (100 kg plus or minus 1.6 kg) should be used (see paragraph (a)(4) above).

(ii) Lanyard length should be 6 feet plus or minus 2 inches (1.83 m plus or minus 5 cm) as measured from the fixed anchorage to the attachment on the body belt or body harness.

(iii) The test weight should fall free from the anchorage level to its handling location (a total of 6 feet (1.83 m) free fall distance) without interference, obstruction, or hitting the floor or ground during the test.

(2) For all other systems. (i) A test weight of 220 pounds plus or minus 3 pounds (100 kg plus or minus 1.6 kg) should be used (see paragraph (a)(4) above).

(ii) The free fall distance to be used in the test should be the maximum fall distance physically permitted by the system during normal use conditions, up to a maximum free fall distance for the test weight of 6 feet (1.83 m), except as follows:

(A) For deceleration systems which have a connection link or lanyard, the test weight should free fall a distance equal to the connection distance (measured between the center line of the lifeline and the attachment point to the body belt or harness).

(B) For deceleration device systems with integral life lines or lanyards which automatically limit free fall distance to 2 feet (0.61 m) or less, the test weight should free fall a distance equal to that permitted by the system in normal use. (For example, to test a system with a self-retracting lifeline or lanyard, the test weight should be supported and the system allowed to retract the lifeline or lanyard as it would in normal use. The test weight would then be released and the force and deceleration distance measured.)

(3) Failure. A system fails the force test if the recorded maximum arresting force exceeds 1,260 pounds (5.6 Kn) when using a body belt, or exceeds 2,520 pounds (11.2 Kn) when using a body harness.

(4) Distances. The maximum elongation and deceleration distance should be recorded during the force test.

(d) *Deceleration device tests—general.* The device should be evaluated or tested under the environmental conditions (such as rain, ice, grease, dirt, type of lifeline, etc.) for which the device is designed.

(1) Rope-grab-type deceleration devices. (i) Devices should be moved on a lifeline 1,000 times over the same length of line a distance of not less than 1 foot (30.5 cm), and the mechanism should lock each time.

(ii) Unless the device is permanently marked to indicate the type of lifelines which must be used, several types (different diameters and different materials) of lifelines should be used to test the device.

(2) Other-self-activating-type deceleration devices. The locking mechanisms of other self-activating-type deceleration devices designed for more than one arrest should lock each of 1,000 times as they would in normal service.

2. *Positioning device systems*—(a) *Test Conditions.* (1) The fixed anchorage should be rigid and should not have a deflection greater than .04 inches (1 cm) when a force of 2,250 pounds (10 Kn) is applied.

(2) For linemen's body belt and pole straps, the body belt should be secured to a 250 pound (113 kg) bag of sand at a point which simulates the waist of an employee. One end of the pole strap should be attached to the rigid anchorage and the other end to the body belt. The sand bag should be allowed to free fall a distance of 4 feet (1.2 m). Failure of the pole strap and body belt should be indicated by any breakage or slippage sufficient to permit the bag to fall free to the ground.

(3) For window cleaner's belts, the complete belt should withstand a drop test consisting of a 250 pound (113 kg) weight falling free for a distance of 6 feet (1.83 m). The weight should be a rigid object with a girth of 38 inches plus or minus four inches (97 cm plus or minus 10 cm). The weight should be placed in the waistband with the belt buckle drawn firmly against the weight, as when the belt is worn by a window cleaner. One belt terminal should be attached to a rigid anchor and the other terminal should hang free. The terminals should be adjusted to their maximum span. The weight fastened in the freely suspended belt should then be lifted exactly 6 feet (1.83 m) above its "at rest" position and released so as to permit a free fall of 6 feet (1.83 m) vertically below the point of attachment of the terminal anchor. The belt system should be equipped with devices and instrumentation capable of measuring the duration and magnitude of the arrest forces. Any breakage or slippage which permits the weight to fall free of the system constitutes failure of the test. In addition, the initial and subsequent arresting force peaks should be measured and should not exceed 2,000 pounds (8.9 Kn) for more than 2 milliseconds for the initial impact, nor exceed 1,000 pounds (4.45 Kn) for the remainder of the arrest time.

(4) All other positioning device systems (except for restraint line systems) should withstand a drop test consisting of a 250 pound (113 kg) weight falling free for a distance of 4 feet (1.2 m). The weight should be a rigid object with a girth of 38 inches plus or minus 4 inches (96 cm plus or minus 10 cm). The body belt or harness should be affixed to the test weight as it would be to an employee. The system should be connected to the rigid anchor in the manner that the system would be connected in normal use. The weight should be lifted exactly 4 feet (1.2 m) above its "at rest" position and released so as to permit a vertical free fall of 4 feet (1.2 m). Any breakage or slippage which permits the weight to fall free to the ground should constitute failure of the system.

10. Section § 1915.5 is revised as follows:

§ 1915.5 Incorporation by reference.

(a) Specifications, standards, and codes of agencies of the U.S. Government, to the extent specified in the text, form a part of the regulations of this part. In addition, under the authority vested in the Secretary under the Act, the specifications, standards, and codes of organizations which are not agencies of the U.S. Government, in effect on the date of the promulgation of the regulations of this part as listed below, to the extent specified in the text, form a part of the regulations of this part.

(b) The materials listed in paragraph (d) of this section are incorporated by reference in the corresponding sections noted as they exist on the date of the approval, and a notice of any change in

these materials will be published in the **Federal Register**. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(c) Copies of the following standards that are issued by the respective private standards organizations may be obtained from the issuing organizations. The materials are available for purchase at the corresponding addresses of the private standards organizations noted below. In addition, all are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington DC, and through the OSHA Docket Office, room N2625, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, DC 20210, or any of its regional offices.

(d)(1) The following material is available for purchase from the American National Standards Institute, 11 West 42nd Street, New York, NY 10036.

(i) ANSI A14.1–1959 Safety Code for Portable Wood Ladders, IBR approved for § 1915.72(a)(6)

(ii) ANSI A14.2–1956 Safety Code for Portable Metal Ladders, IBR approved for § 1995.72(a)(4)

(iii) ANSI B7.1–1964 Safety Code for the Use, Care, and Protection of Abrasive Wheels, IBR approval for § 1915.134(c)

(iv) ANSI Z87.1–1989 Practice for Occupational and Educational Eye and Face Protection, IBR approved for § 1915.153(b)(1).

(v) ANSI 87.1–1979 Practice for Occupational and Educational Eye and Face Protection, IBR approved for § 1915.153(b)(2)

(vi) ANSI Z89.1–1986 Personnel Protection—Protective Headgear for Industrial Workers Requirements, IBR approved for § 1915.155(b)(1)

(vii) ANSI Z89.1–1969 Safety Requirement for Industrial Head Protection, IBR approved for § 1915.155(b)(2).

(viii) ANSI Z41–1991 Personal Protection—Protective Footwear, IBR approved for § 1915.156(b)(1)

(ix) ANSI Z41–1983 Personal Protection—Protective Footwear, IBR approved for § 1915.156(b)(2).

(2) The following material is available for purchase from the American Society of Mechanical Engineers, 345 East 47th Street, New York, New York 10017:

(i) ASME Boiler and Pressure Vessel Code, Section VIII, Rules for Construction of Unfired Pressure Vessels, 1963, IBR approved for § 1915.172(a).

(3) The following material is available for purchase from the American Conference of Governmental Industrial Hygienists (ACGIH), 1014 Broadway, Cincinnati, OH 45202:

(i) Threshold limit values, 1970, IBR approved for §§ 1915.12(b) and 1915.1000, table Z.

[FR Doc. 96–12573 Filed 5–23–96; 8:45 am]
BILLING CODE 4510–26–P

federal register

Friday
May 24, 1996

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity; NOFA for Fair Housing Initiatives Program; FY 1996 Competitive Solicitation; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4047–N–01]

Office of the Assistant Secretary for Fair Housing and Equal Opportunity; NOFA for Fair Housing Initiatives Program; FY 1996 Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: This NOFA announces the availability of up to $12,106,000 of 1996 Fiscal Year (FY) funding for the Fair Housing Initiatives Program (FHIP). This program assists projects and activities designed to enforce and enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. In the body of this document is information concerning the purpose of the NOFA, eligibility, available amounts, selection criteria, how to apply for funding, and how selections will be made.

DATES: An application kit for funding under this Notice will be available following publication of the NOFA. The actual application due date will be specified in the application kit. However, applicants will be given at least 60 days from today's date, until July 23, 1996, to submit their applications. Applications will be accepted if they are received on or before the application due date, or are received within 7 days after the application due date, but with a U.S. postmark or receipt from a private commercial delivery service (such as, Federal Express or DHL) that is dated on or before the application due date.

ADDRESSES: To obtain a copy of the application kit, please write the Fair Housing Information Clearinghouse, P.O. Box 9146, McLean, VA 22102, or call the toll free number 1–800–343–3442 (voice) or 1–800–290–1617 (TTY). Please also contact this number if information concerning this NOFA is needed in an accessible format.

FOR FURTHER INFORMATION CONTACT: Sharon Bower, Special Assistant, Office of Fair Housing Initiatives and Voluntary Programs, Room 5234, 451 Seventh Street, S.W., Washington, D.C. 20410–2000. Telephone number (202) 708–0800. A telecommunications device for hearing and speech impaired persons is available at (202) 708–0800. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2529–0033. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Purpose and Substantive Description

(a) Authority

Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–19 (Fair Housing Act), charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate action with State and local agencies administering fair housing laws and to cooperate with, and render technical assistance to, public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616 note, established the Fair Housing Initiatives Program (FHIP) to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enforce and enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR part 125.

Three general categories of activities were established at 24 CFR part 125 for FHIP funding under section 561 of the Housing and Community Development Act of 1987: the Administrative Enforcement Initiative, the Education and Outreach Initiative, and the Private Enforcement Initiative. Section 905 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992), amended section 561 by adding specific eligible applicants and activities to the Education and Outreach and Private Enforcement Initiatives, as well as an entirely new Fair Housing Organizations Initiative.

More significantly, section 905 has established FHIP as a permanent program. The final rule implementing these statutory amendments was published on November 27, 1995 (60 FR 58446).

The primary objective of this NOFA is to provide funds for the purpose of sustaining and supporting the activities of fair housing enforcement organizations. The limited amount of funding prevents the Department from embarking on new projects or initiatives. Instead, it prompts the Department to promote supporting those new fair housing enforcement organizations created under previous FHIP competitions and giving preference to those FHIP recipients whose grants expire between September 30, 1995 and December 31, 1996.

Definitions: The term "qualified fair housing enforcement organization" (the only eligible applicants under this NOFA) is given a specific definition in section 905. In addition, the November 27, 1995 final rule defines the term "meritorious claim," which is used in the statutory definition of "qualified fair housing enforcement organization." Applicants should note that the definition of "meritorious claim" is only relevant as a part of the definition of QFHO, and does not impose a limit on the kinds of activities that may be funded under FHIP. These definitions, which apply to this NOFA, are as follows:

Qualified fair housing enforcement organization (QFHO) means any organization, whether or not it is solely engaged in fair housing enforcement activities, that—

(1) Is organized as a private, tax-exempt, nonprofit, charitable organization;

(2) Has at least 2 years experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and

(3) Is engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims at the time of application for FHIP assistance. For the purpose of meeting the 2-year qualification period for these activities it is not necessary that the activities were conducted simultaneously, as long as each activity was conducted for 2 years. It is also not necessary for the activities to have been conducted for 2 consecutive or continuous years. An organization may aggregate its experience in each activity over the 3 year period preceding its application to meet the 2-year qualification period requirement.

Meritorious claims means enforcement activities by an organization that resulted in lawsuits, consent decrees, legal settlements, HUD and/or substantially equivalent agency (under 24 CFR 115.6) conciliations and organization initiated settlements with the outcome of monetary awards for compensatory and/or punitive damages to plaintiffs or complaining parties, or other affirmative relief, including the provision of housing.

On July 14, 1995, HUD announced a public meeting to be held July 21, 1995 (60 FR 36301). The purpose of the meeting was to solicit comments on the FHIP. Additionally, on August 3, 1995, HUD invited written public comments on the FHIP (60 FR 39769). During the comment period, which ended August 15, 1995, HUD received public comments. HUD is grateful for public comments and has considered them in the development of the FY 1996 FHIP NOFA and Application Kit.

The program components of FHIP are described in the Catalog of Federal Domestic Assistance at 14.409, Education and Outreach Initiative; 14.410, Private Enforcement Initiative; and 14.413, Fair Housing Organizations Initiative.

(b) Allocation Amounts

For FY 1996, The Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134, approved April 26, 1996) appropriated $30 million for Fair Housing activities, of which $17 million is being made available for the FHIP. Of this amount, $4,894,000 is being utilized for the FY 1996 funding of FY 1995 awards. These awards were made to nine organizations that submitted applications under the FY 1995 FHIP NOFA and received scores making them the next eligible applicants for funding, but that did not receive FY 1995 funding. The remaining $12,106,000 is being made available on a competitive basis to eligible organizations that submit timely applications and are selected in response to this NOFA. The funding selections will be made on the basis of criteria for eligibility, factors for award, and completeness of budget information, and any other factors described in this NOFA under the heading, below, Selection Process.

The full cost of FY 1996 multi-year awards under the Private Enforcement Initiative will be funded from FY 96 funds. Recipients of 48 month PEI FHIP grant awards based upon applications submitted under the FY 1995 FHIP NOFA, RFA–95–1 (FR–3878, published April 11, 1995, 60 FR 18444), may not apply in the FY 1996 competition for multi-year Private Enforcement Initiative awards.

The Department retains the right to shift funds among the FHIP Initiatives listed below, within statutorily prescribed limitations. The amounts included in this NOFA are subject to change based on fund availability. The amount of FY 1996 funding available for the FHIP is divided among three FHIP Initiatives as follows:

(1) *Education and Outreach Initiative (EOI).* The amount of $2,000,000 in FY 1996 funds is being used for the Education and Outreach Initiative for single year projects. Of this amount, $185,677 is made available under this NOFA for national Education and Outreach Initiative programs, with an award cap of $185,677, and $1.0 million in FY 1996 funds is made available under this NOFA for regional, local, and community based programs, with an award cap of $125,000. Furthermore, $814,323 will be utilized for the FY 1996 funding of FY 1995 awards.

(2) *Private Enforcement Initiative (PEI).* The amount of $12 million in FY 1996 funds is being used for the PEI. Funds are made available under this NOFA in the amount of $7,920,323 for 24 to 36 month projects, with an award cap of $500,000 and with incremental funding during the life of the award subject to periodic performance reviews. The amount of $4,079,677 will be used for the FY 1996 funding of FY 1995 awards.

Recipients of multi-year PEI awards based upon applications submitted under RFA 95–1 for 48-month projects may not apply for multi-year PEI funds made available under this NOFA. This restriction does not apply to 24 month projects with FY 95 funding.

(3) *Fair Housing Organizations Initiative (FHOI).* The amount of $3,000,000 is made available under this NOFA for the FHOI, to be used for the continued development of fair housing enforcement organizations, with an award cap of $250,000.

(c) Eligibility

Eligible activities, eligible applicants, and additional requirements under each Initiative are listed below. All activities and materials funded by FHIP must be reasonably accessible to persons with disabilities.

(1) *Education and Outreach Initiative.*

(i) *Eligible applicants.* The only organizations that are eligible to receive FY 1996 funding under the Education and Outreach Initiative are qualified fair housing enforcement organizations (QFHOs);

(ii) *Eligible activities.* (A) *In general.* Each application for Education and Outreach Initiative funding must identify if it proposes a national, regional, local, or community-based program. The kinds of activities that may be funded through this Initiative may include (but are not limited to) the following:

(*1*) Activities that support the Fair Housing planning requirement of State and local governments subject to the Consolidated Plan (24 CFR part 91). These activities include (a) conducting an analysis of impediments to fair housing choice and (b) undertaking actions to eliminate the identified impediments.

(*2*) Informing persons with disabilities, and/or their support organizations and service providers, housing providers, and the general public on the rights of disabled persons under the Fair Housing Act and on the location or availability of accessible housing or the modification of non-accessible housing;

(*3*) Providing guidance to housing providers on meeting their Fair Housing Act obligation to make reasonable accommodations for persons with disabilities;

(*4*) Providing fair housing counseling services, including the subjects of pre- and post-purchase counseling (mortgage lending, appraisal, and insurance and/or rental);

(*5*) Developing informative material on fair housing rights and responsibilities;

(*6*) Developing fair housing and affirmative marketing instructional material for educational programs for housing industry groups;

(*7*) Providing educational materials, seminars and working sessions for schools, civic associations, neighborhood organizations, and other groups to support community based education and outreach efforts;

(*8*) Developing media campaigns regarding fair housing;

(*9*) Bringing housing industry and civic or fair housing groups together to identify illegal real estate practices and to determine how to correct them;

(*10*) Developing mechanisms for the identification of, and quick response to, housing discrimination cases involving the threat of physical harm;

(*11*) Developing materials and providing technical assistance to support compliance with housing adaptability and accessibility guidelines contained in the 1988 Fair Housing Amendments Act;

(*12*) Developing or implementing Fair Housing Month activities.

(B) *National programs.* (*1*) Activities eligible to be funded as national programs shall be designed to provide a centralized, coordinated effort for the development and dissemination of fair

housing media products or educational materials that may appropriately be used on a nationwide basis. All activities listed in paragraph I.(c)(2)(ii)(A) above are eligible as national projects.

(2) National program applications will receive a preference of up to ten additional points if they:

(i) Demonstrate cooperation with real estate industry organizations (up to five points); and/or

(ii) Provide for the dissemination of educational information and technical assistance to support compliance with the housing adaptability and accessibility guidelines contained in the Fair Housing Amendments Act of 1988 (up to five points).

(C) *Regional, local and community-based programs.* (1) Activities eligible to be funded as regional, local and community-based programs include any of the activities, to be implemented on a regional, local or community-based level, listed in paragraph I.(c)(2)(ii)(A) above, of this NOFA.

(2) For the purposes of this NOFA, activities that are "local" in scope are activities that are limited to a single unit of general local government, meaning a city, town, township, county, parish, village, or other general purpose political subdivision of a State. Activities that are "regional" in scope are activities that cover adjoining States or two or more units of general local government within a State. Activities that are "community based" in scope are those which are focused on particular neighborhoods within a unit of general local government. Community-based programs include school, church and community presentations, conferences or other educational activities.

(iii) *Additional requirements.* The following requirements are applicable to all applications under the Education and Outreach Initiative:

(A) All projects must address or have relevance to housing discrimination based on race, color, religion, sex, handicap, familial status or national origin.

(B) Projects may range in length from twelve to eighteen months in duration. National projects have an award cap of $185,677. Regional, local and community based projects have an award cap of $125,000. Applications which request FHIP funding in excess of the award cap will be deemed ineligible.

(C) Projects that appear to be aimed solely or primarily at research or data-gathering, including surveys and questionnaires, will not be eligible under this NOFA. Such data-gathering activities require OMB approval under the Paperwork Reduction Act before commencement of the activity.

(D) All proposals must contain a description of how the activities or the final products of the projects can be used by other agencies and organizations and what modifications, if any, would be necessary for that purpose.

(E) Coordination of activities. Each non-governmental applicant for funding under the Education and Outreach Initiative Regional, Local and Community-Based Component that is located within the jurisdiction of a State or local enforcement agency or agencies administering a fair housing law that has been certified by the Department under 24 CFR part 115 as being a substantially equivalent fair housing law must provide, with its application, documentation (such as letters between the two organizations) that it has consulted with the agency or agencies to coordinate activities to be funded under the Education and Outreach Initiative. This coordination will ensure that the activities of one group will minimize duplication and fragmentation of activities of the other. Failure to submit the documentation required by this section will be treated as a technical deficiency in accordance with section IV., below, of this NOFA.

(F) Every application must include as one of its activities a procedure for referring persons with Fair Housing complaints to State or local agencies administering substantially equivalent laws, private attorneys, HUD or the Department of Justice for further enforcement processing.

(2) *Private Enforcement Initiative (PEI).*

(i) *Eligible applicants.* The only organizations that are eligible to receive FY 1996 funding assistance under the PEI are qualified fair housing enforcement organizations (QFHOs). NOTE: Recipients of multi-year (48 month) PEI FHIP grant awards based upon applications submitted under RFA–95–1 may not apply in the FY 1996 competition for multi-year PEI awards.

(ii) *Eligible activities.* Applications are solicited for multi-year project proposals as described in this NOFA. Applications may designate up to 20% of requested funds to conduct education and outreach to promote awareness of the services provided by the project, but such promotion must be necessary for the successful implementation of the project.

(A) *Bonus Points.* PEI applications from FHIP grant recipients whose period of performance for all FHIP grants expired/will expire between September 30, 1995 and December 31, 1996, will receive a bonus of ten additional points.

(B) Project applications may involve, but are not limited to, the following:

(1) Discovering and providing remedies for discrimination in the public or private real estate markets and real estate-related transactions, including, but not limited to, the making or purchasing of loans and the provision of other financial assistance for sales and rentals of housing, such as property insurance, appraisal practices, and housing advertising;

(2) Conducting investigations of systemic housing discrimination for further enforcement processing by HUD or State or local agencies which administer laws that are substantially equivalent to the Fair Housing Act, or for referral to private attorneys or the Department of Justice;

(3) Professionally conducting testing or other investigative support for administrative and judicial enforcement of fair housing laws;

(4) Linking fair housing organizations regionally in enforcement activities designed to combat broader housing market discriminatory practices;

(5) Building the capacity to investigate, through testing and other investigative methods, housing discrimination complaints covering all protected classes, including persons with mental and physical disabilities;

(6) Carrying out special projects, including the development of prototypes to respond to new or sophisticated forms of discrimination against persons protected under title VIII, such as in the areas of independent living and architectural barriers;

(7) Providing funds for the costs and expenses of litigating fair housing cases, including expert witness fees.

(iii) *Additional requirements.*

(A) Testers in testing activities funded with PEI funds must not have prior felony convictions or convictions of crimes involving fraud or perjury, and they must receive training or be experienced in testing procedures and techniques. Testers and the organizations conducting tests, and the employees and agents of these organizations may not:

(1) Have an economic interest in the outcome of the test, without prejudice to the right of any person or entity to recover damages for any cognizable injury;

(2) Be a relative of any party in a case;

(3) Have had any employment or other affiliation, within one year, with the person or organization to be tested; or

(4) Be a licensed competitor of the person or organization to be tested in the listing, rental, sale, or financing of real estate.

(B) Multi-year projects must be for 24–36 months in duration, with an award cap of $500,000. Successful projects will receive incremental funding during the life of the award subject to periodic performance reviews. Applications which request FHIP funding in excess of the award cap will be deemed ineligible.

(C) Projects that appear to be aimed solely or primarily at research or data-gathering, including surveys and questionnaires unrelated to existing or planned fair housing enforcement programs, will not be eligible for funding under this NOFA. Data-gathering activities require OMB approval under the Paperwork Reduction Act before commencement of the activity.

(D) In accordance with 24 CFR 125.104(f), no recipient of assistance under the PEI may use any funds provided by the Department for the payment of expenses in connection with litigation against the United States.

(E) Recipients of funds under the Private Enforcement Initiative shall be required to record, in a case tracking log (or Fair Housing Enforcement Log) to be supplied by HUD, information appropriate to the funded project relating to the number of complaints of discrimination received; the basis of these complaints; the type and number of tests utilized in the investigation of each allegation; the time for case processing, including administrative or judicial proceedings; the cost of testing activities and case processing; and case outcome or relief provided. The recipient must agree to make this log available to HUD.

(F) All proposals must certify that the applicant will not solicit funds from or seek to provide fair housing educational or other services or products for compensation, directly or indirectly, to any person or organization which has been the subject of testing by the applicant during a 12 month period following the test. This requirement does not preclude settlements based on investigative findings.

(3) *Fair Housing Organizations Initiative (FHOI).*

(i) *Purpose: Continued Development of Existing Organizations.*

(A) *Eligible applicants.* The only organizations eligible under this NOFA to apply under this purpose of the FHOI are: qualified fair housing enforcement organizations (QFHOs).

(B) *Eligible activities.* Eligible activities for funding under this purpose of the FHOI are any activities listed as eligible under the Private Enforcement Initiative in section I.(c)(2)(ii) of this NOFA and carried out as twelve to eighteen month projects. However, all applications must be for the sole purpose of providing direct services/support to sustain the operations of the new fair housing enforcement organizations created under the FY 93 FHIP NOFA (58 FR 68000, December 22, 1993) and the FY 94 FHIP NOFA (59 FR 25532, May 16, 1994). (The full listing of these organizations will be included in the Application Kit.)

The list of eligible activities are examples only, and is not all inclusive. In addition to the examples listed in section I.(c)(2)(ii), other eligible activities include:

(1) Technical assistance and mentoring services for the new organization(s);

(2) Training for the staff of the new organization(s);

(3) Up to 20% of requested funds to conduct education and outreach to promote awareness of the services provided by the new organization(s), but such promotion must be necessary for the successful implementation of the project;

(4) Other costs relating to the operations of the new organization(s):

(i) Salaries and fringe benefits;

(ii) Rent, leases, supplies and other direct costs;

(iii) Travel connected with funded activities;

(iv) Testing and litigation expenses, and

(v) Indirect costs.

(C) *Additional Requirements.* The following requirements apply to activities funded under the Continued Development of Existing Organizations purpose of the FHOI:

(1) *Limitation on Sponsorship.* Applicants may only propose to support up to two (2) new fair housing enforcement organizations under a single award. Applicants must include with their applications letters of support for the proposed activities from the new organization(s) identified for sponsorship and detailed budgets for both the applicant and the new organization(s).

(2) *Limitation on Awards.* The limitation of receiving one award cited in this NOFA at I.(d)(3) will be modified for applicants that submit successful applications under the FHOI. In such cases, FHOI recipients will also be eligible to receive one additional award under either the PEI or EOI.

(3) *Eligible applications involving the same new fair housing enforcement organization(s).* If more than one eligible application proposes to support the same new organization(s), the applicant receiving the higher overall score will be selected for funding.

(4) *Capacity building.* Capacity building activities must be directed toward building capacity of the new fair housing enforcement organization(s) to provide fair housing enforcement. Thus, applications which include non-enforcement related activities as a part of the project will not be approved and corresponding budget reductions will be made to the award.

(5) *Operating budget limitation.* Funding provided under this purpose of the FHOI may not exceed more than 50 percent of the operating budget of a recipient organization for any one year. For purposes of the limitation in this paragraph, *operating budget* means the applicant's total planned budget expenditures from all sources, including the value of in-kind and monetary contributions, in the year for which funding is sought. Additionally, the grant recipient is limited to expending no more than 25% of the amount requested in the application for the purpose of covering the grantee's costs in providing sponsorship support to the new organization(s).

(6) *Term of grant.* One-year projects may be from twelve to eighteen months in duration, with an award cap of $250,000. Applications which request FHIP funding in excess of the award cap will be deemed ineligible.

(7) Testers in testing activities funded with FHIP funds must not have prior felony convictions or convictions of crimes involving fraud or perjury, and they must receive training or be experienced in testing procedures and techniques. Testers and the organizations conducting tests, and the employees and agents of these organizations may not:

(i) Have an economic interest in the outcome of the test, without prejudice to the right of any person or entity to recover damages for any cognizable injury;

(ii) Be a relative of any party in a case;

(iii) Have had any employment or other affiliation, within one year, with the person or organization to be tested; or

(iv) Be a licensed competitor of the person or organization to be tested in the listing, rental, sale, or financing of real estate.

(8) Projects that appear to be aimed solely or primarily at research or data-gathering including surveys and questionnaires will not be eligible for funding under this NOFA. Data-gathering activities require OMB approval under the Paperwork

Reduction Act before commencement of the activity.

(9) Each applicant under the continued development of existing organizations purpose of the Fair Housing Organizations Initiative must submit an operating budget that describes the applicant's total planned expenditures from all sources, including the value of in-kind and monetary contributions, in the 12–18 months for which funding is sought. This operating budget will be used for the purposes of determining the extent of the 50% funding limitation on operating expenses.

(10) All proposals for testing under the Fair Housing Organizations Initiative must certify that the applicant will not solicit funds from or seek to provide fair housing educational or other services or products for compensation, directly or indirectly, to any person or organization which has been the subject of testing by the applicant during a 12 month period following the test. This does not preclude settlement based on investigative findings.

(d) Selection Criteria/Rating Factors

(1) Selection Criteria for Rating Applications for Assistance

In addition to the preference points indicated in section I.(c)(1)(ii)(B)(2) for particular activities, and in section I.(c)(1)(ii)(A) for PEI applications from FHIP grant recipients whose period of performance for all FHIP grants expired/will expire, all projects proposed in applications will be rated on the basis of the following criteria for selection:

(i) *The anticipoted impact of the project proposed on the concerns identified in the application.* (20 points) In determining the anticipated impact of the proposed project, HUD will consider the degree to which a proposed project addresses problems and issues that are significant fair housing problems and issues, as explained in the application, or based upon other information available to HUD. (The clarity and thoroughness of the project description can be considered in this determination.) This criterion will be judged on the basis of the applicant's submissions in response to paragraph III.(a)(1) of this NOFA under the heading "Checklist of Application Submission Requirements."

(ii) *The extent to which the project will provide benefits in support of fair housing after funded activities have been completed.* (20 points) In determining the extent to which the project will provide benefits after funded activities have been completed, HUD will consider the degree to which the project will be of continuing use in dealing with housing discrimination after funded activities have been completed. This criterion will be judged on the basis of the applicant's submissions in response to paragraphs III.(a)(6) and III.(a)(7) of this NOFA under the heading "Checklist of Application Submission Requirements."

(iii) *The extent to which the project will provide the maximum impact on the concerns identified in a cost-effective manner.* (20 points) In determining the extent to which the project will provide the maximum impact on the concerns identified in a cost effective manner, HUD will consider the quality and reasonableness of the proposed activities, timeline and budget for implementation and completion of the project. HUD will consider as well the adequacy and clarity of proposed procedures to be used by the agency for monitoring the progress of the project and ensuring its timely completion. These procedures may consist of a system for checking whether or not the milestones established by the project's timeline are being met. The applicant's capability in handling financial resources (e.g., adequate financial control procedures, accounting procedures) will be taken into account as part of the assessment. This may be evidenced by the applicant's financial management of previous FHIP grants or other civil rights project management, a certification from the cognizant auditor, and other documentation. This criterion will be judged on the basis of the applicant's submissions in response to paragraphs III.(a)(2), and III.(a)(5) of this NOFA under the heading "Checklist of Application Submission Requirements."

(iv) *The extent to which the applicant's professional and organizational experience will further the achievement of project goals.* (30 points) In determining the extent to which the applicant's professional and organizational experience will further the achievement of the project's goals, HUD will consider the applicant's experience in formulating and carrying out programs to prevent or eliminate discriminatory practices, including the applicant's management and performance under past and current FHIP or other civil rights projects, the experience and qualifications of existing personnel identified for key positions, or a description of the qualifications of new staff that will be hired and the experience of subcontractors/consultants. For organizations submitting an application under the Education and Outreach Initiative, HUD will consider both fair housing experience and experience in implementing education, outreach or public information programs. This criterion will be judged on the basis of the applicant's submissions in response to paragraph III.(a)(3) of this NOFA under the heading "Checklist of Application Submission Requirements."

(v) *The extent to which the project utilizes other public or private resources that may be available.* (10 points) Both monetary and in-kind resources identified in the application are eligible for determining the extent to which other public or private resources will be used. The resources that will be considered must be targeted specifically for the proposed project, and must be over and above the resources available to the applicant as a part of its usual, non-project operations for such expenses as salaries, equipment, supplies, and rent. This criterion will be judged on the basis of the applicant's submissions in response to paragraph III.(a)(4) of this NOFA under the heading "Checklist of Application Submission Requirements."

(2) Selection Process

Each application for funding will be evaluated competitively, and awarded points based on the Selection Criteria for Rating Applications for Assistance identified in section I.(d)(1) of this NOFA. The final decision rests with the Assistant Secretary for Fair Housing and Equal Opportunity or designee. After eligible applications are evaluated against the factors for award and assigned a score, they will be organized by rank order. The rank ordering will be done separately for four categories: PEI; EOI-National; EOI-Regional, local and community-based; and FHOI-Continued Development of Existing Organizations. Awards for each category listed above will be funded in rank order until all available funds have been obligated, or until there are no acceptable applications, with one exception. If more than one eligible application under the FHOI competition proposes to support the same new fair housing enforcement organization(s), the applicant receiving the higher overall score will be selected for funding. The Assistant Secretary will have the discretion to make awards out of rank order to provide broader geographic representation among funded organizations and to provide enforcement of fair housing rights for all protected classes in a particular geographic region. When there is a tie in the overall total score, the award will be made to the applicant that receives a total higher number of cumulative points under Selection Criteria (i) and (iv) of section I.(d)(1), above. If these scores are identical then geographical consideration will be the next variable, followed by the grant with the lower request for FHIP funding.

(3) Applicants Limited to a Single Award

Applicants may apply for funding for more than one project or activity. However, applicants are limited to one award under this NOFA, with one exception. The limitation of receiving one award will be modified for applicants that submit successful applications under the FHOI. In such cases, FHOI recipients will also be eligible to receive one additional award under either the PEI or EOI. In all other cases, if more than one eligible application is submitted by an applicant and both are within funding range, the Department will select the application which the applicant has indicated as its preference for award should more than one application submitted be within funding range.

(4) Independence of Awards

Each project or activity proposed in an application must be independent and capable of being implemented without reliance on the selection of other applications submitted by the applicant or other applicants. However, this provision does not preclude an applicant from submitting a proposal which includes other organizations as subcontractors to the proposed project or activity.

(5) Project Starting Period

The Department has determined that all applications must propose that the project will begin during the period October 1–December 1, 1996.

(6) Page Limitation

Applicants will be limited to 10 pages of narrative responses for each of the five selection criteria (this does not include forms or documents which are required under each criterion). Furthermore, brochures, news articles or other examples included in the application will not be considered in the evaluation process. Applicants that exceed the 10-page limit for each criterion will only have the first 10 pages evaluated for each criterion. Failure to provide narrative responses to all five criteria will result in an application being deemed as ineligible.

(e) Applicant Notification and Award Procedures

(1) Notification

No information will be available to applicants during the period of HUD evaluation, approximately 90 days, except for notification in writing to those applicants that are determined to be ineligible or that have technical deficiencies in their applications that may be corrected. Selectees will be announced by HUD upon completion of the evaluation process, subject to final negotiations and award.

(2) Negotiations

After HUD has ranked the applications and made an initial determination of applicants whose scores are within the funding range (but before the actual award), HUD may require that applicants in this group participate in negotiations to determine the specific terms of the cooperative or grant agreement. In cases where it is not possible to conclude the necessary negotiations successfully, awards will not be made.

If an award is not made to an applicant whose application is in the initial funding threshold because of an inability to complete successful negotiations, and if funds are available to fund any applications that may have fallen outside the initial funding threshold, HUD will select the next highest ranking applicant and proceed as described in the preceding paragraph.

(3) Funding Instrument

HUD expects to award a cost reimbursable or fixed-price cooperative or grant agreement to each successful applicant. HUD reserves the right, however, to use the form of assistance agreement determined to be most appropriate after negotiation with the applicant.

(4) Reduction of Requested Grant Amounts and Special Conditions

HUD may approve an application for an amount lower than the amount requested, fund only portions of an application, withhold funds after approval, and/or require the grantee to comply with special conditions added to the grant agreement, in accordance with 24 CFR 84.14, the requirements of this NOFA, or where:

(i) HUD determines the amount requested for one or more eligible activities is unreasonable or unnecessary;

(ii) The applicant has proposed an ineligible activity in an otherwise eligible project;

(iii) Insufficient amounts remain in that funding round to fund the full amount requested in the application and HUD determines that partial funding is a viable option;

(iv) The applicant has demonstrated an inability to manage HUD grants, particularly Fair Housing Initiatives Program grants; or

(v) For any other reason where good cause exists.

(5) Performance Sanctions

A recipient failing to comply with the procedures set forth in its grant agreement will be liable for such sanctions as may be authorized by law, including repayment of improperly used funds, termination of further participation in the FHIP, and denial of further participation in programs of the Department or of any Federal agency.

II. Application Process

An application kit is required as the formal submission to apply for funding. The kit includes information on the Management Work Plan and Budget for activities proposed by the applicant. An application may be obtained by writing the Fair Housing Information Clearinghouse, P.O. Box 9146, McLean, VA 22102, or by calling the toll free number 1–800–343–3442 (voice) or 1–800–290–1617 (TTY). To ensure a prompt response, it is suggested that requests for application kits be made by telephone.

Completed applications are to be submitted to: Maxine B. Cunningham, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Room 5234, 451 Seventh Street, S.W., Washington, DC 20410.

The application due date will be specified in the application kit. However, applicants will be given at least 60 days from today's date, until July 23, 1996, to submit their applications. Applications will be accepted if they are received on or before the application due date, or are received within 7 days after the application due date, but with a U.S. postmark or receipt from a private commercial delivery service (such as, Federal Express or DHL) that is dated on or before the application due date.

The application deadline is firm as to date. In the interest of fairness to all competing applicants, the Department will treat as *ineligible for consideration* any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. A

transmission by facsimile machine ("FAX") will not constitute delivery.

An applicant may apply for funding for more than one project or activity, but a separate application must be submitted for each of the following categories of funding:

(1) National programs under the Education and Outreach Initiative;

(2) Regional or local and community-based activities under the Education and Outreach Initiative;

(3) Multi-year projects under the Private Enforcement Initiative; and

(4) Continued Development of Existing Organizations activities under the Fair Housing Organizations Initiative.

Although a separate application is required for each funding category, an application may propose more than one type of eligible activity under each category. For example, both production and distribution of a public service message may be proposed in a single application for a national program under the Education and Outreach Initiative.

Applicants must submit all information required in the application kit and must include sufficient information to establish that the applicant and its application meet eligibility requirements as set forth above and the application meets the selection criteria set forth in section I.(d), above, of this NOFA.

III. Checklist of Application Submission Requirements

(a) *General requirements.* The application kit will contain a checklist of application submission requirements to complete the application process. Each application for FHIP funding must contain the following items:

(1) A description of the activities proposed for funding, and the practice or practices at the community, local, regional or national level that have adversely affected the achievement of the goal of fair housing, and that will be addressed by the proposed activities. This description must include a discussion and analysis of the housing practices identified, including available information and studies relating to discriminatory housing practices and their historical background, and relevant demographic data indicating the nature and extent of the impact of the described practices on persons seeking dwellings or services related to the sale, rental or financing of dwellings, in the general location where the applicant proposes to undertake activities.

(2) A budget—which must include a set-aside of $5,000 for single-year projects and $10,000 for multi-year projects to be used for travel and associated costs for training sponsored or approved by the Department—and a timeline for the implementation of the proposed activities, consisting of a description of the specific activities to be conducted with FHIP funds, the geographic areas to be served by the activities, any reports to be produced in connection with the activities, and a schedule for the implementation and completion of the activities.

(3) A description of the applicant's experience in formulating or carrying out programs to prevent or eliminate discriminatory housing practices or in implementing other civil rights programs, the experience and qualifications of existing personnel identified for key positions, or a description of the qualifications of new staff to be hired, and the experience of subcontractors/consultants.

(4) A statement indicating the need for FHIP funding in support of the proposed project and an estimate of other public or private resources that will be used to assist the proposed activities.

(5) A description of the procedures to be used by the applicant for monitoring the progress of the proposed activities and the applicant's planned or implemented financial control procedures that will demonstrate the applicant's capability in managing financial resources.

(6) A description of the fair housing benefits that successful completion of the project will produce, and the indicators by which these benefits are to be measured.

(7) A description of the degree to which the project will be of continuing use in addressing housing discrimination after funded activities have been completed;

(8) HUD Form 2880, Applicant Disclosures;

(9) Fair Housing Organizations Initiative applicants must include with their applications letters of support for the proposed activities from the new organization(s) identified for sponsorship, and detailed budgets for both the applicant and the new organization(s).

(10) A listing of any current or pending grants or contracts, or other business or financial relationships or agreements, to provide training, education, and/or self-testing services between the applicant and any entity or organization of entities involved in the sale, rental, advertising or provision of insurance, brokerage or lending services for housing. The listing must include the name and address of the entity or organization; a brief description of the services being performed or for which negotiations are pending; the dates for performance of the services; and the amount of the contract or grant. This listing must be updated during the grant negotiation period, at the end of the grant term, and for grants that will run for more than twelve months, at the end of each year of the multi-year project.

(11) The applicant must submit a certification and disclosure in accordance with the requirements of section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989), as implemented in HUD's interim final rule at 24 CFR part 87, published in the **Federal Register** on February 26, 1990 (55 FR 6736). This statute generally prohibits recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. If warranted, the applicant should include the Disclosure of Lobbying Activities form (SF–LLL).

(12) Prior to award execution, successful applicants must submit a certification that they will comply with the certification requirements contained in the application kit.

(13) Each application must include documentation which demonstrates that the applicant meets all of the requirements of a qualified fair housing enforcement organization (QFHO), as defined under the heading *Definitions*, in section I.(a), above, of this NOFA.

IV. Corrections to Deficient Applications

Applicants will not be disqualified from being considered for funding because of technical deficiencies in their application submission, e.g., an omission of information such as regulatory/program certifications, or incomplete signatory requirements for application submission.

HUD will notify an applicant in writing of any technical deficiencies in the application. The applicant must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any technical deficiency.

The 14-day correction period pertains only to non-substantive, technical deficiencies or errors. Technical deficiencies relate to items that:

1. Are not necessary for HUD review under selection criteria/ranking factors; and

2. Would not improve the substantive quality of the proposal.

V. Other Matters

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients and sub-recipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that the policies announced in this Notice would not have a significant impact on the formation, maintenance, and general well-being of families except indirectly to the extent of the social and other benefits expected from this program of assistance.

Executive Order 12612, Federalism

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the policies contained in this Notice will not have federalism implications and, thus, are not subject to review under the Order. The promotion of fair housing policies is a recognized goal of general benefit without direct implications on the relationship between the national government and the states or on the distribution of power and responsibilities among various levels of government.

Drug-Free Workplace Certification

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide drug-free workplaces. Thus, each applicant must certify that it will comply with drug-free workplace requirements in accordance with 24 CFR part 24, subpart F.

Accountability in the Provision of HUD Assistance

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the final rule codified at 24 CFR part 4, subpart A, published on April 1, 1996 (61 FR 1448), contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published, at 57 FR 1942, a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

Section 103 HUD Reform Act. HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) A telecommunications device for persons with speech and hearing impairments is available at 1–800–877–8339. For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Authority: 42 U.S.C. 3601–3619; 42 U.S.C. 3616 note.

Dated: May 10, 1996.

Elizabeth K. Julian,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 96–13073 Filed 5–23–96; 8:45 am]

BILLING CODE 4210–28–P

OL
1
SS
1
0
2
MY
2 4
996
MI

federal register

Friday
May 24, 1996

Part V

Department of Education

Foreign Language Assistance Grants (Local Education Agencies); Inviting Applications for New Awards for Fiscal Year 1996; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.293B]

Foreign Language Assistance Grants (Local Educational Agencies); Notice Inviting Applications for New Awards for Fiscal Year (FY) 1996

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this competition.

Purpose of Program: This program provides grants to pay for the Federal share of the cost of innovative model programs providing for the establishment, improvement, or expansion of foreign language study for elementary and secondary school students.

In awarding grants under this program, the Secretary supports projects that—(A) show the promise of being continued beyond their project period; (B) demonstrate approaches that can be disseminated and duplicated in other local educational agencies; and (C) may include a professional development component.

Eligible Applicants: Local educational agencies.

Deadline for Transmittal of Applications: June 24,1996.

Deadline for Intergovernmental Review: August 23,1996.

Available Funds: $6,039,000.

Estimated Range of Awards: $50,000-$175,000.

Estimated Average Size of Awards: $112,500.

Estimated Number of Awards: 54.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 75 (Direct Grant Programs).

(2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR Part 82 (New Restrictions on Lobbying).

(7) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

Description of Program: Part B of Title VII of the Elementary and Secondary Education Act of 1965, as amended (the Act), authorizes the Foreign Language Assistance Grants program. Appropriations for this program are authorized by section 7206 of the Act. Section 7203(c)(3) of the Act provides that at least 75 percent of the funds appropriated under section 7206 shall be used for the expansion of foreign language learning in elementary grades. The Secretary does not fund projects that propose Native American languages.

Priorities: Under 34 CFR 75.105(c)(2)(i) the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards five points to an application that meets this competitive priority in a particularly effective way. These points would be in addition to any points the application earns under the selection criteria for the program:

Competitive Preference Priority 1—Less Commonly Taught Languages of Major Economic and Political Importance to the United States (5 points).

Supplementary Information: The Senate Committee on Appropriations noted that three-fourth's of the world's population, including some major United States trading partners, speak Japanese, Chinese, Russian, Arabic, or Korean. S. REP. No. 318, 103rd Cong. 2nd Sess. 187 (1994). In addition, the Committee pointed out that these languages are seldom offered in our schools and that truly effective language training must begin in the elementary grades. In order to address this important concern, the Secretary gives an additional five points to an application that meets the competitive priority in a particularly effective way.

Priority

Projects that propose to establish, improve, or expand foreign language learning in the elementary grades and that focus on any of the following languages: Japanese, Chinese, Russian, Arabic, or Korean.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department of Education to offer interested parties the opportunity to comment on proposed priorities. Because of the lateness of Congress in passing the fiscal year 1996 budget for this agency, the Department has determined that publication of a proposed priority would interfere with an orderly, responsible grant award process. The Secretary, therefore, has determined, pursuant to 5 U.S.C. 553(b)(B), that publication of a proposed priority is impracticable and contrary to the public interest.

Under 34 CFR 75.105(b)(2)(iv) and (c)(2)(i) and section 7204(b) of the Act (20 U.S.C. 7514(b)), the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards three points to an application that meets this competitive priority in a particularly effective way. These points would be in addition to any points the application earns under the selection criteria for the program: *Competitive Preference Priority 2—Special Considerations* (3 points).

Priority

Projects that propose to carry out one or more of the following activities: (1) intensive summer foreign language programs for professional development; (2) linking non-native English speakers in the community with the schools in order to promote two-way language learning; or (3) promoting the sequential study of a foreign language, beginning in elementary schools.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.*—(1) *Meeting the purposes of the authorizing statute.* (37 points) The Secretary reviews each application to determine how well the project will meet the purpose of Part B of Title VII of the Act, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the Act.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the Act, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i) (A) and (B) of this section will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B) of this section, the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (8 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the recipient.)

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on August 10, 1995 (60 FR 40980 and 40981).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.293B, U.S. Department of Education, Room 6213, 600 Independence Avenue, S.W., Washington, D.C. 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Eastern time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Instructions for transmittal of applications:

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.293B), Washington, D.C. 20202–4725 or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Eastern time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.293B), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instruction and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden, guidance on addressing the EDGAR selection criteria, and various

assurances, certifications, and required documentation. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Part III: Application Narrative.

Additional Materials

a. Estimated Public Reporting Burden.

b. Part B of Title VII of the Elementary and Secondary Education Act of 1965, as amended (the Act).

c. Guidance on Addressing the EDGAR Selection Criteria.

d. Additional Non-Regulatory Guidance: Questions and Answers.

e. Group Application Certification.

f. Student Data.

g. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

h. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

i. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

j. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget at 61 FR 1413 (January 19, 1996).

k. Notice to All Applicants.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. All applicants must submit ONE original signed application, including ink signatures on all forms and assurances, and TWO copies of the application. Please mark each application as "original" or "copy". No grant may be awarded unless a completed application form has been received.

For Further Information Contact: Harpreet Sandhu, U.S. Department of Education, 600 Independence Avenue, S.W., Room 5090, Switzer Building, Washington, D.C. 20202–6510. Telephone: (202) 205–9808. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases); or on the World Wide Web (at http://www.ed.gov/money.html). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 7511–7514.

Dated: May 20, 1996.

Delia Pompa,

Director, Office of Bilingual Education and Minority Languages Affairs.

BILLING CODE 4000–01–P

Appendix

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION: Application* ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (give city, county, state, and zip code):

Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐–☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify) _____

8. TYPE OF APPLICATION: ☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY: U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 9 3 B

TITLE: Foreign Language Assistance Program (Local Educational Agency Grants)

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.)

13. PROPOSED PROJECT: Start Date; Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant; b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

Name of Institution/Organization

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

BILLING CODE 4000-01-C

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202–4651; and the Office of Management and Budget, Paperwork Reduction Project 1875–0102, Washington, D.C. 20503.

Instructions for ED Form No. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A—Budget Summary, U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1–11.

Lines 1–11, columns (a)–(e):

For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1–11, column (f):

Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)–(e):

Show the total budget request for each project year for which funding is requested.

Line 12, column (f):

Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B—Budget Summary, Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1–11 of Section B.

Line 1–11, columns (a)–(e):

For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1–11, column (f):

Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)–(e):

Show the total matching or other contribution for each project year.

Line 12, column (f):

Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C—Other Budget Information, Pay Attention to Applicable Program Specific Instructions, if Attached

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem, necessary.

Instructions for Application Narrative

Before preparing the Application Narrative an applicant should read carefully the description of the program, the information regarding priorities, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should--

1. Begin with an Abstract, that is, a summary of the proposed project;

2. Described the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

Applicants should note the non-regulatory guidance provided on subsequent pages in regard to addressing the EDGAR selection criteria. Under the listed EDGAR criteria, selected provisions are quoted from the authorizing statute in order to indicate where applicants may appropriately address these provisions. These provisions are statutory requirements and must be addressed in order to receive a grant.

The narrative must be limited to no more than 35 double-spaced, typed pages (on one side only), including appendices. This limit applies to the pages containing the narrative and any accompanying tables, graphs, and charts; regardless of the pagination shown on these pages, the total number of these pages must not exceed 35 sheets. The page limit does not apply to the application forms, assurances, certifications, and attachments to those forms, assurances, and certifications. Applications that exceed the page limit specified above will not be considered for funding.

Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1885–0528. (Expiration date: April 1998). The time required to complete this information collection is estimated to average 120 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, D.C. 20202–4651. *If you have comments or concerns regarding the status of your individual submission of this form, write directly to:* Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 600 Independence Avenue, S.W., Washington D.C. 20202–6510.

BILLING CODE 4000–01–M

"PART B—FOREIGN LANGUAGE ASSISTANCE PROGRAM

Foreign Language Assistance Act of 1994.
20 USC 7511.

"SEC. 7201. SHORT TITLE.

"This part may be cited as the 'Foreign Language Assistance Act of 1994'.

"SEC. 7202. FINDINGS.

20 USC 7512.

"The Congress finds as follows:

"(1) Foreign language proficiency is crucial to our Nation's economic competitiveness and national security. Significant improvement in the quantity and quality of foreign language instruction offered in our Nation's elementary and secondary schools is necessary.

"(2) All Americans need a global perspective. To understand the world around us, we must acquaint ourselves with the languages, cultures, and history of other nations.

"(3) Proficiency in two or more languages should be promoted for all American students. Multilingualism enhances cognitive and social growth, competitiveness in the global marketplace, national security, and understanding of diverse people and cultures.

"(4) The United States lags behind other developed countries in offering foreign language study to elementary and secondary school students.

"(5) Four out of five new jobs in the United States are created from foreign trade.

"(6) The optimum time to begin learning a second language is in elementary school, when children have the ability to learn and excel in several foreign language acquisition skills, including pronunciation, and when children are most open to appreciating and valuing a culture other than their own.

"(7) Foreign language study can increase childrens' capacity for critical and creative thinking skills and children who study a second language show greater cognitive development in areas such as mental flexibility, creativity, tolerance, and higher order thinking skills.

"(8) Children who have studied a foreign language in elementary school achieve expected gains and score higher on standardized tests of reading, language arts, and mathematics than children who have not studied a foreign language.

"SEC. 7203. PROGRAM AUTHORIZED.

20 USC 7513.

"(a) PROGRAM AUTHORITY.—

"(1) IN GENERAL.—The Secretary shall make grants, on a competitive basis, to State educational agencies or local educational agencies to pay the Federal share of the cost of innovative model programs providing for the establishment, improvement or expansion of foreign language study for elementary and secondary school students.

"(2) DURATION.—Each grant under paragraph (1) shall be awarded for a period of three years.

"(b) REQUIREMENTS.—

"(1) GRANTS TO STATE EDUCATIONAL AGENCIES.—In awarding a grant under subsection (a) to a State educational agency, the Secretary shall support programs that promote systemic approaches to improving foreign language learning in the State.

"(2) GRANTS TO LOCAL EDUCATIONAL AGENCIES.—In awarding a grant under subsection (a) to a local educational agency, the Secretary shall support programs that—

"(A) show the promise of being continued beyond the grant period;

"(B) demonstrate approaches that can be disseminated and duplicated in other local educational agencies; and

"(C) may include a professional development component.

"(c) FEDERAL SHARE.—

"(1) IN GENERAL.—The Federal share for each fiscal year shall be 50 percent.

"(2) WAIVER.—The Secretary may waive the requirement of paragraph (1) for any local educational agency which the Secretary determines does not have adequate resources to pay the non-Federal share of the cost of the activities assisted under this part.

"(3) SPECIAL RULE.—Not less than three-fourths of the funds appropriated under section 7206 shall be used for the expansion of foreign language learning in the elementary grades.

"(4) RESERVATION.—The Secretary may reserve not more than 5 percent of funds appropriated under section 7206 to evaluate the efficacy of programs under this part.

20 USC 7514.

"SEC. 7204. APPLICATIONS.

"(a) IN GENERAL.—Any State educational agency or local educational agency desiring a grant under this part shall submit an application to the Secretary at such time, in such form, and containing such information and assurances as the Secretary may require.

"(b) SPECIAL CONSIDERATION.—The Secretary shall give special consideration to applications describing programs that—

"(1) include intensive summer foreign language programs for professional development;

"(2) link non-native English speakers in the community with the schools in order to promote two-way language learning; or

"(3) promote the sequential study of a foreign language for students, beginning in elementary schools.

BILLING CODE 4000-01-C

Guidance on Addressing the EDGAR Selection Criteria

1. *Meeting the purposes of the authorizing statute.* (See section 75.210(b)(1) of EDGAR)

"IN GENERAL.—The Secretary shall make grants, on a competitive basis, to State educational agencies or local educational agencies to pay the Federal share of the cost of innovative model programs providing for the establishment, improvement or expansion of foreign language study for elementary and secondary school students."

(20 U.S.C. 7513)

2. *Extent of need for the project.* (See section 75.210(b)(2) of EDGAR)

3. *Plan of operation.* (See section 75.210(b)(3) of EDGAR)

"(b) SPECIAL CONSIDERATION.—The Secretary shall give special consideration to applications describing programs that—

"(1) include intensive summer foreign language programs for professional development;

"(2) link non-native English speakers in the community with the schools in order to promote two-way language learning; or

(3) promote the sequential study of a foreign language for students, beginning in elementary schools."

(20 U.S.C. 7514)

"(1) GRANTS TO STATE EDUCATIONAL AGENCIES.—In awarding a grant under subsection (a) to a State educational agency, the Secretary shall support programs that promote systemic approaches to improving foreign language learning in the State."

"(2) GRANTS TO LOCAL EDUCATIONAL AGENCIES.—In awarding a grant under subsection (a) to a local education agency, the Secretary shall support programs that—

"(A) show promise of being continued beyond the grant period;

"(B) demonstrate approaches that can be disseminated and duplicated in other local educational agencies; and

"(C) may include a professional development component."

(20 U.S.C. 7513)

4. *Quality of key personnel.* (See section 75.210(b)(4) of EDGAR)

5. *Budget and cost effectiveness.* (See section 75.210(b)(5) of EDGAR)

"(1) IN GENERAL.—The Federal share for each fiscal year shall be 50 percent.

"(2) WAIVER.—The Secretary may waive the requirement of paragraph (1) for any local educational agency which the Secretary determines does not have adequate resources to pay the non-Federal share of the cost of the activities assisted under this part."

(20 U.S.C. 7513)

6. *Evaluation plan.* (See section 75.210(b)(6) of EDGAR)

7. *Adequacy of resources.* (See section 75.210(b)(7) of EDGAR)

Foreign Language Assistance Program Grants to Local Educational Agencies, Additional Non-Regulatory Guidance

(Questions and Answers)

Q. How will the Secretary comply with the statutory requirement, set out in Section 7204(b) of the Elementary and Secondary Education Act, to give special consideration to applications that describe programs that (1) include intensive summer foreign language programs for professional development; (2) link non-native English speakers in the community; or (3) promote the sequential study of a foreign language for students, beginning in elementary schools?

A. The Secretary has established a competitive priority to comply with this statutory requirement. Under that priority, the Secretary awards three additional points to applications that propose to carry out one or more of the activities specified in Section 7204(b) of the Act in a particularly effective way. These points would be in addition to any points the application earns under the Selection Criteria. This priority is set out in full in the Application Notice.

Q. How can an applicant promote two-way language learning?

A. Two-way language learning is promoted through encouraging interaction between non-native English speakers and foreign language learners in an instructional setting for purposes of facilitating foreign language acquisition. Although improvement of the English language skills of non-native English speakers is a desirable ancillary benefit of a project that utilizes two-way language learning, the primary focus of projects funded under the Foreign Language Assistance program must be on foreign language learning. As a consequence, funds received under the Foreign Language Assistance program should not be used to fund English language instruction.

Q. What is the definition of "elementary school" or "secondary school?"

A. The definitions of these two terms are set out in 34 CFR 77.1(c). The term "elementary school" means: "a day or residential school that provides elementary education, as determined under State law." The term "secondary school" means: "a day or residential school that provides secondary education as determined under State law. In the absence of State law, the Secretary may determine, with respect to that State, whether the term includes educational beyond the twelfth grade."

Q. What is the State of LEA's share of costs for the Foreign Language Assistance program for each fiscal year?

A. The State or LEA's share is 50 percent. However, a waiver may be granted for an LEA if the Secretary determines that the LEA does not have adequate resources to pay the non-Federal share of the cost of the activities. (Section 7203(c), 20 U.S.C. 7513(c)). The Education Department General Administrative Regulations, at 34 CFR 80.24, also addresses Federal Cost sharing requirements.

Q. How does an LEA apply for a waiver of the non-Federal share of costs?

A. The Secretary suggests that local educational agencies—wishing to do so—request a waiver from the requirements of Section 7203(c) of the Act as a part of their grant application. This waiver request should include information that will assist the Secretary in determining whether the local educational agency seeking a waiver "does not have adequate resources to pay the non-Federal share of the costs of the activities assisted under the Foreign Language Assistance program." (Section 7203(b) of the Act, 20 U.S.C. 7513(c)(2)).

Q. Under this program, may an applicant propose to hire foreign language teachers?

A. Yes, program funds may be used to hire foreign language teachers?

Q. May two districts apply together if they are already working together in an elementary school foreign language program?

A. Yes, the statute does not prohibit school districts from applying together. The requirements on group applications are in 34 CFR 75.127–75.129.

Q. How will the Secretary give priority to projects that propose to teach Japanese, Chinese, Russian, Arabic or Korean?

A. The Secretary awards five points to an application that meets the following competitive priority in a particularly effective way. These points would be in addition to any points the application earns under the Selection Criteria. This priority is set out in full in the Application Notice.

Projects that propose to establish, improve or expand foreign language learning in the elementary grades and that focus on any of the following languages: Japanese, Chinese, Russian, Arabic or Korean.

Q. How can an LEA ensure that their proposed program design will lead to an enhanced and effective foreign language program?

A. An LEA may consider the National and State foreign language content standards when designing their program.

BILLING CODE 4000–01–M

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative					
Typed Name	Title	Signature	Date Signed	Telephone Number (including Area Code)	Name of Institution/ Organization

FOREIGN LANGUAGE DATA

Name of Local Educational Agency

NOTE: This section must be completed by local educational agencies applying under the following program:

- Foreign Language Assistance Grants

1. Total number of students in the school district	
2. Total number of students in the district enrolled in a foreign language program	

3. Foreign languages taught in the school district

Elementary	Secondary

4. Name of project school	Language(s) to be taught	Grade(s) to be served	Number of students to be served

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10;000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted–

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion–Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity Registrant *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:	13. Type of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. ~~Continuation Sheet(s) SF-LLL-A attached:~~ ~~☐ Yes~~ ~~☐ No~~

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C.1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only.	Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate.~~ Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. ~~Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.~~
12. ~~Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.~~
13. ~~Check the appropriate box(es). Check all boxes that apply. If other, specify nature.~~
14. ~~Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~
15. ~~Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C 20503

BILLING CODE 4000-01-C

BILLING CODE 4000-01-C

Notice to all Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provisions is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. *All applicants for new awards must include information in their applications to address this new provision in order to receive funding under this program.*

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information my be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What Are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it tends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

Accordingly to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801–0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

[FR Doc. 96–13093 Filed 5–23–96; 8:45 am]
BILLING CODE 4000–01–M

Federal Register

Friday
May 24, 1996

Part VI

Department of Education

Foreign Language Assistance Grants (State Education Agencies); Inviting Applications for New Awards for Fiscal Year 1996; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.293C]

Foreign Language Assistance Grants (State Educational Agencies); Notice Inviting Applications for New Awards for Fiscal Year (FY) 1996

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this competition.

Purpose of Program: This program provides grants to pay for the Federal share of the cost of innovative model programs providing for the establishment, improvement, or expansion of foreign language study for elementary and secondary school students.

In awarding grants under this program, the Secretary supports projects that promote systemic approaches to improving foreign language learning in the State.

Eligible Applicants: State educational agencies.

Deadline for Transmittal of Applications: June 24, 1996.

Deadline for Intergovernmental Review: August 23,1996.

Available Funds: $1,500,000.

Estimated Range of Awards: $30,000–$70,000.

Estimated Average Size of Awards: $50,000.

Estimated Number of Awards: 30.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 75 (Direct Grant Programs).

(2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR Part 82 (New Restrictions on Lobbying).

(7) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

Description of Program: Part B of Title VII of the Elementary and Secondary Education Act of 1965, as amended (the Act), authorizes the Foreign Language Assistance Grants program. Appropriations for this program are authorized by section 7206 of the Act. Section 7203(c)(3) of the Act provides that at least 75 percent of the funds appropriated under section 7206 shall be used for the expansion of foreign language learning in elementary grades. The Secretary does not fund projects that propose Native American languages.

Priorities: Under 34 CFR 75.105(c)(2)(i) the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards five points to an application that meets this competitive priority in a particularly effective way. These points would be in addition to any points the application earns under the selection criteria for the program:

Competitive Preference Priority 1—Less Commonly Taught Languages of Major Economic and Political Importance to the United States (5 points).

Supplementary Information: The Senate Committee on Appropriations noted that three-fourth's of the world's population, including some major United States trading partners, speak Japanese, Chinese, Russian, Arabic, or Korean. S. REP. No. 318, 103rd Cong. 2nd Sess. 187 (1994). In addition, the Committee pointed out that these languages are seldom offered in our schools and that truly effective language training must begin in the elementary grades. In order to address this important concern, the Secretary gives an additional five points to an application that meets the competitive priority in a particularly effective way.

Priority

Projects that propose to establish, improve, or expand foreign language learning in the elementary grades and that focus on any of the following languages: Japanese, Chinese, Russian, Arabic, or Korean.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedures Act (5 U.S.C. 553), it is the practice of the Department of Education to offer interested parties the opportunity to comment on proposed priorities. Because of the lateness of Congress in passing the fiscal year 1996 budget for this agency, the Department has determined that publication of a proposed priority would interfere with an orderly, responsible grant award process. The Secretary, therefore, has determined, pursuant to 5 U.S.C. 553(b)(B), that publication of a proposed priority is impracticable and contrary to the public interest.

Under 34 CFR 75.105(b)(2)(iv) and (c)(2)(i) and section 7204(b) of the Act (20 U.S.C. 7514(b)), the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards three points to an application that meets this competitive priority in a particularly effective way. These points would be in addition to any points the application earns under the selection criteria for the program:

Competitive Preference Priority 2—Special Considerations (3 points).

Priority

Projects that propose to carry out one or more of the following activities: (1) intensive summer foreign language programs for professional development; (2) linking non-native English speakers in the community with the schools in order to promote two-way language learning; or (3) promoting the sequential study of a foreign language, beginning in elementary schools.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for the new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.*—(1) *Meeting the purposes of the authorizing statute.* (37 points) The Secretary reviews each application to determine how well the project will meet the purpose of Part B of Title VII of the Act, including consideration of—

(i) The objectives of the project: and

(ii) How the objectives of the project further the purposes of the Act.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the Act, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i) (A) and (B) of this section will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B) of this section, the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (8 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the recipient.)

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on August 10, 1995 (60 FR 40980 and 40981).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.293C, U.S. Department of Education, Room 6213, 600 Independence Avenue, S.W., Washington, D.C. 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Eastern time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.293C), Washington, D.C. 20202–4725 or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Eastern time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.293C), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden, guidance on addressing the EDGAR selection criteria, and various assurances, certifications, and required documentation. These parts and additional materials are organized in the same manner that the submitted

application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Part III: Application Narrative.

Additional Materials

a. Estimated Public Reporting Burden.

b. Part B of Title VII of the Elementary and Secondary Education Act of 1965, as amended (the Act).

c. Guidance on Addressing the EDGAR Selection Criteria.

d. Additional Non-Regulatory Guidance: Questions and Answers.

e. Group Application Certification.

f. State Educational Agency Data Form.

g. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

h. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

i. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

j. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget at 61 FR 1413 (January 19, 1996).

k. Notice to All Applicants.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. All applicants must submit ONE original signed application, including ink signatures on all forms and assurances, and TWO copies of the application. Please mark each application as "original" or "copy". No grant may be awarded unless a completed application form has been received.

For Further Information Contact: Harpreet Sandhu, U.S. Department of Education, 600 Independence Avenue, S.W., Room 5090, Switzer Building, Washington, D.C. 20202–6510. Telephone: (202) 205–9808. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases); or on the World Wide Web (at http://www.ed.gov/money.html). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 7511–7514.

Dated: May 20, 1996.

Delia Pompa,

Director, Office of Bilingual Education and Minority Languages Affairs.

BILLING CODE 4000–01–P

Appendix

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☒ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: | Organizational Unit:

Address (*give city, county, state, and zip code*): | Name and telephone number of the person to be contacted on matters involving this application (*give area code*)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (*enter appropriate letter in box*) ☐

A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify): _____

8. TYPE OF APPLICATION: ☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (*specify*): _____

9. NAME OF FEDERAL AGENCY: U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 9 3 C

TITLE: Foreign Language Assistance Program (State Educational Agency Grants)

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (*cities, counties, states, etc.*):

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

Name of Institution/Organization

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

BILLING CODE 4000-01-C

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and the Office of Management and Budget, Paperwork Reduction Project 1875–0102, Washington, DC 20503.

Instructions for ED Form No. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A—Budget Summary, U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1–11.

Lines 1–11, columns (a)–(e):

For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1–11, column (f):

Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)–(e):

Show the total budget request for each project year for which funding is requested.

Line 12, column (f):

Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B—Budget Summary, Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1–11 of Section B.

Lines 1–11, columns (a)–(e):

For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1–11, column (f):

Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)–(e):

Show the total matching or other contribution for each project year.

Line 12, column (f):

Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this blank.

Section C—Other Budget Information, Pay Attention to Applicable Program Specific Instructions, if Attached

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the types of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

Instructions for Application Narrative

Before preparing the Application Narrative an applicant should read carefully the description of program, the information regarding priorities, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract, that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

Applicants should note the non-regulatory guidance provided on subsequent pages in regard to addressing the EDGAR selection criteria. Under the listed EDGAR criteria, selected provisions are quoted from the authorizing statute in order to indicate where applicants may appropriately address these provisions. These provisions are statutory requirements and must be addressed in order to receive a grant.

The narrative must be limited to no more than 35 double-spaced, typed pages (on one side only), including appendices. This limit applies to the pages containing the narrative and any accompanying tables, graphs, and charts; regardless of the pagination shown on these pages, the total number of these pages must not exceed 35 sheets. The page limit does not apply to the application forms, assurances, certifications, and attachments to those forms, assurances, and certifications. Applications that exceed the page limit specified above will not be considered for funding.

Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid MOB control number. The valid OMB control number for this information collection is 1885–0528. (Expiration date: April 1998). The time required to complete this information collection is estimated to average 120 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, D.C. 20202–4651. *If you have comments or concerns regarding the status of your individual submission of this form, write directly to:* Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 600 Independence Avenue, S.W., Washington D.C. 20202–6510.

BILLING CODE 4000–01–M

"PART B—FOREIGN LANGUAGE ASSISTANCE PROGRAM

Foreign Language Assistance Act of 1994.
20 USC 7511.

"SEC. 7201. SHORT TITLE.

"This part may be cited as the 'Foreign Language Assistance Act of 1994'.

20 USC 7512.

"SEC. 7202. FINDINGS.

"The Congress finds as follows:

"(1) Foreign language proficiency is crucial to our Nation's economic competitiveness and national security. Significant improvement in the quantity and quality of foreign language instruction offered in our Nation's elementary and secondary schools is necessary.

"(2) All Americans need a global perspective. To understand the world around us, we must acquaint ourselves with the languages, cultures, and history of other nations.

"(3) Proficiency in two or more languages should be promoted for all American students. Multilingualism enhances cognitive and social growth, competitiveness in the global marketplace, national security, and understanding of diverse people and cultures.

"(4) The United States lags behind other developed countries in offering foreign language study to elementary and secondary school students.

"(5) Four out of five new jobs in the United States are created from foreign trade.

"(6) The optimum time to begin learning a second language is in elementary school, when children have the ability to learn and excel in several foreign language acquisition skills, including pronunciation, and when children are most open to appreciating and valuing a culture other than their own.

"(7) Foreign language study can increase childrens' capacity for critical and creative thinking skills and children who study a second language show greater cognitive development in areas such as mental flexibility, creativity, tolerance, and higher order thinking skills.

"(8) Children who have studied a foreign language in elementary school achieve expected gains and score higher on standardized tests of reading, language arts, and mathematics than children who have not studied a foreign language.

20 USC 7513.

"SEC. 7203. PROGRAM AUTHORIZED.

"(a) PROGRAM AUTHORITY.—

"(1) IN GENERAL.—The Secretary shall make grants, on a competitive basis, to State educational agencies or local educational agencies to pay the Federal share of the cost of innovative model programs providing for the establishment, improvement or expansion of foreign language study for elementary and secondary school students.

"(2) DURATION.—Each grant under paragraph (1) shall be awarded for a period of three years.

"(b) REQUIREMENTS.—

"(1) GRANTS TO STATE EDUCATIONAL AGENCIES.—In awarding a grant under subsection (a) to a State educational agency, the Secretary shall support programs that promote systemic approaches to improving foreign language learning in the State.

"(2) GRANTS TO LOCAL EDUCATIONAL AGENCIES.—In awarding a grant under subsection (a) to a local educational agency, the Secretary shall support programs that—

"(A) show the promise of being continued beyond the grant period;

"(B) demonstrate approaches that can be disseminated and duplicated in other local educational agencies; and

"(C) may include a professional development component.

"(c) FEDERAL SHARE.—

"(1) IN GENERAL.—The Federal share for each fiscal year shall be 50 percent.

"(2) WAIVER.—The Secretary may waive the requirement of paragraph (1) for any local educational agency which the Secretary determines does not have adequate resources to pay the non-Federal share of the cost of the activities assisted under this part.

"(3) SPECIAL RULE.—Not less than three-fourths of the funds appropriated under section 7206 shall be used for the expansion of foreign language learning in the elementary grades.

"(4) RESERVATION.—The Secretary may reserve not more than 5 percent of funds appropriated under section 7206 to evaluate the efficacy of programs under this part.

20 USC 7514.

"SEC. 7204. APPLICATIONS.

"(a) IN GENERAL.—Any State educational agency or local educational agency desiring a grant under this part shall submit an application to the Secretary at such time, in such form, and containing such information and assurances as the Secretary may require.

"(b) SPECIAL CONSIDERATION.—The Secretary shall give special consideration to applications describing programs that—

"(1) include intensive summer foreign language programs for professional development;

"(2) link non-native English speakers in the community with the schools in order to promote two-way language learning; or

"(3) promote the sequential study of a foreign language for students, beginning in elementary schools.

Guidance on Addressing the EDGAR Selection Criteria

1. *Meeting the purposes of the authorizing statute.* (See section 75.210(b)(1) of EDGAR)

"IN GENERAL.—The Secretary shall make grants, on a competitive basis, to State educational agencies or local educational agencies to pay the Federal share of the cost of innovative model programs providing for the establishment, improvement or expansion of foreign language study for elementary and secondary school students."

(20 U.S.C. 7513)

2. *Extent of need for the project.* (See section 75.210(b)(2) of EDGAR)

3. *Plan of operation.* (See section 75.210(b)(3) of EDGAR)

"(b) SPECIAL CONSIDERATION.—The Secretary shall give special consideration to applications describing programs that—

"(1) include intensive summer foreign language programs for professional development;

"(2) Link non-native English speakers in the community with the schools in order to promote two-way language learning; or

"(3) promote the sequential study of a foreign language for students, beginning in elementary schools."

(20 U.S.C. 7514)

"(1) GRANTS TO STATE EDUCATIONAL AGENCIES.—In awarding a grant under subsection (a) to a State educational agency, the Secretary shall support programs that promote systemic approaches to improving foreign language learning in the State."

"(2) GRANTS TO LOCAL EDUCATIONAL AGENCIES.—In awarding a grant under subsection (a) to a local educational agency, the Secretary shall support programs that—

"(A) show promise of being continued beyond the grant period;

"(B) demonstrate approaches that can be disseminated and duplicated in other local educational agencies; and

"(C) may include a professional development component."

(20 U.S.C. 7513)

4. *Quality of key personnel.* (See section 75.210(b)(4) of EDGAR)

5. *Budget and cost effectiveness.* (See section 75.210(b)(5) of EDGAR)

"(1) IN GENERAL.—The Federal share for each fiscal year shall be 50 percent.

"(2) WAIVER.—The Secretary may waive the requirement of paragraph (1) for any local educational agency which the Secretary determines does not have adequate resources to pay the non-Federal share of the cost of the activities assisted under this part."

(20 U.S.C. 7513)

6. *Evaluation plan.* (See section 75.210(b)(6) of EDGAR)

7. *Adequacy of resources.* (See section 75.210(b)(7) of EDGAR)

Foreign Language Assistance Program Grants to State Educational Agencies Additional Non-Regulatory Guidance

(Questions and Answers)

Q. How can State educational agencies support programs that promote systemic approaches to improving foreign language learning in the States?

A. Activities may include staff development, curriculum development, development of State standards and appropriate assessment strategies, and use of instructional technology to improve foreign language learning in the State.

Q. How will the Secretary comply with the statutory requirement, set out in Section 7204(b) of the Elementary and Secondary Education Act, to give special consideration to applications that describe programs that (1) include intensive summer foreign language programs for professional development; (2) link non-native English speakers in the community; or (3) promote the sequential study of a foreign language for students, beginning in elementary schools?

A. The Secretary has established a competitive priority to comply with this statutory requirement. Under that priority, the Secretary awards three additional points to applications that propose to carry out one or more of the activities specified in Section 7204(b) of the Act in a particularly effective way. These points would be in addition to any points the application earns under the Selection Criteria. This priority is set out in full in the Application Notice.

Q. How can an applicant promote two-way language learning?

A. Two-way language learning is promoted through encouraging interaction between non-native English speakers and foreign language learners in an instructional setting for purposes of facilitating foreign language acquisition. Although improvement of the English language skills of non-native English speakers is a desirable ancillary benefit of a project that utilizes two-way language learning, the primary focus of projects funded under the Foreign Language Assistance program must be on foreign language learning. As a consequence, funds received under the Foreign Language Assistance program should not be used to fund English language instruction.

Q. What is the definition of "elementary school"or "secondary school?"

A. The definitions of these two terms are set out in 34 CFR 77.1(c). The term "elementary school" means: "a day or residential school that provides elementary education, as determined under State law." The term "secondary school" means: "a day or residential school that provides secondary education as determined under State law. In the absence of State law, the Secretary may determine, with respect to that State, whether the term includes education beyond the twelfth grade."

Q. What is the State or Lea's share of costs for the Foreign Language Assistance program for each fiscal year?

A. The State or LEA's share is 50 percent. However, a waiver may be granted for an LEA if the Secretary determines that the LEA does not have adequate resources to pay the non-Federal share of the cost of the activities. (Section 7203(c), 20 U.S.C. 7513(c)). The Education Department General Administrative Regulations, at 34 CFR 80.24, also addresses Federal Cost sharing requirements.

Q. How will the Secretary give priority to projects that teach Japanese, Chinese, Russian, Arabic or Korean?

A. The Secretary awards five points to an application that meets the following competitive priority in a particularly effective way. These points would be in addition to any points the application earns under the Selection Criteria. This priority is set out in full in the Application Notice.

Projects that propose to establish, improve or expand foreign language learning in the elementary grades and that focus on any of the following languages: Japanese, Chinese, Russian, Arabic or Korean.

Q. What is the ultimate goal of effective foreign language education programs?

A. The ultimate goal of effective foreign language education programs is to develop communicative competency in a foreign language. The Secretary interprets "communicative competency" to mean the ability to communicate in meaningful and effective ways in a foreign language.

BILLING CODE 4000-01-M

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative					Name of Institution/ Organization
Typed Name	Title	Signature	Date Signed	Telephone Number (including Area Code)	

FOREIGN LANGUAGE DATA

Name of State Educational Agency

NOTE: This section must be completed by State educational agencies applying under the following program:

- Foreign Language Assistance Grants

	Secondary
1. Total number of local educational agencies (LEAs) in the State	
2. Total number of LEAs in the State providing foreign language programs	
3. Foreign languages taught	
Elementary	

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier ____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity Registrant *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*	13. Type of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C.1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate.~~ Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. ~~Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

BILLING CODE 4000-01-C

Notice to all Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. *All applicants for new awards must include information in their applications to address this new provision in order to receive funding under this program.*

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What Are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it tends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801–0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

[FR Doc. 96–13092 Filed 5–23–96; 8:45 am]
BILLING CODE 4000–01–M

federal register

Friday
May 14, 1996

Part VII

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171 and 173
Temporary Prohibition of Oxygen Generators as Cargo in Passenger Aircraft; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 173

[Docket No. HM-224, Amdt No. 171-146, 173-254]

RIN 2137-AC89

Temporary Prohibition of Oxygen Generators as Cargo in Passenger Aircraft

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Interim final rule.

SUMMARY: To protect life and property, RSPA is issuing an interim final rule temporarily prohibiting the offering for transportation and transportation of oxygen generators as cargo in passenger-carrying aircraft. This rule applies to both foreign and domestic passenger-carrying aircraft entering, leaving or operating in the United States and to any person offering an oxygen generator for transportation on any passenger-carrying aircraft.

DATES: *Effective date:* This interim final rule is effective May 24, 1996.

Comment date: Comments must be received by July 23, 1996.

ADDRESSES: Address comments to the Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, room 8421, 400 Seventh Street, SW, Washington, DC 20590-0001. Comments should identify the docket number and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. The Dockets Unit is located in the Department of Transportation headquarters building (NASSIF Building) at the above address on the eighth floor. Public dockets may be reviewed there between the hours of 8:30 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: William E. Vincent, Acting Director, Office of Policy and Program Support, (202) 366-4831, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW, Washington DC 20590-0001.

SUPPLEMENTARY INFORMATION:

I. Background

Under a Secretarial delegation (49 CFR 1.53(b)), the Research and Special Programs Administration (RSPA) is the administration within the Department of Transportation (DOT) primarily responsible for issuing regulations implementing the Federal hazardous material transportation law (Federal hazmat law), 49 U.S.C. 5101-5127. Under this delegated authority, RSPA has issued the Hazardous Materials Regulations (HMR), 49 CFR Parts 171-180.

Under delegations from the Secretary of Transportation (49 CFR Part 1), the authority for enforcement under the Federal hazmat law is shared by RSPA and each of four modal administrations: the Federal Highway Administration, the Federal Railroad Administration, the Federal Aviation Administration (FAA), and the United States Coast Guard. FAA has primary enforcement authority concerning transportation and shipments of hazardous materials by air. 49 CFR 1.47(k).

The National Transportation Safety Board and the FAA are investigating a recent accident involving a passenger-carrying aircraft. Preliminary evidence indicates that oxygen generators (chemical) were carried as cargo on board the aircraft and may have caused, or contributed to the severity, of the accident. Oxygen generators are safely installed inside thermal protective casings in the cabins of many passenger-carrying aircraft to provide oxygen in emergencies to passengers and certain crew members.

Some persons have offered, and some air carriers have transported, uninstalled generators as cargo on passenger-carrying aircraft under authority in the HMR, including §§ 175.10(a)(2) and 171.11 (which authorizes use of the International Civil Aviation Organization (ICAO) Technical Instructions).

In order to preclude the possibility that an oxygen generator carried as cargo may cause or contribute to a future incident in air commerce, RSPA is issuing this interim final rule prohibiting until January 1, 1997, with one exception, transportation in passenger-carrying aircraft, and offering for transportation in passenger-carrying aircraft, any oxygen generator as cargo. This regulation applies to both foreign and domestic aircraft entering, leaving or operating in the United States and to any person offering an oxygen generator for transportation on any of those aircraft as cargo.

This regulation applies to oxygen generators (chemical) and not to cylinders containing compressed oxygen. Unlike oxygen generators (chemical), compressed oxygen cylinders do not involve heat-producing mixing of chemicals to create oxygen. To clarify the applicability of the prohibition in this rule, RSPA is adding a definition of "oxygen generator (chemical)" to 49 CFR § 171.8. That definition reads "a device containing chemicals that upon activation release oxygen as a product of chemical reaction."

Exceptions to the prohibition are provided for an oxygen generator for medical use of a passenger that is carried in the passenger cabin and meets the specific safety requirements of § 175.10(a)(7) and for a small oxygen generator for personal use that is transported as checked baggage and meets the specific safety requirements of § 175.10(a)(24).

Because of the potential safety risk posed by continued transportation of oxygen generators as cargo in passenger-carrying aircraft, RSPA has determined that good cause exists for making this rule effective less than 30 days from its issuance and that notice and comment is impractical and contrary to public interest.

Based on currently available information, RSPA believes that at least a temporary ban on offering and transportation of the generators is justified on an emergency basis because of the potential for loss of life and damage to property. Although an opportunity for public comment on this rule has not been provided prior to issuance of this interim final rule, RSPA seeks public comment. Based on comments received, NTSB and FAA investigation, and RSPA and FAA joint inspection of contract maintenance vendors, RSPA may make the ban permanent, terminate or modify the ban, or otherwise amend the provisions of this rule. As an interim final rule, however, this regulation is in effect and binding upon publication in the **Federal Register**.

RSPA encourages interested persons to participate in this rulemaking by submitting written views, data and information concerning this interim final rule. Commenters should provide a reason or basis for each comment. RSPA will consider all public comments and will make changes to this rule if public comments indicate a change is necessary.

II. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and therefore is subject to review by the Office of Management and Budget. The rule is significant according to the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

The changes adopted in this rule should not result in any significant additional costs to persons subject to the HMR. About 150,000 of these oxygen generators are installed on about 1,000 U.S. passenger-carrying aircraft. Because of their typical effective life of about ten years, it is not necessary to frequently transport these generators as uninstalled or not-in-use materials. In addition, alternative transportation is available for these generators because this rule does not prohibit or inhibit their transportation by highway, rail, water or cargo aircraft. Because of the minimal economic impact of this rule, a full regulatory evaluation is not warranted.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism") and does not have sufficient Federalism impacts to warrant the preparation of a federalism assessment.

Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule imposes a limited prohibition on certain persons subject to the HMR. However, there are limited adverse economic impacts on small businesses or other organizations.

Paperwork Reduction Act

There are no information collection requirements in this final rule.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, 49 CFR Parts 171 and 173 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 5101-5127, 44701; 49 CFR 1.45, 1.53.

2. In § 171.8, a definition for "oxygen generator (chemical)" is added in alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Oxygen generator (chemical) means a device containing chemicals that upon activation release oxygen as a product of chemical reaction.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 5101-5127, 44701; 49 CFR 1.45, 1.53.

4. In § 173.21, paragraph (k) is added to read as follows:

§ 173.21 Forbidden materials and packages.

* * * * *

(k) Notwithstanding any other provision of this subchapter, including §§ 171.11 and 175.10(a)(2) of this subchapter, an oxygen generator (chemical) as cargo on a passenger-carrying aircraft until January 1, 1997. This prohibition does not apply to an oxygen generator for medical or personal use of a passenger that meets the requirements of § 175.10(a)(7) or § 175.10(a)(24) of this subchapter.

Issued in Washington, DC on May 23, 1996 under authority delegated in 49 CFR part 1.

D.K. Sharma,

Administrator, Research and Special Programs Administration.

[FR Doc. 96-13404 Filed 5-23-96; 12:31 pm]

BILLING CODE 4910-60-P

OL
1
SS
1
0
2
IY
4
996
MI

federal register

Friday
May 24, 1996

Part VIII

Department of Transportation

Federal Aviation Administration

Enforcement Policy; Emergency Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Emergency Notice of Enforcement Policy

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Emergency notice of enforcement policy.

SUMMARY: This emergency notice of enforcement policy is necessary to address safety concerns regarding air transportation of oxygen generators arising from investigation of a recent accident involving a passenger-carrying aircraft.

EFFECTIVE DATE: May 23, 1996.

FOR FURTHER INFORMATION CONTACT: Peter J. Lynch, Assistant Chief Counsel for Enforcement, Enforcement Division, Office of the Chief Counsel, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9956

The text of the FAA emergency notice of enforcement policy follows: The National Transportation Safety Board and the FAA are investigating a recent accident involving a passenger aircraft. Preliminary evidence indicates that oxygen generators (containing a chemical or chemicals intended to release oxygen upon activation) were carried as cargo on board the aircraft and may have caused or contributed to the severity of the accident.

The Research and Special Programs Administration has amended the Department of Transportation (DOT) Hazardous Materials Regulations, to prohibit the offering for transportation or transportation of oxygen generators as cargo in passenger-carrying aircraft. The rule applies to both foreign and domestic aircraft entering, leaving, or operating in the United States and to any person offering an oxygen generator for transportation on any of those aircraft.

The FAA enforces the DOT Hazardous Materials Regulations as they apply to the shipment of transportation of such materials by air. Any person who violates these regulations is subject to a civil penalty of up to $25,000 for each violation. In determining the amount of the civil penalty, the FAA considers, among other things, the nature, circumstances, extent, and gravity of the violation. The FAA considers the offering or transporting of such oxygen generators in violation of the regulations to be an extremely serious offense.

TAKE NOTICE that, effective immediately, any person who, in violation of the DOT Hazardous Materials Regulations, offers for transportation or transports oxygen generators as cargo aboard a passenger-carrying aircraft will be subject to swift enforcement action, including, but not limited to significant civil penalties and appropriate judicial remedies.

Further, any person who willfully violates a DOT Hazardous Materials Regulations is subject to criminal penalties of up to 5 years in prison and/or fines.

Issued in Washington, DC, on May 23, 1996.

David R. Hinson,

Administrator.

[FR Doc. 96–13414 Filed 5–23–96; 1:31 pm]

BILLING CODE 4910–13–M

Reader Aids

Federal Register

Vol. 61, No. 102

Friday, May 24, 1996

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Public inspection announcement line	523–5215
Laws	
Public Laws Update Services (numbers, dates, etc.)	523–6641
For additional information	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: 301–713–6905

FEDERAL REGISTER PAGES AND DATES, MAY

19155–19502	1
19503–19804	2
19805–20116	3
20117–20418	6
20419–20700	7
20701–21046	8
21047–21360	9
21361–21946	10
21947–24204	13
24205–24432	14
24433–24664	15
24665–24874	16
24875–25134	17
25135–25388	20
25389–25548	21
25549–25774	22
25775–26068	23
26069–26422	24

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6889 19503
6890 19803
6891 20419
6892 21045
6893 21047
6894 24661
6895 24663
6896 25129
6897 25765
6898 25767
6899 25769
6900 26067

Executive Orders:
11216 (See EO 13002) 24665
11593 (See EO 13006) 26071
12072 (See EO 13006) 26071
13001 21943
13002 24665
13003 25131
13004 25771
13005 26069
13006 26071

Administrative Orders:
Memorandums:
April 1, 1996 26017
April 26, 1996 19505
April 26, 1996 24667
April 26, 1996 24877
April 28, 1996 19507
May 10, 1996 26033
Presidential Determinations:
No. 96–20 of April 1, 1996 26019
No. 96–21 of April 4, 1996 26021
No. 96–22 of April 18, 1996 26027
No. 96–23 of April 30, 1996 26029
No. 96–24 of May 9, 1996 26031

4 CFR

Proposed Rules:
21 19205

5 CFR

Ch. LXIX 20117
300 19509
410 21947
532 20701
831 21953
842 21953
890 25775

7 CFR

2 25775
28 19511
51 20702
52 25549
53 19155
54 19155
225 25550
226 25550
272 19155
273 19155
301 20877
319 24433
800 24669
810 24669
900 20717
915 19512
916 ..... 19160, 26073
917 ..... 19160, 26073
946 20119
956 20121
959 24877
979 20718
980 25551
985 20122
1002 20719
1004 20719
1007 20124
1280 ..... 19514, 21049, 21053
1485 24205
1755 26073
1841 21361
1843 21361
1845 21361
1903 21361
1945 21361
1980 21361
2054 21361
3403 25366

Proposed Rules:
51 24247
911 20754
924 20756
944 ..... 20754, 20756
958 20188
1005 19861
1007 19861
1011 19861
1046 19861
1160 20759

8 CFR

3 ..... 19976, 21065, 21228
100 25777
242 ..... 19976, 21065, 21228

9 CFR

50 25135
77 25135
78 19976
130 ..... 20421, 25513

Proposed Rules:
92 ..... 20189, 20190, 21389
93 20190
94 20190

95.....20190
96.....20190
98.....20190
301.....19564
304.....19578
308.....19578
317.....19564, 19578
318.....19564, 19578
319.....19578
320.....19564
381.....19564, 19578

10 CFR

20.....24669
30.....24669
40.....24669
61.....24669
70.....24669
72.....24669

Proposed Rules:

26.....21105, 24731
72.....24249

11 CFR

110.....24533

12 CFR

5.....19524
19.....20330
20.....19524
25.....21362
28.....19524
205.....19662, 19678
211.....24439
220.....20386
228.....21362
229.....25389
327.....26078, 26083
250.....19805
263.....20338
308.....20344
345.....21362
509.....20350
563e.....21362
614.....20125

Proposed Rules:

207.....20399
215.....19863
220.....20399
221.....20399
226.....26126
330.....25596
344.....26135
614.....24907

13 CFR

Proposed Rules:

121.....20191

14 CFR

21.....20696
25.....24208, 24213, 25778
27.....21904
29.....21894, 21904
31.....20877
39.....19540, 19807, 19808, 19809, 19811, 19813, 19815, 20125, 20127, 20616, 20636, 20638, 20639, 20641, 20643, 20644, 20646, 20668, 20669, 20671, 20672, 20674, 20676, 20677, 20679, 20681, 20682, 21066, 21068, 21070, 21071, 24206, 24214, 24216, 24218, 24220, 24675, 24684, 24686, 24688, 24690, 24691, 24878, 24881, 24883, 24884, 25557, 15558, 26089, 23090, 23091
43.....19498
71.....19541, 19542, 19816, 19817, 21364, 21365, 21953, 24222, 24223, 26094
73.....20127, 26095
91.....24430
97.....25138, 25139, 25141, 25780, 25781, 25783
159.....19784
205.....19164
323.....19164
385.....19166

Proposed Rules:

29.....20760
39.....20192, 20194, 20762, 20764, 21146, 21979, 21980, 21982, 24250, 25417, 25418, 25598
71.....19590, 19591, 19592, 19593, 21910, 21984, 24533, 25157, 25600
91.....24582
121.....21149, 24582, 24533, 26036
127.....24582
135.....24582, 26036
158.....25420

15 CFR

24.....26095
902.....19171, 21926
981.....21073

Proposed Rules:

946.....19594

16 CFR

405.....25560
1500.....19818, 26096
1507.....26096

Proposed Rules:

254.....19869
1210.....20503

17 CFR

1.....19177, 19830
3.....20127, 26253
5.....19830
10.....21954
31.....19830
140.....21954
200.....20721, 25652
228.....25652
229.....25652
230.....21356, 25652
231.....24644
232.....25652
239.....25652
240.....21354, 25652
241.....24644
249.....21354
270.....25652
271.....24644
274.....25652
276.....24644

Proposed Rules:

1.....19869
156.....19869
230.....25601
240.....25601
250.....25601
270.....25601
275.....25601

18 CFR

35.....21940
37.....21737
385.....21940
1300.....20117

Proposed Rules:

35.....21847
161.....19211
250.....19211
284.....19211, 19832
346.....19878

19 CFR

10.....19834, 24887
12.....24888
103.....19835
122.....25777
145.....24888
161.....24888

Proposed Rules:

101.....19834

20 CFR

200.....25390
345.....20070
601.....19982
617.....19982
626.....19982
658.....19982
702.....19982

21 CFR

2.....25390
5.....24223
101.....20096, 21074
173.....25392
201.....20096
310.....25142
341.....25142
369.....20096
500.....19542
501.....20096
510.....21075, 24440
520.....24441, 24443
522.....21075, 24440, 25784
556.....24440, 24441
558.....21075, 24443, 24694
582.....19542
589.....19542
600.....24227
601.....24227
740.....20096
801.....20096

Proposed Rules:

Ch. 1.....21392
25.....19476
101.....25421
102.....19220
130.....19220
131.....19220
133.....19220
135.....19220
136.....19220
137.....19220
139.....19220
145.....19220
146.....19220
150.....19220
152.....19220
155.....19220
156.....19220
158.....19220
160.....19220
161.....19220
163.....19220
164.....19220
165.....19220
166.....19220
168.....19220
169.....19220
210.....20104
211.....20104
328.....21392
530.....25118
589.....24253
801.....26140

22 CFR

126.....19841
514.....20437

24 CFR

0.....19187
201.....19788
290.....19188
585.....25124
941.....19708
970.....19708

Proposed Rules:

206.....21910
888.....20982
901.....20358
3500.....21394

25 CFR

Proposed Rules:

144.....24731
250.....19600
291.....25604
525.....21394

26 CFR

1.....19188, 19189, 19544, 19546, 21366, 21955
301.....19189
602.....19189

Proposed Rules:

1.....20503, 20766, 20767, 21985, 21988
31.....20767
32.....20767
35a.....20767
301.....20503, 21989

27 CFR

1.....20721, 26096
2.....26096
3.....26096
4.....20721
7.....20721
16.....20721
19.....20721
20.....20721
21.....20721
22.....20721
24.....20721, 21076
25.....20721
53.....20721
55.....20721
71.....20721
170.....20721
178.....20721
179.....20721
194.....20721
197.....20721
200.....20721
250.....20721
251.....20721
252.....20721
270.....20721
275.....20721
285.....20721
290.....20721
296.....20721

28 CFR

58.....24889
501.....25120
550.....25120

Proposed Rules:

90.....24526
100.....21396

29 CFR

1.....19982
2.....19982
4.....19982
5.....19982
6.....19982
7.....19982
8.....19982
22.....19982
24.....19982
32.....19982
96.....19982
500.....24694
504.....19982
507.....19982
508.....19982
530.....19982
1601.....21370
1910.....19547, 21228
1915.....26322
1978.....19982
2619.....21228, 24444, 25513
2627.....24694
2676.....24444

Proposed Rules:

Ch. XIV.....20768
4.....19770
102.....25158

30 CFR

75.....20877
250.....25147

Proposed Rules:

Ch. II.....21977, 25160
202.....25421
206.....25421
211.....25421
256.....24466
901.....20768
902.....20768
904.....19881, 20768
913.....20768
914.....20768
915.....20768
916.....20768
917.....20768
918.....20768
920.....20768
934.....25425
936.....25426
946.....19885
950.....20773

31 CFR

12.....25396
361.....20437
585.....24696

Proposed Rules:

356.....25164

32 CFR

95.....26102
324.....25561

33 CFR

52.....24233
100.....19192, 20132, 21959, 21960, 21961, 21962, 25149, 26102, 26103, 26104
110.....25149
117.....24235, 25149
165.....19192, 19841, 21963, 24697, 24698, 24699, 24701, 24892, 26105
334.....26107
401.....19548

Proposed Rules:

100.....25835
165.....25838

34 CFR

361.....24390
685.....24446

Proposed Rules:

100.....20196, 21998, 21999, 22001
117.....22002
154.....20084
155.....20084

36 CFR

242.....25785
292.....20726
1228.....19552, 24702

Proposed Rules:

7.....20775
100.....19220
117.....19223
701.....25839

37 CFR

Proposed Rules:

Ch. II.....20197, 22004
1.....19224, 20877

38 CFR

2.....20133, 20437, 26107
3.....20438, 20726, 25787
4.....20438, 20440
9.....20134
17.....21964, 24236
19.....20447
20.....20447
21.....20727, 24237, 26107

Proposed Rules:

3.....24910
17.....25428

39 CFR

3001.....24447

Proposed Rules:

233.....21404

40 CFR

50.....25566
52.....19193, 19555, 20136, 20139, 20142, 20145, 20147, 20453, 20455, 20458, 20730, 20732, 24239, 24457, 24702, 24706, 24709, 24712, 25789, 25791
55.....25149
60.....20734, 21080
63.....21370, 25397
70.....20150, 24457, 24715
75.....25580
80.....20736
81.....20458, 21372, 24239, 24242
82.....25585
89.....20738
90.....20738
110.....25149
117.....25149
123.....20972
131.....20686
141.....24354
167.....25151
180.....19842, 19845, 19847, 19849, 19850, 19852, 19854, 19855, 20742, 20743, 20745, 21378, 24893, 25152, 26117, 26118
185.....25153
271.....25794, 25796, 25799
300.....20473, 24720, 24894
355.....20473
421.....24242

Proposed Rules:

Ch. I.....19432
51.....19231
52.....19233, 19601, 20199, 20200, 20201, 20504, 21405, 21412, 24467, 24737, 24738, 25840, 25841
55.....25173
61.....20775
63.....19887, 21414
70.....20202, 26145
80.....20779
81.....19233, 21415
82.....25604
89.....20738
90.....20738
136.....26149
148.....21418
170.....19889
180.....19233, 20780, 20781, 24738, 24911, 26149
185.....20780
186.....10780, 20781, 24911
261.....21418, 25175
268.....21418
271.....21418
300.....19889, 20202, 20785, 21422, 22004, 22006, 24261

41 CFR

50–203.....19982
60–1.....19982, 25516
60–30.....19982
60–60.....25516
60–250.....19366, 19982
60–741.....19336, 19982
301–4.....25802

42 CFR

405.....19722
412.....21969
486.....19722

Proposed Rules:

84.....24740, 25513

43 CFR

11.....20560

44 CFR

61.....19197
62.....24462
64.....19857, 25802
65.....25400, 25402, 25403
67.....25405
206.....19197

Proposed Rules:

67.....25429, 25435

45 CFR

Proposed Rules:

1311.....24467
2400.....25612

46 CFR

Ch. I.....24464
10.....19858
15.....19858, 25984
26.....25984
30.....25272
31.....25272, 25984
32.....25272, 25984
33.....25272
34.....25984
35.....25272, 25984
38.....25984
54.....25984
56.....25984
58.....25984
61.....25984
70.....25272
71.....25272
72.....25984
75.....25272
76.....25984
77.....25272, 25984
78.....25272, 25984
90.....25272
91.....25272
92.....25984
94.....25272
95.....25984
96.....25272, 25984
97.....25272, 25984
107.....25272
108.....25272, 25984
109.....25272, 25984
114.....20556
116.....20556
117.....20556
118.....20556
119.....20556
120.....20556
121.....20556
122.....20556
125.....25272
133.....25272
153.....25984
160.....25984
162.....25984
164.....25984
167.....25272, 25984
168.....25272, 25984
169.....25984
170.....20556, 24464
171.....24464
173.....20556, 24464
175.....20556
176.....20556
177.....20556
178.....20556
179.....20556
180.....20556
181.....20556
182.....20556
183.....20556
185.....20556
188.....25272
189.....25272, 25984
190.....25984
192.....25272
193.....25984
195.....25272
196.....25272, 25984
199.....25272
298.....21302
381.....24895
403.....21081

404.....21081

47 CFR

0.....25804
3.....20155
21.....25594
22.....21380
24.....25807, 25808, 25810
64.....20746, 24897
73.....20490, 20747, 21384, 21385, 21973, 24262, 24263, 24465, 25594
80.....25804, 26120
90.....21380, 25810
97.....21385

Proposed Rules:

Ch. I.....22008, 26152
0.....21151
1.....19236, 20505, 24743, 25183
2.....19236
15.....24473, 24749
21.....19236
22.....24470
24.....24470
64.....25184, 26152
73.....19601, 20206, 20207, 20505, 20789, 21425, 24262, 24263, 25183, 25841
80.....21151
90.....25185
94.....19236

48 CFR

Ch. 1.....24263
209.....25408
231.....21973
242.....25409
243.....25408
570.....24720
801.....20491
803.....20491
804.....20491
805.....20491
806.....20491
808.....20491
810.....20491
812.....20491
813.....20491
815.....20491
816.....20491
820.....20491
822.....20491
828.....20491
833.....20491
834.....20491
836.....20491
837.....20491
846.....20491
871.....20493
904.....21975
906.....21975
911.....21975
912.....21975
913.....21975
915.....21975
919.....21975
925.....21975
926.....21975
933.....21975
950.....21975
952.....21975
970.....21975
2401.....19468
2402.....19468
2404.....19468
2405.....19468
2406.....19468
2409.....19468
2411.....19468
2412.....19468
2413.....19468
2414.....19468
2415.....19468
2416.....19468
2417.....19468
2419.....19468
2420.....19468
2426.....19468
2428.....19468
2429.....19468
2432.....19468
2434.....19468
2436.....19468
2437.....19468
2442.....19468
2452.....19468
2453.....19468

Proposed Rules:

Ch. 1.....22010
Ch. 2.....22010
52.....24473
901.....19891
905.....19891
906.....19891
908.....19891
915.....19891
916.....19891
917.....19891
922.....19891
928.....19891
932.....19891
933.....19891
935.....19891
936.....19891
942.....19891
945.....19891
952.....19891
971.....19891
1515.....25440
1552.....25440

49 CFR

18.....21386
37.....25409
38.....25409
90.....21386
107.....21084
171.....21084, 25940
172.....20747
173.....20747, 21084, 25940
174.....20747
176.....20747
178.....21084, 25940
192.....26121
193.....26121
195.....24244, 26121
212.....26124
228.....20494
397.....20496
533.....25595
564.....20497
571.....19201, 19202, 19560, 19561, 20170, 20172, 20497
604.....19562
609.....19562
639.....25088
1051.....19859
1053.....19859
1164.....21387
1311.....21387
1312.....19859
1330.....024722

Proposed Rules.

171.....24904, 26253
173.....24904, 26253
180.....24904, 26253
219.....21149
382.....21149
537.....22010
571.....19602, 24263, 24265
653.....21149
654.....21149
1002.....20877
1100.....19236
1101.....19236
1102.....19236
1103.....19236
1104.....19236
1105.....19236
1106.....19236
1107.....19236
1108.....19236
1109.....19236
1110.....19236
1111.....19236
1112.....19236
1113.....19236
1114.....19236
1115.....19236
1116.....19236
1117.....19236
1118.....19236
1119.....19236
1120.....19236
1121.....19236
1122.....19236
1123.....19236
1124.....19236
1125.....19236
1126.....19236
1127.....19236
1128.....19236
1129.....19236
1130.....19236
1131.....19236
1132.....19236
1133.....19236
1134.....19236
1135.....19236
1136.....19236
1137.....19236
1138.....19236
1139.....19236
1140.....19236
1141.....19236
1142.....19236
1143.....19236
1144.....19236
1145.....19236
1146.....19236
1147.....19236
1148.....19236
1149.....19236
1185.....22014
1300.....21153
1305.....24474
1312.....19902

50 CFR

17.....24722, 25813
91.....25155
100.....25785
216.....21926
222.....21926
253.....19171
255.....19171
620.....20175
641.....25833
658.....24728
661.....20175, 26125
663.....21102
672.....19976, 21104, 24729
675.....19976, 24730, 24905, 25595
678.....21978

Proposed Rules:

16.....24267
17.....19237, 21426, 25618
246.....25443
280.....25443
281.....25443
282.....25443
298.....25443
299.....25443
300.....25443
301.....25443
371.....25443
380.....25443
600.....19390
601.....19390
602.....19390
603.....19390
605.....19390
611.....19390
619.....19390
620.....19390
621.....19390
625.....20506
628.....20789
641.....24267
649.....20207
650.....20207, 21431
651.....20207
655.....25185
652.....19604
672.....24475, 24750
673.....19902, 21431
675.....24475, 24750
676.....24475
695.....25443

REMINDERS

The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

COMMERCE DEPARTMENT

Grants and cooperative agreements to State and local governments; cost principles for state, local and indian tribal governments (OMB A-87); published 5-24-96

DEFENSE DEPARTMENT

Gifts from foreign Governments: CFR part removed; published 5-24-96

DEFENSE DEPARTMENT
Engineers Corps

Danger zones and restricted areas:
- Albemarle and Pamlico Sounds; Harvey Point, Perquimans County, NC
  - Correction; published 5-24-96

ENVIRONMENTAL PROTECTION AGENCY

Clean Air Act:
- State operating permits programs--
  - California; published 4-24-96

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Oxo-alkyl acetates; published 5-24-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration

Biological products:
- Well-characterized biotechnology products--
  - Product and establishment license applications requirement; elimination; published 5-14-96

SOCIAL SECURITY ADMINISTRATION

Civil monetary penalties, assessments and recommended exclusions; published 4-24-96

TRANSPORTATION DEPARTMENT
Federal Aviation Administration

Airworthiness directives:
- Boeing; published 5-9-96
- McDonnell Douglas; published 5-9-96

Airworthiness standards:
- Manned free balloons--
  - Burner testing; published 4-24-96

Class D and E airspace
- Correction; published 5-24-96

TREASURY DEPARTMENT
Alcohol, Tobacco and Firearms Bureau

Alcoholic beverages:
- Basic permit requirements, spirits and wine honindustrial use, and distilled spirits bulk sales and bottling; Federal regulatory reform; published 5-24-96

VETERANS AFFAIRS DEPARTMENT

Organization, functions, and authority delegations:
- General Counsel et al.; decision on discrimination complaint; published 5-24-96

Vocational rehabilitation and education:
- Veterans education--
  - Miscellaneous amendments; published 5-24-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
- Horses; vesicular stomatitis; comments due by 5-31-96; published 4-1-96

Interstate transportation of animals and animal products (quarantine):
- Brucellosis in cattle and bison--
  - Brucella vaccine approval; comments due by 5-31-96; published 4-1-96

AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation

Crop insurance regulations:
- Pear crop provisions; comments due by 5-28-96; published 4-25-96

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service

Meat and poultry inspection:
- Processed meat and poultry products; nutrient content claim and general definition and standard of identity; comment period extension; comments due by 5-28-96; published 2-27-96

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Atlantic golden crab fishery, etc.; comments due by 5-28-96; published 4-11-96
- Northeast multispecies, Atlantic sea scallop, and American lobster; comments due by 5-30-96; published 5-6-96
- Ocean salmon off coasts of Washington, Oregon, and California; comments due by 5-31-96; published 5-6-96

International fisheries in U.S. Exclusive Economic Zone and on high seas; regulations consolidation; comments due by 5-30-96; published 5-21-96

Magnuson Act provisions; regulations consolidation and update; comments due by 5-31-96; published 5-1-96

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Contractor overhead certification; comments due by 5-28-96; published 3-29-96

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; standards of performance for new stationary sources:
- Volatile organic compound (VOC) emissions--
  - Automobile refinish coatings; comments due by 5-30-96; published 4-30-96

Air quality implementation plans:
- Preparation, adoption, and submittal--
  - Volatile organic coumpound definition; HFC 43-10mee and HCFC 225ca and cb exclusion; comments due by 5-31-96; published 5-1-96

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 5-30-96; published 4-30-96
- Florida; comments due by 5-28-96; published 4-25-96
- Kansas and Missouri; comments due by 5-28-96; published 4-25-96
- Wisconsin; comments due by 5-29-96; published 4-29-96

Hazardous waste program authorizations:
- Alabama; comments due by 5-28-96; published 4-25-96
- Kentucky; comments due by 5-28-96; published 4-26-96
- North Carolina; comments due by 5-28-96; published 4-25-96
- South Carolina; comments due by 5-28-96; published 4-26-96

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Aluminum tris (O-ethylphosphonate); comments due by 5-28-96; published 4-26-96
- Dicofol, etc.; comments due by 5-30-96; published 3-1-96
- Quizalofop ethyl; comments due by 5-28-96; published 4-26-96

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Microwave relocation for C, D, E, and F blocks; voluntary negotiation period shortening, etc.; comments due by 5-28-96; published 5-15-96

Communications equipment:
- Radio frequency devices--
  - Vehicle radar systems and radio astronomy operations; protection from interference; use of frequency bands above 40 GHz restricted; comments due by 5-28-96; published 3-29-96

Television broadcasting:
- Telecommunications Act of 1996--
  - Cable reform provisions; comments due by 5-28-96; published 4-30-96

FEDERAL ELECTION COMMISSION

Reports by political committees:
- Electronic filing of reports; comments due by 5-28-96; published 3-27-96

GENERAL ACCOUNTING OFFICE

Practice and procedure:

Personnel Appeals Board–
Reductions in force; comments due by 5-31-96; published 3-7-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare and Medicaid:
Prepaid health care organizations; physician incentive plans requirements; comments due by 5-28-96; published 3-27-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Inspector General Office, Health and Human Services Department
Medicare and Medicaid:
Prepaid health care organizations; physician incentive plans requirements; comments due by 5-28-96; published 3-27-96

INTERIOR DEPARTMENT
Fish and Wildlife Service
Migratory bird hunting:
Migratory bird harvest information program; participating States; comments due by 5-29-96; published 4-29-96

INTERIOR DEPARTMENT
Tribal government:
Self-governance program; awarding negotiation and planning grants; procedure establishment; comments due by 5-31-96; published 4-23-96

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Immigration:
Immigrant petitions–
Battered or abused spouses and children; classification as immediate relative of U.S. citizen or preference immigrant; self-petitioning; comments due by 5-28-96; published 3-26-96

JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Inmate personal property; authorized personal property lists standardization and transportation procedures; comments due by 5-31-96; published 4-1-96

POSTAL SERVICE
International Mail Manual:
International package consignment service implementation; comments due by 5-31-96; published 3-28-96

SECURITIES AND EXCHANGE COMMISSION
Securities:
Odd-lot tender offers by issuers; comments due by 5-28-96; published 4-25-96

SMALL BUSINESS ADMINISTRATION
Small business size standards:
Nonmanufacturer rule; waivers–
Purified terephthalic acid ground and unground; comments due by 5-29-96; published 5-6-96
Tabulating paper (computer forms, manifold or continuous); comments due by 5-29-96; published 5-6-96

TRANSPORTATION DEPARTMENT
Coast Guard
Merchant marine officers and seamen:
Electronic records of shipping articles and certificates of discharge; comments due by 5-28-96; published 3-28-96
Tankermen and persons in charge of dangerous liquids and liquefied gases transfers; qualifications; comment period reopening; comments due by 5-28-96; published 3-26-96
Regattas and marine parades:
Harborwalk Boat Race; comments due by 5-28-96; published 3-26-96
Suncoast Kilo Run et al.; comments due by 5-31-96; published 5-1-96

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 5-28-96; published 4-15-96
AlliedSignal, Inc.; comments due by 5-28-96; published 3-26-96
Beech; comments due by 5-28-96; published 4-15-96
CFM International; comments due by 5-28-96; published 3-26-96
McDonnell Douglas; comments due by 5-31-96; published 4-19-96
Airworthiness standards:
Special conditions–
Cessna model 425 airplanes; comments due by 5-30-96; published 4-30-96
Class E airspace; comments due by 5-30-96; published 4-30-96
Jet routes; comments due by 5-30-96; published 4-16-96

TRANSPORTATION DEPARTMENT
Federal Highway Administration
Motor carrier safety standards:
Commercial Driver's License and Physical Qualification Requirements Negotiated Rulemaking Advisory Committee–
Intent to establish; comments due by 5-29-96; published 4-29-96

TRANSPORTATION DEPARTMENT
Surface Transportation Board
Railroad contracts:
Specified rail services provision under specified rates and conditions; comment due date extended; comments due by 5-28-96; published 4-22-96

TREASURY DEPARTMENT
Customs Service
Organization and functions; field organization, ports of entry, etc.:
Columbus, OH; port limits extension; comments due by 5-31-96; published 5-3-96

TREASURY DEPARTMENT
Fiscal Service
Treasury certificates of indebtedness, notes, and bonds; State and local government series; comments due by 5-30-96; published 4-30-96

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List May 23, 1996

Printed on recycled paper

OL
1
SS
1
0
3
MY
28
996
MI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

5-28-96
Vol. 61 No. 103

federal register

Tuesday
May 28, 1996

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********3-DIGIT 481
A FR UMI 345U DEC 96 R
UMI
SERIALS ACQUISITIONS
PO BOX 1346
ANN ARBOR MI 48106

OL
1
SS
1
0
3
MY
28
996
MI

5–28–96
Vol. 61 No. 103
Pages 26423–26768

federal register

Tuesday
May 28, 1996

Briefings on How To Use the Federal Register
For information on briefings in Chicago, IL, and Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $494, or $544 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $433. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 61 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530
Single copies/back copies:	
Paper or fiche	512–1800
Assistance with public single copies	512–1803

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

CHICAGO, IL

WHEN: June 11, 1996 at 9:00 am
WHERE: Metcalfe Federal Building, Conference Room 328, 77 West Jackson, Chicago, Illinois 60604
RESERVATIONS: 1–800–688–9889

WASHINGTON, DC

[Two Sessions]

WHEN: June 18, 1996 at 9:00 am, and June 25, 1996 at 9:00 am
WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 61, No. 103
Tuesday, May 28, 1996

Agency for Health Care Policy and Research
NOTICES
Research priority topics; nominations of outcomes and effectiveness, 26519–26520

Agency for International Development
NOTICES
Meetings:
Voluntary Foreign Aid Advisory Committee, 26545

Agriculture Department
See Animal and Plant Health Inspection Service
See Farm Service Agency
See Food Safety and Inspection Service
See Forest Service

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, domestic:
Mexican fruit fly, 26423

Arms Control and Disarmament Agency
PROPOSED RULES
Service of process, production of official information, and agency employees testimony, 26474–26477

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Occupational safety and health—
Fatality surveillance and field investigations at State level using NIOSH fatality assessment and control evaluation (FACE) model, 26520–26523

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Alaska, 26498
Nevada, 26498
Washington, 26498

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 26505
Settlement agreements:
Burlington Coat Factory Warehouse Corp., 26505–26507

Defense Department
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Final indirect cost rates, 26766–26767
Nonstatutory certifications elimination, 26496–26497

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Elementary and secondary education—
Local educational agencies; comprehensive local improvement plans, 26730–26747

Energy Department
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
NOTICES
Foreign research reactor spent nuclear fuel acceptance; fee policy establishment, 26507–26508
Spent nuclear fuel and high level radioactive waste; acceptance, storage, and transportation responsibilities; performance plan; comment request, 26508–26509

Environmental Protection Agency
NOTICES
Superfund; response and remedial actions, proposed settlements, etc.:
San Gabriel Valley Sites, CA, 26515–26516

Executive Office of the President
See Management and Budget Office

Farm Service Agency
RULES
Wetlands reserve program; CFR part removed, 26423–26424

Federal Aviation Administration
RULES
Airworthiness directives:
Beech; correction, 26426–26427
Cessna; correction, 26425–26426
de Havilland; correction, 26425
Dornier; correction, 26426
Empressa Brasileiro de Aeronautico, S.A. (EMBRAER); correction, 26427
Fairchild; correction, 26424–26425
Jetstream; correction, 26424
Robinson Helicopter Co., 26429–26431
Class C airspace, 26431–26433
Class D airspace, 26434
Organization, functions, and authority delegations:
Air Traffic Operations, Program Director, 26434–26435
PROPOSED RULES
Class E airspace, 26473
NOTICES
Emergency enforcement policy:
Oxygen generator transportation aboard passenger-carrying aircraft; prohibition [**Editorial Note:** This document, published as Part VIII at 61 FR 26422 in the Federal Register of May 24, 1996, was inadvertently omitted in that issue's Table of Contents.]

Federal Communications Commission
RULES
Common carrier services:
Operator service access and pay telephone compensation, 26466–26467
Organization, functions, and authority delegations:
General Counsel, 26464
Radio services, special:
Terrestrial microwave fixed services, 26670–26728
Vessel traffic services (VTS) system frequencies, 26465–26466

PROPOSED RULES
Radio and television broadcasting:
Broadcast blanketing interference, 26491–26496
Telecommunications Act of 1996; implementation:
Customer proprietary network information, etc.; telecommunications carriers' use, 26483–26491
NOTICES
Committees; establishment, renewal, termination, etc.:
Network Reliability and Interoperability Council, 26516

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Illinois, 26516–26517
Montana, 26517

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
PSI Argentina, Inc., et al., 26512–26514
Applications, hearings, determinations, etc.:
Algonquin LNG, Inc., 26509–26510
CNG Transmission Corp., 26510–26511
Columbia Gulf Transmission Co., 26511
Koch Gateway Pipeline Co., 26511
Michigan Gas Storage Co., 26511
Questar Pipeline Co., 26511–26512
Stingray Pipeline Co., 26512
Tennessee Gas Pipeline Co., 26512

Federal Maritime Commission
NOTICES
Agreements filed, etc., 26517

Federal Prison Industries
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26545

Federal Reserve System
PROPOSED RULES
Loan guarantees for defense production (Regulation V), 26471–26473
Truth in Savings (Regulation DD):
Official staff commentary; revisions
Withdrawn, 26470–26471
NOTICES
Banks and bank holding companies:
Change in bank control, 26518
Formations, acquisitions, and mergers, 26518
Permissible nonbanking activities, 26518–26519

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
Washington County, UT; desert tortoise, 26529
Pipeline right-of-way applications:
Louisiana, 26529–26544

Food and Drug Administration
PROPOSED RULES
Biological products:
Placental/umbilical cord blood stem cell products intended for transplantation, etc.; draft document, 26473–26474
NOTICES
Biological products:
Products comprised of living autologous cells manipulated ex vivo and intended for structural repair or reconstruction; guidance availability, 26523–26524

Food Safety and Inspection Service
PROPOSED RULES
Meat and poultry inspection:
Processed meat and poultry products; nutrient content claim and general definition and standard identity
Comment period extended, 26470

Foreign Assets Control Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26555–26556

Forest Service
NOTICES
Meetings:
Southwest Oregon Provincial Interagency Executive Committee Advisory Committee, 26498

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Final indirect cost rates, 26766–26767
Nonstatutory certifications elimination, 26496–26497

Health and Human Services Department
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Food and Drug Administration

Hearings and Appeals Office, Energy Department
NOTICES
Special refund procedures; implementation, 26514–26515

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26524
Submission for OMB review; comment request, 26524–26527

Immigration and Naturalization Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26547

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Meetings:
Commissioner's Advisory Group, 26556

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
U.S.-South Africa Business Development Committee, 26499
Export trade certificates of review, 26499–26501

International Trade Commission
NOTICES
Meetings; Sunshine Act, 26545

Justice Assistance Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26547–26548

Justice Department
See Federal Prison Industries
See Immigration and Naturalization Service
See Justice Assistance Bureau
See Juvenile Justice and Delinquency Prevention Office
NOTICES
Americans with Disabilities Act; barrier free design regulations certifications:
Texas, 26545–26547

Juvenile Justice and Delinquency Prevention Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26548

Labor Department
See Mine Safety and Health Administration

Land Management Bureau
NOTICES
Committees; establishment, renewal, termination, etc.:
Resource advisory councils—
Bakersfield et al., 26527
Environmental statements; availability, etc.:
Gillette South Assessment Area, WY; coalbed methane development projects, 26527–26528
Meetings:
Mojave-Southern Great Basin Resource Advisory Council, 26528
Public land orders:
Arizona, 26528–26529

Management and Budget Office
NOTICES
North American Industry Classification System; standard industrial classification replacement:
Food manufacturing, grain and oilseed milling, etc., 26558–26668

Mine Safety and Health Administration
RULES
Coal mine safety and health:
Underground coal mines—
Ventilation; safety standards; correction, 26441–26442

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Final indirect cost rates, 26766–26767
Nonstatutory certifications elimination, 26496–26497

National Highway Traffic Safety Administration
RULES
Organization, functions, and authority delegations:
Chief Counsel, 26468–26469

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Foreign and domestic fishing—
Scientific research activity, exempted fishing, and exempted educational activities, 26435–26441
NOTICES
Marine mammals:
Incidental taking; authorization letters, etc.—
BP Exploration, 26501–26504
Meetings:
North Pacific Fishery Management Council, 26504–26505
Permits:
Marine mammals, 26505

National Science Foundation
NOTICES
Meetings:
Cross Disciplinary Activities Special Emphasis Panel, 26549
Materials Research Special Emphasis Panel, 26549

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Guzman, Juan, et al., 26549

Office of Management and Budget
See Management and Budget Office

Personnel Management Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26549
Submission for OMB review; comment request, 26550

Public Health Service
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Food and Drug Administration

Research and Special Programs Administration
RULES
Hazardous materials:
Cylinders, DOT specification and exemption, for compressed gases transportation; maintenance and requalification, 26750–26764
Hazardous materials transportation—
Oxygen generators as cargo in passenger aircraft; temporary prohibition [**Editorial Note:** This document, published as Part VII at 61 FR 26418 in the Federal Register of May 24, 1996, was inadvertently omitted in that issue's Table of Contents.]

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 26550
Self-regulatory organizations; proposed rule changes:
Government Securities Clearing Corp., 26550–26552
Participants Trust Co., 26552–26554

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Indiana, 26443–26445
Missouri, 26445–26461
Oklahoma, 26461–26464
PROPOSED RULES
Federal regulatory review:
Permanent program and abandoned mine land reclamation plan submissions, 26477–26483

Surface Transportation Board
NOTICES
Meetings; Sunshine Act, 26554
Railroad operation, acquisition, construction, etc.:
Angelina & Neches River Railroad Co., 26554
Railroad services abandonment:
Council Bluffs Railway, 26554–26555

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board
RULES
Americans with Disabilities Act; implementation:
Accessibility guidelines—
Transportation for individuals with disabilities; correction, 26467–26468

Treasury Department
See Foreign Assets Control Office
See Internal Revenue Service

Separate Parts In This Issue

Part II
Office of Management and Budget, 26558–26668

Part III
Federal Communications Commission, 26670–26728

Part IV
Department of Education, 26730–26747

Part V
Department of Transportation, Research and Special Programs Administration, 26750–26764

Part VI
Department of Defense, General Services Administration, National Aeronautics and Space Administration, 26766–26767

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
301 26423
703 26423

9 CFR
Proposed Rules:
319 26470
381 26470

12 CFR
Proposed Rules:
230 26470
245 26471

14 CFR
39 (9 documents) 26424, 26425, 26426, 26427, 26429
71 (2 documents) 26431, 26434
73 26434
Proposed Rules:
71 26473

15 CFR
902 26435

21 CFR
Proposed Rules:
Ch. I 26473

22 CFR
Proposed Rules:
608 26474

30 CFR
75 26441
914 26443
925 (2 documents) 26445, 26454
936 26461
Proposed Rules:
925 26477
926 26477
931 26477
934 26477
935 26477
936 26477
938 26477
943 26477
944 26477
946 26477
948 26477
950 26477

47 CFR
Ch. I 26466
0 (2 documents) 26464, 26465
1 26670
2 26670
21 26670
80 26465
94 26670
101 26670
Proposed Rules:
Ch. I 26483
73 26491

48 CFR
Proposed Rules:
Ch. 1 26496
42 26766
52 26766

49 CFR
37 26467
38 26467
171 26750
173 26750
501 26468

50 CFR
611 26435
620 26435

Rules and Regulations

Federal Register
Vol. 61, No. 103
Tuesday, May 28, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 95–089–2]

Mexican Fruit Fly Regulations; Addition of Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Mexican fruit fly regulations by adding California to the list of quarantined States and by designating portions of Los Angeles County and San Diego County, CA, as regulated areas. The interim rule was necessary to impose certain restrictions on the interstate movement of regulated articles from the regulated areas in California in order to prevent the spread of the Mexican fruit fly to noninfested areas of the United States.

EFFECTIVE DATE: The interim rule was effective on January 22, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective January 22, 1996, and published in the **Federal Register** on January 26, 1996 (61 FR 2391–2393, Docket No. 95–089–1), we amended the Mexican fruit fly regulations in 7 CFR 301.64 by quarantining the State of California and designating as regulated areas portions of Los Angeles County and San Diego County, CA.

Comments on the interim rule were required to be received on or before March 26, 1996. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, the National Environmental Policy Act, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 61 FR 2391–2393 on January 26, 1996.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 21st day of May 1996.

William S. Wallace,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–13282 Filed 5–24–96; 8:45 am]
BILLING CODE 3410–34–P

Farm Service Agency

7 CFR Part 703

RIN 0560–AE83

Wetlands Reserve Program

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This final rule removes obsolete regulations pertaining to the Wetlands Reserve Program (WRP). Under the Department of Agriculture Reorganization Act of 1994, Public Law 103–354, WRP program authority was transferred to the Natural Resources Conservation Service. This action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

EFFECTIVE DATE: May 28, 1996.

FOR FURTHER INFORMATION CONTACT: Cheryl Zavodny, Chief, Conservation Programs Branch, Conservation and Environmental Protection Division, USDA, FSA, P.O. Box 2415, Ag Box 0513, Washington, DC 20013–2415 or call 202–720–7333.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Commodity Credit Corporation is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of final rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of the final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR Part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR Part 703 set forth in this final rule do not contain information collections that require clearance by OMB under the provisions of 44 U.S.C. 35.

Background

This final rule removes 7 CFR Part 703 pertaining to the Wetlands Reserve Program (WRP). WRP program authority was transferred from the Farm Service Agency to the Natural Resource Conservation Service under the Department of Agriculture Reorganization Act of 1994, Public Law No. 103–354. Therefore, 7 CFR Part 703 is obsolete. Regulations for the WRP are now located in 7 CFR Part 620.

List of Subjects in 7 CFR Part 703

Administrative practices and procedures, agriculture, Flood plains, Grant programs—Agriculture, Grant programs—natural resources, Reporting and recordkeeping requirements, Technical assistance, Wetlands.

PART 703—[REMOVED]

Accordingly, under the Authority of 7 U.S.C. 2202 and 7 CFR 2.42, 7 CFR Part 703 is removed.

Signed at Washington, DC, on May 20, 1996.

Bruce R. Weber,

Administrator, Farm Service Agency.

[FR Doc. 96–13211 Filed 5–24–96; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–07–AD; Amendment 39–9593; AD 96–09–17]

RIN 2120—AA64

Airworthiness Directives; Jetstream Aircraft Limited Jetstream Models 3101 and 3201 Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This action makes a correction to Airworthiness Directive (AD) 96–09–17 concerning all Jetstream Aircraft Limited (Jetstream) Models 3101 and 3201 airplanes, which published in the **Federal Register** on May 7, 1996 (61 FR 20644). That publication incorrectly references a cue for the pilot or crew member in severe icing conditions. The AD currently requires the pilot to follow certain visual cues during flight in icing conditions and the second of these cues requires the pilot to look at the lower surface of the wing. The word "lower" is wrong in the second cue. The intent of the AD in paragraph (a)(1), first bullet, second cue, is to require the pilot or crew member to look at the "upper" surface of the wing. This action corrects the AD to reflect this change.

EFFECTIVE DATE: June 11, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. John Dow, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: On May 7, 1996, the Federal Aviation Administration (FAA) issued AD 96–09–17, Amendment 39–9593 (61 FR 20644, May 7, 1996), which applies to Jetstream Models 3101 and 3201 airplanes. This AD requires a revision in the Airplane Flight Manual (AFM) by incorporating a warning into the Limitations Section of the AFM. Within this warning (in the first bulleted paragraph) are cues for the pilot to follow during flight in severe icing conditions. The second cue references accumulation of ice on the lower surface of the wing aft of the protected area.

Need for the Correction

The AD incorrectly references the "* * *lower surface of the wing* * *" instead of the upper surface of the wing. Jetstream Models 3101 and 3201 airplanes are designed with the wings sitting low on the body of the airplane, which would not allow the pilot to visually check the lower surface of the wings on the airplane during flight without exiting the airplane.

Correction of Publication

Accordingly, the publication of May 7, 1996 (61 FR 20644), of Amendment 39–9593; AD 96–09–17, which was the subject of FR Doc. 96–10727, is corrected as follows:

§ 39.13 [Corrected]

On page 20646, in the first column, § 39.13, paragraph (a)(1) of the AD, line 26 from the top of the column, correct "—Accumulation of ice on the lower surface" to read "—Accumulation of ice on the upper surface".

Action is taken herein to clarify this requirement of AD 96–09–17 and to add this AD correction to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13). The effective date remains June 11, 1996.

Issued in Kansas City, Missouri on May 17, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–13063 Filed 5–24–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–CE–06–AD; Amendment 39–9592; AD 96–09–16]

RIN 2120—AA64

Airworthiness Directives; Fairchild Aircraft SA226 and SA227 Series Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This action makes a correction to Airworthiness Directive (AD) 96–09–16 concerning all Fairchild Aircraft (Fairchild) SA226 and SA227 series airplanes, which published in the **Federal Register** on May 7, 1996 (61 FR 20643). That publication incorrectly references a cue for the pilot or crew member in severe icing conditions. The AD currently requires the pilot to follow certain visual cues during flight in icing conditions and the second of these cues requires the pilot to look at the lower surface of the wing. The word "lower" is wrong in the second cue. The intent of the AD in paragraph (a)(1), first bullet, second cue, is to require the pilot or crew member to look at the "upper"surface of the wing. This action corrects the AD to reflect this change.

EFFECTIVE DATE: June 11, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. John Dow, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426– 6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: On May 7, 1996, the Federal Aviation Administration (FAA) issued AD 96–09–16, Amendment 39–9592 (61 FR 20643, May 7, 1996), which applies to Fairchild SA226 and SA227 series airplanes. This AD requires a revision in the Airplane Flight Manual (AFM) by incorporating a warning into the Limitations Section of the AFM. Within this warning (in the first bulleted paragraph) are cues for the pilot to follow during flight in severe icing conditions. The second cue references accumulation of ice on the lower surface of the wing aft of the protected area.

Need for the Correction

The AD incorrectly references the "* * * lower surface of the wing * * *" instead of the upper surface of the wing. Fairchild SA226 and SA227 series airplanes are designed with the wings sitting low on the body of the airplane, which would not allow the pilot to visually check the lower surface of the wings on the airplane during flight without exiting the airplane.

Correction of Publication

Accordingly, the publication of May 7, 1996 (61 FR 20643), of Amendment 39–9592; AD 96–09–16, which was the subject of FR Doc. 96–10724, is corrected as follows:

§ 39.13 [Corrected]

On page 20644, in the second column, § 39.13, paragraph (a)(1) of the AD, line 20 from the top of the column, correct "—Accumulation of ice on the lower surface" to read "—Accumulation of ice on the upper surface".

Action is taken herein to clarify this requirement of AD 96–09–16 and to add this AD correction to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains June 11, 1996.

Issued in Kansas City, Missouri on May 17, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–13062 Filed 5–24–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–CE–01–AD; Amendment 39–9587; AD 96–09–11]

RIN 2120—AA64

Airworthiness Directives; de Havilland, Inc. DHC–6 Series Airplane; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This action makes a correction to Airworthiness Directive (AD) 96–09–11 concerning de Havilland DHC–6 series airplanes, which was published in the **Federal Register** on May 7, 1996 (61 FR 20616). That publication incorrectly references a cue for the pilot or crew member in severe icing conditions. The AD currently requires the pilot to follow certain visual cues during flight in icing conditions and the second of these cues requires the pilot to look at the upper surface of the wing. The word "upper" is wrong in the second cue. The intent of the AD in paragraph (a) (1), first bullet, second cue, is to require the pilot or crew member to look at the "lower" surface of the wing. This action corrects the AD to reflect this change.

EFFECTIVE DATE: June 11, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. John Dow, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: On May 7, 1996, the Federal Aviation Administration (FAA) issued AD 96–09–11, Amendment 39–9587 (61 FR 20616, May 7, 1996), which applies to de Havilland DHC–6 series airplanes. This AD requires a revision in the Airplane Flight Manual (AFM) by incorporating a warning into the Limitations Section of the AFM. Within this warning (in the first bullet paragraph) are cues for the pilot to follow during flight in severe icing conditions. The second cue references accumulation of ice on the upper surface of the wing aft of the protected area.

Need for the Correction

The AD incorrectly references the "upper surface of the wing" instead of the lower surface of the wing. The de Havilland DHC–6 series airplanes are designed with the wings sitting high on the body of the airplane, which would not allow the pilot to visually check the upper surface of the airplane during flight without exiting the airplane.

Correction of Publication

Accordingly, the publication of May 7, 1996 (61 FR 20616), of Amendment 39–9587; AD 96–09–11, which was the subject of FR Doc. 96–10728, is corrected as follows:

§ 39.13 [Corrected]

On page 20635, in the third column, § 39.13, paragraph (a) (1) of the AD, the 19th line from the bottom of the column, correct "—Accumulation of ice on the upper surface" to read "—Accumulation of ice on the lower surface".

Action is taken herein to clarify this requirement of AD 96–09–11 and to add this AD correction to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains June 11, 1996.

Issued in Kansas City, Missouri on May 17, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–13057 Filed 5–24–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–CE–05–AD; Amendment 39–9591; AD 96–09–15]

RIN 2120—AA64

Airworthiness Directives; Cessna Aircraft Company Models 208 and 208B Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This action makes a correction to Airworthiness Directive (AD) 96–09–15 concerning all Cessna Aircraft Company (Cessna) Models 208 and 208B airplanes, which was published in the **Federal Register** on May 7, 1996 (61 FR 20641). That publication incorrectly references a cue for the pilot or crew member in severe icing conditions. The AD currently requires the pilot to follow certain visual cues during flight in icing conditions and the second of these cues requires the pilot to look at the upper surface of the wing. The word "upper" is wrong in the second cue. The intent of the AD in paragraph (a) (1), first bullet, second cue, is to require the pilot or crew member to look at the "lower" surface of the wing. This action corrects the AD to reflect this change.

EFFECTIVE DATE: June 11, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. John Dow, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: On May 7, 1996, the Federal Aviation Administration (FAA) issued AD 96–09–15, Amendment 39–9591 (61 FR 20641, May 7, 1996), which applies to all Cessna Models 208 and 208B airplanes. This AD requires a revision in the Airplane Flight Manual (AFM) by incorporating a warning into the Limitations Section of the AFM. Within this warning (in the first bulleted paragraph) are cues for the pilot to follow during flight in severe icing conditions. The second cue references accumulation of ice on the upper surface of the wing aft of the protected area.

Need for the Correction

The AD incorrectly references the ". . . upper surface of the wing. . . ." instead of the lower surface of the wing. Cessna Models 208 and 208B airplanes are designed with the wings sitting high on the body of the airplane, which would not allow the pilot to visually check the upper surface of the wings on the airplane during flight without exiting the airplane.

Correction of Publication

Accordingly, the publication of May 7, 1996 (61 FR 20641), of Amendment 39–9591; AD 96–09–15, which was the subject of FR Doc. 96–10729, is corrected as follows:

§ 39.13 [Corrected]

On page 20642, in the third column, § 39.13, paragraph (a)(1) of the AD, line 15 from the top of the column, correct "—Accumulation of ice on the upper surface" to read "—Accumulation of ice on the lower surface".

Action is taken herein to clarify this requirement of AD 96–09–15 and to add this AD correction to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains June 11, 1996.

Issued in Kansas City, Missouri on May 17, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–13061 Filed 5–24–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–CE–04–AD; Amendment 39–9590; AD 96–09–14]

RIN 2120–AA64

Airworthiness Directives; Dornier 228 Series Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This action makes a correction to Airworthiness Directive (AD) 96–09–14 concerning all Dornier 228 series airplanes, which was published in the **Federal Register** on May 7, 1996 (61 FR 20639). That publication incorrectly references a cue for the pilot or crew member in severe icing conditions. The AD currently requires the pilot to follow certain visual cues during flight in icing conditions and the second of these cues requires the pilot to look at the upper surface of the wing. The word "upper" is wrong in the second cue. The intent of the AD in paragraph (a)(1), first bullet, second cue, is to require the pilot or crew member to look at the "lower" surface of the wing. This action corrects the AD to reflect this change.

EFFECTIVE DATE: June 11, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. John Dow, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: On May 7, 1996, the Federal Aviation Administration (FAA) issued AD 96–09–14, Amendment 39–9590 (61 FR 20639, May 7, 1996), which applies to all Dornier 228 series airplanes. This AD requires a revision in the Airplane Flight Manual (AFM) by incorporating a warning into the Limitations Section of the AFM. Within this warning (in the first bulleted paragraph) are cues for the pilot to follow during flight in severe icing conditions. The second cue references accumulation of ice on the upper surface of the wing aft of the protected area.

Need for the Correction

The AD incorrectly references the "* * * upper surface of the wing * * *" instead of the lower surface of the wing. Dornier 228 series airplanes are designed with the wings sitting high on the body of the airplane, which would not allow the pilot to visually check the upper surface of the wings on the airplane during flight without exiting the airplane.

Correction of Publication

Accordingly, the publication of May 7, 1996 (61 FR 20639), of Amendment 39–9590; AD 96–09–14, which was the subject of FR Doc. 96–10722, is corrected as follows;

§ 39.13 [Corrected]

On page 20641, in the first column, § 39.13, paragraph (a)(1) of the AD, line 12 from the top of the column, correct "—Accumulation of ice on the upper surface" to read "—Accumulation of ice on the lower surface".

Action is taken herein to clarify this requirement of AD 96–09–14 and to add this AD correction to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains June 11, 1996.

Issued in Kansas City, Missouri on May 17, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–13060 Filed 5–24–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–CE–03–AD; Amendment 39–9589; AD 96–09–13]

RIN 2120—AA64

Airworthiness Directives; Beech Aircraft Corporation Models 99, 99A, A99A, B99, C99, B200, B200C, 1900, 1900C, and 1900D Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This action makes a correction to Airworthiness Directive (AD) 96–09–13 concerning Beech Aircraft Corporation (Beech) Models 99, 99A, A99A, B99, C99, B200, B200C, 1900, 1900C, and 1900D airplanes, which published in the **Federal Register** on May 7, 1996 (61 FR 20638). That publication incorrectly references a cue for the pilot or crew member in severe icing conditions. The AD currently requires the pilot to follow certain visual cues during flight in icing conditions and the second of these cues requires the pilot to look at the lower surface of the wing. The word "lower" is wrong in the second cue. The intent of the AD in paragraph (a)(1), first bullet, second cue, is to require the pilot or crew member to look at the "upper" surface of the wing. This action corrects the AD to reflect this change.

EFFECTIVE DATE: June 11, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. John Dow, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: On May 7, 1996, the Federal Aviation Administration (FAA) issued AD 96–09–13, Amendment 39–9589 (61 FR 20638, May 7, 1996), which applies to Beech Models 99, 99A, A99A, B99, C99, B200, B200C, 1900, 1900C, and 1900D airplanes. This AD requires a revision in the Airplane Flight Manual (AFM) by incorporating a warning into the Limitations Section of the AFM. Within this warning (in the first bulleted paragraph) are cues for the pilot to follow during flight in severe icing conditions. The second cue references

accumulation of ice on the lower surface of the wing aft of the protected area.

Need for the Correction

The AD incorrectly references the "* * * lower surface of the wing * * *" instead of the upper surface of the wing. Beech Models 99, 99A, A99A, B99, C99, B200, B200C, 1900, 1900C, and 1900D airplanes are designed with the wings sitting low on the body of the airplane, which would not allow the pilot to visually check the lower surface of the airplane during flight without exiting the airplane.

Correction of Publication

Accordingly, the publication of May 7, 1996 (61 FR 20638), of Amendment 39–9589; AD 96–09–13, which was the subject of FR Doc. 96–10723, is corrected as follows:

§ 39.13 [Corrected]

On page 20639, in the second column, § 39.13, paragraph (a)(1) of the AD, line 10 from the top of the column, correct "—Accumulation of ice on the lower surface" to read "—Accumulation of ice on the upper surface".

Action is taken herein to clarify this requirement of AD 96–09–13 and to add this AD correction to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains June 11, 1996.

Issued in Kansas City, Missouri on May 17, 1996

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–13059 Filed 5–24–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–CE–02–AD; Amendment 39–9588; AD 96–09–12]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileiro de Aeronautico, S.A. Models EMB–110P1 and EMB–110P2 Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This action makes a correction to Airworthiness Directive (AD) 96–09–12 concerning Empresa Brasileiro de Aeronautico, S.A. (EMBRAER) Models EMB–110P1 and EMB–110P2 airplanes, which published in the **Federal Register** on May 7, 1996 (61 FR 20636). That publication incorrectly references a cue for the pilot or crew member in severe icing conditions. The AD currently requires the pilot to follow certain visual cues during flight in icing conditions and the second of these cues requires the pilot to look at the lower surface of the wing. The word "lower" is wrong in the second cue. The intent of the AD in paragraph (a)(1), first bullet, second cue, is to require the pilot or crew member to look at the "upper" surface of the wing. This action corrects the AD to reflect this change.

EFFECTIVE DATE: June 11, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. John Dow, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: On May 7, 1996, the Federal Aviation Administration (FAA) issued AD 96–09–12, Amendment 39–9588 (61 FR 20636, May 7, 1996), which applies to EMBRAER Models EMB–110P1 and EMB–110P2 airplanes. This AD requires a revision in the Airplane Flight Manual (AFM) by incorporating a warning into the Limitations Section of the AFM. Within this warning (in the first bulleted paragraph) are cues for the pilot to follow during flight in severe icing conditions. The second cue references accumulation of ice on the lower surface of the wing aft of the protected area.

Need for the Correction

The AD incorrectly references the "* * * lower surface of the wing * * *" instead of the upper surface of the wing. The EMBRAER Models EMB–110P1 and EMB–110P2 airplanes are designed with the wings sitting low on the body of the airplane, which would not allow the pilot to visually check the lower surface of the airplane during flight without exiting the airplane.

Correction of Publication

Accordingly, the publication of May 7, 1996 (61 FR 20636), of Amendment 39–9588; AD 96–09–12, which was the subject of FR Doc. 96–10725, is corrected as follows:

§ 39.13 [Corrected]

On page 20637, in the second column, § 39.13, paragraph (a) (1) of the AD, the second to the last line from the bottom of the column, correct "—Accumulation of ice on the lower surface" to read "—Accumulation of ice on the upper surface".

Action is taken herein to clarify this requirement of AD 96–09–12 and to add this AD correction to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains June 11, 1996.

Issued in Kansas City, Missouri, on May 17, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–13058 Filed 5–24–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–SW–32–AD; Amendment 39–9634; AD 96–11–09]

RIN 2120–AA64

Airworthiness Directives; Robinson Helicopter Company Model R44 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Robinson Helicopter Company (Robinson) Model R44 helicopters, that requires an adjustment to the low-RPM warning unit threshold to increase the revolutions-per-minute (RPM) at which the warning horn and caution light activate, and revisions to the R44 Rotorcraft Flight Manual that prohibit flight with the throttle governor (governor) selected off, except in certain situations. This amendment is prompted by an FAA Technical Panel Review of Robinson accident history data which revealed that main rotor (M/R) blade stall at abnormally low M/R RPM resulted in accidents. The actions specified by this AD are intended to minimize the possibility of pilot mismanagement of the M/R RPM, which could result in unrecoverable M/R stall and subsequent loss of control of the helicopter.

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (310) 627–5265; fax (310) 627-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Robinson Model R44 helicopters was published in the **Federal Register** on February 2, 1996 (61 FR 3882). That action proposed to require resetting the warning unit to activate the warning horn and caution

light at 96% to 97% RPM, and revisions to the R44 Rotorcraft Flight Manual that prohibit flight with the governor selected off, except in certain situations.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two comments were received. One commenter supports the proposal. The other commenter states that the proposal should not be issued since it is unnecessary with little impact on safety. The commenter notes that Robinson Helicopter R44 Service Bulletin SB–7A, revised June 8, 1995, already requires all helicopters to be updated with the low RPM warning horn threshold between 96% to 98% RPM. Additionally, the commenter states that all U.S. registered aircraft have the current revision of the R44 Rotorcraft Flight Manual (RFM) incorporating the governor off limitation.

The FAA does not concur. Manufacturer's Service Bulletins are not mandatory for Part 91 operators. Similarly, flight manual revisions are not required to be inserted in the RFM unless the revision is required by an AD. The FAA has determined that AD action should be taken to ensure that all U.S. operators have incorporated the revision to the Limitations section of the FAA-approved R44 RFM regarding operation of the governor.

The same commenter also disagrees with the proposed action requiring an instructor pilot to be present with a high-time experienced pilot while practicing emergency procedures with the governor off. The commenter notes that since the R44 RFM requires the governor off for autorotations, high-time experienced pilots would only be allowed to practice autorotations with an instructor pilot present. The commenter believes that a pilot should be able to practice autorotations without an instructor.

The FAA concurs. Pilots should be able to reinforce their training by practicing maneuvers in which they have already demonstrated proficiency. Pilots who have received an endorsement from a certified flight instructor to act as a pilot in command of a Robinson R44 helicopter should be allowed to practice emergency procedures training without the assistance of a flight instructor. This final rule is revised to require the Limitations section of the R44 RFM to read "Flight prohibited with governor selected off, with exceptions for inflight system malfunction or emergency procedures training."

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for revisions to paragraph (b) to delete the words "with an instructor pilot" from the requirement "flight prohibited with governor selected off, with exceptions for inflight system malfunction or emergency procedures training with an instructor pilot."

The FAA estimates that 20 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.2 work hour per helicopter to accomplish the actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $240.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 96–11–09 Robinson Helicopter Company: Amendment 39–9634. Docket No. 95–SW–32–AD.

Applicability: Model R44 helicopters, serial numbers (S/N) 0001 through 0183 and 0189, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 30 days after the effective date of this AD, unless accomplished previously.

To minimize the possibility of pilot mismanagement of the main rotor (M/R) RPM, which could result in M/R stall and subsequent loss of control of the helicopter, accomplish the following:

(a) Adjust the A569–6 low-RPM warning unit so that the warning horn and caution light activate when the M/R RPM is between 96% and 97% rotor RPM in accordance with the procedures contained in the applicable maintenance manual.

(b) Insert page 2–7 of the FAA-approved Robinson Helicopter Company R44 Rotorcraft Flight Manual, revised July 25, 1995, into each Model R44 helicopter's flight manual, and make pen-and-ink changes to page 2–7 to add the word "inflight" before "system malfunction," and change "and" to "or," so that the affected limitation will state "Flight prohibited with governor selected off, with exceptions for inflight system malfunction or emergency procedures training."

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on July 2, 1996.

Issued in Fort Worth, Texas, on May 15, 1996.

Daniel P. Salvano,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96–13207 Filed 5–24–96; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–SW–27–AD, Amendment 39–9633; AD 96–11–08]

RIN 2120–AA64

Airworthiness Directives; Robinson Helicopter Company Model R22 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Robinson Helicopter Company (Robinson) Model R22 helicopters, that currently requires installing a low-rotor RPM caution light and resetting the low-RPM warning unit to activate the warning horn and caution light at 94% to 96% revolutions-per-minute (RPM). This amendment requires installation of an improved throttle governor; an adjustment to the low RPM warning unit threshold to increase the RPM at which the warning horn and caution light activate; and, revisions to the R22 Rotorcraft Flight Manual that prohibit flight with the improved throttle governor selected off, except in certain situations. This amendment is prompted by an FAA Technical Panel review of Model R22 accident history data which revealed that main rotor (M/R) blade stall at abnormally low M/R RPM resulted in accidents. The actions specified by this AD are intended to minimize the possibility of pilot mismanagement of the M/R RPM, which could result in unrecoverable M/R blade stall and subsequent loss of control of the helicopter.

EFFECTIVE DATE: July 2, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (310) 627–5265; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 82–23–51, Amendment 39–4645, (48 FR 21894, May 16, 1983), which is applicable to Robinson Helicopter Model R22 helicopters, was published in the **Federal Register** on December 14, 1995 (60 FR 64129). That action proposed to require installation of an improved throttle governor; an adjustment to the warning unit threshold to increase the RPM at which the warning horn and caution light activate; and, revisions to the R22 Rotorcraft Flight Manual.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Discussion of Comments

Eight commenters responded to the NPRM. These commenters are the National Transportation Safety Board (NTSB), Helicopter Association International (HAI), Helicopter Association of Australia, Civil Aviation Safety Authority Australia, the Robinson Helicopter Association, the manufacturer, and two helicopter operators. Comments were received on the proposal to increase the threshold of the low rotor RPM warning unit, the proposal to require installation of the improved throttle governor, the proposal to limit operations with the governor selected off, and proposed Rotorcraft Flight Manual (RFM) changes and other general comments. The commenters' positions and the FAA response to each of these positions are summarized as follows:

Increase in Threshold of Warning Unit

Three commenters support and no commenters object to the proposal to increase the low rotor RPM warning unit horn and caution light threshold from 95±1% RPM to between 96% and 97% RPM. Therefore, the proposal is adopted as proposed.

Installation of Improved Throttle Governor

Three commenters support and five commenters oppose the proposal to require installation of a throttle governor on all Model R22 helicopters. The two commenters from Australia oppose mandating installation of a throttle governor and state that although the throttle governor would reduce pilot workload and enhance public safety, mandatory installation of the governor is unnecessary since no conclusive evidence exists to indicate that a Model R22 accident in their country was caused by abnormally low RPM. Therefore, very few accidents would have been prevented with a governor installed. Additionally, these two commenters suggest that the FAA allow more time to determine whether implementation of Special Federal Aviation Regulation (SFAR 73) on March 27, 1995, mandating awareness training for low time pilots and special training requirements for flight instructors, will necessitate any further safety action.

Another commenter states that the improved throttle governor is not necessary based upon their analysis of the National Transportation Safety Board (NTSB) accident data for the Model R22 from January 1992 to December 1995. The commenter noted that the overall number of R22 accidents declined with the implementation of SFAR 73 and the issuance of Airworthiness Directive 95–11–09, effective July 14, 1995, prohibiting low "g" maneuvers.

Another commenter states that recent accident statistics show that no R22 accident in 1995 could be attributed to low rotor RPM. The commenter states that the awareness training has had a positive effect and that mechanical solutions should be deleted or put on hold until evidence is available which indicates that the proposed changes are necessary.

A fifth commenter states that the proposal to require installation of the improved throttle governor may not increase safety in any way and may cause additional accidents since some low time pilots may become too reliant on the governor and not realize other difficulties such as carburetor icing.

The FAA does not concur. Although accident data presented indicates that low rotor stall due to improper throttle management has not resulted in recent R22 accidents, several of the 31 fatal accidents in the period from 1981 to the present involving main rotor to fuselage contact have exhibited signs of low rotor stall due to low rotor RPM. Accident records provided by the NTSB indicate that there were 33 non-fatal accidents in a 10 year period, from June 1985 to June 1995, in which failure to maintain rotor RPM was a casual factor. These accidents all resulted in at least substantial damage to the airframe. The FAA's recently completed study indicates that the potential exists for these types of accidents due to throttle mismanagement. Installation of the improved throttle governor will reduce the possibility of throttle mismanagement.

Even with the improved training, as stipulated in SFAR 73, the possibility of M/R stall due to throttle mismanagement still exists. The current

R22 fleet consists of helicopters that have no governors, and that have either throttle/collective governors or throttle governors. The FAA considers issuance of this AD to be necessary due to the different operating characteristics and associated safety implications of this mixed fleet, particularly in the training environment. The differences in flight operating characteristics between the governor configurations are significant and could cause confusion and an unsafe condition for students and low-time pilots, especially while operating in adverse flying conditions. Based on these safety concerns, the proposal to install or upgrade, as appropriate, a governor on the Model R22 helicopters is adopted as proposed.

Another commenter, although supportive of the proposal to require a throttle governor, states that installation of a governor caution light should be mandatory to indicate governor failure.

The FAA does not concur. A governor caution light is not necessary since the main rotor RPM gage and low rotor RPM warning horn and light should provide sufficient information to the pilot to indicate that a governor failure has occurred. This suggestion is beyond the scope of the proposal, is unecessary, and is not adopted.

Operations With the Governor Selected Off

One commenter supports the proposed rule to prohibit flight with the throttle governor selected off, except for system malfunction and emergency procedures training with an instructor pilot. Three commenters oppose this action.

Two commenters state that pilots should be allowed to operate without the throttle governor during all dual training operations with a qualified helicopter flight instructor to ensure the continuing acceptance of the R22 helicopter as a generic piston helicopter trainer.

The FAA does not concur. The FAA considers flight with the governor off to be emergency procedures training and disagrees that the governor should remain off during all flight with a qualified flight instructor to support training for flight in other piston helicopters.

One commenter states that the proposed action is too restrictive and may have a negative impact on safety in that it precludes low-time pilots from continuing to reinforce their training through hands-on flying.

The FAA does not concur. The proposed action does not preclude a low time pilot from practicing flight with the governor selected off when that pilot is with an instructor. Therefore, there is still the opportunity to continue to reinforce flight training with the governor selected off.

RFM Changes and Other General Comments

The manufacturer comments that the R22 Rotorcraft Flight Manual (RFM) requires the governor be selected off for autorotations. It further states that a high time experienced pilot should be able to practice autorotations without an instructor.

The FAA concurs. Pilots should be able to reinforce their training by practicing maneuvers in which they have already demonstrated proficiency. Persons who have received an endorsement from a certified flight instructor to act as a pilot in command of a Robinson R22 helicopter should be allowed to practice emergency procedures training without the assistance of a flight instructor. This final rule is revised to require the Flight and Maneuver Limitations section of the R22 RFM to read "Flight prohibited with governor selected off, with exceptions for inflight system malfunction or emergency procedures training."

The manufacturer states that the cost estimate in the proposal is $1,000,000 too high, since only one-half of the 1,014 helicopters will require the complete governor at a cost of $2,150 per helicopter.

The costs stated in the proposal are estimates. Since it is unknown how many Model R22's will require the upgrade to the throttle/collective governor, there are no data to support a change and therefore the estimated total cost in the proposal will remain unchanged.

The manufacturer also states that the reference to the July 6, 1995 date, the revision date of the Rotorcraft Flight Manual (RFM), in paragraph (d) of the NPRM should be omitted. Additionally, the manufacturer states that the requirement to add page 2–2 to the FAA approved R22 RFM is not appropriate since it is already in the earlier revision to the RFM and is not related to the proposed actions.

The FAA concurs. Changes to page 2–2 of the FAA approved RFM, revised July 6, 1995, do not pertain to the actions of this AD. Therefore, the reference to page 2–2 of the RFM is omitted in this final rule. Also, since the proposal indicated that page 2–7 would be inserted into the RFM, it was necessary to state the revision date, July 6, 1995, of that change. However, this final rule only requires that a specific statement be inserted into the Flight and Maneuver Limitations section of the RFM and not that the manufacturers specific revised page be inserted into the RFM; hence, the revision date of July 6, 1995 is no longer needed. Therefore, with the exception of omitting the reference to page 2–2 and reorganization of the requirement to add a statement to the Flight and Maneuver Limitations section of the RFM, this action is adopted as proposed.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rules as proposed except for revisions to paragraph (d) to delete the words "with an instructor pilot" from the requirement "flight prohibited with governor selected off, with exceptions for inflight system malfunction or emergency procedures training with an instructor pilot," deletion of page 2–2 as referenced, and deletion of the reference to page 2–7.

The FAA estimates that 1,014 helicopters of U.S. registry will be affected by this AD, that it will take approximately 8 work hours to install the improved throttle governor, or 7 hours to upgrade the throttle/collective governor, and approximately 0.2 work hour to accomplish the adjustment of the light/warning horn RPM, and that the average labor rate is $60 per work hour. Required parts will cost approximately $2,150 per helicopter to install the improved throttle governor, or approximately $500 for upgrading the throttle/collective governor per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,678,988. This cost estimate assumes that no helicopters are currently equipped with a governor and all will need the improved throttle governor installed.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–4645 (48 FR 21894, May 16, 1983), and by adding a new airworthiness directive (AD), Amendment 39–9633, to read as follows:

AD 96–11–08 Robinson Helicopter Company: Amendment 39–9633. Docket No. 95–SW–27–AD. Supersedes AD 82–23–51, Amendment 39–4645.

Applicability: Model R22 helicopters, serial numbers (S/N) 0002 to 2537, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 30 days after the effective date of this AD, unless accomplished previously.

To minimize the possibility of pilot mismanagement of the main rotor (M/R) revolutions-per-minute (RPM), which could result in unrecoverable M/R blade stall and subsequent loss of control of the helicopter, accomplish the following:

(a) Adjust the A569–1 or –5 low-RPM warning unit so that the warning horn and caution light activate when the M/R RPM is between 96% and 97% rotor RPM in accordance with the procedures contained in the Model R22 maintenance manual.

(b) For Model R22 helicopters that do not have a governor currently installed, install a Robinson Helicopter Company KI–67–2 Governor Field Installation Kit in accordance with the kit instructions.

(c) For Model R22 helicopters that have a throttle/collective governor currently installed, upgrade the governor with a Robinson Helicopter Company KI–67–3 Governor Upgrade Kit in accordance with the kit instructions.

(d) Upon accomplishment of paragraphs (b) or (c) of this AD, revise the FAA-approved Robinson Helicopter Company R22 Rotorcraft Flight Manual (RFM) to include the following statement in the Flight and Maneuver Limitations section. This may be accomplished by inserting a copy of this AD into the RFM.

"Flight prohibited with governor selected off, with exceptions for inflight system malfunction or emergency procedures training."

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through FAA Principal Maintenance Inspectors, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on May 15, 1996.

Daniel P. Salvano,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96–13206 Filed 5–24–96; 8:45 am]

BILLING CODE 4910–13–P

---

14 CFR Part 71

[Airspace Docket No. 95–AWA–7]

Modification of the Offutt AFB, Class C Airspace Area; NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule will modify the Class C airspace area at Offutt AFB, NE, by eliminating the 1-mile exclusion around the South Omaha Airport due to its closure. In addition, this action will reduce controller workload.

EFFECTIVE DATE: 0901 UTC, August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–3075.

SUPPLEMENTARY INFORMATION:

History

On November 1, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class C airspace area at Offutt AFB, NE (60 FR 55498). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received concerning the proposal. Except for editorial changes, this amendment is the same as that proposed in the notice. Class C airspace designations are published in paragraph 4000 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class C airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class C airspace area at Offutt AFB, NE. This amendment eliminates the 1-mile exclusion around the South Omaha Airport due to its closure. The action returns this airspace to the surface area of the established Class C airspace.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this final rule is not "a significant regulatory action" as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures.

This final rule will modify the Class C airspace area at Offutt AFB, NE. The

rule will delete the 1-mile airspace exclusion around South Omaha Airport and standardize air traffic operations.

Costs

The FAA has determined that the implementation of the final rule to modify the Class C airspace area at Offutt AFB, NE, will result in little or no cost to either the agency or aircraft operators. The elimination of the 1-mile airspace exclusion around the South Omaha Airport will not reduce aviation safety nor increase the risk of a midair collision because that airport is closed. Also, the revision to aeronautical charts to reflect the airspace modification will be part of the routine and periodic updating of charts. Finally, the FAA will not incur any additional administrative costs for either personnel or equipment.

Benefits

The final rule will generate benefits for system users and the FAA primarily in the form of enhanced operational efficiency. The final rule will provide additional controlled airspace for aircraft landing at and departing from the Offutt AFB, NE. Air traffic controllers will gain operational efficiency as they will be able to standardize air traffic operations.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a final rule will have "a significant economic impact on a substantial number of small entities." FAA Order 2100.14A outlines the FAA's procedures and criteria for implementing the RFA. Small entities are independently owned and operated small businesses and small not-for-profit organizations. A substantial number of small entities is defined as a number that is 11 or more and which is more than one-third of the small entities subject to this final rule.

The FAA determined that revising the Class C airspace area at Offutt AFB will not result in a significant economic impact on a substantial number of small entities. This determination was made because there are little or no costs associated with this final rule.

International Trade Impact Assessment

This final rule will not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries and the import of foreign goods and services into the United States. This final rule will not impose costs on aircraft operators or aircraft manufacturers in the United States or foreign countries. The modification of the Class C airspace area will only affect U.S. terminal airspace operating procedures at and in the vicinity of Offutt AFB, NE. This final rule will not have international trade ramifications because it is a domestic airspace matter that will not impose additional costs or requirements on affected entities.

Conclusion

In view of the minimal cost of compliance, the benefits of enhanced aviation safety, and increased operational efficiency of air traffic controllers, the FAA believes that this final rule is cost-beneficial.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 4000—Subpart C—Class C Airspace

* * * * *

ACE NE C Offutt AFB, NE [Revised]
Offutt AFB, NE
(lat. 41°07′06″N, long. 95°54′45″W.)

That airspace extending upward from the surface to and including 5,000 feet MSL within a 5-mile radius of Offutt AFB, and that airspace extending upward from 2,500 feet MSL to and including 5,000 feet MSL within a 10-mile radius of the Offutt AFB excluding that airspace designated as the Eppley Airfield, Omaha, NE, Class C airspace area.

* * * * *

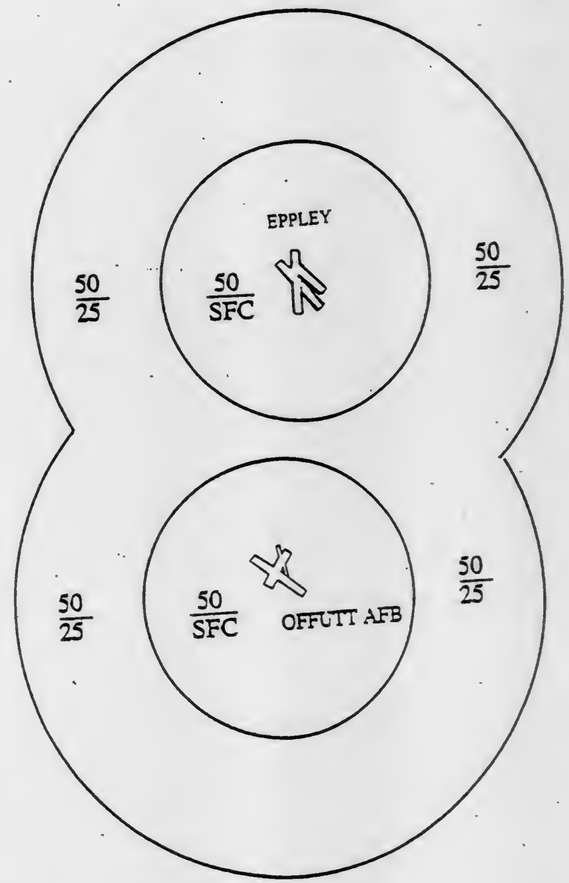
Issued in Washington, DC, on May 13, 1996

Harold W. Becker,
Acting Program Director for Air Traffic, Airspoce Management.

BILLING CODE 4910–13–P

OFFUTT AFB, NEBRASKA
CLASS C AIRSPACE AREA

(Not to be used for navigation)



Prepared by the
FEDERAL AVIATION ADMINISTRATION
Publications Branch
ATP-210

[FR Doc. 96–13255 Filed 5–24–96; 8:45 am]

BILLING CODE 4910–13–C

14 CFR Part 71

[Airspace Docket No. 95–AGL–4]

Removal of Class D Airspace; K.I. Sawyer (AFB), MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Class D airspace at K.I. Sawyer (AFB), MI. On August 31, 1995, the Air Force closed Sawyer AFB and ceased all operations. As a result, Class D airspace at this location is no longer necessary.

EFFECTIVE DATE: 0901 UTC, August 15, 1996.

FOR FURTHER INFORMATION CONTACT: Peter H. Salmon, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On January 31, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to remove Class D airspace at K.I. Sawyer AFB, MI (61 FR 3346).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class D designation listed in this document will be removed subsequently in the Order.

The Rule

The amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) removes Class D airspace at K.I. Sawyer AFB, MI. On August 31, 1995 the Air Force closed Sawyer AFB and ceased all operations. As a result Class D airspace at this location is no longer necessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI D K.I. Sawyer, MI [Removed]

* * * * *

Issued in Des Plaines, Illinois on May 2, 1996.

Maureen Woods,

Acting Manager, Air Traffic Division.

[FR Doc. 96–13253 Filed 5–24–96; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR part 73

[Docket No. 27400; Amendment No. 73–8]

Special Use Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action replaces the title of the Director, Office of Air Traffic System Management, with Program Director for Air Traffic Operations. This change is necessary to make the regulation consistent with the current Air Traffic organizational structure.

EFFECTIVE DATE: May 28, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. White, Air Traffic Rules, ATA–431, Airspace and Rules Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 1996, the Air Traffic Services of the FAA underwent a reorganization that affected the Washington headquarters and regional offices. One result of the reorganization was a realignment of functions with corresponding changes in office names. Section 73.19, Reports by Using Agency, of Title 14, Code of Federal Regulations (14 CFR) requires agencies using special use airspace to report their annual use of assigned restricted areas to the Director, Office of Air Traffic System Management. The office with current responsibility for managing those reports now is the Program Director for Air Traffic Operations. This technical amendment updates the rule to reflect the change in office name.

Because this action is merely a technical amendment reflecting the change in the name of an office, the FAA finds that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. For the same reason, the FAA finds that good cause exists under 5 U.S.C. 5553(d) for making this amendment effective upon publication.

The FAA has determined that this regulation; (1) is not "significant" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal. Since this is a routine matter that will affect only air traffic procedures, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Air safety, Air traffic control, Air transportartion, Airmen, Airports, Aviation safety.

The Amendment

In consideration of the above, the FAA amends 14 CFR Part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 106(G), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p#389, 14 CFR 11.69.

2. In Section 73.19, paragraphs (a) and (c) are revised as follows:

§ 73.19 Reports by using agency.

(a) Each using agency shall prepare a report on the use of each restricted area assigned thereto during any part of the preceding 12-month period ended September 30, and transmit it by the following January 31 of each year to the Manager, Air Traffic Division in the regional office of the Federal Aviation Administration having jurisdiction over the area in which the restricted area is located, with a copy to the Program Director for Air Traffic Operations, Federal Aviation Administration, Washington, DC 20591.

* * * * *

(c) If it is determined that the information submitted under paragraph (b) of this section is not sufficient to evaluate the nature and extent of the use of a restricted area, the FAA may request the using agency to submit supplementary reports. Within 60 days after receiving a request for additional information, the using agency shall submit such information as the Program Director for Air Traffic Operations considers appropriate. Supplementary reports must be sent to the FAA officials designated in paragraph (a) of this section.

* * * * *

Issued in Washington, DC, on May 17, 1996.

Harold W. Becker,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 96–13256 Filed 5–24–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Parts 611 and 620

[Docket No. 960222043–6131–02; I.D. 111595B]

RIN 0648–AC61

Foreign and Domestic Fishing; Scientific Research Activity and Exempted Fishing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues new and revised definitions for certain regulatory terms to distinguish clearly among scientific research activities, exempted fishing, and exempted educational activities; to clarify and standardize issuance procedures for letters of acknowledgement of notification of scientific research activity and exempted fishing permits (EFPs); and to facilitate scientific research activities.

EFFECTIVE DATE: June 27, 1996.

ADDRESSES: Comments regarding burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be sent to Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and to the Office of Management and Budget, Paperwork Reduction Project (0648–0214), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: William D. Chappell at 301–713–2341

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) authorizes the Secretary of Commerce (Secretary) to conserve and manage fishery resources in the exclusive economic zone (EEZ) by regulating "fishing." Excluded expressly from the definition of "fishing," and therefore from the Magnuson Act's purview, is "scientific research activity which is conducted by a scientific research vessel." However, the Magnuson Act does not define "scientific research activity" or "scientific research vessel." The legislative history provides little guidance on Congress' intent in exempting scientific research conducted from a scientific research vessel from the Magnuson Act's requirements. In this rule, NMFS defines "scientific research activity," "scientific research vessel," and related terms.

"Exempted fishing," an activity that has been regulated under fishery management plans (FMPs) prepared by Regional Fishery Management Councils (Councils) or the Secretary, is defined in this rule for domestic vessels only. NMFS anticipates that individual FMPs that currently authorize "experimental fishing" will be amended, as necessary, to replace existing references to "experimental fishing" with references to "exempted fishing," and to standardize terminology and procedures for issuance of EFPs by replacing existing regulatory text with references to these rules. In the absence of specific regulations for each fishery, these procedures will be followed. Authority to allow exempted fishing in any regulated fishery would be established through the governing FMP and/or its implementing regulations.

In addition, NMFS proposes to define "exempted educational activity" for the domestic fishing regulations to distinguish between commercially oriented exempted fishing and those activities of very limited scope and duration, conducted by educational institutions, that may involve activities that are not in accordance with regulations implemented under authority of an FMP. In the absence of specific regulations for each fishery, these procedures will be followed.

NMFS published a proposed rule at 61 FR 10712, March 15, 1996, requesting comments by April 15, 1996. No comments from the general public or other agencies were received. The following addresses internal comments generated during review.

Throughout the rule, the term "Center Director" is replaced by the term "Science and Research Director" to reflect accurately the title of the Directors of NMFS's Fishery Science Centers.

Under the definition of the term "scientific research plan" for both the foreign and domestic regulations, paragraph (5) has been revised to include expected quantities of fish to be taken instead of an absolute amount, retaining some flexibility for researchers.

In § 620.10(b)(1), the authority of the Regional Director to issue EFPs is expanded to include reasons of health and safety, environmental cleanup, and hazard removal. This provision allows an exemption for fishing gear to be used in oil rig removal cleanup, oil spill cleanup, or other contingencies not directly related to fishing.

In § 620.10(b)(3)(i), the requirement for a comment period on EFPs is modified to allow comment to be taken at a Council meeting instead of, or in conjunction with, a more formal comment period. This allows some Councils to continue their current practice, which has proven sufficient for public comment and is more efficient in providing timely response to the applicants.

In § 620.10(d)(3)(ii)(F), the paragraph is corrected to reference exempted educational activity instead of EFP.

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated, to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The reasons were published at 61 FR 10712, March 15, 1996. As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This rule contains a collection-of-information requirement subject to the PRA. The collection of this information has been approved by the OMB, OMB Control Number 0648–0309. The public reporting burden for this collection of information is estimated: (1) To average 1 hour per response to send NMFS a copy of a scientific research plan and provide a copy of the cruise report or research publication; (2) to average 1 hour per response to complete an application for an EFP or authorization for an exempted educational activity; and (3) to average 1 hour per response to collect information and provide a report at the conclusion of exempted fishing. Send comments regarding this burden estimate, or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 620

Fisheries, Fishing.

Dated: May 20, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

15 CFR CHAPTER IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b) the table is amended by adding, in numerical order, the following entries to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
. . . . .	
50 CFR.	
. . . . .	
611.14	–0309
. . . . .	
620.10	–0309
. . . . .	

50 CFR CHAPTER VI

PART 611—FOREIGN FISHING

3. The authority citation for part 611 is revised to read as follows:

Authority: 16 U.S.C. 971 *et seq.*, 1361 *et seq.*, 1801 *et seq.*, and 22 U.S.C. 1971 *et seq.*

4. In § 611.2, the definition for "Center Director" is removed and definitions for "Director", "Science and Research Director", "Scientific cruise", "Scientific research activity", "Scientific research plan", and "Scientific research vessel", are added, in alphabetical order, to read as follows:

§ 611.2 Definitions.

* * * * *

Director means the Director of the Office of Fisheries Conservation and Management, 1315 East-West Highway, Silver Spring, MD 20910.

* * * * *

Science and Research Director means the Director of one of the five NMFS Fisheries Science Centers described in Table 1 of Appendix A to this subpart, or a designee.

Scientific cruise means the period of time during which a scientific research vessel is operated in furtherance of a scientific research project, beginning when the vessel leaves port to undertake the project and ending when the vessel completes the project as provided for in the applicable scientific research plan.

Scientific research activity is, for the purposes of this part, an activity in furtherance of a scientific fishery investigation or study that would meet the definition of fishing under the Magnuson Act, but for the exemption applicable to scientific research activity conducted from a scientific research vessel. Scientific research activity includes, but is not limited to, sampling, collecting, observing, or surveying the fish or fishery resources within the EEZ, at sea, on board scientific research vessels, to increase scientific knowledge of the fishery resources or their environment, or to test a hypothesis as part of a planned, directed investigation or study conducted according to methodologies generally accepted as appropriate for scientific research. At-sea scientific fishery investigations address one or more issues involving taxonomy, biology, physiology, behavior, disease, aging, growth, mortality, migration, recruitment, distribution, abundance, ecology, stock structure, bycatch, and catch estimation of finfish and shellfish (invertebrate) species considered to be a component of the fishery resources within the EEZ. Scientific research activity does not include the collection and retention of fish outside the scope of the applicable research plan, or the testing of fishing gear. Data collection designed to capture and land quantities of fish for product development, market research, and/or public display are not scientific research activities and must be permitted under exempted fishing procedures. For foreign vessels, such data collection activities are considered scientific research if they are carried out in full cooperation with the United States.

Scientific research plan means a detailed, written formulation, prepared in advance of the research, for the accomplishment of a scientific research project. At a minimum, a sound scientific research plan should include:

(1) A description of the nature and objectives of the project, including the hypothesis or hypotheses to be tested.

(2) The experimental design of the project, including a description of the methods to be used, the type and class of any vessel(s) to be used, and a description of sampling equipment.

(3) The geographical area(s) in which the project is to be conducted.

(4) The expected date of first appearance and final departure of the research vessel(s) to be employed, and deployment and removal of equipment, as appropriate.

(5) The expected quantity and species of fish to be taken and their intended disposition, and, if significant amounts of a managed species or species otherwise restricted by size or sex are needed, an explanation of such need.

(6) The name, address, and telephone/telex/fax number of the sponsoring organization and its director.

(7) The name, address, and telephone/telex/fax number, and curriculum vitae of the person in charge of the project and, where different, the person in charge of the research project on board the vessel.

(8) The identity of any vessel(s) to be used including, but not limited to, the vessel's name, official documentation number and IRCS, home port, and name, address, and telephone number of the owner and master.

Scientific research vessel means a vessel owned or chartered by, and controlled by, a foreign government agency, U.S. Government agency (including NOAA or institutions designated as federally funded research and development centers), U.S. state or territorial agency, university (or other educational institution accredited by a recognized national or international accreditation body), international treaty organization, or scientific institution. In order for a vessel that is owned or chartered and controlled by a foreign government to meet this definition, the vessel must have scientific research as its exclusive mission during the scientific cruise in question and the vessel operations must be conducted in accordance with a scientific research plan.

* * * * *

5. In § 611.7, paragraphs (a)(27) and (a)(28) are redesignated as paragraphs (a)(29) and (a)(30), respectively, and new paragraphs (a)(27) and (a)(28) are added to read as follows:

§ 611.7 Prohibitions.

(a) * * *

(27) Fish in violation of the terms or conditions of any permit or authorization issued under the Magnuson Act;

(28) On a scientific research vessel, engage in fishing other than recreational fishing authorized by applicable state, territorial, or Federal regulations;

* * * * *

6. Section 611.14 is revised to read as follows:

§ 611.14 Scientific research activity.

(a) *Scientific research activity.* Persons planning to conduct scientific research activities in the EEZ that may be confused with fishing are encouraged to submit to the appropriate Regional Director, Director, or designee, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific cruise. The Regional Director, Director, or designee will acknowledge notification of scientific research activity by issuing to the operator or master of that vessel, or to the sponsoring institution, a letter of acknowledgment. This letter of acknowledgment is separate and distinct from any permit required under any other applicable law. If the Regional Director, Director, or designee, after review of a research plan, determines that it does not constitute scientific research activity but rather fishing, the Regional Director, Director, or designee will inform the applicant as soon as practicable and in writing. The Regional Director, Director, or designee may also make recommendations to revise the research plan to make the cruise acceptable as scientific research activity. In order to facilitate identification of activity as scientific research, persons conducting scientific research activities are advised to carry a copy of the scientific research plan and the letter of acknowledgment on board the scientific research vessel. Activities conducted in accordance with a scientific research plan acknowledged by such a letter are presumed to be scientific research activities. The presumption may be overcome by showing that an activity does not fit the definition of scientific research activity or is outside the scope of the scientific research plan.

(b) *Reports.* Persons conducting scientific research are requested to submit a copy of any cruise report or other publication created as a result of the cruise, including the amount, composition, and disposition of their catch, to the appropriate Science and Research Director.

7. Table 1 to Appendix A to subpart A of part 611 is revised to read as follows:

Appendix A to Subpart A—Addresses, Areas of Responsibility and Communications

TABLE 1.—ADDRESSES

NMFS regional directors	NMFS Fisheries Science Center directors	U.S. Coast Guard commanders
Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930–2298; Telex: 940007; Telephone: 508–281–9300; FAX: 508–281–9333.	Director, Northeast Fisheries Science Center, National Marine Fisheries Service, NOAA, 166 Water Street, Woods Hole, MA 02543–1097, Attn: Observer Program; Telex: 322200; Telephone: 508–548–5123; FAX: 508–548–5124.	Commander, Atlantic Area, U.S. Coast Guard, Governor's Island, New York, NY 10004; Telex: 126831; Telephone: 212–668–7877.
Director, Southeast Region, National Marine Fisheries Service, NOAA, 9721 Exec. Center Drive N., St. Petersburg, FL 33702; Telephone: 813–570–5301; FAX: 813–570–5300.	Director, Southeast Fisheries Science Center, National Marine Fisheries Service, NOAA, 75 Virginia Beach Drive, Miami, FL 33149–1003; Telephone: 305–361–5761; FAX: 305–361–4219.	Commander, Atlantic Area, U.S. Coast Guard, New York, NY 10004; Telex: 126831; Telephone: 212–668–7877.
Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115; Telex: 9104442786; Telephone: 206–526–6150; FAX: 206–526–6426.	Director, Northwest Fisheries Science Center, National Marine Fisheries Service, NOAA, 2725 Montlake Boulevard East, Seattle, WA 98112–2097; Telephone: 206–442–1872; FAX: 206–442–4304.	Commander, Pacific Area, U.S. Coast Guard, Government Island, Alameda, CA 94501; Telex: 172343; Telephone: 510–437–3700; FAX: 510–437–3017.
Director, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 1668, Juneau, AK 99802–1668; Telex: 09945377; Telephone: 907–586–7221; FAX: 907–586–7249.	Director, Alaska Fisheries Science Center, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 4, Seattle, WA 98115–0070; Telex: 329422; Telephone: 206–526–4000; FAX: 206–526–4004.	Commander, Seventeenth Coast Guard District, P.O. Box 3–5000, Juneau, AK 99801; Telex: 45305; Telephone: 907–586–7200 after hours: 907–586–7350.

TABLE 1.—ADDRESSES—Continued

NMFS regional directors	NMFS Fisheries Science Center directors	U.S. Coast Guard commanders
Director, Southwest Region National Marine Fisheries Service, NOAA, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802–4213; Telephone: 310–980–4001; FAX: 310–980–4018.	Director, Southwest Fisheries Science Center, National Marine Fisheries Service, NOAA, P.O. Box 271, La Jolla, CA 92038–0271; Telephone: 619–546–7000; FAX: 619–546–7003.	Commander, Fourteenth Coast Guard District, 300 Ala Moana Blvd., Honolulu, HI 96813; Telex: 392401; Telephone: 808–546–7597.

PART 620—GENERAL PROVISIONS FOR DOMESTIC FISHERIES

8. The authority citation for part 620 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

9. In § 620.2, definitions for "Director", "Exempted educational activity", "Exempted or experimental fishing", "Regional Director", "Science and Research Director", "Scientific cruise", "Scientific research activity", "Scientific research plan", and "Scientific research vessel", are added, in alphabetical order, to read as follows:

§ 620.2 Definitions.

* * * * *

Director means the Director of the Office of Fisheries Conservation and Management, 1315 East-West Highway, Silver Spring, MD 20910.

* * * * *

Exempted educational activity means an activity, conducted by an educational institution accredited by a recognized national or international accreditation body, of limited scope and duration, that is otherwise prohibited by part 285 or chapter VI of this title, but that is authorized by the appropriate Director or Regional Director for educational purposes.

Exempted or experimental fishing means fishing from a vessel of the United States that involves activities otherwise prohibited by part 285 or chapter VI of this title, but that are authorized under an exempted fishing permit (EFP). These regulations refer exclusively to exempted fishing. References in 50 CFR part 285 and elsewhere in this chapter to experimental fishing mean exempted fishing under this part.

* * * * *

Regional Director means the Director of one of the five NMFS Regions.

* * * * *

Science and Research Director means the Director of one of the five NMFS Fisheries Science Centers.

Scientific cruise means the period of time during which a scientific research vessel is operated in furtherance of a scientific research project, beginning when the vessel leaves port to undertake the project and ending when the vessel completes the project as provided for in the applicable scientific research plan.

Scientific research activity is, for the purposes of this part, an activity in furtherance of a scientific fishery investigation or study that would meet the definition of fishing under the Magnuson Act, but for the exemption applicable to scientific research activity conducted from a scientific research vessel. Scientific research activity includes, but is not limited to, sampling, collecting, observing, or surveying the fish or fishery resources within the EEZ, at sea, on board scientific research vessels, to increase scientific knowledge of the fishery resources or their environment, or to test a hypothesis as part of a planned, directed investigation or study conducted according to methodologies generally accepted as appropriate for scientific research. At-sea scientific fishery investigations address one or more issues involving taxonomy, biology, physiology, behavior, disease, aging, growth, mortality, migration, recruitment, distribution, abundance, ecology, stock structure, bycatch, and catch estimation of finfish and shellfish (invertebrate) species considered to be a component of the fishery resources within the EEZ. Scientific research activity does not include the collection and retention of fish that is outside the scope of the applicable research plan, or the testing of fishing gear. Data collection designed to capture and land quantities of fish for product development, market research, and/or public display are not scientific research activities and must be permitted under exempted fishing procedures.

Scientific research plan means a detailed, written formulation, prepared in advance of the research, for the accomplishment of a scientific research project. At a minimum, a sound scientific research plan should include:

(1) A description of the nature and objectives of the project, including the hypothesis or hypotheses to be tested.

(2) The experimental design of the project, including a description of the methods to be used, the type and class of any vessel(s) to be used (including the name and tonnage of vessel as soon as identified), and a description of sampling equipment.

(3) The geographical area(s) in which the project is to be conducted.

(4) The expected date of first appearance and final departure of any research vessel(s) to be employed, and deployment and removal of equipment, as appropriate.

(5) The expected quantity and species of fish to be taken and their intended disposition, and, if significant amounts of a managed species or species otherwise restricted by size or sex are needed, an explanation of such need.

(6) The name, address, and telephone/telex/fax number of the sponsoring organization and its director.

(7) The name, address, telephone/telex/fax number, and curriculum vitae of the person in charge of the project and, where different, the person in charge of the research project on board the vessel.

(8) The identity of any vessel(s) to be used, including, but not limited to, the vessel's name, official documentation number or state registration number, home port, and name, address, and telephone number of the owner and master.

Scientific research vessel means a vessel owned or chartered by, and controlled by, a foreign government agency, U.S. Government agency (including NOAA or institutions designated as federally funded research and development centers), U.S. state or territorial agency, university (or other educational institution accredited by a recognized national or international accreditation body), international treaty organization, or scientific institution. To meet this definition, the vessel must have scientific research as its exclusive mission during the scientific cruise in question and the vessel operations must be conducted in accordance with a scientific research plan.

* * * * *

10. In § 620.7, paragraphs (i) through (l) are added to read as follows:

§ 620.7 General prohibitions.

* * * * *

(i) Fish in violation of the terms or conditions of any permit or authorization issued under the Magnuson Act.

(j) Fail to report catches as required while fishing pursuant to an exempted fishing permit.

(k) On a scientific research vessel, engage in fishing other than recreational fishing authorized by applicable state or Federal regulations.

(l) Trade, barter, or sell; or attempt to trade, barter, or sell fish possessed or retained while fishing pursuant to an authorization for an exempted educational activity.

11. Section 620.10 is added to read as follows:

§ 620.10 Scientific research activity, exempted fishing, and exempted educational activity.

(a) *Scientific research activity.* Nothing in this part is intended to inhibit or prevent any scientific research activity conducted by a scientific research vessel. Persons planning to conduct scientific research activities in the EEZ are encouraged to submit to the appropriate Regional Director, Director, or designee, 60 days or as soon as practicable prior to its start, a scientific research plan for each scientific cruise. The Regional Director, Director, or designee will acknowledge notification of scientific research activity by issuing to the operator or master of that vessel, or to the sponsoring institution, a letter of acknowledgment. This letter of acknowledgment is separate and distinct from any permit required by any other applicable law. If the Regional Director, Director, or designee, after review of a research plan, determines that it does not constitute scientific research but rather fishing, the Regional Director, Director, or designee will inform the applicant as soon as practicable and in writing. The Regional Director, Director, or designee may also make recommendations to revise the research plan to make the cruise acceptable as scientific research activity or recommend the applicant request an EFP. In order to facilitate identification of activity as scientific research, persons conducting scientific research activities are advised to carry a copy of the scientific research plan and the letter of acknowledgment on board the scientific research vessel. Activities conducted in accordance with a scientific research plan acknowledged by such a letter are presumed to be scientific research activity. The presumption may be overcome by showing that an activity does not fit the definition of scientific research activity or is outside the scope of the scientific research plan.

(b) *Exempted fishing*—(1) *General.* A NMFS Regional Director or Director may authorize, for limited testing, public display, data collection, exploratory, health and safety, environmental cleanup, and/or hazard removal purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. Exempted fishing may not be conducted unless authorized by an EFP issued by a Regional Director or Director in accordance with the criteria and procedures specified in this section. The Regional Director or Director may charge a fee to recover the administrative expenses of issuing an EFP. The amount of the fee will be calculated, at least annually, in accordance with procedures of the NOAA Handbook for determining administrative costs of each special product or service; the fee may not exceed such costs. Persons may contact the appropriate Regional Director or Director to find out the applicable fee.

(2) *Application.* An applicant for an EFP shall submit a completed application package to the appropriate Regional Director or Director, as soon as practicable and at least 60 days before the desired effective date of the EFP. Submission of an EFP application less than 60 days before the desired effective date of the EFP may result in a delayed effective date because of review requirements. The application package must include payment of any required fee as specified by paragraph (b)(1) of this section, and a written application that includes, but is not limited to, the following information:

(i) The date of the application.

(ii) The applicant's name, mailing address, and telephone number.

(iii) A statement of the purposes and goals of the exempted fishery for which an EFP is needed, including justification for issuance of the EFP.

(iv) For each vessel to be covered by the EFP as soon as the information is available and before operations begin under the EFP:

(A) A copy of the U.S. Coast Guard documentation, state license, or registration of each vessel, or the information contained on the appropriate document.

(B) The current name, address, and telephone number of the owner and master, if not included on the document provided for the vessel.

(v) The species (target and incidental) expected to be harvested under the EFP, the amount(s) of such harvest necessary to conduct the exempted fishing, the arrangements for disposition of all regulated species harvested under the EFP, and any anticipated impacts on marine mammals or endangered species.

(vi) For each vessel covered by the EFP, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used.

(vii) The signature of the applicant.

(viii) The Regional Director or Director, as appropriate, may request from an applicant additional information necessary to make the determinations required under this section. An incomplete application or an application for which the appropriate fee has not been paid will not be considered until corrected in writing and the fee paid. An applicant for an EFP need not be the owner or operator of the vessel(s) for which the EFP is requested.

(3) *Issuance.* (i) The Regional Director or Director, as appropriate, will review each application and will make a preliminary determination whether the application contains all of the required information and constitutes an activity appropriate for further consideration. If the Regional Director or Director finds that any application does not warrant further consideration, both the applicant and the affected Council(s) will be notified in writing of the reasons for the decision. If the Regional Director or Director determines that any application warrants further consideration, notification of receipt of the application will be published in the **Federal Register** with a brief description of the proposal, and the intent of NMFS to issue an EFP. Interested persons will be given a 15- to 45-day opportunity to comment and/or comments will be requested during public testimony at a Council meeting. The notification may establish a cut-off date for receipt of additional applications to participate in the same, or a similar, exempted fishing activity. The Regional Director or Director also will forward copies of the application to the Council(s), the U.S. Coast Guard, and the appropriate fishery management agencies of affected states, accompanied by the following information:

(A) The effect of the proposed EFP on the target and incidental species, including the effect on any total allowable catch.

(B) A citation of the regulation or regulations that, without the EFP, would prohibit the proposed activity.

(C) Biological information relevant to the proposal, including appropriate statements of environmental impacts, including impacts on marine mammals and threatened or endangered species.

(ii) If the application is complete and warrants additional consultation, the Regional Director or Director may consult with the appropriate Council(s)

concerning the permit application during the period in which comments have been requested. The Council(s) or the Director or Regional Director shall notify the applicant in advance of any meeting at which the application will be considered, and offer the applicant the opportunity to appear in support of the application.

(iii) As soon as practicable after receiving responses from the agencies identified in paragraph (b)(3)(i) of this section, and/or after the consultation, if any, described in paragraph (b)(3)(ii) of this section, the Regional Director or Director shall notify the applicant in writing of the decision to grant or deny the EFP, and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application; or

(B) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect the well-being of the stock of any regulated species of fish, marine mammal, or threatened or endangered species in a significant way; or

(C) Issuance of the EFP would have economic allocation as its sole purpose; or

(D) Activities to be conducted under the EFP would be inconsistent with the intent of this section, the management objectives of the FMP, or other applicable law; or

(E) The applicant has failed to demonstrate a valid justification for the permit; or

(F) The activity proposed under the EFP could create a significant enforcement problem.

(iv) The decision of a Regional Director or Director to grant or deny an EFP is the final action of NMFS. If the permit, as granted, is significantly different from the original application, or is denied, NMFS may publish notification in the **Federal Register** describing the exempted fishing to be conducted under the EFP or the reasons for denial.

(v) The Regional Director or Director may attach terms and conditions to the EFP consistent with the purpose of the exempted fishing, including, but not limited to:

(A) The maximum amount of each regulated species that can be harvested and landed during the term of the EFP, including trip limitations, where appropriate.

(B) The number, size(s), name(s), and identification number(s) of the vessel(s) authorized to conduct fishing activities under the EFP.

(C) The time(s) and place(s) where exempted fishing may be conducted.

(D) The type, size, and amount of gear that may be used by each vessel operated under the EFP.

(E) The condition that observers, a vessel monitoring system, or other electronic equipment be carried on board vessels operated under an EFP, and any necessary conditions, such as predeployment notification requirements.

(F) Reasonable data reporting requirements.

(G) Other conditions as may be necessary to assure compliance with the purposes of the EFP, consistent with the objectives of the FMP and other applicable law.

(H) Provisions for public release of data obtained under the EFP that are consistent with NOAA confidentiality of statistics procedures as set out at part 603 of this chapter. An applicant may be required to waive the right to confidentiality of information gathered while conducting exempted fishing as a condition of an EFP.

(4) *Duration.* Unless otherwise specified in the EFP or a superseding notice or regulation, an EFP is effective for no longer than 1 year, unless revoked, suspended, or modified. EFPs may be renewed following the application procedures in this section.

(5) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(6) *Transfer.* EFPs issued under this section are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.

(7) *Inspection.* Any EFP issued under this section must be carried on board the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(8) *Sanctions.* Failure of a permittee to comply with the terms and conditions of an EFP may be grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP for enforcement purposes will be governed by 15 CFR part 904, subpart D.

(c) *Reports.* (1) Persons conducting scientific research activity are requested to submit a copy of any cruise report or other publication created as a result of the cruise, including the amount, composition, and disposition of their catch, to the appropriate Science and Research Director.

(2) Persons fishing under an EFP are required to report their catches to the appropriate Regional Director or Director, as specified in the EFP.

(d) *Exempted educational activities*—(1) *General.* A NMFS Regional Director or Director may authorize, for educational purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. The decision of a Regional Director or Director to grant or deny an exempted educational activity authorization is the final action of NMFS. Exempted educational activities may not be conducted unless authorized in writing by a Regional Director or Director in accordance with the criteria and procedures specified in this section. Such authorization will be issued without charge.

(2) *Application.* An applicant for an exempted educational activity authorization shall submit to the appropriate Regional Director or Director, at least 15 days before the desired effective date of the authorization, a written application that includes, but is not limited to, the following information.

(i) The date of the application.

(ii) The applicant's name, mailing address, and telephone number.

(iii) A brief statement of the purposes and goals of the exempted educational activity for which authorization is requested, including a general description of the arrangements for disposition of all species collected.

(iv) Evidence that the sponsoring institution is a valid educational institution, such as accreditation by a recognized national or international accreditation body.

(v) The scope and duration of the activity.

(vi) For each vessel to be covered by the authorization:

(A) A copy of the U.S. Coast Guard documentation, state license, or registration of the vessel, or the information contained on the appropriate document.

(B) The current name, address, and telephone number of the owner and master, if not included on the document provided for the vessel.

(vii) The species and amounts expected to be caught during the exempted educational activity.

(viii) For each vessel covered by the authorization, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used.

(ix) The signature of the applicant.

(x) The Regional Director or Director may request from an applicant additional information necessary to make the determinations required under this section. An incomplete application will not be considered until corrected in writing.

(3) *Issuance.* (i) The Regional Director or Director, as appropriate, will review each application and will make a determination whether the application contains all of the required information, is consistent with the goals, objectives, and requirements of the FMP or regulations and other applicable law, and constitutes a valid exempted educational activity. The applicant will be notified in writing of the decision within 5 working days of receipt of the application.

(ii) The Regional Director or Director may attach terms and conditions to the authorization, consistent with the purpose of the exempted educational activity, including, but not limited to:

(A) The maximum amount of each regulated species that may be harvested.

(B) The time(s) and place(s) where the exempted educational activity may be conducted.

(C) The type, size, and amount of gear that may be used by each vessel operated under the authorization.

(D) Reasonable data reporting requirements.

(E) Such other conditions as may be necessary to assure compliance with the purposes of the authorization, consistent with the objectives of the FMP or regulations.

(F) Provisions for public release of data obtained under the authorization, consistent with NOAA confidentiality of statistics procedures at part 603 of this chapter. An applicant may be required to waive the right to confidentiality of information gathered while conducting exempted educational activity as a condition of the authorization.

(iii) The authorization will specify the scope of the authorized activity and will include, at a minimum, the duration, vessel(s), species and gear involved in the activity, as well as any additional terms and conditions specified under paragraph (d)(3)(ii) of this section.

(4) *Duration.* Unless otherwise specified, authorization for an exempted educational activity is effective for no longer than 1 year, unless revoked, suspended, or modified. Authorizations may be renewed following the application procedures in this section.

(5) *Alteration.* Any authorization that has been altered, erased, or mutilated is invalid.

(6) *Transfer.* Authorizations issued under this paragraph (d) are not transferable or assignable.

(7) *Inspection.* Any authorization issued under this paragraph (d) must be carried on board the vessel(s) for which it was issued or be in possession of the applicant to which it was issued while the exempted educational activity is being conducted. The authorization must be presented for inspection upon request of any authorized officer. Activities that meet the definition of "fishing," despite an educational purpose, are fishing. An authorization may allow covered fishing activities; however, fishing activities conducted outside the scope of an authorization for exempted educational activities are illegal.

[FR Doc. 96–13288 Filed 5–24–96; 8:45 am]
BILLING CODE 3510–22–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AA11

Safety Standards for Underground Coal Mine Ventilation

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule; corrections.

SUMMARY: This document corrects errors in the final rule for safety standards for underground coal mine ventilation which appeared in the **Federal Register** on March 11, 1996 (61 FR 9764).

EFFECTIVE DATE: June 10, 1996.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1996, MSHA published a final rule to revise its safety standards for underground coal mine ventilation. This document corrects several errors that appeared in the preamble discussion and in the final rule.

In the preamble discussion to § 75.313 Main mine fan stoppage with persons underground, on page 9774, the second column, 25 lines from the bottom, the phrase "in nonventilated areas" inadvertently appears. This correction notice deletes the phrase from the preamble.

The final rule language of § 75.322, Harmful quantities of noxious gases, is incorrect. No changes were proposed to § 75.322 and the current version of § 75.322 that appears in the 1995 compilation of the Code of Federal Regulations is correct. Therefore, § 75.322 is corrected to be the version that appears in the 1995 compilation of the Code of Federal Regulations.

The final rule language of § 75.325 Air quantity, inadvertently omits the last sentence of existing § 75.325(b). No changes were proposed to § 75.325(b) and the current version of § 75.325(b) that appears in the 1995 compilation of the Code of Federal Regulations is correct. Therefore, § 75.325(b) is corrected to be the version that appears in the 1995 compilation of the Code of Federal Regulations.

Paragraph (h) of § 75.333(h) Ventilation controls, deals with the maintenance of ventilation controls. In the preamble and the rule, the word "permanent" inadvertently appears. This correction notice deletes the word "permanent" from § 75.333(h) and from the preamble of the rule in the last sentence of the second column of page 9782. The preamble discussion in columns 1 and 2 of page 9784 makes it clear that § 75.333(h) is to apply to temporary controls as well as permanent controls, and that the word "permanent" therefore appeared in error. As correctly stated on page 9784, "Given the importance of temporary control devices in providing for adequate ventilation, the final rule requires all ventilation controls, both permanent and temporary, including all doors and seals, to be maintained to serve the purpose for which they were built."

The preamble for paragraph (g)(2) of § 75.362 On-shift examination, is inconsistent with the language appearing in the final rule. This correction notice clarifies the intent of the Agency that a certified person must certify that the examination has been completed. At page 9799 of the preamble discussion, the preamble correctly states that: "The final rule deletes the word 'certified,' permitting on-shift examinations of dust controls to be conducted by one or more persons who are not certified individuals. However, the examination must still be conducted under the direction of a person designated by the operator and as set out in paragraph (g)(2), a certified person must certify that the examination has been completed * * *." The last sentence at page 9801 in the preamble discussion of the rule is inconsistent with this explanation and this correction document corrects the sentence. Also, the word "certified" is added to the rule.

In the last sentence of the final rule language of paragraph (a)(2) of § 75.362 On-shift examination, on page 9839, the second column, the word —additional—

inadvertently appears. This correction notice deletes the word from the rule.

The second sentence of the final rule language of paragraph (a) of § 75.363 Hazardous conditions; posting, correcting and recording, inadvertently contains a phrase which limits the application of the rule. The phrase would exclude the application of posting and correcting requirements of § 75.363 when a hazardous condition is found during a preshift examination or during a preshift type examination conducted following a fan stoppage and restart under § 75.313(d)(1)(i). As proposed, MSHA's intent is that the § 75.363 requirements for posting or immediately correcting hazardous conditions do apply to the preshift examination and to preshift-type examinations conducted following a fan stoppage and restart under § 75.313(d)(1)(i). It is only the recording requirements of § 75.363 that do not extend to the § 75.360 and § 75.364 examinations since these examinations contain their own recording requirements. This correction notice deletes the phrase that inadvertently appears in the rule. Also, this correction notice makes a conforming change to the preamble of the rule. On page 9802 of the preamble to the final rule, the second sentence of the second paragraph in the first column is corrected by this notice.

In the preamble to § 75.380 Escapeways; bituminous and lignite mines, on page 9813, the second column, 14 lines from the top, the date "September 15, 1992" is incorrect. The correct date is "November 16, 1992," which was the effective date of the 1992 final ventilation rule. This correction notice deletes the incorrect date and replaces it with the correct date. In addition, a portion of the preamble discussion for § 75.380 is inadvertently repeated almost verbatim and is deleted by this correction notice. Specifically, the repetition of the preamble discussion of § 75.380 begins with the third full paragraph of the middle column on page 9816 (the paragraph begins, —Like the proposal, the final rule * * *") and continues through the end of the preamble discussion for § 75.380.

Correction of Publication

The preamble and final rule for safety standards for underground coal mine ventilation that appeared in the **Federal Register** on March 11, 1996 (61 FR 9764) are corrected as follows:

1. In the preamble, on page 9774, in the second column, 25 lines from the bottom, the phrase "in nonventilated areas" is removed.

2. In the preamble, on page 9782, in the second column, last paragraph, the last sentence is correctly revised to read as "New paragraph (h) requires all ventilation controls, including seals, to be maintained to serve the purpose for which they were built".

3. In the preamble, on page 9801, in the last column, last paragraph, the last sentence is correctly revised to read as "Under (g)(2), the certified person directing the on-shift examination to assure compliance with the respirable dust control parameters specified in the mine ventilation plan must certify by initials, date, and time that the examination was made."

4. In the preamble, on page 9802, in the first column, the second sentence of the second paragraph is correctly revised to read as, "It specifies that hazardous conditions shall be corrected immediately or posted until the conditions are corrected."

5. In the preamble, on page 9813, in the second column, 14 lines from the top, remove "September 15, 1992", and add "November 16, 1992".

6. In the preamble, beginning on page 9816, in the second column, the third full paragraph, through page 9820, to the end of the first column is removed.

7. In the rule, on page 9832, in the first column, § 75.322 is correctly revised to read as:

§ 75.322 Harmful quantities of noxious gases.

Concentrations of noxious or poisonous gases, other than carbon dioxide, shall not exceed the threshold limit values (TLV) as specified and applied by the American Conference of Governmental Industrial Hygienists in "Threshold Limit Values for Substance in Workroom Air" (1972). Detectors or laboratory analysis of mine air samples shall be used to determine the concentrations of harmful, noxious, or poisonous gases. This incorporation by reference has been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the Mine Safety and Health Administration, Department of Labor, 4015 Wilson Boulevard, Arlington, VA 22203 and at every Coal Mine Health and Safety District and Subdistrict Office. The material is available for examination at the Office of the Federal Register, 800 N. Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

§ 75.325 [Corrected]

8. In the rule, on page 9833, in the second column, § 75.325(b), a sentence is added following the last sentence of the first paragraph to read as follows:

* * * * *

(b) * * * This minimum also applies to sections which are not operating but are capable of producing coal by simply energizing the equipment on the section.

* * * * *

§ 75.333 [Corrected]

9. In the rule, on page 9835, in the first column, § 75.333, paragraph (h), is correctly revised to read as follows:

* * * * *

(h) All ventilation controls, including seals, shall be maintained to serve the purpose for which they were built.

§ 75.362 [Corrected]

10. In the rule, on page 9839, in the second column, the last sentence, § 75.362, paragraph (a)(2), is correctly revised to read as follows:

(a) * * *

(2) * * * Measurements of the air velocity and quantity, water pressure and flow rates are not required if continuous monitoring of these controls is used and indicates that the dust controls are functioning properly.

* * * * *

11. In the rule, on page 9839, in the third column, § 75.362, paragraph (g)(2), is correctly revised to read as follows:

* * * * *

(g) * * *

(2) The certified person directing the on-shift examination to assure compliance with the respirable dust control parameters specified in the mine ventilation plan shall certify by initials, date, and time that the examination was made.

* * * * *

§ 75.363 [Corrected]

12. In the rule on page 9839, in the third column, the second sentence of § 75.363, paragraph (a), is correctly revised to read as follows:

(a) * * * A hazardous condition shall be corrected immediately or the area shall remain posted until the hazardous condition is corrected. * * *

* * * * *

Dated: May 17, 1996.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 96–13275 Filed 5–22–96; 3:08 pm]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–112–FOR; Amendment No. 92–7C]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; clarification/approval of amendment.

SUMMARY: OSM is clarifying the previous approval, and noted deferrals therein, of an amendment to the Indiana permanent regulatory program (hereinafter referred to as the "Indiana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consisted of revisions to Indiana's Surface Coal Mining and Reclamation Rules concerning the control of subsidence caused by underground mining operations. The amendment was submitted to revise the Indiana program to be consistent with SMCRA and to incorporate State initiatives.

EFFECTIVE DATE: May 28, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. Background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 914.10, 914.15, and 914.16.

II. Submission of the Proposed Amendment

By letter dated December 2, 1992 (Administrative Record No. IND–1175), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment (#92–7) to the Indiana program. Amendment #92–7 proposed changes to the Indiana surface mining rules concerning subsidence liability.

On May 17, 1993, OSM approved, with two exceptions, amendment #92–7 (58 FR 28775). By letter dated March 18, 1994 (Administrative Record Number IND–1340), Indiana submitted to OSM a notice of the final adoption of amendment #92–7 as published in the Indiana Register, Volume 17, Number 6, pages 1086–1089 (March 1, 1994).

The final adopted language of amendment #92–7 differed in some ways from the language approved by OSM on May 17, 1993. Therefore, OSM reopened the public comment period and invited comment on the substantive differences.

OSM announced receipt of the proposed amendment (i.e., the adopted language of #92–7) in the April 22, 1994, **Federal Register** (59 FR 19155), and in the same document opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on May 23, 1994.

On April 20, 1995, OSM approved the amendment with deferrals on decisions in three areas until July 31, 1995, when OSM was to address the enforcement of SMCRA section 720 and 30 CFR 784.20 and 817.121 (60 FR 19669). The deferrals related to the above enforcement provisions during the period from the effective date of SMCRA section 720 (October 24, 1992) to the effective date of the corresponding Indiana statute IC 13–4.1–9–2.5 (June 30, 1994).

On July 28, 1995, OSM announced its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Indiana (60 FR 38680). After consultation with Indiana and consideration of public comments, OSM decided that initial enforcement in Indiana would be accomplished through joint Indiana and OSM enforcement. OSM, however, did not specifically address the deferrals of the April 20, 1995, approval (60 FR 19669).

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the deferrals contained in the original approval of the proposed amendment (60 FR 19669). These findings are based on the original proposed amendment and the April 20, 1995, approval and deferrals related to the enforcement scheme as published on July 28, 1995. It should be noted that the July 28, 1995, decision addressed only the initial enforcement schemes for water replacement (30 CFR 817.41(j)) and subsidence damage repair/compensation (30 CFR 817.121(c)(2)) provided for under section 720 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), as amended by the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776(1992). In addition to the basic water supply replacement requirement and the related subsidence damage repair requirement, the implementing Federal regulations that became effective March 31, 1995, contain other related supporting and permitting provisions. OSM anticipates that these other requirements will become effective in the same way as other revisions to the permanent program regulations; i.e., in primacy states such as Indiana, upon adoption of counterpart State regulatory program provisions (60 FR 16722). This process will be initiated separately by OSM under the provisions of 30 CFR 732.17(d)).

1. 310 IAC 12–3–87.1 Subsidence Control Plan

310 IAC 12–3–87.1(c)(2). In the April 20, 1995, **Federal Register**, the Director approved the language at subsection 87.1(c)(2) to the extent that it met the requirements of SMCRA section 720 and 30 CFR 784.20 from June 30, 1994. However, the Director deferred a decision until July 31, 1995, on the enforcement of the provisions of SMCRA section 720 and 30 CFR 784.20 during the period from the effective date of SMCRA section 720 (October 24, 1992) to the effective date of the corresponding Indiana statute IC 13–4.1–9–2.5 (June 30, 1994).

On July 28, 1995, OSM announced its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Indiana (60 FR 38680). After consultation with Indiana and consideration of public comments, OSM decided that initial enforcement in Indiana would be accomplished through joint Indiana and OSM enforcement. In discussions leading to this decision, Indiana indicated that Indiana law at IC 13–4.1–9–2.5 incorporates the substantive language of section 620 of SMCRA and applies to underground mining operations conducted after June 30, 1994. For underground mining operations conducted in Indiana in the interim period between October 24, 1992 (the effective date of the Energy Policy Act of 1992 and SMCRA section 720), and June 30, 1994 (the effective

date of Indiana law counterpart to the Energy Policy Act of 1992), the State concluded that the existing Indiana program provisions provide the IDNR with sufficient authority to impose the requirements of the Energy Policy Act of 1992 with respect to underground mining operations conducted in Indiana during the interim period. The State concluded, however, that although it believes that the IDNR has sufficient authority to impose the requirements of the Energy Policy Act of 1992 during the interim period, joint State and OSM enforcement in Indiana should be the chosen enforcement scheme in Indiana, as it would assure protection for the citizens of Indiana during the interim period (Administrative Record Number IND–1494). Under this scheme, the IDNR would enforce the requirements of the Energy Policy Act of 1992 in Indiana from June 30,1994, and during the interim period to the extent permissible under Indiana law. OSM would enforce the requirements of the Energy Policy Act of 1992 in the interim period only if a situation arose where the State could not so enforce.

Based on the discussion above, the Director finds that 310 IAC 12–3–87.1(c)(2) is no less effective than 30 CFR 784.20 and no less stringent than SMCRA section 720, to the extent that IC 13–4.1–9–2.5 meets the requirements of SMCRA section 720 and 30 CFR 784.20 from June 30, 1994, and the enforcement scheme approved July 28, 1995, meets the requirements of SMCRA section 720 and 30 CFR 784.20 during the period from the effective date of SMCRA section 720 (October 24, 1992) to the effective date of IC 13–4.1–9–2.5 (June 30, 1994).

2. 310 IAC 12–5–130.1 Subsidence Control; General Requirements

310 IAC 12–5–130.1(c)(2). In the April 20,1995, **Federal Register**, the Director approved the language at subsection 130.1(c)(2) to the extent that it met the requirements of SMCRA section 720 from June 30, 1994. However, the Director deferred a decision until July 31, 1995, on the enforcement of the provisions of SMCRA section 720 and 30 CFR 817.121 during the period from the effective date of SMCRA section 720 (October 24, 1992) to the effective date of the corresponding Indiana statute IC 13–4.1–9–2.5 (June 30, 1994).

As discussed in Finding 1 above, on July 28, 1995, OSM announced its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Indiana (60 FR 38680). OSM decided that initial enforcement would be accomplished through joint Indiana and OSM enforcement. The IDNR would enforce the requirements of the Energy Policy Act of 1992 in Indiana from June 30, 1994, and during the interim period (October 24, 1992–June 30, 1994) to the extent permissible under Indiana law. OSM would enforce the requirements of the Energy Policy Act of 1992 in the interim period only if a situation arose where the State could not so enforce.

Based on the above discussion, the Director finds that 310 IAC 12–5–130.1(c)(2) is no less effective than 30 CFR 817.121(c)(2) and no less stringent than SMCRA section 720, to the extent that IC 13–4.1–9–2.5 meets the requirements of SMCRA section 720 from June 30, 1994, and the enforcement scheme approved July 28, 1995, meets the requirements of SMCRA section 720 and 30 CFR 817.121(c)(2) during the period from the effective date of SMCRA section 720 (October 24, 1992) to the effective date of IC 13–4.1–9–2.5 (June 30, 1994).

3. Repeal of 310 IAC 12–5–132

Indiana proposed the repeal of 310 IAC 12–3–87, 310 IAC 12–5–130, 310 IAC 12–5–131, and 310 IAC 12–5–132 because the provisions were replaced by 310 IAC 12–3–87.1, 310 IAC 12–5–130.1, and 310 IAC 12–5–131.1. The Director deferred decision on the repeal of 310 IAC 12–5–132 until July 31, 1995, when OSM was to address the enforcement of the provisions of SMCRA section 720 and 30 CFR 784.20 and 817.121 during the period from the effective date of SMCRA section 720 (October 24, 1992) to the effective date of IC 13–4.1–9–2.5 (June 30, 1994).

As discussed in Findings 1 and 2 above, on July 28, 1995, OSM announced its decision on initial enforcement of underground coal mine subsidence control and water replacement requirements in Indiana (60 FR 38680), finding that initial enforcement would be accomplished through joint Indiana and OSM enforcement. IDNR would enforce the requirements of the Energy Policy Act of 1992 in Indiana from June 30, 1994, and during the interim period (October 24, 1992–June 30, 1994) to the extent permissible under Indiana law. OSM would enforce the requirements of the Energy Policy Act of 1992 in the interim period only if a situation arose where the State would not so enforce.

Based on the above discussion, the Director is approving the repeal of 310 IAC 12–5–132 because appropriate provisions are replaced by 310 IAC 12–3–87.1 and 310 IAC 12–5–130.1 and the repeal does not render the Indiana program less effective than the counterpart Federal requirements to the extent that IC 13–4.1–9–2.5 meets the requirements of SMCRA section 720 from June 30, 1994, and the enforcement scheme approved July 28, 1995, meets the requirements of SMCRA section 720 and 30 CFR 784.20 and 817.121(c)(2) during the period from the effective date of SMCRA section 720 (October 24, 1992) to the effective date of IC 13–4.1–9–2.5 (June 30, 1994).

IV. Summary and Disposition of Comments

Comments on the initial submittal were solicited from Federal agencies and the public on January 14, 1993 (58 FR 4372), and on the adopted language of the approved changes on April 22, 1994 (59 FR 19155). Comments received were discussed in the related **Federal Registers** of May 17, 1993 (58 FR 28775), and April 20, 1995 (60 FR 19669), respectively. As this current action is based on language of the previous submittals, the solicitation of additional comments is not necessary; refer to the **Federal Registers** identified above for the discussion of comments received.

V. Director's Decision

Based on the findings above, the Director is approving the three provisions of Indiana's program amendment concerning subsidence, as originally submitted by Indiana on March 18, 1994, and for which the decisions were deferred in the April 20, 1995, **Federal Register** (60 FR 19669). As discussed above in Finding 1 concerning 310 IAC 12–3–87.1(c)(2) and Finding 2 concerning 310 IAC 12–5–130.1(c)(2), the Director is approving the proposed deference to State law to the extent that IC 13–4.1–9–2.5 meets the requirements of SMCRA section 720 from June 30, 1994, and the enforcement scheme approved July 28, 1995, meets the requirements of SMCRA section 720 and 30 CFR 784.20 and 817.121(c)(2) during the period from the effective date of SMCRA section 720 (October 24, 1992) to the effective date of IC 13–4.1–9–2.5 (June 30, 1994). As discussed in Finding 3, the Director is also approving the repeal of 310 IAC 12–5–132.

The Federal regulations at 30 CFR Part 914, codifying decisions concerning the Indiana program, are being amended to implement this decision.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 8, 1996.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for Part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended by adding paragraph (qqq) to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(qqq) The revised provisions at 310 IAC 12–3–87.1(c)(2) and 310 IAC 12–5–130.1(c)(2) and the repeal of 310 IAC 12–5–132 contained in Indiana's program amendment concerning subsidence, as originally submitted by Indiana on March 18, 1994, and for which the decisions were deferred on April 20, 1995, are approved effective May 28, 1996.

[FR Doc. 96–13264 Filed 5–24–96; 8:45 am]

BILLING CODE 4310–05–M

---

30 CFR Part 925

[SPATS No. MO–026–FOR]

Missouri Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with a reporting stipulation, a proposed amendment to the Missouri regulatory program (hereinafter referred to as the "Missouri program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Revised Statutes of Missouri (RSMo) and the Code of State Regulations (CSR) along with supporting documentation and information pertaining to Missouri's alternative bonding system. The amendment is intended to revise the Missouri program to be consistent with the corresponding Federal regulations and SMCRA.

EFFECTIVE DATE: May 28, 1996.

FOR FURTHER INFORMATION CONTACT: Brent Wahlquist, Regional Director, Mid-Continent Regional Coordinating Center, Alton Federal Building, 501 Belle Street, Alton, Illinois, 62002 Telephone: (618) 463–6460.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Missouri Program

On November 21, 1980, the Secretary of Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Missouri program can be found in the November 21, 1980, **Federal Register** (45 FR 77017). Subsequent actions concerning Missouri's program and program amendments can be found at 30 CFR 925.12, 925.15, and 925.16.

II. Submission of the Proposed Amendment

By letter dated March 7, 1995, Missouri submitted a proposed amendment to its program pursuant to SMCRA (Administrative record No. MO–617). Missouri submitted the proposed amendment in response to a January 30, 1986, letter (Administrative record No. MO–351) that OSM sent to Missouri in accordance with 30 CFR 732.17(c) and in response to the required program amendments at 30 CFR 925.16(g). The provisions of the Revised Statutes of Missouri (RSMo) and the Code of State Regulations (CSR) that Missouri proposed to revise were: RSMO 444.805, Definition of Phase I reclamation bond; RSMO 444.830, Bond requirements, when a bond must be filed, the amount of a bond, and allowance for bond substitution; RSMO 444.950, Phase I reclamation bond requirements; RSMO 444.960, Establishment, purpose, and duties of the Coal Mine Land Reclamation Fund (CMLR Fund); RSMO 444.965.1, Assessment for fund; 10 CSR 40–7.011, Bond requirements; 10 CSR 40–7.021, Duration and release of reclamation liability; 10 CSR 40–7.041, Form and administration of the CMLR Fund. In addition, Missouri submitted: (1) A

narrative explaining the current and projected balances of the bond pools (Fund A and Fund B) of the CMLR Fund; (2) a discussion of how each outstanding required program amendment codified in the final rule in the May 8, 1991, **Federal Register** (56 FR 21281) will be resolved (Administrative Record No. MO–536); (3) an explanation of how the deficiencies identified in OSM's issue letter dated March 9, 1994 (Administrative Record No. MO–592) will be resolved; (4) a table of reclamation cost estimates for all permits except those that represent a minimal liability to the bond pools; (5) a statement from the Missouri Attorney General that explains the legal basis for using Abandoned Mine Land Funds for the reclamation of Bill's Coal Forfeiture Project; and (6) copies of the revised bond forms utilized by Missouri.

By letter dated March 28, 1995 (Administrative Record No. MO–623), Missouri informed the OSM Kansas City Field Office of an inadvertent omission in its program amendment request, and requested inclusion in the proposed amendment of statutory revisions at RSMO 444.805 that removes the definition for "full cost bond" and revises the definition for "Phase I reclamation bond." These changes correspond to regulation changes at 10 CSR 40–7.011 and have been incorporated into this amendment.

By letter dated February 21, 1996, (Administrative Record No. MO–636), Missouri informed OSM it was removing the proposed revisions concerning administrative rulemaking procedures at RSMO 444.950(2)–(8).

The main provisions of the amendment propose to:

- Eliminate the option to post a "full cost bond" and require mandatory participation in Missouri's alternative bonding program.
- Require that up to 20 percent of Phase I reclamation bond be held until Phase III liability is released.
- Establish minimum rate adjustable Phase I reclamation bond amounts.
- Establish the CMLR Fund as part of the alternative bonding system (ABS), with 40 percent of the assessments placed in Fund A for reclamation of permits revoked prior to September 1, 1988, and 60 percent of the assessments placed in Fund B for reclamation of permits revoked after September 1, 1988.
- Allow expenditure of CMLR funds for completion of Phase I reclamation.
- Allow expenditure of Phase I reclamation bond for any phase of reclamation.

OSM published a notice in the March 27, 1995, **Federal Register** (58 FR 15728) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment. The public comment period ended April 26, 1995. The public hearing scheduled for April 21, 1995, was not held because no one requested an opportunity to testify.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Missouri's Regulations That Are Substantively Identical to the Corresponding Federal Regulations

Missouri proposes revisions to the following regulations that contain language that is identical in meaning to the counterpart Federal regulations (Federal regulation counterparts are indicated in brackets): 10 CSR 40–7.11(1)(H), Definition of Surety bond [30 CFR 800.5(a)]; 10 CSR 40–7.011(2), Requirement to file a bond [30 CFR 800.11]. The Director, therefore, finds these proposed revisions to Missouri's regulations are no less effective than the federal regulations.

B. Required Program Amendments

Missouri submitted proposed revisions in response to required program amendments that the Director placed on the Missouri program at 30 CFR 925.16(g) on May 8, 1991 (56 FR 21281).

1. Required Program Amendments Satisfied by Statute or Regulation Changes in the Proposed Amendment

The Director finds that the proposed revisions to the following State statutes and regulations satisfy the indicated required program amendments and are not inconsistent with the requirements of section 509(c) of SMCRA and 30 CFR 800.11(e) of the Federal regulations. Missouri's proposed revisions and accompanying fiscal demonstration indicate these revisions will resolve the issues associated with currently approved alternative bonding provisions. Therefore, the Director is approving them. For clarity, the required program amendments are listed below, verbatim, along with Missouri's proposed revisions.

a. *30 CFR 925.16(g)(1).* At RSMo 444.830.1; 444.965.1; 10 CSR 40–7.011(2)(B); and 10 CSR 40–7.041(1)(A); demonstrate that the resulting financial aspect of the proposed optional participation by an applicant of either a full-cost bond or Phase I bond will ensure that the ABS can meet the requirements of 30 CFR 800.11(e) or remove this provision.

To satisfy 30 CFR 925.16(g)(1), Missouri proposes (1) at RSMo 444.830.1 to delete the option that allows an applicant to file a full-cost bond and pay a one time assessment to the CMLR Fund (the one time assessment only being required until September 1, 1993), thereby making participation in the ABS mandatory; (2) at RSMo 444.950.1 to remove the reference to a full-cost bond and to require all applicants to file a Phase I reclamation bond; (3) at RSMo 444.965.1 to delete language related to the option to file a full-cost bond; (4) at 10 CSR 40–7.011(2) (B) and (C) to delete provisions concerning filing of a full-cost bond; and (5) at 10 CSR 40–7.041(1) to delete provisions concerning assessment lump sum payments by permittees who file full cost bonds.

These proposed revisions satisfy the concerns raised by 30 CFR 925.16(g)(1), and the Director is removing this paragraph.

b. *30 CFR 925.16(g)(2).* At RSMo 444.950.1 and 10 CSR 40–7.011(4) (A), (B), (C), and (D) to ensure that the Phase I reclamation bond amounts will cover the cost of reclamation and maintain the flexibility of conventional bonds in all situations and that the open pit minimum bond will be sufficient to assure the completion of the required reclamation in all cases.

At the time this required amendment was imposed, Missouri's program would not allow expenditure of bond pool moneys on Phase I reclamation. Missouri proposes in this amendment to (1) at RSMo 444.950.1 and 10 CSR 40–7.011(5) establish adjustable Phase I reclamation bond rates; (2) at RSMo 444.950.4 and 10 CSR 40–7.021(2)(D)1 allow retention of up to 20 percent of Phase I bond until completion of Phase III reclamation; and (3) at RSMo 444.960.5 and 10 CSR 40–7.041(4)(A)1 allow expenditure of CMLR funds for completion of Phase I reclamation.

The proposed revisions add flexibility to Missouri's alternative bonding system to ensure coverage of the cost of reclamation, and the Director is removing the required amendment at 30 CFR 925.16(g)(2).

c. *30 CFR 925.16(g)(4).* AT RSMo 444.950.3 and 444.830.3 to require the Secretary of the Interior's approval before adopting an alternative bonding system or delete the provision.

In response to the required program amendment at 30 CFR 925.16(g)(4), Missouri proposes to modify its requirements at RSMO 444.830.3 and 444.950.3 regarding the ability of the commission to approve an alternative bonding system by adding the language, "* * * and which is consistent with or pursuant to the purposes of Public Law 95–87, the Surface Mining Control and Reclamation Act."

Section 509(c) of SMCRA specifically requires that the Secretary of the Interior must approve an alternative bonding system prior to a State being able to adopt the system. In a letter to Missouri dated March 9, 1994 (Administrative Record No. MO–592), OSM stated its interpretation of Missouri's intent in making this change to its statute was to indicate Missouri's agreement that the Secretary of the Interior's approval is required and Missouri would first obtain the Secretary's approval prior to implementing any alternative bonding system. Missouri's response letter dated April 4, 1994 (Administrative Record No. MO–594), confirmed that OSM's interpretation was correct and Missouri agrees that the Secretary of the Interior's approval is required prior to implementing any alternative bonding system. therefore, the Director is removing the required program amendment at 30 CFR 925.16(g)(4).

d. *30 CFR 925.16(g)(5).* At RSMo 444.960.1 to clarify how the CMLR Fund may be expended.

At RSMo 444.960.1, Missouri's currently approved statute states that moneys within the CMLR Fund will be used by the Land Reclamation Commission (LRC) to complete the reclamation plan for any permitted lands after the proceeds from any applicable performance bond for such reclamation have been exhausted. This would conceivably allow use of moneys in the CMLR Fund to complete Phases I, II, and III reclamation requirements. However, the existing statute at RSMO 444.960.5, while allowing moneys within the 40 percent fund (Fund A) to be used for any aspect of reclamation, stipulates that moneys within the 60 percent fund (Fund B) may be used for Phases II and III reclamation only.

To satisfy 30 CFR 925.16(g)(5), Missouri proposes at RSMO 444.960.5 to allow moneys from both Fund A and Fund B to be used for all phases of reclamation. The proposed revision clarifies how the CMLR Fund may be expended, and the Director is removing the required amendment at 30 CFR 925.16(g)(5).

e. *30 CFR 925.16(g)(6).* At RSMo 444.960.5 and 10 CSR 40–7.041(4)(A)1, to ensure that the 40 percent fund portion (Fund A) will provide sufficient funding to fully reclaim those sites forfeited prior to September 1, 1988, and demonstrate that the 60 percent fund portion (Fund B) generation of monies will be adequate to reclaim all defaulted lands as required by 30 CFR 800.11(e).

To satisfy 30 CFR 925.16(g)(6), Missouri proposes at RSMo 444.960.5, 10 CSR 40–7.041(1)(A), and 10 CSR 40–7.041(4)(A)1 to require that moneys paid into the CMLR Fund be allocated so that 40 percent of the assessments would be used for reclaiming permits revoked by the LRC prior to September 1, 1988 (Fund A), and 60 percent of the assessments would apply to reclamation of permits revoked by the LRC after September 1, 1988 (Fund B). Moneys that existed in the CMLR Fund as of September 1, 1988, would be allocated to Fund A, as would 40 percent of all moneys assessed for the CMLR Fund after September 1, 1988, until such time that the accumulation of money in Fund A would be sufficient to complete reclamation of those permits revoked by the commission prior to September 1, 1988, after which time all moneys assessed for the CMLR Fund would be allocated to Fund B. In addition, moneys from both Fund A and Fund B would be used on any aspect of reclamation. Missouri also proposes language changes at 10 CSR 40–7.041(1)(B), (C), and (E) to maintain consistency with the proposed changes at 10 CSR 40–7.041(1)(A) and 10 CSR 40–7.041(4)(A)1.

These proposed changes will allow Fund A to accrue additional moneys to assure sufficient funding is available to fully reclaim those sites forfeited prior to September 1, 1988. The portion of 30 CFR 925.16(g)(6) that requires a demonstration that Fund B generation of moneys will be adequate to reclaim all defaulted lands as required by 30 CFR 800.11(e) is incorporated into and discussed in Finding B.2 since it is redundant with 30 CFR 925.16(g)(3), which also requires a demonstration that Missouri's ABS will meet the requirements of SMCRA. Therefore, since Missouri's proposed changes satisfy the Fund A portion of the required amendment and the Fund B portion is a redundant requirement, the Director is removing 30 CFR 925.16(g)(6) in its entirety.

f. *30 CFR 925.16(g)(8).* At RSMo 444.965.3 and 10 CSR 40–7.041(1)(B) 3, 4, 5, and 6; demonstrate that the buy out option would still allow the ABS to meet the requirements of 30 CFR 800.11(e)(1) or remove this option.

In response to 30 CFR 925.16(g)(8), Missouri proposes to delete RSMO 444.965.3 and 10 CSR 40–7.041(1)(B)3, 4, 5, and 6, all of which either provide for or relate to a buy out option. The removal of the buy out option provisions from the Missouri program satisfies OSM's concerns, and the Director is removing the required amendment at 30 CFR 925.16(g)(8).

g. *30 CFR 925.16(g)(20).* At 10 CSR 40–7.021(2)(D)(1. to clarify that its Phase I bond release for an ABS is consistently defined and used throughout its program and to provide a legal opinion of its Phase I reclamation bond release and bond coverage liability.

Missouri proposes to revise 10 CSR 40–7.021(2)(D)1 to reduce Phase I bond by 80 percent when Phase I liability is released and to clarify the remaining bond is permit specific. For consistency throughout its program, Missouri also proposes (1) at 10 CSR 40–7.011(1)(D) to modify the definition of Phase I bond to include release of 80 percent of the bond upon successful completion of Phase I reclamation of a permit area; (2) at RSMo 444.805(15), recodified from 444.805(16), to modify the definition of Phase I reclamation bond to include release of no less than 80 percent of the bond upon successful completion of Phase I reclamation of a permit area; and (3) at RSMo 444.950.4 to allow for release of no less than 80 percent of Phase I reclamation bond upon completion of Phase I reclamation.

These proposed changes assure that Missouri's Phase I bond release for its ABS is consistently defined and used throughout its program. The Federal regulations at 30 CFR 800.40(c)(1), in reference to a conventional bonding system, allow for release of 60 percent of the bond when Phase I reclamation requirements are satisfied. Since Missouri proposes mandatory participation in its alternative bonding system, which will allow moneys to be used in any phase of reclamation, release of 80 percent of the Phase I reclamation bond upon completion of Phase I reclamation would be no less effective than the Federal requirement to release 60 percent of a full cost bond upon completion of Phase I reclamation.

Replacement of the word "mine" with the word "permit" and addition of the word "remaining" at 10 CSR 40–7.021(2)(D)1 clarifies that Phase I reclamation bond release is permit specific. Therefore, a legal opinion of Missouri's Phase I reclamation bond release and bond coverage liability is no longer necessary.

Based upon the above discussions, the Director is removing the required

program amendment at 30 CFR 925.16(g)(20).

2. Required Program Amendments Satisfied by Missouri's Fiscal Demonstration

Missouri's fiscal demonstration satisfies the required program amendments at 30 CFR 925.16(g)(3), the Bond B portion of 30 CFR 925.16(g)(6), and 30 CFR 925.16(g)(7), which are set forth in the May 8, 1991, **Federal Register** (56 FR 21281). For clarity, the required program amendments are listed below.

30 CFR 925.16(g)(3). * * *, demonstrate that the combination of bond liability between the operator's Phase I bond and the CMLR Fund bond will meet the requirements of SMCRA.

30 CFR 925.16(g)(6). * * *, demonstrate that the 60 percent fund portion (Fund B) generation of moneys will be adequate to reclaim all defaulted lands as required by 30 CFR 800.11(e).

30 CFR 925.16(g)(7). * * *, to assure that the fee assessment structure of the CMLR Fund will ensure that the Fund will operate in a financially solvent manner as required by 30 CFR 800.11(e).

In response to these three required program amendments, Missouri submitted the report entitled "Evaluation of Missouri's Alternative Bonding System." Information in this demonstration shows that as of February 1, 1996, Missouri's projected CMLR Fund assets exceed liabilities in both Fund A and Fund B. In addition, projection tables in the report indicate continued assessment fee payments to the Fund will enable the State to reclaim all forfeiture sites and meet contractual commitments in a timely manner without the Fund incurring a deficit through September 1998.

Section 509(c) of SMCRA and 30 CFR 800.11(e) both require that under an alternative bonding system, the regulatory authority must have available sufficient money to complete the reclamation plan for any site that may be in default at any time. An alternative bonding system cannot be allowed to incur a deficit if it is to have available adequate revenues to complete the reclamation of all outstanding bond forfeiture sites. Since Missouri's demonstration shows that the CMLR Fund has sufficient funds to fund the reclamation of forfeiture sites that may be in default at any time, the Director finds that Missouri's alternative bonding system meets the requirements of 30 CFR 800.11(e), and it is achieving the objectives and purposes of the conventional bonding program set forth in section 509 of SMCRA. However, due to the possibility of future unanticipated bond forfeitures or increased reclamation costs on pending or existing forfeiture sites that could have significant impacts on solvency of Missouri's CMLR Fund, OSM must have a means of monitoring continued solvency of the Fund. Therefore, the Director is removing the required program amendments at 30 CFR 925.16 (g)(3), (g)(6), and (g)(7), with the stipulation that Missouri submit semi-annual reports to demonstrate continued solvency of the CMLR Fund, beginning with the first report due October 1, 1996, until such time that OSM informs Missouri of a less frequent reporting period.

C. Revisions to Missouri's Statutes That Are Not Substantively Identical to the Corresponding Provisions of the Federal Statutes

1. RSMo 444.805—Definitions

Missouri proposes to recodify this section, delete the definition of "full-cost bond," and revise the definition of "Phase I reclamation bond."

a. *Full-Cost Bond.* Missouri proposes to delete the term "full-cost bond" previously defined at subsection (8), as this term is no longer used in the revised statutes. Operators will no longer have the option of posting a "full-cost bond," but will be required to post a "Phase I reclamation bond" at a minimum rate of $2,500 an acre and pay assessments to the CMLR fund. The requirement for mandatory participation in Missouri's alternative bonding program will make the term "full-cost bond" obsolete. The Director finds that Missouri's deletion of the definition of "full-cost bond" does not render RSMo 444.805 less stringent than the requirements of SMCRA for performance bonds at section 509(a). The Director is, therefore, approving Missouri's proposal to delete the definition of "full-cost bond" at RSMo 444.805(8).

b. *Phase I Reclamation Bond.* At recodified subsection (15), previously codified subsection (16), Missouri redefines the term "Phase I reclamation bond" to mean "a bond for performance filed by a permittee pursuant to section 444.450 that may have no less than eighty percent released upon the successful completion of Phase I reclamation of a permit area in accordance with the approved reclamation plan, with the rest of the bond remaining in effect until Phase III liability is released." The previous definition for "Phase I reclamation bond" allowed Missouri to release all Phase I reclamation bond upon the successful completion of Phase I reclamation. By requiring the retention of 20 percent of the Phase I bond until after Phase III liability is released, the revised definition provides incentive for operators to successfully complete Phase II and Phase III reclamation as required by 30 CFR 800.11(e)(2). There is no Federal counterpart to Missouri's proposed definition. However, since the Federal regulations at 30 CFR 800.13(a)(2) authorize regulatory authorities to accept phased bonding and the Federal regulations at 30 CFR 800.40(c) allow regulatory authorities to release bond if they are satisfied that all the reclamation or a phase of the reclamation covered by the bond has been accomplished, the Director finds this definition is not inconsistent with Federal program requirements. Therefore, the Director is approving Missouri's proposed revision to its definition of "Phase I reclamation bond" at RSMo 444.805(15).

2. RSMo 444.830—Filing Phase I Reclamation Bond

Missouri proposes to remove a provision from RSMo 444.830.1 and insert the provision at RSMo 444.850.1. This provision concerns the factors to be considered when determining the required Phase I bond amount. Since the provision is to be inserted in RSMo 444.950.1, the Director finds this change does not render the previously approved provisions at RSMo 444.830.1 and 444.950.1 less stringent than the requirements for performance bonds at section 509(a) of SMCRA and is approving the provision move.

3. RSMo 444.950—Phase I Reclamation Bond Requirements

a. *Adjustable Phase I Bond.* (1) *Minimum Adjustable Rate Phase I Reclomation Bond.* At RSMO 444.950.1, Missouri proposes to establish a minimum Phase I reclamation bond rate of $2,500 per acre for all permitted acreage, except for coal preparation areas for which the minimum bond rate would be $10,000 per permitted acre. OSM previously approved the $2,500 per acre Phase I bond amount in the February 26, 1988, **Federal Register** (53 FR 5766) and the $10,000 per acre bond requirement for coal preparation areas in the October 31, 1988, **Federal Register** (53 FR 43866) for unbonded acreage under new permits, after April 30, 1986, or permits undisturbed as of that date. Both approvals were considered to be adequate partial responses to OSM's January 30, 1986, 30 CFR part 732 notification to Missouri.

Missouri's proposal includes provisions that would allow annual adjustments of up to $250 for the $2,500 minimum rate and $500 for the $10,000 minimum rate, with maximum bond rates of $5,000 and $15,000, respectively, Bond amount adjustments would have to be approved through rulemaking.

Establishment of adjustable Phase I bond rates is an improvement over the previously approved fixed rats. Adjustable rates will provide the necessary flexibility to accommodate changes in the cost of future reclamation, a component essential to ensure the CMLR Fund's solvency and hence its ability to meet the criteria of 300 CFR 800.11(e). Therefore, the Director finds these revised provisions at RSMo 444.950.1 are not inconsistent with the requirements of section 509(a) of SMCRA, and he is approving them.

(2) *Factors Used to Determine Phase I Reclamation Bond Amounts.* Missouri proposes to insert a provision at RSMo 444.950.1, that was removed from RSMO 444.830.1, with no substantive changes in language. This provision concerns the factors to be considered when determining the required Phase I reclamation bond amount. These factors will be used to assess all mine sites annually to determine if an adjustment in the Phase I reclamation bond amount is necessary. The Director finds that the addition of this previously approved provision does not render the provisions at RSMo 444.950.1 less stringent that the Federal requirements for performance bonds at section 509(a) of SMCRA. Therefore, the Director is approving Missouri's proposed change.

(3) *Minimum Amount of Phase I Reclamation Bond.* Missouri proposes to remove the language "permitted surface coal mining operation" and add the word "permit" in that portion of the provision which currently requires a minimum of $10,000 of Phase I reclamation bond be posted by an operator. The $10,000 minimum will now apply to each permit instead of a surface coal mining operation, which might include multiple permits. Missouri also proposes to delete the language "at two thousand five hundred dollars per acre" in that portion of the provision which requires a minimum bond equivalent to 20 acres of Phase I reclamation bond be posted for each acre of open pit. This change is necessary to be consistent with Missouri's proposal to establish adjustable Phase I reclamation bond amounts. These changes are not inconsistent with section 509 of SMCRA, and represent an improvement to Missouri's alternative bonding system. Therefore, the Director is approving these revisions to RSMo 444.950.1.

b. *Acceptance of Phase I Reclamation Bond.* At RSMO 444.950.3, Missouri proposes to add the language "Phase I reclamation." This change is necessary to maintain consistency with Missouri's proposal to delete the term "full-cost bond" and revise the term "Phase I reclamation bond" at section 444.805. This proposed change is nonsubstantive and does not render section 444.950.3 less stringent than section 509(c) of SMCRA. Therefore, the Director is approving the proposed change.

c. *Release of Phase I Reclamation Bond.* At RSMO 444.950.4, Missouri proposes to add language which would allow retention of up to 20 percent of Phase I reclamation bond after completion of Phase I reclamation with the retained bond remaining in effect until completion of Phase III reclamation. This is an improvement over the existing provision which requires all Phase I bond to be released on completion of Phase III reclamation. This is an improvement over the existing provision which requires all Phase I bond to be released on completion of Phase I reclamation, and it would provide the economic incentive required by 30 CFR 800.11(e)(2) for permittees to comply with all reclamation provisions.

Missouri further proposes to allow Phase I reclamation bond be available for all phases of reclamation in the event of forfeiture. This is an improvement in the event of forfeiture. This is an improvement over the existing provision which allows the expenditure of Phase I reclamation bond only for Phase I reclamation in the event of forfeiture. Section 509(a) of SMCRA requires that the amount of the bond be sufficient to assure the completion of the reclamation plan in the event of forfeiture.

Based on the above discussions, the Director finds the proposed changes at RSMO 444.950.4 are not inconsistent with sections 509 and 519 of SMCRA, and represent an improvement in the Missouri alternative bonding program. Therefore, the Director is approving Missouri's proposed changes.

4. RSMo 444.960–Coal Mine Land Reclamation Fund

Section 509(c) of SMCRA provides that "in lieu of establishment of a bonding program, as set forth in this section, the Secretary may approve * * * an alternative system that will achieve the objectives and purposes of the bonding program pursuant to this section." As stated in section 509(a) of SMCRA, one of the key objectives and purposes of the bonding program is "to assure the completion of the reclamation plan if the work had to be performed by the regulatory authority in the event of forfeiture * * *." In furtherance of this objective, 30 CFR 800.11(e)(1) provides, in pertinent part, that OSM may approve an alternative bonding system if the alternative assures that "the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time. Reclamation liability under a bond pool must be continuous. The liability and obligation of an ABS does not disappear if the bond pool finds itself unable to meet its obligations as they mature, its existing capital structure is impaired, or its ability to perform any of its obligations is impaired.

To meet the requirements of 30 CFR 800.11(e), an alternative bonding system must assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time, and must provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

In this proposed program amendment submittal, Missouri proposes several changes to its statutes to strengthen its ABS and meet requirements of section 509 of SMCRA and 30 CFR 800.11(e).

a. *Fund A.* At RSMO 444.960, Missouri established Fund A in response to the Director's January 30, 1986, letter that required the State to outline plans to reclaim its backlog of forfeited sites. The proposed fee structure of Fund A allocates moneys that existed in the CMLR Fund as of September 1, 1988, to Fund A and allocates 40 percent of all moneys assessed for the CMLR Fund after September 1, 1988, to Fund A until such time that the accumulation of money in Fund A would be sufficient to complete reclamation of those permits revoked by the commission prior to September 1, 1988.

In addition, at the time this proposed amendment was submitted, Missouri submitted a letter from its Attorney General that explains the legal basis for using Abandoned Mine Land Funds for the reclamation of Bill's Coal Forfeiture Project. When the proposed amendment was submitted, Missouri's statutes were silent on expenditure of Abandoned Mine Land Funds (AML Funds) on forfeiture sites where the surety became insolvent. Since then, OSM approved a proposed amendment in which Missouri made changes to its statutes to specifically allow use of AML Funds on sites where insolvency of the surety occurred (60 FR 43972, August 24, 1995). Approval of this amendment assures Missouri's statute includes

language which allows use of AML Funds on the Bill's Coal Forfeiture Project. Use of AML Funds at this site would lessen the financial burden on Fund A, thereby reducing the time period for which assessments to Fund A must continue.

Separation of Fund A from Fund B in the CMLR Fund system as proposed by Missouri will allow the funds necessary to reclaim the backlog of sites forfeited prior to September 1, 1988, and is not inconsistent with section 509(c) of SMCRA. Therefore, the Director finds that Missouri's proposed establishment of Fund A under section RSMo 444.960.1 is no less stringent than section 509(c) of SMCRA and is no less effective than 30 CFR 800.11(e). Accordingly, the Director is approving Missouri's proposed establishment of Fund A in the ABS.

b. *Fund B.* Missouri's proposed Fund B will be used to fund reclamation of sites where forfeiture occurred after September 1, 1988. The proposed fee structure requires that 60 percent of the moneys assessed for the CMLR Fund be allocated to Fund B until enough moneys accrue in Fund A to complete reclamation of sites where forfeiture occurred prior to September 1, 1988, after which Fund B will receive 100 percent of the CMLR Fund assessments.

Missouri proposes other changes which will specifically strengthen Fund B. At RSMo 444.830.1, Missouri proposes to remove the option of operators to file a full cost bond. This would require all permittees to participate in the ABS program, thereby providing potential for increased assessments to the CMLR Fund. At RSMo 444.950.4, Missouri proposes to allow retention of up to 20 percent of Phase I reclamation bond after completion of Phase I reclamation with the retained bond remaining in effect until completion of Phase III reclamation. Also at RMSo 444.950.4, Missouri proposes to allow the expenditure of Phase I reclamation bond for all phases of reclamation in the event of forfeiture. The existing provisions at RMSo 444.950.4 allow release of all Phase I bond on completion of Phase I reclamation and the expenditure of Phase I reclamation bond only for Phase I reclamation in the event of forfeiture. These changes would potentially lessen the burden on Fund B when forfeitures occur. As previously discussed in this final rule, all of these proposed changes are being approved by the Director.

The Director finds that Missouri's proposed concept of Fund B is not inconsistent with section 509(c) of SMCRA or 30 CFR 800.11(e). Therefore, the Director is approving Missouri's proposed establishment of Fund B under section RMSo 444.960.

5. RMSo 444.965—Payments to the CMLR Fund

a. *Redesignations.* In Missouri's proposed amendment, RMSo 444.965.4 is redesignated 444.965.3, section 444.965.5 is redesignated section 444.965.4, and section 444.965.6 is redesignated section 444.965.5. These changes do not render the previously approved provisions of RMSo 444.965 less stringent than the requirements of section 509 of SMCRA. Therefore, the Director is approving the redesignations.

b. *CMLR Fund Adjustment.* Proposed language at newly codified RMSO 444.965.4, recodified from section 444.965.5, would require that after the date when enough moneys have accumulated in the 40 percent pool (Fund A) to complete reclamation on sites revoked prior to September 1, 1988, whenever the fund balance falls below $7 million, tonnage assessments would resume at the rate of 25 cents per ton for the first 50,000 tons and 15 cents per ton for the second 50,000 tons of coal sold, shipped, or otherwise disposed of in a calendar year by a permittee, and the assessments would remain in effect until the fund balance once again achieved at least $7 million dollars at the close of the State's fiscal year.

Missouri's proposed tonnage rate assessments at section 444.965.4 would allow reductions in the assessment rates provided at section 444.965.2. Such fee assessments reductions would probably not jeopardize solvency of the CMLR Fund because at the time of such reductions, enough moneys would already have accumulated to reclaim the backlog of forfeited sites where revocation occurred prior to September 1, 1988. The Director finds the changes proposed by Missouri are not inconsistent with the requirements of section 509(c) of SMCRA. Therefore, the Director is approving Missouri's proposed changes at section 444.965.4.

c. *CMLR Fund Balance Below $2 Million.* At newly codified RMSo 444.965.5, recodified from section 444.965.6, Missouri proposes that: "After September 1, 1998, whenever the fund balance falls below $2 million, the assessment rate established in subsection 2 of the section [RMSo 444.965.2] shall increase to a per ton rate of 30 cents per ton for the first 50,000 tons and 20 cents per ton for the second 50,000 tons of coal sold, shipped, or otherwise disposed of in a calendar year by a permittee. The increased tonnage assessment shall remain in effect until the fund balance is at least $3 million at the close of the State's fiscal year, at which time the assessment rate will revert to the rate established pursuant to subsection 4 of this section [RSM 444.965.4]." The proposed increase in assessment rates after September 1, 1998, whenever the fund balance falls below $2 million will increase Missouri's ability to adjust the fee schedule for the CMLR Fund when necessary. The Director finds the changes proposed by Missouri are not inconsistent with the requirements of section 509(c) of SMCRA. Therefore, the Director is approving the changes proposed by Missouri at section 444.965.5.

D. Revisions to Missouri's Regulations That Are Not Substantively Identical to the Corresponding Provisions of the Federal Regulations

1. 10 CSR 40–7.011—Bond Requirements

a. *10 CSR 40–7.011(1), Definitions.* (1) *Redesignations.* In Missouri's proposed amendment, 10 CSR 40–7.011(1)(B) is redesignated 10 CSR 40–7.011(1)(A), 10 CSR 40–7.011(1)(C) is redesignated 10 CSR 40–7.011(1)(B), 10 CSR 40–7.011(1)(D) is redesignated 10 CSR 40–7.011(1)(C), 10 CSR 40–7.011(1)(E) is redesignated 10 CSR 40–7.011(1)(D), 10 CSR 40–7.011(1)(F) is redesignated 10 CSR 40–7.011(1)(G), and 10 CSR 40–7.011(1)(G) is redesignated 10 CSR 40–7.011(1)(H). These changes do not render the previously approved provisions at 10 CSR 40–7.011(1) less effective than the Federal regulations. Therefore, the Director is approving the redesignations.

(2) *Definition of "Full Cost Bond."* At 10 CSR 40–7.011(1)(A), Missouri proposes to delete the definition of "full-cost bond." Deletion of this definition is discussed in Finding C.1.a. of this document. In that finding, the Director is approving Missouri's proposal to delete the definition of "full-cost" bond from its statutes. Therefore, the Director is also approving Missouri's proposal to delete the definition of "full-cost bond" from its regulations at 10 CSR 40–7.011(1)(A).

(3) *Definition of "Phase I Bond."* At 10 CSR 40–7.011(1)(D), previously designated 10 CSR 40–7.011(1)(E), Missouri proposes to redefine the term "Phase I reclamation bond." Redefinition of this term is discussed in Finding C.1.b. of this document. In that finding, the Director is approving Missouri's proposal to redefine the term in its statutes. Since the definition in Missouri's regulation is substantively the same as the definition in its statute, the Director is also approving Missouri's proposal to redefine the term "Phase I bond" in its regulation at 10 CSR 40–7.011(1)(D).

(4) *Definition of "Phase II Bond."* At 10 CSR 40–7.011(1)(E), Missouri proposes to add a definition for "Phase II bond." It is defined as "performance bond conditioned on the release of Phase II liability." There is no direct Federal counterpart to Missouri's proposed definition. However, since the Federal regulations at 30 CFR 800.13(a)(2) authorize regulatory authorities to accept phased bonding and the Federal regulations at 30 CFR 800.40(c) allow regulatory authorities to release bond if they are satisfied that all the reclamation or a phase of the reclamation covered by the bond has been accomplished, the Director finds Missouri's proposed definition of "Phase II bond" is not inconsistent with the Federal regulation requirements. therefore, the Director is approving Missouri's proposal to add a definition for "Phase II bond" at 10 CSR 40–7.011(1)(E).

(5) *Definition of "Phase III Bond."* At 10 CSR 40–7.011(1)(F), Missouri proposes to add a definition for "Phase III bond." It is defined as "performance bond conditioned on the release of Phase III liability." There is no direct Federal counterpart to Missouri's proposed definition. However, since the Federal regulations at 30 CFR 800.13(a)(2) authorize regulatory authorities to accept phased bonding and the Federal regulations at 30 CFR 800.40(c) allow regulatory authorities to release bond if they are satisfied that all the reclamation or a phase of the reclamation covered by the bond has been accomplished, the Director finds Missouri's proposed definition of "Phase III bond" is not inconsistent with the Federal regulation requirements. Therefore, the Director is approving Missouri's proposal to add a definition for "Phase III bond" at 10 CSR 40–7.011(1)(F).

b. *10 CSR 40–7.011(3), Incremental Bonding.* (1) *Filing Incremental Bond.* At 10 CSR 40–7.011(3)(A), Missouri proposes to add the provision, "Disturbance is prohibited on succeeding increments, underground shafts, tunnels, or operations prior to acceptance of bond." This provision is substantially the same as that found at 10 CSR 40–7.011(c). Therefore, the Director finds that addition of this provision does not render 10 CSR 40–7.011(3)(A) less effective than the Federal regulations, and he is approving the addition as proposed by Missouri.

(2) *Identification of Increments for Bonding.* At 10 CSR 40–7.011(3)(D), Missouri proposes to add the language, "* * * submit an incremental bonding schedule and * * *." Although the counterpart Federal regulation at 30 CFR 800.11(b)(3) does not require submission of an incremental bonding schedule, the Federal regulation at 30 CFR 800.11(d)(3) does require the applicant to submit an incremental bond schedule if he elects to bond in increments. Therefore, the Director finds that addition of this requirement to 10 CSR 40–7.011(3)(D) does not render it less effective than 30 CFR 800.11(b)(3), and is approving the addition of language as proposed by Missouri.

(c) *10 CSR 40–7.011(4), Bond Amounts.* (1) *Minimum per Acre Phase I Bond Amounts.* At 10 CSR 40–7.011(4)(A), Missouri proposes to make language changes and deletions to retain consistency with proposed changes at RSMo 444.950.1 concerning minimum Phase I reclamation bond amounts. Missouri, also, proposes to add the provision now found at 10 CSR 40–7.011(4)(C) which establishes the minimum amount of Phase I reclamation bond required for each acre of coal preparation area. The proposed revisions to Missouri's statute requirements for minimum Phase I reclamation bond amounts are discussed in Finding C.3.a.(1) in this document. In that finding, the Director approved Missouri's proposed changes to its statute at RSMo 444.950.1. Therefore, the Director is also approving Missouri's proposed language changes, additions, and deletions as proposed at 40 CSR 40–7.011(4)(A), since they are consistent with the approved statute revisions at RSMo 444.950.1.

(2) *Minimum Phase I Bond for a Permit.* At existing 10 CSR 40–7.011(4)(D), redesignated as 10 CSR 40–7.011(4)(B), Missouri proposes to change language so that the minimum amount of Phase I bond required for mines with fewer than 1,000 acres shall be $10,000, or the equivalent of 20 acres of bond for each acre of open pit area, for a single permit instead of mine, and remove the definition of a "single mine." The Federal regulations at 30 CFR 800.14(b) set a minimum bond requirement of $10,000 for the entire area under one permit. Missouri's proposed changes at 10 CSR 40–7.011(4)(B) would also establish a minimum bond rate of $10,000 for the area under one permit. Therefore, the Director finds Missouri's proposed changes are no less effective than the Federal regulations at 30 CFR 800.14(b), and he is approving Missouri's proposed changes at redesignated 10 CSR 40–7.011(4)(B).

(3) *Deleted Regulations.* Missouri proposes to delete existing 10 CSR 40–7.011(4) (B), (C), (E), (F), (G), (H), and (I).

(a) At existing 10 CSR 40–7.011(4)(B), the provision allows for a lesser amount of bond per acre than the $2,500 minimum bond per acre set by 10 CSR 40–7.011(4)(A). Deletion of existing 10 CSR 40–7.011(4)(B) will allow bond on any permitted acreage to be no less than the $2,500 bond per acre required by 10 CSR 40–7.011(4)(A). The Director finds deletion of existing 10 CSR 40–7.011(4)(B) will not render 10 CSR 40–7.011(4) less effective than the Federal requirements at 30 CFR 800.14(b).

(b) The provision at 10 CSR 40–7.011(4)(C) is being added to 10 CSR 40–7.011(4)(A). The Director finds deletion of 10 CSR 40–7.011(4)(C) and insertion of the provision at 10 CSR 40–7.011(4)(A) will not render 10 CSR 40–7.011(4) less effective than the Federal requirements at 30 CFR 800.14(b).

(c) The provisions at 10 CSR 40–7.011(4) (E), (F), (G), (H), and (I) all pertain to full-cost bonding. Deletion of the option to file a full-cost bond in the Missouri statutes is discussed in Finding B.1.a. In that finding, the Director approved Missouri's proposal at RSMo 444.830.1 to delete the option to file a full-cost bond. Therefore, the Director is approving Missouri's proposal to delete existing regulations pertaining to full-cost bond at 10 CSR 40–7.011(4) (B), (C), (E), (F), (G), (H), and (I).

d. *10 CSR 40–7.011(5), Adjustment of Bond Amounts.* Missouri proposes to add new section 10 CSR 40–7.011(5), which includes provisions at subsections (A), (B), (C), (D), and (E), that would allow the State to adjust Phase I bond rates to ensure adequate bonding amounts. The provisions at proposed new section 10 CSR 40–7.011(5) are substantially the same as the proposed provisions of Missouri's statute at RSMo–444.950.1, which are discussed in Finding C.3.a.(1). In that finding, the Director is approving Missouri's proposed statute provisions concerning adjustment of Phase I bond amounts. Therefore, the Director is approving Missouri's proposed regulation provisions at 10 CSR 40–7.011(5).

2. 10 CSR 40–7.021 Duration and Release of Reclamation Liability

a. *10 CSR 40–7.021(2) Criteria and Schedule for Release of Reclamation Liability.* (1) *General.* At 10 CSR 40–7.021(2), Missouri proposes to remove the provision concerning retention of bond on unreclaimed temporary structures, such as roads, sediment ponds, diversions, and stockpiles where

Phase I, II, and III liabilities under the alternative bonding system apply and on a reclamation cost estimate basis where full-cost bonding applies. Missouri is proposing to move that portion of the provision pertaining to Phase I bond to 10 CSR 40–7.021(2)(A), and is proposing to delete that portion of the provision pertaining to full-cost bonding. As discussed in Finding B.1.a., the Director is approving Missouri's proposal to delete the option to file a full-cost bond. Therefore, none of the existing Missouri program provisions are rendered less effective by this proposed move and deletion, and the Director is approving Missouri's proposed revision at 10 CSR 40–7.021(2).

(2) *10 CSR 40–7.021(2)(A) Qualification for Release of Phase I Liability.* As discussed above, Missouri proposes to move the requirement that Phase I bond be retained on unreclaimed temporary structures, such as roads, sediment ponds, diversions, and stockpiles from 10 CSR 40–7.021(2) to 10 CSR 40–7.021(2)(A). Retention of bond for unreclaimed temporary structures is not addressed as separate requirements in the Federal regulations for bond release; however, Phase I bond release may not be approved until backfilling, grading, and drainage control in accordance with the reclamation plan is complete. Since 10 CSR 40–7.021(2)(A) retains its requirement for completion of backfilling, grading, and drainage control prior to Phase I bond release, the existing regulation provisions are not rendered less effective by the inclusion of the requirement for retention of bond for unreclaimed temporary structures. Therefore, the Director finds the proposed revision is no less effective than the Federal regulations at 30 CFR 800.40(c)(1), and is approving Missouri's proposed change at 10 CSR 40–7.021(2)(A).

(3) *10 CSR 40–7.021(2)(D)1 Release of Phase I Bond When Phase I Reclamation is Completed.* In addition to the proposed changes at 10 CSR 40–7.021(2)(D)1 previously discussed in Finding B.1.b., Missouri proposes to add language to require that after 80 percent of Phase I bond is released, the total remaining bond for a single permit shall not be below the amount required by 10 CSR 40–7.011(4)(B). As discussed in Finding D.1.c.(2), the Director is approving new 10 CSR 40–7.011(4)(B) which requires that the minimum amount of Phase I bond applied to a single permit shall be $10,000, or the equivalent of 20 acres of bond for each acre of open pit area, whichever is greater. The Director finds Missouri's proposed change does not render 10 CSR 40–7.021(2)(D)1 less effective than the requirements of 30 CFR 800.40(c)(1), and he is approving it.

(4) *10 CSR 40–7.021(2)(D)2 Release of Remaining Phase I Reclamation Bond.* At 10 CSR 40–7.021(2)(D)2, Missouri proposes to delete language pertaining to release of full-cost bonds and to add the following language pertaining to release of Phase I reclamation bond: "The remaining amount of the bonds shall be released when Phase III liability is released." Deletion of the option to file a full-cost bond is discussed in Finding B.1.a. In that finding, the Director approved Missouri's proposal to delete the option to file a full-cost bond from its statutes. Retention of a portion of Phase I bond until completion of Phase III reclamation is discussed in Finding C.3.c. In that finding, the Director approved Missouri's provision in its statutes to retain up to 20 percent of Phase I bond until completion of Phase III reclamation. These changes proposed by Missouri are necessary to maintain consistency in its program and are not inconsistent with SMCRA or the Federal regulations. Therefore, the Director is approving Missouri's proposed changes at 10 CSR 40–7.021(2)(D)2.

(5) *10 CSR 40–7.021(2)(E) Release of Bond from Undisturbed Areas.* At 10 CSR 40–7.021(2)(E), Missouri proposes to clarify its provision for release of bond liability from undisturbed areas which are adjacent to disturbed lands by specifying that the bond "may" be released instead of "shall" be released and by adding language pertaining to surface mining disturbances: "All bonding liability may be released in full from undisturbed areas when further disturbances from surface mining have ceased." In addition, Missouri proposes to clarify that "The permit shall terminate on all areas where all bonds have been released." Federal regulations at 30 CFR 800.15(c) allow reduction of bond liability for undisturbed land. Although the Federal regulations for undisturbed areas do not contain specific language pertaining to permit termination, the Director finds the proposed changes would not render 10 CSR 40–7.021(2)(E) inconsistent with SMCRA or the Federal regulations and is approving them.

b. *10 CSR 40–7.021(5) Requirement to File an Affidavit.* On the State's initiative, additional requirements for bond release are proposed to be added to the Missouri program. Specifically, Missouri proposes to add a new section 10 CSR 40–7.021(5) which would require an operator who is seeking a Phase III bond release to file an affidavit with the recorder of deeds in the county where mining occurred describing the parcel(s) of land where operations such as underground mining, auger mining, covering of slurry ponds, or other underground activities occurred which could impact or limit future use of the land. This requirement would be applicable to mined land where Phase I reclamation was completed on or after September 1, 1992. There is no Federal counterpart to the proposed provision for Phase III bond release at section 519 of SMCRA or 30 CFR 800.40(c). The Director finds the additional requirements would not adversely impact the Missouri program as none of the existing program provisions are rendered less effective than the Federal regulations by the inclusion of the additional requirements. Therefore, he is approving 10 CSR 40–7.021(5) as proposed.

3. 10 CSR 40–7.041 Form and Administration of the Coal Mine Land Reclamation Fund

Missouri proposes to delete 10 CSR 40–7.041(4)(A)2. This provision stipulates that Reclamation Fund moneys cannot be expended for reclamation or areas bonded by full-cost bonds. Since Missouri also proposes in this amendment to remove the option to file a full-cost bond, this proposed deletion is necessary to maintain consistency in the Missouri program. As discussed in Finding B.1.a., the Director is approving the deletion of the option to file a full-cost bond from the Missouri program. Therefore, the Director finds Missouri's proposed deletion of 10 CSR 40–7.041(4)(A)2 will not render 10 CSR 40–7.041(4)(A) less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because on one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Missouri program. No comments from Federal agencies were received.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*).

None of the revisions that Missouri proposed to make in its amendment pertain to air or water quality standards. Nevertheless, OSM requested EPA's concurrence with the proposed amendment (Administrative Record Nos. MO–621 and MO–624). EPA did not respond to OSM's request.

V. Director's Decision

Based on the above findings, the Director is approving, with a reporting stipulation, the proposed amendment as submitted by Missouri on March 7, 1995, and March 28, 1995. This stipulation requires Missouri to submit semi-annual reports to demonstrate continued solvency of the CMLR Fund, beginning with the first report due October 1, 1996, until such time that OSM informs Missouri of a less frequent reporting period.

The changes approved in this rulemaking strengthens the Missouri program and, as such, are consistent with SMCRA and the Federal regulations at 30 CFR 732.17(g).

The Director approves the regulations and statutes as proposed by Missouri with the provision that they be fully promulgated in identical form to the regulations and statutes submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 925, codifying decisions concerning the Missouri program, are being amended to implement this decision. With respect to those changes in State laws and regulations approved in this document, the Director is making the final rule effective immediately.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. In the oversight of the Missouri program, the Director will recognize only the statutes, regulations, and other materials approved by OSM, together with any consistent implementing policies, directives, and other materials, and will require the enforcement by Missouri of only such provisions.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 8, 1996.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 925—MISSOURI

1. The authority citation for Part 925 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 925.15 is amended by adding paragraph (t) to read as follows:

§ 925.15 Approval of regulatory program amendments.

* * * * *

(t) Revisions to the following statutes and regulations, as submitted to OSM on March 7 and March 28, 1995, are approved effective May 28, 1996, with a reporting stipulation that requires Missouri to submit semi-annual reports to demonstrate continued solvency of the CMLR Fund, beginning with the first report due October 1, 1996, until such time that OSM informs Missouri of a less frequent reporting period.

(1) Revisions to the Revised Statutes of Missouri (RSMo).

RSMo 444.805—Deletion of the definition of full-cost bond and revision of the definition of Phase I reclamation bond.

RSMo 444.830.1—Deletion of option to file a full-cost bond and revision to Phase I reclamation bond filing requirements.

RSMo 444.830.3—Commission's adoption of an alternative bonding system.

RSMo 444.950.1—Phase I reclamation bond amount requirements, including annual adjustments proposed through the Missouri rulemaking process.

RSMo 444.950.3—Self-bonding requirements and adoption of an alternative bonding system.

RSMo 444.950.4—Phase I reclamation bond liability.

RSMo 444.960.1—Establishment of the CMLR Fund.

RSMo 444.960.5—Allocation and use of the A (40%) and B (60%) portions of the CMLR Fund.

RSMo 444.965.1—CMLR initial assessments.

RSMo 444.965.3—Deletion of buy-out option.

RSMo 444.965.4—CMLR Fund Adjustment.

RSMo 444.965.5—CMLR assessment increase.

(2) Revisions to the Missouri Code of Regulations (CSR) at 10 CSR 40–7.

10 CSR 40–7.011(1)—Deletion of the definition of full-cost bond, revision of the definition of Phase I bond, and addition of definitions for Phase II and Phase III bond.

10 CSR 40–7.011(2)—Revision of requirements to file a bond.

10 CSR 40–7.011(3)—Filing of incremental bond and identification of increments for bonding.

10 CSR 40–7.011(4)—Minimum per acre Phase I bond amounts, minimum Phase I bond for a permit, and deletion of full-cost bonding provisions.

10 CSR 40–7.011(5)—Annual adjustment of Phase I bond amounts.

10 CSR 40–7.021(2)—Concerning criteria and schedule for release of reclamation liability, qualification for release of Phase I liability, release of Phase I bond when Phase I reclamation is completed, and release of bond from undisturbed areas.

10 CSR 40–7.021(5)—Requirement to file an affidavit at Phase III release of underground mining acreage.

10 CSR 40–7.041(1)—Payment to the 40 percent pool, assessment rates, continuation of monthly assessments, and reinstatement rates.

10 CSR 40–7.041(4)—Expenditure of reclamation fund moneys.

§ 925.16 [Amended]

3. Section 925.16 is amended by removing and reserving paragraphs (g)(1) through (g)(8) and (g)(20).

[FR Doc. 96–13261 Filed 5–24–96; 8:45 am]
BILLING CODE 4310–05–M

30 CFR Part 925

[SPATS No. MO–025–FOR]

Missouri Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions, a proposed amendment to the Missouri regulatory program (hereinafter referred to as the "Missouri program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of a proposed set of revegetation success guidelines and a rulemaking that eliminates the reference to an earlier set of guidelines that was never approved by OSM. The amendment is intended to revise the Missouri program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: May 28, 1996.

FOR FURTHER INFORMATION CONTACT: Brent Wahlquist, Regional Director, Mid-Continent Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002, Telephone: (618) 463–6460.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Missouri Program

On November 21, 1980, the Secretary of Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Missouri program can be found in the November 21, 1980, **Federal Register** (45 FR 77017). Subsequent actions concerning Missouri's program and program amendments can be found at 30 CFR 925.12, 925.15, and 925.16.

II. Submission of the Proposed Amendment

By letter dated December 14, 1995 (Administrative Record no. MO–633), Missouri submitted a proposed amendment to its program pursuant to SMCRA. Missouri submitted the proposed amendment in response to the required program amendments at 30 CFR 925.16 (a) and (p)(6). The provisions of the Code of State Regulations (CSR) that Missouri proposes to amend are: 10 CSR 40–3.120/3.270(c)(B)2.A–H., Specific revegetation success standards for postmining land uses. Specifically, Missouri proposes revisions to its approved program for evaluating revegetation success. Missouri revised its regulations for the specific standards for each of its approved land uses to delete the reference to an earlier set of guidelines that had not been approved by OSM and reference the guidelines as currently proposed in this amendment. The proposed revegetation success guidelines consist of eight separate guidance documents that establish the revegetation success standards by land use. These documents are titled the: (1) Phase II and Phase III revegetation standards for prime farmland; (2) Phase III revegetation standards for cropland; (3) Phase III revegetation standards for pasture and previously mined areas; (4) Phase III revegetation standards for wildlife habitat; (5) Phase III revegetation standards for woodland; (6) Phase III revegetation standards for industrial/commercial revegetation; (7) Phase III revegetation success standards for residential land use; and (8) Phase III revegetation success standards for recreation land use. Each set of guidelines elaborates by land use type the revegetation success standards, measurement frequency, sampling procedures, data submission and analysis, maps, and mitigation plan requirements. The guidance documents follow the approved Missouri program regulations at 10 CSR 40–3.120/3.270(6).

OSM announced receipt of the proposed amendment in the January 26, 1996, **Federal Register** (61 FR 2459), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on February 26, 1996.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

1. 10 CSR 40–3.120/3.270(6)(B)—Specific Standards for Postmining Land Uses

The required amendment at 30 CFR 925.16(p)(6) requires Missouri to amend its program at 10 CSR 40–3.120/3.270(6)(B) 2.A through H to remove the reference to the Land Reclamation Commission's June 1990 Phase III Liability Release Guidelines.

Missouri proposes to revise each land use specific revegetation success guidance document which it incorporated by reference into its regulations. Measurement, for applicable land use specific levels of ground cover, production, or stocking shall be performed in accordance with the criteria contained in the current land use specific guidelines of the Land Reclamation Commission.

Although there is not an exact counterpart Federal regulation concerning the incorporation by reference of revegetation success guidance documents, the Federal regulations at 30 CFR 816/817.116(a)(1) require a State to include its standards for success and statistically valid sampling techniques for measuring revegetation success in its approved regulatory program. Missouri is proposing to accomplish this by incorporating eight land use specific guidance documents by reference in its regulations at 10 CSR 40–3.120/3.270(6)(B). The Director finds that Missouri's proposal to include these documents by reference into its approved program is not inconsistent with the Federal regulation requirements. Accordingly, the Director is removing the required program amendment from the Missouri program as codified at 30 CFR 925.16(p)(6).

2. Revegetation Success Guidelines

The required amendment at 30 CFR 925.16(a) requires Missouri to amend its program to include those technical guidance procedures that the State considers acceptable for use in evaluating revegetation success.

a. Phase III Revegetation Success Standards for Woodland

Missouri proposes to adopt a guidance document entitled "Phase III Revegetation Success Standards for Woodland." This document describes the criteria and procedures for determining Phase III success standards for areas being restored as Woodland pursuant to 10 CSR 40–3.120/3.270(6) and (7).

Missouri proposes that revegetation success on woodland be determined on the basis of: the general revegetation requirements of the approved permit; ground cover; and tree/shrub stocking and survival. The permittee is responsible for measuring the vegetation and for submitting the data to the director of Missouri Land Reclamation Program (MLRP) for analysis. Measurements of the vegetation must be made in accordance with the procedures outlined in the guidance document. The director of MLRP must determine that the general requirements for revegetation success be satisfied as stated in 10 CSR 40–3.120/3.270(1). The guidance document sets out specific success standards and measurement frequencies for ground cover and tree and shrub stocking rate based on the regulatory requirements of 10 CSR 40–3.120/3.270. Sampling procedures are to use statistically valid random sampling methods using a 90 percent statistical confidence limit. Ground cover is to be measured by the line-point transect method and tree/shrub stocking is to be measured with sampling circles. Sample adequacy is to be determined using a prescribed formula. If the data indicates that the vegetation is close to the standard but less than the standard, the data is to be submitted to the director of MLRP for statistical analysis to determine if the differences are statistically significant within the limits allowed by regulation. Maps must be provided by the permittees for each Phase III plan indicating the location of each sampling transect and sample frame point, the area covered by the sampling and all permit boundaries. If the permittees can not demonstrate revegetation success in the fifth year after completion of initial seeding, a mitigation plan must be submitted to the director of MLRP including a statement of the problem, a discussion of methods to correct the problem, and a new phase III liability release plan. If the plan involves augmented activities then the 5 year responsibility period will begin again. Appendices are attached illustrating the selection of random sampling sites; data forms for line-point transect; data forms for sample circle; T-table; example of sample adequacy determination for ground cover; example of sample adequacy determination for tree/shrub stocking; statistical analysis for ground cover and tree/shrub stocking; accepted plant species; and references.

The counterpart Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816/817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Missouri is proposing to accomplish this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for woodland. The Director finds that the guidance document is not inconsistent with and no less effective than the Federal regulations.

b. Phase III Success Standards for Industrial/Commercial Revegetation

Missouri proposes to adopt a guidance document entitled "Phase III Success Standards for Industrial/Commercial Revegetation." This document describes the criteria and procedures for determining Phase III success standards for areas being restored as industrial/commercial pursuant to 10 CSR 40–3.120/3.270 (6) and (7).

Missouri proposes that revegetation success on industrial/commercial be determined on the basis of: the general revegetation requirements of the approved permit; and ground cover density. The permittee is responsible for measuring the vegetation and for submitting the data to the director of MLRP for analysis. Measurements of the vegetation must be made in accordance with the procedures outlined in the guidance document. The director of MLRP must determine that the general requirements for revegetation success be satisfied as stated in 10 CSR 40–3.120/3.270(1). The guidance document sets out specific success standards and measurement frequencies for ground cover based on the regulatory requirements of 10 CSR 40–3.120/3.270. Sampling procedures are to use statistically valid random sampling methods using a 90 percent confidence interval. Ground cover is to be measured by the line-point transect method. Sample adequacy is to be determined using a prescribed formula. If the data indicates that the vegetation is close to the standard but less than the standard, the data is to be submitted to the director of MLRP for statistical analysis to determine if the differences are

statistically significant within the limits allowed by regulation. Maps must be provided by the permittee for each Phase III plan indicating the location of each sampling transect and sample frame point, the area covered by the sampling, and all permit boundaries. If the permittee can not demonstrate revegetation success in the fifth year after completion of initial seeding, a mitigation plan must be submitted to the director of MLRP including a statement of the problem, a discussion of methods to correct the problem, and a new phase III liability release plan. If the plan involves augmented activities then the 5 year responsibility period will begin again. Appendices are attached illustrating the selection of random sampling sites; data forms for line-point transect; data forms for sample circle; T-table; example of sample adequacy determination for ground cover; statistical analysis for ground cover; accepted plant species; and references.

The counterpart Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816/817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Missouri is proposing to accomplish this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for industrial/commercial land uses. The Director finds that the guidance document is not inconsistent with and is no less effective than the Federal regulations.

c. Phase III Revegetation Success Standards for Cropland

Missouri proposes to adopt a guidance document entitled "Phase III Revegetation Success Standards for Cropland." This document describes the criteria and procedures for determining Phase III success standards for areas being restored as cropland pursuant to 10 CSR 40–3.120/3.270 (6) and (7).

Missouri proposes that revegetation success on cropland be determined on the basis of ground cover and crop production. The permittee is responsible for measuring the vegetation and for submitting the data to the director of MLRP for analysis. Measurements of the vegetation must be made in accordance with the procedures outlined in the guidance document. The guidance document sets out specific success standards and measurement frequencies for ground cover and crop production based on the regulatory requirements of 10 CSR 40–3.120/3.270. The crop production standard is to be determined with a reference area or the use of a technical standard. Approved technical standards include the county average or target yield established by the U.S. Department of Agriculture Natural Resources Conservation Service (USDA NRCS). Target yields must be adjusted annually and be representative of yields expected when using high management practices common to the area. Sampling procedures are to use statistically valid random sampling methods. Ground cover is to be measured by the line-point transect method. Crop production is to be measured utilizing sampling frames for forage production or whole area harvest for forage or row crop production. Manual sampling of row crops is only allowed when weather or other factors prevent mechanical harvest and must have prior approval by the director of MLRP. The guidance document also establishes a method for establishing representative test plots for use with row crop production. Sample adequacy is to be determined using a prescribed formula. If the data indicates that the vegetation is close to the standard but less than the standard, the data is to be submitted to the director of MLRP for statistical analysis to determine if the differences are statistically significant within the limits allowed by regulation. Maps must be provided by the permittee for each Phase III plan indicating the location of each sampling transect and sample frame point, the area covered by the sampling, and all permit boundaries. If the permittee can not demonstrate revegetation success in the fifth year after completion of initial seeding, a mitigation plan must be submitted to the director of MLRP including a statement of the problem, a discussion of methods to correct the problem, and a new phase III liability release plan. If the plan involves augmented activities then the 5 year responsibility period will begin again. Appendices are attached illustrating the selection of random sampling sites; summary data forms for sampling frames; data forms for crop production data; T-table; example of sample adequacy determination for hay production measurements; statistical analysis for sampling frame data; data form for forage crop production data harvested as baled hay; statistical analysis of whole release area harvesting; yield adjustments for release areas due to differing soil series; yield adjustments for moisture; crop surveyor's affidavit of qualifications and crop production yields; grasses of acceptable plant species for permanent ground cover on agricultural areas; procedure for manually sampling row crops; and references.

The counterpart Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816/817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Missouri is proposing to accomplish this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for cropland. The Director finds that the guidance document is not inconsistent with and no less effective than the Federal regulations.

d. Phase III Revegetation Success Standards for Wildlife Habitat

Missouri proposes to adopt a guidance document entitled "Phase III Revegetation Success Standards for Wildlife Habitat." This document describes the criteria and procedures for determining Phase III success standards for areas being restored as wildlife habitat pursuant to 10 CSR 40–3.120/3.270 (6) and (7).

Missouri proposes that revegetation success on wildlife habitat be determined on the basis of: the general revegetation requirements of the approved permit; ground cover; and tree/shrub stocking and survival. The permittee is responsible for measuring the vegetation and for submitting the data to the director of MLRP for analysis. Measurements of the vegetation must be made in accordance with the procedures outlined in the guidance document. The director of MLRP must determine that the general requirements for revegetation success be satisfied as stated in 10 CSR 40–3.120/3.270(1). The guidance document sets out specific success standards and measurement frequencies for ground cover and tree and shrub stocking rate based on the regulatory requirements of 10 CSR 40–3.120/3.270. Sampling procedures are to use statistically valid random sampling methods. Ground cover is to be measured by the line-point transect method and tree/shrub stocking is to be measured with sampling circles. Sample adequacy is to be determined using a prescribed formula. If the data indicates that the vegetation is close to the standard but less than the standard, the data is to be submitted to the director of MLRP for statistical analysis to determine if the differences are statistically significant within the limits allowed by regulation. Maps must be provided by the permittee for each Phase III plan indicating the location of each sampling transect and sample frame point, the area covered by the sampling, and all permit boundaries. If the permittee can not demonstrate revegetation success in the fifth year after completion of initial seeding, a mitigation plan must be submitted to the director of MLRP including a statement of the problem, a discussion of methods to correct the problem, and a new phase III liability release plan. If the plan involves augmented activities then the 5 year responsibility period will begin again. Appendices are attached illustrating the selection of random sampling sites; data forms for line-point transect; data forms for sample circle; T—table; example of sample adequacy determination for ground cover; example of sample adequacy determination for tree/shrub stocking; statistical analysis for ground cover and tree/shrub stocking; accepted plant species; and references.

The counterpart Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816/817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Missouri is proposing to accomplish this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for wildlife habitat. The Director finds that the guidance document is not inconsistent with and no less effective than the Federal regulations.

e. Phase III Revegetation Success Standards for Pasture and Previously Mined areas

Missouri proposes to adopt a guidance document entitled "Phase III Revegetation Success Standards for Pasture and Previously Mined Areas." This document describes the criteria and procedures for determining Phase III success standards for areas being restored as pasture and previously mined land pursuant to 10 CSR 40–3.120/3.270 (6) and (7).

Missouri proposes that revegetation success on pasture and previously mined land be determined on the basis of: the general revegetation requirements of the approved permit; ground cover; and production. The permittee is responsible for measuring the vegetation and for submitting the data to the director of MLRP for analysis. Any previously mined land that was remined or redistributed and reclaimed to a land use of pasture, must achieve the same success standard for cover as land that was not previously disturbed by mining. However if the area is not reclaimed to the requirements of 10 CSR 40–3.120(6)(B), the vegetation cover shall not be less than the ground cover existing before redisturbance and shall be adequate to control erosion. This ground cover standard must have been determined and incorporated into the permit prior to disturbance. There is no productivity standard for previously mined land. The director of MLRP must determine that the general requirements for revegetation success be satisfied as stated in 10 CSR 40–3.120/3.270(1). Measurements of the vegetation must be made in accordance with the procedures outlined in the guidance document. The guidance document sets out specific success standards and measurement frequencies for ground cover and production based on the regulatory requirements of 10 CSR 40–3.120/3.270. The forage production standard is to be determined with a reference area or a current USDA/NRCS high management target yield. Sampling procedures are to use statistically valid random sampling methods at a 90 percent statistical confidence interval. Ground cover is to be measured by the line-point transect method. Forage production is to be measured utilizing sampling frames or whole area harvest. The guidance document also establishes a method for establishing representative test plots. Sample adequacy is to be determined using a prescribed formula. If the data indicates that the vegetation is close to the standard but less than the standard, the data is to be submitted to the director of MLRP for statistical analysis to determine if the differences are statistically significant within the limits allowed by regulation. Maps must be provided by the permittee for each Phase III plan indicating the location of each sampling transect and sample frame point, the area covered by the sampling and all permit boundaries. If the permittee can not demonstrate revegetation success in the fourth year after completion of last augmented seeding, a mitigation plan must be submitted to the director of MLRP including a statement of the problem, a discussion of methods to correct the problem, and a new phase III liability release plan. If the plan involves augmented activities then the 5 year responsibility period will begin again. Appendices are attached illustrating the selection of random sampling sites; data forms for line point transects; summary data forms for sampling frames; T-table; data form for forage crop production data harvested as baled hay; example use of sample adequacy formula for ground cover measurements and hay production measurements; statistical analysis on sampling frame data and whole release area harvesting; yield adjustments for release areas due to differing soil series; grasses of acceptable plant species for permanent ground cover on agricultural areas; and references.

The counterpart Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816/817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be

considered equal to the approved success standard then they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Missouri is proposing to accomplish this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for pasture and previously mined land. The Director finds that the guidance document is not inconsistent with and no less effective than the Federal regulations.

f. Phase II/III Revegetation Success Standards for Prime Farmland

Missouri proposes to adopt a guidance document entitled "Phase II/III Revegetation Success Standards for Prime Farmland." This document describes the criteria and procedures for determining Phase II and III success standards for areas being restored as prime farmland pursuant to 10 CSR 40–3.120/3.270 (6) and (7) and 10 CSR 40–4.030.

Missouri proposes that revegetation success on prime farmland be determined on the basis of crop production. The permittee is responsible for measuring the vegetation and for submitting the data to the director of MLRP for analysis. Measurements of the vegetation must be made in accordance with the procedures outlined in the guidance document. Ground cover must be established following soil replacement with approved species to effectively control erosion. The guidance document sets out specific success standards and measurement frequencies for crop production based on the regulatory requirements of 10 CSR 40–3.120/3.270 and 10 CSR 40–4.030. The crop production standard is to be determined with a reference area or the use of a technical standard. Approved technical standards include the county average or target yield established by the USDA NRCS. Target yields must be adjusted annually and be representative of yields expected when using high management practices common to the area.

Sampling procedures are to use statistically valid random sampling methods. Crop production is to be measured utilizing sampling frames for forage production or whole area harvest for forage or row crop production. Manual sampling of row crops is only allowed when weather or other factors prevent mechanical harvest and must have prior approval by the director of MLRP. The guidance document also establishes a method for establishing representative test plots for use with row crop production. Sample adequacy is to be determined using a prescribed formula. If the data indicates that the vegetation is close to the standard but less than the standard, the data is to be submitted to the director of MLRP for statistical analysis to determine if the differences are statistically significant within the limits allowed by regulation. Maps must be provided by the permittee for each Phase III plan indicating the location of each sampling transect and sample frame point, the area covered by the sampling, and all permit boundaries. If the permittee cannot demonstrate revegetation success in the fifth year after completion of initial seeding, a mitigation plan must be submitted to the director of MLRP including a statement of the problem, a discussion of methods to correct the problem, and a new phase III liability release plan. If the plan involves augmented activities, then the 5-year responsibility period will begin again. Appendices are attached illustrating the selection of random sampling sites; summary data forms for sampling frames; data forms for crop production data; T—table; example of sample adequacy determination for hay production measurements; statistical analysis for sampling frame data; data form for forage crop production data harvested as baled hay; statistical analysis of whole release area harvesting; yield adjustments for release areas due to differing soil series; yield adjustments for moisture; crop surveyor's affidavit of qualifications and crop production yields; grasses of acceptable plant species for permanent ground cover on agricultural areas; procedure for manually sampling row crops; and references.

The counterpart Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved program. The Federal regulation at 30 CFR 823.15 establishes the revegetation and restoration requirements for soil productivity on prime farmland.

Missouri is proposing to accomplish this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for prime farmland. The Director finds that portion of the prime farmland guidance document that establishes the revegetation standards and sampling techniques is not inconsistent with and no less effective than the Federal regulations and is approving it with the following exception.

As previously discussed, Missouri proposes in its prime farmland guidance document one option for establishing a success standard by utilizing approved technical standards including the county average or target yield established by the USDA NRCS. Target yields must be adjusted annually and be representative of yields expected when using high management practices common to the area. The Federal regulation at 30 CFR 823.15(b)(7) requires that reference crop yields for a given crop season are to be determined from * * * (ii) the average county yields recognized by the USDA, which have been adjusted by the U.S. Soil Conservation Service for local yield variation within the county that is associated with differences between nonmined prime farmland soil and all other soils that produce the reference crop. The Director finds that Missouri's proposal to utilize county averages of production is less effective than the Federal regulations because county averages would not have been adjusted by the U.S. Soil Conservation Service to remove the influence of other nonprime soils that produce the reference crop. The Director finds that portion of the prime farmland guidance document concerning Missouri's option for establishing a revegetation success standard for prime farmland soils with county averages that do not distinguish between nonprime and prime soil is less effective than the Federal regulations and is not approving its use.

g. Phase III Revegetation Success Standards for a Recreation Land Use

Missouri proposes to adopt a guidance document entitled "Phase III Revegetation Success Standards for a Recreation land use." This document describes the criteria and procedures for determining Phase III success standards for areas being restored for a recreation land use pursuant to 10 CSR 40–3.120/3.270 (6) and (7).

Missouri proposes that revegetation success for a recreation land use be determined on the basis of: the general revegetation requirements of the approved permit; ground cover; and tree/shrub stocking and survival. The permittee is responsible for measuring the vegetation and for submitting the data to the director of MLRP for analysis. Measurements of the vegetation must be made in accordance with the procedures outlined in the guidance document. The director of MLRP must determine that the general requirements for revegetation success be satisfied as stated in 10 CSR 40–3.120/3.270(1). The guidance document sets out specific success standards and measurement frequencies for ground cover and tree and shrub stocking rate based on the regulatory requirements of 10 CSR 40–3.120/3.270. Sampling procedures are to use statistically valid random sampling methods. Ground cover is to be measured by the line-point transect method and tree/shrub stocking is to be measured with sampling circles. Sample adequacy is to be determined using a prescribed formula. If the data indicates that the vegetation is close to the standard but less than the standard, the data is to be submitted to the director of MLRP for statistical analysis to determine if the differences are statistically significant within the limits allowed by regulation. Maps must be provided by the permittee for each Phase III plan indicating the location of each sampling transect and sample frame point, the area covered by the sampling and all permit boundaries. If the permittee can not demonstrate revegetation success in the fifth year after completion of initial seeding, a mitigation plan must be submitted to the director of MLRP including a statement of the problem, a discussion of methods to correct the problem, and a new phase III liability release plan. If the plan involved augmented activities then the 5 year responsibility period will begin again. Appendices are attached illustrating the selection of random sampling sites; data forms for line-point transect; T—table; example of sample adequacy determination for ground cover; statistical analysis for ground cover; accepted plant species; and references.

The counterpart Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816/817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Missouri is proposing to accomplish this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for a recreation land use. The Director finds that the guidance document is not inconsistent with and no less effective than the Federal regulations.

h. Phase III Revegetation Success Standards for Residential Land Use

Missouri proposes to adopt a guidance document entitled "Phase III Revegetation Success Standards for Residential land use." This document describes the criteria and procedures for determining Phase III success standards for areas being restored as industrial/commercial pursuant to 10 CSR 40–3.120/3.270 (6) and (7).

Missouri proposes that revegetation success for a residential land use be determined on the basis of: the general revegetation requirements of the approved permit; ground cover density; and if approved in the permit, tree and shrub stocking. The permittee is responsible for measuring the vegetation and for submitting the data to the director of MLRP for analysis. Measurements of the vegetation must be made in accordance with the procedures outlined in the guidance document. The director of MLRP must determine that the general requirements for revegetation success be satisfied as stated in 10 CSR 40–3.120/3.270(1). The guidance document sets out specific success standards and measurement frequencies for ground cover based on the regulatory requirements of 10 CSR 40–3.120/3.270. Sampling procedures are to use statistically valid random sampling methods. Ground cover is to be measured by the line-point transect method and tree/shrub stocking is to be measured with sampling circles. Sample adequacy is to be determined using a prescribed formula. If the data indicates that the vegetation is close to the standard but less than the standard, the data is to be submitted to the director of MLRP for statistical analysis to determine if the differences are statistically significant within the limits allowed by regulation. Maps must be provided by the permittee for each Phase III plan indicating the location of each sampling transect and sample frame point, the area covered by the sampling and all permit boundaries. If the permittee can not demonstrate revegetation success in the fifth year after completion of initial seeding, a mitigation plan must be submitted to the director of MLRP including a statement of the problem, a discussion of methods to correct the problem, and a new phase III liability release plan. If the plan involves augmented activities then the 5 year responsibility period will begin again. Appendices are attached illustrating the selection of random sampling sites; data forms for line-point transect; data forms for sample circle; T-table; example of sample adequacy determination for ground cover measurements and tree/shrub counts; statistical analysis for ground cover and tree/shrub data; accepted plan species; and references:

The counterpart Federal regulations at 30 CFR 816/817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved program. The Federal regulations at 30 CFR 816/817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error). Missouri is proposing to accomplish this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for a residential land use. The Director finds that the guidance document is not inconsistent with and no less effective than the Federal regulations.

Based on the above findings, the Director is removing the required program amendment from the Missouri program as codified at 30 CFR 925.16(a).

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(I), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Missouri program. No comments were received.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written

concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Missouri proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(I), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. MO–634). EPA did not respond to OSM's request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. Since the proposed amendment would not have any effect on historic properties, OSM did not solicit comment from the SHPO or ACHP.

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions, the proposed amendment as submitted by Missouri on December 14, 1995.

The Director does not approve, as discussed in: finding No. 2.f, Phase II/III Revegetation Success Standards for Prime Farmland, Missouri's proposal to utilize county averages of production as one method of establishing a target yield for prime farmland. This is less effective than the Federal regulations at 30 CFR 823.15(b)(7) because the county averages would not have been adjusted by the U.S. Soil Conservation Service to remove the influence of other nonprime soils that produce the reference crop. Missouri must not use the option for utilizing a county average as a success standard for prime farmland soils unless and until it is revised consistent with the Federal regulations and approved by OSM.

The Director approves, as discussed in: finding No. 1, 10 CSR 40–3.120/3.270(6)(B) concerning Specific standards for postmining land uses; finding No. 2.a, concerning its Phase III Revegetation Success Standards for Woodland; finding No. 2.b, concerning its Phase III Success Standards for Industrial/Commercial Revegetation; finding No. 2.c, concerning its Phase III Revegetation Success Standards for Cropland; finding No. 2.d, concerning its Phase III Revegetation Success Standards for Wildlife Habitat; finding No. 2.e, concerning its Phase III Revegetation Success Standards for Pasture and Previously Mined Areas; finding No. 2.f, concerning its Phase II/III Revegetation Success standards for Prime Farmland, with the exception noted above; finding No. 2.g, concerning its Phase III Revegetation Success Standards for a Recreation land use; finding No. 2.h, concerning its Phase III Revegetation Success Standards for Residential land use.

The Director approves the rules and guidance documents as proposed by Missouri with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 925, codifying decisions concerning the Missouri program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Missouri program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Missouri of only such provisions.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 731.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 8, 1996.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 925—MISSOURI

1. The authority citation for Part 925 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 925.15 is amended by adding paragraph (u) to read as follows:

§ 925.15 Approval of regulatory program amendments.

* * * * *

(u) With the exception of that portion of the Phase II/III Revegetation Success Standards for Prime Farmland, concerning the option to utilize county averages of production as one method of establishing a target yield for prime farmland, the addition of the following revegetation success guidelines: Phase III Revegetation Success Standards for Woodland; Phase III Success Standards for Industrial/Commercial Revegetation; Phase III Revegetation Success Standards for Cropland; Phase III Revegetation Success Standards for Wildlife Habitat; Phase III Revegetation Success Standards for Pasture and Previously Mined Areas; Phase II/III Revegetation Success Standards for Prime Farmland; Phase III Revegetation Success Standards for a Recreation land use; Phase III Revegetation Success Standards for Residential land use; and the revision of the rules at 10 CSR 40–3.120/3.270(6)(B) concerning specific standards for postmining land uses, as submitted to OSM on December 14, 1995, are approved effective May 28, 1996.

§ 925.16 [Amended]

3. Section 925.16 is amended by removing and reserving paragraphs (a) and (p)(6).

[FR Doc. 96–13263 Filed 5–24–96; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 936

[SPATS No. OK–015–FOR]

Oklahoma Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Oklahoma abandoned mine land reclamation plan (hereinafter referred to as the "Oklahoma plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Oklahoma proposed revisions and additions to its rules and to sections of the Oklahoma plan pertaining to definitions, contractor responsibility, eligible lands and waters, reclamation project objectives and priorities, project ranking, public participation, organizational structure, and coordination of reclamation with other agencies. The amendment is intended to revise the Oklahoma plan to be consistent with the corresponding Federal regulations and SMCRA, to incorporate the additional flexibility afforded by the revised Federal regulations, and to improve operational efficiency.

EFFECTIVE DATE: May 28, 1996.

FOR FURTHER INFORMATION CONTACT: Jack R. Carson, Acting Director, Tulsa Field Office; Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: 918 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Plan
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Oklahoma Plan

On January 21, 1982, the Secretary of the Interior approved the Oklahoma plan. Background information on the Oklahoma plan, including the Secretary's findings, the disposition of comments, and the approval of the plan can be found in the January 21, 1982, **Federal Register** (47 FR 2989). Subsequent actions concerning Oklahoma's plan and amendments to the plan can be found at 30 CFR 936.25.

II. Submission of the Proposed Amendment

By letter dated November 13, 1995 (Administrative Record No. OAML–63), Oklahoma submitted a proposed amendment to its plan pursuant to SMCRA. Oklahoma submitted the proposed amendment in response to a September 26, 1994, letter from OSM in accordance with 30 CFR 884.15 (Administrative Record No. OAML–65) and at its own initiative. Oklahoma proposed to amend its administrative rules at OAC 155:15, Oklahoma Abandoned Mine Land Program, and its reclamation plan at section 884.13(c)1, Goals and Objectives; 884.13(c)2, Project Ranking and Selection: 884.13(c)3, Interagency Coordination; 884.13(c)5, Eligible Lands and Waters; 884.13(c)7, Public Participation; and 884.13(d)1, Administrative and Management Structure.

OSM announced receipt of the proposed amendment in the December 21, 1995, **Federal Register** (60 FR 66244), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on January 22, 1996.

During its review of the amendment, OSM identified concerns relating to Oklahoma's proposal to revise the administrative regulations at OAC 155.15–1–5, Eligible Lands and Water, and the Oklahoma plan at section 884.13(c)5, Eligible Lands and Water. These revisions were intended to allow expenditure of funds for reclamation of certain lands and water affected by mining after August 3, 1977, the effective date of SMCRA. OSM notified Oklahoma of the concerns by telephone on March 15, 1996, and by telefax on March 19, 1996 (Administrative Record Nos. OAML–71 and OAML–72).

Oklahoma responded in a letter dated March 21, 1996, by submitting revisions to its amendment (Administrative Record No. OAML–69).

Based upon the revisions to the proposed plan amendment submitted by Oklahoma, OSM reopened the public comment period in the April 8, 1996, **Federal Register** (61 FR 15435) and provided opportunity for public comment on the adequacy of the revised amendment. The public comment period closed on April 23, 1996.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive editorial changes, punctuation, grammatical, or revised cross-references and paragraph

notations to reflect organizational changes resulting from this amendment.

A. OAC 155:15, Oklahoma Abandoned Mine Land Reclamation Program

1. *OAC 155:15–1–2.* This section is amended to revise the definitions for "Act"; "Fund"; "Program"; and "Secretary." The revised definitions are not inconsistent with the definition contained in the Federal regulations at 30 CFR 870.5. Therefore, the Director is approving the proposed revisions at OAC 155:15–1–2.

2. *OAC 155:15–1–3.* This section is changed to add subsection (4) that requires all successful bidders for AML construction contracts to be found eligible to receive funding using the OSM automated Applicant/Violator System (AVS). This is a required amendment as specified in the September 26, 1994, letter from the Director. The Director finds the proposed provision is in compliance with the requirements of the Federal regulations at 30 CFR 874.16 and 875.20. Therefore, the Director is approving the proposed revision to OAC 155:15–1–3.

3. *OAC 155:15–1–5.* Subsections (b), (c), and (d) are added to OAC 155:15–1–5. These subsections incorporate the requirements of the Federal regulations at 30 CFR 874.12 (d), (g), and (h). These new subsections expand the definition of lands and waters eligible for funding to include certain sites mined after August 4, 1977. Review of the original amendment determined that the Oklahoma plan or regulations must also make provisions for the requirements of 30 CFR 874.12(e) and (f), in order for the plan to be consistent with the provisions of SMCRA and the Federal regulations. OSM notified Oklahoma of this concern on March 15, 1996, and advised that the additional provisions may be included in either the State regulations at OAC 155:15–1–5 or in the Oklahoma Plan. Oklahoma submitted an additional revision to the plan on March 21, 1996.

The Director finds that the proposed regulations at OAC 155:15–1–5 (b), (c), and (d) are substantially the same as the Federal counterpart regulations at 30 CFR 874.12 (d), (g), and (h). Counterparts to the Federal Regulations at 30 CFR 874.12 (e) and (f) are included in the Oklahoma plan at Section 884.13(c)5. Therefore, the Director finds the post-SMCRA eligibility provisions of this amendment to be consistent with SMCRA and the Federal regulations, and he is approving them.

4. *OAC 115:15–1–6.* A new first paragraph is added to OAC 115:156–1–6 which incorporates the revised requirements of 30 CFR 874.13 and outlines reclamation project objectives and priorities. New provisions require that State reclamation projects be accomplished in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects", published March 6, 1980.

Old subsections (4) and (7) of 155:15–1–6 were deleted and the remaining subsections renumbered (4) and (5). Old subsection (4) identified "projects for research and demonstration relating to reclamation and water quality control" as the fourth priority for funding, an old subsection (7) identified "construction of public facilities in mining impacted communities" as the seventh priority of reclamation funding. The deletion of these two subsections is consistent with the deletion of the Federal counterpart subsections on May 31, 1994 (59 FR 28136). The revised regulation at OAC 155:15–1–6 is substantially the same as the Federal counterpart regulation at 30 CFR 874.13 and SMCRA section 403(a). Therefore, the Director finds it is consistent with SMCRA and the Federal regulations, and he is approving it.

5. *OAC 115:15–1–14.* This section is added to incorporate the requirements of 30 CFR 874.14, authorizing repair and replacement of water supplies damaged by abandoned mines. The proposed regulation at OAC 115:15–1–14 is substantially the same as the Federal counterpart regulation at 30 CFR 874.14 and SMCRA section 403(a). Therefore, the Director finds it is consistent with SMCRA and the Federal regulations, and he is approving it.

6. *OAC 155:15–1–15.* This section is added to allow Oklahoma to receive and use future set-aside funds. The proposed regulation at OAC 155:1–15 is substantially the same as the Federal counterpart regulation at 30 CFR 873. Therefore, the Director is approving OAC 155:15–1–15.

7. *OAC 155:15–1–16.* This section is added to authorize the establishment of an Acid Mine Drainage Trust Fund and to outline the requirements for acid mine drainage projects. The proposed regulation at OAC 155:15–1–16 is substantively the same as the Federal counterpart regulation at 30 CFR 876. Therefore, the Director is approving OAC 155:15–1–16.

B. Oklahoma Abandoned Mine Land Reclamation Plan

1. *Section 884.13(c)1, Goals and Objectives.* This section is changed to reflect new language in the "objectives and priorities" section of the Federal regulation at 30 CFR 874.13 and the elimination of two reclamation priorities in SMCRA section 403. The new introductory paragraph outlines reclamation project objectives and priorities and states that "generally, projects of a lower priority should not be undertaken until all known higher priority coal projects have either been accomplished, are in the process of being reclaimed, or have been approved by the secretary, except in those instances where such lower priority projects may be undertaken in conjunction with a higher priority site." This adds clarification to the section and is in compliance with new language in 30 CFR 874.13.

The seven priority objectives outlined in the original version of the State plan are revised to five priority objectives. Old priority objectives (4) and (7) of this section were deleted and the remaining objectives renumbered (4) and (5). Old objective (4) identified as the fourth priority for funding, projects for research and demonstration relating to reclamation and water quality control. Old objective (7) identified construction of public facilities in mining impacted communities as the seventh priority of reclamation funding. The deletion of these two objectives is consistent with the deletion of the Federal regulation counterpart objectives on May 31, 1994 (59 FR 28136).

At the State's initiative, detailed discussions of generic AML problem types, corrective measures, conservation practices, funding considerations, anticipated benefits, possible adverse effects, and time frames covered by the plan are all deleted from the State reclamation plan through this revision. These discussions are not a required part of this section and many were out of date because of changes to the State program, changes to SMCRA, the advancement of reclamation technology, and completion of many of the State's highest priority projects.

The Director finds that Section 884.13(c)1 is substantially the same as the Federal counterpart regulation at 30 CFR 874 and SMCRA section 403(a). Therefore, he is approving it. This revision also accurately reflects changes to the Oklahoma Administrative Code at OAC 115:15–1–6.

2. *Section 884.13(c)2, Specific Criteria for Ranking and Identifying Projects To Be Funded.* A new provision is added to the first paragraph that provides for publication of public notices in 16 coal counties and provides opportunity for the public to attend one of four annual public meetings. The Project Selection Matrix is replaced with a new one. Table 3 which outlines the general procedure for project ranking and selection is replaced. It clarifies the process and clearly outlines the responsibilities of each of the parties involved in project selection. Input from the general public is placed at the head of the process. This public involvement was not explicit in the previously approved procedure.

The proposed changes are voluntary on the part of the State program and improve opportunities for public involvement in the project selection process. There are no comparable components in SMCRA or the Federal regulations. However, 30 CFR 884.13(c)(2) does require that States describe the project ranking procedures in their State reclamation plans. Therefore, the Director finds the new provisions are consistent with SMCRA and the Federal regulation requirements, and he is approving the proposed revision.

3. *Section 884.13(c)3, Coordination of Reclamation Work Between The State, The Soil Conservation Service And Other Reclamation Agencies.* The list of agencies which will be represented on the State Reclamation Committee is revised. The sections entitled "Purpose of the State Reclamation Committee" and "Role of the State Reclamation Committee" are consolidated into one "Purpose" section. The proposed changes are voluntary on the part of the State program. There are no comparable components in SMCRA or the Federal regulations. However, 30 CFR 884.13(c)(3) does require that States describe coordination of reclamation work among the State reclamation program, the Rural Abandoned Mine Program, the reclamation programs of any Indian tribes, and OSM reclamation programs. Therefore, the Director finds this part of the State plan is consistent with and satisfies the requirements of 30 CFR 884.13(c)(3), and he is approving the proposed revisions.

4. *Section 884.13(c)5, Policies and Procedures Regarding Reclamation on Private Land.* The subsection entitled "Eligible Lands and Water" is revised to make certain mine lands, abandoned after passage of SMCRA, eligible for reclamation funding under the Abandoned Mine Land Program. A new sub-part (B) is added to the "Eligible Lands and Waters" subsection which incorporates the requirements of 30 CFR 874.12 (d), (e), (f), (g), and (h). The changes to Section 884.13(c)5 are substantially the same as the Federal counterpart regulations. Therefore, the Director is approving the proposed revision.

5. *Section 884.13(c)7, Public Participation And Involvement In The Preparation Of The State Reclamation Plan And In The State Reclamation Program.* Subsection (2) of the public participation policies is changed to provide more and earlier opportunity for the public to become involved in the AML project selection process. This is a voluntary change initiated by the State. There is no direct counterpart Federal regulation. However, a description of public participation policies is required by 30 CFR 884.13(c)(7). Therefore, the Director finds this revised section meets this Federal requirement, and he is approving it.

6. *Section 884.13(d)1, A Description Of The Administrative And Management Structure To Be Used In Conducting the Reclamation Program.* Figure 7, "Organizational Chart of the Oklahoma Conservation Commission", is replaced with a new chart dated July 1, 1995. Supplemental charts are included which depict the various sub-parts of the Conservation Commission. The subsection entitled "State Agencies Which May Become Involved in the State Reclamation Program" is replaced with a new list of agencies. Figure 8, "Organization Chart of the Oklahoma Executive Branch", is deleted. This chart is not required by Federal regulations.

There is no direct counterpart Federal regulation. However, a description of the organization of the designated agency and its relation ship to other State organizations or officials is required by 30 CFR 884.13(d)(1). The Director finds this revised section meets this Federal requirement, and he is approving it.

IV. Summary Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 884.14(a)(2) and 884.15(a), the Director solicited comments on the proposed amendment from various other Federal agencies with an actual or potential interest in the Oklahoma plan (Administrative Record No. OAML–64 and OAML–70). The U.S. Department of Interior, Bureau of Mines, the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, and the Oklahoma Historical Society responded with expressions of "no comment" (Administrative Record Nos. OAML–66, OAML–67, OAML–73, OAML–74, and OAML–75). No other comments were received.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Oklahoma on November 13, 1995 and revised on March 21, 1996.

The Director is taking this opportunity to correct the date of program approval from July 20, 1981, to January 21, 1982, at 30 CFR 936.20, Approval of Oklahoma Abandoned Mine Land Reclamation Plan, and to add the date a previous amendment was approved on July 20, 1990, at 30 CFR 936.25, Approval of Abandoned Mine Land Reclamation Plan Amendments.

The Federal regulations at 30 CFR Part 936, codifying decisions concerning the Oklahoma plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State plan amendment process and to encourage States to bring their plans into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR Parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the

Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). The submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 8, 1996.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 936—OKLAHOMA

1. The authority citation for Part 936 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 936.20 is revised to read as follows:

§ 936.20 Approval of Oklahoma abandoned mine land reclamation plan.

The Oklahoma Abandoned Mine Land Reclamation Plan, as submitted on July 30, 1981, is approved effective January 21, 1982 (47 FR 2989–2991, January 21, 1982). Copies of the approved Plan and Amendments are available at:

Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 E. Skelly Drive, Suite 470, Tulsa, OK 74135

Oklahoma Conservation Commission, 2800 N. Lincoln Blvd., Suite 160, Oklahoma 73505

3. Section 936.25 is added to read as follows:

§ 936.25 Approval of Abandoned Mine Land Reclamation Plan Amendments.

(a) The proposed amendment pertaining to the Oklahoma abandoned mine land reclamation plan, as submitted to OSM on August 24, 1989, is approved effective July 20, 1990.

(b) The proposed amendment pertaining to the Oklahoma abandoned mine land reclamation plan, as submitted to OSM on November 13, 1995, and revised on March 21, 1996, is approved effective May 28, 1996.

[FR Doc. 96–13262 Filed 5–24–96; 8:45 am]
BILLING CODE 4310–05–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[DA 96–396]

Delegation of Authority to General Counsel To Act Upon Applications for Determination of Exempt Telecommunications Company Status

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This amendment changes the Commission's rules to reflect delegation of authority to the General Counsel to act on applications for determination of exempt telecommunications company status.

EFFECTIVE DATE: May 28, 1996.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Spiwak, Office of General Counsel, (202) 418–1880.

SUPPLEMENTARY INFORMATION:

1. Through this order in DA 96–396, adopted May 14, 1996 and released May 15, 1996, we amend part O of the Commission's rules to reflect a delegation of authority to the General Counsel to act upon applications for "exempt telecommunications company" ("ETC") status filed with the Commission under new section 34(a)(1) of the Public Utility Holding Company Act of 1935.[1] This authority was delegated by the Commission in an order granting the application of CSW Communications, Inc. for a determination of ETC status.[2] In CSW, the Commission also ordered the Managing Director to make conforming changes to the Commission's rules to reflect this delegation of authority.[3]

2. The amendments adopted herein pertain to agency organization. The notice and comment and effective date provisions of section 4 of the Administrative Procedure Act[4] are therefore inapplicable. Authority for the amendments adopted herein is contained in sections 4(i) and (j), 5(c)(1) of the Communications Act of 1934, as amended.

3. *Accordingly, it is ordered,* pursuant to authority delegated by Commission Order, FCC 96–152, released April 4, 1996, and effective upon publication in the **Federal Register**, that part 0 of the Commission's rules and regulations is amended as set forth below.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

List of Subjects in 47 CFR Part 0

Organization and functions.

Final Rules

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION AND FUNCTIONS

1. The authority citation for part 0 continues to read as follows:

Authority: 47 CFR Ch. 1, secs. 2–5, 301, 303, 307–309, 315, 317, 48 Stat., as amended, 1064–1066, 1068, 1081–1085, 1089, 47 U.S.C. 152–155, 301, 303, 307–309, 315, 317.

2. Section 0.251 is amended by adding a new paragraph (j), which reads as follows:

* * * * *

(j) The General Counsel is delegated authority to act upon any application for a determination of exempt telecommunications company status filed pursuant to section 34(a)(1) of the Public Utility Holding Company Act of 1935, as amended by section 103 of the Telecommunications Act of 1996.

[FR Doc. 96–13249 Filed 5–24–96; 8:45 am]
BILLING CODE 6712–01–P

[1] 15 U.S.C. 79–79z–5b, as added by section 103 of the Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56 (1996).

[2] Order, In re Application of CSW Communications, Inc. for Status as an Exempt Telecommunications Company, ____ FCC Rcd ____, (FCC 96–152, Rel. April 4, 1996) ("CSW").

[3] Id.

[4] 5 U.S.C. § 553(b)(A) and 553(d).

47 CFR Parts 0 and 80

[WT Docket No. 95–132; FCC 96–201]

Vessel Traffic Services (VTS)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Sault Ste. Marie, Michigan; San Francisco, California; and Morgan City, Louisiana to the United States Coast Guard (Coast Guard) designated radio protection areas for mandatory VTS and establishing marine VHF Channel 12 as the VTS frequency for Sault Ste. Marie, Michigan; San Francisco, California; and Channel 11 as the VTS frequency for Morgan City, Louisiana. This action is in response to a request from the Coast Guard. The designation of Sault Ste. Marie, Michigan; San Francisco, California; and Morgan City, Louisiana as a VTS areas will allow the Coast Guard to manage vessel traffic in a more efficient manner.

EFFECTIVE DATE: June 27, 1996.

FOR FURTHER INFORMATION CONTACT: James Shaffer, (202) 418–0680, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 95–201, adopted May 1, 1996, and released May 9, 1996. The full text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, Suite 140, Washington, D.C. 20037, telephone (202) 857–3800.

Summary of Report and Order

1. The Coast Guard filed petitions (RM–8500, 8592, 8598), Public Notice No. 2023 and 2057, requesting that the Commission amend Part 80 of the Rules, 47 CFR Part 80, to add Sault Ste. Marie, Michigan; San Francisco, California; and Morgan City, Louisiana to the Coast Guard designated radio protection areas for mandatory VTS and establish marine VHF Channel 12 as the VTS frequency for Sault Ste. Marie, Michigan; San Francisco, California; and Channel 11 as the VTS frequency for Morgan City, Louisiana.

2. Under the Ports and Waterways Safety Act of 1972, as amended by the Port and Tanker Safety Act of 1978 and the Oil Pollution Act of 1990, the Coast Guard may construct, operate, maintain, improve or expand VTS systems in any port or place under the jurisdiction of the United States, including the navigable waters of the United States, or in any area covered by an international agreement negotiated pursuant to 33 U.S.C. 1230. The Ports and Waterways Safety Act requires certain designated vessels which operate in a VTS area to utilize and comply with the VTS. Marine accidents in recent years have underscored the need for improving safety on the nation's waterways. Moreover, Congress mandated VTS participation in section 4107 of the Oil Pollution Act , 33 U.S.C. 1223(a)(2). The Coast Guard has amended its VTS regulations to make participation in all VTS systems mandatory. A VTS system instills order and predictability on a waterway by coordinating vessel movements through the collection, verification, organization, and dissemination of information.

3. Designating Sault Ste. Marie and Berwick Bay as VTS areas will allow the Coast Guard to manage vessel traffic in those areas more efficiently and will help protect the marine environment by preventing vessel collisions and groundings. Therefore, we are adding Sault Ste. Marie and Berwick Bay to the Commission's list of designated radio protection areas for VTS systems specified in Section 80.383. The radio protection area for Sault Ste. Marie will be defined as "The rectangle between North latitudes 45 degrees and 47 degrees, and West longitudes 83 degrees and 85 degrees." The radio protection area for Berwick Bay will be defined as "The rectangle between North latitudes 28 degrees 30 minutes and 30 degrees 30 minutes, and West longitudes 90 degrees 50 minutes and 92 degrees." This area is part of the New Orleans VTS which discontinued operations on July 30, 1988, due to budgetary constraints.

4. We also designate Channel 12 (156.600 MHz) as a second radio frequency for use within the San Francisco VTS radio protection area. The density of vessel traffic in the San Francisco Bay, which includes numerous recreational boats, ferries and commercial fishing boats, severely constrains the ability of large vessels to maneuver in the event of an emergency. The Coast Guard states that with mandatory participation, the current VTS channel, Channel 14 (156.700 MHz), will be inadequate to ensure safe and reliable communications in this busy and environmentally sensitive area. The addition of Channel 12 will permit increased navigational safety in the area by organizing traffic flow patterns, reduced meeting, crossing and overtaking situations between large vessels in tight spaces, and limited vessel speed. We will permit private coast stations currently authorized on Channel 12 within the San Francisco VTS area to operate until the end of their current license term on a noninterference basis. The staff will help affected licensees find suitable alternative channels. No fee will be charged for affected stations that apply for modification for an alternative channel before their next renewal.

5. We also amend Section 0.331 to authorize the Chief, Wireless Telecommunications Bureau to amend the maritime service rules at the request of the United States Coast Guard to designate radio protection areas for mandatory VTS and establish marine channels as VTS frequencies for these areas. This will allow the Commission to expedite these requests, which will increase safe vessel transit and protect U.S. waters and associated natural resources from environmental harm.

List of Subjects

47 CFR Part 0

Delegations of authority.

47 CFR Part 80

Communications equipment, Marine safety.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rules Changes

Title 47 of the Code of Federal Regulations, Parts 0 and 80, are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.331 is amended by revising paragraph (d) to read as follows:

§ 0.331 Authority delegated.

* * * * *

(d) Authority concerning rulemaking proceedings. The Chief, Wireless Telecommunications Bureau shall not have the authority to act upon notices of proposed rulemaking and inquiry, final orders in rulemaking proceedings and inquiry proceedings, and reports arising from any of the forgoing except such orders involving ministerial conforming amendments to rule parts, or orders conforming any of the applicable rules to formally adopted international conventions or agreement

where novel questions of fact, law or policy are not involved. Also, the addition of new Marine VHF frequency coordination committee(s) to § 80.514 of this chapter need not be referred to the Commission if they do not involve novel questions of fact, policy or law, as well as requests by the United States Coast Guard to designate radio protection areas for mandatory Vessel Traffic Services (VTS) and establish marine channels as VTS frequencies for these areas.

PART 80—STATIONS IN THE MARITIME SERVICES

3. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

4. Section 80.383 is amended by revising the entries for 156.550 MHz and 156.600 MHz in the table in paragraph (a) and adding new paragraphs (b)(7) and (b)(8) to read as follows:

80.383 Vessel Traffic Services (VTS) system frequencies.

* * * * *

(a) * * *

VESSEL TRAFFIC CONTROL FREQUENCIES

Carrier frequencies (MHz)	Geographic areas
. . . . .	
156.550	New York, New Orleans,[1] Houston, Prince William Sound,[3] Berwick Bay.
156.600	New York, New Orleans,[1] Houston, San Francisco,[3] Sault Ste. Marie.[3]
. . . . .	

[1] Until further notice, this frequency is available for use as permitted by § 80.373(f), notwithstanding the provisions of footnote 3 that are applicable to the VTS system. Availability is a result of the closure of the VTS system for the port area of New Orleans. If the United States Coast Guard re-establishes this system, the Commission may require operations pursuant to such conditional licenses for this frequency to cease, or may choose not to renew such conditional licenses. All licenses for this frequency will be expressly conditional upon the continued availability of the frequency for non-VTS use.

. . . . .

[3] Private coast station licenses for the use of this frequency in this area will expire at the end of the current license term or five years after the adopted date of the final rule, whichever comes first. Continued use until expiration must be on a noninterference basis to Coast Guard VTS communications.

(b) * * *

(7) *Sault Ste. Marie.* The rectangle between North latitudes 45 degrees and 47 degrees, and West longitudes 83 degrees and 85 degrees.

(8) *Berwick Bay.* The rectangle between North latitudes 28 degrees 30 minutes and 30 degrees 30 minutes, and West longitudes 90 degrees 50 minutes and 92 degrees.

* * * * *

[FR Doc. 96–13099 Filed 5–24–96; 8:45 am]

BILLING CODE 6712–01–P

---

47 CFR Chapter I

[CC Docket No. 91–35; FCC 96–131]

Operator Service Access and Pay Telephone Compensation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Where technically feasible and economically reasonable, the Commission's Third Report and Order requires local exchange carriers (LECs) to make international call blocking services available to non-aggregator business customers as well as to those businesses that qualify as aggregators under the Communications Act of 1934, as amended by The Telephone Operator Consumer Services Improvement Act of 1990. The Commission extended the availability of these services to non-aggregator business customers to assist these customers in reducing losses attributable to international toll fraud.

The Commission Order states, however, that LECs will not be required to provide similar international blocking to residential customers, whether to prevent international toll fraud or to control access to international dial-a-porn. Although LECs may elect to offer these services to their residential customers, the Commission declined to require that these services be made available to residences because it was not clear that such a new residential service would be technically feasible and economically reasonable. It was also unclear to what extent such a residential blocking service would be effective in limiting toll fraud and access to dial-a-porn.

In addition, the Commission Order requires LECs to file federal tariffs for both billed number screening (BNS) and originating line screening (OLS) "confirmation screening services" that allow aggregators to ensure that the proper screening codes are associated with their telephone lines. The Order specifies that the OLS service must deliver a code that discretely identifies private payphones and such other codes as are necessary to identify other categories of aggregator locations. The Order also stresses that it is important for LECs to use uniform codes for their OLS services. The Order further requires LECs to unbundle their OLS "confirmation services," unless they can show either that bundling would not place aggregators at a competitive disadvantage or that it would not be technically feasible or would be economically unreasonable to unbundle these "confirmation services." It also requires LECs to unbundle the BNS "confirmation services" that they provide to aggregators under federal tariff and to make those services available to both aggregators and non-aggregators. Finally, it specifies a rate structure for features of OLS and BNS service provided to aggregators.

The Commission Order requires that LECs include these screening services in their federal tariffs and specifies a rate structure for service to aggregators because the Commission found these services were not uniformly available to aggregators under existing LEC state tariffs and because these services were not always adequate when made available under those tariffs.

As a result of the Commission Order, non-aggregator, as well as aggregator, business customers of LECs gain access to international call blocking services offered under federal tariffs. In addition, aggregator business customers will have greater access to uniform and discrete OLS screening codes and to unbundled OLS "confirmation services." Also, the Commission Order results in both aggregators and non-aggregators having access to unbundled BNS "confirmation services" under federal tariffs.

EFFECTIVE DATE: June 27, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas David, Accounting and Audits Division, Common Carrier Bureau, (202) 418–0800, or Allen A. Barna, Competitive Pricing Division, Common Carrier Bureau, (202) 418–1530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order adopted March 25, 1996, and released April 5, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room (Room 230), 1919 M St., N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Suite 140, 2100 M Street, N.W., Washington, D.C. 20037.

Regulatory Flexibility Analysis:

The Commission has determined that Section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), does not apply to these rules because they do not have a significant economic impact on a substantial number of small entities. The definition of a "small entity" in Section 3 of the Small Business Act excludes any business that is dominant in its field of operation. Although some of the LECs that will be affected are very small, such LECs do not qualify as "small entities" because each has a monopoly on ubiquitous access to the subscribers in their service area. The Commission has also found all exchange carriers to be dominant in its competitive carrier proceeding. See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorization Therefore, CC Docket No. 79–252, First Report and Order, 85 FCC 2d 1, 23–24 (1980), 45 FR 76148, November 18, 1980. To the extent that small telephone companies will be affected by these rules, the Commission certified that these rules would not have a significant effect on a substantial number of "small entities."

Summary of Report and Order

In its Docket 91–35 Reconsideration Order, the Commission ordered LECs to offer, pursuant to interstate tariffs, services that would block international direct-dialed sequences (011+ and 10XXX–011+), but did not require LECs to make that service available to customers other than aggregators. See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91–35, Order on Reconsideration, 7 FCC Rcd 4355 (1992) (Docket 91–35 Reconsideration Order), 57 FR 34253, August 4, 1992. The Commission also required the LECs to offer two tariffed screening services, originating line screening (OLS) and billed number screening (BNS). These services enable operator service providers (OSPs) to determine whether there are billing restrictions on lines to which a caller may seek to bill a call. The Commission, however, did not expressly require that those screening services be federally tariffed. In its Order on Further Reconsideration and Further Notice of Proposed Rulemaking in this docket, 8 FCC Rcd 2863 (1993) (Further Reconsideration/Further NPRM), 58 FR 21435, April 21, 1993, the Commission subsequently affirmed the requirement that LECs offer OLS and BNS services and tentatively found that Bell Atlantic's federally tariffed line information data base (LIDB) service fulfills its obligation to provide a BNS service. The Further Reconsideration/Further NPRM requested further comment on three major issues: (1) whether the Commission should require the LECs to extend their international blocking services to non-aggregator business subscribers and to residential subscribers; (2) whether the Commission should affirm its tentative conclusion that BNS and OLS services should be tariffed at the federal level; and (3) whether proposed standards regarding availability to all customers, unbundling, and rate levels should be applied to OLS and BNS services provided by the LECs. In light of the rapid growth in the availability of, and complaints about, international information services since comments were last filed in this proceeding, the Commission's Common Carrier Bureau (Bureau) issued a Public Notice in March 1995 requesting further comment on whether international blocking for residential consumers would be useful in preventing losses to international pay-per-call services, particularly dial-a-porn services. Public Notice, Request for Additional Comments on the Costs and Benefits of International Blocking for Residential Customers, CC Docket No. 91–35, 10 FCC Rcd 4549 (Com.Car.Bur. 1995) (Public Notice), 60 FR 16651, March 31, 1995. Specifically, the Bureau asked LECs to comment on the costs they would incur to provide international call blocking service to residential customers and to show the extent to which those costs could be reduced by not providing blocking in areas in which it would not be technically feasible or economically reasonable to do so.

In this Order, the Commission required LECs to provide international blocking services to business customers, where technically feasible and economically reasonable. The Commission did not, however, require LECs to provide such blocking for residential consumers at this time. Also, the Commission required LECs to tariff, at the federal level, BNS and OLS screening services that allow aggregators to ensure that the proper screening codes are associated with their telephone lines. The OLS service must deliver a code that discretely identifies private payphones and such other codes as are necessary to identify other categories of aggregator locations. The Commission emphasized again that it is important for LECs to use uniform codes for the OLS services that they provide. The Commission required the LECs to unbundle their OLS "confirmation services," unless they can show that bundling would not place aggregators at a competitive disadvantage or that it is not technically feasible or would be economically unreasonable to unbundle OLS service. The Commission also required that LECs unbundle the BNS service they provide to aggregators under federal tariff and make that service available to both aggregators and non-aggregators. Finally, the Commission specified a rate structure for OLS and BNS services provided to aggregators.

Ordering Clauses

Accordingly, it is ordered, pursuant to authority contained in Sections 1, 4, 201–205, 218, 220, and 226 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 218, 220, and 226, that the policies and requirements set forth herein ARE adopted.

It is further ordered That this Order will be effective June 27, 1996.

It is further ordered That, pursuant to Section 203 of the Communications Act, 47 U.S.C. 203, each of the LECs SHALL FILE revisions to their federal tariffs, reflecting the requirements of this Order to provide international blocking service for non-aggregator business customers and Billed Number Screening (BNS) service within 60 days after the effective date of this Order.

It is further ordered That, pursuant to Section 203 of the Communications Act, 47 U.S.C. § 203, each of the LECs shall file tariff revisions, reflecting the requirements of this Order to federally tariff Originating Line Screening (OLS) service, no later than December 1, 1996.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–13300 Filed 5–24–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Parts 37 and 38

[Docket No. 49658]

RIN 2105–AC13

Transportation for Individuals With Disabilities; Correction

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Correction to final regulations.

SUMMARY: On May 21, 1996, the Department of Transportation published final rules amending its Americans with Disabilities Act in several respects (61 FR 25409). This document corrects certain editorial errors in that document. The corrections do not affect the substance of the amendments.

EFFECTIVE DATE: June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW, Room 10424, Washington, DC, 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD); or Richard Wong, Office of Chief Counsel, Federal Transit Administration, same street address, Room 9316. (202) 366–4011.

SUPPLEMENTARY INFORMATION:

Background

The Department is making editorial corrections to its May 21, 1996, final rule (61 FR 25409), amending 49 CFR parts 37 and 38, which implement the Americans with Disabilities Act for transportation services. The amendments concern such subjects as advance reservations for paratransit service, updates to paratransit plans, requirements for independent private schools, and other subjects.

Need for Correction

As published, the document contains errors which may prove to be misleading and are in need of correction. First, In the preamble, the last sentence of the first paragraph under the heading "Visitor Eligibility," beginning "The Department will further amend * * *" (61 FR 25414, first column) is incorrect, and should be disregarded. The rule does not contain such an amendment,

In four instances, the amendatory language for certain provisions of the rule left notice of proposed rulemaking language (e.g., "proposes to amend" rather than "amends" or "revises") in place. This document corrects these errors. Finally, the amendment to § 37.135(c)(1) contained an potentially misleading citation to §§ 37.137–139, which could cause confusion ebout the applicability of the requirement of §§ 37.137(c) for continuing public participation in transit authorities' paratransit programs. The citation is corrected to fix this problem.

Correction of Publication

Accordingly, the publication on May 21, 1996, of the final regulations amending 49 CFR Parts 37 and 38, which were the subject of FR Doc. 96–11935, is corrected as follows:

1. On page 25415, in the third column, amendatory instruction 1, relating to the authority citation for 49 CFR Part 37, is corrected to read as follows:

1. The authority citation for 49 CFR Part 37 continues to read as follows:

2. On page 25415, in the third column, amendatory instruction 2, relating to the authority citation for 49 CFR Part 38, is corrected to read as follows:

2. The authority citation for 49 CFR Part 38 is revised to read as follows:

3. On page 25415, in the third column, amendatory instruction 3, relating to the revision of § 37,27(b), is corrected to read as follows:

3. In part 37, § 37.27(b) is revised to read as follows:

4. On page 25416, in the second column, in the amendment to § 37.135(c)(1), the citation in the final sentence of the paragraph to "§§ 37.137–37.139" is corrected to read "§§ 37.137 (a) and (b), 37.138 and 37.139".

5. On page 25416, in the third column, amendatory instruction 12, relating to Appendix D to Part 37, is corrected to read as follows:

12. In Part 37, Appendix D, the paragraph entitled "Section 37.13 Effective Date for Certain Vehicle Lift Specifications" is amended by replacing the words "new 30" by 48"" with the words "Part 38".

Rasheed J. Tahir,

Legal Assistant.

[FR Doc. 96–13252 Filed 5–24–96; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

49 CFR Part 501

Organization and Delegation of Powers and Duties

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule delegates to NHTSA's Chief Counsel the authority to issue authoritative interpretations of the statutes administered by NHTSA and the regulations issued by the agency.

EFFECTIVE DATE: May 28, 1996.

FOR FURTHER INFORMATION CONTACT: John Womack, Senior Assistant Chief Counsel, NHTSA, 400 Seventh Street, SW, Room 5219, Washington, DC 20590. Mr. Womack's telephone number is: (202) 366–9511.

SUPPLEMENTARY INFORMATION: This final rule revises the regulations on the organization of and delegation of powers and duties within the National Highway Traffic Safety Administration (NHTSA).

Since the creation of the agency, NHTSA's Chief Counsel has issued written interpretations of the statutes the agency administers and the regulations it issues. These interpretations, in the form of letters responding to questions from the motor vehicle industry and members of the public, have been available to the public in the agency's technical reference library in Washington. With the development of new technology, the agency is now able to make them available through the Internet on the World Wide Web. (The website is www.nhtsa.dot.gov. At that site, select "NHTSA's Library." On the "NHTSA Library" page, select "NHTSA's Interpretation Letters.")

In preparing to implement this new service, NHTSA noted that although the industry and the public have consistently recognized the implicit authority of the Chief Counsel to issue such interpretations, there was no formal delegation of that authority from the Administrator to the Chief Counsel. Therefore, in connection with the broadening of public access to these interpretations, and in order to eliminate any possible misunderstanding or doubt, NHTSA is amending 49 CFR 501.8(d) to formally delegate the authority to interpret applicable statutes and regulations to the Chief Counsel.

This action should be construed as a confirmation of a preexisting implicit delegation, and does not invalidate in any way the interpretations that have previously been issued by the Office of Chief Counsel. However, interested persons should recognize that all interpretations are necessarily based on the facts presented in individual cases and the law that exists at the time the interpretation is issued. Since the agency's statutes and regulations change from year to year, past interpretations may no longer be applicable under current law.

As matters relating to agency management, the amendments made by this document are not covered by the notice and comment or the effective date requirements of the Administrative Procedure Act. These amendments relate solely to changes in the scope of the delegation of authority from the NHTSA Administrator to the Chief Counsel and have no substantive effect. Notice and the opportunity for comment are, therefore, not required, and these amendments are effective immediately upon publication in the **Federal Register**. In addition, these amendments are not subject to Executive Order 12866, the Department of Transportation's regulatory policies and procedures, or the provisions for Congressional review of final rules in Chapter 8 of Title 5, United States Code.

List of Subjects in 49 CFR Part 501

Authority, Delegations.

In consideration of the foregoing, 49 CFR part 501 is amended as follows:

PART 501—[AMENDED]

1. The authority citation for part 501 continues to read as follows:

Authority: 49 U.S.C. sections 105 and 322; delegation of authority at 49 CFR 1.50.

2. Section 501.8 is amended by adding a new paragraph (d)(5) to read as follows:

§ 501.8 Delegations

* * * * *

(d) * * *

(5) Issue authoritative interpretations of the statutes administered by NHTSA and the regulations issued by the agency.

* * * * *

Issued on: May 22, 1996.

Ricardo Martinez,

Administrator.

[FR Doc. 96–13299 Filed 5–24–96; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 61, No. 103
Tuesday, May 28, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 319 and 381

[Docket No. 92-024E]

RIN 0583-AB51

Food Standards: Requirements for Processed Meat and Poultry Products Named by Use of an Expressed Nutrient Content Claim and a Standardized Term—Extension of Comment Period

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice; extension of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is extending the comment period for the proposed rule, "Food Standards: Requirements for Processed Meat and Poultry Products Named by Use of an Expressed Nutrient Content Claim and a Standardized Term" for an additional 180 days.

DATES: Comments must be received on or before November 25, 1996.

ADDRESSES: An original and two copies of written comments should be sent to: FSIS Docket Clerk, Docket No. 92-024P, Room 4352, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250-3700. Oral comments should be directed to Mr. Charles R. Edwards, Director, Product Assessment Division, at (202) 254-2565.

FOR FURTHER INFORMATION CONTACT: Mr. Charles R. Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250-3700, (202) 254-2565.

SUPPLEMENTARY INFORMATION: FSIS and the Food and Drug Administration (FDA) have initiated reviews of their regulations pertaining to food standards of identity and composition. Each agency's review responds in part to President Clinton's March 4, 1995, memorandum to heads of departments and agencies, titled "Regulatory Reinvention Initiative." This memorandum directed departments and agencies to conduct a page-by-page review of all of their regulations and eliminate or revise those that are outdated or otherwise in need of reform.

On December 29, 1995, FSIS published a proposed rule "Food Standards: Requirements for Processed Meat and Poultry Products Named by Use of an Expressed Nutrient Content Claim and a Standardized Term" (60 FR 67474). The rule proposes to establish a general definition and standard of identity for standardized meat and poultry products that have been modified to qualify for use of certain expressed nutrient content claims as part of the product name.

Also, on December 29, 1995, FDA published an Advance Notice of Proposed Rulemaking (ANPR) "Food Standards of Identity, Quality, and Fill of Containers; Common or Usual Name Regulations; Request for Comments on Existing Regulations," (60 FR 67492). The ANPR solicited comments from interested parties on whether FDA's regulations regarding identity, quality, and fill of container for standardized foods and its common or usual name regulations for nonstandardized foods should be retained, revised, or revoked. The ANPR also addressed the need for consistency between FSIS and FDA in the development and implementation of food standards. FDA stated that it believes such harmonization will help manufacturers comply with the requirements of both agencies. On May 1, 1996, FDA extended the comment period on its ANPR until June 28, 1996, to receive comments only on the issue of FDA and FSIS harmonization of food standards (61 FR 19220).

FSIS is also developing and will soon publish an ANPR that will solicit information from the public on what direction further food standards reform should take, including suggestions on whether to alter or eliminate entirely the regulations for standardized meat and poultry products.

FSIS's proposed rule and its soon-to-be-published ANPR encompass the Agency's food standards review initiative. Therefore, to give the public an opportunity to consider the proposed rule and ANPR simultaneously, and in response to requests, FSIS is extending the comment period 180 days for the proposed rule "Food Standards: Requirements for Processed Meat and Poultry Products Named by Use of an Expressed Nutrient Content Claim and a Standardized Term."

Done at Washington, DC, on: May 22, 1996.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 96-13409 Filed 5-23-96; 1:41 pm]

BILLING CODE 3410-DM-P

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R-0904]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Withdrawal of proposed official staff interpretation.

SUMMARY: The Board is withdrawing proposed revisions to the official staff commentary to Regulation DD (Truth in Savings) concerning guidance on issues of general interest, based on considerations of regulatory burden which was published in the **Federal Register** on December 6, 1995.

DATES: The proposal is withdrawn May 21, 1996.

FOR FURTHER INFORMATION CONTACT: Jane Ahrens, Senior Attorney, or Michael L. Hentrel, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412. For users of Telecommunications Device for the Deaf (TDD) *only*, please contact Dorothea Thompson, at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Savings Act (TISA), 12 U.S.C. 4301 *et seq.*, is to assist consumers in comparing deposit accounts offered by depository institutions. The TISA requires institutions to disclose fees, the interest rate, the annual percentage yield (APY), and other account terms whenever a consumer requests the information and before an account is opened. Fees and other information also must be provided on any periodic statement the institution sends to the consumer. Rules are set forth for deposit account advertisements and advance notices to account holders of adverse changes in terms. The act restricts how institutions must determine the account balance on which interest is calculated. The TISA is implemented by the Board's Regulation DD (12 CFR part 230). The regulation authorizes the issuance of official staff interpretations.

On December 6, 1995 (60 FR 62349), the Board published for comment proposed amendments to the commentary to Regulation DD. Mainly, the proposed revisions provided guidance on technical matters such as the effect of a leap year on the calculation of interest, the APY and the annual percentage yield earned (APYE). Comments addressing other technical issues concerning the definition of bonuses and time accounts were also proposed.

The Board received nearly 50 comments on its proposal. About 90 percent of the comments were from financial institutions. By far, commenters focused on the proposals addressing leap-year calculations and compounding and crediting policies. Overall, comments were mixed. Some supported the proposals as helpful clarifications. Others opposed the proposals—particularly the revisions concerning calculations in a leap year and crediting interest—as being unduly technical and unnecessary. Based on the comments received and upon further analysis, the Board is withdrawing all proposed commentary revisions, due to considerations of regulatory burden and the narrow scope of the proposals.

II. Discussion

Leap-Year Calculations

Regulation DD requires institutions to pay interest on the full amount of principal in an interest-bearing account each day. Institutions may apply a daily rate of 1/365 or 1/366 of the interest rate during a leap year. On August 8, 1994, the Board issued a final staff commentary for Regulation DD (59 FR 40217). Comment 7(a) (1)-4 clarified that institutions may apply a daily rate of 1/365 or 1/366 of the interest rate for 366 days during a leap year, if the account will earn interest for February 29.

The Board published on December 6, 1995 proposed revisions to the commentary that further discussed leap-year calculations of interest, as well as the APY and the APYE. Numerous commenters opposed the proposed revisions (60 FR 62349). Many believed the regulation sufficiently addresses the rule, and that highly technical interpretations were neither necessary nor desirable. Other commenters opposed the Board's existing rule that permits institutions sometimes to use a daily factor of 1/366 or 1/365 during a leap year—although these commenters represent both ends of the spectrum. Some believe a daily factor of 1/366 should never be used; others would expand its use, for example to all accounts during a calendar leap year. Not all commenters opposed the proposal. Some supported the revisions, and sought further elaboration about calculations for a variety of specific accounts. After reviewing the concerns raised and upon further analysis, the Board has decided not to adopt the proposed comments addressing leap-year calculations. The Board believes that for some institutions, a variety of specific examples would be helpful; overall, however, the Board believes the level of technical guidance proposed is not necessary. The regulation and commentary provide general guidance on leap-year calculations, which, on balance, the Board believes is the appropriate level of interpretive detail at this time.

Compounding and Crediting Policies

Institutions must pay interest on the full amount of principal in the account each day, but may compound or credit interest at any frequency. Neither the TISA nor the regulation define "compounding," "crediting," or "principal." Proposed comment 7 (b)-4 would have provided that once interest is credited to an account it becomes part of the principal, and if interest remains in the account, interest must accrue on those funds.

Many commenters addressing the issue favored the proposal as a clarification of current banking practice. However, many others were opposed to the proposal. Commenters raised several related concerns arising out of the proposal about the definition of terms such as "posting," "crediting," and "principal." Those commenters argued that the Board's proposal raised issues that should properly be addressed after further notice and opportunity for public comment. Others were concerned about the effect of the proposal on time accounts that permit consumers to withdraw credited interest during the account term without penalty. They argued that if this interest were to be considered part of the principal, early withdrawal penalties could be triggered under some account agreements. Some commenters also stated that the TISA and Regulation DD do not require such a reading of the rules regarding the payment of interest. Many stated that the proposal would result in a reduction of account choices or interest rates available to consumers for those institutions wishing to avoid accruing interest on interest credited to and remaining in the account.

The Board believes a number of valid concerns were raised about issues that were not addressed in the proposal. Accordingly, the Board is withdrawing the comment and will consider whether further guidance is needed in the future on these matters.

Other Proposed Revisions

The proposed commentary update also addressed rounding rules for the APYE and the definitions of time account and bonuses. Given the technical nature and narrow application of these remaining proposals, the Board believes the cost and regulatory burden of reviewing and implementing changes associated with these provisions outweighs the benefits of additional official guidance, and is therefore withdrawing all proposed comments.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, May 21, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96-13226 Filed 5-24-96; 8:45 am]

BILLING CODE 6210-01-P

12 CFR Part 245

[Regulation V; Docket No. R-0928]

Loan Guarantees for Defense Production

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to abolish its Regulation V as obsolete. This consideration does not represent any major policy change, but rather is intended to eliminate an outmoded regulation and reduce regulatory burden.

DATES: Comments must be submitted on or before July 29, 1996.

ADDRESSES: Comments, which should refer to Docket No. R-0928, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments addressed to Mr. Wiles also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of

those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in Room M–P–500 between 9:00 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202–452–3625), Heatherun Allison, Attorney (202–452–3565), Legal Division; for users of the Telecommunications Device for the Deaf (TDD) only, Dorothea Thompson (202–452–3544); Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Regulatory Review

Pursuant to Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, the Board of Governors of the Federal Reserve System (the Board) is conducting a review of its regulations and written policies in order to improve efficiency, reduce unnecessary costs, eliminate unwarranted constraints on credit availability, and to remove inconsistencies and outmoded and duplicative requirements. As part of this review, the Board is proposing to abolish Regulation V (12 CFR part 245), concerning the loan guarantee program under the Defense Production Act of 1950 (50 App. U.S.C. 2061) (the Act). The Board is requesting public comment on this proposed regulatory change, as well as soliciting the views of the guaranteeing departments and agencies (as defined in the Act) consistent with Executive Order 12919 (June 3, 1994) and Executive Order 10789 (Nov. 14, 1958) (as amended), implementing the Act.

Authority for Regulation V

The Board promulgated Regulation V (12 CFR 245) pursuant to the Act "to facilitate the financing of contracts or other operations deemed necessary to national defense production." Section 301(a)(1) of the Act allows the President to authorize "guaranteeing agencies" to enter into guarantees with public or private financing institutions concerning contracts "deemed by the guaranteeing agency to be necessary to expedite or expand production and deliveries or services under Government contracts for the procurement of industrial resources or critical technology items essential to the national defense, or for the purpose of financing any contractor, subcontractor or other person in connection with or in contemplation of the termination, in the interest of the United States, of any contract made for the national defense; * * *" Section 301(a)(1) of the Act defines "guaranteeing agencies" as the Department of Defense, the Department of Energy, the Department of Commerce, "and such other agencies of the United States engaged in procurement for the national defense as he may designate."

Exec. Order No. 12,919 (1994) provides that "the head of each Federal department or agency engaged in procurement for the national defense * * * and the President and chairman of the Export-Import Bank of the United States" is authorized to guarantee public or private financing institutions as provided in Section 301 of the Act.[1] In furtherance of this authorization, Exec. Order No. 12,919 provides that "The Board of Governors of the Federal Reserve System is authorized, after consultation with heads of guaranteeing departments and agencies, the Secretary of the Treasury, and the Director, OMB, to prescribe regulations governing procedures, forms, rates of interest, and fees for [loan] guarantee contracts." Exec. Order. No. 12919, 59 FR 29,525 (1994).[2] The Board exercised this authorization in implementing Regulation V in the 1950s. Regulation V was modified and streamlined in 1979.

Purpose of Regulation V

The loan guarantee provisions of the Act were intended to permit defense agencies to enter into defense-related contracts without regard to whether appropriations had been made for the underlying projects. Without the appropriations, defense agencies would lack the legal authority to make progress payments to defense contractors. Without progress payments, contractors would not have the working capital to perform their contracts unless they could obtain financing from private banking institutions, which might be reluctant to lend for the performance of contracts if the funds for the contract had not been appropriated. Thus, while the Act contemplates that defense-contract funding would be obtained from private banks, the loan guarantees provisions of the Act would enable the funding and therefore the continued production of items deemed necessary to the national defense by ensuring private banks of repayment when the contract was completed. Regulation V sets forth applicable procedures, forms, fees, charges and rates of interest for these loan guarantees, in which a Federal Reserve Bank acts as the fiscal agent of one or more specified federal departments or agencies for the guarantee by that department or agency of a defense production loan made by a private financing institution.

Decline in Use of Regulation V

The Act and the Executive Orders implementing it have periodically expired and subsequently been reauthorized. However, in 1975, the Act was amended to make the guarantee provisions unnecessary for most practical purposes. These amendments provided that "all authority hereby or hereafter extended under title III [relating to expansion of productive capacity and supply, including loan guarantee provisions] shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts." 50 U.S.C. App. 2166(a). Thus, under the 1975 amendments, defense agencies that have authority to authorize loan guarantees have authority to do so only if funds have been appropriated for the contract in question. Once funds have been appropriated, however, there is little need for the guarantee, because the appropriated funds can be paid timely in accordance with the defense contracts. Notwithstanding the 1975 amendments, the loan guarantee provisions of the Act were not deleted. No loan guarantees are currently outstanding and no applications for loan guarantees have been filed for several years.

Current Regulatory Review Proposal

Repealing Regulation V would achieve the objectives of Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 by improving efficiency and removing outmoded requirements while at the same time not adversely affecting the abilities of any parties to participate in a loan guarantee should the need arise. Repealing Regulation V would not affect the existence or availability of the loan guarantee program as provided by the Act. Although the 1975 amendments to the Act make it unlikely that a loan guarantee application will be filed, the Board and the Federal Reserve Banks would be able to perform their fiscal agency and application coordination responsibilities under the Act if such an application were filed using fiscal agency procedures already in place in other contexts and on a case-by-case basis.

[1] The "head of each Federal department or agency engaged in procurement for the national defense" is defined as the head of each of the departments and agencies listed in Exec. Order No. 10,789 (1958), consisting of the following Departments: Defense, Army, Navy, Air Force, Treasury, Interior, Agriculture, Commerce, Transportation, Nuclear Regulatory Commission, General Services Administration, National Aeronautics & Space Administration, Tennessee Valley Authority, Government Printing Office, and Federal Emergency Management Agency. Exec. Order No. 10,789, 23 Fed. Reg. 8,897 (1958), as amended.

[2] A similar provision was formerly set forth in Section 302(c) of Exec. Order No. 10,480 (1953). Exec. Order No. 10,480 was revoked by Exec. Order No. 12,919 (1994).

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis (5 U.S.C. 603(b) (1)–(2)), a description of the reasons why action by the agency is being considered and a statement of the objectives of, and legal basis for, the proposal, are contained in the supplementary material above. The proposal rule imposes no additional reporting or recordkeeping requirements and does not overlap with other federal rules. (5 U.S.C. 603(b) (4)–(5).)

Another requirement for the initial regulatory flexibility analysis is a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply. (5 U.S.C. 603(b)(3).) The proposal will apply to all depository institutions regardless of size. The proposal seeks to eliminate an obsolete regulatory provision and does not impose any substantial economic burden on small entities.

By order of the Board of Governors of the Federal Reserve System, May 21, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–13225 Filed 5–24–96; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AGL–1]

Proposed Amendment of Class E Airspace; Rochester, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) which amended the Class E airspace at Rochester, MN. The airspace, as published, was incomplete and will be reissued subsequently with the corrected airspace description.

DATES: May 28, 1996.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7459.

SUPPLEMENTARY INFORMATION:

The Proposed Rule

On March 22, 1996, a Notice of Proposed Rulemaking was published in the **Federal Register** to amend the Class E airspace at Rochester, MN. This was necessary to accommodate the new Copter GPS 325 degrees approach procedure to St. Mary's Hospital Heliport, Rochester, MN (61 FR 11792). The airspace description, as published, was incomplete; therefore this NPRM is being withdrawn and will be reissued.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Withdrawal of Proposed Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 96–AGL–1, as published in the **Federal Register** on March 22, 1996 (61 FR 11792), is hereby withdrawn.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 14 CFR 11.69.

Issued in Des Plaines, Illinois on May 1, 1996.

Maureen Woods,

Acting Manager, Air Traffic Division.

[FR Doc. 96–13254 Filed 5–24–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. 96N–0002]

"Draft Document Concerning the Regulation of Placental/Umbilical Cord Blood Stem Cell Products Intended for Transplantation or Further Manufacture into Injectable Products;" Availability; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Availability of draft document; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to July 26, 1996, the comment period for the draft document entitled "Draft Document Concerning the Regulation of Placental/Umbilical Cord Blood Stem Cell Products Intended for Transplantation or Further Manufacture into Injectable Products," which appeared in the **Federal Register** of February 26, 1996 (61 FR 7087). The purpose of the draft document is to identify a draft regulatory approach that FDA believes is appropriate for the regulation of placental/umbilical cord blood stem cell products for transplantation. FDA published the draft document in response to numerous inquiries regarding the agency's regulatory approach to cord blood stem cell products and to provide an opportunity for interested persons to submit written comments on the draft document prior to fully implementing this approach. FDA is taking this action in response to requests to allow additional time for public comments.

DATES: Written comments by July 26, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sharon A. Carayiannis, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 26, 1996 (61 FR 7087), FDA requested public comment from interested persons on the draft document which included discussions of the following: (1) The applicable legal authorities in the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act; (2) FDA's approach to the regulation of human cord blood stem cells intended for transplantation; (3) FDA's approach to the regulation of cord blood stem cells as source material for further manufacture; and (4) FDA's approach to the regulation of ancillary products used for production of cord blood stem cells. Interested persons were given until April 26, 1996, to submit written comments on the draft document.

The agency received four letters from companies and research institutions involved in the collection and storage of cord blood requesting an extension of the comment period. The letters requested up to 90 additional days for comment on the basis that FDA's proposed regulatory approach would significantly alter the current cord blood collection and storage practices used by companies and research institutions. In addition, the requests cited the need for additional time to adequately review

and analyze the draft document so as to formulate and submit meaningful, substantive comments to the agency. In a letter of April 26, 1996, FDA responded by offering an additional 29 days for comment, while the agency considered the requests for a 90-day extension. After careful consideration, the agency has concluded that it is in the public interest to allow additional time for interested persons to submit comments. Accordingly, FDA is extending the original comment period by 90 days, to July 26, 1996.

Interested persons may, on or before July 26, 1996, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft document and received comments are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 23, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–13304 Filed 5–22–96; 4:03 pm]

BILLING CODE 4160–01–F

ARMS CONTROL AND DISARMAMENT AGENCY

22 CFR Part 608

Service of Process; Production of Official Information; and Testimony of Agency Employees

AGENCY: Arms Control and Disarmament Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish or clarify policies, practices, responsibilities, and procedures for the service of legal process upon the United States Arms Control and Disarmament Agency (ACDA, the Agency), its officers, and employees, and the production of official ACDA information and the appearance of and testimony by ACDA employees as witnesses in connection with litigation. This rule is procedural in nature. Although not required to do so, ACDA is voluntarily publishing this proposed rule for public comment.

DATES: To be considered, comments must be delivered by mail or in person to the address, or faxed to the telephone number, listed below by 5 p.m. on Friday, June 28, 1996.

ADDRESSES: Comments should be directed to the Office of the General Counsel, United States Arms Control and Disarmament Agency, Room 5636, 320 21st Street, NW., Washington, DC 20451; FAX (202) 647–0024. Comments will be available for inspection between 8:15 a.m. and 5 p.m. at the same address.

FOR FURTHER INFORMATION CONTACT: Frederick Smith, Jr., United States Arms Control and Disarmament Agency, Room 5635, 320 21st Street, NW., Washington, DC 20451, telephone (202) 647–3596.

SUPPLEMENTARY INFORMATION:

General

This proposed rule is intended to clarify ACDA policies and practices regarding litigation-related matters such as service of process upon ACDA and ACDA employees and the production of official ACDA information in litigation. ACDA anticipates that the rule, which generally parallels similar rules which have been adopted by numerous other federal agencies, e.g., the Department of Defense (32 CFR part 97), the Department of Justice (28 CFR part 16, subpart B), the Nuclear Regulatory Commission (10 CFR part 9, subpart D), and the Department of State (22 CFR part 172), will eliminate or reduce current ambiguities regarding such matters for ACDA employees, as well as for private attorneys and judicial and quasi-judicial authorities. ACDA also expects that this rule will promote consistency in ACDA's assertions of privileges and objections, thereby reducing the potential for both inappropriate, potentially harmful disclosure of protected information and wasteful or inappropriate allocation of Agency resources. Although the proposed rule is largely self-explanatory, we describe the general scheme of the several subsections below for the readers' ease of reference.

Service of Process

Part 604.4(b) of 22 CFR establishes the Agency's Office of the General Counsel as the designated office for the presentation of administrative claims asserted under the Federal Tort Claims Act (and 22 CFR parts 602, 603, and 605 set forth procedures for administrative requests under the Freedom of Information Act, under the Privacy Act, and for declassification of national security information, respectively). However, until the present, the Agency has not had regulations establishing the Agency's General Counsel, or his/her delegate, as the sole Agency recipient for litigation-related demands, whether civil or criminal, for official Agency information, whether oral or documentary, or for other Agency action. The proposed rule also clarifies that ACDA is not an agent for service on behalf of its employees in respect of purely private legal disputes and explains that ACDA will counsel its employees not to use their official positions to evade judicial process.

Compliance With Requests or Demands for Official Information

Fundamentally, the compliance sections of the proposed rule (§§ 608.4–608.9) simply track, to a greater or lesser degree, similar regulations which have been adopted by other federal agencies (such as those referenced above), and which derive from the Supreme Court's decision in *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). Thus, the principal thrust of the compliance provisions of the proposed rule is that Agency employees (including former employees) must obtain the approval of the Agency's General Counsel, or his/her delegate, prior to responding to any subpoenas or other litigation-related requests or demands for Agency information, whether classified or unclassified, that relate to the employee's official duties.

Significantly, § 608.5 requires the party who initiates a litigation-related request or demand for official ACDA information to provide a written statement providing specified information concerning the nature and scope of the demand.

Finally, the proposed rule describes factors, among others, that Agency officials shall take into consideration when considering litigation-related requests or demands and specifies that Agency employees may ordinarily not provide expert or official testimony on behalf of private parties.

Regulatory Flexibility Act Certification

It is hereby certified that the proposed rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866 Determination

ACDA has determined that the proposed rule is not a significant regulatory action within the meaning of section 3(f) of that Executive Order.

Paperwork Reduction Act Statement

The proposed rule is not subject to the provisions of the Paperwork Reduction Act because it does not contain any information collection requirements within the meaning of that Act.

Unfunded Mandates Act Determination

ACDA has determined that the proposed rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532.

List of Subjects in 22 CFR Part 608

Administrative practice and procedure, Classified information, Government employees.

The Proposed Regulations

ACDA proposes to amend title 22 of the Code of Federal Regulations by adding a new part 608 as follows:

PART 608—SERVICE OF PROCESS; PRODUCTION OR DISCLOSURE OF OFFICIAL INFORMATION IN RESPONSE TO COURT ORDERS, SUBPOENAS, NOTICES OF DEPOSITIONS, REQUESTS FOR ADMISSIONS, INTERROGATORIES, OR SIMILAR REQUESTS OR DEMANDS IN CONNECTION WITH FEDERAL OR STATE LITIGATION; EXPERT TESTIMONY

Sec.

608.1 Purpose and scope; definitions.
608.2 Service of summonses and complaints.
608.3 Service of subpoenas, court orders, and other demands or requests for official information or action.
608.4 Testimony and production of documents prohibited unless approved by appropriate Agency officials.
608.5 Procedure when testimony or production of documents is sought—general.
608.6 Procedure when response to demand is required prior to receiving instructions.
608.7 Procedure in the event of an adverse ruling.
608.8 Considerations in determining whether the Agency will comply with a demand or request.
608.9 Prohibition on providing expert or opinion testimony.

Authority: 22 U.S.C. 2581(j).

§ 608.1 Purpose and scope; definitions.

(a) This part sets forth the procedures to be followed with respect to:

(1) Service of summonses and complaints or other requests or demands directed to the U.S. Arms Control and Disarmament Agency (ACDA, the Agency) or to any ACDA employee or former employee in connection with federal or state litigation arising out of or involving the performance of official activities of ACDA; and

(2) The oral or written disclosure, in response to subpoenas, orders, or other requests or demands of federal or state judicial or quasi-judicial authority (collectively, "demands"), whether civil or criminal in nature, or in response to requests for depositions, affidavits, admissions, responses to interrogatories, document production, or other litigation-related matters, pursuant to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, or applicable state rules (collectively, "requests"), of any material contained in the files of the Agency, any information relating to material contained in the files of the Agency, or any information acquired while the subject of the demand or request is or was an employee of the Agency as part of the performance of the person's duties or by virtue of the person's official status.

(b) For purposes of this part, and except as ACDA may otherwise determine in a particular case, the term *employee* includes the Director of ACDA and former Directors of ACDA, and all employees and former employees of ACDA or other federal agencies who are or were appointed by, or subject to the supervision, jurisdiction, or control of the Director of ACDA, whether residing or working in the United States or abroad, including United States nationals, foreign nationals, and contractors.

(c) For purposes of this part, the term *litigation* encompasses all pre-trial, trial, and post-trial stages of all judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards, or other judicial or quasi-judicial bodies or tribunals, whether criminal, civil, or administrative in nature. This part governs, inter alia, responses to discovery requests, depositions, and other pre-trial, trial, or post-trial proceedings, as well as responses to informal requests by attorneys or others in situations involving litigation. However, this part shall not apply to any claims by ACDA employees (present or former), or applicants for Agency employment, for which jurisdiction resides with the U.S. Equal Employment Opportunity Commission; the U.S. Merit Systems Protection Board; the Office of Special Counsel; the Federal Labor Relations Authority; the Foreign Service Labor Relations Board; the Foreign Service Grievance Board; or a labor arbitrator operating under a collective bargaining agreement between ACDA and a labor organization representing ACDA employees; or their successor agencies or entities.

(d) For purposes of this part, *official information* means all information of any kind, however stored, that is in the custody and control of ACDA, relates to information in the custody and control of ACDA, or was acquired by ACDA employees as part of their official duties or because of their official status within ACDA while such individuals are employed by or served on behalf of ACDA.

(e) Nothing in this part affects disclosure of information under the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, Executive Order 12356 on national security information (or successor order thereto), the Government in the Sunshine Act, 5 U.S.C. 552b, the Agency's regulations in 22 CFR chapter VI implementing any of the foregoing, or pursuant to congressional subpoena. Nothing in this part otherwise permits disclosure of information by ACDA or its employees except as provided by statute or other applicable law.

(f) This part is intended only to inform the public about ACDA procedures concerning the service of process and responses to demands or requests and is not intended to and does not create, and may not be relied upon to create, any right or benefit substantive or procedural, enforceable at law by a party against ACDA or the United States.

(g) Nothing in this part affects:

(1) The disclosure of information during the course of legal proceedings in foreign courts, commissions, boards, or other judicial or quasi-judicial bodies or tribunals; or

(2) The rules and procedures, under applicable U.S. law and international conventions, governing diplomatic and consular immunity.

(h) Nothing in this part affects the disclosure of official information to other foreign agencies or Department of Justice attorneys in connection with litigation conducted on behalf or in defense of the United States, its agencies, officers, and employees, or to federal, state, local, or foreign prosecuting and law enforcement authorities in conjunction with criminal law enforcement investigations, prosecutions, extradition, deportation or other proceedings.

§ 608.2 Service of summonses and complaints.

(a) Only ACDA's General Counsel, or his/her delegate, is authorized to receive and accept summonses or complaints sought to be served upon ACDA or ACDA employees. All such documents should be delivered or addressed to

General Counsel, U.S. Arms Control and Disarmament Agency, 320 21st St. N.W., Room 5635, Washington, DC 20451. Pursuant to 42 U.S.C. 659(b) and 5 U.S.C. 5520a(c)(1), this same officer has been designated specifically to accept service of process for the enforcement of the legal obligation to provide child support or to make alimony payments by employees of the Agency and to accept service of process for the enforcement of the legal obligation to pay monies owed for other than child support or alimony by employees of the Agency, respectively.

(b) In the event any summons or complaint described in § 608.1(a) is delivered to an employee of ACDA other than in the manner specified in this part, such attempted service shall be ineffective, and the recipient thereof shall either decline to accept the proffered service or return such document under cover of a written communication which directs the person attempting to make service to the procedures set forth in this part.

(c) Except as otherwise provided in §§ 608.2(d) and 608.3(c), ACDA is not an authorized agent for service of process with respect to civil litigation against ACDA employees purely in their personal, non-official capacity. Copies of summonses or complaints directed to ACDA employees in connection with legal proceedings arising out of the performance of official duties may, however, be served upon ACDA's General Counsel, or his/her delegate.

(d) Although ACDA is not an agent for the service of process upon its employees with respect to purely personal, non-official litigation, ACDA recognizes that its employees stationed overseas should not use their official positions to evade their personal obligations and will, therefore, counsel and encourage ACDA employees to accept service of process in appropriate cases, and will waive applicable diplomatic or consular privileges and immunities when ACDA determines that it is in the interest of the United States to do so. Pursuant to section 302 of Executive Order 12953, ACDA's General Counsel has been designated in Appendix B to 5 CFR part 581 as the official to assist in the service of legal process in civil actions pursuant to orders of State courts to establish paternity and to establish or to enforce support obligations by making ACDA employees available for service of process, regardless of the location of the employee's workplace.

(e) Documents for which ACDA's General Counsel, or his/her delegate, accepts service in official capacity only shall be stamped "Service Accepted in Official Capacity Only." Acceptance of service shall not constitute an admission or waiver with respect to jurisdiction, propriety of service, improper venue, or any other defense in law or equity available under the laws or rules applicable for the service of process.

§ 608.3 Service of subpoenas, court orders, and other demands or requests for official information or action.

(a) Except in cases in which ACDA is represented by legal counsel who have entered an appearance or otherwise given notice of their representation, only ACDA's General Counsel, or his/her delegate, is authorized to receive and accept subpoenas, or other demands or requests directed to ACDA or any component thereof, or its employees, or former employees, whether civil or criminal in nature, for:

(1) Material, including documents, contained in the files of the Agency;

(2) Information, including testimony, affidavits, declarations, admissions, response to interrogatories, or informal statements, relating to material contained in the files of the Agency or which any Agency employee acquired in the course and scope of the performance of official duties;

(3) Garnishment or attachment of compensation of current or former employees; or

(4) The performance or non-performance of any official ACDA duty.

(b) In the event that any subpoena, demand, or request is sought to be delivered to an Agency employee (including former employee) other than in the manner prescribed in paragraph (a) of this section, such attempted service shall be ineffective. Such employee shall, after consultation with the office of the General Counsel, decline to accept the subpoena, demand, or request or shall return it to the serve under cover of a written communication referring to the procedures prescribed in this part.

(c) Except as otherwise provided in this part, ACDA is not an agent for service or otherwise authorized to accept on behalf of its employees any subpoenas, show-cause orders, or similar compulsory process of federal or state courts, or requests from private individuals or attorneys, which are not related to the employees' official duties except upon the express, written authorization of the individual ACDA employee to whom such demand or request is directed.

(d) Acceptance of such documents by ACDA's General Counsel, or his/her delegate, does not constitute a waiver of any defenses that might otherwise exist with respect to service under the Federal Rules of Civil or Criminal Procedure or other applicable rules.

§ 608.4 Testimony and production of documents prohibited unless approved by appropriate Agency officials.

(a) No employee of ACDA shall, in response to a demand or request in connection with any litigation, whether criminal or civil, provide oral or written testimony by deposition, declaration, affidavit, or otherwise concerning any information acquired wile such person is or was an employee of ACDA as part of the performance of that person's official duties or by virtue of that person's official status, unless authorized to do so by ACDA's General Counsel, or his/her delegate.

(b) No ACDA employee shall, in response to a demand or request in connection with any litigation, produce for use at such proceedings any document or any other material acquired as part of the performance of that employee's duties or by virtue of that employee's official status, unless authorized to do so by ACDA's General Counsel, or his/her delegate.

§ 608.5 Produce when testimony or production of documents is sought—general.

(a) if official ACDA information is sought, through testimony or otherwise, by a request or demand, the party seeking such release or testimony must (except as otherwise required by federal law or authorized by the Office of the General Counsel) set forth in writing and with as much specificity as possible, the nature and relevance of the official information sought. Where documents or other materials are sought, the party should identify the record or reasonably describe it in terms of date, format, subject matter, the office originating or receiving the record, and the names of all persons to whom the record is known to relate. Subject to § 606.7, ACDA employees may produce, disclose, release, comment upon, or testify concerning only those matters that were specified in writing and properly approved by ACDA's General Counsel or his/her delegate. See *United States ex re. Toughy* v. *Ragen*, 340 U.S. 462 (1951). The Office of the General Counsel may waive this requirement in appropriate circumstances.

(b) To the extent it deems necessary or appropriate, ACDA may also require from the party seeking such testimony or documents a plan of all reasonably foreseeable demands, including but not limited to the names of all employees and former employees from whom discovery will be sought, areas of inquiry, expected duration of proceedings requiring oral testimony, and identification of potentially relevant documents.

(c) ACDA's General Counsel, or his/her delegate, will notify the ACDA employee and such other persons as circumstances may warrant of the decision regarding compliance with the request or demand.

(d) The Office of the General Counsel will consult with the Department of Justice regarding legal representation for ACDS employees in appropriate cases.

§ 608.6 Procedure when response to demand is required prior to receiving instructions.

(a) If a response to a demand is required before ACDA's General Counsel, or his/her delegate, renders a decision, ACDA will request that either a Department of Justice attorney or an ACDA attorney designated for the purpose:

(1) Appear with the employee upon whom the demand has been made;

(2) Furnish the court or other authority with a copy of the regulations contained in this part;

(3) Inform the court or other authority that the demand has been or is being, as the case may be, referred for the prompt consideration of ACDA's General Counsel, or his/her delegate; and

(4) Respectfully request the court or authority to stay the demand pending receipt of the requested instructions.

(b) In the event that an immediate demand for production or disclosure is made in circumstances that would preclude the proper designation or appearance of a Department of Justice or ACDA attorney on the employee's behalf, the employee shall respectfully request the demanding court or authority for a reasonable stay of proceedings for the purpose of obtaining instructions from ACDA.

§ 608.7 Procedure in the event of an adverse ruling.

If the court or other judicial or quasi-judicial authority declines to stay the effect of the demand in response to a request made pursuant to § 608.6, or if the court or other authority rules that the demand must be complied with irrespective of the Agency's instructions not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall respectfully decline to comply with the demand, citing these regulations and *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 463 (1951).

§ 608.8 Considerations in determining whether the Agency will comply with a demand or request.

(a) In deciding whether to comply with a demand or request, ACDA officials and attorneys shall consider, among others:

(1) Whether such compliance would be unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand arose;

(2) Whether compliance is appropriate under the relevant substantive law concerning privilege or disclosure of information;

(3) The public interest;

(4) The need to conserve the time of ACDA employees for the conduct of official business;

(5) The need to avoid spending the time and money of the United States for private purposes;

(6) The need to maintain impartiality between private litigants in cases where a substantial government interest is not implicated;

(7) Whether compliance would have an adverse effect on performance by ACDA of its mission and duties; and

(8) The need to avoid involving ACDA in controversial issues not related to its mission.

(b) Among those demands and requests in response to which compliance will not ordinarily be authorized are those with respect to which, *inter alia*, any of the following factors exist:

(1) Compliance would violate a statute or a rule of procedure;

(2) Compliance would violate a specific regulation or executive order;

(3) Compliance would reveal information properly classified in the interest of national security;

(4) Compliance would reveal confidential commercial or financial information or trade secrets without the owner's consent;

(5) Compliance would reveal the internal deliberative processes of the Executive Branch; or

(6) Compliance would potentially impede or prejudice an ongoing law enforcement investigation.

§ 608.9 Prohibition on providing expert or opinion testimony.

(a) Except as provided in this section, and subject to 5 CFR 2635.805, ACDA employees shall not provide opinion or expert testimony based upon information which they acquired in the scope and performance of their official ACDA duties, except on behalf of the United States or a party represented by the Department of Justice.

(b) Upon a showing by the requester of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the United States, ACDA's General Counsel, or his/her delegate, may, consistent with 5 CFR 2635.805, in the exercise of discretion, grant special, written authorization for ACDA employees to appear and testify as expert witnesses at no expense to the United States.

(c) If, despite the final determination of ACDA's General Counsel, a court of competent jurisdiction or other appropriate authority orders the appearance and expert or opinion testimony of an ACDA employee, such employee shall immediately inform the Office of General Counsel of such order. If the Office of the General Counsel determines that no further legal review of or challenge to the court's order will be made, the ACDA employee shall comply with the order. If so directed by the Office of the General Counsel, however, the employee shall respectfully decline to testify. See *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

Dated: May 17, 1996.

Mary Elizabeth Hoinkes,

General Counsel.

[FR Doc. 96–13194 Filed 5–24–96; 8:45 am]

BILLING CODE 6820–32–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 925, 926, 931, 934, 935, 936, 938, 943, 944, 946, 948 and 950

RIN 1029–AB87

State Program Amendments

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is proposing to amend its regulations by revising the information currently reported in the Code of Federal Regulations (CFR) regarding the OSM Director's approval of amendments to State regulatory programs and abandoned mine land reclamation plans (hereafter State program amendments). A companion rule, State Program Amendments (I), was proposed revising the information reported at 30 CFR parts 901 through 920. As with the prior rulemaking, the information regarding the Director's approval of State program

amendments would be condensed to a tabular presentation depicting the dates when State program amendments were originally submitted to OSM and the dates the OSM Director's decision approving all or portions of these amendments were published in the **Federal Register**. This rulemaking would further reduce the number of unnecessary pages in the CFR. As always, people interested in getting copies of the full text of the amended State regulatory program or abandoned mine land reclamation plan could contact the State regulatory authority office or the OSM field office with oversight authority for that State.

DATES: *Written comments:* We will accept written comments on the proposed rule until 5:00 p.m. Eastern time on July 29, 1996.

Public hearings: We will accept requests for a public hearing until 4:00 p.m. Eastern time on June 27, 1996. People who want to attend but not testify at the hearing, must contact the person listed under **FOR FURTHER INFORMATION CONTACT,** beforehand to verify that we will hold a hearing. Any disabled individuals who need special accommodations to attend a public hearing should also contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: *Written comments:* Please hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Room 120, 1951 Constitution Ave. NW., Washington, DC, or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, SIB 120, 1951 Constitution Ave. NW., Washington, DC 20240.

You may also send comments through the Internet to OSM's Administrative Record. Our Internet address is: OSMRulesOSMRE.GOV. We will file copies of any electronic messages received with our Administrative Record.

Public hearings: You must contact the person identified under **FOR FURTHER INFORMATION CONTACT** by the time required under **DATES** to request a public hearing.

FOR FURTHER INFORMATION CONTACT: John A. Trelease, Rules and Legislation Staff, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington DC 20240; Telephone (202) 208–2783.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Discussion of Proposed Rules
Why is this rule being written?
What would change?
How do I get a copy of State program amendments?
III. Procedural Matters

I. Public Comment Procedures

Written Comments

If you are submitting written comments on the proposed rule please be specific, limit your comments to issues pertinent to the proposed rule, and explain the reason for your recommendations. If possible, please submit three copies of your comments to our Administrative Record (see **ADDRESSES**). We may not consider your comments for the final rule when received after the close of the comment period (see **DATES**) or delivered to addresses other than those listed in **ADDRESSES**.

Public Hearings

We will hold public hearings on the proposed rule by request only. If no one has contacted Mr. Trelease requesting a hearing by the date listed in **DATES**, we will not hold a hearing. We will hold a public meeting instead of a hearing if only one person expresses an interest. We will include the results of all meetings and hearings in our Administrative Record.

If we hold a hearing, it will continue until everyone who wants to testify is heard. Please provide us with an advanced copy of your testimony at the address specified for the submission of written comments (see **ADDRESSES**), and a copy of the transcriber when you arrive at the hearing. This will assist us in preparing appropriate questions, and ensure that the transcriber provides us with an accurate record of the testimony.

II. Discussion of Rule

Why Is This Rule Being Written?

On March 4, 1995, the President announced a government-wide Regulatory Reinvention Initiative. The President directed each agency to conduct a page-by-page review of its regulations for the purpose of eliminating or revising those that are outdated or otherwise in need of reform. As part of that effort, OSM is considering several means of reducing the number of pages in the CFR.

This rulemaking would result in a reduction of approximately 50 pages from the CFR and reduce future printing costs for the government, and contribute to on-going efforts to make the CFR a more readable document.

What Would Change?

The OSM Director's approval or approval in part of State program amendments is published in the **Federal Register** and codified in the CFR. The regulatory text documenting such decisions usually contains topical outlines of the amendments and associated program citations, the dates the amendments were submitted to OSM, and the dates the amendments became effective. Under the revised procedures of this rulemaking, the regulatory text for 30 CFR parts 925, 926, 931, 934, 935, 936, 938, 943, 944, 946, 948 and 950 would be limited to a tabular presentation of the dates that States submitted amendments, and the dates the amendments were published in the **Federal Register** after approval, or partial approval, by the OSM Director. A companion rule was proposed on May 8, 1996 (61 FR 20768), revising the information reported at 30 CFR parts 901 through 920.

OSM believes that there is no compelling public need to codify all of the information currently found in the regulatory text of State program amendment approvals. Although the topical outline of an approved amendment may be a convenient reference for members of the public who want to begin their research of particular provisions of that program amendment, OSM believes that the public would still find it necessary to refer back to the final rule's **Federal Register** notice for a thorough preamble discussion of those provisions. As always, those people who would like copies of the full text of the State program amendment may contact the State regulatory authority office or the OSM field office with oversight authority for that State.

How Do I Get a Copy of State Program Amendments?

Copies of approved State program amendments may be obtained by contacting the State regulatory authority or the local OSM field office with oversight authority for that State. Addresses for these offices are found in parts 900 through 950 of the CFR with their respective State programs.

III. Procedural Matters

Federal Paperwork Reduction Act

This rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

The Department of the Interior certifies that this revision would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates

This rule imposes no unfunded mandates on any government or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

National Environmental Policy Act

This rule has been reviewed by OSM and it has been determined to be categorically excluded from the National Environmental Policy Act (NEPA) process in accordance with the Departmental Manual 516 DM 6, Appendix 8.4.A.(2).

Executive Order 12866

This rule is not significant under Executive Order 12866 and does not require review by the Office of Management and Budget.

Executive Order 12988

This proposed rule has been reviewed under the applicable standards of Section 3(b)(2) of Executive Order 12988, Civil Justice Reform (61 FR 4729). In general, the requirements of Section 3(b)(2) of Executive Order 12988 are covered by the preamble discussion of this proposed rule. Additional remarks follow concerning individual elements of the Executive Order:

A. What is the preemptive effect, if any, to be given to the regulation?

The proposed rule would have no preemptive effect.

B. What is the effect on existing Federal law or regulation, if any, including all provisions repealed or modified?

This rule does not modify the implementation of SMCRA, nor does it modify the implementation of any other Federal statute. The preceding discussion of this rule specifies the Federal regulatory provisions that are affected by this rule.

C. Does the rule provide a clear and certain legal standard for affected conduct rather than a general standard, while promoting implication and burden reduction?

The standards established by this rule are so clear and certain as practicable, given the complexity of the topics covered and the mandates of SMCRA.

D. What is the retroactive effect, if any, to be given to the regulation?

This rule is not intended to have retroactive effect.

E. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings are required before parties may file suit in court challenging the provisions of this rule under section 526(a) of SMCRA, 30 U.S.C. 1276(a).

Prior to any judicial challenge to the application of the rule, however, administrative procedures must be exhausted. In situations involving OSM application of the rule, applicable administrative procedures may be found at 43 CFR Part 4. In situations involving State regulatory authority application of provisions equivalent to those contained in this rule, applicable administrative procedures are set forth in the particular State program.

F. Does the rule define key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items?

Terms which are important to the understanding of this rule are set forth in 30 CFR 700.5 and 701.5.

G. Does the rule address other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget, that are determined to be in accordance with the purposes of the Executive Order?

As of the date of publication, the Attorney General and the Director of the Office of Management and Budget have not issued any guidance on this requirement.

List of Subjects in 30 CFR Parts 925, 926, 931, 934, 935, 936, 938, 943, 944, 946, 948 and 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 20, 1996.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR Parts 925, 926, 931, 934, 935, 936, 938, 943, 944, 946, 948 and 950 are proposed to be amended as follows.

PART 925—MISSOURI

1. The authority citation for part 925 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 925.15 is revised to read as follows:

§ 925.15 Approval of Missouri regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register**:

Original amendment submission date	Date of final publication
December 3, 1980 and March 12, 1981.	July 23, 1982.
September 7, 1982 and October 13, 1982.	January 17, 1983.
April 13, 1983	May 8, 1984.
March 13, 1986	January 7, 1987.
February 4, 1987	February 26, 1988.
June 22, 1987	June 16, 1988.
December 14 and 18, 1987.	October 31, 1988.
August 3, 1988	December 11, 1989.
July 8, 1988	January 8, 1990.
March 18, 1988	June 5, 1990.
June 5, 1989	July 6, 1990.
July 21, 1989	October 30, 1990.
January 12, 1989	January 3, 1991.
July 8, 1988 and January 12, 1988.	May 8, 1991.
November 8, 1991	September 24, 1992.
October 10, 1990	September 29, 1992.
October 19, 1992	December 6, 1993.
September 24, 1993	April 22, 1994.
February 10, 1995	July 13, 1995.

3. Section 925.25 is revised to read as follows:

§ 925.25 Approval of Missouri abandoned mine land reclamation plan amendments.

(a) You may receive copies of the Missouri abandoned mine land reclamation plan and amendments from the:

(1) Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102; or

(2) Office of Surface Mining Reclamation and Enforcement, Mid-Continent Regional Coordinating Center, Alton Federal Building, 501 Belle Street, Alton, IL 62002.

(b) The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register**:

Original amendment submission date	Date of final publication
June 22, 1987	June 16, 1988.
August 22, 1988	March 15, 1989.
November 29, 1994	August 24, 1995.

PART 926—MONTANA

4. The authority citation for part 926 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

5. Section 926.15 is revised to read as follows:

§ 926.15 Approval of Montana regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register**:

Original amendment submission date	Date of final publication
September 13, 1983	January 3, 1984.
April 2, 1984	January 3, 1985.
January 3, 1984	November 18, 1985.
July 3, 1985	February 14, 1986.
April 23, 1987	December 31, 1987.
December 21, 1988	May 11, 1990.
June 19, 1990	March 20, 1991 and August 19, 1992.
October 19, 1992	February 25, 1994.
June 16, 1993 and July 28, 1993.	February 1, 1995.

6. Section 926.25 is added to read as follows:

§ 926.25 Approval of Montana abandoned mine land reclamation plan amendments.

(a) Montana certification of completing all known coal-related impacts is accepted, effective July 9, 1990.

(b) The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register**:

Original amendment submission date	Date of final publication
April 20, 1983	September 19, 1983.
March 22, 1995	July 19, 1995.

PART 931—NEW MEXICO

7. The authority citation for part 931 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

8. Section 931.15 is revised to read as follows:

§ 931.15 Approval of New Mexico regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register**:

Original amendment submission date	Date of final publication
February 28, 1982	May 27, 1982.
July 9, 1982	October 26, 1982.
February 8, 1984	August 1, 1984.
June 6, 1984	January 4, 1985.
June 20, 1984 and July 18, 1984.	January 31, 1985.
August 12, 1987	February 11, 1988.
September 1, 1988	January 30, 1989.
June 17, 1987	March 9, 1989.
April 18, 1988 and October 20, 1988.	March 17, 1989.
February 21, 1989 and August 17, 1989.	December 26, 1989.
March 29, 1989 and April 26, 1989.	April 26, 1990.
May 25, 1989	November 23, 1990.
July 22, 1989	February 26, 1991.
April 24, 1990	June 21, 1991.
March 15, 1990	December 31, 1991.
July 9, 1991	April 13, 1992.
November 22, 1991	June 23, 1992.
January 16, 1991	December 17, 1993.
October 26, 1994	February 15, 1995.

PART 934—NORTH DAKOTA

9. The authority citation for part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

10. Section 934.15 is revised to read as follows:

§ 934.15 Approval of North Dakota regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register**:

Original amendment submission date	Date of final publication
July 30, 1982	February 9, 1983 and November 9, 1983.
February 2, 1984	July 19, 1984.
February 27, 1984	January 3, 1985.
June 18, 1985	February 18, 1986.
May 30, 1986	October 21, 1986.
September 8, 1986	December 9, 1986.
April 3, 1987	November 16, 1987.
February 10, 1987	February 2, 1988.
June 1, 1988,	March 10, 1989.
April 11, 1989	August 4, 1989.
November 1, 1988	January 19, 1990.
November 20, 1990.	January 9, 1992.
June 12, 1991 and November 19, 1991.	August 20, 1992.
April 21, 1993	March 15, 1994 and July 22, 1994.
October 22, 1993	July 22, 1994.
November 10, 1994.	April 13, 1995.
February 17, 1994	July 14, 1995.

11. Section 934.25 is revised to read as follows:

§ 934.25 Approval of North Dakota abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register**:

Orginal amendment submission date	Date of final publication
March 4, 1983	June 24, 1983.
September 15, 1987	June 16, 1988.
October 31, 1991	July 27, 1992.
May 25, 1993	September 27, 1993.

PART 935—OHIO

12. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

13. Section 935.15 is revised to read as follows:

§ 935.15 Approval of Ohio regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register**:

Original amendment submission date	Date of final publication
September 16, 1982	January 17, 1983.
October 13, 1982	January 31, 1983 and July 22, 1983.
January 6, 1983	May 24, 1983.
June 10, 1983, August 11, 1983 and August 22, 1983.	October 6, 1983.
July 18, 1983	October 13, 1983.
January 30, 1984	April 23, 1984.
February 8, 1984	May 1, 1984.
December 28, 1983	June 5, 1984.
March 5, 1984	August 8, 1984.
June 15, 1984	September 25, 1984.
July 23, 1984	November 1, 1984.
March 9, 1984	November 7, 1984.
September 17, 1984	December 31, 1984.
July 10 and 23, 1984	March 18, 1985.
July 11, 1984 and July 23, 1984.	May 23, 1985.
July 3, 1985	September 18, 1985.
November 15, 1985	April 9, 1986 and June 9, 1986.
January 15, 1986	May 6, 1986.
October 26, 1985	July 17, 1986.
November 6, 1984	July 28, 1986.
March 3, 1986	September 18, 1986.
July 10, 1986	October 29, 1986.
October 8, 1986	March 5, 1987.
December 1, 1986 and January 13, 1987.	July 17, 1987.
May 16, 1986	July 17, 1987.
January 28, 1987	August 10, 1987.
June 26, 1987	December 9, 1987.
January 16, 1987	March 10, 1988.
October 16, 1987	May 27, 1988.
March 24, 1988 and August 23, 1988.	December 22, 1988.
March 8, 1988 and July 1, 1988.	January 30, 1989.
April 17, 1987	February 21, 1989.
November 3, 1987	December 15, 1989.
January 26, 1989	January 31, 1990.

Original amendment submission date	Date of final publication
October 2, 1989	April 20, 1990.
August 11, 1989	June 5, 1990.
December 5, 1989	July 20, 1990.
October 20, 1988	July 25, 1990.
May 11, 1990	August 21, 1990.
March 1, 1989	September 18, 1990.
January 20, 1989	September 24, 1990.
May 11, 1990	February 21, 1991.
December 7, 1990	February 26, 1991.
June 15, 1990	April 19, 1991.
January 31, 1991	May 21, 1991 and June 6, 1991.
March 1, 1991	May 30, 1991.
January 31, 1989	October 21, 1991.
August 23, 1991	December 9, 1991.
November 16, 1987 and October 12, 1990.	April 13, 1992.
January 16, 1990	July 27, 1992.
July 22, 1991 and September 10, 1991.	August 18, 1992.
May 12, 1992	September 11, 1992.
December 11, 1991	October 28, 1992.
June 30, 1992	January 12, 1993.
May 12, 1992 and June 22, 1992.	January 14, 1993.
December 9, 1992	April 23, 1993.
February 7, 1992 and March 2, 1992.	June 11, 1993.
April 5, 1993	June 22, 1993.
February 11, 1993	August 16, 1993.
January 15, 1993	September 3, 1993.
May 1, 1992 and June 11, 1993.	May 2, 1994.
May 17, 1994	July 27, 1994.
March 15, 1993	September 1, 1994.
February 23, 1994	October 12, 1994.
March 4, 1993	November 15, 1994.
July 19, 1994	May 11, 1995.
May 17, 1994	May 12, 1995.
September 22, 1994	July 17, 1995.
March 28, 1995	July 25, 1995.
February 2, 1995	November 9, 1995.

14. Section 935.25 is revised to read as follows:

§ 935.25 Approval of Ohio abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register**:

Original amendment submission date	Date of final publication
January 6, 1983	May 24, 1983.
April 2, 1984	November 19, 1984.
August 20, 1986	August 17, 1987.
October 2, 1989	April 20, 1990.
February 19, 1992	September 24, 1992.

PART 936—OKLAHOMA

15. The authority citation for part 936 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

16. Section 936.15 is revised to read as follows:

§ 936.15 Approval of Oklahoma regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register**:

Original amendment submission date	Date of final publication
January 22, 1982	April 2, 1982.
February 22, 1983	May 4, 1983.
May 13, 1983	August 28, 1984.
July 8, 1983	March 18, 1985.
July 16, 1985	December 10, 1985.
August 15, 1985	January 14, 1986.
September 11, 1985	January 16, 1986.
August 8, 1985	April 28, 1986.
May 18, 1988	March 27, 1990 and May 15, 1990.
March 30, 1990	December 18, 1990 and February 15, 1991.
June 21, 1990	January 9, 1991.
February 6, 1992	December 7, 1993.
February 17, 1994	January 10, 1995.
Septemver 14, 1994	March 10 and 29, 1995.
July 5, 1995	November 9, 1995.

PART 938—PENNSYLVANIA

17. The authority citation for part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

18. Section 938.15 is revised to read as follows:

§ 938.15 Approval of Pennsylvania Regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register**.

Original amendment submission date	Date of final publication
April 26, 1983 and May 12, 1983.	October 5, 1983.
August 1, 1983	January 4, 1984.
January 17, 1984	March 20, 1984.
October 31, 1983	May 15, 1984 and July 3, 1984.
March 30, 1984	November 27, 1984.
March 2, 1984	April 4, 1985.
April 19, 1985	August 15, 1985.
April 16, 1985	November 4, 1985.
September 5, 1985	February 19, 1986.
November 2, 1984	May 19, 1986.
September 30, 1985	September 8, 1986.
April 18, 1985	June 18, 1987.
January 22, 1987	July 14, 1987.
April 14, 1987	October 27, 1988.
December 5, 1988	July 14, 1989.
August 17, 1988	August 18, 1989.
August 21, 1986	November 3, 1989.
December 22, 1989	May 31, 1991.
September 24, 1986	October 24, 1991.
May 27, 1992	October 28, 1992.
June 2, 1992	November 16, 1992.
December 18, 1991	December 30, 1992, January 14, 1993 and April 8, 1993.
February 18, 1993	July 6, 1993.
March 9, 1993	December 6, 1993.
May 11, 1993	July 20, 1994.
October 24, 1994	April 3, 1995.

19. Section 938.25 is revised to read as follows:

§ 938.25 Approval of Pennsylvania abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register**:

Original amendment submission date	Date of final publication
April 17, 1992	October 30, 1992.

PART 943—TEXAS

20. The authority citation for part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

21. Section 943.15 is revised to read as follows:

§ 943.15 Approval of Texas regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register**:

Original amendment submission date	Date of final publication
March 27, 1980	November 26, 1980.
September 18, 1981	June 3, 1982.
August 31, 1984	July 9, 1985.
August 24, 1988	December 11, 1989.
June 24, 1991	February 19, 1992.
December 23, 1991	April 17, 1992.
September 12, 1989	May 21, 1992.
September 22, 1989	August 19, 1992.
February 8, 1993	March 21, 1994.
May 24, 1994	March 27, 1995.
August 11, 1995	December 13, 1995.

22. Section 943.25 is revised to read as follows:

§ 943.25 Approval of Texas abandoned mine land reclamation plan amendments.

(a) Texas certification of completing all known coal-related impacts is accepted, effective August 19, 1992.

(b) The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register:**

Original amendment submission date	Date of final publication
May 11, and May 26, 1989.	August 19, 1992.

PART 944—UTAH

23. The authority citation for part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

24. Section 944.15 is revised to read as follow:

§ 944.15 Approval of Utah regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register:**

Original amendment submission date	Date of final publication
June 29, 1981	June 22, 1982.
May 21, 1981	September 27, 1982.
August 26, 1982	December 13, 1982.
December 3, 1982	March 7, 1983.
February 6, 1984	August 29, 1984 and December 18, 1985.
August 13, 1984	December 3, 1985.
October 9, 1985	January 16, 1986.
January 21, 1985	June 10, 1986.
March 3, 1986	July 28, 1986.
September 3, 1986	January 28, 1987.
January 8, 1988	March 28, 1988.
September 24, 1987	August 18, 1988.
August 11, 1989	April 12, 1990.
November 13, 1989	August 13, 1990.
October 10, 1990	January 29, 1991.
July 3, 1990	August 23, 1991.
March 1, 1991	November 22, 1991.
December 30, 1991	May 11, 1992.
July 26, 1991	August 19, 1992.
November 20, 1991	September 11, 1992.
November 5, 1992	March 30, 1993.
April 30, 1992	September 17, 1993.
September 17, 1992	April 7, 1994.
March 7, 1994	May 24, 1994 and September 27, 1994.
August 2, 1993	July 11, 1994.
January 27, 1994	September 27, 1994.
September 9, 1994	March 27, 1995.
February 10, 1995	May 2, 1995.
November 12, 1993	May 30, 1995.
April 14, 1994	July 19, 1995.
February 6, 1995	September 14, 1995.

25. Section 944.25 is revised to read as follows:

§ 944.25 Approval of Utah abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register:**

Original amendment submission date	Date of final publication
July 26, 1991	August 19, 1992.
March 7, 1994	September 27, 1994.
April 14, 1994	July 19, 1995.

PART 946—VIRGINIA

26. The authority citation for part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

27. Section 946.15 is revised to read as follows:

§ 946.15 Approval of Virginia regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register:**

Original amendment submission date	Date of final publication
January 28, 1982	July 21, 1982.
July 9, 1982	August 19, 1982.
July 8, 1982	September 21, 1982.
August 13, 1982	December 13, 1982.
September 30, 1982	January 18, 1983.
December 20, 1982	February 28, 1983.
March 22, 1983	April 21, 1983 and June 6, 1983 and June 20, 1983.
July 9, 1982	April 22, 1983.
May 20, 1983	December 27, 1983.
July 27, 1983	March 16, 1984.
February 10, 1984	May 8, 1984.
April 11, 1984	August 2, 1984.
June 13, 1984	August 31, 1984.
February 20, 1985	May 8, 1985.
May 1985	August 15, 1985.
September 4, 1985	November 18, 1985.
November 8, 1985	November 25, 1986.
March 20, 1987	July 17, 1987.
January 16, 1987	August 17, 1987.
June 15, 1987 and July 2, 1987.	December 31, 1987.
September 1, 1987	March 7, 1988.
September 10, 1987	June 16, 1988.
June 30, 1989	December 1, 1989.
July 5, 1989	February 2, 1990.
April 6, 1988	February 5, 1990.
August 31, 1990	December 7, 1990.
September 12, 1990	December 26, 1990.
June 29, 1990	January 4, 1991.
April 5, 1991 and May 1, 1991.	August 5, 1991.
October 1, 1990	July 7, 1992.
May 6, 1993	September 24, 1993.
October 22,1993	September 27, 1994.
October 31, 1994	August 8, 1995.

28. Section 946.25 is revised to read as follows:

§ 946.25 Approval of Virginia abandoned mine land reclamation plan amendments.

(a) The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register:**

Original amendment submission date	Date of final publication
November 8, 1985	November 25, 1986.
February 3, 1987	November 13, 1987.

(b) You may receive a copy from:

(1) Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219, or

(2) Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Drawer 1216, Powell Valley Square Shopping Center, room 220, Route 23, Big Stone Gap, Virginia 24219.

PART 948—WEST VIRGINIA

29. The authority citation for part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

30. Section 948.15 is revised to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register:**

Original amendment submission date	Date of final publication
October 29, 1981	May 11, 1982.
June 17, 1982	September 10, 1982.
September 14, 1982 and October 29, 1982.	March 1, 1983.
February 16, 1983, April 29, 1983, June 15, 1983 and September 13, 1983.	November 16, 1983.
January 12, 1984	September 20, 1984.
November 20, 1984	April 23, 1985.
March 30, 1984, October 30, 1984, May 20, 1985 and June 14, 1985.	July 11, 1985.
November 11, 1985	March 20, 1986.
June 30, 1986 and April 26, 1986.	May 23, 1990.
June 29, 1990	October 4, 1991.
July 12, 1991	November 19, 1991.
July 30, 1993	August 16, 1995.
June 28, 1993	October 4, 1995 and February 21, 1996.

31. Section 948.25 is revised to read as follows:

§ 948.25 Approval of West Virginia abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register:**

Original amendment submission date	Date of final publication
May 20, 1985	July 11, 1985.
December 30, 1987	August 26, 1988.
September 17, 1991 and October 25, 1991.	March 26, 1993.

PART 950—WYOMING

32. The authority citation for part 950 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

33. Section 950.15 is revised to read as follows:

§ 950.15 Approval of Wyoming regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register:**

Original amendment submission date	Date of final publication
March 26, 1981 and April 8, 1981.	February 18, 1982.
May 26, 1982	September 27, 1982.
March 3, 1983, March 8, 1983 and March 21, 1983.	November 9, 1983.
June 25, 1984	February 28, 1985.
September 21, 1984	December 3, 1985.
October 12, 1984	December 13, 1985.
June 19, 1985	January 2, 1986.
June 10, 1985	March 31, 1986.
May 1, 1986	November 24, 1986.
December 13, 1985	May 6, 1987.
March 31, 1989	July 25, 1990.
May 1, 1986	January 29, 1991.
March 21, 1991	July 8, 1992.
June 24, 1991	October 29, 1992.
March 19, 1993	August 23, 1993.
July 8, 1992	October 7, 1993.
July 24, 1992	November 2, 1993.
August 18, 1982 and March 9, 1993.	January 24, 1994.
December 15, and August 6, 1993.	March 30, 1994.
May 1, 1986	June 30, 1994.
April 13, 1994	October 21, 1994.
November 8, 1994	March 17, 1995.
June 2, 1995	September 14, 1995

34. Section 950.35 is revised to read as follows:

§ 950.35 Approval of Wyoming abandoned mine land reclamation plan amendments.

(a) Wyoming certification of completing all known coal-related impacts is accepted, effective May 25, 1984.

(b) The following is a list of the dates amendments were submitted to OSM and the dates when the Director's decision approving all, or portions of these amendments, were published in the **Federal Register:**

Original amendment submission date	Date of final publication
December 16, 1991	April 13, 1992.
April 21, 1995	February 21, 1996.

[FR Doc. 96–13260 Filed 5–24–96; 8:45 am]

BILLING CODE 4310–05–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 96–115, FCC 96–221]

Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is issuing this Notice of Proposed Rulemaking seeking comment on proposed regulations to specify in more detail and clarify the obligations of telecommunications carriers with respect to the use and protection of customer proprietary network information (CPNI) and other customer information. The Notice is being issued in response to formal and informal requests for guidance as to local exchange carriers' responsibilities under the Telecommunications Act of 1996. The objective of the Notice of Proposed Rulemaking is to provide an opportunity for public comment and to provide a record for a Commission decision on the issues stated above.

DATES: Comments are due on or before June 11, 1996 and Reply Comments are due on or before June 26, 1996. Written comments by the public on the proposed and/or modified information collections are due June 11, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before July 29, 1996.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, NW., Room 544, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Blaise Scinto, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1380, or Radhika Karmarkar, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1628. For additional information concerning the information collections contained in this NPRM contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking adopted May 16, 1996 and released May 17, 1996 (FCC–96–221). This NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding. The full text of this Notice

of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., NW., Suite 140, Washington, DC 20037.

Paperwork Reduction Act

This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due July 29, 1996. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: None.

Title: Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96–115.

Form No.: N/A.

Type of Review: New collection.

Information collection requirement	Number of respondents (approx.)	Estimated time per response	Total annual burden
Customer approval—oral	1,500	10 hours	15,000 hours.
Customer approval—written	1,500	10 hours	15,000 hours.
Burden of proof—oral approval	100	1 hour	100 hours.
CPNI Disclosure to Third Parties	500	5 hours	2,500 hours.
Record-keeping requirement for restricted CPNI	3,000	5 hours	15,000 hours.
Aggregate CPNI disclosure	1,400	5 hours	7,000 hours.
Subscriber list information disclosure	1,400	4 hours	5,600 hours.

Total Annual Burden: 60,200.

Respondents: Business or other for profit, including small businesses.

Estimated costs per respondent: $0.

Needs and Uses: The Notice of Proposed Rulemaking seeks to clarify and specify in more detail the obligations of telecommunications carriers under the customer proprietary network information (CPNI) and subscriber list information provisions for the Telecommunications Act of 1996 (*see* 47 U.S.C. § 222). The Notice also seeks to implement data safeguards for information about calls received by alarm monitoring services, pursuant to 47 U.S.C. 275(d).

SYNOPSIS OF NOTICE OF PROPOSED RULEMAKING

A. Summary

I. Introduction

1. On February 14, 1996, several local exchange carrier associations (the Associations) informed the Common Carrier Bureau (Bureau) that their members were uncertain about their responsibilities under the Telecommunications Act of 1996 (the 1996 Act) regarding use and protection of customer proprietary network information (CPNI), and requested that the Commission conduct a rulemaking to implement the provisions of the 1996 Act. On March 5, 1996, the NYNEX Telephone Companies (NYNEX) filed a petition for declaratory ruling regarding the proper interpretation of the term "telecommunications service" as used in Section 222. On March 27, 1996, U S West, Inc. (U S West) responded to the NYNEX Petition by letter to the Bureau Chief. In response to these and other informal requests for guidance from the telecommunications industry, we initiate this proceeding to seek comment on proposed regulations to specify in more detail and clarify the obligations of telecommunications carriers with respect to the use and protection of CPNI and other customer information. We invite parties who wish to respond to any of the above-referenced industry filings to do so by submitting comments in this proceeding.

2. Section 702 of the 1996 Act added a new Section 222 to the Communications Act of 1934, as amended, which sets forth, among other things, restrictions on the use of CPNI obtained by telecommunications carriers in providing telecommunications service to customers as well as certain requirements related to the availability of subscriber list information. In addition, the 1996 Act establishes a new Section 275(d) that prohibits local exchange carriers (LECs) from using information obtained from calls made to alarm monitoring service providers to market their own alarm monitoring services, or those provided by any other entity, and requires the Commission to adopt implementing regulations within six months. Although the requirements of Section 222 were immediately effective, we tentatively conclude that regulations that interpret and specify in more detail a telecommunications carrier's obligations under subsections 222 (c)–(f) of the 1996 Act would be in the public interest. In this Notice of Proposed Rulemaking (NPRM), we propose a regulatory regime that balances consumer privacy and competitive considerations to ensure that telecommunications carriers comply with their new statutory obligations to maintain the privacy of CPNI and other customer information.

3. In addition, we clarify that the CPNI requirements the Commission previously established as nonstructural safeguards in the *Computer II* and *Computer III* proceedings for the provision of enhanced services and customer premises equipment (CPE) by American Telephone and Telegraph (AT&T), the Bell Operating Companies (BOCs), and GTE Corporation (GTE) remain in effect, pending the outcome of the rulemaking, to the extent that they do not conflict with Section 222, since nothing in the 1996 Act affects these requirements. To the extent that the 1996 Act requires more of a carrier, or imposes greater restrictions on a carrier's use of CPNI, the statute, of course, governs. We seek comment on whether there are statutory, competitive, or privacy reasons that justify the continued application of these pre-existing rules (which are discussed in greater detail below) to the BOCs, and GTE. With respect to AT&T, we tentatively conclude that these requirements should be removed in light of our recent decisions classifying AT&T as a non-dominant carrier, and the pending AT&T reorganization separating its equipment business from its telecommunications service business. We also seek comment regarding the extent to which these pre-existing rules should or must be amended in light of the language or pro-competitive, deregulatory goals of the new statute. We tentatively conclude that it is not in the public interest, at this time, to extend all of these pre-existing CPNI rules to carriers that are not affiliated with AT&T, the BOCs, or GTE, and seek comment on that conclusion. To the extent that we conclude that we should apply more restrictive CPNI access requirements to certain groups of carriers, such as the BOCs, we seek comment on the specific market conditions or other circumstances that would warrant removal of those requirements in the future.

II. Background

A. Commission CPNI Requirements Established Prior to Enactment of the Telecommunications Act of 1996

4. Prior to enactment of the 1996 Act, in the context of the *Computer II* and *Computer III* proceedings, the Commission established requirements applicable to the use of CPNI for the marketing of enhanced services and CPE by AT&T, the BOCs, and GTE. The Commission determined that such requirements were necessary to protect independent enhanced service providers (ESPs) and CPE suppliers from discrimination by AT&T, the BOCs, and GTE. In the absence of these safeguards, the affected carriers could use CPNI obtained from their provision of regulated services to gain an anticompetitive advantage in the unregulated CPE and enhanced services markets. Further, the Commission found that these CPNI requirements were in the public interest because they were intended to protect legitimate customer expectations of confidentiality regarding individually identifiable information. The Commission defined CPNI to encompass any information about customers' network services and their use of those services that a telephone company possessed because it provided those network services.

5. Under the Commission's *Computer III* rules, the BOCs have been required to abide by a request from any customer that its CPNI be withheld from the BOCs' enhanced services and CPE marketing personnel. If, however, the customer has not requested CPNI protection, the CPNI rules vary depending on: (1) Whether the information is disclosed to the BOC's CPE or ESP affiliate; (2) the number of lines to which a customer subscribes; and (3) whether the subscriber is a residential or business customer. For example, BOC personnel have been able to use CPNI without prior authorization for marketing CPE to all customers. With respect to marketing enhanced services, written prior authorization has been required from customers that subscribe to more than 20 lines. BOC personnel could use the CPNI of customers that subscribe to 20 or fewer lines, however, without prior authorization. Unaffiliated ESPs by contrast have been required to obtain prior customer authorization to obtain access to CPNI maintained by the BOCs. The Commission's rules also imposed on BOCs a notification obligation which required BOCs to provide annual written notification of CPNI rights to multiline (2 or more lines) business customers. In previous orders, the Commission has required the BOCs to implement various computerized systems to protect against unauthorized access by their enhanced services and CPE personnel to restricted CPNI. In addition, the BOCs have been required to accommodate customer requests for partial or temporary restrictions on access to their CPNI. The Commission applied these requirements to GTE in its provision of enhanced services, but not CPE, while declining to apply these requirements to other independent telephone companies.

6. Although AT&T is subject to CPNI restrictions under *Computer III*, the AT&T requirements generally are less stringent than those applicable to the BOCs. For example, AT&T is not required to obtain prior authorization from a customer with more than 20 lines before using its CPNI to market enhanced services. Similarly, while the BOCs must notify multiline customers annually of their right to restrict disclosure of CPNI to BOC CPE affiliates, AT&T must only provide such notification in a one-time billing insert. AT&T, however, must maintain password/ID systems and other mechanisms to restrict unauthorized access to CPNI.

7. On March 10, 1994, the Bureau issued a Public Notice inviting comments on these CPNI rules in light of the increasing alliances, acquisitions, and mergers by and between telephone and non-telephone companies. In recognition of these changes, the Bureau sought comment from the public on whether the existing CPNI safeguards would continue in the future to strike the appropriate balance among customers' privacy interests, competitive equity, and efficiency.

B. New Sections 222(c) and (d): CPNI Privacy Provisions of the Telecommunications Act of 1996

8. In new Sections 222(c) and (d), the 1996 Act established requirements for maintaining the confidentiality of CPNI that became effective immediately upon enactment for all telecommunications carriers. New Section 222(f)(1) defines CPNI as "information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship." The statute explicitly includes within the definition of CPNI "information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier."

9. New Section 222(c)(1) provides that:

> Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains [CPNI] by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable [CPNI] in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.

Section 222 further provides that "[a] telecommunications carrier shall disclose [CPNI], upon affirmative written request by the customer, to any person designated by the customer."

10. The 1996 Act establishes three exceptions to the general prohibition set forth in Section 222(c)(1). A telecommunications carrier, either directly or indirectly through its agents, may use, disclose, or permit access to individually identifiable CPNI: "(1) to initiate, render, bill, and collect for telecommunications services; (2) to protect the carrier's rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services; or (3) to provide any inbound telemarketing, referral, or administrative services to the customer for the duration of the call, if such call was initiated by the customer and the customer approves of the use of

such information to provide such service."

11. The 1996 Act also establishes separate requirements for the treatment of "Aggregate Customer Information." A telecommunications carrier, other than a LEC, may use, disclose, or permit access to aggregate customer information for purposes other than those specified by Section 222(c)(1). LECs may use aggregate CPNI for purposes other than those specified by Section 222(c)(1) only if, upon reasonable request, they provide such aggregate customer information to other carriers or persons on reasonable and nondiscriminatory terms and conditions.

C. New Section 222(e): Availability of Subscriber List Information

12. New Section 222(e) states that, notwithstanding Sections 222(b), (c), and (d), a telecommunications carrier that provides telephone exchange service must provide "subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format." "Subscriber list information" is defined as "any information identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications * * * that the carrier or an affiliate has published * * * or accepted for publication in any directory format." As with new Sections 222(c) and (d), new Section 222(e) also became effective immediately upon enactment.

D. New Section 275(d): Use of Data Regarding Alarm Monitoring Services

13. With respect to the provision of alarm monitoring services, the 1996 Act states that a LEC "may not record or use in any fashion the occurrence or contents of calls received by providers of alarm monitoring services for the purposes of marketing such services on behalf of such [LEC], or any other entity." The new statute further requires the Commission to establish, within six months after the enactment of the 1996 Act, any regulations necessary to enforce the provisions concerning LEC use of alarm monitoring service call information.

III. Discussion

14. As noted above, shortly after passage of the 1996 Act, representatives of several telecommunications carriers and carrier associations contacted the Bureau with questions regarding the scope and substance of their obligations under the Section 222 CPNI provisions that became effective immediately upon enactment. The Bureau also received a letter, submitted on behalf of associations representing a majority of the LECs, that, *inter alia*, asked the Commission to commence a rulemaking to resolve questions concerning the LECs' responsibilities under the CPNI provisions of the 1996 Act. In addition, NYNEX filed a petition for declaratory ruling seeking confirmation of its interpretation of one aspect of Section 222 and U S West responded by letter to that petition.

15. In view of these concerns expressed by the industry, as well as our own analysis of the 1996 Act, we tentatively conclude that regulations that interpret and specify in more detail a telecommunications carrier's obligations under Section 222 would be in the public interest. We seek comments on this tentative conclusion and on the specific requirements we propose to adopt. Based on our reading of the 1996 Act and its legislative history, we believe that Congress sought to address both privacy and competitive concerns by enacting Section 222. In their comments, we ask parties to explain specifically whether their arguments in support of, or in opposition to, the adoption of particular CPNI requirements are based on privacy concerns, competitive concerns, or both. In this proceeding, we seek to establish promptly the regulatory framework for carrier compliance with the CPNI requirements contained in Section 222. We also clarify the applicability of our existing *Computer III* CPNI rules to AT&T, the BOCs, and GTE, and seek comment on whether these pre-existing rules should continue to apply. In addition, we seek comment on the carrier requirements in Section 222(e) for making subscriber list information available to others upon request for the purpose of publishing directories. Finally, we seek comment on what procedures LECs should develop to comply with their Section 275(d) obligations.

A. Scope of the Commission's Authority

16. Section 2(b) of the 1934 Act preserves state jurisdiction over "charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communications service by wire or radio of any carrier * * *." Under *Louisiana PSC*, the Commission has authority to preempt state regulation of intrastate telecommunications services where such state regulation would thwart or impede the Commission's exercise of its lawful authority over interstate telecommunications services because regulation of the interstate aspects cannot be severed from regulation of the intrastate aspects. We note that, in connection with the CPNI rules we established prior to the enactment of the 1996 Act, we preempted state CPNI rules that required prior authorization inconsistent with our own rules, determining that such state rules would effectively negate federal policies promoting both carrier efficiency and consumer benefits. The U.S. Court of Appeals for the Ninth Circuit upheld this exercise of our preemption authority. We note that our preexisting CPNI rules were established pursuant to the Commission's general regulatory authority under the Communications Act of 1934. The 1996 Act establishes a specific statutory scheme governing access to and protection of CPNI in a way that "balance[s] both competitive and consumer privacy interests with respect to CPNI."

17. We seek comment on the extent to which Section 222 permits states to impose additional CPNI requirements. We further seek comment regarding what aspects of state regulation of CPNI or other customer information would enhance or impede the federal purpose. We are particularly interested in receiving comment on state regulation regarding: (1) Whether written or oral authorization is allowed, and (2) the appropriate interpretation of the term "telecommunications service," and whether such state regulation would enhance or impede valid federal interests with respect to CPNI and other customer information.

18. In addition, we seek comment regarding whether the CPNI provisions of Section 222 and the data safeguards provision of Section 275(d) may by themselves give the Commission jurisdiction over both the interstate and intrastate use and protection of CPNI and other customer information with respect to matters falling within the scope of those sections.

19. In addition, we seek comment regarding the scope of the Commission's authority with respect to the subscriber list information provision set out in Section 222(e), which applies to information gathered in the provision of "telephone exchange service." Because Section 222(e) applies to "telephone exchange service," we further seek comment regarding the respective federal and state roles in ensuring that subscriber list information is made available "under nondiscriminatory and reasonable rates, terms, and conditions."

B. Procedures for All Telecommunications Corriers: Sections 222(c) and (d)

i. CPNI Use Prohibition

20. Absent prior customer authorization, Section 222(c)(1) authorizes a telecommunications carrier to use individually identifiable CPNI obtained from the provision of a particular telecommunications service solely to provide "the telecommunications service from which such information is derived," or services necessary to provide that telecommunications service. Neither Section 222 nor the definition of the terms "telecommunications" and "telecommunications service" set forth in the 1996 Act provide explicit guidance as to the scope of the term "a telecommunications service," as used in Section 222. Moreover, the Joint Explanatory Statement in the Conference Report is silent on this issue. Some might contend that Congress intended to define the term "telecommunications service" broadly to include all services that the Commission has classified as "basic" services. Under this interpretation, providers of telecommunications services could use, without prior customer authorization, CPNI obtained from any such service to market any other telecommunications service. We believe, however, that a close reading of Section 222 does not support this interpretation.

21. Section 222(c)(1), by its terms, bars a telecommunications carrier from using CPNI obtained from the provision of "a telecommunications service" for any purpose other than to provide "the telecommunications service" from which the CPNI is obtained or services necessary to provide "such telecommunications service." The use of the singular in this section suggests that Congress recognized that telecommunications carriers provide a variety of telecommunications services and intended, absent prior customer approval, to prohibit a carrier from using CPNI obtained from the provision of one service for marketing or other purposes in connection with the provision of another service. This statutory interpretation is reinforced by other provisions of Section 222. Section 222(a) refers to "telecommunications services" and Section 222(b) refers to "any telecommunications service." These references support our reading that Congress contemplated that a single carrier provides different telecommunications services.

22. We tentatively conclude that it would be reasonable to interpret Section 222 as distinguishing among telecommunications services based on traditional service distinctions. Under this approach, we tentatively conclude that we should treat the following as distinct "telecommunications services": local (including short-haul toll); interexchange (including interstate, intrastate, and international long distance offerings, as well as short-haul toll); and commercial mobile radio services (CMRS). We tentatively conclude that short-haul toll should be treated as both a local telecommunications service, when provided by a LEC, as well as an interexchange telecommunications service, when provided by an interexchange carrier (IXC), because under traditional service distinctions both LECs and IXCs currently market and provide short-haul toll service as part of an integrated package with local and interexchange services, respectively. Under the AT&T Consent Decree, BOC services have been subject to LATA boundaries. *See United States v. Western Elec. Co.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) (subsequent history omitted); 47 U.S.C. 153(25). The Commission has not traditionally applied the interLATA and intraLATA distinction. For purposes of this NPRM, with respect to the BOCs, the term "short-haul toll" should be interpreted as "intraLATA toll," and the term "interexchange" should be interpreted as "interLATA." We seek comment on these proposed distinctions and on other possible service distinctions. We further seek comment on how changes in telecommunications technology and regulation that allow carriers to provide more than one traditionally distinct service (e.g., LECs and IXCs may begin providing each others' services) may impact how carriers would implement the requirements of Section 222 to restrict use of CPNI from one telecommunications service to another.

23. CPNI obtained from providing any one of the discrete services listed above may not be used for any purpose, including marketing, involving any of the other services, unless the telecommunications carrier obtained prior customer authorization or one of the exceptions established by Sections 222(c) and (d) applies. We recognize that in the rapidly evolving market for telecommunications services, the distinctions we propose here may become outdated. Thus, we invite parties to suggest other distinctions among telecommunications services that in their view are mandated, envisioned, or logically consistent with the statute for CPNI protection. We request that parties who do so comment specifically on the costs and benefits of the schemes they propose, as well as the impact that such schemes will have on both competitive and consumer privacy interests. We also seek comment on whether and when technological and market developments may require us to revisit the issue of telecommunications service distinctions.

24. Our interpretation also enhances customer privacy by giving customers greater control over CPNI use; CPNI derived from one telecommunications service cannot be used to provide other services or products without prior customer knowledge. We believe that our interpretation of the term "telecommunications service" also addresses competitive considerations. Our reading of the 1996 Act prohibits carriers that are established providers of certain telecommunications services from gaining an advantage by using CPNI to facilitate their entry into new telecommunications services without obtaining prior customer authorization.

25. We seek comment on our tentative conclusions concerning the scope of the term "telecommunications service," especially regarding the costs and benefits associated with our interpretation. We also seek comment on the effect on customer privacy of precluding the use of CPNI among telecommunications service categories. We further seek comment regarding how our proposed interpretation of the term "telecommunications service" would affect competition both in the provision of telecommunications services, and the provision of other adjacent services and products, such as information services and CPE.

26. The CPNI prohibition restricts unauthorized use of CPNI for any purpose other than those specified in Section 222(c)(1) and the exceptions listed in Section 222(d). For example, CPNI obtained from the provision of any telecommunications service may not be used to market information services or CPE without prior customer authorization. Section 222(d)(1) enables carriers to use, disclose, or permit access to CPNI "to initiate, render, bill, and collect for telecommunications services." We seek comment on whether this exception permits carriers, without prior authorization, to use a customer's CPNI derived from the provision of one telecommunications service to perform installation, maintenance, and repair for any telecommunications service to which that customer subscribes. We also seek comment on whether, in the alternative, installation, maintenance,

and repair would qualify as "services necessary to, or used in, the provision of such telecommunications service," under Section 222(c)(1)(B). We also seek comment on what other services might be "necessary to, or used in the provision of, such telecommunications service" under Section 222(c)(1)(B).

ii. Customer Notification of CPNI Rights/Prior Authorization

27. Section 222(c)(1) authorizes a carrier that obtains CPNI by providing a telecommunications service to use that CPNI for purposes unrelated to the service from which it is obtained if the customer approves. The statute, however, does not specify the procedures that a carrier must use to obtain customer approval, nor whether approval must be written or oral. We seek comment on what methods carriers may use to obtain customer authorization for use of CPNI in compliance with the statute.

a. Notification Requirements

28. We tentatively conclude that, in order to ensure full compliance with the prior authorization requirement specified by Section 222(c)(1), we should require a telecommunications carrier seeking approval for CPNI use from its customers to notify those customers of their rights to restrict access to their CPNI. We tentatively conclude that customers must know that they can restrict access to the CPNI obtained from their use of a telecommunications service before they waive that right, in order to be considered to have given approval. We seek comment on whether we should allow such notification to be given orally and simultaneously with a carrier's attempt to seek approval for CPNI use, or whether we should instead require an advance written notification. We further seek comment on what is the least burdensome method of notification that would meet the objectives of the 1996 Act. We note that under the Computer III CPNI rules, we require AT&T, the BOCs, and GTE to provide to multiline business customers written notification of their CPNI rights, along with election forms to restrict or authorize CPNI access. We seek comment on whether we need to specify the information that should be included in the customer notification, and, if so, the disclosure requirements that we should adopt.

b. Authorization Requirements

29. Carriers may choose to obtain written authorization from customers to use their CPNI for purposes unrelated to the provision of the service from which it was obtained. This authorization could take the form of a letter or a billing insert sent to the customer that contains a summary of the customer's CPNI rights and is accompanied by a postcard which the customer could sign and return to the carrier to authorize CPNI use. Written authorization provides greater protection to both customers and the carrier than oral authorization, in that the former advises customers in writing of their CPNI rights and provides the carrier with evidence that it has obtained customer approval. From a consumer protection standpoint, written notification, which is more specific and verifiable than oral notification, may be preferable.

30. We seek comment on whether Section 222(c)(1) allows carriers to choose to use outbound telemarketing programs to obtain oral "approval" from customers for use of their CPNI. We note that Section 222(c)(1) mandates that carriers obtain "the approval of the customer" in order to obtain access to the customer's CPNI, without indicating whether the approval has to be written or oral. There are two related provisions of the statute which give rise to conflicting inferences on this point. On the one hand, Section 222(c)(2) requires carriers to disclose CPNI to any person designated by a customer "upon affirmative written request by the customer," which suggests that Section 222(c)(1) allows oral approval, because unlike 222(c)(2) it does not specifically require written authorization.

31. On the other hand, Section 222(d)(3) regarding inbound telemarketing provides that a telecommunications carrier may use, disclose, or permit access to CPNI obtained from its customers "to provide any inbound telemarketing, referral, or administrative services for the duration of the call, if such call was initiated by the customer and the customer approves of the use of such information to provide such service." Section 222(d)(3) could be interpreted as suggesting that oral consent cannot be given for a broader purpose or a longer duration. In the alternative, Section 222(d)(3) could also be interpreted as permitting a carrier to use CPNI to provide a customer with information for the duration of an inbound call, even if the customer has otherwise restricted the carrier's use of its CPNI. We seek comment on how Section 222(c)(1) should be interpreted in light of Section 222(c)(2) and Section 222(d)(3). We also seek comment on the privacy and competitive implications of requiring carriers to obtain prior written approval under Section 222(c)(1) in order to obtain access to customer CPNI, as well as on the costs and benefits of requiring written approval.

32. To the extent that oral approval is allowed under 222(c)(1), we propose to require carriers choosing to obtain oral approval to bear the burden of proof associated with such a scheme in the event of a dispute. Specifically, such carriers would be required to demonstrate through credible evidence that they had obtained the required customer authorization prior to granting access to the CPNI for purposes that otherwise would be unlawful.

33. Additionally, we seek comment on whether we should establish requirements regarding: (1) How long a customer's CPNI use authorization should remain valid; (2) how often carriers may contact a customer in order to attempt to obtain CPNI use authorization, whether or not the customer has requested restriction of its CPNI; and (3) whether and to what extent customers may authorize partial access to their CPNI (for example, limited to certain uses or time periods).

iii. CPNI Disclosure to Third Parties

34. Section 222(c)(2) requires carriers, when presented with a customer's affirmative written request, to provide that customer's CPNI to any person designated in the written authorization. Section 222(c)(2) imposes a disclosure requirement on carriers to ensure that any party with customer authorization, including unaffiliated third party competitors, can obtain access to individually identifiable CPNI. As such, carriers must provide a customer's CPNI to any party that has obtained an affirmative written authorization from the customer. We seek comment with respect to what additional mechanisms or procedures, if any, we ought to require telecommunications carriers to implement to guard against unauthorized access to CPNI by third parties.

iv. Safeguards for Customer-Restricted CPNI Data

35. We tentatively conclude that all telecommunications carriers must establish effective safeguards to protect against unauthorized access to CPNI by their employees or agents, or by unaffiliated third parties. We noted above that we have required AT&T, the BOCs, and GTE to implement computerized safeguards and manual file indicators to prevent unauthorized access to CPNI. We seek comment on whether these requirements should continue to apply to AT&T, the BOCs, and GTE.

36. We tentatively conclude that we should not now specify safeguard requirements for all other telecommunications carriers, but we note that these carriers may wish to adopt some or all of the types of safeguards against unauthorized access to CPNI that we applied to AT&T, the BOCs, and GTE in *Computer III*, in satisfaction of their obligation to develop effective means to protect restricted CPNI. We seek comment, however, regarding whether we should impose on all telecommunications carriers any of the requirements imposed on AT&T, the BOCs, and GTE, or any other safeguard designed to protect against unauthorized access to restricted CPNI, and will adopt such requirements if the record indicates a need for them.

v. Aggregate CPNI

37. The aggregate CPNI provisions of Section 222(c)(3) permit telecommunications carriers, other than LECs, to use aggregate CPNI for purposes other than providing telecommunications services. LECs, however, may use aggregate CPNI for purposes other than providing telecommunications service only if the aggregate CPNI is made available to others on a reasonable and nondiscriminatory basis. In *Computer III*, we required the subject carriers to notify third parties about the availability of aggregate CPNI used by these carriers by publishing notices in trade publications or newsletters. We seek comment on whether, in addition to the statutory requirements of Section 222, we should also require all LECs to provide similar notification to others regarding the availability of aggregate CPNI, on a reasonable and nondiscriminatory basis prior to using such aggregate CPNI themselves.

C. Applicability of Computer III CPNI Requirements

38. We conclude that the 1996 Act does not prohibit the Commission from enforcing CPNI requirements that are not inconsistent with the new statutory provisions, since nothing in the 1996 Act affects these requirements. We recognize that in certain respects our existing *Computer III* requirements place greater restrictions than the 1996 Act on CPNI access by AT&T, the BOCs, and GTE for the provision of enhanced services and CPE. Under our reading of the new statute, these additional restrictions will continue to apply to those carriers, pending the outcome of this rulemaking.

39. AT&T, the BOCs, and GTE must continue to provide annual written notification to customers about CPNI rights before using this CPNI to market enhanced services. The current retention of this requirement does not supersede the new statutory requirement that all telecommunications carriers, including AT&T, the BOCs, and GTE, obtain prior authorization before using CPNI to engage in any activity other than providing the service from which the CPNI was derived. The BOCs and GTE must also continue to obtain prior written authorization from customers with more than twenty lines before using their CPNI to market enhanced services. With respect to use of CPNI for marketing CPE, AT&T must continue to notify customers in a one-time billing insert before using the CPNI of these customers to market CPE. Similarly, the BOCs must continue to notify multiline customers annually about their CPNI rights before using this CPNI to market CPE. In addition, AT&T, the BOCs, and GTE must maintain any previously approved mechanisms (i.e, computer password systems, filing mechanisms) to restrict unauthorized internal access to CPNI.

40. We do not propose to extend our pre-existing *Computer III* CPNI requirements, as modified by the 1996 Act, to other telecommunications carriers, because we tentatively conclude that these additional CPNI restrictions are not necessary to secure the public interest objectives of the 1996 Act. The Commission's CPNI rules were established in the context of the *Computer III* proceeding, in which the Commission adopted various nonstructural safeguards to protect independent ESPs and CPE suppliers from discrimination by AT&T, the BOCs, and GTE. The Commission specifically sought to prohibit these carriers from using CPNI obtained from their provision of basic regulated services to gain an anticompetitive advantage in the unregulated CPE and enhanced services markets. In that proceeding, we determined that, because AT&T, the BOCs, and GTE could gain anticompetitive advantages in this manner, their use of CPNI must be restricted.

41. We, however, recognize that some of the anticompetitive concerns we sought to address through the establishment of our CPNI rules may now be addressed by the new Section 222. In such light, we seek comment on which, if any, of our *Computer III* CPNI rules may no longer be necessary as a result of new Section 222. For example, we seek comment on the necessity for continuing to require AT&T, the BOCs, and GTE to provide written notification to multiline customers of their CPNI rights. Given that the *Computer III* CPNI rules are part of a scheme of nonstructural safeguards, parties should address how changing the CPNI rules might influence the effect of other *Computer III* requirements. Parties should comment on whether there are privacy or competitive reasons for continuing to apply these specific pre-existing requirements to these carriers, as well as on the costs and benefits of maintaining these requirements. We also invite parties to comment on what, if any, modifications to our current CPNI rules should be adopted to further the pro-competitive, deregulatory goals of the 1996 Act, in addition to those discussed in this NPRM.

42. We further seek comment on whether AT&T, the BOCs, and GTE continue to possess a competitive advantage with respect to access to and use of customer CPNI, as well as whether any other entities, such as independent LECs, now possess similar advantages. In particular, it appears that our recent decisions classifying AT&T as a non-dominant carrier, and the pending AT&T reorganization separating its equipment business from its telecommunications service business, may justify removal of *Computer III* CPNI requirements for AT&T. We tentatively conclude that removal of these requirements is now justified. We further seek comment regarding whether privacy, competitive concerns, or any other considerations, justify special regulatory treatment of AT&T, the BOCs, and GTE. Further, to the extent that commenters believe differential regulatory treatment is justified for certain carriers, we seek comment on whether such differential treatment should be permanent or limited in duration, and, if limited, what sunset provisions should apply.

D. Section 222(e): Availability of Subscriber List Information

43. Section 222(e) states that a telecommunications carrier that provides "telephone exchange service" shall provide subscriber list information "gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format." We interpret Section 222(e) to require not only LECs, but also any telecommunications carrier, including an IXC or cable operator, for example, to meet the requirements of this section to the extent such carrier provides telephone exchange service. We seek comment on this interpretation.

44. Subscriber list information is defined in Section 222(f)(3) as any information "identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service)" or any combination of such information, that the "carrier or an affiliate has published * * * or accepted for publication in any directory format." We seek comment on what regulations, if any, are necessary to clarify the type and/or categories of information that must be made available under this section. In particular, we seek comment on the meaning of "primary advertising classifications," since the statute does not specify what is meant by this term. We also note that new Section 274(h)(2)(i) of the 1996 Act excepts from the definition of "electronic publishing" the provision of "directory assistance that provides names, addresses, and telephone numbers and does not include advertising." We tentatively conclude that the term "primary advertising classifications" in Section 222(e) is used differently than the term "advertising" in Section 274(h)(2)(i), and that therefore subscriber list information does not fall within the definition of electronic publishing. We seek comment on this tentative conclusion.

45. We also seek comment on what regulations or procedures may be necessary to implement the requirement that subscriber list information be provided "on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions." Commenting parties should state specifically what regulations or procedures, if any, should be required and how Section 222(e) makes them necessary. In particular, commenters should comment on the format in which the information should be provided and how it should be unbundled.

46. We also seek comment on what safeguards may be necessary to ensure that a person seeking subscriber list information is doing so for the specified purpose of "publishing directories in any format." While the Joint Explanatory Statement states that the purpose of Section 222(e) is to guarantee "independent publishers access to subscriber list information" upon request, we seek comment on how and to what extent a telecommunications carrier subject to this section may seek authorization from a person or entity requesting such information. Parties should comment on whether such requests must be in writing or whether they can be made orally.

E. Section 275(d): Alarm Monitoring Procedures for LECs

47. Section 275(d) prohibits a LEC from recording or using in any fashion "the occurrence or content of calls received by providers of alarm monitoring services for the purposes of marketing such services on behalf of such [LEC], or any other entity." Thus, Section 275(d) restricts LECs from using the information described in that section for marketing another alarm monitoring service, either their own service or a service offered by another affiliated or unaffiliated entity. We tentatively conclude that a customer's authorization under Section 222(c)(1) will not extend to any records concerning the occurrence of calls received by alarm monitoring service providers. Although call content information is not considered CPNI, we note that, pursuant to Section 275(d), LECs may not use information concerning the "content of calls" received by providers of alarm monitoring services to market such services. We seek comment on what procedures LECs should develop to comply with Section 275(d).

IV. Conclusion

48. In this notice, we seek comment on rules to ensure compliance by telecommunications carriers with the provisions relating to carrier use of and access to CPNI and other customer information established by the Telecommunications Act of 1996 in new Sections 222(c)–(f) and 275(d), and to secure the privacy and competitive protections mandated by Congress. We invite comment on our interpretation of the requirements imposed by Section 222(c)–(f) and Section 275(d), as well as our tentative conclusions regarding regulations necessary to ensure carrier compliance with these requirements and to more fully effectuate the statutory policies. We also request parties to specify whether their comments on our proposed regulatory requirements address privacy or competitive concerns, and to comment on the appropriate duration of such regulatory requirements. Any party disagreeing with our tentative conclusions should explain with specificity in terms of costs and benefits its position and suggestions for alternative regulatory policies.

V. Procedural Issues

A. Ex Parte Presentations

49. This is a non-restricted notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, 1.1206.

B. Initial Regulatory Flexibility Analysis

50. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. §§ 601–612, the Commission's Initial Regulatory Flexibility Analysis with respect to the NPRM is as follows:

51. *Reason for Action:* The Commission is issuing this NPRM seeking comment on proposed regulations to ensure telecommunications carriers' compliance with requirements for the use and protection of customer proprietary network information (CPNI) and other customer information set forth in the Telecommunications Act of 1996, Pub. L. 104–104, 110 Stat. 56 (1996).

52. *Objectives:* The objective of the NPRM is to provide an opportunity for public comment and to provide a record for a Commission decision on the issues stated above. The Commission is committed to reducing the regulatory burdens on small communications services companies whenever possible, consistent with our other public interest responsibilities.

53. *Legal basis:* The NPRM is adopted pursuant to Sections 1, 4, 222, 275, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 222, 275, and 303(r).

54. *Description, potential impact, and number of small entities affected:* Any rule changes that might occur as a result of this proceeding could impact small business entities, as defined in Section 601(3) of the Regulatory Flexibility Act. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth findings in the Final Regulatory Flexibility Analysis. The Secretary shall send a copy of this NPRM to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

55. *Reporting, recordkeeping and other compliance requirement:* None.

56. *Federal rules that overlap, duplicate or conflict with the Commission's proposal:* None.

57. *Any significant alternatives minimizing impact on small entities and consistent with stated objectives:* The NPRM solicits comments on a variety of alternatives.

58. *Comments are solicited:* Written comments are requested on this Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines set for comments on the other issues in this NPRM but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of the Notice to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

C. Initial Paperwork Reduction Act of 1995 Analysis

59. This NPRM contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

D. Comment Filing Procedures

60. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before June 11, 1996 and reply comments on or before June 26, 1996. To file formally in this proceeding, you must file an original and six (6) copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven (11) copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, NW., Room 544, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, NW, Room 239, Washington, DC. 20554.

61. In order to facilitate review of comments and reply comments, both by parties and by Commission staff, we require that comments be no longer than twenty-five (25) pages and reply comments be no longer than fifteen (15) pages. Copies of specific proposed rules that conform to the C.F.R. format, relevant state orders, sample CPNI notification and authorization forms or letters, and empirical economic studies will not be counted against these page limits. Comments and reply comments must also comply with Section 1.49 and all other applicable sections of the Commission's Rules. See 47 C.F.R. § 1.49. However, we require here that a summary be included with all comments and reply comments, regardless of length, although a summary that does not exceed three pages will not count toward the page limit for comments or reply comments. This summary may be paginated separately from the rest of the pleading (e.g., as "i, ii").

62. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Janice Myles of the Common Carrier Bureau, 1919 M Street, NW., Room 544, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

63. Written comments by the public on the proposed and/or modified information collections are due June 11, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the **Federal Register**. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW., Washington, DC 20503 or via the Internet to fain___t@al.eop.gov.

VI. Ordering Clauses

64. Accordingly, *it is ordered* that pursuant to Sections 1, 4, 222, 275, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 222, 275, and 303(r), a *Notice of Proposed Rulemaking* is hereby *Adopted*.

65. *It is further ordered* that, the Secretary shall send a copy of this *Notice of Proposed Rulemaking*, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. (1981).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–13329 Filed 5–24–96; 8:45 am]

BILLING CODE 6712–01–P

---

47 CFR Part 73

[MM Docket No. 96–62; FCC 96–124]

Broadcast Blanketing Interference

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes consolidation of FCC regulations to combine the blanketing interference rules into a new single rule section for AM, FM, and TV broadcast services. This rulemaking proceeding also proposes to amend signal contour determinations in establishing AM radio and TV broadcast blanketing areas, provide detailed clarification of broadcast licensee's responsibility in resolving blanketing interference, and provide a list of protected and non-protected devices.

DATES: Comments must be filed on or before June 25, 1996 and reply comments filed on or before July 25, 1996. Written comments by the public

on the proposed and/or modified information collections are due on or before June 29, 1996. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before July 29, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collection contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10234 NEOB, 725—17th Street, NW., Washington, DC 20503 or via the Internet to fain ____ t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Bernard Gorden (202) 418–2190, or Robert Greenberg (202) 418–2720, Mass Media Bureau. For additional information concerning the information collection contained in the NPRM, contact Dorothy Conway at (202) 418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Information Collection Notification

The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. The NRPM has been submitted to the Office of Management and Budget for review under Section 3507(d) of the PRA. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: None.

Title: Proposed Section 73.1630 Blanketing Interference.

Form Number: None.

Type of Review: New.

Respondents: Broadcast Licensees.

Number of Respondents: 21,000 Complainants.

Estimated time per response: The burden ranges from 1 hour to 2 hours.

Annual Burden: 41,000 hours.

Total Annual Cost per Respondent: 0.

Needs and Uses: This rulemaking proceeding proposes to provide detailed clarification of the AM, FM, and TV licensee's responsibilities in resolving/eliminating blanketing interference caused by their individual stations. Under the current rules (Section 73.88 (AM), Section 73.318 (FM), Section 73.685(d) (TV)), the licensee is financially responsible for resolving complaints of interference within one year of program test authority when certain conditions are met. After the first year, a licensee is only required to provide technical assistance in determining the cause of the interference. In this NPRM, we are proposing to consolidate all blanketing interference rules under a new Section 73.1630, Blanketing Interference. This new rule is designed to facilitate the resolution of broadcast interference problems and sets forth all responsibilities of the licensee/permittee of a broadcast station. For one year after the broadcast station commences program tests, the licensee is financially responsible for resolving blanketing interference complaints. After the first year, the licensee is obligated to provide technical assistance to resolve complaints of blanketing interference. The information provided to complainants will be used to facilitate the resolution of complaints of blanketing interference.

This is a synopsis of the Commission's *Notice of Proposed Rule Making* in MM Docket No. 96–62 adopted March 21, 1996, and released on April 26, 1996. The complete text of this *Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M St., NW., Washington, DC, and may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., NW., Suite 140, Washington, DC 20037.

Synopsis of Notice of Proposed Rule Making

1. This proceeding is initiated, on the Commission's own motion, in order to clarify to what extent broadcast licensees are responsible for eliminating blanketing interference caused by their individual stations. In addition, this action is taken to refine and specify methods for determining the geographical blanketing area. In many cases, the licensee's responsibility in eliminating blanketing interference is misunderstood by listeners and broadcasters alike. Thus, the objectives of this action is intended to remove confusion and facilitate the resolution of broadcast blanketing interference problems.

2. Receivers are designed to operate in an environment consisting of desired and undesired signals. As long as the levels of the signals remain within the design specifications of the receiver, it will operate in a predictable manner. If any of the signals in the environment exceed the design specifications of the receiver, the receiver will begin to operate with unpredictable results. In addition to broadcast receivers, as mentioned above, a wide range of electronic devices can suffer blanketing interference from the signals of nearby radio and TV stations. For example, we are aware of problems with telephone equipment (including answering machines, hard-wired, cordless, and cellular telephones), hi-fi audio amplifiers, public address systems, electronic music keyboard instruments, professional studio and home recording components, and electronic medical equipment. Currently, however, protection of these devices are not the responsibility of the broadcast licensee.

Blanketing Interference Contours

3. Section 73.88 currently requires licensees of each AM broadcast station to satisfy all reasonable complaints of blanketing interference within the 1 V/m contour. Unlike the rules for FM, which define the method of calculating the blanketing contour, no such method is specified for AM. Thus, the licensee may find it convenient to determine the 1 V/m contour by field measurements. As an alternative, determining the AM blanketing contour mathematically for a single tower antenna may result in a close approximation of the measured contour. Determination of the AM blanketing contour from multi-tower directional antenna arrays, however, may need to be calculated with near-field considerations.

4. In continuing to use the current AM blanketing contour, we propose that for directional antenna array systems, the determination of the 1 V/m contour along each radial direction should be by actual mathematical vector summation of the field radiated by each antenna. Since this approach may require near-field considerations, we believe that a more realistic determination of the 1 V/m contour AM blanketing area would be reflected with this method. Therefore, we propose to amend the rules for the method of calculating the blanketing interference contour for AM broadcast stations as presented under proposed Section 73.1630(a) below.

5. Because many of the transmitting antenna signal characteristics and structural locations are the same for both FM and television broadcast stations, we are not aware of any apparent reason, at this time, not to utilize for television stations the same blanketing area contour currently used for FM stations. Therefore, for regulatory consistency, we propose to amend the rules by specifying that the TV blanketing area be defined by the 115 dBu contour, as presented under proposed Section 73.1630(b) below.

6. When the 115 dBu contour was originally proposed for FM blanketing in BC Docket No. 82–186, most of the commenters agreed with its use. Now that the industry has had much experience with this contour level, we seek information as to whether it continues to be an appropriate contour for defining FM blanketing areas, and should be extended for defining television blanketing areas. In addition, because the 1 V/m contour used for describing the AM blanketing area was established at an even earlier period than the FM blanketing contour, we seek information as to whether the 1 V/m contour continues to be an appropriate contour level in today's radiofrequency environment.

Licensee's Responsibility

7. Under the current rules, which we propose to continue, the licensee is financially responsible for resolving complaints when all three of the following conditions are met: (1) The complainant's affected device is located inside the station's blanketing contour; (2) the complainant filed notice to the station within the first year of program test authority; and (3) the interference is not to electrical devices excluded from protection by Section 73.318(b). When these conditions are met, the licensee must provide effective technical assistance in determining the cause of the problem and advising on corrective measures. Resolution of such blanketing interference complaints may involve the installation of electrical or electronic filters and traps, or the replacement of the complainants' affected equipment, and these efforts are at the licensee's expense and without cost to the complainant. If an otherwise valid complaint is lodged after the one year period, the licensee is only required to provide effective technical assistance in determining the cause of the problem and advice on corrective measures; the licensee is not financially responsible for any necessary corrective equipment or measures. If a complainant is located outside of the blanketing contour area and files after the one year period or the complaint involves devices and equipment excluded from protection, the licensee has no obligation under our rules to resolve the interference problem. However, as noted earlier, many licensees take voluntary steps to assist in alleviating the interference to promote goodwill within the station's community.

8. To give broadcast licensees further detailed guidance in resolving blanketing interference problems, we propose to publish in the rules an outlined summary of the station's responsibilities. We propose that the licensee responsibility will vary depending on (1) whether or not the complaint was filed within the first year of operation, (2) whether the complainant is located inside or outside the blanketing contour, and (3) whether the device experiencing interference is covered under the blanketing rule.

9. Additionally, we note that in today's highly transitory society, neighborhoods may have many residents move in after the initial one year period specified in the rules. Further, the proliferation of new communications services and technology may bring into established neighborhoods many new devices subject to blanketing interference. Therefore, we seek comment on whether the Commission's rules should be modified for situations when blanketing interference occurs after the one year period. Further, we seek comment on whether locations of temporary lodging or transient residences, *e.g.*, hotels, university student dormitories, and rental properties should be subject to the blanketing rules beyond the one year limit. In other words, we seek comment on whether a station's obligation ends with that initial group of complainants that files within one year, or whether the station's obligation should extend to subsequent residents. Further, we seek comment on whether these types of cases should be considered on a case-by-case basis.

Effective Technical Assistance

10. Section 73.1630(d) of the proposed rules states, "[f]ollowing the one year period of full financial obligation to satisfy blanketing complaints, licensees shall provide technical information or assistance to complainants on remedies for blanketing interference." The rule requires that a licensee provide information and assistance sufficiently specific to enable the complainant to eliminate all blanketing interference and not simply that the station attempt to correct the problems. Effective technical assistance entails providing specific details about proper corrective measures to resolve the blanketing interference. For example, licensees may provide complainants with diagrams and descriptions which explain how and where to use radiofrequency chokes, ferrite cores, filters, and/or shielded cable. In addition, effective technical assistance also includes the recommendation on replacement equipment that would work better in the high radiofrequency fields. We note that the licensee may authorize a consultant or service company to provide this information or assistance. However, effective technical assistance is not rendered merely by referring the complainant to the equipment manufacturer.

High Gain Antennas

11. Section 73.318(b) specifies the conditions under which licensees and permittees must satisfy complaints of blanketing interference. It states, in pertinent part, that "[t]hese requirements specifically do not include interference complaints resulting from malfunctioning or mistuned receivers, improperly installed antenna systems, or the use of high gain antennas or antenna booster amplifiers." It has been our experience that high gain antennas have not been a factor in blanketing interference problems. Therefore, we propose to delete reference to high gain antennas from our blanketing rules and seek comment accordingly.

Telephone Interference

12. A great number of blanketing interference complaints are submitted because of interference to telephones. The Commission's blanketing rules, however, do not currently require broadcasters to resolve telephone interference. Hard-wired telephones are considered non-RF devices under the current blanketing interference rules and thus, are excluded from protection per Section 73.318(b). Cordless telephones are covered by Part 15 of the Commission's rules and thus, Section 15.5(b) states, in pertinent part, that cordless telephones may not cause harmful interference and that interference to cordless telephones caused by the operation of an authorized radio station must be accepted. Portable and mobile cellular telephones are RF devices licensed under Part 22, Subpart K, and are considered as mobile receivers, and thus, not protected by the current blanketing interference rules. Because cell sites are fixed locations, however,

they would be protected from blanketing interference by the Commission's rules.

13. We are concerned about interference to all telephones and wireless devices, including interference that may develop in future PCS and specialized mobile radio (SMR) systems. Therefore, we seek specific comment on the following questions:

a. Should the Commission require broadcasters to resolve interference to telephones, either hard-wired or wireless?

b. If so, to what extent should broadcast licensees be responsible for resolving the interference? The Commission found, while conducting the telephone interference survey, that filters are not always reliable in eliminating residential telephone interference. Thus, if such filtering devices are ineffective and licensees are not required to furnish them, to what extent should licensees provide other technical information and assistance?

c. Should the Commission rely on industry voluntary efforts to implement interference free design standards for telephones, or should the Commission initiate a separate rulemaking proceeding to consider imposing higher interference immunity standards for residential telephones?

d. If voluntary standards for interference immunity are developed, should there be any blanketing requirements for telephones that do not meet the voluntary standards for interference free telephones?

Licensee's Response Time

14. There is currently no criteria for speed of service for correcting blanketing interference caused by new or modified station operation. Based on case history, many stations have been slow to respond, *i.e.*, months before a complaint was acted upon, and often even further delay before the interference was finally corrected. There is also no specific requirement to maintain records of name, location, type of complaint, etc. The public inspection file requirements, however, do specify that license application engineering related matters need not be retained longer than three years in the local public inspection file. Accordingly, in that blanketing interference is of engineering related circumstances, the Commission expects broadcast licensees to maintain all letters of such complaints that are timely filed with the station per the proposed Section 73.1630. However, in order to establish a station's definitive efforts to solve blanketing interference, should we require stations to maintain a specific log for some period of time, such as two years after new construction or transmitter modification which would include name, location, phone number, date complaint filed, date complaint resolved, type of complaint, list of affected equipment (manufacturer's name and model number), and what action it took to resolve the complaint? And finally, should we require licensees to respond to complaints within a specified period such as 10 working days and to resolve the complaints within an additional period of time such as 30 calendar days?

Conclusion

15. In light of the proliferation of electronic equipment available to consumers, the increase in the number of broadcast stations, and our concern about the effects of blanketing interference on future wireless communication systems, we believe that it is time to revisit the subject of broadcast blanketing interference. In addition to proposing amendments to refine the Commission's rules and regulations in this area for broadcast licensees, this proceeding may stimulate various related industry manufacturers to begin to meet the challenge of producing components that are less susceptible to blanketing interference. We are proposing specific rule amendments in the broadcast services that primarily clarify our current requirements. Additionally, we seek specific comment on the questions raised, especially those regarding telephone interference, and the specific rule amendments proposed below.

Administrative Matters

Ex Parte Rules—Non-Restricted Proceeding

16. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR §§ 1.1202, 1.1203 and 1.1206(a).

Regulatory Flexibility Act

17. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the NPRM, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this *Notice of Proposed Rule Making*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* *(1981)).*

Reason for Action. This action is taken in order to clarify to what extent broadcast licensees are responsible for eliminating blanketing interference cause by their individual stations. In addition, this action is taken to refine and specify methods for determining the geographical blanketing area.

Objectives. In many cases, the licensee's responsibility in eliminating blanketing interference is misunderstood by listeners and broadcaster alike. Thus, the objectives of this action is intended to remove confusion and facilitate the resolution of broadcast blanketing interference problems.

Legal Basis. Authority for the actions proposed in this Notice may be found in Sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303.

Reporting, Recordkeeping, and Other Compliance Requirements. None.

Federal Rules which Overlap, Duplicate, or Conflict with the Proposed Rule. None.

Description, Potential Impact and Number of Small Entities Involved. None.

Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives. There are none apparent.

Initial Paperwork Reduction Act of 1995 Analysis

18. This NPRM contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due June 25, 1996, OMB comments are due July 29, 1996. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Comment Information

19. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415 and 1.419, interested parties may file comments on or before June 25, 1996 and reply comments on or before July 25, 1996. To file formally in this proceeding, you must file an original plus five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 73 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334.

§ 73.88 [Removed]

2. Sections 73.88 is removed.

§ 73.318 [Removed]

3. Section 73.318 is removed.

4. Section 73.685 is amended by revising paragraph (d) to read as follows:

§ 73.685 Transmitter location and antenna system.

* * * * *

(d) (See Section 73.1630 concerning blanketing interference)

* * * * *

5. A new Section 73.1630 is added to Subpart H to read as follows:

§ 73.1630 Blanketing interference.

(a) Calculation of the Blanketing Interference Contour for AM Stations. Areas adjacent to the transmitting antenna that receive a signal with a strength of 1 V/m or greater will be assumed to be blanketed. The determination of the location of the 1 V/m contour along a radial shall be by actual field strength measurement or by iterative vector summation of the field radiated by each antenna until the 1 V/m contour is located. The distance from each tower to the point at which the fields are being summed, shall be calculated using the Cosine Law with the distance from the tower to the array reference point being one side, the distance to the point of summation from the reference point being the second side and the angle between the two sides being the included angle. The field radiated by each tower is attenuated using only inverse distance attenuation and the phase of the field component from each tower shall be taken as the phase of the current at the tower's current loop minus the space phase from the tower to the point of summation.

Note to paragraph (a): If d_n is the distance from the reference point to the point of summation, s_n the distance from the reference point to the tower n, and Φ_n the included angle, the distance D_n, from tower n, is given by $D_n = (d_n^2 + s_n^2 - 2d_n s_n \cos(\Phi))^{1/2}$. The Field $\mathfrak{V}$, a vector quantity, is given by $\mathfrak{V} = \Sigma\, \mathfrak{V}_n/D_n$ where $\mathfrak{V}_n$ is the field radiated by tower n and D_n is the distance from tower n.

(b) Calculation of the Blanketing Interference Contour for FM and TV Stations. Areas adjacent to the transmitting antenna that receive a signal with a strength of 115 dBu (562 mV/m) or greater will be assumed to be blanketed. In determining the blanketed area, the 115 dBu contour is determined by calculating the inverse distance field using the effective radiated power of the maximum radiated lobe of the antenna without considering its vertical radiation pattern or height. For directional antennas, the effective radiated power in the pertinent bearing shall be used. The distance to the 115 dBu contour is determined using the following equation:

D (in kilometers) = $0.394\sqrt{P}$

D (in miles) = $0.245\sqrt{P}$

Where P is the maximum effective radiated power (ERP), measured in kilowatts, of the maximum radiated lobe.

(c) After January 1, 1997, permittees or licensees who either commence program tests, replace their antennas, or request facilities modifications and are issued a new construction permit must satisfy all complaints of blanketing interference which are received by the station during a one year period. The period begins with the commencement of program test, or commencement of programming utilizing the new antenna. Resolution of complaints shall be at no cost to the complainant. These requirements specifically do not include interference complaints resulting from malfunctioning or mistuned receivers, improperly installed antenna systems, or the use of antenna booster amplifiers. Mobile receivers and non-RF devices such as tape recorders or hi-fi amplifiers (phonographs) are also excluded. (See the Appendix to § 73.1630 for covered devices and non-covered devices.)

(d) A permittee collocating with one or more existing stations and beginning program tests on or after January 1, 1997, must assume full financial responsibility for remedying new complaints of blanketing interference for a period of one year. Two or more permittees that concurrently collocate on or after January 1, 1997, shall assume shared responsibility for remedying blanketing complaints within the blanketing area unless an offending station can be readily determined and then that station shall assume full financial responsibility.

(e) Following the one year period of full financial obligation to satisfy blanketing complaints, licensees shall provide technical information or assistance to complainants on remedies for blanketing interference.

(f) A summary of the station's responsibilities are as follows:

(1) Complainant Within the Blanketing Contour.

(i) Complaint Received Within First Year of Operation—Paragraph (c) of this section.

(A) DEVICES COVERED UNDER Section 73.1630—Licensee/permittee is financially responsible for resolving interference complaints.

(B) DEVICES NOT COVERED UNDER Section 73.1630—Licensee/permittee is not financially responsible for resolving interference complaints.

(ii) Complaint Received After First Year of Operation—Paragraph (e) of this section.

(A) DEVICES COVERED UNDER Section 73.1630—Licensee/permittee is not financially responsible for resolving interference complaints. Licensee/permittee is required to provide technical assistance to complainants. This entails the providing of information on the cause of the interference and also providing information on proper corrective measures.

(B) DEVICES NOT COVERED UNDER Section 73.1630—Same as paragraph (f)(1)(i)(B) of this section.

(2) Complainant Outside the Blanketing Contour.

(i) Complaint Received Within First Year of Operation—Paragraph (c) of this section.

(A) DEVICES COVERED UNDER Section 73.1630—Licensee/permittee is not financially responsible for resolving interference complaints. However, the licensee/permittee is expected to cooperate with complainants by providing technical assistance in determining the cause of the problem and providing advice on corrective measures.

(B) DEVICES NOT COVERED UNDER Section 73.1630—Same as paragraph (f)(1)(i)(B) of this section.

(ii) Complaint Received After First Year of Operation—Paragraph (e) of this section.

(A) DEVICES COVERED UNDER Section 73.1630—Same as paragraph (f)(1)(i)(B) of this section.

(B) DEVICES NOT COVERED UNDER Section 73.1630—Same as paragraph (f)(1)(i)(B) of this section.

Appendix to § 73.1630—Covered and Non-Covered Devices

I. Devices Covered Under 47 CFR § 73.1630

Receivers, Tuners, and RF Amplifiers

—Radio (stationary or portable)
—TV (stationary or portable)
—Satellite TV
—VCR
—Cable TV head-end
—Fixed radio sites for cellular systems, private radio services, SMR and PCS systems.

II. Devices Not Covered Under 47 CFR § 73.1630

—Malfunctioning or mistuned receivers
—Improperly installed antenna systems
—Antenna booster amplifiers
—Mobile receivers and non-RF devices such as:
—Mobile receivers (i.e. Walkman or Watchman)
—Car radios
—Musical instrument amplifiers
—All Telephones (including hard-wired, cordless, mobile or pocket cellular or PCS)
—Answering machines
—Digital or Analog tape recorders
—CD players
—Phonographs
—Computers

III. Definitions

Mobile Receivers—Devices that do not remain in one fixed location. These devices are excluded due to their inherently transient nature.

Portable Receivers—Capable of being carried, whether operating by electric cord or batteries.

Note: Not all portable receivers are operated in the mobile mode.

[FR Doc. 96–12946 Filed 5–24–96; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Elimination of Nonstatutory Certifications

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Agenda for public meeting.

SUMMARY: By **Federal Register** notice dated May 14, 1996 (61 FR 24263), the Administrator for Federal Procurement Policy and the Federal Acquisition Regulatory Council announced a public meeting to discuss implementation of Section 4301(b) for the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104). The notice stated that there would be an interactive meeting between the Federal Acquisition Regulatory Council, other Government representatives (from the procurement, legal and Inspector General communities), and industry. The purpose of this notice is to provide a sample of the types of issues/questions that will be posed for discussion and to solicit additional questions/issues from the public. Suggestions thus far include:

1. What are the requirements of Section 4301(b) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106)?

2. What role do certifications required in the FAR play in the Federal procurement process? Is this role one that should be preserved or discontinued? Why?

3. What are the positive aspects of FAR certification requirements? What concerns or issues, if any, do they create for Government? What concerns or issues, if any, do they create for offerors/contractors?

4. What are the negative aspects of FAR certification requirements? What concerns or issues, if any, do they create for offerors/contractors?

5. Do FAR requirements for prime Government contractors to include certification requirements in their subcontract provide benefits for Government or for offerors/contractors? Do such requirements create concerns or issues for Government or offerors/contractors?

6. Identify any existing FAR certification requirements that are especially burdensome to offerors/contractors. Describe the nature of the burden, and indicate whether or not any benefit derived from the requirement outweighs the burden.

7. In implementing the requirements of Section 4301, what criteria should be used to determine whether or not a particular certification, other than those mandated by statute, should be retained or deleted?

8. Do the FAR certification requirements affect whether or not commercial firms, or commercial divisions of firms, are interested in selling supplies or services to the Government? Why or why not?

9. If the FAR certification requirements do provide a benefit to the Federal procurement process that is worth preserving, is there an alternative means by which the same benefit can be provided?

10. Do certifications promote socially useful efforts by companies to assure that they are in compliance with the law? How useful are these certifications in ensuring the integrity of the procurement process?

11. How should we view the suggestion that certifications make it easier to prosecute cases against those the Government suspects of criminal wrongdoing? Do certifications make it "too easy" for the Government to win, or does it allow the Government to overcome the proof of burden that would otherwise be almost impossible to meet?

DATES: The public meeting will be conducted at the address shown below from 1:00 p.m. to 5:30 p.m., Eastern daylight time, on June 3, 1996.

ADDRESSES: The meeting will be held at the White House Conference Center, Truman Room, 726 Jackson Place, NW, Washington, DC 20503. Suggestions for other questions/issues should be sent prior to the meeting to Mike Mutty, Defense Acquisition Regulations Council, PDUSD (A&T) DP(DAR), IMD 3D129, 3062 Defense Pentagon, Washington, DC 20301–3062, or by FAX to (703) 602–0350.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mutty, Defense Acquisition Regulations Council, at (703) 602–0131, FAX (703) 602–0350.

Dated: May 21, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 96–13246 Filed 5–24–96; 8:45 am]
BILLING CODE 6820–EP–M

Notices

Federal Register
Vol. 61, No. 103
Tuesday, May 28, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Oregon Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on June 13, 1996 at the Riverside Inn, 971 SE Sixth Street, Grants Pass, Oregon. The meeting will begin at 9:30 a.m. and continue until 4:45 p.m. Agenda items to be covered include: (1) Local area issues presentation; (2) Northwest Forest Plan implementation monitoring report; (3) Advisory Committee monitoring recommendation status; (4) Information about the winter storm impacts and management actions, and (5) Public comments.

All Province Advisory committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kurt Austermann, Province Advisory Committee Staff, USDI Medford District, Bureau of Land Management, 3040 Biddle Rd., Medford, Oregon 97504, phone 541–770–2200.

Dated: May 20, 1996.

James T. Gladen,

Forest Supervisor, Designated Federal Official.

[FR Doc. 96–13243 Filed 5–24–96; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alaska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Alaska Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 3:00 p.m. on June 27, 1996, at the Anchorage Hilton, 500 West Third Avenue, Anchorage, Alaska 99501. The purpose of the meeting is to review current civil rights developments in the State and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Gilbert Gutierrez, 907–443–5682, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 17, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–13197 Filed 5–24–96; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Nevada Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Nevada Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 3:00 p.m. on June 21, 1996, at the Offices of Walther, Key, Maupin, et al., 3500 Lakeside Court, Suite 200, Reno, Nevada 89509. The purpose of the meeting is to review current civil rights developments in the State and plan future program activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Margo Piscevich, 702–329–0958, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 17, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–13198 Filed 5–24–96; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Washington State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Washington State Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 11:30 a.m. on June 18, 1996, at the Sixth Avenue Inn, 2000 Sixth Avenue, Room 226, Seattle, Washington 98121. The purpose of the meeting is to review current civil rights developments in the State and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson William Wassmuth, 206–233–9136, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 17, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–13199 Filed 5–24–96; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S.-South Africa Business Development Committee: Membership

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of membership opportunity.

SUMMARY: The Department of Commerce is currently seeking nominations of outstanding individuals to serve on the U.S. section of the U.S.-South Africa Business Development Committee (BDC). On June 4, 1994, the late Secretary of Commerce Ronald H. Brown and South African Minister of Trade and Industry Trevor Manuel signed the document establishing the BDC, the purpose of which is to provide a forum for the public and private sectors to engage in constructive exchanges of information on commercial matters, problem solve, and more effectively work together on issues of common interest. The BDC is composed of two sections, a U.S. section and a South African section. The U.S. Section is chaired by Secretary of Commerce Michael Kantor and is comprised of 21 private sector representatives. The inaugural meeting of the BDC took place September 19–20, 1994. Subsequent plenary and working group meetings have been held over the past two years with the government and private sector members from both countries in attendance.

Obligations

Private sector members were originally appointed for a two year term which expires August 31, 1996. Nominations are now being sought for private sector members to serve for a two year period from September 1, 1996 until August 31, 1998. Private sector members will serve at the discretion of the Secretary and shall serve as representatives of the business community and the industry their business represents. They are expected to participate fully in defining the agenda for the Committee and in implementing its work program. It is expected that private sector individuals chosen for BDC membership will attend not less than 75% of the BDC meetings which will be held in the U.S. and South Africa.

Private sector members are fully responsible for travel, living and personal expenses associated with their participation on the BDC and may be responsible for a pro rata share of administrative and communications costs of the BDC.

The BDC will continue to work on issues of common interest to encourage trade and investment, including the following:

—Resolving obstacles to trade and investment between the two countries;
—Expanding commercial activity between both countries and identifying commercial opportunities;
—Developing sectoral or project-oriented approaches to expand business opportunities;
—Implementing trade and business development programs, including trade missions, seminars, exhibits and other events;
—Identifying further steps to facilitate and encourage the development of commercial expansion between the two countries; and
—Taking any other appropriate steps for fostering commercial relations between the U.S. and South Africa.

Criteria

In order to be eligible for membership in the U.S. section, potential candidates must be:

(1) U.S. citizens or permanent residents;

(2) CEOs or other senior management level employees of a U.S. company or organization with demonstrated involvement in trade with and/or investment in South Africa who will participate in not less than 75% of the BDC meetings, which will be held in the United States and South Africa. (The representative nominated should be the individual that will actively participate in the BDC);

(3) Not a registered Foreign Agent; and

(4) Actively doing business in South Africa or actively developing entry plans for doing business in South Africa.

To the extent possible, the Department of Commerce will strive to achieve membership composition that reflects U.S. entrepreneurial diversity. Therefore, in reviewing eligible candidates, the Department of Commerce will consider such selection factors as:

(1) Depth of experience in the South African market;

(2) Export/investment experience;

(3) Representation of industry or service sectors of importance to our commercial relationship with South Africa;

(4) Company size or, if an organization, size and number of member companies;

(5) Location of company or organization; and

(6) Demographics.

To be considered for membership, please provide the following: name and title of individual proposed for consideration; name and address of the company or organization of which the individual is a representative; company's or organization's product or service line; size of the company or, if an organization, the size and number of member companies; export experience/foreign investment experience in major markets; a brief statement (not more than 1 page) of why each candidate should be considered for membership on the Committee; the particular segment of the business community the candidate would represent; and a personal resume.

Deadline

In order to receive full consideration, requests must be received no later than June 15, 1996.

ADDRESSES: Please send your requests for consideration to Mrs. S.K. Miller, Director, Office of Africa by fax on 202/482–5198 or by mail at Room 2037, U.S. Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Mrs. S.K. Miller, Director, Office of Africa, Room 2037, U.S. Department of Commerce, Washington, D.C. 20230; telephone: 202/482–4227.

Authority: Act of February 14, 1903, c. 552, as amended, 15 U.S.C. 1501 *et seq.*, 32 Stat. 825; Reorganization Plan No. 3 of 1979, 19 U.S.C. 2171 Note, 93 Stat. 1381.

Dated: May 21, 1996.

Sally K. Miller,

Director, Office of Africa.

[FR Doc. 96–13205 Filed 5–24–96; 8:45 am]

BILLING CODE 3510–DA–P

Export Trade Certificate of Review; Notice of Application

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued. The applicant requested, and the Secretary of Commerce, with the concurrence of the Attorney General, has granted expedited review of this application.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination of whether a Secretary of Commerce should issue a Certificate to the applicant. An original and five (5) copies of such comments should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 96–00003."

Summary of the Application

Applicant: U.S. Rice Millers' Association, 4301 N. Fairfax Drive, Arlington, VA 22203–1616; Contact: David Graves; Telephone: (703) 351–8161.

Application No.: 96–00003.

Date Deemed Submitted: May 10, 1996.

Members (in addition to applicant): Affiliated Rice Milling, Inc., Alvin, Texas; American Rice, Inc., Houston, Texas; Brinkley Rice Milling Company, Brinkley, Arkansas; Broussard Rice Mill, Inc., Mermentau, Louisiana; Busch Agricultural Resources, Inc., St. Louis, Missouri; Cargill Rice Milling, Greenville, Mississippi; Louis Dreyfus Corporation, Wilton, Connecticut; El Campo Rice Milling Company, Louise, Texas; Farmers Rice Milling Company, Inc., Lake Charles, Louisiana; Farmers' Rice Cooperative, Sacramento, California; Gulf Rice Milling, Inc., Houston, Texas; Liberty Rice Mill, Inc., Kaplan, Louisiana; Producers Rice Mill, Inc., Stuttgart, Arkansas; The Rice Company, Roseville, California; Riceland Foods, Inc., Stuttgart, Arkansas; RiceTec, Inc., Alvin, Texas; Riviana Foods Inc., Houston, Texas; Supreme Rice Mill, Inc., Crowley, Louisiana; Uncle Ben's, Inc., Houston, Texas.

The Rice Millers' Association seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

Products

Semi-milled and wholly milled rice, whether or not polished or glazed (Harmonized Tariff Schedule 1006.30) and husked (brown) rice (Harmonized Tariff Schedule 1006.20).

Export Markets

For purposes of administering the European Union's tariff rate quota: The countries of the European Union. For all other purposes: All parts of the world except the United States (the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. Rice Millers' Association (RMA) will administer a system for allocating the U.S. share of the European Union (EU) tariff rate quotas ("TRQs") for milled white rice and brown rice (roughly 38,000 tons of milled rice and 8,000 tons of brown rice) agreed to as compensation to the United States for the EU enlargement, to include Austria, Finland and Sweden, as follows:

A. RMA shall establish a special tariff rate quota (hereinafter referred to as "Quota A") for the balance of calendar year 1996 and for calendar year 1997 for those RMA Members which can document exports of milled rice or brown rice to Austria, Finland and Sweden during the period 1990–1993. For the balance of 1996, RMA shall award a Member a Quota A milled rice or brown rice quota amount based upon a percent of the Members average documented historical quantity exported to the three countries in the period 1990–1993, as determined by RMA. For 1997, RMA shall award a Member a milled rice and brown rice Quota A amount equal to 100 percent of the annual average quantity of U.S. milled rice and brown rice that the Member documents that it exported to Austria, Finland and Sweden during the period 1990–1993.

(i) RMA Members receiving a milled rice or brown rice Quota A allocation during 1996 may also receive a milled rice or brown rice Quota B allocation during 1996. Each Member receiving a milled rice or brown rice Quota A allocation during any period in 1997 shall not be eligible to receive a milled rice or brown rice Quota B allocation during that period unless the Member declines a milled rice or brown rice Quota A allocation during any period for that year.

B. For any particular time period, RMA shall establish a tariff rate quota allocation (hereinafter referred to as "Quota B") for milled rice and brown rice allocation equal to the EU milled rice and brown rice tariff rate quota remaining after deducting the milled rice and brown rice Quota A quantity, if any, for that particular time period. (i) RMA may provide for an amount of the milled rice or brown rice Quota B quantity to be available for allocation during any particular time period, in a manner which fully utilizes the quota available for that particular time period. (ii) RMA shall allocate an amount of Quota B milled rice and brown rice available for a given period to eligible RMA Members based on the Member's proportional share of milled rice and brown rice exports to the EU for the previous period duly registered with RMA by a date certain during the period the quota is being allocated, as determined by RMA.

2. RMA shall assess a fee to pay for administration of all matters related to establishing, operating and auditing RMA export trade certificate of review operations and for certain market development activities.

3. RMA and/or its Member shall use those funds remaining after payment of its administrative expenses to carry out market development activities. Such activities shall be of the types approved by RMA that are comparable to those funded under the Department of Agriculture's market access program with primary emphasis on rice market development activities in the European Union.

4. RMA and/or its Members may:

(i) provide for an administrative structure to implement the foregoing tariff rate quota system, in compliance with the U.S.-EU Compensation Agreement and EU regulations,

(ii) exchange and discuss information regarding the structure and method for implementing the foregoing tariff rate quota system, in compliance with the U.S.-EU Compensation Agreement and EU regulations,

(iii) discuss the type of information needed regarding past transactions and exports that are necessary for implementing the foregoing tariff rate quota system, in compliance with the U.S.-EU Compensation Agreement and EU regulations,

(iv) exchange and discuss information about U.S. and foreign legislation and regulations affecting the foregoing tariff rate quota system, in compliance with the U.S.-EU Compensation Agreement and EU regulations,

(v) discuss and establish the fees to be assessed upon Members to pay for administrative expenses and market promotion activities,

(vi) discuss and provide for the market promotion activities to be undertaken with the fees remaining after payment of administrative expenses,

(vii) otherwise exchange and discuss information as necessary to implement the foregoing activities and take the necessary action to implement the allocation system for the foregoing tariff rate quota, in compliance with the U.S.-EU Compensation Agreement and EU regulations, and

(viii) meet to engage in the activities described above.

5. In allocating quotas among Members, those employees or agents of RMA who are not also employees of a Member, may receive, and each Member may supply to such employees or agents of RMA, information as to the Member's sales and exports of milled white rice and brown rice to the EU as is necessary to properly administer the quota, provided that such information is not disclosed by RMA employees or agents to any other Member.

Definitions

"Members" means a mill member of the Rice Millers Association who has been certified as a "Member" within the meaning of Section 325.1(1) of the Regulations.

Dated: May 21, 1996.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 96–13212 Filed 5–24–96; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[I.D. 050196A]

Small Takes of Marine Mammals Incidental to Specified Activities; Offshore Seismic Activities in the Beaufort Sea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the BP Exploration (Alaska) 900 East Benson Boulevard, Anchorage, AK 99519 (BPX) for authorization to take small numbers of marine mammals by harassment incidental to conducting seismic surveys in the Northstar Unit, in the Beaufort Sea in state and federal waters. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize BPX to incidentally take, by harassment, small numbers of bowhead whales and other marine mammals in the above mentioned area during the open water period of 1996.

DATES: Comments and information must be received no later than June 27, 1996.

ADDRESSES: Comments on the application should be addressed to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application, an environmental assessment (EA), and a list of references used in this document may be obtained by writing to this address, by telephoning one of the contacts listed below or by leaving a voice mail request at (301) 713–4070.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, Ron Morris, Western Alaska Field Office, NMFS, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim rule establishing, among other things, procedures for issuing incidental harassment authorizations under section 101(a)(5)(D) of the MMPA in Arctic waters. For additional information on the procedures to be followed for this authorization, please refer to that document.

Summary of Request

On March 18, 1996, NMFS received an application from BPX requesting an authorization for the harassment of small numbers of several species of marine mammals incidental to conducting seismic surveys during the open water season within the Northstar Unit, located in the Beaufort Sea in U.S. waters. The survey is expected to take place between approximately July 20 and October 20, 1996. A detailed description of the work planned is contained in the application (BPX 1996) and is available upon request (see **ADDRESSES**).

Description of Habitat and Marine Mammal Affected by the Activity

A detailed description of the Beaufort Sea ecosystem and its associated marine mammals can be found in the EA prepared for this authorization (SAIC 1996) or in other documents (Minerals Management Service (MMS) 1992, 1996) and need not be repeated here. A copy of the EA is available upon request (see **ADDRESSES**).

Marine Mammals

The Beaufort/Chukchi Seas support a diverse assemblage of marine mammals including bowhead whales (*Balaena glacialis*), gray whales (*Eschrichtius robustus*), beluka (*Delphinapterus leucas*), ringed seals (*Phoca hispida*), spotted seals (*Phoca largha*) and bearded seals (*Erignathus barbatus*). Descriptions on the biology and distribution of these species, and others, can be found in several other documents (BPX 1996, Lentfer 1988, MMS 1992, NMFS 1990 and 1996, Small and DeMaster 1995). Please refer to those documents for information on these species.

Potential Effects of Seismic Surveys on Marine Mammals.

Disturbance by seismic noise is the principal means of taking by this activity. Vessel and aircraft will provide a secondary source of noise.

Deep seismic surveys are used to obtain data about formations several thousands of feet deep. The physical presence of vessels could also lead to non-acoustic effects involving visual or other cues. These surveys are accomplished by transmitting sound waves into the earth, which are reflected

off subsurface formations and recorded with detectors in the water column. A typical marine seismic source is an airgun array, which releases compressed air into the water creating an acoustical energy pulse that is directed downwards toward the seabed. Hydrophones spaced along a streamer cable just below the surface of the water receive the reflected energy from the subsurface formations and transmit data to the seismic vessel. Onboard the vessel, the signals are amplified, digitized, and recorded on magnetic tape.

Depending upon ambient conditions and the sensitivity of the receptor, underwater sounds produced by open water seismic operations may be detectable some substantial distance away from the activity. Any sound that is detectable is (at least in theory) capable of eliciting a disturbance reaction by a marine mammal or masking a signal of comparable frequency (BPX 1996). An incidental harassment take is presumed to occur when marine mammals in the vicinity of the seismic source (or other vessels) react to the generated sounds or visual cues.

Seismic pulses are known to cause bowhead whales to behaviorally respond within a distance of several kilometers (Richardson *et al.* 1995). Although some limited masking of low-frequency sounds (e.g., whale calls) is a possibility, the intermittent nature of seismic source pulses will limit the extent of masking. Bowhead whales are known to continue calling in the presence of seismic survey sounds, and their calls can be heard between seismic pulses (Richardson *et al.* 1986).

Hearing damage is not expected to occur during the project. It is not known whether a marine mammal very close to an air gun array would be at risk of temporary or permanent hearing impairment, but temporary threshold shift is a theoretical possibility for animals within a few hundred meters (Richardson *et al.* 1995). Planned monitoring and mitigation measures (described below) are designed to detect marine mammals occurring near the array and to avoid exposing them to sound pulses that have any possibility of causing hearing damage.

When the received levels of noise exceed some behavioral reaction threshold, cetaceans will show disturbance reactions (BPX 1996). The levels, frequencies, and types of noise that will elicit a response vary between and within species, individuals, locations and season. Behavioral changes may be subtle alterations in surface-dive-respiration cycles. More conspicuous responses, include changes in activity or aerial displays, movement away from the sound source, or complete avoidance of the area. The reaction threshold and degree of response are related to the activity of the animal at the time of the disturbance. Whales engaged in active behaviors such as feeding, socializing or mating are less likely than resting animals to show overt behavioral reactions, unless the disturbance is directly threatening (BPX 1996).

Bowhead Whales

Various studies (Reeves *et al.* 1984, Fraker *et al.* 1985, Richardson *et al.* 1986, Ljungblad *et al.* 1988) have reported that, when an operating seismic vessel approaches within a few kilometers, most bowhead whales exhibit strong avoidance behavior and changes in surfacing, respiration, and dive cycles. Bowheads exposed to seismic pulses from vessels more than 4.5 miles (7.5 km) away rarely showed observable avoidance of the vessel, but their surface, respiration, and dive cycles appeared altered in a manner similar to that observed in whales exposed at a closer distance (BPX 1996).

Within a 3.7–60 mile (6–99 km) range, it has not been possible to determine a specific distance at which subtle behavioral changes no longer occur (Richardson and Malme 1993), given the high variability observed in bowhead whale behavior (BPX 1996).

Gray Whales

The reactions of gray whales to seismic pulses is similar to those of bowheads. Migrating gray whales along the California coast were noted to slow their speed of swimming, turn away from seismic noise sources, and increase their respiration rates. Malme *et al.* (1983, 1984, 1988) concluded that about 50 percent showed avoidance when the average received pulse level was 170 dB (re 1 μPa @ 1 m). Less consistent results were indicated at levels of 140–160 dB.

Belukha

The belukha is the only species of toothed whale (Odontoceti) expected to be encountered in the Beaufort Sea. Because its hearing threshold at frequencies below 100 Hz (where most of the energy from air gun arrays is concentrated) is poor (125 dB re 1 μPa @ 1 m) or more depending upon frequency (Johnson *et al.* 1989 (as referenced in BPX 1996), Richardson 1991, 1995), belukha are not predicted to be strongly influenced by seismic noise. However, because of the high source levels of seismic pulses, airgun sounds may be audible to belukha at large distances (Richardson 1991, 1995).

Ringed, Largha and Bearded Seals

No detailed studies of reactions by seals to noise from open water seismic exploration have been published (Richardson *et al.* 1995). However, there are some data on the reactions of seals to various types of impulsive sounds (J. Parsons as quoted in Greene *et al.* 1985, Anon. 1975, Mate and Harvey 1985). These studies indicate that ice seals typically either tolerate or habituate to seismic noise produced from open water sources.

Underwater audiograms have been obtained using behavioral methods for 3 species of phocinid seals, ringed, harbor, and harp seals (*Pagophilus groenlandicus*). These audiograms were reviewed in Richardson *et al.* (1995). Below 30–50 kHz, the hearing threshold of phocinids is essentially flat down to at least 1 kHz, and ranges between 60 and 85 dB (re 1 μPa @ 1 m). There are few data on hearing sensitivity of phocinid seals below 1 kHz. NMFS considers harbor seals to have a hearing threshold of 70–85 dB at 1 kHz (60 FR 53753, October 17, 1995), and recent measurements for a harbor seal indicate that, below 1 kHz, its thresholds deteriorate gradually to 97 dB (re 1 μPa @ 1 m) at 100 Hz (Kastak and Schusterman, 1995a,b).

Because no studies to date have focused on pinniped reaction to underwater noise from pulsed, seismic arrays in open water (Richardson et al., 1991, 1995), as opposed to in-air exposure to continuous noise, substantive conclusions are not possible at this time. However, assuming an sound pressure level needed to be 80–100 dB over its threshold in order to cause annoyance and 130 dB for injury (pain), as is the current thought based upon human studies (ARPA, 1995), then it appears unlikely that pinnipeds would be harassed or injured by low frequency sounds from a seismic source unless they were within close proximity of the array. For permanent injury, marine mammals would need to remain in the high noise field for extended periods of time. Existing evidence also suggests that, while they may be capable of hearing sounds from seismic arrays, seals appear to tolerate intense pulsatile sounds, without known effect, once they learn that there is no danger associated with the noise (see, for example, NMFS/WDFW, 1995). In addition, they will apparently not abandon feeding or breeding areas due to exposure to these noise sources (Richardson *et al.* 1991) and may habituate to certain noises over time. Since seismic work is fairly common in Western Beaufort Sea waters, pinnipeds have previously been exposed to seismic noise, and may not react to it, after initial exposure.

Effects of Seismic Noise and other Activities on Subsistence Needs.

The disturbance and potential displacement of marine mammals by sounds from seismic activities is the principle concern related to subsistence use of the area. The harvest of marine mammals (mainly bowhead whales, ringed seals, and bearded seals) is central to the culture and subsistence economies of the coastal North Slope communities (BPX 1996). Displacement of migrating marine mammals farther offshore due to behavioral changes resulting from elevated noise levels could potentially make harvest of these species more difficult.

Nuiqsut is the community closest to the area of the proposed activity, and only harvests bowhead whales during the fall whaling season. Nuiqsut whalers typically take zero to three whales each season, with a trend toward larger harvests in the most recent years (BPX 1996). Nuiqsut whalers concentrate their efforts on areas north and east of the Northstar Unit, generally in water depths greater than 65 ft (20 m). Cross Island, located 13 miles (20 km) east of the eastern edge of the primary area of proposed activity, is the principle field camp location for Nuiqsut whalers. Thus, most bowhead whales will not enter the ensonified area until they have passed through the area used by Nuiqsut whalers (BPX 1996).

The location of the proposed seismic activity is to the south of the main westward migration route of bowhead whales. BPX believes that although whales may be able to hear the sounds emitted by the seismic array out to a distance of 30 miles (50 km) or more, it is unlikely that changes in migration route will occur at distances of >15 miles (>25 km). As discussed above, scientific studies have shown obvious avoidance reactions at distances up to 3.7–5 miles (6–8 km), with one probable case of avoidance at 15 miles (24 km)(Richardson *et al.* 1986, Koski and Johnson 1987, Ljungblad *et al.* 1988). However, other bowheads >3.7 miles (>6 km) from shallow-water seismic operations showed no obvious avoidance (BPX 1996).

It is difficult to determine the maximum distance at which reactions occur (Moore and Clark 1992), although whalers believe that some migrating bowheads are deflected by seismic operations at distances greater than those documented by scientific studies done to date. As a result, BPX is developing a Communications and Avoidance Agreement with the whalers (see BPX 1996) to reduce any potential interference with the hunt. Also, it is believed that the monitoring plan proposed by BPX (LGL 1996) will provide information that will help resolve uncertainties about the effects of seismic exploration on the accessibility of bowheads to hunters.

In addition, while seismic exploration in the Northstar Unit has some potential to influence subsistence seal hunting activities, the peak season for seal hunting is during the winter months when the harvest consists almost exclusively of ringed seals (BPX 1996). In summer, boat crews hunt ringed, spotted and bearded seals (BPX 1996). The most important sealing area for Nuiqsut hunters is off the Colville delta, extending as far west as Fish Creek and as far east as Pingok Island (BPX 1996). In this area, during summer, sealing occurs by boat when hunters apparently concentrate on bearded seals (BPX 1996).

Mitigation

BPX proposes to use biological observers to monitor marine mammal presence in the vicinity of the seismic array. To avoid the potential for serious injury to marine mammals, BPX will power down the seismic source if pinnipeds are sighted within 500 ft (150 m) of the source or if cetaceans are sighted within 2,130 ft (650 m) of the source. At 500 ft (150 m), the average pulse levels will be less than 190 dB (re 1 μPa @ 1 m). At 2,130 ft (650 m), the average pulse level is expected to be about 180 dB (re 1 μPa @ 1 m), based on the expected characteristics of the air gun array to be used in this program, and on site-specific propagation loss data (from Miles *et al.* 1987).

In addition, NMFS proposes to require BPX to ramp-up the seismic source from a level less than, or equal to, 160 dB to its operating level immediately preceding transmissions at a rate not exceeding 6 dB/min and to power-down the array to a level no greater than 160 dB whenever marine mammals enter their respective safety zone. NMFS will recommend ramp-up be accomplished through software designed to fire a specified sequence of guns operating at a designated pressure until the full array of guns are firing at peak operating pressure.

Monitoring

As part of their application, BPX provided a preliminary monitoring plan for assessing impacts to marine mammals from seismic surveys in the Beaufort Sea (LGL 1996). As required by the MMPA, this monitoring plan will be subject to a peer-review panel of technical experts prior to formal acceptance by NMFS.

Preliminarily, BPX plans to conduct the following:

(1) Vessel-based Visual Monitoring

Two biologist-observers aboard the seismic vessel will search for and observe marine mammals whenever seismic operations are in progress, and immediately preceding the start of shooting. These observers will scan the area immediately around the vessels with binoculars during the daytime and with night vision equipment during the night. When mammals are detected within a safety zone designated to prevent injury to the animals, the geophysical crew leader will be notified so that shutdown procedures can be implemented.

(2) Aerial Surveys

From September 1, 1996 until the seismic program ends, aerial surveys will be conducted daily, weather permitting. The primary objective will be to document the occurrence, distribution, and movements of bowhead and belukha whales in and near the area where they might be affected by the seismic pulses. These observations will be used to estimate the level of harassment takes and for assessing the possibility that seismic operations affect the accessibility of bowhead whales for subsistence hunting. Pinnipeds will be recorded when seen, and sonobuoys will be dropped to document ambient noise and characteristics of seismic noise near whale sightings. Aerial surveys will be at an altitude of 1,000 ft (300 m) above sea level. It is tentatively proposed to avoid direct overflights of the Cross Island area where whalers from Nuiqsut are based during their fall whale hunt.

The daily aerial surveys are proposed to cover two grids:

(a) A grid of 12 north-south lines spaced 8 km (5 miles) apart and extending to about 30 mi (50 km) offshore, 30 mi (50 km) east, and 12.5 mi (20 km) west of the Northstar area;

(b) A grid of 8 north-south lines within the above region, also spaced 5 mi (8 km) apart and mid-way between the longer lines, to provide more intensive coverage of the area of the seismic operations and immediate surrounding waters.

(3) Acoustical Measurements

A boat-based acoustical measurement program is proposed for a 10-day period in mid- to late-August 1996. The objectives of this survey will be as follows:

(a) To measure the levels and other characteristics of the horizontally-propagating seismic survey sounds as a function of distance and aspect relative to BPX's seismic source vessel.

(b) To measure acoustic transmission loss vs. frequency, distance, and propagation direction in and near the Northstar Unit, based on transmission and reception of standardized acoustic signals having a source level of about 165 dB re 1 µPa @ 1 m. Transmissions will not be done if bowheads are seen within 2,130 ft (650 m) of the seismic array.

(c) To obtain additional site-specific ambient noise data, which determine signal-to-noise ratios for seismic and other acoustic signals at various ranges from their sources.

In addition, data on ambient noise and on characteristics of seismic pulses will be obtained from sonobuoys dropped and monitored from the survey aircraft after September 1, 1996.

For a more detailed description of planned monitoring activities, please refer to the application and supporting document (LGL 1996).

Reporting

BPX will provide an initial report to NMFS within 90 days of the completion of the seismic program. This report will provide dates and locations of seismic operations, details of marine mammal sightings, estimates of the amount and nature of all takes by harassment, and any apparent effects on accessibility of marine mammals to subsistence users.

A final technical report will be provided by BPX within 20 working days of receipt of the document from the contractor, but no later than April 30, 1996. The final technical report will contain a description of the methods, results, and interpretation of all monitoring tasks.

Consultation

Under section 7 of the Endangered Species Act, NMFS has begun consultation on the proposed issuance of this authorization. Consultation will be concluded upon completion of the comment period and consideration of those comments in the final determination on issuance of an authorization.

National Environmental Policy Act

In conjunction with this notice, NMFS has released an EA that addresses the impacts on the human environment from issuance of the authorization and the alternatives to the proposed action. A copy of the EA is available upon request (see **ADDRESSES**).

Conclusions

NMFS has preliminarily determined that the short-term impact of conducting seismic surveys in the Northstar Unit of the Beaufort Sea will result, at worst, in a temporary modification in behavior by certain species of cetaceans. While behavioral modifications may be made by these species of cetaceans to avoid the resultant noise, this behavioral change is expected to have a negligible impact on the animals.

As the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals (which vary annually due to variable ice conditions and other factors) in the area of seismic operations, due to the distribution and abundance of marine mammals during the projected period of activity and the location of the proposed seismic activity in waters generally too shallow and distant from the edge of the pack ice for most marine mammals of concern, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated and the potential for temporary or permanent hearing impairment will be avoided through incorporation of the mitigation measures mentioned above.

Because bowhead whales are east of the seismic area in the Canadian Beaufort Sea until late August/early September, seismic activities are not expected to impact subsistence hunting of bowhead whales prior to that date. After September 1, 1996, BPX will initiate aerial survey flights for bowhead whale assessments. Appropriate mitigation measures to avoid an unmitigable adverse impact on the availability of bowhead whales for subsistence needs will be the subject of consultation between BPX and subsistence users.

Also, while summer seismic exploration in the Northstar Unit has some potential to influence seal hunting activities by residents of Nuiqsut, because (1) the peak sealing season is during the winter months, (2) the main summer sealing is off the Colville delta (west and inshore of Northstar), and (3) the zone of influence by seismic sources on belukha and seals is fairly small, NMFS believes the Northstar seismic survey will not have an unmitigable adverse impact on the availability of these stocks for subsistence uses.

Proposed Authorization

NMFS proposes to issue an incidental harassment authorization for the 1996 Beaufort Sea open water season for a seismic survey within the Northstar Unit provided the above mentioned mitigation, monitoring and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed seismic activity would result in the harassment of only small numbers of bowhead whales, gray whales, and possibly belukha whales, bearded seals, and largha seals; will have a negligible impact on these marine mammal stocks; and will not have an unmitigable adverse impact on the availability of these stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: May 17, 1996.

Patricia A. Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–13287 Filed 5–23–96; 10:02 am]

BILLING CODE 3510–22–F

[I.D. 051796D]

North Pacific Fishery Management Council; Committee Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory bodies will meet the week of June 10, 1996 in Portland, OR. Other committee and workgroup meetings may be held on short notice during the week; notices will be posted at the meeting site. All meetings are open to the public with the exception of Council executive sessions to discuss personnel, international issues, and litigation. An executive session is tentatively scheduled for noon on June 13.

ADDRESSES: Red Lion Hotel Portland Downtown, 310 S.W. Lincoln, Portland, OR. Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501-2252.

DATES: The Advisory Panel (AP) and the Scientific and Statistical Committee (SSC) will begin meeting at 9:00 a.m. on June 10. The SSC will conclude their meeting by June 12, and the AP will conclude their meeting on June 13. The Council will begin their meeting on June 11, at 8:00 a.m. and conclude mid-day on June 16. The Council will meet in joint session with the International Pacific Halibut Commission (IPHC) from 1:00 p.m. to 5:00 p.m. on June 11.

FOR FURTHER INFORMATION CONTACT: Council staff, telephone: 907-271-2809.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include the following subjects:

1. Reports from NMFS and the Alaska Department of Fish and Game on the current status of the fisheries off Alaska, and enforcement reports from the U.S. Coast Guard and NMFS.
2. Final review of a regulatory amendment to raise ownership caps for Bering Sea/Aleutian Islands (BSAI) halibut quota share holders.
3. Final decision on gear allocations for BSAI Pacific cod fishery.
4. Final decisions on BSAI crab bycatch management measures, including proposed closures and prohibited species limits.
5. Initial review of an amendment package for measures to improve retention and utilization of groundfish species.
6. A report on a proposal to ban night trawling for Pacific cod and discussion of whether to proceed with an amendment analysis.
7. Final decision on proposed revisions to the Gulf of Alaska and BSAI groundfish overfishing definitions.
8. Review and approval of a Request for Proposals for analysis of management measures for the halibut charterboat industry off Alaska.

The agenda for the Council's joint meeting with the IPHC includes the following discussion items:

1. IPHC Area 4 biomass distribution.
2. Gridsorting.
3. Bycatch compensation by area.
4. Bycatch limits.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907-271-2809, at least 5 working days prior to the meeting date.

Dated: May 20, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–13285 Filed 5–24–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 051796C]

Marine Mammals; Scientific Research Permit (P466C)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Mr. Scott D. Kraus, New England Aquarium, Central Wharf, Boston, MA 02110–3399, has applied in due form for a permit to take by harassment up to 4,000 harbor porpoises (*Phocoena phocoena*) in the Gulf of Maine during the course of acoustic playback experiments for purposes of scientific research.

DATES: Written comments must be received on or before June 21, 1996.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant seeks authorization to take by harassment up to 4,000 harbor porpoises (*Phocoena phocoena*) in the Gulf of Maine during the course of underwater acoustic playback experiments. The proposed research is a continuation of work previously authorized in 1992, and will provide data on porpoise responses to various acoustic stimuli used as acoustic deterrent devices in commercial fishing gear.

Dated: May 17, 1996.

Ann D. Terbush,

Chief, Permits and Documentation, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–13286 Filed 5–22–96; 3:24 pm]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Thursday, May 30, 1996.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway., Bethesda, MD 20207 (301) 504–0800.

Dated: May 22, 1996.

Sadye E. Dunn,

Secretary.

[FR Doc. 96–13446 Filed 5–23–96; 2:51 pm]

BILLING CODE 6355–01–M

[CPSC Docket No. 96–C0006]

Burlington Coat Factory Warehouse Corp., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR Section 1605.13. Published below is a provisionally-accepted Settlement Agreement with Burlington Coat Factory Corp., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by June 12, 1996.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 96–C0006, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: William J. Moore, Jr., Trial Attorney, Office of Compliance and Enforcement,

Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: May 20, 1996.

Sadye E. Dunn,

Secretary.

Consent Order Agreement

Burlington Coat Factory Warehouse Corporation ("Burlington Coat Factory" or "Respondent") enters into this Consent Order Agreement with the staff ("the staff") of the Consumer Product Safety Commission ("the Commission") pursuant to the procedures set forth in section 1605.13 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Flammable Fabrics Act (FFA), 16 CFR part 1605.

This Agreement and Order are for the sole purpose of settling allegations of the staff that Respondent sold certain ladies' rayon sheer chiffon skirts and scarves that failed to comply with the Standard for the Flammability of Clothing Textiles 16 CFR part 1610 ("the general wearing apparel standard").

Respondents and the Staff Agree

1. The Consumer Product Safety Commission is an independent regulatory agency of the United States government. The Commission has jurisdiction over this matter under the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.* (CPSA), the Flammable Fabrics Act, 15 U.S.C. 1191 *et seq.* (FAA) and the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.* (FTC).

2. Respondent Burlington Coat Factory is a corporation organized and existing under the laws of the State of Delaware with principal corporate offices at 1830 Route 130, Burlington, New Jersey 08016.

3. Respondent is now, and has been, engaged in one or more of the following activities: the sale, or the offering for sale, in commerce, or the delivery for introduction, transportation in commerce, or the sale or delivery after sale or shipment in commerce, of womens' skirts and scarves subject to the general wearing apparel standard.

4. This Agreement is for the sole purpose of settling the allegations in the accompanying Complaint. The Agreement becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon Respondent. The parties agree to entry of the attached Order, which is incorporated herein by reference.

5. Respondent specifically denies the allegations contained in paragraphs 3–5 of the accompanying Complaint. In particular, Respondent contends that it did not knowingly sell rayon sheer chiffon skirts and scarves that violated the flammability requirements of the general wearing apparel standard. Nothing in this Agreement constitutes an admission by Respondent that it violated the law.

6. Respondent further contends that it has received no reports of injuries from the use of any products enumerated in this agreement or the accompanying Complaint. Respondent makes no admission of any fault, liability, or statutory violation. Nor does this Agreement constitute an admission by Respondent that it is paying a civil penalty; any payment referenced in paragraph II of the accompanying Order is solely to settle the Commission's contention that a civil penalty is appropriate.

7. The parties agree that this Consent Order Agreement resolves the allegations of the accompanying Complaint. The Commission specifically waives its right to initiate any other criminal, civil or administrative action against the Respondent, its shareholders, officers, directors, employees, and agents with respect to those alleged violations.

8. Respondent waives any rights to a formal hearing as to any findings of fact and conclusions of law regarding the allegations set forth in the Complaint. Respondent waives any right to seek judicial review or otherwise challenge or contest the validity of the Commission's Order.

9. The Commission may disclose the terms of this Consent Order Agreement to the public consistent with Section 6(b) of the CPSA.

10. This Agreement and the Complaint accompanying the Agreement may be used in interpreting the incorporated Order. Agreements, understandings, representations or interpretations made outside of this Consent Order Agreement may not be used to vary or contradict its terms.

Upon acceptance of this Agreement, the Commission shall issue the following order.

By:

Paul C. Tang,

Vice President and General Counsel, Burlington Coat Factory, Warehouse Corporation, 1830 Route 130, Burlington, New Jersey 08016.

Date: April 12, 1996.

By:

William J. Moore, Jr.,

Trial Attorney, Division of Administrative Litigation.

Date: April 12, 1996.

Eric L. Stone,

Acting Director, Division of Administrative Litigation.

David Schmeltzer,

Assistant Executive Director, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207.

Order

Upon consideration of the Agreement of the parties

I

It is hereby ordered That Respondent, its successors and assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality, do forthwith cease and desist from selling or offering for sale, in commerce, or introducing, delivering for introduction, transporting or causing to be transported, in commerce, or selling or delivering after sale or shipment in commerce, any 100% rayon sheer chiffon skirts or scarves that fail to comply with the flammability requirements of the Standard for the Flammability of Clothing Textiles: 16 C.F.R. Part 1610.

II

It is further ordered That Respondent pay to the United States Treasury a civil penalty of TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000) within twenty (20) days after service upon Respondent of the Final Order.

III

It is further ordered That for a period of three years following the service upon Respondent of the Final Order in this matter, Respondent notify the Commission within 30 days following the consummation of the sale of a majority of its stock or following a change in any of its corporate officers responsible for compliance with the terms of this Consent Agreement and Order.

By direction of the Commission, this Consent Order Agreement is provisionally accepted pursuant to 16 C.F.R. Section 1605.13, and shall be placed on the public record, and the Secretary is directed to publish the provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the **Federal Register**.

So ordered by the Commission, this 20th day of May, 1996.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Complaint

The staff of the Consumer Product Safety Commission ("staff") contends that Burlington Coat Factory Warehouse Corporation, a corporation ("Respondent"), is subject to the provisions of the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.* (CPSA); the Flammable Fabrics Act, 15 U.S.C. 1191 *et seq.* (FFA); the Federal Trade Commission Act (15 U.S.C. 41 *et seq.* (FTC); and the Standard for the Flammability of Clothing Textiles, 16 C.F.R. part 1601 ("the general wearing apparel standard"). The staff further contends Respondent violated the general wearing apparel standard's provisions related to the flammability of certain women's rayon sheer chiffon skirts and scarves.

Based upon the information provided to the Commission by the staff, the Commission determined it is in the public interest to issue this Complaint. Therefore, by virtue of the authority vested in the Commission by section 30(b) of the CPSA, 15 U.S.C. 2079(b); sections 3 and 5 of the FFA, 15 U.S.C. 45; and in accordance with the Commission's Rules of Practice for Adjudicative Proceedings, 16 CFR Part 1025, the Commission hereby issues this Complaint and states the staff's charges as follows:

1. Respondent Burlington Coat Factory is a corporation organized and existing under the laws of the State of Delaware with principal corporate offices at 1830 Route 130 N, Burlington, New Jersey, 08016.

2. Respondent is and has been engaged in one or more of the following activities: the sale, or the offering for sale, in commerce, of women's sheer chiffon rayon skirts and scarves subject to the general wearing apparel standards.

3. In 1994 and 1995, Respondent sold and offered for sale women's 100% rayon sheer chiffon skirts and scarves that did not comply with the flammability requirements for general wearing apparel.

4. As the result of these failures to comply with the general wearing apparel standard, Respondent sold, or offered for sale, in commerce, a significant number of women's garments purchased from several different importers that failed to comply with the general wearing apparel flammability standards.

5. After being informed of the violations involving sheer chiffon skirts by the Commission staff in 1994, Respondent nevertheless sold and offered for sale sheer chiffon scarves that did not comply with the applicable flammability requirements.

Relief Sought

Wherefore, the staff requests the Commission to issue an order requiring the Respondent to:

Cease and desist from the sale, or the offering for sale, in commerce, delivery for introduction, transportation in commerce, or the sale or delivery after sale or shipment in commerce, of rayon sheer chiffon skirts and scarves subject to the general wearing apparel standards that fail to comply with such standards.

Wherefore, the premises considered, the Commission hereby issues this Complaint on the ____ day of _____, 1996.

Dated:

By direction of the Commission:

David Schmeltzer,

Assistant Executive Director, Office of Compliance.

[FR Doc. 96–13203 Filed 5–24–96; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF ENERGY

Establishment of the Fee Policy for Acceptance of Foreign Research Reactor Spent Nuclear Fuel

AGENCY: Department of Energy.

ACTION: Notice of establishment of the fee policy for acceptance of foreign research reactor spent nuclear fuel.

SUMMARY: This notice establishes the fee policy for receipt and management of spent nuclear fuel from foreign research reactors by the Department of Energy (DOE). DOE's foreign research reactor spent fuel acceptance policy covers aluminum-based and TRIGA (Training, Research, Isotope, General Atomics) spent fuel and target material containing uranium enriched in the United States. For high-income economy countries, the fee will be no higher than $4,500 per kilogram of total mass for aluminum based spent fuel containing highly enriched uranium (HEU) and TRIGA spent fuel, and no higher than $3,750 per kilogram of total mass for aluminum based spent fuel containing low enriched uranium (LEU). The cost of shipping the spent fuel to the United States from high-income economy countries is not included in the fee, and will be borne by the reactor operators. For other countries, the Department will pay the costs for shipping, receipt, and management.

FOR FURTHER INFORMATION CONTACT: G. F. Cole, Director, Office of Spent Fuel Management (EM–67), U.S. Department of Energy, 1000 Independence Ave, SW, Washington, DC 20585, Telephone (301) 903–1450.

SUPPLEMENTARY INFORMATION: On May 13, 1996, the Department of Energy (DOE) issued the Record of Decision (ROD) for the Final Environmental Impact Statement on a Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel (DOE/EIS–0218F of February 1996, the Final EIS). The ROD specifies that the United States will accept up to 19.2 MTHM (metric tonnes of heavy metal) of foreign research reactor spent fuel in approximately 22,700 separate elements and up to approximately an additional 0.6 MTHM of target material over a thirteen year period. All of this material contains uranium that was enriched in the United States.

DOE specified in the ROD that the following spent fuel and target material types will be accepted under this policy:

1. Spent nuclear fuel (HEU or LEU) from foreign research reactors operating on LEU fuel or in the process of converting to LEU fuel when the policy became effective.

2. Spent nuclear fuel (HEU or LEU) from foreign research reactors that operated on HEU fuel when the policy became effective but that formally commit to convert to LEU fuel. Spent nuclear fuel will not be accepted from foreign research reactors that could convert to LEU fuel but whose operators or owners do not formally commit, prior to receipt of their spent fuel into the United States, to make the conversion. Similarly, target material containing uranium enriched in the United States will only be accepted if reactors wishing to ship such target material have formally committed to convert to the use of LEU targets, when such targets become available. The terms and commitments for conversion are discussed in the ROD.

3. HEU spent nuclear fuel from foreign research reactors having lifetime cores, from foreign research reactors planning to shut down by a specific date while the policy is in effect, and from foreign research reactors for which a suitable LEU fuel is not available.

4. HEU or LEU spent nuclear fuel from foreign research reactors that are already shut down.

5. Unirradiated HEU or LEU fuel from eligible foreign research reactors will be accepted as spent nuclear fuel.

As stated in the ROD, DOE will not accept LEU spent fuel from any individual foreign research reactor until the HEU spent fuel at that reactor has all been shipped, unless there are extenuating circumstances (e.g., deterioration of one or more LEU elements sufficient to cause a safety problem if acceptance were delayed). In addition, DOE will not accept spent fuel (HEU or LEU) from new foreign research reactors starting operation after the date of implementation of the policy.

The ROD specifies that the United States will charge high-income-economy countries a fee that will be published in a separate **Federal Register** Notice (this constitutes that notice). The ROD also specifies that DOE will bear the full cost of shipping and managing foreign research reactor spent fuel from other countries, including at-reactor preparation. The countries from which spent fuel would be accepted, and definition of whether or not they are considered to be high-income-economy countries, are listed in the ROD and the Final EIS. The Final EIS also identifies the estimated number of spent nuclear fuel shipments from each country, and the estimated number of casks each country would ship.

The fee will be no higher than $4,500 per kilogram of total mass (not heavy metal mass) for aluminum based spent fuel containing HEU and TRIGA spent fuel, and no higher than $3,750 per kilogram of total mass for aluminum based spent fuel containing LEU. Total mass includes, among other things, the mass of cladding, structural materials, the aluminum fuel matrix, overpack canning. The actual fee will be established in DOE's spent fuel acceptance contracts. These fees will be used to cover all aspects of receipt and management of the spent nuclear fuel by DOE, including geologic disposal. The cost of preparing the spent nuclear fuel for shipment to the United States (e.g., inspection, documentation, and canning, if necessary), and shipping the spent nuclear fuel to a DOE spent fuel management site in the the United States, is not included in the fee and is not an obligation of the United States. These costs will be borne by the individual reactor operators in high-income-economy countries. Fees are due and payable upon DOE acceptance of the spent nuclear fuel at the DOE management site.

No fee is specified in this notice for acceptance of target material. This fee will be established separately at a later time.

For spent fuel not covered by a valid, signed DOE acceptance contract, DOE reserves the right to modify the fee upward or downward at any time to respond to changed circumstances, including a change in the cost of managing the spent fuel in the United States.

Issued at Washington, DC., on May 22, 1996.

Jill Lytle,

Deputy Assistant Secretary, Office of Nuclear Material and Facility Stabilization Environmental Management.

[FR Doc. 96–13283 Filed 5–24–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Waste Acceptance, Storage, and Transportation Services

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Request for expression of interest and comments.

SUMMARY: The Office of Civilian Radioactive Waste Management (OCRWM) is responsible under the Nuclear Waste Policy Act of 1982, as amended (NWPA) for transporting spent nuclear fuel (spent fuel) from commercial nuclear reactor sites to a Federal facility for storage or disposal. The Standard Contract for Disposal of Spent Fuel and/or High Level Radioactive Waste (10 CFR part 961) details the arrangements between the Department and the owners and generators of spent fuel (Purchasers) for the Department to accept the spent fuel at the Purchasers' sites for transport to the receiving Federal facility. Section 137(a)2 of the NWPA requires the utilization of private industry to the "fullest extent possible" in the transportation of spent fuel.

OCRWM is developing a plan for the performance of its waste acceptance, storage and transportation responsibilities which are set forth in the NWPA and Standard Contract and is soliciting input from interested parties as to its proposed approach.

DATES: Submissions of interest and comments in response to this Notice should be received by the Department no later than three weeks from the date of this announcement. A presolicitation conference may be held this summer, if so, a separate Notice will be issued identifying the date. Respondents to this Notice will be placed on a list to receive additional information which may include draft solicitation documents in preparation for the presolicitation conference.

ADDRESSES: Submissions of interest including any comments should be sent to: Michelle Miskinis, Contracting Officer, U. S. Dept. Of Energy, 1000 Independence Ave. SW, Attention: HR–561.21, Washington D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ms Michelle Miskinis (DOE/HR–561.21), 202–634–4413 or Ms Beth Tomasoni (DOE/HR–561.21), 202–634–4408.

SUPPLEMENTARY INFORMATION: The following describes key features of the OCRWM proposed approach:

Scope of Services: DOE anticipates contracting for supplies and services which would include: accepting spent-fuel from Purchasers' facilities (as identified in the Acceptance Priority Ranking and Annual Capacity Reports and supplying compatible transportation (and possibly storage) casks and equipment and transporting spent-fuel to a designated Federal facility. Contractors would also be responsible for any intermodal transport required, including heavy haul. Contractors may be permitted to alter the order of spent-fuel acceptance to achieve efficiency of operation or to lower costs. Contractors would work with Purchasers to determine the best way to service a site and would recommend preferred transportation routes to the Federal facility. Contractors will also be required to interface with those State, Local and Tribal governments along the selected routes.

The location and type of Federal facility (either a repository or an interim storage facility (ISF) cannot yet be determined. Initially, spent-fuel delivered to the Federal site would be canistered before arrival at the facility, but at some point in the service period the contractor may be required to handle uncanistered spent-fuel. Transportation and storage equipment to be supplied would be required to comply with applicable Nuclear Regulatory Commission (NRC) and Department of Transportation (DOT) regulations, OCRWM acceptance criteria, and standard commercial practices.

Contract Type: Competitive, fixed-price type, contracts are being considered with a phased implementation that includes sequential development of business/servicing plans describing contractors' individual approaches, fabrication/acquisition of hardware, and transportation services operations. More than one award is anticipated. One approach under consideration is to divide the country into regions, for example, the four NRC regions. No contractor would be awarded more than two regional service contracts. It is envisioned that there will be several Requests for Proposals (RFPs) issued over several decades for these services with more than one award made under each RFP.

Contract Term: A contract term of five to ten years is envisioned. This would allow a contractor two to three years to procure transportation and storage equipment and achieve operational readiness. Performance of waste acceptance and transportation services would take place over the remaining period of any contract. A service period spanning several years also would allow contractors the flexibility to improve the efficiency of operations and reduce costs.

Schedule: Schedule specifics will be addressed in any solicitation. For planning purposes, it is expected that a Federal facility could be in operation to receive spent fuel within four years of statutory direction, and contractors could be expected to begin developing service arrangements with Purchasers two to three years before spent fuel shipment.

Submissions of Interest

OCRWM is interested in receiving expressions of interest and comments relating to this proposed approach for carrying out its waste acceptance, transportation and any storage functions especially with regard to the following issues:

1. The ability of transportation service contractors and individual Purchasers to reach agreement on methods and schedules for servicing specific utility sites, including ways to foster Purchaser cooperation.

2. The willingness of Purchasers to construct temporary or permanent physical plant modifications and to obtain license amendments or technical specification changes that would improve the efficiency and reduce the costs of loading and removal of spent fuel from individual plants.

3. The reasonableness of dividing the country into a number of regions to preserve competition and industrial capability in the marketplace, while still ensuring low cost services to OCRWM.

4. The capability of the nuclear industry to acquire sufficient spent fuel canister, transportation cask, and storage module production capacity to meet near-term service contractor requirements.

5. Potential business arrangements/pricing structures which might increase contractor freedom and flexibility to develop and implement innovative approaches to improve system efficiency and lower costs, reduce or eliminate the need for front-end financing by OCRWM of contractor activities and procurements, or mitigate risks associated with programmatic uncertainties.

6. Alternative methods of structuring this procurement to ensure competition on future procurements.

DOE will consider and may utilize all information, recommendations, and suggestions provided in response to this notice. Respondents should not provide any information that they consider to be privileged or confidential or which the respondent does not want disclosed to the public. DOE does not intend to respond to comments, either to individual commentors or by publication of a formal notice. Each submittal should consist of one original and three photocopies.

This notice should not be construed (1) as a commitment by the Department to enter into any agreement with any entity submitting an expression of interest or comments in response to this Notice, (2) as a commitment to issue any RFP concerning the subject of this Notice, or (3) as a request for proposals.

Issued in Washington, DC, on May 21, 1996.

Scott Sheffield,

Director, Headquarters Operation Division "B", Office of Placement and Administration.

[FR Doc. 96–13244 Filed 5–24–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP96–517–000]

Algonquin LNG, Inc.; Notice of Application

May 21, 1996.

Take Notice that on May 13, 1996, Algonquin LNG, Inc. (Algonquin LNG), 1284 Soldiers Field Road, Boston, Massachusetts, 02135, filed in Docket No. CP96–517–000 an application for a certificate of public convenience and necessity under Section 7(c) of the Natural Gas Act (NGA) and a request for abandonment of services and facilities under Section 7(b) of the NGA.

Algonquin LNG seeks authorization for new services and facilities so that it will have the enhanced flexibility to receive from its customers natural gas to be liquefied and stored as liquefied natural gas (LNG), and to withdraw and deliver, as requested by its customer(s), such natural gas in liquid or gaseous form. Algonquin LNG's proposal is more fully set forth in its application which is on file with the Commission and open for public inspection.

Specifically, Algonquin LNG seeks authorization to:

(1) acquire, own, and operate existing pipeline facilities for the purpose of connecting its storage facility to the interstate pipeline grid;

(2) construct, own, and operate new pipeline, liquefaction, high-pressure vaporization, metering, and ancillary facilities; and,

(3) provide an enhanced LNG firm and interruptible handling service, which will include natural gas liquefaction, LNG storage and LNG vaporization on an open access, self-implementing blanket basis.

Algonquin LNG also wants the Commission to:

(4) approve the terms and conditions of a restated and revised FERC Gas Tariff;

(5) approve a Blanket Certificate under Part 157, Subpart F, of the Commission's Regulations for the construction from time to time of eligible facilities other than those at the LNG plant site; and,

(6) authorize the abandonment, pursuant to Section 7(b) of the NGA, of the services it presently provides, and the low-pressure vaporizers and certain other facilities currently in service at Algonquin LNG's site.

Algonquin LNG currently owns and operates a 600,000 barrel LNG storage facility located at a site on the west bank of the Providence River in Providence, Rhode Island. Algonquin LNG utilizes such LNG storage facility to provide firm and interruptible open access LNG storage and vaporization service approved under Part 284 of the Commission's regulations pursuant to Algonquin LNG's Rate Schedules FST–LG and IST–LG. Algonquin LNG says that its current LNG plant does not have direct access to the interstate pipeline grid, but that vaporized LNG is delivered into the interstate system via displacement through the local distribution facilities of Providence Gas Company (Providence Gas).

Algonquin LNG proposes by this application to enhance its LNG storage services by installing liquefaction capability at its LNG plant and to establish a direct connection to the interstate pipeline grid. Algonquin LNG will acquire two 10-inch lines under the Providence River near its LNG plant from Providence gas and will construct one mile of new 20-inch line to connect the river crossing with Algonquin Gas Transmission Company's (Algonquin Gas) mainline.[1] Algonquin LNG will also construct liquefaction facilities capable of liquefying natural gas at a rate of 40,000 MMBtu/d, and

[1] Algonquin Gas proposes to rebuild the East Providence meter station under its Subpart F blanket certificate and associated environmental requirements. Algonquin LNG will pay for the rebuild.

vaporization facilities with a vaporization capability of 375,000 MMBtu/d. Further, Algonquin LNG will construct various metering facilities, control and monitoring systems and other miscellaneous facilities. No changes to tank storage although Algonquin LNG intends to conduct a thorough inspection of the internal components of the tank and perform any necessary maintenance. The total cost of all of this work is estimated to be $75.7 million, including the acquisition cost of the river crossing pipelines.

Algonquin LNG proposes to provide its new open access LNG handling service under the terms of its proposed Second Revised Volume No. 1—FERC Tariff, which is contained in Exhibit P of the application. Algonquin LNG says that the open access provisions of its former Volume No. 1—FERC Tariff have been replicated in the new tariff. Algonquin LNG says that the new tariff will control the nomination and scheduling of liquefaction and vaporization and may, under certain conditions, subject customers to operational flow orders. The tariff consists of a firm service rate schedule and an interruptible rate schedule, plus general terms and conditions and *pro forma* service agreements.

The proposed initial rates for Algonquin LNG's firm and interruptible services are based on a straight fixed-variable cost classification. The reservation fee has been designed on the basis of storage tank capacity. The vaporization and liquefaction services will subject the customers to fuel use retainage factors and adjustments. The rate base underlying the proposed initial rates is based on the estimated capital cost of $75.7 million, plus the net book value as of November 1, 1997, of the existing facilities that will be used as part of this proposal. The cost of service underlying the proposed initial rates was developed utilizing the capital structure of Algonquin LNG's parent Algonquin Gas and the cost of capital, as approved in Algonquin Gas's most recent rate settlement, along with a proposed depreciation rate of 3.33 percent.

Algonquin LNG says that interruptible customers will pay a unit rate equal to the cost that a firm customer would incur for storage of one barrel of LNG for one year, but that no costs have been allocated to interruptible service. Instead, the tariff provides for crediting to firm customers of 90 percent of revenues received for interruptible storage and services.

Algonquin LNG says that the available capacity of the project, 592,000 barrels of LNG storage, has been fully subscribed. Providence Gas has signed a binding precedent agreement obligating it to sign a service agreement for 349,452 barrels. EnergyPlus Marketing Company (EnergyPlus), an affiliate of Algonquin LNG via parent company PanEnergy Corp., has signed a binding precedent agreement obligating it to sign a service agreement for 242,548 barrels, the remainder of the available capacity. Therefore, Algonquin LNG says that it has satisfied all of the conditions required to avoid an "at risk" condition. Both Providence Gas and EnergyPlus will be responsible for obtaining gas supplies.

Algonquin LNG says that the existing Algonquin Gas system would function as both the upstream and the downstream connection to the proposed new facilities, depending upon whether Algonquin LNG is functioning in the vaporization or liquefaction mode. There is capacity on the Algonquin Gas system to take gas away from the Algonquin LNG Interconnect. Thus, no downstream capacity needs to be installed on the Algonquin Gas pipeline to support peak day vaporization operations of the Algonquin LNG facility.

Algonquin LNG says that the environmental impact of the proposed project will be minimal. Most of the construction will take place within a site that has been dedicated to industrial use for over a century. It says that the use of the existing Providence Gas-owned river crossings will further minimize the environmental impacts of the project. It further says that the environmental impacts associated with the 1 mile of 20-inch pipeline on the east side of the river will be minimal as a result of the location of a substantial portion of the pipeline within or adjacent to existing right-of-way corridors. Algonquin LNG also says that any impacts of the operation of the plant would be little affected by the proposed plant modifications and that the use of electric compressors and pumps will limit air and noise emissions from the site.

Any person desiring to be heard or to make any protest with reference to this application should on or before June 12, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.20). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Algonquin LNG to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13217 Filed 5–24–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–212–001]

CNG Transmission Corporation; Notice of Section 4 Filing

May 21, 1996.

Take notice that on May 14, 1996, CNG Transmission Corporation (CNG), tendered for filing, pursuant to Section 4 of the Natural Gas Act, Substitute Original Sheets 10, 11, 12, 19, 22, 29, 30, 61, 62, 79, 84, 86, 87, 88, 89, 93, 103, and 104 to First Revised Volume 1A of CNG Transmission's FERC Gas Tariff. CNG further states that the filing is made to correct errata in the filing of First Revised Volume 1A.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13219 Filed 5–24–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–522–000]

Columbia Gulf Transmission Company, Notice of Application

May 21, 1996.

Take notice that on May 15, 1996, Columbia Gulf Transmission Company (Columbia Gulf), 2603 Augusta, Suite 125, Houston, Texas 77210–4621, filed in Docket No. CP96–522–000 an abbreviated application pursuant to Section 7(b) and 7(c) of the Natural Gas Act, as amended, for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and order granting permission and approval to abandon the facilities being replaced, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia Gulf states that as part of its objective to ensure the more efficient and reliable operation of its pipeline system, it initiated in 1986 to install on-line pigging facilities on its mainline system. Columbia Gulf further states that as part of this program, it proposes to construct and operate approximately 0.3 mile of 30-inch pipeline crossing the Ouachita River, replacing approximately 0.3 mile of dual 24-inch pipeline located in Catahoula Parish, Louisiana. Columbia Gulf indicates that the estimated cost of the proposed construction is $712,000. It is asserted that the proposed single 30-inch pipeline crossing will result in a *de minimus* decrease in the theoretical capacity of the crossing. It is further asserted that the proposed crossing will have no effect on the throughput of Columbia Gulf's loop pipeline system as the minimal pressure reduction can be made up at the existing Delhi Compressor Station with existing compressor units.

Any person desiring to be heard or to make protest with reference to said application should on or before June 11, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia Gulf to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13218 Filed 5–24–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–120–012]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 21, 1996.

Take notice that on May 16, 1996, Koch Gateway Pipeline Company (Koch Gateway) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets:

Substitute Eleventh Revised Sheet No. 20
Substitute Tenth Revised Sheet No. 21
Substitute Eleventh Revised Sheet No. 22
Substitute Seventh Revised Sheet No. 23
Substitute Eleventh Revised Sheet No. 24

Koch Gateway states that the purpose of this filing is to comply with the Commission's May 1, 1996 Order on Rehearing. Koch Gateway also states that these tariff sheets reflect adjustments to the gathering rate in compliance with the Order.

Koch Gateway states that copies of the filing will be served upon all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13220 Filed 5–24–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG96–8–001]

Michigan Gas Storage Company; Notice of Filing

May 21, 1996.

Take notice that on May 13, 1996, Michigan Gas Storage Company (Michigan Gas) filed a revised Standard K, 18 CFR 161.3(k), in response to the Commission's April 12, 1996 order.[1]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before June 5, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13221 Filed 5–24–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–239–000]

Questar Pipeline Company; Notice of Tariff Filing

May 21, 1996.

Take notice that on May 17, 1996, Questar Pipeline Company, tendered for filing as part of its FERC Gas Tariff, First

[1] 75 FERC ¶61,075 (1996).

Revised Volume No. 1, the below-listed tariff sheets, to be effective June 19, 1996:

Listing of Proposed Tariff Sheets

Revised title page
Original Sheet Nos. 1A and 1B
First Revised Sheet Nos. 1, 93, 94, 98B and 99
Second Revised Sheet Nos. 5A.1, 90 and 91
Third Revised Sheet Nos. 92 and 172
Fourth Revised Sheet Nos. 8 and 40

Questar states that these tariff sheets revise its tariff by incorporating certain revisions that are promulgated by Commission Order Nos. 581, 581–A, 582 and 582–A.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Wyoming Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13222 Filed 5–24–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–180–000]

Stingray Pipeline Company; Notice of Technical Conference

May 21, 1996.

In the Commission's order issued April 19, 1996,[1] the Commission held that the filing in the above captioned proceeding raises issues that should be addressed in a technical conference.

Take notice that the technical conference will be held on Tuesday, June 18, 1996, at 1:00 p.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426. All interested parties and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13223 Filed 5–24–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–524–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

May 21, 1996.

Take notice that on May 17, 1996, Tennessee Gas Pipeline Company (Tennessee), Post Office Box 2511, Houston, Texas 77252, filed a request with the Commission in Docket No. CP96–524–000 pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to establish a delivery point for Nashville Gas Company (Nashville) authorized in blanket certificate issued in Docket No. CP82–413–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to install a new delivery point on Tennessee's system in Cheatham County, Tennessee which would be used for the delivery of natural gas to Nashville, a division of Piedmont Natural Gas Company. Tennessee states that it would install, own, operate and maintain two two-inch hot taps, approximately 60 feet of two-inch interconnect piping, one two-inch turbine meter with bypass, and electronic gas measurement equipment. The hot tap and interconnect pipe would be located on Tennessee's existing right-of-way. The meter station would be located on a site adjacent to Tennessee's existing right-of-way provided by Nashville. The estimated cost of the meter station would be $102,024.00, which would be reimbursed by Nashville.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13224 Filed 5–24–96; 8:45 am]

BILLING CODE 6717–01–M

Federal Energy Regulatory Commission

[Docket No. EG94–81–000, et al.]

PSI Argentina, Inc., et al.; Electric Rate and Corporate Regulation Filings

May 20, 1996.

Take notice that the following filings have been made with the Commission:

1. PSI Argentina, Inc.

[Docket No. EG94–81–000]

Take notice that on April 24, 1996, pursuant to Section 365.7 of the Commission's regulations, 18 CFR 365.7, PSI Argentina, Inc. filed notification that it surrenders its status as an exempt wholesale generator under Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended.

2. Enron Power Marketing, Inc., Vitol Gas & Electric LLC, Texas-Ohio Power Marketing, Inc., Northwest Regional Transmission Association, Power Exchange Corporation, KN Marketing, Inc.

[Docket No. ER94–24–012, ER94–155–013, ER94–1676–007, ER95–19–005, ER95–72–005, ER95–869–004 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On May 1, 1996, Enron Power Marketing, Inc. filed certain information as required by the Commission's December 2, 1993 order in Docket No. ER94–24–000.

On May 1, 1996, Vitol Gas & Electric LLC filed certain information as required by the Commission's January 14, 1994 order in Docket No. ER94–155–000.

On May 16, 1996, Texas-Ohio Power Marketing, Inc., filed certain information as required by the Commission's October 31, 1994 order in Docket No. ER94–1676–000.

On May 13, 1996, Northwest Regional Transmission Association filed certain information as required by the Commission's June 28, 1995 order in Docket No. ER95–19–000.

On May 16, 1996, Power Exchange Corporation filed certain information as required by the Commission's February 1, 1995 order in Docket No. ER95–72–000.

On May 1, 1996 and May 13, 1996 KN Marketing, Inc. filed certain information as required by the Commission's May 26, 1995 order in Docket No. ER95–869–000.

3. New England Power Company

[Docket No. ER96–1004–001]

Take notice that on May 10, 1996, New England Power Company tendered for filing revised copies of its compliance filing in the above-referenced docket.

Comment date: June 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Entergy Power, Inc.

[Docket No. ER96–1300–000]

Take notice that on May 3, 1996, Entergy Power, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: June 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Family Fiber Connection

[Docket No. ER96–1631–000]

Take notice that on May 15, 1996, Family Fiber Connection tendered for filing supplemental information to its April 24, 1996, filing in the above-referenced docket.

Comment date: June 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Energy Tek, Inc.

[Docket No. ER96–1781–000]

Take notice that on May 10, 1996, Energy Tek, Inc. (Energy Tek), petitioned the Commission for acceptance of Energy Tek, Inc. Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates, and the waiver of certain Commission regulations. Energy Tek, Inc. is a subsidiary of AGR International Consultants, Inc. based in California.

Comment date: June 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Maine Public Service Company

[Docket No. ER96–1782–000]

Take notice that on May 10, 1996, Maine Public Service Company (Maine Public), filed an executed Service Agreement with Federal Energy Sales, Inc.

Comment date: June 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Northern Indiana Public Service Company

[Docket No. ER96–1783–000]

Take notice that on May 10, 1996, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement between Northern Indiana Public Service Company and Citizens Lehman Power Sales.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Citizens Lehman Power Sales pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. ER96–399–000 and allowed to become effective by the Commission, *Northern Indiana Public Service Company*, 71 FERC ¶ 61,014 (1996). Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of June 1, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: June 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Potomac Electric Power Company

[Docket No. ER96–1784–000]

Take notice that on May 10, 1996, Potomac Electric Power Company (Pepco), tendered for filing service agreements pursuant to Pepco FERC Electric Tariff, Original Volume No. 1, entered into between Pepco and: Public Service Electric and Gas Company, and Federal Energy Sales, Inc. An effective date of April 12, 1994, for these service agreements, with waiver of notice, is requested.

Comment date: June 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Public Service Corporation

[Docket No. ER96–1785–000]

Take notice that on May 10, 1996, Wisconsin Public Service Corporation, tendered for filing an executed service agreement with Manitowoc Public Utilities under its CS–1 Coordination Sales Tariff.

Comment date: June 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Electric Power Company

[Docket No. ER96–1786–000]

Take notice that on May 10, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement and a Transmission Service Agreement between itself and WPS Energy Services, Inc. (WPS). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff. The Transmission Service Agreement allows WPS to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume No. 5, Rate Schedule STNF, under Docket No. ER95–1474.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on WPS, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: June 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power & Light Company

[Docket No. ER96–1787–000]

Take notice that on May 10, 1996, Florida Power & Light Company (FPL), filed the Contract for Purchases and Sales of Power and Energy between FPL and Phibro Inc. FPL requests an effective date of May 20, 1996.

Comment date: June 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power & Light Company

[Docket No. ER96–1788–000]

Take notice that on May 10, 1996, Florida Power & Light Company (FPL), filed the Contract for Purchases and Sales of Power and Energy between FPL and Calpine Power Service Company. FPL requests an effective date of May 20, 1996.

Comment date: June 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power & Light Company

[Docket No. ER96–1789–000]

Take notice that on May 10, 1996, Florida Power & Light Company (FPL), filed the Contract for Purchases and Sales of Power and Energy between FPL and Delhi Energy Services, Inc. FPL requests an effective date of May 20, 1996.

Comment date: June 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Pool

[Docket No. ER96–1790–000]

Take notice that on May 10, 1996, the New England Power Pool Executive Committee, filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by Morgan Stanley Capital Group Inc. (Morgan

[1] Stingray Pipeline Co., 75 FERC ¶ 61,061 (1996).

Stanley). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit Morgan Stanley to join the over 90 Participants already in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Morgan Stanley a Participant in the Pool. NEPOOL requests an effective date of July 1, 1996 for commencement of participation in the Pool by Morgan Stanley.

Comment date: June 3, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13216 Filed 5–24–96; 8:45 am]

BILLING CODE 6717–01–P

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy announces the procedures for disbursement of $1,140,552.84 (plus accrued interest) in alleged or adjudicated crude oil overcharges obtained by the DOE from Gil-Mc Oil Corporation (Case No. LEF–0054), LeClair Operating Company (Case No. LEF–0054), SRG Corporation (Case No. LEF–0056), Petroleum Carrier Company (Case No.LEF–0119) and Dane Energy Company (LEF–0122). The OHA has determined that the funds obtained from these firms, plus accrued interest, will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 Fed. Reg. 27899 (August 4, 1986).

FOR FURTHER INFORMATION CONTACT: Richard T. Tedrow, Deputy Director, Office of Hearings and Appeals, Washington, DC 20585, (202) 426–1562.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision and Order sets for the procedures that the DOE has formulated to distribute a total of $1,140,553, plus accrued interest, remitted to the DOE by Gil-Mc Oil Corporation, LeClair Operating Company, SRG Corporation, Petroleum Carrier Company, and Dane Energy Company. The DOE is currently holding these funds in interest bearing escrow accounts pending distribution. The OHA will distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers will be based on the volume of petroleum products that they purchased and the extent to which they can demonstrate injury. Because the June 30, 1995, deadline for the crude oil refund applications has passed, no new applications from purchasers of refined petroleum products will be accepted for the 20 percent of these funds allocated to individual claimants. Instead, that share of the funds will be added to the general crude oil overcharge pool used for direct restitution.

Dated: May 16, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms: Gil-Mc Oil Corporation, LeClair Operating Company, SRG Corporation, Petroleum Carrier Company, Dane Energy Company.

Dates of Filings: July 20, 1993, December 7, 1993, April 8, 1994.

Case Numbers: LEF–0054, LEF–0055, LEF–0056, LEF–0119, LEF–0122.

The Economic Regulatory Administration (ERA) of the Department of Energy filed five Petitions for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute funds remitted to the DOE pursuant to settlements between Gil-Mc Oil Corporation (Gil-Mc), LeClair Operating Company (LeClair), SRG Corporation (SRG), Petroleum Carrier Company, (Petroleum Carrier), and Dane Energy Company (Dane). A total of $1,140,553, plus interest, is available for restitution. All of these funds are now being held in an interest-bearing account pending a determination regarding their proper disposition.

In accordance with the procedural regulations codified at 10 C.F.R. Part 205, Subpart V, the ERA requests in its Petitions that the OHA establish special refund procedures to remedy the effects of any regulatory violations which were resolved by these settlements. This Decision and Order sets forth the OHA's final plan to distribute these funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. §§ 4501–07 (PODRA), *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

I. Background

On June 16, 1982, the DOE issued a Proposed Remedial Order (PRO) to Gil-Mc which alleged that certain first sales of crude oil by Gil-Mc had been in excess of applicable ceiling prices during the period August 19, 1973 through January 27, 1981. The DOE and Gil-Mc entered into a Consent Order on March 29, 1983, which satisfied the DOE's claim against Gil-Mc. There is a total of $10,273, plus interest, available from Gil-Mc for restitution.

On June 3, 1982, the DOE issued a PRO to LeClair which alleged that certain first sales of crude oil by LeClair had been in excess of applicable ceiling prices during the period August 19, 1973 through January 27, 1981. The DOE and LeClair entered into a Consent Order on November 5, 1982, which satisfied the DOE's claim against LeClair. There is a total of $70,386, plus interest, available from LeClair for restitution.

On July 23, 1982, the DOE entered into a Consent Order with SRG which resolved DOE's claims against SRG. Specifically, the DOE alleged that during the period of August 19, 1973 through January 27, 1981, crude oil was sold from certain properties operated by SRG in excess of the applicable lawful ceiling prices. There is a total of $171,041, plus interest, available from SRG for restitution.

On June 26, 1987, the DOE issued a Remedial Order to Petroleum Carrier for violations of the crude oil pricing regulations during the period from June 1974 through December 1977. The DOE collected a total of $18,853 from Petroleum Carrier pursuant to the Remedial Order. That amount, plus interest, is available for restitution.

On December 10, 1992, the DOE issued a Remedial Order to Dane for violations of the crude oil pricing regulations during the period December 1978 through December 1980. The DOE and Dane entered into a Consent Order on December 16, 1993, which satisfied the DOE's claim against Dane. There is a total of $870,000, plus interest, available from Dane for restitution.

II. The Proposed Decisions

On October 26, 1993, May 20, 1994, and June 6, 1994, we issued Proposed Decisions and Orders (PDOs) that tentatively concluded that ERA's Petitions to implement Subpart V proceedings with respect to the funds collected from these five firms should be approved. *Gil-Mc Oil Corp.*, 58 FR 57595 (October 26, 1993) (also included LeClair and SRG); *Petroleum Carrier Co.*, 59 FR 26493 (May 20, 1994); *Dane Energy Co.*, 59 FR 29287 (June 6, 1994). In each of the PDOs, we tentatively determined that the funds obtained from these firms should be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the MSRP). The MSRP was issued as a result of a court-approved Settlement Agreement. *In re: The Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan. 1986) (the Stripper Well Settlement Agreement). The MSRP establishes that 40 percent of the crude oil funds will be remitted to the federal government, another 40 percent to the states, and up to 20 percent may be initially reserved for payment of claims to injured parties.

The MSRP also specifies that any monies remaining after all valid claims by injured purchasers are paid be disbursed to the federal government and the states in equal amounts.

The OHA has utilized the MSRP in all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). This Order provided a period of 30 days for filing of comments or objections to our proposed use of the MSRP as the groundwork for evaluating claims in crude oil refund proceedings. Following this period, the OHA issued a Notice evaluating the numerous comments which it had received pursuant to the Order Implementing the MSRP. This notice was published at 52 FR 11737 (April 10, 1987).

The April 10, 1987 Notice contained guidance to assist potential claimants wishing to file refund applications for crude oil monies under the Subpart V regulations. Generally, all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) show that they were injured by the alleged crude oil overcharges. We also specified that end-users of petroleum products whose businesses were unrelated to the petroleum industry will be presumed to have been injured by the alleged crude oil overcharges. End-users, therefore, need only submit documentation of their purchase volumes. *See City of Columbus, Georgia*, 16 DOE ¶ 85,550 (1987). Additionally, we stated that we would calculate crude oil refunds on a per gallon (or volumetric) basis. We obtained this figure by dividing the crude oil refund pool by the total consumption of petroleum products in the United States during the crude oil price control period. OHA is currently paying crude oil refund claims at the rate of $0.0016 per gallon. We will decide whether sufficient crude oil overcharge funds are available for additional refunds when we are better able to determine how much additional money will be collected from firms that have either outstanding obligations to the DOE or enforcement cases currently in litigation.

III. The Refund Procedure

No comments were received on the PDOs, and we adopt the tentative determination to distribute these funds in accordance with the MSRP. These standard crude oil procedures will be used to distribute the funds remitted by Gil-Mc, LeClair, SRG, Petroleum Carrier and Dane. Accordingly, we shall initially reserve 20 percent of these funds, $228,110.56, plus accrued interest, for direct refunds to claimants in order to ensure sufficient funds will be available for injured parties. As we have stated in prior decisions, a crude oil refund applicant need only submit one application for its share of all available crude oil overcharge funds. *See, e.g., A. Tarricone, Inc.*, 15 DOE ¶ 85,495 (1987). June 30, 1995, was the final deadline for filing Applications for Refund from the crude oil funds. *See* 60 FR 19914 (April 21, 1995). A party that submitted a timely claim in the crude oil refund proceeding need not file another claim in order to share in the funds at issue in this Decision.

Under the terms of the MSRP, the remaining 80 percent of the funds collected from these five firms shall be disbursed in equal shares to the states and the federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement, 6 Fed. Energy Guidelines ¶ 90,509 at 90,687. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Settlement Agreement.

It Is Therefore Ordered That: The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller of the Department of Energy shall take all steps necessary to transfer $10,273, plus all accrued interest, from the Gil-Mc subaccount (Account No. 670C00339T), $70,386, plus all accrued interest from the LeClair subaccount (Account No. 600C20071T), $171,041, plus all accrued interest from the SRG subaccount (Account No. 400C00200T), $18,853, plus all accrued interest from the Petroleum Carrier subaccount (Account No. 6A0X00253Z) and $870,000, plus all accrued interest, from the Dane subaccount (Account No. 6A0X00320Z), for a total of $1,140,553, plus all accrued interest, pursuant to Paragraphs (2), (3), and (4) of this Decision.

(2) The Director of Special Accounts and Payroll shall transfer $456,221 (plus interest) of the funds obtained pursuant to Paragraph (1) above into the subaccount denominated "Crude Tracking—States," Number 999DOE003W.

(3) The Director of Special Accounts and Payroll shall transfer $456,221 (plus interest) of the funds obtained pursuant to Paragraph (1) above into the subaccount denominated "Crude Tracking—Federal," Number 999DOE002W.

(4) The Director of Special Accounts and Payroll shall transfer $228,111 (plus interest) of the funds obtained pursuant to Paragraph (1) above into the subaccount denominated "Crude Tracking—Claimants 4," Number 999DOE010Z.

(5) This is a final Order of the Department of Energy.

Dated: May 16, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 96–13245 Filed 5–24–96; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5510–1]

San Gabriel Valley Superfund Sites, Areas 1–4; Proposed Notice of Administrative Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9600 *et seq.*, notice is hereby given that a proposed prospective purchaser agreement associated with the San Gabriel Valley Superfund Sites, Areas 1–4 was executed by the United States Environmental Protection Agency ("EPA") on May 13, 1996. The proposed prospective purchaser agreement would resolve certain potential claims of the United States under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and section 7003 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6973, against the Monsanto Company (the "Purchaser"). The proposed settlement would require the purchaser to pay EPA a one-time payment of $150,000.

For thirty (30) calendar days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. If requested prior to the expiration of this public comment period, EPA will provide an opportunity for a public meeting in the effected area. EPA's response to any comments received will be available for public

inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before June 27, 1996.

AVAILABILITY: The proposed prospective purchaser agreement and additional background documentation relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed settlement may be obtained from Mark Klaiman, Assistant Regional Counsel (RC–3–1), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Comments should reference "Monsanto Company, San Gabriel Valley Superfund Sites, Areas 1–4" and "Docket No. 96–09" and should be addressed to Mark Klaiman at the above address.

FOR FURTHER INFORMATION CONTACT: Mark Klaiman, Assistant Regional Counsel (RC–3–1), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; E-mail: KLAIMAN.MARK@EPAMAIL.EPA.GOV; phone: (415) 744–1473.

Keith Takata,

Acting Director, Hazardous Waste Management Division, U.S. EPA, Region IX.

[FR Doc. 96–13191 Filed 5–24–96; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

FCC Amends Charter of Network Reliability and Interoperability Council

April 18, 1996.

The Federal Communications Commission has renewed and amended the charter of its advisory committee, the "Network Reliability Council" and renamed it the "Network Reliability and Interoperability Council" (the "Council"). Under its amended charter, the Council will develop recommendations to the Commission as to how it might best accomplish responsibilities placed on it by Section 256 of the Telecommunications Act of 1996.

These include developing procedures to oversee coordinated network planning by providers of telecommunications service and participating in the development, by standards-setting organizations, of public telecommunications network interconnectivity standards. The purposes of Section 256 are, first, to promote nondiscriminatory accessibility by the broadest number of users and vendors of telecommunications products and services to public telecommunications networks through (a) coordinated network planning and design and (b) interconnectivity of public networks and devices to those networks, and, second, to ensure the ability of users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks.

The Council will also continue to provide recommendations to the Commission and to the industry that will help assure optimal reliability of the public telecommunications networks.

Building on the accomplishments of the committee to date and in view of the wider purposes of the committee under the amended charter, the Commission has selected members of the Council on the basis of their technical knowledge, the impact of their activities on network reliability and the impact of network availability on the constituencies the members represent. Any new members will be chosen so that the largest possible diversity of interests, given the function to be performed, will be represented.

The continuation of the Council is necessary and in the public interest to prepare recommendations of the FCC as to how it might best accomplish responsibilities placed on it by Section 256 of the Telecommunications Act of 1996. Continuation is also necessary to prepare recommendations to the industry and to the FCC for avoiding, and minimizing the impact of, future network outages. Continuation of the Council is also necessary so that the telecommunications industry and the Commission can effectively monitor and encourage the implementation of the Council's prior recommendations by the industry, and assess the effectiveness of the implemented recommendations on network access during outages and help assure maximum availability of crucial telecommunications services.

For additional information, contact Robert Kimball 202/418–2339.

Federal Communciations Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–13248 Filed 5–24–96; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1112–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois, (FEMA–1112–DR), dated May 6, 1996, and related determinations.

EFFECTIVE DATE: May 20, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Illinois, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 1996:

Adams, Brown, Hamilton, Hancock, Menard, Schuyler and Vermilion Counties for Public Assistance and Hazard Mitigation.

Cass, Douglas, Jackson, Sangamon, White and Williamson Counties for Individual Assistance, Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–13280 Filed 5–24–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1112–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA–1112–DR), dated May 6, 1996, and related determinations.

EFFECTIVE DATE: May 20, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 17, 1996.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96–13281 Filed 5–24–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1113–DR]

Montana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Montana (FEMA–1113–DR), dated May 16, 1996, and related determinations.

EFFECTIVE DATE: May 16, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 16, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Montana, resulting from severe storms, flooding, ice jams, and excessive soil saturation on March 9, 1996 and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Montana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint David P. Grier, IV of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Montana to have been affected adversely by this declared major disaster:

Blain, Flathead, Hill, Liberty, Phillips and Toole Counties for Public Assistance and Hazard Mitigation Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–13279 Filed 5–24–96; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in section 560.602 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–010730–005.

Title: City of Los Angeles/Los Angeles Cruise Ship Terminals, Inc. Terminal Agreement.

Parties: City of Los Angeles ("Port"), Los Angeles Cruise Ship Terminals, Inc. ("LACST").

Filing Agent: Raymond P. Bender, Esquire, Office of the City Attorney, City of Los Angeles, P.O. Box 151, San Pedro, CA 90733–0151.

Synopsis: The proposed amendment permits LACST to have preferential berthing at Berths 91–92 and 93A–C for five years eight months ending December 31, 2000.

Agreement No.: 224–200852–002.

Title: Port of New Orleans/International Shipholding Corp. Terminal Agreement.

Parties: Port of New Orleans, International Shipholding Corporation.

Filing Agent: Joseph W. Fritz, Jr., Esquire, Port of New Orleans, P.O. 60046, New Orleans, LA 70160.

Synopsis: The proposed amendment extends the term of the Agreement for one year.

Dated: May 21, 1996.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–13233 Filed 5–24–96; 8:45 am]

BILLING CODE 6730–01–M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232–011417–001.

Title: Thompson/CIS Agreement.

Parties: Thompson Shipping Co., Ltd. ("Thompson"), Cayman Island Shipping, Ltd.

Synopsis: The proposed amendment substitutes Tropical Shipping and Construction Co., Ltd. for Thompson by acquiring certain assets of Thompson that are utilized in the U.S. foreign commerce. It also changes the name of the Agreement from Thompson/CIS Agreement to Tropical/CIS Agreement. The parties have requested a shortened review period.

Dated: May 21, 1996.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–13234 Filed 5–24–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 11, 1996.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Stephen Elsmer Cone, Jr., Lubbock, Texas; to acquire an additional 21.79 percent, for a total of 29.19 percent of the voting shares of Sundown Bankshares, Inc., Sundown, Texas, and thereby indirectly acquire Sundown State Bank, Sundown, Texas.

Board of Governors of the Federal Reserve System, May 21, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–13227 Filed 5–24–96; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 21, 1996.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Chambers Bancshares, Inc., Danville, Arkansas; to acquire 100 percent of the voting shares of ACME Holding Company, Inc., Mulberry, Arkansas, and thereby indirectly acquire Bank of Mulberry, Mulberry, Arkansas.

Board of Governors of the Federal Reserve System, May 21, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–13228 Filed 5–24–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 11, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. FCFT, Inc., Princeton, West Virginia; to engage *de novo* in community development activities through an investment in South Oakwood Plaza Limited Partnership, III, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Tattnall Bancshares, Inc., Reidsville, Georgia; to acquire Reidsville Insurance Agency, Inc., Reidsville, Georgia, and thereby engage in insurance agency activities, pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. The geographic scope of this activity will be Reidsville, Georgia.

Board of Governors of the Federal Reserve System, May 21, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–13229 Filed 5–24–96; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Nominations of Outcomes and Effectiveness Research Priority Topics

The Agency for Health Care Policy and Research (AHCPR) is inviting suggestions for priority topics for research related to prevention, diagnosis, treatment and/or management of common diseases and clinical conditions. These suggestions will be considered in AHCPR's plans for future research on the outcomes and effectiveness of health care services. The process AHCPR will employ in establishing priorities and selecting topics for outcomes/effectiveness research is described below.

Background

AHCPR is charged under Title IX of the Public Health Service Act (42 U.S.C. 299–299c–6) with enhancing the quality, appropriateness, and effectiveness of health care services and access to such services. AHCPR accomplishes these goals through scientific research that promotes improvements in clinical practice (including the prevention of diseases and other health conditions) and improvements in the organization, financing, and delivery of health care services. Section 1142 of the Social Security Act (42 U.S.C. 1320b–12) enhances and elaborates on AHCPR's program of outcomes and effectiveness research. Outcomes of care and effectiveness research constitutes a major portion of AHCPR's health services research agenda.

Outcomes and Effectiveness Research Program

The outcomes and effectiveness research program grew out of awareness of significant unexplained variations in clinical (medical, nursing, and allied health) practice and the inadequacy of scientific evidence to support many common treatments and procedures. Outcomes and effectiveness research encompasses three main areas of emphasis for the prevention, diagnosis, treatment, and management of illness: (1) Determination of the clinical interventions that are most effective, cost effective, and appropriate; (2) development of methods and data to advance effectiveness research; and (3) dissemination and evaluation of the impact of research findings on clinical practice and outcomes. Other distinctive characteristics of outcomes and effectiveness research include its multidisciplinary nature; use of a variety of research designs (e.g., observational studies, prospective trails, database studies) and analytical methods (e.g., decision analysis, utility analysis, and cost-effectiveness analysis); incorporation of both objective and subjective measures of outcomes; and emphasis on policy relevance.

To date, AHCPR's outcomes and effectiveness research has focused on conditions that meet the following criteria:

- High incidence or prevalence in the general population or in major population subgroups, as defined by age, gender, or ethnicity;
- Controversy or uncertainty about the effectiveness and relative effectiveness of available clinical strategies;
- High cost, whether due to the number of people needing care, high unit cost of care, or high indirect costs;
- Needs, of the Medicare and Medicaid programs; and
- Data available, or readily developed.

In addition, all outcomes and effectiveness research is expected to be:

- Generalizable: Outcomes and effectiveness research is concerned with the outcomes that can be expected in typical patients, receiving care in typical clinical situations, not with outcomes that can be achieved only in selected patients and in controlled clinical situations. Thus, critical features of all outcomes and effectiveness research projects are that the questions have broad applicability and the research designs support wide generalizability of findings.
- Pragmatic: Outcomes and effectiveness research projects address questions that have high clinical and policy significance and are designed with attention to the eventual implementation of findings. They strengthen the science base in ways that can directly contribute to improved patient outcomes and decisionmanking processes (including practice guidelines), and to a more equitable and cost-effective health care system. The usefulness of outcomes and effectiveness research stems, in part, from the requirement that the clinical problems and practices addressed are common and costly, and from attention to the realities of clinical practice.
- *Potient-Centered:* Outcomes and effectiveness research evaluates health care in terms of outcomes that emphasize the patient's experience and perspective. In addition to survival, morbidity, and complications, outcomes and effectiveness studies consider patient-reported symptom relief, functional capacity, quality of life, satisfaction with care, and economic burden. Demographic, social and cultural characteristics, as well as personal preferences, are important independent variables.
- *Multidisciplinary:* Outcomes and effectiveness research requires theoretical and practical understanding of a wide range of clinical and non-clinical variables that determine the structure, processes, and outcomes of health care. Studies typically involve teams of researchers who bring together the knowledge and methodological expertise of both the clinical and social sciences, plus understanding of the perspectives of patients, providers, and policymakers.

Since 1989, AHCPR has supported significant advances in medical effectiveness research, especially through the set of special projects known as Patient Outcomes Research Teams (PORTs). PORTs are large-scale, 5-year studies designed to determine "what works best" in clinical treatment for common diseases and conditions. PORTs have succeeded in (1) documenting the scientific basis for many common clinical practices, (2) demonstrating the relative benefits of different interventions, and (3) identifying areas for further research. The following clinical conditions addressed by the AHCPR PORT program meet the criteria of being common, costly, and feasible to study:

- Acute Myocardial Infarction
- Ischemic Heart Disease
- Low Back Pain
- Total Knee Replacement
- Hip Fracture and Osteoarthritis
- Low Birth Weight Prevention
- Cataract
- Community-Acquired Pneumonia
- Childbirth
- Schizophrenia
- Stroke Prevention
- Type II Diabetes
- Biliary Tract Disease
- Prostrate Disease

In July 1993, AHCPR introduced a new generation of PORT research, known as PORT II. A program announcement inviting applications for PORT IIs was published in the May 13, 1994 "NIH Guide for Grant and

Contracts," Vol. 23, No. 18. Like the original PORTs, PORT IIs are pragmatic, methodologically sophisticated, multidisciplinary projects that focus on patient outcomes for common clinical problems. They differ from the original PORTs by their individualized research strategies and are also distinguished by their expected impact on clinical practice, patient outcomes, and health care policy. PORT IIs focus on the establishment of direct linkages between practice and outcomes and on research methods that facilitate direct comparisons of two or more distinct clinical strategies. Clinical conditions addressed to date by the AHCPR PORT II program include:

- Localized Breast Cancer
- Cardiac Arrhythmia
- End-stage Renal Disease
- Depression
- Prostate Disease
- Infant Dehydration
- Cataract: Preoperative Testing
- Pelvic Inflammatory Disease

In addition to PORTs and PORT IIs, AHCPR has funded approximately 130 other outcomes and effectiveness research clinical studies. For clinical subjects as diverse as AIDS, dental disease, emergency medicine, and cancer, these studies document patterns of practice, describe the natural history of diseases, synthesize the evidence for various clinical strategies, or answer relatively discrete effectiveness questions. Major ongoing program areas focus on pharmaceutical therapy, minority health, and primary care.

AHCPR Process for Determining Priority Topics

Topic selection for the original PORT projects was guided by work of the Institute of Medicine (IOM) which was described in the 1990 IOM publication entitled "National Priorities for the Assessment of Clinical Conditions and Medical Technologies." A new process to identify priorities for future outcomes research was discussed at a November, 1995 expert panel meeting. During this meeting, the AHCPR conferred with health services and effectiveness experts, representing multiple disciplines, specialties, and institutions. Alternative approaches for prioritizing topic areas and identification of populations whose major health conditions have not yet been adequately addressed (e.g., young children, the very elderly, women, and ethnic minorities) were considered.

Based on the IOM work and expert discussions, AHCPR has initiated a three stage process for identifying topics:

1. Develop a preliminary list of priority topics and reasons for importance, representing the views of health care providers, insurers, medical and health specialty societies, consumers, and the general public;

2. Convene an expert panel to review and assess the preliminary research priorities and suggested criteria; and

3. Identify which topic areas can be most appropriately addressed using outcomes and effectiveness research methods.

This Notice initiates the first step, that is, a solicitation of topics from health care providers, insurers, health-related societies, consumers, and the public. Written suggestions for research topics that fit within the parameters of AHCPR's outcomes and effectiveness research program are invited.

For each suggestion, the nominee should provide a clear rationale and supporting evidence for the topic's importance and clinical relevance. Responses should be submitted by July 29, 1996 to: Carolyn Clancy, M.D., Acting Director, Center for Outcomes and Effectiveness Research, Agency for Health Care Policy and Research, Suite 605, 2101 East Jefferson Street, Rockville, Maryland 20852. All responses will be available for public inspection at the Center for Outcomes and Effectiveness Research, Telephone (301) 594–1485, weekdays between 8:30 a.m. and 5 p.m. The AHCPR will not reply to individual responses, but will consider all submissions in developing the research priorities.

For further information on the outcomes and effectiveness research program, contact: Carolyn Clancy, M.D., Acting Director, Center for Outcomes and Effectiveness Research, Agency for Health Care Policy and Research, Suite 605, 2101 East Jefferson Street, Rockville, Maryland 20852; Telephone (301) 594–1485.

Dated: May 16, 1996.

Clifton R. Gaus,

Administrator.

[FR Doc. 96–13195 Filed 5–24–96; 8:45 am]

BILLING CODE 4160–90–M

Centers for Disease Control and Prevention

[ANNOUNCEMENT 648]

National Institute for Occupational Safety and Health; Fatality Surveillance and Field Investigations at the State Level Using the NIOSH Fatality Assessment and Control Evaluation (FACE) Model

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1996 funds for cooperative agreements to build State capacity for conducting traumatic occupational fatality surveillance, investigation, and intervention activities through the National Institute for Occupational Safety and Health (NIOSH) Fatality Assessment and Control Evaluation (FACE) Model.

The CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Occupational Safety and Health, and Surveillance and Data Systems. (To order a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized under section 20(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)) and sections 301 (42 U.S.C. 241) and 317 (42 U.S.C. 247b) of the Public Health Service Act, as amended.

Smoke-Free Workplace

The CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are State Departments of Health, Departments of Labor, Departments of Industry, etc., located within any State or territory of the United States. Program activities, however, may not be carried out by departmental divisions that are responsible for enforcement of occupational safety and health standards. Awards will be limited to those organizations that can exercise public health authority for intervention into occupational safety and health problems. Only one application per State will be accepted under this announcement. Stronger consideration will be given to those States or territories submitting applications which demonstrate coordination among relevant State agencies.

Availability of Funds

Approximately $600,000 will be available in FY 1996 to fund five to seven awards. It is expected that the awards will range from $60,000 to $100,000 with an average award of $80,000. Individual awards may vary by State, and will be based upon the scope and nature of traumatic occupational fatalities documented by the respondent, and upon proposed personnel, administrative, and associated costs. The awards will be made on or about September 30, 1996, with 12-month budget periods within project periods of up to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be determined on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of funding these cooperative agreements is to expand the State-based FACE project and significantly strengthen the occupational public health infrastructure. This will be accomplished by integrating resources for occupational safety and health research and public health prevention programs at the State and local levels. The ultimate goal of the project is to reduce traumatic occupational fatalities within the States. Over the past seven years, State level personnel have shown that the NIOSH FACE model for investigation of occupational fatalities can be successfully implemented in the States. The most immediate products of the State level FACE programs have been accurate and timely surveillance systems for detecting traumatic occupational fatalities occurring within the State, fatality investigations identifying causal factors, and recommendations for prevention strategies. This program will permit awardees to efficiently integrate resources for prevention of occupational fatalities at the State and local level. Additionally, States will be encouraged to target occupational traumatic injury research and prevention programs based on specific State priority areas. FACE data will be shared with all award recipients. The specific objectives for this cooperative agreement are as follows:

1. Develop a timely, comprehensive, multiple source State level surveillance system for identifying and recording basic epidemiologic data on all traumatic occupational fatalities occurring within the State.

2. Conduct on-site investigations of specific traumatic occupational fatalities using the NIOSH FACE investigative model.

3. Through case investigations, identify factors common to selected types of traumatic occupational fatalities, leading to development and prioritization of prevention strategies.

4. Develop and disseminate prevention recommendations to reduce the risk of fatal occupational injuries within the State.

5. Develop and implement prevention strategies and projects for reducing State incidence of traumatic occupational injuries and fatalities.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A.(Recipient Activities), and CDC/NIOSH will be responsible for the activities under B. (CDC/NIOSH Activities).

A. Recipient Activities

1. Develop a comprehensive multiple-source, State-level surveillance system for prompt identification and reporting of epidemiologic data on all traumatic occupational fatalities occurring in the State.

2. Conduct in-depth site investigations of targeted occupational fatalities as determined by NIOSH. Currently, falls from elevations and machinery-related incidents are targeted fatality types. These are among the leading causes of work-place fatalities, as identified by national surveillance systems; however, they may change over the term of the agreement. Greatest emphasis must be placed on the determined targets; however, States may choose, in cooperation with NIOSH, to conduct in-depth investigations of other fatality types identified.

3. In specified format, develop and submit to NIOSH a narrative report of each in-depth fatality investigation which describes the fatal incident and includes recommendations for preventing future similar occurrences.

4. Submit first reports of fatalities, investigative narrative reports, and supplementary investigative data electronically to NIOSH through CDC's WONDER/PC system.

5. Evaluate surveillance data and investigative findings to identify specific worker populations to which prevention programs should be addressed.[1]

6. Identify entities such as employers, unions, and trade associations that can effect change in the workplace.

7. Communicate recommended preventions to those who can affect change in the workplace and to those at risk through targeted dissemination.

8. Prepare and submit periodic status reports of activities in designated format and an annual report that summarizes the activities and progress made by the State toward meeting the objectives for the State FACE program.

9. Participate in annual NIOSH-conducted FACE project workshop/conference in Morgantown, West Virginia, or other selected site.

B. CDC/NIOSH Activities

1. Provide formats for data reporting forms, coding formats, computer software, and State personnel training for electronic transmission of FACE surveillance and investigative data to the NIOSH data base.

2. Provide assistance to awardee staff in establishing traumatic occupational fatality notification networks.

3. Provide initial training in procedures and subsequent technical assistance for conducting on-site fatality investigations using the FACE investigative methodology (including the use of FACE investigative data collection instruments).

4. Provide assistance in identifying sentinel events resulting from industrial applications of new and emerging technologies.

5. Provide technical assistance in the dissemination of summary reports and other published findings to State and local health and labor officials, voluntary health groups, workers, unions, employers and professional organizations.

6. Provide technical assistance in identifying and evaluating effective intervention strategies.

7. CDC will provide funds to purchase one IBM-compatible, Pentium-based personal computer, printer, telecommunications equipment, and needed software for use on appropriate activities related to this cooperative agreement, if necessary.

[1] A Framework for Assessing the Effectiveness of Disease and Injury Prevention. Morbidity and Mortality Weekly Report (MMWR), March 27, 1992/Vol.41/Jn. The MMWR can be accessed through CDC's DocView, World-Wide Web (http://www.cdc.gov/epo/mmwr/mmwr.html).

Evaluation Criteria

Evaluation of the applications will be based on the following criteria:

1. Ability to communicate the scope and nature of traumatic occupational fatalities in the State as evidenced by the quality of the narrative and documented research and experience. (10%)

2. The qualifications and time commitment of proposed project staff (principal investigator, field investigator (if already identified), administrative and technical support staff). (30%—Total)

a. The existence of or potential for acquiring expertise in investigation of occupational fatalities. There should be a full-time field investigator dedicated to the project. (15%)

b. The existence of or potential for acquiring safety expertise relevant to formulation of injury prevention strategies. (15%)

3. Applicant's collaborative relationships with various relevant State or territorial agencies or organizations in addressing the problem of traumatic occupational fatality surveillance, investigation, and intervention. (30%—Total)

a. The existence of or potential for establishment of a multiple-source network for identification and reporting of traumatic occupational fatalities. (15%)

b. The existence of or potential for establishment of relationships with public safety departments, safety compliance agencies, and other entities that can provide background and supplementary data relating to specific fatality cases. (15%)

4. Demonstrated ability to communicate recommended preventions to those at risk through targeted dissemination. (25%)

5. Additional personnel/facilities/equipment already in place that can contribute to successful implementation of the project. (5%)

6. Human Subjects. (Not Scored)

Whether or not exempt from the DHHS regulations, are procedures adequate for protection of human subjects. Recommendations on the adequacy of protections include: (1) Protections appear adequate, and there are no comments to make or concerns to raise, (2) protections appear adequate, but there are comments regarding the protocol, (3) protections appear inadequate and the Objective Review Group has concerns related to human subjects, or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

7. Budget Justification. (Not Scored)

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds.

Executive Order 12372 Review

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. Indian tribes are strongly encouraged to request tribal government review of the proposed application. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit.

If SPOCs or tribal governments have any State process recommendations on applications submitted to CDC, they should forward them to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 60 days after the application deadline date. The granting agency does not guarantee to "accommodate or explain" State or tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance for this program is 93.283.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (OMB Number 0937–0189) must be submitted to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before July 11, 1996:

1. Deadline: Applications will be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (The applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

2. Late Applications: Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicants.

Where To Obtain Additional Information

To receive additional written information, call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement 648. You will receive a complete program description and information on application procedures and forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie M. Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, Room 300, 255 East Paces Ferry Road, NE., Atlanta, GA 30305, telephone (404) 842–6546, Internet: oxb3@opspgo1.em.cdc.gov.

Programmatic technical assistance may be obtained from Ted A. Pettit, State FACE Project Officer, Chief, Trauma Investigations Section, Surveillance and Field Investigations Branch, NIOSH/Division of Safety Research, Mailstop 180P, 1095 Willowdale Road, Morgantown, WV 26505–2888, telephone (304) 285–5972, Internet: TAP3@NIOSR1.EM.CDC.GOV, or Dr. Nancy Stout, Acting Chief, Surveillance and Field Investigations Branch, NIOSH/Division of Safety Research, Mailstop 180P, 1095 Willowdale Road, Morgantown, WV 26505–2888, telephone (304) 285–5916.

Please refer to Announcement Number 648 when requesting information and submitting an application.

There may be delays in mail delivery as well as difficulty in reaching the CDC Atlanta offices during the 1996 Summer Olympics (July 19–August 4). Therefore, CDC suggests the following to get more timely responses to any questions: use Internet/email, follow all instructions in this announcement, and leave messages on the contact person's voice mail.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: May 17, 1996.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–13196 Filed 5–24–96; 8:45 am]

BILLING CODE 4163–19–P

Food and Drug Administration

[Docket No. 95N–0200]

Guidance on Applications for Products Comprised of Living Autologous Cells Manipulated Ex Vivo and Intended for Structural Repair or Reconstruction; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Guidance on Applications for Products Comprised of Living Autologous Cells Manipulated Ex Vivo and Intended for Structural Repair or Reconstruction." The guidance was prepared by the Center for Biologics Evaluation and Research (CBER) in consultation with the Center for Devices and Radiological Health. The document is intended to provide guidance on FDA's approach to the regulation of living autologous cells manipulated ex vivo and intended for structural repair or reconstruction (Manipulated Autologous cells or MAS cells). The agency is also inviting comments on the guidance.

DATES: Written comments by August 26, 1996.

ADDRESSES: Submit written requests for single copies of the guidance entitled "Guidance on Applications for Products Comprised of Living Autologous Cells Manipulated Ex Vivo and Intended for Structural Repair or Reconstruction" to the Division of Congressional and Public Affairs (HFM–44), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail or FAX by calling the CBER Voice Information System at 1–800–835–4709.

Persons with access to the INTERNET may obtain the document in several ways. Users of "Web Browser" software, such as Mosaic, Netscape, or Microsoft Internet Explorer may obtain this document via the World Wide Web by using the following Uniform Resource Locators:

http://www.fda.gov/cber/cberftp.html
ftp://ftp.fda.gov/CBER/

The document may also be obtained via File Transfer Protocol (FTP). Requestors should connect to FDA's FTP Server, FTP.FDA.GOV(192.73.61.21). CBER documents are maintained in a subdirectory called "CBER" on the server. Logins with the user name of anonymous are permitted, and the user's e-mail address should be sent as the password. The "READ.ME" file in that subdirectory describes the available documents that may be available as an ASCII text file (*.TXT), or a WordPerfect 5.1 or 6.x document (*.w51,wp6), or both. Finally, the guidance can be obtained by "bounce-back e-mail". A message should be sent to: GDEXV@al.cber.fda.gov".

Submit written comments on the guidance to the Dockets Managements Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Sharon A. Carayiannis, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION:

FDA had recently become aware of the clinical use of MAS cell products. MAS cells are defined as cells derived from a patient's tissues, which are manipulated ex vivo, and then implanted locally into the same patient with the intent of providing repair or reconstruction of a structure. The repair and reconstruction does not involve systemic action by the MAS cell product. Examples of MAS cells include chondrocytes expanded ex vivo and implanted in focal cartilage defects (see 60 FR 36808 at 36809 for additional information and references). The commercialization and distribution of expanded cartilage cells to provide a potential solution to a relatively common medical injury suggested that numerous patients could be receiving these cells within a short period of time.

In light of the potential public health significance of the MAS cell products, the growth of a commercial industry potentially affecting a large number of patients, and the need to decide which existing regulatory authorities (e.g., device versus biologics) would be appropriate to apply or whether a new regulatory framework was required, the agency held a public hearing on November 16 and 17, 1995 (60 FR 36808). The intent of the meeting was to solicit information on the nature and diversity of these products, and to receive comments on the formulation and implementation of any new regulatory requirements. The public hearing had 8 panels with 24 speakers, and there was general consensus that the establishment, the production process, and the MAS cell products should be of the highest quality. The speakers and attendees also agreed that MAS cell products should benefit the patient, but there was little consensus on the appropriate mechanism that should be used to show this benefit.

In the **Federal Register** of March 7, 1996 (61 FR 9185), after reviewing the comments and further internal discussions, the agency published a notice announcing a Commissioner's roundtable to be held on March 15, 1996. The roundtable was held to present the elements of a planned regulatory framework intended to ensure patient safety and to demonstrate patient benefit, while accommodating the development of these therapies and the need for a flexible regulatory approach. Many of the concepts presented at the roundtable were derived from ongoing FDA Reinventing Government (REGO) initiatives. In the same **Federal Register** notice, FDA also invited the submission of written comments concerning FDA's draft plan for the regulation of MAS cells. Based on the discussions at the March 15, 1996, roundtable and on a review of all comments received, FDA has decided that, in light of the existing and increased flexibility provided by REGO initiatives, FDA will apply the regulatory framework as detailed and explained in the guidance. CBER is

designated as the agency component with primary jurisdiction for the premarket review and regulation of MAS cell products. The products are subject to licensure as biological products under section 351 of the Public Health Service Act (42 U.S.C. 262).

The guidance document includes discussions on the following: (1) Background and recent events; (2) regulatory plan, including: A summary and discussions of products to be regulated, registration and inspection of establishments, clinical studies, investigational phase and requirements for premarket approval, cost recovery, marketing application, chemistry, manufacturing and controls section of a biologics license application, formulation of an intercenter working group, contracting of manufacture, lot release, and current good manufacturing practice requirements; (3) registration and application submission; and (4) submission of comments.

As with other procedural guidance documents, FDA does not intend this guidance to be all-inclusive. Alternative approaches could be warranted in specific situations, and certain aspects might not be applicable in all situations. If an applicant believed a procedure described in this guidance was inapplicable to a specific situation for a particular product, the applicant could provide, for CBER's consideration, information supporting an alternative process. If an applicant chooses to use an alternative process, the applicant may wish to discuss the matter further with the agency to prevent expenditure of money and resources on activities that later might be determined to be inappropriate to FDA. Although this guidance does not create or confer any rights for or on any person, and does not operate to bind FDA or the public, it does represent the agency's current thinking on the regulation of MAS cell products.

Interested persons may, on or before (*insert date 90 days after date of publication in the* **Federal Register**), submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments and information are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Received comments on this document will be considered in determining whether revisions to the guidance are warranted.

Dated: May 22, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–13386 Filed 5–23–96; 11:13 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing; Notice of Proposed Information Collection for Public Comment

[Docket No. FR–3917–N–78]

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement, described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: July 29, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451—7th Street, SW., Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Betty Belin, Telephone number (202) 708–0614 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Multifamily Coinsurance Claims Package (f).

OMB Control Number: 2502–0420.

Description of the need for the information and proposed use: Under Statue 12 USC 1715z–9 and Title II, Section 244 of the National Housing Act authorizes the Secretary of HUD to coinsure eligible multifamily mortgages against default. In addition to complying with statutory requirements, the information collected is used by HUD to determine the claim amount due the mortgages. The main purpose for the forms is for lenders to file a claim for insurance benefits.

Agency form numbers: HUD 27008, 27009B, 27009D, 27009F.

Members of affected public: Mortgagees participating in Section 233(f).

An estimation of the total numbers of hours needed to prepare the information collection is 5, the number of respondents is 5, frequency of response is 1, and the hours of response is 5.

Status of the proposed information collection: Reinstatement with change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 20, 1996.

Nicolas P. Retsinas,

A/S Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96–13238 Filed 5–24–96; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–3917–N–81]

Office of Administration; Submission for OMB Review; Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: June 27, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, is applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 17, 1996.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Statement and Voucher for Basic Annual Contributions—Leased Housing.

Office: Public and Indian Housing.

OMB Approval Number: 2577–0061.

Description of the Need for the Information and Its Proposed Use: This form is needed to provide essential financial information on the operations for Public Housing Agencies (PHAs), which is used for multiple purposes by HUD, including identification of debts owed to the Department.

Form Number: HUD–52981.

Respondents: State, Local, or Tribal Government and Not-For Profit Institutions.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–52981	125		1		.88		110

Total Estimated Burden Hours: 110.

Status: Reinstatement, without changes.

Contact: Joan DeWitt, HUD, (202) 708–1872, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 17, 1996.

[FR Doc. 96–13235 Filed 5–24–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR3917–N–80]

Office of Administration; Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: June 27, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30 days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 17, 1996.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Lease and Sale of HUD-Acquired Single Family Properties for the Homeless.

Office: Housing.

OMB Approval Number: 2502–0412.

Description of the Need for the Information and its Proposed Use: The purpose of this program is to make available, through sale or lease, to applicants approved by HUD, certain HUD-acquired single family properties for use in housing the homeless.

Form Number: None.

Respondents: State, Local or Tribal Government and Not-For Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	300		1		2		600

Total Estimated Burden Hours: 600.

Status: Reinstatement, without changes.

Contact: Marilyn Hart, HUD, (202) 708–4767 x2319, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated May 17, 1996.

[FR Doc. 96–13236 Filed 5–24–96; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR 3917–N–79]

Office of Administration; Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposal.

DATES: Comments due date: June 27, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 13, 1996.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Solicitation Mailing List Application.

Office: Administration, Office of Procurement and Contracts.

OMB Approval Number: 2535–0086.

Description of the Need for the Information and Its Proposed Use: This information will be used by potential sources to indicate their particular field(s) of expertise or interest. HUD will use this information to target the types of solicitations that organizations receive as a result of being placed on the Solicitation Mailing List.

Form Number: HUD–24010 and SF–129.

Respondents: Business or Other For-Profit, Individuals or Households, State, Local, or Tribal Government, and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	1,200		1		.17		200

Total Estimated Burden Hours: 200.

Status: Extension, no changes.

Contact: Larry S. DeWalt, HUD, (202) 708–0294, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 13, 1996.

[FR Doc. 96–13237 Filed 5–24–96; 8:45 am]

BILLING CODE 4210–01–M

Office of Administration; Submission for OMB Review: Comment Request

[Docket No. FR–3950–N–05]

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: June 27, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 13, 1996.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Notice of Application for Designation as a Single Family Foreclosure Commissioner (FR–3950).

Office: General Counsel.

OMB Approval Number: 2510–0012.

Description of the Need for the Information and its Proposed Use: Under the Single Family Mortgage Foreclosure Act of 1994, HUD may exercise a nonjudicial Power of Sale of single family HUD-held mortgages and may appoint Foreclosure Commissioners to do this. HUD needs the Notice and resulting applications for compliance with the Act's requirements that commissioners be qualified. Most respondents will be attorneys, but anyone may apply.

Form Number: None.

Respondents: Business or Other For-Profit and Individuals or Households.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	BBurden hours
Applications, First Year	750		1		.50		375
Applications, Later Years	250		1		.50		100

Total Estimated Burden Hours: 475.

Status: Extension with changes.

Contact: Bruce S. Albright, HUD, (202) 708–0080, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 13, 1996.

[FR Doc. 96–13239 Filed 5–24–96; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–912–0777–52–241A]

Extension of Nomination Period for Bakersfield, Susanville, and Ukiah Resource Advisory Councils, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to extend the nomination period for three Bureau of Land Management Resource Advisory Councils in Bakersfield, Susanville, and Ukiah, California. This nomination period was announced in a **Federal Register** notice published April 4, 1996, and by press releases issued throughout California.

Announcement of this extension was circulated to BLM's interested publics in a news release issued May 21, 1996.

Nominations for Resource Advisory Councils should be sent to the appropriate BLM office: Bakersfield: Ron Fellows, 3801 Pegasus Drive, Bakersfield, CA 95482. Linda Hansen, 2950 Riverside Drive, Susanville, CA 96130 Renee Snyder, 2550 N. State Street, Ukiah, CA 95482.

DATES: The extended nomination period will close June 5, 1996.

FOR FURTHER INFORMATION CONTACT: Tony Staed, Bureau of Land Management, 2800 Cottage Way, Room 2845, Sacramento, CA 95825, 916–979–2835.

Tony Staed,

Deputy State Director, External Affairs.

[FR Doc. 96–13271 Filed 5–24–96; 8:45 am]

BILLING CODE 4310–40–P

[WY–060–1310–00]

Gillette South Assessment Area, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement for coalbed methane development projects in the Gillette South Assessment Area in Campbell County, Wyoming.

SUMMARY: The Bureau of Land Management(BLM) under the National Environmental Policy Act (NEPA) must analyze the impacts of actions we permit on Federal lands and minerals. As part of this analysis, the cumulative affects of the proposed action and other activities occurring in the area must be considered. We have completed three Environmental Assessments (EA), (Pistol Point, Marquiss, and Lighthouse) to address proposed coalbed methane (CBM) development. On these projects, we found there would not be significant impacts as a result of the development and were able to write a Decision Record with a Finding of No Significant Impact (FONSI).

Shortly after the Lighthouse decision was issued in June of 1995, several companies came forward with additional proposals. Torch operating, successor operator in the Marquiss field proposed 40 additional wells; Western Gas Resources proposed 60 to 100 wells in the Lighthouse area; and Petrox Inc., proposed 35 wells within the Lighthouse area. DCD, Inc., and Duncan Oil have proposed about 10 wells. In addition to the new wells proposed

impacts such as water drawdown and water production is proceeding at a rate greater than that predicted in the EAs.

DATES: Comments to be considered in the draft EIS should be submitted by June 28, 1996. The draft EIS should be available for public review by mid September of 1996.

ADDRESSES: Questions or concerns should be addressed to Richard Zander in the Buffalo Resource Area Office, 189 North Cedar, Buffalo, Wyoming 82834.

FOR FURTHER INFORMATION CONTACT: Richard Zander, phone: 1–800–301–3483.

SUPPLEMENTARY INFORMATION: Shortly after the Lighthouse decision was issued in June of 1995, several companies came forward with proposals for approximately 200 additional wells. In addition to the new well proposals impacts were progressing at a faster rate than those predicted in the EAs. Marquiss was modeled at 6 gpm and Lighthouse was modeled at 11 gpm initially declining to an average of 7 gpm. New technological developments such as underreaming the open hole completion in the coal and fracing the coal have led to increased gas production and increased water production. We are seeing 15 to 25 gpm which is a doubling or tripling of the water production in both project areas, with no indication of any decline in water production. This is substantially greater than what was modeled for the NEPA analysis. In Marquiss, because of increased pump rates, static water level drawdowns have occurred in 3 years rather than the 10 years predicted in the NEPA analysis. We do not know if they will go lower. Model assumptions that water production would decline after 1 year are apparently not correct. Torch Operating believes 2 to 3 years may be more realistic. Since water production began in early 1993, we currently have 3 years of production. Torch Operating has stated they are at the point of balancing their production for optimum gas production and water production rates have declined from 25 gpm to 20 gpm.

Monitoring data from one of the shallow wells in the Marquiss project area is possibly showing a decline in the static water level in a sandstone aquifer above the coal. We have talked with the State Engineers Office about this and feel it is too early to determine if there is communication occurring between the two zones. We are closely watching this activity within the aquifers. This type of occurrence makes it imperative that we continue forward with the monitoring program laid out in the Lighthouse EA.

Lighthouse was modeled as a 5-year progressive project: Proposals by Western Gas Resources, Petrox, Inc., DCD, Inc., would possibly shorten the development timeframe. Western Gas has assumed responsibility for the southern two thirds of the project area from American Oil and Gas. They are currently drilling stratigraphic tests on the Durham Buffalo Ranch in Township 45 North, Range 71 and 72 West. We will not do any additional computer groundwater modeling on the areas south of Gillette. It is not feasible to credibly or accurately model as large an area we are talking about with the data available. As variables increase, accuracy decreases. We propose to extrapolate what we have modeled and what we have monitored to make a prediction on expected impacts.

We support the landowner/industry group working on a Water Well Mitigation Agreement that is designed to address the question of potential impacts to water wells, so significant impacts do not occur and we intend to utilized this agreement in the development of the proposed action for the EIS. However, static water level declines are not the only issue we need to deal with. The increased rate of development, increased rates of production, increased surface water discharges, and increased area of disturbance are also questions that need to be addressed. We must evaluate the potential for cumulative impacts as a result of coal and coalbed methane development in the same general area at a time when development areas and production levels for both are increasing.

Dated: May 21, 1996.

Alan R. Pierson,

State Director.

[FR Doc. 96–13272 Filed 5–24–96; 8:45 am]

BILLING CODE 4310–01–P

[NV–050–1020–001]

Mojave-Southern Great Basin Resource Advisory Council—Notice of Meeting Locations and Times

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council meeting locations and times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), council meeting of the Mojave-Southern Great Basin Resource Advisory Council will be held as indicated below. The agenda includes a public comment period, discussion of laws and regulations that pertain to grazing, and an update of standards and guidelines.

All meetings are open to the public. The public may present written comments to the council. Each formal council meeting will have a time allocated for hearing public comments. The public comment period for the council meeting is listed below. Depending of the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Michael Dwyer at the Las Vegas District Office, 4765 Vegas Dr., Las Vegas, NV 89108, telephone, (702) 647–5000.

DATES, TIMES: Dates are June 10 and 11, 1996, from 8 a.m. to approximately 4:30 p.m. The council will meet at the Desert Research Institute, located at 755 E. Flamingo, Las Vegas, NV 89119. The public comment period will be on June 10 from 10 a.m. to noon.

SUPPLEMENTARY INFORMATION: The purpose of the council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the public lands. The council will vote on recommendations for Standards and Guidelines that will be presented to the State Director, Nevada on June 11.

FOR FURTHER INFORMATION CONTACT: Lorraine Buck, Public Affairs Specialist, Las Vegas District, telephone: (702) 647–5000.

Dated: May 15, 1996.

Gary L. Ryan,

Associate District Manager.

[FR Doc. 96–13289 Filed 5–24–96; 8:45 am]

BILLING CODE 4310–HC–M

[AZ–046–1430–01; AZA 23060]

Public Land Order No. 7197; Withdrawal of Public Lands for the Waterman Mountains Area of Critical Environmental Concern; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws public lands from surface entry and mining for a period of 50 years for the Bureau of Land Management to protect the endangered Nichol Turk's Head Cactus within the Waterman Mountains Area of Critical Environmental Concern. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: May 28, 1996.

FOR FURTHER INFORMATION CONTACT: Tony Herrell, BLM Tucson Resource Area, 12661 East Broadway, Tucson, Arizona 85748, 520–722–4289.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the Bureau of Land Management's Waterman Mountains Area of Critical Environmental Concern:

Gila and Salt River Meridian

T. 12 S., R. 9 E.,
- Sec. 29, lots 3 and 4, S½NW¼, N½SW¼, N½SW¼SW¼, SE¼SW¼, and SE¼;
- Sec. 30, lots 1 to 5, inclusive, lot 9, that portion of lot 10 lying outside of Mineral Patent No. 02–79–0008, lot 11, S½NE¼, SE¼NW¼, E½NE¼SW¼, N½N½SE¼, SE¼NE¼SE¼, SW¼NW¼SE¼, and SW¼SE¼SE¼;
- Sec. 31, lots 3 and 4, those portions of lots 5 and 8 lying outside of Mineral Patent No. 02–79–0008, NW¼NE¼NE¼, SE¼NE¼NE¼, N½NW¼NE¼, SW¼NW¼NE¼, NW¼SW¼NE¼, S½S½NE¼, NE¼SE¼NE¼, SE¼NW¼, E½SW¼, and SE¼;
- Sec. 32, Mineral Survey No. 3885;
- Sec. 33, N½NW¼, N½SW¼NW¼, SE¼NW¼, N½NE¼SW¼, S½S½SW¼, and W½W½SE¼.

T. 13 S., R. 9 E.,
- Sec. 5, W½SW¼SW¼;
- Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼.

The areas described aggregate 2,335.21 acres in Pima County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: May 20, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96–13200 Filed 5–24–96; 8:45 am]

BILLING CODE 4310–32–P

Fish and Wildlife Service

Issuance of Permit for Incidental Take of Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

On July 14, 1995, a notice was published in the **Federal Register** (60 FR 36305) that an application had been filed with the U.S. Fish and Wildlife Service (Service) by Washington County, Utah, for a permit to incidentally take, pursuant to Section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), threatened desert tortoise (*Gopherus agassizii*) in conjunction with otherwise legal activities including building construction, in portions of Washington County pursuant to the Implementation Agreement that implements the Washington County Habitat Conservation Plan.

Notice is hereby given that on February 23, 1996, as authorized by the provisions of the Act, the Service issued an incidental take permit PRT–811471 to the above-named party subject to certain conditions set forth therein. The permit was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be to the disadvantage of the threatened species, and that it will be consistent with the purposes and policies set forth in the Act, as amended.

Additional information on this permit action may be obtained by contacting the Assistant Field Supervisor, U.S. Fish and Wildlife Service, Utah Field Office, 145 East 1300 South Street, Suite 404, Salt Lake City, Utah 84115, telephone (801) 524–5001, between the hours of 7:30 a.m. and 4:30 p.m. weekdays.

Dated: May 20, 1996.

Terry Terrell,

Deputy Regional Director Denver, Colorado, U.S. Fish and Wildlife Service

[FR Doc. 96–13290 Filed 5–24–96; 8:45 am]

BILLING CODE 4310–55–M

D'Arbonne National Wildlife Refuge, Union Parish, LA; Right-of-Way Pipeline Application

Notice is hereby given as required under Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449; 30 U.S.C. 185) as amended by Public Law 93–153, that NorAm Gas Transmission Company has applied for a right-of-way for a 20-inch pipeline to be located on lands of the D'Arbonne National Wildlife Refuge in Union Parish, Louisiana, described as follows: (See Exhibits A through G Attached)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: The Fish and Wildlife Service is in the process of issuing a right-of-way permit across the D'Arbonne National Wildlife Refuge in Union Parish, Louisiana.

SUMMARY: The notice advises the public that the Fish and Wildlife Service plans to issue a permit to NorAm Gas Transmission Company, for a 20-inch pipeline on a portion of the D'Arbonne National Wildlife Refuge.

EFFECTIVE DATE: June 27, 1996.

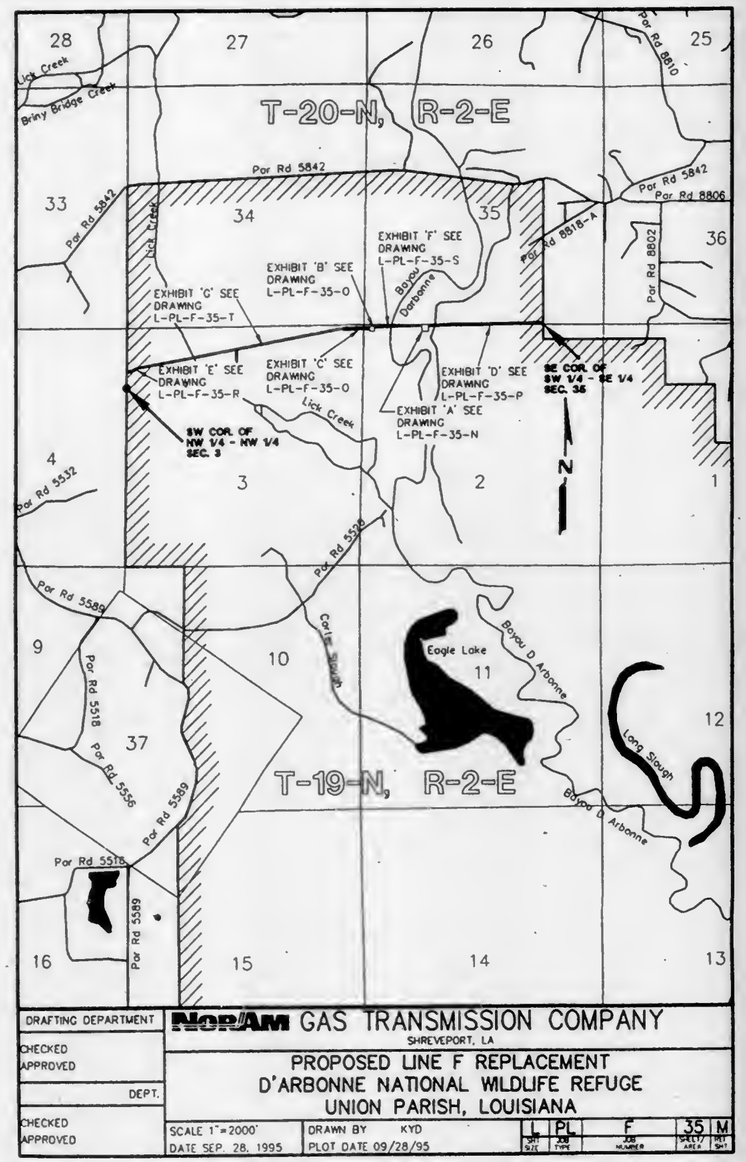
FOR FURTHER INFORMATION CONTACT: Mr. Craig McBroome, Realty Specialist, Division of Realty, Arkansas Field Office, c/o Cache River National Wildlife Refuge, Route 2, Box 126–T, Augusta, Arkansas 72006, Telephone (501) 347–5947.

Dated: May 13, 1996.

Noreen K. Clough,

Regional Director.

BILLING CODE 4310–55–M



BILLING CODE 4310-55-C

Description of Proposed 0.52 Acre Temporary Work Space For Proposed Line "F" Replacement to be Acquired From D'Arbonne National Wildlife Refuge in Section 2, Township 19 North, Range 2 East, Union Parish, Louisiana

EXHIBIT 'A'

A 0.52 acre temporary work space in the Northeast Quarter of Section 2, Township 19 North, Range 2 East; Union Parish, Louisiana, being more particularly described as follows:

COMMENCING at a 2 inch iron pipe at the Northeast corner of the Northwest Quarter of the Northeast Quarter of said Section 2, point being on the East property line of the D'arbonne National Wildlife Refuge;

THENCE West 2549.8 feet and North 8.7 feet to the POINT OF BEGINNING.

THENCE South 88 degrees 09'04" West, 150.0 feet to a point;

THENCE South 01 degree 50'56" East, 150.0 feet to a point;

THENCE North 88 degrees 09'04" East, 150.0 feet to a point;

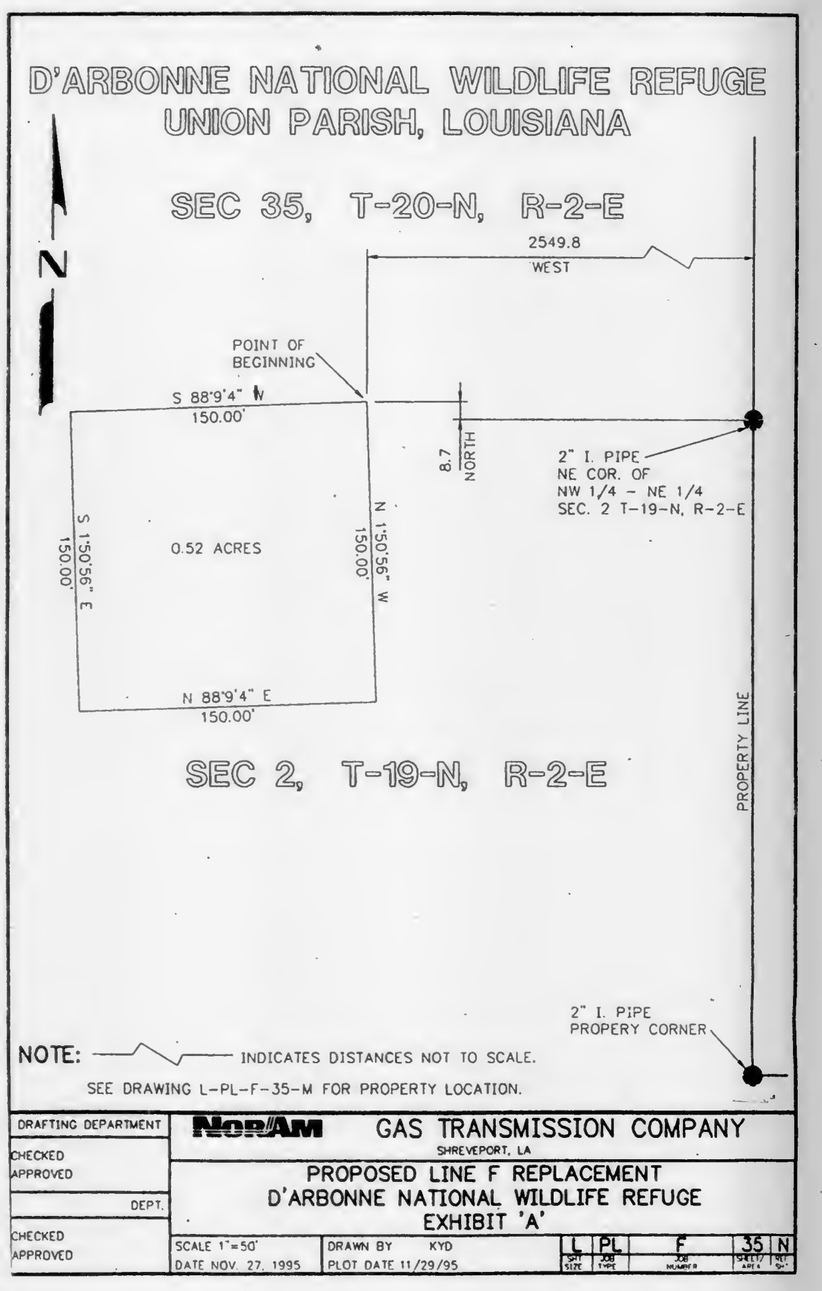
THENCE North 01 degree 50'56" West, 150.0 feet to the Point of Beginning, containing 0.52 acres more or less for a temporary work space.

A 110 foot wide strip containing 0.38 acres more or less on the South side of said temporary work space will revert back to the D'arbonne National Wildlife Refuge after construction.

Note: See drawing L-PL-F-35-N for detail.

Date: November 29, 1995.

BILLING CODE 4310-55-M



BILLING CODE 4310–55–C

Description of a 0.23 Acre Temporary Work Space for Proposed Line "F" Replacement to be Acquired From D'arbonne National Wildlife Refuge in Section 2, Township 19 North, Range 2 East, Union Parish, Louisiana

Exhibit 'B'

A 0.23 acre temporary work space in the Northwest Quarter of Section 2, Township 19 North, Range 2 East, Union Parish, Louisiana, being more particularly described as follows:

COMMENCING at a 2 inch iron pipe at the Northeast corner of the Northwest Quarter of the Northeast Quarter of said Section 2, point being on the East property line of the D'arbonne National Wildlife Refuge;

THENCE West 3751.2 feet and South 31.9 feet to the POINT OF BEGINNING;

THENCE North 89 degrees 47'11" West, 100.0 feet to a point;

THENCE South 0 degrees 12'49" West, 100.0 feet to a point;

THENCE South 89 degrees 47'11" East, 100.0 feet to a point;

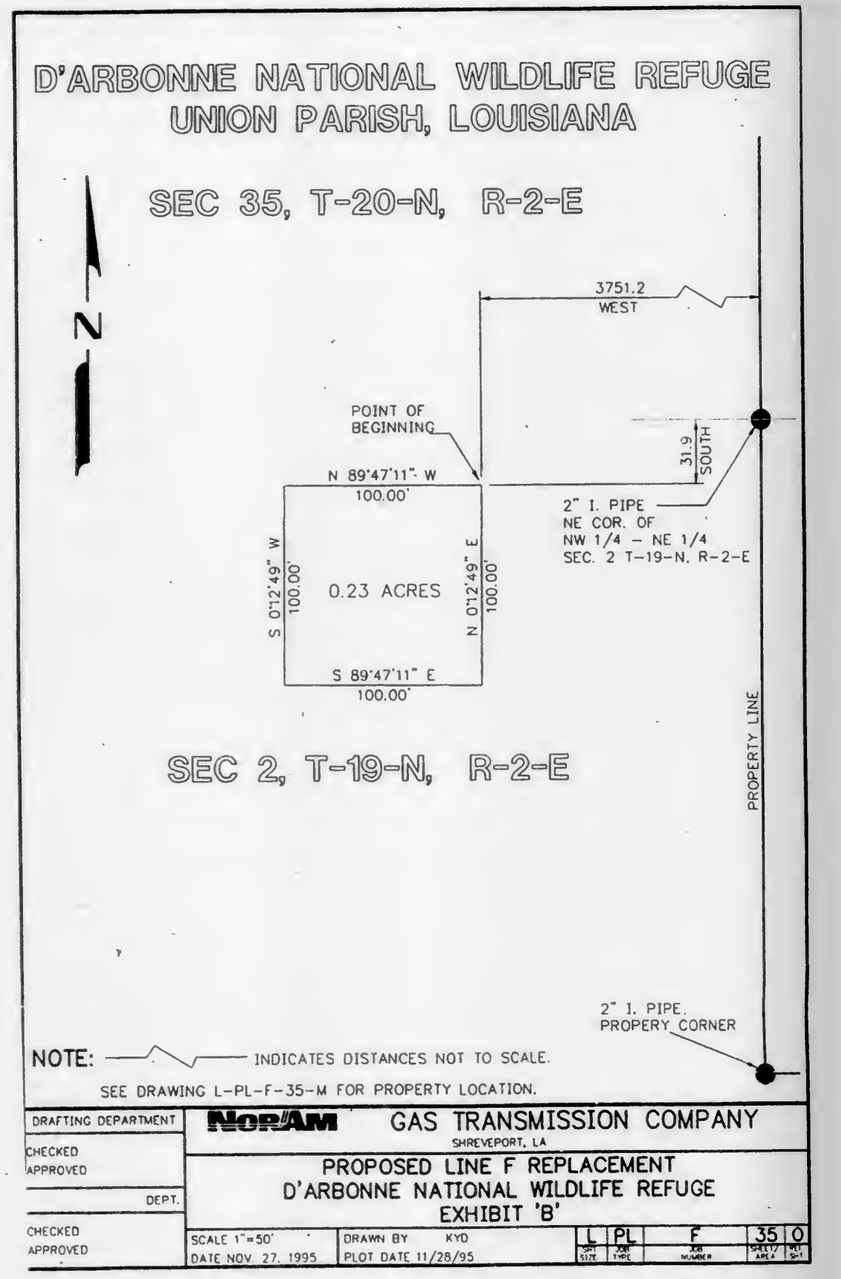
THENCE North 0 degrees 12'49" East, 100.0 feet to the Point of Beginning, containing 0.23 acres more or less for a temporary work space.

A 60 foot wide strip containing 0.14 acres more or less on the South side of said temporary work space will revert back to the D'arbonne National Wildlife Refuge after consideration.

Note: See drawing L–PL–F–35–O for detail.

Date: 11–29–95.

BILLING CODE 4310–55–M



BILLING CODE 4310-55-C

Description of Proposed Temporary Right of Way for Proposed Line "F" Replacement to be Acquired From D'Arbonne National Wildlife Refuge in Sections 2 and 3, Township 19 North, Range 2 East, Union Parish, Louisiana

Exhibit 'C'

A proposed temporary right of way across part of the lands of D'arbonne National Wildlife Refuge in the Northwest Quarter of Section 2 and the Northeast Quarter of Section 3, Township 19 North, Range 2 East, Union Parish, Louisiana, being more particularly described as follows:

COMMENCING at a 2 inch iron pipe at the Northeast Corner of the Northwest Quarter of the Northeast Quarter of Section 2, point being on the East property line of the D'arbonne National Wildlife Refuge.

THENCE West 3851.2 feet and South 31.5 feet to the POINT OF BEGINNING.

THENCE South 0 degrees 12'49" West, 75.00 feet to a point;

THENCE North 89 degrees 47'11" West, 104.39 feet to a point;

THENCE South 88 degrees 56'31" West, 438.94 feet to a point;

THENCE South 79 degrees 34'17" West, 57.77 feet to a point;

THENCE North 0 degrees 12'49" East, 76.31 feet to a point;

THENCE North 79 degrees 34'17" East, 49.83 feet to a point;

THENCE North 88 degrees 56'31" East, 445.92 feet to a point;

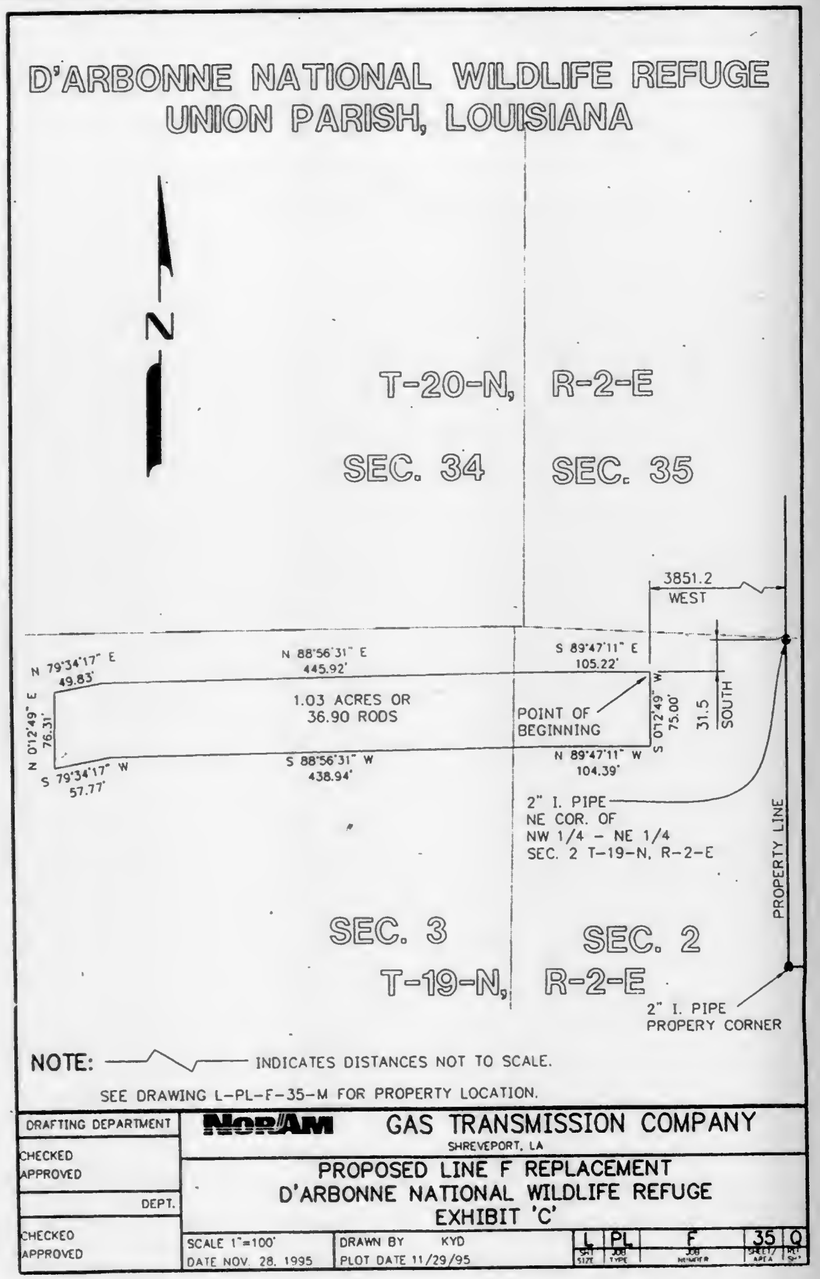
THENCE South 89 degrees 47'11" East, 105.22 feet to the Point of Beginning, containing 1.03 acres more or less or 36.90 rods of Right of Way to be acquired.

A 35 foot wide strip containing 0.48 acres more or less on the South side of said temporary right of way will revert back to the D'arbonne National Wildlife Refuge after construction.

Note: See drawing L-PL-F-35-Q for detail.

Date: 11-29-95.

BILLING CODE 4310-55-M



BILLING CODE 4310-55-C

Description of Proposed 60 Foot Wide Right of Way for Proposed Line "F" Replacement to be Acquired from D'Arbonne National Wildlife Refuge in Section 35, Township 20 North, Range 2 East and Section 2, Township 19 North, Range 2 East, Union Parish, Louisiana

Exhibit 'D'

A 60 foot wide right of way across part of the lands of the D'arbonne National Wildlife Refuge in the Southeast Quarter of Section 35, Township 20 North Range 2 East and the Northeast Quarter of Section 2, Township 19 East, Union Parish Louisiana, being more particularly described as follows:

BEGINNING at a 2 inch iron pipe at the Southeast corner of the Southwest Quarter of the Southeast Quarter of said Section 35, point being on the East property line of the D'arbonne National Wildlife Refuge;

THENCE South 0 degrees 24'30" East, 1.4 feet to a point;

THENCE South 88 degrees 52'27" West, 914.19 feet to a point;

THENCE South 89 degrees 20'50" West, 1110.68 feet to a point;

THENCE South 87 degrees 35'30" West, 524.12 feet to a point;

THENCE North 1 degrees 50'56" West, 60.00 feet to a point;

THENCE North 87 degrees 35'30" East, 524.45 feet to a point;

THENCE North 89 degrees 20'50" East, 1111.36 feet to a point;

THENCE North 88 degrees 52'27" East, 914.69 feet to a point;

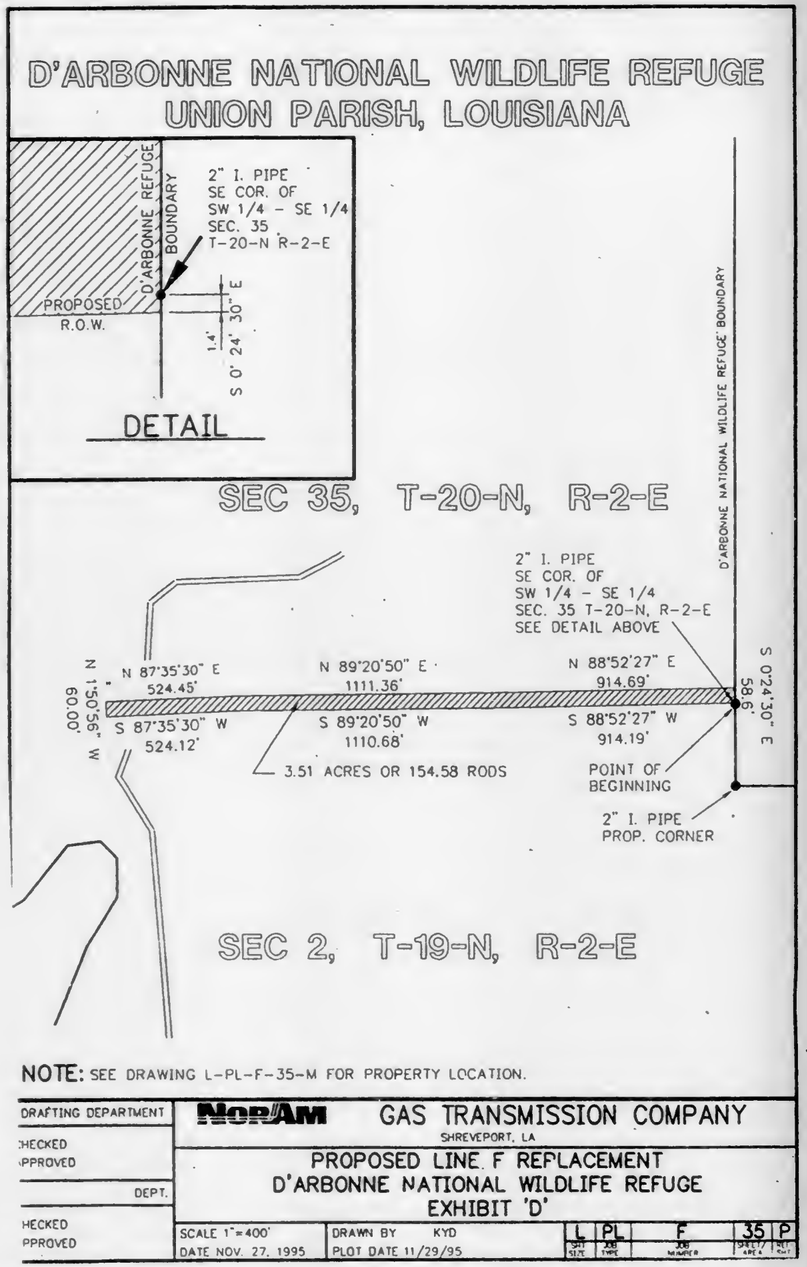
THENCE South 0 degrees 24'30" East, 58.6 feet to a Point of Beginning, containing 3.51 acres more or less or 154.58 rods of Right of Way to be acquired.

A 20 foot wide strip containing 1.17 acres more or less on the south side of said right of way will revert back to the D'arbonne National Wildlife Refuge after construction.

Note: See drawing L-PL-F-35-P for detail.

Date: 11-29-95.

BILLING CODE 4310-55-M



NOTE: SEE DRAWING L-PL-F-35-M FOR PROPERTY LOCATION.

DRAFTING DEPARTMENT	NorAm GAS TRANSMISSION COMPANY SHREVEPORT, LA						
CHECKED / APPROVED	PROPOSED LINE F REPLACEMENT D'ARBONNE NATIONAL WILDLIFE REFUGE EXHIBIT 'D'						
DEPT.							
CHECKED / APPROVED	SCALE 1"=400'	DRAWN BY KYD	L	PL	F	35	P
	DATE NOV. 27, 1995	PLOT DATE 11/29/95	SHT NO.	JOB TYPE	JOB NUMBER	SHEET / AREA	REV.

BILLING CODE 4310-55-C

Description of Proposed Temporary Right of Way for Proposed line "F" Replacement to be Acquired From D'Arbonne National Wildlife Refuge in Section 3, Township 19 North, Range 2 East, Union Parish, Louisiana

Exhibit 'E'

A proposed temporary right of way across part of the lands of D'arbonne National Wildlife Refuge in the Northwest Quarter of the Northwest Quarter of Section 3, Township 19 North, Range 2 East, Union Parish, Louisiana, being more particularly described as follows:

COMMENCING at an iron rod with a cap at the Southwest corner of the Northwest Quarter of the Northwest Quarter of Section 3, point being on the West property line of the D'arbonne National Wildlife Refuge.

THENCE North 0 degrees 26'18" East, 3746.6 feet to a POINT OF BEGINNING;

THENCE North 79 degrees 30'38" East, 126.25 feet to a point;

THENCE North 64 degrees 30'38" East, 104.23 feet to a point;

THENCE North 25 degrees 29'22" West, 60.00 feet to a point;

THENCE South 64 degrees 30'38" West, 96.33 feet to a point;

THENCE South 79 degrees 30'38" West, 106.77 feet to a point;

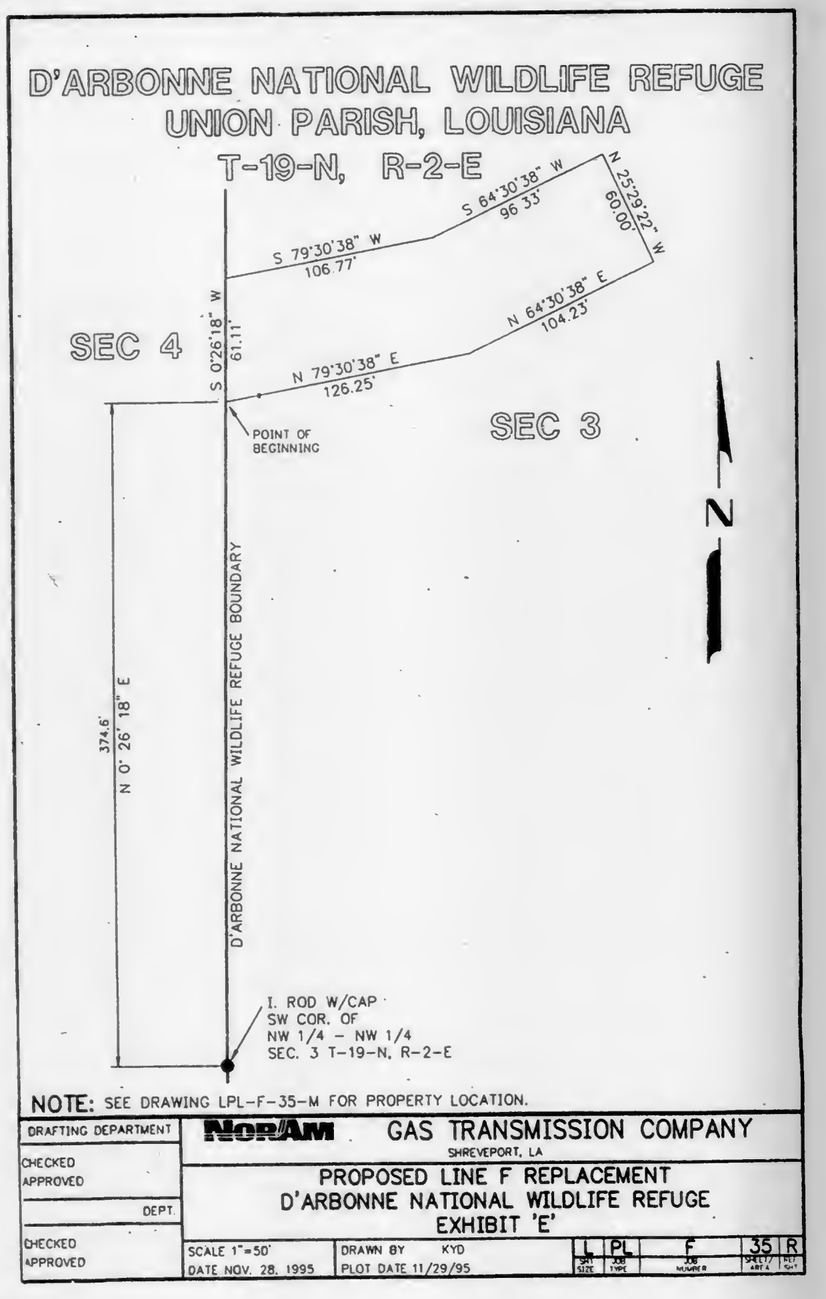
THENCE South 0 degrees 26'18" West, 61.11 feet to a Point of Beginning, containing 0.30 acres more or less of 13.97 rods of Right of Way to be acquired.

A 20 foot wide strip containing 0.10 acres more or less on the South side of said temporary right of way will revert back to the D'arbonne National Wildlife Refuge after construction.

Note: See drawing L-PL-F-35-P for detail.

Date: 11-29-95.

BILLING CODE 4310-55-M



NOTE: SEE DRAWING LPL-F-35-M FOR PROPERTY LOCATION.

DRAFTING DEPARTMENT	NorAm GAS TRANSMISSION COMPANY SHREVEPORT, LA						
CHECKED APPROVED DEPT.	PROPOSED LINE F REPLACEMENT D'ARBONNE NATIONAL WILDLIFE REFUGE EXHIBIT 'E'						
CHECKED APPROVED	SCALE 1"=50' DATE NOV. 28. 1995	DRAWN BY KYD PLOT DATE 11/29/95	L SHT SIZE	PL JOB TYPE	F JOB NUMBER	35 SHEET/ ART #	R HT SHT

BILLING CODE 4310-55-C

Description of Proposed Permanent Right of Way for Proposed Line "F" Replacement To Be Acquired From D'arbonne National Wildlife Refuge in Section 2, Township 19 North, Range 2 East, Union Parish, Louisiana

Exhibit 'F'

A proposed permanent right of way across part of the lands of the D'arbonne National Wildlife Refuge in the Northwest Quarter of Section 2, Township 19 North, Range 2 West, Union Parish, Louisiana, being more particularly described as follows:

COMMENCING at a 2 inch iron pipe at the Northeast of the Northwest Quarter of the Northeast Quarter of Section 2, point being on the East property line of the D'arbonne National Wildlife Refuge.

THENCE West 2699.7 feet and 8.7 feet North to the POINT OF BEGINNING.

THENCE South 1 degree 50'56" East, 40.0 feet to a point;

THENCE South 88 degrees 9'4" West, 1053.50 feet to a point;

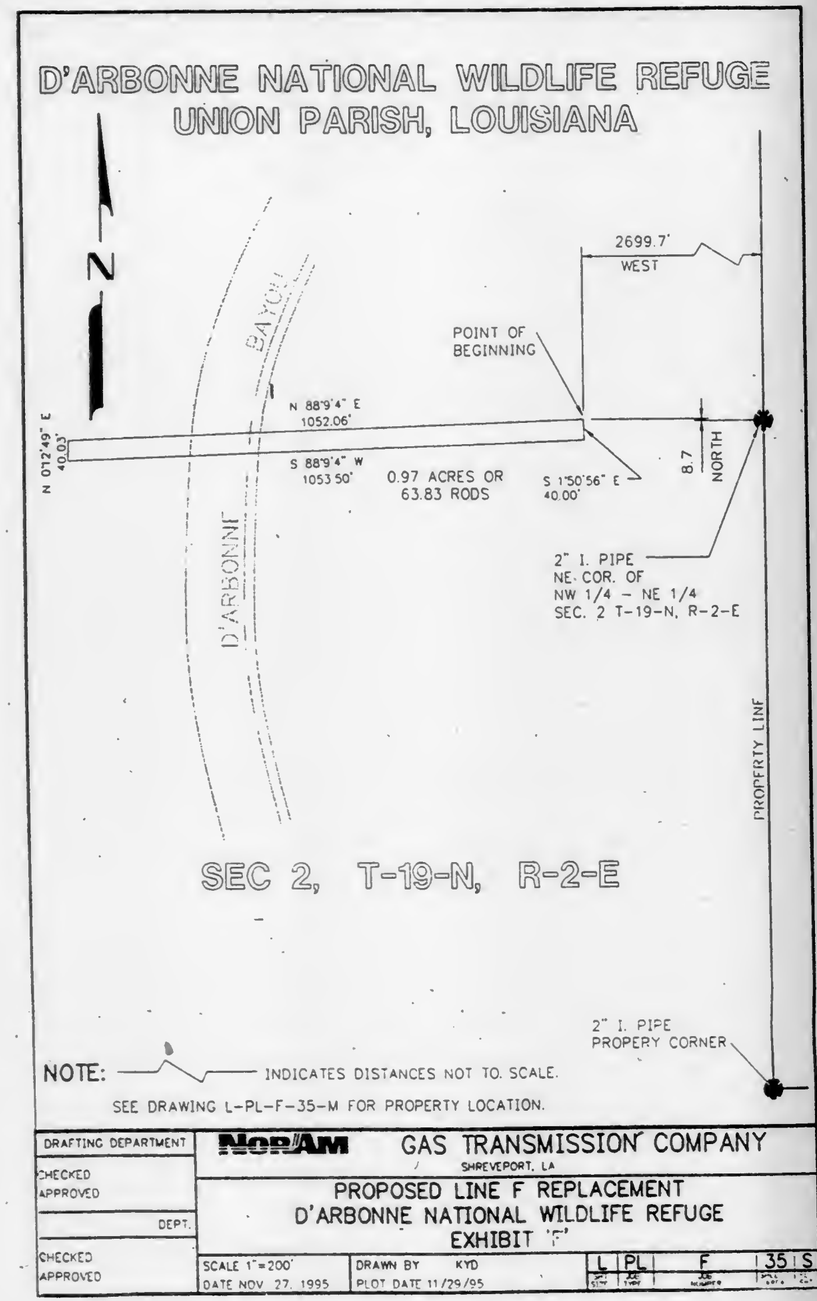
THENCE North 0 degrees 2'49" East, 40.03 feet to a point;

THENCE North 88 degrees 9'4" East, 1052.06 feet to a point to the Point of Beginning, containing 0.97 acres or 63.83 rods of Right of Way to be acquired.

Note: See drawing L-PL-F-35-S for detail.

Dated: 11-29-95.

BILLING CODE 4310-55-M



4310-55-C

Description of Existing Right of Way for Existing Line "F" Across the Lands of D'arbonne National Wildlife Refuge in Section 3, Township 19 North, Range 2 East, Union Parish, Louisiana

Exhibit 'G'

An existing right of way across part of the lands of D'arbonne National Wildlife Refuge, in the North Quarter of Section 3, Township 19 North, Range 2 East, Union Parish Louisiana, being more particularly described as follows:

COMMENCING at an iron rod with a cap at the Southwest corner of the Northwest Quarter of the Northwest Quarter of Section 3, point being on the West property line of the D'arbonne National Wildlife Refuge;

THENCE North 374.6 feet and East 212.77 feet to the POINT OF BEGINNING;

THENCE North 25 degrees 29'22" West, 41.42 feet to a point;

THENCE North 79 degrees 31'56" East, 887.57 feet to a point;

THENCE North 79 degrees 42'57" East, 2015.14 feet to a point;

THENCE North 79 degrees 34'17" East, 1784.68 feet to a point;

THENCE South 0 degrees 12'49" West, 40.70 feet to a point;

THENCE South 79 degrees 34'17" West, 1777.22 feet to a point;

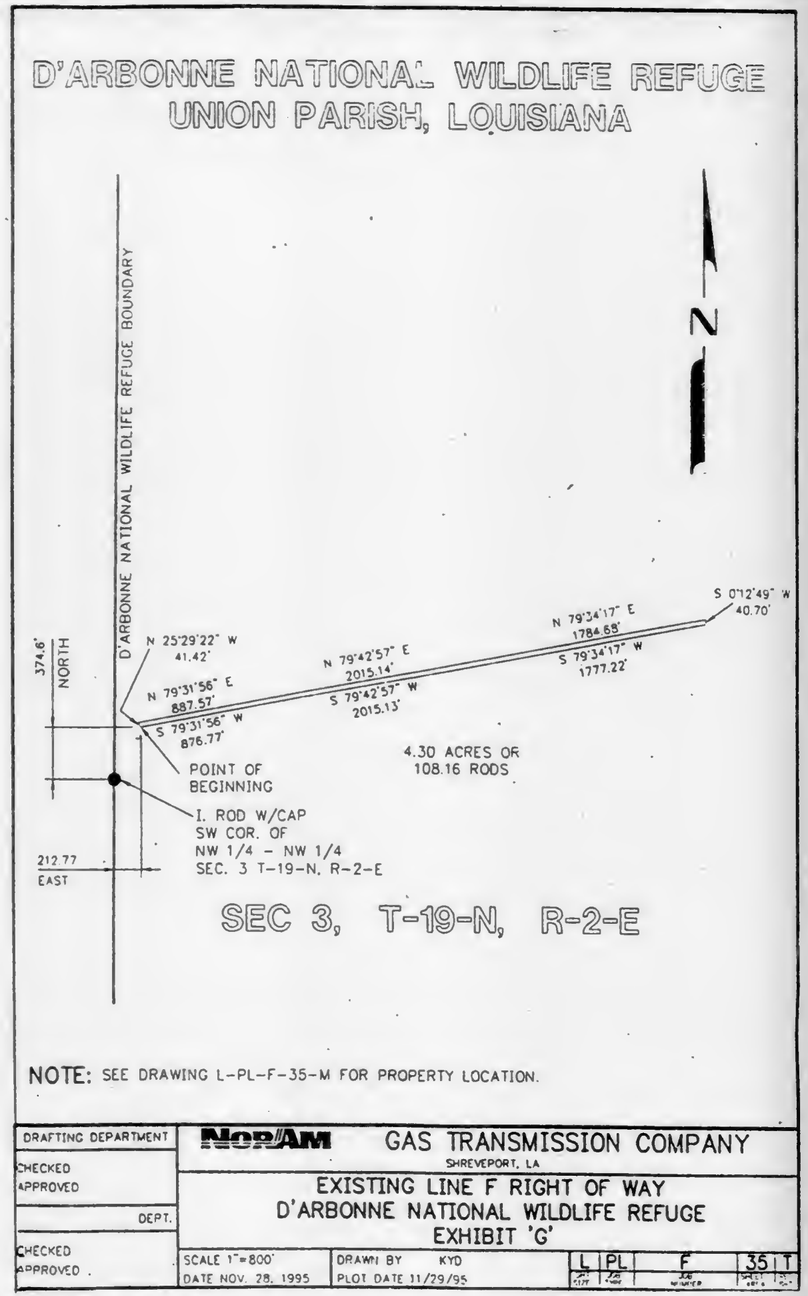
THENCE South 79 degrees 42'57" West, 2015.13 feet to a point;

THENCE South 79 degrees 31'56" West, 876.77 feet to the Point of beginning, containing 4.30 acres or 108.16 rods of existing Right of Way.

Note: See drawing L-PL-F-35-T for detail.

Date: 11-29-95.

BILLING CODE 4310-55-M



[FR Doc. 96–13064 Filed 5–24–96; 8:45 am]

BILLING CODE 4310–55–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Advisory, Committee on Voluntary Foreign Aid; Notice of Meeting

Pursuant to the Federal Advisory Commission Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: June 12, 1996 (9:00 a.m. to 5:00 p.m.).

Location: State Department, Loy Henderson Auditorium, 23rd Street Entrance.

The purposes of the meeting are to discuss and provide nongovernmental input on: USAID collaboration with private voluntary organizations (PVOs) in limited or non-presence countries, the status of USAID procurement reforms, and additional feasible actions for inclusion in the USAID Gender Plan of Action.

The meeting is free and open to the public. However, notification by June 7, 1996, through the Advisory Committee Headquarters is required. Persons wishing to attend the meeting must call Lisa J. Douglas (703) 351–0243 or Susan Saragi (703) 351–0244 or FAX (703) 351–0228/0212. Persons attending must include their name, organization, birthdate and social security number for security purposes.

Dated: May 20, 1996.

John P. Grant,

Director, Office of Private and Voluntary Cooperation, Bureau for Humanitarian Response.

[FR Doc. 96–13192 Filed 5–24–96; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

"Federal Register" CITATION OF PREVIOUS ANNOUNCEMENT: 61FR20541—dated May 7, 1996.

CHANGE OF DATE, AND TIME:

Original Date and Time: May 29, 1996 at 11:00 a.m.

New Date and Time: June 4, 1996 at 10:00 a.m.

Notice is given that a Commission meeting was scheduled at 11:00 a.m., on May 29, 1996 and in conformity with 19 CFR § 201.37(a), the Commission has voted to change the date and time for the meeting to June 4, 1996 at 10:00 a.m.

Commissioners Watson, Nuzum, Rohr, Newquist, Crawford, and Bragg determined by circulation of an action jacket that Commission business requires the change in the date and time, and affirmed that no earlier notice of the change was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary (202) 205–2000.

Issued: May 23, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–13447 Filed 5–23–96; 2:50 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Prison Industries, Inc.

Planning, Research and Activation Branch; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; public involvement procedures regarding proposals to produce new products or expand the production of existing products.

The proposed information collection is published to obtain comments from the public. Comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the **Federal Register**.

The purpose of this notice is to request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information.

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have comments, suggestions or need a copy of the proposed information collection, please contact Edward J. Spear, Planning, Research and Activation, 202–508–8552, Federal Prison Industries, Inc., ACACIA Building, 320 First Street, NW., Washington, D.C. 20534 or via facsimile at 202–628–0855.

Overview of this information collection:

(1) Type of Information Collection: Existing collection in use without an OMB control number.

(2) Title of the Form/Collection: Public Involvement Procedures Information Collection.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: No forms. Planning, Research and Activation, Federal Prison Industries, Federal Bureau of Prisons, United States Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: Primary: Business or other for profit. Other: Federal Government. The information is collected in order to provide private industry the opportunity to comment on new product and expansion proposals. All comments received become part of the public record submitted to the Federal Prison Industries, Board of Directors. This record is the basis from which the Board of Directors makes its decision on the proposal.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 25 responses at .50 hours, or 30 minutes per comment.

(6) An estimate of the total public burden (in hours) associated with the collection: 62 total annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, D.C. 20530.

Dated: May 21, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–13213 Filed 5–24–96; 8:45 am]

BILLING CODE 4410–06–M

Office of the Assistant Attorney General for Civil Rights

Certification of the State of Texas Accessibility Standards Under the Americans With Disabilities Act

AGENCY: Department of Justice.

ACTION: Notice of preliminary determination of equivalency and certification hearings.

SUMMARY: The Department of Justice (Department) has determined that the State of Texas Accessibility Standards

(Texas Standards) meet or exceed the new construction and alterations requirements of title III of the Americans with Disabilities Act of 1990 (ADA). The Department proposes to issue a final certification, pursuant to 42 U.S.C. 12188(b)(1)(A)(ii) and 28 C.F.R. § 36.601 *et seq.*, which would constitute rebuttable evidence, in any enforcement proceeding, that a building constructed or altered in accordance with the Texas Standards meets or exceeds the requirements of the ADA. The Department will hold informal hearings on the proposed certification in Washington, D.C. and Austin, Texas.

DATES: To be assured of consideration, comments must be in writing and must be received on or before July 29, 1996. The hearing in Austin, Texas is scheduled for Tuesday, June 25, 1996 at 1:00 pm, Central Time. The hearing in Washington, D.C. is scheduled for Thursday, August 1, 1996 at 9:30 am, Eastern Time.

ADDRESSES: Comments on the preliminary determination of equivalency and on the proposal to issue final certification of equivalency of the Texas Standards should be sent to: John L. Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice. P.O. Box 66738, Washington, D.C. 20035–6738.

The hearings will be held at:

Austin, Texas: State of Texas, Capitol Building Extension, Room E2.012, Austin, Texas

Washington, D.C.: U.S. Department of Justice, Civil Rights Division, Disability Rights Section, 1425 New York Avenue, N.W., Suite 4039, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John L. Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, D.C. 20035–6738. Telephone number (800) 514–0301 (Voice) or (800) 514–0383 (TDD).

Copies of this notice are available in formats accessible to individuals with vision impairments and may be obtained by calling (800) 514–0301 (Voice) or (800) 514–0383 (TDD). Copies of the Texas Standards and supporting materials may be inspected by appointment at 1425 New York Avenue, N.W., Suite 4039, Washington, D.C. by calling Tito Mercado at (202) 307–0663 (Voice/TDD). This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

The ADA authorizes the Department of Justice, upon application by a State or local government, to certify that a State or local law that establishes accessibility requirements meets or exceeds the minimum requirements of title III of the ADA for new construction and alterations. 42 U.S.C. 12188(b)(1)(A)(ii); 28 CFR 36.601 *et seq.* Final certification constitutes rebuttable evidence, in any ADA enforcement action, that a building constructed or altered in accordance with the certified code complies with the new construction and alterations requirements of title III of the ADA.

By letter dated November 17, 1994, the Texas Department of Licensing and Regulation requested that the Department of Justice (Department) certify that the State of Texas Accessibility Standards, effective April 1, 1994, as adopted pursuant to Texas Civil Statutes, Article 9102, as amended effective September 1, 1993, and the Architectural Barriers Administrative Rules, Chapter 68, as amended effective June 1, 1994 (Texas Standards), meet or exceed the new construction and alterations requirements of title III of the ADA.

The Department has analyzed the Texas Standards, and has preliminarily determined that they meet or exceed the new construction and alterations requirements of title III of the ADA. By letter dated May 10, 1996, the Department notified the Texas Department of Licensing and Regulation of its preliminary determination of equivalency.

Effect of Certification

The certification determination will be limited to the version of the Texas Standards that has been submitted to the Department. The certification will not apply to amendments or interpretations that have not been submitted and reviewed by the Department.

Certification will not apply to buildings constructed by or for State or local government entities, which are subject to title II of the ADA. Nor does certification apply to accessibility requirements that are addressed by the Texas Standards that are not addressed by the ADA Standards for Accessible Design, such as the provisions for children's facilities in the Texas Standards.

Finally, certification does not apply to variances or waivers granted under the Texas Standards by the Commissioner of Licensing and Regulation. Therefore, if a builder receives a variance, waiver, modification, or other exemption from the requirements of the Texas Standards for any element of construction or alterations, the certification determination will not constitute evidence of ADA compliance with respect to that element.

Procedure

The Department will hold informal hearings in Washington, DC and Austin, Texas to provide an opportunity for interested persons, including individuals with disabilities, to express their views with respect to the preliminary determination of equivalency of the Texas Standards. Interested parties who wish to testify at a hearing should contact Tito Mercado at (202) 307–0663 (Voice/TDD). This is not a toll-free number.

The hearing sites will be accessible to individuals with disabilities. Individuals who require sign language interpreters or other auxiliary aids should contact Tito Mercado at (202) 307–0663 (Voice/TDD). This is not a toll-free number.

Dated: May 21, 1996.

Deval L. Patrick,

Assistant Attorney General for Civil Rights.

[FR Doc. 96–13292 Filed 5–24–96; 8:45 am]

BILLING CODE 4410–01–M

Certification of the State of Texas Accessibility Standards Under the Americans With Disabilities Act

AGENCY: Department of Justice.

ACTION: Notice of hearings.

SUMMARY: The Department of Justice will hold informal hearings on the proposed certification that the State of Texas Accessibility Standards meet or exceed the new construction and alternations requirements of title III of the Americans with Disabilities Act (ADA) in Washington, D.C. and Austin, Texas.

DATES: The hearing in Austin, Texas is scheduled for Tuesday, June 25, 1996 at 1:00 PM, Central Time. The hearing in Washington, D.C. is scheduled for Thursday, August 1, 1996, at 9:30 AM, Eastern Time.

ADDRESSES: The hearings will be held at:

Austin, Texas: State of Texas, Capitol Building Extension, Room E2.012, Austin, Texas

Washington, D.C.: U.S. Department of Justice, Civil Rights Division, Disability Rights Section, 1425 New York Avenue, N.W., Suite 4039, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John L. Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, D.C. 20035–6738. Telephone number (800) 514–0301 (Voice) or (800) 514–0383 (TDD).

Copies of this notice are available in formats accessible to individuals with vision impairments and may be obtained by calling (800) 514–0301 (Voice) or (800) 514–0383 (TDD).

SUPPLEMENTARY INFORMATION: On May 28, 1996, the Department of Justice (Department) published a notice in the **Federal Register** announcing that it had preliminarily determined that the State of Texas Accessibility Standards, effective April 1, 1994, as adopted pursuant to Texas Civil Statutes, Article 9102, as amended effective September 1, 1993, and the Architectural Barriers Administrative Rules, Chapter 68, as amended effective June 1, 1994 (Texas Standards), meet or exceed the new construction and alternations requirements of title III of the ADA. The Department also noted that it intended to issue final certification of the Texas Standards and requested written comments on the preliminary determination and the proposed final certification. Finally, the Department noted that it intended to hold informal hearings in Washington, D.C. and Austin, Texas.

The purpose of the informal hearings is to provide an opportunity for interested persons, including individuals with disabilities, to express their views with respect to the preliminary determination of equivalency of the Texas Standards. Interested parties who wish to testify at a hearing should contact Tito Mercado at (202) 307–0663 (Voice/TDD). This is not a toll-free number.

The meeting sites will be accessible to individuals with disabilities. Individuals who require sign language interpreters or other auxiliary aids should contact Tito Mercado at (202) 307–0663 (Voice/TDD). This is not a toll-free number.

Dated: May 21, 1996.

Deval L. Patrick,

Assistant Attorney General for Civil Rights.

[FR Doc. 96–13293 Filed 5–24–96; 8:45 am]

BILLING CODE 4410–01–M

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Application for Certificate of Citizenship in Behalf of an Adopted Child.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 21, 1996 at 61 FR 11651, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the **Federal Register**. This process is conducted in accordance with 5 Code of Federal Regulations, Part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The proposed collection is listed below:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection.* Application for Certificate of Citizenship in Behalf of an Adopted Child.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–643. Office of Examinations, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Household. The information collected is used to allow U.S. citizen parents to apply for a certificate of citizenship on behalf of their adopted alien children.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 8,000 respondents at one hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 8,000 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: May 20, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–13214 Filed 5–24–96; 8:45 am]

BILLING CODE 4410–18–M

Office of Justice Programs

Bureau of Justice Assistance; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Subgrant Award Report for Violence Against Women Formula Grant Program.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the **Federal Register**. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact the Violence Against Women Grants Office, 202–307–6026, U.S. Department of Justice, Fourth Floor, 633 Indiana Avenue, NW, Washington, DC 20531. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to the address and phone number set forth.

Overview of this information collection:

(1) Type of Information Collection: New collection.

(2) Title of the Form/Collection: STOP Violence Against Women Formula Grant Program Subgrant Award Report

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: None. Violence Against Women Branch, Crime Act Support Division, Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State, Local or Tribal governments. Other: None. The Crime Act of 1994 enacted the Violence Against Women Formula Grant Program. This program awards grant money to the states and territories to combat violence against women. The Subgrant Award Report will be completed by each of the states and territories and will provide information on each subgrant awarded under the program.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 560 responses at 1.0 hour each.

(6) An estimate of the total public burden (in hours) associated with the collection: 560 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 20, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–13215 Filed 5–24–96; 8:45 am]

BILLING CODE 4410–21–M

Office of Juvenile Justice and Delinquency Prevention

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Survey to examine the relationship between juvenile delinquency and gang and nongang affiliation of Southeast Asian refugee youths.

The proposed information collection is published to obtain comments form the public and affected agencies. Comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the **Federal Register.**

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to D. Elen Grigg (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact D. Elen Grigg, 202-307–5929, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, Room 782, 633 Indiana Avenue, NW, Washington, DC 20531.

Overview of this information collection:

(1) Type of Information Collection: New survey to examine the relationship between juvenile delinquency and gang and nongang affiliation of Southeast Asian refugee youths.

(2) Title of the Form/Collection: Delinquency and Criminal Street Gang Affiliation Among Southeast Asian-American Youth Survey.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: none. Office of Juvenile Justice and Delinquency Prevention, office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Delinquent and non-delinquent youth involved in gang or non-gang law violating groups and a parent or guardian.Other: None. The information collected is used to document the proportion of total juvenile delinquency for which gang and non-gang involved law-violating youth are responsible and to document the contribution of gang membership versus that of other law-violating youth groups to serious, violent and chronic juvenile careers.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: There will be 800 respondents and it will take about one hour to respond to the questions for a total of 800 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: 800 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 22, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–13294 Filed 5–24–96; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel In Cross Disciplinary Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross Disciplinary Activities (#1193).

Date and Time: June 14, 1996; 8:30 am–5 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1150 and 1120, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person(s): Rita V. Rodriguez, Program Director, CISE/GDA, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1980.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate NSF–CONACyT Collaborative Research Opportunities proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 22, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–13295 Filed 5–24–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research (DMR) #1203.

Dates and Times: June 5, 1996, 7 p.m.–9 p.m.; June 6, 1996, 8 a.m.–6 p.m.

Place: National Science Foundation; 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meetings: Closed.

Contact Person: Dr. W. Lance Haworth, Program Director, Materials Research Science and Engineering Centers, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Blvd., Arlington, VA, 22230. Telephone (703) 306–1815.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support by the Materials Research Science and Engineering Centers Program.

Agenda: Review and evaluate proposals as part of the selection process for NSF support.

Reason for Closing: The proposals being reviewed may include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Times and dates could not be finalized until all details concerning panelists for reverse site visit panels meeting between May 13 and May 24, 1996 were finalized.

Dated: May 22, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–13296 Filed 5–24–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. IA 96–020; ASLBP No. 96–715–03–EA]

Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 F.R. 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

Juan and Laurene Guzman

Order Prohibiting Unescorted Access or Involvement in NRC-Licensed Activities (Effective Immediately)

IA 96–020

This Board is being established as a result of a April 19, 1996 NRC staff order. The petitioners, Juan and Laurene Guzman, are requesting a hearing in accordance with 10 C.F.R. § 2.202.

The Board is comprised of the following administrative judges:

G. Paul Bollwerk, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

David R. Schink, Department of Oceanography, Texas A&M University, College Station, Texas 77843.

All correspondence, documents and other materials shall be filed with the Judges in accordance with 10 C.F.R. § 2.701.

Issued at Rockville, Maryland, this 20th day of May 1996.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 96–13242 Filed 5–24–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[RI 38–107]

Proposed Collection; Comment Request for Review of a Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of personnel Management intends to submit to the Office of Management and Budget a request for review of a revised information collection. RI 38–107, Verification of Who is Getting Payments, is used to verify that the entitled person is indeed receiving the monies payable. Failure to collect this information would cause OPM to pay monies absent the assurance of a correct payee.

We estimate 25,400 RI 38–107 forms are completed annually. Each form takes approximately 10 minutes to complete. The annual estimated burden is 4,234 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@mail.opm.gov.

DATES: Comments on this proposal should be received by no later than July 29, 1996.

ADDRESSES: Send or deliver comments to—Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–13269 Filed 5–24–96; 8:45 am]

BILLING CODE 6325–01–M

[RI 25–15]

Submission for OMB Review; Comment Request Review of a Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for clearance of a revised information collection. RI 25–15, Notice of Change In Student's Status, is used to collect sufficient information from adult children of deceased Federal employees or annuitants to assure that the child continues to be eligible for payments from OPM.

We estimate 2,500 certifications will be processed annually. Each form takes approximately 10 minutes to complete. The annual estimated burden is 417 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@mail.opm.gov.

DATES: Comments on this proposal should be received by no later than June 27, 1996.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–13270 Filed 5–24–96; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of May 27, 1996.

An open meeting will be held on Thursday, May 30, 1996, at 10:00 a.m. A closed meeting will be held on Thursday, May 30, 1996, following the 10:00 a.m. open meeting.

Commissioners, Counsel of the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Thursday, May 30, 1996, at 10:00 a.m., will be:

(1) Consideration of whether to issue a release proposing rule changes that would implement recommendations made in the March 5, 1996 Report of the Task Force on Disclosure Simplification. The proposed rules would eliminate two forms and one rule, and amend several other forms and regulations to eliminate unnecessary disclosure requirements and to streamline the registration process. FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Division of Corporation Finance, at (202) 942–2990.

(2) Consideration of whether to issue a release adopting rule changes that eliminate a number of rules and forms, as recommended by the Task Force on Disclosure Simplification in its March 5, 1996 report, and that effect other minor and technical amendments to the Commission's rules. FOR FURTHER INFORMATION CONTACT: James R. Budge, Division of Corporation Finance at (202) 942–2910.

(3) Consideration of whether to issue (1) a release adopting amendments to rules under Section 16 of the Exchange Act, and (2) a release extending the phase-in period for Rule 16b–3. FOR FURTHER INFORMATION CONTACT: Anne M. Krauskopf, Division of Corporation Finance, at (202) 942–2900.

The subject matter of the closed meeting scheduled for Thursday, May 30, 1996, following the 10:00 a.m. open meeting, will be: Institution and settlement of administrative proceedings of an enforcement nature

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: May 22, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–13455 Filed 5–23–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37230; File No. SR–GSCC–96–04]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Proposed Rule Change Relating to Interdealer Broker Netting Members Participating in the Netting and Settlement Services for Repurchase and Reverse Repurchase Transactions Involving Government Securities

May 20, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 10, 1996, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change and on May 13, 1996, amended the filing,[2] which is described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

GSCC proposes to modify its rules to allow interdealer broker ("IDB") netting members to become eligible for GSCC's netting service for repurchase and reverse repurchase transactions involving government securities as the underlying instrument ("repos").[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Jeffrey F. Ingber, General Counsel, GSCC, to Christine Sibille, Division of Market Regulation, Commission (May 13, 1996).

[3] The text of the proposed revised rules is attached as Exhibit A to File No. SR–GSCC–96–04 which is available for review in the Commission's Public Reference Room.

in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(a) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

GSCC's long-range plans for repo services entail the full and complete automation of all aspects of start and close leg processing, including the intraday settlement of repo start legs. These services have been and will continue to be introduced in phases.

In a previous rule filing, GSCC sought and received authority to implement the first phase of repo netting services, which was the provision of netting and risk management services for the non-same-day settling aspects of next-day and forward-settling repo transactions.[5] During the first phase, GSCC did not make IDB netting members eligible for GSCC's repo netting services because brokering in the repo market currently is done on a give-up basis (*i.e.*, the brokers give up the names of each counterparty to the other and drop out of the transaction). GSCC anticipated addressing the various issues related to IDB members' participation in GSCC's repo netting system in its next repo rule filing relating to a netting and settlement service for same-day-settling start legs. However, because the settlement of same-day-settling start legs involves significant technological issues, GSCC realizes it will not be able to implement such a service until the last quarter of this year at the earliest. Therefore, GSCC is making this rule filing in order to allow its IDB netting members to participate in its current repo netting services.

Pursuant to this rule change, IDB netting members and non-IDB netting members (*i.e.*, dealers) will submit data on brokered repos to GSCC in the same manner as they do for cash transaction. GSCC will compare, net, and settle repo start legs which are submitted prior to the start date (*i.e.*, non-same-day-settling start legs) and repo close legs pursuant to GSCC's existing procedures for the netting and settlement of repos. GSCC Rule 18, Special Provisions for Repo Transactions, will also apply to brokered repos.[6] The parties to brokered repos will assume the responsibility for the intraday settlement of same-day-settling start legs outside of GSCC.

Under this proposal, only IDBs that have and agree to maintain a level of excess net capital or excess liquid capital, as applicable, of at least $10 million will be eligible to submit data on repo transactions to GSCC.[7] To further minimize risk, GSCC will only accept from IDBs that participate in this repo netting process data on repo transactions that have been executed between two dealers that have been designated as eligible to participate in GSCC's repo netting services.[8] As a result, the IDBs' position will always net out.

GSCC will impose operational requirements on IDB repo netting members to minimize errors or problems, to help ensure a low level of uncompared trades, and to achieve the highest possible netting factor for IDBs. These operation requirements are: (1) Upon being informed by either GSCC or another netting member of an error in or problem with the data on an eligible repo transaction that it has submitted to GSCC, an IDB netting member must act promptly and in good faith to correct the error; (2) each IDB repo netting member will be assigned a second GSCC participant number, and all repos must be processed using that number;[9] and (3) each IDB repo netting member will be required to establish a separate account with a separate Fedwire address at a clearing bank that will be used exclusively for the intraday settlement outside of GSCC of same-day-settling start legs. (*I.e.*, the dealer member on the repo side of the start leg will deliver securities to this separate Fedwire account, and the IDB will redeliver the securities to the contraparty from this account.) GSCC intends to require each IDB repo netting member to authorize its clearing bank to allow GSCC to review this clearing account. This review will be performed solely in order to facilitate the correction of errors and problems. GSCC will not have or assume any responsibility for the settlement of a same-day settling start leg.

As set forth below, the benefits of allowing IDBs to participate in the existing repo netting process are numerous.

1. Immediate Implementation

GSCC and its netting members, including IDBs, already have the systems in place to submit data to and receive output from GSCC for repo transactions. Thus, IDBs will only need to make minor changes to their regular cash input and output specifications to accommodate repos and then to test with GSCC.

2. Enhanced Risk Protection

In the same manner as it does now for netting-eligible repo legs, GSCC will become the legal counterparty to all eligible netted close legs and start legs submitted prior to the settlement date through novation and will guarantee their settlement.

3. More Efficient Settlement

By encompassing more transactions into the net, the total number of daily settlements for participants will be reduced. This will make the settlement process more efficient, will lower clearance costs, and will reduce participants' exposure to daylight overdraft costs.

4. Anonymity

Through repo blind brokering, IDBs will no longer give up the name of the dealer counterparties. In this way, the dealer counterparties will only know the IDB and will not see through to the other side of the repo. This is the manner in which secondary market

[4] The Commission has modified the text of the summaries prepared by GSCC.

[5] Securities Exchange Act Release No. 36491 (November 17, 1995), 60 FR 61577 (order approving proposed rule change relating to the netting and risk management services for the non-same-day-settling aspects of next-day and forward-settling repo transactions).

[6] Rule 18 limits eligibility to participate in the repo netting process, establishes the timing for novation of a repo transaction, and sets forth a netting member's obligation to submit repo transactions to GSCC, another registered clearing agency, or a clearing agency that has been exempted from registration as a clearing agency.

[7] File No. SR–GSCC–96–02, currently pending with the Commission, will require all IDBs, regardless of whether they participate in the repo netting service, to have and to maintain a minimum level of excess liquid/net capital of at least $10 million. GSCC stated in that filing that it is the intention of the Board of Directors of GSCC no longer to consider applications for Category 1 IDB netting membership unless the IDB applicant meets the new financial criteria. It is the Board's further intention that if File No. SR–GSCC–96–02 has not yet been approved prior to the approval of this filing, GSCC nonetheless will not permit a Category 1 IDB with less than $10 million in excess liquid/net capital to participate in the repo netting service. For a complete description of the modifications to the minimum financial criteria for Category 1 IDB netting members, refer to Securities Exchange Act Release No. 36945 (March 7, 1996), 61 FR 10614 (notice of proposed rule change modifying the minimum financial criteria for Category 1 interdealer broker netting membership).

[8] GSCC proposes to amend the definitions for Category 1 and Category 2 IDBs to account for repo transactions with non-GSCC members. Specifically, Category 1 IDBs will not be limited to acting exclusively as brokers on behalf of GSCC netting members and/or grandfathered nonmembers with respect to repo transactions. Similarly, Category 2 IDBs will not be limited to acting exclusively as brokers or conducting at least ninety percent of their business with GSCC netting members and/or grandfathered nonmembers with respect to repo transactions. Similarly, IDB netting members will not need to report data on repos pursuant to Section 3 of Rule 15 and the continuance standards of Rule 3, Section 5 (g) and (i) will not take into account repo transactions.

[9] The second account will make it easier for GSCC to monitor an IDB's repo activity.

activity currently is conducted for cash activity and is the means of trading preferred by GSCC's members because of its efficiencies.

5. East of Transition to Fully Automated Services

GSCC and its participants will gain experience in processing blind-broker repos during this first implementation stage. This experience will aid GSCC in developing and fine-tuning the fully automated blind brokering service that will provide for the settlement of same-day-settling repo start legs directly through GSCC. In the future, when fully automated services are available, IDBs will make the processing switch to submitting locked-in trade data, and GSCC anticipates a smooth transition to the new service.

GSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder. In particular, the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act [10] because it is designed to assure the safeguarding of securities and funds that are in the custody or control of GSCC or for which it is responsible, and it will reduce the risk exposure to its solvent participants from the default of common participants. Further, the proposed rule change will foster cooperation and coordination with entities engaged in the clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited or received. Members will be notified of the rule filing, and comments will be solicited by an important notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (1) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–96–04 and should be submitted by June 18, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13251 Filed 5–24–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37227; File No. SR–PTC–96–01]

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing of a Proposed Rule Change Eliminating the Deduction of Reserve on Gain in the Calculation of Net Free Equity for Proprietary and Agency Accounts of a Receiving Participant in Certain Transactions

May 20, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] notice is hereby given that on February 5, 1996, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–PTC–96–01) as described in Items I, II, and III below, which items have been prepared primarily by PTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend Article I, Rule 1 of PTC's Rules to eliminate the deduction of reserve on gain ("ROG") in the calculation of net free equity ("NFE") for proprietary and agency accounts of a receiving participant in certain transactions while retaining the deduction of ROG as it applies to the calculation of NFE for proprietary and agency accounts of a delivering participant.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend Article I, Rule 1 of PTC's Rules to eliminate the deduction of ROG in the calculation of NFE for proprietary and agency accounts of a receiving participant in certain transactions. PTC intends to retain the deduction of ROG as it applies to the calculation of NFE for proprietary and agency accounts of a delivering participant.

Under PTC's current rules, in connection with any account transfer versus payment, ROG is: (1) With respect to a delivering participant, the amount by which the contract value credited to the cash balance of the account of the delivering participant exceeds the market value of the securities delivered or (ii) with respect to a receiving participant, the amount by which the market value of the securities credited to the transfer account associated with the account of the receiving participant exceeds the contract value of the transaction. As explained below, ROG (if applicable) is excluded in the computation of NFE for proprietary and agency accounts.

As set forth in Article II, Rule 9 of PTC's Rules, NFE for any agency or proprietary account is calculated as the sum of (i) the applicable percentage, as defined in Article I, Rule 1 of PTC's rules, of the market value of securities in the account and the associated transfer account, (ii) the cash balance in the account, and (iii) the participant's supplemental processing collateral, as calculated pursuant to the formula set forth in Article I, Rule 1 of PTC's rules, to the extent not required to collateralize an account transfer in any other account, minus the amount (if any) of ROG with respect to the account.

NFE measures the value associated with the account of a participant that is available to support transaction processing to or from the participant's account. Under Article II, Rule 9, Section 2 and Article II, Rule 13, PTC will not process an account transfer of securities if as a result of such transfer the account of that delivering participant or receiving participant will have negative NFE.

In any account transfer versus payment from a proprietary of agency account in which the contract value of the securities exceed the market value, the deliverer's ROG is the difference in those values. The deliverer's ROG is deduced in calculating the NFE of the account of the delivering participant to prevent the delivering participant from using the gain on the transaction to increase its NFE (*i.e.*, the amount available to the participant to support other activity in its account). The deduction of the deliverer's ROG creates an NFE "reserve" to ensure that if necessary sufficient funds exist in the delivering participant's account to permit the debit of the contract value from the cash balance in the account of the delivering participant in the event the transaction is reversed (*i.e.*, "DK'ed") by the receiving participant because of error or other circumstances permitted under the guidelines for good delivery. The ROG deduction also prevents a delivering participant, who inputs the terms of the trade on PTC's system, from abusing the system by creating additional NFE through the delivery versus payment of securities at an artificially inflated value.

The receiver's ROG is the difference in value that results when the market value of securities received into a proprietary or agency account versus payment exceeds the contract value of the securities. (*I.e.*, On the receive-side of the transaction, the amount of the potential NFE gain would be the excess of market value of the securities over contract value.) Currently, the receiver's ROG is deducted in the calculation of NFE of the account of the receiving participant. However, the rationale for deducting the receiver's ROG is different from that for deducting the deliverer's ROG. Unlike deliver-side ROG, receive-side ROG is not needed to ensure a receiving participant's ability to reverse a securities transaction because the receiving participant initiates the reversal and controls the availability of NFE in its account.

The deduction of the receiver's ROG in the NFE calculation for an account of a receiving participant was incorporated into PTC's rules in 1989 pursuant to the order granting PTC's registration as a clearing agency. The rule's purpose was to assure sufficient NFE in an account to enable PTC to reverse securities deliveries to achieve settlement in the event of participant default.[3] The provisions of PTC's rules providing the ability to reverse transactions has been deleted.[4] Accordingly, deduction of ROG from the NFE on the receive-side is no longer required.

PTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the proposal facilitates the prompt and accurate clearance and settlement of securities transactions and provides for the safeguarding of securities and funds in PTC's possession or control or for which PTC is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PTC does not perceive that the proposed rule change will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

PTC has not solicited nor received written comments on this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to File No. SR–PTC–96–01 and should be submitted by June 18, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

---

[1] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[11] 17 CFR 200.30–3(a)(12) (1995).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries submitted by PTC.

[3] In 1988, MBS Clearing Corporation ("MBSCC"), PTC's predecessor, proposed a rule change to its Depository Division rules to include receiver's ROG in the NFE calculation of a receiving participant's account. Securities Exchange Act Release No. 26101 (September 22, 1988), 53 FR 37895 [File No. SR–MBS–88–14] (notice of filing of proposed rule change relating to Depository Division rules). Subsequently, the order granting PTC's registration as a clearing agency incorporated the proposed rule change stating that PTC's rules were essentially identical to MBSCC's Depository Division rules including the most recently proposed rule changes. Securities Exchange Act Release No. 26671 (March 31, 1989), 54 FR 13266, [File No. 600–25] (order granting registration as a clearing agency and statement of reasons).

[4] For a more complete discussion of PTC's reasons for removing the reversal capability, refer to Securities Exchange Act Release No. 27193 (August 29, 1989), 54 FR 37065 [File No. SR–PTC–89–02] (order approving proposed rule change).

[5] 17 CFR 200.30–3(a)(12) (1995).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 96–13250 Filed 5–24–96; 8:45 am]
BILLING CODE 8010–01–M

SURFACE TRANSPORTATION BOARD

Sunshine Act Meeting; Board Conference

TIME AND DATE: 10:00 a.m., June 5, 1996.
PLACE: Hearing Room A, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, D.C. 20423.
STATUS: The Board will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.
MATTERS TO BE DISCUSSED:

STB Ex Parte No. 529, *Class Exemption for Acquisition or Operation of Rail Line by Class III Rail Carriers Under 49 U.S.C. 10902.*

Docket No. AB–452 (Sub-No. 1X), *The Western Stock Show Association—Abandonment Exemption—in Denver, CO.*

Finance Docket No. 32802, *Philadelphia Belt Line Railroad Company v. Consolidated Rail Corporation, CP Rail System, and CSX Transportation, Inc.* Docket No. AB–1 (Sub-No. 192X) *Chicago and North Western Transportation Company-Abandonment Exemption—Guthrie and Dallas Counties, IA.*[1]

CONTACT PERSONS FOR MORE INFORMATION: Dennis Watson, Office of Congressional and Press Service, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Vernon A. Williams,
Secretary.
[FR Doc. 96–13445 Filed 5–23–96; 8:45 am]
BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board[1]

[STB Finance Docket No. 32888]

Angelina & Neches River Railroad Company—Purchase Exemption—Texas South-Eastern Railroad Company

AGENCY: Surface Transportation Board.
ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts from the prior approval requirements of 49 U.S.C. 10902, the acquisition of approximately 2.9 miles of rail line in Lufkin, Angelina County, TX, by Angelina & Neches River Railroad Company, a Class III railroad.
DATES: The exemption will be effective June 28, 1996. Petitions to stay must be filed by June 10, 1996. Petitions to reopen must be filed by June 18, 1996.
ADDRESSES: Send pleadings, referring to STB Finance Docket No. 32888 to: (1) Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue N.W., Washington, DC 20423; and (2) petitioner's representative: Peter A. Greene, THOMPSON HINE & FLORY P.L.I., Suite 800, 1920 N Street, N.W., Washington, DC 20036.
FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]
SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Room 2229, 1201 Constitution Avenue, N.W., Washington, D.C. 20423. Telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Decided: May 15, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,
Secretary.
[FR Doc. 96–13277 Filed 5–24–96; 8:45 am]
BILLING CODE 4915–00–P

Surface Transportation Board[1]

[STB Docket No. AB–413 (Sub-No. 1X)]

Great Western Railway of Iowa, L.L.C., d/b/a Council Bluffs Railway—Abandonment Exemption—in Council Bluffs, IA

Great Western Railway of Iowa, L.L.C., d/b/a Council Bluffs Railway (CBGR) filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 1 mile of its line of railroad from milepost 409.5 on the west side of Iowa State Highway 192 (also known as the South Expressway), to milepost 410.5 near South 17th Street, including the Milwaukee Connector Track, in the City of Council Bluffs, Pottawattamie County, IA.

CBGR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line has been rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 27, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by June 7, 1996. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 17, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Michael J. Ogborn, Manager, Great Western Railway of Iowa, L.L.C., d/b/a Council Bluffs Railway, Clayton Street, Fourth Floor, Denver, CO 80206.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CBGR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 31, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 21, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.
[FR Doc. 96–13276 Filed 5–24–96; 8:45 am]
BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Information Collection; Comment Request

ACTION: Federal Register Pre-Clearance Notice.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the U.S. Department of the Treasury's Office of Foreign Assets Control is soliciting comments concerning the travel to Cuba declaration requirements authorized pursuant to § 515.602 of the Cuban Assets Control Regulations, 31 CFR Part 515.

DATES: Written comments should be received on or before July 29, 1996.
ADDRESSES: Direct all written comments to Dorene F. Erhard, Sr. Sanctions Advisor, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW Washington, DC 20220, (tel.: 202/622–2500). Internet Address: Dorene.Erhard@treas.sprint.com.
FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing (tel.: 202/622–2480), for questions concerning licensing policy; or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), for legal questions; Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220.
SUPPLEMENTARY INFORMATION:

Title: Travel to Cuba, U.S. Department of the Treasury, Office of Foreign Assets Control, Declaration.

OMB Number: 1505–0118.

Abstract: Declarations are to be completed by persons traveling from the U.S. to Cuba in order to provide the U.S. Government information to be used in administering and enforcing economic sanctions imposed against Cuba pursuant to 31 CFR Part 515.

Current Action: Extension.

Type of Review: Extension.

Affected Public: Individuals/businesses and other for-profit institutions/banking institutions.

Estimated Number of Respondents: 26,000.

Estimated Time Per Respondent: .0833 hour to process.

Estimated Annual Burden Hours: 2,166 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: May 14, 1996.

William B. Hoffman,
Chief Counsel, Office of Foreign Assets Control, U.S. Department of the Treasury.
[FR Doc. 96–13208 Filed 5–24–96; 8:45 am]
BILLING CODE 4810–25–M

Information Collection; Comment Request; Federal Register Pre-Clearance Notice

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506–(c)(2)(A)). Currently, the Treasury Department's Office of Foreign Assets Control is soliciting comments concerning the civil penalty provisions, of the Cuban Assets Control Regulations, 31 CFR §§ 515.703 and 515.704.

DATES: Written comments should be relieved on or before July 29, 1996 to be assured of consideration.
ADDRESSES: Direct all written comments to Dorene F. Erhard, Sr. Sanctions Advisor, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Washington, DC 20220, (tel.: 202/622–2500). Internet Address: Dorene.Erhard@treas.sprint.com.
FOR FURTHER INFORMATION CONTACT: Betsy Sue Scott, Penalties Program Manager (tel.: 202/622–6140); or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), for legal questions; Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220.
SUPPLEMENTARY INFORMATION:

Title: Cuban Assets Control Regulations, Civil Penalties Provisions.

OMB Number: 1505–0145.

Abstract: A recipient of a prepenalty notice alleging a violation of the Cuban Assets Control Regulation is permitted to respond in writing requesting assets control regulation requesting a hearing and/or setting forth his or her belief that a penalty should not be imposed, or if imposed, should be in a lesser amount than proposed.

Current Actions: Extension.

Type of Review: Extension.

Affected Public: Businesses and other for-profit institutions/banking institutions/individuals.

Estimated Number of Respondents: 50.

---

[1] Includes Docket No. AB–6 (Sub-No. 374), *Burlington Northern Railroad Company—Adverse Discontinuance—in Denver, CO*, Docket No. AB–33 (Sub-No. 92), *Union Pacific Railroad Company—Adverse Discontinuance—in Denver, CO*, and Docket No. AB–446 (Sub-No. 2), *Denver Terminal Railroad Company—Adverse Abandonment—in Denver, CO.*

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10902.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). This notice relates to functions that ere subject to the Board's jurisdiction pursuant to 49 U.S.C. 10903.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Board will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

Estimated Time Per Respondent: 2 hours to process.

Estimated Annual Burden Hours: 100 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information or respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: May 14, 1996.

William B. Hoffman,

Chief Counsel, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 96–13209 Filed 5–24–96; 8:45 am]

BILLING CODE 4810–25–M

Internal Revenue Service

Commissioner's Advisory Group: Public Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public meeting of Commissioner's Advisory Group.

SUMMARY: Public meeting of the Commissioner's Advisory Group (CAG) will be held in Washington, DC.

DATES: The meeting will be held June 20, 1996.

FOR FURTHER INFORMATION CONTACT: Merci del Toro at (202) 622–5081 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a public meeting of the CAG will be held on June 20, 1996, beginning at 10 a.m. in Room 3313, main Internal Revenue Service building, 1111 Constitution Avenue, NW., Washington, DC 20224. The agenda will include the following topics: various IRS issue updates and reports by the CAG subgroups on Compliance, Small Business, and Improving Services to Customers.

Note: Last minute changes to the agenda or order of topic discussion are possible and could prevent effective advance notice.

The meeting will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space and security specifications, notification of intent to attend the meeting must be made with Lorenza Wilds. Ms. Wilds can be reached on (202) 622–6440 (not toll-free). Attendees are encouraged to allow enough time to clear security at the 1111 Constitution Avenue, NW entrance.

If you would like to have the Committee consider a written statement, please call or write: Merci del Toro, Office of Public Liaison, C:I, Internal Revenue Service, 1111 Constitution Avenue, NW., room 3308 IR, Washington, DC 20224.

Dated: May 17, 1996.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 96–13190 Filed 5–24–96; 8:45 am]

BILLING CODE 4830–01–U

federal register

Tuesday
May 28, 1996

Part II

Office of Management and Budget

Economic Classification Policy Committee: Standard Industrial Classification Replacement—The North American Industry Classification System Proposed Industry Classification Structure; Notice

OFFICE OF MANAGEMENT AND BUDGET

Economic Classification Policy Committee: Standard Industrial Classification Replacement—The North American Industry Classification System Proposed Industry Classification Structure

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of solicitation of comments for North American Industry Classification System industries.

SUMMARY: Under Title 44 U.S.C. 3504, the Office of Management and Budget (OMB) is seeking public comment on a series of notices documenting the development of the new North American Industry Classification System (NAICS), the industry classification system being proposed to replace the current Standard Industrial Classification (SIC) system. All Federal agencies that collect establishment-based data are expected to utilize the new system.

This notice, the fifth related to preparation of NAICS and the third in a series seeking comment on proposed industry structures, presents the proposed industry structure for the NAICS subsectors listed in the Supplementary Information section below. This notice also presents alternatives for the NAICS coding system.

OMB is seeking comments on the usefulness and advisability of the proposed new NAICS subsectors submitted by the Economic Classification Policy Committee (ECPC), an interagency committee established by OMB, and on the NAICS coding system.

The next **Federal Register** notice will present the entire structure of NAICS and seek comment on that structure and other industry sectors and subsector proposals. NAICS is being developed in cooperation with Statistics Canada and Mexico's Instituto Nacional de Estadística, Geografía e Informatíca (INEGI). The new NAICS system provides common industry definitions for Canada, Mexico, and the United States to facilitate economic analyses that cover the economies of the three North American countries. The three country collaboration on an industry classification system for North America was announced for public comment in the **Federal Register**, July 26, 1994, pp. 38092–38096.

The July 26, 1994 **Federal Register** notice includes the concepts for the new system, as developed by Statistics Canada, Mexico's INEGI, and the ECPC. It also includes a copy of the joint statement of the three countries' statistical agencies regarding the development of NAICS. That agreement includes the following principles:

(1) NAICS will be erected on a production-oriented, or supply-based, conceptual framework. This means that producing units that use identical or similar production processes will be grouped together in NAICS.

(2) The system will give special attention to developing production-oriented classifications for (a) new and emerging industries, (b) service industries in general, and (c) industries engaged in the production of advanced technologies.

(3) Time series continuity will be maintained to the extent possible. However, changes in the economy and proposals from data users must be considered. In addition, adjustments will be required for sectors where the United States, Canada, and Mexico presently have incompatible industry classification definitions in order to produce a common industry system for all three North American countries.

(4) The system will strive for compatibility with the 2-digit level of the International Standard Industrial Classification of All Economic Activities (ISIC, Rev. 3) of the United Nations.

ECPC Report No. 3, Summary of Public Responses to the Proposed New North American Industry Classification System, provides a summary of public comments received in response to the July 26, 1994, **Federal Register** notice.

A notice was published in the **Federal Register,** July 26, 1995, pp. 38436–38452, requesting comment on proposed industry structures for petroleum and coal product manufacturing, chemical manufacturing, and rubber and plastic manufacturing; for broadcasting and telecommunications; and for food services and drinking places and accommodations. A **Federal Register** notice was published on February 6, 1996, pp. 4524–4578, requesting comment on proposed industry structures for crop production, animal production, forestry and logging, fishing, hunting, and trapping, and support activities for agriculture and forestry; textile mills, textile product mills, apparel manufacturing, and leather and allied product manufacturing; food manufacturing and beverage and tobacco product manufacturing; fabricated metal product manufacturing; machinery manufacturing; electrical equipment, appliance, and component manufacturing; and transportation equipment manufacturing.

DATES: To ensure consideration and response to all comments on the proposals set forth in this notice, comments must be in writing and should be submitted as soon as possible, but no later than July 29, 1996. This proposed industry system would become effective in the U.S. on January 1, 1997.

ADDRESSES: Correspondence about the industry proposals of the NAICS structure announced in this **Federal Register** notice should be sent to: Carole A. Ambler, Coordinator, Economic Classification Policy Committee, Bureau of the Census, U.S. Department of Commerce, Room 2633–3, Washington, DC 20233, telephone number: (301) 457–2668, FAX number: (301) 457–1343.

Correspondence about the NAICS numbering system should be sent to: Jack E. Triplett, Chairman, Economic Classification Policy Committee, Bureau of Economic Analysis (BE-42), U.S. Department of Commerce, Washington, DC 20230, telephone number: (202) 606–9615, FAX number: (202) 606–5311. Copies of all ECPC issues papers, previous **Federal Register** notices, and ECPC reports are available from the same address.

ELECTRONIC AVAILABILITY AND COMMENTS: This document is available on the Internet from the Census Bureau via WWW browser, ftp, and E-mail.

To obtain this document via WWW browser, connect to "http://www.census.gov" then select "Economy," then select "Economy-Wide Programs," then select "NAICS Documents."

To obtain this document via ftp, log in to ftp.census.gov as anonymous, and retrieve the file "prop01.txt" from the "/pub/epcd/naics" directory. (That directory also contains previous NAICS **Federal Register** Notices and related documents.)

To obtain this document via Internet E-mail, send a message to majordomo@census.gov with the body text as follows: "get gatekeeper prop01.txt". The document will be delivered as a message attachment.

Comments may be sent via Internet E-mail to the Census Bureau at naics@census.gov (do not include any capital letters in the address). Comments received at this address by the dates specified above will be included as part of the official record.

FOR FURTHER INFORMATION CONTACT: Carole A. Ambler, Coordinator, Economic Classification Policy Committee, Bureau of the Census, U.S. Department of Commerce, Room 2633–3, Washington, DC 20233, telephone number: (301) 457–2668, FAX number: (301) 457–1343.

SUPPLEMENTARY INFORMATION:

Structure of Notice

There are 20 parts to this notice. Part I includes the proposals for health and social assistance; Part II includes educational services; Part III includes computer and electronic product manufacturing; Part IV includes furniture manufacturing; Part V includes printing and related support activities; Part VI includes professional, scientific, and technical services; Part VII includes performing arts, spectator sports and related industries, museums, historical sites and similar institutions, and recreation, amusement, and gambling; Part VIII includes information; Part IX includes wood product manufacturing, except furniture; Part X includes rental and leasing; Part XI includes repair and maintenance; Part XII includes management and support; Part XIII includes transportation; Part XIV includes retail and wholesale trade; Part XV includes mining; Part XVI includes paper manufacturing; Part XVII includes nonmetallic mineral manufacturing; Part XVIII includes primary metal manufacturing; Part XIX includes miscellaneous manufacturing; and Part XX includes postal service and couriers.

Each of the 20 parts of the notice is organized into two sections. The first section includes a copy of the proposed agreement signed by the ECPC, Statistics Canada, and INEGI; the structure of NAICS; and an explanation of the structure. For a number of reasons, NAICS industries do not always provide as much industry detail as has been present in the U.S. SIC. Each country may add additional detailed industries, below the industry level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a NAICS industry in order to ensure full comparability among the three countries. The proposed United States NAICS system would include U.S. national industries. These represent important industries in the U.S. that cannot be recognized in the statistical systems of either Canada or Mexico because of size restrictions, confidentiality or other reasons. The second section of each part includes the U.S. detailed industries within NAICS and two comparison tables showing the differences between the 1987 SIC and the 1997 NAICS with United States detail.

The NAICS numbering system is still under development; therefore the hierarchical structure is displayed in this document with X's representing the following:

X Industry Sector
XX Industry Subsector
XXX Industry Group
XXXX Industry
XXXXX U.S. National Industry

The terms "Industry Sector" and "Industry Subsector" are changes from the terms "Division" and "Major Group" used in the 1987 SIC manual.

NAICS Coding System: Issue for Comment

The ECPC is requesting public comment on two alternatives for a NAICS coding system—a 5-character alphanumeric system and a 6-character, all numeric system. In the initial stages of its review, the ECPC was informed that the computer systems of some U.S. statistical agencies could not accommodate six characters, which ruled out consideration of a 6-character system. Further investigation has indicated, however, that 6-character fields are possible and may offer certain advantages.

Background

NAICS is organized in a hierarchical structure, much like the existing U.S. SIC. The 1987 SIC employed a 4-digit coding system, in which the first two digits designate what in NAICS is known as a "subsector," the third digit designates the industry group, and the fourth digit designates the industry. For example, in the 1987 SIC, the two digits 26 designate the manufacture of "Paper and Allied Products," within which the digits 262 designate an industry group titled "Paper Mills," which contains one 4-digit industry, SIC 2621, also titled "Paper Mills."

The NAICS coding system must be expanded beyond the four digits used in the SIC for two reasons. First, the NAICS agreements among the ECPC, INEGI, and Statistics Canada permit each country to designate detailed industries, below the level of a NAICS industry, to meet national needs. The United States will have such national industry detail in many places in the new classification, and this national detail can only be accommodated by expanding the coding system to at least five characters. This national industry detail has been shown schematically in previous **Federal Register** notices.

Second, it is desirable that the first character or characters in a coding system designate the sector (the term "industry sector" is replacing the term "division" used in the 1987 SIC). A modern economy is too complex to be described adequately if the first character of the coding system restricts the number of sectors to nine or ten. The ECPC, INEGI, and Statistics Canada are proposing that NAICS have 18 industry sectors. Accordingly, either the first character of the coding system must be a letter, rather than a number, or two digits must be used to designate the sector in NAICS.

The foregoing considerations lead to two options for the coding system in NAICS:

(1) A 5-character, alphanumeric coding system, in which the first character (a letter) designates the NAICS sector, and the second, third, fourth, and fifth numerical characters designate, respectively, the subsector, industry group, NAICS industry, and U.S. national industry (if any).

(2) A 6-character, all numeric coding system, in which the first two digits designate the NAICS sector, and the third, fourth, fifth, and sixth digits designate, respectively, the subsector, industry group, NAICS industry, and U.S. national industry (if any).

To illustrate the differences between the two coding systems, the following table shows a portion of the proposed NAICS structure, with U.S. national detail, for two manufacturing subsectors, and for one non-manufacturing subsector. In the example, hypothetical 5-character and 6-character coding systems are displayed for illustration (the actual positions of these subsectors in the classification system, and hence the actual codes to be assigned to them, will be determined later).

ILLUSTRATIVE PORTION OF THE NAICS STRUCTURE, SHOWING HYPOTHETICAL ALTERNATIVE CODING SYSTEMS

	5-character alphanumeric system	6-character all numeric system
Manufacturing	E, F, G	21, 22, 23
Food Manufacturing	E1	211
Animal Food Manufacturing	E11	2111

ILLUSTRATIVE PORTION OF THE NAICS STRUCTURE, SHOWING HYPOTHETICAL ALTERNATIVE CODING SYSTEMS—Continued

	5-character alphanumeric system	6-character all numeric system
Animal Food Manufacturing	E111	21111
Dog and Cat Food Manufacturing	E1111	211111
Other Animal Food Manufacturing	E1112	211112
Grain and Oilseed Milling	E12	2112
Flour Milling and Malt Manufacturing	E121	21121
Flour Milling	E1211	211211
Rice Milling	E1212	211212
Malt Manufacturing	E1213	211213
Starch and Vegetable Fats and Oils Manufacturing	E122	21122
Soybean Processing	E1221	211221
Wet Corn Milling	E1222	211222
Other Oilseed Processing	E1223	211223
Edible Fats and Oils Manufacturing	E1224	211224
Breakfast Cereal Manufacturing	E123	21123
Sugar and Confectionery Product Manufacturing	E13	2113
(Classification continues)	...	...
Textile Mills	E2	212
Fibre, Yarn, and Thread Mills	E21	2121
Fiber, Yarn, and Thread Mills	E211	21211
Yarn Spinning Mills	E2111	212111
Yarn Texturing, Throwing, and Twisting Mills	E2112	212112
Thread Mills	E2113	212113
Fabric Mills	E22	2122
Broadwoven Fabric Mills	E221	21221
Narrow Fabric Mills and Schiffli Machine Embroideries	E222	21222
Narrow Fabric Mills	E2221	212221
Schiffli Machine Embroideries	E2222	212222
Nonwoven Fabric Mills	E223	21223
Knit Fabric Mills	E224	21224
Weft Knit Fabric Mills	E2241	212241
Other Knit Fabric and Lace Mills	E2242	212242
(Classification continues)	...	...
Computer and Electronic Product Manufacturing	F1	221
Computer and Peripheral Equipment Manufacturing	F11	2211
Computer and Peripheral Equipment Manufacturing	F111	22111
Electronic Computer Manufacturing	F1111	221111
Computer Storage Device Manufacturing	F1112	221112
Computer Terminal Manufacturing	F1113	221113
Other Computer Peripheral Equipment Manufacturing	F1114	221114
Communication Equipment Manufacturing	F12	2212
Telephone Apparatus Manufacturing	F121	22121
Broadcast and Studio Equipment for Radio, TV, and.		
Cable Manufacturing	F122	22122
Other Communication Equipment Manufacturing	F123	22123
Audio and Video Equipment Manufacturing	F13	2213
(Classification continues)	...	...
Information	J	71
Publishing	J1	711
Newspaper, Periodical, Book and Database Publishing	J11	7111
Newspaper Publishing	J111	71111
Periodical Publishing	J112	71112
Book Publishing	J113	71113
Database Publishing	J114	71114
Other Publishing	J115	71115
Greeting Card Publishing	J1151	711151
All Other Publishing	J1152	711152
(Classification continues)	...	...

Advantages and Disadvantages of the Two Options

6-Character All Numeric System

Advantages

• An all numeric code can be key-punched more efficiently, i.e., more quickly and accurately. First, a 6-character all numeric code can be keyed faster than a 5-character alphanumeric one. Second, an all numeric code can more readily be verified by the computer system with a check-digit. Third, an all numeric code is less subject to misinterpretation since numerals are more distinct than certain letters (e.g., E & F, M & N, or U & V) even if letters such as I, O, and S are omitted because of their similarity to certain numerals. These productivity advantages reduce the cost of key-punching, compared with a 5-character alphanumeric system. This is the primary advantage of a 6-character, all numeric system to Government agencies.

• Using an all numeric system allows more flexibility for future expansion of NAICS industry sectors. Under a 5-character alphanumeric system, NAICS would use 22 letters of the alphabet (18 NAICS industry sectors, plus four extra letters for industry sectors, such as Manufacturing, that contain more than ten subsectors). Eliminating the three or four letters that are similar to numerals leaves essentially no room for expansion of the number of NAICS industry sectors under the 5-character alphanumeric proposal, whereas the 6-character all numeric system would permit future expansion of NAICS industry sectors.

• Most other industry classification systems used throughout the world are all numeric, though most of them are 4- or 5-digit systems.

Disadvantages

• Some of the numerical codes used in the 1987 SIC would be reused for NAICS, but they would describe different levels of aggregation of different industries compared to their use in the 1987 SIC. Even though at any given number of digits, the codes will designate different levels in the two classification systems, reusing codes could lead to some initial confusion about the meaning of a given code. For example, using the hypothetical codes shown above, NAICS code 2111 could represent the industry group for Animal Food Manufacturing, which contains one NAICS industry and two U.S. national industries, while the 1987 SIC code 2111 represents the 4-digit industry for the manufacture of cigarettes.

• Because expanding a field can be expensive for existing database systems, some users may prefer a 5-character field to one that requires 6-characters, especially since, of the 99 available initial two-digits in a 6-character system, NAICS will only use 22 of them (18 NAICS sectors, plus four extra initial digit pairs for industry sectors, such as Manufacturing, that contain more than ten subsectors).

5-Character Alphanumeric System

Advantages

• Only 5-character fields must be carried in government and nongovernment data bases thereby potentially lessening database-related transition costs to the new system. However, since the field would need to be changed from a numeric to an alphanumeric one, the extent of potential savings is not clear.

• A 5-character system beginning with a letter provides for unique codes as compared to the 1987 SIC. This will help minimize initial confusion between the new and old systems.

Disadvantages

• A 5-character alphanumeric system is expected to impose substantially higher data entry costs on the U.S. statistical agencies responsible for industry coding. Key-punching of 5-character alphanumeric industry codes takes longer and is less accurate than a 6-character all numeric system for the reasons discussed above under advantages of the 6-character system.

• Using a 5-character alphanumeric system permits essentially no flexibility for future expansion of NAICS industry sectors. Under a 5-character alphanumeric system, NAICS would use 22 letters of the alphabet (18 NAICS industry sectors, plus four more letters for industry sectors, such as Manufacturing, that contain more than ten subsectors). Eliminating the three or four letters that are similar to numerals leaves essentially no room for expansion of the number of NAICS industry sectors under the 5-character alphanumeric proposal, whereas the 6-character all numeric system would permit future expansion of NAICS industry sectors.

Disadvantages of Both Systems

• With either coding system, multiple initial characters must be used for large sectors, such as manufacturing, transportation, and wholesale and retail trade. Manufacturing, for example, has 21 subsectors in NAICS, so that the 5-character alphanumeric system will require three letters to designate manufacturing and the 6-character all numeric system will require three sets of 2-digit codes. This is an inconvenience in working with the system because tabulating manufacturing will require entering three letters or three 2-digit codes, rather than just one. However, this characteristic is also present in the 1987 SIC system (where initial digits 2 and 3 designate manufacturing).

• In public comments to the ECPC, some users have requested a more "user friendly" coding system than the present 4-digit SIC. Neither of the two systems is an improvement in this respect.

ECPC Proposal: Request for Comment

The ECPC is proposing the adoption of the 6-character, all numeric coding system for NAICS. The principal reasons for this proposal are the additional key-punching costs to Government agencies if an alphanumeric system were to be adopted as well as the flexibility for future expansion that a 6-character system permits. Other advantages and disadvantages of one coding system over the other seem less compelling because they are more or less offsetting. Of the other countries that are partners in NAICS, Statistics Canada has indicated a strong preference for an all numeric system, and INEGI (which now uses a 6-character numeric system for its industry classification system) has indicated that either system would be acceptable. The ECPC requests comments on its proposal to adopt the 6-digit coding system.

Time Series Summary

The standard approach to preserving time series continuity after classification revisions is to create linkages where the series break. This is accomplished by producing the data series using both the old and new classifications for a given period of transition. With the dual classifications of data, the full impact of the revision can be assessed. Data producers then may measure the reallocation of the data at aggregate industry levels and develop a concordance between the new and old series for that given point in time. The concordance creates a crosswalk between the old and new classification systems. This link between the 1987 U.S. SIC and NAICS (with U.S. national detail) will be developed by the statistical agencies in the U.S.

Outreach Activities

OMB and the Economic Classification Policy Committee (ECPC) are seeking comments on the proposed NAICS structure for the industries described in this notice. In carrying out its mandate to ensure maximum public participation in the process of constructing NAICS, the ECPC has already discussed many of these industry proposals with industry and user groups and will continue to do so. In addition, the ECPC is replying, on a flow basis as soon as the work is completed for industry subsectors, to respondents to previous **Federal Register** notices. Thus, this **Federal Register** notice supplements other ECPC public outreach activities in the development of NAICS.

Part I—Proposed New Industry Structure for Ambulatory Health Care Services, Hospitals, Nursing and Residential Care Facilities, and Social Assistance

Section A—NAICS Structure

North American Industry Classification System

(NAICS)
Agreement Number 11

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industries:
Ambulatory Health Care Services
Hospitals
Nursing and Residential Care Facilities
Social Assistance

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on September 27, 1995—September 29, 1995 in Mexico City, Mexico.

Accepted	Signature	Date
Canada	/S/ Jacob Ryten	9/29/95
Mexico	/S/ Enrique Ordaz.	9/29/95
United States	/S/ Jack E. Triplett.	9/29/95

Attachment 1—NAICS Structure

XX Ambulatory Health Care Services
XXX Offices of Physicians
XXXX Offices of Physicians
XXX Offices of Dentists
XXXX Offices of Dentists
XXX Offices of Other Health Practitioners
XXXX Offices of Chiropractors
XXXX Offices of Optometrists
XXXX Offices of Mental Health Practitioners, except Physicians
XXXX Offices of Physical, Occupational, and Speech Therapists and Audiologists
XXXX Offices of All Other Health Practitioners
XXX Outpatient Care Facilities
XXXX Family Planning Centers
XXXX Outpatient Mental Health Facilities
XXXX Other Outpatient Care Facilities
XXX Medical and Diagnostic Laboratories
XXXX Medical and Diagnostic Laboratories
XXX Home Health Care Services
XXXX Home Health Care Services
XXX Miscellaneous Ambulatory Health Care Services
XXXX Ambulance Services
XXXX Other Miscellaneous Ambulatory Health Care Services
XX Hospitals
XXX General Medical and Surgical Hospitals
XXXX General Medical and Surgical Hospitals
XXX Psychiatric and Substance Abuse Hospitals
XXXX Psychiatric and Substance Abuse Hospitals
XXX Specialty Hospitals, Except Psychiatric and Substance Abuse Hospitals
XXXX Specialty Hospitals, Except Psychiatric and Substance Abuse Hospitals
XX Nursing and Residential Care Facilities
XXX Nursing Care Facilities
XXXX Nursing Care Facilities
XXX Mental Health, Mental Retardation, and Substance Abuse Facilities
XXXX Mental Retardation Facilities
XXXX Mental Health and Substance Abuse Facilities
XXX Community Care Facilities for the Elderly
XXXX Community Care Facilities for the Elderly
XXX Other Residential Care Facilities
XXXX Other Residential Care Facilities
XX Social Assistance
XXX Individual and Family Services
XXXX Child and Youth Services
XXXX Services for the Elderly and Persons with Disabilities
XXXX Other Individual and Family Services
XXX Community Food, Shelter, and Emergency and Relief Services
XXXX Community Food Services
XXXX Community Housing Services
XXXX Emergency and Other Relief Services
XXX Job Training and Vocational Rehabilitation Services
XXXX Job Training and Vocational Rehabilitation Services
XXX Child Day-care Services
XXXX Child Day-care Services

Attachment 2—North American Industry Classification System

Draft Classification for:
Ambulatory Health Care Services
Hospitals
Nursing and Residential Care Facilities
Social Assistance

Representatives of the statistical agencies of Canada, Mexico and the United States agree to a draft classification for these industries.

The draft classification constitutes the sector Health and Social Assistance. The sector is subdivided into 4 subsectors, 18 industry groups, and 30 industries.

A General Outline

The health and social services industries provide health care and social assistance for individuals. Because it is sometimes difficult to distinguish between the boundaries of health care and social assistance, these industries are grouped together in a new Health and Social Assistance sector. The industries are arranged in order from those providing the most intensive type of health care to those providing minimal health care with social assistance to those providing only social assistance to individuals.

Industries in the Ambulatory Health Care Services subsector provide health care services directly or indirectly to ambulatory patients and do not usually provide inpatient overnight services. Health practitioners in this subsector provide outpatient services, with the facilities and equipment not usually being the most significant part of the production process.

The Hospitals subsector includes establishments that provide medical, diagnostic, and treatment services that include physician, nursing and other health services to inpatients and the specialized accommodation services required by inpatients. Hospitals also may provide outpatient services as a secondary activity. Establishments in the Hospitals subsector provide inpatient health services, many of which can only be provided using the specialized facilities and equipment that form a significant and integral part of the production process.

The Nursing and Residential Care Facilities subsector includes establishments that provide residential care combined with either nursing, supervisory or other types of care as required by the residents. In this subsector, the facilities are a significant part of the production process and the care provided is a mix of health and social services with the health services being largely some level of nursing services.

The Social Assistance subsector includes establishments that provide a wide variety of assistance services directly to their clients. These services do not include residential or accommodation services except on a short stay basis.

Limitations and Constraints of the Classification

The draft classification avoids the problem of the delineation of the boundary between health and social services by incorporating both into a continuum.

General Medical and Surgical Hospitals is a very large industry group. NAICS developers considered subdividing this NAICS industry; however, research indicated a wide range of services are typically provided at general medical and surgical hospitals. Some hospitals provide specific advanced medical procedures such as organ transplants that require skilled specialists and special equipment for the operating and recovery phases of the procedures. Other hospitals may offer the same or different advanced medical procedures

with their corresponding technologies, along with the less specialized services and less sophisticated technologies that are offered by virtually all hospitals. The mix of services and technologies among hospitals varies significantly along this continuum, but no clear basis for differentiating among general and surgical hospitals based on their mix of services or technological threshold was found.

Relationship to ISIC

All of the 30 industries included in these subsectors are contained within Division 85, Health and Social Work, in the current International Standard Industrial Classification of All Economic Activities (ISIC, Revision 3) of the United Nations. ISIC Division 85, however, includes veterinary services; in NAICS, veterinary services are in the Professional, Scientific, and Technical Services subsector.

Some Changes to the National Classifications

Changes to the Canadian SIC include splitting CSIC 8621, Homes for Personal and Nursing Care, into Nursing Care Facilities and Community Care Facilities for the Elderly, and expanding CSIC 8646, Meal Services (Non-Commercial), to include a broader range of food services in the new industry Community Food Services. Community Housing Services and Emergency and Other Relief Services are essentially new industries for Canada. Air ambulance services move out of CSIC 4513, Non-Scheduled Air Transport, Specialty Industry, to Ambulance Services. CSIC 8689, Other Health Laboratories, moves out of this sector. CSIC 8693, Health Care Research Agencies, moves out of this sector.

For Mexico, the new Health and Social services sector represents the grouping of medical and social assistance classified in CMAP groups 9231, Medical, Dental, and Veterinary Services (Private Sector); 9232, Medical, Dental, and Veterinary Services (Public Sector); 9241, Social Security Services (Private Sector); and 9242, Social Security Services (Public Sector). Veterinary services are no longer included in this sector. A distinction is made between the public and private sector in CMAP for both health and social services. Because this distinction is not maintained in NAICS, it will be made by Mexico at the national industry level.

For the United States, there is a major change to 1987 SIC's 8011, Offices and Clinics of Doctors of Medicine, and 8031, Offices and Clinics of Doctors of Osteopathy. NAICS industry Offices of Physicians now includes both doctors of medicine and doctors of osteopathy. The 1987 distinction between the two types of doctors has been eliminated to recognize the convergence of the two types of medical service. The training and the specialties in which the doctors of medicine and doctors of osteopathy are engaged in many cases are the same and it is more and more common for the two types of doctors to practice together. The U.S. will define a separate national industry for physicians who practice mental health specialties. In addition to this change to 1987 SIC's 8011 and 8031, HMO medical centers and ambulatory surgical and free-standing emergency centers have been moved to NAICS industry Other Outpatient Care Facilities. The U.S. will recognize separate industries for these activities in its national detail. Another major change is the transfer of ambulance services from 1987 SIC's 4119, Local Passenger Transportation, Not Elsewhere Classified, and 4522, Air Transportation, Nonscheduled, into Ambulatory Health Care Services. The medical services included in the Ambulance Services industry are judged to be of greater significance than the vehicle used and the significance of the medical service dwarfs the transportation service also provided. Dental Laboratories, 1987 SIC 8072, are moved from the medical subsector to the Miscellaneous Manufacturing subsector, because making dentures, crowns, bridgework and artificial teeth is similar to other manufacturing processes classified there.

Achievements of Objectives

The classification meets the objectives for the North American Industry Classification System (NAICS). It is comprised of industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. In the main, the hierarchical structure of the classification also follows the production concept.

The classification achieves comparability for the three participating countries. All countries agree on the definitions of the industries.

Other objectives of the NAICS project have also been met. New industries that recognize current health and social service establishments have been established. New and emerging service industries have been created, especially in the area of social assistance.

The industries are economically significant. Some NAICS industries are much larger than others, but this was necessary to ensure comparability among the countries or because it was not possible to further subdivide large industries.

Finally, disruptions to time series, while they exist, have been minimized to the extent possible. Most of the changes to time series reflect the changing structure of health care across the three countries. For the U.S., additional changes have been made to the national detail to reflect these changes.

Section B—Annex: United States National Industry Detail

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the four NAICS industry subsectors presented in Part 1, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the four NAICS industry subsectors covered in Part I of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX	Ambulatory Health Care Services:			
XXX	Offices of Physicians:			
XXXX ...	Offices of Physicians:			

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XXXXX	Offices of Physicians except Mental Health Specialists.	N	*8011	Offices and Clinics of Doctors of Medicine (except mental health specialists).
			*8031	Offices and Clinics of Doctors of Osteopathy (except mental health specialists).
XXXXX	Offices of Physicians, Mental Health Specialists.	N	*8011	Offices and Clinics of Doctors of Medicine (mental health specialists).
			*8031	Offices and Clinics of Doctors of Osteopathy (mental health specialists).
XXX	Offices of Dentists:			
XXXX ...	Offices of Dentists	E	8021	Offices and Clinics of Dentists.
XXX	Offices of Other Health Practitioners:			
XXXX ...	Offices of Chiropractors	E	8041	Offices and Clinics of Chiropractors.
XXXX ...	Offices of Optometrists	E	8042	Offices and Clinics of Optometrists.
XXXX ...	Offices of Mental Health Practitioners, except Physicians.	N	*8049	Offices and Clinics of Health Practitioners, NEC (mental health practitioners except physicians).
XXXX ...	Offices of Physical, Occupational, and Speech Therapists and Audiologists.	N	*8049	Offices and Clinics of Health Practitioners, NEC (physical, occupational, speech therapists, and audiologists).
XXXX ...	Offices of All Other Health Practitioners:			
XXXXX	Offices of Podiatrists	E	8043	Offices and Clinics of Podiatrists.
XXXXX	Miscellaneous Health Practitioners	N	*8049	Offices and Clinics of Health Practitioners, NEC (except mental health practitioners, physical, occupational, speech therapists, and audiologists).
XXX	Outpatient Care Facilities:			
XXXX ...	Family Planning Centers	N	*8093	Speciality Outpatient Facilities, NEC (family planning centers).
			*8099	Health and Allied Services, NEC (childbirth preparation).
XXXX ...	Outpatient Mental Health Facilities	N	*8093	Specialty Outpatient Facilities, NEC (mental health facilities).
XXXX ...	Other Outpatient Care Facilities:			
XXXXX	HMO Medical Centers	N	*8011	Offices and Clinics of Doctors of Medicine (HMO Medical Centers).
XXXXX	Kidney Dialysis Centers	E	8092	Kidney Dialysis Centers.
XXXXX	Ambulatory Surgical and Freestanding Emergency Centers.	N	*8011	Offices and Clinics of Doctors of Medicine (surgical and emergency centers).
XXXXX	All Other Outpatient Care Facilities	N	*8093	Specialty Outpatient Facilities, NEC (except family planning and mental health centers).
XXX	Medical and Diagnostic Laboratories:			
XXXX ...	Medical and Diagnostic Laboratories:			
XXXXX	Medical Laboratories	R	*8071	Medical Laboratories (except diagnostic imaging centers).
XXXXX	Diagnostic Imaging Centers	N	*8071	Medical Laboratories (diagnostic imaging centers).
XXX	Home Health Care Services:			
XXXX ...	Home Health Care Services:			
XXXXX	Home Health Agencies	N	*8082	Home Health Care Services (home health agencies).
XXXXX	Other Home Health Care Services	N	*8082	Home Health Care Services (except home health agencies).
XXX	Miscellaneous Ambulatory Health Care Services:			
XXXX ...	Ambulance Services	N	*4119	Local Passenger Transportation, NEC (land ambulance)
			*4522	Air Transportation, Nonscheduled (air ambulance).
XXXX ...	Other Miscellaneous Health Care Services:			
XXXXX	Blood and Organ Banks	N	*8099	Health and Allied Services, NEC (blood and organ banks).
XXXXX	All Other Miscellaneous Health Care Services.	N	*8099	Health and Allied Services, NEC (except blood and organ banks).
XX	Hospitals:			
XXX	General Medical and Surgical Hospitals:			
XXXX ...	General Medical and Surgical Hospitals	R	8062	General Medical and Surgical Hospitals.
			*8069	Specialty Hospitals, Except Psychiatric (childrens' hospitals).
XXX	Psychiatric and Substance Abuse Hospitals:			
XXXX ...	Psychiatric and Substance Abuse Hospitals	R	8063	Psychiatric Hospitals
			*8069	Specialty Hospitals, Except Psychiatric (substance abuse hospitals).
XXX	Specialty Hospitals, except Psychiatric and Substance Abuse Hospitals:			
XXXX ...	Specialty Hospitals, except Psychiatric and Substance Abuse Hospitals.	R	*8069	Specialty Hospitals, Except Psychiatric (except childrens' and substance abuse hospitals).
XX	Nursing and Residential Care Facilities:			
XXX	Nursing Care Facilities:			
XXXX ...	Nursing Care Facilities	N	*8051	Skilled Nursing Care Facilities (except continuing care retirement communities).
			*8052	Intermediate Care Facilities (except continuing care retirement communities and mental retardation facilities).
			*8059	Nursing and Personal Care Facilities, NEC (except continuing care retirement communities).

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XXX	Mental Health, Mental Retardation, and Substance Abuse Facilities:			
XXXX ...	Mental Retardation Facilities	N	*8052	Intermediate Care Facilities (mental retardation facilities).
XXXX ...	Mental Health and Substance Abuse Facilities.	N	*8361	Residential Care (mental health and substance abuse facilities).
XXX	Community Care Facilities for the Elderly:			
XXXX ...	Community Care Facilities for the Elderly:			
XXXXX	Continuing Care Retirement Communities	N	*8051	Skilled Nursing Care Facilities (continuing care retirement communities).
			*8052	Intermediate Care Facilities (continuing care retirement communities).
			*8059	Nursing and Personal Care Facilities, NEC (continuing care retirement communities).
XXXXX	Homes for the Elderly	N	*8361	Residential Care (homes for the elderly).
XXX	Other Residential Care Facilities:			
XXXX ...	Other Residential Care Facilities	N	*8361	Residential Care (except mental health and substance abuse facilities, homes for the elderly).
XX	Social Assistance:			
XXX	Individual and Family Services:			
XXXX ...	Child and Youth Services	N	*8322	Individual and Family Social Services (child and youth services).
XXXX ...	Services for the Elderly and Persons with Disabilities.	N	*8322	Individual and Family Social Services (services for the elderly and disabled).
XXXX ...	Other Individual and Family Services	N	*8322	Individual and Family Social Services (except services for children, youth, elderly, disabled; food, housing, emergency and relief).
XXX	Community Food, Shelter, and Emergency Relief Services:			
XXXX ...	Community Food Services	N	*8322	Individual and Family Social Services (food services).
XXXX ...	Community Housing Services:			
XXXXX	Temporary Shelter	N	*8322	Individual and Family Social Services (temporary shelter).
XXXXX	Other Community Housing Services	N	*8322	Individual and Family Social Services (housing services except temporary shelter).
XXXX ...	Emergency and Other Relief Services	N	*8322	Individual and Family Social Services (emergency and relief services).
XXX	Job Training and Vocational Rehabilitation Services:			
XXXX ...	Job Training and Vocational Rehabilitation Services.	E	8331	Job Training and Vocational Rehabilitation Services.
XXX	Child Day Care Services:			
XXXX ...	Child Day-care Services	E	8351	Child Day Care Services.

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
4119@	Local Passenger Transportation, NEC	Ambulance Services (pt.).
4522@	Air Transportation, Nonscheduled	Ambulance Services (pt.).
8011@	Offices and Clinics of Doctors of Medicine:	
	Clinics of Physicians, Surgical and Emergency Centers.	Ambulatory Surgical and Freestanding Emergency Centers.
	HMO Medical Centers	HMO Medical Centers.
	Offices of Physicians, Mental Health Specialists	Offices of Physicians, Mental Health Specialists (pt.).
	Other Offices of Physicians	Offices of Physicians, Except Mental Health Specialists (pt.).
8021	Offices and Clinics of Dentists	Offices of Dentists.
8031@	Offices and Clinics of Doctors of Osteopathy:	
	Offices of Doctors of Osteopathy, Except Mental Health.	Offices of Physicians, Except Mental Health Specialists (pt.).
	Offices of Doctors of Osteopathy, Mental Health Specialists.	Offices of Physicians, Mental Health Specialists (pt.).
8041	Offices and Clinics of Chiropractors	Offices of Chiropractors.
8042	Offices and Clinics of Optometrists	Offices of Optometrists.
8043	Offices and Clinics of Podiatrists	Offices of Podiatrists.
8049	Offices and Clinics of Health Practitioners, Not Elsewhere Classified:	
	Mental Health Practitioners, Except Physicians	Offices of Mental Health Practitioners, Except Physicians.

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
	Offices of Physical, Occupational, and Speech Therapists and Audiologists.	Offices of Physical, Occupational, and Speech Therapists and Audiologists.
	Other Offices of Heath Practitioners	Miscellaneous Health Practitioners.
8051@	Skilled Nursing Care Facilities:	
	Continuing Care Retirement Communities	Continuing Care Retirement Communities (pt.).
	All Other Skilled Nursing Care Facilities	Nursing Care Facilities (pt.).
8052@	Intermediate Care Facilities:	
	Continuing Care Retirement Communities	Continuing Care Retirement Communities (pt.).
	Mental Retardation Facilities	Mental Retardation Facilities.
	Other Intermediate Care Facilities	Nursing Care Facilities (pt.).
8059@	Nursing and Personal Care Facilities, Not Elsewhere Classified:	
	Continuing Care Retirement Communities	Continuing Care Retirement Communities (pt.).
	Other Nursing and Personal Care Facilities	Nursing Care Facilities (pt.).
8062@	General Medical and Surgical Hospitals	General Medical and Surgical Hospitals (pt.).
8063@	Psychiatric Hospitals	Psychiatric and Substance Abuse Hospitals (pt.).
8069@	Specialty Hospitals, Except Psychiatric:.	
	Children's Hospitals	General Medical and Surgical Hospitals (pt.).
	Psychiatric and Substance Abuse Hospitals	Psychiatric and Substance Abuse Hospitals (pt.).
	Other Specialty Hospitals	Specialty Hospitals, Except Psychiatric and Substance Abuse Hospitals.
8071	Medical Laboratories:	
	Diagnostic Imaging Centers	Diagnostic Imaging Centers.
	Medical Laboratories, Except Diagnostic Imaging Centers.	Medical Laboratories.
8072	Dental Laboratories	Dental Laboratories (Included in Miscellaneous Manufacturing subsector).
8082	Home Health Care Services:	
	Home Health Agencies	Home Health Agencies.
	Home Health Care Services, Except Home Health Agencies.	Other Home Health Care Services.
8092	Kidney Dialysis Centers	Kidney Dialysis Centers.
8093	Specialty Outpatient Facilities, Not Elsewhere Classified:	
	Family Planning Centers	Family Planning Centers.
	Outpatient Mental Health Facilities	Outpatient Mental Health Facilities.
	Other Specialty Outpatient Facilities	All Other Outpatient Care Facilities.
8099	Health and Allied Services, Not Elsewhere Classified:	
	Blood and Organ Banks	Blood and Organ Banks.
	Medical artists	Graphic Design Services (pt.) (Included in Professional, Scientific, and Technical Services subsector).
	Medical Photography	Commercial Photography (pt.) (Included in Professional, Scientific, and Technical Services subsector).
	Other Health and Allied Services	All Other Miscellaneous Health Care Services.
8322	Individual and Family Social Services:	
	Child and Youth Services	Child and Youth Services.
	Community Food Services	Community Food Services.
	Community Housing Services, Except Temporary Shelters.	Other Community Housing Services.
	Emergency and Other Relief Services	Emergency and Other Relief Services.
	Services for the Elderly and Persons with Disabilities.	Services for the Elderly and Persons with Disabilities.
	Temporary Shelter	Temporary Shelter.
	Other Individual and Family Services	Other Individual and Family Services.
8331	Job Training and Vocational Rehabilitation Services.	Job Training and Vocational Rehabilitation Services.
8351	Child Day-care Services	Child Day Care Services.
8361	Residential Care:	
	Homes for the Elderly	Homes for the Elderly.
	Mental Health and Substance Abuse Facilities	Mental Health and Substance Abuse Facilities.
	Other Residential Care	Other Residential Care Facilities.

The abbreviation "pt" mean "part of". @ means a time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry.

Description of Changes to the U.S. System

1. Ambulatory Health Care Services—Sixteen new NAICS or national industries were added to the 1997 industry structure for this subsector to better describe the growing and changing U.S. Ambulatory Health Care Services industries. A number of these new industries were created from 1987 Not Elsewhere Classified (NEC) industries. The new industries are:

Offices of Physicians, except Mental Health Specialists from part of 1987 SIC code 8011, Offices and Clinics of Doctors of Medicine, and part of 1987 SIC code 8031, Offices and Clinics of Doctors of Osteopathy. In most cases, these two types of physicians provide the same services.

Offices of Physicians, Mental Health Specialists from Part of 1987 SIC code 8011, Offices and Clinics of Doctors of Medicine, and part of 1987 SIC code 8031, Offices and Clinics of Doctors of Osteopathy. Mental health is separated from other physicians because the production process they use most differs from that used by other physicians.

Offices of Mental Health Practitioners, Except Physicians from part of 1987 SIC 8049, Offices of Health Practitioners, NEC. This new industry was created because it had a unique production process.

Offices of Physical, Occupational, and Speech Therapists and Audiologists from part of 1987 SIC 8049, Offices of Health Practitioners, NEC. This new industry was created because it had a unique production process.

Miscellaneous Health Practitioners from part of 1987 SIC 8049, Offices and Clinics of Health Practitioners, NEC. This is one of two new residual categories from the current NEC category. It includes only offices of practitioners.

Family Planning Centers from part of 1987 SIC 8093, Specialty Outpatient Clinics, NEC, and part of 1987 SIC 8099, Health and Allied Services, NEC. This new industry was created because it had a unique production process.

Outpatient Mental Health Facilities from part of 1987 SIC 8093, Specialty Outpatient Clinics, NEC. This new industry was created because it had a unique production process.

HMO Medical Centers from part of 1987 SIC 8011, Offices and Clinics of Doctors of Medicine. The range of services provided in these centers are generally greater than in physician offices.

Ambulatory Surgical and Freestanding Emergency Centers from part of 1987 SIC 8011, Offices and Clinics of Doctors of Medicine. This new industry was created because it had a unique production process.

All Other Outpatient Care Facilities from part of 1987 SIC 8049, Offices and Clinics of Health Practitioners, NEC. This is the second residual category from the current NEC. It contains only outpatient care facilities.

Diagnostic Imaging Centers from part of 1987 SIC 8071, Medical Laboratories. This new industry was created because it had a unique production process.

Home Health Agencies from part of 1987 SIC 8082, Home Health Care Services. This industry provides skilled nursing, physical and other therapy, and other services provided in the home.

Other Home Health Care Services from part of 1987 SIC 8082, Home Health Care Services. This residual of the current industry includes, for example, home inhalation, infusion, and perfusion therapy.

Ambulance Services from parts of 1987 SIC 4119, Local Passenger Transportation, Not Elsewhere Classified, and 1987 SIC 4522, Air Transportation, Nonscheduled. The medical service provided by ambulance personnel is more important than the transportation.

Blood and Organ Banks from part of 1987 SIC 8099, Health and Allied Services, NEC. The new industry was created because it had a unique production process.

All Other Miscellaneous Health Care Services from part of 1987 SIC 8099, Health and Allied Services, NEC. This is the new residual category for the current 8099.

2. Hospitals—There are no new industries, but some content changes were made to achieve comparability among the three countries. These are:

Children's hospitals were moved from 1987 SIC 8069, Specialty Hospitals, except Psychiatric, to General Medical and Surgical Hospitals. These hospitals provide the wide variety of services found in general hospitals.

Alcohol and drug abuse hospitals were moved from 1987 SIC 8069, Speciality Hospitals, except Psychiatric, to form part of Psychiatric and Substance Abuse Hospitals to recognize the growing number of these hospitals.

3. Nursing and Residential Care Facilities—The three industries in 1987 SIC Industry Group 805, Nursing and Personal Care Facilities, and 1987 SIC 8361, Residential Care, have been redistributed into five NAICS industries and two additional National industries to better describe this growing activity and to eliminate the distinction made in 1987 based on the Medicare/Medicaid programs. The new industries are:

Nursing Care Facilities from parts of 1987 SIC 8051, Skilled Nursing Care Facilities; 1987 SIC 8052, Intermediate Care Facilities; and 1987 SIC 8059, Nursing and Personal Care Facilities, NEC. These industries were combined because many establishments provide care for persons needing varying levels of health care.

Mental Retardation Facilities from part of 1987 SIC 8052, Intermediate Care Facilities. This new industry was created because it had a production process not found in nursing homes.

Mental Health and Substance Abuse Facilities from part of 1987 SIC 8361, Residential Care. This new industry was created because it had a unique production process.

Continuing Care Retirement Communities from parts of 1987 SIC 8051, Skilled Nursing Care Facilities; 1987 SIC 8052, Intermediate Care Facilities; and 1987 SIC 8059, Nursing and Personal Care Facilities, NEC. This new industry was created to handle the growing number of establishments having facilities for various levels of care at one facility, including nursing care, housekeeping, meal service, and other services to assist elderly persons in daily living.

Homes for the Elderly from part of SIC 1987 8361, Residential Care. This new industry was created to provide data on establishments known as retirement homes or assisted living facilities, where medical care is incidental.

Other Residential Care Facilities from part of 1987 SIC 8361, Residential Care. This is a new residual category from the current 8361, Residential Care.

4. Social Assistance—1989 SIC 8322, Individual and Family Social Services, has been split into seven new industries in two industry groups. These new industries reflect the growing and changing character of social assistance industries. Additional industries for social assistance were requested by several organizations interested in activities of not for profit organizations. These new industries were created to fill that need and because the new industries had different production processes.

The industries included in the industry group Individual and Family Services are:

Child and Youth Services
Services for the Elderly and Persons with Disabilities
Other Individual and Family Services

The industries under the new industry group Community Food, Shelter, and Emergency Relief Services are:

Community Food Services
Temporary Shelter (U.S. national industry)
Other Community Housing Services (U.S. national industry)
Emergency and Other Relief Services

Part II—Proposed New Industry Structure for Educational Services

Section A—NAICS Structure

North American Industry Classification System (NAICS)

Agreement Number 12

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following subsector:
Educational Services

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on September 27, 1995–September 29, 1995 in Mexico City, Mexico.

Accepted	Signature	Date
Canada	/S/ Jacob Ryten	9/29/95
Mexico	/S/ Enrique Ordaz.	9/29/95
United States	/S/ Jack E. Triplett.	9/29/95

Attachment 1—NAICS Structure

X Educational Services
XXX Elementary and Secondary Schools
XXXX Elementary and Secondary Schools
XXX Junior Colleges
XXXX Junior Colleges
XXX Colleges, Universities, and Professional Schools
XXXX Colleges, Universities, and Professional Schools
XXX Business, Computer and Management Training Schools
XXXX Business and Secretarial Schools
XXXX Computer Training Schools
XXXX Professional and Management Development Training Schools
XXX Technical and Trade Schools
XXXX Technical and Trade Schools
XXX Miscellaneous Schools and Instruction
XXXX Fine Arts Schools
XXXX Athletic Instruction
XXXX Language Schools
XXXX Other Miscellaneous Schools and Instruction
XXX Educational Support Services
XXXX Educational Support Services

Attachment 2—North American Industry Classification System

Draft Classification for:
Educational Services

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industry classification for these industries.

This draft classification applies to the subsector Educational Services. This subsector is subdivided into 7 industry groups and 12 industries.

A General Outline

Educational services industries provide instruction and training in a wide variety of subjects. The industry groups within this subsector (Elementary and Secondary Schools; Junior Colleges; Colleges, Universities, and Professional Schools; Business, Computer and Management Training Schools; Technical and Trade Schools; Miscellaneous Schools and Instruction; and Educational Support Services) are based on the level of educational services provided, and therefore on the level and types of training that are required of the instructors and teachers.

The Elementary and Secondary Schools industry group includes establishments that furnish courses that comprise each country's basic preparatory education. Included are parochial schools and military academies furnishing basic preparatory academic courses and secondary schools that furnish both academic and technical courses.

Junior Colleges furnish academic or academic and technical courses and grant associate or equivalent academic degrees, diplomas, or certificates that are below the college or university level. This grouping includes community colleges that offer associate degrees. The requirement for admission to an associate or equivalent degree program is at least a high school diploma or equivalent general academic training. Schools having junior college grades in conjunction with secondary grades are classified in Elementary and Secondary Schools.

Colleges, Universities, and Professional Schools furnish academic courses and grant academic degrees at the baccalaureate or postgraduate level. The requirement for admission is at least a high school diploma or equivalent general academic training.

Business, Computer and Management Training Schools include establishments that provide training in business, secretarial, computer, and related fields. This industry group contains three industries. Business and Secretarial Schools offer courses in office procedures and secretarial and stenographic skills and may offer courses in basic computer skills, word processing, spreadsheet, and desktop publishing. In addition, they offer such classes as office machine operation, reception, communications, and other skills designed for individuals pursuing a clerical or secretarial career or a career in court reporting. Colleges of business within universities are excluded. The Computer Training Schools industry reflects the increasing demand for on-site and specialized computer training. Establishments included in this industry conduct training on all phases of computer activities including computer programming, software packages, computerized business systems, computer electronics technology, computer operations, and local area network management. Establishments that design custom computer systems and then provide training in the use of these custom systems are excluded; these establishments are included in the Professional, Scientific and Technical Services subsector. Professional and Management Development Training Schools include establishments that offer an array of short duration courses and seminars for career development. These establishments may customize or modify their courses to meet the special needs of customers. The courses typically focus on executive management and professional development and may be provided directly to individuals or through employers' training programs. The courses may be offered on-site or off-site.

Technical and Trade Schools provide training in a wide variety of technical subjects and trades. Because the nature of technical training varies so widely among the three countries, only one NAICS 4-digit industry is defined within this industry group. Each country may provide national industry detail below the NAICS industry level to reflect technical and trade schools found within each country.

The Miscellaneous Schools and Instruction industry group includes 4-digit industries for Fine Arts Schools, Athletic Instruction, and Language Schools. Fine Arts Schools include art schools, drama schools, music schools, professional dance schools, other dance schools and studios. However, schools that offer high school diplomas or academic degrees are placed in the other appropriate industry groups, even if they specialize in fine arts. Athletic Instruction includes establishments that provide training in athletic activities such as baseball, basketball, golf, martial arts, and skiing. Language Schools are establishments that teach foreign languages. They are designed to offer language instruction ranging from conversational skills for personal enrichment to intensive training courses for career or educational opportunities. Skills taught by these establishments may include speaking, reading, and writing in another language.

Educational Support Services include educational consultants, educational test development and evaluation services, educational testing services, student exchange programs, educational curriculum development, and other non-instructional services that support educational processes or systems. Establishments primarily engaged in providing job training for the unemployed, underemployed, persons with disabilities, and persons who have a job market disadvantage because of a lack of education, job skills, or experience are classified in the Health and Social Assistance sector.

Limitations and Constraints of the Classification

Defining educational services industries that are economically significant and homogeneous was often difficult due to lack of data. Some industries that were considered when establishing NAICS industries for educational services are either too small or not specialized in all three countries, for example correspondence schools. It is not possible to use the proposed system to identify specific fields of study because many establishments offer a wide range of courses. Further, it is not possible to differentiate career-oriented training from training taken for personal development as many types of establishments provide both kinds of training.

The way activities are defined in establishments differs in the three countries, preventing the establishment of additional NAICS industries. For example, in Mexico there are separate establishments that provide special educational instruction for elementary and secondary school students with learning disabilities while in the United States and Canada, special educational instruction is generally provided by schools serving all students. Also in the United States, establishments providing trade apprenticeship training are separately identifiable, whereas in the other countries this type of training generally occurs "on the job."

Changes were required in each country's national classification to reach international comparability. The production principle was applied whenever these changes were required.

Relationship to ISIC

Most 4-digit NAICS industries in this sector are contained within Division 80, Education, of the current International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) of the United Nations. Therefore, data tabulated using NAICS also can be tabulated according to ISIC with the following exceptions: (1) Informal education activities below kindergarten (or preschool in Mexico) are often combined with day-care, and are classified with the Child Day-care industry in the NAICS subsector for Social Assistance and (2) NAICS classifies athletic instruction in Educational Services, but ISIC classifies it in 924, Sporting and Other Recreational Activities. There are five 4-digit industries covering educational services in ISIC while NAICS is more detailed, providing for twelve industries. The NAICS industries for Junior Colleges and Colleges, Universities, and Professional Schools are directly comparable to ISIC industry, 8030, Higher Education. In ISIC, Elementary and Secondary Schools are separate industries, while in NAICS they are combined, because in the U.S. data on schools are usually collected from school systems that operate both levels.

Some Changes to National Classification

In Canada CSIC 8521, Post-Secondary Non-University Education, has been split into Junior Colleges, Business and Secretarial Schools, Computer Training, Technical and Trade Schools, and Fine Arts Schools. Aviation Schools have been moved out of CSIC 4513, Non-Scheduled Air Transport Specialty Industry, to this subsector because they primarily provide instruction, even though aircraft may be required in some portions of the instruction process. Sports instruction has been moved out of CSIC 96, Amusement and Recreational Service Industries, and becomes NAICS industry, Athletic Instruction. CSIC 8599, Other Educational Services, has been split into Language Schools, Other Miscellaneous Instruction and Educational Support Services. Two industries have been moved from Educational Service Industries. These are CSIC 8541, Library Services, to the new Information sector, and CSIC 8551 Museums and Archives, to the new Museums, Historical Sites and Similar Institutions subsector. Both will be published separately.

The Mexican CMAP groups 9211, Education Services (Private), and CMAP 9212, Education Services (Public), are combined in the NAICS Educational Services subsector. The NAICS Educational Services subsector does not distinguish between establishments in the private and public sectors. Mexico will make this distinction in its national detail. The only activities that came from another CMAP subsector are athletic instruction and educational support services.

For the United States, cosmetology and barber schools moved into Educational Services from 1987 SIC's 7231, Beauty Shops, and 7241, Barber Shops. Dance schools move into Educational Services from 1987 SIC 7911, Dance Studios, Schools, and Halls. A dancing school is not closely related to a ballroom, though both may have dance floors. Athletic instruction moves from 1987 SIC 7999, Amusement and Recreation Services, Not Elsewhere Classified, to Educational Services. Libraries, 1987 SIC 8231, have been moved from Educational Services to the new Information sector, to be published separately.

Achievement of Objectives

The classification meets the objectives for the North American Industry Classification System (NAICS). It is comprised of industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. In the main, the hierarchical structure of the classification also follows the production concept.

The classification achieves comparability for the three participating countries. All countries agree on the detailed definitions of the industries. However, each country will use terminology that reflects its own educational system.

Other objectives of the NAICS project have also been met. New industries have been added to reflect trends in adult education and professional training.

The industries are highly specialized and economically significant. This enhances the classification's suitability for sampling and other aspects of survey operations. Finally, disruptions to time series, while they exist, have been minimized and generally result from subdividing existing "not elsewhere classified" industries. The major changes are well-defined and can be taken into account in linking time series.

Section B—Annex: United States National Industry Detail

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the

NAICS industry subsector presented in Part II, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the NAICS industry subsector covered in Part II of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX	Educational Services:			
XXX	Elementary and Secondary Schools:			
XXXX ...	Elementary and Secondary Schools	E	8211	Elementary and Secondary Schools.
XXX	Junior Colleges:			
XXXX ...	Junior Colleges	E	8222	Junior Colleges and Technical Institutes.
XXX	Colleges, Universities, and Professional Schools:			
XXXX ...	Colleges, Universities, and Professional Schools.	E	8221	Colleges, Universities, and Professional Schools.
XXX	Business, Computer, and Management Training Schools.			
XXXX ...	Business and Secretarial Schools	E	8244	Business and Secretarial Schools.
XXXX ...	Computer Training Schools	E	8243	Data Processing Schools.
XXXX ...	Professional and Management Development Training Schools.	N	*8299	Schools and Educational Services, Not Elsewhere Classified (professional and management development training).
XXX	Technical and Trade Schools:			
XXXX ...	Technical and Trade Schools:			
XXXXX	Cosmetology and Barber Schools	N	*7231	Beauty Shops (beauty and cosmetology schools).
			*7241	Barber Shops (barber colleges).
XXXXX	Vocational and Technical Schools	N	*8249	Vocational Schools, Not Elsewhere Classified (vo-tech schools, except high schools).
XXXXX	Aviation and Flight Training	N	*8249	Vocational Schools, Not Elsewhere Classified (aviation schools, excluding flying instruction).
			*8299	Schools and Educational Services, Not Elsewhere Classified (flying instruction).
XXXXX	Apprenticeship Training	N	*8249	Vocational Schools, Not Elsewhere Classified (vocational apprenticeship training).
XXXXX	Other Technical and Trade Schools	N	*8249	Vocational Schools, Not Elsewhere Classified (except vo-tech schools, aviation and flight training, apprenticeship training, and driving schools).
XXX	Miscellaneous Schools and Instruction:			
XXXX ...	Fine Arts Schools	N	*8299	Schools and Educational Services, Not Elsewhere Classified (art, drama, and music schools).
			*7911	Dance Studios, Schools, and Halls (dance instructors, and professional and other dance schools).
XXXX ...	Athletic Instruction	N	*7999	Amusement and Recreation Services, Not Elsewhere Classified (baseball, basketball, bowling, gymnastic, judo, karate, parachute, scuba and skin diving, skating, ski, swimming, tennis, and other sports instruction; and sports instructional schools and camps).
XXXX ...	Language Schools	N	*8299	Schools and Educational Services, Not Elsewhere Classified (language schools).
XXXX ...	Other Miscellaneous Schools and Instruction:.			
XXXXX	Exam Preparation and Tutoring	N	*8299	Schools and Educational Services, Not Elsewhere Classified (exam preparation and tutoring).
XXXXX	Automobile Driving Schools	N	*8249	Vocational Schools, Not Elsewhere Classified (truck driving schools).
			*8299	Schools and Educational Services, Not Elsewhere Classified (automobile driving instruction).
XXXXX	All Other Miscellaneous Schools and Instruction.	N	*8299	Schools and Educational Services, Not Elsewhere Classified (except professional and management training, aviation and flight training, fine arts schools, language schools, exam preparation and tutoring, automobile driving schools, and educational support services).
XXX	Educational Support Services:			
XXXX ...	Educational Support Services	N	*8299	Schools and Educational Services Not Elsewhere Classified (except instruction).

TABLE 1—Continued

1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
		*8748	Business Consulting Services, Not Elsewhere Classified (educational test development and evaluation services, educational testing services, and educational consultants).

The definitions of status codes are as follows: E—existing industry; N—new industry R—revised industry; and *means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
7231@	Beauty Shops:	
	Beauty Shops	Beauty Shops (Included in Consumer Services subsector).
	Beauty and Cosmetology Schools	Cosmetology and Barber Schools (pt.).
7241	Barber Shops:	
	Barber Shops	Barber Shops (Included in Consumer Services subsector).
	Barber Colleges	Cosmetology and Barber Schools (pt.).
7911@	Dance Studios, Schools, and Halls:	
	Dance Studios and Halls	Miscellaneous Operators of Sports and Recreation Facilities (Included in Recreation, Amusement, and Gambling subsector).
	Dance Schools	Fine Arts Schools (pt.).
7999	Amusement and Recreation Services, Not Elsewhere Classified.	Athletic Instruction.
8211	Elementary and Secondary Schools	Elementary and Secondary Schools.
8221	Colleges, Universities, and Professional Schools	Colleges, Universities, and Professional Schools.
8222	Junior Colleges and Technical Schools	Junior Colleges.
8231	Libraries	Libraries and Archives (Included in Information subsector).
8243	Data Processing Schools	Computer Training Schools.
8244	Business and Secretarial Schools	Business and Secretarial Schools.
8249@	Vocational Schools, Not Elsewhere Classified:	
	Trade Schools	Apprenticeship Training.
	Truck Drivers Schools	Automobile Driving Schools (pt.).
	Aviation Schools	Aviation and Flight Training (pt.).
	Vocational Schools	Vocational and Technical Schools.
	Other Technical and Trade Schools	Other Technical and Trade Schools.
8299@	Schools and Educational Services, Not Elsewhere Classified:	
	Flying Instruction	Aviation and Flight Training (pt.).
	Automobile Driving Instruction	Automobile Driving Schools (pt.).
	Curriculum Development, Educational	Educational Support Services (pt.).
	Exam Preparation and Tutoring	Exam Preparation and Tutoring.
	Art Schools	Fine Arts Schools (pt.).
	Language Schools	Language Schools.
	Personal Development Schools	Professional and Management Development Training (pt.).
	All Other Schools and Educational Services, Not Elsewhere Classified.	All Other Miscellaneous Instruction.
8748@	Business Consulting Services, Not Elsewhere Classified.	Educational Support Services (pt.).

The abbreviation "pt" means "part of" @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry.

Description of Changes to the U.S. System

Educational Services—Thirteen new industries are added to the 1997 industry structure for this industry subsector. Most of these new industries have been formed by breaking apart old Not Elsewhere Classified (NEC) industries in the 1987 U.S. SIC. New industries are as follows:

Professional and Management Development Training Schools from part of 1987 SIC 8299, Schools and Educational Services, NEC. This new industry was created because it had a unique production function.

Cosmetology and Barber Schools from part of 1987 SIC 7231, Beauty Shops, and 1987 SIC 7241, Barber Shops. This was moved to this sector because the primary activity is education, even though these schools give hair cuts.

Vocational and Technical Schools from part of 1987 SIC 8249, Vocational Schools, NEC. This new industry was created because it had a unique production function.

Aviation and Flight Training from parts of 1987 SIC 8249, Vocational Schools NEC, and 1987 Industry Code 8299, Schools and Educational Services, NEC. This new industry was created because it had a unique production function.

Apprenticeship Training from part of 1987 SIC 8249, Vocational Schools, NEC. This new industry was created because it had a unique production function.

Other Technical and Trade Schools from part of 1987 SIC 8249, Vocational Schools, NEC. This is the residual five digit category for the four digit industry Technical and Trade Schools.

Fine Arts Schools from parts of 1987 SIC 8299, Schools and Educational Services, NEC, and 1987 SIC 7911, Dance Studios, Schools, and Halls. This new industry was created because it had a unique production function.

Athletic Instruction from part of 1987 SIC 7999, Amusement and Recreation Services, NEC. This was moved to this sector because the primary activity is education, rather than entertainment.

Language Schools from part of 1987 SIC 8299, Schools and Educational Services, NEC. This new industry was created because it had a unique production function.

Exam Preparation and Tutoring from part of 1987 SIC 8299, Schools and Educational Services, NEC. This new industry was created because it had a unique production function.

Automobile Driving Schools from parts of 1987 SIC 8249, Vocational Schools, NEC, and SIC 8299, Schools and Educational Services, NEC. This new industry was created because it had a unique production function.

All Other Miscellaneous Schools and Instruction from part of 1987 SIC 8299, Schools and Educational Services, NEC. This is the residual category for the subsector.

Educational Support Services from parts of 1987 SIC 8299, Schools and Educational Services, NEC, and 1987 SIC 8748, Business Consulting Services, NEC. This new industry differs from the others in that it provides support to educational industries, rather than providing instruction.

A major change to the 1987 Major Group, Educational Services, is the movement of 1987 SIC 8231, Libraries, to the new Information sector.

The number of Educational Services industries increased from 8 to 18. For time series linkage, six of the eight 1987 industries are comparable within three percent of the 1997 industries.

Part III—Proposed New Industry Structure for Computer and Electronic Product Manufacturing

Section A—NAICS Structure

North American Industry Classification System
(NAICS)
Agreement Number 13

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following subsector: Computer and Electronic Product Manufacturing

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on September 27, 1995–September 29, 1995 in Mexico City, Mexico.

Accepted	Signature	Date
Canada	/S/ Jacob Ryten	9/29/95
Mexico	/S/ Enrique Ordaz.	9/29/95
United States	/S/ Jack E. Triplett.	9/29/95

Attachment 1—NAICS Structure

XX Computer and Electronic Product Manufacturing
XXX Computer and Peripheral Equipment Manufacturing
XXXX Computer and Peripheral Equipment Manufacturing
XXX Communications Equipment Manufacturing
XXXX Telephone Apparatus Manufacturing
XXXX Broadcast and Studio Equipment for Radio, TV, and Cable Manufacturing
XXXX Other Communications Equipment Manufacturing
XXX Audio and Video Equipment Manufacturing
XXXX Audio and Video Equipment Manufacturing
XXX Semiconductor and Electronic Component Manufacturing
XXXX Semiconductor and Electronic Component Manufacturing
XXX Navigational, Measuring, Medical and Control Instrument Manufacturing
XXXX Navigational, Measuring, Medical and Control Instrument Manufacturing
XXX Manufacturing and Reproduction of Magnetic and Optical Media
XXXX Manufacturing and Reproduction of Magnetic and Optical Media (Includes the manufacturing of blank audio and video tapes, diskettes and CD–ROMs, and reproduction of software, audio, video, and multimedia products)

Attachment 2—North American Industry Classification System

Draft Classification for:
Computer and Electronic Product Manufacturing

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industrial classification for these industries.

The draft classification provides for the subsector, Computer and Electronic Product Manufacturing. This subsector is further subdivided into six industry groups and eight industries. The subsector will be part of the Manufacturing sector of the classification.

A General Outline

The Computer and Electronic Product Manufacturing industries produce computers, computer peripherals, communications equipment, and similar electronic products, together with components for such products. The treatment of this subsector in NAICS differs substantially from past national classifications in all three countries, and also from other international classifications.

First, in NAICS the computer and electronic product manufacturing industries have been elevated to a separate subsector that brings together in the classification the manufacture of electronic products and their components. In previous national classification systems, and in the International Standard Industrial Classification of All Economic Activities (ISIC, Revision 3) of the United Nations, these industries are placed in machinery industries or with electrical equipment. Computer and electronic product manufacturing industries have been elevated in the hierarchy of NAICS because of the economic importance they have attained, because their rapid growth suggests that they will become even more important in the economies of all three North American countries in the future, and because their manufacturing processes are fundamentally different from the manufacturing processes of other machinery and electrical components with which they have been grouped in the past, and are grouped in ISIC.

Computers, communications equipment, and other electronic devices can of course be regarded as types of machines, which has been the view embodied in past classification systems. However, in NAICS the application of mechanical principles defines the Machinery subsector, because it describes the production processes (gear cutting and so forth) that must be used to manufacture machinery that functions on mechanical principles. Mechanical principles are not significant in the operation of computers and other electronic devices, and the production of computers, communications equipment and other electronic devices is not characterized by the processes that are used in the Machinery subsector.

Instead, the design and use of integrated circuits and the application of highly specialized miniaturization technologies are common elements in the production technologies of the Computer and Electronic Product Manufacturing subsector. The production processes are in a constant state of technological development, such that heavy research and development expenditures are necessary to cope with rapid obsolescence of tangible and intangible assets. The manufacture of these products is grouped together because similar production processes are used.

A second substantive difference between NAICS and most other classification systems involves the grouping itself. In NAICS, the manufacture of integrated circuits and related electronic components is placed in the same subsector as the manufacturing of computers, communications equipment and other end products for which these components are an essential part of the end-product technology. Moreover, NAICS combines in the same subsector end products that have different uses—for example, computers, communications equipment, and audio equipment—but have similar and converging technologies.

Convergence of technology motivates the NAICS groupings. Digitalization of sound recording, for example, causes both the medium (the "compact disk") and the equipment to resemble the technologies for recording, storing, transmitting and manipulating data. Communications technology and equipment have been converging with computer technology. Machines already exist that can send fax messages, copy electronically, and print documents. Transmission technology may take the form of a dedicated, separately-housed machine (end product), or the same technology may be incorporated into a board mounted inside a computer (in which case it is technically an electronic component); thus, the component/end product distinction no longer justifies separating electronic components in a separate part of the classification system from electronic end products. Combining in the same subsector the production of equipment designed for different end uses, and also combining in the same subsector the components with the end-use equipment, is justified by rapid convergence in the production technologies and by the expected continued convergence of technology.

When technologically related components are in the same sector, it makes it easier to adjust the classification for future changes, without needing to redefine its basic structure. The creation of the Computer and Electronic Product Manufacturing subsector will assist in delineating new and emerging industries because the activities that will serve as the probable sources of new industries—such as computer manufacturing and communications equipment manufacturing, or computers and audio equipment—are brought together. As new activities emerge, they are less likely therefore to cross the subsector boundaries of the classification.

In addition, the three countries put a priority in NAICS on the delineation of industries engaged in the production of advanced technologies. The creation of this subsector is a response to that priority. It groups activities that are constantly developing and applying new scientific and engineering knowledge.

Though the three countries' statistical agencies agree that the growth of computer and electronic components in all three countries is likely to be significant in the future, and that accordingly it merits treatment as a subsector in NAICS, many differences currently exist in the degrees of specialization and differentiation in the three countries. The United States has more diversification and more specialization in these high technology sectors than does either Canada or Mexico. For this reason, it was necessary to specify NAICS 4-digit industries in this sector at a relatively broad level of detail. By setting up a forward-looking classification, it will be easier to subdivide NAICS 4-digit industries in the future, as the sector expands in all three countries, without requiring major shifts in the classification system. This is especially important in view of the fact that the technologies that are common across all of the industries in this subsector may converge in the future as well as differentiate.

The Computer and Electronic Product Manufacturing subsector is subdivided into six industry groups. Computer and Peripheral Equipment Manufacturing comprises the production of computers and associated products such as storage devices and monitors. Communication Equipment Manufacturing includes the manufacture of telephone apparatus and radio and television studio and broadcast equipment. Audio and Video Equipment Manufacturing covers household and commercial radios, televisions, video equipment and similar articles. Semiconductor and Electronic Component Manufacturing includes the manufacture of a broad range of components used as parts in this subsector. The loading of circuit boards is classified here. Navigational, Measuring, Medical and Control Instrument Manufacturing includes the manufacture of such products as radar and sonar equipment and industrial process control equipment.

The sixth industry group, Manufacturing and Reproduction of Magnetic and Optical Media, includes the production of media such as video tapes and CD–ROMs, and the mass duplication of these media. It should be noted that the manufacture of packaged software is placed in this sector; however, the publishing of software, and its distribution electronically, is placed in the new NAICS Information sector, to be published separately, while traditional custom applications of software to client specification are in the Professional, Scientific and Technical Services subsector. These changes were made to represent better the different ways that software is produced and distributed. Sources within the industry and without have noted that the attempt, in past classification systems, to locate all software in a single portion of the classification system (the Services sector, or the Manufacturing sector) obliterates useful distinctions in software production and distribution, and tends, whatever the decision, to become rapidly obsolete as the nature and use of software changes. The NAICS structure is intended to facilitate the production of data on such changes, rather than obliterating them.

Consideration was given to subdividing this industry. Two possibilities were considered. Establishments could be distinguished based on the type of media, for example, CD–ROMs and diskettes or on the type of application, for example software and entertainment. This was not done for two reasons. First, the production process is often the same for a particular medium regardless of the application. For example, a blank CD–ROM can be used for recording music or for recording software. The format used for recording music CD–ROMs is also commonly used in multimedia software applications. Secondly, some establishments combine the production of the possible subdivisions. Establishments exist that produce both diskettes and CD–ROMs. These technological and establishment organization issues precluded a subdivision of the industry for NAICS. It is also the case that any subdivisions would be very small in Canada and Mexico.

Limitations and Constraints of the Classification

In the Computer and Electronic Product Manufacturing subsector, most activities that were identified in one country exist in the others. However, as noted above, often an activity is not economically significant to the same degree in all countries. For example, a broad NAICS Computer and Peripheral Equipment Manufacturing industry was created because in Canada and Mexico establishments that primarily manufacture computers also produce peripherals to a significant degree. In Canada, a computer manufacturing industry would have a specialization ratio of only 70%. In addition, there is evidence that the lines between computer and peripheral equipment manufacturing are becoming less precise even in the U.S. The U.S. specialization ratio for computer manufacturing declined from 87% to 82% between 1987 and 1992. As another example, a relatively broad NAICS industry was created for Semiconductor and Electronic Component Manufacturing, partly because any possible subdivisions are small or confidential in Canada and Mexico.

Each country may publish additional national industries that comprise subdivisions of NAICS industries, to present data for activities that are nationally significant. Though these national industries are also constrained by the desire to preserve time series comparability within each country's statistics, so far as possible, the three countries are committed to increased international comparability of industrial statistics in these high technology sectors, as development in the three economies makes it feasible.

Bringing electronic components and end products together in the classification has inevitably produced some anomalies at the boundary of the sector. For example, most of the traditional instrument industries have been located in this subsector because electronic measuring devices and instruments have rapidly displaced mechanical and electrical types that served similar functions. It was, however, not practical to split off all of the traditional forms of instruments, partly for the sake of preserving time series, partly because the establishments themselves have shifted from the old to the new technology, and partly because the rapid eclipse of some traditional instrument types may mean that an industry or industries for mechanical instrument manufacturing (in Miscellaneous Manufacturing) would soon become obsolete, even if it were established in NAICS. As a consequence, however, some activities that are neither electronic nor "high tech" (watch springs, for example) appear anomalously in this subsector.

For those users requiring detailed commodity information, each country will publish information on the products of these industries. Efforts are also underway to harmonize the commodity classifications to allow for greater comparability of these statistics.

Relationship to ISIC

The Computer and Electronic Product Manufacturing subsector does not closely match any existing Division of the current International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) of the United Nations. Computers and peripherals are classified in ISIC Division 30, Manufacture of Office, Accounting and Computing Machinery. Communications equipment, audio and video equipment and most electronic components are in ISIC Division 32, Manufacture of Radio, Television and Communication Equipment and Apparatus. Navigational, measuring and controlling equipment are included in ISIC Division 33, Manufacture of Medical, Precision and Optical Instruments, Watches and Clocks. Other activities in this subsector are classified in three additional ISIC Divisions.

However, of the eight NAICS 4-digit industries in this subsector, six of them are each contained entirely within a single ISIC Division. The other two NAICS industries cross two ISIC Divisions: Semiconductor and Electronic Component Manufacturing is largely included in ISIC Division 32, but includes the manufacture of electronic coils, transformers, connectors and switches that are classified in ISIC Division 31, Manufacture of Electrical Machinery and Apparatus, NEC. Manufacturing and Reproduction of Magnetic and Optical Media is split between ISIC Division 24, Manufacture of Chemicals and Chemical Products (the manufacture of media) and ISIC Division 22, Publishing, Printing and Reproduction of Recorded Media (mass duplication); in North America, these activities take place in the same establishments, so they are combined in NAICS.

Most of ISIC Division 32 is included in this subsector. However, the other ISIC Divisions (31, 24 and 22) linked to the Computer and Electronic Component Manufacturing subsector all have significant activities that are classified elsewhere in NAICS.

Some Changes to the National Classifications

For all countries, the creation of the Computer and Electronic Product Manufacturing subsector represents a significant change to the structure of the current national classifications.

For Canada, the subsector is largely the sum of three industry groups in Electrical and Electronic Products Industries (CSIC 334, 335 and 336) and instruments now in Other Manufacturing Industries (part of 391). The amount of detail of this NAICS subsector is less than that contained in the Canadian classification.

For Mexico, the Computer and Electronic Product Manufacturing subsector has coverage similar to the Mexican classification's Manufacture and Assembly of Electronic Radio, Television, Communications and Medical Equipment (CMAP 3832), combined with the computers and peripherals activities from Manufacture and Assembly of Office Calculating and Data Processing Machines (3823). The amount of detail of this NAICS subsector is similar to that of these areas of the Mexican classification.

For the United States, this subsector includes activities from three major groups. Computers and peripherals are now in Computer and Office Equipment, 1987 Industry Group 357; instruments are now a large part of 1987 SIC Major Group 38, Measuring, Analyzing, and Controlling Instruments; Photographic, Medical and Optical Goods; Watches and Clocks; and the remaining NAICS activities in this subsector are largely classified in 1987 Major Group 36, Electronic and Other Electric Equipment (especially 365, 366 and 367). NAICS provides much less industry detail than the 1987 U.S. SIC. However, the U.S. national industries will provide similar detail below the NAICS industry level.

Achievement of Objectives

The classification meets the objectives for the North American Industry Classification System (NAICS). It includes industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. The hierarchical structure of the classification also follows the production concept. For example, computer peripherals and electronic components are both used in the manufacture of computers; however, components are separated from peripherals in the hierarchy because the production process used in the manufacture of peripherals is more like that of computers, with assembly of parts being important, while the manufacture of electronic components is driven by miniaturization techniques.

The industries have high specialization ratios, and they are economically significant. Some are much larger than others, but this was necessitated by the considerations discussed above under Limitations and Constraints of the Classification. The classification is still suitable for sampling, data-publishing and other aspects of survey operations. Finally, while disruptions to time series exist, they are mostly at the level of the aggregation structure. The statistical agencies can develop statistical "links" to enable the re-tabulation of time series on the new NAICS classification structure.

The classification achieves comparability for the three participating countries. Based on existing data, all three countries expect to be able to publish data regularly at the industry (4-digit) level of the structure. All countries agree on the detailed definitions of the industries.

Section B—Annex: United States National Industry Detail

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the NAICS industry subsector presented in Part III, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the NAICS subsector covered in Part III of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS & U.S. description	Status code	1987 SIC code	1987 SIC description
XX	Computer and Electronic Product Manufacturing:			
XXX	Computer and Peripheral Equipment Manufacturing:			
XXXX ...	Computer and Peripheral Equipment Manufacturing:			
XXXXX	Electronic Computer Manufacturing	E	3571	Electronic Computers.
XXXXX	Computer Storage Device Manufacturing ...	E	3572	Computer Storage Devices.
XXXXX	Computer Terminal Manufacturing	E	3575	Computer Terminals.
XXXXX	Other Computer Peripheral Equipment Manufacturing.	R	3577	Computer Peripheral Equipment, NEC.
			*3578	Calculating and Accounting Machines, Except Electronic Computers (point of sale terminals and fund transfer devices).
			*3699	Electrical Machinery Equipment and Supplies, NEC (bar code scanners).
XXX	Communication Equipment Manufacturing:			
XXXX ...	Telephone Apparatus Manufacturing	R	*3661	Telephone and Telegraph Apparatus (except telephone transformers and external PC consumer modems).
XXXX ...	Broadcast and Studio Equipment for Radio, TV, and Cable Manufacturing.	R	3663	Radio and Television Broadcasting and Communication Equipment.
			*3679	Electronic Components, NEC (communication equipment).
XXXX ...	Other Communication Equipment Manufacturing.	E	3669	Communications Equipment, NEC.
XXX	Audio and Video Equipment Manufacturing:			
XXXX ...	Audio and Video Equipment Manufacturing ...	E	3651	Household Audio and Video Equipment.
XXX	Semiconductor and Electronic Component Manufacturing:			
XXXX ...	Semiconductor and Electronic Component Manufacturing:			
XXXXX	Electron Tube Manufacturing	E	3671	Electron Tubes.
XXXXX	Printed Circuit Board Manufacturing	E	3672	Printed Circuit Boards.
XXXXX	Semiconductor and Related Device Manufacturing.	E	3674	Semiconductors and Related Devices.
XXXXX	Electronic Capacitor Manufacturing	E	3675	Electronic Capacitors.
XXXXX	Electronic Resistor Manufacturing	E	3676	Electronic Resistors.
XXXXX	Electronic Coil, Transformer, and Other Inductor. Manufacturing.	R	*3661	Telephone and Telegraph Apparatus (telephone transformers).
			3677	Electronic Coils, Transformers, and Other Inductors.
			*3825	Instruments for Measuring and Testing of Electricity and Electrical Signals (portable instrument transformers).
XXXXX	Electronic Connector Manufacturing	E	3678	Electronic Connectors.
XXXXX	Other Electronic Component Manufacturing	R	*3661	Telephone and Telegraph Apparatus (external PC consumer modems).
			*3679	Electronic Components, NEC (other electronic components including loaded printed circuit boards).
XXX	Navigational, Measuring, Medical, and Control Instrument Manufacturing:			
XXXX ...	Navigational, Measuring, Medical, and Control Instrument Manufacturing:			

Table 1—Continued

	1997 NAICS & U.S. description	Status code	1987 SIC code	1987 SIC description
XXXXX	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing.	E	3812	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instruments.
XXXXX	Automatic Control for Regulating Residential and Commercial Environment and Appliance Manufacturing.	E	3822	Automatic Controls for Regulating Residential and Commercial Environments and Appliances.
XXXXX	Industrial Instrument for Measurement, Display, and Control of Process Variables, and Related Products.	E	3823	Industrial Instruments for Measurement, Display, and Control of Process Variables; and Related Products.
XXXXX	Totalizing Fluid Meter and Counting Device Manufacturing.	E	3824	Totalizing Fluid Meters and Counting Devices.
XXXXX	Instruments for Measuring and Testing of Electricity and Electrical Signal Manufacturing.	R	*3825	Instruments for Measuring and Testing of Electricity and Electrical Signals (except portable instrument transformers).
XXXXX	Analytical Instrument Manufacturing	E	3826	Laboratory Analytical Instruments.
XXXXX	Other Measuring and Controlling Device Manufacturing.	R	*3829	Measuring and Controlling Devices, NEC (except medical thermometers).
XXXXX	Watch, Clock, and Part Manufacturing	R	*3495	Wire Springs (clock and watch springs).
			*3579	Office Machines, NEC (time clocks and other time recording devices).
			3873	Watches, Clocks, Clockwork Operated Devices, and Parts.
XXXXX	X-Ray Apparatus and Tubes and Related Irradiation Apparatus.	E	3844	X-Ray Apparatus and Tubes and Related Irradiation Apparatus.
XXXXX	Electromedical and Electrotherapeutic Apparatus.	R	*3842	Orthopedic, Prosthetic, and Surgical Appliances and Supplies (electronic hearing aids).
			3845	Electromedical and Electrotherapeutic Apparatus.
XXX	Manufacturing and Reproduction of Magnetic and Optical Media:			
XXXX	Manufacturing and Reproduction of Magnetic and Optical Media:			
XXXXX	Reproduction of Software	R	*7372	Prepackaged Software (reproduction of software).
XXXXX	Prerecorded Compact Disk, Except Software, Tape, and Record Manufacturing.	N	*3652	Phonograph Records and Prerecorded Audio Tapes and Disks (reproduction of all other media except video).
			*7819	Services Allied to Motion Picture Production (Reproduction of video).
XXXXX	Magnetic and Optical Recording Media Manufacturing.	E	3695	Magnetic and Optical Recording Media.

The definitions of status codes are as follows: E—existing; N—new industry; R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
3495	Wire Springs:	
	Clock and Watch Springs	Watch, Clock and Part Manufacturing (pt).
	Wire Springs, Except Clock and Watch Springs	Wire Spring Manufacturing (Included in Fabricated Metal Product Manufacturing subsector).
3571	Electronic Computers	Electronic Computer Manufacturing.
3572	Computer Storage Devices	Computer Storage Device Manufacturing.
3575	Computer Terminals	Computer Terminal Manufacturing.
3577	Computer Peripheral Equipment, NEC	Other Computer Peripheral Equipment Manufacturing (pt).
3578@	Calculating and Accounting Machines, Except Electronic Computers:	
	Point of Sales Terminals and Fund Transfer Devices.	Other Computer Peripheral Equipment Manufacturing (pt).
	Calculating and Accounting Machines, Except Point of Sales Terminals and Fund Transfer Devices.	Office Machinery Manufacturing (pt) (Included in Machinery Manufacturing subsector).
3579@	Office Machines, NEC:	
	Pencil Sharpeners and Staplers	Lead Pencils, Crayons and Artists' Supplies (pt) (Included in Miscellaneous Manufacturing subsector).
	Timeclocks and Other Time Recording Devices	Watch, Clock, and Part Manufacturing (pt).
	Other	Office Machinery Manufacturing (pt) (Included in Machinery Manufacturing subsector).
3651	Household Audio and Video Equipment	Audio and Video Equipment Manufacturing.
3652@	Phonograph Records and Prerecorded Audio Tapes and Disks:	
	Record Publishing	(Included in Information subsector).

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
	Reproduction of All Other Media Except Video	Prerecorded Compact Disk, Tape and Record Manufacturing (pt).
	External PC Consumer Modems	Other Electronic Component Manufacturing (pt).
	Telephone Transformers	Electronic Coil, Transformer, and Other Inductor Manufacturing (pt) (Included in Electrical Equipment, Appliance and Component Manufacturing subsector).
	Telephone and Telegraph Apparatus, Except Telephone Transformers and Consumer External Modems.	Telephone Apparatus Manufacturing.
3663	Radio and Television Broadcasting and Communication Equipment.	Broadcast and Studio Equipment for Radio, TV, and Cable (pt) Manufacturing.
3669	Communications Equipment, NEC	Other Communication Equipment Manufacturing.
3671	Electron Tubes	Electron Tube Manufacturing.
3672	Printed Circuit Boards	Printed Circuit Board Manufacturing.
3674	Semiconductors and Related Devices	Semiconductor and Related Device Manufacturing.
3675	Electronic Capacitors	Electronic Capacitor Manufacturing.
3676	Electronic Resistors	Electronic Resistor Manufacturing.
3677	Electronic Coils, Transformers, and Other Inductors.	Electronic Coil, Transformer, and Other Inductor Manufacturing (pt).
3678	Electronic Connectors	Electronic Connector Manufacturing.
3679	Electronic Components, NEC:	
	Communication Equipment	Broadcast and Studio Equipment for Radio, TV and Cable Manufacturing (pt).
	Electronic Control Modular Chips for Motor Vehicles.	Electrical Equipment for Internal Combustion Engine Manufacturing (pt) (Included in Transportation Equipment Manufacturing subsector).
	Other Electronic Components Including Loaded PC Boards.	Other Electronic Component Manufacturing (pt).
3695	Magnetic and Optical Recording Media	Magnetic and Optical Recording Media Manufacturing.
3699@	Electrical Machinery, Equipment, and Supplies, NEC:	
	Bar Code Scanners	Other Computer Peripheral Equipment Manufacturing (pt).
	Christmas Tree Lighting Sets and Electric Insect Lamps.	Other Lighting Equipment Manufacturing (pt) (To Be Included in Electrical Equipment, Appliance and Component Manufacturing subsector).
	Electric Outboard Motor;	Other Engine Manufacturing (pt) (Included in Machinery Manufacturing subsector).
	Lasers	Classified according to function.
	Other Electrical Machinery, Equipment, and Supplies.	Other Electrical Industrial Apparatus Manufacturing (pt) (Included in Electrical Equipment, Appliance, and Component Manufacturing subsector).
3812	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instruments.	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing.
3822	Automatic Controls for Regulating Residential and Commercial Environment and Appliances.	Automatic Control for Regulating Residential and Commercial Environment and Appliance Manufacturing.
3823	Industrial Instruments for Measurement, Display, and Control of Process Variables; and Related Products.	Industrial Instrument for Measurement, Display, and Control of Process Variables; and Related Product Manufacturing.
3824	Totalizing Fluid Meters and Counting Devices	Totalizing Fluid Meter and Counting Device Manufacturing.
3825	Instruments for Measuring and Testing of Electricity and Electrical Signals:	
	Portable Instrument Transformers	Electronic Coil, Transformer, and Other Inductor Manufacturing (pt).
	Except Portable Instrument Transformers	Instruments for Measuring and Testing of Electricity and Electrical Signal Manufacturing.
3826	Laboratory Analytical Instruments	Analytical Instrument Manufacturing.
3829	Measuring and Controlling Devices, NEC:	
	Medical Thermometers	Surgical Appliance and Supply Manufacturing (pt) (Included in Miscellaneous Manufacturing Subsector).
	Except Medical Thermometers	Other Measuring and Controlling Device Manufacturing.
3842@	Orthopedic, Prosthetic, and Surgical Appliances and Supplies:	
	Electronic Hearing Aids	Electromedical and Electrotherapeutic Apparatus (pt.).
	Other	Surgical Appliance and Supply Manufacturing (pt.) (To be Included in Miscellaneous Manufacturing subsector).
3844	X-Ray Apparatus and Tubes and Related Irradiation Apparatus.	X-Ray Apparatus and Tubes and Related Irradiation Apparatus.
3845	Electromedical and Electrotherapeutic Apparatus	Electromedical and Electrotherapeutic Apparatus (pt.).
3873	Watches, Clocks, Clockwork Operated Devices and Parts.	Watch, Clock, and Part Manufacturing (pt).
7372@	Prepackaged Software:	
	Reproduction of Software	Reproduction of Software.

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
7819@	Other	(Included in Information subsector).
	Services Allied to Motion Picture Production	
	Reproduction of Video	Prerecorded Compact Disk, Tape and Record Manufacturing (pt).
	Other	(Included in Services subsector).

The abbreviation "pt" means "part of", @ means time series break has been created that is greater than 3% of the 1992 value of shipments for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

Description of Changes to the U.S. System

A number of the changes listed in this section were made for reasons of international comparability. Where one or more of the three North American countries had different definitions of an industry classification, adjustments to the definitions in one or more countries were required. In constructing NAICS, the three countries agreed to move, where change was required to attain international comparability, in the direction of the country or countries whose existing classification definitions most closely corresponded to the production-oriented concept adopted for NAICS. Cases where the U.S. changed are listed below; other cases where Canada Mexico moved toward the U.S. classification are not, of course, listed in this section.

This is a new subsector for 1997. Computer and Electronic Product Manufacturing is composed of industries from 1987 Major Group 35, Industrial Commercial Machinery and Computer Equipment; 1987 Major Group 36, Electronic and Other Electrical Equipment and Components, Except Computer Equipment; and 1987 Major Group 38, Measuring, Analyzing and Controlling Instruments; Photographic, Medical and Optical Goods; Watches and Clocks.

The following four complete industries were transferred into this subsector from 1987 Major Group 35, Industrial Commercial Machinery and Computer Equipment:

SIC 3571, Electronic Computers
SIC 3572, Computer Storage Devices
SIC 3575, Computer Terminals
SIC 3577, Computer Peripheral Equipment, NEC

The following twelve complete industries were transferred into this subsector from 1987 Major Group 36, Electronic and Other Electrical Equipment and Components, Except Computer Equipment:

SIC 3651, Household Audio and Video Equipment
SIC 3661, Telephone and Telegraph Apparatus
SIC 3663, Radio and Television Broadcasting and Communication Equipment
SIC 3669, Communications Equipment, NEC
SIC 3671, Electron Tubes
SIC 3672, Printed Circuit Boards
SIC 3674, Semiconductors and Related Devices
SIC 3675, Electronic Capacitors
SIC 3676, Electronic Resistors
SIC 3677, Electronic Coils, Transformers, and Other Inductors
SIC 3678, Electronic Connectors
SIC 3695, Magnetic and Optical Recording Media

Eight complete industries were transferred into this subsector from 1987 Major Group 38, Measuring, Analyzing and Controlling Instruments; Photographic, Medical and Optical Goods; Watches and Clocks. Those industries are:

SIC 3812, Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instruments
SIC 3822, Automatic Controls for Regulating Residential and Commercial Environments and Appliances
SIC 3823, Industrial Instruments for Measurement, Display, and Control of Process Variables; and Related Products
SIC 3824, Totalizing Fluid Meters and Counting Devices
SIC 3826, Laboratory Analytical Instruments
SIC 3844, X-Ray Apparatus and Tubes and Related Irradiation Apparatus
SIC 3845, Electromedical and Electrotherapeutic Apparatus
SIC 3873, Watches, Clocks, Clockwork Operated Devices, and Parts

These 34 complete industries were transferred into this new subsector for one or more of the following reasons: (1) the changes were in response to public requests; (2) the changes were supported by similar processes; and (3) the changes produced international comparability.

One industry, SIC 3825, Instruments for Measuring and Testing of Electricity and Electrical Signals, moved in its entirety to this subsector, but was split; portable instrument transformers to NAICS industry, Electronic Coil, Transformer, and other Inductor Manufacturing, and the rest going to NAICS industry, Instruments for Measuring and Testing of Electricity and Electrical Signal Manufacturing.

Two new industries were formed from very similar activities that were formerly partly included in manufacturing and partly in services.

Prerecorded Compact Disk, Except Software, Tape, and Record Manufacturing was formed from part of 1987 SIC 3652, Phonograph Records and Prerecorded Audio Tapes and Disks, and from part of 1987 SIC 7819, Services Allied to Motion Picture Production.

Reproduction of Software was created from part of 1987 SIC 7372, Prepackaged Software. The ECPC recognizes that some establishments combine the production of prepackaged software and the production of other prerecorded compact disks, tapes, and records and that the production process is often the same. Therefore, it may be necessary to combine these activities into one industry. The ECPC requests specific comments on this proposal. (The publishing portions of these three 1987 SIC industries have been moved to the new NAICS Information sector.) These changes are made in response to an industry proposal, to improve international comparability, and to recognize that the production of prepackaged software is a manufacturing, not a services, activity.

Eleven activities were transferred into 1997 Computer and Electronic Product Manufacturing.

Point of sales terminals and fund transfer devices were transferred from 1987 SIC 3578, Calculating and Accounting Machines, Except Electronic Computers, into Other Computer Peripheral Equipment Manufacturing, in response to a proposal from the industry and to create a better production-oriented industry.

Time clocks and other time recording devices were transferred from 1987 SIC 3579, Office Machines, NEC, into Watch, Clock and Part Manufacturing. This improves international comparability and is supported by similarity in production processes.

Phonograph records and prerecorded audio tapes and disks, except record publishing, were transferred from 1987 SIC 3652, Phonograph Records and Prerecorded Audio Tapes and Disks, into Prerecorded Compact Disk, Tape, and Record Manufacturing. This improves international comparability and is supported by similarity in production processes.

Telephone and telegraph apparatus, except telephone transformers and consumer external PC modems, were transferred from 1987 SIC 3661, Telephone and Telegraph Apparatus, into Telephone Apparatus Manufacturing. This improves international comparability and is supported by similarity in production processes.

The communication equipment formerly in 1987 SIC 3679, Electronic Components, NEC, was transferred into Broadcast and Studio Equipment Manufacturing for Radio, TV, and Cable. This improves international comparability and is supported by similarity in production processes.

Other electronic components, including loaded printed circuit boards, were transferred from 1987 SIC 3679, Electronic Components, NEC, into Other Electronic Component Manufacturing. This improves international comparability and is supported by similarity in production processes.

Other measuring and controlling devices, except medical thermometers, were transferred from 1987 SIC 3829, Measuring and Controlling Devices, NEC, into Other Measuring and Controlling Device Manufacturing. This improves international comparability and is supported by similarity in production processes.

Bar code scanners were transferred from 1987 SIC 3699, Electrical Machinery, Equipment and Supplies, NEC, into Other Computer Peripheral Equipment Manufacturing. This improves international comparability and is supported by similarity in production processes.

Reproduction of software was transferred from 1987 SIC 7372, Prepackaged Software, into Reproduction of Software. This improves international comparability and is supported by similarity in production processes.

Reproduction of video was transferred from 1987 SIC 7819, Services Allied to Motion Picture Production, into Magnetic and Optical Media Manufacturing. This improves international comparability and is supported by similarity in production processes.

Clock and watch springs were transferred from 1987 SIC 3495, Wire Springs, into Watch, Clock, and Part Manufacturing. This improves international comparability with Mexico, Canada, and the ISIC.

There are 29 industries in this new subsector. For time series linkage 19 of the 29 1997 industries are comparable within three percent of the old 1987 industries.

Part IV—Proposed New Industry Structure for Furniture Manufacturing

Section A—NAICS Structure

North American Industry Classification System
(NAICS)
Agreement Number 14

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following subsector:

Furniture Manufacturing

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on September 27, 1995 -September 29, 1995 in Mexico City, Mexico.

Accepted	Signature	Date
Canada	/S/ Jacob Ryten	9/29/95
Mexico	/S/ Enrique Ordaz.	9/29/95
United States	/S/ Jack E. Triplett.	9/29/95

Attachment 1—NAICS Structure

XX Furniture Manufacturing
XXX Furniture Manufacturing
XXXX Mattress Manufacturing
XXXX Blind and Shade Manufacturing
XXXX Wood Furniture Manufacturing
XXXX Metal Furniture Manufacturing
XXXX Other Furniture Manufacturing

Attachment 2—North American Industry Classification System

Draft Classification for:

Furniture Manufacturing

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industrial classification for these industries.

The draft classification applies to the subsector, Furniture Manufacturing. This subsector contains one industry group and five industries. The subsector will be part of the Manufacturing sector of the classification.

A General Outline

Furniture Manufacturing includes establishments that produce articles such as chairs, beds, mattresses, dressers, tables and desks for human comfort, convenience and utility. Processes used in the manufacture of furniture include the cutting, bending, molding, laminating and assembly of such materials as wood, metal, glass, plastics, and rattan. In addition, design and fashion trends play an important part in the production of furniture. The production process for furniture is not solely bending metal, cutting and shaping wood, or extruding and molding plastic. The integrated design of the article for esthetic qualities, and to carry out its function efficiently, is also a major part of the process of manufacturing furniture, though design services are also sometimes purchased by furniture manufacturers from industrial designers.

Furniture manufacturing establishments tend to specialize in making articles primarily from one material, such as wood or metal, because the production processes required to make a wooden table, for example, are quite different from the production processes for metal tables. However, it is unusual to make furniture exclusively from a single input. A wooden table might have metal brackets and a wooden chair a fabric or plastic seat.

Some of the processes used in furniture manufacturing are similar to processes that are used in other segments of manufacturing. For example, cutting and assembly occurs in the production of wood trusses that are classified in the Wood Product Manufacturing, Except Furniture subsector. However, the multiple processes that distinguish wood furniture manufacturing from wood product manufacturing warrant inclusion of wooden furniture manufacturing in the Furniture Manufacturing subsector. Metal furniture manufacturing uses techniques that are also employed in the manufacturing of roll formed products in the Fabricated Metal Product Manufacturing sector. The molding

process for plastic furniture is similar to the molding of other plastic products. However, plastic furniture producing establishments tend to specialize in furniture.

Though the production processes, products, and industry practices in furniture manufacturing are relatively mature ones, the existing classification structures in the three North American countries differed so extensively that substantial restructuring in all three countries was required in order to achieve international comparability. Even so, international comparability could be achieved only at a relatively high level of aggregation (for example, wood furniture manufacturing). Barriers to further expansion in NAICS detail are discussed in the following section, and additional information may be provided by countries in discussions of their own national industries.

Limitations and Constraints of the Classification

In the Furniture Manufacturing industries, most activities that were identified in one country exist in the others. However, often an activity is not economically significant to the same degree in all countries. For example, wood office furniture manufacturing in Canada is too small to publish, and wood store furniture manufacturing is too small to publish in both Canada and Mexico.

It is not always possible to separately identify production process industries for end use categories. For example, United States manufacturers tend to specialize in household furniture or office furniture because differences in uses require differences in production. However, in Mexico household and office furniture are often produced in the same establishment, and some blurring of the household/office distinction is apparent even in the U.S.

For these reasons, only broad categories for wood and metal furniture and furniture made from other materials were created for NAICS. Each country will publish additional categories that comprise subdivisions of NAICS industries to present data for activities that are nationally significant.

For those users requiring detailed commodity information, each country will publish information on the products of these industries. Efforts are also underway to harmonize the commodity classifications to allow for greater comparability of these statistics.

Relationship to ISIC

Most 4-digit NAICS industries in this subsector are contained within Class 3610 Manufacture of Furniture, of the current International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) of the United Nations. A notable exception is the manufacture of blinds and shades that ISIC classifies into different ISIC divisions by type of input material. In North America, production of blinds and shades of multiple materials occurs in a single establishment, so it is neither possible nor desirable to separate them by type of material in the classification system. For this reason, both Mexico and the United States currently classify all blind and shade manufacturing in a single industry. Other differences between NAICS and ISIC include the classification of wood and metal partitions and serving carts, which are placed in the respective wood or metal products divisions of ISIC. In NAICS, these manufacturing activities are placed in Furniture Manufacturing since the manufacturing processes are essentially identical to those used for furniture.

In spite of these differences, this NAICS subsector is substantially the same as ISIC Class 3610, because most of the production in this subsector occurs in the industries that are compatible with this ISIC class.

Some Changes to the National Classifications

For Canada, the NAICS Furniture Manufacturing subsector restructures the existing classification from an end use classification to a production process and input form, i.e., into wood, metal, and other furniture industries. In the case of wood furniture, the Canadian classification was structured both by input raw material (wood) and by end use, i.e., wooden household and upholstered household furniture. For furniture of metal and other materials, Canadian industries were restructured to the NAICS pattern. Other Canadian changes include the movement of wooden kitchen cabinets and bathroom vanities from the Wood Industries major group to this subsector, and the grouping of all kinds of shades, blinds and window hardware into a single NAICS industry.

For Mexico, the significant change is one of concept. Formerly, Mexico had no separately identified furniture subsector. Thus, this subsector will be entirely new. Changes at the industry level are relatively small, as the current structure in Mexico classifies wood furniture in the wood product manufacturing industries, metal furniture in the fabricated metal manufacturing industries, etc.

For the United States, changes parallel those in Canada. The existing U.S. structure classifies furniture by both inputs and end use in some detail. Like Canada, the U.S. structure has considerable detail for wood furniture, but unlike Canada, the U.S. also has substantial detail for metal furniture. A considerable amount of internal restructuring was required to achieve the NAICS design. However, the U.S. will retain substantial national industry detail below the level of the NAICS Furniture Manufacturing industries, e.g., wood household furniture is distinguished from wood office furniture at the 5-digit national detail level.

Another important change for the United States is the inclusion of custom furniture in this sector. The manufacture of custom furniture was formerly classified in the retail sector. The change was made to agree with the Canadian and Mexican classification of the activity because the Canadian and Mexican treatment meets the production-oriented criterion for NAICS. Other changes include the movement of wood kitchen cabinets and wooden chair frames from the 1987 SIC Lumber and Wood Products, Except Furniture major group because the production processes are essentially identical to those for furniture.

Achievement of Objectives

The classification meets the objectives for the North American Industry Classification System (NAICS). It includes industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. In the main, the hierarchical structure of the classification also follows the production concept.

The classification achieves comparability for the three participating countries. Based on existing data, all three countries expect to be able to publish data regularly at the industry (4-digit) level of the structure. All countries agree on the detailed definitions of the industries.

Other objectives of the NAICS project are not as relevant in this area of the classification as in others. These objectives are the delineation of new and emerging industries, service industries and industries engaged in the production of advanced technologies. The industrial sector in question is relatively mature, generally produces goods and has employed relatively stable technology. Therefore, the emphasis is on the objectives listed above.

The industries have high specialization ratios, and they are economically significant. The detail (4-digit) level and structures of the classification are balanced in size. This enhances the classification's suitability for sampling and other aspects of survey operations. Finally, though disruptions to time series exist, the major changes are well identified and can be taken into account in linking time series.

Section B—Annex: United States National Industry Detail

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the NAICS industry subsector presented in Part IV, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the NAICS industry subsector covered in Part IV of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX	Furniture Manufacturing:			
XXX	Furniture Manufacturing:			
XXXX ...	Mattress Manufacturing	E	2515	Mattresses and Bedsprings.
XXXX ...	Blind and Shade Manufacturing	E	2591	Drapery Hardware and Blinds and Shades.
XXXX ...	Wood Furniture Manufacturing:			
XXXXX	Wood Household Furniture Manufacturing, Except Upholstered.	R	*2426	Hardwood Dimension and Flooring Mills (wooden chair frames and chair seats).
			*2499	Wood Products, NEC (wood laundry hampers).
			2511	Wood Household Furniture, Except Upholstered.
			2517	Wood TV and, Radio Cabinets.
			*5712	Furniture Stores (custom made furniture except cabinets).
XXXXX	Wood Kitchen Cabinet Manufacturing	R	2434	Wood Kitchen Cabinets.
			*5712	Furniture Stores (custom wood cabinets).
XXXXX	Upholstered Wood Household Furniture Manufacturing	E	2512	Wood Household Furniture, Upholstered.
XXXXX	Wood Office and Public Building Furniture Manufacturing.	R	*2426	Hardwood Dimension and Flooring Mills (office chair frames and chair seats).
			*2521	Wood Office Furniture.
			*2531	Public Building and Related Furniture (wood furniture for public buildings).
			*2599	Furniture and Fixtures, NEC (wood industrial work benches and stools, and other wood furniture such as ship furniture).
			*3952	Lead Pencils, Crayons, and Artists' Materials (wood drafting tables and boards).
XXXXX	Wood Office and Store Fixture, Partition, Shelving, and Locker Manufacturing.	R	*2541	Wood Office and Store Fixtures, Partitions, Shelving, and Lockers (except custom architectural woodwork, millwork, and fixtures).
XXXXX	Custom Architectural Woodwork, Millwork, and Fixtures.	N	*2541	Wood Office and Store Fixtures, Partitions, Shelving, and Lockers (architectural woodwork, millwork, and fixtures).
XXXX ...	Metal Furniture Manufacturing:			
XXXXX	Metal Household Furniture Manufacturing	R	2514	Metal Household Furniture.
			*3499	Fabricated Metal Products, NEC (metal household frames and furniture parts).
XXXXX	Metal Office and Public Building Furniture Manufacturing.	R	*2522	Office Furniture, Except Wood (metal office furniture).
			*2531	Public Building and Related Furniture (metal furniture for public buildings).
			*2599	Furniture and Fixtures, NEC (metal industrial work benches and stools, and other metal furniture such as ship furniture).
			*3499	Fabricated Metal Products, NEC (metal frames and furniture parts).
			*3952	Lead Pencils; Crayons, and Artists' Materials (metal drafting tables and boards).
			*3999	Manufacturing Industries, NEC (barber and beauty chairs).
XXXXX	Metal Office and Store Fixture, Partition, Shelving and Locker Manufacturing.	R	*2542	Office and Store Fixtures, Partitions, Shelving and Lockers, Except Wood (metal office and store fixtures, partitions, shelving, and lockers).
XXXX ...	Other Furniture Manufacturing	R	*2499	Wood Products, NEC (laundry hampers made from rattan, reed or willow)
			2519	Household Furniture, NEC.
			*2522	Office Furniture, Except Wood (office furniture not made of wood or metal).
			*2531	Public Building and Related Furniture (other furniture not made of wood or metal for public buildings).

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
			*2542	Office and Store Fixtures, Partitions, Shelving and Lockers, Except Wood (office and store fixtures, partitions, shelving, and lockers not made of rmetal).
			*2599	Furniture and Fixtures, NEC (other furniture or fixtures).

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
2426	Hardwood Dimension and Flooring Mills:	
	Hardwood Flooring	Millwork Manufacturing, Including Flooring (pt) (Included in the Wood Product Manufacturing, Except Furniture subsector).
	Stock and Turnings	Other Wood Product Manufacturing (pt) (Included in the Wood Product Manufacturing, Except Furniture subsector).
	Office Chair Frames and Chair Seats	Wood Office and Public Building Furniture Manufacturing (pt).
	Chair Frames for Nonupholstered Furniture (Household).	Wood Household Furniture Manufacturing, Except Upholstered (pt).
	Chair Frames for Upholstered Furniture (Household).	Upholstered Wood Household Furniture Manufacturing (pt).
	Hardwood Dimension Except Flooring	Hardwood Dimension Mills (Included in the Wood Product Manufacturing, Except Furniture subsector).
2434	Wood Kitchen Cabinets	Wood Kitchen Cabinet Manufacturing (pt).
2499	Wood Products, NEC:	
	Wood Tubs and Vats, Jewelry and Cigar Boxes	Other Wood Container Manufacturing (pt) (Included in the Wood Product Manufacturing, Except Furniture subsector).
	Wood Laundry Hampers	Wood Household Furniture Manufacturing, Except Upholstered (pt).
	Laundry Hampers Made from Rattan, Reed or Willow.	Other Furniture Manufacturing (pt).
2511@	Wood Household Furniture, Except Upholstered	Wood Household Furniture Manufacturing, Except Upholstered (pt).
2512	Wood Household Furniture, Upholstered	Upholstered Wood Household Furniture Manufacturing.
2514	Metal Household Furniture	Metal Household Furniture Manufacturing (pt).
2515	Mattresses and Bedsprings	Mattress Manufacturing.
2517@	Wood TV and, Radio Cabinets	Wood Household Furniture Manufacturing, Except Upholstered (pt).
2519@	Household Furniture, NEC	Other Furniture Manufacturing (pt).
2521	Wood Office Furniture	Wood Office and Public Building Furniture Manufacturing (pt).
2522@	Office Furniture, Except Wood:.	
	Metal Office Furniture	Metal Office Furniture Manufacturing (pt).
	Office Furniture Not Made of Wood or Metal	Other Furniture Manufacturing (pt).
2531@	Public Building and Related Furniture:	
	Blackboards	All Other Miscellaneous Manufacturing (pt) (To Be Included in Miscellaneous Manufacturing subsector).
	Seats for Motor Vehicles	Motor Vehicle Fabric Accessory and Seat Manufacturing (pt) (Included in Transportation Equipment Manufacturing subsector).
	Metal Furniture for Public Building	Metal Office and Public Building Furniture Manufacturing (pt).
	Wood Furniture for Public Building	Wood Office and Public Building Furniture Manufacturing (pt).
	Other Furniture Not Made of Wood or Metal for Public Buildings.	Other Furniture Manufacturing (pt).
2541@	Wood Office and Store Fixtures, Partitions, Shelving, and Lockers:	
	Except Architectural Woodwork, Millwork and Fixtures.	Wood Office and Store Fixture, Partition, Shelving and Locker Manufacturing (pt.).
	Custom Architectural Woodwork, Millwork and Fixtures.	Custom Architectural Woodwork, Millwork, and Fixtures.
2542@	Partitions and Fixtures, Except Wood:	
	Metal Office and Store Fixtures, Partitions, Shelving, and Lockers.	Metal Office and Store Fixture, Partition, Shelving and Locker Manufacturing (pt).
	Office and Store Fixtures, Partitions, Shelving, and Lockers Not Made of Metal.	Other Furniture Manufacturing (pt).
2591	Drapery Hardware and Blinds and Shades	Blind and Shade Manufacturing.
2599@	Furniture and Fixtures, NEC:	
	Hospital Beds	Orthopedic, Prosthetic and Surgical Appliance and Supply Manufacturing (pt) (To Be Included in Miscellaneous Manufacturing subsector).

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
	Metal Industrial Work Benches and Stools, and Other Metal Furniture Such As Ship Furniture.	Metal Office and Public Building Furniture Manufacturing (pt).
	Wood Industrial Work Benches and Stools, and Other Wood Furniture Such As Ship Furniture.	Wood Office and Public Building Furniture Manufacturing (pt).
	Other Furniture and Fixtures	Other Furniture Manufacturing (pt).
3499	Fabricated Metal Products, NEC:	
	Metal Frames and Furniture Parts, Household	Metal Household Furniture Manufacturing (pt).
	Metal Frames and Furniture Parts, Office	Metal Office and Public Building Furniture Manufacturing (pt).
	Powder Metallurgy	Metal Stamping and Powder Metallurgy Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Metal Boxes	Metal Shipping Container, Barrel, Drum, Keg, Pail, Bin, Box, etc. Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
Safe and Vault Locks	Hardware Manufacturing, Including Locks (pt) (Included in Fabricated Metal Product Manufacturing subsector)..	
	Metal Aerosol Valves	Other Valve and Pipe Fitting Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Other Metal Products	All Other Miscellaneous Fabricated Metal Product Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
3952@	Lead Pencils, Crayons, and Artist's Materials:	
	Metal Drafting Tables and Boards	Metal Office and Public Building Furniture Manufacturing (pt).
	Wood Drafting Tables and Boards	Wood Office and Public Building Furniture Manufacturing (pt).
	Drawing and India Ink	Printing Ink Manufacturing (pt) (Included in Chemical Manufacturing subsector).
	Other	Lead Pencil and Art Goods Manufacturing (pt) (To be included in Miscellaneous Manufacturing subsector).
3999	Manufacturing Industries, NEC:.	
	Beauty and Barber Chairs	Metal Office and Public Building Furniture Manufacturing (pt).
	Burnt Wood Articles	Other Wood Product Manufacturing (pt) (Included in Wood Product Manufacturing, Except Furniture subsector).
	Fur Bleaching, Currying, Scraping, Tanning and Dyeing.	Leather and Hide Tanning and Finishing Manufacturing (pt) (Included in Leather and Allied Product Manufacturing subsector)
	Lamp Shades of Paper and Textile	Other Lighting Equipment Manufacturing (pt) (Included in Electrical Equipment, Appliance and Component Manufacturing subsector).
	Matches	Other Miscellaneous Chemical Product Manufacturing (pt) (Included in Chemical Manufacturing subsector).
	Metal Products, Such As Combs, Hair Curlers, Etc..	All Other Fabricated Metal Product Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Plastics Products, Such As Combs, Hair Curlers, Etc..	All Other Plastic Product Manufacturing (pt) (Included in Rubber and Plastic Product Manufacturing subsector).
	Flexographic Printing Eyeglass Frames for the Trade.	Commercial Flexographic Printing (pt) (Included in Printing and Related Support Activities subsector).
	Gravure Printing Eyeglass Frames for the Trade	Commercial Gravure Printing (pt) (Included in Printing and Related Support Activities subsector).
	Lithographic Printing Eyeglass Frames for the Trade.	Commercial Lithographic Printing (pt) (Included in Printing and Related Support Activities subsector).
	Screen Printing Eyeglass Frames for the Trade	Commercial Screen Printing (pt) (Included in Printing and Related Support Activities subsector).
	Other Printing Eyeglass Frames for the Trade	Other Commercial Printing (pt) (Included in Printing and Related Support Activities subsector).
	Tape Measures	Hand and Edge Tool Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Other	All Other Miscellaneous Manufacturing (pt) (To Be Included in Miscellaneous Manufacturing subsector).
5712	Furniture Stores:	
	Custom Made Furniture, Except Cabinets	Wood Household Furniture Manufacturing, Except Upholstered (pt).
	Custom Wood Cabinets	Wood Kitchen Cabinet Manufacturing (pt).
	Other Than Custom Made Furniture	To Be Included in the Retail sector.

The abbreviation "pt" means "part of", @ means time series break has been created that is greater than 3% of the 1992 value of shipments for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

Description of Changes to the U.S. System

A number of the changes listed in this section were made for reasons of international comparability. Where one or more of the three North American countries had different definitions of an industry classification, adjustments to the definitions in one or more countries were required. In constructing NAICS, the three countries agreed to move, where change was required to attain international comparability, in the direction of the country or countries whose existing classification definitions most closely corresponded to the production-oriented concept adopted for NAICS. Cases where the U.S. changed are listed below; other cases where Canada or Mexico moved toward the U.S. classification are not, of course, listed in this section.

Three activities were transferred out of 1987 SIC Furniture major group.

Motor vehicle seats were transferred from part of 1987 SIC 2531, Public Building and Related Furniture, into Motor Vehicle Fabric Accessory and Seat Manufacturing in the 1997 NAICS subsector for Transportation Equipment Manufacturing. This change was made for international comparability and because there is very little production similarity between the manufacture of automobile seats and the production of church pews and like products that are in 1987 SIC 2531.

Hospital beds were transferred from part of 1987 SIC 2599, Furniture and Fixtures, NEC, into Orthopedic, Prosthetic, and Surgical Appliance and Supply Manufacturing in the 1997 NAICS subsector for Miscellaneous Manufacturing. This change was necessary to align the U.S. classification to that of Canada and Mexico.

Blackboards were transferred from part of 1987 SIC 2531, Public Building and Related Furniture, into All Other Miscellaneous Manufacturing in the 1997 NAICS subsector for Miscellaneous Manufacturing. This change was necessary to align the U.S. classification system with that of Mexico.

Eight activities were transferred into the 1997 NAICS Furniture Manufacturing subsector. Three of the eight were transformed from 1987 SIC NEC industries.

Wooden chair frames and seats were transferred from part of 1987 SIC 2426, Hardwood Dimension and Flooring Mills, and classified in this subsector. This change was necessary to align the U.S. classification with that of Mexico and Canada, and because the production processes are similar.

Wood laundry hampers were transferred from part of 1987 SIC 2499, Wood Products, NEC, and placed by component material in their respective NAICS industries. This change was necessary to align the U.S. classification with that of Canada.

Custom wood household furniture was transferred from part of 1987 Retail Industry SIC 5712, Furniture Stores, into Wood Household Furniture. This change was necessary to align the U.S. classification with that of Mexico and Canada, and because the production process is essentially that of furniture manufacturing and the retailing activity is subsidiary.

Wood kitchen cabinets were transferred from 1987 SIC Major Group 24, Lumber and Wood Products, Except Furniture. This change reflects production processes that are essentially identical with those for furniture. The change also facilitated and increased the international comparability with Canada and Mexico.

Custom wood kitchen cabinets were transferred from part of 1987 Retail SIC 5712, Furniture Stores, into Wood Kitchen Cabinet Manufacturing, for international comparability, as noted above.

Drafting tables and boards were transferred from 1987 SIC 3952, Lead Pencils, Crayons, and Artists' Materials, and classified in the Furniture Manufacturing subsector. This change was necessary to align the U.S. classification with that of Canada and Mexico, and because the production process is similar to other furniture manufacturing.

Metal frames and furniture parts were transferred from 1987 SIC 3499, Fabricated Metal Products, NEC, and classified in the Furniture Manufacturing subsector. This change was necessary to align the U.S. classification with that of Canada.

Barber and beauty chairs were transferred from 1987 SIC 3999, Manufacturing Industries, NEC, into Metal Office Furniture Manufacturing. This change was necessary to reflect the common production processes and similarities between beauty and barber shop chair manufacturers and other furniture manufacturers.

A new industry was created for Custom Architectural Woodwork, Millwork, and Fixtures from part of SIC 2541, Wood Office and Store Fixtures, Partitions, Shelving and Lockers.

Also several activities were transferred within the Furniture Manufacturing subsector.

In addition, 1987 SIC 2517, Wood TV and Radio Cabinets, was combined with Wood Household Furniture Manufacturing because production in 1987 SIC 2517 has declined in the U.S. and the production processes are similar in both industries.

The number of Furniture Manufacturing industries declined from 13 in 1987 to 12 in 1997. For time series linkage, seven of the 13 1987 industries are comparable within three percent of the 1997 industries.

Part V—Proposed New Industry Structure for Printing and Related Support Activities.

Section A—NAICS Structure

North American Industry Classification System
(NAICS)
Agreement Number 15

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following subsector:

Printing and Related Support Activities

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on September 27, 1995–September 29, 1995 in Mexico City, Mexico.

Accepted	Signature	Date
Canada	/S/ Jacob Ryten	9/29/95
Mexico	/S/ Enrique Ordaz.	9/29/95
United States	/S/ Jack E. Triplett.	9/29/95

Attachment 1—NAICS Structure

XX Printing and Related Support Activities
XXX Printing and Related Support Activities
XXXX Printing
XXXX Support Activities for Printing

Attachment 2—North American Industry Classification System

Draft Classification for:
Printing and Related Support Activities

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industrial classification for these industries.

The draft classification applies to the subsector, Printing and Related Support Activities. The subsector is subdivided into a single industry group and two industries. The subsector will be part of the Manufacturing sector of the classification.

A General Outline

Printing and Related Support Activities industries print products such as newspapers, books, periodicals, business forms, greeting cards, and other material. Support activities, such as bookbinding, plate making, and data imaging are also included in this subsector. These activities are an integral part of the printing industry, and a product (a printing plate, a bound book, or a computer disk or file) that is an integral part of the printing industry is almost always provided by these operations.

Processes used in printing include a variety of methods used to transfer an image from a plate, screen, or computer file to some medium, such as paper, plastic, metal, textile articles or wood. The most prominent of these methods is to transfer the image from a plate or screen to the medium (lithographic, gravure, screen and flexographic printing). A rapidly growing new technology uses a computer file to "drive" the printing mechanism directly to create the image (non-impact printing). A number of important boundary issues involving printing and other sectors are noted in the *Some Changes to National Classifications* section.

In contrast to many other classification systems that locate publishing of printed materials in manufacturing, NAICS locates the publishing of printed products in a separate subsector, Publishing, which is part of the new NAICS Information sector, to be published separately. Though printing and publishing are often carried out by the same enterprise (a newspaper, for example), it is less and less the case that these distinct activities are carried out in the same establishment. More information on this change is contained in the text to the proposed NAICS Information sector.

Limitations and Constraints of the Classification

Most of the printing activities that take place in one country exist in the others. It is not possible in all countries to identify separately production process industries or specialized end use production categories. For example, in Canada and the United States, unique production establishments exist for the printing of books and business forms, and these processes can be recognized in the U.S. classification. In Mexico, however, book or business forms printers also print other types of products. Similarly, printing in Canada and the United States occurs largely in establishments that use a single printing process, such as lithographic or screen printing; in Mexico, diverse types of printing equipment are used in the same establishment.

For these reasons, only broad categories for printing (of all types) and support activities for printing were created for NAICS. Each country will publish additional categories that comprise subdivisions of NAICS industries, to present data for activities that are nationally significant.

For those users requiring detailed commodity information, each country will publish information on the products of these industries. Efforts are also underway to harmonize the commodity classifications to allow for greater comparability of these statistics.

Relationship to ISIC

Both 4-digit industries in this subsector are contained within Division 22, Publishing Printing, and Reproduction of Recorded Media, of the current Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) of the United Nations. However, two activities that are included in the NAICS Printing and Related Support Activities subsector are classified elsewhere in ISIC. Printing on textile articles is included in ISIC 1729, Manufacture of Other Textiles, NEC. Lithographic and gravure commercial printing of labels and tags is included in ISIC 2109, Manufacture of Other Articles of Paper and Paperboard.

Some Changes to the National Classifications

For all three countries, publishing, including integrated publishing and printing establishments, has been moved out of the Printing and Related Support Activities subsector into the new NAICS Information sector.

For Canada, a major change to the Printing and Related Support Activities subsector is to move printing on purchased fabric articles (mostly "T" shirts) from the Clothing Industries major group to this subsector. The production process involved here is printing, and not the manufacture of clothing. Another change is the redefinition of certain types of printing, sometimes referred to as "quick printing." This printing is done in relatively small, often "store front" establishments; these establishments use small printers, and usually bundle printing with other services, such as mailing, fax and similar types of activities. Because printing is only one of a number of services performed in the same establishment, "quick printers" have been located in the NAICS Management, Employment, Administrative and Support Services subsector. This redefinition must be carefully constructed to ensure that commercial printing is not misclassified in the Management, Employment, Administrative and Support Services subsector.

For Mexico, changes to this subsector are minor.

For the United States, changes parallel those made for Canada. Printing on purchased fabric articles and the redefinition of quick printing were made for the United States, as they were in Canada. Printing on signs and advertising specialties was also moved here from its current U.S. classification in Miscellaneous Manufacturing in order to attain comparability with Canada and Mexico, and because the production process is primarily printing. A similar change, made for the identical reasons, involves printing on tags and labels.

Achievement of Objectives

The classification meets the objectives for the North American Industry Classification System (NAICS). It includes industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. In the main, the hierarchical structure of the classification also follows the production concept.

Other objectives of the NAICS project are not as relevant in this area of the classification as in others. These objectives are the delineation of new and emerging industries, service industries and industries engaged in the production of advanced technologies. The industrial sector in question is relatively mature, generally produces goods and has employed relatively stable technology. An evolving new technology in the printing industry involves the creation of a computer file that directly drives printing equipment. Thus, no printing plate is needed. This technology, however, does not yet account for a significant share of production in any of the three countries, and therefore has not been separated in the classification.

The industries have high specialization ratios, and they are economically significant. While disruptions to time series exist, they

have been minimized. The statistical agencies can develop statistical "links," to enable the re-tabulation of time series on the new NAICS classification structure.

The classification achieves comparability for the three participating countries. Based on existing data, all three countries expect to be able to publish data regularly at the industry (4-digit) level of the structure. All countries agree on the detailed definitions of the industries.

Section B—Annex: United States Notional Industry Detail

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the NAICS industry subsector presented in Part V, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the NAICS industry subsector covered in Part V of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX	Printing and Related Support Activities:			
XXX	Printing and Related Support Activities:			
XXXX	Printing:			
XXXXX	Book Printing	E	2732	Book Printing.
XXXXX	Commercial Lithographic Printing	R	*2752	Commercial Printing, Lithographic (Except Quick Printing).
			*2771	Greeting Cards (lithographic printing of greeting cards).
			*2782	Blankbooks, Loose-leaf Binders and Devices (lithographic printing of checkbooks).
			*3993	Signs and Advertising Specialties (lithographic printing of advertising specialties).
			*3999	Manufacturing Industries, NEC (lithographic printing of eyeglass frames for the trade).
XXXXX	Commercial Gravure Printing	R	2754	Commercial Printing, Gravure.
			*2771	Greeting Cards (gravure printing of greeting cards).
			*2782	Blankbooks, Loose-leaf Binders and Devices (gravure printing of checkbooks).
			*3993	Signs and Advertising Specialties (gravure printing of advertising specialties).
			*3999	Manufacturing Industries, NEC (gravure printing of eyeglass frames for the trade).
XXXXX	Commercial Screen Printing	N	*2759	Commercial Printing, NEC (screen printing).
			*2771	Greeting Cards (screen printing of greeting cards).
			*2782	Blankbooks, Loose-leaf Binders and Devices (screen printing of checkbooks).
			*3993	Signs and Advertising Specialties (screen printing of advertising specialties).
			*3999	Manufacturing Industries, NEC (screen printing of eyeglass frames for the trade).
XXXXX	Commercial Flexographic Printing	N	*2759	Commercial Printing, NEC (flexographic printing).
			*2771	Greeting Cards (flexographic printing of greeting cards).
			*2782	Blankbooks, Loose-leaf Binders and Devices (flexographic printing of checkbooks).
			*3993	Signs and Advertising Specialties (flexographic printing of advertising specialties).
			*3999	Manufacturing Industries, NEC (flexographic printing of eyeglass frames for the trade).
XXXXX	Other Commercial Printing	R	*2759	Commercial Printing, NEC (other commercial printing).
			*2771	Greeting Cards (other printing of greeting cards).
			*2782	Blankbooks, Loose-leaf Binders and Devices (other printing of checkbooks).
			*3993	Signs and Advertising Specialties (other printing of advertising specialties for the trade).
			*3999	Manufacturing Industries, NEC (other printing of eyeglass frames for the trade).
XXXXX	Manifold Business Form Printing	E	2761	Manifold Business Forms.
XXXXX	Bankbook, Loose-leaf Binder and Device	R	*2782	Blankbooks, Loose-leaf Binders and Devices (except checkbooks).
	Manufacturing:			
XXXXX	Printing on Apparel	N	*2396	Automotive Trimmings, Apparel Findings, and Related Products (Printing and Embossing on Fabric Articles).
XXXX	Support Activities for Printing:			
XXXXX	Tradebinding and Related Work	E	2789	Bookbinding and Related Work.
XXXXX	Prepress Services	R	2791	Typesetting.

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
			2796	Platemaking and Related Services.

The definitions of status codes are as follows: E—existing industry; L—null industry for the U.S.; N—new industry; R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
2711	Newspapers: Publishing, or Publishing and Printing.	Included in new Information sector.
2721	Periodicals: Publishing, or Publishing and Printing	Included in new Information sector.
2731	Books: Publishing, or Publishing and Printing	Included in new Information sector.
2732	Book Printing	Book Printing.
2741	Miscellaneous Publishing	Included in new Information sector.
2752	Commercial Printing, Lithographic	Commercial Lithographic Printing (pt.).
	Commercial Printing, Lithographic (Except Quick Printing):	
	Quick Printing	Included in Other Services sector.
2754	Commercial Printing, Gravure	Commercial Gravure Printing (pt).
2759@	Commercial Printing, NEC:	
	Flexographic Printing	Commercial Screen Printing (pt).
	Other Commercial Printing (pt).	
2761	Manifold Business Forms	Manifold Business Form Printing (pt).
2771@	Greeting Cards:	
	Lithographic Printing of Greeting Cards	Commercial Lithographic Printing (pt).
	Gravure Printing of Greeting Cards	Commercial Gravure Printing (pt).
	Flexographic Printing of Greeting Cards	Commercial Flexographic Printing (pt).
	Screen Printing of Greeting Cards	Commercial Screen Printing (pt).
	Other Printing of Greeting Cards	Other Commercial Printing (pt).
	Publishing Greeting Cards	Included in new Information Sector.
2782@	Blankbooks, Loose-leaf Binders and Devices:	
	Lithographic Printing of Checkbooks	Commercial Lithographic Printing (pt).
	Gravure Printing of Checkbooks	Commercial Gravure Printing (pt).
	Flexographic Printing of Checkbooks	Commercial Flexographic Printing (pt).
	Screen Printing of Checkbooks	Commercial Screen Printing (pt).
	Other Printing of Checkbooks	Other Commercial Printing (pt).
	Blankbooks, Loose-leaf Binders and Devices	Blankbook, Loose-leaf Binder and Device Manufacturing.
2789	Bookbinding and Related Work	Tradebinding and Related Work.
2791@	Typesetting	Prepress Services (pt).
2796@	Platemaking and Related Services	Prepress Services (pt).
3993@	Signs and Advertising Specialties:	
	Lithographic Printing of Advertising Specialties	Commercial Lithographic Printing (pt).
	Gravure Printing of Advertising Specialties	Commercial Gravure Printing (pt).
	Flexographic Printing of Advertising Specialties	Commercial Flexographic Printing (pt).
	Screen Printing of Advertising Specialties	Commercial Screen Printing (pt).
	Other Printing of Advertising Specialties	Other Commercial Printing (pt).
	Electric Signs	Electric Signs (Included in Electrical Equipment, Appliance, and Component Manufacturing subsector).
	Non-Electric Wood Signs	Other Wood Product Manufacturing (pt) (Included in Wood Product Manufacturing, Except Furniture subsector).
	Non-Electric Metal Signs	All Other Fabricated Metal Product Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Non-Electric Plastics Signs	All Other Plastic Product Manufacturing (pt) (Included in Rubber and Plastic Product Manufacturing subsector).
3999@	Manufacturing Industries, NEC:	
	Lithographic Printing of Eyeglass Frames for the Trade.	Commercial Lithographic Printing (pt).
	Gravure Printing of Eyeglass Frames for the Trade.	Commercial Gravure Printing (pt).
	Flexographic Printing of Eyeglass Frames for the Trade.	Commercial Flexographic Printing (pt).
	Screen Printing of Eyeglass Frames for the Trade.	Commercial Screen Printing (pt).
	Other Printing of Eyeglass Frames for the Trade	Other Commercial Printing (pt).
	Other	Other Miscellaneous Manufacturing (pt) (To Be Included in Miscellaneous Manufacturing subsector).
2396@	Automotive Trimmings, Apparel Findings, and Related Products:	

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
	Printing and Embossing on Fabric Articles	Printing on Apparel.
	Automotive Trimmings	Motor Vehicle Fabric Accessory and Seat Manufacturing (pt) (Included in Transportation Equipment Manufacturing subsector).
	Apparel Findings and Trimmings	Apparel Belts, Apparel Accessories, and Other Apparel Manufacturing (pt) (Included in Apparel Manufacturing subsector).
	Other Apparel Trimmings	All Other Miscellaneous Textile Product Mills (pt) (Included in Textile Product Mills subsector).

The abbreviation "pt" means "part of". @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry.

Description of Changes to the U.S. System

Three new industries were added to the 1997 industry structure for this industry subsector.

Commercial Screen Printing was created from part of 1987 SIC 2759, Commercial Printing, NEC; part of 1987 SIC 2771, Greeting Cards; part of 1987 SIC 2782, Blankbooks, Loose-leaf Binders, and Devices; part of 1987 SIC 3993, Signs and Advertising Specialties; and part of 1987 SIC 3999, Manufacturing Industries, NEC. This change was made in response to a proposal from the industry and it corresponds to the production-oriented industry concept accepted for NAICS.

Commercial Flexographic Printing was created from part of 1987 SIC 2759, Commercial Printing, NEC; part of 1987 SIC 2771, Greeting Cards; part of 1987 SIC 2782, Blankbooks, Loose-leaf Binders, and Devices; and part of 1987 SIC 3993, Manufacturing Industries, NEC, and part of 1987 SIC 3999, Manufacturing Industries, NEC. This change corresponds to the production-oriented industry concept accepted for NAICS.

Printing on Apparel was created from part of 1987 SIC 2396, Automotive Trimmings, Apparel Findings, and Related Products. This change was made for international comparability, and because the process involved is printing, not apparel manufacture.

Four industries were removed from this industry group and transferred to the new NAICS Information sector. They are:

1987 SIC 2711, Newspapers: Publishing, or Publishing and Printing.

1987 SIC 2721, Periodicals: Publishing, or Publishing and Printing.

1987 SIC 2731, Books: Publishing, or Publishing and Printing.

1987 SIC 2741, Miscellaneous Publishing.

These four industries were transferred to the newly created Information sector in response to the increased use of electronic and other means for information transformation, manipulation, and dissemination, and because the production processes that characterize publishing are neither printing nor manufacturing. Where printing of newspapers, periodicals and books take place in a separate establishment (increasingly the case), these printing activities remain in manufacturing. More information is contained in the text for the NAICS Information sector, published separately.

Two activities were transferred into the 1997 NAICS Printing and Related Support Activities subsector.

Advertising specialty manufacturing transferred from part of 1987 SIC 3993, Signs and Advertising Displays, into Commercial Printing, depending on the printing process.

Printing eyeglasses for the trade transferred from part of 1987 SIC 3999, Manufacturing Industries, NEC, into Commercial Printing, depending on the printing process. Transferring these two activities into the Printing and Related Support Activities subsector was necessary to align the U.S. classification with those of Canada and Mexico, and because the activities are printing processes.

One activity was transferred out of the 1977 NAICS subsector for Printing and Allied Industries.

Quick printing, 1987 industry code 2752 was transferred to the Other Services subsectors. This change was made to better conform with production services.

Also, several activities were transferred within the Printing and Related Support Activities subsector. The number of printing industries decreased from 14 in 1987 to 11 in 1997. For time series linkage, 5 of the 14 1987 industries are comparable within three percent of the 1997 industries.

Part VI—Proposed New Industry Structure for Professional, Scientific and Technical Services

Section A—NAICS Structure

North American Industry Classification System
(NAICS)
Agreement Number 16

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industries: Professional, Scientific and Technical Services.

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on September 27, 1995–September 29, 1995 in Mexico City, Mexico.

Accepted	Signature	Date
Canada	/S/ Jacob Ryten	9/29/95
Mexico	/S/ Enrique Ordaz.	9/29/95
United States	/S/ Jack E. Triplett.	9/29/95

Attachment 1—NAICS Structure

XX Professional, Scientific and Technical Services
XXX Legal Services
XXXX Offices of Lawyers
XXXX Offices of Notaries
XXXX Other Legal Services
XXX Accounting, Tax Preparation, Bookkeeping and Payroll Services
XXXX Offices of Accountants
XXXX Tax Preparation, Bookkeeping and Payroll Services
XXX Architectural, Engineering and Related Services
XXXX Architectural Services
XXXX Engineering Services
XXXX Drafting Services
XXXX Building Inspection Services
XXXX Landscape Architecture Services
XXXX Surveying and Mapping Services
XXXX Geophysical Surveying Services
XXXX Testing Laboratories
XXX Specialized Design Services
XXXX Interior Design Services
XXXX Industrial Design Services
XXXX Graphic Design Services
XXXX Other Specialized Design Services
XXX Computer Systems Design and Related Services
XXXX Computer Systems Design and Related Services
XXX Management, Scientific and Technical Consulting Services
XXXX Management Consulting Services
XXXX Environmental Consulting Services
XXXX Other Scientific and Technical Consulting Services
XXX Scientific Research and Development Services
XXXX Research and Development in the Physical and Engineering Sciences
XXXX Research and Development in the Life Sciences
XXXX Research and Development in the Social Sciences and Humanities
XXX Advertising and Related Services
XXXX Advertising Agencies
XXXX Public Relations Services
XXXX Media Buying Agencies
XXXX Media Representatives
XXXX Display Advertising
XXXX Direct Mail Advertising
XXXX Advertising Material Distribution
XXXX Other Services Related to Advertising
XXX Other Professional, Scientific and Technical Services
XXXX Market Research and Public Opinion Polling
XXXX Photography Services
XXXX Translation and Interpretation Services
XXXX Veterinary Services
XXXX All Other Professional, Scientific and Technical Services

Attachment 2—North American Industry Classification System

Draft Classification for:

Professional, Scientific, and Technical Services

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industry classification for the Professional, Scientific, and Technical Service industries.

The subsector is further subdivided into nine industry groups and 37 industries. The placement of this subsector within the NAICS structure is not yet determined.

A General Outline

The statistical agencies of Canada, Mexico, and the United States have agreed to place major emphasis on improved services classifications in NAICS. In their July 26, 1994 statement of concept for NAICS (FR, Vol. 59, No. 142, p. 38094), they stated: "Statistical agencies of the three countries agree to give special attention to developing production-oriented classifications for (a) new and emerging industries, (b) service industries in general * * *."

Past industry classifications have two analytical inadequacies. First, individual services industries are too few in number, which is another way of saying that they have been defined too broadly to be useful—they have combined too many disparate activities into a single industry definition. This criticism has been heard even in the U.S., which had more services industry detail in its 1987 Standard Industrial Classification Manual than was the case for most other classification systems. As indicated later in this outline, the detail problem has been addressed in NAICS by breaking out new services industries from many of the broad and heterogeneous industries in the former systems of all three countries.

A second problem in past services industry classifications is a general lack of a coherent structure. To take the 1987 U.S. SIC system as an example, though it had what in NAICS would be called a "subsector" for "Business Services," it was difficult to discern an organizational principle in this subsector, or the relation that the industries included in it had to each other or to the subsector as a whole. Moreover, engineering and architecture were not defined as business services at all, and were located in a different part of the classification. Again, this lack of coherent structure has been criticized.

In NAICS, organizing principles have been sought that will give coherence to NAICS services sectors and subsectors. The organizing principle of the Professional, Scientific, and Technical Services subsector is human capital, the knowledge and skills of the employees in the subsector.

A services firm is often in the business of selling the skills of its workers. When this is the case, the production process of a services producer depends essentially on the abilities and capabilities of its employees. Of course, human capital is important in other areas of services as well—medicine, for example. A broad interpretation of the principles of human capital could have led to the inclusion of other industries in this subsector. For example, investment advisors and real estate appraisers also make available the particular knowledge and skills of their human capital.

The distinguishing feature of the Professional, Scientific, and Technical Services subsector is the fact that most of the industries grouped in it have production processes that are almost wholly dependent on worker skills. In most of these industries, equipment and materials are not of major importance, unlike health care, for example, where "high tech" machines and materials are important collaborating inputs to labor skills in the production of health care. Thus, the establishments classified in this subsector are expertise sellers. Much of the expertise requires degrees, though not in every case. Moreover, differences in expertise and in training distinguish the industries that are classified in this subsector.

Because of the importance of services industries, and their rapid growth in North America, the three countries' statistical agencies have created a forward looking classification for this subsector that is intended to provide a framework for measuring services as they expand throughout the entire North American economy. For this reason, many NAICS industries in this subsector have been created even when they cannot at present be supported by all three countries. This is a different rule than the one followed in most of the traditional goods producing sectors. The following paragraphs provide a brief description of the content of each industry group and observations on issues that are of particular interest.

The Legal Services industry group includes Offices of Lawyers, Offices of Notaries and Other Legal Services. Offices of Lawyers are by far the largest industry in this group. Though many law firms specialize in particular forms of law practice, no acceptable way was found to further disaggregate this industry into more detailed industries that would be collectible in all three countries, and would apply to the operations of the industry in all three countries. In Canada and Mexico, Offices of Notaries are empowered to draft, approve, and execute legal documents and contracts. Such establishments do not exist in the United States. The Other Legal Services industry actually groups legal activities that are noncomparable in the three countries. In Canada, this industry includes offices of bailiffs that are involved in a mixture of activities, including enforcing court orders, serving writs and summonses, repossession of property and providing court house security. Bailiffs in Mexico

and the United States are employees of the courts and normally provide security, and serve court documents. For this reason, offices of bailiffs do not exist as establishments in the U.S. and Mexico. The Other Legal Services industry includes offices of paralegals in the United States. Though most paralegals in the U.S. are employees of other legal firms, separate establishments of paralegals are emerging, and are placed in the Other Legal Services industry. The Other Legal Services industry does not exist in Mexico, because neither bailiffs nor paralegals exist as independent establishments.

The Accounting, Tax Preparation, Bookkeeping and Payroll Services industry group includes establishments providing auditing, accounting, tax preparation, bookkeeping and billing, and payroll accounting services. The dominant expertise in this industry group is expertise in accounting. However, other activities that are sometimes done in accounting firms and sometimes in more specialized establishments (tax preparation, for example) are also located here. The United States will subdivide the Offices of Accountants industry to distinguish auditing accountants (Certified Public Accountants (CPAs)) from non-auditing accountants (non-CPAs).

The Architectural, Engineering and Related Services industry group includes establishments providing architectural, engineering, drafting, building inspection and surveying services. All of the proposed industries within this industry group are specialized and economically significant in Canada and the United States. However, three industries (Drafting Services, Surveying and Mapping Services and Geophysical Surveying Services) do not exist in Mexico. The Testing Laboratories industry includes establishments engaged in the provision of laboratory sampling and technical testing services, such as chemical analysis and nondestructive testing. It is located in this subsector because the industries in this industry group are major users of testing laboratory services and because of the processes used in the laboratories.

The Specialized Design Services industry group includes establishments providing interior, industrial, graphic and other specialized design services. It should be noted that the Architectural and Engineering Services industries also include establishments that are engaged in providing design services.

The Computer Systems Design and Related Services industry group includes establishments providing expertise in the field of information technologies. These establishments provide services such as custom programming services, systems design services, data center management services and technical consulting services. Though custom computer programming is in this sector, the reproduction of packaged software is in the NAICS Manufacturing sector, and software publishing and on-line retrieval services are in the new NAICS Information sector, to be published separately.

The Management, Scientific and Technical Consulting Services industry group includes establishments that advise and counsel clients on virtually all aspects of corporate operations, as well as those offering technical advice and counsel on non-management issues. Many kinds of consulting exist in a modern economy. This industry group brings together those consultants who, while having specific expertise, offer a wide range of services to their prospective clients. It is not the clients' business on which the consultants in this industry group have expertise, but rather, they have specialized knowledge with potential applications in a broad range of industries. Accordingly, those establishments that provide consulting services that are closely tied to a specific industry are classified in the sector or group of industries to which they are related. For example, agricultural consultants are included in the Agriculture sector. In addition, establishments that provide consulting services in conjunction with other services as part of an integrated process, or in conjunction with other sales, are excluded. For example, the provision of advice and counsel on financial matters is often related to or incidental to the sale of financial products, and is therefore included in the Finance and Insurance sector.

The Scientific Research and Development Services industry group includes establishments engaged in original investigation undertaken on a systematic basis to gain new knowledge (research) and/or in the application of research findings or other scientific knowledge for the creation of new or significantly improved products or processes (experimental development). The industries within this industry group are defined on the basis of the domain of research; that is, on the scientific expertise of the establishment.

The Advertising and Related Services industry group includes Advertising Agencies, Public Relations Services, Media Buying Agencies, Media Representatives, Display Advertising, Direct Mail Advertising, Advertising Material Distribution and Other Services Related to Advertising. These establishments are primarily engaged in preparing advertising campaigns, placing advertisements, or the delivery of advertising material to the general public.

The Other Professional, Scientific, and Technical Services industry group represents a residual grouping that includes Market Research and Public Opinion Polling, Photography Services, Translation and Interpretation Services, Veterinary Services and other activities that could not be placed within other industry groups.

Limitations and Constraints of the Classification

Differences in the organization of activities within establishments, and differences in the economic significance of individual industries from country to country, were the major issues faced in the development of a common classification structure for this subsector. These issues were dealt with by grouping activities in a manner that recognized the different levels of integration and diversification of establishments while allowing each country to add industries where necessary to reflect the greater level of specialization or economic significance of particular industries in its national economy. Still, in some instances, proposed NAICS industries in this subsector do not exist in all countries.

Establishments that offer services to a broad spectrum of industries, and therefore do not require particular expertise in the client's own industry, are classified in this sector. However, the narrower interpretation imposes limits on studies of a more broadly defined "professional or knowledge-based sector." Uses requiring such a broad definition will require regrouping of NAICS industries in other sectors.

The identification of new and emerging industries is one of the principal goals of the NAICS project. Many users have expressed the wish that this goal be achieved while minimizing breaks in time series. However, these two objectives are more often than not conflicting, and the degree to which proposed NAICS industries relate to existing national classification systems varies from country to country.

Relationship to ISIC

Each of the NAICS industries created in this subsector can be assigned to a division of the current International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) of the United Nations. The majority of the NAICS industries are contained within ISIC Division 74, Other Business Activities. Other NAICS industries in this sector relate to ISIC Divisions 72, Computer and Related Activities and ISIC Division 73, Research and Development.

Changes to the National Classification

For Canada, the identification of a significant number of new industries represents the most important change to the 1980 Canadian Standard Industrial Classification (CSIC). Twenty-seven of the 37 proposed NAICS industries applicable in Canada are new. The industries of this sector are, for the most part, currently classified in CSIC 77, Business Service Industries. The expansion is particularly important for legal services (CSIC 7761), computer services (CSIC 7721), advertising services (CSIC 774), scientific and technical services (CSIC 7759) and other business services (CSIC 7799).

The Legal Services industry group now contains three industries compared to one in the existing Canadian system. The Offices of Notaries and Other Legal Services industries are new.

The current Computer Services industry (CSIC 7721) is split into five industries. The computer systems design and related services component is part of this subsector. The newly created Information sector contains three industries, namely, Software Publishing, On-line Retrieval Services and Data Transaction Processing Services, that were formerly contained in CSIC 7721, but are not placed in the NAICS Professional, Scientific and Technical Services subsector. Computer rental and leasing is now classified in the Rental and Leasing subsector of NAICS.

The Advertising Services industry group (CSIC 774) expands to eight industries from the current four. The new industries are Public Relations Services, Media Buying Agencies, Direct Mail Advertising, and Advertising Material Distribution.

Nine of the proposed NAICS industries are components of the Other Scientific and Technical Services Industry (CSIC 7759). This includes Drafting Services, Landscape Architecture Services, Surveying and Mapping Services, Geophysical Surveying Services, Environmental Consulting Services, Testing Laboratories and the three proposed Scientific Research and Development Services industries.

The proposed industries for Interior Design Services, Translation and Interpretation Services, Document Preparation Services, Telephone Call Centers and Packaging and Labeling Services are components of CSIC 7799, Other Business Services n.e.c. Various parts of this industry are reassigned to new NAICS industries.

Other significant changes include the creation of two industries from CSIC 7771, Management Consulting Services (Management Consulting and Management Services) and the splitting of a Graphic Design Services industry from CSIC 7749, Other Advertising Services.

The majority of proposed NAICS industries (22) relate to only one existing CSIC industry. In those cases, the task of linking statistics based on the old and new systems is relatively easy. For the remaining classes, this task is much more difficult since they are defined in terms of components of existing industries for which no data are available. However, many of these partial relationships are marginal in terms of economic activity.

For Mexico, 24 CMAP industries are included in this subsector: four industries have one-to-one correspondence with NAICS; four CMAP industries were combined to form one NAICS industry class; two other industries were merged with parts of other industry classes to form two new NAICS industries; and of the remaining fourteen CMAP industry classes, 27 industries were created for this subsector in the NAICS. Some of the new or revised industries reflect an increasing degree of specialization in this subsector in Mexico. Services that were offered in combination within the same establishment, even when one of these services was a secondary activity, are now provided separately by establishments that specialize in only one activity. Therefore, in this new classification system there are industries that were not even mentioned in CMAP, because they were formerly either secondary activities or included with other activities.

The activities that are incorporated into this subsector are currently classified in branch 9510 of the CMAP, Provision of Professional Services, Technical and Specialized. However, to fill out the new subsector some activities were relocated that were found in other CMAP branches or subsectors or even from other activity sectors.

From CMAP Subsector 92, Services of Education, Investigation, Medicine, Welfare and Civil and Religious Associations, the scientific investigation services performed by the private sector and the public sector (CMAP classes 922100 and 922200, respectively) were reclassified into three classes: Research and Development in the Physical and Engineering Services; Research and Development in the Life Sciences; and Research and Development in the Social Sciences and Humanities.

CMAP Subsector 94, Cultural, Recreational, and Sports Services, included establishments that are devoted to personnel contracting for theatrical and cinematographic works (CMAP classes: 941101, Private Production of Cinematographic Movies; 941106, Private Promotion Services, Assembly and Artistic Spectacles Presentation; and in 941204, Promotion and Assembly Public Service and Artistic Spectacles Presentation). These contracting agencies are joined to the agencies of personnel placement to form a single NAICS class.

CMAP Class 952002, Various Personal Services, Photographic Services is reclassified to NAICS Photography Services.

Two classes of CMAP Branch 9510 are not included in this subsector: CMAP class 951014, News Agency Services, and CMAP 951016, Photograph and Movies Developing Services. The first is reclassified to the sector for Information and the second is included in the Arts, Entertainment and Recreation subsector.

For the rest of the classes of CMAP Branch 9510, the most important changes are the separations of the CMAP classes 951005, Services of Advising and Technical Studies of Engineering and Architecture; 951008, Services of Advertising and Related Activities; 951010, Advising Services in Administration and Organization of Businesses, and 951023, Other Professional Services, Technical and Specialized, not mentioned previously. The creation of new product classes resulting from the separation is based on two fundamental criteria: on the one hand, the specificity concerning production function and, additionally, the perspective of growth in the future.

The CMAP class 951005, Services of Engineering and Architecture Consulting and Mechanical Studies, is split into six parts; the first five are identified by their very specific production functions: Architectural Services, Engineering Services, Surveying and Mapping Services, Geophysical Surveying Services and Testing Laboratories. The sixth part (prototypes design) is combined with the services of urban planners and with the services of mode designers (located within the current CMAP class 951023), to become NAICS industry Other Specialized Design Services.

The current class Advertising and Related Activities (CMAP 951008) is split into eight NAICS industries:

Advertising Agencies, Media Purchasing Agencies, Media Representation Agencies, Advertising Agencies, Direct Mail Agencies, Direct Mail Advertising Agencies, Commercial Event and Convention Organizers, and Other Services Related to Advertising.

The current CMAP class 951010, Administration and Organization Advising Services, is split into five NAICS industries: Administrative Consultants, Public Relations Services, Translation and Interpretation Services, Organizing Services, and Other Scientific and Technical Consultancy Services.

Finally, certain activities in current CMAP class 951023, Other Professional Services, Technical and Specialized Not Mentioned Previously, are now NAICS industries.

For the United States, of the 37 proposed NAICS industries, 23 are new. Of the 23 new industries in this subsector, eight were created from 1987 SIC 7389, Business Services, Not Elsewhere Classified. This former NEC industry had become a "catch-all" category that included some of the fastest growing services in the U.S. economy, in a grouping that had no natural interpretation or usefulness. Its size is significantly reduced by the creation of the new industries in this subsector. Examples of new industries that were created from 1987 SIC 7389 are: Other Legal Services, Drafting Services, Building Inspection Services, Interior Design Services, Industrial Design Services, and Translation and Interpretation Services. In addition, other activities formerly included in SIC 7389 were redistributed among the industries to create homogeneous industries or industry groupings. The redistributions out of 1987 SIC 7389 will reduce its overall size by approximately 40% of the establishments and receipts. In addition, the remainder are redistributed into NAICS industry groups that have more logic and coherence than the 1987 SIC 73 major group.

The NAICS industry group Accounting, Tax Preparation, Bookkeeping and Payroll Services includes the services of accountants, tax preparers, bookkeepers, and payroll services. The inclusion of tax preparation services represents a significant change; these services are currently included in 1987 SIC Major Group 72, Personal Services. Accounting services were previously grouped with bookkeeping; the NAICS structure separates these two activities.

The NAICS industry group Architectural, Engineering and Related Services groups three previously existing services industries (1987 SICs 8711, 8712, 8713), one previously existing industry from Agriculture (1987 SIC 0781) and includes two new industries.

The NAICS industry group Other Specialized Design Services includes new industries for Interior Design Services, Industrial Design Services and Graphic Design Services.

The NAICS industry group Management, Scientific and Technical Consulting includes one significant change. It includes a separate industry for Environmental Consulting Services. This service is included in 1987 SIC 8999, Services Not Elsewhere Classified.

The NAICS industry group for Scientific Research and Development Services changes the focus from the source of funding (commercial versus non commercial) to the domain of research, that is, physical sciences, life sciences, and social sciences.

The NAICS industry group Other Professional, Scientific and Technical Services includes Photography Services that are in 1987 SIC's 7221, Photographic Studios, Professional, and 7335, Commercial Photography. The U.S. will continue to separate these industries in its 5-digit industry detail.

Achievement of Objectives

The proposed classification meets the objectives for the North American Industry Classification System. It is comprised of industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. The hierarchical structure of the classification also follows the production concept.

The classification achieves comparability for the three participating countries. Based on existing data, all three countries expect to be able to publish data regularly at most industry levels of the NAICS structure, though a number of exceptions exist, as noted in the "Limitations and Constraints of Classification" above. The proposed NAICS structure also introduces a number of new and emerging industries by expanding the current classification systems of each country for business and professional service industries. All countries agree on the detailed definitions of the industries.

Section B—Annex: United States National Industry Detail

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the NAICS industry subsector presented in Part VI, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the NAICS industry subsector covered in Part VI of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC descriptions
XX	Professional, Scientific and Technical Services:			
XXX	Legal Services:			
XXXX ...	Offices of Lawyers	E	8111	Legal Services.
XXXX ...	Offices of Notaries	L	.....	Null Set for U.S.
XXXX ...	Other Legal Services	N	*7389	Business Services, NEC (process services, patent agents, notaries public, paralegal services).
XXX	Accounting, Tax Preparation, Bookkeeping and Payroll Services:			
XXXX ...	Offices of Accountants:			

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC descriptions
XXXXX	Offices of Certified Public Accountants	N	*8721	Accounting, Auditing, and Bookkeeping Services (certified public accountants).
XXXXX	Offices of Accountants, Except Certified	N	*8721	Accounting, Auditing, and Bookkeeping Services (accountants, except certified public accountants).
XXXX ...	Tax Preparation, Bookkeeping and Payroll Services:			
XXXXX	Tax Preparation Services	E	7291	Tax Return Preparation Services.
XXXXX	Bookkeeping and Billing Services	N	*8721	Accounting, Auditing, and Bookkeeping Services (bookkeeping and billing).
XXXXX	Payroll Services	N	*7819	Services Allied to Motion Picture Production (talent payment services).
			8721	Accounting, Auditing, and Bookkeeping Services (payroll services).
XXX	Architectural, Engineering and Related Services:			
XXXX ...	Architectural Services	E	8712	Architectural Services.
XXXX ...	Engineering Services	E	8711	Engineering Services.
XXXX ...	Drafting Services	N	*7389	Business Services, NEC (drafting service).
XXXX ...	Building Inspection Services	N	*7389	Business Services, NEC (home and building inspection services).
XXXX ...	Landscape Architecture Services	E	0781	Landscape Counseling and Planning.
XXXX ...	Surveying and Mapping Services	N	*7389	Business Services, NEC (map making services).
			*8713	Surveying Services (except geophysical surveying).
XXXX ...	Geophysical Surveying Services	N	*8713	Surveying Services (geophysical surveying).
XXXX ...	Testing Laboratories	R	*8734	Testing Laboratories (except veterinary testing laboratories).
XXX	Specialized Design Services:			
XXXX ...	Interior Design Services	N	*7389	Business Services, NEC (interior design).
XXXX ...	Industrial Design Services	N	*7389	Business Services, NEC (industrial design).
XXXX ...	Graphic Design Services	R	7336	Commercial Art and Graphic Design.
			*8099	Health and Allied Services, NEC (medical artists).
XXXX ...	Other Specialized Design Services:			
XXXXX	Land Use Planners Services	N	*8748	Business Consulting Services, NEC (planners of land use).
XXXXX	All Other Design Services	N	*7389	Business Services, NEC (fashion, furniture, and other design services).
XXX	Computer Systems Design and Related Services:			
XXXX ...	Computer Systems Design and Related Services:			
XXXXX	Custom Computer Programming Services	E	7371	Computer Programming Services.
XXXXX	Systems Design Services	N	7373	Computer Integrated Systems Design.
			*7379	Computer Related Services, NEC (computer systems consultants).
XXXXX	Computer Facilities Management Services	E	7376	Computer Facilities Management Services.
XXXXX	Other Computer Systems Design and Related Services.	R	*7379	Computer Related Services, NEC (except computer systems consultants).
XXX	Management, Scientific and Technical Consulting Services:			
XXXX ...	Management Consulting Services:			
XXXXX	Administrative and General Management Consulting.	N	*8742	Management Consulting Services (administrative management and general management consulting).
XXXXX	Human Resources Consulting	N	*8742	Management Consulting Services (human resources and personnel management consulting).
			*7361	Employment Agencies (executive placement services).
XXXXX	Marketing Consulting	N	*8742	Management Consulting Services (marketing consulting).
XXXXX	Process, Physical, Distribution and Logistics Consulting.	N	*8742	Management Consulting Services (manufacturing management, physical distribution, and site location consulting).
XXXXX	Other Management Consulting Services	N	*4731	Arrangement of Transportation of Freight and Cargo (tariff consulting).
			*8748	Business Consulting Services, NEC (safety consulting).
XXXX ...	Environmental Consulting Services	N	*8999	Services, NEC (environmental consultants).
XXXX ...	Other Scientific and Technical Consulting Services.	N	*8748	Business Consulting Services, NEC (economic, radio, and traffic consultants).
			*8999	Services, NEC (nuclear consultants, geologists, physicists and actuarial consulting).
XXX	Scientific Research and Development Services:			
XXXX ...	Research and Development in the Physical and Engineering Sciences.	N	*8731	Commercial Physical and Biological Research (physical and engineering sciences).
			*8733	Noncommercial Research Organizations (physical and engineering services).

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC descriptions
XXXX ...	Research and Development in the Life Sciences.	N	*8731	Commercial Physical and Biological Research (life sciences).
			*8733	Noncommercial Research Organizations (life sciences).
XXXX ...	Research and Development in the Social Sciences and Humanities.	N	*8732	Commercial Economic, Sociological, and Educational Research (social sciences and humanities).
			*8733	Noncommercial Research Organizations (social sciences and humanities).
XXX	Advertising and Related Services:			
XXXX ...	Advertising Agencies	E	7311	Advertising Agencies.
XXXX ...	Public Relations Services	E	8743	Public Relations Services.
XXXX ...	Media Buying Agencies	N	*7319	Advertising, NEC (media buying services).
XXXX ...	Media Representatives	E	7313	Radio, Television, and Publishers' Advertising Representatives.
XXXX ...	Display Advertising	N	7312	Outdoor Advertising Services.
			*7319	Advertising, NEC (display advertising, except outdoor).
XXXX ...	Direct Mail Advertising	E	7331	Direct Mail Advertising Services.
XXXX ...	Advertising Material Distributors	N	*7319	Advertising, NEC (advertising materials distributor).
XXXX ...	Other Services Related to Advertising	N	*7319	Advertising, NEC (except media buying, display advertising, except outdoor; and advertising material distributors).
			*5199	Nondurable Goods, NEC (advertising specialities goods distributors).
XXX	Other Professional, Scientific and Technical Services:			
XXXX ...	Market Research and Public Opinion Polling	N	*8732	Commercial Economic, Sociological, and Educational Research (market research and opinion research).
XXXX ...	Photography Services:			
XXXXX	Photography Studios, Portrait	E	7221	Photographic Studios, Portrait.
XXXXX	Commercial Photography	R	7335	Commercial Photography.
			*8099	Health and Allied Services, NEC (medical photography).
XXXX ...	Translation and Interpretation Services	N	*7389	Business Services, NEC (translation and interpretation services).
XXXX ...	Veterinary Services	E	0741	Veterinary Services for Livestock.
			*0742	Veterinary Services for Animal Specialties
XXXX ...	All Other Professional, Scientific and Technical Services..	N	7389	Business Services, NEC (appraisers, except insurance and real estate, and miscellaneous professional, scientific, and technical services).

The definitions of status codes are as follows: E—existing industry; L—null industry for the U.S.; N—new industry; R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
0741	Veterinary Services for Livestock	Veterinary Services (pt.).
0742	Veterinary Services for Animal Specialties	Veterinary Services (pt.).
0781	Landscape Counseling and Planning	Landscape Architecture Services.
4731	Arrangement of Transportation of Freight and Cargo:	
	Tariff Consulting	Other Management Consulting Services (pt.).
5199	Nondurable Goods, NEC:	
	Advertising Specialities Goods Distributors	Other Services Related to Advertising (pt.).
7221	Photographic Studios, Portrait	Photographic Studios, Portrait.
7291	Tax Return Preparation Services	Tax Preparation Services.
7311	Advertising Agencies	Advertising Agencies.
7312	Outdoor Advertising Services	Display Advertising (pt.).
7313	Radio, Television, and Publishers' Advertising Representatives.	Media Representatives.
7319@	Advertising, NEC:	
	Media Buying Services	Media Buying Agencies.
	Display Advertising, Except Outdoor	Display Advertising (pt.).
	Advertising Materials Distributor	Advertising Material Distributors.
	Other	Other Services Related to Advertising (pt.).
7331	Direct Mail Advertising Services	Direct Mail Advertising.
7335	Commercial Photography	Commercial Photography (pt.).
7336	Commercial Art and Graphic Design	Graphic Design Services (pt.).
7361	Employment Agencies:	
	Executive Placement Services	Human Resources Consulting (pt.).
7371	Computer Programming Services	Custom Computer Programming Services.
7373	Computer Integrated Systems Design	Systems Design Services (pt.).
7376	Computer Facilities Management Services	Computer Facilities Management Services.

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
7379	Computer Related Services, NEC:	
	Computer Systems Consultants	Systems Design Services (pt.).
	Except Computer Systems Consultants	Other Computer Systems Design and Related Services.
7389@	Business Services, Not Elsewhere Classified:	
	Process Services, Patent Agents, Notaries Public and Paralegal Services.	Other Legal Services.
	Mapmaking Services	Surveying and Mapping Services (pt.).
	Interior Design	Interior Design Services.
	Industrial Design	Industrial Design Services.
	Drafting Service	Drafting Services.
	Fashion, Furniture and Other Design Services	All Other Design Services.
	Translation and Interpretation Services	Translation and Interpretation Services.
	Home and Building Inspection Services	Building Inspection Services.
	Appraisers, Except Insurance and Real Estate, Miscellaneous Professional, Scientific, and Technical Services.	All Other Professional, Scientific and Technical Services.
7819	Services Allied to Motion Picture Production:	
	Talent Payment Services	Payroll Services (pt.).
8099	Health and Allied Services, NEC:	
	Medical Artists	Graphic Design Services (pt.).
	Medical Photography	Commercial Photography (pt.).
8111	Legal Services	Offices of Lawyers.
8711	Engineering Services	Engineering Services.
8712	Architectural Services	Architectural Services.
8713	Surveying Services:	
	Except Geophysical Surveying	Surveying and Mapping Services (pt.).
	Geophysical Surveying Services	Geophysical Surveying Services.
8721@	Accounting, Auditing, and Bookkeeping Services:	
	Certified Public Accountants	Offices of Certified Public Accountants.
	Accountants, Except Certified Public Accountants.	Offices of Accountants, except Certified.
	Payroll Services	Payroll Services.
8731@	Commercial Physical and Biological Research:	
	Physical and Engineering Sciences	Research and Development in the Physical and Engineering Sciences (pt.).
	Life Sciences	Research and Development in the Life Sciences (pt).
8732@	Commercial Economic, Sociological, and Educational Research:	
	Social Sciences and Humanities	Research and Development in the Social Sciences and Humanities (pt.).
	Market Research and Opinion Research	Market Research and Public Opinion Polling.
8733@	Noncommercial Research Organizations:	
	Physical and Engineering Services	Research and Development in the Physical and Engineering Sciences (pt.).
	Life Sciences	Research and Development in the Life Sciences (pt.).
	Social Sciences and Humanities	Research and Development in the Social Sciences and Humanities (pt.).
8734	Testing Laboratories	Testing Laboratories.
8742@	Management Consulting Services:	
	Administrative Management and General Management Consulting.	Administrative and General Management Consulting.
	Human Resources and Personnel Management Consulting.	Human Resources Consulting (pt.).
	Marketing Consulting	Marketing Consulting.
	Manufacturing Management, Physical Distribution, and Site Location Consulting.	Process, Physical, Distribution, and Logistics Consulting.
8743	Public Relations Services	Public Relations Services.
8748@	Business Consulting Services, Not Elsewhere Classified:	
	Planners of Land Use	Land Use Planners Services.
	Safety Consulting	Other Management Consulting Services.
	Economic Consultants, Radio Consultants, Traffic Consultants.	Other Scientific and Technical Consulting Services (pt.).
8999@	Services, NEC:	
	Nuclear Consultants, Consulting Geologists, Consulting Physicists, and Actuarial Consulting.	Other Scientific and Technical Consulting Services (pt.).
	Environmental Consultants	Environmental Consulting.

The abbreviation "pt" means "part of". @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC Industry. The abbreviation NEC is used for Not Elsewhere Classified.

Description of Changes to the U.S. System

Forty-eight U.S. industries are included in the NAICS Professional, Scientific, and Technical Services subsector. Thirty-one of these are new industries (Offices of Notaries, as defined, do not exist in the U.S.); four are revised 1987 SIC industries; and 13 are industries that existed in 1987. The primary focus of this subsector is to group together establishments that make available the particular knowledge, expertise or skills of their employees to a wide range of business and individual clients. The activities included here can be utilized throughout all sectors of the economy. Other activities that do not meet this criteria are generally included in the particular subsector they serve. The industries within this subsector have similar production processes. The changes also help to better achieve comparability with Mexico and Canada. The following new industries were added for 1997:

Other Legal Services from part of 1987 SIC 7389, Business Services, NEC.

Offices of Certified Public Accountants from part of 1987 SIC 8721, Accounting, Auditing, and Bookkeeping Services.

Offices of Accountants, Except Certified from part of 1987 SIC 8721, Accounting, Auditing, and Bookkeeping Services.

Bookkeeping and Billing Services from part of 1987 SIC 8721, Accounting, Auditing, and Bookkeeping Services.

Payroll Services from part of 1987 SIC 7819, Service Allied to Motion Picture Production, and part of 1987 SIC 8721, Accounting, Auditing, and Bookkeeping Services.

Drafting Services from part of 1987 SIC 7389, Business Services, NEC.

Building Inspection Services from part of 1987 SIC 7389, Business Services, NEC.

Surveying and Mapping Services from part of 1987 SIC 8713, Surveying Services, and part of 1987 SIC 7389, Business Services, NEC.

Geophysical Surveying Services from part of 1987 SIC 8713, Surveying Services.

Interior Design Services from part of 1987 SIC 7389, Business Services, NEC.

Industrial Design Services from part of 1987 SIC 7389, Business Services, NEC.

Land Use Planners Services from part of 1987 SIC 8748, Business Consulting Services, NEC.

All Other Design Services from part of 1987 SIC 7389, Business Services, NEC.

Systems Design Services from 1987 SIC 7373, Computer Integrated Systems Design, and part of 1987 SIC 7379, Computer Related Services, NEC.

Administrative and General Management Consulting from part of 1987 SIC 8742, Management Consulting Services.

Human Resources Consulting from part of 1987 SIC 8742, Management Consulting Services, and part of 1987 SIC 7361, Employment Agencies.

Marketing Consulting from part of 1987 SIC 8742, Management Consulting Services.

Process, Physical Distribution, and Logistics Consulting from part of 1987 SIC 8742, Management Consulting Services.

Other Management Consulting Services from part of 1987 SIC 4731, Arrangement of Transportation of Freight and Cargo, and part of 1987 SIC 8748, Business Consulting Services, NEC.

Environmental Consulting from part of 1987 SIC 8999, Services NEC.

Other Scientific and Technical Consulting Services from part of 1987 SIC 8748, Business Consulting Services, NEC, and part of 1987 SIC 8999, Services, NEC.

Research and Development in the Physical and Engineering Sciences from part of 1987 SIC 8731, Commercial Physical and Biological Research, and part of 1987 SIC 8733, Noncommercial Research Organizations.

Research and Development in the Life Sciences from part of 1987 SIC 8731, Commercial Physical and Biological Research, and part of 1987 SIC 8733, Noncommercial Research Organizations.

Research and Development in the Social Sciences and Humanities from part of 1987 SIC 8732, Commercial Economic, Sociological, and Educational Research, and part of 1987 SIC 8733, Noncommercial Research Organizations.

Media Buying Agencies from part of 1987 SIC 7319, Advertising, NEC.

Display Advertising from 1987 SIC 7312, Outdoor Advertising Services, and part of 1987 SIC 7319, Advertising, NEC.

Advertising Material Distributors from part of 1987 SIC 7319, Advertising, NEC.

Other Services Related to Advertising from part of 1987 SIC 5199, Nondurable Goods, NEC, and part of 1987 SIC 7319, Advertising, NEC.

Market Research and Public Opinion Polling from part of 1987 SIC 8732, Commercial Economic, Sociological, and Educational Research.

Translation and Interpretation Services from part of 1987 SIC 7389, Business Services, NEC.

All Other Professional, Scientific and Technical Services from part of 1987 SIC 7389, Miscellaneous Business Services.

The following four NAICS industries were modified from their 1987 definitions:

Testing Laboratories from 1987 SIC 8734, Testing Laboratories. This industry was modified by moving veterinary laboratories to the Support Services for Agriculture subsector. This move was made to improve comparability with Canada and Mexico and because the production process of this type of laboratory was so different from the others that are included.

Graphic Design Services from 1987 SIC 7336, Commercial Art and Graphic Design, and part of 1987 SIC 8099, Health and Allied Services, NEC. Medical artists of 1987 SIC 8099 were combined here because of the similarity of the production process with graphic designers and to improve comparability with Mexico and Canada.

Other Computer Systems Design and Related Services from part of 1987 SIC 7379, Computer Related Services, NEC. This industry was modified by moving computer systems consultants to NAICS industry Systems Design Services to improve comparability with Mexico and Canada.

Commercial Photography from 1987 SIC 7335, Commercial Photography, and from part of 1987 SIC 8099, Health and Allied Services, NEC. Medical photography from 1987 SIC 8099 was combined with commercial photography because of the similarity of their production processes.

Part VII—Proposed New Industry Structure for Performing Arts, Spectator Sports and Related Industries; Museums, Historical Sites and Similar Institutions; and Recreation, Amusement and Gambling

Section A—NAICS Structure

North American Industry Classification System
(NAICS)
Agreement Number 17

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industries:

Performing Arts, Spectator Sports and Related Industries
Museums, Historical Sites and Similar Institutions
Recreation, Amusement and Gambling

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on September 27, 1995–September 29, 1995 in Mexico City, Mexico.

Accepted	Signature	Date
Canada	/S/ Jacob Ryten	9/29/95
Mexico	/S/ Enrique Ordaz.	9/29/95
United States	/S/ Jack E. Triplett.	9/29/95

Attachment 1—NAICS Structure

XX Performing Arts, Spectator Sports and Related Industries
XXX Performing Arts Companies
XXXX Theater Companies
XXXX Dance Companies
XXXX Musical Groups and Artists
XXXX Other Performing Arts Companies
XXX Spectator Sports
XXXX Spectator Sports
XXX Promoters of Arts, Sports and Similar Events
XXXX Promoters of Arts, Sports and Similar Events with Facilities
XXXX Promoters of Arts, Sports and Similar Events without Facilities
XXX Agents and Managers for Artists, Athletes and Other Entertainers
XXXX Agents and Managers for Artists, Athletes and Other Entertainers
XXX Independent Artists, Writers and Performers
XXXX Independent Artists, Writers and Performers
XX Museums, Historical Sites and Similar Institutions
XXX Museums, Historical Sites and Similar Institutions
XXXX Museums
XXXX Historical Sites
XXXX Botanical and Zoological Gardens
XXXX Nature Parks and Similar Institutions
XX Recreation, Amusement and Gambling Industries
XXX Sports and Recreation Facilities
XXXX Golf Courses
XXXX Skiing Facilities
XXXX Marinas
XXXX Recreational, Sports and Fitness Centers
XXXX Bowling Centers
XXX Amusement Facilities
XXXX Amusement and Theme Parks
XXXX Amusement Arcades and Other Coin-operated Amusement Devices
XXX Gambling Industries
XXXX Casinos, except Hotel Casinos
XXXX Other Gambling Industries
XXX Other Recreation and Amusement Services
XXXX Other Recreation and Amusement Services

Attachment 2—North American Industrial Classification System

Draft Classification for:
Performing Arts, Spectator Sports and Related Industries
Museums, Historical Sites and Similar Institutions
Recreation, Amusement and Gambling Industries

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industry classification for these industries.

The draft classification contains three subsectors, Performing Arts, Spectator Sports and Related Industries; Museums, Historical Sites and Similar Institutions; and Recreation, Amusement and Gambling Industries. These are further subdivided into ten industry groups and twenty-three industries.

A General Outline

The Performing Arts, Spectator Sports and Related Industries subsector includes establishments that produce or organize live presentations involving the performances of actors and actresses, singers, dancers, musical groups and artists, athletes and other entertainers. It also includes independent entertainers and the establishments that manage their careers. The classification recognizes four basic processes: producing events; presenting and promoting events; managing and representing entertainers; and finally, providing the artistic, creative and technical skills necessary to the production of these live events. Four industries are proposed for performing arts, each defined on the basis of the particular skills of the entertainers involved in the presentations. Promoters that own and operate their facilities are distinguished from those that do not, thereby emphasizing significant differences in cost structures.

The proposed structure makes a clear distinction between performing arts companies and performing artists (independents). Although not unique to arts and entertainment, freelancing is a particularly important phenomenon in the Performing Arts, Spectator Sports, and Related Industries subsector. Distinguishing this activity from the production activity is a meaningful process differentiation. This approach, however, is difficult to implement in the case of musical groups (companies) and artists, especially pop groups. These establishments tend to be more loosely organized and it can be difficult to distinguish companies from freelancers. For those reasons, NAICS includes one industry that covers both musical groups and musical artists.

The proposed NAICS structure contains two industries for Promoters of Arts, Sports and Similar Events, one for those that operate facilities and another for those that do not. It is therefore necessary for users interested in information by type of event (e.g. performing arts as opposed to sports) to rely on product data.

The Museums, Historical Sites and Similar Institutions subsector includes establishments engaged in the preservation and exhibition of objects, sites and natural wonders of historical, cultural and educational value. The four industries of this subsector are Museums; Historic Sites; Botanical and Zoological Gardens; and Nature Parks and Similar Institutions.

The Recreation, Amusement and Gambling Industries subsector comprises three industry groups. The Sports and Recreation Facilities industry group includes establishments that operate and provide access to facilities where patrons can actively participate in sports and recreational activities. The six industries of this industry group represent the most important types of facilities found in North America. The Amusement Facilities industry group contains establishments that operate and provide access to sites and facilities primarily used for amusement purposes. Finally, the Gambling Industries industry group includes operators of casinos, lotteries, bingo halls and other establishments primarily engaged in gambling activities.

Limitations and Constraints of the Classification

The most important limitation of the proposed structure is the incomplete coverage of recreational activities

Providers of recreational services are often engaged in processes classified in other sectors of NAICS. For example, operators of resorts and hunting and fishing camps provide both accommodation and recreational facilities and services. It is proposed to classify these establishments in the Accommodation Services subsector, partly to reflect the significant costs associated with the provision of accommodation services and partly to ensure consistency with international standards. Similarly, some night clubs present live entertainment on a regular basis and it can be argued that they could be classified in the Promoters of Arts, Sports and Similar Events With Facilities industry. However, since most

of these establishments function as any other drinking place when they do not stage entertainment and furthermore because most of their revenue is derived from sale of food and beverages, it is proposed to classify them with other drinking places. Finally, establishments using transportation equipment to provide sightseeing and pleasure cruises are classified in the Transportation sector.

The proposed Gambling Industries group does not provide for full coverage of gambling activities. It only includes those establishments specializing in such activities. Casino hotels are classified in the Accommodation Services subsector while horse and dog racing tracks are classified in the Spectator Sports industry group.

Relationship to ISIC

Each of the NAICS industries created in these subsectors can be assigned to a division of the current International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) of the United Nations. Nineteen of the twenty-four proposed industries are contained within ISIC Division 92, Recreational, Cultural, and Sporting Activities. The five industries not in ISIC Division 92 are small pieces of ISIC Division 60, Land Transport, Transport Via Pipelines; ISIC Division 63, Supporting and Auxiliary Transport Activities, Activities of Travel Agencies; ISIC Division 70, Real Estate Activities; and ISIC Division 74, Other Business Activities. The discrepancies between these proposed NAICS industries and ISIC are minor and do not have a significant impact on the comparability of the data.

Some Changes to the National Classifications

For Canada, the proposed NAICS structure constitutes a restructuring and expansion of industries currently found in major group 96, Amusement and Recreational Service Industries, of the 1980 Canadian Standard Industrial Classification (CSIC). A few activities classified in other areas of the classification are now included in this structure and industry groups CSIC 961, Motion Picture, Audio and Video Production and Distribution, and CSIC 962, Motion Picture Exhibition are moved to the proposed Information sector.

The activities included in the Performing Arts Companies industry group are all part of CSIC 9631, Entertainment Production Companies, except for circuses (CSIC 9692) and dinner theaters (CSIC 9211). The remaining components of CSIC 9631, Promoters of Artistic Events and Independent Artists, are assigned to different NAICS industries.

The NAICS Spectator Sports industry corresponds to CSIC 964. Commercial Spectator Sports, except for promoters of sports events that are now classified in a newly created industry group for Promoters (presenters) of Arts, Sports and Similar Events.

In the CSIC, promoters are closely associated to the type of event they are promoting (arts, sports, fairs, etc.) and are classified in different industries. The approach adopted for NAICS, that of combining all promoters in the same group, therefore represents a significant change to the current practice.

A similar approach is proposed for Agents and Managers for Artists, Athletes and Other Entertainers and for Independent Artists, Writers and Performers. Agents and managers, currently classified in arts, sports or business service depending on the type of client they represent, are grouped in a single NAICS industry. Similarly, independent artists, writers and performers, currently found in four industries, are combined in one class.

The Museums, Historical Sites and Similar Institutions industry group includes activities that are classified in Education (Museums, Heritage and Historic Sites) and Amusement and Recreation (botanical gardens, zoological gardens, nature parks, exhibition centers, etc.).

Three of the five industries proposed for the operators of Sports and Recreational Facilities industry group already exist in the CSIC. The most significant change in this area is the adoption of a Recreational, Sports and Fitness Centers industry that includes components of three existing classes, namely, CSIC 9652, Curling clubs; CSIC 9659, Other Sports and Recreation Clubs; and CSIC 9799, Other Personal and Household Services.

Finally, the proposed Gambling Industries categories are components of CSIC 9961, Gambling Industries. At the national level, an additional industry will be created for Lotteries.

For Mexico, the contents of these subsectors essentially stem from the CMAP subsector 94, Entertainment, Culture, Recreation and Sports, although an important restructuring has occurred. In addition, some classes of CMAP subsector 94 related to motion pictures, radio and television went into the proposed NAICS Information sector, and those related to the teaching of gymnastics and martial arts moved to the proposed NAICS Education Services subsector.

In order to accommodate this proposed structure of new subsectors, Mexico included some activities from other subsectors such as tour guide services, marinas, and the retail sale of lottery tickets.

For the United States, the proposed NAICS structure represents a significant change from the current Standard Industrial Classification System (SIC) system. The NAICS industries are more clearly defined than those in the current system and ambiguous distinctions such as "membership" criteria have been eliminated in NAICS industries.

New industries are established for various types of performing arts companies, spectator sports, museums, historical sites and similar institutions, gambling services and operators of sports and recreation facilities. Overall, there are nine new industries in the NAICS structure for amusement, recreation, museums and botanical and zoological gardens.

Separate industries are established for promoters of events, agents and managers of artists, athletes, and entertainers, as well as a new industry for artists and entertainers who normally work independently or on a contract basis. These types of establishments are included in many different industries in the SIC system, including some in 1987 SIC 8999, Services, Not Elsewhere Classified (NEC), as well as in other NEC categories, such as 1987 SIC 7999, Amusement and Recreation Services, Not Elsewhere Classified.

The "not elsewhere classified (NEC)" industries in the 1987 SIC system are significantly reduced in NAICS, because many types of establishments in this category are assigned to more specific, process-based categories.

Achievement of Objectives

The proposed classification structure meets the objectives for the North American Industry Classification System (NAICS). It is comprised of industries that group establishments with similar production processes, that is, it applies the production oriented economic concept. The hierarchical structure of the classification generally follows the production concept at each level.

The classification achieves comparability for the three participating countries. Based on existing data, each country expects to be able to publish data regularly or in the near future at the industry (4-digit) level of this structure. All countries agree on the definitions of the industries.

Other objectives of the NAICS project have also been met. The inclusion of new and emerging services industries are introduced in this proposed structure. These classifications reflect changes in the arts, entertainment, and recreation industries that have occurred in the past but have never been identified in the existing classification systems of the three countries.

The industries in most cases are economically significant in all three countries. Smaller industries are present because comparability is given priority over size.

Section B—Annex: United States National Industry Detail

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the three NAICS industry subsectors presented in Part VII, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the three NAICS industry subsectors covered in Part VII of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX	Performing Arts, Spectator Sports and Related Industries:			
XXX	Performing Arts Companies:			
XXXX ...	Theater Companies	N	*5812	Eating Places (dinner theaters).
			*7922	Theatrical Producers (except Motion Pictures) and Miscellaneous Theatrical Services (theater companies, opera companies).
XXXX ...	Dance Companies	N	*7922	Theatrical Producers (except Motion Pictures) and Miscellaneous Theatrical Services (ballet and dance companies).
XXXX ...	Musical Groups and Artists	N	*7929	Bands, Orchestras, Actors, and Entertainment Groups (musical groups and artists).
XXXX ...	Other Performing Arts Companies	N	*7929	Bands, Orchestras, Actors, and Entertainment Groups (except musical groups and artists).
			*7999	Amusement and Recreation Services, Not Elsewhere Classified (circus companies).
XXX	Spectator Sports:			
XXXX ...	Spectator Sports:			
XXXXX	Sports Clubs	N	*7941	Professional Sports Clubs and Promoters (professional sports clubs).
XXXXX	Race Tracks	N	*7948	Racing, Including Track Operations (track operations).
XXXXX	Other Spectator Sports	N	*7941	Professional Sports Clubs and Promoters (except sports clubs, stadium operators, sports promoters and agents).
			*7948	Racing, Including Track Operations (except track operators).
			*7999	Amusement and Recreation Services, NEC (professional athletes).
XXX	Promoters of Arts, Sports and Similar Events:			
XXXX ...	Promoters of Arts, Sports and Similar Events with Facilities.	N	*6512	Operators of Nonresidential Buildings (stadium and arena owners).
			*7922	Theatrical Procedures (except Motion Pictures) and Miscellaneous Theatrical Services (theater operators).
			*7941	Professional Sports Clubs and Promoters (stadium operators).
XXXX ...	Promoters of Arts, Sports and Similar Events without Facilities.	N	*7922	Theatrical Producers (except Motion Pictures) and Miscellaneous Theatrical Services (theatrical promoters).
			*7941	Professional Sports Clubs and Promoters (sports promoters).
XXX	Agents and Managers for Artists, Athletes and Other Entertainers:			
XXXX ...	Agents and Managers for Artists, Athletes, and Other Entertainers.	N	*7389	Business Services, NEC (agents and brokers for authors and artists).
			*7922	Theatrical Producers (except Motion Pictures) and Miscellaneous Theatrical Services (theatrical agents).
			*7941	Professional Sports Clubs and Promoters (sports agents).
XXX	Independent Artists, Writers, and Performers:			
XXXX ...	Independent Artists, Writers, and Performers	N	*7819	Services Allied to Motion Picture Production (film directors and related motion picture production services, independent).
			*7929	Bands, Orchestras, Actors, and Other Entertainers and Entertainment Services (actors and actresses).
			*8999	Services, Not Elsewhere Classified (authors, artists, and related technical services independent).
XX	Museums, Historical Sites and Similar Institutions:			
XXX	Museums, Historical Sites and Similar Institutions:			
XXXX ...	Museums	R	*8412	Museums and Art Galleries (except historic and heritage sites).
XXXX ...	Historical Sites	N	*8412	Museums and Art Galleries (historic and heritage sites).

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XXXX ...	Botanical and Zoological Gardens	R	*8422	Arboreta and Botanical and Zoological Gardens (except nature parks and reserves).
XXXX ...	Nature Parks and Similar Institutions	N	*7999	Amusement and Recreation Services, NEC (caverns and miscellaneous commercial parks).
			*8422	Arboreta and Botanical and Zoological Gardens (nature parks and reserves).
XX	Recreation, Amusement and Gambling Industries:			
XXX	Operators of Sports and Recreation Facilities:			
XXXX ...	Golf Courses	N	7992	Public Golf Courses.
			*7997	Membership Sports and Recreation Clubs (golf clubs).
XXXX ...	Skiing Facilities	N	*7999	Amusement and Recreation Services, NEC (skiing facilities).
XXXX ...	Marinas	E	4493	Marinas.
XXXX ...	Recreational, Sports and Fitness Centers	N	7991	Physical Fitness Facilities.
			*7997	Membership Sports and Recreation Clubs (recreation clubs with facilities).
			*7999	Amusement and Recreation Services, NEC (nonmembership recreation facilities).
XXXX ...	Bowling Centers	E	7933	Bowling Centers.
XXX	Amusement Facilities:			
XXXX ...	Amusement and Theme Parks	E	7996	Amusement Parks.
XXXX ...	Amusement Arcades and Other Coin Operated Amusement Devices.	R	*7993	Coin-Operated Amusement Devices (except slot machine operators).
XXX	Gambling Industries:			
XXXX ...	Casinos, except Hotel Casinos	N	*7999	Amusement and Recreation Services, NEC (casinos, except hotel casinos).
XXXX ...	Other Gambling Industries	N	*7993	Coin-Operated Amusement Devices (slot machine operators).
			*7999	Amusement and Recreation Services, NEC (lottery, bingo, bookie, and other gambling operations).
XXX	Other Recreation and Amusement Services:			
XXXX ...	Other Recreation and Amusement Services	N	*7911	Dance Studios, Schools, and Halls (except instruction).
			*7997	Membership Sports and Recreation Clubs (recreation clubs without facilities).
			*7999	Amusement and Recreation Services, NEC (except circuses, professionals, athletes, caverns and other commercial parks, skiing facilities, casinos and other gambling operations, amusement and recreation facilities, sports instruction, sports equipment rental, and amusement or scenic transport operations).

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of." The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
4493	Marinas	Marinas.
5812@	Eating Places (Dinner theatres)	Theater Companies (pt.).
6512@	Operators of Nonresidential Buildings:	
	Stadium and Arena Owners	Promoters of Arts, Sports and Similar Events with Facilities (pt.).
7389@	Business Services, NEC:	
	Agents and Brokers for Authors and Artists	Agents and Managers for Artists, Athletes, and Other Entertainers (pt.).
	Other	(Has been distributed among other service related subsectors).
7819@	Services Allied to Motion Picture Production:.	
	Film Directors and Related Motion Picture Production Services, Independent.	Independent Artists, Writers, and Performers (pt.).
7911@	Dance Studios, Schools and Halls:	
	Ballroom and Dance Hall Operations	Other Recreation and Amusement Services (pt.).
	Instruction Studios and Schools, Professional Dancing Schools.	Fine Arts Schools (pt.) (Included in Educational Services subsector).
7922@	Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services:	
	Theater and Opera Companies	Theater Companies (pt.).
	Theatrical Agents	Agents and Managers for Artists, Athletes and Other Entertainers (pt.).
	Ballet and Dance Companies	Dance Companies.
	Theater Operators	Promoters of Arts, Sports, and Similar Events with Facilities (pt.).

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
	Theatrical Promoters	Promoters of Arts, Sports, and Similar Events without Facilities (pt.).
	Theatrical Agents	Agents and Managers for Artists, Athletes, and Other Entertainers (pt.).
7929@	Bands, Orchestras, Actors, and Other Entertainers and Entertainment Groups:	
	Musical Groups and Artists, Orchestras	Musical Groups and Artists.
	Actors and Actresses	Independent Artists, Writers, and Performers (pt.).
	Except Musical Groups and Artists, Actors and Actresses:.	Other Performing Arts Companies (pt.).
7933	Bowling Centers	Bowling Centers.
7941@	Professional Sports Clubs and Promoters:	
	Professional Sports Clubs	Sports Clubs.
	Sports Agents	Agents and Managers of Artists, Athletes, and other Entertainers (pt.).
	Sports Promoters	Promoters of Arts, Sports and Similar Events without Facilities (pt.).
	Stadium Operators	Promoters of Arts, Sports, and Similar Events with Facilities (pt.).
	Except Sports Clubs, Stadium Operators, Sports Promoters, and Agents.	Other Spectator Sports (pt.).
7948@	Racing, Including Track Operations:	
	Racetracks	Race Tracks.
	Racing, except Track Operators	Other Spectator Sports (pt.).
7991@	Physical Fitness Facilities	Recreational, Sports and Fitness Centers (pt.).
7992@	Public Golf Courses	Golf Courses (pt.).
7993@	Coin Operated Amusement Devices:	
	Except Gambling (Slot Machine) Operators	Amusement Arcades and Other Coin Operated Amusement Devices.
	Gambling (Slot Machine) Operators	Other Gambling Industries (pt.).
7996	Amusement Parks	Amusement and Theme Parks.
7997@	Membership Sports and Recreation Clubs:	
	Golf Clubs	Golf Courses (pt.).
	Recreation Clubs with Facilities	Recreational Sports and Fitness Centers (pt.).
	Recreation Clubs Without Facilities	Other Recreation and Amusement Services (pt.).
7999@	Amusement and Recreation Services, NEC:	
	Circus Companies	Other Performing Arts Companies (pt.).
	Professional Athletes	Other Spectator Sports (pt.).
	Skiing Facilities	Skiing Facilities.
	Nonmembership Recreation Facilities	Recreation Sports and Fitness Centers (pt.).
	Casinos, except Hotel Casinos	Casinos, except Hotel Casinos.
	Lottery, Bingo, Bookie and Other Gaming Operations.	Other Gambling Industries (pt.).
	Caverns and Miscellaneous Commercial Parks	Nature Parks and Similar Institutions (pt.).
	Sports Instruction	Athletic Instruction (Included in Educational Services subsector).
	Sports Equipment Rental	Rental of Recreation Goods (Included in Rental and Leasing subsector).
	Scenic Transport Operations, Land	Scenic and Sightseeing Transportation, Land (Included in Scenic and Sightseeing Transportation subsector).
	Scenic Transport Operations, Water	Scenic and Sightseeing Transportation, Water (Included in Scenic and Sightseeing Transportation subsector.
	Amusement and Recreation Services, NEC (except circuses, professional athletes, caverns, and other commercial parks, skiing facilities, casinos and other gambling operations, amusement and recreation facilities).	Other Recreation and Amusement Services (pt.).
8412	Museums and Art Galleries:	
	Museums	Museums.
	Historical and Heritage Sites	Historical Sites.
8422	Arboreta and Botanical or Zoological Gardens:	
	Botanical and Zoological Gardens	Botanical and Zoological Gardens.
	Nature Parks and Reserves	Nature Parks and Similar Institutions (pt.).
8999	Services, Not Elsewhere Classified:	
	Authors, Artists, and Related Technical Services, Independent.	Independent Artists, Writers, and Performers (pt.).

The abbreviation "pt." means "part of". @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

Description of Changes to the U.S. System

The industries included in the following subsectors were primarily created from the twelve 1987 SICs of Major Group 79, Amusement and Recreation Services. For time series linkage, a time series break greater than three percent of their 1992 revenue is estimated for ten of these industries.

1. Performing Arts, Spectator Sports and Related Industries—There were eleven new industries added to the 1997 industry structure in this subsector to group those activities with the same production process and to improve overall comparability with Mexico and Canada. The underlying focus of this subsector was to group together those entertainment activities that are more visual and non-participatory. The following new industries were created:

Theater Companies from part of 1987 SIC 5812, Eating Places, and part of 1987 SIC 7922, Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services.

Dance Companies from part of 1987 SIC 7922, Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services.

Musical Groups and Artists from part of 1987 SIC 7929 Bands, Orchestras, Actors, and Other Entertainers and Entertainment Groups.

Other Performing Arts Companies from part of 1987 SIC 7929, Bands, Orchestras, Actors, and Other Entertainers and Entertainment Groups, and part of 1987 SIC 7999, Amusement and Recreation Services, NEC.

Sports Clubs from part of 1987 SIC 7941, Professional Sports Clubs and Promoters.

Race Tracks from part of 1987 SIC 7948, Racing, Including Track Operation.

Other Spectator Sports from part of 1987 SIC 7941, Professional Sports Clubs and Promoters; part of 1987 SIC 7948, Racing, Including Track Operation; and part of 1987 SIC 7999, Amusement and Recreation Services, NEC.

Promoters of Arts, Sports and Similar Events With Facilities from part of 1987 SIC 6512, Operators of Nonresidential Buildings; part of 1987 SIC 7922, Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services; and part of 1987 SIC 7941, Professional Sports Clubs and Promoters.

Promoters of Arts, Sports and Similar Events without Facilities from part of 1987 SIC 7922, Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services, and part of 1987 SIC 7941, Professional Sports Clubs and Promoters.

Agents and Managers for Artists, Athletes and Other Entertainers from part of 1987 SIC 7389, Business Services, NEC; part of 1987 SIC 7922, Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services; and part of 1987 SIC 7941, Professional Sports Clubs and Promoters.

Independent Artists, Writers, and Performers from part of 1987 SIC 7819, Services Allied to Motion Picture Production; part of 1987 SIC 7929, Bands, Orchestras, Actors, and other Entertainers and Entertainment Groups; and part of 1987 SIC 8999, Services, NEC.

2. Museums, Historic Sites and Similar Institutions—The NAICS industries within this subsector were essentially created from the two industries of 1987 Major Group 84, Museums, Art Galleries, and Botanical, and Zoological Gardens. Two new industries were added for this 1997 industry subsector and two industries reflect content changes from their 1987 definitions. These changes were made to better represent the production process differences among these activities. The following industries were added for 1997:

Historical Sites from part of 1987 SIC 8412, Museums and Art Galleries.

Nature Parks and Similar Institutions from part of SIC 7999, Amusement and Recreation Services, NEC; and part of 1987 SIC 8422, Arboreta and Botanical or Zoological Gardens.

The following two industries represent content changes from 1987:

Museums from part of 1987 SIC 8412, Museums and Art Galleries.

Botanical and Zoological Gardens from part of 1987 SIC 8422, Arboreta and Botanical Gardens.

3. Recreation, Amusement and Gambling Industries—This subsector consists of 10 industries. Six new industries were added to the 1997 structure for this subsector, one industry represents a 1987 industry with content changes, and three industries from 1987 were included without any changes. The NAICS industries within this subsector represent an effort to group those activities with the same production process and to improve comparability with Mexico and Canada. The basis for developing this subsector was to group together entertainment activities that are participatory in nature and to eliminate industry distinctions based on membership. The following new industries were created:

Golf Courses from 1987 SIC 7992, Public Golf Courses, and part of 1987 SIC 7997, Membership Sports and Recreation Clubs.

Skiing Facilities from part of 1987 SIC 7999, Amusement and Recreation Services, NEC.

Recreational, Sports and Fitness Centers from 1987 SIC 7991, Physical Fitness Facilities; part of 1987 SIC 7997, Membership Sports and Recreation Clubs; and part of 1987 SIC 7999, Amusement and Recreation Services, NEC.

Casinos, Except Hotel Casinos from part of 1987 SIC 7999, Amusement and Recreation Services, NEC.

Other Gambling Industries from part of 1987 SIC 7993, Coin-Operated Amusement Devices, and part of 1987 SIC 7999, Amusement and Recreation Services, NEC.

Other Recreation and Amusement Services from part of 1987 SIC 7911, Dance Studios, Schools, and Halls; part of 1987 SIC 7997, Membership Sports and Recreation Clubs; and part of 1987 SIC 7999, Amusement and Recreation Services, NEC.

The following industry represents a change in content from 1987:

Amusement Arcades and Other Coin-Operated Amusement Devices from part of 1987 SIC 7993, Coin-Operated Amusement Devices.

Part VIII—Proposed New Industry Structure for Information

Section A—NAICS Structure

North American Industry Classification System
(NAICS)
Agreement Number 18

This Document represents the proposed agreement for the North American Industry Classification System (NAICS) on the boundaries of the following sector and the 4-digit industries of which it is composed:

Information, to be described as:
Information and Cultural Industries in Canada
Informacion en Medios Masivos in Mexico
Information in the United States

It also displays an aggregation structure that is accepted by all three countries, along with a brief description of the structure and its details (Attachments 1 and 2).

Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on September 27, 1995–September 29, 1995 in Mexico City, Mexico.

Accepted	Signature	Date
Canada	/S/ Jacob Ryten	9/29/95
Mexico	/S/ Enrique Ordaz.	9/29/95
United States ..	/S/ Jack E. Triplett.	9/29/95

Attachment 1—NAICS Structure

XX Publishing
XXX Newspaper, Periodical, Book, and Data Base Publishing
XXXX Newspaper Publishing
XXXX Periodical Publishing
XXXX Book Publishing
XXXX Database Publishing
XXXX Other Publishing
XXX Software Publishing
XXXX Software Publishing
XX Motion Picture and Sound Recording
XXX Motion Picture and Video Industries
XXXX Motion Picture and Video Production
XXXX Motion Picture and Video Distribution
XXXX Teleproduction and Other Post-Production Services
XXXX Motion Picture and Video Exhibition
XXXX Other Motion Picture and Video Industries
XXX Sound Recording Industries
XXXX Record Production Companies
XXXX Integrated Record Companies
XXXX Music Publishing
XXXX Sound Recording Studios
XXXX Other Sound Recording Industries
XX Broadcasting and Telecommunications
XXX Radio and Television Broadcasting
XXXX Radio Broadcasting
XXXX Television Broadcasting
XXX Cable Networks and Program Distribution
XXXX Cable Networks
XXXX Cable and Program Distribution
XXX Telecommunications
XXXX Wired Telecommunications Carriers
XXXX Wireless Telecommunications Carriers, Except Satellite
XXXX Telecommunications Resellers
XXXX Satellite Telecommunications
XXXX Other Telecommunications
XX Information Services and Data and Transaction Processing
XXX Information Services
XXXX News Syndicates
XXXX Libraries and Archives
XXXX Other Information Services
XXX Data and Transaction Processing
XXXX Data and Transaction Processing

Attachment 2—North American Industry Classification System

Draft Classification For:
Information and Cultural Industries in Canada
Information en Medios Masivos in Mexico
Information in the United States

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industry classification for these industries.

The draft classification includes four subsectors, Publishing; Motion Picture and Sound Recording; Broadcasting and Telecommunications; and Information Services and Data and Transaction Processing Services. These are further subdivided into 9 industry groups and 29 industries.

A General Outline

The expressions "information age" and "global information economy" are used with considerable frequency today. The general idea of an "information economy" includes both the notion of industries primarily producing, processing, and distributing information, as well as the idea that every industry is using available information and information technology to reorganize and make themselves more productive.

For the purpose of developing NAICS, it is the transformation of information into a commodity that is produced, manipulated and distributed by a number of growing industries that is at issue. The proposed Information sector groups three types of establishments: those engaged in producing, manipulating and distributing information and cultural products; those that provide the means to transmit or distribute these products as well as data or communications; and those that process data or transactions. (Cultural products are those that directly express attitudes, opinions, ideas, values, and artistic creativity; provide entertainment; or offer information and analysis concerning the past and present. Included in this definition are popular, mass-produced, products as well as cultural products that normally have a more limited audience, such as poetry books, literary magazines or classical records.) These activities are currently classified throughout the existing national classifications; traditional publishing is in manufacturing, broadcasting in communications, software production in business services, film production in amusement services, etc.

The unique characteristics of information and cultural products, and of the processes involved in their production and distribution, justify the creation of an Information sector, distinct from the goods-producing and service-producing sectors. Some of these characteristics are:

1. Unlike traditional goods, an "information or cultural product" such as a newspaper or television program does not necessarily have tangible qualities, nor is it necessarily associated with a particular form. A movie can be shown at a movie theater, on a television broadcast, through video on demand or rented at a local video store. A sound recording can be aired on radio, embedded in multi-media products or sold at a record store.

2. Unlike traditional services, the delivery of these products does not require direct contact between the supplier and the consumer.

3. The value of these products to the consumer does not lie in their tangible qualities but in their information, educational, cultural or entertainment content.

4. Unlike goods or services, information and cultural products can be copied easily. The law has long recognized this; copyright law protects the intangible property of intellectual creations such as books and sound recordings. Copyright applies to all original literary, dramatic, musical, and artistic works, including databases and computer programs.

5. The intangible property aspect of information and cultural products makes the processes involved in their production and distribution very different from goods and services. Only those possessing the rights to these works are authorized to reproduce, alter, improve and distribute them. Acquiring and using these rights often involves significant costs. In addition, technology is revolutionizing the distribution of these products. It is possible to distribute them in a physical form, via broadcast or on line.

6. Distributors of information and cultural products can easily add value to the products they distribute. For instance, broadcasters add advertising not contained in the original product. This capacity means that unlike traditional distributors, they derive revenue not from sale of the distributed product to the final consumer, but from those who pay for the privilege of adding information to the original product. Similarly, a CD–ROM publisher can acquire the rights to thousands of previously published newspaper and periodical articles and add new value by providing search and software and organizing the information in a way that facilitates research and retrieval. These products often command a much higher price than the original information.

The distribution modes for information commodities may either eliminate the necessity for traditional manufacture or reverse the conventional order of manufacture-distribute: A newspaper distributed on line, for example, can be printed locally or by the final consumer. Similarly, it is anticipated that packaged software, which today is mainly bought through the traditional retail channels, will soon be available mainly on line. The NAICS Information sector is designed to make such economic changes transparent as they occur, or to facilitate designing surveys that will monitor the new phenomena and provide data to analyze the changes. Other classification systems tend to obscure economic changes of this kind.

Many of the industries in the NAICS information sector are engaged in producing and manipulating products protected by copyright law, or in distributing them (other than distribution by traditional wholesale and retail methods). Examples are traditional publishing industries, software and database publishing industries and film and sound industries. Broadcasting and telecommunication industries, and information providers and processors, are also included in the information sector, because their technologies are so closely linked to other industries in the information sector.

Although many new industries have been created for this sector, most of the activities it contains have existed for some time and are distributed throughout the existing classifications. The following paragraphs provide a brief description of the individual components of this sector.

The Publishing subsector groups establishments engaged in the publishing of newspapers, periodicals, and books, as well as database and software publishing. In general, publishers issue copies of works for which they possess copyright for sale to the general public, in one or more formats including traditional print form, CD–ROM or on line. Publishers may publish works originally created by others for which they have obtained the rights, and/or works that they have created in-house.

In most other classification systems, publishing is treated as a subsidiary activity to a manufacturing activity—book and newspaper publishing, for example, are depicted as subsidiary activities to printing, and placed with printing in the classification. In NAICS, publishing—the reporting, writing, editing, and other processes that are required to create an edition of a newspaper, for example—is treated as a major economic activity in its own right, and classified in the Information sector, whereas printing remains in the NAICS Manufacturing sector. In part, the NAICS classification reflects the fact that publishing increasingly takes place in establishments that are physically separate from the associated printing establishments. More crucially, the NAICS classification of book and newspaper publishing is intended to portray their roles in a modern economy, in which they do not resemble manufacturing activities.

Software publishing is included here because the activity—creation of a copyrighted product and bringing it to market—is equivalent to the creation process for other types of intellectual products. Reproduction of pre-packaged software is treated in NAICS as a manufacturing activity; on-line distribution of software products is in the Information sector, and custom design of software to client specifications remains in business services. These distinctions arise because of the different ways that software is created, reproduced, and distributed.

The Motion Picture and Sound Recording subsector groups establishments involved in the production and distribution of motion pictures and sound recordings (those involved exclusively in the wholesaling of sound recordings are classified in Wholesale Trade). While motion picture and sound recordings are also "published," the processes involved are sufficiently different from those traditional publishing industries to warrant placing them in the Motion Picture and Sound Recording subsector. The production and distribution of these products involves a complex process and several distinct industries.

The Motion Picture and Video Industries industry group includes separate industries for Motion Picture and Video Production, Motion Picture and Video Distribution, Teleproduction and Other Post-Production Services, Motion Picture and Video Exhibition, and Other Motion Picture and Video Industries. The distribution industry includes establishments primarily engaged in acquiring the distribution rights (major input) for films and programs, and charging such clients as movie theaters and broadcasters to show them; those engaged in wholesaling videos to retail stores and rental outlets are classified in Wholesale Trade.

The Sound Recording Industries industry group contains new classes for Record Production Companies, Integrated Record Companies, Music Publishing, Sound Recording Studios, and Other Sound Recording Industries. Record production companies are primarily engaged in searching out, identifying and contracting artists for which they arrange and finance the production of master tapes for which they hold the reproduction rights. Establishments in this industry do not own duplication facilities or have distribution capabilities, so they commercialize these rights through leasing/licensing agreements with third parties. Integrated record production companies (major record labels) integrate the production, manufacturing and/or distribution functions, commercializing reproduction rights through these vertically integrated operations. While establishments engaged in record production derive most of their revenues from leasing/licensing the reproduction rights of master recordings and from mechanical royalties, integrated record companies derive most of their revenues from the exploitation of their rights to distribute duplicate sound recordings. The industrial structure proposed for this area is a major revision of existing classifications; the purpose of this restructuring is to reflect the actual activity structure of the sound recording industry, which is not well articulated in current classifications.

The structure of the Broadcasting and Telecommunications subsector was decided upon in a previously signed preliminary agreement (Number 2), but at the time, the sector in which it would be included had not been determined. The three countries have agreed to place it in the Information sector. The following is a summary of the previously signed agreement.

The Broadcasting and Telecommunications subsector includes establishments providing point-to-point communications and the services related to that activity. The industry groups (Radio and Television Broadcasting, Cable Networks and Program Distribution, and Telecommunications) are based on differences in the methods of communication and in the nature of services provided. The Radio and Television Broadcasting industry group includes establishments that operate broadcasting studios and facilities for over the air or satellite delivery of radio and television programs of entertainment, news, talk, and the like. These establishments are often engaged in the production and purchase of programs and generating revenues from the sale of air time to advertisers, and from donations, subsidies, and/or the sale of programs. The Cable Network and Program Distribution industry group includes two types of establishments. Cable Networks establishments operate studios and facilities for the broadcasting of programs that are typically narrow cast in nature (limited format such as news, sports, education, and youth-oriented programming). The services of these establishments are typically sold on a subscription or fee basis. Delivery of the programs to customers is handled by other establishments, in the Cable and Program Distribution industry, that operate cable systems, direct-to-home satellite systems, or other similar systems. The Telecommunications industry group is primarily engaged in operating, maintaining, and/or providing access to facilities for the transmission of voice, data, text, sound, and full motion picture video between network termination points. A transmission facility may be based on a single technology or a combination of technologies.

The Information Services and Data and Transaction Processing subsector is subdivided into two industry groups. The Information Services industry group includes establishments that provide, store, or provide access to information. The Data and Transaction Processing industry group includes establishments that process data and transactions.

Limitations and Constraints of the Classificotion

The concept of an Information sector is new and for that reason its definition could be very broad or very narrow. For instance, it can be argued that establishments engaged in activities such as advertising, marketing research, public opinion polling and credit reporting should be included here since they are, in one way or another, engaged in producing, manipulating and distributing information and/or cultural products. These establishments, however, also share characteristics with establishments found in the Professional, Scientific and Technical Services subsector and it is proposed to classify them in that sector. Similarly, independent artists, writers, and performers could be classified here since they provide the creative input essential to the production of many of the industries found in this sector. However, it has been decided to classify all such establishments in a single industry in the Performing Arts, Spectator Sports, and Related Industries subsector.

The Information sector is largely a restructuring of existing classifications. For example, many of the activities that are classified in Publishing and in Sound Recording Industries are currently classified in the Manufacturing sectors in the existing national classifications. As a result, the definition of existing broad aggregates such as manufacturing or business services have changed.

The identification of new and emerging industries is one of the principle goals of the NAICS project, and in this case many such industries are introduced in the classification (the extent varies by country.) However, many users have expressed the wish that this goal be achieved while minimizing breaks in time series. These two objectives are often conflicting and the degree to which proposed NAICS industries relate to existing national classification systems varies from country to country. This issue is elaborated in the Changes to the National Classification section.

Relotionship to ISIC

Twenty-six of the 29 proposed NAICS industries are contained within Divisions 22, Publishing, Printing and Reproduction of Recorded Media; 64, Post and Telecommunications; 72, Computer and Related Activities; and 92, Recreational, Cultural and Sporting Activities of the Current International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) of the United Nations. The following NAICS industries cannot be assigned to an ISIC division without being subdivided: Other Publishing; Radio Broadcasting; and Television Broadcasting. However, the discrepancies between these proposed NAICS industries and ISIC are minor and do not have a significant impact on the comparability of data. Accordingly, most of the NAICS Information sector can be retabulated to reach consistency at the two-digit level of ISIC.

Changes to the National Classification

For Canada, the most fundamental change to the 1980 Canadian Standard Industrial Classification (CSIC) is the grouping in one sector of industries currently classified in several sectors. Publishing has been moved from Manufacturing (CSIC 28), broadcasting and telecommunication industries from Communication Industries (CSIC 48), film industries from Amusement and Recreational Service Industries (CSIC 96), record companies from Manufacturing (CSIC 39), libraries from Educational Services Industries (CSIC 85), and software publishing and data processing from Business Service Industries (CSIC 77).

The current classification for traditional publishing separates establishments engaged in publishing only from those engaged in publishing and printing. In the proposed NAICS classification, these establishments are classified to five different 4-digit industries according to the type of publishing (newspaper, book, database, etc.) whether or not they are also engaged in printing activities. Software publishing, currently a component of the Computer Services industry (CSIC 7721), is now classified in this subsector.

The classification of video wholesaling to the existing Motion Picture and Video Distribution class (CSIC 9612) is changed; video wholesaling is now assigned to the Wholesale Trade area. Establishments primarily engaged in videotaping are moving from the Motion Picture and Video Production industry (CSIC 9611) to the NAICS class for Photography in the Management, Employment, Administrative and Support Services subsector. The three existing classes for motion picture and video exhibition (CSIC 9621, 9622, 9629) are collapsed into one NAICS class. Independent motion picture directors, currently classified to the Motion Picture and Video Production industry, are moving to the Performing Arts, Spectator Sports and Related Industries subsector of NAICS.

Sound recording activities are now classified to a separate industry group in five newly created 4-digit industries. This is significantly different from the current practice of assigning these activities in different areas of the CSIC, the most important being wholesale trade and manufacturing.

Other significant changes include the movement of libraries (part of CSIC 8541) and archives (part of CSIC 8551) from Educational Service Industries to this sector and of news syndicates (part of CSIC 7799), on-line information services (part of CSIC 7799) and data processing services (part of CSIC 7721) from the Business Services division to this sector.

For Mexico, economic activities emanating from various CMAP sectors have been reclassified into the new Information sector. Editing and a combination of editing and printing were taken from the Manufacturing Sector, group CMAP 3420, corresponding to printing and editing. From group CMAP 3832, Manufacture and/or Assembly of Electronic Radio, Television, Communications and Medical Equipment, recording, editing and record reproducing studios were

transferred when these studios are integrated in this manner.

The following classes were reclassified from the current Transportation and Communications Sector; CMAP classes 720003, Telephone Services; 720004, Public Telephone Services; 720005, Telegraph Services; and 720006, Other Telecommunications Services, except for facsimile services in the latter category, found under the Organization Services subsector, together with Business Centers.

Services related to cinematography, radio and television were taken from the current Recreation, Cultural and Sports Services (CMAP classes 941101, 941102, 941103, 941104, 941105, 941201, 941202 and 941203), both from the public and private sectors. Library services, currently classified by the CMAP together with museums, botanical gardens and the like, under CMAP branches 9421 and 9422, were also reclassified under this new sector.

Finally, from the current CMAP 9510 branch, Provision of Professional, Technical and Specialized Services, the following CMAP classes were taken: from CMAP 951004, Systems Analysis and Information Processing Services, the corresponding parts to software editing services, on-line consulting services and rented computer time; CMAP 951014, News Agencies' Services; and CMAP 951023, Other Professional, Technical and Specialized Services previously mentioned, pre-recorded telephone information services.

For the United States, the Information sector is a new grouping and includes industries that were included in different divisions of the 1987 SIC. The concepts underlying the creation of this sector and the industry descriptions address the increasing use of electronic means of dissemination that is not considered in the 1987 SIC.

The Newspaper, Periodical, Book and Database Publishing industry group is currently included in the Manufacturing division of the 1987 SIC (Industry Groups 271, 272, 273, 274 and part of 1987 SIC 2771). The industries included in the NAICS Information sector are those involved in publishing, or publishing and printing combined. Establishments engaged in printing only remain in the Manufacturing sector of NAICS.

The Software Publishing industry is part of the 1987 SIC 7372, Prepackaged Software, in the 1987 SIC in the Business Services major group. The reproduction of prepackaged software only is included in the Computer and Electronic Components subsector in the NAICS Manufacturing sector.

The Motion Picture and Video Industries industry group includes industries classified in the Motion Pictures major group of the 1987 SIC. Parts of 1987 SIC 7819, Services Allied Motion Pictures, were reclassified in other sectors to create more homogeneous, production based categories. A new industry is created for Teleproduction and Other Post-production Services from 1987 SIC 7819, Services Allied to Motion Picture Production, and the remainder of 1987 SIC 7819 was combined with 1987 SIC 7829, Services Allied to Motion Picture Distribution.

Five new industries are created within the Sound Recording Industries industry group. None of these industries exist in the 1987 SIC and, in most instances, there is no indication in the 1987 SIC Manual of the appropriate industry in which they should be included. Because of this, it is difficult to predict the impact of this change, though in most instances it is expected to have a minor effect on existing time series.

Changes to the U.S. SIC system for the Broadcasting and Telecommunications industries subsector were addressed in a previous NAICS agreement (Agreement number 2).

The Information Services and Data and Transaction Processing subsector includes a number of information service-related industries. The News Syndicates and Libraries and Archives industries correspond to 1987 SIC 7383, News Syndicates, and 8231, Libraries. News Syndicates were previously located in the Business Services major group and Libraries were located in the Educational Services major group. The Other Information Services industry primarily includes establishments classified in 1987 SIC 7375, Information Retrieval Services. U.S. national detail preserves this industry and provides a residual class for all other information services. The Data and Transaction Processing industry corresponds to 1987 SIC 7374, Computer Processing and Data Preparation and Processing Services. Both Information Retrieval Services and Computer Processing and Data Preparation and Processing Services were located in the Business Services major group.

Achievement of Objectives

The classification meets the objectives for the North American Industry Classification System. It is comprised of industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. The hierarchical structure also follows the production concept.

The classification achieves comparability for the three participating countries. All countries agree on the definitions of the industries. The classification improves comparability with other countries. Based on existing data, each country expects to be able to publish data regularly, or in the near future, at the 4-digit NAICS level of this structure.

Other objectives of the NAICS project have also been met. The classification meets the objectives of an industry classification. In an effort to identify high technology and new emerging industries, new industries in the Sound Recording industry group and the Broadcasting and Telecommunications subsector have been identified. The classifications are homogeneous and account for most of the activities that define them. In addition, they are economically significant.

Section B—Annex: United States National Industry Detail

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the NAICS industry sector presented in Part VIII, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the NAICS industry sector covered in Part VIII of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX	Publishing			
XXX	Newspaper, Periodical, Book and Database Publishing:			
XXXX	Newspaper Publishing	E	2711	Newspapers: Publishing, or Publishing and Printing.
XXXX	Periodical Publishing	E	2721	Periodicals: Publishing, or Publishing and Printing.
XXXX	Book Publishing	E	2731	Books: Publishing, or Publishing and Printing.
XXXX	Database Publishing	N	*2741	Miscellaneous Publishing (database publishers).
XXXX	Other Publishing:			
XXXXX	Greeting Card Publishing	R	*2771	Greeting Cards.
XXXXX	All Other Publishing	R	*2741	Miscellaneous Publishing (except database publishing).
XXX	Software Publishing:			
XXXX	Software Publishing	R	*7372	Prepackaged Software.
XX	Motion Picture and Sound Recording:			
XXX	Motion Picture and Video Industries:			
XXXX	Motion Picture and Video Production	E	7812	Motion Picture and Video Tape Production.
XXXX	Motion Picture and Video Distribution	E	*7822	Motion Picture and Video Tape Distribution (except video tape and cassette wholesalers).
XXXX	Teleproduction and Other Post-Production Services.	N	*7819	Services Allied to Motion Picture Production (teleproduction and post-production services).
XXXX	Motion Picture and Video Exhibition:			
XXXXX	Motion Picture Theaters, except Drive-Ins	E	7832	Motion Picture Theaters, Except Drive-In.
XXXXX	Drive-In Motion Picture Theaters	E	7833	Drive-In Motion Picture Theaters.
XXXX	Other Motion Picture and Video Industries	N	*7819	Services Allied to Motion Picture Production (except casting bureaus, wardrobe and equipment rental, talent payment services, teleproduction and other post-production services).
			7829	Services Allied to Motion Picture Distribution.
XXX	Sound Recording Industries:			
XXXX	Record Production Companies	N	*6794	Patent Owners and Lessors (music royalties, sheet and record).
XXXX	Integrated Record Companies	N	*3652	Phonograph Records and Prerecorded Audio Tapes and Disks (integrated record companies, except duplication only).
XXXX	Music Publishing	N	*6794	Patent Owners and Lessors (music publishing).
XXXX	Sound Recording Studios	N	*7389	Business Services, NEC (recording studios).
XXXX	Other Sound Recording Industries	N	*7389	Business Services, NEC (audio taping services).
			*7922	Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services (producers of radio programs).
XX	Broadcasting and Telecommunications:			
XXX	Radio and Television Broadcasting:			
XXXX	Radio Broadcasting:			
XXXXX	Radio Networks	N	*4832	Radio Broadcasting Stations (networks).
XXXXX	Radio Stations	N	*4832	Radio Broadcasting Stations (except networks).
XXXX	Television Broadcasting	E	4833	Television Broadcasting Stations.
XXX	Cable Networks and Program Distribution:			
XXXX	Cable Networks	N	*4841	Cable and Other Pay Television Services (cable networks).
XXXX	Cable and Program Distribution	N	*4841	Cable and Other Pay Television Services (except cable networks).
XXX	Telecommunications:			
XXXX	Wired Telecommunications Carriers	N	*4813	Telephone Communications, Except Radiotelephone (except resellers).
			4822	Telegraph and Other Message Communications.
XXXX	Wireless Telecommunications Carriers, Except Satellite:			
XXXXX	Paging	N	*4812	Radiotelephone Communications (paging carriers).
XXXXX	Cellular and Other Wireless Telecommunications.	N	*4812	Radiotelephone Communications (cellular carriers).
			*4899	Communications Services, NEC (radio dispatch).
XXXX	Telecommunications Resellers	N	*4812	Radiotelephone Communications (paging and cellular resellers).
			*4813	Telephone Communications, Except Radiotelephone (resellers).
XXXX	Satellite Telecommunications	N	*4899	Communications Services, NEC (Satellite communications).
XXXX	Other Telecommunications	N	*4899	Communications Services, NEC (except radio dispatch, satellite communications).
XX	Information Services and Data and Transaction Processing:			
XXX	Information Services:			
XXXX	News Syndicates	E	7383	News Syndicates.
XXXX	Libraries and Archives	E	8231	Libraries.
XXXX	Other Information Services:			
XXXXX	On-Line Information Services	E	7375	Information Retrieval Services.

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XXXXX	All Other Information Services	N	*8999	Services, NEC (miscellaneous information providers).
XXX	Data and Transaction Processing:			
XXXX	Data and Transaction Processing	E	7374	Computer Processing and Data Preparation and Processing Services.

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
2711	Newspapers: Publishing, or Publishing and Printing.	Newspaper Publishing.
2721	Periodicals: Publishing, or Publishing and Printing	Periodical Publishing.
2731	Books: Publishing, or Publishing and Printing	Book Publishing.
2741@	Miscellaneous Publishing:	
	Database Publishing	Database Publishing.
	Miscellaneous Publishing, Except Database	All Other Publishing.
2771	Greeting Cards	Greeting Card Publishing.
4812@	Radiotelephone Communications:	
	Paging Carriers	Paging.
	Cellular Carriers	Cellular and Other Wireless Telecommunications
	Paging and Cellular Resellers	Telecommunications Resellers (pt.).
4813@	Telephone Communications, Except Radiotelephone:	
	Except Resellers	Wired Telecommunications Carriers (pt.).
	Resellers	Telecommunications Resellers (pt.).
4822@	Telegraph and Other Message Communications	Wired Telecommunications Carriers (pt.).
4832	Radio Broadcasting Stations:	
	Networks	Radio Networks.
	Stations	Radio Stations.
4833	Television Broadcasting Stations	Television Broadcasting.
4841	Cable and Other Pay Television Services:	
	Cable Networks	Cable Networks.
	Except Cable Networks	Cable and Program Distribution.
4899	Communications Services, Not Elsewhere Classified:	
	Radio Dispatch	Cellular and Other Wireless Telecommunications (pt.).
	Satellite Communications	Satellite Telecommunications.
	Except Radio Dispatch and Satellite	Other Telecommunications.
7372	Prepackaged Software:	
	Software Publishing	Software Publishing.
	Reproduction of Software	Reproduction of Software.
7374	Computer Processing and Data Preparation and Processing Services.	Data and Transaction Processing.
7375	Information Retrieval Services	On-Line Information Services.
7383	News Syndicates	New Syndicates.
7389	Business Services, Not Elsewhere Classified:	
	Sound Recording Studios	Sound Recording Studios.
	Audio Taping Services	Other Sound Recording Industries (pt.).
7812	Motion Picture and Video Tape Production	Motion Picture and Video Production.
7819	Services Allied to Motion Picture Production:	
	Teleproduction and Post-Production Services	Teleproduction and Other Post-Production Services.
	Casting Bureaus	Employment Agencies (pt.) (Included in Management, Employment, Administrative and Support Services subsector).
	Wardrobe Rental (Motion Pictures)	Rental and Leasing of Formal Wear and Costumes (pt.) (Included in Rental and Leasing subsector).
	Rental of Motion Picture Equipment	Rental and Leasing of Machinery and Equipment (pt.) (Included in Rental and Leasing subsector).
	Talent Payment Services	Payroll Services (Included in Professional Scientific and Technical Services subsector).
	Except Casting Bureaus, Wardrobe and Equipment Rental, Teleproduction and Other Post-Production Services.	Other Motion Picture and Video Services (pt.).
7822	Motion Picture and Video Tape Distribution:	
	Distribution, Except Video Tape and Cassette Wholesalers.	Motion Picture and Video Distribution.
	Video Tape and Cassette Wholesalers	(Included in Wholesale Trade Sector).
7829	Services Allied to Motion Picture Distribution	Other Motion Picture and Video Services (pt.).

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
7832	Motion Picture Theaters, Except Drive-Ins	Motion Picture Theaters, Except Drive-In.
7833	Drive-In Motion Picture Theaters	Drive-In Motion Picture Theaters.
7922@	Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services:	
	Producers of Radio Programs:	Other Sound Recording Industries (pt.).
8231	Libraries	Libraries and Archives.
6794@	Patent Owners and Lessors:	
	Record Production Companies	Record Production Companies.
	Music Publishing	Music Publishing.
3652@	Phonograph Records and Prerecorded Audio Tapes and Disk.	
	Integrated Record Companies, Except Duplication Only.	Integrated Record Companies.
8999@	Services, Not Elsewhere Classified.	
	Miscellaneous Information Providers	All Other Information Services.

The abbreviation "pt." means "part of". @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.
Note: Detail for SIC's 7389, 7922, 6794, 3652 and 8999 only represent those parts applicable to the Information Sector.

Description of Changes to the U.S. System

1. One new industry was created in the Publishing subsector.

Database Publishing was created from part of 1987 SIC 2741, Miscellaneous Publishing. It was established because of the growth of this type of publishing and is supported by the production process.

All Other Publishing was revised from part of 1987 SIC 2741, Miscellaneous Publishing, by the removal of database publishing.

Software Publishing was created from part of 1987 SIC 7372 Prepackaged Software. Reproduction of software only is included in the Computer and Electronic Component Manufacturing subsector.

Four of the five 1987 publishing industries remained largely unchanged and time series will not be significantly affected.

2. Seven new industries were created in the Motion Picture and Sound Recording subsector. The Teleproduction and Other Post-Production Services industry was created from part of 1987 SIC 7819, Services Allied to Motion Picture Production, based upon a request by the industry and is supported by production based principles.

Other Motion Picture and Video Industries was created from part of 1987 SIC 7819, Services Allied to Motion Picture Production, and 1987 SIC 7829, Services Allied to Motion Picture Distribution, to form a residual industry containing establishments that provide specialized services in support of the motion picture production and distribution industries.

The Record Production Companies industry was created from part of 1987 SIC 6794, Patent Owners and Lessors. This industry was created to include establishments that perform a specialized role in searching out and contracting musical artists. This industry is supported by the production process.

The Integrated Record Companies industry was created from part of 1987 SIC 3652, Phonograph Records and Prerecorded Audio Tapes and Disks. This industry was established to include establishments that reproduce and distribute musical recordings. This industry is supported by the production process.

The Music Publishing industry was created from part of 1987 SIC 6794, Patent Owners and Lessors, to recognize the specialized role it has in promoting the use of musical works in recordings, film, television, and other media. Music publishers are primarily engaged in owning the copyright of musical compositions, and administering the exploitation of the bundle of rights that flow from the ownership of this copyright. The industry is supported by production based principles.

The Sound Recording Studios industry was created from part of 1987 SIC 7389, Business Services, Not Elsewhere Classified. This industry was established to include establishments that perform a specialized role in providing facilities and expertise in recording performances, and is supported by production based principles.

Other Sound Recording Services was created from part of 1987 SIC 7922, Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services, and part of 1987 SIC 7389, Business Services, NEC. This industry was created as a residual to include establishments that provide specialized audio and sound related services. It is supported by production based principles.

3. There are 11 new industries in the Broadcasting and Telecommunications subsector. These were published in the **Federal Register** on July 26, 1995. Please refer to page 38448 for details.

4. There is one new industry in the Information Services and Data and Transaction Processing subsector. The All Other Information Services industry was created to include a variety of information service related establishments not included in other industries in this sector. While this class is expected to be very small at the present time, it represents a residual industry that may contain new types of establishments in the future as more advanced information technologies emerge and grow. The U.S. national On-Line Information Services industry (1987 SIC 7375, Information Retrieval Services) includes establishments that provide access to, and distribution of, information that has been stored electronically for retrieval.

Part IX—Proposed New Industry Structure for Wood Product Manufacturing, Except Furniture

Section A—NAICS Structure

North American Industry Classification System
(NAICS)
Agreement Number 19

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following subsector:

Wood Product Manufacturing, Except Furniture

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on September 27, 1995–September 29, 1995 in Mexico City, Mexico.

Accepted	Signature	Date
Canada	/S/ Jacob Ryten	9/29/95
Mexico	/S/ Enrique Ordaz.	9/29/95
United States	/S/ Jack E. Triplett.	9/29/95

Attachment 1—NAICS Structure

XX Wood Product Manufacturing, Except Furniture
XXX Sawmill Product and Wood Preservation Manufacturing
XXXX Sawmill Product and Wood Preservation Manufacturing
XXX Laminated Wood Product Manufacturing
XXXX Laminated Wood Product Manufacturing
XXX Other Wood Product Manufacturing
XXXX Wood Construction Product Manufacturing
XXXX Wood Container and Package Product Manufacturing
XXXX All Other Wood Product Manufacturing

Attachment 2—North American Industry Classification System

Draft Classification for:

Wood Product Manufacturing, Except Furniture

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industry classification for these industries.

The draft classification provides for the subsector Wood Product Manufacturing, Except Furniture. This subsector is further subdivided into three industry groups and five industries.

A General Outline

The Wood Product Manufacturing, Except Furniture industries produce wood products such as lumber, hardwood and softwood plywood and veneers, wood containers, wood flooring and trusses, mobile homes, and prefabricated wood buildings.

The production processes of the Wood Product Manufacturing, Except Furniture industries include sawing, planing, shaping, laminating and sometimes assembly of wood, starting from logs that are cut into bolts, planks, or boards that then may be further cut, or shaped by lathes or other shaping tools. The boards or other shapes also may be subsequently planed or smoothed, and assembled into finished products such as wooden containers.

The Sawmill Product and Wood Preservation Manufacturing industries include establishments whose production process begins with wooden logs that are then transformed into boards, poles, ties, and beams. Establishments that process wood to prevent rotting by impregnation with creosote or other chemical compounds also are included in this industry group.

The Laminated Wood Product Manufacturing industries include establishments that produce hardwood and softwood plywood, particle board, oriented strand board, and glue laminated wood products, including plywood covered with other materials such as plastic and metals. Plywood and particle board products that are included in this industry group are generally produced by a process involving high-pressure compression and through the use of glues either in combination or separately.

There are three NAICS industries in the Other Wood Product Manufacturing industry group. The Wood Construction Product Manufacturing industry includes establishments that manufacture doors, windows, closets, wall coverings, parquet flooring, staves, partitions, and general products for woodwork. Excluded from this industry is the manufacture of wooden houses and furniture.

Establishments in the Wood Container and Package Product Manufacturing industries manufacture products for packing and packaging, such as pallets, barrels, casks, crates, vats, containers, jewelry boxes, and decorative and ornamental boxes.

Finally, establishments in the All Other Wood Product Manufacturing industries produce cork and cork products, manufactured wooden houses, plaiting materials, such as wicker, reeds, etc., turned items, etc.

Limitations and Constraints of the Classification

Developing an industry classification for Wood Product Manufacturing, Except Furniture industries was difficult for the three countries. First, the wood industry in Mexico is small and relatively unspecialized. Therefore the NAICS industries are quite aggregated to ensure that information can be published in all three countries. For example, in Mexico the treatment and preservation of wood generally takes place at sawmills as part of the production of poles and ties. There are few establishments where it is the primary activity. Therefore, NAICS combines these activities into one industry.

Another factor that limited the formulation of classes in this subsector are differences in climate among the three countries. The climate has led to higher levels of development and specialization in the wood industry in the United States and Canada, particularly with regard to construction and construction materials. Mexico does not grow hardwood trees. Each country may, however, publish additional national industries that comprise subdivisions of NAICS industries to present data for activities that are nationally significant.

Relationship to ISIC

Most four-digit NAICS industries in this subsector are contained within Division 20, Manufacture of Wood Products, of the current International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) of the United Nations. The following NAICS industry cannot be assigned to an ISIC Division: All Other Wood Product Manufacturing. This industry includes the manufacture of wooden heels that are classified in ISIC Division 19, Manufacture of Leather, Leather Products, and Footwear. However, this is a very small activity and should not significantly affect the comparability between this NAICS subsector and ISIC Division 20.

Changes to the National Classifications

The changes to the current national classifications were varied in nature. In some cases, changes applied to all three countries while in others the changes affected only one or two of the countries.

For Canada, the major structural change entailed moving the production of building board (CSIC 2714) to the Wood Product Manufacturing, Except Furniture subsector both to achieve international comparability and to better meet the production process principle. CSIC 2542, Kitchen Cabinet and Bathroom Vanities, was moved from the Canadian Wood major group to better adhere to the production process, and ultimately to achieve three country

comparability. In addition, sawmills were redefined to exclude wood and wood products made from purchased lumber. Wooden coffins were moved from this subsector to Miscellaneous Manufacturing because establishments tend to make this product from plastic and metal as well as wood. Other structural changes for Canada, such as the movement of the manufacture of wooden cigar cases and jewelry boxes, wooden boot and shoe heels, billboards, and other wooden signs and cork gaskets, etc. are minor.

For Mexico, the major change is the movement of wood furniture from CMAP Subsector, Wood and Wood Products, Including Furniture, to the new NAICS Furniture Manufacturing subsector. In the current Mexican structure, the manufacture of furniture is classified in groups allocated to the type of input material, that is, wood, metal, plastic, etc. Furniture is more and more being made of multiple materials and design is an important component of its production process. Thus, a separate NAICS subsector was created for the manufacture of furniture from all types of material.

For the United States, the major change is the movement of 1987 SIC 2411, Logging, from the Lumber and Wood Products, Except Furniture major group to the Forestry and Logging subsector. The move was made to better meet production principles, and to match Canada's and Mexico's classification of this activity. Another important structural change was to move the manufacture of 1987 SIC 2434, Wood Kitchen Cabinets, from this group to the NAICS Furniture Manufacturing subsector for production principles. The manufacture of wooden chair frames was also moved from here to the Furniture Manufacturing subsector to reach international comparability. Other structural changes include the movement of cork gaskets, wood heels, wood signs, and burnt wood articles to this group from various other manufacturing subsectors.

Achievement of Objectives

The classification meets the objectives for the North American Industry Classification System (NAICS). It includes industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. The hierarchical structure of the classification also follows the production concept.

The industries have high specialization ratios, and they are economically significant. The NAICS industries are large aggregations, but this was necessitated by the considerations discussed above under Limitations and Constraints of the Classification. The classification is suitable for sampling, data-publishing, and other aspects of survey operations. Finally, while disruptions to time series exist, they are not generally significant. The statistical agencies can develop statistical "links," to enable the re-tabulation of time series on the NAICS classification structure.

The classification achieves comparability for the three participating countries. Based on existing data, all three countries expect to be able to publish data regularly at the industry (4-digit) level of the structure. All countries agree on the detailed definitions of the industries.

Section B—Annex: United States National Industry Detail

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the NAICS industry subsector presented in Part IX, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the NAICS industry subsector covered in Part IX of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX	Wood Product Manufacturing, Except Furniture:			
XXX	Sawmill Product and Wood Preservation Manufacturing:			
XXXX	Sawmill Product and Wood Preservation Manufacturing:			
XXXXX	Sawmills and Planing Mills	R	2421	Sawmills and Planing Mills, General.
			2429	Special Product Sawmills, NEC.
XXXXX	Wood Preserving	E	2491	Wood Preserving.
XXX	Laminated Wood Product Manufacturing:			
XXXX	Laminated Wood Product Manufacturing:			
XXXXX	Hardwood Veneer and Plywood Manufacturing.	E	2435	Hardwood Veneer and Plywood.
XXXXX	Softwood Veneer and Plywood Manufacturing.	E	2436	Softwood Veneer and Plywood.
XXXXX	Structural Wood Member Manufacturing, Except Trusses.	R	*2439	Structural Wood Members, NEC (except trusses).
XXXXX	Reconstituted Wood Product Manufacturing	E	2493	Reconstituted Wood Products.
XXX	Other Wood Product Manufacturing:			
XXXX	Wood Construction Product Manufacturing:			
XXXXX	Hardwood Dimension Mills	R	*2426	Hardwood Dimension and Flooring Mills (except flooring)
XXXXX	Wood Window and Door Manufacturing	N	*2431	Millwork.
XXXXX	Other Millwork Manufacturing, Including Flooring.	R	*2426	Hardwood Dimension and Flooring Mills (hardwood flooring).
			*2431	Millwork.
XXXXX	Truss Manufacturing	N	*2439	Structural Wood Members, NEC (trusses).

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XXXX ...	Wood Container and Package Product Manufacturing.			
XXXXX	Wood Container and Package Product Manufacturing.	N	2441	Nailed and Lock Corner Wood Boxes and Shook.
			2448	Wood Pallets and Skids.
			2449	Wood Containers, NEC.
			*2499	Wood Products, NEC (wood tubs and vats, jewelry and cigar boxes).
XXXX ...	All Other Wood Product Manufacturing:			
XXXXX	Manufactured Homes (Mobile) Manufacturing.	E	2451	Mobile Homes.
XXXXX	Prefabricated Wood Building and Component Manufacturing.	E	2452	Prefabricated Wood Buildings and Components.
XXXXX	Other Wood Product Manufacturing	R	*2426	Hardwood Dimension and Flooring Mills (wood stock and turnings).
			*2499	Wood Products, NEC (other wood products).
			*3053	Gaskets, Packing, and Sealing Devices (cork gaskets, packaging, and sealing devices).
			*3131	Boot and Shoe Cut Stock and Findings (wood heels).
			*3993	Signs and Advertising Specialties (wood signs).

The definitions of status are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
2411	Logging	Logging Operations (Included in Support Activities for Forestry subsector).
2421@	Sawmills and Planing Mills, General	Sawmills and Planing Mills (pt).
2426@	Hardwood Dimension and Flooring Mills:	
	Hardwood Flooring	Millwork Manufacturing, Including Flooring (pt)
	Wood Stock and Turnings	Other Wood Product Manufacturing (pt).
	Office Chair Frames	Wood Office Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).
	Chair Frames for Nonupholstered Furniture (Household).	Wood Household Furniture Manufacturing, Except Upholstered (pt) (Included in Furniture Manufacturing subsector).
	Chair Frames for Upholstered Furniture (Household).	Upholstered Wood Household Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).
	Other Hardwood Dimension Except Flooring	Hardwood Dimension Mills.
2429@	Special Product Sawmills NEC	Sawmills and Planing Mills (pt).
2431@	Millwork:	
	Wood Window and Door Manufacturing	Other Millwork Manufacturing, Including Flooring (pt).
2434	Wood Kitchen Cabinets	Wood Kitchen Cabinet Manufacturing (Included in Furniture Manufacturing subsector).
2435	Hardwood Veneer and Plywood	Hardwood Veneer and Plywood Manufacturing
2436	Softwood Veneer and Plywood	Softwood Veneer and Plywood Manufacturing
2439@	Structural Wood Members, NEC:	
	Except Trusses	Structural Wood Member Manufacturing, Except Trusses.
	Trusses	Truss Manufacturing.
2441	Nailed and Lock Corner Wood Boxes and Shook	Wood Containers and Package Product Manufacturing (pt).
2448	Wood Pallets and Skids	Wood Containers and Package Product Manufacturing (pt).
2449	Wood Containers, NEC	Wood Containers and Package Product Manufacturing (pt).
2451	Mobile Homes	Manufactured Homes, (Mobile Manufacturing
2452	Prefabricated Wood Buildings and Components	Prefabricated Wood Building and Component Manufacturing.
2491	Wood Preserving	Wood Preserving.
2493	Reconstituted Wood Products	Reconstituted Wood Product Manufacturing.
2499	Wood Products, NEC:	
	Wood Tubs and Vats, Jewelry and Cigar Boxes	Other Wood Container Manufacturing (pt).
	Wood Laundry Hampers	Household Wood Furniture Manufacturing, Except Upholstered (pt) (Included in Furniture Manufacturing subsector).
	Laundry Hampers Made from Rattan, Reed or Willow Mirror and Picture Frames.	Other Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector) All Other Miscellaneous Manufacturing (pt) (To Be Included in Miscellaneous Manufacturing subsector).
	Other Wood Products	Other Wood Product Manufacturing (pt).
3053@	Gaskets, Packing, and Sealing Devices:	
	Cork Gaskets, Packing, and Sealing Devices	Other Wood Product Manufacturing (pt).

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
	Metal Gaskets, Packing, and Sealing Devices ...	Other Miscellaneous Fabricated Metal Product Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Plastics Gaskets, Packing, and Sealing Devices	All Other Plastic Product Manufacturing (pt) (Included in Rubber and Plastic Product Manufacturing subsector).
	Rubber Gaskets, Packing, and Sealing Devices	All Other Rubber Product Manufacturing (pt) (Included in Rubber and Plastic Product Manufacturing subsector).
3131@	Boot and Shoe Cut Stock and Findings:	
	Wood Heels	Other Wood Product Manufacturing (pt).
	Metal Buckles	Fastener, Button, Needle, and Pin Manufacturing (pt) (To be Included in Miscellaneous Manufacturing subsector).
	Other Footwear Cut Stock	Miscellaneous Leather and Allied Product Manufacturing (pt) (Included in Leather and Allied Product Manufacturing subsector).
3993@	Signs and Advertising Specialties:	
	Wood Signs	Other Wood Product Manufacturing (pt).
	Electric Signs	Electric Sign Manufacturing (Included in Electrical Equipment, Appliance, and Component Manufacturing subsector).
	Metal Signs	All Other Fabricated Metal Product Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Flexographic Printing of Advertising Specialties	Commercial Flexographic Printing (pt) (Included in Printing and Related Support Activities subsector).
	Gravure Printing of Advertising Specialties	Commercial Gravure Printing (pt) (Included in Printing and Related Support Activities subsector).
	Lithographic Printing of Advertising Specialties	Commercial Lithographic Printing (pt) (Included in Printing and Related Support Activities subsector).
	Screen Printing of Advertising Specialties	Commercial Screen Printing (pt) (Included in Printing and Related Support Activities subsector).
	Other Printing of Advertising Specialties	Other Commercial Printing (pt) (Included in Printing and Related Support Activities subsector).
3999	Manufacturing Industries, NEC:	
	Burnt Wood Articles	Other Wood Product Manufacturing (pt).
	Beauty and Barber Chairs	Metal Office and Public Building Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).
	Fur Bleaching, Currying, Scraping, Tanning and Dyeing.	Leather and Hide Tanning and Finishing Manufacturing (pt) (Included in Leather and Allied Product Manufacturing subsector).
	Lamp Shades of Paper and Textile	Other Lighting Equipment Manufacturing (pt) (Included in Electrical Equipment, Appliance, and Component Manufacturing subsector).
	Matches	Other Miscellaneous Chemical Product Manufacturing (pt) (Included in Chemical Product Manufacturing subsector).
	Metal Products, Such As Combs, Hair Curlers, Etc..	All Other Fabricated Metal Product Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Plastics Products, Such As Combs, Hair Curlers, Etc..	All Other Plastic Product Manufacturing (pt) (Included in Rubber and Plastic Product Manufacturing subsector).
	Flexographic Printing Eyeglass Frames for the Trade.	Commercial Flexographic Printing (pt) (Included in Printing and Related Support Activities subsector).
	Gravure Printing Eyeglass Frames for the Trade	Commercial Gravure Printing (pt) (Included in Printing and Related Support Activities subsector).
	Lithographic Printing Eyeglass Frames for the Trade.	Commercial Lithographic Printing (pt) (Included in Printing and Related Support Activities subsector).
	Screen Printing Eyeglass Frames for the Trade	Commercial Screen Printing (pt) (Included in Printing and Related Support Activities subsector).
	Other Printing Eyeglass Frames for the Trade ...	Other Commercial Printing (pt) (Included in Printing and Related Support Activities subsector).
	Tape Measures	Hand and Edge Tool Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Other	All Other Miscellaneous Manufacturing (pt) (To Be Included in Miscellaneous Manufacturing subsector).

The abbreviation "pt." means "part of", @ means time series break has been created that is greater than 3% of the 1992 value of shipments for the 1987 SIC industry. The abbrevision NEC is used for Not Elsewhere Classified.

Description of Changes to the U.S. System

A number of changes listed in this section were made for reasons of international comparability. Where one or more of the three North American countries had different definitions of an industry classification, adjustments to the definitions in one or more countries were required. In constructing NAICS, the three countries agreed to move, where change was required to attain

international comparability, in the direction of the country or countries whose existing classification definitions most closely corresponded to the production-oriented concept adopted for NAICS. Cases where the U.S. changed are listed below; other cases where Canada or Mexico moved toward the U.S. classification are not, of course, listed in this section.

Two new industries were added to the 1997 industry structure for this industry subsector. Truss Manufacturing was created from part of 1987 SIC 2439, Structural Wood Members, NEC. This change was in response to an industry proposal and also groups similar production processes together.

Wood Window and Door Manufacturing was created from part of 1987 SIC 2431, Millwork. The change was in response to an industry proposal, and conforms to production concepts.

Two complete industries were transferred out of 1987 Major Group 24, Lumber and Wood Products.

1987 SIC 2411, Logging, was transferred into the Support Activities for Forestry subsector. This change was necessary to align the U.S. classification with Canada and Mexico, and because logging is not a production process that is similar to the manufacture of wood products from logs.

1987 SIC 2484, Wood Kitchen Cabinets, was transferred into the Furniture Manufacturing subsector. This change reflects production processes that are essentially identical with those for furniture.

Three activities were transferred out of 1987 Major Group Lumber and Wood Products.

Wood chair frames and wood chair seats were transferred from 1987 SIC 2426, Hardwood Dimension and Flooring Mills, to (1) Wood Office Furniture Manufacturing, (2) Wood Household Furniture Manufacturing, and (3) Upholstered Wood Household Furniture Manufacturing. This change was necessary to align the U.S. classification with Canada and Mexico.

Laundry hampers were transferred from 1987 SIC 2499, Wood Products, NEC, and placed by component material in their respective industries within the Furniture Manufacturing subsector. This change was necessary to align the U.S. classification with Canada and Mexico.

Mirror and picture frames were transferred 1987 SIC 2499, Wood Products, NEC, into the All Other Miscellaneous Manufacturing subsector This change promotes international comparability with Canada and reflects similar production functions regardless of material.

Four activities were transferred into the Wood Product Manufacturing, Except Furniture subsector.

Cork gaskets were transferred 1987 SIC 3053, Gaskets, Packing and Sealing Devices, into Other Wood Product Manufacturing. This change promotes international comparability with Mexico, and reflects similar production functions regardless of material.

Wood heels were transferred from 1987 SIC 3131, Boot and Shoe Cut Stock and Findings, into Other Wood Product Manufacturing. This change promotes international comparability with Mexico, while reflecting similar production functions.

Wood signs were transferred from 1987 SIC 3993, Signs and Advertising Specialities, into Other Wood Product Manufacturing. This change promotes international comparability with Mexico, while reflecting similar production functions.

Burnt wood articles were transferred from 1987 SIC 3999, Manufacturing Industries, NEC, into Other Wood Product Manufacturing. This change was necessary to align the U.S. classification with Canada and Mexico.

Also several activities were transferred within the Lumber and Wood Products Major Group. The number of industries decreased from 17 in 1987 to 14 in 1997. For time series linkage 11 of the 17 1987 industries are comparable within the three percent of the 1997 industries.

Part X—Proposed New Industry Structure for Rental and Leasing

Section A—NAICS Structure

North American Industry Classification System
(NAICS)
Agreement Number 20

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industries:

Rental and Leasing

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on November 8 and November 9, 1995 in Washington, D.C.

Accepted	Signature	Date
Canada	/S/ Jacob Ryten	11/9/95
Mexico	/S/ Enrique Ordaz.	11/9/95
United States	/S/ Triplett Jack E..	11/9/95

Attachment 1—NAICS Structure

XX Rental and Leasing Services
XXX Rental and Leasing of Automotive Equipment Without Drivers
XXXX Rental and Leasing of Passenger Cars Without Drivers
XXXX Rental and Leasing of Trucks Without Drivers, Utility Trailers, and Recreation Vehicles
XXX Rental and Leasing of Consumer Goods
XXXX Rental of Consumer Electronics, Appliances and Home and Garden Tools
XXXX Rental of Formal Wear and Costumes
XXXX Rental of Video Tapes
XXXX Other Rental and Leasing of Consumer Goods
XXX Rental and Leasing of Machinery and Equipment
XXXX Rental and Leasing of Heavy Construction, Transportation, Mining and Forestry Machinery and Equipment
XXXX Rental and Leasing of Office Machinery and Equipment
XXXX Rental and Leasing of Other Machinery and Equipment

Attachment 2—North American Industrial Classification System

Draft Classification for:
Rental and Leasing

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industry classification for these industries.

The draft classification provides for the subsector Rental and Leasing. This subsector is further subdivided into three industry groups and nine industries. The placement of this subsector within the NAICS structure is not yet decided.

A General Outline

The Rental and Leasing subsector includes establishments that acquire and own a wide variety of tangible goods, such as machinery, equipment, computers and consumer goods, and rent or lease these goods to customers, businesses or individuals in return for a periodic rental or lease payment.

The subsector includes two main types of establishments: those that provide rental of various consumer goods and equipment and those that provide longer term leases for

machinery and equipment generally used in business operations. The first type generally provide short-term rentals and operate from a retail-like facility. The latter type typically have direct contact with individual clients, work with the clients to determine their individual needs, and tailor the lease arrangement to those specific ends. They often restructure the lease to provide clients with more appropriate equipment as the clients' needs change and they have expertise in remarketing or disposing of previously leased equipment and typically do not operate a retail-like facility.

Rental and leasing activities are currently dispersed throughout the classification systems of the three countries. This grouping brings together those activities with similar production processes.

Establishments that act as a third party in providing financing or credit to enable the acquisition of the equipment through a lease arrangement, such as banks or credit subsidiaries of manufacturing companies, are excluded from this subsector. They are classified in the Finance and Insurance sector. Also excluded are those establishments primarily engaged in renting or leasing real property (land and buildings). They are classified in the Real Estate subsector. Those establishments that primarily engage in renting or leasing equipment with operators are classified in various subsectors of NAICS depending on the nature of the service provided (for example, Transportation or Construction). These activities are excluded from this subsector since the lessee is paying for the expertise and knowledge of the equipment operator, in addition to the rental of the equipment. In many cases, such as the rental of heavy construction equipment, the operator is essential to operate the equipment. Likewise, because the provision of crop harvesting services includes both the equipment and operator, it is included in the agriculture subsector. The rental or leasing of intangibles or intellectual property is, for the most part, classified in the following proposed subsectors or sectors: Information; Professional, Scientific and Technical Services; and Arts, Entertainment and Recreation. The choice of industry is based on the nature and origin of the intangible property being made available for rental or leasing.

This subsector is subdivided into three industry groups. Establishments primarily engaged in rental and leasing of passenger cars. trucks and utility trailers comprise one industry group. This reflects the increasingly common practice of leasing these types of equipment, particularly passenger cars. These establishments generally operate a retail-like facility, some offer only short term rental, others only longer term leases, and some provide both type of services.

The second industry group includes establishments primarily engaged in renting and leasing personal and household goods. Establishments classified in this industry group often operate from a retail like or storefront facility and normally offer rental and leasing of goods for relatively short periods of time.

The third industry group includes establishments primarily engaged in renting and leasing machinery and equipment. The types of establishments included in this industry group are generally involved in providing capital or investment type equipment that clients use in their business operations. These operations are typically characterized by a business to business relationship and do not generally involve a retail like facility or operation.

Limitations and Constraints of the Classification

The proposed classification structure does not provide for complete coverage of all rental and leasing activity. There are a number establishments engaged in rental, leasing and related activities included in other areas of the classification. The most important are establishments renting and leasing transportation equipment with operators, establishments providing financing for lease arrangements (Finance and Insurance sector) and those renting and leasing real estate (Real Estate subsector). In addition, the structure excludes the distribution arm of manufacturers that use leasing as an alternative means of distributing their parent company's products. These establishments' production processes are more like the sector to which they have been assigned than to the production process of establishments included in the Rental and Leasing subsector.

The categories in this subsector are based on production processes. Because of this it does not allow for the analysis of rental and leasing activities by market segment. Some of the industries in the proposed structure cater primarily to businesses and others cater primarily to households; many establishments cater to both businesses and households. Establishments renting passenger cars and those renting home and garden tools are perhaps the best examples.

Relationship to ISIC

Four of the nine proposed industries are contained within Division 71, Renting of Machinery and Equipment without Operator, of the current International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) of the United Nations. The following NAICS industry cannot be assigned to an ISIC division without being subdivided: Other Rental and Leasing of Consumer Goods industry that includes components of Division 71, Renting of Machinery and Equipment without Operator and of Personal and Household Goods and Division 92, Recreational, Cultural and Sporting Activities (rental of recreational equipment). However, these are small activities and should not significantly affect comparability between this NAICS subsector and ISIC Division 71. The remaining five proposed industries are contained within ISIC Division 71 and ISIC Division 65, Financial Intermediation, Except Insurance and Pension Funding (financial leasing). All establishments involved in direct leasing are classified in the Rental and Leasing subsector in NAICS regardless of the type of lease contract.

Changes to Notional Classifications

For Canada, the adoption of a Rental and Leasing subsector represents a significant departure from its current practice. Although the 1980 Canadian Standard Industrial Classification (CSIC) contains two industry groups for this type of activity, CSIC 991, Machinery and Equipment Rental and Leasing Services, and CSIC 992, Automobile and Truck Rental and Leasing Services, many rental and leasing activities are distributed throughout the classification. The proposed NAICS structure consolidates most rental and leasing activities here.

The most important structural change is the transfer to this subsector of the following activities: rental and leasing, without operators, of airplanes, ships and railway equipment from the transportation subsector (CSIC's 4522, 4532, 4544); rental and leasing of computer and related equipment from the computer services industry (CSIC 7721); and rental and leasing of a variety of recreational equipment from the Amusement and Recreational Services major group (CSIC 96). Since many of these activities are components of existing industries, there is a significant number of partial relationships between the proposed and existing classifications.

The content of existing rental and leasing industries has also been distributed among the proposed industries. For example, it is proposed to classify the rental and leasing of passenger automobiles and of trucks and recreational vehicles in different industries; these activities are currently classified in the same industry CSIC 9921, Automobile and Truck Rental and Leasing Services. Similarly, the major components of CSIC 9912, Rental and Leasing of Audiovisual Equipment (consumer electronics, home movies and audiovisual equipment for the trade), are assigned to three different NAICS industries.

For Mexico, this subsector includes 13 classes of CMAP; one of these classes is the equivalent of one NAICS industry; five CMAP classes make up four NAICS industries, and seven of the remaining CMAP classes are combined to create six NAICS industries. These final classes are not new but rather represent combinations of existing CMAP classes.

The rental and leasing subsector presents two important changes with respect to CMAP. The first is the reclassification of the services of buses rented without chauffeur that was classified in CMAP 711318, Scholastic Transportation Services and Tourism, and the rental of automobiles without chauffeur that was classified in CMAP 711319, Rental Services of Automobiles.

The second change refers to the separation of the CMAP 831121, Services of Television Rental, Sound Equipment, Videocassettes and Musical Instruments, that is divided into three parts: video rental centers and rental centers for appliances and electronics are in the same industry in NAICS, and the third part of the CMAP rental class, rental of musical instruments, has been combined with the rental of compact disks to create another NAICS industry.

For the United States, the proposed NAICS structure includes 1987 SIC Industry Group 751, Automotive Rental and Leasing, Without Drivers; 1987 SIC Industry Group 735, Miscellaneous Equipment Rental and Leasing; 1987 SIC 7377, Computer Rental and Leasing; 1987 SIC 7841, Video Tape Rental; 1987 SIC 4741, Rental of Railroad Cars; and components of other transportation, personal, motion picture, amusement service, and miscellaneous business credit institutions industries. These changes are designed to bring together establishments that primarily rent or lease a wide variety of machinery or goods to individuals or businesses. While in most of these cases, the whole 1987 industry group is moving to the new NAICS subsector, selected 1987 4-digit industries are split to better define rental and leasing activities. This is particularly true in the case of 1987 SIC 7359, Equipment Rental and Leasing, NEC, that has been substantially reduced in size by the redistribution of activities formerly classified there.

Achievement of Objectives

The proposed classification structure meets the objectives for the North American Industry Classification System (NAICS) in that it comprises industries that group establishments with similar production processes and achieves comparability for the three participating countries. The NAICS structure consolidates rental and leasing of equipment and goods in one subsector and provides a structure, as well as individual industries, that recognizes specialized segments within the subsector.

The industries are economically significant. Some NAICS industries are larger than others, but this was necessary to ensure comparability among the countries or because it was not possible to subdivide large industries.

Finally, disruptions to time series, while they exist, have been minimized to the extent possible. Most of the changes reflect the regrouping of diverse residual categories to create new industries that better define the activities.

Section B—Annex: United States National Industry Detail

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the NAICS industry subsector presented in Part X, Section A—Attachment I, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the NAICS industry subsector covered in Part X of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX	Rental and Leasing Services:			
XXX	Rental and Leasing of Automotive Equipment Without Drivers:			
XXXX ...	Rental and Leasing of Passenger Cars Without Drivers:			
XXXXX	Rental of Passenger Cars Without Drivers	E	7514	Passenger Car Rental.
XXXXX	Leasing of Passenger Cars Without Drivers	R	*6159	Miscellaneous Business Credit Institutions (fleet leasing).
			7515	Passenger Car Leasing.
XXXX ...	Rental and Leasing of Trucks Without Drivers, Utility Trailers and Recreational Vehicles.	N	*6159	Miscellaneous Business Credit Institutions (truck leasing).
			7513	Truck Rental and Leasing Without Drivers.
			7519	Utility Trailers and Recreational Vehicle Rental.
XXX	Rental and Leasing of Consumer Goods:			
XXXX ...	Rental of Consumer Electronics, Appliances and Home and Garden Tools:			
XXXXX	Rental of Consumer Electronics and Appliances.	N	*7359	Equipment Rental and Leasing, NEC (appliances, TV, VCR, and electronic equipment rental).
XXXXX	Rental and Leasing of Home and Garden Equipment.	N	*7359	Equipment Rental and Leasing, NEC (home and garden tool rental).

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XXXX ...	Rental of Formal Wear and Costumes	N	*7299	Miscellaneous Personal Services, NEC (costume, dress suit, and tuxedo rental).
			*7819	Services Allied to Motion Picture Production (wardrobe rental for motion picture film production).
XXXX ...	Rental of Video Tapes	E	7841	Video Tape Rental.
XXXX ...	Other Rental and Leasing of Consumer Goods:			
XXXXX	Rental and Leasing of Home Health Furniture and Equipment.	N	*7352	Medical Equipment Rental and Leasing (home health furniture and equipment rental and leasing).
XXXXX	Rental of Recreational Goods	N	*7999	Amusement and Recreation Services, NEC (canoe, pleasure boats, bicycles, motorcycles, moped, go carts, etc. rental).
XXXXX	All Other Rental and Leasing of Consumer Goods.	R	*7299	Miscellaneous Personal Services, NEC (locker rental, except cold storage).
			*7359	Equipment Rental and Leasing, NEC (except transportation equipment, industrial equipment, and consumer electronics, appliances and home and garden equipment).
XXX	Rental and Leasing of Machinery and Equipment:			
XXXX ...	Rental and Leasing of Heavy Construction, Transportation, Mining and Forestry Machinery and Equipment:			
XXXXX	Rental and Leasing of Commercial Air, Rail, and Water Transportation Equipment.	N	*4499	Water Transportation Services, NEC (ship rental, commercial).
			*4741	Rental of Railroad Cars (rental of railroad cars).
			*6159	Miscellaneous Business Credit Institutions (other heavy transportation equipment finance leasing, except automotive).
			*7359	Equipment Rental and Leasing, NEC (airplane rental and leasing).
XXXXX	Rental and Leasing of Heavy Construction, Mining and Forestry Machinery and Equipment.	R	*6159	Miscellaneous Business Credit Institutions (heavy machinery and equipment finance leasing).
			7353	Heavy Construction Equipment Rental and Leasing.
			*7359	Equipment Rental and Leasing, NEC (oil field and well drilling equipment).
XXXX ...	Rental and Leasing of Office Machinery and Equipment.	N	*6159	Miscellaneous Business Credit Institutions (office equipment).
			*7359	Equipment Rental and Leasing (office machine rental and leasing).
			7377	Computer Rental and Leasing.
XXXX ...	Rental and Leasing of Other Machinery and Equipment.	N	*6159	Miscellaneous Business Credit Institutions (other).
			*7352	Medical Equipment Rental and Leasing (except invalid supplies and home health furniture and equipment).
			*7359	Equipment Rental and Leasing, NEC (industrial truck and equipment rental and leasing).
			*7819	Services Allied to Motion Picture Production (motion picture equipment rental).
			*7922	Theatrical Producers (except motion picture) and Miscellaneous Theatrical Services (theatrical equipment rental).

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
4499	Water Transportation Services, NEC Ship Rental, Commercial.	Rental and Leasing of Commercial Air, Rail, and Water Transportation Equipment (pt).
4741@	Rental of Railroad Cars	Rental and Leasing of Commercial Air, Rail, and Water Transportation Equipment (pt).
6159@	Miscellaneous Business Credit Institution:	
	Automobile Fleet Finance Leasing	Leasing of Passenger Cars Without Drivers (pt).
	Truck Finance Leasing	Rental and Leasing of Trucks Without Drivers, Utility Trailers, and Recreational Vehicles (pt).
	Air, Rail, and Water Equipment Finance Leasing	Rental and Leasing of Commercial Air, Rail, and Water Transportation Equipment (pt).
	Heavy Machinery and Equipment Finance Leasing.	Rental and Leasing of Heavy Construction, Mining, and Forestry Machinery and Equipment (pt).

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
	Office Machinery and Equipment Finance Leasing.	Rental and Leasing of Office Machinery and Equipment (pt).
	Other Machinery and Equipment Finance Leasing.	Rental and Leasing of Other Machinery and Equipment (pt).
7299	Miscellaneous Personal Services:	
	Formal Wear and Costume Rental	Rental of Formal Wear and Costumes (pt).
	Locker Rental, Except Cold Storage	All Other Rental and Leasing of Consumer Goods (pt).
7352@	Medical Equipment Rental and Leasing:	
	Home Health Furniture and Equipment Rental and Leasing.	Rental and Leasing of Home Health Furniture and Equipment.
	Medical Machinery Rental and Leasing	Rental and Leasing of Other Machinery and Equipment (pt).
7353	Heavy Construction Equipment Rental and Leasing.	Rental and Leasing of Heavy Construction, Mining and Forestry Machinery and Equipment pt).
7359@	Equipment Rental and Leasing, NEC:	
	Consumer Electronics and Appliances Rental and Leasing.	Rental of Consumer Electronics and Appliances.
	Home and Garden Tools and Equipment Rental and Leasing.	Rental and Leasing of Home and Garden Equipment.
	Residential Furniture, Party Supplies, and All Other Miscellaneous.	All Other Rental and Leasing of Consumer Goods (pt).
	Consumer Goods Rental and Leasing:	
	Oilfield and Well Drilling Machinery and Equipment Rental and.	Rental and Leasing of Heavy Construction, Mining and Forestry Machinery and Equipment (pt).
	Airplane Rental and Leasing.	Rental and Leasing of Commercial Air, Rail, and Water Transportation Equipment (pt).
	Office Machinery and Equipment Rental and Leasing.	Rental and Leasing of Office Machinery and Equipment (pt).
	Industrial Trucks Rental and Leasing	Rental and Leasing of Other Machinery and Equipment (pt).
7377	Computer Rental and Leasing	Rental and Leasing of Office Machinery and Equipment (pt).
7513	Truck Rental and Leasing, Without Drivers	Rental and Leasing of Trucks Without Drivers, Utility Trailers and Recreational Vehicles (pt).
7514	Passenger Car Rental	Rental of Passenger Cars Without Drivers.
7515	Passenger Car Leasing	Leasing of Passenger Cars Without Drivers (pt).
7519	Utility Trailer and Recreational Vehicle Rental	Rental and Leasing of Trucks Without Drivers, Utility Trailers and Recreational Vehicles (pt).
7819	Services Allied to Motion Picture Production:	
	Wardrobe Rental for Motion Picture Film Production.	Rental of Formal Wear and Costumes (pt).
	Motion Picture Equipment Rental	Rental and Leasing of Other Machinery and Equipment (pt).
	Talent Payment Services	Payroll Services (pt) (Included in Professional, Technical, and Scientific Services subsector).
7841	Video Tape Rental	Rental of Video Tapes.
7922@	Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services.	Rental and Leasing of Other Machinery and Equipment (pt).
	Theatrical Equipment Rental	Rental and Leasing of Other Machinery and Equipment (pt).
7999@	Amusement and Recreation, NEC:	
	Recreational Goods Rental Including Pleasure Boats.	Rental of Recreational Goods (pt).

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

Description of Changes to the U.S. System

Rental and Leasing Services—Fourteen industries are included in this NAICS subsector. Nine of these are new industries; three are revised 1987 SIC industries; and two are industries that existed in 1987. The primary focus of this subsector is to bring together, in one subsector, those establishments that primarily rent or lease a wide variety of machinery or goods to individuals or businesses. This subsector is significantly shaped by the splitting apart and/or regrouping of activities of 1987 SIC Industry Group 735, Miscellaneous Equipment Rental and Leasing. Additionally, activities from other 1987 major groups are included here because of the similarity of their production processes and to better achieve comparability with Mexico and Canada. The following new industries were added for 1997:

Rental and Leasing of Trucks Without Drivers, Utility Trailers and Recreational Vehicles from 1987 SIC 7513, Truck Rental and Leasing Without Drivers; 1987 SIC 7519, Utility Trailers and Recreational Vehicles Rental; and part of 1987 SIC 6159, Miscellaneous Business Credit Institutions.

Rental of Consumer Electronics and Appliances from part of 1987 SIC 7359, Equipment Rental and Leasing, NEC.

Rental and Leasing of Home and Garden Equipment from part of 1987 SIC 7359, Equipment Rental and Leasing, NEC.

Rental of Formal Wear and Costumes from part of 1987 SIC 7299, Miscellaneous Personal Services, NEC, and part of SIC 7819, Services Allied to Motion Picture Production.

Rental and Leasing of Home Health Furniture and Equipment from part of 1987 SIC 7352, Medical Equipment Rental and Leasing.

Rental of Recreational Goods from part of 1987 SIC 7999, Amusement and Recreation Services, NEC.

Rental and Leasing of Commercial Air, Rail, and Water Transportation Equipment from part of 1987 SIC 4499, Water Transportation Services, NEC; part of 1987 SIC 4741, Rental of Railroad Cars; part of 1987 SIC 6159, Miscellaneous Business Credit Institutions; and part of 1987 SIC 7359, Equipment Rental and Leasing, NEC.

Rental and Leasing of Office Machinery and Equipment from part of 1987 SIC 6159, Miscellaneous Business Credit Institutions; 1987 SIC 7377, Computer Rental and Leasing; and part of 1987 SIC 7359, Equipment Rental and Leasing, NEC.

Rental and Leasing of Other Machinery and Equipment from part of 1987 SIC 6159, Miscellaneous Business Credit Institutions; part of 1987 SIC 7352, Medical Equipment Rental and Leasing; part of 1987 SIC 7359, Equipment Rental and Leasing, NEC; part of 1987 SIC 7819, Services Allied to Motion Picture Production; and part of 1987 SIC 7922, Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services

The following three 1997 industries were modified from their 1987 definitions:

Leasing of Passenger Cars Without Drivers from part of 1987 SIC 6159, Miscellaneous Business Credit Institutions and 1987 SIC 7515, Passengor Car Leasing.

All Other Rental and Leasing of Consumer Goods from part of 1987 SIC 7299, Miscellaneous Personal Services, NEC, and part of 1987 SIC 7359, Equipment Rental and Leasing, NEC. This industry brings together all miscellaneous rental and leasing of equipment and goods not specified in any of the other NAICS industries because of the similarity of production process among all of these activities

Rental and Leasing of Heavy Construction, Mining, and Forestry Machinery and Equipment from part of 1987 SIC 6159, Miscellaneous Business Credit Institutions; 1987 SIC 7353, Heavy Construction Equipment Rental and Leasing; and part of 1987 SIC 7359, Equipment Rental and leasing, NEC. This industry was modified for comparability with Canada and Mexico.

The number of rental and leasing industries increased from 10 in 1987 to 14 in 1997. For time series linkage, 6 of the 10 1987 industries are comparable within three percent of the 1997 industries. Most of the changes reflect the regrouping of diverse residual categories to create new industries that better define the activities. For example, new industries have been created from 1987 SIC 7359, Equipment Rental and Leasing, NEC; 1987 SIC 7299, Miscellaneous Personal Services, NEC; and 1987 SIC 7999, Amusement and Recreation Services, NEC. These new industries include, among others, Rental and Leasing of Heavy Construction, Transportation, Mining and Forestry Machinery and Equipment; Rental and Leasing of Office Machinery and Equipment; and Rental of Consumer Electronics and Appliances.

Part XI—Proposed New Industry Structure for Repair and Maintenance

Section A—NAICS Structure

North American Industry Classification System
(NAICS)
Agreement Number 21

This document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industries:

Repair and Maintenance

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on November 8 and November 9, 1995 in Washington, D.C.

Accepted	Signature	Date
Canada	/S/ Jacob Ryten	11/9/95
Mexico	/S/ Enrique Ordaz.	11/9/95
United States	/S/ Jack E. Triplett.	11/9/95

Attachment 1—NAICS Structure

XX Repair and Maintenance
XXX Automotive Repair and Maintenance
XXXX Automotive Mechanical and Electrical Repair and Maintenance
XXXX Automotive Body, Paint and Interior Repair
XXXX Other Automotive Repair and Maintenance
XXX Heavy and Industrial Machinery and Equipment Repair and Maintenance
XXXX Heavy and Industrial Machinery and Equipment Repair and Maintenance
XXX Electronic and Precision Equipment Repair and Maintenance
XXXX Electronic and Precision Equipment Repair and Maintenance
XXX Personal or Household Goods Repair and Maintenance
XXXX Home and Garden Equipment and Appliance Repair and Maintenance
XXXX Reupholstery and Furniture Repair
XXXX Footwear and Leather Goods Repair
XXXX Other Personal or Household Goods Repair and Maintenance

Attachment 2—North American Industrial Classification System

Draft Classification for:
Repair and Maintenance

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industry classification for these industries.

The draft classification provides for the subsector Repair and Maintenance. This subsector is further sub-divided into four industry groups and nine industries. The placement of this subsector within the NAICS structure has not yet been decided.

A General Outline

In the current classification systems of the three countries, repair and maintenance establishments are included in many different categories based on the type of item being repaired. Further, repair and maintenance industries are dispersed among many industry categories in ISIC. The NAICS structure brings together most types of repair and maintenance establishments and categorizes them based on production processes, that is, on the type of repair and maintenance activity performed, and the necessary skills, expertise and processes that are found in different repair and maintenance establishments.

Establishments included in the Repair and Maintenance subsector apply skill and knowledge to restoring machinery, equipment and other products to working order for customers. These establishments also typically perform general or routine maintenance on such products to ensure that they work efficiently and to prevent breakdown and unnecessary repairs.

This subsector includes four industry groups, each based on the type of repair and maintenance services provided and on the operating characteristics of the establishments classified in the component industries.

The Automotive Repair and Maintenance industry group includes establishments involved in the repair and maintenance of motor vehicles, both cars and trucks. Establishments

classified in the Automotive Mechanical and Electrical Repair and Maintenance industry employ mechanics with specialized technical skills to diagnose and repair the mechanical and electrical systems of motor vehicles. The Automotive Body, Paint and Interior Repair industry includes establishments with staff skilled in repairing or painting automotive exteriors, or in repairing interiors. The Other Automotive Repair and Maintenance industry includes establishments that provide a variety of automotive care services that help to maintain vehicles but that do not normally require the technical skill levels that establishments in the other industries possess.

The Heavy and Industrial Machinery and Equipment Repair and Maintenance industry group includes establishments that repair and maintain transportation equipment, except motor vehicles, and other heavy and industrial machinery and equipment.

The Electronic and Precision Equipment Repair and Maintenance industry group includes establishments that repair electronic equipment, such as computers and communications equipment, and other highly specialized precision instruments. These establishments typically have staff skilled in repairing items having complex, electronic components.

The last industry group, Personal or Household Goods Repair and Maintenance, includes establishments that repair a wide variety of goods, most of which are personal and household goods such as garden tools and home appliances.

The proposed subsector does not include all establishments that do repair and maintenance. For example, a substantial amount of repair is done by establishments that also manufacture machinery, equipment and other goods. These establishments are included in the Manufacturing sector in NAICS. Rebuilding of machinery and equipment for resale is considered manufacturing in NAICS and therefore not included in this subsector. In addition, repair of transportation equipment is often provided by or based at transportation facilities (airports, seaports) and these activities are included in the Transportation sector.

A particularly unique situation exists with repair of buildings. Plumbing, electrical installation and repair, painting and decorating and other construction-related establishments are often involved in performing installation or other work on new construction as well as providing repair services on existing structures. While some specialize in repair, it is difficult to distinguish between the two types and all have been included in the Construction sector.

This classification also does not delineate between repair services provided to businesses versus those that serve households. Although some industries primarily serve businesses and other households, separation by class of customer is limited by the fact that many establishments serve both businesses and households. Establishments repairing computers and consumer electronics products are two examples of such overlap.

Limitations and Constraints of the Classification

In the Repair and Maintenance subsector, most activities identified in one country exist in the others. The way activities are combined in establishments differs to some extent in the different countries. Therefore, the NAICS structure contains somewhat less detail than the existing classification systems of the three countries. The level of specialization for repair services varies significantly among the three countries and the NAICS levels reflect those for which common classes can be established. For example, there are a significant number of establishments in Mexico specializing in rebuilding automotive engines as a repair service, and these are located in this subsector. In the United States and Canada, owners of cars that need rebuilt engines typically buy a factory rebuilt engine that is installed at an automotive repair shop.

Relationship to ISIC

The approach adopted for NAICS, that of regrouping most repair activities in a single subsector, is significantly different from the approach employed in the current International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) of the United Nations. The most important difference is that ISIC classifies establishments primarily engaged in the repair of most types of machinery and equipment in the same industry as those manufacturing the equipment. For example, the repair of printing equipment is included in ISIC, 2929, Manufacture of Other Special Purpose Machinery. Repair activities can be found in twenty-seven manufacturing industries spanning seven 2-digit groups in ISIC. Repair activities also are found in ISIC Division 50, Sale, Maintenance and Repair of Motor Vehicles and Motorcycles, Retail Sales of Automotive Fuel; Division 52, Retail Trade, Except of Motor Vehicles and Motorcycles, Repair of Personal and Household Goods; and Division 72. Computer and Related Activities.

Largely as a result of the conceptual difference, four of the nine proposed NAICS industries relate to more than one 2-digit ISIC. These are: Heavy and Industrial Machinery & Equipment Repair and Maintenance (three 2-digit ISIC's); Electronic and Precision Equipment Repair and Maintenance (six 2-digit ISIC's); Home and Garden Equipment and Appliance Repair and Maintenance (four 2-digit ISIC's); and Other Personal or Household Goods Repair and Maintenance (seven 2-digit ISIC's).

Changes to National Classification

For Canada, the adoption of a Repair and Maintenance subsector represents a major departure from its current practice. The 1980 Canadian Standard Industrial Classification (CSIC) assigns repair and maintenance activities to many subsectors including Retail Trade, Wholesale Trade, Business Services and Personal and Household Services. The proposed NAICS structure consolidates most repair and maintenance activities in this subsector.

The most important structural change is the transfer to this subsector of the following activities: the repair and maintenance of automobiles, home appliances, consumer electronics, furniture, recreational vehicles, bicycles, musical instruments and watches and jewelry from retail trade; the repair and maintenance of a wide range of machinery and equipment from wholesale trade; the repair and maintenance of computer and related equipment from business services; and the repair of shoes, leather goods and clothing from personal services. Since many of these activities are components of existing industries, there are a significant number of partial relationships between the proposed and existing classifications, in particular for wholesale trade industries. In practice, however, the number of establishments moving from the Wholesale Trade sector to the Repair and Maintenance subsector is small. The repair and maintenance of machinery and equipment is often a secondary activity of wholesalers of the machinery and equipment and the number of establishments specializing in repairs is relatively small.

More often than not, the repair and maintenance activities currently found in retail trade, business services and personal services are classified in separate industries. As a result, the relationship between the new and old classifications is more straightforward. Furthermore, a number of the existing industries will be retained in the national classification, thereby facilitating the comparison between statistics compiled on the basis of the two systems.

For Mexico, there were fewer changes since CMAP class 96, Repair and Maintenance Services, was the basis upon which NAICS was established. Changes to CMAP included CMAP classes 951023, Other Professional Technical Specialized Services not previously mentioned; 961203, Automotive Body Repair Services; and part of CMAP 961309, Furniture Upholstery Services. These classes were merged to form a single NAICS industry, Automotive Body, Paint and Interior Repair.

Finally, computer repair, CMAP 961106, Repair and Maintenance of Machinery not previously mentioned, was combined with Electronic and Precision Equipment Repair and Maintenance in NAICS.

For the United States, the proposed NAICS structure consolidates most types of repair establishments into this NAICS subsector. The structure primarily includes those industries covered by 1987 SIC Major Group 76, Miscellaneous Repair Services, and 1987 SIC Industry Group 753, Automotive Repair Services. The new structure also includes establishments classified in 1987 SIC 7542, Car Washes; part of 1987 SIC 7549, Automotive Services, Except Repair and Carwashes (oil change and lubricating services, rustproofing services); 1987 SIC 7378, Computer Maintenance and Repair; 1987 SIC 7251, Shoe Repair Shops and Shoeshine Parlors; part of 1987 SIC 7219, Laundry and Garment Services, NEC (repair of furs and apparel and reweaving of textiles); and part of 1987 SIC 3732, Boat Building and Repairing (repair services). Tire retreading and electric motor rebuilding on a factory basis are manufacturing activities and are now included in the Manufacturing sector in NAICS.

The NAICS structure and U.S. national industry detail provide new industry classifications for various types of industrial machinery and equipment repair, electronic and precision equipment repair, and other specialized repair and maintenance. Many of the new industries were created by breaking apart 1987 SIC 7629, Electrical and Electronic Repair Shops, NEC, and 1987 SIC 7699, Repair Shops and Related Services, N.E.C.

Achievement of Objectives

The proposed classification structure meets the objectives for the North American Industry Classification System (NAICS) in that it comprises industries that group establishments with similar production processes and achieves comparability for the three participating countries. The NAICS structure consolidates repair and maintenance in one subsector and provides a structure that includes specialized segments within the subsector.

Other objectives of the NAICS project have also been met. New industries that recognize new and emerging activities have been established, particularly in the area of electronic and precision equipment repair and maintenance.

The industries are economically significant. Some NAICS industries are much larger than others, but this was necessary to ensure comparability among the countries or because it was not possible to subdivide large industries.

Finally, disruptions to time series, while they exist, have been minimized to the extent possible. Most of the changes reflect the regrouping of diverse residual categories to create new industries that better define the activities.

Section B—Annex: United States National Industry Detail

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the NAICS industry subsector presented in Part XI, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the NAICS industry subsector covered in Part XI of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX	Repair and Maintenance:			
XXX	Automotive Repair and Maintenance:			
XXXX ...	Automotive Mechanical and Electrical Repair and Maintenance:			
XXXXX	General Automotive Repair	E	7538	General Automotive Repair Shops.
XXXXX	Automotive Exhaust System Repair	E	7533	Automotive Exhaust System Repair Shops.
XXXXX	Automotive Transmission Repair	E	7537	Automotive Transmission Repair Shops.
XXXXX	Other Automotive Mechanical and Electrical Repair and Maintenance.	E	7539	Automotive Repair Shops, NEC.
XXXX ...	Automotive Body, Paint, and Interior Repair:			
XXXXX	Automotive Body, Paint and Upholstery Repair and Maintenance.	E	7532	Top, Body, and Upholstery Repair Shops and Paint Shops.
XXXXX	Automotive Glass Replacement Shops	E	7536	Automotive Glass Replacement Shops.
XXXX ...	Other Automotive Repair and Maintenance:			
XXXXX	Automotive Oil Change and Lubrication Shops.	N	*7549	Automotive Services, Except Repair and Carwashes (lubricating service, automotive).
XXXXX	Car Washes	E	7542	Carwashes.
XXXXX	All Other Automotive Repair and Maintenance.	R	*7534	Tire Retreading and Repair Shops (repair).
			*7549	Automotive Services, Except Repair and Carwashes (except lubricating and towing).

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XXX	Heavy and Industrial Machinery and Equipment Repair and Maintenance:			
XXXX ...	Heavy and Industrial Machinery and Equipment Repair and Maintenance:			
XXXXX	Transportation Equipment Repair and Maintenance.	N	*3732	Boat Building and Repairing (boat repair).
			*7699	Repair Shops and Related Services, NEC (other non-automotive transportation equip.).
XXXXX	Other Industrial Machinery and Equipment Repair and Maintenance.	R	*7623	Refrigerator and Air-Conditioning Service and Repair Shops (commercial refrigerator equipment repair).
			*7694	Armature Rewinding Shops (repair).
			*7699	Repair Shops and Related Services, NEC (industrial machines and equipment).
XXX	Electronic and Precision Equipment Repair and Maintenance:			
XXXX ...	Electronic and Precision Equipment Repair and Maintenance:			
XXXXX	Consumer Electronics Repair and Maintenance.	N	*7622	Radio and Television Repair Shops (stereo, TV, VCR, and other consumer electronics equipment).
			*7629	Electrical and Electronic Repair Shops, NEC (consumer equipment except computer).
XXXXX	Computer and Office Machine Repair and Maintenance.	N	7378	Computer Maintenance and Repair.
			*7629	Electrical and Electronic Repair Shops, NEC (business and office machine repair, electrical).
			*7699	Repair Shops and Related Services, NEC (typewriter repair).
XXXXX	Communication Equipment Repair and Maintenance.	N	*7622	Radio and Television Repair Shops (telecommunication equipment repair).
			*7629	Electrical and Electronic Repair Shops, NEC (telephone set repair).
XXXXX	Other Electronic and Precision Equipment Repair and Maintenance.	N	*7629	Electrical and Electronic Repair Shops, NEC (electrical measuring instrument repair and calibration, medical equipment repair, electrical).
			*7699	Repair Shops and Related Services, NEC (dental instrument repair, laboratory instrument repair, medical equipment and other electronic and precision equipment repair, except typewriters).
XXX	Personal or Household Goods Repair and Maintenance:			
XXXX ...	Home and Garden Equipment and Appliance Repair and Maintenance:			
XXXXX	Home and Garden Equipment Repair and Maintenance.	N	*7699	Repair Shops and Related Services, NEC (lawnmower repair shops, sharpening and repairing knives, saws and tools).
XXXXX	Appliance Repair and Maintenance	N	*7623	Refrigeration and Air-Conditioning Service and Repair Shops (except commercial).
			*7629	Electrical and Electronic Repair Shops, NEC (appliance repair, electrical; washing machine repair; Electric razor repair).
			*7699	Repairs Shops and Related Services, NEC (gas appliance repair service, sewing machine repair, stove repair shops, and other non-electrical appliance).
XXXX ...	Reupholstery and Furniture Repair	E	7641	Reupholstery and Furniture Repair.
XXXX ...	Footwear and Leather Goods Repair	R	7251	Shoe Repair and Shoeshine Parlors.
			*7699	Repair Shops and Related Services (leather goods repair shops, luggage repair shops, pocketbook repair shops).
XXXX ...	Other Personal or Household Goods Repair and Maintenance.	N	*7219	Laundry and Garment Services, NEC (alteration and repair).
			7631	Watch, Clock, and Jewelry Repair.
			7692	Welding Repair.
			*7699	Repair Shops and Related Services, NEC (except industrial, electronic, home and garden, appliance, and leather goods).

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
3732@	Boat Building and Repairing (Boat repair)	Transportation Equipment Repair and Maintenance (pt).

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
7219	Laundry and Garment Services, NEC (Alteration and Repair).	Other Personal or Household Goods Repair and Maintenance (pt).
7251	Shoe Repair Shops and Shoeshine Parlors	Footwear and Leather Goods Repair (pt).
7378	Computer Maintenance and Repair	Computer and Office Machine Repair and Maintenance (pt).
7532	Top, Body, and Upholstery Repair Shops and Paint Shops.	Automotive Body, Paint, and Upholstery Repair and Maintenance.
7533	Automotive Exhaust System Repair Shops	Automotive Exhaust System Repair.
7534@	Tire Retreading and Repair Shops:	
	Remanufacturing	Manufacturing Sector.
	Repair	All Other Auto Repair and Maintenance (pt).
7536	Automotive Glass Replacement Shops	Automotive Glass Replacement Shops.
7537	Automotive Transmission Repair Services	Automotive Transmission Repair.
7538	General Automotive Repair Services	General Automotive Repair.
7539	Automotive Repair shops, NEC	Other Automotive Mechanical and Electrical Repair and Maintenance.
7542	Carwashes	Car Washes.
7549@	Automotive Services, Except Repair and Carwashes:	
	Lubricating Services, Automotive	Automotive Oil Change and Lubrication Shops.
	Towing	Towing Services (Included in Transportation sector).
	Automotive Services, Except Repair and Carwashes (except lubricating and towing).	All Other Automotive Repair and Maintenance (pt).
7622	Radio and Television Repair Shops:	
	Stereo, TV, VCR, and Other Consumer Electronics Equipment.	Consumer Electronics Repair and Maintenance (pt).
	Telecommunication Equipment Repair	Communication Equipment Repair and Maintenance (pt).
7623@	Refrigeration and Air-Conditioning Services and Repair Shops:	
	Commercial Refrigerator Equipment Repair	Other Industrial Machinery and Equipment Repair and Maintenance (pt).
	Except Commercial	Appliance Repair and Maintenance (pt).
7629@	Electrical and Electronic Repair Shops, NEC:	
	Business and Office Machine Repair, Electrical	Computer and Office Machine Repair and Maintenance (pt).
	Telephone Set Repair	Communication Equipment Repair and Maintenance (pt).
	Electrical Measuring Instrument Repair and Calibration, Medical Equipment Repair, Electrical.	Other Electronic and Precision Equipment Repair and Maintenance (pt).
	Appliance Repair, Electrical; Washing Machine Repair; Electric Razor Repair.	Appliance Repair and Maintenance (pt).
	Consumer Electronic Equipment Repair Except Computer.	Consumer Electronics Repair and Maintenance (pt).
7631@	Watch, Clock, and Jewelry Repair	Other Personal or Household Goods Repair and Maintenance (pt).
7641	Reupholstery and Furniture Repair	Reupholstery and Furniture Repair.
7692@	Welding Repair	Other Personal or Household Goods Repair and Maintenance (pt).
7694@	Armature Rewinding Shops:	
	Repair	Other Industrial Machinery and Equipment Repair and Maintenance (pt).
	Remanufacturing	Included in Manufacturing Sector.
7699@	Repair Shops and Related Services, NEC:	
	Other Non-Automotive Transportation Equipment.	Transportation Equipment Repair and Maintenance (pt).
	Industrial Machines and Equipment	Other Industrial Machinery and Equipment Repair and Maintenance (pt).
	Typewriter Repair	Computer and Office Machine Repair and Maintenance (pt).
	Dental Instrument Repair, Laboratory Instrument Repair, Medical Equipment and Other Electronic and Precision.	Other Electronic and Precision Equipment Repair and Maintenance (pt).
	Equipment Repair, Except Typewriters:	
	Lawnmower Repair Shops, Sharpening and Repairing Knives, Saws and Tools.	Home and Garden Equipment Repair and Maintenance (pt).
	Gas Appliance Repair Service, Sewing Machine Repair, Stove Repair Shops, and Other Non-Electrical Appliances.	Appliance Repair and Maintenance.
	Leather Goods Repair Shops, Luggage Repair Shops, Pocketbook Repair Shops.	Footwear and Leather Goods Repair (pt).
	Lock Parts Made to Order and Locksmith Shops.	(Included in Management and Support Services subsector).

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
	Except Industrial, Electronic, Home and Garden,. Appliance, Locksmith, and Leather Goods.	Other Personal or Household Goods Repair and Maintenance.

The abbreviation "pt" means "part of". @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

Description of Changes to the U.S. System

Repair and Maintenance—Nine new NAICS or national industries were created in this new subsector for 1997 to better describe the activities associated with the subsector and to bring together activities with similar production functions. A number of these industries were created from parts of two 1987 Not Elsewhere Classified (NEC) industries. The new industries are:

Automotive Oil Change and Lubrication Shops from part of 1987 SIC 7549, Automotive Services, Except Repair and Carwashes.

Transportation Equipment Repair and Maintenance from part of 1987 SIC 3732, Boat Building and Repairing, and part of 1987 SIC 7699, Repair Shops and Related Services, NEC.

Consumer Electronics Repair and Maintenance from part of 1987 SIC 7622, Radio and Television Repair Shops, and part of 1987 SIC 7629, Electrical and Electronic Repair Shops, NEC.

Computer and Office Machine Repair and Maintenance from 1987 SIC 7378, Computer Maintenance and Repair; part of 1987 SIC 7629, Electrical and Electronic Repair Shops, NEC; and part of 1987 SIC 7699, Repair Shops and Related Services, NEC.

Communication Equipment Repair and Maintenance from part of 1987 SIC 7622, Radio and Television Repair Shops, and part of 1987 SIC 7629, Electrical and Electronic Repair Shops, NEC.

Other Electronic and Precision Equipment Repair and Maintenance from part of 1987 SIC 7629, Electrical Electronic Repair Shops, NEC, and part of 1987 SIC 7699, Repair Shops and Related Services, NEC.

Home and Garden Equipment Repair and Maintenance from part of 1987 SIC 7699, Repair Shops and Related Services, NEC.

Appliance Repair and Maintenance from part of 1987 SIC 7623, Refrigeration and Air-Conditioning Service and Repair Shops; part of 1987 SIC 7629, Electrical and Electronic Repair Shops, NEC; and part of 1987 SIC 7699, Repair Shops and Related Services, NEC.

Other Personal or Household Good Repair and Maintenance from part of 1987 SIC 7219, Laundry and Garment Services, NEC; 1987 SIC 7631, Watch, Clock, and Jewelry Repair; 1987 SIC 7692, Welding Repair; and part of 1987 SIC 7699, Repair Shops and Related Services, NEC.

The 1987 SIC Major Group 76, Miscellaneous Repair Services, was split into 3 new industry groups: Heavy and Industrial Machinery and Equipment Repair and Maintenance; Electronic and Precision Equipment Repair and Maintenance; and Personal and Household Goods Repair and Maintenance. Of the 8 industries in 1987 Major Group 76 only two, Radio and Television Repair and Reupholstery and Furniture Repair, will not have a time series break. There will be time series breaks for the other six 1987 SIC industries. These changes were made to break up the miscellaneous industries and to more clearly define industries with similar production functions.

There will also be a time series break for 1987 SIC's 7534 and 7549. The time series break for 1987 SIC 7534, Tire Retreading and Repair Shops, is the result of moving the remanufacturing portion of retreading to the manufacturing sector and the repair to All Other Auto Repair and Maintenance. The time series break for 1987 SIC 7549 is the result of splitting oil change and lubrication shops and towing services from all other automotive repair, Automotive Services, Except Repairs and Carwashes, and maintenance.

Part XII—Proposed New Industry Structure for Management and Support Services

Section A—NAICS Structure

North American Industry Classification System
(NAICS)
Agreement Number 22

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industries: Management and Support Services.

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on November 8 and November 9, 1995 in Washington, D.C.

Accepted	Signature	Date
Canada	/S/ Jacob Ryten	11/9/95
Mexico	/S/ Enrique Ordaz.	11/9/95
United States	/S/ Jack E. Triplett.	11/9/95

Attachment 1—NAICS Structure

XX Management and Support Services
XXX Management and Facilities Support Services
XXXX Management Services
XXXX Facilities Support Management Services
XXX Employment Services
XXXX Employment Placement Agencies
XXXX Temporary Help Services
XXXX Employee Leasing Services
XXX Administrative Support Services
XXXX Document Preparation Services
XXXX Telephone Call Centers
XXXX Business Service Centers
XXXX Collection Agencies
XXXX Credit Bureaus
XXXX Other Administrative Support Services
XXX Travel Arrangement and Reservation Services
XXXX Travel Agencies
XXXX Tour Operators
XXXX Other Travel Arrangement and Reservation Services
XXX Security and Investigation Services
XXXX Investigation, Guard and Armored Car Services
XXXX Security Systems Services
XXX Services to Buildings and Dwellings
XXXX Exterminating and Pest Control Services
XXXX Janitorial Services
XXXX Carpet and Upholstery Cleaning Services
XXXX Landscaping Care and Maintenance Services
XXXX Other Services to Buildings and Dwellings
XXX Miscellaneous Support Services
XXXX Packaging and Labeling Services
XXXX Convention and Trade Show Organizers
XXXX Other Miscellaneous Support Services

Attachment 2—North American Industry Classification System

Draft Classification for:
Management and Support Services

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industry classification for these industries.

The draft classification provides for the Management and Support Services subsector. This subsector is further subdivided into seven industry groups and 24 industries. The placement of this subsector within the NAICS structure is not yet determined.

A General Outline

The statistical agencies of Canada, Mexico, and the United States have agreed to place major emphasis on improved services classifications in NAICS, and to give special attention to developing production-oriented classifications for new and emerging industries and service industries in general.

Most past services classifications, including the International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) have two analytical inadequacies. First, individual services industries have been too aggregated to be useful. They have combined too many disparate activities into a single industry definition. This criticism has been heard even in the U.S., where the 1987 Standard Industrial Classification has more services industries detail than is the case for other classification systems. As indicated later in this outline, the detail problem has been addressed in NAICS by breaking out new services industries from many of the broad and heterogeneous industry definitions in the former systems of all three countries. These new industries reflect the increasing degree of specialization in the economy as businesses and other organizations increasingly contract out for services that have historically been done in house. In order to meet this objective, a number of industries were established that are presently small or nonexistent in Canada or Mexico. Many of the establishments in these new industries are included in miscellaneous classes in current classification systems and the NAICS structure will substantially reduce the size of such residual classes.

A second problem in past services industry classifications is a general lack of a coherent structure. To take the 1987 U.S. SIC system as an example, though it has a major group (2-digit) for Business Services, it is difficult to discern an organizational principle in this subsector, or the relation the industries included in it had to each other or to the division as a whole. The Canadian classification also includes a grouping for Business Services, but its coverage is different. Again, this lack of a coherent structure has been criticized.

Currently, activities included in the Management and Support Services subsector are scattered throughout the existing classification systems; their grouping into a single area has allowed for the creation of more homogeneous aggregates for these service-producing industries. This, however, has been achieved at the expense of creating a subsector less homogeneous across all industry groups contained in it than in other proposed NAICS subsectors. However, the fundamental objective of NAICS is to define industries and industry aggregates on the basis of similarity in production process. This objective is largely met in the case of the individual industries (4-digit) and industry groups (3-digit) of this subsector, even though the subsector includes industry groups that cover a diverse set of activities.

The Management and Support Services subsector groups establishments that are engaged in activities that support the day-to-day operations of other organizations. The processes employed in this sector are often integral parts of the activities of establishments found in all sectors of the economy (general management, personnel administration, clerical activities, cleaning activities, etc.). The establishments classified in this subsector have specialized in one or more of these administrative and support activities, and can therefore provide services to clients in a variety of industries and, in some cases, to households. The individual industries of this subsector are defined on the basis of the particular process in which they are engaged and the particular service(s) they provide.

This proposed subsector includes a mix of well established and emerging industries. The number of new classes varies from country to country; approximately half of the proposed industries are new or redefined in the Canadian and U.S. systems while most are new in the Mexican system. The following paragraphs provide a brief description of the content of each industry group and observations on issues that are of particular interest.

The Management and Facilities Support Services industry group includes two industries. The first, Management Services, includes those establishments that provide management services to clients on a day-to-day basis. For example, establishments in this industry may provide management services to oversee and coordinate the office operations of a physician's practice. This might include personnel management, bookkeeping, and other administrative services. The second NAICS industry, Facilities Support Management Services, includes establishments that provide managerial and operating staff to deliver a wide range of services that are essential to support the operations of an establishment or facility. Such establishments provide food service, janitorial service, guard service and so forth to support the operations of facilities such as hospitals or government reservations. If each of the services were provided by different establishments, these different establishments would be included in the appropriate industries. However, these facility management establishments are unique in that they provide a broad mix of services that involve multiple production processes. This industry is significant in the United States with the largest operations being establishments that serve government facilities or reservations. It is not significant in Canada and Mexico.

The Employment Services industry group includes three industries. Employment Placement Agencies are establishments engaged in listing employment vacancies and in selecting, referring and placing applicants in employment on either a permanent or temporary basis. A separate industry, Temporary Help Services, is included for establishments that supply workers to client businesses for limited periods of time to supplement the work force of the client. Another industry, Employee Leasing Services, is included for establishments that acquire all or part of a client's work force and "lease back" the employees to the client organization. Both industries are large and growing in the United States, reflecting the increasing specialization and complexity of the U.S. economy. Employee leasing is not significant in Canada and Mexico.

The Administrative Support Services industry group includes establishments engaged in document preparation, telephone call center operation, copy or quick printing services, and mail center operation, bill collection and similar activities. These activities are those ongoing routine, administrative support functions that all businesses and organizations must do and that they have traditionally done for themselves. Recent trends are to contract or purchase such services from businesses that specialize in such activities and can therefore provide the services more efficiently. While most of the industries in this group are relatively small, some are growing rapidly and are expected to continue to grow.

The Travel Arrangement and Reservation Services industry group includes travel agents, tour operators and providers of other travel arrangement services such as hotel and restaurant reservations, and arranging the purchase of tickets. Establishments in this industry serve many types of clients, including individual consumers, and the industries in this group cannot be viewed as strictly "support." However, this industry group was placed in this subsector because the services are often of the "support" nature (for example, travel arrangement) and businesses and other organizations are increasingly the ones purchasing such services.

The Security and Investigation Services industry group includes establishments engaged in a range of security related activities such as guard and patrol services and alarm monitoring services. The desire to contract out for such services and the impact of new, sophisticated electronic security systems has contributed to the size and growth of the industries in this industry group.

The Services to Buildings and Dwellings industry group includes establishments engaged in a range of general cleaning and upkeep services in and around buildings and dwellings. As in other subgroups, growth in this industry group is primarily from the increasing reliance of businesses and other organizations to contract out for building cleaning services.

Finally, Miscellaneous Support Services includes establishments engaged in such activities as packaging and labeling services, organizing conventions, etc. Establishments in the Packaging and Labeling Services industry are primarily engaged in packaging client owned materials such as food products, pharmaceuticals, household cleaners, toilet preparations and hardware using a variety of automated or manual packaging techniques, including blister forming and packaging, shrink or skin wrapping, form filling and sealing, pouch filling and aerosol packaging. The packaging service may include the labeling or imprinting of the package. Although the types of establishments in this industry group are not similar in nature, each industry in its own way provides some form of support service to businesses and organizations.

Limitations and Constraints of the Classification

Differences in the organization of activities within establishments, and differences in the economic significance of individual industries from country to country were the major issues faced in the development of a common classification structure for this sector. These issues were dealt with by grouping activities in a manner that recognized the different levels of integration and diversification of establishments while allowing each country to add industries where necessary to reflect the greater level of specialization or economic significance of particular industries in their national economy. Still, in some instances, proposed NAICS industries do not exist in all countries.

This subsector is not as homogeneous across all industry groups as other proposed subsectors in NAICS.

The identification of new and emerging industries is one of the principle goals of the NAICS project. Many users have expressed the wish that this goal be achieved while minimizing breaks in time series. However, these two objectives are more often than not conflicting, and the degree to which proposed NAICS industries relate to existing national classification systems varies from country to country.

Relationship to ISIC

Seventeen of the NAICS industries in this subsector can be assigned entirely to ISIC Division 74, Other Business Activities, of the current International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) of the United Nations. Landscaping Care and Maintenance Services are included in ISIC Division 01, Agriculture, Hunting and Related Service Activities; the Travel Arrangement and Reservation Services industries are included in ISIC Division 63, Supporting and Auxiliary Transport Activities; and Carpet and Upholstery Cleaning Services are included in ISIC Division 93, Other Service Activities. The following NAICS industries cannot be assigned to an ISIC division without being subdivided: Employment Placement Agencies (casting bureaus are in Division 92, Recreational, Cultural and Sporting Activities in ISIC) and Miscellaneous Support Services. However, the discrepancies between NAICS and ISIC are minor and do not have a significant impact on the comparability of data at 2-digit ISIC level.

Changes to the National Classification

For Canada, the proposed NAICS structure constitutes a restructuring and expansion of industries that are, for the most part, currently found in Major Group 77, Business Service Industries; Industry Group 995, Services to Buildings and Dwellings; and Industry Group 996, Travel Services, of the 1980 Canadian Standard Industrial Classification (CSIC). A few activities classified in other areas of the classification are now included in this subsector. Fifteen of the twenty-two NAICS industries applicable in Canada are new or redefined. The most important new industries are: Management Services; Document Preparation Services; Telephone Call Centers; Business Service Centers; Investigation, Guard and Armored Car Services; Security Systems Services, Landscaping Care and Maintenance Services; Packaging and Labeling Services; and Convention and Trade Show Organizers.

The majority of proposed NAICS industries (15) relate to only one existing CSIC industry. In those cases, the task of linking statistics based on the old and new systems is relatively easy. For the remaining classes, this task is much more difficult since they are defined in terms of components of existing industries for which no data are available. However, many of these partial relationships are marginal in terms of economic activity.

For Mexico, this subsector that includes 24 industries contains 17 of the current CMAP classes. This increase in the number of classes results from the fact that there is now more specialization in Mexico in many service activities. Services that used to be performed in combination with others within a single establishment, including those performed as a secondary activity of the establishment, are now beginning to be carried out as a principal activity in establishments specializing in that particular service. For that reason, this new classification includes classes that were not even mentioned in the CMAP owing to their secondary status, and classes that had been included with other activities.

The activities being incorporated into this subsector are currently classified, for the most part, in CMAP Branch 9510, Provision of Professional, Technical, and Specialized Services, excluding Agricultural Services. Nevertheless, in order to create the new subsector, some activities that had been in other branches or subsectors, and even in a different sector of activity, were relocated.

From CMAP Sector 7, Transportation and Communications, fax services that had been classified under CMAP Class 720006, Other Telecommunications Services, were reclassified. They were combined with Photocopying Services and Business Center Services to form a new NAICS industry.

From CMAP Subsector 94, Entertainment, Cultural, Recreational, and Athletic Services, there was a reclassification of establishments engaged in the hiring of personnel for cinematographic and theatrical production that had been included under CMAP Classes 941101, Private Production of Cinematographic Films; 941106 Private Services for the Promotion, Staging and Presentation of Artistic Productions; and 941204 Public Services of Promotion, Staging, and Presentation of Artistic Productions. These recruitment agencies were combined with personnel placement agencies to form a single NAICS industry.

From CMAP Subsector 97, Services Related to Agriculture, Stockraising, Construction, Transportation, Finance and Commerce, there was a reclassification of telemarketing establishments and establishments engaged in advance sales of tickets, that had been under class 975000, Financial Intermediary Services. Telemarketing services combined with establishments that make and receive telephone calls were placed in a single NAICS industry under the Administrative Support Services industry group. Services of establishments that sell tickets in advance gave rise to a new NAICS industry when these services were combined with hotel reservations that had been classified under CMAP 951023, Professional, Technical, and Specialized Services Not Previously Mentioned.

From CMAP Branch 9530, Drycleaning and Laundering Services, there was a reclassification of carpet cleaning and furniture cleaning services that had previously been in CMAP Class 953002, Cleaning and Dyeing of Carpets and Curtains. This branch was combined with carpet cleaning that had been under CMAP 951021, Building Cleaning Services, to form a new NAICS class called Carpet and Upholstery Cleaning Services.

The current CMAP Class 951018, Services of Personnel Placement and Selection Agencies, was subdivided into three parts. Two of them resulted in the same number of NAICS industries, those being Temporary Help Services and Employee Leasing Services. The other part was combined with agencies for placement of personnel from television works, cinematography, and theaters, that had been classified under CMAP Subsector 94, Entertainment, Cultural, Recreational, and Athletic Services, to form a new NAICS industry called Employment Placement Agencies.

CMAP Class 951021, Building Cleaning Services, was subdivided into four parts. Three of them resulted in the same number of industries in NAICS, and another part was combined with Carpet and Upholstery Cleaning Services that had been classified in CMAP 953002, Cleaning and Dyeing of Carpets and Curtains, to create a new NAICS industry.

CMAP Class 951023, Other Professional, Technical, and Specialized Services Not Previously Mentioned, that had contained several very different types of services underwent a major realignment. The services of CMAP Class 951023 relating to this subsector were combined with activities that were similar in terms of their forms of production, and each combination produced a new NAICS class. Telephone answering services were combined with telemarketing services (the latter had been classified in the CMAP under 975000, Financial Intermediary Services); business center services were combined with photocopying establishments (the latter had been classified under CMAP Class 951017, Photocopying and Similar Services); and financial solvency agencies were combined with credit information offices. Finally, a NAICS industry was formed for Packaging and Labeling Services.

For the United States, eleven of the twenty-four proposed NAICS industries are new. Of the eleven new industries in this sector, eight were created from 1987 SIC 7389, Business Services, Not Elsewhere Classified. 1987 SIC 7389 was a "catchall" category that included some of the fastest growing services in the U.S. economy, and that had no natural interpretation or usefulness. This former NEC industry is significantly reduced by the creation of new industries. Examples of the new industries that were created from 1987 SIC 7389 are: Telephone Call Centers; Packaging and Labeling Services; and Convention and Trade Show Organizers. In addition, other activities formerly included in 1987 SIC 7389 were redistributed among the industries to create homogeneous industries or industry groupings. The redistributions out of 1987 SIC 7389 will reduce its overall size by approximately 40% of the establishments and receipts. In addition, the remainder are redistributed into NAICS industry groups that have more logic and coherence than the 1987 SIC 73 major group, Business Services.

The NAICS industry group for Management and Facilities Support Services groups activities with similar production processes previously classified in 1987 SIC 8741, Management Services, and 1987 SIC 8744, Facilities Support Management Services. Separate industries are created for each.

The NAICS industry group for Employment Services includes one significant change for the United States by including Temporary Help Services and Employee Leasing Services as new industries. These services are included in 1987 SIC 7363, Help Supply Services.

The NAICS industry group for Administrative Support Services includes Document Preparation Services, Telephone Call Centers, Business Service Centers and Other Administrative Support Services as new industries. These services are included in 1987 SIC 7338, Secretarial and Court Reporting Services, and 1987 SIC 7389, Business Services, Not Elsewhere Classified.

The NAICS industry group for Services to Buildings and Dwellings includes one previously existing industry from 1987 SIC Major Group 72, Personal Services (1987 SIC 7217, Carpet and Upholstery Cleaning) and two industries from 1987 SIC Major Group 07, Agriculture Services (1987 SIC 0782, Lawn and Garden Services; and 1987 SIC 0783, Ornamental Shrub and Tree Services). A new industry for Other Services to Buildings and Dwellings has been created from part of 1987 SIC's 7389, Business Services, Not Elsewhere Classified, and 1987 SIC 7699, Repair Shops and Related Services, Not Elsewhere Classified.

The NAICS industry group for Miscellaneous Support Services includes three new industries formed from part of 1987 SIC 7389, Business Services, Not Elsewhere Classified.

Achievement of Objectives

The classification meets the objectives for the North American Industry Classification System (NAICS). It is comprised of industries that group establishments with similar production

processes, that is, it applies the production-oriented economic concept.

The classification achieves comparability for the three participating countries. Based on existing data, all three countries expect to be able to publish data regularly or in the near future at the industry (4-digit) level of the structure. All countries agree on the detailed definitions of the industries.

Other objectives of the NAICS project have been met. A significant number of new industries are established which is consistent with the goal of recognizing new and emerging industries.

The industries are economically significant. Some NAICS industries are much larger than others, but this was necessary to ensure comparability among the three countries.

Section B—Annex: United States National Industry Detail

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the NAICS industry subsector presented in Part XII, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the NAICS industry subsector covered in Part XII of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX	Management and Support Services:		.....	
XXX	Management and Facilities Support Services:		.....	
XXXX ...	Management Services	R	*8741	Management Services (except construction management).
XXXX ...	Facilities Support Management Services	E	8744	Facilities Support Management Services.
XXX	Employment Services:		.....	
XXXX ...	Employment Placement Agencies	R	*7361	Employment Agencies (except executive placing services).
			*7819	Services Allied to Motion Pictures Production (casting bureaus).
			*7922	Theatrical Producers and Miscellaneous Theatrical Services (casting agencies).
XXXX ...	Temporary Help Services	N	*7363	Help Supply Services (except employee leasing service).
XXXX ...	Employee Leasing Services	N	*7363	Help Supply Services (except temporary help service).
XXX	Administrative Support Services:		.....	
XXXX ...	Document Preparation Services	N	*7338	Secretarial and Court Reporting (except court reporting).
XXXX ...	Telephone Call Centers:		.....	
XXXXX	Telephone Answering Services	N	*7389	Business Services, Not Elsewhere Classified (telephone answering).
XXXXX	Telemarketing Bureaus	N	*7389	Business Services, Not Elsewhere Classified (telemarketing bureaus and telephone soliciting).
XXXX ...	Business Service Centers:		.....	
XXXXX	Photocopying and Duplicating Services	R	*2752	Commercial Printing, Lithographic (electrostatic, digital, and nonimpact quick printing).
			7334	Photocopying and Duplicating Services,
XXXXX	Private Mail Centers	N	*7389	Business Services, Not Elsewhere Classified (private mail box centers and mail box rental).
XXXX ...	Collection Agencies	R	*7322	Adjustment and Collection Services (except adjustment bureaus).
XXXX ...	Credit Bureaus	E	7323	Credit Reporting Services.
XXXX ...	Other Administrative Support Services:			
XXXXX	Repossession Services	N	*7322	Adjustment and Collection (adjustment bureaus).
			*7389	Business Services, Not Elsewhere Classified (recovery and repossession services).
XXXXX	Court Reporting and Stenotype Services	N	*7338	Secretarial and Court Reporting (except secretarial).
XXXXX	All Other Administrative Support Services	N	*7389	Business Services, Not Elsewhere Classified (administrative support services except telephone answering, telemarketing bureaus, private mail centers and repossession services).
XXX	Travel Arrangement and Reservation Services:		.....	
XXXX ...	Travel Agencies	E	4724	Travel Agencies.
XXXX ...	Tour Operators	E	4725	Tour Operators.
XXXX ...	Other Travel Arrangement and Reservation Services.		4729	Arrangement of Passenger Transportation, Not Elsewhere Classified.
XXXXX	Convention and Visitor Bureaus	N	*7389	Business Services, Not Elsewhere Classified (convention and visitor bureaus tourist information bureaus).
XXXXX	All Other Travel Arrangement and Reservation Services.	N	*7389	Business Services, Not Elsewhere Classified (reservation systems: hotel & restaurants).
			*7999	Amusement and Recreation Services, Not Elsewhere Classified (ticket agencies).
XXX	Security and Investigation Services:		.....	
XXXX ...	Investigation, Guard and Armored Car Services:		.....	

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XXXXX	Investigation Services	N	*7381	Detective and Armored Car Services (detective services).
XXXXX	Security Guards and Patrol Services	N	*7381	Detective and Armored Car Services (guard services).
XXXXX	Armored Car Services	N	*7381	Detective and Armored Car Services (armored car services).
XXXX ...	Security Systems Services:		.....	
XXXXX	Security Systems Services, except Locksmiths.	E	7382	Security Systems Services.
XXXXX	Locksmiths	N	*7699	Repair Shops and Related Services, Not Elsewhere Classified (locksmith shops).
XXX	Services to Buildings and Dwellings:		.....	
XXXX ...	Exterminating and Pest Control Services	R	*7342	Disinfecting and Pest Control Services (exterminating and pest control).
XXXX ...	Janitorial Services	R	*7342	Disinfecting and Pest Control Services (except exterminating).
			7349	Building Maintenance Services, Not Elsewhere Classified.
			*4581	Airports, Flying Fields, and Airport Terminal Services (airplane cleaning and janitorial services).
XXXX ...	Landscaping Care and Maintenance Services:		.....	
XXXXX	Lawn and Garden Services	E	0782	Lawn and Garden Services.
XXXXX	Ornamental Shrub and Tree Services	E	0783	Ornamental Shrub and Tree Services.
XXXX ...	Carpet and Upholstery Cleaning Services	E	7217	Carpet and Upholstery Cleaning.
XXXX ...	Other Services to Buildings and Dwellings	N	*7389	Business Services, Not Elsewhere Classified (swimming pool cleaning and maintenance).
			*7699	Repair Shops and Related Services, Not Elsewhere Classified (furnace, duct, chimney cleaning and furnace cleaning services).
XXX	Miscellaneous Support Services:			
XXXX ...	Packaging and Labeling Services	N	*7389	Business Services, Not Elsewhere Classified (packaging and labeling services).
XXXX ...	Convention and Trade Show Organizers		*7389	Business Services, Not Elsewhere Classified (convention and trade show services).
XXXX ...	Other Miscellaneous Support Services	N	*7389	Business Services, Not Elsewhere Classified (business support services except packaging and labeling, convention and trade shows services, convention and visitor bureaus, tourist information bureaus).

The definitions of status codes are as follows: E-existing industry; N-new industry; R-revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U. S. description
0782	Lawn and Garden Services	Lawn and Garden Services.
0783	Ornamental Shrub and Tree Services	Ornamental Shrub and Tree Services.
2752@	Commercial Printing, Lithographic:	
	Electrostatic Digital and Nonimpact Quick Printing.	Photocopying and Duplicating Services (pt).
4581	Airport, Flying Fields, and Airport Terminal Services:	
	Aircraft Cleaning and Janitorial Services	Janitorial Services (pt).
4724	Travel Agencies	Travel Agencies.
4725	Tour Operators	Tour Operators.
4729	Arrangement of Passenger Transportation, Not Elsewhere Classified.	Other Travel Arrangement and Reservation Services (pt).
7217	Carpet and Upholstery Cleaning	Carpet and Upholstery Cleaning.
7322	Adjustment and Collection Services:	
	Collection Services	Collection agencies.
	Adjustment Bureaus	Repossession Services (pt).
7323	Credit Reporting Services	Credit Bureaus.
7334@	Photocopying and Duplicating Services	Photocopying and Duplicating Services (pt).
7338	Secretarial and Court Reporting Services:	
	Secretarial Services	Document Preparation Services.
	Court Reporting Services	Court Reporting and Stenotype Services.
7342	Disinfecting and Pest Control Services:	
	Disinfecting Services	Janitorial Services (pt).
	Exterminating and Pest Control Services	Exterminating and Pest Control Services.
7349	Building Cleaning and Maintenance Services, Not Elsewhere Classified.	Janitorial Services (pt).
7361@	Employment Agencies:	
	Executive Placing Services	Human Resources Consulting (pt) (Included in Professional, Scientific and Technical Services Subsector)

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U. S. description
	Except Executive Placing Services	Employment Placement Agencies (pt).
7363	Help Supply Services:	
	Temporary Help Supply	Temporary Help Services.
	Employee Leasing Services	Employee Leasing Services.
7381	Detective, Guard, and Armored Car Services:	
	Detective Services	Investigation Services.
	Guard Services	Security Guards and Patrol Services.
	Armored Car Services	Armored Car Services.
7382	Security Systems Services	Security Systems Services.
7389@	Business Services, Not Elsewhere Classified:	
	Telephone Answering Services	Telephone Answering Services.
	Telemarketing Bureaus and Telephone Soliciting Services.	Telemarketing Bureaus.
	Private Mail Centers and Mail Box Rental	Private Mail Centers.
	Recovery and Repossess	Repossession Services (pt).
	Packaging and Labeling Services	Packaging and Labeling Services.
	Swimming Pool Cleaning and Maintenance	Other Services to Dwellings and Buildings (pt).
	Hotel and Restaurant Reservation Services	Other Travel Arrangement and Reservation Services.
	Convention and Trade Show Services	Trade Show and Convention Organizers.
	Convention and Visitors Bureaus and Tourist Information Service.	Convention and Visitors Bureaus.
	Administrative Support Services, Except Telephone Answering, Telemarketing Bureaus, Private Mail Centers, and Repossession Services.	All Other Administrative Support Services.
	Business Support Services, Except Packaging and Labeling Services.	Other Miscellaneous Support Services.
	Convention and Trade Show Services	Convention and Trade Show Organizers.
7699	Repair Shops and Related Services, Not Elsewhere Classified:	
	Locksmith Shops	Locksmiths.
	Furnace Ducts, Chimney and Gutter Cleaning Services.	Other Services to Dwellings and Buildings (pt).
7819	Services Allied to Motion Pictures:	
	Casting Bureaus	Employment Placement Agencies (pt.).
7922	Theatrical Producers and Services:	
	Casting Agencies	Employment Placement Agencies (pt.).
7999	Amusement and Recreation Services, Not Elsewhere Classified:	
	Ticket Agencies	Other Travel Arrangement and Reservation Services (pt).
8741@	Management Services:	
	Construction Management	Construction Sector.

The abbreviation "pt." means "part of". @ means times series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

Description of Changes to the U.S. System

Nineteen new industries are included in this subsector. Ten of the new industries were created by breaking apart old U.S. SIC 7389, Business Services, Not Elsewhere Classified. These are new and growing industries. New industries were created for:

Temporary Help Services from part of 1987 SIC 7363, Help Supply Services. This was requested by the industry and is supported by production process principles.

Employee Leasing Services from part of 1987 SIC 7363, Help Supply Services. This was requested by the industry and is supported by production process principles.

Document Preparation Services from part of 1987 SIC 7338, Secretarial and Court Reporting Services. This split provides for a better production process based industry.

Telephone Answering Services from part of 1987 SIC 7389, Business Services, Not Elsewhere Classified. This industry is based on production process principles.

Telemarketing Bureaus from part of 1987 SIC 7389, Business Services, Not Elsewhere Classified. This industry is based on production process principles.

Private Mail Centers from part of 1987 SIC 7389, Business Services, Not Elsewhere Classified. This industry is based on production process principles.

Repossession Services from part of 1987 SIC 7322, Adjustment and Collection Services, and part of 1987 SIC 7389, Business Services, Not Elsewhere Classified. This industry is based on production process principles.

Court Reporting and Stenotype Services from part of 1987 SIC 7338, Secretarial and Court Reporting Services. This split provides for a better production process industry.

All Other Administrative Support Services from part of 1987 SIC 7389, Business Services, Not Elsewhere Classified. This provides for a residual industry that includes related activities.

Other Travel Arrangement and Reservation Services from part of 1987 SIC 7389, Business Services, Not Elsewhere Classified; part of 1987 SIC 7999, Amusement and Recreation Services, Not Elsewhere Classified; and all of 1987 SIC 4729, Arrangement of Passenger Transportation, Not Elsewhere Classified. This change combines activities having similar production processes.

Investigation Service from part of 1987 7381, Detective and Armored Car Services. This split provides for a better production process industry.

Security Guard and Patrol Services from part of 1987 SIC 7381, Detective and Armored Car Services. This split provides for a better production process industry.

Armored Car Services from part of 1987 SIC 7381, Detective and Armored Car Services. This split provides for a better production process industry.

Locksmiths from part of 1987 SIC 7699, Repair Ships and Related Services, NEC. This split was requested by the industry and is supported by production process based principles.

Other Services to Buildings and Dwellings from part of 1987 SIC 7389, Business Services, Not Elsewhere Classified, and 1987 SIC 7699, Repair Shops and Related Services, Not Elsewhere Classified. This industry is supported by production process principles and improves international comparability.

Packaging and Labeling Services from part of 1987 SIC 7389, Business Services, Not Elsewhere Classified. This industry is supported by production process principles.

Trade Show and Convention Organizers from part of 1987 SIC 7389, Business Services, Not Elsewhere Classified. This industry is supported by production process principles.

Convention and Visitors Bureaus from part of 1987 SIC 7389, Business Services, Not Elsewhere Classified. This was requested by the industry and is supported by production process principles.

Other Miscellaneous Support Services from part of 1987 SIC 7389, Business Services, Not Elsewhere Classified. This provides for a residual industry that includes related activities.

Six industries included in this subsector were revised:

Construction management services were transferred from 1987 SIC 8741, Management Services, to the Construction Sector. This change was made to achieve international comparability and to combine activities having similar inputs.

Casting services were transferred from 1987 SIC 7819, Services Allied to Motion Picture Production, and from 1987 SIC 7922, Theatrical Producers and Miscellaneous Theatrical Services, to Employment Placement Agencies to form a better production process industry.

Quick printers that primarily use electrostatic, digital and nonimpact technologies were transferred from 1987 SIC 2752, Commercial Printing, Lithographic, based on industry requests. The activity was placed with Photocopying and Duplicating Services because the technologies were similar.

Adjustment services were transferred from 1987 SIC 7322, Adjustment and Collection Services, to Repossession Services to form a better production process industry.

Exterminating services were transferred from 1987 SIC 7342, Disinfecting and Exterminating Services, to Exterminating and Pest Control Services to form a better production process industry.

Disinfecting services, part of 1987 SIC 7342, Disinfecting and Exterminating Services, was combined with 1987 SIC 7349, Building Cleaning and Maintenance Services, Not Elsewhere Classified, to form a production process industry titled Janitorial Services.

Part XIII—Proposed New Industry Structure for Air Transportation, Rail Transportation, Water Transportation, Truck Transportation, Transit and Ground Passenger Transportation, Pipeline Transportation, Scenic and Sightseeing Transportation, and Support Activities for Transportation

Section A—NAICS Structure

North American Industry Classification System
(NAICS)
Agreement Number 23

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following subsectors:

Air Transportation
Rail Transportation
Water Transportation
Truck Transportation
Transit and Ground Passenger Transportation
Pipeline Transportation
Scenic and Sightseeing Transportation
Support Activities for Transportation

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on November 8 and November 9, 1995 in Washington, D.C.

Accepted	Signature	Date
Canada	/S/ Jacob Ryten	11/9/95
Mexico	/S/ Enrique Ordaz.	11/9/95
United States	/S/ Jack E. Triplett.	11/9/95

Attachment 1—NAICS Structure

XX Air Transportation
XXX Scheduled Air Transportation
XXXX Scheduled Air Transportation
XXX Nonscheduled Air Transportation
XXXX Nonscheduled Chartered Air Transportation
XXXX Nonscheduled Specialty Air Transportation
XX Rail Transportation
XXX Rail Transportation
XXXX Rail Transportation
XX Water Transportation
XXX Deep Sea, Coastal and Great Lakes Water Transportation
XXXX Deep Sea, Coastal and Great Lakes Water Transportation
XXX Inland Water Transportation
XXXX Inland Water Transportation
XX Truck Transportation
XXX General Freight Trucking
XXXX General Freight Trucking, Local
XXXX General Freight Trucking, Long Distance
XXX Specialized Freight Trucking
XXXX Used Household and Office Goods Moving
XXXX Specialized Freight (except Used Goods) Trucking, Local
XXXX Specialized Freight (except Used Goods) Trucking, Long Distance
XX Transit and Ground Passenger Transportation
XXX Urban Transit Systems
XXXX Urban Transit Systems
XXX Interurban and Rural Bus Lines
XXXX Interurban and Rural Bus Lines
XXX Taxi and Limousine Service
XXXX Taxi Service
XXXX Limousine Service
XXX School and Employee Bus Industry
XXXX School and Employee Bus Industry
XXX Charter Bus Industry
XXXX Charter Bus Industry
XXX Other Transit and Ground Passenger Transportation
XXXX Other Transit and Ground Passenger Transportation
XX Pipeline Transportation
XXX Pipeline Transportation of Crude Oil
XXXX Pipeline Transportation of Crude Oil
XXX Pipeline Transportation of Natural Gas
XXXX Pipeline Transportation of Natural Gas
XXX Other Pipeline Transportation
XXXX Pipeline Transportation of Refined Petroleum Products
XXXX All Other Pipeline Transport
XX Scenic and Sightseeing Transportation
XXX Scenic and Sightseeing Transportation, Land
XXXX Scenic and Sightseeing Transportation, Land
XXX Scenic and Sightseeing Transportation, Water
XXXX Scenic and Sightseeing Transportation, Water

XXX Scenic and Sightseeing Transportation, Other
XXXX Scenic and Sightseeing Transportation, Other
XX Support Activities for Transportation
XXX Support Activities for Air Transportation
XXXX Airport Operations
XXXX Other Support Activities for Air Transportation
XXX Support Activities for Rail Transportation
XXXX Support Activities for Rail Transportation
XXX Support Activities for Water Transportation
XXXX Port and Harbor Operations
XXXX Marine Cargo Handling
XXXX Navigational Services to Shipping
XXXX Other Support Activities for Water Transportation
XXX Support Activities for Road Transportation
XXXX Motor Vehicle Towing
XXXX Other Support Activities for Road Transportation
XXX Freight Transportation Arrangement
XXXX Freight Transportation Arrangement
XXX Storage Facilities
XXXX Refrigerated Storage Facilities
XXXX Farm Product Storage Facilities
XXXX Other Storage Facilities
XXX Other Support Activities for Transportation
XXXX Other Support Activities for Transportation

Attachment 2—North American Industry Classification System
Draft Classification for:

Air Transportation
Rail Transportation
Water Transportation
Truck Transportation
Transit and Ground Passenger Transportation
Pipeline Transportation
Scenic and Sightseeing Transportation
Support Activities for Transportation

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industrial classification for these industries.

The draft classification provides for the subsectors Air Transportation, Rail Transportation, Water Transportation, Truck Transportation, Transit and Ground Passenger Transportation, Pipeline Transportation, Scenic and Sightseeing Transportation and Support Activities for Transportation. These subsectors are further subdivided into twenty-six industry groups and thirty-nine industries.

A General Outline

Establishments in the Transportation sector transport people and goods, and provide services to these establishments. The structure distinguishes these two basic types of activities, providing a subsector for each mode of transportation and a subsector for establishments providing support activities for transportation. In addition, there is a subsector for establishments that provide passenger transportation for scenic and sightseeing purposes.

The modes of transportation are air, rail, water, trucking, transit and ground passenger, and pipeline. These are further subdivided according to the way in which businesses in each mode organize their establishments. The structure also reflects the degree of similarity of the industrial structures of the three countries.

An alternative structure was considered that would group services to a mode of transportation in the same subsector as the establishments carrying out the modal transportation activity. For example, support activities for air transportation would be an industry group in the same subsector as scheduled and nonscheduled air transportation. It was decided not to adopt this approach, because, first, many support activities for transportation are inherently multi-modal, such as freight transportation arrangement, or have multi-modal aspects. Secondly, there are production process similarities among the support activities. In any case, the structure allows the re-aggregation of the modal services with the modes of transportation.

In Air Transportation, the classification distinguishes scheduled from nonscheduled air transportation. Establishments included in Scheduled Air Transportation must operate flights even if only partially loaded. Nonscheduled operations also have more freedom to take off and land during non-peak time slots at busy airports. Nonscheduled Air Transportation is subdivided into charter and specialty activities. The former comprises fairly specialized establishments engaged in transporting freight and people, using equipment designed for those purposes. Specialty air transportation establishments use small, general purpose aircraft to provide a variety of specialized flying services, with none predominating (if the establishment is specialized in one activity, it is placed elsewhere in the classification, e.g., a specialist crop dusting establishment is classified in support activities for agriculture). Consideration was given to separating passenger from freight in each of the air transportation industries, but too many establishments provide both services to allow this distinction in a NAICS establishment classification; it is preferable to collect such data using the commodity classification or at the national detail level as the United States will do.

The classification does not provide for any subdivision of Rail Transportation. In Mexico, most rail services are currently provided by a large national rail company that cannot be subdivided into establishments carrying out various processes. This is likely to change in the future, but the eventual establishment structure cannot be predicted now. This prevents the definition of any detail in Rail Transportation.

In Water Transportation, the underlying industrial structures in the three countries are quite different. In addition, the existing concepts used in national classifications are dissimilar. The only breakdown of water transportation that could be agreed to was inland (other than Great Lakes) and all other. This is a meaningful production process distinction in all countries, but inland shipping is an economically significant activity only in the United States. Each country can use national detail to define additional industrial detail.

The Truck Transportation subsector is first subdivided into general freight trucking and specialized freight trucking. Specialized freight transportation is the transportation of articles that, because of size, weight, shape or other inherent characteristics require specialized equipment for transportation. Each of these industry groups is further subdivided based on distance traveled. Local trucking establishments primarily carry goods within a single metropolitan area and its hinterland. Long distance establishments carry goods between metropolitan areas. This distinction reflects differences in equipment used, type of load carried, and scheduling, terminal and other networking services. Long-distance trucking is of particular interest in the context of North American free trade, since it is this group of establishments that will be able to compete internationally. The Specialized Freight Trucking industry group provides an additional industry for the transportation of used household and office goods, whether local or long distance, because such establishments do not specialize on a distance basis, but on the transport of such goods.

The Transit and Ground Passenger Transportation subsector includes a variety of passenger transportation activities, such as urban transit systems, taxis and so on. These activities are distinguished based on such process factors as whether routes are scheduled, run over fixed routes, and charged on a per-seat or per-vehicle basis.

The Pipeline Transportation subsector is subdivided along product lines because pipelines are designed to carry specific products. Industries have been created to cover the pipeline transportation of crude oil, natural gas, refined petroleum products, and other products.

The Scenic and Sightseeing Transportation subsector activities have a production process distinct from passenger transportation carried out for the purpose of transportation. The process does not emphasize efficient transportation; in fact, such activities often use obsolete vehicles such as steam trains, to provide some extra ambience. The activity is local in nature, usually involving a same-day return to the point of departure. Some examples are steam train excursions, urban horse-drawn tourist excursions and hot air balloons. Activities that are sporting in nature, and involve participation by the customer, such as white-water rafting, are generally excluded unless they impose a significant impact on the transportation infrastructure, such as charter fishing, which is included in the Scenic and Sightseeing Transportation, Water industry.

The Support Activities for Transportation subsector includes an industry group for services specific to each mode of transportation, and for the multi-modal activities of freight transportation arrangement, storage facilities and other support activities for transportation. The rental and leasing of transportation equipment, without operator, is included in a separate sector in NAICS.

Limitations and Constraints of the Classification

In the transportation industries proposed structure, most activities that were identified in one country exist in the others. However, often an activity is not carried out by specialized establishments in all countries. For example, a broad NAICS industry was created for Rail Transportation, because the various activities included here are carried out by the same establishments in Mexico.

For those users requiring detailed commodity information, each country will publish information on the products of these industries. Efforts are also underway to harmonize the commodity classifications to allow for greater comparability of these statistics.

Relationship to ISIC

Most of the NAICS 4-digit industries in these subsectors are contained in ISIC Divisions 60, Land Transport; Transport via Pipelines; Division 61, Water Transport; Division 62, Air Transport; Division 63, Supporting and Auxiliary Transport Activities; Activities of Travel Agencies; and Division 64, Post and Telecommunication Activities, of the current International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) of the United Nations. Thirty-two of the thirty-nine NAICS 4-digit industries in these subsectors are contained entirely within these divisions. There are, however, some differences between the two systems.

NAICS includes the storage of natural gas with the pipeline transportation of natural gas, because the storage is usually done by the pipeline establishments, and because a pipeline is inherently a network in which all the nodes are inter-dependent. ISIC includes the storage of natural gas in Storage and Warehousing. NAICS includes ship repair and maintenance, not done in a shipyard, in Other Support Activities for Water Transportation. An example would be a floating drydock service in a harbour. ISIC includes these in the Building and Repairing of Ships Industry in Manufacturing. The five other NAICS industries that cannot be assigned to an ISIC Division without being sub-divided are Nonscheduled Specialty Air Transportation; Scenic and Sightseeing Transportation, Water; Other Support Activities for Air Transportation; Support Activities for Rail Transportation and Navigational Services to Shipping.

ISIC includes some activities in Supporting and Auxiliary Transport Activities that NAICS classifies in other sectors. These include the operation of parking lots and garages and the operation of travel agencies and tour operators.

Some Changes to the National Classifications

For Canada, the coverage of the NAICS Transportation sector is largely the same as the current Canadian classification's Division G, Transportation and Storage Industries. Air courier activities, in Air Transport Industries in the Canadian Classification, are in the Postal Service and Couriers subsector of NAICS. Scenic and Sightseeing Transportation includes some activities, such as charter fishing, now found in Services. Other Support Activities for Water Transportation includes non-factory ship repairing, now classified in the Shipbuilding and Repair industry in Manufacturing. The Motor Vehicle Towing Industry, in Transportation in NAICS, is in Retail Trade in the Canadian classification. Customs Brokers are in Freight Transportation Arrangement in NAICS but in Business Services in the Canadian classification. The contract maintenance of roads, bridges and tunnels is in Other Service Industries Incidental to Transportation in the Canadian classification, but not in NAICS. Rental and leasing, without operator, of transportation equipment other than motor vehicles is in Transportation in the Canadian classification, but is grouped with the rental and leasing of other equipment in NAICS. The structure of this NAICS subsector is similar to that of the Canadian classification, except that services to transportation are arranged modally in the latter. The amount of detail is similar.

For Mexico, the Transportation subsectors are largely the same as the current Mexican classification's Transportation subsector, CMAP 71; which includes Services Related to Land Transport, CMAP 9731; Services Related to Water Transport, CMAP 9732; Services Related to Air Transport, CMAP 9733; and Storage and Refrigeration Services, CMAP 979002. Pipeline Transportation of Crude Oil and Natural Gas is included in CMAP 220000, Extraction of Crude Oil and Natural Gas. Other Pipeline Transportation is included in Manufacturing (parts of CMAP's 351100, Manufacture of Basic Petrochemicals, and 353000, Petroleum Refining). Non-factory repair and maintenance of aircraft is included in Repair and Maintenance in CMAP 961104, Transport Equipment Repair and Maintenance. Customs Brokers are in Freight Transportation Arrangement in NAICS but in subsector 9510, Professional, Technical and Specialized Services, excluding Agricultural Services, in the Mexican classification. The contract maintenance of roads, bridges and tunnels is in Services Related to Land Transport in the Mexican classification, but not in NAICS. Rental and leasing, without operator, of transportation equipment is in Transportation in the CMAP, but is grouped with the rental and leasing of other equipment in NAICS. The structure of NAICS adds pipelines and services to transportation to the Transportation Sector. These activities are in other sectors in CMAP. The amount of detail of these NAICS subsectors is similar to that of the corresponding areas of the Mexican classification.

For the United States, the coverage of the Transportation subsectors is largely contained in Division E, Transportation

and Public Utilities of the 1987 SIC. While NAICS industries are much broader than the 1987 SIC, the U.S. has maintained most of the 1987 SIC industries in its NAICS 5-digit detail. Air transportation has been separated into industries based on the type of operation—scheduled, charter, specialty. This involves adding an industry for Nonscheduled Specialty Air Transportation that is included in 1987 SIC 4522, Air Transportation, Nonscheduled. This is being added by the U.S. to improve the comparability with Canada and Mexico. NAICS also classifies air ambulance activity in the health sector rather than these subsectors.

Marina establishments that are included in 1987 SIC 4493, Marinas, are included in the NAICS Recreation, Amusement, and Gambling subsector. These changes are agreed to by the U.S. to improve international comparability with Mexico and Canada.

Truck Transportation is separated first into general freight and specialized freight. This distinction is principally based on the type of vehicle with general freight being hauled by standard vans and containers. General Freight Trucking is then broken down between local and long-distance. Specialized Freight Trucking is separated into Used Household and Office Goods Moving; Specialized Freight (except Used Goods) Trucking, Local; and Specialized Freight (except Used Goods) Trucking, Long-Distance. The household and office goods movers are separated because of the substantial network of establishments that has developed to deal with local and long-distance moving and the associated storage. In this area, the same establishment provides both local and long-distance services. Other specialized freight establishments generally limit their services to either local or long-distance hauling. This is a change from the existing classifications (1987 SIC 4212, Local Trucking Without Storage; 4213, Trucking, Except Local; and 4214, Local Trucking With Storage) that include storage as a criteria in the classifications. The collection of refuse and garbage is included in 1987 SIC 4212, Local Trucking Without Storage, but this activity will be included in the Utilities subsector.

The activities included in 1987 SIC 4215, Courier Services, Except by Air; 1987 SIC 4311, United States Postal Service; and SIC 4513, Air Courier Services, will be included in the NAICS subsectors, Postal Services and Couriers.

The remaining mode-specific subsector, Transit and Ground Passenger Transportation, includes commuter transportation and highway-based passenger transportation. In this subsector, the principal splits identify scheduled transportation as separate from nonscheduled transportation. The scheduled transportation industry groups are Urban and Suburban Transit Systems, Interurban and Rural Bus Lines, School and Employee Bus Industry. The nonscheduled industry groups are Charter Bus Industry; Taxi and Limousine Service; and Other Transit and Ground Passenger Transportation. The School and Employee Bus Industry was changed from 1987 SIC 4151, School Buses, to introduce the employee transport that is included in 1987 SIC 4119, Local Passenger Transportation, Not Elsewhere Classified. The Charter Bus industry combines the local and long-distance industries of the existing classification system, 1987 SIC 4141, Local Bus Charter Service, and 4142 Bus Charter Service, Except Local, because the production process and the equipment are similar. The change includes classifying ambulance services, included in 1987 SIC 4119, Local Passenger Transportation, Not Elsewhere Classified, as health services in NAICS.

The Scenic and Sightseeing Transportation subsector is separated into three industries based on the mode—land, water, and other.

The Support Activities for Transportation subsector includes all services to transportation but is separated by type of mode serviced. In the 1987 SIC, support activities were included in the same major group as the type of mode serviced.

The Support Activities for Rail Transportation industry is changed to include all of the services to the rail industry. This classification includes rail related activities included in 1987 SIC 4013, Railroad Switching and Terminal Establishments; SIC 4741, Rental of Railroad Cars; and SIC 4789, Transportation Services, Not Elsewhere Classified.

Travel agents and tour operators, currently included in 1987 SIC 4724, Travel Agencies, and SIC 4725, Tour Operators, respectively, will be included in the Management and Support Services subsector in NAICS.

Achievement of Objectives

The classification meets the objectives for the North American Industry Classification System (NAICS). It includes industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. The hierarchical structure of the classification also follows the production concept at each level.

Another objective of the NAICS project is the delineation of service industries. The transportation industries subsectors provide services, so the achievement of a common North American classification, with a reasonable amount of detail, satisfies that objective.

The objective of delineating new and emerging industries is not as relevant in this sector as in others, as it is relatively mature in its industrial structure.

The industries have high specialization ratios, and they are, in most cases, economically significant in all three countries. The detail (4-digit) level and structure of the classification are balanced in size. This enhances the classification's suitability for sampling, data-publishing and other aspects of survey operations. Finally, while disruptions to time series exist, they have been minimized.

The classification achieves comparability for the three participating countries. All countries agree on the detailed definitions of the industries.

Section B—Annex United States National Industry Detail

As explained in the structure presentation of this notice, for a number of reasons 4-digit industries in the eight NAICS industry subsectors in Part XIII, Section A—Attachment I, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. SIC system. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the eight NAICS subsectors covered in Part XIII of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX	Air Transportation			
XXX	Scheduled Air Transportation:			
XXXX ...	Scheduled Air Transportation:			
XXXXX	Scheduled Passenger Air Transportation ...	N	*4512	Air Transportation, Scheduled (passenger).
XXXXX	Scheduled Freight Air Transportation	N	*4512	Air Transportation, Scheduled (freight).
XXX	Nonscheduled Air Transportation:			
XXXX ...	Nonscheduled Chartered Air Transportation:			
XXXXX	Nonscheduled Chartered Passenger Air Transportation.	N	*4522	Air Transportation, Nonscheduled (passenger).
XXXXX	Nonscheduled Chartered Freight Air Transportation.	N	*4522	Air Transportation, Nonscheduled (freight).
XXXX ...	Nonscheduled Specialty Air Transportation ...	N		Establishments that use small, general purpose aircraft to provide a variety of specialized flying services, with none of them predominating, such as the following:
			*0721	Crop Planting, Cultivating, and Protecting (crop dusting).
			*0851	Forestry Services (aerial forest fighting).
			*1382	Oil and Gas Field Exploration Services (aerial geophysical exploration).
			*4522	Air Transportation, Nonscheduled (mixed operations).
			*7319	Advertising, Not Elsewhere Classified (aerial advertising).
			*7335	Commercial Photography (aerial photography).
			*7997	Membership Sports and Recreation Clubs (membership aviation clubs).
			*8299	Schools and Educational Services, Not Elsewhere Classified (flight school).
			*8713	Surveying Services (aerial surveying).
XX	Rail Transportation:			
XXX	Rail Transportation:			
XXXX ...	Rail Transportation:			
XXXXX	Line-Haul Railroads	E	4011	Railroads, Line-Haul Operating.
XXXXX	Short Line Railroads	N	*4013	Railroad Switching and Terminal Establishments (belt line and logging railroads).
XX	Water Transportation:			
XXX	Deep Sea, Coastal and Great Lakes Water Transportation:			
XXXX ...	Deep Sea, Coastal and Great Lakes Water Transportation:			
XXXXX	Deep Sea Freight Transportation	E	4412	Deep Sea Foreign Transportation of Freight.
XXXXX	Deep Sea Passenger Transportation	R	*4481	Deep Sea Transportation of Passengers, Except by Ferry (deep sea activities).
XXXXX	Coastal and Great Lakes Freight Transportation.	R	4424	Deep Sea Domestic Transportation of Freight.
			4432	Freight Transportation on the Great Lakes—St. Lawrence Seaway.
			*4492	Towing and Tugboat Services (coastal barge operations).
XXXXX	Coastal and Great Lakes Passenger Transportation.	R	*4481	Deep Sea Transportation of Passengers, Except by Ferry (coastal activities).
			*4482	Ferries (coastal and Great Lakes).
XXX	Inland Water Transportation:			
XXXX ...	Inland Water Transportation:			
XXXXX	Inland Water Freight Transportation	R	4449	Water Transportation of Freight, Not Elsewhere Classified.
			*4492	Towing and Tugboat Services (inland barge operations).
XXXXX	Inland Water Passenger Transportation	R	*4482	Ferries (inland).
			*4489	Water Transportation of Passengers, Not Elsewhere Classified (water taxi).
XX	Truck Transportation:			
XXX	General Freight Trucking:			
XXXX ...	General Freight Trucking, Local	N	*4212	Local Trucking without Storage (general freight).
			*4214	Local Trucking with Storage (general freight).
XXXX ...	General Freight Trucking, Long-Distance:			
XXXXX	General Freight Trucking, Long-Distance, Truckload.	N	*4213	Trucking, Except Local (general freight, truckload).
XXXXX	General Freight Trucking, Long-Distance, Less Than Truckload.	N	*4213	Trucking, Except Local (general freight, less than truckload).
XXX	Specialized Freight Trucking:			
XXXX ...	Used Household and Office Goods Moving ...	N	*4212	Local Trucking Without Storage (household goods moving).
			*4213	Trucking, Except Local (household goods moving).
			*4214	Local Trucking With Storage (household goods moving).
XXXX ...	Specialized Freight (except Used Goods) Trucking, Local.	N	*4212	Local Trucking without Storage (specialized freight).

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
			*4214	Local Trucking with Storage (specialized freight).
XXXX ...	Specialized Freight (except Used Goods) Trucking, Long-Distance.	N	*4213	Trucking, Except Local (specialized freight).
XX	Transit and Ground Passenger Transportation:			
XXX	Urban Transit Systems:			
XXXX ...	Urban Transit Systems:			
XXXXX	Mixed Mode Transit Systems	N	*4111	Local and Suburban Transit (mixed mode).
XXXXX	Commuter Rail Systems	N	*4111	Local and Suburban Transit (commuter rail).
XXXXX	Bus and Motor Vehicle Transit Systems	N	*4111	Local and Suburban Transit (bus and motor vehicle).
XXXXX	Other Urban Transit Systems	N	*4111	Local and Suburban Transit (other than mixed mode, commuter rail, and bus and motor vehicle).
XXX	Interurban and Rural Bus Lines:			
XXXX ...	Interurban and Rural Bus Lines	E	4131	Intercity and Rural Bus Transportation.
XXX	Taxi and Limousine Service:			
XXXX ...	Taxi Service	E	4121	Taxicabs.
XXXX ...	Limousine Service	N	*4119	Local Passenger Transportation, Not Elsewhere Classified (limousine rental with driver and automobile rental with driver).
XXX	School and Employee Bus Industry:			
XXXX ...	School and Employee Bus Industry	R	*4151	School Buses.
			4119	Local Passenger Transportation, Not Elsewhere Classified (employee transportation).
XXX	Charter Bus Industry:			
XXXX ...	Charter Bus Industry	R	4141	Local Bus Charter Service.
			4142	Bus Charter Services, Except Local.
XXX	Other Transit and Ground Passenger Transportation:			
XXXX ...	Other Transit and Ground Passenger Transportation:			
XXXXX	Special Needs Transportation	N	*4119	Local Passenger Transportation, Not Elsewhere Classified (special needs transportation).
XXXXX	All Other Transit and Ground Passenger Transportation.	R	*4111	Local and Suburban Transit (airport transportation service).
			*4119	Local Passenger Transportation, Not Elsewhere Classified (hearse rental with driver and carpool and vanpool operation).
XX	Pipeline Transportation:			
XXX	Pipeline Transportation of Crude Oil:			
XXXX ...	Pipeline Transportation of Crude Oil	E	4612	Crude Petroleum Pipelines.
XXX	Pipeline Transportation of Natural Gas:			
XXXX ...	Pipeline Transportation of Natural Gas	E	4922	Natural Gas Transmission.
XXX	Other Pipeline Transportation:			
XXXX ...	Pipeline Transportation of Refined Petroleum Products.	E	4613	Refined Petroleum Pipelines.
XXXX ...	All Other Pipeline Transport	E	4619	Pipelines, Not Elsewhere Classified.
XX	Scenic and Sightseeing Transportation:			
XXX	Scenic and Sightseeing Transportation, Land:			
XXXX ...	Scenic and Sightseeing Transportation, Land	N	*4119	Local Passenger Transportation, Not Elsewhere Classified (cable cars and cog railways, except scenic and amusement and sightseeing buses).
			*4789	Transportation Services, Not Elsewhere Classified (horse-drawn cabs and carriages).
			*7999	Amusement and Recreation Services, Not Elsewhere Classified (scenic railroads).
XXX	Scenic and Sightseeing Transportation, Water:			
XXXX ...	Scenic and Sightseeing Transportation, Water.	N	*4489	Water Transportation of Passengers, Not Elsewhere Classified (airboats, excursion boats, and sightseeing boats).
XXX	Scenic and Sightseeing Transportation, Other:			
XXXX ...	Scenic and Sightseeing Transportation, Other	N	*4522	Air Transportation, Non-Scheduled (sightseeing planes).
			*7999	Amusement and Recreation Services, Not Elsewhere Classified (aerial tramways, scenic and amusement).
XX	Support Activities for Transportation:			
XXX	Support Activities for Air Transportation:			
XXXX ...	Airport Operations:			
XXXXX	Air Traffic Control	N	*4581	Airports, Flying Fields, and Airport Terminal Services (private air traffic control).
			*9621	Regulation and Administration of Transportation Programs (government air traffic control).

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XXXXX	Air Operations, Except Air Traffic Control	N	*4581	Airports, Flying Fields, and Airport Terminal Services (airfreight handling at airports, hangar operations, airport terminal services, aircraft storage, airports, and flying fields).
			*4959	Sanitary Services, Not Elsewhere Classified (vacuuming of runways).
XXXX ...	Other Support Activities for Air Transportation	N	*4581	Airports, Flying Fields, and Airport Terminal Services (aircraft servicing and repairing).
XXX	Support Activities for Rail Transportation:			
XXXX ...	Support Activities for Rail Transportation	R	*4013	Railroad Switching and Terminal Establishments (all but short line railroads).
			*4741	Rental of Railroad Cars (grain leveling in railroad cars, grain trimming for railroad equipment, precooling of fruits and vegetables in connection with transportation, and railroad car cleaning, icing, ventilating, and heating).
			*4789	Transportation Services, Not Elsewhere Classified (car loading and unloading; cleaning of railroad ballasts; dining, parlor, sleeping, and other car operations; and railroad maintenance).
XXX	Support Activities for Water Transportation:			
XXXX ...	Port and Harbor Operations	N	*4491	Marine Cargo Handling (dock and pier operations).
			*4499	Water Transportation Services, Not Elsewhere Classified (seaway and lighthouse operations).
XXXX ...	Marine Cargo Handling	R	*4491	Marine Cargo Handling (all but dock and pier operations).
XXXX ...	Navigational Services to Shipping	N	*4492	Towing and Tugboat Services (all but barge operations).
			*4499	Water Transportation Services, Not Elsewhere Classified (piloting vessels in and out of harbors and marine salvage).
XXXX ...	Other Support Activities for Water Transportation	R	*4499	Water Transportation Services, Not Elsewhere Classified (all but seaway and lighthouse operations, piloting vessels in and out of harbors, and marine salvage).
			*4785	Fixed Facilities and Inspection and Weighing Services for Motor Vehicle Transportation (marine cargo checkers).
			*7699	Repair Shops and Related Services, Not Elsewhere Classified (ship scaling).
XXX	Support Activities for Road Transportation:			
XXXX ...	Motor Vehicle Towing	N	*7549	Automotive Services, Except Repair and Carwashes (towing).
XXXX ...	Other Support Activities for Road Transportation.	R	4173	Terminal and Service Facilities for Motor Vehicle Passenger Transportation.
			4231	Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation.
			*4785	Fixed Facilities and Inspection and Weighing Services for Motor Vehicle Transportation (all but marine cargo checkers).
XXX	Freight Transportation Arrangement:			
XXXX ...	Freight Transportation Arrangement	E	4731	Arrangement of Transportation of Freight and Cargo.
XXX	Storage Facilities:			
XXXX ...	Refrigerated Storage Facilities	R	4222	Refrigerated Warehousing and Storage.
			*4226	Special Warehousing and Storage, Not Elsewhere Classified (fur storage).
XXXX ...	Farm Product Storage Facilities	E	4221	Farm Product Warehousing and Storage.
XXXX ...	Other Storage Facilities:			
XXXXX	General Storage Facilities	R	*4225	General Warehousing and Storage (all but self-storage miniwarehouse warehousing).
XXXXX	All Other Storage Facilities	R	4226	Special Warehousing and Storage, Not Elsewhere Classified (all but fur storage).
XXX	Other Support Activities for Transportation:			
XXXX ...	Other Support Activities for Transportation:			
XXXXX	Packing and Crating	E	4783	Packing and Crating.
XXXXX	All Other Support Activities for Transportation.	R	*4729	Arrangement of Passenger Transportation, Not Elsewhere Classified (arrangement of carpools and vanpools).
			*4789	Transportation Services, Not Elsewhere Classified (pipeline terminals and stockyards for transportation).

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 NAICS and U.S. description
0721	Crop Planting, Cultivating and Protecting:	

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 NAICS and U.S. description
	Crop dusting when combined with a variety of aircraft-based services.	Nonscheduled Speciality Air Transportation.
	Other	(Included in the Crop Production subsector).
0851	Forestry Services:	
	Aerial forest fighting when combined with a variety of aircraft-based services.	Nonscheduled Speciality Air Transportation.
	Other	(Included in the Forestry subsector).
1382	Oil and Gas Field Exploration Services:	
	Aerial geophysical exploration combined with a variety of aircraft-based services.	Nonscheduled Speciality Air Transportation.
	Other	(Included in the Mining subsector).
4011	Railroads, Line-haul Operating	Line-Haul Railroads.
4013@	Railroad Switching and Terminal Establishments:	
	Beltline and logging railroads	Short Line Railroads.
	Other	Support Activities for Rail Transportation (pt.).
4111@	Local and Suburban Transit:	
	Mixed mode transit systems	Mixed Mode Transit Systems.
	Commuter rail systems	Commuter Rail Systems.
	Bus and motor vehicle transit systems	Bus and Motor Vehicle Transit Systems.
	Other urban transit systems	Other Urban Transit Systems.
	Airport limousine transportation	All Other Transit and Ground Passenger Transportation (pt).
4119@	Local Passenger Transportation, Not Elsewhere Classified:	
	Ambulances	Ambulance Service (Included in Health and Social Assistance sector).
	Employee transportation	School and Employee Bus Industry (pt.).
	Sightseeing buses and cable and cog railways, except scenic.	Scenic and Sightseeing Transportation, Land (pt.).
	Special needs transportation	Special Needs Transportation.
	Hearse rental with driver and carpool and vanpool operations.	All Other Transit and Ground Passenger Transportation (pt).
	Automobile rental with driver and limousine rental with driver.	Limousine Service.
4121	Taxicabs:	
	Taxicabs	Taxi Service.
4131	Intercity and Rural Bus Transportation	Interurban and Rural Bus Lines.
4141@	Local Charter Bus Service:	
	Local charter bus service	Charter Bus Industry (pt.).
4142@	Bus Charter Service, Except Local:	
	Long-distance charter bus service	Charter Bus Industry (pt.).
4151	School Buses	School and Employee Bus Industry (pt.).
4173@	Terminal and Service Facilities for Motor Vehicle Passenger Transportation:	
	Independent bus terminals	Other Support Activities for Road Transportation (pt.).
4212@	Local Trucking Without Storage:	
	Garbage collection	Garbage Collection (Included in subsector related to sanitary services).
	Local general freight trucking without storage	General Freight Trucking, Local (pt.).
	Household goods moving without storage	Used Household and Office Goods Moving (pt.).
	Local specialized freight trucking without storage.	Specialized Freight (except Used Goods) Trucking, Local (pt.).
4213@	Trucking, Except Local:	
	Long-distance truckload general freight trucking	General Freight Trucking, Long-Distance, Truckload.
	Long-distance less than truckload general freight trucking.	General Freight Trucking, Long-Distance, Less Than Truckload.
	Long-distance household goods moving	Used Household and Office Goods Moving (pt.).
	Long-distance specialized freight trucking	Specialized Freight (except Used Goods) Trucking, Long-Distance.
4214@	Local Trucking with Storage:	
	Local general freight trucking with storage	General Freight Trucking, Local (pt.).
	Local household goods moving	Used Household and Office Goods Moving (pt.).
	Local specialized freight trucking with storage	Specialized Freight (except Used Goods) Trucking, Local.
4215@	Couriers Services Except by Air:	
	Courier services Except by Air	Courier Services (Included in Couriers subsector).
4221	Farm Product Warehousing and Storage	Farm Product Storage Facilities.
4222	Refrigerated Warehousing and Storage	Refrigerated Storage Facilities (pt.).
4225	General Warehousing and Storage:	
	General Warehousing and Storage	General Storage Facilities (pt).
	Self-Storage Miniwarehouse Warehousing	Operators of Miniwarehouses (included in Real Estate subsector).
4226	Special Warehousing and Storage, Not Elsewhere Classified:	

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 NAICS and U.S. description
	Fur storage	Refrigerated Storage Facilities (pt.).
	Other	All Other Storage Facilities.
4231@	Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation:	
	Independent truck terminals	Other Support Activities for Road Transportation (pt.).
4311@	United States Postal Service:	
	United States Postal Service	Postal Services (Included in Postal Services subsector).
4412	Deep Sea Foreign Transportation of Freight	Deep Sea Freight Transportation.
4424@	Deep Sea Domestic Transportation of Freight:	
	Coastal freight operations	Coastal and Great Lakes Freight Transportation (pt.).
4432@	Freight Transportation on the Great Lakes-St. Lawrence Seaway:	
	Great Lakes freight operations	Coastal and Great Lakes Freight Transportation (pt.).
4449	Water Transportation of Freight, Not Elsewhere Classified.	Inland Water Freight Transportation (pt.).
4481	Deep Sea Transportation of Passengers, Except by Ferry:	
	Deep sea passenger transportation	Deep Sea Passenger Transportation.
	Coastal and Great Lakes passenger transportation.	Coastal and Great Lakes Passenger Transportation (pt.).
4482@	Ferries:	
	Coastal and Great Lakes ferries	Coastal and Great Lakes Passenger Transportation (pt.).
	Inland water ferries	Inland Water Passenger Transportation (pt.)
4489	Water Transportation of Passengers, Not Elsewhere Classified:	
	Water taxis	Inland Water Passenger Transportation (pt.).
	Airboats, excursion boats, and sightseeing boats.	Scenic and Sightseeing Transportation, Water.
4491	Marine Cargo Handling:	
	Dock and pier operations	Port and Harbor Operations (pt.)
	Other	Marine Cargo Handling.
4492@	Towing and Tugboat Services:	
	Coastal and Great Lakes barge operations	Coastal and Great Lakes Freight Transportation (pt.).
	Inland water barge operations	Inland Water Freight Transportation (pt.).
	Other	Navigational Services to Shipping (pt.).
4493@	Marinas:	
	Marinas	Marinas (Included in Recreation, Amusement, and Gambling subsector).
4499@	Water Transportation Services, Not Elsewhere Classified:	
	Boat rental	Boat rental (Included in Rental and Leasing subsector)
	Seaway and lighthouse operations	Port and Harbor Operations (pt.).
	Marine salvage and piloting vessels in and out of harbors.	Navigational Services to Shipping (pt.).
	Other	Other Supporting Activities for Water Transportation (pt.).
4512	Air Transportation, Scheduled:	
	Scheduled passenger air transportation	Scheduled freight air transportation.
	Scheduled Passenger Air Transportation	Scheduled Freight Air Transportation.
4513@	Air Courier Services:	
	Air courier operations	Couriers and Messengers (Included in Couriers subsector).
4522@	Air Transportation, Nonscheduled:	
	Air ambulance	Ambulance Services (Included in Health and Social Assistance sector).
	Nonscheduled charter freight air transportation	Nonscheduled Chartered Freight Air Transportation.
	Nonscheduled charter passenger air transportation.	Nonscheduled Chartered Passenger Air Transportation.
	Nonscheduled specialty air transportation	Nonscheduled specialty air transportation.
	Sightseeing airplanes	Scenic and Sightseeing Transportation, Other (pt.).
4581	Airports, Flying Fields, and Airport Terminal Services:	
	Air traffic control	Air Traffic Control.
	Airfreight handling at airports, hangar operations, airport terminal services, aircraft storage, airports, and flying fields.	Airport Operations, Except Air Traffic Control.
	Other	Other Support Activities for Air Transportation.
4612	Crude Petroleum Pipelines	Pipeline Transportation of Crude Oil.
4613	Refined Petroleum Pipelines	Pipeline Transportation of Refined Petroleum Products.
4619	Pipelines, Not Elsewhere Classified	All Other Pipeline Transport.
4724@	Travel Agents:	
	Travel agents	Travel Agencies (Included in Management and Support Services subsector).
4725@	Tour Operators:	

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 NAICS and U.S. description
	Tour operators	Tour Operators (Included in Management and Support Services subsector)
4729@	Arrangement of Passenger Transportation, Not Elsewhere Classified:	
	Arrangement of carpools and vanpools	All Other Support Activities for Transportation (pt.).
	Other	(Included in Management and Support Services subsector).
4731	Arrangement of Transportation of Freight and Cargo:	
	Freight rate auditors and tariff consultants	Other Management Consulting Services (Included in Professional, Scientific, and Technical Services subsector).
	Other	Freight Transportation Arrangement.
4741@	Rental of Railroad Cars:	
	Railcar rental	Railroad Car Rental (Included in Rental and Leasing subsector).
	Other	Support Activities for Rail Transportation (pt.).
4783	Packing and Crating	Packing and Crating.
4785	Fixed Facilities and Inspection and Weighing Services for Motor Vehicle Transportation:	
	Marine cargo checkers	Other Support Activities for Water Transportation (pt.).
	Other	Other Support Activities for Road Transportation (pt.).
4789	Transportation Services, Not Elsewhere Classified	
	Pipeline terminals and stockyards for transportation.	All Other Support Activities for Transportation (pt.)
	Horse-drawn cabs and carriages	Scenic and Sightseeing Transportation, Land (pt.).
	Other	Support Activities for Rail Transportation (pt.).
4922	Natural Gas Transmission	Pipeline Transportation of Natural Gas.
4959	Sanitary Services, Not Elsewhere Classified:	
	Vacuuming of airport runways	Airport Operations, Except Air Traffic Control.
	Other	(Included in subsector related to sanitary services).
7319	Advertising, Not Elsewhere Classified:	
	Aerial advertising when combined with a variety of aircraft-based services.	Nonscheduled Specialty Air Transportation.
	Other	(Included in the Professional, Scientific and Technical Services subsector).
7335	Commercial Photography:	
	Aerial photography when combined with a variety of aircraft-based services.	Nonscheduled Specialty Air Transportation.
	Except when combined with a variety of aircraft-based services.	Commercial Photography (Included in the Professional, Scientific and Technical Services subsector).
7549	Automotive Services, Except Repair and Carwashes:	
	Motor Vehicle Towing	Motor Vehicle Towing.
	Except Motor Vehicle Towing	(Included in the Repair and Maintenance subsector).
7699	Repair Shops and Related Services, Not Elsewhere Classified:	
	Ship scaling	Other Supporting Activities for Water Transportation.
	Other	(Included in Repair and Maintenance subsector).
7997	Membership Sports and Recreation Clubs:	
	Membership aviation clubs when combined with a variety of aircraft-based services	Nonscheduled Specialty Air Transportation.
	Other	(Included in the Recreation, Amusement, and Gambling subsector).
7999	Amusement and Recreation Services, Not Elsewhere Classified:	
	Aerial tramways, scenic and amusement	Scenic and Sightseeing Transportation, Other.
	Scenic railroads	Scenic and Sightseeing Transportation, Land.
	Other	(Included in the Recreation, Amusement, and Gambling subsector).
8299	Schools and Educational Services, Not Elsewhere Classified:	
	Flight schools when combined with a variety of aircraft-based services.	Nonscheduled Specialty Air Transportation.
	Other	(Included in the Education Services subsector).
8713	Surveying Services: Aerial surveying when combined with a variety of aircraft-based services	Nonscheduled Specialty Air Transportation.
	Other	(Included in the Professional, Scientific and Technical Services subsector).
9621	Regulation and Administration of Transportation Programs:	
	Government air traffic control	Air Traffic Control.
	Other	(Included in Public Administration subsector).

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 NAICS and U.S. description

The abbreviation "pt." means "part of". @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 industry. The abbreviation NEC is used for Not Elsewhere Classified.

Description of Changes to the U.S. System

1. Air Transportation—There are five new classifications added to the 1997 industry structure for this subsector. New industries are the following:

Scheduled Passenger Air Transportation from part of 1987 SIC 4512, Air Transportation, Scheduled.

Scheduled Freight Air Transportation from part of 1987 SIC 4512, Air Transportation, Scheduled.

Nonscheduled Chartered Passenger Air Transportation from part of 1987 SIC 4522, Air Transportation, Nonscheduled.

Nonscheduled Chartered Freight Air Transportation from part of 1987 SIC 4522, Air Transportation, Nonscheduled.

Nonscheduled Specialty Air Transportation establishments that use small, general purpose aircraft to provide a variety of specialized flying services, with none of them predominating, from parts of 1987 SIC 0721, Crop Planting, Cultivating, and Protecting; 1987 SIC 0851, Forestry Services; 1987 SIC 1382, Oil and Gas Field Exploration Services; 1987 SIC 4522, Air Transportation, Nonscheduled; 1987 SIC 7319, Advertising, Not Elsewhere Classified; 1987 SIC 7335, Commercial Photography; 1987 SIC 7997, Membership Sports and Recreation Clubs; 1987 SIC 8299, Schools and Educational Services, Not Elsewhere Classified; and 1987 SIC 8713, Surveying Services. The changes to air transportation to separate passenger transportation from freight transportation were requested by the industry and are supported by production-based principles.

2. One new industry has been added for Rail Transportation. Short Line Railroads was created from part of 1987 SIC 4013, Railroad Switching and Terminal Establishments. This change was made because of the differences in the production process between short line and line-haul railroads.

3. Water Transportation—The Water Transportation subsector now includes six industries, five of which have been revised from 1987.

Deep Sea Passenger Transportation now excludes coastal activities.

Coastal and Great Lakes Freight Transportation includes 1987 SIC 4424, Deep Sea Domestic Transportation of Freight; 1987 SIC 4432, Freight Transportation on the Great Lakes-St. Lawrence Seaway; and part of 1987 SIC 4492, Towing and Tugboat Services.

Coastal and Great Lakes Passenger Transportation now includes part of 1987 SIC 4481, Deep Sea Transportation of Passenger, Except by Ferry, and part of 1987 SIC 4482, Ferries.

Inland water transportation has been split between freight and passenger transportation. These changes were made to achieve international comparability with Canada and Mexico and to also recognize the split between freight and passenger transportation.

3. Truck Transportation—The trucking industry has been redefined in terms of the type of equipment used. This regroups 1987 SIC 4212, Local Trucking Without Storage; 1987 SIC 4213, Trucking, Except Local; and 1987 SIC 4214, Local Trucking with Storage. The new classifications are: General Freight Trucking Local; General Freight Trucking, Long-Distance, Truckload; General Freight Trucking, Long-Distance, Less than Truckload; Used Household and Office Goods Moving; Specialized Freight (except Used Goods) Trucking, Local; and Specialized Freight (except Used Goods) Trucking, Long-Distance. This change was requested by the industry and is supported on production-based principles.

4. Transit and Ground Passenger Transportation—There were four industries created from 1987 SIC 4111, Local and Suburban Transit. They are: Mixed Mode Transit Systems, Commuter Rail Systems, Bus and Motor Vehicle Transit Systems, and Other Urban Transit Systems. These classifications were identified to separate the industry based on the mode of transportation.

Limousine Service was created from part of 1987 SIC 4119, Local Passenger Transportation, Not Elsewhere Classified. This industry was created from an NEC industry to recognize its production process and to group it in the same industry group as taxis, an industry that provides similar services, with a similar production process.

Special Needs Transportation was created from part of 1987 SIC 4119, Local Passenger Transportation, Not Elsewhere Classified. This industry identifies a separate process involving the use of specially equipped vehicles and special services not found in other passenger transportation.

A residual industry, All Other Transit and Ground Passenger Transportation, was created from part of 1987 SIC 4111, Local and Suburban Transit; and part of 1987 SIC 4119, Local Passenger Transportation, Not Elsewhere Classified.

5. Pipeline Transportation—There were no changes to these industries for NAICS.

6. Scenic and Sightseeing Transportation—Three new industries were created for this subsector as follows:

Scenic and Sightseeing Transportation, Land from part of 1987 SIC 4119, Local Passenger Transportation, Not Elsewhere Classified; part of 1987 SIC 4789, Transportation Services Not Elsewhere Classified; and part of 1987 SIC 7999, Amusement and Recreation Services, Not Elsewhere Classified.

Scenic and Sightseeing Transportation, Water from 1987 SIC 4489, Water Transportation of Passengers, Not Elsewhere Classified.

Scenic and Sightseeing Transportation, Other from part of 1987 SIC 4522, Air Transportation, nonscheduled, and part of 1987 SIC 7999, Amusement and Recreation Services, Not Elsewhere Classified. These industries were agreed to by the U.S. to improve international comparability with Mexico and Canada, and because scenic and sightseeing involves different activities from other forms of transportation, as noted in Section A.

7. Support Activities for Transportation—Three new industries have been created for Support Activities for Air Transportation. Activities included in 1987 SIC 4581, Airports, Flying Fields and Airport Terminal Services, are now included in three new industries: Air Traffic Control also including government operations included in 1987 SIC 9621, Regulation and Administration of Transportation Programs; Air Operations, Except Air Traffic Control; and Other Support Activities for Air Transportation. Air Operations, Except Air Traffic Control

also includes runway vacuuming included in 1987 SIC 4959, Sanitary Services, Not Elsewhere Classified. These changes improve comparability with Mexico and Canada and are supported based on production principles.

Two new industries are included in Support Activities for Water Transportation. These are Port and Harbor Operations and Navigational Services to Shipping. Port and Harbor Operations is a combination of dock and pier activities formerly included in 1987 SIC 4491, Marine Cargo Handling, and part of 1987 SIC 4499, Water Transportation Services, Not Elsewhere Classified (lighthouse and seaway operations). Navigational Services to Shipping is a combination of the activities from 1987 SIC 4492, Towing and Tugboat Services (all but the barge activities), and 1987 SIC 4499, Water Transportation Services, Not Elsewhere Classified (piloting vessels in and out of harbors and marine salvage). These changes were made to improve international comparability.

In Support Activities for Road Transportation, Motor Vehicle Towing has been created from part of 1987 SIC 7549, Automotive Services, Except Repair and Carwashes. This activity was moved from automotive services because the processes are similar to transportation activities. Other changes include the combination of activities from 1987 SIC 4173, Terminal and Service Facilities for Motor Vehicle Passenger Transportation; other road services from 1987 SIC 4231, Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation; and most of the activities included in 1987 SIC 4785, Fixed Facilities and Inspection and Weighing Services for Motor Vehicle Transportation (all but marine cargo checkers). The new industry, Other Support Activities for Road Transportation, was created because the production process of these activities is similar regardless of the input that produces these services.

The number of industries in this sector has increased from forty-five in 1987 to fifty-four in 1997. For time series linkage twelve of the forty-five 1987 industries are directly comparable. Another twelve are comparable within three percent of the 1997 industries. Yet another four 1987 industries have changes that resulted in twelve 1997 NAICS industries that can be summed for comparable classifications.

Part XIV—Proposed New Industry Structure for Retail Trade and Wholesale Trade

Section A—NAICS Structure

(NAICS)
Agreement Number 25

This Document represents the proposed agreement on the boundaries of the North American Industry Classification System (NAICS) for the following sectors:
Retail Trade
Wholesale Trade

A brief description of the boundaries for Retail Trade and Wholesale Trade is attached. Each country agrees to release a copy of the proposed NAICS boundaries to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the boundaries is made. The structure and detailed definitions of the industries within the boundaries will be determined by each country's national requirements. The NAICS boundaries for these sectors were presented and provisionally accepted at the NAICS Committee meeting held on November 8 and November 9, 1995 in Washington D.C.

Accepted	Signature	Date
Canada	/S/ Jacob Ryten	11/9/95
Mexico	/S/ Enrique Ordaz.	11/9/95
United States	/S/ Jack E. Triplett.	11/9/95

Attachment 1—NAICS Structure

Attachment 2—North American Industry Classification System

Draft Classification For:
Retail Trade
Wholesale Trade

Summary

In most sectors of the North American Industry Classification System (NAICS), the statistical agencies of Canada, Mexico, and the United States have agreed to a detailed structure that includes subsectors, industry groups, and detailed industry definitions. However, in the cases of the Retail Trade sector and the Wholesale Trade sector, the three statistical agencies have agreed that only the boundaries of the sectors will be made comparable internationally at the present time. The structure and detailed definitions of the industries within the boundaries will be determined by national requirements.

For the Retail Trade and Wholesale Trade sectors, determining internationally comparable boundaries was vital. Internationally comparable boundaries make it possible to compare the relative size of the Retail Trade and Wholesale Trade sectors in the economies of the three countries. Moreover, achieving international comparability on the boundaries of the Retail Trade and Wholesale Trade sectors was necessary to obtain internationally comparable data for the other sectors of NAICS. For example, previously the three countries had different and inconsistent boundaries between retail trade and manufacturing for some activities, between retail trade and services for others, and between retail trade and wholesale trade for still others.

Because resources and time for constructing NAICS were limited, the three countries decided to place priority on determining internationally comparable boundaries for the Retail Trade and Wholesale Trade sectors. This agreement does not preclude further work toward internationally comparable retail trade and wholesale trade industries in the future.

General Outline

The NAICS definitions of Retail Trade and Wholesale Trade differ from the previous definitions in all three countries. The new definitions of Retail Trade and Wholesale Trade follow. They result from a new criterion to separate these sectors.

Retail establishments are primarily engaged in selling merchandise, generally without transformation, for end use. These establishments attract customers using methods such as advertising, point-of-sale location, and display of merchandise for ease of selection.

Two type of retailers are distinguished:

(1) Store retailers attempt to attract a high volume of walk-in customers through site location and/or advertising. In general, retail stores have extensive merchandise displays to promote product accessibility and sales. Other store retailers include catalog sales showrooms, gasoline service stations, and mobile home dealers.

(2) Non-store retailers—those selling by other means—include:
Mail order houses
Vending machine operators
Telemarketing sales
Home delivery (e.g., milk, newspapers)
Door-to-door sales
Party plans
Electronic shopping
Sales through temporary stands or stalls

Sales of capital or durable nonconsumer goods used in the production of goods and services, such as farm machinery, medium and heavy duty trucks, and industrial machinery, as well as the sale of raw materials used in production, are included in wholesale trade. These goods are virtually never sold through the methods outlined above.

Wholesale establishments are primarily engaged in selling or arranging the purchase or sale of a) goods for resale, b) capital or durable nonconsumer goods, and c) raw and intermediate materials and supplies used in production. Wholesale establishments have most or all of the following characteristics:

Wholesalers normally operate from a warehouse or office. These warehouses and offices are characterized by having little or no display of merchandise. In addition, neither the design nor the location of the premises is intended to solicit walk-in traffic. Wholesalers do not normally use advertising directed to the general public. Customers are generally reached initially via telephone, in-person marketing, or by specialized advertising that may include internet and other electronic means.

While sales are normally in large volumes, durable nonconsumer goods may be sold in single units.

Sales of capital or durable nonconsumer goods used in the production of goods and services, such as farm machinery, medium and heavy duty trucks, and industrial machinery, as well as the sale of raw materials used in production, are always included in wholesale trade.

Two types of wholesalers may be distinguished:

(1) Establishments selling goods, generally without transformation, on their own account are known as "merchant wholesalers" or "distributors." Sales of products may include integral services such as sorting, packaging and labeling, and marketing. Merchant wholesalers typically maintain their own warehouses. Merchant wholesalers also include drop shippers and import/export merchants.

(2) Establishments arranging for the purchase or sale of goods owned by others or purchasing on a commission basis are known as "agents and brokers." Agents and brokers operate from offices and rarely own and handle goods. Commission merchants, auction agents, import/export agents, and manufacturers' representatives are included in agents and brokers.

The redefinition of the criterion to separate retail trade and wholesale trade is a change for all three countries. In the past, the criterion was based on the class of customer (though specific exceptions were listed). That is, if the business was primarily engaged in selling merchandise for personal or household consumption, the establishment was classified in Retail Trade. If the establishment was primarily selling to business or farm customers for business use, the establishment was included in Wholesale Trade. This led to anomalies, for example, the classification into wholesale trade of businesses perceived to be retail trade, the classification of similar businesses to different sectors, and contrary interpretations of the rule by the various statistical agencies.

The new wholesale-retail definition emphasizes what the establishment does, rather than to whom it sells. A store retailer, for example, has the attributes of a store: A selling place open to the public, merchandise on display or available through sales clerks, facilities for making cash or credit card transactions, and services provided to retail customers. The store provides a place to purchase commodities and is a location where customers may go to obtain information about commodities that are available in retail markets. The new rule is an implementation of the production-oriented criterion for classification adopted for NAICS. But it also agrees with common sense and the normal usage of the word "retailing" among the public and by business within the sector itself. The old class of customer rule did not correspond to the usual meaning of the word "retailing."

Relationship to ISIC

The International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) does not include separate aggregates for Retail Trade and Wholesale Trade. Rather, it combines these activities into three ISIC divisions as follows: Division 50, Sale, Maintenance and Repair of Motor Vehicles and Motorcycles; Retail Sale of Automotive Fuel; Division 51, Wholesale Trade and Commission Trade, Except of Motor Vehicles and Motorcycles; and Division 52, Retail Trade, Except of Motor Vehicles and Motorcycles; Repair of Personal and Household Goods. The Retail Trade and Wholesale Trade sectors proposed for NAICS are equivalent to those ISIC divisions minus class 5020, Maintenance and Repair of Motor Vehicles; class 5260, Repair of Personal and Household Goods; and part of class 5040, Sale, Maintenance and Repair of Motorcycles and Related Parts and Accessories.

Some Changes to the National Classifications

For Canada, the agreement on new definitions for retail trade and wholesale trade results in the transfer of a number of establishments from wholesale trade to retail trade, manufacturing, and services, and from retail trade to manufacturing and services. The most important of these changes are outlined below.

Although the main criterion to distinguish Retail Trade establishments from Wholesale Trade in the 1980 Standard Industrial Classification (SIC) is the class of customer, particular types of trade establishments are assigned to wholesale trade irrespective of their main class of customer. The most important of these are building materials dealers, computer and software stores, office supplies stores and home fuel dealers. NAICS assigns many of these establishments in Retail Trade, that is, those establishments that meet the conditions specified in the Retail Trade definition. Establishments that supply these products to retailers will remain in Wholesale Trade.

The Wholesale Trade division currently includes some activities that are moved to the NAICS manufacturing sector. These activities are tire retreading, the rebuilding on a factory basis of some automotive parts and the converting of fabric (piece goods converters). Piece goods converters are establishments primarily engaged in purchasing fabric in the grey and arranging to have a separate establishment dye the fabric on a contract basis. As well, establishments primarily engaged in the repair of various types of machinery and equipment are transferred from Wholesale Trade to a newly created Repair and Maintenance subsector. These changes affect a relatively small number of establishments currently found in sixteen wholesale industries.

A number of activities currently in Retail Trade in the Canadian classification are assigned to other sectors in NAICS, including establishments engaged in the transformation and sale of products on the premises. Therefore, retail bakeries and candy shops that produce most of their products on the premises and tailor shops that produce custom garments are being moved to manufacturing. Also, the repair and maintenance of automobiles, home appliances, consumer electronics, furniture, recreational vehicles, bicycles, musical instruments and watches and jewelry is transferred from Retail Trade to the newly created Repair

and Maintenance subsector. This change implies the relocation of entire industries, CSIC 6213, Furniture Refinishing and Repair Shops; CSIC 6223, Appliance, Television, Radio and Stereo Repair Shops; CSIC 635, Motor Vehicle Repair Shops; most of CSIC 639, Other Motor Vehicle Services; CSIC 6562, Watch and Jewelry Repair Shops; and parts of CSIC 6323, Motorcycle and Snowmobile Dealers; CSIC 6542, Bicycle Shops; and CSIC, 6551, Musical Instrument Stores.

For Mexico, the change from class of customer to production characteristics changes a number of industries. These include such things as office supplies, farm supplies, building materials, paint, and hardware that existed only in wholesale in CMAP. In NAICS these activities, are in both Wholesale Trade and Retail Trade . The biggest change in this area is including the sales of computers and office furniture in Retail Trade. CMAP does not include classifications in Retail Trade for these activities.

There are a number of activities that will be included in Retail Trade and Wholesale Trade for NAICS that are included in other areas of CMAP. These include vending operations and establishments selling on a commission basis. The vending machine operators are included in CMAP 931011, Restaurants and Eateries. Commissionaires are included in CMAP 97500, Business Intermediation.

The sales of lottery tickets that is included in CMAP 623089, Retail Trade in Lottery Tickets, Etc., will be excluded from Retail Trade in NAICS.

For the United States, restaurants and bars, formerly included in retail trade in the U.S., have been moved and combined with hotels and other accommodations (See Agreement No, 3). This affects all of 1987 SIC Major Group 58 and part of the retail food industry, including such establishments as doughnut shops, cookie shops, pretzel shops, etc. that are primarily engaged in the preparation of food and drink for immediate consumption. These establishments were previously classified in 1987 SIC 5461, Retail Bakeries, and 1987 SIC 5499, Miscellaneous Food Stores. It also includes mobile food services that were previously included in 1987 SIC 5963, Direct Selling Establishments.

The handling of the combination of sales and service is also a change. In the past, establishments that were primarily engaged in service activities were included in Services. This resulted in many businesses that engaged in both sales and service changing classification from year to year based on the condition of the market for the sales of the product. This was particularly evident in the area of bicycle sales and service. In NAICS, establishments that are selling and providing services for the products sold will be included in retail trade even if more of their revenue is in service receipts. An establishment that only has incidental sales or that provides services for products they do not sell such as automobile repair by an independent repair shop are still classified in NAICS as a service establishment.

Another example of change is the print and frame shop. Establishments that frame pictures usually also sell prints and framing materials to their customers. Such an establishment was classified either in Services or Retail based on the share of revenue derived from the framing activity versus the sales activity. NAICS specifies that these establishments are to be classified in Retail Trade.

There is also a change in the classification of some activities involving making and selling goods to the public at the same location. Establishments engaged in producing candy, baked goods, custom clothing, furniture, cabinets, and crafts are included in the Manufacturing sector of NAICS. These activities are included in Division G, Retail Trade, of the 1987 SIC.

The change from class of customer to production characteristics will affect establishments in industries such as computer stores, office furniture dealers, and office suppliers which will move from wholesale to retail.

Another change to Wholesale Trade is the treatment of piece goods converters. In the past, these piece goods converters have been included in Wholesale Trade. But in NAICS, converters will be included in Manufacturing.

Achievement of Objectives

The classification meets the objectives for the North American Industrial Classification System (NAICS). It groups establishments with similar production processes, that is, it applies production-oriented economic concepts. It achieves comparability for the three participating countries. Based on the existing data, all three countries expect to be able to publish data regularly at the total level for Retail and Wholesale trade sectors.

Other objectives of the NAICS project were not as relevant in this area of the classification as in others. These objectives are the delineation of new and emerging industries, expansion of the service industries, and industries engaged in the production of advanced technologies. Therefore, the emphasis was on the objectives listed above.

Section B—Annex: United States National Industry Detail

The U.S. national detail industries will be shown in the next Federal Register notice.

Part XV—Proposed New Industry Structure for Oil and Gas Extraction; Mining, except Oil and Gas; Support Activities for Mining

Section A—Structure

North American Industry Classification System
(NAICS)
Agreement Number 26

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industries:

Oil and Gas Extraction
Mining, Except Oil and Gas
Support Activities for Mining

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on November 8 and November 9, 1995 in Washington, D.C.

Accepted	Signature	Date
Canada	/S/ Jacob Ryten	11/9/95
Mexico	/S/ Enrique Ordaz.	11/9/95
United States	/S/ Jack E. Triplett.	11/9/95

Attachment 1—NAICS Structure

XX Oil and Gas Extraction
XXX Oil and Gas Extraction
XXXX Oil and Gas Extraction
XX Mining, Except Oil and Gas
XXX Coal Mining
XXXX Coal Mining
XXX Metal Ore Mining
XXXX Iron Mining
XXXX Gold and Silver Mining
XXXX Copper, Nickel, Lead, and Zinc Mining
XXXX Other Metal Ore Mining
XXX Non-Metallic Mineral Mining and Quarrying
XXXX Stone Mining and Quarrying
XXXX Sand, Gravel, Clay, Ceramic, and Refractory Mineral Mining and Quarrying
XXXX Other Non Metallic Mineral Mining and Quarrying
XX Support Activities for Mining
XXX Support Activities for Mining
XXXX Support Activities for Mining

Attachment 2—North American Industry Classification System

Draft Classification for:
Mining

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industry classification for these industries.

This draft classification applies to the sector Mining. This sector is subdivided into three subsectors and five industry groups: Oil and Gas Extraction, Coal Mining, Metal Ore Mining, Non-Metallic Mineral Mining and Quarrying, and Support Activities for Mining. The five industry groups are subdivided into 10 industries.

A General Outline

The Mining sector includes the extraction of liquids and gases such as petroleum and natural gas by the operation of wells and the extraction of naturally occurring minerals through underground or surface mining. Also included is the beneficiating of the ores by crushing, grinding, washing, drying, leaching, and other means. The sector is divided into three subsectors, two being based on the types of minerals extracted and beneficiated and one being support activities for the extraction.

The existing industry classifications of Canada, Mexico, and the United States were remarkably similar in their overall structure for mining. There were significant differences in the classifications at the detailed level, as the detailed level varied because of the specific mineral deposits that were significant to each country. The existing classifications were for the most part inherently production oriented and satisfactory to data users. The structure maximizes the comparability between the three countries and makes modest enhancements to the production orientation of the classification.

Limitations and Constraints of the Classification

The extraction of any mineral is conditional on the presence of a suitable mineral deposit. Generally, the extraction method varies according to the type of deposit mined as does the beneficiating process.

An approach that distinguished surface and underground mining as a basis for defining industry groups was considered but in the case of many metals and non-metals the activity in each was too small to permit separation. On the other hand the difference in the beneficiating processes (agglomerating, crushing, chemical, leaching etc.) required for different ores provided the basis for distinguishing production processes. The type of mineral deposit was therefore considered to be a good proxy for the production process in most cases of metal mining. However, these deposits vary significantly among the three countries. For many types of minerals the number of deposits in any one country may be too small to permit publishing data on that industry for that country. This limited the number of possible industries. The industries are therefore based on the type of minerals that generally occur together in a mineral deposit in all three countries. For example, the occurrence of combinations of copper, lead, zinc and nickel in the same mineral deposit is common among the three countries. In the case of non-metal mining, the quarrying of stone, above ground, requires precision cutting of large blocks of stone which is a process very different from the process of extracting sand, gravel, clay, ceramic and refractory minerals.

Relationship to ISIC

Most 4-digit industries in this sector are contained within Divisions 10-14, Mining and Quarrying, of the current International Standard Industrial Classification of all Economic Activities (ISIC Revision 3) of the United Nations. Generally, the industries can be reaggregated to the ISIC divisions. However, there are some differences: ISIC includes peat with coal in Division 10, Mining of Coal and Lignite, Extraction of Peat, whereas peat extraction is included in NAICS industry Non Metallic Mineral Mining and Quarrying. Although peat is similar to coal in that it can be used as a fuel, the extraction and beneficiating processes are distinctly different from coal and are similar to the processes involved with non metallic minerals. It should be noted that in North America peat is seldom used as fuel but rather as a soil conditioner. ISIC Division 12, Mining of Uranium and Thorium Ores, is not supportable as a NAICS industry.

Some Changes to the National Classifications

For Canada, CSIC 0611, Gold Mines, has been combined with the silver part of CSIC 0614, Silver-Lead-Zinc Mines, to form the NAICS four digit industry Gold and Silver Mining. Gold mining and silver mining are separated at the national five digit level. Silver mining becomes a null set as it does not exist in Canada. Silver is mined only as a by product of lead and zinc mining in Canada.

CSIC 0612, Copper and Copper-Zinc Mines, has been combined with CSIC 0613, Nickel-Copper Mines, plus the lead and zinc part of CSIC 0614 to form NAICS industry Copper, Nickel, Lead, and Zinc Mining.

CSIC 0615, Molybdenum Mines, was combined with CSIC 0616, Uranium Mines, and CSIC 0619, Other Metal Mines, to form NAICS Other Metal Mining.

CSIC 0811, Granite Quarries; CSIC 0812, Limestone Quarries; CSIC 0813, Marble Quarries; and CSIC 0814, Sandstone Quarries, becomes NAICS industry Mining and Quarrying of Stone. However these 4 digit industries are restored for national detail.

CSIC 0821, Sand and Gravel Pits, has been combined with CSIC 0815, Shale Quarries, and the crude clays from clay pits part of CSIC 3511, Clay Products, to form NAICS industry Sand, Gravel, Clay, Ceramic and Refractory Mineral Mining and Quarrying. However, CSIC 0821, Sand and Gravel Pits, is restored at the level of national detail. There are no known establishments primarily engaged in extracting clay in Canada, although extraction of clay exists by the manufacturers of clay products.

For Mexico, peat mining has been split from CMAP 210000, Mining and/or Beneficiation of Coal, to be included in NAICS industry Non-Metallic Mineral Mining and Quarrying. The remaining portion of CMAP 21000 is equivalent to NAICS industry Coal Mining. Peat extraction is of little statistical significance in Mexico.

For Mexico, the nickel part of CMAP 232006, Mining and/or Beneficiation of Other Nonferrous Metallic Ores, has been split out. This split will have little statistical impact as there is only a very small amount of nickel mining in Mexico. The split is combined with CMAP 232003, Mining and/or Beneficiation of Industrial Ore with a High Lead and Zinc Content, and CMAP 232005, Mining and/or Beneficiation of Ore with a High Copper Content, to form the NAICS four digit industry Copper, Nickel, Lead, and Zinc Mining.

The creation of the Support Activities for Mining subsector in is an important change for Mexico, since such activities are not represented in the Mexican classification. However, the coverage of the mining sector is very close to the current mining sector in CMAP.

For the United States, a structural change involved moving the support

activity industries from their respective 1987 SIC Major Groups and bringing them all together in the NAICS structure under the subsector Support Activities for Mining.

The nickel ore mining part of 1987 SIC 1061, Ferroalloy Ores, Except Vanadium, has been combined with 1987 SIC 1021, Copper Ores, at the national level. This has a small statistical impact as production is relatively insignificant. This national level industry plus 1987 SIC 1031, Lead and Zinc Ores, also maintained at the national level, form NAICS industry Copper, Nickel, Lead, and Zinc Mining.

The bituminous limestone and bituminous sandstone part of 1987 SIC 1499, Miscellaneous Nonmetallic Minerals, Except Fuels, is moved out of Non Metallic Minerals Mining to NAICS industry Mining and Quarrying of Stone.

Achievement of Objectives

The classification meets the objectives for the North American Industry Classification System (NAICS). It includes industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. In the main, the hierarchical structure of the classification also follows the production concept.

Other objectives of the project are not as relevant in this area of the classification as in others. These objectives are the delineation of new and emerging industries, service industries and industries engaged in the production of advanced technologies. The industrial sector in question is relatively mature and uses relatively stable technology for extraction.

The industries are highly specialized, and they are economically significant. Disruptions to time series are minimal. The classification achieves comparability for the three participating countries. All countries agree on the detailed definitions of the industries.

Section B—Annex: United States National Industry Detail

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the three NAICS industry subsectors presented in Part XV, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the three NAICS industry subsectors covered in Part XV of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX	Oil and Gas Extraction:			
XXX	Oil and Gas Extraction:			
XXXX ...	Oil and Gas Extraction:			
XXXXX	Crude Petroleum and Natural Gas Extraction.	E	1311	Crude Petroleum and Natural Gas.
XXXXX	Natural Gas Liquid Extraction	E	1321	Natural Gas Liquids.
XX	Mining except Oil and Gas:			
XXX	Coal Mining:			
XXXX ...	Coal Mining:			
XXXXX	Bituminous Coal and Lignite Surface Mining.	E	1221	Bituminous Coal and Lignite Surface Mining.
XXXXX	Bituminous Coal Underground Mining	E	1222	Bituminous Coal Underground Mining.
XXXXX	Anthracite Mining	E	1231	Anthracite Mining.
XXX	Metal Ore Mining:			
XXXX ...	Iron Mining	E	1011	Iron Ores.
XXXX ...	Gold and Silver Mining:			
XXXXX	Gold Mining	E	1041	Gold Ores.
XXXXX	Silver Mining	E	1044	Silver Ores.
XXXX ...	Copper, Nickel, Lead and Zinc Mining:			
XXXXX	Copper and Nickel Mining	R	1021	Copper Ores.
			*1061	Ferroalloy Ores, Except Vanadium (nickel).
XXXXX	Lead and Zinc Mining	E	1031	Lead and Zinc Ores.
XXXX ...	Other Metal Ore Mining:			
XXXXX	Uranium-Radium-Vanadium Ores Mining	E	1094	Uranium-Radium-Vanadium Ores.
XXXXX	Other Metal Ore Mining	R	*1061	Ferroalloy Ores, Except Vanadium (other ferroalloys except nickel).
			1099	Miscellaneous Metal Ores, NEC.
XXX	Non-Metallic Mineral Mining and Quarrying:			
XXXX ...	Stone Mining and Quarrying:			
XXXXX	Dimension Stone Mining and Quarrying	E	1411	Dimension Stone.
XXXXX	Crushed and Broken Limestone Mining and Quarrying.	E	1422	Crushed and Broken Limestone.
XXXXX	Crushed and Broken Granite Mining and Quarrying.	E	1423	Crushed and Broken Granite.
XXXXX	Other Crushed and Broken Stone Mining and Quarrying.	R	1429	Crushed and Broken Stone, NEC.
			*1499	Miscellaneous Nonmetallic Minerals, Except Fuels (bituminous limestone and bitumincus sandstone).
XXXX ...	Sand, Gravel, Clay, Ceramic and Refractory Mineral Mining and Quarrying:			

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XXXXX	Construction Sand and Gravel Mining	E	1442	Construction Sand and Gravel.
XXXXX	Industrial Sand Mining	E	1446	Industrial Sand.
XXXXX	Kaolin and Ball Clay Mining	E	1455	Kaolin and Ball Clay.
XXXXX	Clay, Ceramic, and Refractory Mineral Mining.	E	1459	Clay, Ceramic, and Refractory Minerals, NEC.
XXXX ...	Other Non-Metallic Mineral Mining and Quarrying:			
XXXXX	Potash, Soda, and Borate Mineral Mining	E	1474	Potash, Soda, and Borate Minerals.
XXXXX	Phosphate Rock Mining	E	1475	Phosphate Rock.
XXXXX	Other Chemical and Fertilizer Mineral Mining.	E	1479	Chemical and Fertilizer Mineral Mining, NEC.
XXXXX	All Other Non-Metallic Mineral Mining	R	*1499	Miscellaneous Non-Metallic Minerals, Except Fuels (except bituminous limestone and bituminous sandstone).
XX	Support Activities for Mining:			
XXX	Support Activities for Mining:			
XXXX ...	Support Activities for Mining:			
XXXXX	Support Activities for Metal Mining	E	1081	Metal Mining Services.
XXXXX	Support Activities for Coal Mining	E	1241	Coal Mining Services.
XXXXX	Drilling Oil and Gas Wells	E	1381	Drilling Oil and Gas Wells.
XXXXX	Support Activities for Oil and Gas Field Exploration.	E	1382	Oil and Gas Field Exploration Services.
XXXXX	Other Oil and Gas Field Support Activities	E	1389	Oil and Gas Field Services, NEC.
XXXXX	Support Activities for Non-Metallic Minerals Except Fuels.	E	1481	Non-Metallic Minerals Services, except Fuels.

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
1011	Iron Ores	Iron Ore Mining.
1021	Copper Ores	Copper Mining.
1031	Lead and Zinc Ores	Lead and Zinc Mining.
1041	Gold Ores	Gold Mining.
1044	Silver Ores	Silver Mining.
1061	Ferroalloy Ores, Except Vanadium:	
	Nickel Ore Mining	Copper and Nickel Mining (pt).
	Other Ferroalloys	Other Metal Ore Mining (pt).
1081	Metal Mining Services	Support Activities for Metal Mining.
1094	Uranium-Radium-Vanadium Ores	Uranium-Radium-Vanadium Ore Mining.
1099	Miscellaneous Metal Ores, NEC	Other Metal Ore Mining (pt).
1221	Bituminous Coal and Lignite Surface Mining	Bituminous Coal and Lignite Surface Mining.
1222	Bituminous Coal Underground Mining	Bituminous Coal Underground Mining.
1231	Anthracite Mining	Anthracite Mining.
1241	Coal Mining Services	Support Activities for Coal Mining.
1311	Crude Petroleum and Natural Gas	Crude Petroleum and Natural Gas Extraction.
1321	Natural Gas Liquids	Natural Gas Liquid Extraction.
1381	Drilling Oil and Gas Wells	Drilling Oil and Gas Wells.
1382	Oil and Gas Field Exploration Services	Support Activities for Oil and Gas Field Exploration.
1389	Oil and Gas Field Services, NEC	Other Oil and Gas Field Support Activities.
1411	Dimension Stone	Dimension Stone Mining or Quarry.
1422	Crushed and Broken Limestone	Crushed and Broken Limestone Mining or Quarrying.
1423	Crushed and Broken Granite	Crushed and Broken Granite Mining or Quarrying.
1429	Crushed and Broken Stone, NEC	Other Crushed and Broken Stone Mining or Quarrying (pt).
1442	Construction Sand and Gravel	Construction Sand and Gravel Mining.
1446	Industrial Sand	Industrial Sand Mining.
1455	Kaolin and Ball Clay	Kaolin and Ball Clay Mining.
1459	Clay, Ceramic, and Refractory Minerals, NEC	Clay, Ceramic, and Refractory Mineral Mining.
1474	Potash, Soda, and Borate Minerals	Potash, Soda, and Borate Mineral Mining.
1475	Phosphate Rock	Phosphate Rock Mining.
1479	Chemical and Fertilizer Mineral Mining, NEC	Other Chemical and Fertilizer Mineral Mining.
1481	Non-Metallic Mineral Services, Except Fuels	Support Activities for Non-Metallic Minerals, Except Fuels.
1499	Miscellaneous Non-Metallic Minerals, Except Fuels	
	Bituminous Limestone and Bituminous Sandstone	Other Crushed and Broken Stone Mining or Quarrying (pt).

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
	Except Bituminous Limestone and Bituminous Sandstone.	All Other Non-Metallic Mineral Mining.

The abbreviation "pt." means "part of". @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry.

Description of Changes to the U.S. System

There were no new industries added to the 1997 industry structure for this industry sector.

Oil and Gas Extraction—All oil and gas field services (1987 SIC's 1381, 1382, 1389) were transferred to the new 1997 subsector Services Incidental to Mining. There were no changes in the existing 1987 industries.

Coal Mining—1987 SIC 1241, Coal Mining Services, was transferred to the new 1997 subsector Services Incidental to Mining. There were no changes in the existing 1987 industries.

Metal Ore Mining—1987 SIC 1061, Ferroalloy Ores, Except Vanadium, has been split into two new industries, Copper and Nickel Mining and Other Metal Ore Mining. 1987 SIC 1081, Metal Mining Services, was transferred to the 1997 subsector Services Incidental to Mining. There were no changes in the other existing 1987 industries.

Non-Metallic Mineral Mining and Quarrying—1987 SIC 1499, Miscellaneous Non-Metallic Minerals, except Fuels, has been split between Other Crushed and Broken Stone Quarrying and Mining (bituminous limestone and bituminous sandstone) and All Other Non-Metallic Mineral Mining (all other miscellaneous non-metallic minerals). 1987 SIC 1481, Non-Metallic Mineral Services, except Fuels, was transferred to the 1997 subsector Services Incidental to Mining. There were no changes in the other existing 1987 industries.

Support Activities for Mining—This new subsector was created to include all incidental mining services. No new industries were created within this subsector; however, six existing industries were transferred out of the 1987 SIC industry groups based upon the mineral/ore mined into this subsector.

The number of Mining Industries decreased from 31 in 1987 to 30 in 1997. For time series linkage 30 of the 31 1987 industries are comparable within three percent of the 1997 industries.

Part XVI—Proposed New Industry Structure for Paper Manufacturing

Section A—NAICS Structure

North American Industry Classification System

(NAICS)

Agreement Number 27

This document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industries: Paper Manufacturing

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on November 8 and November 9, 1995 in Washington, D.C.

Accepted	Signature	Date
Canada	/S/ Jacob Ryten	11/9/95
Mexico	/S/ Enrique Ordaz.	11/9/95
United States	/S/ Jack E.Triplett.	11/9/95

Attachment 1—NAICS Structure

XX Paper Manufacturing
XXX Pulp, Paper, and Paperboard Mills
XXXX Pulp Mills
XXXX Paper Mills
XXXX Paperboard Mills
XXX Converted Paper Product Manufacturing
XXXX Paperboard Container Manufacturing
XXXX Paper Bag and Coated and Treated Paper Manufacturing
XXXX Stationery Product Manufacturing
XXXX Other Converted Paper Product Manufacturing

Attachment 2—North American Industry Classification System

Draft Classification for:

Paper Manufacturing

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industrial classification for these industries.

The draft classification provides for the subsector, Paper Manufacturing. This subsector is further subdivided into two industry groups and seven industries. The subsector will be part of the Manufacturing sector of the classification.

A General Outline

The Paper Manufacturing industries produce pulp, paper and converted paper products. The manufacture of these products is grouped together because they constitute a series of vertically connected processes. More than one is often carried out in a single establishment. There are essentially three activities. The manufacture of pulp involves separating the cellulose fibers from other impurities in wood or used paper. The manufacture of paper involves matting these fibers into a sheet. Converted paper products are produced from paper and other materials by various cutting and shaping techniques.

The Paper Manufacturing subsector is subdivided into two industry groups, the first for the manufacture of pulp and paper and the second for the manufacture of converted paper products. Paper making is treated as the core activity of the subsector. Therefore, any establishment that makes paper (including paperboard), either alone or in combination with pulp manufacture or paper converting, is classified as a Paper or Paperboard Mill. Establishments that make pulp but no paper are classified as Pulp Mills. Pulp Mills, Paper Mills and Paperboard Mills comprise the first industry group.

Establishments that make products from purchased paper and other materials make up the second industry group, Converted Paper Product Manufacturing. This general activity is then subdivided based, for the most part, on process distinctions. Paperboard Container Manufacturing uses corrugating and cutting machinery to form paperboard into containers. Paper Bag and Coated and Treated Paper Manufacturing establishments cut and coat paper. Stationery Product Manufacturing establishments produce a variety of paper products used for writing, filing and similar applications. Other Converted Paper Product Manufacturing includes in particular the conversion of sanitary paper stock into such things as tissue paper and disposable diapers.

An important process used in the Paper Bag and Coated and Treated Paper Manufacturing industry is lamination, often combined with coating. Lamination and coating produces a composite material with improved properties of strength, impermeability and so on. The laminated materials may be paper, metal foil or plastic film. While paper is often one of the components, it is not always. However, lamination of plastic film to plastic film is classified in Rubber and Plastic Product Manufacturing because establishments that do this often first produce the film. The same situation holds with respect to bags. The manufacture of bags from plastic only, whether or not laminated, is classified in Rubber and Plastic Product Manufacturing, but all other bag manufacturing is classified in this industry.

Limitations and Constraints of the Classification

In the Paper Manufacturing industry, most activities that were identified in one country exist in the others. However, often an activity is not economically significant to the same degree in all three countries. For example, a relatively broad NAICS industry was created for Paper Mills, because the possible subdivisions are small in Mexico.

An operating rule has therefore been adopted for this industry subsector that the NAICS industries must be economically significant and publishable in all three countries. Each country will publish additional categories that comprise subdivisions of NAICS industries, to present data for activities that are nationally significant.

For those users requiring detailed commodity information, each country will publish information on the products of these industries. Efforts are also underway to harmonize the commodity classifications to allow for greater comparability of these statistics.

Relationship to ISIC

Most 4-digit NAICS industries in this subsector are contained in Division 21, Manufacture of Paper and Paper Products, of the current International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) of the United Nations. Four of the seven NAICS 4-digit industries in this subsector are contained entirely in this Division. There are, however, some differences between the two systems.

NAICS includes the manufacture of some products that are made from non-paper materials, such as multi-web plastic bags, in Paper Bag and Coated and Treated Paper Manufacturing, because the production processes are similar regardless of the material. ISIC classifies these articles according to their principal component material.

The other differences with ISIC are minor, but they do result in the following NAICS industries not being entirely contained within ISIC Division 21. Paper Mills in NAICS includes the manufacture of saturated papers, if the paper is made in the same establishment. ISIC treats this activity in manufacture of Non-Metallic Mineral Products. It is a minor difference. Other Converted Paper Product Manufacturing includes some minor activities, such as the manufacture of paper novelties, that are classified elsewhere in ISIC.

Some Changes to the National Classifications

For Canada, the Paper Manufacturing subsector is largely the same as the current Canadian classification's Paper and Allied Products Industries major group. There are two major differences. The Canadian classification includes the manufacture of building board in Paper Manufacturing, whereas NAICS includes it in Wood Manufacturing, except Furniture because it is in fact made from wood fibers and not paper. The saturation of paper products with asphalt is classified in NAICS Petroleum and Coal Product Manufacturing, because the saturation process is more important to the activity than the material being saturated. The structure of this NAICS subsector is similar to that of the Canadian classification, but there is less detail.

For Mexico, the Paper Manufacturing subsector is largely the same as the current Mexican classification's Manufacture of Pulp, Paper and Paper Products. The main difference is the classification of some sanitary products, such as disposable paper diapers, in Textile Products. The structure and amount of detail of this NAICS subsector is similar to that of the corresponding area of the Mexican classification.

For the United States, there is little difference between the Paper Manufacturing subsector of NAICS and the current Paper and Allied Products Major Group. Converted foil containers are included in the NAICS subsector; they are classified in Metal Fabricating in the 1987 SIC.

Achievement of Objectives

The classification meets the objectives for the North American Industry Classification System (NAICS). It includes industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. The hierarchical structure of the classification also follows the production concept. Pulp and paper manufacturing are much more capital intensive operations than paper converting, and the material inputs are different.

Other objectives of the NAICS project are not as relevant in this area of the classification as in others. These objectives are the delineation of new and emerging industries and service industries. The industrial sector in question is relatively mature and generally produces goods. At the product level, there are numerous developments, such as the use of recycled paper in pulp making; however, these do not form the basis of establishment organization and hence of industries. Therefore, the emphasis is on the objectives listed above.

The industries have high specialization ratios, and they are economically significant. The detail (4-digit) level and structure of the classification are balanced in size. This enhances the classification's suitability for sampling, data-publishing and other aspects of survey operations. Finally, while disruptions to time series exist, they have been minimized. The statistical agencies can develop statistical "links" to enable the re-tabulation of time series on the new NAICS classification structure.

The classification achieves comparability for the three participating countries. Based on existing data, all three countries expect to be able to publish data regularly at the industry (4-digit) level of the structure. All countries agree on the detailed definitions of the industries.

Section B—Annex: United States National Industry Detail

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the NAICS industry subsector presented in Part XVI, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than

is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the NAICS industry subsector covered in Part XVI of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX	Paper Manufacturing:			
XXX	Pulp, Paper and Paperboard Mills:			
XXXX ...	Pulp Mills	R	*2611	Pulp Mills (pulp producing mills only).
XXXX ...	Paper Mills:			
XXXXX	Paper Mills, except Newsprint Mills	R	*2611	Pulp Mills (pulp mills producing paper).
			*2621	Paper Mills (pt) (except newsprint mills).
XXXXX	Newsprint Mills	N	*2621	Paper Mills (pt) (newsprint mills).
XXXX ...	Paperboard Mills	E	*2631	Paperboard Mills.
XXX	Converted Paper Product Manufacturing:			
XXXX ...	Paperboard Container Manufacturing:			
XXXXX	Setup Paperboard Box Manufacturing	E	2652	Setup Paperboard Boxes.
XXXXX	Corrugated and Solid Fiber Box Manufacturing.	E	2653	Corrugated and Solid Fiber Boxes.
XXXXX	Fiber Can, Tube, Drum, and Similar Product.	E	2655	Fiber Cans, Tubes, Drums, and Similar Products.
	Manufacturing:			
XXXXX	Non-Folding Sanitary Food Container Manufacturing.	R	2656	Sanitary Food Containers, Except Folding.
			*2679	Converted Paper and Paperboard Products, NEC (egg cartons and other containers from purchased paper).
XXXXX	Folding Paperboard Box Manufacturing	E	2657	Folding Paperboard Boxes, Including Sanitary.
XXXX ...	Paper Bag and Coated and Treated Paper Manufacturing:			
XXXXX	Coated and Laminated Packaging Paper and Plastic Film Manufacturing.	R	*2671	Packaging Paper and Plastics Film, Coated and Laminated (single-web paper, paper multiweb laminated rolls and sheets for packaging uses).
XXXXX	Coated and Laminated Paper Manufacturing.	R	2672	Coated and Laminated Paper, NEC.
			*2679	Converted Paper and Paperboard Products, NEC (wallpaper and gift wrap paper).
XXXXX	Plastic, Foil, and Coated Paper Bag Manufacturing.	R	*2673	Plastics, Foil, and Coated Paper Bags (coated or multiweb laminated bags).
XXXXX	Uncoated Paper and Multiwall Bag Manufacturing.	E	2674	Uncoated Paper and Multiwall Bags.
XXXXX	Laminated Aluminum Foil Manufacturing for Flexible Packaging Uses.	N	*3497	Metal Foil and Leaf (laminated aluminum foil rolls and sheets for flexible packaging uses).
XXXX ...	Stationery Product Manufacturing:			
XXXXX	Die-Cut Paper and Paperboard Office Supply Manufacturing.	N	*2675	Die-Cut Paper and Paperboard and Cardboard (file folders, tabulating cards, and other paper and paperboard office supplies)
			*2679	Converted Paper and Paperboard Products, NEC (paper supplies for business machines and other paper office supplies).
XXXXX	Envelope Manufacturing	E	2677	Envelopes.
XXXXX	Stationery, Tablet, and Related Product Manufacturing.	E	2678	Stationery, Tablets, and Related Products.
XXXX ...	Other Converted Paper Product Manufacturing:			
XXXXX	Surface-Coated Paperboard Manufacturing	N	*2675	Die-Cut Paper and Paperboard and Cardboard (pasted, lined, laminated, or surface-coated paperboard).
XXXXX	Sanitary Paper Product Manufacturing	E	2676	Sanitary Paper Products.
XXXXX	Other Converted Paper and Paperboard Product Manufacturing.	R	*2675	Die-Cut Paper and Paperboard and Cardboard (die-cut paper and paperboard products, except office supplies).
			*2679	Converted Paper and Paperboard Products, NEC (Other converted paper and paperboard products such as paper filters, crepe paper, and laminated and tiled wallboard).

The definitions of status codes are as follows: E—existing industry; L—null industry for the U.S.; N—new industry R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC code	1997 U.S. description
2611	Pulp Mills:	
	Pulp Producing Mills Only	Pulp Mills.
	Pulp and Paper Producing Mills	Paper Mills, except Newsprint Mills (pt).
2621@	Paper Mills:	
	Except Newsprint Mills	Paper Mills, except Newsprint Mills (pt).
	Newsprint Mills	Newsprint Mills.
2631	Paperboard Mills	Paperboard Mills.
2652	Setup Paperboard Boxes	Setup Paperboard Box Manufacturing.
2653	Corrugated and Solid Fiber Boxes	Corrugated and Solid Fiber Box Manufacturing.
2655	Fiber Cans, Tubes, Drums, and Similar Products	Fiber Can, Tube, Drum, and Similar Product Manufacturing.
2656	Sanitary Food Containers, Except Folding	Non-Folding Sanitary Food Container Manufacturing (pt).
2657	Folding Paperboard Boxes, Including Sanitary	Folding Paperboard Box Manufacturing.
2671@	Packaging Paper and Plastics Film, Coated and Laminated Single-Web Paper, Paper Multiweb Laminated Rolls and Sheets for Packaging Uses.	Coated and Laminated Packaging Paper and Plastic Film Manufacturing.
	Plastic Packaging Film and Sheet	Unsupported Plastic Packaging Film and Sheet Manufacturing (Included in Rubber and Plastic Product Manufacturing subsector).
2672	Coated and Laminated Paper, NEC	Coated and Laminated Paper Manufacturing (pt).
2673@	Plastics, Foil, and Coated Paper Bags:	Coated and Laminated Paper Manufacturing (pt).
	Coated or Multiweb Laminated Bags	Plastic, Foil, and Coated Paper Bag Manufacturing.
	Plastics Bags	Unsupported Plastic Bag Manufacturing (Included in Rubber and Plastic Product Manufacturing subsector).
2674	Uncoated Paper and Multiwall Bags	Uncoated Paper and Multiwall Bag Manufacturing.
2675@	Die-Cut Paper and Paperboard and Cardboard:	
	File Folders, Tabulating Cards, and Other Paper and Paperboard Office Supplies.	Die-Cut Paper and Paperboard Office Supply Manufacturing (pt).
	Pasted, Lined, Laminated, or Surface-Coated Paperboard.	Surface-Coated Paperboard Manufacturing.
	Die-Cut Paper and Paperboard Products, Except Office Supplies.	Other Converted Paper and Paperboard Product Manufacturing (pt).
2676	Sanitary Paper Products	Sanitary Paper Product Manufacturing.
2677	Envelopes	Envelope Manufacturing.
2678	Stationery, Tablets, and Related Products	Stationery, Tablet, and Related Product Manufacturing.
2679@	Converted Paper and Paperboard Products, NEC:	
	Egg Cartons and Other Containers from Purchased Paper.	Non-Folding Sanitary Food Container Manufacturing (pt).
	Wallpaper and Gift Wrap Paper	Coated and Laminated Paper Manufacturing (pt).
	Paper Supplies for Business Machines and Other Paper Office Supplies.	Die-Cut Paper and Paperboard Office Supply Manufacturing (pt).
	Other Converted Paper and Paperboard Products such as Paper Filters, Crepe Paper, and Laminated and Tiled Wallboard.	Other Converted Paper and Paperboard Product Manufacturing (pt).
3497@	Metal Foil and Leaf:	
	Laminated Aluminum Foil Rolls and Sheets for Flexible Packaging Uses.	Laminated Aluminum Foil Manufacturing for Flexible Packaging Uses.
	Foil and Foil Containers	All Other Fabricated Metal Product Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).

The abbreviation "pt." means "part of". @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry.

Description of Changes to the U.S. System

Four new industries were added to the 1997 industry structure for this industry subsector. The industries created were:

Newsprint Mills from part of 1987 SIC 2621, Paper Mills, to achieve international comparability with Canada.

Laminated Aluminum Foil Manufacturing for Flexible Packaging Uses from part of 1987 SIC 3497, Metal Foil and Leaf, to achieve international comparability, and because the production processes are similar, regardless of the material used. This is the lamination, not creation of foil. Canada has this in CSIC 27, Paper and Allied Products.

Die-Cut Paper and Paperboard Office Supply Manufacturing from part of 1987 SIC 2675, Die-Cut Paper and Paperboard and Cardboard; and 1987 SIC 2679, Converted Paper and Paperboard Products, NEC. These two 1987 SIC industries (SIC 2675 and SIC 2679) were split and recombined in order to achieve international comparability with Canada and Mexico; as a result of this split, it was possible for the U.S. to form this new industry, which is justified on the production-oriented criterion and has the effect of reducing the size of an "NEC" category in the 1987 SIC.

Surface-Coated Paperboard Manufacturing from part of 1987 SIC 2675, Die-Cut Paper and Paperboard and Cardboard, to achieve international comparability.

Two activities were transferred out of 1987 Major Group 26, Paper and Allied Products, into the 1997 NAICS Rubber and Plastic Product Manufacturing

subsector, because of similarities of production process. These were:

Plastic packaging film and sheet from 1987 SIC 2671, Packaging Paper and Plastics Film, Coated and laminated plastic bags from 1987 SIC 2673, Plastics, Foil, and Coated Paper Bags.

Also, several activities were transferred within the Paper Manufacturing subsector. The number of paper manufacturing industries increased from 17 in 1987 to 20 in 1997. For time series linkage, 13 of the 17 1987 industries are comparable within three percent of the 1997 industries.

Part XVII—Proposed New Industry Structure for Nonmetallic Mineral Product Manufacturing

Section A—NAICS Structure

North American Industry Classification System
(NAICS)
Agreement Number 28

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industries:

Nonmetallic Mineral Product Manufacturing

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on November 8 and November 9, 1995 in Washington, D.C.

Accepted	Signature	Date
Canada	/S/ Jacob Ryten	11/9/95
Mexico	/S/ Enrique Ordaz.	11/9/95
United States	/S/ Jack E. Triplett.	11/9/95

Attachment 1—NAICS Structure

XX Nonmetallic Mineral Product Manufacturing
XXX Clay Product and Refractories Manufacturing
XXXX Pottery, Ceramics, and Plumbing Fixture Manufacturing
XXXX Clay Building Material and Refractories Manufacturing
XXX Glass, Glass Product and Glass Container Manufacturing
XXXX Glass and Glass Product Manufacturing
XXXX Glass Container Manufacturing
XXX Cement and Concrete Product Manufacturing
XXXX Hydraulic Cement Manufacturing
XXXX Ready-Mix Concrete Manufacturing
XXXX Concrete Pipe, Brick, and Block Manufacturing
XXXX Other Precast Concrete Product Manufacturing
XXX Lime, Gypsum and Gypsum Product Manufacturing
XXXX Lime Manufacturing
XXXX Gypsum and Gypsum Product Manufacturing
XXX Miscellaneous Nonmetallic Mineral Product Manufacturing
XXXX Abrasive Product Manufacturing
XXXX Other Miscellaneous Nonmetallic Mineral Product Manufacturing

Attachment 2—North American Industry Classification System

Draft Classification for:
Nonmetallic Mineral Product Manufacturing

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industrial classification for these industries.

The draft classification provides for the subsector Nonmetallic Mineral Product Manufacturing. The subsector is sub-divided into five industry groups and twelve industries. This subsector will be part of the Manufacturing sector of the classification.

A General Outline

The Nonmetallic Mineral Product Manufacturing industries produce such products as bricks, refractories, and ceramic products, and glass and glass products, such as plate glass, fiberglass and containers. Also included are cement and concrete products, lime, gypsum and other nonmetallic mineral products, including abrasive products, cut stone and mineral wool. The products are used in a wide range of activities from construction and heavy and light manufacturing to articles for personal consumption.

Processes used in the Nonmetallic Mineral Product Manufacturing industries include grinding, mixing, cutting, shaping, and honing sand, stone, ceramic, and other nonmetallic raw material inputs. Heat often is used in the process, and chemicals are frequently mixed to change the composition, purity, and chemical properties of the intended product. For example, glass is produced by heating silica sand to the melting point (sometimes combined with cullet or recycled glass) and then drawn or blow molded to the desired shape or thickness. Refractory materials are heated and then formed to brick or other shapes for use in industrial applications.

Limitations and Constraints of the Classification

A few factors constrained the structure and detail of the classification in the area under consideration. Most of the activities that take place in one country exist in the others. However, often an activity is not economically significant to the same degree in all countries. Another constraint is the small number of producers in some countries. For example, separate NAICS industries could not be created for refractories or concrete pipe because of confidentiality problems in Canada. Similar limitations prevent creation of more detailed industries for glass and glass products, mineral wool and other nonmetallic minerals products. Each country will publish additional categories that comprise subdivisions of NAICS industries, to present data for activities that are nationally significant.

For those users requiring detailed commodity information, each country will publish information on the products of these industries. Efforts are also underway to harmonize the commodity classifications to allow for greater comparability of these statistics.

Relationship to ISIC

All NAICS 4-digit industries in this subsector are contained in Division 26, Manufacture of Nonmetallic Mineral Products, of the current International Standard Industrial Classification of All Economic Activities (ISIC, Revision 3) of the United Nations. This means that one can combine the industries of this NAICS subsector and be comparable to ISIC Division 26.

Some Changes to the National Classifications

For Canada, the production of glass yarn was moved from CSIC 1211, Man-Made Fiber and Filament Yarn, and mirrors from CSIC 3259, Other Motor Vehicle Accessories and Parts. Other changes consist of a restructuring of the existing Canadian subsector for Nonmetallic Minerals Product Manufacturing. For example, the production of glass products was separated for establishments producing glass, and those that purchase glass, then manufacture glass products.

For Mexico, all changes are within the existing CMAP class for Nonmetallic Minerals. Changes include the separation of glass fibers (in primary glass production in NAICS) from glass insulation; moving the production of dead burned dolomite from the refractory industry to the NAICS Lime Manufacturing industry; separating decorative glass from glass containers; and moving articles made from plaster of Paris to the Other Nonmetallic Mineral Product Manufacturing industry.

For the United States, little change was made to this subsector. The most important change was the elimination of the all but non-existent asbestos product industry. Two remaining products are made by establishments formerly classified in this industry: (1) Brake linings were moved to the brake parts industry in the Transportation Equipment Manufacturing subsector and (2) gaskets were moved to the Other Nonmetallic Mineral Product Manufacturing industry. Other changes within the subsector were to move dry mix cement from the concrete products industry, to move steel wool from the abrasives industry, to move some plaster work into the NAICS industry for Gypsum and Gypsum Product Manufacturing, and to create new industries for cast concrete products.

Achievement of Objectives

The classification meets the objectives for the North American Industry Classification System (NAICS). It includes industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. In the main, the hierarchical structure of the classification also follows the production concept.

Other objectives of the NAICS project are not as relevant in this area of the classification as in others. These objectives are the delineation of new and emerging industries, service industries and industries engaged in the production of advanced technologies. The industrial sector in question is relatively mature, generally produces goods, and has employed relatively stable technology. Therefore, the emphasis is on the objectives listed above.

The industries have high specialization ratios, and they are economically significant. The detail (4-digit) level and structures of the classification are balanced in size. This enhances the classification's suitability for sampling, data publishing and other aspects of survey operations. Finally, while disruptions to time series exist, they have been minimized.

The classification achieves comparability for the three participating countries. Based on existing data, all three countries expect to be able to publish data regularly at the industry (4-digit) level of the structure. All countries agree on the detailed definitions of the industries.

Section B—Annex: United States National Industry Detail

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the NAICS industry subsector presented in Part XVII, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the NAICS industry subsector covered in Part XVII of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS & U.S. description	Status code	1987 SIC code	1987 SIC description
XX	Nonmetallic Mineral Product Manufacturing:			
XXX	Clay Product and Refractories Manufacturing			
	Pottery, Ceramics and Plumbing Fixture:			
XXXX	Manufacturing:			
XXXXX	Vitreous China Plumbing Fixture and China and Earthenware Fitting and Bathroom Accessory Manufacturing.	E	3261	Vitreous China Plumbing Fixtures and China and Earthenware Fittings and Bathroom Accessories.
XXXXX	Vitreous China, Fine Earthenware and Other Pottery Product Manufacturing.	N	3262	Vitreous China Table and Kitchen Articles.
			3263	Fine Earthenware (Whiteware) Table and Kitchen Articles.
			3269	Pottery Products, NEC.
XXXXX	Porcelain Electrical Supply Manufacturing	E	3264	Porcelain Electrical Supplies.
XXXX	Clay Building Material and Refractories Manufacturing:			
XXXXX	Brick and Structural Clay Tile Manufacturing.	E	3251	Brick and Structural Clay Tile.
XXXXX	Ceramic Wall and Floor Tile Manufacturing	E	3253	Ceramic Wall and Floor Tile.
XXXXX	Other Structural Clay Product Manufacturing.	E	3259	Structural Clay Products, NEC.
XXXXX	Clay Refractory Manufacturing	E	3255	Clay Refractories.
XXXXX	Nonclay Refractory Manufacturing	E	3297	Nonclay Refractories.
XXX	Glass, Glass Product and Glass Container Manufacturing:			
XXXX	Glass and Glass Product Manufacturing:			
XXXXX	Flat Glass Manufacturing	E	3211	Flat Glass.
XXXXX	Other Pressed and Blown Glass and Glassware Manufacturing.	E	3229	Pressed and Blown Glass and Glassware, NEC.
XXXXX	Glass Product Manufacturing Made of Purchased Glass.	E	3231	Glass Products, Made of Purchased Glass.
XXXX	Glass Container Manufacturing	E	3221	Glass Containers.
XXX	Cement and Concrete Product Manufacturing:			

TABLE 1—Continued

	1997 NAICS & U.S. description	Status code	1987 SIC code	1987 SIC description
XXXX ...	Hydraulic Cement Manufacturing	E	3241	Cement, Hydraulic.
XXXX ...	Ready-Mix Concrete Manufacturing	E	3273	Ready-Mixed Concrete.
XXXX ...	Concrete Pipe, Brick and Block Manufacturing:			
XXXXX	Concrete Block and Brick Manufacturing	E	3271	Concrete Block and Brick.
XXXXX	Concrete Pipe Manufacturing	N	*3272	Concrete Products, Except Block and Brick (concrete pipe).
XXXX ...	Other Precast Concrete Product Manufacturing	N	*3272	Concrete Products, Except Block and Brick (concrete products, except dry mix concrete, pipe, bricks and blocks).
XXX	Lime, Gypsum and Gypsum Product Manufacturing:			
XXXX ...	Lime Manufacturing	E	3274	Lime.
XXXX ...	Gypsum and Gypsum Product Manufacturing	R	3275	Gypsum Products.
			*3299	Nonmetallic Mineral Products, NEC (moldings, ornamental and architectural plaster work).
XXX	Miscellaneous Nonmetallic Mineral Product Manufacturing:			
XXXX ...	Abrasive Product Manufacturing	R	*3291	Abrasive Products (except metallic scouring sponges and scouring pads).
XXXX ...	Other Miscellaneous Nonmetallic Mineral Product Manufacturing:			
XXXXX	Cut Stone and Stone Product Manufacturing.	E	3281	Cut Stone and Stone Products.
XXXXX	Ground or Treated Mineral and Earth Manufacturing.	E	3295	Minerals and Earths, Ground or Otherwise Treated.
XXXXX	Mineral Wool Manufacturing	E	3296	Mineral Wool.
XXXXX	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing.	R	*3272	Concrete Products, Except Block and Brick (dry mixture concrete).
			*3292	Asbestos Products (except brake pads and linings).
			*3299	Nonmetallic Mineral Products, NEC (except moldings, ornamental and architectural plaster work).

The definitions of status codes are as follows: E—existing industry; L-null industry for the U.S.; N—new industry; R-revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
3211	Flat Glass	Flat Glass Manufacturing.
3221	Glass Containers	Glass Container Manufacturing.
3229	Pressed and Blown Glass and Glassware, NEC	Other Pressed and Blown Glass and Glassware Manufacturing.
3231	Glass Products, Made of Purchased Glass	Glass Product Manufacturing Made of Purchased Glass.
3241	Cement, Hydraulic	Hydraulic Cement Manufacturing.
3251	Brick and Structural Clay Tile	Brick and Structural Clay Tile Manufacturing.
3253	Ceramic Wall and Floor Tile	Ceramic Wall and Floor Tile Manufacturing.
3255	Clay Refractories	Clay Refractory Manufacturing.
3259	Structural Clay Products, NEC	Other Structural Clay Product Manufacturing.
3261	Vitreous China Plumbing Fixtures and China and Earthenware Fittings and Bathroom Accessories.	Vitreous China Plumbing Fixture and China and Earthenware Fitting and Bathroom Accessory Manufacturing.
3262	Vitreous China Table and Kitchen Articles	Vitreous China, Fine Earthenware and Other Pottery Product Manufacturing (pt).
3263	Fine Earthenware (Whiteware) Table and Kitchen Articles.	Vitreous China, Fine Earthenware and Other Pottery Product Manufacturing (pt).
3264	Porcelain Electrical Supplies	Porcelain Electrical Supply Manufacturing.
3269	Pottery Products, NEC	Vitreous China, Fine Earthenware, and Other Pottery Product Manufacturing (pt).
3271	Concrete Block and Brick	Concrete Block and Brick Manufacturing.
3272@	Concrete Products, Except Block and Brick:	
	Dry Mixture Concrete	Other Miscellaneous Nonmetallic Mineral Product Manufacturing (pt).
	Concrete Pipes	Concrete Pipe Manufacturing.
	Other Concrete Products	Other Precast Concrete Product Manufacturing.
3273	Ready-Mixed Concrete	Ready-Mix Concrete Manufacturing.
3274	Lime	Lime Manufacturing.
3275	Gypsum Products	Gypsum and Gypsum Product Manufacturing (pt).
3281	Cut Stone and Stone Products	Cut Stone and Stone Product Manufacturing.
3291	Abrasive Products:	
	Metallic Scouring Sponges and Scouring Pads	Other Metal Product Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Other Abrasive Products	Abrasive Product Manufacturing.
3292@	Asbestos Products	

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
	Asbestos Brake Linings and Pads	Motor Vehicle Brake System Manufacturing (pt) (Included in Transportation Equipment Manufacturing subsector).
	Other Asbestos Products	Other Miscellaneous Nonmetallic Mineral Product Manufacturing.
3295	Minerals and Earths, Ground or Otherwise Treated.	Ground or Treated Mineral and Earth Manufacturing.
3296	Mineral Wool	Mineral Wool Manufacturing.
3297	Nonclay Refractories	Nonclay Refractory Manufacturing.
3299@	Nonmetallic Mineral Products, NEC.	
	Moldings, Ornamental and Architectural Plaster Work.	Gypsum and Gypsum Product Manufacturing (pt).
	Other Nonmetallic Mineral Products	Other Miscellaneous Nonmetallic Mineral Product Manufacturing (pt).

The abbreviation "pt." means "part of". @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 SIC industry.

Description of Changes to the U.S. System

1987 SIC 3272, Concrete Products, Except Block and Brick, was split into three new industries in the 1997 structure for this industry subsector as follows:

Concrete Pipe Manufacturing for international comparability.

Other Precast Concrete Product Manufacturing.

Other Miscellaneous Nonmetallic Mineral Product Manufacturing.

Two activities were transferred out of 1987 Major Group 32, Stone, Clay, Glass and Concrete Products:

Metallic scouring sponges and scouring pads from 1987 SIC 3291, Abrasive Products, were moved into the 1997 NAICS Fabricated Metal Product Manufacturing subsector to achieve comparability with Canada and Mexico and to better meet production concept criteria.

Asbestos brake linings and pads from 1987 SIC Code 3292, Asbestos Products, were moved into the 1997 NAICS Transportation Equipment Manufacturing subsector to match Canada and Mexico, and because the production of brake linings from asbestos and non-asbestos materials are similar processes.

1987 SIC 3262, Vitreous China Table and Kitchen Articles; 1987 SIC 3263, Fine Earthenware (Whiteware) and Kitchen Articles; and 1987 SIC 3269, Pottery Products, Not Elsewhere Classified, were combined into the new Vitreous China, Fine Earthenware and Other Pottery Product Manufacturing national industry. The combination was made because the 1987 SIC's were too small to warrant separation. The new national industry, however, shows strong production concept characteristics.

Also, some activities were transferred within the Nonmetallic Mineral Product Manufacturing subsector. The number of nonmetallic mineral product manufacturing industries decreased by two to 24, from the 1987 SIC. For time series linkage, 23 of the 26 1987 industries are comparable within three percent of the 1997 industries.

Part XVIII—Proposed New Industry Structure for Primary Metal Manufacturing

Section A—NAICS Structure

North American Industry Classification System
(NAICS)
Agreement Number 29

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industry:

Primary Metal Manufacturing

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on November 8 and November 9, 1995 in Washington, D.C.

Accepted	Signature	Date
Canada	/S/ Jacob Ryten	11/9/95
Mexico	/S/ Enrique Ordaz.	11/9/95
United States	/S/ Jack E. Triplett.	11/9/95

Attachment 1—NAICS Structure

XX Primary Metal Manufacturing
XXX Iron and Steel Mills and Ferroalloy Manufacturing
XXXX Iron and Steel Mills and Ferroalloy Manufacturing
XXX Steel Products Made from Purchased Steel
XXXX Iron and Steel Pipe and Tube Manufacturing from Purchased Steel
XXXX Rolling and Drawing of Purchased Steel
XXX Smelting, Refining, Rolling, Drawing, and Extruding of Aluminum
XXXX Smelting, Refining Rolling, Drawing and Extruding of Aluminum
XXX Smelting, Refining, Rolling, Drawing, and Extruding of Other Nonferrous Metal
XXXX Smelting and Refining of Nonferrous Metal Except Aluminum
XXXX Rolling, Drawing and Extruding Copper
XXXX Rolling, Drawing and Extruding of Nonferrous Metal Except Copper or Aluminum
XXX Metal Castings
XXXX Ferrous Castings
XXXX Nonferrous Castings

Attachment 2—North American Industry Classification System

Draft Classification for:
Primary Metal Manufacturing

Representatives of the statistical agencies of Canada, Mexico and the United States agree to a draft industry classification for these industries.

The draft classification provides for the subsector, Primary Metal Manufacturing. This subsector is divided into five industry groups and nine industries. The subsector is part of the Manufacturing sector.

A General Outline

The Primary Metal Manufacturing industries are well defined and include

the production of steel and steel products; the smelting, refining, and rolling of nonferrous metals; and the production of metal castings. The processes employed in these industries include the use of blast furnaces to produce iron, and the use of basic oxygen and other steel making furnaces to produce steel. Rolling, drawing, and extruding processes to produce such products as pipe and tube, wire, and sheet are also used in this subsector. Similar processes are used to produce the nonferrous metal and metal products also included in this subsector.

A structure along the lines of function or process (refining and smelting, or rolling, drawing, and extruding) for all metals was considered for this subsector. It was not adopted, because: (1) The processes, although they have some similarity, are clearly distinct for steel versus nonferrous metals. Within nonferrous metal manufacturing, the processes are also different. For example, the primary reduction of aluminum involves the massive use of electricity, where the primary reduction of copper is accomplished by using heat and chemicals; (2) establishments that roll, draw or extrude are highly specialized by type of nonferrous metal; (3) due to the combination of process activities in aluminum manufacture in Mexico, a separate trilateral NAICS industry could not be created that would split primary aluminum from aluminum, rolling, drawing, and extrusion. For this reason, a separate NAICS 3-digit and 4-digit industry group and industry was created for Smelting, Refining, Rolling, Drawing and Extruding Aluminum, and a 3-digit NAICS group, Smelting, Refining, Rolling, Drawing, and Extruding of Other Nonferrous Metal, that parallels the 3-digit structure for Aluminum. The "Other" nonferrous group, however, contains 4-digit levels for process industries for copper and for nonferrous metals, except aluminum and copper.

The Iron and Steel Mills and Ferroalloy Manufacturing industry group comprises establishments that produce steel products, beginning with the treatment of iron ore, using furnaces or direct reduction techniques and establishments that begin their process with the purchase of iron, pig iron, or scrap. Establishments that produce ferroalloys are also included in this subsector. Establishments classified in the NAICS industry Rolling and Drawing of Purchased Steel produce sheet and plate, pipe and tube, and wire drawn from purchased steel. The subsector also includes establishments that produce wire rods, bars, plates, sheet, and wire from purchased primary shapes.

The Smelting, Refining, Rolling, Drawing, and Extruding of Aluminum and Other Nonferrous Metal industry groups include establishments that produce primary nonferrous metals and those that produce nonferrous metal products such as sheet, foil, shapes, etc.

Limitations and Constraints of the Classification

In the Primary Metal Manufacturing subsector, most activities that were identified in one country exist in the others. However, the combination of activities within establishments varied across the three countries resulting in higher aggregations of some NAICS industries. For example, broad NAICS classes were created for nonferrous castings, due to production overlap in Mexico. Similarly, often an activity is not economically significant to the same degree in all countries. For example, a separate NAICS industry cannot be created for the smelting and refining of copper, because the resulting industries are too small in Canada.

Each country may publish additional national industries that comprise subdivisions of NAICS industries, to present data for activities that are nationally significant. For those users requiring detailed commodity information, each country will publish information on the products of these industries. Efforts are also underway to harmonize the commodity classifications to allow for greater comparability of these statistics.

Relationship to ISIC

Each of the NAICS industries created in this subsector can be assigned without any subdivision to Division 27, Manufacture of Basic Metals, of the current International Standard Industrial Classification of all Economic Activities (ISIC Revision 3) of the United Nations. The movement of steel and nonferrous wire drawing (CSIC's 3052 & 3381), and precious metal refining (CSIC 3922), for Canada; of molding of metal castings (CMAP 381100) for Mexico; and of the production of alumina (1987 SIC 2819 pt), for the United States are all changes that enhance the NAICS/ISIC relationship. This means that one can combine the industries of this subsector and be comparable to ISIC Division 27.

Some Changes to the National Classifications

For Canada, an important improvement for both production precepts and for international comparability was the movement of ferrous and nonferrous wire drawing to this subsector from other areas. Smelting and refining of precious metals was moved for the same reasons. Other changes for Canada were internal to the existing subsector structure. These changes generally involved realignment of industries to achieve three country comparability, as well as to better meet the production process principle. Some examples are the split of the Other Primary Steel industry to match the NAICS industries for Iron and Steel Mills and Ferroalloy Manufacturing and Rolling and Drawing of Purchased Steel, and the separation of various types of castings from other ferrous or nonferrous manufacturing to match agreed upon NAICS classes.

For Mexico, the only structural modification was to move the production of ferrous and nonferrous castings from the current CMAP classes for machinery. This change allows for three country comparability, and improves the production definition of this subsector. Other changes are internal to the existing Mexican structure, but like those made for Canada above, they were made to both achieve an international NAICS level, while at the same time, they are sound production industry moves. An example is splitting the production of rods and structural shapes, pipe and tube and wire made in a steel making facility from those made from purchased primary steel shapes.

In the United States, a significant structural change was to move the production of alumina from the Chemical Product Manufacturing subsector. This change both matches the Canadian and Mexican treatment, and groups the basic reduction of this ore with metal manufacturing rather than in a chemical processing group. Other changes entailed the realignment of internal nonferrous smelting, rolling and drawing, mostly to achieve three country compatibility.

Achievement of Objectives

The classification meets the objectives for the North American Industry Classification System. It includes industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. The hierarchical structure of the classification also follows the production concept.

The classification achieves comparability for the three participating countries. Based on existing data, all three countries expect to be able to publish data regularly at the industry (4-digit) level of the structure. All countries agree on the definitions of industries.

Other objectives of the NAICS project are not as relevant in this area of the classification as in others. These objectives are the delineation of new and emerging industries, service industries and industries engaged in the production of advanced technologies. The industrial sector in question is relatively mature, generally produces goods and employs relatively stable technology. Therefore, the emphasis is on the objectives listed above.

The industries have high specialization ratios, and they are economically significant. The classification is suitable for sampling, data-publishing, and other aspects of survey operations.

Section B—Annex: United States National Industry Detail

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the NAICS industry subsector presented in Part XIX, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the NAICS industry subsector covered in Part XIX of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS & U.S. description	Status code	1987 SIC code	1987 SIC description
XX	Primary Metal Manufacturing:			
XXX	Iron and Steel Mills and Ferroalloy Manufacturing:			
XXXX ...	Iron and Steel Mills and Ferroalloy Manufacturing:			
XXXXX	Iron and Steel Mills	N	3312	Steel Works, Blast Furnaces, and Rolling Mills (except stand-alone cake ovens).
			*3399	Primary Metal Products, NEC (ferrous powder, paste, flakes, etc.).
XXXXX	Electrometallurgical Ferroalloy Product Manufacturing.	R	*3313	Electrometallurgical Products, except Steel (ferroalloys).
XXX	Steel Products Made from Purchased Steel:			
XXXX ...	Iron and Steel Pipe and Tube Manufacturing from Purchased Steel.	E	3317	Steel Pipe and Tubes.
XXXX ...	Rolling and Drawing of Purchased Steel:			
XXXXX	Cold-Rolled Steel Shape Manufacturing	E	3316	Cold-Rolled Steel Sheet, Strip, and Bars.
XXXXX	Steel Wire Drawing	R	*3315	Steel Wiredrawing and Steel Nails and Spikes (steel wire drawing).
XXX	Smelting, Refining, Rolling, Drawing and Extruding of Aluminum:			
XXXX ...	Smelting, Refining, Rolling, Drawing and Extruding of Aluminum:			
XXXXX	Primary Refining of Aluminum	E	3334	Primary Production of Aluminum.
XXXXX	Secondary Smelting of Aluminum	N	*3341	Secondary Smelting and Refining of Nonferrous Metals (aluminum).
			*3399	Primary Metal Products, NEC (aluminum powder, paste, flakes, etc.)
XXXXX	Alumina Manufacturing	N	*2819	Industrial Inorganic Chemicals, NEC (alumina).
XXXXX	Aluminum Sheet, Plate, and Foil Manufacturing.	E	3353	Aluminum Sheet, Plate, and Foil.
XXXXX	Aluminum Extruded Product Manufacturing	E	3354	Aluminum Extruded Products.
XXXXX	Other Aluminum Rolling and Drawing	R	3355	Aluminum Rolling and Drawing, NEC.
			*3357	Drawing and Insulating of Nonferrous Wire (aluminum wire drawing).
XXX	Smelting, Refining, Rolling, Drawing, and Extruding of Other Nonferrous Metal:			
XXXX ...	Smelting and Refining of Nonferrous Metal Except Aluminum:			
XXXXX	Primary Smelting and Refining of Copper	E	3331	Primary Smelting and Refining of Copper.
XXXXX	Primary Smelting and Refining of Nonferrous Metal, Except Copper and Aluminum.	E	3339	Primary Smelting and Refining of Nonferrous Metals, Except Copper and Aluminum.
XXXXX	Secondary Smelting and Refining of Nonferrous Metals.	R	*3313	Electrometallurgical Products, Except Steel (except ferrous alloys).
			*3341	Secondary Smelting and Refining of Nonferrous Metals (except aluminum).
			*3399	Primary Metal Products, NEC (nonferrous powders, flakes, paste, etc., except aluminum).
XXXX ...	Rolling, Drawing and Extruding Copper:			
XXXXX	Rolling, Drawing and Extruding Copper	R	3351	Rolling, Drawing, and Extruding of Copper.
XXXXX	Drawing of Copper Wire	N	*3357	Drawing and Insulating of Nonferrous Wire (copper wire drawing).

TABLE 1—Continued

	1997 NAICS & U.S. description	Status code	1987 SIC code	1987 SIC description
XXXX ...	Rolling, Drawing, and Extruding of Nonferrous Metal Except Copper or Aluminum.	R	3356	Rolling, Drawing, and Extruding of Nonferrous Metals, Except Copper and Aluminum.
			3357*	Drawing and Insulating of Nonferrous Wire (wire drawing except copper or aluminum).
XXX	Metal Castings:			
XXXX ...	Ferrous Castings:			
XXXXX	Gray, Malleable, and Ductile Iron Foundries.	R	3321	Gray and Ductile Iron Foundries.
			3322	Malleable Iron Foundries.
XXXXX	Steel Investment Foundries	E	3324	Steel Investment Foundries.
XXXXX	Steel Foundries	E	3325	Steel Foundries, NEC.
XXXX ...	Nonferrous Castings:			
XXXXX	Aluminum Die-Castings	E	3363	Aluminum Die-Castings.
XXXXX	Nonferrous Die-Castings, Except Aluminum	E	3364	Nonferrous Die-Castings, Except Aluminum.
XXXXX	Aluminum Foundries	E	3365	Aluminum Foundries.
XXXXX	Copper Foundries	E	3366	Copper Foundries.
XXXXX	Nonferrous Foundries, Except Aluminum and Copper.	E	3369	Nonferrous Foundries, Except Aluminum and Copper.

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
2819@	Industrial Inorganic Chemicals, NEC:	
	Alumina	Alumina Manufacturing (pt).
	Activated Carbon and Charcoal	Other Miscellaneous Chemical Preparation Manufacturing (pt) (Included in Chemical Product Manufacturing subsector).
	Inorganic Dyes	Inorganic Dyes and Pigments Manufacturing (pt) (Included in Chemical Product Manufacturing subsector).
	Other	Other Miscellaneous Inorganic Chemical Manufacturing (pt) (Included in Chemical Manufacturing subsector).
3312@	Steel Works, Blast Furnaces (Including Coke Ovens),and Rolling Mills.	Iron and Steel Mills.
	Coke Ovens, not Integrated With Steel Mills	Other Petroleum and Coal Product Manufacturing (pt) (Included in Petroleum and Coal Product Manufacturing subsector).
3313@	Electrometallurgical Products, Except Steel:	
	Ferroalloys	Electrometallurgical Ferroalloy Product Manufacturing.
	Nonferrous Alloys	Secondary Smelting and Refining of Nonferrous Metal (pt).
3315@	Steel Wiredrawing and Steel Nails and Spikes:	
	Steel Wire Drawing	Steel Wire Drawing.
	Nails, Spikes, Paper clips, Wire, Not Made in Wire Drawing Plants	Miscellaneous Fabricated Wire Product Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
3316	Cold-Rolled Steel Sheet, Strip, and Bars	Cold-Rolled Steel Shape Manufacturing.
3317	Steel Pipe and Tubes	Iron and Steel Pipe and Tube Manufacturing from Purchased Steel.
3321	Gray and Ductile Iron Foundries	Gray, Malleable, and Ductile Iron Foundries (pt).
3322	Malleable Iron Foundries	Gray Malleable and Ductile Iron Foundries (pt).
3324	Steel Investment Foundries	Steel Investment Foundries.
3325	Steel Foundries, NEC	Steel Foundries (pt).
3331	Primary Smelting and Refining of Copper	Primary Smelting and Refining of Copper (pt).
3334	Primary Production of Aluminum	Primary Refining of Aluminum.
3339	Primary Smelting and Refining of Nonferrous Metals, Except Copper and Aluminum.	Primary Smelting and Refining of Nonferrous Metals, Except Copper and Aluminum (pt).
3341@	Secondary Smelting and Refining of Nonferrous Metals:	
	Aluminum	Secondary Smelting of Aluminum (pt).
	Except Aluminum	Secondary Smelting and Refining of Nonferrous Metals (pt).
3351	Rolling, Drawing, and Extruding of Copper	Rolling, Drawing, and Extruding of Copper.
3353	Aluminum Sheet, Plate, and Foil	Aluminum Sheet, Plate, and Foil Manufacturing.
3354	Aluminum Extruded Products	Aluminum Extruded Product Manufacturing.
3355	Aluminum Rolling and Drawing, NEC	Other Aluminum Rolling and Drawing, (pt).
3356	Rolling, Drawing, and Extruding of Nonferrous Metals, Except Copper and Aluminum.	Rolling, Drawing, and Extruding of Nonferrous Metals Except Copper or Aluminum (pt).
3357@	Drawing and Insulating of Nonferrous Wire:	
	Aluminum Wire Drawing	Other Aluminum Rolling and Drawing (pt).
	Copper Wire Drawing	Drawing of Copper Wire.
	Wire Drawing Except Copper or Aluminum.	Rolling, Drawing, and Extruding of Nonferrous Metals Except Copper or Aluminum (pt).
	Communication and Energy Wire—Insulating Only..	Communication and Energy Wire Manufacturing (Included in Electrical Equipment, Appliance and Component Manufacturing subsector).
3363	Aluminum Die-Castings	Aluminum Die-Castings.
3364	Nonferrous Die-Castings, Except Aluminum	Nonferrous Die-Castings, Except Aluminum.
3365	Aluminum Foundries	Aluminum Foundries.
3366	Copper Foundries	Copper Foundries.
3369	Nonferrous Foundries, Except Aluminum and Copper.	Nonferrous Foundries, Except Aluminum and Copper.
3398	Metal Heat Treating	Metal Heat Treating (Included in Fabricated Metal Product Manufacturing subsector).
3399@	Primary Metal Products, NEC:	
	Ferrous Powder, Paste, Flakes, etc.	Steel Mills (pt).
	Aluminum Powder, Paste, Flakes, etc.	Secondary Smelting of Aluminum (pt).
	Other Nonferrous Powder, Paste, Flakes, etc.	Secondary Smelting and Refining of Nonferrous Metals (pt).
	Nonferrous Nails, Brads, Staples, etc.	Miscellaneous Fabricated Wire Product Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Laminated Steel	Electroplating, Plating, Polishing, Anodizing, and Coloring (pt) (Included in Fabricated Metal Product Manufacturing subsector).

The abbreviation "pt." means "part of", @ means time series break has been created that is greater than 3% of the 1992 value of shipments for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

Description of Chonges to the U.S. System

A number of the changes listed in this section were made for reasons of international comparability. Where one or more of the three North American countries had different definitions of an industry classification, adjustments to the definitions in one or more countries were required. In constructing NAICS, the three countries agreed to move, where change was required to attain international comparability, in the direction of the country or countries whose existing classification definitions most closely corresponded to the production-oriented concept adopted for NAICS. Cases where the U.S. changed are listed below; other cases where Canada or Mexico moved toward the U.S. classification are not, of course, listed in this section.

Four new industries were added to the 1997 industry structure for this industry subsector. New industries were created for:

Iron and Steel Mills, from 1987 SIC 3312, Steel Works, Blast Furnaces, and Rolling Mills, and part of 1987 SIC 3399, Primary Metal Products, NEC, for comparability with Canada and Mexico, and because the production processes include direct reduction and other furnace processes similar to those used in manufacturing steel.

Secondary Smelting of Aluminum from part of 1987 SIC 3341, Secondary Smelting and Refining of Nonferrous Metals, and part of 1987 SIC 3399, Primary Metal Products, NEC, because of specialized production processes involved, and for international comparability.

Alumina Manufacturing from part of 1987 SIC 2819, Industrial Inorganic Chemicals, in the 1987 Major Group 28, Chemicals and Allied Products, to achieve international comparability. Canada has this in CSIC 2951, Primary Production of Aluminum.

Drawing of Copper Wire from part of 1987 SIC 3357, Drawing and Insulating of Nonferrous Wire, for international comparability, and because it is a specialized production process.

One complete industry was transferred out of 1987 Major Group 33, Primary Metals.

Metal Heat Treating was transferred into the 1997 subsector Fabricated Metal Product Manufacturing. The move improves the production process classification for this activity.

Five activities were transferred out of 1987 Major Group 33, Primary Metals, and are described more fully in their new respective NAICS subsectors.

Nails, spikes, paper clips, and wire, not made in wire drawing plants, were transferred from 1987 SIC 3315, Steel Wiredrawing and Steel Nails and Spikes, into Miscellaneous Fabricated Wire Product Manufacturing in the 1997 subsector Fabricated Metal Product Manufacturing.

Communication and energy wire-insulating only, was transferred from 1987 SIC 3357, Drawing and Insulating of Nonferrous Wire, into Communication and Energy Wire Manufacturing in 1997 subsector Electrical Equipment, Appliance and Component Manufacturing.

Nonferrous nails, brads, staples, etc. were transferred from 1987 SIC 3399, Primary Metal Products, NEC, into Miscellaneous Fabricated Wire Product Manufacturing in the 1997 subsector Fabricated Metal Product Manufacturing.

Laminated steel was transferred from 1987 SIC 3399, Primary Metal Products, NEC, into Electroplating, Polishing, Anodizing, and Coloring in 1997 subsector Fabricated Metal Product Manufacturing.

Coke ovens, not operated with a blast furnace were transferred from part of 1987 SIC 3312, Blast Furnaces and Steel Mills, into Other Petroleum and Coal Product Manufacturing in the 1997 NAICS subsector, Petroleum and Coal Product Manufacturing.

Also, several activities were transferred within the subsector for Primary Metal Manufacturing. The number of primary metal industries remained the same between 1997 and 1987 at 26. For time series linkage, 20 of the 26 1987 industries are comparable within three percent of the 1997 industries.

Part XIX—Proposed New Industry Structure for Miscellaneous Manufacturing

Section A—NAICS Structure

North American Industry Classification System
(NAICS)
Agreement Number 30

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industries: Miscellaneous Manufacturing

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries.

This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on November 8 and November 9, 1995 in Washington, D.C.

Accepted	Signature	Date
Canada	/S/ Jacob Ryten	11/9/95
Mexico	/S/ Enrique Ordaz.	11/9/95
United States	/S/ Jack E. Triplett.	11/9/95

Attachment 1—NAICS Structure

XX Miscellaneous Manufacturing
XXX Medical Equipment and Supply Manufacturing
XXXX Medical Equipment and Supply Manufacturing
XXX Cotton Ginning
XXXX Cotton Ginning
XXX Other Miscellaneous Manufacturing
XXXX Jewelry and Silverware Manufacturing
XXXX Sporting and Athletic Good Manufacturing
XXXX Doll, Toy, and Game Manufacturing
XXXX Office Supply, Except Paper Manufacturing
XXXX All Other Miscellaneous Manufacturing

Attachment 2—North American Industry Classification System

Draft Classification for:
Miscellaneous Manufacturing

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industrial classification for these industries.

The draft classification provides for the subsector, Miscellaneous Manufacturing. This subsector contains three industry groups and seven industries. The subsector will be part of the Manufacturing sector of the classification.

A General Outline

The Miscellaneous Manufacturing industries produce a wide range of products that cannot be logically classified in other, specific subsectors in manufacturing. Products as diverse as medical equipment and supplies, ginned cotton, jewelry, sporting goods, toys and office supplies are produced by the industries in the subsector.

Because this subsector is an "other" grouping, the processes used vary significantly. For example, for cotton ginning, the separation of the seed from the cotton lint, differs significantly from the fabrication processes in making dolls or toys. Other processes used in this subsector include the melting and shaping of precious metals to make jewelry, and the bending, forming and assembly used in making medical products.

Limitations and Constraints of the Classification

In the Miscellaneous Manufacturing industries, most activities that were identified in one country exist in the others. However, often an activity is not economically significant to the same degree in all countries. In some instances, separate industries could not be created due to size constraints. For example, a separate industry for musical instruments was too small in Canada to support a separate NAICS industry. Each country will publish additional categories that comprise subdivisions of NAICS industries, to present data for activities that are nationally significant.

For those users requiring detailed commodity information, each country will publish information on the products of these industries. Efforts are also underway to harmonize the commodity classifications to allow for greater comparability of these statistics.

Relationship to ISIC

Three of the seven NAICS industries created in this subsector are contained in a single division of the International Standard Industrial Classification of all Economic Activities (ISIC Revision 3) of the United Nations, without any subdivision. Two 4-digit NAICS industries in this subsector, Sporting and Athletic Good Manufacturing and Doll, Toy and Game Manufacturing, are contained within ISIC Division 36, Miscellaneous Manufacturing, and the third, Cotton Ginning, is contained within ISIC Division 01, Agriculture, Hunting and Related Service Activities.

The following NAICS industries cannot be assigned to a single ISIC division without being sub-divided: Medical Equipment and Supply Manufacturing; Jewelry and Silverware Manufacturing; Office Supply, Except Paper, Manufacturing; and Other Miscellaneous Manufacturing. The Jewelry and Silverware industry would fall within a single ISIC division, except for watch jewels and watch bands.

Some Changes to the National Classifications

The most significant change for Canada are the activities that moved out of Miscellaneous Manufacturing and into Computer and Electronic Product Manufacturing. These are the manufacturing of navigational, measuring and control instruments. Another significant change is the creation of the Medical Equipment and Supply Manufacturing industry. This industry is created by combining activities from nine separate industries in six different major groups. Other industries that moved from the Miscellaneous Manufacturing subsector include the Sign and Display industry and the Floor Tile Linoleum and Coated Fabrics industry.

The creation of Medical Equipment and Supply Manufacturing industries is the most significant change for Mexico. For Mexico, this industry is created by combining activities from 14 separate industries in three subsectors. Another structural change for Mexico is the movement of cotton ginning from Basic Textile Manufacturing to Miscellaneous Manufacturing. The NAICS industry, Doll, Toy and Game Manufacturing, includes the manufacture of wood and plastic toys that the Mexican classification places in wood products and plastics products, respectively.

The most significant changes for the United States are two structural changes. The Medical Equipment and Supply Manufacturing industry group moves from Instruments and Related Products to Miscellaneous Manufacturing and cotton ginning, formerly in 1987 SIC Major Group, Agricultural Services, is moved to Miscellaneous Manufacturing. In addition, several activities moved out of miscellaneous manufacturing. Hard Surface Floor Covering was moved from Miscellaneous Manufacturing to Rubber and Plastic Product Manufacturing. Signs and Advertising Specialties was eliminated as a separate industry and the activities moved to various industries.

Achievement of Objectives

At the industry level, the classification meets the objectives for the North American Industry Classification System (NAICS). It includes industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. Since this is the miscellaneous subsector, the hierarchical structure is not truly a production concept.

Other objectives of the NAICS project are not as relevant in this area of the classification as in others. These objectives are the delineation of new and emerging industries, service industries and industries engaged in the production of advanced technologies. The industrial sector in question is relatively mature, generally produces goods and has employed relatively stable technology. Therefore, the emphasis is on the objectives listed above.

The industries have high specialization ratios, and they are economically significant. The detail (4-digit) level and structure of the classification are balanced in size. This enhances the classification's suitability for sampling, data-publishing and other aspects of survey operations. Finally, while disruptions to time series exist, they have been minimized.

The classification achieves comparability for the three participating countries. Based on existing data, all three countries expect to be able to publish data regularly at the industry (4-digit) level of the structure. All countries agree on the detailed definitions of the industries.

Section B—Annex: United States National Industry Detail

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the NAICS industry subsector presented in Part XIX, Section A—Attachment 1, contain less detail than is currently in the U.S. SIC system, and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the NAICS industry subsector covered in Part XIX of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX	Miscellaneous Manufacturing:			
XXX	Medical Equipment and Supply Manufacturing:			
XXXX	Medical Equipment and Supply Manufacturing:			
XXXXX	Laboratory Apparatus and Furniture Manufacturing.	E	3821	Laboratory Apparatus and Furniture.
XXXXX	Surgical and Medical Instrument Manufacturing.	E	3841	Surgical and Medical Instruments and Apparatus.
XXXXX	Surgical Appliance and Supply Manufacturing.	R	*2599	Furniture and Fixtures, NEC (hospital beds).
			*3829	Measuring and Controlling Devices, NEC (medical thermometers).
			*3842	Orthopedic, Prosthetic, and Surgical Appliances and Supplies (except electronic hearing aids).
XXXXX	Dental Equipment and Supply Manufacturing.	E	3843	Dental Equipment and Supplies.
XXXXX	Ophthalmic Good Manufacturing	E	3851	Ophthalmic Goods.
XXXXX	Dental Laboratories	E	8072	Dental Laboratories.
XXXXX	Eyeglass and Contact Lens Manufacturing	E	*5995	Optical Goods Stores (grinding of lenses to prescription).
XXX	Cotton Ginning:			
XXXX	Cotton Ginning	E	0724	Cotton Ginning.
XXX	Other Miscellaneous Manufacturing:			
XXXX	Jewelry and Silverware Manufacturing:			
XXXXX	Jewelry Manufacturing, including Precious Metal.	R	*3469	Metal Stamping, NEC (stamping coins).
			*3479	Coating, Engraving, and Allied Services, NEC (silver and plated ware engraving and etching).
			3911	Jewelry, Precious Metal.
XXXXX	Silverware and Plated Ware Manufacturing	R	*3479	Coating, Engraving, and Allied Services, NEC (silver and plated ware engraving and etching).
			*3914	Silverware, Plated Ware, and Stainless Steel Ware (excludes nonprecious metal cutlery and flatware).
XXXXX	Jewelers' Material and Lapidary Work Manufacturing.	E	3915	Jewelers' Findings and Materials, and Lapidary Work.
XXXXX	Costume Jewelry and Novelty Manufacturing.	R	*3479	Coating, Engraving, and Allied Services, NEC (costume jewelry engraving and etching).
			*3499	Fabricated Metal Products, NEC (trophies of nonprecious metals).
			3961	Costume Jewelry and Costume Novelties, Except Precious Metal.
XXXX	Sporting and Athletic Good Manufacturing	E	3949	Sporting and Athletic Goods, NEC.

TABLE 1—Continued

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XXXX ...	Doll, Toy, and Game Manufacturing:			
XXXXX	Doll and Stuffed Toy Manufacturing	E	3942	Dolls and Stuffed Toys.
XXXXX	Game, Toy, and Children's Vehicle Manufacturing.	R	*3944	Games, Toys, and Children's Vehicles, Except Dolls and Bicycles (except metal tricycles).
XXXX ...	Office Supply , Except Paper, Manufacturing:			
XXXXX	Pen and Mechanical Pencil Manufacturing	E	3951	Pens, Mechanical Pencils, and Parts.
XXXXX	Lead Pencil and Art Good Manufacturing	R	*2531	Public Building and Related Furniture (blackboards).
			*3579	Office Machines, NEC (pencil sharpeners, staplers and other office equipment).
			*3952	Lead Pencils, Crayons, and Artists' Materials (except drawing and india ink, and drafting tables and boards).
XXXXX	Marking Device Manufacturing	E	3953	Marking Devices.
XXXXX	Carbon Paper and Inked Ribbon Manufacturing.	E	3955	Carbon Paper and Inked Ribbons.
XXXX ...	All Other Miscellaneous Manufacturing:			
XXXXX	Musical Instrument Manufacturing	E	3931	Musical Instruments.
XXXXX	Fastener, Button, Needle, and Pin Manufacturing.	E	3965	Fasteners, Buttons, Needles, and Pins.
XXXXX	Broom, Brush, and Mop Manufacturing	R	3991	Brooms and Brushes.
			*2392	Housefurnishings, Except Curtains and Draperies (mops, floor and dust).
XXXXX	Burial Casket Manufacturing	E	3995	Burial Caskets.
XXXXX	All Other Miscellaneous Manufacturing	R	*2499	Wood Products, NEC (wood and metal frames for mirrors and pictures).
			*3999	Manufacturing Industries, NEC (other miscellaneous products not specially provided for previously).

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and *means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
0724	Cotton Ginning	Cotton Ginning.
2392@	Housefurnishings, Except Curtains and Drapes:	
	Blanket and Wardrobe Bags	Textile Bag Manufacturing (pt) (Included in Textile Mills subsector).
	Dusting Rags	Other Household Product Mills (pt) (Included in Textile Mills subsector).
	Mops, Floor and Dust	Broom, Brush and Mop Manufacturing (pt).
	Other	Other Household Textile Product Mills (pt) (Included in Textile Mills subsector).
2499	Wood Products, NEC:	
	Mirror and Picture Frames	All Other Miscellaneous Manufacturing (pt).
	Laundry Hampers Made from Rattan, Reed or Willow.	Other Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).
	Wood Laundry Hampers	Household Wood Furniture Manufacturing, Except Upholstered (pt) (Included in Furniture Manufacturing subsector).
	Wood Tubs and Vats, Jewelry and Cigar Boxes	Other Wood Container Manufacturing (pt) (Included in Wood Product Manufacturing, except Furniture subsector).
	Other Wood Products	Other Wood Product Manufacturing (pt) (Included in Wood Product Manufacturing, except Furniture subsector).
2531@	Public Building and Related Furniture:	
	Blackboards	All Other Miscellaneous Manufacturing (pt).
	Metal Public Building Furniture	Metal Office Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).
	Seats for Motor Vehicles	Motor Vehicle Fabric Accessory and Seat Manufacturing (pt) (Included in Transportation Equipment Manufacturing subsector).
	Wood Public Building Furniture	Wood Office Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).
	Other Public Building Furniture	Other Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).
2599@	Furniture and Fixtures, NEC:	
	Furniture such as Ship Furniture, Metal Industrial Work Benches and Stools.	Other Metal Office Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).
	Hospital Beds	Surgical Appliance and Supply Manufacturing (pt).
	Wood Industrial Work Benches and Stools, and Other.	Wood Office Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
	Other Furniture or Fixtures	Other Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).
3469	Metal Stamping, NEC:	
	Stamping of Coins	Jewelry Manufacturing, including Precious Metal (pt).
	Metal Stamping, except Kitchen Utensils, Pots and Pans for Cooking and Coins.	Metal Stamping and Powder Metallurgical Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Kitchen Utensils and Pots and Pans for Cooking	Kitchen Utensil, Pot and Pan Manufacturing (Included in Fabricated Metal Product Manufacturing subsector).
3479	Coating, Engraving, and Allied Services, NEC:	
	Jewelry Engraving and Etching, Costume Jewelry.	Costume Jewelry and Novelty Manufacturing (pt).
	Jewelry Engraving and Etching, Precious Metal	Jewelry Manufacturing, Precious Metal (pt).
	Silverware and Flatware Engraving and Etching	Silverware and Plated Ware Manufacturing (pt).
	Other	Metal Coating, Engraving, and Allied Services, Except Jewelry and Silverware (Included in Fabricated Metal Product Manufacturing subsector).
3499@	Fabricated Metal Products, NEC:	
	Metal Aerosol Valves	Other Valve and Pipe Fitting Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Metal Boxes	Metal Shipping Container, Barrel, Drum, Keg, Pail, Bin, Box, etc. Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Metal Furniture Parts, Household	Household Metal Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).
	Metal Furniture Parts, Office	Office Metal Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).
	Powder Metallurgy	Metal Stampings and Powder Metallurgy Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Safe and Vault Locks	Hardware Manufacturing, Including Locks (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Trophies of Nonprecious Metals	Costume Jewelry and Novelty Manufacturing (pt).
	Other Metal Products	All Other Fabricated Metal Product Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
3579@	Office Machines, NEC:	
	Pencil Sharpeners, Staplers and Other Office Equipment.	Lead Pencil and Art Good Manufacturing (pt).
	Timeclocks and Time Stamps	Watch, Clock, and Part Manufacturing (pt) (Included in Computer and Electronic Product Manufacturing subsector).
	Other Office Machines	Office Machine Manufacturing (pt) (Included in Machinery Manufacturing subsector).
3821	Laboratory Apparatus and Furniture	Laboratory Apparatus and Furniture Manufacturing.
3827	Optical Instruments and Lenses	Optical Instrument and Lens Manufacturing (Included in Machinery Manufacturing subsector).
3829	Measuring and Controlling Devices, NEC:	
	Medical Thermometers	Surgical Appliance and Supply Manufacturing (pt).
	Other Measuring and Controlling Devices	Other Measuring and Controlling Device Manufacturing (Included in Computer and Electronic Product Manufacturing subsector).
3841	Surgical and Medical Instruments and Apparatus	Surgical and Medical Instrument Manufacturing.
3842@	Orthopedic, Prosthetic, and Surgical Appliances and Supplies:	
	Orthopedic, Prosthetic, and Surgical Appliances and Supplies, except Electronic Hearing Aids.	Surgical Appliance and Supply Manufacturing (pt).
	Electronic Hearing Aids	Electromedical Equipment Manufacturing (pt) (Included in Computer and Electronic Product Manufacturing).
3843	Dental Equipment and Supplies	Dental Equipment and Supply Manufacturing.
3844	X-Ray Apparatus and Tubes and Related Irradiation Apparatus.	X-Ray Apparatus and Tube Manufacturing (Included in Computer and Electronic Product Manufacturing subsector).
3845	Electromedical and Electrotherapeutic Apparatus	Electromedical Equipment Manufacturing (Included in Computer and Electronic Product Manufacturing subsector).
3851	Ophthalmic Goods	Ophthalmic Good Manufacturing.
3911	Jewelry, Precious Metal	Jewelry Manufacturing, except Precious Metal (pt).
3914	Silverware, Plated Ware, and Stainless Steel Ware:	
	Nonprecious Cutlery and Flatware	Cutlery and Flatware Manufacturing, Except Precious (pt) (Included in Fabricated Metal Product Manufacturing subsector).

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
	Silverware, Plated Ware, and Stainless Steel Ware (Except Nonprecious Flatware and Cutlery).	Silverware and Plated Ware Manufacturing.
3915	Jewelers' Findings and Materials, and Lapidary Work.	Jewelers' Material and Lapidary Work Manufacturing.
3931	Musical Instruments	Musical Instrument Manufacturing.
3942	Dolls and Stuffed Toys	Doll and Stuffed Toy Manufacturing.
3944	Games, Toys, and Children's Vehicles, Except Dolls and Bicycles:	
	Tricycles and	Motorcycle, Bicycle, and Part Manufacturing (pt) (Included in Transportation Equipment Manufacturing subsector).
	Other	Game, Toy, and Children's Vehicle Manufacturing.
3949	Sporting and Athletic Goods, NEC	Sporting and Athletic Good Manufacturing.
3951	Pens, Mechanical Pencils and Parts	Pen and Mechanical Pencil Manufacturing.
3952@	Lead Pencils, Crayons, and Artists' Materials:	
	Drawing and India Ink	Printing Ink Manufacturing (pt) (Included in Chemical Product Manufacturing subsector).
	Metal Drafting Tables and Boards	Metal Office Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).
	Wood Drafting Tables and Boards	Wood Office Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).
	Other	Lead Pencil and Art Good Manufacturing (pt).
3953	Marking Devices	Marking Device Manufacturing.
3955	Carbon Paper and Inked Ribbons	Carbon Paper and Inked Ribbon Manufacturing.
3961	Costume Jewelry and Costume Novelties, Except Precious Metals.	Costume Jewelry and Novelty Manufacturing (pt).
3965	Fasteners, Buttons, Needles, and Pins	Fastener, Button, Needle and Pin Manufacturing.
3991	Brooms and Brushes	Broom, Brush and Mop Manufacturing.
3993@	Signs and Advertising Specialties:	
	Flexographic Printing of Advertising Specialties	Commercial Flexographic Printing (pt) (Included in Printing and Related Support Activities subsector).
	Gravure Printing of Advertising Specialties	Commercial Gravure Printing (pt) (Included in Printing and Related Support Activities subsector).
	Lithographic Printing of Advertising Specialties	Commercial Lithographic Printing (pt) (Included in Printing and Related Support Activities subsector).
	Screen Printing of Advertising Specialties	Commercial Screen Printing (pt) (Included in Printing and Related Support Activities subsector).
	Other Printing of Advertising Specialties	Other Commercial Printing (pt) (Included in Printing and Related Support Activities subsector).
	Electric Signs	Electric Sign Manufacturing (Included in Electrical Equipment, Appliance and Component Manufacturing subsector).
	Metal Signs	All Other Fabricated Metal Product Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Wood Signs	Other Wood Product Manufacturing (pt) (Included in Wood Product Manufacturing, except Furniture subsector).
3995	Burial Caskets	Burial Casket Manufacturing.
3996	Linoleum, Asphalted-Felt-Base, and Other Hard Surface Floor Coverings, NEC.	Resilient Floor Coverings Manufacturing (pt) (Included in Rubber and Plastic Product Manufacturing subsector).
3999@	Manufacturing Industries, NEC:	
	Beauty and Barber Chairs	Metal Office Furniture Manufacturing (pt) (Included in Furniture Manufacturing subsector).
	Burnt Wood Articles	Other Wood Product Manufacturing (pt) (Included in Wood Product Manufacturing, except Furniture subsector).
	Fur Bleaching, Currying, Scraping, Tanning and Dyeing.	Leather and Hide Tanning and Finishing Manufacturing (pt) (Included in Leather and Allied Product Manufacturing subsector).
	Lamp Shades of Paper and Textile	Other Lighting Equipment Manufacturing (pt) (Included in Electrical Equipment, Appliance and Component Manufacturing subsector).
	Matches	Other Miscellaneous Chemical Product Manufacturing (pt) (Included in Chemical Manufacturing subsector).
	Metal Products, such as Combs, Hair Curlers, etc.	All Other Fabricated Metal Product Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Plastics Products, such as Combs, Hair Curlers, etc.	All Other Plastic Product Manufacturing (pt) (Included in Rubber and Plastic Product Manufacturing subsector).
	Flexographic Printing Eyeglass Frames for the Trade.	Commercial Flexographic Printing (pt) (Included in Printing and Related Support Activities subsector).
	Gravure Printing Eyeglass Frames for the Trade	Commercial Gravure Printing (pt) (Included in Printing and Related Support Activities subsector).
	Lithographic Printing Eyeglass Frames for the Trade.	Commercial Lithographic Printing (pt) (Included in Printing and Related Support Activities subsector).
	Screen Printing Eyeglass Frames for the Trade	Commercial Screen Printing (pt) (Included in Printing and Related Support Activities subsector).
	Other Printing Eyeglass Frames for the Trade	Other Commercial Printing (pt) (Included in Printing and Related Support Activities subsector).
	Tape Measures	Hand and Edge Tool Manufacturing (pt) (Included in Fabricated Metal Product Manufacturing subsector).
	Other	All Other Miscellaneous Manufacturing (pt).
5995	Optical Goods Stores:	
	Grinding of lenses to prescription only	Eyeglass and Contact Lens Manufacturing.
	Other	Optical Goods Stores (Included in Retail sector).
8072	Dental Laboratories	Dental Laboratories.

The abbreviation "pt." means "part of", means time series break has been created that is greater than 3% of the 1992 value of shipments for the 1987 SIC industry. The abbreviation NEC is used for Not Elsewhere Classified.

Description of Changes to the U.S. System

Two complete industries were transferred out of 1987 Major Group 39, Miscellaneous Manufacturing Industries.

Signs and Advertising Specialties was transferred out as follows: printing advertising specialties were transferred into the 1997 subsector Printing and Related Support Activities, in response to an industry proposal; electric signs were transferred into the 1997 subsector, Electrical Equipment, Appliance and Component Manufacturing; metal signs were transferred into the 1997 subsector, Fabricated Metal Product Manufacturing; and wood signs were transferred into the 1997 subsector Wood Product Manufacturing, except Furniture.

Linoleum, Asphalted-Felt-Base, and Other Hard Surface Floor Coverings, NEC was transferred into the 1997 subsector Rubber and Plastic Product Manufacturing.

Seven complete industries were transferred into the 1997 Miscellaneous Manufacturing subsector.

Cotton Ginning was transferred from 1987 SIC Industry Group 072, Crop Services, for international comparability. This is a nonexistent activity for Canada.

The following five industries were transferred from the discontinued 1987 SIC Major Group 38, Measuring, Analyzing, and Controlling Instruments; Photographic, Medical and Optical Goods; Watches and Clocks:

Laboratory Apparatus and Furniture Manufacturing (1987 SIC 3821).
Surgical and Medical Instrument Manufacturing (1987 SIC 3841).
Surgical Appliance and Supply Manufacturing (1987 SIC 3842).
Dental Equipment and Supply Manufacturing (1987 SIC 3843).
Ophthalmic Good Manufacturing (1987 SIC 3851).

Dental Laboratories were transferred from 1987 SIC Major Group 807, Medical and Dental Laboratories.

Eyeglass and Contact Lens Manufacturing was transferred from part of 1987 SIC 5995, Optical Goods Stores.

Fourteen activities were transferred out of 1987 Major Group 39, Miscellaneous Manufacturing and are described more fully in their new respective NAICS subsectors.

Nonprecious cutlery and flatware were transferred from 1987 SIC 3914, Silverware, Plated and Stainless Steel Ware, into Cutlery and Flatware Manufacturing in the 1997 subsector Fabricated Metal Product Manufacturing.

Metal tricycles were transferred from 1987 SIC 3944, Games, Toys and Children's Vehicles, Except Dolls and Bicycles, into Motorcycle, Bicycle, and Part Manufacturing in 1997 subsector Transportation Equipment Manufacturing.

Drawing and india ink were transferred from 1987 SIC 3952, Lead Pencils, Crayons, and Artists' Materials, into Printing Ink Manufacturing in the 1997 subsector Chemical Product Manufacturing.

Drafting tables and boards were transferred from 1987 SIC 3952, Lead Pencils, Crayons and Boards, with metal going into Metal Office Furniture Manufacturing and wood going into Wood Office Furniture Manufacturing in the 1997 subsector Furniture Manufacturing.

Beauty and barber chairs were transferred from 1987 SIC 3999, Manufacturing Industries, NEC, into Metal Office Furniture Manufacturing in the 1997 subsector Furniture Manufacturing.

Burnt wood articles were transferred from 1987 SIC Code 3999, Manufacturing Industries, NEC, into Other Wood Product Manufacturing in the 1997 subsector Wood Product Manufacturing, Except Furniture.

Fur bleaching, currying, scraping, tanning and dyeing were transferred from 1987 SIC 3999, Manufacturing Industries, NEC, into Allied and Hide Tanning and Finishing Manufacturing in the 1997 subsector Leather and Allied Product Manufacturing.

Lamp shades of paper and textile were transferred from 1987 SIC 3999, Manufacturing Industries, NEC, into Other Lighting Equipment Manufacturing in the 1997 subsector Electrical Equipment, Appliance, and Component Manufacturing.

Matches were transferred from 1987 SIC 3999, Manufacturing Industries, NEC, into Other Miscellaneous Chemical Manufacturing in the 1997 subsector Chemical Product Manufacturing.

Metal products such as combs, hair curlers, etc. were transferred from 1987 SIC 3999, Manufacturing Industries, NEC, into All Other Fabricated Metal Product Manufacturing in the 1997 subsector Fabricated Metal Product Manufacturing.

Plastic products such as combs, hair curlers, etc. were transferred from 1987 SIC 3999, Manufacturing Industries, NEC, into All Other Plastic Product Manufacturing in the 1997 subsector Rubber and Plastic Product Manufacturing.

Printing eyeglass frames for the trade was transferred from 1987 SIC 3999, Manufacturing Industries, NEC, into the 1997 subsector Printing and Related Support Activities and was distributed by method of printing.

Tape measures were transferred from 1987 SIC 3999, Manufacturing Industries, NEC, into Hand and Edge Tool Manufacturing in the 1997

subsector Fabricated Metal Product Manufacturing.

Teaching machine and flight simulator manufacturing was transferred from 1987 SIC 3699, Electrical Machinery, Equipment, and Supplies, NEC, into Other Commercial and Service Industry Machinery Manufacturing in the 1997 subsector Machinery Manufacturing.

There were nine activities that transferred into the 1997 subsector Miscellaneous Manufacturing.

Mops, floor and dust, were transferred into Broom, Brush, and Mop Manufacturing from 1987 SIC 2392, Housefurnishings, Except Curtains and Draperies, for international comparability. The U.S. moved to match Canada and Mexico.

Wood and metal frames for mirrors and pictures were transferred into All Other Miscellaneous Manufacturing from 1987 SIC 2499, Wood Products, NEC, to reflect similarities in production, and for three country comparability.

Blackboards were transferred into Lead Pencil and Art Good Manufacturing from 1987 SIC 2531, Public Building and Related Furniture, to achieve international comparability. The U.S. and Canada moved to agree with Mexico.

Hospital beds were transferred into Surgical Appliance and Supply Manufacturing from 1987 SIC 2599, Furniture and Fixtures, NEC, to reflect similarities in production and achieve international comparability.

Stamping of coins was transferred into Jewelry Manufacturing, including Precious Metal from 1987 SIC 3469, Metal Stampings, NEC, for international comparability.

Engraving and etching on precious jewelry, costume jewelry, and silverware and plated ware was transferred into Jewelry Manufacturing, including Precious Metal; Costume Jewelry and Novelty Manufacturing; and Silverware and Plated Ware Manufacturing, respectively, from 1987 SIC 3479, Coating, Engraving, and Allied Services, NEC, for international comparability. The U.S. and Mexico moved to agree with Canada.

Trophies of nonprecious metals were transferred into Costume Jewelry and Novelty Manufacturing from 1987 SIC 3499, Fabricated Metals, NEC, to achieve international comparability. The U.S. moved to agree with Canada and Mexico.

Pencil sharpeners, staplers and other office equipment were transferred into Lead Pencil and Art Good Manufacturing from 1987 SIC 3579, Office Machines, NEC, for international comparability. The U.S. and Canada moved to agree with Mexico.

Medical thermometers were transferred into Surgical Appliance and Supply Manufacturing from 1987 SIC 3829, Measuring and Controlling Devices, NEC, to achieve international comparability. The U.S. and Canada moved to agree with Mexico.

Also there were several activities that were transferred within the subsector for Miscellaneous Manufacturing. The number of miscellaneous industries increased from 18 in 1987 to 24 in 1997. For time series linkage, 14 of the 18 1987 industries are comparable within three percent of the 1997 industries.

Part XX—Proposed New Industry Structure for Postal Service and Couriers

Section A—NAICS Structure

North American Industry Classification System
(NAICS)
Agreement Number 31

This Document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the following industries:

Postal Service
Couriers

The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries, below the 4-digit level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to a 4-digit NAICS level in order to ensure full comparability among the three countries. This NAICS structure was presented and provisionally accepted at the NAICS Committee meeting held on November 8 and November 9, 1995 in Washington, D.C.

Accepted	Signature	Date
Canada	/S/ Jacob Ryten	11/9/95
Mexico	/S/ Enrique Ordaz.	11/9/95
United States	/S/ Jack E. Triplett.	11/9/95

Attachment 1—NAICS Structure

XX Postal Service
XXX Postal Service
XXXX Postal Service
XX Couriers
XXX Couriers
XXXX Couriers
XXX Local Messengers and Local Delivery
XXXX Local Messengers and Local Delivery

Attachment 2—North American Industry Classification System

Draft Classification for:
Postal Services
Couriers

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industrial classification for these industries.

The draft classification provides for the subsectors, Postal Services and Couriers. These subsectors are further subdivided into three industry groups, each with one industry. These subsectors will be part of the Transportation sector of the classification.

A General Outline

The Postal Service and Couriers industries deliver letters and small packages. These articles can be described as those that can be handled by a single person without special equipment. This allows the collection, pick-up and delivery operations to be done with limited labor costs and minimal equipment. Sorting and transportation activities, where necessary, are increasingly mechanized. The restriction to small parcels distinguishes these establishments from those in the transportation industries.

The Postal Service subsector includes the activities of the Post Office and its subcontractors in delivering letters and small parcels, normally without pick-up at the senders' location. This describes the traditional activity of national Postal Services.

Establishments that perform these activities, such as the operation of rural Post Offices on contract to the Postal Service, are included in this subsector. This follows the industrial classification concept that ownership should not determine the industry of an establishment, but rather the activity undertaken. However, the delivery of bulk mail on contract to the Postal Service is not included here, because it is usually done by transportation establishments that carry other customers' goods as well.

The Couriers subsector includes two types of activities. Couriers deliver parcels between cities. The parcels must be no larger or heavier than a single driver can handle without special equipment. The Couriers industry includes the establishments that perform intercity transportation as well as establishments that, under contract to them, do the local pick-up and delivery.

The intent is to include the complete hub-and-spoke network in the industry.

Where the Postal Service undertakes a courier activity, and it can be delineated as one or more separate establishments, it is included in the Couriers industry. This reflects the rule concerning ownership referred to above. Canada expects to be able to delineate such establishments, but Mexico and the United States do not.

The Local Messengers and Local Delivery industry undertakes deliveries of small parcels within a single urban area. There are two types of activity in practice. One is the delivery of letters and documents, usually of a legal nature, often by bicycle or on foot. The second is the delivery of small parcels, such as groceries or alcoholic beverages, usually by small truck or van.

Relationship to ISIC

Each of the NAICS industries included in this subsector can be assigned to Division 64, Post and Telecommunications of the current International Standard Industrial Classification of all Economic Activities (ISIC, Revision 3) of the United Nations without any subdivision. The only difference is that ISIC includes separate courier establishments of the Postal Service in the National Post Activities class, whereas NAICS places them in the Couriers industry.

Some Changes to the National Classifications

For Canada, these subsectors include activities from several industries in the current Transportation and Storage Industries division (part of the NAICS Couriers subsector) and from the Communication and Other Utilities Industries division (the Postal Service subsector and the rest of the Couriers subsector). The amount of detail of these NAICS subsectors is similar to that contained in the Canadian classification.

For Mexico, the NAICS Postal Service and Couriers subsectors have the same coverage as the Mexican classification's Postal Services (CMAP 720001) and Courier Services (CMAP 720002).

For the United States, the activities included in these subsectors are currently in the Transportation and Public Utilities division, with the exception of contract postal services, currently in the Services Division (1987 SIC 7389, Business Services, Not Elsewhere Classified). The Couriers industry combines the truck couriers included in 1987 SIC 4215, Courier Services, Except by Air, and air couriers included in 1987 SIC 4513, Air Courier Services.

Achievement of Objectives

The classification meets the objectives for the North American Industry Classification System (NAICS). It includes industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. The hierarchical structure of the classification also follows the production concept.

The industries have high specialization ratios, and they are economically significant. Some are much larger than others, but this was necessitated to make them homogenous in terms of production process. The classification is still suitable for sampling, data-publishing and other aspects of survey operations. Disruptions to time series are minimal. The statistical agencies can develop statistical "links", to enable the re-tabulation of time series on the new NAICS classification structure.

The classification achieves comparability for the three participating countries. All countries agree on the detailed definitions of the industries.

Section B—Annex: United States National Industry Detail

As explained in the Structure presentation of this notice, for a number of reasons 4-digit industries in the two NAICS industry subsectors presented in Part XX, Section A—Attachment 1, contains less detail than is currently in the U.S. SIC system and less detail than is required to meet important analytical requirements in the U.S. The three country agreement on NAICS envisions that each country may develop national detailed industries below the NAICS industry level, so long as the national detail can be aggregated to the NAICS classification, thus assuring full North American comparability.

The ECPC is proposing U.S. 5-digit industry detail for the two NAICS industry subsectors covered in Part XX of this notice. For cases where no 5-digit detail is shown, the ECPC is proposing that the NAICS 4-digit industries will also represent the most detailed U.S. industries.

TABLE 1

	1997 NAICS and U.S. description	Status code	1987 SIC code	1987 SIC description
XX	Postal Service:			
XXX	Postal Service:			
XXXX	Postal Service:			
XXXXX	National Postal Service	E	4311	United States Postal Service.
XXXXX	Contract Postal Operations, Excluding Bulk Mail Transportation.	N	*7389	Business Services, Not Elsewhere Classified (Postal Service contract operations).
XX	Couriers:			
XXX	Couriers:			
XXXX	Couriers	R	*4215	Courier Services, Except by Air (hub and spoke intercity delivery).
			4513	Air Courier Services.
XXX	Local Messengers and Local Delivery:			
XXXX	Local Messengers and Local Delivery	N	*4215	Courier Services, Except by Air (local delivery).

The definitions of status codes are as follows: E—existing industry; N—new industry; R—revised industry; and * means "part of". The abbreviation NEC is used for Not Elsewhere Classified.

TABLE 2

1987 SIC code	1987 SIC description	1997 U.S. description
4215@	Couriers Services Except by Air:	

TABLE 2—Continued

1987 SIC code	1987 SIC description	1997 U.S. description
	Hub and Spoke Intercity Delivery	Couriers (pt).
	Local Delivery	Local Messengers and Local Delivery.
4311	United States Postal Service	National Postal Service.
4513@	Air Courier Services	Couriers (pt).
7389	Business Services, Not Elsewhere Classified:	
	Post Office Contract Stations	Contract Postal Operations, Excluding Bulk Mail Transportation

The abbreviation "pt" means "part of", @ means time series break has been created that is greater than 3% of the 1992 revenues for the 1987 industry. The abbreviation NEC is used for Not Elsewhere Classified.

Description of Changes to the U.S. System

There are two new industries, one in each of the proposed subsectors. The Contract Postal Operations, Excluding Bulk Mail Transportation industry was created to reflect operations similar to the Postal Service in process but which provide for fewer of the production equipment and facilities. This activity is included in 1987 SIC 7389, Business Services, Not Elsewhere Classified.

The Local Messengers and Local Delivery industry located in the Couriers subsector identifies establishments involved in local pick up and delivery and is created from part of 1987 SIC 4215, Courier Services, Except by Air. These establishments are identified separately from the Couriers industry based on production differences involving equipment and the method of delivery. This industry includes establishments that pick up and deliver by foot, bicycle, car and small van. The Couriers industry, created from part of 1987 SIC 4215, Courier Services, Except by Air, and part of 1987 SIC 4513, Air Courier Services, includes establishments that are part of a hub and spoke network by truck and air delivery.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 96–13039 Filed 5–24–96; 8:45 am]

BILLING CODE 3110–01–P

federal register

Tuesday
May 28, 1996

Part III

Federal Communications Commission

47 CFR Part 1 et al.
Terrestrial Microwave Fixed Radio Services; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 21, 94, and 101

[WT Docket No. 94–148, FCC 96–51]

Terrestrial Microwave Fixed Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order to establish regulations governing the Terrestrial Microwave Fixed Radio Services and implement section 403(j) of the Telecommunications Act of 1996. These amendments streamline the Commission's rules, expedite processing of authorizations for the Terrestrial Microwave Fixed Radio Services, and clarify rules concerning the Terrestrial Microwave Fixed Radio Services.

EFFECTIVE DATE: These regulations are effective August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Robert James of the Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted February 8, 1996, and released February 29, 1996. The full text of this action is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. In this action, the Commission created one comprehensive new rule part for the microwave services and eliminated undue regulatory burdens resulting in significant benefits for both the public and the Commission. We reorganized and amended parts 21 and 94 of the rules to establish a new part 101. We anticipate that the new consolidated part 101 will result in a number of major benefits. First, the public will benefit from simplified and streamlined rules. Second, both the public and the Commission will benefit from reduced regulatory burdens. Third, the new rules will encourage more efficient use of microwave spectrum by permitting more intensive use of microwave equipment. Fourth, common technical standards for common carrier and private operational fixed microwave equipment will lead to economics of scale in microwave equipment production and lower equipment prices to licensees. The new consolidated part 101 will eliminate arbitrary distinction and further regulatory symmetry between common carrier and private operational fixed microwave services.

2. Section 403(j) of the 1996 Telecommunications Act amends section 309(b) of the Communications Act by removing the requirement that the Commission delay granting an application for a private fixed point-to-point microwave station until thirty days after the Commission issues a public notice announcing that it has accepted the application for filing. This Report and Order deletes § 1.962(a) of its rules, 47 CFR 1.962(a), to reflect this statutory change.

3. These new rules reflect a comprehensive restructuring in the regulatory requirements and policies of the fixed microwave services. The streamlined and simplified rules, reduce regulatory burdens, encourage more efficient use of the microwave spectrum, and foster economies of scale in microwave equipment production. These rules will allow licensees to compete more on price and quality of service rather than on regulatory gamesmanship.

4. The rules are set forth below.

5. This Report and Order is issued under the authority of sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

6. Need and purpose of this action. This Report and Order simplifies the rules for the common carrier and private operational fixed services, currently contained respectively in parts 21 and 94 of the Commission's rules, and consolidates those rules into a new part 101. These new rules eliminate unnecessary information collection requirements, eliminate redundancy, remove obsolete language, and promote the public interest.

7. Summary of issues raised by the public. Several commenters suggested modifications to some of the Commission's proposals. As a result of these comments, we have made modifications to the proposed rules as appropriate. The specific suggestions and modifications are discussed in the paragraphs above.

8. Significant alternatives considered. The Notices of Proposed Rule Making in the two subject proceedings offered numerous proposals. The commenters overwhelmingly supported the majority of the proposed rule changes. Several commenters suggested modifications to some of the Commission's proposals. Many of the suggested modifications are incorporated in the final rules. The regulatory burdens which we have retained are necessary to fulfill our duties under the Communications Act of 1934, as amended. We will continue to examine alternatives in the future with the objective of eliminating unnecessary regulations and minimizing economic impact on small business entities.

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 2

Communications equipment.

47 CFR Part 21

Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 94

Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 101

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Final Rules

Parts 1, 2, 21 and 94 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 303, and 303(j) unless otherwise noted.

2. Section 1.77 is amended by adding a new paragraph (i) to read as follows:

§ 1.77 Detailed application procedures; cross references.

* * * * *

(i) Rules governing applications for authorizations in the Common Carrier and Private Radio terrestrial microwave services are set out in part 101 of this chapter.

3. Section 1.741 is revised to read as follows:

§ 1.741 Scope.

The general rules relating to applications contained in §§ 1.742 through 1.748 apply to all applications filed by carriers except those filed by public correspondence radio stations pursuant to parts 80, 87, and 101 of this chapter, and those filed by common carriers pursuant to part 25 of this chapter. Parts 21 and 101 of this chapter contain general rules applicable to applications filed pursuant to these parts. For general rules applicable to applications filed pursuant to parts 80 and 87 of this chapter, see such parts and subpart F of this part. For rules applicable to applications filed pursuant to part 25, see said part.

4. Section 1.761 is revised to read as follows:

§ 1.761 Cross reference.

Specific types of applications under Title III of the Communications Act involving public correspondence radio stations are specified in parts 23, 80, 87, and 101 of this chapter.

5. Section 1.825 is amended by revising paragraph (b) to read as follows:

§ 1.825 Random selection procedures for Digital Electronic Message Service.

* * * * *

(b) Petitions to deny applications for digital electronic message service authorizations, and responsive pleadings, shall be filed prior to conducting the random selection, pursuant to the requirements of § 101.43 of this chapter. Following the random selection, petitions against tentative selectee's applications shall be resolved by the Commission.

6. Section 1.901 is revised to read as follows:

§ 1.901 Scope.

In the case of any conflict between the rules set forth in this subpart and the rules set forth in part 13 of this chapter or the rules set forth for specific services in parts 80 through 101 of this chapter, the rules in this subpart shall govern.

7. Section 1.924 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 1.924 Assignment or transfer of control, voluntary and involuntary.

* * * * *

(b)(1) * * *

(2) * * *

(ii) *FCC Form 402.* For assignment of station authorizations in the Private Operational Fixed Microwave Service (part 101 of this chapter). Attached thereto shall be an executed Form 1046 or a signed letter from proposed assignor stating the assignor's desire to assign the current authorization in accordance with the rules governing the particular service involved.

* * * * *

8. Section 1.926 is amended by revising paragraph (a)(6) to read as follows:

§ 1.926 Application for renewal of license.

(a) * * *

(6) Renewal of station authorizations in the Private Operational Fixed Microwave Service (part 101 of this chapter) shall be submitted on such form as the Commission may designate by the public notice in accordance with the provisions of § 101.13 of this chapter.

* * * * *

§ 1.962 [Amended]

9. Section 1.962 is amended by removing paragraph (a)(1) and redesignating paragraphs (a)(2) through paragraphs (a)(7) as paragraphs (a)(1) through (a)(6) respectively.

10. Section 1.972 is amended by revising paragraphs (a)(1) and (c) to read as follows:

§ 1.972 Grants by random selection.

(a) * * *

(1) For stations in the following Private Radio Services:

Part 80—Stations in the Maritime Services
Part 87—Aviation Services
Part 90—Private Land Mobile Services
Part 95—Subpart F—Personal Radio Services
Part 101—Subpart H—Private Operational Fixed Point-to-Point Microwave Service.

* * * * *

(c) If there are mutually exclusive applications for an initial license for stations subject to part 80 or part 87 of this chapter, or if there are more applications for an initial license in part 90, part 95-subpart F, or part 101-subpart H of this chapter, than can be accommodated on available frequencies, the Commission may process the applications pursuant to a system of random selection. Each such random selection shall be conducted pursuant to an order issued by the Wireless Telecommunications Bureau and under the direction of the Chief of the Bureau.

* * * * *

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 302, 303, and 307, unless otherwise noted.

2. Section 2.995 is amended by revising paragraph (a)(2) to read as follows:

§ 2.995 Measurements required: Frequency stability.

(a) * * *

(2) From −20° to +50° centigrade for equipment to be licensed for use in the Maritime Services under part 80 of this chapter, except Class A, B, and S Emergency Position Indicating Radiobeacons (EPIRBS), and equipment to be licensed for use above 952 MHz at operational fixed stations in all services, stations in the Local Television Transmission Service and Point-to-Point Microwave Radio Service under part 101 of this chapter, and equipment licensed for use aboard aircraft in the Aviation Services under part 87 of this chapter.

* * * * *

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602; 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

2. Section 21.2 is revised to read as follows:

§ 21.2 Definitions.

As used in this part:

Antenna power gain. The square of the ratio of the root-mean-square free space field intensity produced at one mile in the horizontal plane, in millivolts per meter for one kilowatt antenna input power to 137.6 mV/m. This ratio should be expressed in decibels (dB). (If specified for a particular direction, antenna power gain is based on the field strength in that direction only.)

Antenna power input. The radio frequency peak or RMS power, as the case may be, supplied to the antenna from the antenna transmission line and its associated impedance matching network.

Antenna structures. The antenna, its supporting structure and anything attached to it.

Assigned frequency. The centre of the frequency band assigned to a station.

Authorized bandwidth. The maximum width of the band of frequencies permitted to be used by a station. This is normally considered to be the necessary or occupied bandwidth, whichever is greater.

Authorized frequency. The frequency, or frequency range, assigned to a station by the Commission and specified in the instrument of authorization.

Authorized power. The maximum power a station is permitted to use. This power is specified by the Commission in the station's authorization.

Bandwidth occupied by an emission. The band of frequencies comprising 99

percent of the total radiated power extended to include any discrete frequency on which the power is at least 0.25 percent of the total radiated power.

Basic Trading Area (BTA). The geographic areas by which the Multipoint Distribution Service is licensed. BTA boundaries are based on the Rand McNally 1992 Commercial Atlas and Marketing Guide, 123rd Edition, pp. 36–39, and include six additional BTA-like areas as specified in § 21.924(b).

Bit rate. The rate of transmission of information in binary (two state) form in bits per unit time.

BTA authorization holder. The individual or entity authorized by the Commission to provide Multipoint Distribution Service to the population of a BTA.

BTA service area. The area within the boundaries of a BTA to which a BTA authorization holder may provide Multipoint Distribution Service. This area excludes the protected service areas of incumbent MDS stations and previously proposed and authorized ITFS facilities, including registered receive sites.

Carrier. In a frequency stabilized system, the sinusoidal component of a modulated wave whose frequency is independent of the modulating wave; or the output of a transmitter when the modulating wave is made zero; or a wave generated at a point in the transmitting system and subsequently modulated by the signal; or a wave generated locally at the receiving terminal which when combined with the side bands in a suitable detector, produces the modulating wave.

Carrier frequency. The output of a transmitter when the modulating wave is made zero.

Communication common carrier. Any person engaged in rendering communication service for hire to the public.

Control point. A control point is an operating position at which an operator responsible for the operation of the transmitter is stationed and which is under the control and supervision of the licensee.

Control station. A fixed station whose transmissions are used to control automatically the emissions or operations of another radio station at a specified location, or to transmit automatically to an alarm center telemetering information relative to the operation of such station.

Coordination distance. For the purpose of this part, the expression "coordination distance" means the distance from an earth station, within which there is a possibility of the use of a given transmitting frequency at this earth station causing harmful interference to stations in the fixed or mobile service, sharing the same band, or of the use of a given frequency for reception at this earth station receiving harmful interference from such stations in the fixed or mobile service.

Digital modulation. The process by which some characteristic (frequency, phase, amplitude or combinations thereof) of a carrier frequency is varied in accordance with a digital signal, e.g. one consisting of coded pulses or states.

Domestic fixed public service. A fixed service, the stations of which are open to public correspondence, for radiocommunications originating and terminating solely at points all of which lie within:

(a) The State of Alaska;

(b) The State of Hawaii;

(c) The contiguous 48 States and the District of Columbia; or

(d) A single possession of the United States. Generally, in cases where service is afforded on frequencies above 72 MHz, radio-communications between the contiguous 48 States (including the District of Columbia) and Canada or Mexico, or radiocommunications between the State of Alaska and Canada, are deemed to be in the domestic fixed public service.

Domestic public radio services. The land mobile and domestic fixed public services the stations which are open to public correspondence.

Note: Part 80 of this chapter is applicable to the maritime services and fixed stations associated with the maritime services; part 87 of this chapter is applicable to aeronautical services.

Earth station. A station located either on the earth's surface or within the major portion of the earth's atmosphere and intended for communications:

(a) With one or more space stations; or

(b) With one or more stations of the same kind by means of one or more reflecting satellites or other objects in space.

Effective radiated power (ERP). The product of the power supplied to the antenna and its gain relative to a half-wave dipole in a given direction.

Equivalent Isotropically Radiated Power (EIRP). The product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna. This product may be expressed in watts or dB above 1 watt (dBW).

Facsimile. A form of telegraphy for the transmission of fixed images, with or without half-tones, with a view to their reproduction in a permanent form.

Fixed earth station. An earth station intended to be used at a specified fixed point.

Fixed station. A station in the fixed service.

Frequency tolerance. The maximum permissible departure by the centre frequency of the frequency band occupied by an emission from the assigned frequency or, by the characteristic frequency of an emission from the reference frequency. The frequency tolerance is expressed as a percentage or in Hertz.

Harmful interference. Interference which endangers the functioning of a radionavigation service or of other safety services or seriously degrades, obstructs, or repeatedly interrupts a radiocommunication service.

Incumbent. An MDS station that was authorized or proposed before September 15, 1995, including those stations that are subsequently modified, renewed or reinstated.

Landing area. A landing area means any locality, either of land or water, including airports and intermediate landing fields, which is used, or approved for use for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo.

Microwave frequencies. As used in this part, this term refers to frequencies of 890 MHz and above.

Multichannel multipoint distribution service. Those multipoint distribution service channels that use the frequency band 2596 MHz to 2644 MHz and associated response channels.

Multipoint distribution service. A one-way domestic public radio service rendered on microwave frequencies from a fixed station transmitting (usually in an omnidirectional pattern) to multiple receiving facilities located at fixed points.

Multipoint distribution service response station. A fixed station operated at an MDS receive location to provide communications with the associated station in the Multipoint Distribution Service.

Necessary bandwidth of emission. For a given class of emission, the width of the frequency band that is just sufficient to ensure the transmission of information at the rate and with the quality required under specified conditions.

Note: The necessary bandwidth for an emission may be calculated using the formulas in § 2.202 of this chapter.

Partitioned service area authorization holder. The individual or entity authorized by the Commission to provide Multipoint Distribution Service to the population of a partitioned service area.

Partitioned service area (PSA). The area within the coterminous boundaries of one of more counties or other geopolitical subdivisions, drawn from a BTA, to which an authorization holder may provide Multipoint Distribution Service or the area remaining in a BTA upon partitioning any portion of that BTA. This area excludes the protected service areas of incumbent MDS stations and previously proposed and authorized ITFS stations, including registered receive sites.

Private line service. A service whereby facilities for communication between two or more designated points are set aside for the exclusive use or availability for use of a particular customer and authorized users during stated periods of time.

Public correspondence. Any telecommunication which the offices and stations, by reason of their being at the disposal of the public, must accept for transmission.

Radio station. A separate transmitter or a group of transmitters under simultaneous common control, including the accessory equipment required for carrying on a radiocommunication service.

Radiocommunication. Telecommunication by means of radio waves.

Rated power output. The term "rated power output" of a transmitter means the normal radio frequency power output capability (Peak or Average Power) of a transmitter, under optimum conditions of adjustment and operation, specified by its manufacturer.

Record communication. Any transmission of intelligence which is reduced to visual record form at the point of reception.

Reference frequency. A frequency having a fixed and specified position with respect to the assigned frequency. The displacement of this frequency with respect to the assigned frequency has the same absolute value and sign that the displacement of the characteristic frequency has with respect to the center of the frequency band occupied by the emission.

Relay station. A fixed station used for the reception and retransmission of the signals of another station or stations.

Repeater station. A fixed station established for the automatic retransmission of radiocommunications received from one or more stations and directed to a specified receiver site.

Signal booster station. A low-power repeater station automatically retransmitting on the same frequency as the received signal, and located within the protected service area of a Multipoint Distribution Service station.

Standby transmitter. A transmitter installed and maintained for use in lieu of the main transmitter only during periods when the main transmitter is out of service for maintenance or repair.

Symbol rate. Modulation rate in bauds. This rate may be higher than the transmitted bit rate as in the case of coded pulses or lower as in the case of multilevel transmission.

Television. A form of telecommunication for transmission of transient images of fixed or moving objects.

Television STL station (studio transmitter link). A fixed station used for the transmission of television program material and related communications from a studio to the transmitter of a television broadcast station.

§ 21.3 [Amended]

3. Section 21.3 is amended by removing paragraph (b), and redesignating paragraph (c) as paragraph (b).

4. Section 21.6 is amended by revising paragraphs (b) and (c) to read as follows:

§ 21.6 Filing of applications, fees, and numbers of copies.

* * * * *

(b) Applications requiring fees as set forth in part 1, subpart G of this chapter must be filed in accordance with § 0.401(b) of this chapter. Applications not requiring fees shall be submitted to: Federal Communications Commission, Washington, DC 20554.

(c) All correspondence or amendments concerning a submitted application shall clearly identify the radio service, the name of the applicant, station location, and the Commission file number (if known) or station call sign of the application involved. All correspondence or amendments concerning a submitted application may be sent directly to the Mass Media Bureau.

* * * * *

5. Section 21.13 is amended by removing paragraph (f), redesignating paragraph (g) as paragraph (f), and revising paragraphs (a)(6) and (b) to read as follows:

§ 21.13 General application requirements.

(a) * * *

(6) Show compliance with the special requirements applicable to each radio service and make all special showings that may be applicable (*e.g.*, those required by secs. 21.900, 21.912 and 21.913).

(b) Applications filed in the Multipoint Distribution Service shall not cross-reference previously filed material.

* * * * *

6. Section 21.15 is amended by revising the introductory text, and paragraphs (c), (d), and (g) to read as follows:

§ 21.15 Technical content of applications.

Applications shall contain all technical information required by the application form and any additional information necessary to fully describe the proposed facilities and to demonstrate compliance with all technical requirements of the rules governing the radio service involved (see subparts C, F and K as appropriate). The following paragraphs describe a number of technical requirements.

* * * * *

(c) Each application involving a new or modified transmitting antenna supporting structure, passive facility, or the addition or removal of a transmitting antenna, or the repositioning of an authorized antenna for a station must be accompanied by a vertical profile sketch of the total structure depicting its structural nature and clearly indicating the ground elevation (above sea level) at the structure site, the overall height of the structure above ground (including obstruction lights when required, lightning rods, etc.) and, if mounted on a building, its overall height above the building. The proposed antenna on the structure must be clearly identified and its height above-ground (measured to the center of radiation) clearly indicated. Alternatively, applicants in the Multipoint Distribution Service who filed applications on or after September 15, 1995, may provide this information in the MDS long-form application.

(d) Each application proposing a new or modified antenna structure for a station (including a passive repeater or signal booster station) so as to change its overall height shall indicate whether any necessary notification of the FAA has been made. Complete information as to rules concerning the construction, marking and lighting of antenna structures is contained in part 17 of this chapter. See also § 21.111 if the structure is used by more than one station.

* * * * *

(g) Applications in the Multipoint Distribution Service filed before September 15, 1995, proposing a new or replacement antenna (excluding omni-directional antennas) shall include an antenna radiation pattern showing the antenna power gain distribution in the

horizontal plane expressed in decibels, unless such pattern is known to be on file with the Commission in which case the applicant may reference in its application the FCC-ID number that indicates that the pattern is on file with the Commission. Multipoint Distribution Service applicants who filed applications on or after September 15, 1995 must provide related information in completing an MDS long-form application.

* * * * *

7. Section 21.20 is amended by revising paragraph (b)(5) to read as follows:

§ 21.20 Defective applications.

* * * * *

(b) * * *

(5) The application does not certify the availability of the proposed station site.

* * * * *

8. Section 21.23 is amended by removing paragraphs (c)(1) and (d), redesignating (c)(2) through (c)(7) as paragraphs (c)(1) through (c)(6), redesignating paragraphs (e) through (g) as paragraphs (d) through (f), and revising the newly redesignated paragraphs (c)(1) introductory text, and (d)(1) to read as follows:

§ 21.23 Amendment of applications.

* * * * *

(c) * * *

(1) If in the Multipoint Distribution Service, the amendment results in a substantial modification of the engineering proposal such as (but not necessarily limited to):

* * * * *

(d) * * *

(1) Any applicant whose application appears on its face to be mutually exclusive with the application being amended, including those applicants originally served under § 21.902;

* * * * *

§ 21.27 [Amended]

9. Section 21.27 is amended by removing paragraph (d).

§ 21.31 [Amended]

10. Section 21.31 is amended by removing paragraph (f).

§ 21.33 [Amended]

11. Section 21.33 is amended by removing paragraph (a), and redesignating paragraphs (b) through (d) as paragraphs (a) through (c) respectively.

12. Section 21.39 is amended by revising paragraph (d)(3) to read as follows:

§ 21.39 Considerations involving transfer or assignment applications.

* * * * *

(d) * * *

(3) The median date of the applicable commencement dates (determined pursuant to paragraphs (c) (1) and (2) of this section) if the transaction involves two or more stations. (The median date is that date so selected such that fifty percent of the commencement dates of the total number of stations, when arranged in chronological order, lie below it and fifty percent lie above it. When the number of stations is an even number, the median date will be a value half way between the two dates closest to the theoretical median).

13. Section 21.41 is amended by revising paragraphs (b) and (c) to read as follows:

§ 21.41 Special processing of applications for minor facility modifications.

* * * * *

(b) An application may be considered under the procedures of this section only if:

(1) It is in the Multipoint Distribution Service;

(2) The cumulative effect of all such applications made within any 60 days period does not exceed the appropriate values prescribed by paragraph (c) of this section;

(3) The facilities to be modified are not located within 56.3 kilometers (35 miles) of the Canadian or Mexican border;

(4) It is acceptable for filing, is consistent with all of the Commission's rules, and does not involve a waiver request;

(5) It specifically requests consideration pursuant to this section;

(6) Frequency notification procedures are complied with and a copy of the application has been served on those who also were served under § 21.902; and

(7) In the Multipoint Distribution Service, the modified facility would not produce a power flux density that exceeds −73 dBW/m², pursuant to §§ 21.902 and 21.939 at locations on the boundaries of protected service areas to which there is an unobstructed signal path.

(c) The modifications that may be authorized under the procedures of this section are:

(1) Changes in a transmitter and existing transmitter operating characteristics, or protective configuration of transmitter, provided that:

(i) In the Multipoint Distribution Service, any increase in EIRP is one and one-half dB or less over the previously-authorized power value; or

(ii) The necessary bandwidth is not increased by more than 10% of the previously authorized necessary bandwidth.

(2) Changes in the height of an antenna, provided that:

(i) In Multipoint Distribution Service, any increase in antenna height is less than 3.0 meters above the previously authorized height; and

(ii) The overall height of the antenna structure is not increased as a result of the antenna extending above the height of the previously authorized structure, except when the new height of the antenna structure is 6.1 meters or less (above ground or man-made structure, as appropriate) after the change is made.

(3) Change in the geographical coordinates of a transmit station by ten seconds or less of latitude, longitude or both, provided that when notice to the FAA of proposed construction is required by part 17 of this chapter for antenna structure at the previously authorized coordinates (or will be required at the new location) the applicant must comply with the provisions of § 21.15(d).

* * * * *

14. Section 21.42 is amended by removing paragraph (c)(7), redesignating paragraph (c)(8) as paragraph (c)(7), and revising paragraphs (a), (b)(1), (b)(4), and (c)(3) to read as follows:

§ 21.42 Certain modifications not requiring prior authorization.

(a) Equipment in an authorized radio station may be replaced without prior authorization or notification if:

(1) The replacement equipment is identical (i.e., same manufacturer and model number) with the replacement equipment; or

(2) The replacement transmitter, transmitting antenna, transmission line loss and/or devices between the transmitter and antenna, or combinations of the above, do not change the EIRP of a station in any direction.

(b) Licensees of fixed stations in the Multipoint Distribution Service may make the facility changes listed in paragraph (c) of this section without obtaining prior Commission authorization, if:

(1) The Multipoint Distribution Service licensee serves a copy of the notification described in paragraph (b)(3) of this section on those who were served under § 21.902, and

* * * * *

(4) In the Multipoint Distribution Service, the modified facility would not produce a power flux density at the protected service area boundary that exceeds −73 dBW/m², pursuant to §§ 21.902 and 21.939.

(c) * * *

(3) Change to an antenna when the new antenna conforms with § 21.906 and the EIRP resulting from the new antenna does not exceed that resulting from the previously authorized antenna by more than one dB in any direction.

* * * * *

15. Section 21.43 is amended by revising paragraph (a) to read as follows:

§ 21.43 Period of construction; certification of completion of construction.

(a) Except for Multipoint Distribution Service station licenses granted to BTA and PSA authorization holders, each license for a radio station for the services included in this part shall specify as a condition therein the period during which construction of facilities will be completed and the station made ready for operation. Construction may not commence until the grant of a license, and must be completed by the date specified in the license as the termination date of the construction period. Except as may be limited by § 21.45(b) or otherwise determined by the Commission for any particular application, the maximum construction period for all stations licensed under this part shall be a maximum of 12 months from the date of the license grant.

* * * * *

16. Section 21.45 is amended by revising paragraphs (a) and (c) to read as follows:

§ 21.45 License period.

(a)(1) Licenses for stations in the Multipoint Distribution Service will be issued for a period not to exceed 10 years, except that licenses for developmental stations will be issued for a period not to exceed one year. The expiration date of developmental licenses shall be one year from the date of the grant thereof. Unless otherwise specified by the Commission, the expiration of regular licenses shall be on the following date in the year of expiration.

Multipoint Distribution Service—May 1.

(2) When a license is granted subsequent to the last renewal date of the class of license involved, the license shall be issued only for the unexpired period of the current license term of such class.

* * * * *

(c) Upon the expiration or termination of any station license, any related conditional authorization, which bears a later expiration date, shall be automatically terminated concurrently with the related station license, unless it shall have been determined by the Commission that the public interest, convenience or necessity would be served by continuing in effect said conditional authorization.

17. Section 21.100 is revised to read as follows:

§ 21.100 Frequencies.

The frequencies available for use in the service covered by this part are listed in subpart K. Assignment of frequencies will be made only in such a manner as to facilitate the rendition of communication service on an interference-free basis in each service area. Unless otherwise indicated, each frequency available for use by stations in this service will be assigned exclusively to a single applicant in any service area. All applicants for, and licensees of, stations in this service shall cooperate in the selection and use of the frequencies assigned in order to minimize interference and thereby obtain the most effective use of the authorized facilities. In the event harmful interference occurs or appears likely to occur between two or more radio systems and such interference cannot be resolved between the licensees thereof, the Commission may, after notice and opportunity for hearing, require the licensees to make such changes in operating techniques or equipment as it may deem necessary to avoid such interference.

18. Section 21.101 is amended by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and revising paragraph (a) to read as follows:

§ 21.101 Frequency tolerance.

(a) The carrier frequency of each transmitter authorized in these services shall be maintained within the following percentage of the reference frequency except as otherwise provided in paragraph (b) of this section or in the applicable subpart of this part (unless otherwise specified in the instrument of station authorization the reference frequency shall be deemed to be the assigned frequency):

Frequency range (MHz)	Frequency tolerance for fixed stations (percent)
2,150 to 2,162[1 2]	0.001
2,596 to 2,680[2]	0.005

[1] Beginning Aug. 9, 1975, this tolerance will govern the marketing of equipment pursuant to §§ 2.803 and 2.805 of this chapter and the issuance of all authorizations for new radio equipment. Until that date new equipment may be authorized with a frequency tolerance of 0.03 percent in the frequency range 2,200 to 10,500 MHz and equipment so authorized may continue to be used for its life provided that it does not cause interference to the operation of any other licensee. Equipment authorized in the frequency range 2,450 to 10,500 MHz prior to June 23, 1969, at a tolerance of 0.05 percent may continue to be used until February 1, 1976 provided it does not cause interference to the operation of any other licensee.

[2] Beginning November 1, 1991, equipment authorized to be operated in the frequency bands 2150–2162 MHz, 2596–2644 MHz, 2650–2656 MHz, 2662–2668 MHz, and 2674–2680 MHz for use in the Multipoint Distribution Service shall maintain a frequency tolerance within +1 KHz of the assigned frequency.

* * * * *

§ 21.106 [Amended]

19. Section 21.106 is amended by removing paragraphs (a)(2)(ii), (a)(3), and (a)(4) and redesignating paragraph (a)(2)(iii) as paragraph (a)(2)(ii).

20. Section 21.107 is amended by removing paragraph (c) and revising paragraph (b) to read as follows:

§ 21.107 Transmitter power.

* * * * *

(b) The EIRP of a transmitter station employed in this radio service shall not exceed the values shown in the following tabulation:

Frequency range (MHz)	Maximum allowable EIRP for a fixed station (Watts)
2,150 to 2,162	[1] 2000
2,596 to 2,680	[1] 2000

[1] When a Multipoint Distribution Service station uses a non-omnidirectional antenna EIRP up to 7943 Watts may be authorized pursuant to § 21.904(b) of this Part.

§ 21.108 [Removed and reserved]

21. Section 21.108 is removed and reserved.

22. Section 21.109 is amended by revising paragraph (b) to read as follows:

§ 21.109 Antenna and antenna structures.

* * * * *

(b) The Commission may require the replacement, at the licensee's expense, of any antenna system of a permanent fixed station operating at 2500 MHz or higher upon a showing that said

antenna causes or is likely to cause interference to any other authorized or proposed station.

§ 21.114 [Removed and reserved]

23. Section 21.114 is removed and reserved.

§ 21.119 [Removed and reserved]

24. Section 21.119 is removed and reserved.

25. Section 21.120 is amended by removing paragraphs (d) and (e), and revising paragraph (a) to read as follows:

§ 21.120 Authorization of transmitters.

(a) Except for transmitters used at developmental stations, each transmitter shall be a type which has been type accepted by the Commission for use under the applicable rules of this part.

* * * * *

26. Section 21.122 is amended by revising paragraph (a) and removing paragraphs (d) and (e), to read as follows:

§ 21.122 Microwave digital modulation.

(a) Microwave transmitters employing digital modulation techniques and operating below 15 GHz shall, with appropriate multiplex equipment, comply with the following additional requirement: The bit rate, in bits per second, shall be equal to or greater than the bandwidth specified by the emission designator in Hertz (e.g., to be acceptable, equipment transmitting at a 6 Mb/s rate must not require a bandwidth of greater than 6 MHz), except the bandwidth used to calculate the minimum rate shall not include any authorized guard band.

* * * * *

§§ 21.212–21.214 [Removed]

27. Sections 21.212 through 21.214 are removed.

28. Section 21.303 is amended by revising paragraphs (a), (b), (c) and (d)(1) to read as follows:

§ 21.303 Discontinuance, reduction or impairment of service.

(a) If the public communication service provided by a station subject to this rule part is involuntarily discontinued, reduced or impaired for a period exceeding 48 hours, the station licensee shall promptly give notification thereof in writing to the Mass Media Bureau at Washington, DC 20554. In every such case, the licensee shall furnish full particulars as to the reasons for such discontinuance, reduction or impairment of service, including a statement as to when normal service is expected to be resumed. When normal service is resumed, prompt notification thereof shall be given in writing to the Mass Media Bureau at Washington, DC 20554.

(b) No station licensee subject to title II of the Communications Act of 1934, as amended, shall voluntarily discontinue, reduce or impair public communication service to a community or part of a community without obtaining prior authorization from the Commission pursuant to the procedures set forth in part 63 of this chapter or complying with the requirements set forth at § 21.910. In the event that permanent discontinuance of service is authorized by the Commission, the station licensee shall promptly send the station license for cancellation to the Mass Media Bureau at Washington, DC 20554, except that station licenses need not be surrendered for cancellation if the discontinuance is a result of a change of status by a Multipoint Distribution Service licensee from common carrier to non-common carrier pursuant to § 21.910.

(c) Any station licensee, not subject to title II of the Communications Act of 1934, as amended, who voluntarily discontinues, reduces or impairs public communication service to a community or a part of a community shall give written notification to the Commission within 7 days thereof. In the event of permanent discontinuance of service, the station licensee shall promptly send the station license for cancellation to the Mass Media Bureau at Washington, DC 20554, except that Multipoint Distribution Service station licenses need not be surrendered for cancellation if the discontinuance is a result of a change of status by a Multipoint Distribution Service licensee from non-common carrier to common carrier.

(d) * * *

(1) Submit for cancellation the station license (or licenses) to the Commission at Washington, DC 20554.

* * * * *

§§ 21.500–21.512 (Subpart G) [Removed and reserved]

29. Subpart G of part 21 (21.500 through 21.512) is removed and reserved.

§§ 21.700–21.713 (Subpart I) [Removed and reserved]

30. Subpart I of part 21 (21.700 through 21.713) is removed and reserved.

§§ 21.800–21.809 (Subpart J) [Removed and reserved]

31. Subpart J of part 21 (21.800 through 21.809) is removed and reserved.

32. Section 21.901 is amended by revising paragraph (e) to read as follows:

§ 21.901 Frequencies.

* * * * *

(e) Frequencies in the band segments 18,580–18,820 MHz and 18,920–19,160 MHz are available for assignment to fixed stations in this service for a point-to-point return link from a subscriber's location. Assignments in the 18 GHz band for these return links will be made in accordance with the provisions of subpart I of part 101 of this chapter.

* * * * *

33. Section 21.902 is amended by revising paragraph (c)(1)(ii) to read as follows:

§ 21.902 Frequency interference.

* * * * *

(c) * * *

(1) * * *

(ii) if the great circle path between the applicant's proposed transmitter and the protected service area of any authorized, or previously-proposed, cochannel or adjacent-channel station(s) is within 241.4 kilometers or less and 90 percent or more of the path is over water or within 16.1 kilometers of the coast or shoreline of the Atlantic Ocean, the Pacific Ocean, the Gulf of Mexico, any of the Great Lakes, or any bay associated with any of the above (see §§ 21.901(a) and 74.902 of this chapter);

* * * * *

34. Section 21.903 is amended by revising paragraph (a) to read as follows:

§ 21.903 Purpose and permissible service.

(a) Multipoint Distribution Service stations are generally intended to provide one-way radio transmission (usually in an omnidirectional pattern) from a stationary transmitter to multiple receiving facilities located at fixed points. When service is provided on a common carrier basis, subscriber supplied information is transmitted to points designated by the subscriber. When service is provided on a non-common carrier basis, transmissions may include information originated by persons other than the licensee, licensee- manipulated information supplied by other persons, or information originated by the licensee. Point-to-point radio return links from a subscriber's location to a MDS operator's facilities may be authorized in the 18,580 through 18,820 MHz and 18,920 through 19,160 MHz bands. Rules governing such operation are contained in subpart I of part 101 of this chapter, the Point-to-Point Microwave Radio Service.

* * * * *

PART 94—[REMOVED AND RESERVED]

35. Part 94 is removed and reserved.

36. Part 101 is added to read as follows:

PART 101—FIXED MICROWAVE SERVICES

Subpart A—General

Sec.
101.1 Scope and authority.
101.3 Definitions.

Subpart B—Applications and Licenses

General Filing Requirements
101.4 Transition plan.
101.5 Station authorization required.
101.7 Eligibility for station license.
101.9 Formal and informal applications.
101.11 Filing of applications, fees, and number of copies.
101.13 Application forms and requirements for private operational fixed stations.
101.15 Application forms for common carrier fixed stations.
101.17 [Reserved]
101.19 General application requirements.
101.21 Technical content of applications.
101.23 Waiver of rules.
101.25 Inconsistent or conflicting applications.
101.27 Repetitious applications.
101.29 Amendment of pending applications.
101.31 Special temporary, temporary, and conditional authorizations.
101.33 Who may sign applications.

Processing of Applications
101.35 Preliminary processing of applications.
101.37 Public notice period.
101.39 Dismissal and return of applications.
101.41 Ownership changes and agreements to amend or dismiss applications or pleadings.
101.43 Opposition to applications.
101.45 Mutually exclusive applications.
101.47 Consideration of applications.
101.49 Grants by random selection.
101.51 Comparative evaluation of mutually exclusive applications.

License Transfers, Modifications, Conditions and Forfeitures
101.53 Assignment or transfer of station authorization.
101.55 Considerations involving transfer or assignment applications.
101.57 Modification of station license.
101.59 Processing of applications for facility minor modifications.
101.61 Certain modifications not requiring prior authorization.
101.63 Period of construction; certification of completion of construction.
101.65 Forfeiture and termination of station authorizations.
101.67 License period.
101.69 Transition of the 2.11–2.13 and 2.16–2.18 GHz bands from the Common Carrier Fixed Point-to-Point Microwave Services and the 1.85–1.99, 2.13–2.15, and 2.18–2.20 GHz bands from the Private Operational Fixed Point-to-Point Microwave Service to emerging technologies.

Subpart C—Technical Standards

101.101 Frequency availability.
101.103 Frequency coordination procedures.
101.105 Interference protection criteria.
101.107 Frequency tolerance.
101.109 Bandwidth.
101.111 Emission limitations.
101.113 Transmitter power limitations.
101.115 Directional antennas.
101.117 Antenna polarization.
101.119 Simultaneous use of common antenna structures.
101.121 Marking of antenna structures.
101.123 Quiet zones.
101.125 Temporary fixed antenna height restrictions.
101.127 Topographical data.
101.129 Transmitter location.
101.131 Transmitter construction and installation.
101.133 Limitations on use of transmitters.
101.135 Shared use of radio stations and the offering of private carrier service.
101.137 Interconnection of private operational fixed point-to-point microwave stations.
101.139 Authorization of transmitters.
101.141 Microwave modulation.
101.143 Minimum path length requirements.
101.145 Interference to geostationary-satellites.
101.147 Frequency assignments.
101.149 Special requirements for operation in the band 38,600–40,000 MHz.

Subpart D—Technical Operation

101.201 Station inspection.
101.203 Communications concerning safety of life and property.
101.205 Operation during emergency.
101.207 Suspension of transmission.
101.209 Operation of stations at temporary fixed locations for communication between the United States and Canada or Mexico.
101.211 Operator requirements.
101.213 Station identification.
101.215 Posting of station authorization and transmitter identification cards, plates, or signs.
101.217 Station records.

Subpart E—Miscellaneous Common Carrier Provisions

101.301 National defense; free service.
101.303 Answers to notices of violation.
101.305 Discontinuance, reduction or impairment of service.
101.307 Tariffs, reports, and other material required to be submitted to the Commission.
101.309 Requirement that licensees respond to official communications.
101.311 Equal employment opportunities.

Subpart F—Developmental Authorizations

101.401 Eligibility.
101.403 Scope of service.
101.405 Adherence to program of research and development.
101.407 Special procedure for the development of a new service or for the use of frequencies not in accordance with the provisions of the rules in this part.
101.409 Terms of grant; general limitations.
101.411 Supplementary showing required.
101.413 Developmental report required.

Subpart G—Digital Electronic Message Service

101.501 Eligibility.
101.503 Digital Electronic Message Service Nodal Stations.
101.505 Frequencies.
101.507 Frequency stability.
101.509 Interference protection criteria.
101.511 Purpose and permissible service.
101.513 Transmitter power.
101.515 Emissions and bandwidth.
101.517 Antennas.
101.519 Interconnection.
101.521 Spectrum utilization.

Subpart H—Private Operational Fixed Point-to-Point Microwave Service

101.601 Eligibility.
101.603 Permissible communications.

Subpart I—Common Carrier Fixed Point-to-Point Microwave Service

101.701 Eligibility.
101.703 Permissible communications.
101.705 Renewal of station licenses.

Subpart J—Local Television Transmission Service

101.801 Eligibility.
101.803 Frequencies.
101.805 Assignment of frequencies to mobile stations.
101.807 Transmitter power.
101.809 Bandwidth and emission limitations.
101.811 Modulation requirements.
101.813 Remote control operation of mobile television pickup stations.
101.815 Stations at temporary fixed locations.
101.817 Notification of station operation at temporary locations.
101.819 Stations affected by coordination contour procedures.

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

Subpart A—General

§ 101.1 Scope and authority.

(a) The purpose of the rules in this part is to prescribe the manner in which portions of the radio spectrum may be made available for private operational and common carrier fixed microwave operations that require transmitting facilities on land or in specified offshore coastal areas within the continental shelf.

(b) The rules in this part are issued pursuant to the authority contained in

Titles I through III of the Communications Act of 1934, as amended, which vest authority in the Federal Communications Commission to regulate common carriers of interstate and foreign communications, to regulate radio transmissions and issue licenses for radio stations, and to regulate all interstate and foreign communications by wire and radio necessary to the accomplishment of the purposes of the Act.

§ 101.3 Definitions.

As used in this part.

Antenna power gain. The ratio of the maximum radiation intensity to that of an isotropic (omnidirectional) radiator in the far field of its main (forward direction) lobe.

Antenna power input. The radio frequency peak or RMS power, as the case may be, supplied to the antenna from the antenna transmission line and its associated impedance matching network.

Antenna structure. The antenna, its supporting structure and anything attached to it.

Assigned frequency. The center of the frequency band assigned to a station.

Assigned frequency bandwidth. The frequency band within which the emission of a station is authorized; the width of the band equals the necessary bandwidth plus twice the absolute value of the frequency tolerance.

Authorized bandwidth. The maximum bandwidth authorized to be used by a station as specified in the station license. (See § 2.202 of this chapter)

Authorized frequency. The frequency, or frequency range, assigned to a station by the Commission and specified in the instrument of authorization.

Authorized power. The maximum power a station is permitted to use. This power is specified by the Commission in the station's authorization.

Automatic Transmitter Power Control (ATPC). ATPC is a feature of a digital microwave radio system that adjusts the transmitter output power. ATPC allows the transmitter to operate at less than maximum power for most of the time. In a radio employing ATPC, the transmit power is reduced during normal operation conditions. When the receiver detects a reduction in signal level, a control signal is sent to the far end transmitter, instructing it to increase the power output to compensate for the signal reduction. The power output is limited to the licensed (maximum) transmit power. Guidelines for use of ATPC are set forth in the TIA Telecommunications Systems Bulletin TSB 10, "Interference Criteria for Microwave Systems (TSB 10)."

Bandwidth occupied by an emission. The band of frequencies comprising 99 percent of the total radiated power extended to include any discrete frequency on which the power is at least 0.25 percent of the total radiated power.

Bit rate. The rate of transmission of information in binary (two state) form in bits per unit time.

Carrier. In a frequency stabilized system, the sinusoidal component of a modulated wave whose frequency is independent of the modulating wave; or the output of a transmitter when the modulating wave is made zero; or a wave generated at a point in the transmitting system and subsequently modulated by the signal; or a wave generated locally at the receiving terminal which when combined with the side bands in a suitable detector, produces the modulating wave.

Carrier frequency. The output of a transmitter when the modulating wave is made zero.

Central office. A landline termination center used for switching and interconnection of public message communication circuits.

Common carrier fixed point-to-point microwave service. A common carrier public radio service rendered on microwave frequencies by fixed and temporary fixed stations between points that lie within the United States or between points to its possessions or to points in Canada or Mexico.

Communication common carrier. Any person engaged in rendering communication service for hire to the public.

Control point. An operating position at which an operator responsible for the operation of the transmitter is stationed and which is under the control and supervision of the licensee.

Control station. A fixed station, the transmissions of which are used to control automatically the emissions or operations of a radio station, or a remote base station transmitter.

Coordination area. The area associated with a station outside of which another station sharing the same or adjacent frequency band neither causes nor is subject to interfering emissions greater than a permissible level.

Coordination contour. The line enclosing the coordination area.

Coordination distance. The distance on a given azimuth from a station beyond which another station neither causes nor is subject to interfering emissions greater than a permissible level.

Digital Electronic Message Nodal Station. A fixed point-to-multipoint radio station in a Digital Electronic Message Service providing two-way communication with Digital Electronic Message User Stations.

Digital Electronic Message Service. A two-way end-to-end fixed radio service utilizing digital termination systems for the exchange of digital information. This service may also make use of point-to-point microwave facilities, satellite facilities or other communications media to interconnect digital termination systems to comprise a network.

Digital Electronic Message User Station. Any one of the fixed microwave radio stations located at users' premises, lying within the coverage area of a Digital Electronic Message Nodal Station, and providing two-way digital communications with the Digital Electronic Message Nodal Station.

Digital modulation. The process by which some characteristic (frequency, phase, amplitude or combinations thereof) of a carrier frequency is varied in accordance with a digital signal, e.g., one consisting of coded pulses or states.

Drop point. A term used in the point-to-point microwave radio service to designate a terminal point where service is rendered to a subscriber.

Earth station. A station located either on the Earth's surface or within the major portion of Earth's atmosphere and intended for communication:

(1) With one or more space stations; or

(2) With one or more stations of the same kind by means of one or more reflecting satellites or other objects in space.

Effective radiated power (ERP). The product of the power supplied to the antenna and its gain relative to a half-wave dipole in a given direction.

Equivalent Isotropically Radiated Power (EIRP). The product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna.

Exchange. A unit of a communication company or companies for the administration of communication service in a specified area, which usually embraces a city, town, or village and its environs, and consisting of one or more central offices, together with the associated plant, used in furnishing communication service in that area.

Exchange area. The geographic area included within the boundaries of an exchange.

Fixed satellite earth station. An earth station intended to be used at a specified fixed point.

Fixed relay station. A fixed station associated with one or more stations, established to receive radio signals directed to it and to retransmit them automatically on a fixed service frequency.

Fixed Service. A radio communications service between specified fixed points.

Fixed station. A station in the fixed service.

Frequency tolerance. The maximum permissible departure by the center frequency of the frequency band occupied by an emission from the assigned frequency or, by the characteristic frequency of an emission from the reference frequency.

Note: The frequency tolerance is expressed as a percentage or in Hertzs.

General communication. Two-way voice communication, through a base station, between:

(1) A common carrier land mobile or airborne station and a landline telephone station connected to a public message landline telephone system;

(2) Two common carrier land mobile stations;

(3) Two common carrier airborne stations;

(4) A common carrier land mobile station and a common carrier airborne station.

Harmful interference. Interference that endangers the functioning of a radionavigation service or of other safety services or seriously degrades, obstructs or repeatedly interrupts a radiocommunication service operating in accordance with these regulations.

Intermodal link. A point-to-point communications link used to provide communications between nodal stations or to interconnect nodal stations to other communications media.

Landing area. A landing area means any locality, either of land or water, including airports and intermediate landing fields, which is used, or approved for use for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo.

Local Television Transmission Service. A public radio communication service for the transmission of television material and related communications.

Long haul system. A microwave system licensed under this part in which the longest radio circuit of tandem radio paths exceeds 402 kilometers.

Master station. A station in a multiple address radio system that controls, activates or interrogates four or more remote stations. Master stations performing such functions may also receive transmissions from remote stations.

Message center. The point at which messages from members of the public are accepted by the carrier for transmission to the addressee.

Microwave frequencies. As used in this part, this term refers to frequencies of 890 MHz and above.

Microwave link. A link is defined as a simplex communications circuit between two points utilizing a single frequency/polarization assignment. A duplex communications circuit would require two links, one link in each direction.

Miscellaneous common carriers. Communications common carriers that are not engaged in the business of providing either a public landline message telephone service or public message telegraph service.

Mobile earth station. An earth station intended to be used while in motion or during halts at unspecified points.

Mobile Service. A radio communication service between mobile and land stations or between mobile stations.

Mobile station. A station in the mobile service intended to be used while in motion or during halts at unspecified points.

Multiple address system (MAS). A point-to-multipoint radio communications system, either one-way or two-way, utilizing frequencies in accordance with § 101.147 and serving a minimum of four unique remote stations. Each master station must serve at least its own four remotes. The remote stations must be scattered over the service area in such a way that two or more point-to-point systems would be needed to serve those remotes.

National Spatial Reference System. The National Spatial Reference System (NSRS) is the name given to all Geodetic Control information contained in the National Geodetic Survey (NGS) Data Base. This includes: A, B, First, Second, and Third Order horizontal and vertical control observed by NGS as well as data submitted by other agencies (i.e., USGS, BLM, States, Counties, Cities, and private surveying organizations).

Necessary bandwidth. For a given class of emission, the width of the frequency band that is just sufficient to ensure the transmission of information at the rate and with the quality required under specified conditions. The necessary bandwidth may be calculated using the formulas in § 2.202 of this chapter.

Nodal station. The central or controlling station in a radio system operating on point-to-multipoint frequencies in the 2.5, 10.6, or 18 GHz bands.

Occupied bandwidth. The width of a frequency bandwidth such that, below the lower and above the upper frequency limits, the mean powers emitted are each equal to a specified percentage, B/2 of the total mean power of a given emission. Unless otherwise specified by the CCIR for the appropriate class of emission, the value of B/2 should be taken as 0.5%.

Note: The percentage of the total power outside the occupied bandwidth is represented by B.

Operational fixed station. A private fixed station not open to public correspondence.

Passive repeater. A re-radiation device associated with a transmitting/receiving antenna system that re-directs intercepted radiofrequency energy. For example, it may consist of reflector(s) or back-to-back parabolic or horn antennas.

Path length. The total distance of a path from the transmit to the receive antenna, inclusive of all passive repeaters, if any.

Periscope antenna system. An antenna system which involves the use of a passive reflector to deflect radiation from or to a directional transmitting or receiving antenna which is oriented vertically or near vertically.

Prior coordination. A bilateral process conducted prior to filing applications which includes the distribution of the technical parameters of a proposed radio system to potentially affected parties for their evaluation and timely response.

Private carrier. An entity licensed in the private service and authorized to provide communications service to other private service eligibles on a commercial basis.

Private line service. A service whereby facilities for communication between two or more designated points are set aside for the exclusive use or availability for use of a particular customer and authorized users during stated periods of time.

Private operational fixed point-to-point microwave service. A private line radio service rendered on microwave frequencies by fixed and temporary fixed stations between points that lie within the United States or between points to its possessions or to points in Canada or Mexico.

Public correspondence. Any telecommunication which the offices and stations must, by reason of their being at the disposal of the public, accept for transmission.

Public message service. A service whereby facilities are offered to the

public for communication between all points served by a carrier or by interconnected carriers on a non-exclusive message by message basis, contemplating a separate connection for each occasion of use.

Radio station. A separate transmitter or a group of transmitters under simultaneous common control, including the accessory equipment required for carrying on a radiocommunication service.

Radiocommunication. Telecommunication by means of radio waves.

Rated power output. The maximum radio frequency power output capability (peak or average power) of a transmitter, under optimum conditions of adjustment and operation, specified by its manufacturer.

Record communication. Any transmission of intelligence which is reduced to visual record form at the point of reception.

Reference frequency. A frequency having a fixed and specified position with respect to the assigned frequency. The displacement of this frequency with respect to the assigned frequency has the same absolute value and sign that the displacement of the characteristic frequency has with respect to the centre of the frequency band occupied by the emission.

Relay station. A fixed station used for the reception and retransmission of the signals of another station or stations.

Remote station. A fixed station in a multiple address radio system that transmits one-way to one or more central receive sites, controls a master station, or is controlled, activated or interrogated by, and may respond to, a master station.

Repeater station. A fixed station established for the automatic retransmission of radiocommunications received from one or more mobile stations and directed to a specified location; for public mobile radio operations, a fixed station that automatically retransmits the mobile communications and/or transmitter information about the base station, along a fixed point-to-point link between the base station and the central station.

Short haul system. A microwave system licensed under this part in which the longest radio circuit of tandem radio paths does not exceed 402 kilometers.

Signaling communication. One-way communications from a base station to a mobile or fixed receiver, or to multi-point mobile or fixed receivers by audible or subaudible means, for the purpose of actuating a signaling device in the receiver(s) or communicating information to the receiver(s), whether or not the information is to be retained in record form:

Standby transmitter. A transmitter installed and maintained for use in lieu of the main transmitter only during periods when the main transmitter is out of service for maintenance or repair.

Symbol rate. Modulation rate in bauds. This rate may be higher than the transmitted bit rate as in the case of coded pulses or lower as in the case of multilevel transmission.

Telegraphy. A form of telecommunication which is concerned in any process providing transmission and reproduction at a distance of documentary matter, such as written or printed matter or fixed images, or the reproduction at a distance of any kind of information in such a form. Unless otherwise specified, telegraphy means a form of telecommunication for the transmission of written matter by the use of signal code.

Telemetering. The use of telecommunication for automatic indicating or recording measurements at a distance from the measuring instrument.

Telephony. A form of telecommunication set up for the transmission of speech, or in some cases, other sounds.

Television. A form of telecommunication for transmission of transient images of fixed or moving objects.

Temporary fixed station. A station established in a non-permanent mode (temporary) at a specified location for a short period of time, ranging up to one year. Temporary-fixed operations are itinerant in nature, and are not to be confused with mobile-type operations.

Video entertainment material. The transmission of a video signal (*e.g.* United States Standard Monochrome or National Television Systems Committee 525-line television) and an associated audio signal which is designed primarily to amuse or entertain, such as movies and games.

Subpart B—Applications and Licenses

General Filing Requirements

§ 101.4 Transition plan.

(a) All systems subject to parts 21 and 94 of this chapter in effect as of July 31, 1996, which are licensed or which are proposed in an application on file, as of July 31, 1996, are subject to the requirements under part 21 or part 94 of this chapter as contained in the CFR edition revised as of October 1, 1995 and amended in the **Federal Register** through July 31, 1996, as applicable.

(b) For purposes of this section, a "system" shall include:

(1) The originally licensed system;

(2) Any modification to the original system involving a change in antenna azimuth, antenna beam width, channel loading, emission, station location, antenna height, authorized power, or authorized frequencies;

(3) Additional links constructed to complete an integrated communications network; or

(4) Operationally connecting new facilities and/or frequencies.

(c) All radio frequency devices authorized pursuant to part 2 of this chapter as being in compliance with applicable part 21 or part 94 of this chapter in effect as of July 31, 1996, requirements can be used indefinitely with systems licensed under this part 101.

§ 101.5 Station authorization required.

(a) No radio transmitter shall be operated in this service except under and in accordance with a proper station authorization granted by the Federal Communications Commission. Except as provided in paragraph (d) of this section, no construction, modification or operation of a station may be commenced without an authorization from the Commission.

(b) A separate application form must be filed for each Digital Electronic Message Service Nodal Station. No license is required for a Digital Electronic Message User Station. Authority for a Digital Electronic Message Nodal Station licensee to serve a specific number of user stations to be licensed in the name of the carrier must be requested on FCC Form 494 filed for the Digital Electronic Message Nodal Station.

(c) If construction and or operation may have a significant environmental impact as defined by § 1.1307 of this chapter, the requisite environmental assessment as prescribed in § 1.1311 of this chapter must be filed with the application and Commission environmental review must be completed before construction of the station is initiated. See § 1.1312 of this chapter.

(d) For stations authorized under subpart H (Private Operational Fixed Point-to-Point Microwave Service) and subpart I (Common Carrier Fixed Point-to-Point Microwave Service), construction of new or modified stations may be initiated prior to grant of an authorization. As a condition to commencing construction under this paragraph (d), the Commission may, at any time and without hearing or notice, prohibit such construction for any reason. Any construction conducted hereunder is at the applicant's sole risk.

§ 101.7 Eligibility for station license.

(a) A station license may not be granted to or held by a foreign government or by a representative of a foreign government.

(b) In the Common Carrier service, a station license may not be granted or held by:

(1) Any alien or the representative of any alien;

(2) Any corporation organized under the laws of any foreign government;

(3) Any corporation of which any officer or director is an alien;

(4) Any corporation of which more than one-fifth of the capital stock is owned of record or voted by: Aliens or their representatives; a foreign government or representatives thereof; or any corporation organized under the laws of a foreign country;

(5) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, if the Commission finds that the public interest will be served by the refusal or revocation of such license; or

(6) Any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens or their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign government, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

§ 101.9 Formal and informal applications.

(a) Except for an authorization under any of the proviso clauses of section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a)), the Commission will grant the following authorizations only upon written application: Station licenses; modifications of station licenses; renewals of station licenses; extensions of time to construct; transfers and assignments of station licenses or of any rights thereunder.

(b) Except as may be otherwise permitted by this part, a separate written application must be filed for each instrument of authorization requested. Applications may be:

(1) "Formal applications" where the Commission has prescribed in this part a standard form; or

(2) "Informal applications" (normally in letter form) where the Commission has not prescribed a standard form.

(c) An informal application will be accepted for filing only if:

(1) A standard form is not prescribed or clearly applicable to the authorization requested;

(2) It is a document submitted, in duplicate, with a caption which indicates clearly the nature of the request, radio service involved, location of the station, and the application file number (if known); and

(3) It contains all the technical details and informational showings required by the rules and states clearly and completely the facts involved and authorization desired.

§ 101.11 Filing of applications, fees, and number of copies.

(a) Part 1 of this chapter contains information on application filing procedures and requirements for all services authorized under this part. All filings must include the original application plus one copy.

(b) Applications or filings requiring fees as set forth at part 1, subpart G of this chapter must be filed in accordance with § 0.401(b) of this chapter. Applications or filings not requiring fees must be submitted to: Federal Communications Commission, Common Carrier Radio Services, 1270 Fairfield Road, Gettysburg, PA 17325.

(c) All correspondence or amendments concerning a submitted application must clearly identify the radio service, the name of the applicant, station location, and the Commission file number (if known) or station call sign of the application involved.

(d) Except as otherwise specified, all applications, amendments, and correspondence must be signed as prescribed by part 1 of this chapter.

§ 101.13 Application forms and requirements for private operational fixed stations.

(a) A separate application must be submitted on FCC Form 402 for the following:

(1) New station authorization for private operational fixed microwave station;

(2) New authorization to operate one or more fixed stations at temporary locations in this service;

(3) Modification of station license;

(4) New station authorization or modification of license for each master station of a system consisting of a master station and its associated remote stations;

(5) The Commission's consent to the complete or partial assignment of an authorization to another person or entity, or the transfer of control of an entity holding an authorization. In addition, the application must be accompanied by a signed letter from proposed assignor/transferor stating the desire to assign all or part of its right, title, and interest in and to such authorization, or to transfer control over the entity holding the authorization, stating the call sign and location of the station, and that, if applicable, the assignor will submit its current station authorization for cancellation upon completion of the assignment. Form 1046 may be used in lieu of this letter. Licensees who fail to consummate must modify their licenses to conform them to their initial state within 30 days of a failure to consummate; or

(6) Amendment of any application.

(b) An application for authority to operate a fixed station at temporary locations must specify the precise geographic area within which the operation will be confined. The area specified must be defined as a radius of operation about a given state or states, latitude/longitude, or as a rectangular area bounded by upper and lower lines of latitude and longitude. Exception to this specific requirement may be made for exceptionally large areas, such as the continental United States. Sufficient data must be submitted to show the need for the proposed area of operation. If an operational-fixed station is authorized to be operated at temporary locations and actually remains, or is to remain, at the same location for a period of over a year, application for a permanent authorization specifying the fixed location must be made as soon as possible but not later than 30 days after the expiration of the one-year period.

(c) A separate Form 402 for point-to-multipoint frequencies in the 10.6 GHz and 18 GHz bands must be filed for each Nodal Station except for operations consistent with § 101.147. Each Nodal Station application must specify the service area that will be served by the station in terms of a distance radius or other geographical specification, and, if applicable, the Standard Metropolitan Statistical Area (SMSA) being served.

(d) Application for renewal of station licenses must be submitted on such form as the Commission may designate by public notice. Applications for renewal must be made during the license term and should be filed within 90 days, but not later than 30 days, prior to the end of the license term. When a licensee submits a timely application for renewal of a station license, the existing license for that station will continue as a valid authorization until the Commission has made a final decision on the application. Whenever a group of station licenses in the same radio service are to be renewed simultaneously, a single "blanket" application may be filed to cover the

entire group if the application identifies each station by call sign and station location. Applicants should note also any special renewal requirements under the rules for such radio station(s).

(e) A separate application must be filed for each fixed master station in a Multiple Address System (MAS). Applications may include any number of remote stations in a single application, but must specify the geographic service area in which these remote stations will be located. Applications for mobile operations or for systems employing only remote stations must designate a reference point (set of coordinates) at or near the center of the area being served.

(f) Cancellation of a license can be made by letter.

§ 101.15 Application forms for common carrier fixed stations.

(a) *New or modified facilities.* FCC Form 494 must be submitted and a license granted for each station. FCC Form 494 also must be submitted to amend any license application, to modify any license pursuant to §§ 101.57(a) and 101.59, and to notify the Commission of modifications made pursuant to § 101.61. Cancellation of a license can be made by letter.

(b) *Additional time to construct.* FCC Form 701 ("Application for Additional Time to Construct Radio Station") must be filed prior to the expiration of the time for construction noted in a conditional license to modify the license by extending the period of construction.

(c) *Renewal of station license.* Except for renewal of special temporary authorizations, FCC Form 405 ("Application for Renewal of Station License") must be filed by the licensee between thirty (30) and sixty (60) days prior to the expiration date of the license sought to be renewed. Whenever a group of station licenses in the same radio service are to be renewed simultaneously, a single "blanket" application may be filed to cover the entire group if the application identifies each station by call sign and station location. Applicants should note also any special renewal requirements under the rules for each radio service. When a licensees submits a timely application for renewal of a station license, the existing license continues in effect until the Commission has rendered a decision on the renewal application.

(d) Assignment of license. FCC Form 702 ("Application for Consent to Assignment of Radio Station Construction Authorization or License for Stations in Services Other than Broadcast") must be submitted to assign voluntarily (as by, for example, contract or other agreement) or involuntarily (as by, for example, death, bankruptcy, or legal disability) the station authorization. In the case of involuntary assignment (or transfer of control) the application must be filed within 10 days of the event causing the assignment (or transfer of control). FCC Form 702 must also be used for non-substantial (pro forma) assignments. Whenever a group of station licenses in the same radio services are to be assigned to a single assignee, a single "blanket" application may be filed to cover the entire group, if the application identifies each station by call sign and station location. Licensees who fail to consummate must modify their licenses to conform them to their initial state within 30 days of a failure to consummate.

(e) *Partial assignment of license.* Authorization for assignment from one company to another of only a part or portions of the facilities (transmitters) authorized under an existing license (as distinguished from an assignment of the facilities in their entirety) may be granted upon application:

(1) By the assignor on FCC Form 494 for deletion of the assigned facilities (no fee required); and

(2) By the assignee on FCC Form 494 with a request for recertification in the name of the assignee for frequencies eliminated from assignor's license (fee required). In the event that consummation does not occur, FCC Form 494 must be submitted to return the assignor's license to its original condition.

(f) *Transfer of control of corporation holding a conditional license or license.* FCC Form 704 ("Application for Consent to Transfer of Control") must be submitted in order to voluntarily or involuntarily transfer control (de jure or de facto) of a corporation holding any conditional licenses or licenses. FCC Form 704 must also be used for non-substantial (pro forma) transfers of control. Licensees who fail to consummate must modify their licenses to conform them to their initial state within 30 days of a failure to consummate.

§ 101.17 [Reserved]

§ 101.19 General application requirements.

(a) Each application for a license or for consent to assignment or transfer of control must:

(1) Disclose fully the real party (or parties) in interest, including (as required) a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant;

(2) Demonstrate the applicant's legal, technical, and other qualifications to be a licensee;

(3) Submit the information required by the Commission's rules, requests, and application forms;

(4) Be maintained by the applicant substantially accurate and complete in all significant respects in accordance with the provisions of § 1.65 of this chapter; and

(5) Show compliance with the special requirements applicable to each radio service and make all special showings that may be applicable (*e.g.*, those required by §§ 101.103(d), 101.701, and of this part, etc.).

(b) In addition to the general application requirements of §§ 101.19 and 101.21, applicants must submit any additional documents, exhibits, or signed written statements of fact:

(1) As may be required by the other parts of the Commission's rules, and the other subparts of this part (particularly Subpart C and those subparts applicable to the specific radio service involved); and

(2) As the Commission, at any time after the filing of an application and during the term of any authorization, may require from any applicant, permittee, or licensee to enable it to determine whether a radio authorization should be granted, denied, or revoked.

(c) All applicants are required to indicate at the time their application is filed whether an authorization of the facilities is categorically excluded as defined by § 1.1306 of this chapter. If answered affirmatively, an Environmental Assessment as described by § 1.1311 of this chapter, need not be filed with the application.

§ 101.21 Technical content of applications.

Applications must contain all technical information required by the application form and any additional information necessary to fully describe the proposed facilities and to demonstrate compliance with all technical requirements of the rules governing the radio service involved (see subparts C, F, G, I, and J, as appropriate). The following paragraphs describe a number of technical requirements.

(a) Each application proposing a new or modified antenna structure for a station (including a receive-only or passive repeater) must indicate whether the owner has registered the structure with the Commission. Complete information as to rules concerning the registration, construction, marking and lighting of antenna structures is

contained in part 17 of this chapter. See also § 101.121 if the structure is used by more than one station.

(b) Each application for construction permit for a developmental authorization must be accompanied by pertinent supplemental information as required by § 101.411 in addition to such information as may be specifically required by this section.

(c) An applicant proposing construction of one or more new stations or modification of existing stations must submit the location and telephone number (if known) of the maintenance center for a fixed microwave system. In lieu of providing the location and telephone number of the maintenance center(s) on a case by case basis, a licensee may file a complete list for all operational stations with the Commission and the Engineer-In-Charge of the appropriate radio district on an annual basis or at more frequent intervals as necessary to keep the information current.

(d) Each application in the Private Operational Fixed Point-to-Point Microwave, Common Carrier Fixed Point-to-Point Microwave, Local Television Transmission, and Digital Electronic Message Services (excluding user stations) proposing a new or replacement antenna (excluding omnidirectional antennas) must include an antenna radiation pattern showing the antenna power gain distribution in the horizontal plane expressed in decibels, unless such pattern is known to be on file with the Commission in which case the applicant may reference in its application the FCC–ID number that indicates that the pattern is on file with the Commission.

(e) Each application in the Private Operational Fixed Point-to-Point Microwave Service and the Common Carrier Fixed Point-to-Point Microwave Service must include the following information:

Applicant's name and address.
Transmitting station name.
Transmitting station coordinates.
Frequencies and polarizations to be added, changed or deleted.
Transmitting equipment type, its stability, actual output power, emission designator, and type of modulation (loading).
Transmitting antenna type(s), model, gain, and, if required, a radiation pattern provided or certified by the manufacturer.
Transmitting antenna center line height(s) above ground level and ground elevation above mean sea level.
Receiving station name.
Receiving station coordinates.
Receiving antenna type(s), model, gain, and, if required, a radiation pattern provided or certified by the manufacturer.
Receiving antenna center line height(s) above ground level and ground elevation above mean sea level.
Path azimuth and distance.
Estimated transmitter transmission line loss expressed in dB.
Estimated receiver transmission line loss expressed in dB.

Note: The position location of antenna sites shall be determined to an accuracy of no less than ±1 second in the horizontal dimensions (latitude and longitude) and ±1 meter in the vertical dimension (ground elevation) with respect to the National Spacial Reference System.

(f) All applicants for regular authorization must, before filing an application, amendments to a pending application, or modifications to a license, prior coordinate the proposed frequency usage with existing users in the area and other applicants with previously filed applications in accordance with the procedures in § 101.103. In those frequency bands shared with the communication-satellite service, an applicant for a new station, for new points of communication, for the initial frequency assignment in a shared band for which coordination has not been previously effected, or for authority to modify the emission or radiation characteristics of an existing station in a manner that may increase the likelihood of harmful interference, must ascertain in advance whether the station(s) involved lie within the great circle coordination distance contours of an existing Earth station or one for which an application has been accepted for filing, and must coordinate his proposal with each such Earth station operator or applicant. For each potential interference path, the applicant must perform the computations required to determine that the expected level of interference to or from the terrestrial station does not exceed the maximum permissible interference power level in accordance with the technical standards and requirements of §§ 25.251–25.256 of this chapter. The Commission may, in the course of examining any application, require the submission of additional showings, complete with pertinent data and calculations in accordance with part 25 of this chapter, showing that harmful interference will not likely result from the proposed operation. (Technical characteristics of the Earth stations on file and coordination contour maps for those Earth stations will be kept on file for public inspection in the offices of the Commission's International Bureau in Washington, DC)

§ 101.23 Waiver of rules.

Waivers of these rules may be granted upon application or on the Commission's own motion.

A request for waiver shall contain a statement of reasons sufficient to justify a waiver. A waiver will not be granted except upon an affirmative showing that:

(a) The underlying purpose of the rule will not be served, or would be frustrated, by its application in the particular case, and that grant of the waiver is otherwise in the public interest; or

(b) The unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest. Applicants must also show the lack of a reasonable alternative.

§ 101.25 Inconsistent or conflicting applications.

While an application is pending and undecided, no subsequent inconsistent or conflicting application may be filed by the same applicant, the applicant's successor or assignee, or on behalf or for the benefit of the same applicant, the applicant's successor or assignee.

§ 101.27 Repetitious applications.

(a) Where an applicant has been afforded an opportunity for a hearing with respect to a particular application for a new station, or for an extension or enlargement of a service or facilities, and the Commission has, after hearing or default, denied the application or dismissed it with prejudice, the Commission will not consider a like application involving service of the same kind to the same area by the same applicant, or by the applicant's successor or assignee, or on behalf of or for the benefit of the original parties in interest, until after the lapse of 12 months from the effective date of the Commission's order. The Commission may, for good cause shown, waive the requirements of this section.

(b) Where an appeal has been taken from the action of the Commission denying a particular application, another application for the same class of station and for the same area, in whole or in part, filed by the same applicant or by the applicant's successor or assignee, or on behalf or for the benefit of the original parties in interest, will not be considered until the final disposition of such appeal.

§ 101.29 Amendment of pending applications.

(a) Any pending application may be amended as a matter of right if the

application has not been designated for hearing, or for comparative evaluation pursuant to § 101.51, or for the random selection process, provided, however, that the amendments must comply with the provisions of § 101.41 as appropriate.

(b) Requests to amend an application designated for hearing or for comparative evaluation, or tentatively selected by the random selection process may be granted only if a written petition demonstrating good cause is submitted and properly served upon the parties of record.

(c) The Commission will classify amendments on a case-by-case basis. Whenever previous amendments have been filed, the most recent amendment will be classified by reference to how the information in question stood as of the latest Public Notice issued which concerned the application. An amendment will be deemed to be a major amendment subject to § 101.37 and § 101.45 under any of the following circumstances:

(1) If the amendment results in a substantial modification of the engineering proposal such as (but not necessarily limited to):

(i) A change in, or an addition of a radio frequency channel;

(ii) A change in polarization of the transmitted signal;

(iii) An increase in the equivalent isotropically radiated power of three (3) dB or more;

(iv) A change in type of transmitter emission or an increase in emission bandwidth of more than ten (10) percent;

(v) A change in the geographic coordinates of a station's transmitting antenna of more than five (5) seconds of latitude or longitude, or both;

(vi) A change of more than one (1) degree in the azimuth of the center of the main lobe of radiation of a point-to-point station's transmitting antenna (including any deflections by repeating devices);

(vii) Any change which increases the antenna center line height by 3.0 meters (ten (10) feet) or more;

(viii) Any changes or combination of changes which would cause harmful electrical interference to an authorized facility or result in a mutually exclusive conflict with another pending application; or

(ix) Any technical change that would increase the effective radiated power in any direction by more than one and one-half (1.5) dB in the Digital Electronic Message Service.

(2) If the amendment would convert a proposal, such that it may have a significant impact upon the environment under § 1.1307 of this chapter, which would require the submission of an environmental assessment, see § 1.1311 of this chapter, and Commission environmental review, see §§ 1.1308 and 1.1312 of this chapter.

(3) If the amendment results in a substantial and material alteration of the proposed service.

(4) If the amendment specifies a substantial change in beneficial ownership or control (de jure or de facto) of an applicant such that the change would require, in the case of an authorized station, the filing of a prior assignment or transfer of control application under section 310(d) of the Communications Act of 1934 (47 U.S.C. 310(d)). Such a change would not be considered major where the assignment or transfer of control is for legitimate business purposes other than the acquisition of applications.

(5) If the amendment, or the cumulative effect of the amendment, is determined by the Commission otherwise to be substantial pursuant to section 309 of the Communications Act of 1934.

(d) A pending application may be amended by a major amendment to reflect the relocation of a proposed station site and a new application will not be required if:

(1) The geographic coordinates of the new station site are within 32.2 kilometers of the coordinates of the original site; and

(2) The relocated station would serve essentially the same purpose in the system as originally proposed.

(e) The applicant must serve copies of any amendments or other written communications upon the following parties:

(1) Any applicant whose application appears on its face to be mutually exclusive with the application being amended, including those applicants originally served under § 101.509;

(2) Any applicant whose application has been found by the Commission, as published in a public notice, to be mutually exclusive with the application being amended; and

(3) Any party who has filed a petition to deny the application or other formal objection, when that petition or formal objection has not been resolved by the Commission.

(f) The Commission may waive the service requirements of paragraph (e) of this section and prescribe such alternative procedures as may be appropriate under the circumstances to protect petitioners' interests and to avoid undue delay in a proceeding, if an applicant submits a request for waiver which demonstrates that the service requirement is unreasonably burdensome. Requests for waiver must be served on petitioners. Oppositions to the petition may be filed within five (5) days after the petition is filed and must be served on the applicant. Replies to oppositions will not be entertained.

(g) Any amendment to an application must be signed and must be submitted in the same manner, and with the same number of copies, as was the original application. Amendments may be made in letter form if they comply in all other respects with the requirements of this chapter.

§ 101.31 Special temporary, temporary, and conditional authorizations.

(a) *Special temporary authorization.* (1) In circumstances requiring immediate or temporary use of facilities, licensees subject to this part may request special temporary authority to install and/or operate new or modified equipment. Any such request may be submitted as an informal application in the manner set forth in § 101.9 and must contain full particulars as to the proposed operation including all facts sufficient to justify the temporary authority sought and the public interest therein. No such request will be considered unless the request is received by the Commission at least 10 days prior to the date of proposed construction or operation or, where an extension is sought, expiration date of the existing temporary authorization.

(2) Special temporary authorization may be granted upon written request in the following circumstances:

(i) In emergency situations;

(ii) To permit restoration or relocation of existing facilities to continue communication service;

(iii) To conduct tests to determine necessary data for the preparation of an application for regular authorization;

(iv) For a temporary, non-recurring service where a regular authorization is not appropriate;

(v) In other situations involving circumstances which are of such extraordinary nature that delay in the institution of temporary operation would seriously prejudice the public interest.

(3) The Commission may grant requests for special temporary authority without issuing the public notice provided for in § 101.37 for periods not exceeding 180 days, if there are extraordinary circumstances supporting the request and where delay in commencing temporary operation would seriously prejudice the public interest. Requests for special temporary authorization not involving extraordinary circumstances may be granted without public notice for a period of 30 days where an application for regular operation is not contemplated or for 60 days pending or after the filing of an application for regular operation. Requests for special temporary authority are issued on a strictly secondary, non-interfering basis, and do not in any way affect the final disposition of any application or action pending before the Commission.

(4) Extension of a special temporary authorization for a period of 180 days may be granted, but the renewing applicant bears a heavy burden to show that extraordinary circumstances warrant such an extension.

(5) Request for special temporary authorization must contain the following information:

(i) Name, address, and citizenship status of the applicant;

(ii) Need for special action, including a description of any emergency or damage to equipment;

(iii) Type of operation to be conducted;

(iv) Purpose of operation;

(v) Time and date of operation desired;

(vi) Class of station and nature of service;

(vii) Location of station and points with which station will communicate;

(viii) Equipment to be used, specifying manufacturer, model number, and number of units;

(ix) Frequency(s) desired;

(x) Azimuth and beamwidth of major lobe of transmitting antenna and ERP;

(xi) Type of emission;

(xii) Description of antenna to be used, including height; and

(xiii) Certification that prior coordination is complete.

(6) In cases of emergency found by the Commission, involving danger to life or property or due to damage of equipment, or during a national emergency proclaimed by the President or declared by the Congress or during the continuance of any war in which the United States is engaged and when such action is necessary for the national defense or safety or otherwise in furtherance of the war effort, or in cases of emergency where the Commission finds that it would not be feasible to secure renewal applications from existing licensees or otherwise to follow normal licensing procedure, the Commission will grant construction permits and station licenses, or modifications or renewals thereof, during the emergency found by the Commission or during the continuance of any such national emergency or war, as special temporary licenses, only for the period of emergency or war, requiring such action, without the filing of formal applications.

(b) *Temporary authorizations.* (1) Authorizations may be issued upon proper application for rendition of temporary service to subscribers under the following conditions:

(i) When a fixed station, authorized to operate at temporary locations, is to remain at a single location for more than 6 months, an application (FCC Form 402 or 494, as appropriate) for a station authorization designating that single location as the permanent location shall be filed at least 90 days prior to the expiration of the 6-month period;

(ii) The station shall be used only for rendition of communication service at a remote point where the provision of wire facilities is not practicable within the required time frame; and

(iii) The antenna structure height employed at any location shall not exceed the criteria set forth in § 17.7 of this chapter unless, in each instance, authorization for use of a specific maximum antenna structure height for each location has been obtained from the Commission prior to erection of the antenna. See § 101.125.

(2) Applications for authorizations to operate stations at temporary locations under the provisions of this section shall be made upon FCC Form 402 or 494, as appropriate. Blanket applications may be submitted for the required number of transmitters.

(3) The licensee of stations which are authorized pursuant to the provisions of paragraph (b) of this section shall notify the Commission at least five (5) days prior to installation of the facilities, stating:

(i) The call sign, manufacturer's name, type or model number, output power and specific location of the transmitter(s);

(ii) The maintenance location for the transmitter;

(iii) The location of the transmitting or receiving station with which it will communicate and the identity of the correspondent operating such facilities;

(iv) The exact frequency or frequencies to be used;

(v) The public interest, convenience and necessity to be served by operation of the proposed installation;

(vi) The commencement and anticipated termination dates of operation from each location. In the event the actual termination date differs from the previous notification, written notice thereof promptly shall be given to the Commission;

(vii) A notification shall include compliance with the provisions of § 101.21(e) when operations are to be conducted in the area of other terrestrial microwave stations and with the provisions of § 101.21(e) when operations are to be conducted within the coordination distance contours of a fixed earth station; and

(viii) Where the notification contemplates initially a service which is to be rendered for a period longer than 90 days, the notification shall contain a showing as to why application should not be made for regular authorization.

(4) Less than 5 days advance notice may be given when circumstances require shorter notice provided such notice is promptly given and the reasons in support of such shorter notice are stated.

(5) A copy of the notification shall be kept with the station license.

(c) *Prior coordination.* Stations authorized under this section may complete the prior coordination process orally and the period allowed for response to a coordination notification may be less than 30 days if the parties agree. The requirements under § 101.103(d)(2)(i) for written documentation shall apply to such oral notice.

(d) *Certification.* Any applicant under this section must submit a certification that neither the applicant nor any party to the applicant is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, as required by § 1.2002 of this chapter.

(e) *Conditional authorization.* (1) An applicant for a new point-to-point microwave radio station(s) or a modification of an existing station(s) in the 3,700–4,200; 5,925–6,425; 6,525–6,875; 10,550–10,680; 10,700–11,700; 11,700–12,200; 12,200–12,700; 12,700–13,200; 13,200–13,250; 17,700–19,700; and 21,200–23,600 MHz bands (see § 101.147 for specific service usage) may operate the proposed station(s) during the pendency of its applications(s) upon the filing of a properly completed formal application(s) that complies with subpart B of part 101 if the applicant certifies that the following conditions are satisfied:

(i) The frequency coordination procedures of § 101.103 have been successfully completed;

(ii) The antenna structure(s) has been previously studied by the Federal Aviation Administration and determined to pose no hazard to aviation safety as required by subpart B of part 17 of this chapter; or the antenna or tower structure does not exceed 6.1 meters above ground level or above an existing man-made structure (other than an antenna structure), if the antenna or tower has not been previously studied

by the Federal Aviation Administration and cleared by the FCC;

(iii) The grant of the application(s) does not require a waiver of the Commission's rules:

(iv) The applicant has determined that the facility(ies) will not significantly affect the environment as defined in § 1.1307 of this chapter;

(v) The station site(s) does not lie within 56.3 kilometers of any international border or within a radio "Quiet Zone" identified in § 101.123, or if operated on frequencies in the 17,700–19,700 MHz band, the station site(s) does not lie within the states of Colorado, Maryland and Virginia and the District of Columbia;

(vi) The filed application(s) does not propose to operate in the 10.6–10.68 GHz band, or in the 21.2–23.6 GHz band with an E.R.P. greater than 55 dBm pursuant to § 101.147(s); and

(vii) The filed application(s) is consistent with the proposal that was coordinated pursuant to § 101.103.

(2) Conditional authority ceases immediately if the application(s) is returned by the Commission because it is not acceptable for filing.

(3) A conditional authorization pursuant to paragraphs (e)(1) and (e)(2) of this section is evidenced by retaining the original executed conditional licensing Certification Form with the station records. Conditional authorization does not prejudice any action the Commission may take on the subject application(s). Conditional authority is accepted with the express understanding that such authority may be modified or cancelled by the Commission at any time without hearing if, in the Commission's discretion, the need for such action arises. An applicant operating pursuant to this conditional authority assumes all risks associated with such operation, the termination or modification of the conditional authority, or the subsequent dismissal or denial of its application(s).

(4) The Certification Form, or a copy thereof, must be posted at each station operating pursuant to this section consistent with § 101.215.

§ 101.33 Who may sign applications.

See part 1 of this chapter (§§ 1.743 and 1.913), for practices and procedures governing signatures on applications, amendments and related statements of fact.

Processing of Applications

§ 101.35 Preliminary processing of applications.

(a) Applications received for filing are given a file number. The assignment of a file number to an application is for administrative convenience and does not indicate the acceptance of the application for filing and processing and does not preclude the subsequent return of the application.

(b) Applications that are incomplete with respect to answers, supplementary statements, execution, or other matters of a formal character will be considered defective and may be returned to the applicant with a brief statement as to such defects. If an applicant is requested by the Commission to file any additional documents or information not included in the prescribed application form, failure to comply with such request will be deemed to render the application defective, and such application may be dismissed. Applications will also be deemed to be defective and may be returned to the applicant in the following cases:

(1) Statutory disqualification of applicant;

(2) Proposed use or purpose of station would be unlawful;

(3) Requested frequency is not allocated for assignment for the service proposed;

(4) The submitted filing fee (if required) is insufficient;

(5) The application does not demonstrate compliance with the special requirements applicable to the radio service involved;

(6) The applications does not include all necessary exhibits; or

(7) The application fails to meet any other Commission requirements.

(c) Any application that has been returned to the applicant for correction will be processed in original order of receipt when resubmitted if it is received within 60 days from the date on which it was returned to the applicant and the change does not involve a major amendment. If the application is not resubmitted within the prescribed time, it will be treated as a new application and considered at the time other applications received on the same date are considered.

(d) Applications considered defective under paragraph (b) of this section may be accepted for filing if:

(1) The application is accompanied by a request which sets forth the reasons in support of a waiver of (or an exception to), in whole or in part, any specific rule, regulation, or requirement with which the application is in conflict; or

(2) The Commission, upon its own motion, waives (or allows an exception to), in whole or in part, any rule, regulation or requirement.

§ 101.37 Public notice period.

(a) At regular intervals, the Commission will issue a public notice listing:

(1) The acceptance for filing of common carrier applications and major amendments thereto;

(2) Significant Commission actions concerning these applications;

(3) The receipt of common carrier applications for minor modifications made pursuant to § 101.59;

(4) Information which the Commission in its discretion believes of public significance; and

(5) Special environmental considerations as required by part 1 of this chapter.

(b) A public notice will not normally be issued for any of the following applications:

(1) For authorization of a minor technical change in the facilities of a proposed or authorized station where such a change would not be classified as a major amendment to a pending application, as defined by § 101.29, or as a minor modification to a license pursuant to § 101.59;

(2) For temporary authorization pursuant to § 101.31;

(3) For an authorization under any of the proviso clauses of section 308(a) of the Communications Act of 1934 (47 U.S.C. 308(a));

(4) For consent to an involuntary assignment or transfer of control of a radio authorization; or

(5) For consent to a voluntary assignment or transfer of control of a radio authorization, where the assignment or transfer does not involve a substantial change in ownership or control.

(c) Except as otherwise provided in this part (*e.g.*, § 101.59), no application that has appeared on public notice will be granted until the expiration of a period of thirty days following the issuance of the public notice listing the application, or any major amendment thereto, or until the expiration of a period of thirty days following the issuance of a public notice identifying the tentative selectee of a random selection process, whichever is later.

(d) The listing of an application on public notice as accepted for filing does not indicate that the application has been found by the Commission to be acceptable for filing and does not preclude the subsequent return of the application.

§ 101.39 Dismissal and return of applications.

(a) Except as provided under paragraph (c) of this section and under § 101.41, any application may, upon written request, be dismissed without prejudice as a matter of right prior to the adoption date of any final Commission action or the application's designation for hearing or comparative evaluation.

(b) A request to dismiss an application without prejudice will be considered after designation for hearing, after selection through the comparative evaluation procedure of § 101.51, or after selection as a tentative selectee in a random selection proceeding, only if:

(1) A written petition is submitted to the Commission and, in the case of applications designated for hearing or comparative evaluation, is properly served upon all parties of record;

(2) The petition is submitted before the issuance date of a public notice of Commission action denying the application; and

(3) The petition complies with the provision of § 101.41 (whenever applicable) and demonstrates good cause.

(c) Except as provided under § 101.41, an application designated for inclusion in the random selection process may be dismissed without prejudice as a matter of right if the applicant requests its dismissal at least 2 days prior to a random selection proceeding.

(d) Dismissal for failure to prosecute or for failure to respond to official correspondence or requests for additional information within a specified time period will be without prejudice prior to its designation for hearing, or tentative selection by the random selection process. Dismissal may be with prejudice after selection of the comparative evaluation process, or after selection as a tentative selectee in a random selection proceeding.

§ 101.41 Ownership changes and agreements to amend or dismiss applications or pleadings.

(a) Except as provided in paragraph (b) of this section, applicants or any other parties in interest to pending applications must comply with the provisions of this section whenever:

(1) They participate in any agreement (or understanding) which involves any consideration promised or received, directly or indirectly, including any agreement (or understanding) for merger of interests or the reciprocal withdrawal of applications; and

(2) The agreement (or understanding) may result in either:

(i) A proposed substantial change in beneficial ownership or control (*dejure* or *de facto*) of an applicant such that the change would require, in the case of an authorized station, the filing of a prior assignment or transfer of control application under section 310(d) of the Communications Act of 1934 (47 U.S.C. 310(d)), or

(ii) Proposed withdrawal, amendment or dismissal of any application(s), amendment(s), petition(s), pleading(s), or any combination thereof, which would thereby permit the grant without hearing, comparative evaluation under § 101.51, or random selection of an application previously in contested status.

(b) The provisions of this section will not be applicable to any engineering agreement (or understanding) that:

(1) Resolves frequency conflicts with authorized stations or other pending applications without the creation of new or increased frequency conflicts; and

(2) Does not involve any consideration promised or received, directly or indirectly (including any merger of interests or reciprocal withdrawal of applications), other than the mutual benefit of resolving the engineering conflict.

(c) For any agreement subject to this section, the applicant of an application which would remain pending pursuant to such an agreement will be considered responsible for the compliance by all parties with the procedures of this section. Failure of the parties to comply with the procedures of this section will constitute a defect in those applications which are involved in the agreement and remain in a pending status.

(d) The principals to any agreement or understanding subject to this section must comply with the standards of paragraph (e) of this section in accordance with the following procedure:

(1) Within ten (10) days after entering into the agreement, the parties thereto must jointly notify the Commission in writing of the existence and general terms of such agreement, the identity of all of the participants and the applications involved;

(2) Within thirty (30) days after entering into the agreement, the parties thereto must file any proposed application amendments, motions, or requests together with a copy of the agreement which clearly sets forth all terms and provisions, and such other facts and information as necessary to satisfy the standards of paragraph (e) of this section. Such submission must be accompanied by the certification by affidavit of each principal to the agreement declaring that the statements made are true, complete, and correct to the best of their knowledge and belief, and are made in good faith; and

(3) The Commission may request any further information which in its judgment it believes is necessary for a determination under paragraph (e) of this section.

(e) The Commission will grant an application (or applications) involved in the agreement (or understanding) only if it finds upon examination of the information submitted, and upon consideration of such other matters as may be officially noticed, that the agreement is consistent with the public interest, and the amount of any monetary consideration and the cash value of any other consideration promised or received is not in excess of those legitimate and prudent costs directly assignable to the engineering, preparation, filing and advocacy of the withdrawn, dismissed, or amended application(s), amendment(s), petition(s), pleading(s), or any combination thereof. Where such costs represent the applicant's in-house efforts, these costs may include only directly assignable costs and must exclude general overhead expenses. (The treatment to be accorded such consideration for interstate rate making purposes will be determined at such time as the question may arise in an appropriate rate proceeding.) An itemized accounting must be submitted to support the amount of consideration involved except where such consideration (including the fair market value of any non-cash consideration) promised or received does not exceed one thousand dollars ($1,000.00). Where consideration involves a sale of facilities or merger of interests, the accounting must clearly identify that portion of the consideration allocated for such facilities or interests and a detailed description thereof, including estimated fair market value. The Commission will not presume an agreement (or understanding) to be prima facie contrary to the public interest solely because it incorporates a mutual agreement to withdraw pending application(s), amendment(s), petition(s), pleading(s), or any combination thereof.

§ 101.43 Opposition to applications.

(a) Any party in interest may file with the Commission a petition to deny any application for which public notice is required. All such petitions must:

(1) Identify the application or applications including applicant's name, station location, Commission file numbers and radio service involved with which it is concerned;

(2) Be filed in accordance with the pleading limitations, filing periods, and other applicable provisions of this part and part 1 of this chapter;

(3) Contain specific allegations of fact (except for those of which official notice may be taken), supported by affidavit of a person or persons with personal knowledge thereof and be sufficient to make a prima facie showing that the petitioner is a party in interest and that a grant of the application would be

inconsistent with the public interest, convenience and necessity;

(4) Be filed within thirty (30) days after the date of public notice announcing the acceptance for filing of such applications or major amendments thereto, or, identifying the tentative selectee of a random selection proceeding (unless the Commission otherwise extends the deadline); and

(5) Contain a certificate of service showing that the applicant has been mailed a copy of the petition no later than the date on which the petition is filed with the Commission.

(b) The applicant may file an opposition to any petition to deny and the petitioner may file a reply thereto in which allegations of fact or denials thereof must be supported by an affidavit of a person or persons with personal knowledge thereof and be clearly identified. The applicant must serve a copy of the opposition on the petitioner, and the petitioner must serve a copy of its reply on the applicant. The time for filing such oppositions and replies are provided in § 1.45 of this chapter.

(c) Notwithstanding the provisions of paragraph (a) of this section, before Commission action on any application for an instrument of authorization, any person may file informal objections to the grant. The Commission will consider informal objections, but not necessarily discuss them in a written opinion, if the objection is filed at least one day prior to action on the application and the objection is signed by the submitting person with a disclosure of that person's interest. Such objections may be submitted in letter form. The limitation on pleadings and time for filing pleadings provided for in § 1.45 of this chapter will not be applicable to any objections duly filed pursuant to this paragraph.

(d) Petitions to deny not filed in accordance with paragraph (a) of this section will be treated as informal objections.

§ 101.45 Mutually exclusive applications.

(a) The Commission will consider applications to be mutually exclusive if their conflicts are such that the grant of one application would effectively preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more of the other applications. The Commission will presume "harmful electrical interference" exists when the levels of § 101.105 are exceeded, or when there is a material impairment to service rendered to the public despite full cooperation in good faith by all applicants or parties to achieve reasonable technical adjustments which would avoid electrical conflict.

(b) A common carrier application will be entitled to be included in a random selection process or to comparative consideration with one or more conflicting applications only if:

(1) The application is mutually exclusive with the other application; and

(2) The application is received by the Commission in a condition acceptable for filing by whichever "cut-off" date is earlier:

(i) Sixty (60) days after the date of the public notice listing the first of the conflicting applications as accepted for filing; or

(ii) One (1) business day preceding the day on which the Commission takes final action on the previously filed application (should the Commission act upon such application in the interval between thirty (30) and sixty (60) days after the date of its public notice).

(c) Whenever three or more applications are mutually exclusive, but not uniformly so, the earliest filed application established the date prescribed in paragraph (b)(2) of this section, regardless of whether or not subsequently filed applications are directly mutually exclusive with the first filed application. (For example, applications A, B, and C are filed in that order. A and B are directly mutually exclusive, B and C are directly mutually exclusive. In order to be considered comparatively with B, C must be filed within the "cut-off" period established by A even though C is not directly mutually exclusive with A.)

(d) Private operational fixed point-to-point microwave applications for authorization under this part will be entitled to be included in a random selection process or to comparative consideration with one or more conflicting applications in accordance with the provisions of § 1.227(b)(4) of this chapter.

(e) An application otherwise mutually exclusive with one or more previously filed applications, but filed after the appropriate date prescribed in paragraphs (b) or (d) of this section, will be returned without prejudice and will be eligible for refiling only after final action is taken by the Commission with respect to the previously filed application (or applications).

(f) For the purposes of this section, any application (whether mutually exclusive or not) will be considered to be a newly filed application if it is amended by a major amendment (as defined by § 101.29), except under any of the following circumstances:

(1) The application has been designated for comparative hearing, or for comparative evaluation (pursuant to § 101.51), and the Commission or the presiding officer accepts the amendment pursuant to § 101.29(b);

(2) The amendment resolves frequency conflicts with authorized stations or other pending applications which would otherwise require resolution by hearing, by comparative evaluation pursuant to § 101.51, or by random selection pursuant to § 101.49 provided that the amendment does not create new or additional frequency conflicts;

(3) The amendment reflects only a change in ownership or control found by the Commission to be in the public interest, and for which a requested exemption from the "cut-off" requirements of this section is granted;

(4) The amendment reflects only a change in ownership or control which results from an agreement under § 101.41 whereby two or more applicants entitled to comparative consideration of their applications join in one (or more) of the existing applications and request dismissal of their other application (or applications) to avoid the delay and cost of comparative consideration;

(5) The amendment corrects typographical, transcription, or similar clerical errors which are clearly demonstrated to be mistakes by reference to other parts of the application, and whose discovery does not create new or increased frequency conflicts; or

(6) The amendment does not create new or increased frequency conflicts, and is demonstrably necessitated by events which the applicant could not have reasonably foreseen at the time of filing, such as, for example:

(i) The loss of a transmitter or receiver site by condemnation, natural causes, or loss of lease or option;

(ii) Obstruction of a proposed transmission path caused by the erection of a new building or other structure; or

(iii) The discontinuance or substantial technological obsolescence of specified equipment, whenever the application has been pending before the Commission for two or more years from the date of its filing.

(g) Applicants for the 932.5–935/941.5–944 MHz bands shall select a frequency pair. Applicants for these bands may select an unpaired frequency only upon a showing that spectrum efficiency will not be impaired and that unpaired spectrum is not available in other bands. During the initial filing window, frequency coordination is not required, except that an application for a frequency in the 942–944 MHz band must be coordinated to ensure that it does not affect an existing broadcast auxiliary service licensee. After the initial filing window, an applicant must submit evidence that frequency coordination has been performed with all licensees affected by the application. All frequency coordination must be performed in accordance with § 101.103. In the event of mutually exclusive applications occurring during the initial filing window for the 932.5–935/941.5–944 MHz bands, applicants shall be given the opportunity to resolve these situations by applying for an alternative frequency pair, if one is available. To the extent that there are no other available frequencies or to the extent that mutually exclusive applications remain after this process is concluded, lotteries shall be conducted for each frequency pair among all remaining mutually exclusive applications, assuming appropriate coordination with existing broadcast auxiliary stations can be concluded, where necessary. In the event of mutually exclusive applications being received for these bands on the same day after the initial filing window has closed and a subsequent filing window opened, lotteries shall be conducted for each frequency pair among all mutually exclusive applications.

§ 101.47 Consideration of applications.

(a) Applications for an instrument of authorization will be granted if, upon examination of the application and upon consideration of such other matters as it may officially notice, the Commission finds that the grant will serve the public interest, convenience, and necessity.

(b) The grant will be without a formal hearing if, upon consideration of the application, any pleadings of objections filed, or other matters which may be officially noticed, the Commission finds that:

(1) The application is acceptable for filing, and is in accordance with the Commission's rules, regulations, and other requirements;

(2) The application is not subject to comparative consideration (pursuant to § 101.45) with another application (or applications), except where the competing applicants have chosen the comparative evaluation procedure of § 101.51 and a grant is appropriate under that procedure;

(3) A grant of the application would not cause harmful electrical interference to an authorized station;

(4) There are no substantial and material questions of fact presented; and

(5) The applicant is legally, technically, financially and otherwise qualified, and a grant of the application would serve the public interest.

(c) Whenever the Commission, without a formal hearing, grants any application in part, or subject to any terms or conditions other than those normally applied to applications of the same type, it will inform the applicant of the reasons therefor, and the grant will be considered final unless the Commission revises its action (either by granting the application as originally requested, or by designating the application for a formal evidentiary hearing) in response to a petition for reconsideration that:

(1) Is filed by the applicant within thirty (30) days from the date of the letter or order giving the reasons for the partial or conditioned grant;

(2) Rejects the grant as made and explains the reasons why the application should be granted as originally requested; and

(3) Returns the instrument of authorization.

(d) The Commission will designate an application for a formal hearing, specifying with particularity the matters and things in issue, if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission determines that:

(1) A substantial and material question of fact is presented;

(2) The Commission is unable for any reason to make the findings specified in paragraph (a) of this section and the application is acceptable for filing, complete, and in accordance with the Commission's rules, regulations, and other requirements;

(3) The application is entitled to comparative consideration (under § 101.45) with another application (or applications); or

(4) The application is entitled to comparative consideration (pursuant to § 101.45) and the applicants have chosen the comparative evaluation procedure of § 101.51 but the Commission deems such procedure to be inappropriate.

(e) The Commission may grant, deny, or take other action with respect to an application designated for a formal hearing pursuant to paragraph (d) of this section or part 1 of this chapter.

(f) Whenever the public interest would be served thereby the Commission may grant one or more mutually exclusive applications expressly conditioned upon final action on the applications, and then either conduct a random section process (in specified services under this rules part), designate all of the mutually exclusive applications for a formal evidentiary hearing or (whenever so requested) follow the comparative evaluation procedures of § 101.51, as appropriate, if it appears:

(1) That some or all of the applications were not filed in good faith, but were filed for the purpose of delaying or hindering the grant of another application;

(2) That the public interest requires the prompt establishment of radio service in a particular community or area;

(3) That a delay in making a grant to any applicant until after the conclusion of a hearing or a random selection proceeding on all applications might jeopardize the rights of the United States under the provision of an international agreement to the use of the frequency in question; or

(4) That a grant of one application would be in the public interest in that it appears from an examination of the remaining applications that they cannot be granted because they are in violation of provisions of the Communications Act, other statutes, or of the provisions of this chapter.

(g) Reconsideration or review of any final action taken by the Commission will be in accordance with subpart A of part 1 of this chapter.

§ 101.49 Grants by random selection.

(a) If an application for an authorization in the Digital Electronic Message Service (DEMS) is mutually exclusive with another such application and satisfies the requirements of § 101.45, the applicant may be included in the random selection process set forth in §§ 1.821, 1.822 and 1.825 of this chapter.

(b) Renewal applications will not be included in a random selection process.

§ 101.51 Comparative evaluation of mutually exclusive applications.

(a) In order to expedite action on mutually exclusive applications in services under this rules part where the random selection process does not apply, the applicants may request the Commission to consider their applications without a formal hearing in accordance with the summary procedure outlined in paragraph (b) in this section if:

(1) The applications are entitled to comparative consideration pursuant to § 101.45;

(2) The applications have not been designated for formal evidentiary hearing; and

(3) The Commission determines, initially or at any time during the

procedure outlined in paragraph (b) of this section, that such procedure is appropriate, and that, from the information submitted and consideration of such other matters as may be officially noticed, there are no substantial and material questions of fact presented (other than those relating to the comparative merits of the applications) which would preclude a grant under paragraphs (a) and (b) of § 101.47.

(b) Provided that the conditions of paragraph (a) of this section are satisfied, applicants may request the Commission to act upon their mutually exclusive applications without a formal hearing pursuant to the summary procedure outlined below:

(1) To initiate the procedure, each applicant will submit to the Commission a written statement containing:

(i) A waiver of the applicant's right to a formal hearing;

(ii) A request and agreement that, in order to avoid the delay and expense of a comparative formal hearing, the Commission should exercise its judgment to select from among the mutually exclusive applications that proposal (or proposals) which would best serve the public interest; and

(iii) The signature of a principal (and the principal's attorney if represented).

(2) After receipt of the written requests of all of the applicants the Commission (if it deems this procedure appropriate) will issue a notice designating the comparative criteria upon which the applications are to be evaluated and will request each applicant to submit, within a specified period of time, additional information concerning the applicant's proposal relative to the comparative criteria.

(3) Within thirty (30) days following the due date for filing this information, the Commission will accept concise and factual argument on the competing proposals from the rival applicants, potential customers, and other knowledgeable parties in interest.

(4) Within fifteen (15) days following the due date for the filing of comments, the Commission will accept concise and factual replies from the rival applicants.

(5) From time to time during the course of this procedure the Commission may request additional information from the applicants and hold informal conferences at which all competing applicants will have the right to be represented.

(6) Upon evaluation of the applications, the information submitted, and such other matters as may be officially noticed the Commission will issue a decision granting one (or more) of the proposals which it concludes would best serve the public interest, convenience and necessity. The decision will report briefly and concisely the reasons for the Commission's selection and will deny the other application(s). This decision will be considered final.

License Transfers, Modifications, Conditions and Forfeitures

§ 101.53 Assignment or transfer of station authorization.

(a) No station license, or any rights thereunder, may be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation or any other entity holding any such license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience and necessity will be served thereby.

(b) For purposes of this section, transfers of control requiring Commission approval must include any and all transactions that:

(1) Change the party controlling the affairs of the licensee; or

(2) Affect any change in a controlling interest in the ownership of the licensee, including changes in legal or equitable ownership.

(c) Requests for transfer of control or assignment authority must be submitted on the application form prescribed by § 101.13 or § 101.15, and must be accompanied by the applicable showings required by §§ 101.19, 101.21, and 101.55.

(d) The Commission must be promptly notified in writing when a licensee is voluntarily or involuntarily placed in bankruptcy or receivership and when an individual licensee, a member of a partnership which is a licensee, or a person directly or indirectly in control of a corporation which is a licensee, dies or becomes legally disabled. Within thirty days after the occurrence of such bankruptcy, receivership, death or legal disability, an application of involuntary assignment of such license, or involuntary transfer of control of such corporation, must be filed with the Commission, requesting assignment or transfer to a successor legally qualified under the laws of the place having jurisdiction over the assets involved.

(e) The assignor of a station licensed under this part may retain no right of reversion or reassignment of the license and may not reserve the right to use the facilities of the station for any period whatsoever. No assignment of license will be granted or authorized if there is a contract or understanding, express or implied, pursuant to which a right of reversion or reassignment of the license or right to use the facilities are retained as partial or full consideration for the assignment or transfer.

(f) No special temporary authority, or any rights thereunder, may be assigned or otherwise disposed of, directly or indirectly, voluntarily or involuntarily, without prior Commission approval.

§ 101.55 Considerations involving transfer or assignment applications.

(a) Licenses may not be assigned or transferred prior to the completion of construction of the facility. However, consent to the assignment or transfer of control of such a license may be given prior to the completion of construction where:

(1) The assignment or transfer does not involve a substantial change in or ownership or control of the authorized facilities; or

(2) The assignment or transfer of control is involuntary due to the licensee's bankruptcy, death, or legal disability.

(b) The Commission will review a proposed transaction to determine if the circumstances indicate "trafficking" in licenses whenever applications (except those involving pro forma assignment or transfer of control) for consent to assignment of a license, or for transfer of control of a licensee, involve facilities:

(1) Authorized following a comparative hearing and have been operated less than one year;

(2) Involve facilities that have not been constructed; or

(3) Involve facilities that were authorized following a random selection proceeding in which the successful applicant received preference and that have been operated for less than one year.

(c) At its discretion, the Commission may require the submission of an affirmative, factual showing (supported by affidavits of a person or persons with personal knowledge thereof) to demonstrate that the proposed assignor or transferor has not acquired an authorization or operated a station for the principal purpose of profitable sale rather than public service. This showing may include, for example, a demonstration that the proposed assignment or transfer is due to changed circumstances (described in detail) affecting the licensee subsequent to the acquisition of the license, or that the proposed transfer of radio facilities is incidental to a sale of other facilities or merger of interests.

(d) If a proposed transfer of radio facilities is incidental to a sale or other facilities or merger of interests, any showing requested under paragraph (a) of this section must include an additional exhibit that:

(1) Discloses complete details as to the sale of facilities or merger of interests;

(2) Segregates clearly by an itemized accounting, the amount of consideration involved in the sale of facilities or merger of interests; and

(3) Demonstrates that the amount of consideration assignable to the facilities or business interests involved represents their fair market value at the time of the transaction.

(e) For the purposes of this section, the one year period is calculated using the following dates (as appropriate):

(1) The initial date of grant of the license, excluding subsequent modifications;

(2) The date of consummation of an assignment or transfer, if the station is acquired as the result of an assignment of license, or transfer of control of corporate licensee; or

(3) The median date of the applicable commencement dates (determined pursuant to paragraphs (d)(1) and (2) of this section) if the transaction involves a system (such as a Private Operational Fixed Point-to-Point Microwave system) of two or more stations. (The median date is that date so selected such that fifty percent of the commencement dates of the total number of stations, when arranged in chronological order, lie below it and fifty percent lie above it. When the number of stations is an even number, the median date will be a value half way between the two dates closest to the theoretical median).

§ 101.57 Modification of station license.

(a) Except as provided in § 101.59, no modification of a license issued pursuant to this part (or the facilities described thereunder) may be made except upon application to the Commission.

(b) No application for modification to extend a license construction period will be granted for delays caused by lack of financing or for lack of site availability. Applications for time extensions for other reasons must include a verified statement from the applicant showing that the licensee has made diligent efforts to construct the facilities and:

(1) That additional time is required due to circumstances beyond the applicant's control, in which case the applicant must describe such circumstances and must set forth with specificity and justify the precise extension period requested; or

(2) That there are unique and overriding public interest concerns that justify such an extension, in which case the applicant must identify such interests and must set forth and justify a precise extension period.

(c) Notwithstanding the provisions of paragraph (b) of this section, when a station license has been assigned or transferred pursuant to § 101.53, any extension of time will be limited so that the time left to construct after Commission grant of the transfer or assignment will be no more than the time remaining for construction at the date of the filing of the application for transfer or assignment.

(d) Modification of license is required for the following changes in authorized stations:

(1) Any change in frequencies used;

(2) Any change in antenna azimuth;

(3) Any change in antenna beamwidth;

(4) Any change in antenna or passive repeater location greater than 1 second or which involves a requirement for special aeronautical study;

(5) Any change in antenna polarization;

(6) Any change in antenna height;

(7) Any change in the size of passive reflectors or repeaters associated with the facilities of an authorized station;

(8) Any increase in emission bandwidth beyond that authorized;

(9) Any change in the type of emission;

(10) Any change in authorized equivalent isotropically radiated power in excess of 3 dB (a 2-to-1 ratio); or

(11) Substitution of equipment having a greater frequency tolerance.

(e) When the name of the licensee is changed (without changes in the ownership, control, or corporate structure), or when the mailing address is changed (without changing the authorized location of the fixed station) a formal application for modification of license is not required. However, the licensee must notify the Commission within thirty days of the effective date of these changes. The notice, which may be in letter form, must contain the name and address of the licensee as they appear in the Commission's records, the new name or address, the call signs and classes of all radio stations authorized to the licensee under this part and the radio service in which each station is authorized. The notice must be sent to the Federal Communications Commission, Gettysburg, PA 17325 and a copy must be maintained with the license of each station until a new license is issued.

§ 101.59 Processing of applications for facility minor modifications.

(a) Unless an applicant is notified to the contrary by the Commission, as of the twenty-first day following the date of public notice, any application that meets the requirements of paragraph (b) of this section and proposes only the change specified in paragraph (c) of this section will be deemed to have been authorized by the Commission.

(b) An application may be considered under the procedures of this section only if:

(1) It is in the Private Operational Fixed Point-to-Point Microwave, Common Carrier Fixed Point-to-Point Microwave, Local Television Transmission, or Digital Electronic Message Services;

(2) The cumulative effect of all such applications made within any 60 day period does not exceed the appropriate values prescribed by paragraph (c) of this section;

(3) The facilities to be modified are not located within 56.3 kilometers (35 miles) of the Canadian or Mexican border;

(4) It is acceptable for filing, is consistent with all of the Commission's rules, and does not involve a waiver request;

(5) It specifically requests consideration pursuant to this section; and

(6) Written notice of such filing has been provided to all parties otherwise required to be provided a prior coordination notice in accordance with § 101.103(d) or, in the Digital Electronic Message Services, a copy of the application has been served on those who also were served under § 101.509.

(c) The modifications that may be authorized under the procedures of this section are:

(1) Changes in a transmitter and existing transmitter operating characteristics, or protective configuration of transmitter, provided that:

(i) In all radio services other than Digital Electronic Message Service, any increase in equivalent isotropically radiated power is less than 3 dB over the previously authorized output power, and in Digital Electronic Message Service, any increase in equivalent isotropically radiated power is 1.5 dB or less over the previously authorized equivalent isotropically radiated power;

(ii) The necessary bandwidth is not increased beyond the previously authorized bandwidth;

(2) Changes in the center line height of an antenna, provided that:

(i) In all radio services except the Digital Electronic Message Service, any

increase in antenna height is less than 3.0 meters (10 feet) above the previously authorized height;

(ii) In the Digital Electronic Message Service, any increase in antenna height is less than 3.0 meters (10 feet) above the previously authorized height; and

(iii) The overall height of the antenna structure is not increased as a result of the antenna extending above the height of the previously authorized structure, except when the new height of the antenna structure is 6.1 meters (20 feet) or less (above ground or man-made structure, as appropriate) after the change is made.

(3) Change in the geographical coordinates of a transmit station, receive station or passive facility by five (5) seconds or less of latitude, longitude or both, provided that when notice to the FAA of proposed construction is required by part 17 of this chapter for antenna structure at the previously authorized coordinates (or will be required at the new location) the applicant must comply with the provisions of § 101.21(a).

(d) Upon grant of an application under the procedure of this section and at such time that construction begins, the applicant must keep a complete copy of the application (including the filing date) with the station license if construction begins prior to receipt of the authorization.

§ 101.61 Certain modifications not requiring prior authorization.

(a) Equipment in an authorized radio station may be replaced without prior authorization or notification if the replacement equipment is equivalent to the replaced equipment.

(b) Licensees of fixed stations in the Private Operational Fixed Point-to-Point Microwave, Common Carrier Fixed Point-to-Point Microwave, Local Television Transmission, or Digital Electronic Message Services, may make the facility changes listed in paragraph (c) of this section without obtaining prior Commission authorization, if:

(1) Frequency coordination procedures, as necessary, are complied with in accordance with § 101.103(d) or, in the Digital Electronic Message Services, a copy of the notification described in paragraph (b)(3) of this section is served on those who were served under § 101.509; and

(2) The cumulative effect of all facility changes made within any 60 day period does not exceed the appropriate values prescribed by paragraph (c) of this section; and

(3) The Commission is notified of changes made to facilities by the submission of a completed FCC Form 494 within thirty days after the changes are made.

(c) Modifications that may be made without prior authorization under paragraph (b) of this section are:

(1) Change or modification of a transmitter, when:

(i) The replacement or modified transmitter is type-accepted (or type-notified) for use under this part and is installed without modification from the type-accepted (or type notified) configuration;

(ii) The type of modulation is not changed;

(iii) The frequency stability is equal to or better than the previously authorized frequency stability; and

(iv) The necessary bandwidth and the output power do not exceed the previously authorized values.

(2) Addition or deletion of a transmitter for protection without changing the authorized power output (*e.g.* hot standby transmitters);

(3) Change to an antenna (other than any change involving a periscope antenna system), when:

(i) For the Private Operational Fixed Point-to-Point Microwave, Common Carrier Fixed Point-to-Point Microwave, and Local Television Transmission Services, the new antenna conforms to the requirements of § 101.115 and has essentially the same or better radiation characteristics than the previously authorized antenna;

(ii) For the Digital Electronic Message Service, the new antenna conforms with § 101.517 and the gain of the new antenna does not exceed that of the previously authorized antenna by more than one dB in any direction.

(4) Any technical changes that would decrease the effective radiated power.

(5) Change to the height of an antenna system, when:

(i) The new center line height (measured at the center-of-radiation) is within ±1.5 meters of the previously authorized height; and

(ii) The overall height of the antenna structure is not increased as a result of the antenna extending above the height of the previously authorized structure, except when the new height of the antenna structure is 6.1 meters or less (above ground or man-made structure, as appropriate) after the change is made.

(6) Decreases in the overall height of an antenna structure, provided that, when notice to the FAA of proposed construction was required by part 17 of this chapter for the antenna structure at the previously authorized height, the applicant must comply with the provisions of § 101.21(a).

(7) Changes in the azimuth of the center of the main lobe of radiation of a point-to-point station's antenna by a maximum of one degree.

(8) Changes to the transmission line and other devices between the transmitter and the antenna when the effective radiated power of the station is not increased by more than one dB.

(d) Licensees may notify the Commission of permissible changes or correct erroneous information on a license not involving a major change (*i.e.*, a change that would be classified as a major amendment as defined by § 101.29) without obtaining prior Commission approval by filing FCC Form 494.

§ 101.63 Period of construction; certification of completion of construction.

(a) Each station authorized under this part must be in operation within 18 months from the initial date of grant. Modification of an operational station must be completed within 18 months of the date of grant of the applicable modification request.

(b) Failure to timely begin operation means the authorization cancels automatically and must be returned to the Commission.

(c) The frequencies associated with all point-to-multipoint authorizations which have cancelled automatically or otherwise been recovered by the Commission will again be made available for reassignment on a date and under terms set forth by Public Notice.

(d) Requests for extension of time to be in operation may be granted upon a showing of good cause, setting forth in detail the applicant's reasons for failure to have the facility operating in the prescribed period. Such requests must be submitted no later than 30 days prior to the end of the prescribed period to the Federal Communications Commission, Gettysburg, PA 17325–7245.

(e) Construction of any station must be completed by the date specified in the license as the termination date of the construction period. Licensees who fail to complete construction must return their authorization for cancellation within 5 days after the expiration of the construction period specified on the license.

§ 101.65 Forfeiture and termination of station authorizations.

(a) A license will be automatically forfeited in whole or in part without further notice to the licensee upon:

(1) The expiration of the construction period specified therein, or after such additional time as may be authorized by the Commission;

(2) The expiration of the license period specified therein, unless prior thereto an application for renewal of such license has been filed with the Commission; or

(3) The voluntary removal or alteration of the facilities, so as to render the station not operational for a period of 30 days or more.

(b) A license forfeited in whole or in part under the provisions of paragraph (a)(1) or (a)(2) of this section may be reinstated if the Commission, in its discretion, determines that reinstatement would best serve the public interest, convenience and necessity. Petitions for reinstatement filed pursuant to this subsection will be considered only if:

(1) The petition is filed within 30 days of the expiration date set forth in paragraph (a)(1) or (a)(2) of this section, whichever is applicable;

(2) The petition explains the failure to timely file such notification or application as would have prevented automatic forfeiture; and

(3) The petition sets forth with specificity the procedures which have been established to insure timely filings in the future.

(c) A special temporary authorization will automatically terminate upon the expiration date specified therein, or upon failure to comply with any special terms or conditions set forth therein. Operation may be extended beyond such termination date only after application and upon specific authorization by the Commission.

(d) If a station licensed under this part discontinues operation on a permanent basis, the licensee must forward the station license to the Federal Communications Commission, Gettysburg, Pennsylvania 17325, for cancellation. For purposes of this section, any station which has not operated for one year or more is considered to have been permanently discontinued. See § 101.305 for additional rules regarding temporary and permanent discontinuation of service.

§ 101.67 License period.

Licenses for stations authorized under this part will be issued for a period not to exceed 10 years. Unless otherwise specified by the Commission, the expiration of regular licenses shall be on the date (month and day) selected by licensees in the year of expiration.

§ 101.69 Transition of the 2.11–2.13, and 2.16–2.18 GHz bands from the Common Carrier Fixed Point-to-Point Microwave Services and the 1.85–1.99, 2.13–2.15, and 2.18–2.20 GHz bands from the Private Operational Fixed Point-to-Point Microwave Service to emerging technologies.

(a) Licensees proposing to implement services using emerging technologies (ET Licensees) may negotiate with Common Carrier and Private Operational Fixed Point-to-Point Microwave Service licensees (Existing Licensees) in these bands for the purpose of agreeing to terms under which the Existing Licensees would relocate their operations to other fixed microwave bands or to other media, or alternatively, would accept a sharing arrangement with the ET Licensee that may result in an otherwise impermissible level of interference to the existing licensee's operations. ET Licensees may also negotiate agreements for relocation of the Existing Licensees' facilities within the 2 GHz band in which all interested parties agree to the relocation of the Existing Licensee's facilities elsewhere within these bands. "All interested parties" includes the incumbent licensee, the emerging technology provider or representative requesting and paying for the relocation, and any emerging technology licensee of the spectrum to which the incumbent's facilities are to be relocated.

(b) Common Carrier and Private Operational Fixed Point-to-Point Microwave Service licensees, with the exception of public safety facilities defined in paragraph (f) of this section, in bands allocated for licensed emerging technology services will maintain primary status in these bands until two years after the Commission commences acceptance of applications for an emerging technology service (two-year voluntary negotiation period), and until one year after an emerging technology service licensee initiates negotiations for relocation of the fixed microwave licensee's operations (one-year mandatory negotiation period) or, in bands allocated for unlicensed emerging technology services, until one year after an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations (one-year mandatory negotiation period). When it is necessary for an emerging technology provider or representative of unlicensed device manufacturers to negotiate with a fixed microwave licensee with operations in spectrum adjacent to that of the emerging technology provider, the transition schedule of the entity requesting the move will apply. Public safety facilities defined in paragraph (f) of this section will maintain primary status in these bands until three years after the Commission commences acceptance of applications for an emerging technology service (three-year voluntary negotiation period), and until two years after an emerging technology service licensee or an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations (two-year mandatory negotiation period).

(c) The Commission will amend the operation license of the Common Carrier and Private Operational Fixed Point-to-Point Microwave Service operator to secondary status only if the following requirements are met:

(1) The service applicant, provider, licensee, or representative using an emerging technology guarantees payment of all relocation costs, including all engineering, equipment, site and FCC fees, as well as any reasonable, additional costs that the relocated fixed microwave licensee might incur as a result of operation in another fixed microwave band or migration to another medium;

(2) The emerging technology service entity completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave frequencies and frequency coordination; and

(3) The emerging technology service entity builds the replacement system and tests it for comparability with the existing 2 GHz system.

(d) The 2 GHz microwave licensee is not required to relocate until the alternative facilities are available to it for a reasonable time to make adjustments, determine comparability, and ensure a seamless handoff.

(e) If within one year after the relocation to new facilities the 2 GHz microwave licensee demonstrates that the new facilities are not comparable to the former facilities, the emerging technology service entity must remedy the defects or pay to relocate the microwave licensee back to its former or equivalent 2 GHz frequencies.

(f) Public safety facilities subject to the three-year voluntary and two-year mandatory negotiation periods, are those that the majority of communications carried are used for police, fire, or emergency medical services operations involving safety of life and property. The facilities within this exception are those facilities

currently licensed on a primary basis pursuant to the eligibility requirements of § 90.19 of this chapter, Police Radio Service; § 90.21 of this chapter, Fire Radio Service; § 90.27 of this chapter Emergency Medical Radio Service; and subpart C of part 90 of this chapter, Special Emergency Radio Services. Licensees of other part 101 facilities licensed on a primary basis under the eligibility requirements of subparts B and C, part 90 of this chapter, are permitted to request similar treatment upon demonstrating that the majority of the communications carried on those facilities are used for operations involving safety of life and property.

Subpart C—Technical Standards

§ 101.101 Frequency availability.

Frequency band (MHz)	Radio service				
	Common carrier (Part 101)	Private radio (Part 101)	Broadcast auxiliary (Part 74)	Other (Parts 15, 21, 24, 25, 74, 78 & 100)	Notes
928–929		MAS			
932.0–932.5	MAS	MAS			(1)
932.5–935.0	CC	OFS			(1)
941.0–941.5	MAS	MAS			(1)
941.5–944.0	CC	OFS	Aural BAS		(1)
952–960		OFS/MAS			
1850–1990		OFS		PCS	
2110–2130	CC			PET	
72130–2150		OFS		PET	
2150–2160		OFS		MDS	
2160–2180	CC			ET	
2180–2200		OFS		PET	
2450–2500	LTTS	OFS	TV BAS	ISM	F/M/TF
2650–2690		OFS		MDS/ITFS	
3700–4200	CC LTTS	OFS		SAT	
5925–6425	CC LTTS	OFS		SAT	
6425–6525	LTTS	OFS	TV BAS	CARS	M
6525–6875	CC	OFS			F/TF
10,550–10,680	CC DEMS	OFS, DEMS			
10,700–11,700	CC LTTS	OFS		SAT	
11,700–12,200	LTTS			SAT	
12,200–12,700		OFS		DBS	
12,700–13,250	CC LTTS	OFS	TV BAS	CARS	F/M/TF
14,200–14,400	LTTS			SAT	
17,700–18,580	CC	OFS	TV BAS	SAT CARS	
18,580–18,820	CC	OFS	Aural BAS	SAT	
18,820–18,920	DEMS	OFS DEMS		SAT	
18,920–19,160	CC	OFS	Aural BAS	SAT	
19,160–19,260	DEMS	OFS DEMS		SAT	
19,260–19,700	CC	OFS	TV BAS	CARS SAT	
21,200–23,600	CC LTTS	OFS			TF
27,500–29,500	CC			SAT	
31,000–31,300	CC LTTS	OFS	TV BASCARS	F/M/TF	
38,600–40,000	CC	OFS	TV BAS		F/M/TF

BAS: Broadcast Auxiliary Service—(Part 74).
CARS: Cable Television Relay Service —(Part 78).
CC: Common Carrier Fixed Point-to-Point Microwave Service—(Part 101, Subparts C & I).
DBS: Direct Broadcast Satellite—(Part 100).
DEMS: Digital Electronic Message Service—(Part 101, Subpart G).
ET: Emerging Technologies (per ET Dkt. No. 92–9, not yet assigned).
ISM: Industrial, Scientific & Medical—(Part 18).
ITFS: Instructional Television Fixed Service—(Part 74)
LTTS: Local Television Transmission Service—(Part 101, Subpart J).
MAS: Multipoint Address System—(Part 101).7MDS: Multipoint Distribution Service—(Part 21).7OFS: Private Operational Fixed Point-to-Point Microwave Service—(Part 101, Subparts C & H).
PCS: Personal Communications Service—(Part 24).
SAT: Fixed Satellite Service—(Part 25).
Notes:
F—Fixed. M—Mobile. TF—Temporary Fixed.
(1)—Applications for frequencies in the 932.5–935/941.5–944 MHz bands may be filed initially during a one-week period to be announced by public notice. After these applications have been processed, the Commission will announce by public notice a filing date for remaining frequencies. From this filing date forward, applications will be processed on a daily first-come, first-served basis.

§ 101.103 Frequency coordination procedures.

(a) Assignment of frequencies will be made only in such a manner as to facilitate the rendition of communication service on an interference-free basis in each service area. Unless otherwise indicated, each frequency available for use by stations in these services will be assigned exclusively to a single applicant in any service area. All applicants for, and licensees of, stations in these services must cooperate in the selection and use of the frequencies assigned in order to minimize interference and thereby obtain the most effective use of the authorized facilities. In the event harmful interference occurs or appears likely to occur between two or more radio systems and such interference cannot be resolved between the licensees thereof, the Commission may specify a time sharing arrangement for the stations involved or may, after notice and opportunity for hearing, require the licensees to make such changes in operating techniques or equipment as it may deem necessary to avoid such interference.

(b) The provisions of this section do not apply to operations in the band 31.0 to 31.3 GHz. Operations in this band are unprotected and subject to harmful interference from other licensed operations in this band.

(c) Frequency diversity transmission will not be authorized in these services in the absence of a factual showing that the required communications cannot practically be achieved by other means. Where frequency diversity is deemed to be justified on a protection channel basis, it will be limited to one protection channel for the bands 3,700–4,200, 5925–6425, and 6525–6875 MHz, and a ratio of one protection channel for three working channels for the bands 10,550–10,680 and 10,700–11,700 MHz. In the bands 3,700–4,200, 5,925–6,425, and 6525–6875 MHz, no frequency diversity protection channel will be authorized unless there is a minimum of three working channels, except that where a substantial showing is made that a total of three working channels will be required within three years, a protection channel may be authorized simultaneously with the first working channel. A protection channel authorized under such exception will be subject to termination if applications for the third working channel are not filed within three years of the grant date of the applications for the first working channel. Where equipment employing digital modulation techniques with cross-polarized operation on the same frequency is used, the protection channel authorized under the above conditions may be considered to consist of both polarizations of the protection frequency where such is shown to be necessary.

(d) Frequency coordination. For each frequency authorized under this part, the following frequency usage coordination procedures will apply:

(1) General requirements. Proposed frequency usage must be prior coordinated with existing licensees, permittees and applicants in the area, and other applicants with previously filed applications, whose facilities could affect or be affected by the new proposal in terms of frequency interference on active channels, applied-for channels, or channels coordinated for future growth. Coordination must be completed prior to filing an application for regular authorization, or an amendment to a pending application, or any major modification to a license. In coordinating frequency usage with stations in the fixed satellite service, applicants must also comply with the requirements of § 101.21(f). In engineering a system or modification thereto, the applicant must, by appropriate studies and analyses, select sites, transmitters, antennas and frequencies that will avoid interference in excess of permissible levels to other users. All applicants and licensees must cooperate fully and make reasonable efforts to resolve technical problems and conflicts that may inhibit the most effective and efficient use of the radio spectrum; however, the party being coordinated with is not obligated to suggest changes or re-engineer a proposal in cases involving conflicts. Applicants should make every reasonable effort to avoid blocking the growth of systems as prior coordinated. The applicant must identify in the application all entities with which the technical proposal was coordinated. In the event that technical problems are not resolved, an explanation must be submitted with the application. Where technical problems are resolved by an agreement or operating arrangement between the parties that would require special procedures be taken to reduce the likelihood of interference in excess of permissible levels (such as the use of artificial site shielding) or would result in a reduction of quality or capacity of either system, the details thereof may be contained in the application.

(2) Coordination procedure guidelines are as follows:

(i) Coordination involves two separate elements: notification and response. Both or either may be oral or in written form. To be acceptable for filing, all applications and major technical amendments must certify that coordination, including response, has been completed. The names of the licensees, permittees and applicants with coordinated proposals, applicants, permittees, and licensees with which coordination was accomplished must be specified. If such notice and/or response is oral, the party providing such notice or response must supply written documentation of the communication upon request;

(ii) Notification must include relevant technical details of the proposal. At minimum, this should include, as applicable, the following:

Applicant's name and address.
Transmitting station name.
Transmitting station coordinates.
Frequencies and polarizations to be added, changed or deleted.
Transmitting equipment type, its stability, actual output power, emission designator, and type of modulation (loading).
Transmitting antenna type(s), model, gain and, if required, a radiation pattern provided or certified by the manufacturer.
Transmitting antenna center line height(s) above ground level and ground elevation above mean sea level.
Receiving station name.
Receiving station coordinates.
Receiving antenna type(s), model, gain, and, if required, a radiation pattern provided or certified by the manufacturer.
Receiving antenna center line height(s) above ground level and ground elevation above mean sea level.
Path azimuth and distance.
Estimated transmitter transmission line loss expressed in dB.
Estimated receiver transmission line loss expressed in dB.

Note: The position location of antenna sites shall be determined to an accuracy of no less than ±1 second in the horizontal dimensions (latitude and longitude) and ±1 meter in the vertical dimension (ground elevation) with respect to the National Spacial Reference System.

(iii) For transmitters employing digital modulation techniques, the notification should clearly identify the type of modulation. Upon request, additional details of the operating characteristics of the equipment must also be furnished;

(iv) Response to notification should be made as quickly as possible, even if no technical problems are anticipated. Any response to notification indicating potential interference must specify the technical details and must be provided to the applicant, in writing, within the 30-day notification period. Every reasonable effort should be made by all applicants, permittees and licensees to eliminate all problems and conflicts. If no response to notification is received within 30 days, the applicant will be deemed to have made reasonable efforts to coordinate and may file its application without a response;

(v) The 30-day notification period is calculated from the date of receipt by the applicant, permittee, or licensee being notified. If notification is by mail, this date may be ascertained by:

(A) The return receipt on certified mail;

(B) The enclosure of a card to be dated and returned by the recipient; or

(C) A conservative estimate of the time required for the mail to reach its destination. In the last case, the estimated date when the 30-day period would expire should be stated in the notification.

(vi) An expedited prior coordination period (less than 30 days) may be requested when deemed necessary by a notifying party. The coordination notice should be identified as "expedited" and

the requested response date should be clearly indicated. However, circumstances preventing a timely response from the receiving party should be accommodated accordingly. It is the responsibility of the notifying party to receive written concurrence (or verbal, with written to follow) from affected parties or their coordination representatives.

(vii) All technical problems that come to light during coordination must be resolved unless a statement is included with the application to the effect that the applicant is unable or unwilling to resolve the conflict and briefly the reason therefor;

(viii) Where a number of technical changes become necessary for a system during the course of coordination, an attempt should be made to minimize the number of separate notifications for these changes. Where the changes are incorporated into a completely revised notice, the items that were changed from the previous notice should be identified. When changes are not numerous or complex, the party receiving the changed notification should make an effort to respond in less than 30 days. When the notifying party believes a shorter response time is reasonable and appropriate, it may be helpful for that party to so indicate in the notice and perhaps suggest a response date;

(ix) If, after coordination is successfully completed, it is determined that a subsequent change could have no impact on some parties receiving the original notification, these parties must be notified of the change and of the coordinator's opinion that no response is required;

(x) Applicants, permittees and licensees should supply to all other applicants, permittees and licensees within their areas of operations, the name, address and telephone number of their coordination representatives. Upon request from coordinating applicants, permittees and licensees, data and information concerning existing or proposed facilities and future growth plans in the area of interest should be furnished unless such request is unreasonable or would impose a significant burden in compilation;

(xi) Parties should keep other parties with whom they are coordinating advised of changes in plans for facilities previously coordinated. If applications have not been filed 6 months after coordination was initiated, parties may assume that such frequency use is no longer desired unless a second notification has been received within 10 days of the end of the 6 month period. Renewal notifications are to be sent to all originally notified parties, even if coordination has not been successfully completed with those parties; and

(xii) Any frequency reserved by a licensee for future use in the bands subject to this part must be released for use by another licensee, permittee or applicant upon a showing by the latter that it requires an additional frequency and cannot coordinate one that is not reserved for future use.

(e) Where frequency conflicts arise between co-pending applications in the Private Operational Fixed Point-to-Point Microwave, Common Carrier Fixed Point-to-Point Microwave and Local Television Transmission Services, it is the obligation of the later filing applicant to amend his application to remove the conflict, unless it can make a showing that the conflict cannot be reasonably eliminated. Where a frequency conflict is not resolved and no showing is submitted as to why the conflict cannot be resolved, the Commission may grant the first filed application and dismiss the later filed application(s) after giving the later filing applicant(s) 30 days to respond to the proposed action.

(f) When the proposed facilities are to be operated in the band 12,500–12,700 MHz, applications must also follow the procedures in § 101.21 and the technical standards and requirements of part 25 of this chapter as regards licensees in the Communication-Satellite Service.

§ 101.105 Interference protection criteria.

(a) The interference protection criteria for fixed stations subject to this part are as follows:

(1) To long-haul analog systems, employing frequency modulated radio and frequency division multiplexing to provide multiple voice channels, the allowable interference level per exposure:

(i) Due to co-channel sideband-to-sideband interference must not exceed 5 pwpO (Picowatts of absolute noise power psophometrically weighted (pwpO), appearing in an equivalent voice band channel of 300–3400 Hz); or

(ii) Due to co-channel carrier-beat interference must not exceed 50 pwpO.

(2) To short-haul analog systems employing frequency modulated radio and frequency division multiplexing to provide multiple voice channels, the allowable interference level per exposure:

(i) Due to co-channel sideband-to-sideband interference must not exceed 25 pwpO except in the 952–960 MHz band interference into single link fixed relay and control stations must not exceed 250 pwpO per exposure; or

(ii) Due to co-channel carrier-beat interference must not exceed 50 pwpO except in the 952–960 MHz band interference into single link fixed relay and control stations must not exceed 1000 pwpO per exposure.

(3) FM–TV. In analog systems employing frequency modulated radio that is modulated by a standard, television (visual) signal, the allowable interference level per exposure may not exceed the levels which would apply to long-haul or short-haul FM–FDM systems, as outlined in paragraphs (b) (1) and (2) of this section, having a 600–1200 voice channel capacity.

(b) In addition to the requirements of paragraph (a) of this section the adjacent channel interference protection criteria to be afforded, regardless of system length, or type of modulation, multiplexing, or frequency band, must be such that the interfering signal does not produce more than 1.0 dB degradation of the practical threshold of the protected receiver. The "practical threshold" of the protected receiver can be based upon the definition in TSB 10, referenced in paragraph (c) of this section, or upon alternative generally acceptable good engineering standards.

(c) Applying the Criteria.

(1) Guidelines for applying the interference protection criteria for fixed stations subject to this part are specified in the Telecommunications Industry Association's Telecommunications Systems Bulletin TSB 10, "Interference Criteria for Microwave Systems" (TSB 10). Other procedures that follow generally acceptable good engineering practices are also acceptable to the Commission.

(2) If TSB 10 guidelines cannot be used, the following interference protection criteria may be used by calculating the ratio in dB between the desired (carrier signal) and the undesired (interfering) signal (C/I ratio) appearing at the input to the receiver under investigation (victim receiver): Except as provided in § 101.147 where the applicants proposed facilities are of a type not included in paragraphs (a) and (b) of this section or where the development of the carrier-to-interference (C/I) ratio is not covered by generally acceptable procedures, or where the applicant does not wish to develop the carrier-to-interference ratio, the applicant must, in the absence of criteria or a developed C/I ratio, employ the following C/I protection ratios:

(i) *Co-channel interference:* Both sideband and carrier-beat, applicable to all bands; the existing or previously authorized system must be afforded a carrier to interfering signal protection ratio of at least 90 dB except in the 952–960 MHz band where it must be 75 dB; or

(ii) *Adjacent channel interference:* Applicable to all bands; the existing or previously authorized system must be afforded a carrier to interfering signal protection ratio of at least 56 dB.

(3) Applicants for frequencies listed in § 101.147(b)(1) must make the following showings that protection criteria have been met over the entire service area of existing systems. Such showings may be made by the applicant or may be satisfied by a statement from a frequency coordinator.

(i) For multiple address stations in the 928–929/952–960 MHz bands, a statement that the proposed system complies with the following co-channel separations from all existing stations and pending applications:

Fixed-to-fixed—145 km;
Fixed-to-mobile—113 km:
Mobile-to-mobile 81 km

Note to (3)(i): Multiple address systems employing only remote stations will be treated as mobile for the purposes of determining the appropriate separation. For mobile operation, the mileage is measured from the reference point specified on the license application. For fixed operation on subfrequencies in accordance with § 101.147 the mileage also is measured from the reference point specified on the license application;

(ii) For multiple address stations in the 932–932.5/941–941.5 MHz bands, a statement that the proposed system complies with the following co-channel separation from all existing stations and pending applications:

Fixed-to-fixed—113 Km

(iii) In cases where the geographic separation standard in paragraphs (c)(3)(i) and (c)(3)(ii) of this section are not followed, an engineering analysis must be submitted to show the coordination of the proposed assignment with existing systems located closer than those standards. The engineering analyses will include:

(A) Specification of the interference criteria and system parameters used in the interference study;

(B) Nominal service areas of each system included in the interference analysis.;

(C) Modified service areas resulting from the proposed system. The propagation models used to establish the service boundary limits must be specified and any special terrain features considered in computing the interference impact should be described; and

(D) A statement that all parties affected have agreed to the engineering analysis and will accept the calculated levels of interference.

(4) Multiple address systems operating on subfrequencies in accordance with § 101.147 that propose to operate master stations at unspecified locations must define the operating area by a radius about a geographical coordinate and describe how interference to co-channel users will be controlled.

(5) Multiple address frequencies in the 956 MHz band may be assigned for use by mobile master stations on a primary basis. Multiple address frequencies in the 952 MHz band may be assigned for use by mobile master stations on a case-by-case basis. Mobile operation in the 952 MHz band will be on a secondary basis to fixed operations.

(6) Each application for new or modified nodal station on channels numbered 4A, 4B, 7, 9, and 19/20 in the 10.6 GHz band and all point-to-multipoint channels in the 18 GHz band must demonstrate that all existing co-channel stations are at least 56 kilometers from the proposed nodal station site. Applicants for these channels must certify that all licensees and applicants for stations on the adjacent channels within 56 kilometers of the proposed nodal station have been notified of the proposed station and do not object. Alternatively, or if one of the affected adjacent channel interests does object, the applicant may show that all affected adjacent channel parties are provided a C/I protection ratio of 0 dB. An applicant proposing to operate at an AAT greater than 91 meters must reduce its EIRP in accordance with the following table; however, in no case may EIRP exceed 70 dBm on the 10.6 GHz channels.

AAT (meters)	EIRP dBm
Above 300	+38
251 to 300	41
201 to 250	43
151 to 200	49
101 to 150	55
100 and below	85

(7) Each application for new or modified nodal station on channels numbered 21, 22, 23, and 24 in the 10.6 GHz band must include an analysis of the potential for harmful interference to all other licensed and previously applied for co-channel and adjacent channel station located within 80 kilometers of the location of the proposed station. The criteria contained in § 101.103(d)(2) must be used in this analysis. Applicants must certify that copies of this analysis have been served on all parties which might reasonably be expected to receive interference above the levels set out in § 101.103(d)(2) within 5 days of the date the subject application is filed with the Commission.

(8) If the potential interference will exceed the prescribed limits, a statement shall be submitted with the application for new or modified stations to the effect that all parties have agreed to accept the higher level of interference.

(d) Effective August 1, 1985, when a fixed station that conforms to the technical standards of this subpart (or, in the case of the 12,200–12,700 MHz band, a direct broadcast satellite station) receives or will receive interference in excess of the levels specified in this section as a result of an existing licensee's use of non-conforming equipment authorized between July 20, 1961 and July 1, 1976, and the interference would not result if the interfering station's equipment complied with the current technical standards, the licensee of the non-conforming station must take whatever steps are necessary to correct the situation up to the point of installing equipment which fully conforms to the technical standards of this subpart. In such cases, if the engineering analysis demonstrates that:

(1) The conforming station would receive interference from a non-conforming station in excess of the levels specified in this section; and

(2) The interference would be eliminated if the non-conforming equipment were replaced with equipment which complies with the standards of this subpart, the licensee (or prospective licensee) of the station which would receive interference must provide written notice of the potential interference to both the non-conforming licensee and the Commission's office in Gettysburg, PA. The non-conforming licensee must make all required equipment changes within 180 days from the date of official Commission notice informing the licensee that it must upgrade its equipment, unless an alternative solution has been agreed to by all parties involved in the interference situation. If a non-conforming licensee fails to make all required changes within the specified period of time, the Commission may require the licensee to suspend operation until the changes are completed.

(e) Interference Dispute Resolution Procedures. Should a licensee licensed under this part receive harmful interference from another licensee licensed under this chapter, the parties involved shall comply with the dispute resolution procedures set forth herein:

(1) The licensee experiencing the harmful interference shall notify the licensee believed to be causing the harmful interference and shall supply information describing its problem and supporting its claim;

(2) Upon receipt of the harmful interference notice, the licensee alleged to be causing the harmful interference shall respond immediately and make every reasonable effort to identify and resolve the conflict; and

(3) Licensees are encouraged to resolve the harmful interference prior to contacting the Commission.

§ 101.107 Frequency tolerance.

(a) The carrier frequency of each transmitter authorized in these services must be maintained within the following percentage of the reference frequency except as otherwise provided in paragraph (b) of this section or in the applicable subpart of this part (unless otherwise specified in the instrument of station authorization the reference frequency will be deemed to be the assigned frequency):

Frequency (MHz)	Frequency Tolerance (percent)		
	All fixed and base stations	Mobile stations over 3 watts	Mobile stations 3 watts or less
928 to 929[2 5]	0.0005		
932 to 932.5[2]	0.00015		
932.5 to 935[2]	0.00025		
941 to 941.5	0.00015		
941.5 to 944	0.00025		
952 to 960[7]			
944.0 to 1,000	0.0005	0.0005	0.0005
1,850 to 1,990	0.002		
2,110 to 2,200	0.001		
2,200 to 12,200[1 3]	0.005	0.005	0.005
2,450 to 2,500	0.001		
3,700 to 4,200	0.005		
5,925 to 6,875	0.005		
10,550 to 11,700	0.005		
12,200 to 13,250[6]	0.005		
12,200 to 17,700	0.03	0.03	0.03
17,700 to 18,820[4 5]	0.003		
18,820 to 18,920[4 5]	0.001		
18,920 to 19,700[4 5]	0.003		
19,700 to 40,000[6]	0.03	0.03	0.03

[1] Applicable only to common carrier LTTS stations. Beginning Aug. 9, 1975, this tolerance will govern the marketing of LTTS equipment and the issuance of all such authorizations for new radio equipment. Until that date new equipment may be authorized with a frequency tolerance of .03 percent in the frequency range 2,200 to 10,500 MHz and .05 percent in the range 10,500 MHz to 12,200 MHz, and equipment so authorized may continue to be used for its life provided that it does not cause interference to the operation of any other licensee.

[2] Equipment authorized to be operated on frequencies between 890 and 940 MHz as of Oct. 15, 1956, must maintain a frequency tolerance within 0.03 percent subject to the condition that no harmful interference is caused to any other radio station.

[3] See subpart G of this part for the stability requirements for transmitters used in the Digital Electronic Message Service.

[4] Existing type accepted equipment with a frequency tolerance of ±0.03% may be marketed until December 1, 1988. Equipment installed and operated prior to December 1, 1988 may continue to operate after that date with a minimum frequency tolerance of ±0.03%. However, the replacement of equipment requires that the ±0.003% tolerance be met.

[5] For remote stations with 12.5 KHz bandwidth, the tolerance is ±0.00015%.

[6] Applicable to private operational fixed point-to-point microwave only. For exceptions see § 101.147.

[7] For private operational fixed point-to-point microwave systems, with a channel greater than or equal to 50 KHz bandwidth, ±0.0005%; for multiple address master stations, regardless of bandwidth, ±0.00015%; for multiple address remote stations with 12.5 KHz bandwidths, ±0.00015%; for multiple address remote stations with channels greater than 12.5 KHz bandwidth, ±0.0005%.

(b) Heterodyne microwave radio systems may be authorized at a somewhat less restrictive frequency tolerance (up to .01 percent) to compensate for frequency shift caused by numerous repeaters between base band signal insertion. Where such relaxation is sought, applicant must provide all calculations and indicate the desired tolerance over each path. In such instances the radio transmitters and receivers used must individually be capable of complying with the tolerance specified in paragraph (a) of this section. Heterodyne operation is restricted to channel bandwidth of 10 MHz or greater.

(c) As an additional requirement in any band where the Commission makes assignments according to a specified channel plan, provisions must be made to prevent the emission included within the occupied bandwidth from radiating outside the assigned channel at a level greater than that specified in § 101.111.

§ 101.109 Bandwidth.

(a) Each authorization issued pursuant to these rules will show, as the emission designator, a symbol representing the class of emission which must be prefixed by a number specifying the necessary bandwidth. This figure does not necessarily indicate the bandwidth actually occupied by the emission at any instant. In those cases where part 2 of this chapter does not provide a formula for the computation of the necessary bandwidth, the occupied bandwidth may be used in the emission designator.

(b) Stations in this service will be authorized any type of emission, method of modulation, and transmission characteristic, consistent with efficient use of the spectrum and good engineering practice, except that Type B, damped-wave emission will not be authorized.

(c) The maximum bandwidth which will be authorized per frequency assigned is set out in the table that follows. Regardless of the maximum authorized bandwidth specified for each frequency band, the Commission reserves the right to issue a license for less than the maximum bandwidth if it appears that a lesser bandwidth would be sufficient to support an applicant's intended communications.

Frequency band (MHz)	Maximum authorized bandwidth
928 to 929	25 KHz[1 6]
932 to 932.5, 941 to 941.5.	12.5 KHz[1]
932.5 to 935, 941.5 to 944.	200 KHz[1]
952 to 960	200 KHz[1 5]
1,850 to 1,990	10 MHz[1]
2,110 to 2,130	3.5 MHz
2,130 to 2,150	800 or 1600 KHz[1]
2,150 to 2,160	10 MHz
2,160 to 2,180	3.5 MHz
2,180 to 2,200	800 or 1600 KHz[1]
2,450 to 2,483.5	625 KHz[2]
2,483.5 to 2,500	800 KHz
3,700 to 4,200	20 MHz
5,925 to 6,425	30 MHz[1]
6,425 to 6,525	25 MHz
6,525 to 6,875	10 MHz[1]
10,550 to 10,680	5 MHz[1]
10,700 to 11,700	40 MHz[1]
12,200 to 12,700	20 MHz[1]
13,200 to 13,250	25 MHz
17,700 to 18,140	220 MHz[1]
18,140 to 18,142	2 MHz
18,142 to 18,580	6 MHz
18,580 to 18,820	20 MHz[1]
18,820 to 18,920	10 MHz
18,920 to 19,160	20 MHz[1]
19,160 to 19,260	10 MHz
19,260 to 19,700	220 MHz[1]
21,200 to 23,600	100 MHz[4]
27,500 to 29,500	220 MHz
31,000 to 31,300	25 or 50 MHz
38,600 to 40,000	50 MHz Bands above 40,000[3]

[1] The maximum bandwidth that will be authorized for each particular frequency in this band is detailed in the appropriate frequency table in § 101.147.

[2] 1250 KHz, 1875 KHz, or 2500 KHz on a case-by-case basis.

[3] To be specified in authorization.

[4] For exceptions, see § 101.147(t).

[5] A 12.5 KHz bandwidth applies only to frequencies listed in § 101.147(b)(1).

[6] For frequencies listed in § 101.147(b)(1), consideration will be given on a case-by-case basis to authorizing bandwidths up to 50 KHz.

§ 101.111 Emission limitations.

(a) The mean power of emissions must be attenuated below the mean output power of the transmitter in accordance with the following schedule:

(1) When using transmissions other than those employing digital modulation techniques:

(i) On any frequency removed from the assigned frequency by more than 50 percent up to and including 100 percent of the authorized bandwidth: At least 25 decibels;

(ii) On any frequency removed from the assigned frequency by more than 100 percent up to and including 250 percent of the authorized bandwidth: At least 35 decibels;

(iii) On any frequency removed from the assigned frequency by more than 250 percent of the authorized bandwidth: At least 43+10 Log_{10} (mean output power in watts) decibels, or 80 decibels, whichever is the lesser attenuation.

(2) When using transmissions employing digital modulation techniques (see § 101.141(b)) in situations not covered in this section:

(i) For operating frequencies below 15 GHz, in any 4 KHz band, the center frequency of which is removed from the assigned frequency by more than 50 percent up to and including 250 percent of the authorized bandwidth: As specified by the following equation but in no event less than 50 decibels:

$A=35+0.8(P-50)+10\ \text{Log}_{10}B.$

(Attenuation greater than 80 decibels is not required.)

where:

A=Attenuation (in decibels) below the mean output power level.

P=Percent removed from the carrier frequency.

B=Authorized bandwidth in MHz.

(ii) For operating frequencies above 15 GHz, in any 1 MHz band, the center frequency of which is removed from the assigned frequency by more than 50 percent up to and including 250 percent of the authorized bandwidth: As specified by the following equation but in no event less than 11 decibels:

$A=11+0.4(P-50)+10\ \text{Log}_{10}B.$

(Attenuation greater than 56 decibels is not required.)

(iii) In any 4 KHz band, the center frequency of which is removed from the assigned frequency by more than 250 percent of the authorized bandwidth: At least 43+10 Log_{10} (mean output power in watts) decibels, or 80 decibels, whichever is the lesser attenuation.

(3) For Digital Termination System channels used in the Digital Electronic Message Service (DEMS) operating in the 10,550–10,680 MHz band:

(i) In any 4 KHz band, the center frequency of which is removed from the edge of the DEMS channel by up to and including 1.125 times the DEMS subchannel bandwidth: As specified by the following equation may in no event be less than 50+10 $\log_{10}$ N decibels:

$A=50+0.0333\ (F-0.5B)+10\ \log_{10}N$ decibels

Where:

A=Attenuation (in decibels) below means output power level contained within the DEMS channel for a given polarization.

B=Bandwidth of DEMS channel (in KHz).

F=Absolute value of the difference between the center frequency of the 4 KHz band measured and the center frequency of the DEMS channel (in KHz).

N=Number of active subchannels of the given polarization within the DEMS channel.

(ii) In any 4 KHz band within the authorized DEMS band the center frequency of which is removed from the center frequency of the DEMS channel by more than the sum of 50% of the DEMS channel bandwidth plus 1.125 times the subchannel bandwidth: As specified by the following equation but in no event less than 80 decibels:

$A=80+10\ \log_{10}N$ decibels

(iii) In any 4 KHz band the center frequency of which is outside the authorized DEMS band: At least 43+10 $\log_{10}$ (mean output power in watts) decibels.

(4) For Digital Termination System channels used in the Digital Electronic Message Service (DEMS) operating in the 17,700–19,700 MHz band:

(i) In any 4 KHz band, the center frequency of which is removed from the frequency of the center of the DEMS channel by more than 50 percent of the DEMS channel bandwidth up to and including 50 percent plus 500 KHz: As specified by the following equation but in no event be less than 50+10 $\log_{10}$ N decibels:

$A=50+0.06\ (F-0.5B)+10\ \log_{10}N$ decibels

Where:

A=Attenuation (in decibels) below means output power level contained within the DEMS channel for a given polarization.

B=Bandwidth of DEMS channel (in KHz).

F=Absolute value of the difference between the center frequency of the 4 KHz band measured and the center frequency of the DEMS channel (in KHz).

N=Number of active subchannels of the given polarization within the DEMS channel.

(ii) In any 4 KHz band within the authorized DEMS band, the center frequency of which is removed from the center frequency of the DEMS channel by more than the sum of 50 percent of the channel bandwidth plus 500 KHz: As specified by the following equation but in no event less than 80 decibels:

$A=80+10\ \log_{10}N$ decibels

(iii) In any 4 KHz band the center frequency of which is outside the authorized Digital Message Service band: At least 43+10 $\log_{10}$ (mean output power in watts) decibels.

(5) When using transmissions employing digital modulation techniques on the 900 MHz multiple address frequencies with a 12.5 KHz

bandwidth, the power of any emission must be attenuated below the unmodulated carrier power of the transmitter (P) in accordance with the following schedule:

(i) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (fd in KHz) of more than 2.5 KHz up to and including 6.25 KHz: At least 53 $\log_{10}$ (fd/2.5) decibels;

(ii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (fd in KHz) of more than 6.25 KHz up to and including 9.5 KHz: At least 103 $\log_{10}$ (fd/3.9) decibels;

(iii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (fd in KHz) of more than 9.5 KHz up to and including 15 KHz: At least 157 $\log_{10}$ (fd/5.3) decibels; and

(iv) On any frequency removed from the center of the authorized bandwidth by a displacement frequency greater than 15 KHz: At least 50 plus 10 $\log_{10}$(P) or 70 decibels, whichever is the lesser attenuation.

(6) When using transmissions employing digital modulation techniques on the 900 MHz multiple address frequencies with a bandwidth greater than 12.5 KHz, the power of any emission must be attenuated below the unmodulated carrier power of the transmitter (P) in accordance with the following schedule:

(i) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (fd in KHz) of more than 5 KHz up to and including 10 KHz: At least 83 $\log_{10}$ (fd/5) decibels;

(ii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (fd in KHz) of more than 10 KHz up to and including 250 percent of the authorized bandwidth: At least 116 $\log_{10}$ (fd/6.1) decibels or 50 plus 10 $\log_{10}$ (P) or 70 decibels, whichever is the lesser attenuation; and

(iii) On any frequency removed from the center of the authorized bandwidth by more that 250 percent of the authorized bandwidth: At least 43 plus 10 $\log_{10}$ (output power in watts) decibels or 80 decibels, whichever is the lesser attenuation.

(b) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in paragraph (a) of this section.

(c) The emission of an unmodulated carrier is prohibited except for test purposes as required for proper station and system maintenance.

§ 101.113 Transmitter power limitations.

(a) On any authorized frequency, the average power delivered to an antenna in this service must be the minimum amount of power necessary to carry out the communications desired. Application of this principle includes, but is not to be limited to, requiring a licensee who replaces one or more of its antennas with larger antennas to reduce its antenna input power by an amount appropriate to compensate for the increased primary lobe gain of the replacement antenna(s). In no event shall the average equivalent isotropically radiated power (EIRP), as referenced to an isotropic radiator, exceed the values specified below. In cases of harmful interference, the Commission may, after notice and opportunity for hearing, order a change in the effective radiated power of this station. Further, the output power of a transmitter on any authorized frequency in this service may not exceed the following:

Frequency Band (MHz)	Maximum allowable EIRP [1] [2]	
	Fixed (dBW)	Mobile (dBW)
928.0 to 929.0	+17	
932.0 to 932.5	+17	
932.5 to 935.0	+40	
941.0 to 941.5	+30	
941.5 to 944.0	+40	
952.0 to 960.0 [2]	+40	
1,850 to 1,990	+45	
2,110 to 2,130	+45	
2,130 to 2,150	+45	
2,150 to 2,160 [3]	+45	
2,160 to 2,180 [3]	+45	
2,180 to 2,200	+45	
2,450 to 2,500	+45	
2,500 to 2,686 [4]		
2,686 to 2,690 [4]	+45	
3,700 to 4,200	+55	
5,925 to 6,425 [4]	+55	
6,425 to 6,525 [4]		+35
6,525 to 6,875 [4]	+55	
10,550 to 10,680 [5]	+55	
10,700 to 11,700	+55	
12,200 to 12,700	+50	
12,700 to 13,250 [4]	+50	
17,700 to 18,600	+55	
18,600 to 18,800 [6]	+35	
18,800 to 19,700	+55	
21,200 to 23,600 [7]	[5] +55	
27,500 to 29,500	+55	
31,000 to 31,300	([8])	([8])
38,600 to 40,000	+55	

[1] Per polarization.

[2] For multiple address operations, see § 101.147. Remote alarm units that are part of a multiple address central station protection system are authorized a maximum of 2 watts.

[3] When an omnidirectional antenna is authorized in the 2150–2160 MHz band, the maximum power shall be 60 dBm.

[4] Also, see § 101.145.

[5] The output power of a DEMS System nodal transmitter shall not exceed 0.5 watts per 250 KHz. The output power of a DEMS System user transmitter shall not exceed 0.04 watts per 250 KHz. The transmitter power in terms of the watts specified is the peak envelope power of the emission measured at the associated antenna input port. The operating power shall not exceed the authorized power by more than 10 percent of the authorized power in watts at any time.

[6] Maximum power delivered to the antenna shall not exceed −3 dBW.

[7] Also, see § 101.147(t).

[8] The maximum transmit power is 0.05 watts.

(b) The power of transmitters that use Automatic Transmitter Power Control shall not exceed the power input or output specified in the instrument of station authorization. The power of non-ATPC transmitters shall be maintained as near as practicable to the power input or output specified in the instrument of station authorization.

§ 101.115 Directional antennas.

(a) Unless otherwise authorized upon specific request by the applicant, each station authorized under the rules of this part must employ a directional antenna adjusted with the center of the major lobe of radiation in the horizontal plane directed toward the receiving station with which it communicates: *provided, however,* where a station communicates with more than one point, a multi- or omni-directional antenna may be authorized if necessary. New Periscope antenna systems will not, under ordinary circumstances, be authorized.

(b) Stations operating below 932.5 MHz that are required to use directional antennas must employ antennas meeting the standards indicated below. (Maximum beamwidth is for the major lobe of radiation at the half power points. Suppression is the minimum attenuation required for any secondary lobe signal and is referenced to the maximum signal in the main lobe.)

Frequency range	Maximum beamwidth (degrees)	Suppression (dB)
512 to 932.5 MHz	20	13

(c) Fixed stations (other than temporary fixed stations and DEMS nodal stations) operating at 932.5 MHz or higher must employ transmitting and receiving antennas (excluding second receiving antennas for operations such as space diversity) meeting the appropriate performance Standard A indicated below, except that in areas not subjected to frequency congestion antennas meeting performance Standard B may be used subject to the

requirements set forth in paragraph (d) of this section.

ANTENNA STANDARDS

Frequency (MHz)	Category	Maximum beam width to 3 dB points (included angles in degrees)	Minimum antenna gain (dbi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels					
				5° to 10°*	10° to 15°*	15° to 20°*	20° to 30°*	30° to 100°*	100° to 140°*	140° to 180°*
932.5 to 935	A	14.0	N/A		6	11	14	17	20	24
	B	20.0	N/A			6	10	13	15	20
941.5 to 944	A	14.0	N/A		6	11	14	17	20	24
	B	20.0	N/A			6	10	13	15	20
952 to 960 [8,9]	A	14.0	N/A		6	11	14	17	20	24
	B	20.0	N/A			6	10	13	15	20
1,850 to 2,500 [11]	A	5.0	N/A	12	18	22	25	29	33	39
	B	8.0	N/A	5	18	20	20	25	28	36
3,700 to 4,200	A	N/A	36	23	29	33	36	42	55	55
	B	N/A	36	20	24	28	32	32	32	32
5,925 to 6,425 [5]	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	21	25	29	32	35	39	45
5,925 to 6,425 [6]	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36
6,525 to 6,875 [5]	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	21	25	29	32	35	39	45
6,525 to 6,875 [6]	A	1.5	N/A	26	29	32	34	38	41	49
	B	2.0	N/A	21	25	29	32	35	39	45
10,550 to 10,680 [4,5]	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	35	39
10,550 to 10,680 [6]	A	3.4	34	20	24	28	32	35	55	55
	B	3.4	34	20	24	28	32	35	35	39
10,565 to 10,615 [7]	N/A	360	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
10,630 to 10,680 [7]	N/A	N/A	34	20	24	28	32	35	36	36
10,700 to 11,700 [5]	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36
12,200 to 13,250 [12]	A	1.0	N/A	23	28	35	39	41	42	50
	B	2.0	N/A	20	25	28	30	32	37	47
17,700 to 18,820	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36
18,920 to 19,700 [1]	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36
21,200 to 23,600 [10]	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36
31,000 to 31,300 [2,3]	N/A	4.0	38	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Above 31,300	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36

[*1] DEMS User Station antennas in this band must meet performance Standard B and have a minimum antenna gain of 34 dBi. The maximum beamwidth requirement does not apply to DEMS User Stations. DEMS Nodal Stations need not comply with these standards.

[2] The minimum front-to-back ratio must be 38 dBi.

[3] Mobile, except aeronautical mobile, stations need not comply with these standards.

[4] Except for antennas between 140° and 180° authorized or pending on January 1, 1989, in the band 10,550 to 10,565 MHz for which minimum radiation to suppression to angle (in degrees) from centerline of main beam is 36 decibels.

[5] These antenna standards apply to all point-to-point stations authorized after June 1, 1997. Existing licensees and pending applicants on that date are grandfathered and need not comply with these standards.

[6] These antenna standards apply to all point-to-point stations authorized on or before June 1, 1997.

[7] These antenna standards apply only to DEMS User Stations licensed, in operation, or applied for prior to July 15, 1993.

[8] Except for Multiple Address System frequencies listed in where omnidirectional antennas may be used.

[9] Antennas used at outlying stations as part of a central protection alarm system need conform to only the following 2 standards: (i) The minimum on-beam forward gain must be at least 10 dBi; and (ii) the minimum front-to-back ratio must be at least 20 dB.

[10] Except as provided in § 101.147(t). **Note to paragraph (10):** Stations must employ an antenna that meets the performance standards for Category A, except that in areas not subject to frequency congestion, antennas meeting standards for Category B may be employed. Note, however, that the Commission may require the use of high performance antennas where interference problems can be resolved by the use of such antennas.

[11] Omnidirectional antennas may be authorized in the band 2150–2160 MHz.

[12] Except for temporary-fixed operations in the band 13200–13250 MHz with output powers less than 250 mW and as provided in § 101.147(q).

(d) The Commission shall require the replacement of any antenna or periscope antenna system of a permanent fixed station operating at 932.5 MHz or higher that does not meet performance Standard A specified in paragraph (c) of this section, at the expense of the licensee operating such antenna, upon a showing that said antenna causes or is likely to cause interference to (or receive interference from) any other authorized or applied for station whereas a higher performance antenna is not likely to involve such interference. Antenna performance is expected to meet the standards of paragraph (c) of this section for parallel polarization. For cases of potential interference, an antenna will

not be considered to meet Standard A unless the parallel polarization performance for the discrimination angle involved meets the requirements, even if the cross-polarization performance controls the interference.

(e) In cases where passive reflectors are employed in conjunction with transmitting antenna systems, the foregoing paragraphs of this section also will be applicable. However, in such instances, the center of the major lobe of radiation from the antenna normally must be directed at the passive reflector, and the center of the major lobe of radiation from the passive reflector directed toward the receiving station with which it communicates.

(f) Periscope antennas used at an electric power facility plant area will be excluded from the requirements of paragraph (c) of this section on a case-by-case basis where technical considerations or safety preclude the use of other types of antenna systems.

(g) In the event harmful interference is caused to the operation of other stations, the Commission may, after notice and opportunity for hearing, order changes to be made in the height, orientation, gain and radiation pattern of the antenna system.

§ 101.117 Antenna polarization.

Except as set forth herein, stations operating in the radio services included in this part are not limited as to the type of polarization of the radiated signal, provided, however, that in the event interference in excess of permissible levels is caused to the operation of other stations the Commission may, after notice and opportunity for hearing, order the licensee to change the polarization of the radiated signal. No change in polarization may be made without prior authorization from the Commission. Unless otherwise allowed, only linear polarization (horizontal or vertical) shall be used.

§ 101.119 Simultaneous use of common antenna structures.

The simultaneous use of common antenna structures by more than one radio station, or by one of more domestic public radio stations and one or more stations of any other class or service, may be authorized: provided, however, that each licensee or user of any such structure is responsible for maintaining the structure, and for painting and illuminating the structure when obstruction marking is required by the Commission. (See § 101.21(a).)

§ 101.121 Marking of antenna structures.

The owner of each antenna structure required to be painted and/or illuminated under the provision of section 303(q) of the Communications Act of 1934, as amended, shall operate and maintain the antenna structure painting and lighting in accordance with part 17 of this chapter. In the event of default by the owner, each licensee or permittee shall be individually responsible for conforming to the requirements pertaining to antenna structure painting and lighting. For complete regulations relative to antenna marking requirements, see part 17 of this chapter.

§ 101.123 Quiet zones.

Quiet zones are those areas where it is necessary to restrict radiation so as to minimize possible impact on the operations of radio astronomy or other facilities that are highly sensitive to radio frequency interference.

(a) In order to minimize possible harmful interference at the National Radio Astronomy Observatory site located at Green Bank, Pocohontas County, W. Va., and at the Naval Radio Research Observatory site at Sugar Grove, Pendleton County, W. Va., any applicant for a station authorization other than temporary-fixed seeking a station license for a new station or to modify an existing station in a manner which would change either the frequency, power, antenna height or directivity, or location of such a station within the area boarded by 39°15′ N. on the north, 78°30′ W. on the east, 37°30′ N. on the south, and 80°30′ W. on the west must at the time of filing such application with the Commission, simultaneously notify the Director, National Radio Astronomy Observatory, Post Office Box No. 2, Green Bank, W. Va. 24944, in writing, of the technical particulars of the proposed station. Such notification must include the geographical coordinates of the antenna, antenna height, antenna directivity if any, proposed frequency, type of emission and power. In addition, the applicant must indicate in his application to the Commission the date notification was made to the Observatory. After receipt of such applications, the Commission will allow a period of twenty (20) days for comments or objections in response to the notifications indicated. If an objection to the proposed operation is received during the 20-day period from the National Radio Astronomy Observatory for itself or on behalf of the Naval Radio Research Observatory, the Commission will consider all aspects of the problem and take whatever action is deemed appropriate.

(b) Protection for Table Mountain Radio Receiving Zone, Boulder County, Colorado. Applicants for a station authorization to operate in the vicinity of Boulder County, Colorado under this part are advised to give due consideration, prior to filing applications, to the need to protect the Table Mountain Radio Receiving Zone from harmful interference. These are the research laboratories of the Department of Commerce, Boulder County, Colorado. To prevent degradation of the present ambient radio signal level at the site, the Department of Commerce seeks to ensure that the field strengths of any radiated signals (excluding reflected signals) received on this 1800 acre site (in the vicinity of coordinates 40°07′50″ N. Latitude, 105°14′40″ W. Longitude), resulting from new assignments or from the modification or relocation of existing facilities do not exceed 1 mV/m in the authorized bandwidth of service. (A field strength of 1 mV/m is equivalent to a power flux density of 85.8 dBW/M² assuming a free-space characteristic impedance of 376.7 ohms.)

(1) Advance consultation is recommended particularly for those applicants who have no reliable data which indicates whether the field strength or power flux density figures would be exceeded by their proposed radio facilities. In such instances, the following is a suggested guide for determining whether coordination is recommended:

(i) All stations within 2.4 km;

(ii) Stations within 4.8 km with 50 watts or more effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Table Mountain Receiving Zone;

(iii) Stations within 16 km with 1 kW or more ERP in the primary plane of polarization in the azimuthal direction of the Table Mountain Receiving Zone; or

(iv) Stations within 80 km with 25 kW or more ERP in the primary plane of polarization in the azimuthal direction of the Table Mountain Receiving Zone.

(2) Applicants concerned are urged to communicate with the Radio Frequency Management Coordinator, Department of Commerce, Research Support Services, NOAA/R/E5X2, Boulder Laboratories, Boulder CO 80303; telephone (303) 497–6548, in advance of filing their applications with the Commission.

(3) The Commission will not screen applications to determine whether advance consultation has taken place. However, applicants are advised that such consultation can avoid objections from the Department of Commerce or proceedings to modify any authorization which may be granted which, in fact, delivers a signal at the site in excess of the field strength specified herein.

(c) Protection for Federal Communications Commission monitoring stations:

(1) Applicants in the vicinity of an FCC monitoring station for a radio station authorization to operate new transmitting facilities or changed transmitting facilities which would increase the field strength produced over the monitoring station over that previously authorized are advised to give consideration, prior to filing applications, to the possible need to protect the FCC stations from harmful interference. Geographical coordinates of the facilities which require protection are listed in § 0.121(c) of this chapter. Applications for stations (except mobile stations) which will produce on any frequency a direct wave fundamental field strength of greater than 10 mV/m in the authorized bandwidth of service (−65.8 dBW/m² power flux density assuming a free space characteristic impedance of 120 ohms) at the referenced coordinates, may be examined to determine extent of possible interference. Depending on the theoretical field strength value and existing root-sum-square or other ambient radio field signal levels at the indicated coordinates, a clause protecting the monitoring station may be added to the station authorization.

(2) In the event that calculated value of expected field exceeds 10 mV/m (−65.8 dBW/m²) at the reference coordinates, or if there is any question whether field strength levels might exceed the threshold value, advance consultation with the FCC to discuss any protection necessary should be considered. Prospective applicants may communicate with: Chief, Compliance and Information Bureau, Federal Communications Commission, Washington, DC 20554, Telephone (202) 418–1100.

(3) Advance consultation is suggested particularly for those applicants who have no reliable data which indicates whether the field strength or power flux density figure indicated would be exceeded by their proposed radio facilities (except mobile stations). In such instances, the following is a suggested guide for determining whether an applicant should coordinate:

(i) All stations within 2.4 kilometers;

(ii) Stations within 4.8 kilometers with 50 watts or more average effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Monitoring Stations;

(iii) Stations within 16 kilometers with 1 kW or more average ERP in the primary plane of polarization in the azimuthal direction of the Monitoring Station; or

(iv) Stations within 80 kilometers with 25 kW or more average ERP in the primary plane of polarization in the azimuthal direction of the Monitoring Station.

(4) Advance coordination for stations operating above 1000 MHz is recommended only where the proposed station is in the vicinity of a monitoring station designated as a satellite monitoring facility in § 0.121(c) of this chapter and also meets the criteria outlined in paragraphs (c)(2) and (c)(3) of this section.

(5) The Commission will not screen applications to determine whether advance consultation has taken place. However, applicants are advised that such consultation can avoid objections from the Federal Communications Commission or modification of any authorization which will cause harmful interference.

§ 101.125 Temporary fixed antenna height restrictions.

The overall antenna structure heights employed by mobile stations in the Local Television Transmission Service and by stations authorized to operate at temporary fixed locations may not exceed the height criteria set forth in § 17.7 of this chapter, unless in each instance, authorization for use of a specific maximum antenna height (above ground and above mean sea level) for each location has been obtained from the Commission prior to erection of the antenna. Requests for such authorization must show the inclusive dates of the proposed operation. (Complete information as to rules concerning the construction, marking and lighting of antenna structures is contained in part 17 of this chapter.)

§ 101.127 Topographical data.

Determining the location and height above sea level of the antenna site, the elevation or contour intervals must be taken from United States Geological Survey Topographic Quadrangle Maps, United States Army Corps of Engineers maps or Tennessee Valley Authority maps, whichever is the latest, for all areas for which such maps are available. If such maps are not published for the area in question, the next best topographic information should be used. Topographic data may sometimes be obtained from State and municipal agencies. Data from Sectional Aeronautical Charts (including bench marks) or railroad depot elevations and highway elevations from road maps may be used where no better information is available. In cases where limited topographic data is available, use may be made of an altimeter in a car driven along roads extending generally radially from the transmitter site. If it appears necessary, additional data may be requested. United States Geological Survey Topographic Quadrangle Maps may be obtained from the Department of the Interior, Geological Survey, Washington, DC 20242. Sectional Aeronautical Charts are available from the Department of Commerce, Coast and Geodetic Survey, Washington, DC 20230.

§ 101.129 Transmitter location.

(a) The applicant must determine, prior to filing an application for a radio station authorization, that the antenna site specified therein is adequate to render the service proposed. In cases of questionable antenna locations, it is desirable to conduct propagation tests to indicate the field intensity which may be expected in the principal areas or at the fixed points of communication to be served, particularly where severe shadow problems may be expected. In considering applications proposing the use of such locations, the Commission may require site survey tests to be made pursuant to a developmental authorization in the particular service concerned. In such cases, propagation tests should be conducted in accordance with recognized engineering methods and should be made with a transmitting antenna simulating, as near as possible, the proposed antenna installation. Full data obtained from such surveys and its analysis, including a description of the methods used and the name, address and qualifications of the engineer making the survey, must be supplied to the Commission.

(b) Antenna structures should be so located and constructed as to avoid making them hazardous to air navigation. (See part 17 of this chapter for provisions relating to antenna structures.) Such installation must be maintained in good structural condition together with any required painting or lighting.

§ 101.131 Transmitter construction and installation.

(a) The equipment at the operating and transmitting positions must be so installed and protected that it is not accessible to, or capable of being operated by, persons other than those duly authorized by the licensee.

(b) In any case where the maximum modulating frequency of a transmitter is prescribed by the Commission, the transmitter must be equipped with a low-pass or band-pass modulation filter

of suitable performance characteristics. In those cases where a modulation limiter is employed, the modulation filter must be installed between the transmitter stage in which limiting is effected and the modulated stage of the transmitter.

(c) Each transmitter employed in these services must be equipped with an appropriately labeled pilot lamp or meter which will provide continuous visual indication at the transmitter when its control circuits have been placed in a condition to activate the transmitter. In addition, facilities must be provided at each transmitter to permit the transmitter to be turned on and off independently of any remote control circuits associated therewith.

(d) At each transmitter control point the following facilities must be installed:

(1) A carrier operated device which will provide continuous visual indication when the transmitter is radiating, or, in lieu thereof, a pilot lamp or meter which will provide continuous visual indication when the transmitter control circuits have been placed in a condition to activate the transmitter; and

(2) Facilities which will permit the operator to turn transmitter carrier on and off at will.

(e) Transmitter control circuits from any control point must be so installed that grounding or shorting any line in the control circuit will not cause the transmitter to radiate: provided, however, That this provision will not be applicable to control circuits of stations which normally operate with continuous radiation or to control circuits which are under the effective operational control of responsible operating personnel 24 hours per day.

§ 101.133 Limitations on use of transmitters.

(a) Transmitters licensed for operation in Common Carrier services may be concurrently licensed or used for non-common carrier communication purposes. Mobile units may be concurrently licensed or used for non-common carrier communication purposes provided that the transmitter is type-accepted for use in each service.

(b) Private operational fixed point-to-point microwave stations authorized in this service may communicate with associated operational-fixed stations and fixed receivers and with units of associated stations in the mobile service licensed under Private Radio Service rule parts. In addition, intercommunication is permitted with other licensed stations and with U.S. Government stations in those cases which require cooperation or coordination of activities or when cooperative use arrangements in accordance with § 101.135 are contemplated; provided, however, that where communication is desired with stations authorized to operate under the authority of a foreign jurisdiction, prior approval of this Commission must be obtained; And provided further, That the authority under which such other stations operate does not prohibit the intercommunication.

(c) Two or more persons or governmental entities eligible for private operational fixed point-to-point microwave licenses may use the same transmitting equipment under the following terms and conditions:

(1) Each licensee complies with the general operating requirements set out in this part;

(2) Each licensee is eligible for the frequency(ies) on which the facility operates; and

(3) Each licensee must have the ability to access the transmitter(s) that it is authorized to operate under the multiple licensing arrangement.

§ 101.135 Shared use of radio stations and the offering of private carrier service.

Licensees of Private Operational Fixed Point-to-Point Microwave radio stations may share the use of their facilities on a non-profit basis or may offer service on a for-profit private carrier basis, subject to the following conditions and limitations:

(a) Persons or governmental entities licensed to operate radio systems on any of the private radio frequencies set out in § 101.101 may share such systems with, or provide private carrier service to, any eligible for licensing under this part, regardless of individual eligibility restrictions, provided that the communications being carried are permissible under § 101.603. In addition, persons or governmental entities licensed to operate low power systems under the provisions of § 101.147(r)(10) may share such systems with, or provide private carrier services to, Federal Government entities, provided the communications carried are permissible under § 101.603;

(b) The licensee must maintain access to and control over all facilities authorized under its license;

(c) All sharing and private carrier arrangements must be conducted pursuant to a written agreement to be kept as part of the station records; and

(d) The licensee must keep an up-to-date list of system sharers and private carrier subscribers and the basis of their eligibility under this part. Such records must be kept current and must be made available upon request for inspection by the Commission.

§ 101.137 Interconnection of private operational fixed point-to-point microwave stations.

Private operational fixed point-to-point microwave stations may be interconnected with facilities of common carriers subject to applicable tariffs.

§ 101.139 Authorization of transmitters.

(a) Except for transmitters used at developmental stations or for fixed point-to-point operation pursuant to subparts H and I of this part, each transmitter must be a type which has been type accepted by the Commission for use under the applicable rules of this part. Transmitters used in the private operational fixed and common carrier fixed point-to-point microwave services under subparts H and I of this part must be of a type that has been either notified or type accepted by the Commission (see § 2.904(d) of this chapter). Effective March 5, 1984, only grants of notification will be issued for transmitters used exclusively for fixed point-to-point operation. Transmitters designed for use in the 31.0 to 31.3 GHz band will be authorized under the notification procedure.

(b) Any manufacturer of a transmitter to be produced for use under the rules of this part may request type acceptance or notification by following the applicable procedures set forth in part 2 of this chapter. Type accepted and notified transmitters are included in the Commission's Radio Equipment List. Copies of this list are available for inspection at the Commission's office in Washington, DC and at each of its field offices.

(c) Type acceptance or notification for an individual transmitter may also be requested by an applicant for a station authorization, pursuant to the procedures set forth in part 2 of this chapter. An individual transmitter will not normally be included in the Radio Equipment List but will be enumerated on the station authorization.

(d) A transmitter presently shown on an instrument of authorization, which operates on an assigned frequency in the 890–940 MHz band and has not been type accepted, may continue to be used by the licensee without type acceptance provided such transmitter continues otherwise to comply with the applicable rules and regulations of the Commission.

(e) Type acceptance or notification is not required for portable transmitters operating with peak output power not greater than 250 mW. If operation of such equipment causes harmful interference the FCC may, at its discretion, require the licensee to take such corrective action as is necessary to eliminate the interference.

(f) After July 15, 1996, the manufacture (except for export) or importation of equipment employing digital modulation techniques in the 3700–4200, 5925–6425, 6525–6875, 10,550–10,680 and 10,700–11,700 MHz bands must meet the minimum payload capacity requirements of § 101.141.

§ 101.141 Microwave modulation.

(a) Microwave transmitters employing digital modulation techniques and operating below 19.7 GHz must, with appropriate multiplex equipment, comply with the following additional requirements:

(1) The bit rate, in bits per second, must be equal to or greater than the bandwidth specified by the emission designator in Hertz (*e.g.*, to be acceptable, equipment transmitting at a 20 Mb/s rate must not require a bandwidth of greater than 20 MHz), except the bandwidth used to calculate the minimum rate may not include any authorized guard band.

Note to (a)(1): Systems authorized prior to December 1, 1988, may install equipment after that date with no minimum bit rate.

(2) Equipment to be used for voice transmission placed in service, authorized, or applied for on or before June 1, 1997 in the 2110 to 2130 and 2160 to 2180 MHz bands must be capable of satisfactory operation within the authorized bandwidth to encode at least 96 voice channels. Equipment placed in service, authorized, or applied for on or before June 1, 1997 in the 3700–4200, 5925–6425 (30 MHz bandwidth), and 10,700–11,700 MHz (30 and 40 MHz bandwidths) bands must be capable of satisfactory operation within the authorized bandwidth to encode at least 1152 voice channels. These required loading levels may be reduced by a factor of 1/N provided that N transmitters may be operated satisfactorily, over the same radio path, within an authorized bandwidth less than, or equal to, the maximum authorizable bandwidth (*e.g.*, the 1152 channel requirement may be reduced to 576 if two transmitters can be satisfactorily operated over the same path within the maximum bandwidth). Where type accepted equipment is designed to operate on the same frequency in a cross polarized configuration to meet the above capacity requirements, the Commission will require, at the time additional transmitters are authorized, that both polarizations of a frequency be used before a new frequency assignment is made, unless a single transmitter installation was found to be justified by the Commission at the time it authorized the first transmitter.

(3) The following capacity and loading requirements must be met for equipment applied for, authorized, and placed in service after June 1, 1997 in the 3700–4200 MHz (4 GHz), 5925–6425 and 6525–6875 MHz (6 GHz), 10,550–10,680 MHz (10 GHz), and 10,700–11,700 MHz (11 GHz) bands:

Nominal channel bandwidth (MHz)	Minimum payload capacity (Mbits/s) [1]	Minimum traffic loading payload (as percent of payload capacity)	Typical utilization [2]
0.400	1.54	N/A	1 DS–1
0.800	3.08	N/A	2 DS–1
1.25	3.08	N/A	2 DS–1
1.60	6.17	N/A	4 DS–1
2.50	6.17	N/A	4 DS–1
3.75	12.3	N/A	8 DS–1
5.0	18.5	N/A	12 DS–1
10.0	44.7	[3] 50	1 DS–3/STS–1
20.0	89.4	[3] 50	2 DS–3/STS–1
30.0 (11 GHz)	89.4	[3] 50	2 DS–3/STS–1
30.0 (6 GHz)	134.1	[3] 50	3 DS–3/STS–1
40.0	134.1	[3] 50	3 DS–3/STS–1

[1] Per polarization

[2] DS and STS refer to the number of voice circuits a channel can accommodate. 1 DS–1 = 24 voice circuits; 2 DS–1 = 48; 4 DS–1 = 96; 8 DS–1 = 192; 12 DS–1 = 288; 1 DS–3/STS–1 = 672; 2 DS–3/STS–1 = 1344; 3 DS–3/STS–1 = 2016.

[3] This loading requirement must be met within 30 months of licensing. If two transmitters simultaneously operate on the same frequency over the same path, the requirement is reduced to 25 percent.

(4) If a transmitter is authorized to operate in a bandwidth that is not listed in paragraph (a)(3) of this section, it must meet the minimum payload capacity and traffic loading requirements of the next largest channel bandwidth listed in the table; *e.g.*, if the authorized bandwidth is 3.5 MHz, the minimum payload capacity must be 12.3 Mbits/s.

(5) Transmitters carrying digital motion video motion material are exempt from the requirements specified in paragraphs (a)(2) and (a)(3) of this section, provided that at least 50 percent of the payload is digital video motion material and the minimum bit rate specified in paragraph (a)(1) of this section is met. In the 6, 10, and 11 GHz bands, concatenation of multiple contiguous channels is permitted for channels of equal bandwidth on center frequencies, provided no other channels are available and the minimum payload capacity requirements are met.

(6) Digital systems using bandwidths of 10 MHz or larger will be considered 50 percent loaded when the following condition is met: at least 50 percent of their total DS–1 capacity is being used. A DS–1 channel is being used when it has been connected to a DS–0/DS–1 multiplexer. For non-DS–0 services, such as, but not limited to, video or broadband data transmission, the next largest DS–1 equivalent will be considered for the computation of a loading percentage.

(7) For digital systems, minimum payload capacities shall be expressed in numbers of DS–1s, DS–3s or STS–1s. The payload capacity required by the Commission shall correspond to commercially available equipment.

(b) For purposes of compliance with the emission limitation requirements of § 101.111(a)(2) and the requirements of paragraph (a) of this section, digital modulation techniques are considered as being employed when digital modulation occupies 50 percent or more to the total peak frequency deviation of a transmitted radio frequency carrier. The total peak frequency deviation will be determined by adding the deviation produced by the digital modulation signal and the deviation produced by any frequency division multiplex (FDM) modulation used. The deviation (D) produced by the FDM signal must be determined in accordance with § 2.202(f) of this chapter.

(c) Analog Modulation. Except for video transmission, an application for an initial working channel for a given route will not be accepted for filing where the anticipated loading (within five years for voice, or other period subject to reasonable projection) is less than the minimum specified for the following frequency bands. Absent extraordinary circumstances, applications proposing additional frequencies over existing routes will not be granted unless it is shown that the traffic load will shortly exhaust the capacity of the existing equipment. Where no construction of radio facilities is requested, licensees must submit this evidence with their filing of any necessary authority required pursuant to section 214 of the Communications Act and part 63 of this chapter.

Frequency band (MHz)	Minimum number of voice channels (4 KHz or equivalent)
3700 to 4200 (20 MHz bandwidth)	900
5925 to 6425 (10 MHz bandwidth)	300
5925 to 6425 (20 MHz bandwidth)	600
5925 to 6425 (30 MHz bandwidth)	900
6525 to 6875 (10 MHz bandwidth)	300
10,700 to 11,700 (10 MHz bandwidth)	300
10,700 to 11,700 (20 MHz bandwidth)	600
10,700 to 11,700 (30 MHz bandwidth)	900
10,700 to 11,700 (40 MHz bandwidth)	900

§ 101.143 Minimum path length requirements.

(a) The distance between end points of a fixed link in the private operational fixed point-to-point and the common carrier fixed point-to-point microwave services must equal or exceed the value set forth in the table below or the EIRP must be reduced in accordance with the equation set forth below:

Frequency band (MHz)	Minimum path length (km)
Below 1,850	N/A
1,850 to 7,125	17
10,550 to 13,250	5
Above 17,700	N/A

(b) For paths shorter than those specified in the Table, the EIRP shall not exceed the value derived from the following equation:

EIRP = MAX EIRP—40*log(A/B) dBW

Where:

EIRP=Equivalent isotropically radiated power in dBW.

A=Minimum path length from the Table for the frequency band in kilometers.

B=The actual path length in kilometers.

Note to paragraph (b): For transmitters using Automatic Transmit Power Control, EIRP that corresponds to the maximum transmitter power must satisfy this requirement.

(c) Upon an appropriate technical showing, applicants and licensees unable to meet the minimum path length requirement may be granted an exception to these requirements.

Note to paragraph (c): Links authorized prior to April 1, 1987, need not comply with this requirement.

§ 101.145 Interference to geostationary-satellites.

These limitations are necessary to minimize the probability of harmful interference to reception in the bands 2655–2690 MHz, 5925–6875 MHz, and 12.7–12.75 GHz on board geostationary-space stations in the fixed-satellite service.

(a) Stations authorized prior to July 1, 1976 in the band 2655–2690 MHz, which exceed the power levels in paragraphs (a) and (b) of this section are permitted to operate indefinitely, provided that the operations of such stations does not result in harmful interference to reception in these band on board geostationary space stations.

(b) 2655 to 2690 MHz and 5925 to 6875 MHz. No directional transmitting antenna utilized by a fixed station operating in these bands may be aimed within 2 degrees of the geostationary-satellite orbit, taking into account atmospheric refraction. However, exception may be made in unusual circumstances upon a showing that there is no reasonable alternative to the transmission path proposed. If there is no evidence that such exception would cause possible harmful interference to an authorized satellite system, said transmission path may be authorized on waiver basis where the maximum value of the equivalent isotropically radiated power (EIRP) does not exceed:

(1) +47 dBW for any antenna beam directed within 0.5 degrees of the stationary satellite orbit; or

(2) +47 to +55 dBW, on a linear decibel scale (8 dB per degree) for any antenna beam directed between 0.5 degrees and 1.5 degrees of the stationary orbit.

(c) 12.7 to 12.75 GHz. No directional transmitting antenna utilized by a fixed station operating in this band may be aimed within 1.5 degrees of the geostationary-satellite orbit, taking into account atmospheric refraction. However, exception may be made in unusual circumstances upon a showing that there is no reasonable alternative to the transmission path proposed. If there is no evidence that such exception would cause possible harmful interference to an authorized satellite system, said transmission path may be authorized on waiver basis where the maximum value of the equivalent isotropically radiated power (EIRP) does not exceed +45 dBW for any antenna beam directed within 1.5 degrees of the stationary satellite orbit.

(d) Methods for calculating the azimuths to be avoided may be found in: CCIR Report No. 393 (Green Books), New Delhi, 1970; in "Radio-Relay Antenna Pointing for controlled Interference With Geostationary-Satellites" by C. W. Lundgren and A. S. May, Bell System Technical Journal, Vol. 48, No. 10, pp. 3387–3422, December 1969; and in "Geostationary Orbit Avoidance Computer Program" by Richard G. Gould, Common Carrier Bureau Report CC–7201, FCC, Washington, DC, 1972. This latter report is available through the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22151, in printed form (PB–211 500) or source card deck (PB–211 501).

§ 101.147 Frequency assignments.

(a) Frequencies in the following bands are available for assignment to fixed radio point-to-point microwave stations.

928.0–929.0 MHz (22)
932.0–932.5 MHz (27)
932.5–935 MHz (17)
941.0–941.5 MHz (17) (18)
941.5–944 MHz (27)
952.0–960.0 MHz (22)
1,850–1,990 MHz (22)
2,110–2,130 MHz) (1) (3) (7) (20)
2,130–2,150 MHz (22)
2,150–2,160 MHz (22)
2,160–2,180 MHz (1) (2) (20) (21)
2,180–2,200 MHz (22)
2,450–2,500 MHz (22)
2,650–2,690 MHz (22)
3,700–4,200 MHz (8) (14) (25)
5,925–6,425 MHz (6) (14) (25)
6,425–6,525 MHz (24)
6,525–6,875 MHz (14)
10,550–10,680 MHz (19)
10,700–11,700 MHz (8) (9) (19) (25)
11,700–12,200 MHz (24)
12,200–12,500 MHz (22)
12,500–12,700 MHz (22)
12,700–13,200 MHz (22)
13,200–13,250 MHz (4) (24) (25)
14,200–14,400 MHz (24)
17,700–18,820 MHz (5) (10) (15)
18,820–18,920 MHz (22)
18,920–19,160 MHz (5 (10) (15)
19,160–19,260 MHz (22)
19,260–19,700 MHz (5) (10) (15)
21,200–22,000 MHz (4) (11) (12) (13) (24) (25) (26)
22,000–23,600 MHz (4) (11) (12) (24) (25) (26)
27,500–29,500 MHz (5)
31,000–31,300 MHz (16) (24)
38,600–40,000 MHz (4)
Bands Above 40,000 MHz

Notes

(1) Frequencies in this band are shared with control and repeater stations in the Domestic Public Land Mobile Radio Service and with stations in the International Fixed Public Radiocommunication Services located south of 25° 30′ north latitude in the State of Florida and U. S. possessions in the Caribbean area. Additionally, the band 2160–2162 MHz is shared with stations in the Multipoint Distribution Service.

(2) Except upon showing that no alternative frequencies are available, no new assignments will be made in the band 2160–2162 MHz for stations located within 80.5 kilometers (50 miles) of the coordinates of the cities listed in §) 21.901(c) of this chapter.

(3) Television transmission in this band is not authorized and radio frequency channel widths may not exceed 3.5 MHz.

(4) Frequencies in this band are shared with fixed and mobile stations licensed in other services.

(5) Frequencies in this band are shared with stations in the fixed-satellite service.

(6) These frequencies are not available for assignment to mobile earth stations.

(7) Frequencies in the band 2110–2120 MHz may be authorized on a case-by-case basis to Government or non-Government space research earth stations for telecommand purposes in connection with deep space research.

(8) This frequency band is shared with station(s) in the Local Television Transmission Service and, in the U.S. Possessions in the Caribbean area, with stations in the International Fixed Public Radiocommunications Services.

(9) The band segments 10.95–11.2 and 11.45–11.7 GHz are shared with space stations (space to earth) in the fixed-satellite service.

(10) This band is co-equally shared with stations in the fixed services under parts 74, 78 and 101 of this chapter.

(11) Frequencies in this band are shared with Government stations.

(12) Assignments to common carriers in this band are normally made in the segments 21.2–21.8 GHz and 22.4–23.8 GHz and to operational fixed users in the segments 21.8–22.4 GHz and 23.0–23.6 GHz. Assignments may be made otherwise only upon a showing that no interference free frequencies are available in the appropriate band segments.

(13) Frequencies in this band are shared with stations in the earth exploration satellite service (space to earth).

(14) Frequencies in this band are shared with stations in the fixed-satellite and private operational fixed point-to-point microwave services.

(15) Stations licensed as of September 9, 1983 to use frequencies in the 17.7–19.7 GHz band may, upon proper application, continue to be authorized for such operation.

(16) Frequencies in this band are co-equally shared with stations in the Auxiliary Broadcasting, Cable Television Relay, Private Operational Fixed Point-to-Point Microwave, and General Mobile Radio Services. Use of this spectrum for direct delivery of video programs to the general public or multi-channel cable distribution is not permitted.

(17) Frequencies in these bands are shared with Government fixed stations and stations in the Private Operational Fixed Point-to-Point Microwave Service (part 101).

(18) Frequencies in the 942 to 944 MHz band are also shared with broadcast auxiliary stations.

(19) Frequencies in this band are shared with stations in the private-operational fixed point-to-point microwave service.

(20) New facilities in these bands will be licensed only on a secondary basis. Facilities licensed or applied before January 16, 1992, are permitted to make modifications and minor extensions and retain their primary status.

(21) Any authorization of additional stations to use the 2160–2162 MHz band for Multipoint Distribution Service applied for after January 16, 1992, will be secondary to use of the band for emerging technology services.

(22) Frequencies in these bands are for the exclusive use of Private Operational Fixed Point-to-Point Microwave Service (part 101).

(23) Frequencies in these bands are for the exclusive use of Common Carrier Fixed Point-to-Point Microwave Service (part 101).

(24) Frequencies in these bands are available for assignment to television pickup and television non-broadcast pickup stations. The maximum power for the local television transmission service in the 14.2–14.4 GHz band is +45 dBW except that operations are not permitted within 1.5 degrees of the geostationary orbit.

(25) Frequencies in these bands are available for assignment to television STL stations.

(26) Frequency pairs 21.825/23.025 GHz, 21.875/23.075 GHz, 21.925/23.125 GHz, and 21.975/23.175 GHz may be authorized for low power, limited coverage, systems subject to the provisions of paragraph (s) of this section.

(27) Frequencies in the 932 to 932.5 MHz and 941 to 941.5 MHz bands are shared with Government fixed point-to-multipoint stations and point-to-multipoint stations in the Public Land Mobile Service. Frequencies in these bands are paired with one another and are available for point-to-multipoint transmission of the licensee's products and information services, excluding video entertainment material, to the licensee's customers.

(b) Frequencies normally available for assignment in this service are set forth with applicable limitations in the following tables: *928–960 MHz* Multiple address system (MAS) frequencies are available for the point-to-multipoint transmission of a licensee's products or services, excluding video entertainment material, to a licensee's customer or for its own internal communications. The paired frequencies listed in this section are used for two-way interrogate/response communications between a master station and remote stations. Each master station operating on these frequencies is required to serve a minimum of four separate active remote stations. Ancillary one-way communications on paired frequencies are permitted on a case-by-case basis. Ancillary communications between interrelated master stations are permitted on a secondary basis. The normal channel bandwidth assigned will be 12.5 kHz. Upon adequate justification, however, channels with bandwidths up to 50 kHz may be authorized. Tables 2, 4, and 6 list frequencies with 25 kHz bandwidth channels. When licensed for a larger bandwidth, the system still is required to use equipment that meets the ±0.00015 percent tolerance requirement. (See § 101.107). Any bandwidth (12.5 kHz, 25 kHz or greater) authorized in accordance with this section may be subdivided into narrower bandwidths to create additional (or sub) frequencies without the need to specify each discrete frequency within the specific bandwidth. Equipment that is used to create additional frequencies by narrowing bandwidth (whether authorized for a 12.5 kHz, 25 kHz or greater bandwidth) will be required to meet, at a minimum, the ±0.00015 percent tolerance requirement so that all subfrequencies will be within the emission mask. When using subfrequencies, licensees are subject to the construction requirement of one master and four remotes per authorized bandwidth (12.5 kHz, 25 kHz or greater. Systems licensed for frequencies in these MAS bands prior to August 1, 1975, may continue to operate as authorized until June 11, 1996, at which time they must comply with current MAS operations based on the 12.5 KHz channelization set forth in this

paragraph. Systems licensed between August 1, 1975, and January 1, 1981, inclusive, are required to comply with the grandfathered 25 kHz standard bandwidth and channelization requirements set forth in this paragraph. Systems originally licensed after January 1, 1981, and on or before May 11, 1988, with bandwidths of 25 kHz and above, will be grandfathered indefinitely. (1) General Access Pool: Frequencies listed in this paragraph are available to all persons eligible under this part for use in multiple address radio systems. Except as noted, however, the frequencies may be used by eligibles in the Power Radio Service only if the frequencies in paragraph (b)(2) of this section are exhausted in the particular geographic area. The frequencies are also available for shared use by part 22 Public Land Mobile Service users if frequencies listed in § 22.50(g) of this chapter are exhausted in the particular geographic area. Applications for use of these frequencies under part 22 of this chapter are subject to part 101 requirements.

TABLE 1.—PAIRED FREQUENCIES (MHz)

[12.5 kHz bandwidth]

Remote transmit	Master transmit
928.00625	952.00625
928.01875	952.01875
928.03125	952.03125
928.04375	952.04375
928.05625	952.05625
928.06875	952.06875
928.08125	952.08125
928.09375	952.09375
928.10625	952.10625
928.11875	952.11875
928.13125	952.13125
928.14375	952.14375
928.15625	952.15625
928.16875	952.16875
928.18125	952.18125
928.19375	952.19375
928.20625	952.20625
928.21875	952.21875
928.23125	952.23125
928.24375	952.24375
928.25625	952.25625
928.26875	952.26875
928.28125	952.28125
928.29375	952.29375
928.30625	952.30625
928.31875	952.31875
928.33125	952.33125
928.34375	952.34375

UNPAIRED FREQUENCIES (MHz) [1]

[12.5 kHz bandwidth]

956.25625	956.33125	956.39375
956.26875	956.34375	956.40625
956.28125	956.35625	956.41875

UNPAIRED FREQUENCIES (MHz) [1]—Continued

[12.5 kHz bandwidth]

956.29375	956.36875	956.43125
956.30625	956.38125	956.44375
956.31875		

[1] Available to power eligibles regardless of whether frequencies in the power pool are exhausted.

TABLE 2.—PAIRED FREQUENCIES (MHz)

[25 kHz bandwidth]

Remote transmit	Master transmit
928.0125	952.0125
928.0375	952.0375
928.0625	952.0625
928.0875	952.0875
928.1125	952.1125
928.1375	952.1375
928.1625	952.1625
928.1875	952.1875
928.2125	952.2125
928.2375	952.2375
928.2625	952.2625
928.2875	952.2875
928.3125	952.3125
928.3375	952.3375

UNPAIRED FREQUENCIES (MHz) [1]

[25 kHz bandwidth]

956.2625	956.3375	956.4125
956.2875	956.3625	956.4375
956.3125	956.3875	

[1] Available to power eligibles regardless of whether frequencies in the power pool are exhausted.

(2) Power Pool: Frequencies listed in this paragraph are available to persons eligible under § 90.63 of this chapter for licensing in the Power Radio Service for use in multiple address radio systems. After January 1, 1992, the frequencies are also available for use by general access pool users and part 22 Public Land Mobile Service users (§ 22.501(g) of this chapter) provided frequencies listed in their respective pools are exhausted in the particular geographic area. Applications for use of these frequencies under part 22 of this chapter are subject to part 101 requirements.

TABLE 3.—PAIRED FREQUENCIES (MHz)

[12.5 kHz bandwidth]

Remote transmit	Master transmit
928.35625	952.35625
928.36872	952.36872
928.38125	952.38125
928.39375	952.39375

TABLE 3.—PAIRED FREQUENCIES (MHz)—Continued

[12.5 kHz bandwidth]

Remote transmit	Master transmit
928.40625	952.40625
928.41875	952.41875
928.43125	952.43125
928.44375	952.44375
928.45625	952.45625
928.46875	952.46875
928.48125	952.48125
928.49375	952.49375
928.50625	952.50625
928.51875	952.51875
928.53125	952.53125
928.54375	952.54375
928.55625	952.55625
928.56875	952.56875
928.58125	952.58125
928.59375	952.59375
928.60625	952.60625
928.61875	952.61875
928.63125	952.63125
928.64375	952.64375
928.65625	952.65625
928.66875	952.66875
928.68125	952.68125
928.69375	952.69375
928.70625	952.70625
928.71875	952.71875
928.73125	952.73125
928.74375	952.74375
928.75675	952.75625
928.76875	952.76875
928.78125	952.78125
928.79375	952.79375
928.80625	952.80625
928.81875	952.81875
928.83125	952.83125
928.84375	952.84375

TABLE 4.—PAIRED FREQUENCIES (MHz)

[25 kHz bandwidth]

Remote transmit	Master transmit
928.3625	952.3625
928.3875	952.3875
928.4125	952.4125
928.4375	952.4375
928.4625	952.4625
928.4875	952.4875
928.5125	952.5125
928.5375	952.5375
928.5625	952.5625
928.5875	952.5875
928.6125	952.6125
928.6375	952.6375
928.6625	952.6625
928.6875	952.6875
928.7125	952.7125
928.7375	952.7375
928.7625	952.7625
928.7875	952.7875
928.8125	952.8125
928.8375	952.8375

(3) Frequencies listed in this paragraph are available for shared use by general access pool users for multiple address operations if frequencies listed in paragraph (b)(1) of this section are exhausted in the particular geographic area: The frequencies are also available to eligibles in the power pool provided there are no other frequencies available for the type of operation contemplated. The frequencies in this pool may be assigned for paired or unpaired operation. If paired, the corresponding lower frequency is for remote unit use. Applications for these frequencies are subject to the conditions outlined in § 22.27 of this chapter.

TABLE 5.—PUBLIC MOBILE SERVICE CATEGORY FREQUENCIES (MHz)

[12.5 kHz bandwidth]

Remote transmit	Master transmit
928.85625	959.85625
928.86875	959.86875
928.88125	959.88125
928.89375	959.89375
928.90625	959.90625
928.91875	959.91875
928.93125	959.93125
928.94375	959.94375
928.95625	959.95625
928.96875	959.96875
928.98125	959.98125
928.99375	959.99375

TABLE 6.—PUBLIC MOBILE SERVICE CATEGORY FREQUENCIES (MHz)

[25 kHz bandwidth]

Remote transmit	Master transmit
928.8625	959.8625
928.8875	959.8875
928.9125	959.9125
928.9375	959.9375
928.9625	959.9625
928.9875	959.9875

(4) Frequencies listed in this paragraph are shared with stations in the Public Land Mobile Service, part 22 of this chapter.

TABLE 7.—PAIRED FREQUENCIES

[12.5 kHz bandwidth]

Remote transmit	Master transmit
932.00625	941.00625
932.01875	941.01875
932.03125	941.03125
932.04375	941.04375
932.05625	941.05625
932.06875	941.06875
932.08125	941.08125
932.09375	941.09375
932.10625	941.10625
932.11875	941.11875
932.13125	941.13125
932.14375	941.14375
932.15625	941.15625
932.16875	941.16875
932.18125	941.18125
932.19375	941.19375
932.20625	941.20625
932.21875	941.21875
932.23125	941.23125
932.24375	941.24375
932.25625	941.25625
932.26875	941.26875
932.28125	941.28125
932.29375	941.29375
932.30625	941.30625
932.31875	941.31875
932.33125	941.33125
932.34375	941.34375
932.35625	941.35625
932.36875	941.36875
932.38125	941.38125
932.39375	941.39375
932.40625	941.40625
932.41875	941.41875
932.43125	941.43125
932.44375	941.44375
932.45625	941.45625
932.46875	941.46875
932.48125	941.48125
932.49375	941.49375

(5) Equivalent power and antenna heights for multiple address master stations:

Antenna height (AAT) in meters	Maximum effective radiated power	
	Watts	dBm
Above 305	200	53
Above 274 to 305	250	54
Above 244 to 274	315	55
Above 213 to 244	400	56
Above 182 to 213	500	57
Above 152.5 to 182	630	58
152.5 and below	1,000	60

For mobile operations the maximum ERP is 25 watts (44 dBm).

(6) Fixed point-to-point frequencies.

TABLE 8.—PAIRED FREQUENCIES

[All frequencies may be used by Common Carrier Fixed Point-to-Point and Private Operational Fixed Point-to-Point Microwave Service licensees; 25 kHz bandwidth]

Transmit (receive) (MHz)	Receive (transmit) (MHz)
932.5125	941.5125
932.5375	941.5375
932.5625	941.5625
932.5875	941.5875
932.6125	941.6125
932.6375	941.6375
932.6625	941.6625
934.8375	943.8375
934.8625	943.8625
934.8875	943.8875
934.9125	943.9125
934.9375	943.9375
934.9625	943.9625
934.9875	943.9875

TABLE 9.—PAIRED FREQUENCIES

[Frequencies may be used only by Private Operational Fixed Point-to-Point Microwave Service licensees, unless otherwise noted; 50 kHz bandwidth]

Transmit (receive) (MHz)	Receive (transmit) (MHz)
932.70 [1]	[1] 941.70
932.75 [1]	[1] 941.75
934.80 [1]	[1] 943.80
956.65	953.05
956.75	953.15
956.85	953.25
956.95	953.35
957.05	953.45
957.25	953.65
957.35	953.75
957.45	953.85
957.65	954.05
957.75	954.15
957.85	954.25
958.05	954.45
958.15	954.55
958.25	954.65
958.45	954.85
958.55	954.95
958.65	955.05
958.85	955.25
958.95	955.35
959.05	955.45
959.25	955.65
959.35	955.75
959.45	955.85
959.55	955.95
959.65	956.05

[1] These frequencies also may be used by Common Carrier Fixed Point-to-Point Microwave licensees.

TABLE 10.—PAIRED FREQUENCIES

[Frequencies may be used only by Private Operational Fixed Point-to-Point Microwave licensees, unless otherwise noted; 100 kHz bandwidth]

Transmit (receive) (MHz)	Receive (transmit) (MHz)
932.8250 [1]	[1] 941.8250
932.9250 [1]	[1] 941.9250
933.0250 [1]	[1] 942.0250
934.5250 [1]	[1] 943.5250
934.6250 [1]	[1] 943.6250
934.7250 [1]	[1] 943.7250
956.6	953.0
956.7	953.1
956.8	953.2
956.9	953.3
957.0	953.4
957.1	953.5
957.2	953.6
957.3	953.7
957.4	953.8
957.5	953.9
957.6	954.0
957.7	954.1
957.8	954.2
957.9	954.3
958.0	954.4
958.1	954.5
958.2	954.6
958.3	954.7
958.4	954.8
958.5	954.9
958.6	955.0
958.7	955.1
958.8	955.2
958.9	955.3
959.0	955.4
959.1	955.5
959.2	955.6
959.3	955.7
959.4	955.8
959.5	955.9
959.6	956.0
959.7	956.1

[1] These frequencies also may be used by Common Carrier Fixed Point-to-Point Microwave licensees.

TABLE 11.—PAIRED FREQUENCIES

[Frequencies may be used only by Private Operational Fixed Point-to-Point Microwave licensees, unless otherwise noted; 200 kHz bandwidth]

Transmit (receive) (MHz)	Receive (transmit) (MHz)
933.1750 [1]	[1] 942.1750
933.3750 [1]	[1] 942.3750
933.5750 [1]	[1] 942.5750
933.7750 [1]	[1] 942.7750
933.9750 [1]	[1] 942.9750
933.1750 [1]	[1] 943.1750
933.3750 [1]	[1] 943.3750
957.15	953.55
957.55	953.95
957.95	954.35
958.35	954.75
958.75	955.15

TABLE 11.—PAIRED FREQUENCIES—Continued

[Frequencies may be used only by Private Operational Fixed Point-to-Point Microwave licensees, unless otherwise noted; 200 kHz bandwidth]

Transmit (receive) (MHz)	Receive (transmit) (MHz)
959.15	955.55

[1] These frequencies also may be used by Common Carrier Fixed Point-to-Point Microwave licensees.

(c) *1850–1990 MHz.*

(1) 10 MHz maximum bandwidth.

PAIRED FREQUENCIES

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1855	1935
1865	1945
1875	1955
1885	1965
1895	1975
1905	1985

UNPAIRED FREQUENCIES

1915 [1]
1925 [1]

[1] Available for systems employing one-way transmission.

(2) 5 MHz maximum bandwidth.

PAIRED FREQUENCIES

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1860	1940
1870	1950
1880	1960
1890	1970
1900	1980

(d) *2130–2150 MHz; 2180–2200 MHz;* 800 kHz maximum bandwidth, unless noted.

PAIRED FREQUENCIES

2130–2150	2180–2200
Transmit (receive) (MHz)	Receive (transmit) (MHz)
2130.8	2180.8
2131.6	[1] 2181.6
2132.4	2182.4
2133.2	[1] 2183.2
2134.0	2184.0
2134.8	[1] 2184.8
2135.6	2185.6
2136.4	[1] 2186.4
2137.2	2187.2
2138.0	[1] 2188.0
2139.6	[1] 2189.6
2138.8	2188.8
2140.4	2190.4
2141.2	[1] 2191.2
2142.0	2192.0
2142.8	[1] 2192.8
2143.6	2193.6
2144.4	[1] 2194.4
2145.2	2195.2
2146.0	[1] 2196.0
2146.8	2196.8
2147.6	[1] 2197.6
2148.4	2198.4
2149.2	2199.2

[1] Consideration will be given on a case-by-case basis to assigning these frequency pairs to systems employing 1600 KHz bandwidth transmissions.

(e) *2150–2160 MHz:* Specific frequency of operation to be set forth in authorization. Omnidirectional transmission only may be authorized, subject to providing protection from harmful interference to previously authorized stations in this service and in other services sharing this band.

(f) *2450–2500 MHz:*

(1) This band is shared with other communications services and is not subject to protection from interference from industrial, scientific, and medical devices operating on 2450 MHz.

(2) Stations licensed in this band under this part prior to March 1, 1996, are grandfathered and may continue their authorized operations. Stations licensed in the 2483.5–2500 MHz portion of the band as of July 25, 1985, or on a subsequent date as a result of submitting an application on or before July 25, 1985, are grandfathered, and may continue operations, subject only to license renewal, on a co-primary basis with the Radiodetermination Satellite Service.

(3) 625 KHz bandwidth channels. The normal bandwidth authorized will be 625 KHz. Upon adequate justification, additional contiguous channels may be authorized to provide up to a 2500 KHz bandwidth.

PAIRED FREQUENCIES

Transmit (receive) (MHz)	Receive (transmit) (MHz)
2450.3125	2467.5625
2450.9375	2468.1875
2451.5625	2468.8125
2452.1875	2469.4375
2452.8125	2470.0625
2453.4375	2470.6875
2454.0625	2471.3125
2454.6875	2471.9375
2455.3125	2472.5625

PAIRED FREQUENCIES—Continued

Transmit (receive) (MHz)	Receive (transmit) (MHz)
2455.9375	2473.1875
2456.5625	2473.8125
2457.1875	2474.4375
2457.8125	2475.0625
2458.4375	2475.6875
2459.0625	2476.3125
2459.6875	2476.9375
2460.3125	2477.5625
2460.9375	2478.1875
2461.5625	2478.8125
2462.1875	2479.4375
2462.8125	2480.0625
2463.4375	2480.6875
2464.0625	2481.3125
2464.6875	2481.9375
2465.3125	2482.5625
2465.9375	2483.1875

(g) *2500–2690 MHz:* Operational-fixed stations may be authorized on the following frequencies:

FREQUENCIES (MHz)

2686.9375
2687.9375
2688.5625
2688.6875
2688.9375
2689.5625
2689.6875

Note to (g): Operational-Fixed stations authorized in this band as of July 16, 1971, which do not comply with the provisions of this part may continue to operate on the frequencies assigned on a coequal basis with other stations operating in accordance with the Table of Frequency allocations. Requests for subsequent license renewals or modifications for such stations will be considered. However, expansion of systems comprised of such stations will not be permitted, except pursuant to the provisions of this part. No new licenses will be issued under this part until specific operating parameters are established for this band.

(h) *3,700 to 4,200 MHz:* 20 MHz maximum authorized bandwidth.

20 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
3710	3750
3730	3770
3790	3830
3810	3850
3870	3910
3890	3930
3950	3990
3970	4010
4030	4070
4050	4090
4110	4150
4130	4170

Transmit (receive) (MHz)	Receive (transmit) (MHz)
N/A	[1] 4190

[1] This frequency may be assigned for unpaired use.

(i) *5,925 to 6,425 MHz:* 30 MHz authorized bandwidth.

(1) 400 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5925.225	6177.100
5925.625	6177.500
5926.050	6177.925
5926.450	6178.325
5926.875	6178.750
5927.275	6179.150
5927.725	6179.600
5928.125	6180.000
5928.550	6180.425
5928.950	6180.825
5929.375	6181.250
5929.775	6181.650
6168.350	6420.225
6168.750	6420.625
6169.175	6421.050
6169.575	6421.450
6170.000	6421.875
6170.400	6422.275
6170.850	6422.725
6171.250	6423.125
6171.675	6423.550
6172.075	6423.950
6172.500	6424.375
6172.900	6424.775

(2) 800 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5925.425	6177.300
5926.250	6178.125
5927.075	6178.950
5927.925	6179.800
5928.750	6180.625
5929.575	6181.450
6168.550	6420.425
6169.375	6421.250
6170.200	6422.075
6171.050	6422.925
6171.875	6423.750
6172.700	6424.575

(3) 1.25 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5925.625	6177.500
5926.875	6178.750
5928.125	6180.000
5929.375	6181.250
6108.893	6360.933
6110.128	6362.168
6111.364	6363.404
6112.599	6364.639
6113.834	6365.874
6115.070	6367.110
6116.305	6368.345
6117.541	6369.581
6118.776	6370.816
6120.011	6372.051
6121.247	6373.287
6122.482	6374.522
6123.718	6375.758
6124.953	6376.993
6126.189	6378.229
6127.424	6379.464
6128.659	6380.699
6129.895	6381.935
6131.130	6383.170
6132.366	6384.406
6133.601	6385.641
6134.836	6386.876
6136.072	6388.112
6137.307	6389.347
6138.543	6390.583
6139.778	6391.818
6141.014	6393.054
6142.249	6394.289
6143.484	6395.524
6144.720	6396.760
6145.955	6397.995
6147.191	6399.231
6148.426	6400.466
6149.661	6401.701
6150.897	6402.937
6152.132	6404.172
6153.368	6405.408
6154.603	6406.643
6155.839	6407.879
6157.074	6409.114
6158.309	6410.349
6159.545	6411.585
6160.780	6412.820
6162.016	6414.056
6163.251	6415.291
6164.486	6416.526
6165.722	6417.762
6166.957	6418.997
6168.750	6420.625
6170.000	6421.875
6171.250	6423.125
6172.500	6424.375
6173.750 [1]	N/A
6175.000 [1]	N/A
6176.250 [1]	N/A

[1] These frequencies may be assigned for unpaired use.

(4) 2.5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5926.250	6178.125
5928.750	6180.625
6109.510	6361.550
6111.981	6364.021
6114.452	6366.492
6116.923	6368.963
6119.394	6371.434
6121.865	6373.905
6124.335	6376.375
6126.806	6378.846
6129.277	6381.317
6131.748	6383.788
6134.219	6386.259
6136.690	6388.730

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6139.160	6391.200
6141.631	6393.671
6144.102	6396.142
6146.573	6398.613
6149.044	6401.084
6151.515	6403.555
6153.985	6406.025
6156.456	6408.496
6158.927	6410.967
6161.398	6413.438
6163.869	6415.909
6166.340	6418.380
6169.375	6421.250
6171.875	6423.750
6175.625 [1]	N/A

[1] This frequency may be assigned for un-paired use.

(5) 3.75 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6111.364	6363.404
6116.305	6368.345
6121.247	6373.287
6126.189	6378.229
6131.130	6383.170
6136.072	6388.112
6141.014	6393.054
6145.955	6397.995
6150.897	6402.937
6155.839	6407.879
6160.780	6412.820
6165.722	6417.762
6175.000 [1]	N/A

[1] This frequency may be assigned for un-paired use.

(6) 5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6110.75	6362.79
6115.69	6367.73
6120.63	6372.67
6125.57	6377.61
6130.51	6382.55
6135.45	6387.49
6140.40	6392.44
6145.34	6397.38
6150.28	6402.32
6155.22	6407.26
6160.16	6412.20
6165.10	6417.14

(7) 10 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5935.32	6187.36
5945.20	6197.24
5955.08	6207.12
5964.97	6217.01
5974.85	6226.89
5984.73	6236.77
5994.62	6246.66
6004.50	6256.54
6014.38	6266.42
6024.27	6276.31
6034.15	6286.19
6044.03	6296.07
6053.92	6305.96
6063.80	6315.84
6073.68	6325.72
6083.57	6335.61
6093.45	6345.49
6103.33	6355.37
6113.22 [1]	[1] 6365.26
6123.10 [1]	[1] 6375.14
6132.98 [1]	[1] 6385.02
6142.87 [1]	[1] 6394.91
6152.75 [1]	[1] 6404.79
6162.63 [1]	[1] 6414.67

[1] Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

(8) 30 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5945.20	6197.24
5974.85	6226.89
6004.50	6256.54
6034.15	6286.19
6063.80	6315.84
6093.45	6345.49
6123.10 [1]	[1] 6375.14
6152.75 [1]	[1] 6404.79

[1] Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

(j) *6,425 to 6,525 MHz:* Mobile. Paired and un-paired operations permitted. Use of this spectrum for direct delivery of video programs to the general public or multi-channel cable distribution is not permitted. This band is co-equally shared with mobile stations licensed pursuant to parts 21, 74, and 78 of this chapter. Stations not intended to be operated while in motion will be licensed under the provision of § 101.13(b). The following channel plans apply.

(1) 1 MHz maximum authorized bandwidth channels:

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
6425.5	6475.5
6450.5	6500.5

(2) 8 MHz maximum authorized bandwidth channels:

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
6430.0	6480.0
6438.0	6488.0
6446.0	6596.0
6455.0	6505.0
6463.0	6513.0
6471.0	6521.0

(3) 25 MHz maximum authorized bandwidth channels:

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
6437.5	6487.5
6462.5	6512.5

(k) On the condition that harmful interference will not be caused to services operating in accordance with the Table of Frequency Allocations, persons holding valid station authorizations on July 15, 1963, to provide television nonbroadcast pickup service in the 6525–6575 MHz band may be authorized to continue use of the frequencies specified in their authorization for such operations until July 15, 1968.

(l) *6,525 to 6,875 MHz.* 10 MHz authorized bandwidth.

(1) 400 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6525.225	6870.225
6525.625	6870.625
6526.050	6871.050
6526.450	6871.450
6526.875	6871.875
6527.275	6872.275
6527.725	6872.725
6528.125	6873.125
6528.550	6873.550
6528.950	6873.950
6529.375	6874.375
6529.775	6874.775

(2) 800 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6525.425	6870.425
6526.250	6871.250
6527.075	6872.075
6527.925	6872.925
6528.750	6873.750
6529.575	6874.575

(3) 1.25 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6525.625	6870.625

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6526.875	6871.875
6528.125	6873.125
6529.375	6874.375
6540.625 [1]	[1] 6718.125
6541.875 [1]	[1] 6719.375
6543.125 [1]	[1] 6713.125
6544.375 [1]	[1] 6714.375
6545.625 [1]	[1] 6715.625
6546.875 [1]	[1] 6716.875
6548.125	6728.125
6549.375	6729.375
6550.625	6730.625
6551.875	6731.875
6553.125 [1]	[1] 6723.125
6554.375 [1]	[1] 6724.375
6555.625 [1]	[1] 6725.625
6556.875 [1]	[1] 6726.875
6558.125	6738.125
6559.375	6739.375
6560.625	6740.625
6561.875	6741.875
6563.125	6733.125
6564.375	6734.375
6565.625	6735.625
6566.875	6736.875
6568.125 [1]	[1] 6720.625
6569.375 [1]	[1] 6721.875
6580.625 [1]	[1] 6868.125
6581.875 [1]	[1] 6869.375
6583.125	6743.125
6584.375	6744.375
6585.625	6745.625
6586.875	6746.875
6588.125	6748.125
6589.375	6749.375
6590.625	6750.625
6591.875	6751.875
6593.125	6753.125
6594.375	6754.375
6595.625	6755.625
6596.875	6756.875
6598.125	6758.125
6599.375	6759.375
6600.625	6760.625
6601.875	6761.875
6603.125	6763.125
6604.375	6764.375
6605.625	6765.625
6606.875	6766.875
6608.125	6768.125
6609.375	6769.375
6610.625	6770.625
6611.875	6771.875
6613.125	6773.125
6614.375	6774.375
6615.625	6775.625
6616.875	6776.875
6618.125	6778.125
6619.375	6779.375
6620.625	6780.625
6621.875	6781.875
6623.125	6783.125
6624.375	6784.375
6625.625	6785.625
6626.875	6786.875
6628.125	6788.125
6629.375	6789.375
6630.625	6790.625
6631.875	6791.875
6633.125	6793.125
6634.375	6794.375
6635.625	6795.625
6636.875	6796.875
6638.125	6798.125
6639.375	6799.375
6640.625	6800.625
6641.875	6801.875
6643.125	6803.125
6644.375	6804.375
6645.625	6805.625
6646.875	6806.875
6648.125	6808.125
6649.375	6809.375
6650.625	6810.625
6651.875	6811.875
6653.125	6813.125
6654.375	6814.375
6655.625	6815.625
6656.875	6816.875
6658.125	6818.125
6659.375	6819.375
6660.625	6820.625
6661.875	6821.875
6663.125	6823.125
6664.375	6824.375
6665.625	6825.625
6666.875	6826.875
6668.125	6828.125
6669.375	6829.375
6670.625	6830.625
6671.875	6831.875
6673.125	6833.125
6674.375	6834.375
6675.625	6835.625
6676.875	6836.875
6678.125	6838.125
6679.375	6839.375
6680.625	6840.625
6681.875	6841.875
6683.125	6843.125
6684.375	6844.375
6685.625	6845.625
6686.875	6846.875
6688.125	6848.125
6689.375	6849.375
6690.625	6850.625
6691.875	6851.875
6693.125	6853.125
6694.375	6854.375
6695.625	6855.625
6696.875	6856.875
6698.125	6858.125
6699.375	6859.375
6700.625	6860.625
6701.875	6861.875
6703.125	6863.125
6704.375	6864.375
6705.625	6865.625
6706.875	6866.875
6708.125 [1]	[1] 6710.625
6709.375 [1]	[1] 6711.875

[1] These frequencies may be assigned for unpaired use.

(4) 2.5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6526.25	6871.25
6528.75	6873.75
6541.25 [1]	[1] 6718.75
6543.75 [1]	[1] 6713.75
6546.25 [1]	[1] 6716.25
6548.75	6728.75
6551.25	6731.25
6553.75 [1]	[1] 6723.75
6556.25 [1]	[1] 6726.25
6558.75	6738.75
6561.25	6741.25
6563.75	6733.75
6566.25	6736.25
6568.75 [1]	[1] 6721.25
6581.25 [1]	[1] 6868.75
6583.75	6743.75
6586.25	6746.25
6588.75	6748.75
6591.25	6751.25
6593.75	6753.75
6596.25	6756.25
6598.75	6758.75
6601.25	6761.25
6603.75	6763.75
6606.25	6766.25
6608.75	6768.75
6611.25	6771.25
6613.75	6773.75
6616.25	6776.25
6618.75	6778.75
6621.25	6781.25
6623.75	6783.75
6626.25	6786.25
6628.75	6788.75
6631.25	6791.25
6633.75	6793.75
6636.25	6796.25
6638.75	6798.75
6641.25	6801.25
6643.75	6803.75
6646.25	6806.25
6648.75	6808.75
6651.25	6811.25
6653.75	6813.75
6656.25	6816.25
6658.75	6818.75
6661.25	6821.25
6663.75	6823.75
6666.25	6826.25
6668.75	6828.75
6671.25	6831.25
6673.75	6833.75
6676.25	6836.25
6678.75	6838.75
6681.25	6841.25
6683.75	6843.75
6686.25	6846.25
6688.75	6848.75
6691.25	6851.25
6693.75	6853.75
6696.25	6856.25
6698.75	6858.75
6701.25	6861.25
6703.75	6863.75
6706.25	6866.25
6708.75 [1]	[1] 6711.25

[1] These frequencies may be assigned for unpaired use.

(5) 3.75 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6545.625 [1]	6715.625 [1]

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6550.625	6730.625
6555.625 [1]	6725.625 [1]
6560.625	6740.625
6565.625	6735.625
6585.625	6745.625
6590.625	6750.625
6595.625	6755.625
6600.625	6760.625
6605.625	6765.625
6610.625	6770.625
6615.625	6775.625
6620.625	6780.625
6625.625	6785.625
6630.625	6790.625
6635.625	6795.625
6640.625	6800.625
6645.625	6805.625
6650.625	6810.625
6655.625	6815.625
6660.625	6820.625
6665.625	6825.625
6670.625	6830.625
6675.625	6835.625
6680.625	6840.625
6685.625	6845.625
6690.625	6850.625
6695.625	6855.625
6700.625	6860.625
6705.625	6865.625
6710.625 [1]	[1] 6720.625

(6) 5 MHz bandwidth channels:

[1] These frequencies may be assigned for unpaired use.

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6545 [1]	[1] 6715
6550	6730
6555 [1]	[1] 6725
6560	6740
6565	6735
6585	6745
6590	6750
6595	6755
6600	6760
6605	6765
6610	6770
6615	6775
6620	6780
6625	6785
6630	6790
6635	6795
6640	6800
6645	6805
6650	6810
6655	6815
6660	6820
6665	6825
6670	6830
6675	6835
6680	6840
6685	6845
6690	6850
6695	6855
6700	6860
6705	6865
6710 [1]	[1] 6720

[1] These frequencies may be assigned for unpaired use.

(7) 10 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6545 [1]	[1] 6715
6555 [1]	[1] 6725
6565	6735
6585	6745
6595	6755
6605	6765
6615	6775
6625	6785
6635	6795
6645	6805
6655	6815
6665	6825
6675	6835
6685	6845
6695	6855
6705	6865
6535 [2]	[2] 6575

[1] These frequencies may be assigned for unpaired use.

[2] Available only for emergency restoration, maintenance bypass, or other temporary-fixed purposes. Such uses are authorized on a non-interference basis to other frequencies in this band. Interference analysis required by § 101.105 does not apply to this frequency pair.

(m) *10,550 to 10,680 MHz.* 5 MHz authorized bandwidth.

(1) 400 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10605.225	10670.225
10605.625	10670.625
10606.050	10671.050
10606.450	10671.450
10606.875	10671.875
10607.275	10672.275
10607.725	10672.725
10608.125	10673.125
10608.550	10673.550
10608.950	10673.950
10609.375	10674.375
10609.775	10674.775
10610.225	10675.225
10610.625	10675.625
10611.050	10676.050
10611.450	10676.450
10611.875	10676.875
10612.275	10677.275
10612.725	10677.725
10613.125	10678.125
10613.550	10678.550
10613.950	10678.950
10614.375	10679.375
10614.775	10679.775

(2) 800 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10605.425	10670.425
10606.250	10671.250
10607.075	10672.075
10607.925	10672.925
10608.750	10673.750
10609.575	10674.575
10610.425	10675.425
10611.250	10676.250
10612.075	10677.075
10612.925	10677.925
10613.750	10678.750
10614.575	10679.575

(3) 1.25 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10550.625	10615.625
10551.875	10616.875
10553.125	10618.125
10554.375	10619.375
10555.625	10620.625
10556.875	10621.875
10558.125	10623.125
10559.375	10624.375
10560.625	10625.625
10561.875	10626.875
10563.125	10628.125
10564.375	10629.375
10565.625	10630.625
10566.875	10631.875
10568.125	10633.125
10569.375	10634.375
10570.625	10635.625
10571.875	10636.875
10573.125	10638.125
10574.375	10639.375
10575.625	10640.625
10576.875	10641.875
10578.125	10643.125
10579.375	10644.375
10580.625	10645.625
10581.875	10646.875
10583.125	10648.125
10584.375	10649.375
10585.625	10650.625
10586.875	10651.875
10588.125	10653.125
10589.375	10654.375
10590.625	10655.625
10591.875	10656.875
10593.125	10658.125
10594.375	10659.375
10595.625	10660.625
10596.875	10661.875
10598.125	10663.125
10599.375	10664.375
10600.625	10665.625
10601.875	10666.875
10603.125	10668.125
10604.375	10669.375
10605.625	10670.625
10606.875	10671.875
10608.125	10673.125
10609.375	10674.375
10610.625	10675.625
10611.875	10676.875
10613.125	10678.125
10614.375	10679.375

(4) 2.5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10551.25	10616.25
10553.75	10618.75
10556.25	10621.25
10558.75	10623.75
10561.25	10626.25
10563.75	10628.75
10566.25	10631.25
10568.75	10633.75
10571.25	10636.25
10573.75	10638.75
10576.25	10641.25
10578.75	10643.75
10581.25 [1]	[1] 10646.25
10583.75 [1]	[1] 10648.75
10586.25 [1]	[1] 10651.25
10588.75 [1]	[1] 10653.75
10591.25 [1]	[1] 10656.25
10593.75 [1]	[1] 10658.75
10596.25 [1]	[1] 10661.25
10598.75 [1]	[1] 10663.75
10601.25 [1]	[1] 10666.25
10603.75 [1]	[1] 10668.75
10606.25 [1]	[1] 10671.25
10608.75 [1]	[1] 10673.75
10611.25 [1]	[1] 10676.25
10613.75 [1]	[1] 10678.75

[1] These frequencies are also available for DEMS stations licensed, in operation, or applied for prior to July 15, 1993.

(5) 3.75 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10553.125	10618.125
10558.125	10623.125
10563.125	10628.125
10568.125	10633.125
10573.125	10638.125
10578.125	10643.125
10583.125	10648.125
10588.125	10653.125
10593.125	10658.125
10598.125	10663.125
10603.125	10668.125

(6) 5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10552.5	10617.5
10557.5	10622.5
10562.5	10627.5
10567.5 [1]	[1] 10632.5
10572.5 [1]	[1] 10637.5
10577.5 [1]	[1] 10642.5
10582.5 [1]	[1] 10647.5
10587.5	10652.5
10592.5	10657.5
10597.5	10662.5
10602.5	10667.5

[1] These frequencies are also available for DEMS stations licensed, in operation, or applied for prior to July 15, 1993.

(n) Point-to-multipoint systems licensed, in operation, or applied for in the 10,550–10,680 MHz band prior to July 15, 1993, are permitted to use the DEMS frequencies noted above if they prior coordinate such usage with the necessary parties including 10 GHz point-to-point applicants and licensees. DEMS Nodal Stations shall use the band 10,565–10,615 MHz while DEMS User Stations shall use the band 10,630–10,680 MHz.

(o) *10,700 to 11,700 MHz.* 40 MHz authorized bandwidth.

(1) 1.25 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
11130.625	11620.625
11131.875	11621.875
11133.125	11623.125
11134.375	11624.375
11135.625	11625.625
11136.875	11626.875
11138.125	11628.125
11139.375	11629.375
11140.625	11630.625
11141.875	11631.875
11143.125	11633.125
11144.375	11634.375
11145.625	11635.625
11146.875	11636.875
11148.125	11638.125
11149.375	11639.375
11150.625	11640.625
11151.875	11641.875
11153.125	11643.125
11154.375	11644.375
11155.625	11645.625
11156.875	11646.875
11158.125	11648.125
11159.375	11649.375
11160.625	11650.625
11161.875	11651.875
11163.125	11653.125
11164.375	11654.375
11165.625	11655.625
11166.875	11656.875
11168.125	11658.125
11169.375	11659.375
11170.625	11660.625
11171.875	11661.875
11173.125	11663.125
11174.375	11664.375
11175.625	11665.625
11176.875	11666.875
11178.125	11668.125
11179.375	11669.375
11180.625	11680.625
11181.875	11681.875
11183.125	11683.125
11184.375	11684.375
11185.625	11685.625
11186.875	11686.875
11188.125	11688.125
11189.375	11689.375
11190.625	11690.625
11191.875	11691.875
11193.125	11693.125
11194.375	11694.375
11195.625	11695.625
11196.875	11696.875
11198.125	11698.125
11199.375	11699.375

(2) 2.5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
11131.25	11621.25
11133.75	11623.75
11136.25	11626.25
11138.75	11628.75
11141.25	11631.25
11143.75	11633.75
11146.25	11636.25
11148.75	11638.75
11151.25	11641.25
11153.75	11643.75
11156.25	11646.25
11158.75	11648.75
11161.25	11651.25
11163.75	11653.75
11166.25	11656.25
11168.75	11658.75
11171.25	11661.25
11173.75	11663.75
11176.25	11666.25
11178.75	11668.75
11181.25	11681.25
11183.75	11683.75
11186.25	11686.25
11188.75	11688.75
11191.25	11691.25
11193.75	11693.75
11196.25	11696.25
11198.75	11698.75

(3) 3.75 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
11133.125	11623.125
11138.125	11628.125
11143.125	11633.125
11148.125	11638.125
11153.125	11643.125
11158.125	11648.125
11163.125	11653.125
11168.125	11658.125
11173.125	11663.125
11178.125	11668.125
11183.125	11683.125
11188.125	11688.125
11193.125	11693.125
11198.125	11698.125

(4) 5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
11132.5	11622.5
11137.5	11627.5
11142.5	11632.5
11147.5	11637.5
11152.5	11642.5
11157.5	11647.5
11162.5	11652.5
11167.5	11657.5
11172.5	11662.5
11177.5	11667.5
11182.5	11682.5
11187.5	11687.5
11192.5	11692.5
11197.5	11697.5

(5) 10 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10705	11205
10715	11215
10725[2]	[1] 11675
10735	11225
10745	11235
10755	11245
10765	11255
10775	11265
10785	11275
10795	11285
10805	11295
10815	11305
10825	11315
10835	11325
10845	11335
10855	11345
10865	11355
10875	11365
10885	11375
10895	11385
10905	11395
10915	11405
10925	11415
10935	11425
10945	11435
10955	11445
10965	11455
10975	11465
10985	11475
10995	11485
11005	11495
11015	11505
11025	11515
11035	11525
11045	11535
11055	11545
11065	11555
11075	11565
11085	11575
11095	11585
11105	11595
11115	11605
11125	11615
11135[1]	[1] 11625
11145[1]	[1] 11635
11155[1]	[1] 11645
11165[1]	[1] 11655
11175[1]	[1] 11665
11185[1]	[1] 11685
11195[1]	[1] 11695

[1] Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

[2] These frequencies may be assigned for unpaired use.

(6) 30 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10715	11215
10755	11245
10795	11285
10835	11325
10875	11365
10915	11405
10955	11445
10995	11485
11035	11525
11075	11565
11115	11605
11155[1]	[1] 11645
11185[1]	[1] 11685

[1] Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

(7) 40 MHz bandwidth channels:[2]

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10735	11225
10775	11265
10815	11305
10855	11345
10895	11385
10935	11425
10975	11465
11015	11505
11055	11545
11095	11585
11135[1]	[1] 11625
11175[1]	[1] 11665

[1] Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

[2] In congested areas where 40 MHz channels block most 30 MHz channels, radios authorized for 30 MHz bandwidths may use the 40 MHz channels. In uncongested areas, 30 MHz channels should be used.

(p) *12,000–12700 MHz*: The Commission has allocated the 12.2–12.7 GHz band for use by the broadcasting-satellite service. Private operational fixed point-to-point microwave stations authorized after September 9, 1983, will be licensed on a noninterference basis and are required to make any and all adjustments necessary to prevent interference to operating domestic broadcasting-satellite systems. Notwithstanding any other provisions, no private operational fixed point-to-point microwave stations are permitted to cause interference to broadcasting-satellite stations of other countries operating in accordance with the Region 2 plan for the broadcasting-satellite service established at the 1983 WARC.

(q) Special provisions for low power, limited coverage systems in the band segments 12.2 12.7 GHz. Notwithstanding any contrary provisions in this part the frequency pairs 12.220/12.460 GHz, 12.260/12.500 GHz, 12.300/12.540 GHz and 12.340/12.580 GHz may be authorized for low power, limited coverage systems subject to the following provisions:

(1) Maximum equivalent isotropically radiated power (EIRP) shall be 55 dBm;

(2) The rated transmitter output power shall not exceed 0.500 watts;

(3) Frequency tolerance shall be maintained to within 0.01 percent of the assigned frequency;

(4) Maximum beamwidth not to exceed 4 degrees. However, the sidelobe suppression criteria contained in § 101.115 of this part shall not apply, except that a minimum front-to-back ratio of 38 dB shall apply;

(5) Upon showing of need, a maximum bandwidth of 12 MHz may be authorized per frequency assigned;

(6) Radio systems authorized under the provisions of this section shall have no more than three hops in tandem, except upon showing of need, but in any event the maximum tandem length shall not exceed 40 km (25 miles);

(7) Interfering signals at the receiver antenna terminals of stations authorized under this section shall not exceed −90 dBm and −70 dBm respectively, for co-channel and adjacent channel interfering signals, and

(8) Stations authorized under the provisions of this section shall provide the protection from interference specified in § 101.105 to stations operating in accordance with the provisions of this part.

(r) *17,700 to 19,700 MHz*: Applicants may use either a two-way link or one frequency of a frequency pair for a one-way link and must coordinate proposed operations pursuant to the procedures required in § 101.103. (Note, however, that stations authorized as of September 9, 1983, to use frequencies in the band 17.7–19.7 GHz may, upon proper application, continue to be authorized for such operations.)

(1) 2 MHz maximum authorized bandwidth channel:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
18141.0	N/A

(2) 5 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
340 MHz Separation	
18762.5	19102.5
18767.5	19107.5
18772.5	19112.5
18777.5	19117.5
18782.5	19122.5
18787.5	19127.5
18792.5	19132.5
18797.5	19137.5
18802.5	19142.5
18807.5	19147.5
18812.5	19152.5
18817.5	19157.5

(3) 6 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
216 MHz Separation	
18145.0	N/A
18151.0	18367.0
18157.0	18373.0
18163.0	18379.0
18169.0	18385.0
18175.0	18391.0
18181.0	18397.0
18187.0	18403.0
18193.0	18409.0
18199.0	18415.0
18205.0	18421.0
18211.0	18427.0
18217.0	18433.0
18223.0	18439.0
18229.0	18445.0
18235.0	18451.0
18241.0	18457.0
18247.0	18463.0
18253.0	18469.0
18259.0	18475.0
18265.0	18481.0
18271.0	18487.0
18277.0	18493.0
18283.0	18499.0
18289.0	18505.0
18295.0	18511.0
18301.0	18517.0
18307.0	18523.0
18313.0	18529.0
18319.0	18535.0
18325.0	18541.0
18331.0	18547.0
18337.0	18533.0
18343.0	18559.0
18349.0	18565.0
18355.0	18571.0
18361.0	18577.0

(4) 10 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17705.0	19265.0
17715.0	19275.0
17725.0	19285.0
17735.0	19295.0
17745.0	19305.0
17755.0	19315.0
17765.0	19325.0
17775.0	19335.0
17785.0	19345.0
17795.0	19355.0
17805.0	19365.0
17815.0	19375.0
17825.0	19385.0
17835.0	19395.0
17845.0	19405.0
17855.0	19415.0
17865.0	19425.0
17875.0	19435.0
17885.0	19445.0
17895.0	19455.0
17905.0	19465.0
17915.0	19475.0
17925.0	19485.0
17935.0	19495.0
17945.0	19505.0
17955.0	19515.0
17965.0	19525.0
17975.0	19535.0
17985.0	19545.0
17995.0	19555.0
18005.0	18565.0
18015.0	19575.0
18025.0	19585.0
18035.0	19595.0
18045.0	19605.0
18055.0	19615.0
18065.0	19625.0
18075.0	19635.0
18085.0	19645.0
18095.0	19655.0
18105.0	19665.0
18115.0	19675.0
18125.0	19685.0
18135.0	19695.0

(5) 20 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
340 MHz Separation	
18585.0	18925.0
18595.0	18935.0
18605.0	18945.0
18615.0	18955.0
18625.0	18965.0
18635.0	18975.0
18645.0	18985.0
18655.0	18995.0
18665.0	19005.0
18675.0	19015.0
18685.0	19025.0
18695.0	19035.0
18705.0	19045.0
18715.0	19055.0
18725.0	19065.0
18735.0	19075.0
18745.0	19085.0
18755.0	19095.0
18765.0	19105.0
18775.0	19115.0
18785.0	19125.0
18795.0	19135.0
18805.0	19145.0
18815.0	19155.0
1560 MHz Separation	
17710.0	19270.0
17730.0	19290.0
17750.0	19310.0
17770.0	19330.0
17790.0	19350.0
17810.0	19370.0
17830.0	19390.0
17850.0	19410.0
17870.0	19430.0
17890.0	19450.0
17910.0	19470.0
17930.0	19490.0
17950.0	19510.0
17970.0	19530.0
17990.0	19550.0
18010.0	19570.0
18030.0	19590.0
18050.0	19610.0
18070.0	19630.0
18090.0	19650.0
18110.0	19670.0
18130.0	19690.0
18590.0	18930.0
340 MHz Separation	
18610.0	18950.0
18630.0	18970.0
18650.0	18990.0
18670.0	19010.0
18690.0	19030.0
18710.0	19050.0
18730.0	19070.0
18750.0	19090.0
18770.0	19110.0
18790.0	19130.0
18810.0	19150.0

(6) 40 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17720.0	19280.0
17760.0	19320.0
17800.0	19360.0
17840.0	19400.0
17880.0	19440.0
17920.0	19480.0
17960.0	19520.0
18000.0	19560.0
18040.0	19600.0
18080.0	19640.0
18120.0	19680.0

(7) 80 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
1560 MHz Separation	
17740.0	19300.0
17820.0	19380.0
17900.0	19460.0
17980.0	19540.0
18060.0	19620.0

(8) 220 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
17810.0	18470.0
18030.0	19370.0
18250.0	19590.0

(9) The following frequencies are available for point-to-multipoint DEMS Systems:

Channel No.	Nodal station frequency band (MHz) limits	User station frequency band (MHz) limits
25	18,820–18,830	19,160–19,170
26	18,830–18,840	19,170–19,180
27	18,840–18,850	19,180–19,190
28	18,850–18,860	19,190–19,200
29	18,860–18,870	19,200–19,210
30	18,870–18,880	19,210–19,220
31	18,880–18,890	19,220–19,230
32	18,890–18,900	19,230–19,240
33	18,900–18,910	19,240–19,250
34	18,910–18,920	19,250–19,260

(i) Each station will be limited to one frequency pair per SMSA. Additional channel pairs may be assigned upon a showing that the service to be provided will fully utilize the spectrum requested. A channel pair may be subdivided as desired by the licensee.

(ii) A frequency pair may be assigned to more than one licensee in the same SMSA or service area so long as the interference protection criteria of § 101.105 are met.

(10) Special provision for low power systems in the 17–700–19700 MHz band. Notwithstanding other provisions in this Rule part, licensees of point-to-multipoint channel pairs 25–29 may operate multiple low power transmitting devices within a defined service area. The service area will be a 28 kilometer omnidirectional radius originating from specified center reference coordinates. The specified center coordinates must be no closer than 56 kilometers from any co-channel nodal station or the specified center coordinates of another co-channel system. Applicants/licensees do not need to specify the location of each individual transmitting device operating within their defined service areas. Such operations are subject to the following requirements on the low power transmitting devices:

(i) Power must not exceed one watt EIRP and 100 milliwatts transmitter output power,

(ii) A frequency tolerance of 0.001% must be maintained; and

(iii) The mean power of emissions shall be attenuated in accordance with the following schedule:

(A) In any 4 kHz band, the center frequency of which is removed from the center frequency of the assigned channel by more than 50 percent of the channel bandwidth and is within the bands 18,820–18870 MHz or 19,19160–19,210 MHz:

A=35+.003(F–0.5B) dB

or,

80 dB (whichever is the lesser attenuation).

Where

A=Attenuation (in decibels) below output power level contained within the channel for a given polarization.

B=Bandwidth of channel in kHz.

F=Absolute value of the difference between the center frequency of the 4 kHz band measured at the center frequency of the channel in kHz.

(B) In any 4 kHz band the center frequency of which is outside the bands 18.820–18.870 GHz: At least $43+10\log_{10}$(mean output power in watts) decibels.

(s) Special provisions for low power, limited coverage systems in the band segments 21.8–22.0 GHz and 23.0–23.2 GHz. Notwithstanding any contrary provisions in this part the frequency pairs 21.825/23.025 GHz, 21.875/23.075 GHz, 21.925/23.125 GHz and 21.975/23.175 GHz may be authorized for low power, limited coverage systems subject to the following provisions:

(1) Maximum effective radiated power (ERP) shall be 55 dBm;

(2) The rated transmitter output power shall not exceed 0.100 watts;

(3) Frequency tolerance shall be maintained to within 0.05 percent of the assigned frequency;

(4) Maximum beamwidth not to exceed 4 degrees. However, the sidelobe suppression criteria contained in § 101.115 shall not apply, except that a minimum front-to-back ratio of 38 dB shall apply;

(5) Upon showing of need, a maximum bandwidth of 50 MHz may be authorized per frequency assigned;

(6) Radio systems authorized under the provisions of this section shall have no more than five hops in tandem, except upon showing of need, but in any event the maximum tandem length shall not exceed 40 km (25 miles);

(7) Interfering signals at the antenna terminals of stations authorized under this section shall not exceed −90 dBm and −70 dBm respectively, for co-channel and adjacent channel interfering signals; and

(8) Stations authorized under the provisions of this section shall provide the protection from interference specified in § 101.105 to stations operating in accordance with the provisions of this part.

(t) *31.0 to 31.3 GHz.* These frequencies are shared on a co-equal basis with other stations in the fixed and mobile services (see parts 74 of this chapter, 95 of this chapter, and this part 101). No interference protection is afforded to fixed or mobile stations operating in this band.

(1) 25 MHz authorized bandwidth channels, 150 MHz separation:

Transmit (receive) (MHz)	Receive) (transmit) (MHz)
31,012.5	31,162.5
31,037.5	31,187.5
31,062.5	31,212.5
31,087.5	31,237.5
31,112.5	31,262.5
31,137.5	31,287.5

(2) 50 MHz authorized bandwidth channels, 150 MHz separation:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
31,025.0	31,175.0
31,075.0	31,225.0
31,125.0	31,275.0

(u) Assignments in the band 38,600–40,000 MHz must be according to the following frequency plan:

Channel group A		Channel group B	
Channel No.	Frequency band limits MHz	Channel No.	Frequency Band limits MHz
1–A	38,600–38,650	1–B	39,300–39,350
2–A	38,650–38,700	1–B	39,350–39,400
3–A	38,700–38,750	3–B	39,400–39,450
4–A	38,750–38,800	4–B	39,450–39,500
5–A	38,800–38,850	5–B	39,500–39,550
6–A	38,850–38,900	6–B	39,550–39,600
7–A	38,900–38,950	7–B	39,600–39,650
8–A	38,950–39,000	8–B	39,650–39,700

Channel group A		Channel group B	
Channel No.	Frequency band limits MHz	Channel No.	Frequency Band limits MHz
9–A	39,000–39,050	9–B	39,700–39,750
10–A	39,050–39,100	10–B	39,750–39,800
11–A	39,100–39,150	11–B	39,800–39,850
12–A	39,150–39,200	12–B	39,850–39,900
13–A	39,200–39,250	13–B	39,900–39,950
14–A	39,250–39,300	14–B	39,950–40,000

Note to (u): These channels are assigned for use within a rectangular service area to be described in the application by the maximum and minimum latitudes and longitudes. Such service area must be as small as practical consistent with the local service requirements of the carrier. These frequency plans may be subdivided as desired by the licensee and used within the service area as desired without further authorization subject to the terms and conditions set forth in § 101.149. These frequencies may be assigned only where it is shown that the applicant will have reasonable projected requirements for a multiplicity of service points or transmission paths within the area.

(v) Fixed systems licensed, in operation, or applied for in the 3,700–4,200, 5925–6425, 6,525–6,875, 10,550–10,680, and 10,700–11,700 MHz bands prior to July 15, 1993, are permitted to use channel plans in effect prior to that date, including adding channels under those plans.

(w) Operations on other than the listed frequencies may be authorized where it is shown that the objectives or requirements of the interference criteria prescribed in § 101.105 could not otherwise be met to resolve the interference problems.

(x) The frequency 27.255 MHz in the 27.23–27.28 MHz band is allocated for assignment to microwave auxiliary stations in this service on a shared basis with other radio services. Assignments to stations on this frequency will not be protected from such interference as may be experienced from the emissions of industrial, scientific and medical equipment operating on 27.12 MHz in accordance with § 2.106 of this chapter.

§ 101.149 Special requirements for operation in the band 38,600–40,000 MHz

Assigned frequency channels in the band 38,600–40,000 MHz may be subdivided and used anywhere in the authorized service area, subject to the following terms and conditions:

(a) No interference may be caused to a previously existing station operating in another authorized service area;

(b) Each operating station must have posted a copy of the service area authorization; and

(c) The antenna structure height employed at any location may not exceed the criteria set forth in § 17.7 of this chapter unless, in each instance, authorization for use of a specific maximum antenna structure for each location has been obtained from the FAA prior to the erection of the antenna.

Subpart D—Operational Requirements

§ 101.201 Station inspection.

The licensee of each station authorized in the radio services included in this part must make the station available for inspection by representatives of the Commission at any reasonable hour.

§ 101.203 Communications concerning safety of life and property.

(a) Handling and transmission of messages concerning the safety of life or property which is in imminent danger must be afforded priority over other messages.

(b) No person may knowingly cause to be transmitted any false or fraudulent message concerning the safety of life or property, or refuse upon demand immediately to relinquish the use of a radio circuit to enable the transmission of messages concerning the safety of life or property which is in imminent danger, or knowingly interfere or otherwise obstruct the transmission of such messages.

§ 101:205 Operation during emergency.

The licensee of any station in these services may, during a period of emergency in which normal communication facilities are disrupted as a result of hurricane, flood, earthquake, or similar disaster, utilize such station for emergency communication service in a manner other than that specified in the instrument of authorization: Provided:

(a) That as soon as possible after the beginning of such emergency use, notice be sent to the Commission at Washington, DC stating the nature of the emergency and the use to which the station is being put;

(b) That the emergency use of the station must be discontinued as soon as substantially normal communication facilities are again available;

(c) That the Commission at Washington, DC must be notified immediately when such special use of the station is terminated;

(d) That, in no event, will any station engage in emergency transmission on frequencies other than, or with power in excess of, that specified in the instrument of authorization or as otherwise expressly provided by the Commission, or by law; and

(e) That the Commission may, at any time, order the discontinuance of any such emergency communication.

§ 101.207 Suspension of transmission.

Transmission must be suspended immediately upon detection by the station or operator licensee or upon notification by the Commission of a deviation from the technical requirements of the station authorization and must remain suspended until such deviation is corrected, except for transmission concerning the immediate safety of life or property, in which case transmission must be suspended immediately after the emergency is terminated.

§ 101.209 Operation of stations at temporary fixed locations for communication between the United States and Canada or Mexico.

Stations authorized to operate at temporary fixed locations may not be used for transmissions between the United States and Canada, or the United States and Mexico, without prior specific notification to, and authorization from, the Commission. Notification of such intended usage of the facilities should include a detailed showing of the operation proposed, including the parties involved, the nature of the communications to be handled, the terms and conditions of such operations, the time and place of operation, such other matters as the applicant deems relevant, and a showing as to how the public interest, convenience and necessity would be

served by the proposed operation. Such notification should be given sufficiently in advance of the proposed date of operation to permit any appropriate correlation with the respective foreign government involved (see §§ 101.31, 101.811, 101.813, and 101.815).

§ 101.211 Operator requirements.

(a) Any person, with the consent or authorization of the licensee, may employ stations in this service for the purpose of telecommunications in accordance with the conditions and limitations set forth in § 101.135.

(b) The station licensee is responsible for the proper operation of the station at all times and is expected to provide for observations, servicing and maintenance as often as may be necessary to ensure proper operation.

(c) The provisions of paragraph (a) of this section may not be construed to change or diminish in any respect the responsibility of station licensees to have and to maintain control over the stations licensed to them (including all transmitter units thereof), or for the proper functioning and operation of those stations (including all transmitter units thereof) in accordance with the terms of the licenses of those stations.

§ 101.213 Station identification.

Stations in these services are exempt from the requirement to identify transmissions by call sign or any other station identifier.

§ 101.215 Posting of station authorization and transmitter identification cards, plates, or signs.

(a) Each licensee shall post at the station the name, address and telephone number of the custodian of the station license or other authorization if such license or authorization is not maintained at the station.

(b) The requirements in paragraph (a) of this section do not apply to remote stations using frequencies listed in § 101.147(b).

§ 101.217 Station records.

Each licensee of a station subject to this part shall maintain records in accordance with the following:

(a) For all stations, the results and dates of transmitter measurements and the name of the person or persons making the measurements;

(b) For all stations, when service or maintenance duties are performed, which may affect their proper operation, the responsible operator shall sign and date an entry in the station record concerned, giving:

(1) Pertinent details of all transmitter adjustments performed by him or under his supervision; and

(2) His name and address, provided that this information, so long as it remains unchanged, is not required to be repeated in the case of a person who is regularly employed as operator on a full-time basis at the station.

(c) The records shall be kept in an orderly manner, and in such detail that the data required are readily available. Key letters or abbreviations may be used if proper meaning or explanation is set forth in the record.

(d) Each entry in the records of each station shall be signed by a person qualified to do so, having actual knowledge of the facts to be recorded.

(e) No record or portion thereof shall be erased, obliterated, or willfully destroyed within the required retention period. Any necessary correction may be made only by the person originating the entry, who shall strike out the erroneous portion, initial the correction made and indicate the date of correction.

(f) Records required by this part shall be retained by the licensee for a period of at least one year.

Subpart E—Miscellaneous Common Carrier Provisions

§ 101.301 National defense; free service.

Any common carrier authorized under the rules of this part may render to any agency of the United States Government free service in connection with the preparation for the national defense. Every such carrier rendering any such free service must make and file, in duplicate, with the Commission, on or before the 31st of July and on or before the 31st day of January in each year, reports covering the periods of 6 months ending on the 30th of June and the 31st of December, respectively, next prior to said dates. These reports must show the names of the agencies to which free service was rendered pursuant to this rule, the general character of the communications handled for each agency, and the charges in dollars which would have accrued to the carrier for such service rendered to each agency if charges for such communications had been collected at the published tariff rates.

§ 101.303 Answers to notices of violation.

Any person receiving official notice of a violation of the terms of the Communications Act of 1934, as amended, any other Federal statute or Executive Order pertaining to radio or wire communications or any international radio or wire communications treaty or convention, or regulations annexed thereto to which the United States is a party, or the rules and regulations of the Federal Communications Commission, must, within 10 days from such receipt, send a written answer to the office of the Commission originating the official notice. If an answer cannot be sent or an acknowledgment made within such 10-day period by reason of illness or other unavoidable circumstances, acknowledgment and answer must be made at the earliest practicable date with a satisfactory explanation of the delay. The answer to each notice must be complete in itself and may not be abbreviated by reference to other communications or answers to other notices. If the notice relates to some violation that may be due to the physical or electrical characteristics of transmitting apparatus, the answer must state fully what steps have been taken to prevent future violations, and, if any new apparatus is to be installed, the date such apparatus was ordered, the name of the manufacturer, and promised date of delivery. If the installation of such apparatus requires a construction permit, the file number of the application must be given or, if a file number has not been assigned by the Commission, such identification as will permit ready reference thereto. If the notice of violation relates to inadequate maintenance resulting in improper operation of the transmitter, the name and license number of the operator performing the maintenance must be given. If the notice of violation relates to some lack of attention to, or improper operation of, the transmitter by other employees, the reply must enumerate the steps taken to prevent a recurrence of such lack of attention or improper operation.

§ 101.305 Discontinuance, reduction or impairment of service.

(a) If the public communication service provided by a station in the Common Carrier Radio Services is involuntarily discontinued, reduced or impaired for a period exceeding 48 hours, the station licensee must promptly notify the Commission, in writing, at Federal Communications Commission, Common Carrier Radio Services, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325. In every such case, the licensee must furnish full particulars as to the reasons for such discontinuance, reduction or impairment of service, including a statement as to when normal service is expected to be resumed. When normal service is resumed, prompt notification thereof must be given in writing to the Federal Communications Commission, Common Carrier Radio Services, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325.

(b) No station licensee subject to title II of the Communications Act of 1934, as amended, may voluntarily discontinue, reduce or impair public communication service to a community or part of a community without obtaining prior authorization from the Commission pursuant to the procedures set forth in part 63 of this chapter. In the event that permanent discontinuance of service is authorized by the Commission, the station licensee must promptly send the station license to the Federal Communications Commission, Common Carrier Radio Services, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325 for cancellation.

(c) Any common carrier station licensee, not subject to title II of the Communications Act of 1934, as amended, who voluntarily discontinues, reduces or impairs public communication service to a community or a part of a community must give written notification to the Commission within 7 days thereof. In the event of permanent discontinuance of service, the station licensee must promptly send the station license to the Federal Communications Commission, Common Carrier Radio Services, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325 for cancellation.

(d) If any common carrier radio frequency should not be used to render any service as authorized during a consecutive period of twelve months at any time after construction is completed under circumstances that do not fall within the provisions of paragraph (a), (b), or (c) of this section, or, if removal of equipment or facilities has rendered the station not operational, the licensee must, within thirty days of the end of such period of nonuse:

(1) Submit for cancellation the station license (or licenses) to the Federal Communications Commission, Common Carrier Radio Services, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325 for cancellation;

(2) File an application for modification of the license (or licenses) to delete the unused frequency (or frequencies); or

(3) Request waiver of this rule and demonstrate either that the frequency will be used (as evidenced by appropriate requests for service, etc.) within six months of the end of the initial period of nonuse, or that the frequency will be converted to allow rendition of other authorized public services within one year of the end of the initial period of nonuse by the filing of appropriate applications within six months of the end of the period of nonuse.

§ 101.307 Tariffs, reports, and other material required to be submitted to the Commission.

Sections 1.771 through 1.815 of this chapter contain summaries of certain materials and reports, including schedule of charges and accounting and financial reports, which, when applicable, must be filed with the Commission.

§ 101.309 Requirement that licensees respond to official communications.

All licensees in these services are required to respond to official communications from the Commission with reasonable dispatch and according to the tenor of such communications. Failure to do so will be given appropriate consideration in connection with any subsequent applications which the offending party may file and may result in the designation of such applications for hearing, or in appropriate cases, the institution of proceedings looking to the modification or revocation of the pertinent authorizations.

§ 101.311 Equal employment opportunities.

Equal opportunities in employment must be afforded by all common carrier licensees in accordance with the provisions of § 21.307 of this chapter.

Subpart F—Developmental Authorizations

§ 101.401 Eligibility.

Developmental authorizations for stations in the radio services included in this part will be issued only to existing and proposed licensees who are legally, financially and otherwise qualified to conduct experimentation for the development of engineering or operational data, or techniques, directly related to a proposed radio service or to a regularly established radio service regulated by the rules of this part.

§ 101.403 Scope of service.

Developmental authorizations may be issued for:

(a) Field strength surveys relative to or precedent to the filing of applications for licenses, in connection with the selection of suitable locations for stations proposed to be established in any of the regularly established radio services regulated by the rules of this part; or

(b) The testing of existing or authorized antennas, wave guides, paths, or other equipment used in a system subject to this part.

§ 101.405 Adherence to program of research and development.

The program of research and development, as stated by an applicant in the application for license or stated in the instrument of station authorization, must be substantially adhered to unless the licensee is otherwise authorized by the Commission.

§ 101.407 Special procedure for the development of a new service or for the use of frequencies not in accordance with the provisions of the rules in this part.

(a) An authorization for the development of a new service not in accordance with the provisions of the rules in this part may be granted for a limited time, but only after the Commission has made a preliminary determination with respect to the factors set forth in this paragraph, as each case may require. This procedure also applies to any application that involves use of a frequency which is not in accordance with the provisions of the rules in this part, although in accordance with the Table of Frequency Allocations contained in part 2 of this chapter. (An application which involves use of a frequency which is not in accordance with the Table of Frequency Allocations in part 2 of this chapter should be filed in accordance with the provisions of part 5 of this chapter, Experimental Radio Services.) The factors with respect to which the Commission will make a preliminary determination before acting on an application filed under this paragraph are as follows:

(1) That the public interest, convenience or necessity warrants consideration of the establishment of the proposed service or the use of the proposed frequency;

(2) That the proposed operation appears to warrant consideration to effect a change in the provisions of the rules in this part; and/or

(3) That some operational data should be developed for consideration in any rule making proceeding which may be initiated.

(b) Applications for stations that are intended to be used in the development of a proposed service must be accompanied by a petition to amend the Commission's rules with respect to frequencies and such other items as may be necessary to provide for the regular establishment of the proposed service.

§ 101.409 Terms of grant; general limitations.

(a) Developmental authorizations normally will be issued for one year, or such shorter term as the Commission

may deem appropriate in any particular case, and will be subject to cancellation without hearing by the Commission at any time upon notice to the licensee.

(b) Where some phases of the developmental program are not covered by the general rules of the Commission or by the rules of this part, the Commission may specify supplemental or additional requirements or conditions in each case as it may deem necessary in the public interest, convenience or necessity.

(c) Frequencies allocated to the service toward which such development is directed will be assigned for developmental operation on the basis that no interference will be caused to the regular services of stations operating in accordance with the Commission's Table of Frequency Allocations (§ 2.106 of this chapter).

(d) The rendition of communication service for hire is not permitted under any developmental authorizations unless specifically authorized by the Commission.

(e) The grant of a developmental authorization carries with it no assurance that the developmental program, if successful, will be authorized on a permanent basis either as to the service involved or the use of the frequencies assigned or any other frequencies.

§ 101.411 Supplementary showing required.

(a) Authorizations for development of a proposed radio service in the services included in this part will be issued only upon a showing that the applicant has a definite program of research and development, the details of which must be set forth, which has reasonable promise of substantial contribution to these services within the term of such authorization. A specific showing should be made as to the factors which qualify the applicant technically to conduct the research and development program, including a description of the nature and extent of engineering facilities that the applicant has available for such purposes.

(b) Expiring developmental authorizations may be renewed only upon the applicant's compliance with the applicable requirements of § 101.413 (a) and (b) relative to the authorization sought to be renewed and upon a factual showing that further progress in the program of research and development requires further radio transmission and that the public interest, convenience or necessity would be served by renewal of such authorization.

§ 101.413 Developmental report required.

(a) Upon completion of the program of research and development, or, in any event, upon the expiration of the instrument of station authorization under which such investigations were permitted, or at such times during the term of the station authorization as the Commission may deem necessary to evaluate the progress of the developmental program, the licensee must submit, in duplicate, a comprehensive report on the following items, in the order designated:

(1) Report on the various phases of the project which were investigated;

(2) Total number of hours of operation on each frequency assigned;

(3) Copies of any publication on the project;

(4) Detailed analysis of the result obtained; and

(5) Any other pertinent information.

(b) In addition to the information required by paragraph (a) of this section, the developmental report of a station authorized for the development of a proposed radio service must include comprehensive information on the following items:

(1) Probable public support and methods of its determination;

(2) Practicability of service operations;

(3) Interference encountered;

(4) Pertinent information relative to merits of the proposed service;

(5) Propagation characteristics of frequencies used, particularly with respect to the service objective;

(6) Frequencies believed to be more suitable and reasons therefor; and

(7) Type of signals or communications employed in the experimental work.

(c) Developmental reports will be made a part of the Commission's public records, except upon the applicant's specific request for confidentiality and Commission approval in accordance with § 0.459 of this chapter. Information determined confidential by the Commission will not be publicly disclosed.

Subpart G—Digital Electronic Message Service

§ 101.501 Eligibility.

Applications will be granted only in cases in which the applicant establishes it is legally, technically, financially and otherwise qualified to render the services proposed and that the public interest, convenience and necessity would be served by such a grant. Each application will identify the Standard Metropolitan Statistical Area (SMSA) within which boundaries the Digital Electronic Message Service (DEMS) nodal station will be constructed and which the facility will serve.

§ 101.503 Digital Electronic Message Service Nodal Stations.

DEMS Nodal Stations may be authorized only as a part of an integrated communication system wherein DEMS User Stations associated therewith also are licensed to the DEMS Nodal Station licensee. Applications for DEMS Nodal Station licenses should specify the maximum number of DEMS User Stations to be served by that nodal station. Any increase in that number must be applied for pursuant to § 101.15.

§ 101.505 Frequencies.

(a) Frequencies in the 17,700–19,700 MHz band are available for assignment for all DEMS applicants. Assignment will consist of a pair of channels as set out in paragraph (c) of this section plus internodal channels as set out in paragraph (d) of this section.

(b) Licensees may apply for an additional channel pair in an SMSA only when it is operating its previously authorized DEMS at or near the expected capacity and the service to be provided will fully utilize all spectrum requested.

(c) DEMS assignments will be made according to the following plan, except that systems licensed, in operation, or applied for in the 10,565–10,615 and 10,630–10,680 MHz bands prior to July 15, 1993 are permitted to use frequencies in those bands if they prior coordinate with 10 GHz point-to-point licensees:

Channel No	Nodal station frequency band (MHz)	User station frequency band (MHz)
30	18,870–18,880	19,210–19,220
31	18,880–18,890	19,220–19,230
32	18,890–18,900	19,230–19,240
33	18,900–18,910	19,240–19,250
34	18,910–18,920	19,250–19,260

Note to (c): These channel pairs will be assigned in each SMSA and may be subdivided as desired by the licensee.

(d) Internodal link assignments are to be made in accordance with the provisions of Subpart I of this part, applying to point-to-point operations.

§ 101.507 Frequency stability.

The frequency stability of each DEMS Nodal Station transmitter authorized for this service in the 17,700–19,700 MHz band must be ±0.001%. The frequency stability of each DEMS User Station transmitter authorized for this service in this band must be ±0.003%.

§ 101.509 Interference protection criteria.

(a) All harmful interference to other users and blocking of adjacent channel use in the same city and cochannel use in nearby Standard Metropolitan Statistical Areas is prohibited. In areas where SMSA's are in close proximity, careful consideration should be given to minimum power requirements and to the location, height, and radiation pattern of the transmitting antenna. Licensees and applicants are expected to cooperate fully in attempting to resolve problems of potential interference before bringing the matter to the attention of the Commission.

(b) As a condition for use of frequencies in this service each carrier is required to:

(1) Engineer the system to be reasonably compatible with adjacent channel operations in the same city; and

(2) Cooperate fully and in good faith to resolve whatever potential interference and transmission security problems may be present in adjacent channel operation.

(c) The following interference studies, as appropriate, must be included with each application for a new or major modification in a DEMS Nodal Station:

(1) An analysis of the potential for harmful interference with other stations if the coordinates of any proposed station are located within 80 kilometers (50 miles) of the coordinates of any authorized, or previously proposed station(s) that utilizes, or would utilize, the same frequency or an adjacent potentially interfering frequency; and

(2) An analysis concerning possible adverse impact upon Canadian communications if the station's transmitting antenna is to be located within 55 kilometers (35 miles) of the Canadian border.

(d) In addition a copy of the interference analysis submitted in response to paragraph (c)(1) of this section must be served on all applicants and/or grantees concerned within 5 days of its submission to the Commission.

§ 101.511 Purpose and permissible service.

(a) The DEMS is intended to provide for the exchange of digital information among and between subscribers using one or more DEMS Systems.

(b) Unless otherwise directed or conditioned in the applicable instrument of authorization, DEMS may be used to exchange any type of digital information consistent with the Commission's Rules and the applicable tariff of the carrier.

(c) The carrier's tariff must fully describe the parameters of the service to be provided, including the degree of communications security a subscriber can expect in ordinary service.

§ 101.513 Transmitter power.

The transmitter power will be governed by § 101.113. Further, each application must contain an analysis demonstrating compliance with § 101.113(a).

§ 101.515 Emissions and bandwidth.

Different types of emissions may be authorized if the applicant describes fully the modulation and bandwidth desired, and demonstrates that the bandwidth desired is no wider than needed to provide the intended service. In no event, however, may the necessary or occupied bandwidth exceed the specified channel width of the assigned pair.

§ 101.517 Antennas.

(a) Transmitting antennas may be omnidirectional or directional, consistent with coverage and interference requirements.

(b) The use of horizontal or vertical plane wave polarization, or right hand or left hand rotating elliptical polarization must be used to minimize harmful interference between stations.

(c) Directive antennas must be used at all DEMS User Stations and may be elevated no higher than necessary to assure adequate service. Antenna structures requiring FAA notification under part 17 of this chapter must be registered with the Commission. The structure owner is responsible for registering, painting, and lighting the structure if applicable. Requests for such authorization must show the inclusive dates of the proposed operation.

§ 101.519 Interconnection.

(a) All DEMS licensees must make available to the public all information necessary to allow the manufacture of user equipment that will be compatible with the licensee's network.

(b) All DEMS licensees must make available to the public all information necessary to allow interconnection of DEMS networks.

§ 101.521 Spectrum utilization.

All applicants for DEMS frequencies must submit as part of the original application a detailed plan indicating how the bandwidth requested will be utilized. In particular the application must contain detailed descriptions of the modulation method, the channel time sharing method, any error detecting and/or correcting codes, any spatial frequency reuse system and the total data throughput capacity in each of the links in the system. Further, the application must include a separate analysis of the spectral efficiency including both information bits per unit bandwidth and the total bits per unit bandwidth.

Subpart H—Private Operational Fixed Point-to-Point Microwave Service

§ 101.601 Eligibility

Any person, or any governmental entity or agency, eligible for licensing in a radio service under parts 80, 87, or 90 of this chapter or any person proposing to provide communications service to such persons, governmental entities or agencies is eligible to hold a license under this subpart.

§ 101.603 Permissible communications.

(a) Except as provided in paragraph (b) of this section, stations in this radio service may transmit communications as follows:

(1) On frequencies below 21,200 MHz, licensees may transmit their own communications, including the transmission of their products and information services, to their customers except that the distribution of video entertainment material to customers is permitted only as indicated in § 101.101 and paragraph (a)(2) of this section.

(2) In the frequency bands 6425–6525 MHz, 18,142–18,580 MHz and on frequencies above 21,200 MHz, licensees may deliver any of their own products and services to any receiving location;

(3) Licensees may transmit the communications of their parent corporation, or of another subsidiary of the same parent, or their own subsidiary where the party to be served is regularly engaged in any of the activities that constitute the basis for eligibility to use the frequencies assigned;

(4) Licensees may transmit the communications of other parties in accordance with § 101.135;

(5) Licensees may transmit emergency communications unrelated to their activities in accordance with § 101.205;

(6) Licensees may transmit communications on a commercial basis to eligible users, among different premises of a single eligible user, or from one eligible user to another as part of transmissions by Digital Electronic Message Service systems on the frequencies provided for this purpose;

(7) Licensees may transmit program material from one location to another, provided that the frequencies do not serve as the final RF link in the chain of distribution of the program material to broadcast stations;

(b) Stations licensed in this radio service shall not:

(1) Render a common carrier communications service of any kind;

(2) Transmit program material for use in connection with broadcasting, except as provided in paragraphs (a)(2), and (a)(7)) of this section; and/or

(3) Be used to provide the final RF link in the chain of transmission of program material to cable television systems, multipoint distribution systems or master antenna TV systems, except in the frequency bands 6425–6525 and 18,142–18,580 MHz and on frequencies above 21,200 MHz.

Subpart I—Common Carrier Fixed Point-to-Point Microwave Service

§ 101.701 Eligibility.

(a) Authorizations for stations in this service will be issued to existing and proposed common carriers. Applications will be granted only in cases in which it is shown that:

(1) The applicant is legally, technically, financially and otherwise qualified to render the proposed service;

(2) There are frequencies available to enable the applicant to render a satisfactory service; and

(3) The public interest, convenience, and necessity would be served by a grant thereof.

(b) If the content is originated, selected, controlled, or otherwise substantively influenced by the applicant, licensee, or a closely affiliated entity, no station or radio frequency in this service will be authorized, or may be utilized, to transmit any closed circuit television signals or television signals other than broadcast television signals, unless:

(1) Such service is otherwise permitted for a specific length of time by grant of an acceptable petition for waiver of this rule; or

(2) Such service is otherwise permitted by a condition in the applicable instrument of authorization; or

(3) Such service is provided pursuant to applicable FCC tariff and is temporary and occasional intra-company television communication for management, network supervision, or other internal carrier functions. For purposes of this paragraph, an entity will be considered to be "closely affiliated" with an applicant if it is in a parent-subsidiary relationship, or both are commonly controlled, or they have any common officers or management employees.

(c) Applications for stations or frequencies that will be used primarily to relay broadcast television signals must include a demonstration (including appropriate system diagrams and tables) that at least fifty percent of the customers (or points of service) on the microwave system involved, including those served through an interconnecting carrier(s), receiving applicant's service, will not be related or affiliated in any degree with the applicant, and that the proposed usage by such customers, in terms of hours of use and channels delivered, must constitute at least fifty percent of the usage of the applicant's microwave service.

Applications that do not contain these demonstrations will be returned as unacceptable for filing.

§ 101.703 Permissible communications.

Stations in this service are authorized to render any kind of communication service provided for in the legally applicable tariffs of the carrier, unless otherwise directed in the applicable instrument of authorization or limited by § 101.147 or §§ 101.111 and 101.113.

§ 101.705 Renewal of station licenses.

(a) An application for renewal of a station license in the Common Carrier Fixed Point-to-Point Microwave Service primarily used to relay television signals must contain:

(1) A statement that such use complies with § 101.701(b); and

(2) The demonstration required by § 101.701(c). Applications that do not contain these items as appropriate will be returned as unacceptable for filing.

(b) Any application for renewal of license, for a term commencing January 1, 1975, or after, involving facilities utilizing frequency diversity must contain a statement showing compliance with § 101.103(c) or the exceptions recognized in paragraph 141 of the "First Report and Order" in Docket No. 18920 (29 FCC 2d 870). (This document is available at: Federal Communications Commission, Library (Room 639), 1919 M Street, NW., Washington, DC.) If not in compliance, a complete statement with the reasons therefor must be submitted.

Subpart J—Local Television Transmission Service

§ 101.801 Eligibility.

Authorizations for stations in this service will be granted to existing and proposed communication common carriers. Applications will be granted only in cases where it is shown that:

(a) The applicant is legally, financially, technically and otherwise qualified to render the proposed service;

(b) There are frequencies available to enable the applicant to render a satisfactory service; and

(c) The public interest, convenience or necessity would be served by a grant thereof.

§ 101.803 Frequencies.

(a) Frequencies in the following bands are available for assignment to television pickup and television non-broadcast pickup stations in this service:

6,425 to 6,525 MHz. (6)
11,700 to 12,200 MHz. (3)
13,200 to 13,250 MHz. (1)
14,200 to 14,400 MHz.
21,200 to 22,000 MHz. (1), (2), (4), (5)
22,000 to 23,600 MHz. (1), (2), (5)
31,000 to 31,300 MHz. (7)

Notes

(1) This frequency band is shared with fixed and mobile stations licensed under this and other parts of the Commission's Rules.

(2) This frequency band is shared with Government stations.

(3) This frequency band is shared, on a secondary basis, with stations in the broadcasting-satellite and fixed-satellite services.

(4) This frequency band is shared with stations in the earth-exploration satellite service.

(5) Assignments to common carriers in this band are normally made in the segments 21,200–21,800 MHz and 22,400–23,800 MHz and to operational fixed users in the segments 21,800–22,400 MHz and 23,000–23,600 MHz. Assignments may be made otherwise only upon a showing that interference free frequencies are not available in the normally assigned band segments. The maximum power for the local television transmission service in the 14.2–14.4 GHz band is +45 dBW except that operations are not permitted within 1.5 degrees of the geostationary orbit.

(6) This band is co-equally shared with mobile stations licensed pursuant to parts 74 and 78 of this chapter, and subpart H of this part.

(7) Use of this spectrum for direct delivery of video programs to the general public or multi-channel cable distribution is not permitted.

(b) Communications common carriers in the Local Television Transmission Service may be assigned frequencies listed in §§ 74.602(a), 78.18(a)(7) and 78.18(a)(8) of this chapter to provide service to television broadcast stations, television broadcast network-entities, cable system operators and cable network-entities. Frequency availability is subject to the provisions of § 74.604 of this chapter and the use of the facility is limited to the permissible uses described in §§ 74.631 and 78.11 of this chapter. Operations on these frequencies are subject to the technical provisions of part 74, subpart F, and part 78, subpart D of this chapter.

(c) [Reserved]

(d) Frequencies in the following bands are available for assignment to television STL stations in this service:

3,700 to 4,200 MHz (1)
5,925 to 6,425 MHz (1),(5)
10,700 to 11,700 MHz (1),(6)
13,200 to 13,250 MHz (2)
21,200 to 22,000 MHz (2),(4),(7),(8)
22,000 to 23,600 MHz (2),(6),(8)
31,000 to 31,300 MHz (9)

Notes

(1) This frequency band is shared with stations in the Point to Point Microwave Radio Service and, in United States Possessions in the Caribbean area, with stations in the International Fixed Radiocommunications Services.

(2) This frequency band is shared with fixed and mobile stations licensed under this and other parts of the Commission's rules.

(3) This frequency band is shared with space stations (space to earth) in the fixed-satellite service.

(4) This frequency band is shared with Government stations.

(5) This frequency band is shared with earth stations (earth to space) in the fixed-satellite services.

(6) The band segments 10.95–11.2 and 11.45–11.7 GHz are shared with space stations (space to earth) in the fixed-satellite service.

(7) This frequency band is shared with space stations (space to earth) in the earth exploration satellite service.

(8) Assignments to common carriers in this band are normally made in the segments 21,200–21,800 MHz and 22,400–23,000 MHz and to operational fixed users in the segments 21,800–22,400 MHz and 23,000–23,600 MHz. Assignments may be made otherwise only upon a showing that interference free frequencies are not available in the appropriate band segments.

(9) Frequencies in this band are co-equally shared with stations in the Auxiliary Broadcasting (part 74) of this chapter, Cable Television Relay (part 78) of this chapter, Private Operational-Fixed Microwave (subpart H) of this part, and General Mobile Radio Services (part 95) of this chapter.

(e) 31.0 to 31.3 GHz. These frequencies are shared on a co-equal basis with other stations in the fixed and mobile services (see parts 74, 78, and 95 of this chapter, and subpart H of this part). No interference protection is afforded to fixed or mobile stations operating in this band.

(1) 25 MHz authorized bandwidth channels, 150 MHz separation.

Transmit (receive) (MHz)	Receive (transmit) (MHz)
31,012.5	31,162.5
31,037.5	31,187.5
31,062.5	31,212.5
31,087.5	31,237.5
31,112.5	31,262.5
31,137.5	31,287.5

(2) 50 MHz authorized bandwidth channels, 150 MHz separation.

Transmit (receive) (MHz)	Receive (transmit) (MHz)
31,025.0	31,175.0
31,075.0	31,225.0
31,125.0	31,275.0

(f) On the condition that harmful interference will not be caused to services operating in accordance with the Table of Frequency Allocations, persons holding valid station authorizations on July 15, 1963, to provide television nonbroadcast pickup service in the 6525–6575 MHz band may be authorized to continue use of the frequencies specified in their authorization for such operations until July 15, 1968.

(g) 6425 to 6525 MHz—Mobile Only. Paired and un-paired operations permitted. Use of this spectrum for direct delivery of video programs to the general public or for multi-channel cable distribution is not permitted. This band is co-equally shared with mobile stations licensed pursuant to parts 74 and 78 of this chapter. The following channel plans apply.

(1) 1 MHz maximum authorized bandwidth channels.

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
6425.5	6475.5
6450.5	6500.5

(2) 8 MHz maximum authorized bandwidth channels.

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
6430.0	6480.0
6438.0	6488.0
6446.0	6596.0
6455.0	6505.0
6463.0	6513.0
6471.0	6521.0

(3) 25 MHz maximum authorized bandwidth channels.

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
6437.5	6487.5
6462.5	6512.5

(h) The frequency 27.255 MHz in the 27.23–27.28 MHz band is allocated for assignment to microwave auxiliary stations in this service on a shared basis with other radio services. Assignments to stations on this frequency will not be protected from such interference as may be experienced from the emissions of industrial, scientific and medical equipment operating on 27.12 MHz in accordance with § 2.106 of this chapter.

§ 101.805 Assignment of frequencies to mobile stations.

The assignment of frequencies to mobile stations in this service will not be limited to a single licensee within any area. However, geographical limits within which mobile units may operate may be imposed by the Commission.

§ 101.807 Transmitter power.

Stations in this service will not be authorized to use transmitters having a rated power output in excess of the limits set forth in § 101.113(b) and a standby transmitter having a rated power output in excess of that of the main transmitter with which it is associated will not be authorized.

§ 101.809 Bandwidth and emission limitations.

(a) Stations in this service operating on frequencies in the 27.23–27.28 MHz band will be authorized to employ only amplitude modulated or frequency modulated emission for radiotelephony. The authorization to use such emissions will be construed to include authority to employ unmodulated emission only for temporary or short periods necessary for equipment testing incident to the construction and maintenance of the station.

(b) Stations in the service operating on frequencies above 940 MHz may be authorized to use amplitude modulated, frequency modulated or pulse type of emission for radiotelephony and television. In addition, the use of unmodulated emission may be authorized in appropriate cases.

(c) The maximum bandwidths which will normally be authorized for single channel operation on frequencies below 500 MHz in this service must not exceed the limits set forth below:

Type of emission	Authorized bandwidth (kHz)
A3E	8
F3E or (G3E)	40

(d) Maximum bandwidths in the following frequency bands must not exceed the limits set forth below:

Frequency band (MHz)	Maximum authorized bandwidth (MHz)
3,700 to 4,200	20
5,925 to 6,425	30
6,425 to 6,525	25
10,700 to 12,200	40
13,200 to 13,250	25

Frequency band (MHz)	Maximum authorized bandwidth (MHz)
22,000 to 23,600	100

(e) The bandwidths authorized on frequencies above 500 MHz must be appropriate to the type of operation in any particular case. An application requesting such authorization must fully describe the modulation, emission, and bandwidth desired and must specify the bandwidth to be occupied.

§ 101.811 Modulation requirements.

(a) The use of modulating frequencies higher than 3000 hertz for single channel radiotelephony or tone signaling on frequencies below 500 MHz is not authorized.

(b) When amplitude modulation is used, the modulation percentage must be sufficient to provide efficient communication and must normally be maintained above 70 percent on positive peaks, but may not exceed 100 percent on negative peaks.

(c) When phase or frequency modulation is used for single channel radiotelephony on frequencies below 500 MHz, the deviation arising from modulation may not exceed plus or minus 15 kHz from the unmodulated carrier.

(d) Each unmultiplexed radiotelephone transmitter having more than 3 watts plate power input to the final radio frequency stage and initially installed at the station in this service after September 4, 1956, must be provided with a device that will automatically prevent modulation in excess of that specified in paragraphs (b) and (c) of this section which may be caused by greater than normal audio level.

§ 101.813 Remote control operation of mobile television pickup stations.

(a) Mobile television pickup stations (including nonbroadcast) may be operated by remote control from the fixed locations for periods not to exceed 6 months.

(b) The Commission may, upon adequate showing by the licensee as to why the television pickup operations should not be conducted under a fixed station authorization, renew the authority granted under the provisions of paragraph (a) of this section.

(c) Reference should be made to § 101.125 concerning mobile station antenna height restrictions and to paragraphs (c) and (f) of § 101.131 concerning control points.

§ 101.815 Stations at temporary fixed locations.

(a) Authorizations may be issued upon proper application for the use of frequencies listed in § 101.803 by stations in the Local Television Transmission Service for rendition of temporary service to subscribers under the following conditions:

(1) When a fixed station is to remain at a single location for less than 6 months, the location is considered to be temporary. Services that are initially known to be of longer than 6 months' duration may not be provided under a temporary fixed authorization but rendered pursuant to a regular license.

(2) When a fixed station authorized to operate at temporary locations is installed and it subsequently becomes necessary for the station to operate from such location for more than six months, application FCC Form 494 for a station authorization to specify the permanent location must be filed at least thirty days prior to the expiration of the six month period.

(3) The station must be used only for rendition of communication service at a remote point where the provision of wire facilities is not practicable.

(4) The antenna structure height employed at any location may not exceed the criteria set forth in § 17.7 of this chapter unless, in each instance, authorization for use of a specific maximum antenna structure height for each location has been obtained from the Commission prior to erection of the antenna. See § 101.125.

(5) Applications for such stations must comply with the provisions of § 101.713.

(b) Applications for authorizations to operate stations at temporary locations under the provisions of this section may be made upon FCC Form 494. Blanket applications may be submitted for the required number of transmitters.

(c) Prior coordination of mobile assignments will be in accordance with the procedures in § 101.103(d) except that the prior coordination process for mobile (temporary fixed) assignments may be completed orally and the period allowed for response to a coordination notification may be less than 30 days if the parties agree.

§ 101.817 Notification of station operation at temporary locations.

(a) The licensee of stations authorized pursuant to § 101.813 must notify the Commission prior to each period of operation. This notification may be oral or written and must include:

(1) The call sign, manufacturer's name, type or model number, output power and specific location of the transmitter(s);

(2) The maintenance location for the transmitter;

(3) The location of the transmitting or receiving station with which it will communicate and the identity of the correspondent operating such facilities;

(4) The exact frequency or frequencies to be used;

(5) The public interest, convenience and necessity to be served by operation of the proposed installation;

(6) The commencement and anticipated termination dates of operation from each location. In the event the actual termination date differs from the previous notification, written notice thereof promptly must be given to the Commission;

(7) Where the notification contemplates initially a service that is to be rendered for a period longer than 90 days, the notification must contain a showing as to why application should not be made for regular authorization; and

(8) A notification must include compliance with the provisions of § 101.813(c).

(b) A copy of the notification must be kept with the station license.

§ 101.819 Stations affected by coordination contour procedures.

In frequency bands shared with the communication-satellite service, applicants must also comply with the requirements of § 101.21.

Note: This attachment will not be published in the Code of Federal Regulations.

ATTACHMENT—CROSS REFERENCE TABLE

Present section	Final section
Part 21	
Subpart A—General	
21.1	101.1
21.2	101.3
Subpart B—Applications and Licenses	
21.3	101.5
21.4	101.7
21.5	101.9
21.6	101.11
21.7	101.15
21.11	101.15
21.13	101.19
21.15	101.21
21.19	101.23
21.20	101.35
21.21	101.25
21.22	101.27
21.23	101.29
21.25	101.31
21.26	101.35
21.27	101.37

ATTACHMENT—CROSS REFERENCE TABLE—Continued

Present section	Final section
21.28	101.39
21.29	101.41
21.30	101.43
21.31	101.45
21.32	101.47
21.33	101.49
21.35	101.51
21.38	101.53
21.39	101.55
21.40	101.57
21.41	101.59
21.42	101.61
21.43	101.63
21.44	101.65
21.45	101.67
21.50	101.69
Subpart C—Technical Standards	
21.100	101.103
21.101	101.107
21.105	101.109
21.106	101.111
21.107	101.113
21.108 (a) through (e)	101.115(a)–(d)
21.108(e)	101.145
21.110	101.117
21.111	101.119
21.112	101.121
21.113	101.123
21.114	101.125
21.116	101.127
21.117	101.129
21.118	101.131
21.119	101.133(a)
21.120	101.139
21.122	101.141
Subpart D—Technical Operations	
21.200	101.201
21.201	101.215
21.209	101.205
21.210	101.207
21.211	101.209
21.214	101.211
Subpart E—Miscellaneous	
21.301	101.301
21.302	101.303
21.303	101.305
21.304	101.307
21.306	101.309
21.307	101.311
Subpart F—Developmental Authorizations	
21.400	101.401
21.401	101.403
21.402	101.405
21.403	101.407
21.404	101.409
21.405	101.411
21.406	101.413
Subpart G—Digital Electronic Message Service	
21.500	101.501
21.501	101.503

ATTACHMENT—CROSS REFERENCE TABLE—Continued

Present section	Final section
21.502	101.505
21.503	101.507
21.504	101.509
21.505	101.511
21.506	101.513
21.507	101.113
21.508	101.515
21.509	101.517
21.510	101.519
21.511	101.521
Subpart H—[Reserved]	
Subpart I—Point-to-Point Microwave Radio Service	
21.700	101.701
21.701	101.147
21.702	101.113
21.703	101.109 and 101.111
21.704	101.141
21.705	101.703
21.706	101.21
21.707	101.31
21.708	101.31
21.709	101.705
21.710	101.145 (a) through (c)
21.710(d)	101.141
21.711	101.149
Subpart J—Local Television Transmission Service	
21.800	101.801
21.801	101.803
21.802	101.805
21.803	101.807
21.804	101.809
21.805	101.811
21.806	101.813
21.807	101.815
21.808	101.817
21.809	101.819
Subpart K—Multipoint Distribution Service	
[This Subpart retained in Part 21]	
Part 94—	
Subpart A—General Information	
94.1	101.1
94.3	101.3
94.5	101.601
94.7	101.7(a)
94.9	101.603
94.11(a)	101.133(b)
94.11(b)	101.205
94.13	101.137
94.15(a)	101.103(a)
94.15(e)	101.149
94.15(f)	101.149
94.15(g)	101.149
94.17	101.135
94.19	101.133(c)

ATTACHMENT—CROSS REFERENCE TABLE—Continued

Present section	Final section
Subpart B—Applications, Authorizations, and Notifications	
94.23	101.5(a)
94.25(a)(b)	101.11
94.25(d)	101.13(b)
94.25 (e)	101.13(c)
94.25(f)	101.123(a)
94.25(g)	101.123(b)
94.25(h)	101.603(b)(3)
94.25(i)	101.123(c)
94.25(j)	101.13(f)
94.25(k)	101.101
94.27	101.13
94.29	101.33
94.31(a)	101.19
94.31(d)	101.411
94.31(e)	101.13(b)
94.31(f)	101.19
94.31(h)	101.121
94.31(i)	101.5(c)
94.31(k)	101.147
94.33	101.35
94.35(b)	101.39(a)
94.37	101.47
94.39(a)	101.67(d)
94.39(b)	101.409
94.41	101.47(d)
94.43	101.31
94.45	101.57(d)(e)
94.47(a)	101.53(a)
94.47(b)	101.55(b)
94.51	101.63
94.53	101.65(d)
94.59	101.69
Subpart C—Technical Standards	
94.61	101.101
94.63	101.105
94.65	101.147
94.67	101.107
94.69	101.109(b)
94.71(a)	101.109(a)
94.71(b)	101.109(c)
94.71	101.111 (c) through (e)
94.73	101.113
94.75(a)(b)	101.115
94.75	101.115 (d) through (f)
94.75(h)	101.517
94.77(a)	101.145
94.79	101.143
94.81	101.139
94.83	101.131(a)
94.88	101.147(r)(10)
94.90	101.147(q)
94.91	101.147(s)
94.92	101.105(d)
94.93	101.147(p)
94.94	101.141(e)
Subpart D—Station Operating Requirements	
94.101	101.209
94.103	101.211
94.105	101.213
94.107	101.215
94.109	101.201

ATTACHMENT—CROSS REFERENCE TABLE—Continued

Present section	Final section
94.111	101.121
94.113	101.217
Subpart E—Developmental Operation	
94.151	101.401
94.153	101.407
94.155	101.405
94.157	101.409(b)
94.159	101.409(b)
94.161	101.409
94.163	101.411
94.165	101.413

[FR Doc. 96–12942 Filed 5–24–96; 8:45 am]
BILLING CODE 6712–01–P

federal register

Tuesday
May 28, 1996

Part IV

Department of Education

Comprehensive Local Reform Assistance; Notice Inviting Applications for New Awards with Fiscal Year (FY) 1995 Funds; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.317]

Comprehensive Local Reform Assistance; Notice Inviting Applications for New Awards With Fiscal Year (FY) 1995 Funds

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application requirements, and instructions needed to apply for a grant under these competitions.

Purpose of Program: To assist local educational agencies (LEAs) in the development and implementation of comprehensive local improvement plans directed at enabling all children to reach challenging academic standards.

Eligible Applicants: LEAs in Montana and Oklahoma are eligible to apply for grants. The Secretary is especially interested in receiving applications from consortia of LEAs in these States.

Note: By statute, the Secretary may award direct grants to LEAs in a State that was not participating in Goals 2000 as of October 20, 1995, if the State educational agency (SEA) approves LEA participation in the program. Five States—Alabama, Montana, New Hampshire, Oklahoma, and Virginia—were not participating in Goals 2000 as of October 20, 1995. By the date this application notice was submitted to the **Federal Register**, the Montana and Oklahoma SEAs had approved LEA participation in this direct grant program. If timely approval is received from one or more of the other SEAs, the Secretary will publish in the **Federal Register** a notice inviting applications for FY 1995 funds from LEAs in the other State(s).

Deadline for Transmittal of Applications: July 15, 1996.

Deadline for Intergovernmental Review: August 1, 1996.

Available Funds: The amount of funds available to LEAs in Montana is $1,560,150. The amount of funds available to LEAs in Oklahoma is $4,396,613. These amounts are based on each State's FY 1995 Goals 2000 allotment.

In accordance with section 402 of the Department of Education Organization Act, 20 USC 3462, the Secretary may use up to 1% of the funds from each State's allotment to pay the expenses and fees of non-Federal experts necessary to review the applications submitted in response to this notice.

In the event that there are an insufficient number of funded applications from LEAs in either State to use all of the State's allotment, the Secretary may reallot the remaining funds consistent with the Act.

The Secretary does not intend to conduct competitions for FY 1996 funds. Instead, pursuant to 34 CFR 75.253, the Secretary intends to make continuation awards from each State's FY 1996 allotment to successful applicants under this notice. The Secretary expects to conduct new competitions when FY 1997 funds become available.

Estimated Range of Awards: $20,000–$100,000 annually. (The Secretary estimates that both the initial FY 1995 awards and the continuation awards from the FY 1996 allotments will fall within this range.)

Estimated Average Size of Awards: $40,000 annually. (The Secretary estimates that both the initial FY 1995 awards and the continuation awards from the FY 1996 allotments will average $40,000.)

Estimated Numbers of Awards: The estimated number of awards to LEAs in Montana is 39. The estimated number of awards to LEAs in Oklahoma is 110.

(Note: These estimates are projections for the guidance of potential applicants. The Department of Education and applicants are not bound by any estimates in this notice.)

Project Period: Up to 24 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 75 (Direct Grant Programs).

(2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR Part 82 (New Restrictions on Lobbying).

(7) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

SUPPLEMENTARY INFORMATION:

(a) Background

Section 304(e) of the Goals 2000: Educate America Act (Pub. L. 103–227) (20 USC 5801 *et seq.*) (the Act), which was added to the Act as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, authorizes the Secretary to award direct grants to LEAs in States that were not participating in Goals 2000 as of October 20, 1995, if the applicable SEA approves the LEAs' participation in the program. Alabama, Montana, New Hampshire, Oklahoma and Virginia were not participating in Goals 2000 as of that date. By the date this application notice was submitted to the **Federal Register**, the Montana and Oklahoma SEAs had approved LEA participation in this direct grant program.

Under Section 304(e), the Secretary may award grants for purposes consistent with the provisions of the Act. The Goals 2000 Act is designed to help States and communities develop and implement their own education reforms focused on challenging academic standards in order to increase student academic achievement. With broad-based, grassroots involvement, LEAs participating in Goals 2000 develop comprehensive strategies for helping all students reach challenging academic standards, such as through upgrading assessments and curriculum to reflect high standards, improving the quality of teaching, expanding the use of technology, strengthening accountability for teaching and learning, and building strong partnerships among schools and families, employers, and others in the community.

The Secretary has determined that grants awarded under Section 304(e) will be used to support the development and implementation of comprehensive local improvement plans designed to help all children reach challenging academic standards. In particular, the Secretary encourages LEAs to address in their applications how their reform strategies might include enhanced preservice teacher education and professional development activities of educators that are directly connected to challenging standards.

Where appropriate, LEAs should use funds awarded under this notice to build upon comprehensive reform strategies that have already been initiated. An LEA that has not yet developed or completed a comprehensive local improvement plan consistent with the statutory provisions referenced in this notice may seek FY 1995 funds to do so. An LEA that has already developed such a plan may seek funds to implement the plan.

LEAs are not required or expected to submit their local improvement plans to the U.S. Department of Education for review and approval, whether or not those plans are developed or implemented with funds awarded under this notice. Local plans that have been or are being developed pursuant to State requirements, and that also receive funding under Goals 2000, would only remain subject to any State review processes that may exist.

Pursuant to 34 CFR 75.253, the Secretary intends to make available to successful applicants continuation awards from their States' FY 1996 allotments.

Application Requirements: The authorizing statute—section 304(e) of the Act—permits the Secretary to fund LEA applications that are consistent with the provisions of Goals 2000. The Secretary has determined that grants under this competition must be used for the development or implementation of comprehensive local improvement plans to help all students reach challenging academic standards. In particular, a local improvement plan that is developed or implemented with funds awarded under section 304(e) must be consistent with the requirements in sections 309(a)(3)(B) through (E) of the Act. Adapted to this direct grant program, these requirements specify that local plans—

(1) Describe a process of broad-based community participation in the development, implementation, and evaluation of the local improvement plan;

(2) Address districtwide education improvement, directed at enabling all students to meet the State content standards and State student performance standards (or local standards, if there are no State standards), including specific goals and benchmarks; reflect the priority of the State improvement plan (if there is a comprehensive State improvement plan) and include a strategy for—

(a) Improving teaching and learning, with strategies such as enhanced professional development and preservice education activities aligned to the standards;

(b) Improving governance, management, and accountability for performance; and

(c) Generating, maintaining, and strengthening parental and community involvement.

(3) Promote the flexibility of local schools in developing plans that address the particular needs of their school and community and are consistent with the local improvement plan; and

(4) Describe how the LEA will encourage and assist schools to develop and implement comprehensive school improvement plans that focus on helping all students reach State (or local) content standards and student performance standards.

Selection Criteria: The Secretary will use the following selection criteria in 34 CFR 75.210 to evaluate applications under this competition. The maximum score for all of the criteria is 100 points. The maximum score for each criterion is indicated in parenthesis with the criterion.

(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purposes of the authorizing statute, including consideration of:

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (24 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of:

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (18 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including:

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including:

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (4)(i)(A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(ii) To determine personnel qualifications under paragraphs (4)(i)(A) and (B), the Secretary considers:

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which:

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (13 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation:

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs: This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State processes and on State, areawide, regional, and local coordination for review of proposed Federal financial assistance.

Montana and Oklahoma have not adopted State intergovernmental review processes. Therefore, State, areawide, regional, and local entities may submit comments directly to the Department.

Any comments submitted pursuant to the executive order must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.317, U.S. Department of Education, Room 6300, 600 Independence Avenue, S.W., Washington, D.C. 20202.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address. Instructions for transmittal of applications:*

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.317), Washington, D.C. 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.317), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing: (1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted (CFDA# 84.317).

Application Instructions and Forms: The appendix to this application is divided into three parts, plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 524A) and instructions.

Part III: Application Narrative.

Additional Materiols: Estimated Public Reporting Burden; Assurances—Non-Construction Programs (Standard Form 424B); Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget at 61 FR 1413 (January 19, 1996).

Notice to All Applicants

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Thomas Fagan, U.S. Department of Education, 600 Independence Avenue, S.W., Portals Building, Room 4000, Washington, D.C. 20202–2110, Telephone: (202) 401–0039, FAX: (202) 205–0303. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register.**

Program Authority: Section 304(e) of the Goals 2000: Educate America Act, 20 U.S.C. 5884(b).

Dated: May 21, 1996.

Gerald N. Tirozzi,

Assistant Secretary Elementary and Secondary Education.

BILLING CODE 4000–01–P

Appendix

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☒ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: | Organizational Unit:

Address (*give city, county, state, and zip code*): | Name and telephone number of the person to be contacted on matters involving this application (*give area code*)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (*enter appropriate letter in box*) ☐

A. State · H. Independent School Dist.
B. County · I. State Controlled Institution of Higher Learning
C. Municipal · J. Private University
D. Township · K. Indian Tribe
E. Interstate · L. Individual
F. Intermunicipal · M. Profit Organization
G. Special District · N. Other (Specify): _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award · B. Decrease Award · C. Increase Duration
D. Decrease Duration · Other (*specify*): _____

9. NAME OF FEDERAL AGENCY: U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 3 1 7

TITLE: Comprehensive Local Reform Assistance

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (*cities, counties, states, etc.*):

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative | b. Title | c. Telephone number

d. Signature of Authorized Representative | e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - —"New" means a new assistance award.
   - —"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - —"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

Name of Institution/Organization

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e):
For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e):
Show the total budget request for each project year for which funding is requested.

Line 12, column (f):
Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Instructions for ED Form 524 (cont.)

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e):
For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f):
Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e):
Show the total matching or other contribution for each project year.

Line 12, column (f):
Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

BILLING CODE 4000-01-C

Instructions for Part III Application Narrative

Before preparing the Application Narrative an applicant should read the information in this notice, including the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of your proposal;

2. Describe the proposal in light of each of the selection criteria in the order in which the criteria are listed in this application; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 20 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length. The Department has found that successful applications for similar programs generally meet this page limit.

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1810–0594 (Expiration date: August 31, 1996). The time required to complete this information collection is estimated to average 50 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, D.C. 20202–4651. *If you have comments or concerns regarding the status of your individual submission of this form, write directly to:* Thomas Fagan, U.S. Department of Education, 600 Independence Avenue, S.W., Portals Building, Room 4000, Washington, D.C. 20202–2110.

BILLING CODE 4000-01-P

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted–

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier ____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity Registrant (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C.1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only.

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate.~~ Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. ~~Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.~~
12. ~~Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.~~
13. ~~Check the appropriate box(es). Check all boxes that apply. If other, specify nature.~~
14. ~~Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~
15. ~~Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

BILLING CODE 4000-01-C

Notice to All Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. *ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.*

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What Are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it tends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801–0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

[FR Doc. 96–13291 Filed 5–24–96; 8:45 am]
BILLING CODE 4000–01–P

OL
1
SS
1
0
3
MY
28
996
MI

federal register

Tuesday
May 28, 1996

Part V

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171 and 173

Periodic Inspection and Testing of Cylinders; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 173

[Docket No. HM–220A, Amdt Nos. 171–143, 173–251]

RIN 2137–AC59

Periodic Inspection and Testing of Cylinders

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is amending the requirements contained in the Hazardous Materials Regulations pertaining to the maintenance and requalification of DOT specification and exemption cylinders used for transportation of compressed gases in commerce. These changes clarify current inspection and retest requirements, incorporate certain regulatory interpretations, and add new provisions. The intent of these changes is to enhance public safety by clarifying the regulations for those persons who perform periodic inspection and testing of cylinders.

DATES: *Effective date:* The effective date of these amendments is October 1, 1996.

Compliance date: Voluntary compliance with the regulations is authorized immediately.

Incorporation by reference date: The incorporation by reference of certain publications listed in these amendments has been approved by the Director of the Federal Register to be effective on October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Theresa Gwynn or Hattie L. Mitchell, telephone (202) 366–4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street SW., Washington DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On October 18, 1995, RSPA published a notice of proposed rulemaking (NPRM; Notice No. 95–13; 60 FR 54008) under Docket HM–220A proposing to amend the requirements contained in the Hazardous Materials Regulations pertaining to the maintenance and requalification of DOT specification and exemption cylinders used for transportation of compressed gases in commerce. Comments were due by December 15, 1995. RSPA received several requests to extend the comment period and, although RSPA did not extend the comment period, it did consider late-filed comments.

RSPA received more than 30 comments, and several commenters filed supplements to their initial comments. These comments represent the views of various trade associations, cylinder manufacturers and owners, compressed gas suppliers, fire safety equipment suppliers, independent hydrostatic retest operators and manufacturers of hydrostatic retest equipment and cylinder relief valves. All of the commenters were in general agreement with the NPRM's clarification goal, but many expressed concerns about specific proposals and suggested that RSPA make additional changes.

A number of commenters requested that RSPA delay this rulemaking and incorporate it into a future rulemaking in which RSPA will propose the revision and reorganization of all cylinder specifications in Part 178 (Docket HM–220, Regulation Identification Number 2137–AA92; See DOT Semiannual Regulatory Agenda, 60 FR 60296, 60434, November 28, 1995). RSPA also intends to propose that all requirements applicable to the inspection, retest, repair and continuing requalification of cylinders be moved from section 173.34 to part 180. However, RSPA believes that some of the regulatory requirements in section 173.34(e) are not sufficiently clear and, based on safety concerns regarding retest and condemnation procedures, are in need of immediate clarification. Therefore, this final rule is being issued now to address the persistent questions and problems that the regulated community experiences in this area.

Some comments were beyond the scope of this rulemaking and thus, not addressed in this rule; however, RSPA will, where feasible, consider incorporating these comments in the future rulemaking. In addition, the reorganization of section 173.34(e) will require the correction of the section references contained in the Guidelines for Civil Penalties (Appendix A to Subpart D of Part 107). RSPA intends to accomplish this editorial correction in a future rulemaking.

II. Discussion of Comments

Section 173.34(e)

Revision of Retest Table

A number of commenters noted that the section references contained in the proposed Retest and Inspection of Cylinders table (NPRM, pages 54013–14) were incorrect. The table has been revised to list the correct section references. In addition, RSPA incorporated two requirements previously found in section 173.34(e) (7) and (12) as footnotes to the retest table.

In the NPRM, RSPA invited comments on whether table entries were needed to specify retest pressure or frequency for any specification, exemption or special permit cylinder. Although most comments supported such a change, RSPA has not included those entries in the table at this time. RSPA is considering, as a part of HM–220, how to provide this information for the specification cylinders to retesters while not expanding the table to an unmanageable size. RSPA agrees with those commenters who recommended that the table contain a generic entry that refers to a copy of the current exemption for the exemption cylinders. This final rule revises the table to include such an entry.

Another commenter suggested that the following note be placed at the end of the retest table: "Foreign acetylene cylinders must be tested in accordance with the same requirements as those of DOT 8, 8AL." This suggestion has not been adopted in this final rule because there has not been an adequate opportunity for the public to comment on this proposed revision. However, RSPA will consider this comment in a future rulemaking.

General Requirements and Retester Authorization

RSPA proposed amending section 173.34(e)(1)(ii) to prohibit the use, for transportation of a hazardous material in commerce, of a DOT specification or exemption cylinder that is required to be periodically inspected or tested unless the cylinder is marked with an inspection or test date indicating that it is qualified for use. Several commenters pointed out what they perceived as an apparent conflict between the language proposed in section 173.34(e)(1)(ii) and the language found in section 173.34(a)(1). Section 173.34(a)(1) prohibits a person from charging or filling a DOT specification cylinder with a hazardous material when the cylinder's retest date has expired, but permits the shipment of an "out-of-test date" cylinder which was charged or filled prior to the test date. The commenters stated that the proposed language represented dramatic change to the current application of the regulations. RSPA did not intend to change the current application of section 173.34(e)(1)(ii), and the proposed language has been reworded to clarify that the prohibition is against charging or filling a DOT specification cylinder after the cylinder's retest date has expired.

A commenter suggested that RSPA add a new paragraph in section 173.34(e) to explicitly recognize that there are certain conditions (e.g., corrosion or dents) that would require a cylinder to be removed from service prior to the scheduled retest date. RSPA has not adopted this comment because this situation is addressed adequately in section 173.34(a)(1), which states: "A cylinder that leaks, is bulged, has defective valves or safety devices, bears evidence of physical abuse, fire or heat damage, or detrimental rusting or corrosion, must not be used unless it is properly repaired * * *."

Proposed section 173.34(e)(2) sets forth the procedure to obtain retester authorization, in the form of a retester identification number (RIN), and to renew that authorization. A commenter stated that the proposed section does not specify from whom the retester is to obtain a RIN application. RSPA agrees and has revised the regulatory language to include this information.

A commenter requested that RSPA revise section 173.34(e)(2) to specifically prohibit a retester from being authorized to perform retests in mobile operated stations such as vans. RSPA has not incorporated this comment because it is outside the scope of this rulemaking. In addition, RSPA has no information that would demonstrate that a retester could not comply with the applicable requirements of the HMR using a mobile station.

Several commenters requested that RSPA clarify whether persons who only perform visual inspections on DOT specification or exemption cylinders need a RIN. RSPA has revised section 173.34(e)(2)(i) to clarify that a person is not required to obtain a RIN, if the person only performs visual inspections on DOT specification or exemption cylinders.

In sections 173.34(e) (2)(i), (2)(iv) and (2)(v), RSPA proposed three new requirements. First, a retester's authority to mark a cylinder with a RIN and an inspection or test date would be contingent on the retester operating in compliance with the terms of the RIN issuance letter. Second, a retester would be required to inform RSPA in writing of any change in the company's address, cylinder qualification personnel or testing equipment within 20 days. (RSPA now imposes these two requirements under the terms of the RIN issuance letter.) Third, a retester would be required to maintain, at each facility where inspection and retesting is performed, the relevant parts of 49 CFR; copies of the current exemptions for all exemption cylinders inspected, retested or marked; and all Compressed Gas Association (CGA) pamphlets incorporated by reference in section 171.7 that apply to the retester's activities.

A commenter stated that the requirement in proposed section 173.34(e)(2)(v) that a retester maintain "current copies" of certain CGA publications was confusing. The commenter indicated that it was unclear whether "current" referred to the most recent edition published by the CGA or the edition incorporated in the HMR. A retester must maintain, at each location where it inspects, retests or marks cylinders, the edition of each CGA publication incorporated by reference in section 171.7 that applies to retester's cylinder inspection, retesting and marking activities. To eliminate ambiguity, RSPA has clarified the language of this section.

Another commenter suggested that, instead of referring to a specific CGA publication, RSPA add the language "or a more current edition." RSPA has not adopted this suggestion. Regulations of the Office of the Federal Register require that materials incorporated by reference must be identified by title, date, edition, author, publisher and identification number of the publication (see 1 CFR Part 51).

Visual Inspection

Several commenters requested that additional language be added to section 173.34(e)(3) to clarify that a visual inspection is required each time a cylinder is retested. RSPA agrees with this comment and has inserted additional language to clarify this existing requirement. In addition, RSPA has added language to section 173.34(e)(2)(i) to clarify that a person who only performs a visual inspection and marks the cylinder with the inspection date does not need a RIN. However, CGA petitioned RSPA (P–1090) to add the requirement that such persons obtain a RIN. RSPA will consider this issue in the future rulemaking.

Retesting

RSPA received numerous comments concerning the retest requirements proposed in section 173.34(e)(4). A commenter requested that RSPA revise this section to reflect that expanding the calibrated cylinder to the prescribed level and then checking the pressure gauge provides the most precise indication of test system accuracy and, therefore, is the preferred method. RSPA has not adopted this comment. There are a number of acceptable methods that indicate test system accuracy, and RSPA believes this choice is best left to the individual retest operator.

Several commenters suggested revisions concerning proposed section 173.34(e)(4)(ii). One commenter stated that it is not feasible to allow a 1 percent accuracy on the pressure-indicating device and a 1 percent accuracy on the expansion-indicating device and achieve a 1 percent accuracy for the total test system. The commenter stated that either the accuracy requirements for the two components of the test system must be reduced or the overall test system accuracy must be increased to account for both components of the test system being at the maximum allowable accuracy limit.

In the NPRM, RSPA was attempting to clarify two key concepts: device *accuracy* (i.e., how truthfully the system displays, or records, the actual pressure or expansion being measured) and device *resolution* (i.e., the smallest incremental unit at which a measuring instrument or system must be capable of being read, or recorded, so as to meet or exceed the measurement accuracy requirement). RSPA proposed that a retester compare the pressure- and expansion-indicating devices against a calibrated standard daily to check their accuracy. However, if the scale of the indicating device does not show the proper resolution, the accuracy of the reading is not assured. Thus, section 173.34(e)(4)(ii) in the NPRM proposed resolution standards for both pressure- and expansion-indicating devices, while section 173.34(e)(4)(iii) proposed accuracy standards for both.

The commenter has combined these two concepts and suggested that there must be a larger range for total test system accuracy. RSPA proposed that the pressure-indicating device and the expansion-indicating device each have an accuracy of ±0.5% and the total test system accuracy be ±1.0%. In order to achieve a 1% system accuracy, the pressure-indicating device (gauge or digital equivalent) and the expansion-indicating device (burette or load cell) each must be calibrated to ½ of 1% within the usable range. RSPA proposed this accuracy standard because when the system is being tested against a known benchmark (i.e., a calibrated cylinder), the standard is readily achievable and allows the retester to verify the structural integrity of the cylinder.

As previously stated, this accuracy standard is separate and distinct from the resolution standard. In a system using pressure gauges, for example, if a pressure gauge reads only in increments of 50 psi, and the minimum prescribed test pressure for a cylinder to be tested

is 1000 psi, the gauge would show insufficient resolution to determine accuracy. A gauge with a finer scale is needed. To achieve the required resolution, the gauge divisions should permit reading of pressures to within 10 psi, which is 1% of the cylinder's minimum prescribed test pressure (1000 psi). Because mid-point interpolation is permissible and 10 psi is one-half of 20 psi, a gauge of no greater than 20 psi increments can be used for this example. Thus, whether the pressure-indicating device meets the resolution standard is separate from whether the device meets the accuracy standard.

In addition, RSPA proposed at section 173.34(e)(4)(iii)(A) that "[t]he pressure indicating device * * * must permit readings of pressure from 90%–120% of the minimum prescribed test pressure of the cylinder to be tested." Several commenters opposed this requirement and stated that the requirement should specify a range of 90%–110% of test pressure. The commenters maintained that the NPRM's requirement would impose a financial burden on the industry without a safety benefit. The commenter stated that the current industry standard (CGA Pamphlet C–1) prohibits pressuring a cylinder above 110% of the specified test pressure. In addition, the commenter estimated that there were approximately 1,000 test systems equipped with gauges capable of reading 110% of the specified test pressure. The commenter estimated the cost of replacement at $450 per gauge and the total cost to industry of complying with this proposal to be in excess of $500,000. Because the main goal of this rule is clarification, not substantive change, RSPA is revising the proposed requirement and is specifying a 90%–110% range.

RSPA requested comments on whether calibration should be required more or less frequently than the proposed daily calibration, and whether, for example, it is appropriate to require a calibration check at the beginning of each shift (for those facilities operating more than one shift per day), for each change in retest operator, or at some other frequency. Most commenters supported the daily calibration requirement proposed in section 173.34(e)(4)(iii). Two commenters suggested that calibration be required at the beginning of each shift. Another commenter indicated that it is important for each retest operator to have actual knowledge that the retest equipment is accurate. After reviewing the comments, RSPA has decided that the appropriate calibration verification interval is daily and thus, when conducting hydrostatic retests, a retest operator must verify the calibration of the equipment at least once each 24-hour period.

In addition, one commenter suggested that proposed section 173.34(e)(4)(iv) be revised to read: "The test equipment must be verified to be accurate within ±1% of the calibrated cylinder's pressure * * *." RSPA agrees that this language clarifies the requirement and has incorporated this language into the rule.

RSPA proposed in section 173.34(e)(4)(iii) to allow a retester to use a method other than a calibrated cylinder if the retester receives written authorization from the Associate Administrator for Hazardous Materials Safety. One commenter inquired whether RSPA would grant this authorization to each individual retest facility or whether the authorization could be in the form of a more general notice. A retester who seeks to use a method not specifically recognized by the HMR must request written authorization to use that method. RSPA would review each request and, if it found the method acceptable, grant written authorization only to each specific retest facility requesting approval. If RSPA found that it was receiving and authorizing numerous requests for one particular alternative method, it would initiate a rulemaking to incorporate the alternative method into the HMR.

Proposed section 173.34(e)(4)(v) restates the current requirements for cylinder retesting, including the requirement to hold minimum test pressure for at least 30 seconds and as long as necessary for full cylinder expansion, and the prohibition on pressurizing a cylinder above 90 percent of test pressure before a retest. When the system apparatus fails to hold pressure after test pressure has been reached, retest is authorized at a pressure increased by 10 percent or 100 psi, whichever is less.

The NPRM invited comments on whether RSPA should: (1) Specify the period of time a retest operator must wait, after applying more than 90 percent of test pressure, before a second retest, (2) limit the number of permissible retests after apparatus failure, and (3) specify a standard for condemnation in the event of overpressurization. Most commenters opposed RSPA specifying requirements in any of these areas. They cited a wide range of reasons for opposing these requirements. Among those commenters who supported RSPA establishing standards in these areas, there was no consensus as to what the standards should be. After reviewing the comments, RSPA believes further evaluation is required and is not adopting any of these standards in this rulemaking.

One commenter asked if there was a time frame between retests that would negate the requirement to increase the retest pressure and if a cylinder would still have to be tested at a higher test pressure if repairs to the retest equipment took several days. At this time, RSPA is unable to cite a specific time frame between retests that would negate the requirement to increase the retest pressure following an equipment failure. However, a brief passage of time, for example, where repairs to the retest equipment take several days, would not negate the requirement to increase the test pressure following an equipment failure.

The commenter also asked how many times a retest could be performed before the cylinder must be condemned due to excessive pressurization. A cylinder must be condemned when the retest results exceed the permanent expansion limit. Thus, once this limit is exceeded, a retester must condemn the cylinder and no further retesting is permitted. This final rule contains language emphasizing that a second retest is authorized only when the testing apparatus has failed to hold test pressure.

One commenter requested that RSPA expand the conditions under which a second retest is permitted. The commenter requested that RSPA add "improper procedure" and "operator error" as conditions under which a retester could repeat a retest at a higher test pressure. The commenter stated that equipment malfunction is not the only potential cause of an invalid test. RSPA has not adopted this comment. Such a revision would allow a retest operator to repeat a test under any condition by simply attributing it to "operator error" and to retest until the desired results were obtained.

In addition, one commenter suggested that, at least every six months, retest operators be required to use a dead weight or master gauge to recalibrate the pressure gauge used for retesting. RSPA did not propose this standard in the NPRM and questions whether a six-month interval is the proper frequency for recalibrating the pressure gauge when compared to the additional costs. Because the proposal exceeds the scope of this rulemaking, and there was no opportunity for public comment on its additional costs, RSPA is not adopting this comment.

One commenter suggested revisions to proposed section 173.34(e)(11) (paragraph (e)(10) in this rule.) The commenter inquired whether the requirements of pressure gauge accuracy, readability and daily verification were applicable to the "modified hydrostatic test." The commenter stated that because there is only one calibration device in the modified hydrostatic test system, there is no reason to verify the device's accuracy on a daily basis. The fact that the modified hydrostatic test system has only one calibration device increases, not decreases, the need for daily verification. Therefore, RSPA is not adopting this comment.

The commenter also requested that RSPA clarify the system requirements for the modified hydrostatic test. RSPA has added language to clarify that an external visual inspection is part of the modified hydrostatic retest. In addition, as stated in section 173.34(e)(11), the system requirements for the modified hydrostatic retest are the same as the hydrostatic retest with the exception of the water jacket and the determination of the cylinder's total and permanent expansions.

Marking

RSPA proposed several changes to the marking requirements contained in section 173.34(e)(7). RSPA received a number of comments concerning these proposed changes. One commenter stated that, as proposed, the requirement for marking a cylinder with a RIN remains confusing and needs to be rewritten for clarification. RSPA has reviewed the language in proposed section 173.34(e)(7) and has made minor modifications to improve the section's clarity.

One commenter suggested that RSPA require a retester to mark its RIN on a cylinder regardless of the test method used. RSPA has not adopted this comment, because this change in marking procedures was not proposed in the NPRM and there has not been an opportunity to comment on this additional marking burden. In addition, the commenter requested that the marking concepts of DOT Exemption E–11372 be incorporated into this rulemaking. RSPA has not had an opportunity to evaluate all the effects of this comment and therefore, will consider this comment in a future rulemaking.

Cylinder Rejection/Condemnation

RSPA received a number of comments on the proposed requirements, in sections 173.34(e) (5) and (6).

One commenter suggested that RSPA revise the proposed language of section 173.34(e)(5) to stress that a cylinder that has been rejected may be requalified by repairing the defect (e.g., bad foot ring or damaged collar). RSPA agrees and has revised this section to clarify that a cylinder that has been rejected may be requalified by repairing the defect.

Several commenters noted that the preamble language described the proposed rule as requiring a condemned cylinder to be stamped with a series of X's over the DOT specification number and service pressure or with the word "CONDEMNED" on the shoulder, top head, or neck of the cylinder was inconsistent with the regulatory language requiring a retester to apply both markings. The proposed regulatory language was incorrect and should have tracked the preamble language. RSPA is revising this rule to allow the retester to decide whether to stamp a condemned cylinder with a series of X's or the word "CONDEMNED."

A commenter requested that RSPA revise proposed section 173.34(e)(6)(ii) to shorten the word "CONDEMNED" to "CNDMD." The commenter stated that such a revision would save the retester time and expense. RSPA recognizes that the proposed requirement will require more time than stamping "CNDMD". However, the proposed language is a better method to communicate to the public that the cylinder is not qualified to be used for the transportation of hazardous materials and is a better method to prevent condemned cylinders from being used to transport hazardous materials. Within the general public, there could be confusion concerning the meaning of "CNDMD." In addition, as stated above, the retester has the option of stamping a condemned cylinder with a series of X's over the DOT specification number and service pressure. However, if stamping the word "CONDEMNED" or a series of X's over the DOT specification number and service pressure would create an undue burden on a retester, then under section 173.34(e)(7), the retester can make a written request for a variation to the marking requirement.

Another commenter inquired as to how to stamp a fully-wrapped cylinder with the word "CONDEMNED" if there is not sufficient space on the neck of the cylinder. If there is not sufficient space to stamp the cylinder with the word "CONDEMNED" then, under this rule, a retester can exercise the option of stamping a series of X's over the DOT specification number and service pressure.

Several commenters suggested that a retester be required to mark its RIN on a condemned cylinder. One commenter stated: "Otherwise, a person wishing to claim a steel cylinder for scrap metal could simply 'X' out the DOT specifications." RSPA is not aware that such a practice has become a problem, and RSPA does not believe the addition of a RIN would discourage or prevent such a practice. RSPA has not adopted this comment because this additional step would increase the cost of condemnation without any offsetting benefit.

One commenter stated that the CGA pamphlets cited in proposed section 173.34(e)(6)(i)(A) do not provide sufficient information for the retester to make an objective determination as to what would "appreciably weaken" a given cylinder. RSPA has reviewed each of the CGA pamphlets incorporated by reference in section 173.34(e)(6)(i)(A) and finds that they provide a safe minimum standard for condemnation procedures.

RSPA received only one comment opposing the written notification requirement for rejected and condemned cylinders in proposed sections 173.34 (e)(5)(ii) and (e)(6)(ii) (sections 173.34 (e)(5)(iii) and (e)(6)(iii) of this rule). The commenter stated that this requirement "would generate unnecessary paperwork and would not improve the chances that a condemned cylinder will not be refilled." This written requirement gives the cylinder's owner actual notice that the cylinder can no longer be used to transport hazardous materials. In light of the potential civil liability considerations, this additional step will increase the likelihood that the cylinder owner will promptly remove the cylinder from service involving hazardous materials.

Proposed section 173.34(e)(6)(ii) would allow a retester, at the direction of the owner, to render the cylinder incapable of holding pressure in some fashion (e.g., by damaging the cylinder threads or drilling through the cylinder wall). Several commenters suggested that RSPA add regulatory language authorizing the retester, without the permission of the owner, to render a condemned cylinder unserviceable by "drilling a hole in the side or by damaging the threads." These commenters stated that simply marking the cylinders with a series of X's is not sufficient to ensure a condemned cylinder is not returned to service.

RSPA must balance the commenters' concerns against the property interests of the cylinder's owner. Because the cylinder in most cases is not the property of the retester and a condemned cylinder may be used for purposes other than the transportation of hazardous materials in commerce, RSPA is not authorizing the retester to "render the cylinder incapable of holding pressure" unless the cylinder's

owner has given permission to the retester.

One commenter requested that RSPA further clarify the phrase "render the cylinder incapable of holding pressure." The commenter indicated that it knew of instances "in which cylinders that had holes drilled in them by owners or retesters * * * were 'repaired' using auto body filler or similar material." The commenter recommended that the HMR specify three actions a retester could take that would render a condemned cylinder incapable of holding pressure. RSPA has not adopted this comment. There are numerous actions a retester may take that would render a cylinder incapable of holding pressure. RSPA is not mandating any particular action but instead leaves this decision to the discretion of the cylinder's owner or, with the permission of the owner, the retester.

Recordkeeping

RSPA received a number of comments concerning the recordkeeping requirements proposed in section 173.34(e)(8). RSPA proposed that the retest record contain those entries previously required, as well as the cylinder manufacturer's name or symbol, cylinder dimensions and identification of the retest operator. One commenter requested that the language proposed in section 173.34(e)(8)(ii)(B) be revised to indicate that a retester is required to record only the information that is marked on the cylinder. The commenter stated that millions of cylinders are marked with only an owner's mark and are not marked with the manufacturer's name or symbol. Another commenter requested that the regulation allow a retester to use a code or symbol to represent the cylinder's dimensions. The commenter also requested that RSPA add the word "actual" prior to "test pressure" to avoid any confusion as to whether the retest operator should record the actual test pressure or the specified test pressure. Additionally, to clarify the recordkeeping procedures, the commenter requested that RSPA delete the phrase "disposition, with reason for retest" and insert "disposition, with reason for any repeated test." RSPA agrees with each of these comments and has made the appropriate changes.

One commenter was opposed to a requirement that retest operators record a cylinder's dimensions. This rule does not adopt this comment because an entry on dimensions can help distinguish between cylinders that have the same serial numbers and capacities.

Another commenter recommended that RSPA revise the NPRM language concerning the length of time a retester must maintain its hydrostatic retest records. The commenter noted that RSPA proposed that records be maintained for five years, but some cylinders have retest periods in excess of five years. The commenter recommended retaining the current requirement that requires retention of the records until the expiration of the retest period or until the cylinder is reinspected or retested, whichever occurs first. RSPA agrees with this comment and has retained the current requirement in this final rule.

One commenter requested that RSPA change the word "sheets" in section 173.34(e)(8)(ii)(A) to "log." The relevant proposed language is: "Calibrations must be recorded on the same sheets as, and in chronological order with, retest records for that date;". The commenter stated that the word "sheets" could be interpreted to mean that each time a retester began recording retest information on a new sheet, it must verify the calibration of its retest equipment. RSPA has not adopted this comment because it believes the likelihood of such a misunderstanding is small. The provision does not require a retester to verify calibration each time it begins recording retest information on a new retest sheet.

In addition, RSPA has modified its proposal to reduce the paperwork burden on retest operators. First, as quoted above, RSPA proposed that calibrations be recorded on the same sheets as the retest records for that date. The rule now requires only that the retest operator be able to demonstrate that the results of the daily calibration verification correspond to the hydrostatic retests that were performed on that day.

Second, RSPA proposed that calibration runs be recorded, in chronological order, with the retest records for that day. Several commenters opposed this requirement. One commenter stated that this requirement "would substantially increase our expense due to lost production and would only serve to meet the regulation." Another commenter stated that it maintained its retest records according to the name of each customer and the proposed requirement would drastically alter its filing system.

CGA Pamphlet C–1, which is not incorporated by reference in section 171.7, recommends that retesters record calibrated cylinder expansions used to confirm retest apparatus calibration. Calibration checks must be recorded as a means of demonstrating that the test apparatus was accurate on any given day. However, RSPA did not intend to significantly increase the recordkeeping burden for retester operators, and therefore, RSPA has not adopted the proposed requirement that a retester maintain its retest records in chronological order. The recordkeeping requirement now requires a retest operator to be able to associate the daily verification(s) of calibration with the hydrostatic retests performed on that date.

One commenter was opposed to the proposed revision of section 173.34(e)(8)(ii)(B) because it interpreted the NPRM as requiring the retest operator to sign the retest sheet each time the retest operator recorded the results of a hydrostatic retest. This section does not require a retest operator to sign the retest sheet each time the retest operator records the results of a hydrostatic retest. RSPA agrees with the commenter that such a requirement would be "a waste of time and paper space." Section 173.34(e)(8)(ii)(B) requires that, for each cylinder retested or visually inspected, the retest record must contain a legible identification of test operator. Thus, if the retest operator performed all the retests recorded on a particular retest sheet, this section requires a retest operator to be legibly identified only once on the retest sheet. There is no requirement that the retest operator sign the sheet each time a retest is completed.

Proposed section 173.34(e)(8)(i) requires each retester to maintain at its facility its RIN issuance letter from RSPA, a copy of its renewal request if the request is pending, copies of notifications to RSPA of changes in its name, address, personnel or equipment which occurred after issuance of the most recent RIN letter, and the most recent certificates of calibration for all calibrated cylinders.

One commenter stated that the requirement "to maintain specific documentation is unnecessary so long as the retester can provide equivalent documentation * * *." RSPA has not adopted this comment because section 173.34(e)(8) provides that a person shall maintain its RIN issuance letter, request for renewal if pending, copies of notifications to RSPA of changes in its name, address, personnel or equipment which occurred after issuance of the most recent RIN letter, and the most recent certificates of calibration for all calibrated cylinders in paper form "or in a form from which a paper copy can be produced on request." Thus, a person can maintain this documentation in an electronic medium (e.g., computer records) provided the person can produce a paper copy upon request. In addition, it is unclear what specific items would serve as the "equivalent documentation." This phrase is subject to broad interpretation and lacks definition. RSPA's retester inspections indicate that maintenance of these documents is standard retester operating practice because of the requirement presently found in the RIN issuance letter. Furthermore, this requirement facilitates a prompt determination whether the retester is complying with the HMR.

DOT 4-series Cylinders

One commenter recommended three revisions to proposed section 173.34(e)(10). First, the commenter requested a revision to clarify that all DOT 4L cylinders are excluded from the requirements of this paragraph because these cylinders are excluded from requalification requirements. RSPA agrees and has adopted this comment. The revised language now appears in section 173.34(e)(9) of this rule.

Second, the commenter recommended that RSPA add a sentence to proposed paragraph (e)(10) that would prohibit the removal of a DOT 4L cylinder's original stamped tare weight. The commenter stated that if the original stamped tare weight is removed and then there is a series of tare weight changes, it is difficult to determine if the cylinder has lost 10 percent of its original weight (rejection criterion for DOT–4 series cylinders). This was not suggested in the NPRM and is not adopted in this rulemaking because RSPA requires additional time to study the merits of the proposal. RSPA will consider this proposal in a future rulemaking.

Third, this commenter suggested that for inspection of DOT 4L cylinders, a more appropriate CGA reference for proposed paragraph (e)(10) is CGA Pamphlet C–6.3 and not C–6.1 as proposed in the NPRM. RSPA agrees and has revised the CGA reference which now appears in section 173.34(e)(9) of this rule.

Another commenter suggested that a number of hazardous materials be added to the materials listed in proposed paragraphs (e) (12) and (13). This was not suggested in the NPRM and is not adopted in this rulemaking because RSPA requires additional time to study the merits of the proposal.

Two commenters stated that the proposed language in section 173.34(e)(18)(iv) provides a "loophole" wherein certain cylinders that exceed the wall stress limitation in section 173.302(c)(3), but subsequently confined to a specified noncorrosive gas service, would be allowed a ten year requalification. RSPA agrees and this result was not the intent of the proposed rule. Thus, RSPA has revised the rule to clarify that, in addition to other requirements, a cylinder that is not used exclusively in specific noncorrosive gas services must be retested and examined in accordance with the requirements of section 173.302(c) (2), (3) and (4), before the periodic retest interval can be extended from five to ten years. In addition, the tested cylinder must be confined to specified noncorrosive gas services in order to qualify for the ten year retest cycle. The revised language now appears in section 173.34(e)(16) of this rule.

Section 173.301

Foreign Cylinders for Export

Several commenters suggested that markings on foreign cylinders contain the RIN. RSPA has not adopted this comment because the marking of a RIN on these cylinders could lead to confusion between these foreign cylinders and those authorized for use in domestic hazardous materials transportation.

One commenter requested that RSPA revise the language proposed in section 173.301(j)(2) to require that the bill of lading or other shipping paper, "when possible," identify the cylinder. RSPA has not adopted this comment, because it would create a loophole that would allow a person to ship cylinders for export without the cylinders being identified on an accompanying shipping paper. This lack of documentation would make it difficult to determine whether the shipment of cylinders complied with the HMR export requirements. In addition, such a provision would render the certification that the cylinders were retested and refilled in accordance with the HMR requirements meaningless. A person could simply state that "it was not possible" to identify a particular cylinder on the shipping paper and thus, the certification could not be associated with the particular cylinder.

The commenter also requested that RSPA revise section 173.301(j) to allow cylinders currently retested, but not marked, to continue in service without being returned for re-marking. According to the commenter, without this revision, cylinders meeting the other requirements in this section, but not marked, would not be allowed to continue in service. RSPA recognizes that this rule would require some cylinders previously tested to be retested. This requirement may cause practical problems for certain members of the regulated community. Therefore, RSPA has revised the proposed language. If the previous testing can be verified, then the person can utilize the language in section 173.301(j)(1)(i) which allows, on a case-by-case basis, for authorization of an alternative method of qualification by Associate Administrator for Hazardous Materials Safety.

Section 173.302

Computing Wall Stress for Overfill Authorization

RSPA proposed requiring a retester to compute both a cylinder's average and maximum wall stress prior to overfilling the cylinder. Several commenters opposed the proposed change stating that there is no need to make both calculations and that one calculation, as presently required, is sufficient. RSPA agrees with the commenters and is not adopting this change.

In the NPRM, RSPA invited comments on whether other methods not presently authorized by paragraph (c)(3) may be used to compute accurately the average or maximum wall stress (60 FR 54011). One commenter requested that language be added to paragraph (c)(3) to permit the person computing the wall stress to rely, if present, on the Rejection Elastic Expansion (REE) values stamped on the cylinder. The commenter stated: "It is now common practice for manufacturers to include stamped REE values on new cylinders * * *." RSPA has not had an opportunity to consider all the possible effects that might result from the adoption of this proposal. Therefore, RSPA will consider this comment in a future rulemaking.

Section 173.309

Retest Requirements for Fire Extinguishers

Current section 173.309 prescribes DOT specification cylinders authorized for transportation under the description "Fire extinguishers containing *compressed or liquefied gas*, 2.2, UN1044" when certain conditions are met. Section 173.309(b)(1) states that the cylinder must be used exclusively for fire extinguishing agents such as ammonium phosphate, sodium bicarbonate, potassium bicarbonate, potassium imido dicarboxamide and bromochlorodifluromethane or bromotrifluromethane, which are commercially free from corroding components. In the NPRM, RSPA proposed to move section 173.309(b)(1) to section 173.34(e)(21). The proposed change was in response to a petition for rulemaking (P–1216) submitted by the Fire Equipment Manufacturers'

Association, Inc. (FEMAI) requesting that RSPA move the retest conditions to section 173.34(e). FEMAI stated this change would clarify that fire extinguishers charged with carbon dioxide only do not qualify for the special retest provisions in current section 173.34(e)(18). RSPA also proposed to remove from section 173.309(b)(2) a limitation on the dew point for propellant gases.

In this final rule, RSPA has removed section 173.309(b)(4), containing a reference to the retest provisions in section 173.34, but is not adopting the other proposed changes to section 173.309(b). The conditions identifying the contents authorized for fire extinguishers are shipper requirements rather than retest requirements and, therefore, are retained in section 173.309(b). However, paragraph (b)(1) is revised to permit the use of any fire extinguishing medium that is non-flammable, non-poisonous, and commercially free from corroding components. Any fire extinguisher containing a fire extinguishing medium or propellant gas not meeting the requirements in paragraphs (b) (1)and (2) may not be shipped under these provisions.

Several commenters to the NPRM noted that proposed section 173.34(e)(21) does not allow a 12-year retest period for cylinders having a water capacity of 12 lbs. or less regardless of the retest method. The commenters requested that RSPA revise the paragraph to add this provision. RSPA inadvertently omitted the language from the NPRM. In this final rule, RSPA has added the 12-year retest period and moved the fire extinguisher retest provisions to section 173.34(e)(19).

In the NPRM, reference to DOT 3A, 3AA and 3AL cylinders were not included in the fire extinguisher retest provisions in proposed section 173.34(e)(21). RSPA has added the retest provision for these cylinders in section 173.34(e)(19)(ii) of this final rule. These cylinders may be hydrostatically retested using the water jacket method at 12-year intervals.

Miscellaneous Technical Revisions to Part 173

The NPRM proposed a provision encouraging voluntary compliance with CGA Pamphlet S–1.1.1, paragraph 9.1.1.1, which specifies the replacement or requalification of pressure relief valves, on certain DOT cylinders every 10 years. The National Propane Gas Association (NPGA) submitted comments stating that the propane industry has experienced no problems with these pressure relief valves and that RSPA should not "encourage" the replacement of these pressure relief valves. In addition, NPGA opposed this proposal, despite its permissive nature, because NPGA believes that State and local enforcement officials would attempt to enforce this permissive standard and this result along with liability costs would make this a "de facto mandate." NPGA also stated that its analysis indicates that the periodic replacement of these pressure relief valves would cost the industry in excess of $60 million per year.

RSPA proposed this permissive standard in order to encourage the periodic replacement of pressure relief valves. One commenter agreed with RSPA's efforts to encourage the practice and suggested RSPA make it a mandatory requirement. The commenter cited a Canadian standard as precedent. RSPA believes a number of pressure relief valves deteriorate over time-in-service and that most members of the regulated community recognize the need for periodic replacement of these valves. RSPA does not believe that State and local enforcement officials would attempt to enforce this permissive standard. However, based on NPGA's concerns about the effect this permissive standard would have on the issue of liability, the amount of time required to gather and analyze incident data and the time required to verify NPGA's cost estimates, RSPA is deleting the permissive reference to CGA Pamphlet S–1.1.1, paragraph 9.1.1.1. RSPA will consider this issue in a future rulemaking.

In addition, one commenter proposed that throughout section 173.34(d) the phrase "safety relief devices" be revised to read "pressure relief devices." The commenter stated: "The use of the word 'pressure' in lieu of the word 'safety' is preferred because 'pressure relief' describes the function of the device." RSPA agrees with this editorial amendment and has made the appropriate changes. In addition, the commenter suggested adding the metric equivalents to the English measurements in the paragraph. RSPA will consider this comment in a future rulemaking.

The same commenter also suggested several amendments that in RSPA's view were more than editorial comments and thus, beyond the scope of the present rulemaking. These include suggestions that RSPA add a sentence to section 173.34(d) that would require that selection of pressure relief devices for cylinders containing compressed gas mixtures be made in accordance with CGA Pamphlet S–7; add "flammable, liquefied compressed gases" to section 173.34(d)(7), and add a new paragraph allowing Classes 3 or 8 materials to be transported in cylinders that are not under pressure and not equipped with pressure relief devices. CGA Pamphlet S–7 has not been incorporated by reference and RSPA is uncertain of the impact of such an amendment. In addition, RSPA needs additional time to review those materials in Classes 3 and 8 which have a high vapor pressure at temperatures normally related to transportation and therefore, may require a pressure relief device. Moreover, these proposals were not suggested in the NPRM and are not adopted in this rulemaking because there has been no opportunity for public comment on them.

Another commenter stated that "[a]n effort should be made to use the same terminology between the DOT regulations and the CGA Pamphlets referenced therein." RSPA agrees and has made an effort to harmonize the terminology.

III. Rulemaking Analyses and Notices

1. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). The economic impact of this rule is minimal to the extent that preparation of a regulatory evaluation is not warranted.

2. Executive Order 12612

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not "substantively the same" as the Federal requirements. 49 U.S.C. 5125(b)(1). These covered subjects are:

(A) the designation, description, and classification of hazardous material;

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements respecting the number, contents, and placement of those documents;

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container which is represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This rulemaking addresses the maintenance and testing of a packaging represented as qualified for use in the transportation of hazardous material. Therefore, the rule preempts State, local and Indian tribe requirements that are not "substantively the same" as Federal requirements on these subjects. Section 5125(b)(2) of Title 49 U.S.C. provides that when DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier that the 90th day following the date of issuance of the final rule and no later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption of this final rule is October 1, 1996. Because RSPA lacks discretion in this area, preparation of a federalism assessment is not warranted.

3. Regulatory Flexibility Act

I certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule applies to persons who inspect, retest and certify cylinders used to transport hazardous materials. These persons include a number of small businesses; however, the economic impact on any small business affected by the rule is expected to be minimal. There are no direct or indirect adverse economic impacts for small units of government or other organizations.

4. Paperwork Reduction Act

This final rule changes information collection requirements in section 173.34 pertaining to testing, inspecting and marking of cylinders which were previously approved by the Office of Management and Budget under OMB control number 2137–0022. RSPA is requesting reinstatement and revision of this approval from OMB and will display the control number, through publication in the **Federal Register**, when it is approved by OMB. Public comment on this request was invited through publication of a **Federal Register** notice on March 5, 1996 (61 FR 8706). Under the Paperwork Reduction Act of 1995, no person is generally required to respond to a requirement for collection of information unless the requirement displays a valid OMB control number.

5. Regulation Identifier Number

A regulation identifier number is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The regulation identifier number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, 49 CFR parts 171 and 173 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.7, in the Table in paragraph (a)(3), under the entry *Compressed Gas Association, Inc.*, the entries for CGA Pamphlets C–6, C–13, and S–1.1 are revised and four new entries are added in alpha-numerical order, to read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
. . . . .	
Compressed Gas Association, Inc.,	
. . . . .	
CGA Pamphlet C–5, Cylinder Service Life—Seamless Steel High Pressure Cylinders, 1991	173.302
CGA Pamphlet C–6, Standards for Visual Inspection of Steel Compressed Gas Cylinders, 1993	173.34; 180.519
CGA Pamphlet C–6.1, Standards for Visual Inspection of High Pressure Aluminum Compressed Gas Cylinders, 1995	173.34
CGA Pamphlet C–6.2, Guidelines for Visual Inspection and Requalification of Fiber Reinforced High Pressure Cylinders, 1988.	173.34
CGA Pamphlet C–6.3, Guidelines for Visual Inspection and Requalification of Low Pressure Aluminum Compressed Gas Cylinders, 1991.	173.34
. . . . .	
CGA Pamphlet C–13, Guidelines for Periodic Visual Inspection and Requalification of Acetylene Cylinders, 1992	173.34; 173.303
. . . . .	
CGA Pamphlet S–1.1., Pressure Relief Device Standards—Part 1—Cylinders for Compressed Gases, 1994 (with the exception of paragraph 9.1.1.1).	173.34
. . . . .	

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

4. In § 173.23, paragraphs (c), (d), and (e) are revised to read as follows:

§ 173.23 Previously authorized packaging.

* * * * *

(c) After July 2, 1982, a seamless aluminum cylinder manufactured in conformance with and for use under DOT special permit (SP) or exemption (E) 6498, 7042, 8107, 8364 or 8422 may be continued in use if marked before or at the time of the next retest with either the specification identification "3AL" immediately above the special permit or exemption number, or the DOT mark (e.g., DOT 3AL 1800) in proximity to the special permit or exemption marking.

(d) Cylinders (spheres) manufactured and marked under DOT special permit (SP) or exemption (E) 6616 prior to January 1, 1983, may be continued in use if marked before or at the time of the next retest with the specification identification "4BA" near the special permit or exemption marking.

(e) After October 1, 1984, cylinders manufactured for use under special permit (SP) or exemption (E) 6668 or 8404 may be continued in use, and must be marked "DOT–4LXXXYY" (XXX to be replaced by the service pressure, YY to be replaced by the letters "AL", if applicable) in compliance with Specification 4L (§ 178.57 of this subchapter) on or before January 1, 1986. The "DOT–4LXXXYY" must appear in proximity to other required special permit or exemption markings.

* * * * *

5. In § 173.34, paragraph (d)(7) is removed, the first sentence of the introductory text of paragraph (d), paragraphs (d)(1) through (d)(5) and paragraph (e) are revised, and paragraph (d)(6) is added to read as follows:

§ 173.34 Qualification, maintenance and use of cylinders.

* * * * *

(d) *Pressure relief device systems.* No person may offer a cylinder charged with a compressed gas for transportation in commerce unless the cylinder is equipped with one or more pressure relief devices sized and selected as to type, location, and quantity and tested in accordance with CGA Pamphlet S–1.1 (compliance with paragraph 9.1.1.1 of CGA Pamphlet S–1.1 is not required).

* * *

(1) Except as provided in paragraphs (d)(1) (i) through (iii) of this section, a pressure relief device is not required on a cylinder 12 inches or less in length, exclusive of neck, and 4½ inches or less in outside diameter.

(i) A pressure relief device is required on a specification 9, 39 (§ 178.65 of this subchapter), 40, or 41 cylinder. A metal pressure relief valve is required on a specification 39 cylinder used for a liquefied flammable gas. A fusible pressure relief device is not authorized on a specification 39 cylinder containing a liquefied compressed gas.

(ii) A pressure relief device is required on a cylinder charged with a liquefied gas for which this part requires a service pressure of 1800 psi or higher.

(iii) A pressure relief device is required on a cylinder charged with a nonliquefied gas to a pressure of 1,800 psi or higher at 70 °F.

(2) Except for a specification 39 cylinder and a cylinder used for acetylene in solution, a pressure relief device is not required on a cylinder charged with a nonliquefied gas under pressure of 300 psi or less at 70 °F.

(3) A pressure relief device is prohibited on a cylinder charged with a Division 2.3 or Division 6.1 material in Hazard Zone A.

(4) A pressure relief device is prohibited on a cylinder charged with fluorine.

(5) A pressure relief device is not required on a cylinder charged with methyl mercaptan; with mono-, di-, or trimethylamine, anhydrous; with not over 10 pounds of nitrosyl chloride; or with less than 165 pounds of anhydrous ammonia.

(6) Pressure relief devices, if used, must be in the vapor space of cylinders containing pyroforic liquids, inorganic or organic, n.o.s., covered by § 173.124.

(e) *Periodic qualification and marking of cylinders.* Each cylinder that becomes due for periodic retest as specified in the following table must be retested and marked in conformance with the requirements of this paragraph (e):

RETEST AND INSPECTION OF CYLINDERS [1]

Specification under which cylinder was made [2]	Minimum retest pressure (p.s.i.) [3]	Retest period (years)
DOT–3	3,000 p.s.i	5.
DOT–3A, 3AA	5/3 times service pressure, except non-corrosive service (see § 173.34(e)(13))	5, 10, or 12 (see § 173.34 (e)(14), (e)(12), (e)(16), and (e)(19)).
DOT–3AL	5/3 times service pressure	5 or 12 (see (e)(19)).
DOT–3AX, 3AAX	5/3 times service pressure	5.
3B, 3BN	2 times service pressure (see § 173.34(e)(13))	5 or 10 (see § 173.34(e)(12)).
3C	Retest not required.	
3D	5/3 times service pressure	5.
3E	Retest not required.	
3HT	5/3 times service pressure	3 (see § 173.34(e)(15)).
3T	5/3 times service pressure	5.
4	700 p.s.i	10.
4A	5/3 times service pressure (see § 173.34(e)(13))	5 or 10 (see § 173.34(e)(12)).
4AA480	2 times service pressure (see § 173.34(e)(13))	5 or 10 (see § 173.34(e)(14)).
4B, 4BA, 4BW, 4B–240ET	2 times service pressure, except non-corrosive service (see § 173.34(e)(13))	5, 10 or 12 (see § 173.34 (e)(11), (e)(12) and (e)(19)).
4C	Retest not required.	
4D, 4DA, 4DS	2 times service pressure	5.
DOT–4E	2 times service pressure, except non-corrosive service (see § 173.34(e)(13))	5.
4L	Retest not required.	
8, 8AL		10 or 20 (see § 173.34(e)(18)).
DOT–9	400 p.s.i. (maximum 600 p.s.i.)	5.

RETEST AND INSPECTION OF CYLINDERS [1]—Continued

Specification under which cylinder was made [2]	Minimum retest pressure (p.s.i.) [3]	Retest period (years)
25	500 p.s.i	5.
26 for filling at over 450 p.s.i	5/3 times service pressure	5.
26 for filling at 450 p.s.i. and below.	2 times service pressure, except non-corrosive service (see § 173.34(e)(13))	5 or 10 (see § 173.34(e)(11)).
33	800 p.s.i	5.
38	500 p.s.i	5.
Exemption cylinder	See current exemption	See current exemption.
Foreign cylinder (see § 173.301(j) for restrictions on use).	As marked on the cylinder, but not less than 5/3 of any service or working pressure marking.	5.

[1] Any cylinder not exceeding two inches outside diameter and less than two feet in length is excepted from hydrostatic retest.
[2] A cylinder in chlorine or sulfur dioxide service made before April 20, 1915, must be retested at 500 psi.
[3] For cylinders not marked with a service pressure, see § 173.301(e)(1).

(1) *General requirements.* (i) Each cylinder bearing a DOT specification marking (including a cylinder remarked in conformance with § 173.23) must be inspected, retested and marked in conformance with this section, at the frequency specified in the Retest and Inspection of Cylinders Table in this paragraph (e). Each cylinder bearing a DOT exemption number must be inspected, retested and marked in conformance with this section and the terms of the applicable exemption, at the frequency specified in the exemption.

(ii) No cylinder required to be retested by paragraph (e)(1)(i) of this section may be charged or filled with a hazardous material and transported in commerce unless that cylinder has been inspected and retested in accordance with this section and the retester has marked the cylinder by stamping the date of retest, the cylinder retester identification number unless excepted under this section, and any other marking required by this section. No person may mark a test date or a retester identification number on a DOT specification or exemption cylinder unless all applicable requirements of this section have been met.

(2) *Retester authorization.* (i) No person may mark a cylinder with a test date or retester identification number, or otherwise represent that a DOT specification or exemption cylinder has been retested under this section, unless that person holds a current retester identification number issued by the Associate Administrator for Hazardous Material Safety and operates in compliance with the terms of the retester identification number issuance letter. With the exception of visual inspections, all functions under this section must be performed or supervised by an individual named as qualified in the retester identification number application or a notification pursuant to paragraph (e)(2)(iv) of this section. A person is not required to obtain a retester identification number, if the person only performs visual inspections on DOT specification or exemption cylinders.

(ii) Any person seeking approval as a cylinder retester shall arrange for an independent inspection agency, approved by the Associate Administrator for Hazardous Material Safety pursuant to § 173.300a, to inspect its retest facility. The person seeking approval shall bear the cost of the inspection. Independent inspection agencies are not RSPA agents or representatives. A list of approved independent inspection agencies is available from the Associate Administrator for Hazardous Materials Safety, Office of Hazardous Materials Exemptions and Approvals (DHM–32), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Assistance in obtaining an approval may be requested from the same address.

(A) After the inspection, the person seeking approval must submit a letter of recommendation and inspection report from the independent inspection agency and a completed request for approval to the Associate Administrator for Hazardous Materials Safety at the address listed in this paragraph (e)(2)(ii). An applicant must include the following information: company name; facility location; mailing address (if different from location of facility); business telephone number; name of facility manager; the DOT specification/exemption cylinders that will be tested at the facility; a certification that the facility will operate in compliance with the applicable requirements of this subchapter, the date and an authorized signature.

(B) The Associate Administrator for Hazardous Materials Safety reviews the application, the inspection report and recommendation submitted by the independent inspection agency, and other available information. The Associate Administrator for Hazardous Materials Safety issues a retester identification number upon a finding that the applicant's facility and qualifications are adequate to properly inspect, test and mark cylinders under this section. Unless otherwise provided in the retester identification number issuance letter, a retester identification number expires five years from the date of issuance.

(iii) An approved retester shall apply for retester identification number renewal in a timely manner. A new inspection report and recommendation of an independent inspection agency are required for each renewal. If the Associate Administrator for Hazardous Materials Safety receives a renewal application with the accompanying inspection report and recommendation at least 50 days before expiration of the retester identification number, the retester identification number remains in effect until the Associate Administrator for Hazardous Materials Safety issues a renewal or notifies the retester that its request for renewal of the retester identification number is denied. The Associate Administrator for Hazardous Materials Safety considers renewal of a retester identification number in accordance with the standard in paragraph (e)(2)(ii)(B) of this section.

(iv) The retester identification number holder shall report in writing any change in its name, address, ownership, testing equipment, or management or personnel performing any function under this section, to the Associate Administrator for Hazardous Materials Safety (DHM–32) within 20 days of the change. A retester identification number remains valid only if the retester's facility and qualifications are maintained at or above the level

observed at the time of inspection by the independent inspection agency.

(v) A retester shall maintain, at each location at which it inspects, retests or marks cylinders under this section:

(A) Current copies of those portions of this subchapter that apply to its cylinder inspection, retesting and marking activities at that location.

(B) Current copies of all exemptions governing exemption cylinders inspected, retested or marked by the retester at that location.

(C) Copies of each CGA pamphlet incorporated by reference in § 171.7 of this subchapter that applies to the retester's cylinder inspection, retesting and marking activities at that location. The publication maintained must be the edition incorporated by reference in § 171.7 of this subchapter.

(3) *Visual inspection.* Except as otherwise provided in this section, each time a cylinder is retested, it must be visually inspected, internally and externally, in accordance with CGA Pamphlets C–6, C–6.1, C–6.2, or C–6.3, as applicable. The cylinder must be approved, rejected or condemned according to the criteria in the applicable CGA pamphlet. Internal inspection may be omitted for cylinders of the type and in the service described under paragraph (e)(13) of this section. DOT 3BN cylinders must be inspected in accordance with CGA Pamphlet C–6.

(4) *Pressure retest.* (i) Unless otherwise provided, each cylinder required to be retested under this section must be retested by means suitable for measuring the expansion of the cylinder under pressure. Bands and other removable attachments must be loosened or removed before testing so that the cylinder is free to expand in all directions.

(ii) The pressure-indicating device of the testing apparatus must permit reading of pressures to within 1% of the minimum prescribed test pressure of each cylinder tested, except that for an analog device, interpolation to ½ of the marked gauge divisions is acceptable. The expansion-indicating device of the testing apparatus must also permit incremental reading of the cylinder expansion to 1% of the total expansion of each cylinder tested or 0.1 cubic centimeter, whichever is larger. Midpoint visual interpolation is permitted.

(iii) Each day before retesting, the retester shall confirm, by using a calibrated cylinder or other method authorized in writing by the Associate Administrator for Hazardous Materials Safety that:

(A) The pressure-indicating device, as part of the retest apparatus, is accurate within ±1.0% of the prescribed test pressure of any cylinder tested that day. The pressure indicating device, itself, must be certified as having an accuracy of ±0.5%, or better, of its full range, and must permit readings of pressure from 90%–110% of the minimum prescribed test pressure of the cylinder to be tested. The accuracy of the pressure indicating device within the test system can be demonstrated at any point within 500 psi of the actual test pressure for test pressures at or above 3000 psi, or 10% of the actual test pressure for test pressures below 3000 psi; and

(B) The expansion-indicating device, as part of the retest apparatus, gives a stable reading of expansion and is accurate to ±1.0% of the total expansion of any cylinder tested or 0.1 cubic centimeter, whichever is larger. The expansion-indicating device itself must have an accuracy of ±0.5%, or better, of its full scale.

(iv) The test equipment must be verified to be accurate within ±1.0% of the calibrated cylinder's pressure and corresponding expansion values. This may be accomplished by bringing the pressure to a value shown on the calibration certificate for the calibrated cylinder used and verifying that the resulting total expansion is within ±1.0% of the total expansion shown on the calibration certificate. Alternatively, calibration may be demonstrated by bringing the total expansion to a known value on the calibration certificate for the calibrated cylinder used and verifying that the resulting pressure is within ±1.0% of the pressure shown on the calibration certificate. The calibrated cylinder must show no permanent expansion. The retester shall demonstrate calibration in conformance with this paragraph (e)(4) to an authorized inspector on any day that it retests cylinders. A retester shall maintain calibrated cylinder certificates in conformance with paragraph (e)(8)(iii) of this section.

(v) Minimum test pressure must be maintained for at least 30 seconds, and as long as necessary for complete expansion of the cylinder. A system check may be performed at or below 90% of test pressure prior to the retest. In the case of a malfunction of the test equipment, the test may be repeated at a pressure increased by 10 percent or 100 psi, whichever is less. This paragraph (e)(4) does not authorize retest of a cylinder otherwise required to be condemned under paragraph (e)(6) of this section.

(5) *Cylinder rejection.* (i) A retester shall reject a cylinder when on visual inspection, it meets a rejection standard in CGA Pamphlets C–6, C–6.1, C–6.2, or C–6.3, as applicable.

(ii) Except as provided in paragraph (e)(5)(iv) of this section, a cylinder that is rejected may not be marked as meeting the requirements of this section.

(iii) When a cylinder is rejected, the retester shall notify the cylinder owner, in writing, that the cylinder has been rejected and, unless requalified as provided in paragraph (e)(5)(iv) of this section, may not be filled with a hazardous material for transportation in commerce where use of a specification packaging is required.

(iv) A rejected cylinder with a service pressure of less than 900 psig may be requalified and marked if the cylinder is repaired or rebuilt and subsequently reinspected and retested in conformance with—

(A) CGA Pamphlets C–6, C–6.1, C–6.2, or C–6.3, as applicable;

(B) Parts 173 and 178 of this subchapter;

(C) Any exemption specific to that cylinder; and

(D) Any approval required under paragraphs (i) and (l) of this section.

(6) *Cylinder condemnation.* (i) A cylinder must be condemned when—

(A) On inspection, it meets a condition for condemnation in CGA Pamphlets C–6, C–6.1, C–6.2, or C–6.3, as applicable;

(B) The cylinder leaks through its wall;

(C) Evidence of cracking exists to the extent that the cylinder is likely to be weakened appreciably;

(D) For a DOT specification cylinder other than a DOT 4E aluminum cylinder, permanent expansion exceeds 10 percent of total expansion;

(E) For a DOT 4E aluminum cylinder, permanent expansion exceeds 12 percent of total expansion;

(F) For a DOT exemption cylinder, permanent expansion exceeds the limit in the applicable exemption, or the cylinder meets another criterion for condemnation in the applicable exemption; or

(G) For a DOT specification 3HT cylinder, elastic expansion exceeds the marked rejection elastic expansion.

(ii) When a cylinder is required to be condemned, the retester shall stamp a series of X's over the DOT specification number and the marked service pressure or stamp "CONDEMNED" on the shoulder, top head, or neck using a steel stamp. Alternatively, at the direction of the owner, the retester may render the cylinder incapable of holding pressure.

(iii) When a cylinder is required to be condemned, the retester shall notify the cylinder owner, in writing, that the cylinder is condemned and may not be filled with hazardous material for transportation in commerce where use of a specification packaging is required.

(iv) A cylinder that is condemned may not be filled with hazardous material for transportation in commerce where use of a specification packaging is required and may not be marked as meeting the requirements of this section or any DOT exemption. No person may remove or obliterate the "CONDEMNED" marking.

(7) *Retester markings.* (i) Each cylinder passing retest must be marked with the retester's identification number set in a square pattern, between the month and year of the retest date, in characters not less than ⅛-inch high. The first character of the retester identification number must appear in the upper left corner of the square pattern; the second in the upper right; the third in the lower right, and the fourth in the lower left. Example: A cylinder retested in May 1994, and approved by a person who has been issued retester identification number "A123", would be marked plainly and permanently into the metal of the cylinder in accordance with location requirements of the cylinder specification or on a metal plate permanently secured to the cylinder in accordance with paragraph (c) of this section:

```
    A  1
5         94
    3  2
```

(ii) Markings of previous tests may not be obliterated. A cylinder that is subject to the requirements of paragraph (e)(10), (11) (modified hydrostatic test only), (13) or (14) of this section is not required to be marked with a retester identification number. A cylinder requalified by the modified hydrostatic test method or external inspection must be marked after a retest or an inspection by stamping the date of retest or reinspection on the cylinder followed by the symbol "E" (external inspection) or "S" (modified hydrostatic test method) as appropriate. However, a cylinder subject to the requirements of § 173.301(j) may not be marked with a retester identification number. Variation from the marking requirement may be approved on written request to the Associate Administrator for Hazardous Materials Safety.

(8) *Recordkeeping.* A retester shall maintain the following records at the retesting location, on paper or in a form from which a paper copy can be produced on request.

(i) Records of authority to inspect, retest and mark must be maintained, as follows:

(A) Current retester identification number issuance letter;

(B) If the retester identification number has expired and renewal is pending, a copy of the renewal request; and

(C) Copies of notifications to Associate Administrator for Hazardous Materials Safety required under paragraph (e)(2)(iv) of this section.

(ii) Daily records of visual inspection and hydrostatic retest must be maintained until either the expiration of the retest period or until the cylinder is again reinspected or retested, whichever occurs first. A single date may be used for each retest sheet, provided each retest on the sheet was conducted on that date. Ditto marks or a solid vertical line may be used to indicate repetition of the preceding entry for the following entries: date; actual dimensions or a symbol; if present, manufacturer's name or symbol; if present, owner's name or symbol and retest operator. Blank spaces may not be used to indicate repetition of a prior entry. Records must include—

(A) For each test to demonstrate calibration, the date; serial number of the calibrated cylinder; calibration test pressure; total, elastic and permanent expansions; and legible identification of retest operator. The retest operator must be able to demonstrate that the results of the daily calibration verification correspond to the hydrostatic retests that were performed on that day. The daily verification of calibration(s) may be recorded on the same sheets as, and with, retest records for that date;

(B) For each cylinder retested or visually inspected, records containing the date; serial number; ICC/DOT specification or exemption number; service pressure; actual dimensions or a symbol; if present, manufacturer's name or symbol; if present, owner's name or symbol; result of visual inspection; actual test pressure; total, elastic and permanent expansions; percent permanent expansion; disposition, with reason for any repeated retest, rejection or condemnation; and legible identification of test operator. For each cylinder marked pursuant to § 173.302(c)(5), the retest sheet must indicate the method by which any average or maximum wall stress was computed. Records must be kept for all completed retests, as well as unsuccessful retests under paragraph (e)(4)(v) of this section. The entry for a later retest under paragraph (e)(4)(v) of this section after a failure to hold test pressure, or retest of a cylinder requalified after rejection, must indicate the date of the earlier inspection or retest; and

(C) Calculations of average and maximum wall stress pursuant to § 173.302(c)(3), if performed.

(iii) The most recent certificate of calibration must be maintained for each calibrated cylinder used by the retester.

(9) *DOT 4-series cylinders.* A DOT 4-series cylinder, except 4L cylinders, that at any time shows evidence of a leak or of internal or external corrosion, denting, bulging or rough usage to the extent that it is likely to be weakened appreciably; or that has lost five percent or more of its official tare weight must be retested before being recharged and shipped. (Refer to CGA Pamphlet C–6 or C–6.3, as applicable, regarding cylinder weakening.) After retest, the actual tare weight must be recorded as the new tare weight.

(10) *Cylinders 12 pounds or less with service pressures of 300 psi or less.* A cylinder of 12 pounds or less water capacity authorized for service pressure of 300 psi or less must be given a complete external visual inspection at the time periodic retest becomes due. External visual inspection must be in accordance with CGA Pamphlet C–6 or C–6.1. The cylinder may be hydrostatically retested without a water jacket and without determining total and permanent expansions. The retest is successful if the cylinder, when examined under test pressure, does not display a defect described in paragraph (e)(6)(i) (B) or (C) of this section.

(11) *Modified hydrostatic retest.* A cylinder made in compliance with specification DOT 4B, DOT 4BA, DOT 4BW, DOT 4E or ICC–26–300[2] (§§ 178.50, 178.51, 178.61, 178.68 of this subchapter) that is used exclusively for anhydrous dimethylamine; anhydrous methylamine; anhydrous trimethylamine; methyl chloride; liquefied petroleum gas; methylacetylene-propadiene stabilized; or dichlorodifluoromethane, difluoroethane, difluorochloroethane, chlorodifluoromethane, chlorotetrafluoroethane, trifluorochloroethylene, or mixture thereof, or mixtures of one or more with trichlorofluoromethane; and that is commercially free from corroding components and protected externally by a suitable corrosion-resistant coating (such as galvanizing or painting) may be given a hydrostatic retest every 12 years instead of every five years. Alternatively, the cylinder may be

[2] For filling at 450 p.s.i. and below. Use of existing cylinders authorized; new construction not authorized.

subjected to internal hydrostatic pressure of at least two times the marked service pressure without determination of expansions, but this latter type of test must be repeated every seven years after expiration of the first 12-year period. When subjected to the latter test, the cylinder must be carefully examined under test pressure and removed from service if a leak or other harmful defect exists. A cylinder requalified by the modified hydrostatic test method must be marked after a retest or an inspection by stamping the date of retest or reinspection on the cylinder followed by a "S".

(12) A cylinder made in conformance with specification DOT–3A, DOT–3AA, DOT–3B, DOT–4BA or DOT–4BW (§§ 178.36, 178.37, 178.38, 178.51, 178.61 of this subchapter) having a service pressure of 300 psi or less that is used exclusively for methyl bromide, liquid; mixtures of methyl bromide and ethylene dibromide, liquid; mixtures of methyl bromide and chlorpicrin, liquid; mixtures of methyl bromide and petroleum solvents, liquid; or methyl bromide and nonflammable, nonliquefied compressed gas mixtures, liquid; that is commercially free of corroding components, and that is protected externally by a suitable corrosion resistant coating (such as galvanizing or painting) and internally by a suitable corrosion resistant lining (such as galvanizing) may be tested every 10 years instead of every five years, provided that a visual internal and external examination of the cylinder is conducted every five years in accordance with CGA Pamphlet C–6. The cylinder must be examined at each filling, and rejected if a dent, corroded area, leak or other condition indicates possible weakness.

(13) A cylinder made in conformance with a specification listed in the table in this paragraph (e)(13) and used exclusively in the service indicated may, instead of a periodic hydrostatic retest, be given a complete external visual inspection at the time periodic retest becomes due. External visual inspection must be in accordance with CGA Pamphlets C–6 or C–6.1. When this inspection is used instead of hydrostatic retesting, subsequent inspections are required at five-year intervals after the first inspection. Inspections must be made only by competent persons and the results recorded and maintained in accordance with paragraph (e)(8) of this section. Records shall include: date of inspection (month and year); DOT specification number; cylinder identification (registered symbol and serial number, date of manufacture, and owner); type of cylinder protective coating (including statement as to need of refinishing or recoating); conditions checked (e.g., leakage, corrosion, gouges, dents or digs in shell or heads, broken or damaged footring or protective ring or fire damage); disposition of cylinder (returned to service, returned to cylinder manufacturer for repairs or scrapped). A cylinder that passes inspection shall be marked with the date in accordance with paragraph (e)(7) of this section. An "E" after the date indicates requalification by the external inspection method. Specification cylinders must be in exclusive service as follows:

Cylinders made in compliance with—	Used exclusively for—
DOT–4, DOT–3A, DOT–3AA, DOT–3A480X, DOT–4A, DOT–4AA480.	Anhydrous ammonia of at least 99.95% purity.
DOT–3A, DOT–3AA, DOT–3A480X, DOT–3B, DOT–4B, DOT–4BA, DOT–4BW, ICC–26–240,[1] ICC–26–300[1].	Butadiene, inhibited, which is commercially free from corroding components.
DOT–3A, DOT–3A480X, DOT–3AA, DOT–3B, DOT–4A, DOT–4AA480, DOT–4B, DOT–4BA, DOT–4BW.	Cyclopropane which is commercially free from corroding components.
DOT–3A, DOT–3AA, DOT–3A480X, DOT–4B, DOT–4BA, DOT–4BW, DOT–4E.	Fluorinated hydrocarbons and mixtures thereof which are commercially free from corroding components.
DOT–3A, DOT–3AA, DOT–3A480X, DOT–3B, DOT–4B, DOT–4BA, DOT–4BW, DOT–4E, ICC–26–240,[1] ICC–26–3001.	Liquefied hydrocarbon gas which is commercially free from corroding components.
DOT–3A, DOT–3AA, DOT–3A480X, DOT–3B, DOT–4B, DOT–4BA, DOT–4BW, DOT–4E, ICC–26–2401, ICC–26–3001.	Liquefied petroleum gas which is commercially free from corroding components.
DOT–3A, DOT–3AA, DOT–3B, DOT–4B, DOT–4BA, DOT–4BW, DOT–4E.	Methylacetylene-propadiene, stabilized, which is commercially free from corroding components.
DOT–3A, DOT–3AA, DOT–3B, DOT–4B, DOT–4BA, DOT–4BW	Anhydrous mono, di, trimethylamines which are commercially free from corroding components.
DOT–4B240, DOT–4BW240	Ethyleneimine, inhibited.

[1] Use of existing cylinders authorized; new construction not authorized.

(14) *Cylinders containing anhydrous ammonia.* A cylinder made in compliance with specification DOT–3A, DOT–3A 480X, or DOT–4AA480 used exclusively for anhydrous ammonia, commercially free from corroding components, and protected externally by a suitable corrosion-resistant coating (such as painting) may be retested every 10 years instead of every five years.

(15) *3HT cylinders.* (i) In addition to the other requirements of this section, a cylinder marked DOT–3HT must be requalified in accordance with CGA Pamphlet C–8.

(ii) The cylinder must be condemned:

(A) If elastic expansion exceeds the marked rejection elastic expansion. A cylinder made before January 17, 1978, and not marked with a rejection elastic expansion in cubic centimeters near the marked original elastic expansion must be so marked before the next retest date. The rejection elastic expansion for a cylinder is 1.05 times its original elastic expansion.

(B) If there is evidence of denting or bulging.

(C) Twenty-four years after the date of the original test or after 4,380 pressurizations, whichever occurs first. If a cylinder is recharged, on average, more than once every other day, an accurate record of the number of rechargings must be maintained by the cylinder owner or his/her agent.

(iii) The retest date and retester identification number must be applied by low-stress steel stamp to a depth no greater than that of the marking at the time of manufacture. Stamping on the sidewall is not authorized.

(16) *DOT–3A or 3AA cylinders.* (i) A cylinder made in conformance with specification DOT–3A or 3AA with a water capacity of 125 pounds or less that is removed from any cluster, bank, group, rack or vehicle each time it is filled, may be retested every ten years instead of every five years, provided the cylinder complies with all of the following—

(A) The cylinder was manufactured after December 31, 1945;

(B) The cylinder is used exclusively for air, argon, cyclopropane, ethylene, helium, hydrogen, krypton, neon, nitrogen, nitrous oxide, oxygen, sulfur hexafluoride, xenon, permitted mixtures of these gases (see § 173.301(a)) and permitted mixtures of these gases with up to 30 percent by volume of carbon dioxide, provided that the gas has a dew point at or below minus 52° F at 1 atmosphere;

(C) Before each refill, the cylinder passes the hammer test specified in CGA Pamphlet C–6;

(D) The cylinder is dried immediately after hydrostatic testing to remove all traces of free water;

(E) The cylinder is not used for underwater breathing; and

(F) Each cylinder is stamped with a five-point star at least one-fourth of an inch high immediately following the test date.

(ii) If, since the last required hydrostatic retest, a cylinder has not been used exclusively as specified in paragraph (e)(16)(i)(B) of this section, but currently conforms with all other provisions of paragraph (e)(16)(i) of this section, it may be retested every 10 years instead of every five years, provided it is first retested and examined as prescribed by § 173.302(c)(2), (3) and (4).

(iii) Except as specified in paragraph (e)(16)(ii) of this section, if a cylinder marked with a star is charged with a compressed gas other than as specified in this paragraph (e)(16), the star following the most recent test date must be obliterated. The cylinder must be retested five years from the marked retest date, or prior to the first charging with a compressed gas, if the required five-year retest period has passed.

(17) *Cylinders containing corrosive materials.* (i) A cylinder that previously contained a Class 8 (corrosive) material may not be used to transport a compressed gas in commerce unless the following requirements are met—

(A) The cylinder is visually inspected, internally and externally, in accordance with CGA Pamphlet C–6;

(B) Regardless of the date of previous retest, the cylinder is subjected to and passes inspection and hydrostatic retest in accordance with this section; and

(C) The record prescribed in paragraph (e)(8) of this section includes: the month and year of inspection and test; the cylinder identification (including ICC or DOT specification number, registered symbol, serial number, date of manufacture and owner); the conditions checked (e.g., leakage, corrosion, gouges, dents, or digs in shell or heads, broken or damaged footrings, fire damage) and the disposition of the cylinder (returned to service, returned to the manufacturer for repairs, or scrapped).

(ii) A cylinder requalified for compressed gas service in accordance with this paragraph (e)(17) may have its next retest and inspection scheduled from the date of the inspection and retest prescribed in this paragraph (e). If decontamination cannot remove all significant residue or impregnation by the Class 8 material, the cylinder may not be used to transport compressed gas in commerce.

(18) *DOT 8 and 8AL cylinders.* (i) Each owner of a DOT 8 or 8AL cylinder used to transport acetylene must have the cylinder shell and the porous filler requalified in accordance with CGA Pamphlet C–13. Requalification must be performed in accordance with the following schedule:

Date of cylinder manufacture	Shell (visual inspection) requalification		Porous filler requalification	
	Initial	Subsequent	Initial	Subsequent
Before January 1, 1991	Before January 1, 2001	10 yrs	Before January 1, 2001	Not required.
On or after January 1, 1991	10 yrs[1]	10 yrs	3 to 30 yrs[2]	Not required.

[1] Years from date of cylinder manufacture.
[2] For a cylinder manufactured on or after January 1, 1991, requalification of the porous filler must be performed no sooner than 3 years, and no later than 20 years, from the date of manufacture.

(ii) Unless requalified and marked in accordance with CGA Pamphlet C–13 before October 1, 1994, an acetylene cylinder must be requalified by a person who holds a valid retester identification number. Each cylinder successfully passing a shell or filler requalification must be marked with the retester's identification number in accordance with paragraph (e)(7) of this section. In addition, the cylinder must be marked to identify the type of requalification performed in accordance with paragraph 5.6 of CGA Pamphlet C–13. For example, the letter "S" must be used for a shell requalification and the letter "F" for a porous filler requalification.

(iii) If a cylinder valve is replaced, a cylinder valve of the same weight must be used or the tare weight of the cylinder must be adjusted to compensate for valve weight differential.

(19) *Cylinders used as a fire extinguisher.* A DOT specification cylinder used as a fire extinguisher in compliance with § 173.309 may be retested in accordance with this paragraph (e)(19).

(i) A DOT specification 4B, 4BA, 4B240ET or 4BW (§§ 178.50, 178.51, 178.55 and 178.61 of this subchapter) cylinder may be retested as follows:

(A) For a cylinder with a water capacity of 12 pounds or less by hydrostatic test using the water jacket method or by hydrostatic test without determination of expansion (modified hydrostatic test method). A retest must be performed 12 years after the original test date and at 12-year intervals thereafter.

(B) For a cylinder having a water capacity over 12 pounds—

(*1*) By hydrostatic test without determination of expansion (modified hydrostatic test method). A retest must be performed 12 years after the original test date and at 7-year intervals; or

(*2*) By hydrostatic test using the water jacket method. A retest must be performed 12 years after the original test date and at 12-year intervals thereafter.

(ii) A DOT specification 3A, 3AA, or 3AL (§§ 173.36, 178.37 and 178.46 of this subchapter) cylinder may be retested by hydrostatic test using the water jacket method. A retest must be performed 12 years after the original test date and at 12-year intervals thereafter.

* * * * *

§ 173.163 [Amended]

6. In § 173.163, the reference "§ 173.34(e)(5)" is revised to read "§ 173.34(e)(8)".

7. In § 173.301, the section heading and paragraph (j) are revised to read as follows:

§ 173.301 General requirements for shipment of compressed gases in cylinders and spherical pressure vessels.

* * * * *

(j) *Charging of foreign cylinders for export.* (1) A cylinder manufactured outside the United States that has not been manufactured, inspected, tested and marked in accordance with part 178 of this subchapter may be charged with compressed gas in the United States, and shipped solely for export if it meets

the following requirements, in addition to other requirements of the subchapter:

(i) It has been inspected, tested and marked (with only the month and year of retest) in conformance with the procedures and requirements of § 173.34(e) or the Associate Administrator for Hazardous Materials Safety has authorized the charging company to fill foreign cylinders under an alternative method of qualification; and

(ii) It meets the maximum filling density and service pressure requirements of this part.

(2) The bill of lading or other shipping paper must identify the cylinder and carry the following certification: "This cylinder has [These cylinders have] been retested and refilled in accordance with DOT requirements for export."

* * * * *

§ 173.301 [Amended]

8. In addition, in § 173.301, in paragraph (a), the reference to "§ 173.34(e)(16)" is revised to read "§ 173.34(e)(17)".

9. In § 173.302, in paragraph (c)(3), the text preceding the table and the value for "K" in Note 1 following the table are revised, and Note 3 is added after Note 2, to read as follows:

§ 173.302 Charging of cylinders with non-liquefied compressed gases.

* * * * *

(c) * * *

(3) That either the average wall stress or the maximum wall stress does not exceed the wall stress limitation shown in the following table (see Notes 1, 2 and 3):

* * * * *

Note 1: * * *

* * * * *

K=factor×10^{-7}, experimentally determined for the particular type of cylinder being tested, or derived in accordance with CGA Pamphlet C–5;

* * * * *

Note 3: Compliance with average wall stress limitation may be determined through computation of the elastic expansion rejection limit in accordance with CGA Pamphlet C–5.

* * * * *

10. In § 173.309, paragraph (b) is revised to read as follows:

§ 173.309 Fire extinguishers.

* * * * *

(b) Specification 3A, 3AA, 3E, 3AL, 4B, 4BA, 4B240ET or 4BW (§§ 178.36, 178.37, 178.42, 178.46, 178.50, 178.51, 178.55 and 178.61 of this subchapter) cylinders are authorized for use as fire extinguishers subject to the following conditions:

(1) Each fire extinguisher may only have extinguishing contents that are nonflammable, non-poisonous, non-corrosive and commercially free from corroding components.

(2) Each fire extinguisher must be charged with a nonflammable, non-poisonous, dry gas that has a dew-point at or below minus 46.7 °C (minus 52 °F) at 101 kPa (1 atmosphere) and is free of corroding components, to not more than the service pressure of the cylinder.

(3) Each fire extinguisher must be protected externally by suitable corrosion-resisting coating.

Issued in Washington, DC on May 16, 1996, under authority delegated in 49 CFR part 1.

Rose A. McMurray,

Acting Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 96–12838 Filed 5–24–96; 8:45 am]

BILLING CODE 4910–60–P

Federal Register

Tuesday
May 28, 1996

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 42 and 52
Federal Acquisition Regulation; Final Indirect Cost Rates; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 42 and 52

[FAR Case 95–018]

RIN 9000–AG88

Federal Acquisition Regulation; Final Indirect Cost Rates

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to revise the procedures relating to final indirect cost rates. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before July 29, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS),18th & F Streets, NW., Room 4037, Washington, DC 20405.

Please cite FAR case 95–018 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 95–018.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends FAR Subpart 42.7 to permit, with certain restrictions, increased interim payments to contractors under certain circumstances. FAR 42.704 is amended to permit, with certain restrictions, contractor use of billing rates contained in certified final indirect cost rate proposals. The clauses at FAR 52.216–7 and 52.216–13 are revised to establish a timeframe for contractor submission of final vouchers. The clauses at 52.216–8 through 52.216–10 are revised to require release of 75 percent of all fee withholds under physically completed cost-type contracts, and to permit release of 90 percent of all withholds in certain circumstances.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because most contracts awarded to small business are awarded on the basis of firm-fixed-price, and settlement of final indirect cost rates is, therefore, not an issue. Furthermore, any impact of this rule would be to reduce cost and administrative burdens on both contractors and Government. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601 *et seq.* (FAR case 95–018), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 42 and 52

Government procurement.

Dated: May 21, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 42 and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 42 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. 2301 to 2331; and 42 U.S.C. 2473(c).

PART 42—CONTRACTOR ADMINISTRATION

2. Section 42.704 is amended by adding paragraph (e) to read as follows:

42.704 Billing rates.

* * * * *

(e) When the contractor provides to the cognizant contracting officer the certified final indirect cost rate proposal in accordance with 42.705–1(b) or 42.705–2(b), the contractor may bill the proposed indirect cost rates, as approved by the Government to reflect historically disallowed amounts from prior years' audits, until the proposal has been audited and settled. The historical decrement will be determined by either the cognizant contracting officer (42.705–1(b)) or the cognizant auditor (42.705–2(b)).

3. Section 42.705 is revised to read as follows:

42.705 Final indirect cost rates.

(a) Final indirect cost rates shall be established on the basis of—

(1) Contracting officer determination procedure (see 42.705–1) or

(2) Auditor determination procedure (see 42.705–2).

(b) Within 120 days after settlement of the final indirect cost rates, the contractor shall submit a completion invoice or voucher reflecting the settled amounts and rates on all contracts physically completed in the year covered by the proposal.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.216–7 is amended by revising the date of the clause; redesignating paragraph (d)(4) as (d)(5) and adding a new paragraph (d)(4); and revising paragraph (h)(1) to read as follows:

52.216–7 Allowable Cost and Payment.

* * * * *

Allowable Cost and Payment (Date)

(d) * * *

(4) Within 120 days after settlement of the final indirect cost rates covering the year in which this contract is physically complete, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

* * * * *

(h) *Finol payment.* (1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(4) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

* * * * *

5. Section 52.216–8 is amended by revising the date and paragraph (b) of the clause to read as follows:

52.216–8 Fixed fee.

* * * * *

Fixed-Fee (Date)

* * * * *

(b) The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions,

including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withhold under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

(End of clause)

6. Section 52.216–9 is amended by revising the date and paragraph (c) of the clause to read as follows:

52.216–9 Fixed-Fee—Construction.

* * * * *

Fixed-Fee—Construction (Date)

* * * * *

(c) The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withhold under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

* * * * *

(End of clause)

7. Section 52.216–10 is amended by revising the date of the clause; and adding two sentences to the end of paragraph (c); to read as follows:

52.216–10 Incentive Fee.

* * * * *

Incentive Fee (Date)

* * * * *

(c) * * * The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withhold under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

* * * * *

(End of clause)

8. Section 52.216–13 is amended by revising the date of the clause; redesignating paragraph (c)(4) as (c)(5) and adding a new paragraph (c)(4); and by revising the date and paragraph (h) of Alternate I to read as follows:

52.216–13 Allowable Cost and Payment—Facilities.

* * * * *

Allowable Cost and Payment—Facilities (Date)

* * * * *

(c) * * *

(4) Within 120 days after settlement of the final indirect cost rate covering the year in which this contract is physically complete, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

* * * * *

(End of clause)

Alternate I (Date) * * *

* * * * *

(h) *Final payment.* Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (c)(4) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs not previously paid.

[FR Doc. 96–13247 Filed 5–24–96; 8:45 am]

BILLING CODE 6820–EP–P

Reader Aids

Federal Register

Vol. 61, No. 103

Tuesday, May 28, 1996

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–523–5227**
Public inspection announcement line	**523–5215**
Laws	
Public Laws Update Services (numbers, dates, etc.)	**523–6641**
For additional information	**523–5227**
Presidential Documents	
Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**
Other Services	
Electronic and on-line services (voice)	**523–4534**
Privacy Act Compilation	**523–3187**
TDD for the hearing impaired	**523–5229**

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. **202–275–0920**

FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

FEDERAL REGISTER PAGES AND DATES, MAY

19155–19502	1
19503–19804	2
19805–20116	3
20117–20418	6
20419–20700	7
20701–21046	8
21047–21360	9
21361–21946	10
21947–24204	13
24205–24432	14
24433–24664	15
24665–24874	16
24875–25134	17
25135–25388	20
25389–25548	21
25549–25774	22
25775–26068	23
26069–26422	24
26423–26768	28

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

6889	19503
6890	19803
6891	20419
6892	21045
6893	21047
6894	24661
6895	24663
6896	25129
6897	25765
6898	25767
6899	25769
6900	26067

Executive Orders:

11216 (See EO 13002)	24665
11593 (See EO 13006)	26071
12072 (See EO 13006)	26071
13001	21943
13002	24665
13003	25131
13004	25771
13005	26069
13006	26071

Administrative Orders:

Memorandums:

April 1, 1996	26017
April 26, 1996	19505
April 26, 1996	24667
April 26, 1996	24877
April 28, 1996	19507
May 10, 1996	26033

Presidential Determinations:

No. 96–20 of April 1, 1996	26019
No. 96–21 of April 4, 1996	26021
No. 96–22 of April 18, 1996	26027
No. 96–23 of April 30, 1996	26029
No. 96–24 of May 9, 1996	26031

4 CFR

Proposed Rules:

21	19205

5 CFR

Ch. LXIX	20117
300	19509
410	21947
532	20701
831	21953
842	21953
890	25775

7 CFR

2	25775
28	19511
51	20702
52	25549
53	19155
54	19155
225	25550
226	25550
272	19155
273	19155
301	20877, 26423
319	24433
703	26423
800	24669
810	24669
900	20717
915	19512
916	19160, 26073
917	19160, 26073
946	20119
956	20121
959	24877
979	20718
980	25551
985	20122
1002	20719
1004	20719
1007	20124
1280	19514, 21049, 21053
1485	24205
1755	26073
1841	21361
1843	21361
1845	21361
1903	21361
1945	21361
1980	21361
2054	21361
3403	25366

Proposed Rules:

51	24247
911	20754
924	20756
944	20754, 20756
958	20188
1005	19861
1007	19861
1011	19861
1046	19861
1160	20759

8 CFR

3	19976, 21065, 21228
100	25777
242	19976, 21065, 21228

9 CFR

50	25135
77	25135
78	19976
130	20421, 25513

Proposed Rules:

92	20189, 20190, 21389
93	20190

94.....20190
95.....20190
96.....20190
98.....20190
301.....19564
304.....19578
308.....19578
317.....19564, 19578
318.....19564, 19578
319.....19578, 26470
320.....19564
381.....19564, 19578, 26470

10 CFR

20.....24669
30.....24669
40.....24669
61.....24669
70.....24669
72.....24669

Proposed Rules:

26.....21105, 24731
72.....24249

11 CFR

110.....24533

12 CFR

5.....19524
19.....20330
20.....19524
25.....21362
28.....19524
205.....19662, 19678
211.....24439
220.....20386
228.....21362
229.....25389
327.....26078, 26083
250.....19805
263.....20338
308.....20344
345.....21362
509.....20350
563e.....21362
614.....20125

Proposed Rules:

207.....20399
215.....19863
220.....20399
221.....20399
226.....26126
230.....26470
245.....26471
330.....25596
344.....26135
614.....24907

13 CFR

Proposed Rules:

121.....20191

14 CFR

21.....20696
25.....24208, 24213, 25778
27.....21904
29.....21894, 21904
31.....20877
39.....19540, 19807, 19808, 19809, 19811, 19813, 19815, 20125, 20127, 20616, 20636, 20638, 20639, 20641, 20643, 20644, 20646, 20668, 20669, 20671, 20672, 20674, 20676, 20677, 20679, 20681, 20682, 21066, 21068, 21070, 21071, 24206, 24214, 24216, 24218, 24220, 24675, 24684, 24686, 24688, 24690, 24691, 24878, 24881, 24883, 24884, 25557, 15558, 26089, 23090, 23091, 26424, 26425, 26426, 26427, 26429
43.....19498
71.....19541, 19542, 19816, 19817, 21364, 21365, 21953, 24222, 24223, 26094, 26431, 26434
73.....20127, 26095, 26434
91.....24430
97.....25138, 25139, 25141, 25780, 25781, 25783
159.....19784
205.....19164
323.....19164
385.....19166

Proposed Rules:

29.....20760
39.....20192, 20194, 20762, 20764, 21146, 21979, 21980, 21982, 24250, 25417, 25418, 25598
71.....19590, 19591, 19592, 19593, 21910, 21984, 24533, 25157, 25600, 26473
91.....24582
121.....21149, 24582, 24533, 26036
127.....24582
135.....24582, 26036
158.....25420

15 CFR

24.....26095
902.....19171, 21926, 26435
981.....21073

Proposed Rules:

946.....19594

16 CFR

405.....25560
1500.....19818, 26096
1507.....26096

Proposed Rules:

254.....19869
1210.....20503

17 CFR

1.....19177, 19830
3.....20127, 26253
5.....19830
10.....21954
31.....19830
140.....21954
200.....20721, 25652
228.....25652
229.....25652
230.....21356, 25652
231.....24644
232.....25652
239.....25652
240.....21354, 25652
241.....24644
249.....21354
270.....25652
271.....24644
274.....25652
276.....24644

Proposed Rules:

1.....19869
156.....19869
230.....25601
240.....25601
250.....25601
270.....25601
275.....25601

18 CFR

35.....21940
37.....21737
385.....21940
1300.....20117

Proposed Rules:

35.....21847
161.....19211
250.....19211
284.....19211, 19832
346.....19878

19 CFR

10.....19834, 24887
12.....24888
103.....19835
122.....25777
145.....24888
161.....24888

Proposed Rules:

101.....19834

20 CFR

200.....25390
345.....20070
601.....19982
617.....19982
626.....19982
658.....19982
702.....19982

21 CFR

2.....25390
5.....24223
101.....20096, 21074
173.....25392
201.....20096
310.....25142
341.....25142
369.....20096
500.....19542
501.....20096
510.....21075, 24440
520.....24441, 24443
522.....21075, 24440, 25784
556.....24440, 24441
558.....21075, 24443, 24694
582.....19542
589.....19542
600.....24227
601.....24227
740.....20096
801.....20096

Proposed Rules:

Ch. I.....21392, 26473
25.....19476
101.....25421
102.....19220
130.....19220
131.....19220
133.....19220
135.....19220
136.....19220
137.....19220
139.....19220
145.....19220
146.....19220
150.....19220
152.....19220
155.....19220
156.....19220
158.....19220
160.....19220
161.....19220
163.....19220
164.....19220
165.....19220
166.....19220
168.....19220
169.....19220
210.....20104
211.....20104
328.....21392
530.....25118
589.....24253
801.....26140

22 CFR

126.....19841
514.....20437

Proposed Rules:

608.....26474

24 CFR

0.....19187
201.....19788
290.....19188
585.....25124
941.....19708
970.....19708

Proposed Rules:

206.....21910
888.....20982
901.....20358
3500.....21394

25 CFR

Proposed Rules:

144.....24731
250.....19600
291.....25604
525.....21394

26 CFR

1.....19188, 19189, 19544, 19546, 21366, 21955
301.....19189
602.....19189

Proposed Rules:

1.....20503, 20766, 20767, 21985, 21988
31.....20767
32.....20767
35a.....20767
301.....20503, 21989

27 CFR

1.....20721, 26096
2.....26096
3.....26096
4.....20721
7.....20721
16.....20721
19.....20721
20.....20721
21.....20721
22.....20721
24.....20721, 21076
25.....20721
53.....20721
55.....20721
71.....20721
170.....20721
178.....20721
179.....20721
194.....20721

197.....20721
200.....20721
250.....20721
251.....20721
252.....20721
270.....20721
275.....20721
285.....20721
290.....20721
296.....20721

28 CFR

58.....24889
501.....25120
550.....25120

Proposed Rules:

90.....24526
100.....21396

29 CFR

1.....19982
2.....19982
4.....19982
5.....19982
6.....19982
7.....19982
8.....19982
22.....19982
24.....19982
32.....19982
96.....19982
500.....24694
504.....19982
507.....19982
508.....19982
530.....19982
1601.....21370
1910.....19547, 21228
1915.....26322
1978.....19982
2619.....21228, 24444, 25513
2627.....24694
2676.....24444

Proposed Rules:

Ch. XIV.....20768
4.....19770
102.....25158

30 CFR

75.....20877, 26441
250.....25147
914.....26443
925.....26445, 26454
936.....26461

Proposed Rules:

Ch. II.....21977, 25160
202.....25421
206.....25421
211.....25421
256.....24466
901.....20768
902.....20768
904.....19881, 20768
913.....20768
914.....20768
915.....20768
916.....20768
917.....20768
918.....20768
920.....20768
925.....26477
926.....26477
931.....26477
934.....25425, 26477
935.....26477
936.....25426, 26477
938.....26477
943.....26477
944.....26477
946.....19885, 26477
948.....26477
950.....20773, 26477

31 CFR

12.....25396
361.....20437
585.....24696

Proposed Rules:

356.....25164

32 CFR

95.....26102
324.....25561

33 CFR

52.....24233
100.....19192, 20132, 21959, 21960, 21961, 21962, 25149, 26102, 26103, 26104
110.....25149
117.....24235, 25149
165.....19192, 19841, 21963, 24697, 24698, 24699, 24701, 24892, 26105
334.....26107
401.....19548

Proposed Rules:

100.....25835
165.....25838

34 CFR

361.....24390
685.....24446

Proposed Rules:

100.....20196, 21998, 21999, 22001
117.....22002
154.....20084
155.....20084

36 CFR

242.....25785
292.....20726
1228.....19552, 24702

Proposed Rules:

7.....20775
100.....19220
117.....19223
701.....25839

37 CFR

Proposed Rules:

Ch. II.....20197, 22004
1.....19224, 20877

38 CFR

2.....20133, 20437, 26107
3.....20438, 20726, 25787
4.....20438, 20440
9.....20134
17.....21964, 24236
19.....20447
20.....20447
21.....20727, 24237, 26107

Proposed Rules:

3.....24910
17.....25428

39 CFR

3001.....24447

Proposed Rules:

233.....21404

40 CFR

50.....25566
52.....19193, 19555, 20136, 20139, 20142, 20145, 20147, 20453, 20455, 20458, 20730, 20732, 24239, 24457, 24702, 24706, 24709, 24712, 25789, 25791
55.....25149
60.....20734, 21080
63.....21370, 25397
70.....20150, 24457, 24715
75.....25580
80.....20736
81.....20458, 21372, 24239, 24242
82.....25585
89.....20738
90.....20738
110.....25149
117.....25149
123.....20972
131.....20686
141.....24354
167.....25151
180.....19842, 19845, 19847, 19849, 19850, 19852, 19854, 19855, 20742, 20743, 20745, 21378, 24893, 25152, 26117, 26118
185.....25153
271.....25794, 25796, 25799
300.....20473, 24720, 24894
355.....20473
421.....24242

Proposed Rules:

Ch. I.....19432
51.....19231
52.....19233, 19601, 20199, 20200, 20201, 20504, 21405, 21412, 24467, 24737, 24738, 25840, 25841
55.....25173
61.....20775
63.....19887, 21414
70.....20202, 26145
80.....20779
81.....19233, 21415
82.....25604
89.....20738
90.....20738
136.....26149
148.....21418
170.....19889
180.....19233, 20780, 20781, 24738, 24911, 26149
185.....20780
186.....10780, 20781, 24911
261.....21418, 25175
268.....21418
271.....21418
300.....19889, 20202, 20785, 21422, 22004, 22006, 24261

41 CFR

50–203.....19982
60–1.....19982, 25516
60–30.....19982
60–60.....25516
60–250.....19366, 19982
60–741.....19336, 19982
301–4.....25802

42 CFR

405.....19722
412.....21969
486.....19722

Proposed Rules:

84.....24740, 25513

43 CFR

11.....20560

44 CFR

61.....19197
62.....24462
64.....19857, 25802
65.....25400, 25402, 25403
67.....25405
206.....19197

Proposed Rules:

67.....25429, 25435

45 CFR

Proposed Rules:

1311.....24467
2400.....25612

46 CFR

Ch. I.....24464
10.....19858
15.....19858, 25984
26.....25984
30.....25272
31.....25272, 25984
32.....25272, 25984
33.....25272
34.....25984
35.....25272, 25984
38.....25984
54.....25984
56.....25984
58.....25984
61.....25984
70.....25272
71.....25272
72.....25984
75.....25272
76.....25984
77.....25272, 25984
78.....25272, 25984
90.....25272
91.....25272
92.....25984
94.....25272
95.....25984
96.....25272, 25984
97.....25272, 25984
107.....25272
108.....25272, 25984
109.....25272, 25984
114.....20556
116.....20556
117.....20556
118.....20556
119.....20556
120.....20556
121.....20556
122.....20556
125.....25272
133.....25272
153.....25984
160.....25984
162.....25984
164.....25984
167.....25272, 25984
168.....25272, 25984
169.....25984
170.....20556, 24464
171.....24464
173.....20556, 24464
175.....20556

176.....20556
177.....20556
178.....20556
179.....20556
180.....20556
181.....20556
182.....20556
183.....20556
185.....20556
188.....25272
189.....25272, 25984
190.....25984
192.....25272
193.....25984
195.....25272
196.....25272, 25984
199.....25272
298.....21302
381.....24895
403.....21081
404.....21081

47 CFR

Ch. I.....26464
0.....25804, 26464, 26465
1.....26670
2.....26670
3.....20155
21.....25594, 26670
22.....21380
24.....25807, 25808, 25810
64.....20746, 24897
73.....20490, 20747, 21384, 21385, 21973, 24262, 24263, 24465, 25594
80.....25804, 26120, 26465
90.....21380, 25810
94.....26670
97.....21385
101.....26670

Proposed Rules:

Ch. I.....22008, 26152, 26483
0.....21151
1.....19236, 20505, 24743, 25183
2.....19236
15.....24473, 24749
21.....19236
22.....24470
24.....24470
64.....25184, 26152
73.....19601, 20206, 20207, 20505, 20789, 21425, 24262, 24263, 25183, 25841, 26491
80.....21151
90.....25185
94.....19236

48 CFR

Ch. 1.....24263
209.....25408
231.....21973
242.....25409
243.....25408
570.....24720
801.....20491
803.....20491
804.....20491
805.....20491
806.....20491
808.....20491
810.....20491
812.....20491
813.....20491
815.....20491
816.....20491
820.....20491
822.....20491
828.....20491
833.....20491
834.....20491
836.....20491
837.....20491
846.....20491
871.....20493
904.....21975
906.....21975
911.....21975
912.....21975
913.....21975
915.....21975
919.....21975
925.....21975
926.....21975
933.....21975
950.....21975
952.....21975
970.....21975
2401.....19468
2402.....19468
2404.....19468
2405.....19468
2406.....19468
2409.....19468
2411.....19468
2412.....19468
2413.....19468
2414.....19468
2415.....19468
2416.....19468
2417.....19468
2419.....19468
2420.....19468
2426.....19468
2428.....19468
2429.....19468
2432.....19468
2434.....19468
2436.....19468
2437.....19468
2442.....19468
2452.....19468
2453.....19468

Proposed Rules:

Ch. 1.....22010, 26496
Ch. 2.....22010
42.....26766
52.....24473, 26766
901.....19891
905.....19891
906.....19891
908.....19891
915.....19891
916.....19891
917.....19891
922.....19891
928.....19891
932.....19891
933.....19891
935.....19891
936.....19891
942.....19891
945.....19891
952.....19891
971.....19891
1515.....25440
1552.....25440

49 CFR

18.....21386
37.....25409, 26467
38.....25409, 26467
90.....21386
107.....21084
171.....21084, 25940, 26750
172.....20747
173.....20747, 21084, 25940, 26750
174.....20747
176.....20747
178.....21084, 25940
192.....26121
193.....26121
195.....24244, 26121
212.....26124
228.....20494
397.....20496
501.....26468
533.....25595
564.....20497
571.....19201, 19202, 19560, 19561, 20170, 20172, 20497
604.....19562
609.....19562
639.....25088
1051.....19859
1053.....19859
1164.....21387
1311.....21387
1312.....19859
1330.....024722

Proposed Rules:

171.....24904, 26253
173.....24904, 26253
180.....24904, 26253
219.....21149
382.....21149
537.....22010
571.....19602, 24263, 24265
653.....21149
654.....21149
1002.....20877
1100.....19236
1101.....19236
1102.....19236
1103.....19236
1104.....19236
1105.....19236
1106.....19236
1107.....19236
1108.....19236
1109.....19236
1110.....19236
1111.....19236
1112.....19236
1113.....19236
1114.....19236
1115.....19236
1116.....19236
1117.....19236
1118.....19236
1119.....19236
1120.....19236
1121.....19236
1122.....19236
1123.....19236
1124.....19236
1125.....19236
1126.....19236
1127.....19236
1128.....19236
1129.....19236
1130.....19236
1131.....19236
1132.....19236
1133.....19236
1134.....19236
1135.....19236
1136.....19236
1137.....19236
1138.....19236
1139.....19236
1140.....19236
1141.....19236
1142.....19236
1143.....19236
1144.....19236
1145.....19236
1146.....19236
1147.....19236
1148.....19236
1149.....19236
1185.....22014
1300.....21153
1305.....24474
1312.....19902

50 CFR

17.....24722, 25813
91.....25155
100.....25785
216.....21926
222.....21926
253.....19171
255.....19171
611.....26435
620.....20175, 26435
641.....25833
658.....24728
661.....20175, 26125
663.....21102
672.....19976, 21104, 24729
675.....19976, 24730, 24905, 25595
678.....21978

Proposed Rules:

16.....24267
17.....19237, 21426, 25618
246.....25443
280.....25443
281.....25443
282.....25443
298.....25443
299.....25443
300.....25443
301.....25443
371.....25443
380.....25443
600.....19390
601.....19390
602.....19390
603.....19390
605.....19390
611.....19390
619.....19390
620.....19390
621.....19390
625.....20506
628.....20789
641.....24267
649.....20207
650.....20207, 21431
651.....20207
655.....25185
652.....19604
672.....24475, 24750
673.....19902, 21431
675.....24475, 24750
676.....24475
695.....25443

REMINDERS

The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Fruits, vegetables, and specialty crops; import regulations:
Avocados, grapefruit, kwifruit, etc.; published 3-26-96

AGRICULTURE DEPARTMENT
Farm Service Agency
Wetlands reserve program; CFR part removed; published 5-28-96

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; published 4-26-96
Wisconsin; published 4-25-96
Hazardous waste:
Idnetification and listing--Solid waste; definition; published 3-26-96

FEDERAL COMMUNICATIONS COMMISSION
Organization, functions, and authority delegations:
General Counsel; published 5-28-96
Television broadcasting:
Cable Television Consumer Protection and Competition Act of 1992--
Consumer electronics equipment and cable systems; compatibility ensurance; published 4-26-96
Cable television systems--Major television markets; list; published 4-25-96

FEDERAL RESERVE SYSTEM
Bank Secrecy Act; implementation
Funds transfers and transmittals (wire transfers); recordkeeping by financial institutions; published 4-1-96

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Indiana; published 5-28-96
Missouri; published 5-28-96
Oklahoma; published 5-28-96

JUSTICE DEPARTMENT
Prisons Bureau
Inmate conrol, custody, care, etc.:
Intensive confinement center program; published 4-26-96

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
AlliedSignal Inc.; published 3-26-96
AlliedSignal, Inc.; published 3-26-96
Organization, functions, and authority delegations:
Air Traffic Operations, Program Director; published 5-28-96

TRANSPORTATION DEPARTMENT
Federal Highway Administration
Right-of-way and environment:
Right-of-way program administration; obsolete and redundant regulations removed; published 4-25-96

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Alcohol traffic safety programs, incentive grant criteria; CFR part removed; published 4-25-96
Organization, functions, and authority delegations:
Chief Counsel; published 5-28-96

TREASURY DEPARTMENT
Currency and foreign transactions; financial reporting and recordkeeping requirements:
Bank Secrecy Act; implementation--
Funds transfers and transmittals (wire transfers); recordkeeping by financial institutions; published 4-1-96
Funds transfers and transmittals (wire transfers); recordkeeping by financial institutions; published 4-1-96
Funds transfers and transmittals (wire transfers); recordkeeping by financial institutions; correction; published 4-25-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Horses; vesicular stomatitis; comments due by 5-31-96; published 4-1-96
Interstate transportation of animals and animal products (quarantine):
Brucellosis in cattle and bison--
Brucella vaccine approval; comments due by 5-31-96; published 4-1-96

AGRICULTURE DEPARTMENT
Federal Crop Insurance Corporation
Crop insurance regulations:
Pear crop provisions; comments due by 5-28-96; published 4-25-96

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
Processed meat and poultry products; nutrient content claim and general definition and standard of identity; comment period extension; comments due by 5-28-96; published 2-27-96

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Atlantic golden crab fishery, etc.; comments due by 5-28-96; published 4-11-96
Northeast multispecies, Atlantic sea scallop, and American lobster; comments due by 5-30-96; published 5-6-96
Ocean salmon off coasts of Washington, Oregon, and California; comments due by 5-31-96; published 5-6-96
International fisheries in U.S. Exclusive Economic Zone and on high seas; regulations consolidation; comments due by 5-30-96; published 5-21-96
Magnuson Act provisions; regulations consolidation and update; comments due by 5-31-96; published 5-1-96

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Contractor overhead certification; comments due by 5-28-96; published 3-29-96

ENVIRONMENTAL PROTECTION AGENCY
Air pollution; standards of performance for new stationary sources:
Volatile organic compound (VOC) emissions--
Automobile refinish coatings; comments due by 5-30-96; published 4-30-96
Air quality implementation plans:
Preparation, adoption, and submittal--
Volatile organic coumpound definition; HFC 43-10mee and HCFC 225ca and cb exclusion; comments due by 5-31-96; published 5-1-96
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 5-30-96; published 4-30-96
Florida; comments due by 5-28-96; published 4-25-96
Kansas and Missouri; comments due by 5-28-96; published 4-25-96
Wisconsin; comments due by 5-29-96; published 4-29-96
Hazardous waste program authorizations:
Alabama; comments due by 5-28-96; published 4-25-96
Kentucky; comments due by 5-28-96; published 4-26-96
North Carolina; comments due by 5-28-96; published 4-25-96
South Carolina; comments due by 5-28-96; published 4-26-96
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Aluminum tris (O-ethylphosphonate);

comments due by 5-28-96; published 4-26-96

Dicofol, etc.; comments due by 5-30-96; published 3-1-96

Quizalofop ethyl; comments due by 5-28-96; published 4-26-96

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Microwave relocation for C, D, E, and F blocks; voluntary negotiation period shortening, etc.; comments due by 5-28-96; published 5-15-96

Communications equipment:

Radio frequency devices–

Vehicle radar systems and radio astronomy operations; protection from interference; use of frequency bands above 40 GHz restricted; comments due by 5-28-96; published 3-29-96

Television broadcasting:

Telecommunications Act of 1996–

Cable reform provisions; comments due by 5-28-96; published 4-30-96

FEDERAL ELECTION COMMISSION

Reports by political committees:

Electronic filing of reports; comments due by 5-28-96; published 3-27-96

GENERAL ACCOUNTING OFFICE

Practice and procedure:

Personnel Appeals Board–

Reductions in force; comments due by 5-31-96; published 3-7-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare and Medicaid:

Prepaid health care organizations; physician incentive plans requirements; comments due by 5-28-96; published 3-27-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Inspector General Office, Health and Human Services Department

Medicare and Medicaid:

Prepaid health care organizations; physician incentive plans requirements; comments due by 5-28-96; published 3-27-96

INTERIOR DEPARTMENT

Fish and Wildlife Service

Migratory bird hunting:

Migratory bird harvest information program; participating States; comments due by 5-29-96; published 4-29-96

INTERIOR DEPARTMENT

Tribal government:

Self-governance program; awarding negotiation and planning grants; procedure establishment; comments due by 5-31-96; published 4-23-96

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:

Immigrant petitions–

Battered or abused spouses and children; classification as immediate relative of U.S. citizen or preference immigrant; self-petitioning; comments due by 5-28-96; published 3-26-96

JUSTICE DEPARTMENT

Prisons Bureau

Inmate control, custody, care, etc.:

Inmate personal property; authorized personal property lists standardization and transportation procedures; comments due by 5-31-96; published 4-1-96

POSTAL SERVICE

International Mail Manual:

International package consignment service implementation; comments due by 5-31-96; published 3-28-96

SECURITIES AND EXCHANGE COMMISSION

Securities:

Odd-lot tender offers by issuers; comments due by 5-28-96; published 4-25-96

SMALL BUSINESS ADMINISTRATION

Small business size standards:

Nonmanufacturer rule; waivers–

Purified terephthalic acid ground and unground; comments due by 5-29-96; published 5-6-96

Tabulating paper (computer forms, manifold or continuous); comments due by 5-29-96; published 5-6-96

TRANSPORTATION DEPARTMENT

Coast Guard

Merchant marine officers and seamen:

Electronic records of shipping articles and certificates of discharge; comments due by 5-28-96; published 3-28-96

Tankermen and persons in charge of dangerous liquids and liquefied gases transfers; qualifications; comment period reopening; comments due by 5-28-96; published 3-26-96

Regattas and marine parades:

Harborwalk Boat Race; comments due by 5-28-96; published 3-26-96

Suncoast Kilo Run et al.; comments due by 5-31-96; published 5-1-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 5-28-96; published 4-15-96

AlliedSignal, Inc.; comments due by 5-28-96; published 3-26-96

Beech; comments due by 5-28-96; published 4-15-96

CFM International; comments due by 5-28-96; published 3-26-96

McDonnell Douglas; comments due by 5-31-96; published 4-19-96

Airworthiness standards:

Special conditions–

Cessna model 425 airplanes; comments due by 5-30-96; published 4-30-96

Class E airspace; comments due by 5-30-96; published 4-16-96

Jet routes; comments due by 5-30-96; published 4-16-96

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Motor carrier safety standards:

Commercial Driver's License and Physical Qualification Requirements Negotiated Rulemaking Advisory Committee–

Intent to establish; comments due by 5-29-96; published 4-29-96

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Railroad contracts:

Specified rail services provision under specified rates and conditions; comment due date extended; comments due by 5-28-96; published 4-22-96

TREASURY DEPARTMENT

Customs Service

Organization and functions; field organization, ports of entry, etc.:

Columbus, OH; port limits extension; comments due by 5-31-96; published 5-3-96

TREASURY DEPARTMENT

Fiscal Service

Treasury certificates of indebtedness, notes, and bonds; State and local government series; comments due by 5-30-96; published 4-30-96

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $883.00 domestic, $220.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, or Master Card). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at **(202) 512–1800** from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to **(202) 512-2233.**

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-028-00001-1)	$4.25	Feb. 1, 1996
*3 (1995 Compilation and Parts 100 and 101)	(869-028-00002-9)	22.00	[1] Jan. 1, 1996
4	(869-028-00003-7)	5.50	Jan. 1, 1996
5 Parts:			
1-699	(869-028-00004-5)	26.00	Jan. 1, 1996
700-1199	(869-028-00005-3)	20.00	Jan. 1, 1996
1200-End, 6 (6 Reserved)	(869-028-00006-1)	25.00	Jan. 1, 1996
7 Parts:			
*0-26	(869-028-00007-0)	22.00	Jan. 1, 1996
27-45	(869-026-00008-5)	14.00	Jan. 1, 1995
46-51	(869-028-00009-6)	13.00	Jan. 1, 1996
52	(869-028-00010-0)	5.00	Jan. 1, 1996
53-209	(869-028-00011-8)	17.00	Jan. 1, 1996
210-299	(869-028-00012-6)	35.00	Jan. 1, 1996
*300-399	(869-028-00013-4)	17.00	Jan. 1, 1996
400-699	(869-028-00014-2)	22.00	Jan. 1, 1996
700-899	(869-026-00015-8)	23.00	Jan. 1, 1995
900-999	(869-028-00016-9)	30.00	Jan. 1, 1996
1000-1059	(869-026-00017-4)	23.00	Jan. 1, 1995
1060-1119	(869-026-00018-2)	15.00	Jan. 1, 1995
1120-1199	(869-026-00019-1)	12.00	Jan. 1, 1995
1200-1499	(869-028-00018-5)	29.00	Jan. 1, 1996
1500-1899	(869-028-00019-3)	41.00	Jan. 1, 1996
1900-1939	(869-028-00020-7)	16.00	Jan. 1, 1996
1940-1949	(869-026-00023-9)	30.00	Jan. 1, 1995
1950-1999	(869-028-00022-3)	39.00	Jan. 1, 1996
2000-End	(869-028-00023-1)	15.00	Jan. 1, 1996
8	(869-028-00024-0)	23.00	Jan. 1, 1996
9 Parts:			
*1-199	(869-028-00025-8)	30.00	Jan. 1, 1996
200-End	(869-026-00028-0)	23.00	Jan. 1, 1995
10 Parts:			
0-50	(869-028-00027-4)	30.00	Jan. 1, 1996
*51-199	(869-028-00028-2)	24.00	Jan. 1, 1996
200-399	(869-028-00029-1)	5.00	Jan. 1, 1996
400-499	(869-028-00030-4)	21.00	Jan. 1, 1996
500-End	(869-028-00031-2)	34.00	Jan. 1, 1996
*11	(869-028-00032-1)	15.00	Jan. 1, 1996
12 Parts:			
1-199	(869-028-00033-9)	12.00	Jan. 1, 1996
*200-219	(869-028-00034-7)	17.00	Jan. 1, 1996
220-299	(869-028-00035-5)	29.00	Jan. 1, 1996
300-499	(869-026-00038-7)	23.00	Jan. 1, 1995
*500-599	(869-028-00037-1)	20.00	Jan. 1, 1996
600-End	(869-028-00038-0)	31.00	Jan. 1, 1996
*13	(869-028-00039-8)	18.00	Mar. 1, 1996

Title	Stock Number	Price	Revision Date
14 Parts:			
*1-59	(869-028-00040-1)	34.00	Jan. 1, 1996
60-139	(869-028-00041-0)	30.00	Jan. 1, 1996
140-199	(869-028-00042-8)	13.00	Jan. 1, 1996
200-1199	(869-026-00045-0)	23.00	Jan. 1, 1995
1200-End	(869-028-00044-4)	16.00	Jan. 1, 1996
15 Parts:			
0-299	(869-028-00045-2)	16.00	Jan. 1, 1996
300-799	(869-028-00046-1)	26.00	Jan. 1, 1996
800-End	(869-028-00047-9)	18.00	Jan. 1, 1996
18 Parts:			
0-149	(869-028-00048-7)	6.50	Jan. 1, 1996
150-999	(869-028-00049-5)	19.00	Jan. 1, 1996
1000-End	(869-028-00050-9)	26.00	Jan. 1, 1996
17 Parts:			
1-199	(869-026-00054-9)	20.00	Apr. 1, 1995
200-239	(869-026-00055-7)	24.00	Apr. 1, 1995
240-End	(869-026-00056-5)	30.00	Apr. 1, 1995
18 Parts:			
1-149	(869-026-00057-3)	16.00	Apr. 1, 1995
150-279	(869-026-00058-1)	13.00	Apr. 1, 1995
280-399	(869-026-00059-0)	13.00	Apr. 1, 1995
400-End	(869-026-00060-3)	11.00	Apr. 1, 1995
19 Parts:			
1-140	(869-026-00061-1)	25.00	Apr. 1, 1995
141-199	(869-026-00062-0)	21.00	Apr. 1, 1995
200-End	(869-026-00063-8)	12.00	Apr. 1, 1995
20 Parts:			
1-399	(869-026-00064-6)	20.00	Apr. 1, 1995
400-499	(869-026-00065-4)	34.00	Apr. 1, 1995
500-End	(869-026-00066-2)	34.00	Apr. 1, 1995
21 Parts:			
1-99	(869-026-00067-1)	16.00	Apr. 1, 1995
100-169	(869-026-00068-9)	21.00	Apr. 1, 1995
170-199	(869-026-00069-7)	22.00	Apr. 1, 1995
200-299	(869-026-00070-1)	7.00	Apr. 1, 1995
300-499	(869-026-00071-9)	39.00	Apr. 1, 1995
500-599	(869-026-00072-7)	22.00	Apr. 1, 1995
600-799	(869-026-00073-5)	9.50	Apr. 1, 1995
800-1299	(869-026-00074-3)	23.00	Apr. 1, 1995
1300-End	(869-026-00075-1)	13.00	Apr. 1, 1995
22 Parts:			
1-299	(869-026-00076-0)	33.00	Apr. 1, 1995
300-End	(869-026-00077-8)	24.00	Apr. 1, 1995
23	(869-026-00078-6)	22.00	Apr. 1, 1995
24 Parts:			
0-199	(869-026-00079-4)	40.00	Apr. 1, 1995
200-219	(869-026-00080-8)	19.00	Apr. 1, 1995
220-499	(869-026-00081-6)	23.00	Apr. 1, 1995
500-699	(869-026-00082-4)	20.00	Apr. 1, 1995
700-899	(869-026-00083-2)	24.00	Apr. 1, 1995
900-1699	(869-026-00084-1)	24.00	Apr. 1, 1995
1700-End	(869-026-00085-9)	17.00	Apr. 1, 1995
25	(869-026-00086-7)	32.00	Apr. 1, 1995
26 Parts:			
§§ 1.0-1-1.60	(869-026-00087-5)	21.00	Apr. 1, 1995
§§ 1.61-1.169	(869-026-00088-3)	34.00	Apr. 1, 1995
§§ 1.170-1.300	(869-026-00089-1)	24.00	Apr. 1, 1995
§§ 1.301-1.400	(869-026-00090-5)	17.00	Apr. 1, 1995
§§ 1.401-1.440	(869-026-00091-3)	30.00	Apr. 1, 1995
§§ 1.441-1.500	(869-026-00092-1)	22.00	Apr. 1, 1995
§§ 1.501-1.640	(869-026-00093-0)	21.00	Apr. 1, 1995
§§ 1.641-1.850	(869-026-00094-8)	25.00	Apr. 1, 1995
§§ 1.851-1.907	(869-026-00095-6)	26.00	Apr. 1, 1995
§§ 1.908-1.1000	(869-026-00096-4)	27.00	Apr. 1, 1995
§§ 1.1001-1.1400	(869-026-00097-2)	25.00	Apr. 1, 1995
§§ 1.1401-End	(869-026-00098-1)	33.00	Apr. 1, 1995
2-29	(869-026-00099-9)	25.00	Apr. 1, 1995
30-39	(869-026-00100-6)	18.00	Apr. 1, 1995
40-49	(869-026-00101-4)	14.00	Apr. 1, 1995

Title	Stock Number	Price	Revision Date
50-299	(869-026-00102-2)	14.00	Apr. 1, 1995
300-499	(869-026-00103-1)	24.00	Apr. 1, 1995
500-599	(869-026-00104-9)	6.00	[4] Apr. 1, 1990
600-End	(869-026-00105-7)	8.00	Apr. 1, 1995
27 Parts:			
1-199	(869-026-00106-5)	37.00	Apr. 1, 1995
200-End	(869-026-00107-3)	13.00	[6] Apr. 1, 1994
28 Parts:			
1-42	(869-026-00108-1)	27.00	July 1, 1995
43-end	(869-026-00109-0)	22.00	July 1, 1995
29 Parts:			
0-99	(869-026-00110-3)	21.00	July 1, 1995
100-499	(869-026-00111-1)	9.50	July 1, 1995
500-899	(869-026-00112-0)	36.00	July 1, 1995
900-1899	(869-026-00113-8)	17.00	July 1, 1995
1900-1910 (§§ 1901.1 to 1910.999)	(869-026-00114-6)	33.00	July 1, 1995
1910 (§§ 1910.1000 to end)	(869-026-00115-4)	22.00	July 1, 1995
1911-1925	(869-026-00116-2)	27.00	July 1, 1995
1926	(869-026-00117-1)	35.00	July 1, 1995
1927-End	(869-026-00118-9)	36.00	July 1, 1995
30 Parts:			
1-199	(869-026-00119-7)	25.00	July 1, 1995
200-699	(869-026-00120-1)	20.00	July 1, 1995
700-End	(869-026-00121-9)	30.00	July 1, 1995
31 Parts:			
0-199	(869-026-00122-7)	15.00	July 1, 1995
200-End	(869-026-00123-5)	25.00	July 1, 1995
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-026-00124-3)	32.00	July 1, 1995
191-399	(869-026-00125-1)	38.00	July 1, 1995
400-629	(869-026-00126-0)	26.00	July 1, 1995
630-699	(869-026-00127-8)	14.00	[5] July 1, 1991
700-799	(869-026-00128-6)	21.00	July 1, 1995
800-End	(869-026-00129-4)	22.00	July 1, 1995
33 Parts:			
1-124	(869-026-00130-8)	20.00	July 1, 1995
125-199	(869-026-00131-6)	27.00	July 1, 1995
200-End	(869-026-00132-4)	24.00	July 1, 1995
34 Parts:			
1-299	(869-026-00133-2)	25.00	July 1, 1995
300-399	(869-026-00134-1)	21.00	July 1, 1995
400-End	(869-026-00135-9)	37.00	July 5, 1995
35	(869-026-00136-7)	12.00	July 1, 1995
36 Parts			
1-199	(869-026-00137-5)	15.00	July 1, 1995
200-End	(869-026-00138-3)	37.00	July 1, 1995
37	(869-026-00139-1)	20.00	July 1, 1995
38 Parts:			
0-17	(869-026-00140-5)	30.00	July 1, 1995
18-End	(869-026-00141-3)	30.00	July 1, 1995
39	(869-026-00142-1)	17.00	July 1, 1995
40 Parts:			
1-51	(869-026-00143-0)	40.00	July 1, 1995
52	(869-026-00144-8)	39.00	July 1, 1995
53-59	(869-026-00145-6)	11.00	July 1, 1995
60	(869-026-00146-4)	36.00	July 1, 1995
61-71	(869-026-00147-2)	36.00	July 1, 1995
72-85	(869-026-00148-1)	41.00	July 1, 1995
86	(869-026-00149-9)	40.00	July 1, 1995
87-149	(869-026-00150-2)	41.00	July 1, 1995
150-189	(869-026-00151-1)	25.00	July 1, 1995
190-259	(869-026-00152-9)	17.00	July 1, 1995
260-299	(869-026-00153-7)	40.00	July 1, 1995
300-399	(869-026-00154-5)	21.00	July 1, 1995
400-424	(869-026-00155-3)	26.00	July 1, 1995
425-699	(869-026-00156-1)	30.00	July 1, 1995
700-789	(869-026-00157-0)	25.00	July 1, 1995
790-End	(869-026-00158-8)	15.00	July 1, 1995
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-026-00159-6)	9.50	July 1, 1995
101	(869-026-00160-0)	29.00	July 1, 1995
102-200	(869-026-00161-8)	15.00	July 1, 1995
201-End	(869-026-00162-6)	13.00	July 1, 1995
42 Parts:			
1-399	(869-026-00163-4)	26.00	Oct. 1, 1995
400-429	(869-026-00164-2)	26.00	Oct. 1, 1995
430-End	(869-026-00165-1)	39.00	Oct. 1, 1995
43 Parts:			
1-999	(869-026-00166-9)	23.00	Oct. 1, 1995
1000-3999	(869-026-00167-7)	31.00	Oct. 1, 1995
4000-End	(869-026-00168-5)	15.00	Oct. 1, 1995
44	(869-026-00169-3)	24.00	Oct. 1, 1995
45 Parts:			
1-199	(869-022-00170-7)	22.00	Oct. 1, 1995
200-499	(869-026-00171-5)	14.00	Oct. 1, 1995
500-1199	(869-026-00172-3)	23.00	Oct. 1, 1995
1200-End	(869-026-00173-1)	26.00	Oct. 1, 1995
46 Parts:			
1-40	(869-026-00174-0)	21.00	Oct. 1, 1995
41-69	(869-026-00175-8)	17.00	Oct. 1, 1995
70-89	(869-026-00176-6)	8.50	Oct. 1, 1995
90-139	(869-026-00177-4)	15.00	Oct. 1, 1995
140-155	(869-026-00178-2)	12.00	Oct. 1, 1995
156-165	(869-026-00179-1)	17.00	Oct. 1, 1995
166-199	(869-026-00180-4)	17.00	Oct. 1, 1995
200-499	(869-026-00181-2)	19.00	Oct. 1, 1995
500-End	(869-026-00182-1)	13.00	Oct. 1, 1995
47 Parts:			
0-19	(869-026-00183-9)	25.00	Oct. 1, 1995
20-39	(869-026-00184-7)	21.00	Oct. 1, 1995
40-69	(869-026-00185-5)	14.00	Oct. 1, 1995
70-79	(869-026-00186-3)	24.00	Oct. 1, 1995
80-End	(869-026-00187-1)	30.00	Oct. 1, 1995
48 Chapters:			
1 (Parts 1-51)	(869-026-00188-0)	39.00	Oct. 1, 1995
1 (Parts 52-99)	(869-026-00189-8)	24.00	Oct. 1, 1995
2 (Parts 201-251)	(869-026-00190-1)	17.00	Oct. 1, 1995
2 (Parts 252-299)	(869-026-00191-0)	13.00	Oct. 1, 1995
3-6	(869-026-00192-8)	23.00	Oct. 1, 1995
7-14	(869-026-00193-6)	28.00	Oct. 1, 1995
15-28	(869-026-00194-4)	31.00	Oct. 1, 1995
29-End	(869-026-00195-2)	19.00	Oct. 1, 1995
49 Parts:			
1-99	(869-026-00196-1)	25.00	Oct. 1, 1995
100-177	(869-026-00197-9)	34.00	Oct. 1, 1995
178-199	(869-026-00198-7)	22.00	Oct. 1, 1995
200-399	(869-026-00199-5)	30.00	Oct. 1, 1995
400-999	(869-026-00200-2)	40.00	Oct. 1, 1995
1000-1199	(869-026-00201-1)	18.00	Oct. 1, 1995
1200-End	(869-026-00202-9)	15.00	Oct. 1, 1995
50 Parts:			
1-199	(869-026-00203-7)	26.00	Oct. 1, 1995
200-599	(869-026-00204-5)	22.00	Oct. 1, 1995
600-End	(869-026-00205-3)	27.00	Oct. 1, 1995

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869-026-00053-1)	36.00	Jan. 1, 1995
Complete 1996 CFR set		883.00	1996
Microfiche CFR Edition:			
Subscription (mailed as issued)		264.00	1996
Individual copies		1.00	1996
Complete set (one-time mailing)		264.00	1995
Complete set (one-time mailing)		244.00	1994
Complete set (one-time mailing)		223.00	1993

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

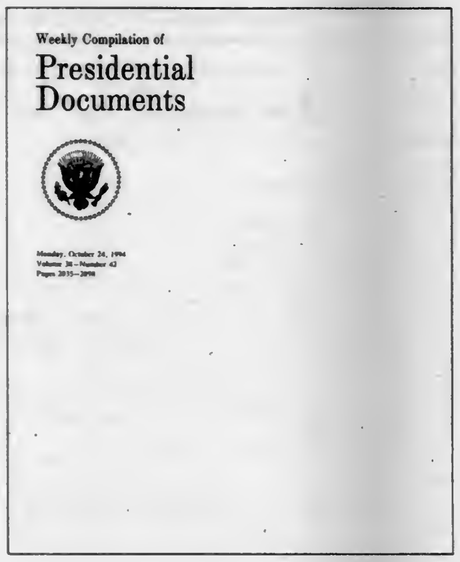
[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1994 to March 31, 1995. The CFR volume issued April 1, 1994, should be retained.

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Subscription Order Form

Order Processing Code:
* **5420**

Charge your order. It's easy! MasterCard VISA

To fax your orders (202) 512–2233

☐ **YES,** please enter ____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $132.00 First Class Mail ☐ $75.00 Regular Mail

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

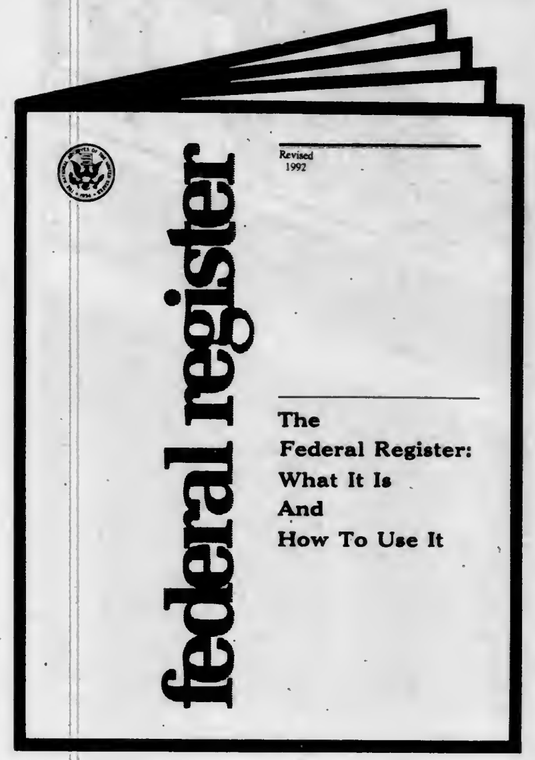
For privacy, check box below:
☐ Do not make my name available to other mailers

Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Authorizing signature) 10/94

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Announcing the Latest Edition

The Federal Register: What It Is and How to Use It

A Guide for the User of the Federal Register — Code of Federal Regulations System

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a sample research problem.

Price $7.00

Superintendent of Documents **Publications** Order Form

P3

Order processing code:
*6173

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202)-512-2250

☐ **YES**, please send me the following:

_____ copies of **The Federal Register - What It Is and How To Use It**, at $7.00 per copy. Stock No. 069-000-00044-4

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:
☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date) ***Thank you for your order!***

(Authorizing Signature) (Rev. 1-93)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.
$26.00 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.
$24.00 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.



Superintendent of Documents Subscription Order Form

Order Processing Code:
* 5421

Charge your order. It's easy!

To fax your orders (202) 512–2233

☐ **YES,** enter the following indicated subscriptions for one year:

___ **LSA ◆ List of CFR Sections Affected** (LCS) at $26.00 each

___ **Federal Register Index** (FRSU) at $24.00 each

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

For privacy, check box below:
❑ Do not make my name available to other mailers

Check method of payment:
❑ Check payable to Superintendent of Documents
❑ GPO Deposit Account [ ][ ][ ][ ][ ][ ] – [ ]
❑ VISA ❑ MasterCard [ ][ ][ ][ ] (expiration)

[ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]

(Authorizing signature) 10/94

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example*:

A renewal notice will be sent approximately 90 days before this date.

```
                                    /
AFR  SMITH212J              DEC95 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

A renewal notice will be sent approximately 90 days before this date.

```
                                    /
AFRDO  SMITH212J            DEC95 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9375.

To order a new subscription: Please use the order form provided below.

Order Processing Code:
* 5468

Superintendent of Documents Subscription Order Form

Charge your order. It's easy!

To fax your orders (202) 512–2233

☐ **YES,** please enter my subscriptions as follows:

___ subscriptions to **Federal Register** (FR); *including* the daily Federal Register, monthly Index and LSA List of Code of Federal Regulations Sections Affected, at $544 ($680 foreign) each per year.

___ subscriptions to **Federal Register,** *daily only* (FRDO), at $494 ($617.50 foreign) each per year.

The total cost of my order is $_____. (Includes regular shipping and handling.) Price subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

For privacy, check box below:
❑ Do not make my name available to other mailers

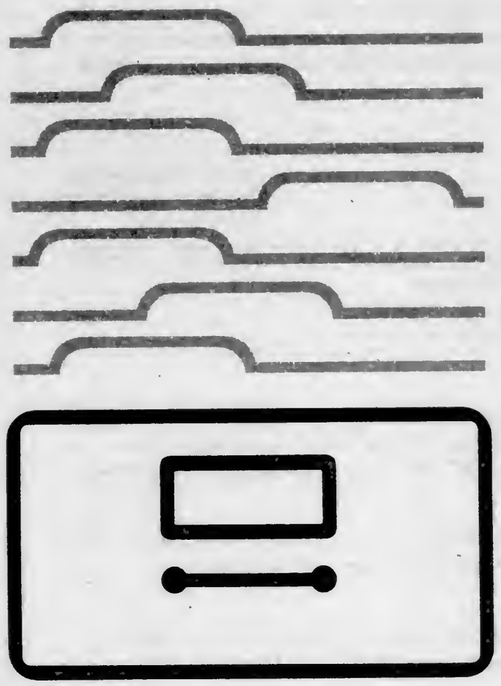
Check method of payment:
❑ Check payable to Superintendent of Documents
❑ GPO Deposit Account [ ][ ][ ][ ][ ][ ] – [ ]
❑ VISA ❑ MasterCard [ ][ ][ ][ ] (expiration date)

[ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]

Thank you for your order!

Authorizing signature 10/94

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



NEW EDITION

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

Revised January 1, 1994

The GUIDE is a useful reference tool, compiled from agency regulations, designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

Compiled by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Order Form

Charge your order. It's easy!

Order Processing Code:
* **7296**

To fax your orders (202) 512-2250

❑ **YES,** send me ____ subscriptions to **1994 Guide to Record Retention Requirements in the CFR,** S/N 069-000-00056-8, at $20.00 ($25.00 foreign) each.

The total cost of my order is $ _____. (Includes regular shipping and handling.) Price subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

Check method of payment:

❑ Check payable to Superintendent of Documents

❑ GPO Deposit Account ☐☐☐☐☐☐☐-☐

❑ VISA ❑ MasterCard ☐☐☐☐ (expiration date)

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Thank you for your order!

Authorizing signature 4/94

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

OL
1
S S
1
0
3
MY
2 8
996
MI



Printed on recycled paper

OL
1
SS
1
0
4
IY
9
996
MI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

5–29–96
Vol. 61 No. 104

federal register

Wednesday
May 29, 1996

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 96 R
UMI
SERIALS ACQUISITIONS
PO BOX 1346
ANN ARBOR MI 48106

5–29–96
Vol. 61 No. 104
Pages 26769–27000

Wednesday
May 29, 1996

federal register

Briefings on How To Use the Federal Register
For information on briefings in Chicago, IL, and Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $494, or $544 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $433. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 61 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530
Single copies/back copies:	
Paper or fiche	512–1800
Assistance with public single copies	512–1803
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

CHICAGO, IL

WHEN: June 11, 1996 at 9:00 am
WHERE: Metcalfe Federal Building, Conference Room 328, 77 West Jackson, Chicago, Illinois 60604
RESERVATIONS: 1–800–688–9889

WASHINGTON, DC

[Two Sessions]

WHEN: June 18, 1996 at 9:00 am, and June 25, 1996 at 9:00 am
WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 61, No. 104
Wednesday, May 29, 1996

Agricultural Marketing Service
PROPOSED RULES
Cherries (tart) grown in—
Michigan et al., 26956–26979

Agricultural Research Service
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Consep, Inc., 26873

Agriculture Department
See Agricultural Marketing Service
See Agricultural Research Service
See Animal and Plant Health Inspection Service

Animal and Plant Health Inspection Service
PROPOSED RULES
Exportation and importation of animals and animal products:
African swine fever; disease status change—
Spain, 26850–26852
Foreign "regions" criteria based on risk class levels, etc.
Hearings, 26849–26850
NOTICES
Environmental statements; availability, etc.:
Veterinary unlicensed biological products for field testing; shipment, 26873–26874

Army Department
See Engineers Corps

Assassination Records Review Board
NOTICES
Meetings; Sunshine Act, 26874

Census Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26875

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26907
Submission for OMB review; comment request, 26907–26910

Children and Families Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 26910

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Florida, 26874
Michigan, 26874
Meetings; Sunshine Act, 26874

Coast Guard
RULES
Ports and waterways safety:
Delaware Bay, NJ; safety zone, 26840–26841
PROPOSED RULES
Navigation aids on artificial islands and fixed structures, etc.:
International Association of Lighthouse Authorities; conformance
Withdrawn, 26857

Commerce Department
See Census Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 26875

Defense Department
See Engineers Corps
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review—
Submission for OMB review; comment request, 26892

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26893–26895
Grants and cooperative agreements; availability, etc.:
Individuals with disabilities—
Minority entities and underrepresented populations; outreach services, 26996
Personnel training program, 26996–26999

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board—
Los Alamos National Laboratory, 26895

Engineers Corps
NOTICES
Base realignment and closure:
Surplus Federal property—
Fort Greely, AK, 26892–26893

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Prosulfuron, 26841–26844
PROPOSED RULES
Drinking water:
National primary and secondary drinking water regulations—
Enhanced surface water treatment requirements for waterborne pathogens and viruses, 26857–26858

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Dicofol, etc., 26858–26859
Methyl esters of tall-oil fatty acids, 26859–26861
Pesticide chemicals; various tolerance actions, 26861–26863
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26901–26903
Clean Air Act:
Citizens suits; proposed settlements—
Delaware Valley Citizens' Council for Clean Air, 26903
Pesticides; temporary tolerances:
Cyfluthrin, 26904
Reports; availability, etc.
Paper products recovered materials advisory notice, 26986–26993

Executive Office of the President
See Management and Budget Office
See Presidential Documents
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness directives:
Beech, 26780–26781
Israel Aircraft Industries, Ltd., 26776–26778
McDonnell Douglas, 26778–26780
Airworthiness standards:
Special conditions—
Dassault Aviation, Mystere Falcon 50 airplane, 26775–26776
Class E airspace, 26781–26783
PROPOSED RULES
Airworthiness directives:
Don Luscombe Aviation History Foundation, 26853–26854
Class E airspace, 26855–26857
NOTICES
Advisory circulars; availability, etc.:
Aircraft—
Acceptable methods, techniques, and practices; aircraft inspection and repair, 26946
Airport noise compatibility program:
Noise exposure map—
San Francisco International Airport, CA, 26946–26947
Grants and cooperative agreements; availability, etc.:
Airport capital improvement program national priority system; comment request, 26947–26948

Federal Communications Commission
PROPOSED RULES
Television broadcasting:
Digital broadcast television licensees; digital television standard requirement, 26864–26872

Federal Energy Regulatory Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 26895–26896
Environmental statements; availability, etc.:
Alaska Power & Telephone Co., 26898
Meetings; Sunshine Act, 26898
Natural gas companies (Natural Gas Act):
Uniform system of accounts, forms, statements, and reporting requirements; revisions, 26900–26901
Applications, hearings, determinations, etc.:
Eastern Shore Natural Gas Co., 26896
Entergy Power, Inc., 26896–26897
Missouri Gas Energy et al., 26897
Northwest Alaskan Pipeline Co., 26897
Southern California Edison Co., 26897–26898
Texas Eastern Transmission Corp., 26898

Federal Housing Finance Board
NOTICES
Meetings; Sunshine Act, 26904

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
All-Ways Forwarding International Inc. et al., 26905

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 26905
Formations, acquisitions, and mergers, 26905
Permissible nonbanking activities, 26905–26906
Meetings; Sunshine Act, 26906

Financial Management Service
See Fiscal Service

Fiscal Service
RULES
Financial management services:
Surety companies; Federal process agents appointment reporting; elimination, 26839–26840

Fish and Wildlife Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26922

Food and Drug Administration
RULES
Food additives:
Dimethyl dicarbonate, 26786–26788
NOTICES
Food for human consumption:
Food labeling—
Nutrient values for voluntary nutrition labeling of raw fruits, vegetables and fish, 26910–26911
Human drugs:
Patent extension; regulatory review period determinations—
AMARYL, 26913–26914
COREG, 26911–26912
FOSAMAX, 26912–26913
ZYRTEC, 26913

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review—
Submission for OMB review; comment request, 26892
Federal travel:
Special actual subsistence expense reimbursement ceiling—
Augusta (Richmond County), GA, 26906–26907

Health and Human Services Department
See Centers for Disease Control and Prevention

See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Health Care Financing Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 26914–26915

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs:
Condominium units in non-FHA approved projects, 26982–26984
NOTICES
Grant and cooperative agreement awards:
Congregate housing services program, 26919–26921
HOPE homeownership program—
Multifamily units program (HOPE 2), 26921–26922

Immigration and Naturalization Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 26932–26934

Indian Affairs Bureau
NOTICES
Indian tribes, acknowledgement of existence determinations, etc.:
Samish Tribal Organization, 26922–26923

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Reclamation Bureau
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Procedure and administration:
Taxpayer identifying numbers (TIN), 26788–26792

International Trade Administration
NOTICES
Antidumping:
Aramid fiber formed of poly para-phenylene terephthalamide from—
Netherlands, 26876
Corrosion-resistant carbon steel flat products from—
Australia, 26876–26878
Fresh and chilled Atlantic salmon from—
Norway, 26878
Sodium azide from—
Japan, 26878
Countervailing duties:
Cut-to-length carbon steel plate from—
Sweden, 26878–26879
Iron-metal castings from—
India, 26879
Live swine from—
Canada, 26879–26890
Countervailing duty orders:
Determinations not to revoke, 26890
Export trade certificates of review, 26890–26891
Meetings:
Environmental Technologies Trade Advisory Committee, 26891

Justice Department
See Immigration and Naturalization Service
NOTICES
Pollution control; consent judgments:
Fidelcor Business Credit Corp. et al., 26932

Land Management Bureau
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 26923–26924
Opening of public lands:
California, 26924
Realty actions; sales, leases, etc.:
South Dakota, 26924
Resource management plans, etc.:
Escalante Resource Area et al., UT, 26924–26925

Legal Services Corporation
NOTICES
Priorities list for recipients, 26934–26935

Management and Budget Office
NOTICES
Commercial activities performance (A–76), 26939

Minerals Management Service
NOTICES
Outer Continental Shelf operations:
Notice to lessees and operators (NTL) issued by each OCS region and National Office, 26925–26929

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review—
Submission for OMB review; comment request, 26892
Meetings:
Life and Microgravity Sciences and Applications Advisory Committee, 26935–26936

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Occupant crash protection—
Lockable lap belts or lap belt portions of seat belt assemblies; CFR correction, 26845–26846
PROPOSED RULES
Lamps, Reflective Devices, and Associated Equipment Negotiated Rulemaking Committee:
Meetings, 26872
NOTICES
Grants and cooperative agreements; availability, etc.:
Patterns for Life Program (Child passenger safety, child pedestrian safety, and bicycle helmet safety), 26948–26952

National Institute of Standards and Technology
NOTICES
Information processing standards, Federal:
Perforated tape code for information interchange, etc.; withdrawn, 26891–26892

National Institutes of Health
NOTICES
Grants and cooperative agreements; availability, etc.:
Hydroxylated aromatic protein crosslinking compounds for treatment of hyperproliferative epithelial lesions; scientific and commercial development, 26915–26916
Meetings:
Advisory Committee to Director, 26916
Alternative Medicine Program Advisory Council, 26916
Dietary supplements for physically active people; workshop, 26916–26917
National Heart, Lung, and Blood Institute, 26917
National Institute of Allergy and Infectious Diseases, 26918
National Institute of Diabetes and Digestive and Kidney Diseases, 26918–26919
National Institute of General Medical Sciences, 26918
National Institute on Alcohol Abuse and Alcoholism, 26917–26918
Research Grants Division special emphasis panels, 26919

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeast multispecies, 26847–26848

National Park Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 26930
Environmental statements; availability, etc.:
Yellowstone National Park, WY; commercial services management plan, 26930
National Register of Historic Places:
Pending nominations, 26930–26931

Nuclear Regulatory Commission
PROPOSED RULES
Onsite low-level waste disposal in agreement States; approval authority; withdrawn, 26852–26853
NOTICES
Meetings; Sunshine Act, 26938–26939
Applications, hearings, determinations, etc.:
Houston Lighting & Power Co. et al., 26936–26938

Office of Management and Budget
See Management and Budget Office

Office of United States Trade Representative
See Trade Representative, Office of United States

Postal Rate Commission
NOTICES
Post office closings; petitions for appeal:
Salem, NE, 26939–26940

Presidential Documents
PROCLAMATIONS
Special observances:
Prayer for Peace, Memorial Day (Proc. 6901), 26769–26770
EXECUTIVE ORDERS
Indian Sacred Sites (EO 13007), 26771–26772
ADMINISTRATIVE ORDERS
Yugoslavia, Federal Republic of (Serbia and Montenegro) and Bosnian Serbs; continuation of emergency (Notice of May 24, 1996), 26773–26774

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Reclamation Bureau
NOTICES
Central Valley Project Improvement Act:
Water conservation plans; evaluation criteria; decision, 26931–26932

Securities and Exchange Commission
NOTICES
Meetings:
Capital Formation and Advisory Processes Advisory Committee, 26940
Meetings; Sunshine Act, 26940
Self-regulatory organizations; proposed rule changes:
Chicago Stock Exchange, Inc., 26940–26942
Delta Clearing Corp., 26942–26943
New York Stock Exchange, Inc., 26943–26944

Small Business Administration
NOTICES
Disaster loan areas:
Illinois, 26944
Meetings; district and regional advisory councils:
Connecticut, 26944

Social Security Administration
NOTICES
Meetings:
Representative Payment Advisory Committee, 26944–26945

State Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 26945
Pipeline facilities on U.S. borders; permit applications:
Rio Grande Pipeline Co., 26945–26946

Substance Abuse and Mental Health Services Administration
NOTICES
Meetings:
Substance Abuse Prevention Center National Advisory Council, 26919

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Colorado, 26792–26801
Illinois, 26801–26825
New Mexico, 26825–26836
Virginia, 26836–26839

Surface Transportation Board
RULES
Contracts and exemptions:
Boxcar traffic, 26846–26847

Trade Representative, Office of United States
RULES
Sugar imports; tariff-rate quota implementation, 26783–26785

Transportation Department
See Coast Guard
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See Fiscal Service
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Meetings:
Geriatrics and Gerontology Advisory Committee, 26952–26953

Separate Parts In This Issue

Part II
Department of Agriculture, Agricultural Marketing Service, 26956–26979

Part III
Department of Housing and Urban Development, 26982–26984

Part IV
Environmental Protection Agency, 26986–26993

Part V
Department of Education, 26996–26999

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6901 26769
Executive Orders:
12808 (See Notice of May 24, 1996) 26773
12810 (See Notice of May 24, 1996) 26773
12831 (See Notice of May 24, 1996) 26773
12846 (See Notice of May 24, 1996) 26773
12934 (See Notice of May 24, 1996) 26773
13007 26771
Presidential Determination No. 96–7 of Dec. 27, 1995 (See Notice of May 24, 1996) 26773
7 CFR
Proposed Rules:
930 26956
9 CFR
Proposed Rules:
92 26849
93 26849
94 (2 documents) 26849, 26850
95 26849
96 26849
98 26849
10 CFR
Proposed Rules:
150 26852
14 CFR
25 26775
39 (3 documents) 26776, 26778, 26780
71 26781
Proposed Rules:
39 26853
71 (2 documents) 26855, 26856
15 CFR
2011 26783
21 CFR
172 26786
24 CFR
206 26982
234 26982
26 CFR
301 26788
602 26788
30 CFR
906 26792
913 26801
931 26825
946 26836
31 CFR
224 26839
33 CFR
165 26840
Proposed Rules:
67 26857
40 CFR
180 (2 documents) 26841, 26843
Proposed Rules:
141 26857
142 26857
180 (3 documents) 26856, 26859, 26861
185 26861
186 26861
47 CFR
Proposed Rules:
Ch. I 26864
49 CFR
571 26845
1039 26846
Proposed Rules:
571 26872
50 CFR
651 26847

Federal Register
Vol. 61, No. 104
Wednesday, May 29, 1996

Presidential Documents

Title 3—

The President

Proclamation 6901 of May 24, 1996

Prayer for Peace, Memorial Day, 1996

By the President of the United States of America

A Proclamation

On the last Monday of May each year, our Nation takes time to remember those who have given their lives to safeguard America's freedom. Courageous and loyal citizens have died on battlefields around the world in defense of the United States, our interests, and our values, thus ensuring more than two centuries of independence and a society based on individual rights. Their selflessness demands our profound gratitude and calls us to consider anew the awesome price of liberty.

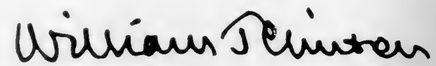
On this special day, let us reflect upon the supreme sacrifice made by our fellow citizens lost in battle. All were proud members of our national community, and all perished while protecting our country's honor and the American way of life. Let us share in the grief of the families whose loved ones remain unaccounted for or fell while defending this great Nation. And let us pray, each in our own way, for peace throughout this land and across the globe. As beneficiaries of the freedoms our troops secured, we can best pay tribute to their deeds by leaving to future generations an America that continues to be a beacon of justice and freedom for people everywhere.

In respect and recognition of the courageous men and women to whom we pay tribute, the Congress, by joint resolution approved on May 11, 1950 (64 Stat. 158), has requested the President to issue a proclamation calling upon the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the American people might unite in prayer.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Memorial Day, May 27, 1996, as a day of prayer for permanent peace, and I designate the hour beginning in each locality at 11:00 a.m. of that day as a time to join in prayer. I urge the press, radio, television, and all other information media to take part in this observance.

I also request the Governors of the United States and the Commonwealth of Puerto Rico, and the appropriate officials of all units of government, to direct that the flag be flown at half-staff during this Memorial Day on all buildings, grounds, and naval vessels throughout the United States and in all areas under its jurisdiction and control, and I request the people of the United States to display the flag at half-staff from their homes for the customary forenoon period.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of May, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twentieth.



[FR Doc. 96–13596
Filed 5–28–96; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13007 of May 24, 1996

Indian Sacred Sites

By the authority vested in me as President by the Constitution and the laws of the United States, in furtherance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered:

Section 1. *Accommodation of Sacred Sites.* (a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

(b) For purposes of this order:

(i) "Federal lands" means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands;

(ii) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law No. 103–454, 108 Stat. 4791, and "Indian" refers to a member of such an Indian tribe; and

(iii) "Sacred site" means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

Sec. 2. *Procedures.* (a) Each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, as appropriate, promptly implement procedures for the purposes of carrying out the provisions of section 1 of this order, including, where practicable and appropriate, procedures to ensure reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments."

(b) Within 1 year of the effective date of this order, the head of each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall report to the President, through the Assistant to the President for Domestic Policy, on the implementation of this order. Such reports shall address, among other things, (i) any changes necessary to accommodate access to and ceremonial use of Indian sacred sites; (ii) any changes necessary to avoid adversely affecting the physical integrity of Indian sacred sites; and (iii) procedures implemented or proposed to facilitate consultation with appropriate Indian tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites.

Sec. 3. Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action. For purposes of this order, "agency action" has the same meaning as in the Administrative Procedure Act (5 U.S.C. 551(13)).

Sec. 4. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, officers, or any person.

William J. Clinton

THE WHITE HOUSE,
May 24, 1996.

[FR Doc. 96–13597
Filed 5–27–96; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Notice of May 24, 1996

Continuation of Emergency With Respect to the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Bosnian Serbs

On May 30, 1992, by Executive Order 12808, President Bush declared a national emergency to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions and policies of the Governments of Serbia and Montenegro, blocking all property and interests in property of those Governments. President Bush took additional measures to prohibit trade and other transactions with the Federal Republic of Yugoslavia (Serbia and Montenegro) by Executive Orders 12810 and 12831, issued on June 5, 1992, and January 15, 1993, respectively. On April 25, 1993, I issued Executive Order 12846, blocking the property and interests in property of all commercial, industrial, or public utility undertakings or entities organized or located in the Federal Republic of Yugoslavia (Serbia and Montenegro), and prohibiting trade-related transactions by United States persons involving those areas of the Republic of Bosnia and Herzegovina controlled by Bosnian Serb forces and the United Nations Protected Areas in the Republic of Croatia. On October 25, 1994, because of the actions and policies of the Bosnian Serbs, I expanded the scope of the national emergency to block the property of the Bosnian Serb forces and the authorities in the territory that they control within the Republic of Bosnia and Herzegovina, as well as the property of any entity organized or located in, or controlled by any person in, or resident in, those areas.

On December 27, 1995, I issued Presidential Determination No. 96–7, directing the Secretary of the Treasury, *inter alia,* to suspend the application of sanctions imposed on the Federal Republic of Yugoslavia (Serbia and Montenegro) pursuant to the above-referenced Executive orders and to continue to block property previously blocked until provision is made to address claims or encumbrances, including the claims of the other successor states of the former Yugoslavia. This sanctions relief, in conformity with United Nations Security Council Resolution 1022 of November 22, 1995 (hereinafter the "Resolution"), was an essential factor motivating Serbia and Montenegro's acceptance of the General Framework Agreement for Peace in Bosnia and Herzegovina initialled by the parties in Dayton, Ohio, on November 21, 1995, and signed in Paris on December 14, 1995 (hereinafter the "Peace Agreement"). The sanctions imposed on the Federal Republic of Yugoslavia (Serbia and Montenegro) were accordingly suspended prospectively, effective January 16, 1996. Sanctions imposed on the Bosnian Serb forces and authorities and on the territory that they control within the Republic of Bosnia and Herzegovina were subsequently suspended prospectively, effective May 10, 1996, also in conformity with the Peace Agreement and Resolution.

In the last year, substantial progress has been achieved to bring about a settlement on the conflict in the former Yugoslavia acceptable to the parties. Before agreeing to the sanctions suspension, the United States insisted on a credible reimposition mechanism to ensure the full implementation of the Peace Agreement. Thus, Resolution 1022 provides a mechanism to reimpose the sanctions if the Federal Republic of Yugoslavia or the Bosnian Serb authorities fail significantly to meet their obligations under the Peace Agreement. It also provides that sanctions will not be terminated until after the first free and fair elections occur in the Republic of Bosnia and Herzegovina, as provided for in the Peace Agreement, and provided that

the Bosnian Serb forces have continued to respect the zones of separation as provided in the Peace Agreement. The Resolution also provides for the continued blocking of assets potentially subject to conflicting claims and encumbrances, including the claims of the other successor states of the former Yugoslavia, until provision is made to address them.

Because the resolution of the crisis and conflict in the former Yugoslavia that resulted from the actions and policies of the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), and of the Bosnian Serb forces and the authorities in the territory that they control, will not be complete until such time as the Peace Agreement is implemented fully and the terms of Resolution 1022 have been met, the national emergency declared on May 30, 1992, as expanded in scope on October 25, 1994, and the measures adopted pursuant thereto to deal with that emergency must continue beyond May 30, 1996.

Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Bosnian Serb forces and those areas of the Republic of Bosnia and Herzegovina under the control of the Bosnian Serb forces.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
May 24, 1996.

[FR Doc. 96–13579
Filed 5–28–96; 8:45 am]
Billing code 4810–25–M

Rules and Regulations

Federal Register
Vol. 61, No. 104
Wednesday, May 29, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federation Aviation Administration

14 CFR Part 25

[Docket No. NM–126; Special Conditions No. 25–ANM–16]

Special Conditions: Dassault Aviation, Mystere Falcon 50 Airplane; High-Intensity Radiated Fields

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Dassault Aviation, Mystere Falcon 50 airplane modified by Garrett Aviation Services of Springfield, Illinois. This airplane will be equipped with a Collins EFIS–86C(14) Electronic Flight Instrument System that provides critical data to the flightcrew. The applicable regulations do not contain adequate or appropriate safety standards for the position of these systems from the effects of high-intensity radiated fields. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is May 21, 1996. Comments must be received on or before July 15, 1996.

ADDRESSES: Comments on these final special conditions, request for comments, may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–126, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–126. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Connie Beane, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (206) 227–2796; facsimile (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–126." The postcard will be date stamped and returned to the commenter.

Background

On March 7, 1996, Garrett Aviation Services of Springfield, Illinois, applied for a supplemental type certificate to modify Dassault Aviation, Mystere Falcon 50 airplanes. The Dassault Aviation, Mystere Falcon 50 is a business jet with three aft mounted turbine engines. The airplane can carry three crew and 19 passengers depending on the configuration, and is capable of operating to an altitude of 49,000 feet. The proposed modification incorporates the installation of a Collins EFIS–86C(14) Electronic Flight Instrument System (EFIS)), which is potentially vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.101 of the Federal Aviation Regulations (FAR), Garrett Aviation Services must show that the altered Dassault Aviation, Mystere Falcon 50 airplane continues to meet the applicable provisions of § 21.29; and part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–34 and § 25.255 of Amendments 25–42; § 25.979(d) and (e) of Amendments 25–38; § 25.1013(b)(1) of Amendments 25–36; § 25.1351(d) of Amendments 25–41; § 25.1353(c)(6) of Amendments 25–42; part 36 of the FAR effective December 1, 1969, as amended through Amendment 36–9; Special Federal Aviation Regulations (SFAR) 27 effective February 1, 1974, as amended through Amendment SFAR 27–1; and Special Conditions 25–86–EU–24. In addition, the certification basis may include other special conditions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Dassault Aviation, Mystere Falcon 50 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Dassault Aviation, Mystere Falcon 50 airplane incorporates a Collins EFIS–86c(14) system that provides critical date to the flightcrew. This system may be vulnerable to HIRF external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are issued for the Dassault Aviation, Mystere Falcon 50, which would require that new technology electrical and electronic systems, such as the EFIS, etc., be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIFR must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2000 KHz	70	70
2 MHz–30 MHz	200	200
30 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1000 MHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

As discussed above, these special conditions would be applicable initially to the Garrett Aviation Services modified Dassault Aviation, Mystere Falcon 50. Should Garrett Aviation Services apply at a later date for a change to the supplemental type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on the Dassault Aviation, Mystere Falcon 50 airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions for this airplane has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation, safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, the following special conditions are issued as part of the supplemental type certification basis for the Garrett Aviation Services modified Dassault Aviation, Mystere Falcon 50 series airplanes.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on May 21, 1996.

Norman B. Martenson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 96–13426 Filed 5–28–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 96–NM–94–AD; Amendment 39–9635; AD 96–11–10]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries (IAI), Ltd., Model 1125 Westwind Astra Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain IAI, Ltd., Model 1125 Westwind Astra series airplanes. This action requires a visual inspection for clearance between the hydraulic lines/vacuum lines and the electrical wire bundles, and repair or replacement of damaged lines or wire bundles with serviceable parts. This AD also requires installation of neoprene hose around the affected hydraulic lines and vacuum lines. This amendment is prompted by a report indicating that chafing was found on a hydraulic line. The actions specified in this AD are intended to prevent such chafing, which could result in leakage of hydraulic fluid and subsequent loss of one of the two hydraulic systems.

DATES: Effective June 13, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 13, 1996.

Comments for inclusion in the Rules Docket must be received on or before July 29, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–94–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Technical Publications, Astra Jet Corporation, 77 McCullough Drive, Suite 11, New Castle, Delaware 19720. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, recently notified the FAA that an unsafe condition may exist on certain Israel Aircraft Industries (IAI), Ltd., Model 1125 Westwind Astra series airplanes. The CAAI advises that it received a report indicating that chafing was found on a hydraulic line located at fuselage station 383.00. This chafing was the result of an electrical wire bundle sagging and coming in contact with the hydraulic lines in the area. Chafing of a hydraulic line can result in leakage of hydraulic fluid. This condition, if not corrected, could result in loss of one of the two hydraulic systems.

Explanation of Relevant Service Information

Astra Jet has issued Service Bulletin SB 1125–29–139, dated August 2, 1995, which describes procedures for a visual inspection for clearance between the hydraulic lines/vacuum lines and the electrical wire bundles, and repair or replacement of damaged lines or wire bundles with serviceable parts. The service bulletin also describes procedures for installation of neoprene hose around the affected hydraulic lines and vacuum lines. Accomplishment of the installation will protect the hydraulic lines located at fuselage station 383.00 from possible chafing. The CAAI classified this service bulletin as mandatory and issued Israeli AD No. 96–19, dated February 8, 1996, in order to assure the continued airworthiness of these airplanes in Israel.

FAA's Conclusions

This airplane model is manufactured in Israel and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent chafing of the hydraulic lines, which could result in leakage of hydraulic fluid and subsequent loss of one of the two hydraulic systems. This AD requires a visual inspection for clearance between the hydraulic lines/vacuum lines and the electrical wire bundles, and repair or replacement of damaged lines or wire bundles with serviceable parts. This AD also requires installation of neoprene hose around the affected hydraulic lines and vacuum lines. The actions are required to be accomplished in accordance with the service bulletin described previously.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–94–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy

of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–11–10 Israel Aircraft Industries (IAI), Ltd.: Amendment 39–9635. Docket 96–NM–94–AD.

Applicability: Model 1125 Westwind Astra series airplanes, serial numbers 004 through 076 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To prevent chafing of the hydraulic lines, which could result in leakage of hydraulic fluid and subsequent loss of one of the two hydraulic systems, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with Astra Jet Service Bulletin SB 1125–29–139, dated August 2, 1995.

(1) Perform a visual inspection for clearance between the hydraulic lines/vacuum lines and the electrical wire bundles at fuselage station 383.00, in accordance with the service bulletin. Prior to further flight, repair or replace any damaged line or wire bundle with a serviceable part in accordance with the service bulletin.

(2) Install neoprene hose around the affected hydraulic lines and vacuum lines in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Astra Jet Service Bulletin SB 1125–29–139, dated August 2, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Technical Publications, Astra Jet Corporation, 77 McCullough Drive, Suite 11, New Castle, Delaware 19720. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 13, 1996.

Issued in Renton, Washington, on May 20, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–13230 Filed 5–28 –96; 8:45 am]

BILLING CODE 4910–13–P

---

14 CFR Part 39

[Docket No. 95–NM–145–AD; Amendment 39–9636; AD 96–11–11]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–9 series airplanes, that requires inspection(s) to detect cracking in the nose skin of the fuselage, and various follow-on actions. This amendment also provides for an optional modification, which would defer certain repetitive inspections, if no cracking is detected. This amendment is prompted by reports of cracking in the upper nose skin of the fuselage due to fatigue. The actions specified by this AD are intended to prevent fatigue-related cracking, which could compromise the structural integrity of the airplane.

DATES: Effective July 3, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 3, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5224; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC–9 series airplanes was published in the **Federal Register** on January 19, 1996 (61 FR 1301). That action proposed to require inspection(s) to detect cracking in the nose skin of the fuselage, and various follow-on actions. That action also proposed a provision for an optional modification, which would defer certain repetitive inspections, if no cracking is detected.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Two commenters support the proposed rule.

Request to Extend the Compliance Time

One commenter requests that the "grace period" of the compliance time for the accomplishment of the high frequency eddy current (HFEC) inspection be extended from the proposed 3,000 landings to 4,000 landings. This will allow the HFEC inspection to be accomplished during a regularly scheduled maintenance check, thereby eliminating any additional expenses. In addition, the commenter indicates that it has accomplished the HFEC inspection on 86 Model DC–9 series airplanes and has found "a high rate of positive findings" (i.e., cracking).

The FAA does not concur with the commenter's request to extend the "grace period" of the compliance time. In developing an appropriate compliance time for this action, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the HFEC inspection. In consideration of these items, as well as the numerous reports of cracking in the upper nose skin of the fuselage of airplanes in service, the FAA has determined that a "grace period" of 3,000 landings, as proposed, is appropriate. However, under the provisions of paragraph (b) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Request to Allow DER Approval of Repairs

This commenter also requests that proposed paragraph (a)(3) be revised to permit the approval of repairs (of any cracked areas beyond the repair limits specified in McDonnell Douglas DC–9 Service Bulletin 53–262) by Designated Engineering Representatives (DER) of the McDonnell Douglas Corporation; this will allow a more expeditious response time on repair recommendations.

The FAA does not concur with the commenter's request to revise paragraph (a)(3) of this AD. While DER's are authorized to determine whether a design or repair method complies with a specific requirement, they are not authorized to make the discretionary determination as to what the applicable requirement is. Further, where repair data does not exist, it is essential that the FAA have feedback as to the type of repairs being made. The FAA has determined that the Manager of the Los Angeles Aircraft Certification Office (ACO) should approve any such repairs or other deviations to the AD's requirements. Given that possible new relevant issues might be revealed during this process, it is imperative that the FAA, at this level, have such feedback. Only by reviewing deviation approvals can the FAA be assured of this feedback and of the adequacy of the repair methods. However, the FAA, in conjunction with the Aviation Rulemaking Advisory Committee (ARAC) currently is considering guidelines to address this issue, and may eventually develop additional FAA policy on this subject.

Request to Allow a Temporary Repair

One commenter requests that the FAA revise the proposal to allow a temporary repair, having a life limit of 8,000 flight cycles, to be accomplished in accordance with Structural Repair Manual 53–04, Figure 12B, Class III, until the proposed permanent repair can be accomplished. This would minimize down time for the operator.

The FAA does not concur. The FAA does not consider it appropriate to include various provisions in an AD applicable to a single operator's unique use of an affected airplane. Paragraph (b) of this AD provides for the approval of alternative methods of compliance to address these types of unique circumstances.

Request for Clarification of Use of Previously Approved Repairs

One commenter requests clarification as to the use of repairs that have been previously approved by the Manager, Los Angeles ACO, in accordance with AD 94–03–01, amendment 39–8907 (59 FR 6538, February 11, 1994).

The FAA agrees that clarification is necessary. The FAA considers the subject area of this AD to be identical to the subject area in AD 94–03–01. Therefore, repairs that have been approved previously by the Manager, Los Angeles ACO, are considered to be approved as alternative methods of compliance with paragraphs (a)(2) and (a)(3) of this AD. Accordingly, the FAA has revised the final rule to include a new paragraph (b)(2) to clarify this.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 889 Model DC–9 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 568 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $340,800, or $600 per airplane, per inspection.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, since the issuance of the proposal, the FAA has been advised that the initial inspection required by this AD has been accomplished on at least 86 affected airplanes. Therefore, the future cost impact of this AD on U.S. operators is reduced by approximately $51,600.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–11–11 McDonnell Douglas: Amendment 39–9636. Docket 95–NM–145–AD.

Applicability: All Model DC–9–10, –20, –30, –40, –50, and C–9 (military) series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue-related cracking, which could compromise the structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 40,000 total landings, or within 3,000 landings after the effective date of this AD, whichever occurs later, perform a high frequency eddy current (HFEC) inspection to detect cracking in the nose skin of the fuselage, in accordance with McDonnell Douglas DC–9 Service Bulletin 53–262, dated October 11, 1994.

(1) If no cracking is detected, accomplish either paragraph (a)(1)(i) or (a)(1)(ii) of this AD, in accordance with the service bulletin.

(i) Repeat the HFEC inspection thereafter at intervals not to exceed 4,000 landings; or

(ii) Accomplish the modification of the upper nose skin of the cockpit fuselage in accordance with the service bulletin. Prior to the accumulation of 60,000 landings after accomplishment of this modification, perform a visual inspection of the upper nose skin of the cockpit fuselage in accordance with the service bulletin. Repeat the visual inspection thereafter at intervals not to exceed 25,000 landings.

(2) If any cracking is detected and it is within the repair limits specified in the service bulletin, prior to further flight, repair the cracked nose skin in accordance with the service bulletin. Prior to the accumulation of 60,000 landings after accomplishment of this repair, perform a visual inspection to detect cracking of the repair; and prior to further flight, repair any cracking found during this inspection; in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(3) If any cracking is detected and it is beyond the repair limits specified in the service bulletin, prior to further flight, repair the cracked nose skin in accordance with a method approved by the Manager, Los Angeles ACO.

(b)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(b)(2) Alternative methods of compliance, approved in accordance with AD 94–03–01, amendment 39–8907, are approved as alternative methods of compliance with paragraphs (a)(2) and (a)(3) of this AD. This approval only applies to repairs that are subject to the requirements of this AD.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspections, modification, and certain repairs shall be done in accordance with McDonnell Douglas DC–9 Service Bulletin 53–262, dated October 11, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 3, 1996.

Issued in Renton, Washington, on May 20, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–13231 Filed 5–28–96; 8:45 am]

BILLING CODE 4910–13–P

---

14 CFR Part 39

[Docket No. 95–CE–82–AD; Amendment 39–9637; AD 96–11–12]

RIN 2120–AA64

Airworthiness Directives; Beech Aircraft Corporation Model C90A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Beech Aircraft Corporation (Beech) Model C90A airplanes equipped with an optional Beech electric trim system or a Collins autopilot system. This action requires modifying the elevator electric trim tab actuator assembly. Failure of the elevator electric trim tab system on a Beech Model C90A prompted the proposed AD action. The actions specified by the proposed AD are intended to prevent possible failure of the elevator electric trim tab system, which, if not detected and corrected, could cause loss of airplane maneuverablity and possible loss of control of the airplane.

DATES: Effective July 24, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 24, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–82–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harvey E. Nero, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4137; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Beech Aircraft Corporation (Beech) Model C90A airplanes equipped with an optional Beech electric trim system or a Collins autopilot system was published in the **Federal Register** on November 28, 1995 (60 FR 58583). The action proposed to require procedures for modifying the elevator electric trim tab actuator assembly. Accomplishment of this action will be in accordance with Beech Service Bulletin (SB) No. 2631, Issued: June 1995, Revised: September 1995.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 300 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 6 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts are estimated to be $160 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $156,000 or $520 per airplane. Beech has informed FAA that no parts have been distributed to owners/operators for this modification; therefore, this figure is based on the assumption that no owners/operators have accomplished the proposed inspection and modification.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

96–11–12. Beech Aircraft Corporation: Amendment 39–9637; Docket No. 95–CE–82–AD.

Applicability: The following Model C90A Airplanes, certificated in any category, that are equipped with an optional Beech electric trim system or a Collins autopilot system:

(1) Serial numbers LJ–1111 through LJ–1410 that were equipped at manufacture assembly with a pin-type cable guard actuator assembly (P/N 33–524023–51) on the elevator electric trim tab actuator assembly.

(2) All serial numbers (except LJ–1 through LJ–1110) equipped with a pin-type cable guard actuator assembly (P/N 33–524023–51) installed through field approval.

Note 1: Steps 1 through 4 of the ACCOMPLISHMENT INSTRUCTIONS section of Beech Service Bulletin (SB) No. 2631, Issued: June 1995, Revised: September 1995, provide procedures for determining which assembly is installed.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as follows, unless already accomplished:

(1) Within 150 hours time-in-service (TIS) after the effective date of this AD; or

(2) Upon installation of an optional Beech elevator electric trim tab system or a Collins autopilot system, whichever occurs first.

To prevent possible failure of the optional Beech electric trim system or the Collins autopilot system, which, if not detected and corrected, could cause loss of airplane maneuverability and possible loss of control of the airplane, accomplish the following:

(a) Modify all elevator electric trim tab actuator assemblies, part number (P/N) 33–524023–51 to the P/N 33–524023–77 or P/N 33–524023–79 level, by accomplishing the procedures in the ACCOMPLISHMENT INSTRUCTIONS section of Beechcraft Mandatory Service Bulletin SB No. 2631, Issued: June 1995, Revised: September 1995.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(d) The modification required by this AD shall be done in accordance with Beechcraft Mandatory Service Bulletin No. 2631, Issued: June 1995, Revised: September 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, suite 700, Washington, DC.

(e) This amendment (39–9637) becomes effective on June 24, 1996.

Issued in Kansas City, Missouri, on May 22, 1996.

Bobby Sexton,

Action Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–13273 Filed 5–28–96; 8:45 am]

BILLING CODE 4910–16–U

---

14 CFR Part 71

[Airspace Docket No. 96–ANE–12]

Amendment to Class E Airspace; Pittsfield, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action revises the Class E airspace area at Pittsfield, MA (PSF) to provide for adequate controlled airspace for those aircraft using the GPS RWY 8 Instrument Approach Procedure to Pittsfield Municipal Airport.

DATES: Effective 0901 UTC, August 15, 1996.

Comments for inclusion in the Rules Docket must be received on or before June 28, 1996.

ADDRESSES: Send comments on the proposal to: Manager, Operations

Branch, ANE–530, Federal Aviation Administration, Docket No. 96–ANE–12, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7530; fax (617) 238–7596. Comments may also be submitted electronically to the following Internet address:
neairspace_comments@mail.hq.faa.gov

The official docket file may be examined in the Office of the Assistant Chief Counsel, New England Region, ANE–7, Room 401, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7050; fax (617) 238–7055.

An informal docket may also be examined during normal business hours in the Air Traffic Division, Room 408, by contacting the Manager, Operations Branch at the first address listed above.

FOR FURTHER INFORMATION CONTACT: Joseph A. Bellabona, Operations Branch, ANE–530.6, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7536; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION: A new Standard Instrument Approach Procedure to Pittsfield Municipal Airport, the GPS RWY 8 approach, requires additional Class E airspace area at Pittsfield, MA. This action extends the Class E airspace area at Pittsfield, MA southwesterly in order to provide adequate controlled airspace for those aircraft using the GPS RWY 8 instrument approach. Class E airspace designations for airspace areas extending upward from 700 feet above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment, and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96–ANE–12." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005—Class E Airspace Areas Extending Upward from 700 Feet or more Above the Surface of the Earth

* * * * *

ANE MA E5 Pittsfield, MA [Revised]

Pittsfield Municipal Airport, MA
(lat. 42°25'36" N, long. 73°17'34" W)

That airspace extending upward from 700 feet above the surface within a 4-mile radius of Pittsfield Municipal Airport, and within 3.9 miles on each side of the Pittsfield Municipal Airport 244° bearing extending from the 4-mile radius to 9.1 miles southwest of Pittsfield Municipal Airport, and within 4 miles on each side of the Pittsfield Municipal Airport 065° bearing extending from the 4-mile radius to 16.2 miles northeast of Pittsfield Municipal Airport; excluding that airspace within the Great Barrington, MA, and Hudson, NY, Class E airspace areas.

* * * * *

Issued in Burlington, MA, on May 28, 1996

David J. Hurley,

Manager, Air Traffic Division, New England Region.

[FR Doc. 96–13424 Filed 5–28–96; 8:45 am]

BILLING CODE 4910–B–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

15 CFR Part 2011

Implementation of Tariff-Rate Quota for Imports of Sugar

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Final rule.

SUMMARY: This rule makes final the interim final rule published on October 4, 1990 in the Federal Register governing certificates of quota eligibility for imports of sugar, specialty sugar, and allocations for "Other Specified Countries and Areas", with a change responding to comments received on that interim final rule and with conforming changes to reflect the entry into force of the Agreement Establishing the World Trade Organization (WTO).

EFFECTIVE DATE: May 29, 1996.

ADDRESSES: Office of the United States Trade Representative, Office of Agricultural Affairs, 600 17th Street NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Thomas Perkins, Senior Economist for Agricultural Affairs, Room 421, Office of the United States Trade Representative, Washington, DC 20506; telephone: (202) 395–6127.

SUPPLEMENTARY INFORMATION: As a result of the Uruguay Round Agreements, approved by the Congress in section 101 of the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465), the United States has replaced the previous tariff-rate quota (TRQ) for imports of certain sugars, syrups, and molasses with a new tariff-rate quota provided in Schedule XX—United States of America annexed to the Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994 (GATT 1994). Pursuant to section 111 of the URAA, the President proclaimed a number of changes to the Harmonized Tariff Schedule of the United States (HTS) to implement the new sugar TRQ (President Proclamation No. 6763 of December 23, 1994). The changes include, among other things, changes in the HTS item numbers for imports of sugar, the deletion of notes to the HTS, and the proclaiming of new notes to the HTS.

A number of conforming changes need to be made to the sugar regulations issued by the United States Trade Representative (USTR) to reflect these changes to the HTS. This rule makes those conforming changes, as well as some technical and clerical amendments. Those conforming changes include correcting the references to the HTS to reflect the new HTS item numbers and removing subpart C as unnecessary in light of the fact that the allocations under the new TRQ will be announced annually.

In addition, when the United States Trade Representative promulgated the current rule on October 4, 1990 (55 FR 40648), it did so as an interim rule and invited public comments. This rule includes an amendment to the definition of specialty sugar in response to the comments received.

Summary of Issues Raised by Public Comments

Four public comments were received.

Specialty Sugars

One commenter requested that certain edible sugar decorations be added to the list of products eligible for potential treatment as "specialty sugars." Pursuant to this public comment, this final rule adds to that list sugar decorations. Two informal comments that were received after the December 4, 1990, deadline requested that various other specified sugar products be added to the list of products eligible for treatment as "specialty sugars." The Office of the United States Trade Representative, responding to these written comments, has added to the list: golden granulated sugar, muscovado, molasses sugar and sugar cubes. The United States Trade Representative has determined that these specific items are appropriate because they represent specialty sugars within the normal commerce of the United States.

The United States Trade Representative also has determined that it is appropriate to provide in the definition for other forms of sugar determined by the United States Trade Representative to be specialty sugar products within the normal commerce of the United States.

Another commenter requested that rock candy be removed from the list of products which are eligible for potential treatment as specialty sugar. The commenter's suggestion was not adopted primarily because rock candy appears to qualify as specialty sugar.

Reallocation of Quota Shortfalls

Finally, a commenter suggested that the rule contain a provision that if a country were not fully utilizing its allocation under the tariff-rate quota, then that country's allocation would be automatically reallocated to other countries. The commenter's suggestion was not adopted in the final rule because a general provision to that effect is unnecessary given alternative means by which unused allocations may be reallocated on a case-by-case bais when appropriate. Moreover, the HTS authorizes the USTR, in consultation with the Secretaries of State and Agriculture, to modify or suspend a country's allocation for the remainder of a quota year whenever he or she determines that a country will not be filling such allocation and he or she finds that such action is appropriate to carry out the rights or obligations of the United States under any international agreement to which the United States is a party or is appropriate to promote the economic interests of the United States.

Review

This rule has been determined to be a "significant regulatory action" under Executive Order 12866.

Pursuant to the Unfunded Mandates Reform Act of 1995, USTR has assessed the effects of this rulemaking action on state, local, and tribal governments, and the private sector. This action does not compel the expenditure of $100 million or more by any state, local, or tribal government, or by anyone in the private sector, and therefore a statement under section 202 of the Act is not required.

Pursuant to the Paperwork Reduction Act of 1980, the Office of Management and Budget has approved the information collection requirements imposed by this rule under Office of Management and Budget control number 0551–0014. Comments on any burden resulting from the information collection requirements of this regulation may be forwarded to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. These programs are not subject to the provisions of Executive Order 12372 which required intergovernmental consultation with State and local officials.

No regulatory flexibility analysis is required for this rule since neither 5 U.S.C. 553 nor any other provision of law requires publication of a general notice of proposed rulemaking with respect to this rule. However, the United States Trade Representative has also determined that the rule will not have

a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 2011

Certificates of quota eligibility, imports, specialty sugars, sugar.

Accordingly, the interim rule amending 15 CFR part 2011 which published at 55 FR 40648 (October 4, 1990) is adopted as a final rule with the following changes:

PART 2011—ALLOCATION OF TARIFF-RATE QUOTA ON IMPORTED SUGARS, SYRUPS AND MOLASSES

1. The authority citation for part 2011 is revised to read as follows:

Authority: 19 U.S.C. 3601, Presidential Proclamation No. 6763, Additional U.S. note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States.

Section 2011.101 is revised to read as follows:

§ 2011.101 General.

This subpart sets forth the terms and conditions under which certificates of quota eligibility will be issued to foreign countries that have been allocated a share of the U.S. sugar tariff-rate quota. Except as otherwise provided in this subpart, sugar imported from a foreign country may not be entered unless such sugar is accompanied by a certificate of quota eligibility. This subpart applies only to the ability to enter sugar at the in-quota tariff rates of the quota (subheadings 1701.11.10, 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS). Nothing in this subpart shall affect the ability to enter articles at the over-quota tariff rate (subheadings 1701.11.50, 1701.12.50, 1701.91.30, 1701.99.50, 1702.90.20, 2106.90.46).

3. Section 2011.102 is amended by redesignating paragraphs (g) through (m) as paragraph (h) through (n) respectively, adding a new paragraph (g), and revising paragraphs (a), (c), (e), (f), (j), (k), (l), and (n) (as so redesignated) to read as follows:

§ 2011.102 Definitions.

* * * * *

(a) "Additional U.S. Note 5" means additional U.S. Note 5 to chapter 17 of the HTS, including any amendments thereto.

* * * * *

(c) "Certificate of quota eligibility" or "certificate" means a certificate issued by the Secretary to a foreign country that, when duly executed and issued by the certifying authority of such foreign country, authorizes the entry into the United States of sugar produced in such country.

* * * * *

(e) "Enter" or "Entry" means to enter or withdraw from warehouse, or the entry or withdrawal from warehouse, for consumption in the customs territory of the United States.

(f) "Foreign country" means, for any quota period, any foreign country or area with which an agreement or arrangement described in section 2011.106 is in effect for that quota period and to which the United States Trade Representative has allocated a particular quantity of the quota.

(g) "HTS" means the Harmonized Tariff Schedule of the United States.

* * * * *

(j) "Quota" means the tariff-rate quota on imports of sugar provided in additional U.S. Note 5.

(k) "Quota period" means the period October 1 of a calendar year through September 30 of the following calendar year.

(l) "Raw value" has the meaning provided in additional U.S. Note 5.

* * * * *

(n) "Sugar" means sugars, syrups, and molasses described in subheadings 1701.11.10, 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS, but does not include for any foreign country for any quota period specialty sugars as defined in subpart B of this part if a quantity of the quota for that quota period has been reserved for specialty sugars and an amount of that quota quantity has been allocated to that country.

4. Section 2011.103 is amended by revising paragraphs (a) and (b)(3) to read as follows:

§ 2011.103 Entry into the United States.

(a) General. Except as otherwise provided in §§ 2011.104, 2011.109, and 2011.110, no sugar that is the product of a foreign country may be permitted entry unless at the time of entry the person entering such sugar presents to the appropriate customs official a valid and properly executed certificate of quota eligibility for such sugar.

(b) * * *

(3) This paragraph (b) shall not affect the manner in which the amount of sugar (raw value) entered is determined fo purposes of administering the quota.

5. Section 2011.104(a) is revised to read as follows:

§ 2011.104 Waiver.

(a) General. The Secretary may waive, with respect to individual shipments, any or all of the requirements of this subpart if he or she determines that a waiver will not impair the proper operation of the sugar quota system, that it will not have the effect of modifying the allocation of sugar made pursuant to the provisions of subdivision (b) of additional U.S. Note 5, and that such waiver is justified by unusual, unavoidable, or otherwise appropriate circumstances. Such circumstances include, but are not limited to, loss or destruction of the certificate, unavoidable delays in transmittal of the certificate to the port of entry, and clerical errors in the execution or issuance of the certificate.

* * * * *

6. Section 2011.105(b) is revised to read as follows:

§ 2011.105 Form and applicability of certificate.

* * * * *

(b) Other limitations. The Secretary may attach such other terms, limitations, or conditions to individual certificates of quota eligibility as he or she determines are appropriate to carry out the purposes of this subpart, provided that such other terms, limitations, or conditions will not have the effect of modifying the allocation of sugar made pursaunt to the provisions of subdivision (b) of additional U.S. Note 5. Such terms, limitations, or conditions may include, but are not limited to, maximum quantities per certificate and a specified period of time during which the certificate shall be valid. In no event shall the maximum quantity per certificate exceed 10,000 short tons.

* * * * *

7. Section 2011.107(b) introductory text is revised to read as follows:

§ 2011.107 Issuance of certificates to foreign countries.

* * * * *

(b) Adjustments. The Secretary may adjust the amount of certificates issued to a certifying authority for any quota period, provided that such adjustment will not have the effect of modifying the allocation of sugar made pursaunt to the provisions of subdivision (b) of additional U.S. Note 5 to reflect:

* * * * *

8. Section 2011.109(a) is revised to read as follows:

§ 2011.109 Suspension or revocation of individual certificates.

(a) Suspension or revocation. The Secretary may suspend, revoke, modify or add further limitations to any certificate if the Secretary determines that such action or actions is necessary to ensure the effective operation of the import quota system for sugar and that such suspension, revocation, modification or addition of further limitations will not have the effect of modifying the allocation of sugar made pursuant to the provisions of subdivision (b) of additional U.S. Note 5.

* * * * *

9. Section 2011.201 is revised to read as follows:

§ 2011.201 General.

This subpart sets forth the terms and conditions under which certificates will be issued to U.S. importers for importing specialty sugars from specialty sugar source countries. Specialty sugars imported from specialty sugar source countries may not be entered unless accompanied by a specialty sugar certificate. This subpart applies only to the ability to enter specialty sugar at the in-quota tariff rates of the quota (subheadings 1701.11.10, 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS). Nothing in this subpart shall affect the ability to enter articles at the over-quota tariff rate (subheadings 1701.11.50, 1701.12.50, 1701.91.30, 1701.99.50, 1702.90.20, 2106.90.46).

10. Section 2011.202 is amended by removing paragraph (g), redesignating paragraphs (h) through (j) as paragraphs (g) through (i), respectively, revising paragraphs (b), (c), (f), (g), and (i), as redesignated, and adding a new paragraph (j) as follows:

§ 2011.202 Definitions.

* * * * *

(b) "Certificate" means a specialty sugar certificate issued by the Certifying Authority permitting the entry of specialty sugar.

(c) "Certifying Authority" means the Team Leader, Import Quota Programs, Foreign Agricultural Service, U.S. Department of Agriculture, or his or her designee.

* * * * *

(f) "Person" means any individual, partnership, corporation, association, estate, trust, or other legal entity, and, wherever applicable, any unit, instrumentality, or agency, of a government, domestic or foreign.

(g) "Quota" means the tariff-rate quota on imports of sugar provided in additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States.

* * * * *

(i) "Specialty sugar" means brown slab sugar (also known as slab sugar candy), pearl sugar (also known as perl sugar, perle sugar, and nibs sugar), vanilla sugar, rock candy, demerara sugar, dragees for cooking and baking, fondant (a creamy blend of sugar and glucose), ti light sugar (99.2% sugar with the residual comprised of the artificial sweeteners aspartame and acesulfame K), caster sugar, golden syrup, ferdiana granella grossa, golden granulated sugar, muscovado, molasses sugar, sugar decorations, sugar cubes, and other sugars, as determined by the United States Trade Representative, that would be considered specialty sugar products within the normal commerce of the United States, all of which in addition:

(1) are sugars, syrups, or molasses described in subheading 1701.11.10, 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, or 2106.90.44 of the Harmonized Tariff Schedule of the United States,

(2) are the product of a specialty sugar source country, and

* * * * *

(j) "Specialty sugar source country" means any country or area to which the United States Trade Representative has allocated an amount of the quantity reserved for the importation of specialty sugars under additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States.

11. Section 2011.203 is amended by revising paragraphs (a) and (c) to read as follows:

§ 2011.203 Issuance of specialty sugar certificates.

(a) Specialty sugars imported into the United States from specialty sugar source countries may be entered only if such specialty sugars are accompanied by a certificate issued by the Certifying Authority.

* * * * *

(c) Subject to quota availability, an unlimited number of complying shipments may enter under a given certificate and a given certificate may cover more than one type of specialty sugar. Issuance of a certificate does not guarantee the entry of any specific shipment of specialty sugar, but only permits entry of such sugar if the amount allocated to the specialty sugar source country is not already filled.

12. Section 2011.204 is revised to read as follows:

§ 2011.204 Entry of specialty sugars.

An importer or the importer's agent must present a certificate to the appropriate customs official at the date of entry of specialty sugars. Entry of specialty sugars shall be allowed only in conformity with the description of sugars and other conditions, if any, stated in the certificate.

13. Section 2011.206 is amended by revising paragraph (c) to read as follows:

§ 2011.206 Suspension or revocation of individual certificates.

* * * * *

(c) The determination of the Certifying Authority under paragraph (a) that the importer has failed to comply with the requirements of this subpart may be appealed to the Director, Import Policy and Trade Analysis Division, Foreign Agricultural Service (FAS), U.S. Department of Agriculture, Washington, D.C. 20250, within 30 days from the date of suspension or revocation. The request for reconsideration shall be presented in writing and shall specifically state the reason or reasons why such determination should not stand. The Director shall provide such person with an opportunity for an informal hearing on such matter. A further appeal may be made to the Administrator, FAS, U.S. Department of Agriculture, Washington, D.C. 20250, within five working days of receipt of the notification of the Director's decision. The Certifying Authority may take action under paragraph (b) during the pendency of any appeal.

14. Section 2011.207(a) is revised to read as follows:

§ 2011.207 Suspension of the certificate system.

(a) Suspension. The U.S. Trade Representative may suspend the provisions of this subpart whenever he or she determines that the quota is no longer in force or that this subpart is no longer necessary to implement the quota. Notice of such suspension and the effective date thereof shall be published in the **Federal Register**.

* * * * *

15. Subpart B of part 2011 is amended by adding § 2011.208 to read as follows:

§ 2011.208 Paperwork Reduction Act assigned number.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the regulations in this subpart in accordance with 44 U.S.C. Chapter 25 and OMB control number 0551–0014 has been assigned with corresponding clearance effective through April 30, 1997.

Subpart C—[Removed]

16. Subpart C of part 2011 is removed.

Signed at Washington, D.C. on May 15, 1996.

Charlene Barshefsky

Acting United States Trade Representative

[FR Doc. 96–12807 Filed 5–28–96; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 94F–0189]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Dimethyl Dicarbonate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of dimethyl dicarbonate (DMDC) as a yeast inhibitor in sports drinks and fruit or juice sparklers. This action is in response to a petition filed by Miles, Inc. (now Bayer Corp.).

DATES: Effective May 29, 1996; written objections and requests for a hearing by June 28, 1996.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Martha D. Peiperl, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3077.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of June 28, 1994 (59 FR 33299), FDA announced that a food additive petition (FAP 4A4420) had been filed by Miles, Inc., Mobay Rd., Pittsburgh, PA 15205–9741 (now Bayer Corp., 100 Bayer Rd., Pittsburgh, PA 15205–9741), proposing that the food additive regulations in § 172.133 *Dimethyl dicarbonate* (21 CFR 172.133) be amended to provide for the safe use of DMDC as a yeast inhibitor in sports drinks and fruit or juice sparklers. The petition defines sports drinks as carbonated or noncarbonated, nonjuice-containing (less than or equal to 1 percent juice), flavored or unflavored beverages containing added electrolytes (5–20 milliequivalents (meq)/liter sodium ion (Na^+) and 3–7 meq/liter potassium ion (K^+)). Fruit or juice sparklers are defined as carbonated, dilute beverages containing juice, fruit flavor, or both, with juice content not to exceed 50 percent.

DMDC is currently approved in § 172.133 for use as a yeast inhibitor in wine, dealcoholized wine, and low alcohol wine (53 FR 41325, October 21, 1988; and 58 FR 6088, January 26, 1993) and in ready-to-drink tea beverages (59 FR 5317, February 4, 1994) (hereinafter referred to as the October 1988 final rule, the January 1993 final rule, and the February 1994 final rule, respectively).

As discussed below, FDA has evaluated data in the petition and other relevant material and concludes that DMDC is efficacious in preventing the growth of yeasts and molds in sports drinks and fruit or juice sparklers and that the proposed use of DMDC is safe.

II. Determination of Safety

Under the so-called "general safety clause" in section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The food additive anticancer or Delaney clause in section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A)) further provides that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to the impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety clause using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive, *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984).

III. Safety of DMDC in Sports Drinks and Fruit or Juice Sparklers

DMDC is currently permitted as a yeast inhibitor in wine and wine substitutes (dealcoholized wine and low-alcohol wine) and in ready-to-drink tea beverages under § 172.133. In the October 1988, January 1993, and February 1994 final rules, the agency concluded that, because DMDC decomposes almost immediately after addition to aqueous beverages, there will be virtually no exposure to the additive from the consumption of the above-listed beverages.

Data submitted in the petition to support the proposed use of the additive at levels up to 250 parts per million (ppm) in sports drinks and fruit or juice sparklers are consistent with these findings. Specifically, data from a study of sparkling juice drink formulated with 250 ppm DMDC showed no detectable amount of the additive (limit of detection (LOD) = 40 parts per billion (ppb)) after 4 hours (Ref. 1). A study of water with 250 ppm DMDC added yielded the same result (Ref. 1). Based on these data and data incorporated from the petition that resulted in the October 1988 final rule (FAP 2A3636), the agency concludes that there will be virtually no consumer exposure to DMDC, per se, from the use of the additive in sports drinks and fruit or juice sparklers. Therefore, FDA concludes that DMDC itself presents no hazard to the consumer.

IV. Safety of Substances That May be Present in Sports Drinks and Fruit or Juice Sparklers Due to the Use of the Additive

DMDC is unstable in aqueous solution and breaks down almost immediately after addition to beverages. In aqueous liquids, the principal breakdown products are methanol and carbon dioxide. Dimethyl carbonate (DMC) may be present as an impurity in DMDC. Section 172.133 sets a specification of 0.2 percent DMC in DMDC. DMDC also may react with traces of ammonium ions in beverages to produce methyl carbamate (MC), a known carcinogen.

In previous evaluations of DMDC, the agency, in accordance with § 171.1 (21 CFR 171.1), reviewed the safety not only of DMDC but also of its decomposition products in aqueous beverages. The results of the agency's analysis of the additive's use in wine and wine substitutes were discussed extensively in the October 1988 and January 1993 final rules, and its use in ready-to-drink tea beverages was discussed in the February 1994 final rule. The agency applied the same type of analysis as in past reviews to its review of the petitioned use of DMDC. Aspects of the safety evaluation that were not previously addressed in final rules for other uses of DMDC are discussed below.

A. Methanol

As stated in previous final rules on DMDC, the tolerable (safe) level of exposure to methanol is 7.1 to 8.4 milligrams per kilogram body weight per day (mg/kg body weight/day), or approximately 426 to 504 mg/person/day for a 60 kg adult. FDA estimates that the cumulative methanol exposure for a consumer at the 90th percentile from its presence naturally in untreated fruit juice and wine and from all uses of DMDC, including its currently regulated uses and the proposed use in sports drinks and fruit or juice sparklers, is 59 mg/person/day (Ref. 2). This estimate is based on a maximum level of methanol that can be derived from DMDC of 48.7 ppm methanol per 100 ppm DMDC used. This level is less than one-seventh of the tolerable safe level. The agency, therefore, concludes that there is an adequate margin of safety between total methanol consumption from all sources, including the petitioned use of DMDC, and the amount of methanol that can be safely ingested.

B. Methyl Carbamate

The reaction of ammonium ions in beverages with DMDC produces MC, a known carcinogen. The petitioner provided data showing that MC was detected at a level of 3.7 ppb in a fruit sparkler formulated with 250 ppm DMDC. MC was not detected in DMDC-treated sports drinks, using an analytical method with an LOD of 0.5 ppb. Using the residual level of 3.7 ppb and the LOD of 0.5 ppb for MC in fruit sparklers and sports drinks, respectively, the agency estimates the exposure to MC for all ages from the petitioned use of DMDC to be 1.5 microgram/person/day at the 90th percentile (Ref. 1). Using established procedures for quantitative risk assessment, the agency estimates that the 90th percentile upper-bound lifetime risk from potential exposure to MC from the petitioned use of DMDC is 1.5×10^{-8}, or less than 1 in 67 million, and the 90th percentile upper-bound lifetime risk from exposure to MC from all approved and petitioned uses of DMDC is 1.8×10^{-8}, or less than 1 in 56 million (Refs. 1 and 3).

Therefore, the agency concludes that there is a reasonable certainty of no harm from the exposure to MC that may result from the use of up to 250 ppm of DMDC in sports drinks and fruit or juice sparklers.

V. Conclusion on Safety

FDA has evaluated all of the data in the petition pertaining to the use of DMDC in sports drinks and fruit or juice sparklers, as well as other data in its files, and concludes that the additive is safe for its proposed use.

To ensure the safe use of the additive in sports drinks and fruit or juice sparklers, FDA, under 21 U.S.C. 348(c)(1)(A), finds that it is necessary to require directions on the food additive label limiting the level of use of the additive in these beverages to 250 ppm.

In accordance with § 171.1(h), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VI. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

The agency received one comment on the environmental assessment in response to the filing notice published in the **Federal Register** of June 28, 1994 (59 FR 33299). The comment states that approval of the subject additive could have two environmental benefits due to switching from hot-fill bottling of sports drinks and sparklers to cold-fill. The comment claims that this switch could greatly reduce water usage in the bottling process and could reduce cooling water flow into municipal wastewater treatment plants. However, the comment did not provide quantitative data on the magnitude of the claimed environmental benefits of the approval of this petition. FDA has concluded that the comment does not affect the agency's determination that the approval of this petition will have no significant impact on the environment. This comment can be seen at the Dockets Management Branch, along with the petitioner's environmental assessment and the agency's finding of no significant impact.

VII. Objections

Any person who will be adversely affected by this regulation may at any time on or before June 28, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from the Chemistry Review Branch to the Direct Additives Branch, "FAP 4A4420–Dimethyl Dicarbonate as a Yeast Inhibitor in Sports Drinks and in Fruit or Juice Sparkling Beverages," dated July 8, 1994.

2. Memorandum from the Chemistry Review Branch to the Direct Additives Branch, "FAP 4A4420–DMDC as a Yeast Inhibitor in Sports Drinks and Sparkling Fruit or Juice Beverages. Background Methanol Exposure," dated May 8, 1996.

3. Memorandum from the Direct Additives Branch to the Quantitative Risk Assessment Committee, "Estimation of the Upper-Bound Lifetime Risk from Methyl Carbamate (MC) Formed by the Reaction of Ammonium Ions with Dimethyl Dicarbonate (DMDC) During the Use of DMDC as Requested in FAP 4A4420 (Miles Inc.)," dated May 23, 1995.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 379e).

2. Section 172.133 is amended by adding new paragraphs (b)(3) and (b)(4)

and by revising paragraph (c)(2) to read as follows:

§ 172.133 Dimethyl dicarbonate.

* * * * *

(b) * * *

(3) Inhibitor of yeast in carbonated or noncarbonated, nonjuice-containing (less than or equal to 1 percent juice), flavored or unflavored beverages containing added electrolytes (5–20 milliequivalents (meq)/liter sodium ion (Na^+) and 3–7 meq/liter potassium ion (K^+)). The additive may be added to the beverage in an amount not to exceed 250 ppm.

(4) Inhibitor of yeast in carbonated, dilute beverages containing juice, fruit flavor, or both, with juice content not to exceed 50 percent. The additive may be added to the beverage in an amount not to exceed 250 ppm.

(c) * * *

(2) Directions to provide that not more than 200 ppm of dimethyl dicarbonate will be added to the wine, dealcoholized wine, or low alcohol wine and not more than 250 ppm of dimethyl dicarbonate will be added to the ready-to-drink tea or to the beverages described in parts (b)(3) and (b)(4) of this section.

Dated: May 17, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–13303 Filed 5–28–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[TD 8671]

RIN 1545–AS83

Taxpayer Identifying Numbers (TINs)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to requirements for furnishing a taxpayer identifying number on returns, statements, or other documents. These regulations set forth procedures for requesting a taxpayer identifying number for certain alien individuals for whom a social security number is not available. These numbers are called "IRS individual taxpayer identification numbers." These regulations also require foreign persons to furnish a taxpayer identifying number on their tax returns.

DATES: These regulations are effective May 29, 1996.

For dates of applicability of these regulations, see § 301.6109–1(h).

FOR FURTHER INFORMATION CONTACT: Lilo A. Hester, (202) 874–1490 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1461.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden for the collection of information contained in § 301.6109–1(d) is reflected in the burden of Form W–7.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On June 8, 1995, the IRS published in the **Federal Register** (60 FR 30211) the withdrawal of the notice of proposed rulemaking published in the **Federal Register** on September 27, 1990 at 55 FR 39427, a notice of proposed rulemaking, and a notice of public hearing relating to taxpayer identifying numbers as contained in the Income Tax Regulations (26 CFR part 301) under section 6109 of the Internal Revenue Code (Code).

Written comments responding to the notice of proposed rulemaking were received, and a public hearing was held on September 28, 1995. After consideration of all the comments, the proposed regulations under 6109 of the Code are adopted as revised by this Treasury decision. The comments and revisions are discussed below.

Explanation of Provisions and Revisions

A. Principal Changes

Section 6109 of the Code generally provides that, when required by regulations, a person must furnish a taxpayer identifying number (TIN) for securing proper identification of that person on any return, statement, or other document made under the Code. The notice of proposed rulemaking contains two principal changes to the existing regulations. The first change is the introduction of a new IRS-issued TIN, called an IRS individual taxpayer identification number (ITIN), for use by alien individuals, whether resident or nonresident, who currently do not have, and are not eligible to obtain, social security numbers. The Social Security Administration generally limits its assignment of social security numbers to individuals who are U.S. citizens and alien individuals legally admitted to the United States for permanent residence or under other immigration categories which authorize U.S. employment. Therefore, this change is designed to help taxpayers (who need a TIN but cannot qualify for a social security number) maintain compliance with TIN requirements under the Code and regulations.

The second change is to modify the existing rule set forth in § 301.6109–1(g) that currently excludes from the general requirement of providing a TIN, foreign persons that do not have either (1) income effectively connected with the conduct of a U.S. trade or business or (2) a U.S. office or place of business or a U.S. fiscal or paying agent. Under these regulations, the exclusion is modified to require that any foreign person who makes a return of tax (i.e., income, gift, and estate tax returns, amended returns, or refund claims, but excluding information returns) furnish its TIN on that return. This change is intended to address the IRS' and Treasury's concern that, without TINs, taxpayers cannot be identified efficiently and tax returns cannot be processed effectively.

B. Comments

Regarding the assignment of ITINs under § 301.6109–1(d)(3)(iii) of the proposed regulations, commentators suggested that the IRS develop a process whereby either (1) the Social Security Administration (SSA) issues the ITIN when the individual is not eligible for a social security number, or (2) the Immigration and Naturalization Service (INS) (within the Department of Justice) and the U.S. consulate offices (within the Department of State) issue the ITIN when issuing a U.S. visa. These suggestions were not adopted. The IRS is the most appropriate federal agency to assign the ITIN because the number is intended for tax use only. Having the IRS as the sole issuer of ITINs will facilitate the general public's acceptance of the fact that the assignment of an ITIN creates no inference regarding the immigration status of an alien individual or the right of that individual to be legally employed in the United States. Over the past few years, the IRS has had extensive discussions with the SSA, the INS, and the State Department regarding the IRS' development of a new numbering system. These agencies concur that the IRS is the appropriate initiator of a numbering system dedicated solely for tax purposes, and have expressed a willingness to support the IRS' efforts to develop the system, to disseminate information about obtaining an ITIN, and to otherwise facilitate IRS' assignment of the ITINs.

Regarding the IRS' solicitation of comments and suggestions regarding the type of documents that could be accepted to verify reliably a taxpayer's identity and foreign status, the commentators suggested passports and immigration documentation. This suggestion is already included partially in the proposed regulations which state that examples of acceptable documentary evidence may include items such as "passport, driver's license, birth certificate, identity card or U.S. visa." However, the proposed regulations use the term *U.S. visa* rather than the term *immigration documentation*. The term *immigration documentation* is broader in scope than the term *U.S. visa*, and encompasses various identifying documents (including a U.S. visa) required by U.S. immigration laws to support an alien's request for entry, and entry, into the United States. As such, § 301.6109–1(d)(3)(iii) of the final regulations has been revised to substitute the term *immigration documentation* for the term *U.S. visa*.

Regarding the role of acceptance agents under § 301.6109–1(d)(3)(iv) of proposed regulations, some commentators suggested that acceptance agents should only be required to provide the necessary forms to the ITIN applicant and to forward the completed forms, together with copies of required documentation, to the IRS in order to avoid being held responsible for applicant's errors or being considered as the applicant's tax advisor. The adoption of this suggestion was not necessary because, under the proposed regulations, the precise role of an acceptance agent is a matter to be decided by written agreement between the particular person and the IRS. Under an agreement with the IRS, an acceptance agent could act as a conduit of information between the IRS and the applicant as suggested by the commentators or could take a more active role in the process by assuming responsibility for reviewing the required documentation and providing the necessary representations to the IRS for the issuance of a number. In the latter case, the acceptance agent would generally not be required to furnish any underlying documentation to the IRS, except as part of a verification process by which the IRS may periodically verify the agent's compliance with the agreement. Even in that case, the acceptance agent would not be considered a tax return preparer for purposes of section 7216 if it acted within the terms of the agreement with the IRS. In addition, under this agreement, an acceptance agent would not be responsible for an ITIN applicant's errors as long as the acceptance agent exercises due diligence under the agreement. The IRS is preparing further guidance on acceptance agent agreements.

The rule proposed in § 301.6109–1(b)(2)(iv) that would require foreign persons to furnish a TIN when making a return of tax has been restated to clarify that making a return of tax includes filing an amended return or a claim for refund. In addition, regarding this rule, commentators asked whether Form SS–4, Application for Employer Identification Number, is a return of tax for this purpose. For purposes of this rule, a return of tax includes income, estate, and gift tax returns, amended returns, or refund claims but excludes information returns, statements or other documents. Form SS–4 is a statement or document but not a return of tax; therefore, the foreign persons described in § 301.6109–1(b)(2)(iv) of the proposed regulations are not required to obtain an ITIN in order to sign a Form SS–4. For example, a foreign individual signing Form SS–4 as a principal officer of a corporation need not obtain an ITIN for the sole purpose of signing the form. See for comparison, however, § 301.6109–1(d)(4)(ii) regarding the requirement to furnish a previously-issued ITIN on Form SS–4 when a foreign individual is required to obtain an employer identification number for such individual's own business purposes. No further clarification is needed in these regulations.

Regarding the proposed regulations becoming effective for any return, statement, or other document filed after December 31, 1995, commentators suggested that the effective date be delayed. This suggestion was adopted. Accordingly, the final regulations are generally effective on the date of publication in the **Federal Register**, except that the requirement for an estate to obtain an employer identification number applies on and after January 1, 1984, and the requirement for a foreign person as described in § 301.6109–1(b)(2)(iv) to furnish a TIN on a tax return is effective for tax returns filed after December 31, 1996. The IRS will begin accepting applications for ITINs (Form W–7) on or after July 1, 1996.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these final regulations has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Lilo A. Hester of the Office of Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6109–1 also issued under 26 U.S.C. 6109 (a), (c), and (d). * * *

Par. 2. Section § 301.6109–1 is amended as follows:

1. Paragraphs (a)(1), (b), (c), and (d)(2) are revised.

2. Paragraphs (d)(3) and (4) are added.

3. Paragraphs (f), (g), and (h) are revised.

The revisions and additions read as follows:

§ 301.6109–1 Identifying numbers.

(a) *In general*—(1) *Taxpayer identifying numbers*—(i) *Types.* There are generally three types of taxpayer identifying numbers: social security numbers, Internal Revenue Service (IRS) individual taxpayer identification numbers, and employer identification numbers. Social security numbers take the form 000–00–0000, IRS individual taxpayer identification numbers take the form 000–00–0000 but begin with a specific number designated by the IRS, and employer identification numbers take the form 00–0000000. Both social security numbers and IRS individual taxpayer identification numbers identify individual persons. For the definition of social security number and employer identification number, see §§ 301.7701–11 and 301.7701–12, respectively. For the definition of IRS individual taxpayer identification number, see paragraph (d)(3) of this section.

(ii) *Uses.* Except as otherwise provided in applicable regulations under this title or on a return, statement, or other document, and related instructions, taxpayer identifying numbers must be used as follows:

(A) Except as otherwise provided in paragraphs (a)(1)(ii) (B) and (D) of this section, an individual required to furnish a taxpayer identifying number must use a social security number.

(B) Except as otherwise provided in paragraph (a)(1)(ii)(D) of this section, an individual required to furnish a taxpayer identifying number but who is not eligible to obtain a social security number, must use an IRS individual taxpayer identification number.

(C) Any person other than an individual (such as corporations, partnerships, nonprofit associations, trusts, estates, and similar nonindividual persons) that is required to furnish a taxpayer identifying number must use an employer identification number.

(D) An individual, whether U.S. or foreign, who is an employer or who is engaged in a trade or business as a sole proprietor should use an employer identification number as required by returns, statements, or other documents and their related instructions.

* * * * *

(b) *Requirement to furnish one's own number*—(1) *U.S. persons.* Every U.S. person who makes under this title a return, statement, or other document must furnish its own taxpayer identifying number as required by the forms and the accompanying instructions. A U.S. person whose number must be included on a document filed by another person must give the taxpayer identifying number so required to the other person on request. For penalties for failure to supply taxpayer identifying numbers, see sections 6721 through 6724. For provisions dealing specifically with the duty of employees with respect to their social security numbers, see § 31.6011(b)-2 (a) and (b) of this chapter (Employment Tax Regulations). For provisions dealing specifically with the duty of employers with respect to employer identification numbers, see § 31.6011(b)-1 of this chapter (Employment Tax Regulations).

(2) *Foreign persons.* The provisions of paragraph (b)(1) of this section regarding the furnishing of one's own number shall apply to the following foreign persons—

(i) A foreign person that has income effectively connected with the conduct of a U.S. trade or business at any time during the taxable year;

(ii) A foreign person that has a U.S. office or place of business or a U.S. fiscal or paying agent at any time during the taxable year;

(iii) A nonresident alien treated as a resident under section 6013(g) or (h); and

(iv) Any other foreign person who, with respect to taxes imposed under this title (including income, estate, and gift taxes), makes a return of tax, an amended return, or a refund claim, but excluding information returns, statements, or documents.

(c) *Requirement to furnish another's number.* Every person required under this title to make a return, statement, or other document must furnish such taxpayer identifying numbers of other U.S. persons and foreign persons that are described in paragraph (b)(2)(i), (ii), or (iii) of this section as required by the forms and the accompanying instructions. If the person making the return, statement, or other document does not know the taxpayer identifying number of the other person, such person must request the other person's number. A request should state that the identifying number is required to be furnished under authority of law. When the person making the return, statement, or other document does not know the number of the other person, and has complied with the request provision of this paragraph, such person must sign an affidavit on the transmittal document forwarding such returns, statements, or other documents to the Internal Revenue Service, so stating. A person required to file a taxpayer identifying number shall correct any errors in such filing when such person's attention has been drawn to them.

(d) * * *

(2) *Employer identification number.* Any person required to furnish an employer identification number must apply for one, if not done so previously, on Form SS–4. A Form SS–4 may be obtained from any office of the Internal Revenue Service, U.S. consular office abroad, or from an acceptance agent described in paragraph (d)(3)(iv) of this section. The person must make such application far enough in advance of the first required use of the employer identification number to permit issuance of the number in time for compliance with such requirement. The form, together with any supplementary statement, must be prepared and filed in accordance with the form, accompanying instructions, and relevant regulations, and must set forth fully and clearly the requested data.

(3) *IRS individual taxpayer identification number*— (i) *Definition.* The term *IRS individual taxpoyer identification number* means a taxpayer identifying number issued to an alien individual by the Internal Revenue Service, upon application, for use in connection with filing requirements under this title. The term *IRS individual taxpayer identification number* does not refer to a social security number or an account number for use in employment for wages. For purposes of this section, the term *alien individual* means an individual who is not a citizen or national of the United States.

(ii) *General rule for obtaining number.* Any individual who is not eligible to obtain a social security number and is required to furnish a taxpayer identifying number must apply for an IRS individual taxpayer identification number on Form W–7, Application for IRS Individual Taxpayer Identification Number, or such other form as may be prescribed by the Internal Revenue Service. Form W–7 may be obtained from any office of the Internal Revenue Service, U.S. consular office abroad, or any acceptance agent described in paragraph (d)(3)(iv) of this section. The individual shall furnish the information required by the form and accompanying instructions, including the individual's

name, address, foreign tax identification number (if any), and specific reason for obtaining an IRS individual taxpayer identification number. The individual must make such application far enough in advance of the first required use of the IRS individual taxpayer identification number to permit issuance of the number in time for compliance with such requirement. The application form, together with any supplementary statement and documentation, must be prepared and filed in accordance with the form, accompanying instructions, and relevant regulations, and must set forth fully and clearly the requested data.

(iii) *General rule for assigning number.* Under procedures issued by the Internal Revenue Service, an IRS individual taxpayer identification number will be assigned to an individual upon the basis of information reported on Form W–7 (or such other form as may be prescribed by the Internal Revenue Service) and any such accompanying documentation that may be required by the Internal Revenue Service. An applicant for an IRS individual taxpayer identification number must submit such documentary evidence as the Internal Revenue Service may prescribe in order to establish alien status and identity. Examples of acceptable documentary evidence for this purpose may include items such as an original (or a certified copy of the original) passport, driver's license, birth certificate, identity card, or immigration documentation.

(iv) *Acceptance agents*—(A) *Agreements with acceptance agents.* A person described in paragraph (d)(3)(iv)(B) of this section will be accepted by the Internal Revenue Service to act as an acceptance agent for purposes of the regulations under this section upon entering into an agreement with the Internal Revenue Service, under which the acceptance agent will be authorized to act on behalf of taxpayers seeking to obtain a taxpayer identifying number from the Internal Revenue Service. The agreement must contain such terms and conditions as are necessary to insure proper administration of the process by which the Internal Revenue Service issues taxpayer identifying numbers to foreign persons, including proof of their identity and foreign status. In particular, the agreement may contain—

(*1*) Procedures for providing Form SS–4 and Form W–7, or such other necessary form to applicants for obtaining a taxpayer identifying number; application form together with a certification that the acceptance agent has reviewed the required documentation and that it has no actual knowledge or reason to know that the documentation is not complete or accurate;

(*2*) Procedures for providing assistance to applicants in completing the application form or completing it for them;

(*3*) Procedures for collecting, reviewing, and maintaining, in the normal course of business, a record of the required documentation for assignment of a taxpayer identifying number;

(*4*) Procedures for submitting the application form and required documentation to the Internal Revenue Service, or if permitted under the agreement, submitting the application form together with a certification that the acceptance agent has reviewed the required documentation and that it has no actual knowledge or reason to know that the documentation is not complete or accurate;

(*5*) Procedures for assisting taxpayers with notification procedures described in paragraph (g)(2) of this section in the event of change of foreign status;

(*6*) Procedures for making all documentation or other records furnished by persons applying for a taxpayer identifying number promptly available for review by the Internal Revenue Service, upon request; and

(*7*) Provisions that the agreement may be terminated in the event of a material failure to comply with the agreement, including failure to exercise due diligence under the agreement.

(B) *Persons who may be acceptance agents.* An acceptance agent may include any financial institution as defined in section 265(b)(5) or § 1.165–12(c)(1)(v) of this chapter, any college or university that is an educational organization as defined in § 1.501(c)(3)–1(d)(3)(i) of this chapter, any federal agency as defined in section 6402(f) or any other person or categories of persons that may be authorized by regulations or Internal Revenue Service procedures. A person described in this paragraph (d)(3)(iv)(B) that seeks to qualify as an acceptance agent must have an employer identification number for use in any communication with the Internal Revenue Service. In addition, it must establish to the satisfaction of the Internal Revenue Service that it has adequate resources and procedures in place to comply with the terms of the agreement described in paragraph (d)(3)(iv)(A) of this section.

(4) *Coordination of taxpayer identifying numbers*—(i) *Social security number.* Any individual who is duly assigned a social security number or who is entitled to a social security number will not be issued an IRS individual taxpayer identification number. The individual can use the social security number for all tax purposes under this title, even though the individual is, or later becomes, a nonresident alien individual. Further, any individual who has an application pending with the Social Security Administration will be issued an IRS individual taxpayer identification number only after the Social Security Administration has notified the individual that a social security number cannot be issued. Any alien individual duly issued an IRS individual taxpayer identification number who later becomes a U.S. citizen, or an alien lawfully permitted to enter the United States either for permanent residence or under authority of law permitting U.S. employment, will be required to obtain a social security number. Any individual who has an IRS individual taxpayer identification number and a social security number, due to the circumstances described in the preceding sentence, must notify the Internal Revenue Service of the acquisition of the social security number and must use the newly-issued social security number as the taxpayer identifying number on all future returns, statements, or other documents filed under this title.

(ii) *Employer identification number.* Any individual with both a social security number (or an IRS individual taxpayer identification number) and an employer identification number may use the social security number (or the IRS individual taxpayer identification number) for individual taxes, and the employer identification number for business taxes as required by returns, statements, and other documents and their related instructions. Any alien individual duly assigned an IRS individual taxpayer identification number who also is required to obtain an employer identification number must furnish the previously-assigned IRS individual taxpayer identification number to the Internal Revenue Service on Form SS–4 at the time of application for the employer identification number. Similarly, where an alien individual has an employer identification number and is required to obtain an IRS individual taxpayer identification number, the individual must furnish the previously-assigned employer identification number to the Internal Revenue Service on Form W–7, or such other form as may be prescribed by the Internal Revenue Service, at the time of

application for the IRS individual taxpayer identification number.

* * * * *

(f) *Penalty.* For penalties for failure to supply taxpayer identifying numbers, see sections 6721 through 6724.

(g) *Special rules for taxpayer identifying numbers issued to foreign persons*—(1) *General rule*—(i) *Social security number.* A social security number is generally identified in the records and database of the Internal Revenue Service as a number belonging to a U.S. citizen or resident alien individual. A person may establish a different status for the number by providing proof of foreign status with the Internal Revenue Service under such procedures as the Internal Revenue Service shall prescribe, including the use of a form as the Internal Revenue Service may specify. Upon accepting an individual as a nonresident alien individual, the Internal Revenue Service will assign this status to the individual's social security number.

(ii) *Employer identification number.* An employer identification number is generally identified in the records and database of the Internal Revenue Service as a number belonging to a U.S. person. However, the Internal Revenue Service may establish a separate class of employer identification numbers solely dedicated to foreign persons which will be identified as such in the records and database of the Internal Revenue Service. A person may establish a different status for the number either at the time of application or subsequently by providing proof of U.S. or foreign status with the Internal Revenue Service under such procedures as the Internal Revenue Service shall prescribe, including the use of a form as the Internal Revenue Service may specify. The Internal Revenue Service may require a person to apply for the type of employer identification number that reflects the status of that person as a U.S. or foreign person.

(iii) *IRS individual taxpayer identification number.* An IRS individual taxpayer identification number is generally identified in the records and database of the Internal Revenue Service as a number belonging to a nonresident alien individual. If the Internal Revenue Service determines at the time of application or subsequently, that an individual is not a nonresident alien individual, the Internal Revenue Service may require that the individual apply for a social security number. If a social security number is not available, the Internal Revenue Service may accept that the individual use an IRS individual taxpayer identification number, which the Internal Revenue Service will identify as a number belonging to a U.S. resident alien.

(2) *Change of foreign status.* Once a taxpayer identifying number is identified in the records and database of the Internal Revenue Service as a number belonging to a U.S. or foreign person, the status of the number is permanent until the circumstances of the taxpayer change. A taxpayer whose status changes (for example, a nonresident alien individual with a social security number becomes a U.S. resident alien) must notify the Internal Revenue Service of the change of status under such procedures as the Internal Revenue Service shall prescribe, including the use of a form as the Internal Revenue Service may specify.

(3) *Waiver of prohibition to disclose taxpayer information when acceptance agent acts.* As part of its request for an IRS individual taxpayer identification number or submission of proof of foreign status with respect to any taxpayer identifying number, where the foreign person acts through an acceptance agent, the foreign person will agree to waive the limitations in section 6103 regarding the disclosure of certain taxpayer information. However, the waiver will apply only for purposes of permitting the Internal Revenue Service and the acceptance agent to communicate with each other regarding matters related to the assignment of a taxpayer identifying number and change of foreign status.

(h) *Effective date*—(1) *General rule.* Except as otherwise provided in this paragraph (h), the provisions of this section are generally effective for information that must be furnished after April 15, 1974. However, the provisions relating to IRS individual taxpayer identification numbers apply after May 29, 1996. An application for an IRS individual taxpayer identification number (Form W–7) may be filed at any time on or after July 1, 1996.

(2) *Special rules*—(i) *Employer identification number of an estate.* The requirement under paragraph (a)(1)(ii)(C) of this section that an estate obtain an employer identification number applies on and after January 1, 1984.

(ii) *Taxpayer identifying numbers of certain foreign persons.* The requirement under paragraph (b)(2)(iv) of this section that certain foreign persons furnish a TIN on a return of tax is effective for tax returns filed after December 31, 1996.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In § 602.101, the table in paragraph (c) is amended by revising the entry for 301.6109–1 to read as follows:

301.6109–1	1545–0003 1545–0295 1545–0367 1545–0387 1545–0957 1545–1461

Margaret Milner Richardson,
Commissioner of Internal Revenue.
Approved: May 20, 1996
Leslie Samuels,
Assistant Secretary of the Treasury.
[FR Doc. 96–13397 Filed 5–28–96; 8:45 am]
BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

[SPATS No. CO–029–FOR]

Colorado Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.
ACTION: Final rule; approval of amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the Colorado regulatory program (hereinafter referred to as the "Colorado program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Colorado proposed revisions to and additions of rules pertaining to Colorado's responsibility as regulatory authority for regulating surface coal mining and reclamation operations and coal exploration; definitions; commercial use or sale of coal extracted during coal exploration; public availability of information; right of entry and operation information; public notice and comment on permit applications; procedures for review of permit applications; criteria for permit approval or denial; permit conditions; permit revisions; allowance of self-bonds; terms and conditions for self-bonds; criteria and schedule for release of performance bonds; termination of jurisdiction; performance standards for signs and markers, haul and access roads, effluent standards for discharges

of water from areas disturbed by surface coal mining and reclamation operations, blasting, and coal mine waste returned to underground mine workings; inspection frequency at abandoned sites; inspections based upon citizen requests; enforcement actions at abandoned sites; and show cause orders and patterns of violations involving violations of water quality effluent standards. The amendment was intended to revise the Colorado program to be consistent with the corresponding Federal regulations, incorporate the additional flexibility afforded by the revised Federal regulations, and improve operational efficiency.

EFFECTIVE DATE: May 29, 1996.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Telephone: (303) 672–5524.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. General background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program can be found in the December 15, 1980, **Federal Register** (45 FR 82173). Subsequent actions concerning Colorado's program and program amendments can be found at 30 CFR 906.15, 906.16, and 906.30.

II. Proposed Amendment

By letter dated November 20, 1995, Colorado submitted a proposed amendment to its program (administrative record No. CO–675) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). Colorado submitted the proposed amendment at its own initiative; in partial response to May 7, 1986, and March 22, 1990, letters (administrative record No. CO–282 and CO–496) that OSM sent to Colorado in accordance with 30 CFR 732.17(c); and in response to the requirement that Colorado amend its program at 30 CFR 906.16(a).

OSM announced receipt of the proposed amendment in the December 7, 1995, **Federal Register** (60 FR 62789), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. CO–675–2). Because no one requested a public hearing or meeting, none was held. The public comment period ended on January 8, 1996.

During its review of the amendment, OSM identified apparent typographical errors and a concern relating to the regulatory authority's discretionary acceptance of self bonds. OSM notified Colorado of the typographical errors and concern by letter dated January 25, 1996 (administrative record No. CO–675–8). Colorado responded in a letter dated February 16, 1996, by submitting a revised amendment (administrative record No. CO–675–9).

Based upon the revisions to the proposed program amendment submitted by Colorado, OSM reopened the public comment period in the March 5, 1996, **Federal Register** (61 FR 8534; administrative record No. CO–675–10). The public comment period ended on March 20, 1996.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by Colorado on November 20, 1995, is no less effective than the corresponding Federal regulations. Accordingly, the Director approves the proposed amendment.

1. Nonsubstantive Revisions to Colorado's Rules

Colorado proposed revisions to the following previously-approved rules that are nonsubstantive in nature and consist of minor editorial changes (corresponding Federal regulation provisions are listed in parentheses):

Rule 2.07.3(3)(a)(iii) (30 CFR 773.13(a)(2)), concerning the content of Colorado's written notice upon receipt of applications, to replace the word "submitted" with the word "inspected;"

Rule 2.07.7(1) (30 CFR 773.17), concerning permit conditions, to add "[t]he" prior to "permittee;"

Rule 2.08.6(2)(b)(iii) (30 CFR 774.17(b)(iii), concerning transfer, assignment, or sale of permit rights, to delete an extraneous ";or" at the end of the subsection; and

Rule 4.08.4(10) (30 CFR 816.67(d)(2)(i)), concerning the table showing the allowed maximum peak particle velocity in blasting operations, by replacing the signature for footnotes "1" and "2" with the symbol "†."

Because the proposed revisions to these previously-approved Colorado rules are nonsubstantive in nature, the Director finds that they are no less effective than the Federal regulations. The Director approves these proposed rules.

2. Substantive Revisions to Colorado's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

Colorado proposed revisions to the following rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulation provisions (listed in parentheses).

Rule 1.04(1) (30 CFR 840.11(g) and 842.11(e)), concerning the definition of "Abandoned site;"

Rules 1.04 (31a), (31b), (47a), (71a) (76), (83b), (116) and (135a) (30 CFR 800.23(a)), concerning the respective definitions of "Current liabilities," "Fixed assets," "Liabilities," "Net worth," "Parent corporation," "Self-bond," and "Tangible net worth;"

Rule 1.04(92) (30 CFR 700.5), concerning the definition of "Person;"

Rule 2.02.7 (30 CFR 772.14), concerning the commercial use and sale of coal from exploration operations;

Rule 2.07.6(2) (30 CFR 773.15(c)), concerning findings that the State regulatory authority must make prior to approval of applications for permits and permit revisions;

Rules 2.07.7 (6), (7), and (8) (30 CFR 773.17 (a), (b), and (c)), concerning permit conditions;

Rule 2.08.6(4)(a) (30 CFR 774.17(d)(1)), concerning approval of transfer, assignment, or sale of permit rights;

Rules 3.02.4(1)(c) and 3.02.4(2)(e) (30 CFR 800.23 (b) through (f)), concerning the allowance of self-bonding and the conditions for approval of self-bonds;

Rules 3.03.3 (1) and (2) (30 CFR 700.11(d) (1) and (2)), concerning termination of jurisdiction;

Rule 4.11.3 (30 CFR 816.81(f)), concerning return of coal mine waste to underground mine workings;

Rule 5.02.2(4)(b) (30 CFR 840.11(f)(2)), concerning when the State regulatory authority can consider an operation an inactive surface coal mining and reclamation operation; and

Rules 5.03.2(1)(e) and 5.03.2(2)(h) (30 CFR 843.22), concerning enforcement procedures at abandoned sites;

Because these proposed Colorado rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective than the Federal regulations. The Director approves these proposed rules.

3. Rules 1.03.1(1)(a), 2.03.3(8), 2.07.3(2), 2.07.3(2) (e) and (f), 2.07.3(3)(a), 2.07.3(4)(a), 2.07.4(2), and 2.07.4(3) (b) and (c), Permit Applications, Public Notice Requirements, Permit Review and Decision, and Bonding Requirements Prior to Permit Issuance

a. *Rules 1.03.1(1)(a), 2.07.3(2), 2.07.3(3)(a), 2.07.3(4)(a), and 2.07.4(2), Clarification of which permitting procedures apply to technical revisions, permit revisions, permits, or renewals of existing permits.* Colorado proposed to revise Rules 1.03.1(1)(a), 2.07.3(2), 2.07.3(3)(a), 2.07.3(4)(a), and 2.07.4(2), concerning requirements for (1) the applicant's submission of applications,

(2) the applicant's and Colorado's responsibility for public notice, and (3) Colorado's review of and decisions on applications, to clarify which rules apply to technical revisions, permit revisions, new permits, or renewals of existing permits. The requirements of these rules have not otherwise been revised.

The respective counterpart Federal regulations at 30 CFR 701.4(a), 30 CFR 773.13(a)(1), 30 CFR 773.13(a)(3), and 30 CFR 773.15(a)(1) set forth the requirements concerning application submittal, public notice, and the regulatory authority's responsibility for review and decision for minor revisions, significant permit revisions, permits, and permit renewals.

Colorado's requirements for technical revisions correspond to the Federal requirements for minor revisions; Colorado's requirements for permits and permit revisions correspond to the Federal requirements for permits and significant permit revisions. Proposed Rules 1.03.1(1)(a), 2.07.3(2), 2.07.3(3)(a), 2.07.3(4)(a), and 2.07.4(2) clarify the scope of existing requirements in a manner that is consistent with and no less effective than the respective counterpart Federal regulations at 30 CFR 701.4(a), 30 CFR 773.13(a)(1), 30 CFR 773.13(a)(3), 30 CFR 773.15(a)(1). Therefore, the Director approves proposed Rules 1.03.1(1)(a), 2.07.3(2), 2.07.3(3)(a), 2.07.3(4)(a), and 2.07.4(2).

b. *Rule 2.03.3(8), number of applications required to be submitted to the regulatory authority.* Colorado proposed to revise Rule 2.03.3(8) to require that three, rather than five, copies of a permit application with original signatures be submitted to the State.

The Federal regulations at 30 CFR 740.13(b)(2) state that, unless specified otherwise by the regulatory authority, seven copies of the complete permit application package shall be filed with the regulatory authority.

Because Colorado has elected to specify the number of applications that must be submitted, Colorado's proposed Rule 2.03.3(8) is consistent with and no less effective than the Federal regulations at 30 CFR 740.13(b)(2). Therefore, the Director approves proposed Rule 2.03.3(8).

c. *Rules 2.07.3(2) (e) and (f), Contents of public notices for operations affecting public roads.* Colorado proposed to revise Rules 2.07.3(2) (e) and (f), concerning contents of public notices for operations in which the applicant proposes, respectively, (1) that affected areas would be within 100 feet, measured horizontally, of a public road and (2) to close or relocate a public road. Colorado proposed to add to Rules 2.07.3(2) (e) and (f) the requirement that the published notices include—

> A statement indicating that a public hearing in the locality of the proposed mining operation for the purpose of determining whether the interests of the public and affected landowners will be protected may be requested by contacting the Division in writing within 30 days after the last publication of the notice.

The Federal regulations at 30 CFR 773.13(a)(1)(v) require that an applicant (for a permit, significant revision of a permit, or renewal of a permit), if seeking a permit to mine within 100 feet, measured horizontally, of the outside right-of-way of a public road or to relocate or close a public road, must place an advertisement in a local newspaper a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing. The Federal regulations at 30 CFR 761.12(d)(2) require, in such cases, that the regulatory authority or public road authority designated by the regulatory authority shall provide an opportunity for a public hearing in the locality of the proposed mining operation for the purpose of determining whether the interests of the public and affected landowners will be protected.

The requirement that the applicant include in its public notice for a permit application the opportunity for a public hearing on the affect of mining on public roads, which Colorado proposes to add at Rules 2.07.3(2) (e) and (f), is consistent with and no less effective than the requirements in the Federal regulations at 30 CFR 773.13(a)(1) (v) and 761.12(d)(2). Therefore, the Director approves proposed Rules 2.07.3(2) (e) and (f).

d. *Rules 2.07.4(3) (b) and (c), the requirement for performance bond approval prior to permit issuance.* Colorado proposed to revise Rules 2.07.4(3) (b) and (c), concerning its decision on a permit application and the opportunity for public hearing, to clarify that no permit shall be issued until a performance bond has been submitted and approved.

The Federal regulations at (1) 30 CFR 773.15(d) require the regulatory authority, if it decides to approve a permit application, to require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued and (2) 30 CFR 800.11 (a) and (c) require that after a permit application is approved, but before any new area is disturbed, that the applicant submit and the regulatory authority approve the required performance bond.

The requirement proposed by Colorado at Rules 2.07.4(3) (b) and (c), that no approved permit shall be issued until a performance bond has been submitted and approved, is no less effective than the requirements of the Federal regulations at 30 CFR 773.15(d) and 800.11 (a) and (c). Therefore, the Director approves proposed Rules 2.07.4(3) (b) and (c).

4. Rule 1.04(89), Definition of "Permit area"

Colorado proposed to revise the definition of "Permit area" at Rule 1.04(89) to (1) include the requirement that "the permit area be identified through a complete and detailed legal description, as required by Rule 2.03.6," and (2) delete the requirement that the area "shall be readily identifiable by appropriate markers on the site." Colorado stated that Rule 4.02.3 requires that only the perimeter of all areas affected by surface operations or facilities be identified by markers on site, and does not pertain to the extent of underground operations.

The Federal definition of "Permit area" at 30 CFR 701.5 does not include the requirement for a legal description. The requirement in Colorado's proposed definition of "Permit area" for identification by legal description would ensure the identification of the extent of both surface and underground coal mining and reclamation operations.

Therefore, the Director finds that Colorado's proposed definition of "Permit area" at Rule 1.04(89) is consistent with and no less effective than the Federal definition of "Permit area" at 30 CFR 701.5. The Director approves proposed Rule 1.04(89).

5. Rule 2.03.4(10), Permit Application Requirements Concerning Identification of Interests and Compliance Information

Colorado proposes, at Rule 2.03.4(10), to delete the requirement for "a form approved by the Board" on which an applicant would submit information required by 2.03.4 and by 2.03.5 (identification of interests and compliance information). The requirement that the required information be submitted in the permit application is otherwise unaltered.

The Federal regulation at 30 CFR 778.13(j) requires that information concerning identification of interests be submitted in any prescribed OSM format that is issued. The OSM format would be applicable only where OSM is the regulatory authority (RA). There is no requirement in the Federal regulation for a State RA to design a format.

Therefore, Colorado's proposed deletion of a required format for information at Rule 2.03.4(10) is no less effective than the Federal regulation at 30 CFR 778.13(j). The Director approves proposed Rule 2.03.4(10).

6. Rule 2.03.6(1), Contents of Permit Applications Pertaining to an Applicant's Legal Right to Enter a Proposed Permit Area

Proposed Rule 2.03.6(1), concerning the contents of permit applications pertaining to an applicant's legal right to enter a proposed permit area, is, with one exception, substantively identical to the Federal regulation at 30 CFR 778.15(a).

The exception is that Colorado proposed to add the requirement for the application to contain a "complete and detailed legal description of the proposed permit boundary." The Federal regulation at 30 CFR 778.15(a) does not include this requirement. However, Colorado's inclusion of the requirement for a legal description of the proposed permit boundary to which the applicant has the legal right to enter adds specificity and is not inconsistent with the Federal regulation at 30 CFR 778.15(a).

Therefore, the Director finds that proposed Rule 2.03.6(1) is no less effective than the Federal regulation at 30 CFR 778.15(a) and approves it.

7. Rule 2.07.5(2)(c), Notice and Hearing Procedures for Persons Seeking and Opposing Disclosure of Confidential Information

OSM required at 30 CFR 906.16(a) (56 FR 1371, January 14, 1991) that Colorado amend its program to provide for notice and hearing procedures for persons seeking and opposing disclosure of confidential information.

Colorado proposed a new Rule 2.07.5(2)(c) that states—

> (I)nformation requested to be held as confidential under 2.07.5(2) shall not be made publicly available until after notice and opportunity to be heard is afforded persons seeking disclosure and those persons opposing disclosure of information and such information is determined by the Board not to be confidential, proprietary information. Information for which disclosure is sought shall not be made available to those persons seeking disclosure prior to or during such opportunity to be heard. Such information shall not be made available until a final decision is made by the Board allowing such disclosure.

The Federal regulations at 30 CFR 773.13(d)(3) require, in part, that the "regulatory authority shall provide procedures, including notice and opportunity to be heard for persons both seeking and opposing disclosure, to ensure confidentiality of qualified confidential information." There is no requirement in the Federal program that the procedures be submitted to OSM for review as a program amendment.

Because Colorado's proposed Rule 2.07.5(2)(c) provides for notice and opportunity to be heard for both parties seeking disclosure and opposing disclosure of information requested to be held confidential, the Director finds that Rule 2.07.5(2)(c) is no less effective than the 30 CFR 773.13(d)(3) and satisfies the requirement that Colorado amend its program at 30 CFR 906.16(a). Therefore, the Director approves proposed Rule 2.07.5(2)(c) and removes the requirement that Colorado amend it program at 30 CFR 906.16(a).

8. Rules 2.07.6(2)(d) and 2.07.6(2)(d)(iii)(E), Findings Which Must be Made by the State Regulatory Authority Prior to Approval of Applicotions for Permits and Permit Revisions

Colorado proposed to revise Rules 2.07.6(2)(d) and 2.07.6(2)(d)(iii)(E), concerning the findings which must be documented prior to approval of applications for permits or permit revisions, to clarify that the findings pertaining to lands unsuitable for mining apply to the proposed "affected areas" rather than to the operations for mining coal within those affected areas. Colorado's definition of "affected area" at Rule 1.04(17) is no less effective than the definition of "affected area" in the Federal regulations at 30 CFR 701.5.

The Federal regulations at 30 CFR 773.15(c)(3) require findings documenting that the proposed permit area, subject to valid existing rights, is (1) not within an area under study or administrative proceedings under a petition to have an area designated as unsuitable for surface coal mining operations or (2) not within an area designated as unsuitable for mining.

Because the intent of the regulations governing lands unsuitable for mining is to ascertain whether reclamation is technologically and economically feasible, Colorado's proposed revision to clarify that the findings apply to the proposed affected areas rather than to the operations is consistent with the Federal regulations.

Therefore, the Director finds that proposed Rules 2.07.6(2)(d) and 2.07.6(2)(d)(iii)(E) are no less effective than the Federal regulations at 30 CFR 773.15(c)(3). The Director approves proposed Rules 2.07.6(2)(d) and 2.07.6(2)(d)(iii)(E).

9. Rule 2.07.6(2)(d)(iv), Public Notice and Opportunity for Public Hearing Regarding Proposed (1) Operations Located Within 100 Feet of a Public Rood or (2) Operations Which Require Closure or Relocation of a Public Road

Colorado proposed to revise Rule 2.07.6(2)(d)(iv) by adding the option for an appropriate public road authority to conduct required hearings and make findings regarding proposed: (1) Operations located within 100 feet, measured horizontally, of a public road or (2) operations which propose to close or relocate a public road. The revisions clarify that it is the responsibility of Colorado to designate a responsible authority, and that either may approve public road relocation, closure, or that the affected area may be within 100 feet of such road. However, the aforementioned may be done only after public notice and opportunity for a public hearing. Moreover, either must make a written finding stating that the interests of the affected public and landowners will be protected.

The Federal regulations at 30 CFR 761.11(d) provide for either the regulatory authority or the appropriate public road authority to provide for public notice and opportunity for a public hearing and to make written findings stating that the interests of the affected public and landowners will be protected.

Because proposed Rule 2.07.6(2)(d)(iv) provides for public notice, opportunity for public hearing, and requirements for written findings that may be implemented by an appropriate public road authority, the Director finds that proposed Rule 2.07.6(2)(d)(iv) is no less effective than the Federal regulations at 30 CFR 761.11(d). Therefore, the Director approves proposed Rule 2.07.6(2)(d)(iv).

10. Rule 2.07.7(9), Permit Condition Requiring Continuous Bond Coverage

Colorado proposed adding a permit condition at Rule 2.07.7(9) which requires continuous bond coverage but allows for adjustment of the bond amount from time to time to reflect changes in the cost of reclamation due to factors such as inflation and market forces.

Proposed Rule 2.07.7(9) has no direct counterpart in the Federal regulations at 30 CFR 773.17 as a condition to a permit. However, the Federal regulations at (1) 30 CFR 773.17(a) require as a permit condition that the permittee conduct operations only on those lands that are subject to the performance bond in effect pursuant to Subchapter J and (2) 30 CFR 800.4(g)

require that the regulatory authority require in the permit that adequate bond coverage be in effect at all times.

Because the permit condition at proposed Rule 2.07.7(9) contains provisions that are consistent with the requirements of the Federal regulations at 30 CFR 773.17(a) and 800.4(g), the Director finds that proposed Rule 2.07.7(9) is no less effective than these Federal regulations. The Director approves proposed Rule 2.07.7(9).

11. Rules 2.08.4 (1) Through (4), Revisions and Revision Application Requirements

With two exceptions, Colorado proposed revisions to Rules 2.08.4 (1) through (4), concerning revisions and revision application requirements, that are editorial in nature. The Federal regulation at 30 CFR 774.13(b)(2) requires that the regulatory authority establish (1) time periods with which it will act on applications for permit revisions and (2) the scale or extent of revisions for which all permit application information requirements and procedures shall apply. The proposed editorial revisions at Rules 2.08.4 (1) through (4) reorganize existing requirements (without altering the substance of the requirements) to more clearly delineate what types of changes in a proposed operation would require either a permit revision, a technical revision, or a minor revision. These editorial revisions are consistent with the corresponding Federal regulation at 30 CFR 774.13(h)(2).

The first exception is the proposed deletion of Rule 2.08.4(1)(c), which requires that the permittee submit a permit revision in order to continue liability insurance policy, capability of self-insurance, or performance bond, upon which the original permit was issued. OSM has no counterpart requirement to this State rule. The Colorado rule proposed for deletion is less effective than the Federal program in that it would allow an operation to be permitted without continuous bond coverage. The deletion of this rule is consistent with the requirements of the Federal regulations at 30 CFR 800.15 (a) through (d) which provide for adjustments in bond amounts, but which require continuous bond coverage.

The second exception is the proposed addition of Rule 2.08.4(1)(d), which requires a permit revision for any extensions to the area covered by a permit, except for incidental boundary revisions. The corresponding Federal regulation at 30 CFR 774.13(d) provides that any extension to the area covered by the permit, except for an incidental boundary revision, shall be made by application for a new permit. However, in Colorado's approved program, the procedural requirements of Rule 2.07 are the same for permit revisions and new permit applications. Furthermore, existing Rule 2.08.4(5)(d) requires for all types of permit revision applications such information as may be necessary to determine if the proposed revision will comply with Colorado's approved program. In the "Statement of Basis, Specific statutory Authority, and Purpose" for its August 23, 1988, amendment (administrative record No. 384), Colorado stated that—

(f) or the Division to make the findings required by Rule 2.07.6(2), which applies to '* * * permit or (permit) revision applications * * *,' it will be necessary for the permittee to submit adequate information pertaining to baseline, operations plan and reclamation plan. Additional information may be requested by the Division if not in sufficient detail pursuant to Rule 2.08.4(4)(d) (recodified as Rule 2.08.4(5)(d)).

OSM interprets this as meaning that all informational requirements applicable to new permits would also be applicable to permit revisions when they involve an extension of area to be covered by a permit other than an incidental boundary change.

Based on the above discussion, the Director finds that the revisions proposed at Rules 2.08.4 (1) through (4) are consistent with and no less effective than the Federal regulations at 30 CFR 774.13(b) (2) and (d) and 800.15 (a) through (d). The Director approves proposed Rules 2.08.4 (1) through (4).

12. Rules 2.08.4(6)(b) (i) and (ii), Public Hearing and Notice Requirements for Technical Revisions

Colorado proposed recodification of existing Rules 2.08.4 (4) and (5) as 2.08.4 (5) and (6). In addition, Colorado proposed: (1) revising Rule 2.08.4(6)(b)(i) to clarify that informal conference procedures do not apply to technical revisions, and (2) adding Rule 2.08.4(6)(b)(ii) to provide a 10-day public comment period for proposed technical revisions. Colorado's defines, at Rule 1.04(136), "Technical revisions" to mean—

A minor change, including incidental permit boundary revisions, to the terms or requirements of a permit issued under these rules, which change shall not cause a significant alteration in the operator's reclamation plan. The term includes, but is not limited to, increases in coal production, reduction or termination of approved environmental monitoring programs, or design changes for regulated structures or facilities.

The Federal regulation at 30 CFR 773.13(c) provides that any person may request an informal conference; however, this provision is applicable only to applications for permits, significant permit revisions, and permit renewals. There is no Federal provision applicable to technical revisions as defined in Colorado's program. Therefore, Colorado's clarification, at proposed Rule 2.08.4(6)(b)(i), that informal conference procedures do not apply to technical revisions is consistent with the Federal regulations at 30 CFR 773.13(c).

Technical revisions, as defined in Colorado's program, are not subject to the requirements in the Federal regulations at 30 CFR 774.13(b)(2) for notice, public participation, and notice of decision. These Federal requirements are applicable to applications for permits and significant permit revisions. Therefore, Colorado's proposed allowance at Rule 2.08.4(6)(b)(ii) for a 10-day comment period on technical revisions provides for a greater degree of public participation than required by the Federal program.

Based on the above discussion, the Director finds that the revisions proposed at Rules 2.08.4(6)(b) (i) and (ii) are consistent with and no less effective than the Federal regulations at 30 CFR 773.13(c) and 774.13(b)(2). The Director approves proposed Rules 2.08.4(6)(b) (i) and (ii).

13. Rule 3.03.1(5), Release of Bond Coverage for Liability Associated With Temporary Drainage and Sediment Control Facilities

Colorado proposed to add Rule 3.03.1(5) which provides that—

(R)elease of bond coverage for liability associated with temporary drainage and sediment control facilities including impoundments and conveying systems shall be authorized only after final inspection, acceptance, and approval by the Division. Such approval shall be granted based on determination by the Division that backfilling and grading, topsoiling, and reseeding of such facilities have been completed in compliance with the approved plan. Vegetative cover must be adequate to control erosion and similar to the surrounding reclaimed area. Reclaimed temporary drainage control facilities shall not be subject to the extended liability period of 3.03.3(2) or the bond release criteria of 3.03.1(2).

a. *OSM's policy concerning the term of liability for reclamation of temporary sediment control facilities.* Section 515(b)(20) of SMCRA provides that the revegetation responsibility period shall commence "after the last year of augmented seeding, fertilizing, irrigation, or other work" needed to assure revegetation success. In the absence of any indication of Congressional intent in the legislative history, OSM interprets this requirement as applying to the increment or permit area as a whole, not individually to those lands within the permit area upon which revegetation is delayed solely because of their use in support of the reclamation effort on the planted area. As implied in the preamble discussion of 30 CFR 816.46(b)(5), which prohibits the removal of ponds or other siltation structures until 2 years after the last augmented seeding, planting of the sites from which such structures are removed need not itself be considered an augmented seeding necessitating an extended or separate liability period (48 FR 44038–44039; September 26, 1983).

The purpose of the revegetation responsibility period is to ensure that the mined area has been reclaimed to a condition capable of supporting the desired permanent vegetation. Achievement of this purpose will not be adversely affected by this interpretation of section 515(b)(20) of SMCRA since (1) the lands involved are small in size and widely dispersed and (2) the delay in establishing revegetation on these sites is due not to reclamation deficiencies or the facilitation of mining, but rather to the regulatory requirement that ponds and diversions be retained and maintained to control runoff from the planted area until the revegetation is sufficiently established to render such structures unnecessary for the protection of water quality.

Direct support for this proposed exception from statutory responsibility period standards can be found in the fact that, on May 16, 1983, OSM promulgated 30 CFR 816.22(a)(3) and 817.22(a)(3), which, in analogous fashion, provide limited exceptions to the requirement in section 515(b)(5) of SMCRA that the operator remove and save topsoil from all lands to be affected by mining activities. In addition, it may reasonably be argued that the areas from which ponds are removed are likely to be no larger than those areas reseeded or replanted pursuant to normal husbandry practices, for which the Federal regulations do not require restarting of the revegetation responsibility period.

However, nothing in this interpretation of section 515(b)(20) of SMCRA shall be construed as exempting such lands from meeting the revegetation requirements of section 515(b)(19) of SMCRA prior to final bond release. As required by 30 CFR 816.46(b)(6), when siltation structures are removed, the land on which they were located must be regraded and revegetated in accordance with the reclamation plan and the requirements of 30 CFR 816.111 through 816.116, with the exception of 30 CFR 816.116(c), which requires a period of extended responsibility for successful revegetation on reclaimed areas (September 15, 1993, 58 FR 48333).

b. *Comparison of Colorado's proposed Rule 3.03.1(5) with OSM's proposed policy clarification.* Colorado proposed Rule 3.03.1(5) specifies that a bond release decision shall be based "on determination by the Division that backfilling and grading, topsoiling, and reseeding of such facilities has been completed in compliance with the approved [reclamation] plan." Vegetative cover must be adequate to control erosion and similar to the reclaimed area or surrounding undisturbed area. Because the reseeding must be found to be in compliance with the reclamation plan in the approved permit, Colorado has ensured that the vegetation of these reclaimed areas would be subject to (1) Colorado's counterparts to the Federal regulations at 30 CFR 816.111 and 817.111, and (2) those portions of Colorado's counterparts to the Federal regulations at 816.116 and 817.116 related to the attainment of the postmining land use (other than quantitative measurement techniques and liability periods).

Because Colorado's proposed Rule 3.03.1(5) also specifies that vegetative cover must be adequate to control erosion and similar to the reclaimed area or surrounding undisturbed area, the areas where the temporary sediment control structures had been located are expected to be similar to the remainder of the surrounding reclaimed or undisturbed area. This requirement would tend to discourage the removal of ponds or diversions toward the end of the liability period for the surrounding area. If removal of the structures occurs toward the end of the liability period for the larger reclaimed area, the areas where the ponds or diversions existed would not qualify for final bond release until reclamation has been established with some degree of permanence.

Based on the above discussion, the Director finds that Colorado's proposed Rule 3.03.1(5) is consistent with and no less effective than the Federal regulations at 30 CFR 817.46(b) (5) and (6) and sections 515(b) (19) and (20) of SMCRA, as clarified by OSM in the September 15, 1993, Federal Register (58 FR 48333).

14. Rules 4.02.2(2) (o) Through (c), Information Required on Identification Signs

Colorado proposed revising Rule 4.02.2(2)(a), concerning the required information on identification signs displayed at each point of access to the permit area from public roads, to recodify one existing provision as Rule 4.02.2(2)(b), and to add at Rule 4.02.2(2)(c) the requirement that such signs must include the name, address and telephone number of the office where the mining and reclamation permit is filed. With the exception of this added requirement, Rules 4.02.2(2) (a) through (c) are substantively identical to the Federal regulation at 30 CFR 816.11(c)(2).

Colorado's proposed inclusion of the requirement, that the name, address and telephone number of the office where the mining and reclamation permit is filed, provides for information on the mine identification sign that will facilitate the public's ability to participate in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by Colorado and is, therefore, not inconsistent with the Federal regulation at 30 CFR 816.11(c)(2).

Based on the above discussion, the Director finds that proposed Rules 4.02.2(2) (a) through (c) are no less effective than the Federal regulation at 30 CFR 816.11(c)(2). The Director approves Rules 4.02.2(2) (a) through (c).

15. Rules 4.03.1(d) (i) and (ii) and 4.03.2(f) (i) and (ii), Engineer's Certification of the construction or Reconstruction of Haul and Access Roads

Colorado proposes to revise Rules 4.03.1(d)(i) and 4.03.2(f)(i) to provide an exemption at Rules 4.03.1(d)(ii) and 4.03.2(f)(ii) from the requirement for an engineer's certification of the construction or reconstruction of haul and access roads that were completed prior to August 1, 1995, if the applicant provides a relevant showing, on a case-by-case basis, which may include monitoring data or other evidence, whether the road meets the performance standards of, respectively, Rules 4.03.1 or 4.03.2.

On August 1, 1995, Colorado promulgated the existing requirement at Rules 4.03.1(d)(i) and 4.03.2(f)(i) for certification of the design and construction of haul and access roads not within the disturbed area. Therefore, proposed Rules 4.03.1(d) (i) and (ii) and 4.03.2(f0 (i) and (ii) provide the exemption from the certification only

for those haul and access roads that existed prior to the promulgation of the requirement, i.e., only for existing structures.

The Federal regulations corresponding to Rules 4.03.1(1)(d) and 4.03,2(1)(f) are at 30 CFR 816.151(a) ad 817.151(a). These regulations became effective on December 8, 1988 (53 FR 45190). Like the State rules, they require the certification of the "construction and reconstruction" of primary roads, which are analogous to Colorado's haul and access roads.

OSM has implemented these Federal regulations by requiring the certification of primary roads that were newly constructed or reconstructed on or after December 8, 1998. For a road that existed prior to December 8, 1988, and that an operator continued to use thereafter, OSM has not required a certification but is has required, in accordance with 30 CFR 780.12(a)(4) and 784.12(a)(4), that the operator show that the road meets the performance standards of 30 CFR, Subchapter K. The applicable performance standards in Subchapter K. The applicable performance standards in Subchapter K are at 30 CFR 816.150(b), 816.151 (b) through (e), 817.150(b), and 817.151 (b) through (e).

Colorado's Rule 2.05.3(3)(b)(i)(D) is similar in its requirements to the Federal regulations at 30 CFR 780.12(a)(4) and 784.12(a)(4). This State rule requires for each existing structure (such as an existing road) a "[s]howing, including relevant monitoring data or other evidence, whether the structure meets the design requirements or performance standards of Rule 4." Colorado's exemption requires that the applicant show that the existing haul or access road that existed prior to August 1, 1995, meets the performance standards of Rule 4.03.2. Rule 4.03.2 contains all of the applicable performance standards that correspond to the Federal regulations at 30 CFR 816.150(b), 816.151 (b) through (e), 817.150(b), and 817.151 (b) through (e).

Based on the above discussion, the Director finds that proposed Rules 4.03.1(d) and 4.03.2(f) are consistent with and no less effective than the Federal regulations at 30 CFR 816.151(a) and 817.151(a), concerning roads, and 780.12(a)(4) and 784.12(a)(4), concerning existing structures. The Director approves proposed Rules 4.03.1(d) (i) and (ii) and 4.03.2(f) (i) and (ii).

16. Rules 4.05.2(7), 5.03.3(1)(a), 5.03.3(2)(a) (i) and (ii), and 5.03.3(20(b), Compliance with the Effluent Limitations for Coal Mining Promulgated by the U.S. Environmental Protection Agency Set Forth in 40 CFR Part 434 and Enforcement Procedures Concerning Violations of Effluent Limitations

a. *Rule 44.05.2(7), Compliance with effluent limitations for coal mining.* Colorado proposed to revise Rule 4.05.2(7), concerning water quality standards and effluent limitations, by adding the requirement that the discharges of water from areas disturbed by surface coal mining and reclamation operations shall be made in compliance with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR part 434, as these rules existed on July 1, 1993.

This requirement is substantively identical to the Federal requirement at 30 CFR 816.42 and 817.42 with the exception that the Federal regulations refer to discharges of water from areas disturbed by "surface and underground mining activities" rather than areas disturbed by "surface coal mining and reclamation operations."

Colorado defines "surface coal mining and reclamation operations" at Rule 1.04(133) to mean surface coal mining operations and all activities necessary and incident to the reclamation of such operations. Colorado's Rule 1.04(132) defines "surface coal mining operations" to mean—

(a) (a)ctivities conducted on the surface of lands in connection with a surface coal mine or activities subject to the requirements of Section 34–33–121 of the Act which involve surface operations and surface impacts incident to an underground coal mine. * * * and (b) (t)he areas upon which such activities occur or where such activities disturb and natural land surface. Such areas shall also include an adjacent land the use of which is incidental to any such activities, * * *.

Section 34–33–121 of the Colorado Surface Coal Mining Reclamation Act provides for the surface effects of underground coal mining and Rule 4 sets forth the minimum performance standards and design requirements to be used for surface coal mining and reclamation operations incident to underground mining activities. Colorado defines "underground mining activities" at Rule 1.04(144) to mean a combination of

(a) (s)urface operations incident to underground extraction of coal or in situ processing, such as * * *; and (b) (u)nderground operations such as * * *, subject to review for surface and hydrologic impacts in accordance with Rules 2 and 4.

The Federal regulations at 30 CFR 701.5 define "surface mining activities" to mean those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by auger coal mining, or by the recovery of coal from a deposit that is not in its original geologic location. In addition, these Federal regulations define "underground mining activities" to mean a combination of (a) (s)urface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining are placed; and (b) (u)nderground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

The term "underground mining activities" as defined at Colorado's Rule 1.04(144) is substantively identical to the counterpart Federal definition of the same term at 30 CFR 705.1, except Colorado requires that surface operations incident to underground extraction of coal or in situ processing and underground operations are subject to review for surface and hydrologic impacts in accordance with Rules 2 and 4.

Based upon the reference at Rule 1.04(132) to Colorado's Act and Rule 4, which in turn pertain to the surface effects of underground coal mining and underground mining activities, the use of the term "surface coal mining and reclamation operations" at Rule 4.05.2(7) is no less effective that the Federal regulations at 30 CFR 816.42 and 817.42 which pertain to surface mining activities and underground mining activities.

Therefore, based upon the above discussion the Director finds that Colorado's proposed Rule 4.05.2(7) is consistent with and no less effective than the Federal regulations at 30 CFR 816.42 and 817.42 pertaining to water quality standards and effluent limitations. The Director approves proposed Rule 4.05.2(7).

b. Rules 5.03.3(1)(a) and 5.03.3(2)(1)(1), (2)(a)(ii), and (2)(b), Enforcement procedures concerning violations of effluent limitations. Colorado proposed to revise Rule

5.03(1)(a), concerning show cause orders, and Rules 5.03.3(2)(a) (i) and (ii) and 5.03.3(2)(b), concerning patterns of violations, to add new language providing that—

Notices of violation issued by the Water Quality Control Division which cite a one day exceedance of the water quality effluent standards referenced in 4.05.22 shall be included by the Division in determining whether a pattern of violations exists.

The Federal regulations at 30 CFR 843.13(a)(1), (2), and (3) which are the Federal counterpart provisions for orders to show cause when it is determined that a pattern of violations exists or has existed, do not contain a separate requirements that notices of violations of the water quality effluent standards shall be considered by the Director in determining whether a pattern of violations exists. However, these same Federal regulations do not exclude violations of water quality effluent limitations from the violations reviewed to determine whether a pattern of violations exists or has existed. In addition, section 521(d) of SMCRA provides that

(a)s a condition of approval of any State program submitted pursuant to section 503 of this Act, the enforcement provisions thereof shall, at a minimum, incorporate sanctions no less stringent than those set forth in this section, and shall contain the same or similar procedural requirements relating thereto. Nothing herein shall be construed so as to eliminate any additional enforcement rights or procedures which are available under State law to a State regulatory authority by which are not specifically enumerated herein.

Colorado's proposed Rules 5.03.3(1)(a), 503.3(2)(a), (i) and (ii), and 5.03.3(2)(b) provide for enforcement procedures that are not specified in the Federal regulations at 30 CFR 843.12(a) (1), (2), and (3). However, the enforcement procedures are consistent with these Federal regulations and with section 521(d) of SMCRA.

Therefore, the Director finds that proposed Rules 5.03.3(1)(a), 503.3(2)(a) (i) and (ii), and 5.03.3(2)(b) are no less stringent than section 521(d) of SMCRA and no less effective than the Federal regulations at 30 CFR 843.13(a) (1), (2) and (3). The Director approves proposed Rules 5.03.3(1)(a), 5.03(2)(a) (i) and (ii), and 5.03.3(2)(b).

17. Rule 4.08.3(2)(b)(i), Blasting Areas

Colorado proposed to revise Rule 4.08.3(2)(b)(i), concerning blasting areas identified in the blasting schedule, by deleting the requirement for specific approval of a blasting area in excess of 300 acres.

The Federal regulations at 30 CFR 864.64(a)(1) do not place limits on blasting areas, but allow the regulatory authority to limit the area covered, timing, and sequence of blasting as listed in the schedule, if such limitations are necessary and reasonable in order to protect the public health and safety or welfare. With the deletion of the requirement for approval of a blasting area in excess of 300 acres, Colorado's proposed Rule 4.08.3(2)(b)(i) is substantively identical to the requirement in the Federal regulations at 30 CFR 816.64(c)(2) which requires that the blasting schedule shall contain identification of the specific areas in which blasting will take place.

Therefore, the Director finds that (1) Colorado's proposed deletion of the requirement for approval of a blasting area in excess of 300 acres from Rule 4.08.3(2)(b)(i) is consistent with and no less effective than the Federal regulations at 30 CFR 864.64(a) (1) and (2) proposed Rule 4.08.3(2)(b)(i) is no less effective than the Federal regulations at 30 CFR 816.64(c)(2). The Director approves proposed Rule 4.08.3(2)(b)(i).

18. Rules 5.02.5(1), 5.02.5(1)(a), and 5.02.5(1)(b)(i), Inspections Based Upon a Citizens' Requests

a. *Rule 5.02.5 (1) and (1)(a), A person's right to request and inspection and Colorado's response time to a person's request for an inspection.* Colorado proposed to revise Rule 5.02.5(1) to provide that any person who believes there is a violation of Colorado's approved program or permit conditions, or that any imminent danger or harm exists, may request an inspection for violations. Colorado proposed to revise Rule 5.02.5(1)(a) to add the provision that the State will conduct such an inspection within 10 days of receipt of a written request, but that if the request gives Colorado sufficient basis to believe that imminent danger or harm exists, the inspection shall be conducted no later than the next day, following the receipt of such a request.

The Federal regulation at 30 CFR 840.11(b)(1)(i) provides that OSM shall immediately conduct a Federal inspection when it has reason to believe on the basis of information available (other than information resulting from a previous Federal inspection) that there exists a violation of the Federal program, permit condition, or that there exists any condition, practice, or violation which creates an imminent danger to the health or safety of the public or is causing or could reasonably be expected to cause a significant, imminent environmental harm to land, air, or water resources.

Colorado's proposed Rule 5.02.5 (1) and (1)(a) differ from the Federal regulation at 30 CFR 840.11(b)(1)(i) in that they distinguish between those citizen's requests that provide sufficient basis to believe that imminent danger or harm exists and those that do not. Colorado has, in effect, defined in its proposed rules the term "immediately" which is not defined in the Federal program, nor is it discussed in the preamble to the Federal regulations. The Federal regulations at 30 CFR 840.11(b)(1) do not make a distinction in response time between whether or not a citizen's request provides sufficient reason to believe that imminent danger or harm exists.

However, Colorado's proposal to determine the response time to a citizen's request for an inspection, based on whether there is reason to believe there exists imminent harm or danger, is a reasonable interpretation of the Federal regulations and one that would not result in a response or an inspection that would be less effective than the one required in the Federal regulations. Therefore, the Director finds that Colorado's proposed Rules 5.02.5 (1) and (1)(a) are consistent with and no less effective than the Federal regulation at 30 CFR 840.11(b)(1)(i). The Director approves proposed Rule 5.02.5 (1) and (1)(a).

b. *Rule 5.02.5(1)(b) (i) and (ii), When a citizen's request for inspection gives sufficient reason to believe that there is cause for an inspection.* Colorado proposed to revise Rule 5.02.5(1)(b), which defines when it will have sufficient basis to believe there is cause for an inspection requested by a citizen, by replacing the word "and" with the word "or" between paragraphs (i) and (ii), so that these proposed rules define the "sufficient basis to believe" exists when

(i) (T)he request alleges facts that, if true, would constitute any of the above-described violations; or

(ii) (T)he request either states the basis upon which the facts are known by the requesting citizen or provides other corroborating evidence sufficient to give the Division a basis to believe that the violation has occurred.

The corresponding Federal regulation at 30 CFR 842.11(b)(2) states that an authorized representative shall have reason to believe that a violation, condition or practice exists if the facts alleged by the informant would, if true, constitute a condition, practice or violation referred to in 30 CFR 842.11 (b)(1)(i).

Colorado's existing Rule 5.02.5(1)(b)(i) is substantially identical to the Federal regulation at 30 CFR 842.11(b)(2). Existing Rule 5.02.5(1)(b)(ii) provides a more stringent condition than does Colorado's Rule 5.02.5(1)(b) (i) and the Federal regulation at 30 CFR 842.11(b)(2). However, proposed Rules 5.02.5(1)(b) (i) and (ii) no longer require that a citizen's request for an inspection meet the criterium of Rule 5.02.5(1)(b)(ii), but provide that the criterium at Rule 5.02.5(1)(b)(ii) is optional.

Therefore, the Director finds that Colorado's proposed Rules 5.02.5(1)(b) (i) and (ii) are no less effective than the Federal regulation at 30 CFR 842.11(b)(2) in responding to a citizen's complaint. The Director approves proposed Rules 5.02.5(1) (b) (i) and (ii).

19. Rules 5.02.2(8) (a) Through (c), Inspection Frequency at Abandoned Sites; and Rule 5.03.2(3), Enforcement Procedures at Abandoned Sites

a. *Rules 5.02.2(8) (a) through (c), Inspection frequency at abandoned sites.* Colorado proposed adding Rules 5.02.2(8) (a), (b), and (c), to identify the criteria and requirements for public notice that must be implemented for determining the inspection frequency of abandoned sites.

Proposed Rules 5.02.2(8)(a), (b), and (c) are, with one exception, substantively identical to the Federal regulations at 30 CFR 840.11(h) (1) and (2). The exception is proposed Rule 5.02.2(8)(c), which states that—

(T)he Division shall implement a final inspection frequency based on its findings and any additional information received during the comment period."

Proposed Rule 5.02.2(8)(c) has no counterpart in the Federal program. This is a declarative statement of the duties of the regulatory authority and does not alter the substance of the requirements concerning the criteria and the requirements for public notice that must be used when determining the inspection frequency of abandoned sites.

Therefore, based on the above discussion, the Director finds that proposed Rules 5.02.2(8) (a) through (c) are no less effective than the respective Federal regulations at 30 CFR 840.11(h) (1) and (2). The Director approves proposed Rules 5.02.2(8) (a) through (c).

b. *Rule 5.03.2(3), Enforcement procedures at abandoned sites.* Colorado proposed revising Rule 5.03.2(3), concerning notices of violation and subsequent failure-to-abate cessation orders (FTACO), by adding the statement that Colorado—

May refrain from issuing a failure-to-abate cessation order for such failure to abate a violation or failure to accomplish an interim step, if the operation is an abandoned site as defined in 1.04(1).

Existing Rule 5.03.2(3) is substantively identical to 30 CFR 843.11(b)(1). However, there is no provision at 30 CFR 843.11(b)(1) concerning enforcement of notices of violation at abandoned sites. The Federal regulations at 30 CFR 843.22 provide that a cessation order need not be issued at an abandoned site if abatement of the violation is required under any previously issued notice or order. Colorado's proposed allowance at Rule 5.03.2(3) to refrain from issuing an FTACO if the site qualifies as an abandoned site would apply only when abatement of the violation is already required under a previously issued notice of violation.

Therefore, based on the above discussion, the Director finds that proposed Rule 5.03.2(3) is no less effective than 30 CFR 843.22. The Director approves proposed Rule 5.03.2(3).

IV. Summary and Disposition of Comments

Following are summaries of all substantive oral and written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Colorado program.

The U.S. Forest Service responded on December 15, 1995, and March 26, 1996, that it had no comments on the proposed amendment (administrative record Nos. CO–675–3 and CO–675–13).

The U.S. Natural Resources Conservation Service responded on December 20 and 21, 1995, that it had no comments on the proposed amendment (administrative record No. CO–675–4).

The U.S. Army Corps of Engineers responded on December 27, 1995, that it had found the proposed amendment to be satisfactory (administrative record No. CO–675–5).

The U.S. Mine Safety and Health Administration (MSHA) responded on December 27, 1995, and March 20, 1996, that the proposed amendment did not conflict with MSHA standards (administrative record Nos. CO–675–7 and CO–675–12).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

OSM solicited EPA's concurrence with the proposed amendment (administrative record CO–675–1). On April 10, 1996, EPA gave its written concurrence and stated that it had no comments on the proposed revisions (administration record No. CO–675–14).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. CO–675–1). Neither the SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves Colorado's proposed amendment as submitted on November 20, 1995, and revised on February 16, 1996, and removes the requires amendment at 30 CFR 906.16(a).

The Director approves, as discussed in:

Finding No. 1, Rule 2.07.3(a)(iii), Rule 2.07.7(1), Rule 2.08.6(2)(b)(iii), and Rule 4.08.4(10), concerning nonsubstantive revisions to previously approved rules that consist of editorial revisions;

Finding No. 2, Rules 1.04(1), 1.04 (31a), (31b), (47a), (71a), (76), (83b), (92), (116), and (135a); Rule 2.02.7; Rule 2.07.6(2); Rules 2.07.7 (6), (7), and (8); Rule 2.08.6(4)(a); Rules 3.02.4(1)(c) and 3.02.4(2)(e); Rules 3.03.3 (1) and (2); Rule 4.11.3; Rule 5.02.2(4)(b); and Rules 5.03.2(1)(e) and 5.03.2(2)(h); concerning substantive revisions to previously approved rules that are substantively identical to the Federal regulations;

Finding No. 3, Rules 1.03.1(1)(a), 2.03.3(8), 2.07.3(2), 2.07.3(2) (e) and (f), 20.07.3(3)(a), 2.07.3(4)(a), 2.07.4(2), and 2.07.4(3) (b) and (c), concerning permit applications, public notice requirements, permit review and decision, and bonding requirements prior to permit issuance;

Finding No. 4, Rule 1.04(89), concerning the definition of "Permit area;"

Finding No. 5, Rule 2.03.4(10), concerning permit application requirements concerning identification of interests and compliance information;

Finding No. 6, Rule 2.03.6(1), concerning contents of permit applications pertaining to an applicant's legal right to enter a proposed permit area;

Finding No. 7, Rule 2.07.5(2)(c), concerning notice and hearing procedures for persons seeking and opposing disclosure of confidential information;

Finding No. 8, Rules 2.07.6(2)(d) and 2.07.6(2)(d)(iii)(E), concerning findings which must be made by the State regulatory authority prior to approval of applications for permits and permit revisions;

Finding No. 9, Rule 2.07.6(2)(d)(iv), concerning public notice and opportunity for public hearing regarding proposed (1) operations located within 100 feet, measured horizontally, of a public road or (2) operations which require closure or relocation of a public road;

Finding No. 10, Rule 2.07.7(9), concerning permit conditions requiring continuous bond coverage;

Finding No. 11, Rules 2.08.4 (1) through (4), concerning permit revisions and permit revision application requirements;

Finding No. 12, Rules 2.08.4(6)(b) (i) and (ii), concerning public hearing and notice requirements for technical revisions;

Finding No. 13, Rule 3.03.1(5), concerning release of bond coverage for liability associated with temporary drainage and sediment control facilities;

Finding No. 14, Rules 4.02.2(2) (a) through (c), concerning information required on identification signs;

Finding No. 15, Rules 4.03.1(d) (i) and (ii) and 4.03.2(f) (i) and (ii), concerning an engineer's certification of the construction or reconstruction of haul and access road;

Finding No. 16, Rules 4.05.2(7), 5.03.3(1)(a), 5.03.3(2)(a) (i) and (ii), and 5.03.3(2)(b), concerning (1) compliance with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR part 434 and (2) enforcement procedures concerning violations of effluent limitations;

Finding No. 17, Rule 4.08.3(2)(b)(i), concerning blasting areas;

Finding No. 18, Rules 5.02.5(1), 5.02.5(1)(a), and 5.02.5(1)(b)(i), concerning inspections based upon citizens' requests; and

Finding No. 19, Rules 5.02.2(8) (a) through (c), concerning inspection frequency at abandoned sites, and Rule 5.03.2(3), concerning enforcement procedures at abandoned sites.

The Federal regulations at 30 CFR part 906, codifying decisions concerning the Colorado program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted form review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of Tribe or State AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific Tribe or State, not by OSM. Decisions on proposed Tribe or State AMLR plans and revisions thereof submitted by a Tribe or State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed Tribe or State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will no: have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Tribe or State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the Tribe or State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

6. Unfunded Mandates Reform Act

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 7, 1996.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 906—COLORADO

1. The authority citation for Part 906 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 906.15 is amended by adding paragraph (u) to read as follows:

§ 906.15 Approval of amendments to the Colorado regulatory program.

* * * * *

(u) The Director approves the proposed revisions submitted by Colorado on November 20,1 995, and revised on February 16,1 996.

3. Section 906.16 is amended by removing and reserving paragraph (a) to read as follows:

§ 906.16 Required program amendments.

* * * * *

(a)–(c) [Reserved.]

* * * * *

[FR Doc. 96–13266 Filed 5–28–96; 8:45 am]

BILLING CODE 4310–05–M

---

30 CFR Part 913

[SPATS No. IL–089–FOR]

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions and additional requirements, a proposed amendment to the Illinois regulatory program (hereinafter referred to as the "Illinois program") under the Surface Mining Control and Reclamation act of 1977 (SMCRA). Illinois proposed revisions to and additions of regulations pertaining to termination of jurisdiction, permit fees, definitions, coal exploration, permitting, environmental resources, reclamation plans, special categories of mining, small operator assistance, bonding, performance standards, revegetation, inspection, enforcement, civil penalties, administrative and judicial review, and certification of blasters. The amendment is intended to revise the Illinois program to be consistent with the corresponding Federal regulations, incorporate the additional flexibility afforded by recently revised Federal regulations, clarify ambiguities, and improve operational efficiency.

EFFECTIVE DATE: May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521, Telephone: (317) 226–6700.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the June 1, 1982, **Federal Register** (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 913.15, 913.16, and 913.17.

II. Submission of the Proposed Amendment

By letter dated February 3, 1995 (Administrative Record No. IL–1615), Illinois submitted a proposed amendment to its program pursuant to SMCRA. Illinois submitted the proposed amendment in response to an August 5, 1993, letter (Administrative Record No. IL–1400) that OSM sent to Illinois in accordance with 30 CFR 732.17(c), in response to required program amendments at 30 CFR 913.16(s), (t), and (u), and at its own initiative. Illinois proposed to revise or add provisions to the following parts or sections of its program: 62 IAC 1700, general; 62 IAC 1701.Appendix A, definitions; 62 IAC 1761.11, areas where mining is prohibited or limited; 62 IAC 1772, requirements for coal exploration; 62 IAC 1773, requirements for permits and permit processing; 62 IAC 1774.13, permit revisions; 62 AC 1778.15, right of entry information; 62 IAC 1779, surface mining permit applications—minimum requirements for information on environmental resources; 62 IAC 1780.23, reclamation plan—premining and postmining information; 62 IAC 1783, underground mining permit applications: minimum requirements for information on environmental resources; 62 IAC 1784.15, reclamation plan—premining and postmining information; 62 IAC 1785, requirements for permits for special categories of mining; 62 IAC 1795, small operator assistance; 62 IAC 1800, bonding and insurance requirements for surface coal mining and reclamation operations; 62 IAC 1816, permanent program performance standards—surface mining activities; 62 IAC 1817, permanent program performance standards—underground mining activities; 62 IAC 1825.14, high capability lands—soil replacement; 62 IAC 1840, department inspections; 62 IAC 1843, state enforcement; 62 IAC 1845.12, when penalty will be assessed; 62 IAC 1847, notice of hearing; and 62 IAC 1850, training, examination and certification of blasters.

OSM announced receipt of the proposed amendment in the February 27, 1995, **Federal Register** (60 FR 19522), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on March 29, 1995. A public hearing was requested and was held on March 24, 1995, as scheduled.

During its review of the amendment, OSM identified concerns relating to 62 IAC 1701.Appendix A, definition of wetlands; 62 IAC 1773.20, general procedures for improvidently issued permits; 62 IAC 1773.23, review of ownership of control and violation information; 62 IAC 1773.24, procedures for challenging ownership or control shown in the Applicant Violator System; 62 IAC 1774.13(d)(6), incidental boundary revisions; 62 IAC 1785.17, prime farmlands; 62 IAC 1816/1817.13 and 1816/1817.46(e)(2), siltation structures; 62 IAC 1816/1817.116(a)(3)(F) and 62 IAC 1816(a)(4)(A)(ii), revegetation standards for small isolated areas; 62 IAC 1816.116(a)(4)(D), revegetation standards for hay production; 62 IAC 1816.116(a)(4)(D), revegetation standards for hay production; 62 IAC 1816/1817.116(a)(5), wetlands revegetation; 62 IAC 1816/1817.116(c), revegetation reference areas; and 62 IAC 1816.Appendix A, permit specifics yield standards. OSM notified Illinois of the concerns by letters dated April 28 and August 3, 1995 (Administrative Record Nos. IL–1649 and IL–1660, respectively).

By letter dated November 1, 1995 (Administrative Record No. IL–1663), Illinois responded to OSM's concerns by submitting additional explanatory information and revisions to its proposed program amendment. Based upon the additional explanatory information and revisions to the proposed program amendment submitted by Illinois, OSM reopened the public comment period in the December 5, 1995, **Federal Register** (60 FR 62229) and provided an opportunity for a public hearing on the adequacy of the revised amendment. The public comment period closed on January 4, 19996. The public hearing scheduled for January 2, 1996, was not held because no one requested an opportunity to testify.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

A. Revisions to Illinois' Regulations That Are Not Substantive in Nature

Revisions not specifically discussed in this final rule concern nonsubstantive wording changes, corrected typographical errors, or revised cross-references and paragraph notations to reflect organizational changes within the amended regulations.

Throughout its revised regulations, Illinois proposed to change specific references of the "Illinois Department of Mines and Minerals" to the "Illinois Department of Natural Resources, Office of Mines and Minerals" in order to reflect a reorganization change which was effective July 1, 1995; to change its citation references of the "Ill. Rev. Stat. 1989, ch. 96½, pars. 7901.01 et seq." to "225 ILCS 720" to reflect recodification of the Illinois Surface Coal Mining Land Conservation and Reclamation Act (State Act) that occurred in 1992; and to change its references of the "Soil Conservation Service" and "S.C.S." to the "Natural Resources Conservation Service" and "NRCS" to reflect that Federal agency's change in name.

The above proposed revisions do not alter the substance of the previously approved provisions in the Illinois regulations. Therefore, the Director finds that they will not render the Illinois regulations less effective than the Federal regulations.

B. Revisions to Illinois' Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

1. Revisions to Existing Regulations and New Regulations

62 IAC 1700.11(f), Termination of jurisdiction (30 CFR 700.11(d)); 62 IAC 1701.Appendix A, Definition of "Applicant Violator System or AVS" (30 CFR 773.5); 62 IAC 1701.Appendix A, Definition of "Federal violation notice" (30 CFR 773.5); 62 IAC 1701.Appendix A, Definition of "Historic lands" (30 CFR 762.5); 62 IAC 1701.Appendix A, Definition of "Land eligible for remining" (30 CFR 701.5); 62 IAC 1701.Appendix A, Definition of "Ownership or control link" (30 CFR 773.5); 62 IAC 1701.Appendix A, Definition of "State violation notice" (30 CFR 773.5); 62 IAC 1701.Appendix A, Definition of "Substantially disturb" (30 CFR 701.5); 62 IAC 1701.Appendix A, Definition of "Violation notice" (30 CFR 773.5); 62 IAC 1761.11(a)(4)(B), Areas where mining is prohibited or limited (30 CFR 761.11(d)(2)); 62 IAC 1773.15 (b)(1) and (b)(2), Review of violations (30 CFR 773.15 (b)(1) and (b)(2)); 62 IAC 1773.20(b), Improvidently issued permits review criteria (30 CFR 773.20(b)); 62 IAC 1773.20(c)(4), Improvidently issued permits remedial measures (30 CFR 773.20(c)(2)); 62 IAC 1773.21(a), Automatic suspension and rescission (30 CFR 773.21(a)); 62 IAC 1773.22, Verification of ownership or control application information (30 CFR 773.22); 62 IAC 1773.23, Review of ownership or control and violation information (30 CFR 773.23); 62 IAC 1773.24(a), procedures for challenging ownership or control links shown in the Applicant Violator System (30 CFR 773.24(a)); 62 IAC 1773.25, Standards for challenging ownership or control links and the status of violations (30 CFR 773.25); 62 IAC 1780.23(a) (1)–(2), Reclamation plan premining information for surface mining permit applications (30 CFR 780.23(a) (1)–(2)); 62 IAC 1780.23 (b) and (c), Reclamation plan postmining information for surface mining permit applications (30 CFR 780.23 (b) and (c)); 62 IAC 1784.15(a) (1)–(2), Reclamation plan premining information for underground mining permit applications (30 CFR 784.15(a) (1)–(2)); 62 IAC 1784.15 (b) and (c), Reclamation plan postmining information for underground mining permit applications (30 CFR 784.15 (b) and (c)); 62 IAC 1795.4(b), Definition of "Qualified laboratory" (30 CFR 795.3); 62 IAC 1795.6 (b), (b)(1), and (b)(2), Small operator assistance—eligibility for assistance (30 CFR 795.6 (a)(2), (a)(2)(i), and (a)(2)(ii)); 62 IAC 1795.9 (b)(1)–(b)(5), Small operator assistance—program services and data requirements (30 CFR 795.9 (b)(1)–(b)(5)); 62 IAC 1795.12(a)(2), Small operator assistance—applicant liability (30 CFR 795.12(a)(2)); 62 IAC 1816.79, Protection of underground mining (30 CFR 816.79); 62 IAC 1816.97(b), Endangered and threatened species—surface mining (30 CFR 816.97(b)); 62 IAC 1817.97(b), Endangered and threatened species—underground mining (30 CFR 817.97(b)); 62 IAC 1840.11 (g) and (h), Inspections by the Department—abandoned sites (30 CFR 840.11 (g) and (h)); 62 IAC 1843.13(a)(3), Suspension or revocation of permits (30 CFR 843.13(a)(3)); 62 IAC 1843.13(a)(4)(B), Suspension or revocation of permits (30 CFR 843.13(a)(4)(ii)); 62 IAC 1843.13(b), Suspension or revocation of permits (30 CFR 843.13(d)); and 62 IAC 1843.23, Enforcement actions at abandoned sites (30 CFR 843.22).

Because the above proposed revisions and/or additions are identical in meaning to the corresponding Federal regulations, shown in brackets, the Director finds that Illinois' proposed regulations are no less effective than the Federal regulations.

2. Deletions of Existing Regulations

62 IAC 1773.21(c), Improvidently issued permits—appeals of rescission notices (30 CFR 773.21(c), 59 FR 54306, October 28, 1994); 62 IAC 1779.22, Surface coal mining application requirements for premining land use information (30 CFR 779.22, 59 FR 27932, May 27, 1994); 62 IAC 1779.25(a)(11), Surface coal mining application requirements for premining slope measurements (30 CFR 779.25(a)(11), 59 FR 27932, May 27, 1994); 62 IAC 1783.22, Underground coal mining application requirements for premining land use information (30 CFR 783.22, 59 FR 27932, May 27, 1994); and 62 IAC 1783.25(a)(11), Underground coal mining application requirements for premining slope measurements (30 CFR 783.25(a)(11), 59 FR 27932, May 27, 1994).

The above proposed deletions are consistent with OSM's repeal of the Federal counterpart regulations, shown in brackets. Therefore, the Director finds that the proposed deletions will not render the Illinois regulations less effective than the Federal regulations.

C. Revisions to Illinois' Regulations That Are Substantive in Nature

1. 62 IAC 1700.16(a) Fees

Illinois proposed a revision to 62 IAC 1700.16(a) that requires fees collected under the provisions of the Surface Coal Mining Land Conservation and Reclamation Act (State Act) be deposited in the Coal Mining Regulatory Fund instead of the general revenue fund. This revision implements the requirements at 225 ILCS 720/9.07 of the State Act that OSM approved on November 21, 1994 (59 FR 59918). The Coal Mining Regulatory Fund was established to receive money for administration of the Illinois program. There is no direct Federal counterpart to 62 IAC 1700.16(a). However, the proposed amendment is not inconsistent with the general requirements for permit fees at section 507(a) of SMCRA and 30 CFR 777.17 of the Federal regulations. Therefore, the Director finds that the proposed revision to 62 IAC 1700.16(a) is not inconsistent with the requirements of SMCRA or the Federal regulations.

2. 62 IAC 1701.Appendix A Wetland Definition

Illinois proposed to add the definition of "wetland" from the Illinois Interagency Wetland Policy Act of 1989 (20 ILCS 830/I–6(a)) to its regulations at 62 IAC 1701.Appendix A. Illinois proposed the definition because it had proposed standards for wetland revegetation in its regulations at 62 IAC 1816/1817.116(a)(5). Illinois defined wetland to mean "land that has a predominance of hydric soils (soils which are usually wet and where there is little or no free oxygen) and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation (plants typically found in wet habitats) typically adapted for life in saturated soil conditions. Areas which are restored or created as the result of mitigation or planned construction projects and which function as a wetland are included within this definition even when all three wetland parameters are not present."

In its letter dated April 28, 1995 (Administrative Record No. 1649), OSM requested Illinois to provide a statement which explains the meaning of the last sentence of the "wetlands" definition (Areas which are restored or created as the result of mitigation or planned construction projects and which function as a wetland are included within this definition even when all three wetland parameters are not present). At the May 31, 1995, meeting (Administrative Record No. 1654), Illinois explained that generally the "hydric" soil profile may not be fully developed in a newly created wetland. This concept is consistent with the U.S. Army Corps of Engineers (Corps) Wetlands Delineation Manual, Technical Report Y–87–1 (Administrative Record No. IL–1616). In the manual, the Corps states that "Although wetland indicators of all three parameters (i.e. vegetation, soils, and hydrology) may be found in some man-induced wetlands, indicators of hydric soils are usually absent. Hydric soils require long periods (hundreds of years) for development of wetness characteristics, and most man-induced wetlands have not been in existence or a sufficient period to allow development of hydric soil characteristics * * *."

The Federal regulations at 30 CFR Chapter VII do not contain a counterpart wetland definition. However, the Illinois definition is not inconsistent with the provisions of section 515(b)(24) of SMCRA or the Federal regulations at 30 CFR 816/817.97(f) pertaining to wetlands and habitats of unusually high value for fish and wildlife. These provisions require the operator to minimize disturbances and adverse impacts to fish and wildlife and to enhance wherever practical or restore habits or high value for fish and wildlife, including wetlands.

Based on the above discussion, the Director finds that Illinois' proposed definition of wetland is not inconsistent with SMCRA or the Federal regulations.

3. 62 IAC 1772.11(b)(5) Notice Requirements for Exploration Removing 250 Tons of Coal or Less

At 62 IAC 1772.11(b)(5), Illinois proposed to clarify that forms OG–7 and OG–8 are required to be submitted with a coal exploration notice only if such forms are required by the Department's Oil and Gas Division.

There is no direct Federal regulation counterpart. However, the Director finds the proposed regulation is not inconsistent with the general provisions governing coal exploration notice requirements at 30 CFR 772.11.

4. 62 IAC 1772.12(d)(2) Decision on an Application for Exploration Removing More Than Two Hundred and Fifty (250) Tons of Coal

Illinois proposed to revise 62 IAC 1772.12(d)(2) by replacing the word "operation" with the word "permit" in the phrase "application for a coal exploration operation." The Director finds the revised language is substantively identical to the language in the Federal counterpart regulation at 30 CFR 772.12(d)(2); and it is, therefore, no less effective than the Federal regulation.

At 62 IAC 1772.12(d)(2)(C), Illinois proposed to delete its reference to the "agency with jurisdiction over State Historic Preservation" and replace it with the name of the agency, "Illinois Historic Preservation Agency," that has jurisdiction over cultural and historical resources in Illinois. The Director finds that referencing the actual agency that has jurisdiction adds clarity to this provision and does not render the previously approved regulation less effective than the Federal counterpart regulation at 30 CFR 772.12(d)(2)(iii).

5. 62 IAC 1773.15(a)(1) Review of Permit Applications

Illinois offers the opportunity for both an informal conference and a public hearing on the decision to issue deny, or modify a permit application. Illinois is proposing to revise 62 IAC 1773.15(a)(1) by removing reference to its informal conference at section 1773.13(c) and adding a reference to its public hearing at section 1773.14. This is consistent with the Illinois Attorney General's legal opinion dated June 13, 1980, which was required by OSM in accordance with 30 CFR 731.14(c) prior to State program approval. In the Illinois Attorney General's opinion, the public hearing at 62 IAC 1773.14 met the requirements of the informal conference in the Federal regulations at 30 CFR 773.13(c). Illinois' informal conference at section 1773.13(c) was considered an optional, additional step for public participation in permit processing. Therefore, the Director finds that the Illinois regulation at 62 IAC 1773.15(a)(1), as amended, is no less effective than the counterpart Federal regulation at 30 CFR 773.15(a)(1).

6. 62 IAC 1773.24 Procedures for Challenging Ownership or Control Shown in the Applicant Violator System

Illinois proposed new provisions at 62 IAC 1773.24 (b) through (d) that provide procedures for challenges concerning the status of State violations to which persons shown on the Applicant Violation System (AVS) have been linked. These proposed procedures are substantively identical to the procedures in the Federal regulations at 30 CFR 773.24 (b) through (d) for challenges concerning an ownership or control link shown in the AVS or the status of a Federal violation. Therefore, the Director finds that Illinois' regulations at 62 IAC 1773.24 (b) through (d) for challenging the status of State violations are no less effective than 30 CFR 773.24 (b) through (d) of the Federal regulations for challenging the status of Federal violations.

7. 62 IAC 1774.13 Application Requirements and Procedures for Permit Revisions

a. *Section 1774.13(b)(2)(E).* At subsection (b)(2)(E), Illinois is proposing that a significant revision be required for land use changes involving greater than 5 percent of the "Total permit acreage" instead of the "original total permit acreage." This proposed change in language allows adjustment to the previously approved 5 percent cumulative total limitation. The proposed addition of subsection 1774.13(b)(2)(E)(i) would allow the accumulation of the 5 percent limit to restart upon issuance of a significant revision that addresses all previous land use changes approved via insignificant revisions. The proposed addition of subsection 1774. 13(b)(2)(E)(ii) would allow acreage added by incidental boundary revisions to be included in the total permit acreage used to determine the 5 percent limit if the acreage has been addressed previously in a significant revision. Changing the land use on more than an accumulated 5 percent of the permit area through the insignificant revision process without giving the public an opportunity for review and comment through the significantly revision process would still not be allowed under the proposed revision. It is also noted that Illinois requires all alternative land use revisions, both significant and insignificant, to comply with its postmining land capability requirements at 62 IAC 1816.133 or 1817.133 and requires consultation with the landowner or the land management agency with jurisdiction over the lands before approval of either type of revision.

The Federal counterpart regulation for permit revisions at 30 CFR 774.13(b) requires the regulatory authority to establish guidelines for the scale or extent of revisions for which all the permit application requirements will apply. OSM determined in the September 28, 1983, **Federal Register** 948 FR 44344) that this requirement provided flexibility to the regulatory authority to establish guidelines suitable to the operation of individual State programs. Therefore, the Director finds that the proposed revisions represent a reasonable application by Illinois of the requirement in 30 CFR 774.13(b) and that 62 IAC 1774.13(b), as amended, is no less effective than the counterpart Federal regulation for permit revisions.

b. *Section 1774.13(d)(6).* Illinois is proposing to amend its regulations pertaining to incidental boundary revisions as a partial response to an August 5, 1993, letter (Administrative Record No. IL–1400) that was sent to Illinois in accordance with 30 CFR 732.17(c) and (e)(3). OSM had determined that Illinois' administration of its incidental boundary revision regulations appeared inconsistent with the approved regulatory program. At subsection (d)(6), Illinois originally proposed to require public notice and a ten-day comment period for incidental boundary revision applications which propose new surface acreage or planned subsidence shadow area to the original permit (Administrative Record No. IL–1615). During a May 31, 1995, public meeting (Administrative Record NO. 1654), Illinois and OSM discussed reducing the comment period from ten days to seen days because of time restrictions in processing incidental boundary revisions (90 days). Subsequent to this meeting, Illinois submitted revised language which reduced the comment period to seven days. Illinois had previously submitted a letter dated September 14, 1993 (Administrative Record No. IL–1402), that specified the internal control and management practices implemented to identify potential patterns of incidental boundary revision abuse and to prevent abuse.

The Director finds that the proposed amendment to Illinois' regulations at 62 AC 1774.13(d)(6) to allow public involvement in this incidental boundary revision review and approved process is consistent with the Federal regulations at 30 CFR 774.13(d). Furthermore, Illinois' proposed amendment and its implementation of internal management control measures for its incidental boundary revision review and approval process resolves the issues associated with OSM's August 5, 1993, 30 CFR part 732 action.

8. 62 IAC 1778.15 Right for Entry Information

a. *Section 1778.15(a).* At subsection (a), Illinois is proposing to remove the requirement for underground coal mining applications to contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface coal mining and reclamation operations in the shadow area, including the right to subside within the shadow area. Right of entry information would still be required to enter and begin surface coal mining and reclamation operations in the permit area. The language in the revised provision is substantively identical to the counterpart Federal provision at 30 CFR 778.15(a), which requires such a description only for the permit area. On April 5, 1983 (48 FR 14814), OSM revised the definition of "permit area" and associated terms to exclude areas overlying underground workings (shadow area). Therefore, the Director finds 62 IAC 177815(a), as revised, is no less effective than the counterpart Federal regulation.

b. *Section 1778.15(e).* At subsection (e); Illinois is proposing to clarify that underground mining applications in which the applicant claims to have valid existing rights to conduct planned subsidence operations within an area where mining is prohibited or limited, contain the necessary information and meet the requirements of 62 IAC 1778.16. (Relationship to Areas Designed Unsuitable for Mining) and 62 IAC 1761.12 (Procedures for determining whether mining operations are limited or prohibited). The existing provision specified this information for applications to conduct surface coal mining operations only. The Federal regulations at 30 CFR 778.15 pertaining to right of entry information contain no comparable requirement. However, the proposed additional requirement at 62 IAC 1778.15(e) is not inconsistent with the Federal regulation provisions at 30 CFR 761.12 pertaining to procedures for determining whether mining operations are limited or prohibited, § 778.16 pertaining to the proposed permit area relationship to areas designed unsuitable for mining, or § 784.20 pertaining to the requirement for an underground mining application to contain a substance control plan. Therefore the Director finds that the revised provision at subsection (e) does not render the Illinois regulations at 62 IAC 1778.15 less effective than the counterpart Federal regulations at 30 CFR 778.15, and he is approving it.

c. *Section 1778.15(f).* Illinois is proposing to add new subsection (f) to require applications for underground mining area (shadow area) to contain a notarized statement by a responsible official of the applicant attesting that all necessary mining rights, including the right to subside, if applicable, have been or will be obtained prior to mining. The Federal regulations at 30 CFR 778.15 pertaining to right of entry information contain no comparable requirements for underground mining shadow area. However, the proposed requirements at 62 IAC 1778.15(f) are not inconsistent with the Federal regulation provisions at 30 CFR 78.10 pertaining to the requirement for subsidence control plans for undergrounds mining applications. Therefore, the Director finds that the new provision at subsection (f) does not render the Illinois regulations at 62 IAC 1778.15 less effective than the counterpart Federal regulations at 30 CFR 778.18, and he is approving it.

9. 62 IAC 1780.23(a)(3) and 62 IAC 1784.15(a)(3) Reclamation Plan: Premining Information

Because the cited regulations governing surface mining permit application requirements at 62 IAC 1780.23(a) are identical to counterpart regulations governing underground mining permit application requirements at 62 IAC 1784.15(a), the discussion of changes are consolidated.

Illinois is proposing to add new subsection (a)(3) at 62 IAC 1780.23 and 1784,15. This is a recodification of the provisions deleted from existing 62 IAC 1779.25(a)(11)(D) for surface mines and 1783.25 (a)(11)(D) for underground mines with one minor exception. The recodified provisions pertain to a requirement for a premining soils map or contoured aerial photo of the proposed permit area. Both the current provisions and the recodified provisions, as originally proposed (Administrative Record No. IL–1663), require "a solid map of medium intensity" to be submitted with the permit application, while the revised recodified provisions require "an intensive soil map" to be submitted. This change in language was proposed because of a comment from the Natural Resources Conservation Service, during the State's own rulemaking process, that the terminology "medium intensity" was not consistent with the terminology of the National Cooperative Soil Survey for the State of Illinois. There are no Federal counterpart provisions. However, the Director finds that the addition of these previously approved requirements, including the change in terminology at 62 IAC 1780.23(a)(3) and 1784.15(a)(3), is not inconsistent with the Federal regulations.

10. 63 IAC 1785.17(a) Prime Farmlands

In subsection (1)(1), Illinois is proposing to delete the following language: "Nothing in this Section shall

apply to any permit issued period to the date of enactment of the Federal Act, or to any revisions or renewals thereof, or to any existing surface mining operations for which a permit was issued prior to the date of enactment of the Federal Act, as determined by the Department prior to September 29, 1981. For lands for which a request for exemption was initially made or pending on or after September 29, 1981." Illinois also proposed to delete existing subsections (a)(5) and (a)(6) pertaining to an acreage limitation on the amount of exempted prime farmland and (a)(7)(B) pertaining to a preliminary exemption review. Illinois proposed to redesignate existing subsection (a)(1) to (a)(2)(A); (a)(2) to (a)(2)(B); (a)(3) to (a)(2)(C); (a)(4) to (a)(3); and (a)(7)(A) to (a)(4).

The Federal regulations do not contain counterpart provisions to the deleted language in subsections (a)(1), (a)(5), (a)(6), and (a)(7)(B). The proposed revisions at 62 IAC 1785.17(a) render Illinois' regulation requirements substantively identical to the counterpart Federal regulation requirements at 30 CFR 785.17(a) with one exception. At redesignated subsection (a)(4), Illinois retained an additional requirements for a scale map of the area proposed to be exempted. Therefore, the Director finds the revised provisions of 62 IAC 1785.17(a) are no less effective than the Federal regulation provisions at 30 CFR 785.17(a).

11. 63 IAC 1785.23 Minor Underground Mine Facilities Not at or Adjacent to the Processing or Preparation Facility or Area

Illinois originally adopted section 1785.23 to take into account the distinct differences between surface and underground mining. This category of facilities, which includes air shaft, fan and ventilation buildings, small support buildings or sheds, access power holes, and other small structures and associated roads, would be subject to an abbreviated permit application and review period on the basis that these types of structures have a very minimal impact on the land and the environment. There is no Federal counterpart to these previously approved provisions. In this amendment, Illinois proposed to clarify the public notice and opportunity to comment provisions at subsection (d) by revising paragraph (3) to require written comments from persons with an interest which is or may be adversely affected be filed within the 30-day public comment period and by revising paragraph (4) to require the Interagency Committee to submit review comments within 30 days of the date of receipt of the application. A proposed revision to subsection (e)(1) requires the Department to make its final decision to approve, deny, or modify the complete application for a permit within 20 days, rather than 10 days, following the close of the public comment period. Subsection (g)(1) is proposed to be amended to require the Department to notify persons who filed comments or objections to the application of its final decision, to replace the word "disapprove" with the word "deny" for consistency with other sections of the Illinois regulations dealing with approval and denial of permit applications, and its final action. Subsection (g)(2) is proposed to be revised by correcting the administrative and judicial review regulation citation.

While there are no direct Federal counterparts to these proposed revisions, the Director finds that the proposed revisions to 62 IAC 1785.23 will enhance the public participation and review process provisions for a minor underground mine facility permit application and that the proposed revisions are not inconsistent with the public participation and review provisions of section 510(a) of SMCRA and 30 CFR 773.13 and 773.15(a) of the Federal regulations.

12. 62 IAC 1795 Small Operator Assistance Program

On November 5, 1990, and October 24, 1992, the President signed into law the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508 and the Energy Policy Act of 1992, Public Law 102–486, respectively. Included in these laws were amendments to the Small Operator Assistance Program (SOAP) authorized at section 507(c) of SMCRA. On May 31, 1994 (59 FR 28136), OSM published a final rule to amend the Federal regulations at 30 CFR part 795 to reflect these amendments.

In this amendment, Illinois proposed changes to its regulations to be consistent with and incorporate the additional flexibility afforded by the revised provisions of SMCRA and the Federal regulations. Illinois had previously proposed enabling statutory revisions pertaining to its SOAP at 225 ILCS 720/2.02 of the Illinois Surface Coal Mining Land Conservation and Reclamation Act (State Act), and these revisions were approved by OSM on November 21, 1994 (59 FR 59918). The Illinois SOAP regulations that contain revised provisions substantively identical to the counterpart Federal regulations are noted in finding B.1., and those that contain revised provisions that are not substantively identical to the counterpart Federal regulations are discussed below.

a. Section 1795.1 Scope and Purpose

Illinois proposed to amend the purpose statement at subsection (b) to reference the new and enhanced technical permitting services that can be provided to eligible operators under its SOAP program. Although the purpose statement in the counterpart Federal regulation at 30 CFR 795.1 was not changed to reflect these new and enhanced technical permitting services, the Federal regulation at 30 CFR 795.9(b) does list the specific technical services authorized for the SOAP by the Energy Policy Act of 1992. Therefore, the Director finds that the revised purpose statement at 62 IAC 1795.1 is no less effective than the counterpart Federal regulation purpose statement at 30 CFR 795.1.

b. Section 1795.9 Program Services and Data Requirements

At 62 IAC 1795.9(b)(6), Illinois proposed substantively identical language to that contained in the counterpart Federal regulation at 30 CFR 795.9(b)(6), including the listing of its counterpart regulation citations at 62 IAC 1780.16 and 1784.21, but also authorized the collection of information and production of plans for the information required under its regulations at 62 IAC 1779.19 and 1783.19. Sections 1779.19 for surface mines and 1783.19 for underground mines require a permit application to contain a map or aerial photograph that delineates existing vegetative types and a description of the plant communities within the proposed permit areas that include sufficient adjacent areas to allow evaluation of vegetation as important habitat for fish and wildlife for those species of fish and wildlife identified under 62 IAC 1780.16 and 1784.21, respectively. The Federal regulation at 30 CFR 795.9(b)(6) authorizes the collection of site-specific resources information and production of protection and enhancement plans for fish and wildlife habitats required by 30 CFR 780.16 and 784.21 and information and plans for any other environmental values required by the regulatory authority under SMCRA.

Since the counterpart Federal regulation at 30 CFR 795.9(b)(6) allows a regulatory authority to authorize assistance for the collection of information and production of plans for any other environmental value required under SMCRA, the Director finds the revised provisions of 62 IAC 1795.9(b)(6) are no less effective than the Federal regulation provisions.

c. Section 1795.12 Applicant Liability

At 62 IAC 1795.12(a)(3), Illinois proposed language which is substantively identical to the language in the Federal regulation at 30 CFR 795.12(a)(3) with the following exceptions. Illinois is requiring reimbursement if the "original permittee's and transferee's" total actual and attributed production exceeds 300,000 tons during the specified 12-month period, while the Federal regulation requires reimbursement if the "transferee's" total actual and attributed production exceeds 300,000 tons during the specified 12-month period. Illinois further clarified its requirement by proposing the following additional language. "If the permit is transferred during the twelve (12) month period immediately following the permit issuance date, the determination of adherence to the twelve (12) month-300,000 tons limit shall be performed by combining the actual and attributed production of both parties for the twelve (12) month period immediately following the date of original permit issuance." Both the Illinois and Federal regulations contain the provision that holds the applicant and its successor jointly and severally obligated to reimburse the regulatory authority. The Director finds that since the attributed tonnage in Illinois' proposed revision does not exceed the 300,000 ton limit for the same time period specified in the Federal regulation, the revised regulation at 62 IAC 1795.12(a)(3) is no less effective than the counterpart Federal regulation.

At 62 IAC 1795.12(b), Illinois proposed to delete its definition of good faith. There is no Federal counterpart to this definition. Therefore, the Director finds this deletion is not inconsistent with the Federal regulations.

13. 62 IAC 1800 Bonding and Insurance Requirements for Surface Coal Mining and Reclamation Operations

o. Section 1800.5 Definitions

Illinois proposed to revise subsection (b)(4) to allow acceptance of irrevocable letters of credit from banks organized or authorized in other states and from banks organized or authorized in the United States by national charter rather than from only those organized or authorized to transact business in Illinois. Illinois is requiring a confirming bank be designated with an office in Illinois that is authorized to accept, negotiate, and pay the letter upon presentment in Illinois if the bank does not have an office for collection in Illinois. This is consistent with the Federal regulation at 30 CFR 800.5(b)(4) which requires the banks to be organized or authorized to transact business in the United States. Therefore, the Director finds the revised regulation at 62 IAC 1800.5(b)(4) is no less effective than the counterpart Federal regulation.

b. Section 1800.20 Surety Bonds

Illinois is proposing to remove subsections (b)(2) through (b)(5), which contained surety bond conditions. The counterpart Federal regulation at 30 CFR 800.20(b) does not contain the provisions proposed for removal. Therefore, the Director finds the removal of these provisions is not inconsistent with the Federal regulations.

c. Section 1800.21 Collateral Bonds

Illinois proposed to revise subsection (b)(1) to clarify that irrevocable letters of credit may be issued by banks organized or authorized to do business in Illinois, in another state of the United States or in the United States by national charter. Illinois is requiring a confirming bank be designated with an office in Illinois that is authorized to accept, negotiate, and pay the letter upon presentment in Illinois if the issuing bank does not have an office for collection in Illinois. This is consistent with the Federal regulation at 30 CFR 800.21(b)(1) which requires the banks issuing letters of credit to be organized or authorized to transact business in the United States. Therefore, the Director finds the revised regulation at 62 IAC 1800.21(b)(1) is no less effective than the counterpart Federal regulation.

14. 62 IAC 1816 and 62 IAC 1817 Permanent Program Performance Standards for Surface and Underground Mining Activities

The Illinois permanent program performance standard regulations for surface mining activities at 62 IAC 1816 and underground mining activities at 62 IAC 1817 that contain revised provisions substantively identical to the counterpart Federal regulations are noted in finding B.1., and those that contain revised provisions that are not substantively identical to the counterpart Federal regulations are discussed below. Since most of the surface mining and underground mining regulations are identical, the revisions are being combined for discussion purposes, unless otherwise noted.

a. Sections 1816.22(b) and 1817.22(b) Topsoil and Subsoil: Substitutes and Supplements

Illinois is proposing to remove subsection (b)(2) to eliminate the requirement that topsoil plans for substitutes or supplements be considered a significant revision unless specified circumstances apply. Existing subsection (b)(1) is redesignated subsection (b) because of the removal. The counterpart Federal regulations at 30 CFR 816.22(b) and 817.22(b) do not contain the removed language, and the revised provisions in 62 IAC 1816.22(b) and 1817.22(b) are substantively identical to these Federal counterparts. Therefore, the Director finds the removal of subsection (b)(2) will not render Illinois' regulations at 62 IAC 1816.22(b) and 1817.22(b) less effective than the Federal counterpart regulations.

b. Sections 1816.41(c) and 1817.41(c) Hydrologic Balance Protection: Ground Water Monitoring

At 62 IAC 1816.41(c)(2) and 1817.41(c)(2), Illinois proposed to revise subsection (c)(2) by specifying that the ground water monitoring reports, that are required to be submitted every three months, shall be submitted by the first day of the second month following the reporting period, unless the Department specifies an alternative reporting schedule. The Federal counterpart regulations at 30 CFR 816.41(c)(2) and 817.41(c)(2) require reports to be submitted every three months or more frequently as prescribed by the regulatory authority without specifying exact reporting schedules. Since Illinois has retained its requirement that ground water monitoring data be submitted every three months or more frequently if necessary, the Director finds the addition of a specific reporting schedule will not render the Illinois regulations at 62 IAC 1816.41(c)(2) and 1817.41(c)(2) less effective than the counterpart Federal regulations.

c. Section 1816.41(e) and 1817.41(e) Hydrologic Balance Protection: Surface Water Monitoring

Illinois proposed to revise subsection (e)(2) by removing the requirement to send NPDES reports to the Department concurrently with those sent to the Illinois EPA and adding the requirement that NPDES reports are to be sent to the Department by the first day of the second month following the reporting period. The Federal counterpart regulations at 30 CFR 816.41(e)(2) and 817.41(e)(2) require surface water monitoring reports to be submitted

every three months or more frequently as prescribed by the regulatory authority without specifying exact reporting schedules. Since Illinois has retained its requirement that surface water monitoring data be submitted every three months or more frequently if necessary, the Director finds the addition of a specific reporting schedule for submitting Illinois' required NPDES report will not render the Illinois regulations at 62 IAC 1816.41(e)(2) and 1817.41(e)(2) less effective than the counterpart Federal regulations.

d. Sections 1816.46(e) and 1817.46(e) Hydrologic Balance: Siltation Structures: Exemptions

Illinois proposed to revise the language in subsection (e) and incorporate the language from existing subsection (e)(1) to read as follows: "Exemptions to the requirements to pass all drainage from disturbed areas through a siltation structure may be granted if the disturbed drainage area within the total disturbed area is small . . ." Illinois added an additional exemption provision at new subsection (e)(1) that will allow the use of the alternate sediment control measures described in §§ 1816.45(b) and 1817.45(b) instead of siltation structures in instances where the disturbed drainage area within the total disturbed area is small and the permittee demonstrates that siltation structures are not necessary for drainage to meet the effluent limitations and water quality standards for the receiving waters. Sections 1816.45 for surface mining activities and 1817.45 for underground mining activities require that sediment control measures be designed, constructed, and maintained using the best technology currently available (BTCA). Furthermore, Illinois stated in the comment section of its revised amendment submittal dated November 1, 1995 (Administrative Record No. IL–1663), that "the Department will require that any alternative sediment control measures be shown to be the best technology currently available."

The Federal regulations do not contain a counterpart to the proposed exemption at 30 CFR 816.46(e)(1) and 817.46(e)(1). However, the Federal regulations at 30 CFR 816.45(a)(1) and 817.45(a)(1) require that BTCA be used to "prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area." Also, the Federal regulations at 30 CFR 816.46(b)(2) and 817.46(b)(2) which required all surface drainage from a disturbed area be passed through a siltation structure were remanded by the District Court in 1985 in *In re: Permanent Surface Mining Regulation Litigation (III)*, 620 F. Suppl. 1519 (D.D.C. 1985). Subsequently, OSM suspended these rules on November 20, 1986 (51 FR 41957). The effect of this suspension is that State regulatory authorities may determine on a case by case basis what is BTCA rather than requiring, in every situation, that drainage be passed through siltation structures. The use of BTCA is required by sections 515(b)(10)(B) and 516(b)(9)(B) of SMCRA. In the preamble of the 1986 suspension notice (51 FR 41957–41958), OSM stated that "in situations where sediment control measures other than siltation structures are determined as BTCA, the performance standards of §§ 816.45 and 817.45 will control." The referenced sections are the Federal counterparts to Illinois regulations at 62 IAC 1816.45 and 1817.45. Therefore, since Illinois requires alternate sediment control measures be designed, constructed, and maintained using BTCA, the Director finds the proposed revisions will not render 62 IAC 1816.46(e) and 1817.46(e) less effective than the Federal regulations for sediment control for small disturbed drainage areas.

e. Sections 1816.116(a)(2)(B) and 1817.116(a)(2)(B) Revegetation Standards for Success: Success of Revegetation

The State Act was amended at 225 ILCS 720/3.15 to change the revegetation responsibility period from five years to two years for areas eligible for remining consistent with section 515(b)(20)(B) of SMCRA. At sections 1816.116(a)(2)(B) for surface mining and 1817.116(a)(2)(B) for underground mining, Illinois proposed to implement this statutory provision by revising the first sentence of each section to read: "The period of extended responsibility shall continue for a period of not less than five (5) full years, except that on lands eligible for remining, the period of responsibility (until September 30, 2004) shall be two (2) full years." The counterpart Federal regulations at 30 CFR 816.116(c)(2) and 817.116(c)(2), as amended on November 27, 1995 (60 FR 58480), require the period of responsibility for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof, to continue for a period of not less than two full years. The amended Federal regulations also require that "to the extent that the success standards are established by paragraph (b)(5) of this section, the lands shall equal or exceed the standards during the growing season of the last year of the responsibility period." Illinois' counterparts to 30 CFR 816.116(b)(5) and 817.116(b)(5) at sections 1816.116 (a)(3)(A) and 1817.116(a)(3)(A) require remined areas to meet the specified standards in those sections during the last year of the responsibility period. Therefore, the Director finds that the revised regulations at 62 IAC 1816.116(a)(2)(B) and 1817.116(a)(2)(B) are no less effective than the counterpart Federal regulations.

f. Sections 1816.116(a)(2)(F) and 1817.116(a)(2)(F) Revegetation Standards for Success: Augmentation

(1) Existing provisions at subsection (a)(2)(F)(i), (ii), and (iii) concerning augmentation requirements for high capability land areas are proposed to be deleted. Illinois' provisions for high capability lands, including the provisions proposed for deletion, have no direct Federal counterparts. Therefore, the Director finds the deletion of these provisions is not inconsistent with the Federal regulations concerning revegetation success standards.

(2) Illinois is proposing to add the following augmentation provision for pasture, hayland, and grazing land at new subsection (a)(2)(F)(i): "The five (5) year period of responsibility shall not recommence after deep tillage on areas where the operator has met the revegetation success standards of subsection (a)(3)(E) below." Subsection (a)(3)(E) pertains to the revegatation success standards for pasture, hayland, and grazing land areas. Illinois' proposed provision would allow augmentation, in the form of deep tillage, without restarting the period of extended responsibility for revegetation success and bond liability. The Federal regulations at 30 CFR 816.116(c)(1) and 817.116(c)(1) do not allow augumentation without restarting the period of extended responsibility. Although the Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4) allow regulatory authorities to approve selective husbandry practices without extending the period of responsibility for revegetation success and bond liability, they must first obtain approval for the practices from OSM. The regulatory authorities must provide proof that the proposed practices are normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed areas. Illinois has neither proposed nor obtained approval for use of deep tillage as a normal husbandry practice in Illinois. Therefore, the Director finds the proposed provisions at 62 IAC 1816.116(a)(2)(F)(i) and 1817.116(a)(2)(F)(i) are inconsistent with and less effective than the Federal regulation requirements at 30 CFR 816.116(c)(1) and 817.116(c)(1), and he is not approving them. Furthermore, he is requiring Illinois to remove 62 IAC 1816.116(a)(2)(F)(i) and 1817.116(a)(2)(F)(i) from its program.

(3) Illinois proposed to add augmentation provisions for wetlands at new subsection (a)(2)(F)(ii). A portion of the proposed provisions identify and clarify those actions which constitute augmentative practices. Augmentative practices include significant alterations to the size or character of the watershed, pumping used to maintain water levels, and applying neutralizing agents, chemical treatments or fertilizers to the wetland area. The Director finds that the augmented practices proposed by Illinois that would restart the period of extended responsibility for successful revegetation and bond liability on wetlands are not inconsistent with the Federal regulations at 30 CFR 816.116(c)(1) and 817.116(c)(1).

The proposed provisions also identify and clarify those actions which constitute non-augmentative (normal husbandry) practices and management techniques for wetland areas. Non-augmentative practices and management techniques include normal agricultural husbandry practices, such as routine liming and fertilization, and wetlands managed as wildlife food plot areas and water management using permanent water control structures.

On September 3, 1993 (Administrative Record No. IL–1219), OSM approved Illinois' designation of the agricultural practices described in the Illinois Agronomy Handbook (Administrative Record No. IL–1192A) and those practices which are a part of an approved conservation plan subject to the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 1421 *et seq.*) as normal agricultural husbandry practices for the State of Illinois. The approved practices include normal routine liming and fertilization of lands used for the production of food and/or forage. Therefore, in the State of Illinois, these approved agricultural practices would be used for the management of wildlife food plot areas.

Illinois in its submission dated February 3, 1995 (Administrative Record No. IL–1615), addresses the use of permanent water control structures as a normal husbandry practice to manage water levels in wetlands. Illinois supports this designation by citing two publications which indicate that this type of water level management is necessary to create suitable aerobic/anaerobic conditions for the germination of hyrophytic plants.

As shown above, the information and literature contained in the Illinois administrative record provide adequate documentation that agricultural techniques, such as routine liming and fertilization, are normal husbandry practices in the State of Illinois for lands used in the production of food and/or forage and that the use of permanent water control structures for managing the water levels of wetlands is a normal husbandry practice. These proposed practices should assist in ensuring the effectiveness of fish and wildlife management areas by providing regulation and guidelines for the enhancement of wetland and riparian vegetation areas as required by 30 CFR 816.97(f) and 817.97(f) of the Federal regulations. The Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4) allow the regulatory authority to approve selective husbandry practices with prior approval from OSM. Therefore, the Director finds the proposed regulations at new 62 IAC 1816.116(a)(2)(f)(ii) and 1817.116(a)(2)(F)(ii) are no less effective than the Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4).

g. Sections 1816.116(a)(3)(E) and 1817.116(a)(3)(E) Ground Cover and Production for Pasture, Hayland, and Grazing Land

In response to the required amendment at 30 CFR 913.16(s), subsection (a)(3)(E) is proposed to be amended to clarify that pasture and/or hayland or grazing land on non-previously disturbed areas are subject to a 90 percent ground cover standard for a minimum of any two years of a ten (10) year period prior to the release of the performance bond, except the first year of the five (5) year extended responsibility period. The counterpart Federal regulations at 30 CFR 816.116(b)(1) and 817.116(b)(1) require that for areas developed for use as grazing land or pasture land, ground cover and production of living plants on the revegetated area meet certain success standards approved by the regulatory authority. With Illinois' proposed revision, 62 IAC 1816.116(a)(3)(E) and 1817.116(a)(3)(E) now contain both ground cover and production success standards for pasture, hayland, and grazing land. Therefore, the Director finds the proposed regulation provisions pertaining to production and ground cover success standards for pasture, hayland, and grazing land are no less effective than the counterpart Federal regulations, and he is removing the required amendment at 30 CFR 913.16(s).

Illinois proposed to revise subsection (a)(3)(E) by removing the provision that limited the substitution of corn production for hay production on high capability pasture land to one attempt. The Federal regulations at 30 CFR 816.116 and 817.116 do not contain specific standards for high capability pasture land. However, the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require that standards for success include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters for production. The Illinois administrative record contains sufficient proof that high capability land is suitable for cropland and that crop/hay rotations are common practices in cropland areas surrounding mines (Administrative Record Nos. IL–1164 and IL–1192A). Therefore, since corn production standards are generally accepted to be more difficult to meet than hay production standards, the Director finds that the removal of this limitation provision will not render 62 IAC 1816.116(a)(3)(E) and 1817.116(a)(3)(E) less effective than the Federal regulations at 30 CFR 816.116(b)(1) and 817.116(b)(1).

Illinois also proposed to revise subsection (a)(3)(E) to allow one year substitution of crops in lieu of hay on limited capability land, provided the Department determines that the practice is proper management in accordance with its regulations at 62 IAC 1816.116(a)(2)(C) and 1817.116(a)(2)(C). The Illinois regulations at subsection (a)(2)(C) contain provisions pertaining to normal husbandry practices. In the amendment submittal dated February 3, 1995 (Administrative Record No. IL–1615), Illinois noted that it has required limited capability land to be returned to a land use other than cropland as a normal practice. However, Illinois explained that some operators have reclaimed limited capability land to a higher quality when all prime and high capability land acreage obligations have been met. The capabilities described in the Illinois program include limited capability (non-cropland capable land), high capability (cropland capable land), and prime farmland (cropland capable land). Therefore, the Director interprets the reference Illinois made to "a higher quality" to mean that the limited capability land had been reclaimed to either prime farmland or high capability standards. To the extend that Illinois will consider the quality of the soils when making its determination and will restrict its approval to limited capability

lands that are reclaimed to a higher quality, the Director finds the proposed provision does not render the Illinois regulations less effective than the Federal regulations at 30 CFR 816.116(b)(1) and 817.116(b)(1).

h. Section 1816.116(a)(3)(F) and 1817.116(a)(3)(F) Revegetation Success Standards for Non-Contiguous Areas Less Than or Equal to Four Acres

Illinois proposes to add new subsection (a)(3)(F) as follows: "Non-contiguous areas less than or equal to four acres which were disturbed from activities such as, but not limited to, signs, boreholes, power poles, stockpiles and substations shall be considered successfully revegetated if the operator can demonstrate that the soil disturbance was minor, i.e., the majority of the subsoil remains in place, the soil has been returned to its original capability and the area is supporting its approved postmining land use at the end of the responsibility period."

Although OSM recognizes the practicality to excluding the need to test for revegetation success for small areas such as signs, boreholes, powerpoles, and other small and minimally disturbed areas, this proposal cannot be approved. The provision does not limit the type of disturbance that could occur on such areas. It does not clarify the type of demonstration the operator is to make at the end of the responsibility period to prove that the soil has been returned to its original capability and to prove that the postmining land use has been achieved. Illinois' proposed revision would allow bond release without adequate proof of productivity on disturbed areas of four acres or less.

In order for OSM to approve this type of proposal, Illinois would need to provide additional regulatory language which would more closely correlate the maximum acreage to the types of activities which would qualify for the exemption. Illinois would also have to provide additional regulatory language as to what would constitute a satisfactory demonstration of minimum disturbance, achievement of original capability, and achievement of postmining land use. Absent this information, the Director finds that the proposed regulations at 62 IAC 1816.116(a)(3)(F) and 1817.116(a)(3)(F) are less effective than the Federal regulations at 30 CFR 816.116(a) and 817.116(a), and he is not approving them. Furthermore, he is requiring Illinois to remove these regulations from its program.

i. Section 1816.116(a)(4)(A)(ii) Use of the Agricultural Lands Productivity Formula, Section 1816.Appendix; Fields

Illinois proposed to add the following provision at subsection (a)(4)(A)(ii): "The Department may approve a field to represent non-contiguous areas less than or equal to four acres of the same capability if it determines that the field is representative of reclamation of such areas. The small isolated areas shall be managed and vegetated in the same manner as the representative field."

This proposal would allow the approval of the success of revegetation for non-contiguous disturbed areas based on the testing of a representative field of the same soil capability that had also been disturbed. The current Illinois program requires that fields of four acres or less be sampled in their entirety with yields determined by harvest weight. The Federal regulations at 30 CFR 816/817.116(a)(1) require that revegetation standards for success and statistically valid sampling techniques for measuring success be utilized by the regulatory authority and that the sampling techniques for measuring success use a 90 percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha level). The Federal regulation at 30 CFR 823.15(b)(2) requires that prime farmland soil productivity be measured on a representative sample or on all of the mined and reclaimed prime farmland area using the reference crop determined under paragraph (b)(6) of this section. It also requires that a statistically valid sampling techniques at a 90 percent or greater confidence level be used as approved by the regulatory authority in consultation with the U.S. Natural Resources Conservation Service.

Illinois has not provided sufficient regulatory language as to how the determination that a field is representative of the small areas to be exempt from testing would be made and what information would be needed for a satisfactory demonstration of representation. Therefore, the Director finds that the proposed provisions at 62 IAC 1816.116(a)(4)(A)(ii) are less effective than the Federal regulations at 30 CFR 823.15, 816.116, and 817.116, and he is not approving them. Furthermore, he is requiring Illinois to remove these regulations from its program.

j. Section 1816.116(a)(4)(D) Use of the Agriculturol Lands Productivity Formula, Section 1816.Appendix; Crops

Illinois is proposing to add oat crops to the list of crops that may be grown on prime farmland and other cropland areas to prove productivity. The Federal regulations at 30 CFR 823.15(b)(6) pertaining to prime farmland requires reference crops for proving soil productively be selected from the crops most commonly produced on the surrounding prime farmland. The Federal regulations at 30 CFR 816.116(a) and 817.116(a) pertaining to other cropland areas require the use of criteria representative of unmined lands in the area being reclaimed. Proof exists in the Illinois administrative record that oats is a commonly grown crop in Illinois and that it is one of the crops that is rotated with corn on unmined cropland areas. This use is described in a section of the Illinois Agronomy Handbook concerning crop rotations. Therefore, the Director finds the revised regulation requirement is not inconsistent with the Federal regulations.

k. Sections 1816.116(a)(5) and 1817.116(a)(5) Wetland Revegetation Success Standards

Illinois proposed to add provisions at subsection (a)(5)(A) that specify the criteria and sampling procedures in the U.S. Army Corps of Engineers Wetlands Delineation Manual which will be used to determine wetland revegetation success. New subsection (a)(5)(B) further requires that areas designed to support vegetation in the approved plan have a minimum areal coverage of 30 percent. The testing procedures in Sections 1816.117(d) (1) through (3) and 1817.117(d) (1) through (3) shall be used to evaluate the extent of cover in conjunction with other specified procedures. In OSM's letter to the State dated April 28, 1995 (Administrative Record No. IL–1649), Illinois was asked to provide a statement and technical support which justifies why a minimum areal coverage of 30 percent for wetlands will be consistent with the revegetation standards for ground cover for areas to be developed for fish and wildlife habitat at 30 CFR 816.116(a)(3) and 817.116(a)(3). As technical support for the 30 percent standard, Illinois provided a copy of a Michigan State University study (Journal of Wildlife Management 45(1):1–15) that compared dabbling duck and aquatic macroinvertebrate responses to manipulated wetlands under 30:70, 50:50, and 70:30 percent of cover to percent of water treatments and a U.S. Fish and Wildlife Service, Biological Services Program, publication on the qualitative values of wetlands with various degrees of emergent vegetation at the 20 percent to 70 percent levels (Administrative Record Nos. IL–1650B and IL–1653). Illinois provided a statement that indicated the Michigan State University study determined that the 50:50 treatment was the most desirable vegetative cover. However, with the recognition that the percent of vegetative cover increases with time as open water decreases during wetlands development, Illinois determined use of the 30:70 as a minimum standard would provide more incentive for the industry to create wetlands.

There are no direct counterpart Federal regulations at 30 CFR 816.116 and 817.116 for determining wetland revegetation success. However, OSM's internal policy and procedures for construction of wetlands to supplement and enhance fish and wildlife habitat as a postmining land use (Directives System No. TSR–14, Transmittal Number 828) provide that wetland areas must meet the Federal definition of a wetland as defined by the U.S. Army Corps of Engineers Wetlands Delineation Manual prior to bond release. Illinois' requirement that the wetland vegetation criteria in the U.S. Army Corps of Engineers Wetlands Delineation Manual be achieved as proof of productivity should assure that the wetland areas meet the Federal definition of a wetland as defined by the Corps. Therefore, the Director finds that 62 IAC 1816.116(a)(5) and 1817.116(a)(5) are no less effective than the Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3) for areas to be developed for fish and wildlife habitat.

l. Sections 1816.117(a)(1) and 1817.117(a)(1) Revegetation: Tree and Shrub Vegetation; Lands Eligible for Remining

Illinois proposed to revise subsection (a)(1) by requiring the period of responsibility (until September 30, 2004) be two full years for trees and shrubs on lands eligible for remining. Also, until September 30, 2004, trees and shrubs planted on lands eligible for remining need not have been in place for three years prior to bond release and shall not be counted in determining success during the same calendar year in which they were planted.

The counterpart Federal regulations at 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii) do not contain the proposed provisions. However, the Federal regulations at 30 CFR 816.116(c)(2)(ii) and 817.116(c)(2)(ii) were amended November 27, 1995 (60 FR 58480), to require a period of responsibility of two full years for lands eligible for remining included in permits issued before September 30, 2004, or any renewals thereof. This responsibility period requirement would apply to all applicable postmining land uses, including areas to be developed for fish and wildlife habitat. Also, a two year responsibility period effectively eliminates the requirement that trees and shrubs be left in place for three years. Therefore, the Director finds the Illinois regulations at 62 IAC 1816.117(a)(1) and 1871.117(a)(1), as revised, are no less effective than the counterpart Federal regulations.

m. Sections 1816.117(a)(3) and 1817.117(a)(3) Revegetation: Tree and Shrub Vegetation; Erosion Control Structures

Illinois proposed to amend subsection (a)(3) to clarify that erosion control structures, including pond embankments within an approved land use of fish and wildlife, forest, or recreation shall not require the planting of trees and shrubs. A herbaceous ground cover will be required, and the ground cover requirements of subsection (a)(2) are still applicable to erosion control structures. Illinois determined that tree and shrub growth on embankments is detrimental to their maintenance, and submitted an Illinois Department of Transportation (IDOT) booklet entitled "Guidelines and Forms for Inspection of Illinois Dams" to support this determination (Administrative Record No. IL–1617). The Director finds that prudent engineering practices dictate that large rooted plants should not be planted on erosion control structures because they can cause instability. Illinois has provided adequate support for its exemption of erosion control structures from the planting of trees and shrubs for the State of Illinois. Therefore, Illinois' proposed regulation provisions at 62 IAC 1816.117(a)(3) and 1817.117(a)(3) are not inconsistent with the Federal regulations at 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii).

n. Sections 1816.117(b) and 1817.117(b) Revegetation: Tree and shrub Vegetation; Woody Plants

Illinois proposed to revise subsection (b) to clarify that planting arrangements such as hedgerows, border plantings, clump plantings, shelterbelts, and open herbaceous areas which increase diversity and edge effect within wildlife areas may be approved by the Department on a case-by-case basis prior to planting such areas. The Federal regulations at 30 CFR 816.116(b)(3)(i) and 817.116(b)(3)(i) require minimum stocking and planting arrangements be specified by the regulatory authority on the basis of local and regional conditions. Therefore, the Director finds that the proposed revision will not render Illinois' regulations at 62 IAC 1816.117(b) and 1817.117(b) inconsistent with the Federal regulations.

o. Sections 1816.117(c)(1),(c)(7) and 1817.117(c)(1),(c)(7) Revegetation: Tree and Shrub Vegetation; Sampling Procedure

Illinois proposed to revise subsection (c)(1) to establish a field system for trees and shrubs similar to that already adopted for agricultural areas by replacing the word "area" with the word "field." This subsection is also revised by adding a requirement that once field boundaries are established in a submittal, the boundaries shall not be changed unless the Department approves a request in accordance with its permit revision regulations at 62 IAC 1774.13. At subsection (c)(7), Illinois proposed to remove the reference to "Illinois Department of Conservation" and change the word "conduct" to "administer." The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that the regulatory authority select statistically valid sampling techniques for measuring success and include them in its program. The Director finds that the revised provisions at 62 IAC 1816.117 (c)(1) and (c)(7) 1817.117 (c)(1) and (c)(7) will not render Illinois' previously approved sampling procedures for measuring tree and shrub vegetation less effective than the Federal regulations.

15. 62IAC 1817.121(c)(3) Subsidence Control; Water Replacement

Illinois proposes to add new subsection (c)(3) to require operators to promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation operations permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations.

The proposed language is consistent with section 720(a)(2) of SMCRA, which was added October 24, 1992, by the Energy Policy Act. It is also consistent with the counterpart Federal regulation provision at 30 CFR 817.41(j), with one exception. The Federal provision specifies "underground mining activities conducted after October 24, 1992." Whereas the Illinois provision will apply to activities conducted after adoption. However, by letter dated April 25, 1995 (Administrative Record No. IL–1533), Illinois indicated that its current regulations codified at 62 IAC 1817.121(c)(2) require repair or

compensation for subsidence-related material damage, including damage from activities conducted after October 24, 1992, to any structures or facilities, and this would include repair of or compensation for damage to water delivery systems such as well, cisterns, and water lines. Furthermore, on July 28, 1995 (60 FR 38677), OSM announced its decision on initial enforcement of the water replacement requirements for Illinois for activities conducted after October 24, 1992. It was decided that initial enforcement of the water replacement requirements in Illinois is not reasonably likely to be required and that implementation will be accomplished through the State program amendment process. Therefore, the Director finds 62 IAC 1817.121(c)(3) is no less effective than the Federal counterpart provision for subsidence-related water replacement.

However, it should be noted that the July 28, 1995, decision addressed only the initial enforcement schemes for water replacement (30 CFR 817.41(j)) and subsidence damage repair/compensation (30 CFR 817.121(c)(2)) provided for under section 720 of SMCRA, as amended by the Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (1992). In addition to the basic water supply replacement requirement and the related subsidence damage repair requirement, the implementing Federal regulations that became effective March 31, 1995, contain other related supporting and permitting provisions. OSM anticipates that these other requirements will become effective in the same way as other revisions to the permanent program regulations; i.e., in primacy states such as Illinois, upon adoption of counterpart State regulatory program provisions (60 FR 16722). This process will be initiated separately by OSM under the provisions of 30 CFR 732.17(d).

16. 62 IAC 1816.151 and 1817.151 Primary Roads

At subsection (a), Illinois proposes to specify that the certification of the construction or reconstruction of primary roads shall be submitted within 30 days after completion of construction. Illinois defines "completion of construction" to mean that the road is being used for its intended purpose as determined by the Department. The counterpart Federal regulations at 30 CFR 816.151 and 817.151 do not set a time for submittal of primary road construction certifications or define "completion of construction." However, the Director finds that the proposed revisions to 62 IAC 1816.151(a) and 1817.151(a) clarify the existing provisions and do not render the Illinois regulations less effective than the Federal counterparts.

17. 62 IAC 1816.190 (a), (b) and (c) and 1817.190 (a), (b) and (c) Affected Acreage Map

At subsection (a), Illinois proposed to require submittal of reports and maps of affected areas to the Department only by removing the phrase "and to the county clerk." At subsection (b), Illinois is requiring the permittee to submit two copies of the reports and maps, plus an additional copy for each county in which the permit is located, which the Department will then forward to the county clerks. Illinois is also requiring that one of the copies contain the original signature of a company official. Also, statutory citations are being updated in subsections (b) and (c). There are no direct counterpart Federal regulations pertaining to an annual submittal of affected acreage reports and maps. However, the Director finds the proposed revisions to 62 IAC 1816.190 (a), (b), and (c) and 1817.190 (a), (b), and (c) would clarify and simplify the administration of Illinois' requirements for these annual submittals and would not render the Illinois regulations inconsistent with SMCRA or the Federal regulations.

18. 62 IAC 1816. Appendix A Agricultural Lands Productivity Formula—Permit Specifics Yield Standard

a. Illinois proposed revisions to the two existing paragraphs and reorganized them into subsections (a) and (b), respectively. Language is proposed at redesignated subsection (a) to clarify that yield standards must be calculated for each capability class in the disturbed area in the pit and that high capability and limited capability lands will be calculated in a manner similar to prime farmland. At redesignated subsections (a) and (b), Illinois proposed to replace the terms "permit area and/or mining permit area" with the term "pit."

Illinois has proposed to substitute the term "pit" for "permit area" in determining specific crop yield standards. The change proposed would alter the specific land area that would be included in the computation of the target yield utilizing the Illinois Agricultural Lands Productivity Formula (Illinois Productivity Formula). The counterpart Federal regulation for the establishment of yield standards on prime farmland is 30 CFR 823.15(b)(5). It requires that restoration of soil productivity shall be considered achieved when the average yield during the measurement period equals or exceeds the average yield of the reference crop established for the same period for nonmined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices.

OSM initially had a major concern with the proposed revisions pertaining to how the "pit" area was to be utilized in calculations of the Illinois Productivity Formula. This concern was raised in public meetings held on May 31 and August 16, 1995. During these meetings representatives of Illinois explained how the area of the "pit" would be determined in a variety of circumstances. During the August 16, 1995, public meeting, Illinois stated that it would submit further clarification to OSM. Based on the State's clarification in the public meetings held on May 31 and August 16, 1995 (Administrative Record Nos. IL–1654 and IL–1662), and the subsequent submittal to OSM of additional clarification, including maps defining pit areas (Administrative Record No. IL–1663), the Director finds that the proposed revisions are no less effective than the Federal regulations and is approving the revisions.

This approval is based upon Illinois defining the use of the term "pit" in the following circumstances:

(1) Single pit within a single permit—The pit area is the same as the permit area.

(2) Multiple pits within a single permit—Each pit area will be clearly marked on the permit map that has been subjected to public review prior to approval.

(3) Single pit within several permits that have been consolidated into a single permit—The pit area will be the same as the area of the consolidated permit.

(4) Multiple pits within several permits that are consolidated into one permit—Each pit area will be clearly marked on the consolidated permit map that has been subjected to public review prior to approval.

In all circumstances, Illinois must assure that the crop yield standard is representative of the average yield of the reference crop established for the same period for nonmined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices.

b. New subsection (c) was added and reads as follows:

After mining operations have ceased, the Department shall recalculate the yield standards for the pit based solely on the soils which were disturbed. Recalculated targets shall be applicable to all areas tested for productivity subsequent to the recalculation. Approved significant revisions after permanent cessation of mining shall cause the targets to be recalculated and applied to productivity fields tested after the recalculation.

This proposal provides that after mining has ceased in any pit, the yield standard would be recalculated for the pit utilizing only those soils actually disturbed. These recalculated yield standards would be applicable only to those areas not already tested. Again, the standard to which OSM must compare the change is the Federal requirement that the yield standard be developed from lands representative of the lands mined and reclaimed. This proposal should improve the accuracy of the calculated yield standard as it represents the soils actually disturbed by mining. Therefore, the Director finds that the proposed revisions are no less effective than the Federal regulations.

19. 62 IAC 1816. Appendix A Agricultural Lands Productivity Formula; Sampling Method

Illinois proposed a revision to the sampling method section of its productivity formula to require the Department and the Illinois Department of Agriculture to jointly request the operator to verify yields by harvest weight for specified reasons, including but not limited to verification of random sampling results and availability of sample enumerators. Prior to this revision, only the Department could make this request. However, as referenced in other sections, the Illinois Department of Agriculture works with the Department in implementing the Illinois Productivity Formula. Therefore, the Director finds the revision is not inconsistent with the Federal regulations.

20. 62 IAC 1825.14 High Capability Lands: Soil Replacement

Illinois added new subsection (e)(1)(E) to specify that excessive compaction is also indicated by other diagnostic methods approved by the Department, in consultation with the Illinois Department of Agriculture and the U.S. Department of Agriculture, Natural Resources Conservation Service. At subsection (e)(2), Illinois is proposing an additional method for the Department to evaluate excessive compaction. The permittee will have a choice between the existing provision and the new provision which specifies that compaction alleviation is required unless the permittee can demonstrate that the requirements of 62 IAC 1816.116 or 1816.117, as applicable, have been met without compaction alleviation on areas reclaimed in a similar manner. A second new provision in subsection (e)(2) requires the Department to retain sufficient bond at the time of Phase II bond release if it determines that compaction alleviation may be needed to achieve the revegetation success requirements.

There are no direct counterpart Federal regulations to Illinois' regulations for high capability lands at 62 IAC 1825. However, the Director finds that the revisions proposed at 62 IAC 1825.14(e) pertaining to soil compaction alleviation do not adversely affect other aspects of the Illinois program and are not inconsistent with the topsoil and subsoil provisions of the Federal regulations at 30 CFR 816.22 and 817.22.

21. 62 IAC 1840.17 Review of Decision Not to Inspect or Enforce

Illinois proposed to revise subsection (a) by allowing affected persons to request from the "Director or his or her designee" a review of a decision not to inspect or enforce. The Director finds that the proposed language at 62 IAC 1840.17(a) is consistent with the counterpart Federal regulation language at 30 CFR 842.15(a).

Illinois also proposed to revise subsection (a) by adding a new provision that requires the request for review to be submitted within 30 days from the date the citizen is notified of the decision and that specifies failure to file a request for informal review within this time period would result in a waiver of the right to such review. Although the counterpart Federal regulation at 30 CFR 842.15(a) does not include a deadline for filing a review request, the Illinois requirement at 62 IAC 1840.17(a) that such requests be filed within 30 days of the State's decision is not unreasonable. Using this approach, Illinois can ensure administrative efficiency by setting a firm deadline for appeals, without undue prejudice to the interest of citizens who may be adversely affected by the decisions not to inspect or enforce. Illinois affirmed that persons will be notified of this requirement via certified mail as part of the decision documents. Therefore, the Director finds the State's requirement that requests be filed within a specified time period ensures administrative efficiency in a manner that is not inconsistent with SMCRA or the Federal regulations. However, this approval is made with the understanding that notification of the 30-day time period within which to request, or else waive, the right to informal review will be included in the notice of decision not to inspect or enforce and that failure to include the notification will not limit the right for review.

Subsection (b) is proposed to be amended by changing the reviewing official for reviews of the authorized representative's decision not to inspect or enforce from the "Supervisor of the Land Reclamation Division" to the "Director or his or her designee." This change is in line with a recent reorganization of the Illinois regulatory authority into a Department of Natural Resources, and it elevates the review level to the Director of the Department of Natural Resources. The Director finds the revised language at 62 IAC 1840.17(b) is consistent with the counterpart Federal regulation language at 30 CFR 842.15(b).

Subsection (c) is proposed to be amended to reference 62 IAC 1847.3 of the Illinois regulations for formal review, rather than Section 8.07 of the State Act. The Director finds that 62 IAC 1847.3 is the correct citation since this section contains the State's procedures for seeking administrative and judicial review of formal decisions not to inspect or enforce under 62 IAC 1840.17.

22. 62 IAC 1843.13 Suspension or Revocation of Permits

At existing subsections (a)(1), (a)(3) and (b) language was deleted in order to eliminate the mandatory determination that a pattern of violations exists under specified conditions and to eliminate an exception which allowed Illinois to decline to issue a show cause order if it determined that to issue the order would be "demonstrably unjust." Existing subsections (c), (d), (e), and (f) were redesignated as (b), (c), (d), and (e), respectively. The Director finds that the deletion of the mandatory determination and exception provision language at 62 IAC 1843.13 (a)(1), (a)(3), and (b) is consistent with changes made to the counterpart Federal regulations at 30 CFR 843.13 on August 16, 1982 (47 FR 35630).

23 62 IAC 1845.12 When Penalty Will Be Assessed

As required by 30 CFR 913.16(t), Illinois proposed to amend subsection (d) by adding language which assures that the Department will consider the factors set forth in Section 1845.13 in determining whether to assess a penalty below $1,100. Illinois also proposed to codify its long-standing policy of assessing a penalty when a violation is the permittee's second or more related violation within a 12-month period. The director finds that the proposed language is not inconsistent with the intent of the counterpart Federal

regulation at 30 CFR 845.12(c), and he is removing the required amendment at 30 CFR 913.16(t).

24. 62 IAC 1847 Administrative and Judicial Review

a. Section 1847.3 Hearings

(1) At subsection (a), Illinois is specifying that administrative review under this section also applies to decisions not to inspect or enforce under 62 IAC 1840.17, to decisions on minor underground mine facility permit applications pursuant to 62 IAC 1785.23, and to decisions on challenges to ownership or control links at 62 IAC 1773.24. The regulations at 62 IAC 1847.3 consolidate the procedures for most of the formal reviews provided for in the Illinois program. The proposed revision clarifies what additional portions of the Illinois program are covered under the administrative review procedures at 62 IAC 1847.3.

The Federal regulations provide for administrative hearings at 43 CFR 4.1360–1369 for permitting issues and at 43 CFR 4.1380–1387 for challenges to ownership or control links. The Federal regulations at 30 CFR 842.15 do not provide for a formal adjudicatory administrative hearing for decisions pertaining to review of decisions not to inspect or enforce, but do provide for a right of appeal under 43 CFR 4.1280–1286. The Director finds the regulations at 62 IAC 1847.3 are consistent with 43 CFR part 4 for purposes of administrative hearings on minor underground mine facility permit applications and challenges to ownership or control links. He also finds that allowing a formal adjudicatory administrative hearing for decisions pertaining to review of a decision not to inspect or enforce is not inconsistent with the Federal regulations at 30 CFR 842.15.

(2) Illinois is proposing revisions at subsections (f), (i), and (j) to clarify that the final decision of the Department in administrative review hearings held under 62 IAC 1847.3 is made by the Hearing Officer. At subsection (f), Illinois is replacing the word "Director's" with the word "final." At subsection (i), Illinois is changing the time period from 15 to 10 days for filing of written exceptions and responses and requiring exceptions to be filed with the hearing officer instead of the Director. At subsection (j), Illinois is specifying that if no exceptions are filed pursuant to the hearing officer's proposed decision, the decision becomes final within 10 days rather than 15 days. The revision also adds language which provides that the hearing officer can affirm or modify his proposed decision or remand and rehear the issue in response to any exceptions filed.

The Federal regulations relative to appeals of a variety of administrative decisions, including 30 CFR 775.11 for decision on permits, require that administrative hearings under Federal programs be governed by 43 CFR part 4, which requires requests for review be filed with the Office of Hearings and Appeals, U.S. Department of the Interior. An Administrative Law Judge is assigned by the Office of Hearings and Appeals and he or she issues a written decision. A petition for discretionary review of the written decision can then be filed with the Board of Land Appeals. States do not have the same hierarchy available to them and must attempt to create an appeal process which is as effective as that provided in the Federal regulations. The Federal regulations specify general adjudicatory provisions that States must include in their administrative review hearing procedures, but allow the States discretion in how to implement these provisions. This would include the determination of who shall make final administrative hearing decisions. Therefore, the Director finds that the designation of a hearing officer to make final administrative hearing decisions does not render the Illinois regulations less effective than the Federal regulations. The Federal regulations contain no comparable provisions to those being revised concerning filing of written exceptions to a hearing officer's decision, time limits for filing written exceptions and responses to exceptions, and time limits for issuance of a final administrative decision. However, the Director finds that these proposed revisions will not render the regulations at 62 IAC 1847.3 inconsistent with SMCRA or the Federal regulations.

(3) In response to a required amendment, Illinois proposed to revise 62 IAC 1847.3(1)(2) to specify that judicial review of an administrative review decision may be requested if the hearing officer or the Department fail to act within specified time limits. The Federal regulations at 30 CFR 775.13(a)(2) also require that judicial review be granted if the regulatory authority or the hearing officer for administrative review fail to act within applicable time limits. Therefore, the Director finds that Illinois' revised regulation is no less effective than the counterpart Federal regulation, and he is removing the required amendment at 30 CFR 913.16(u).

b. Section 1847.4 Citation Hearings

Illinois is proposing revisions at subsections (g), (j), and (k) to clarify that the final decision of the Department in administrative review hearings pertaining to citations is made by the Hearing Officer. At subsection (g), Illinois is replacing the word "Director's" with the word "final." At subsection (j), Illinois is proposing to change the time period from 15 to 10 days for filing of written exceptions and responses. Also, they are to be filed with the hearing officer instead of the Director. At subsection (k), Illinois is proposing to have the proposed decision become final in 10 days instead of 15 if no written exceptions are filed. Illinois is also proposing that the hearing officer instead of the Director issue the final administrative decision affirming or modifying or vacating the proposed decision if written exceptions are filed. These revisions are substantively identical to those proposed for 62 IAC 1847.3 (f), (i), and (j). Therefore, the Director is approving the proposed revisions at 62 IAC 1847.4 (g), (j), and (k) for the same reasons discussed in finding C.24.a.(2) for 62 IAC 1847.3 (f), (i), and (j).

c. Section 1847.5 Civil Penalty Assessment Hearings

Illinois is proposing revisions at subsections (j), (m), and (n) to clarify that the final decision of the Department in administrative review hearings pertaining to civil penalty assessments is made by the Hearing officer. At subsection (j), Illinois is changing the reference from the decision of the Director to the final decision. At subsection (m), Illinois is proposing to change the time period from 15 to 10 days for filing of written exceptions and responses. Also, they are to be filed with the hearing officer instead of the Director. At subsection (n), Illinois is proposing to have the proposed decision become final in 10 days instead of 15 if no written exceptions are filed. Illinois is also proposing that the hearing officer instead of the Director issue the final administrative decision affirming, modifying, or vacating the proposed decision if written exceptions are filed. These revisions are substantively identical to those proposed for 62 IAC 1847.3 (f), (i), and (j). Therefore, the Director is approving the proposed revisions at 62 IAC 1847.5 (j), (m), and (n) for the same reasons discussed in finding C.24.a.(2) for 62 IAC 1847.3 (f), (i), and (j).

d. Section 1847.6 Show Cause Hearings

Illinois is proposing revisions at subsections (i), (k), and (l) to clarify that the final decision of the Department in administrative review hearings pertaining to show cause orders is made by the hearing officer. At subsection (i), Illinois is replacing the word "Director's" with the word "final." At subsection (k), Illinois is proposing to change the time period from 15 to 10 days for filing to written exceptions and responses. Also, they are to be filed with the hearing officer instead of the Director. At subsection (1), Illinois is proposing to have the proposed decision become final in 10 days instead of 15 if no written exceptions are filed. Illinois is also proposing that the hearing officer instead of the Director issue the final administrative decision affirming, modifying, or vacating the proposed decision if written exceptions are filed. These revisions are substantively identical to those proposed for 62 IAC 1847.3 (f), (i), and (j). Therefore, the Director is approving the proposed revisions at 62 IAC 1847.6 (i), (k), (l) for the same reasons discussed in finding C.24.a.(2) for 62 IAC 1847.3 (f), (i), and (j).

e. Section 1847.7 Bond Forfeiture Hearings

Illinois is proposing revisions at subsections (h), (j), and (k) to clarify that the final decision of the Department in administrative review hearings pertaining to bond forfeiture is made by the hearing officer. At subsection (h), Illinois is replacing the word "Director's" with the word "final." At subsection (j), Illinois is proposing to change the time period from 15 to 10 days for filing of written exceptions and responses. Also, they are to be filed with the hearing officer instead of the Director. At subsection (k), Illinois is proposing to have the proposed decision become final in 10 days instead of 15 if no written exceptions are filed. Illinois is also proposing that the hearing officer instead of the Director issue the final administrative decision affirming, modifying, or vacating the proposed decision if written exceptions are filed. These revisions are substantively identical to those proposed for 62 IAC 1847.3 (f), (i), and (j). Therefore, the Director is approved the proposed revisions at 62 IAC 1847.7 (h), (j), and (k) for the same reasons discussed in finding C.24.a.(2) and 62 IAC 1847.3 (f), (i), and (j).

25. 62 IAC 1848.5 Notice of Hearing

Illinois proposed new subsection (f) to implement a July 7, 1993, amendment to Section 2.11 of the State Act pertaining to permit hearing notices. If the hearing concerns review of a permit decision under 62 IAC 1847.3, a notice containing specified information in a specified format shall be published in a newspaper of general circulation published in each county in which any part of the area of the affected land is located. The notice cannot be placed where legal notices and classified advertisements appear. The Federal regulations at 30 CFR 775.11 for administrative review hearings of permitting actions do not contain this specific requirement for a public notice. However, the Director finds that the addition of this new provision will not render 62 IAC 1848.5 less effective than the Federal regulations.

26. 62 IAC 1850 Training, Examination and Certification of Blasters

a. Section 1850.14 Examination

Illinois proposed to amend subsections (a) and (b) to allow notification of examinations to be done by telephone in those cases where it is not possible to give such notice in writing within the time specified in the regulations by removing references to written notification and notification by letter. The Director finds that the counterpart Federal regulations at 30 CFR 850.14 do not contain any specific requirements for notification of blaster certification examinations and that the proposed revisions do not alter the effectiveness of Illinois' previously approved blaster examination provisions. Therefore, the revised regulations at 62 IAC 1850.14 and no less effective than the counterpart Federal regulations.

b. Section 1850.15 Application and Certification

Subsection (a) is proposed to be amended by shortening the deadline for receipt of applications for certification from 45 days to 30 days and by shortening the deadline for review of applications from 30 to 15 days. Illinois also proposed a revision that will allow the option of including any applicant with an application received less than 15 days before a regularly scheduled session in that session or in the next session. The counterpart Federal regulation at 30 CFR 850.15(a) does not contain specific procedures governing applications for certification. The Director finds the proposed revisions will allow Illinois more flexibility in scheduling and administering its blaster certification examinations and will not alter the effectiveness of Illinois' previously approved provisions. Therefore, the revised regulations at 62 IAC 1850.15 are no less effective than the counterpart Federal regulations.

c. Section 1850.16 Denial, Issuance of Notice of Infraction, Suspension, Revocation, and Other Administrative Actions

Illinois proposed several nonsubstantive revisions at 62 IAC 1850.16: Subsection (b) is proposed to be entitled "Notice of Infraction" and subsection (c) is proposed to be entitled "Notice to Show Cause; at subsections (b)(1) (A) and (D), various regulatory and statute citations are corrected, including the reference to SMCRA; and it subsections (b)(3) and (c)(2) and (c)(3), the hearing regulation reference is corrected to reference the State's new section for administrative review of blasting infractions at 62 IAC 1847.4 (e) and (g) through (p).

Subsection (b)(3) is proposed to be revised by clarifying the blaster is to file a request for review and hearing of a notice of infraction with the Department. The specific address listed in this subsection is removed since it is subject to change. The blaster's request for review is simplified by removing a requirement to include specified information, which would already be available to the Department. In subsections (b) and (c), the hearings for a notice of infraction and a notice to show cause are proposed to be held at one of the Department's offices, and the existing language, which limited the hearings to two locations, is removed. These changes will provide for greater opportunity to hold hearings in the locale of the requestors. The Director finds that the proposed revisions at 62 IAC 1850.16 simplify, clarify, and strengthen the Illinois provisions for administrative review of blaster certifications and are not inconsistent with the Federal regulations at 30 CFR 850.15.

d. Section 1850.17 Judicial Review

Illinois proposed to repeal 62 IAC 1850.17 concerning judicial review for final administrative decisions on blaster certifications. The Director finds that since the provision for judicial review of these administrative decisions is contained in previously approved 62 IAC 1847.4(p) and section 1847.4 is referenced in all applicable sections of 62 IAC 1850, this repeal will not render the Illinois blaster certification regulations less effective than the counterpart Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided on an opportunity for a public hearing on the proposed amendment on two separate occasions. A public hearing was held on March 24, 1995, in Galesburg, Illinois (Administrative Record No. IL–1636). Comments on the proposed revisions to Illinois' regulations were received from Janis King, President of the Citizens Organizing Project; Dennis Sullivan, Vice-president of the Sauk Trail Organization for Preservation; Roger Holmes, President of the Knox County Farm Bureau; Robert L. Masterson, Zoning Administrator for the Knox County Zoning Department; Helen Pence; Anna Johnson and Patrick D. Shaw, Citizens Organizing Project; Tom Fitzgerald, Director of the National Citizens' Coal Law Project (NCCLP); Robert G. Darmody, Associate Professor of Pedology, University of Illinois, and Keith Shank.

Following is a summary of the substantive comments received on the proposed amendment. Comments identifying errors of a purely typographical or editorial nature, comments voicing general support or opposition to the proposed amendment but devoid of any specific statements, and comments which do not specifically relate to requirements in the proposed regulations are not discussed. The summarized comments and responses to the comments are organized by the section of the amended regulations to which they pertain.

62 IAC 1700.11(f) Termination of jurisdiction

Comment: To the extent that the requirements of 62 Ill. Code 280 incorporate all of the counterpart 30 CFR Subchapter B interim program performance standards and other requirements, the proposed adoption of the termination of jurisdiction regulations appear to conform to 30 CFR 700.11(d).

Response: The Illinois regulations at 62 IAC 280 incorporate by reference the applicable provisions of subchapter B of the Federal regulations.

62 IAC 1701.Appendix A Definition of Wetland

Comment 1: Two commenters expressed concern that not requiring all three of the wetland parameters to be present prior to bond release could result in environmental damage and incomplete reclamation.

Response: As discussed in finding C.2, Illinois' explanation that the hydric soil profile may not be fully developed in an artificial wetland is consistent with the U.S. Army Corps of Engineers' determination that indicators of hydric soils are usually absent in man-induced wetlands. Furthermore, as discussed in finding C.14.k, Illinois proposed and the Director approved wetland revegetation regulations at 62 IAC 1816.116(a)(5) and 1817.116(a)(5) that require the use of the wetland vegetation criteria and sampling procedures specified in the U.S. Army Corps of Engineers Wetlands Delineation Manual, Technical Report Y–87–1. Therefore, reclaimed areas must meet specified revegetation success standards prior to bond release.

Comment 2: One commenter expressed concern regarding the requirement that a mitigated wetland area function as a wetland to be considered wetlands, and recommended that it be deleted because of the possible difficulties in applying the requirement. The commenter expressed the belief that all mitigation areas should be protected regardless as to whether they exhibit tangible wetlands functions.

Response: The proposed definition does not conflict with any existing Federal regulation. OSM interprets the requirement for a functioning wetland to be applicable to areas reclaimed as planned wetlands which have attained that land use as determined by a trained professional of the State's staff, but may not clearly meet each of the three parameters contained in the definition. As discussed in finding C.2, the U.S. Army Corps of Engineers recognizes that man-induced wetlands (restored or created wetland) may not contain all three parameters.

Pre-existing wetlands mitigation requirements and conditions relating to surface coal mining activities are determined by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act. In accordance with section 702(a)(3) of SMCRA, Federal and State program requirements cannot supersede, amend, modify, or repeal requirements under section 404 of the Clean Water Act, including mitigation plans for those wetlands which existed in the premining landscape and are being replaced in accordance with a Section 404 permit. If mitigation of pre-existing wetlands is required, the mine operator must meet the requirements and conditions of the U.S. Army Corps of Engineers.

However, section 515(b)(24) of SMCRA requires surface coal mining operations "to the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable." Furthermore, the Illinois program implements this SMCRA requirement at 62 IAC 1816.97 and 1817.97 by requiring the protection of fish, wildlife, and related environmental values, including wetlands.

Comment 3. One commenter believed that the State should be requested to commit to permit, require bonds, and apply all reclamation to wetland mitigation areas.

Response: As discussed above, mitigation of pre-existing wetlands is conducted under the authority of the U.S. Army Corps of Engineers under section 404 of the Clean Water Act. Pursuant to the requirements of section 702(a)(3) of SMCRA, OSM does not have the authority to require States to permit, require bonds, and apply all reclamation standards to off-site wetland mitigation areas. Furthermore, on-site wetland mitigation areas are subject only to those requirements of a Federal or State program that do not supersede, amend, modify, or repeal requirements under Section 404 of the Clean Water Act.

62 IAC 1701.Appendix A Definition of Violation Notice

Comment: Two commenters were concerned that the definition of violation notice would not include violations involving underground mining operations because of its reference to "surface coal mining operations" only.

Response: Illinois' defines "surface coal mining operations" at 62 IAC 1701.Appendix A to mean "activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of Section 516 of the Federal Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce, or the operations of which directly or indirectly affect interstate commerce." Therefore, the proposed definition of "violation notice" requires Illinois to consider violations in connection with both surface and underground coal mines.

62 IAC 1761.11(d)(12) [Recodfied 1761.11(a)(4)(B)] Areas Where Mining is Prohibited or Limited

Comment: Two commenters were concerned with the deletion of the phrase "including surface areas impacted by planned subsidence" from this provision. One commenter believed that the deletion "could be construed to mean an intent to prohibit any planned subsidence within 100 feet of a public road, or an intent to completely eliminate from consideration the location of planned or unplanned subsidence relative to public roads." This commenter supported the application to public roads." This commenter supported the application of the 30 CFR 761.11 prohibitions to underground mining that has the potential to cause direct or indirect surface impacts, and believed that unless it can be demonstrated that material damage will not occur from the underground operation (planned or room and pillar), the permit should not be issued.

Response: The language in the revised regulation at existing 62 IAC 1761.11(d)(2) [recodified 1761.11(a)(4)(B)] is substantively identical to the corresponding Federal regulation at 30 CFR 761.11(d)(2); and, therefore, is not inconsistent with the Federal requirements.

62 IAC 1773.15(b) Review of Violations

Comment 1: Two commenters were concerned that the phrase "surface coal mining and reclamation operations" restricted the provision at 62 IAC 1773.15(b)(1) for evaluating violator status of permit applicants to violations in connection with surface coal mines.

Response: Illinois' definition of "surface coal mining and reclamation operations" at 62 IAC 1701.Appendix A includes its definition of "surface coal mining operations." As discussed above, under 62 IAC 1701.Appendix A, definition of "violation notice," Illinois must consider violations in connection with both surface and underground coal mines.

Comment 2: One commenter objected to the provision at 62 IAC 1773.15(b)(2) that allows a permit to be conditionally issued if an outstanding violation is in the process of being corrected.

Response: The proposed regulation at 62 IAC 1773.15(b)(2) is substantively identical to the Federal regulation at 30 CFR 773.15(b)(2), and, therefore, is not inconsistent with the Federal requirements.

Comment 3: One commenter acknowledged that the State rule and the Federal rule are identical, but expressed the opinion that both rules are inconsistent with the Federal Act.

Response: The appropriateness of the Federal rule is not at issue in this rulemaking.

62 IAC 1773.24 (b) Through (d) Procedures for Challenging Ownership or Control Links Show in the AVS

Comment: It is not clear from the proposed revision to 62 IAC 1773.24 (b) through (d), that the phrase "other person" in the context of who beyond the applicant may appeal a decision concerning whether an ownership and control link has been demonstrated or rebutted, includes persons (such as neighbors of the proposed mining operation) who have an interest which is or may be adversely affected by the decision to lift an ownership and control link and permit block.

Response: The Illinois regulation at 62 IAC 1773.24(b), as revised on November 1, 1995, specifically states that the "other person" must be eligible under the provisions of subsection (a)(3). To be eligible under the provisions of subsection (a)(3). To be eligible under the provisions of subsection (a)(3), the "other person" must be shown in the AVS in an ownership or control link to any person cited in a state violation notice.

62 IAC 1773.25(c)(1)(B) Standards for Challenging Ownership or Control Links

Comment: How can a person who "owns or controls" not have authority to determine manner in which surface mining operations are conducted? The criteria for exclusion from responsibility for a violation is contrary to the liability of ownership.

Response: Illinois' regulation at 62 IAC 1773.25(c)(1)(B) is substantively identical to the Federal regulation at 30 CFR 773.25(c)(1)(ii). These regulations refer to a person who is subject to a presumption of "ownership or control." This presumption is refutable under the definition of "owned or controlled" or "owns or controls" at 30 CFR 773.5.

62 IAC 1774.13(b)(2)(E) Permit Revisions

Comment 1: The proposed change in this rule, to the extent that it allows an increase in the acreages for which the postmining land use may be changed without public notice and comment, is opposed as being arbitrary and inconsistent with the purpose of the Act of enfranchising the public in permitting matters.

The proposal would allow a "rolling" 5% limit, that would restart whenever the prior land use changes had been subject to public review, rather than cumulating such changes. The concern is that a 5% limit is unrelated to the significance of the land use change, which, depending on the type of land and pre- and post-mining land use, could be locally significant (i.e. high quality farmland to hayland/pasture, agricultural to industrial or commercial, etc.) The NCCLP suggests that an abbreviated public comment period should be provided in all cases where the post-mining land use is to be changed, as is apparently provided with all incidental boundary revisions.

Response: Neither SMCRA nor the Federal regulations require a public comment period for all postmining land use changes. Section 511(b)(2) of SMCRA and the Federal regulations at 30 CFR 774.13(b) require the regulatory authority to establish guidelines for the scale or extent of revisions for which all the permit application requirements will apply, including public notice. As discussed in finding C.7.a, the Director found that the proposed change represents a reasonable application by Illinois of this requirement.

Since Illinois requires all alternative land use revisions, both significant and insignificant, to comply with 62 IAC 1816.133 or 1817.133, the concern that Illinois would approve a proposal to allow a disturbed area to be restored to a lower or a lesser land use is unfounded. These sections of the Illinois program pertain to postmining land capability requirements, including the requirement that the disturbed areas be restored to a condition capable of supporting prior uses or higher or better uses. Illinois also requires consultation with the landowner or the land management agency with jurisdiction over the lands before approval of either type of revision.

Comment 2: One comment questioned whether Illinois had a definition for "insignificant change" with relation to its proposed provisions for land use changes.

Response: Illinois does not have a specific definition for "insignificant change" in its regulations at 62 IAC 1774.13. However, subsections 1774.13(b)(2) (A) through (E) specify departures from the methods or conduct of mining or reclamation operations which would not be considered significant, including changes in land use. Subsection 1774.13(b)(2)(E) contains the criteria used to determine whether a land use change is significant or insignificant. This final determination must be made on a case-by-case basis. As discussed in finding C.7.a, the Federal counterpart regulation for permit revisions at 30 CFR 774.13(b) requires the regulatory authority to establish guidelines for the scale or extent of revisions.

62 IAC 1774.13(d)(6) Incidental Boundary Revisions

Comment: The NCCLP further cautions against increasing the acreage that can be added to permits under IBRs without full-scale public review as would attach to a permit or permit amendment, since the use of IBRs on the scale contained in the existing Illinois state program is arguably inconsistent with the federal Act. The commenter believed that the addition of as much as 20 acres of area to existing permits under the State's incidental boundary revision regulations went beyond the intent of Congress.

Response: The Director previously approved the existing Illinois provisions pertaining to the size and scope of incidental boundary revisions, and no changes to these provisions are proposed in this amendment. As discussed in finding C.7.b, the Director is approving a new provision at subsection (d)(6) that requires public notice and comment for all additions to permit areas and planned subsidence areas that are requested pursuant to Illinois' incidental boundary revision regulations at 62 IAC 1774.13(d).

62 IAC 1778.15 Right of Entry Information

Comment: The proposal to delete the requirement of right-of-entry information for areas overlying underground workings is inconsistent with the federal Act and Secretary of Interior's regulations and the original requirement must be reinstated. The requirement, hardly a "burdensome" matter, is a mandate for all areas within the permit area, and the Secretary's regulations require that areas overlying tunnels, shafts and underground operations, be bonded, thus those areas are within the permit area under 30 CFR 701.5. The commenter provided additional argument in support of the belief that areas overlying underground shafts, tunnels and operations should be subject to right-of-entry requirements, should be included within the permit area, and should be bonded (Administrative Record No. IL–1643).

Response: As discussed in finding C.8.a, OSM revised the Federal definition of "permit area" and associated terms to exclude areas overlying underground workings (48 FR 14814, April 5, 1983). Also, the preamble to the July 19, 1983, revisions to the Federal bonding rules clarifies that no bond is needed for areas overlying underground workings (48 FR 32947–48). Therefore, the Federal regulation at 30 CFR 778.15(a) does not require a description of right-of-entry documents for areas overlying underground workings (shadow area). The Illinois regulation at 62 IAC 1778.15(a) is substantively identical to the Federal counterpart, and, therefore, is not inconsistent with the Federal requirements.

62 IAC 1785.17(a) Prime Farmlands

Comment: Three commenters objected to the proposed deletion of provisions that required a preliminary prime farmland exemption review and that limited the amount of prime farmland to be exempted in the State.

Response: The Federal regulations do not contain counterpart provisions to the language deleted from the State regulations. As discussed in finding C.10, the revised regulation provisions at 62 IAC 1785.17(a) are substantively identical to the counterpart Federal regulation provisions at 30 CFR 785.17(a), and, therefore, they are not inconsistent with the Federal requirements.

62 IAC 1785.17(d)(1) Consultation With the State Conservationist

Comment: Four commenters objected to the proposed deletion of the phrase "The State recognizes that the permit cannot be issued without the required consultation with the USDA" from 62 IAC 1785.17(d)(1).

Response: Illinois withdrew its proposed deletion, and reinstated the phrase at the end of 62 IAC 1785.17(d)(1).

62 IAC 1795.6(b) Eligibility for Assistance

Comment: Eligibility for "Small Operators Assistance Program" is based on yearly productivity from an operation covered by a single permit as per the wording of the proposed rule. The proposed 300,000 Tons per year eligibility should be reduced to 100,000 Tons. The reason for this is that 300,000 Tons is too close to the following productivity as per the Department's 1993 Statistical Report: ASARCO Knox County—428,546 Tons, Freeman-United Industry, McDonough County—431,103 Tons, and Consolidated Burning Star #2—324,555 Tons. Surely, not any of these companies need assistance.

Response: The commenter has misinterpreted the proposed rule. As described in 62 IAC 1785.6 (b)(1) through (b)(4), coal produced by other mines and other companies in which the applicant has an interest must be added to the applicant's anticipated production. The revised regulation is substantively identical to the Federal regulation at 30 CFR 795.6(a)(2).

62 IAC 1795.12(b) Applicant Liability

Comment: The elimination of the objective standard for what constitutes "good faith" for purposes of waiver of the reimbursement obligation makes it unclear whether the standard will be one of reasonable prudence or "good heart, empty head."

Response: The Federal regulation at 30 CFR 795.12(b) does not contain a definition of "good faith." Therefore, the proposed deletion does not render the State regulation less effective than the Federal counterpart. The phrase "good faith" can be reasonably applied within its normal meaning, and a definition is not needed.

62 IAC 1800.5(b)(4)/1800.21(b)(1) Irrevocable Letter of Credit

Comment: The proposal to allow irrevocable letters of credit to be posted by institutions chartered outside of Illinois must retain the requirement that there be a bank within the state authorized to pay the letter on presentation, since under the "full faith and credit" doctrine, courts in sister states will entertain defenses to penal judgments obtained from a court or agency in another state.

Response: Both 62 IAC 1800.5(b)(4) and 1800.21(b)(1) contain a requirement for a designated confirming bank with an office in Illinois that is authorized to accept, negotiate, and pay the letter upon presentment in Illinois.

62 IAC 1800.20(b) Surety Bonds

Comment: By removing required conditions for surety, you are removing standards by which to determine whether corporate surety is "good and sufficient" as required by the Surface Coal Mining Land Conservation and Reclamation Act. 225ILCS 720/6.01(a). This increases the chance that the Illinois taxpayers will be the ones ultimately required to pick up the tab if reclamation is not completed.

Response: The counterpart Federal regulations do not contain the provisions proposed for deletion. Therefore, the proposed removal of 62 IAC 1800.20(b) (2) through (5) does not render the State regulations inconsistent with the Federal regulations at 30 CFR 800.20(b).

62 IAC 1816/1817.13 and 1816/1817.15 Casing and Sealing of Exposed Underground Openings

Comment: The requirement to "backfill" drilled holes and exposed underground openings is less protective than casing, sealing and otherwise managing the holes. Depending on the circumstances, the backfilling of a hole with porous material can allow migration of contaminants. On its face, the requirement is less protective than 30 CFR 816.13, 14 and 15.

Response: Illinois withdrew its proposed revision to these sections.

62 IAC 1816/1817.22 Topsoil and Subsoil

Comment: Three commenters expressed concern regarding the removal of the provisions at 62 IAC 1816(b)(2) and 1817(b)(2) that require topsoil plans for substitutes or supplements for prime farmland be considered a significant revision subject to public review. Their major concern was that Illinois would allow the use of non-prime soil for substitutes or supplements for prime farmland soils.

Response: As discussed in finding C.14.a, the counterpart Federal regulations at 30 CFR 816.22(b) and 817.22(b) do not contain the removed language. However, the Director notes that prime farmland reclamation plans, including topsoil plans, must meet the special environmental protection reclamation standards for prime farmland soils at 62 IAC 1823. This includes the requirement at § 1823.12(a) that reconstructed soils have equal or greater productive capacity than what existed before mining.

62 IAC 1816/1817.41(c)(2) Ground Water Monitoring

Comment: To submit groundwater monitoring data every three months is not often enough to allow remedial action to a problem.

Response: As discussed in finding C.14.b, the Illinois regulations are consistent with the Federal counterpart regulations at 30 CFR 816.41(c)(2) and 817.41(c)(2) that require reports to be submitted every three months or more frequently as prescribed by the regulatory authority.

62 IAC 1816/1817.41(e)(2) Surface Water Monitoring

Comment: Keep requirement that NPDES reports be sent to the Department concurrent with those sent to Illinois EPA.

Response: The Federal regulations do not require that National Pollutant Discharge Elimination System (NPDES) reports be submitted to State regulatory authorities. Therefore, the proposed revisions to this section are not inconsistent with the Federal regulations at 30 CFR 816/817.41(e)(2). As discussed in finding C.14.c, Illinois has retained its requirement that surface water monitoring data be submitted every three months or more frequently if necessary.

62 IAC 1816/1817.46(e)(1) Siltation Structures; Exemptions

Comment: Two commenters expressed concern regarding the new exemption at 62 IAC 1816.46(e)(1) and 1817.46(e)(1) that would allow use of the alternative sediment control measures described in 62 IAC 1816.45(b) and 1817.45(b) in lieu of a siltation structure for control of drainage from disturbed areas. One commenter expressed the belief that "the use of siltation structures remains the BTCA for the coal mining point source category, and allowing alternative sediment control measures in lieu of siltation structures for areas defined only as 'small' is not consistent with the Secretary's regulations." One commenter questioned: "When is the use of straw bales to filter pit pumpage better than a sediment pond?"

Response: As discussed in finding C.14.d, the Federal regulations at 30 CFR 816.46(b)(2) and 817.46(b)(2) which require all surface drainage from a disturbed area to be passed through a siltation structure were suspended on November 20, 1986 (51 FR 41957–41958). Therefore, State regulatory authorities may determine on a case-by-case basis what is BTCA rather than requiring that drainage be passed through siltation structures in all cases. As discussed in the referenced finding, Illinois is requiring permittees to demonstrate that drainage from the disturbed area will meet effluent limitation and water quality standards without the use of siltation structures and will require that any alternative sediment control measures be shown to be the BTCA.

62 IAC 1816/1817.97 Protectio of Fish, Wildlife, and Related Environmental Values

Comment: Four commenters expressed concern that the elimination of the reference to the Illinois Endangered Species Protection Act (520 ILCS 10/1) would remove state-listed species from protection. Two of the commenters were concerned that elimination of the reference would violate the State Act and "would be misleading as to the obligations of mining operations."

Response: Section 505(a) of SMCRA provides that: "No State law or regulation in effect on the date of enactment of this Act, or which may become effective thereafter, shall be superseded by any provision of this Act or any regulation issued pursuant thereto except insofar as such State law or regulation is inconsistent with the provisions of this Act." Therefore, if mining operation activities are covered under the Illinois Endangered Species Protection Act (520 ILCS 10/1), the removal of the reference will not affect an operator's obligations under this Act. Furthermore, the State regulations at 62 IAC 1816.97(b) and 1817.97(b) and the Federal counterpart regulations at 30 CFR 816.97(b) and 817.97(b) still require the operator to report any state- or federally-listed endangered or threatened species within the permit area and require consultation with appropriate State and Federal fish and wildlife agencies before allowing the operator to proceed with mining activity. Therefore, state endangered species are still protected under the Illinois program.

62 IAC 1816/1817.116(a)(2)(B) Success of Revegetation; Extended Responsibility Period

Comment: In the OSM publication of the Surface Mining Act which includes all revisions through December 31, 1993, there is at section 515(b)(20)(B) of the Federal Act a note that this section was added October 24, 1992. However, in that 1993 addition there is no mention of the date September 30, 2004. Hence, the year 2004 should be eliminated from the proposed rule.

Response: The commenter is correct that in section 515(b)(20)(B) of SMCRA the date September 30, 2004, is not mentioned. However, section 510(e) of SMCRA specifies that the authority of section 515(b)(20)(B) shall terminate on September 30, 2004. Therefore, the date should not be eliminated from the proposed regulation.

62 IAC 1816/1817.116(a)(2)(F) (i), (ii), and (iii) Success of Revegetation; Augmentation; High Capability Land

Comment: Two commenters were concerned that the deletion of the provisions concerning augmentation of high capability land areas would lower the State's standards for reclamation of high capability cropland areas.

Response: The deletion of these provisions does not alter the requirement that reclaimed high capability cropland areas meet the success of revegetation standards set forth in 62 IAC 1816/1817.116(a)(3)(C) and (a)(4).

62 IAC 1816/1817.116(a)(2)(F)(i) Success of Revegetation; Augmentation; Pasture and Hayland

Comment: Two commenter expressed concern with the proposed language in this section which stated that the period of responsibility shall not recommence after deep tillage on areas where the

revegtation success standard has been met.

Response: OSM is not approving the proposed language. Deep tillage has not been approved as a normal husbandry practice in Illinois. Therefore, its use would restart the responsibility period as required by 30 CFR 816.116(c)(1).

62 IAC 1816/1817.116(a)(3)(E) Revegetation Success; Ground Cover and Production for Pasture, Hayland, and Grazing land

Comment 1: One commenter disagreed with the proposed deletion of the provision that limited the substitution of corn production for hay production on high capability land to one year.

Response: As discussed in finding C.14.g, the Illinois administrative record contains sufficient proof that high capability land is suitable for crops and that crop/hay rotations are common practices in cropland areas surrounding mines.

Comment 2: One commenter disagreed with the proposed provision that would allow the substitution of one year of crop production for hay production on limited capability land. He was concerned that there would be no available yield data that could be factored into the State's productively formula to project a reliable yield standard for grain crops grown on limited capability lands.

Response: As discussed in finding C.14.g, Illinois indicated in the preamble to its February 3, 1995, amendment (Administrative Record No. IL–1615) that the proposed provision would be applied to those limited capability land areas that were reclaimed to a higher quality (such as prime farmland or high capability standards). As noted in the referenced finding, the Director approved this provision to the extent that Illinois restricts its approval to limited capability lands that are reclaimed to a higher quality.

62 IAC 1816/1817.116(a)(3)(F) Revegetation Success; Non-Contiguous Areas Less Than or Equal to Four Acres

Comment: Two commenters objected to the language in this section which would exempt, under certain conditions, areas up to four acres from any type of testing for revegetation success.

Response: OSM is not approving the proposal. The merit of some type of exemption for small areas is recognized by OSM. However, the Illinois proposal lacks the requirements OSM believes are necessary to implement such a proposal (see finding C.14.h).

62 IAC 1816.116(a)(4)(A)(ii) Success of Revegetation; Field to Represent Non-Contiguous Areas Less Than or Equal to Four Acres

Comment: Six commenters objected to the Illinois proposal in this section which would exempt non-contiguous areas up to four acres in size from any type of revegetation success testing if the Department determines that another larger field is representative of the smaller four acre or less area.

Response: OSM is not approving this proposal. The Federal regulation at 30 CFR 816.116(a)(2) requires a statistically valid sampling technique for assessing the success of vegetation for all areas. Illinois has not demonstrated that its proposal would provide a statistically valid representative test field at a 90 percent confidence interval.

62 IAC 1816/1817.116(a)(5) Success of Revegetation; Wetlands

Comment: "Aerial coverage" for measurement of success of wetland revegetation is undefined. The success criteria for revegetation of wetlands should be identified in the post-mining land use plan, and should be sufficient to demonstrate the area is functioning as a wetland, (not merely a final cut impoundment) including the full range of functions and values sought to be replicated or restored for that wetland. The bond should not be released without coordination with the US Army Corps of Engineers, and an areal coverage of 30% is remarkably low, leaving 70% of the area either unvegetated or containing possibly incompatible species. Particularly where the wetland is a bottomland hardwood or other intermittently-inundated land, the vegetative success criteria should be comparable to the cover and revegetation requirements for other land uses.

Response: Use of the term "aerial coverage" is consistent with its usage in the U.S. Army Corps of Engineers Wetlands Delineation Manual. Although, "aerial" is a misspelling and it has been corrected to "areal." In the past, Illinois determined the success for those fish and wildlife land use reclamation plans that contained wetland areas on a case-by-case basis. Illinois is proposing to replace the case-by-case approach with a consistent wetland reclamation standard. Most final-cut impoundments would not meet the criteria for a wetland, as these areas are considered deepwater habitat. However, the edges of final-cut impoundments where water is shallow can be developed as wetland areas.

Wetland areas intended to mitigate pre-existing wetlands must meet the conditions of the U.S. Army Corps of Engineers' 404 permit. Pursuant to the requirements of section 702(a)(3) of SMCRA, Federal and State program requirements cannot supersede, amend, modify, or repeal requirements under Section 404 of the Clean Water Act, including mitigation plans for those wetlands which existed in the premining landscape and are being replaced in accordance with a Section 404 permit. Therefore, the revegetation standards for wetlands proposed by the State would not pertain to wetlands constructed to mitigate pre-existing wetlands. They would pertain only to those wetlands constructed to supplement and enhance a postmining land use of fish and wildlife habitat. The Federal regulations at 30 CFR 701.5, 780.25, 816.46, and 816.49 (Impoundments); 816.84(b)(1) (Coal Mine Waste Impounding Structures); 816.97 (Protection of Fish and Wildlife); 816.102 (Backfilling and Grading); 816.111 and 816.116 (Revegetation); 816.133 (Postmining Land Use) allow for the construction of wetlands that supplement and enhance fish and wildlife habitat.

Coordination with the U.S. Army Corps of Engineers prior to bond release of wetlands that are not under the jurisdiction of the Corps is not required by SMCRA or the Federal regulations. As discussed in finding C.14.k, Illinois submitted adequate support for its use of a minimum 30 percent areal coverage standard.

62 IAC 1816/1817.116(c) Success of Revegetation; Reference Area

Comment: Six commenters objected to the use of reference areas in lieu of Illinois' Agricultural Lands Productivity Formula Sampling Method for determining the success of revegetation for cropland and hayland. Extensive comments were submitted in support of this objection.

Response: Illinois withdrew its proposed regulations at 62 IAC 1816.116(c) and 1817.116(c) pertaining to use of a reference area for determining the success of revegetation for cropland and hayland.

62 IAC 1816/1817.117(a)(3) Tree and Shrub Vegetation on Erosion Control Structures

Comment: One commenter was concerned that operators will not be required to plant trees and shrubs on erosion control structures, including pond embankments.

Response: As discussed in finding C.14.m, the planting of trees and shrubs on the embankments of erosion control structures is not a sound engineering practice. A herbaceous ground cover will be required for these areas.

62 IAC 1816/1817.117(b) Tree and Shrub Vegetation, Woody Plants

Comment: One commenter was concerned that the new provision pertaining to a case-by-case approval of planting arrangements for wildlife areas would eliminate the requirement that an operator must plant trees and shrubs on areas to be developed for fish and wildlife habitat or recreation areas.

Response: Illinois' regulation at 62 IAC 1816/1817.117(b) still requires that these areas have a minimum population of 250 trees or shrubs per acre. The new provision allows operators to request approval for optional planting designs rather than requiring uniform planting arrangements for all mined wildlife and recreation areas.

62 IAC 1816/1817.190(a) Affected Acreage Map

Comment: This change would eliminate sending maps and reports on affected acreage to county clerks. We object to deletion of the phrase "and to the county clerk." This deletion would further deny local government its role in protecting natural resources, a role already deeply invaded by the fossil fuel preemption.

Response: Illinois' proposed revision at subsection (b) requires the operator to submit an additional copy of the affected acreage report and maps for each county in which the permit is located and requires the Department to forward those additional copies to the county clerk(s). Therefore, Illinois is now assured that a copy of the affected acreage report and map goes to the county.

62 IAC 1816/1817.190(b) Affected Acreage Map

Comment: What do words, "Also, statutory citations are being updated in subsection (b)" as found in the **Federal Register** mean?

Response: Citations to and titles of statutes have been updated to reflect Illinois' new statutory codification system.

62 IAC 1816. Appendix A Agricultural Lands Productivity Formula Permit Specific Yield Standard; Subsections (a), (b), and (c)

Comment 1: One commenter raised the concern that the proposed change from permit area to pit area will need to be "fine turned" and that the issue when a pit lies in more than one county should be addressed.

Response: OSM has determined that the State's proposal to utilize pit area instead of permit area will meet the requirements of 30 CFR 823.15 in providing a representative standard. Existing Illinois regulations require the State to utilize data from the county in which the area being tested is located.

Comment 2: One commenter expressed several concerns with the Illinois proposal to utilize only the lands disturbed within the pit area in the Illinois productivity formula once mining has ceased. These concerns included the proposal not to apply the recalculated standard to areas previously tested.

Response: The requirement under the Federal regulations is to obtain the most representative sample of the mined and reclaimed areas. OSM believes the Illinois proposal meets that requirement. Because the Illinois formula results in annual targets based upon year-specific climatological data and yield data, it would not be appropriate to apply the recalculated standard retroactively.

Comment 3: One commenter raised the issue of landowner comment opportunities in relation to the change from permit area to put area. The concern was that the target yields could change because of the recalculation at the tie of cessation of mining and the landowner would not be offered the opportunity to comment at the time of the change.

Response: OSM required Illinois to clarify how the pit area would be defined under a variety of circumstances. This was done to assure that the pit area was not only truly representative of the mined and reclaimed area, but also to assure the pit area was always a clearly defined area. Illinois provided the information needed to resolve these concerns. In finding C.18, OSM made it clear that Illinois must interpret the rule in a manner which assures the use of representative areas and results in a clear and consistent delineation of the pit area. The possible circumstances for which OSM sought clarification and the associated opportunities for public comment are listed below.

(1) *Single pit within a single permit.* The pit area would be the same as the permit area, and thus the change from permit to pit would not affect the opportunity to comment.

(2) *Multiple pits within a single permit.* Each pit area will be clearly marked on the permit map, and will be subject to public comment as part of the permitting process.

(3) *Single pit within several permits that have been consolidated into a single permit.* Public review will occur at the time of consolidation.

(4) *Multiple pits within several permits that are consolidated into one permit* Each pit area will be clearly marked on the consolidated permit map that will be subject to public review prior to approval.

Thus the opportunity to comment should be available whenever a change in the pit area is made.

Comment 4: One commenter was concerned with the provision at subsection (c) that requires yield targets to be recalculated if a significant revision is proposed after permanent cessation of mining. She wanted to know why Illinois would allow a "significant revision" after permanent cessation of mining.

Response: Illinois' regulations at 62 IAC 1774.13(b)(2) require significant revisions to a permit be obtained for changes in reclamation operations when such changes constitute a significance departure from the method contemplated by the original permit. Since reclamation operations are on-going after permanent cessation of active coal mining, significant revisions to reclamation plans may be proposed.

62 IAC 1816. Appendix A Agricultural Lands Productivity Formula Permit Specifics Yield Standard; Subsections (d) and (f)

Comment: Extensive comments were received from five commenters opposing proposed provisions to be added at subsection (d) that required annual target yield adjustments to be based on the county with the greater permit acreage if a mining pit was present in more than one county and subsection (f) that allowed Illinois to consolidate prime farmland and high capability target yields.

Response: These proposed provisions were withdrawn.

62 IAC 1817.121(c)(3) Subsidence Control

Comment: Subsidence from underground mining requires operators to supply any residential, etc. water lost from underground mining but for how long the operator is obligated for water replacement is not stated.

Response: Although the Illinois regulation does not specifically state that its requirement is for permanent water replacement, the word "replace" within the regulation indicates permanency. OSM's definition of "Replacement of water supply" at 30 CFR 701.5 clarifies that permanent water replacement is required. "Replacement of water supply means, with respect to protected water supplies

contaminated, diminished, or interrupted by coal mining operations, provisions of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies." (60 FR 16722, March 31, 1995).

As noted in finding C.15, primacy states, including Illinois, will be notified pursuant to the provisions of 30 CFR 732.17(d) of the additional Federal water supply replacement requirements and related subsidence damage repair requirements that are not currently contained within their programs. This will include notification of a requirement for a definition consistent with the Federal definition at 30 CFR 701.5 pertaining to water replacement.

62 IAC 1840.11(h)(2) Inspections by the Department; Abandoned Site

Comment: One commenter believed that Illinois should provide written notice to the county clerk(s) of the counties affected at the time public notice was provided of an alternate inspection frequency for an abandoned site.

Response: The counterpart Federal regulations at 30 CFR 840.11(h)(2) do not contain specific provision for written notice to the county clerk(s). However, both the Federal regulations at 30 CFR 840.14(c) and the Illinois regulations at 62 IAC 1840.14(c) provide that copies of all records, reports, inspection materials, and other subject information or a description of the information will be made available for public inspection at a Federal, State or local government office in the county where the mining is occurring. Illinois has historically sent this type of information to the county clerk(s).

62 IAC 1840.17(a) Review of Decision Not To Inspect or Enforce

Comment 1: The inclusion of a 30-day period in which to file a request for informal review of a decision not to inspect or enforce is more restrictive of the right of the public to administrative review procedures at the state level than is provided by the Secretary's regulations, and must be disapproved.

Response: To require that requests for a review be filed within a specified time period assures administrative efficiency in a manner that is not inconsistent with SMCRA or the Federal regulations. Using this approach, Illinois can ensure administrative efficiency by setting a firm deadline for appeals, without undue prejudice to the interests of citizens who may be adversely affected by decisions not to inspect or enforce.

Comment 2: In order for this waiver to be fair, an addition to this section should be added which requires that the citizen be informed by certified mail that the right to appeal to the director for informal review must be made within 30 days or that right is waived. Without this requirement, the citizen could lose a right without that citizen knowing that their right was lost.

Response: The 30 day period begins when the citizen is notified of Illinois' decision, which is done by certified mail. Illinois has indicated that this notification will include language informing the recipient of the 30-day time period within which to request, or else waive, the right to informal review. As discussed in finding C.21, the proposed revision is being approved with the understanding that notification of the 30-day time period will be included in the notice of decision not to inspect or enforce and that failure to include the notification will not limit the right for review.

62 IAC 1840.17(c) Review of Decision Not To Inspect or Enforce; Formal Review

Comment: Two commenters were concerned how the reference to formal review under 62 IAC 1847.3 would relate to formal review of a decision not to inspect or enforce since the current provisions of § 1847.3 pertained to permitting actions. They recommended that the subsection be rewritten without reference to specific provisions.

Response: Illinois proposed a revision to its regulations at 62 IAC 1847.3 that provides for administrative review of decisions not to inspect or enforce under 62 IAC 1840.17 (see finding C.21).

62 IAC 1843.23 Enforcement Actions at Abandoned Sites

Comment: This provision does not promulgate a responsive action to the problems of violators who abandon mining sites. It appears geared towards allowing the Department to refrain from doing a useless thing, but does not state the Department's policy in enforcing violations of State and Federal law at abandoned sites.

Response: The proposed regulation is substantively identical to the counterpart Federal regulation at 30 CFR 843.22.

62 IAC 1847.3 Administrative and Judicial Review; Hearings

Comment: The inclusion of formal review of decisions not to inspect or enforce in section 1847.3 is of concern because the section is triggered by notice to the permit applicant rather than notice to the party who requested the inspection and enforcement action. The right to informal and formal review of such decisions, as well as all other actions of the agency, are triggered by notice to the party rather than the applicant.

Response: Section 1847.3 is not necessarily triggered by notice to the permit applicant. The Illinois regulation at 62 IAC 1840.17(b) requires the Director or his or her designee to inform the person, in writing, of the results of an informal review of an authorized representative's decision not to inspect or enforce. OSM has verified several times over the past years, through its oversight activities, that these letters are mailed via certified mail to the person who requested the action. It is the receipt of this decision which triggers the 30-day time limit within which to request formal review under the provisions of section 1847.3, as authorized by 62 IAC 1840.17(c).

62 Ill. Adm. Code 1847.3(i), (j); 1847.4(j), (k); 1847.5(m), (n); 1847.6(k), (l); and 1847.7(j), (k) Hearing Officer's Proposed Decision

Comment 1: Two commenters were concerned that written exceptions to the hearing officer's proposed decision are to be filed with the hearing officer instead of the Director and that written exceptions and responses to exceptions are to be filed within 10 rather than 15 days.

Response: As discussed in finding C.24.a.(2), the Federal regulations specify general adjudicatory provisions that States must include in their administrative review hearing procedures, but allow the States discretion in how to implement these provisions. The Federal regulations contain no comparable provisions for filing of written exceptions to a proposed decision, filing of responses to written exceptions, or time limitations for these filings. However, the proposed revisions are not inconsistent with SMCRA or the Federal regulations.

Comment 2: One commenter was concerned that the Illinois regulatory authority might be absolved of the responsibility for administrative decisions if a hearing officer was allowed to make the decisions.

Response: The Illinois regulations at 62 IAC 1847 provide that the hearing officer's decision is the Department's final administrative decision. Pursuant to 62 IAC 1847, final administrative decisions are subject to judicial review in accordance with the Illinois Administrative Review Law (735 ILCS 5/3).

62 IAC 1848.5(f) Notice of Hearing

Comment 1: One commenter was in agreement with the proposed provisions that would require certain specifications for legal notices of hearings, but questioned the prohibition in this proposed subsection against inclusion of hearing notices among other legal notices in the paper.

Response: The prohibition against inclusion of these hearing notices in that portion of the paper where legal notices appear is a statutory prohibition which was requested by Knox County citizens when section 2.11(c) of the Surface Coal Mining Land Conservation and Reclamation Act, 225 ILCS 720, was amended in 1993. Neither SMCRA nor the Federal regulations specify the portion of the newspaper wherein the public notice of a hearing must appear.

Comment 2: One commenter believed that § 1848.5(f) should include a provision for notification of the country clerk of the county affected.

Response: Neither SMCRA nor the Federal regulations require that a separate notice of an administrative hearing be sent to the county clerk of the county affected.

Comment 3: One commenter objected to the last sentence of the provision that was proposed in the original amendment: "Any deviations from the requirements of this subsection attributable to the publishing newspaper shall not be grounds for postponement of continuance of the hearing, nor will such errors necessitate that the notice be republished."

Response: In the revised amendment dated November 1, 1995, Illinois removed this sentence from § 1848.5(f).

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Illinois program (Administrative Record Nos. IL–1618 and IL–1664). The Natural Resources Conservation Service (NRCS) commented on March 15, 1995 (Administrative Record No. IL–1631), that the State should withdraw its proposal to remove the language "The state recognizes that the permit cannot be issued without the required consultation with USDA" from section 1785.17(d)(1). OSM notes that Illinois withdrew this proposed revision, and the indicated language was retained.

On June 7, 1995 (Administrative Record No. IL–1657), and July 20, 1995 (Administrative Record No. IL–1661), the Natural Resources Conservation Service (NRCS) offered comments on the following three sections:

62 IAC 1816/1817.116(a)(3)(E) NRCS commented that the Service did not object to the substitution of one year of crop production for one year of hay production on limited capability lands if the Department determines the practice is proper management. OSM notes that Illinois included language in this section which requires such determination before the substitution can be made.

62 IAC 1816.116(a)(3)(F) NRCS believed the proposed revision was not specific enough as to the types of activities which would qualify under this section, the maximum area of disturbance should be specified, and the term minimal soil disturbance should be defined. NRCS also commented that they concurred with the State's objective in proposing the rule. OSM is not approving this rule because it would exempt areas as large as four acres from any type of revegetation success testing. OSM does not agree that it would be possible to list all of the activities that may occur on these small areas. Should the State of Illinois resubmit language limiting the exemption to a smaller area, the demonstration required by the operator will have to be more thoroughly addressed. NRCS also commented that deep tillage should be required for any areas exempted under this section. OSM believes that the requirement for deep tillage should be made on a case by case basis. The State regulatory Authority would make the decision as part of its determination pertaining to the operator's demonstration.

62 IAC 1816.116(a)(4)(A)(ii). NRCS affirmed its support for the proposal to include small areas with representative larger fields if the terms "representative," "small," and "isolated" are better defined. The Service also pointed out the importance of a reliable sampling method. OSM is not approving this rule because Illinois has not demonstrated that the test plot would provide a statistically valid sample at a 90 percent confidence interval.

62 IAC 1816. Appendix A NRCS raised the issue as to whether the proposal to base yield calculations on pit areas rather than permit areas would allow operators to "shop" for the best standard in terms of meeting the required yield. OSM had the same concern initially, but determined that, at any one time, the pit area will be a finite area defined by specific boundaries and that is the only area upon which calculations can be based. There can be no shopping. OSM is approving the change to pit area.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Illinois proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record Nos. IL–1618 and IL–1664. EPA responded on February 24, 1995, that "* * * the definition of hydric soils in the wetland definition can be interpreted, by some readers, to mean being inundated greater than 50 percent of the time. It would be clearer to adopt the definition used by the National Technical Committee on Hydric Soils and the Food Security Act Manual, Third Edition: 'A soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.' This would also be consistent with the definition of hydric soils in the 1987 Corps Wetland Delineation Manual." (Administrative Record No. IL–1623).

As discussed in finding C.2, OSM found that the proposed definition is not inconsistent with SMCRA or the Federal regulations. Illinois clarified its meaning of hydric soil in the comment section of its November 1, 1995, revised amendment (Administrative Record No. IL–1663): "The explanation of hydric soil appearing in the wetlands definition is intended only as a supplemental explanation of the term 'hydric soil' in layman's terms and is not intended to be a legal definition of the term. Any determination of hydric soils would be in accordance with the technical guidelines of the 1987 Corps Manual * * * *"

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. IL–1618 and IL–1664). The SHPO responded on

March 3, 1995, that "In our opinion, this amendment is consistent with section 106 of the National Historic Preservation Act, as amended, and its implementing regulations 36 CFR part 800, Protection of Historic Properties" (Administrative Record No. IL–1624(A).

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions and additional requirements, the proposed amendment as submitted by Illinois on February 3, 1995, and as revised on November 1, 1995.

With the requirement that Illinois further revise its regulations, the Director does not approve, as discussed in: finding No. C.14.f.(2), 62 IAC 1816.116(a)(2)(F)(i) and 1817.116(a)(2)(F)(i), concerning augmentation of pasture, hayland, and grazing land; finding No. C.14.h, 62 IAC 1816.116(a)(3)(F) and 1817.116(a)(3)(F), concerning the revegetation success standards for non-contiguous areas less than or equal to four acres; and finding No. C.14.i, 62 IAC 1816.116(a)(4)(A)(ii), concerning approval of the success of revegetation for a representative field being used in determining the success of revegetation on non-contiguous areas less than or equal to four acres.

In accordance with 30 CFR 732.17(f)(1), the Director is also taking this opportunity to clarify in the required amendment section at 30 CFR 913.16 that, within 60 days of the publication of this final rule, Illinois must either submit a proposed written amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Illinois' established administrative procedures.

The Federal regulations at 30 CFR Part 913, codifying decisions concerning the Illinois program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. In the oversight of the Illinois program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Illinois of only such provisions.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 10, 1996.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 913—ILLINOIS

1. The authority citation for Part 913 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 913.15 is amended by adding paragraph(s) to read as follows:

§ 913.15 Approval of regulatory program amendments.

* * * * *

(s) With the exception of 62 IAC 1816.116(a)(2)(F)(i) and 1817.116(a)(2)(F)(i), concerning augmentation of pasture, hayland, and grazing land; 62 IAC 1816.116(a)(3)(F) and 1817.116(a)(3)(F), concerning the revegetation success standards for non-contiguous areas less than or equal to four acres; and 62 IAC 1816.116(a)(4)(A)(ii), concerning use of a representative field to determine success of revegetation on non-contiguous areas less than or equal to four acres, the amendment submitted by Illinois to OSM by letter dated February 3, 1995, and as revised and supplemented with explanatory information on November 1, 1995, is approved effective May 29, 1996.

3. Section 913.16 is amended by removing and reserving paragraphs (s), (t), and (u) and by adding paragraphs (w), (x), and (y) to read as follows:

§ 913.16 Required program amendments.

* * * * *

(s)–(u) [Reserved]

* * * * *

(w) By July 29, 1996, Illinois shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to remove the regulation provisions at 62 IAC 1816.116(a)(2)(F)(i) and 1817.116(a)(2)(f)(i), concerning the authority to approve augmentative practices without restarting the period of extended responsibility for revegetation success and bond liability for pasture, hayland, and grazing land, from Chapter I, Title 62 of the Illinois Administrative Code.

(x) By July 29, 1996, Illinois shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to remove the regulations at 62 IAC 1816.116(a)(3)(F) and 1817.116(a)(3)(F), concerning the revegetation success standards for non-contiguous areas less than or equal to four acres that would not require statistically valid sampling techniques be used to evaluate success of revegetation, from Chapter I, Title 62 of the Illinois Administrative Code.

(y) By July 29, 1996, Illinois shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption of proposed revisions to remove the provision at 62 IAC 1816.116(a)(4)(A)(ii), concerning revegetation success for a larger field being representative of the revegetation success of a non-contiguous reclaimed area less than or equal to four acres, from Chapter I, Title 62 of the Illinois Administrative Code.

[FR Doc. 96–13267 Filed 5–28–96; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 931

[SPATS No. NM–036–FOR]

New Mexico Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment with one exception and additional requirements.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is approving, with one exception and additional requirements, a proposed amendment to the New Mexico regulatory program (hereinafter referred to as the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). New Mexico proposed revisions to and/or additions of rules pertaining to definitions; procedures for designating lands unsuitable for coal mining; permit application requirements concerning compliance information, the reclamation plan, and the subsidence information and control plan; procedures concerning permit application review; criteria for permit approval or denial; procedures concerning improvidently issued permits; permit conditions; requirements concerning ownership and control information; and performance standards for coal exploration, hydrologic balance, permanent and temporary impoundments, coal processing waste, disposal of noncoal waste, protection of fish, wildlife, and related environmental values, revegetation success, subsidence control, and roads. The amendment was intended to revise the New Mexico program to be consistent with the corresponding Federal regulations, incorporate the additional flexibility afforded by the revised Federal regulations, and improve operational efficiency.

EFFECTIVE DATE: May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (505) 248–5070.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated January 22, 1996, New Mexico submitted a proposed amendment to its program (administrative record No. NM–766) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico submitted the proposed amendment at its own initiative and in response to the required program amendments at 30 CFR 931.16 (a), (c), (d), (f) through (p), and (n)(2) through (s) (55 FR 48841, November 23, 1990; 56 FR 67520, December 31, 1991; and 58 FR 65907, December 17, 1993).

OSM announced receipt of the proposed amendment in the February 1, 1996, **Federal Register** (61 FR 3625), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. NM–767). Because no one requested a public hearing or meeting, none was held. The public comment period ended on March 4, 1996.

During its review of the amendment, OSM identified concerns relating to the certain provisions of the proposed amendment. OSM notified New Mexico of the concerns on March 13, 1996 (administrative record No. NM–774).

New Mexico responded on March 13, 1996, that it would not submit revisions to the amendment and that OSM should proceed with the publishing of this final rule **Federal Register** notice (administrative record No. NM–774).

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds, with certain exceptions and additional requirements, that the proposed program amendment submitted by New Mexico on January 22, 1996, is no less effective than the corresponding Federal regulations. Accordingly, the Director approves, with one exception, the proposed amendment and adds additional requirements.

1. Nonsubstantive Revisions to New Mexico's Rules

New Mexico proposed revisions to the following previously-approved rules that are nonsubstantive in nature and consist of minor editorial changes or recodification (corresponding Federal regulation provisions are listed in parentheses):

Coal Surface Mining Commission (CSMC) Rule 80–1–11–20(d) (30 CFR 773.20(c)), concerning remedial measures for improvidently issued permits, to recodify existing CSMC Rule 80–1–11–20(c) as CSMC Rule 80–1–11–20(d);

CSMC Rule 80–1–20–41(e)(3)(i) (30 CFR 816.41 (c)(3) and (e)(3) and 817.41 (c)(3) and (e)(3)), concerning general performance standard requirements for protection of the hydrologic balance, to correctly reference CSMC 80–1–20–41(e)(2)(i); and

CSMC Rule 80–1–20–82(a)(4) (30 CFR 816.71(h) and 817.71(h)), concerning inspections of coal processing waste banks, to correctly reference "Part 9" of New Mexico's rules.

CSMC Rule 80–1–20–89(d)(2) (30 CFR 816.89(b)), concerning disposal of noncoal

wastes, to correctly reference "Section 3–109D" of the New Mexico Water Quality Control Commission regulations.

Because the proposed revisions to these previously-approved rules are nonsubstantive in nature, the Director finds that these proposed New Mexico rules are no less effective than the Federal regulations. The Director approves these proposed rules.

2. Substantive Revisions to New Mexico's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

New Mexico proposed revisions to or additions of the following rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulation provisions (listed in parentheses).

CSMC Rule 80–1–1–5 (30 CFR 773.5), concerning the definitions of "Applicant/violator system or AVS," "Federal violation notice," "Ownership or control link," "State violation notice," and Violation notice;"

CSMC Rule 80–1–1–5 (30 CFR 700.5), concerning the definition of "OSM;"

CSMC Rules 80–1–1–5 (30 CFR 701.5), concerning the definition of "Road;"

CSMC Rules 80–1–11–20(c) (1) and (2) and (e) (30 CFR 773.20(b)(2) (i) and (ii) and (c)(2)), concerning general procedures for improvidently issued permits;

CSMC 80–1–11–24(a) and [deletion of] (c) (30 CFR 773.21(a)), concerning rescission procedures for improvidently issued permits;

CSMC Rule 80–1–11–31 (a) through (d) (30 CFR 773.22 (a) through (d)), concerning verification of ownership or control application information;

CSMC Rule 80–1–11–32 (a) through (c) (30 CFR 773.23 (a) through (c)), concerning review of ownership or control and violation information;

CSMC Rule 80–1–11–33 (a) through (d) (30 CFR 773.24 (a) through (d)), concerning procedures for challenging ownership or control links shown in AVS; and

CSMC Rule 80–1–11–34 (a) through (d) (30 CFR 773.25 (a) through (d)), concerning standards for challenging ownership or control links and the status of violations.

Because these proposed New Mexico rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective than the Federal regulations. The Director approves these proposed rules.

3. CSMC Rule 80–1–1–5, Definition of "Qualified Laboratory"

At its own initiative, New Mexico proposed a definition of "Qualified laboratory" at CSMC Rule 80–1–1–5 that is, with one exception, substantively identical to the Federal definition of "qualified laboratory" at 30 CFR 795.3. The exception is that New Mexico's definitions only provides for laboratory services related to the determination of probable hydrolic consequences or statement of results of test borings or core samplings under the new Mexico small operator assistance program (SOAP), where as the Federal definition provides for these and other services specified at 30 CFR 795.9.

New Mexico's CSMC Rule 80–1–32–9, which corresponds to 30 CFR 795.9 in the Federal regulations, has not been revised to include the additional services which can be funded under the Federal SOAP program (59 FR 28168, May 31, 1994). However, a State's implementation of SOAP is not mandated by SMCRA nor the Federal regulations and the provisions for SOAP funding may, to the extent provided for in the Federal program, be elected by the State.

Therefore, the Director finds that New Mexico's definition of "Qualified laboratory" at CSMC Rule 80–1–1–5 is no less effective than the Federal definition of "qualified laboratory" at 30 CFR 795.3 and approves the proposed definition of "Qualified laboratories" at CSMC 80–1–1–5.

4. CSMC Rules 80–1–1–5 and 80–1–7–14(c) (1) through (5), Ownership and Control Information Required in Permit Applications Concerning Violations

OSM required at 30 CFR 931.16(d) that New Mexico revise CSMC Rule 80–1–7–14(c) to add the requirement that a permit application include information on violations received pursuant to SMCRA, its implementing regulations, and to any State or Federal law, rule or regulation enacted or promulgated pursuant to SMCRA (finding No. 4, 58 FR 65907, 65909, December 17, 1993).

New Mexico proposed to revise CSMC Rules 80–1–7–14(c) (1) through (5), concerning compliance information required in permit applications, to include requirements that are, with one exception, substantively identical to the Federal regulations at 30 CFR 778.14(c) (1) through (5).

The exception is that New Mexico requires information concerning violations received pursuant to SMCRA. New Mexico proposed, at CSMC Rule 80–1–1–5, to add a definition of "SMCRA" which means, in addition to the Federal act, its implementing regulations at 30 CFR Chapter VII, and any State or Federal law, rule, regulation, or program enacted or promulgated pursuant to the Federal act.

The corresponding Federal regulations at 30 CFR 778.14(c) require information concerning violations received pursuant to SMCRA, its implementing regulations, and to any State or Federal law, rule or regulation enacted or promulgated pursuant to SMCRA. As defined by New Mexico, the use of the term "SMCRA" in proposed CSMC Rules 80–1–7–14(c) is equivalent to the use, in the Federal regulations, of the phrase "SMCRA, its implementing regulations, and any State or Federal law, rule or regulation enacted or promulgated pursuant to SMCRA."

Based upon the above discussion, the Director finds that proposed CSMC Rules 80–1–7–14(c) (1) through (5) and the term "SMCRA," as proposed at CSMC Rule 80–1–1–5, (1) are consistent with and no less effective than the Federal regulations at 30 CFR Part 778.14(c) (1) through (5), concerning compliance information required in permit applications, and (2) satisfy the required amendment at 30 CFR 931.16(d). The Director approves proposed CSMC Rules 80–1–7–14(c) (1) through (5) and the proposed definition of "SMCRA" at CSMC Rule 80–1–1–5, and removes the required amendment at 30 CFR 931.16(d).

5. CSMC Rule 80–1–1–5, Definitions of "Drinking, domestic, or residential water supply," "Material damage," "Noncommercial building," "Occupied residential dwelling and associated structures," and "Replacement of water supply" and CSMC Rules 80–1–20–121, 124, 125, and 127, Performance Standards Concerning the Subsidence Information and Control Plan

At 30 CFR 931.16(s), OSM required that New Mexico revise CSMC Rule 80–1–20–124 to require that an operator (1) repair or compensate for subsidence-related material damage to structures and facilities, (2) correct, by restoring the land to the extent technologically and economically feasible, any material damage resulting from subsidence caused to surface lands, (3) require an operator to either repair or compensate the owner in full regardless of the extent of operator liability under State law for any subsidence-related damage occuring after October 24, 1992, to occupied residential dwellings, structures related thereto, and noncommercial buildings, and (4) remove the inconsistency with proposed CSMC Rule 80–1–9–39(c) with regard to limiting to the extent required under State law, an operator's obligation to remedy subsidence-related material damage to structures and facilities (finding No. 19, 58 FR 65907, 65922, December 17, 1993).

In response to these required amendments, New Mexico proposed to delete its existing rules at CSMC Rule 80–1–20–121 and 124 and add rules that incorporate the definitions and performance standards pertaining to the repair of subsidence-caused damages that were promulgated on March 31, 1995, in the Federal program at 30 CFR 701.5 and 817.121 (60 FR 16749).

a. *CSMC Rule 80–1–1–5, Definitions of "Drinking, domestic, or residential water supply," "Material damage," "Noncommercial building," "Occupied residential dwelling and associated structures," and "Replacement of water supply."* New Mexico proposed to revise CSMC Rule 80–1–1–5 by adding definitions for "Drinking, domestic, or residential water supply," "Material damage," "Noncommercial building," "Occupied residential dwelling and associated structures," and "Replacement of water supply." These proposed definitions are substantively identical, with one exception, to the counterpart Federal definitions at 30 CFR 701.5.

The exception concerns a reference to the performance standards pertaining to repair of subsidence-caused damages in the proposed definitions of "Material damage" and "Occupied residential dwelling and structures related thereto." The Federal definitions of "material damage" and "occupied residential dwelling and structures related thereto" reference the Federal regulations at 30 CFR 780.20 and 817.121. The New Mexico rules that correspond to the Federal regulations at 30 CFR 817.121 are proposed CSMC Rules 80–1–9–39 and 80–1–20–121, 124, 125, and 127 (discussed below); however, New Mexico's proposed definitions of "Material damage" and "Occupied residential dwelling and structures related thereto" reference only New Mexico's CSMC Rules 80–1–9–39 and 80–1–20–124.

The Director finds that, with the exception of the reference to the performance standards pertaining to repair or subsidence-caused damages at CSMC Rule 80–1–20–124 in the proposed definitions of "Material damage" and "Occupied residential dwelling and structures related thereto," New Mexico's proposed definitions at CSMC 80–1–1–5 for "Drinking, domestic, or residential water supply," "Material damage," "Noncommercial building," "Occupied residential dwelling and associated structures," and "Replacement of water supply" are no less effective than the corresponding Federal definitions at 30 CFR 701.5. The Director approves these proposed definitions at CSMC 80–1–1–5, but is adding a new requirement that New Mexico further revise the definitions of "Material damage" and "Occupied residential dwelling and associated structures" at CSMC 80–1–1–5 to include references to CSMC Rules 80–1–20–121, 125, and 127.

b. *CSMC Rules 80–1–20–121, 124, 125, and 127, Performance standards concerning the subsidence information and control plan.* New Mexico proposed to add the following performance standards pertaining to subsidence that are, with one exception, substantively identical to the corresponding Federal regulations (in parentheses):

CSMC Rules 80–1–20–121 (a) through (d) (30 CFR 817.121(a) (1)–(3) and 817.121(b)), concerning general requirements for subsidence control;

CSMC Rules 80–1–20–124 (a) through (d) (30 CFR 817.121(c)(1), 817.41(j), and 817.121 (c)(2) and (c)(3)), concerning surface owner protection and restoration, replacement, repair, or compensation of subsidence-caused damages;

CSMC Rules 80–1–20–125 (a) through (e) (30 CFR 817.121 (c)(4)(i) through (c)(4)(v)), concerning rebuttable presumption of causation by subsidence; and

CSMC Rule 80–1–20–127 (30 CFR 817.121(c)(5)), concerning the requirement to adjust the bond amount for subsidence damage.

The exception concerns New Mexico's proposed requirement at CSMC 80–1–20–127 to adjust the bond amount when subsidence-related material damage occurs to land, structures or facilities protected under CSMC 80–1–20–124(a) through (d). The Federal regulation at 30 CFR 817.121(c)(5) requires adjustment of the bond amount when subsidence-related material damage to land, structures or facilities, *or when contamination, diminution, or interruption to a water supply* occurs (emphasis added). Although New Mexico's proposed CSMC 80–1–20–127 includes a reference to proposed CSMC 80–1–20–124(b) concerning replacement of water supplies, because the term "material damage" is not defined with respect to water supplies and it is not clear that the term "facilities" would include a water supply, New Mexico's proposed CSMC 80–1–20–127 does not clearly require adjustment of the bond amount when subsidence-related "contamination, diminution, or interruption to a water supply" occurs.

Based on the above discussion, the Director finds that, with the exception of the lack of a clear requirement at proposed CSMC 80–1–20–127 for adjustment of the bond amount when subsidence-related "contamination, diminution, or interruption to a water supply" occurs, proposed CSMC Rules 80–1–20–121, 124, 125, and 127 are no less effective than the corresponding Federal regulations at 30 CFR 817.121 (a) through (c) and satisfy the required amendment at 30 CFR 931.16(a). The Director approves proposed CSMC Rules 80–1–20–121, 124, 125, and 127 and removes the required amendment at 30 CFR 931.16(s). However, the Director is adding a new requirement that New Mexico further revise proposed CSMC Rules 80–1–20–127 to clearly require adjustment of the bond amount when subsidence-related "contamination, diminution, or interruption to a water supply" occurs.

6. CSMC Rules 80–1–4–15(b)(1), Procedures for Initial Processing, Record-Keeping, and Notification Requirements Concerning Petitions to Designate Lands Unsuitable for Mining

OSM required at 30 CFR 931.16(c) that New Mexico revise CSMC Rule 80–1–4–15(b)(1) to require publication in the New Mexico State register of a public notice of receipt of a petition to designate lands unsuitable for mining (finding No. 4, 56 FR 67520, 67522, December 31, 1991).

New Mexico proposed to revise CSMC Rule 80–1–4–15(b)(1) by adding the requirement that the regulatory authority notify the general public of the receipt of such a petition in the New Mexico register of public notices. This proposed requirement is substantively identical to the requirement in the Federal regulation at 30 CFR 764.15(b)(1) and satisfies the requirement that New Mexico amend its program at 30 CFR 931.16(c).

Therefore, the Director finds that proposed CSMC Rule 80–1–4–15(b)(1) is no less effective than the Federal regulation at 30 CFR 764.15(b)(1), approves New Mexico's proposed CSMC Rule 80–1–4–15(b)(1), and removes the required amendment at 30 CFR 931.16(c).

7. CSMC Rules 80–1–9–25 (a) and (c) and 80–1–20–49(e) (1) through (11), Requirements for Ponds, Impoundments, and Banks, Dams, and Embankments that Meet or Exceed the Class B or C Criteria of Technical Release No. 60 (210–VI–TR60, October 1985)

At its own initiative, New Mexico proposed to revise its program to incorporate the requirements for permit applications and performance standards pertaining to design, construction, and inspection of ponds and impoundments, and banks, dams, and embankments that meet or exceed the Class B or C criteria of Technical Release No. 60 (210–VI–TR60, October 1985), i.e., the hazardous classification criteria published by the U.S. Department of Interior, National Resource Conservation Service (NRCS). These requirements were incorporated into the Federal program on October 20,

1994 (see 59 FR 53029). Because New Mexico intended to revise its program to be no less effective than the Federal program with respect to the hazardous classification criteria published by the NRCS, OSM has identified those existing provisions in the New Mexico program which were not proposed to be revised but which New Mexico must revise in order for the New Mexico program to be no less effective than the Federal program.

a. *CSMC Rule 80–1–9–25(a) (2) and (3), and 80–1–9–25(c), Contents of permit applications.* New Mexico proposed to revise CSMC Rules 80–1–9–25(a) (2) and (3) and 80–1–9–25(c), concerning the contents of permit applications, to incorporate requirements pertaining to ponds and impoundments, and banks, dams, and embankments that meet or exceed the Class B or C criteria of Technical Release No. 60 (210–VI–TR60, October 1985). The proposed requirements are substantively identical to the requirements in the corresponding Federal regulations at 30 CFR 780.25 (a)(2), (a)(3), and (c)(3). Therefore, the Director finds that New Mexico's program at CSMC Rule 80–1–9–25, with the exception of an existing rule that was not revised, is no less effective than the Federal program at 30 CFR 780.25 with respect to incorporation of the NRCS hazardous classification criteria.

The exception concerns New Mexico's existing CSMC 80–1–9–25(e)(5), which New Mexico did not propose to revise to incorporate requirements pertaining to the NRCS hazardous classification criteria. The corresponding Federal regulation at 30 CFR 780.25(f) requires that, if the structure meets the Class B or C criteria for dams in TR–60 or meets the size or other criteria of 30 CFR 77.216(a), each plan required under 30 CFR 780.25(b), (c), and (e) must include a stability analysis of the structure and a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Therefore, the Director finds that existing CSMC 80–1–9–25(e)(5) is less effective than the revised Federal regulations at 30 CFR 780.25(f) with respect to requirements pertaining to those structures that meet the Class B or C criteria for dams in TR–60.

Based on the discussion above, the Director approves proposed CSMC Rules 80–1–9–25(a) (2) and (3) and 80–1–9–25(c), but is adding a new requirement that New Mexico further revise existing CSMC 80–1–9–25(e)(5) to incorporate the requirements pertaining to those structures that meet the Class B or C criteria for dams in TR–60.

b. *CSMC Rules 80–1–20–49(e) (1) through (11), Performance standards.* New Mexico proposed to revise the introductory paragraph at CSMC Rule 80–1–20–49(e) to clarify that its requirements apply to all temporary or permanent impoundments at both surface and underground mining operations. In addition, New Mexico proposed to recodify CSMC Rules 80–1–20–49(e) (1) through (11) and to incorporate requirements concerning impoundments that meet or exceed the Class B or C criteria of Technical Release No. 60 (210–VI–TR60, October 1985).

The requirements of New Mexico's CSMC Rule 80–1–20–49(e) (1) through (11), along with existing requirements at CSMC Rules 80–1–20–49 (b), (c), (d), (f), and (g) are, with two exceptions discussed below, substantively identical to the requirements in the corresponding Federal regulations at 30 CFR 816.49(a) and 817.49(a).

The first exception concerns New Mexico's existing CSMC Rules 80–1–20–49(d), which pertains to construction certification, 80–1–20–49(f)(2), which pertains to required design precipitation events, and 80–1–20–49(g) (4) and (5), which pertain to inspection and construction certification. New Mexico did not propose to revise these rules to incorporate requirements pertaining to the NRCS hazardous classification criteria. The corresponding Federal regulations at 30 CFR 816.49(a)(9)(ii) (A) and (C), 816.49(a)(11)(iv), and 816.49(12) and 30 CFR 817.49(a)(9)(ii) (A) and (C), 817.49(a)(11)(iv), and 817.49(12) include requirements pertaining to structures that meet or exceed the Class B or C criteria for dams in TR–60.

Therefore, the Director finds that proposed CSMC Rules 80–1–20–49(e) (1) through (11) are no less effective than the Federal regulations at 30 CFR 816.49(a) and 817.49(a). However, the Director also finds that existing CSMC Rules 80–1–20–49(d), 80–1–20–49(f)(2), and 80–1-20–49(g) (4) and (5) are, with respect to requirements pertaining to those structures that meet or exceed the Class B or C criteria for dams in TR–60, less effective than the revised Federal regulations at 30 CFR 816.49(a)(9)(ii) (A) and (C), 816.49(a)(11)(iv), and 816.49(12) and 30 CFR 817.49(a)(9)(ii) (A) and (C), 817.49(a)(11)(iv), and 817.49(12).

The second exception in New Mexico's proposed CSMC 80–1–20–49(e)(11) which requires barriers to control seepage. Proposed CSMC 80–1–20–49(e)(11) has no Federal counterpart. However, this requirement is not inconsistent with the requirements of 30 CFR 816.49(a)(6), concerning foundation stability, and provides for additional protection.

Based on the discussion above, the Director approves proposed CSMC Rules 80–1–20–49(e) (1) through (11), but is adding a new requirement that New Mexico further revise existing CSMS Rules 80–1–20–49(d), 80–1–20–49(f)(2), and 80–1–20–(g) (4) and (5) to incorporate the requirements pertaining to those structures that meet or exceed and do not meet or exceed the Class B or C criteria for dams in TR–60.

8. CSMC Rule 80–1–9–39 (a), (b), and (c), Permit Application Requirements Concerning a Subsidence Information and Control Plan for Underground Mining Operations

OSM required at 30 CFR 931.16 (f) and (g) that New Mexico revise, respectively, (1) its program to require that a permit application include a description of measures that an operator would use to mitigate or remedy subsidence-related material damage to the land and to occupied residential dwellings, structures related thereto, and noncommercial buildings where the damage resulted from underground mining operations conducted after October 23, 1992; and (2) CSMC Rule 80–1–9–39(d) to remove from its program the exception allowed at paragraph (d)(2) from the requirements of CSMC Rule 80–1–9–39(d), concerning adoption of measures to prevent subsidence causing material damage to the extent technologically and economically feasible (findings Nos. 8. b and c, 58 FR 65907, 65912 and 65913, December 17, 1993).

New Mexico proposed to delete existing CSMC Rules 80–1–9–39(a) (1) through (5), (b) (1) through (3), and (c) (1) through (4), and add CSMC Rules 80–1–9–39 (a) (1) through (6), (b), and (c) (1) through (9), concerning permit application requirements for subsidence information and control plans.

New Mexico's proposed CSMC Rules 80–1–9–39(a) (1) through (6), (b), and (c) (1) through (9), are, with one exception, substantively identical to the corresponding Federal regulations at 30 CFR 780.24(a) (1) through (3) and (b) (1) through (9), and satisfy the required amendments at 30 CFR 931.16 (f) and (g). The exception concerns New Mexico's requirement at proposed CSMC Rule 80–1–9–39(a)(3), concerning the pre-subsidence survey, for a photo, prior to mining, of the exterior of each non-commercial building or occupied residential dwelling and associated structures. The counterpart Federal regulation at 30 CFR 784.20(a)(3) does not require photographs as part of the survey. However, proposed CSMC Rule 80–1–9–39(a)(3) is not inconsistent with the Federal regulations and provides for additional documentation of the condition of existing structures that may be materially damaged or for which the reasonably foreseeable use maybe diminished by subsidence.

Based on the above discussion, the Director finds that New Mexico's proposed CSMC Rules 80–1–9–39(a) (1) through (6), (b), and (c) (1) through (9), concerning permit application requirements for a subsidence information and control plan, are no less effective than the Federal regulations at 30 CFR 780.24(a) (1) through (3) and (b) (1) through (9). The Director approves proposed CSMC Rules 80–1–9–39(a) (1) through (6), (b), and (c) (1) through (9), and removes the required amendments at 30 CFR 931.16 (f) and (g).

9. CSMC Rule 80–1–11–17(c), Basis for Permit Denial

OSM required at 30 CFR 931.16(h) that New Mexico revise CSMC Rule 80–1–11–17(c) to require, as a basis of permit denial, that New Mexico (1) consider delinquent civil penalties issued pursuant to all the derivative State and Federal programs encompassed by the Federal phrase "section 518 of the Act," and (2) prohibit issuance of a permit if there exist uncorrected or unabated violations received by an applicant or other controlling entity pursuant to SMCRA, its implementing regulations, or any State or Federal law, rule or regulation enacted or promulgated pursuant to SMCRA (finding No. 9.b, 58 FR 65907, 65913, December 17, 1993).

New Mexico proposed to revise CSMC Rule 80–1–11–17(c), concerning the basis for permit denial, to include requirements that are substantively identical to those in the Federal regulation at 30 CFR 773.15(b)(1) and, in doing so, has satisfied the required amendment at 30 CFR 931.16(h).

Because New Mexico's proposed rule is substantively identical to the Federal regulation, the Director finds that proposed CSMC Rule 80–1–11–17(c) is no less effective than the Federal regulation at 30 CFR 773.15(b)(1). The Director approves proposed CSMC 80–1–11–17(c) and removes the required amendment at 30 CFR 931.16(h).

10. CSMC Rules 80–1–11–17(d) and 80–1–11–19(i), Review of Permit Applications and Criteria for Permit Approval or Denial

OSM required at 30 CFR 931.16(i) that New Mexico revise CSMC Rules 80–1–11–17(d) and 80–1–11–19(i) to require that the Director of the New Mexico program, when making a determination of whether a pattern of willful violations exists, consider violations received by an applicant, operator, or controlling entity pursuant to SMCRA, its implementing regulations, or any State or Federal law, rule or regulation enacted or promulgated pursuant to SMCRA (finding No. 9.c, 58 FR 65907, 65914, December 7, 1993).

New Mexico proposed to revise CSMC Rule 80–1–11–17(d) and 80–1–11–19(i), concerning, respectively, New Mexico's (1) review of permit applications for a demonstrated pattern of willful violations, and (2) criteria for permit approval and denial pertaining to a demonstrated pattern of willful violations, to include the requirement that the Director of the New Mexico program consider violations received by an applicant, operator, or controlling entity pursuant to "SMCRA." New Mexico proposed a definition of the term "SMCRA" at CSMC Rule 80–1–1–5 to mean, in addition to the Federal act, its implementing regulations at 30 CFR Chapter VII, and any State or Federal law, rule, regulation, or program enacted or promulgated pursuant to it (see finding No. 4.c for a discussion of the Director's approval of the definition of "SMCRA" proposed at CSMC Rule 80–1–1–5).

New Mexico's use of the term "SMCRA" in proposed CSMC Rules 80–1–11–17(d) and 80–1–11–19(i) is equivalent to the use, in the Federal regulations at 30 CFR 773.15(b)(3), of the phrase "SMCRA, its implementing regulations, and any State or Federal law, rule or regulation enacted or promulgated pursuant to SMCRA" and satisfies the required amendment at 30 CFR 931.16(i).

Based upon the above discussion, the Director finds that proposed CSMC Rules 80–1–11–17(d) and 80–1–11–19(i) are consistent with and no less effective than the counterpart Federal regulations at 30 CFR 773.15(b)(3), approves proposed CSMC Rules 80–1–11–17(d) and 80–1–11–19(i), and removes the required amendment at 30 CFR 931.16(i).

11. CSMC Rules 80–1–11–20 (b)(1) and (b)(3), General Procedures Pertaining to Improvidently Issued Permits

OSM required at 30 CFR 931.16(j) that New Mexico revise CSMC Rules 80–1–11–20 (b)(1) and (b)(3) to reference CSMC Rule 80–1–11–20(b)(1)(iii) instead of CSMC Rule 80–1–7–14 (finding No. 10.a, 58 FR 65907, 65914, December 17, 1993).

New Mexico proposed to revise CSMC Rules 80–1–11–20 (b)(1), (b)(1)(ii), and (b)(3), concerning review criteria for improvidently issued permits, to include requirements that are, with one exception, substantively identical to the Federal regulations at 30 CFR 773.20(b)(1) (i) and (iii). In doing so, New Mexico deleted the language that necessitated the reference to CSMC Rule 80–1–11–20(b)(1)(iii) and, thereby, satisfied the required amendment at 30 CFR 931.16(j).

The exception is that New Mexico proposed to delete, from CSMC Rule 80–1–11–20(b)(1)(ii), a reference to the applicable violations review criteria in the preamble of the Federal regulations published at 54 CFR 18438, 18440–18441. This reference identifies the applicable review criteria the Director of the New Mexico program is to use when determining what specific unabated violations, delinquent penalties and fees, and ownership and control relationship apply under this rule.

The Federal regulations at 30 CFR 773.20(b)(1)(i) require that a regulatory authority shall find that a surface coal mining and reclamation permit was improvidently issued if, under the violations review criteria of the regulatory program at the time the permit was issued, the regulatory authority should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or the permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued.

Because New Mexico proposed to delete from CSMC Rule 80–1–11–20(b)(1)(ii) the reference to the applicable violations review criteria, New Mexico's program no longer identifies the review criteria that the Director of the New Mexico program would use to determine what specific unabated violations, delinquent penalties and fees, and ownership and control relationship applied at the time a permit was issued. To be no less effective than the Federal regulations at 30 CFR 773.20(b)(1)(i), New Mexico

must review CSMC Rule 80–1–11–20(b)(1) to identify the applicable violations review criteria.

Based on the above discussion, the Director finds that (1) New Mexico has satisfied the required amendment at 30 CFR 931.16(j), and (2) New Mexico's proposed CSMC Rules 80–1–11–20(b)(1), (b)(1)(ii), and (b)(3), with the exception of the proposed deletion the applicable violations review criteria at CSMC Rule 80–1–11–20(b)(1)(ii), are no less effective than the Federal regulations at 30 CFR 773.20(b)(1) (i) and (iii). The Director approves proposed CSMC Rules 80–1–11–20 (b)(1), (b)(1)(ii), and (b)(3) and removes the required amendment at 30 CFR 931.16(j). However, the Director is adding a new requirement that New Mexico further revise CSMC Rule 80–1–11–20(b)(1) to identify the applicable violations review criteria that the Director of the New Mexico program would use to determine what specific unabated violations, delinquent penalties and fees, and ownership and control relationship applied at the time a permit was issued.

12. CSMC Rule 80–1–11–29(d) Conditions of Permits

OSM required at 30 CFR 931.16(k) that New Mexico revise CSMC Rule 80–1–11–29(d) to require the permittee to update the ownership and control information when a Federal cessation order has been issued in accordance with 30 CFR 843.11, or, if there has been no change in the required information, to so notify the Director (finding No. 11, 58 FR 65907, 65915, December 17, 1993).

New Mexico proposed to revise CSMC Rule 80–1–11–29(d) to require that a permittee submit information concerning, among other things, "a Federal cessation order issued in accordance with 30 CFR 843.11." Existing CSMC Rule 80–1–11–29(d)(3) requires that the permittee notify New Mexico in writing if there has been no change in previously submitted information.

Therefore, the Director finds that proposed CSMC Rule 80–1–11–29(d) is no less effective than the Federal regulation at 30 CFR 773.17(i) and satisfies the required amendment at 30 CFR 931.16(k). The Director approves CSMC Rule 80–1–11–29(d) and removes the required amendment at 30 CFR 931.16(k).

13. CSMC Rule 80–1–19–15(c) Performance Standards for Coal Exploration

OSM required at 30 CFR 931.16(l) that New Mexico revise CSMC Rule 80–1–19–15(c) to require that "other transportation facilities" used for coal exploration activities meet the requirements of CSMC Rules 80–1–20–150 (b) through (g) and 80–1–20–181 (a) and (b) (finding No. 12, 58 FR 65907, 65916, December 17, 1993).

New Mexico proposed to revise CSMC Rules 80–1–19–15 (c)(2), (c)(3), and (c)(3)(iii), concerning performance standards applicable to coal exploration, to apply these rules to other transportation facilities as well as to new and existing roads and to require that new and significantly altered existing roads or other transportation facilities comply with the provisions of CSMC Rules 80–1–20–150 (b) through (f) and 80–1–20–180 and 181. In addition, New Mexico proposed to further revise CSMC Rule 80–1–19–15(c)(4) to clarify that (1) any road or facility that will be retained permanently must comply with the applicable provisions of CSMC Rules 80–1–20–150, 151, 20–180, and 20–182 and (2) if a road or facility will not be retained it must be immediately reclaimed.

The Federal regulations at 30 CFR 815.15(b) require that all roads or other transportation facilities used for coal exploration shall comply with the applicable provisions of 30 CFR 816.150 (b) through (f), 816.180, and 816.181.

The Director finds that proposed CSMC Rules 80–1–19–15 (c)(2), (c)(3), (c)(iii), and (c)(4) are no less effective than the Federal regulations at 30 CFR 815.15(b) and satisfy the required amendment at 30 CFR 931.16(l). The Director approves proposed CSMC Rules 80–1–19–15 (c)(2), (c)(3), (c)(iii), and (c)(4) and removes the required amendment at 30 CFR 931.16(1).

14. CSMC Rule 80–1–20–93(a)(1) Performance Standard Pertaining to the Design and Construction of Dams and Embankments Constructed of or Intended to Impound Coal Processing Waste

At its own initiative, New Mexico proposed to revise CSMC 80–1–20–93(a)(1) to delete the requirement that the design freeboard must be at least 3 feet and to require, for the design of each dam and embankment constructed of or intended to impound coal processing waste, that the maximum water elevation shall be that determined by the freeboard hydrograph criteria contained in the NRCS hazardous classification criteria referenced in CSMC Rule 80–1–20–49.

The corresponding Federal regulations concerning the design of each dam and embankment constructed of coal processing waste or intended to impound such waste are at 30 CFR 816.84(b)(1) and 817.64(b)(1). These Federal regulations reference the requirements at 30 CFR 816.49(a) and 817.49(a) for determination of the maximum water elevation. As discussed in finding No. 7 above, OSM revised the Federal program at 30 CFR 816.49(a) and 817.49(a) to include new requirements for impoundments that meet or exceed the NRCS hazardous classification criteria. Specifically, the Federal regulations at 30 CFR 816.49(a)(5) and 817.49(a)(5) include the requirement that freeboard design for impoundments that meet the Class B or C criteria for dams in NRCS Technical Release No. 60 (TR–60; 210–VI–TR60, Oct. 1985), shall comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR–60. In this amendment, also discussed in finding No. 7.b above, New Mexico proposed to revise CSMC Rule 80–1–20–49(e) to include NRCS hazardous classification criteria that are no less effective than those in the Federal regulations. Specifically, New Mexico proposed to revise CSMC Rules 80–1–20–49(e)(4) to incorporated requirements concerning freeboard design for impoundments meeting the NRCS hazardous classification criteria.

Because proposed CSMC 80–1–20–93(a)(1) requires, by reference to CSMC 80–1–20–49, that the maximum water elevation be that determined by the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table, proposed CSMC 80–1–20–93(a)(1) is no less effective than the Federal regulations at 30 CFR 816.84(b)(1) and 817.64(b)(1). The Director approves proposed CSMC 80–1–20–93(a)(1); however, OSM recommends, for clarity, the New Mexico further revise proposed CSMC 80–1–20–93(a)(1) to reference the requirements at CSMC 80–1–20–49(e)(4) rather than CSMC 80–1–20–49.

15. CSMC Rules 80–1–20–97(b) and (c), Protection of Fish, Wildlife, and Related Environmental Values

OSM required at 30 CFR 931.16(a) that New Mexico revise its program to require protection of threatened and endangered species from underground mining activities (finding No. 4, 55 FR 48837, 48839, November 23, 1990).

New Mexico proposed to revise CSMC Rules 80–1–20–97 (b) and (c) to prohibit operators from conducting "surface coal mining operations or reclamation" that are likely to jeopardize the continued existence of endangered or threatened species and their habitats, including bald and golden eagles, their nests and eggs. New Mexico also proposed to extend the prohibition to threatened and endangered species listed by the "New Mexico Energy, Minerals and Natural Resources and Game and Fish Department" in addition to those listed by the Secretary of the U.S. Department of the Interior.

The corresponding Federal regulations at 30 CFR 816.97 (b) and (c) and 817.97 (b) and (c) prohibit operators from conducting, respectively, "surface mining activities" or "underground mining activities" that are likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary of the Interior and their habitats, including bald and golden eagles, their nests and eggs.

At existing CSMC Rule 80–1–1–5, New Mexico defines (1) "Reclamation" to mean

> those actions taken to restore mined land as required by the Act and these rules and regulations to a postmining land use approved by the Director

and (2) "Surface coal mining operations" to mean

> (a) activities conducted on the surface lands in connection with a surface coal mine or, subject to the requirements of Section 69–25A–20 NMSA 1978 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce.

Therefore, New Mexico's use, at proposed CSMC Rules 80–1–20–97 (b) and (c), of the phrase "surface coal mining operations or reclamation" includes "surface operations and surface impacts incident to an underground coal mine" and satisfies the required amendment at 30 CFR 931.16(a).

The corresponding Federal regulations at 30 CFR 816.97(b) and 817.97(b) also require protection of species listed by the Secretary, but do not prohibit the protection of other species. Therefore, New Mexico's proposed inclusion of additional species at CSMC Rules 80–1–20–97 (b) and (c), while not required, is not inconsistent with the Federal requirements.

Based on the above discussion, the Director finds that proposed CSMC Rules 80–1–20–97 (b) and (c) are consistent with and no less effective than the Federal regulations at 30 CFR 816.97 (b) and (c) and 817.97 (b) and (c), approves proposed CSMC Rules 80–1–20–97 (b) and (c), and removes the required amendment at 30 CFR 931.16(a).

16. CSMC Rule 80–1–20–116(b)(1), Period of Extended Responsibility

OSM required at 30 CFR 931.16(n)(2) that New Mexico revise CSMC Rule 80–1–20–116(b)(1) to require that the period of extended responsibility begin after the last year of augmented seeding, fertilizing, irrigation, or other work (finding No. 16.b, 58 FR 65907, 65919, December 17, 1993).

New Mexico proposed to revise CSMC Rule 80–1–20–116(b) (1) to (1) delete the allowance for supplemental fertilization and interseeding in order to establish species diversity to occur without disrupting the liability period and (2) require that the extended liability period begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the Director in accordance with CSMC Rule 80–1–20–116(b)(6).

The Federal regulations at 30 CFR 816.116(c)(1) provide that the period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the regulatory authority in accordance with 30 CFR with 30 CFR 816.116(c)(4).

The Director finds that the proposed revisions at CSMC Rule 80–1–20–116(b)(1), concerning the beginning of the bond liability period, (1) are substantively identical to and, therefore, no less effective than the Federal regulations at 30 CFR 816.116(c) (1), and (2) satisfy the required amendment at 30 CFR 931.16(n)(2). (Please note that the existing provision at CSMC Rule 80–1–20–116(b)(1), concerning revegetation success standards for ground cover and productivity, which allows for standards other than those developed by use of a reference area to be approved by the Director of the New Mexico program, is subject to an outstanding required amendment at 30 CFR 931.16(n)(1).)

Based on the above discussion, the Director approves the proposed revisions at CSMC Rule 80–1–20–116(b)(1), concerning the beginning of the bond liability period, and removes the required amendment at 30 CFR 931.16(n)(2).

17. CSMC 80–1–20–116(b) (1) Through (5), Revegetation Success Standards

At its own initiative, New Mexico proposed to revise CSMC 80–1–20–116(b)(1) (i) and (ii), (b)(2), and (b)(3) by recodifying these rules as CSMC 80–1–20–116 (b)(2) through (b)(5) and proposing nonsubstantive editorial revisions at CSMC 80–1–20–116(b) (2) and (3). In addition, New Mexico proposed to revise CSMC Rule 80–1–20–116(b) (5) to (1) delete the allowance for 80 percent statistical confidence to demonstrate success of shrubland when compared to reference areas, and (2) allow shrubland stocking, in addition to ground cover and production, to be considered successful when they are at least 90 percent of the standards developed for historical records under CSMC Rule 8–1–20–116(a).

The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require, among other things, that ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard and that the sampling techniques for measuring success shall use a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error).

Therefore, the Director finds that, because New Mexico's proposed CSMC Rule 80–1–20–116(b)(5) now requires success of ground cover and productivity of all revegetation to be measured with 90 percent statistical confidence in order to be considered successful, proposed CSMC Rule 80–1–20–116(b)(5) is no less effective than the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2). The Director approves the (1) recodification and nonsubstantive editorial revisions at CSMC 80–1–20–116 (b)(2) through (b)(4), and (2) proposed revisions at CSMC Rule 80–1–20–116(b)(5).

18. CSMC 80–1–20–116(b)(6), Normal Husbandry Practices

At its own initiative, New Mexico proposed a new CSMC Rule 80–1–20–116(b)(6) that allows the Director of the New Mexico program to approve selective husbandry practices without extending the period of responsibility for revegetation success or bond liability, and identifies husbandry practices as those activities that can be expected to continue as part of the post mining land use, and are employed within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, to control disease, pest and vermin and appropriate pruning, reseeding, and transplanting activities. Proposed CSMC Rule 80–1–20–116(b)(6) also provides that husbandry practices may be allowed if they will not reduce the probability of permanent revegetative success if they are discontinued after the liability period expires and states that any practice the Director determines to be augmented

seeding, fertilization or irrigation shall not be considered a husbandry practice.

The Federal regulations at 30 CFR 816.116(c)(4) provide that the regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from the Director of OSM, in accordance with 30 CFR 732.17, that the practices are normal husbandry practices, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding, and transplanting specifically necessitated by such actions.

New Mexico's proposed CSMC Rule 80–1–20–116(b)(6) mimics the language in the Federal regulations, but does not actually identify husbandry practices. It only states that the Director of the New Mexico program may approve selective husbandry practices that would not extend the period of responsibility for revegetation success or bond liability and describes the nature of husbandry practices. The Federal regulations at 30 CFR 816.116(c)(4) require that the regulatory authority obtain prior approval, that the selected practices are normal husbandry practices, from OSM in accordance with 30 CFR 732.17 (i.e., the state program approval process).

Based on the above discussion, the Director finds that proposed CSMC Rule 80–1–20–116(b)(6) is less effective than the Federal regulations at 30 CFR 816.116(c)(4). With the exception of the allowance for the Director of the New Mexico program to approve husbandry practices that have not received approval from OSM in accordance with 30 CFR 732.17, the Director approves proposed CSMC Rule 80–1–20–116(b)(6).

However, the Director is also adding a new requirement that New Mexico revise CSMC Rule 80–1–20–116(b)(6) to either (1) identify selected husbandry practices and submit them with documentation verifying that the proposed practices would be considered normal in the areas being mined or (2) state that selected husbandry practices approved by the Director may not be implemented prior to approval from OSM in accordance with the State program amendment process at 30 CFR 772.17.

19. CSMC Rules 80–1–20–117, 117(c)(1), 117(c)(3), 117(c)(4), 117(d)(2), and 117(d)(3)(i), Performance Standards for the Revegetation of Trees and Shrubs

In response to required program amendments at 30 CFR 931.16 (p), (q), and (4), New Mexico proposed revisions at CSMC Rules 80–1–20–117, 117(c)(1), 117(c)(3), 117(c)(4), 117(d)(2), and 117(d)(3)(i), concerning performance standards for the revegetation of trees and shrubs. At its own initiative, New Mexico also proposed revisions at CSMC Rule 80–1–20–117(d)(3)(i), concerning statistical sampling techniques (finding Nos. 17.a, 17.c.i, and 17.c.ii, 58 FR 65907, 65920, and 65921, December 17, 1993).

Based on the discussion in paragraphs 19.a through 19.d below, the Director approves proposed CSMC Rules 80–1–20–117, 117(c)(1), 117(c)(3), 117(c)(4), 117(d)(2), and 117(d)(3)(i), and removes the required amendment at 30 CFR 931.16 (p), (q), and (r).

a. *CSMC Rule 80–1–20–117, Performance standards for tree and shrub stocking and utility of the trees and shrubs for the approved postmining land use.* OSM required at 30 CFR 931.16(p) that New Mexico revise CSMC Rule 80–1–20–117(a) and (b) to (1) provide revegetation success standards for lands developed as fish or wildlife habitat, recreation areas, or shelterbelts, and (2) require that the trees and shrubs used in determining stocking success and adequacy of plant arrangement shall have utility for the approved postmining land use.

In response to the required amendment at 30 CFR 931.16(p), New Mexico proposed to revise CSMC Rule 80–1–20–117 to (1) apply its tree and shrub stocking requirements to reclaimed land developed for use as fish and wildlife habitat, recreation, shelterbelts, or forestry and (2) require that trees and shrubs used in determining the success of stocking and the adequacy of plant arrangement shall have utility for the approved postmining land use.

The Director finds that proposed CSMC Rule 80–1–20–117 satisfies the required amendment at 30 CFR 931.16(p) and is no less effective than the Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3).

b. *CMSC 80–1–20–117(c)(1), (3), and (4), Performance standards for stocking of trees and shrubs where commercial forest land is the approved postmining land use.* OSM required at 30 CFR 931.16(q) that New Mexico revise CSMC Rule 80–1–20–117(c) to (1) clarify whether the stocking rate for commercial forest land will be determined by the State Forester on a permit-specific or program-wide basis, (2) reference the correct rules for determining the number of trees, shrubs, and ground-cover plants on commercial forest land, and (3) reference CSMC Rule 80–1–20–117(d)(2) for the appropriate bond release success standards for stocking and ground cover.

In response to the required amendment at 30 CFR 931.16(q)(1), New Mexico proposed to revise CSMC 80–1–20–117(c)(1) to require that the minimum stocking of trees or shrubs will be determined by the State Forester *on a permit-specific basis* (emphasis added). In response to the required amendment at 30 CFR 931.16(q)(2), New Mexico proposed to revise CSMC Rule 80–1–20–117(c)(3), concerning success standards for areas where commercial forest land is the approved postmining land use, to (1) reference CSMC Rules 80–1–20–116(b)(5)(iv) and 20–117(b) for the approved sampling methods, and (2) delete a provision specific to tree and shrub stocking for the beginning of the extended liability period. In response to the required amendment at 30 CFR 931.16(q)(3), New Mexico proposed to revise CSMC 80–1–20–117(c)(4) to reference CSMC Rules 80–1–20–116 and 80–1–20–117 for the requirements pertaining to the demonstration required, upon request for final bond release, to show success of tree and shrub stocking and ground cover.

The Director finds that New Mexico's proposed CSMC Rules 80–1–20–117(c) (1), (3), and (4) satisfy the requirements of 30 CFR 931.16(q) (1), (2), and (3), and are no less effective than the Federal regulations at 30 CFR 816.116(b)(3) and 817.116(b)(3).

c. *CSMC Rules 80–1–20–117(d)(2) and (d)(3)(i), Performance standards for tree and shrub stocking concerning sampling techniques, revegetation success standards, and the extended period of responsibility for revegetation success.* OSM required at 30 CFR 931.16(r) that New Mexico revise CSMC Rule 80–1–20–117 (d) to (1) provide at CSMC Rule 80–1–20–117 (d)(2) and (d)(3)(i) the correct references to rules pertaining to revegetation success standards and the extended period of responsibility for revegetation success, and (2) require at CSMC Rule 80–1–20–117(d)(3)(i) that the sampling techniques for measuring revegegation success shall use a 90-percent statistical confidence interval.

In response to the required amendment at 30 CFR 931.16(r)(1), New Mexico proposed to revise CSMC Rules 80–1–20–117(d)(2), concerning success standards for areas where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land, to (1) reference CSMC Rules 80–1–20–116(b)(5)(iv) and 80–1–20–117(d)(1) for the revegetation success standards for stocking of trees, half-shrubs, shrubs, and ground cover, and (2) delete a provision specific to tree and shrub stocking for the beginning of the extended liability period.

In response to the required amendments at 30 CFR 931.16(r) (1) and (2), New Mexico proposed to revise CSMC Rule 80–1–20–117(d)(3)(i) to require that, upon expiration of the 5 or 10 year responsibility period and at the time of request for bond release, vegetated woody plants must be equal to or greater than 90 percent of the stocking of live woody plants of the same life form ascertained pursuant to CSMC Rule 80–1–20–117(b) with 90 percent statistical confidence.

The Director finds that New Mexico's proposed revisions of (1) CSMC Rules 80–1–20–117 (d)(2) and (d)(3)(i), concerning referenced rules for revegetation success standards, and (2) CSMC Rule 80–1–20–117(d)(3)(i), concerning the requirement that the sampling techniques for measuring revegetation success shall use a 90-percent statistical confidence interval, satisfy the required amendments at 30 CFR 931.16(r) (1) and (2) and are no less effective than the Federal regulations at 30 CFR 816.116 (a)(2) and (b)(3) and 817.116 (a)(2) and (b)(3).

d. *CSMC Rule 80–1–20–117(d)(3)(i), Performance standards concerning the statistical techniques for measuring success of tree and shrub stocking.* At its own initiative, New Mexico proposed a revision at CSMC 80–1–20–117(d)(3)(i) to require that statistical techniques for measuring success use appropriate parametric or nonparametric one-tail test with a 90-percent confidence interval and a 10-percent alpha error.

The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require, among other things, that ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard and that the sampling techniques for measuring success shall use a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error).

With one exception, New Mexico's proposed CSMC Rule 80–1–20–117(d)(3)(i), concerning statistical sampling techniques, is substantively identical to these requirements in the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2). The exception is that New Mexico cites as appropriate statistical tests either parametric or nonparametric tests and indicates that both would be tests that are one-tailed with a 90-percent confidence interval and a 10-percent alpha error. Nonparametrically distributed populations exist when the parameters being measured are not normally distributed throughout the area being sampled, e.g., in the arid west when the vegetation cover approaches zero and where shrubs are planted and occur with irregularity throughout the reclaimed area. A test for a nonparametrically distributed population can be found to be 90% confident with a one-tailed test with a .1% alpha error, just as can a test for parametrically distributed populations.

Therefore, based on the above discussion, the Director finds that proposed CSMC Rule 80–1–20–117(d)(3)(i), concerning statistical sampling techniques, is no less effective than the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2).

20. CSMC Rule 80–1–20–150(c), Prohibition of Vehicular Fords or Low Water Crossings by Ancillary Roads

At its own initiative, New Mexico proposed to delete CSMC Rule 80–1–20–150(c) which prohibits vehicular use of fords or low water crossings by ancillary roads at any time there is a visible surface flow.

The Federal regulations at 30 CFR 816.151(c)(2) and 817.151(c)(2) prohibit fords of perennial and intermittent streams by primary roads. However, there is no similar prohibition in the general requirements for all roads in the Federal regulations at 30 CFR 816.150(b) (2) and (3) and 817.150(b) (2) and (3), which correspond to New Mexico's CSMC Rule 80–1–20–150.

Therefore, the Director finds that New Mexico's proposed deletion of CSMC Rule 80–1–20–150(c), concerning the prohibition pertaining to fords by ancillary roads, does not cause CSMC Rule 80–1–20–150 to be inconsistent with nor less effective than the general requirements for all roads in the Federal regulations at 30 CFR 816.150(b) (2) and (3) and 817.150(b) s(2) and (3). The Director approves the proposed deletion of CSMC Rule 80–1–20–150(c).

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the New Mexico program.

The U.S. Army Corps of Engineers responded on February 27, 1996, that the proposed revisions were satisfactory (administrative record No. NM–769).

The U.S. Bureau of Land Management (BLM) responded on March 4, 1996, with the following comments (administrative record No. NM–771).

BLM questioned the appropriateness of New Mexico's proposed definitions at CSMC 80–1–1–5 for (1) "Occupied residential dwelling and associated structures,"commenting that by providing for fenced in areas to count as part of a dwelling, it would allow large tracts to be excluded from mining consideration, (2) "Ownership or control link," commenting that, by using the phrase "owns and controls," the reasoning if circular, and (3) "Replacement of water supply," commenting that it is not a pure definition because procedure and definition are mixed together. Because, as discussed in finding Nos. 2 and 5.a, these definitions proposed by New Mexico are, with one exception concerning a reference to other New Mexico rules in "Occupied residential dwelling and associated structures," substantively identical to the same Federal definitions at 30 CFR 701.5 and 773.5, the Director is not requiring that New Mexico further revise its rules in response to these comments. However, nothing in New Mexico's proposed definition of "Occupied residential dwelling and associated structures," nor in the same Federal definition, excludes areas from mining. The term is defined in order that compensation may be provided if damage to such a structure occurs after October 24, 1992, that is, under certain conditions, a result of subsidence due to underground mining operations.

BLM commented that proposed CSMC Rules 80–1–9–25 (a)(2) and (a)(3), concerning permit application requirements for ponds and impoundments, are incomplete statements. New Mexico's proposed amendment contained only the language that was proposed for revision and did not include language in the approved New Mexico program that was not being revised. Therefore, the commenter did

not see the subparagraphs that exist in New Mexico which complete the statements at proposed CSMC Rules 80–1–9–25 (a)(2) and (a)(3). Because complete statements exist in the New Mexico program, the Director is not requiring that New Mexico further revise its rules in response to this comment.

BLM commented that proposed CSMC Rule 80–1–9–25(c)(3), concerning permit application requirements for subsidence information and control plans, should require that photos be taken of all sides of occupied building, and buildings of considerable value, and that a foundation inspection should be done on such buildings as part of the survey of conditions. Proposed CSMC Rule 80–1–9–39(c)(3) does require a photo, taken prior to mining, of the exterior of all non-commercial buildings or occupied residential dwellings and associated structures that are within the area encompassed by the applicable angle of draw. Proposed CSMC Rule 80–1–9–39(c)(3) is substantially identical to the counterpart Federal regulation at 30 CFR 784.20(a)(3), with the exception that it requires a photo of the buildings prior to mining as part of a presubsidence survey. Therefore, because New Mexico's proposed requirement for a photo already provides for additional information not specified in the Federal program, the Director is not requiring that New Mexico further revise proposed CSMC Rule 80–1–9–39(c)(3) in response to this comment. However, nothing in the proposed rule would prevent the applicant from documenting the condition of the buildings to the extent recommended by the commenter.

BLM commented that proposed CSMC Rules 80–1–11–33 and 34, concerning procedures and standards for challenging ownership and control links, are detailed procedures and standards and should be covered in an internal document. As discussed in finding No. 2, these proposed rules are substantively identical to the requirements in the Federal regulations at 30 CFR 773.24 (a) through (d) and 773.25 (a) through (d). With these proposed rules, New Mexico's approved program is no less effective than the Federal program. Therefore, the Director is not requiring that New Mexico further revise its program in response to this comment.

BLM commented that at (proposed performance standards for ponds and impoundments) (1) CSMC Rule 80–1–20–49(e)(4), the size of the storm event that the impoundment is expected to weather without overtopping should be specified, (2) CSMC Rule 80–1–20–49(e)(8), protection against sudden drawdown does not make sense because sudden drawdown is a subsurface phenomenon which would not occur as a result of sheet erosion, and (3) CSMC Rule 80–1–20–49(e)(10), it is unclear whether the rule referred to submerged highwalls in a pit left flooded after reclamation.

These New Mexico proposed rules are substantively identical to the respective counterpart Federal regulations at 30 CFR 816.19(a)(5) and 817.49(a)(5), 816.49(a)(7) and 817.49(a)(7), and 816.49(a)(10) and 817.49(a)(10). In response to the comment concerning proposed CSMC Rule 80–1–20–49(e)(4), the Director notes that the design storm event is specified within the referenced "Minimum Emergency Spillway Hydrologic Criteria" table in TR–60. In response to the comment concerning proposed CSMC Rule 80–1–20–49(e)(8), the rule requires protection (e.g., by rip rap, fabric, or vegetation) of the pond or impoundment inslope against sudden drawdown, which could occur as a result of pumping or other rapid release of water. In addition, the rule requires outslope protection that could occur as a result of surface sheet erosion. In response to the comment concerning proposed CSMC Rule 80–1–20–49(e)(10), the Director notes that the rule does refer to a permanent impoundment which is created by a portion of a pit approved to be left in the reclaimed environment in support of the approved postmining land use. Because New Mexico's proposed rules are substantively identical to the counterpart Federal regulations, the Director is not requiring that New Mexico further revise its rules in response to these comments.

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that New Mexico proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. NM–768. It responded on February 27, 1996, that it had no comments (administrative record No. NM–770).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. NM–768). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves, with one exception and certain additional requirements, New Mexico's proposed amendment as submitted on January 22, 1996.

The Director approves, as discussed in finding No. 1, nonsubstantive editorial revisions at: CSMC Rule 80–1–11–22(d), concerning remedial measures for improvidently issued permits; CSMC Rule 80–1–20–41(e)(3)(i), concerning general performance standard requirements for protection of the hydrologic balance; CSMC Rule 80–1–20–82(a)(4), concerning inspections of coal processing waste banks; and CSMC Rule 80–1–20–89(d)(2), concerning disposal of noncoal wastes.

The Director approves, as discussed in finding No. 2, concerning rules that are substantively identical to the corresponding Federal regulations at: CSMC Rule 80–1–1–5, the definitions of "Applicant/violator system or AVS," "Federal violation notice," "Ownership or control link," "State violation notice," "Violation notice," "OSM," and "Road;" CSMC Rules 80–1–11–20(c) (1) and (2) and (e), concerning general procedures for improvidently issued permits; CSMC 80–1–11–24(a) and [deletion of] (c), concerning rescission procedures for improvidently issued permits; CSMC Rule 80–1–11–31 (a) through (d), concerning verification of ownership or control application information; CSMC Rule 80–1–11–32 (a) through (c), concerning review of ownership or control and violation information; CSMC Rule 80–1–11–33 (a) through (d), concerning procedures for challenging ownership or control links shown in AVS; and CSMC Rule 80–1–11–34 (a) through (d), concerning standards for challenging ownership or control links and the status of violations;

The Director approves, as discussed in: finding No. 3, CSMC Rule 80–1–1–5, concerning the definition of "Qualified laboratory;" finding No. 5.a, CSMC Rule 80–1–1–5, concerning definitions for "Drinking, domestic, or residential water supply," "Noncommercial building," and "Replacement of water supply;" finding No. 14, CSMC Rule 80–1–20–93(a)(1), concerning performance standard pertaining to the design and construction of dams and embankments constructed of or intended to impound coal processing waste; and finding No. 20, deletion of CSMC Rule 80–1–20–150(c), concerning the prohibition pertaining to vehicular use of fords or low water crossings by ancillary roads at any time there is a visible surface flow.

The Director removes existing required amendments and approves, as discussed in: finding No. 4, CSMC Rule 80–1–1–5, concerning the definition of "SMCRA" and CSMC Rules 80–1–7–14(c) (1) through (5), concerning compliance information required in permit applications; finding No. 6, CSMC Rule 80–1–4–15(b)(1), concerning procedures for initial processing, record-keeping, and notification requirements concerning petitions to designate lands unsuitable for mining; finding No. 8, CSMC Rules 80–1–9–39(a) (1) through (6), (b), and (c) (1) through (9), concerning permit application requirements for subsidence information and control plans; finding No. 9, CSMC Rule 80–1–11–17(c), concerning the basis for permit denial; finding No. 10, CSMC Rules 80–1–11–17(d) and 80–1–11–19(i), concerning, respectively, review of permit applications for a demonstrated pattern of willful violations, and criteria for permit approval and denial pertaining to a demonstrated pattern of willful violations; finding No. 12, CSMC Rule 80–1–29(d), concerning conditions of permits; finding No. 13, CSMC Rules 80–1–19–15 (c)(2), (c)(3), (c)(3)(iii), and (c)(4), concerning performance standards applicable to coal exploration; finding No. 15, CSMC Rules 80–1–20–97 (b) and (c), concerning protection of fish, wildlife, and related environmental values; finding No. 16, CSMC Rule 80–1–20–116(b)(1), concerning the period of extended liability for demonstration of revegetation success; finding No. 17, CSMC Rule 80–1–20–116(b)(1) through (b)(5), concerning revegetation success standards; and finding No. 19, CSMC Rules 80–1–20–117, 117(c)(1), 117(c)(3), 117(c)(4), 117(d)(2), and 117(d)(3)(i), concerning performance standards for revegetation success pertaining to trees and shrubs.

With the requirement that New Mexico further revise its rules, the Director approves, as discussed in: finding No. 5.a, CSMC Rule 80–1–1–5, concerning definitions for "Material damage" and "Occupied residential dwelling and structures related thereto;" and finding No. 7, CSMC Rules 80–1–9–25 (a) and (c) and 80–1–20–49(e) (1) through (11), concerning requirements for ponds, impoundments, and banks, dams, and embankments that meet or exceed the Class B or C criteria of Technical Release No. 60 (210–VI–TR60, October 1985).

With the requirement that New Mexico further revise its rules, the Director removes existing required amendments and approves, as discussed in: finding No. 5.b, CSMC Rules 80–1–20–121 (a) through (d), concerning general requirements for subsidence control, CSMC Rules 80–1–20–124 (a) through (d), concerning surface owner protection and restoration, replacement, repair, or compensation of subsidence-caused damages, CSMC Rules 80–1–20–125 (a) through (e), concerning rebuttable presumption of causation by subsidence, and CSMC Rules 80–1–20–127, concerning the requirement to adjust the bond amount for subsidence damage; finding No. 11, CSMC Rules 80–1–11–20 (b)(1), (b)(1)(ii), and (b)(3), concerning review criteria for improvidently issued permits; and finding No. 18, CSMC Rule 80–1–20–116(b)(6), concerning normal husbandry practices that may be used during the extending liability period for demonstrating revegetation success, with the exception of the allowance for the Director of the New Mexico program to approve husbandry practices that have not received approval from OSM.

The Federal regulations at 30 CFR Part 931, codifying decisions concerning the New Mexico's program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the New Mexico program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by New Mexico of only such provisions.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of Tribe or State AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific Tribe or State, not by OSM. Decisions on proposed Tribe or State AMLR plans and revisions thereof submitted by a Tribe or State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed Tribe or State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Tribe or State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the Tribe or State. In making the determination as to whether this rule would have a significant economic impact, the

Department relied upon the data and assumptions in the analysis for the corresponding Federal regulations.

6. Unfunded Mandates Reform Act

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 7, 1996.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 931—NEW MEXICO

1. The authority citation for Part 931 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 931.15 is amended by adding paragraph (t) to read as follows:

§ 931.15 Approval of amendments to State regulatory program.

* * * * *

(t) The director approves, with one exception at CSMC 80–1–20–116(b)(6) concerning the authorization for the Director of the New Mexico program to approve normal husbandry practices that have not been approved by OSM, the proposed revisions submitted by New Mexico on January 22, 1996.

3. Section 931.16 is amended by removing and reserving paragraphs (a), (c), (d), (f), (g), (h), (i), (j), (k), (l), (p), (q), (r), and (s); revising (n); and adding paragraphs (w),(x),(y), (z), and (aa) to read as follows:

§ 931.16 Required program amendments.

* * * * *

(n) By February 15, 1994, New Mexico shall submit to OSM proposed revisions to CSMC Rule 80–1–20–116(b)(1), or otherwise amend its program, to require that all revegetation success standards and measuring techniques be approved by the Director of OSM as well as the Director of MMD.

* * * * *

(w) By November 25, 1996, New Mexico shall submit revisions at CSMC Rule 80–1–1–5, for the definitions of "Material damage" and "Occupied residential dwelling and associated structures" to include references in these definitions to CSMC Rules 80–1–20–121, 125, and 127.

(x) By November 25, 1996, New Mexico shall submit revisions at CSMC Rule 80–1–9–29(e)(5) and CSMC Rules 80–1–20–49(d), (f)(2), and (g)(4) and (5), to incorporate the requirements pertaining to those structures that meet or exceed the Class B or C criteria for dams in TR–60.

(y) By November 25, 1996, New Mexico shall submit revisions at CSMC Rule 80–1–11–20(b)(1) to violations review criteria that the Director of the New Mexico program would use to determine what specific unabated violations, delinquent penalties and fees, and ownership and control relationship applied at the time a permit was issued.

(z) By November 25, 1996, New Mexico shall submit revisions at CSMC Rule 80–1–20–116(b)(6) to either

(1) Identify selected husbandry practices and submit them with documentation verifying that the proposed practices would be considered normal in the areas being mined or

(2) State that selected husbandry practices approved by the Director may not be implemented prior to approval from OSM in accordance with the State program amendment process at 30 CFR 772.17.

(aa) By November 25, 1996, New Mexico shall submit revisions at CSMC Rule 80–1–20–127 to clearly require adjustment of the bond amount when subsidence-related contamination, diminution, or interruption to a water supply occurs.

[FR Doc. 96–13265 Filed 5–28–96; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 946

[VA–105–FOR]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of five explanatory statements written to clarify and assist the implementation of, and compliance with, recent changes to §§ 480–03–19.816/817.102(e) of the Virginia program relative to the disposal of coal processing waste and underground development waste in mined-out areas. The amendment is intended to address a required program amendment at 30 CFR 946.16(a).

EFFECTIVE DATE: May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determination.

I. Background on the Virginia Program

SMCRA was passed in 1977 to address environmental and safety problems associated with coal mining. Under SMCRA, OSM works with States to ensure that coal mines are operated in a manner that protects citizens and the environment during mining, that the land is restored to beneficial use following mining, and that the effects of past mining at abandoned coal mines are mitigated.

Many coal-producing States, including Virginia, have sought and obtained approval from the Secretary of the Interior to carry out SMCRA's requirements within their borders. In becoming the primary enforces of SMCRA, these "primacy" States accept a shared responsibility with OSM to achieve the goals of the Act. Such States join with OSM in a shared commitment to the protection of citizens from abusive mining practices, to be responsive to their concerns, and to allow them full access to information needed to evaluate the effects of mining on their health, safety, general welfare, and property. This commitment also recognizes the need for clear, fair, and consistently applied policies that are not unnecessarily burdensome to the coal industry—producers of an important sources of our Nation's energy.

Under SMCRA, OSM sets minimum regulatory and reclamation standards. Each primacy State ensures that coal mines are operated and reclaimed in accordance with the standards in its approved State program. The States serve as the front-line authorities for implementation and enforcement of SMCRA, while OSM maintains a State performance evaluation role and provides funding and technical assistance to States to carry out their approved programs. OSM also is responsible for taking direct

enforcement action in a primacy State, if needed, to protect the public in cases of imminent harm or, following appropriate notice to the State, when a State acts in an arbitrary and capricious manner in not taking needed enforcement actions required under its approved regulatory program.

Currently, there are 24 primacy states that administer and enforce regulatory programs under SMCRA. These states may amend their programs, with OSM approval, at any time so long as they remain no less effective than Federal regulatory requirements. In addition, whenever SMCRA or implementing Federal regulations are revised, OSM is required to notify the States of the changes so that they can revise their programs accordingly to remain no less effective than the Federal requirements.

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background information on the Virginia program including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981, **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 946.11, 946.12, 946.13, 946.15, and 946.16.

II. Submission of the Amendment

By letter dated October 31, 1994 (Administrative Record No. VA–839), Virginia proposed to amend section 480–03–19.816/817.102(e) to clarify the Virginia regulations that are applicable when coal processing waste and underground development waste is used as backfill material for mined-out areas. The amendment was submitted to settle interpretational differences between Virginia and OSM relative to how the coal mine waste regulations apply to waste materials placed in backfills.

Virginia's submittal of the amendment to section 480–03–19.816/817.102(e) was accompanied by a detailed explanation of the intended implementation and scope of the proposed amendment. OSM approved the amendment on August 8, 1995 (60 FR 40271) to the extent that the amendments are implemented as explained by Virginia in its October 31, 1994, submittal letter. In addition, OSM also required (at 30 CFR 946.16(a)) that Virginia further clarify the implementation of the changes by amending the Virginia program as follows:

(1) Define the term "suitable;"

(2) Add a requirement to the Virginia rules to explicitly require the determination of the location of seeps, springs, or other discharges in the designing of a backfill;

(3) Add to 480–03–19.773.17 a specific requirement that a permit condition be imposed requiring a quarterly analysis of coal mine waste as it is placed in a refuse pile or in an area being backfilled.

(4) Define the term "small" to mean that there are no channeled flows, that during storm events there is only sheet flow, and that no variance would be approved if the drainage area above the pile on any point exceeds 500 feet, measured along the slope; (5) Add a requirement that whenever coal refuse is placed on preexisting benches for the purpose of returning the benches to approximate original contour (AOC), the performance standards for the placement of excess spoil on preexisting benches will be followed.

By letter dated October 13, 1995 (Administrative Record No. VA–865), Virginia submitted its response to the required amendments at 30 CFR 946.16(a). The amendment consists of five statements that are attached to a letter to be sent to coal operators, consultants, Virginia Division of Mined Land Reclamation (DMLR) personnel, and other interested parties. The five statements are intended to clarify the intended implementation and scope of the recently approved amendments to section 480–03–19.816/817.102(e).

The proposed amendment was published in the November 27, 1995, **Federal Register** (60 FR 58320), and in the same notice, OSM opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on December 27, 1995. There were no requests for a public hearing, so no hearing was held.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Virginia program.

I. Clarification of the Term "Suitable"

The State submitted the following statement:

The Department of Mines, Minerals, and Energy (DMME) has not promulgated a regulatory definition for the term "suitable" as used at 480–03–19.816/817.102(e) since the ordinary usage (Webster-satisfactory for a use or pu pose) is intended. DMME will consider material suitable provided it is satisfactory for the purpose of meeting the Virginia program performance standards for each site specific circumstance. For an example, the physical cohesive property of a given waste material under specific site conditions will be considered suitable provided the required (1.3) static safety factor can be achieved and landslides prevented [see 480–03–19.816/817.102(a) and (f)]. Waste material is considered suitable provided the host site conditions, the material's chemical and physical characteristics, and the disposal techniques collectively demonstrate compliance with the Virginia program performance standards, including sections 480–03–19–816/817.41, 480–03–19.816/817.74, 480–03–19.816/817.81, 480–03–19.816/817.95, 480–03–19.816/817.97, 480–03–19.816/817.111–116, and 480–03–19.816/817.133.

The Director finds that the DMLS's statement adequately clarifies how the State interprets and will implement the term "suitable" in the Virginia program. That is, materials will be considered suitable, if the DMME determines that the use of those materials will not result in the violation of the Virginia approved performance standards. Therefore, the Director finds that the required amendment at 30 CFR 946.16(a)(1) is satisfied and can be removed.

2. Seeps, Springs, or Other Discharges in the Backfill

The State submitted the following statement:

The Division of Mined Land Reclamation (DMLR) finds it necessary for the applicant to determine and identify in the application the location of seeps, springs, or other discharges in any area proposed for backfilling with coal mine waste. Such information is crucial to the applicant's site selection and backfill design as well as to DMLR's environmental impact analysis. DMLR has initiated the process to revise its regulations to be more specific with regard to seeps and springs in such backfills. In the meantime, DMLR interprets 480–03–19.780.21 (f) and (h) and 480–03–19.784.14 (e) and (g) as authority for this requirement.

The Federal regulations at 30 CFR 780.21(f) and 784.14(e) concerning probable hydrologic consequences (PHC) determination provide the findings shall be made on whether adverse impacts may occur to the hydrologic balance, and whether acid-forming or toxic-forming materials are present that could result in contamination of surface or ground waters. In addition, 30 CFR 780.21(h) and 784.14(g) provide that an application shall contain a hydrologic reclamation plan that includes the measures to be taken to avoid acid or toxic drainage.

The DMLR has clarified that a permit application should include the location of seeps, springs, or other discharges is crucial to the applicant's site selection and backfill design as well as to the DMLR's environmental impact analysis. The DMLR also acknowledged that it has the authority under § 480–03–

19.780.21 (f) and (h) and 784.14 (e) and (g) to require such information. In addition, the DMLR will revise its regulations to more clearly require information regarding springs and seeps.

The Director finds that the DMLR's statement adequately explains the State program concerning the identification of the location of seeps, springs, and other discharges in any area proposed for backfilling with coal mine waste, and that the Virginia program has the authority to require such information. Therefore, the Director finds that the required amendment at 30 CFR 946.16(a)(2) is satisfied and can be removed.

3. Permit Condition/Quarterly Analysis-Clarificotion

The State submitted the following statement:

> The Virginia regulations at 480–03–19.773.17(b) provide authority for DMLR to impose permit conditions in addition to those mandated by this section. When the physical or chemical characteristics of coal mine waste used as backfill material are subject to change, DMLR will specify a condition in the permit approval document requiring the appropriate sampling and analysis necessary to ensure continued compliance with the performance standards. (Examples of circumstances in which DMLR requires periodic analysis of coal mine refuse, and/or backfill include, but is not limited to: refuse produced by preparation plant serving several operations; refuse produced over a large areal extent at a single operation; refuse produced by several operations; and refuse of varying quality produced at several locations within one operation.)

The Director finds that the DMLR's statement clearly acknowledges that the regulatory authority will impose a permit condition requiring sampling of the coal mine waste material whenever the physical or chemical characteristics of that material are subject to changes. In addition, the DMLR has provided some specific examples that clarify typical circumstances under which the DMLR will apply permit conditions to require analysis of coal mine waste that is placed in the backfill to ensure continued compliance with the performance standards. The DMLR also has stated that it interprets § 480–03–19.780/784.22(c) as authority to require periodic testing as necessary to ensure compliance with the hydrologic protection and other performance standards.

As noted above, the Director had required Virginia to amend its program by adding a provision requiring quarterly analysis of coal mine waste material as it is placed in backfills or refuse piles. The basis for this required amendment was Virginia's statement that, as a matter of practice, it already imposed permit conditions pursuant to 480–03–19.773.17 requiring a quarterly analysis of coal mine waste. Because the Director was concerned that this permit condition requirement would not be enforceable, he required Virginia to add the requirement to its program. *See* 60 FR 40271, 40274, August 8, 1995. In its submittal of October 13, 1995 (Administrative Record No. VA–865), Virginia stated that it had chosen a more flexible permit condition requirement, based on the type of coal mine waste material involved in each particular instance. The Director did not conclude in the August 8, 1995, **Federal Register** notice, nor does he conclude now, that quarterly analysis of coal mine waste material is required in all instances by SMCRA or its implementing regulations. Rather, the Director's primary concern was that Virginia have the ability to enforce the requirement of an added permit condition. Moreover, the Director now agrees with Virginia that the State regulatory authority should have the flexibility to impose permit conditions requiring "appropriate" sampling and analysis to ensure continued compliance with all applicable performance standards, particularly where the chemical or physical characteristics of the coal mine waste material are subject to change. "Appropriate" analysis may, in some instances, mean testing the material more, or less frequently than on a quarterly basis. Because Virginia has adequately incorporated into the Virginia program its permit condition requirements with respect to coal mine waste, the Director is satisfied that these requirements are now enforceable. Therefore, the Director finds that 30 CFR 946.16(a)(3) is satisfied, and can be removed.

4. "Small Area"—Clarification

The State submitted the following statement:

> At 480–03–19.816/817.102(e), the Virginia regulations provide that a variance to the requirement at 480–03–19.816/817.83(a)(2) may be approved by DMLR provided "the applicant demonstrates that the area above the refuse pile is *small* and that appropriate measures will be taken to direct or convey runoff across the surface area of the pile in a controlled manner.
>
> DMLR intends to consider areas *small* provided the drainage area is 500 feet or less as measured along the slope. However, DMLR will grant such a variance only when there are no channeled flows, and if during storm events, there is only sheet flow.

The Director finds that the DMLR's statement adequately explains the definition of "small" relative to uncontrolled drainage above a backfill in accordance with the required amendments at 30 CFR 946.16(a)(4). 39 CFR946.16(a)(4) is, therefore, removed.

5. Preexisting Benches—Clarification

> DMLR will approve an application to place coal refuse on preexisting benches for the purpose of returning the benches to the approximate original contour provided the performance standard for the placement of excess spoil on preexisting benches will be followed. The preexisting bench standard are found at 480–03–19.816/817.74.

The Director finds the DMLR's statement adequately clarifies the applicability of the performance standards for the placement of excess spoil on pre-existing benches in accordance with the required amendment at 30 CFR 946.16(a)(5). 30 CFR 946.16(a)(5) is, therefore, removed.

IV. Summary and Disposition of Comments

Federal Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. The U.S. Fish and Wildlife Service responded (Administrative Record No. VA–868) but offered no comments on this amendment. The U.S. Department of Labor, Mine Safety and Health Administration responded (Administrative Record No. VA–867) that the amendments are deemed appropriate since there appears to be no conflict with MSHA regulations. The U.S. Department of Agriculture, Natural Resources Conservation Service responded (Administrative Record No. VA–866) and stated that the clarifications should be accepted.

Public Comments

A public comment period and opportunity to request a public hearing was announced in the November 27, 1995, **Federal Register** (60 FR 58320). The comment period closed on December 27, 1995. No comments were received and no one requested an opportunity to testify at the scheduled public hearing so no hearing was held.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with the respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA. EPA responded on February 1, 1996 (Administrative Record No. VA–869) and stated that the amendment is consistent with regulations under the Clean Water Act and offered no additional comments.

V. Director's Decision

Based on the findings above, the Director is approving Virginia's amendment concerning coal refuse disposal as submitted by Virginia on October 13, 1995.

The Federal regulations at 30 CFR Part 946 codifying decisions concerning the Virginia program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 14, 1996.

Michael K. Robinson,

Acting Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 946—VIRGINIA

1. The authority citation for Part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 946.15, paragraph (jj) is added to read as follows:

§ 946.15 Approval of regulatory program amendments.

* * * * *

(jj) The following amendment to the Virginia program at 480–03–19.816/817.102(e) concerning coal refuse disposal as submitted to OSM on October 13, 1995, is approved effective May 29, 1996:

§ 946.16 [Amended]

3. In § 946.16, paragraph (a) is removed and reserved.

[FR Doc. 96–13268 Filed 5–28–96; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 224

RIN 1510–AA49

Federal Process Agents of Surety Companies

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This action amends the regulation governing surety companies doing business with the United States. Specifically, it eliminates the requirement that surety companies doing business with the United States report their Federal process agent appointments to the Department of the Treasury, Financial Management Service (FMS). FMS no longer needs or collects this information. This amendment makes the regulation consistent with current practice.

EFFECTIVE DATE: June 28, 1996.

FOR FURTHER INFORMATION CONTACT: Dorothy E. Martin, (202) 874–6850 (Manager, Surety Bond Branch).

SUPPLEMENTARY INFORMATION: This regulation eliminates the requirement that surety companies report their Federal Process Agent appointments to the Financial Management Service. This action does not eliminate the requirement for surety companies to designate a person to serve as a Federal Process Agent and register that person with the clerk of the district court for the district in which a surety bond is to be given.

The final rule includes several editorial changes and a realignment of the sections as a result of eliminating § 224.5, "Filing process agent appointment information with the Treasury."

The revision to 31 CFR Part 224 appeared on November 9, 1995, at 60 FR 56551 and was open for comment through December 11, 1995. During the comment period, only one comment was received from a trade association. They indicated support for the revision.

This regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required. It is hereby certified that this revision will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This change clarifies a regulation and reduces the reporting requirements for surety companies doing business with the United States. Therefore, there is no significant economic impact.

List of Subjects in 31 CFR Part 224

Insurance, Surety bonds.

Accordingly, part 224 of title 31 is amended as follows:

PART 224—FEDERAL PROCESS AGENTS OF SURETY COMPANIES

1. The authority citation continues to read as follows:

Authority: 31 U.S.C. 9306

2. Section 224.1 is revised to read as follows:

§ 224.1 Statutory provision.

The rules and regulations in this part are prescribed for carrying into effect 31 U.S.C. 9306.

§ 224.5—[Removed]

3. Section 224.5 is removed, and § 224.6 is redesignated as § 224.5.

§ 224.7—[Redesignated as § 224.6]

4. Section 224.7 is redesignated as § 224.6, and revised to read as follows:

§ 224.6 United States district courts; location of divisional offices.

A list of the divisional offices of the court in each judicial district where powers of attorney should be filed may be obtained from the Surety Bond Branch, Financial Management Service, Department of the Treasury, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782.

Dated: May 14, 1996.

Russell D. Morris,

Commissioner.

[FR Doc. 96–13412 Filed 5–28–96; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

RIN 2115–AA97

[CGD 05–96–030]

Safety Zone Regulations: Delaware Bay, Delaware River, Salem River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Delaware Bay and Delaware River from Marcus Hook, Pennsylvania, to the Delaware Breakwater. This safety zone is needed to protect vessels, the port community and the environment from potential safety and environmental hazards associated with the loading and outbound transit of the T/V EMSGAS.

EFFECTIVE DATES: This rule is effective from 12:01 a.m. May 20, 1996, and terminates at 11:59 p.m. June 2, 1996. The Captain of the Port, Philadelphia, may, at an earlier date, advise mariners by Broadcast Notice to Mariners that the safety zone will not be enforced.

FOR FURTHER INFORMATION CONTACT: LTJG S.J. Kelly, Project officer at the Captain of the Port, Philadelphia, (215) 271–4909.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after the **Federal Register** publication. The Coast Guard was informed by the owner/operator of the T/V EMSGAS on May 16, 1996 of the intended transit of the T/V EMSGAS along the Delaware River. Publishing a NPRM and delaying its effective date would be contrary to the public interest, since immediate action is needed to respond to protect the environment and vessel traffic against potential hazards associated with the transit of the T/V EMSGAS while it is loaded with liquified petroleum gas.

Discussion of the Regulation

This safety zone includes a specified area around the vessel during cargo operations and while underway outbound. It will be in effect during the T/V EMSGAS's transit of the Delaware River and Delaware Bay and during cargo operations at the Sun Refining and Marketing Refinery terminal on the Delaware River, at Marcus Hook, Pennsylvania. The circumstances requiring this regulation are the potential hazards associated with the transportation of liquified petroleum gas by a large tankship in heavily trafficked areas of the Delaware River and Delaware Bay as well as in the Ports of Philadelphia. The transit consists of T/V EMSGAS's outbound transit on the Delaware River and the Delaware Bay between the vessel's berth at the Sun Refining and Marketing Refinery terminal on the Delaware River, at Marcus Hook, Pennsylvania, and the Delaware Breakwater. Coast Guard Captain of the Port Philadelphia may impose transit restriction on vessels operating within the safety zone while the T/V EMSGAS is loaded with LPG that exceeds 2% of the vessel's cargo carrying capacity.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(30 of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.e (34). of Commandant Instruction M16475.1B (as revised by 59 FR 38654; Jul 29, 1994), this rule is categorically excluded from further environmental documentation.

Collection of Information

This rule contains no collection of information requirement under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.T05030 is added to read as follows:

§ 165.T05030 Safety Zone: Marcus Hook, PA and the Delaware Breakwater.

(a) *Location.*—A safety zone is established for:

(1) All waters within an area which extends 500 yards on either side and 1000 yards ahead and astern of the T/V EMSGAS while the vessel is in the loaded condition and underway in the area bonded by the Delaware Breakwater and the Sun Refining and Marketing Refinery terminal at Marcus Hook, Pennsylvania.

(2) All waters within a 200 yard radius of the T/V EMSGAS while it is moored at the Sun Refining and Marketing Refinery terminal in the loaded condition.

(b) *Effective date.*—This section is effective from 12:01 a.m., May 20, 1996 and terminates at 11:59 p.m., June 2, 1996. If the conditions requiring a safety zone terminate at an earlier date, the Captain of the Port, Philadelphia, may advise mariners by Broadcast Notice to Mariners that the safety zone will not be enforced.

(c) *Regulations.*—The following regulations shall apply within the safety zone.

(1) No vessel may enter the safety zone unless its operator obtains permission of the Captain of the Port or his designated representative.

(2) As a condition of entry, the COTP or his designated representative may order that each vessel:

(i) Maintain a continuous radio guard on channels 13 and 16 VHF-FM while underway;

(ii) Not overtake the T/V EMSGAS unless the overtaking is to be completed before any bends in the channel, and the pilots, masters and operators of both vessels clearly agree on all action including speeds, time and location of overtaking.

(iii) Operate at a minimum no wake speed sufficient to maintain steerage while T/V EMSGAS is moored at the Sun Refining and Marketing Refinery terminal, at Marcus Hook, Pennsylvania;

(iv) Proceed as directed by the Captain of the Port or by his designated representative.

(d) *Designated COTP representative.*—(1) The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Philadelphia, Pennsylvania to act on his behalf. The designated representative enforcing the safety zone may be contacted on VHF channels 13 & 16.

(2) The Captain of the Port of Philadelphia and the Command Duty Officer at the Marine Safety Office, Philadelphia, may be contacted at telephone number (215) 271–4940.

Dated: May 20, 1996.

John E. Veentjer,

Captain, U.S. Coast Guard, Captain of the Port, Philadelphia, PA.

[FR Doc. 96–13418 Filed 5–28–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300416A/R2243; FRL–5371–8]

Prosulfuron; Extension of Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule establishes tolerances for residues of the herbicide prosulfuron, 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2- (3,3,3-trifluoropropyl)-phenylsulfonyl]-urea in or on the raw agricultural commodities corn (forage, fodder, grain and fresh [including sweet kernels plus cobs with husks removed]), milk, and meat, fat and meat by-products, of cattle, goats, hogs, horses, and sheep. The regulation was requested by Ciba-Geigy Corporation and establishes the maximum permissible level for residues of the herbicide in or on corn.

EFFECTIVE DATE: This regulation becomes effective May 29, 1996. These tolerances will expire on December 31, 1999.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP–300416A/R2243], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to EPA Headquarters Accounting Office Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW, Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: oppdocket@epamil.gov.

Copies of objections and hearing requests must be submitted as an ACSII file avoiding the use of special characters and any firm of encryption. Copies of objections and hearing requests will also be accepted on disks in Word Perfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic hearing requests in electronic form must be identified by the docket number [OPP–300416A/R2243]. No Confidential Business Information (CBI) should be submitted through e-mail Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail, Robert J. Taylor, Product Manager (PM 25), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson-Davis Hwy., Arlington, VA 22202, (703) 305-6027; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule (FRL–5349–7), in the **Federal Register** of March 6, 1996 (61 FR 8903) which proposed to extend the tolerances for residues of the herbicide prosulfuron, 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-phenylsulfonyl]-urea in or on the raw agricultural commodities corn (forage, fodder, grain and fresh [including sweet kernels plus cobs with husks removed]) at 0.01 part per million (ppm), milk at 0.01 part per million (ppm), and meat, fat and meat by-products, of cattle, goats, hogs, horses, and sheep at 0.05 part per million (ppm), to December 31, 1999. These tolerances with an expiration date were required by EPA to allow the petitioner, Ciba-Geigy Corp. to submit additional data concerning the method trial and corn metabolism and ruminant metabolism data. The petitioner has

submitted the method trial and the method has been validated by an independent laboratory. Additional time is being required to complete review of this method trial and allow additional time to complete and submit the required metabolism data.

No comments were received in response to the proposed rule.

Based on the information cited above and in the document establishing the time-limiting tolerance for prosulfuron (60 FR 24788, May 10, 1995), the Agency has determined that when used in accordance with good agricultural practice, this ingredient is useful and the tolerances will protect the public health. Therefore, EPA is establishing the tolerances as described below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above, 40 CFR 178.20. A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector, 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [OPP–300416A/R2243] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p,m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Written objections and hearing requests, identified by the document control number [OPP–300416A/R2243], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. The official record for this rulemaking, as well as the public version, as describes above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is a paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office Of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 millionor more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligation of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

This action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Pursuant to the requirements of the Regulatory Flexibility Act (Pub L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additive, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 16, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a. and 371.

2. By revising § 180.481 to read as follows:

§ 180.481 Prosulfuron; tolerances for residues.

Tolerances that expire on the date indicated in the following table are established for residues of the herbicide prosulfuron 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-phenylsulfonyl]-urea in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration date
Corn, forage	0.01	December 31, 1999

Commodity	Parts per million	Expiration date
Corn, fodder	0.01	Do.
Corn, grain and fresh (including sweet kernels plus cobs with husks removed])	0.01	Do.
Milk	0.01	Do.
cattle, meat	0.05	Do.
cattle, fat	0.05	Do.
cattle, kidney	0.05	Do.
cattle, liver,	0.05	Do.
cattle, meat by-produts	0.05	Do.
Goats, meat	0.05	Do.
Goats, fat	0.05	Do.
Goats, kidney	0.05	Do.
Goats, liver	0.05	Do.
Goats, meat by-products	0.05	Do.
Hogs, meat	0.05	Do.
Hogs, fat	0.05	Do.
Hogs, kidney	0.05	Do.
Hogs, liver	0.05	Do.
Hogs, meat byproducts	0.05	Do.
Horses, meat	0.05	Do.
Horses, fat	0.05	Do.
Horses, kidney	0.05	Do.
Horses, liver	0.05	Do.
Horses, meat by-products	0.05	Do.
Sheep, meat	0.05	Do.
Sheep, fat	0.05	Do.
Sheep, kidney	0.05	Do.
Sheep, liver	0.05	Do.
Sheep, meat by-products	0.05	Do.

[FR Doc. 96–13444 Filed 5–28–96; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[PP 5F4469/R2225; FRL–5357–5]

RIN 2070–AB78

Prosulfuron; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is establishing time-limited tolerances for residues of the herbicide prosulfuron, 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-phenylsulfonyl]-urea in or on the raw agricultural commodities cereal grains group (except rice and wild rice), grain; cereal grains group (except rice and wild rice), forage; cereal grains group (except rice and wild rice), fodder, cereal grains group (except rice and wild rice), straw; and cereal grains group (except rice and wild rice), hay. The Agency has not completed the regulatory assessment of the science findings; therefore, these tolerances are being established with an expiration date. These tolerances were requested by the Ciba-Geigy Corporation.

EFFECTIVE DATE: This regulation becomes effective May 29, 1996. These tolerances will expire on December 31, 1999 .

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 5F4469/R2225], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

An electronic copy of objections and hearing requests filed with the Hearing Clerk may be submitted to OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov.

Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [PP 5F4469/R2225] . No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–305–6800, e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 17, 1996 (61 FR 16742) (FRL–5357–5), EPA issued a proposed rule proposing to establish time-limited tolerances for residues of the herbicide prosulfuron on cereal grains group (except rice and wild rice), grain at 0.01 ppm; cereal grains group (except rice and wild rice), forage at 0.10 ppm; cereal grains group (except rice and wild rice), fodder at 0.01 ppm; cereal grains group (except rice and wild rice), straw at 0.02 ppm; and cereal grains group (except rice and wild rice), hay at 0.20 ppm. In the proposed rule EPA said that it was revising § 180.481; however, EPA did not intend that

§ 180.481 be completely rewritten, but rather that the section be amended to add entries for "cereal grains (except rice/wild rice) group," and the "cereal grains, forage, fodder, straw and hay (except rice/wild rice) group". Therefore, in this final rule, EPA is amending § 180.481 by adding tolerances for the cereal grains (except rice/wild rice) group," and the "cereal grains, forage, fodder, straw and hay (except rice/wild rice) group."

There were two favorable comments received in response to the proposed rule.

The data submitted with the proposed rule and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency has determined that when used in accordance with good agricultural practice, prosulfuron is useful and the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under the docket number [PP 5F4469/R2225] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rule-making record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12866.

This action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 20, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a. and 371.

2. In § 180.481 by revising the introductory text, and amending the table by adding alphabetically entries to read as set forth below:

§ 180.481 Prosulfuron; tolerances for residues.

Tolerances that expire as indicated in the table below are established for residues of the herbicide prosulfuron 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-phenylsulfonyl]-urea in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration date
. .	. .	.
Cereal grains group (except rice and wild rice), grain.	0.01	December 31, 1999
Cereal grains group (except rice and wild rice), forage.	0.10	Do
Cereal grains group (except rice and wild rice), fodder.	0.01	Do
Cereal grains group (except rice and wild rice), straw.	0.02	Do
Cereal grains group (except rice and wild rice), hay.	0.20	Do
. .	. .	.

[FR Doc. 96–13443 Filed 5–28–96; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Motor Vehicle Safety Standards; Occupant Crash Protection

CFR Correction

In Title 49 of the Code of Federal Regulations, parts 400 to 999, revised as of October 1, 1995, on page 514, in the second column, in § 571.208, paragraph S7.1.1.5 and Figure 5 were inadvertently omitted and should read as follows:

§ 571.208 Standard No. 208, Occupant Crash Protection.

* * * * *

S7.1.1.5 *Passenger cars, and trucks, buses, and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less manufactured on or after September 1, 1995 shall meet the requirements of S7.1.1.5(a), S7.1.1.5(b) and S7.1.1.5(c).*

(a) Each designated seating position, except the driver's position, and except any right front seating position that is equipped with an automatic belt, that is in any motor vehicle, except walk-in van-type vehicles and vehicles manufactured to be sold exclusively to the U.S. Postal Service, and that is forward-facing or can be adjusted to be forward-facing, shall have a seat belt assembly whose lap belt portion is lockable so that the seat belt assembly can be used to tightly secure a child restraint system. The means provided to lock the lap belt or lap belt portion of the seat belt assembly shall not consist of any device that must be attached by the vehicle user to the seat belt webbing, retractor, or any other part of the vehicle. Additionally, the means provided to lock the lap belt or lap belt portion of the seat belt assembly shall not require any inverting, twisting or otherwise deforming of the belt webbing.

(b) If the means provided pursuant to S7.1.1.5(a) to lock the lap belt or lap belt portion of any seat belt assembly makes it necessary for the vehicle user to take some action to activate the locking feature, the vehicle owner's manual shall include a description in words and/or diagrams describing how to activate the locking feature so that the seat belt assembly can tightly secure a child restraint system and how to deactivate the locking feature to remove the child restraint system.

(c) Except for seat belt assemblies that have no retractor or that are equipped with an automatic locking retractor, compliance with S7.1.1.5(a) is demonstrated by the following procedure:

(1) With the seat in any adjustment position, buckle the seat belt assembly. Complete any procedures recommended in the vehicle owner's manual, pursuant to S7.1.1.5(b), to activate any locking feature for the seat belt assembly.

(2) Locate a reference point A on the safety belt buckle. Locate a reference point B on the attachment hardware or retractor assembly at the other end of the lap belt or lap belt portion of the seat belt assembly. Adjust the lap belt or lap belt portion of the seat belt assembly pursuant to S7.1.1.5(c)(1) as necessary so that the webbing between points A and B is at the maximum length allowed by the belt system. Measure and record the distance between points A and B along the longitudinal centerline of the webbing for the lap belt or lap belt portion of the seat belt assembly.

(3) Readjust the belt system so that the webbing between points A and B is at any length that is 5 inches or more shorter than the maximum length of the webbing.

(4) Apply a pre-load of 10 pounds, using the webbing tension pull device described in Figure 5 of this standard, to the lap belt or lap belt portion of the seat belt assembly in a vertical plane parallel to the longitudinal axis of the vehicle and passing through the seating reference point of the designated seating position whose belt system is being tested. Apply the pre-load in a horizontal direction toward the front of the vehicle with a force application angle of not less than 5 degrees nor more than 15 degrees above the horizontal. Measure and record the length of belt between points A and B along the longitudinal centerline of the webbing for the lap belt or lap belt portion of the seat belt assembly while the pre-load is being applied.

(5) Apply a load of 50 pounds, using the webbing tension pull device described in Figure 5 of this standard, to the lap belt or lap belt portion of the seat belt assembly in a vertical plane parallel to the longitudinal axis of the vehicle and passing through the seating reference point of the designated seating position whose belt system is being tested. Apply the pre-load in a horizontal direction toward the front of the vehicle with a force application angle of not less than 5 degrees nor more than 15 degrees above the horizontal at an onset rate of not more than 50 pounds per second. Attain the 50 pound load in not more than 5 seconds. If webbing sensitive emergency locking retroactive are installed as part of the lap belt assembly or lap belt portion of the seat belt assembly, apply the load at a rate less than the threshold value for lock-up specified by the manufacturer. Maintain the 50 pound load for at least 5 seconds before the measurements specified in S7.1.1.5(c)(6) are obtained and recorded.

(6) Measure and record the length of belt between points A and B along the longitudinal centerline of the webbing for the lap belt or lap belt portion of the seat belt assembly.

(7) The difference between the measurements recorded under S7.1.1.5(c) (6) and (4) shall not exceed 2 inches.

(8) The difference between the measurements recorded under S7.1.1.5(c) (6) and (2) shall be 3 inches or more.

* * * * *

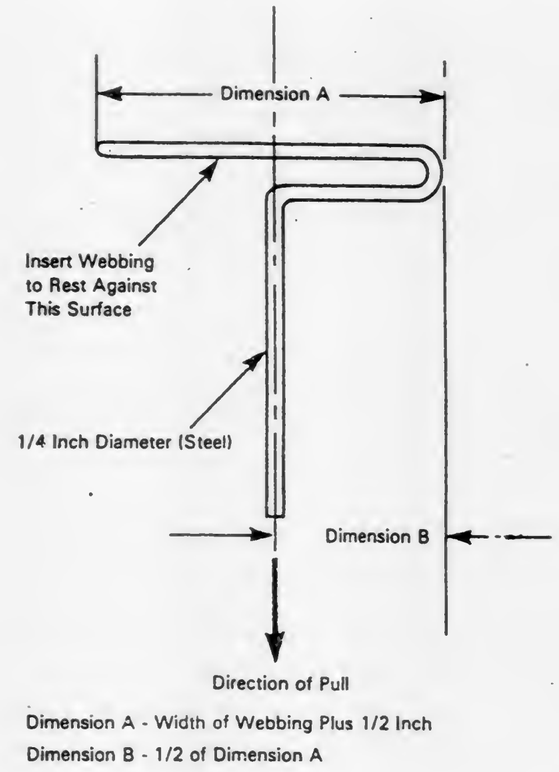


Figure 5. - Webbing Tension Pull Device

BILLING CODE 1505-01-C

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1039

[STB Ex Parte No. 548] [1]

Exemption From Regulation—Boxcar Traffic

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (the Board) is eliminating an obsolete provision of a regulation pertaining to rates on nonferrous recyclable commodities by broadening the exemption for traffic moving in boxcars.

EFFECTIVE DATE: June 28, 1996.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–7513. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA) abolished the Interstate Commerce Commission (ICC) and established the Board. Section 204 of the ICCTA provides that "[t]he Board shall promptly rescind all regulations established by the [ICC] that are based on provisions of law repealed and not substantively reenacted by this Act." In *Removal of Obsolete Recyclables Regulations*, 1 S.T.B. 7 (1996) (*Obsolete Regulations*), the Board removed, *inter alia*, obsolete recyclable regulations at 49 CFR 1134 and 49 CFR 1145, pertaining to discrimination against recyclables and rates on recyclables, because Congress repealed former 49 U.S.C. 10710 and 10731, the statutory bases for these regulations. We stated that we would separately consider the disposition of 49 CFR 1039.14(b)(5), which excludes rates on nonferrous recyclable commodities from the exemption of boxcar traffic from rate regulation.

Consequently, on March 26, 1996, we served a notice of proposed rulemaking (NPR) in this proceeding, published at 61 FR 13146, proposing to remove 49 CFR 1039.14(b)(5) and to redesignate paragraphs (6) and (7). The only comment in response to the NPR was filed by AAR. Noting the substantial intermodal and intramodal competition for nonferrous recyclables, as evidenced by the decline in rail market share and the fact that, from 1981 through 1994, revenue per ton mile for nonferrous recyclables fell 49 percent in constant (inflation-adjusted) dollars, AAR supports the proposal and asks that it be adopted expeditiously.

We will grant the broader exemption by removing the exclusion for nonferrous recyclables from the boxcar exemption. The ICC has already found that an exemption from rate regulation for transportation by boxcars was warranted.

Now that the special statutory provisions for recyclables traffic are gone, there is no basis for excluding it from the exemption. The current record, moreover, warrants granting an exemption.

We find that a broadened exemption will meet the standards of new section 10502. Regulation is generally not necessary to carry out the transportation policy of new 49 U.S.C. 10101. *See* 49 U.S.C. 10101 (1), (2), (3), (5), and (9). Furthermore, given the competitive nature of transportation of nonferrous recyclables, regulation is not necessary to protect shippers from abuse of market power.

The Board certifies that this rule will not have a significant economic effect on a substantial number of small entities. This rule will reduce regulation; it imposes no new reporting or other requirements directly or indirectly on small entities. While there may be an impact on some small entities because recyclables no longer will be excepted from the boxcar exemption, it appears that such an impact will not be significant nor will it likely affect a significant number of small entities.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Decided: May 15, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, chapter X of the Code of Federal Regulations is amended as set forth below:

PART 1039—EXEMPTIONS

1. The authority citation for part 1039 continues to read as follows:

Authority: 5 U.S.C. 553 and 49 U.S.C. 721 and 10502.

§ 1039.14 [Amended]

2. Section 1039.14 is amended by removing paragraph (b)(5) and redesignating paragraphs (b)(6) and (b)(7) as paragraphs (b)(5) and (b)(6).

[FR Doc. 96–13278 Filed 5–28–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The notice of proposed rulemaking issued on March 26, 1996 was designated as STB Ex Parte No. 346 (Sub-No. 8). In a notice served on May 2, 1996, the docket number was changed to STB Ex Parte No. 548.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[I.D. 052196A]

Northeast Multispecies Fishery; Amendment 7; Resubmission of the Measure for the Nonregulated Species Permit Category

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces that the New England Fishery Management Council (Council) has resubmitted a previously disapproved proposal contained in Amendment 7 to the Northeast Multispecies Fishery Management Plan (FMP) concerning the Possession Limit category permit. The Council revised the permit and submitted it for Secretarial review. The intended effect of this measure is to allow fishing for nonregulated multispecies (silver hake, red hake, and ocean pout) in fisheries having minimal bycatch of regulated multispecies.

DATES: Comments must be received on or before June 24, 1996.

ADDRESSES: Send comments to Dr. Andrew A. Rosenberg, Regional Director, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930–3799. Mark the outside of the envelope "Comments on Possession Limit Permit Category."

Copies of the original Amendment 7 and related documents are available from the New England Fishery Management Council, 5 Broadway (U.S. Rte. 1), Saugus, MA, 01906–1097.

FOR FURTHER INFORMATION CONTACT: Peter W. Christopher, Fishery Management Specialist, 508–281–9288.

SUPPLEMENTARY INFORMATION: Amendment 7 was prepared by the Council and submitted to the Secretary of Commerce (Secretary) for review under section 304(b) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The Magnuson Act requires the Secretary to approve, disapprove, or partially disapprove FMPs or amendments, based upon a determination of consistency with national standards and other applicable laws. On February 14, 1996, the Secretary announced disapproval of three measures contained in Amendment 7: The additional allowance of days-at-sea (DAS) for trawl vessels enrolled in the Individual DAS category that use exclusively 8–inch (20.32 cm) mesh, the 300–lb (136.1 kg) possession allowance of regulated species for vessels that use 8–inch (20.32 cm) mesh in an exempted fishery, and the establishment of a limited access category for vessels that fished in the Possession Limit open access category under Amendment 5. The remainder of Amendment 7 was published as a proposed rule on March 5, 1996 (61 FR 8540), and the first two of the three disapproved measures were resubmitted by the Council. The measure that would have allowed a 300–lb (136.1 kg) regulated species possession limit for vessels fishing with 8–inch (20.32 cm) mesh in an exempted fishery was again disapproved and the measure that would give additional multispecies DAS to all limited access multispecies vessels fishing exclusively with large mesh was published as a proposed rule on April 18, 1996 (61 FR 16892). Amendment 7, with the exception of the three measures, was approved on May 16, 1996. The resubmitted measure that would give additional DAS to all groundfish vessels fishing under the Large Mesh Individual DAS category was approved on May 17, 1996, and has been added to the final rule to implement Amendment 7.

Pursuant to section 304(b)(3)(A) of the Magnuson Act, the Council has resubmitted the third disapproved measure. This proposed measure is designed to allow fishing for nonregulated multispecies by vessels that do not qualify for a limited access permit.

Regulations proposed by the Council to implement the resubmitted measure for Amendment 7 to the FMP are scheduled to be published within 15 days.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 22, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–13341 Filed 5–23–96; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 61, No. 104

Wednesday, May 29, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules..

DEPARTMENT OF AGRICULTURE

9 CFR Parts 92, 93, 94, 95, 96, and 98

[Docket No. 94–106–3]

RIN 0579–AA71

Importation of Animals and Animal Products; Public Hearings

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public hearings.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service is hosting three additional public hearings on the proposed rule on the importation of animals and animal products that was published in the **Federal Register** on April 18, 1996. One hearing has already been held in Riverdale, MD. The hearings will provide an additional opportunity for the public to comment on the proposal, which would establish criteria for foreign "regions" based on risk class levels. The criteria would be used to establish importation requirements for particular animals and animal products from different regions outside the United States.

DATES: The public hearings will be held in Atlanta, GA, on June 17 and, if there are more registered speakers than can be heard in one day, on June 18; in Kansas City, MO, on June 26 and, if there are more registered speakers than can be heard in one day, on June 27; and in Denver, CO, on July 1, and, if there are more registered speakers than can be heard in one day, on July 2. Each public hearing will begin at 9 a.m. and is scheduled to end at 5 p.m each day.

ADDRESSES: The public hearings will be held at the following locations:

1. Atlanta, GA: Peachtree Summit Federal Center, Conference Rooms A and B, 401 W. Peachtree Street, N.E., Atlanta, GA. Picture identification is required. A pay parking garage is adjacent to the building.
2. Kansas City, MO: Richard Boling Federal Building, Room 111, 601 East 12th Street, Kansas City, MO. Enter from 12th or 13th Street. Picture identification is required. Pay parking is available across the street from the building.
3. Denver, CO: Denver Federal Center, Building 25, Lecture Halls A and B, 6th and Kipling, Denver, CO. Enter through door E2. Picture identification is required. Pay parking is available on the east side of the building.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231, (301) 734–8590.

SUPPLEMENTARY INFORMATION:

Background

Three additional public hearings will be held on the proposed rule on the importation of animals and animal products, published by the Animal and Plant Health Inspection Service (APHIS) in the **Federal Register** on April 18; 1996 (61 FR 16977–17105, Docket No. 94–106–1). One hearing has already been held in Riverdale, MD. The additional public hearings will be held in Atlanta, GA, on June 17 and, if there are more registered speakers than can be heard in one day, on June 18; in Kansas City, MO on June 26 and, if there are more registered speakers than can be heard in one day, on June 27; and in Denver, CO on July 1, and, if there are more registered speakers than can be heard in one day, on July 2.

A representative of APHIS will preside at the public hearings. Any interested party may appear and be heard in person, or through an attorney or other representative. We are interested in obtaining the views of the public on all aspects of the proposed rule. Each hearing will begin with a brief informational presentation explaining the background, content and organization of the proposed rule.

Persons who wish to speak at the hearings will be asked to provide their names and affiliations. Parties wishing to make oral presentations may register in advance by either: (1) Calling the Regulatory Analysis and Development voice mail at (301) 734–4346 and leaving a message stating their name, telephone number, and organization, the location of the hearing at which they wish to speak, and the approximate time necessary for their presentation; or (2) providing the above information by electronic mail to dkaczmarski@aphis.usda.gov. Parties responding by e-mail may wish to use the electronic response registration form available at the APHIS Regionalization Proposal Web Page. A list of persons registered to speak at each hearing will also be posted to the Web page shortly before the hearing. The Web page URL is http://www.aphis.usda.gov/PPD/region. Registration will also be held for each hearing at that hearing site between 8 a.m. and 8:45 a.m on the day of the hearing. Speakers will be scheduled in the order their registration is received. Advance registrations for the hearings must be transmitted to APHIS no later than the following:

1. Atlanta, GA: 5 p.m., d.s.t., June 12, 1996;
2. Kansas City, MO: 5 p.m., d.s.t., June 21, 1996; and
3. Denver, CO: 5 p.m., d.s.t., June 29, 1996.

The hearings will begin at 9 a.m. of the first day of each hearing. The session on the second day of each hearing will be held only if speakers who have registered for the first day have not yet had a chance to speak. The hearings are scheduled to end at 5 p.m. each day that they are held, but may conclude at any time if all persons desiring to speak have been heard. The hearing officer may limit the time for each presentation so that all interested persons have an opportunity to participate. Attendees who wish to speak but who did not register will be provided time to speak only after all registered speakers have been heard.

We ask that anyone who reads a written statement provide two copies to the presiding officer at the hearing. A transcript will be made of the public hearings and the transcript will be placed in the rulemaking record and will be available for public inspection.

The purpose of the public hearings is to give all interested parties an opportunity to present data, views, and information to the Department concerning this proposed rule. Questions about the content of the proposal may be part of a commenter's oral presentation. However, neither the presiding officer nor any other representative of the Department will respond to the comments at the

hearings, except to clarify or explain the proposed rule.

Done in Washington, DC, this 22nd day of May 1996.

Donald Husnik,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–13407 Filed 5–28–96; 8:45 am]

BILLING CODE 3410–34–P

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 96–025–1]

Change in Disease Status of Spain Because of African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to declare Spain free of African swine fever. Declaring Spain free of African swine fever appears to be appropriate because there have been no confirmed outbreaks of African swine fever in Spain since September 1994. This proposed rule would relieve restrictions on the importation of pork and pork products into the United States from Spain. However, because Spain shares common land borders with countries affected by certain swine diseases and because Spain, as a member state of the European Union, has certain trade practices that are less restrictive than are acceptable to the United States, the importation into the United States of pork and pork products from Spain would continue to be subject to certain restrictions.

DATES: Consideration will be given only to comments received on or before July 29, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 96–025–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 96–025–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Products Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–8688; or e-mail: jcougill@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various animal diseases, including rinderpest, foot-and-mouth disease, bovine spongiform encephalopathy, swine vesicular disease, hog cholera, and African swine fever (ASF). These are dangerous and destructive communicable diseases of ruminants and swine.

Section 94.8 of the regulations provides that ASF exists or is reasonably believed to exist in all the countries of Africa, Brazil, Cuba, Haiti, Italy, Malta, Portugal, and Spain. We will consider declaring a country to be free of ASF if there have been no reported cases of the disease in that country for at least the previous 1-year period. The last case of ASF in Spain occurred in September 1994. The Government of Spain has requested that the U.S. Department of Agriculture (USDA) recognize Spain to be free of ASF.

The Animal and Plant Health Inspection Service (APHIS) has reviewed the documentation submitted by the Government of Spain in support of its request. A team of APHIS officials traveled to Spain in July 1994 to conduct an on-site evaluation of Spain's animal health program with regard to African horse sickness. The evaluation consisted of a review of Spain's veterinary services, laboratory and diagnostic procedures, vaccination practices, and administration of laws and regulations intended to prevent the introduction of communicable animal diseases into Spain. We believe that the July 1994 on site evaluation was sufficient to provide APHIS with a complete picture of Spain's animal health program with regard to ASF, as well. Therefore, we have used the findings of the July 1994 on-site evaluation as part of the basis for this proposed rule. (Details concerning the July 1994 on-site evaluation are available upon written request from the person listed under **FOR FURTHER INFORMATION CONTACT.**)

Based on the information discussed above, we are proposing to amend § 94.8 of the regulations by removing Spain from the list of countries where ASF exists or is reasonably believed to exist. This action would relieve certain restrictions on the importation of pork and pork products into the United States from Spain, including restrictions on the importation of live swine and fresh pork and pork products. This action would also eliminate requirements on the curing time for Spanish hams and other pork products offered for importation into the United States from Spain.

However, the importation of pork and pork products into the United States from Spain would continue to be subject to certain restrictions because Spain appears in the list of countries in § 94.11 that have been declared free of rinderpest and foot-and-mouth disease (FMD), but from which the importation of pork and pork products is restricted, and Spain appears in the list of countries in § 94.13 that have been declared free of swine vesicular disease (SVD), but from which the importation of pork and pork products is restricted. The countries listed in §§ 94.11 and 94.13 are subject to these restrictions because they: (1) Supplement their national pork supply by importing fresh, chilled, or frozen pork from countries where rinderpest, FMD, or SVD, respectively, is considered to exist; (2) have a common border with countries where rinderpest, FMD, or SVD, respectively, is considered to exist; or (3) have certain trade practices that are less restrictive than are acceptable to the United States. Spain shares common land borders with France, a country affected by SVD, and Portugal, a country affected by rinderpest, FMD, and SVD. Additionally, as a member state of the European Union (EU), Spain trades without restrictions with other member states of the EU that are affected by rinderpest, FMD, and/or SVD. These trade practices could allow live swine, pork, or pork products produced in Spain to be commingled with live swine, pork, or pork products from a country affected by rinderpest, FMD, and/or SVD, resulting in an undue risk of the introduction of these diseases into the United States. As such, pork and pork products, as well as any ship's stores, airplane meals, and baggage containing such pork, offered for importation into the United States from Spain would be subject to the restrictions specified in §§ 94.11 and 94.13 of the regulations and to the applicable requirements contained in the regulations of the USDA's Food Safety and Inspection Service (FSIS) at 9 CFR chapter III. Sections 94.11 and 94.13 generally require that pork and pork products be: (1) Prepared in an inspected establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act; and (2) accompanied by an additional certification from a full-time salaried veterinary official of the national government of the exporting country, stating that the pork or pork product has not been commingled with or exposed to meat or other animal products originating in, imported from, or transported through a country in which rinderpest, FMD, or SVD, respectively, is considered to exist.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this proposed rule on small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

In accordance with 21 U.S.C. 111–113, 114a, 115, 117, 120, 123, and 134a, the Secretary of Agriculture has the authority to promulgate regulations and take measures to prevent the introduction into the United States, and the interstate dissemination within the United States, of communicable diseases of livestock and poultry.

This proposed rule would amend the regulations in part 94 by removing Spain from the list of countries where ASF exists or is reasonably believed to exist. This action would relieve certain restrictions on the importation of live swine, pork, and pork products into the United States from Spain. However, because of Spain's proximity to France and Portugal (countries affected by serious swine diseases) and Spain's trading practices as a member state of the European Union, other requirements would continue to restrict the importation of pork and pork products from Spain.

In 1992, the majority (approximately 96.3 percent) of all hog and pig farmers in the United States qualified as small entities. However, the impact of relieving restrictions on live swine imports from Spain on these producers is expected to be minimal because the swine industry of Spain is relatively small compared to the market in the United States. In 1994, swine production in Spain was estimated to be 26.7 million head, compared to swine production in the United States of over 100 million head. Also, in 1994, Spain exported a little more than 0.5 million live swine, or less than 2 percent of its total swine production, and all of those animals were directed to countries in Europe.

Total imports of live swine into the United States are very small relative to domestic production. In 1993, only 1.75 million head were imported into the United States. Due to transportation costs and other factors, nearly all of the live swine imported into the United States (more than 99.8 percent in 1993) are from Canada. Most of the live swine that are imported from Western Europe into the United States are imported in very small numbers, to be used for genetic improvements of domestic stock. We expect that the importation of swine embryos and semen will not increase as a result of the proposed change. Movement of swine embryos and semen is limited because the technology is not as advanced as it is for other species.

Like domestic swine producers, the majority of pork producers (97 percent of 1367 meat packing establishments and 98 percent of 1264 other processing plants, according to 1992 data) qualify as small entities. We expect the effect of the proposed amendment on these entities would be minimal because, while Spain produces a considerable amount of pork (2.107 million metric tons in 1994), its total pork production amounts to only about 26 percent of the total pork production of the United States. Additionally, most of Spain's pork production is consumed within Spain, as its population consumes pork at a rate greater than 1.6 times that of the U.S. population.

In 1994, Spain exported approximately 83,000 metric tons of pork, but more than 97 percent of these exports were to European countries. While Spanish exports of pork are growing and its imports of pork are declining, Spain has historically been a net importer of pork. From 1991 to 1993, Spain imported well over twice as much pork as it exported. Even if Spain were able to redirect all of its exports of pork to the United States, it would constitute a small portion of the domestic market, as U.S. pork production was 8 million metric tons in 1994.

Since 1985, the United States has expanded its pork exports by more than four times to reach 240,858 metric tons in 1994. Simultaneously, the United States has decreased its pork imports, as exemplified by a decrease of approximately 34 percent in 1994, and the trend is continuing. In an average year, up to 90 percent of pork imported into the United States comes from Canada and Denmark.

Domestic pork producers most likely to be affected by the amendments in this proposal are a small number of domestic producers of specific specialty pork products. If the proposed rule is adopted, we anticipate increased imports into the United States from Spain of dry-cured, ready-to-eat ham; dry-cured, salted, boneless loin; and dry-cured sausages, particularly Serrano ham. Most of these products are similar to Parma and prosciutto hams and other cured pork products being produced domestically and produced in other countries for importation into the United States, but Serrano ham is a specialty product with unique water content, color, aroma, and flavor.

Spain currently produces approximately 350,000 metric tons of all types of cured ham per year. It is estimated that in 1994 more than 975,000 metric tons of all types of cured ham were produced in the United States. While Spanish production of all types of cured ham represents approximately 27.9 percent of U.S. cured ham production, Spain's domestic consumption of cured pork is considerably higher than consumption in the United States. About 40 percent of Spain's total pork consumption consists of cured pork. In 1994, Spain exported only 4,135 metric tons of cured ham, which amounts to significantly less than 1 percent of total U.S. production of cured pork. These exports were directed primarily to France, Argentina, Portugal, and Germany.

From all indications, only a few of the largest 18 cured pork producers in Spain, which account for 50 percent of Spanish production of cured pork, have an interest in or a capability for penetrating the U.S. market over the foreseeable future. Further, we estimate that the maximum amount of cured pork products that Spain could expect to export to the United States would not likely exceed 500 metric tons annually, and this ceiling would not likely be reached for a period of about five years because the imports arriving in the United States from Spain would still be required to meet Food Safety and Inspection Service standards before entering the country.

We estimate that there are approximately 15 companies in the United States producing significant amounts of specialty processed pork

products that would compete with the potential imports from Spain. A small portion of these producers are very large, and these specialty products constitute only a small fraction of their overall business. Therefore, we expect the impact of the proposed change on these large companies would be minimal. However, the small producers may be impacted by additional imports. Yet, without specific information on (1) the quantity of additional imports generated by the rule change, (2) the quantity of domestic production, and (3) the degree to which Spanish imports will displace other imports rather than domestic production, the impact on small domestic producers cannot be predicted.

An alternative to this proposed rule is to make no changes in the regulations. We rejected this alternative because Spain has had no reported cases of ASF since September 1994, and, therefore, we have no scientific reason to continue considering Spain to be a country where ASF exists.

This proposed rule contains no information collection or recordkeeping requirements.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 would be amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

§ 94.8 [Amended]

2. In § 94.8, the introductory text would be amended by removing the words ", and Spain" and by adding the word "and" immediately preceding the word "Portugal".

Done in Washington, DC, this 22nd day of May 1996.

Donald Husnik,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–13406 Filed 5–28–96; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 150

RIN 3150–AC57

Reasserting NRC's Authority for Approving Onsite Low-Level Waste Disposal in Agreement States; Withdrawal

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing a notice of proposed rulemaking that would have reasserted the NRC's jurisdiction in Agreement States over the disposal of licensed material generated and disposed of at nuclear reactor sites. The proposed rule would also have clarified the jurisdiction over disposal of noncritical waste quantities of special nuclear material at reactors and fuel cycle facilities.

FOR FURTHER INFORMATION CONTACT: Joseph J. Mate, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6202.

SUPPLEMENTARY INFORMATION:

Background

On August 22, 1988 (53 FR 31880), the Commission published a notice of proposed rulemaking in the **Federal Register** entitled "Reasserting NRC's Authority for Approving Onsite Low-Level Waste Disposal in Agreement States." This rule would have reasserted the NRC's jurisdiction in the Agreement States over the disposal of low-level radioactive waste generated and disposed of at reactor sites. The proposed rule would also have clarified the jurisdiction over the disposal of noncritical waste quantities of special nuclear material at fuel cycle facilities. The NRC would have authorized this disposal under 10 CFR 20.302, but 10 CFR part 20, "Standards for Protection Against Radiation," was revised in May 1991 (56 FR 23360). The applicable regulation is now 10 CFR 20.2002.

The purpose of the proposed rule was to provide for a more centralized and consistent regulatory review of all onsite waste management activities and to avoid duplication of regulatory effort by the NRC and the Agreement States. The uniform review process that would result from the proposed rule was intended to provide greater assurance that onsite disposal of radioactive material will not present a health hazard and that the disposal of this waste in this manner will not unnecessarily complicate or delay decommissioning.

As a result of publishing the proposed rule in the **Federal Register**, the NRC received 49 comment letters. Twelve commenters (24 percent) favored the proposal, 37 commenters (76 percent) opposed the proposal. Comments were submitted by private citizens, Agreement and Non-Agreement States, nuclear utilities, nuclear utilities' representatives, and various conservation and public interest groups. The vast majority of the comments favoring the proposal were from nuclear utilities and their representatives. Comments opposed to the proposal came from private citizens, Agreement and Non-Agreement States, and conservation and public interest groups. Nineteen of the commenters questioned the need for the proposed rule, six commenters wanted the States' participation in the approval process to be specified, and a few States questioned the NRC's authority to promulgate the rule. The remaining commenters were concerned with better definitions of the protected and exclusion areas, the type of waste to be covered by the rule, existing onsite disposal, and the impact on regional low-level waste disposal facilities. Some States commented that the Agreement States were more familiar with local conditions and that their requirements were more strict than the NRC's. Of the 10 Agreement States that commented, 9 States were opposed to the amendments. The remaining Agreement State that commented supported the rule but reserved the right to participate in the approval process with full review privileges and expected their concerns to be addressed.

As a result of the public comments received and the relatively low hazards

associated with onsite disposal of low-level waste radioactive material, the NRC reevaluated the merits of the proposed rule. In the 7 years since this rulemaking was originally proposed, there have been a number of approvals granted by Agreement States for onsite disposal of low-level waste material under the equivalent of 10 CFR 20.2002 (successor to 20.302). The NRC staff is not aware of any problems with the Agreement States' approvals of any onsite burials of low-level waste material.

Based on the comments received, the relatively low hazards associated with onsite disposal of this type of radioactive material, and current experience with disposals, the NRC has reevaluated the issues and concluded that it is not necessary to reassert its regulatory jurisdiction over onsite disposal at reactor sites in the Agreement States.

Therefore, the proposed rule is not required and is being withdrawn. Withdrawal of the proposed rule does not affect the current NRC jurisdiction over disposal of special nuclear material by reactor or fuel cycle licensees. With the withdrawal of the proposed rule, the Agreement States will maintain jurisdiction over the disposal of low-level radioactive waste on nuclear reactor sites.

Dated at Rockville, Md, this 22nd day of May, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 96–13384 Filed 5–28–96; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–99–AD]

RIN 2120–AA64

Airworthiness Directives; The Don Luscombe Aviation History Foundation Model 8 Series Airplanes.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to The Don Luscombe Aviation History Foundation (referred to as Luscombe from hereon) Model 8 series airplanes. The proposed action would require installing new inspection holes, modifying the wing tip fairings, and inspecting the wing spars for intergranular corrosion. Reports of intergranular corrosion occurring in the wings prompted the proposed action. The actions specified by the proposed AD are intended to prevent wing spar failure resulting from intergranular corrosion, which, if not detected and corrected, could result in structural failure of the wings and loss of control of the airplane.

DATES: Comments must be received on or before July 31, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–99–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from The Don Luscombe Aviation History Foundation, P.O. Box 63581, Phoenix, Arizona 85082; telephone (602) 917–0969 and facsimile (602) 917–4719. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Ms. Lirio L. Liu, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California, 90712; telephone (310) 627–5229; facsimile (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–CE–99–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–CE–99–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of corrosion occurring on both the metal covered wing spars and the fabric-covered wing spars of the Luscombe Model 8 series airplanes. The service history of these airplanes indicates there is a problem of limited access holes to the interior of the metal covered wings to look for any corrosion, which inhibits inspecting the area around the wing spar extrusions. The fabric covered wings on the Luscomb Model 8 airplanes have adequate access holes for inspecting purposes. Routine maintenance inspections have reported intergranular corrosion in the front and rear spar extrusion in the wings of these airplanes.

The Don Luscombe Aviation History Foundation has issued Service Recommendation No. 2, dated December 15, 1993, Revised November 21, 1995, which specifies installing new inspection holes, modifying the wing tip fairings, and inspecting the wing spars for intergranular corrosion.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to detect intergranular corrosion in the wing spars, which, if not detected and corrected, could result in structural failure of the wings and loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Luscombe Model 8 series airplanes of the same type design, the proposed AD would require installing a total of four additional wing inspection holes in the metal covered wings to assist in conducting a more thorough examination of the wing spars, modifying the wing tip fairing so that it is removable, and providing easier access to the interior of the wings. A one

time inspection for intergranular corrosion is proposed for both metal covered and fabric covered wings on the Luscomb Model 8 airplanes in the areas of the front and rear spar extrusions of the wing installations.

The FAA estimates that 2,029 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 7 hours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. The Luscombe Installation kit #8007 cost approximately $125 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,105,805. This figure includes the cost of the installation, modification, and inspection. This figure applies to Model 8 airplanes that have metal covered wings. For airplanes that have fabric covered wings, the cost will only be for the one-time inspection, which is estimated to take approximately 1 hour per airplane.

Luscombe has informed the FAA that these Installation Kits have been distributed to equip approximately 150 airplanes. Assuming that these distributed kits are incorporated on the affected airplanes, the cost of the proposed AD would be reduced by $18,750 from $1,105,805 to $1,087,055.

The compliance time of this AD is presented in calendar time instead of hours time-in-service (TIS). The FAA has determined that a calendar time compliance is the most desirable method because the unsafe condition described by this AD is caused by corrosion. Corrosion initiates as a result of airplane operation, but can continue to develop regardless of whether the airplane is in service or in storage. Therefore, to ensure that the above-referenced condition is detected and corrected on all airplanes within a reasonable period of time without inadvertently grounding any airplanes, a compliance schedule based upon calendar time instead of hours TIS is required.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

The Don Luscombe Aviation History Foundation (formerly The Luscombe Aircraft Company): Docket No. 95–CE–99–AD.

Applicability: Model 8 series airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it. Compliance: Required within the next 12 calendar months after the effective date of this AD, unless already accomplished.

To prevent wing spar failure resulting from intergranular corrosion, which, if not detected and corrected, could result in structural failure of the wings and loss of control of the airplane, accomplish the following:

(a) For Luscombe Model 8 series airplanes with metal covered wings,

(1) Install two additional wing inspection holes (left wing and right wing) using the Don Luscombe Aviation History Foundation (DLAHF) Kit #8007, Wing Access and Inspection Kit, in accordance with the Compliance Procedures section, paragraphs "1B Metal Covered Wings.", (a), (a1.) through (a9.), and (b.) of the Luscombe Service Bulletin (SB) #2, dated December 15, 1993, REVISED November 21, 1995, and

(2) Modify the wing tip fairing using the DLAHF Kit #8007, Wing Access and Inspection Kit, in accordance with the Compliance Procedures section, paragraphs "1B Metal Covered Wings.", (c), and (c1.) through (c5.) of the Luscombe SB #2, dated December 15, 1993, REVISED November 21, 1995.

(b) For all affected Luscombe Model 8 series airplanes, inspect one time for intergranular corrosion in the areas of the front and rear spar extrusions of the wing installations in accordance with the Compliance Procedures: section, paragraph "1A. Fabric Covered Wings." or paragraph "2. Inspect" of the Luscombe SB #2, dated December 15, 1993, REVISED November 21, 1995, whichever paragraph is applicable to the wing construction of the airplane.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial compliance time that provides an equivalent level of safety may be approved by the Manager, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California, 90712. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to The Don Luscombe Aviation History Foundation, P. O. Box 63581, Phoenix, Arizona 85082; telephone (602) 917–0969 and fax (602) 917–4719; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on May 21, 1996.

Bobby Sextion,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–13390 Filed 5–28–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 96–AGL–1]

Proposed amendment to Class E Airspace; Rochester, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace at Rochester, MN. Additional controlled airspace is required for the Copter GPS 325 degrees approach procedure to St. Mary's Hospital Heliport. Controlled Airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed for aircraft executing the approach..

DATES: Comment must be received on or before June 30, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 96–AGL–1, 23000 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7459.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested partiers are invited to participate in this proposed rulemaking by submitting such written data, views, or agruments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statment is made: "Comments to Airspace Docket No. 96–AGL–1." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in this docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Rochester, MN. This proposal would provide adequate Class E airspace for IFR operators executing the Copter GPS 325 degrees approach procedure to St. Mary's Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contained aircraft executing the approach. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E. airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action' under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Rochester, MN [Revised]

Rochester International Airport, MN
(lat. 43°54′32″N, long. 92°29′53″W)
St. Mary's Hospital Heliport, MN
(lat. 44°01′11″N, long 92°28′59″W)
Rocester VOR/DME
(lat. 43°46′58″N, long. 92°35′49″W)

That airspace extending upward for 700 feet above the surface within a 6.7-mile radius of the Rochester International Airport and within 3.2 miles each side of the Rochester VOR/DME 028 radial extending from the 6.7-mile radius to 7.9 miles southwest of the airport, within 5.3 miles southwest and 4 miles northeast of the Rochester northwest localizer course extending from the 6.7-mile radius to 20 miles northwest of the airport, within 5.3

miles northeast and 4 miles southwest of the Rochester southeast localizer course extending from the 6.7-mile radius to 17.3 miles southeast of the airport and within a 6.4 mile radius of the St. Mary's Hospital Heliport.

* * * * *

Issued in Des Plaines, Illinois on May 14, 1996.

Jeffrey L. Griffith,

Acting Manger, Air Traffic Division.

[FR Doc. 96–13423 Filed 5–28–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–AGL–3]

Revision of Class E Airspace; Delta County Airport, Escanaba, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E2 airspace to accommodate the addition of an Automatic Weather Observation System (AWOS–3) at Delta County Airport, Escanaba, MI, to operate turbo-jet charter service on a 24 hour basis.

DATES: Comments must be received on or before June 30, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 96–AGL–3, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96–AGL–3." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E2 airspace to accommodate the addition of an Automatic Weather Observation System (AWOS–3) at Delta County Airport, Escanaba, MI, to operate turbo-jet charter service on a 24 hour basis. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E2 airspace designations for surface areas are published in paragraph 6002 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E2 airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6002 The Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL MI E2 Escanaba, MI [Revised]

Escanaba, Delta County Airport, MI
(lat. 45°43'18"N., long. 87°05'40"W.)
Escanaba VORTAC
(lat. 45°43'21"N., long. 87°05'23"W.)

Within a 4.2-mile radius of the Escanaba VORTAC, and within 2.6 miles each side of the Escanaba VORTAC 007 radial, extending from the 4.2-mile radius to 7.4 miles northeast, and within 2.6 miles each side of the Escanaba VORTAC 101 radial, extending from the 4.2-mile radius to 7.4 miles east, and within 2.6 miles each side of the Escanaba VORTAC 266 radial extending from the 4.2-mile radius to 7 miles west of the VORTAC.

* * * * *

Issued in Des Plaines, Illinois on May 6, 1996.

Maureen Woods,

Acting Manager, Air Traffic Division.

[FR Doc. 96–13421 Filed 5–28–96; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 67

[CGD 95–052]

RIN 2115–AF15

Testing of Obstruction Lights and Fog Signals on Offshore Facilities

AGENCY: Coast Guard, DOT.

ACTION: Notice of termination and withdrawal.

SUMMARY: This rulemaking project was initiated as part of the President's Regulatory Reinvention Initiative (PRRI). It was intended to improve the quality of tests performed on obstruction lights and fog signals, while reducing the administrative burden on the public, and minimizing costs borne by the Coast Guard. Comments to the rulemaking raised several substantial issues which require further study. Therefore, the Coast Guard is terminating further rulemaking under docket number 95–052.

FOR FURTHER INFORMATION CONTACT: LTJG Chad Asplund, Project Manager, Short Range Aids to navigation Division, U.S. Coast Guard Headquarters, (202) 267–1386.

SUPPLEMENTARY INFORMATION: On January 10, 1996, the Coast Guard published a notice requesting comments in the **Federal Register** (61 FR 708). The notice asked (1) whether the flash characteristics of obstruction lights should be changed from a quick-flashing rhythm to a Morse "U"; (2) whether the candlepower requirements on obstruction lighting should be adapted to the new transmissivity tables developed by the Coast Guard; and (3) whether lights and fog signals should be tested independent laboratories rather than by the Coast Guard.

On March 27, 1996, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** (61 FR 13472). The Coast Guard proposed a new rule on only one of the three issues investigated in the notice, specifically, that lights and fog signals would be tested by independent laboratories rather than by the Coast Guard.

The NPRM's approach was in keeping with the goals of the PRRI to make government work better and cost less by finding ways to reduce financial and regulatory burdens on industry while improving governmental efficiency. It proposed to achieve this by (1) consolidating permit applications in headquarters rather than requiring an application to each Coast Guard district; and (2) having independent laboratories test all devices and submit the results to the Coast Guard rather than requiring Coast Guard involvement in the testing of lights or fog signals. In spite of the Coast Guard's intent to reduce burdens, comments indicated that the NPRM, as proposed, was too general to accomplish either the project's goals or the goals of PRRI.

Specifically, comments questioned how independent laboratories would be designated or certified by the Coast Guard, and what standards would be used by the independent laboratories in evaluating lights and fog signals. Comments also expressed concern over the timetable for implementation, with several pointing out that retrofitting all existing structures would impose a high cost on the regulated community without providing any proven reduction in risk.

The Coast Guard has determined that the concerns raised by the comments to this docket require further examination of this area before any rulemaking is undertaken. The Coast Guard seeks to promulgate rules that will improve maritime safety while accomplishing PRRI goals. Because the current rulemaking may do neither, the Coast Guard is terminating further rulemaking under docket number 95–052 but will continue to investigate the feasibility of implementing these concepts in the future.

Dated: May 17, 1996.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 96–13419 Filed 5–28–96; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[WH–FRL–5511–6]

Drinking Water; National Primary Drinking Water Regulations; Enhanced Surface Water Treatment Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of extension of public comment period.

SUMMARY: In this notice, EPA is announcing an extension of the public comment period for the National Primary Drinking Water Regulations (NPDWR) for the Enhanced Surface Water Treatment Regulations (ESWTR) (59 FR 38832, July 29, 1994). The NPDWR consists of a set of regulatory options related to treatment techniques for microbiological pathogens. The NPDWR also includes proposed monitoring, reporting, and public notification requirements for these compounds. The comment period is being extended from May 30, 1996 until August 30, 1996.

DATES: Comments should be postmarked or delivered by hand on or before August 30, 1996. Comments received after this date may not be considered.

ADDRESSES: Send written comments to the ESWTR Docket Clerk, Water Docket (MC–4101); U.S. Environmental Protection Agency; 401 M Street, SW., Washington, DC 20460, or hand deliver to the Water Docket, Room 2616, Waterside Mall, 401 M Street, SW., Washington, DC.

The proposed rule with supporting documents and all comments received are available for review at the Water Docket at the address above. For access to Docket materials, call (202) 260–3027 between 9 am and 3:30 pm for an appointment.

FOR FURTHER INFORMATION CONTACT: General information may be obtained from the Safe Drinking Water Hotline, telephone (800) 426–4791; Stig Regli, Office of Ground Water and Drinking Water (4603), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (202) 260–7379; or Paul Berger, Office of Ground Water and Drinking Water (4603), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (202) 260–3039.

SUPPLEMENTARY INFORMATION: On July 29, 1994 EPA proposed two drinking water regulations: the Disinfectant/Disinfection Byproducts (D/DBP) and

Enhanced Surface Water Treatment (ESWTR) rules. These proposals were the product of a negotiated rulemaking. The negotiators included State and local health and regulatory agency staff and elected officials, consumer groups, environmental groups, and representatives of public water systems.

The group agreed to propose a disinfectant/disinfection byproduct rule to extend coverage to all community and non-transient, non-community water systems that use disinfectants, reduce the current total trihalomethane (TTHM) maximum contaminant level (MCL), regulate additional disinfection byproducts, set limits for the use of disinfectants, and reduce the level of compounds that may react with disinfectants to form byproducts. The group further agreed that revisions to the current Surface Water Treatment Rule might be required at the same time to ensure that microbial risk is not increased as byproduct rules go into effect, and to provide explicit control of *Cryptosporidium*. As a result, the Enhanced Surface Water Treatment Rule was proposed with a number of options for microbial control, including the option to simply retain the requirements of the current Surface Water Treatment Rule. Data being collected through a separate Information Collection Rule (May 14, 1996, 61 FR 24354) and a research program will be used to identify the appropriate option.

The comment period for submission of formal written comments in response to the D/DBPR rule closed on December 29, 1994. The comment period for formal written comments in response to the ESWTR rule was listed in the proposed rule as closing on May 30, 1996. The reason a longer time was allowed for comments on the ESWTR was to allow time for the public to consider data being collected under the Information Collection Rule and the research program prior to that date. Due to delays in the initiation of data collection, the May 30, 1996 date no longer allows commenters time to consider the results of any of those data.

The Agency believes it would be useful to allow the public additional time in which to review the final Information Collection Rule and provide comments on its implications for the ESWTR. The Agency would also like to obtain comments on the ESWTR which are independent of the collection of subsequent data so that analysis of those comments may begin on a timely basis. An extension until August 30, 1996 in essence gives commenters 90 days to file those comments. Once at least eight months of data collected under the Information Collection Rule have been collected and analyzed, the Agency will issue a Notice of Availability providing its analysis of the data and its recommendation for the appropriate regulatory option for the ESWTR. At that time, the Agency will reopen the public comment period for the ESWTR so that commenters can consider the data and EPA's analysis.

Please submit any references cited in your comments. EPA would appreciate an original and three copies of your comments and enclosures (including references). Commenters who want EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted because EPA cannot ensure that they will be submitted to the Water Docket. To ensure that EPA can read, understand and therefore properly respond to comments, the Agency would prefer that commenters type or print comments in ink, and cite, where possible, the paragraph(s) in the proposed regulation (eg., 141.76(b)) to which each comment refers. Commenters should use a separate paragraph for each method or issue discussed.

Dated: May 21, 1996.

Robert Perciasepe,

Assistant Administrator.

[FR Doc. 96–13435 Filed 5–28–96; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 180

[OPP–300415A; FRL–5370–1]

RIN 2070–AC18

Proposed Revocation of Tolerances; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending until July 30, 1996, the comment period for a proposed rule that was published in the **Federal Register** of March 1, 1996 that proposed the revocation of 41 section 408 tolerances established under the Federal Food, Drug and Cosmetic Act (FFDCA) for 22 chemicals. The original comment period on the proposal ends on May 30, 1996, but because of the unavailability of certain documents in the docket and the Dicofol Task Force's intentions to submit additional data, the comment period is being extended.

DATES: Written comments, identified by the docket number [OPP–300415A], must be received on or before July 30, 1996.

ADDRESSES: By mail, submit written comments to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number, [OPP–300415A]. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Niloufar Nazmi, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. WF32C5, Crystal Station #1, 2800 Crystal Drive, Arlington, VA 22202, (703)–308–8028; e-mail: nazmi.niloufar@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 1, 1996, (61 FR 8173), EPA issued a proposed rule proposing the revocation of 9 tolerances, and announcing its decision whether 41 section 408 tolerances for 22 pesticides should be revoked under EPA's policy concerning the coordination of its authorities under sections 408 and 409 of the FFDCA.

A record has been established for this rulemaking under docket number [OPP–300360A] (including any comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-Docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Processed foods, Reporting and recordkeeping requirements.

Dated: May 15, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 96–13284 Filed 5–28–96; 8:45 am]

BILLING CODE 6560–50–F

---

40 CFR Part 180

[PP 6E04666/P660; FRL–5371–6]

RIN 2070–AC18

Methyl Esters of Tall-Oil Fatty Acids; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that methyl esters of tall-oil fatty acids be exempted from the requirement of a tolerance when used as an inert ingredient (adjuvant) in pesticide formulations. This proposed regulation was requested by Union Camp Corporation pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: Comments, identified by the docket number [PP 6E04666/P660], must be received on or before June 28, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person deliver comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number, [PP 6E04666/P660]. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Bipin Gandhi, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 2800 Crystal Drive, North Tower, Arlington, VA, (703) 308–8380, e-mail: gandhi.bipin@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Union Camp Corporation, P.O.Box 2668, Savannah, GA. 31402, has submitted pesticide petition (PP) 6E04666 to EPA requesting that the Administrator, pursuant to section 408(e) of the FFDCA, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for methyl esters of tall-oil fatty acids when used as an inert ingredient (adjuvant) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without that data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. The Agency has decided that no data, in addition to that described below, for methyl esters of tall-oil fatty acids will need to be submitted. The rationale for this decision is described below:

(1) Tall-oil fatty acids are exempted from the requirement of a tolerance under 40 CFR 180.1001(c) as "Tall-oil; fatty acids not less than 58 percent, rosin acids not more than 44 percent, unsaponifiables not more than 8 percent."

(2) Methyl esters of tall-oil fatty acids are prepared from tall-oil fatty acids. These methyl esters degrade to tall-oil fatty acids and therefore, are considered no more toxic than the corresponding tall-oil fatty acids.

(3) Methyl esters (distilled) of tall-oil fatty acids contain 1 to 5 percent rosin acids and 2 percent unsaponifiables and are therefore expected to be less toxic compared to the maximum permitted levels of 44 percent rosin acids and 8 percent unsaponifiables respectively for tall-oil fatty acids specified under 40 CFR 180.1001(c).

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this proposal be referred to an Advisory Committee in accordance with section 408(e) of FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the docket number, [PP 6E04666/P660].

A record has been established for this rulemaking under docket number [PP 6E04666/P660] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

The Office of Management and Budget has exempted this proposed rule from the requirements of section 3 of Executive Order 12866.

This action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–3 54, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 16, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.1001, the table to paragraph (c) is amended by adding alphabetically the inert ingredient "Methyl esters of tall-oil fatty acids," to read as follows:

§ 180.1001 Exemptions from the requirements of a tolerance.

* * * * *

Ingredients	Limits	Uses
. .	. . .	. .
Methyl esters of tall-oil fatty acids. (Fatty acids not less than 58 percent, rosin acids not less than 44 percent unsaponifiables not less than 8 percent).	.....	Adjuvant
. .	. . .	. .

[FR Doc. 96–13441 Filed 5–28–96; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Parts 180, 185 and 186

[OPP–300408; FRL–4992–5]

RIN 2070–AC18

Pesticide Chemicals; Various Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to revoke tolerances established for residues of 13 pesticide chemicals in or on certain raw agricultural commodities (RACs) and processed foods. EPA is initiating this action because there are no current registrations associated with these food uses. The applicable registrations for these pesticide uses have been canceled because of nonpayment of maintenance fees, or by company request.

DATES: Written comments, identified by the document control number [OPP–300408], must be received on or before July 29, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number. [OPP-300408]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Owen F. Beeder, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703)-308-8351; e-mail: beeder.owen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This document proposes the revocation of tolerances and food and feed additive regulations (tolerances) established under sections 408 and 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a and 348) for residues of the herbicides dalapon, diphenamid, sesone, fluchloralin and metobromuron; the fungicides basic zinc sulfate, glyodin, hexachlorophene and manam; the insecticide hydrogen cyanide; the plant regulators DNOC and metachlorphenprop; and the food additive ethyl formate, in or on raw agricultural commodities (RACs), processed foods, and feeds. EPA is initiating this action because all registered uses of these pesticide chemicals in or on RACs and processed foods have been canceled. The registrations for these pesticide chemicals were canceled because the registrant failed to pay the required maintenance fee and/or the registrant voluntarily canceled all registered uses of the pesticide. Because there are no current food use registrations for any of these 13 pesticide chemicals, EPA proposes to revoke the tolerance and food additive and feed additive regulations for these pesticide chemicals. A tolerance, food additive, or feed additive regulation is not generally necessary for a pesticide chemical that is not registered for a particular food use. The Agency is not recommending the establishment of action levels in place of these regulations. Since there are no food use registrations associated with these tolerances-hence, no legal use in the United States-and since these pesticides are either not persistent, or sufficient time has elapsed since their prior use for residues to dissipate, residues should not appear in any domestically produced commodities.

Because there no current food use registrations for any of these 13 pesticide chemicals EPA proposes to immediately revoke the tolerances for all of the pesticides listed above with the exception of dalapon, diphenamid, glyodin, and DNOC and its sodium salt.

Although no usages in 1992 have been found for the herbicides dalapon and diphenamid, the fungicide glyodin, and the plant regulater DNOC and its sodium salt, and their registered products were canceled over three years ago (except for DNOC, for which the last product was canceled in February 1993), each of these chemicals still had small domestic usages on certain crops as late as 1994 and 1995. EPA has therefore decided to delay the revocation of dalapon, diphenamid, glyodin and DNOC until May 1, 1999, instead of immediately to allow domestic growers who may still have stocks on hand to use up their supplies and permit any treated raw commodities and products processed from such commodities to move through marketing channels, and, therefore, result in little or no domestic impacts. EPA is effecting this delayed revocation by including an expiration date in the tolerance.

The tolerances, food additive and feed additive regulations listed in 40 CFR part 180 being proposed for revocation are as follows: § 180.102 (sesone), § 180.124 (glyodin), § 180.130 (hydrogen cyanide), § 180.150 (dalapon), § 180.161 (manganous dimethyldithiocarbamate (manam)), § 180.230 (diphenamid), § 180.244 (basic zinc sulfate), § 180.250 (metobromuron), § 180.302 (hexachlorophene), § 180.325 2-(*m*-Chlorophenoxy) propionic acid (metachlorphenprop), § 180.344 (4,6-dinitro-o-cresol) (DNOC), and its sodium salt, § 180.363 (fluchloralin), § 185.2900 (ethyl formate), § 185.1500 (dalapon), and § 186.1500 (dalapon).

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA).

Interested persons are invited to submit written comments on the proposed regulation. Further, EPA is soliciting comments from anyone adversely affected by revocation of these tolerances, exemption from tolerance, food additive and feed additive regulations. EPA requests that anyone

adversely affected by these revocations submit information pertaining to why and provide specific information as follows: 1. Are there any existing stocks of the chemical? 2. If so, how much? 3. When will the stocks be depleted? 4. How long would the commodities treated with these chemicals be in the channels of trade? 5. Would residues on any of these pesticide chemicals be present in or on commodities grown in foreign countries and imported into the United States? Comments must bear a notation indicating the document control number, [OPP-300408]. All written comments filed in response to this document will be available for public inspection in the Public Response Section, at the Virginia address given above, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [OPP-300408] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, it has been determined that this rule is not a "significant regulatory action" because it does not meet any of the regulatory-significance criteria listed above.

B. Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.) and it has been determined that it will not have an economic impact on any small businesses, governments, or organizations. Accordingly, I certify that this proposed rule does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This proposed regulatory action does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

D. Unfunded Mandates

This action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special consideration as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and Pests Reporting and recordkeeping requirements.

40 CFR Part 185

Environmental protection, Food Additives, Pesticides and Pests.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and Pests.

Dated: May 15, 1996.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that chapter I of title 40 of the Code of Federal Regulations be amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.102 [Removed]

b. By removing § 180.102 *Sesone; tolerances for residues.*

c. By revising § 180.124 *Glyodin; tolerances for residues* to read as follows.

§ 180.124 Glyodin; tolerance for residues.

A time-limited tolerance of 5 parts per million, with an expiration date of May 1, 1999, is established for the residues of the fungicide glyodin (2-heptadecyl-2-imidazoline acetate or 2-heptadecyl-2-imidazoline (base) in or on the following raw agricultural commodities: apples, cherries, peaches, and pears.

§ 180.130 [Removed]

d. By removing § 180.130 *Hydrogen cyanide; tolerances for residues.*

e. By revising § 180.150 *Dalapon; tolerances for residues* to read as follows.

§ 180.150 Dalapon; tolerances for residues.

(a) A time-limited tolerance, with an expiration date of May 1, 1999, is established for residues of the herbicide dalapon (2,2-dichloropropionic acid) resulting from application of dalapon sodium salt or sodium-magnesium salt mixtures in or on the following raw agricultural commodities:

Commodity	Parts per million
Almonds	10
Almonds, hulls	50
Apples	3
Apricots	1
Asparagus	30

Commodity	Parts per million
Bananas	5
Beans	1
Beans, straw	1
Beets, sugar (roots)	5
Beets, sugar (tops)	5
Cattle, mbyp	0.2
Cattle, meat	0.2
Coffee beans	2
Corn, ear, dried (K+C)	10
Corn, fodder	5
Corn, forage	5
Corn, fresh (including sweet K+CWHR)	5
Corn, grain	10
Cottonseed	35
Cranberries	5
Eggs	0.3
Flaxseed	75
Goats, mbyp	0.2
Goats, meat	0.2
Grapefruit	5
Grapes	3
Grasses, pasture	10
Grasses, range	10
Hogs, mbyp	0.2
Hogs, meat	0.2
Lemons	5
Limes	5
Macadamia nuts	1
Milk	0.1
Oranges	5
Peaches	15
Pears	3
Peas, shelled	15
Peas, unshelled	15
Peas, vine, with pod	15
Peas, vine, without pod	15
Pecans	0.1
Pineapples	3
Plums	1
Potatoes	10
Poultry, (excluding kidney)	3
Poultry, kidney	9
Sheep, mbyp	0.2
Sheep, meat	0.2
Sorghum	1
Sorghum, forage	5
Soybeans	1
Soybeans, straw	1
Sugarcane	0.1
Tangerines	5
Walnuts	5

(b) A time-limited tolerance, with an expiration date of May 1, 1999, is established for residues of dalapon (2,2-dichloropropionic acid) resulting from application of dalapon sodium-magnesium salt mixtures to irrigation ditch banks in the western United States in or on the following raw agricultural commodities. Where tolerances are established at higher levels from other uses of dalapon on the subject crops, the higher tolerance applies also to residues from the irrigation ditch bank use.

Commodity	Parts per million
Avocados	0.2
Citrus fruits	0.2
Cottonseed	0.2
Cucurbits	0.5
Flaxseed	2.0
Fruits, pome	0.2
Fruits, small	0.2
Fruits, stone	0.2
Grain crops (exc wheat)	0.5
Grasses, forage	2
Hops	0.2
Legumes, forage	2
Nuts	0.2
Vegetables, fruiting	0.2
Vegetables, leafy	0.5
Vegetables, root crop	0.2
Vegetables, seed and pod	0.5
Wheat	2

§ 180.161 [Removed]

f. By removing § 180.161 *Manganous dimethyldithio-carbamate; tolerances for residues.*

g. By revising § 180.230 *Diphenamid; tolerances for residues* to read as follows.

§ 180.230 Diphenamid; tolerances for residues.

A time-limited tolerance with an expiration date of May 1, 1999, is established for the residues of the herbicide dipenamid (*N,N,*-dimethyl-2,2-diphenylacetamide) including its desmethyl metabolite *N*-methyl-2,2-diphenylacetamide in or on the raw agricultural commodities as follows:

2 parts per million in or on peanut hay and forage.

1 parts per million in or on potatoes and strawberries.

0.5 parts per million in or on peanut hulls and soybean hay and forage.

0.2 parts per million in or on cotton forage.

0.1 parts per million (negligible residue) in or on apples, cottonseed, fruiting vegetables, okra, peaches, peanuts, soybeans, and sweet potatoes.

0.05 parts per million in or on (negligible residue) in meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep.

0.01 parts per million (negligible residue) in milk.

1.0 parts per million in or on raspberries.

§ 180.244 [Removed]

h. By removing § 180.244 *Basic zinc sulfate; tolerances for residues.*

§ 180.250 [Removed]

i. By removing § 180.250 *Metobromuron; tolerances for residues.*

§ 180.325 [Removed]

j. By removing § 180.325 *2-(m-*Chlorophenoxy) propionic acid; tolerances for residues.

k. By revising § 180.344 *4,6-Dinitro-o-cresol and its sodium salt; tolerance for residues* to read as follows.

§ 180.344 4,6-dinitro-o-cresol and its sodium salt; tolerance for residues.

A time-limited tolerance of 0.2 part per million, with an expiration date of May 1, 1999, is established for residues of the plant regulators 4,6-dinitro-*o*-cresol (DNOC) and its sodium salt in or on the raw agricultural commodity apples from application to apple trees at the blossom stage as a fruit-thinning agent.

§ 180.363 [Removed]

l. By removing § 180.363 *Fluchloralin; tolerances for residues.*

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

b. By revising § 185.1500 *Dalapon; tolerances for residues* to read as follows.

§ 185.1500 Dalapon; tolerances for residues.

A time-limited tolerance of 0.2 part per million, with an expiration date of May 1, 1999, is established for the residues of the herbicide dalapon (2,2-dichloropropionic acid) in potable water when present therein as a result of the application of dalapon sodium-magnesium salt mixtures to irrigation ditch banks in the western United States.

§ 185.2900 [Removed]

c. By removing § 185.2900 *Ethyl formate; tolerances for residues.*

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By revising § 186.1500 *Dalapon; tolerances for residues* to read as follows:

§ 186.1500 Dalapon; tolerances for residues.

A time-limited tolerance of 20 parts per million, with an expiration date of May 1, 1999, is established for residues of the herbicide dalapon (2,2-dichloropropionic acid) in dehydrated citrus pulp for cattle feed, when present therein as a result of the application of dalapon sodium salt or dalapon sodium-magnesium salt mixtures during the growing of citrus fruit.

[FR Doc. 96–13442 Filed 5–28–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[MM Docket No. 87–268; FCC: 96–207]

Broadcast Services; Television Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to require digital broadcast television licensees to use the digital television ("DTV") system described by the ATSC ("Advanced Television Systems Committee") DTV Standard and recommended to the Commission by the Advisory Committee on Advanced Television Service. The Commission also proposes to adopt one or more method of assuring that at some future time the Standard does not inhibit innovation and competition. The intended effect is to ensure that all affected partieis have sufficient confidence and certainty in order to promote the smooth introduction of a free and universally available digital broadcast television service while encouraging technological innovation and competition.

DATES: Comments are due by July 11, 1996, and reply comments are due by August 12, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT: Roger Holberg, Mass Media Bureau, Policy and Rules Division (202) 418–2134 or Saul Shapiro, Mass Media Bureau, (202) 418–2600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Fifth Further Notice of Proposed Rule Making* in MM Docket No. 87–268 , FCC 96–207, adopted May 9, 1996, and released May 20, 1996. The complete text of this *FNPRM* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, DC 20037.

Synopsis of Further Notice of Proposed Rule Making

I. Introduction

1. In this proceeding we consider adoption of a digital television ("DTV") broadcast standard. This action has been recommended to the Commission by its Advisory Committee on Advanced Television Service ("Advisory Committee" or "ACATS").[1] We have the following objectives with regard to the authorization and implementation of a DTV standard.[2] We seek to ensure that all affected parties have sufficient confidence and certainty in order to promote the smooth introduction of a free and universally available digital broadcast television service. We seek to increase the availability of new products and services to consumers through the introduction of digital broadcasting. We seek to ensure that our rules encourage technological innovation and competition. And we seek to minimize regulation and assure that any regulations we do adopt remain in effect no longer than necessary.

II. Background

2. On February 13, 1987, 58 broadcast organizations ("Petitioners") filed a joint "Petition for Notice of Inquiry" asking the Commission to initiate a proceeding to explore issues arising from the advent of new and advanced television ("ATV") technologies and their possible impact, in either broadcast or non-broadcast uses, on existing television broadcast service. On July 16, 1987, as a result of the comments it received in response to the petition, the Commission inaugurated the instant proceeding, "to consider the technical and public policy issues surrounding the use of advanced television technologies by television broadcast licensees."[3]

3. The Commission empaneled the Advisory Committee on Advanced Television Service (ACATS) shortly after having opened the inquiry phase of this proceeding. Among other activities, ACATS designed the detailed testing plans for the system and conducted substantial related studies.

4. On May 24, 1993 the three groups that had developed the four final DTV systems examined by ACATS agreed to produce a single, best-of-the-best system to propose as the standard. The three ventures that joined to become the "Grand-Alliance" consisted of AT&T and Zenith Electronics Corporation; General Instrument Corporation and Massachusetts Institute of Technology; and Philips Electronics North America Corporation, Thomson Consumer Electronics, and the David Sarnoff Research Center. The standard recommended by ACATS and now before us is based on the system developed, built, and proposed by the Digital HDTV Grand Alliance proposal to ACATS. The system described by the ATSC[4] DTV Standard having been successfully designed, built and tested, in November 1995, the Advisory Committee voted to recommend the Commission's adoption of the ATSC DTV Standard.

5. We believe that the ATSC DTV Standard embodies the world's best digital television technology and promises to permit striking improvements to today's television pictures and sound; to permit the provision of additional services and programs; to permit integration of future substantial improvements while maintaining compatibility with initial receivers; and to permit interoperability with computers and other digital equipment associated with the national information initiative.

[1] ACATS Report at 19. The Advisory Committee was formed by the Commission on October 16, 1987, pursuant to the Federal Advisory Committee Act (86 Stat. 770, as amended, 5 U.S.C. App. 2 § 1 *et seq.* (1982 ed. and Supp. V)). It was established "to assist the Commission in considering the issues surrounding the introduction of advanced television service in the United States." (*Notice*, 52 Fed. Reg. 38523 (October 16, 1987).) The Advisory Committee consisted of a twenty-five member parent committee and three subcommittees—Planning, Systems and Implementation. Its membership on the date that the ATSC DTV Standard was recommended to the Commission is at Appendix B.

[2] In issuing this *Notice*, we are requesting comment, *inter alia*, on whether to accept the conclusions of the Final Report and Recommendation of the Advisory Committee, adopted November 28, 1995 ("ACATS Report"), which recommends the Advanced Television Systems Committee Standard A/53 (1995) *ATSC Digitol Television Standard* ("ATSC DTV Standard") as the standard for DTV broadcasting in the United States. This standard is based on the Advisory Committee design specifications and the Digital HDTV Grand Alliance ("Grand Alliance") System. The ACATS Report is hereby incorporated into the record of this proceeding. Copies of the ACATS Report are available through the Commission's copy contractor, International Transcription Services. Additionally, the ACATS Report, ACATS Final Technical Report and ATSC DTV Standard are available on the Internet at the ATSC site (http://www.atsc.org).

[3] *Notice of Inquiry* in MM Docket No. 87–268, ("*First Inquiry*"), 2 FCC Rcd 5125 (1987).

[4] "ATSC" is the Advanced Television Systems Committee. ATSC currently has 54 members including television networks, motion picture and television program producers, trade associations, television and other electronic equipment manufacturers and segments of the academic community. It was formed by the member organizations of the Joint Committee on InterSociety Coordination ("JCIC") for the purpose of exploring the need for and, where appropriate, to coordinate development of the documentation of ATV systems. The JCIC is composed of the Electronic Industries Association, the Institute of Electrical and Electronics Engineers, the National Association of Broadcasters, the National Cable Television Association, and the Society of Motion Picture and Television Engineers. The membership of the ATSC when it adopted the ATSC DTV Standard is at Appendix C.

III. The ATSC DTV Standard

6. The five components described in the annexes to the ATSC DTV Standard are video coding, audio coding, transport, RF/transmission and receiver. These five basic components, plus a video format selection function, are sometimes referred to as comprising "layers" of the system. Compliance with the ATSC DTV Standard requires some of its provisions be followed, but many of these provisions include numerous acceptable options that the system's users may select. In addition to the required provisions, some additional provisions of the ATSC DTV Standard are recommended but not required, and others are optional. Finally, although it describes the coding and transmission of television video and audio, it also allows transmission of a variety of other services as "ancillary data." This structure makes the system described by the ATSC DTV Standard extremely flexible and gives it room to incorporate a wide range of future improvements.

7. *Format selection:* The ATSC DTV Standard supports a variety of scanning formats. Table I shows the number of scanning lines and horizontal picture elements (or pixels) per line, which affect resolution. The 720-line and 1080-line formats below represent high resolution video. The lower-resolution 480-line formats accommodate existing NTSC[5] programming and equipment as well as material designed for viewing on VGA computer monitors.

TABLE I

Vertical lines	Horizontal pixels	Aspect ratio	Picture rate
1080	1920	16:9	60I 30P 24P
720	1280	16:9	60P 30P 24P
480	704	16:9 4:3	60I 60P 30P 24P
480	640	4:3	60I 60P 30P 24P

8. Table I also indicates that the high-resolution formats both use a picture aspect ratio of 16 units horizontally by 9 units vertically (that is, a picture 16 inches wide would be 9 inches tall or one 32 inches wide would be 18 inches tall). The choices of 1280 pixels per line for the 720-line format and 1920 pixels per line for the 1080-line format result in square pixels (that is, pixels which are displayed at equal distances, both horizontally and vertically) for both formats, based on the 16:9 aspect ratio. Material in the 480-line by 704-pixel format could use either a 16:9 or a 4:3 aspect ratio.

9. The picture rates specified in Table I identify the number of images that are sent each second, with an "I" designating interlaced scanning and a "P" designating progressive scanning. Progressive scanning lines are presented in succession from the top of the picture to the bottom, with a complete image sent in each frame as is commonly found in computer displays today. For interlaced scanning, which also is used in NTSC television, odd and even numbered lines of the picture are sent consecutively, as two separate fields. These two fields are superimposed to create one frame, or complete picture, at the receiver. The picture rates can be 24, 30 or 60 fields per second.

10. *Video coding:* For compression of video signals, the ATSC DTV Standard requires conformance with the main profile syntax of the MPEG–2 video standard.[6] Employing this standard, the amount of data needed to represent television pictures is reduced using a variety of tools, including a motion compensated discrete cosine transform (DCT) algorithm and bidirectional-frame (B-frame) prediction. Each of these tools serves to improve compression efficiency by reducing the total amount of digital information that needs to be transmitted.

11. *Audio coding:* For compression of audio signals, the ATSC DTV Standard requires conformance with ATSC Doc. A/52, the Digital Audio Compression (AC–3) Standard. The AC–3 perceptual coding system, which was developed by Dolby Labs, can encode a complete main audio service which includes left, center, right, left surround, right surround, and low frequency enhancement channels into a bit stream at a rate of 384 kilobits per second (kbps). Audio service can also include fewer channels (down to single channel, monophonic service) using a lower bit rate.

12. *Transport:* The service multiplex and transport layer of the ATSC DTV Standard is a compatible subset of the MPEG–2 systems standard that describes a means of delivering a digital data stream in fixed-length "packets" of information. Each packet contains only one type of data: video, audio or ancillary. There is no fixed mix of packet types, which further helps provide flexibility. Channel capacity can be dynamically allocated in the transport layer, under the direct control of the broadcaster. Within the transport layer, the packets of video, audio, closed captioning and any other data associated with a single digital television program are combined using a mechanism to ensure that the sound, pictures and closed captioning information can be synchronized at the receiver. Data describing multiple television programs, or unrelated data for other purposes, are also combined in the transport layer.

13. *RF/Transmission:* The transmission layer of the ATSC DTV Standard uses a vestigial sideband (VSB) technique with a small pilot carrier added at the suppressed carrier frequency. The relationship of the pilot carrier frequency to interference to lower adjacent channel NTSC service is discussed in the "interference" section below.

14. Terrestrial broadcasts of DTV will be exposed to situations that include strong interfering signals, electromagnetic noise from numerous sources, and configurations of buildings or terrain features that cause multipath interference. For successful reception under these difficult conditions, an 8-level VSB signal is specified and extensive error correction is provided. Taking into account the transport requirements and error correction, the 8–VSB signal carries an effective useful payload of approximately 19.28 megabits per second (Mbps). For more benign environments, like that provided in a cable system, the ATSC DTV

[5] NTSC refers to the current analog television system. It is named for the National Television System Committee, an industry group that developed the monochrome (black and white) television standard in 1940–41 and the color television standard in 1950–53.

[6] MPEG–2 is a video compression and transport standard created by the Moving Picture Experts Group of the International Organization for Standardization (ISO).

Standard includes a 16-level VSB high data rate mode that provides double the capacity of the 8-level VSB terrestrial broadcast mode.

15. *Receiver:* The ATSC DTV Standard does not specify requirements for a compliant receiver. In essence, the DTV receiver designs are to be based on the specifications of the signal contained in the other portions of the Standard. The receiver reverses the functions of the RF/transmission and transport layers, and, after decompression, generates video and audio suitable for its display.

16. *Flexibility.* The ATSC DTV Standard provides a method of accommodating a broad range of uses. The packetized transport structure is a critical component in achieving this broad level of flexibility. Scrambled packets can be sent, which allows conditional access subscription or pay-per-view services to be delivered.

17. *Extensibility.* In the future, new services may be uniquely identified through the use of new packet identifiers that would be ignored by previously deployed digital receivers. Such data could be used to augment DTV programs or could permit new services that have not yet been envisioned. Either extension of the DTV service would require new DTV receivers or new decoder devices to be developed and used in order to obtain the benefits of the new service or functionality, but would not disrupt provision of DTV service to consumers using existing sets. The marketplace would determine the extent to which sets with new functionalities are available.

IV. Adopting the ATSC DTV Standard

18. There is near universal agreement that transmission standards, either de facto or de jure, confer many benefits.[7] We believe that the proposals discussed herein would enable consumers, licensees and equipment manufacturers to realize the benefits of standards without unduly restricting innovation and competition.

19. *Previous Statements.* Previously, we have asked whether mandatory transmission standards serve the public interest. In our initial 1987 *Notice of Inquiry* in this proceeding, we noted that NTSC standards were established during the television industry's infancy when universal compatibility standards were arguably necessary in order to develop a national television broadcasting system in a timely manner.[8] However, we also stated that the continuation of mandatory standards may no longer be necessary and may even be counterproductive.[9]

20. In the 1988 *Second Inquiry,* we continued our examination of whether the NTSC standard should be relaxed or repealed, how standards should be established for advanced television, and whether it would be desirable to require compatibility between advanced television broadcast transmissions and other ATV distribution media.[10] In this regard, we asserted that establishing a standard has certain advantages such as pointing the various interested parties in the same direction, reducing the risk to both audiences and broadcasters of investments in systems that might become obsolete if a different system is introduced in the market, and overcoming reluctance to invest in new equipment.[11] We also stated that, "detailed, inflexible standards that have the force of law may reduce consumer choice and prevent the timely introduction of new technology." [12]

21. Subsequent to our statements concerning standards in the 1987 and 1988 decisions, as described above, we concluded in 1990 that "[c]onsistent with our goal of ensuring excellence in ATV service, we intend to select a simulcast high definition television system." [13] We also stated that, "parties filing comments in response to the Further Notice generally assume that the Commission will ultimately authorize a system using new technology that will provide HDTV service." (Footnote omitted.) [14] The Commission's November 14, 1990 *Memorandum of Understanding* with the Advisory Committee, the Advanced Television Test Center, Inc., Cable Television Laboratories, Inc., and the Canadian Communications Research Centre, said, "[t]he FCC's stated intention is to select an ATV standard by the second quarter of 1993."

22. *Recent Developments.* Two recent developments are relevant to whether and, if so, what form of a required standard is desirable. First, the presence of multiple competing systems strengthened the argument for selecting a standard. Today, only one system has been recommended by our Advisory Committee and no other competing technology appears to demonstrate superiority over the ATSC DTV Standard.[15] Thus, concerns with the possibility of multiple competing systems may be less relevant today.

23. Second, prior to the development of the ATSC DTV Standard, it was widely believed that the service offered by a licensee would change from one NTSC program stream to one HDTV program stream. Today's digital technologies and improved compression techniques create the opportunity for delivering one, and under special circumstances perhaps two, HDTV program streams, or multiple program streams at lower resolution. Furthermore, digital technologies give each licensee the technical capacity to explore new business opportunities and provide new services. If the ATSC DTV Standard is as dynamic as believed, a required standard will not thwart technical advance.

24. *Analysis of Required Standards.* The traditional rationale for requiring a standard arises when two conditions are met.[16] First, that there is a substantial public benefit from a standard. Second, private industry either will not, or cannot, produce a standard because the private costs of getting involved in standard setting outweigh the private benefits, or a number of different standards have been developed and private industry cannot agree which should become the standard. The second condition may not be applicable in view of the strong industry coalescence around the ATSC DTV Standard. However, we believe that the first condition applies to DTV. Television today is a ubiquitous service that is available to almost every American household and is relied on by a majority of Americans as their primary news and information source.[17]

25. A required standard may provide additional certainty to consumers, licensees, and equipment manufacturers, especially during the launch of this new technology. A required standard may protect consumers against losses by assuring them that their investments in DTV equipment will not be made obsolete by a different technology. In addition, requiring use of a single standard guarantees compatibility. This assures consumers that the DTV equipment they purchase to view one television station can be used to view every other television station. The compatibility guaranteed by a single required standard may also reduce consumer costs by eliminating the need to purchase duplicative equipment or special devices to convert from one standard to another. Finally, a required standard may lead to a more rapid development and acceptance of DTV equipment. Absent a required standard, some consumers and licensees may be reluctant to purchase DTV equipment if they believe that different DTV technologies may become available in the near future. A required standard may reduce such "wait and see" behavior.

26. Although there are benefits to required standards, there also may be certain costs. One may be deterrence of technical innovations.[18] Over time, we expect that normal technological progress will lead to improvements. If subsequent technological improvements cannot be readily incorporated into the ATSC DTV Standard, the Standard could lock the broadcast market into less than optimal technology. Required standards also may reduce some forms of competition while enhancing others. With required standards, equipment manufacturers cannot compete by offering differentiated products using different technologies. As such, a primary cost of required standards is loss of variety.[19] On the other hand, required standards, which are licensed to everyone on a non-discriminatory basis, may intensify the more conventional forms of competition, such as price, service, and product features.[20]

27. As we weigh the benefits and costs of required standards, we note that for MMDS and new services like PCS, DBS, and DARS, we have decided to allow the marketplace to determine transmission standards. We recognize that these decisions were made in a context different from that of terrestrial broadcast television, an established industry upon which the American people rely for both information and entertainment. Additionally, unlike these other services, free over-the-air broadcast television is a mass market media serving nearly all of the American public nationwide rather than a subscription service in which the service provider may supply the reception equipment.[21] In this context, the goals of certainty and reliability take on a different significance than may have been present with respect to other communications services and strengthens the case for our adoption of a DTV standard.

28. *Proposal.* We propose to adopt the ATSC DTV Standard. We tentatively conclude that requiring the use of the ATSC DTV Standard is appropriate because it would provide a measure of certainty and confidence to manufacturers, broadcasters and consumers, thus helping assure a smooth implementation of digital broadcast television and the preservation of a free and universally available broadcast television service.

29. The digital television system that has been recommended by the Advisory Committee appears to be dynamic, flexible and high quality. It provides a variety of picture formats that will allow broadcasters to select the one most appropriate for their program material, ranging from very high resolution providing the best possible picture quality to multiple programs of lower resolution, which could result in increased choices for viewers. Even at the lower resolutions, the recommended system represents a clear improvement over the current NTSC standard.

30. Use of the ATSC DTV Standard also represents a rare opportunity to increase significantly the efficient use of broadcast spectrum. The ATSC DTV Standard will allow channels unusable in the NTSC analog environment to be assigned for digital broadcasting between existing NTSC channels. It was designed to be flexible enough to incorporate future improvements, including those resulting in ever higher resolution, that the Advisory Committee believes will be made possible by future advances in compression and display technology.

31. We believe that the "headroom" for innovation incorporated in the ATSC DTV Standard, along with the desirability of providing certainty and confidence, argue in favor of a required standard. In addition, the flexibility of the ATSC DTV Standard significantly reduces some of the potential detriments associated with a required standard as the new technology is being launched. The packetized structure of the data transport, as described above, ensures a flexibility that will permit the DTV licensee to provide, for instance, several standard definition programs, or one high-definition program, or some standard definition programming together with data transfer or electronic publishing on the remaining bit streams, and to switch instantaneously between such applications. Other applications are limited primarily by the imagination of the DTV licensee. This means that a wide array of innovations can be introduced without Commission action.

32. We seek comment on the tentative conclusion that we will require use of the ATSC DTV Standard. Assuming that we do require the use of the ATSC DTV Standard by digital television licensees, we request comment on whether we should place the Standard into our rules in its entirety or whether we should incorporate it by reference.[22]

33. While we propose to require digital television licensees to use the ATSC DTV Standard, we recognize that the benefits of a required standard may become attenuated over time, as the costs of a requirement may increase. At some point, when the new digital broadcasting technology has become firmly established, requirements designed to promote certainty and to foster a smooth implementation of digital television may no longer be necessary. Meanwhile, over time, the likelihood increases that there will be technological innovation that even the flexible ATSC DTV Standard may not be able to accommodate. In addition, given the pace of technological change, it is likely that there will be unforeseeable innovations that are incompatible with the ATSC DTV Standard. As long as there is a requirement in our rules that DTV licensees use only the ATSC DTV Standard, such innovations could not be introduced to consumers without a potentially costly and time-consuming Commission proceeding. That, in turn, could reduce the incentive to conduct the research and development that leads to innovation.

34. In addition to ensuring that the Commission's rules promote the rapid

---

[7] For a discussion of the benefits of standards, *see* Stanley M. Besen and Leland L. Johnson, *Compatibility Standards, Competition, and Innovation in the Broadcast Industry* (Santa Monica, CA: The RAND Corporation, 1986) at 7–9.

[8] *First Inquiry, supra* at 5135.

[9] *Id.*

[10] *Tentative Decision and Further Notice of Inquiry* in MM Docket No. 87–268 ("*Second Inquiry*"), 3 FCC Rcd 6520, 6534 (1988).

[11] *Id.* at 6534–35.

[12] *Id.* at 6535.

[13] *First Report and Order,* 5 FCC Rcd 5626, 5628 (1990).

[14] *Id.*

[15] ACATS Report at 17.

[16] Stanley M. Besen and Garth Saloner, "The Economics of Telecommunications Standards," in *Changing the Rules: Technological Change, International Competition, and Regulation in Communications,* Robert W. Crandall and Kenneth Flamm, editors (The Brookings Institute, 1989).

[17] Seventy-two percent of Americans rely on television as their primary source of news. NTVA, Roper-Starch, NAB, *America's Watching—Public Attitudes Toward Television-1995,* at 17.

[18] For an overview of the characteristics of the television broadcast market that contribute to the inertia of established standards see Bruce M. Owen and Steven S. Wildman, *Video Economics,* (Harvard University Press, 1992): 260–313. For a more general discussion of the characteristics of one-way and two-way communications systems that affect the adoption of technology see Michael L. Katz and Carl Shapiro, "Systems Competition and Network Effects," *Journal of Economic Perspectives* (Spring 1994): 93–115.

[19] Katz and Shapiro, *supra* at 110.

[20] Stanley M. Besen and Joseph Farrell, "Choosing How to Compete: Strategies and Tactics in Standardization, *Journal of Economic Perspectives* (Spring 1994): 117–131.

[21] *America's Watching—Public Attitudes Toward Television—1995, supra,* at p. 3. Even nearly 60% of viewing in cable television households is of the programming of broadcast television stations. NCTA, *Cable Television Developments, Fall 1995,* at 5.

[22] *See* Letter dated April 2, 1996, submitted for the record by Joseph P. Markoski of the law firm of Squire, Sanders & Dempsey on behalf of the EIA and the EIA Advanced Television Committee. The letter cites as precedent for incorporating the standard into our Rules by reference Sections 73.682(a)(14), 73.682(a)(21)(iv) and 15.31(a)(6) of the Commission's Rules. A similar, but alternative, proposal would be to publish the Standard not in our Rules but, rather, as an OET technical bulletin.

introduction of digital television broadcasting, we seek in this proceeding to adopt rules that encourage further innovation by those who have devised the ATSC DTV Standard as well as new entrants. We also seek to minimize our regulations and to have the regulations that we do adopt remain in effect no longer than necessary. We are mindful, finally, of the spirit of the recently adopted Telecommunications Act of 1996, which seeks, "[t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." [23]

35. There are several options that arguably could accomplish these goals and we propose to adopt one, or more than one in combination.[24] The Commission could proceed under its current processes for regulatory evolution and change, which include consideration, as appropriate, of requests from parties to amend its rules and reviews initiated by the agency.

36. Alternatively, the Commission could commit itself to conduct a proceeding to review the Standard at some future time. If the Commission chooses this option, should a review be structured to place the burden of persuasion on those seeking to continue requiring a standard or on those seeking to eliminate the requirement? When should such a review take place? Should we select a specific date or should we link the review to an objective event?

37. Finally, the Commission could establish a period of time after which the ATSC DTV Standard no longer would be required or exclusive. At the conclusion of some meaningful period of time, digital licensees would be free to use any technology that does not interfere with users of the ATSC DTV Standard. If such a sunset provision were to be adopted, how should we determine when the mandatory aspects of our rules would expire?

38. Commenters are encouraged to comment on the foregoing and to propose other options. In so doing, they should provide a thorough explanation of the benefits and detriments of their options and an explanation of how their options serve the goals that we have outlined above.

39.Finally, we seek comment on alternative approaches to requiring a standard, including those the Commission has previously identified: (1) authorizing use of a standard and prohibiting interference to it, but not requiring the use of that standard; [25] and (2) adopting a standard for allocation and assignment purposes only.[26] We also seek comment on requiring use of some layers of the ATSC DTV Standard (described more fully above) but making others optional. For example, would it be desirable to require digital licensees to use the RF/transmission layer of the ATSC DTV Standard, while leaving them free to choose coding and compression technologies different from those described in the ATSC DTV Standard?

40. *Acceptability of the ATSC DTV Standard.* Although the ATSC DTV Standard has many supporters, it also has its critics. Some in the computer industry argue that the presence of interlaced scanning formats, the 60 Hz transmission rate, aspect ratios, colorimetry and non-square pixel spacing in the ATSC DTV Standard all merit further consideration.[27] Proponents of the ATSC DTV Standard respond that the Standard was developed for terrestrial broadcasting but has incorporated significant elements to enhance compatibility with computers.[28] With respect to the issue of the presence of interlaced scanning in the proposed Standard, the Grand Alliance argues that, "* * * the Grand Alliance HDTV system emphasizes progressive scan—five of the six HDTV formats are progressive scan, and the Advisory Committee believes that the lone interlaced format should be 'migrated' to progressive as soon as improvements in digital compression and transmission technology make an over-1000 line, 60 Hz progressively scanned format achievable within a 6 MHz terrestrial channel." [29]

41. There also has been objection from cinematographers to the 16:9 aspect ratio contained in the ATSC DTV Standard. They are concerned that the proposed Standard may limit broadcasters' ability to display the full artistic quality of their work. They suggest, instead, that HDTV be displayed in a 2:1 aspect ratio. In reply, the Society of Motion Picture and Television Engineers (SMPTE) states that the 16:9 aspect ratio was established by the SMPTE Working Group on High Definition Electronic Production in 1985 on the basis of studies of the requirement for both motion picture and television production. Moreover, it states that the value of 16:9 for aspect ratio was decided upon only after long debate and that "due consideration was given to the then current practices both in North America and around the world." [30] SMPTE states that it has been demonstrated that there is no difficulty in accommodating program material or motion picture films of any reasonable aspect ratio within the 16:9 format and that material originally composed for a 2:1 aspect ratio could be accommodated by leaving 11% of the vertical space unused.[31]

42. Additionally, we note that low power television station ("LPTV") operators generally want to be included in the implementation of digital technology, and have suggested that, if LPTV is excluded, its continued viability would be jeopardized. LPTV commenters are concerned that any standards that could adversely affect their operations be thoroughly documented in this proceeding.[32]

43. We seek comment on these issues. We believe that those opposing our mandate of the ATSC DTV Standard should have the burden of persuasion as to why that standard should not be adopted.

V. Protection From Interference

44. Protection from interference is a fundamental Commission function that must be considered when introducing new technologies into spectrum allocations currently in use. In addition to criteria we will propose in the near future, when we propose an initial Table of DTV Allotments and associated technical criteria, there are some interference-related aspects of the ATSC DTV Standard that we shall explore now. In the following paragraphs, we solicit comment on limitations on stations using the ATSC DTV Standard that might be needed to avoid objectionable interference to reception of either existing NTSC service or the reception of other stations that use the ATSC DTV Standard.

45. First, we propose to adopt an emission mask, limiting the out-of-channel emissions from a DTV station transmitter, measured after any external filter that may be used and based on a measurement bandwidth of 500 kHz. We seek comment on the following emission mask: (A) at the channel edge, emissions attenuated no less than 35 dB below the average transmitted power; (B) more than 6 MHz from the channel edge, emissions attenuated no less than 60 dB below the average transmitted power; and (C) at any frequency between 0 and 6 MHz from the channel edge, emissions attenuated no less than the value determined using the following formula:

Attenuation in dB=35+[(Δf)²/1.44]

Where: Δf=frequency difference in MHz from the edge of the channel

This proposal is derived from analysis of the ACATS test results for protection of adjacent channel stations. The attenuation level is based on an assumption that the average DTV power in a 6 MHz channel is 12 dB less than the NTSC station effective radiated power (ERP). This power difference provides approximately equal noise limited coverage for DTV and NTSC stations in the UHF frequency band. If DTV stations are permitted to operate in a co-located adjacent channel arrangement with average DTV power exceeding that assumed value, greater attenuation of the out-of-band emissions may be required.

46. Second, ACATS has reported interference from an upper-adjacent channel DTV signal to reception of an NTSC station that is related to the precise location of the DTV signal pilot carrier frequency.[33] To prevent interference to NTSC receivers from this source, we are proposing to require an ATSC DTV Standard station pilot frequency to be located 5.082138 MHz above the visual carrier of the lower adjacent channel NTSC station. The above stated frequency difference between the NTSC visual carrier and the DTV VSB pilot would need to be maintained within a tolerance of ±3 Hz.[34]

47. Third, we propose to specify the maximum power for each DTV station as an average power across the occupied bandwidth, so an appropriate method or methods of determining operating power will be different from the established NTSC procedures, which determine the power transmitted during each synchronizing pulse (peak power). We propose that stations using the ATSC DTV Standard would be allowed to determine their average power using conventional RMS averaging power meters.

48. We seek comment on all of the foregoing including whether the proposed limits on out-of-channel emissions, pilot carrier frequency tolerance and average power determination are appropriate and represent the minimum necessary requirements for controlling the interference potential of stations operating in conformance with the ATSC DTV Standard. We also seek comment on whether the proposed limits are sufficient for this purpose, or if other parameters also need to be constrained.

49. In addition to rules restricting broadcast stations that relate to interference concerns, there are many rules that establish procedures or have been applied broadly to all broadcast stations. We propose to modify many of them to include DTV, or to adapt them and create new DTV rules, as appropriate so that eligible licensees might move quickly to introduce this new technology to consumers. A preliminary list of these technical and procedural rules is attached as Appendix A. We seek comment on whether they should be modified to include DTV, be changed to treat DTV differently than NTSC or other broadcast services are treated, or if they need not be applied to DTV. Commenters addressing this issue should provide specific recommendations, rule-by-rule, as to the modifications they advocate.

VI. Interoperability

50. *Cross-Industry Interoperability.* Compatibility with other transmission forms and media applications has been an important issue throughout this proceeding. Since its inception, ACATS emphasized the need for DTV broadcasting technology to be interoperable with alternative media.[35] In addition, ACATS has recognized that interoperability takes on critical importance given the future needs for high resolution digital imagery and the development of a National Information Infrastructure. ACATS believes that the ATSC DTV Standard is suitably interoperable with other video delivery media and imaging systems, including cable television, direct broadcast satellite, and computer systems.

51. The working party and an "interoperability review panel" also adopted a list of eleven characteristics critical to interoperability based on the needs and desires exhibited by alternative media advocates.[36] ACATS believes the Grand Alliance video system adequately addresses all eleven factors and strikes the best balance between various technical considerations and needs of different industries. It is a balance that has been endorsed by, among others, a subgroup of the Federal Government's Information Infrastructure Task Force, the 1994 NIST/ARPA Workshop on Advanced Digital Video, and the Information Technology Industry Council ("ITI").[37] We request comment on the level of interoperability between the ATSC DTV Standard and alternative media and on the ACATS Report's conclusion that it is adequate. Are there any critical interoperability problems that remain? What additional actions, if any, might the Commission take to facilitate interoperability? We ask that in commenting on this issue, commenters provide specific technical or economic analyses upon which we can make our decision.

52. With digital technologies, differences in transmission methods could develop between broadcast and alternative media if an appropriate variant of the ATSC DTV Standard is not required for alternative media. There is no guarantee that alternative media will choose the ATSC DTV Standard. In our *Second Inquiry,* we expressed "our tentative view that ATV compatibility among alternative media also may develop in an appropriate manner without government involvement." [38] While we recognized that there may be benefits to compatibility, we added that "we do not intend to retard the introduction of ATV on non-broadcast media, nor do we intend at this point to require compatibility among the various media or set specific signal or equipment

[23] Preamble to Pub. L. 104–104, 110 Stat. 56 (1996).

[24] These options are not necessarily incompatible. For example, we could adopt a sunset provision but also provide for Commission review of the Standard prior to the sunset.

[25] *Second Inquiry, supra* at 6535.

[26] *Id.*

[27] *See* Comments of Apple Computer, Inc., and Microsoft Corporation, in response to the *Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry* in MM Docket No. 87–268 ("*Fourth Further Notice*"), 10 FCC Rcd 10540 (1995).

[28] Letter of Stanley Baron, President, Society of Motion Picture and Television Engineers ("SMPTE"), 28 August 1995, at 2, Memo of Paul Misener, ACATS, to Fiona Branton, ITI ("Misener Memo"), August 18, 1995, at 1–2. Reply Comments of the Digital HDTV Grand Alliance, in response to the *Fourth Further Notice*, at 38 and 40.

[29] Reply Comments of the HDTV Grand Alliance, *supra* at 40.

[30] Letter of Stanley Baron, President, Society of Motion Picture and Television Engineers, 18 August 1995, at 2.

[31] *Id.* at 3. In this regard it notes that there is a broad range of aspect ratios that has been employed in modern times and that there is no single aspect ratio that is usable universally.

[32] *See, e.g.,* Comments of Abacus Television in response to the *Fourth Further Notice*, at 24–25.

[33] ACATS Final Technical Report at 5.2.8.

[34] *See* Annex to ACATS Report, Record of Test Results for Digital HDTV Grand Alliance System (October 1995), at I–14–67.

[35] This description of the ACATS position on interoperability is largely derived from the ACATS Report at 15–16.

[36] ACATS Report, Appendix I.

[37] ACATS Report at 16. *See also* Information Technology Industry Council, "Position Statement on Standards for Advanced Television," October 31, 1995, at 1–2. We note that subsequently ITI stated that the ATSC DTV Standard "will be an important part of a diverse and flexible NII" and "urges the Commission to promptly adopt and implement" it, but without the interlace options, stating that it believes "a truly interoperable ATV system will require the exclusive use of progressive scan." *See* Comments of the Industry Information Technology Industry Council filed in response to the *Fourth Further Notice*, at 2–3.

[38] *Second Inquiry, supra* at 6537.

standards for this purpose."[39] We seek comment on whether this view remains correct.

53. In the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act), Congress expressed concern about compatibility between consumer electronics equipment and cable systems.[40] We are aware of concern within the broadcast industry that, for example, cable systems may voluntarily adopt QAM modulation in lieu of VSB modulation specified in the ATSC DTV Standard. Some cable system operators suggest deploying a DTV system that does not use B-frames. While we understand that technical distinctions between broadcast and cable may at some extreme cause consumer harm, we also recognize that it is in the economic interests of the providers to ensure consumers have access to the most desirable programming. Today, nearly 60 percent of cable viewing hours are spent watching broadcast programming, much of which is provided under retransmission consent agreements. In light of these concerns, we seek comment on whether the public interest would be served by Commission involvement to assure compatibility between digital broadcast standards and digital cable standards. Similarly, there would appear to be advantages and disadvantages to Commission involvement to assure compatibility between other existing and potential competing video delivery methods, including DBS, MMDS, Instructional Television Fixed Service ("ITFS") and open video systems. We seek comment on the considerations that apply in these different environments.

VII. Other Issues

54. *Receiver Standards and Related Features.* In the *Fourth Further Notice*, we solicited comment on whether DTV receivers should be required to have the ability to receive both SDTV and HDTV transmissions, whether we should regulate how such signals should be displayed and whether permitting the manufacture only of "all format" receivers capable of displaying NTSC, SDTV and HDTV signals would be consistent with the All-Channel Receiver Act or otherwise in the public interest.[41]

55. Now, however, we have the ATSC DTV Standard before us. In Annex E, it indicates that our current TV rules should be appropriate for the digital TV service with respect to tuner performance, direct pickup and closed captioning.[42] It notes that a 10 dB "noise figure" was used for spectrum planning purposes and it expects that value to be appropriate. Additionally, the ATSC DTV Standard indicates that any decoder interface standards we adopt for NTSC "cable-ready" receivers in ET Docket No. 93–7 will almost certainly provide a basis for rules concerning this aspect of digital TV receivers.[43] In its Final Report, the Technical Subgroup of ACATS recommended that the Commission require that receivers (and set-top boxes designed to receive ATV broadcasts for display on NTSC sets) be able to receive adequately all DTV formats.[44] In response to the *Fourth Further Notice*, some commenters expressed concerned that such a requirement might have a large effect on either reception quality or receiver costs.[45] We request comment on the importance of this requirement for compatibility between receivers and broadcast signals. What level of reception performance should be considered adequate? Given our proposal that licensees must use the ATSC DTV Standard, is such a requirement necessary? We seek comment on necessary adjustments to the existing TV receiver rules so that they cover digital TV receivers.

56. *Licensing Technology.* We have previously stated that in order for DTV implementation to be fully realized, the patents on a DTV standard would have to be licensed to other manufacturing companies on reasonable and nondiscriminatory terms.[46] In response, the Advisory Committee's testing procedures have required proponents of any DTV system to follow American National Standards Institute patent policies which require assurance that: (1) a license will be made available without compensation to applicants desiring to utilize the license for the purpose of implementing the standard; or (2) a license will be made available to applicants under reasonable terms and conditions that are demonstrably free of any unfair discrimination.[47] We seek comment on whether we should require more detailed information on the specific terms, if any, for patenting and licensing the ATSC DTV Standard.

57. *International Trade.* We recognize that other countries may choose other digital television systems that they feel more appropriately meet their needs, expectations or national priorities. Their systems may well be incompatible with the ATSC DTV Standard. Would our proposal here serve to enhance competitiveness of a U.S. system worldwide and what are the benefits associated with such a result? Will a requirement to use the ATSC DTV Standard as the sole authorized system exacerbate or enhance the opportunities of U.S. based content providers, equipment manufacturers or other parties? Additionally, to increase international compatibility, the Grand Alliance adopted the MPEG–2 video stream syntax for encoding of video and the MPEG–2 transport stream syntax for the packetization and multiplexing of video, audio and data signals. Should we pursue additional measures to facilitate international compatibility?

58. *Captioning.* Section 305 of the Telecommunications Act of 1996[48] requires the Commission, within 18 months after the date of enactment of the Telecom Act, to prescribe regulations to assure that video programming is fully accessible through the provision of closed captions. The ATSC DTV Standard reserves a fixed 9600 bits-per-second data rate for closed captioning.[49] We understand that EIA's R4.3 Subcommittee on TV Data Systems is considering a standard to define the syntax for the data, as well as the issue of how to include closed captioning information for multichannel SDTV transmissions. Any comments parties may have concerning the ability of DTV to include captioning and how the Commission should implement captioning requirements for DTV may be filed in response to this *Further Notice*.

[39] *Id.*

[40] See Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102–385, 106 Stat. 1460, (1992). Section 17 of the 1992 Cable Act added a new Section 624A to the Communications Act of 1934, which has been implemented by *First Report and Order* in ET Docket No. 93–7, 9 FCC Rcd 1981 (1994). Section 301 of the Telecom Act, in turn, has modified Section 624A.

[41] *Id.* at 10552.

[42] ATSC DTV Standard at 61–64. Note that it describes "appropriate" as meaning that the existing rules for NTSC which are referenced contain most elements of future rules for digital television and, further, the rules may be expanded to cover digital television.

[43] *First Report and Order* in ET Docket No. 93–7, *supra*. Although the Commission adopted requirements for television receivers to be marketed as "cable-ready," an open issue in that proceeding is a standard for a decoder interface.

[44] ACATS Report at 20.

[45] *See, e.g.*, Comments of the Electronic Industries Association and the Advanced Television Committee at 16. *See also* Comments of Zenith Electronics Corporation at 4.

[46] *Notice of Proposed Rule Making* in MM Docket No. 87–268, 6 FCC Rcd 7024, 7035 (1991); *Second Report and Order/Further Notice of Proposed Rule Making* in MM Docket No. 87–268, 7 FCC Rcd 3340, 3358 (1992); *Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rule Making* in MM Docket 87–268, 7 FCC Rcd 6924, 6982 (1992).

[47] Advisory Committee ATV Test Procedures Test Management Plan at § 2.1.

[48] Pub. L. No. 104–104, 110 Stat. 56 (1996).

[49] ATSC DTV Standard at 26.

Administrative Matters

59. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before 45 days after publication in the **Federal Register**, and reply comments on or before 30 days after comments are due. To file formally in this proceeding, you must file an original plus six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus eleven copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

60. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules. *See generally* 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

Initial Regulatory Flexibility Act Statement

I. Reason for Action

The Commission seeks comment on a variety of issues concerning whether to adopt a technical standard for digital television and, if so, whether that standard should be the one reported to the Commission by the Advisory Committee on Advanced Television Systems.

II. Objectives of the Action

The *Fifth Further Notice of Proposed Rule Making* solicits comment on a variety of issues, in order to establish an accurate, comprehensive, reliable record on which to base the Commission's ultimate decisions in this proceeding. The record established from comments filed in response to this decision, as well as other Commission decisions, and the combined efforts of the Commission, the affected industries, the Advisory Committee on Advanced Television Service, and the DTV testing process, will lead to implementation of DTV in the most harmonious fashion and to selection of the most desirable DTV system.

III. Legal Basis

Authority for this action may be found at 47 U.S.C. §§ 154 and 303.

IV. Reporting, Recordkeeping and Other Compliance Requirements

Such requirements are not proposed in this phase of the proceeding, but may be raised and comment sought in future decisions in this proceeding.

V. Federal Rules Which Overlap, Duplicate or Conflict With These Rules

There are no rules which would overlap, duplicate, or conflict with these rules.

VI. Description, Potential Impact and Number of Small Entities Involved

There are approximately 1,546 UHF and VHF, commercial and educational television stations, 2,587 UHF translator stations, 2,275 VHF translator stations, and 1,825 UHF and VHF low power television stations which would be affected by decisions reached in this proceeding. The impact of actions taken in this proceeding on small entities would ultimately depend on the final decisions taken by the Commission. However, the Commission, in taking future action will continue to balance the need to provide the public with affordable, flexible, accessible digital broadcast television service with the economic and administrative interests of the affected industries.

VII. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with Stated Objectives.

This *Fifth Further Notice of Proposed Rule Making* is intended to examine the issue of what, if any, transmission standard for digital television should be adopted by the Commission. In so doing, we are soliciting comments and suggestions that hopefully will represent the views of all of the industries concerned, and thus the Commission will be better able to minimize whatever negative impact might face small entities as a result of our decisions.

Ordering Clause

61. Accordingly, *it is ordered* That pursuant to the authority contained in Sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154 and 303, this *Fifth Further Notice of Proposed Rule Making* IS ADOPTED.

62. Additional Information: For additional information regarding this proceeding, contact Saul Shapiro (202–418–2600) or Roger Holberg (202–418–2134), Mass Media Bureau.

63. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth above. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this *Fifth Further Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Appendix A

Additional procedural or general broadcast rules that may be modified or adapted for DTV.

Sec.

73.607 Availability of channels.
73.611 Reference points and distance computations.
73.612 Protection from interference.
73.615 Administrative changes in authorizations.
73.621 Noncommercial educational TV stations.
73.635 Use of common antenna site.
73.684 Prediction of coverage.
73.685 Transmitter location and antenna system.
73.686 Field strength measurements.
73.688 Indicating instruments.
73.1010 Cross reference to rules in other parts.
73.1015 Truthful written statements and responses to Commission inquiries and correspondence.
73.1030 Notifications concerning interference to radio astronomy, research and receiving installations.
73.1120 Station location.
73.1125 Station main studio location.
73.1201 Station identification.
73.1202 Retention of letters received from the public.
73.1206 Broadcast of telephone conversations.
73.1207 Rebroadcasts.
73.1208 Broadcast of taped, filmed, or recorded material.
73.1209 References to time.
73.1211 Broadcast of lottery information.
73.1212 Sponsorship identification; list retention; related requirements.
73.1213 Antenna structure, marking and lighting.
73.1216 Licensee-conducted contests.

73.1217 Broadcast hoaxes.
73.1225 Station inspections by FCC.
73.1226 Availability to FCC of station logs and records.
73.1230 Posting of station and operator licenses.
73.1250 Broadcasting emergency information.
73.1510 Experimental authorizations.
73.1515 Special field test authorizations.
73.1520 Operation for tests and maintenance.
73.1580 Transmission system inspections.
73.1590 Equipment performance measurements.
73.1610 Equipment tests.
73.1615 Operation during modification of facilities.
73.1620 Program tests.
73.1635 Special temporary authorizations (STA).
73.1660 Acceptability of broadcast transmitters.
73.1665 Main transmitters.
73.1670 Auxiliary transmitters.
73.1675 Auxiliary antennas.

[FR Doc. 96–13394 Filed 5–28–96; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–28; Notice 7]

RIN 2127–AF73

Lamps, Reflective Devices and Associated Equipment; Advisory Committee on Regulatory Negotiation Public Meeting

AGENCY: National Highway Traffic Safety Administration (NHTSA); DOT.

ACTION: Schedule of Advisory Committee on Regulatory Negotiation Meeting.

SUMMARY: This document announces the final meetings of NHTSA's Advisory Committee on Regulatory Negotiation (concerning the improvement of headlamp aimability performance and visual/optical headlamp aiming).

DATES: Wednesday-Thursday, May 29–30, 1996.

ADDRESSES: The meetings will be held at the Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, D.C. The meeting of May 29 is scheduled for noon to 5:00 p.m. The meeting of May 30 will be from 9:00 a.m. to 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Vehicle Safety Standards, NHTSA (Phone: 202–366–5276; FAX: 202–366–4329). *Mediator:* Lynn Sylvester, Federal Mediation and Conciliation Service, (phone: 202–606–9140; FAX: 202–606–3679).

SUPPLEMENTARY INFORMATION: The final meetings of the Advisory Committee on Regulatory Negotiation (concerning the improvement of headlamp aimability performance and visual/optical headlamp aiming) will be held on May 29–30, at which time it is anticipated that final consensus will be reached on a notice of proposed rulemaking on the subject of the negotiations.

The meetings are open to the public.

Issued: May 24, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–13556 Filed 5–24–96; 12:33 pm]
BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 61, No. 104
Wednesday, May 29, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Availability for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of Availability and Intent.

SUMMARY: Notice is hereby given that U.S. Patent Application Serial No. 08/005,722, "Insect Monitoring Trap," filed January 19, 1993, is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant an exclusive license to Consep, Inc. of Bend, Oregon.

DATES: Comments must be received on or before August 27, 1996.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Baltimore Boulevard, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Consep, Inc. has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 96–13326 Filed 5–28–96; 8:45 am]
BILLING CODE 3410–03–M

Animal and Plant Health Inspection Service

[Docket No. 96–030–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment and a finding of no significant impact for the shipment of unlicensed veterinary biological products for field testing. A risk analysis, which forms the basis for the environmental assessment, has led us to conclude that shipment of the unlicensed veterinary biological products for field testing will not have a significant impact on the quality of the human environment. Based on our finding of no significant impact, we have determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact may be obtained by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the docket number and publication date of this notice, as well as the first two words of the product name, when requesting copies. Copies of the environmental assessment and finding of no significant impact (as well as the risk analysis with confidential business information removed) are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Jeanette Greenberg, Veterinary Biologics, BBEP, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1237, telephone (301) 734–8400, fax (301) 734–8910, or E-mail: jgreenberg@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. In order to ship an unlicensed veterinary biological product for the purpose of conducting a proposed field test, a person must receive authorization from the Animal and Plant Health Inspection Service (APHIS).

In determining whether to authorize shipment for field testing of the unlicensed veterinary biological products referenced in this notice, APHIS conducted a risk analysis to assess the potential effect of these products on the safety of animals, public health, and the environment. Based on that risk analysis, APHIS has prepared an environmental assessment. APHIS has concluded that shipment of the unlicensed veterinary biological products for field testing will not significantly affect the quality of the human environment. Based on this finding of no significant impact, we have determined that there is no need to prepare an environmental impact statement. An environmental assessment and finding of no significant impact have been prepared by APHIS for the shipment of the following unlicensed veterinary biological products for field testing:

Requestor	Products	Field test locations
Rhone Merieux, Inc	Canine Distemper-Adenovirus Type 2-Coronavirus-Parainfluenza-Parvovirus Vaccine, Modified Live Virus, Live Canarypox Vector, Leptospira Bacterin, Code 46J9.R1. Canine Distemper-Adenovirus Type 2-Coronavirus-Parainfluenza-Parvovirus Vaccine, Modified Live Virus, Live Canarypox Vector, Code 1591.R1.	California, Colorado, Florida, Georgia, Illinois, Maine, Missouri, New Jersey, New York, Ohio, Oregon, South Carolina, Virginia.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (*42 U.S.C. 4321 et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372; 60 FR 6000–6005, February 1, 1995).

Unless substantial environmental issues are raised in response to this notice, APHIS intends to authorize the shipment of the above products and the initiation of the field tests on June 12, 1996.

Done in Washington, DC, this 23rd day of May 1996.

William S. Wallace,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–13408 Filed 5–28–96; 8:45 am]

BILLING CODE 3410–34–P

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

DATES: June 4–5, 1996.

PLACE: ARRB, 600 E Street, NW., Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Review and Accept Minutes of Closed Meeting.
2. Review of Assassination Records.
3. Other Business.

CONTACT PERSON FOR MORE INFORMATION: Thomas Samoluk, Associate Director for Communications, 600 E Street, NW., Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

David G. Marwell,

Executive Director.

[FR Doc. 96–13482 Filed 5–23–96; 4:52 pm]

BILLING CODE 6118–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:00 p.m. on Tuesday, June 11, 1996, at the OMNI Jacksonville Hotel, 245 Water Street, Jacksonville, Florida 32202. The purpose of the meeting is to hold a followup briefing to the committee report, Racial and Ethnic Tensions in Florida, and to discuss the current status of race relations in Jacksonville. The meeting is open to the public.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Rabbi Solomon Agin, 941–433–0018, or Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 20, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–13355 Filed 5–28–96; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Michigan Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 6:00 p.m. on Tuesday, June 18, 1996, at the Westin Hotel, Renaissance Center, Detroit, Michigan 48243. The purpose of the meeting is to hold a Michigan Consultation: Focus on Affirmative Action.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Janice Frazier, 313–259–8180, or Constance Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 20, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–13356 Filed 5–28–96; 8:45 am]

BILLING CODE 6335–01–P

Sunshine Act Meeting

May 23, 1996.

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, June 14, 1996, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street NW., Room 540, Washington, DC 20425.

STATUS:

AGENDA

I. Approval of Agenda
II. Approval of Minutes of May 10, 1996 Meeting
III. Announcements
IV. Staff Director's Report
V. General Programmatic Theme—FY 1998
VI. Future Agenda Items
11:00 a.m. Briefing on Consumer Racism and Sexism

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Miguel A. Sapp,

Parliamentarian.

[FR Doc. 96–13483 Filed 5–23–96; 4:53 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Initial Patent Application.

Form Numbers: Agency—PTO/SB/01/02/03/04/05/17/18/19/20.

Agency Approval Number: 0651–0032.

Type of Request: Revision of a currently approved collection.

Burden: 2,387,000 hours.

Number of Respondents: 221,000.

Avg. Hours Per Response: 10.8 hours.

Needs and Uses: The purpose of this information collection is to permit the Patent and Trademark Office to determine whether an application meets the criteria set forth in the patent statutes and regulations. The application paper quality, size, and format requirements will facilitate the automatic processing and digital image and/or optical character recognition scanning of application materials. The standard Fee Transmittal form (PTO/SB/17), New Utility Patent Application Transmittal form (PTO/SB/05), New Design Patent Application Transmittal form (PTO/SB/18), New Plant Patent Application Transmittal form (PTO/SB/19), Plant Color Coding Sheet (PTO/SB/20), Declaration (PTO/SB/01), and Plant Patent Application Declaration (PTO/SB/03) will assist applicants in complying with the requirements of the patent statutes and regulations, and will further assist the PTO in processing and examination of the application.

Affected Public: Any individual filing a patent application.

Frequency: When filing a patent application.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Maya A. Bernstein (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC clearing officer, Linda Engelmeier, Department of Commerce, Room 5327.

Written comments and recommendations for the proposed information collection should be sent to Maya A. Bernstein, OMB Desk Officer, Room 10236, New Executive Office Building, Washington, D.C. 20230.

Dated: May 22, 1996.

Linda Engelmeier,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 96–13316 Filed 5–28–96; 8:45 am]

BILLING CODE 3510–16–P

Bureau of the Census

Survey of Plant Capacity

ACTION: Proposed Agency Information Collection Activity; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 29, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Elinor Champion, Bureau of the Census, Room 2135 FB–4, Washington, DC 20233, Telephone (301) 457–4683.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to conduct a survey of plant capacity. The Census Bureau has conducted this survey annually from 1973 through 1988. Then in 1990, 1992, and 1994 we collected 2 years worth of data concurrently. This request is regarding the 1996 survey which will collect data for 1995 and 1996. Data are gathered from a sample of manufacturing plants in the United States. The survey forms will collect data on the value of plant production during actual operations and at full production capability. The survey will also collect estimates of production under a national emergency situation. Data are used in measuring inflationary pressures, capital flows, in understanding productivity determinants, and analyzing and forecasting economic and industrial trends. The survey results will be used by such agencies as the Federal Reserve Board, Federal Emergency Management Agency, International Trade Administration, and the Department of Defense.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect the data. Companies will be asked to respond to the survey within 30 days of the initial mailing. Letters encouraging participation will be mailed to companies that have not responded by the designated time.

III. Data

OMB Number: 0607–0175.

Form Number: MQ–C1.

Type of Review: Regular.

Affected Public: Businesses or other for profit organizations.

Estimated Number of Respondents: 17,000.

Estimated Time Per Response: 2 hours.

Estimated Total Annual Burden Hours: 34,000.

Estimated Total Annual Cost: $589,900.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 22, 1996.

Linda Engelmeier,

Acting Deportmentol Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–13328 Filed 5–28–96; 8:45 a.m.]

BILLING CODE 3510–07–P

International Trade Administration

[A–421–805]

Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands; Extension of Time Limit of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit of Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results in the administrative review of the antidumping duty order on aramid fiber formed of poly para-phenylene terephthalamide (PPD–T aramid) from the Netherlands, covering the period December 16, 1993, through May 31, 1995, because it is not practicable to complete the review within the time limits mandated by the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Donald Little or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 1996, the Department published the preliminary results of this review (*see Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands; Preliminary Results of Antidumping Administrative Review*, 61 FR 15766). The review covers the period December 16, 1993, through May 31, 1995.

It is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act (*see* Memorandum for Paul Joffe from Joe Spetrini, Extension of Time Limits for 1993–95 Antidumping Duty Administrative Review of Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands, May 9, 1996). Therefore, in accordance with that section, the Department is extending the time limits for the final results to September 25, 1996. The Department adjusted the time limits by 28 days due to the government shutdowns, which lasted from November 14, 1995, to November 20, 1995, and from December 15, 1995, to January 6, 1996. *See* Memorandum to the file from Susan G. Esserman, Assistant Secretary for Import Administration, January 11, 1996. These extensions are in accordance with section 751(a)(3)(A) of the Act.

Dated: May 16, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–13321 Filed 5–28–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–602–803]

Certain Corrosion-Resistant Carbon Steel Flat Products From Australia: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by the petitioners, Bethlehem Steel Corporation, U.S. Steel Group, a Unit of USX Corporation, Inland Steel Industries, Inc., LTV Steel Company, Inc., National Steel Corporation, AK Steel Corporation, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, WCI Steel, Inc., and Lukens Steel Company, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on *Certain Corrosion-Resistant Carbon Steel Flat Products from Australia*. This review covers The Broken Hill Proprietary Company, Ltd. (BHP), the sole manufacturer/exporter of the subject merchandise to the United States during the period of review (POR) August 1, 1994, through July 31, 1995. Because BHP failed to submit a response to our questionnaire, we have preliminarily determined to use facts otherwise available for cash deposit and assessment purposes.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Jean Kemp, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–3793.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On July 9, 1993, the Department published in the **Federal Register** (58 FR 37079) the final affirmative antidumping duty determination on certain corrosion-resistant carbon steel flat products from Australia, and published an antidumping duty order on August 19, 1993 (58 FR 44161). On August 1, 1995, the Department published in the **Federal Register** (60 FR 39150) a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on certain corrosion-resistant carbon steel flat products from Australia. On August 31, 1995, petitioners requested an administrative review of BHP, a manufacturer/exporter of this merchandise to the United States. We initiated the review on September 8, 1995 (60 FR 46817).

Scope of the Review

Imports covered by this administrative review constitute one "class or kind" of merchandise: certain corrosion-resistant carbon steel flat products. The class or kind includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers BHP and the period August 1, 1994 through July 31, 1995 (POR).

Use of Facts Otherwise Available

We preliminarily determine, in accordance with section 776 of the Act, that the use of facts available is appropriate for BHP because it did not respond to the Department's antidumping questionnaire. We sent BHP a questionnaire on September 14, 1995, with deadlines of October 16, 1995 for section A and November 13, 1995 for the remaining sections. On October 11, 1995, BHP requested that the Department extend the deadlines for section A and all other portions of the questionnaire for one month. On October 13, 1995, the Department granted BHP a one-week extension for its section A response. However, the Department did not grant an extension for the remaining sections because we are conducting this review under statutory deadlines. Section A of the Department's questionnaire is a general information section that the Department uses to gather information on the respondents, (corporate structure, distribution process, sales process, accounting/financial practices, merchandise, aggregate quantity and value of sales, further manufacture or assembly in the United States, etc.). On October 23, 1995, we received a response to section A. Since section A is the general information section of the Department's questionnaire, the only relevant numerical data provided in section A is the aggregate quantity and value of sales. Sections B through E of the Department's questionnaire provide the Department with transaction-specific pricing and cost data used in the Department's calculation methodology. On November 20, 1995, BHP informed the Department that it no longer intended to continue to participate in this review. We did not receive a response to sections B through E of the questionnaire. Therefore, we must make our preliminary determination based on facts otherwise available (section 776(a) of the Act).

The Department finds that, in not responding to the questionnaire, BHP failed to cooperate by not acting to the best of its ability to comply with a request for information from the Department. Therefore, pursuant to section 776(b) of the Act, we may, in making our determination, use an adverse inference in selecting from the facts otherwise available. This adverse inference may include reliance on data derived from the petition, a previous determination in an investigation or review, or any other information placed on record. Accordingly, in this case, we preliminary assign to BHP a margin of 39.11 percent, the margin calculated in the first administrative review using information provided by BHP in that review (see *Certain Corrosion-Resistant Carbon Steel Flat Products from Australia, Final Results of Antidumping Duty Administrative Review*, 61 FR 14049–14057 (March 29, 1996)).

Because the margin selected for this review is based on information obtained in the course of an earlier segment of the proceeding, the Department is required, pursuant to section 776(c) of the Act, to corroborate this information to the extent practicable from independent sources reasonably at its disposal. This simply means that the Department will satisfy itself that the secondary information used has probative value (See Statement of Administrative Action accompanying the URAA, published in H. Doc. 103–106, 103d Cong., 2d Sess. At 870).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (see, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996), where the Department disregarded the highest margin in that case as adverse BIA because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). In this case, we have used the margin calculated in the most recently completed segment of this proceeding, the previous administrative review (see *Certain Corrosion-Resistant Carbon Steel Flat Products from Australia, Final Results of Antidumping Duty Administrative Review*, 61 FR 14049–14057 (March 29, 1996)). The margin calculated in the above first administrative review, 39.11 percent, was a calculated rate, based on information provided by BHP. There are no circumstances indicating that this margin is not relevant for use as adverse facts available.

Preliminary Results of Review

As a result of our review, we preliminarily determine that a margin of 39.11 percent exists for BHP for the period August 1, 1994 through July 31, 1995.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Case

briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication of this notice. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this administrative review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of corrosion-resistant steel from Australia entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Tariff Act: (1) the cash deposit rate for the reviewed company will be the rate established in the final results of this review; (2) for exporters not covered in this review, but covered in previous reviews or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "All Others" rate established in the original LTFV investigation, which is 24.96 percent.

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 20, 1996.

Paul L. Joffe,

Acting Assistont Secretary for Import Administration.

[FR Doc. 96–13430 Filed 5–28–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–403–801]

Fresh and Chilled Atlantic Salmon From Norway; Antidumping Duty Administrative Review; Time Limits

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the preliminary results of the new shipper antidumping duty administrative review of fresh and chilled Atlantic salmon from Norway. The review covers one manufacturer/exporter of the subject merchandise to the United States and the period May 1, 1995 through October 31, 1995

EFFECTIVE DATE: May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4195/3814.

SUPPLEMENTARY INFORMATION: Because this review is extraordinarily complicated, the Department is extending the time limits for the completion of the preliminary results until September 30, 1996, in accordance with Section 751(a)(2)(B)(iv) of the Trade and Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994. (*See* Memorandum to the file.) We will issue our final results for this review by December 30, 1996.

These extensions are in accordance with section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

Dated: May 14, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–13320 Filed 5–28–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–839]

Notice of Postponement of Preliminary Determination: Antidumping Duty Investigation of Sodium Azide From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or John Beck, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4162 or (202) 482–3464, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act.

Postponement of Preliminary Determination

On May 13, 1996, the American Azide Corporation, the petitioner in this investigation, requested that the Department postpone the preliminary determination of this investigation. We see no reason to deny this request. Therefore, pursuant to section 733(c)(1)(A) of the Act, we are postponing the date of the preliminary determination as to whether sales of sodium azide from Japan have been made at less then fair value until no later than August 13, 1996.

This notice is published pursuant to section 733(c)(2) of the Act.

Dated: May 20, 1996.

Barbara R. Stafford,

Deputy Assistant Secretary for Investigations, Import Administration.

[FR Doc. 96–13322 Filed 5–28–96; 8:45 am]

BILLING CODE 3510–DS–M

[C–401–804]

Certain Cut-to-Length Carbon Steel Plate From Sweden; Extension of Time Limit for Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for preliminary and final results of the 1994 administrative review of the countervailing duty order on certain cut-to-length carbon steel plate from Sweden. This extension is made pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (hereinafter, "the Act").

EFFECTIVE DATE: May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Lorenza Olivas, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W. Washington, D.C., 20230; telephone: (202) 482–2786.

POSTPONEMENT: Under the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. The Department finds that it is not practicable to complete the 1994 administrative review of certain cut-to-length carbon steel plate from Sweden within this time limit.

In accordance with section 751(a)(3)(A) of the Act, the Department will extend the time for completion of the preliminary results of this review from a 245-day period to no later than a 365-day period and, thereafter, for completion of the final results of this review from a 120-day period to no later than a 180-day period.

Dated: May 21, 1996.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 96–13324 Filed 5–28–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–533–063]

Certain Iron-Metal Castings From India; Extension of Time Limit for Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for preliminary and final results of the tenth administrative review of the countervailing duty order on certain iron-metal castings from India. This extension is made pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (hereinafter, "the Act").

EFFECTIVE DATE: May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Christopher Cassel or Lorenza Olivas, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

POSTPONEMENT: Under the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. See Memorandum to the File dated May 17, 1996. The Department finds that it is not practicable to complete the calendar year 1994 administrative review of certain iron-metal castings from India within this time limit.

In accordance with section 751(a)(3)(A) of the Act, the Department will extend the time for completion of the preliminary results of this review from a 245-day period to no later than a 365-day period and for completion of the final results of this review from a 120-day period to no later than a 180-day period.

Dated: May 20, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–13319 Filed 5–28–96; 8:45 am]

BILLING CODE 3510–DS–M

[C–122–404]

Live Swine From Canada; Notice of Preliminary Results of Countervailing Duty Administrative Reviews; Initiation and Preliminary Results of Changed Circumstances Review and Intent To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Reviews; Notice of Initiation and Preliminary Results of Changed Circumstances Review and Preliminary Determination to Revoke Order in Part.

SUMMARY: The Department of Commerce (the Department) is conducting three administrative reviews of the countervailing duty order on live swine from Canada. We preliminarily determine the net subsidy to be Can$0.0594 per kilogram for the period April 1, 1991 through March 31, 1992, Can$0.0609 per kilogram for the period April 1, 1992 through March 31, 1993, and Can$0.0099 per kilogram for the period April 1, 1993 through March 31, 1994. If the final results remain the same as these preliminary results of administrative reviews, we will instruct the U.S. Customs Service to assess countervailing duties as indicated above. Interested parties are invited to comment on these preliminary results.

In accordance with 19 C.F.R § 355.22(h)(1)(i), the Department is initiating a changed circumstances countervailing duty administrative review and issuing a preliminary determination of its intent to revoke, in part, the countervailing duty order on live swine from Canada. On December 11, 1995, petitioners requested that the Department revoke the order, in part, as to slaughter sows and boars and weanlings, effective April 1, 1991. Based on the fact that this portion of the order is no longer of interest to domestic parties, we preliminarily determine that this order should be revoked, in part, with respect to slaughter sows and boars and weanlings. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 15, 1985, the Department published in the **Federal Register** (50 FR 32880) the countervailing duty order on live swine from Canada. On August 12, 1992, the Department published a notice of "Opportunity to Request Administrative Review" (56 FR 41506) of this countervailing duty order for the period April 1, 1991 through March 31, 1992. We received a timely request for review from the Government of Canada (GOC). Wood Lynn Farms and Pryme Pork Ltd. (Pryme), Canadian exporters of live swine, timely requested an individual administrative review. We initiated the review, covering April 1, 1991 through March 31, 1992, on September 28, 1992 (56 FR 44551).

On August 3, 1993, the Department published a notice of "Opportunity to Request Administrative Review" (58 FR 41239) of this countervailing duty order for the period April 1, 1992 through March 31, 1993. We received a timely request for review from the GOC; Pryme also made a timely request for an individual administrative review. We initiated the review, covering April 1, 1992 through March 31, 1993, on September 30, 1993 (58 FR 51053).

On August 3, 1994, the Department published a notice of "Opportunity to Request Administrative Review" (59 FR 39543) of this countervailing duty order for the period April 1, 1993 through March 31, 1994. We received a timely request for review from the GOC; Pryme also made a timely request for an individual administrative review. We initiated the review, covering April 1, 1993 through March 31, 1994, on September 16, 1994 (59 FR 47609). These three administrative reviews cover all producers/exporters of the subject merchandise and 46 programs.

On December 11, 1995, petitioners requested the partial revocation of the order on live swine from Canada with respect to slaughter sows and boars and weanlings due to lack of interest, effective April 1, 1991. As a result, the Department is initiating and simultaneously issuing the preliminary results of a changed circumstances review preliminarily determining that the order should be revoked, in part, with respect to slaughter sows and boars and weanlings.

Applicable Statute and Regulations

The Department is conducting these administrative reviews in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994. However, references to the *Department's Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366 (May 31, 1989) (*Proposed Regulations*), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. (See 60 FR 80) (Jan. 3, 1995)).

Scope of Review

The merchandise covered by these administrative reviews is live swine, except U.S. Department of Agriculture certified purebred breeding swine, from Canada. Such merchandise is classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 0103.91.00 and 0103.92.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The merchandise covered by the changed circumstances review are slaughter sows and boars and weanlings (weanlings are swine weighing up to 27 kilograms or 59.5 pounds).

Requests for Administrative Reviews of Individual Exporters

On August 28, 1992, Wood Lynn Farms submitted a timely request under 19 C.F.R 355.22(a)(2) that the Department conduct an administrative review of Wood Lynn Farms' exports of the subject merchandise to the United States for the 1991–92 review period. On August 10, 1993, the Department denied Wood Lynn Farms' request because the certifications it submitted did not comply with the requirements of 19 C.F.R 355.22(a)(2). Specifically, the certifications failed to state that during the period of review no net subsidy was bestowed upon Wood Lynn Farms or its suppliers with respect to the subject merchandise. For further discussion of the Department's position on Wood Lynn Farm's request, see letter from Barbara E. Tillman to Wood Lynn Farms dated August 10, 1993, which is on file in the Central Records Unit (Room B–099 of the Main Commerce Building)(CRU).

On August 31, 1992, Pryme submitted a request under 19 C.F.R 355.22(a)(2) that the Department conduct an administrative review of Pryme's exports of the subject merchandise to the United States for the 1991–92 review period. The Department found Pryme's certifications deficient (*see* letter from Barbara E. Tillman to Pryme Pork, Ltd. dated August 4, 1993, which is on file in the CRU). Subsequently, Pryme clarified its certifications, based on which the Department found that Pryme's request complied with 19 C.F.R. 355.22(a)(2)(*see Memorandum to the File* from Team E regarding the Countervailing Duty Administrative Review on Live Swine from Canada dated August 10, 1995, which is on file in the CRU). Based on Pryme's request, the Department initiated a review of Pryme's entries for the 1991–92 review period.

On August 30, 1993, Pryme submitted its request under 19 C.F.R. 355.22(a)(2) that the Department conduct an administrative review of Pryme's exports of the subject merchandise to the United States for the 1992–93 review period. Since this request was timely and met the provisions of 19 C.F.R. 355.22(a)(2), the Department initiated the review as requested (*see Memorandum on Pryme's Request for an Individual Administrative Review* to Barbara E. Tillman from The Team dated January 18, 1994, which is on file in the CRU).

On August 30, 1994, Pryme submitted a timely request under 19 C.F.R. 355.22(a)(2) that the Department conduct an administrative review of Pryme's exports of the subject merchandise to the United States for the 1993–94 review period. Since this request was timely and met the provisions of 19 C.F.R. 355.22(a)(2), the Department initiated the review as requested.

Pryme has since submitted a letter to the Department indicating that it is withdrawing its request for individual reviews in the 7th, 8th, and 9th reviews if the Department revokes the order with respect to weanlings and sows and boars. Since we are preliminarily determining to revoke the order, in part, with respect to the above products, we are also preliminarily determining to terminate the individual reviews of Pryme in the 7th, 8th, and 9th review periods.

Verification

Pursuant to 19 C.F.R. § 355.36(a)(1), the petitioner requested that the Department conduct a verification of the 1991–92 review period because the Department did not verify all information submitted in the two prior reviews. As provided in section 776(b) of the Act, we verified all information submitted in the 1991–92 review period. We also verified, as required under § 355.22(f) all certifications submitted with the requests for individual reviews in each of the three review periods. In conducting verification, we followed standard verification procedures, including meeting with government and company officials, and examining relevant accounting records and original source documents. Our verification results are outlined in the public versions of the verification reports, which are on file in the CRU.

Calculation Methodology for Assessment and Cash Deposit Purposes

For each review period, we calculated the net subsidy on a country-wide basis by first calculating the subsidy rate for each province subject to the administrative review. We then weight-averaged the rate received by each province using as the weight the province's share of total Canadian exports to the United States of subject merchandise. We then summed the individual provinces' weight-averaged rates to determine the subsidy rate from all programs benefitting exports of the subject merchandise to the United States. In prior proceedings, a separate rate was calculated for sows and boars and for all other live swine. In these reviews, we are only calculating the rate for all other live swine. The calculation of the rate in these reviews is not affected by the partial revocation of sows and boars and weanlings.

Analysis of Programs

I. Programs Conferring Subsidies

A. Programs Previously Determined to Confer Subsidies

1. Federal Program. Feed Freight Assistance Program. The Feed Freight Assistance Program (FFA) is administered by the Livestock Feed Board of Canada (the Board) under the Livestock Feed Assistance Act of 1966 (LFA). The Board acts to ensure: (1) The availability of feed grain to meet the needs of livestock feeders; (2) the availability of adequate storage space in Eastern Canada to meet the needs of livestock feeders; (3) reasonable stability in the price of feed grain in Eastern Canada to meet the needs of livestock feeders; and (4) equalization of feed grain prices to livestock feeders in Eastern Canada, British Columbia, the Yukon Territory and the Northwest Territories. Although this program is clearly designed to benefit livestock feeders, FFA payments are also made to grain mills that transform the feed grain into livestock feed whenever these mills are the first purchasers of this grain. The Board makes payments related to the cost of feed grain storage in Eastern Canada, and payments related to the cost of feed grain transportation to, or for the benefit of, livestock feeders in Eastern Canada, British Columbia, the Yukon Territory and the Northwest Territories, in accordance with the regulations of the LFA.

In *Live Swine from Canada; Preliminary Results of Countervailing Duty Administrative Review* (55 FR 20613) (May 21, 1990)), and *Live Swine from Canada; Final Results of Countervailing Duty Administrative Review* (56 FR 10410) (March 12, 1991)) (*Swine Second and Third Review Results*), the Department found this program *de jure* specific and thus countervailable because, based on the language of the LFA, benefits are only available to a specific group of enterprises or industries (livestock feeders and feed mills). Subsequently, a U.S.-Canada Free Trade Agreement (FTA) binational panel (*See In the Matter of Live Swine From Canada*, USA–91–1904–04 (June 11, 1993) at 33–36)) affirmed the Department's determination in *Live Swine from Canada; Preliminary Results of Countervailing Duty Administrative Review* (56 FR 29224) (June 26, 1991)), and *Live Swine from Canada; Final Results of Countervailing Duty Administrative Review* (56 FR 50560) (October 7, 1991)) (*Swine Fifth Review Results*), regarding the countervailability of this program. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

To determine the FFA benefit in each review period, we used the methodology applied in *Live Swine from Canada; Preliminary Results of Countervailing Duty Administrative Review* (58 FR 54112, 54114) (October 20, 1993)), and *Live Swine from Canada; Final Results of Countervailing Duty Administrative Review* (59 FR 12243) (March 16, 1994)) (*Swine Sixth Review Results*). We first divided the feed transportation assistance to live swine producers in each province by the total weight of live swine produced in that province during the correspondent review period, calculating the benefit per kilogram on a province-by-province basis. We then weight-averaged each exporting province's benefit by that province's share of total Canadian exports of live swine to the United States during the same review period; we then summed the resulting weighted benefits, calculated for each province during the correspondent review period. On this basis, we preliminarily determine the benefits from this program to be less than Can$0.0001 per kilogram for the 1991–92, 1992–93, and 1993–94 review periods.

2. Federal/Provincial Program. (A) National Tripartite Stabilization Scheme for Hogs Background. The National Tripartite Stabilization Program (NTSP) was created in 1985 by an amendment to the Agricultural Stabilization Act (ASA). This amendment, codified at section 10.1 of the ASA, provides for the introduction of cost-sharing tripartite or bipartite stabilization schemes involving the producer, the federal government and the provinces. Pursuant to this amendment, federal and provincial ministers signed NTSP agreements covering specific commodities.

The general terms of the NTSP for Hogs are as follows: all participating hog producers receive the same level of support per market-hog unit; the cost of the scheme is shared equally between the federal government, the provincial government, and the producers, with each government's contribution, federal as well as provincial, capped at 3 percent of the aggregate market value; producer participation in the scheme is voluntary; the provinces may not offer separate stabilization plans or other *ad hoc* assistance for hogs (with the exception of Québec's FISI program); the federal government may not offer compensation to swine producers in a province not party to an agreement; and the scheme must operate at a level that limits losses but does not stimulate over-production.

Stabilization payments are made when the market price falls below the calculated support price. The difference between the support price and the average market price is the amount of the stabilization payment. Hogs eligible for stabilization payments under NTSP must index above 80 on a hog carcass grading scale.

In *Swine Fifth Review Results* (56 FR 29225), the Department determined that NTSP was *de facto* specific because benefits were being provided to a specific enterprise or industry or group thereof. The binational panel, in its August 26, 1992 decision, affirmed the Department's determination (USA–91–1904–04). *See*, also, *Swine Sixth Review Results* (58 FR 54115).

Integral Linkage Allegation. In the questionnaire response in the 1991–92 review, the GOC submitted new facts pertaining to NTSP, based on which the GOC argues that NTSP is no longer specific. As of April 1, 1991, all NTSP Agreements were brought under the statutory authority of the Farm Income Protection Act (FIPA), designed to cover all agricultural products. FIPA is an agricultural income stabilization act which covers four programs: (1) national tripartite stabilization programs (NTSPs), (2) net income stabilization accounts (NISA), (3) gross revenue insurance program (GRIP), and (4) crop insurance (CI). FIPA unifies all federal-level income stabilization initiatives for farmers under a single statute; it incorporates key concepts from existing programs and integrates them into a new system. As part of this process, the Crop Insurance Act, the Agricultural Stabilization Act (ASA), and the Western Grain Stabilization Act were repealed.

(1) NTSP

NTSP provides insurance coverage against market-price fluctuations for designated commodities. Income stabilization payments are triggered when the market price falls below a calculated support price. This program, thus, moderates the economic effects of losses to farmer's income due to short-term market fluctuations.

(2) NISA

NISA is designed to stabilize an individual farm's overall financial performance through a voluntary

savings plan. The participant is required to enroll all eligible commodities grown on the farm. Farmers may then deposit a portion of their net sales of eligible NISA commodities (up to two percent of net eligible sales) into individual savings accounts, receive matching government deposits (up to one percent of net sales from both the provincial and the federal governments), and make additional, non-matchable deposits (up to 20 percent of net sales).

NISA provides stabilization assistance on a "whole farm" basis. A producer can withdraw funds from a NISA account when the gross profit margin from the entire farming operation falls below an historical average, based on the previous five years. If poor market performance of some products is offset by increased revenues from others, no withdrawal is triggered.

(3) GRIP

GRIP is a voluntary plan offering farmers revenue insurance protection or revenue insurance combined with crop insurance protection. Under GRIP, producers must register their total production of all eligible crops whether they select the revenue insurance protection component of GRIP or the combined revenue insurance and crop insurance protection. Premiums are shared by farmers and the provincial and federal governments. Payouts are triggered when market revenue or yield of any of the covered crops falls below certain historical levels. GRIP's revenue insurance protection component provides for full offsets between yield and price; for example, if a producer received a crop price below the reference value, but produced a higher-than-average yield, no insurance payment would be triggered to the extent that the extra revenue earned from the extra yield offsets the lower price.

(4) Crop Insurance

The crop insurance component of FIPA stabilizes a farmer's income by moderating the economic effects of crop losses caused by natural events. The producers and the governments (federal and provincial) share the payment of the premiums. Payouts are based on a farmer's average crop yield and are triggered when a farmer suffers a yield loss due to a covered hazard.

The GOC argued that for specificity purposes the Department should examine NTSP, NISA, GRIP and CI under FIPA as one program that established a (1) common policy of offering income stabilization on equal terms throughout the country, (2) common administration by the provinces, Agriculture Canada, and through interlocking national committees, and (3) tripartite funding (funds contributed by the federal government, provincial governments and producers). The GOC further argued that FIPA covers a substantial proportion of Canadian producers of agricultural commodities.

The Department examined the information submitted by the GOC on the FIPA legislation, the agreements establishing the programs covered by FIPA, the types of benefits provided by the programs and previous determinations in similar cases. Although FIPA provides the statutory authority for the various separate programs, the federal/provincial agreements that established NISA and GRIP retain substantial discretion, while NTSP and crop insurance predated FIPA itself. Therefore, the Department preliminarily found it more appropriate to examine the NTSP, NISA, GRIP, and CI as separate programs. *See Memorandum on Farm Income Protection Act*, to Barbara E. Tillman from CVD team dated April 13, 1994, which is on file in the CRU.

The GOC also alleged that if the Department determines that NTSP, NISA, GRIP and CI under FIPA do not constitute one program, then the Department should find NTSP, NISA, GRIP and CI integrally linked within the meaning of section 355.43(b)(6) of the Department's *Proposed Regulations*.

Integral Linkage Analysis and Preliminary Determination. Section 355.43(b)(6) of the *Proposed Regulations* sets forth the criteria that the Department examines, among others, in determining whether programs are integrally linked:

- The purposes of the programs as stated in their enabling legislation;
- The administration of the programs;
- Evidence of a government policy to treat industries equally; and
- The manner of funding the programs.

First, to examine whether the purpose of NTSP is similar to the purpose of the other programs, we analyzed whether basically the same type of assistance is being provided to distinct users. We preliminarily find that the purposes of the programs are different, with NTSP providing coverage against market price fluctuations; NISA stabilizing the farmer's net income fluctuations; GRIP providing coverage against market price fluctuations and weather-related disasters, and CI provides coverage against weather-related disasters.

Second, in examining the administration of the programs, we preliminarily find that although the GOC and the provincial governments participate in the administration of each of the programs, there are clear differences in the manner in which the programs are administered. For instance, NTSP and NISA are federally administered, because it is more efficient to centralize the management of these programs in order to administer them uniformly throughout Canada. On the other hand, it was more efficient to grant provincial governments substantially heavier administrative responsibilities for crop insurance under GRIP and CI, because provincial governments are in a position to provide faster relief to farmers in the event of a weather-related disaster. (Questionnaire response dated June 23, 1993, I–42.)

Third, our analysis of the information submitted on the record regarding the government's policy to treat industries equally yielded inconclusive results, because the diversity of the programs did not allow for a comparison of benefits on a commodity by commodity basis. In fact, the four programs are structured to meet different purposes (insurance programs versus savings plan), are designed to cover different types of risks, and involve government participation of unequal proportional amounts. As a result, it is not possible to ascertain whether or not there is evidence of a government policy to treat industries equally.

Finally, although the funding for the four programs is provided by the same three sources, the federal and provincial governments and the producers, there are two distinct funding mechanisms. Under NISA, the GOC and the provincial government provide matching funds to the farmers who may make annual deposits up to 2 percent of eligible net sales. The other three programs are premium-funded insurance programs, in which producers and provincial and federal governments share the payment of the premiums. Moreover, the shares of the premiums funded by each source are different under the three programs. Under NTSP, the producer and the federal and provincial governments each contribute 33.3 percent. Under GRIP, the producers contribute 33.3 percent, the provincial government 25 percent, and the federal government 41.67 percent. On the other hand, for crop insurance, the producer contributes 50 percent and the federal and provincial governments contribute the remaining 50 percent equally.

As a result of our analysis, we preliminarily determine that the NTSP, NISA, GRIP and CI are not integrally linked. For a further discussion, *see Decision Memorandum on Farm Income Protection Act—Integral Linkage*, to Paul L. Joffe from The Team dated May 15, 1996, which is on file in the CRU. Therefore, we preliminarily determine to continue to review NTSP as a separate program. We also examined the specificity of the NISA program because the petitioners alleged that its farm-fed provision allows farmers to make a deposit on the grain that is fed to their livestock, which can benefit live swine. For further discussion of the NISA program, see section II(B) of this notice.

Determination of Benefit from NTSP. In *Swine Sixth Review Results* (58 FR 54115) and (59 FR 12246), we determined NTSP to be de facto specific, and thus countervailable. No new information or evidence of changed circumstances has been submitted in these reviews, which would warrant reconsideration of this finding. The information on the record shows that the terms of the NTSP agreement on hogs did not change during the periods currently under review. During the 1991–92 and 1992–93 review periods, payouts for hogs were made under this program in each of the nine signatory provinces. There were no NTSP payments made to hog producers during the 1993–94 review period.

To calculate the benefit, we used the methodology applied in *Swine Sixth Review Results* (58 FR 54117). We first divided two-thirds of the stabilization payments (representing the federal and provincial contributions) made to producers in each province in each review period by the total weight of live swine produced in that province during the same review period, and calculated a benefit per kilogram on a province-by-province basis. We then weight-averaged each exporting province's per-kilo benefit by that province's share of total Canadian exports of live swine to the United States during the corresponding review period. We then added the weight-averaged benefits of all exporting provinces to calculate the average benefit per kilogram. On this basis, we preliminarily determine the benefit from this program to be Can$0.0508 per kilogram for the 1991–92 review period, Can$0.0578 for the 1992–93 review period, and zero for the 1993–94 review period.

3. Provincial Income Stabilization Programs. (A) Québec Farm Income Stabilization Insurance Program (FISI).

Background. FISI was established in 1976 under the "Loi sur l'assurance-stabilisation des revenus agricoles." The program is administered by the Régie des Assurances Agricoles du Québec (Régie). The purpose of the program is to guarantee a positive net annual income to participants whose income is lower than the stabilized net annual income. Since Québec joined the federal government's NTSP for Hogs in February 1989, the FISI scheme for hogs has been covering only the difference between payments made under the NTSP for Hogs and what FISI payments would have been in the absence of the NTSP. FISI is the only provincial stabilization scheme that continues to operate in conjunction with the NTSP for Hogs. There are two FISI schemes which provide payments to the subject merchandise, the FISI scheme for Hogs and the FISI scheme for Piglets.

Two-thirds of the funding for the FISI program is provided by the provincial government and one-third by producer assessments. Participation in FISI is voluntary. However, once enrolled in the program, a producer must make a five-year commitment. Each farmer may insure a maximum of 5,000 feeder hogs and 400 sows. Whenever the balance in the FISI account is insufficient to make payments to participants, the provincial government lends the needed funds to the program at market rates. The principal and interest on these loans are repaid by the Régie using the producer and provincial contributions.

Integral Linkage Allegation. In the 1991–92 administrative review, the GOQ alleged that the FISI program is integrally linked to the crop insurance program. The GOQ also alleged that because the federal supply management programs are related in purpose and effect to these two provincial programs, the supply management program is integrally linked to FISI and crop insurance within the meaning of § 355.43(b)(1)(6).

Integral Linkage Analysis and Preliminary Determination. We conducted this analysis in accordance with the criteria set forth in section 355.43(b)(6) of the *Proposed Regulations*, and listed in the NTSP section of this notice. In our analysis of the first factor, we begin by reviewing the purpose of each program and then we examine whether the purpose of FISI is similar to the purpose of crop insurance and supply management. We preliminarily find that the purposes of the programs are different. FISI insures against market price fluctuations; crop insurance provides coverage against weather-related disasters; and supply management programs prevent fluctuations in the market price of covered commodities by regulating their supplies.

Second, in examining the administration of the programs, we preliminarily find that many of the procedures for enrolling in and receiving insurance payments under FISI and crop insurance are similar. However, because FISI and crop insurance have distinct purposes, the timing of the benefits is different. On the other hand, the supply management programs operate at both the national and provincial levels because total cooperation from producers of the commodity in all provinces is necessary to manage the supply of a commodity on the market. In addition, the supply management programs are administered independently from the agency that administers the FISI and the crop insurance programs.

Third, our analysis of the information submitted on the record regarding the government's policy to treat industries equally yielded inconclusive results. The actuarial study which the GOQ argued shows equal treatment among users of FISI and crop insurance was not sufficiently detailed to support this conclusion with respect to the subject merchandise.

Finally, regarding the manner of funding, we preliminarily find that the funding for the three programs is different. FISI and crop insurance are funded by premium payments shared between the producer and the GOQ; supply management is funded by producer levies only.

As a result of our analysis, we preliminarily determine that the FISI, crop insurance and supply management programs are not integrally linked. For a further discussion, *see Decision Memorandum on Farm Income Stabilization Insurance—Integral Linkage* to Paul L. Joffe from The Team, dated May 15, 1996, which is on file in the CRU. Therefore, we preliminarily determine to continue to review FISI as a separate program.

In *Swine Sixth Review Results* (58 FR 54117), we determined FISI to be *de facto* specific, and thus countervailable. No new information or evidence of changed circumstances has been submitted in these reviews, which would warrant reconsideration of this finding.

To calculate the benefit, we used the methodology applied in *Swine Sixth Review Results* (58 FR 54118). We multiplied the total payments made under both the piglet and feeder hog schemes during each review period by two-thirds (representing the provincial contribution). We divided this amount by the total weight of live swine produced in Québec during the same review period to get the average benefit per kilogram. We then weight-averaged the benefit by Québec's share of total Canadian exports of live swine to the United States during the corresponding review period. On this basis, we preliminarily determine the benefit from

this program to be Can$0.0050 per kilogram for the 1991–92 review period, Can$0.0001 per kilogram for the 1992–93 review period, and Can$0.0002 per kilogram for the 1993–94 review period.

(B) *British Columbia Farm Income Insurance Program* (FIIP). The FIIP was established in 1979 in accordance with the Farm Income Insurance Act of 1973 (Farm Act) in order to assure income to farmers when commodity market prices fluctuate below the basic costs of production. Schedule B of the Farm Act lists the guidelines for the individual commodities receiving benefits; Schedule B section 4 is the guideline for swine producers.

The program is administered by the provincial Ministry of Agriculture and Food and the British Columbia Federation of Agriculture, and is funded equally by producers and the provincial government. Premiums are paid in all quarters regardless of market returns.

In *Swine Second and Third Review Results* (55 FR 20615), the Department found this program to be countervailable because the program is limited to producers of commodities listed in Schedule B, a specific group of enterprises or industries. No new information or evidence of changed circumstances has been submitted in these proceedings to warrant reconsideration of this finding.

British Columbia did not export live swine to the United States during the 1991–92 period. However, British Columbia exported live swine to the United States during the 1992–93 and 1993–94 review periods. Since the government of British Columbia funds one-half of this program, we calculated the benefit for these review periods by dividing one-half of the total stabilization payments in each review period by the total weight of live swine produced in British Columbia during the same period. We then weight-averaged the result by British Columbia's share of total exports of live swine to the United States during the same review period. On this basis, we preliminarily determine the benefit from this program to be less than Can$0.0001 per kilogram for the 1992–93 review period and Can$0.0004 per kilogram for the 1993–94 review period.

(C) *Saskatchewan Hog Assured Returns Program* (SHARP). SHARP was established in 1976, pursuant to the Saskatchewan Agricultural Returns Stabilization Act which authorized provincial governments to establish stabilization plans for any agricultural commodity. SHARP provided income stabilization payments to hog producers in Saskatchewan when market prices fell below a designated "floor price", calculated quarterly. The program was administered by the Saskatchewan Pork Producers' Marketing Board (the Board) on behalf of the Saskatchewan Department of Agriculture. The program was funded by levies from participating producers on the sale of hogs covered by the program; they ranged from 1.5 to 4.5 percent of market returns and were matched by the provincial government. When the balance in the SHARP account was insufficient to cover payments to producers, the provincial government provided financing on commercial terms. The principal and interest on these loans was to be repaid by the Board from the producer and provincial contributions. After the NTSP for Hogs was implemented on July 1, 1986, SHARP payments were reduced by the amount of the NTSP payments.

In *Swine First Review Results* (53 FR 22192), the Department found the SHARP program to be *de jure* specific, and thus countervailable, because the legislation expressly made the program available only to a single industry (hog producers). No new information or evidence of changed circumstances was submitted in the 1991–92 and 1992–93 review periods to warrant reconsideration of these findings.

In accordance with the NTSP agreement, SHARP was terminated on March 31, 1991. At the time of termination, the SHARP fund had a sizeable deficit because of the cumulation over the operating years of loans from the provincial government. In *Swine Sixth Review Results* (58 FR 54118), the Department found that interest on the loans had stopped accruing on October 31, 1989. The Department determined that interest not accruing on the outstanding loan balance constituted a residual benefit to live swine producers.

To determine the benefit for the 1991–92 review period, we used the methodology applied in Swine Sixth Review Results (59 FR 12260). Since the government of Saskatchewan provided half of the funds of the SHARP program, we calculated the benefit for this review period by multiplying half of the outstanding principal amount at the end of the review period by the benchmark interest rate. We used, as our benchmark interest rate, the simple average of the monthly rates (for the review period) reported as "Typical Short-Term Interest Rates" in Canada in the *Financial Statistics Monthly*, published by the Organization for Economic Cooperation and Development (OECD). We selected this benchmark because the interest rates provided in the questionnaire response pertained to years prior to 1991 and were therefore inappropriate as benchmarks for loans provided during the review period. We selected a short-term rate because the duration of these loans was uncertain, since no indication was provided by respondents on the final disposition of these loans. Next, we divided the amount thus obtained by the total weight of live swine produced in Saskatchewan during the review period. We then weight-averaged the benefit by Saskatchewan's share of total Canadian exports of live swine to the United States during the review period. On this basis, we preliminarily determine the benefit to be Can$0.0009 per kilogram for the 1991–92 review period.

To calculate the benefit from the outstanding loans during the 1992–93 review period, we followed the methodology outlined above. However, during the 1992–93 review period, live swine producers also received residual stabilization payments. The residual payments were due to live swine producers as of the 1991–92 fiscal year, but were paid during the 1992–93 fiscal year. Because the residual payments are co-funded by the government, we divided the total payment amount by two, and added the result to the interest amount calculated on the outstanding loans. We thus obtained the full benefit to swine producers during the review period. On this basis, we preliminarily determine the benefit to be Can$0.0006 per kilogram for the 1992–93 review period.

During the 1993–94 review period, the government canceled the outstanding SHARP deficit. To calculate the benefit from the loan forgiveness, we treated one-half of the amount written off as a grant in accordance with section 355.49 (b)(1) of the *Proposed Regulations*. We took into account only half of the amount because this was the share of the outstanding loans that the producers were responsible for repaying.

The Department's policy with respect to grants is (1) to expense recurring grants in the year of receipt or (2) to allocate non-recurring grants over the average useful life of assets in the industry, unless the sum of grants provided under a particular program is less than 0.50 percent of a firm's total or export sales (depending on whether the program is a domestic or export subsidy) in the year in which the grants were received. (See section 355.49(a) of the *Proposed Regulations* and the *General Issues Appendix*, at 37226, which is attached to the *Final Countervailing Duty Determination; Certain Steel Products from Austria* (58 FR 37217, 37226)) (General Issues Appendix).

The Department considers a grant non-recurring when the benefits are exceptional, the recipient cannot expect to receive benefits on an ongoing basis from year to year, and/or the provision of funds by the government must be approved every year. The Department has preliminarily determined that the write-off of the SHARP deficit is a non-recurring grant because debt forgiveness is exceptional, and it is a one-time event. On this basis, we allocated the benefit from this grant over three years, which is the average useful life of depreciable assets used in the swine industry, as set out in the U.S. Internal Revenue Service Class Life Asset Depreciation Range System. We used, as a discount rate, the simple average of the quarterly medium-term government bond rates (for the review period) from the *International Financial Statistics*, published by the International Monetary Fund. Next, we divided the benefit allocated to the period by the total weight of live swine produced in Saskatchewan during the review period to obtain the average benefit per kilogram. We then weight-averaged the per-kilogram benefit by Saskatchewan's share of total Canadian exports of live swine to the United States during the same review period. On this basis, we preliminarily determine the benefit to be Can$0.0051 per kilogram for the 1993–94 review period. Since residual benefits from this program will continue, we will continue to examine this program in any future administrative reviews.

4. *Other Provincial Programs.* (A) Alberta Crow Benefit Offset Program (ACBOP). This program, administered by the Alberta Department of Agriculture, is designed to compensate producers and users of feed grain for market distortions in feed grain prices, created by the federal government's policy on grain transportation. Assistance is provided for feed grain produced in Alberta, feed grain produced outside Alberta but sold in Alberta, and feed grain produced in Alberta to be fed to livestock on the same farm. The government provides "A" certificates to registered feed grain users and "B" certificates to registered feed grain merchants to use as partial payments for grain purchased from grain producers. Feed grain producers who feed their grain to their own livestock submit a Farm Fed Claim directly to the government for payment.

Hog producers receive benefits in one of three ways: hog producers who do not grow any of their own feed grain receive "A" certificates which are used to cover part of the cost of purchasing grain; hog producers who grow all of their own grain submit a Farm Fed Claim to the government of Alberta for direct payment; and hog producers who grow part of their own grain but also purchase grain receive both "A" certificates and direct payments.

In *Swine Second and Third Review Results* (56 FR 10412), the Department found this program to be *de jure* specific, and thus countervailable, because the legislation expressly makes it available only to a specific group of enterprises or industries (producers and users of feed grain). No new information or evidence of changed circumstances has been submitted in these proceedings to warrant reconsideration of this finding.

To determine the benefit to swine producers from this program, we followed the methodology used in calculating ACBOP benefits in our redetermination on remand in the U.S.-Canada Binational Panel proceedings on the 1989–1990 (fifth) review period. *In the Matter of Live Swine from Canada*, USA–91–1904–04 (June 11, 1993) at 33–36. However, we further improved on this methodology by using more accurate information submitted in the 1991–92 questionnaire response. *See* also the verification report at 31–32, which is available in CRU.

Thus, we calculated the benefit from this program as follows. Using the Alberta *Supply and Disposition Tables*, we first estimated the quantity of grain consumed by livestock in Alberta during the correspondent review period. Then, we multiplied the number of swine produced in Alberta during the same review period by the estimated average grain consumption per hog, and divided the result by the amount of total grains used to feed livestock during the review period. We thus calculated the percentage of total livestock consumption of all grains in Alberta attributable to live swine during the corresponding review period. We then multiplied this percentage by the total value of "A" certificates and farm-fed claim payments received by producers during the same review period. We divided this amount by the total weight of live swine produced in Alberta during the same review period. We then weight-averaged this per-kilo benefit by Alberta's share of total Canadian exports of live swine to the United States during the corresponding review period. On this basis, we preliminarily determine the benefit to be Can$0.0023 per kilogram for the 1991–92 review period, Can$0.0019 per kilogram for the 1992–93 review period, and Can$0.0017 per kilogram for the 1993–94 review period.

(B) Alberta Livestock and Beeyard Compensation Program (Livestock Predator Compensation Sub-program). This program compensates Alberta livestock producers for losses of food-producing livestock, including cattle, sheep, hogs, goats, rabbits and poultry, to predators. The Alberta Department of Agriculture administers this program, and provides assistance in the form of grants, compensating farmers for up to 100 percent of the value of the depredated livestock.

In *Swine Fifth Review Results* (56 FR 29227), the Department found this program to be *de jure* specific and thus countervailable because the legislation expressly makes it available only to a specific group of enterprises or industries (livestock farmers). No new information or evidence of changed circumstances has been submitted in these proceedings to warrant reconsideration of this finding.

To calculate the benefit, we used the methodology applied in *Swine Sixth Review Results* (58 FR 54119). We divided the total payments to hog producers during each review period by the total weight of live swine produced in Alberta during the same review period. We then weight-averaged the result by Alberta's share of Canadian exports of live swine to the United States during the same review period. On this basis, we preliminarily determine the benefit from this program to be less than Can$0.0001 per kilogram for the 1991–92, 1992–93, and 1993–94 review periods.

(C) Ontario Rabies Indemnification Program. This program, administered by the Farm Assistance Branch of the Ontario Ministry of Agriculture and Food, and Rural Affairs compensates livestock producers, including producers of cattle, horses, sheep, swine, and goats, for damage caused by rabies. Producers apply for compensation through a federal inspector, who determines that the animal is rabid and must be destroyed. Farmers receive a maximum of Can$100 per hog under this program.

In *Swine Fifth Review Results* (56 FR 29228), the Department found this program to be *de jure* specific, and thus countervailable, because the program's legislation expressly makes it available only to livestock producers. No new information or evidence of changed circumstances has been submitted in these proceedings to warrant reconsideration of this finding.

To calculate the benefit, we used the methodology applied in *Swine Sixth Review Results* (58 FR 54120). We divided the total payments to swine producers during each review period by

the total weight of live swine produced in Ontario during the same review period. We then weight-averaged the result by Ontario's share of total Canadian exports of live swine to the United States during the same review period. On this basis, we preliminarily determine the benefits from this program to be less than Can$0.0001 per kilogram for the 1991–92, 1992–93, and 1993–94 review periods.

(D) Ontario Livestock and Poultry and Honeybee Compensation Program. This program, administered by the Farm Assistance Programs Branch of the Ontario Ministry of Agriculture, Food, and Rural Affairs, provides assistance in the form of grants which compensate producers for livestock and poultry injured or killed by wolves, coyotes, or dogs. Swine producers apply for and receive compensation through the local municipal government. The Ontario Ministry of Agriculture, Food, and Rural Affairs reimburses the municipality.

In *Swine Fifth Review Results* (56 FR 29227), the Department found this program to be *de jure* specific, and thus countervailable, because the legislation expressly makes it available only to a specific group of enterprises or industries (livestock and poultry farmers). No new information or evidence of changed circumstances has been submitted in these proceedings to warrant reconsideration of this finding.

To calculate the benefit, we used the methodology applied in *Swine Sixth Review Results* (58 FR 54119). We divided the total payment to hog producers during each review period by the total weight of live swine produced in Ontario during the same review period. We then weight-averaged the result by Ontario's share of Canadian exports of live swine to the United Stated during the same review period. On this basis, we preliminarily determine the benefits from this program to be less than Can$0.0001 per kilogram for the 1991–92, and 1993–94 review periods.

(E) Saskatchewan Livestock Investment Tax Credit. Saskatchewan's 1984 Livestock Tax Credit Act provides tax credits to individuals, partnerships, and corporations residents in Saskatchewan on livestock raised in Saskatchewan that were marketed or slaughtered by December 31, 1989. Claimants had to be residents of Saskatchewan, paying Saskatchewan income taxes. Eligible claimants received credits of Can$3 for each hog. Although this program was terminated on December 31, 1989, tax credits are carried forward for up to seven years. In *Swine First Review Results* (53 FR 22198), the Department found this program to be *de jure* specific, and thus countervailable, because the program's legislation expressly made it available only to livestock producers. No new information or evidence of changed circumstances has been submitted in these proceedings to warrant reconsideration of this finding.

To calculate the benefit, we used the methodology applied in *Swine Sixth Review Results* (58 FR 54120). In the questionnaire responses, the GOC provided estimates of the amount of tax credits used by hog producers in Saskatchewan in each review period, since the actual amounts are unavailable. At verification, we reviewed the methodology used to calculate these estimates and found it reasonable and consistent with that used in prior reviews. (See *Verification Report* dated June 8, 1994, p. 24). We divided this amount by the total weight of live swine produced in Saskatchewan during each review period. We then weight-averaged the result by Saskatchewan's share of total exports of live swine to the United States during the same review period. On this basis, we preliminarily determine the benefit from this program to be Can$0.0002 per kilogram for the 1991–92, 1992–93, and 1993–94 review periods.

(F) Saskatchewan Livestock Facilities Tax Credit Program. This program, which was terminated on December 31, 1989, provided tax credits to livestock producers based on their investments in livestock production facilities. The tax credits can only be used to offset provincial taxes and may be carried forward for up to seven years. Livestock covered by this program includes cattle, horses, sheep, swine, goats, poultry, bees, fur-bearing animals raised in captivity, or any other designated animals; it can be raised for either breeding or slaughter. Investments covered under the program include new buildings, improvements to existing livestock facilities, and any stationary equipment related to livestock facilities. The program pays 15 percent of 95 percent of project costs, or 14.25 percent of total costs.

In *Swine Second and Third Review Results* (55 FR 20610), the Department found this program to be *de jure* specific, and thus countervailable, because the program's legislation expressly made it available only to livestock producers. No new information or evidence of changed circumstances has been submitted in these proceedings to warrant reconsideration of this finding.

To calculate the benefit, we used the methodology applied in *Swine Sixth Review Results* (58 FR 54120). In the questionnaire responses, the GOC provided estimates of the amount of tax credits used by hog producers in Saskatchewan, for each review period, since the actual amounts are unavailable. At verification, we reviewed the methodology used to calculate these estimates and found it reasonable and consistent with that used in prior reviews. (See *Verification Report* dated June 8, 1994, p. 24). We divided each amount by the total weight of live swine produced in Saskatchewan during the correspondent review period. We then weight-averaged the result by Saskatchewan's share of total exports of live swine to the United States during the same period. On this basis, we preliminarily determine the benefit from this program to be Can$0.0001 per kilogram for the 1991–92, 1992–93, and 1993–94 review periods.

B. Programs Preliminarily Found to Confer Subsidies

1. Provincial Programs. (A) Saskatchewan Interim Red Meat Production Equalization Program. In the 1992–93 administrative review, the Department received a timely allegation from the petitioner stating that this program may provide benefits to live swine producers in Canada. The Department initiated an investigation of the program and verified the information provided in the questionnaire response. *See Memorandum on New Allegations of Canadian Subsidy Programs*, to Barbara E. Tillman from The Team dated February 18, 1994, which is on file in the CRU.

The Saskatchewan Interim Red Meat Production Equalization Program (IRMPEP), administered by the Saskatchewan Department of Agriculture and Food, was established by the Government of Saskatchewan (GOS) in November 1992. IRMPEP provides grants to livestock producers who raise and feed their livestock in Saskatchewan. In order to qualify for IRMPEP, producers must have sold a minimum number of the eligible livestock which includes steers, heifers and virgin bulls, cull cows, hogs, lambs, kid goats, and horses. Once the minimum number of eligible livestock has been sold, the producer fills out an application and, if the criteria are met, is automatically eligible to receive grants under this program.

Because the program's legislation expressly limits its availability to a specific group of enterprises or industries (livestock producers), we preliminarily determine that benefits from this program are *de jure* specific, and thus countervailable. *See Decision Memorandum on the Saskatchewan Interim Red Meat Production Equalization Program*, to Paul L. Joffe from The Team dated May 15, 1996, which is on file in the CRU.

The Department has preliminarily determined that these grants are recurring because the recipient can expect to receive benefits on an ongoing basis from review period to review period. (*See General Issues Appendix* (58 FR at 37226)). Therefore, to calculate the benefit, we have allocated the amounts of the grants to the year of receipt. Consequently, we divided the amount of IRMPEP grants to live swine producers for the 1992–93 and for the 1993–94 review periods, by the total weight of live swine produced in Saskatchewan in the correspondent review period. We then weight-averaged the result by Saskatchewan's share of total exports of live swine to the United States during the same review period. On this basis, we preliminarily determine the benefit from this program to be Can$0.0002 per kilogram for the 1992–93 review period, and Can$0.0021 for the 1993–94 review period.

(B) Ontario Export Sales Aid Program. The Ontario Export Sales Aid Program was established in 1987 to assist producers and processors of Ontario agricultural and food products to develop their export markets. It was not used in prior reviews. It was used in the 1991–92 and 1993–94 review periods; it was not used during the 1992–93 review period.

The Ontario Export Sales Aid Program is administered by the Ontario Ministry of Agriculture, Food and Rural Affairs which reimburses producers or processors for the costs they incur in developing their export marketing materials. Grants are made on a per-project basis, limited to two projects per producer or company, per fiscal year. The Ministry provides reimbursements for up to 50 percent of the project costs, with a maximum dollar amount. Producers submit a completed application form outlining the objectives of the market development plan, anticipated costs, and forecasted benefits to a review committee for approval. Upon approval, the producer or company receives the grant and initiates the project.

Because receipt of benefits from this program is contingent upon actual or anticipated exportation, the Department preliminarily determines this program to be a countervailable export subsidy. The benefits under this program are provided in the form of grants for specific projects. Assistance is provided on a project-specific basis, and approved by a review committee (with no repeat projects allowed). Therefore, the Department has preliminarily determined that these are non-recurring grants because the recipient cannot expect to receive benefits on an ongoing basis from review period to review period. *See Decision Memorandum on the Ontario Export Sales Aid Program*, to Paul L. Joffe from The Team dated May 15, 1996, which is on file in the CRU. However, because the amount received by live swine producers in both review periods is less than 0.50 percent of the value of live swine exports from this province, we are allocating the benefit to the year of receipt. (*See General Issues Appendix* (58 FR at 37226)).

To calculate the benefit received in the 1991–92 and the 1993–94 review periods, we divided the total grant amount in the correspondent review period by the total weight of live swine produced in Ontario in the same review period. We then weight-averaged the result by Ontario's share of total exports of live swine to the United States during the same review period. On this basis, we preliminarily determine the benefit from this program to be less than Can$0.0001 per kilogram for the 1991–92, and 1993–94 review periods.

II. Programs Preliminarily Found Not To Confer Subsidies

(1) Federal/Provincial Programs

(A) Canada/British Columbia Agri-Food Regional Development Subsidiary Agreement Canada/Manitoba Agri-Food Development Agreement Canada/Québec Subsidiary Agreement on Agri-Food Development. On July 25, 1985, the GOC and British Columbia signed an agreement to promote agricultural development cooperation between the two governments. The objectives of this agreement are to improve the competitiveness of the agri-food industry in British Columbia, increase economic output and employment opportunities in the industry, and conserve and improve the province's agricultural resources. Under this agreement, the federal and provincial governments share funding for projects in the following areas: (1) Productivity enhancement, (2) resource development, and (3) commodity development.

On May 30, 1984, the GOC and Manitoba signed an agreement to support research programs for the development of agriculture. Under this agreement, the federal and provincial governments share funding for research in the following areas: (1) Enhanced agricultural productivity, (2) enhanced soil and water resource management, (3) human resources management, and (4) analysis, evaluation, and public relations.

On December 14, 1984, the GOC entered into an Economic and Regional Development Agreement with the Province of Québec. Under this agreement, the federal and provincial governments share the funding of projects in the following areas: (1) Research and development, (2) technological innovations and new initiatives, and (3) soil conservation and improvement.

The Department has examined these three programs, focusing its inquiry on the public availability of the results of swine-related projects. After finding that the results of the projects funded by these programs were made publicly available, the Department has preliminarily determined in each review that the programs provided no countervailable benefit to producers of live swine in accordance with section 355.44(l) of the *Proposed Regulations*, which states that "assistance provided by a government to a firm in order to finance research and development does not confer a countervailable benefit where the Secretary determines that the results of such research and development have been, or will be, made available to the public, including competitors of the firm in the United States."

(B) NISA. In the 1991–92 administrative review the National Pork Producers Council, petitioner, alleged that the farm-fed grain provision of NISA constitutes a countervailable benefit to hog producers who grow grains. The farm-fed grain provision of NISA is an administrative mechanism that ensures that farm-fed grains are offered the same coverage under that program as marketed grains. Without this provision, NISA's method of calculating deposit entitlements would exclude grains that are fed "on farms" rather than sold. To provide coverage to farm-fed grains, NISA treats fixed portions of a farmer's net sales of cattle, calves, swine, sheep, and lambs, which are not covered under NISA, as sales of covered products, i.e., as sales of the grain the animals were fed.

In the instant case, the relevant program is NISA. The farm-fed provisions of that program are an administrative mechanism to deal with special circumstances concerning one of the numerous eligible products under that program. Livestock producers, including hog producers, who also produce NISA-eligible products may receive benefits under NISA regardless of whether they utilize the farm-fed grain provisions. Thus, any benefits

received under NISA are countervailable only if NISA is specific.

In order to determine the specificity of NISA to ascertain whether the benefits provided to hog producers under its farm-fed provision are countervailable, the Department's *Proposed Regulations* at section 355.43(b)(2) direct us to examine four factors, among others:

(i) The extent to which a government acts to limit the availability of a program;

(ii) The number of enterprises, industries, or groups thereof that actually use a program;

(iii) Whether there are dominant users of a program, or whether certain enterprises, industries, or groups thereof receive disproportionately large benefits, under a program; and

(iv) The extent to which a government exercises discretion in conferring benefits under a program.

In analyzing the first factor, we preliminarily find that NISA's enabling legislation is *de jure* not specific based on its stated purpose to cover all agricultural products. Section 355.43(b)(8) of the *Proposed Regulations* does not regard a program as being specific solely because the program is limited to the agricultural sector. However, section 771(5)(B) of the Tariff Act of 1930, as amended, states that "[n]ominal general availability, under the terms of the law, * * * of the benefits thereunder is not a basis for determining that the bounty, grant, or subsidy is not, or has not been, in fact provided to a specific enterprise or industry, or group thereof"; thus, we turn to our *de facto* specificity analysis. The second factor, the number of users of the program, goes to the *de facto* analysis of the specificity of NISA. In its first year of operation NISA covered 65 products, which accounted for 70 percent of the products grown in Canada. (*See* Verification Report dated June 8, 1994, page 82). In our analysis of the third factor, we found no evidence tnat hog producers were dominant users or were receiving disproportionate benefits from the NISA program. Finally, we found no evidence that the GOC exercises discretion in conferring benefits under the NISA program.

Because NISA covers a large number and variety of agricultural products, no evidence of dominance or disproportionality, and lack of the GOC's discretion in conferring benefits under NISA, we preliminarily determine that the NISA farm-fed grain provision is not limited to a specific enterprise or industry, or group of enterprises, or group thereof. For further discussion, see *Decision Memorandum on the Specificity of the Net Income Stabilization Account Program* to Paul L. Joffe from The Team dated May 15, 1996, which is available in CRU.

(C) Cash Flow Enhancement Program. In the 1991–92 administrative review, the petitioner alleged that the Cash Flow Enhancement Program provides countervailable benefits to live swine producers. Therefore, the Department examined whether this program provided countervailable benefits to live swine producers.

The Cash Flow Enhancement Program provides farmers with interest-free cash advances on loans under the Prairie Grain Advance Payment Act and under the Advance Payments for Crops Act. Both of these Acts specifically state that the advances are strictly for crops that are sold, not used on the farm. Therefore, we preliminarily find this program does not provide countervailable benefits to hog producers because the advances are tied to products other than the subject merchandise. *See Decision Memorandum on the Cash Flow Enhancement Program*, to Paul L. Joffe from The Team dated May 15, 1996, which is on file in the CRU.

2. Provincial Programs. (A) Saskatchewan Livestock Cash Advance Program. Information provided in the 1991–92 review indicates that the correct name for the Saskatchewan Livestock Advance Program is the Saskatchewan Livestock Cash Advance Program (SLCAP). The Department found this program not countervailable in the first review. (*Swine First Review Results*) (53 FR 22198)). Therefore, absent new information, the Department will no longer examine this program.

(B) Ontario Farm Tax Rebate Program. This program provides eligible farmers with rebates of up to 75 percent of the taxes levied on their properties for municipal and school purposes or for local improvements. These taxes are levied under the Local Improvement Act, the Provincial Land Tax Act, or the Local Roads Boards Act, and imposed under the Local Services Boards Act. Eligible farm properties are properties used in a farming enterprise that produces agricultural products.

Any resident of Ontario may receive a rebate if he or she owns or rents and pays taxes on eligible properties. Before January 1, 1990, the minimum gross production level requirements for eligibility varied among regions: Can$8,000 for residents of Southern and Western Ontario and Can$5,000 for residents of Northern and Eastern Ontario. In *Swine First Review Results* (53 FR 22196), the Department found this program to be *de jure* specific, and thus countervailable, because the eligibility criteria varied depending on the region of Ontario in which the farm was located.

In the 1991–92 administrative review, we verified that, as of April 1, 1991 all farmers in Ontario with a minimum gross production value of Can$7,000 are eligible to receive tax rebates. Since there is no restriction on the types of farm products that receive these rebates, and we found no evidence at verification that the government exercises discretion in distributing these rebates, we have reconsidered our prior decision and preliminarily determine that this program is not specific, and therefore, not countervailable. *See Memorandum on the Ontario Farm Tax Rebate Program*, to Barbara E. Tillman from The Team dated March 5, 1996, which is on file in the CRU.

(C) *Prince Edward Island Pro Pork Assistance Program.* The Prince Edward Island (PEI) Pro Pork Assistance Program replaced the Prince Edward Island Swine Incentive Policy Program which terminated September 30, 1990. The Pro Pork Assistance Program was established on January 12, 1991, to improve the profitability, efficiency, and market quality of pork production in PEI; to improve the quality of pork marketed as measured by weight and index; and to develop an equitable marketing system for quality weaner pigs.

This program is administered by the PEI Department of Agriculture in cooperation with the PEI Hog Commodity Marketing Board. Eligible producers submit an application to the Ministry and receive assistance under two sub-programs. Under the Swine Enterprise Analysis and Consulting Service sub-program, Ministry consultants analyze farmers' production records and financial statements to identify areas in which changes to production systems and financial management systems will lead to more profitable operations. The data collected from individual producers is then averaged and used to set an industry benchmark. Thus, a producer can compare his farm's performance with that of other farms and identify areas where improvements can lead to greater productivity and profits. Under the Market Hog Weight and Index Targeting sub-program, producers receive assistance from Ministry consultants in improving swine carcass weights and lean meat yield. Qualifying producers also receive payments for "slaughtered" hogs meeting stipulated weight and index criteria, which are adjusted annually in response to market requirements. Payments to producers are only made on dressed pork (after slaughter).

In order for the producers to qualify for payments under this program, the swine must have been slaughtered on PEI or in New Brunswick. Since producers are not eligible for, and cannot receive benefits under this program unless hogs are slaughtered in Canada, we preliminarily determine that this program does not benefit live swine exported to the United States. *See Decision Memorandum on the Pro Pork Assistance Program*, to Paul L. Joffe from The Team dated May 15, 1996, which is on file in the CRU.

III. Programs Preliminarily Found to be Not Used

We have examined the following programs and preliminarily determine that Canadian exporters of live swine to the United States did not use them during the periods under review: (1) Agricultural Products Board Program; (2) Federal Atlantic Livestock Feed Initiative (New Brunswick, Newfoundland, Nova Scotia, and Prince Edward Island); (3) Western Diversification Program; (4) British Columbia Special Hog Payment Program; (5) New Brunswick Agriculture Development Act—Swine Assistance Program; (6) New Brunswick Livestock Incentive Program; (7) New Brunswick Swine Assistance Policy on Boars; (8) New Brunswick Swine Industry Financial Restructuring Program; (9) Newfoundland Farm Products Corporation—Hog Price Support; (10) Newfoundland Weanling Bonus Incentive Policy; (11) Nova Scotia Improved Sire Policy; (12) Ontario Bear Damage to Livestock Compensation Program; and (13) Ontario Swine Sales Assistance Policy.

IV. Program Preliminarily Found to be Terminated

(A) New Brunswick Hog Price Stabilization Plan

The New Brunswick Hog Price Stabilization Plan (NBHPSP) was established in 1974 to assure hog producers income stabilization during periods of both high and low market prices. The plan was administered jointly by the New Brunswick Department of Agriculture Hog Stabilization Board and the New Brunswick Hog Marketing Board. The plan operated as follows: the board established a base price based on production costs; when the average weekly market price exceeded the base price by Can$5.00, producers paid into the stabilization fund. When the same market price fell below the base price, producers received payments to make up the difference between the two prices. Half of the payment to producers was provided by the Government of New Brunswick as a grant to the producer and the other half was drawn from the producers' equity in the fund. When the producers exhausted their equity in the fund, the provincial government assumed the producers' portion of the payment by providing an interest-free loan, which was to be repaid when the fund was in surplus. In *Swine First Review Results* (53 FR 22194), the Department found this program to be *de jure* specific, and thus countervailable, because the legislation expressly made it available only to a specific group of enterprises or industries (hog producers). In these reviews, neither the GOC nor the government of New Brunswick submitted new information or evidence of changed circumstances to warrant reconsideration of this finding.

The program was terminated on March 31, 1989, with the fund showing a sizeable deficit. This deficit represents the cumulation over the operating years of loans made by the provincial government to cover payouts to producers. These loans were written off by the provincial government by Order-in-Council 89,1016 on December 21, 1989.

The Department's *Proposed Regulations*, at section 355.49(g), state that "where during a year, a government forgives all or part of a loan, the Department will treat the forgiven amount as a grant and will expense or allocate it." The Department considers this grant to be non-recurring because the benefits are exceptional. (*General Issues Appendix*) (58 FR 37226)). Because the grant allocation period is three years, the last year in which producers of live swine may have received benefits under this program was 1991–92. However, New Brunswick did not export to the United States during that review period. Therefore, we preliminarily determine that this program was terminated and that no residual benefits accrued to swine producers after the 1991–92 review period. For a more detailed discussion on the Department's decision *see Memorandum on the New Brunswick Hog Price Stabilization Plan*, to Barbara E. Tillman from The Team dated May 15, 1996, which is on file in the CRU.

(B) Other Programs

We have also examined the following programs and preliminarily determine that they were terminated prior to April 1, 1991, and that no residual benefits were provided during the 1991–92, 1992–93 and 1993–94 review periods: (1) Canada/Alberta Swine Improvement Program Study; (2) Canada/Ontario Western Agribition Livestock Transportation Assistance Program; (3) Canada/Ontario Stabilization Plan for Hog Producers; (4) Alberta Red Meat Interim Insurance; (5) Ontario Livestock Improvement Program for Northern Ontario; (6) Ontario Pork Industry Improvement Plan; (7) Prince Edward Island Interest Payments on Assembly Yard Loan; and (8) Prince Edward Island Swine Incentive Policy.

Preliminary Results of Review

We preliminarily determine the total net subsidy on live swine from Canada to be Can$0.0594 per kilogram for the 1991–92 review period, Can$0.0609 per kilogram for the 1992–93 review period, and Can$0.0099 per kilogram for the 1993–94 review period.

If the final results of these reviews remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to assess countervailing duties of Can$0.0594 per kilogram on shipments of live swine exported on or after April 1, 1991 and on or before March 31, 1992, Can$0.0609 per kilogram on shipments of live swine exported on or after April 1, 1992 and on or before March 31, 1993, and Can$0.0099 per kilogram on shipments of live swine exported on or after April 1, 1993 and on or before March 31, 1994.

Furthermore, if our final determination upholds our preliminary determination to revoke, in part, with respect to slaughter sows and boars and weanlings, the Department intends to instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, and to refund any estimated countervailing duties collected for all unliquidated entries of slaughter sows and boars and weanlings made on or after April 1, 1991, the effective date of the partial revocation, in accordance with 19 C.F.R. 355.25(d)(5). We will also instruct the U.S. Customs Service to refund interest for entries of slaughter sows and boars and weanlings made on or after April 1, 1991, in accordance with section 778 of the Act.

The Department also intends to instruct the U.S. Customs Service to collect a cash deposit of estimated countervailing duties of Can$0.0099 per kilogram on shipments of all live swine, except slaughter sows and boars and weanlings, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 C.F.R. section 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs under 19 C.F.R. section 355.38(c) are due. The Department will publish the final results of these administrative reviews including the results of its analysis of issues raised in any case or rebuttal briefs.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. section 1675(a)(1)) and 19 C.F.R. 355.22.

Dated: May 20, 1996.

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–13318 Filed 5–28–96; 8:45 am]

BILLING CODE 3510–DS–P

Determination Not To Revoke Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty orders.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its determination not to revoke the countervailing duty orders listed below.

EFFECTIVE DATE: May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Cameron Cardozo, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1996, the Department published in the **Federal Register** (61 FR 7475) its intent to revoke the countervailing duty orders listed below. Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party (as defined in sections 355.2(i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) objects to revocation and no interested party requests an administrative review by the last day of the 5th anniversary month.

Within the specified time frame, we received from a domestic interested party either an objection to our intent to revoke, or a request for administrative review, for each of these countervailing duty orders. Therefore, because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke these orders.

This determination is in accordance with 19 CFR 355.25(d)(4).

Countervailing duty orders	
Brazil: Brass Sheet and Strip (C–351–604).	01/08/87 52 FR 698
Chile: Standard Carnations (C–337–601).	03/19/87 52 FR 8635
France: Brass Sheet and Strip (C–427–603).	03/06/87 52 FR 6996
Iran: Raw Pistachios (C–507–501).	03/11/86 51 FR 8344
Israel: Oil Country Tubular Goods (C–508–601).	03/06/87 52 FR 6999
Korea: Stainless steel Cookware (C–580–602).	01/20/87 52 FR 2140
Spain: Stainless Steel Wire Rod (C–469–004).	01/03/83 48 FR 52
Taiwan: Stainless steel Cookware (C–583–604).	01/20/87 52 FR 2141
Turkey: Welded Carbon Steel Pipes and Tubes (C–489–502).	03/07/86 51 FR 7984
Turkey: Welded Carbon Steel Line Pipe (C–489–502).	03/07/86 51 FR 7984

Dated: May 16, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 96–13323 Filed 5–28–96; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of application for an amendment to an export trade certificate of review, application No. 88–4A013.

SUMMARY: The Department of Commerce has received an application to amend an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to determining whether the Certificate should be amended. An original and five (5) copies should be submitted not later than 30 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88–4A013."

CISA Export Trade Group, Inc.'s (CISA ETC) original Certificate of Review No. 88–00013 was issued to CISA on October 19, 1988. Notice of issuance of the Certificate was published in the **Federal Register** on October 26, 1988 (53 FR 43253). Previous amendments to the Certificate were issued on March 2, 1990 (55 FR 23123, June 6, 1990) and on December 16, 1991 (57 FR 883, January 9, 1992).

Summary of the Application:

Applicant: CISA Export Trade Group, Inc. 124 Fieldstone Drive, Venice, Florida 34292.

Contact: Pierre A. Dahmani, Legal Counsel, Telephone: (312) 876–0200.

Application No.: 88–4A013.

Date Deemed Submitted: May 8, 1996.

Proposed Amendment: CISA Export Trade Group, Inc. seeks to amend its Certificate to:

1. add the following companies as "Members" within the meaning of Section 325.2 (1) of the Regulations (15 CFR 325.2(1)): Allied Mineral Products, Inc., Columbus, Ohio; American Colloid Company, Arlington Heights, Illinois; Borden, Inc./North American Resins, Westchester, Illinois; Delta Resins & Refractories, Inc, Milwaukee, Wisconsin; Eirich Machines, Inc., Gurnee, Illinois; Equipment Merchants Int'l, Inc., Cleveland, Ohio; Fargo Wear, Detroit, Michigan; Palmer Manufacturing Company, Springfield, Ohio; Thermtroniz, Adelanto, California; Vulcan Engineering Company, Helena, Alabama;

2. delete the following company as a "Member" within the meaning of Section 325.2(1) of the Regulations (15 CFR 325.2(1)): Carrier Vibrating Equipment, Inc.;

3. change the name of National Engineering Company to Simpson Technologies Corp.

Dated: May 22,1996.

W. Dawn Busby,

Director, Office of Export, Trading Company Affairs.

[FR Doc. 96–13339 Filed 5–28–96; 8:45 am]

BILLING CODE 3510–DR–M

Environmental Technologies Trade Advisory Committee

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Environmental Technologies Trade Advisory Committee (ETTAC) will hold its seventh plenary meeting. The ETTAC was created on May 31, 1994, to promote a close working-relationship between government and industry and to expand export growth in priority and emerging markets for environmental products and services.

DATES AND PLACE: May 29, 1996 from 9:00 a.m. to 5:00 p.m. The meeting will take place in Room 6800 of the Department of Commerce, 14th Street and Constitution Avenue NW., Washington D.C. 20230.

The agenda will include a discussion of ETTAC recommendations with agency representatives from the Environmental Trade Working Group of the Trade Promotion Coordinating Committee; a discussion of a background report prepared by the ETTAC that will accompany its recommendations to the Secretary of Commerce; future steps for the ETTAC.

This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jane Siegel, Department of Commerce, Room 1002, Washington D.C. 20230. Seating is limited and will be on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: The Office of Environmental Technologies Exports, Room 1003, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, phone (202) 482–5225, facsimile (202) 482–5665 TDD 1–800–833–8723.

Dated: May 21, 1996.

Anne Alonzo,

Deputy Assistant Secretary for Environmental Technologies Exports.

[FR Doc. 96–13327 Filed 5–28–96; 8:45 am]

BILLING CODE 3510–DR–M

National Institute of Standards and Technology

[Docket No. 950802199–6064–02]

RIN 0693–XX10

Approval of Withdrawal of Eighteen Federal Information Processing Standards

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce that the Secretary of Commerce has approved the withdrawal of eighteen Federal Information Processing Standards (FIPS).

On August 22, 1995, notice was published in the **Federal Register** (60 FR 43586–43587) proposing withdrawal of eighteen Federal Information Processing Standards (FIPS). These FIPS adopt voluntary industry standards for Federal government use. In some cases, the FIPS documents have not been updated to reference current or revised voluntary industry standards. In other cases, commercial products implementing the voluntary industry standards, such as punched cards, paper tape, optical character recognition equipment, and microfilm readers, are widely available; as a result, it is no longer necessary for the government to mandate standards in these areas.

Withdrawal means that the FIPS will no longer be part of a subscription series that is provided by the National Technical Information Service, and that NIST will no longer be able to support the standards by answering implementation questions or updating the FIPS when the voluntary industry standards are revised. Current voluntary industry standards should be used by agencies in their procurement actions were appropriate, in accordance with OMB Circular A–119, Federal Participation and Use of Voluntary Standards.

The written comments submitted by interested parties and other material available to the Department relevant to these standards were revised by NIST. On the basis of this review, NIST recommended that the Secretary approve the withdrawal of the eighteen FIPS, and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenue, NW., Washington, DC 20230.

This notice provides only the FIPS publication number, title, and the technical specifications number for each of the eighteen standards being withdrawn:

—FIPS 2–1, Perforated Tape Code for Information Interchange (ANSI X3.6–1965/R1991)
—FIPS 13, Rectangular Holes in Twelve-Row Punched Cards (ANSI X3.21–1967/R1991)
—FIPS 14–1, Hollerith Punched Card Code (ANSI X3.26–1980/R1991)
—FIPS 26, One-Inch Perforated Paper Tape for Information Interchange (ANSI X3.18–1967/R1990)
—FIPS 27, Take-Up Reels for One-Inch Perforated Tape for Information Interchange (ANSI X3.20–1967/R1990)
—FIPS 32–1, Character Sets for Optical Character Recognition (OCR) (ANSI X3.2–1970/R1976, X3.17–1981, and X3.49–1975/R1982)
—FIPS 33–1, Character Set for Handprinting (ANSI X3.45–1982)
—FIPS 40, Guideline for Optical Character Recognition Forms
—FIPS 54–1, Computer Output Microform (COM) Formats and Reduction Ratios, 16mm and 105mm (ANSI/AIIM MS5–1991 and MS14–1988)
—FIPS 82, Guideline for Inspection and Quality Control for Alphanumeric Computer-Output Microforms (ANSI/AIIM MS1–1980)
—FIPS 84, Microfilm Readers (ANSI/AIIM (NMA) MS20–1979)

—FIPS 85, Optical Character Recognition (OCR) Inks (ANSI X3.86–1980)
—FIPS 89, Optical Character Recognition (OCR) Character Positioning (ANSI X3.93M–1981)
—FIPS 90, Guideline for Optical Character Recognition (OCR) Print Quality (ANSI X3.99–1983)
—FIPS 107, Local Area Networks: Baseband Carrier Sense Multiple Access with Collision Detection Access Method and Physical Layer Specifications and Link Layer Protocol (ANSI/IEEE 802.2 and 802.3)
—FIPS 108, Alphanumeric Computer Output Microform Quality Test Slide (AIIM MS28–1983)
—FIPS 129, Optical Character Recognition (OCR)—Dot Matrix Character Sets for OCR–MA (ANSI X3.111–1986)
—FIPS 149, General Aspects of Group 4 Facsimile Apparatus (ANSI/EIA–536–1988)

EFFECTIVE DATE: This withdrawal is effective May 29, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Radack, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–2833.

Authority: Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 5131 of the Information Technology Management Reform Act of 1996 and the Computer Security Act of 1987, Pub. L. 104–106.

Dated: May 22, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–13399 Filed 5–28–96; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0142]

Submission for OMB Review; Comment Request Entitled Past Performance Information

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0142).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Past Performance Information. A request for public comments was published at 61 FR 9983, March 12, 1996. One comment was received resulting in a change to block 11c of Standard Form 83–I, *i.e.*, including "not-for-profit institutions" as part of the affected public.

DATES: *Comment Due Date:* June 28, 1996.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0142, Past Performance Information, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

Past performance information is relevant information, for future source selection purposes, regarding a contractor's actions under previously awarded contracts. When past performance is to be evaluated, the rule states that the solicitation shall afford offerors the opportunity to identify Federal, state and local government, and private contracts performed by offerors that were similar in nature to the contract being evaluated.

A submission for OMB review entitled Past Performance Information was published in the **Federal Register** under the emergency processing procedure on March 12, 1996, with a notice of request for public comment. One comment was received calling attention to the fact that block 11c on Standard Form 83–I, Paperwork Reduction Act Submission, should have also been checked. Block 11 concerns "Affected public" and "c" is entitled "Not-for-profit institutions." As a result of the comment, block 11c has now been checked to include "not-for-profit institutions." The burden estimates have not been affected as a result of the comment because the burden estimates are based on the total number of estimated affected contract actions and not on the status of the contractors themselves.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *2* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *150,000*; responses per respondent, 4; total annual responses, *600,000*; preparation hours per response, *2*; and total response burden hours, *1,200,000*.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0142, Past Performance Information, in all correspondence.

Dated: May 22, 1996.

Patricia A. Ting,

Secretariat.

[FR Doc. 96–13357 Filed 5–28–96; 8:45 am]

BILLING CODE 6820–EP–P

Department of the Army Corps of Engineers

Availability of Surplus Land and Buildings Located on Fort Greely, Alaska

AGENCY: U.S. Army Corps of Engineers, Alaska District.

ACTION: Notice of Availability.

SUMMARY: This notice identifies surplus real property located within the cantonment area of Fort Greely, Alaska. Fort Greely is located 107 miles southeast of Fairbanks, Alaska, and is 5 miles south of Delta Junction, Alaska. The Richardson Highway traverses the eastern portion of the installation. Delta Junction is the northern terminus of the Alaska Highway.

FOR FURTHER INFORMATION CONTACT: For more information regarding particular properties identified in this notice (i.e., acreage, floor plans, existing sanitary facilities, etc.), contact Angie Gori, U.S. Army Engineer District, Alaska, ATTN: CENPA–RE–MD, Post Office Box 898, Anchorage, Alaska 99506–0898, telephone 907/753–2845, or Mr. Woodruff at the below address.

SUPPLEMENTARY INFORMATION: This surplus property is available under the provisions of the Federal Property and Administrative Services Act of 1949 and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. Notices of interest should be forwarded to the Delta/Greely Community Coalition, ATTN: Mr. Ray Woodruff, Executive Director, Post Office Box 780, Delta Junction, Alaska 99737–0780, telephone 907/895–1081.

The surplus real property consists of a parcel of land containing 1,785 acres and includes 210 buildings and facilities. The current range of uses include training, maintenance, research and development, storage, medical, administrative, barracks, family housing, transient quarters, community and utility plants.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 96–13381 Filed 5–28–96; 8:45 am]

BILLING CODE 3710–NL–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Acting Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 29, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 22, 1996.

Kent Hannaman,

Acting Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: New.
Title: William D. Ford Federal Direct Loan Program Income Contingent Repayment Plan Alternative Documentation of Income Form.
Frequency: Annually.
Affected Public: Individuals or households
Annual Reporting and Recordkeeping Hour Burden:
Responses: 75,000.
Burden Hours: 24,750.
Abstract: Borrowers in the William D. Ford Federal Direct Loan Program Income Contingent Repayment Plan will use this form to submit documentation of their current income when Adjusted Gross Income information is unavailable or does not reflect current income.
Type of Review: Revision.
Title: Income Contingent Repayment Plan Consent to Disclosure of Tax Information.
Frequency: Once every five years.
Affected Public: Individuals or households.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 235,288.
Burden Hours: 47,058
Abstract: This form is a means by which a William D. Ford Federal Direct Loan Program borrower (and, if married, the borrower's spouse) choosing to repay under the Income Contingent Repayment Plan provides written consent to the disclosure of certain tax return information by the Internal Revenue Service to the Department of Education and its agents for the purpose of calculating the borrower's monthly repayment amount.
Type of Review: Reinstatement.
Title: General Education Provisions Act (GEPA) 424 (formerly GEPA 406A) Biennial Report on the Distribution of Federal Education Funds.
Frequency: Biennially.
Affected Public: Federal Government, State, Local or Tribal Government, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 142.
Burden Hours: 3,420.
Abstract: Section 424 of the GEPA requires State to report on the distribution of funds for State-administered Federal education funds. This reporting requirement, previously known as GEPA 406A, underwent significant revisions during the 1994 reauthorization of the Elementary and Secondary Education Act, including changing the collection from annual to biennial, extending the reporting deadlines, and expanding the report to include Federally-administered programs.

[FR Doc. 96–13336 Filed 5–28–96; 8:45 am]

BILLING CODE 4000–01–P

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to

result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by May 28, 1996. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before July 29, 1996.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention; Wendy Taylor, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506 (c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 22, 1996.

Kent Hannaman,

Acting Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Impact Aid Funding Memorandum—Availability of Construction Funds for Certain Impact Aid Local Educational Agencies (LEAs).

Abstract: In order to be considered for special Impact Aid construction funding, certain Impact Aid LEAs must request consideration for the funding on or before May 28, 1996.

Additional Information: Due to the statutory deadline of May 28, the Department is requesting an emergency clearance for this collection. If this collection is not cleared by May 28, the Department will not be able to make grant awards by the end of the fiscal year. This notice is not intended to solicit comments because of the requested approval date of May 28.

Frequency: One-time.

Affected Public: State, local or Tribal Gov't, SEAs and LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 8.
Burden Hours: 24.

[FR Doc. 96–13337 Filed 5–28–96; 8:45 am].

BILLING CODE 4000–01–U.

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by June 7, 1996. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before July 29, 1996.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506 (c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Group, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 22, 1996.

Kent Hannaman,

Acting Director, Information Resources Group.

Office of Postsecondary Education

Type of Review: Revision.

Title: Drug and Violence Prevention Program in Higher Education, The Institution-Wide Program Competition.

Abstract: Safe and Drug-Free Schools and Communities National Programs (ESEA–A–2) legislation calls for drug and violence prevention programs that benefit college and university students. The Institution-Wide grant competition responds to the mandate by making federal funds available to colleges and universities through a competitive grant making process.

Additional Information: Congress approved this unfunded program during its final budget decisions. If the collection is not cleared quickly, the Department will not be able to fund postsecondary institutions in 1996.

Frequency: At time of grant application.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 240.
Burden Hours: 3,840.

[FR Doc. 96–13338 Filed 5–28–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Department of Energy/Los Alamos National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos National Laboratory.

DATES: Tuesday, June 4, 1996: 6:30 pm–9:30 pm; 7:00 pm to 7:30 pm (public comment session).

ADDRESSES: Northern New Mexico Community College, 1002 N. Onate, Espanola, New Mexico 87532, 505–753–8970.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Roybal, Los Alamos National Laboratory Citizens' Advisory Board Support, Northern New Mexico Community College, 1002 Onate Street, Espanola, NM 87352, (800)753–8970, or (505)753–8970.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Tuesday, June 4, 1996

6:30 PM Call to Order and Welcome
7:00 PM Public Comment
7:30 PM Old Business
8:30 PM Sub-Committee Reports
9:30 PM Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ms. Lisa Roybal, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Herman Le-Doux, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185–5400.

Issued at Washington, DC on May 22, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–13403 Filed 5–28–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[FERC–519]

Information Collection Submitted for Review and Request for Comments

May 22, 1996.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: In compliance with the requirements of Section 3507 of the Paperwork Reduction Act of 1995 (Pub L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is submitting a collection of information listed in this notice to OMB for review under the provisions of the Act.

DATES: Comments regarding this collection of information are best assured of having their full effect if received within 30 days of this notification.

ADDRESSES: Copies of the collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael P. Miller, Information Services Division, ED–12.4, 888 First Street NE., Washington, DC 20426. Comments should also be addressed to: Desk Officer, Federal Energy Regulatory Commission, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Abstract: The information collected under the requirements of FERC–519 "Disposition of Facilities, Mergers and Acquisitions of Securities" (OMB No. 1902–0082) is used by the Commission to implement the statutory provisions of Section 203 of the Federal Power Act (FPA), 16 U.S.C. Section 203 authorizes the Commission to grant approval for transactions in which a public utility disposes of jurisdictional facilities, merges such facilities with the facilities owned by another person, or acquires the securities of another public utility. Under the statute, the Commission must find that the proposed transaction will be consistent with the public interest. Section 318 of the FPA exempts certain persons from the requirements of Section 203 which would otherwise concurrently apply under the Public Utility Holding Company Act of 1935. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 33.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
30	1	80 hours	2,400 hours.

Estimated cost burden to respondents: 2,400 hours/2,087 hours per year × $102,000 per year = $117,298.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13353 Filed 5–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–118–001]

Eastern Shore Natural Gas Company; Notice of Proposed Changes In FERC Gas Tariff

May 22, 1996.

Take notice that on May 20, 1996 Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets in the above captioned docket, with proposed effective date of November 13, 1995.

ESNG states that the purpose of the instant filing is to supplement ESNG's January 19, 1996 Compliance Filing in Docket No. RP96–118–000 in order to reflect further revisions in ESNG's Purchased Gas Cost Adjustment (PGA) Clause required by the Commission order dated February 15, 1996.

On January 19, 1996, ESNG filed revised PGA tariff sheets (as directed by Commission order dated December 29, 1995 in Docket No. TQ96–2–23–000) to remove all references to the PGA regulations in effect prior to the issuance of Commission Order No. 582 in ESNG's currently effective PGA clause. Upon review of ESNG's January 19, 1996 filing the Commission found that ESNG had failed to remove references to PGA regulations on Original Sheet Nos. 250 and 253. In addition the Commission further required ESNG to incorporate relevant definitions formerly contained in previously effective Section 154.302 into its PGA provisions, adjusting the regulatory references as appropriate.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 325.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13345 Filed 5–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1356–000]

Entergy Power, Inc.; Notice of filing

May 22, 1996.

Take notice that on May 15, 1996, Entergy Power, Inc. tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 3, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13347 Filed 5–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–755–000]

Missouri Gas Energy, a Division of Southern Union Company, et al.; Notice of Order To Show Cause

May 22, 1996.

Take notice that on May 16, 1996, the Commission issued an order under section 5 of the Natural Gas Act for Panhandle Eastern Pipe Line Company (Panhandle) to show cause why, in light of its earlier agreement to interconnect with Stahl Specialty Company (Stahl) to provide interruptible service, it should not be required to provide an interconnect for Missouri Gas Energy (Missouri Gas) as well. In doing so, the Commission required that Panhandle explain, in particular, why it does not view Missouri Gas as "similarly situated" to Stahl. Additionally, the Commission required that Panhandle explain why other previously constructed interconnects for interruptible customers qualified for construction under its expressed policy while Missouri Gas does not, or explain why it changed its policy since it constructed, or decided to construct, those interconnects. The Commission required that Panhandle's response contain information concerning: (1) Other requests to construct facilities for interruptible service that Panhandle denied, including any requests for an interconnect for interruptible service that the customer subsequently converted to a request for firm service when the initial request was denied; and (2) specific operational and system integrity information concerning each requested interconnect which Panhandle considered when it denied the requests.

Any person desiring to be heard or to make a protest with reference the order to show cause should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed within 20 days of the date of publication of this notice in the Federal Register. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene.[1] Copies of the order to show cause are available on the Commission Issuance Posting System.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13348 Filed 5–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–240–000]

Northwest Alaskan Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 22, 1996.

Take notice that on May 17, 1996, Northwest Alaskan Pipeline Company (Northwest Alaskan), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, Thirty-Eighth Revised Sheet No. 5, with an effective date of July 1, 1996.

Northwest Alaskan states that it is submitting Thirty-Eighth Revised Sheet No. 5 reflecting a decrease in total demand charges for Canadian gas purchased by Northwest Alaskan from Pan-Alberta Gas Ltd. ("Pan-Alberta") and resold to Pan-Alberta Gas (U.S.), Inc. ("PAG-US") under Rate Schedules X–1, X–2 and X–3, and an increase in total demand charges for Canadian gas resold to Pacific Interstate Transmission Company ("PIT") under Rate Schedule X–4.

Northwest Alaskan states that it is submitting Thirty-Eighth Revised Sheet No. 5 pursuant to the provisions of the amended purchase agreements between Northwest Alaskan and PAG–US and PIT, and pursuant to Rate Schedules X–1, X–2, X–3 and X–4, which provide for Northwest Alaskan to file 45 days prior to the commencement of the next demand charge period (July 1, 1996 through December 31, 1996) the demand charges and demand charge adjustments which Northwest Alaskan will charge during the period.

Northwest Alaskan states that a copy of this filing has been served on Northwest Alaskan's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13349 Filed 5–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1742–000]

Southern California Edison Company; Notice of Filing

May 22, 1996.

Take notice that on May 7, 1996, Southern California Edison Company tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 338 and all supplements thereto.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888

[1] We note that persons who filed a motion to intervene in the complaint filed by Missouri Gas in this proceeding already are parties to the proceeding and do not have to file another motion to intervene.

First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 4, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13350 Filed 5–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT96–14–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 22, 1996.

Take notice that on May 17, 1996 Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheets:

Third Revised Sheet No. 624
First Revised Sheet No. 624A
Second Revised Sheet No. 647

Texas Eastern states that the purpose of this filing is to reflect the name change of Panhandle Trading Company to PanEnergy Gas Services, Inc. (PGS), which is the marketing company which manages day to day performance of Texas Eastern's remainnig gas purchase contracts.

The proposed effective date of these tariff sheets is June 17, 1996.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions, and all current interruptible customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13351 Filed 5–28–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11077–001]

Alaska Power and Telephone Company; Notice of Availability of Final Environmental Assessment

May 22, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for an original license for the Goat lake Hydroelectric Project, located on Pitchfork Falls, about 7 miles from the town of Skagway, in southeast Alaska.

The Federal Energy Regulatory Commission and the U.S. Forest Service have prepared a Final Environmental Assessment (FEA) for the project which analyzes existing and potential future environmental effects of the project. Our conclusion is that license issuance for the project, with appropriate environmental protective or enhancement measures, would not be a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13354 Filed 5–28–96; 8:45 am]

BILLING CODE 6717–01–M

Sunshine Act Meeting

May 22, 1996.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: May 29, 1996, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note—Items Listed on the Agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a Recording Listing Items Stricken from or Added to the Meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro
653rd Meeting—May 29, 1996, Regular Meeting (10:00 a.m.)

CAH–1.	DOCKET# DI94–1	001	TOWN OF ESTES PARK, COLORADO.
CAH–2.	DOCKET# P–2396	003	CENTRAL VERMONT PUBLIC SERVICE CORPORATION.
	OTHER#S P–2397	003	CENTRAL VERMONT PUBLIC SERVICE CORPORATION.
	P–2399	004	CENTRAL VERMONT PUBLIC CERVICE CORPORATION.
	P–2400	003	CENTRAL VERMONT PUBLIC SERVICE CORPORATION.
CAH–3.	DOCKET# P–2513	005	GREEN MOUNTAIN pOWER CORPORATION.
CAH–4.	DOCKET# P–9974	020	ROUGH AND READY HYDRO COMPANY.
CAH–5.	DOCKET# P–349	030	ALABAMA POWER COMPANY.
CAH–6.	OMITTED		
CAH–7.	DOCKET# P–3409	016	BOYNE USA RESORTS.

CONSENT AGENDA—ELECTRIC

CAE–1.	DOCKET# ER95–1141	000	CENTRAL POWER AND LIGHT COMPANY.
CAE–2.	OMITTED		

CAE–3.	OMITTED		
CAE–4.	OMITTED		
CAE–5.	DOCKET# ER96–1471	000	CLEVELAND ELECTRIC ILLUMINATING COMPANY.
CAE–6.	DOCKET# ER96–1497	000	MIDWEST ENERGY, INC.
CAE–7.	DOCKET# ER96–1551	000	PUBLIC SERVICE COMPANY OF NEW MEXICO.
CAE–8.	DOCKET# ER96–1554	000	PORTLAND GENERAL ELECTRIC COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY.
CAE–9.	DOCKET# ER96–1552	000	DAYTON POWER AND LIGHT COMPANY.
CAE–10.	DOCKET# ER96–1426	000	NORTHERN INDIANA PUBLIC SERVICE COMPANY.
	OTHER# ER96–1431	000	NIPSCO ENERGY SERVICES, INC.
CAE–11.	DOCKET# TX96–1	000	CITIZENS UTILITIES COMPANY.
	OTHER#S TX96–3	000	CITIZENS UTILITIES COMPANY.
CAE–12.	DOCKET# ER94–1559	000	PUGET SOUND POWER & LIGHT COMPANY.
CAE–13.	DOCKET# ER96–391	001	KANSAS CITY POWER & LIGHT COMPANY.
	OTHER#S ER94–1045	008	KANSAS CITY POWER & LIGHT COMPANY.
CAE–14.	DOCKET# ER95–1787	001	TEXACO NATURAL GAS INC.
CAE–15.	DOCKET# ER96–108	002	DUKE/LOUIS DREYFUS L.L.C.
	OTHER#S ER95–760	002	DUKE POWER COMPANY.
	ER96–109	001	DUKE ENERGY MARKETING CORPORATION.
	ER96–110	002	DUKE POWER COMPANY.
CAE–16.	DOCKET# QF89–58	006	MEGAN-RACINE ASSOCIATES, INC.
CAE–17.	DOCKET# QF95–302	003	BROOKLYN NAVY YARD COGENERATION PARTNERS, L.P.
CAE–18.	DOCKET# ER96–930	001	PENNSYLVANIA POWER & LIGHT COMPANY.
	OTHER#S ER96–931	001	PENNSYLVANIA POWER & LIGHT COMPANY.
	ER96–932	001	PENNSYLVANIA POWER & LIGHT COMPANY.
	ER96–933	001	PENNSYLVANIA POWER & LIGHT COMPANY.
CAE–19.	DOCKET# EL94–75	001	CLEVELAND ELECTRIC ILLUMINATING COMPANY V. CITY OF CLEVELAND, OHIO.
	OTHER#S EL94–80	001	CITY OF CLEVELAND, OHIO V. CLEVELAND ELECTRIC ILLUMINATING COMPANY.
	EL94–86	001	CITY OF CLEVELAND, OHIO V. CLEVELAND ELECTRIC ILLUMINATING COMPANY.
CAE–20.	DOCKET# ER95–1561	001	MONTAUP ELECTRIC COMPANY.
CAE–21.	DOCKET# ER95–1842	001	NEW ENGLAND POWER COMPANY.
	OTHER#S ER92–764	005	NEW ENGLAND POWER COMPANY.
	ER92–766	005	NORTHEAST UTILITIES SERVICE COMPANY.
	ER95–1668	001	NORTHEAST UTILITIES SERVICE COMPANY.
CAE–22.	DOCKET# EL91–32	003	POWER AUTHORITY OF THE STATE OF NEW YORK V. LONG ISLAND LIGHTING COMPANY.
	OTHER#S EL91–34	003	MUNICIPAL ELECTRIC UTILITIES ASSOCIATION OF NEW YORK V. LONG ISLAND LIGHTING COMPANY.
CAE–23.	DOCKET# EL96–46	000	METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA.
CAE–24.	DOCKET# AC96–81	000	PECO ENERGY COMPANY.
CAE–25.	DOCKET# EL96–2	000	ASHBURNHAM MUNICIPAL LIGHT DEPARTMENT, ET AL. V. MAINE YANKEE ATOMIC POWER COMPANY.
CAE–26.	DOCKET# NJ96–1	000	SOUTH CAROLINA PUBLIC SERVICE AUTHORITY.

CONSENT AGENDA—GAS AND OIL

CAG–1.	OMITTED		
CAG–2.	DOCKET# RP96–211	000	TRANSCONTINENTAL GAS PIPE LINE CORPORATION.
	OTHER#S RP95–197	010	TRANSCONTINENTAL GAS PIPE LINE CORPORATION.
CAG–3.	DOCKET# RP96–215	000	FLORIDA GAS TRANSMISSION COMPANY.
	OTHER#S RP96–215	001	FLORIDA GAS TRANSMISSION COMPANY.
CAG–4.	DOCKET# RP96–217	000	GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP.
CAG–5.	DOCKET# RP96–218	000	TEXAS EASTERN TRANSMISSION CORPORATION.
CAG–6.	DOCKET# RP96–222	000	COLUMBIA GAS TRANSMISSION CORPORATION.
CAG–7.	DOCKET# tM96–9–23	000	EASTERN SHORE NATURAL GAS COMPANY.
	OTHER#S TM96–10–23	000	EASTERN SHORE NATURAL GAS COMPANY.
CAG–8.	DOCKET# RP96–223	000	PANHANDLE EASTERN PIPE LINE COMPANY.
CAG–9.	DOCKET# RP96–224	000	PANHANDLE EASTERN PIPE LINE COMPANY.
CAG–10.	DOCKET# RP96–225	000	NATURAL GAS PIPELINE COMPANY OF AMERICA.
CAG–11.	OMITTED		
CAG–12.	OMITTED		
CAG–13.	DOCKET# RP96–213	000	KERN RIVER GAS TRANSMISSION COMPANY.
CAG–14.	DOCKET# RP96–99	000	NORA TRANSMISSION COMPANY.
	OTHER#S RP96–99	000	NORA TRANSMISSION COMPANY.
CAG–15.	DOCKET# RP96–1–8	000	SOUTH GEORGIA NATURAL GAS COMPANY.
	OTHER#S RP95–38	000	SOUTH GEORGIA NATURAL GAS COMPANY.
CAG–16.	DOCKET# RP95–411	000	PANHANDLE EASTERN PIPE LINE COMPANY.
	OTHER#S RP95–411	001	PANHANDLE EASTERN PIPE LINE COMPANY.
CAG–17.	DOCKET# RP96–51	002	PANHANDLE EASTERN PIPE LINE COMPANY.
	OTHER#S RP96–51	000	PANHANDLE EASTERN PIPE LINE COMPANY.
CAG–18.	DOCKET# PR96–111	000	SEA ROBIN PIPELINE COMPANY.
CAG–19.	DOCKET# PR96–16	000	OLYMPIC PIPELINE COMPANY.
	OTHER#S RP95–17	000	OLYMPIC PIPELINE COMPANY.
CAG–20.	DOCKET# RP91–26	015	EL PASO NATURAL GAS COMPANY.

	OTHER#S RP91-162	006	EL PASO NATURAL GAS COMPANY.
CAG-21.	DOCKET# RP95-449	002	TRUNKLINE GAS COMPANY
CAG-22	OMITTEED		
CAG-23	DOCKET #OR95-2	001	SANTEE DISTRIBTUING COMPANY V. DIXIE PIPELINE COMPANY.
CAG-24	DOCKET #SA94-5	001	CENTANA INTRASTATE PIPELINE COMPANY.
CAG-25	DOCKET #RP95-88	007	TENNSSEE GAS PIPELINE COMPANY.
CAG-26	OMITTED		
CAG-27	DOCKET #MG96-10	000	CARNEGIE INTERSTATE PIPELINE COMPANY.
CAG-28	OMITTED		
CAG-29	DOCKET #CP95-482	001	COLUMBIA GAS TRANSMISSION CORPORATION.
CAG-30	OMITTED		
CAG-31	DOCKET #CP95-76	001	TEXAS EASTERN TRANSMISSION CORPORATION.
	OTHER # SCP95-2	000	TEXAS EASTERN TRANSMISSION CORPORATION.
	CP95-2	001	TEXAS EASTERN TRANSMISSION CORPORATION.
	CP95-76	000	TEXAS EASTERN TRANSMISSION CORPORATION.
	CP95-76	002	TEXAS EASTERN TRANSMISSION CORPORATION.
CAG-32	DOCKET #CP95-376	000	MISSISSIPPI RIVER TRANSMISSION CORPORATION AND NORMA FIELD SERVICES CORPORATION.
CAG-33	DOCKET #95-700	001	WILLIAMS NATURAL GAS COMPANY.
	OTHER SCP95-700	000	WILLIAMS NATURAL GAS COMPANY.
CAG-34	DOCKET #CP95-609	000	EQUITRANS, INC.
CAG-35	OMITTED		
CAG-36	OMITTED		
CAG-37	DOCKET #CP95-500	001	SOUTHERN NATURAL GAS COMPANY.
CAG-38.	DOCKET #RP96-226	000	YOUNG GAS STORAGE COMPANY, LTD.
	HYDRO AGENDA		
H-1	RESERVED		
	ELECTRIC AGENDA		
E-1.	RESERVED		
	OIL AND GAS AGENDA		
I	PIPELINE RATE MATTERS		
PR	RESERVED		
II.	PIPELINE CERTIFICATE MATTERS		
PC-1.	RESERVED		

Lois D. Cashell,

Secretary.

[FR Doc. 96-13484 Filed 5-23-95; 4:54 pm]

BILLING CODE 6717-01-P

[Docket No. RM95-4-000]

Revisiosn to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies; Notice of Revised Electronic Filing Specifications for Index of Customers and Discount Transportation Rate Report

May 22, 1996.

On September 28, 1995, the Federal Energy Regulatory Commission (Commission) issued Order No. 581, amending its Uniform System of Accounts, forms, and reports and statements for natural gas companies.[1] The changes wrought by the rule include modifications to the Commission's electronic filing requirements.

Although Order No. 581 imposed new and revised electronic filing requirements, it did not include the final electronic filing specifications. On February 29, 1996, the Commission issued "Notice Adopting Electronic Filing Specifications for Index of Customers and Discount Transportation Rate Report" (the Notice) in Docket No. RM95-4-000.[2] The Notice contained the instructions for filing the Index of Customers and discount rate reports electronically.[3] The first Index of Customers filing was due April 1, 1996. The first discount rate report filed electronically was due with the filing of the March report.

On April 29, 1996, the Commission issued an Order on Clarification addressing requests for clarification of the instructions for filing the Index and discount rate reports electronically. The Commission agreed to make two modifications to its instructions. The Commission directed staff to include these changes, and other minor modifications staff has identified, in revised instruction manuals to be issued soon after issuance of the Notice.

In compliance with the Notice, staff is revising the instruction manuals for the Index of Customers and discount rate reports appended as Attachments A and B, respectively.[4]

Changes Required by the Order on Clarification

In accordance with the Order on Clarification, General Instruction 1(B) of both sets of instructions is modified to eliminate the impression that the respondent has the election to comply with the Index of Customers and discount rate report requirements. The phrase "[i]f the respondent does not want to report a value for a specific data item on the record, then the data item can be omitted * * * is replaced by the phrase "If a data item is not applicable, the data item must be omitted, * * *.". A similar modification is made at General Instruction 5(B).

In the instruction manual for the Index of Customers, the last sentence of the Purpose section is revised to clarify that the electronic file must be downloadable from the pipeline's EBB.

Minor Changes Common to Both Sets of Instructions

Staff desires to make several minor modifications to correct typographical errors and make other corrections. Due to experience gained from the filing of the Index of Customers and discount rate reports in April, several instructions are added or clarified to avoid confusion.

The section, What to Submit, now instructs the pipeline on the proper contents of a revised filing. The instructions applicable to the Report Date are clarified. The Report Date is the date the pipeline expects to file the report with the Secretary of the Commission. In other words, the Report Date is the anticipated filing date.

The instructions concerning the footnote record are revised. The data item, Footnote ID, is renamed Footnote Number to avoid confusion with a data item of the same name on the detail record. The format of this data item is changed to numeric. The instruction is rewritten to ensure that only the number of the footnote is reported on the footnote record. The proper format for the footnote record is displayed at page 10 of the instructions.

Recently issued pipeline ID codes are added to the pipeline ID code listing. Erroneous pipeline ID codes are corrected. Several pipeline names are also corrected.

In the appendix containing the file creation hints, instructions for saving a tab delimited file in Wordperfect 6.0 are added.

Modifications Unique to the Index of Customers

In the instructions concerning the detail record, the definition of the data item, Max Storage Quantity, is clarified. There has been some confusion over which storage contract quantity the Commission requires to be reported. The Max Storage Quantity is the largest quantity of natural gas the pipeline is obligated to store for the shipper under the reported contract. The commission does not want a daily injection or withdrawal quantity reported in this field. Similarly, a pipeline must not report the daily injection or withdrawal quantity in the field reserved for the data item, Max Daily Transportation Quantity.

Staff would also like to bring to the pipelines' attention two instructions to which some pipelines are not adhering. First, the regulation at 18 CFR 284.106(c)(3)(i) requires the pipeline to report the full legal name of the customer. Some of the indices received to date do not reflect the full legal name of the customers.

Several guidelines should be followed when recording a customer's name. Take care to check the correct spelling of the name. TransCanada Pipelines Limited was spelled also TransCanada PipeLines Limited. Do not leave words out of a customer's name. The name, Washington Gas Light Company, was submitted correctly in some instances but also incorrectly as, Washington Gas Light, and Washington Gas.

Pay attention to punctuation and do not abbreviate words within the name. NGC Transportation, Inc. was spelled:

NGC Transportation Inc.
NGC Transportation, Inc.
NGC TRANSPORTATION, INC.
NGC TRANS., INC.

By far, however, the most common error is the omission of the words company, corporation, or Inc. The pipeline must report the full legal name of the shipper.

The regulation at 18 CFR 284.106(c)(3) requires the pipeline to report all firm transportation or storage service contracts. Individually certificated contracts appearing in Volume No. 2 of the pipeline's FERC Gas Tariff must be included. Several pipelines appear to have excluded these contracts from their indices. All firm transportation and storage contracts must be reported in the Index of Customers, including individually certificated transactions.

Modifications Unique to the Discount Rate Report

The Commission received several discount rate reports in April which did not contain a paper copy of the report. The Commission requires a paper copy filing of the discount rate report. To avoid any further confusion, an instruction is added in the section, What to Submit, requiring an original and at least five paper copies of the letter of transmittal and of the data items required by 18 CFR 284.7(c)(6) to accompany the electronic filing.

The section, When to Submit, is modified to clarify that all reports submitted subsequent to the report due for March must comply with the electronic filing instructions. All resubmissions filed after April 15, 1996, therefore, no matter to what billing periods they apply, must be filed electronically.

General Instruction 3 clarifies the file naming convention. Resubmissions for prior months must be segregated into separate files. However, they may be filed on a single diskette if submitted under the cover of a single letter of transmittal.

General Instruction 5(C) is revised to refer to the measurement basis to be used when reporting the maximum and discounted rates. All of the rates must be reported on the same measurement basis as the rates reported in the pipeline's FERC Gas Tariff. General Instruction 5(E) is modified to remind pipelines not to include dollar signs when reporting rates. General Instruction 7(B) is deleted since no rate schedules are reported in the discount rate report.

The format for the paper copy of the discount rate report is unspecified. Several pipelines have simply printed on paper the contents of the electronic file. This is an acceptable format with the following modifications:

(a) The pipeline must add column headers to the data to explain the contents of each column.

(b) The Item ID must appear in the column heading for each data item so the Footnote ID can be properly interpreted.

Conclusion

The filing requirements and regulations have been carefully crafted to ensure the data submitted by the pipelines is compatible with typical computer processing techniques. It is imperative for pipelines to adhere closely to the instructions to ensure the data's usefulness. Where a pipeline's data on file with the Commission does not conform to the regulations and filing requirements, we would expect to see a revision filed to bring the data into conformance.

Lois D. Cashell,

Secretary.

[FR Doc. 96-13352 Filed 5-28-96; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5510-5]

Agency Information Collection Activities Up for Renewal; Neshap for Benzene Emissions for Benzene Waste Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C.

[1] Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies, 60 FR 53019 (October 11, 1995).

[2] 61 FR 8870, March 6, 1996.

[3] The requirement to file an Index of Customers is set forth in §§ 284.106(c) and 284.223(b). The requirement to file the discount rate report is contained in § 284.7(c)(6). The instructions for filing the Index of Customers electronically are entitled "Instruction Manual for Electronic Filing of the *Index of Customers*." The instructions for filing the discount rate reports electronically ere entitled "Instruction Manuel for Electronic Filing of the *Discount Transportation Rate Report*."

[4] These Attachments are not being published in the **Federal Register**, but are available from the Commission's Public Reference Room.

3501 *et* seq.), this notice announces that the Information Collection Request (ICR) listed below is coming up for renewal. Before submitting the renewal package to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before July 29, 1996.

ADDRESSES: United States Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Office of Compliance, Manufacturing, Energy and Transportation Division, Energy and Transportation Branch (2223A), 401 M Street, SW, Washington, DC. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Ráfael Sanchez, United States Environmental Protection Agency, Office of Enforcement and Compliance Assurance, Office of Compliance, Manufacturing, Energy and Transportation Division, Energy and Transportation Branch (2223A), 401 M Street, SW. Telephone: (202) 564–7028. Facsimile: (202) 564–0039. Internet: Sanchez.Rafael@EPAMAIL.EPA.GOV

SUPPLEMENTARY INFORMATION:

Affected entities: Entities affected by this action are facilities which generate wastes that contain benzene, such as chemical manufacturing plants, coke by-product recovery plants, and petroleum refineries. Other affected entities are those owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDF) which receive wastes from the above facilities.

Title: NESHAP for Benzene Emissions for Benzene Waste Operations—40 CFR part 61, subpart FF, OMB No. 2060–0183, Expiration Date: 8/31/96.

Abstract: The National Emission Standards for Benzene Emissions for Benzene Waste Operations were promulgated on March 7, 1990. Due to widespread confusion among affected industries concerning key provisions of the rule, EPA issued a stay of effectiveness of subpart FF on March 5, 1992 (57 FR 8012). The stay remained in effect until January 7, 1993, when EPA promulgated clarifying amendments to Subpart FF. The standards are codified at 40 CFR part 61, subpart FF.

The provisions of this subpart apply to owners and operators of chemical manufacturing plants, coke by-product recovery plants, and petroleum refineries. In addition, this subpart applies to owners and operators of hazardous waste treatment, storage, and disposal facilities that treat, store, or dispose of hazardous waste generated from the above facilities.

The calculation of total annual benzene (TAB) quantity in all aqueous waste streams determines whether a facility is subject to control requirements of the rule. A facility at or above the TAB threshold in the rule of 10 megagram per year (Mg/yr) is required to control each benzene waste stream at the facility, or demonstrate that the waste stream meets a criterion in the rule for exemption from control. A facility with a TAB below 10 Mg/yr is only subject to the rule's reporting and record keeping provisions, unless the facility receives a waste from offsite that must be controlled in order to meet Subpart FF, in which case that waste must be controlled. A facility with a TAB less than 1 Mg/yr is only subject to maintain documentation of the quantity of benzene in the waste.

Owners or operators of the affected facilities described above must make the following one-time-only notices or reports: notification of anticipated startup; notification of actual startup; notification of an emission test, report following an emission test; notification of any physical/operational changes (i.e., modification) that could increase emissions, a monitoring system performance test; and a report following a monitoring system performance test. These notifications and reports are general provisions and required of all sources subject to any NESHAP.

Reporting requirements specific to benzene waste operations include submission, within 90 days after January 7, 1993, or by the initial startup for a new source, of an initial report that summarizes the regulatory status of each waste stream containing benzene. Each owner or operator who has no benzene onsite in wastes, products, byproducts, or intermediary shall submit an initial report that is a statement to this effect.

If the TAB quantity from facility waste is less than 1 Mg/yr, then the owner and operator shall submit a report that updates its regulatory status whenever there is a change in the process that may cause the TAB to increase.

If the TAB is less than 10 Mg/yr, but equal to or greater than 1 Mg/yr, then the owner or operator shall submit a report that updates the regulatory status of each waste stream containing benzene. The report shall be submitted annually and whenever there is a change in the process generating the waste stream that could cause the total annual benzene quantity from facility waste to increase to 10 Mg/yr or more. If the information in the annual report does not change in the following year, the owner or operator may submit a statement to that effect.

If the total annual benzene quantity from facility waste is equal to or greater than 10 Mg/yr, then the owner or operator shall submit the following reports:

(1) Within 90 days after January 7, 1993, or by the date of initial startup for a new source with an initial startup after the effective date, a certification that the equipment necessary to comply with these standards has been installed, and that the required initial inspections or tests have been carried out in accordance with this subpart.

(2) Beginning on the date that the equipment necessary to comply with these standards has been certified, the owner or operator shall submit, annually, a report that updates the regulatory status of each stream.

(3) Beginning three months after the date that the equipment necessary to comply with these standards has been certified, the owner or operator shall submit, quarterly, a certification that all the required inspections have been carried out in accordance with the requirements of this subpart.

(4) Beginning three months after the date that the equipment necessary to comply with these standards has been certified, the owner or operator shall submit a report, quarterly, that summarizes all the monitoring of operations.

(5) Beginning one year after the date that the equipment necessary to comply with these standards has been certified, the owner or operator shall submit, annually, a report that summarizes all inspections during which detectable emissions are measured or a problem (such as a broken seal, gap or other problem) that could result in benzene emissions is identified, including information about the repairs or corrective action taken.

Monitoring and record keeping requirements specific to benzene waste operations include maintaining records that identify each waste stream at the facility subject to this subpart, and indicate whether the waste stream is controlled for benzene emissions in accordance with this subpart. In addition, the owner or operator shall maintain the following records:

(1) For each waste stream not controlled for benzene emissions in accordance with this subpart, the records shall include all test results, measurements, calculations, and other documentation used to determine the following information for the waste stream: waste stream identification, water content, whether or not the waste stream is a process wastewater stream, annual waste quantity, range of benzene concentrations, annual average flow-weighted benzene concentration, and annual benzene quantity.

(2) For each process wastewater stream not controlled for benzene emissions, the records shall include all measurements, calculations, and other documentation used to determine that the continuous flow of process wastewater is less than 0.02 liters per minute, or the annual waste quantity of process wastewater is less than 10 Mg/yr.

(3) For each facility where process wastewater streams are controlled for benzene emissions, the records shall include for each treated process wastewater stream: all measurements, calculations, and other documentation used to determine the annual benzene quantity in the process wastewater stream exiting the treatment process.

(4) For each facility where wastewater streams are controlled for benzene emissions, the records shall include all measurements, calculations, and other documentation used to determine the annual benzene quantity in the wastewater streams exiting wastewater treatment systems at the facility.

(5) Owners or operators transferring waste off-site to another facility for treatment shall maintain documentation for each offsite waste shipment that includes the following information: date waste is shipped offsite, quantity of waste shipped offsite, name and address of the facility receiving the waste, and a copy of the notice sent with the waste shipment.

(6) An owner or operator using control equipment, shall maintain engineering design documentation for all control equipment installed on the waste management unit. The documentation shall be retained for the life of the control equipment.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement

Most of the industry costs associated with the information collection activity in the standards are labor. The current average annual burden to industry from these record keeping and reporting requirements is estimated at 17,028 person-hours. The respondent costs have been calculated based on $14.50 per hour plus 110 percent overhead. The current average annual burden to industry is estimated to be $518,503.

Based upon available information, it has been estimated that 395 facilities are subject to the standards, and 140 of those are estimated to have more than 10 Mg/yr of benzene in the waste. In addition, EPA estimates that these 140 facilities have a total of 2,819 waste streams per facility for which initial benzene concentration determination could be made. A total of 57 facilities are estimated to have more than 50 Mg/yr of benzene in their wastes and are expected to apply controls without applying for exceptions.

No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

Send comments regarding these matters, or any aspect of the information collection, including suggestions for reducing the burden, to the address listed above.

Dated: May 17, 1995.

Elaine G. Stanley,

Director, Office of Compliance.

[FR Doc. 96–13436 Filed 5–28–96; 8:45 am]

BILLING CODE 6560–60–P

[FRL–5511–3]

Proposed Settlement Agreement, Determinations of Attainment of the Ozone Standard by Pittsburgh-Beaver Valley, Pennsylvania and Reading, Pennsylvania Ozone Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: Inaccordance with Section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a proposed settlement agreement concerning litigation instituted against the Environmental Protection Agency ("EPA") regarding EPA's July 19, 1995 determinations regarding the attainment of the ozone standard by the Pittsburgh-Beaver Valley, Pennsylvania, and Reading, Pennsylvania ozone nonattainment areas and the applicability of certain pollution control requirements, 60 Fed. Reg. 37,015 (July 19, 1995). *Delaware Valley Citizens' Council for Clean Air* v. *Browner*, No. 95–3494 (3rd Cir.) and *Delaware Valley Citizens' Council for Clean Air* v. *Browner*, No. 96–3086 (3rd Cir.).

The proposed settlement agreement provides that, no later than June 30, 1996, the EPA Regional Administrator, Region 3, will sign a notice of final rulemaking concerning the proposed Revocation of Determination of Attainment of Ozone Standard by the Pittsburgh-Beaver Ozone Nonattainment and Reinstatement of Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements. 61 Fed. Reg. 5360 (Feb. 12, 1996). The proposed agreement also provides that, no later than July 31, 1996, the EPA Regional Administrator, Region 3, shall sign a notice of proposed rulemaking proposing action on the Commonwealth of Pennsylvania's request, submitted November 12, 1993, for EPA to redesignate to attainment for ozone the Reading, Pennsylvania ozone nonattainment area; and that the EPA Regional Administrator, Region 3 shall sign a notice of final rulemaking concerning the above request no later than December 31, 1996.

For a period of thirty [30] days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement agreement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Copies of the settlement agreement are available from Sonja Lee, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202) 260–7606. Written comments should be sent to Kendra Sagoff at the above address and must be submitted on or before June 28, 1996.

Dated: May 22, 1996.

Scott Fulton,

Acting General Counsel.

[FR Doc. 96–13433 Filed 5–28–96; 8:45 am]

BILLING CODE 6560–60–M

[PF–655; FRL–5371–9]

Cyfluthrin; Amended Notice of Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that Bayer Corporation, 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO has submitted an amendment to pesticide petition 2F4137 proposing to increase tolerances for cyfluthrin, cyano-(4-fluoro-3-pheroxyphenyl)methyl 3-(2,2-dichloroethyl)-2,2-dimethly-cyclopropanecarboxylate in or on the raw agricultural commodities cattle, fat, goat, fat, hogs, fat, horses, fat, sheep, fat, milkfat, and aspirated grain fractions.

DATES: Comments, identified by the docket number [PF–655] must be received on or before June 27, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–655]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Goerge LaRocca, Product Manager (PM) 13, Registration Division, (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 204, CM #2, 2801 Jefferson Davis Highway, Arlington, VA 22202, (703)–305–6224; e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The Bayer Corporation (formerly Miles, Inc.), 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120–0013 has submitted an amendment to pesticide petition (PP) 2F4137. The amendment proposes to amend 40 CFR 180.436 by increasing tolerances for residues of the insecticide cyfluthrin, cyano-(4-fluoro-3-pheroxyphenyl)methyl 3-(2,2-dichloroethyl)-2,2-dimethly-cyclopropanecarboxlate in or on the raw agricultural commodities cattle, fat at 5.00 ppm, goats, fat at 5.00 ppm, hogs, fat at 5.00 ppm, horses, fat, at 5.00 ppm, sheep, fat at 5.00 ppm, milkfat at 15.0 (reflecting 0.5 ppm in whole milk), and aspirated grain fractions at 300 ppm. The original notice of filing published in the **Federal Register** on December 30, 1992 (57 FR 62333) (PF–569; FRL–4177–7).

A record has been established for this document under docket number [PF–655] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this document, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 136a.

Dated: May 17, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–13439; Filed 5–28–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting; Announcing an Open Meeting of the Board

TIME AND DATES: 10:00 a.m. Wednesday, June 5, 1996.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Federal Home Loan Bank of Des Moines Proposal to make advances to the Minneapolis Community Development Agency
- Federal Home Loan Bank of Seattle Proposal to Certify the Montana Board of Housing as a Nonmember Mortgagee
- Approval of the Federal Home Loan Bank of Atlanta President
- Federal Home Loan Bank of San Francisco's request to increase AHP Award to California Savings Bank
- Federal Home Loan Bank of San Francisco's 1996 AHP Priority
- Federal Home Loan Bank of Des Moines request for approval to purchase Manufactured Housing Securities

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 96–13568 Filed 5–24–96; 12:57 pm]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

All-Ways Forwarding Int'l Inc., Hemisphere Center, U.S. Rt. 1–9 South, Newark, NJ 07114, Officers: Solomon Weber, President, Paul Jeka, Vice President

H.Y.H. International Cargo Services, Inc., 1620 NW 82nd Avenue, Miami, FL 33126, Officer: Hans G. Hofmann, President

Mundial Forwarding, 918 Dunwoody Drive, Houston, TX 77076, Timoteo Muro Martinez, Sole Proprietor

Dated: May 22, 1996.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 96–13325 Filed 5–28–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 11, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Richard Kundert, Blanchardville, Wisconsin; to acquire an additional 7.38 percent, for a total of 31.91 percent, of the voting shares of Blanchardville Financial Services, Inc., Blanchardville, Wisconsin, and thereby indirectly acquire First National Bank of Blanchardville, Blanchardville, Wisconsin.

Board of Governors of the Federal Reserve System, May 22, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–13379 Filed 5–28–96; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 21, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Banking Company of Southeast Georgia, Statesboro, Georgia; to acquire 100 percent of the voting shares of FNB Bancshares, Inc., Springfield, Georgia, and thereby indirectly acquire First National Bank of Effingham, Springfield, Georgia.

2. First National Banc, Inc., St. Marys, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank, St. Marys, Georgia.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Brickyard Bancorp, Inc., Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Sysco Financial, Inc., Lincolnwood, Illinois, and thereby indirectly acquire Brickyard Bank, Lincolnwood, Illinois.

Board of Governors of the Federal Reserve System, May 22, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–13377 Filed 5–29–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for

processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 11, 1996.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Fort Calhoun Investment Company, Fort Calhoun, Nebraska; to engage *de novo* in expanding its insurance agency activity to include the sale of all types of life insurance products other than life insurance or annuities, pursuant to § 225.25(b)(vi) of the Board's Regulation Y. Company is a bank holding company with consolidated assets of under $50 million.

Board of Governors of the Federal Reserve System, May 22, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–13378 Filed 5–28–96; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE BOARD

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, June 3, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 24, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–13593 Filed 5–24–96; 2:36 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FTR 18]

Federal Travel Regulation; Reimbursement of Higher Actual Subsistence Expenses for Official Travel to Augusta, Georgia

AGENCY: Office of Policy, Planning and Evaluation, GSA.

ACTION: Notice of bulletin.

SUMMARY: The attached bulletin informs agencies of the establishment of a special actual subsistence expense ceiling for official travel to Augusta (Richmond County), Georgia. The Secretary of Transportation (DOT) requested establishment of the increased rate to accommodate employees who performed temporary duty in this locality and who experienced a temporary but significant increase in lodging costs due to the escalation of lodging rates during the annual Masters Golf Tournament held in Augusta.

EFFECTIVE DATES: This special rate is retroactively applicable to claims for reimbursement covering travel to Augusta, Georgia, during the period April 8 through April 15, 1996.

FOR FURTHER INFORMATION CONTACT: Devoanna R. Reels, General Services Administration, Travel and Transportation Management Policy Division (MTT), Washington, DC 20405, telephone 202–501–1538.

SUPPLEMENTARY INFORMATION: The Administrator of General Services, pursuant to 41 CFR 301–8.3(c) and at the request of the Secretary of Transportation, increased the maximum daily amount of reimbursement that agencies may retroactively approve for actual and necessary subsistence expenses for official travel to Augusta (Richmond County), Georgia, during the period April 8 through April 15, 1996. The attached GSA Bulletin FTR 18 is issued to inform agencies of the establishment of this special actual subsistence expense ceiling.

Dated: May 20, 1996.

William T. Rivers,

Acting Deputy Associate Administrator, Office of Transportation and Personal Property.

Attachment

[GSA Bulletin FTR 18]

May 20, 1996.

To: Heads of Federal agencies

Subject: Reimbursement of higher actual subsistence expenses for official travel to Augusta (Richmond County), Georgia

1. *Purpose.* This bulletin informs agencies of the establishment of a special actual subsistence expense ceiling for official travel to Augusta (Richmond County), Georgia, due to the escalation of lodging rates during the annual Masters Golf Tournament held there. This special rate is retroactively applicable to claims for reimbursement covering travel during the period April 8 through April 15, 1996.

2. *Background.* The Federal Travel Regulation (FTR) (41 CFR chapters 301–304) part 301–8 permits the Administrator of General Services to establish a higher maximum daily rate for the reimbursement of actual subsistence expenses of Federal employees on official travel to an area within the continental United States. The head of an agency may request establishment of such a rate when special or unusual circumstances result in an extreme increase in subsistence costs for a temporary period. The Secretary of Transportation (DOT) requested establishment of such a rate for Augusta to accommodate employees who performed temporary duty there and experienced a temporary but significant increase in lodging costs due to the escalation of lodging rates during the annual Masters Golf Tournament. These circumstances justify the need for higher subsistence expense reimbursement in Augusta during the designated period.

3. *Maximum rate and effective date.* The Administrator of General Services, pursuant to 41 CFR 301–8.3(c), increased the maximum daily amount of reimbursement that agencies may retroactively approve for actual and necessary subsistence expenses for official travel to Augusta (Richmond County), Georgia, during the period April 8 through April 15, 1996. Agencies may retroactively approve actual subsistence expense reimbursement not to exceed $214 ($184 maximum for lodging and a $30 allowance for meals and incidental expenses) for official travel to Augusta (Richmond County), Georgia, during this time period.

4. *Expiration date.* This bulletin expires on October 1, 1996.

5. *For further information contact.* Devoanna R. Reels, General Services Administration, Travel and Transportation Management Policy Division (MTT), Washington, DC 20405, telephone 202–501–1538.

[FR Doc. 96–13410 Filed 5–28–96; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–96–17]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. HIV Prevention Programs in National/Regional Minority and Other Community Based Organization Project Reports—(0920–0249)—Reinstatement—CDC is responsible for monitoring and evaluating HIV prevention activities conducted under cooperative agreements with National/Regional Minority and Other Community Based Organizations. Enhancing and assuring quality programming requires that CDC have current information regarding the progress of activities and services supported through these cooperative agreements. In some instances, these cooperative agreements have been awarded to organizations that have not previously been awarded Federal funds, or provided HIV prevention services. Additionally, many have limited infrastructure, requiring greater oversight and technical assistance. Technical assistance site visits and telephone communications do provide some of the required information; yet, site visits have been dramatically reduced and specific contents of phone conversations can be easily forgotten, especially when several awards are administered by one individual. Therefore, thorough quarterly project reports are considered a critical component of the monitoring/evaluation process. Because this program encompasses at least 23 N/RMOs and 90 CBOs awards, there is a need for a standardized system for reporting the progress of each organization's activities. The total cost to respondents is $22,028.80.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
National/Regional	23	4	4	368
CBO	90	4	4	1,440
Total				1,808

Dated: May 22, 1996.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–13392 Filed 5–28–96; 8:45 am]

BILLING CODE 4163–18–P

[30DAY–12]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request more information on these projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 30 days of this notice.

The following requests have been submitted for review since the last publication date on May 9, 1996.

Proposed Projects

1. Resources and Services Database of the CDC National AIDS Clearinghouse (NAC)—(0920–0255)—Extension—This is a request to extend this project for three years. NAC will mail the Resource Organization Questionnaire along with a cover letter once an organization is identified as providing AIDS-related services. Each organization will also receive a stamped, self-addressed envelope for the return of the questionnaire. If there is no response a follow-up letter will be sent along with another questionnaire and return envelope. A telephone call will be made to those organizations who respond but whose responses need clarification. Approximately one third of the entire Resources and Services Database is verified each year. As part of this process, 40 percent of these organizations will receive a copy of their current database entry by mail, including a cover letter, a list of instructions, and a stamped, self-addressed envelope. The remaining 60 percent will receive a telephone call to review their record.

The Centers for Disease Control and Prevention (CDC) National AIDS Clearinghouse (NAC), is a critical member of the network of government agencies, community organizations, businesses, health professionals, educators, and human services providers that educate the American public about Acquired immunodeficiency syndrome (AIDS) and provide services for persons infected with human immunodeficiency virus (HIV). NAC's Resources and Services Database contains records of

approximately 18,000 organizations and is the most comprehensive listing of AIDS resources and services available throughout the country.

NAC's reference staff rely on the Resources and Services Database to respond to more than 100,000 requests for information or referral each year. The Database is also the main information source for the CDC National AIDS Hotline which refers approximately 1.8 million callers from the general public each year to appropriate organizations for information, services, and treatment.

In its continuing efforts to maintain an up-to-date, comprehensive database, NAC is seeking renewal of approval of the survey instrument and proposed methods.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hrs.)
Questionnaire	2,400	1	0.33
Clarification Follow-Up	360	1	0.17
Verification	10,636	1	0.33
Verif. Follow-Up	993	1	0.17

The total burden hours is 3771. Send comments to Desk Officer, CDC; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503.

2. The National Ambulatory Medical Care Survey (NAMCS)—(0920–0234)—Extension—The National Ambulatory Medical Care Survey (NAMCS) was conducted annually from 1973 to 1981, again in 1985, and resumed as an annual survey in 1989 by the National Center for Health Statistics, CDC. The NAMCS samples from all office visits within the United States made by ambulatory patients to non-Federal office-based physicians engaged in direct patient care. More than 70 percent of all direct ambulatory medical care visits occur in physicians' offices. To complement these data, in 1992 NCHS initiated the separate National Hospital Ambulatory Medical Care Survey (NHAMCS). These two surveys constitute the ambulatory care component of the National Health Care Survey (NHCS), and provide coverage of more than 90 percent of U. S. ambulatory medical care. NAMCS data include patients' demographic characteristics and medical problems, and the physicians' diagnostic services, therapeutic prescriptions and disposition decisions. These annual data may be used to monitor change and its effects and stimulate further improvements to the use, organization, and delivery of ambulatory care. Users of NAMCS data include Congress and federal agencies (e.g. NIMH, NIAAA, NCI, HRSA), state and local governments, medical schools, schools of public health, colleges and universities, private businesses, nonprofit, and individual practitioners and administrators.

Respondents	Number of respondents	Number of responses/ respondents	Average burden/response (in hrs.)
Private, Office-based Physicians Forms:.			
Induction	3000	1	0.250
Patient Record	3000	30	0.033

The total burden hours is 3,720. Send comments to Desk Officer, CDC; Human Resources and Housing Branch, New Executive Office Building, Room 10236; Washington, DC 20503.

3. Complications Associated with Home Infusion Therapy: The Nature and Frequency of Blood Contacts Among Health Care Workers New-Occupational blood contact and the potential for transmission of blood borne pathogens is a serious concern for health care workers (HCWs) who provide care to patients. There are no data on the frequency of occupational percutaneous injuries and mucocutaneous blood contact among HCWs who provide home infusion therapy.

The Hospital Infections Program, National Center for Infectious Diseases, will conduct prospective, active surveillance of HCWs who provide home infusion therapy. The objectives of the surveillance project are to (1) estimate the procedure-specific frequency of and assess risk factors for percutaneous, mucous membrane, or cutaneous blood contacts sustained by HCWS during the delivery of home infusion therapy and the performance of related procedures, such as phlebotomy and blood culture collection; (2) describe and evaluate the effectiveness of infection control precautions and safety devices to prevent blood contacts; and (3) evaluate the impact of HCWs' knowledge of universal precautions on the use of protective equipment, safety devices, and the frequency of blood contacts.

The population under surveillance will be nurses and phlebotomists from three home health care agencies. Before beginning data collection, HCWs will complete a background questionnaire to provide basic demographic information as well as information about previous blood contacts. HCWs will then complete an exposure questionnaire after each home visit for a two-four week data collection period. This questionnaire will include information about the reason for the visit, the types of procedures performed, the length of the visit, the number and types of blood contacts sustained, and the use of infection control precautions and any safety devices. At the end of their individual data collection period, each HCW will complete an infection control questionnaire to assess knowledge and attitudes related to blood contacts and the use of universal precautions.

Respondents (HCWs)	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)
Background Questionnaire	1337	1	.083
Exposure Questionnaire	1337	41	.0167
Infection Control Questionnaire	1337	1	.083

The total burden hours is 1137. Send comments to Desk Officer, CDC; Human Resources and Housing Branch, New Executive Office Building, Room 10236; Washington, DC 20503.

4. Evaluation of a Training Curriculum for Hemophilia Nurses Who Teach Home Infusion and Infection Control-New-The Hematologic Disorders Branch at CDC has plans to develop, pilot, and evaluate training curricula for hemophilia health care providers to improve their knowledge and skills in teaching home infusion of Factors VII and IX (coagulating agents which reduce the bleeding resulting from a deficiency of natural clotting agents in the blood of people with hemophilia) and infection control related to the infusion. CDC has initiated the development of a self-learning manual for nurses with responsibility of teaching hemophilia patients and their families about home infusion and infection control (HI/IC). The goals of the manual are 1) to facilitate nurses' understanding of content that should be covered when teaching HI/IC techniques, and 2) to assist nurses in determining how they can best teach HI/IC to patients and their families. The purpose of the proposed data collection is to assess the efficacy of the manual in achieving those goals.

An experimental design will be employed in this study in which 100 randomly sampled nurses will be assigned to either an experimental condition (n=50) or to a control group (n=50). Nurses in the experimental condition will be asked to use the manual, while those in the control condition will continue their current practices and engage in any naturally-occurring learning experiences related to HI/IC. Baseline and follow-up surveys administered to both groups will yield data that will be used to determined the difference in knowledge, attitudes, and skills that can be attributed to use of the self-learning guide.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hrs.)
Nurses in experimental condition	50	2	0.50
Nurses in control condition	50	2	0.50

The total burden is 100. Send comments to Desk Officer, CDC; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503.

5. The National Hospital Ambulatory Medical Care Survey (NHAMCS)—(0920–0278)—Extension—The National Hospital Ambulatory Medical Care Survey (NHAMCS) has been conducted annually since 1992 by the National Center for Health Statistics, CDC. The NHAMCS is the principal source of data on the 153 million visits to hospital emergency and outpatient departments. It is the only source of nationally representative estimates of outpatient demographics, diagnoses, diagnostic services, medication therapy, and the patterns of use of care in hospitals which differ in size, location, and ownership. NHAMCS is also the only source of national estimates on causes of non-fatal injury for visits to emergency and outpatient departments.

These data complement those from the National Ambulatory Medical Care Survey (NAMCS), on visits to non-Federal physicians in office-based practices. NHAMCS data are essential for planning health services, improving medical education, determining health care work force needs, and assessing health. Users of NHAMCS data include Congress, Federal agencies such as NIH, private groups such as the American Heart Association, universities, and state offices of public health.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hrs.)
Noninstitutional, general and short stay, hospital outpatient and emergency departments forms:			
Hospital Induction	600	1	1.0
Ambulatory Unit Induction	600	1	1.2
Emergency Department Patient Record	600	50	0.06
Outpatient Department Patient Record	600	150	0.06

The total burden is 8,520. Send comments to Desk Officer, CDC; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503.

Dated: May 22, 1996.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evalution, Center for Disease Control and Prevention (CDC).

[FR Doc. 96–13393 Filed 5–28–96; 8:45 am]

BILLING CODE 4163–18–P

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Plan for the Child Care and Development Block Grant.

OMB No.: 0970–0114.

Description: This legislatively-mandated plan serves as the agreement between the grantee and the Federal Government as to how CCDBG programs will be operated. The plans provide assurances that the funds will be administered in conformance with the legislative requirements, pertinent Federal Regulations, and other applicable instructions or guidelines issued by ACF.

Respondents: State governments.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–700	282	1	40	11,280

Estimated Total Annual Burden Hours: 11,280.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: May 6, 1996.

Roberta Katson,

Director, Office of Information Resource Management Services.

[FR Doc. 96–13317 Filed 5–28–96; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 94N–0155]

Nutrient Values for the Voluntary Nutrition Labeling of Raw Fruits, Vegetables, and Fish; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of updated nutrition labeling values for the 20 most frequently consumed raw fruits, vegetables, and fish in the United States. The agency is making these values available to assist those food retailers who wish to update the voluntary nutrition labeling information that they make available to consumers before FDA's next survey of retail stores to determine whether there is substantial compliance with the voluntary nutrition labeling program.

ADDRESSES: Submit written requests for single copies of the nutrition labeling values to the Division of Technical Evaluation (HFS–165), Office of Food Labeling, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204. Requests should be identified with the docket number found in brackets in the heading of this document. Send a self-addressed adhesive label or fax number to assist that office in processing your requests.

FOR FURTHER INFORMATION CONTACT: Mary M. Bender, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5592, FAX 202–205–5532.

SUPPLEMENTARY INFORMATION: The Nutrition Labeling and Education Act of 1990 amended the Federal Food, Drug, and Cosmetic Act (the act) to require, among other things, that under section 403(q)(4) of the act (21 U.S.C. 343(q)(4)), FDA: (1) Identify the 20 most frequently consumed raw fruits, vegetables, and fish in the United States; (2) establish guidelines for the voluntary nutrition labeling of these raw fruits, vegetables, and fish; and (3) issue regulations that define "substantial compliance" with respect to the adherence by food retailers with those guidelines. In the **Federal Register** of July 2, 1991 (56 FR 30468 at 30479 through 30481), FDA responded to these requirements by issuing a proposal, and, in the **Federal Register** of November 27, 1991 (56 FR 60880), the agency published a final rule on the nutrition labeling of raw fruits, vegetables, and fish (corrected on March 6, 1992 (57 FR 8174)). In the **Federal Register** of July 18, 1994 (59 FR 36379) (corrected on July 21, 1994 (59 FR 37190)), FDA published a proposal to revise the guidelines and the labeling values for the 20 most frequently consumed raw fruits, vegetables, and fish. FDA plans to publish a final rule on that rulemaking in the near future.

Under the guidelines of the voluntary labeling program, nutrition labeling information should be provided in close proximity to the place in the retail establishment where raw fruits, vegetables, and fish are displayed for sale. Information may be made available in signs, posters, brochures, notebooks, or leaflets and may be supplemented by video, live demonstration, or other media. Nutrition labeling information may also be provided on the individual food package.

In § 101.43 (21 CFR 101.43), FDA defined substantial compliance to mean that at least 60 percent of the food retailers sampled in a representative survey provide nutrition labeling information (as specified in the guidelines) for at least 90 percent of the foods that they sell that are included on the listing of the most frequently consumed raw fruits, vegetables, and fish. Section 403(q)(4)(C)(ii) of the act states that if substantial compliance is achieved by food retailers, FDA is to reassess voluntary labeling compliance every 2 years. The act also states that, if substantial compliance is not achieved, FDA is to propose to require that nutrition information be provided by any person who offers raw fruits and vegetables or raw fish to consumers (section 403(q)(4)(D)(i)).

Because substantial compliance was achieved in 1993 and 1995, section 403(q)(4)(C)(ii) of the act requires that FDA reassess voluntary labeling compliance and issue a report in 1997. FDA will survey retail stores under contract in November and December of 1996 to determine whether substantial compliance in the voluntary provision of labeling information for raw fruits, vegetables, and fish continues to exist. If substantial compliance is not met, the agency will propose to modify § 101.43 to make the program mandatory.

The industry has informed the agency that many retailers need new posters, charts, or brochures, and rather than reprinting the old values, they would prefer to wait until they have the new values to print the necessary materials. The timeframe by which the agency intends to publish a final rule to update the voluntary labeling program, however, may not allow food retailers and trade associations adequate time to print, distribute, and post nutrition labeling information before the next compliance survey. Therefore, because FDA considers that both industry and consumers will benefit if the most current nutrition labeling values for the 20 most frequently consumed raw fruits, vegetables, and fish are made available for use in the voluntary program, FDA is publishing these values at this time, in advance of completion of work on the final rule. The agency encourages retailers to use these new values when they print their posters, charts, or brochures on raw fruits, vegetables, and fish. However, because of the short amount of time before the 1996 survey, FDA is allowing retailers who choose to participate in the voluntary nutrition labeling program to use the old 1991 values or these new values.

Therefore, firms interested in obtaining the nutrition labeling values for the 20 most frequently consumed raw fruits, vegetables, and fish should submit a written request, accompanied by a self-addressed adhesive label or a fax number, to the Division of Technical Evaluation (HFS–165), Office of Food Labeling, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

Dated: May 20, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–13309 Filed 5–28–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0045]

Determination of Regulatory Review Period for Purposes of Patent Extension; COREG®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for COREG® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product COREG® (carvedilol). COREG® is indicated for the management of essential hypertension. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for COREG® (U.S. Patent No. 4,503,067) from Boehringer Mannheim GmbH, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 22, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of COREG® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for COREG® is 3,625 days. Of this time, 2,727 days occurred during the testing phase of the regulatory review period, while 898 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* October 13, 1985. FDA has verified the applicant claim that the day the investigational new drug application became effective was on October 13, 1985.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* March 31, 1993. FDA has verified the applicant's claim that the new drug application (NDA) for COREG® (NDA 20–297) was initially submitted on March 31, 1993.

3. *The date the application was approved:* September 14, 1995. FDA has verified the applicant's claim the NDA 20–297 was approved on September 14, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,825 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 29, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 25, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 13, 1996.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 96–13307 Filed 5–28–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0036]

Determination of Regulatory Review Period for Purposes of Patent Extension; FOSAMAX®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for FOSAMAX® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product FOSAMAX® (alendronate sodium). FOSAMAX® is indicated for the treatment of osteoporosis in postmenopausal women and Paget's disease of bone. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for FOSAMAX® (U.S. Patent No. 4,621,077) from Instituto Gentili S.p.A., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 1, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of FOSAMAX® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for FOSAMAX® is 2,558 days. Of this time, 2,375 days occurred during the testing phase of the regulatory review period, while 183 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: September 29, 1988. FDA has verified the applicant's claim that the date that the investigational new drug application (IND) became effective was on September 29, 1988.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: March 31, 1995. FDA has verified the applicant's claim that the new drug application (NDA) for FOSAMAX® (NDA 20–560) was initially submitted on March 31, 1995.

3. *The date the application was approved*: September 29, 1995. FDA has verified the applicant's claim that NDA 20–560 was approved on September 29, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,369 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 29, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 25, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 16, 1996.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 96–13308 Filed 5–28–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0046]

Determination of Regulatory Review Period for Purposes of Patent Extension; ZYRTEC™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ZYRTEC™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ZYRTEC™ (cetirizine hydrochloride). ZYRTEC™ is indicated for the relief of symptoms associated with seasonal allergic rhinitis due to allergens such as ragweed, grass and tree pollens in adults and children 12 years and older. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ZYRTEC™ (U.S. Patent No. 4,525,358) from UCB PHARMA, INC., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 1, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ZYRTEC™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ZYRTEC™ is 4,210 days. Of this time, 1,493 days occurred during the testing phase of the regulatory review period, while 2,717 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: May 31, 1984. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on May 31, 1984.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: July 1, 1988. FDA has verified the applicant's claim that the new drug application (NDA) for ZYRTEC™ (NDA 19–835) was initially submitted on July 1, 1988.

3. *The date the application was approved*: December 8, 1995. FDA has verified the applicant's claim that NDA 19–835 was approved on December 8, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension..

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 29, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 25, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 16, 1996.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 96–13310 Filed 5–28–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96E–0044]

Determination of Regulatory Review Period for Purposes of Patent Extension; AMARYL®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for AMARYL® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration,

rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product AMARYL® (glimepiride). AMARYL® is indicated as an adjunct to diet and exercise to lower the blood glucose in patients with noninsulin-dependent (Type II) diabetes mellitus (NIDDM) whose hyperglycemia cannot be controlled by diet and exercise alone. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for AMARYL® (U.S. Patent No. 4,379,785) from Hoechst Atiengesellschaft, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 1, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of AMARYL® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for AMARYL® is 2,683 days. Of this time, 2,225 days occurred during the testing phase of the regulatory review period, while 458 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: July 28, 1988. FDA has verified the applicant's claim that the date that the investigational new drug application (IND) became effective was on July 28, 1988.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: August 30, 1994. FDA has verified the applicant's claim that the new drug application (NDA) for AMARYL® (NDA 20–496) was initially submitted on August 30, 1994.

3. *The date the application was approved*: November 30, 1995. FDA has verified the applicant's claim that NDA 20–496 was approved on November 30, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,569 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 29, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 25, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 13, 1996.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 96–13311 Filed 5–28–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[HCFA–2567–A]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services (DHHS), has submitted to the Office of Management and Budget (OMB) the following request for Emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 C.F.R., Part 1320, in order to permit recertification of OPOs as required by statute. Failure to issue these rules in time for the 1996 redesignation process may result in the termination of OPO agreements. This means that persons in need of organs may not receive them. The Agency cannot reasonably comply with the normal clearance procedures because public harm is likely to result if normal clearance procedures are followed. Without this information, HCFA could not assure compliance with this Congressional mandate.

HCFA is requesting that OMB review this document on 5/31/96 and grant a 90-day approval. During this 90-day period HCFA will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. Then HCFA will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Statement of Deficiencies and Plan of Correction; *Form No.:* HCFA–2567–A; *Use:* This Paperwork package provides information regarding deficiencies for Organ Procurement Organizations (OPO) as well as deficiencies noted during periodic facility and laboratory certification surveys. This information is used to make decisions concerning OPO redesignation, certification/recertification of health care facilities participating in the Medicare/Medicaid Programs, and laboratories regulated by CLIA. *Frequency:* Annually and Biennially; *Affected Public:* State, Local or Tribal Governments, Business or other for-profit, Not-for-profit institutions, Federal Government; *Number of Respondents:* 49,200; *Total Annual Responses:* 98,400; *Total Annual Hours Requested:* 196,800.

To request copies of the proposed paperwork collections referenced above, call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent by 5/31/96 to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: May 22, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–13519 Filed 5–28–96; 8:45 am]

BILLING CODE 4120–03–P–M

National Institutes of Health

National Cancer Institute: Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Scientific and Commercial Development of Hydroxylated Aromatic Protein Cross-Linking Compounds for the Treatment of Hyperproliferative Epithelial Lesions

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) seeks a company that can collaboratively pursue the pre-clinical and clinical development of Hydroxylated Aromatic Protein Cross-Linking Compounds for the treatment of hyperproliferative epithelial lesions including skin neoplasia, warts and other hyperproliferative skin disorders. The National Cancer Institute, Laboratory of Cellular Carcinogenesis and Tumor Promotion (LCCTP) has established that this class of compounds (cinnamic acid derivatives) may be effective in treating hyperproliferative skin disorders. The selected sponsor will be awarded a CRADA for the co-development of this agent with the National Cancer Institute.

ADDRESS: Questions about this opportunity may be addressed to Jeremy A. Cubert, M.S., J.D., Office of Technology Development, NCI, 6120 Executive Blvd., MSC 7182, Bethesda MD 20892–7182, Phone: (301) 496–0477, Facsimile: (301) 402–2117, from whom further information may be obtained.

DATE: In view of the important priority of developing new agents for the treatment or prevention of cancer, interested parties should notify this office in writing no later than July 12, 1996. Respondents will then be provided an additional 30 days for the filing of formal proposals.

SUPPLEMENTARY INFORMATION:

"Cooperative Research Development Agreement" or "CRADA" means the anticipated joint agreement to be entered into by NCI pursaunt to the Federal Technology Transfer Act of 1986 and amendments (including 104 P.L. 113) and Executive Order 12591 of October 10, 1987 to collaborate on the specific research project described below.

The Government is seeking a pharmaceutical company which, in accordance with the requirements of the regulations governing the transfer of agents in which the Government has taken an active role in developing (37 CFR 404.8), can further develop the subject compounds through Federal Food and Drug Administration approval and to a commercially available status to meet the needs of the public and with the best terms for the Government. The government has applied for a patent application directed to methods for the treatment for Hyperproliferative Epithelial Lesions by Topical Application of Hydroxylated Aromatic Protein Cross-Linking-Compounds.

Methyl 2,5-dihydroxycinnamate (MC), a cinnamic acid derivative, has been shown to both inhibit cell growth and chemically cross-link proteins. The growth inhibitory and protein cross-linking activity of MC are independent and complementary. The cross-linking effect of the compounds is rapid and leads to programmed cell death for many cell types. At lower concentrations, the compounds inhibit tyrosine kinases and cell growth. The compounds have been shown to be effective in many cell types indicating potential for topical treatment of a wide range of localized hyperproliferative epithelial disorders.

The LCCTP, Division of Basic Sciences, NCI is interested is establishing a CRADA with a company to assist in the continuing development of these compounds. The Government will provide all available expertise and information to date and will jointly pursue pre-clinical and clinical studies as required, giving the company full access to existing data and data developed pursuant to the CRADA. The successful company will provide the necessary scientific, financial and organizational support to establish clinical efficacy and possible commercial status of the subject compounds.

The expected duration of the CRADA will be two (2) to five (5) years.

The role of the National Cancer Institute, includes the following:

1. Selection of appropriate compounds for *in vitro* screening.
2. Selection of appropriate compounds for *in vivo* screening.
3. Conduct *in vitro* screening of appropriate compounds.
4. Identify chemical basis of activity for class of compounds.
5. Conduct *in vivo* testing of appropriate compounds.
6. Evaluation of test results.
7. Preparation of manuscripts for publication.
8. Relevant Government intellectual property rights are available for licensing through the Office of Technology Transfer, National Institutes of Health. For further information contact Allan Kiang, J.D., NIH Office of Technology Transfer, 6011 Executive Blvd., Suite 325, Rockville, MD 20852, Phone: (301) 496–7735 (ext. 270); Facsimile: (301) 402–0220.

The role of the collaborator company, includes the following:

1. Conduct *in vitro* screening of appropriate compounds.
2. Identify chemical basis of activity for class of compounds.
3. Conduct *in vivo* testing of appropriate compounds.
4. Evaluation of test results.
5. Develop vehicle for delivery of compounds to patients.
6. Conduct pre-clinical and clinical trials of appropriate candidate compounds.

Criteria for choosing the company include its demonstrated experience and commitment to the following:

1. Scientific expertise in and demonstraterd commitment to the treatment of skin related disorders.
2. Scientific expertise in and demonstrated commitment to the development of drug delivery systems.
3. Experience in preclinical and clinical drug development.
4. Experience and ability to produce, package, market and distribute pharmaceutical products.
5. Experience in the monitoring, evaluation and interpretation of the data from

investigational agent clinical studies under an IND.

6. A willingness to cooperate with the NCI in the collection, evaluation, publication and maintaining of data from pre-clinical studies and clinical trials regarding the subject compounds.

7. Provide defined financial and personnel support for the CRADA to be mutually agreed upon.

8. An agreement to be bound by the DHHS rules involving human and animal subjects.

9. The aggressiveness of the development plan, including the appropriateness of milestones and deadlines for preclinical and clinical development.

10. Provisions for equitable distribution of patent rights to any CRADA inventions. Generally the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, nonexclusive, royalty-free license to the Government and (2) an option for the collaborator to elect an exclusive or nonexclusive license to Government owned rights under terms that comply with the appropriate licensing statutes and regulations.

Dated: May 1, 1996.

Thomas D. Mays,

Director, Office of Technology Development, OD, NCI.

[FR Doc. 96–13375 Filed 5–28–96; 8:45 am]

BILLING CODE 4140–01–M

Notice of Meeting of the Advisory Committee to the Director, NIH

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, June 17, 1996, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9:00 a.m. to adjournment. The topics proposed for discussion include (1) Report from the NIH AIDS Research Program Evaluation Group; (2) Report on Intramural Research Program; (3) Discussion of Misconduct in Science; (4) Discussion of Issues Related to Co-Funding with other Organizations; and (5) Status of Reinvention Activities. Attendance by the public will be limited to space available.

Ms. Janice Ramsden, Program Assistant, Office of the Deputy Director, National Institutes of Health, 1 Center Drive MSC 0159, Bethesda, Maryland 20892–0159, telephone (301) 496–0959, fax (301) 496–7451, will furnish the meeting agenda, roster of committee members, and substantive program information upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Ramsden no later than June 12, 1996.

Dated: May 22, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–13364 Filed 5–28–96; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health (NIH)

Meeting; Alternative Medicine Program Advisory Council

Pursuant to sec. 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the Alternative Medicine Program Advisory Council on June 13, 1996, from 8 a.m. to 5 p.m. and on June 14, 1996, from 8 a.m. to 11 a.m. in Conference Room 6, Building 31C, the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland.

The entire meeting will be open to the public. The purpose of the meeting will be to update the Council on the activities of the Office of Alternative Medicine and to seek the Council's advice on strategic planning for alternative medicine research.

The Council will discuss the priorities voted upon at the February Council meeting and how the Office of Alternative Medicine might implement these activities. Attendance by the public will be limited to space available.

Ms. Beth Clay, Committee Management Officer, Office of Alternative Medicine, NIH, 9000 Rockville Pike, Building 31, Room 5B37 Mail Stop 2182, Bethesda, Maryland 20892, phone (301) 594–1990, fax (301) 402–4741, E-Mail: bethclay@helix.nih.gov, will furnish the meeting agenda, roster of committee members, and substantive program information upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Clay at the above location no later than June 3, 1996.

Dated: May 22, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–13373 Filed 5–28–96; 8:45 am]

BILLING CODE 4140–01–M

Workshop on the Role of Dietary Supplements for Physically Active People

Notice is hereby given of the NIH Workshop on "The Role of Dietary Supplements For Physically Active People," which will be held June 3–4, 1996, in the Natcher Conference Center of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The conference begins at 8 a.m. on both days.

Scientific research linking dietary supplements to health over the life span can be viewed as a relatively new area of research. In the early part of this century, nutrition sciences and dietary recommendations were focused on the identification and treatment of nutritional deficiency diseases. Although the American people have been consuming vitamin and mineral supplements for decades, the direct relationship between diet and health and, therefore, the potential role for nutrients beyond the minimum levels required to avoid deficiencies, has become apparent only within the last 15 years. The possible roles of other food components and derivatives of natural products in promoting health and preventing disease are also now being recognized. The publication of the Surgeon General's Report on Nutrition and Health and the Diet and Health report from the National Academy of Sciences further highlighted the breadth of understanding of the diet-health relationship. Scientific research on the characterization of the potential roles of individual nutrients and compounds as dietary supplements has grown dramatically in the 1990s.

Dietary supplements in the United States are usually defined as comprising plant extracts, enzymes, vitamins, minerals, and hormonal products that are available without prescription and may be consumed in addition to the regular diet. Considerable research on the effects of dietary supplements has been conducted in Asia and Europe, where plant products have a long tradition of use. The overwhelming majority of supplements have not been studied scientifically, and therefore, it is important to conduct research to determine the benefits and risks of the use of promising dietary supplements and to interpret available scientific information so that the public may understand its contents. One strong and continuing public health message to the American people, based on such scientific information, is that moderate exercise should become a part of their daily lives. Physical activity has been shown to reduce the risk of cardiovascular disease through its effects on high blood pressure, high blood cholesterol, diabetes mellitus/insulin resistance, and obesity. Americans should heed the advice of health professionals and adopt a more physically active lifestyle that includes a planned exercise component. This scientific workshop will focus on the role of dietary supplements for physically active people who are interested in health promotion, in improving their personal performance in recreational sports, or in reduction of general fatigue. The goal of the meeting is to develop a research agenda that will identify key areas warranting further investigation.

The workshop will bring together specialists in aging, human anatomical configurations, child development, clinical nutrition, cognitive science, dietary supplements, dietetics, endocrinology, exercise physiology, exercise science, growth and development, kinesiology, medicine, nutrition, nutritional biochemistry, pediatrics, physiology, sports medicine, and women's health issues. These scientists will present reviews of the current state of scientific knowledge regarding selected dietary supplements and physical activity. Although scientific studies in many of the areas to be addressed in this workshop have often necessarily included primarily studies of elite athletes, the focus of this workshop is on the more typical healthy person who is physically active.

Primary sponsors of this workshop are the Office of Dietary Supplements, NIH, in conjunction with the American Society for Clinical Nutrition and the American Institute of Nutrition. The workshop will be cosponsored by the NIH Office of Alternative Medicine; the National Heart, Lung, and Blood Institute; the National Institute on Aging; the National Institute of Arthritis and Musculoskeletal and Skin Diseases; the National Institute of Child Health and Human Development; the National Institute on Deafness and Other Communication Disorders; the National Institute of Dental Research; the National Institute of Diabetes and Digestive and Kidney Diseases; and the National Institute of Mental Health.

Advance information on the conference program and conference registration materials may be obtained from: Annette Besignano, Technical Resources International, Inc., 3202 Tower Oaks Blvd., Suite 200, Rockville, Maryland 20852, (301) 770–3153, confdept@tech-res.com.

The proceedings of this workshop will be published as a supplement to the American Journal of Nutrition.

Dated: May 14, 1996.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 96–13376 Filed 5–28–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel.

The meeting will be open to the public to provide concept review of proposed contract or grant solicitations.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of Panel: Use of Cardiac Electron Beam Computed Tomography (EBCT) and Magnetic Resonance Imaging (MRI) in Epidemiologic Studies of Cardiovascular Disease.

Dates of Meeting: June 28, 1996.

Time of Meeting: 8:30 a.m.

Place of Meeting: Two Rockledge Center, 6701 Rockledge Drive, Conference Room 9A2, Bethesda, Maryland 20892.

Agenda: To evaluate the use of EBCT and MRI of the heart in population-based studies for future initiatives.

Contact Person: Diane Bild, M.D./Ph.D., NHLBI/DECA, Two Rockledge Center, 6701 Rockledge Drive, Rm. 3150, MSC 7934, Bethesda, Maryland 20892. (301) 435–0457.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: May 22, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–13369 Filed 5–28–96; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meetings:

Name of SEP: Phased Readiness Testing of Implantable Total Artificial Hearts—Phase II.

Date: June 17, 1996.

Time: 8:30 a.m.

Place: Two Rockledge Center, 6701 Rockledge Drive, Rm. 7111, Bethesda, Maryland 20892.

Contact Person: C. James Scheirer, Ph.D., Two Rockledge Center, Room 7220, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0266.

Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: Review of the Institutional National Research Service Awards (T32s), Independent Scientist Award (K02s) and the Mentored Clinical Scientist Development Award (K08s).

Date: June 24, 1996.

Time: 8:00 a.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: S. Charles Selden, Ph.D., Two Rockledge Center, Room 7196, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0266.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: May 22, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–13371 Filed 5–28–96; 8:45 am]

BILLING CODE 1140–01–M

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, June 7, 1996, which was published in the Federal Register on April 24, 1996 (61 FR 18397).

The meeting date is changed to July 22, 1996 at 8:30 a.m. The meeting will be held at the National Institutes of Health, Two Rockledge Center, Room 9A, 6701 Rockledge Drive, Bethesda, Maryland. As previously advertised, the meeting is open to the public.

Dated: May 22, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–13374 Filed 5–28–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute on Alcohol Abuse and Alcoholism Initial Review Group:

Purpose/Agenda: To review and evaluate grant applications.

Name of Committee: Biochemistry, Physiology, and Medicine Subcommittee.

Dates of Meeting: June 19, 1996.

Time: 8:00 a.m.

Place of Meeting: Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814.

Contact Person: Ronald Suddendorf, Ph.D., 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, 301–443–6107.

Name of Committee: Epidemiology and Prevention Subcommittee.

Dates of Meeting: June 20, 1996.

Time: 8:30 a.m.

Place of Meeting: River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Thomas D. Sevy, M.S.W., 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, 301–443–6106.

Name of Committee: Neuroscience and Behavior Subcommittee.

Dates of Meeting: June 21, 1996.

Time: 9:00 a.m.

Place of Meeting: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Antonio Noronha, Ph.D., 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, 301–443–9419.

Name of Committee: Clinical and Treatment Subcommittee.

Dates of Meeting: June 27–28, 1996.

Time: 11:00 a.m.

Place of Meeting: Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC 20001.

Contact Person: Elsie D. Taylor, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, 301–443–9787.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; National Institutes of Health).

Dated: May 22, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–13365 Filed 5–28–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Committee Name: Minority Biomedical Research Support Review Subcommittee, Minority Programs Review Committee.

Date: July 10, 1996.

Time: 8:30 a.m.–5 p.m.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Michael A. Sesma, Ph.D., Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS–19, Bethesda, MD 20892–6200, Telephone: 301–594–2048.

Agenda/Purpose: Review and evaluation of grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS].)

Dated: May 22, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–13367 Filed 5–28–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Committee Name: Special Emphasis Panel—NIGMS Initiative for Minority Student Development.

Date: July 11–12, 1996.

Time: 8:30 a.m.–5 p.m.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Michael A. Sesma, Ph.D., Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS–19, Bethesda, MD 20892–6200, Telephone: 301–594–2048.

Agenda/Purpose: Review and evaluation of grant applications received in response to PAR–96–006.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS].)

Dated: May 22, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–13368 Filed 5–28–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Unsolicited P01s.

Date: June 27, 1996.

Time: 8:30 a.m.

Place: Solar Bldg., Rm. 1A03, 6003 Executive Boulevard, Bethesda, MD 20892–7610, (301) 496–2550.

Contact Person: Dr. Sayeed Quraishi, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C22, Bethesda, MD 20892–7610, (301) 496–7465.

Purpose/Agenda: To evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: May 22, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–13370 Filed 5–28–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMANS SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Ac, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee B.

Date: June 3–4, 1996.

Time: 7:30 p.m.—adjournment on June 4.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Contact Person: Ned Feder, Ph.D., Natcher Building, Room 6AS–25S, National Institutes of Health, Bethesda, Maryland 20892–6600; Phone: (301) 594–8890.

Purpose/Agenda: To review and evaluate research grant applications.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee C.

Date: June 6–7, 1996.

Time: 8:30 a.m.—adjournment on June 7.

Place: Omni Shoreham Hotel, 2500 Calvert St., NW., Washington, DC 20008.

Contact Person: Daniel Matsumoto, Ph.D., Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, Maryland 20892–6600. Phone: (301) 594–8894.

Purpose/Agenda: To review and evaluate research grant applications.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, Subcommittee D.

Date: June 14, 1996.

Time: 8 a.m.—adjournment.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.

Contact Person: Ann A. Hagan, Ph.D., Natcher Building, Room 6AS–43G, National Institutes of Health, Bethesda, Maryland 20892–6600; Phone: (301) 594–8891.

Purpose/Agenda: To review and evaluate research grant applications.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: May 22, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–13372 Filed 5–28–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting that is being held to review grant applications:

NEUROLOGICAL SCIENCES INITIAL REVIEW GROUP

Study section/contact person	June 1996 meeting	Time	Location
Neurology A: Dr. Joe Marwah, 301–435–1253	June 20–22	8:30 a.m.	Windom Bristol Hotel, Washington, DC.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 22, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–13366 Filed 5–28–96; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention National Advisory Council Meeting in May

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA).

ACTION: Correction of Meeting Notice.

SUMMARY: Public notice was given in the **Federal Register** on May 13, 1996 (Vol. 61, No.93, page 22068) that the Center for Substance Abuse Prevention National Advisory Council meeting on May 30, 1996 would be open to the public. However, this meeting will now include the presentation and discussion of information about the agency's procurement plans. Therefore, a portion of the meeting, from 1:30 p.m. to 2:30 p.m., will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(3) and 5 U.S.C. app. 2, § 10(d).

The agenda, location, hours of the open session of the meeting, and the contact for additional information remain as announced.

Dated: May 22, 1996

Peggy Cockrill,

Acting Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 96–13301 Filed 5–28–96; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Congregate Housing Services Program; Announcement of Funding Awards for FY 1995

[Docket No. FR–3839–N–03]

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for the Congregate Housing Services Program (CHSP). This announcement contains the names and addresses of the awardees and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Carissa Janis, Office of Multifamily Housing Asset Management and Disposition, Department of Housing and Urban Development, room 6176, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3291 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The CHSP is authorized by section 802 of the National Affordable Housing Act of 1990 (Pub. L. 101–625) (42 U.S.C. 8011), as amended by the Housing and Community Development Act of 1992 (Pub. L. 102–550).

The Fiscal Year 1995 competition was announced in a NOFA published in the **Federal Register** on May 10, 1995 (60 FR 25092). The NOFA announced the availability of $38,480,150 to provide assistance to States, Indian Tribes, units of general local government, public housing and Indian housing agencies, and local nonprofit housing sponsors to fund congregate supportive services for frail elderly persons, persons with disabilities, and temporarily disabled individuals living in eligible housing for the elderly. Applications were scored and selected for funding based on criteria contained in the Notice.

Congress, however, rescinded $37 million of the above dollar amount in the 1995 Emergency Supplemental Appropriations for Additional Disaster Assistance, for Anti-Terrorism Initiative, for Assistance in Recovery from the Tragedy That Occurred at Oklahoma City, and Rescissions Act (Pub. L. 104–19), approved July 27, 1995. Therefore, HUD and the Rural Housing Service had only $1,480,150 available for new grants. This amount was left to the Rural Housing Service, who awarded one grant in the amount of $292,595.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is hereby publishing the names and addresses of the awardees that received funding under the NOFA, and the amount of funds awarded to each. This information is provided in Appendix A to this document.

Dated: May 22, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix A—Fiscal Year 1995, Office of Housing

Program Name: Congregate Housing Services Program.

Statute: Public Law 101–625, November 28, 1990 and Public Law 102–550, October 28, 1992.

Nofa Date: May 10, 1995.

Funding recipient (name and address) applicant name contact	Award amount
Grantee: Opportunities for the Retarded, Inc., 64–1510 Kamehameha Highway, Wahiawa, HI 96786	$292,595.00
Project: Helemano Plantation Village, 64–1510 Kamehameha Highway, Wahiawa, HI 96786	

[FR Doc. 96–13332 Filed 5–28–96; 8:45 am]

BILLING CODE 4210–27–P

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Congregate Housing Services Program Announcement of Funding Awards for FY 1994

[Docket No. FR–3630–N–04]

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for the Congregate Housing Services Program (CHSP). This announcement contains the names and addresses of the awardees and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Carissa Janis, Office of Multifamily Housing Asset Management and Disposition, Department of Housing and Urban Development, room 6176, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3291 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The CHSP is authorized by section 802 of the National Affordable Housing Act of 1990 (Pub. L. 101–625) (42 U.S.C. 8011), as amended by the Housing and Community Development Act of 1992 (Pub. L. 102–550).

The Fiscal Year 1994 competition was announced in a NOFA published in the **Federal Register** on April 29, 1994 (59 FR 22236). The NOFA announced the availability of $39.5 million to provide assistance to States, Indian Tribes, units of general local government, public housing and Indian housing agencies, and local nonprofit housing sponsors to fund congregate supportive services for frail elderly persons, persons with disabilities, and temporarily disabled individuals living in eligible housing for the elderly. Applications were scored and selected for funding based on criteria contained in the Notice.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is hereby publishing the names and addresses of the awardees that received funding under the NOFA, and the amount of funds awarded to each. This information is provided in Appendix A to this document.

Dated: May 22, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix A—Fiscal Year 1994 Office of Housing

Program Name: Congregate Housing Services Program.

Statute: Public Law 101–625, November 28, 1990 and Public Law 102–550, October 28, 1992.

Nofa Dates: April 29, 1994.

Funding recipient (name and address) applicant name contact	Dollar amount
Region 01	
New Hampshire State Office:	
Keene Housing Authority: Bennett Block, 32 Washington St., Keene, NH 03431	$80,018
Harper Acres, 105 Castle St., Keene, NH 03431	125,799
Somersworth Housing Authority: Carpenter Apts, 28 Franklin Street, Somersworth, NH 03878	221,201
Nashua Housing Authority: Sullivan Terr. So., 57 Tyler Street, Nashua, NH 03060	225,812

Funding recipient (name and address) applicant name contact	Dollar amount
Manchester Housing Authority: Kalivas High Rise, 175 Chestnut Street, Manchester, NH 03103	283,200
Region 03	
Maryland State Office:	
Housing Authority of Baltimore: Brentwood, 401 East 25th St., Baltimore, MD 21218	368,105
Pittsburgh Area Office:	
Mid ACV Housing Corp., East Brady Heights, P.O. Box 367, East Brady, PA 16028	187,652
Region 04	
North Carolina State Office:	
High Point Housing Authority: Elm Towers, 301 South Elm St., High Point, NC 27261	442,312
Region 05	
Michigan State Office:	
Detroit Int. Stake Audit Hsg. Restoration Towers, 16651 Lahser Road, Detroit, MI 48219	170,658
Grand Rapids Area Office: Potential Dev. Homes, I: Hope House I, 1706 Second Street, Jackson, MI 49204	68,245
Potential Dev. Homes, II: Hope House II, 400 Van Buren, Jackson, MI 49201	68,245
Indiana State Office:	
Muncie Housing Authority: Gillespie Tower, Apartments, 701 West Jackson, Muncie, IN 47305	237,912
Minnesota State Office:	
St. Paul Public Housing Agency: Edgerton Hi-rise, 1000 Edgerton St., St. Paul, MN 55101	479,812
Montreal Hi-rise, 1085 Montreal Ave., St. Paul, MN 55116	360,711
Iowa Hi-rise, 1743 East Iowa Ave., St. Paul, MN 55106	359,592
Region 06	
Arkansas State Office:	
North Arkansas Human Service: Homestead House, 3210 East Moore St., Searcy, AR 72143	289,977
Louisana State Office:	
Evangaline Council Housing f/t: Village de Memoire I, 250 W. 6th Street, Dubuque, IA 52001	95,689
Region 07	
Iowa State Office:	
Ecumenical Housing, Inc.: Ecumenical Tower, 250 W. 6th St., Dubuque, IA 52001	184,153
Alverno Apartments, Inc.: Alverno Apts, Inc., 3525 Windsor Avenue, Dubuque, IA 52201	148,006
Charles City Hous. Comm.: Cedar Terrace North, 624 North Main, Charles City, IA 50616	276,937
Cedar Terrace South, 501 Court, Charles City, IA 50616	559,557
Kansas/Missouri State Office	
H.A. of the City of Atchison: The Mail Towers Hi-rise, Atchison, KS 66002	154,056
Nebraska State Office:	
Lincoln Area Agency on Aging: Mahoney Manor, 4241 N 61st St., Lincoln, NE 68507	238,571
Burke Plaza, 6721 "L" St., Lincoln, NE 68505	155,121
St. Louis Area Office:	
Community Housing Association: CHAI Apartments, #10 Millstone Campus, St. Louis, MO 63164	98,540
B'nai B'rith Covenant House, I: Covenant House I, 10 Millstone Campus,St. Louis, MO 63146	113,428
Region 08	
Colorado State Office:	
Northern Cheyenne Hous. Auth.: Shoulderblade Complex, Lame Deer, MT 59043	361,710
Colorado State Office/Rural Housing Service:	
Senior Meals and Serv., Inc.: Park Place I, Devils Lake, MD 58330	97,887

[FR Doc. 96–13334 Filed 5–28–96; 8:45 am]

BILLING CODE 4210–27–P

[Docket No. FR–3353–N–04]

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; HOPE 2—Homeownership of Multifamily Units Program; Announcement of Funding Awards; Fiscal Year 1993

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding awards made by the Department under a Federal Register notice for the HOPE 2—Homeownership of Multifamily Units Program. This announcement contains the names and addresses of the HOPE 2 grantees and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Michael Diggs, Office of Multifamily Housing Asset Management and Disposition, Department of Housing and Urban Development, room 6176, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0558 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay. Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: HOPE 2—Homeownership of Multifamily Units Program is authorized by title IV of the Cranston-Gonzales National Affordable Housing Act of 1990 (Pub. L. 101–625) (42 U.S.C. 8011), enacted November 28, 1990. Program Guidelines were published on January 14, 1992 (57 FR 1558). Program changes were made by the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 23, 1992) and other changes made by the Department as a result of the first funding round.

Fiscal Year 1993 funds were announced in a **Federal Register** Notice of Funding Availability (NOFA) published on July 16, 1993 (58 FR 38466). The NOFA announced the availability of $102.2 million for HOPE 2 Implementation Grants to provide for homeownership of Multifamily units. The purpose of the HOPE 2 Implementation Grant program is to provide funding for carrying out homeownership programs in accordance with Section 415 of the guidelines. Applications are awarded funding if they meet the eligibility criteria indicated in the NOFA.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is hereby publishing the names and addresses of the HOPE 2 awardees that received funding under this NOFA, and the amount of funds awarded to each. The total amount awarded during this period was $33,549,795 to 10 projects. This information is provided in Appendix A to this document.

Dated: May 22, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

FISCAL YEAR 1993 MULTIFAMILY HOUSING (HOPE 2)

PROGRAM NAME: HOPE FOR HOMEOWNERSHIP OF MULTIFAMILY UNITS (HOPE 2)

STATUTE: PUBLIC LAW 101–625, NOVEMBER 28, 1990.

NOFA DATE: July 16, 1993.

Funding Recipient (name and address) applicant name contact	Amount Awarded
Larry Kluetsch, Mutual Housing SW CT, 800 Summer St. Suite 330, Stamford, CT. 06457, (203) 359–6940	$3,332,700
Sandra Abramson, The City of New York, 100 Gold Street, New York, NY. 10029, (212) 978–6100	6,750,000

Funding Recipient (name and address) applicant name contact	Amount Awarded
Barbara Barnes, VMH, Inc., 109 Holly Road, Suite 101, Virginia Beach, VA. 23451, (804) 425–6231	726,475
Charles Pharr, Pritchard Housing Authority, P.O. Box 10307, Pritchard, AL. 35209, (334) 456–3324	3,033,747
Gordon Ellingson, SR Habitat/Humanity, P.O. Box 488, Pascagoula, MS. 39701, (601) 497–4495	878,691
P. Gilbertson Barno, Buckeye Community Hope Foundation, 947 E. Johnstown RD. Suite 221, Gahanna, OH. 43230, (614) 337–9718	2,157,000
P. Gilbertson Barno, Buckeye Community Hope Foundation, 947 E. Johnstown Rd. Suite 221, Gahanna, OH. 43230, (614) 337–9718	2,810,880
Walter Dumas, Shiloh Bapt. Church, 185 Eddie Robinson Sr. Drive, Baton Rouge, LA. 70806, (504) 383–7436	6,858,751
Jim Willett, Indian Center, Inc., 1100 Military Road, Lincoln, NE. 68154 (402) 438–5231	1,908,904
Steven Barbier, GDMHA, 1776 SO. Jackson St. Ste. 811, Enver, CO. 80202, (303) 762–7274	5,092,647

[FR Doc. 96–13333 Filed 5–28–96; 8:45 am]
BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Request for Renewal/Reinstatement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Fish and Wildlife Service (Service) is planning to submit the following proposal for the collection of information listed below to the Office of Management and Budget (OMB), for renewal under the provisions of the Paperwork Reduction Act. This proposal for renewal includes existing information collection requirements and adds information collection requirements for likely respondents to recently enacted regulations that implement the Wild Bird Conservation Act. Copies of the information collection requirement and related forms and explanatory material may be obtained by contacting the Service's Clearance Officer at the telephone number listed below. The Service is soliciting comments and suggestions on the requirement as described as below.

DATES: Comments must be submitted on or before July 29, 1996.

ADDRESSES: Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Mail Stop 224-Arlington Square, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Phyllis H. Cook, Service Information Collection Clearance Officer, 703/358–1943.

SUPPLEMENTARY INFORMATION:

Title: Wild Exotic Bird Import Application.

OMB Approval Number: 1018–0084.

Abstract: The Wild Bird Conservation Act of 1992 (WBCA) authorizes the Service to issue permits for the importation of individual exotic birds from otherwise prohibited species for the following purposes (after a finding that such imports are not detrimental to the species' survival): scientific research; personally owned pets of individuals returning to the United States after being out of the country for a least one year; zoological breeding or display programs; and cooperative breeding programs designed to promote the conservation of the species in the wild, that are developed and administered by organizations meeting certain standards. The information required on the application is used by the Service to determine if an applicant should be granted a permit to import an exotic bird under the provisions of the WBCA. This proposed amendment will change this requirement by providing for applications that will be submitted by foreign governments and foreign breeding facilities, in accordance with recently enacted regulations to implement the WBCA. This proposed amendment does not affect existing information collection requirements for scientific research, personal pets, zoological breeding or display, or cooperative breeding, in any way.

Service Form Number(s): 3–200.

Frequency: On occasion.

Description of respondents: Individuals and households; businesses or other for profit organizations; non-profit institutions and small businesses or organizations, foreign governments.

Completion Time: The reporting burden is estimated to average 4 hours per respondent for all permits except those for personally owned pets. For permits for personally owned pets, it is estimated that completion time will average 1 hour per application. Applications for species approval from foreign governments and foreign breeding facilities will require an average of 8 hours to complete. The average completion time for all applicants is estimated at 3.42 hours per response.

Annual Responses: Service experience indicates that approximately 600 applicants will apply each year for permits other than for personally owned pets. Approximately 200 applicants will apply for permits for personally owned pets. The Service anticipates that 10 or less foreign governments and approximately 20 foreign breeding facilities will apply. Total annual responses will be 830.

Annual Burden Hours: Total annual burden hours will be 2,480.

Kenneth Stansell,

Acting Assistant Director—International Affairs.

[FR Doc. 96–13358 Filed 5–28–96; 8:45 am]
BILLING CODE 4310–55–M

Bureau of Indian Affairs

Supplemental Final Determination for Federal Acknowledgment of the Samish Tribal Organization as an Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Supplemental Notice of Final Determination.

SUMMARY: The Assistant Secretary—Indian Affairs has determined that the Samish Tribal Organization (STO) exists as an Indian tribe within the meaning of Federal law pursuant to the acknowledgment regulations, 25 CFR Part 83, that became effective October 2, 1978. The Secretary has directed that the determination be made final and effective immediately.

DATES: This supplemental notice of determination is final and effective immediately.

FOR FURTHER INFORMATION CONTACT: Office of the Assistant Secretary—Indian Affairs, (202) 208–7163.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

On March 29, 1996, the Assistant Secretary—Indian Affairs issued a notice of her determination pursuant to 25 CFR Part 83 that the Samish Tribal Organization existed as an Indian tribe. The notice instructed the Director, Portland Area Office, Bureau of Indian Affairs, to verify the membership list and to develop with the tribe a plan and budget for the implementation of the Assistant Secretary's decision and the provision of services to the members of the Samish Tribal Organization. The notice was published in the **Federal Register** on April 9, 1996 (61 FR 15825).

The notice indicated that two tribes had requested that the Secretary direct the Assistant Secretary to reconsider her decision and that the Secretary was considering whether he had authority to direct the Assistant Secretary to reconsider and, if he had that authority, whether he should direct her to reconsider. The notice also indicated that the Samish Tribal Organization has not requested administrative reconsideration of the Assistant Secretary's determination to acknowledge its existence as an Indian tribe but had filed suit seeking to require a reinstatement verbatim of the Administrative Law Judge's recommended decision and findings of fact. Lastly, the notice stated that the determination would be effective 60 days after the date on which the notice appeared in the **Federal Register**, or June 8, unless the Secretary of the Interior requested a reconsideration by the Assistant Secretary—Indian Affairs pursuant to 25 CFR § 83.10(a)-(c).

On April 26, 1996, the Secretary responded in writing to the two requests for reconsideration. He concluded that there were significant questions as to his authority to grant the requests because of the unique terms and circumstances of the remand from the District Court which governed the Assistant Secretary's determination. The Secretary noted that, in accordance with the district court's remand to the Department, the Assistant Secretary's determination did not resolve the nature and extent of the treaty rights, if any, of the Samish Tribal Organization so the treaty rights of the tribes requesting reconsideration were not affected by the determination. The Secretary concluded that the Assistant Secretary's determination should be deemed final agency action and effective April 26, 1996. Accordingly, he directed that this notice be published.

Dated: May 20, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–13438 Filed 5–23–96; 2:47 pm]
BILLING CODE 4310–02–P

Bureau of Land Management

[WO–310–1310–02–24 1A]

OMB Approval Number 1004–0162

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposed renewal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). On March 5, 1996, the Bureau of Land Management (BLM) published a notice in the **Federal Register** (61 FR 8638) requesting comments on the collection. The comment period ended May 5, 1996. No comments were received. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0162), Washington, DC 20503, telephone (202) 395–7340.

Title: Oil and Gas Geophysical Exploration Operations (43 CFR 3151).

OMB Approval Number: 1004–0162.

Abstract: Respondents supply information which will be used to determine procedures for conducting oil and gas geophysical exploration operations on public lands. The information supplied allows the Bureau of Land Management to determine that geophysical exploration operation activities are conducted in a manner consistent with the regulations, local use plans and environmental assessments in compliance with the provisions of the National Environmental Policy Act of 1969 as amended.

Form Numbers: 3150–4, 3150–5.

Frequency: On occasion.

Description of Respondents: Oil and gas exploration and drilling companies.

Estimated Completion Time: Form 3150–4—1 hour; Form 3150–5—1/3 hour.

Annual Responses: 1200.

Annual Burden Hours: 800.

Bureau Clearance Officer: Wendy Spencer (303) 236–6642.

Dated: May 10, 1996.

Patrick W. Boyd,

Acting Chief, Regulatory Management Team.

[FR Doc. 96–13342 Filed 5–28–96; 8:45 am]
BILLING CODE 4310–84–P

[WO–320–4130–02–24 1A]

OMB Approval Number 1004–0169

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) On February 14, 1996, BLM published a notice in the **Federal Register** (61 FR 5797) requesting comment on this proposed collection. The comment period ended on April 15, 1996. BLM received one comment from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the BLM clearance officer and to the Office of Management and Budget, Interior Department Desk Officer (1004–0169), Washington, D.C., 20503, telephone (202) 395–7340.

Title: Use and Occupancy and under the Mining Laws (43 CFR 3715).

OMB approval number: 1004–0169.

Abstract: The Bureau of Land Management is proposing to renew the approval of an information collection for a new rule at 43 CFR 3715. That rule will manage use and occupancy on unpatented mining claims. It sets out the restrictions on use and occupancy of unpatented mining claims and mill sites on Federal lands and to provide field managers with the tools necessary to manage occupancy and use. The final rule would define those activities that are related to prospecting, mining, or processing operations and uses reasonably incident thereto. The rule would establish conditions for determining whether these criteria are met, procedures for initiation of occupancy, standards for the use or occupancy, prohibited acts, procedures for inspection and enforcement, and procedures for recognizing and managing existing occupancies. It would also provide for penalties and appeals procedures. The rules only apply to public land under the administration of the Bureau of Land Management.

Bureau Form Number: None.

Frequency: Once.

Description of respondents: Respondents may range from an

individual to multi-national corporations.

Estimated completion time: 2.0 hours.
Annual responses: 780.
Annual burden hours: 1560.
Collection Clearance Officer: Wendy Spencer, 303–236–6642.

Dated: May 7, 1996.

Annetta L. Cheek.

Chief, Regulatory Management Team.

[FR Doc. 96–13343 Filed 5–28–96; 8:45 am]

BILLING CODE 4130–84–P

[CA–010–1430–00; CACA 7870]

Order Providing for Opening of Lands Subject to Section 24 of the Federal Power Act; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order opens, subject to section 24 of the Federal Power Act (FPA), approximately 87.6 acres of public lands withdrawn by two Federal Power Commission (FPC) orders, dated June 27, 1963 and February 17, 1971, for Power Project Number 2179. This action will permit consummation of a pending land exchange and retain the power rights to the United States of America. The Federal Energy Regulatory Commission (FERC) has determined that the power value of the subject lands will not be injured or destroyed by their exchange, if the land exchange is subject to section 24 of FPA. FERC concurred with this action in a letter, DVCA–1237, dated March 29, 1996. Although the lands have been and will remain closed to mining, they have been and will remain open to mineral leasing.

DATES: August 28, 1996.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–931.4), 2800 Cottage Way, Sacramento, CA 95825–1889, 916–979–2858.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, Section 24, as amended, 41 Stat. 1075; 49 Stat. 846; 62 Stat. 275; 16 U.S.C. 818, and pursuant to the determination by the Federal Energy Regulatory Commission in DVCA–1237, it is ordered as follows:

1. At 8:30 a.m. on August 28, 1996, the following described lands withdrawn by two Federal Power Commission (FPC) orders, dated June 27, 1963 and February 17, 1971, for Power Project Number 2179, will be opened to disposal by land exchange subject to the provisions of Section 24 of the Federal Power Act as specified by the Federal Energy Regulatory Commission in determination DVCA–1237, and subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law:

Mount Diablo Meridian

T. 4 S., R. 15 E.,
Sec. 14, E½SE¼SE¼;
Sec. 23, NE¼SE¼.
T. 5 S., R. 15 E.,
Sec. 2, that portion of lot 1 lying inside of the project boundary for Power Project Number 2179;
Sec. 3, lots 7 through 15 (formerly described as lot 2).

The areas described aggregate approximately 87.6 acres in Mariposa County.

2. The State of California has a preference right for public highway rights-of-way or material sites for a period of 90 days from the date of publication of this order, and any location, entry, selection, or subsequent patent shall be subject to any rights granted the State as provided by the Act of June 10, 1920, Section 24, as amended, 41 Stat. 1075; 49 Stat. 846; 62 Stat. 275; 16 U.S.C. 818.

Dated: May 15, 1996.

David McIlnay,

Chief, Branch of Lands.

[FR Doc. 96–13359 Filed 5–28–96; 8:45 am]

BILLING CODE 4310–40–P

[MT–034–1430–01]

Notice of Realty Action—Non-Competitive Sale in Lawrence County, South Dakota (SDM–084985)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described public surface has been determined suitable for disposal by direct sale, at not less than fair market value of $500 to Kathleen Farstad pursuant to 43 CFR 2710 and under the authority of Section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716). The public surface land to be acquired by Kathleen Farstad in Lawrence County, South Dakota:

Black Hills Meridian

T. 4 N., R. 3 E.,
Sec. 17, lot 7.

Containing approximately 00.01 acres

DATES: Interested parties may submit comments to the District Manager, Bureau of Land Management, Dakotas District Office, 2933 Third Avenue West, Dickinson, North Dakota 58601–2619. Comments shall be submitted by July 15, 1996. Any adverse comments will be evaluated by the BLM Montana State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION: Information related to this sale including the environmental assessment is available for review at the Bureau of Land Management, South Dakota Resource Area Office, 310 Roundup Street, Belle Fourche, SD 57717, or the Dakotas District Office, 2933 Third Avenue West, Dickinson, North Dakota 58601–2619.

SUPPLEMENTARY INFORMATION: The public lands and mineral described above are segregated from settlement, location and entry under the public land laws, including the mining laws, but not from the mineral leasing laws nor from sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976, for a period of 270 days from the date of publication of this notice. The sale will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with U.S.C. 945.
2. The reservation to the United States of all minerals in the Federal lands being transferred.
3. All valid existing rights of record.
4. Any other applicable terms and conditions.

This sale is consistent with BLM policies and the South Dakota Resource Management Plan, dated 1985, and has been discussed with state and local officials. The public interest will be served by completion of this direct sale to the surrounding landowner because it will enable the BLM to sell a potential problem parcel and will increase management efficiency of public lands in the area.

Dated: May 21, 1996.

Douglas J. Burger,

District Manager.

[FR Doc. 96–13391 Filed 5–28–96; 8:45 am]

BILLING CODE 4310–WN–M

[UT–040–06–1610–00]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: The Bureau of Land Management, Cedar City District, Escalante Resource Area, has completed an Environmental Analysis (EA)/ Finding of No Significant Impact (FONSI) of the Proposed Plan Amendment to the Cedar/Beaver/ Garfield/Antimony Resource Management Plan and the Escalante & Paria Management Framework Plans. The Proposed Amendment allows land tenure adjustments and adds five (5) criteria elements by which land disposals and exchanges (adjustments) will be evaluated.

DATES: The protest period for this Proposed Plan Amendment will commence with the date of publication of this notice and last for 30 days. Protests must be received on or before June 28, 1996.

ADDRESSES: Protests must be addressed to the Director (480), Bureau of Land Management, Resource Planning Team, 1849 C Street, N.W. Washington, D.C. 20240 within 30 days after the date of publication of this Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Gregg Christensen, Acting Area Manager, Escalante Resource Area, P. O. Box 225, Escalante, Utah 84726, (801) 826–4291. Copies of the proposed Plan Amendment are available for review at the Escalante Resource Area.

SUPPLEMENTARY INFORMATION: This action is announced pursuant to Section 202(a) of the Federal Land Management Act (1976) and 43 CFR Part 1610. This Proposed Amendment is subject to protests by any party who has participated in the planning process. Protest must be specific and contain the following information:

—The name, mailing address, phone number, and interest of the person filing the protest.
—A statement of the part(s) of the proposed amendment being protested and citing pages, paragraphs, maps, etc., of the proposed Plan Amendment.
—A copy of all documents addressing the issue(s) submitted by the protestor during the planning process or a reference to the date when the protester discussed the issue(s) for the record.
—A concise statement as to why the protester believes the BLM State Director is incorrect.

David E. Little,

Associate State Director.

[FR Doc. 96–13411 Filed 5–28–96; 8:45 am]

BILLING CODE 4310–DQ–P

Minerals Management Service

Outer Continental Shelf; Operations, Current List of Notice to Lessees and Operators (NTL) issued by Each OCS Region and the National Office

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice.

SUMMARY: The MMS issues NTL's to lessees and operators and guidelines for oil, gas, and sulphur operations in the OCS. This notice informs the public, industry, and other Government agencies of NTL's that are in effect as of April 3, 1996, in each OCS Region and the National Office, This notice is also on MMS's worldwide website at HTTP://WWW.MMS.GOV.

ADDRESSES: To obtain copies of NTL's, write or telephone the OCS Region or the National Office that issued the NTL at the following addresses:

Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 110, Anchorage, AK 99508–4302, (907) 271–6065, Attention: Regional Supervisor, Field Operations

Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Blvd., New Orleans, LA 70123–2394, (5047) 736–2519

Pacific OCS Region, Minerals Management Service, 770 Paseo Camarillo, Camarillo, CA 93010–6064, (805) 389–7550, Attention: Ms. Freddie Mason

Engineering and Standards Branch, Minerals Management Service, 381 Elden Street, Herndon, VA 22070–4817, (703) 787–1600, Attention: Mr. Vincent Brown

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Vincent Brown, Engineering and Standards Branch, 381 Elden St., Herndon, VA 22070–4817 Telephone: (703) 787–1600.

SUPPLEMENTARY INFORMATION: The MMS has responsibility for oil, gas, and sulphur operations in the OCS to ensure operational and environmental safety. NTL's give lessees and operators guidance concerning policies and procedures. If an NTL issued before April 3, 1996, is not listed, it is cancelled and no longer in effect. The current NTL's for each OCS Region and the National Office are as follows:

BILLING CODE 4310–MR–M

The Following Notices to Lessees and Operators Were Released by the Regional Offices		
Alaska OCS Region		
1980		
80-2	June 13	Guidelines For Preparing Outer Continental Shelf Environmental Reports
1984		
84-04	August 1	Preliminary Activities Conducted on Leased Areas-Gulf of Alaska/Cook Inlet
1985		
85-02	August 9	Preliminary Activities Conducted on Leased Areas--Bering Sea
1986		
86-02	January 15	Preliminary and Other Activities Conducted on Leased Areas--Beaufort Sea
1987		
87-01	November 30	Preliminary and Other Activities Conducted on Leased Areas--Chukchi Sea
1989		
89-01	December 1	Minimizing Potential for Incidental Taking of Polar Bear and Walrus During Preliminary and Other Activities Conducted on Leased Areas in the Beaufort and Chukchi Seas
89-02	December 1	Shallow Hazards Geophysical Surveys and Geotechnical Evaluations
1990		
90-01	April 2	Submission of Digitized Well Log Data on Magnetic Tape
1991		
91-01	October 25	Updated Form for Designation of Operator
91-03	November 21	Furnishing Food, Quarters, and Transportation to Minerals Management Service (MMS) Personnel
91-04	November 21	District Office Hours and Contact Procedures
Gulf of Mexico OCS Region		
1972		
72-9	September 22	OCS Operations Safety Alert Notice No. 1, Flash Fire from Liquid Phase Heat Transfer Unit
1973		
73-3	February 16	The Use of Polychlorinated Biphenyls (PCB's)
1983		
83-3	September 7	OCS Shallow Hazards Requirements for the Gulf of Mexico OCS Region (Cancels NTL's Nos. 75-8 and 80-5)

1985		
85-2	February 4	Effect of Drilling "Window" Approvals
85-8	November 26	Minimizing Oil and Gas Structures in the Gulf of Mexico
1986		
86-5	June 18	New Forms for Designation of Operator
86-9	October 13	Outer Continental Shelf Environmental Report/Information Guidelines for Plans Submitted in the Gulf of Mexico OCS Region (Supersedes NTL 80-6)
86-11	November 17	Guidelines for Reducing or Eliminating Trash and Debris in the Gulf of Mexico.
1988		
88-2	June 10	Submission of List of Safety and Pollution Prevention Equipment
88-3	June 29	Information to be Made Available on the Reports Required in Subpart of 30 CFR part 250
88-7	September 15	Reorganization of Office of Field Operations and Realignment of New District Boundaries
88-11	February 1	Implementation of Measures to Detect and Protect Deepwater Chemosynthetic Communities
1989		
89-1	August 1	Implementation of Consistent Biological Stipulation Measures in Central and Western Gulf of Mexico
89-2	March 30	Special Security Handling of Well Logs and Data Generated from Oil and Gas Leases
89-05	September 29	Timelapse in Exploratory Drilling Operations Not to Exceed 180 Days for Deepwater (400 meters of deeper) Leases
89-06	November 30	Requirements for Submittal of Documents Under 30 CFR part 250, subpart I, Platforms and Structures
89-07	December 15	Supplemental Bonds
	June 27	Memorandum on Removal of All Abandoned Casing Stubs
1990		
90-09	November 8	Temporary Abandonment of Wells and Maintenance, Protection and Removal of Underwater Casing Stubs
1991		
91-01	April 15	Submittal of Electric, Radioactive, and Other Well Bore Surveys
91-02	December 20	OCS Archaeological Resource Requirements for the Gulf of Mexico OCS Region
91-04	July 30	Rate Control Section Address, Office Hours, and Phone Call Procedures
91-06	September 11	Notice to Designated Operators of Liquid Royalty Measurement Facilities

1992		
92-02	May 28	Minimum Interim Requirements for Site Clearance (and Verification) of Abandoned Oil and Gas Structures in the Gulf of Mexico
92-04	July 1	Interim Requirements for Oil Spill Contingency Plans and Oil Spill Response Training Drills
1993		
93-04	September 30	Outer Continental Shelf Functional Responsibility of New Regulations
93-05	October 14	Procedures and Policies Concerning Transition Period for Use of the New Semiannual Well Test Report Form
1994		
94-02	February 2	Air Emissions Reporting Requirements
94-03	March 1	Interim Requirement for Design, Fabrication, Etc.
94-04	May 6	Best Available Control Technology
94-06	August 24	New Orleans District Office Hours and Phone Call Procedures
94-07	December 9	Lafayette District Office Hours and Phone Call Procedures
1995		
95-01	April 25	Interim Reporting Requirements for 30 CFR 250, Subpart K (PD)
95-02	June 12	Rate Control Section Address, Office Hours, and Phone Call Procedures
95-05	September 1	Pipeline Unit Office Hours and Notification Procedures
95-06	September 1	Lafayette District Address, Office Hours and Phone Call Procedures
95-07	November 27	New Orleans District Office Hours and Phone Call Procedures
1996		
96-01	January 1	Houma District Office Hours and Phone Call Procedures
96-02	February 1	Lake Jackson District Address, Office Hours and Phone Call Procedures
Pacific OCS Region		
1977		
77-03	March 1	Minimum Cultural Survey Requirements, OCS Exploratory Drilling
1978		
78-01	October 23	Minimum Requirements for Biological Surveys
1980		
80-02	March 20	Minimum Requirements for Environmental Reports
1988		
88-05	May 5	Requirements for Exploratory Operations
88-06	May 5	Guidelines for Shallow Hazards Survey for OCS Exploratory Operations

88-07	May 5	Guidelines for Shallow Hazards Survey for OCS Development Platforms
88-08	May 5	Guidelines for Shallow Hazards Survey for OCS Pipeline Routes
88-09	May 5	Submission of Digitized Well Log Data on Magnetic Tape
1991		
91-01	November 8	Notice to Designated Operators of Liquid Royalty Measurement Facilities
1992		
92-01	March 24	Warning Signs: Pipeline and Power Cables
1993		
93-01	September 30	Helideck Closures
1995		
95-01	June 8	Camarillo District Office Hours and Phone Call Procedures
95-02	June 8	Santa Maria District Office Hours and Phone Call Procedures

The Following Notices to Lessees and Operators Were Released by the National Office

1992		
92-IN	September 11	Guidelines for an Application for Suspension of Production Due to Uneconomical Market Conditions
1993		
93-IN	April 16	Guidelines for an Application for Certificate of Oil Spill Financial Responsibility for Offshore Facilities
93-2N	October 6	Liability for Plugging Wells and Removal of Property
1994		
94-1N	December 1	Decentralization of the Lessee Training Program (Subpart O)
1995		
95-IN	August 1	Suspension of Requirements for Updating Safety and Pollution Prevention Equipment Inventory Lists
1996		
96-1N	January 1	Determination of Pollution Inspection Frequencies for Unmanned Facilities

Dated: May 20, 1996.

Kumkum Ray,

Acting Associate Director, Offshore Minerals Management.

[FR Doc. 96–13417 Filed 5–28–96; 8:45 am]

BILLING CODE 4310–MR–C

National Park Service

Submission of Study Package for Office of Management and Budget Review Opportunity for Public Comment

AGENCY: National Park Service, Guadalupe Mountains National Park, Interior

ACTION: Notice and request for comments.

ABSTRACT: The National Park Service and University of Texas at El Paso propose to conduct a survey of visitors to Guadalupe Mountains National Park. The goal is to learn visitor demographics and visitors' opinions about services and facilities in the park. Results will be used by managers to improve services, protect resources and better serve the visitors. The study package including the proposed survey questionnaire has been submitted to the Office of Management and Budget for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the NPS invites public comment on a proposed information collection request (ICR).

Comments are invited on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

The primary purpose of the proposed ICR is to compare and contrast any significant differences between park users from three apparently different visitor use seasons of spring, summer, and fall. This proposed collection of information will be accomplished using a mail-back questionnaire focusing on information that is not readily available from registers at visitor centers, trailheads, or camping permits. The range of issues in the questionnaire will assess (1) visitor information sources inside and outside the park, (2) visitor travel flow within the park, (3) visitor evaluation of existing and desired facilities, programs or activities, and (4) visitor perceptions of crowding or solitude in wilderness and developed areas. This data is needed to plan for future management actions that would protect park resources and provide visitor services.

SEND COMMENTS TO: Superintendent, Guadalupe Mountains National Park, HC 60 Box 400, Salt Flat, TX 79847–9801.

FOR FURTHER INFORMATION OR A COPY OF THE QUESTIONNAIRE SUBMITTED FOR OMB REVIEW, CONTACT: Fred Armstrong, Resource Management Specialist, at (915) 828–3251 ext. 132, or Jacqueline Bergdahl, Department of Sociology, UTEP AT (915) 747–6812.

There were no public comments received or submitted to OMB for review as a result of publishing a 60 day notice of intention to request clearance of information collection.

SUPPLEMENTARY INFORMATION:

Title: Visitor Survey—Guadalupe Mountains National Park.
Form: Not applicable.
OMB Number: To be assigned.
Expiration Date: To be assigned.
Type of Request: Request for new clearance.
Description of Need: To evaluate significant differences in visitor activities and visitor perceptions during three apparently different visitor use seasons of spring, summer and fall. The proposed information to be collected is not available from existing records, sources, or observations.
Description of Respondents: Individuals or groups of park visitors.
Estimated Annual Reporting Burden: 800 hours.
Estimated Average Burden Hours Per Response: 12 minutes.
Estimated Average Number of Respondents: 4,000.
Estimated Frequency of Response: For a 7 day period each during the visitor use seasons of spring, summer, and fall, for a total of 21 days of survey.

Terry N. Tesar,
Information Collection Clearance Officer, Management Services Division, National Park Service.

[FR Doc. 96–13362 Filed 5–28–96; 8:45 am]
BILLING CODE 4310–70–M

Commercial Services Management Plan, Environmental Impact Statement, Yellowstone National Park, Wyoming

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the Commercial Services Management Plan, Yellowstone National Park.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for a Commercial Services Management Plan for Yellowstone National Park.

The effort will result in a plan that will determine the levels and types of commercial visitor services appropriate for Yellowstone National Park (Yellowstone). The plan is intended to provide the park with long-term strategic guidance for management of commercial services.

The plan will provide a framework or broad, general direction and guidance. Individual commercial service proposals may also require further site specific plans and compliance, when implemented in the future.

This plan will assimilate decisions made in previous planning documents and amend some elements of plans that are no longer consistent with management objectives of the park. The plan will provide the basis for development of prospectuses for new concession contracts when existing contracts expire.

For the purposes of this planning process, commercial services include anything offered to the public or private individuals, in which park resources are used, and which results in compensation of any kind to an individual, organization, or corporation. Compensation may be "for profit" or "non-profit" under local, state, or federal law.

Major issues which will be addressed by the plan, include:

(1) What types of services and facilities are appropriate for Yellowstone as we enter the next century?

(2) What levels of services and facilities are essential to serve Yellowstone visitors?

(3) What types of support facilities (e.g., employee housing, warehouses, storage, transportation) are necessary?

(4) What are the appropriate areas for facilities which serve visitors and provide support services?

A general information brochure has been prepared that lists the issues identified to date. Copies of that information can be obtained by contacting: Commercial Services Plan, P.O. Box 168, Yellowstone National Park, Wyoming 82190.

Dated: May 20, 1996.

John E. Cook,
Director, Intermountain Field Area.

[FR Doc. 96–13363 Filed 5–28–96; 8:45 am]
BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before

MAY 18, 1996. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013-7127. Written comments should be submitted by June 13, 1996.

Carol D. Shull,
Keeper of the National Register.

MONTANA

Flathead County

Wurtz Homestead, N. Fork Rd., 2 mi. N of Ford, Flathead National Forest, Polebridge vicinity, 96000661

Ravalli County

McCart Fire Lookout, Approximately 4 mi. S of E. Fork Forest Service Station, Bitterroot National Forest, Sula vicinity, 96000660

NEVADA

Humboldt County

Paradise Valley Ranger Station, 355 S. Main St., Humboldt National Forest, Paradise Valley, 96000662

NEW YORK

Jefferson County

Buttermilk Flat Schoolhouse No. 22 (Orleans MPS) S side of Buttermilk Flat Rd., E of jct. with Carter St. Rd., Orleans, 96000671
Carter Street Schoolhouse No. 21 (Orleans MPS) Jct. of Vaadi and Dog Hill Rds., SW corner, Orleans, 96000665
Horr, Elijah, House (Orleans MPS) E side of NY 180, N of jct. with Woodard Rd., Hamlet of Stone Mills, Orleans, 96000666
La Farge Land Office (Orleans MPS) Jct. of Main and Mill Sts., SW corner, Hamlet of La Fargeville, Orleans, 96000668
La Fargeville United Methodist Church (Orleans MPS) W side of Main St., S. of jct. with Co. Rt. 181, Hamlet of La Fargeville, Orleans, 96000670
Methodist Episcopal Church (Orleans MPS) S side of NY 180, W of jct. with Gore Rd., Hamlet of Omar, Orleans, 96000663
Methodist—Protestant Church at Fisher's Landing (Orleans MPS) Reed Point Rd., near jct. with Co. Rd. 195, Hamlet of Fisher's Landing, Orleans, 96000667
St. Paul's Episcopal (Orleans MPS) E side of Main St., S of jct. with Co. Rt. 181, Hamlet of La Fargeville, Orleans, 96000669
Thousand Island Grange Hall (Orleans MPS) E side of Gore Rd., N of jct. with NY 180, Hamlet of Omar, Orleans, 96000664

Seneca County

Burton, William H., House, 35 E. Main St., Waterloo, 96000675
Waterloo Library, 31 Williams St., Waterloo, 96000676

OHIO

Athens County

Nelsonville Historic District, Roughly bounded by Canal, Jefferson, Scott, and Madison Sts., Nelsonville, 96000672

Cuyahoga County

Park Building, 140 Public Sq., Cleveland, 96000674

Greene County

McDonald Farm, 1446 Stone Rd., Xenia vicinity, 96000673

TENNESSEE

Davidson County

Tennessee State University Historic District, 3500 John A. Merritt Blvd., Nashville, 96000677

UTAH

Sanpete County

Great Basin Research Station Historic District, UT 29, approximately 8 mi. E of Ephraim, Manti—Lasal National Forest, Ephraim vicinity, 96000678

[FR Doc. 96–13427 Filed 5–28–96; 8:45 am]
BILLING CODE 4310–70–P

Bureau of Reclamation

Central Valley Project Improvement Act, Criteria for Evaluating Water Conservation Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of draft decision of evaluation of water conservation plans.

SUMMARY: To meet the requirements of the Central Valley Project Improvement Act (CVPIA), the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Conservation Plans (Criteria) dated April 30, 1993. These Criteria were developed based on information provided during public scoping and public review sessions held throughout Reclamation's Mid-Pacific (MP) Region. Reclamation uses these Criteria to evaluate the adequacy of all water conservation plans developed by project contractors in the MP Region, including those required by the Reclamation Reform Act of 1982. The Criteria were developed and the plans evaluated for the purpose of promoting the most efficient water use reasonably achievable by all MP Region's contractors. Reclamation made a commitment (stated within the Criteria) to publish a notice of its draft determination on the adequacy of each contractor's water conservation plan in the **Federal Register** and to allow the public a minimum of 30 days to comment on its preliminary determinations. This program is on-going; an updated list will be published to recognize districts as plans are revised to meet the Criteria.

DATES: All public comments must be received by Reclamation by June 28, 1996.

ADDRESSES: Please mail comments to the address provided below.

FOR FURTHER INFORMATION CONTACT: Betsy Reifsnider, Bureau of Reclamation, 2800 Cottage Way, MP–402, Sacramento, CA 95825. To be placed on a mailing list for any subsequent information, please write Ms. Reifsnider or telephone at (916) 979–2388.

SUPPLEMENTARY INFORMATION: Under provisions of section 3405(e) of the CVPIA (Title 34 of Pub. L. 102–575), "The Secretary (of the Interior) shall establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982." Also, according to section 3405(e)(1), these criteria will be developed " * * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices."

The MP Criteria states that all parties (districts) that contract with Reclamation for water supplies (municipal and industrial contracts greater than 2,000 acre feet and agricultural contracts over 2,000 irrigable acres) will prepare water conservation plans which will be evaluated by Reclamation based on the following required information detailed in the steps listed below to develop, implement, monitor and update their water conservation plans. The steps are:

1. Coordinate with other agencies and the public.
2. Describe the district.
3. Inventory water resources.
4. Review the past water conservation plan and activities
5. Identify best management practices to be implmented
6. Develop schedules, budgets and projected results
7. Review, evaluate, and adopt the water conservation plan
8. Implement, monitor and update the water conservation plan

The MP contractors listed below have developed water conservation plans which Reclamation has evaluated and preliminarily determined meet the requirements of the Criteria.

- Goleta Water District
- Kern-Tulare Water District
- Rag Gulch Water District

Public comment on Reclamation's preliminary (i.e., draft) determinations at this time is invited. Copies of the plans listed above will be available for review at Reclamation's MP Regional Office and MP's area offices. If you wish to review a copy of the plans, please contact Ms. Goodman to find the office nearest you.

Dated: May 16, 1996.

Roger K. Patterson,

Regional Director.

[FR Doc. 96–13274 Filed 5–28–96; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Notice of Lodging a Settlement by Consent Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)

Notice is hereby given that on May 8, 1996, a proposed consent decree in *United States* v. *Fidelcor Business Credit Corp., et al.*, Civ. A. No. 93–CV–0233, was lodged with the United States District Court for the Eastern District of Pennsylvania. This settlement is with Fidelcor Business Credit Corporation, and three of its officers, Gerald Blum, Bruce Hilowitz and Steven Freidberg, who are alleged to have arranged for the disposal of hazardous substances at the Eddystone Avenue Superfund Site, located in Eddystone, Pennyslvania and the Thompson Street Trailer Superfund Site located in Philadelphia, Pennsylvania. The settlement in this matter is pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. 9601 *et seq.*, and requires the Settlors to pay $720,000.00 in past response costs to the United States. The Decree reserves the right of the United States to seek further injunctive relief or response costs should new information or new conditions be discovered indicating that further response actions are necessary, and to seek recovery of costs associated with damage to natural resources.

The consent decree includes a covenant not to sue by the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and under Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973, for past response costs.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC, 20044, and should refer to *United States* v. *Fidelcor Business Credit Corp., et al.*, DOJ Reference No. 90–11–3–956. Commentors may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed consent decree may be examined at the Office of the United States Attorney for the Eastern District of Pennsylvania, 651 Chestnut Street, Philadelphia, Pa., Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pa.; and at the Consent Decree Library, 1120 "G" Street NW., 4th Floor, Washington, DC, 20005, (202) 624–0892. A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library at the address listed above. In requesting a copy, please refer to the referenced case and number, and enclose a check in the amount of $4.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–13360 Filed 5–28–96; 8:45 am]

BILLING CODE 4410–01–M

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; nonimmigrant checkout letter.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" from the date listed at the top of this page in the **Federal Register**.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Overview of this information collection:

(1) Type of Information Collection: *Extension of a currently approved collection.*

(2) Title of the Form/Collection: Nonimmigrant Checkout Letter.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form G–146. Detention and Deportation, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. This collection of information is used in making inquiries of persons in the United States or abroad concerning the whereabouts of aliens, and also requests departure information by the Immigration and Naturalization Service, when initial investigation to locate the alien or verify his or her departure is unsuccessful.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 20,000 respondents at 10 minutes (.166) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 3,320 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street NW., Washington, DC 20530.

Dated: May 22, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–13312 Filed 5–28–96; 8:45 am]

BILLING CODE 4410–18–M

Agency Information Collection Activities: New Collection; Comment Request

ACTION: Notice of information collection under review; joint employment verification pilot (JEVP).

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" from the date listed at the top of this page in the **Federal Register**.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Overview of this information collection:

(1) Type of Information Collection: *New Collection.*

(2) Title of the Form/Collection: Joint Employment Verification Pilot (JEVP).

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: None. Office of Management, SAVE, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit. The information collection will be used by the Immigration and Naturalization Service and the Social Security Administration to verify employment authorization for all new employees regardless of citizenship for those companies participating in the Joint Employment Verification Pilot.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 1,000 respondents at 3.5 hours per response, and 400,000 responses at 5 minutes (.083) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 36,700 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street NW., Washington, DC 20530.

Dated: May 22, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–13313 Filed 5–28–96; 8:45 am]

BILLING CODE 4410–18–M

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; applicant survey.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" from the date listed at the top of this page in the **Federal Register**.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Overview of this information collection:

(1) Type of Information Collection: *Extension of a currently approved collection.*

(2) Title of the Form/Collection: Applicant Survey.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form G–942. Human Resources Branch, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. This form is required to ensure compliance with Federal laws and regulations which mandates equal opportunity in the recruitment of applicants for Federal employment.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 75,000 respondents at 4 minutes (.066) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 4,950 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 22, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–13314 Filed 5–28–96; 8:45 am]

BILLING CODE 4410–18–M

LEGAL SERVICES CORPORATION

Suggested List of Priorities for LSC Recipients

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: This notice sets out a suggested list of priorities adopted by the Legal Services Corporation's ("LSC" or "Corporation") Board of Directors on May 20, 1996, pursuant to a Fiscal Year ("FY") 1996 appropriations act requirement. The list is intended to be considered by LSC recipients when setting their own priorities for the provision of legal assistance.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, (202) 336–8810.

SUPPLEMENTARY INFORMATION: Public Law 104–134, the omnibus legislation that includes the FY 1996 appropriation for the Legal Services Corporation, contains two modifications of current law relating to grantees' allocation of priorities in the use of resources. The governing boards of grantees are directed to set specific priorities in writing, pursuant to the Legal Services Corporation Act and the Corporation's priority-setting regulation, of the types of matters and cases to which they will devote time and resources, and their staffs must sign written agreements not to undertake cases or matters other than in accordance with these specific priorities except in emergency situations [Section 504 (a)(9)]. The Corporation itself is directed to promulgate a suggested list of priorities that local boards of directors may use in setting their local priorities [Section 504 (c)]. Accordingly, the following suggested list of priorities has been adopted by the Board at its meeting on May 20, 1996.

A one-third reduction in funding for the Legal Services Corporation for FY 1996 requires that the Corporation's grantees exercise the utmost care in making the difficult and, at times, painful decisions as to the types of cases they can accept and the nature of the service they will provide. While the ultimate decision in these matters rests with the local program—which must develop its own priorities within the context of the circumstances in its own community, in consultation with the client community, subject to applicable legislative and regulatory restrictions—the Corporation expects each program to respond to the most compelling and critical needs of its eligible clients and to leverage its resources in order to compensate to the greatest degree possible for the inevitable reduction in client service resulting from this cut in funding. In meeting this crisis, each program must continue to maintain a high level of professionalism and quality in the delivery of legal services and in the observance of ethical standards.

To this end, and in response to the direction of Congress, the Corporation's Board of Directors has identified the following suggested priorities to help guide local legal services programs as they strive to continue to provide high quality, effective legal services to members of their communities. It has formulated this response in the context of the existing pattern of individual cases being handled nationwide, the largest category of which involves family matters, in which the client base is disproportionately comprised of women and children. Hence, a principal focus by the Board of Directors is in the context of the family. Recognition is given, however, to other critical case needs comprising the everyday problems encountered by our eligible clients.

Suggested List of Priorities

Support for Families: The cohesiveness of the family is not only a time-honored value fundamental to our American way of life, but also the undergirding of the stability of our American society. Programs should take cognizance of the vulnerability of American families to problems requiring legal assistance for their resolution. The Corporation suggests that programs place a high priority on those cases in which legal assistance supports the integrity, safety, and well-being of the family.

Preserving the Home: Preservation of the home is essential to the well-being of every person. The loss of housing through uninhabitability, eviction; or foreclosure can precipitate exposure to physical and medical risks in crowded shelters or the streets, disruption of the schooling of young children, loss of employment, and the splintering of families whose members may be dispersed in seeking alternate shelter. Enabling families to avoid loss of their home should be an important priority for grantees, as should assistance to those families or individuals who have become homeless.

Of equal importance is the assurance that families can be safe and secure in their places of residence. This is of particular concern in public housing complexes where crime and violent behavior put many families at risk. Legal assistance to tenant associations or other groups of eligible clients seeking to ameliorate the condition of a dangerous environment contributes to family well-being and should be a priority where appropriate. The Corporation also encourages grantees to give a high priority to representation of individual families threatened by unsafe or unhealthy conditions in both public and private rental housing.

Help may also be needed when physical harm to family living quarters is caused by natural disaster, such as flood, earthquake, fire, and hurricane. Programs are urged to respond to the needs of clients in such emergencies and, when appropriate, to cooperate in joint endeavors with the Federal Emergency Management Agency. Funds may be available through special appropriations, which programs can use to provide emergency services to clients in matters such as relocation, repair of housing, filing for benefits, and dealing with insurance, contractors, and creditors.

Maintaining Economic Stability: Families must be economically viable in order to survive. The Corporation encourages programs to give high priority to cases in which the family's source of income is at risk.

For the working poor, those seeking to avoid dependency and find a route out of poverty, the loss of a job may trigger a plummet into abject poverty, possibly leading to the loss of housing and access to health care, and even to the breakup of the family. The prevention of unemployment may obviate a sequence of far greater legal activity, and should therefore be a high priority for legal services programs. In addition to matters directly involving employment law, other cases may fall into the category of potentially preventing joblessness, for example, consumer cases relating to the tools of a worker's trade or to an automobile which is needed to transport the worker to the site of the job. A category of the working poor whose legal needs should not be overlooked in setting priorities are family farmers, who are especially vulnerable to the vagaries of weather and markets.

The Corporation also suggests that programs accord a high priority to cases involving parental responsibility for the support of their children. In light of recent legislative attention to this issue, the rate of success in obtaining child support from absent parents makes such representation an ever more efficient and cost-effective use of legal time.

For workers who have lost their jobs or become disabled or those who are otherwise unable to obtain employment, representation in cases involving eligibility for benefits to which they have a claim may be the only way to preserve a source of income for the family.

Other legal matters may threaten basic economic stability and therefore merit high priority. For example, a family entrapped by a fraudulent scheme may be forced into bankruptcy if it has no recourse to legal assistance.

Safety, Stability and Health: Domestic violence threatens the security and stability of families at all economic levels. The physical abuse of women, frequently mothers of children in the household, as well as neglect and harm to children themselves, calls for heightened awareness and a fast response by, the justice system. The intervention of legal service lawyers in obtaining judicial remedies, such as orders of protection, can be life-saving. Every program should endeavor to offer that vital assistance.

Representation in legal separation or divorce may also be essential to sustain what remains of a viable family structure, especially as it relates to regularization or clarification of the custody of children. Programs should also consider representation where dissolution of the marital relationship is the result of abandonment or other compelling circumstances, applying their own assessment of priorities to take cognizance of the exigencies of each situation.

Representation in cases involving access to health care may also be essential to preserve the security and stability of families, and should be accorded an appropriate priority.

Populations with Special Vulnerabilities: While the Corporation encourages programs to focus prime attention on providing support for families, this cannot and should not be to the exclusion of assistance to individuals living outside a family context. This is particularly true with respect to the growing numbers of elderly individuals in our population who are among the most vulnerable, particularly as their capacity to make independent and informed judgments diminishes. In addition to assurance of access to basic needs of life—food, shelter and medical care—they often require remedies against the unscrupulous who take unfair advantage in their dealings with them.

Programs should also pay particular attention to other similarly vulnerable individuals within their service areas who, in addition to being in a marginal economic status, are less capable of fending for themselves by reason of difference in language, cultural and educational backgrounds, disability, or other special problems of access to legal assistance or special legal needs.

The Delivery of Legal Services: Apart from the focus on substantive issues or client populations, the Corporation expects its grantees to give attention to matters relating to the nature or method of delivery of legal services. The sharp reduction in funding will necessarily cause programs to turn away an increasing number of eligible clients needing assistance. Before the FY 1996 reduction, it had been estimated that only a fraction of the legal needs of low-income clients were being met, perhaps as little as twenty percent. In some of our programs, the turn-away rate of those who sought assistance was over fifty percent. The Corporation understands that a one-third budgetary cut may well, in a given program, translate into a reduction in service capability greater than one-third, as staff and fixed commitments do not yield to simple proportionate reductions. It is therefore essential that each program consider methods by which it can stretch its resources in an effort to compensate in part for the substantial loss in capacity.

To this end, the Corporation urges programs to make maximum use of available technology in screening, researching and responding to client needs. Because the Corporation can offer no assistance with acquisition of equipment, we suggest programs consider discrete fundraising projects for this purpose. Centralized intake through hotlines and computerized networks can facilitate referrals and brief service and result in more efficient use of lawyer time. Similarly, community legal education, *pro se* representation and other forms of self-help can reduce the need for legal intervention, enabling programs to conserve their resources for matters most requiring a lawyer's help.

The Corporation recommends that programs place a high priority on activities designed to involve the entire community in sharing the responsibility for facilitating access to justice. Special attention should be accorded to the involvement of the private bar in the provision of *pro bono* client representation. Although increased *pro bono* services will not make up for the effects of the current cutbacks in funding for the Corporation, involvement of the private bar represents an important supplement to direct service by Corporation grantees. In addition to *pro bono* representation, the private bar can provide assistance in relevant substantive areas of law, training for staff and volunteers, and both direct financial support and assistance with fundraising. Law schools and other law-related entities can also make unique contributions. The community at large, including clients, religious and civic groups, community service agencies, and business enterprises and organizations should also be included in efforts to broaden each program's outreach effort.

Conclusion: The Legal Services Corporation recognizes that different communities have different needs and will respect the autonomy of every grantee to make decisions that reflect the resources available to it and the demographics and particular circumstances of its client populations. In some communities, issues not touched upon here may be of grave concern to clients and worthy of being accorded a high priority. Nevertheless, we expect that each grantee will give careful consideration to the issues that have been identified here as priorities from the Corporation's nationwide perspective.

Dated: May 23, 1996.

Victor M. Fortuno,

General Counsel.

[FR Doc. 96–13413 Filed 5–28–96; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–052]

NASA Advisory Council, Life and Micorgravity Sciences and Applications Advisory Committee, Space Station Utilization Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act. Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Life and Microgravity Sciences and Application Advisory Committee, Space Station Utilization Advisory Subcommittee.

DATES: June 24, 1996, 8 a.m. to 5 p.m.; June 25, 1996, 8 a.m. to 5 p.m.; June 26, 1996, 8 a.m. to 5 p.m.; June 27, 1996, 8 a.m. to 5 p.m.; June 28, 1996, 8 a.m. to 2 p.m.

ADDRESSES: Woods Hole Oceanographic Institute Quissett Campus, Clark Lab, Fifth Floor, Room 507, Woods Hole, MA.

FOR FURTHER INFORMATION CONTACT:

Dr. Edmond M. Reeves, Code US, National Aeronautics and Space Administration, Washington, DC, 20546, 202/358–2560.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Advance notice of attendance to the Executive Secretary is requested. The agenda for the meeting is as follows:

—Station program update

—Science and technology utilization research plans and station capability requirements

—International sub-rack standards payload interfaces

—International research campaign mode of operation planning

—Plans for OLMSA advisory committee reorganization

—Plans for advanced life support systems

—Other topics related to the scientific, technologies and commercial utilization of the space station may be included in the meeting discussions.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: May 21, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer National Aeronautics and Space Administration.

[FR Doc. 96–13382 Filed 5–28–96; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499]

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–76 and NPF–80 issued to Houston Lighting & Power Company, et. al., (the licensee) for operation of the South Texas Project, Units 1 and 2, located in Matagorda County, Texas.

The proposed amendment would modify Technical Specification (TS) Section 3/4.4.5, Steam Generators, 3/4.4.6, Reactor Coolant System Leakage, and associate Bases to allow the installation of tube sleeves as an alternative to plugging to repair defective steam generator tubes.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The laser welded sleeve has been designed and analyzed in accordance with the requirements of the ASME [American Society of Mechanical Engineers] Code. The applied stresses and fatigue usage for the sleeve are bounded by the limits established in the ASME Code. ASME Code minimum material property values are used for the structural and plugging limit analysis. Ultrasonic inspection is used to verify that minimum weld fusion zone thicknesses are produced. Mechanical testing has shown that the structural strength of Alloy 690 laser welded sleeves, under normal, upset, and faulted conditions provides margin to the acceptance limits. Leakage testing for ¾-inch and⅞-inch tube sleeves has demonstrated no unacceptable levels of primary-to-secondary leakage are expected during any plant condition, including the case where the seal weld is not produced in the lower joint of the tubesheet.

The sleeve nominal wall thickness (used for developing the depth-based plugging limit for the sleeve) is determined using the guidance of Regulatory Guide 1.121 and the pressure stress equation of Section III of the ASME Code. The limiting requirement of Regulatory Guide 1.121, which applies to part throughwall degradation, is the minimum acceptable wall to maintain a factor of safety of three against tube failure under normal operating (design) conditions. A bounding set of design and transient loading input conditions was used for the minimum wall thickness evaluation in the generic evaluation. Evaluation of the minimum acceptable wall thickness for normal, upset, and postulated accident condition loading per the ASME Code indicates these conditions are bounded by the design condition required minimum wall thickness.

A bounding tube wall degradation growth rate per cycle and an eddy current uncertainty has been assumed for determining the sleeve Technical Specification plugging limit. The sleeve wall degradation extent determined by eddy current, which would require plugging sleeved tubes, is developed using the guidance of Regulatory Guide 1.121 and is defined in Westinghouse Letter Report NSD–JLH–6146 to be 42% throughwall. Conservatively, South Texas will plug 40% sleeve wall degradation as determined by eddy current.

The effect of sleeving and plugging will remain below the plugging limit assumed in [the] Chapter 15 accident analysis of the South Texas Project Safety Analysis Report. The proposed change will not increase the consequences of these accidents.

The results of the analyses and testing demonstrate the laser welded sleeve is an acceptable means of maintaining tube integrity. Further, per Regulatory Guide 1.83 recommendations, the sleeved tube can be monitored through periodic inspections with present non-destructive examination techniques.

These measures demonstrate installation of sleeves spanning degraded areas of the tube will restore the tube to a condition consistent with its original design basis.

Conformance of the sleeve design with the applicable sections of the ASME Code and results of the leakage and mechanical tests, support the conclusion that installation of laser welded sleeves does not increase the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Sleeving will not adversely affect any plant component. Stress and fatigue analysis of the repair has shown the ASME Code and Regulatory Guide 1.121 criteria are not exceeded.

Implementation of laser welded sleeving maintains overall tube bundle structural and leakage integrity at a level consistent with that of the original tubing during all plant conditions. Leak and mechanical testing of sleeves support the conclusions of the calculations that each sleeve joint retains both structural and leakage integrity during all conditions. Sleeving of tubes does not provide a mechanism resulting in an accident outside of the area affected by the sleeves. Any accident as a result of potential tube or sleeve degradation in the repaired portion of the tube is bounded by the existing tube rupture accident analysis.

Implementation of laser welded sleeving will reduce the potential for primary-to-secondary leakage during a postulated steam line break while not significantly impacting available primary coolant flow area in the event of a LOCA [loss of coolant accident]. By effectively isolating degraded areas of the tube through repair, the potential for steam line break leakage is reduced. These degraded intersections are returned to a condition consistent with the Design Basis. While the installation of a sleeve reduces primary coolant flow, the reduction is far below that caused by plugging. Therefore, far greater primary coolant flow area is maintained through sleeving versus plugging.

Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does the change involve a significant reduction in a margin of safety?

The laser welded sleeve repair of degraded steam generator tubes has shown by analysis to restore the integrity of the tube bundle consistent with its original design basis condition (i.e., tube/sleeve operational and faulted condition stresses are bounded by the ASME Code requirements and the repaired tubes are essentially leaktight). The safety factors used in the design of the sleeves for the repair of degraded tubes are consistent with the safety factors in the ASME Code used in steam generator design. The portions of the installed sleeve assembly which represent the reactor coolant pressure boundary can be monitored for the initiation and progression of sleeve/tube wall degradation, thus satisfying the requirements of Regulatory Guide 1.83. The portion of the tube bridged by the sleeve is effectively removed from the pressure boundary, and the sleeve then forms the new pressure boundary. The areas of the sleeved tube assembly which require inspection are defined in WCAP–13698, Revision 2 and Westinghouse Letter Report NSD–JLH–6146.

The effect of sleeving and plugging will remain below the plugging limit assumed in [the] Chapter 15 accident analysis of the South Texas Project Safety Analysis. The change will not reduce the margin of safety for these accidents.

Provisional requirements cited in other Nuclear Regulatory Commission Safety Evaluation Reports addressing the implementation of sleeving have required the reduction of the individual steam generator normal operation primary-to-secondary leakage limit from 500 to 150 gpd [gallons per day]. Consistent with these evaluations, the South Texas Project will reduce the per steam generator leak rate limit of 500 gpd in Technical Specification 3.4.6.2.c to 150 gpd. The establishment of this leakage limit at 150 gpd provides additional safety margin.

Therefore, it is concluded that the proposed license amendment request does not result in a significant reduction in the margin of safety as defined in the South Texas Project Final Safety Analysis Report or Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 28, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, TX. If a request for a hearing or petition for leave to intervene is filed

by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the basis of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248–5100 (in Missouri 1-(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to W. D. Beckner: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 17, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX.

Dated at Rockville, Maryland, this 22nd day of May 1996.

For the Nuclear Regulatory Commission.

Janet L. Kennedy,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–13385 Filed 5–28–96; 8:45 am]

BILLING CODE 7590–01–P

Sunshine Act Meeting

DATE: Weeks of May 27, June 3, 10, and 17, 1996.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 27

Thursday, May 30

2:00 p.m.—Briefing on Status of Dry Cask Storage Issues (Public Meeting) (Contact: William Travers, 301–415–8500).

Friday, May 31

10:00 a.m.—Briefing on NRC Inspection Activities (Public Meeting) (Contact: Bill Borchardt, 301–415–1257).

11:30 a.m.—Affirmation Session (Public Meeting) (if needed).

Week of June 3—Tentative

Monday, June 3

10:00 a.m.—Briefing on Part 100 Final Rule on Reactor Site Criteria (Public Meeting) (Contact: Charles Ader, 301–415–5622).

Thursday, June 6

3:30 p.m.—Affirmation Session (Public Meeting) (if needed).

Week of June 10—Tentative

Tuesday, June 11

3:30 p.m.—Affirmation Session (Public Meeting) (if needed).

Week of June 17—Tentative

Tuesday, June 18

10:00 a.m.—Briefing on Status of NRC Operator Licensing Initial Examination Pilot Process (Public Meeting).

11:30 a.m.—Affirmation Session (Public Meeting) (if needed).

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill, (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

William M. Hill, Jr.,

Secy Tracking Officer, Office of the Secretary.

[FR Doc. 96–13510 Filed 5–24–96; 11:35 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Issuance of Transmittal Memorandum No. 16, Amending OMB Circular No. A–76, "Performance of Commercial Activities"

AGENCY: Office of Management and Budget.

SUMMARY: This notice contains Transmittal No. 16, to OMB Circular No. A–76, "Performance of Commercial Activities."

This Transmittal Memorandum updates the Federal pay raise assumptions and inflation factors used for computing the Government's in-house personnel and non-pay costs for Fiscal Years 1996 through 2002. The Federal pay raise assumptions and the non-pay category rates are, generally, contained in the President's Budget for Fiscal Year 1997. The factors contained in OMB Circular No. A–76, Transmittal Memorandum No. 14 are outdated.

The revision does not require any agency to (1) create or maintain a duplicate control/monitoring/reporting system or (2) adopt any additional controls, not presently in compliance with Federal Acquisition Regulations (FAR).

Agencies are reminded that OMB Circular No. A–76, Transmittal Memoranda 1 through 14 are canceled. Transmittal Memorandum No. 15 provided the Revised Supplemental Handbook, dated March 1996 (Federal Register, April 1, 1996, pages 14338–14346).

DATES: As with previous OMB Circular A–76 Transmittals, the provisions of Transmittal Memorandum No. 16 are effective immediately and shall apply to all cost comparisons in progress that have not yet undergone bid opening or where the in-house bid has not yet otherwise been revealed.

FOR FURTHER INFORMATION CONTACT: Mr. David Childs, Budget Analysis and Systems Division, NEOB Room 6104, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Telephone Number: (202) 395–6104, FAX Number (202) 395–7230.

Alice M. Rivlin,

Director.

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

Washington, D.C. 20503

May 23, 1996.

Circular No. A–76 (Revised)
Transmittal Memorandum No. 16

To the Heads of Executive Departments and Agencies

Subject: Performance of Commercial Activities

This Transmittal Memorandum updates the Federal pay raise assumptions and inflation factors used for computing the Government's in-house personnel and non-pay costs, as generally provided in the President's Budget for Fiscal Year 1997. However, because the 1997 Budget did not specify 1998–2002 pay raises for civilians, *for purposes of A–76 cost comparison determinations only*, the civilian pay raise percentages for 1998–2002 shall be assumed to be the same as the military pay raise assumptions for the corresponding years as shown below. Similarly, the non-pay inflation factors are for purposes of A–76 cost comparison determinations only. They reflect the generic non-pay inflation assumptions used to develop the FY 1997 budget baseline estimates required by law. The law requires that a specific inflation factor (GNP fixed-weight FY/FY index) be used for this purpose. These inflation factors should not be viewed as estimates of expected inflation rates for major long-term procurement items or as an estimate of inflation for only particular agency's non-pay purchases mix.

The following factors should be applied per paragraph B, pages 19–21 of the OMB Circular A–76 Revised Supplemental Handbook (March 1996).

Federal pay raise assumptions effective date	Military/ civilian
January 1997	3.0
January 1998	3.1
January 1999	3.1
January 2000	3.1
January 2001	3.1
January 2002	3.1
Non-Pay Categories (Supplies and Equipment, etc.)	
FY 1995	2.9
FY 1996	2.6
FY 1997	2.7
FY 1998	2.7
FY 1999	2.7
FY 2000	2.7
FY 2001	2.7
FY 2002	2.7

Geographic pay differentials received in 1996 shall be included for the development of in-house personnel costs. The above pay raise factors shall be applied after consideration is given to the geographic pay differentials. The pay raise factors provided for 1997 and beyond shall be applied to all employees, with no assumption being made as to how they will be distributed between possible locality and ECI-based increases.

These updates are effective as follows: all changes in the Transmittal Memorandum are effective immediately and shall apply to all cost comparisons in process where the government's in-house cost estimate has not been publicly revealed before this date.

Agencies are reminded that OMB No. A–76, Transmittal Memorandum 1 through Transmittal Memorandum 14 are canceled. Transmittal Memorandum No. 15 provided the Revised Supplemental Handbook, dated March 1996 (Federal Register, April 1, 1996, pages 14338–14346).

Sincerely,

Alice M. Rivin,

Director.

[FR Doc. 96–13405 Filed 5–28–96; 8:45 am]

BILLING CODE 3110–01–M

POSTAL RATE COMMISSION

[Order No. 1112; Docket No. A96–16]

Salem, NE; Appeal and Procedural Schedule

Before Commissioners: Edward J. Gleiman, Chairman; W.H. "Trey" LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr. In the Matter of: Salem, Nebraska 68433 (Roseanne Sittler, et al., Petitioner); Docket No. A96–16; Order No. 1112; Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5).

(Issued May 23, 1996).

Docket Number: A96–16.

Name of Affected Post Office: Salem, Nebraska 68433.

Name(s) of Petitioner(s): Roseanne Sittler, et al.

Type of Determination: Consolidation.

Date of Filing of Appeal Papers: May 20, 1996.

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

Docket No. A96–16.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404(b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders:

(a) The Postal Service shall file the record in this appeal by June 4, 1996.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,

Secretary.

May 20, 1996—Filing of Appeal letter
May 23, 1996—Commission Notice and Order of Filing of Appeal
June 14, 1996—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)]
June 24, 1996—Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)]
July 15, 1996—Postal Service's Answering Brief [*see* 39 CFR 3001.115(c)]
July 30, 1996—Petitioner's Reply Brief should Petitioner choose to file one [*see* 39 CFR 3001.115(d)]
August 6, 1996—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116]
September 17, 1996—Expiration of the Commission's 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)]

[FR Doc. 96–13389 Filed 5–28–96; 8:45 am]
BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–7297; 34–3736; File No. 265–20]

Advisory Committee on the Capital Formation and Regulatory Processes; Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting.

SUMMARY: This is to give notice that the Securities and Exchange Commission Advisory Committee on the Capital Formation and Regulatory Processes will meet on June 10, 1996 in room 1C30 at the Commission's main offices, 450 Fifth Street NW., Washington, D.C., beginning at 1:30 p.m. The meeting will be open to the public, and the public is invited to submit written comments to the Committee.

ADDRESSES: Written comments should be submitted in triplicate and should refer to File No. 265–20. Comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: David A. Sirignano, Committee Staff Director, at 202–942–2870; Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 10a, notice is hereby given that the Committee will meet on June 10, 1996 in room 1C30 at the Commission's main offices, 450 Fifth Street NW., Washington, D.C., beginning at 1:30 p.m. The meeting will be open to the public.

The Committee was formed in February 1995, and its responsibilities include advising the Commission regarding the informational needs of investors and the regulatory costs imposed on the U.S. securities markets. The purpose of this meeting will be to discuss progress of the Committee's work and draft report, and possibly vote on the Committee's report.

Dated: May 22, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–13330 Filed 5–28–96; 8:45 am]
BILLING CODE 8010–01–M

Sunshine Act, Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of May 27, 1996.

An open meeting will be held on Wednesday, May 29, 1996, at 3:00 p.m. Commissioner Wallman, as duty officer, determined that no earlier notice was possible.

The subject matter of the open meeting scheduled for Wednesday, May 29, 1996:

In the Matter of A.R. Baron & Co., Inc., Andrew Bressman and Roman Okin, File No. 3-9010. The Commission will hear arguments on an application by the Division of Enforcement to determine whether the respondents have violated or threaten to violate Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and rule 10b–5 promulgated thereunder, and if so, whether to issue a temporary Cease and Desist Order and Other relief. For information, contact Barry Goldsmith, (202) 942–4622 or Mark Kreitman, (202) 942–4677.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: May 24, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–13619 Filed 5–24–96; 3:52 pm]
BILLING CODE 8010–01–M

[Release No. 34–37228; International Series Release No. 981; File No. SR–CHX–96–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, by the Chicago Stock Exchange, Inc., Relating to Trading of Particular Investment Company Units

May 20, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") 15 U.S.C. 78s(b)(1), notice is hereby given that on April 23, 1996, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" of "SEC") the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XXVIII of the CHS's Rules governing the listing requirements of securities on the CHX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Chonge

1. Purpose

In SR–CHX–96–12, the Exchange requested approval of proposed rule changes allowing listing and/or trading of units representing an interest in a registered investment company ("Units").[1] In that rule filing, the Exchange also stated its intent to trade CountryBasket securities, pursuant to a request for unlisted trading privileges. CountryBasket securities are Units designed to track the performance of specific foreign indices, more fully described in SR–CHX–96–12 and SR–NYSE–95–23.[2]

The American Stock Exchange ("Amex"), in SR–Amex–95–43, requested and received approval of rules allowing listing and/or trading of Units.[3] The Amex also requested specific approval for the listing and trading of World Equity Benchmark Securities ("WEBS"), securities similar to CountryBaskets.

The CHX is proposing to adopt listing standards to permit its members to trade WEBS pursuant to unlisted trading privileges ("UTP"). If at a later time CHX desires to list WEBS, rather than only trade the Amex-approved WEBS pursuant to UTP, the Exchange will request SEC approval for that listing in a separate proposed rule change filed pursuant to Section 19(b) of the Act.

WEBS

The remainder of this filing discusses the structure of WEBS, the details of which are taken from SR–Amex–95–43 and its Amendments Nos. 1, 2, and 3. The information provided here is significantly condensed from the Amex's filing. CHX notes that the Amex has represented that customers who purchase WEBS will receive a detailed prospectus from the issuer.

Structure of WEBS

WEBS are issued by Foreign Fund, Inc., and based on seventeen Morgan Stanley Capital International ("MSCI") Indices (each individually an "MSCI Index" or "Index" and collectively "MSCI Indices" or "Indices"). The countries whose markets are represented by those indices are: Australia, Austria, Belgium, Canada, France, Germany, Hong Kong, Italy, Japan, Malaysia, Mexico, Netherlands, Singapore, Spain, Sweden, Switzerland, and the United Kingdom.

The investment objective of each WEBS series is to seek to provide investment results that correspond generally to the price and yield performance of public securities traded in the aggregate in particular foreign markets, as represented by specific MSCI Indices. Each WEBS series will use a "passive" or indexing investment approach which attempts to approximate the investment performance of its benchmark index through quantitative analytical procedures.

A WEBS series normally will invest at least 95% of its total assets in stocks that are represented in the relevant MSCI Index and will at all times invest at least 90% of its total assets in such stocks. A WEBS series will not hold all of the issues that comprise the subject MSCI Index, but will attempt to hold a representativo sample of the securities in the Index in a technique known as "portfolio sampling."

Foreign Fund, Inc., will issue and redeem WEBS of each Index Series only in aggregations of shares specified for each Index Series (each aggregation a "Creation Unit"). The number of shares per Creation Unit will range from 40,000 to 600,000. The Amex anticipates that the value of a Creation Unit at the start of trading will range from $450,000 to $10,000,000 and the net asset value ("NAV") of an individual WEBS will range from $10 to $20.

The MSCI Indices

MSCI generally seeks to have 60% of the capitalization of a country's stock market index reflected in the MSCI Index for such country. Thus, the MSCI Indices seek to balance the inclusiveness of an "all share" index against the replicability of a "blue chip" index. MSCI applies the same criteria and calculation methodology across all markets for all indices, developed and emerging.

All single-country MSCI Indices are market capitalization weighted. For countries that restrict foreign ownership, MSCI calculates two Indices. The additional Indices are called "free" Indices, and they exclude companies and share classes not purchasable by foreigners. Free Indices are currently calculated for Singapore, Mexico, the Philippines, and Venezuela, and for those regional and international Indices which include such markets. The Mexico and Singapore WEBS series will be based on the free Indices for those countries. There are no WEBS series corresponding to the Philippines and Venezuela MSCI Indices.

All MSCI Indexes are calculated daily. The calculation method weights stocks in an index by their beginning-of-period market capitalization. Share prices are "swept clean" daily and adjusted for any rights issues, stock dividends or splits. The MSCI Indices currently are calculated in local currency and in U.S. dollars, without dividends and with gross dividends reinvested.

Prices used to calculate the MSCI Indices are the official exchange closing prices. All prices are taken from the dominant exchange in each market. To calculate the applicable foreign currency exchange rate, MSCI uses WM/Reuters Closing Spot Rates for all developed and emerging markets except those in Latin America. Because of the high volatility of currencies in some Latin American countries, MSCI continues to calculate its own rates for those countries. Under exceptional circumstances MSCI may elect to use an alternative exchange rate for any country if the WM/Reuters rate is believed not to be representative for a given currency on a particular day.

Each MSCI Index on which a WEBS series is based is calculated by MSCI for

[1] *See* Securities Exchange Act Release No. 37121 (April 17, 1996), 61 FR 17932 (notice of File No. SR–CHX–96–12).

[2] *Id. See also* Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (order approving File No. SR–NYSE–95–23).

[3] *See* Securities Exchange Act Release No. 36947 (March 14, 1996), 61 FR 10606 (order approving File No. SR–AMEX–95–43 as emended).

each trading day in the applicable foreign exchange market based on official closing prices in such exchange market.

For each trading day, MSCI publicly disseminates each Index value for the previous day's close. MSCI Indices are reported periodically in major financial publications and also are available through vendors of financial information.

Foreign Fund, Inc., will cause to be made available daily the names and required number of shares of each of the securities to be deposited in connection with the issuance of WEBS in Creation Unit size aggregations for each WEBS series, as well as information relating to the required cash payment representing, in part, the amount of accrued dividends applicable to such WEBS series. This information will be made available by the Fund Advisor to any National Securities Clearing Corporation ("NSCC") participant requesting such information. In addition, other investors can request such information directly from the Fund distributor. The NAV for each WEBS series will be calculated directly by the Fund administrator, PFPC Inc. NAVs will be made available to the public from the Fund distributor by means of a toll-free number, and also will be available to NSCC participants through data made available from NSCC.

To provide current WEBS pricing information, the Amex has represented that it anticipates it will disseminate through the facilities of the Consolidated Tape Association an "indicative optimized portfolio value" ("Value") for each WEBS series as calculated by Bloomberg, L.P. ("Bloomberg"). The Value will be disseminated on a per WEBS basis every fifteen seconds during regular Amex trading hours of 9:30 a.m. to 4:00 p.m. New York time.

The Value likely will not reflect the value of all securities included in the applicable benchmark MSCI Index. In addition, the Value will not necessarily reflect the precise composition of the current portfolio of securities held by the Fund for each WEBS series at a particular moment. Therefore, the Value on a per WEBS basis disseminated during Amex trading hours should not be viewed as a real-time update of the net asset value of the Fund, which is calculated only once a day. It is expected, however, that during the trading day the Value will closely approximate the value per WEBS share of the portfolio of securities for each WEBS series except under unusual circumstances.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that the proposal fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system and protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available at the principal office of the CHX. All submissions should refer to File No. SR–CHX–96–14 and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13388 Filed 5–28–96; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–37235; File No. SR–DCC–96–06]

Self Regulatory Organizations; Delta Clearing Corp.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Authorization of Tradition (Government Securities) Inc. To Participate as an Interdealer Broker for U.S. Treasury Repurchase and Reverse Repurchase Agreement Trades

May 20, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 24, 1996, Delta Clearing Corp. ("DCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regualtory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to notify the Commission that Tradition (Government Securities) Inc. ("Tradition") has been authorized to act as an interdealer broker in DCC's clearance and settlement system for repurchase and reverse repurchase agreement transactions in U.S. Treasury securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DCC's repo clearance system clears transactions in repurchase agreements that have been agreed to through the facilities of interdealer brokers that have been authorized by DCC ("Authorized Brokers") to offer their services to DCC participants.[3] Currently, Liberty Brokerage, Inc., RMJ Special Brokerage, Inc., Euro Brokers Maxcor Inc., and Prebon Securities (USA) Inc. are Authorized Brokers. The purpose of the proposed rule change is to notify the Commission that Tradition has been added as an Authorized Broker in DCC's clearance and settlement system for repo trades.

Tradition is a wholly owned subsidiary of Tradition (North America) Inc. and is registered as a broker-dealer with the Commission under Rule 15(b) of the Act. Tradition (North America) Inc. is a subsidiary of Compagnie Financiere Tradition of Switzerland, which is an institutional broker of money market and debt market instruments and derivatives.

The proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions, and therefore, the proposed rule change is consistent with the requirements of the Act, specifically Section 17A of the Act, and the rules and regulations thereunder.[4]

(B) Selff-Regulatory Organization's Statement on Burden on Competition

DCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(e)(4)[6] in that the proposal effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communciation relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at DCC. All submissions should refer to File No. SR–DCC–96–06 and should be submitted by June 19, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret M. McFarland,

Deputy Secretary.

[FR Doc. 96–13331 Filed 5–28–96; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified parts of these statements.

[3] For a complete description of the DCC's repo clearance system, see Securities Exchange Act Release No. 36367 (October 13, 1995), 60 FR 54095.

[4] 15 U.S.C. 78q–1 (1988).

[5] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[6] 17 CFR 240.19b–4(e)(4) (1995).

[7] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–37237; File No. SR–NYSE–96–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Procedures for Public Release of Information by its Listed Companies

May 22, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on May 7, 1996, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is proposing amendments to its rules governing the procedures followed by its listed companies for disseminating material news or information to the public. These requirements are contained in Section 202.06(B) and Section 202.06(C) of its Listed Company Manual. The amendments would require the Exchange's listed companies to disseminate news or information which might reasonably be expected to materially affect the market for their securities to Bloomberg Business News ("Bloomberg").

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's timely disclosure procedures require listed companies to

release to the public any news or information which might reasonably be expected to materially affect the market for their securities. Listed companies are currently required to disseminate material news to Dow Jones & Company, Inc. ("Dow Jones") and Reuters Economic Services ("Reuters"). They are also encouraged, though not required, to promptly distribute news releases to Bloomberg. Bloomberg's news network has dramatically expanded in recent years and reaches a broad base of equity participants and related subscribers. It is common practice today among many listed companies to disseminate material news to Dow Jones, Reuters and Bloomberg. The proposed amendment will require listed companies to disseminate news or information which might reasonably be expected to materially affect the market for their securities to Bloomberg, in addition to Dow Jones and Reuters.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–96–11 and should be submitted by **[INSERT DATE 21 DAYS FROM DATE OF PUBLICATION]**.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13387 Filed 5–28–96; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2852]

Illinois; Declaration of Disaster Loan Area (Amendment #2)

In accordance with notices from the Federal Emergency Management Agency dated May 20, 1996, the above-numbered declaration is hereby amended to include Cass, Douglas, Jackson, Sangamon, White, and Williamson Counties in the State of Illinois as a disaster area due to damages caused by severe storms and flooding. This declaration is further amended to establish the incident period for this disaster as beginning on April 28, 1996 and continuing through May 17, 1996.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Brown, Champaign, Christian, Coles, Edgar, Edwards, Gallatin, Johnson, Logan, Macon, Mason, Menard, Morgan, Moultrie, Piatt, Pope, Schuyler, Union, Vermilion, and Wayne Counties in Illinois; Perry County, Missouri; and Gibson and Posey Counties in Indiana.

All other information remains the same, i.e., the termination date for filing applications for physical damage is July 5, 1996, and for loans for economic injury the deadline is February 6, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: May 22, 1996.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96–13395 Filed 5–28–96; 8:45 am]

BILLING CODE 8025–01–P

Hartford District Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Hartford District Advisory Council will hold a public meeting on Monday, June 17, 1996 at 8:30 a.m. at 2 Science Park, New Haven, Connecticut 06511, to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Ms. Jo-Ann Van Vechten, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut, (860) 240–4670.

Dated: May 22, 1996.

Michael P. Novelli,

Director, Office of Advisory Council.

[FR Doc. 96–13396 Filed 5–28–96; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Representative Payment Advisory Committee; Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

DATES: June 5–6, 1996, 8:30 a.m.–4:30 p.m.; June 7, 1996, 8:30 a.m.–3:30 p.m.

ADDRESSES: Social Security Administration Headquarters, Altmeyer Multi-Purpose Auditorium, 6401 Security Blvd., Baltimore, MD 21235.

SUPPLEMENTARY INFORMATION:

Type of meeting: The meeting is open to the public.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces the sixth meeting of the Representative Payment Advisory Committee. The Committee will discuss the following broad categories of representative payment policy: (1) Beneficiary (in)capability; (2) payee selection; (3) payee recruitment and retention; (4) standards for payee performance; and (5) payee oversight.

This is the second of two deliberative meetings at which no public testimony will be heard. However, interested parties are invited to attend the meeting. The Committee will use this time to continue discussing and concluding its findings.

Agenda: The Committee will meet commencing at 8:30 a.m. to 4:30 p.m. on Wednesday and Thursday, June 5–6, 1996, and 8:30 a.m. to 3:30 p.m. on Friday, June 7, 1996. Discussion items will include a discussion of beneficiary (in)capability; payee selection; payee recruitment and retention; standards for payee performance; and payee oversight.

Persons interested in attending this meeting should call the Representative Payment Advisory Committee at (410) 966–4688 so that arrangements for entrance into the meeting can be made. Individuals not making advance arrangements should report to the main lobby of the Altmeyer Building. Arrangements for entrance can be made at that time. The Committee welcomes written comments. To be given consideration, all written comments must be received by May 30, 1996. They may be sent to the Representative Payment Advisory Committee at P.O. Box 17763, Baltimore, MD 21203–7763.

Records are being kept of all Committee proceedings, and are available for public inspection by appointment at the office of the Representative Payment Advisory Committee, Room 2–N–24, Operations Building, 6401 Security Boulevard, Baltimore, MD 21235 between the hours of 9:00 a.m. and 4:00 p.m. on regular business days. Anyone requiring information regarding the Committee should contact the Representative Payment Advisory Committee at P.O. Box 17763, Baltimore, MD 21203–7763; Telephone: (410) 966–4688; FAX (410) 966–0980; Internet: adcom@ssa.gov.

Dated: May 20, 1996.

Reba Andrew,

Staff Director, Representative Payment Advisory Committee.

[FR Doc. 96–13315 Filed 5–28–96; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice 2392]

Office of Protocol; Information Collection Under Review

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the **Federal Register**. This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320.10.

1. Summary: The Office of Protocol of the Department of State, (S/CPR) in order to extend privileges and immunities under the Vienna Convention on Diplomatic Relations, 1961 and the Vienna Convention on Consular Relations, 1963 and to issue official identification cards, must obtain information from foreign government representatives concerning the appointment and termination of assignment of diplomatic and career and honorary consular offices, foreign government employees and their dependents in the United States. The following summarizes the information collection proposal submitted to OMB:

Type of request—Reinstatement.
Originating office—Office of Protocol.
Title of information collection—Notification of Appointment of Foreign Diplomatic and Career Consular Officer.
Frequency—On occasion.
Form Number—DSP–110.
Respondents—Foreign government representatives.
Estimated number of respondents—2,000.
Average hours per response—0.30.
Total estimated burden hours—1,000.

Title of information collection—Notification of Appointment of Foreign Government Employee.
Frequency—On occasion.
Form Number—DSP–111.
Respondents—Foreign government representatives.
Estimated number of respondents—5,000.
Average hours per response—0.30.
Total estimated burden hours—2,500.

Title of information collection—Notification of Appointment of Honorary Consular Officer.
Frequency—On occasion.
Form Number—DSP–112.
Respondents—Foreign government representatives.
Estimated number of respondents—200.
Average hours per response—0.30.
Total estimated burden hours—100.

Title of information collection—Notification of Change, Identification Card Request.
Frequency—On occasion.
Form Number—DSP–113.
Respondents—Foreign government representatives.
Estimated number of respondents—5,000.
Average hours per response—0.10.
Total estimated burden hours—600.

Title of information collection—Notification of Dependents of Diplomatic, Consular and Foreign Government Employees (Continuation Sheet).
Frequency—On occasion.
Form Number—DSP–114.
Respondents—Foreign government representatives.
Estimated number of respondents—7,000.
Average hours per response—0.10.
Total estimated burden hours—840.

Title of information collection—Notification of Termination of Diplomatic, Consular or Foreign Government Employment.
Frequency—On occasion.
Form Number—DSP–115.
Respondents—Foreign government representatives.
Estimated number of respondents—6,000.
Average hours per response—0.10.
Total estimated burden hours—720.
44 U.S.C. 3504(h) does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Charles S. Cunningham (202) 647–0596. Comments and questions should be directed to (OMB) Jefferson Hill (202) 395–3176.

Dated: May 21, 1996.

Patrick F. Kennedy,

Assistant Secretary for Administration.

[FR Doc. 96–13401 Filed 5–28–96; 8:45 am]

BILLING CODE 4710–20–M

[Public Notice 2397]

Office of the Under Secretary for Economic and Agricultural Affairs; Notice of Receipt of Application for a Permit for Pipeline Facilities Constructed and Maintained on the Borders of the United States of America

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal no later than 30 days

after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Stephen Gallogly, Chief, Division of Energy Producer Country Affairs, Office of International Energy Policy, Department of State, Washington, DC 20520. (202) 647–1476.

The Department of State has received an application from Rio Grande Pipeline Company for a Presidential permit, pursuant to Executive Order 11423 of August 16, 1988, as amended by Executive Order 12847 of May 17, 1993 to construct a new liquid petroleum gas (LPG) pipeline that will originate in Hudspeth County, Texas and terminate in Ciudad Juarez, Mexico. The pipeline will cross the U.S.-Mexico International Border in El Paso County, south of the town of San Elizario at Latitude 31 degrees, 33 minutes, 2 seconds and Longitude 106 degrees, 15 minutes and 40 seconds.

Rio Grande Pipeline Company is a partnership having its principal office in Tulsa, Oklahoma. Applicant is a Texas General Partnership of Juarez Pipeline Company (Juarez), Amoco Rio Grande Pipeline Company (AMOCO), and Navajo Southern, Inc. (Navajo).

Dated: May 23, 1996.

Glen R. Rase,

Director, Office of International Energy and Commodities Policy.

[FR Doc. 96–13400 Filed 5–28–96; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC No. 43.13–1A]

Proposed Revision B to Advisory Circular (AC) on Acceptable Methods, Techniques, and Practices—Aircraft Inspection and Repair

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of the Proposed Revision B to AC 43.13–1A, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on proposed revision B to AC 43.13–1A, Acceptable Methods, Techniques, and Practices—Aircraft Inspection and Repair, which provides guidance on acceptable methods, techniques, and practices associated with inspection and repairs to small, nonpressurized, older aircraft of 12,500 pounds or less. This notice is necessary to give all interested persons an opportunity to present their views on the proposed revision to the AC. Any comments, corrections, or suggestions should reflect the applicable AC chapter, page, and paragraph number. If new data are suggested, a copy of these data, repair methods, inspection procedures, or new techniques should be enclosed with the comments.

DATES: Comments must be received on or before July 15, 1996.

ADDRESSES: Send all comments on the proposed AC to: FAA, Manufacturing Standards Section, AFS–613, 6500 S. MacArthur Boulevard, ARB Room 304, Oklahoma City, Oklahoma 73125. Requests for copies of the proposed AC can be facsimiled to AFS–613 at (405) 954–4104. Comments may be inspected at the above address between 9 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. William F. O'Brien, General Aviation and Commercial Branch, AFS–340, FAA, 800 Independence Avenue SW., Washington, DC 20591, telephone: (202) 267–3796, facsimile (202) 267–5115.

Issued in Washington, DC on April 22, 1996.

William J. White,

Deputy Director, Flight Standards Service.

[FR Doc. 96–13420 Filed 5–28–96; 8:45 am]

BILLING CODE 4910–13–M

Acceptance of Updated Noise Exposure Maps for San Francisco International Airport, San Francisco, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the updated noise exposure maps submitted by the city of San Francisco, California for San Francisco International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is May 17, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph R. Rodriguez, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010, Telephone: 415/876–2805. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the updated noise exposure maps submitted for San Francisco International Airport are in compliance with applicable requirements of Part 150, May 17, 1996.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the city of San Francisco, California. The specific maps under consideration are Figures 2 and 3 in the submission. The FAA has determined that these maps for San Francisco International Airport are in compliance with applicable requirements. This determination is effective on May 17, 1996. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.16 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the updated noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 621, Washington, D.C. 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, AWP–600, 15000 Aviation Boulevard, Room 3012, Hawthorne, California 90261

Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010–1303

Mr. John Martin, Director of Airports, San Francisco International Airport, San Francisco, California 94128.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on May 17, 1996

Robert C. Bloom,

Acting Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 96–13425 Filed 5–28–96; 8:45 am]

BILLING CODE 1410–13–M

Notice of Airport Capital Improvement Program National Priority System; Opportunity To Comment

AGENCY: Federal Aviation Administration (FAA), (DOT).

SUMMARY: The FAA is clarifying details of the ACIP National Priority System. Comments and recommendations for improving the effectiveness of the ACIP National Priority System are solicited.

DATES: Comments and/or recommendations must be submitted on or before July 29, 1996.

ADDRESSES: Comments may be delivered or mailed to the FAA, Airports Financial Assistance Division, Programming Branch, APP–520, Room 615, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Stan Lou, Manager, Programming Branch, Airports Financial Assistance Division, Office of Airport Planning and Programming, APP–520, on (202) 267–8809.

SUPPLEMENTARY INFORMATION: FAA Order 5100.39, "Airport Capital Improvement Plan" describes procedures that are intended to guide the distribution of Airport Improvement Program (AIP) funds to the highest priority projects nationally. In order to implement the ACIP Order, a standard database has been established. This database (NPIAS–CIP) provides a common data structure to compile and analyze airport development needs. A key element of this process is the determination of objective priority ratings for items of work.

The National Priority is a numerical, computer-generated system for prioritizing work items in accordance with agency goals. The ACIP is used as a vehicle to evaluate requests for AIP funded airport development in an airport's five year Capital Improvement Program (CIP).

The ACIP uses a national priority calculation as prescribed by Order 5100.39. Priority numbers are calculated based on the size and type of airport (service level) and the type of project (as described by the NPIAS–CIP project codes). The national priority calculation:

- Provides a standard means to sort projects from high to low priority.
- Is used to measure how well funding plans (the ACIP) address the highest priority needs.
- Imitates the existing AIP priority system.
- Is not intended to be the sole gauge for project approval.

The national priority calculation is as follows: (P*(APT+C+1)+T)*10+APT

Where:

P=Purpose Points (0 to 5 pts)
Safety/Security=0 pt.
Reconstruction=1 pt.
Standards=2 pts.
Environment=1 pt.
Upgrade=3 pts.
Capacity=3 pts.
New Airport (Community)=5 pts.
New Airport (Capacity)=3 pts.
Planning=1 pt.

C=Component Points (1 to 6 pts)
Land=3 pts.
Runway=1 pt.
Taxiway=3 pts.
Apron=4 pts.
Lighting=3 pts.
Approach Aids=2 pts.
Terminal=5 pts.
Access=5 pts.
Planning=1 pt.
Equipment=3 pts.
Other=3 pts.

T=Type Points (1 to 3 points), and
Access=2 pts.
Acquire Airport=2 pts.
Terminal Building Bond=2 pts.
Runway Centerline Lights=1 pt.
Construction=2 pts.
Land for Development=2 pts.
Extension/Expansion=2 pts.
Runway Friction=1 pt.
Gates=2 pts.
Grooving=1 pt.
Helicopter Landing=2 pts.
High Intensity Runway Lights=1 pt.
Improvements=1 pt.
Mass Transit/Master Plan=2 pts.
Metropolitan Planning=2 pts.
Medium Intensity Runway Lights=1 pt.
Miscellaneous=3 pts.
Noise Barrier=2 pts.
Landscaping For Noise=2 pts.
Noise Plan/Suppression=2 pts.
Soundproofing=2 pts.
Obstruction Removal=2 pts.
Parking=3 pts.
Partial Instrument=2 pts.
Relocation Assistance (Non-Noise)=2 pts.
ARFF Vehicle=1 pt.
Relocation Assistance (Noise)=2 pts.
Rehab Runway Lights=1 pt.
Rehab Taxiway Lights=2 pts.
Safety Related Building=2 pts.
Sealcoat=2 pts.
Security Improvement=1 pt.
Runway Safety Area=1 pt.
Service Road Improvement=3 pts.
Snow Removal Equipment=2 pts.
Runway Sensors=2 pts.
Safety Zone=1 pt.
Terminal=2 pts.
Visual Approach Aids=2 pts.
Construct V/TOL Runway/Vertical Plan=2 pts.
Weather Reporting=2 pts.
Runway/Taxiway Signs=1 pt.
Taxiway Sensors/State Planning=2 pts.
Air Navigation Facilities=2 pts.
Deicing Facilities=1 pt.
Fuel Farm Development=3 pts.
Utility Development=3 pts.

APT=Airport Points (1, 2, 3, or 6 pt). Airport Points are calculated as follows:

Primary and Reliever Airports

Large and Medium Hub=1 pt.

Small and Non Hub=2 pts.
Commercial Service Airports=3 pts.

General Aviation Airports Aircraft/ Operations

100 or 50,000=1 pt.
50 or 20,000=2 pts.
20 or 8,000=3 pts.
≤20 or ≤8,000=6 pts.

The ACIP is used to help make AIP fund allotment decisions for each airport/development type. Funds are allotted to regions through two mechanisms: Commitments and Priorities. Commitments are projects that are believed to merit funding regardless of their relative priority calculation. These projects typically include Letters of Intend (LOI) and "phased" projects where it is important to complete a development program to derive an acceptable level of benefit for both the airport and the national system. Funds for Commitment projects are "set aside" for each airport/development category. The remainder of the available discretionary funds are distributed to the highest priority projects which remain unfunded in the ACIP. Priority distribution uses a priority "cut-off" for each airport/development category.

Issued in Washington, DC on May 2, 1996.

Stan Lou,

Manager, Programming Branch.

[FR Doc. 96–13422 Filed 5–28–96; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

Discretionary Cooperative Agreements To Support the Demonstration and Evaluation of the Patterns for Life Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Announcement of discretionary cooperative agreements to support the demonstration and evaluation of the Patterns for Life Program.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces the availability of FY 1996 discretionary cooperative agreements to demonstrate the effectiveness of using health/medical organizations to establish an infrastructure of credible program efforts pertaining to child passenger safety, child pedestrian safety and bicycle helmet safety. This notice solicits applications from national health and medical related organizations that are interested in developing and implementing community partnerships with local law enforcement, fire and rescue, child care providers, state and local governments, educational institutions, local child safety seat distributors and trainers to establish an infrastructure of knowledgeable and skilled partners at the state and local level.

DATES: Applications must be received at the office designated below on or before July 10, 1996.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), Attention: Karen S. Brockmeier, 400 7th Street SW., Room 5301, Washington DC 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program Number DTNH22–96–H–05194, and identify the program approach for which the application is submitted. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Karen S. Brockmeier, Office of Contracts and Procurement, at (202) 366–9567. Programmatic questions relating to this cooperative agreement program should be directed to Ms. Cheryl Neverman, National Organizations Division, Office of Occupant Protection, (NTS–11) NHTSA, 400 7th Street SW., Room 5118, Washington, DC 20590 (202) 366–2696.

SUPPLEMENTARY INFORMATION:

Background

The need to establish a community infrastructure that can accommodate on-going training needs as child transportation technology and issues change has emerged as a priority for the nation. The Department of Transportation, NHTSA, is initiating a new program effort, Patterns for Life, in FY 1996 to provide outreach to state and local communities on issues focused on child passenger, pedestrian, and bicycle helmet safety. The goal of this program effort is to establish lifelong safety habits that set a pattern of safety for children. The health/medical community is often the first and most continuous contact that new or expectant parents have when pregnant and during the first formative years of a child's life. It is at this time that "patterns" of behavior are established which may have lasting impact on a child's lifetime safety habits.

Under this cooperative agreement program, the effectiveness of using health and medical organizations to conduct child traffic safety initiatives shall be demonstrated and evaluated to determine the impact on reducing motor vehicle injuries and associated costs to the community. Specific objectives for this cooperative agreement are as follows:

- Increasing the public's awareness of the importance of child passenger, child pedestrian and helmet safety through community partnerships;
- Performing aggressive community outreach service through dedicated support (e.g. paid advertising) and earned media (e.g. articles in newspaper, story on evening news);
- Maintaining partnerships in order to preserve existing child safety programs;
- Increasing the correct use of child restraints, safety belts, and bicycle helmets;
- Providing comprehensive education and outreach to high-risk, underserved, and culturally diverse populations using updated educational materials and new publications;
- Encouraging vigorous enforcement of existing child passenger safety, safety belt, and bicycle helmet use laws;
- Encouraging the enactment of bicycle helmet laws and upgrades of existing laws to cover children in all vehicle seating positions with correct restraint use;
- Increasing public awareness and education of the benefits and the dangers of air bags; especially as they interact with children who are unrestrained, improperly restrained, or in rear-facing child seats;
- Measuring program effectiveness and sharing success stories to encourage public use and support; and
- Establishing and maintaining a health/medical infrastructure at the community level which can serve as an on-going resource for the community and contact for future educational and technological messages.

As the result of high visibility in the media about issues such as child seat misuse and increased distribution of safety products, such as the free child seat distribution made possible through the settlement between General Motors and the Department of Transportation, the public is seeking more answers to questions about these safety issues. Similar programs exist for the distribution of free or reduced-price bicycle helmets. Hundreds of state and local programs have become distribution sites for these efforts, but little effort has been made to assure that those involved in the distribution have easy access to updated training and are able to maintain a source of future information. Additionally, the strong enforcement of traffic safety laws and the need to upgrade existing laws or

implement new laws demands an infrastructure which can provide the outreach, advocacy and knowledge necessary for success and strong public support. The health/medical community has been and continues to be one of the most effective national and community-level leaders in supporting new legislative efforts. It is also the group that is most likely to have access to the largest variety of populations, from low-income to special needs children, especially those considered at high risk in traffic crashes.

The area of child passenger safety has some unique considerations. Research has demonstrated that child safety seats, when correctly used, can reduce fatalities among children less than 5 years of age by 71 percent. This makes child safety seats one of the most effective safety innovations ever developed. As a result of improvements in the convenience of the seats, increased availability of free or reduced-price seats, upgrades and increased enforcement of child passenger safety laws and public education, the use of child safety seats has increased dramatically over the past ten years. However, the use rate for children involved in fatal crashes shows that as many as 40 percent of these children are still totally unrestrained. Recent studies confirm the fact that as a child's age increases, the use of any occupant restraint decreases, as does the use of an occupant restraint appropriate for a given height and weight. A number of national program efforts are making child safety seats more available to low-income and special needs families. Under an agreement with the Department of Transportation, General Motors will donate a total of eight million dollars to qualified and selected national organizations to purchase and distribute child safety seats and ensure that proper use information is provided to the family recipients. Other community-based programs featuring free or reduced price child seats offered by business partners in the local community include the Midas Project Safe Baby program and Operation Baby Buckle through the SAFE America Foundation.

In the area of misuse, the degree of compatibility between use of child restraints and motor vehicles and improper installation are important in determining the level of effectiveness of the child safety seat in providing optimum protection in a crash. Even though a child restraint may perform adequately during compliance testing, if it is not used properly in or is not compatible with the vehicle seat belts or seat, its effectiveness in a real crash may be reduced. As technology changes, the need for maintaining current training for educators of the public and the media continues to increase. Educational materials produced just a few years ago may need updating. The Blue Ribbon Panel on Child Restraint and Vehicle Compatibility, a group made up of child seat, auto, and equipment manufacturers and child safety practitioners and advocates, was named by NHTSA Administrator Ricardo Martinez in 1995 to review child restraint misuse and compatibility concerns. The Panel announced twenty-seven major recommendations in June of 1995 including the need to conduct an intensive educational campaign on correct use and installation of child safety seats and to make the public aware of emerging incompatibility issues such as air bags and rear-facing child seats and other common misuses and compatibility problems. The report encouraged the government to work collaboratively with groups such as health care and emergency medical service providers. The efforts are to emphasize training for child safety professionals who are in a position to reach out to populations less likely to be reached by a more generic public information approach.

Public information and education efforts are offered on an on-going basis through long-time partners such as the American Academy of Pediatrics. Newer partners, such as Morton, International, an air bag supplier, have made great strides in developing new educational materials. New curricula have been developed and training efforts have been implemented with law enforcement, emergency medical service providers, child care providers, and child safety advocates such as local SAFE KIDS coalitions. However, despite many such efforts, the need remains high to reach out to the local infrastructure and provide a lasting means of maintaining a network of trainers and educators who can reach the people who still don't provide proper occupant protection for their children. In part because of non-use and incorrect use, child safety seats are not currently saving as many lives as they could save.

Current issues and concerns about safe transportation for children can be summarized as follows:

—Approximately 40 percent of young children are not protected by child restraints, with the use rate dropping dramatically as the child grows older.
—New technology, such as air bags, and compatibility issues resulting from design changes in vehicle belt and seat systems demand updated training for those who interact with children and their families.
—Recent studies in patterns of misuse of child seats conform anecdotal information from advocates conducting child seat clinics and checkpoints showing misuse rates to be as high as 80 percent. (The studies did not provide a national misuse rate, nor did they rank the misuse modes as they would relate to seriousness of potential injury.)
—While all states have primary child passenger safety laws, a number of states have significant gaps in their child passenger safety and safety belt laws, allowing children to ride unprotected without threat of citation.
—As more new vehicles with dual air bags enter the market, there are increased concerns about children who are riding unrestrained, incorrectly restrained, or in rear-facing child seats in the front seat of passenger-side air bag equipped vehicles.

The importance of pedestrian and bicycle safety issues must not be overlooked when developing community traffic safety initiatives. Children become pedestrians with their very first step, and their first mode of transportation is usually a bicycle.

In 1994, 5,472 pedestrians were killed in traffic crashes in the United States. Of these deaths, 1,082 were young people under the age of twenty. On average, pedestrians are killed in traffic crashes every ninety-six minutes. Furthermore, the fatality rate for bicyclists is just as tragic. More than one-third of the bicyclists killed in traffic crashes were children between five and fifteen years old.

Educating young people about pedestrian and bicycle safety rules, including always using a certified bicycle helmet, could prevent some of these tragedies. Few schools provide quality pedestrian safety and street crossing training, even though the material is readily available. Increasing age-specific bicycle helmet laws can also prevent needless deaths and injuries. In fact, as of July 1995, thirteen states and more than twenty jurisdictions had enacted age-specific bicycle helmet laws. The stage is set. It is up to those working within the community infrastructure to establish an outreach system that incorporates education and training to help young people set a lifelong pattern of healthy traffic safety habits. This is one of the agency's greatest concerns.

Community outreach centers were identified and the first training and

community outreach materials were provided. Each community center was provided with basic instruction to enable it to effectively perform its role as a community child safety seat educator and distribution point. Concurrent training and outreach programs were conducted among the national networks of law enforcement, fire and rescue, and health and safety advocates to prepare local affiliates of these groups to become partners in community child safety coalitions. Peer-to-peer outreach programs were established within the law enforcement and fire and rescue communities to promote participation in Patterns for Life training and outreach activities. Linkages between these community partners and the child seat distribution points were initiated.

As these training and outreach efforts were being implemented, new and updated educational materials were developed. New training materials include an updated comprehensive child safety seat technical manual and a complete set of manufacturers' instructions for correct use of child safety seats. New public information materials include information on child pedestrian safety and bicycle helmet safety.

Community outreach was further enhanced through cooperative agreements with several national health and medical organizations. These agreements provided additional community partnerships and resources by mobilizing the organizations' state and community affiliates to directly support local child safety program efforts or to contribute indirect support, such as endorsement of strong traffic laws and aggressive law enforcement.

FY 1996 Program

In FY 1996, NHTSA intends to establish cooperative agreements with national health and medical organizations that have mechanisms to reach constituencies that can address the program approaches described below. One cooperative agreement will be awarded for each of these three (3) program approaches. An applicant organization could be awarded cooperative agreements for two program approaches, if qualified in both and based upon submitting two separate applications and budgets. More than one agreement could be awarded for a program approach if additional funding becomes available. Following is a description of the program approaches:

1. Economically Disadvantaged Populations

To achieve NHTSA's goal of educating all American consumers about the benefits of correctly using child safety seats and bicycle helmets, and teaching pedestrian safety, additional emphasis is being placed on reaching individuals who have been identified as being at higher than average risk of suffering the effects of non-use or incorrect use of protective devices. Death rates of motor vehicle occupants are greatest in geographic areas with lowest per capita income. Income, education and other variables form profiles called socio-economic status (SES). Recent surveys conducted by NHTSA support previous findings that individuals who fall into lower SES profiles are less likely to practice safe transportation habits, which in turn affects their children's use and misuse levels.

The goal of this program is to identify and develop community partnerships which can have a significant impact on effectively reaching these populations with traffic safety education and access to safe equipment. The program further seeks to explore the means to maintain this level of community education, awareness, and advocacy as an on-going effort. This includes identifying how child transportation safety issues can fit into a health/medical organization's overall mission, and exploring innovative and long lasting delivery mechanisms.

2. Community-Based Child Passenger Safety

The national promotion of child passenger safety presents unique program challenges. The rapid turnover of the child passenger safety audience and educators demands that public education efforts be intensive and consistent. Each day, new parents (and other child caretakers) enter the audience and need to be reached with the child passenger safety message. New technology and emerging issues require maintaining an on-going means of educating the trainers. It is essential that we reach each parent quickly and effectively to ensure that the child is best protected while traveling.

Parents (and other caretakers) need to understand risks and potential consequences of both non-use and misuse of child occupant protection. They need to receive education concerning proper seat selection and specific technical advice pertaining to child seat compatibility with vehicle belts and seats.

NHTSA has found that health care providers are among the most credible of educators for parents and the ones most likely to reach the new parent and to have continued contact through well-child contacts. Health care providers also serve well as prominent support for upgrading child passenger safety laws and supporting enhanced enforcement of these laws.

The goal of this program is to develop a community-based child passenger safety education and training campaign. The specific objectives include: Facilitating parent education in health/medical settings; providing training for patient educators; developing or adapting appropriate program materials for dissemination through the organizational network; designing a program effort which encourages the institutionalization of these educational activities; and providing for strong advocacy efforts which support legislative and enforcement goals.

3. Safe Communities Partnerships for Child Transportation Safety

Local community partnerships, formed by public and private sector groups under the strong leadership of the health/medical community, can be an effective means of establishing a lasting infrastructure which will provide on-going educational and advocacy efforts for child transportation safety issues. Other organizations in the community would benefit by the health/medical leadership in identifying needs at the community level and working together to fill gaps in education and in availability of proper safety devices at an affordable level, in showing solidarity in legislative and enforcement support, and in providing access to ongoing, current technological information.

The goal of this program approach is to form lasting community partnerships to work together to reduce injuries and deaths related to child passenger, bicycle and pedestrian safety. The specific objectives are: to establish or work to enhance a local coalition of community leaders who will collaborate on efforts to prevent child injuries and fatalities in motor vehicle crashes; to find innovative means at the local level to maintain the training needs of the local child safety educators; to develop effective child transportation safety campaigns that serve the individual needs of the community, to develop or modify existing materials as appropriate; to expand the outreach of health/medical professionals to incorporate traffic safety education and awareness programs; and to measure the effectiveness of local efforts on reducing child injuries.

Innovative Approaches

Applicant organizations are encouraged to develop and propose innovative strategies within these program approaches that are appropriate for their constituencies. Some examples of activities follow that have been conducted in the past by national organizations and others involved in the occupant protection program. These examples are provided only to stimulate thinking and should not be viewed as required activities: identify members of the organization (and their family members) that qualify for "Saved By the Child Seat/Helmet Club" recognition and publicize these survivor stories in organizational publications; identify materials needed to conduct the project (this could include handbooks, manuals, brochures, posters, audio-visuals, etc.); publish articles in organizational newsletters, magazines, and/or journals; encourage and assist organizations in adopting a national policy resolution for child transportation safety.

NHTS Involvement

The National Highway Traffic Safety Administration (NHTSA), Office of Occupant Protection (OOP), will be involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of the cooperative agreement and to coordinate activities between the organization and OOP;
2. Provide information, educational materials and curricula, and technical assistance from government sources within available resources and as determined appropriate by the COTR;
3. Provide liaison with other government/private agencies as appropriate; and
4. Stimulate the exchange of ideas and information among cooperative agreement recipients through periodic meetings.

Period of Support

Subject to the availability of funds, satisfactory performance and continued demonstrated need, cooperative agreements may cover a total project period of up to two (2) years. An application should be submitted for an initial funding period of 12 months and should address what will be accomplished during that initial period. The application and budget for the initial project period should cover only the first 12 months of effort. To obtain funding after the initial 12 month period, an updated application must be submitted for approval for any subsequent year. The updated application will not be subjected to competitive review, but must demonstrate that the continuation effort will effectively and efficiently continue to fulfill program objectives.

Anticipated funding level for FY 1996 projects will be $66,000.00 for each of the three program approaches. Federal funds should be viewed as seed money to assist organizations in the development in traffic safety initiatives. Monies allocated for cooperative agreements are not intended to cover all of the costs that will be incurred in the process of completing the projects. Applicants should demonstrate a commitment of financial or in-kind resources to the support of proposed projects.

Eligibility Requirements

In order to be eligible to participate in this cooperative agreement program, a national health and medical organization must meet the following requirements:

- Have exclusive membership within the health and medical professional field; provide medical care and/or advice to patients and educate members.
- Have an established membership structure with state/local chapters in all regions of the country; and
- Have formal organizational communication mechanisms established for use in informing and motivating members and other constituents to become involved in child safety at the state and local levels. Such communication mechanisms may include organizational newsletters, journals, quarterly reports, and scheduled conferences/conventions.

Application Procedure

Each applicant must submit one original and two (2) copies of its application package to NHTSA, Office of Contracts and Procurement (NAD–30), Attention: Karen S. Brockmeier, 400 7th Street SW., room 5301, Washington, DC 20590. Submission of two additional applications will expedite processing but is not required. Applications must be typed on one side of the page only. Applications must include a reference to NHTSA Cooperative Agreement Program Number DTNH22–96–H–05194 and identify the program approach for which the application is submitted. Applicants may apply for more than one program approach, however, a separate application and budget must be submitted for each program area approach. Only complete applications received on or before July 10, 1996, shall be considered.

Application Content

1. The application package must be submitted with OMB Standard Form 424 (Rev. 4–88, including 424A and 424B), Applications for Federal Assistance, with the required information filled in and the certified assurances included. While Form 424–A deals with budget information, and Form 424B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed costs. A supplemental sheet shall be provided which presents a detailed breakdown of the proposed costs, as well as any costs which the applicant indicates will be contributed by the organization or its local affiliates and partners.

2. Applications shall include a program narrative statement which addresses the following in separately labeled sections:

a. *Technical Approach:* A description of the organizational membership and purpose, demonstrating the need for the assistance, and stating the principal goals and subordinate objectives of the project, as well as the anticipated results and benefits. This section shall describe any unusual features, such as design or technological innovations, reductions in cost or time, or extraordinary social/community involvement. Supporting documentation from concerned interests other than the applicant can be used. Any relevant data based on planning studies should be included or footnoted. (Evaluation Factor #1)

b. *Implementation Plan:* A description of the program approach, including a plan of action pertaining to the scope and detail of the proposed work. This section shall include the reasons for taking this plan of action as opposed to others. The Implementation Plan shall include a presentation at one or more national meetings (e.g. Moving Kids Safely, Lifesavers or others.) (Evaluation Factor #2)

c. *Project Management and Staffing:* Quantitative projections of the accomplishments to be achieved, if possible, or lists of activities in chronological order to show the schedule of accomplishments and their target dates. This section shall list each organization, corporation, consultant or other individuals who will work on the project along with a short description of the nature of the individual's effort or contribution and relevant experience. (Evaluation Factor #3)

d. *Evaluation Plan:* A description of the kinds of data to be collected and maintained and the criteria to be used to evaluate the results. This section shall explain the methodology that will be used to determine if the needs identified and discussed are being met, and if the results and benefits identified are being achieved. (Evaluation Factor #4)

Evaluation Criteria and Review Process

Initially, all applications will be reviewed to confirm that the applicant is an eligible recipient and to assure that the application contains all of the information required by this notice. Each complete application from an eligible recipient will then be evaluated by an Evaluation Committee. The Evaluation Committee will include one non-NHTSA staff specialist from the Children's Safety Network. The application will be evaluated using the following criteria:

1. Understanding of the Problem and the Relationship to the Health/Medical Community (40%). The extent to which the applicant has demonstrated an understanding of the child transportation safety issues. The extent to which the applicant is knowledgeable about data sources, community linkages, the need for a coordinated approach to controlling child traffic injuries using the health/medical field as leaders, and his demonstrated the organization's affiliate's willingness to commit to and participate in the program. The extent to which the applicant has access to the potential target populations in the community.

2. Goals, Objectives, and Implementation Plan (40%). The extent to which the applicant's goals are clearly articulated and the objectives are time-phased, specific, measurable and achievable. The extent to which the Implementation Plan will achieve an outcome oriented result that will reduce child-related traffic injuries and deaths. The Implementation Plan will be evaluated with respect to its feasibility, realism, and ability to achieve the desired outcomes.

3. Project Management and Staffing (10%). The reasonableness of the applicant's plan for accomplishing the objectives of the project within the time frame set out in this announcement. The skill and experience of proposed staff, including project management and program staff and proposed affiliates, and ability to accomplish the program objectives.

4. Evaluation Plan (10%). The extent to which the proposed methods for measuring the processes and outcomes of the proposed interventions (countermeasures) will assess the effectiveness of the use of the Health/Medical Community in reaching the desired target populations.

Special Award Selection Factors

While not a requirement, applicants are strongly urged to consider the use of other available organizational resources, including other sources of financial support. Preference may be given, for those applicants that are evaluated as meritorious for consideration of award, for those who show commitment on the part of the Health/Medical organization by committing other organizational resources or seeking additional outside partners (cost-sharing strategies).

Terms and Conditions of the Award

1. Prior to award, each recipient must comply with the certification requirements of 49 CFR Part 20, Department of Transportation New Restriction or Lobbing, and 49 CFR Part 29 Department of Transportation Government-wide Department and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

2. Performance Requirements and Deliverables:

(a) The grantee shall arrange to meet with the Contracting Officer's Technical Representative (COTR) within 2 weeks of the award of the cooperative agreement to discuss the implementation plan, including milestones and deliverables.

(b) The grantee shall supply Quarterly Progress Reports every ninety days, in a format to be determined at the time of award. Quarterly Progress Reports are to include a summary of the previous quarter's activities and accomplishments, as well as proposed activities for the upcoming quarter. Any decisions and actions required in the upcoming quarter should be included in the report.

(c) Draft Final Report. The grantee shall prepare a Draft Final Report that includes a description of the intervention strategies, program implementation, and findings from the program evaluation. It is important, for purposes of future programs, to know what worked and did not work, under what circumstances, and what can be done to avoid potential problems in replicating similar programs. The grantee shall submit the Draft final report to the COTR 30 days prior to the end of the performance period. The COTR will review the document and provide comments within 2 weeks of receipt of the document.

(d) Final Report. The grantee shall revise the draft final report to reflect the COTR's comments. The revised document shall be delivered to the COTR on or before the end of the performance period. The grantee shall supply the COTR on computer disk copy in WordPerfect format, and four additional hard copies of the revised document.

3. Meetings and Briefings. The grantee shall plan for the initial planning meeting in Washington, DC with the COTR, as well as an interim briefing approximately midway through the project, a final briefing at the end of the project period, and a presentation at one or more national meetings, (e.g. Moving Kids Safety, Lifesavers or other).

4. During the effective performance period of cooperative agreements awarded under this announcement, the agreement shall be subject to the National Highway Traffic Safety Administration's General Provisions for Assistance Agreements.

Issued on: May 22, 1996.

James Hedlund,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 96–13344 Filed 5–28–96; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Geriatrics and Gerontology, Notice of Meeting

The Department of Veterans Affairs gives notice that a meeting of the Geriatrics and Gerontology Advisory Committee (GGAC) will be held on June 11–12, 1996 by the Department of Veterans Affairs, in Room 1105 of VA TechWorld located at 801 I Street NW., Washington, DC. The purpose of the GGAC is to advise the Secretary of Veterans Affairs and the Under Secretary for Health relative to the care and treatment of the aging veterans, and to evaluate the Geriatric Research, Education, and Clinical Centers. The Committee will convene at 9:00 a.m. (EST) on June 11 and will adjourn at Noon (EST) on June 12.

The agenda for June 11 will begin with updates for the Office of Geriatrics and Extended Care. The first day's agenda will also cover an overview of activities in the offices of Research and Development; Geriatric and Grants Management Service; Patient Care Services, Academic Affiliations; and Extended Care Service.

On June 12 the Committee will plan the programs and activities for future GGAC projects as well as plan review of the GRECC (Geriatric Research, Education; and Clinical Centers).

The meeting will be open to the public up to the seating capacity which is about 20 persons. Those wishing to attend should contact Jacqueline Holmes, Program Assistant, Office of the Assistant Chief Medical Director for Geriatrics and Extended Care, phone (202) 565–7164, not later than 12 noon, EST June 7, 1996.

Dated: May 20, 1996.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 96–13361 Filed 5–28–96; 8:45 am]

BILLING CODE 8320–01–M

OL
1
S S
1
0
4
Y
9
96
MI

federal register

Wednesday
May 29, 1996

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 930

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Secretary's Decision and Referendum Order on the Proposed Marketing Agreement and Order; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. AO–370–A5; FV93–930–2]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Secretary's Decision and Referendum Order on the Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes the issuance of a marketing agreement and order for tart cherries grown in certain designated States and provides growers and processors the opportunity to vote in a referendum to determine if they favor the proposed order. For the purposes of this document, the term "Cherries" refers to all tart/sour cherry varieties grown in the proposed production area, which consists of the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. The proposed order would authorize volume regulation, grade, size, and maturity regulations, and mandatory inspection. It would also authorize production, processing, and marketing research and promotion projects, including paid advertising. The order would be administered by an 18 member administrative board consisting of 17 growers and handlers and one public member, and would be financed by assessments on handlers of tart cherries grown in the production area. A primary objective of this program would be to improve producer returns by strengthening consumer demand through volume control and quality assurance mechanisms. Tart cherry producers and processors would vote in a referendum to determine if they favor issuance of the proposed marketing order.

DATES: The referendum shall be conducted from June 12, 1996, through July 10, 1996. The representative period for the purpose of the referendum herein ordered is July 1, 1995, through May 31, 1996.

FOR FURTHER INFORMATION CONTACT:

(1) R. Charles Martin or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456; telephone: 202–720–5053, FAX: 202–720–5698.

(2) Robert Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, Oregon 97204; telephone: 503–326–2725, FAX: 503–326–7440.

SUPPLEMENTARY INFORMATION:

Prior Documents in This Proceeding

Notice of Hearing, issued on November 30, 1993, and published in the **Federal Register** on November 30, December 23, 1993, and January 31, 1994 [58 FR 63108, 58 FR 68065, and 59 FR 4259, respectively]. The notice reopening the hearing was issued on December 5, 1994, and published in the **Federal Register** on December 8, 1994 [59 FR 63273]; Recommended Decision and Opportunity to File Written Exceptions to the Proposed Marketing Agreement and Order, issued November 20, 1995, and published in the **Federal Register** on November 29, 1995 (60 FR 61292). The reopening of the comment period to file written exceptions to the proposed marketing agreement and order was issued on December 27, 1995, and published in the **Federal Register** on January 2, 1996 (61 FR 21).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code, and is therefore excluded from the requirements of Executive Order 12866.

The marketing agreement and order proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed agreement and order would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposal.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Preliminary Statement

This proposed marketing agreement and order was formulated on the record of a public hearing held December 15–17, 1993, in Grand Rapids, Michigan; January 13, 1994, in Provo, Utah; February 15–17, 1994, in Portland, Oregon; January 12–13, 1995, in Portland, Oregon; and January 18–19, 1995, in Grand Rapids, Michigan. These multiple hearing sessions were held to consider a proposed marketing agreement and order regulating the handling of tart cherries grown in the proposed production area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900). Approximately 40 witnesses, including tart cherry growers, handlers, and economists, testified in support of the order. Growers and handlers mainly from the States of Oregon and Washington testified in opposition to the proposed order and asked to have Oregon and Washington excluded from the proposed production area.

At the conclusion of the February 1994 hearing in Oregon, the deadline for filing post-hearing briefs was set at April 29, 1994. The deadline for filing post-hearing briefs was subsequently extended to May 31, 1994. However, based on a review of the hearing evidence and post-hearing briefs, USDA determined that the hearing should be reopened to clarify some provisions. USDA wanted to obtain additional information and clarification concerning: (1) The States that should be regulated under the order; (2) the economic impact of the proposed order on small and large businesses; (3) whether the expected program benefits would exceed costs, especially for growers, handlers and consumers; and (4) how certain provisions would be implemented under the proposed marketing order. The hearing was reopened and held January 12–13, 1995, in Portland, Oregon, and January 18–19, 1995 in Grand Rapids, Michigan. At the conclusion of the Michigan hearing, the deadline for filing post-hearing briefs was set at March 17, 1995. Ten briefs were filed following the first briefing period and seven briefs were filed following the second briefing period.

The proponents testified that severely fluctuating tart cherry prices are inherently harmful to growers and consumers. It was contended that the proposed marketing order would improve grower returns by strengthening consumer demand through volume control and quality assurance mechanisms.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on November 29, 1995, filed with the Hearing Clerk, U. S. Department of Agriculture, a recommended decision with the opportunity for written exceptions by December 29, 1995. Subsequently, the USDA received three requests to provide more time to analyze the recommended decision and prepare and file written comments. Based on these requests the USDA reopened the comment period until January 16, 1996.

There were 29 exceptions received on the proposed order. Seven exceptions support the order as proposed, 4 support the order with minor modifications, 2 support the order with substantial modifications, 15 oppose the order, and 1 recommends only a minor technical clarification. Exceptions were received from: Richard DeRuiter, Michigan tart cherry processor; Senator Mark Hatfield, Congressional Representatives Peter DeFazio, Jim Bunn, Ron Wyden, Elizabeth Furse, and Wes Cooley, all from the State of Oregon; Mark L. Schrepel, Oregon tart cherry grower and processor; William R. Sherman, Burnette Foods, Inc., Michigan grower/processor; Randy Hageman, General Manager, Milne Fruit Products; Rick Jacobson, NORPAC Foods; Christian Schlect, President, Northwest Horticultural Council; Mark Riley, Michigan tart cherry grower; Terry Dorsing, President, Washington Tart Cherry Products, Inc.; Ray, Jim, Mildred and Mary Schultz, Michigan tart cherry growers; Philip Walker, Oregon tart cherry grower; Thomas A. Facer, Vice-President Agricultural Services, Comstock Michigan Fruit Division; Lee W. Schrepel, Chair, Oregon Tart Cherry Association; Bruce Andrews, Director, Oregon Department of Agriculture; the Department of Justice, Anti-Trust Division; Claude A. Rowley, Manager, Payson Fruit Growers; David Frank, Fruit Belt Canning, Co. Inc.; Norman R. Veliquette, President, Great Lakes Packing Company; Dean Kleckner, President, American Farm Bureau Federation; Forest P. Johnson, Michigan tart cherry grower; Ken Guise, Executive Vice-President, Chief Operating Officer, Knouse Foods Cooperative, Inc.; Kenneth T. Morrison, President, Cherry Growers, Inc.; David White, President, Chain O'Lakes Fruit Growers Association; Randy G. Harmson, General Manager, Michigan Agricultural Cooperative Marketing Association, Inc.; Jack Laurie, President, Michigan Farm Bureau; Teryl R. Roper, Associate Professor and Extension Fruit Specialist, University of Wisconsin; Gene A. Veliquette, Michigan tart cherry grower, President, Shoreline Fruit, Inc.; Ian A. MacKay, CPA, American Institute of Certified Public Accountants; and the Cherry Marketing Institute (CMI), the proponent group.

The issues raised in the exceptions are discussed in the *Findings and Conclusions*.

Small Business Consideration and Paperwork Reduction Act: In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), AMS has considered the economic impact of this action on small entities. The record indicates that there are approximately 1,600 growers of tart cherries and 75 handlers who process cherries in the production area proposed to be regulated. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers as those having annual receipts of less than $500,000. The majority of the tart cherry handlers and producers may be classified as small entities.

For practical purposes, there is no fresh market for tart cherries. Processors dry, freeze, can, juice, or puree pitted tart cherries. Market use averages are: 56 percent of the product becomes industrial grade frozen cherries; 16 percent goes into consumer-size cans of pie filling; 8 percent is used for commercial pie filling; 10 percent becomes juice concentrate; 2 percent is dried; and, 8 percent goes into water packs.

Since 1971, there has been a marked transformation in the processing industry's structure. Currently, 75 percent of the crop is processed by farmer-owned cooperatives or grower-owned processing facilities; whereas in 1971, a substantial volume was processed by independent handlers. Processors, through their sales agents, market in all U.S. markets and export to Europe and Asia. There are no discrete regional markets where cherries from a particular district could have a particular advantage, beyond nominal differences in transportation costs, which can often be overcome by price discounting.

The record evidence shows that economic adversity has caused more than 21 percent of Michigan's growers to withdraw from tart cherry farming. There were 1,183 Michigan commercial growers in 1986, compared to 933 in 1992. In 1992, Michigan growers had an average production of 238,000 pounds with 19 percent of those growers averaging 800,000 pounds, accounting for 66 percent of the total Michigan production. In States other than Michigan, there has also been a general decline in the number of commercial growers since 1986. There are fewer growers in other States besides Michigan, but the number of bearing acres has increased from 45,000 acres in 1986, to more than 50,000 acres in 1990.

Record evidence also indicates that the demand for red tart cherries is inelastic at high and low levels of production, and relatively elastic in the middle range. At the extremes, during times of very low and very high production, different factors become operational. In very short crop years, such as 1991, there is limited but sufficient exclusive demand for cherries that can cause processor prices to double and grower prices to triple. In the event of large crops, there seems to be no price low enough to expand sales beyond about 275 million pounds of raw fruit in a single year.

Since 1982, annual sales have averaged 230 million pounds. Under the proposed order, total returns to growers could be increased by restricting supplies of red tart cherries available for sale by handlers during large crop years. Also, production characteristics of the tart cherry industry provide an opportunity to increase growers' total earnings by converting the excess production of large crop years into storable products that could constitute reserve pools. These pools would be liquidated in a year when the available supplies are short.

One of the main concerns addressed in this proposed order is the short term annual variation in supply which is attributable to climatic factors that neither growers nor processors can control, and which leads to chaotic marketing conditions. Such climatic factors can result in highly unpredictable annual crop sizes, causing gluts and shortages of tart cherries. When gluts occur, large carryin inventories can decrease processor and grower prices, regardless of the anticipated size of the oncoming year's crop. Many sales are consummated with large buyers well before the current crop year's supply and demand situation is clear (based on what can best be described as "Anticipated Supply", i.e., the sum of the carryin inventory and USDA crop forecast, available usually

late in June, weeks before the actual crop harvest.)

These large, unrestricted carryin inventories and crop estimates can play a dominant role in setting the tone of the market in a given year. The proposed order is intended to lessen the impact of these inventories and estimates by establishing an "optimum supply," thereby reducing price swings to growers and buyers, and ultimately resulting in a stabilization and enhancement of the market.

The order would impose some reporting and record keeping requirements on handlers. Handler testimony indicated that the expected burden that would be imposed with respect to these requirements would be negligible since most of the information that would be reported to the Board is already compiled by handlers for other uses and is readily available. Reporting and record keeping requirements issued under comparable marketing order programs impose an average annual burden on each regulated handler of about one hour. It is reasonable to expect that a comparable burden would be imposed under this proposed marketing order on the estimated 75 handlers of tart cherries. With respect to growers, they testified at the hearing that information required to be submitted to the Board for grower diversion is already collected and available from growers.

The Act requires that, prior to the issuance of a marketing order for tart cherries, a referendum be conducted among effected producers and processors to determine if they favor issuance of the order. The ballot material that would be used in conducting the referendum would be submitted to and approved by OMB before it is used. It is estimated that it would take an average of 20 minutes for each of the approximately 1,600 tart cherry growers and 75 tart cherry processors to complete the ballots. Additionally, it has been estimated that it would take approximately ten minutes for each handler to read and sign the marketing agreement.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320), which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and record keeping requirements contained in the proposed rule specific to the ballot material to be used in conducting the referendum have been approved by OMB on a temporary basis and have been assigned OMB number 0581–0177. An expiration date of September 1996 has been established for this temporary OMB approval. A complete package of information and collection requirements contained in this proposed rule will be submitted, for approval, to OMB at a later date. Those requirements would not become effective prior to OMB review. Interested persons would be provided 60 days to comment on : (1) whether the proposed collection of information is necessary for the functioning of the proposed tart cherry marketing order program and USDA'S oversight of that program; (2) the accuracy of the collection burden estimate and the validity of methodology and assumptions used in estimating the burden on respondents; (3) ways to enhance the quality, utility, and clarity of the information requested; and (4) ways to minimize the burden, including use of automated or electronic technologies. Any record keeping and reporting requirements imposed would be evaluated against the potential benefits to be derived and it is expected that any added burden resulting from increased reporting and record keeping would not be significant when compared to those anticipated benefits derived from administration of the order.

The purpose of the RFA is to fit regulatory and informational requirements to the size and scale of the business entities in a manner that is consistent with the objectives of the rule and applicable statutes. The proposed marketing order provisions have been carefully reviewed and every effort has been made to eliminate any unnecessary costs or requirements. As discussed in the RFA, Congress' intent, among other objectives, was to direct agencies to identify the need for any "special accommodation" (e.g., exemption or relaxation) on regulated small entities (i.e., handlers) because, in the past, some Federal regulatory and reporting requirements imposed unnecessary and disproportionately burdensome demands on small businesses. After reviewing the record AMS determined that direct or indirect costs imposed under the marketing order regulation would not be proportionately greater on small handlers than on large handlers, or conversely, that any projected order benefits would not be proportionately smaller for small handlers than for large handlers.

The record evidence indicates that the proposed order may impose some additional costs and requirements on handlers, but those costs are insignificant and are directly proportional to the size of the regulated handlers. The evidence also indicates that, given the severe economic conditions and unstable markets facing the majority of the industry, the benefits to small (as well as large) handlers are likely to be greater than would accrue under the alternatives to the order proposed herein, namely no marketing order, or an order without the proposed combination of volume controls and other order authorities.

The record evidence indicates that the proposed order would be instrumental in providing expanding markets and sales, and raising and stabilizing prices of tart cherries, primarily for the benefit of producers. The evidence also indicates that handlers would benefit as well. While the level of such benefits to handlers is difficult to quantify, it is also clear the provisions of the proposed order are designed to benefit small entities. Small handlers and producers are more likely to be minimally capitalized than large entities, and are less likely to survive without the stability the proposed order would provide.

Accordingly, based on the information discussed above, AMS has determined that the issuance of this proposed rule and referendum order would not have a significant economic impact on a substantial number on small entities.

The material issues presented on the record are:

1. Whether the handling of tart cherries grown in the proposed production area is in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects such commerce;

2. Whether the economic and marketing conditions are such that they justify a need for a Federal marketing agreement and order which will tend to effectuate the declared policy of the Act;

3. What the definition of the production area and the commodity to be covered by the marketing order should be;

4. What the identity of the persons and the marketing transactions to be regulated should be; and

5. What the specific terms and provisions of the order should be including:

(a) The definition of terms used therein which are necessary and incidental to attain the declared policy and objectives of the order and the Act;

(b) The establishment, composition, maintenance, procedures, powers and duties of a committee that shall be the local administrative agency for assisting the Secretary in the administration of the marketing order;

(c) The authority to incur expenses and the procedure to levy assessments on handlers to obtain revenue for paying such expenses;

(d) The authority to establish or provide for the establishment of production, processing and marketing research and marketing development projects, including paid advertising;

(e) The authority to establish regulations that would require minimum quality and inspection requirements applicable to cherries to be handled;

(f) The authority to establish regulations that would provide for a volume control program;

(g) The establishment of requirements for handler reporting and record keeping;

(h) The requirement of compliance with all provisions of the order and with any regulations issued under it; and

(i) Additional terms and conditions as set forth in section 930.81 through section 930.91 of the Notice of Hearing published in the **Federal Register** of November 30, 1993, which are common to all marketing agreements and orders, and other terms and conditions published at section 930.92 through section 930.94 that are common to marketing agreements only.

Findings and Conclusions and Rulings on Exceptions

The material issues, findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the November 29, 1995, issue of the **Federal Register** [60 FR 61292] are hereby approved and adopted subject to the following additions and modifications:

Based upon the exceptions filed by Department of Justice, Anti-trust Division (DOJ), and Mr. Lee Schrepel, the findings and conclusions in material issue number 2 of the Recommended Decision concerning the question of whether economic and marketing conditions are such that they justify a need for a Federal marketing agreement and order which would tend to effectuate the declared policy of the Act are amended by adding the following eight paragraphs after the last paragraph (60 FR 61297) to read as follows:

In its exception to the Recommended Decision, DOJ urged USDA to reject the proponents' request for a marketing order for tart cherries. DOJ contended that the proposed marketing order is not by any means a "national solution" for any existing problems in the tart cherry industry, and its implementation would harm the public. DOJ asserts there is no reliable evidence to show that the proposed marketing order would produce supply or price stability and it should not be issued. In addition, DOJ cited two areas of disagreement with the Recommended Decision. DOJ stated that: (1) The tart cherry industry does not require regulation based on the evidence presented at the hearing; and (2) the proposed marketing order would not stabilize tart cherry prices or supplies.

In regard to its first concern, DOJ stated that growers and handlers who prefer to protect against fluctuating prices may do so by using any one of the numerous market mechanisms that already exist for that purpose. DOJ stated that these mechanisms are far superior to government regulation for reducing risk because they help producers deal with fluctuating supplies without artificially inflating prices. As previously stated, the market mechanisms suggested by DOJ are currently available to the industry. The marketing order is another tool for the industry to use in stabilizing supplies. Marketing orders do not exist to the exclusion of other market mechanisms. However, as the record shows, those mechanisms have not been effective in dealing with the production variability problems faced by the industry.

In regard to its second concern, DOJ contended that the finding that the proposed marketing order would contribute to orderly marketing conditions and, therefore, effectuate the declared policy of the Act, is without support in the record. The agency stated that USDA relied heavily on the testimony of Dr. Forker, who testified on price stability. It is DOJ's position that Dr. Forker's conclusions on price stability are wrong and that he improperly manipulated the data to reach a desired result. In addition, in his exception, Mr. Lee Schrepel also objected to USDA relying on the evidence presented by Dr. Forker.

As previously stated, USDA believes that the proponents have demonstrated a need for a tart cherry marketing order. The record supports the argument that the industry has suffered since the termination of the prior order. A proposed order was developed to correct the situation with the goal of increasing grower returns and bringing supplies in line with demand. Authority for volume control regulation which would only be used when the market warrants it, is included in the order. Record evidence supports the need for the marketing order. Evidence presented at the hearing did not offer a basis for discrediting Dr. Forker. Dr. Forker is a recognized expert in his field and there was no persuasive evidence presented at the hearing which would refute his testimony. In addition, USDA did not rely solely on Dr. Forker. It considered all the testimony and analyzed the record in its entirety in arriving at its findings and conclusions.

In Mr. Schrepel's exception, he stated that USDA has discounted any and all arguments that reporting and record keeping requirements will be significantly greater for Oregon producers and processors, and that their subsequent costs and benefits of operating under the marketing order are proportionately and significantly different than expected to be experienced in larger producing districts. Mr. Schrepel also contends that smaller producing States (i.e., Pennsylvania and Oregon) have not been producing the reports that will be needed under the marketing order, and therefore it will be an added burden on small handlers to submit such reports to the Board under the marketing order.

Handlers from the smaller producing areas testified that reporting to the Board would not be unduly burdensome. They normally keep such records in conducting their business operations and therefore could easily compile the information for use under the marketing order. In addition, handlers in districts which are not volume regulated (e.g., the smaller producing states) would have fewer reporting and record keeping requirements than those handlers in regulated districts since they would not be maintaining reserve pools and reporting on storage and disposition. Such requirements would stay reduced as long as that district's production remains below the trigger amount for volume regulation.

The record evidence also supports the premise that small growers and handlers would have the most to benefit from implementation of the marketing order because such growers and handlers have been going out of business over most of the last 8 years due to low cherry prices. Since the order would help increase grower returns, this should increase the buffer between success and failure.

Based on the above discussion, the exceptions by DOJ and Mr. Schrepel are denied.

Based upon the exceptions filed by Mr. Dorsing, Mr. Hageman, Mr. Mark Schrepel, and Mr. Lee Schrepel, the findings and conclusions in material issue number 3 of the Recommended Decision concerning the definition of the production area and the commodity to be covered are amended by adding the following six paragraphs after the last paragraph (60 FR 61299) to read as follows:

The exception filed by Mr. Dorsing stated that the States of Washington and Oregon should not be included in the proposed marketing order. Mr. Dorsing

indicated that 1995 production figures for the State of Washington show that over 90 percent of the tart cherry production went to juice concentrate. He contended that the majority of producers in Washington and Oregon produce their cherries for use in juice concentrate rather than canned or frozen products. Mr. Dorsing also stated that the juice characteristics of the Northwest tart cherry are unique in character and juice companies are finding that the characteristics of Northwest juice concentrate meet their required specifications. He also stated that Northwest production is not adding to the "glut" in the packed product industry, since the Northwest is primarily a juice concentrate industry. Mr. Dorsing stated further that the Northwest tart cherry industry pays for its own storage, develops its own markets and does its own promotion and advertising. Thus, there is nothing to be gained by the Northwest being included in the tart cherry marketing order. In addition, Mr. Dorsing requested that each State be allowed to vote separately for inclusion in the marketing order.

The exception filed by Mr. Hageman opposed the proposed marketing order. He stated that the order would unnaturally inflate grower prices to nearly double the current level. He also asked that Washington and Oregon be excluded from coverage under the proposed marketing order. The reason given was that Washington and Oregon account for 6.5 percent of the 1990–1994 total U.S. production and that, during the same time period, less than 20 percent of the Washington and Oregon production entered the five plus one canned and frozen product line. This would indicate that less than 1.5 percent of the nation's supply of five plus one stock was produced in the Northwest. It was argued by Mr. Hageman that the Northwest industry is dependent on the juice concentrate and puree market which does not compete with the five plus one market. Mr. Hageman also requested a State-by-State referendum.

The exception filed by Mr. Mark Schrepel stated that any proposed order should not include the State of Oregon, and that the Act appears not to include cherries for canning or freezing if they originated in Oregon or Washington. Mr. Schrepel believes that no Oregon grower or processor supports the order. He also requested a State-by-State referendum.

The exception filed by Mr. Lee Schrepel indicated that one of the reasons the proposed order should exclude Washington and Oregon is because the Northwest has distinctive production and marketing characteristics. Further, it is Mr. Schrepel's contention that successful marketing orders depend on the support of affected producers and handlers. According to him, the unanimous opposition of Oregon producers and handlers and near unanimous opposition by Washington producers and handlers demonstrate the lack of this essential element. Mr. Schrepel also requested voting by a State-by-State referendum.

As previously stated, to exclude any portion of the proposed production area would tend to defeat the purpose of the proposed order and could depress prices of the regulated cherries. Contrary to Mr. Schrepel's suggestion, Oregon and Washington cherries for freezing or canning are not excluded from coverage under the Act. Record evidence supports the position that the oversupply situation in the U.S. is a national problem. In addition, the juice concentrate market in areas such as Oregon and Washington can be impacted by production in other areas. Therefore, the entire industry needs to work together to alleviate the problem. Also, the record evidence supports the argument that the Northwest has the greatest potential to expand tart cherry producing acreage, thereby further benefiting from the proposed order in the event of increased production. Therefore, the Northwest should be included in the production area under the proposed order and the requests to exclude Oregon and Washington from the proposed production area are denied.

In regard to the requests to conduct a State-by-State referendum to determine who should be covered under the proposed tart cherry order, such requests are denied. The Act requires that all producers and processors in the proposed production area should vote in a referendum on the promulgation of an order. There is no authority for State by State voting.

Based upon the exception filed by CMI, the findings and conclusions in material issue number 5(a) of the Recommended Decision concerning the commodity to be covered are amended by adding the following paragraph after the sixth paragraph (60 FR 61300) to read as follows:

CMI stated that the definition of cherries should be modified to correct the misspelling of a species name and to include the words "or hybrids of" to the cherry definition. Adding these words would correct and clarify the definition. Therefore, CMI's exception is adopted herein.

Based upon the exceptions filed by CMI, Mr. Morrison, and Mr. Facer, the findings and conclusions in material issue number 5(b) of the Recommended Decision concerning the establishment, composition, maintenance, procedures, powers and duties of the Board are amended by adding the following eight paragraphs after the 73rd paragraph in material issue number 5(b) (60 FR 61307) to read as follows:

In its exception, it was CMI's contention that the order should be modified to require that, in order for the Board to adopt preliminary or final free and restricted percentages for any crop year, at least 11 Board members from districts that would be subject to volume regulation vote in the affirmative on any such action. CMI also wanted this requirement to apply if there are modifications to the marketing policy under section 930.50(f). In addition, CMI argued that since the Recommended Decision contains a Board voting requirement of two-thirds of the entire Board rather than a majority of the Board, as originally proposed, this modification is necessary because it is important that a clear majority of those who are going to be regulated agree with the determination before volume regulation can go into effect. It was also CMI's concern that the unregulated districts could somehow influence the decision to impose volume regulation when such regulation is a possibility under the optimum supply formula. Eleven votes out of 13 is approximately 85 percent of the votes from the volume regulated districts. CMI suggested that this voting requirement apply to recommendations made under sections 930.50(b), 930.50(d) and 930.50(f).

In his exception, Mr. Morrison argued that Board members from nonregulated districts should not be allowed to vote on matters concerning regulation of the crop or the timing on the release of the primary pool.

Throughout this formal rulemaking process, it has been expressed that the oversupply situation in the U.S. is a national problem, and that the entire industry should work together to alleviate the problem by participating in the proposed marketing order. Although USDA understands CMI's concerns, they are overstated, since the proposed order provisions concerning the marketing policy and issuance of volume regulations contain a number of procedural steps which, in many respects, make them self-executing. Also, it is the Secretary, and not the Board, who issues the volume regulations and sets the final free and restricted percentages. Therefore, as previously discussed in the Recommended Decision, all actions by the Board, including volume regulation issues, should continue to require a two-thirds affirmative vote of the entire Board to pass. Therefore, CMI's and Mr. Morrison's exceptions are denied.

Mr. Facer requested that only regulated districts be allowed to vote on the release of the primary reserve. This is not necessary nor is it supported by the record. As previously stated the situation that exists in the industry is a national problem, therefore, all members that represent the tart cherry industry in the Board should vote in all matters. The reserve would be released by the Board when certain conditions exist. For example, proposed section 930.50(g) would release, to all handlers, up to an additional 10 percent (above the optimum supply level) of the average of the prior three years sales, if such inventory is available in the primary inventory reserve. Therefore, Mr. Facer's exception is denied.

Based upon the exception filed by CMI and Mr. Lee Schrepel, the findings and conclusions in material issue number 5(b) of the Recommended Decision concerning the establishment, composition, maintenance, procedures, powers and duties of the Board are amended by adding the following three paragraphs after the fourth paragraph (60 FR 61301) to read as follows:

Questions and recommendations regarding order language concerning the Board membership limitation on sales constituencies in proposed § 930.20(f) were raised by both Mr. Lee Schrepel and CMI. It was Mr. Schrepel's concern that a single sales constituency could potentially gain control of the Board and he asked that not more than 30 percent of the Board be allowed to be affiliated (even remotely) in any manner with a single sales constituency. However, a 30 percent limitation is not adequately supported by the record. CMI's concern was that if a grower who sells cherries through a number of different processors is nominated for membership to the Board in a district, all of those processors but one would then be prevented from having grower representation on the Board. According to CMI, this would be true even if the grower sold a very small amount of cherries to a particular handler on a one-time basis. As proposed by CMI, this concern can be addressed by considering the sales constituency to which the grower delivers the majority of his or her cherries to be the grower's sales constituency for nomination and representation purposes.

Concerns regarding sales constituencies and Board representation have been raised from the beginning of this rulemaking process. That is one of the reasons that USDA decided to impose a two-thirds voting requirement instead of a simple majority, and added a provision requiring the consensus of at least two-thirds of the entire Board to pass any action by the Board (see page 61306 of the Recommended Decision). The record is clear that the major reason § 930.20(f) generated so much discussion was the perception among some of the participants at the hearing sessions that the Board could become controlled by a single constituency, and the interests of those growers and handlers not associated with such constituency would not receive proper attention or could be ignored altogether. Additions and changes to § 930.20(f) were suggested by Mr. Lee Schrepel and CMI, and although these have merit, they are not dispositive of the main issue, *i.e.*, control of the Board by a single interest group.

When the question of adding further restrictions to § 930.20(f) arose early in the rulemaking proceeding, CMI indicated that it was unlikely that any single sales constituency could gain control of the Board, and that theoretical projections of such possibilities are not realistic. Furthermore, it was pointed out by CMI that the Secretary could effectively enforce the limitations contemplated by § 930.20(f) without modifying its language because the ultimate decision of whom to appoint to the Board lies with the Secretary. Therefore, in light of such requirements, and clear record evidence that the purpose of § 930.20(f) is to achieve a fair and balanced Board representation, USDA will not add additional limitations to § 930.20(f), but, instead, will add language to more clearly express the purpose of that section. In addition, the Secretary could issue regulations to implement the section, if necessary.

Based upon the exception filed by Mr. Lee Schrepel, the findings and conclusions in material issue number 5(b) of the Recommended Decision concerning the establishment, composition, maintenance, procedures, powers and duties of the Board are amended by adding the following two paragraphs after the 30th paragraph (60 FR 61303) to read as follows:

In Mr. Lee Schrepel's exception, he stated that the testimony by the proponent made it clear that its intent is to maintain control of the Board's public member. It was Mr. Schrepel's view that the proposed marketing order still has no provisions to prevent the Board from appointing Board members. Mr. Schrepel argued that the public member should be appointed at the sole discretion of the Secretary, without the advice or consent of the Board.

The Secretary has discretion in appointing members and alternate members to the Board, including the public member. The appointments can be made from Board nominees or other qualified individuals. In the case of the public member and such member's alternate, the Secretary is relying on the Board to nominate and elect eligible individuals. As was previously stated in the Recommended Decision, such individuals would then be subject to appointment by the Secretary. This procedure is similar to the selection of public members and alternates on other marketing order committees. Therefore, § 930.24 is modified to clarify the selection and appointment procedure.

Based upon the exceptions filed by Mr. Facer, Mr. Guise, Mr. Lee Schrepel and CMI, the findings and conclusions in material issue number 5(b) of the Recommended Decision concerning the establishment, composition, maintenance, procedures, powers and duties of the Board are amended by adding the following six paragraphs after the 27th paragraph (60 FR 61303) to read as follows:

The exception filed by Mr. Facer stated that the responsibilities and authority of the Board relating to its ability to assess the industry for research, development, promotion and advertising are too broadly described. Also, the Board composition includes too much representation from the nonregulated districts.

USDA relies on the marketing order committees and boards to recommend rules and regulations concerning their particular industries. Marketing order committees and boards are comprised of industry grower and handler members and are experienced in the industry's operations and should be capable of evaluating the industry's needs. It is for the Secretary to determine whether rules recommended by committees or boards should be issued. Board composition was recommended by the proponent group to provide fair and equitable representation to the entire industry based on the relative levels of production of cherries in the various producing districts. It was the proponents' position that all States covered under the order should be represented on the Board in order to keep them informed of the Board's activities. In addition, all States covered under the marketing order have the potential to become regulated States in the future. Mr. Facer's exception is therefore denied.

The exceptions filed by Mr. Ken Guise, Mr. Lee Schrepel and CMI requested that the proposed order be modified to correct the handler nomination petition process for District 6. Currently, only one handler exists in District 6, which covers the State of Pennsylvania (Knouse Foods Cooperative, Inc.). The Recommended Decision provided that for a handler to be nominated for election to the Board, the handler would have to obtain the signature of at least one handler, other than the nominee, from the nominee's district who is eligible to vote in the referendum. Under this procedure, Mr. Guise and CMI point out that since there is no other handler in District 6 except Knouse Foods, such handler would be denied the opportunity to be nominated for election to the Board and District 6 would never be represented by a handler representative unless another handler were to start operating in that District.

CMI stated that this result is wholly unintended by the proponent and requests that the USDA modify section 930.23(b)(2) to require that when nominating handler members to the Board, the petition form be signed by a handler other than the nominee shall not apply in any District where less than two handlers are eligible to vote.

Mr. Schrepel requested that the same procedures developed for Pennsylvania also apply to Washington and Oregon, since they have very few handlers. The modification proposed by the proponents would also address Mr. Lee Schrepel's concerns since the modification would apply to any District that has less than two handlers.

Mr. Guise's, Mr. Lee Schrepel's and CMI's exception on this issue is therefore adopted in this Secretary's Decision and appropriate changes are made in section 930.23(b)(2).

Based upon the exception filed by Mr. Lee Schrepel, the findings and conclusions in material issue number 5(b) of the Recommended Decision concerning the establishment, composition, maintenance, procedures, powers and duties of the Board are amended by adding the following paragraph after the 33rd paragraph (60 FR 61304) to read as follows:

Mr. Lee Schrepel requested that the procedures for electing alternate members to the Board be more clearly detailed in the order. The proposed order provides under section 930.23 that each member and alternate member would be nominated and elected separately. The Board has the authority to recommend rules and regulations to effectuate such authority and specify more detailed procedures in regard to the nomination process. Therefore, Mr. Schrepel's exception is denied.

Based upon the exception filed by Mr. Lee Schrepel, the findings and conclusions in material issue number 5(b) of the Recommended Decision concerning the establishment, composition, maintenance, procedures, powers and duties of the Board are amended by adding the following paragraph after the 35th paragraph (60 FR 61304) to read as follows:

In his exception, Mr. Schrepel stated that USDA has submitted contradictatory language regarding the nomination process. He claimed that USDA appears to be advancing it's own interests of fast tracking the proposal, if promulgated, by conducting nomination meetings in the districts and allowing growers and handlers to vote for members and alternate members at these meetings. USDA is not fast tracking such a proposal. If the Secretary determines that conducting nomination meetings and voting at these meetings would be the best method of completing the process in a timely manner, then such method should be used. Should the proposed order receive the required level of grower and processor support in the referendum, USDA intends to conduct meetings to nominate and elect the initial Board members and alternate members using petition forms and election ballots as provided by § 930.23. Therefore, Mr. Schrepel's exception is denied.

In Mr. Lee Schrepel's exception, he indicated that there was an error in proposed section 930.22 regarding Board members' terms of office. The current proposed order specifies that one-third of such initial members and alternates shall serve only one fiscal year, one-third of such members and alternates shall serve only two fiscal years and one-third of such members and alternate members shall serve two fiscal years. The latter reference to two fiscal years should be changed to three fiscal years to be consistent with the record evidence. Mr. Schrepel is correct and his exception is adopted herein by revising the order language.

Based upon the exceptions filed by Mr. MacKay and Mr. Lee Schrepel, the findings and conclusions in material issue number 5(b) of the Recommended Decision concerning the establishment, composition, maintenance, procedures, powers and duties of the Board are amended by adding the following three paragraphs after the 51st paragraph (60 FR 61305) to read as follows:

In Mr. Lee Schrepel's exception, he stated that in section 930.31(h), the reference to disbursement of all funds, including the payment of storage to handlers, should not be included in that particular section. USDA does not intend for the Board to utilize assessments to pay for the storage of any cherries or cherry products. The proponent's proposal to collect assessments from handlers for storage of primary inventory reserve cherries was removed by the USDA in the Recommended Decision. Therefore, such language referencing storage assessments should not be contained in the proposed order. This has been an oversight and such language shall be removed. Therefore, Mr. Schrepel's exception is adopted.

The exception filed by Mr. MacKay requested that the proposed marketing order be modified under the area of duties of the Board to include that the Board's financial statements be prepared in accordance with generally accepted accounting principles and to be audited by a certified public accountant. Currently, the proposed order provides that the Board cause its books to be audited by a certified public accountant. Mr. MacKay requested USDA to clarify in the final order whether the term "books" refers to the Board's financial statements and clarify the basis for the financial statement presentation (generally accepted accounting principles).

The term "books" does refer to the Board's financial statements. The modification to change the term "books" to "financial statements" is incorporated in this document. However, the modification to clarify the basis for the financial statement presentation (generally accepted accounting principles) is denied. The Fruit and Vegetable Division's Marketing Agreement and Order Operation Manual specifies the types of financial statement presentations to be used in committee audits. This manual is used by all marketing order committees and is a policy document issued by USDA. It is not feasible to place such language in the order, since in the future, USDA could change the basis for financial statement presentation for all marketing order committees to use. If such a change occurred, the marketing order would have to be amended, which can be a costly process. Therefore, such a modification is denied. Thus, Mr. MacKay's exception is partially denied.

Based upon the exception filed by Mr. Lee Schrepel, the findings and conclusions in material issue number 5(c) of the Recommended Decision concerning the authority to incur expenses and the procedure to levy assessments on handlers to obtain revenue for paying such expenses are amended by adding the following paragraph after the seventh paragraph (60 FR 61308) to read as follows:

In his exception, Mr. Lee Schrepel contended that a built-in limit on the authority to level assessments should be established. Mr. Schrepel proposed that this authority be capped at no more than 5 percent of the average field price for the season. He suggested that this limit could be adjustable through modification at continuance referendum time or more frequently. Under the order, the tart cherry industry assessment rate would be dependent on meeting administrative and other expenses and would be necessarily influenced by the volume of the crop. The assessment rate would be established through informal rulemaking which would require a Board recommendation and an opportunity for public comment. Mr. Schrepel did not specify why 5 percent of the average field price for the season would be a reasonable limit, and record evidence does not contain support for such a cap. However, if the marketing order is implemented, the Board could adopt such a cap as a guideline when recommending the assessment rate. Therefore, Mr. Schrepel's exception is denied.

Based upon the exception filed by Mr. Lee Schrepel, the findings and conclusions in material issue number 5(c) of the Recommended Decision concerning the authority to incur expenses and the procedure to levy assessments on handlers to obtain revenue for paying such expenses are amended by adding the following two paragraphs after the eighth paragraph (60 FR 61308) to read as follows:

In Mr. Lee Schrepel's exception, he stated that it is not equitable to exempt from assessment those cherries which are diverted in accordance with proposed sections 930.58 and 930.59.

Pursuant to section 930.62, cherries would be exempt from assessments if they are diverted according to section 930.59. Product diverted by handlers would not be entering normal market channels, therefore assessments should not be levied. Mr. Schrepel does not point to any evidence in the record to support his exception concerning assessment of diverted cherries. Conversely, record testimony amply supported exempting diverted cherries, since they are not entering normal market channels. Therefore, Mr. Schrepel's exception is denied.

Based upon the exceptions filed by Mr. Mark Schrepel and Mr. Morrison, the findings and conclusions in material issue number 5(c) of the Recommended Decision concerning the authority to incur expenses and the procedure to levy assessments on handlers to obtain revenue for paying such expenses are amended by adding the following three paragraphs after the eighth paragraph (60 FR 61308) to read as follows:

In Mr. Mark Schrepel's exception, he stated that he is concerned about provisions within the proposal that would add expense and hardship to growers. Mr. Schrepel contended that handlers should not be assessed under this marketing order program if handlers are not in a regulated district. He further stated that handlers in unregulated districts should not be assessed for any expenses accrued by the Board since handlers who divert are not assessed on diverted product.

As supported by record evidence, all growers and handlers in the States proposed to be covered under the marketing order, including those not subject to volume regulation, would enjoy the benefits provided by the marketing order (i.e., improved grower returns and increased consumption of tart cherries). Therefore, all handlers should be assessed for the administrative costs of the order. Also, handlers who enter cherries into normal market channels who choose to divert some of their cherries would still be assessed for the cherries that enter normal market channels. Therefore, Mr. Schrepel's exception is denied.

In Mr. Morrison's exception, he stated that further effort needs to be made to make sure that growers understand that the cost of holding and processing the reserve can be passed on to growers by their handlers. It is true that some handlers may pass such costs on to their growers, either directly or indirectly. Under the former order, which was based on a grower pool, growers were directly assessed storage and processing costs for reserve pool cherries. However, this proposed order is based on a handler pool. Therefore, it does not contain authority to assess growers for such costs. Because of this difference, Mr. Morrison's recommendation to somehow emphasize that storing and processing costs can be passed on to growers is denied.

Based upon the exception filed by Mr. Lee Schrepel, the findings and conclusions in material issue number 5(d) of the Recommended Decision concerning the authority to provide for the establishment of production, processing and marketing research and market development projects, including paid advertising, are amended by adding the following paragraph after the sixth paragraph (60 FR 61309) to read as follows:

Mr. Lee Schrepel questioned whether the handlers in States that have State marketing order programs should be exempted from paying assessments on research and marketing development to the Federal marketing order. Mr. Schrepel stated that there should only be one assessment, a Federal or state assessment, not both. There is no current proposal to exempt handlers from paying these assessments if they are in a State that has a State marketing order program. The record evidence did indicate that it would be highly unlikely that the Board would initiate recommendations for research, development, or promotion related assessments while a high percentage of tart cherry growers are financing such activities through other organizations. The record evidence does not contain support for Mr. Schrepel's proposal, therefore, his exception is denied.

Based upon the exceptions filed by Mr. Frank, Mr. Morrison, Mr. Facer, and Mr. Lee Schrepel, the findings and conclusions in material issue number 5(e) of the Recommended Decision concerning the authority to establish regulations that would require minimum quality and inspection requirements are amended by adding the following six paragraphs after the seventh paragraph (60 FR 61310) to read as follows:

In Mr. Frank's exception, he stated that sections 930.44 (a) and (b) are ambiguous and do not spell out what form of inspection would be required (raw product or finished product). He also stated that any inspection of free tonnage cherries should be a decision by a handler and growers that deliver cherries to such handler. This should not be a decision by an administrative body such as the Board. Local weather conditions could affect a small geographic area, thereby causing damage in a localized area rather than the entire production area under the proposed order. This also interferes with a handler's decision on what quality such handler feels could be marketed. Mr. Frank suggested that the above mentioned sections be deleted from the proposed marketing order.

Mr. Morrison also filed an exception that stated that only the quality of cherries placed in the reserve should be regulated. This would be the same as the prior order. Also, Mr. Morrison stated that the Board should not regulate the raw product grade.

In Mr. Facer's exception, he stated that although the order requires inspection of primary reserve tart cherries, there is no official quality standards for some products. Therefore,

such inspection will be impractical, irrelevant and of no economic benefit.

In Mr. Lee Schrepel's exception, he stated that the Board should not be empowered to require the inspection of all cherries entering the stream of commerce.

As previously stated, the proponents testified that as technology increases, the Board should have the authority to adopt quality standards for cherries, especially those concerning pit count. If quality standards are recommended by the Board and implemented by the Secretary, no handler would be allowed to process cherries into manufactured products or sell manufactured products in the current of commerce unless the cherries used in such products meet the applicable requirements. Before recommending quality regulation, the record evidence shows that it was the intent of the proponents that the Board would obtain an industry consensus before making a recommendation to USDA on this issue. Any such regulation would be issued by the Secretary through informal rulemaking which would allow an opportunity for comment.

Without additional Board action, only inventory reserve cherries would be inspected, prior to placing them in the reserve. It is imperative to maintain the quality of the reserve so that only good quality cherries are released to handlers to be sold in the marketplace. Therefore, based on the above discussion on the record evidence, Mr. Frank's, Mr. Morrison's, Mr. Facer's, and Mr. Lee Schrepel's exceptions are denied.

Based upon the exception filed by Mr. Lee Schrepel, the findings and conclusions in material issue number 5(e) of the Recommended Decision concerning the authority to establish regulations that would require minimum quality and inspection requirements are amended by adding the following two paragraphs after the 4th paragraph (60 FR 61310) to read as follows:

In Mr. Schrepel's exception, he stated that the cost of inspecting new cherries to be rotated into the reserve and removing older cherries out of the reserve should be at the expense of the handler. Such action as this, undertaken by or at the convenience of the affected handler for the benefit of the handler or some other party, should not be the expense of the industry.

As previously stated, rotating cherries in the reserve is not a requirement. However, it would benefit the industry if it were done. This would insure that good quality cherries are being released when inventory reserve cherries are sold. The Board will have the authority to limit the number of inspections of cherries to be rotated into inventory for which the Board would be financially liable. In order to establish such limits, the Board would make a recommendation to the Secretary and informal rulemaking would be conducted. Based on the fact that the record evidence supports including this authority it will remain in the order. Therefore, Mr. Lee Schrepel's exception is denied.

Based upon the exception filed by Mr. Lee Schrepel, the findings and conclusions in material issue number 5(e) of the Recommended Decision concerning the authority to establish regulations that would require minimum quality and inspection requirements are amended by adding the following two paragraphs after the third paragraph (60 FR 61310) to read as follows:

The exception filed by Mr. Lee Schrepel stated that there should be no reimbursement of inspection costs for quality inspections for any reserve or free market cherries. Also, requirements for reinspection are inappropriate unless such cherries are part of the primary reserve.

The record evidence indicates that quality control inspections would be paid for by handlers. However, inspections of primary reserve cherries should be paid for by the Board. As previously stated, this would insure that only good quality cherries would be available for release from the reserve into the marketplace. This benefits all in the industry. In regard to reinspection, cherries would only be reinspected if they were regraded, resorted, repackaged or any other way further prepared for market. This would be done if a handler had to repackage a product that was already packaged for a client. This provision is a safety valve to prevent poor quality product entering the marketplace. New crop cherries would be inspected prior to being placed in the primary reserve. The record evidence supports the above provisions, therefore, Mr. Lee Schrepel's exception is denied.

Based upon the exceptions filed by CMI, the findings and conclusions in material issue number 5(e) of the Recommended Decision concerning the authority to establish regulations that would require minimum quality and inspection requirements are amended by adding the following paragraph after the seventh paragraph (60 FR 61310) to read as follows:

CMI's exception stated that the proponent wishes to make it clear that the Board would exercise its powers with regard to the establishment of quality standards and inspection requirements in a manner consistent with the establishment of quality standards under the prior order. Producers and handlers were comfortable with the way that the Board under the prior order instituted inspection requirements. The proponents expect the new Board would operate in the same manner, although they recognize that there are obvious significant differences between the two orders. In addition, such quality regulations would be implemented through the informal rulemaking process which would require a Board vote and opportunity for the public to comment.

Based upon the exception filed by Mr. Harmson, the findings and conclusions in material issue number 5(f) of the Recommended Decision concerning the authority to establish volume regulation provisions under the proposed order are amended by adding the following two paragraphs after the 15th paragraph (60 FR 61311) to read as follows:

In an exception filed by Mr. Harmson, he stated that the provision that would allow the Board to acknowledge a national bargaining agency on behalf of growers should not be deleted from the proposed order. Bargaining associations are a form of group action in agriculture that contributes greatly to the economic well being of growers and adds an important dimension to representation of their interests in the marketplace.

As previously stated, the record evidence did not adequately explain how such a provision would work or what the benefits would be to growers. Also, the record evidence did not define the functions of a national bargaining association as related to the proposed marketing order. Therefore, Mr. Harmson's exception is denied.

Based upon the exception filed by Mr. Lee Schrepel, the findings and conclusions in material issue number 5(f) of the Recommended Decision concerning the authority to establish volume regulation provisions under the proposed order are amended by adding the following two paragraphs after the 23rd paragraph (60 FR 61312) to read as follows:

The exception filed by Mr. Lee Schrepel stated that ownership of the primary or secondary reserve should not be allowed to be transferred, but remain with the handler who had the initial reserve obligation.

Record evidence supported authorizing the transfer of a handler's equity in the primary reserve to another person. As previously stated, a handler may need to do this if, for example, such handler does not have the storage area to store the primary reserve. Therefore, Mr. Schrepel's exception is denied.

Based upon the exception filed by CMI, the findings and conclusions in material issue number 5(f) of the Recommended Decision concerning the authority to establish volume regulation provisions under the proposed order are amended by adding the following paragraph after the seventh paragraph (60 FR 61311) to read as follows:

In CMI's exception, it stated that section 930.50(b) governing the application of the optimum supply formula in calculating preliminary free and restricted percentages was altered from the proponents' proposal. The proponents' proposal provided that tonnage requirements for the current crop year should be subtracted from the current year USDA crop forecast. The Recommended Decision provided that these numbers should be divided. This calculation would not work properly and is an inadvertent error by USDA. Therefore, it will be corrected in the amendatory language and CMI's exception is adopted.

Based upon the exception filed by CMI, the findings and conclusions in material issue number 5(f) of the Recommended Decision concerning the authority to establish volume regulation provisions under the proposed order are amended by adding the following paragraph after the 67th paragraph (60 FR 61316) to read as follows:

The exception filed by CMI indicated that section 930.52(d) should be corrected and clarified by removing the word "maximum" in the phrase "maximum average annual processed production" since this phrase is ambiguous and lacks clear meaning. One can either have a maximum annual production or an average annual production over the last five years, but not both. Therefore, section 930.52(d) should be modified by removing the word "maximum" and simply permit a district to drop out of volume regulation when its current crop is 50 percent less than the average crop processed over the prior five years. CMI's exception is adopted herein.

Based upon the exceptions filed by Mr. Rowley, Mr. Morrison, CMI, Mr. Mark Schrepel, and Mr. Lee Schrepel, the findings and conclusions in material issue number 5(f) of the Recommended Decision concerning the authority to establish volume regulation provisions under the proposed order are amended by adding the following eight paragraphs after the 59th paragraph (60 FR 61315) to read as follows:

The exception filed by Mr. Rowley stated that he was very concerned that the Recommended Decision did not authorize cherries used for drying as a diversion outlet. Mr. Rowley stated that his company had spent over $1,500,000 to develop dried cherries and dried cherry products. He believes that it would be grossly unfair that unregulated States could sell all their dried cherry products and he could not since dried cherries is not a diversion outlet.

Mr. Mark Schrepel's exception expressed concern that export would be prohibited as an exempt use or diversion outlet.

Mr. Morrison's exception requested that diversion credit be allowed for juice, exports and dried cherries. Mr. Morrison stated that companies have invested substantial sums to develop new markets and expand current markets dealing with juice, export and dried cherries. In CMI's exception, it requested that the USDA modify section 930.62 to include dried cherries that are exported, and cherries that are converted to juice.

Under section 930.59 of the proposed order, handler diversion can take place by several methods, including uses exempt under section 930.62. Section 930.62 provides that diverted cherries used for specific purposes may be exempt from certain provisions of the marketing order. These include exemption from assessment and volume control provisions.

Dried cherries or cherries designated for export can be exempted under § 930.62 from certain order provisions or can be allowed to qualify as diversion outlets under § 930.59. As specified under section 930.62, the Board can also designate other exempt uses. If the Board choose to designate export or dried cherries as an exempted use under § 930.62, export and dried cherries could also be specified as an eligible diversion outlet. Thus, such uses requested by the exceptions for diversion credit are not prohibited under the marketing order, except for cherries converted to juice or juice concentrate.

As previously discussed, record evidence supports the proposition that cherries converted to juice or juice concentrate cannot be used as an eligible diversion outlet. The arguments raised in the exceptions did not overcome the evidence in the record indicating that cherries converted to juice or juice concentrate cannot be used as an eligible diversion. This is mainly because of the possibility of oversupplies damaging the juice market already established by cherry producers and handlers in Oregon and Washington.

In addition, CMI's exception requested USDA to modify section 930.59(d) to clarify that the prohibition of juice or juice concentrate as an eligible handler diversion only prohibits the conversion of diverted cherries to juice or concentrate. CMI requested that the use of juice or juice concentrate for sales in export markets be eligible for diversion credit. As previously discussed, the prohibition of juice or juice concentrate for diversion credit, discussed in the Recommended Decision (60 FR 61316), would also apply to sales of juice or juice concentrate in export markets. This prohibition on diversion credit, however, does not preclude the export of free tonnage cherries that have been converted to juice or juice concentrate. Therefore, CMI's exception is denied.

Finally, Mr. Lee Schrepel's exception stated that there was an error in section 930.58(b) which referenced section 930.63 as exempted uses. Section 930.62 is the section in the marketing order that specifies the exempt uses. Therefore, section 930.58(b) should be corrected.

Based upon the exceptions filed by Mr. Frank and Mr. Facer, the findings and conclusions in material issue number 5(f) of the Recommended Decision concerning the authority to establish volume regulation provisions under the proposed order are amended by adding the following paragraph after the 68th paragraph (60 FR 61317) to read as follows:

In Mr. Frank's exception, he stated that tart cherries is a national crop and the oversupply is a national problem. Therefore, Washington, Oregon, Wisconsin and Pennsylvania should not be exempt from participating in the marketing order. These States comprise 17 percent of the total bearing acreage. Mr. Frank states that this is not an insignificant amount and to exempt these States from participating in the marketing order is not fair or right. In Mr. Facer's exception, he stated that he opposed the 15 million pound requirement tart cherry producing areas would have to meet to become regulated under the order. All tart cherry producing areas should be included or there should not be a marketing order. The above-mentioned States are not exempt from the marketing order. If the proposed order becomes effective, they would not be regulated under the order's proposed volume regulation because they do not meet the 15 million pound criteria. Should they meet the criteria in the future, they would become regulated. Handlers in all States would pay assessments for the administration of the order. The record evidence does not warrant volume

regulation in the States discussed by Mr. Frank or Mr. Facer, at this time. Therefore, Messrs. Frank's and Facer's exceptions are denied.

Based upon the exception filed by Mr. Facer, the findings and conclusions in material issue number 5(f) of the Recommended Decision concerning the authority to establish volume regulation provisions under the proposed order are amended by adding the following two paragraphs after the 23rd paragraph (60 FR 61312) to read as follows:

Mr. Facer expressed a concern that the proposed order would not protect individual producers' investments in processing/marketing cooperatives. He stated that many producers have made substantial investments in cooperatives to market their production while other producers have no such investments. It is his contention that the order will make all producers equal, allowing each to market the same portion of his/her crop.

The proposed order does not regulate producers. The order regulates only handlers of tart cherries. If a volume regulation is implemented, handlers would have to decide how to market their product, whether to withhold the required reserve or divert product, or both. Independent handlers and cooperatives would be making similar decisions concerning tart cherries to those they have made in the past when faced with overproduction. Such decisions would include identifying which producers' cherries to purchase, and which of those to utilize in various products and markets. The proposed marketing order is intended to bring supplies in line with current demand, thereby increasing returns to growers. Therefore, Mr. Facer's exception is denied.

Based upon the exception filed by Mr. Lee Schrepel, the findings and conclusions in material issue number 5(f) of the Recommended Decision concerning the authority to establish volume regulation provisions under the proposed order are amended by adding the following two paragraphs after the 20th paragraph (60 FR 61312) to read as follows:

Mr. Lee Schrepel's exception stated that the Board, even with the concurrence of the Secretary, should never have authority to modify the 50 million pound primary reserve limit. If a modification occurs, it should involve a proposal of modification to the Secretary followed by a comment period and State-by-State voting.

The record evidence supports the 50 million pound level specified in section 930.50(i). If the Board recommended a change to the 50 million pound level, it would have to be implemented through the formal rulemaking process which would require a public hearing and eventually a favorable vote by growers and processors to implement such change. State-by-State voting is not authorized under the Act nor is it supported by the record.

Based upon the exception filed by CMI, the findings and conclusions in material issue number 5(f) of the Recommended Decision concerning the authority to establish volume regulation provisions under the proposed order are amended by adding the following paragraph after the 16th paragraph (60 FR 61311) to read as follows:

The exception filed by CMI stated that there was an inconsistency in section 930.55(b) of the proposed order. The record evidence supported the concept that handlers could place cherries in any form in the inventory reserve. Handlers would have the option of choosing what form of inventory they wish to store. However, proposed section 930.55(b) states that the form to be used would be prescribed by the Board. This statement is inconsistent with the record evidence. Therefore, CMI's exception is adopted and appropriate modifications are made in section 930.55(b).

Based upon the exception filed by CMI, the findings and conclusions in material issue number 5(f) of the Recommended Decision concerning the authority to establish volume regulation provisions under the proposed order are amended by adding the following paragraph after the 15th paragraph (60 FR 61311) to read as follows:

The exception filed by CMI stated that section 930.53 should also apply to the modification, suspension, or termination of quality regulations along with volume regulations. This change would clarify the Board's responsibility to monitor crop and market conditions and recommend changes to existing regulations as necessary. Therefore, CMI's exception is adopted and appropriate modifications to section 930.53 have been made.

Based upon the exception filed by Mr. Lee Schrepel, the findings and conclusions in material issue number 5(f) of the Recommended Decision concerning the authority to establish volume regulation provisions under the proposed order are amended by adding the following paragraph after the 12th paragraph (60 FR 61311) to read as follows:

In Mr. Lee Schrepel's exception, he stated that the reference to the harvest season beginning in August (used as part of an illustration) was incorrect. Mr. Schrepel stated that the harvest season actually begins in mid-June and runs through mid-August. Mr. Schrepel's exception is correct.

Based upon the exception filed by Mr. Lee Schrepel, the findings and conclusions in material issue number 5(f) of the Recommended Decision concerning the authority to establish volume regulation provisions under the proposed order are amended by adding the following paragraph after the 52nd paragraph (60 FR 61314) to read as follows:

The exception filed by Mr. Lee Schrepel stated that grower diversion credit should not be given for fruit that is storm damaged. A diversion credit may be a marketable commodity, an item of value, and no such value should be accrued for unmarketable cherries. USDA did not include the proponents' proposal to authorize diversion credit for unharvestable or unmarketable fruit. The record evidence supported the proposition that growers should be allowed to receive diversion credit for marketable, harvestable fruit, even if some portion of such fruit was damaged by storm winds or floods. USDA has determined that the grower diversion program contained in the Recommended Decision could benefit the industry and believes that this finding is consistent with Mr. Schrepel's exception.

Based upon the exceptions filed by CMI and Mr. Lee Schrepel, the findings and conclusions in material issue number 5(f) of the Recommended Decision concerning the authority to establish volume regulation provisions under the proposed order are amended by adding the following 10 paragraphs after the 68th paragraph (60 FR 61317) to read as follows:

The exception filed by CMI stated that since USDA modified the provisions under section 930.52, the section may not now provide authority to subject additional districts to volume regulation once the initial group of volume regulated districts is established at the time of promulgation. CMI also proposes a new section 930.52 to replace section 930.52 that was published in the Recommended Decision. CMI objected to USDA removing a 150 percent trigger provision which would make districts that had a surge in production subject to volume control. USDA determined that such an additional criteria would be complicated for the Board to administer and possibly inequitable to growers and handlers.

CMI stated that, since the 150 percent trigger was removed from the proposal, the potential now exists for having up to 25 million pounds of unregulated production. In a market of 250 million pounds, this amounts to 10 percent of unregulated production annually and an additional 10 percent could have a substantial impact upon markets and prices. CMI states that this emphasizes the need to have realistic production triggers. Also, CMI disagrees with USDA's conclusion that the dual triggers (150 percent and 15 million pounds) would somehow cause confusion and concern that a district could meet one criteria and not the other and still be regulated. CMI contends that the rules pertaining to the 15 million pound criteria and the 150 percent trigger are clear on the record, and therefore are not confusing.

CMI has proposed modifications to section 930.52 which would provide that: (1) Upon promulgation, those districts potentially subject to any imposed volume regulation would be those in which the average annual production of cherries over the prior three years, measured on a total production basis, has exceeded 15 million pounds of cherries and that handlers in districts not meeting this 15 million pound requirement at the time of order promulgation shall become subject to any volume regulation implemented in accordance with this part in the crop year that follows any three-year period in which the 15 million pound average production requirement is exceeded in that district; (2) If total production data is unavailable for a district, the Board would adjust the 15 million pound trigger upward or downward by a factor accounting for the historical difference between the total production and total utilization; and (3) When a district hits the 15 million pound trigger, it would be subject to regulation in the next crop year and remain regulated until the crop year following that in which its production drops below 15 million pounds over any three-year period subsequent to the year in which it hit the original 15 million pound threshold.

Regarding modification number one, USDA is adopting CMI's exception. This would clarify the intent and meaning of section 930.52 which should provide that after the initial regulation of districts that meet the 15 million pound test, additional districts may become regulated in the future.

Regarding modification number two, USDA is not adopting this exception. Such factors as proposed by CMI would be confusing and difficult to administer. If the order is promulgated, information needed to calculate each State's production would be collected under the marketing order. The marketing order provides for information collection from handlers that can be used for this purpose.

Finally, the third modification is also denied. This modification would lock a State in to being regulated for three years once it reaches the 15 million pound threshold. This was not the intent of USDA's modification to the Recommended Decision to delete the 150 percent trigger mechanism. USDA intended that States would become regulated in the year subsequent to when they reach 15 million pounds (computed as a rolling average of a three year period). Also, States would become unregulated in the year subsequent to when they fell below the 15 million pounds. The production of each State or district would be reviewed annually to determine if they would be regulated or not regulated in the upcoming crop year. Therefore, CMI's exception is denied on this issue.

In Mr. Lee Schrepel's exception, he stated that the Board should not have the authority to modify the 15 million pound requirement for volume regulation. If the Board decided to recommend modification of the 15 million pound level, such modification would have to be implemented through formal rulemaking procedures. This would require a public hearing and a favorable vote by growers and processors to implement such change.

Mr. Schrepel further stated that the proposal should be modified to facilitate that this trigger (15 million pound requirement) for imposition of volume regulations increase whenever it falls below 8 percent of the optimum supply. There is no support in the record for such proposition. Also, Mr. Schrepel did not specify why 8 percent was chosen and how this provision would work, therefore, his exception is denied.

Mr. Schrepel also requested clarification of when districts would become permanently regulated; would it be contingent upon the average of the previous three seasons? As previously discussed, no district would be regulated unless that district continued to have production above the 15 million pound requirement. Each year, the production of each district (based on a rolling 3-year average) would be evaluated to determine if such district would be regulated in the upcoming crop year.

Mr. Schrepel also requested that USDA specify the source of data for application of the trigger. USDA believes that the proponents intended that the Board use post-harvest production figures from each district. The Board can also obtain this information from USDA data and handler reports.

Based upon the exception filed by Mr. Lee Schrepel, the findings and conclusions in material issue number 5(f) of the Recommended Decision concerning the authority to establish volume regulation provisions under the proposed order are amended by adding the following paragraph after the 19th paragraph (60 FR 61312) to read as follows:

Mr. Lee Schrepel's exception stated under section 930.63(a) that referenced "60 days prior to the end of the crop year" appears to be open to interpretation by the reader. USDA disagrees with this statement. Crop year is defined under the marketing to mean the 12-month period beginning on July 1 of any year and ending on June 30 of the following year. Therefore, 60 days prior to the end of the crop year would mean April 30. Mr. Schrepel's exception is denied.

Based upon the exception filed by Mr. Lee Schrepel, the findings and conclusions in material issue number 5(h) of the Recommended Decision concerning the additional terms and conditions which are common to all marketing orders are amended by adding the following five paragraphs after the sixth paragraph (60 FR 61318) to read as follows:

Mr. Lee Schrepel's exception stated that a continuance referendum every sixth year is not frequent enough. The industry should be able to petition the Secretary to hold a continuance referendum more frequently.

The record evidence supported the conduct of a continuance referendum at least every six years among growers and processors in the industry to determine if they favor continuance of the order. This is also consist with Departmental guidelines that endorse a continuance referendum every six years. The Secretary is not prevented from holding a continuance referendum at an earlier date if such referendum is deemed necessary. Therefore, Mr. Schrepel's exception is denied.

Mr. Schrepel also stated that the standards or criteria should be as stringent for continuance of the order as it is for the initial promulgation. As was indicated in the Recommended Decision, it was contemplated that the criteria for continuance of the order would be based on a two-thirds affirmative vote by number or volume represented in the referendum. This standard would be similar to the promulgation standard. In any event, the Secretary would still have discretionary authority in deciding whether to continue the order. Therefore, Mr. Schrepel's exception is denied.

Mr. Schrepel also stated that section 930.91 should include provisions for the initiation of an amendment from a source within the industry other than the Board. Mr. Schrepel stated that incidents may occur and the Board may not choose to act on a matter that may be of considerable importance to an industry segment. The language in section 930.91 is standard language which is found in other orders and does not preclude anyone from recommending amendments.

The Secretary relies on the Board to make recommendations that are important to the welfare of the industry. If one segment of the industry is concerned about an issue, it should be brought to the Board to be addressed. Any person can submit recommendations to the Secretary for consideration. If the Secretary does conclude that formal rulemaking is necessary based on a Board recommendation or other recommendations, other persons will also have the opportunity to submit proposals. In addition, the Secretary may propose amendments, even in the absence of outside recommendations. Therefore, Mr. Schrepel's exception is denied.

In addition, to the exceptions filed and discussed above, CMI filed an exception that included some typographical errors in the amendatory language of the proposed order. Those changes are adopted in the amendatory language below. They are:

(1) Section 930.11—Add the words "for his or her own account" at the end of the definition.

(2) Section 930.15—cross sectional references are incorrect that refer to the primary and secondary reserve.

(3) Section 930.17—cross sectional reference is incorrect that refers to the primary and secondary reserve.

(4) Section 930.25—the phrase "reapportionment or" should be added to make this section consistent with other changes that were made.

(5) Section 930.51—A comma and the word "this" were left out of the proposal.

(6) Section 930.55(a)—cross sectional reference is incorrect that refers to equity holders.

(7) Section 930.57(a)—cross sectional reference is incorrect that refers to equity holders.

(8) Section 930.58(b)—cross sectional reference is incorrect that refers to exemptions.

(9) Section 930.58(b)(i)—add an "and" at the end of the paragraph.

(10) Section 930.60—Change "sole property" to sole responsibility."

Also, in his exception, Mr. Lee Schrepel pointed out some typographical errors and omissions of words in the Recommended Decision. They are: (1) the dates of the Grand Rapids, Michigan hearing session were incorrectly listed (60 FR 61292) and should be changed from January 9 and 10, 1995, to January 18 and 19, 1995, respectively; (2) in the description of small agricultural producers as those entities having annual receipts of less than $500,000 (60 FR 61293), the words "less than" were inadvertently omitted and should be added; and, (3) the listings of U.S. bearing acreage of tart cherries (60 FR 61293) in 1986 and 1990 were incorrectly stated and should be changed from 4.5 million and 5 million, respectively, to 45,000 and 50,000, respectively.

USDA has modified sections 70(c) to make that provision consistent with authorities provided under this proposed order and other Federal marketing orders. In addition, where necessary, USDA has made minor conforming changes to ensure that all sections of this part accurately reflect the modifications adopted in this decision.

Rulings on Exceptions

In arriving at the findings and conclusions and the regulatory provisions of this decision, the exceptions to the Recommended Decision were carefully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exceptions, such exceptions are denied.

Marketing Agreement and Order

Annexed hereto and made a part hereof is the document entitled "Order Regulating the Handling of Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400) to determine whether the issuance of the annexed order regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin is approved or favored by growers and processors, as defined under the terms of the order, who, during the representative period were engaged in the production or processing of tart cherries in the proposed production area.

The representative period for the conduct of such referendum is hereby determined to be July 1, 1995, through May 31, 1996.

The agents of the Secretary to conduct such referendum are hereby designated to be Gary D. Olson and Robert J. Curry, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, Oregon 97204; telephone 503–326–2724, FAX 503–326–7440.

List of Subjects in 7 CFR Part 930

Marketing agreements, Tart cherries, Reporting and recordkeeping requirements.

Dated: May 22, 1996.

Shirley R. Watkins,

Deputy Assistant Secretary, Marketing and Regulatory Programs.

Order Regulating the Handling of Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin [1]

Findings and determinations upon the basis of the record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon a proposed marketing agreement and order regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order regulate the handling of tart cherries grown in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which hearings have been held;

[1] This order shall not become effective unless and until the requirements of section 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(3) The marketing agreement and order are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) There are no differences in the production and marketing of tart cherries produced in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of tart cherries grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, shall be in conformity to, and in compliance with, the terms and conditions of the said order, as follows:

The provisions of the proposed marketing agreement and order contained in the Recommended Decision issued by the Administrator on November 20, 1995, and published in the **Federal Register** on November 29, 1995 [60 FR 61292], as revised herein, shall be and are the terms and provisions of this agreement and order. Sections 930.92 through 930.94 apply only to the proposed marketing agreement and not the proposed order.

Title 7, Chapter IX is proposed to be amended by adding part 930 to read as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

Subpart A—Order Regulating Handling

Definitions

Sec.

930.1 Act.
930.2 Board.
930.3 Cherries.
930.4 Crop year.
930.5 Department or USDA.
930.6 District.
930.7 Fiscal period.
930.8 Free market tonnage percentage cherries.
930.9 Grower.
930.10 Handle.
930.11 Handler.
930.12 Person.
930.13 Primary inventory reserve.
930.14 Production area.
930.15 Restricted percentage cherries.
930.16 Sales constituency.
930.17 Secondary inventory reserve.
930.18 Secretary.

Administrative Body

930.20 Establishment and membership.
930.21 Reestablishment
930.22 Term of office.
930.23 Nomination and election.
930.24 Appointment.
930.25 Failure to nominate.
930.26 Acceptance.
930.27 Vacancies.
930.28 Alternate members
930.29 Eligibility for membership on Cherry Industry Administrative Board.
930.30 Powers.
930.31 Duties.
930.32 Procedure.
930.33 Expenses and compensation.

Expenses and Assessments

930.40 Expenses.
930.41 Assessments.
930.42 Accounting.

Quality Control

930.44 Quality Control.

Research, Market Development and Promotion

930.48 Research, Market Development and Promotion.

Regulations

930.50 Marketing policy.
930.51 Issuance of volume regulations.
930.52 Establishment of districts subject to volume regulations.
930.53 Modification, suspension, or termination of regulations.
930.54 Prohibition on the use or disposition of inventory reserve cherries.
930.55 Primary inventory reserves.
930.56 Off-premise inventory reserve.
930.57 Secondary inventory reserve.
930.58 Grower diversion privilege.
930.59 Handler diversion privilege.
930.60 Equity holders.
930.61 Handler compensation.
930.62 Exemptions.
930.63 Deferment of restricted obligation.

Reports and Records

930.70 Reports.
930.71 Records.
930.72 Verification of reports and records.
930.73 Confidential information.

Miscellaneous Provisions

930.80 Compliance.
930.81 Right of the Secretary.
930.82 Effective time.
930.83 Termination.
930.84 Proceedings after termination.
930.85 Effect of termination or amendment.
930.86 Duration of immunities.
930.87 Agents.
930.88 Derogation.
930.89 Personal liability.
930.90 Separability.
930.91 Amendments.
930.92 Counterparts.
930.93 Additional parties.
930.94 Order with marketing agreement.

Subpart B—[Reserved]

Authority: 7 U.S.C. 601–674.

Subpart A—Order Regulating Handling

Definitions

§ 930.1 Act.

Act means Public Act No. 10, 73d Congress (May 12, 1933), as amended, and as reenacted and amended by the Agriculture Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended, 68 Stat. 906, 1047; 7 U.S.C. 601 *et seq.*).

§ 930.2 Board.

Board means the Cherry Industry Administrative Board established pursuant to § 930.20.

§ 930.3 Cherries.

Cherries means all tart/sour cherry varieties grown in the production area classified botanically as *Prunus cerasas*, or hybrids of *Prunus cerasas* by *Prunus avium*, or *Prunus cerasas* by *Prunus fruticosa*.

§ 930.4 Crop year.

Crop year means the 12-month period beginning on July 1 of any year and ending on June 30 of the following year, or such other period as the Board, with the approval of the Secretary, may establish.

§ 930.5 Department or USDA.

Department or *USDA* means the United States Department of Agriculture.

§ 930.6 District.

District means one of the subdivisions of the production area described in § 930.20(c), or such other subdivisions as may be established pursuant to § 930.21, or any subdivision added pursuant to § 930.63.

§ 930.7 Fiscal period.

Fiscal period is synonymous with fiscal year and means the 12-month period beginning on July 1 of any year and ending on June 30 of the following year, or such other period as the Board, with the approval of the Secretary, may establish: *Provided*, That the initial fiscal period shall begin on the effective date of this part.

§ 930.8 Free market tonnage percentage cherries.

Free market tonnage percentage cherries means that proportion of cherries handled in a crop year which are free to be marketed in normal commercial outlets in that crop year under any volume regulation established pursuant to § 930.50 or § 930.51 and, in the absence of a

restricted percentage being established for a crop year pursuant to § 930.50 or § 930.51, means all cherries received by handlers in that crop year.

§ 930.9 Grower.

Grower is synonymous with *producer* and means any person who produces cherries to be marketed in canned, frozen, or other processed form and who has a proprietary interest therein: *Provided*, That the term *grower* shall not include a person who produces cherries to be marketed exclusively for the fresh market in an unpitted condition.

§ 930.10 Handle.

Handle means the process to brine, can, concentrate, freeze, dehydrate, pit, press or puree cherries, or in any other way convert cherries commercially into a processed product, or divert cherries pursuant to § 930.59 or obtain grower diversion certificates issued pursuant to § 930.58, or otherwise place cherries into the current of commerce within the production area or from the area to points outside thereof: *Provided*, That the term *handle* shall not include:

(a) The brining, canning, concentrating, freezing, dehydration, pitting, pressing or the converting, in any other way, of cherries into a processed product for home use and not for resale.

(b) The transportation within the production area of cherries from the orchard where grown to a processing facility located within such area for preparation for market.

(c) The delivery of such cherries to such processing facility for such preparation.

(d) The sale or transportation of cherries by a grower to a handler of record within the production area.

(e) The sale of cherries in the fresh market in an unpitted condition.

§ 930.11 Handler.

Handler means any person who first handles cherries or causes cherries to be handled for his or her own account.

§ 930.12 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 930.13 Primary inventory reserve.

Primary inventory reserve means that portion of handled cherries that are placed into handlers' inventories in accordance with any restricted percentage established pursuant to § 930.50 or § 930.51.

§ 930.14 Production area.

Production area means the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin.

§ 930.15 Restricted percentage cherries.

Restricted percentage cherries means that proportion of cherries handled in a crop year which must be either placed into handlers' inventories in accordance with § 930.55 or § 930.57 or otherwise diverted in accordance with § 930.60 and thereby withheld from marketing in normal commercial outlets under any volume regulation established pursuant to § 930.50 or § 930.51.

§ 930.16 Sales constituency.

Sales constituency means a common marketing organization or brokerage firm or individual representing a group of handlers or growers.

§ 930.17 Secondary inventory reserve.

Secondary inventory reserve means any portion of handled cherries voluntarily placed into inventory by a handler under § 930.57.

§ 930.18 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

Administrative Body

§ 930.20 Establishment and membership.

(a) There is hereby established a Cherry Industry Administrative Board (Board) consisting of 18 members. Seventeen of these members shall be qualified growers and handlers selected pursuant to this part, each of whom shall have an alternate having the same qualifications as the member for whom the person is an alternate. The remaining member of the Board shall be a public member who, along with his or her alternate, shall be elected by the Board from the general public.

(b) District representation on the Board shall be as follows:

District	Grower members	Handler members
1	2	2
2	1	2
3	1	1
4	1	1
5	1	or 1
6	1	or 1
7	1	1
8	1	or 1
9	1	or 1

(c) Upon the adoption of this part, the production area shall be divided into the following described subdivisions for purposes of this section:

District 1—Northern Michigan: That portion of the State of Michigan which is north of a line drawn along the northern boundary of Mason County and extended east to Lake Huron.

District 2—Central Michigan: That portion of the State of Michigan which is south of District 1 and north of a line drawn along the southern boundary of Allegan County and extended east to Lake St. Clair.

District 3—Southern Michigan: That portion of the State of Michigan not included in Districts 1 and 2.

District 4—The State of New York.
District 5—The State of Oregon.
District 6—The State of Pennsylvania.
District 7—The State of Utah.
District 8—The State of Washington.
District 9—The State of Wisconsin.

(d) The ratio of grower to handler representation in District 2 shall alternate each time the term of a Board member from the representative group having two seats expires. During the initial period of the order, the ratio shall be as designated in paragraph (b) of this section.

(e) Board members from Districts 5, 6, 8 and 9 may be either grower or handler members and will be nominated and elected as outlined in § 930.23. If District 5, 6, 8, and/or 9 becomes subject to volume regulation under §§ 930.52(a), then the Board shall be reestablished by the Secretary to provide such District(s) with at least one grower and one handler seat on the Board and such seats shall be filled according to the provisions of § 930.23.

(f) In order to achieve a fair and balanced representation on the Board, and to prevent any one sales constituency from gaining control of the Board, not more than one Board member may be from, or affiliated with, a single sales constituency in those districts having more than one seat on the Board. There is, however, no prohibition on the number of Board members from differing districts that may be elected from a single sales constituency which may have operations in more than one district. However, as provided in § 930.23, a handler or grower may only nominate Board members and vote in one district.

(g) Subject to the approval of the Secretary, the Board shall at its first meeting and annually thereafter elect from among any of its members a chairperson and a vice-chairperson and may elect other appropriate officers.

§ 930.21 Reestablishment.

Districts, subdivisions of districts, and the distribution of representation among growers and handlers within a respective district or subdivision thereof, or among the subdivision of districts, may be reestablished by the Secretary, subject to the provisions of § 930.23, based upon recommendations by the Board. In recommending any such changes, the Board shall consider:

(a) the relative importance of producing areas;

(b) relative production;

(c) the geographic locations of producing areas as they would affect the efficiency of administration of this part;

(d) shifts in cherry production within the districts and the production area;

(e) changes in the proportion and role of growers and handlers within the districts; and

(f) other relevant factors.

§ 930.22 Term of office.

The term of office of each member and alternate member of the Board shall be for three fiscal years: Provided that, of the nine initial members and alternates from the combination of Districts 1, 2 and 3, one-third of such initial members and alternates shall serve only one fiscal year, one-third of such members and alternates shall serve only two fiscal years, one-third of such members and alternates shall serve three fiscal years; and one-half of the initial members and alternates from Districts 4 and 7 shall serve only one fiscal year, and one-half of such initial members and alternates shall serve two fiscal years (determination of which of the initial members and their alternates shall serve for 1 fiscal year, 2 fiscal years, or 3 fiscal years, in both instances, shall be by lot). Members and alternate members shall serve in such capacity for the portion of the term of office for which they are selected and have qualified until their respective successors are selected, have qualified and are appointed. The consecutive terms of office of grower, handler and public members and alternate members shall be limited to two 3-year terms, excluding any initial term lasting less than 3 years. The term of office of a member and alternate member for the same seat shall be the same. If this part becomes effective on a date such that the initial fiscal period is less than 6 months in duration, then the tolling of time for purposes of this subsection shall not begin until the beginning of the first 12-month fiscal period.

§ 930.23 Nomination and election.

(a) *Forms and ballots.* Nomination and election of initial and successor members and alternate members of the Board shall be conducted through petition forms and election ballots distributed to all eligible growers and handlers via the U.S. Postal Service or other means, as determined by the Secretary. Similar petition forms and election ballots shall be used for both members and alternate members and any requirements for election of a member shall apply to the election of an alternate.

(b) *Nomination:*

(1) In order for the name of a grower nominee to appear on an election ballot, the nominee's name must be submitted with a petition form, to be supplied by the Secretary or the Board, which, except in District 8, contains at least five signatures of growers, other than the nominee, from the nominee's district who are eligible to vote in the referendum. Grower petition forms in District 8 must be signed by only two growers, other than the nominee, from the nominee's district.

(2) In order for the name of a handler nominee to appear on an election ballot, the nominee's name must be submitted with a petition form, to be supplied by the Secretary or the Board, which contains the signature of at least one handler, other than the nominee, from the nominee's district who is eligible to vote in the referendum. The requirement that the petition form be signed by a handler other than the nominee shall not apply in any District where less than two handlers are eligible to vote.

(3) Only growers, including duly authorized officers or employees of growers, who are eligible to serve as grower members of the Board shall participate in the nomination of grower members and alternate grower members of the Board. No grower shall participate in the submission of nominees in more than one district during any fiscal period. If a grower produces cherries in more than one district, that grower may select in which district he or she wishes to participate in the nominations and election process and shall notify the Secretary or the Board of such selection. A grower may not participate in the nomination process in one district and the election process in a second district in the same election cycle.

(4) Only handlers, including duly authorized officers or employees of handlers, who are eligible to serve as handler members of the Board shall participate in the nomination of handler members and alternate handler members of the Board. No handler shall participate in the selection of nominees in more than one district during any fiscal period. If a handler handles cherries in more than one district, that handler may select in which district he or she wishes to participate in the nominations and election process and shall notify the Secretary or the Board of such selection. A handler may not participate in the nominations process in one district and the elections process in a second district in the same election cycle. If a person is a grower and a grower-handler only because some or all of his or her cherries were custom packed, but he or she does not own or lease and operate a processing facility, such person may vote only as a grower.

(5) In Districts 5, 6, 8 and 9, both growers and handlers may be nominated for the district's Board seat. Grower and handler nominations must follow the petition procedures outlined in paragraphs (b)(1) and (b)(2) of this section.

(6) All eligible growers and handlers in all districts may submit the names of the nominees for the public member and alternate public member of the Board.

(7) After the appointment of the initial Board, the Secretary or the Board shall announce at least 180 days in advance when a Board member's term is expiring and shall solicit nominations for that position in the manner described in this section. Nominations for such position should be submitted to the Secretary or the Board not less than 120 days prior to the expiration of such term.

(c) *Election:*

(1) After receiving nominations, the Secretary or the Board shall distribute ballots via the U.S. Postal Service or other means, as determined by the Secretary, to all eligible growers and handlers containing the names of the nominees by district for the respective seats on the Board, excluding the public voting member seat. The ballots will clearly indicate that growers and handlers may only rank or otherwise vote for nominees in their own district.

(2) Except as provided in paragraph (c)(4) of this section, only growers, including duly authorized officers or employees of growers, who are eligible to serve as grower members of the Board shall participate in the election of grower members and alternate grower members of the Board. No grower shall participate in the election of Board members in more than one district during any fiscal period. If a grower produces cherries in more than one district, the grower must vote in the same district in which he or she chose to participate in the nominations process under paragraph (b)(3) of this section. However, if the grower did not participate in the nominations process, he or she may select in which district he or she wishes to vote and shall notify the Secretary or the Board of such selection.

(3) Except as provided in paragraph (c)(4) of this section, only handlers, including duly authorized officers or

employees of handlers, who are eligible to serve as handler members of the Board shall participate in the election of handler members and alternate handler members of the Board. No handler shall participate in the election of Board members in more than one district during any fiscal period. If a handler does handle cherries in more than one district, he or she must vote in the same district in which the handler elected to participate in the nominations process under paragraph (b)(4) of this section. However, if a handler did not participate in the nominations process, that handler may select in which district he or she chooses to vote and shall notify the Secretary or the Board of such selection. If a person is a grower and a grower-handler only because some or all of his or her cherries were custom packed, but he or she does not own or lease and operate a processing facility, such person may vote only as a grower.

(4) In Districts 5, 6, 8 and 9, growers and handlers may vote for either the grower or handler nominee(s) for the single seat allocated to those districts.

(d) The members of the Board appointed by the Secretary pursuant to § 930.24 shall, at the first meeting and whenever necessary thereafter, by at least a two-thirds vote of the entire Board, select individuals to serve as the public member and alternate public member of the Board from the list of nominees received from growers and handlers pursuant to paragraph (b) of this section or from other persons nominated by the Board. The persons selected shall be subject to appointment by the Secretary under § 930.24.

(e) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

§ 930.24 Appointment.

The selection of nominees made pursuant to elections conducted under § 930.23(c) shall be submitted to the Secretary in a format which indicates the nominees by district, with the nominee receiving the highest number of votes at the top and the number of votes received being clearly indicated. The Secretary shall appoint from those nominees or from other qualified individuals, the grower and handler members of the Board and an alternate for each such member on the basis of the representation provided for in § 930.20 or as provided for in any reapportionment or reestablishment undertaken pursuant to § 930.21. The public member and alternate public member is nominated by the Board pursuant to § 930.23(d) and shall also be subject to appointment by the Secretary. The Secretary shall appoint from nominees by the Board or from other qualified individuals the public member and the alternate public member.

§ 930.25 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § 930.23, the Secretary may, without regard to nominations, select the members and alternate members of the Board on the basis of the representation provided for in § 930.20 or as provided for in any reapportionment or reestablishment undertaken pursuant to § 930.21.

§ 930.26 Acceptance.

Each person to be appointed by the Secretary as a member or as an alternate member of the Board shall, prior to such appointment, qualify by advising the Secretary that he/she agrees to serve in the position for which nominated for selection.

§ 930.27 Vacancies.

To fill any vacancy occasioned by the failure of any person appointed as a member or as an alternate member of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be appointed by the Secretary from the most recent list of nominations for the Board made by growers and handlers, from nominations made by the Board, or from other qualified individuals. Any nominations made by the Board to fill a vacancy must be received by the Secretary within 90 days of the effective date of the vacancy. Board members wishing to resign from the Board must do so in writing to the Secretary.

§ 930.28 Alternate members.

An alternate member of the Board, during the absence of the member for whom that member serves as an alternate, shall act in the place and stead of such member and perform such other duties as assigned. However, if a member is in attendance at a meeting of the Board, an alternate member may not act in the place and stead of such member. In the event of the death, removal, resignation, or disqualification of a member, the alternate shall act for the member until a successor for such member is appointed and has qualified.

§ 930.29 Eligibility for membership on Cherry Industry Administrative Board.

(a) Each grower member and each grower alternate member of the Board shall be a grower, or an officer or employee of a grower, in the district for which nominated or appointed.

(b) Each handler member and each handler alternate member of the Board shall be a handler, or an officer or employee of a handler, who owns, or leases, and operates a cherry processing facility in the district for which nominated or appointed.

(c) The public member and alternate public member of the Board shall be prohibited from having any financial interest in the cherry industry and shall possess such additional qualifications as may be established by regulation.

§ 930.30 Powers.

The Board shall have the following powers:

(a) To administer this part in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 930.31 Duties.

The Board shall have, among others, the following duties:

(a) To select such officers, including a chairperson and vice-chairperson, as may be necessary, and to define the duties of such officers and the duties of the chairperson and the vice-chairperson;

(b) To employ or contract with such persons or agents as the Board deems necessary and to determine the duties and compensation of such persons or agents;

(c) To select such committees and subcommittees as may be necessary;

(d) To adopt bylaws and to adopt such rules for the conduct of its business as it may deem advisable;

(e) To submit to the Secretary a budget for each fiscal period, prior to the beginning of such period, including a report explaining the items appearing therein and a recommendation as to the rates of assessments for such period;

(f) To keep minutes, books, and records which will reflect all of the acts and transactions of the Board and which shall be subject to examination by the Secretary;

(g) To prepare periodic statements of the financial operations of the Board and to make copies of each statement available to growers and handlers for examination at the office of the Board;

(h) To cause its financial statements to be audited by a certified public accountant at least once each fiscal year and at such times as the Secretary may request. Such audit shall include an examination of the receipt of assessments and the disbursement of all funds. The Board shall provide the Secretary with a copy of all audits and shall make copies of such audits, after the removal of any confidential individual grower or handler information that may be contained in them, available to growers and handlers for examination at the offices of the Board;

(i) To act as intermediary between the Secretary and any grower or handler with respect to the operations of this part;

(j) To investigate and assemble data on the growing, handling, and marketing conditions with respect to cherries;

(k) To apprise the Secretary of all Board meetings in a timely manner;

(l) To submit to the Secretary such available information as the Secretary may request;

(m) To investigate compliance with the provisions of this part;

(n) To develop and submit an annual marketing policy for approval by the Secretary containing the optimum supply of cherries for the crop year established pursuant to § 930.50 and recommending such action(s) necessary to achieve such optimum supply;

(o) To implement volume regulations established under § 930.50 and issued by the Secretary under § 930.51, including the release of any inventory reserves;

(p) To provide thorough communication to growers and handlers regarding the activities of the Board and to respond to industry inquiries about Board activities;

(q) To oversee the collection of assessments levied under this part;

(r) To enter into contracts or agreements with such persons and organizations as the Board may approve for the development and conduct of activities, including research and promotion activities, authorized under this part or for the provision of services required by this part and for the payment of the cost thereof with funds collected through assessments pursuant to § 930.41 and income from such assessments. Contracts or agreements for any plan or project shall provide that:

(1) The contractors shall develop and submit to the Board a plan or project together with a budget(s) which shall show the estimated cost to be incurred for such plan or project;

(2) Any contract or agreement for a plan or project and any plan or project adopted by the Board shall only become effective upon approval by the Secretary; and

(3) Every such contracting party shall keep accurate records of all of its transactions and make periodic reports to the Board of activities conducted and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Secretary or employees of the Board may audit periodically the records of the contracting party;

(s) Pending disbursement consistent with its budget, to invest, with the approval of the Secretary, and in accordance with applicable Departmental policies, funds collected through assessments authorized under § 930.41 and income from such assessments;

(t) To establish standards or grade requirements for cherries for frozen and canned cherry products, subject to the approval of the Secretary;

(u) To borrow such funds, subject to the approval of the Secretary and not to exceed the expected expenses of one fiscal year, as are necessary for administering its responsibilities and obligations under this part; and

(v) To establish, with the approval of the Secretary, such rules and procedures relative to administration of this subpart as may be consistent with the provisions contained in this subpart and as may be necessary to accomplish the purposes of the Act and the efficient administration of this subpart.

§ 930.32 Procedure.

(a) Twelve members of the Board, including alternates acting for absent members, shall constitute a quorum. For any action of the Board to pass, at least two-thirds of the entire Board must vote in support of such action.

(b) The Board may provide through its own rules and regulations, subject to approval by the Secretary, for simultaneous meetings of groups of its members assembled at different locations and for votes to be conducted by telephone or other means of communication. Votes so cast shall be promptly confirmed in writing.

(c) All meetings of the Board are open to the public, although the Board may hold portions of meetings in executive session for the consideration of certain business. The Board will establish, with the approval of the Secretary, a means of advanced notification of growers and handlers of Board meetings.

§ 930.33 Expenses and compensation.

Except for the public member and alternate public member who shall receive such compensation as the Board may establish and the Secretary may approve, the members of the Board, and alternates when acting as members, shall serve without compensation but shall be reimbursed for necessary and reasonable expenses, as approved by the Board, incurred by them in the performance of their duties under this part. The Board at its discretion may request the attendance of one or more alternates at any or all meetings, notwithstanding the expected or actual presence of the respective member(s), and may pay the expenses of such alternates.

Expenses and Assessments

§ 930.40 Expenses.

The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired by the levying of assessments as provided in § 930.41.

§ 930.41 Assessments.

(a) An assessment may be levied upon handlers annually under this part to cover the administrative costs of the Board, costs of inspection, and any research, development and promotion activities initiated by the Board under § 930.48.

(b) Each part of an assessment intended to cover the costs of each activity in paragraph (a) of this section, must be identified and approved by the Board and the Secretary, and any notification or other statement regarding assessments provided to handlers must contain such information.

(c) As a pro rata share of the administrative, inspection, research, development, and promotion expenses which the Secretary finds reasonable and likely to be incurred by the Board during a fiscal period, each handler shall pay to the Board assessments on all cherries handled, as the handler thereof, during such period: *Provided*, a handler shall be exempt from any assessment on the tonnage of handled cherries that are diverted according to § 930.59 which includes cherries represented by grower diversion certificates issued pursuant to § 930.58(b)(2) and acquired by handlers and those cherries devoted to exempt uses under § 930.62.

(d) The Secretary, after consideration of the recommendation of the Board, shall fix the rate of assessment to be paid by each handler during the fiscal period in an amount designed to secure sufficient funds to cover the expenses which may be approved and incurred

during such period or subsequent period as provided in paragraph (c) of this section. At any time during or after the fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all cherries handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments, the Board may accept the payment of assessments in advance, and may borrow money for such purposes.

(e) Assessments not paid within a time prescribed by the Board may be made subject to interest or late payment charges, or both. The period of time, rate of interest, and late payment charge will be as recommended by the Board and approved by the Secretary: *Provided*, That when interest or late payment charges are in effect, they shall be applied to all assessments not paid within the prescribed period of time.

(f) Assessments will be calculated on the basis of pounds of cherries handled: *Provided*, That the formula adopted by the Board and approved by the Secretary for determining the rate of assessment will compensate for differences in the number of pounds of cherries utilized for various cherry products and the relative market values of such cherry products.

(g) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

§ 930.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, the Board, with the approval of the Secretary, may carry over all or any portion of such excess into subsequent fiscal periods as a reserve. Such reserve funds may be used to cover any expenses authorized by this part, and to cover necessary expenses of liquidation in the event of termination of this part. If any such excess is not retained in a reserve, it shall be refunded proportionately to the handlers from whom the excess was collected. Without an additional reserve level approved by the Secretary, the amount held in reserve may not exceed approximately one year's operational expenses. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such a manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practicable, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the Board pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the Board and its members to account for all receipts and disbursements.

Quality Control

§ 930.44 Quality Control.

(a) *Quality standards.* The Board may establish, with the approval of the Secretary, such minimum quality and inspection requirements applicable to cherries as will contribute to orderly marketing or be in the public interest. If such requirements are adopted, no handler shall process cherries into manufactured products or sell manufactured products in the current of commerce unless such cherries and/or such cherries used in the manufacture of products meet the applicable requirements as evidenced by certification acceptable to the Board. The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

(b) *Inspection and certification.* Whenever the handling of any cherries requires inspection pursuant to this part, each handler who handles cherries shall cause such cherries to be inspected by the appropriate division of USDA, and certified by it as meeting the applicable requirements of such regulation: *Provided*, That inspection and certification shall be required for cherries which previously have been so inspected and certified only if such cherries have been regraded, resorted, repackaged, or in any other way further prepared for market. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the Board a copy of the certificate of inspection issued with respect to such cherries.

Research, Market Development and Promotion

§ 930.48 Research, Market Development and Promotion.

The Board, with the approval of the Secretary, may establish or provide for the establishment of production and processing research, market research and development, and/or promotional activities, including paid advertising, designed to assist, improve or promote the efficient production and processing, marketing, distribution, and consumption of cherries subject to this part. The expense of such projects shall be paid from funds collected pursuant to this part and the income from such funds.

Regulations

§ 930.50 Marketing policy.

(a) *Optimum Supply.* On or about July 1 of each crop year, the Board shall hold a meeting to review sales data, inventory data, current crop forecasts and market conditions in order to establish an optimum supply level for the crop year. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years to which shall be added a desirable carryout inventory not to exceed 20 million pounds or such other amount as the Board, with the approval of the Secretary may establish. This optimum supply volume shall be announced by the Board in accordance with paragraph (h) of this section.

(b) *Preliminary percentages.* On or about July 1 of each crop year, the Board shall establish a preliminary free market tonnage percentage which shall be calculated as follows: from the optimum supply computed in paragraph (a) of this section, the Board shall deduct the carryin inventory to determine the tonnage requirements (adjusted to a raw fruit equivalent) for the current crop year which will be subtracted by the current year USDA crop forecast. If the resulting number is positive, this would represent the estimated over-production which would need to be the restricted percentage tonnage. This restricted percentage tonnage would then be divided by the sum of the USDA crop forecast for the regulated districts to obtain the percentages for the regulated districts. The Board shall establish a preliminary restricted percentage equal to the quotient, rounded to the nearest whole number, with the compliment being the preliminary free tonnage percentage. If subtracting the current crop year requirement, computed in the first sentence from the current USDA crop forecast, results in a negative number, the Board shall establish a preliminary free tonnage of 100 percent with a preliminary restricted percentage of zero. The Board shall announce these preliminary percentages in accordance with paragraph (h) of this section.

(c) *Interim percentages.* Between July 1 and September 15 of each crop year, the Board may modify the preliminary free market tonnage and restricted percentages to adjust to the actual pack occurring in the industry. The Board shall announce any interim percentages in accordance with paragraph (h) of this section.

(d) *Final percentages.* No later than September 15 of each crop year, the Board shall review actual production during the current crop year and make such adjustments as are necessary between free and restricted tonnage to achieve the optimum supply and recommend such final free market tonnage and restricted percentages to the Secretary and announce them in accordance with paragraph (h) of this section. The difference between any final free market tonnage percentage designated by the Secretary and 100 percent shall be the final restricted percentage. With its recommendation, the Board shall report on its consideration of the factors in paragraph (e) of this section.

(e) *Factors.* When computing preliminary and interim percentages, or determining final percentages for recommendation to the Secretary, the Board shall give consideration to the following factors:

(1) The estimated total production of cherries;

(2) The estimated size of the crop to be handled;

(3) The expected general quality of such cherry production;

(4) The expected carryover as of July 1 of canned and frozen cherries and other cherry products;

(5) The expected demand conditions for cherries in different market segments;

(6) Supplies of competing commodities;

(7) An analysis of economic factors having a bearing on the marketing of cherries;

(8) The estimated tonnage held by handlers in primary or secondary inventory reserves; and

(9) Any estimated release of primary or secondary inventory reserve cherries during the crop year.

(f) *Modification.* In the event the Board subsequently deems it advisable to modify its marketing policy, because of national emergency, crop failure, or other major change in economic conditions, it shall hold a meeting for that purpose, and file a report thereof with the Secretary within 5 days (exclusive of Saturdays, Sundays, and holidays) after the holding of such meeting, which report shall show the Board's recommended modification and the basis therefor.

(g) *Reserve tonnage to sell as free tonnage.* In addition, the Board shall make available tonnage equivalent to an additional 10 percent, if available, of the average sales of the prior 3 years for market expansion. Handlers can determine if they need the additional tonnage and inform the Board so that reserve cherries may be released to them. Handlers not desiring the additional tonnage would not have it released to them.

(h) *Publicity.* The Board shall promptly give reasonable publicity to growers and handlers of each meeting to consider a marketing policy or any modification thereof, and each such meeting shall be open to them and to the public. Similar publicity shall be given to growers and handlers of each marketing policy report or modification thereof, filed with the Secretary and of the Secretary's action thereon. Copies of all marketing policy reports shall be maintained in the office of the Board, where they shall be made available for examination. The Board shall notify handlers, and give reasonable publicity to growers, of its computation of the optimum supply, preliminary percentages, and interim percentages and shall notify handlers of the Secretary's action on final percentages by registered or certified mail.

(i) *Restricted Percentages.* Restricted percentage requirements established under paragraph (b), (c) or (d) of this section may be fulfilled by handlers by either establishing an inventory reserve in accordance with § 930.55 or § 930.57 or by diversion of product in accordance with § 930.59. In years where required, the Board shall establish a maximum percentage of the restricted quantity which may be established as a primary inventory reserve such that the total primary inventory reserve does not exceed 50 million pounds. Handlers will be permitted to divert (at plant or with grower-diversion certificates) as much of the restricted percentage requirement as they deem appropriate, but may not establish a primary inventory reserve in excess of the percentage established by the Board for restricted cherries. In the event handlers wish to establish inventory reserve in excess of this amount, they may do so, in which case it will be classified as a secondary inventory reserve and will be regulated accordingly.

(j) *Inventory Reserve Release.* In years when inventory reserve cherries are available and when the expected availability of cherries from the current crop plus expected carryin inventory does not fulfill the optimum supply, the Board shall release not later than November 1st of the current crop year such volume from the inventory reserve as will satisfy the optimum supply.

(k) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

§ 930.51 Issuance of volume regulations.

(a) Whenever the Secretary finds, from the recommendation and supporting information supplied by the Board, that to designate final free market tonnage and restricted percentages for any cherries acquired by handlers during the crop year will tend to effectuate the declared policy of the Act, the Secretary shall designate such percentages. Such regulation designating such percentage shall fix the free market tonnage and restricted percentages, totaling 100 percent, which shall be applied in accordance with this section, § 930.55, § 930.57 and § 930.59 to cherries grown in regulated districts, as determined under § 930.52, and handled during such fiscal period.

(b) The Board shall be informed immediately of any such regulation issued by the Secretary, and the Board shall promptly give notice thereof to handlers.

(c) That portion of a handler's cherries that are restricted percentage cherries is the product of the restricted percentage imposed under paragraph (a) of this section multiplied by the tonnage of cherries, originating in a regulated district, handled, including those diverted according to § 930.59, by that handler in that fiscal year. Therefore, while diverted cherries, including those represented by grower diversion certificates, may be exempt from assessment under § 930.41, they must be counted when computing restricted percentage requirements.

(d) The Board, with the approval of the Secretary, shall develop rules and regulations which shall provide guidelines for handlers in complying with any restricted tonnage requirements, including, but not limited to, a grace period of at least 30 days to segregate and appropriately document any tonnage they wish to place in the inventory reserve and to assemble any applicable diversion certificates.

§ 930.52 Establishment of districts subject to volume regulations.

(a) Upon adoption of this part, the districts in which handlers shall be subject to any volume regulations implemented in accordance with this part shall be those districts in which the average annual production of cherries over the prior three years has exceeded 15 million pounds. Handlers in districts not meeting the 15 million pound requirement at the time of order promulgation shall become subject to volume regulation implemented in accordance with this part in the crop year that follows any three-year period in which the 15 million pound average

production requirement is exceeded in that district.

(b) Handlers in districts which are not subject to volume regulation would only be so regulated to the extent that they handled cherries which were grown in a district subject to regulation as specified in paragraph (a) of this section. In such a case, the handler must place in inventory reserve pursuant to § 930.55 or § 930.57 or divert pursuant to § 930.59 the required restricted percentage of the crop originating in the regulated district.

(c) Handlers in districts not meeting the production requirement described in paragraph (a) of this section in a given year would not be subject to volume regulation in the next crop year.

(d) Any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous five years would be exempt from any volume regulation if, in that year, a restricted percentage is established.

(e) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

§ 930.53 Modification, suspension, or termination of regulations.

(a) In the event the Board at any time finds that, by reason of changed conditions, any regulations issued pursuant to §§ 930.44 or 930.51 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the Board or from other available information, that a regulation issued pursuant to §§ 930.44 or 930.51 should be modified, suspended or terminated with respect to any or all shipments of cherries in order to effectuate the declared policy of the Act, the Secretary shall modify, suspend, or terminate such regulation.

§ 930.54 Prohibition on the use or disposition of inventory reserve cherries.

(a) *Release of primary and secondary inventory reserve cherries.* Except as provided in § 930.50 and paragraph (b) of this section, cherries that are placed in inventory reserve pursuant to the requirements of § 930.50, § 930.51, § 930.55, or § 930.57 shall not be used or disposed of by any handler or any other person: *Provided*, That if the Board determines that the total available supplies for use in normal commercial outlets do not at least equal the amount, as estimated by the Board, needed to meet the demand in such outlets, the Board shall recommend to the Secretary and provide such justification that, during such period as may be recommended by the Board and approved by the Secretary, a portion or all of the primary and/or secondary inventory reserve cherries shall be released for such use.

§ 930.55 Primary inventory reserves.

(a) Whenever the Secretary has fixed the free market tonnage and restricted percentages for any fiscal period, as provided for in § 930.51(a), each handler in a regulated district shall place in his or her primary inventory reserve for such period, at such time, and in such manner, as the Board may prescribe, or otherwise divert, according to § 930.59, a portion of the cherries acquired during such period.

(b) The form of the cherries, frozen, canned in any form, dried, or concentrated juice, placed in the primary inventory reserve is at the option of the handler. Except as may be limited by § 930.50 (i) or as may be permitted pursuant to § 930.59 and § 930.62, such inventory reserve portion shall be equal to the sum of the products obtained by multiplying the weight or volume of the cherries in each lot of cherries acquired during the fiscal period by the then effective restricted percentage fixed by the Secretary: *Provided*, That in converting cherries in each lot to the form chosen by the handler, the inventory reserve obligations shall be adjusted in accordance with uniform rules adopted by the Board in terms of raw fruit equivalent.

(c) Inventory reserve cherries shall meet such standards of grade, quality, or condition as the Board, with the approval of the Secretary, may establish. All such cherries shall be inspected by USDA. A certificate of such inspection shall be issued which shall show, among other things, the name and address of the handler, the number and type of containers in the lot, the grade of the product, the location where the lot is stored, identification marks (can codes or lot stamp), and a certification that the cherries meet the prescribed standards. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the Board, at the place designated by the Board, a copy of the certificate of inspection issued with respect to such cherries.

(d) Handlers shall be compensated for inspection costs incurred on cherries placed in the primary inventory reserve. All reporting of cherries placed in, rotated in and out, or released from an inventory reserve shall be in accordance with rules and procedures established by the Board, with the approval of the Secretary. The Board could, with the approval of the Secretary, also limit the number of inspections of reserve cherries being rotated into inventory reserves for which the Board would be financially liable.

(e) Except as provided in § 930.54, handlers may not sell inventory reserve cherries prior to their official release by the Board. Handlers may rotate cherries in their inventory reserves with prior notification to the Board. All cherries rotated into the inventory reserve must meet the applicable inspection requirements.

§ 930.56 Off-premise inventory reserve.

Any handler may, upon notification to the Board, arrange to hold inventory reserve, of his or her own production or which was purchased, on the premises of another handler or in an approved commercial storage facility in the same manner as though the inventory reserve were on the handler's own premises.

§ 930.57 Secondary inventory reserve.

(a) In the event the inventory reserve established under § 930.55 of this part is at its maximum volume, and the Board has announced, in accordance with § 930.50, that volume regulation will be necessary to maintain an orderly supply of quality cherries for the market, handlers in a regulated district may elect to place in a secondary inventory reserve all or a portion of the cherries the volume regulation would otherwise require them to divert in accordance with § 930.59.

(b) Should any handler in a regulated district exercise his or her right to establish a secondary inventory reserve under paragraph (a) of this section, all costs of maintaining that reserve, as well as inspection costs, will be the responsibility of the individual handler.

(c) The secondary inventory reserve shall be established in accordance with §§ 930.55(b) and (c) and such other rules and regulations which the Board, with the approval of the Secretary, may establish.

(d) The Board shall retain control over the release of any cherries from the secondary inventory reserve. No cherries may be released from the secondary reserve until all cherries in any primary inventory reserve established under § 930.55 have been released. Any release of the secondary inventory reserve shall be in accordance with the annual marketing policy and with § 930.54.

§ 930.58 Grower diversion privilege.

(a) *In general.* Any grower may voluntarily elect to divert, in accordance with the provisions of this section, all or a portion of the cherries which otherwise, upon delivery to a handler, would become restricted percentage cherries. Upon such diversion and compliance with the provisions of this section, the Board shall issue to the diverting grower a grower diversion certificate which such grower may deliver to a handler, as though there were actual harvested cherries.

(b) *Eligible diversion.* Grower diversion certificates shall be issued to growers only if the cherries are diverted in accordance with the following terms and conditions or such other terms and conditions that the Board, with the approval of the Secretary, may establish. Diversion may take such of the following forms which the Board, with the approval of the Secretary, may designate: uses exempt under § 930.62; nonhuman food uses; or other uses, including diversion by leaving such cherries unharvested.

(c) *Application/mapping.* The Board, with the approval of Secretary, shall develop rules and regulations providing for the diversion of cherries by growers. Such regulations may include, among other things: (1) The form and content of applications and agreements relating to the diversion, including provisions for supervision and compensation; and (2) provisions for mapping areas in which cherries will be left unharvested.

(d) *Diversion certificate.* If the Board approves the application it shall so notify the applicant and conduct such supervision of the applicant's diversion of cherries as may be necessary to assure that the cherries have been diverted. After the diversion has been accomplished, the Board shall issue to the diverting grower a diversion certificate stating the weight of cherries diverted. Where diversion is carried out by leaving the cherries unharvested, the Board shall estimate the weight of cherries diverted on the basis of such uniform rule prescribed in rules and regulations as the Board, with the approval of the Secretary, may recommend to implement this section.

§ 930.59 Handler diversion privilege.

(a) *In general.* Handlers handling cherries harvested in a regulated district may fulfill any restricted percentage requirement in full or in part by voluntarily diverting cherries or cherry products in a program approved by the Board, rather than placing cherries in an inventory reserve. Upon such diversion and compliance with the provisions of this section, the Board shall issue to the diverting handler a handler diversion certificate which shall satisfy any restricted percentage or diversion requirement to the extent of the Board or Department inspected weight of the cherries diverted.

(b) *Eligible diversion.* Handler diversion certificates shall be issued to handlers only if the cherries are diverted in accordance with the following terms and conditions or such other terms and conditions that the Board, with the approval of the Secretary, may establish. Such diversion may take place in any of the following forms which the Board, with the approval of the Secretary, may designate: uses exempt under § 930.62; contribution to a Board approved food bank or other approved charitable organization; acquisition of grower diversion certificates that have been issued in accordance with § 930.58; or other uses, including diversion by destruction of the cherries at the handler's facilities: *Provided*, That diversion may not be accomplished by converting cherries into juice or juice concentrate.

(c) *Notification.* The handler electing to divert cherries through means specified in this section or other approved means (not including uses exempt under § 930.62), shall first notify the Board of such election. Such notification shall describe in detail the manner in which the handler proposes to divert cherries including, if the diversion is to be by means of destruction of the cherries, a detailed description of the means of destruction and ultimate disposition of the cherries. It shall also contain an agreement that the proposed diversion is to be carried out under the supervision of the Board and that the cost of such supervision is to be paid by the handler. Uniform fees for such supervision shall be established by the Board, pursuant to rules and regulations approved by the Secretary.

(d) *Application.* The handler electing to divert cherries by utilizing an exemption under § 930.62 shall first apply to the Board for approval of such diversion; no diversion should take place prior to such approval. Such application shall describe in detail the uses to which the diverted cherries will be put. It shall also contain an agreement that the proposed diversion is to be carried out under the supervision of the Board and that the cost of such supervision is to be paid by the applicant. The Board shall notify the applicant of the Board's approval or disapproval of the submitted application.

(e) *Diversion certificate.* The Board shall conduct such supervision of the handler's diversion of cherries under paragraph (c) or under paragraph (d) of this section as may be necessary to assure that the cherries are diverted. After the diversion has been accomplished, the Board shall issue to the diverting handler a handler diversion certificate indicating the weight of cherries which may be used to offset any restricted percentage requirement.

§ 930.60 Equity holders.

(a) *Inventory reserve ownership.* The inventory reserve shall be the sole responsibility of the handlers who place products into the inventory reserve. A handler's equity in the primary inventory reserve may be transferred to another person upon notification to the Board.

(b) *Agreements with growers.* Individual handlers are encouraged to have written agreements with growers who deliver their cherries to the handler as to how any restricted percentage cherries delivered to the handler will be handled and what share, if any, the grower will have in the eventual sale of any inventory reserve cherries.

(c) *Rulemaking authority.* The Board, with the approval of the Secretary, may adopt rules and regulations necessary and incidental to the administration of this section.

§ 930.61 Handler compensation.

Each handler handling cherries from a regulated district that is subject to volume regulations shall be compensated by the Board for inspection relating to the primary inventory reserve as the Board may deem to be appropriate. The Board, with the approval of the Secretary, may establish such rules and regulations as are necessary and incidental to the administration of this section.

§ 930.62 Exemptions.

The Board, with the approval of the Secretary, may exempt from the provisions of § 930.41, § 940.44, § 930.51, § 930.53, and § 930.55 through § 930.57 cherries: diverted in accordance with § 930.59; used for new product and new market development; used for experimental purposes or for any other use designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year average production of cherries were utilized. The Board, with the approval of the Secretary, shall prescribe such rules, regulations, and safeguards as it may deem necessary to ensure that cherries handled under the provisions of this section are handled only as authorized.

§ 930.63 Deferment of restricted obligation.

(a) *Bonding.* The Board, with the approval of the Secretary, may require handlers to secure bonds on deferred inventory reserve tonnage. Handlers may, in order to comply with the requirements of §§ 930.50 and 930.51 and regulations issued thereunder, secure bonds on restricted percentage cherries to temporarily defer the date that inventory reserve cherries must be held to any date requested by the handler. This date shall be not later than 60 days prior to the end of that crop year. Such deferment shall be conditioned upon the voluntary execution and delivery by the handler to the Board of a written undertaking within thirty (30) days after the Secretary announces the final restricted percentage under § 930.51. Such written undertaking shall be secured by a bond or bonds with a surety or sureties acceptable to the Board that on or prior to the acceptable deferred date the handler will have fully satisfied the restricted percentage amount required by § 930.51.

(b) *Rulemaking authority.* The Board, with the approval of the Secretary, may adopt rules and regulations necessary and incidental to the administration of this section.

Reports and Records

§ 930.70 Reports.

(a) *Weekly production, monthly sales, and inventory data.* Each handler shall, upon request of the Board, file promptly with the Board, reports showing weekly production data; monthly sales and inventory data; and such other information, including the volume of any cherries placed in or released from a primary or secondary inventory reserve or diverted, as the Board shall specify with respect to any cherries handled by the handler. Such information may be provided to the Board members in summary or aggregated form only without any reference to the individual sources of the information.

(b) *Other reports.* Upon the request of the Board, with the approval of the Secretary, each handler shall furnish to the Board such other information with respect to the cherries acquired, handled, stored and disposed of by such handler as may be necessary to enable the Board to exercise its powers and perform its duties under this part.

(c) *Protection of proprietary information.* Under no circumstances shall any information or reports be made available to the Board members, or to any person designated by the Board or by the Secretary, which will reveal the proprietary information of an individual handler.

§ 930.71 Records.

Each handler shall maintain such records of all cherries acquired, handled, stored or sold, or otherwise disposed of as will substantiate the required reports and as may be prescribed by the Board. All such records shall be maintained for not less than two years after the termination of the fiscal year in which the transactions occurred or for such lesser period as the Board may direct with the approval of the Secretary.

§ 930.72 Verification of reports and records.

For the purpose of assuring compliance and checking and verifying the reports filed by handlers, the Secretary and the Board, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where cherries are received, stored, or handled, and, at any time during reasonable business hours, shall be permitted to inspect such handlers premises and any and all records of such handlers with respect to matters within the purview of this part.

§ 930.73 Confidential information.

All reports and records furnished or submitted by handlers to the Board and its authorized agents which include data or information constituting a trade secret or disclosing trade position, financial condition, or business operations of the particular handler from whom received, shall be received by and at all times kept in the custody and under the control of one or more employees of the Board or its agent, who shall disclose such information to no person other than the Secretary.

Miscellaneous Provisions

§ 930.80 Compliance.

Except as provided in this part, no person may handle cherries, the handling of which has been prohibited by the Secretary under this part, and no person shall handle cherries except in conformity with the provisions of this part and the regulations issued hereunder. No person may handle any cherries for which a diversion certificate has been issued other than as provided in § 930.58(b) and § 930.59(b).

§ 930.81 Right of the Secretary.

Members of the Board (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each regulation, decision, determination, or other act of the Board shall be subject to the Secretary's disapproval at any time. Upon such disapproval, the disapproved action of the Board shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 930.82 Effective time.

The provisions of this part, and of any amendment thereto, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated, or suspended.

§ 930.83 Termination.

(a) The Secretary may, at any time, terminate any or all of the provisions of this part by giving at least 1 day's notice by means of a press notice or in any other manner in which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this part whenever the Secretary finds by referendum or otherwise that such termination is favored by a majority of the growers and processors: *Provided,* That such majority has, during the current fiscal year, produced or canned and frozen more than 50 percent of the volume of the cherries which were produced or processed within the production area. Such termination shall become effective on the last day of June subsequent to the announcement thereof by the Secretary.

(d) The Secretary shall conduct a referendum within the month of March of every sixth year after the effective date of this part to ascertain whether continuation of this part is favored by the growers and processors. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance is not favored by a majority of growers and processors who, during a representative period determined by the Secretary, have been engaged in the production or processing of tart cherries in the production area. Such termination shall be announced on or before the end of the fiscal period.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 930.84 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the then functioning members of the Board shall, for the purpose of liquidating the affairs of the Board, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall:

(1) continue in such capacity until discharged by the Secretary;

(2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct; and

(3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or in the trustees pursuant to this part.

(c) Any person to whom funds, property, and claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligations imposed upon the Board and upon the trustees.

§ 930.85 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have risen or which may thereafter arise in connection with any provision of this part or any regulation issued thereunder;

(b) Release or extinguish any violation of this part or any regulation issued thereunder;

(c) Affect or impair any rights or remedies of the Secretary or any other person with respect to any such violation.

§ 930.86 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 930.87 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the U.S. Department of Agriculture, to act as the Secretary's agent or representative in connection with any provisions of this part.

§ 930.88 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 930.89 Personal liability.

No member or alternate member of the Board and no employee or agent of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 930.90 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 930.91 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by the Secretary.

§ 930.92 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 930.93 Additional parties.

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting part at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ 930.94 Order with marketing agreement.

Each signatory hereby requests the Secretary to issue, pursuant to the Act, an order providing for regulating the handling of tart cherries in the same manner as is provided for in this agreement.

Subpart B—[Reserved]

Dated: May 22, 1996.

Shirley R. Watkins,

Deputy Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96–13383 Filed 5–24–96; 8:45 am]

BILLING CODE 3410–02–P

OL
1
SS
1
0
4
MY
2 9
996
MI

federal register

Wednesday
May 29, 1996

Part III

Department of Housing and Urban Development

24 CFR Parts 206 and 234
Condominium Units in Non-FHA Approved Projects; Mortgage Insurance; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 206 and 234

[Docket No. FR–3655–F–02]

RIN 2502–AG23

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Mortgage Insurance on Condominium Units in Non-FHA Approved Projects

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, (HUD).

ACTION: Final rule.

SUMMARY: This rule adds provisions to the regulations governing Federal Housing Administration (FHA) mortgage insurance on condominium units to permit insurance of mortgages on individual units in condominium projects that have not received FHA approval in advance. These "spot loans" will be approved under less stringent requirements than the existing requirements for mortgage insurance for condominiums, but mortgages on these units are required to satisfy standards that assure that the risk involved for FHA is reasonable. The final rule does make one change from the proposed rule in response to public comment—to increase, for small projects, the percentage of units that may be approved for FHA mortgage insurance.

EFFECTIVE DATE: June 28, 1996.

FOR FURTHER INFORMATION CONTACT: Richard Manuel, Director, Single Family Development Division, Office of Insured Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, D.C. 20410. He may be reached at (202) 708–2700 (not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via text telephone by dialing the Federal Information Relay Service at 1–800–877–9339.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in § 234.26(i) of this rule were reviewed and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (42 U.S.C. 3501–3520) and assigned OMB approval number 2502–0513. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Response to Public Comments

On June 23, 1995, HUD published a proposed rule to revise the regulations concerning eligibility of mortgages for insurance under the Home Equity Conversion Mortgage Insurance program (24 CFR part 206) or under the Condominium Ownership Mortgage Insurance program (24 CFR part 234). During the comment period, which ended August 22, 1995, HUD received 7 public comments from lending institutions and individuals. Three of the public comments favored the rule, while the remaining comments focused on difficulties with the rule. The only change being made in the rule as a result of consideration of these public comments is to increase the percentage of units on which "spot loans" are permitted from 10 percent to 20 percent of the units in a project of 30 or fewer units.

General comments

Several commenters stated that the rule would permit elderly homeowners to take advantage of the Home Equity Conversion Mortgage program more easily, since they would not have to make public to other unit owners in the condominium that they were seeking additional income from this source. Similarly, homeowners would be able to use the refinancing program that permits cash out to the buyer in a project not currently eligible for FHA mortgage insurance. The availability of this additional cash to condominium owners will increase their ability to keep up with growing costs for such basic needs as increasing condominium association fees, health care costs, or other essential services.

One commenter praised the reduction in paperwork, noting that the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") streamlined their project approval processes in the past decade, with each one using a procedure very similar to the one proposed in this rule for one class of mortgage (Fannie Mae Type A condominium and Freddie Mac Class III condominium).

A commenter also praised this effort as contributing towards stabilizing the condominium resale market.

Specific Comments

Ten Percent Limit on Participation in a Project

1. *Comment:* There is no way now to track how many units in a particular project have received the benefit of FHA mortgage insurance. Even though project approval requests could be added to HUD's existing CHUMS system at the time of project approval, spot loans would be difficult to track. This problem is complicated by the multitude of direct endorsement lenders.

Response: Since the Department currently is without the technical or staffing capability to track the exact number of FHA-insured mortgages in a condominium project, mortgagees will be responsible for assuring that the condominium project meets all the streamlined approval requirements. These streamlined requirements are similar to Fannie Mae's requirements for approving "Type A condominiums," found in Part VIII, Chapter 2, § 201 of its *Selling Guide*. To the extent that the Department has information that can assist in ensuring compliance with the new FHA requirements, it will provide mortgagees with that information.

The rule requires lenders to monitor all of the requirements, including the limit on FHA spot loans in a project of no more than ten percent of the units and certifying to this effect. The Department recognizes that there is some potential for exceeding the prescribed limit, either accidentally or intentionally. The local HUD offices or the Regional Processing Centers will be conducting random reviews of these mortgage loans. Mortgage lenders demonstrating a pattern of abuse will be subject to sanctions.

The Department relies primarily on this limitation on the number of loans in a project to minimize risk of loss. As an additional safeguard, however, risk of loss also is minimized by the other requirements added to § 234.26, which collectively should ensure the viability of the project.

2. *Comment:* HUD need not limit this type of approval to 10 percent of the units. Alternative suggestions were to eliminate the limit entirely (Fannie Mae and Freddie Mac do not so limit their exposure); to add a requirement for the lender to insure that the project's budget is adequate, such as to fund replacement of common elements; or to increase the percentage to 20 percent of the units if the project has fewer than 30 units and/or has been in existence for more than five years. For example, in a project of fewer than 10 units, even one unit would exceed the 10 percent limit.

Response: The reason for this restriction is to limit the Department's risk of loss under this program. Furthermore, it assures that the spot loan process does not become a means of circumventing the requirements and protection of HUD's condominium approval process. Since the Department recognizes that small condominium projects might not be able to participate in the spot loan program, we are accepting the recommendation to permit up to 20% of the units in a project of 30 or fewer units to have FHA-insured mortgages.

Concern About Default Rate

1. *Comment:* Units insured under spot loans pose a greater risk of default than those approved as part of a project approval. Many of the criteria relied upon in approving condominium developments for FHA insurance under the Section 234(c) program would not be used in the case of spot loans.

Response: The Department expects mortgage lenders to apply sound underwriting practices in processing spot loans. In most cases, spot loan projects should have the same maintenance level, reserves for replacement level, plan for maintenance, and insurance coverage as comparable developments approved under the Section 234(c) program. Lenders also should look at the length of time the homeowners association has operated successfully. All pertinent information regarding the viability of the development should be reviewed. Lenders may wish to create checksheets to facilitate this review. Presently, the Department believes that it is unnecessary to require all spot loan appraisals to be done on the Fannie Mae Form 1073, as one commenter suggested.

2. *Comment:* One method for limiting FHA's risk would be to limit spot loan mortgage insurance to reverse mortgage loans.

Response: The impetus for the spot loan program was to provide home mortgage insurance for those seeking to purchase condominium units in developments where there is little likelihood that the development would make the requisite changes in its legal documents (usually to benefit one association member) to obtain FHA approval. However, the Department wants spot loans to be available in forward loans as well as reverse loans. Reducing the risk of loss is addressed by limiting the Department's involvement in the development.

Downpayment

Comment: Given the additional risk involved in approving mortgage insurance without the full approval process, the downpayment should be proportionately increased, for example to 20 or 30 percent.

Response: The Department believes that increased downpayment requirements would thwart the spot loan program and, particularly, those constituents the Department has traditionally served—middle- and moderate-income families who normally could not obtain loans in other mortgage insurance markets. Few of FHA traditional constituents could afford to meet a 20 percent downpayment requirement. As previously noted, the Department has determined that spot loans pose a "reasonable risk," which the rule controls largely by limiting the Department's involvement in each development.

Enforcement of lender responsibilities

Comment: If a lender approves a mortgage for FHA insurance under the spot loan provisions and the project does not satisfy the eligibility requirements stated in the regulation, there should be a penalty. Cancellation of the mortgage insurance or loss of the lender's direct endorsement authority might be appropriate.

Response: The Department agrees that enforcement mechanisms governing mortgagee activity apply to this program, as to other FHA mortgage insurance activity. The Department will monitor activity under the spot loan program.

Miscellaneous

1. *Comment:* Current provisions for FHA-approved projects with respect to the 51% owner-occupancy requirement should be loosened—permitting HUD field offices to approve a lower percentage if appropriate.

Response: This provision is not new. It follows current practice for non-spot loans. The Department does not believe it appropriate to change this requirement at this time.

2. *Comment:* The criterion (§ 234.26(i)(1)(iii)) limiting the number of units *owned by a single entity* in a project for which a spot loan approval is sought should be changed to the number of units *controlled by a single entity*. This would prevent insuring mortgages in projects where family members and wholly owned businesses or partnerships own more than 10 percent of the units in a project.

Response: The Department believes that "ownership" is a reasonable standard to use and that is easy to understand. "Control" is harder to identify and enforce. The Department declines to change this provision.

Findings and Certifications

Impact on the Environment

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332, in connection with the proposed rule on this subject. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have significant impact on States or their political subdivisions since the provisions of the proposed rule affect private purchasers and sellers of condominium units.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being. Therefore, the rule is not subject to review under the Order. The rule merely broadens the coverage of condominium units for which mortgage insurance can be obtained.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities, because it makes available additional financing options for purchasers and sellers of condominium units.

Catalog

The Catalog of Federal Domestic Assistance number for the program affected by this proposed rule is 14.133.

List of Subjects

24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, parts 206 and 234 of title 24 of the Code of Federal Regulations are amended as follows:

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

1. The authority citation continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z-20; 42 U.S.C. 3535(d).

2. Section 206.51 is revised to read as follows:

§ 206.51 Eligibility of mortgages involving a dwelling unit in a condominium.

If the mortgage involves a dwelling unit in a condominium, the project in which the unit is located shall have been committed to a plan of condominium ownership by deed, or other recorded instrument, that is acceptable to the Secretary, except as provided in § 234.26(i) of this chapter.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

3. The authority citation for part 234 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715y; 42 U.S.C. 3535(d). Section 234.520(a)2(ii) is also issued under 12 U.S.C. 1701(a).

4. In § 234.26, a new paragraph (i) would be added, to read as follows:

§ 234.26 Project requirements.

* * * * *

(i) Notwithstanding the requirements of paragraphs (a) through (h) of this section, a loan on a single unit in an unapproved condominium project ("spot loan") may qualify for mortgage insurance under this part.

(1) The project must meet the following criteria:

(i) All units, common elements, and facilities—including those that are part of any master association—must have been completed, and the project cannot be subject to additional phasing or annexation. The project must provide for undivided ownership of common areas by unit owners;

(ii) Control of the owners' association must have been turned over to the unit purchasers, and the unit purchasers must have been in control for at least one year;

(iii) At least 90% of the total units in the project must have been conveyed to the unit purchasers, and at least 51% of the total units in the project must have been conveyed to purchasers who are occupying the units as their principal residences or second homes. No single entity (the same individual, investor group, partnership, or corporation) may own more than 10% of the total units in the project;

(iv) The units in the project must be owned in fee simple or be an eligible leasehold interest, as described in § 234.65, and the unit owners must have sole ownership interest in, and right to the use of, the project's facilities, common elements, and limited common elements including parking, recreational facilities, etc.;

(v) The project must be covered by hazard, flood, and liability insurance acceptable to the Commissioner;

(vi) For projects with more than 30 units, no more than 10% of the total units in the project may be encumbered by FHA-insured mortgages. (If more than 10% of the units in the project are encumbered by FHA-insured mortgages, the condominium project must be approved under paragraphs (a) through (h) of this section.) For smaller projects, no more than 20% of the total units in the project may be encumbered by FHA-insured mortgages; and

(vii) The assumability provisions of § 234.66 must be satisfied.

(2) Lenders must perform an underwriting analysis and certify that a project satisfies the eligibility criteria for a "spot loan" in a condominium project that has not been approved by FHA. Lenders may use information from the appraiser, the owners' association, the management company, the real estate broker, and the project developer, but the lender must ensure the accuracy of the information obtained from these sources.

(Approved by the Office of Management and Budget under control number 2502–0513)

Dated: May 22, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–13335 Filed 5–28–96; 8:45 am]

BILLING CODE 4210–27–P

federal register

Wednesday
May 29, 1996

Part IV

Environmental Protection Agency

Paper Products Recovered Materials Advisory Notice

ENVIRONMENTAL PROTECTION AGENCY

[SWH–FRL–5510–4–/EPA530–Z–96–005]

Paper Products Recovered Materials Advisory Notice

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of availability of final document.

SUMMARY: EPA is providing notice of the availability of the final Paper Products Recovered Materials Advisory Notice (RMAN) and supporting materials. Under Section 6002 of the Resource Conservation and Recovery Act, which establishes a buy-recycled program for federal agencies, EPA designates items that are or can be made with recovered materials and provides recommendations for government procurement of these items: The Agency is revising the 1988 recommendations to government procuring agencies for purchasing paper and paper products containing recovered materials. The final Paper Products RMAN addresses issues raised by paper manufacturers, merchants, and purchasers as they implemented the 1988 recommendations, and incorporates minimum content standards for uncoated printing and writing papers established by Executive Order. This action will promote paper recycling by using government purchasing to expand and maintain markets for recovered paper.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located in Crystal Gateway I, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The Docket Identification Number is F–96–PPRF–FFFFF. The RIC is open from 9:00 am to 4:00 pm, Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page. The index of and some supporting materials are also available electronically. See Section IV of the **SUPPLEMENTARY INFORMATION** section for information on accessing the materials electronically.

FOR FURTHER INFORMATION CONTACT: For general information, please contact the RCRA Hotline at 800 424–9346, TDD 800 553–7672 (hearing impaired), or 703 412–9810 (Washington, DC metropolitan area).

For more detailed information regarding the recommendations in today's notice, contact Dana Arnold of the Office of Solid Waste at 703 308–7279 or at U.S. Environmental Protection Agency (5306W), 401 M Street, S.W., Washington, DC 24060, or at e-mail: arnold.dana@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority
II. Agency's Response to Public Comments
A. Definition of "Postconsumer Fiber"
B. Definitions of "Recovered Fiber" and "Mill Broke"
C. Inclusion of Recommendations for Consumer (At-home) Tissue Products
D. Recommendations for Newsprint, Corrugated Containers, Carrierboard, and Commercial/Industrial Tissue Products
1. Newsprint
2. Corrugated Containers
3. Carrierboard
4. Commercial/Industrial Tissue Products
III. Revision to Executive Order 12873
IV. Supporting Materials and Accessing Internet
V. Use of EPA's Recommendations
Final Paper Products Recovered Materials Advisory Notice

I. Authority

The final Paper Products Recovered Materials Advisory Notice (Paper RMAN) is published under authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a) and 6962, and Executive Order 12873, "Federal Acquisition, Recycling, and Waste Prevention" (58 FR 54911, October 22, 1993).

II. Agency's Response to Public Comments

Today, the U.S. Environmental Protection Agency (EPA or the Agency) is publishing a final Paper RMAN, which contains recommendations for procuring agencies to use when purchasing paper and paper products in accordance with section 6002 of the Resource Conservation and Recovery Act of 1976 (RCRA).

EPA received over 50 comments on the draft Paper RMAN, which was published in the **Federal Register** on March 15, 1995 (see 50 FR 14181–14191). In addition to responding to EPA's requests in the draft Paper RMAN for comment on certain issues, the commenters also raised the following issues:

(1) Definition of "postconsumer fiber,"

(2) Definitions of "recovered fiber" and "mill broke,"

(3) Inclusion of recommendations for consumer (at-home) tissue products, and

(4) Recommendations for newsprint, corrugated containers, carrierboard, and commercial/industrial tissue products.

A summary of all comments received and the Agency's response to these comments are provided in "Final Summary of Comments on the Proposed Paper Products Recovered Materials Advisory Notice" and "Final Paper Products Recovered Materials Advisory Notice—Response to Comments," respectively. The response to comments document also provides discussions of changes EPA made to the March 1995 draft recommendations, other than those discussed in this notice. See also "Draft Paper Products RMAN—Supporting Analyses," February 1995, for additional discussions of the recommendations in the Paper RMAN. Section IV of this preamble provides information on viewing and obtaining copies of these documents.

A. Definition of "Postconsumer Fiber"

In the draft Paper RMAN, EPA defined "postconsumer fiber" based on RCRA section 6002(h)(1)'s definition of "postconsumer recovered materials." This is the same definition EPA used in the 1988 paper procurement guideline. In the draft Paper RMAN, however, EPA further stated that the definition of "postconsumer fiber" excludes "fiber derived from printers' over-runs, converters' scrap, and over-issue publications." EPA has consistently taken the position since 1988 that postconsumer fiber does not include these recovered papers.

Several commenters argued that EPA should adopt a broader postconsumer definition for its recommendations. Most of these commenters believe that over-issue publications, such as newspapers and magazines, are postconsumer materials. Some of the commenters also stated that printers' over-runs should be included in the postconsumer definition. The commenters stated that the source of recovered paper is irrelevant to the pulp and papermaking processes because printed materials must be handled and pulped in the same way, regardless of source. The commenters also stated that it is not always possible to determine the origin of a bale or truckload of recovered paper and that there is no scientific means of testing paper to determine whether or not it is from a postconsumer source. They further claimed that the use of the narrower definition adds to the costs of manufacturing recycled paper because it is more costly to track postconsumer materials.

EPA previously discussed these arguments in the preamble to the draft Paper RMAN (60 FR 14185, March 15, 1995) and in "Draft Paper Products RMAN—Supporting Analyses". Commenters simply repeated past arguments without providing new information to justify expanding the postconsumer definition. As explained in the following discussion, EPA continues to believe that its interpretation of RCRA section 6002 is reasonable.

RCRA section 6002(c) requires each procuring agency that purchases an EPA-designated item to procure such item containing the highest levels of recovered material practicable. In the case of paper, a procuring agency must procure a designated paper item composed of the "highest percentage of postconsumer recovered materials." RCRA section 6002(h) defines "recovered materials" in the case of paper products. Paper recovered materials include two subsets: postconsumer materials, defined in (h)(1), and manufacturing and other recovered materials, defined in (h)(2).

Of the three types of material in question (converting scrap, printers' over-runs, and over-issue publications), one—converting scrap—clearly is not a postconsumer material. RCRA section 6002(h) specifically lists it with manufacturing and other recovered materials in subset (h)(2).

With respect to the other two types of material, over-issue publications and printers' over-runs, RCRA section 6002(h)(1) suggests two clear benchmarks for determining whether these are postconsumer materials. First, postconsumer paper includes paper that has passed through its end-usage as a consumer item. This includes conventional discarded paper (e.g., old newspapers and magazines) from retail stores, homes, and office buildings. Second, postconsumer paper also includes paper recovered from municipal solid waste. Thus, the statute would seem to limit postconsumer recovered newspapers and magazines to those publications collected from the consumer *before* they enter the municipal solid waste stream as well as that recovered from the municipal solid waste stream *after* collection. Over-issue publications and printers' over-runs which never reach a consumer do not meet either of these criteria.

The examples in the RCRA section 6002(h) definition appear to make a distinction between recovered materials and postconsumer recovered materials based on whether the paper is received by an ultimate consumer. Thus, for example, paper, paperboard and fibrous materials may be postconsumer paper after passing through their intended end uses as a consumer item. If, however, that same paper, paperboard or fibrous material never reaches a consumer, it remains a preconsumer recovered material.

In addition, a reading of the types of materials listed in section 6002(h)(1) suggests that over-issue publications and over-runs are not postconsumer materials. Among the examples of postconsumer paper given in the statute are "old newspapers." Because publishers' over-runs and over-issue publications are clearly not "old" newspapers or "old" magazines, they are not a postconsumer material. Moreover, while section 6002(h) does not specifically list printers' over-runs and over-issue publications as either "postconsumer materials" or other recovered materials, it does provide that "finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others [emphasis added]" are not postconsumer materials. Thus, EPA believes that over-issue publications and printers' over-runs are specifically listed in RCRA section 6002 as preconsumer recovered materials.

Finally, one commenter stated that the postconsumer definition used in the draft Paper RMAN is contrary to the "recovered materials" definition in RCRA. The Agency disagrees with this comment. Congress defined "postconsumer recovered materials" in RCRA section 6002(h)(1). The postconsumer definition is the first subset of the "recovered materials" definition that Congress directs agencies to use when purchasing paper and paper products. Thus, EPA's use of the postconsumer definition is consistent with the RCRA definition.

B. Definitions of "Recovered Fiber" and "Mill Broke"

In the draft Paper RMAN, EPA provided revised definitions of "recovered fiber" and "mill broke." "Recovered fiber" identifies materials that can be counted toward the total recycled content of paper or paperboard. "Mill broke" identifies materials generated at a paper mill that would not be counted either as total recycled content or as postconsumer content under EPA's recommended content levels.

The definitions in the draft Paper RMAN were based on EPA's 1988 definitions of "waste paper" and "mill broke." (In the 1988 paper procurement guideline, EPA had established a "waste paper" category to promote the use of postconsumer and other recovered paper in the manufacture of printing and writing papers.) EPA made three changes to these 1988 definitions in developing the Paper RMAN definitions. First, the following mill-generated materials were moved from "waste paper" to "mill broke": offgrade or off-specification rolls, converting scrap, culls, stub rolls, side rolls, end rolls, and obsolete inventories. In other words, these materials could no longer be counted toward the total recovered fiber content levels recommended in the Paper RMAN. EPA stated that these materials are commonly re-pulped, sold to others for pulping, or otherwise used in or converted to paper products. Allowing these materials to count toward recovered fiber content does not provide an incentive for mills to use materials recovered from solid waste and, therefore, does not meet the RCRA objective of increasing markets for postconsumer materials.

Second, EPA specified that materials must be re-pulped. As a result, a person cannot purchase an off-specification or obsolete roll, convert it into cut sheets or note pads, and sell it as paper containing "recovered materials" or paper "meeting EPA's guidelines."

Third, EPA corrected an error in the 1988 definition of "waste paper" by deleting the words "forest residues" from the phrase introducing the non-postconsumer materials that count as "recovered fiber." EPA had erroneously included the words "forest residues" in the introductory phrase in the 1988 definition of "waste paper," although the Agency had intended to exclude these materials from the definition.

While some commenters agreed with the "recovered fiber" and "mill broke" definitions, most commenters opposed the narrowing of the "recovered fiber" definition and the related expansion of the "mill broke" definition. Commenters pointed out that some of the materials that EPA included in the "mill broke" definition are specifically listed in the RCRA section 6002(h) definition of "recovered materials." Therefore, the commenters stated, it is contrary to RCRA to include these materials in the definition of "mill broke." Commenters also stated that all of the industry data previously provided to EPA were based on the 1988 definitions and, therefore, would be incorrect. Further, commenters stated that the excluded materials generally are easier to use because they are homogenous, clean, and without printing, whereas postconsumer materials are heterogenous, sometimes

contaminated with food residue and other contaminants, and contain printing. For this reason, mills would not substitute postconsumer materials for the excluded materials, but would instead seek out other preconsumer materials. Finally, commenters stated that the paper industry has based its investments and strategies for manufacturing recycled paper on the 1988 definitions and has invested billions of dollars in recycling, so there is no reason to change course now when the definitions have been working to increase domestic recycling capacity.

In light of the comments, EPA has reconsidered the definitions used in the draft Paper RMAN and has concluded that they are inconsistent with RCRA section 6002(h). EPA also has concluded that industry commenters are correct that retaining the definitions would require the Agency to conduct new research into the recovered fiber content of products. Further, EPA believes that, because the materials in question represent a small percentage of all materials recovered and used, the definitions would not make a significant contribution to expanding the use of postconsumer materials. For these reasons, EPA will retain the 1988 definition of "mill broke" in the final Paper RMAN. EPA also is retaining the 1988 definition of "waste paper" as the basis of the definition of "recovered fiber." However, the Agency has modified the "recovered fiber" definition by adding that the material must be re-pulped and by excluding the words "forest residues."

C. Inclusion of Recommendations for Consumer (At-home) Tissue Products

In the draft Paper RMAN, EPA recommended content levels for consumer (at-home) bathroom tissue and paper towels (see Table A–3 in 60 FR 14190, March 15, 1995). Based on the data it had gathered on tissue products, EPA concluded that the paper industry produced two distinct product lines: consumer (at-home) tissue products and commercial/industrial (away-from-home) products. While procuring agencies generally would not purchase consumer tissue products and, consequently, would not be subject to the purchasing requirements under RCRA section 6002 with respect to these products, EPA determined that the Paper RMAN was a useful vehicle for disseminating information on another market for materials recovered from the solid waste stream. RCRA section 8003(e) specifically directs EPA to provide information on resource recovery.

Commenters opposed the inclusion of recommendations for consumer bathroom tissue and paper towels. They stated that the use of postconsumer and recovered fiber in consumer tissue products is driven by customer demand and mill economics and does not need additional stimulus from EPA recommendations. Several of the commenters stated that customer surveys and product shelf tests indicated that consumers resist recycled content consumer tissue products. They also noted that government agencies do not purchase consumer tissue products and that, therefore, EPA had exceeded its authority by recommending content levels for these products.

EPA believes that it did not exceed its authority under RCRA by recommending content levels for consumer tissue products. RCRA section 6002 directs EPA to provide guidance regarding the use of postconsumer materials in paper products. Moreover, as noted above, EPA has general authority under RCRA section 8003 to provide information about the use of recovered materials in products.

EPA's intent in recommending content levels for consumer tissue products was to encourage manufacturers producing these items with postconsumer and other recovered fiber. EPA policy has been to recommend content levels for paper products not purchased by government agencies if those recommendations would advance recycling and were supported by the product manufacturers. However, given the absence of any RCRA section 6002 obligations with respect to consumer tissue products and concern that EPA's action would, in fact, adversely affect the market for such products, EPA is not including recommendations for consumer tissue products in the final Paper RMAN.

D. Recommendations for Newsprint, Corrugated Containers, Carrierboard, and Commercial/Industrial Tissue Products

In the March 15, 1995 **Federal Register**, EPA described its methodology for establishing the ranges of recovered and postconsumer fiber recommended in the draft Paper RMAN (60 FR 14186). EPA stated that the high end of each range will be set at the maximum content currently used in paper and paper products that are available in sufficient quantities, and with adequate competition, to meet procuring agency needs. The low end of each range will be set at levels that can be met by the simple majority of mills currently producing paper and paper products containing postconsumer and recovered fiber. Comments indicated that the low end of the recommended ranges for newsprint, corrugated containers, carrierboard, and commercial/industrial tissue products did not reflect the fiber levels being used by a simple majority of mills at that time.

1. Newsprint

In the draft Paper RMAN, EPA recommended that newsprint contain 40–100% recovered fiber, including 40–85% postconsumer fiber (see Table A–2 in 60 FR 14189, March 15, 1995). Commenters stated that the low end of EPA's recommended ranges, 40%, is too high and does not reflect the content currently used by a simple majority of North American newsprint mills. In evaluating these comments, EPA researched the current postconsumer content of newsprint manufactured by 34 U.S. and Canadian mills and found that the majority of mills use about 20% postconsumer fiber.

Based on this additional information, and consistent with the methodology described in the draft Paper RMAN, EPA is revising the recommended ranges for newsprint in the final RMAN to 20–100% recovered fiber and 20–85% postconsumer fiber. EPA believes that government procuring agencies will continue to be able to purchase newsprint containing higher levels of both postconsumer and other recovered fiber. EPA believes that some private sector purchasers also will be able to purchase newsprint containing high levels of both postconsumer and other recovered fiber, but others will not. These other purchasers should seek newsprint containing lower levels of both postconsumer and other recovered fiber, consistent with EPA's recommended ranges, rather than simply purchasing newsprint containing no recovered fiber.

2. Corrugated Containers

In the draft Paper RMAN, EPA recommended that corrugated containers with a strength rating of less than 300 pounds per square inch (<300 psi) contain 40–50% recovered fiber, including 40–50% postconsumer fiber. EPA also recommended that corrugated containers with a strength rating of 300 psi contain 30% recovered fiber, all of which is postconsumer fiber (see Table A–4 in 60 FR 14190, March 15, 1995).

Commenters questioned the low end of the ranges and indicated that EPA's data regarding the postconsumer content of corrugating medium did not reflect what the majority of mills currently use. Commenters provided current information about the percentages of postconsumer and recovered fiber used in corrugated containers. The data confirmed that at least some mills could meet the ranges recommended in the draft Paper RMAN. Using new data submitted by commenters about the current postconsumer content of corrugating medium, and consistent with the methodology described in the draft Paper RMAN, EPA re-calculated the content of corrugated containers and concluded that the low end of the recommended ranges should be 25%. Therefore, in Table A–4 of the final Paper RMAN, EPA recommends that corrugated containers (<300 psi) contain 25–50% recovered fiber, including 25–50% postconsumer fiber and that corrugated containers (300 psi) contain 25–30% recovered fiber, including 25–30% postconsumer fiber.

3. Carrierboard

In the draft Paper RMAN, EPA recommended that carrierboard (which is a type of paperboard used to package multi-packs of beverages containers) contain 25–100% recovered fiber, including 15% postconsumer fiber (see Table A–4 in 60 FR 14190, March 15, 1995). The two manufacturers of unbleached kraft carrierboard commented that, due to shortages of old corrugated containers (OCC), the postconsumer fiber content of their product currently was 10%. The manufacturers previously had used 15% postconsumer fiber but were experiencing problems obtaining adequate supplies of OCC. Based on this information, and consistent with the methodology for establishing the low end of the ranges described in the draft Paper RMAN, EPA is changing the postconsumer fiber recommendation for carrierboard in the final Paper RMAN to a range of 10–15%. EPA is making a corresponding revision to the recovered fiber range, 10–100%. Purchasing agencies should note that, when OCC supplies are adequate, the manufacturers should be able to provide carrierboard containing 15% postconsumer fiber.

4. Commercial/Industrial Tissue Products

In the draft Paper RMAN, EPA recommended that commercial/industrial sanitary tissue products contain 100% recovered fiber, including varying ranges of postconsumer fiber (see Table A–3 in 60 FR 14190, March 15, 1995). EPA recommended a 100% recovered fiber level, rather than a range, because the Agency's data indicated that most manufacturers produced tissue products containing 100% recovered fiber.

Commenters stated that EPA's data on commercial/industrial tissue products were incorrect. The commenters stated that many of the tissue manufacturers produce one product line containing 100% recovered fiber, but this represents only a small fraction of their overall product lines. The commenters also stated that there is not a sufficient supply of tissue products containing 100% recovered fiber to ensure product availability and competition or to supply the broader, commercial (non-government) market. In addition, they stated that, even if they wanted to re-formulate their product lines to contain 100% recovered fiber, they would not be able to do so, because they currently are experiencing shortages and/or high prices for the grades of recovered paper used in tissue products. The commenters submitted new data to substantiate their comments.

In the supporting analyses to the draft Paper RMAN, EPA stated that there is great variability in the postconsumer and recovered fiber usage among tissue producers. The commenters' data confirm this variability. In fact, commenters demonstrated that some tissue mills have integrated pulp and papermaking operations and use small percentages of postconsumer and recovered fiber combined with wood-based pulp. Others rely entirely on postconsumer and recovered fiber. EPA believes that commenters demonstrated that the Agency should recommend a range for the recovered fiber content of tissue products. Adding ranges will provide flexibility to all tissue mills when fiber supplies are tight and will allow more mills to compete, thereby encouraging greater usage of postconsumer fiber.

Commenters proposed that EPA retain the 1988 postconsumer-only content recommendations in the final Paper RMAN, rather than two-part content recommendations. The commenters stated that there is an inadequate supply of recovered paper for tissue mills to meet the postconsumer fiber ranges recommended in the draft Paper RMAN and provided data to support their comments.

EPA continues to believe that the use of two-part content levels will result in greater usage of postconsumer materials by all tissue mills than will postconsumer-only levels because, as stated in the March 15, 1995 **Federal Register** notice (60 FR 14185), mills will use postconsumer fiber to meet both some of their total recovered fiber needs and their postconsumer fiber needs.

Aggregate data provided by commenters and EPA's conversations with tissue manufacturers indicate that the majority of mills can meet the 1988 recommended content levels for bathroom tissue, paper towels, and paper napkins.

EPA's 1988 recommended content level for facial tissue was 5% postconsumer fiber. EPA requested additional information from the commenters regarding the postconsumer fiber content of facial tissue. The additional information is discussed in "Final Paper Products RMAN—Response to Comments." EPA believes that the information supports a postconsumer fiber range of 10–15% for facial tissue.

Based on the original comments and the additional information about facial tissue, EPA is recommending the following levels for commercial/industrial tissue products in the final Paper RMAN:

- Bathroom tissue: 20–100% recovered fiber, including 20–60% postconsumer fiber,
- Paper towels: 40–100% recovered fiber, including 40–60% postconsumer fiber,
- Paper napkins: 30–100% recovered fiber, including 30–60% postconsumer fiber, and
- Facial tissue: 10–100% recovered fiber, including 10–15% postconsumer fiber.

III. Revision to Executive Order 12873

Section 504 of Executive Order 12873 (58 FR 54916, October 22, 1993) established postconsumer content standards for selected uncoated printing and writing papers. The Executive Order specified a 20% postconsumer content for high speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, and white wove envelopes, and a standard of 50% recovered materials, including 20% postconsumer materials, for writing and office paper, book paper, cotton fiber paper, and text and cover paper. EPA incorporated these content levels into its recommendations for printing and writing papers in the draft Paper RMAN. (As explained in "Draft Paper Products RMAN—Supporting Analyses," EPA used slightly different terminology in the draft Paper RMAN than that used in the Executive Order to reflect the way in which terms are currently used by paper mills, vendors, and procuring agencies.)

On March 25, 1996, President Clinton amended section 504 to delete the 50% recovered materials standard. (See Executive Order 12995, 61 FR 13645, March 28, 1996.) As a result, the

Executive Order now establishes a 20% postconsumer content level for all of the named printing and writing papers. EPA has revised Table A–1a in the final Paper RMAN accordingly.

IV. Supporting Materials and Accessing Internet

The index of supporting materials is available in the RCRA Information Center (RIC) and on the Internet. The address and telephone number of the RIC are provided in **ADDRESSES** above. The following supporting materials are available on the Internet:

Final Summary of Comments on the Proposed Paper Products Recovered Materials Advisory Notice, prepared for U.S. EPA by Eastern Research Group, July 27, 1995, 64 pages.

Draft Paper Products RMAN—Supporting Analyses, Office of Solid Waste, U.S. EPA, February 1995, 86 pages.

Final Paper Products Recovered Materials Advisory Notice —Response to Public Comments, Office of Solid Waste, U.S. EPA, April 1996, 64 pages.

Copies of the following supporting materials are available for viewing at the RIC only:

Memorandum regarding the Status of Over-Issue Publications from Richard T. Witt, Attorney, Solid Waste and Emergency Response Division, Office of General Counsel, to Robert W. Dellinger, Associate Division Director, Municipal & Industrial Solid Waste Division, Office of Solid Waste, February 9, 1996, 4 pages.

Minutes, *Ex Parte* Meeting Between EPA and The Tissue Producers Coalition, July 07, 1995, 4 pages.

Memorandum to the Record, Final Paper Products RMAN, re Market Share of Commercial/Industrial Tissue Market, March 12, 1996, 2 pages.

Minutes, *Ex Parte* Meeting Between EPA and Newsprint Manufacturers, February 13, 1996, 3 pages.

"Research on Use of Postconsumer Materials in Newsprint Manufacturing," prepared for U.S. EPA by Eastern Research Group, October 25, 1995, 4 pages.

"Meeting Average Recycled Content Newsprint Goals in the Newspaper Publishing Industry," Final Report, prepared for U.S. EPA by Eastern Research Group, December 18, 1995, 5 pages.

"Use of Recovered Fiber in Selected Bristols," Final Report, prepared for U.S. EPA by Eastern Research Group, December 18, 1995.

Letter to Dana Arnold regarding machine finished uncoated groundwood paper, American Forest & Paper Association, Sara Freund, February 13, 1996, 1 page.

Minutes, *Ex Parte* Meeting Between EPA and Representatives of Mead Corporation, July 18, 1995, 2 pages.

Follow these instructions to access the information electronically:

Gopher: gopher.epa.gov
WWW: http://www.epa.gov
Dial-up: 919 558–0335

The materials can be accessed off the main EPA Gopher menu, in the directory EPA Offices and Regions/Office of Solid Waste and Emergency Response (OSWER)/Office of Solid Waste (RCRA)/[Non-Hazardous Waste—RCRA Subtitle D/Procurement/Paper].

FTP: ftp.epa.gov
Login: anonymous
Password: your Internet address
Files are located in /pub/gopher/OSWRCRA.

V. Use of EPA's Recommendations

EPA encourages state and local agencies to use the recommendations in today's final Paper RMAN when purchasing paper and paper products. EPA also encourages private sector purchasers to use the information provided by EPA when purchasing paper and paper products. EPA recommends that purchasers establish their minimum content standards at the highest percentages available to them that achieve their price and performance objectives, even if these standards exceed EPA's recommended ranges. If a product is not available at a competitive price and at a content level at the high end of EPA's recommended ranges, purchasers should set their standards at the highest levels available to them that meet their price and performance objectives, using the recommended ranges as a guide. In this way, EPA's recommended ranges will encourage both public and private sector purchasers to purchase paper products containing the highest levels of postconsumer and recovered fiber practicable.

EPA has found that some state agencies have been using the Agency's 1988 content recommendations as a starting point in establishing product labeling requirements. While EPA's recommendations were not intended for use as labeling standards, they can be used as an information source for agencies establishing recycled product labeling programs.

EPA cautions persons using EPA's recommendations, whether to establish purchasing specifications or labeling standards, to use them only for the *specific items* for which they were intended. It is not appropriate to analogize from one item in a paper grade (e.g., printing and writing paper, tissue products, paperboard) to another item that could also fall within that grade, without first researching the use of postconsumer and recovered fiber in the other item. The two items could have different performance requirements necessitating different levels of postconsumer or recovered fiber. In addition, one item could be made primarily by mills that use high percentages of postconsumer or recovered fiber, while the other item could be made primarily by mills that use low or no percentages of this fiber.

Dated: May 15, 1996.

Elliott P. Laws,
Assistant Administrator,
Office of Solid Waste and Emergency Response.

Final Paper Products Recovered Materials Advisory Notice

This Paper Products Recovered Materials Advisory Notice (Paper RMAN) contains EPA's recommendations to procuring agencies for purchasing paper and paper products in compliance with section 6002 of the Resource Conservation and Recovery Act of 1976 (RCRA). These recommendations replace the recommendations found in EPA's 1988 paper procurement guideline, 40 CFR Part 250 (53 FR 23545, June 22, 1988). These recommendations also replace the recommendations found in Part A of EPA's 1995 RMAN (60 FR 21388–21389, May 1, 1995). The contents of this Paper RMAN consist of the Part A, Paper and Paper Products, sections listed below.

Contents

Part A—Paper and Paper Products

Section A–1—Printing and Writing Papers
Section A–2—Newsprint
Section A–3—Commercial/Industrial Sanitary Tissue Products
Section A–4—Paperboard and Packaging Products
Section A–5—Miscellaneous Paper Products
Section A–6—Other Recommendations for Paper and Paper Products
Section A–7—Definitions
Appendix A–1.—Example Calculation of Postconsumer Fiber Content of a Corrugated Container

Part A—Paper and Paper Products

Section A–1—Printing and Writing Papers

Preference Program: EPA recommends that procuring agencies establish minimum content standards expressed as a percentage of recovered fiber, including a percentage of postconsumer fiber. EPA recommends that procuring agencies base their minimum content standards for printing and writing papers on the content levels shown in Tables A–1a, A–1b, and A–1c. Percentages are based on the fiber weight of the product. The content

levels in the tables should be read as X% recovered fiber, including Y% postconsumer fiber and *not* as X% recovered fiber plus Y% postconsumer fiber. Where the content level is the same in both columns (e.g., 20% in both the recovered fiber and postconsumer fiber columns), this means that EPA is recommending that agencies establish identical content levels for both postconsumer and recovered fiber.

TABLE A–1A.—RECOMMENDED RECOVERED FIBER CONTENT LEVELS FOR UNCCATED PRINTING AND WRITING PAPERS

Item	Recovered fiber (%)	Postconsumer fiber (%)
Reprographic Paper (e.g., mimeo and duplicator paper, high-speed copier paper, and bond paper) [1]	20	20
Offset Paper (e.g., offset printing paper,[1] book paper[1], bond paper[1])	20	20
Tablet Paper (e.g., office paper such as note pads, stationery [1] and other writing [1] papers)	20	20
Forms Bond (e.g., forms, computer printout paper, ledger) [1]	20	20
Envelope Paper:		
Wove	20	20
Kraft:		
White and colored (including manila)	10–20	10–20
Unbleached	10	10
Cotton Fiber Paper (e.g., cotton fiber papers, ledger,[1] stationery [1] and matching envelopes, and other writing [1] papers)	20	20
Text & Cover Paper (e.g., cover stock, book paper [1], stationery [1] and matching envelopes, and other writing [1] paper)	20	20
Supercalendered	10	10
Machine finish groundwood	10	10
Papeteries	20	20
Check Safety Paper	10	10

[1] These items can be made from a variety of printing and writing papers, depending on the performance characteristics of the item. Some of the papers are a commodity-type and some are specialty papers. EPA recommends that procuring agencies determine the performance characteristics required of the paper prior to establishing minimum content standards. For example, bond, ledger, or stationery made from cotton fiber paper or a text & cover paper have different characteristics than similar items made from commodity papers.

TABLE A–1B.—RECOMMENDED RECOVERED FIBER CONTENT LEVELS FOR COATED PRINTING AND WRITING PAPERS

Item	Recovered fiber (%)	Postconsumer fiber (%)
Coated Printing Paper	10	10
Carbonless	20	20

TABLE A–1C.—RECOMMENDED RECOVERED FIBER CONTENT LEVELS FOR BRISTOLS

Item	Recovered fiber (%)	Postconsumer fiber (%)
File Folders (manila and colored)	20	20
Dyed Filing Products	20–50	20
Cards (index, postal, and other, including index sheets)	50	20
Pressboard Report Covers and Binders	50	20
Tags and Tickets	20–50	20

Section A–2—Newsprint

Preference Program: EPA recommends that procuring agencies establish minimum content standards expressed as a percentage of recovered fiber, including a percentage of postconsumer fiber. EPA recommends that procuring agencies base their minimum content standards for newsprint on the content levels shown in Table A–2. Percentages are based on the fiber weight of the product. The content levels in the table should be read as X% recovered fiber, including Y% postconsumer fiber and *not* as X% recovered fiber plus Y% postconsumer fiber.

TABLE A–2.—RECOMMENDED RECOVERED FIBER CONTENT LEVELS FOR NEWSPRINT

Item	Recovered fiber (%)	Postconsumer fiber (%)
Newsprint	20–100	20–85

Section A–3—Commercial/Industrial Sanitary Tissue Products

Preference Program: EPA recommends that procuring agencies establish minimum content standards expressed as a percentage of recovered fiber, including a percentage of postconsumer fiber. EPA recommends that procuring agencies

base their minimum content standards for commercial/industrial tissue products on the content levels shown in Table A–3. Percentages are based on the fiber weight of the product. The content levels in the table should be read as X% recovered fiber, including Y% postconsumer fiber and *not* as X% recovered fiber plus Y% postconsumer fiber.

TABLE A–3.—RECOMMENDED RECOVERED FIBER CONTENT LEVELS FOR COMMERCIAL/INDUSTRIAL SANITARY TISSUE PRODUCTS

Item	Recovered fiber (%)	Postconsumer fiber (%)
Bathroom tissue	20–100	20–60
Paper towels	40–100	40–60
Paper napkins	30–100	30–60
Facial tissue	10–100	10–15
General purpose industrial wipers	40–100	40

Section A–4—Paperboard and Packaging Products

Preference Program: EPA recommends that procuring agencies establish minimum content standards expressed as a percentage of recovered fiber, including a percentage of postconsumer fiber. EPA recommends that procuring agencies base their minimum content standards for paperboard and packaging products on the content levels shown in Table A–4. Percentages are based on the fiber weight of the product. The content levels in the table should be read as X% recovered fiber, including Y% postconsumer fiber and *not* as X% recovered fiber plus Y% postconsumer fiber. Where the content level is the same in both columns (e.g., 40% in both the recovered fiber and postconsumer fiber columns), this means that EPA is recommending that agencies establish identical content levels for postconsumer and recovered fiber.

TABLE A–4.—RECOMMENDED RECOVERED FIBER CONTENT LEVELS FOR PAPERBOARD AND PACKAGING PRODUCTS

Item	Recovered fiber (%)	Postconsumer fiber (%)
Corrugated containers:[1]		
(<300 psi)	25–50	25–50
(300 psi)	25–30	25–30
Solid Fiber Boxes	40	40
Folding cartons[2]	100	40–80
Industrial paperboard (e.g., tubes, cores, drums, and cans)	100	45–100
Miscellaneous (e.g., pad backs, covered binders, book covers, mailing tubes, protective packaging)	90–100	75–100
Padded mailers	5–15	5–15
Carrierboard[3]	10–100	10–15
Brown papers (e.g., wrapping paper and bags)	5–40	5–20

[1] The recovered fiber and postconsumer fiber content is calculated from the content of each component relative to the weight each contributes to the total weight of the box. See Appendix I for an example.
[2] The recommended content ranges are not applicable to all types of paperboard used in folding cartons. Cartons made from solid bleached sulfate or solid unbleached sulfate contain no or small percentages of postconsumer fiber, depending on the paperboard source.
[3] Carrierboard made from unbleached kraft contains up to 25% recovered fiber, while carrierboard made from recycled paperboard contains up to 100% recovered fiber.

Section A–5—Miscellaneous Paper Products

Preference Program: EPA recommends that procuring agencies establish minimum content standards expressed as a percentage of recovered fiber, including a percentage of postconsumer fiber. EPA recommends that procuring agencies base their minimum content standards for the listed paper products on the content levels shown in Table A–5. Percentages are based on the fiber weight of the product. The content levels in the table should be read as 100% recovered fiber, including X% postconsumer fiber and *not* as 100% recovered fiber plus Y% postconsumer fiber.

TABLE A–5.—RECOMMENDED RECOVERED FIBER CONTENT LEVELS FOR MISCELLANEOUS PAPER PRODUCTS

Item	Recovered fiber (%)	Postconsumer fiber (%)
Tray liners	100	50–75

Section A–6—Other Recommendations for Paper and Paper Products

Measurement: EPA recommends that procuring agencies express their minimum content standards as a percentage of the fiber weight of the paper or paper product. EPA further recommends that procuring agencies specify that mill broke cannot be counted toward postconsumer or recovered fiber content, except that procuring agencies should permit mills to count mill broke generated in a papermaking process using postconsumer and/or recovered fiber as feedstock toward "postconsumer fiber" or "recovered fiber" content, to the extent that the feedstock contained these materials. In other words, if a mill uses less than 100% postconsumer or recovered fiber, only a proportional amount of broke can be counted towards postconsumer or recovered fiber content.

Specifications: EPA recommends that procuring agencies review specifications provisions pertaining to performance and aesthetics and revise provisions that can impede use of postconsumer and recovered fiber, unless such provisions are related to reasonable performance standards. Agencies should determine whether performance provisions are unnecessarily stringent for a particular end use. Agencies also should revise aesthetics provisions—such as brightness, dirt count, or shade matching—if appropriate, consistent with the agencies' performance requirements, in order to allow for a higher use of postconsumer and recovered fiber.

EPA recommends that procuring agencies document determinations that paper products containing postconsumer and recovered fiber will not meet the agencies' reasonable performance standards. Any determination should be based on technical performance information related to a specific item, not a grade of paper or type of product.

EPA recommends that procuring agencies watch for changes in the use of postconsumer and recovered fiber in paper and paper products. When a paper or a paper product containing postconsumer and recovered fiber is produced in types and grades not previously available, at a competitive price, procuring agencies should either revise specifications to allow the use of such type or grade, or develop new specifications for such type or grade, consistent with the agencies' performance requirements.

Recyclability: EPA recommends that procuring agencies consider the effect of a procurement of a paper product containing recovered and postconsumer fiber on their paper collection programs by assessing the impact of their decision on their overall contribution to the solid waste stream.

Section A–7—Definitions

For purposes of the recommendations contained in this Part, terms shall have the following meanings:

"Postconsumer fiber" means:

(1) Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and

(2) All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste.

Postconsumer fiber does not include fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

"Recovered fiber" means the following materials:

(1) Postconsumer fiber such as:

(A) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and

(B) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste, and

(2) Manufacturing wastes such as——

(A) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(B) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

"Mill broke" means any paper waste generated in a paper mill prior to completion of the papermaking process. It is usually returned directly to the pulping process. Mill broke is excluded from the definition of "recovered fiber."

Appendix A–1.—Example Calculation of Postconsumer Fiber Content of a Corrugated Container

C-flute has a take-up factor of approximately 1.44, which means that for each one foot of combined corrugated board there is 1.44 feet of fluted medium. This factor is used to calculate the weight of paperboard in a given area of combined corrugated board, from which the basis weight of the board is derived. Each linerboard contributes 35% of the basis weight (42/121.4). The medium contributes 30% of the total basis weight (37.4/121.4).

BOARD BASIS WEIGHT

	lbs/MSF
Linerboard #1: 42 × 1.00 =	42.0
Medium: 26 × 1.44 =	37.4
Linerboard #2: 42 × 1.00 =	42.0
Combined Board Weight	121.4

If the linerboard used has 20% postconsumer fiber and the medium has 80% postconsumer fiber, the resulting total postconsumer fiber content of the containerboard is as follows:

Linerboard: .35 × .20 = .07 × 2 = .14 (or 14%)
Medium: .30 × .80 = .24 (or 24%)
Total postconsumer fiber: .14 + .24 = .38 (or 38%)

[FR Doc. 96–13432 Filed 5–28–96; 8:45 am]
BILLING CODE 6560–50–P

Federal Register

Wednesday
May 29, 1996

Part V

Department of Education

Training Personnel for the Education of Individuals With Disabilities; Grants for Personnel Training; Notices

DEPARTMENT OF EDUCATION

[CFDA No.: 84.029J]

Training Personnel for the Education of Individuals With Disabilities—Grants for Personnel Training; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1996

PURPOSE OF PROGRAM: The Individuals With Disabilities Education Act (IDEA) recommends that the Secretary develop and implement a plan for providing outreach services to minority entities and underrepresented populations to assist them in participating more fully in the discretionary programs under the Act (section 610(j)(2)(C)).

This final priority supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

ELIGIBLE APPLICANTS: Eligible applicants are institutions of higher education, State agencies, and other appropriate nonprofit agencies.

APPLICABLE REGULATIONS: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Priority—Absolute Priority—Outreach Services to Minority Entities To Expand Research Capacity (84.029J)

The priority Outreach Services to Minority Entities to Expand Research Capacity in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**, applies to this competition.

SELECTION CRITERIA: In evaluating applications for grants under this program, the Secretary uses the EDGAR selection criteria in 34 CFR 75.210.

Applications Available: May 31, 1996.

Deadline for Transmittal of Applications: July 16, 1996.

Deadline for Intergovernmental Review: September 16, 1996.

Estimated Number of Awards: 1.

Project Period: Up to 36 months.

Available Funds: In FY 1996, approximately $996,000 will be available to support 1 project (cooperative agreement) under this absolute priority (competition). A multi-year project will be level funded unless there is an increase in costs attributable to significant changes in activity level, and funds are available.

Note: The Department of Education is not bound by any estimates in this notice.

FOR APPLICATIONS AND GENERAL INFORMATION CONTACT: Requests for applications and general information should be addressed to: Claudette Carey, U.S. Department of Education, 600 Independence Avenue, SW., Switzer Building, Room 3525, Washington, DC. 20202–2641. Telephone: (202) 205–9864. FAX: (202) 205–8105. Internet: Claudette_Carey@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8953.

FOR TECHNICAL INFORMATION CONTACT: Scott Brown, U.S. Department of Education, 600 Independence Avenue, SW., Room 3522, Switzer Building, Washington, DC. 20202–2641. Telephone: (202) 205–5509. FAX: (202) 205–8117. Internet: Scott_Brown@ed.gov

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases); or on the World Wide Web at http://www.ed.gov/money.html However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1431.

Dated: May 23, 1996.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–13428 Filed 5–28–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Training Personnel for the Education of Individuals With Disabilities—Grants for Personnel Training

AGENCY: Department of Education.

ACTION: Notice of Final Priority.

SUMMARY: The Secretary announces a final priority for the Training Personnel for the Education of Individuals with Disabilities—Grants for Personnel Training program administered by the Office of Special Education and Rehabilitative Services (OSERS) under the Individuals with Disabilities Education Act. The Secretary may use this priority in Fiscal Year 1996 and subsequent years. The Secretary takes this action to focus Federal assistance on identified needs to improve outcomes for children with disabilities. This final priority is intended to ensure wide and effective use of program funds.

EFFECTIVE DATE: This priority takes effect on June 28, 1996.

FOR FURTHER INFORMATION CONTACT: Scott Brown, U.S. Department of Education, 600 Independence Avenue SW., Room 3522, Switzer Building, Washington, DC. 20202–2641. Telephone: (202) 205–8117. FAX: (202) 205–8105. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8953. Internet: Scott_Brown@ed.gov

SUPPLEMENTARY INFORMATION: The Individuals with Disabilities Education Act (IDEA) directs the Secretary to develop and implement a plan for providing outreach services to minority entities and underrepresented populations to assist them in participating more fully in the discretionary programs under the Act (section 610(j)(2)(C)).

On March 26, 1996, the Secretary published a notice of proposed priority for this program in the **Federal Register** (61 FR 13376–13377).

This final priority supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

The publication of this priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements. Funding of particular projects depends on the availability of funds, and the quality of the applications received. Further, FY 1996 priorities could be affected by enactment of legislation reauthorizing these programs.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register.**

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, five parties submitted comments. An analysis of the comments and of the changes in the proposed priority follows. Technical and other minor changes—as well as suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Priority—Outreach Services to Minority Entities To Expand Research Capacity

Comment: One commenter requested that the priority clarify whether the Historically Black Colleges and Universities (HBCUs), other minority institutions (OMIs), and other eligible institutions as defined under section 312 of the Higher Education Act of 1965 (OEIs) that are the target of the linkage activities specified in the priority need to be doctoral-degree granting institutions or providers of Ph.D.'s in joint programs with other universities. The commenter stated that, for a national effort whose major goal is to prepare scholars for careers in research on special education and related services, the focus should be on the doctoral-level programs since they are the ones that typically apply for and receive grants and contracts for research activities.

Discussion: The Secretary agrees that recipients of awards for research activities are predominantly institutions of higher education with doctoral-degree level programs. However, although many HBCUs, OMIs, and OEIs do not have doctoral-level programs for students, the project's linkage activities are also expected to target institutional faculty members. Many of the faculty at these institutions are very capable and experienced in conducting research. Strengthening the capacity of these individuals, and thereby that of institutions, is considered a useful component of strategies developed under the priority.

Changes: None.

Comment: One commenter requested clarification as to the priority's relative emphasis on building the capacity of individual minority researchers as opposed to entire faculties of HBCUs, OMIs and OEIs.

Discussion: The purpose of the project is two-fold. The priority is intended to increase the participation of HBCUs, OMIs, and OEIs in discretionary research and development grant programs authorized under the Individuals with Disabilities Education Act, and to increase the capacity of individuals at these institutions to conduct research and development activities in special education and related services. The dual emphasis is important, since the ability of individual students and faculty members to conduct research is a key contributing factor in an institution's capacity to successfully compete for IDEA research grants. The priority does not require the project to focus on entire faculties at these institutions. The priority is intended to allow the project to identify appropriate faculty members that will enhance the ability of HBCUs, OMIs, and OEIs to compete for grants.

Changes: The priority has been revised to clarify that its purpose is to increase the participation of HBCUs, OMIs, and OEIs in discretionary research and development grant programs under the IDEA consistent with Congress' direction, and to increase the capacity of individuals at these institutions to conduct research and development activities.

Comment: One commenter stated the an HBCU, OMI, or an OEI was the only appropriate institution to conduct the type of project required by the priority and suggested that eligibility for the grant award be restricted to minority institutions. The commenter also recommended that the language of the priority be strengthened to require the project to have actual experience and knowledge of how to identify and work with the strengths as well as overcome the barriers inherent in the infrastructure. The commenter stated that a project designed to recruit minority researchers and generate research in minority communities would be received more favorably and responded to more rapidly if conducted by a minority institution.

Discussion: The Secretary believes that limiting eligibility under the priority to minority institutions would be unduly restrictive. The critical factors that the performing entity must have are: (1) Experience and familiarity in research on children with disabilities in urban and high-poverty schools with predominately minority enrollment; (2) experience in capacity development in special education research; and, (3) a thorough understanding of the strengths and needs of HBCUs, OMIs, and OEIs with respect to carrying out research programs. These factors are included in the priority. Any advantage that a minority institution can demonstrate in these areas may be considered in the evaluation of applications.

Change: None.

Comment: One commenter recommended that the priority be revised to strengthen the requirement that findings, results, and/or products be communicated directly to SEAs with significant minority populations and to educational decision makers in urban areas.

Discussion: The Secretary believes that dissemination of findings should be carried out by the Department of Education's technical assistance, training, and dissemination projects that have been established specifically to accomplish this important task. To require this project to conduct dissemination activities would unnecessarily diffuse the project's focus, and would require it to conduct activities that are not necessarily compatible with research and capacity building activities.

Changes: None.

Comment: One commenter stated that the research agenda developed for the project's workscope must be relevant to local communities and address problems of real need. The commenter felt that needs assessments must be developed with the local communities' (LEAs, SEAs, and IHEs) participation, and complete articulation of research findings with these stakeholders should be guaranteed. Another commenter recommended that the project conduct a national assessment of needs and convene an Advisory Panel with representation from in-service and Comprehensive System for Personnel Development planning components with appropriate State educational agencies.

Discussion: The priority requires that the project conduct research on one or more specified issues. The Secretary believes that each of the suggested research topics are particularly relevant to the overall objectives of improving the delivery of special education services and educational results for children with disabilities in urban and high-poverty schools with predominately minority enrollments. The Department of Education has collected sufficient data to warrant the focus of research on these topics. Furthermore, the selection criteria that will be used to evaluate applications require applicants to describe the needs addressed by the project; how those needs were identified; and how the needs will be met by the project. In view of these factors, the Secretary believes that to require this project to conduct a national assessment of needs would be unnecessary, would diffuse the project's focus, and would impose requirements that are not necessarily compatible with research and capacity building activities.

Changes: None.

Comment: Two commenters requested that the priority specify the applicable indirect cost rate, and questioned whether the indirect cost rate would be that of a training or a research grant. Both commenters recommended that the project be considered personnel preparation and carry an 8 percent indirect cost rate.

Discussion: Because the priority is primarily a research training project, the grantee's negotiated cost rate applies to the priority. Although the Education Department General Administrative

Regulations (EDGAR) at § 75.562 authorizes an 8 percent cap on indirect costs for educational training grants, "research training programs" were specifically excluded from the scope of educational training grants under that section. Furthermore, the Secretary believes that the amount of the project budget that is devoted to direct grant activities will reflect the level of commitment and effort offered by each applicant, and will be considered in determining the relative merit of applications. For these reasons, the grantee's negotiated indirect cost rate used for research programs applies to the final priority.

Changes: None.

Comment: One commenter stated that the balance between urban and rural research agenda seems weighted toward inner city challenges. The commenter recommended that the priority should place equal emphasis on urban and rural problems.

Discussion: The priority requires that the project focus on issues related to improving the delivery of special education services and educational results for children with disabilities in urban and high poverty schools with predominantly minority enrollments. Relevant research indicates that approximately 47 percent of urban youth with disabilities live in households with an annual income of less that $12,000, compared to 34 percent of rural and 19 percent of suburban youth with disabilities. Consequently, the Secretary expects the project to emphasize the needs of children with disabilities in urban areas given the disproportionate representation of special education students who live in poverty and the high percentage of poor children in urban settings.

Changes: None.

Comment: One commenter suggested that the project demonstrate the high quality of its research through a peer or internal review, and through mentoring during implementation.

Discussion: The Secretary believes that the methods suggested by the commenter are two potentially useful approaches that a research project might employ to ensure high quality of research results. However, because there may be a variety of viable methodologies that may ensure high quality research, the Secretary believes that identifying two such methodologies would be unduly restrictive.

Changes: None.

Comment: One commenter noted that the priority does not mention the importance of linking research findings to application and practice at minority IHEs, and suggested that applicants describe the systems to be used to translate research to practice and to infuse new knowledge into existing personnel preparation programs.

Discussion: The priority requires that findings of importance to audiences other than researchers be made available to the Department of Education's technical assistance training and dissemination projects for distribution to those audiences. The Secretary believes that this approach, as opposed to requiring the grantee to undertake the entire process of translating research to practice, will allow for a more coherent research-to-practice effort, and a potentially larger, more inclusive audience.

Changes: None.

Comment: One commenter requested that a single existing policy research center for coordination or collaboration be omitted from the priority or, in the alternative, that the role of such a center be clearly defined.

Discussion: The Secretary agrees that it is not necessary to single out a specific policy research center for collaboration or coordination since the priority requires that the project collaborate with other relevant OSEP-funded projects. Also, the Secretary is concerned that referencing a specific policy coordination center could discourage the project from coordinating directly with other relevant projects.

Changes: The reference in the proposed priority to coordination with the ongoing Policy Research Institute has been deleted.

Priority

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this absolute priority.

Absolute Priority—Outreach Services to Minority Entities To Expand Research Capacity

Background: The Congress has found that the Federal Government must be responsive to the growing needs of an increasingly diverse society and that a more equitable distribution of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals. The Congress has concluded that the opportunity for full participation in awards for grants, cooperative agreements and contracts by Historically Black Colleges and Universities (HBCUs), other institutions of higher education whose minority enrollment is at least 25 percent (OMIs) and other eligible institutions as defined under section 312 of the Higher Education Act of 1965 (OEIs) is essential if we are to obtain greater success in the education of children from diverse backgrounds in special education.

This priority focuses on assisting HBCUs, OMIs and OEIs to prepare scholars for careers in research on special education and related services. This preparation shall consist of engaging both faculty and students at HBCUs, OMIs and OEIs in special education research activities. The activities focus on an area of critical emerging need which has material application in today's changing environment and will likely be the subject of future research efforts—*the special education of children in urban and high poverty schools with predominantly minority enrollments.* By building a cadre of experienced researchers on this important topic, the chances for full participation in awards for grants, cooperative agreements and contracts by HBCUs, OMIs and OEIs will be increased.

The association between socioeconomic status and enrollment in special education has been well documented. Available data from the National Longitudinal Transition Study (NLTS) show that 68 percent of students in special education live in a household where the income is less than $25,000 per year versus 39 percent of the general population of youth.

The problem of this association is heightened in urban school districts and, to a lesser extent, rural districts. NLTS data reveal that only 34 percent of students in special education live in suburban school districts compared to 48 percent of all youth. Data from the Office for Civil Rights indicate that 30 percent of all inner-city students live in poverty compared to 18 percent of students in non-inner city areas. Moreover, findings from the National Longitudinal Transition Study indicate that 47 percent of urban youth with disabilities live in households with an annual income of less than $12,000 (in 1986 dollars) compared to 34 percent of rural and 19 percent of suburban youth with disabilities (Valdes et al., 1990).

Urban school districts face a variety of challenges in meeting the educational needs of their students. Their schools often have high per student costs and limited financial resources. Their students are disproportionately poor and the population of individuals with limited English proficiency is among the fastest growing populations with special needs in some of these districts. This disproportionate representation of poor children in special education is also likely to be uniquely influenced by culturally diverse and urban settings, posing both opportunities and problems in the provision of special education services.

Priority

The Secretary establishes an absolute priority for a project whose purpose is to increase the participation of HBCUs, OMIs, and OEIs in discretionary research and development grant programs authorized under the Individuals with Disabilities Education Act (IDEA), and to increase the capacity of individuals at these institutions to conduct research and development activities in special education and related services. Each research activity of the program must implement the Congress' direction in section 610(j)(2) to support outreach activities to HBCUs, OMIs and OEIs to increase their participation in competitions for research, demonstration and outreach grants, cooperative agreements and contracts funded under the IDEA. Activities shall include:

(1) Conducting research activities at HBCUs, OMIs and OEIs as explained below that link scholars at HBCUs, OMIs and OEIs with researchers at institutions with an established research capacity in a mentoring relationship to develop both individual and institutional research capacity at those HBCUs, OMIs and OEIs with a demonstrated need for capacity development; and

(2) Providing linkages between HBCUs, OMIs and OEIs with a demonstrated need for capacity development and institutions with an established research capacity to provide opportunities for researchers at those HBCUs, OMIs and OEIs to develop first hand experience in the grants and contracts application process.

All research activities must be conducted for the purpose of capacity building. The research program must include one or more projects that are focused on issues related to improving the delivery of special education services and educational results for children with disabilities in urban and high poverty schools with predominantly minority enrollments. The program must examine the association between minority status and identification for, evaluation for and placement in special education. Other possible research topics may include:

(1) Effective intervention strategies that make a difference in the provision of a Free Appropriate Public Education (FAPE);

(2) Practices to promote the successful inclusion of children with disabilities in a least restrictive environment (LRE);

(3) Strategies for establishing high expectations for children with disabilities and increasing their participation in the general curriculum provided to all children;

(4) Increasing effective parental participation in the educational process, especially for poor parents, minority parents, and parents with limited English proficiency;

(5) Effective disciplinary approaches, including behavioral management strategies, for ensuring a safe and disciplined learning environment;

(6) The effect of school-wide projects conducted under Title 1 of the Elementary and Secondary Education Act on the delivery of special education; or

(7) Effective practices for promoting the coordination of special education services with health and social services for children with disabilities and their families.

The program shall ensure that findings are communicated in appropriate formats for researchers. The program shall also ensure that if findings are of importance to other audiences, such as teachers, administrators and parents, they are made available to Department of Education's technical assistance, training and dissemination projects for distribution to those audiences.

Projects must demonstrate experience and familiarity in research on children with disabilities in urban and high poverty schools with predominantly minority enrollments. The project must also demonstrate experience in capacity development in special education research, as well as a thorough understanding of the strengths and needs of HBCUs, OMIs and OEIs.

The project must budget for two trips annually to Washington, D.C. for: (1) A two-day Research Project Directors' meeting; and (2) an additional meeting to meet and collaborate with the project officer of the Office of Special Education Programs (OSEP) and with other relevant OSEP funded projects.

Program Authority: 20 U.S.C. 1431.

(Catalog of Federal Domestic Assistance Number 84.029, Training Personnel for the Education of Individuals with Disabilities Program)

Dated: May 23, 1996.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–13429 Filed 5–28–96; 8:45 am]

BILLING CODE 4000–01–P

Reader Aids

Federal Register

Vol. 61, No. 104

Wednesday, May 29, 1996

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–523–5227**
Public inspection announcement line	**523–5215**
Laws	
Public Laws Update Services (numbers, dates, etc.)	**523–6641**
For additional information	**523–5227**
Presidential Documents	
Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**
Other Services	
Electronic and on-line services (voice)	**523–4534**
Privacy Act Compilation	**523–3187**
TDD for the hearing impaired	**523–5229**

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. **202–275–0920**

FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

FEDERAL REGISTER PAGES AND DATES, MAY

19155–19502	1
19503–19804	2
19805–20116	3
20117–20418	6
20419–20700	7
20701–21046	8
21047–21360	9
21361–21946	10
21947–24204	13
24205–24432	14
24433–24664	15
24665–24874	16
24875–25134	17
25135–25388	20
25389–25548	21
25549–25774	22
25775–26068	23
26069–26422	24
26423–26768	28
26769–27000	29

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6889 19503
6890 19803
6891 20419
6892 21045
6893 21047
6894 24661
6895 24663
6896 25129
6897 25765
6898 25767
6899 25769
6900 26067
6901 26769

Executive Orders:
11216 (See EO 13002) 24665
11593 (See EO 13006) 26071
12072 (See EO 13006) 26071
12808 (See Notice of May 24, 1996) 26773
12810 (See Notice of May 24, 1996) 26773
12831 (See Notice of May 24, 1996) 26773
12846 (See Notice of May 24, 1996) 26773
12934 (See Notice of May 24, 1996) 26773
13001 21943
13002 24665
13003 25131
13004 25771
13005 26069
13006 26071
13007 26771

Administrative Orders:
Memorandums:
April 1, 1996 26017
April 26, 1996 19505
April 26, 1996 24667
April 26, 1996 24877
April 28, 1996 19507
May 10, 1996 26033

Presidential Determinations:
No. 96–7 of Dec. 27, 1996 (See Notice of May 24, 1996) 26773
No. 96–20 of April 1, 1996 26019
No. 96–21 of April 4, 1996 26021
No. 96–22 of April 18, 1996 26027
No. 96–23 of April 30, 1996 26029
No. 96–24 of May 9, 1996 26031

4 CFR

Proposed Rules:
21 19205

5 CFR

Ch. LXIX 20117
300 19509
410 21947
532 20701
831 21953
842 21953
890 25775

7 CFR

2 25775
28 19511
51 20702
52 25549
53 19155
54 19155
225 25550
226 25550
272 19155
273 19155
301 ..... 20877, 26423
319 24433
703 26423
800 24669
810 24669
900 20717
915 19512
916 ..... 19160, 26073
917 ..... 19160, 26073
946 20119
956 20121
959 24877
979 20718
980 25551
985 20122
1002 20719
1004 20719
1007 20124
1280 ..... 19514, 21049, 21053
1485 24205
1755 26073
1841 21361
1843 21361
1845 21361
1903 21361
1945 21361
1980 21361
2054 21361
3403 25366

Proposed Rules:
51 24247
911 20754
924 20756
930 26956
944 ..... 20754, 20756
958 20188
1005 19861
1007 19861
1011 19861

1046.....19861
1160.....20759

8 CFR

3.....19976, 21065, 21228
100.....25777
242.....19976, 21065, 21228

9 CFR

50.....25135
77.....25135
78.....19976
130.....20421, 25513

Proposed Rules:

92.....20189, 20190, 21389, 26849
93.....20190, 26849
94.....20190, 26849, 26850
95.....20190, 26849
96.....20190, 26849
98.....20190, 26849
301.....19564
304.....19578
308.....19578
317.....19564, 19578
318.....19564, 19578
319.....19578, 26470
320.....19564
381.....19564, 19578, 26470

10 CFR

20.....24669
30.....24669
40.....24669
61.....24669
70.....24669
72.....24669

Proposed Rules:

26.....21105, 24731
72.....24249
150.....26852

11 CFR

110.....24533

12 CFR

5.....19524
19.....20330
20.....19524
25.....21362
28.....19524
205.....19662, 19678
211.....24439
220.....20386
228.....21362
229.....25389
327.....26078, 26083
250.....19805
263.....20338
308.....20344
345.....21362
509.....20350
563e.....21362
614.....20125

Proposed Rules:

207.....20399
215.....19863
220.....20399
221.....20399
226.....26126
230.....26470
245.....26471
330.....25596
344.....26135
614.....24907

13 CFR

Proposed Rules:

121.....20191

14 CFR

21.....20696
25.....24208, 24213, 25778, 26775
27.....21904
29.....21894, 21904
31.....20877
39.....19540, 19807, 19808, 19809, 19811, 19813, 19815, 20125, 20127, 20616, 20636, 20638, 20639, 20641, 20643, 20644, 20646, 20668, 20669, 20671, 20672, 20674, 20676, 20677, 20679, 20681, 20682, 21066, 21068, 21070, 21071, 24206, 24214, 24216, 24218, 24220, 24675, 24684, 24686, 24688, 24690, 24691, 24878, 24881, 24883, 24884, 25557, 15558, 26089, 23090, 23091, 26424, 26425, 26426, 26427, 26429, 26776, 26778, 26780
43.....19498
71.....19541, 19542, 19816, 19817, 21364, 21365, 21953, 24222, 24223, 26094, 26431, 26434, 26781
73.....20127, 26095, 26434
91.....24430
97.....25138, 25139, 25141, 25780, 25781, 25783
159.....19784
205.....19164
323.....19164
385.....19166

Proposed Rules:

29.....20760
39.....20192, 20194, 20762, 20764, 21146, 21979, 21980, 21982, 24250, 25417, 25418, 25598, 26853
71.....19590, 19591, 19592, 19593, 21910, 21984, 24533, 25157, 25600, 26473
91.....24582, 26855, 26856
121.....21149, 24582, 24533, 26036
127.....24582
135.....24582, 26036
158.....25420

15 CFR

24.....26095
902.....19171, 21926, 26435
981.....21073
2011.....26783

Proposed Rules:

946.....19594

16 CFR

405.....25560
1500.....19818, 26096
1507.....26096

Proposed Rules:

254.....19869
1210.....20503

17 CFR

1.....19177, 19830
3.....20127, 26253
5.....19830
10.....21954
31.....19830
140.....21954
200.....20721, 25652
228.....25652
229.....25652
230.....21356, 25652
231.....24644
232.....25652
239.....25652
240.....21354, 25652
241.....24644
249.....21354
270.....25652
271.....24644
274.....25652
276.....24644

Proposed Rules:

1.....19869
156.....19869
230.....25601
240.....25601
250.....25601
270.....25601
275.....25601

18 CFR

35.....21940
37.....21737
385.....21940
1300.....20117

Proposed Rules:

35.....21847
161.....19211
250.....19211
284.....19211, 19832
346.....19878

19 CFR

10.....19834, 24887
12.....24888
103.....19835
122.....25777
145.....24888
161.....24888

Proposed Rules:

101.....19834

20 CFR

200.....25390
345.....20070
601.....19982
617.....19982
626.....19982
658.....19982
702.....19982

21 CFR

2.....25390
5.....24223
101.....20096, 21074
172.....26786
173.....25392
201.....20096
310.....25142
341.....25142
369.....20096
500.....19542
501.....20096
510.....21075, 24440
520.....24441, 24443
522.....21075, 24440, 25784
556.....24440, 24441
558.....21075, 24443, 24694
582.....19542
589.....19542
600.....24227
601.....24227
740.....20096
801.....20096

Proposed Rules:

Ch. I.....21392, 26473
25.....19476
101.....25421
102.....19220
130.....19220
131.....19220
133.....19220
135.....19220
136.....19220
137.....19220
139.....19220
145.....19220
146.....19220
150.....19220
152.....19220
155.....19220
156.....19220
158.....19220
160.....19220
161.....19220
163.....19220
164.....19220
165.....19220
166.....19220
168.....19220
169.....19220
210.....20104
211.....20104
328.....21392
530.....25118
589.....24253
801.....26140

22 CFR

126.....19841
514.....20437

Proposed Rules:

608.....26474

24 CFR

0.....19187
201.....19788
206.....26982
234.....26982
290.....19188
585.....25124
941.....19708
970.....19708

Proposed Rules:

206.....21910
888.....20982
901.....20358
3500.....21394

25 CFR

Proposed Rules:

144.....24731
250.....19600
291.....25604
525.....21394

26 CFR

1.....19188, 19189, 19544, 19546, 21366, 21955
301.....19189, 26788
602.....19189, 26788

Proposed Rules:

1.....20503, 20766, 20767, 21985, 21988
31.....20767

32.....20767
35a.....20767
301.....20503, 21989

27 CFR

1.....20721, 26096
2.....26096
3.....26096
4.....20721
7.....20721
16.....20721
19.....20721
20.....20721
21.....20721
22.....20721
24.....20721, 21076
25.....20721
53.....20721
55.....20721
71.....20721
170.....20721
178.....20721
179.....20721
194.....20721
197.....20721
200.....20721
250.....20721
251.....20721
252.....20721
270.....20721
275.....20721
285.....20721
290.....20721
296.....20721

28 CFR

58.....24889
501.....25120
550.....25120

Proposed Rules:

90.....24526
100.....21396

29 CFR

1.....19982
2.....19982
4.....19982
5.....19982
6.....19982
7.....19982
8.....19982
22.....19982
24.....19982
32.....19982
96.....19982
500.....24694
504.....19982
507.....19982
508.....19982
530.....19982
1601.....21370
1910.....19547, 21228
1915.....26322
1978.....19982
2619.....21228, 24444, 25513
2627.....24694
2676.....24444

Proposed Rules:

Ch. XIV.....20768
4.....19770
102.....25158

30 CFR

75.....20877, 26441
250.....25147
906.....26792
913.....26801
914.....26443
925.....26445, 26454
931.....26825
936.....26461
946.....26836

Proposed Rules:

Ch. II.....21977, 25160
202.....25421
206.....25421
211.....25421
256.....24466
901.....20768
902.....20768
904.....19881, 20768
913.....20768
914.....20768
915.....20768
916.....20768
917.....20768
918.....20768
920.....20768
925.....26477
926.....26477
931.....26477
934.....25425, 26477
935.....26477
936.....25426, 26477
938.....26477
943.....26477
944.....26477
946.....19885, 26477
948.....26477
950.....20773, 26477

31 CFR

12.....25396
224.....26839
361.....20437
585.....24696

Proposed Rules:

356.....25164

32 CFR

95.....26102
324.....25561

33 CFR

52.....24233
100.....19192, 20132, 21959, 21960, 21961, 21962, 25149, 26102, 26103, 26104
110.....25149
117.....24235, 25149
165.....19192, 19841, 21963, 24697, 24698, 24699, 24701, 24892, 26105, 26840
334.....26107
401.....19548

Proposed Rules:

67.....26857
100.....25835
165.....25838

34 CFR

361.....24390
685.....24446

Proposed Rules:

100.....20196, 21998, 21999, 22001
117.....22002
154.....20084
155.....20084

36 CFR

242.....25785
292.....20726
1228.....19552, 24702

Proposed Rules:

7.....20775
100.....19220
117.....19223
701.....25839

37 CFR

Proposed Rules:

Ch. II.....20197, 22004
1.....19224, 20877

38 CFR

2.....20133, 20437, 26107
3.....20438, 20726, 25787
4.....20438, 20440
9.....20134
17.....21964, 24236
19.....20447
20.....20447
21.....20727, 24237, 26107

Proposed Rules:

3.....24910
17.....25428

39 CFR

3001.....24447

Proposed Rules:

233.....21404

40 CFR

50.....25566
52.....19193, 19555, 20136, 20139, 20142, 20145, 20147, 20453, 20455, 20458, 20730, 20732, 24239, 24457, 24702, 24706, 24709, 24712, 25789, 25791
55.....25149
60.....20734, 21080
63.....21370, 25397
70.....20150, 24457, 24715
75.....25580
80.....20736
81.....20458, 21372, 24239, 24242
82.....25585
89.....20738
90.....20738
110.....25149
117.....25149
123.....20972
131.....20686
141.....24354
167.....25151
180.....19842, 19845, 19847, 19849, 19850, 19852, 19854, 19855, 20742, 20743, 20745, 21378, 24893, 25152, 26117, 26118, 26841, 26843
185.....25153
271.....25794, 25796, 25799
300.....20473, 24720, 24894
355.....20473
421.....24242

Proposed Rules:

Ch. I.....19432
51.....19231
52.....19233, 19601, 20199, 20200, 20201, 20504, 21405, 21412, 24467, 24737, 24738, 25840, 25841
55.....25173
61.....20775
63.....19887, 21414
70.....20202, 26145
80.....20779
81.....19233, 21415
82.....25604
89.....20738
90.....20738
136.....26149
141.....26857
142.....26857
148.....21418
170.....19889
180.....19233, 20780, 20781, 24738, 24911, 26149, 26856, 26859, 26861
185.....20780, 26861
186.....10780, 20781, 24911, 26861
261.....21418, 25175
268.....21418
271.....21418
300.....19889, 20202, 20785, 21422, 22004, 22006, 24261

41 CFR

50–203.....19982
60–1.....19982, 25516
60–30.....19982
60–60.....25516
60–250.....19366, 19982
60–741.....19336, 19982
301–4.....25802

42 CFR

405.....19722
412.....21969
486.....19722

Proposed Rules:

84.....24740, 25513

43 CFR

11.....20560

44 CFR

61.....19197
62.....24462
64.....19857, 25802
65.....25400, 25402, 25403
67.....25405
206.....19197

Proposed Rules:

67.....25429, 25435

45 CFR

Proposed Rules:

1311.....24467
2400.....25612

46 CFR

Ch. I.....24464
10.....19858
15.....19858, 25984
26.....25984
30.....25272
31.....25272, 25984
32.....25272, 25984
33.....25272
34.....25984
35.....25272, 25984
38.....25984
54.....25984
56.....25984
58.....25984
61.....25984
70.....25272

71 25272
72 25984
75 25272
76 25984
77 ..... 25272, 25984
78 ..... 25272, 25984
90 25272
91 25272
92 25984
94 25272
95 25984
96 ..... 25272, 25984
97 ..... 25272, 25984
107 25272
108 ..... 25272, 25984
109 ..... 25272, 25984
114 20556
116 20556
117 20556
118 20556
119 20556
120 20556
121 20556
122 20556
125 25272
133 25272
153 25984
160 25984
162 25984
164 25984
167 ..... 25272, 25984
168 ..... 25272, 25984
169 25984
170 ..... 20556, 24464
171 24464
173 ..... 20556, 24464
175 20556
176 20556
177 20556
178 20556
179 20556
180 20556
181 20556
182 20556
183 20556
185 20556
188 25272
189 ..... 25272, 25984
190 25984
192 25272
193 25984
195 25272
196 ..... 25272, 25984
199 25272
298 21302
381 24895
403 21081
404 21081

47 CFR

Ch. I 26464
0 ..... 25804, 26464, 26465
1 26670
2 26670
3 20155
21 ..... 25594, 26670
22 21380
24 ..... 25807, 25808, 25810
64 ..... 20746, 24897
73 ..... 20490, 20747, 21384, 21385, 21973, 24262, 24263, 24465, 25594
80 ..... 25804, 26120, 26465
90 ..... 21380, 25810
94 26670
97 21385
101 26670

Proposed Rules:

Ch. I 22008, 26152, 26483, 26864
0 21151
1 ..... 19236, 20505, 24743, 25183
2 19236
15 ..... 24473, 24749
21 19236
22 24470
24 24470
64 ..... 25184, 26152
73 ..... 19601, 20206, 20207, 20505, 20789, 21425, 24262, 24263, 25183, 25841, 26491
80 21151
90 25185
94 19236

48 CFR

Ch. 1 24263
209 25408
231 21973
242 25409
243 25408
570 24720
801 20491
803 20491
804 20491
805 20491
806 20491
808 20491
810 20491
812 20491
813 20491
815 20491
816 20491
820 20491
822 20491
828 20491
833 20491
834 20491
836 20491
837 20491
846 20491
871 20493
904 21975
906 21975
911 21975
912 21975
913 21975
915 21975
919 21975
925 21975
926 21975
933 21975
950 21975
952 21975
970 21975
2401 19468
2402 19468
2404 19468
2405 19468
2406 19468
2409 19468
2411 19468
2412 19468
2413 19468
2414 19468
2415 19468
2416 19468
2417 19468
2419 19468
2420 19468
2426 19468
2428 19468
2429 19468
2432 19468
2434 19468
2436 19468
2437 19468
2442 19468
2452 19468
2453 19468

Proposed Rules:

Ch. 1 ..... 22010, 26496
Ch. 2 22010
42 26766
52 ..... 24473, 26766
901 19891
905 19891
906 19891
908 19891
915 19891
916 19891
917 19891
922 19891
928 19891
932 19891
933 19891
935 19891
936 19891
942 19891
945 19891
952 19891
971 19891
1515 25440
1552 25440

49 CFR

18 21386
37 ..... 25409, 26467
38 ..... 25409, 26467
90 21386
107 21084
171 ..... 21084, 25940, 26750
172 20747
173 ..... 20747, 21084, 25940, 26750
174 20747
176 20747
178 ..... 21084, 25940
192 26121
193 26121
195 ..... 24244, 26121
212 26124
228 20494
397 20496
501 26468
533 25595
564 20497
571 ..... 19201, 19202, 19560, 19561, 20170, 20172, 20497, 26845
604 19562
609 19562
639 25088
1039 26846
1051 19859
1053 19859
1164 21387
1311 21387
1312 19859
1330 024722

Proposed Rules:

171 ..... 24904, 26253
173 ..... 24904, 26253
180 ..... 24904, 26253
219 21149
382 21149
537 22010
571 ..... 19602, 24263, 24265, 26872
653 21149
654 21149
1002 20877
1100 19236
1101 19236
1102 19236
1103 19236
1104 19236
1105 19236
1106 19236
1107 19236
1108 19236
1109 19236
1110 19236
1111 19236
1112 19236
1113 19236
1114 19236
1115 19236
1116 19236
1117 19236
1118 19236
1119 19236
1120 19236
1121 19236
1122 19236
1123 19236
1124 19236
1125 19236
1126 19236
1127 19236
1128 19236
1129 19236
1130 19236
1131 19236
1132 19236
1133 19236
1134 19236
1135 19236
1136 19236
1137 19236
1138 19236
1139 19236
1140 19236
1141 19236
1142 19236
1143 19236
1144 19236
1145 19236
1146 19236
1147 19236
1148 19236
1149 19236
1185 22014
1300 21153
1305 24474
1312 19902

50 CFR

17 ..... 24722, 25813
91 25155
100 25785
216 21926
222 21926
253 19171
255 19171
611 26435
620 ..... 20175, 26435
641 25833
651 26847
658 24728
661 ..... 20175, 26125
663 21102
672 ..... 19976, 21104, 24729

675 ..... 19976, 24730, 24905, 25595
678 21978

Proposed Rules:

16 24267
17 ..... 19237, 21426, 25618
246 25443
280 25443
281 25443
282 25443
298 25443
299 25443
300 25443
301 25443
371 25443
380 25443
600 19390
601 19390
602 19390
603 19390
605 19390
611 19390
619 19390
620 19390
621 19390
625 20506
628 20789
641 24267
649 20207
650 ..... 20207, 21431
651 20207
655 25185
652 19604
672 ..... 24475, 24750
673 ..... 19902, 21431
675 ..... 24475, 24750
676 24475
695 25443

REMINDERS

The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

EDUCATION DEPARTMENT
CFR parts removed; Federal regulatory reform; published 4-29-96

ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Prosulfuron; published 5-29-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food additives:
Dimethyl dicarbonate; published 5-29-96

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Environmental review procedures for entities assuming HUD environmental responsibilities; published 4-30-96

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Colorado; published 5-29-96
New Mexico; published 5-29-96
Virginia; published 5-29-96

OFFICE OF UNITED STATES TRADE REPRESENTATIVE
Trade Representative, Office of United States
Sugar imports; tariff-rate quota implementation; published 5-29-96

TRANSPORTATION DEPARTMENT
Coast Guard
Pollution:
Facility response plans and required pollution response equipment; published 2-29-96

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; published 4-29-96
Bell; published 5-14-96
McDonnell Douglas; published 5-14-96

TREASURY DEPARTMENT
Internal Revenue Service
Procedure and administration:
Taxpayer identifying numbers (TIN); published 5-29-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Avocados grown in Florida; comments due by 6-3-96; published 5-2-96
Limes grown in Florida and imported; comments due by 6-7-96; published 5-8-96
Onions (sweet) grown in Washington and Oregon; comments due by 6-5-96; published 5-6-96
Onions grown in–
Idaho et al.; comments due by 6-5-96; published 5-6-96
Potatoes (Irish) grown in–
Washington; comments due by 6-5-96; published 5-6-96
Prunes grown in Washington and Oregon and imported; comments due by 6-7-96; published 5-8-96
Spearmint oil produced in Far West; comments due by 6-5-96; published 5-6-96

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Garbage that can introduce diseases or pests of livestock, poultry, or plants; disposal by cruise ships in landfills at Alaskan ports; comments due by 6-4-96; published 4-5-96
Hog cholera and swine vesicular disease; disease status change–
Netherlands; comments due by 6-3-96; published 4-4-96
Horses; permanent private quarantine facilities; comments due by 6-3-96; published 5-6-96
Interstate transportation of animals and animal products (quarantine):
Tuberculosis in cervids; identification requirements; comments due by 6-3-96; published 4-4-96

AGRICULTURE DEPARTMENT
Rural Utilities Service
Single family housing; reengineering and reinvention of direct section 502 and 504 programs; comments due by 6-7-96; published 4-8-96

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Atlantic bluefish; comments due by 6-7-96; published 5-8-96
Shrimp fishery off Southern Atlantic states; comments due by 6-7-96; published 4-23-96
Fishery management councils; hearings:
New England; comments due by 6-4-96; published 5-10-96

COMMERCE DEPARTMENT
Patent and Trademark Office
Patent cases:
Fee revisions; comments due by 6-5-96; published 5-1-96

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Management oversight of service contracting; comments due by 6-3-96; published 4-3-96

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Consumer products; energy conservation program:
Clothes washers; test procedures, etc.; comments due by 6-6-96; published 4-22-96

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Oil pipelines:
Cost-of-service filing requirements; comments due by 6-3-96; published 5-3-96

ENVIRONMENTAL PROTECTION AGENCY
Air pollution control; new motor vehicles and engines:
New non-road spark ignition and compression-ignition engines; reduced certification reporting requirements; comments due by 6-7-96; published 5-8-96
Urban buses (1993 and earlier model years); retrofit/rebuild requirements; equipment certification–
Detroit Diesel Corp.; comments due by 6-3-96; published 4-17-96
Air programs:
Fuel and fuel additives–
Reformulated gasoline sold in California; Reid Vapor Pressure lower limit adjustment; comments due by 6-7-96; published 5-8-96
Reformulated gasoline sold in California; Reid Vapor Pressure lower limit adjustment; comments due by 6-7-96; published 5-8-96
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 6-3-96; published 5-2-96
Illinois; comments due by 6-5-96; published 5-6-96
Ohio; comments due by 6-5-96; published 5-6-96
Utah; comments due by 6-5-96; published 5-6-96
Clean Air Act:
Consumer products; national volatile organic compound emission standards; comments due by 6-3-96; published 4-2-96
State operating permits programs–
Rhode Island; comments due by 6-5-96; published 5-6-96
Rhode Island; comments due by 6-5-96; published 5-6-96
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Avermectin B1 and delta-8,9-isomer; comments due by 6-7-96; published 5-8-96
Chloroxuron, etc.; comments due by 6-3-96; published 4-3-96
Fluorine compounds; comments due by 6-7-96; published 5-8-96
Superfund program:
National oil and hazardous substances contingency plan–
National priorities list update; comments due by 6-5-96; published 5-6-96
National priorities list update; comments due by 6-7-96; published 5-8-96
National priorities list update; comments due by 6-7-96; published 5-8-96
National priorities list update; comments due by 6-7-96; published 5-10-96
National priority list update; comments due by 6-3-96; published 5-3-96

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Video programming services; local exchange carrier provision; costs allocation; comments due by 6-7-96; published 5-20-96
Wireless services; cellular spectrum priority access; national security/emergency preparedness responsiveness; rulemaking petition; comments due by 6-3-96; published 4-26-96

FEDERAL TRADE COMMISSION
Magnuson-Moss Warranty Act interpretations, etc.; comments due by 6-3-96; published 4-3-96

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Management oversight of service contracting; comments due by 6-3-96; published 4-3-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Color additives:
Color additive lakes; safe use in food, drugs, and cosmetics; permanent listing; comments due by 6-3-96; published 3-4-96
GRAS or prior-sanctioned ingredients:
Meat and poultry products; substances approved; comment period reopening; comments due by 6-3-96; published 4-3-96
Human drugs:
Antiflatulent products (OTC); monograph amendment; comments due by 6-3-96; published 3-5-96
Medical devices:
Ophthalmic devices–
Neodymium:yttrium: aluminum:garnet (Nd:YAG) laser; reclassification from Class III to Class II; comments due by 6-6-96; published 3-8-96

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
National Environmental Policy Act; implementation; comments due by 6-4-96; published 4-5-96

INTERIOR DEPARTMENT
Land Management Bureau
Marginal gas producers; production incentives through royalty reductions; comment request; comments due by 6-3-96; published 3-5-96

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Northern spotted owl; comments due by 6-3-96; pubiished 4-8-96
Endangered Species Convention:
River otters taken in Missouri; export; comments due by 6-3-96; published 4-2-96

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Federal lands program:
State-Federal cooperative agreements; Federal regulatory review; comments due by 6-3-96; published 4-4-96
Permanent program and abandoned mine land reclamation plan submissions:
Arkansas; comments due by 6-3-96; published 5-3-96
Virginia; comments due by 6-3-96; published 5-3-96
Wyoming; comments due by 6-7-96; published 5-8-96

JUSTICE DEPARTMENT
Persons of Japanese ancestry; redress provisions; comments due by 6-6-96; published 4-22-96

LABOR DEPARTMENT
Pension and Welfare Benefits Administration
Employee Retirement Income Security Act:
Interpretive bulletins and regulations removed; comments due by 6-3-96; published 4-3-96

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Management oversight of service contracting; comments due by 6-3-96; published 4-3-96

SECURITIES AND EXCHANGE COMMISSION
Investment companies:
Acquisition of securities during existence of underwriting syndicate; comments due by 6-3-96; published 3-27-96

TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
Louisiana; comments due by 6-7-96; published 4-8-96
Ports and waterways safety:
Tampa Bay, Hillsborough Bay and approaches, FL: safety zone; comments due by 6-3-96; published 4-2-96
Regattas and marine parades:
First Coast Guard District fireworks displays; comments due by 6-6-96; published 5-23-96

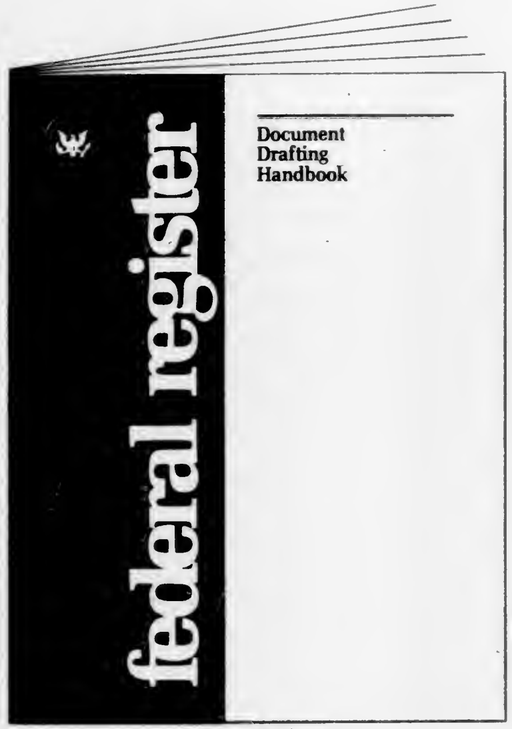
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airports:
National Capital airports; CFR part removed; comments due by 6-3-96; published 5-2-96
Airworthiness directives:
de Havilland; comments due by 6-3-96; published 4-23-96
Empressa Brasileira de Aeronautica, S.A.; comments due by 6-3-96; published 4-23-96
McDonnell Douglas; comments due by 6-4-96; published 4-10-96
New Piper Aircraft, Inc.; comments due by 6-7-96; published 3-27-96
Textron Lycoming; comments due by 6-7-96; published 4-8-96
Airworthiness standards:
Special conditions–
Sikorsky model S76C helicopter; comments due by 6-7-96; published 5-8-96
Class E airspace; comments due by 6-3-96; published 4-9-96

TRANSPORTATION DEPARTMENT
Federal Highway Administration
Motor carrier safety standards:
Parts and accessories necessary for safe operation–
Television receivers and data display units; comments due by 6-3-96; published 4-3-96

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
National Driver Register transition procedures; comments due by 6-3-96; published 4-17-96

TRANSPORTATION DEPARTMENT
Surface Transportation Board
Interlocking rail officers and directors; authorization; comments due by 6-3-96; published 5-13-96
Tariffs and schedules:
Pipeline common carriage; change of rates and other service terms; disclosure and notice; comments due by 6-4-96; published 5-15-96

TREASURY DEPARTMENT
Internal Revenue Service
Employment taxes and collection of income taxes at source:
Federal Unemployment Tax Act (FUTA) and Federal Insurance Contributions Act (FICA); taxation of amounts under employee benefit plans
Hearing; comments due by 6-3-96; published 5-8-96
Income taxes:
Foreign corporations–
Determination of interest expense deduction and branch profits tax; comments due by 6-6-96; published 3-8-96
Loans to plan participants or beneficiaries; hearing; comments due by 6-7-96; published 5-8-96



Federal Register Document Drafting Handbook

A Handbook for Regulation Drafters

This handbook is designed to help Federal agencies prepare documents for publication in the Federal Register. The updated requirements in the handbook reflect recent changes in regulatory development procedures, document format, and printing technology.

Price $5.50

Superintendent of Documents Publication Order Form

Order processing code: *6133

Charge your order. It's easy!

To fax your orders and inquiries – (202) 512-2250

☐ **YES,** please send me the following indicated publications:

_____ copies of **DOCUMENT DRAFTING HANDBOOK at $5.50 each.** S/N 069-000-00037-1

1. The total cost of my order is $_____ Foreign orders please add an additional 25%. All prices include regular domestic postage and handling and are subject to change.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature) (Rev 12/91)

4. **Mail To:** New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954



Printed on recycled paper

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

5–30–96
Vol. 61 No. 105

federal register

Thursday
May 30, 1996

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********3-DIGIT 481
A FR UMI 346U DEC 96 R
UMI
SERIALS ACQUISITIONS
PO BOX 1346
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

5–30–96
Vol. 61 No. 105
Pages 27001–27242

Federal Register

Thursday
May 30, 1996

Briefings on How To Use the Federal Register
For information on briefings in Chicago, IL, and Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $494, or $544 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $433. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 61 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243
For other telephone numbers, see the Reader Aids section at the end of this issue.

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

CHICAGO, IL

WHEN: June 11, 1996 at 9:00 am
WHERE: Metcalfe Federal Building, Conference Room 328, 77 West Jackson, Chicago, Illinois 60604
RESERVATIONS: 1–800–688–9889

WASHINGTON, DC

[Two Sessions]

WHEN: June 18, 1996 at 9:00 am, and June 25, 1996 at 9:00 am
WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 61, No. 105
Thursday, May 30, 1996

Agricultural Marketing Service
RULES
Fluid milk promotion order, 27003
PROPOSED RULES
Avocados and limes grown in Florida, 27027

Agriculture Department
See Agricultural Marketing Service
See Forest Service
See Grain Inspection, Packers and Stockyards Administration
See Natural Resources Conservation Service
See Rural Housing Service

Air Force Department
NOTICES
Base realignment and closure:
Disposal and reuse—
Gentile Air Force Station, OH, 27054
Environmental statements; availability, etc.:
Nellis Air Force Range, NV, 27054–27055

Arms Control and Disarmament Agency
PROPOSED RULES
Freedom of Information Act; implementation, 27031–27036

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Assassination Records Review Board
NOTICES
Meetings; Sunshine Act, 27047

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Agricultural Disease and Injury Research, Education, and Prevention Centers, 27079–27082

Children and Families Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 27082–27083

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration

Defense Department
See Air Force Department
See Defense Logistics Agency
See Navy Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 27053
Meetings:
Education Benefits Board of Actuaries, 27053–27054
Retirement Board of Actuaries, 27054
Science Board task forces, 27054

Defense Logistics Agency
NOTICES
Senior Executive Service:
Performance Review Boards; membership, 27055

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Lonza Riverside, 27098–27099
Research Triangle Institute, 27099
Roche Diagnostic Systems, Inc., 27099
Sanofi Winthrop Inc., 27099–27100
Wildlife Laboratories, Inc., 27100

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 27056–27057

Employment and Training Administration
NOTICES
Federal-State unemployment compensation program:
Unemployment insurance program letters—
Federal unemployment insurance law interpretation, 27101–27104

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission

Energy Efficiency and Renewable Energy Office
NOTICES
Consumer product test procedures; waiver petitions:
Inter-City Products Corp., 27057–27058
Grants and cooperative agreements; availability, etc.:
State energy program special projects, 27058–27059

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Printing and publishing industry operations, 27132–27159
Air quality implementation plans; approval and promulgation; various States:
Idaho, 27019–27023
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Idaho, 27038
Solid wastes:
Hazardous waste combustors, etc.; maximum achievable control technologies performance standards, 27038–27039
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 27073–27075

Executive Office of the President
See Management and Budget Office
See Presidential Documents

Federal Aviation Administration
RULES
Class E airspace, 27004
PROPOSED RULES
Airworthiness directives:
Beech, 27028–27030
Learjet, 27030–27031
NOTICES
Airport noise compatibility program:
James M. Cox-Dayton International Airport, OH, 27125–27126

Federal Communications Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 27075–27076
Rulemaking proceedings; petitions filed, granted, denied, etc., 27076

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Florida Power & Light Co. et al., 27063–27065
Public Service Co. of Colorado et al., 27066–27067
Environmental statements; availability, etc.:
Maritimes & Northeast Pipeline, L.L.C., 27067–27069
Portland Natural Gas Transmission System, 27070–27072
Hydroelectric applications, 27072–27073
Applications, hearings, determinations, etc.:
Blandin Paper Co., 27059
Columbia Gas Transmission Corp., 27059
Eagle Gas Marketing Co., 27059–27060
KN Interstate Gas Transmission Co., 27060
Maritimes & Northeast Pipeline, L.L.C., et al., 27060–27061
Northern Natural Gas Co., 27061
SEMCOR, Inc., 27061
Texas Gas Transmission Corp., 27061
Trunkline Gas Co., 27062
Universal Resources Corp., 27062–27063
Viking Gas Transmission Co., 27063
Williston Basin Interstate Pipeline Co., 27063

Federal Housing Finance Board
NOTICES
Agency information collection activities:
Proposed collection; comment request, 27076–27077

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
Northeast Illinois Railroad Corp., 27126

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 27077
Formations, acquisitions, and mergers, 27077
Permissible nonbanking activities, 27077–27078

Federal Trade Commission
RULES
Industry guides:
Metallic watch band and jewelry industries, 27178–27222
Metallic watch band industry; CFR part removed, 27222–27223
PROPOSED RULES
Industry guides:
Jewelry, precious metals, and pewter industries, 27224–27228

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
Century Indemnity Co., 27129

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 27096–27097

Food and Drug Administration
RULES
Organization, functions, and authority delegations:
Center for Food Safety and Applied Nutrition—
Association of Official Analytical Chemists International; new name and address; correction, 27004–27005
NOTICES
Agency information collection activities:
Proposed collection; comment request, 27083–27085
Food additive petitions:
Asahi Denka Kogyo K.K., 27085
Human drugs:
Patent extension; regulatory review period determinations—
PRECOSE, 27085–27086

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Louisiana
BP Exploration & Oil Inc.; oil refinery complex, 27047
Michigan, 27047–27048
North Carolina, 27048
Ohio
BP Exploration & Oil Inc.; oil refinery complex, 27048–27049

Forest Service
NOTICES
Environmental statements; availability, etc.:
Mendocino National Forest, CA, 27044–27045

Grain Inspection, Packers and Stockyards Administration
NOTICES
Agency designation actions:
Kentucky et al., 27045
South Dakota et al., 27045–27046

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See Public Health Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 27078–27079

Health Care Financing Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 27086–27087

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Maternal and child health services—
Federal set-aside program, etc., 27087

Housing and Urban Development Department
RULES
Public and Indian housing:
Rental certificate and voucher programs (Section 8)—
Technical amendments, 27162–27163
NOTICES
Agency information collection activities:
Proposed collection; comment request, 27087–27093
Grant and cooperative agreement awards:
Housing assistance payments (Section 8)—
Service coordinators in assisted housing projects, 27093–27096

Interior Department
See Fish and Wildlife Service
See National Park Service

Internal Revenue Service
RULES
Employment taxes and collection of income taxes at source:
Nonpayroll withheld tax liabilities; reporting, 27007–27008
Income taxes:
Meals and entertainment, club dues, and spousal travel; expenses paid by employer, 27005–27007
PROPOSED RULES
Income taxes:
Low income housing credit; available unit rule, 27036–27038

International Development Cooperation Agency
See Overseas Private Investment Corporation

International Trade Administration
NOTICES
Antidumping:
Pencils, cased, from—
China, 27049
Solid urea from—
Former German Democratic Republic, 27049
Export trade certificates of review, 27049–27050

International Trade Commission
NOTICES
Import investigations:
Foam extruded PVC and polystyrene framing stock from—
United Kingdom, 27097–27098

Justice Department
See Drug Enforcement Administration
See Justice Programs Office

Justice Programs Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 27100–27101

Labor Department
See Employment and Training Administration

Management and Budget Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 27109

Maritime Administration
NOTICES
Mortgagees and trustees; applicants approval, disapproval, etc.:
First Union Bank of Connecticut, 27126

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Humanities Panel, 27104

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Occupant crash protection—
Head restraints, 27023–27025
PROPOSED RULES
Motor vehicle safety standards:
Controls and displays; Federal regulatory review, 27039–27042

National Institute of Standards and Technology
NOTICES
Grants and cooperative agreements; availability, etc.:
Advanced Technology Program (ATP), 27050–27052

National Oceanic and Atmospheric Administration
RULES
Pacific Halibut Commission, International:
Pacific halibut fisheries, 27025–27026
PROPOSED RULES
Marine mammals:
Pacific offshore fisheries take reduction plan; meeting, 27042–27043
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 27052
North Pacific Fishery Management Council, 27052
Permits:
Marine mammals, 27052–27053

National Park Service
RULES
National Park System:
Glacier Bay National Park, AK; vessel management plan, 27008–27019
NOTICES
Native American human remains and associated funerary objects:
Los Angeles County Museum of Natural History, CA; inventory, 27097

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 27104
Environmental statements; availability, etc.:
McMurdo Station, Antarctica; wastewater treatment plant, 27104–27105

National Telecommunications and Information Administration
PROPOSED RULES
Public telecommunications facilities program, 27230–27242

Natural Resources Conservation Service
NOTICES
Environmental statements; availability, etc.:
White Tank Mountains Watershed, AZ, 27046

Navy Department
NOTICES
Environmental statements; availability, etc.:
Base realignment and closure—
Fleet and Industrial Supply Center, Oakland, CA, 27056

Nuclear Regulatory Commission
PROPOSED RULES
Nuclear power reactors, standard design certifications; and combined licenses; early site permits:
Boiling water reactors—
System 80+ standard designs; certification approval, 27027–27028
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 27105–27106
Meetings:
Nuclear Waste Advisory Committee, 27108–27109
Reactor Safeguards Advisory Committee, 27109
Applications, hearings, determinations, etc.:
Carolina Power & Light Co., 27106
Madigan Army Medical Center, Takoma, WA, 27106–27107
McDaniel, Emerick S., 27108

Office of Management and Budget
See Management and Budget Office

Overseas Private Investment Corporation
NOTICES
Meetings; Sunshine Act, 27097

Presidential Documents
ADMINISTRATIVE ORDERS
Turkey; waiver of statutory restrictions to permit assistance (Presidential Determination No. 96–25 of May 16, 1996), 27001

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
NOTICES
Organization, functions, and authority delegations:
Health Resources and Services Administration, 27087

Research and Special Programs Administration
RULES
Hazardous materials:
Safety program; Federal regulatory reform, 27166–27176
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 27126–27128
Meetings:
International standards on transport of dangerous goods, 27128

Rural Housing Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 27046–27047

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 27109–27110
Self-regulatory organizations; proposed rule changes:
New York Stock Exchange, Inc., 27123–27124
Applications, hearings, determinations, etc.:
Aetna Life Insurance & Annuity Co. et al., 27110–27112
Lord Abbett Global Fund, Inc., et al., 27112–27114
Stagecoach Funds, Inc., et al., 27114–27116
THC Partners, 27116–27118
Van Kampen American Capital Comstock Fund et al., 27118–27120
Washington National Insurance Co. et al., 27120–27123

Small Business Administration
NOTICES
Applications, hearings, determinations, etc.:
Eastern Virginia Small Business Investment Corp., 27124

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Warren & Trumbull Railroad Co., 27128–27129

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
See Maritime Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 27125

Treasury Department
See Fiscal Service
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Meetings:
Education Advisory Committee, 27129

Separate Parts In This Issue

Part II
Environmental Protection Agency, 27132–27159

Part III
Department of Housing and Urban Development, 27162–27163

Part IV
Department of Transportation, Research and Special Programs Administration, 27166–27176

Part V
Federal Trade Commission, 27178–27228

Part VI
Department of Commerce, National Telecommunications and Information Administration, 27230–27242

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Presidential Determination:
No. 96–25 of May 16, 1996 27001

7 CFR
1160 27003
Proposed Rules:
911 27027
915 27027

10 CFR
Proposed Rules:
52 27027

14 CFR
71 27004
Proposed Rules:
39 (2 documents) 27028, 27030

15 CFR
Proposed Rules:
2301 27230

16 CFR
19 27222
23 27178
Proposed Rules:
23 27224

21 CFR
172 27004
173 27004
175 27004
176 27004
177 27004
178 27004
180 27004
181 27004
189 27004

22 CFR
Proposed Rules:
602 27031

24 CFR
982 27162
983 27162

26 CFR
1 27005
31 27007
602 27007
Proposed Rules:
1 27036

36 CFR
13 27008

40 CFR
9 27132
52 27019
63 27132
Proposed Rules:
52 27038
60 27038
63 27038
260 27038
261 27038
264 27038
265 27038
266 27038
270 27038
271 27038

49 CFR
171 27166
172 27166
173 27166
176 27166
177 27166
178 27166
180 27166
571 27023
Proposed Rules:
571 27039

50 CFR
301 27025
Proposed Rules:
229 27042

Federal Register
Vol. 61, No. 105
Thursday, May 30, 1996

Presidential Documents

Title 3—

The President

Presidential Determination No. 96–25 of May 16, 1996

Waiver of Statutory Restrictions To Permit Assistance to Turkey

Memorandum for the Secretary of State

Pursuant to subsection (b) of section 562 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996 (Public Law 104–107) (The "Act"), I hereby determine that it is in the national security interest of the United States to make funds available for assistance in support of Turkey notwithstanding the restriction in subsection (a) of section 562.

You are authorized and directed to transmit this determination and justification to the Congress and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, May 16, 1996.

[FR Doc. 96–13655
Filed 5–29–96; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 61, No. 105
Thursday, May 30, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1160

[DA–96–07]

Fluid Milk Promotion Order; Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Fluid Milk Promotion Order to modify the term of the chairperson of the National Fluid Milk Processor Promotion Board, effective July 1, 1996. The proposal was submitted by the National Fluid Milk Processor Promotion Board which contends the action is necessary to enable it to operate more effectively.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Eugene E. Krueger, Head, Promotion and Research Staff, USDA/AMS/Dairy Division, Room 2734, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6909.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Invitation to Submit Comments on Proposed Amendment to the Order: Issued May 2, 1996; published May 8, 1996 (61 FR 20759).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. The amendment modifies the term of the chairperson of the National Fluid Milk Processor Promotion Board and will not have an economic effect on any entity engaged in the dairy industry.

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Fluid Milk Promotion Act of 1990, as amended, authorizes the Fluid Milk Promotion Order. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1999K of the Act, any person subject to a Fluid Milk Promotion Order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and request a modification of the order or to be exempted from the order. A person subject to an order is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling of the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the forms and reporting and recordkeeping requirements that are included in the Fluid Milk Promotion Order have been approved by the Office of Management and Budget (OMB) and were assigned OMB No. 0581–0093, except for Board members' nominee information sheets that were assigned OMB No. 0505–0001.

Statement of Consideration

Section 1160.209(a) of the Fluid Milk Promotion Order currently provides that the National Fluid Milk Processor Promotion Board meet at least once a year and elect from among its members a chairperson to serve a term of one year and not more than two consecutive terms. The proposed amendment would modify, from one year to a fiscal period, the term of the chairperson and provide that such chairperson may serve not more than two consecutive fiscal periods.

Currently, a term of office for the chairperson of the National Fluid Milk Processor Promotion Board is based on an annual period, which expires on July 27, 1996, rather than a fiscal period. The Board contends that the proposed amendment will provide continuity between fiscal periods and the terms of office of the chairperson. The Board indicates that this will allow the Board to operate more effectively.

Interested parties were provided an opportunity to submit comments on the proposed amendment, published in the **Federal Register** at 61 FR 20759 on May 8, 1996; no comments were received.

Issuance of this final rule is necessary to provide continuity between fiscal periods and the terms of office of the chairperson, and to allow the Board to operate more effectively. Accordingly, the proposed amendment to the order is made final in this action.

List of Subjects in 7 CFR Part 1160

Milk, Fluid milk products, Promotion.

For the reasons set forth in the preamble, the following provision in Title 7, Part 1160, is amended as follows:

PART 1160—FLUID MILK PROMOTION ORDER

1. The authority citation for 7 CFR Part 1160 continues to read as follows:

Authority: 7 U.S.C. 6401–6417.

2. Section 1160.209(a) is revised to read as follows:

§ 1160.209 Duties of the Board.

* * * * *

(a) To meet not less than annually, and to organize and select from among its members a chairperson, who may serve for a term of a fiscal period pursuant to § 1160.113, and not more than two consecutive terms, and to select such other officers as may be necessary;

* * * * *

Dated: May 24, 1996.

Shirley R. Watkins,

Deputy Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96–13614 Filed 5–29–96; 8:45 am]
BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AWP–5]

Amendment of Class E Airspace; Ely, NV

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace area at Ely, NV. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 18 has made this action necessary. The intended effect of this action is to provide additional controlled airspace for Instrument Flight Rules (IFR) operations at Ely Airport (Yelland Field), Ely, NV.

EFFECTIVE DATE: 0901 UTC August 15, 1996.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

History

On March 11, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the Class E airspace area at Ely, NV (61 FR 9656). On April 8, 1996, the FAA issued a supplemental notice to amend this proposal to establish a Class E airspace area at Ely, NV (61 FR 15432).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposals to the FAA. No comments to the proposals were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace area at Ely, NV. The development of a GPS SIAP to RWY 18 has made this action necessary. The intended effect of this action is to provide additional controlled airspace for IFR operations at Ely Airport (Yelland Field), Ely, NV.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designation and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP NV E5 Ely, CA [Revised]

Ely VOR/DME
(Lat. 39°17'53" N, long. 114°50'54" W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of Ely VOR and within 4.3-miles northeast and 8.3 miles southwest of the Ely VOR 303° radial, extending from the Ely VOR to 16.1 miles northwest and within 3 miles each side of the Ely VOR 014° radial, extending from the Ely VOR to 12.6 miles northeast and within 3 miles each side of the Ely VOR 167° radial, extending from the Ely VOR to 7.7 miles south of the Ely VOR. That airspace extending upward from 1,200 feet above the surface within 19.1-mile radius of Ely VOR and within 6.1 miles northeast and 8.7 miles southwest of the Ely VOR 335° radial, extending from the 19.1-mile radius to 33 miles northwest of the Ely VOR and within 4.3 miles east and 6.5 miles west of the Ely VOR 014° radial, extending from the 19.1-mile radius to 21.3 miles north of the Ely VOR and within 14 miles east and 12.5 west of the Ely VOR 169° radial, extending from the 19.1-mile radius to 53 miles south of the Ely VOR.

* * * * *

Issued in Los Angeles, California, on May 17, 1996.

Thomas S. Kamman,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 96–13555 Filed 5–29–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 172, 173, 175, 176, 177, 178, 180, 181, and 189

Change of Names and Addresses; Technical Amendment; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Technical amendment; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a technical amendment that appeared in the **Federal Register** of April 2, 1996 (61 FR 14481). The document amended the regulations in 21 CFR parts 172, 173, 175, 176, 177, 178, 180, 181, and 189 to reflect a change in the name and mailing address for the Association of Official Analytical Chemists International. The document was published with some errors. This document corrects those errors.

DATES: Effective April 1, 1996.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In FR doc. 96–7919, appearing on p.14481, in the **Federal Register** of Tuesday, April 2, 1996, the following correction is made:

§§ 172, 173, 175, 176, 177, 178, 180, 181, and 189 [Corrected]

On page 14482, in the 1st column, under the "**Supplementary Information**" caption, beginning in line 12, the name and mailing address for the Association of Official Analytical Chemists International is corrected to read: "AOAC INTERNATIONAL, 481 North Frederick, suite 500, Gaithersburg, MD 20877–2417".

Dated: May 22, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–13537 Filed 5–29–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8666]

RIN 1545–AS74

Payment by Employer of Expenses for Meals and Entertainment, Club Dues, and Spousal Travel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to reimbursement and other expense allowance arrangements for expenses of business meals and entertainment that are disallowed as a deduction under section 274(n), and working condition fringe benefit treatment for expenses for club dues and spousal travel that are disallowed as a deduction under sections 274(a)(3) and 274(m)(3). The final regulations reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1993. The persons affected by the final regulations are persons who provide or receive the use of business meals and entertainment, club membership dues, or spousal travel expenses.

EFFECTIVE DATE: May 30, 1996.

FOR FURTHER INFORMATION CONTACT: Concerning regulations under sections 62 and 132, David N. Pardys, (202) 622–6040; concerning regulations under section 274, John T. Sapienza, Jr., (202) 622–4920 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On December 16, 1994, a notice of proposed rulemaking relating to payment by an employer of expenses for business meals and entertainment, club dues, and spousal travel was published in the **Federal Register** (59 FR 64909). A public hearing was held on April 14, 1995.

Written comments responding to the notice were received. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision. The significant comments on the proposed regulations and the principal revisions made in the final regulations are discussed below.

Explanation of Provisions

This Treasury decision contains final regulations to the Income Tax Regulations under sections 62(c), 132(d), and 274 of the Internal Revenue Code (Code) to reflect changes made to section 274 of the Code by sections 13209, 13210, and 13272 of OBRA (107 Stat. 469, 542). The OBRA provisions amended section 274 of the Code by (1) limiting the deductible portion of meal and entertainment expenses to 50 percent; (2) eliminating the deduction for club dues; and (3) restricting the deduction for spousal travel. The amendments to the regulations under sections 62 and 132 of the Code concern the income tax consequences to employees when their employer's (or third party payor's) deduction is disallowed by the amendments to section 274 of the Code.

Comments to the proposed regulations concerned whether payment of expenses for club dues and spousal travel by an employer exempt from taxation under subtitle A of the Internal Revenue Code were eligible for the working condition fringe exclusion. The final regulations provide that any reference in the regulations to an employer's deduction disallowed by sections 274(a)(3) or 274(m)(3) of the Code will be treated as a reference to the amount which would be disallowed as a deduction to the employer if the employer were not exempt from taxation.

Other comments suggested that the final regulation extend the section 274(e)(2) option of an employer to avoid the section 274 disallowance for payment of spousal travel to persons who pay expenses described in section 274(e)(9). To achieve consistent results for payments to independent contractors and employees with respect to spousal travel, the final regulations adopted this suggestion.

A number of comments requested clarification of the term *other individual* in section 274(m)(3). In particular, the comments asked that the term be clarified so as not to preclude the deduction for travel expenses of a business associate accompanying the taxpayer (or an officer or employee of the taxpayer) on business travel. The regulation was amended to reflect these comments.

One comment concerned the person to whom a fringe benefit is taxable. The rules concerning to whom a fringe benefit is taxable are set forth in § 1.61–21(a)(4). For rules concerning volunteers, see § 1.132–5(r).

Several comments involved the amount of the employer's disallowed deduction when the expenses of a spouse, dependent, or other individual accompanying an employee on a noncommercial flight qualify as a working condition fringe benefit. This issue is under further consideration. In addition, other comments requested clarification of what constitutes a deductible expenditure for spousal travel under the general rule of section 162(a). The rules for deducting travel expenses of a spouse are in § 1.162–2(c).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information. The principal authors of these regulations are David N. Pardys, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), and John T. Sapienza, Jr., Office of the Assistant Chief Counsel (Income Tax and Accounting), IRS. Personnel from other offices of the IRS and Treasury Department also participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. In § 1.62–2, paragraph (h)(1) is amended by adding a second sentence at the end of the paragraph to read as follows:

§ 1.62–2 Reimbursements and other expense allowance arrangements.

* * * * *

(h) * * * (1) * * * If an arrangement provides advances, allowances, or reimbursements for meal and entertainment expenses and a portion of the payment is treated as paid under a nonaccountable plan under paragraph (d)(2) of this section due solely to section 274(n), then notwithstanding paragraph (h)(2)(ii) of this section, these nondeductible amounts are neither treated as gross income nor subject to withholding and payment of employment taxes.

* * * * *

Par. 3. In § 1.132–5, paragraphs (s) and (t) are added to read as follows:

§ 1.132–5 Working condition fringes.

* * * * *

(s) *Application of section 274(a)(3)*—(1) *In general.* If an employer's deduction under section 162(a) for dues paid or incurred for membership in any club organized for business, pleasure, recreation, or other social purpose is disallowed by section 274(a)(3), the amount, if any, of an employee's working condition fringe benefit relating to an employer-provided membership in the club is determined without regard to the application of section 274(a) to the employee. To be excludible as a working condition fringe benefit, however, the amount must otherwise qualify for deduction by the employee under section 162(a). If an employer treats the amount paid or incurred for membership in any club organized for business, pleasure, recreation, or other social purpose as compensation under section 274(e)(2), then the expense is deductible by the employer as compensation and no amount may be excluded from the employee's gross income as a working condition fringe benefit. See § 1.274–2(f)(2)(iii)(A).

(2) *Treatment of tax-exempt employers.* In the case of an employer exempt from taxation under subtitle A of the Internal Revenue Code, any reference in this paragraph (s) to a deduction disallowed by section 274(a)(3) shall be treated as a reference to the amount which would be disallowed as a deduction by section 274(a)(3) to the employer if the employer were not exempt from taxation under subtitle A of the Internal Revenue Code.

(3) *Examples.* The following examples illustrate this paragraph (s):

Example 1. Assume that Company *X* provides Employee *B* with a country club membership for which it paid $20,000. B substantiates, within the meaning of paragraph (c) of this section, that the club was used 40 percent for business purposes. The business use of the club (40 percent) may be considered a working condition fringe benefit, notwithstanding that the employer's deduction for the dues allocable to the business use is disallowed by section 274(a)(3); if *X* does not treat the club membership as compensation under section 274(e)(2). Thus, *B* may exclude from gross income $8,000 (40 percent of the club dues, which reflects *B*'s business use). *X* must report $12,000 as wages subject to withholding and payment of employment taxes (60 percent of the value of the club dues, which reflects *B*'s personal use). *B* must include $12,000 in gross income. *X* may deduct as compensation the amount it paid for the club dues which reflects *B*'s personal use provided the amount satisfies the other requirements for a salary or compensation deduction under section 162.

Example 2. Assume the same facts as *Example 1* except that Company *X* treats the $20,000 as compensation to *B* under section 274(e)(2). No portion of the $20,000 will be considered a working condition fringe benefit because the section 274(a)(3) disallowance will apply to *B*. Therefore, *B* must include $20,000 in gross income.

(t) *Application of section 274(m)(3)*—(1) *In general.* If an employer's deduction under section 162(a) for amounts paid or incurred for the travel expenses of a spouse, dependent, or other individual accompanying an employee is disallowed by section 274(m)(3), the amount, if any, of the employee's working condition fringe benefit relating to the employer-provided travel is determined without regard to the application of section 274(m)(3). To be excludible as a working condition fringe benefit, however, the amount must otherwise qualify for deduction by the employee under section 162(a). The amount will qualify for deduction and for exclusion as a working condition fringe benefit if it can be adequately shown that the spouse's, dependent's, or other accompanying individual's presence on the employee's business trip has a bona fide business purpose and if the employee substantiates the travel within the meaning of paragraph (c) of this section. If the travel does not qualify as a working condition fringe benefit, the employee must include in gross income as a fringe benefit the value of the employer's payment of travel expenses with respect to a spouse, dependent, or other individual accompanying the employee on business travel. See §§ 1.61–21(a)(4) and 1.162–2(c). If an employer treats as compensation under section 274(e)(2) the amount paid or incurred for the travel expenses of a spouse, dependent, or other individual accompanying an employee, then the expense is deductible by the employer as compensation and no amount may be excluded from the employee's gross income as a working condition fringe benefit. See § 1.274–2(f)(2)(iii)(A).

(2) *Treatment of tax-exempt employers.* In the case of an employer exempt from taxation under subtitle A of the Internal Revenue Code, any reference in this paragraph (t) to a deduction disallowed by section 274(m)(3) shall be treated as a reference to the amount which would be disallowed as a deduction by section 274(m)(3) to the employer if the employer were not exempt from taxation under subtitle A of the Internal Revenue Code.

Par. 4. The last sentence of § 1.274–1 is revised to read as follows:

§ 1.274–1 Disallowance of certain entertainment, gift and travel expenses.

* * * For specific provisions with respect to the deductibility of expenditures: for an activity of a type generally considered to constitute entertainment, amusement, or recreation, and for a facility used in connection with such an activity, as well as certain travel expenses of a spouse, etc., see § 1.274–2; for expenses for gifts, see § 1.274–3; for expenses for foreign travel, see § 1.274–4; for expenditures deductible without regard to business activity, see § 1.274–6; and for treatment of personal portion of entertainment facility, see § 1.274–7.

Par. 5. Section 1.274–2 is amended as follows:

1. The section heading for § 1.274–2 is revised.
2. In paragraph (c)(6), a second sentence is added at the end of the paragraph.
3. The paragraph heading for paragraph (f)(2)(i) is revised.
4. Paragraph (f)(2)(iii) is revised.
5. Paragraph (g) is added.

The revised and added provisions read as follows:

§ 1.274–2 Disallowance of deductions for certain expenses for entertainment, amusement, recreation, or travel.

* * * * *

(c) * * *

(6) * * * This paragraph (c)(6) applies to club dues paid or incurred before January 1, 1987.

* * * * *

(f) * * *

(2) * * *

(i) Business meals and similar expenditures paid or incurred before January 1, 1987—* * *

* * * * *

(iii) *Certain entertainment and travel expenses treated as compensation*—(A) *In general.* Any expenditure by a taxpayer for entertainment (or for use of a facility in connection therewith) or for travel described in section 274(m)(3), if an employee is the recipient of the entertainment or travel, is not subject to the limitations on allowability of deductions provided for in paragraphs (a) through (e) of this section to the extent that the expenditure is treated by the taxpayer—

(*1*) On the taxpayer's income tax return as originally filed, as compensation paid to the employee; and

(*2*) As wages to the employee for purposes of withholding under chapter 24 (relating to collection of income tax at source on wages).

(B) *Expenses includible in income of persons who are not employees.* Any expenditure by a taxpayer for entertainment (or for use of a facility in connection therewith), or for travel described in section 274(m)(3), is not subject to the limitations on allowability of deductions provided for in paragraphs (a) through (e) of this section to the extent the expenditure is includible in gross income as compensation for services rendered, or as a prizer or award under section 74, by a recipient of the expenditure who is not an employee of the taxpayer. The preceding sentence shall not apply to any amount paid or incurred by the taxpayer if such amount is required to be included (or would be so required except that the amount is less that $600) in any information return filed by such taxpayer under part III of subchapter A of chapter 61 and is not so included. See section 274(e)(9).

(C) *Example.* The following example illustrates the provisions this paragraph (f):

Example. If an employer rewards the employee (and the employee's spouse) with an expense paid vacation trip, the expense is deductible by the employer (if otherwise allowable under section 162 and the regulations thereunder) to the extent the employer treats the expenses as compensation and as wages. On the other hand, if a taxpayer owns a yacht which the taxpayer uses for the entertainment of business customers, the portion of salary paid to employee members of the crew which is allocable to use of the yacht for entertainment purposes (even though treated on the taxpayer's tax return as compensation and treated as wages for withholding tax purposes) would not come within this exception since the members of the crew were not recipients of the entertainment. If an expenditure of a type described in this subdivision properly constitutes a dividend paid to a shareholder or if it constitutes unreasonable compensation paid to an employee, nothing in this exception prevents disallowance of the expenditure to the taxpayer under other provisions of the Internal Revenue Code.

* * * * *

(g) *Additional provisions of section 274—travel of spouse, dependent or others.* Section 274(m)(3) provides that no deduction shall be allowed under this chapter (except section 217) for travel expenses paid or incurred with respect to a spouse, dependent, or other individual accompanying the taxpayer (or an officer or employee of the taxpayer) on business travel, unless certain conditions are met. As provided in section 274(m)(3), the term *other individual* does not include a business associate (as defined in paragraph (b)(2)(iii) of this section) who otherwise meets the requirements of sections 274(m)(3)(B) and (C).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: March 26, 1996.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 96–13298 Filed 5–29–96; 8:45 am]

BILLING CODE 4830–01–P

26 CFR Parts 31 and 602

[TD 8672]

RIN 1545–AT86

Reporting of Nonpayroll Withheld Tax Liabilities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the reporting of nonpayroll withheld income taxes under section 6011 of the Internal Revenue Code. The final regulations require a person to file Form 945, Annual Return of Withheld Federal Income Tax, only for a calendar year in which the person is required to withhold Federal income tax from nonpayroll payments.

EFFECTIVE DATE: These regulations are effective May 30, 1996.

FOR FURTHER INFORMATION CONTACT: Vincent G. Surabian, 202–622–6232 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1413. Responses to this collection of information are required by the IRS to monitor compliance with the Federal tax rules related to the reporting and deposit of nonpayroll withheld income taxes.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Estimates of the reporting burden in these final regulations are reflected in the burden of Form 945.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On October 16, 1995, final and temporary regulations (TD 8624) relating to the reporting of nonpayroll withheld income taxes under section 6011 were published in the **Federal Register** (60 FR 53509). A notice of proposed rulemaking (IA–30–95) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (60 FR 53561).

The IRS received no written comments responding to the notice. Accordingly, the regulations proposed by IA–30–95 are adopted as proposed with a minor editorial change.

Explanation of Provisions

These final regulations remove the requirement that, once a person files a Form 945 for a calendar year, the person must file a Form 945 every subsequent year until the person files a final return. Under these final regulations, a person must file a Form 945 only for a calendar year in which the person is required to withhold Federal income tax from nonpayroll payments.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue

Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information. The principal author of these regulations is Vincent G. Surabian, Office of the Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 31 and 602 are amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 is amended by removing the citation for "Section 31.6011(a)–4T" as follows:

Authority: 26 U.S.C. 7805 * * *.

Par 2. Section 31.6011(a)–4 is amended by revising paragraph (b) to read as follows:

§ 31.6011(a)–4 Returns of income tax withheld.

* * * * *

(b) *Withheld from nonpayroll payments.* Every person required to withhold tax from nonpayroll payments for calendar year 1994 must make a return for calendar year 1994 and for any subsequent calendar year in which the person is required to withhold such tax until the person makes a final return in accordance with § 31.6011(a)–6. Every person not required to withhold tax from nonpayroll payments for calendar year 1994 must make a return for the first calendar year after 1994 in which the person is required to withhold such tax and for any subsequent calendar year in which the person is required to withhold such tax until the person makes a final return in accordance with § 31.6011(a)–6. Form 945, Annual Return of Withheld Federal Income Tax, is the form prescribed for making the return required under this paragraph (b). Nonpayroll payments are—

(1) Certain gambling winnings subject to withholding under section 3402(q);

(2) Retirement pay for services in the Armed Forces of the United States subject to withholding under section 3402;

(3) Certain annuities as described in section 3402(o)(1)(B);

(4) Pensions, annuities, IRAs, and certain other deferred income subject to withholding under section 3405; and

(5) Reportable payments subject to backup withholding under section 3406.

* * * * *

§ 31.6011(a)–4T [Removed]

Par. 3. Section 31.6011(a)–4T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 5. Section 602.101, paragraph (c) is amended in the table by removing the entry "31.6011(a)–4T....1545–1413".

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: April 5, 1996.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 96–13398 Filed 5–29–96; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

RIN 1024–AC05

Glacier Bay National Park, Alaska: Vessel Management Plan Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is revising the regulations, including vessel quotas, that were established to protect the endangered humpback whale and other resources within Glacier Bay National Park and Preserve. The regulations authorize a modest increase in cruise ship, charter boat and private boat use, to be offset by specific mitigation measures. The regulations do not authorize an increase in the maximum number of motor vessels permitted to use the bay on any given day.

Subject to the existing maximum daily limit of two cruise ships per day, the regulations authorize an immediate 30-percent increase in cruise ship traffic during the 1996 and 1997 summer seasons (June 1 through August 31). Additionally, but contingent upon the completion of studies demonstrating that a further increase in cruise ship traffic would be consistent with protection of the values and purposes of Glacier Bay National Park and Preserve, the regulations could allow up to an additional 42-percent increase (*i.e.*, a total increase of 72% from existing 1995 levels) in cruise ship traffic beginning with the 1998 summer season. For each summer season thereafter, the regulations authorize the NPS to adjust the number of cruise ship entries, subject to the maximum daily limit of two vessels, based on available scientific and other information and applicable authorities. NPS has also revised current restrictions on seasonal entries and use-days for charter and private boats to authorize an 8-percent increase in charter boat traffic and a 15 percent increase in private boat traffic beginning with the 1996 summer season.

The regulations also extend and codify park compendium vessel regulations for the protection of park resource values. Several additional measures, such as the requirement for air, water and underwater noise pollution minimization plans from cruise ships, mitigate the potential resource impacts associated with the increase in vessel traffic. Finally, to protect park resource values and maintain opportunities for the safe use of kayaks, the regulations close six specified areas to motor vessels for varying periods.

EFFECTIVE DATE: This rule is effective on May 30, 1996.

FOR FURTHER INFORMATION CONTACT: Russ Wilson, Alaska Desk Officer, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Telephone 202–208–4874.

SUPPLEMENTARY INFORMATION:

Public Participation on the Proposed Rule

The National Park Service published proposed rules as well as a Notice of Availability of the Vessel Management Plan/Environmental Assessment (VMP/EA) on June 5, 1995 (60 FR 29523). The 60 day period for public comment closed on August 4, 1995, but was subsequently reopened from August 10, 1995 (60 FR 40798), until August 25, 1995, to accommodate several commenters who had requested an extension. NPS received 427 timely comments. NPS held six open houses/public hearings on the VMP/EA and proposed regulations in Anchorage, Juneau, Gustavus, Hoonah, Pelican, and Elfin Cove. All meetings were taped and transcriptions of the tapes and written comments accepted at the hearings have been placed in the park file. The National Park Service has carefully considered each of these comments and has adopted several suggestions made by the commenters. Below is a summary of the comments and NPS's responses.

Summary of Comments and Decision

The NPS requested comments on the six alternatives considered in the VMP/EA. The alternatives included an array of vessel management options and provided varying levels of protection for sensitive resources.

Alternative 1 (no action) would not change existing vessel management. Vessel management would continue in accordance with existing regulations and the park compendium.

Alternative 2 would maintain existing levels of vessel entries for cruise ships, tour boats, and charter and private boats into Glacier Bay, while maximizing wilderness recreation opportunities through the seasonal closure of five designated wilderness waters to motor vessels.

Alternative 3 would increase seasonal vessel entry quotas for cruise ships by 30 percent, for charter boats by 8 percent and use days for private boats by 34 percent. Tour boat quotas would not change. The seasonal closure of five designated wilderness waters to motor vessels would enhance wilderness recreation opportunities.

Alternative 4 would optimize resource protection and wilderness recreation in Glacier Bay. Seasonal vessel entries would be reduced for cruise ships (−14%), tour boats (−22%), charter boats (−17%), and private boats (−17%). The seasonal closure of five designated wilderness waters to motor vessels would enhance wilderness recreation opportunities.

Alternative 5 (original proposed action) would optimize visitor-use opportunities in Glacier Bay by raising seasonal cruise ship entry quotas by 72 percent; the daily limit of two ships per day would continue. Daily limits of three tour boats, six charter boats and 25 private boats would continue. Seasonal entries and use-days for tour boats, charter boats, and private boats would not change from existing levels. In the preamble to the proposed regulations, however, the NPS also solicited comments on including an 8 percent increase in seasonal entries and use-days for charter vessels and a 15 percent increase in seasonal entries and use-days for private vessels. The seasonal closure of five designated wilderness waters to motor vessels would enhance wilderness recreation opportunities.

Alternative 6 would provide additional opportunities for motorized recreation. Seasonal vessel entries would be increased for cruise ships (72%), charter boats (8%) and private boats (15%). Tour boat seasonal use-days would not change. The seasonal closure of five designated wilderness waters to motor vessels would enhance wilderness recreation opportunities.

The majority of commenters (about 85%) were opposed to Alternative 5, which included a 72-percent increase in cruise ship entries. Commenters were concerned that air quality, water quality, biological resources and visitor experience would be compromised by cruise ship increases. The majority of commenters (about 85%) favored Alternative 4, which proposed increased resource protection, additional wilderness recreation and decreased vessel entries. The majority of commenters (about 90%) wrote to support the proposed vessel closures or other proposed mitigation measures.

Based on public comment received on the VMP/EA and the accompanying regulations, the NPS has modified Alternative 5's (the proposed action) vessel quotas, vessel operating requirements and special-use area closures and restrictions. The modified action responds to the public's concern for the Glacier Bay environment and a more appropriate balance of vessel use by reducing the proposed cruise ship quota increase, while accommodating additional opportunities for visitor use of the park. The modified alternative includes modest increases for private and charter vessels, providing additional opportunities for visitor use of the park and the different types of visitor experiences that these vessels provide. Because most charter vessels are locally based, the increase in charter vessel use will also provide direct economic benefits to local communities.

Under the modified alternative, in 1996, seasonal entry quotas for cruise ships will increase by 30 percent; however, the daily limit of two ships per day will continue. On or before October 1, 1997, the superintendent of Glacier Bay National Park and Preserve is required to determine, with the approval of the NPS director, whether studies have been completed and sufficient scientific and other information have been developed to support an increase in cruise ship entries for the 1998 summer season (June 1 through August 31). This determination requires a finding that any seasonal increase in cruise ship entries would be consistent with protection of the values and purposes of Glacier Bay National Park and Preserve. Any increase would remain subject to the maximum daily limit of two vessels. NPS would publish a determination to increase cruise ship entries in the **Federal Register**, with an opportunity for public comment. By October 1 of 1998, and of each year thereafter, the superintendent must determine, with the approval of the director, the appropriate number of cruise ship entries for the following summer season (June 1 through August 31), based on available scientific and other information and applicable authorities and subject to the maximum daily limit of two vessels. NPS would publish any determination to revise cruise ship entries (either to increase or decrease) in the **Federal Register**, with an opportunity for public comment.

The daily limit of three tour boats per day will not change. Daily limits of six charter boats and 25 private boats will continue. The NPS is modifying current restrictions on seasonal entries and use-days for charter and private boats to provide an 8-percent increase in seasonal entries and use-days for charter boats and a 15-percent increase in seasonal entries and use-days for private vessels. However, NPS recognizes that, because of the maneuverability of these smaller vessels and the challenge of achieving compliance with protective regulations, the increase in traffic from these vessels could result in impacts to park resources. Consequently, the private and charter vessel increases are authorized contingent upon the continued success of mitigation measures such as an educational orientation program for small vessel operators, favorable results from the compliance monitoring program, continued research on potential impacts to park resources, and—fundamental to all these measures—adequate resources for implementation. NPS intends to evaluate the small vessel programs annually.

Vessel operating requirements and the special-use area closures and restrictions included with this alternative will provide additional protection for sensitive resource values and increase the range and quality of visitor experience opportunities. The modified proposed action includes mitigating measures to further reduce the magnitude of effects of vessel and visitor use. These include an orientation/educational program; air, water, and underwater noise pollution control strategies; and an expanded park research, inventory and monitoring program. This combination of measures will facilitate monitoring and mitigate potential environmental effects resulting from increased vessel quotas.

Analysis of Comments

Research

All comments received that pertain to research stressed the need for additional research and monitoring of vessel traffic impacts to Glacier Bay. Several of these comments suggested that the study area include adjacent Icy Strait waters.

The NPS is formulating a comprehensive research, inventory and monitoring plan to assess the effects of vessel traffic on the values and purposes of Glacier Bay National Park and Preserve. The park's research, inventory and monitoring program will focus on obtaining baseline information on the coastal resources and physical characteristics of Glacier Bay; identifying and understanding the effects of vessel traffic on air quality, marine mammals, birds, visitor-use enjoyment and the economy of the region; and determining whether management strategies and mitigation measures are effectively protecting park purposes and values.

Beginning in 1996, NPS will expand research emphases. In addition to ongoing humpback whale and harbor seal monitoring, NPS studies will focus on behavioral changes of marine mammals in relation to vessels, and the relationship between critical prey species and marine mammal and bird populations and distribution. NPS will also develop protocols for monitoring vessel traffic distribution. These studies may encompass areas beyond the boundaries of the park, including Icy Strait waters, in cooperation with state and federal agencies. NPS management policy directs that parks having migratory species will ensure the preservation of their populations and their habitats inside the park and will cooperate whenever possible with others to ensure the preservation of their habitats outside the park. Management actions may include monitoring of those species outside the park to develop data for other agencies, such as the U.S. Fish and Wildlife Service and National Marine Fisheries Service. *See,* Management Policies, U.S. Department of the Interior, National Park Service, Chapter 4:7, Management of Migratory Animals (1988).

Research will also emphasize the use of new technologies to monitor underwater noise and air pollution emissions in partnership with other agencies, non-profit environmental organizations, universities and possibly the military. This type of research direction has cruise ship and tour boat operator support.

In addition to expanding studies in 1996, NPS will develop a research, inventory and monitoring program for the park within one year. It will stipulate research and protection actions NPS will undertake to ensure that environmental effects do not exceed acceptable levels. This program will enhance the scientific basis for future adjustments in vessel quotas. NPS will make an annual report, detailing efforts, funding levels and personnel allocated to VMP actions available to the public.

One commenter noted that, in implementing the VMP requirement that cruise ships assess the short and long-term impacts of their activities on Glacier Bay resources through a research and monitoring program, it would be inappropriate for each cruise ship to assess the impact of only its activities, as a single cruise ship may be able to conclude that the impacts of its specific operation were negligible even though cumulative impacts may not be. Additionally, if each cruise ship performs its own assessment, NPS could well receive inconsistent studies based on different methodologies and assumptions. The final rule clarifies that, as the commenter suggested, these assessments will be performed pursuant to a comprehensive NPS research, inventory and monitoring plan. Several commenters expressed concern that motor vessel closures would disrupt or hamper research. However, NPS can allow approved research activities pursuant to the administrative exception contained in the regulations.

Humpback Whales and Whale Waters

Numerous commenters suggested that all five areas proposed as whale waters in Alternative 3 should receive that designation to provide maximum protection for whales in these key habitats. On the other hand, a few commenters thought NPS should impose whale water restrictions only when whales are present because the restrictions are a hardship on motor vessel users. One commenter objected that the proposed regulations would not retain the requirement that NPS consult with other federal and state agencies and the public before designating whale waters in Glacier Bay.

The final regulations designate four of the five areas considered for designation as seasonal whale waters on a permanent basis. The final regulations also allow the superintendent to designate any area of Glacier Bay as temporary whale waters if whales concentrate in that area. Whale waters restrictions that limit vessels to one mile from shore or mid-channel will become effective for lower bay waters on May 15, as proposed. This is two weeks earlier than currently imposed. Implementing a mid-channel course earlier in the spring leaves near-shore habitat unoccupied by boats so that whales may move into the park through the narrow mouth of the bay with less disturbance. However, the NPS believes that imposing a speed limit automatically in mid-May, a measure which was more objectionable to boater/commenters than was the mid-channel (one mile from shore) requirement, could result in a loss of credibility and, therefore, reduced compliance if boaters do not see whales in the area. The NPS believes that the public will be better served if these speed restrictions can be imposed promptly when they are needed, and lifted when they are not. This approach requires that the superintendent have the flexibility to act quickly, as this rulemaking provides.

One commenter expressed concern that expanding whale waters, along with the mid-channel and one-mile-from-shore restriction for vessels, would preclude people from seeing wildlife along the shorelines. The NPS acknowledges that, while in whale waters, the regulations would prohibit a vessel within a mile from shore from motoring parallel to the shore. However, motor vessels may travel perpendicularly (by the most direct line) to shore through whale waters to view or photograph wildlife (other than whales) or land on an otherwise unrestricted shore to camp or participate in any other park activity.

Seals

One comment suggested closing Johns Hopkins Inlet during seal pupping from an imaginary line from Jaw Point to Topeka Glacier and south. The NPS has adopted a line running due west from Jaw Point that closes virtually the same area and still provides a view of Johns Hopkins Glacier. Additionally, Johns Hopkins Inlet (south of the line running due west of Jaw Point) will remain closed to cruise ships from July 1 through August 31, to protect significant concentrations of molting harbor seals from disturbance by the increase in cruise ship traffic.

Sea Birds

In response to comments, including one from the U.S. Fish and Wildlife Service (FWS) that direct observations by FWS biologists at Glacier Bay and elsewhere indicate that a 100-foot closed area around seabird nesting colonies is inadequate to prevent disturbance to birds at nesting colonies, NPS has instead adopted a 100-yard closure, except at the southern one-half of South Marble Island where a 50-yard closure will apply.

Many visitors on tour boats in Glacier Bay National Park consider viewing birds at the South Marble Island a highlight of their trip. This bird viewing has caused no apparent changes in the bird population on this island. The excitement people feel on seeing a puffin, kittiwake, or pigeon guillemot can, however, change the way they feel about birds and the places where they can be found. This change can translate into conservation and resource protection for parks where similar wildlife exists. Prior to 1991, there was no restriction on approaching the South Marble Island birds; subsequently, NPS established a 100-foot distance. There have been no apparent changes to the bird population on this island. With this rulemaking, NPS is establishing a 50-yard distance for South Marble Island to provide the birds additional protection but still accommodate the visitor's ability to view the birds.

Air Quality

Most of the comments received concerning air quality expressed concern that the NPS was not doing enough to ensure good air quality at Glacier Bay. In order to protect the air quality of Glacier Bay National Park and Preserve, the NPS has taken four significant steps: (1) the NPS has adopted marine vessel visible emission standards; (2) the NPS will require every cruise ship to prepare and abide by an NPS-approved pollution minimization plan to assure that, to the fullest extent possible, cruise ship companies permitted to travel within the park apply the industry's best approaches toward pollution minimization; (3) the NPS will consider a cruise ship company's demonstrated ability to minimize pollution as a strongly weighted preference for entry permits subject to competitive allocation; and (4) the NPS has dropped a competitive preference that favored a cruise ship company whose route of travel included both the Tarr Inlet and Johns Hopkins Inlet. With regard to this last step, only a Tarr Inlet stop will receive preference, thereby ensuring that park visitors aboard the ship have an opportunity to see superlative sights in Glacier Bay without the ship's slowing down and turning an additional time, a maneuver that tends to increase stack emissions and concentrate them in one area. The NPS will increase its efforts to monitor and study air quality as part of its comprehensive research program and will amend the standards if amendments are required to protect the values and purposes of Glacier Bay National Park and Preserve.

One commenter pointed out that just prior to the publication of the proposed regulations, the State of Alaska revised its air quality regulations by relaxing the opacity standards for vessels in ports. Since neither the state nor the NPS considers Glacier Bay a "port," the regulations which the NPS adopts today are substantially the same as current state regulations applicable to Glacier Bay. If the State of Alaska adopts more restrictive (i.e., protective of park environmental values) laws and regulations concerning visible emissions, NPS will incorporate such provisions in these regulations.

Water Pollution Control Strategies

In response to comments, NPS will implement pollution control strategies to mitigate the increase in vessel traffic with the additional resource protection requirement that cruise ships develop oil spill vessel response plans (VRP). Cruise ship operators must submit VRP for review and approval prior to conducting operations in Glacier Bay National Park. The VRP must meet planning and response standards similar to those identified in U.S. Coast Guard regulations for tank ships (33 CFR Part 155). The VRP will in part develop alternate response strategies for most probable and worst case spill scenarios, and will identify personnel, equipment and other spill response resources that can be timely deployed in response to a spill event. Recent cruise ship groundings in Alaska that resulted in oil spills have highlighted the need for advance planning and preparation, particularly since there is no pollution response contractor in Southeast Alaska that can provide a reasonably timely response to a spill event. The NPS will work with the cruise ship industry to develop VRPs that protect park resources while providing flexibility to the industry to meet established planning and response standards and criteria.

Underwater Noise Reduction

To mitigate the effects of underwater noise in Glacier Bay, the NPS will require every cruise ship to prepare and abide by an NPS-approved underwater noise pollution minimization plan. The NPS will also consider a cruise ship company's demonstrated ability to minimize underwater noise pollution as a strongly weighted preference for entry permits subject to competitive allocation. Several cruise ship industry commenters were critical of the NPS proposal that competitively allocates entry permits, granting a preference to vessels that can demonstrate minimization of air and underwater noise pollution. These commenters questioned whether a sufficient scientific link exists, for example, between underwater noise and humpback whales or other marine mammals. They also questioned the ability of the industry to respond where there are no established standards. However, another commenter suggested that NPS should use competitive allocation of entry permits to challenge companies to devise effective strategies to minimize their impacts.

Ensuring air and water quality in national parks is fundamental to the congressionally mandated mission of the NPS to conserve scenery, natural objects and wildlife "unimpaired." Air quality studies of cruise ships in Glacier Bay demonstrate an obvious air pollution impact. *See,* Vequist, Frequency of Cruise Ship Stack Emissions in Glacier Bay (NPS VMP/EA p. 3–22). The NPS also believes that studies have established a sufficient scientific connection concerning vessel noise and changes in whale behavior to warrant a preference for quiet-running ships. *See,* NMFS Biological Opinion, February 19, 1993 (NPS VMP/EA Appendix D, p. 10–12). For the most part, NPS has established a goal and left industry the flexibility and incentive to figure out the best and most economic way to achieve it.

Cruise Ship, Tour Vessel and Charter Vessel Definitions

The regulations amend the existing definition, which is based solely on the United States System of classification (100 gross tons, U.S. System), by adopting an additional definition of vessel categories which references the International Convention System. United States (U.S.)-flagged vessels are classified under the U.S. System, foreign-flagged vessels under the International Convention System. Since all of the cruise ships and some of the tour boats operating in Glacier Bay National Park are foreign-flagged vessels, the regulations will now reference both tonnage systems in the definitions. Although the different systems are not directly comparable, NPS intends the two measures in the definition to be roughly equivalent and to maintain the status quo.

One cruise ship company asked that the 2,000 gross tons (GT) threshold tonnage (International Convention System) demarcating the line between tour vessels and cruise ships be raised to 20,000 GT. This recommendation, however, would substantially change the current demarcation between cruise ships and tour vessels and consequently allow substantial increases in the size of

tour vessels. The potential environmental consequences of this change have not been studied. More information on certain environmental impacts may become available in the future, as a result of recently initiated vessel acoustics studies with Cornell University and similar research which the park hopes to undertake with the U.S. Navy. Until then, the NPS believes that the 2,000 GT limit (International Convention System) should not be increased until there are specific findings, based on research, monitoring and other relevant information, that adverse consequences would not result.

In response to a comment, NPS has modified the definition of "charter vessel" slightly to allow use of a charter vessel to provide scheduled kayak and camper drop-off and pick-up service. Due in part to size, and in part to keeping continuity in tour presentations, tour vessels can only provide ferry service to a limited number of locations. By allowing charter vessels to augment this service, the NPS hopes to better disperse kayak and shore-based recreational impacts.

In response to another comment, NPS has modified the definition of "tour vessel" in the proposed regulation to remain similar to the existing regulations, with respect to including smaller vessels operating on a regularly scheduled route. Omission of this portion of the existing regulations from the proposed regulation was an error. Continued omission would have the unintended effect of excluding tour vessels operating under current NPS concession permits. The NPS will continue to determine that a proposed visitor service is both necessary and appropriate prior to permitting any smaller vessel as a tour boat.

Cruise Ship Entries

Public comment was overwhelmingly (approximately 90 percent) opposed to an immediate 72-percent increase in cruise ship traffic. As one commenter noted, a modest increase in cruise ship traffic is more consistent with the 1993 NMFS Biological Opinion, which urges the NPS to take a conservative approach in vessel increases. This rulemaking adopts such an approach. The several mitigation measures—including air, water and underwater noise pollution mitigation plans; closures of areas to motorized use; increased efforts to educate the visiting public and increased enforcement actions; plus the commitment to a focused research plan for the bay—should help protect against potential impacts of the vessel increases. The NPS is additionally mindful of its obligation to reduce entries should the additional traffic affect humpback whales, Steller sea lions, other wildlife, or any other values or purposes of Glacier Bay National Park and Preserve. NPS management policies concerning public use state that, although restrictions on recreational use should be limited to the minimum necessary to protect visitor safety and enjoyment, such restrictions may be required—

> when, in the judgment of the superintendent [a use or activity's] occurrence, continuation, or expansion would result in the derogation of the values or purposes for which the park was established, interfere significantly with the enjoyment of park resources and values by other visitors or be inconsistent with the park's enabling legislation or proclamation.

Management Policies, U.S. Department of the Interior, National Park Service, Chapter 8:2, Management of Recreational Use (1988).

This rulemaking requires vessels increases to be considered and implemented incrementally, as suggested by several commenters. With respect to the modest increases in vessel traffic authorized by this final rule for the 1996 and 1997 summer seasons, the NPS believes that the rule provides sufficient mitigation and other protective measures to assure protection of Glacier Bay resources and values. However, with respect to any future increases beginning in 1998, the NPS will examine research, inventory and monitoring results from the planned new studies in addition to existing scientific knowledge, and determine in the context of applicable authorities (*e.g.*, 16 U.S.C. 1, *et seq.*) whether further increases are appropriate. In this regard, NPS Management Policies direct that to the extent practicable, NPS should base its public use limits on the results of scientific research and other available support data. When, as here, that use has the potential to impact park purposes and values, including a threatened species and an endangered species—and virtually all conceivable mitigation measures have been implemented—a finding to expand a public use would require specific findings of no adverse impact to those resources based on research, inventory, monitoring, and other relevant information. If circumstances arise where scientific and other information is lacking, ambiguous, or inconclusive, the superintendent must err on the side of protecting resources. This rulemaking ensures that the NPS has the discretion to adjust cruise ship entries should an adjustment be advisable or required to protect the park's resources and values.

Several commenters noted that additional entries into Glacier Bay may lead to cruise ship companies dropping other Alaska ports from their schedule to the detriment of the economy in those communities. The NPS acknowledges that there may be some schedule changes; however, by adopting a more modest increase in entries at the present time and allowing for potential incremental increases later, disruption should be minimal as the industry and ports adjust.

A number of commenters also noted critically that cruise ships are generally foreign-built, foreign-owned, foreign-flagged vessels, and employ mostly foreign crew. Although this observation is true, the NPS has focused this rule on its statutory mission, *i.e.*, assuring protection of park resources and values and providing for their enjoyment so as to "leave them unimpaired for the enjoyment of future generations." 16 U.S.C. 1.

Other comments suggested that the cruise ship evaluation process should include not only environmental criteria, but criteria concerning whether people are traveling on a ship for reasons that relate to the park (as opposed to other unrelated activities). In the process of competitively awarding cruise ship entries, the NPS has and will continue to consider the extent to which a company's cruise itinerary and on-board passenger activities focus on park purposes.

One commenter wrote to suggest that the park should recover more substantial fees from cruise ship companies. Under present law, the franchise fees collected from concessionaires at national parks generally go to the U.S. Treasury. The NPS supports legislative proposals pending before Congress that would direct increased concessionaire and admission fee revenues directly to the parks for investment in their long-term care.

Tour, Charter and Private Vessel Entries

Commenters' suggestions ranged from calls for no additional entries in these categories to calls for increases. Over the last three summer seasons, Glacier Bay park staff have had to turn away an increasing number of private boaters, with the trend expected to continue. The final rule establishes a 15-percent increase in private vessel seasonal entries and use-days which will accommodate more visitor-use opportunities in early June and late August, periods when the daily-use limit of 25 private vessels has not been filled in the past. The final rule also establishes a modest increase in charter vessel seasonal entries and use-days (8-percent). This action improves visitor

opportunities for this type of park experience, and at the same time tends to benefit the economies of local communities. As with other vessel categories the final rule does not increase the daily limit of charter vessels permitted in Glacier Bay (*i.e.*, six per day). The regulations that NPS published as part of the proposed rule included the respective 8- and 15-percent increases in seasonal entries and use-days. Therefore, this final rule retains the seasonal entry and use-day increases in charter and private vessels, as published in the proposed rule.

Tour boat companies, in particular, suggested that tour boats should receive more entries. Several suggested that some of the entries that NPS proposed for cruise ships should instead go to tour boats. NPS believes that increased opportunities for people to visit the bay can best be provided by modest increases in entries and use-days within the existing vessel-per-day limits. Generally, the increased traffic will occur on the shoulder seasons, not in mid-summer. Tour boats are currently operating at the maximum allowed number of three vessels per day during the summer season.

Commercial Fishing Vessels

Commenters were divided on the issue of how and whether commercial fishing vessels should be managed in Glacier Bay. NPS published proposed regulations concerning commercial fishing in Glacier Bay National Park on August 5, 1991 (50 FR 37202). NPS is reviewing the larger issue of the future of commercial fishing within Glacier Bay National Park in a separate effort that may result in additional regulations. The seasonal motor vessel closures included within today's rulemaking will apply to commercial fishing vessels, as well as all other types of motorized vessels and seaplanes. However, this rule continues the exemption that commercial fishing vessels actually engaged in commercial fishing have from the seasonal entry and daily use limits that apply to other vessel types.

Kayaks

Comments ranged from increasing kayak use to limiting it. Some commenters felt that NPS needs more data on kayak use, so that resource impacts from associated uses such as on-shore camping could receive more detailed consideration in the VMP/EA. NPS is establishing a backcountry monitoring program to establish levels of use and assess impacts. NPS will also continue to restrict camping in certain shoreline areas as necessary to limit camper impacts on bears and other resources. One commenter suggested that safety concerns based on the potential impacts of vessel wakes on kayaks had been exaggerated. For several reasons, however, NPS believes that the safety concerns are real, particularly in the cold and remote waters of Glacier Bay. One commenter suggested that NPS should require kayakers visiting Glacier Bay to attend an educational program on the use of the bay. NPS currently provides a kayaker/camper orientation program, which NPS plans to continue, improve, and perhaps make mandatory at some future date if such a requirement can reduce resource impacts and improve visitor safety.

Concession Boats

One commenter suggested that NPS should not allocate entry permits to charter vessels based in Bartlett Cove that operate sport fishing charters in Icy Strait waters outside the park; rather this commenter thought that such vessels should be encouraged to operate out of Gustavus. NPS believes that this comment has merit. To ensure that Bartlett Cove serves as a base for in-park activities (and not as a base for out-of-park sport fishing), NPS will assess vessels that exit the bay an additional entry upon return. Additionally, NPS will require Bartlett Cove-based charters to submit a park-based operations plan. As the commenter notes, out-of-park activities can better be served from Gustavus. This serves both the park (by reducing traffic through much of the lower bay whale waters) and the park visitor (by providing incentive for use of limited charter entries within the park). Local community economies may also benefit from visitors seeking charter sport fishing opportunities out of the park.

Bareboat Charters

As commonly used, "bareboat charter" means chartering a vessel without master (captain) or crew. Comments ranged from one that suggested prohibition of bareboat charters, except by companies registered by park management and familiar with park management principles, to one of support for bareboat rentals. One commenter suggested that the bareboat charters should not take permits from the pool of permits available to private citizens wishing to enter the park with their own boats. The NPS has reconsidered its position on bareboat charters. Basing another commercial service in Bartlett Cove would increase congestion at the already over-taxed facility. If the demand exists for a bareboat operation, commercial services could be more appropriately based out of Gustavus. NPS would require bareboat charters wanting access to the park to acquire an entry permit (and attend the orientation program), as would any other private boater.

NPS Boats

Several commenters wrote to suggest that NPS consider its own vessel use when proposing to restrict private motorized vessel access. One commenter stated that the VMP/EA did not analyze the potential increase in government vessel operations resulting from additional monitoring, research, resource protection and incident responses associated with this rulemaking. NPS examined its own vessel activities as part of the VMP/EA (*see*, p. 4.7–1). The NPS anticipates only a slight increase in its own vessel traffic as a result of the modest increase in other traffic authorized by this rulemaking. That increase will consist primarily of naturalist transfers to and from the additional cruise ships as the ships enter and exit the bay, and increased research activities. Other commenters were concerned that closures to motorized vessels, including research vessels during the summer season, would severely handicap on-going scientific studies in Glacier Bay. NPS may approve research activities for closed areas pursuant to the administrative exception contained in these regulations.

Wildlife Protection/Wilderness Waters

Generally, support for and opposition to wilderness water closures was equally divided. Commenters sometimes supported particular closures but not others. Specific comments concerning Dundas Bay opposed the proposed closure. Dundas Bay will remain open to motor vessels, in part to allow Elfin Cove residents motorized access to sheltered park waters. In response to commenters, NPS would like to assure the public that it has drawn virtually all of the closure boundaries to allow access to anchorages at the mouths of the various areas. Wildlife protection/wilderness water closures will take effect annually on May 1 (as in the proposed rule).

East Arm Waters

Generally, support for and opposition to east arm water closures to motorized vessels was equally divided. However, some commenters from both "camps" preferred a closure higher up the east arm. NPS has adopted this modification, which allows more motor vessel access to the east arm and its anchorages. It

provides kayakers with solitude, wilderness recreation and access to tidewater glaciers without motorized vessel disturbance without having to undertake a multi-day trip. The closure also mitigates a safety concern associated with kayaker susceptibility to being overturned by vessel wakes.
Another comment that the NPS has adopted suggested splitting the summer season and alternating closures in some areas. This suggestion readily lent itself to the upper east arm: June 1 through July 15, the park will close Muir Inlet waters north of the McBride Glacier to motor vessels and seaplane landings, and July 16 through August 31, the park will close Wachusett Inlet (except the first anchorage) to motor vessels and seaplane landings. The alternating motor vessel closures in the east arm will allow, both visitors using motors and visitors seeking quiet, summertime access to an east arm tidewater glacier and the natural resources of Muir or Wachusett Inlets on a time sharing basis. Furthermore, alternating the closures allows the east arm to continue to serve as a motor vessel destination, thereby dispersing vessel use generally and reducing vessel crowding in the west arm.

Bartlett Cove Access

Two commenters suggested alternative entry demarcation lines to the current line at the mouth of Glacier Bay (Point Carolus-to- Point Gustavus). The suggestions would leave access to Bartlett Cove unrestricted. The adoption of these suggestions would result in an unpredictable increase in vessel traffic throughout the area of the park that attracts the highest concentration of whales, *i.e.*, lower bay whale waters. Therefore, NPS cannot adopt either of these suggestions. Until additional monitoring and studies have been completed and information has been developed on the interaction of vessels and whales that supports specific findings of no adverse impact, NPS cannot authorize increased access to Bartlett Cove.

Orientation Program

One commenter suggested that NPS waive the orientation program on repeat visits. The proposed and final regulations give the superintendent discretion to waive the program.

Other Restrictions

In response to comments, NPS has modified the superintendent's discretionary closure authority. NPS previously determined and still recognizes the need to provide temporary and intermittent administrative remedies to protect whales through imposition of public-use limits, whale-water designations, and other operating restrictions. *See*, 50 FR 19880, 19881–82 (May 10, 1985). The environmentally safe implementation and maintenance of the increased public-use levels authorized in this rulemaking require that the superintendent have the necessary authority to modify public use levels and establish vessel restrictions in response to changing conditions in order to protect all the park's resources. The final rule authorizes the superintendent to impose such conditions separately or as permit requirements to ensure the least possible impact to park resources, as whale and other wildlife feeding, breeding, and molting sites shift to new areas in the dynamic sea and landscape of the rebounding bay.

Section-by-Section Analysis

Section 13.65(b)(1) of the regulations defines various types of vessels and other terms used in this section. The rule retains most of the definitions without significant revision from the existing regulations. However, there are exceptions:

The rule revises the terms "cruise ship," "charter vessel" and "tour vessel." In addition to some technical revisions, the proposed definitions include a measurement standard based on the rules of the International Convention on Tonnage Measurements of Ships, 1969. Congress has provided for recognition of these rules that are generally used to measure and certify foreign hull vessels. *See*, Omnibus Budget Reconciliation Act of 1986, Title V—Maritime Programs, Part J—Measurement of Vessels, P.L. 99–509, 100 Stat. 1919 (codified as amended in scattered sections of 46 U.S.C.). The NPS has adopted a definition of cruise ship that includes a vessel with an International Tonnage Certificate at or exceeding 2,000 tons gross (that carries passengers for hire). The rule defines a vessel with an International Tonnage Certificate less than 2,000 tons gross (that carries passengers for hire) as a tour vessel or a charter vessel. The rule also retains the existing standards, based on the U.S. method for measuring vessels. The rule modifies the term "charter vessel" to allow scheduled camper or kayak drop-off and pick-up service. The rule expands the terms "operate" and "operating" to include the actual or constructive possession of a vessel. NPS has done this to enable enforcement action against vessels violating permit or closed-water restrictions when the vessel is not underway at the time of the violation. The rule adopts definitions for two new terms as a means to retain, clarify, and codify both restricted and permitted activities that were authorized and implemented under the existing 13.65(b)(2)(iii) whale-waters regulations. The first, "speed through the water," is analogous in aeronautical terms to "airspeed," as opposed to "ground speed." NPS has measured and enforced whale-water speed limits in this manner to prevent collisions between vessels moving rapidly "up-current" and whales or other marine mammals that are drifting "down" in the tidal current. These speed limits also lower the level of underwater noise by limiting high engine revolutions that can disrupt whale feeding activities. The rule defines the term "transit" to allow vessels to approach perpendicularly and land on an otherwise unrestricted shore within designated whale waters in order to view or photograph wildlife (except whales), camp or participate in any other park activity. The rule deletes the term "whale season" and includes the dates on which closures or restrictions begin and end as part of the regulation.

Section 13.65(b)(2) of the regulations authorizes a 30-percent increase in cruise ship traffic during the 1996 and 1997 summer seasons (June 1 through August 31). However, there would be no increase in the maximum number of cruise ships permitted to use the bay on any given day (two). Rather, this increase in traffic will be absorbed by distributing the additional entries throughout the summer season. Additionally, but contingent upon the completion of studies demonstrating that a further increase in cruise ship traffic would be consistent with protection of the values and purposes of Glacier Bay National Park and Preserve, the regulations could allow up to an additional 42-percent increase (from existing 1995 levels) in cruise ship traffic beginning with the 1998 summer season. For each summer season thereafter, the regulations authorize the NPS to adjust the number of cruise ship entries, subject to the maximum daily limit of two vessels, based on available scientific and other information and applicable authorities. In determining whether to authorize future increases in cruise ship entries, NPS must err on the side of protecting park resources and values, particularly where the scientific information is lacking, ambiguous, or inconclusive. NPS will publish any future adjustment to cruise ship traffic within the scope of these regulations in the "Notice" section of the **Federal Register**, with opportunity for comment.

The rule revises current restrictions on seasonal entries and use-days for charter and private boats to authorize an 8-percent increase in charter boat traffic and a 15-percent increase in private boat traffic beginning with the 1996 summer season.

This section also provides for reinitiation of consultation with NMFS to ensure that the potential vessel traffic contemplated by these regulations does not affect endangered or threatened species, particularly in Glacier Bay National Park and Preserve. The section also requires the director of the NPS to reduce vessel entry and use levels if necessary to protect the values and purposes of Glacier Bay National Park and Preserve.

Section 13.65(b)(2)(A) requires cruise ships to prepare, and abide by, an NPS-approved air, water and underwater noise pollution minimization plan to be permitted to enter Glacier Bay. Section 13.65(b)(2)(B) clarifies that each cruise ship company's assessment of the impacts of its activities on Glacier Bay resources must correspond to the NPS research, inventory and monitoring plan. Section 13.65(b)(2) also incorporates the permit requirements of section 13.65(b)(3) of the existing regulations, with minor modifications. Paragraph (b)(2)(i)(B) generally requires private motor vessels entering the bay through the mouth to stop at the Bartlett Cove Ranger Station for orientation before proceeding up bay. Vessels that have previously visited the bay may receive a waiver. Paragraph (b)(2)(ii)(E) requires concessioner vessels to notify the Bartlett Cove Ranger Station within the 48 hours prior to, or immediately upon, entry to the bay. Paragraph (b)(2)(iii(C) allows private vessels to launch a motorized skiff or tender after anchoring. Paragraph (b)(2)(iv) prohibits permit and operating violations and clarifies the superintendent's authority to revoke or deny a permit based on a violation.

Section 13.65(b)(3) of the regulations retains the existing prohibitions on operating a vessel within one-quarter nautical mile of a whale, and on pursuing or attempting to pursue a whale. It also retains the superintendent's authority to designate temporary whale waters and establish vessel use and speed restrictions. The regulations identify, and designate as whale waters, areas in which seasonal restrictions have applied on a recurring basis. The regulations codify the restrictions that were implemented pursuant to section 13.65(b)(2) of the existing regulations, i.e., mid-channel transit through these waters, and in the case of lower bay waters, speeds not to exceed 20 knots.

As whales have been known to arrive at the mouth of Glacier Bay in May, the 20-knot speed limit and the requirement that vessels in transit stay one nautical mile off-shore become effective in the designated lower bay whale waters each year on May 15. This earlier date ensures that whales arriving at the mouth of Glacier Bay in late spring are able to pass with minimal disturbance through the narrow entrance to Glacier Bay to access feeding areas. When whales are present, the superintendent will impose a 10-knot speed limit ((b)(3)(v)(A)*(2)*). The rule also establishes a speed restriction to mitigate mortality and stress of breeding and molting harbor seals resulting from large vessel wakes in the narrow confines of the Johns Hopkins Inlet (paragraph (B)).

Seasonal closures and operating restrictions concerning the Spider Island group and Johns Hopkins Inlet that appear in paragraphs (b)(3)(vi) (C)–(F) will also protect the park's large concentration of breeding harbor seals. Except for the continuing Johns Hopkins Inlet cruise ship closure, the park has previously enforced these restrictions as park compendium regulations. Paragraphs (b)(3)(vi) (A)–(B) afford year-round protection to Steller sea lions and their haul-outs, and nesting sea bird colonies are protected seasonally and through year-round vessel landing and foot traffic closure of colonial nesting islands. Park compendium regulations previously protected these small islands seasonally. Continuing these restrictions year-round will reduce impacts to vegetation that is important to nesting birds and will otherwise protect this sensitive nesting habitat from trampling. These closures are consistent with NMFS and FWS recommendations. Paragraph (b)(3)(vi)(G) advises park visitors that the distances established by this rulemaking to be maintained between visitors and wildlife are minimum distances; 36 CFR 2.2 (wildlife protection) requires that greater distances be maintained from wildlife if it is likely that wildlife may be disturbed or frightened.

Seasonal water (area) closures for motor vessels protect nesting sea birds as well as molting and feeding waterfowl (paragraphs (b)(3)(vii)(A) *(1)–(4)*). These closures also protect harbor seal haul-outs associated with pupping and molting activities (paragraph *(4)*). NPS previously proposed similar closures for these areas (48 FR 14978, April 6, 1983). That rulemaking also recognized the importance of sheltering the unique concentrations of marine mammals and birds in these areas from motorized disruption during the critical months of feeding, breeding, nesting and rearing of young. With the exception of Rendu Inlet, these areas contain, or are approached through, shallow areas that are hazardous to navigate in motor vessels.

Paragraphs (b)(3)(vii) (B)–(C) adopt alternating motor vessel closures for the waters of the Muir Inlet north of McBride Glacier (June 1 through July 15) and the Wachusett Inlet (July 16 through August 31). NPS adopts these closures to prevent detriment to park resource values, including the opportunity for kayaking, camping, and engaging in other backcountry use away from the noise and intrusion of motor vessel traffic. Motor vessels can use these areas on a time-sharing basis. As discussed above, the NPS believes that the closures adopted in paragraphs (b)(3)(vi) and (b)(3)(vii)(A) are necessary to protect the natural resource values of Glacier Bay; and the closures adopted in paragraphs (b)(3)(vii) (B)–(C) are necessary to protect the visitor experience and recreational resource values of Glacier Bay. All closures are promulgated in accordance with ANILCA Section 1110(a) to prevent detriment to the resource values of Glacier Bay National Park and Preserve, including its wildlife and other natural resources as well as its opportunities for quiet and solitude.

To provide quiet at popular anchorages, section 13.65(b)(3)(viii) restricts generator and other non-propulsive motor use during the evening hours of summer.

Section 13.65(b)(3)(ix) clarifies the duties, responsibilities, and authority of the superintendent to regulate public use in response to changing conditions.

Section 13.65(b)(4) of the regulations adopts restrictions on marine vessel air pollution (stack) emissions.

NPS is addressing section 13.65(b)(5)–(6) of the existing regulations, *Restricted Commercial Fishing Harvest*, separately (*see*, proposed rules at 56 FR 37262 (August 5, 1991)); commercial fishing is not considered as part of this rulemaking. However, the seasonal closure of water areas to vessels ((b)(3)(vi) and (b)(3)(vii)) also applies to commercial fishing boats.

Drafting Information

The primary authors of this rulemaking are Russel J. Wilson, Alaska Field Office, National Park Service, and Molly N. Ross. Office of the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, Washington, D.C. Glen Yankus, NPS Alaska System Support Office, and

Randy King, Kevin Apgar and Mary Beth Moss, Glacier Bay National Park and Preserve also made significant contributions.

Administrative Procedures Act

In accordance with the Administrative Procedures Act (5 U.S.C. 553(d)(3)), the NPS has determined that publishing this rule 30 days prior to the rule becoming effective would delay effective implementation of this plan for the rapidly approaching summer season. This would be contrary to the public interest and the protection of park resources. Approximately 45 days were lost during the preparation of this plan due to the government shutdown. Wildlife protection provisions contained in the regulations are intended to take effect on May 1, and vessel traffic permit provisions apply as of June 1. NPS requires some lead time in order to inform the public and handle permit scheduling. Since NPS believes that all elements of this rule are inextricably linked—*e.g.*, the increases in vessel traffic must be balanced by the environmental protections—NPS has decided to invoke the "good cause" exception and make the entire rule effective upon publication. Therefore, under the "good cause" exception of the Administrative Procedures Act (5 U.S.C. 553(d)(3)), and as discussed above, it has been determined that this rulemaking is excepted from the 30 day delay in effective date, and shall become effective on the date published in the **Federal Register**.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in this final rule at § 13.65(b)(2), have been approved by the Office of Management and Budget and assigned clearance number 1024–0026. This information is being collected to solicit information that is necessary for the Superintendent to issue motor vessel permits. The public is being asked to provide this information in order for the park to track the number of permits issued and to whom they are issued. Should the park need to contact the permittees, a mechanism will be in place to allow them to do so.

Additionally, cruise ships, tour vessels and charter vessels will be issued permits in accordance with NPS concession authorizations. To obtain or renew an entry permit, cruise ship companies will prepare and, after approval, implement a pollution minimization plan to assure, to the fullest extent possible, that any ship permitted to travel within Glacier Bay will apply the industry's best approaches toward vessel oil-spill response planning and prevention and minimization of air, water and underwater noise pollution while operating in Glacier Bay. Such plan will be submitted to the superintendent, who may approve or disapprove the plan.

The information will be used to grant administrative benefits and there is an obligation to respond.

Compliance With Other Laws

This final rule has been reviewed under Executive Order 12866. The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This regulation was subject to National Environmental Policy Act compliance and an Environmental Assessment (EA) was completed. Based on the information contained in the EA, a Finding of No Significant Impact (FONSI) was determined.

List of Subjects in 36 CFR Part 13

Alaska, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the NPS amends 36 CFR Chapter I as follows:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

1. The authority citation for part 13 is revised to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; § 13.65 also issued under 16 U.S.C. 1a–2(h), 20, 1361, 1531, 3197.

Subpart C—Special Regulations—Specific Park Areas in Alaska

2. Section 13.65 is amended by revising the heading of paragraph (b) and paragraphs (b)(1) through (b)(4) to read as follows:

§ 13.65 Glacier Bay National Park and Preserve.

* * * * *

(b) *Resource protection and vessel management*—(1) *Definitions.* As used in this section:

Charter vessel means any motor vessel under 100 tons gross (U.S. System) or 2,000 tons gross (International Convention System) that is rated to carry up to 49 passengers, and is available for hire on an unscheduled basis; except a charter vessel used to provide a scheduled camper or kayak drop off service.

Commercial fishing vessel means any motor vessel conducting fishing activities under the appropriate commercial fishing licenses as required and defined by the State of Alaska.

Cruise ship means any motor vessel at or over 100 tons gross (U.S. System) or 2,000 tons gross (International Convention System) carrying passengers for hire.

Entry means each time a motor vessel passes the mouth of Glacier Bay into the bay; each time a private vessel activates or extends a permit; each time a motor vessel based at or launched from Bartlett Cove leaves the dock area on the way into Glacier Bay, except a private vessel based at Bartlett Cove that is gaining access or egress to or from outside Glacier Bay; the first time a local private vessel uses a day of the seven use-day permit; or each time a motor vessel is launched from another vessel within Glacier Bay, except a motor vessel singularly launched from a permitted motor vessel and operated only while the permitted vessel remains at anchor, or a motor vessel launched and operated from a permitted motor vessel while that vessel is not under way and in accordance with a concession agreement.

Glacier Bay means all marine waters contiguous with Glacier Bay, lying north of an imaginary line between Point Gustavus and Point Carolus.

Motor vessel means any vessel, other than a seaplane, propelled or capable of being propelled by machinery (including steam), whether or not such machinery is the principal source of power, except a skiff or tender under tow or carried on board another vessel.

Operate or *Operating* includes the actual or constructive possession of a vessel or motor vessel.

Private vessel means any motor vessel used for recreation that is not engaged in commercial transport of passengers, commercial fishing or official government business.

Pursue means to alter the course or speed of a vessel or a seaplane in a manner that results in retaining a vessel, or a seaplane operating on the water, at a distance less than one-half nautical mile from a whale.

Speed through the water means the speed that a vessel moves through the water (which itself may be moving); as distinguished from "speed over the ground."

Tour vessel means any motor vessel under 100 tons gross (U.S. System) or 2,000 tons gross (International Convention System) that is rated to carry more than 49 passengers, or any smaller vessel that conducts tours or provides transportation at regularly scheduled times along a regularly scheduled route.

Transit means to operate a motor vessel under power and continuously so as to accomplish one-half nautical mile of littoral (*i.e.*, along the shore) travel.

Vessel includes every type or description of craft used as a means of transportation on the water, including a buoyant device permitting or capable of free flotation and a seaplane while operating on the water.

Vessel use-day means any continuous period of time that a motor vessel is in Glacier Bay between the hours of 12 midnight on one day to 12 midnight the next day.

Whale means any humpback whale (*Megaptera novaeangliae*).

Whale waters means any portion of Glacier Bay, designated by the superintendent, having a high probability of whale occupancy, based upon recent sighting and/or past patterns of occurrence.

(2) *Permits.* The superintendent will issue permits for private motor vessels in accordance with this part and for cruise ships, tour vessels, and charter vessels in accordance with National Park Service concession authorizations and this part.

(i) *Private vessel permits and conditions.* Each private motor vessel must have a permit to enter Glacier Bay June 1 through August 31.

(A) The superintendent may establish conditions regulating how permits can be obtained, whom a vessel operator must contact when entering or leaving Glacier Bay, designated anchorages, the maximum length of stay in Glacier Bay, and other appropriate conditions.

(B) June 1 through August 31, upon entering Glacier Bay through the mouth, the operator of a private motor vessel must report directly to the Bartlett Cove Ranger Station for orientation.

(1) Failing to report as required is prohibited.

(2) The superintendent may waive this requirement before or upon entry.

(ii) *Commercial vessel permits and conditions.* Each commercially operated motor vessel must have the required permit(s) to enter Glacier Bay.

(A) To obtain or renew an entry permit, a cruise ship company must submit and, after approval, implement a pollution minimization plan. The plan must ensure, to the fullest extent possible, that any ship permitted to travel within Glacier Bay will apply the industry's best approaches toward vessel oil-spill response planning and prevention and minimization of air and underwater noise pollution while operating in Glacier Bay. The superintendent will approve or disapprove the plan.

(B) Each cruise ship company must assess the impacts of its activities on Glacier Bay resources pursuant to the NPS research, inventory and monitoring plan as specified in the applicable concession permit.

(C) The superintendent at any time may impose operating conditions to prevent or mitigate air pollution, water pollution, underwater noise pollution or other effects of cruise ship operation.

(D) The superintendent will immediately suspend the entry permit(s) of any cruise ship that fails to submit, implement or comply with a pollution minimization plan or additional operating condition.

(E) A commercial vessel, except a commercial fishing vessel, is prohibited from entering Glacier Bay unless the operator notifies the Bartlett Cove Ranger Station of the vessel's entry immediately upon entry or within the 48 hours before entry.

(F) Off-boat activity from a commercial vessel is prohibited, unless the superintendent allows it under conditions that the superintendent establishes.

(iii) *Exceptions from entry permit requirement.* A permit is not required to enter Glacier Bay when:

(A) A motor vessel is engaged in official business of the state or federal government.

(B) A private motor vessel based at Bartlett Cove is transiting between Bartlett Cove and waters outside Glacier Bay, or is operated in Bartlett Cove in waters bounded by the public and administrative docks.

(C) A motor vessel is singularly launched from a permitted motor vessel and operated only while the permitted motor vessel remains at anchor, or a motor vessel is launched and operated in accordance with a concession agreement from a permitted motor vessel while that vessel is not underway.

(D) A commercial fishing vessel otherwise permitted under all applicable authorities is actually engaged in commercial fishing within Glacier Bay.

(E) The superintendent grants a vessel safe harbor at Bartlett Cove.

(iv) *Prohibitions.* (A) Operating a motor vessel in Glacier Bay without a required permit is prohibited.

(B) Violating a term or condition of a permit or an operating condition or restriction issued or imposed pursuant to this chapter is prohibited.

(C) The superintendent may immediately suspend or revoke a permit or deny a future permit request as a result of a violation of a provision of this chapter.

(v) *Restrictions on vessel entry.* The superintendent will allow vessel entry in accordance with the following table:

Type of vessel	Allowable vessel use days per day	Total entries allowed	Total vessel use days allowed	Period covered by limitation
Cruise ship	2	[1]	[1]	Year round.
Tour vessel	3			Year round.
Charter vessel	6	312	552	June 1–Aug. 31.
Private vessel	25	468	1,971	June 1–Aug. 31.

[1] See paragraphs (b)(2)(v) (A) through (C) of this section.

(A) By October 1, 1996, the superintendent will reinitiate consultation with the National Marine Fisheries Service (NMFS) and request a biological opinion under section 7 of the Endangered Species Act. The superintendent will request that NMFS assess and analyze any effects of vessel traffic authorized by this section, on the endangered and threatened species that occur in or use Glacier Bay National Park and Preserve.

(1) Based on this biological opinion, applicable authority, and any other relevant information, the director shall reduce the vessel entry and use levels for any or all categories of vessels in this section effective for the 1998 season or any year thereafter, if required to assure protection of the values and purposes of Glacier Bay National Park and Preserve.

(2) The director will publish a document in the **Federal Register** on any revision in the number of seasonal entries and use days under this paragraph (b)(2)(v), with an opportunity for public comment.

(B) By October 1, 1997, the superintendent will determine, with the director's approval, whether studies have been completed and sufficient scientific and other information has been developed to support an increase in cruise ship entries for the 1998 summer season (June 1 through August 31) while assuring protection of the values and purposes of Glacier Bay National Park and Preserve. Any increase will be subject to the maximum daily limit of two vessel use-days. If the superintendent recommends an increase, the superintendent will publish a document of the increase in the **Federal Register** with an opportunity for public comments.

(C) By October 1 of each year (beginning in 1998), the superintendent will determine, with the director's approval, the number of cruise ship entries for the following summer season (June 1 through August 31). This determination will be based upon available scientific and other information and applicable authorities. The number will be subject to the maximum daily limit of two vessel use-days. The superintendent will publish a document of any revision in seasonal entries in the **Federal Register** with an opportunity for public comment.

(D) Nothing in this paragraph will be construed to prevent the superintendent from taking any action at any time to assure protection of the values and purposes of Glacier Bay National Park and Preserve.

(3) *Operating restrictions.* (i) Operating a vessel within one-quarter nautical mile of a whale is prohibited, except for a commercial fishing vessel actually trolling or setting or pulling long lines or crab pots as otherwise authorized by the superintendent.

(ii) The operator of a vessel accidentally positioned within one-quarter nautical mile of a whale shall immediately slow the vessel to ten knots or less, without shifting into reverse unless impact is likely. The operator shall then direct or maintain the vessel on as steady a course as possible away from the whale until at least one-quarter nautical mile of separation is established. Failure to take such action is prohibited.

(iii) Pursuing or attempting to pursue a whale is prohibited.

(iv) *Whale water restrictions.* (A) May 15 through August 31, the following Glacier Bay waters are designated as whale waters.

(*1*) Lower bay waters, defined as waters north of an imaginary line drawn from Point Carolus to Point Gustavus; and south of an imaginary line drawn from the northernmost point of Lars Island across the northernmost point of Strawberry Island to the point where it intersects the line that defines the Beardslee Island group, as described in paragraph (b)(3)(vii)(A)(*4*) of this section, and following that line south and west to the Bartlett Cove shore.

(*2*) [Reserved]

(B) June 1 through August 31, the following Glacier Bay waters are designated as whale waters.

(*1*) Whidbey Passage waters, defined as waters north of an imaginary line drawn from the northernmost point of Lars Island to the northernmost point of Strawberry Island; west of imaginary lines drawn from the northernmost point of Strawberry Island to the southernmost point of Willoughby Island, the northernmost point of Willoughby Island (proper) to the southernmost point of Francis Island, the northernmost point of Francis Island to the southernmost point of Drake Island; and south of the northernmost point of Drake Island to the northernmost point of the Marble Mountain peninsula.

(*2*) East Arm Entrance waters, defined as waters north of an imaginary line drawn from the southernmost point of Sebree Island to the northernmost point of Sturgess Island, and from there to the westernmost point of the unnamed island south of Puffin Island (that comprises the south shore of North Sandy Cove); and south of an imaginary line drawn from Caroline Point across the northernmost point of Garforth Island to shore.

(*3*) Russell Island Passage waters, defined as waters enclosed by imaginary lines drawn from: the easternmost point of Russell Island due east to shore, and from the westernmost point of Russell Island due north to shore.

(C) The superintendent may designate temporary whale waters and impose motor vessel speed restrictions in whale waters. Maps of temporary whale waters and notice of vessel speed restrictions imposed pursuant to this paragraph (b)(3)(iv)(C) shall be made available to the public at park offices at Bartlett Cove and Juneau, Alaska, and shall be submitted to the U.S. Coast Guard for publication as a "Notice to Mariners."

(D) Violation of a whale water restriction is prohibited. The following restrictions apply in designated whale waters:

(*1*) Except on vessels actually fishing as otherwise authorized the superintendent or vessels operating solely under sail, while in transit, operators of motor vessels over 18 feet in length will in all cases where the width of the water permits, maintain a distance of at least one nautical mile from shore, and, in narrower areas will navigate in mid-channel: *Provided, however,* that unless other restrictions apply, operators may perpendicularly approach or land on shore (*i.e.*, by the most direct line to shore) through designated whale waters.

(*2*) Motor vessel speed limits established by the superintendent pursuant to paragraph (b)(3)(iv)(C) of this section.

(v) *Speed restrictions.* (A) May 15 through August 31, in the waters of the lower bay as defined in paragraph (b)(3)(iv)(A)(*1*) of this section, the following are prohibited:

(*1*) Operating a motor vessel at more than 20 knots speed through the water; or

(*2*) Operating a motor vessel at more than 10 knots speed through the water, when the superintendent has designated a maximum speed of 10 knots (due to the presence of whales).

(B) July 1 through August 31, operating a motor vessel on Johns Hopkins Inlet south of 58°54.2′N. latitude (an imaginary line running approximately due west from Jaw Point) at more than 10 knots speed through the water is prohibited.

(vi) *Closed waters, islands and other areas.* The following are prohibited:

(A) Operating a vessel or otherwise approaching within 100 yards of South Marble Island; or Flapjack Island; or any of the three small unnamed islets approximately one nautical mile southeast of Flapjack Island; or Eider Island; or Boulder Island; or Geikie Rock; or Lone Island; or the northern three-fourths of Leland Island (north of 58°39.1′N. latitude; or any of the four small unnamed islands located approximately one nautical mile north (one island), and 1.5 nautical miles east (three islands) of the easternmost point of Russell Island; or Graves Rocks (on the outer coast); or Cormorant Rock, or any adjacent rock, including all of the near-shore rocks located along the outer coast, for a distance of 1½ nautical miles, southeast from the mouth of Lituya Bay; or the surf line along the outer coast, for a distance of 1½ nautical miles northwest of the mouth of the glacial river at Cape Fairweather.

(B) Operating a vessel or otherwise approaching within 100 yards of a Steller (northern) sea lion (*Eumetopias jubatus*) hauled-out on land or a rock or a nesting seabird colony: *Provided, however,* that vessels may approach within 50 yards of that part of South Marble Island lying south of 58°38.6′N. latitude (approximately the southern one-half of South Marble Island) to view seabirds.

(C) May 1 through August 31, operating a vessel, or otherwise approaching within ¼ nautical mile of, Spider Island or any of the four small islets lying immediately west of Spider Island.

(D) May 1 through August 31, operating a cruise ship on Johns Hopkins Inlet waters south of 58°54.2′N. latitude (an imaginary line running approximately due west from Jaw Point).

(E) May 1 through June 30, operating a vessel or a seaplane on Johns Hopkins Inlet waters south of 58°54.2′N. latitude (an imaginary line running approximately due west from Jaw Point).

(F) July 1 through August 31, operating a vessel or a seaplane on Johns Hopkins Inlet waters south of 58°54.2′N. latitude (an imaginary line running approximately due west from Jaw Point), within ¼ nautical mile of a seal hauled out on ice; except when safe navigation requires, and then with due care to maintain the ¼ nautical mile distance from concentrations of seals.

(G) Restrictions imposed in this paragraph (b)(3)(vi) are minimum distances. Park visitors are advised that protection of park wildlife may require that visitors maintain greater distances from wildlife. *See,* 36 CFR 2.2 (Wildlife protection).

(vii) *Closed waters, motor vessels and seaplanes.* (A) May 1 through September 15, operating a motor vessel or a seaplane on the following water is prohibited:

(*1*) Adams Inlet, east of 135°59.2′W. longitude (an imaginary line running approximately due north and south through the charted (*5*) obstruction located approximately 2¼ nautical miles east of Pt. George).

(*2*) Rendu Inlet, north of the wilderness boundary at the mouth of the inlet.

(*3*) Hugh Miller complex, including Scidmore Bay and Charpentier Inlet, west of the wilderness boundary at the mouth of the Hugh Miller Inlet.

(*4*) Waters within the Beardslee Island group (except the Beardslee Entrance), that is defined by an imaginary line running due west from shore to the easternmost point of Lester Island, then along the south shore of Lester Island to its western end, then to the southernmost point of Young Island, then north along the west shore and east along the north shore of Young Island to its northernmost point, then at a bearing of 15° true to an imaginary point located one nautical mile due east of the easternmost point of Strawberry Island, then at a bearing of 345° true to the northernmost point of Flapjack Island, then at a bearing of 81° true to the northernmost point of the unnamed island immediately to the east of Flapjack Island, then southeasterly to the northernmost point of the next unnamed island, then southeasterly along the (Beartrack Cove) shore of that island to its easternmost point, then due east to shore.

(B) June 1 through July 15, operating a motor vessel or a seaplane on the waters of Muir Inlet north of 59°02.7′N. latitude (an imaginary line running approximately due west from the point of land on the east shore approximately 1 nautical mile north of the McBride Glacier) is prohibited.

(C) July 16 through August 31, operating a motor vessel or a seaplane on the waters of Wachusett Inlet west of 136°12.0′W longitude (an imaginary line running approximately due north from the point of land on the south shore of Wachusett Inlet approximately 2¼ nautical miles west of Rowlee Point) is prohibited.

(viii) *Noise restrictions.* June 1 through August 31, except on vessels in transit or as otherwise permitted by the superintendent, the use of generators or other non-propulsive motors (except a windless) is prohibited from 10:00 p.m. until 6:00 a.m. in Reid Inlet, Blue Mouse Cove and North Sandy Cove.

(ix) *Other restrictions.* Notwithstanding any other provision of this part, due to the rapidly emerging and changing ecosystems of, and for the protection of wildlife in Glacier Bay National Park and Preserve, including but not limited to whales, seals, sea lions, nesting birds and molting waterfowl:

(A) Pursuant to §§ 1.5 and 1.6 of this chapter, the superintendent may establish, designate, implement and enforce restrictions and public use limits and terminate such restrictions and public use limits.

(B) The public shall be notified of restrictions or public use limits imposed under this paragraph (b)(3)(ix) and the termination or relaxation of such, in accordance with § 1.7 of this chapter, and by submission to the U.S. Coast Guard for publication as a "Notice to Mariners," where appropriate.

(C) The superintendent shall make rules for the safe and equitable use of Bartlett Cove waters and for park docks. The public shall be notified of these rules by the posting of a sign or a copy of the rules at the dock. Failure to obey a sign or posted rule is prohibited.

(x) Closed waters and islands within Glacier Bay as described in paragraphs (b)(3) (iv) through (vii) of this section are described as depicted on NOAA Chart #17318 GLACIER BAY (4th Ed., Mar. 6/93) available to the public at park offices at Bartlett Cove and Juneau, Alaska.

(xi) Paragraphs (b)(3) (i) through (iii) of this section do not apply to a vessel being used in connection with federally permitted whale research or monitoring; other closures and restrictions in this paragraph (b)(3) do not apply to authorized persons conducting emergency or law enforcement operations, research or resource management, park administration/supply, or other necessary patrols.

(4) *Marine vessel visible emission standards.* Visible emissions from a marine vessel, excluding condensed water vapor, may not result in a reduction of visibility through the exhaust effluent of greater than 20 percent for a period or periods aggregating more than:

(i) Three minutes in any one hour while underway, at berth, or at anchor; or

(ii) Six minutes in any one hour during initial startup of diesel-driven vessels; or

(iii) 12 minutes in one hour while anchoring, berthing, getting underway or maneuvering in Bartlett Cove.

* * * * *

Dated: April 22, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96–13210 Filed 5–29–96; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ID–1–1–5528a; FRL–5449–2]

Approval and Promulgation of State Implementation Plans: Idaho

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) approves the State Implementation Plan submitted by the State of Idaho for the purpose of bringing about the attainment of the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal

to a nominal 10 micrometers (PM_{10}) in the Northern Ada County PM_{10} nonattainment area.

DATES: This action is effective on July 29, 1996 unless adverse or critical comments are received by July 1, 1996. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the State's request and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Idaho Division of Environmental Quality, 1410 N. Hilton, Boise, ID 83720.

Written comments should be addressed to: Montel Livingston, EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue, OAQ–107, Seattle, Washington, 98101.

FOR FURTHER INFORMATION CONTACT: Doug Cole, EPA, Region 10, Idaho Operations Office, 1435 North Orchard, Boise, Idaho 83706, (208) 334–9555.

SUPPLEMENTARY INFORMATION:

I. Background

On September 22, 1994, EPA issued a proposed rulemaking action on the State Implementation Plan (SIP) for the Northern Ada County PM_{10} nonattainment area. *See* 59 FR 48582, Sept. 22, 1994. The plan was submitted for the purpose of satisfying the moderate area planning requirements for PM_{10} nonattainment areas, as set forth in subparts 1 and 4 of Title I of the Clean Air Act (CAA or Act). In that proposed rulemaking, EPA proposed to grant full approval of the emissions inventory and PM_{10} precursor exclusion elements, limited approval of the control measures submitted by the State for the limited purpose of making them Federally enforceable, and disapproval of the control measures, attainment demonstration and quantitative milestones, and reasonable further progress elements of the SIP. Disapproval of these elements was based on the State's failure to adopt into the SIP and submit to EPA the wood smoke control ordinances for the cities of Garden City, Meridian, and Eagle, and for unincorporated Ada County, which the State had relied on to implement the residential wood burning program identified in the SIP. In addition, the State had failed to adequately address in the SIP the enforceability of its control measures. EPA received no comments on its proposal.

On December 30, 1994, the State of Idaho, Department of Health and Welfare, Division of Environmental Quality (IDEQ or State) submitted to EPA additional information which included the wood smoke control ordinances for these areas; an explanation of the enforcement procedures, responsibilities, and sources of funding for each of the adopted ordinances; and the State's assurance of responsibility for adequate implementation of the local control measures. As described in more detail below, EPA believes the Northern Ada County PM_{10} SIP is now fully approvable and therefore fully approves the State's plan.

II. Analysis of State Submission

A detailed analysis of the SIP is contained in the September 22, 1994, **Federal Register** document proposing action on the Northern Ada County PM_{10} SIP. (59 FR 48582) That analysis evaluated each of the SIP elements, and concluded that certain elements were approvable and that certain elements had deficiencies requiring resolution. A summary of the analysis, and additional analysis of information contained in the December 30, 1994, submittal follows.

1. Procedural Background

IDEQ conducted public hearings and adopted the SIP consistent with Section 110 of Clean Air Act. The initial public hearing was held on October 11, 1990, and a second public hearing was held on November 14, 1991, on a plan modification. The additional information submitted on December 30, 1994, included four implementing ordinances that had each been adopted by the responsible agency after having gone through the public hearing process required by State and local law. EPA has determined that notice and public hearing, meeting the requirements of 40 CFR 51.102, is not required for the December 30, 1994, submittal because the ordinances and other information submitted by the State do not differ materially from the control measures outlined in the SIP that went through notice and public hearing.

2. Accurate Emissions Inventory

The September 22, 1994 **Federal Register** document discussed the emissions inventory contained in the November 15, 1991, SIP and concluded it was consistent with the requirements of Sections 172(c)(3) and 110(a)(2)(K) of the Act. The additional information submitted on December 30, 1994, did not change the emissions inventory. Thus, for the reasons set forth in the September 22, 1994 **Federal Register** document, EPA is fully approving the emission inventory.

3. Control Measures

In the September 22, 1994 **Federal Register** document, EPA determined that the November 14, 1991, SIP did not provide for the timely implementation of reasonably available control measures (RACM), including reasonably available control technology (RACT). To achieve required emission reductions, the SIP relied upon a residential wood burning program, which consisted of four elements: an episodic wood burning curtailment program, a wood smoke public education/awareness program, a wood stove certification program, and a wood stove change-out program. The principal element of the residential wood burning program was the episodic wood burning curtailment program. The SIP stated that this program would be implemented at the local level through the adoption of local ordinances by Ada County, and by the cities of Boise, Garden City, Eagle, and Meridian. However, as noted in the September 22, 1994, **Federal Register** document, the State had not adopted and submitted all of these ordinances as part of the SIP submittal and the SIP therefore did not satisfy the RACM/RACT requirement.

The additional information submitted to EPA on December 30, 1994, included the required ordinances for Ada County, and for the cities of Garden City, Eagle, and Meridian. Each ordinance describes the procedures for instituting a wood stove curtailment program, including the monitored level at which an "alert" is called (100 $\mu g/m^3$), and provisions for exemptions from the program. The additional information also included a description of the procedures by which each local agency in the nonattainment area which has passed a wood smoke control ordinance will issue wood stove permits, determine exemptions from the curtailment program, enforce the program, and fund implementation.

EPA believes that the State's December 30, 1994, submittal addresses the deficiencies identified in the September 22, 1994, **Federal Register** document, with one exception which does not bar full approval of the State's control measures as meeting the RACM/RACT requirement. The State's initial SIP submittal stated that all cities in the nonattainment area and the unincorporated areas of Ada County had ordinances prohibiting the sale and installation of uncertified wood stoves. The initial SIP submittal, however, only included the ordinance for the City of Boise, and EPA proposed limited approval of that control measure. As stated above, the additional information submitted on December 30, 1994, included wood smoke control ordinances for Garden City, Eagle, Meridian, and unincorporated Ada County. Only the Garden City and Ada County ordinances, however, have prohibitions on the sale and installation of non-certified wood stoves. EPA does not believe that the failure of the Cities of Meridian and Eagle to prohibit the sale and installation of uncertified wood stoves poses a bar to full approval of the control measures identified in the SIP as meeting the RACM/RACT requirement. As stated in the September 22, 1994, **Federal Register** document, the State did not take any emission reduction credit for the wood stove certification program. *See* 59 FR 48585. RACM/RACT does not require the implementation of all available control measures where an area demonstrates timely attainment of the NAAQS and implementation of additional control measures would not expedite attainment. *See* 57 FR 13498, 13540–13544 (April 10, 1992).

The September 22, 1994 document discussed whether, assuming the implementation of control measures on wood smoke as identified in the SIP, RACM/RACT required the imposition of controls on emissions of other sources of PM_{10} in the nonattainment area, such as road dust, prescribed silvicultural and agricultural burning, and stationary sources. *See* 59 FR 48585. EPA preliminarily concluded that additional controls on these sources would not be necessary, assuming implementation of the proposed wood smoke controls, either because emissions from such sources were insignificant or because additional controls on such sources were not necessary for and would not expedite attainment. Now that the State has fully implemented the wood smoke controls discussed in the SIP and demonstrated that such controls result in timely attainment of the PM_{10} standard, EPA concludes that RACM/RACT does not require additional controls on sources other than wood smoke.[1] Accordingly, for the reasons set forth in the September 22, 1994, **Federal Register** document and the reasons set forth herein, EPA is approving the State's control measures as meeting the RACM/RACT requirement.

[1] As discussed in Section II.6 below, the State has recently identified in the nonattainment area two major sources of NO_x, which is a precursor to particulate formation under certain meteorological conditions. Whether RACM requires the implementation of additional controls on these major sources of NO_x is discussed in Section II.6 below.

4. Attainment Demonstration

As discussed in the September 22, 1994, **Federal Register** document, IDEQ conducted modeling which demonstrated the nonattainment area will be in attainment of the 24-hour PM_{10} NAAQS during the period of 1993 through 2000. However, because IDEQ had not demonstrated to EPA that it had adopted the wood smoke control measures necessary to achieve the emission reductions identified in the SIP, EPA proposed to disapprove the attainment demonstration. *See* 59 FR 48586. Now that IDEQ has demonstrated that the necessary control measures have been adopted and implemented and EPA is approving those measures as meeting the RACM/RACT requirement, EPA is giving full approval to the State's attainment demonstration.

A review of monitored data in the Northern Ada County NAA indicates that no exceedences of the standard have occurred since January 7, 1991. Over time, the expected exceedence rate for the 24-hour standard has been steadily decreasing, from a high of 4.5 during the three-year period 1986–1988 to 0.0 for the period 1992–1994. Based on the monitored data, it appears the nonattainment area has attained the 24-hour PM_{10} standard.

5. Quantitative Milestones and Reasonable Further Progress

The State's initial SIP submittal also met the requirements for quantitative milestones and Reasonable Further Progress (RFP). In the September 22, 1994, **Federal Register** document, however, EPA proposed disapproving these requirements because attainment and maintenance of the standard was predicated on control measures that had not been incorporated into the SIP. *See* 59 FR 48586–48587. Now that this deficiency has been corrected by the December 31, 1994, submittal, EPA is fully approving State's plan as meeting the quantitative milestones and RFP requirements.

6. PM_{10} Precursors

The September 22, 1994, **Federal Register** document proposed to grant the exclusion from controls authorized under Section 189(e) of the Act for major stationary sources of PM_{10} precursors in the nonattainment area. *See* 59 FR 48587. EPA proposed a finding that major stationary sources of PM_{10} precursors did not contribute significantly to PM_{10} levels in excess of the NAAQS in the nonattainment area. IDEQ has subsequently submitted information identifying in the nonattainment area two major stationary sources of NO_x, a PM_{10} precursor under certain meteorological conditions. Northwest Pipeline has a potential to emit 314 tons of NO_x per year and St. Alphonsus Hospital has the potential to emit 116 tons of NO_x per year. The SIP provides an adequate demonstration that implementation of RACT will be sufficient to attain the PM_{10} by the applicable attainment date. In addition, EPA reviewed the ambient air quality data from 1992, 1993, and 1994 and determined that the area attained the NAAQS by December 31, 1994. Thus, although there are two major stationary sources of PM_{10} precursors in the nonattainment area, EPA believes these sources do not contribute significantly to PM_{10} levels in excess of the NAAQS in the nonattainment area. Therefore, Section 189(e) of the Clean Air Act does not require the imposition of control requirements on major stationary sources of PM_{10} precursors in the nonattainment area.

7. Enforceability of Control Measures

In the September 22, 1994, **Federal Register** document, EPA reserved judgment on the enforceability of the identified control measures because several of the control measures relied on by the State in its SIP submittal had not been submitted to EPA. *See* 59 FR 48587. As discussed in Section II.3 above, IDEQ has now submitted those control measures to EPA, and EPA has determined the control measures meet the RACM/RACT requirement. The December 31, 1994, submittal includes a description of each implementing ordinance, the agency responsible for enforcement, enforcement procedures and penalties, and the steps the State of Idaho would take should an agency fail to implement or enforce its respective ordinance, as required by Section 110(a)(2)(E) of the Clean Air Act. Specifically, IDEQ has committed to impose Tier II operating permits on all owners and operators of wood stoves within the nonattainment area should a local agency fail to implement its ordinance, and IDEQ has demonstrated its authority to do so. In summary, EPA believes that IDEQ has satisfied the enforceability requirements of Title I of the Act, including the requirements of Section 110(a)(2)(E), and is therefore fully approving the State's SIP as meeting these requirement.

8. Contingency Measures

Section 172(c)(9) of the Act requires that contingency measures be included in each moderate area PM_{10} nonattainment plan. These measures must take effect without further action by the State or EPA upon a

determination that the area has failed to make Reasonable Further Progress (RFP) or attain the PM_{10} NAAQS by the applicable statutory deadline, and should result in emission reductions approximately equal to the emissions reductions necessary to demonstrate RFP. *See generally* 57 FR 13510–13512 and 13543–13544. For a moderate PM_{10} nonattainment area, such as Northern Ada County, with a three to four year period between SIP development and the attainment date, this would mean that contingency measures should result in emission reductions equal to at least 25 percent of the emission reductions in the total control strategy. 57 FR 13544. A State may rely on "over control" as a contingency measure, that is, rely on control measures that are part of the core control strategy in the SIP, if such control measures result in emission reductions greater than those required to achieve the 24-hour NAAQS standard of 150 $\mu g/m^3$.

On July 13, 1995, IDEQ submitted contingency measures to EPA for approval which were a combination of over control from the wood smoke control measures and new controls on fugitive road dust. Modeling of the core control measures in the SIP for the Northern Ada County nonattainment area indicates a 17 $\mu g/m^3$ reduction in the 24-hour standard (from 164 $\mu g/m^3$ to 147 $\mu g/m^3$). This means that the core control measures in the SIP result in over control of 18 percent (ratio of the difference between 147 $\mu g/m^3$ and 150 $\mu g/m^3$ to 17 $\mu g/m^3$). To obtain the additional 7 percent of emission reductions needed for 25 percent reduction of emissions through contingency measures, the State has adopted a program for the reduction of fugitive road dust. The State's submittal includes a signed agreement between the Idaho Transportation Department, Ada County Highway District, and IDEQ, which details a road sweeping program designed to reduce particulate emissions by prioritizing road sanding such that streets with the highest potential to emit PM_{10}, in the form of re-entrained dust, are swept first, and more frequently. IDEQ retains the authority to review and approve any changes to the plan. The State anticipates that this road dust program will result in an additional 9 percent reduction in PM_{10} emissions. Together with the 18 percent in emission reductions achieved through over control, the State's contingency measures are predicted to result in more than 25 percent of the total reductions necessary for attainment. EPA therefore approves the contingency measures submitted by the State on July 13, 1995.

9. New Source Review

States with initial moderate PM_{10} nonattainment areas were required to submit a permit program for the construction and operation of new and modified stationary sources of PM_{10} by June 30, 1992. *See* Section 189(a) of the Clean Air Act. This permit program element, known as the New Source Review (NSR) program, was submitted by the State of Idaho on May 17, 1994. EPA notified the State on June 10, 1994, that its NSR program submittal was complete. EPA is currently reviewing Idaho's NSR program submittal to determine if the program meets the requirements of the Act. EPA intends to take action on Idaho's NSR program in another rulemaking after EPA has completed its review.

III. This Action

EPA is granting full approval to the November 14, 1991, Northern Ada County PM_{10} SIP, as supplemented by additional information which IDEQ has submitted since that time. IDEQ has demonstrated that the SIP meets the applicable requirements of the Act.

IV. Administrative Review

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under Section 110 and Subchapter I, Part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval process does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely affected by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

EPA has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, EPA Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective July 29, 1996 unless, by July 1, 1996 adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective July 29, 1996.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 29, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* Section 307(b)(2), 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Note: Incorporation by reference of the Implementation Plan for the State of Idaho was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: March 20, 1996.

Chuck Clarke,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart N—Idaho

2. Section 52.670 is amended by adding paragraph (c)(31) to read as follows:

§ 52.670 Identification of plan.

* * * * *

(c) * * *

(31) On November 14, 1991, and on December 30, 1994, the Idaho Department of Health and Welfare (IDHW) submitted revisions to the Idaho State Implementation Plan (SIP) for the Northern Ada County/Boise Particulate (PM_{10}) Air Quality Improvement Plan.

(i) Incorporation by reference.

(A) November 14, 1991, letter from the IDHW Administrator to the EPA Region 10 Regional Administrator submitting a revision to the Idaho SIP for the Northern Ada County/Boise Particulate Air Quality Improvement Plan; The Northern Ada County Boise Particulate (PM_{10}) Air Quality Improvement Plan adopted on November 14, 1991.

(B) December 30, 1994, letter from the IDHW Administrator to the EPA Region 10 Regional Administrator including a revision to the Idaho SIP for the Northern Ada County/Boise PM_{10} Air Quality Improvement Plan; Appendix C–1, Supplemental Control Strategy Documentation, Northern Ada County/Boise PM_{10} Air Quality Improvement Plan, adopted December 30, 1994, with the following attachments: Garden City Ordinances #514 (May 14, 1987), #533 (January 10, 1989) and #624 (September 13, 1994); Meridian Ordinance #667 (August 16, 1994); Eagle Ordinance #245 (April 26, 1994); Ada County Ordinance #254 (November 3, 1992); and Table Ordinance-1 (December 30, 1994).

[FR Doc. 96–12888 Filed 5–29–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 95–84; Notice 02]

RIN 2127–AF70

Federal Motor Vehicle Safety Standards; Head Restraints

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule clarifies the test procedures in Standard No. 202, "Head Restraints," by replacing the phrase "rearmost portion of the head form" with a reference to the portion of the head form in contact with the head restraint. The proposal on which this rule is based contained two other proposed amendments to the standard; this document terminates rulemaking on those proposals.

DATES: Effective Date: The amendments made in this rule are effective July 15, 1996.

PETITION DATES: Any petitions for reconsideration must be received by NHTSA no later than July 15, 1996.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590:

For non-legal issues: Clarke Harper, Frontal Crash Protection Division, Office of Vehicle Safety Standards, NPS–12, telephone (202) 366–4916, fax (202) 366–4329, electronic mail "charper@nhtsa.dot.gov".

For legal issues: Steve Wood, Office of the Chief Counsel, NCC–20, telephone (202) 366–2992, facsimile (202) 366–3820, electronic mail "swood@nhtsa.dot.gov".

SUPPLEMENTARY INFORMATION: Pursuant to the March 4, 1994 directive, "Regulatory Reinvention Initiative," from the President to the heads of departments and agencies, NHTSA has undertaken a review of all its regulations and directives. During the course of this review, the agency identified several requirements and regulations that are potential candidates for amendment or rescission. Some of these provisions were found in Federal Motor Vehicle Safety Standard No. 202, "Head Restraints."

On October 24, 1995, NHTSA published a notice of proposed rulemaking (NPRM), proposing to delete one of two alternative performance requirements for head restraints. The NPRM also proposed to clarify the test procedures by replacing the phrase "rearmost portion of the head form" with a reference to the portion of the head form in contact with the head restraint. Last, the NPRM proposed to specify that head restraints on bench-type seats are loaded simultaneously during compliance testing.

The agency received eight comments in response to this NPRM. As explained below, after reviewing these comments the agency has decided to amend Standard No. 202 to replace the phrase "rearmost portion of the head form" with a reference to the portion of the head form in contact with the head restraint. However, the agency is terminating rulemaking on the other proposed amendments.

Dynamic Test Requirement

Standard No. 202 allows manufacturers a choice of two performance requirements which provide equivalent levels of safety. One alternative, found in S4.3(b) and S5.2, requires the head restraint to have minimum dimensions and to not displace more than 4 inches when a 3,300 inch pound moment is applied to the head restraint. The other alternative, found in S4.3(a) and S5.1, limits rearward angular displacement of the dummy head to less than 45 degrees during a forward acceleration of at least 8g applied to the seat supporting structure. The second alternative involves a testing procedure that is more cumbersome than the first alternative and subsequently has rarely, if ever, been used. Because this alternative has rarely been used, NHTSA proposed to remove this alternative to simplify the regulatory language of the standard.

AAMA and Volkswagen supported this proposal; however, other commenters did not agree. Some commenters stated that Standard No. 202 should be amended by strengthening the dynamic test rather than removing it. Other commenters stated that manufacturers should be allowed this alternate test, and that the dynamic test more closely depicted the real world.

Atwood Mobile Products and the Recreation Vehicle Industry Association stated that removal of the dynamic test could stifle future technological innovation in the area of deployable crash protections systems for head restraints. The Insurance Institute for Highway Safety agreed, stating that development of such systems would be impeded by a standard that only specifies geometric requirements.

Based on these comments, NHTSA has decided to terminate rulemaking on the proposal to rescind the dynamic test alternative in Standard No. 202. NHTSA is concerned that removal of this alternative could stifle technological improvements in this area. In addition, it was not the intention of the proposal to restrict the choice of options available to manufacturers.

"Rearmost Portion of the Head Form"

Paragraph S4.3(b)(3) of Standard No. 202 states that a head restraint installed under option (b) of the standard must limit the rearward displacement of "the rearmost portion" of the head form used to apply a test load to the restraint. During agency compliance testing, questions have occasionally arisen regarding what is meant by the phrase "rearmost portion of the head form" in S4.3(b)(3). Therefore, the agency proposed to clarify the standard by replacing the reference to the phrase "rearmost portion of the head form" with a reference to the portion of the head form in contact with the head restraint.

Three commenters addressed this issue. Two supported the proposal and only one commenter (Liability Research Group (LRG)) objected to it. LRG believed that the proposed change would allow head form contact below the level of the mid-line of the head form and lead to poor head restraint designs. LRG provided no explanation of how the wording change would be detrimental to safety.

The wording change merely clarifies the location on the head form which is subject to the requirement. Therefore, the change will have no effect on safety and will not allow designs not already allowed by the standard. Therefore, NHTSA is adopting the proposed amendment.

Test Consolidation for Bench Seats

To reduce compliance testing costs, the agency proposed to specify that head restraints on bench-type seats would be loaded simultaneously during testing. On front bench seats, this proposal would have required the driver's and right passenger's head restraints to be tested in a single test instead of in two separate tests. Under the current test procedure, a load that will produce a 3,300 inch pound moment is applied to the head restraint. That load is then increased until either a 200 pound load is applied or the seat back fails. NHTSA tentatively concluded that manufacturers could experience minor cost savings as a result of running one test of both head restraints simultaneously, rather than two separate tests.

In the NPRM, the agency recognized that the proposal might theoretically allow manufacturers to install less strong head restraints. If simultaneous loads were to cause the seat back to fail before the 200 pound load were applied, the test would be considered incomplete, rather than a failure. The agency would not have been able to fully evaluate compliance of the vehicle with Standard No. 202. However, NHTSA did not believe that testing head restraints simultaneously would result in a seat back failure. This is because NHTSA has never had a seat back fail during its compliance testing for Standard No. 202, and because the total load would be less than seats are required to withstand under Standard No. 207, *Seating Systems*.

Therefore, the agency did not expect this proposal to result in a lessening of the safety requirements of the standard.

No commenter supported this proposal. Commenters expressed concern that the proposal could allow manufacturers to install weaker seats rather than strong head restraints. The commenters stated that there was no data to support the agency's belief that the proposal would not result in a reduction in safety.

Commenters also stated that the savings to manufacturers would not result. Commenters stated that the test setup would not be noticeably different for a test of two head restraints in comparison to two single tests. Commenters also stated that manufacturers would incur initial costs to upgrade laboratory equipment to conduct simultaneous tests.

Based on these comments, NHTSA is terminating rulemaking on this proposal. The intent of the proposal was to (a) reduce compliance test costs (b) without a reduction in safety. Commenters provided information that the first of these goals was not likely to be met. In addition, commenters raised doubts that the second goal would be met also.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures. This rule merely clarifies a phrase in the test procedure, and does not change the regulatory requirements of the standard. Therefore, there should be no economic impact from this rule.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As explained above, the agency expects no economic impact from this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this final rule.

National Environmental Policy Act

NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.202 is amended by revising section S4.3(b)(3) to read as follows:

§ 571.202 Standard No. 202; Head restraints.

* * * * *

S4.3

* * * * *

(b)

* * * * *

(3) When tested in accordance with S5.2, any portion of the head form in contact with the head restraint shall not be displaced to more than 4 inches perpendicularly rearward of the displaced extended torso reference line during the application of the load specified in S5.2(c); and

* * * * *

Issued on May 22, 1996.

Ricardo Martinez,

Administrator.

[FR Doc. 96–13527 Filed 5–29–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 960111003–6068–03; I.D. 052196B]

Pacific Halibut Fisheries; 1996 Halibut Landing Report No. 1

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes these inseason actions pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of the Pacific halibut stock.

EFFECTIVE DATE: Non-treaty commercial fishing period for Area 2A: 8 a.m. through 6 p.m., Pacific local time, July 10, 1996.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, 907–586–7221; William W. Stelle, Jr., 206–526–6140; or Donald McCaughran, 206–634–1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by NMFS (60 FR 14651, March 20, 1995, and amended at 61 FR 11337, March 20, 1996). On behalf of the IPHC, this inseason action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1996 Halibut Landing Report No. 1

Non-treaty Commercial Fishing Period Limits in Area 2A

The Commission has determined that fishing period limits will be required during the 10-hour, July 10 non-treaty, directed commercial fishing period in Area 2A to avoid exceeding the 91,052 pound (41.90 metric tons (mt)) catch limit. The July 10 fishing period will begin at 8:00 a.m. and end at 6:00 p.m. The fishery is restricted to waters that are south of Point Chehalis, Washington (46°53'18" N. latitude) under regulations promulgated by National Marine Fisheries Service. Fishing period limits as indicated in the following table will be in effect for this opening.

Vessel class		Fishing period limit (pounds)	
Length	Letter	Dressed, head-on	Dressed, head-off*
0–25	A	285	250
26–30	B	360	315
31–35	C	575	505
36–40	D	1,580	1,390
41–45	E	1,700	1,495
46–50	F	2,035	1,790
51–55	G	2,265	1,995
56+	H	3,410	3,000

*Weights are after 2 percent has been deducted for ice and slime if fish are not washed prior to weighing.

The appropriate vessel length class and letter is printed on each vessel license.

The fishing period limit is shown in terms of dressed, head-off weight as well as dressed, head-on weight, although fishermen are reminded that regulations require that all halibut from Area 2A be landed with the head on.

The fishing period limit applies to the vessel, not the individual fisherman, and any landings over the vessel limit will be subject to forfeiture and fine.

Northwest Treaty Tribes Fishery in Area 2A

Northwest treaty Indian tribes were allocated a total allowable catch of 102,000 pounds (82.55 mt) in subarea 2A–1 (northern Washington coast) in 1996. Of this total, 14,000 pounds (6.35 mt) are reserved for ceremonial and subsistence purposes, leaving 168,000 pounds (76.20 mt) for the commercial fishery.

As of April 1, 1996, the total commercial catch in subarea 2A–1 was 166,000 pounds (75.29 mt). A restricted commercial fishery occurred March 15 to April 1, producing 12,000 pounds (5.44 mt). Two directed commercial fishing periods produced a total of 154,000 pounds (69.85 mt). A decision whether to reopen subarea 2A–1 to catch the 2,000 pounds (0.90 mt) remaining in the catch limit will be made later.

Area 2B Commercial Fishery Update

Halibut landings from Area 2B total 3.0 million pounds (1,360.79 mt) through May 6, leaving 6.52 million pounds (2,957.45 mt) of the catch limit to be caught. The fishery will continue until all Individual Vessel Quotas have been filled, or November 15, whichever is earlier.

Annette Island Reserve Fishery in Area 2C

The Metlakatla Indian community has been authorized by the United States Government to conduct a commercial halibut fishery within the Annette Island Reserve. One 48-hour fishing period occurred between April 27–29, producing a total catch of 3,050 pounds (1.38 mt).

Alaskan Commercial Fishery Update

It is estimated that the following catches and number of landings were made in the Alaskan Individual Fishing Quota (IFQ) fishery through May 1, 1996. No Community Development Quota landings have been made.

Area	Catch limit (000's pounds)	Catch (000's pounds)	No. of landings
2C	9,000	2,354	603
3A	20,000	3,786	493
3B	3,700	215	35
4A	1,950	26	4
4B	2,310	13	1
4C	770	0	0
4D	770	0	0
4E	120	0	0
Total	38,620	6,394	1,136

During the same time period in 1995, March 15 through May 2, 2.5 million pounds (11,339.92 mt) were landed in the Alaskan IFQ fishery.

Dated: May 23, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–13474 Filed 5–29–96; 8:45 am]

BILLING CODE 3510–22–W

Proposed Rules

Federal Register

Vol. 61, No. 105

Thursday, May 30, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911 and 915

[Docket No. FV96–911–3]

Limes and Avocados Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that referenda be conducted among eligible producers of Florida limes and Florida avocados to determine whether they favor continuance of the marketing orders regulating the handling of limes and avocados grown in the production area.

DATES: The referenda will be conducted from June 1 through June 15, 1996. To vote in these referenda, growers must have been producing Florida limes or Florida avocados during the period April 1, 1995, through March 31, 1996.

ADDRESSES: Copies of the marketing orders may be obtained from the office of the referendum agent at P.O. Box 2276, Winter Haven, Florida, 33883–2276, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC, 20090–6456; telephone (202) 720–5053.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, Department of Agriculture, P.O. Box 2276, Winter Haven, Florida, 33883–2276; telephone: (941) 299–4770; or Britthany Beadle, Marketing Order Administration Branch, Fruit & Vegetable Division, Agricultural Marketing Service, Department of Agriculture, Room 2536–S, P.O. Box 96456, Washington, DC 20090–6456, telephone: (202) 720–5127.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order Nos. 911 [7 CFR Part 911] and 915 [7 CFR Part 915], hereinafter referred to as the "orders," and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act", it is hereby directed that referenda be conducted to ascertain whether continuance of the orders is favored by the producers. The referenda shall be conducted during the period June 1, through June 15, 1996, among Florida lime and avocado producers in the production area. Only producers that were engaged in the production of Florida limes or Florida avocados during the period of April 1, 1995, through March 31, 1996, may participate in the continuance referenda.

The Secretary of Agriculture has determined that continuance referenda are an effective means for ascertaining whether producers favor continuation of marketing order programs. The Secretary would consider termination of the order(s) if less than two-thirds of the producers voting in the referenda and producers of less than two-thirds of the volume of Florida limes or Florida avocados represented in the referenda favor continuance. In evaluating the merits of continuance versus termination, the Secretary will not only consider the results of the continuance referenda. The Secretary will also consider other relevant information concerning the operation of the orders; the orders' relative benefits and disadvantages to producers, handlers, and consumers; and whether continued operation of the orders would tend to effectuate the declared policy of the Act.

In any event, section 8c(16)(B) of the Act requires the Secretary to terminate an order whenever the Secretary finds that a majority of all producers affected by the order favor termination, and such majority produced for market more than 50 percent of the commodity covered under such order.

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1995 [Pub. L. 104–13], the ballot materials to be used in the referenda herein ordered have been submitted to and approved by OMB and have been assigned OMB Nos. 0581–0091 for Florida limes and 0581–0078 for Florida avocados. It has been estimated that it will take an average of 10 minutes for each of the approximately 114 producers of Florida limes and 138 producers of Florida avocados to cast a ballot.

Participation in the referenda is voluntary. Ballots postmarked after June 15, 1996, will not be included in the vote tabulation.

Doris Jamieson and Christian D. Nissen of the Southeast Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, are hereby designated as the referenda agents of the Secretary of Agriculture to conduct such referenda. The procedure applicable to the referenda shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruit, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" [7 CFR Part 900.400 *et. seq*].

Ballots will be mailed to all producers of record and may also be obtained from the referenda agents and their appointees.

List of Subjects in 7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreement, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: May 22, 1996.

D. Michael Holbrook,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 96–13615 Filed 5–29–96; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

RIN 3150–AE87; 3150–AF15

Standard Design Certification for the U.S. Advanced Boiling-Water Reactor and System 80+ Designs; Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: extension of the comment period.

SUMMARY: A supplementary notice of proposed rulemaking for certification of the U.S. Advanced Boiling-Water Reactor (ABWR) and System 80+ designs was published in the **Federal Register** on April 24, 1996 (61 FR 18099). The supplementary comment period expired on May 24, 1996. On May 17, 1996, the U.S. Nuclear Regulatory Commission (NRC) received a request for a 60-day extension of the supplementary comment period from the Nuclear Energy Institute (NEI). NEI requested the extension in order to provide substantive comments on new issues, as well as on longstanding issues that NEI stated have not yet been resolved to its satisfaction. Therefore, the Commission is extending the comment period to July 23, 1996.

The final design certification rules for the ABWR and System 80+ designs, which are under consideration by the Commission, are contained in SECY–96–077, "Certification of Two Evolutionary Designs," which was prepared by the NRC staff. This SECY paper has been placed in the NRC Public Document Room (PDR), and comments on the proposed rules, focusing specifically on staff-recommended changes from the rules originally proposed, are solicited. These changes are discussed in the supplementary information section of the recommended notices of final rulemaking contained in SECY–96–077. In addition, GE Nuclear Energy (GE) submitted draft changes to the ABWR Design Control Document (DCD) to the NRC in a letter dated April 16, 1996 that GE intends to include in its final DCD. Comments are also solicited on GE's letter of April 16, 1996, which is available in the NRC PDR.

DATES: Comments are due by July 23, 1996. Comments received after this date will be considered if it is practical to do so, but the Commission will only assure consideration for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Service Branch. Comments may also be hand delivered to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Copies of SECY–96–077, including the **Federal Register** notices for both rules, and the comments received will be available for examination at the NRC Public Document Room at 2120 L Street NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jerry N. Wilson, Office of Nuclear Reactor Regulation, telephone (301) 415–3145, or Geary S. Mizuno, Office of the General Counsel, telephone (301) 415–1639, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 23rd day of May, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 96–13574 Filed 5–29–96; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–166–AD]

RIN 2120–AA64

Airworthiness Directives; Beech (Raytheon) Model BAe 125 Series 1000A and Model Hawker 1000 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Beech (Raytheon) Model BAe 125 series 1000A and Model Hawker 1000 airplanes. This proposal would require a one-time inspection for correct sleeve lengths, an inspection to detect discrepancies of the elevator pulley assembly, and correction of any discrepancy. This proposal is prompted by reports indicating that some aircraft have been fitted with an elevator pulley that was assembled incorrectly during manufacture. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the elevator control circuit due to failure of one or more outer lugs or malfunction of the elevator pulley assembly as a result of incorrect assembly of the pulley.

DATES: Comments must be received by July 8, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–166–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; Fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–166–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–166–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Beech (Raytheon) Model BAe 125 series 1000A and Model Hawker 1000 airplanes. The CAA advises that it has received reports indicating that some aircraft have been fitted with an elevator pulley that was assembled incorrectly during manufacture. Failure of one or more outer lugs or malfunction of the elevator pulley assembly, if not corrected, could result in reduced structural integrity of the elevator control circuit.

Explanation of Relevant Service Information

The manufacturer has issued Hawker Service Bulletin SB 27–161, Revision 1, dated July 29, 1994, which describes procedures for a one-time inspection for correct sleeve lengths, and a one-time visual inspection to detect discrepancies of the elevator pulley assembly. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require a one-time inspection for correct sleeve lengths, a one-time visual inspection to detect discrepancies of the elevator pulley assembly, and correction of any discrepancy. The inspections would be required to be accomplished in accordance with the service bulletin described previously. Correction of discrepancies would be required to be accomplished in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 40 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,400, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Beech Aircraft Company (Formerly DeHavilland; Hawker Siddeley; British Aerospace, PLC; Raytheon Corporate Jets, Inc.): Docket 95–NM–166–AD.

Applicability: Model BAe 125 series 1000A and Model Hawker 1000 airplanes; as listed in Hawker Service Bulletin SB 27–161, Revision 1, dated July 29, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Note 2: Beech (Raytheon) Model BAe 125 series 1000B airplanes are similar in design to the airplanes that are subject to the requirements of this AD and, therefore, also may be subject to the unsafe condition addressed by this AD. However, as of the effective date of this AD, those models are not type certificated for operation in the United States. Airworthiness authorities of countries in which Model BAe 125 series 1000B series airplanes are approved for operation should consider adopting corrective action, applicable to those models, that is similar to the corrective action required by this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the elevator control circuit, accomplish the following:

(a) Within 6 months after the effective date of this AD: Perform a one-time inspection for correct sleeve lengths, and a one-time visual inspection to detect discrepancies of the elevator pulley assembly, in accordance with Hawker Service Bulletin SB 27–161, Revision 1, dated July 29, 1994.

(1) If no discrepancy is found, no further action is required by this AD.

(2) If any discrepancy is found, prior to further flight, correct the discrepancy in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 22, 1996.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–13497 Filed 5–29–96; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 39

[Docket No. 95–NM–240–AD]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 60 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Learjet Model 60 airplanes. This proposal would require modification of the aft core cowl nozzle of the engine nacelles. This proposal is prompted by a report that the sealant material in the aft core cowl nozzle of the engine nacelle was found to extend higher than the nozzle's forward flange, which can allow it to interfere with the proper operation of the emergency fuel shutoff actuating mechanism. The actions specified by the proposed AD are intended to prevent physical interference of the emergency fuel shutoff actuating mechanism and resultant engine shutdown.

DATES: Comments must be received by July 8, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–240–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Jeffrey Janusz, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4148; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–240–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–240–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report that, during installation of the aft core cowl nozzle of the engine nacelle on a Learjet Model 60 airplane, the sealant material in the aft core cowl nozzle was found to be improperly extended higher than the nozzle's forward flange. The cause has been attributed to the apparent improper installation of the sealant material during production. Sealant material in the aft core cowl nozzle that extends too high, if not corrected, could interfere with proper operation of the lever of the emergency fuel shutoff actuating mechanism. Such interference could result in the failure of the emergency fuel shutoff actuating mechanism and resultant engine shutdown.

The FAA has reviewed and approved Learjet Service Bulletin SB 60–71–2, dated May 12, 1995, which describes procedures for modification of the aft core cowl nozzle of the engine nacelles. Among other actions, the modification involves replacing the sealant on the aft core cowl nozzle with a filler made from 6061 aluminum, and reidentifying the aft core cowl nozzle. The modification will ensure that the sealant does not interfere with the function of the emergency fuel shutoff actuating mechanism.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the aft core cowl nozzle of the engine nacelles. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 39 Learjet Model 60 airplanes of the affected design in the worldwide fleet. The FAA estimates that 26 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 44 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $68,640, or $2,640 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Learjet: Docket 95–NM–240–AD.

Applicability: Model 60 airplanes, as listed in Learjet Service Bulletin SB 60–71–2, dated May 12, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the sealant material in the aft core cowl nozzle of the engine nacelles from interfering with the lever of the emergency fuel shutoff actuating mechanism, which could result in the failure of the emergency fuel shutoff actuating mechanism and resultant engine shutdown, accomplish the following:

(a) Within 90 days after the effective date of this AD, modify the aft core cowl nozzle of the engine nacelles in accordance with Learjet Service Bulletin SB 60–71–2, dated May 12, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 22, 1996.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–13498 Filed 5–29–96; 8:45 am]

BILLING CODE 4910–13–U

ARMS CONTROL AND DISARMAMENT AGENCY

22 CFR Part 602

Freedom of Information Policy and Procedures

AGENCY: Arms Control and Disarmament Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Arms Control and Disarmament Agency (ACDA) proposes to revise and restate in their entirety its rules that govern the availability and release of information. By clarifying these rules, this proposal will help the public to interact better with ACDA and is part of ACDA's effort to update and streamline its regulations. ACDA invites comments from interested groups and members of the public on the proposed regulations.

DATES: To be considered, comments must be delivered by mail or in person to the address, or faxed to the telephone number, listed below by 5:00 p.m. on Monday, July 8, 1996.

ADDRESSES: Comments should be directed to the Office of the General Counsel, United States Arms Control and Disarmament Agency, Room 5635, 320 21st Street, N.W., Washington, DC 20451; FAX (202) 647–0024. Comments will be available for inspection between 8:15 a.m. and 5:00 p.m. at the same address.

FOR FURTHER INFORMATION CONTACT: Frederick Smith, Jr., United States Arms Control and Disarmament Agency, Room 5635, 320 21st Street, N.W., Washington, DC 20451, telephone (202) 647–3596.

SUPPLEMENTARY INFORMATION: ACDA proposes to update, clarify, reorganize, and streamline its rules regarding the availability and release of information under the Freedom of Information Act, as amended. ACDA does not intend these rules to materially affect current ACDA standards, policies, or procedures.

Regulatory Flexibility Act Certification

It is hereby certified that the proposed rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866 Determination

ACDA has determined that the proposed rule is not a significant regulatory action within the meaning of section 3(f) of that Executive Order.

Paperwork Reduction Act Statement

The proposed rule is not subject to the provisions of the Paperwork Reduction Act because it does not contain any information collection requirements within the meaning of that Act.

Unfunded Mandates Act Determination

ACDA has determined that the proposed rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532.

List of Subjects in 22 CFR Part 602

Freedom of Information Act.

The Proposed Regulations

ACDA proposes to revise 22 CFR Part 602 to read as follows:

PART 602—FREEDOM OF INFORMATION POLICY AND PROCEDURES

Subpart A—Basic Policy

Sec.

602.1 Scope of part.
602.2 Definitions.
602.3 General policy.

Subpart B—Procedure for Requesting Records

602.10 Requests for records.
602.11 Requests in person.
602.12 Availability of records at the ACDA Office of Public Affairs.
602.13 Copies of records.
602.14 Records of other agencies, governments and international organizations.
602.15 Overseas requests.
602.16 Responses and time limits on requests.
602.17 Time extensions.
602.18 Inability to comply with requests.
602.19 Predisclosure notification for confidential commercial information.

Subpart C—Fees

602.20 Fees for records search, review, copying, certification, and related services.
602.21 Waiver or reduction of fees.
602.22 [Reserved]
602.23 GPO and free publications.
602.24 Method of payment.

Subpart D—Denials of Records

602.30 Denials.
602.31 Exemptions.

Subpart E—Review of Denials of Records

602.40 Procedure for appealing initial determinations to withhold records.
602.41 Decision on appeal.

Subpart F—Annual Report to the Congress

602.50 Requirements for annual report.

Authority: 5 U.S.C. 552; 22 U.S.C. 2581; and 31 U.S.C. 9701.

Subpart A—Basic Policy

§ 602.1 Scope of part.

This part 602 establishes the policies, responsibilities and procedures for release to members of the public of records which are under the jurisdiction of the U.S. Arms Control and Disarmament Agency.

§ 602.2 Definitions.

As used throughout this part, the following terms have the meanings set forth in this section:

(a) The term *Agency* and the acronym *ACDA* stand for the U.S. Arms Control and Disarmament Agency.

(b) The term *records* includes all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by the Agency in pursuance of Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by the Agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data contained therein. Library or museum material made or acquired solely for reference or exhibition purposes is not included within the definition of the term "records."

(c) *Deputy Director* means the Deputy Director of the Agency.

(d) The acronym *FOIA* stands for the Freedom of Information Act, as amended (5 U.S.C. 552).

§ 602.3 General policy.

(a) In accordance with section 2 of the Arms Control and Disarmament Act, as amended (22 U.S.C. 2551), it is the policy of ACDA to carry out as one of its primary functions the dissemination and coordination of public information concerning arms control, nonproliferation, and disarmament.

(b) In compliance with the FOIA, ACDA will make available upon request by members of the public to the fullest extent practicable all Agency records under its jurisdiction, as described in the FOIA, except to the extent that they may be exempt from disclosure under the FOIA and § 602.31.

Subpart B—Procedure for Requesting Records

§ 602.10 Requests for records.

(a) A written request for records should be addressed to: FOIA Officer, U.S. Arms Control and Disarmament Agency, 320 21st Street, N.W., Washington, DC 20451. To facilitate processing, the letter of request and envelope should be conspicuously marked "FOIA request."

(b) The request should identify the desired record or reasonably describe it. The identification should be as specific as possible so that a record can be found readily. Blanket requests or requests for "the entire file of" or "all matters relating to" a specified subject will not be accepted. The Agency will make any reasonable effort to assist the requester in sharpening the request to eliminate extraneous and unwanted materials and to keep search and copying fees to a minimum.

(c) If a fee is chargeable under subpart C of this part for search or duplication costs incurred in connection with a request for an Agency record, the request should include the anticipated fee or should ask for a determination of such fee. Any chargeable fee must be paid in full prior to issuance of requested materials. The method of payment is described in § 602.24.

§ 602.11 Requests in person.

A member of the public may request an Agency record by making an appointment to apply in person between the hours of 8:30 a.m. and 4:00 p.m. at the ACDA Office of Public Affairs, 320 21st Street, N.W., Washington, DC 20451. Form ACDA–21, Public Information Service Request, is available at the ACDA Office of Public Affairs for the convenience of members of the public in requesting Agency records.

§ 602.12 Availability of records at the ACDA Office of Public Affairs.

(a) A current index identifying all available records is kept on file at the ACDA Office of Public Affairs. Copies of this index may be obtained free upon request.

(b) In addition, the ACDA Office of Public Affairs will maintain or have available, unless authorized to be withheld, certain types of unclassified records, including but not necessarily limited to the following:

(1) A copy of the ACDA Manual and other Agency regulations, including a copy of title 22 of the Code of Federal Regulations (CFR) and any other title of the CFR in which Agency regulations have been published;

(2) Copies of arms control and disarmament treaties or agreements in force;

(3) Research contracts between the Agency and universities or other non-Government organizations; and

(4) Reimbursable agreements with other Government agencies.

(c) Copies of records available to the public may be inspected by a requester in the ACDA Office of Public Affairs during the business hours stated in § 602.11. Copies of records made available for inspection may not be removed by any requester from the ACDA Office of Public Affairs.

§ 602.13 Copies of records.

(a) The Agency will provide copies of requested records of the same type and quality that it would provide to personnel of another U.S. Government agency in the course of official business. It will not accept requests for special types of copying processes or for special standards of quality of reproduction.

(b) Copies of records requested will be reproduced as promptly as possible and mailed to the requester. Chargeable fees will be determined according to the schedule set forth in subpart C of this part. The FOIA Officer is authorized to limit copies of each requested record to ten or fewer when there exists an extraordinary demand for the number of available copies or when requirements place excessive demands on the Agency's copying facilities.

§ 602.14 Records of other agencies, governments and international organizations.

(a) Requests for records that were originated by or are primarily the concern of another U.S. Government department or agency shall be forwarded to the particular department or agency involved, and the requester notified in writing.

(b) Requests for records that have been furnished to the Agency by foreign governments or by international organizations will not normally be released unless the organization or government concerned has indicated that the particular information should or may be made public. Where international organizations or foreign governments concerned have not made such a determination, the requester will be so advised, and if possible, furnished the address to which the request may be sent.

§ 602.15 Overseas requests.

Pursuant to the general policy outlined in § 602.3, ACDA has made arrangements to provide the United States Information Agency (USIA) with material for dissemination abroad, such as information on official U.S. positions on arms control and disarmament policy. Requests originating in an area served by a USIA office which are received at Agency headquarters, will be referred to USIA when appropriate for direct response to the requester.

§ 602.16 Responses and time limits on requests.

(a) The FOIA requires an initial determination on a request for an Agency record to be made within ten working days after receipt of the request.

(b) If it is determined that the requested record (or portions thereof) will be made available, the requested material will be forwarded promptly after the initial determination, provided any applicable fee has been paid in full.

(c) If prior to making an initial determination it is anticipated that the costs chargeable for a request will amount to more than $25.00 or more than the amount of the payment accompanying the request, whichever is larger, the requester shall be promptly notified of the total amount of the anticipated fee or such portion thereof as can readily be estimated. In these instances, an advance deposit in the estimated amount of the search, review, and copying costs may be required. The request for an advance deposit shall extend an offer to the requester to consult with Agency personnel in order to reformulate the request in a manner that will reduce the fee, yet still meet the needs of the requester.

(d) In instances where the Agency has requested an advance deposit, the date of receipt of the deposit will be considered as the request date which begins the period of response by the Agency.

(e) Receipt of a request for Agency records will be determined by the time and date the request is received.

(f) Where an obvious delay in receipt of a request has occurred, such as in cases where the requester has failed to address the request properly, or where a delay has been caused in the mails, the Agency will dispatch to the requester an acknowldgement of the receipt of the request.

§ 602.17 Time extensions.

(a) In unusual circumstances, the time limit for an initial or final determination may be extended, but not to exceed a total of ten working days in the aggregate in the processing of any specific request for an Agency record.

(b) "Unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular case:

(1) The need to search for and collect the requested records from other establishments that are physically separate from ACDA headquarters;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request.

§ 602.18 Inability to comply with requests.

(a) When a request cannot be fulfilled, the requester will be so informed with reasons, and any fees returned after deduction of applicable search costs. Such reasons may include, but are not limited to the following:

(1) Insufficient or vague identifying information which makes identification or location of the record impossible;

(2) No such record in existence;

(3) Record available for purchase from the Government Printing Office or elsewhere; or

(4) Records destroyed pursuant to the Records Disposal Act.

(b) Inability to comply with requests shall be processed the same as denials of records, i.e., notification to the requester shall be in writing, shall set forth the reasons therefor, shall be signed by the name and title of the FOIA Officer, and shall include an explanation of the requester's right to appeal, including the address to which an appeal may be directed.

§ 602.19 Predisclosure notification for confidential commercial information.

(a) *When notification is required.* If a request under the FOIA seeks a record that contains information submitted by a person or entity outside the Federal government that arguably is exempt from disclosure under exemption 4 of the FOIA because disclosure could reasonably be expected to cause substantial competitive harm, the Agency shall notify the submitter that such a request has been made whenever:

(1) The submitter has made a good faith designation of information, less than ten years old, as confidential commercial or financial information, or

(2) The Agency has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(b) *Notification to submitter.* The notice to the submitter shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the information. The notice shall afford the submitter a reasonable period of time, based on the amount and/or complexity of the information, within which to object to disclosure.

(c) *Objection by submitter.* Any objection by a submitter to disclosure must be made in writing and sent to: FOIA Officer, U.S. Arms Control and Disarmament Agency, 320 21st Street, N.W., Washington, DC 20451. It should identify the portion(s) of the information to which disclosure is objected, and should include a detailed statement of all claimed grounds for withholding any of the information under the FOIA and, in the case of exemption 4, an explanation of why the information constitutes a trade secret or commercial or financial information that is privileged and confidential, including a specification of any claim of competitive or other business harm that would result from disclosure.

(d) *Notification to requester.* The Agency shall notify the requester in writing when any notification to a submitter is made pursuant to paragraph (a) of this section.

(e) *When notification is not required.* Notification to a submitter is not required if:

(1) The Agency determines that the information requested should not be disclosed;

(2) Disclosure is required by statute (other than FOIA) or by regulation; or

(3) The information has previously been lawfully published or officially made available to the public.

(f) *Notice of intent to disclose.* If the Agency determines that despite the objection of the submitter the requested information should be disclosed, in whole or in part, it shall notify both the requester and the submitter of the decision and shall provide to the submitter in writing:

(1) A brief explanation of why the submitter's objections were not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date that provides a reasonable period of time between receipt of the notice and the disclosure date.

(g) *Notice of lawsuit.* (1) Whenever a requester brings legal action to compel disclosure of information covered by paragraph (a) of this section, the Agency shall promptly notify the submitter in writing.

(2) Whenever a submitter brings legal action to prevent disclosure of information covered by paragraph (a) of this section, the Agency shall promptly notify the requester in writing.

Subpart C—Fees

§ 620.20 Fees for records search, review, copying, certification, and related services.

The fees for search, review, and copying services for Agency records under the FOIA or the Privacy Act are as follows:

(a) When documents are requested for commercial use, requesters will be assessed the full direct costs for searching for, reviewing for release, and copying the records sought. A "commercial use" request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(b) Requesters from educational and noncommercial scientific institutions will be assessed only copying costs.

(c) Requesters who are representatives of the news media (persons actively gathering news for an entity that is organized and operated to publish or broadcast news to the public) will be assessed only copying costs.

(d) All other requesters will be assessed fees which recover the full and reasonable direct cost of searching for, reviewing for release, and copying records that are responsive to the request.

(e) Requesters from educational and noncommercial scientific institutions, representatives of the news media, and all other noncommercial users, will not be assessed for the first 100 pages of copying or the first two hours of search time. Commercial use requesters will not be entitled to these free services.

(f) The search and review hourly fees will be based upon employee grade levels in order to recoup the full, allowable direct costs attributable to their performance of these functions.

(g) The fee for paper copy reproduction will be $.20 per page.

(h) The fee for duplication of computer tape or printout reproduction or other reproduction (e.g., microfiche) will be the actual cost, including operator time.

(i) If the cost of collecting any fee would be equal to or greater than the fee itself, it will not be assessed.

(j) A fee may be charged for searches that are not productive and for searches for records or parts of records that subsequently are determined to be exempt from disclosure.

(k) Interest charges may be assessed on any unpaid bill starting on the 31st day following the day on which the billing was sent, at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of billing. The Debt Collection Act, including disclosure to consumer reporting agencies and the use of collection agencies, will be utilized to encourage payment where appropriate.

(l) If search charges are likely to exceed $25.00, the requester will be notified of the estimated fees unless the requester's willingness to pay whatever fee is assessed has been provided in advance.

(m) An advance payment (before work is commenced or continued on a request) may be required if the charges are likely to exceed $250.00. Requesters who have previously failed to pay a fee in a timely fashion (i.e., within 30 days of the date of billing) may be required to pay this amount plus any applicable interest (or demonstrate that the fee has been paid) and then make an advance payment of the full amount of the estimated fee before the new or pending request is processed.

§ 602.21 Waiver or reduction of fees.

Documents shall be furnished without any charge or at a charge reduced below the fees set forth in § 602.20 if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. The following six factors will be employed in determining when such fees shall be waived or reduced:

(a) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government;"

(b) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(c) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the information will contribute to the "public understanding;"

(d) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(e) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(f) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

§ 602.22 [Reserved]

§ 602.23 GPO and free publications.

(a) The index of records available in the Agency's Office of Public Affairs will list the sales offices of records published by the Government Printing Office (GPO). The Agency will refer each requester to the appropriate sales office and refund any fee payments accompanying the request. Published records out of print at the GPO may be copied by the Agency for the requester at the requester's expense in accordance with the fee schedule established for copying service. In some instances the Agency may have extra copies of out of print GPO records. These extra copies will be provided to requesters at the printed GPO price.

(b) The Agency makes some publications or records available to the public without charge. These regulations neither change that practice nor require payment of a fee by a requester unless the original stock has been exhausted and copying services are necessary to satisfy a request.

§ 602.24 Method of payment.

(a) Payment may be in the form of cash, a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the Treasury

of the United States and mailed or delivered to the FOIA Officer, U.S. Arms Control and Disarmament Agency, 320 21st Street, N.W., Washington, DC 20451. Cash should not be sent by mail.

(b) A receipt for fees paid will be given upon request.

Subpart D—Denials of Records

§ 602.30 Denials.

(a) Requests for inspection or copies of records may be denied where the information or record is exempt from disclosure for reasons stated in § 602.31.

(b) Denials shall be in writing, shall set forth the reasons therefor, shall be signed by the FOIA Officer and shall include an explanation of the requester's right to appeal, including the address to which an appeal may be directed.

§ 602.31 Exemptions.

The requirements of this part to make Agency records available do not apply to matters that are:

(a) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order;

(b) Related solely to the internal personnel rules and practices of the Agency;

(c) Specifically exempted from disclosure by statute;

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Inter-agency or intra-agency memoranda or letters that would not be available by law to a private party in litigation with the Agency;

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution that furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

(h) Contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(i) Geological and geophysical information and data, including maps, concerning wells.

Subpart E—Review of Denials of Record

§ 602.40 Procedure for appealing initial determinations to withhold records.

(a) A member of the public who has requested an Agency record in accordance with subpart B of this part and who has received an initial determination that does not comply fully with the request, may appeal such a determination.

(b) The appeal shall:

(1) Be in writing;

(2) Be initiated within 30 working days of the initial determination denying the request;

(3) Include a copy of the initial written request, a copy of the letter of denial, and the requester's reasons for appealing the denial; and

(4) Be addressed to the Deputy Director, U.S. Arms Control and Disarmament Agency, 320 21st Street, N.W., Washington, DC 20451.

(c) The 30-day period for appealing a denial begins on the date of the denial letter. The 30-day limitation may be waived by the Agency for good cause shown. The Agency will consider any request closed if, within 30 working days after a complete or partial denial, the requester fails to appeal the denial.

§ 602.41 Decision on appeal.

(a) Review and final determination on an appeal shall be made by the Deputy Director.

(b) [Reserved]

(c) Review of an appeal shall be made on the submitted record. No personal appearance, oral argument, or hearing shall be permitted.

(d) The final determination on an appeal from a denial shall be made by the Deputy Director within 20 working days of receipt of the appeal by the Agency.

(e) If the final determination is to release the withheld material, the requester will be notified immediately and the material will be forwarded promptly in accordance with the procedure described in § 602.16 for notifications of initial determinations.

(f) If the final determination is to continue to withhold material in whole or in part, the requester will be notified immediately of the determination, the reasons therefor, and the right to judicial review.

(g) All decisions will be indexed and available for inspection and copying in the same manner as other Agency final orders and opinions, if any, under 5 U.S.C. 552(a)(2).

Subpart F—Annual Report to the Congress

§ 602.50 Requirements for annual report.

(a) On or before March 1 of each calendar year, ACDA shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of the Congress. The report shall include the following information:

(1) The number of determinations made by ACDA not to comply with requests for records made to the Agency under this part and the reasons for each such determination;

(2) The number of appeals made by persons under subpart E of this part, the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) The names and titles or positions of each person responsible for the denial of records requested under this part, and the number of instances of participation for each;

(4) The results of each proceeding conducted pursuant to 5 U.S.C. 552(a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary actions was not taken;

(5) A copy of this part 602 and any other rule or regulation made by ACDA regarding 5 U.S.C. 552;

(6) A copy of the fee schedule and the total amount of fees collected by ACDA for making records available under this part; and

(7) Such other information as indicates efforts to administer fully this part.

(b) The FOIA Office will be responsible for preparing the report for review and submission to the Congress.

Dated: May 20, 1996.

Mary Elizabeth Hoinkes,

General Counsel.

[FR Doc. 96–13469 Filed 5–29–96; 8:45 am]

BILLING CODE 6820–32–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–29–95]

RIN 1545–AT60

Available Unit Rule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations concerning the low-income housing credit. The proposed regulations provide rules for determining the treatment of low-income housing units in a building that are occupied by individuals whose incomes increase above 140 percent of the income limitation applicable under section 42(g)(1). The proposed regulations affect owners of those buildings. This document also provides notice of public hearing on these proposed regulations.

DATES: Written comments and outlines of topics to be discussed at the public hearing scheduled for September 17, 1996, must be received by August 28, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (PS–29–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (PS–29–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The public hearing will be held in the NYU Classroom, room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, David Selig, (202) 622–3040; concerning submissions and the hearing, Christina Vasquez, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 42. These amendments are proposed to provide guidance under section 42(g)(2)(D), as amended by section 7108(e)(1) of the Omnibus Budget and Reconciliation Act of 1989, and section 11701(a)(3)(A) and (a)(4) of the Omnibus Budget and Reconciliation Act of 1990. Section 42(g)(2)(D) provides rules for determining the treatment of low-income housing units that are occupied by individuals whose incomes rise above the income limitation applicable under section 42(g)(1).

The general rule in section 42(g)(2)(D)(i) provides that if the income of an occupant of a low-income unit increases above the income limitation applicable under section 42(g)(1), the unit continues to be treated as a low-income unit. This general rule only applies if the occupant's income initially met the income limitation and the unit continues to be rent-restricted. Section 42(g)(2)(D)(ii), however, provides an exception to the general rule in section 42(g)(2)(D)(i). The unit ceases being treated as a low-income unit when two conditions occur. The first condition is that the occupant's income increases above 140 percent of the income limitation applicable under section 42(g)(1), or above 170 percent for a deep rent-skewed project described in section 142(d)(4)(B) (applicable income limitation). When this occurs, the unit becomes an over-income unit. The second condition is that a new resident, whose income exceeds the applicable income limitation (nonqualified resident), occupies any residential unit in the building of a comparable or smaller size (comparable unit).

Explanation of Provisions

All Available Units Must Be Rented to Qualified Residents

The heading of section 42(g)(2)(D)(ii) indicates that the next available unit must be rented to a low-income tenant to maintain the low-income status of an over-income unit. Although the heading of section 42(g)(2)(D)(ii) refers to the next available unit, the body of section 42(g)(2)(D)(ii) clarifies that if any available comparable unit is occupied by a nonqualified resident, the over-income unit ceases to be treated as a low-income unit. Therefore, all available comparable units in the building, not only the next available unit, must be rented to qualified residents to maintain the low-income status of the over-income unit.

A Current Resident May Move Within the Same Low-Income Building

The proposed regulations define a qualified resident under the available unit rule as any person whose income does not exceed the applicable income limitation or any current resident, regardless of the income level of the current resident. Thus, a current resident may move to a different unit in the same low-income building without causing a violation of the available unit rule even if the current resident's income exceeds the applicable income limitation. When a current resident moves to a different unit within the same low-income building, the new unit adopts the status of the vacated unit.

Rule Applies to Each Building Separately

The rules of section 42 generally apply on a building-by-building basis. For example, the amount of credit allowable under section 42(a) is determined for each building in a qualified low-income housing project. The recapture of credit under section 42(j) is determined by examining the qualified basis of each building. In addition, section 42(g)(2)(D)(ii) uses the phrase "any residential rental unit in the building" to identify residential rental units that must be rented to qualified residents to preserve the low-income status of an over-income unit. The proposed regulations provide, therefore, that in a project containing more than one low-income building, the available unit rule applies separately to each building.

Effect of Violation of Available Unit Rule

The proposed regulations further provide that all over-income units in the building lose their status as low-income units if an owner violates the available unit rule. A violation of the rule occurs when a building has one or more over-income units and the owner of the building rents an available comparable unit in the building to a nonqualified resident.

Over-Income Unit Counts Toward Minimum Set-Aside Requirement

The proposed regulations also clarify whether an over-income unit counts towards satisfying the applicable minimum set-aside requirement of section 42(g)(1). The available unit rule provides that an over-income unit maintains its status as a low-income unit as long as the owner does not rent an available comparable unit to a nonqualified resident. Section 42(i)(3), which defines a low-income unit, and section 42(g)(2)(D), which contains rules for increases in the income of existing low-income tenants, work together to treat an over-income unit as a low-income unit when determining whether a project satisfies the applicable minimum set-aside requirement. This treatment helps diminish any incentive a project owner may have to evict from a rent-restricted unit those tenants who originally qualified as low-income tenants. See 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–97 (1986), 1986–3 (Vol. 4) C.B. 97. Therefore, the proposed regulations provide that an over-income unit may continue to be included in the numerator and the denominator of the ratio used to determine whether a project satisfies the applicable minimum set-aside requirement of section 42(g)(1).

Relationship to Tax-Exempt Bond Provisions

Financing arrangements using obligations that purport to be exempt facility bonds under section 142 must meet the requirements of sections 103 and 141 through 150 for interest on the obligations to be excluded from gross income under section 103(a). The requirements under section 142(d) may differ from those under section 42. For example, section 142(d)(1) is applied on a project rather than on a building-by-building basis. The rules set forth in these proposed regulations are not intended as an interpretation of the applicable rules under section 142.

The rules contained in the proposed regulations are proposed to be effective on the date final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 17, 1996, at 10 a.m. in the NYU Classroom, room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and outlines of topics to be discussed and the time devoted to each topic (signed original and eight (8) copies by August 28, 1996.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information: The principal author of these regulations is David Selig, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding a new citation in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.42–15 is also issued under 26 U.S.C. 42(n). * * *

Par. 2. Section 1.42–15 is added to read as follows:

§ 1.42–15 Available unit rule.

(a) *Definitions.* The following definitions apply to this section:

Applicable income limitation means the limitation applicable under section 42(g)(1) or, for deep rent-skewed projects described in section 142(d)(4)(B), 40 percent of area median gross income.

Available unit rule means the rule in section 42(g)(2)(D)(ii).

Comparable unit means a residential unit in a low-income building that is comparably sized or smaller than an over-income unit or, for deep rent-skewed projects described in section 142(d)(4)(B), any low-income unit.

Low-income resident means a person whose income does not exceed the applicable income limitation.

Low-income unit is defined by section 42(i)(3)(A).

New resident means a person who currently is not living in the low-income building.

Nonqualified resident means a new resident whose income exceeds the applicable income limitation.

Over-income unit means a low-income unit in which the income of the occupants of the unit increases above 140 percent of the applicable income limitation under section 42(g)(1), or above 170 percent of the applicable income limitation for deep rent-skewed projects described in section 142(d)(4)(B).

Qualified resident means a low-income resident or a current resident.

(b) *General section 42(g)(2)(D)(i) rule.* Except as provided in paragraph (c) of this section, notwithstanding an increase in the income of the occupants of a low-income unit above the applicable income limitation, if the income of the occupants initially met the applicable income limitation, and the unit continues to be rent-restricted——

(1) The unit continues to be treated as a low-income unit; and

(2) The unit continues to be included in the numerator and the denominator of the ratio used to determine whether a project satisfies the applicable minimum set-aside requirement of section 42(g)(1).

(c) *Exception.* A unit ceases to be treated as a low-income unit if it becomes an over-income unit and a nonqualified resident occupies any comparable unit that is available or that subsequently becomes available in the same low-income building. Thus, to continue treating the over-income unit as a low-income unit, the owner of a low-income building must rent to qualified residents all comparable units that are available or that subsequently become available in the same building.

(d) *Effect of current resident moving within building.* When a current resident moves to a different unit within the building, the newly occupied unit adopts the status of the vacated unit. Thus, if a current resident, whose income exceeds the applicable income limitation, moves from an over-income unit to a vacant unit in the same building, the newly occupied unit is treated as an over-income unit.

(e) *Buildings accounted for separately.* In a project containing more than one low-income building, the available unit rule applies separately to each building.

(f) *Result of violation of available unit rule.* If any comparable unit that subsequently becomes available is rented to a nonqualified resident, all over-income units within the same building lose their status as low-income units.

(g) *Examples.* The following examples illustrate this section.

Example 1. This example illustrates a violation of the available unit rule in a low-income building containing three over-income units. On January 1, 1997, a qualified low-income housing project, consisting of one building containing ten identically sized residential units, received a housing credit dollar amount allocation from a state housing credit agency for five low-income units. To avoid recapture of credit, the Project owner must maintain five of the units as low-income units. The project satisfied the minimum set-aside requirement of section 42(g)(1)(B). Units 1, 2, 3, 4, and 5 were occupied by individuals whose incomes did not exceed the income limitation applicable under section 42(g)(1) (low-income residents). Units 6, 7, 8, and 9 were occupied by market-rate tenants. Unit 10 was vacant. On November 21, 1997, the annual incomes of the individuals in Units 1, 2, and 3 increased above 140 percent of the income limitation applicable under section 42(g)(1), causing those units to become over-income units. On November 30, 1997, Units 8 and 9 became vacant. On December 1, 1997, the project owner rented Units 8 and 9 to qualified residents at rates meeting the rent restriction requirements of section 42(g)(2). On December 31, 1997, the Project owner rented Unit 10 to a market-rate tenant. Because Unit 10, an available comparable unit, was leased to a market-rate tenant, Units 1, 2, and 3 ceased to be treated as low-income units. On that date, Units 4, 5, 8, and 9 were the only remaining low-income units. Because the Project owner did not maintain five of the residential units as low-income units, the qualified basis in the building is reduced, and credit must be recaptured. If the project owner had rented Unit 10 to a qualified resident, eight of the units would be low-income units. Units 1, 2, and 3, the over-income units, could then be rented to market-rate tenants because the building would still contain five low-income units.

Example 2. This example illustrates the provisions of paragraph (d) of this section. A low-income project consists of one six-floor building. The residential units in the building are identically sized. The building contains two over-income units on the sixth floor and two vacant units on the first floor. The project owner, desiring to maintain the over-income units as low-income units, wants to rent the available units to qualified residents. J, a resident of one of the over-income units, wishes to occupy a unit on the first floor. J's income has recently increased above the applicable income limitation. The project owner permits J to move into one of the units on the first floor. Despite the increase in J's income, J is a qualified resident under the available unit rule because J is a current resident of the building. The unit occupied by J becomes an over-income unit under the available unit rule. The over-income units in the building continue to be treated as low-income units.

(h) *Effective date.* This section is effective on the date final regulations are published in the **Federal Register**.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 96–13297 Filed 5–29–96; 8:45 am]

BILLING CODE [4830–01–U]

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ID1–1–5528b; FRL–5449–3]

Approval and Promulgation of State Implementation Plans: Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Idaho for the purpose of bringing about attainment of the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to 10 micrometers (PM_{10}) in the Northern Ada County PM_{10} nonattainment area. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received in writing by July 1, 1996.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101.

The State of Idaho, Division of Environmental Quality, 1410 North Hilton, Boise, Idaho 83720.

FOR FURTHER INFORMATION CONTACT: Doug Cole, EPA, Region 10, Idaho Operations Office, 1435 North Orchard, Boise, Idaho 83706, (206) 334–9555.

SUPPLEMENTARY INFORMATION:

See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: March 20, 1996.

Chuck Clarke,

Regional Administrator.

[FR Doc. 96–12889 Filed 5–29–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 60, 63, 260, 261, 264, 265, 266, 270 and 271

[FRL–5511–7]

Hazardous Waste Combustors; Revised Standards; Proposed Rule—Notice of Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule: notice of extension of comment period.

SUMMARY: Since publication of the proposed rule for hazardous waste combustors (61 FR 17358 (April 19, 1996)), EPA has received several requests to extend the comment period given the complexity of the proposed rulemaking. Accordingly, the Agency is extending the comment period 60 days to August 19, 1996.

DATES: Comment period is extended from June 18, 1996 to August 19, 1996.

ADDRESSES: Commenters must send an original and two copies of their comments referencing Docket Number F–96–RCSP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305W), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW., Washington, DC 20460. For other information regarding submitting comments electronically, viewing the comments received and supporting information, please refer to the proposed rule (61 FR 17358 (April 19, 1996)). The RCRA Information Center is located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington Virginia and is open for public inspection and copying of supporting information for RCRA rules from 9 am to 4 pm Monday through Friday, except for Federal holidays. The public must make an appointment to view docket materials by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION: For general information, call the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington, Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Hotline is open Monday-Friday, 9 a.m. to 6 p.m., Eastern Standard Time. For other information on this notice, contact Larry Denyer (5302W), Office of Solid Waste, 401 M Street, S.W., Washington, DC 20460, phone (703) 308–8770.

SUPPLEMENTARY INFORMATION: On April 19, 1996, EPA proposed revised standards for hazardous waste combustors (i.e., incinerators and cement and lightweight aggregate kilns that burn hazardous waste). See 61 FR 17358. The Agency established a 60-day comment period and indicated that comments on the proposal would be accepted until June 18, 1996.

EPA has received written requests to extend the comment period from Dow Chemical Company, Cadence Environmental Energy, Inc., the Department of Energy, and Congressman Harold Volkmer. In addition, the Agency has received numerous verbal requests for a time extension from stakeholders that are members of the Coalition of Responsible Waste Incineration (CRWI), the Cement Kiln Recycling Coalition (CKRC), and the Chemical Manufacturers Association. The additional time requested ranged from 30 to 120 days.

As justification for a time extension, stakeholders noted: (1) The size of the Notice of Proposed Rulemaking (i.e., 178 **Federal Register** pages plus nine major technical support documents); (2) the complexity of the proposal introduced by using joint Resource Conservation and Recovery Act (RCRA) and Clean Air Act (CAA) authority to promulgate the rule (e.g., raising issues pertaining to coordination of RCRA and CAA permits and enforcement authorities); (3) the comprehensive, state-of-the-art, and complicated compliance procedures; (4) the significant revisions proposed to existing RCRA rules; and (5) some of the background materials needed for review have been placed in the docket only recently.

The Agency agrees that a 60-day comment period may not be adequate to allow stakeholders time to review the provisions of the rulemaking and to formulate comments and recommendations for the Agency's consideration in developing the final rule. Accordingly, the Agency is extending the comment period 60 days to August 19, 1996 to provide for a 120-day comment period.

Dated: May 20, 1996.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 96–13434 Filed 5–29–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 96–52; Notice 1]

RIN 2127–AF86

Federal Motor Vehicle Safety Standards; Controls and Displays

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this notice, NHTSA proposes changes to the Federal Motor Vehicle Safety Standard on motor vehicle controls and displays. The agency seeks public comment on five proposals for changes, including rescission of the standard. This proposed action is undertaken as part of NHTSA's efforts to implement the President's Regulatory Reinvention Initiative.

DATES: Comments must be received on or before July 15, 1996.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to: Docket Section, Room 5109, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590. It is requested that 10 copies of the comments be provided. The Docket Section is open on weekdays from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Van Iderstine, Office of Vehicle Safety Standards, NPS–21, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Mr. Van Iderstine's telephone number is (202) 366–5280 and his FAX number is (202) 366–4329.

SUPPLEMENTARY INFORMATION:

President's Regulatory Reinvention Initiative

Pursuant to the March 4, 1995 directive "Regulatory Reinvention Initiative," from the President to the heads of departments and agencies, NHTSA undertook a review of its regulations and directives. During the course of this review, NHTSA identified regulations that it could propose to eliminate as unnecessary or to amend to improve their comprehensibility, application, or appropriateness. Among these regulations is Federal Motor Vehicle Safety Standard No. 101, *Controls and displays* (49 CFR § 571.101).

Standard No. 101

Standard No. 101 was issued in 1967 (32 FR 2408) as one of the initial Federal Motor Vehicle Safety Standards (FMVSS's). The standard applies to passenger cars, multipurpose passenger vehicles (MPVs), trucks, and buses. Its purpose is to assure the accessibility and visibility of motor vehicle controls and displays under daylight and nighttime conditions. The standard is intended to reduce the risk of safety hazards caused by the diversion of the driver's attention from the driving task in order to locate the desired control or display, and by mistakes in selecting controls. The standard also seeks to ensure that a driver restrained by a seat belt can reach certain controls.

Standard No. 101 specifies location requirements (S5.1), identification requirements (S5.2), and illumination requirements (S5.3). It specifies that the controls and displays must be accessible and visible to a driver restrained in accordance with Standard No. 208, *Occupant crash protection* (S6). In addition, Table 1 "Identification and Illumination of Controls" and Table 2 "Identification and Illumination of Displays" further specify which controls and displays are subject to the identification requirements, and how they are to be identified and illuminated.

NHTSA's Proposals for Change

NHTSA proposes five alternatives for changes to the Standard and seeks public comment on each proposal. The proposals are: (1) rescinding the standard; (2) regulating only those controls and displays related to motor vehicle safety; (3) regulating only those

controls and displays required by other Federal Motor Vehicle Safety Standards; (4) consolidating all control and display requirements into Standard No. 101 and (5) permitting International Standards Organization (ISO) symbols on some or all controls and displays requiring identification. If NHTSA decides not to rescind Standard No. 101, it may decide to adopt one or more of the other proposals. Since some of the proposals, (for example, Proposals Three and Five) address different matters in Standard No. 101, they are not mutually exclusive.

Due to the relative simplicity of the proposals, the agency is not setting forth regulatory language for implementing the proposals.

1. Proposal One—Rescind Standard No. 101

NHTSA's first proposal is to rescind Standard No. 101. NHTSA tentatively concludes that even if Standard No. 101 were rescinded, manufacturers would continue to provide appropriate means of identifying and illuminating controls and displays and place those controls and displays in accessible locations. Even if the standard were rescinded, the agency fully expects manufacturers to provide drivers the means to distinguish among various controls and displays. Further, drivers must be warned of defective functioning of a device in the vehicle in order to be able to avoid potentially hazardous conditions, including the possibility of a crash.

Except for some required controls and displays listed in other standards, there is none specifically required by Standard No. 101. The standard only addresses the visibility, access and illumination of controls and displays *if* they are provided. While the initial premise for the standard was that these aspects need to be regulated for minimizing driver distractions, the controls and displays have in effect become an industry practice that may not require continued Federal regulation. NHTSA believes that market forces will ensure manufacturers continue the currently specified practices.

A good example of how market forces have responded to customers' demands has been the location of the horn button(s). In the absence of more specific location requirements, the horn button was historically located at the center of the steering wheel. With the advent of air bag implementation in that same location, the horn button was often displaced to the spokes of the steering wheel. Apparently this location is contrary to the desires of many drivers, as evidenced by the increased number of letters to the agency about that displacement. This displacement, however, was only temporary, until manufacturers found ways to install horn switches in the cover material over the air bag mechanism. As a consequence, as vehicle steering wheels are updated, the horn control is returning to the center of the wheel.

NHTSA notes that if Standard No. 101 were rescinded, some States might adopt regulations requiring controls and displays or regulating their identification, illumination or accessibility, which would subject manufacturers to multiple, conflicting rules and increase vehicle production costs. Were the States to adopt such regulations, there would not be any express preemption under 49 U.S.C. section 30103(b), which preempts State standards if they conflict with an existing Federal standard. It also does not appear likely that a court would find any implied Federal preemption of State requirements, regardless of whether they are similar or dissimilar to those in the Standard. A State regulation addressing the same subject as a rescinded Federal regulation would be impliedly preempted only if the State regulation conflicted with or otherwise frustrated achieving the purposes of the Federal statute. Even if the agency were to conclude that no regulation, Federal or State, of controls and displays is necessary, it is not readily apparent how State regulations, even ones differing from those of another State, on this subject would conflict with Federal law or have a deleterious effect on motor vehicle safety.

2. Proposal Two—Regulate Only Those Controls and Displays Related to Motor Vehicle Safety

The second proposal is to update Standard No. 101 by removing obsolete provisions and regulating only those controls and displays related to safety. Standard No. 101 includes references to vehicles manufactured before September 1, 1987 and September 1, 1989. NHTSA proposes to remove all references to vehicles manufactured before September 1, 1987 and September 1, 1989.

After references to vehicles manufactured before September 1, 1989 are removed, S3, *Application*, of Standard No. 101 will be shortened to state: "This standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses." NHTSA further proposes to amend S5.(b), and S5.3.3(d), by removing references to vehicles manufactured before September 1, 1987 and September 1, 1989. Finally, NHTSA proposes to remove Table 1(a) "Identification and Illumination of Controls" and Table 2(a) "Identification and Illumination of Internal Displays," since each table applies to vehicles manufactured before September 1, 1987.

Additionally, the standard currently regulates aspects of controls and displays not required to be on vehicles, and that do not have a direct effect on motor vehicle safety. Under Proposal Two, Standard No. 101 would regulate only controls and displays that directly bear on the need for motor vehicle safety, whether they are specified in another Federal Motor Vehicle Safety Standard or not.

NHTSA proposes to remove the following controls from Table 1 "Identification and Illumination of Controls": the heating and air conditioning control; the hand throttle; the heating and air conditioning fan control; and the manual choke. It also proposes to remove the coolant temperature display from Table 2 "Identification and Illumination of Displays." Examples of displays that would continue to be regulated include the seat belt and turn signal displays (both specified in other safety standards) and the fuel level display and speedometer (if they are provided), neither of which is specified in a safety standard.

NHTSA also proposes to remove each of the above named controls and displays (proposed for removal from Tables 1 or 2) if listed in the location requirements of S5.1 of Standard No. 101. The agency seeks comments on which controls and displays are believed to be safety-related.

3. Proposal Three—Regulate Only Controls and Displays Required by Other Federal Motor Vehicle Safety Standards

Proposal Three is similar to Proposal Two, but would limit Standard No. 101 to regulating controls and displays specified in another safety standard. Thus, under proposal three, the following controls presently listed in Table 1 "Identification and Illumination of Controls" would be removed: horn; heating and/or air conditioning fan; rear window defrosting and defogging system; manual choke; engine start; engine stop; hand throttle; automatic vehicle speed; and heating and air conditioning system.

The following displays specified in Table 2 "Identification and Illumination of Displays" would be removed: fuel level telltale and gauge; oil pressure telltale and gauge; coolant temperature telltale and gauge; electrical charge telltale and gauge; the speedometer, and the odometer.

NHTSA also proposes to remove each of the above named controls and displays if listed in the location requirements of S5.1 of Standard No. 101.

The rationale for this proposal is that it would not affect the placement in vehicles of controls and displays no longer specified in Standard No. 101. Market forces (in the form of customer demand) would be highly likely to ensure that vehicle manufacturers would continue to provide appropriately identified, illuminated, and located controls and displays. Auto consumer media and customers themselves would be likely to react negatively to vehicles that do not adequately identify the vehicle's controls and displays, or if the controls are placed in a location difficult for the driver to reach while driving.

4. Proposal Four—Consolidate in Standard No. 101 Controls and Displays Specified in Other Standards

Under this proposal, NHTSA would include in Standard No. 101 reference to the controls and displays specified in other standards; today only Standard No. 208, *Occupant crash protection*, has such requirements. This reference would be consistent with the agency's practice regarding the identification of controls and displays for other regulated vehicle systems. For example, when the agency published a final rule (60 FR 6411; February 5, 1995) establishing FMVSS No. 135, *Passenger car brake systems*, it also amended Table 2 in Standard No. 101 to include the two brake displays, the "variable brake proportioning system" display and the "parking brake applied" display specified in Standard No. 135. Similarly, when NHTSA amended the standards on hydraulic and air brakes to specify antilock braking systems, it amended Standard No. 101 to reference the antilock braking system displays (60 FR 13216; March 10, 1995).

At present, Standard No. 101 does not include certain controls or displays specified in Standard No. 208, *Occupant crash protection*. Paragraph S4.5.2, *Readiness indicator*, of Standard No. 208 specifies that an occupant crash protection system that deploys in the event of a crash shall have a monitoring system with a readiness indicator. The indicator shall monitor its own readiness and shall be clearly visible from the driver's designated seating position.

In this notice of proposed rulemaking, NHTSA proposes to incorporate the readiness indicator specified in Standard No. 208 into Standard No. 101 and to specify the means of identifying the indicator and whether it must be illuminated. To keep Standard No. 101 consistent with requirements in other Federal motor vehicle safety standards, NHTSA proposes to amend Table 2 "Identification and Illumination of Displays" by specifying the air bag readiness indicator. NHTSA proposes to amend Column 3 ("Identifying Words or Abbreviation") to indicate that the air bag readiness indicator must be identified with the words "AIR BAG", and to amend Column 4 to indicate that the air bag readiness indicator display must be illuminated. The agency is not proposing to specify a color (Column 2) or an identifying symbol (Column 4) for the air bag readiness indicator.

In a final rule published May 23, 1995 (60 Federal Register 27233), Standard No. 208 was amended to permit manufacturers the option of installing a key-operated air bag manual cutoff device that motorists could use to deactivate the front passenger-side air bag in vehicles that cannot accommodate infant restraints in the rear seat. The deactivation device is needed because when rear-facing infant restraints are used in the front seat of dual air bag vehicles, they extend forward to a point near the dashboard where they can be struck by a deploying air bag.

The air bag manual cutoff device is specified in Standard No. 208 at S4.5.4, *Passenger Air Bag Manual Cutoff Device*. Paragraph S4.5.4.2 describes the device as being separate from the vehicle ignition switch and operable by means of the ignition key for the vehicle. Paragraph S4.5.4.3 specifies that a telltale light on the dashboard shall be clearly visible from all front seating positions and shall be illuminated whenever the passenger air bag is deactivated. Paragraph S4.5.4.3 further requires the air bag manual cut off device's telltale to be yellow, identified with "AIR BAG OFF," and illuminated the entire time that the passenger air bag is deactivated. The air bag manual cutoff device telltale is further not to be combined with the air bag readiness indicator.

NHTSA proposes to transfer the specifications for the air bag manual cutoff device telltale from Standard No. 208 to Standard No. 101. The language describing the eligibility criteria for vehicles permitted to have an air bag manual cutoff device will remain in Standard No. 208.

NHTSA proposes to include the air bag manual cutoff telltale in Table 2 ("Identification and Illumination of Displays") of Standard No. 101. NHTSA is not proposing to specify a symbol for the device in Table 2. The agency proposes to amend the column on illumination to indicate, by stating "yes", that illumination is required. NHTSA would add a footnote indicating the telltale is to be illuminated only when the air bag manual cutoff device is activated.

NHTSA further proposes that the air bag manual cutoff device be described in Table 1 ("Identification and Illumination of Controls") of Standard No. 101. NHTSA proposes that the device be identified in Column 2 ("Identifying Words or Abbreviation") with the words "Air Bag Cutoff." NHTSA is not proposing to specify an identifying symbol or to specify illumination for the air bag manual cutoff device.

5. Proposal Five—Permit ISO Symbols to Identify Controls and Displays

Many of the symbols specified in Tables 1 and 2 of Standard No. 101 are based on symbols developed by the International Standards Organization (ISO). In the interests of international harmonization of vehicle safety standards, under Proposal Five, NHTSA would permit any ISO symbol to be used to identify a control or display. NHTSA would require that each ISO symbol used be described in the owner's manual. Identification is necessary to ensure that the driver understands the meaning of the symbol. It has been NHTSA's experience that the meaning of certain ISO symbols may not be intuitively evident to a driver.

Rulemaking Analyses and Notices

1. Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice of proposed rulemaking was not reviewed under Executive Order 12866 (Regulatory Planning and Review). NHTSA has analyzed the impact of this rulemaking action and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The agency anticipates if a final rule should result from this notice of proposed rulemaking, it would not have more than a minimal effect on the costs associated with controls and displays. If Proposal Four were adopted, vehicle manufacturers would incur minimal additional costs. All manufacturers already provide some type of identification for the air bag readiness indicator and many provide illumination of it. NHTSA estimates that the additional costs resulting from adopting Proposal Four would be so minimal that preparation of a full regulatory evaluation is not warranted.

None of the other proposals would impose new requirements or have any effect on costs which can be estimated at this time. Proposal Two would delete requirements for motor vehicles manufactured before September 1, 1987 and September 1, 1989. If the standard were rescinded pursuant to Proposal One, NHTSA anticipates no changes in costs resulting from manufacturers' actions, because manufacturers are not expected to respond to the rescission by making any significant changes in the location, identification, and illumination of motor vehicle controls and displays. Further, many of the controls and displays specified in Standard No. 101 are also specified in other Federal motor vehicle safety standards.

To the extent that individual States might choose to establish their own requirements for controls and displays, which would be permitted if the agency rescinded the standard, as discussed above, vehicle production costs would increase. However, the agency has no way of foretelling the extent to which States might opt to do this or of estimating the increase in production cost that would result.

If Proposals Two or Three were adopted, NHTSA also anticipates no changes in costs since it does not believe manufacturers will make any significant changes in the location, identification, and illumination of motor vehicle controls and displays.

2. Regulatory Flexibility Act

NHTSA has also considered the impacts of this rule under the Regulatory Flexibility Act. For the reasons explained above, I hereby certify that this rule would not have a significant economic impact on a substantial number of small entities. Accordingly, there would not be any significant effect on small organizations, jurisdictions or other entities which purchase new motor vehicles. For this reason, an initial regulatory flexibility analysis has not been prepared.

3. National Environmental Policy Act

NHTSA has also analyzed this proposed rule under the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the environment.

4. Executive Order 12612 (FEDERALISM)

NHTSA has analyzed this proposed rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that it would not have significant federalism implications to warrant the preparation of a Federalism Assessment.

5. Civil Justice Reform

This proposed rule would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Procedures for Filing Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: May 23, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–13528 Filed 5–29–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[I.D. 051396B]

Pacific Offshore Fisheries Take Reduction Plan; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public scoping meeting; request for comments.

SUMMARY: NMFS announces its intention to prepare an Environmental Impact Statement (EIS) or Environmental Assessment (EA) for anticipated proposed rulemaking under the Take Reduction Plan (TRP) provisions of the Marine Mammal Protection Act (MMPA). A draft TRP will be developed by the Pacific Offshore Cetacean Take Reduction Team (TRT) and will be forwarded to NMFS by August 12, 1996. NMFS then has 60 days to publish a proposed TRP, along with any proposed implementing regulations, as necessary.

DATES: The scoping meeting will be held on June 25, 1996 at 7 p.m. until 10 p.m. Written comments on the scope of the EIS must be submitted on or before August 12, 1996.

ADDRESSES: The scoping meeting will be held at the JAMS/Endispute offices in the Santa Monica Business Park, 3340 Ocean Park Boulevard, Suite 1050, Santa Monica, CA 90405. Scoping comments, requests for additional information, and requests for special accomodations should be sent to Irma Lagomarsino, National Marine Fisheries Service, Southwest Regional Office, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Irma Lagomarsino, (310) 980–4016, fax (310) 980–4047, or Victoria Cornish, (301) 713–2322, fax (301) 713–0376.

SUPPLEMENTARY INFORMATION: Section 118(f) of the MMPA requires NMFS to develop and implement a TRP designed to assist in the recovery or prevent the depletion of each strategic marine mammal stock(s) that interacts with certain fisheries. The immediate goal of a TRP is to reduce, within 6 months of its implementation, the incidental mortality or serious injury of strategic marine mammal stocks incidentally taken in the course of commercial fishing to levels less than the Potential Biological Removal level, or PBR, established for that stock. The long-term goal of the plan is to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of commercial fishing to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans.

Each TRP shall include a review of the information in the final stock assessment published under section 117(b) and any new information, an estimate of the total number and, if possible, age and gender of animals from the stock that are being incidentally lethally taken or seriously injured each year during the course of commercial fishing operations, recommended regulatory or voluntary measures for the reduction of incidental mortality and serious injury, and recommended dates for achieving the specific objectives of the plan.

In accordance with section 118(f)(6)(A), NMFS established the Pacific Offshore Cetacean TRT for the California/Oregon thresher shark and swordfish drift gillnet fishery on February 12, 1996 (61 FR 5385). This fishery interacts with several strategic marine mammal stocks including: *Mesoplodont sp.* beaked whales, Baird's beaked whale, Cuvier's beaked whale, the sperm whale, the humpback whale, the pygmy sperm whale, and the short-finned pilot whale. These stocks are considered strategic under the MMPA, because they are either listed as an endangered or threatened species under the Endangered Species Act, or the levels of human-caused mortality are greater than their PBR levels.

The purpose of the scoping meeting is to receive comments in anticipation of an EIS or EA that may be prepared for the final TRP and any regulations that may be necessary to implement TRP provisions. Any EIS or EA prepared would examine the environmental impacts of management alternatives considered in the TRP to reduce the incidental mortality and serious injury of marine mammals in this fishery as well as assessing, based on currently available information, the impacts of the TRP and implementing regulations on the human environment, marine mammals, and other protected species.

The scoping meeting is scheduled to coincide with the first day of the last meeting of the TRT on June 25–27, 1996. All interested parties are encouraged to attend. The scoping meeting will include a short presentation from NMFS staff outlining the TRP process and options that are being considered and will allow a minimum of 2 1/2 hours for public comment. NMFS is also requesting written comments to be submitted by mail or by fax, until August 12, 1996, and background materials are available (see **ADDRESSES**). The meeting is open to the public and is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Irma Lagomarsino at (310) 980–4016 by June 20, 1996.

Dated: May 22, 1996.

Patricia Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–13452 Filed 5–29–96; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 61, No. 105

Thursday, May 30, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Pest Management Program at the R5 Genetic Resource Center, Chico in the Pacific Southwest Region, California, in Butte County

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare a draft and final environmental impact statement (EIS) on a proposed action to develop an integrated pest management (IPM) program at the R5 Genetic Resource Center, Chico which is administered by the Mendocino National Forest. The Forest Service began an analysis for the nursery portion of the site in 1989; however, the project was canceled in the May 1, 1995 **Federal Register** Notice. The scope of the current proposed action includes the nursery and seed orchard operations, arboretums, and research areas. The administrative site is approximately 209 acres in size, and the analysis area is approximately 121 acres. Areas on the administrative site which are excluded from this analysis are the office buildings and work areas, residential buildings, boundary fence lines, Comanche Creek wildlife and recreation area, intermittent stream area in the northern portion of the site, the diversion channel, and other small wildlife habitat areas. The excluded area is estimated to be approximately 88 acres in size. The Forest Service invites written comments on the scope of the analysis. In addition, the Forest Service gives notice of the environmental analysis and decisionmaking process that will occur on the proposed action so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by July 1, 1996, to ensure timely consideration.

ADDRESS: Send written comments to: Lynné Hartman, Director, USDA Forest Service, R5 Genetic Resource Center, Chico, 2741 Cramer Lane, Chico, CA 95928.

FOR FURTHER INFORMATION CONTACT: Hank Switzer, Horticulturist, R5 Genetic Resource Center, Chico, CA 95928, (916) 895–1176.

SUPPLEMENTARY INFORMATION: The scope of the analysis will consist of a container nursery, approximately one acre in size, which has the capacity to grow 1.2 million seedlings a year, and 120 acres that are in production as seed orchards for restoration of forest ecosystems or arboretums that are active in growing plant material for a variety of biological, chemical and clinical research programs. Other areas on the site such as the administrative buildings, residential buildings, and the recreational and wildlife areas are not within the scope of this analysis.

The Forest Service will conduct an environmental analysis to determine what type of pest management program will be used at the center. The pest management practices that will be analyzed include, but are not limited to, control of unwanted vegetation by mechanical and chemical methods; control of diseases using sanitation, biological control organisms, and fungicides; control of insect pests with biological and chemical insecticides, and use of sanitation; and control of animal pests through mechanical, chemical, and preventative measures.

In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternative pest management programs including an alternative that will be based on the principles of integrated pest management as required by the Forest Service Manual. The "no action" alternative will be described as the continuation of current pest management practices.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7), which includes:

1. Defining the scope of the analysis and nature of the decision to be made.
2. Identifying the issues and determining the significant issues for consideration and analysis within the environmental impact statement.
3. Defining the proper make-up of the interdisciplinary team.
4. Exploring possible alternatives.
5. Identifying potential environmental effects.
6. Determining potential cooperating agencies.
7. Identifying groups or individuals interested or affected by the decision.

The Forest Service will be seeking information, comments, and assistance from Federal, State and local agencies and other individuals or organizations interested in or affected by the proposed action.

Public participation will be solicited by personal notification of known interested and affected publics. In addition, news releases will be used to keep the public informed. Input from interested people and organizations will be used in preparation of the draft environmental impact statement.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by September 1996. At that time, EPA will publish a notice of availability of the draft environmental impact statement in the **Federal Register.**

The comment period on the draft environmental impact statement will be 45 days from the date the EPA's notice of availability appears in the **Federal Register.** It is very important that those interested in the proposed action participate at that time. To be most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act 40 CFR 1503.3)

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningfull and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Following the comment period on the draft environmental impact statement, comments will be analyzed, considered, and responded to by the Forest Service in preparing the final environmental impact statement. The final environmental impact statement is scheduled to be completed by July 1997.

The responsible official will consider the comments and responses; environmental consequences discussed in the environmental impact statement; and applicable laws, regulations and policies in making a decision regarding this proposal. The decision and reasons for the decision will be documented in the Record of Decision.

Daniel K. Chisholm, Forest Supervisor, Mendocino National Forest, is the responsible official.

Dated May 22, 1996.

Daniel K. Chisholm,

Forest Supervisor.

[FR Doc. 96–13517 Filed 5–29–96; 8:45 am]

BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration

Designation for the Barton (KY) and North Dakota (ND) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of J. W. Barton Grain Inspection Service, Inc. (Barton), and North Dakota Grain Inspection Service, Inc. (North Dakota), to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: July 1, 1996.

ADDRESSES: Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the December 27, 1995, **Federal Register** (60 FR 66958), GIPSA asked persons interested in providing official services in the geographic areas assigned to Barton and North Dakota to submit an application for designation. Applications were due by January 30, 1996. Barton and North Dakota, the only applicants, each applied for designation to provide official inspection services in the entire areas currently assigned to them.

Since Barton and North Dakota were the only applicants, GIPSA did not ask for comments on the applicants.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act; and according to Section 7(f)(l)(B), determined that Barton and North Dakota are able to provide official services in the geographic areas for which they applied. Effective July 1, 1996, and ending June 30, 1999, Barton and North Dakota are designated to provide official services in the geographic areas specified in the December 27, 1995, **Federal Register.**

Interested persons may obtain official services by contacting Barton at 502–683–0616 and North Dakota 701–293–7420.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 10, 1996

Neil E. Porter

Director, Compliance Division

[FR Doc. 96–13201 Filed 5–29–96; 8:45 am]

BILLING CODE 3410–EN–F

Opportunity for Designation in the Aberdeen (SD) Area and the State of Missouri

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations will end not later than triennially and may be renewed. The designations of Aberdeen Grain Inspection, Inc. (Aberdeen), and the Missouri Department of Agriculture (Missouri) will end November 30, 1996, according to the Act, and GIPSA is asking persons interested in providing official services in the Aberdeen and Missouri areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before June 29, 1996.

ADDRESSES: Applications must be submitted to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–690–2755, attention: Janet M. Hart. If an application is submitted by telecopier, GIPSA reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. GIPSA designated Aberdeen, main office located in Aberdeen, South Dakota, and Missouri, main office located in Jefferson City, Missouri, to provide official inspection services under the Act on December 1, 1993.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designations of Aberdeen and Missouri end on November 30, 1996.

Pursuant to Section 7(f)(2) of the USGSA, the following geographic area, in the States of North Dakota and South Dakota, is assigned to Aberdeen.

Bounded on the North by U.S. Route 12 east to State Route 22; State Route 22 north to the Burlington-Northern (BN) line; the Burlington-Northern (BN) line east to State Route 21; State Route 21 east to State Route 49; State Route 49 south to the North Dakota-South Dakota State line; the North Dakota-South Dakota State line east to U.S. Route 83; U.S. Route 83 north to State Route 13; State Route 13 east and north to McIntosh County; the northern

McIntosh County line east to Dickey County; the northern Dickey County line east to U.S. Route 281; U.S. Route 281 south to the North Dakota-South Dakota State line; the North Dakota-South Dakota State line east;

Bounded on the East by the eastern South Dakota State line (the Big Sioux River) to A54B;

Bounded on the South by A54B west to State Route 11; State Route 11 north to State Route 44 (U.S. 18); State Route 44 west to the Missouri River; the Missouri River south-southeast to the South Dakota State line; the southern South Dakota State line west; and

Bounded on the West by the western South Dakota State line north; the western North Dakota State line north to U.S. Route 12.

Pursuant to Section 7(f)(2) of the USGSA, the following geographic area, the entire State of Missouri, except those export port locations within the State which are serviced by GIPSA, is assigned to this official agency.

Interested persons, including Aberdeen and Missouri, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning December 1, 1996, and ending November 30, 1999. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 10, 1996

Neil E. Porter

Director, Compliance Division

[FR Doc. 96–13202 Filed 5–29–96; 8:45 am]

BILLING CODE 3410–EN–F

Natural Resources Conservation Service

White Tank Mountains Watershed, Maricopa County, AZ; Notice of a Finding of No Significant Impact

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the White Tank Mountains Watershed, Maricopa County, Arizona.

FOR FURTHER INFORMATION CONTACT: Michael Somerville, State Conservationist, Natural Resources Conservation Service, 3003 North Central Avenue, Suite 800, Phoenix, AZ 85012, telephone (602) 280–8801.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. Based on evidence presented, Michael Somerville, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project proposes to rehabilitate an existing flood retarding structure to reduce the threat of loss of life and damage to property.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. Copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Donald Paulus, Water Resources Planning Staff Leader, at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Michael Somerville,

State Conservationist.

[FR Doc. 96–13470 Filed 5–29–96; 8:45 am]

BILLING CODE 3410–16–M

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of the Section 502 Direct and the Section 504 Rural Housing Loans and Grants Programs.

DATES: Comments on this notice must be received by July 29, 1996, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Gloria L. Denson, Loan Specialist, Single Family Housing Processing Division, RHS, U.S. Department of Agriculture, Ag Box 0783, Washington, DC 20250, Telephone 720–1487.

SUPPLEMENTARY INFORMATION

Title: Applicant Reference Letter.

OMB Number: 0575–0091.

Expiration Date of Approval: October 31, 1996.

Type of Request: Extension of a currently approved information collection:

Abstract: The rural housing loan program under Section 502 of title V of the Housing Act of 1949, as amended, provides eligible persons who will live in rural areas with an opportunity to own adequate but modest, decent, safe, and sanitary dwellings and related facilities. Also, the Section 504 loan/grant program is to assist eligible very low-income, owner/occupants to repair single family homes in rural areas. In both programs, the Form FmHA 410–8, "Applicant Reference Letter," provides credit information to County Offices serving the area in which the applicant or borrower will live. Applicants are required to furnish information concerning their credit history to RHS when applying for assistance. Form FmHA 410–8, is used by the Agency to supplement or verify other debts when a credit report is limited and unavailable to determine the applicant's eligibility and creditworthiness for RHS loans and grants. In some cases, credit reports cannot be used because the applicant/borrower lives in a remote area; therefore, the form is widely used by the Agency to obtain credit information. Form FmHA 410–8 asks only for specific relevant information to determine applicant's creditworthiness and to provide clarification on the promptness of the applicant's payments on debts which enables RHS to make better creditworthiness decisions.

RHS must, by law, make available to the applicant, upon request, the source of information used to make an adverse decision. Individual references may be solicited with the clear understanding that if the information is used to deny credit, the information will be made available to the applicant upon request. If this information was not collected, RHS would be unable to evaluate the applicant's credit history.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per response.

Respondents: Individuals or households.

Estimated Number of Respondents: 26,600.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 26,334 hours.

Copies of this information collection can be obtained from the Director, Regulations and Paperwork Management Division, at (202) 720–9725.

Comments: Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information including the validity of methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Director, Regulations and Paperwork Management Division, U.S. Department of Agriculture, Rural Development, Ag Box 0743, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 17, 1996.

Maureen Kennedy,

Administrator, Rural Housing Service.

[FR Doc. 96–13463 Filed 5–29–96; 8:45 am]

BILLING CODE 3410–07–U

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

DATE: June 5, 1996, 9:00–9:30 a.m.

PLACE: ARRB, 600 E Street, NW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Review and Accept Minutes of Last Open Meeting
2. Amendment of Board Procedures
3. Other Business

CONTACT PERSON FOR MORE INFORMATION: Thomas Samoluk, Associate Director for Communications, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

David G. Marwell,

Executive Director.

[FR Doc. 96–13674 Filed 5–28–96; 2:18 pm]

BILLING CODE 6118–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 821]

BP Eploration & Oil Inc., (Oil Refinery), Plaquemines Parish, Louisiana; Grant of Authority for Subzone Status

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Board of Harbor Commissioners of the Port of New Orleans, grantee of Foreign-Trade Zone 2, for authority to establish special-purpose subzone status at the oil refinery complex of BP Exploration & Oil Inc., in Plaquemines Parish (New Orleans area), Louisiana, was filed by the Board on August 3, 1995, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 40–95, 60 FR 40819, 8–10–95); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 2I) at the oil refinery of BP Exploration & Oil Inc., in Plaquemines Parish, Louisiana, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR §§ 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings # 2709.00.1000–# 2710.00.1050 and # 2710.00.2500 which are used in the production of:

—petrochemical feedstocks and refinery by-products (examiners report, Appendix D);
—products for export; and,
—products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 21st day of May 1996.

Paul L. Joffe,

Acting, Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest: John J. Da Ponte, Jr., Executive Secretary.

[FR Doc. 96–13585 Filed 5–29–96; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 42–96]

Foreign-Trade Zone 43—Battle Creek, Michigan Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Battle Creek, Michigan, grantee of FTZ 43, requesting authority to expand its zone to include a site in Lawton, Michigan, adjacent to the Battle Creek Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 20, 1996.

FTZ 43 was approved on October 19, 1978 (Board Order 138, 43 FR 50233; 10/27/78). Since then the zone has been expanded three times (B.O.s 496, 554 & 555). The zone currently consists of three sites in the Battle Creek area: *Site 1:* (1,731 acres)—within the Fort Custer Industrial Park and adjacent Columbia West Industrial Park, Battle Creek; *Site 2:* (23 acres)—warehouse facility owned and operated by TLC Warehousing

Services, Inc. (TLC), at 6677 Beatrice Drive in Texas Township (Kalamazoo County); and *Site 3:* (22 acres)—warehouse facility, also operated by TLC, at 8250 Logistic Drive, Zeeland Township (Ottawa County), some 20 miles southwest of Grand Rapids. An application to include a site in Benton Harbor (Berrien County), Michigan, is currently pending (Doc. 37–96, 61 FR 25190; 5/20/96) with the Board.

The applicant is now requesting authority to expand the general-purpose zone to include a site (14 acres) located at the facilities of Honee Bear Canning, 72100 Highway M–40 South, Lawton (Van Buren County), Michigan, within 40 miles of the Battle Creek Customs Port of Entry. Honee Bear, a division of Packers Canning Inc., uses the facility to provide warehousing and labeling services for customers in the canned food products industry.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment (original and 3 copies) is invited from interested parties (see FTZ Board address below). The closing date for their receipt is July 29, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 13, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Port-Director's Office, U.S. Customs Service, North Central Region, 4950 W. Dickman Road, Battle Creek, Michigan 49016

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: May 22, 1996.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 96–13586 Filed 5–29–96; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 815]

Establishment of a Foreign-Trade Zone, Kinston Regional Jetport Complex, Lenoir County, North Carolina; Grant of Authority

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the North Carolina Global TransPark Authority (the Grantee) has made application to the Board (FTZ Docket 16–95, 60 FR 22543, 5/8/95), requesting the establishment of a foreign-trade zone at the Kinston Regional Jetport Complex in Lenoir County, North Carolina, as part of the Global TransPark project, adjacent to the Beaufort-Morehead City Customs port of entry; and,

Whereas, notice inviting public comment has been given in the **Federal Register**, and the Board adopts the findings and recommendations of the examiner's report and finds that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 214, at the site described in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 7th day of May 1996.

Foreign-Trade Zones Board.

Michael Kantor,

Secretary of Commerce, Chairman and Executive Officer.

Attest: John J. Da Ponte, Jr., Executive Secretary.

[FR Doc. 96–13587 Filed 5–29–96; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 822]

BP Exploration & Oil Inc. (Oil Refinery), Lucas, Allen and Wood Counties, Ohio; Grant of Authority for Subzone Status

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Toledo-Lucas County Port Authority, grantee of Foreign-Trade Zone 8, for authority to establish special-purpose subzone status at the oil refinery complex of BP Exploration & Oil Inc., located at sites in Lucas, Allen and Wood Counties (Toledo area), Ohio, was filed by the Board on October 5, 1995, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 59–95, 60 FR 53583, 10–16–95); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 8F) at the oil refinery complex of BP Exploration & Oil Inc., at sites in Lucas, Allen and Wood Counties, Ohio, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR §§ 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings # 2709.00.1000–# 2710.00.1050 and # 2710.00.2500 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix D);
—Products for export; and,
—Products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 21st day of May 1996.

Paul L. Joffe,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest: John J. Da Ponte, Jr., Executive Secretary.

[FR Doc. 96–13588 Filed 5–29–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China; Termination In-Part of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of termination in-part of antidumping duty administrative review.

SUMMARY: On February 1, 1996, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain cased pencils from the People's Republic of China (PRC). The Department is now terminating this review in-part with respect to Shanghai Foreign Trade Corporation (SFTC).

EFFECTIVE DATE: May 30, 1996.

FOR FURTHER INFORMATION CONTACT: Laura Merchant or Thomas Futtner, Office of Antidumping Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, telephone (202) 482–0367/3814.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1996 (61 FR 3670), the Department published in the **Federal Register** a notice of initiation of administrative review of the antidumping duty order on certain cased pencils from the PRC. This notice stated that the Department would review merchandise sold in the United States by SFTC during the period December 21, 1994 through November 30, 1995.

The petitioners in this case withdrew their request for review of SFTC on April 29, 1996. Under 19 CFR 353.22(a)(5) (1994), a party requesting a review may withdraw that request no later than 90 days after the date of publication of the notice of initiation. Because the withdrawal request was made within the time frame specified in 19 CFR 353.22(a)(5), and no other interested party has requested an administrative review for SFTC for this period, the Department is now terminating this review, in-part, with respect to SFTC.

Dated: May 17, 1996.

This notice is published pursuant to 19 CFR 353.22(a)(5).

Paul L. Joffe,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–13583 Filed 5–29–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–429–601]

Solid Urea From the Former German Democratic Republic; Initiation of Changed Circumstances Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Initiation of changed circumstances antidumping duty review.

SUMMARY: The Department of Commerce is initiating a changed circumstances review of the antidumping duty order on solid urea from the former German Democratic Republic (GDR) in order to calculate a new cash deposit rate using a market economy analysis for any shipments of solid urea from the five German states (Brandenburg, Mecklenburg-Vorpommern, Saxony, Saxony-Anhalt, and Thuringia (plus any other territory included in the former GDR)) that formerly constituted the GDR (hereinafter "the Five States") occurring after May 1, 1995 and before May 31, 1996.

EFFECTIVE DATE: May 30, 1996.

FOR FURTHER INFORMATION CONTACT: Donna Kinsella, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Tariff Act) and 19 CFR 353.22(f), the Department may review a determination whenever changed circumstances are sufficient to warrant such a review. In the instant case, the current cash deposit rate is based upon the non-market economy analysis provided for in section 773(c) of the Act. However, the Department has determined that as of October 3, 1990, producers located in the five German states that formerly constituted the GDR have been operating in a market-oriented economy. *See Final Affirmative Countervailing Duty Determinations; Certain Steel Products from Germany*, 58 FR 37315, 37324 (July 9, 1993).

On May 1, 1995, the Department published in the **Federal Register** (60 FR 21068) the initiation of a changed circumstances review to calculate a new cash deposit rate using a market-economy analysis for any shipments of solid urea from the Five States occurring after October 2, 1990, and before May 1, 1995. On March 14, 1996, the Department published in the **Federal Register** (61 FR 10563) a termination of that changed circumstances review because it found no evidence of shipments occurring during this period.

The Department now has evidence of shipment(s) of solid urea from the Five States occurring after May 1, 1995. As a result, and in accordance with 19 CFR 353.22(f), we are initiating a changed circumstance review of the antidumping duty order on solid urea from the former GDR. In this review, the Department will calculate a new cash deposit rate using a market economy analysis for any shipments of solid urea from the Five States occurring after May 1, 1995, and before May 31, 1996. *See Antidumping Duty Order and Initiation of a Changed Circumstances Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plates from Poland*, 58 FR 44166 (1993) (change from a non-market to market economy justified a changed circumstances review to calculate a new cash deposit rate).

We intend to issue the final results of this review not later than December 31, 1996.

Dated: May 22, 1996.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 96–13584 Filed 5–29–96; 8:45 am]

BILLING CODE 3510–DS–M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of revocation of Export Trade Certificate of Review No. 94–00005.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to William E. Elliott (d/b/a Export Exchange). Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate.

This notice summarizes the notification letter sent to William E. Elliott (d/b/a Export Exchange).

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") [Pub. L. No. 97–290, 15 U.S.C. 4011–21] authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ["the Regulations"] are found at 15 CFR part 325 (1986). Pursuant to this authority, a certificate of review was issued on November 10, 1994 to William E. Elliott (d/b/a Export Exchange).

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (Section 308 of the Act, 15 U.S.C. 4018, Section 235.14 (a) of the Regulations, 15 CFR 325.14 (a)). The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review [Sections 325.14 (b) of the Regulations, 15 CFR 325.14 (b)). Failure to submit a complete annual report may be the basis for revocation (Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a) (3) and 325.14(c)).

On October 31, 1995, the Department of Commerce sent to William E. Elliott (d/b/a Export Exchange) a letter containing annual report questions with a reminder that its annual report was due on December 25, 1995. Additional reminders were sent on February 9, 1996 and on March 4, 1996. The Department has received no written response from William E. Elliott (d/b/a Export Exchange) to any of these letters.

On April 18, 1996, and in accordance with Section 325.10 (c) [2] of the Regulations, [15 CFR 325.10 (c) (2)], the Department of Commerce sent a letter by certified mail to notify William E. Elliott (d/b/a Export Exchange) that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing William E. Elliott (d/b/a Export Exchange) thirty days to respond was published in the **Federal Register** on April 24, 1996 at 61 FR 18121. Pursuant to 325.10(c) (2) of the Regulations (15 CFR 325.10(c) (2)), the Department considers the failure of William E. Elliott (d/b/a Export Exchange) to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to William E. Elliott (d/b/a Export Exchange) for its failure to file an annual report. The Department has sent a letter, dated May 24, 1996, to notify William E. Elliott (d/b/a Export Exchange) of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register** 325.10(c) (4) and 325.11 of the Regulations, 15 CFR 324.10(c) (4) and 325.11 of the Regulations, 15 CFR 325.10(c) (4) and 325.11.

Dated: May 23, 1996.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 96–13473 Filed 5–29–96; 8:45 am]

BILLING CODE 3510–DR–P

National Institute of Standards and Technology

[Docket No. 960520140–6140–01]

RIN 0693–ZA 08

Announcement of Availability of Funding for General Competition—Advanced Technology Program (ATP)

AGENCY: National Institute of Standards and Technology, Technology Administration, Commerce.

ACTION: Notice.

SUMMARY: The Technology Administration's National Institute of Standards and Technology (NIST) announces the availability of funding for General Competition 96–01 under the Advanced Technology Program (ATP). This General Competition is open to all areas of technology, including those previously included in focused areas. Only a General Competition is planned this fiscal year; there are no plans to run focused program competitions during fiscal year 1996. This notice provides general information for this ATP competition for fiscal year 1996.

DATES: Proposal due date and other specific instructions for the General Competition will be published in the *Commerce Business Daily* (CBD) at the time the competition is announced. Date, time, and location of Proposers' Conferences held for interested parties considering applying for funding will also be announced in the CBD.

ADDRESSES: Information on the ATP may be obtained from the following address: National Institute of Standards and Technology, Advanced Technology Program, Administration Building (Bldg. 101), Room A430, Gaithersburg, MD 20899–0001.

Additionally, information on the ATP is available on the Internet through the World Wide Web (WWW) at http://www.atp.nist.gov.

FOR FURTHER INFORMATION CONTACT: Requests for ATP information, application materials, and/or to have your name added to the ATP mailing list for future mailings may also be made by:

(a) Calling the ATP toll-free "hotline" number at 1–800–ATP–FUND or 1–800–287–3863. You will have the option of hearing recorded messages regarding the status of the ATP or speaking to one of our customer representatives who will take your name and address. If our representatives are all busy when you call, leave a message after the tone. To ensure that the information is entered correctly, please speak distinctly and slowly and spell the words that might cause confusion. Leave your phone number as well as your name and address;

(b) Sending a facsimile (fax) to 301–926–9524 or 301–590–3053; or

(c) Sending electronic mail to atpmicf.nist.gov. Include your name, full mailing address, and phone number.

SUPPLEMENTARY INFORMATION:

Background

The statutory authority for the ATP is Section 5131 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 15 U.S.C. 278n), as modified by Pub. L. 102–245. The ATP implementing regulations are published at 15 CFR part 295. The Catalog of Federal Domestic Assistance (CFDA) number and program title for the ATP are 11.612, Advanced Technology Program (ATP).

The ATP is a rigorously competitive cost-sharing program designed to assist United States industry/businesses pursue high-risk, enabling technologies with significant commercial/economic potential. The ATP provides multi-year funding to single companies and to industry-led joint ventures to pursue research and development (R&D) projects with high-payoff potential for the nation. The ATP accelerates enabling technologies that, because they are risky, are unlikely to be developed in time to compete in rapidly changing world markets without such a partnership between industry and the Federal government. The ATP challenges industry to take on projects characterized by high technical risk but commensurately high potential payoff to the nation. Proposers must provide credible arguments as to the project feasibility.

The award funding instrument used to fund successful ATP proposals is a "cooperative agreement." Through the use of the cooperative agreement funding instrument, the ATP fosters a government-industry partnership to accomplish a public purpose of support or stimulation. Under a cooperative agreement, NIST plays a substantial role in providing technical assistance and monitoring the technical work and business progress.

Funding Availability

An estimated $20 million to $25 million to first year funding will be available for Competition 96–01. The ATP reserves the right to utilize for this competition more or less funding than the amounts stated above. The actual number of proposals funded will depend on the quality of the proposals received and the amount of funding requested in the highest ranked proposals. Outyear funding beyond the first year is contingent on the approval of future Congressional appropriations and satisfactory project performance.

Eligibility Requirements, Selection Criteria, and Proposal Review Process

The eligibility requirements, selection criteria, and the proposal review process are discussed in detail in the ATP implementing regulations published at 15 CFR part 295.

Funding Amounts, Award Period and Cost Sharing (Matching) Requirements

(a) Single companies can receive up to $2 million of ATP funds over a period not to exceed 3 years. Single companies do not have to provide matching funds, but they are reimbursed for direct costs only. All indirect costs must be paid for by the single companies.

(b) Joint Ventures can be funded up to a maximum of 5 years, with no funding limit. Joint ventures must also share costs, but their cost-share requirement is in the form of matching funds. A joint venture must provide more than 50 percent of the total project costs (direct plus indirect costs).

(c) Subcontractors funded under an ATP cooperative agreement may not contribute towards the matching-fund requirement. However, they may voluntarily reduce their subcontract costs.

Application Forms and Proposal Preparation Kit

The ATP Proposal Preparation Kit dated November 1994 and Supplement dated May 1996 are available upon request from the ATP at the address and phone numbers noted in this notice. The Kit contains proposal cover sheets, other required forms, background material, and instructions for submission of proposals. All proposals must be prepared in accordance with the instructions in the Kit and Supplement.

Note that the ATP is mailing the new Supplement to the Kit to all those individuals whose names are currently on the ATP mailing list. Those individuals need not contact the ATP to request the Supplement to the Kit.

Submission of Revised Proposals

An applicant may submit a full proposal that is a revised version of a full proposal submitted to a previous ATP competition. NIST will examine such proposals to determine whether substantial revisions have been made. Where the revisions are determined not to be substantial, NIST reserves the right to score and rank, or where appropriate, to reject, such proposals based on reviews of the previously submitted proposal.

Other Requirements

(a) *Federal Policies and Procedures.* Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards as identified in the cooperative agreement award.

(b) *Past Performance.* Unsatisfactory performance under prior Federal awards may result in a proposal not being considered for funding.

(c) *Pre-award Activities.* If applicants incur any costs prior to an award being made, they do solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of NIST to cover pre-award costs.

(d) *No obligation for Future Funding.* If a proposal is selected for funding, NIST has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of NIST.

(e) *Delinquent Federal Debts.* No award of Federal funds shall be made to an applicant or recipient who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to NIST are made.

(f) *Name Check Review.* All for-profit and non-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

(g) *Primary Applicant Certification.* All primary applicants (including all joint venture participants) must submit a completed form CD–511, "Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanation is hereby provided:

(1) *Nonprocurement Debarment and Suspension.* Prospective participants, as defined at 15 CFR part 26, section 105 are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

(2) *Drug-Free Workplace,* Grantees (as defined at 15 CFR part 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

(3) *Anti-Lobbying.* Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitations on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and,

(4) *Anti-Lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

(h) *Lower Tier Certification.* Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award

to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and Form SF–LLL, "Disclosure of Lobbying Activities." Although the CD–512 is intended for the use of primary recipients and should not be transmitted to NIST, the SF–LLL submitted by any tier recipient or subrecipient should be forwarded in accordance with the instructions contained in the award document.

(i) *False Statements.* A false statement on any application for funding under ATP may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(j) *Intergovernmental Review.* The ATP does not involve the mandatory payment of any matching funds from state or local government and does not affect directly any state or local government. Accordingly, the Department of Commerce has determined that Executive Order 12372, "Intergovernmental Review of Federal Programs" is not applicable to this program.

(k) *American-Made Equipment and Products.* Applicants are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with the funding provided under this program in accordance with Congressional intent.

(l) *Paperwork Reduction Act.* This notice contains collection of information requirements subject to the Paperwork Reduction Act (PRA) which have been approved by the Office of Management and Budget (OMB Control 0693–0009). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Dated: May 24, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96–13573 Filed 5–29–96; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 052196E]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Mackerel Stock Assessment Panel.

DATES: This meeting will begin at 1:00 p.m. on June 20, 1996 and conclude at 4:00 p.m. on June 26, 1996.

ADDRESSES: The meeting will be held at NMFS Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL.

FOR FURTHER INFORMATION CONTACT: Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Mackerel Stock Assessment Panel will review data and develop a stock assessment for the Gulf of Mexico migratory group of king mackerel including ranges of acceptable biological catch for the 1996–1997 fishing season.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at (see **ADDRESSES**) by June 13, 1996.

Dated: May 22, 1996.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–13450 Filed 5–29–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 052196F]

North Pacific Fishery Management Council; Committee Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Northwest Crab Industry Advisory Committee will hold a meeting in Portland, OR.

DATES: The meeting will be held on June 11, 1996, from 1 p.m. until 5 p.m.

ADDRESSES: Location to be determined; call for information.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Arni Thomson, Alaska Crab Coalition, 206–547–7560.

SUPPLEMENTARY INFORMATION: The agenda includes the following:

1. Presentation by Alaska Dept. of Fish & Game and preliminary discussions on the economic implications of lowering the legal size limit of Bristol Bay red king crab to six inches.
2. Clarifications of 1996 actions of the Alaska Board of Fisheries.
3. Review findings of the North Pacific Fishery Management Council's Crab Rebuilding Committee.

Additional agenda items may be added as needs develop.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Arni Thomson at 206–547–7560, at least 5 working days prior to the meeting date.

Dated: May 22, 1996.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–13451 Filed 5–29–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 051396G]

Marine Mammals; Permit No. 927 (P79I)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for modification.

SUMMARY: Notice is hereby given that the Institute of Marine Science, University of California, Santa Cruz, CA 95064 (Principal Investigators: Daniel P. Costa and Michael E. Goebel) has requested a modification to permit no. 927.

DATES: Written comments must be received on or before July 1, 1996.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

Written data or views, or requests for a public hearing on this request should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject modification to permit no. 927, issued on June 17, 1994 (59 FR 32419) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit no. 927, as amended on July 12, 1995, authorizes the permit holder to take northern fur seals (*Callorhinus ursinus*) in the following manner: Capture, flipper tag, sample, weigh, measure, mark and release up to 440 adult females and pups; an additional 400 male/female pups for body composition and metabolic and energetic use studies; accidentally kill up to 6 annually; and inadvertently harass up to 69,080 during the conduct of these activities.

The permit holder requests authorization to: Subsample an additional 30 pups used in the oxygen consumption and metabolic rate study; expand the capture dates from 1 September to 1 July; obtain 100 muscle samples and 8 pelts from sub-adult animals killed in the subsistence harvest or from other animals that die of nartural causes; subsample an additional 30 pups in the milk intake, metabolism, growth, condition and thermoregulation study of body composition; subsample 30 pups in the total blood volume study; and measure total blood volume in 50 adult females. No additional live animals are requested.

Dated: May 14, 1996.

Ann D. Terbush,

Chief, Permits and Documentotion Division, Office of Protected Resources, Notional Marine Fisheries Service.

[FR Doc. 96–13453 Filed 5–29–96; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request; Notice

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed extension of a currently approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments by July 29, 1996.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) OASD (Force Management Policy) (Military Personnel Policy/Accession Policy) ATTN: Randolph Lougee, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call at (703) 696–0651.

TITLE AND APPLICABLE OMB CONTROL NUMBER: DoD Survey of Recruit Socioeconomic Status (SES), OMB Control Number 0704–0293.

NEEDS AND USES: This survey collects socioeconomic background information from a representative sample of new recruits to the active-duty military. It provides annual data that are descriptive of the military composition as a whole. The data are included in an annual report to Congress on population representation in the U.S. military. The data will be used by members of Congress and DoD policy makers in the debate over the relative merits of voluntary accession and alternative means of recruitment.

Affected Public: Individuals or households.

Annual Burden Hours: 3,340.

Number of Respondents: 20,000.

Responses per Respondent: 1.

Average Burden per Response: 10 minutes.

Frequency: Other: during sample days each year.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

In response to Congressional interest in the background of Service members, the Office of the Under Secretary of Defense (Personnel and Readiness) collects data on the socioeconomic background of new recruits. Since 1989, data have been collected on the occupational and educational background of recruits' parents in order to provide an index of socioeconomic status. The socioeconomic status questionnaire is administered routinely at recruit training centers.

Key questions pertaining to socioeconomic status are matched to questions in the Census Bureau's Current Population Survey. Each year, data from new recruits are compared to data on comparable civilians, and findings are incorporated into an annual report to Congress on population representation in the military. Results are used by the Office of the Under Secretary of Defense (Personnel and Readiness) in an annual report to Congress on the sociodemographic representation of new recruits. The report also is used to respond to inquiries from Congress, the media, and members of the public on social representation in the U.S. Armed Services.

Dated: May 23, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–13466 Filed 5–29–96; 8:45 am]

BILLING CODE 5000–04–M

Department of Defense Education Benefits Board of Actuaries; Notice of Meeting

SUMMARY: A meeting of the board has been scheduled to execute the provisions of Chapter 101, Title 10, United States Code (10 U.S.C. 2006 et seq.). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the G.I. Bill. Persons desiring to (1) attend the DoD Education Benefits Board of Actuaries meeting or (2) make an oral presentation or submit a written statement for consideration at the meeting must notify

Patricia Robertson at (703) 696–7400 by August 1, 1996.

Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: August 9, 1996, 10:00 am to 1:00 pm.

ADDRESSES: The Pentagon, Room 1E801—Room 7.

FOR FURTHER INFORMATION CONTACT: Benjamin I. Gottlieb, Executive Secretary, DoD Office of the Actuary, 1555 Wilson Boulevard, Suite 701, Arlington, VA 22209–2405, (703) 696–7408.

Dated: May 23, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–13467 Filed 5–29–96; 8:45 am]

BILLING CODE 5000–04–M

Office of The Secretary

Department of Defense Retirement Board of Actuaries; Notice of Meeting

SUMMARY: A meeting of the board has been scheduled to execute the provisions of Chapter 74, Title 10, United States Code (10 U.S.C. 1464 *et seq.*). The Board shall review DOD actuarial methods and assumptions to be used in the valuation of the Military Retirement System. Persons desiring to (1) attend the DOD Retirement Board of Actuaries meeting or (2) make an oral presentation or submit a written statement for consideration at the meeting must notify Patricia Robertson at (703) 696–7400 by August 1, 1996.

Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: August 8, 1996, 1:00 pm to 5:00 pm.

ADDRESSES: The Pentagon, Room 1E801—Room 7.

FOR FURTHER INFORMATION CONTACT: Benjamin I. Gottlieb, Executive Secretary, DoD Office of the Actuary, 1555 Wilson Boulevard, Suite 701, Arlington, VA 22209–2405, (703) 696–7408.

Dated: May 23, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–13468 Filed 5–29–96; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Defense Science Board Task Force on Image-Based Automatic Target Recognition; Notice of Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Image-Based Automatic Target Recognition will meet in closed session on July 10–12, 1996 at Science Applications International Corporation, McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will assess the ability of automatic/aided target recognition technology and systems to support important military missions, principally in the near- and mid-term. The Task Force should concentrate on those technologies and systems that use imagery (EO, IR or radar) as their primary input medium.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II (1996)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1996), and that accordingly this meeting will be closed to the public.

Dated: May 23, 1996.

Patricial L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–13465 Filed 5–29–96; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Record of Decision (ROD) for the Disposal and Reuse of Gentile Air Force Station (AFS), Ohio

On April 12, 1995, the Air Force signed the ROD for the Disposal of Gentile AFS. The decisions included in this ROD have been made in consideration of, but not limited to, the information contained in the Final Environmental Impact Statement (FEIS) filed with the Environmental Protection Agency on January 19, 1996.

Gentile AFS will close on December 31, 1996, pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (BCRA), Public Law 100–526, and recommendations of the Defense Secretary's Commission on Base Realignment and Closure. This ROD documents the Gentile AFS disposal decisions.

The decision conveyed by the ROD is to dispose of Gentile AFS in a manner that enables development of light manufacturing, a business complex and recreational facilities. This allows for the central theme of the proposed future land use plans discussed in the FEIS to be fully implemented. The environmental findings and mitigation measures contained in the initial ROD remain fully applicable.

Consistent with the community reuse plan, the ROD balances business and industrial with a recreational park.

One disposal method, an Economic Development Conveyance (EDC) to the City of Kettering, the Local Redevelopment Authority (LRA), includes all parcels involved in the ROD. The installation, consisting of a total of 164 acres, which includes the 16-acre parcel for Defense Finance and Accounting Services (DFAS) and all Government-owned utilities and roadways, will be conveyed to the LRA according to a mutually agreeable schedule being developed based on environmental condition and remediation, community reuse plans and base closure. In addition, new legislation was incorporated into the ROD to lease-back the parcel for DFAS for a long-term lease at no cost to the Government.

The implementation of the closure and reuse action and associated mitigation measures will proceed with minimal adverse impact to the environment. This action conforms with applicable Federal, State and local statues and regulations and all reasonable and practical efforts have been incorporated to minimize harm to the local public and environment.

Any questions regarding this matter should be directed to Ms. Teresa R. Pohlman, Program Manager, Division D. Correspondence should be sent to: AFBCA/DD, 1700 North Moore Street, Suite 2300, Arlington, VA 22209–2809.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–13534 Filed 5–29–96; 8:45 am]

BILLING CODE 3910–01–M

Notice of Intent To Prepare a Legislative Environmental Impact Statement for Nellis Air Force Range (NAFR) Renewal, Nevada

The United States Air Force (Air Force) will prepare a legislative environmental impact statement (LEIS) to assess the potential environmental impacts of renewal of the Nellis Air Force Range (NAFR), Nevada. The LEIS will be prepared in accordance with the National Environmental Policy Act (NEPA).

The current land withdrawal and reservation of the NAFR was established by the Military Lands Withdrawal Act of 1986 (Pub. L. 99–606) for the period ending on November 6, 2001. The Act provides that the Air Force may seek renewal of the NAFR withdrawal, in connection with which the Secretary of the Air Force will publish a legislative EIS addressing legislative alternatives and the effects of continued withdrawal.

The purpose of the proposed NAFR renewal is to retain a military training and testing range essential to near- and long-term preparedness of United States air forces. Renewing the land withdrawal will provide for the continued effective implementation of ongoing training and testing missions while maintaining the flexibility to adapt to the training needs of new technologies as they develop. The performance of air operations in combat is directly related to the quality and depth of training. NAFR provides a combination of attributes that serve this training requirement, including the following: favorable location and flying weather; sufficient land and airspace; diverse terrain; and developed training support facilities.

A range of alternatives, including the No Action alternative required by NEPA, will be considered. Three alternatives are described below.

- Proposed Action: Renew Nellis Air Force Range withdrawal and reservation for an indefinite period of time with Congressional review every 15 years. The existing land withdrawal and reservation, consisting of approximately 3.0 million acres, would be reauthorized for an indefinite period of time. The land would be reserved by Congress for use by the Air Force for an armament and high-hazard test area; training for aerial gunnery, rocketry, electronic warfare, and tactical maneuvering and air support; and other defense-related purposes. Every 15 years Congress would review the Air Force's continuing military need for the land, the environmental effects, and the needs of competing uses for the land and could adjust, if warranted, the terms and conditions of the withdrawal. Without limiting the priority use by the Air Force, the land would be managed in part by the Bureau of Land Management and in part by the U.S. Fish and Wildlife Service. Specifically, the Bureau of Land Management would manage approximately 2.2 million acres of the NAFR pursuant to the Federal Land Policy and Management Act of 1976 and other applicable laws. The remaining 826,000 acres of the NAFR are within the Desert National Wildlife Refuge and would be managed by the Fish and Wildlife Service pursuant to the National Wildlife Refuge System Act of 1976.

- Alternative A: Renew the existing NAFR land withdrawal and reservation for 25 years. The existing land withdrawal and reservation, consisting of approximately 3.0 million acres, would be reauthorized for a specified term of 25 years, rather than for an indefinite time with periodic reviews. Otherwise, this alternative is like the Proposed Action.

- No Action Alternative: No renewal of the NAFR land withdrawal and reservation. The land would not be reserved for use by the Air Force. The lands within the existing NAFR boundary would be managed by the Bureau of Land Management and the Fish and Wildlife Service under existing authorities. The No Action alternative would result in the fragmentation or cancellation of training missions accomplished at the NAFR. DOD would prepare appropriate environmental documentation to obtain Federal Aviation Administration approval to reclassify the existing restricted airspace to a Military Operation Area (MOA). This would allow for air-to-air training operations to continue, but would preclude air-to-ground training missions.

To provide a forum for interested parties to provide comments on the scope of the LEIS, a series of scoping meetings will be held in six Nevada communities. In addition, written comments will be accepted throughout the scoping period. Written comments should be forwarded to the address below by August 5, 1996. Scoping meetings will be held at the following times and locations.

1. Indian Springs, NV, June 17, 1996, 6:00 PM to 9:00 PM.

2. Caliente, NV, June 18, 1996, 6:00 PM to 9:00 PM.

3. Las Vegas, NV, June 20, 1996, 6:00 PM to 9:00 PM.

4. Beatty, NV, June 24, 1996, 6:00 PM to 9:00 PM.

5. Tonopah, NV, June 25, 1996, 6:00 PM to 9:00 PM.

6. Reno, NV, June 26, 1996, 6:00 PM to 9:00 PM.

Please direct written comments concerning the NAFR Renewal LEIS to: Colonel Michael F. Fuquy, Nellis Air Force Base, P.O. Box 9919, Las Vegas, NV 89191–0919.

If you have any questions or require additional information, please contact Major Jeff Shea at (702) 652–4354.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–13448 Filed 5–29–96; 8:45 am]

BILLING CODE 3910–01–M

DEFENSE LOGISTICS AGENCY

Membership of the Defense Logistics Agency (DLA) Performance Review Board (PRB)

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Notice of membership of the DLA PRB.

SUMMARY: This notice announces the appointment of the members of the PRBs of the Defense Logistics Agency. The publication of PRB composition is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations to the Director, Defense Logistics Agency, with respect to pay level adjustments and performance awards.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Arellano, Workforce Effectiveness and Development Group, Human Resources, Defense Logistics Agency, Department of Defense, Ft. Belvoir, Virginia, (703) 767–6427.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of Defense Logistics Agency personnel appointed to serve as members of the PRBs. Members will serve a 1-year renewable term, effective upon publication of this notice.

1st Level PRB:

Mr. Gary Thurber, Associate Director, Acquisition

Mr. James Grady, Director, Distribution Systems Center

Ms. Marilyn Barnett, Deputy Commander, Defense Supply Center Columbus

2nd Level PRB:

Mr. Alton Ressler, Deputy Director, Corporate Administration

Mr. Jeffrey Jones, Executive Director, Logistics Management

Mr. Bruce Baird, General Counsel, DLA

A.C. Ressler,

Deputy Director, Corporate Administration Defense Logistics Agency.

[FR Doc. 96–13454 Filed 5–29–96; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare a Joint Environmental Impact Statement/ Environmental Impact Report for the Proposed Disposal and Reuse of the Fleet and Industrial Supply Center Oakland, CA

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the California Environmental Quality Act (CEQA), and Public Law 102-484 Section 2834, as amended by Public Law 104–106 Section 2867, the Department of the Navy, in association with the Port of Oakland, California, announces its intent to prepare a joint Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the proposed disposal and reuse of the Fleet and Industrial Supply Center, Oakland (FISCO) property and structures in Oakland, California. The Navy will be the lead agency for NEPA documentation and the Port of Oakland will be the lead agency for CEQA documentation. The Defense Base Closure and Realignment Act (Public Law 101–510) of 1990, as implemented by the base closure process of 1995, directed the Navy to close FISCO.

FISCO is located approximately two miles west of the Oakland central business district, on the eastern shore of San Francisco Bay. FISCO consists of approximately 528 acres and has about 125 structures that support general supply operations, waterfront operations, and administration.

The EIS/EIR will address potential impacts to the environment that may result from the disposal of FISCO property and subsequent reuses. FISCO is within the planning jurisdiction of the Port of Oakland. The Port of Oakland Vision 2000 Program proposes development of an intermodal system of ship, railroad, and truck freight handling facilities to meet the anticipated demand for transportation services in the San Francisco Bay area and northern California, and an intermodal port for national and international commerce. The Vision 2000 Program also includes development of public waterfront access and marine habitat enhancement.

The development of the Port of Oakland Vision 2000 Program is expected to require additional property outside of the FISCO boundary in order to meet the objectives of the Program. This joint EIS/EIR will provide a program level analysis supporting both the Navy NEPA requirements to describe potential environmental impacts associated with the property disposal at FISCO, and the Port of Oakland CEQA requirement to analyze environmental impacts of implementing the Vision 2000 Program.

The EIS/EIR will evaluate a "No Action" alternative and several reuse alternatives. The "No Action" alternative would result in the federal government indefinitely retaining ownership of FISCO property. Under the "no action" alternative the Navy would continue leasing property to the Port of Oakland under the existing 50 year lease agreement as allowed by Public Law 102–484, and supported by the 1995 base closure decisions. The reuse alternatives are expected to combine the common land use components of a railroad terminal, marine terminals, public waterfront access and marine habitat enhancement. As FISCO is within the Port of Oakland jurisdiction and is designated as a Port Priority use in the April 1996 San Francisco Bay Conservation and Development Commission and the Metropolitan Transportation Commission Seaport Plan Update, alternatives would emphasize port-related activities. Revisions to these alternatives may be developed during the public scoping period. The EIS/EIR will evaluate the potential for environmental impacts to traffic conditions, air quality, biological resources, cultural resources, utilities, and other environmental issues identified through this scoping process.

ADDRESSES: Federal, state and local agencies, and interested individuals are invited to participate in the scoping process to determine the range of issues and reuse alternatives to be addressed. A public scoping meeting to receive oral and written comments will be held on Thursday, June 13, 1996, at 7:00 p.m., at the McClymonds High School auditorium, located at 2607 Myrtle Street (near 26th Street) in Oakland, California. In the interest of available time, each speaker will be asked to limit oral comments to five minutes. In addition, written comments may be submitted by July 1, 1996, to Mr. Gary J. Munekawa, Environmental Planning Branch, Code 185GM, Engineering Field Activity West, Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, California 94066–5006, telephone (415) 244–3022, fax (415) 244–3737. For further information regarding the Port of Oakland Vision 2000 Program, please contact Ms. Loretta Meyer, Port of Oakland, Environmental Assessment Section, 530 Water Street, Oakland, California 94604, telephone (510) 272–1181, fax (510) 465–3755. If you need special assistance to participate in this meeting, please contact Mr. Munekawa at least 72 hours prior to the meeting.

Dated May 23, 1996

S.L. Haycock,

LCDR, JAGC, USN, Alternate Federal Register Liaison Officer.

[FR Doc. 96–13460 Filed 5–29–96; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 29, 1996.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB.

Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 23, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Gun-Free Schools Act Report'.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs and LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 456.

Abstract: The Gun-Free Schools Act (GFSA) requires each State to provide annual reports to the Secretary concerning implementation of the Act's requirements regarding expulsions from schools resulting from weapons violations. The GFSA requires the Secretary to report to Congress if any State is not in compliance with the GFSA, and requires the Secretary to collect data on the incidence of children with disabilities and violent behaviors.

[FR Doc. 96–13508 Filed 5–29–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. F–085]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to Inter-City Products Corporation

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–085) granting a Waiver to Inter-City Products Corporation (Inter-City) from the existing Department of Energy (DOE or Department) test procedure for furnaces. The Department is granting Inter-City's Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its NUGM, NUG9, NCGM, GUK, GUM and GCK series furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9138

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0103, (202) 586–9507

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(j), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Inter-City has been granted a Waiver for its NUGM, NUG9, NCGM, GUK, GUM and GCK series furnaces permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, on May 23, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the matter of: Inter-City Products Corporation.

[Case No. F–085]

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act, Public Law 94–163, 89 Stat. 917, as amended (EPCA), which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

Inter-City filed a "Petition for Waiver," dated January 8, 1996, in accordance with section 430.27 of 10 CFR Part 430. The Department published in the **Federal Register** on March 19, 1996, Inter-City's Petition and solicited comments, data and information respecting the Petition. 61 FR 11199, March 19, 1996. Inter-City also filed an "Application for Interim Waiver" under section 430.27(b)(2), which DOE granted on March 7, 1996. 61 FR 11199, March 19, 1996.

No comments were received concerning either the "Petition for Waiver" or the "Application for Interim Waiver." The Department consulted with The Federal Trade Commission (FTC) concerning the Inter-City Petition. The FTC did not have any objections to the issuance of the waiver to Inter-City.

Assertions and Determinations

Inter-City's Petition seeks a waiver from the DOE test provisions that

require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Inter-City requests the allowance to test using a 30-second blower time delay when testing its NUGM, NUG9, NCGM, GUK, GUM and GCK series furnaces. Inter-City states that since the 30-second delay is indicative of how these models actually operate, and since such a delay results in an improvement in AFUE of an average 0.4 to 0.6 percent, the Petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Inter-City indicates that it is unable to take advantage of any of these exceptions for its NUGM, NUG9, NCGM, GUK, GUM and GCK series furnaces.

Since the blower controls incorporated on the Inter-City furnaces are designed to impose a 30-second blower delay in every instance of start up, and since the current test procedure provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-second blower time delay when testing the Inter-City NUGM, NUG9, NCGM, GUK, GUM and GCK series furnaces. Accordingly, with regard to testing the NUGM, NUG9, NCGM, GUK, GUM and GCK series furnaces, today's Decision and Order exempts Inter-City from the existing test procedure provisions regarding blower controls and allows testing with the 30-second delay.

It is, therefore, ordered That:

(1) The "Petition for Waiver" filed by Inter-City Products Corporation (Case No. F–085) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR Part 430, Subpart B, Inter-City Products Corporation, shall be permitted to test its NUGM, NUG9, NCGM, GUK, GUM and GCK series furnaces on the basis of the test procedure specified in 10 CFR Part 430, with modifications set forth below:

(I) Section 3.0 of Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t−), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t−), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Inter-City Products Corporation shall comply in all respects with the test procedures specified in Appendix N of 10 CFR Part 430, Subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the NUGM, NUG9, NCGM, GUK, GUM and GCK series furnaces manufactured by Inter-City Products Corporation.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Petition is incorrect.

(5) Effective May 23, 1996, this Waiver supersedes the Interim Waiver granted Inter-City Products Corporation on March 7, 1996. 61 FR 11199, March 19, 1996 (Case No. F–085).

Issued in Washington, DC, on May 23, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 96–13542 Filed 5–29–96; 8:45 am]

BILLING CODE 6450–01–P

State Energy Program Special Projects Financial Assistance

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: As part of the new consolidated State Energy Program (SEP) being implemented for fiscal year 1996, the Office of Energy Efficiency and Renewable Energy is announcing the availability of financial assistance to States for a group of special project activities. Funding is being provided by a number of end-use sector programs in the Office of Energy Efficiency and Renewable Energy, such as Climate Wise, Clean Cities, Rebuild America, Motor Challenge, Building Codes and Standards, and State Alternative Fuel Transportation efforts. States may apply to undertake any of the projects being offered by these programs. States will carry out their selected projects in conjunction with their efforts under SEP.

The projects must meet the relevant requirements of the programs providing the funding, as well as of SEP, as specified in the program guidance/solicitation. Among the goals of the special project activities are to assist States to: accelerate deployment of energy efficiency and renewable energy technologies; facilitate the acceptance of emerging and underutilized energy efficiency and renewable energy technologies; and increase the responsiveness of Federally funded technology development efforts to private sector needs.

DATES: The program guidance/solicitation will be available June 3, 1996. Applications must be received by June 28, 1996.

ADDRESSES AND FOR FURTHER INFORMATION CONTACT: Ernest Chabot at the U. S. Department of Energy Headquarters, 1000 Independence Avenue, S.W., Washington, D. C. 20585, (202) 586–8128, for referral to the appropriate DOE Regional Support Office.

SUPPLEMENTARY INFORMATION: Fiscal year 1996 is the first year special project activities will be funded in conjunction with the new consolidated State Energy Program. Most of these special projects are related to or based on similar efforts that have been funded separately by the various DOE end-use sector programs that are now providing funding for this new consolidated State-oriented approach.

Availability of Fiscal Year 1996 Funds

With this publication, DOE is announcing the availability of up to $12 million in financial assistance funds for fiscal year 1996. The awards will be made through a competitive process. No State will be awarded financial assistance for special projects in excess of $500,000 for fiscal year 1996. Projects may cover a period of up to 2 years.

Restricted Eligibility

Eligible applicants for purposes of funding under this program are limited to the 50 States, the District of Columbia, Puerto Rico, or any territory or possession of the United States, specifically, the State energy or other agency responsible for administering the State Energy Program pursuant to 10 CFR part 420. For convenience, the term State in this notice refers to all eligible State applicants.

The Catalog of Federal Domestic Assistance number assigned to the State Energy Program is 81.041.

Requirements for cost sharing or matching contributions will be addressed in the program guidance/solicitation for each special project activity, as appropriate. Cost sharing or matching contributions beyond any required percentage is desirable.

Any application must be signed by an authorized State official, in accordance with the program guidance/solicitation.

Evaluation Review and Criteria

A first tier review for completeness will occur at the appropriate DOE Regional Support Office. Applications found to be complete will undergo a merit review process by panels comprised of members representing the respective participating end-use sector programs in DOE's Office of Energy Efficiency and Renewable Energy. A decision as to the applications selected for funding will then be made by the Deputy Assistant Secretary for Building Technology, State and Community Programs, or designee, based on the findings of the technical merit review and any stated program policy factors. DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this notice.

More detailed information is available from the U. S. Department of Energy Headquarters at (202) 586–8128.

Issued in Washington, D. C., May 23, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 96–13541 Filed 5–29–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER96–841–000]

Blandin Paper Company; Notice of Issuance of Order

May 23, 1996.

On January 16, 1996, as amended March 14, 1996, Blandin Paper Company (Blandin) submitted for filing a rate schedule under which Blandin will engage in wholesale electric power and energy transactions as a marketer. Blandin also requested waiver of various Commission regulations. In particular, Blandin requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Blandin.

On May 9, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Blandin should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Blandin is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Blandin's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 10, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13550 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–408–000 and RP95–408–001]

Columbia Gas Transmission Corp.; Notice of Informal Settlement Conference

May 23, 1996.

Take notice that an informal settlement conference in this proceeding will be convened on Friday, May 31, 1996 at 10:00 a.m. The settlement conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, for the purpose of exploring the possible settlement of the above referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Thomas J. Burgess at 208–2058 or David R. Cain at 208–0917.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13488 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1503–000]

Eagle Gas Marketing Company; Notice of Issuance of Order

May 23, 1996.

On April 4, 1996, Eagle Gas Marketing Company (Eagle) submitted for filing a rate schedule under which Eagle will engage in wholesale electric power and energy transactions as a marketer. Eagle also requested waiver of various Commission regulations. In particular, Eagle requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Eagle.

On May 8, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Eagle should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Eagle is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Eagle's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 7, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13551 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–529–000]

K N Interstate Gas Transmission Company; Notice of Application

May 23, 1996.

Take notice that on May 20, 1996, K N Interstate Gas Transmission Company (KNI), 370 Van Gordon Street, Lakewood, Colorado 80228–8304, filed an application with the Commission in Docket No. CP96–529–000 pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon its Haven Line in Reno County, Kansas, which was authorized in Docket No. CP70–239,[1] all as more fully set forth in the application which is open to the public for inspection.

KNI proposes to abandon by sale approximately 9.2 miles of 16-inch diameter pipe (the Haven Line) in Reno County to Mid Continent Market Center, Inc. (Mid Continent), which would operate the Haven Line as part of its intrastate pipeline system. KNI states that it would sell the Haven Line to Mid Continent for a negotiated price of $205,000. KNI also states that the only customers currently being served from the Haven Line are nine end-users who are direct retail customers of K N Energy, Inc. KNI's parent company. KNI further states that Western Resources, Inc., Mid Continent's parent, would take over as the direct retail supplier to these nine end-users; thus, no customer would lose gas service as a result of KNI's proposed abandonment of the Haven Line to Mid Continent.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 13, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for KNI to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13489 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–M

[1] 44 FPC 149 (1970).

[Docket Nos. CP96–178–000; CP96–249–000]

Maritimes & Northeast Pipeline, L.L.C., Portland Natural Gas Transmission System; Notice of Technical Conference

May 23, 1996.

Take notice that a technical conference will be convened in the above-docketed proceedings on Thursday, June 6, 1996, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

The purpose of the technical conference is to allow the project proponents to clarify how the two above-docketed projects will serve either local distribution companies or other natural gas customers in Maine and New Hampshire. Proponents of these projects and all of the interstate pipelines that will provide upstream or downstream transportation for the projects should attend and be prepared to answer questions relating to the required interconnections and operational requirements for each project.

Specifically, all of the parties should be prepared to discuss the following:

- What, if any, impediments exist related to Maritimes & Northeast Pipeline, L.L.C.'s (Maritimes) proposal to interconnect with Granite State Gas Transmission, Inc.'s (Granite State) and Tennessee Gas Pipeline Company's (Tennessee) existing transmission facilities?
- What provisions of Granite State's FERC tariff and Maritimes' *pro forma* FERC tariff apply to Maritimes' and/or its shippers' request to interconnect with Granite State and for service on Granite State? To what extent have the pipelines and/or shippers complied or will comply with such provisions? Also, were the interconnections with Granite State for the Portland Natural Gas Transmission System (PNGTS) project treated consistently with the request by Maritimes for interconnections?
- What were the circumstances relating to any other receipt or delivery points which Granite State has constructed or plans to construct under the terms of its FERC tariff?
- What are the potential capacity release volumes and/or excess capacity on Tennessee and Granite State for these projects?

Any party, as defined in 18 CFR 385.214, and any participant, as defined in 18 CFR 385.102(b), in the above-docketed proceedings are invited to participate in the technical conference. However, no topics other than those listed above will be considered. For additional information, please contact Amy Heyman (202) 208–0115 or Richard Foley, (202) 208–2245, at the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13552 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT96–64–000]

Northern Natural Gas Company; Notice of Refund Report

May 23, 1996.

Take notice that on May 20, 1996, Northern Natural Gas Company (Northern) submitted worksheets reflecting the distribution of refunds paid to jurisdictional sales customers on May 20, 1996.

Northern states that these refunds are being made pursuant to the Commission's Order in Colorado Interstate Gas Company, Docket Nos. GP83–11–002 and RI83–9–003 issued December 1, 1993.

The Commission ordered that "any first seller that collected revenues in excess of the applicable maximum lawful price established by the NGPA as a result of the reimbursement of the Kansas ad valorem taxes for sales on or after June 28, 1988, shall refund any such excess revenues to the purchaser" * * *". The Interstate pipelines were then required to make lump-sum cash payments of the Kansas ad valorem tax refunds to the customers who were actually overcharged. Included with Northern's payments is interest covering the period from the date Northern received the refund from the producer until May 20, 1996.

Northern states that a copy of this report is being mailed to each of Northern's affected jurisdictional sales customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such petitions or protests must be filed on or before May 31, 1996. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13509 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1516–000]

SEMCOR, Inc.; Notice of Issuance of Order

May 23, 1996.

On April 8, 1996, SEMCOR, Inc. (SEMCOR) submitted for filing a rate schedule under which SEMCOR will engage in wholesale electric power and energy transactions as a marketer. SEMCOR also requested waiver of various Commission regulations. In particular, SEMCOR requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by SEMCOR.

On May 8, 1996, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by SEMCOR should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, SEMCOR is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of SEMCOR's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 7, 1996.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13553 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–423–005]

Texas Gas Transmission Corporation; Notice of Refund Report

May 23, 1996.

Take notice that on May 1, 1996, Texas Gas Transmission Corporation (Texas Gas) tendered for filing a refund report detailing the amount of refunds made in accordance with the provisions of Article II, Section 2 of the Stipulation and Agreement approved by Commission letter order issued February 20, 1996 in Docket No. RP94–423–003, et al. The refund covers the period April 1, 1995 through January 31, 1996.

Texas Gas states that this refund report is being submitted in compliance with the provisions of Article XIV of the Stipulation and Agreement and Sections 154.501 and 154.502 of the Commission's regulations. Texas Gas states that the report summarizes refunds totalling $23,247,744.60, including $1,213,906.89 in interest through April 3, 1996.

Texas Gas further states that all affected customers and interested state commissions have been served a copy of this refund report.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before May 31, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13490 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–208–001]

Trunkline Gas Company; Notice of Compliance Filing

May 23, 1996.

Take notice that on May 20, 1996, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, to be effective May 11, 1996.

Sub 1st Rev Original Sheet No. 56E

Trunkline asserts that the purpose of this filing is to comply with the Commission's order issued May 10, 1996 in Docket No. RP96–208–000, 75 FERC ¶ 61,147 (1996).

Trunkline states that this filing is to clarify Trunkline's tariff to permit intra-day nominations by firm shippers to bump scheduled and flowing quantities of gas related to hourly changes in QNIT nominations.

Trunkline states that a copy of this filing are being served on all affected customers, applicable state regulatory agencies and all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13491 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–528–000]

Universal Resources Corporation; Notice of Petition

May 23, 1996.

Take notice that on May 17, 1996, Universal Resources Corporation (URC), 79 State Street, Salt Lake City, Utah 84147, filed in Docket No. CP96–528–000 a petition pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for exemption of temporary acts and operations to test the feasibility of converting an existing production field to a storage field, and requests, if permission is needed to perform these acts and operations, pregranted abandonment authorization, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

URC states that it is a natural gas producer and the parent of Questar Energy Trading (QET), a company that markets URC's production, as well as the production of others. It is indicated that URC is a wholly-owned subsidiary of Questar Corporation. URC indicates that it is the operator of the Clear Creek oil and gas field, in Uintah County, Wyoming. URC states that it owns nearly all of the production rights in the field. URC states that the 15 wells drilled in the field have been shut in since 1994 because production of oil and gas is no longer economic. It is indicated that the production in the field was delivered into the facilities of either Questar Pipeline Company or Northwest Pipeline Corporation, and that the interconnecting facilities are still in place. It is stated that available geological data indicate that the field has the potential to operate as an economical storage facility and that some producible gas reserves may remain in as yet undeveloped gas cap.

URC states that it desires to test the Clear Creek Field for two purposes: (1) to determine whether there remains a gas cap with sufficient reserves to justify further drilling and production, and (2) to determine whether the Clear Creek field could be converted to an economically viable storage field. It is stated that, by conducting a 60-to-90 day pressure test, after installation of a rented 1,000 horsepower compressor and associated concrete pad, URC believes that it can answer both questions.

URC states that it currently anticipates that if the tests show that the Clear Creek field should be developed as a storage facility subject to the Natural Gas Act (NGA), URC or its subsidiary, QET, would apply for a certificate under Section 7(c) of the NGA. URC further anticipates that pipeline construction would be undertaken to connect the field to additional pipelines in the area and URC or QET would operate Clear Creek as a private storage field to support QET's natural gas marketing operations.

URC indicates that, inasmuch as testing is needed to perform an obviously non-jurisdictional production purpose—testing for the gas cap—and since the field may never be converted to storage, it is not clear that any Commission authorization is needed for the test. It is stated, because natural gas for the test will be received from Questar, an interstate pipeline, and redelivered to the same interstate pipeline, URC has filed the petition out of an abundance of caution.

URC states that, as part of the test, it will install and operate a compressor and related piping in order to inject gas into the field; monitor pressures in, and flows into and from the reservoir; and receive gas from an interstate pipeline and inject the gas into the reservoir; and redeliver natural gas used in the test in interstate commerce. It is indicated that it will receive the gas from Questar from an existing tap and gathering lines now used to connect the field into Questar's system. It is also indicated that URC and Questar will reverse the historic direction of gas flow to permit gas to be delivered for testing purposes. URC states that it will inject approximately 225,000 Mcf through an existing well for around 30 days at approximately 4,000 psi. URC also states that, following injection URC will monitor pressures and flows of gas out of the injection well for another 30 days. It is indicated that the pressure and flow rates will provide information necessary to determine both the nature of the gas cap and the potential for developing a viable storage field. URC states that it will conduct the tests in compliance with the environmental requirements of the Commission's blanket certificate regulations, as set forth in Section 157.206(d) of the Commission's regulations and any requirements imposed upon it by the Bureau of Land Management.

URC states that it believes that an exemption for temporary acts and operations pursuant to Natural Gas Act Section 7(c)(1)(B) would apply to all necessary authorizations. However, URC requests pregranted abandonment authorization in the event the Commission does not exempt the above-described actions.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 13, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this petition if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to interview is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for URC to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13492 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–241–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 23, 1996.

Take notice that on May 21, 1996, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, proposed to be effective June 1, 1996:

Second Revised Sheet Nos. 13–15
Second Revised Sheet Nos. 19–20
Second Revised Sheet Nos. 23–25
Second Revised Sheet Nos. 28–30
Third Revised Sheet Nos. 39
Fourth Revised Sheet Nos. 62
Third Revised Sheet Nos. 63 and 64

Viking states that the purpose of this filing is to modify Viking's existing policies on the construction of laterals, taps and metering facilities to provide new or additional service to its customers. Viking's current policies provide that Viking will provide laterals and customer delivery facilities only if the customer reimburses Viking for one hundred percent of the new facilities costs prior to the commencement of construction.

Viking states that it is proposing to amend this policy to create a menu of payment options that can be used separately or collectively to provide for payment of the new facilities' costs. Under Viking's proposal, customers would have the additional options of reimbursing Viking by: (1) paying a separately stated firm reservation charge that is designed to recover the cost of the new facilities; or (2) subscribing for a new or additional amount of mainline firm capacity sufficient to provide an incremental revenue stream with a present discounted value equal to or greater than the new facilities; costs.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13493 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–527–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

May 23, 1996.

Take notice that on May 20, 1996, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 300, 200 North Third Street, Bismarck, North Dakota 58501, filed in Docket No. CP96–527–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to utilize two existing taps under Williston Basin's blanket certificate issued in Docket No. CP83–1–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williston Basin proposes to utilize two existing taps to effectuate natural gas transportation deliveries to Montana-Dakota Utilities Company (Montana-Dakota), a local distribution company, for ultimate use by additional residential customers in Richland County, Montana and Big Horn County, Wyoming.

Williston Basin estimates that the additional volumes to be delivered to the existing Richland County, Montana and Big Horn County, Wyoming taps to be 150 Mcf per year and 100 Mcf per year, respectively.

Williston Basin states that it plans to provide the proposed deliveries to Montana-Dakota under Rate Schedule FT–1 of its FERC Gas Tariff, Second Revised Volume No. 1, and that the volumes to be delivered are within the contractual entitlements of the customer.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13494 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1033–000, et al.]

Florida Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

May 22, 1996.

Take notice that the following filings have been made with the Commission:

1. Florida Power & Light Company

[Docket No. ER96–1033–000]

Take notice that on May 10, 1996, Florida Power & Light Company (FPL) filed Supplement No. 1 to Contract for Purchases and Sales of Power and Energy between FPL and Eastex Power Marketing, Inc. FPL requests an effective date of February 19, 1996.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. NRG Energy, Inc. and NRG Generating (U.S.) Inc.

[Docket No. EC96–23–000]

Take notice that on May 9, 1996, NRG Energy, Inc. and NRG Generating (U.S.) Inc. filed an application for approval of the appointment of a Director under Section 203 of the Federal Power Act.

Comment date: June 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Southern Energy Marketing, Inc. and Questar Energy Trading Company

[Docket Nos. ER95–976–003 and Docket No. ER96–404–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On February 29, 1996, Southern Energy Marketing, Inc. filed certain information as required by the Commission's June 27, 1995 order in Docket No. ER95–976–000.

On May 3, 1996, Questar Energy Trading Company filed certain information as required by the Commission's January 29, 1996 order in Docket No. ER96–404–000.

4. Southern California Edison Company

[Docket No. ER96–1125–001]

Take notice that on May 14, 1996, Southern California Edison Company tendered for filing its refund report in the above-referenced docket.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. PSI Energy, Inc.

[Docket No. ER96–1718–000]

Take notice that on April 30, 1996, PSI Energy, Inc. tendered for filing its informational filing for the calendar year 1995.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Cincinnati Gas & Electric Company

[Docket No. ER96–1719–000]

Take notice that on April 30, 1996, Cincinnati Gas & Electric Company tendered for filing copies of its Second Annual Informational Filing for 1995.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Northwest Generating Cooperative, an Oregon Cooperative

[Docket No. ER96–1748–000]

Take notice that on May 8, 1996, Pacific Northwest Generating Cooperative, an Oregon Cooperative, tendered for filing a Petition for Blanket Authorizations Certain Waivers, and Order Approving Rate Schedule Governing Market-Based Rates Sales Of Energy and Capacity.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Powerline Controls, Inc.

[Docket No. ER96–1754–000]

Take notice that on May 8, 1996, Powerline Controls, Inc. tendered for filing an Application for Blanket Authorizations, Certain Waivers, and Order Approving Rate Schedule Governing Market-Based Rates Sales Of Energy and Capacity.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Southern California Edison Company

[Docket No. ER96–1767–000]

Take notice that on May 9, 1996, Southern California Edison Company tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 6, FERC Rate Schedule No. 29, and FERC Rate Schedule No. 180, and all supplements thereto, except FERC Rate Schedule 6.21, 29, 20, and 180.19 which shall remain in effect.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Tucson Electric Power Company

[Docket No. ER96–1770–000]

Take notice that on May 9, 1996, Tucson Electric Power Company tendered for filing a Notice of Cancellation Rate Schedule FERC No. 99.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Tucson Electric Power Company

[Docket No. ER96–1771–000]

Take notice that on May 9, 1996, Tucson Electric Power Company tendered for filing a Notice of Cancellation Rate Schedule FERC No. 77.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Appalachian Power Company

[Docket No. ER96–1779–000]

Take notice that on May 9, 1996, Appalachian Power Company (APCo) tendered for filing with the Commission an Addendum to the existing Electric Service Agreement (ESA) between APCo and Virginia Polytechnic Institute and State University (VPI), which extends the existing ESA, as revised, through June 30, 2007, and a Facilities Agreement, which provides for the recognition of certain facilities owned by APCo and the construction of new local facilities for VPI.

APCo proposes an effective date of July 10, 1996, and states that a copy of its filing was served on VPI and the Virginia State Corporation Commission.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Midwest Energy, Inc.

[Docket No. ER96–1791–000]

Take notice that on May 10, 1996, Midwest Energy, Inc. (Midwest), tendered for filing with the Federal Energy Regulatory Commission its Energy Cost Adjustment rate schedule. In addition, Midwest submitted on May 14, 1996, supplemental information to the May 10, 1996, filing in this docket.

Midwest states that the purpose of this filing is to comply with the Federal Energy Regulatory Commission's February 2, 1996 Order issued in Docket No. ER95–590–000 whereby Midwest was granted a one year extension of time, until July 10, 1996, to conform its rate schedules with the requirements of § 35.14 (Fuel Cost and Purchased Economic Power Adjustment Clauses) of the Commission's Regulations (18 CFR 35.14).

Midwest states that it is serving copies of the instant filing to its customers, State Commissions and other interested parties.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Union Electric Company

[Docket No. ER96–1792–000]

Take notice that on May 13, 1996, Union Electric Company (UE), tendered for filing an Interchange Agreement between UE and Commonwealth Edison Company. UE asserts that the purpose of the Agreement is to set out specific rates, terms, and conditions for the types of power and energy to be exchanged.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Southern Company Services, Inc.

[Docket No. ER96–1794–000]

Take notice that on May 13, 1996, Southern Company Services, Inc. (SCSI), acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as the "Operating Companies"), submitted for filing Amendment No. 6 to The Southern Company System Intercompany Interchange Contract dated October 31, 1988, as amended. The amendment reflects modifications in the procedure used to determine the monthly capacity charges governing the purchase and sale of temporary surplus and deficit capacity among the Operating Companies. The amendment also modifies procedures used to determine load responsibility, unit unavailability and the rating of hydroelectric capacity. SCSI requests an effective date of May 1, 1996 for this submittal.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–1796–000]

Take notice that on May 13, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to Con Edison Rate Schedule FERC No. 94 for transmission service for the Long Island Lighting Company (LILCO). The Rate Schedule provides for transmission of power and energy from the New York Power Authority's Blenheim-Gilboa station. The Supplement provides for a decrease in annual revenues under the Rate Schedule of $5,657.50. Con Edison has requested that this increase take effect on July 1, 1996.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–1797–000]

Take notice that on May 13, 1996, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule FERC No. 117, an agreement to provide transmission and interconnection service to Long Island Lighting Company (LILCO). The Supplement provides for an increase in annual revenues under the Rate Schedule of $38,963.90. Con Edison has requested that this increase take effect on July 1, 1996.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. New England Power Pool

[Docket No. ER96–1799–000]

Take notice that on May 13, 1996, the New England Power Pool Executive Committee filed signature pages to the NEPOOL Agreement dated September 1, 1971, as amended, signed by PSI Energy, Inc. (PSI) and The Cincinnati Gas & Electric Company (CG&E). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature pages would permit PSI and CG&E to join the over 90 Participants that already participate in the Pool. NEPOOL further states that the filed signature pages do not change the NEPOOL Agreement in any manner, other than to make PSI and CG&E Participants in the Pool. NEPOOL requests an effective date on or before May 28, 1996, or as soon as possible thereafter for commencement of participation in the Pool by PSI and CG&E.

COMMENT DATE: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. New England Power Pool

[Docket No. ER96–1800–000]

Take notice that on May 13, 1996, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by PECO Energy Company (PECO). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit PECO to join the over 90 Participants already in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make PECO a Participant in the Pool. NEPOOL requests an effective date of July 1, 1996 for commencement of participation in the Pool by PECO.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Wisconsin Power and Light Company

[Docket No. ER96–1801–000]

Take notice that on May 13, 1996, Wisconsin Power and Light Company (WP&L) tendered for filing an Agreement dated May 3, 1996, establishing WPS Energy Services, Inc. as a customer under the terms of WP&L's Point-to-Point Transmission Tariff.

WP&L requests an effective date of May 3, 1996 and accordingly seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Central Hudson Gas and Electric Corporation

[Docket No. ER96–1802–000]

Take notice that on May 13, 1996, Central Hudson Gas and Electric Corporation (CHG&E) tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR, a Service Agreement between CHG&E and Federal Energy Sales Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER94–1662. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: June 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13548 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER96–1803–000, et al.]

Public Service Company of Colorado, et al.; Electric Rate and Corporate Regulation Filings

May 23, 1996.

Take notice that the following filings have been made with the Commission:

1. Public Service Company of Colorado

[Docket No. ER96–1803–000]

Take notice that on May 13, 1996, Public Service Company of Colorado (Public Service), tendered for filing a Letter Agreement to its Power Purchase Agreement (PPA) with the City of Burlington (City) designated as Public Service Rate Schedule FERC No. 44 and a Letter Agreement to its Power Purchase Agreement (PPA) with the Town of Julesburg (Town) designated as Public Service Rate Schedule FERC No. 46. The Letter Agreements will revise Exhibit A of each PPA to allow the City and the Town to purchase additional Monthly Energy for a one-month period, May 1, 1996 through May 31, 1996 from Western Area Power Administration (Western). Public Service requests an effective date of May 1, 1996.

Copies of the filing were served upon the City of Burlington, the Town of Julesburg, Colorado Public Utilities Commission, and the Colorado Office of Consumer Counsel.

Comment date: June 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Electric Power Company

[Docket No. ER96–1804–000]

Take notice that on May 14, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Transmission Service Agreement between itself and Louis Dreyfus Electric Power Inc. (LDEP). The Transmission Service Agreement allows LDEP to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume No. 5, under Docket No. ER95–1474, Rate Schedule STNF.

Wisconsin Electric requests an effective date of May 30, 1996, and waiver of the Commission's notice requirements to allow for economic transactions. Copies of the filing have been served on LDEP, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: June 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Electric Power Company

[Docket No. ER96–1805–000]

Take notice that on May 14, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement and a Transmission Service Agreement between itself and QST Energy Trading Inc. (QST). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff. The Transmission Service Agreement allows QST to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume No. 5, Rate Schedule STNF, under Docket No. ER95–1474.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on QST, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: June 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Electric Power Company

[Docket No. ER96–1806–000]

Take notice that on May 14, 1996, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement and a Transmission Service Agreement between itself and Southern Energy Marketing Incorporated (Southern). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff. The Transmission Service Agreement allows Southern to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume No. 5, Rate Schedule STNF, under Docket No. ER95–1474.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on Southern, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: June 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Kansas City Power & Light Company

[Docket No. ER96–1807–000]

Take notice that on May 14, 1996, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated April 29, 1996, between KCPL and UtiliCorp United Inc. (UCU). KCPL proposes an effective date of April 29, 1996, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service between KCPL and UCU.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges which were conditionally accepted for filing by the Commission in Docket No. ER94–1045–000.

Comment date: June 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. PECO Energy Company

[Docket No. ER96–1808–000]

Take notice that on May 13, 1996, PECO Energy Company (PECO), filed a Service Agreement dated April 26, 1996, with Commonwealth Edison Company (ComEd) under PECO's FERC Electric Tariff Original Volume No. 3 (Tariff). The Service Agreement adds ComEd as a customer under the Tariff.

PECO requests an effective date of April 26, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to ComEd and to the Pennsylvania Public Utility Commission.

Comment date: June 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. The Montana Power Company

[Docket No. ER96–1809–000]

Take notice that on May 15, 1996, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a Service Agreement with Western Area Power Administration (Western) under FERC Electric Tariff, Original Volume No. 4; and an Index of Customers under said Tariff.

A copy of the filing was served upon Western.

Comment date: June 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Pool

[Docket No. ER96–1810–000]

Take notice that on May 15, 1996, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by AGF, Inc. d/b/a/ AGF Direct Gas Sales (AGF) and KOCH Power Services, Inc. (KOCH). The new England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature pages would permit AGF and KOCH to join the over 90 Participants that already participate in the Pool. NEPOOL further states that the filed signature pages do not change the NEPOOL Agreement in any manner, other than to make AGF and KOCH Participants in the Pool. NEPOOL requests an effective date on or before May 28, 1996 for commencement of participation in the Pool by AGF and KOCH.

Comment date: June 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corporation

[Docket No. ER96–1811–000]

Take notice that on May 15, 1996, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and Federal Energy Sales (FES) dated May 13, 1995, providing for certain transmission services to FES.

Copies of this filing were served upon FES and the New York State Public Service Commission.

Comment date: June 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Niagara Mohawk Power Corporation

[Docket No. ER96–1812–000]

Take notice that on May 15, 1996, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and PECO Energy Co. (PECO) dated May 13, 1995, providing for certain transmission services to PECO.

Copies of this filing were served upon PECO and the New York State Public Service Commission.

Comment date: June 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Power Corporation

[Docket No. ER96–1813–000]

Take notice that on May 15, 1996, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and Cleveland Electric Illuminating Company (CEI) dated May 13, 1995 providing for certain transmission services to CEI.

Copies of this filing were served upon CEI and the New York State Public Service Commission.

Comment date: June 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Niagara Mohawk Power Corporation

[Docket No. ER96–1814–000]

Take notice that on May 15, 1996, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and Noram Energy Service Company (Noram) dated May 13, 1995, providing for certain transmission services to Noram.

Copies of this filing were served upon Noram and the New York State Public Service Commission.

Comment date: June 6, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Old Dominion Electric Cooperative

[Docket No. ES96–28–000]

Take notice that on May 20, 1996, Old Dominion Electric Cooperative (Old Dominion) filed an application under § 204 of the Federal Power Act (FPA) seeking (1) authorization to enter into a proposed tax advantaged lease and leaseback of its Clover Power Station unit 2 and certain common facilities (Facility) and (2) an exemption from the Commission's competitive bidding and negotiated placement regulations. The transaction would involve a lease and lease-back of Old Dominion's 50 percent undivided ownership interest in the Facility under which an investor would obtain ownership of the undivided interest for income tax purposes and Old Dominion would obtain the effects of certain tax benefits that it would not otherwise be able to obtain. There would be no transfer of legal title to the Facility.

Old Dominion states that the Commission should assert jurisdiction over the proposed transaction based on the obligations to be assumed by it, citing a number of precedent cases decided by the Commission. Alternatively, Old Dominion consents to the Commission's review of the proposed transaction under section 204 of the FPA.

Comment date: June 11, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13549 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP96–178–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Maritimes & Northeast Pipeline Project, Request for Comments on Environmental Issues and Notice of Public Meetings (NOI)

May 23, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the construction and operation of the 66.0 miles of pipeline facilities and metering proposed in the Maritimes & Northeast Pipeline Project (Maritimes Project).[1] This EIS will be used by the Commission in its decision-making process to determine whether to approve the project.

We are asking a number of Federal agencies to indicate whether they wish to cooperate with us in the preparation of the EIS. These agencies are listed in appendix 1 and may choose to participate once they have evaluated the proposal relative to their agencies' responsibilities.[2]

Summary of the Proposed Project

Maritimes & Northeast Pipeline, L.L.C. (M&NP) wants to build a new natural gas transmission system in Massachusetts, New Hampshire, and southern Maine to transport 60,000 million cubic feet per day of natural gas for two shippers. The proposed facilities are Phase I of the Maritimes Project, a new high-pressure natural gas pipeline delivery system for the Sable Offshore Energy Project. The Phase I facilities would be the southernmost segment of a pipeline that would eventually extend from Country Harbor, Nova Scotia, Canada, to the Canadian-U.S. border near Calais, Maine, through Maine and

[1] Maritimes & Northeast Pipeline, L.L.C.'s application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] Appendices 2 through 5 referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A–1, Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

New Hampshire and into Massachusetts. M&NP requests Commission authorization, in Docket No. CP96–178–000, to construct and operate the following Phase I facilities:

- 66.0 miles of 24-inch-diameter pipeline from Dracut, Massachusetts to Wells, Maine in Middlesex and Essex Counties, Massachusetts (14.4 miles), Rockingham County, New Hampshire (34.7 miles), and York County, Maine (16.9 miles);
- two meter stations, one in Dracut, Massachusetts and one in Newington, New Hampshire;
- one meter and regulator station in Wells, Maine; and
- associated pipeline facilities, such as mainline block valves and pig launchers and receivers.

The information in this NOI is based on the route maps which were filed with the Commission on May 16, 1996. The general location of the project facilities is shown in appendix 2. The general location of other natural gas projects under Commission review occurring in the same region and within the same time frame (Granite State Gas Transmission, Inc. (Granite State LNG Project, Docket No. CP95–52–000) and Portland Natural Gas Transmission System (PNGTS Project, Docket No. CP96–249–000)) are shown in appendix 3. If you are interested in obtaining detailed maps of a specific portion of the Maritimes Project, contact the EIS Project Manager identified at the end of this notice.

Land Requirements for Construction

Based on information supplied by M&NP, over about 50 percent of the proposed pipeline would parallel existing road, pipeline, or powerline rights-of-way. Construction of the pipeline would require a 75-foot-wide construction right-of-way and would affect about 600 acres of land. Following construction, 50 feet of the construction right-of-way (about 400 acres) would be retained for operation of the pipeline and 1 acre would be retained for operation of each meter station. Existing land uses on the remainder of the disturbed area, as well as most land uses on the permanent right-of-way, would be allowed to continue following construction.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified a number of issues under each topic that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by the applicant. These issues are listed below. This preliminary list of issues may be changed based on your comments and our analysis.

- *Geology and Soils*

—About 60 miles of near-surface bedrock may require blasting.
—Effect on exploitable mineral resources.
—Effect on prime farmland soils.
—Erosion control and right-of-way revegetation procedures.

- *Water Resources*

—Effect on groundwater and surface water supplies.
—About 80 crossings of waterbodies, including 2 crossings of waterbodies over 100 feet (Squamscott and Piscataqua Rivers), and crossings of the Spickett, Little, Exeter, and Great Works Rivers.
—Consistency with state Coastal Zone Management Programs.

- *Biological Resources*

—Clearing of upland forest and the permanent conversion of forest to open land.
—Effect on wetland habitat, including tidal salt marshes along the Squamscott and Piscataqua Rivers.
—Effect on warmwater, coldwater, anadromous, and estuarine fisheries habitat.
—Effect on wildlife habitat.
—Effect on Federal threatened and endangered and state special concern species.

- *Cultural Resources*

—Effect on historic and prehistoric sites.
—Native American and tribal concerns.
—Effect on land sacred to the Bahá'í Faith in the vicinity of MP 50.1.

- *Land Use*

—Effect on 107 residences within 100 feet of the proposed pipeline.
—Effect on planned or proposed residential developments.
—Effect on public and recreation land, including conservation land at the Exeter River, the Henderson-Swasey Town Forest, the Newington Town Forest, and the Peace Development Authority property.

- *Socioeconomics*

—Effect on construction workforce on surrounding areas.

- *Air Quality and Noise*

—Effect on local air quality and noise environment as a result of construction.

- *Reliability and Safety*

—Assessment of hazards associated with natural gas pipelines.

- *Cumulative Impact*

—Assessment of the combined effect of the proposed project with other natural gas projects, such as the PNGTS and Granite State Projects, occurring in the same region and within the same time frame.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the Draft EIS which will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our response to each comment received and will be used by the Commission in its decision-making process to determine whether to approve the project.

Public Participation and Scoping Meetings

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426;
- Reference Docket No. CP96–178–000;
- Send a *copy* of your letter to: Mr. Jeff Gerber, EIS Project Manager, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 71–40, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before June 28, 1996.

In addition to sending written comments, you may attend public scoping meetings. We will conduct three public scoping meetings at the following times and locations:

Date	Time	Location
June 18, 1996.	7:00 p.m	Methuen, Massachusetts.
June 19, 1996.	4:00 p.m. and 7:00 p.m.	Wells, Maine.
June 20, 1996.	4:00 p.m. and 7:00 p.m.	Newton, New Hampshire.

The meetings in Newton and Wells will also cover the proposed PNGTS Project in New Hampshire and Maine. We will send a separate NOI for the PNGTS Project to landowners affected by that project. M&NP and/or PNGTS will be invited to present a description of their proposals at the appropriate meetings. The Newton and Wells meetings will have two sessions in order to provide sufficient time to discuss both projects. While all are invited to attend either session, we are requesting that state and local governments plan on attending a 4:00 p.m. session.

The meeting in Methuen, Massachusetts will be held at the Great Hall, 41 Pleasant Street. The meeting in Newton, New Hampshire will be held at the Memorial Grammar School Gymnasium, 31 West Main Street. The meeting in Wells, Maine will be held at the Wells High School Gymnasium, Sanford Road.

The purpose of the scoping meetings is to obtain input from state and local governments and from the public. Federal agencies have formal channels for input into the Federal process (including separate meetings which we have arranged) on an interagency basis. Federal agencies are expected to transmit their comments directly to the FERC at separate meetings or in writing, and not use the scoping meetings for this purpose.

Interested groups and individuals are encouraged to attend the meetings and present oral comments on the environmental issues which they believe should be addressed in the Draft EIS. Anyone who would like to make an oral presentation at the meeting should contact the EIS Project Manager identified at the end of this notice to have his or her name placed on the list of speakers. Priority will be given to those persons representing groups. A list will be available at the public meetings to allow for non-preregistered speakers to sign up. A transcript will be made of the meetings and comments will be used to help determine the scope of the Draft EIS.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceedings or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 4).

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all potential rights-of-way grantors. As details of the project become established, representatives of M&NP may also separately contact landowners, communities, and public agencies concerning project matters, including acquisition of permits and rights-of-way.

All commenters will be retained on our mailing list. If you do not want to send comments at this time but still want to keep informed and receive copies of the Draft and Final EISs, please return the Information Request (appendix 5). If you do not send comments or return the Information Request, you will be taken off the mailing list.

Additional information about the proposed project is available from Mr. Jeff Gerber, EIS Project Manager, at (202) 208–1121.

Lois D. Cashell,

Secretary.

Appendix 1—Cooperating Agencies

The following Federal and state agencies are asked to indicate whether they want to be cooperating agencies for purposes of producing an EIS:

Advisory Council on Historic Preservation
Department of Agriculture
  Natural Resources Conservation Service
Department of the Air Force
Department of the Army
  Army Corps of Engineers
Department of Commerce
  National Marine Fisheries Service
Department of Energy
Department of the Interior
  Bureau of Indian Affairs
  Bureau of Mines
  Fish and Wildlife Service
  Geological Survey
Department of Transportation
  Federal Highway Administration
Environmental Protection Agency
Massachusetts Energy Facility Siting Board
Massachusetts Executive Office of Environmental Affairs
New Hampshire Department of Environmental Services
Maine Department of Environmental Protection

These, or any other Federal, state, or local agencies wanting to participate as a cooperating agency should send a letter describing the extent to which they want to be involved. Follow the instructions below if your agency wishes to participate in the EIS process or comment on the project:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426;
- Reference Docket No. CP96–178–000;
- Send a *copy* of your letter to: Mr. Jeff Gerber, EIS Project Manager, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 71–40, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before June 28, 1996.

Cooperating agencies are encouraged to participate in the scoping process and provide us written comments. Agencies are also welcome to suggest format and content changes that will make it easier for them to adopt the EIS. However, we will decide what modifications will be adopted in light of our production constaints.

[FR Doc. 96–13485 Filed 5–29–96; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CP96–248–000 and CP96–249–000]

Portland Natural Gas Transmission System; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed PNGTS Project, Request for Comments and Environmental Issues, and Notice of Public Scoping Meeting (NOI)

May 23, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the construction and operation of the 246.2 miles of pipeline and metering facilities proposed in the PNGTS Project.[1] This EIS will be used by the Commission in its decision-making process to determine whether to approve the project.

We are asking a number of Federal and state agencies to indicate whether they wish to cooperate with us in the preparation of the EIS. These agencies are listed in appendix 1 and may choose to participate once they have evaluated the proposal relative to their agencies' responsibilities.[2]

Summary of the Proposed Project

Portland Natural Gas Transmission System (PNGTS) wants to build new natural gas pipeline facilities in Vermont, New Hampshire, Maine, and Massachusetts, with a peak day capacity of 178,000 thousand cubic feet per day (Mcf/d), of natural gas to transport up to 167,000 Mcf/d of natural gas for four shippers. PNGTS requests Commission authorization, in Docket CP96–249–000, to construct and operate the following facilities:

- 241.9 miles of 20-inch-diameter pipeline (mainline) extending from a connection with TransCanada PipeLines Limited (TCPL) at the border of the United States and Canada near North Troy, Vermont to the existing Tennessee Gas Pipeline Company transmission system in Haverhill, Massachusetts. Of the 241.9-mile-long mainline, about 58.8 miles would be in Vermont, 65.9 miles would be in New Hampshire, 117.1 miles would be in Maine, and 0.1 mile would be in Massachusetts;
- 3.3 miles of 12-inch-diameter pipeline lateral connected to the mainline in Westbrook, Maine and ending in Falmouth, Maine;
- 1.0 mile of 12-inch-diameter pipeline lateral connected to the mainline in Newington, New Hampshire and ending near Portsmouth, New Hampshire;
- Four new meter stations, one each in Falmouth and Wells, Maine; Newington, New Hampshire; and Haverhill, Massachusetts;
- Acquisition and modification of an existing meter station in Newington, New Hampshire adjacent to the proposed new meter station; and
- Associated pipeline facilities, such as 15 mainline block valves and 4 pig launchers and/or receivers.

PNGTS has also requested authorization in Docket No. CP96–248–000 to construct, operate, and maintain border facilities to import gas from Canada. The import point border facilities would include about 500 feet of 20-inch-diameter pipeline to connect with the facilities of TCPL near North Troy, Vermont.

PNGTS proposes to have the facilities in service by November 1, 1998. PNGTS also plans to construct but has not yet filed an application for additional pipeline laterals (future laterals) to serve markets near Newport, St. Johnsbury, and Gilman, Vermont; Groveton and Berlin, New Hampshire; and Jay, Maine. PNGTS indicates that it will file a separate application for these facilities in the fall of 1996.

The general locations of the project facilities are shown in appendix 2. The general locations of PNGTS future laterals and other natural gas projects under Commission review occurring in the same region and within the same timeframe (Granite State Gas Transmission, Inc. [Granite State], Granite State LNG Project, Docket No. CP95–52–000 and Maritimes & Northeast Pipeline, L.L.C. [M&NP], Maritimes & Northeast Pipeline [Maritimes Project], Docket No. CP96–178–000) as shown in appendix 3. If you are interested in obtaining detailed maps of a specific portion of the project, contact the EIS Project Manager identified at the end of this notice.

Land Requirements for Construction

Construction of the proposed facilities would affect about 2,506 acres of land. Approximately 93 percent of the proposed pipeline and pipeline laterals would parallel existing pipeline, powerline, or other rights-of-way. The nominal construction rights-of-way for the 20-inch-diameter pipeline and 12-inch-diameter pipeline laterals would be 75 feet wide. Extra temporary work spaces would be used at road, stream, and large wetland crossings, as well as for pipeyards and contractor yards and areas where temporary topsoil or rock storage is required.

Following construction, about 1,473 acres of the land affected by the project would be retained for operation of the pipeline and aboveground facilities. This total includes about 0.5 acre for each of the four new and one existing meter stations and about 1.0 acre for each of the four pig launchers and/or receivers. Permanent 50-foot-wide rights-of-way would be maintained for the 20- and 12-inch-diameter pipelines. The mainline block valves would be within the permanent rights-of-way. Existing land uses on the remainder of the disturbed area, as well as most land uses on the permanent rights-of-way, would be allowed to continue following construction.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this NOI, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas concern.

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified a number of issues under each topic that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by the applicant. These issues are listed below. This is a preliminary list of issues and may be changed based on your comments and our analysis.

- Geology and Soils

—Seismology, soil liquefaction, and areas susceptible to landslide.
—39.6 miles of near-surface bedrock that may require blasting.
—Effect on exploitable mineral resources.
—Effect on farmland.
—Erosion control and right-of-way revegetation procedures.

- Water Resources

—Effect on groundwater and surface water supplies.
—832 crossings of perennial and intermittent waterbodies, including 9 crossings of waterbodies over 100 feet wide (Moos, Connecticut, Peabody, Androscoggin, Presumpscot, Saco, Mousam, Squamscott, and Piscataqua Rivers) and crossings of the Missisquoi, Israel, and Exeter Rivers and Great Brook.
—Consistency with state Coastal Zone Management Programs.

- Biological Resources

—Clearing of upland forest and the permanent conversion of forest to open land.
—Effect on wetland habitat, including tidal salt marshes along the Squamscott and Piscataqua Rivers, resulting from the crossing of 940 wetlands.
—Effect on warmwater, coldwater, anadromous, and estuarine fisheries, habitat.
—Effect on wildlife habitat, including deer wintering areas and waterfowl and wading bird habitat.
—Effect on Federal threatened and endangered species and state special concern species.
—Effect on Kennebunk Plains, an unusual dry grassland community.

- Cultural Resources

—Effect on historic and prehistoric sites.
—Native American and tribal concerns.

- Land Use

—Effect on 103 residences within 50 feet of construction work areas.
—Effect on planned residential developments.
—Effect on public and recreation lands, including the Willoughby State Forest, Victory State Forest, Victory Bog State Wildlife Management Area, Roaring Brook Park, White Birches Campground, Bean Pond Fish and Wildlife Area, White Mountain National Forest, and the Pease Development Authority property.
—Effect on snowmobile, jeep, and hiking trails, several of which are important to the Appalachian Mountain Club and Randolph Mountain Club, including the Carter-Moriah Trail and Appalachian Trail.
—Effect on scenic waterbodies and byways, including the Connecticut, Exeter, and Piscataqua Rivers; and Routes 3, 116, 16, 2, 107, and 238 in New Hampshire and Route 11 in Maine.
—Effects resulting from crossing over or near known hazardous waste sites.

- Socioeconomics

—Effect of construction workforce on surrounding areas.
—Effect on property values.

- Air Quality and Noise

—Effect on local air quality and noise environment as a result of construction.

- Reliability and Safety

—Assessment of hazards associated with natural gas pipelines.

- Cumulative Impact

—Assessment of the combined effect of the proposed project with other projects occurring in the same general area and within the same time frame, including the Granite State LNG Project and Maritimes Project.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the Draft EIS which will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our response to each comment received and will be used by the Commission in its decision-making process to determine whether to approve the project.

Public Participation and Scoping Meetings

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426;
- Reference Docket No. CP96–249–000;
- Send a *copy* of your letter to: Mr. Mark Jensen, EIS Project Manager, Federal Energy Regulatory Commission, 888 First Street, NE, Room 72–65, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before June 28, 1996.

In addition to sending written comments, you may attend public scoping meetings. We will conduct four public scoping meetings comprising six sessions at the following times and locations:

Date	Time	Location
June 17, 1996.	7:00 p.m	Orleans, VT.
June 18, 1996.	7:00 p.m	Gorham, NH.
June 19, 1996.	4:00 p.m. and 7:00 p.m.	Wells, ME.
June 20, 1996.	4:00 p.m. and 7:00 p.m.	Newton, NH.

The meetings in Newton and Wells will also cover the proposed Maritimes Project in New Hampshire and Maine. We will send a separate NOI for the Maritimes Project to landowners affected by that project. PNGTS and/or M&NP will be invited to present a description of their proposals at the appropriate meetings. The Newton and Wells meetings will have two sessions in order to provide sufficient time to discuss both projects at each session. While all are invited to attend either session, we are requesting that state and local governments plan on attending the 4:00 p.m. session.

The meeting in Orleans, Vermont will be held at the Lake Region Union High School. The meeting in Gorham, New Hampshire will be held at the Town and Country Motor Inn, Route 2: The two meetings in Wells, Maine will be held at the Wells High School Gymnasium, Sanford Road. The two meetings in Newton, New Hampshire will be held at the Memorial Grammar School Gymnasium, 31 West Main Street.

The purpose of the scoping meetings is to obtain input from state and local governments and from the public. Federal agencies have formal channels for input into the Federal process (including separate meetings which we have arranged) on an interagency basis. Federal agencies are expected to transmit their comments directly to the

[1] Portland Natural Gas Transmission System's applications were filed with the Commission under Sections 3 and 7 of the Natural Gas Act and Parts 153 and 157 of the Commission's regulations.

[2] Appendices 2 through 5 referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426 or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

FERC and not use the scoping meetings for this purpose.

Interested groups and individuals are encouraged to attend the meetings and present oral comments on the environmental issues which they believe should be addressed in the Draft EIS. The more specific your comments, the more useful they will be. Anyone who would like to make an oral presentation at the meeting should contact the EIS Project Manager identified at the end of this notice to have his or her name placed on the list of speakers. Priority will be given to those persons representing groups. A list will be available at the public meetings to allow for non-preregistered speakers to sign up. A transcript will be made of the meetings and comments will be used to help determine the scope of the Draft EIS.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding or become an "intervenor." Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 4).

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all potential right-of-way grantors to solicit comments regarding environmental considerations related to the proposed project. As details of the project become established, representatives to PNGTS may also separately contact landowners, communities, and public agencies concerning project matters, including acquisition of permits and rights-of-way.

If you do not want to send comments at this time but still want to keep informed and receive copies of the Draft and Final EIS's, please return the Information Request (appendix 5). If you do not return the Information Request, you will be taken off the mailing list.

Additional information about the proposed project is available from Mr. Mark Jensen, EIS Project Manager, at (202) 208–0828.

Lois D. Cashell,

Secretary.

Appendix 1—Cooperating Agencies

The following Federal and state agencies are asked to indicate whether they want to be cooperating agencies for purposes of producing an EIS:

Advisory Council on Historic Preservation
Department of Agriculture
  Natural Resources Conservation Service
Department of the Army
  Army Corps of Engineers
Department of Commerce
National Marine Fisheries Service
Department of Energy
Department of the Interior
  Bureau of Indian Affairs
  Fish and Wildlife Service
  Geological Survey
  National Park Service
Department of Transportation
  Federal Highway Administration
Environmental Protection Agency
Vermont Agency of Natural Resources
New Hampshire Department of Environmental Services
Maine Department of Environmental Protection

These, or any other Federal, state, or local agencies wanting to participate as a cooperating agency should send a letter describing the extent to which they want to be involved. Follow the instructions below if your agency wishes to participate in the EIS process or comment on the project:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426;
- Reference Docket No. CP96–249–000;
- Send a *copy* of your letter to: Mr. Mark Jensen, EIS Project Manager, Federal Energy Regulatory Commission, 888 First Street, NE, Room 72–65, Washington, DC 20426; and Docket No. CP96–248–000, *et al.*
- Mail your comments so that they will be received in Washington, DC on or before June 28, 1996.

Cooperating agencies are encouraged to participate in the scoping process and provide us written comments. Agencies are also welcome to suggest format and content changes that will make it easier for them to adopt the EIS. However, we will decide what modifications will be adopted in light of our production constraints.

[FR Doc. 96–13486 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–M

Notice of Addition of a Second Entity as Applicant

May 23, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Amendment to the Pending Application for Major License to Add a Second Entity as Applicant.

b. Project No.: 10756–001.

c. Date filed: March 15, 1996 (the license application was filed on May 28, 1992).

d. Applicant: Blue Diamond South Pumped Storage Power Company, Inc. and Blue Diamond Power Partners Limited Partnership (requesting to add Blue Diamond Power Partners Limited Partnership).

e. Name of Project: Blue Diamond South Pumped Storage.

f. Location: Mostly on U.S. lands administered by the Bureau of Land Management, on two man-made reservoirs—on and near the Blue Diamond Hill, about 5 miles west of Las Vegas in Clark County, Nevada.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. David K. Iverson, Synergics, Inc., 191 Main Street, Annapolis, MD 21401, (410) 268–8820.

i. FERC Contact: Mr. Surender M. Yepuri, P.E., (202) 219–2847.

j. Deadline Date: Thirty days from the issuance date of this notice. (Please restrict your comments to the addition of a second entity as applicant—the subject of this notice.)

k. Current Processing Status of the Application: The draft environmental impact statement (DEIS) for this application was issued on January 26, 1996. The deadline for filing comments on the DEIS was March 11, 1996.

l. Filing and Service of Responsive Documents—The Commission is requesting comments on the addition of a second entity as applicant.

All filings must: (1) bear in all capital letters the title "COMMENTS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR

385.2001 through 385.205. All comments must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). These documents must be filed by providing the original and eight copies to: Secretary, Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426. An additional copy must be sent to: Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 5K–01, at the above address. Each filing must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

m. Available Locations of Applications: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above).

Lois D. Cashell,

Secretary.

[FR Doc. 96–13487 Filed 5–29–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5512–3; OMB# 2060–0054; EPA# 1131.05]

Agency Information Collection Activities Under OMB Review; Standards of Performance for New Stationary Sources Glass Manufacturing Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3507(a)(1)(D), this notice announces that the Information Collection Request (ICR) for Standards of Performance for New Stationary Sources—Glass Manufacturing Plants—NSPS Subpart CC) described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 1, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1131.05.

SUPPLEMENTARY INFORMATION:

Title: Standards of Performance for Glass Manufacturing Plants (OMB Control No. 2060–0054; EPA ICR No. 1131.05). This is a request for extension of a currently approved collection.

Abstract: The Administrator has judged that PM emissions from glass manufacturing plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners/operators of glass manufacturing plants must notify EPA of construction, modification, startups, shut downs, date and results of initial performance test.

In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on September 29, 1995.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2212.4 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The capital costs associated with this rule result from purchasing particulate matter control devices and operation and maintenance of particulate matter control devices. The estimated cost of a particulate matter control device is $400,000. The estimated annual costs for operation and maintenance of pollution control equipment is $175,000. This figure was calculated using estimates provided by a glass manufacturing industry consultant who stated that operation and maintenance of pollution control equipment costs approximately $2.00 per ton of glass manufactured with the average container glass facility manufacturing 250 tons per day for 350 days per year.

Respondents/Affected Entities: 30.

Estimated Number of Respondents: 30.

Frequency of Response: 2.

Estimated Number of Responses: 60.

Estimated Total Annual Hour Burden: 2,588.9 hours.

Estimated Total Annualized Cost Burden: $78,834.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1131.05 and OMB Control No. 2060–0054 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: May 22, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–13575 Filed 5–29–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5512–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) for General Administrative Requirements for Assistance Programs described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The

ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740, and refer to ERA ICR No. 0938.06.

SUPPLEMENTARY INFORMATION: .

Title: General Administrative Requirements for Assistance Program (OMB Control No. 2030–0020; EPA ICR No. 0938.06. This is a request for a revision of a currently approved collection.

Abstract: The information is collected from applicants/recipients of EPA assistance and is used to make awards, pay recipients and collect information on how Federal funds are being spent. EPA needs the information to meet its Federal stewardship responsibilities. Recipient responses are required to obtain a benefit (Federal funds) under 40 CFR Part 30, "Grants and Agreements with Institutions of High Education, Hospitals and Other Non-profit Organizations" and 40 CFR Part 31, "Uniform Administrative Requirements for Grants and Cooperative to State and Local Governments." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers of EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 03/22/96 (Vol. 61 No. 57 pg. 11834).

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 32 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate maintain retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements, train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transit or otherwise disclose the information:

Respondents/Affected Entities: Not-for-profit institutions.

Estimated Number of Respondents: 3,743.

Frequency of Response: as required.

Estimated Total Annual Hour Burden: 119,776 hours.

Estimated Total Annualized Cost Burden: $4,030,848,00.

Send comments on the agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods of minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0938.06 and OMB Control No. 2030–0020 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: May 23, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–13576 Filed 5–29–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5512–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Selective Enforcement Auditing Reporting and Recordkeeping Requirements for On-Highway Heavy-Duty Engines, Nonroad Large Compression Ignition Engines, and On-Highway Light-Duty Vehicles and Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Application for Selective Enforcement Auditing Reporting and Recordkeeping Requirements for On-Highway Heavy-Duty Engines, Nonroad Large Compression Ignition Engines, and On-Highway Light-Duty Vehicles and Light-Duty Trucks (OMB Control No. 2060–0064, approved through 6/30/96). The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 1, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 0011.08.

SUPPLEMENTARY INFORMATION:

Title: Selective Enforcement Auditing Reporting and Recordkeeping Requirements for On-Highway Heavy-Duty Engines, Nonroad Large Compression Ignition Engines, and On-Highway Light-Duty Vehicles and Light-Duty Trucks (OMB Control No. 2060–0064; EPA ICR No. 0011.08) expiring 6/30/96. This ICR request is an extension of a currently approved collection activity.

Abstract: The On-Highway Light-Duty Vehicle (LDV), Light-Duty Truck (LDT), and Heavy-Duty Engine (HDE) Selective Enforcement Auditing (SEA) Programs as well as the Nonroad Large Compression-ignition Engine (CIE) SEA Program use this information collection to enforce compliance with applicable exhaust emission standards. Under section 206(d) of the Clean Air Act (Act), the U.S. Environmental Protection Agency (EPA) is authorized to conduct emission testing of new, on-highway LDV, LDT, and HDE production through SEAs (or Audits). Section 213(d) of the Act as amended (Act) authorizes the Nonroad SEA Program. The Nonroad CIE SEA Program was designed to parallel the on-highway SEA Programs, reference 40 CFR Part 86 Subpart K, and its information collection requirements.

The on-highway LDV and LDT SEA programs are conducted by the Vehicle Programs and Compliance Division (VPCD), Office of Mobile Sources (OMS), Office of Air and Radiation (OAR). The on-highway HDE and nonroad CIE programs are conducted by the Engine Programs and Compliance Division (EPCD), OMS, OAR.

This information collection requires manufacturers of on-highway LDVs, LDTs, and HDEs, and nonroad CIEs to submit to EPA periodic reports and information from SEAs. VPCD and EPCD collect this information and evaluate it to determine if the applicable production vehicles and engines comply with the Act. The information collected specifically includes "Pre-audit" planning information and "Audit" information. Pre-audit information includes projected annual sales data, production volumes at assembly plants, and voluntary assembly line test data (ALT data) submittals. Audit information includes detailed

production information, records for test equipment, test data, and reports.

The results of SEAs are used by the Office of Mobile Sources to verify compliance of production vehicles and engines with applicable emission standards. The data and test facility information from SEAs may be used by OMS's Certification Programs to help evaluate a manufacturer's future model year Applications for Certification, and LDV and LDT SEA data will also be used by the VPCD's In-use Testing Program to help target potential future in-use nonconformities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 2/12/9; no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average between 260 and 8,988 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The estimated annual cost resulting from this information collection is $453,782, $1,646,612, and $82,440 for the HDE, CIE, and LDV/LDT programs, respectively. The estimated annual cost to the CIE industry segment includes start-up costs and "learning curve" costs. The start-up and learning-factor costs apply to the first three years of the nonroad CIE SEA program (which is the duration of this information collection request) and are divided among the 28 CIE manufacturers.

Respondents/Affected Entities: On-highway LDV, LDT, and HDE as well as nonroad Large CIE manufacturers.

Assembly line test reports	HDE	CIE	LDV/LDT
Estimated Number of Respondents	13	15	18
Frequency of Response	4	4	4
Estimated Total Annual Hour Burden	780 hrs.	900 hrs.	1,080 hrs.
Estimated Total Annualized Cost Burden	$43,368	$50,040	$60,048

Assembly plant projected production volumes/sales data	HDE	CIE	LDV/LDT
Estimated Number of Respondents	22	28	20
Frequency of Response	1	1	1
Estimated Total Annual Hour Burden	572 hrs.	728 hrs.	260 hrs.
Estimated Total Annualized Cost Burden	$33,352	$42,448	$15,160

Selective enforcement audits	HDE	CIE	LDV/LDT
Estimated Number of Respondents	7	7	2
Frequency of Response	1.4	1.4	1
Estimated Total Annual Hour Burden	6,291.6 hrs.	12,583.2 hrs.	110 hrs.
Estimated Total Annualized Cost Burden	$377,062	$754,124	$7,232

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0011.08 and OMB Control No. 2060–0064 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: May 23, 1996.

Joseph Retzec,

Director, Regulatory Information Division.

[FR Doc. 96–13577 Filed 5–29–96; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections being Reviewed by the Federal Communications Commission; Comments Requested

May 22, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the

information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 29, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0055.

Title: Application for Cable Television Relay Station Authorization.

Form No.: FCC Form 327.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit, individuals, and state, local or tribal governments.

Number of Respondents: The Commission receives approximately 1,400 FCC Form 327 filings annually.

Estimated Time Per Response: 3.166 hours per average response.

Total Annual Burden: 4,432 hours (1,400 x 3.166 hours).

Costs for Respondents: $2,800 (1,400 filings x $2), as each filing will have estimated postage and stationery costs of $2.

Needs and Uses: The FCC Form 327 is filed by cable system owners or operators, cooperative enterprises owned by cable system owners or operators, and MMDS operators (wireless cable system operators) when applying for a cable television relay service (CARS) station license, as well as a modification, reinstatement, amendment, assignment, renewal, and transfer of control of a CARS station license. FCC Form 327 filings are reviewed by Commission staff to determine whether applicants meet basic statutory requirements and are qualified to become or continue as a Commission licensee of a CARS station.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–13461 Filed 5–29–96; 8:45 am]

BILLING CODE 6712–01–F

[Report No. 2133]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

May 22, 1996.

A Petition for reconsideration has been filed in the Commission's rulemaking proceedings listed in the Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800. Opposition to this petition must be filed June 14, 1996. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

SUBJECT: Amendment of Section 73.202(b), Table of Allotments, TV Broadcast Stations. (Farmington and Gallup New Mexico) (MM Docket No. 92–81, RM–7875.

Number of Petition Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–13462 Filed 5–29–96; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOUSING FINANCE BOARD

[No. 96–N–3]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) hereby gives notice that it is seeking public comments concerning extension by the Office of Management and Budget (OMB) of the previously approved information collection entitled "Advances to Nonmember Mortgagees."

DATES: Interested persons may submit comments on or before July 29, 1996.

ADDRESSES: Written comments and requests for copies of the information collection should be addressed to Elaine L. Baker, Executive Secretary, (202) 408–2837, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Julie Paller, Financial Analyst, (202) 408–2842, or Janice A. Kaye, Attorney-Advisor, (202) 408–2505, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of Information Collection

Section 10b(a) of the Federal Home Loan Bank Act (Bank Act) permits the Federal Home Loan Banks (FHLBanks) to make advances under certain circumstances to qualified nonmember mortgagees. *See* 12 U.S.C. 1430b(a). Section 10b(b) establishes special expanded collateral requirements for advances to qualified nonmember mortgagees that are state housing finance agencies (SHFAs). *Id.* § 1430b(b). The information collection contained in section 935.22 of the Finance Board's regulations, 12 CFR 935.22, is necessary to enable the Finance Board to determine whether a respondent satisfies the statutory and regulatory requirements to qualify initially and maintain its status as a nonmember mortgagee or a SHFA nonmember mortgagee eligible to receive FHLBank advances.

The OMB number for the information collection is 3069–0005. The OMB clearance for the information collection expires on September 30, 1996.

In order to qualify for FHLBank advances, the Finance Board or its designee must certify a respondent as an eligible nonmember mortgagee. 12 CFR 935.22(c)(1). The Finance Board uses the information collection to determine whether a respondent meets the nonmember mortgagee eligibility requirements. The information collection requires each respondent to submit documentation to the FHLBank from which it seeks advances that shows: (1) it is chartered under law and has succession; (2) it is subject, pursuant to statute or regulation, to the inspection and supervision of a federal, state, or local government agency; (3) its principal activity in the mortgage field consists of lending its own funds; (4) it is approved by the Department of Housing and Urban Development as a "mortgagee" under Title II of the National Housing Act; (5) advances may be safely made to it, as determined by the FHLBank; and (6) where applicable, it qualifies as a SHFA as defined in 12 CFR 935.1. *See* 12 CFR 935.22(c)(2), (3). The FHLBank then must submit the information collected along with its review of the applicant's financial condition to the Finance Board for review and approval. *Id.* § 935.22(c)(5). The Finance Board reviews the information and notifies the FHLBank of its determination regarding the applicant's eligibility to receive advances as a nonmember mortgagee. *Id.* § 935.22(c)(6).

Once certified, a nonmember mortgagee has a continuing obligation to promptly notify its FHLBank of any changes in its status as a nonmember mortgagee. *Id.* § 935.22(f)(1). In addition, from time to time a FHLBank may require a nonmember mortgagee to provide evidence that it continues to satisfy all nonmember mortgagee qualifications and requirements. *Id.* § 935.22(g).

B. Burden Estimate

The total annual average number of respondents is estimated at ten, with one response per respondent. The average hours per response is estimated at ten hours. The total annual burden is estimated at 100 hours (10 respondents x 1 response/respondent x approximately 10 hours).

C. Comment Request

Written comments are requested on: (1) whether the collection of information is necessary for the proper performance of the functions of the Finance Board, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated May 22, 1996.

By the Federal Housing Finance Board.

Rita I. Fair,

Managing Director.

[FR Doc. 96–13504 Filed 5–29–96; 8:45 am]

BILLING CODE 6725–01–U

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 12, 1996.

A. **Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. H.A. True, III, Trust, H.A. True, III, Trustee, Diemer D. True, Trust, Diemer D. True, Trustee, David L. True, Trust, and David L. True, Trustee, all of Casper, Wyoming; to acquire an additional 24.6 percent, for a total of 33.3 percent, of the voting shares of Midland Financial Corporation, Casper, Wyoming, and thereby indirectly acquire Hilltop National Bank, Casper, Wyoming.

Board of Governors of the Federal Reserve System, May 23, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–13505 Filed 5-29-96; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 21, 1996.

A. **Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First State Associates, Inc., Hawarden, Iowa; to become a bank holding company by acquiring 33.3 percent of the voting shares of Hawarden Banking Company, Elkhorn, Nebraska, and thereby indirectly acquire First State Bank, Hawarden, Iowa.

In connection with this application Alton Bancorporation, Alton, Iowa, and Old O'Brien Bancshares, Inc., Sutherland, Iowa, also have applied to each acquire 33.3 percent of the voting shares of Hawarden Banking Company, Elkhorn, Nebraska, and thereby indirectly acquire First State Bank, Hawarden, Iowa.

2. Sparta Union Bancshares, Inc., Sparta, Wisconsin; to become a bank holding company by acquiring at least 95 percent of the voting shares of Union National Bank & Trust Company, Sparta, Wisconsin.

Board of Governors of the Federal Reserve System, May 23, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–13506 Filed 5-29-96; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*,

or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 12, 1996.

A. Federal Reserve Bank of Cleveland (R. Chris Moore, Senior Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. First Southern Bancorp, Inc., Stanford, Kentucky; to acquire Lincoln Financial Bancorp, Inc., Stanford, Kentucky, and thereby indirectly acquire Lincoln Federal Savings Bank, Stanford, Kentucky, and thereby engage in acquiring and operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Eau Claire Financial Services, Inc., St. Paul, Minnesota; to acquire Lake City Agency, Inc., Lake City, Minnesota, and thereby engage in operating an insurance agency in the town of Lake City, Minnesota, a community with a population of less than 5,000, pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. The proposed activity will be conducted throughout Lake City, Minnesota.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Orchard Valley Financial Corporation, Hotchkiss, Colorado; to engage *de novo* in making consumer finance loans, real estate construction loans and real estate development loans, pursuant to §§ 225.25(b)(1)(i), (iii), and (iv) of the Board's Regulation Y.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Santa Barbara Bancorp, , Santa Barbara, California; to engage *de novo* in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y by offering job training to low and moderate income persons in computer software skills.

Board of Governors of the Federal Reserve System, May 23, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–13507 Filed 5-29-96; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

1. HHS Acquisition Regulations—HHSAR Part 342—Contract Administration—Extension no change—0990–0131—HHSAR 342.7103 requires reporting information when a cost overrun is anticipated. The information is used to determine if a proposed overrun is reasonable—Respondents—State or local governments, Business or other for-profit, non-profit institutions, small businesses. Annual number of Responses: 45: Average burden per response: 20 hours; Total burden: 900 hours.

2. HHS Acquisition Regulation—HHSAR Part 333—Disputes and Appeals—Extension no charge—0990–0133—The Litigation and Claims clause is needed to inform the government of actions filed against government contracts—Respondents: State or local governments, Business or other for-profit, non-profit institutions, small businesses. Annual number of Responses: 100; Average burden per response: 30 minutes; Total burden: 50 hours.

3. HHS Acquisition Regulation—HHSAR Part 332—Contract Financing—Extension no change—0990–0134—The requirements of HHSAR Part 332 are needed to ascertain costs associated with certain contracts so as to timely pay contractor. Respondents: State or local governments, small businesses—Burden Information for Cost Sharing Clause—Number of Respondents: 24; Annual Number of Responses per Respondent: 10; Average Burden per Response: one hour; Annual Burden: 240 hours—Burden Information for Letter of Credit Clause—Number of Respondents: 268; Annual Number of Responses: 4; Burden per Response: 1 hour; Estimated Annual Burden: 1072 hours—Total Burden: 1,312 hours.

4. HHS Acquisition Regulation—HHSAR Part 324—Protection of Privacy and Freedom of Information—Extension no change—0990–0136—The confidentiality of Information requirements are needed to prevent improper disclosure of confidential data. Respondents: State or local governments, Business or other for-profit, non-profit institutions, small businesses; Annual Number of Responses: 449; Average Burden per Response: 8 hours; Estimated Burden: 3,592 hours.

5. HHS Acquisition Regulation—HHSAR Part 316—Types of Contracts—Extension no change—0990—0138—The Negotiated Overhead Rate—Fixed clause is needed since fixed rates are authorized by OMB Circular and a clause is not provided in the Federal Acquisition Regulation (FAR). Respondents: non-profit institutions; Annual Number of Responses: 376; Average Burden per Response: 10 hours; Estimated Burden: 3.760 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington, DC 20201. Written comments should be received within 60 days of this notice.

Dated: May 21, 1996.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 96–13525 Filed 5–29–96; 8:45 am]

BILLING CODE 4150–04–M

Centers for Disease Control and Prevention

[Announcement 647]

National Institute for Occupational Safety and Health; Centers for Agricultural Disease and Injury Research, Education, and Prevention

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1996 funds for a cooperative agreement program with universities or university-affiliated medical centers for the establishment of Centers for Agricultural Disease and Injury Research, Education, and Prevention. CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the Section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority

This program is authorized under Sections 20(a) and 22(e)(7) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669 (a) and 671(e)(7)).

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants include State and private universities and university-affiliated, not-for-profit medical centers within the United States (U.S.). The restriction of eligible applicants is due to the FY 1990 appropriations language which initiated this program and states that centers for agricultural occupational safety and health will be established at universities. Because of programmatic and regional differences throughout agriculture in the U.S., only one center will be established in any Department of Health and Human Services (DHHS) region. (Those Regions and their States are: Region I: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont; Region II: New Jersey, New York, Puerto Rico, and the Virgin Islands; Region III: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia; Region IV: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee; Region V: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin; Region VI: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas; Region VII: Iowa, Kansas, Missouri, and Nebraska; Region VIII: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming; Region IX: American Samoa, Arizona, California, Guam, Hawaii, Nevada, Trust Territory, Wake Islands, and North Mariana Island; and Region X: Alaska, Idaho, Oregon, and Washington.) Currently, there is a Center in DHHS Region VI, which includes the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. Therefore, the regional emphasis for this announcement includes all DHHS Regions, with the exception of Region VI.

Availability of Funds

Approximately $4,300,000 will be available in FY 1996 to fund up to seven additional Agricultural Centers. It is expected that the average award will be approximately $500,000. It is expected that the awards will begin on or about September 30, 1996, and will be made for 12-month budget periods within project periods of 3 to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Grant applications should be focused on the research priorities described in the section "FUNDING PRIORITIES" that includes new research priorities developed in a process which resulted in defining a National Occupational Research Agenda. Grant proposals in these areas will compete for the available funds as noted in the previous paragraph, as well as for funds announced through Requests for Applications that are anticipated in FY 1996 and FY 1997.

Purpose

This cooperative agreement program will significantly strengthen the occupational and public health infrastructure by building on past Agricultural Center accomplishments aimed at integrating resources for occupational safety and health research and public health prevention programs at the State and local levels. It is designed to address the research, education, and intervention activities that are unique to agriculture in the Region. To achieve this objective, the program will establish Centers for agricultural disease and injury research, education, and prevention. The program objectives are as follows:

1. Develop and conduct research related to the prevention of occupational disease and injury of agricultural workers and their families.

2. Develop and implement model educational, outreach, and intervention programs promoting health and safety for agricultural workers and their families.

3. Develop and evaluate control technologies to prevent illness and injuries among agricultural workers and their families.

4. Develop and implement model programs for the prevention of illness and injury among agricultural workers and their families.

5. Evaluate agricultural injury and disease prevention and educational materials and programs implemented by the Center.

6. Provide consultation and/or training to researchers, health and safety professionals, graduate/professional students, and agricultural extension agents and others in a position to improve the health and safety of agricultural workers.

7. Develop linkages and communication with other governmental and non-governmental bodies involved in agricultural health and safety with special emphasis on communications with other CDC/NIOSH sponsored agricultural health and safety programs.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for conducting activities under A. (Recipient Activities) below, and CDC/NIOSH will be responsible for conducting activities under B. (CDC/NIOSH Activities) below:

A. Recipient Activities

1. Develop and conduct research related to the prevention of occupational disease and injury of agricultural workers and their families. An emphasis should be placed on multi-disciplinary research efforts and on the development and evaluation of control technologies. Emphasis should also be given to populations not well represented in the current research such as hired farm laborers, migrant/seasonal workers, women and children.

2. Develop a research protocol(s) for the Center for agricultural disease and injury research, education, and prevention. Consult with regional stakeholders (e.g. agricultural organizations, advisory groups, and workers and other interested parties) as appropriate in the development of a program of research. Obtain peer review of the protocol and revise and finalize it as required for final approval by CDC/NIOSH.

3. Develop and implement model educational, outreach, and intervention programs promoting health and safety for agricultural workers and their families. These should include bilingual materials and multi-media presentations as appropriate to reach the target agricultural populations within the Regions. Emphasis should be given to reaching underserved agricultural populations such as hired farm laborers, migrant/seasonal workers, women and children.

4. Develop and implement model programs for the prevention of illness and injury among agricultural workers and their families. Additional emphasis should be placed on the development of control technology interventions suited to the agricultural workplace.

5. Provide assistance and direction to community-based groups in the region (e.g. Farm youth or adult associations, extension services, schools, local government groups, migrant worker groups, medical clinics or treatment centers, worker associations, etc.) for the development and implementation of community projects including intervention research and prevention demonstration projects for preventing work related injuries and illness among farm workers and their families.

6. Develop linkages and communication with other governmental and nongovernmental bodies involved in agricultural health and safety with special emphasis on communications with other CDC/NIOSH-sponsored agricultural health and safety programs, some of which will be identified by CDC/NIOSH. Where appropriate, collaborate with CDC/NIOSH scientists on complementary research areas.

7. Assist in reporting and disseminating research results and relevant health and safety education and training information to appropriate Federal, State, and local agencies, health care providers, the scientific community, agricultural workers and their families, management and union or other worker representatives, and other CDC/NIOSH Centers for agricultural disease and injury research, education, and prevention, some of which will be identified by CDC/NIOSH. Emphasis should be placed on the rapid dissemination of significant public health findings and the translation of research findings into prevention efforts.

8. In collaboration with other CDC/NIOSH Agricultural Centers, develop and utilize a uniform evaluation scheme for Agricultural Center research, education/training, and outreach/intervention activities.[1]

B. CDC/NIOSH Activities

1. Provide technical assistance through site visits and correspondence in the areas of program development, implementation, maintenance, and priority setting related to the cooperative agreement.

2. Provide scientific collaboration where needed.

3. Assist in the reporting and dissemination of research results and relevant health and safety education and training information to appropriate Federal, State, and local agencies, health-care providers, the scientific community, agricultural workers and their families, management and union representatives, and other CDC/NIOSH Centers for agricultural disease and injury research, education, and prevention. Emphasis should be placed on the rapid dissemination of significant public health findings and the translation of research findings into prevention efforts.

[1] A Framework for Assessing the Effectiveness of Disease and Injury Prevention. Morbidity and Mortality Weekly Report, March 27, 1992/Vol.41/Jn. The MMWR can be accessed through CDC's DocView, World-Wide Web (http://www.cdc.gov/epo/mmwr/mmwr.html).

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Responsiveness to the objectives of the cooperative agreement program, including the applicant's understanding of the objectives of the proposed cooperative agreement and the relevance of the proposal to the objectives. (20%)

2. Feasibility of meeting the proposed goals of the cooperative agreement program including the proposed schedule for initiating and accomplishing each of the activities of the cooperative agreement and the proposed method for evaluating the accomplishments. (20%)

3. Strength of the program design in addressing the distinct characteristics, specific populations, and needs in agricultural research and education for the region. (20%)

The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits will be documented.

4. Training and experience of proposed Program Director, staff, and organization. This includes: (a) a Program Director who is a distinguished scientist and technical expert and staff with training or experience sufficient to accomplish proposed program, and (b) a director, staff, and organization with proven accomplishments in the field of agricultural safety and health and the infrastructure necessary to access the agricultural populations in the regions served by the Agricultural Center. (20%)

5. Strength of the proposed program for agricultural safety and health in the areas of prevention, research, education, and multi-disciplinary approach. (10%)

6. Efficiency of resources and novelty of program. This includes the efficient use of existing and proposed personnel with assurances of a major time commitment of the Project Director to the program and the novelty of program approach. (5%)

7. The strength of program plans for development and implementation of a uniform evaluation scheme for Agricultural Center research, education/training, and outreach/intervention activities. (5%)

8. Human Subjects (Not Scored)

Whether or not exempt from the DHHS regulations, are procedures adequate for protection of human subjects. Recommendations on the adequacy of protections include: (1) protections appear adequate, and there are no comments to make or concerns to raise, (2) protections appear adequate, but there are comments regarding the protocol, (3) protections appear inadequate and the Objective Review Group has concerns related to human subjects, or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

9. Budget Justification (Not Scored)

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit.

If SPOCs have any State process recommendations on applications submitted to CDC, they should be sent to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 60 days after the application deadline date. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

(The Catalog of Federal Domestic Assistance Number for this program is 93.262)

Other Requirements

Paperwork Reduction Act

Projects funded through the cooperative agreement mechanism of this program involving the collection of information from 10 or more individuals will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the DHHS Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Women and Minority Inclusion Policy

It is the policy of the Centers of Disease Control and Prevention (CDC) to ensure that women and racial and ethnic groups will be included in CDC supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women, racial and ethnic minority population are appropriately represented for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance on this policy is contained in the **Federal Register**, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951.

Funding Priorities

The NIOSH program priorities, listed below, are applicable to all of the above types of grants listed under the section "MECHANISMS OF SUPPORT". These priority areas were developed by NIOSH and its partners in the public and private sectors to provide a framework to guide occupational safety and health research in the next decade—not only for NIOSH but also for the entire occupational safety and health community. Approximately 500 organizations and individuals outside NIOSH provided input into the development of the National Occupational Research Agenda (NORA). This attempt to guide and coordinate research nationally is responsive to a broadly perceived need to address systematically those topics that are most pressing and most likely to yield gains to the worker and the nation. Fiscal constraints on occupational safety and health research are increasing, making even more compelling the need for a coordinated and focused research agenda. NIOSH intends to support projects that facilitate progress in understanding and preventing adverse effects among workers. The conditions or examples listed under each category are selected examples, not comprehensive definitions of the category. Investigators may also apply in other areas related to occupational safety and health, but the rationale for the significance of the research to the field of occupational safety and health must be presented in the grant application.

The Agenda identifies 21 research priorities. These priorities reflect a remarkable degree of concurrence among a large number of stakeholders. The NORA priority research areas are grouped into three categories: Disease and Injury, Work Environment and Workforce, and Research Tools and Approaches. The NORA document is available through the NIOSH Home Page; http://www.cdc.gov/niosh/nora.html.

NORA Priority Research Areas

Disease and Injury

Allergic and Irritant Dermatitis
Asthma and Chronic Obstructive Pulmonary Disease
Fertility and Pregnancy Abnormalities
Hearing Loss
Infectious Diseases
Low Back Disorders
Musculoskeletal Disorders of the Upper Extremities

Traumatic Injuries

Work Environment and Workforce

Emerging Technologies
Indoor Environment
Mixed Exposures
Organization of Work
Special Populations at Risk

Research Tools and Approaches

Cancer Research Methods
Control Technology and Personal Protective Equipment
Exposure Assessment Methods
Health Services Research
Intervention Effectiveness Research
Risk Assessment Methods
Social and Economic Consequences of Workplace Illness and Injury
Surveillance Research Methods

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Number 0937–0189) must be submitted to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before July 10, 1996.

1. Deadline: Applications will be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (The applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

2. Late Applications: Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicants.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement 647. You will receive a complete program description and information on application procedures and application forms. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6546, Internet: oxb3@opspgo1.em.cdc.gov, fax (404) 842–6513.

Programmatic technical assistance may be obtained from Greg Kullman, Ph.D., Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1095 Willowdale Road, Morgantown, WV 26505–2888, telephone (304) 285–5711, Internet: gjkl@niords1.em.cdc.gov, fax (304) 285–5796.

There may be delays in mail delivery as well as difficulty in reaching the CDC Atlanta offices during the 1996 Summer Olympics (July 19–August 4). Therefore, CDC suggests the following to get more timely responses to any questions: use Internet/email; follow all instructions in this announcement; and leave messages on the contact person's voice mail.

Please refer to Announcement 647 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the "INTRODUCTION" Section through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: May 22, 1996.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–13472 Filed 5–29–96; 8:45 am]

BILLING CODE 4163–19–P

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Evaluation of Family Support Programs.

OMB Number: New collection.

Description: This study, conducted under a contract to Abt Associates, Inc., responds to the requirement of Subpart 2, Section 435 of OBRA 1993, which directs the Secretary of Health and Human Services to evaluate the effectiveness of family support programs. The information collected will provide descriptive information about family support programs, including detailed information about program operations and variation among programs, and will address the question of the effectiveness of such programs in achieving their goals. The data collected will complement a previous review of existing evaluations of family support programs, and will provide prospective information on eight programs, including information about the operation of such programs and outcomes for families and children who participate. Information will be collected beginning in Fall, 1996, through interviews with parents, children, and teachers of children who are participants in family support programs. Domains of interest include adult and child strengths, home environment, child development, children's school success, development of children's social responsibility, family resources, family social support networks, adoption of healthy lifestyles, community environment, community resources, and community networks.

Respondents: Individuals or households, not-for-profit institutions.

ANNUAL BURDEN ESTIMATE

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Family Interview	1,085	3.1	1	3,340
Child Interview	845	3.4	25	715
Student Interview	245	2	.25	125
Teacher Questionnaire	825	2.8	.17	395

Estimated Total Annual Burden Hours: 4,575.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by title.

In addition, requests for copies may be made and comments forwarded to the Reports Clearance Office over the Internet by sending message to rsargis@acf.dhhs.gov. Internet message must be submitted as an ASCII file without special characters or encryption.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques of other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: May 23, 1996.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 96–13526 Filed 5–29–96; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 96N–0122]

Agency Information Collection Activities: Proposed Collections; Comment Request; Extension/ Reinstatement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting requirements contained in existing FDA regulations governing temporary marketing permit applications, State petitions for exemption from preemption, State enforcement notifications, and reference amount petitions.

DATES: Submit written comments on the collections of information by July 29, 1996.

ADDRESSES: Submit written comments on the collections of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Charity B. Smith, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1686.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c). To comply with this requirement, FDA is publishing notice of the proposed collections of information listed below.

With respect to each of the following collections of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

1. Temporary Marketing Permit Applications (21 CFR 130.17(c) and (i)) (OMB Control Number 0910–0133—Extension)

Section 401 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 341) directs FDA to issue regulations establishing definitions and standards of identity for food "whenever * * * such action will promote honesty and fair dealing in the interest of consumers." Under section 403(g) of the act (21 U.S.C. 343(g)), a food that is subject to a definition and standard of identity prescribed by regulation is misbranded if it does not conform to such definition and standard of identity. Section 130.17 (21 CFR 130.17) provides for the issuance by FDA of temporary marketing permits that enable the food industry to test consumer acceptance and measure the technological and commercial feasibility in interstate commerce of experimental packs of food that deviate from applicable definitions and standards of identity. Section 130.17(c) specifies the information that a firm must submit to FDA to obtain a temporary marketing permit. The information required in a temporary marketing permit application under § 130.17(c) enables the agency to monitor the manufacture, labeling, and distribution of experimental packs of food that deviate from applicable definitions or standards of identity. The information so obtained can be used in support of a petition to establish or amend the applicable definition or standard of identity to provide for the variations. Section 130.17(i) specifies the information that a firm must submit to FDA to obtain an extension of a temporary marketing permit.

FDA estimates the burden of the temporary marketing permit application requirements as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
130.17	15	1.33	20	11.5	230

There are no capital costs or operating and maintenance costs associated with this collection.

The estimated number of temporary marketing permit applications and hours per response is an average based on the agency's experience with applications received from October 30, 1991, through September 30, 1994.

2. State Petitions for Exemption From Preemption (21 CFR 100.1(d)) (OMB Control Number 0910–0277—Reinstatement)

Under section 403A(b) of the act (21 U.S.C. 343–1(b)), States may petition FDA for exemption from Federal preemption of State food labeling and standard of identity requirements. Section 100.1(d) (21 CFR 100.1(d)) sets forth the information a State is required to submit in such a petition. The information required under § 100.1(d) enables FDA to determine whether the State food labeling or standard of identity requirement comports with the statutory criteria for exemption from Federal preemption.

FDA estimates the burden resulting from the requirements of § 100.1(d) as follows:

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
100,1(d)	5	1	5	40	200

There are no capital costs or operating and maintenance costs associated with this collection.

Since the enactment of section 403A(b) of the act as part of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments), FDA has received eight petitions for exemption from preemption. Based upon these submissions, FDA estimates that no more than five petitions will be submitted annually. Because § 100.1(d) implements a statutory information collection requirement, only the additional burden attributable to the regulation has been included in the estimate.

3. State Enforcement Notification (21 CFR 100.2(d)) (OMB Control Number 0910–0275—Reinstatement)

Section 310(b) of the act (21 U.S.C. 337(b)) authorizes States to enforce certain sections of the act in their own names, but provides that States must notify FDA before doing so. Section 100.2(d) (21 CFR 100.2(d)) sets forth the information that a State must provide to FDA in a letter of notification when it intends to take enforcement action under the act against a particular food located in the State. The information required under § 100.2(d) will enable FDA to identify the food against which the State intends to take action and advise the State whether Federal action has been taken against it. With certain narrow exceptions, Federal enforcement action precludes State action under the act.

FDA estimates the burden of complying with the enforcement notification requirement as follows:

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
100.2(d)	5	1	5	2	10

There are no capital costs or operating and maintenance costs associated with this collection.

Based upon the small number of enforcement notifications received from the States since the enactment of section 310(b) of the act in 1990, FDA estimates that no more than five notifications will be submitted annually. Because 21 CFR 100.21(d) implements a statutory information collection requirement, only the additional burden attributable to the regulation has been included in the estimate.

4. Reference Amount Petitions (21 CFR 101.12(h)) (OMB Control Number 0910–0286—Reinstatement)

Section 403(q)(1)(A) of the act (21 U.S.C. 343(q)(1)(A)) requires that the label or labeling of food provide nutrition information that includes the serving size or, if the food is not typically expressed in a serving size, the common household unit of measure that expresses the serving size of the food. In response to section 2(b)(1)(B) of the 1990 amendments, FDA issued regulations defining the serving size (or other unit of measure) for various types of food. Food producers are required to use the reference amount values provided in § 101.12 (21 CFR 101.12) and the rules for establishing serving sizes that are prescribed in § 101.9(b) (21 CFR 101.9(b)) to determine the appropriate serving size for their products; however, a manufacturer or other interested person may submit a petition to establish or amend the reference amount value for a food or to create a new food subcategory with its own reference amount. Section 101.12(h) sets forth the information the petitioner is required to include in the petition.

FDA estimates the burden resulting from the requirements of § 101.12(h) as follows:

TABLE 4.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Operating & Maintenance Costs
101.12(h)	5	1	5	80	400	$400,000

There are no capital costs associated with this collection.

Since the enactment of the 1990 amendments that revised the act by adding section 403(q), FDA has received nine petitions to amend existing reference amounts. Based upon these submissions, FDA estimates that no more than five such petitions will be submitted annually. The estimate for operating and maintenance costs is based on the average cost of conducting a consumer survey to support a reference amount petition.

Dated: May 22, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–13536 Filed 5–29–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96F–0164]

Asahi Denka Kogyo K.K.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Asahi Denka Kogyo K.K. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of sodium 2,2'-methylenebis(4,6-di-*tert*-butylphenyl)phosphate as a clarifying agent in high density polyethylene intended for use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by July 1, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 6B4504) has been filed by Asahi Denka Kogyo K.K., 2–13 Shirahata 5–Chome, Urawa City, Saitama 336, Japan. The petition proposes to amend the food additive regulations in § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295) to provide for the safe use of sodium 2,2'-methylenebis(4,6-di-*tert*-butylphenyl)phosphate as a clarifying agent in high density polyethylene intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before July 1, 1996, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 14, 1996.

George H. Pauli,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–13464 Filed 5–29–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95E–0385]

Determination of Regulatory Review Period for Purposes of Patent Extension; PRECOSE™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for PRECOSE™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis

for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product PRECOSE™ (acarbose). PRECOSE™ is indicated as an adjunct to diet to lower blood glucose in patients with noninsulin-dependent diabetes mellitus who hyperglycemia cannot be managed by diet alone. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for PRECOSE™ (U.S. Patent No. 4,904,769) from Bayer AG, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 27, 1995, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period that the approval of PRECOSE™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for PRECOSE™ is 5,647 days. Of this time, 3,789 days occurred during the testing phase of the regulatory review period, while 1,858 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* March 23, 1980. FDA has verified the applicant's claim that the date that the investigational new drug application became effective was on March 23, 1980.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* August 6, 1990. The applicant claims August 9, 1990, as the date the new drug application (NDA) for PRECOSE™ (NDA 20–086) was initially submitted. However, FDA records indicate that NDA 20–086 for the active ingredient in PRECOSE™ (acarbose) was received by the agency on August 6, 1990. This NDA was withdrawn on August 28, 1991. A subsequent NDA for PRECOSE™ (NDA 20–482) was received on September 6, 1994. Therefore, NDA 20–086 signifies the end of the testing phase and the beginning of the approval phase for PRECOSE™, while NDA 20–482 signifies the end of the approval phase. The NDA initially submitted date is August 6, 1990.

3. *The date the application was approved:* September 6, 1995. FDA verified the applicant's claim that NDA 20–482 was approved on September 6, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 922 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 29, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 26, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 16, 1996.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 96–13535 Filed 5–29–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[HCFA–2552–96]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Hospital and Hospital Health Care Complex Cost Report; *Form No.:* HCFA–2552–96; *Use:* This form is required by statute and regulation for participation in the Medicare program. The information is used to determine final payment for Medicare. Hospitals and related complexes are the main users. *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for profit institutions, and State, Local or Tribal Government; *Number of Respondents:* 7,000; *Total Annual Responses:* 7,000; *Total Annual Hours Requested:* 4,599,000.

To request copies of the proposed paperwork collections referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch,

Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: May 22, 1996.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–13520 Filed 5–29–96; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

Maternal and Child Health Services; Federal Set-Aside Program; Continuing Education and Development Cooperative Agreements

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Extension of application deadline date.

The Maternal and Child Health Services; Federal Set-Aside Program; Continuing Education and Development Cooperative Agreements notice deadline date published on April 26, 1996, beginning on page 18613, is hereby extended to July 8, 1996.

The rest of the notice remains as published.

Dated: May 24, 1996.

Ciro V. Sumaya,

Administrator.

[FR Doc. 96–13578 Filed 5–29–96; 8:45 am]

BILLING CODE 4160–15–P

Public Health Service

Health Resources and Services Administration;

Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38409–24, August 31, 1982, as amended most recently at 61 FR 24939–40, May 17, 1996). The changes are as follows:

1. Under Part HB, Health Resources and Services Administration Section HB–20–Functions, "Bureau of Health Resources Development (HBB)" delete the statement in its entirety and replace by the following

Bureau of Health Resources Development (HBB).

Administers Federal policy and programs pertaining to health care facilities, activities associated with organ donations, procurements, transplantation, and a variety of program activities related to HIV infection and acquired immune deficiency syndrome (AIDS). This includes financial, capital, organizational, and physical matters. Specifically: (1) Provides national leadership in supporting, identifying, and interpreting national trends and issues of significance relative to the health status of persons with AIDS, and with HIV infections, including the provision of facilities and services for AIDS and AIDS-related patients, persons in need and provision of services to persons and families of low income; and administers block and discretionary grants, contracts, and funding arrangements designed to address those issues; (2) administers and coordinates AIDS-related grants programs of national significance; (3) administers grant, loan, loan guarantees and interest subsidy programs relating to the construction, modernization, conversion, and closure of health and health care organizations; (4) develops long and short range program goals and objectives for health facilities, and for specific health promotional, organ transplantation, and AIDS activities; (5) manages contracts to provide Federal oversight for the Organ Procurement and Transplantation Network, the Scientific Registry of Transplant Recipients and the National Marrow Donor Programs and works to increase the availability of donor organs and unrelated bone narrow donors by working with the Organ Procurement Organizations (OPOS) and Donor Centers; (6) serves as advisor to and coordinates activities with other Agency organizational elements, other Federal organizations within and outside the Department, State, and local bodies, professional and scientific organizations; (7) develops, promotes, and directs efforts to improve the management, operational effectiveness, and efficiency of health care systems, organizations, and facilities; (8) provides technical assistance to OPOs and health care delivery systems and facilities in a wide variety of specific technical and technological systems; (9) administers HRSA's regional facility engineering and construction activities; (10) designs and implements special epidemiological and evaluation studies of the impact of the Bureau health care programs and of the characteristics of the population serviced; (11) evaluates models of health care delivery systems through grants, contracts, direct activities designs, and tests; (12) plans and develops collaborative efforts in the scientific aspects of Bureau programs with other PHS agencies, Federal departments, universities, and other scientific organizations; and (13) maintains liaison and coordinates with non-Federal public and private entities as necessary for the accomplishment of Bureau missions and objectives; and

2. Delete the Division of Trauma and Emergency Medical System (HBB8) in its entirety.

Delegations of Authority

All delegations and redelegations of authorities to officers and employees of the Bureau of Health Resources Development which were in effect immediately prior to the effective date of this reorganization will be continued in effect in them or their successors, pending further redelegations, provided they are consistent with this reorganization.

These changes are effective upon date of signature.

Dated: May 15, 1996.

Ciro V. Sumaya,

Administrator, Health Resources and Services Administration.

[Fr. Doc. 96–13539 Filed 5–29–96; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3917–N–84]

Office of the Assistant Secretary for Public and Indian Housing; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: July 29, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451—7th Street, SW, Room 4255, Washington, D.C. 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202)–708–0846, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and Indian Housing Authorities concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information: Title of Proposal: Indian Housing Programs—Establishment of Reporting Requirements and Procedures for Tenant Accounts Receivable.

OMB Control Number:

Description of the need for the information and proposed use: The Office of Native American Programs re-establishes the reporting requirement for Tenant Accounts Receivable (TAR) which was eliminated by the cancellation of the Indian Financial Management Handbook 7470.1 REV–1. The collected TAR data will be used to formulate regional statistics and as a risk assessment tool of Indian Housing Authorities.

Members of affected public: IHAs.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: on an annual basis, 189 respondents, 4.5 responses per respondent, 860 total responses, 3,160 total burden hours.

Status of the proposed information collection: Re-establishes reporting requirements for TARs and provides guidance on the preparation of the TAR report which was eliminated by the cancellation of the Indian Financial Management Handbook 7470.1 REV–1.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 7, 1996.

Kevin Emanuel Marchman,

Deputy Assistant Secretary for Distressed and Troubled Housing Recovery.

BILLING CODE 4210–33–M

Report of Tenants Accounts Receivable (TARs)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

DRAFT

Please refer to the instructions on page 2 when filling out this form. OMB Approval No. 2577-XXXX (exp. mm/dd/yy)

Public reporting burden for this collection of information is estimated to average 2.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-xxxx), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600.

Do not send this form to the above address.

This information is collected to obtain data on tenant accounts for each Annual Contributions Contract (ACC) executed. The information will be used by HUD to assess all major areas of tenants accounts and to input the information into the Management Information Retrieval System (MIRS). The information will also be used to formulate statistics and as a risk assessment tool of IHAs. This information is required by the United States Housing Act of 1937, as amended. The information collected does not lend itself to confidentiality. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Name of Housing Authority	Locality

Month Ended	Project Number(s)	Number of Dwelling Units	Number of Tenants in Possession (last day of month)	Total Charges to Tenants (last day of month)	Amount Collected

Accounts Receivables	End of Month (current) No. of Accounts (1)	End of Month (current) Total Amount (2)	Last Report No. of Accounts (3)	Last Report Total Amount (4)
1. Tenants in Possession		$		$
(a) One Month or Less				
(b) Over One Month		$		$
(c) Sub-Total		$		$
2. Vacated Tenant Accounts		$		$
3. Total Tenant Accounts Receivable		$		$
4. Collections Loss				
(a) Charged to Loss this Period				$
(b) Charged to Loss this Year to Date				$
5. Percentage Analysis - Accounts Receivable of Tenants in Possession				
(a) Percent of Accounts Delinquent				%
(b) Percent of Amount Delinquent to Total Current Charge				%

Signature of Person Preparing this Report	Print Name of Preparer	Date
X	Title of Preparer	
Signature of Person Approving this Report	Print Name of Approver	Date
X	Title of Aprover	

form HUD-53020 (05/14/96)
ref. Handbook 7475.1

Instructions for Preparing the Report of Tenant Accounts Receivables (TARS), form HUD-53020

DRAFT

A separate report is to be prepared and submitted quarterly in accordance with the provisions of PIH Notice XX.

The form is self-explanatory, except:

Project No.(s): This refers to the project or projects combined for collection purposes for which the report is prepared. (A separate report must be prepared for Section 23 Leased Housing Projects under the same ACC, Turnkey III Homeownership Projects under the same ACC, and Mutual-Help Indian Housing Projects under the same ACC, even though combined with other projects for collection purposes.)

No. of Dwelling Units: This refers to the total number of dwelling units in the project(s) for which the report is prepared.

No. of Tenants in Possession: This refers to the number of dwelling units occupied on the last day of the quarter for which the report is prepared.

Total Charges to Tenants: This is the amount of rent and other charges to tenants during the last month of the current quarter as shown by rent roll or equivalent record.

Accounts Receivable: Tenants in Possession:

Line 1(a) One Month or Less, Enter in Column (1) the number of accounts of tenants whose total unpaid account balance represented rent and other amounts charged during the last month of the quarter for which the report is prepared. Enter in Column (2) the aggregate amount of unpaid balances of accounts included in Column (1). (Do not record on Line 1(a) any accounts which include any charges for both the last month and previous months. These should be recorded on Line 1(b).

Line 1(b) Over One Month, Enter in Column (1) the number of accounts of tenants whose unpaid account balance includes rent and other amounts charged which are over one month old.

Enter in Column (2) the aggregate amount of unpaid balances of the accounts included in Column (1).

Line 1(c) Enter the total of lines 1(a) and 1(b) in Columns (1) and (2).

Line 2 Vacated Tenants Account. Enter in Columns (1) and (2), respectively, the number of unpaid accounts of former tenants and the aggregate amount of such accounts.

Line 3 Total Tenants Accounts Receivable. Enter the total of lines 1(c) and Line 2 in Columns (1) and (2).

Note: All accounts receivable data shown on this report should include unpaid retroactive rents, utility surcharges, and all other unpaid charges in addition to unpaid contract rent.

Lines 1(a) through 1(c) Lines 2 and 3, Enter in Columns (3) and (4) the number of accounts and aggregate amounts shown on the corresponding lines in Columns (1) and (2) of the previous report.

Line 4(a) Enter the amount written off to Collection Losses during the quarter for which the report is prepared, less any collection of accounts previously written off.

Line 4(b) Enter the amount written off to Collection Losses during the fiscal year to date, less collection of accounts previously written off.

Percentage Analysis: Accounts Receivable of Tenants in Possession:

Line 5(a) Enter the percentage derived by dividing the Number of Accounts (shown on Line 1(c) Column (1)) by the Number of Tenants in Possession shown in the heading. The Number of Tenants in Possession includes all units for which rent was charged on the last day of the quarter involved.

Line 5(b) Enter the percentage derived by dividing the "Aggregate Amount" (shown on Line 1(c) Column (2) by the Amount of "Total Charges to Tenants" shown in the heading.)

form HUD-53020 (05/14/96)
ref. Handbook 7475.1

[FR Doc. 96–13479 Filed 5–29–96; 8:45 am]
BILLING CODE 4210–33–C

[Docket No. FR–3917–N–85]

Government National Mortgage Association; Notice of Proposed Information Collection for Public Comment

AGENCY: Government National Mortgage Association, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: July 29, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Sonya K. Suarez, Government National Mortgage Association, Office of Program, Policy, Procedure, and Risk Management, Department of Housing & Urban Development, 451 7th Street, SW, Room 6222, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sona K. Suarez, on (202) 708–2884 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Prospectuses.

OMB Control Number: 2503–0018.

Description of the need for the information and proposed use: These forms are used to provide a standard format for the description of securities for each type of mortgage eligible for inclusion in a mortgage-backed securities pool. Since each type of mortgage has different characteristics, it is necessary to have separate prospectuses for each program.

Agency form numbers: HUD forms 11712, 11712–II, 11717, 11717–II, 1724, 11728, 11728–II, 1731, 1734, 11747, 11747–ii, 11772–II.

Members of affected public: Business or other for-profit and the Federal Government.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: HUD form 11712, 11712–II, 11717, 11717–II, 1724, 11728, 11728–II, 1731, 1734, 11747, 11747–II, 11772–II.

Number of respondents		Frequency of responses		Total annual responses		Hours per response burden		Total hours
650	×	18	=	11,700	×	.25	=	2,925

Status of the proposed information collection: Extension of currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 15, 1996.

Thomas R. Weakland,

Acting Executive Vice President, Government National Mortgage Association.

[FR Doc. 96–13481 Filed 5–29–96; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. FR–3917–N–82]

Office of the Assistant Secretary for Policy Development and Research; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Policy Development and Research Department of Housing and Urban Development.

ACTION: Notice of proposed information collection for public comment.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. The Department is soliciting public comments on the subject proposal.

DATES: Comments are due by July 29, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Jacqueline A. Kruszek, Program Analyst, 202–708–4370 ext. 141, Jacqueline_A._Kruszek@hud.gov.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Title of Proposal: National Survey of Rehabilitation Enforcement Practices

Description of the Need for Information and Proposed Use: With the growing rehabilitation needs of the

existing building stock in the nation's cities, there is a need to examine compliance alternatives to the building rehabilitation process that maintain an equivalent level of safety, but are designed to encourage rehabilitation. Rehabilitation has many financial, environmental, and historical benefits for communities. For example, rehabilitation frequently allows cities to commit fewer financial resources to the development of city infrastructure, rehabilitation minimizes the problems of removal of building materials, and rehabilitation preserves buildings that are a part of the community's history and culture.

In the 1970s and 80s, HUD undertook efforts to facilitate the process of altering the building regulations for housing rehabilitation. One step was the publication of The Rehabilitation Guidelines to begin examining equivalent compliance alternatives to the regulatory process for the nation's three model codes, state and local code agencies. Although the guidelines are not mandatory, they have had some impact on alteration of the regulatory process. However, the extent and the success of these changes are unknown. Some jurisdiction have adopted regulations that are designed to encourage rehabilitation while accepting compliance alternatives that maintain a level of safety equivalent to that specified in the building codes. The enforcement of these compliance alternatives often relies on the discretion of local code enforcement officials, which means that enforcement may vary between and within jurisdictions.

At the May 1996 HUD sponsored symposium of The Status of Building Regulation for Housing Rehabilitation, there was a need expressed by participants to collect information on building code enforcement as it related to rehabilitation practices since this knowledge is not available. Specifically, the information is being collected (1) to identify differences in building code enforcement as it relates to rehabilitation and (2) to determine the success of compliance alternatives in encouraging rehabilitation. This information will provide data to further facilitate the process of altering rehabilitation enforcement practices nationwide.

Agency Form Numbers, if Applicable: None.

Members of Affected Public: A diverse set of individuals and organizations with roles in building rehabilitation may be affected by the information collection. Some examples are state and local agencies involved with housing rehabilitation code enforcement and community members who are responsible for the building rehabilitation plans. The range of affected individuals in code enforcement agencies vary from policy-makers of code regulations to the actual administrators of codes in communities. The community members affected range from building owners and developers to design professionals.

Estimation of the Total Number of Hours Needed To Prepare the Information Collection Including Number of Respondents, Frequency of Response, and Hours of Response: Information will be collected by mail survey with at most 1,000 participants involved in the code enforcement process. The survey's will take approximately 15 minutes to complete. This means a total of 250 hours of response time for the information collection.

Status of the Proposed Information Collection: Pending submission to the Office of Management and Budget (OMB) for review and clearance.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 21, 1996.

Michael A. Stegman,

Assistant Secretary, Office of Policy Development and Research.

[FR Doc. 96–13502 Filed 5–29–96; 8:45 am]

BILLING CODE 4210–62–M

[Docket No. FR–3917–N–83]

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: July 29, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Donald Kline, Single Family Insurance Operations Division (SFIOD), telephone number (202) 708–0614 ext. 3511 for form HUD–27050–A or Savannah Williams, SFIOD, telephone number (202) 708–0614 ext. 3407 for form HUD–27050–B (these are not toll-free numbers) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Mortgage Insurance Termination—HUD–27050–A, Application for Premium Refund or Distributive Share Payment, HUD–27050–B.

OMB Control Number: 2502–0414.

Description of the Need for the Information and Proposed Use: Mortgage Insurance Termination, form HUD–27050–A, is used by servicing mortgagees to comply with HUD requirements for reporting termination of FHA mortgage insurance. This form is used whenever FHA mortgage insurance is terminated and no claim for insurance benefits will be filed. Under the new streamline III program when the form is submitted on magnetic tape, the form can be used to directly pay eligible homeowners. This condition occurs when the form passes the criteria of certain system edits.

As the result the system generates a disbursement to the eligible homeowners for the refund consisting of the unused portion of the paid premium. The collection information required is used to update HUD's Single Family Insurance System. The billing of mortgage insurance premiums is discontinued as a result of the transaction. Without this information the premium collection/monitoring function would be severely impeded and program data would be unreliable. Under streamline III when the form is processed and but does not pass the series of edits the system generates in these cases the form HUD–27050–B to the homeowner to be completed and returned to HUD for further processing for the refund. In general a Premium Refund is the difference between the amount of prepaid premium and the amount of the premium that has been earned by HUD up to the time the mortgage is terminated.

Estimate of Burden: Public reporting burden for this collection of information for the HUD–27050–A is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources gathering and maintaining the data needed, and completing and reviewing the collection of information. The number of respondents is 9,500 and the frequency of response is as required and the volume per respondents is 1 to 40,000 depending on the size of their FHA portfolio.

Public reporting burden for this collection of information for the HUD–27–50–B estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources gathering and maintaining the data needed, and completing and reviewing the collection of information. The number of respondents is 382,000 and the frequency of response is one time and the volume per respondents is 1.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 23, 1996.

Nicolas P. Retsinas,

Assistont Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–13503 Filed 5–29–96; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–3852–N–03]

Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Service Coordinator Program Announcement of Funding Awards for Section 202 Projects—FY 1995

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding awards made by the Department on an "as applied for" funding basis under a **Federal Register** notice for the Service Coordinator Program. This announcment contains the names and addresses of the Section 202 projects and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Carissa Janis, Office of Multifamily Housing Asset Management and Disposition, Department of Housing and Urban Development, room 6176, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3291 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Service Coordination is authorized by section 808 of the National Affordable Housing Act of 1990, as amended by Section 677 of the Housing and Community Development Act of 1992 (12 U.S.C. 1701q(g)).

Fiscal Year 1995 funds were announced in a **Federal Register** notice published on February 13, 1995 (60 FR 8280). The notice announced the availability of $22 million for Section 202 projects to pay for the employment of a service coordinator and for related administrative expenses. This assistance is available only to owners/borrowers of Section 202 projects. A service coordinator is a social service staff person hired by the project owner/management company. The coordinator is responsible for assuring that residents of the project, especially those who are frail or disabled, are linked to the supportive services they need to continue living independently in that project.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is hereby publishing the names and addresses of the Section 202 awardees that received funding from February 13 through September 30, 1995 under this notice, and the amount of funds awarded to each. the total amount awarded during this period was $8,794,142 to 77 projects. This information is provided in Appendix A to this document.

Dated: May 24, 1996.

Stephanie A. Smith,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix A—Fiscal Year 1995, Office of Housing

SECTION 202s FUNDED WITH SECTION 8 SERVICE COORDINATOR FUNDS WITH FY 1995 MONEY FROM 2/95 THROUGH 9/30/95

[Program Name: Service Coordinator Program; Statute: Public Law 101–625, November 28, 1990 and Public Law 102–550, October 28, 1992; Notice Date: February 13, 1995; Funding Recipient (Name, Address, Dollar Amount)]

McNamara House, 69 Holton Street, Boston (Allston), MA, Owner: Brighton-Allston Edlerly Homes, Inc	023–EH035, MA06–T781–015 MA06–CS95–001	$106,800
NCSC Housing Management Corp., Earl M. Bourden Center, 67 Maple Avenue, Claremont, NH 03743, Owner: Senior Citizens Housing Dev. Corp. of Clairmont.	024EH004 NH36–1440–021	31,575
Maine AFL–CIO Elderly House, Inc., Chateau Cushnec, Maine, Owner: Maine AFL–CIO Elderly Housing, Inc.	024–EH080 ME36T801009	15,593
United Methodist Retirement Center, 40 Irving Avenue, East Providence 02914, Owner: Trustees of United Health and Welfare.	016–SH001 R143–0202–00	75,195
Jamestown Lutheran, 9 Crane Street, Jamestown, NY, Owner: Jamestown Lutheran HDFC, Inc	014–EH017 NY06–T781–012 NY06–CS95–003	232,390
Frances Schervier Housing, 2995 Independence Avenue, Bronx, NY 10463, Owner: Frances Schervier Housing Development Fund Co.	012–EH225 NY36–CS95–003	230,520

SECTION 202s FUNDED WITH SECTION 8 SERVICE COORDINATOR FUNDS WITH FY 1995 MONEY FROM 2/95 THROUGH 9/30/95—Continued

[Program Name: Service Coordinator Program; Statute: Public Law 101–625, November 28, 1990 and Public Law 102–550, October 28, 1992; Notice Date: February 13, 1995; Funding Recipient (Name, Address, Dollar Amount)]

NCSC Housing Management Corp., Plaza Apartments, 91 Sip Avenue, Jersey City, NJ 07304, Owner: Plaza Apartments (NCSC/UAW SCHC Inc.).	031–EH040 NJ39–1438–201 NJ39–CS95–005	20,327
Al Gomer Residence, South Orange, NJ, Owner: South Mountain B'NAI BRITH Jewish Comm. Housing Corp.	031–EH190	84,118
Baltimore Belvedere Green, 1651 East Baltimore Avenue, Baltimore, MD 21239, Owner: GS Housing, Inc.	052–EH140 MD06–T861–005 MD06–SC95–001	108,658
East View Unity Apartments, 200 Jefferson Street, Fairmont, WV 26554, Owner: Human Resources Development and Employment, Inc.	045–EH029 WV15–T811–001 WV15–SC95–001	223,930
Lincoln Unity Apartments, 7 Lincoln Plaza—Apartment 109, Branchland, WV 25506, Owner: Linoln Unity Apartments, Inc.	045–EH098–CA WV15–s891–001	74,610
Four Freedoms House, 6101 Morris Street, Philadelphia, PA 19144, Owner: Four Freedoms House of Philadelphia, Inc.	034–SH013 PA26–M00–008	113,665
Philip Murray House, Inc., 6300 Old York Road, Philadelphia, PA 19141 NA, Owner: Philip Murray House.	034–SH017 PA26–M000–090	113,665
William B. Moore Manor, 9100 Master Street, Philadelphia, PA 19121, Owner: Tenth Memorial Development Corporation.	034–EH345 PA26–T861–00 PA26–CS95–00	81,805
Steven Smith Towers, 1030 Belmont Avenue, Philadelphia, PA 19104, Owner: Stephen Smith Towers, Inc.	034–SH015 PA26–M000–097 PA26–CS95–06	217,690
St. Justin Plaza, 120 Boggs Avenue, Pittsburgh, PA 15211, Owner: St. Justin Plaza, Inc	033–EH035 PA28–T781–023 PA28–CS95–001	101,315
Steelworkers Towers Inc., Steelworkers Tower, 2639 Perrysville Avenue, Pittsburgh, PA 15214, Owner: National Council of SR Citizens/USA Housing Dev. Corp.	033–EH233 PA28–T861–015 PA28–T861–015	25,015
William H. Plummer Plaza, 5520 Townpoint Road, Sulfolk, VA 23435, Owner: Belleville Senior Housing, Inc.	051–EH123 PA36–T851–089 PA36–SC95–004	154,180
J. Michael Hall, President, Culpepper Garden, II, 4435 N. Pershing Drive, Arlington, VA 22203	000–EH162 VA39–T901–001 VA39–CS95–004	110,260
Campbell-Stone Apartments, 2911 Pharr Court South, NW., Atlanta, GA 30305, Owner: CampbellStone Apartments, Inc.	061–SH005 GA06–M000–212 GA06–CS95–001	124,375
Campbell-Stone Apartments, 2911 Pharr Court South, NW., Atlanta, GA 30305, Owner: CampbellStone Apartments, Inc.	061–SH009 GA06–M000–186 GA06–CS95–002	124,375
Wesley Homes, Inc., Branan Lodge, 1146 Wesley Mountain Drive, Blairsville, GA, Owner: Wesley Homes, Inc.	061–EH018 GA06–T771–002 GA06–CS95–008	190,335
Wesley Woods Towers, 1825 Clifton Road, N.E., Atlanta, GA 30329, Owner: Wesley Homes, Inc	061–SH004 GA06–CS95–006	190,335
Calvin Court Apartments, 479 E. Paces Ferry Road, N.E., Atlanta, GA 30305, Owner: Atlanta Area Presbyterian, Homes, Inc.	061–SH007 GA06–M000–182 GA06–CS95–009	231,380
St. Paul Apartments, Macon, GA, Owner: St. Paul Apartments, Inc	061SH011 GA06L000011	127,185
St. Paul Village, Macon, GA, Owner: St. Paul Village, Inc	061EH034	127,185
Magnolia Manor Gardens, Americus, GA, Owner: Methodist Home for the Aging, Inc	061SH014	237,435
Baptist Oaks, 800 Conti Street, Mobile, AL 36602–1280, Owner: Baptist Oaks, Inc	AL09–T821–009 AL–CS95–002	23,832
Cathedral Towers, 601 N. Newnan Street, Jacksonville, FL 32202, Owner: Cathedral Foundation of Jacksonville, Inc.	063–SH017 FL29–SC95–002	159,690
Cathedral Townhouse, 501 N. Ocean Street, Jacksonville, FL 32202, Owner: Cathedral Foundation of Jacksonville, Inc.	063–SH033 FL29–CS95–003	159,690
Calvary Towers, 1099 Clay Street, Winter Park, FL 32789, Owner: Calvary Housing, Inc	067–EH056 FL29–T771–003 FL29–CS95–006	82,885
Four Freedoms House, 3800 Collins Avenue, Miami Beach, FL 33140, Owner: Four Freedoms House of Miami Beach, Inc.	066–SH011 FL29–CS95–005	81,200
AHEPA 421 Apartments, Miami, FL, Owner: AHEPA 421, Inc	066–EH238 FL29–T871–012	88,455
Florida Christian Manor, Sundale Manor, Jacksonville, FL 32205, Owner: Florida Christian Manor, Inc	063–EH092 FL29–CS95–009	129,240
Baptist Terrace, Orlando, FL., Owner: First Baptist Housing, Inc	067–SH040	82,885

SECTION 202s FUNDED WITH SECTION 8 SERVICE COORDINATOR FUNDS WITH FY 1995 MONEY FROM 2/95 THROUGH 9/30/95—Continued

[Program Name: Service Coordinator Program; Statute: Public Law 101–625, November 28, 1990 and Public Law 102–550, October 28, 1992; Notice Date: February 13, 1995; Funding Recipient (Name, Address, Dollar Amount)]

Sayre Village, 3816 Camelot Drive, Lexington, KY 40503, Owner: Christian Benevolent Outreach, Inc	083–EH029 KY36–T791–001 KY36–CS95–001	174,305
Berry Manor, Chicago, IL, Owner: T.W.O. Woodlawn Comm. Dev. Corp	071–EH068 IL06–CS95–006	107,990
Woodlawn Manor, Chicago, IL, Owner: Woodlawn Comm. Dev. Corp	071–EH068 IL06–CS95–006	107,990
Kimbark residences, Chicago, IL, Owner: T.W.O. Woodlawn Comm. Dev. Corp	071–EH568 IL06–CS95–005	105,025
Martin Fareell House, Chicago, IL, Owner: Woodlawn Comm. Dev. Corp	071–EH100 IL06–CS95–005	107,990
YMCA South Suburban, Owner: YMCA of Metropolitan Chicago Foundation	071–EH072 IL 06–CS95–004	171,775
St. Paul Lutheran Village, Inc., St. Paul Lutheran Village I, 5515 Madison Road, Cincinnati, OH 45227, Owner: St. Paul Lutheran Village, Inc.	046– OH–CS95–001	125,730
St. Paul Lutheran Village II, 5515 Madison Road, Cincinnati, OH 45227, Owner: St. Paul Lutheran Village, Inc.	046–EH057 OH16–T801–023 OH10–CS95–002	64,960
Lithuanian Center, 34251 Ridge Road, Willoughby, OH 44094, Owner: Lithuanian Center, Inc	042–EH166 OH12–T821–021 OH12–CS95	67,455
Lourexis Apartments, 5111 Hector Avenue, Cleveland, OH 44127, Owner: Lourexis, Inc	042–EH307 OH12–T851–008	114,810
Willowood Manor, 20665 Lorain Road, Fairview Park, OH 44126, Owner: Fairview Park Senior Apartments Corp.	042–EH406 OH12–T871–017	35,390
Pelham Manor, 2700 Pelham Road, Toledo, OH 43606, Owner: Toledo Jewish Home for the Aged	042–EH010 OH12–T781–001	169,630
Epsilon Apartments, Farmington Hill, MI, Owner: Metropolitan Detroit Baptist Manor, Inc	0044–EH–002 MI28–CS95–002	157,210
Drake Apartment, Farmington Hill, MI, Owner: Metropolitan Detroit Baptist Manor, Inc	044–EN055 MI28–CS95–004	157,205
Santa Cruz Apartments, 3029 West Wells Street, Milwaukee, WI 53208, Owner: Council for the Spanish Speaking, Inc.	075–EH020	78,933
El Jardin, 10th and Madison Streets, & 6th and Orchard Streets, Milwaukee, WI 53204, Owner: Council for the Spanish Speaking, Inc.	075–EH046 WI39–T91–100 WI39–SC95–002	78,935
La Paz Apartments, 1223 South 23rd Street, Milwaukee, WI 53204, Owner: Council for the Spanish Speaking, Inc.	075–EH212 WI39–T78–410, WI39–SC95–003	78,935
Chaska Manor-Talheim, 407 Oak Street, Chaska, MN 55318, Chaska Manor, Inc	092–EH098 MN46–T811–004	36,780
Gideon Pond Housing, 10000 Newton Avenue, Bloomington, MN 55431, Owner: Gideon Pond Housing Corporation.	MN46–CS95– 092–EH176 MN46–T831–005 MN46–CS95–002	84,740
Tarnside Court, Bloomington, MN, Owner: Gideon Pond West, Inc	092–EH–264 MN46–CS95–003	84,740
Mount Carmel Manor, West St. Paul, MN, Owner: Mount Carmel Manor	092–EH244 MN46–CS95–004	24,070
St. Marys Residence, Winstead, MN, Owner: St. Mary's Residence, Inc	092–EH090 MN46–CS95–005	92,160
Mt. Zion Sheltering Arms, 3238 Martin Luther King, San Antonio, TX 78220, Owner: Mr. Earl L. Campbell.	115–EH092 TX59–T831–007 TX59–CS95–001	55,000
Shorey Villa, LEAD 2200 NW Polk, Topeka, KS 66608, Owner: North Topeka Housing Corporation	102–EH194 KS16–T88L–015 KS16–CS95–001	19,215
Jefferson Villa, LEAD 2200 NW Polk, Topeka, KS 66605, Owner: Minority Housing Corporation of Topeka.	102–EH199 KS16–T881–015 KS16–CS95–002	36,210
Cathedral Square Towers, 444 W. 12th Street, Kansas City, MO 64110, Owner: Cathedral Square Inc	084–EH004 MO16–1474–201 MO16–CS95–001	207,865
Wasatch Manor, 535 South 200 East, Salt Lake City, UT 84111	105–SH002 UT30–L000–015 UT00–M000–027	213,575
Heritage Towers, 428 North Jefferson, Sheridan, WY 82801–3860	109–EH001 WY99–0594–201 WY99–SC95–001	115,230

SECTION 202s FUNDED WITH SECTION 8 SERVICE COORDINATOR FUNDS WITH FY 1995 MONEY FROM 2/95 THROUGH 9/30/95—Continued

[Program Name: Service Coordinator Program; Statute: Public Law 101–625, November 28, 1990 and Public Law 102–550, October 28, 1992; Notice Date: February 13, 1995; Funding Recipient (Name, Address, Dollar Amount)]

Casa de la Vista, 686 E. Redlands Boulevard, Redlands, CA 92373, Owner: Russell Huston	122–EH384 CA16–T851–007 CA16–CS95–00 NA	41,987
Naomi Gardens, 655 W. Naomi Avenue, Arcadia, CA 91006, Owner: Joseph F. Glenn	122–EH165 CA16–T811–017 CA16–CS95–001	290,136
Maple Park Apartments, 711 Maple Street, Glendale, CA 91205, Owner: Roy J. Cain	122–EH170 CA16–1811–022 CA16–CS95–004	56,562
Crown House, 3055 Del Mar Boulevard, Pasadena, CA 91107, Owner: Roy J. Cain	122–EH323 CA16–T811–007 CA16–CS95–005	36,889
Rancho Del Valle, 6530 Winnetka Avenue, Woodland Hills, CA 91367, Owner: Roy J. Cain	122–EH409 CA16–T851–032 CS16–CS95–005	56,562
Pacific Rim Apartments, 230 S. Grevilles, Inglewood, CA 90301, Owner: Roy J. Cain	122–EH501 CA16–T881–014 CA16–CS95–007	95,909
Waymark Gardens, 5325 W. Butler Drive, Glendale, AZ 85302, Owner: Arizona Disciple Homes	123–EH009 AZ16–05952	107,600
Albert Einstein Residence Center, 1935 Wright Street, Sacramento, CA 95821	136–EH002 CA30–T791–002 CA30–CS95–010	205,255
President Thomas Jefferson dna, President James Madison Manor	121–EH011 CA39–0817–201	184,886
El Bethel Terrace, 1099 Fillmore Street, San Francisco, CA 94115	121–EH075 CA39–T801–009 CA29–CS95–003	230,360
Central Terrace, Inc.,-Four Freedoms House of Seattle, Seattle, WA 98133, Central Terrace, Inc	127–SH007 WA19–M000–102 WA19–L000–007	127,525
Coventry Court I, W. 1600 Pacific Avenue, Spokane, WA 99204	171–EH004 WA25–2016–201 WA19–SC95–002	92,115
Central Terrace, Inc., Coventry Court II, W. 1600 Pacific Avenue, Spokane, WA 99204	171–EH008 WA19–T781–012 WA19–SC95–003	41,390
St Andrews Court III, N. 1815 Post Street, Spokane, WA 99205	171–EH007 WA19–T781–004 WA19–SC95–004	71,320

[FR Doc. 96–13558 Filed 5–29–96; 8:45 am]
BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Roosevelt Park Zoo, Minot, ND, PRT–815150.

The applicant requests a permit to purchase in interstate commerce a female African leopard (*Panthera pardus*) from Wille's Wildlife Zoo for the purpose of enhancement of the survival of the species through propagation.

Applicant: American Zoo and Aquarium Association, Rhino Taxon Advisory Group, Cumberland, OH, PRT–815151.

The applicant requests a permit to import three non-native free-ranging female Eastern black rhinoceros (*Diceros bicornis michaeli*) from Addo Elephant National Park, South Africa, for the purposes of enhancement of the survivial of the species through captive-propagation.

Applicant: International Animal Exchange, Ferndale, MI, PRT–815230.

The applicant requests a permit to export one male Gray wolf (*Canis lupis*) to the Seoul Grand Park Zoo, Seoul, Korea, for the purpose of enhancement of the survival of the species through propagation.

Applicant: Buenos Aires National Wildlife Refuge, Sasabe, AZ, PRT–814486.

The applicant requests a permit to export 10 captive hatched masked bobwhite quail (*Colinus virginianus ridgwayi*) to the El Centro Ecologico de Sonora, Hermosillo, Sonora, Mexico to enhance the survival of the species through conservation education.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: May 24, 1996.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 96–13567 Filed 5–29–96; 8:45 am]
BILLING CODE 4310–55–P

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from the Vicinity of Victorville, CA in the Possession of the Los Angeles County Museum of Natural History, Los Angeles, CA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and associated funerary objects in the possession of the Los Angeles County Museum of Natural History, Los Angeles, CA.

A detailed assessment of the human remains was made by the Los Angeles County Museum of Natural History, Los Angeles, CA professional staff in consultation with representatives of the San Manuel Band of Mission Indians.

In 1928, human remains representing four individuals, including three adults and one infant, were excavated by Arthur Woodward, a member of the museum staff. No known individuals were identified. The three associated funerary objects include three strings of olivella shell disk beads.

Accession documentation describes the remains and associated funerary objects as, "Material from the ranch of J.C. Turner, in sandy Mohave Riverbed 12 miles north of Victorville. Combination village and burial site." The human remains and associated funerary objects are dated to A.D. 1690–1770, based on the presence of incised olivella wall beads. A representative of the San Manuel Band of Mission Indians has confirmed that the Turner Ranch site lies within traditional Serrano lands and is an historic Serrano village.

Based on the above mentioned information, officials of the Los Angeles County Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of four individuals of Native American ancestry. Officials of the Los Angeles County Museum of Natural History have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), that the three strings of olivella beads listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Los Angeles County Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the San Manuel Band of Mission Indians.

This notice has been sent to officials of the San Manuel Band of Mission Indians. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Margaret Ann Hardin, Curator and Section Head, Anthropology, the Los Angeles County Museum of Natural History, 900 Exposition Blvd., Los Angeles, CA; telephone: (213) 744–3382, before [*thirty days after publication in the* **Federal Register**]. Repatriation of the human remains and associated funerary objects to the San Manuel Band of Mission Indians may begin after that date if no additional claimants come forward.

Dated: May 22, 1996

Francis P. McManamon

Departmental Consulting Archeologist Chief, Archeology and Ethnology Program

[FR Doc. 96–13582 Filed 5-29-96; 8:45 am]
BILLING CODE 4310–70–F

OVERSEAS PRIVATE INVESTMENT CORPORATION

Board of Directors Meeting; March 12, 1996

TIME AND DATE: Tuesday, June 11, 1996, 1:00 PM (OPEN Portion), 1:30 PM (CLOSED Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Meeting OPEN to the Public from 1:00 PM to 1:30 PM: Closed portion will commence at 1:30 PM (approx).

MATTERS TO BE CONSIDERED:

1. President's Report
2. Approval of March 12, 1996 Minutes (Open Portion)
3. Meeting schedule through March, 1997

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 PM).

1. Insurance Project in Poland
2. Finance Project in Russia
3. Finance Project in Turkey
4. Finance Project in Argentina
5. Insurance Project in Venezuela
6. Insurance Project in Trinidad & Tobago
7. Insurance Project in Brazil
8. Finance Project in Indonesia
9. Finance Project in Philippines
10. Report on Investment Funds Policies
11. Pending Major Projects
12. Approval of March 12, 1996 Minutes (Closed Portion)

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: May 24, 1996.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 96–13706 Filed 5–28–96; 2:18 pm]
BILLING CODE 3210–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–738 (Final)]

Foam Extruded PVC and Polystyrene Framing Stock From the United Kingdom

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping Investigation No. 731–TA–738 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from the United Kingdom of foam extruded PVC and polystyrene framing stock,[1] currently provided for in subheadings 3924.90.20 and 3926.90.98 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part

[1] The imported products from the United Kingdom subject to this investigation consist of all extruded PVC and polystyrene framing stock regardless of color, finish, width, or length. Finished frames assembled from foam extruded PVC and polystyrene framing stock are excluded.

201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: May 10, 1996.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of foam extruded PVC and polystyrene framing stock from the United Kingdom are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on September 8, 1995, by Marley Mouldings, Inc., Marion, VA.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on September 12, 1996, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on September 27, 1996, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 20, 1996. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 24, 1996, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is September 19, 1996. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is October 3, 1996; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before October 3, 1996. On October 24, 1996, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before October 29, 1996, but such final comments must not contain new factual information, or comment on information disclosed prior to the filing of posthearing briefs, and must otherwise comply with section 207.29 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: May 24, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–13571 Filed 5–29–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 25, 1996, Lonza Riverside, 900 River Road, Conchohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
4-Methoxyamphetamine (7411)	I
Amphetamine (1100)	II
Phenylacetone (8501)	II

The firm plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistance Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 29, 1996.

Dated: May 22, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–13559 Filed 5–29–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 22, 1996, Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

The Institute will manufacture marihuana cigarettes for the National Institute on Drug Abuse (NIDA) and the cocaine will be used for reference standards, human and animal research, as dictated by NIDA.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 29, 1996.

Dated: May 21, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–13560 Filed 5–29–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 14, 1996, Roche Diagnostic Systems, Inc., 1080 U.S. Highway 202, Somerville, New Jersey 08876–3771, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I

The firms plans to manufacture small quantities of the listed controlled substances for incorporation in drug of abuse detection kits.

Any other such applicant and any person who is presently registered with DEA to manufacturer such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 29, 1996.

Dated: May 21, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–13561 Filed 5–29–96; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on March 29, 1996, Roche Diagnostic Systems, Inc., 1080 U.S. Highway 202, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration to be registered as an importer of tetrahydrocannabinols (7370) a basic class of controlled substance listed in Schedule I.

The tetrahydrocannabinols will be utilized exclusively for non-human consumption in drug of abuse detection kits.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 1, 1996.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 22, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–13562 Filed 5–29–96; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of

such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 8, 1996, Sanofi Withrop Inc., 200 East Oakton Street, Des Plaines, Illinois 60018, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Hydromorphone (9150)	II
Meperidine (9230)	II
Morphine (9300)	II
Fentanyl (9801)	II

The firm plans to import the listed controlled substances for distribution to its customers.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 1, 1996.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 22, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–13563 Filed 5–29–96; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on April 26, 1996, Wildlife Laboratories, Inc., 1401 Duff Drive, Suite 600, Ft. Collins, Colorado 80524, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Etorphine Hydrochloride (9059)	II
Carfentanil (9743)	II

The firm plans to import the listed controlled substances to produce finished products for distribution to its customers.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 1, 1996.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 22, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–13564 Filed 5–29–96; 8:45 am]

BILLING CODE 4410–09–M

Office of Justice Programs

Bureau of Justice Assistance; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; local application form for local law enforcement block grants program.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the Federal Register. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Patricia Dobbs-Medaris, (202) 307–6185, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 633 Indiana Avenue, NW, Washington, DC 20531.

Overview of this information collection:

(1) Type of Information Collection: New collection of information.

(2) Title of the Form/Collection: Local Law Enforcement Block Grants Program, Local Application Form.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State and Local governments. Other: None. Public Law 104–134 enacted the Local Law Enforcement Block Grants Program. This program awards grant money to local units of governments and States and territories to reduce crime and improve public safety. The Local Application Form will be completed by each eligible local applicant and will provide information for application review and award processing.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 5000 responses at 30 minutes.

(6) An estimate of the total public burden (in hours) associated with the collection: 2,500 annual burden.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 23, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–13499 Filed 5–29–96; 8:45 am]

BILLING CODE 4410–18–M

Bureau of Justice Assistance; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; State Application Form for Local Law Enforcement Block Grants Program.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the Federal Register. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Patricia Dobbs-Medaris, (202) 307–6185, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 633 Indiana Avenue, NW, Washington, DC 20531.

Overview of this information collection:

(1) Type of Information Collection: New collection of information.

(2) Title of the Form/Collection: Local Law Enforcement Block Grants Program, State Application Form.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State and Local governments. Other: None. Public Law 104–134 enacted the Local Enforcement Block Grants Program. This program awards grant money to local units of governments and States and territories to reduce crime and improve public safety. The Local Application Form will be completed by each eligible local applicant and will provide information for application review and award processing.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 56 responses at 30 minutes.

(6) An estimate of the total public burden (in hours) associated with the collection: 28 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 23, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–13500 Filed 5–29–96; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letters Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation as part of its role in the administration of the Federal-State unemployment compensation program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Employment Security Agencies (SESAs). The UIPL described below is published in the **Federal Register** in order to inform the public.

UIPL 22–96

Federal law requires that all money received in the unemployment fund shall, immediately upon receipt, be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund. This provision is referred to as the "immediate deposit requirement." Federal law also contains a "withdrawal standard" which, with limited statutory exceptions, requires that all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment

compensation. This UIPL puts forth the Department of Labor's interpretation of when monies are received in the State's unemployment fund and when they cease to be a part of such fund.

Dated: May 23, 1996.

Timothy M. Barnicle,

Assistant Secretary of Labor.

U.S. Department of Labor, Employment and Training Administration, Washington, D.C. 20210

Classification: UI
Correspondence Symbol: TEURL
Date: May 22, 1996

Directive: Unemployment Insurance Program Letter No. 22–96
To: All State Employment Security Agencies
From: Mary Ann Wyrsch, Director, Unemployment Insurance Service
Subject: The Immediate Deposit and Withdrawal Standards

1. *Purpose.* To advise States of the Department of Labor's interpretation of Federal law concerning the applicability of the immediate deposit and withdrawal standards to State unemployment fund moneys.

2. *References.* Sections 3302(a)(1), 3304(a)(3), 3304(a)(4), 3306(f) and 3306(h) of the Federal Unemployment Tax Act (FUTA); Sections 303(a)(1), 303(a)(4), 303(a)(5), and 904 of the Social Security Act (SSA); Cash Management Improvement Act of 1990, Public Law No. 104–453 (1990).

3. *Background.* Over the years the Department of Labor has corresponded with many States concerning the handling and use of moneys in State unemployment funds. Questions which frequently arise include when moneys are "received in" the unemployment fund and when moneys cease to be a part of the fund. This UIPL is issued to inform States of the Department's interpretation of Federal law requirements concerning these matters.

4. *Federal law provisions.* The relevant provisions of Federal law follow.

Rescissions: None
Expiration Date: Continuing

a. Section 3302(a)(1), FUTA, provides that: The taxpayer may, to the extent provided in this subsection and subsection (c), credit against the tax imposed by section 3301 the amount of contributions paid by him into an unemployment fund maintained during the taxable year under the unemployment compensation [henceforth "UC"] law of a State which is certified as provided in section 3304 for the 12-month period ending on October 31 of such year.

b. Section 3304(a)(3), FUTA, requires, as a condition of employers in a State receiving credit against the Federal unemployment tax, that: all money received in the unemployment fund shall * * * immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904 of the Social Security Act.

This "immediate deposit" requirement is also found in Section 303(a)(4), SSA, as a condition for a State receiving administrative grants.

c. Section 3304(a)(4), FUTA, requires, as a condition of employers in a State receiving credit against the Federal unemployment tax, that: all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration * * *.

This "withdrawal standard" is also found in Section 303(a)(5), SSA, as a condition for a State receiving administrative grants. Both provisions contain exceptions not germane to this UIPL.

d. Section 3306(f), FUTA, defines the term "unemployment fund," in relevant part, as meaning: a special fund, established under a State law and administered by a State agency, for the payment of compensation. Any sums standing to the account of the State agency in the Unemployment Trust Fund established by section 904 of the Social Security Act * * * shall be deemed to be a part of the unemployment fund of the State, and no sums paid out of the Unemployment Trust Fund to such State agency shall cease to be a part of the unemployment fund of the State until expended by such State agency. An unemployment fund shall be deemed to be maintained during a taxable year only if throughout such year * * * no part of the moneys of such fund was expended for any purpose other than the payment of compensation (exclusive of expenses of administration) and for refunds of sums erroneously paid into such fund * * *.

e. Section 3306(h), FUTA, defines the term "compensation" as "cash benefits payable to individuals with respect to their unemployment."

f. Section 303(a)(1), SSA, requires, as a condition for States receiving administrative grants, that an approved State law include provision for: [s]uch methods of administration * * * as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.

g. Section 904, SSA, establishes the Unemployment Trust Fund (UTF) and places specific requirements on the U.S. Secretary of the Treasury for its management and investment. Specifically, Section 904(b), SSA, in pertinent part, provides that: [i]t shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States * * *.

5. *Discussion.* a. *In General.* The management of the funds from which UC was to be paid was given considerable attention by the drafters of the SSA of 1935. Federal investment was adopted over State investment as it was feared that liquidation of State investments on a falling market would worsen the severity of an economic downturn and cause the States to sell securities at a loss in order to pay UC. A Senate committee report described the advantages of Federal investment:

> Securities will not have to be dumped on the markets in order that the reserve funds may be liquidated. Instead of increasing the tendency toward deflation, the handling of the reserve funds in the manner provided in the bill [i.e., the SSA] will make possible their use to promote stability. When depression sets in, the funds can be liquidated without actual sale of the securities on the markets, and since they will be used to pay compensation to unemployed workmen, the net effect will be to maintain purchasing power without any offsetting effects toward deflation. [S. Rep. No. 628, 74th Cong., 1st Sess. 15 (1935) (henceforth "Senate Report").]

As a result, the current trust fund [1] system was established. The Senate Report makes it clear that a trust fund limited to a specific purpose was intended: "The States can draw upon the employment trust fund solely for unemployment compensation purposes * * *." (Senate Report at 15.) The Senate Report also states that: [Section 904(a)] establishes in the Treasury of the United States a trust fund with the Secretary of the Treasury as trustee and with the respective State Agencies, administering the State unemployment compensation laws, as beneficiaries of the trust. [Senate Report at 47.]

Unlike many other trust systems, the UC system involves active participation by the beneficiaries: States collect amounts due the trust and make the actual payment of UC. To assure that the States administered these activities in accordance with the purpose of the trust, the immediate deposit and withdrawal standards place specific requirements on the States.

b. *The Unemployment Fund.* Both the immediate deposit and withdrawal standards apply to moneys in the State's unemployment fund. The definition of "unemployment fund" in Section 3306(f), FUTA, begins by emphasizing the States' participation in the UC program: the unemployment fund is "a special fund, established under a State law and administered by a State agency, for the payment of compensation." The unemployment fund includes "[a]ny sums standing to the account of" the State in the UTF. Further, "no sums paid out of the Unemployment Trust Fund to such State agency shall cease to be a part of the unemployment fund of the State *until expended* by such State agency." (Emphasis added.)

Due to the active participation of the States in collecting and expending trust moneys, the parts of the unemployment fund used for these purposes reside in and are managed by the States. A State's unemployment fund consists of three main parts: a clearing account for the temporary and immediate deposit of all moneys paid to the fund, the State's account in the UTF (as provided in Section 3306(f), FUTA), and a benefit payment account consisting of all money requisitioned from the State's account in the UTF for the payment of unemployment benefits.[2]

c. *When Moneys Become Part of a State's Unemployment Fund.* Moneys need not be in any of the three main parts to be in the fund. The exact time moneys become part of the State's unemployment fund is statutorily controlled by the immediate deposit requirement which requires the payment by the State of "all money received in the unemployment fund and * * * immediately upon such receipt" to the Secretary of the Treasury to the credit of the UTF.

The Department interprets the phrase "received in the unemployment fund" to mean that any money received for purposes of the trust (i.e., the payment of UC) is "in" the State's unemployment fund at the instant of its receipt by the State or its agent. This interpretation assures that transfers of moneys in a State's possession are not delayed, thereby giving effect to the immediate deposit requirement that all moneys be immediately [3] paid over to the UTF and assuring the beneficiary has forwarded moneys to the trustee for investment.

This interpretation also assures that an employer paying contributions will receive credit for these payments against the Federal unemployment tax under Section 3302(a)(1), FUTA, which allows the credit to be taken by an employer only for "the amount of contributions paid by him into an unemployment fund."

As an example, employer and employee UC contributions are "received in" the State's unemployment fund at the instant of receipt by the State or its agent and the State must immediately place such moneys in the clearing account for immediate transfer to the UTF. As another example, if the balance over a certain level in a penalty and interest account is required to be transferred to the State's unemployment fund on a certain date, then the amount required to be transferred is deemed to be "in" the State's unemployment fund at the instant the transfer is required to be made. Similarly, all unemployment fund earnings are immediately part of the fund.

In some States the UC agency also collects taxes for other programs, such as temporary disability insurance. In others, a non-UC agency, such as the Department of Revenue, collects UC contributions. In both cases, the UC contributions may be deposited in one State bank account, transferred to another State bank account and then transferred to the UTF. Since UC contributions are in the unemployment fund at the instant they are received by the State, that part of any State account which these contributions pass through its considered to be part of the State's clearing account. Any other interpretation would permit delays in the transfer to the UTF and the other problems discussed above.

d. *Withdrawals From a State's Unemployment Fund.* Under the withdrawal standard, moneys may be withdrawn from the State's unemployment fund only for the payment of UC (or another statutorily permissible use), and, as provided in Section 3306(f), FUTA, do not cease to be a part of the State unemployment fund until actually "expended." The Department interprets the term "expended" to mean an amount is actually paid out to a recipient. That is, the State's account is debited for the purpose of settling a payment by electronic fund transfer and/or redeeming a check, warrant, or other paper instrument.

Put another way, unemployment funds are not expended simply because a negotiable instrument is issued. For example, if a claimant fails to cash a check within the time specified in State law, there has been no expenditure. The State may not, therefore, transfer the funds to the State's general account to be used for another purpose.[4] This interpretation assures the purpose of the trust is accomplished since, even though a check for the payment of UC may have been issued, the unexpended funds remain available for the payment of UC.[5]

Similarly, moneys are not expended from the unemployment fund simply because they are transferred from one State account to another prior to transfer to the UTF or prior to an actual payment of UC or other permissible use. Moneys are, however, considered to be expended when the transfer to another State account (e.g., the State's general account) results in the moneys no longer being available for the payment of UC or other permissible use. It should be noted that, under Section 3306(f), FUTA, an unemployment fund exists only if all fund expenditures from the fund are for the payment of UC (or other statutorily permissible purpose.) Therefore, if the State expended an amount for an impermissible purpose, then the State would no longer have an unemployment fund as provided under Section 3306(f).

e. *Withdrawals from any Unemployment Fund Account are Subject to the Withdrawal Standard.* The withdrawal standard applies to "all amounts withdrawn from the unemployment fund." To assure that unemployment fund moneys are properly used and efficiently managed, the Department interprets this requirement as applying to

[1] According to *Black's Law Dictionary*, a "trust fund" is a "fund held by a trustee for the specific purposes of the trust; in a more general sense, it is a fund which, legally or equitably, is subject to be devoted to a particular purpose and cannot or should not be diverted therefrom."

[2] For example, Section 10(b) of the *Manual of State Employment Security Legislation*, Revised September 1950, provides that the State "shall maintain within the [unemployment] fund three separate accounts: a clearing account, an unemployment trust fund account, and a benefit account."

[3] The Department's interpretation of "immediate" is implemented in the performance levels it has established for measuring the promptness of (1) depositing contributions received by the State into the clearing account and (2) transferring such contributions from the clearing account to the UTF.

[4] UIPL No. 661, dated June 7, 1962, addressed this escheat of uncashed checks drawn against unemployment fund accounts.

[5] The fact that amounts have not been "expended" does not preclude the raising of a withdrawal standard issue on the basis that amounts are constructively withdrawn for an impermissible purpose. UIPL 25–89, 54 Fed. Reg. 22,973 (1989) tranmitted a Secretary's Decision stating that such constructive withdrawals are inconsistent with Federal law.

withdrawals/transfers from one unemployment fund to another. For example, except as otherwise permitted by the Cash Management Improvement Act, any drawdown from the UTF not needed for the immediate payment of UC (or other use authorized by Federal law) is inconsistent with the withdrawal standard. Similarly, a transfer from the clearing account (except as otherwise permitted under Federal law) to any account other than the UTF is inconsistent with the withdrawal standard.

6. *Action Required.* State agency administrators are requested to review existing State law provisions and State procedures to ensure that Federal law requirements as set forth in this UIPL are met. Prompt action, including corrective legislation, should be taken to assure Federal requirements are met.

7. *Inquiries.* Direct questions to your Regional Office.

[FR Doc. 96–13565 Filed 5–29–96; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of the Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Sharon I. Block, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of title 5, United States Code.

1. *Date:* June 4, 1996.
Time: 8:30 a.m. to 5:00 p.m.
Room: 317.
Program: This meeting will review applications for Teaching with Technology and Other Development and Demonstration Projects in History submitted to the Division of Research and Education Program, for projects at the October 1, 1996 deadline.

2. *Date:* June 5, 1996.
Time: 8:30 a.m. to 5:00 p.m.
Room: 317.
Program: This meeting will review applications for Teaching with Technology and Other Development and Demonstration Projects in Archaeology, Anthropology, and Western Language submitted to the Division of Research and Education Program, for projects at the October 1, 1996 deadline.

3. *Date:* June 6, 1996.
Time: 8:30 a.m. to 5:00 p.m.
Room: 317.
Program: This meeting will review applications for the Teaching with Technology and Other Development and Demonstration Projects in Interdisciplinary K–16 submitted to the Division of Research and Education Program, for projects at the October 1, 1996 deadline.

4. *Date:* June 28, 1996.
Time: 8:30 a.m. to 6:00 p.m.
Room: 415.
Program: This meeting will review applications for the Challenge Grants Program submitted to the Office of Challenge Grants, for projects at the May 1, 1996 deadline.

Michael S. Shapiro,
Acting Advisory Committee Management Officer.

[FR Doc. 96–13471 Filed 5–29–96; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On April 15, 1996, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued on May 23, 1996 to the following applicants:

Ron Koger, Permit #97–001.
David F. Parmelee, Permit #97–003.

Nadene G. Kennedy,
Permit Office.

[FR Doc. 96–13580 Filed 5–29–96; 8:45 am]

BILLING CODE 7555–01–M

Notice of Availability of the Environmental Assessment: Wastewater Treatment Plant at McMurdo Station, Antarctica

AGENCY: National Science Foundation.

SUMMARY: The National Science Foundation's research support facility at McMurdo Station, Antarctica currently disposes of sanitary wastes by maceration and discharge through an outfall pipe into the receiving waters of McMurdo Sound. The National Science Foundation is considering the construction and operation of a wastewater treatment facility at McMurdo Station, Antarctica and is seeking comment from interested citizens. An environmental assessment, Wastewater Treatment Plant at McMurdo Station, Antarctica, is available for review and comment.

DATES: Comments regarding the environmental assessment, Wastewater Treatment Plant at McMurdo Station, Antarctica, will be of most use to the planning team if they are received by June 28, 1996.

ADDRESSES: Written comments should be submitted to: Robert S. Cunningham, Office of Polar Programs, Room 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Robert S. Cunningham or Joyce Jatko at the Office of Polar Programs, National Science Foundation TEL: (703) 306–1033, FAX: (703) 306–0139, EMAIL: rcunning@nsf.gov or jjatko@nsf.gov.

SUPPLEMENTARY INFORMATION: The environmental assessment specifically addresses those physical, biological, and social environmental factors and considerations that either affect or are affected by the construction and operation of a wastewater treatment facility at McMurdo Station, Antarctica. Three alternatives are considered: continuation of current practices; extension of the wastwater outfall pipe into McMurdo Sound; and construction and operation of a wastewate treatment facility. In the third alternative, primary, secondary, and tertiary wastewater treatment is considered along with disinfection of wastewater and sludge storage and disposal. The environmental effects of each alternative are compared among alternatives. A preferred alternative is not identified.

Dated: May 22, 1996.

Carol A. Roberts,
Deputy Director, Office of Polar Programs, National Science Foundation.

[FR Doc. 96–13581 Filed 5–29–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: "Codes and Standards for Nuclear Power Plants; Subsection IWE and Subsection IWL."

3. The form number if applicable: Not applicable.

4. How often the collection is required: The American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) requires that inspection results be submitted to the regulatory and enforcement authorities having jurisdiction at the plant site. The final rule has eliminated the requirement to submit those reports to the NRC. Instead, the records are to be retained by the licensee to be made available to the NRC in the event of an NRC audit. However, if an examination reveals degradation to the extent that the structural integrity of the containment could be affected, a report must be submitted to the NRC. A one-time notification of commitment to the containment inservice inspection program would be submitted prior to implementation.

5. Who will be required or asked to report: Nuclear power plant licensees.

6. An estimate of the number of responses: Each of the 109 nuclear power plant licensees will be required to develop a containment inservice inspection (ISI) program in accordance with the ASME Code requirements, and submit a notification of commitment to the program within five years from the effective date of the rule (one-time submittal). Once the program has been implemented, and all licensees have performed the expedited containment ISI, subsequent containment ISI would be performed in accordance with the regularly scheduled ISI of each 10-year ISI interval. Approximately 12 licensees a year would be performing containment ISI and documenting the results. It is estimated that four of those licensees will detect containment degradation that will require them to report to the NRC the extent of degradation and corrective actions.

7. The estimated number of annual respondents: Once the containment ISI program plan has been implemented, the number of annual respondents is estimated to be four.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 116,554 hours over the first four years, of which 109,000 hours is a one-time implementation burden; and a recurring burden thereafter of 9,768 hours (814 hours for each of 12 licensees).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Applicable.

10. Abstract: The Nuclear Regulatory Commission (NRC) is amending its regulations to incorporate by reference the 1992 Edition with the 1992 Addenda of Subsection IWE, "Requirements for Class MC and Metallic Liners of Class CC Components of Light-Water Cooled Power Plants," and Subsection IWL, "Requirements for Class CC Concrete Components of Light-Water Cooled Power Plants," of Section XI, Division 1, of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) with specified modifications and a limitation. Subsection IWE of the ASME Code provides rules for inservice inspection, repair, and replacement of Class MC pressure retaining components and their integral attachments and of metallic shell and penetration liners of Class CC pressure retaining components and their integral attachments in light-water cooled power plants. Subsection IWL of the ASME Code provides rules for inservice inspection and repair of the reinforced concrete and the post-tensioning systems of Class CC components. Provisions have been included to prevent unnecessary duplication of examinations between the expedited examination and the routine 120-month ISI examinations. Subsection IWE and Subsection IWL have not been previously incorporated by reference into the NRC regulations. This final amendment will specify requirements to assure that the critical areas of containments are routinely inspected to detect defects that could compromise a containment's pressure-retaining integrity.

Submit, by July 1, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW., (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by July 1, 1996: Peter Francis, Office of Information and Regulatory Affairs

(3150–0011), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 8th day of May, 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 96–13514 Filed 5–29–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Carolina Power & Light Company (the licensee) to withdraw its December 29, 1992, application for proposed amendment to Facility Operating License Nos. DPR–71 and DPR–62 for the Brunswick Steam Electric Plant, Units 1 and 2, located in Brunswick County, North Carolina.

The proposed amendment would have revised the Type A test acceptance criterion for the as found containment integration leakage rate from 0.75 La to 1.0 La (and 0.75 Lt to 1.0 Lt) that represents the maximum allowable containment leakage rate.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on June 23, 1993, (58 FR 34070). However, by letter dated January 30, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated December 29, 1992, and the licensee's letter dated January 30, 1995, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Dated at Rockville, Maryland, this 16th day of May 1996.

For the Nuclear Regulatory Commission.

Brenda L. Mozafari,

Project Manager, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–13516 Filed 5–29–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 030–03368; License No. 46–02645–03; EA 96–004]

Department of the Army, Madigan Army Medical Center, Tacoma, Washington; Order Imposing Civil Monetary Penalty

I

Madigan Army Medical Center (MAMC, Licensee) is the holder of NRC Materials License No. 46–02645–03, first issued by the Atomic Energy Commission on May 12, 1960. The Nuclear Regulatory Commission (NRC or Commission) issued its first license amendment to MAMC on May 26, 1977. The license authorizes the Licensee to possess byproduct material of various types and to use such material in implementing a nuclear medicine program in accordance with the conditions specified therein.

II

An inspection and investigation of the Licensee's activities were conducted June 6 through December 21, 1995, following the Licensee's report of medical misadministrations that were discovered in June 1995. The results of the inspection and investigation, documented in a report issued on January 5, 1996, NRC Inspection Report No. 030–03368/95–01 and Investigation Report 4–95–027, indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A predecisional enforcement conference was conducted on January 18, 1996, at the Licensee's facility. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of $8,000 was served upon the Licensee by letter dated February 22, 1996. The Notice described the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice in two letters both dated March 21, 1996 (Reply to a Notice of Violation and Answer to a Notice of Violation). In its responses, the Licensee admitted the violations but requested mitigation of the proposed civil penalty based on actions taken by the Madigan Army Medical Center (MAMC) to identify and correct the violations.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as described in the Notice, and that the penalty proposed for the violations should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered* that:

The Licensee pay a civil penalty in the amount of $8,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be: whether, on the basis of the violations admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland, this 20th day of May 1996.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluation and Conclusions

On February 22, 1996, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of $8,000 was issued to Madigan Army Medical Center (MAMC or Licensee) for violations identified during an NRC inspection and investigation. The Licensee responded to the Notice in two letters both dated March 21, 1996. The Licensee admitted the violations but requested mitigation of the proposed civil penalty based on actions taken by MAMC to identify and correct the violations.

Restatement of Violations Assessed a Civil Penalty

I. Violations Assessed a Civil Penalty

A. 10 CFR 35.25(a) (1) and (2) require, in part, that a licensee that permits the receipt, possession, use, or transfer of byproduct material by an individual under the supervision of an authorized user shall: (1) instruct the supervised individual in the licensee's written quality management program (QMP); and (2) require the supervised individual to follow the written QMP procedures established by the licensee.

Item 4 of the licensee's QMP specified, in part, that when computer calculations are performed, an individual who did not make the original calculations will check the dose calculation parameters.

Contrary to the above, the licensee did not meet the above requirements as specified in the following examples:

1. As of June 6, 1995, the licensee had not assured that individuals working under the supervision of an authorized user, i.e., the medical physicist and dosimetrist, were adequately instructed in the licensee's written QMP. Specifically, although the medical physicist and dosimetrist had signed a record indicating that they had reviewed department procedures, including the QMP, they had neither received specific instruction in the procedures incorporated in the QMP nor read each of the procedures.

2. Between February 1994 and May 1995, the licensee took no action to require or assure that individuals working under the supervision of an authorized user, i.e., the medical physicist and dosimetrist, were aware of, or were following, the licensee written QMP procedures established by the licensee. Specifically, computer calculations performed were not checked by an individual who did not make the original calculations. (01012)

B. 10 CFR 35.32(a) requires, in part, that the licensee establish and maintain a written QMP to provide high confidence that byproduct material or radiation from byproduct material will be administered as directed by the authorized user.

10 CFR 35.32(a) (3) and (4) require, in part, that the QMP include written policies and procedures to meet the objectives that: (1) final plans of treatment and related calculations for brachytherapy are in accordance with the applicable written directives and (2) that each administration of radiation from brachytherapy is in accordance with the applicable written directive.

Contrary to the above, between February 1994 and May 1995, the licensee's QMP did not include written procedures that met the above stated objectives. Consequently, in five cases involving patients undergoing brachytherapy treatment during this time period, incorrect data values were entered in a computerized treatment planning system used to develop final treatment plans. The entry of incorrect data resulted in errors in the calculated dose rates identified in final treatment plans, thus causing the administered doses to deviate substantially from the prescribed doses specified in the authorized users' written directives. (01022)

These violations represent a Severity Level II problem (Supplement VI). Civil Penalty—$8,000

Summary of the Licensee's Request for Mitigation

MAMC responded to the Notice on March 21, 1996, admitting the violations but requesting mitigation of the proposed $8,000 civil penalty based on its actions to identify and correct the violations. MAMC noted in its response that "NRC enforcement actions are intended to act as a deterrent against future violations and to encourage prompt identification and comprehensive correction of violations." MAMC then noted that it had identified the violations and made immediate extensive modifications to the radiation safety program and Quality Management Program (QMP) to ensure that the violations would not recur. MAMC described each of the corrective actions and stated that "processes have been implemented to ensure compliance with the QMP as well as a broad range of internal controls developed to prevent reoccurrence." MAMC stated that a standard civil penalty for a Severity Level II violation ($4,000) should be sufficient, noting that this would more appropriately match the intent of NRC's Enforcement Policy and more accurately reflect MAMC's efforts in identifying and correcting the program deficiencies.

NRC Evaluation of Licensee's Request for Mitigation

The Licensee is correct that among the stated purposes of the NRC Enforcement Policy (NUREG–1600) is to encourage prompt identification and comprehensive correction of violations. In this case, normal application of the enforcement policy guidance in Sections VI.B.2.b and c did in fact result in credit for MAMC's identification of the violations and corrective actions. However, Section VII.A. of the Enforcement Policy provides that civil penalties may be escalated to ensure that the proposed civil penalty reflects the significance of the circumstances and conveys the appropriate regulatory message to the licensee. The violations which led to the misadministrations are of very significant regulatory concern to the NRC.

There were at least five cases involving patients undergoing brachytherapy treatment where MAMC administered radiation in excess of what was intended before MAMC discovered an error in its computerized treatment planning program. At least one of these patient misadministrations was later determined by medical consultants of the Licensee and the NRC to have had potential adverse health effects for the patient involved.

It was determined by NRC inspection and investigation that the misadministrations were caused, at least in part, by the Licensee's failure to assure that the MAMC staff was implementing the facility's Quality Management Program (QMP) as required and failure to adequately oversee the QMP. Additional training of the Licensee's personnel and increased management oversight could have prevented the misadministrations. These misadministrations were preventable.

The violations in this case were classified as a Severity Level II problem in recognition of this fundamental breakdown in the very program that is intended to prevent such misadministrations from occurring. The Enforcement Policy provides at Section VII.A.1(a) that discretion should be considered to escalate civil penalties in cases where problems are categorized at Severity Level I or II. As noted in Section I of the Enforcement Policy, enforcement action should be used not only to encourage identification and prompt, comprehensive correction of violations, but also as a deterrent to emphasize the importance of compliance with NRC requirements. While no violation is acceptable, the fact that these violations were preventable cannot be tolerated. In this case, discretion was clearly warranted to assess a civil penalty to MAMC, notwithstanding application of the identification and corrective action factors, to emphasize the importance of preventing significant misadministrations through supervision, training and management oversight. Considering the significance of the actual effects of the violations and their root causes, it was appropriate and wholly consistent with the Enforcement Policy guidance to deny mitigation, exercise discretion and assess a civil penalty of $8,000.

NRC Conclusion

The NRC concludes that an adequate basis for mitigation of the civil penalty is not provided by the Licensee. The NRC also concludes that the proposed civil penalty of $8,000 is appropriate and should be imposed by order.

[FR Doc. 96–13515 Filed 5–29–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 55–21849–EA; ASLBP No. 96–716–04–EA]

Emerick S. McDaniel; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding.

Emerick S. McDaniel

Denial of Reactor Operator's License Application

This Board is being established as a result of an April 4, 1996 letter from NRC staff sustaining a denial of Mr. McDaniel's reactor operator's license application. The petitioner, Emerick S. McDaniel, requests a hearing in accordance with 10 C.F.R. § 2.103(b)(2).

The Board is comprised of the following administrative judges:

B. Paul Cotter, Jr., Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Peter A. Morris, 10825 South Glen Road, Potomac, MD 20854

All correspondence, documents and other materials shall be filed with the Judges in accordance with 10 CFR § 2.701.

Issued at Rockville, Maryland, this 23rd day of May 1996.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 96–13512 Filed 5–29–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 84th meeting on June 25–27, 1996, Room T–2B3, at 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, December 6, 1995 (60 FR 62485).

The entire meeting will be open to public attendance.

The agenda for this meeting shall be as follows:

Tuesday, June 25, 1996—8:30 A.M. until 6:00 P.M.

Wednesday, June 26, 1996—8:30 A.M. until 6:00 P.M.

Thursday, June 27, 1996—8:30 A.M. until 4:00 P.M.

During this meeting, the Committee plans to consider the following:

A. *Total System Performance Assessment 1995*—The Committee will review comments from the NRC staff on the Department of Energy's Total System Performance Assessment 1995. Participation by the staffs of both DOE and NRC is anticipated.

B. *Meeting with the Director, NRC's Division of Waste Management, Office of Nuclear Materials Safety and Safeguards*—The Director will discuss items of current interest related to the Division of Waste Management programs which may include: progress at the Yucca Mountain site, the status of EPA's Yucca Mountain standards and NRC's high-level waste regulations, and the status of NRC draft technical guidance on expert elicitation.

C. *Preparation of ACNW Reports*—The Committee will discuss proposed reports, including: timeframes for regulatory concern, the use of expert elicitation, elements of an adequate low-level waste program, Committee priorities and task action plans, and biological effects from low-levels of ionizing radiation. The Committee may also prepare reports on topics discussed during this meeting.

D. *Meeting with the NRC Commissioners*—The Committee will discuss items of mutual interest with the Commissioners. Potential topics include: Issues and NRC activities associated with the National Research Council's Report, "Technical Bases for Yucca Mountain Standards," ACNW comments on High-Level Waste Prelicensing Program Strategy and Key Technical Issues, ACNW Priority Issues, health effects of low-levels of ionizing radiation, timespan for compliance of the proposed high-level waste repository at Yucca Mountain, Nevada, and the use of expert judgment in nuclear waste licensing.

E. *Discussions with Dr. Dade Moeller, Moeller and Associates, Inc.*—The Committee will discuss several topics of interest to the ACNW with Dr. Moeller including: the open market trading rule which would allow the operator of a facility that is releasing contaminants into the environment the option of reducing its own discharges or those of other sources in the same geographical area, the use of the linear-no-threshold model of response to doses of ionizing radiation, and defining a critical group to predict the anticipated effects of a waste repository.

F. *DOE's Program Plan*—The Committee will meet with representatives of the Department of Energy and the NRC staff to review DOE's current program for developing a high-level waste repository.

G. *Specification of Critical Group and Reference Biosphere*—The Committee will review options under consideration for specifying the critical group and reference biosphere to be used in a performance assessment of a nuclear waste disposal facility.

H. *Time of Compliance in Low-Level Waste Disposal*—The Committee will discuss options for setting a regulatory time of compliance for a low-level waste disposal facility. Participants may include representatives of the NRC staff, the DOE, and individual states.

I. *Committee Activities/Future Agenda*—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members.

J. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 27, 1995 (60 FR 49924). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Chief, Nuclear Waste Branch, Mr. Richard K. Major, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief, Nuclear Waste Branch prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Mr. Major if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Richard K. Major, Chief, Nuclear Waste Branch (telephone 301/415–7366), between 8:00 A.M. and 5:00 P.M. EDT.

ACNW meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the "NRC MAIN MENU." Direct Dial Access number to FedWorld is (800) 303–9672; the local direct dial number is 703–321–3339.

Dated: May 23, 1996.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 96–13513 Filed 5–29–96; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on June 11, 1996, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, June 11, 1996—1:30 p.m. until 3:30 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. It may also discuss the status of appointment of members to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: May 23, 1996

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 96–13511 Filed 5–29–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Information Collection Activity Under OMB Review

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*), this notice requests further comment on the following proposed information collection contained in the revision to Office of Management and Budget (OMB) Circular A–21, "Cost Principles for Educational Institutions," published in the **Federal Register** on May 8, 1996 (61 FR 20880).

The information collection request involves a submission of the Cost Accounting Standards Board's (CASB) Disclosure Statement (DS–2) by educational institutions receiving more than $25 million in Federal sponsored agreements. Circular A–21's information collection requirement covers approximately 20 additional educational institutions than those subject to CASB's regulatory requirement for filing the DS–2, pursuant to Public Law 100–679, which was previously approved and assigned OMB control number 0348–0055 (which expires August 31, 1997).

OMB estimates that the preparation of the DS–2 will take 120 hours to complete.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the revision, contact Gilbert Tran, Office of Federal Financial Management, OMB (telephone: 202–395–3993).

ADDRESSES: Written comments should be sent by July 29, 1996 to: Gilbert Tran, Office of Federal Financial Management, OMB, Room 6025, New Executive Office Building, Washington, DC 20503.

John B. Arthur,

Associate Director for Administration.

[FR Doc. 96–13533 Filed 5–29–96; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 11Ab2–1 and Form SIP; SEC File No. 270–23; OMB Control No. 3235–0043.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. §§ 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for approval of extension on the following rule and form: Rule 11Ab2–1 and Form SIP.

Rule 11Ab2–1 and Form SIP establish the procedures by which a Securities Information Processor ("SIP") files and amends its SIP registration form. The information filed with the Commission pursuant to Rule 11Ab2–1 and Form SIP is designed to provide the Commission with the information necessary to make the required findings under the Act before granting the SIP's application for registration. In addition, the requirement that a SIP file an amendment to correct any inaccurate information is designed to assure that the Commission has current, accurate information with respect to the SIP. This information is also made available to members of the public.

Only exclusive SIPs are required to register with the Commission. An exclusive SIP is a SIP which engages on an exclusive basis on behalf of any national securities exchange or registered securities association, or any national securities exchange or

registered securities association which engages on an exclusive basis on its own behalf, in collecting, processing, or preparing for distribution or publication, any information with respect to (i) transactions or quotations on or effected or made by means of any facility of such exchange or (ii) quotations distributed or published by means of any electronic quotation system operated by such association. The federal securities laws require that before the Commission may approve the registration of an exclusive SIP, it must make certain mandatory findings. It takes a SIP applicant approximately 400 hours to prepare documents which include sufficient information to enable the Commission to make those findings. Currently, there are only two exclusive SIPs registered with the Commission; The Securities Information Automation Corporation ("SIAC") and the National Association of Securities Dealers, Inc. ("NASD"). SIAC and the NASD are required to keep the information on file with the Commission current, which entails filing a form SIP annually to update information.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: May 22, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13458 Filed 5–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21981; No. 812–9848]

Aetna Life Insurance and Annuity Company, et al.

May 23, 1996.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Aetna Life Insurance and Annuity Company ("Aetna") and Variable Life Account B of Aetna Life Insurance and Annuity Company ("Separate Account").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) granting exemptions from Section 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) thereunder.

SUMMARY OF APPLICATION: Applicants request an order that will permit the Separate Account, any future separate accounts established by Aetna ("Future Accounts"), and all other persons, other than Aetna, that may, in the future serve as a principal underwriter ("Future Broker-Dealers") of certain flexible premium variable life insurance policies issued by Aetna, to deduct from premium payments an amount that is reasonably related to the Aetna's increased federal tax burden resulting from the receipt of those premium payments, pursuant to Section 848 of the Internal Revenue Code of 1986, as amended ("Code").

FILING DATE: The application was filed on November 15, 1995 and was amended on May 17, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 18, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants: Susan E. Bryant, Esq., Aetna Life Insurance and Annuity Company, 151 Farmington Avenue, Hartford, Connecticut 06156.

FOR FURTHER INFORMATION CONTACT: Pamela K. Ellis, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Aetna is a stock life insurance company, organized in Connecticut, and is a wholly owned subsidiary of Aetna Life and Casualty Company.

2. The Separate Account is a separate account established by Aetna and registered under the 1940 Act as a unit investment trust. Currently, the Separate Account has 17 subaccounts each of which invests in a corresponding investment portfolio of an open-end management investment company registered under the 1940 Act. The Separate Account funds flexible premium variable life insurance policies issued by Aetna ("Current Policies") for which a registration statement has been filed with the Commission to register interests in the Current Policies under the Securities Act of 1933, and flexible premium variable life insurance policies developed by Aetna in the future ("Future Policies") (Current Policies, together with Future Policies, "Policies"). Aetna anticipates that any Future Accounts established to fund Current Policies or Future Policies would be registered under the 1940 Act as unit investment trusts.

3. Aetna is the principal underwriter and distributor for the Policies. Aetna is a registered broker-dealer under the Securities Exchange Act of 1934 ("1934 Act"), and is a member of the National Association of Securities Dealers, Inc. ("NASD"). Any Future Broker-Dealer will be registered as a broker-dealer under the 1934 Act, and will be a member of the NASD.

4. Applicants propose to deduct from premium payments received under the Policies a 1.25% charge to reimburse Aetna for the increase in its federal income taxes resulting from Section 848 of the Code. The charge will be reasonably related to Aetna's increased federal tax burden.

5. The Omnibus Budget Reconciliation Act of 1990 ("OBRA 1990"), amending Section 848 of the Code, requires life insurance companies to capitalize and amortize over ten years certain general expenses for the current year. Prior law allowed these expenses to be deducted in full from the current year's gross income. Section 848, as amended, effectively accelerates the realization of income from specified contracts and, consequently, the payment of taxes on that income. Taking into account the time value of money, Section 848 increases the insurance company's tax burden because the amount of general deductions that must be capitalized and amortized is measured by the premiums received under the policies.

6. The amount of expenses subject to Section 848 equals a percentage of the current year's net premiums received (*i.e.*, gross premiums minus return premiums and reinsurance premiums) under life insurance or other contracts categorized under this Section. The Policies will be categorized under Section 848 as life insurance contracts requiring 7.7% of the net premiums received to be capitalized and amortized under the schedule set forth in Section 848(c)(1).

7. The increased tax burden on every $10,000 of net premiums received under the Policies is quantified by Applicants as follows. For each $10,000 of net premiums received in a given year, Aetna must capitalize $770 (*i.e.*, 7.7% of $10,000), and $38.50 of this amount may be deducted in the current year. The remaining $731.50 ($770 less $38.50) is subject to taxation at the corporate tax rate of 35% and results in $256.03 (.35% × $731.50) more in taxes for the current year than Aetna would have owed prior to the enactment of OBRA 1990. However, the current tax increase will be offset partially by deductions allowed during the next ten years, which result from amortizing the remainder of the $770 ($77 in each of the following nine years and $38.50 in year ten).

8. In Aetna's business judgement, it is appropriate to use a discount rate of at least 10% in evaluating the present value of its future tax deductions. Capital that Aetna must use to pay its increased federal tax burden under Section 848 will be unavailable for investment. The cost of capital used to satisfy this increased tax burden essentially will be Aetna's after-tax rate of return (*i.e.*, the return sought on invested capital), which is at least 10%.[1] Accordingly, Applicants submit that the targeted rate of return is appropriate for use in this present value calculation.

9. Using a federal corporate tax rate of 35%, and assuming a discount rate of 10%, the present value of the tax effect of the increased deductions allowable in the following ten years, which partially offsets the increased tax burden, amounts to $160.40. The effect of Section 848 on the Policies is, therefore, an increased tax burden with a present value of $95.63 for each $10,000 of net premium payments received (*i.e.*, $256.03 minus $160.40).

10. Aetna does not incur incremental federal income tax when it passes on state premium taxes to Policy owners because state premium taxes are deductible in computing federal income taxes. In contrast, federal income taxes are not deductible in computing Aetna's federal income taxes. To compensate Aetna fully for the impact of Section 848, Aetna must impose an additional charge to make it whole for not only the $95.63 additional tax burden attributable to Section 848, but also the tax on the additional $95.63 itself. This additional charge can be determined by dividing $95.63 by the complement of 35% federal corporate income tax rate (*i.e.*, 65%), resulting in an additional charge of $147.12 for each $10,000 of net premiums, or 1.47%.

11. Based on its prior experience, Aetna reasonably expects to take fully almost all future deductions. It is Aetna's judgement that a 1.25% charge would reimburse it for the increased federal income tax liabilities, under Section 848. Applicants represent that the 1.25% charge will be reasonably related to Aetna's increased federal income tax burden under Section 848. This representation takes into account the benefit to Aetna of the amortization permitted by Section 848 and the use of a 10% discount rate (which is equivalent to Aetna's targeted rate of return) in computing the future deductions resulting from such amortization.

Applicants' Legal Analysis

1. Applicants request an order under Section 6(c) of the 1940 Act exempting them and any Future Accounts from the provisions of Section 27(c)(2) of the 1940 Act, and Rule 6e–3(T)(c)(4)(v) thereunder, to the extent necessary to permit Applicants and any Future Accounts to deduct from premium payments made under the Policies, a charge in an amount that is reasonable in relation to Aetna's increased federal tax burden related to the receipt of such premium payments, without treating such charge as a sales load. Applicants assert that it is appropriate to deduct a charge for an insurer's increased tax burden attributable to premiums received, and to exclude the deduction of this charge from sales load, because it is a legitimate expense of the company and not for sales and distribution expenses. In addition, Applicants request that the order extend the same exemptions granted to Aetna, to any Future Broker-Dealer that may in the future serve as principal underwriter for the Current Policies or Future Policies.

2. Section 6(c) authorizes the Commission, by order and upon application, to exempt any person, security, or transaction, or class of persons, securities, or transactions, from any provisions of the 1940 Act. The Commission grants relief under Section 6(c) to the extent an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. The Separate Account is, and the Future Accounts will be, regulated under the 1940 Act as issuers of periodic payment plan certificates. Accordingly, the Separate Account, the Future Accounts, and Aetna are subject to Section 27 of the 1940 Act.

4. Section 27(c)(2) prohibits the sale of periodic payment plan certificates unless the following conditions are met. The proceeds of all payments (except amounts deducted for "sales load") must be held by a trustee or custodian having the qualifications established under Section 26(a)(1) for the trustees of unit investment trusts.

5. "Sales load" is defined under Section 2(a)(35), in relevant part, as:

> The difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities.

Sales loads on periodic payment plan certificates are limited by Sections 27(a)(1) and 27(h)(1) to a maximum of 9% of total payments.

6. Rule 6e–3(T) provides a range of exemptive relief to separate accounts issuing flexible premium variable life insurance contracts, as defined in subparagraph (c)(1) of that Rule.

For example, paragraph (b)(13)(iii)(E) of Rule 6e–3(T) provides exemptive relief from Section 27(c)(2) by permitting an insurer to make certain deductions, other than sales load, including the insurer's tax liabilities from receipt of premium payments imposed by states or by other governmental entities. Applicants assert that the proposed tax burden charge arguably is covered by subparagraph (b)(13)(iii) or Rule 6e–3(T). Applicants note, however, that the language of paragraph (c)(4) of the Rule appears to require that deductions for federal tax obligations resulting from receipt of

[1] In determining the rate of return used in arriving at the discount rate, Aetna considered a number of factors. These factors included current market interest rates and expected interest rate trends, inflation, Aetna's anticipated long-term growth rate, the level of risk acceptable to Aetna, and available information about rates of return obtained by other life insurance companies.

premium payments be treated as "sales load."

7. Rule 6e–3(T)(c)(4) defines "sales load" during a period as the excess of any payments made during that period over certain specified charges and adjustments, including a deduction for state premium taxes. Under a literal reading of paragraph (c)(4) of the Rule, a deduction for an insurer's increased federal tax burden does not fall squarely into those itemized charges or deductions, arguably causing the proposed tax burden charge to be treated as part of "sales load."

8. Applicants submit that the Rule 6e–3(T)(c)(4)(v) limitation of the premium tax exclusion from the definition of "sales load" to state premium taxes probably is an historical accident related to that fact that when Rule 6e–3(T) was adopted in 1984, and when it was amended in 1987, the additional Code Section 848 tax burden attributable to the receipt of premiums did not exist. Applicants further submit that nothing in the administrative history of Rule 6e–3(T) suggests that the exclusion from the definition of sales load of deductions for tax liabilities attributable to the amount of premium payments received was tied to the type of government entity imposing such taxes.

9. Applicants also request exemptions for any Future Accounts that Aetna may establish to support the Current Policies or any Future Policies, as well as for each Future Broker-Dealer that may distribute the Current Policies or Future Policies.

10. Applicants assert that the standards of Section 6(c) are satisfied because the requested relief is appropriate in the public interest and consistent with the purposes of the 1940 Act and the protection of investors. The exemptive relief would eliminate the need for Aetna to file additional exemptive applications for each Current Policy or Future Policy to be issued through a Future Account with respect to the same issues under the 1940 Act that have been addressed in this application, as well as for each Future Broker-Dealer that distributes the Current Policy or Future Policy, and thus would promote competitiveness in the variable life insurance market by avoiding delay, reducing administrative expenses, and maximizing efficient use of resources. Applicants further assert that the exemptive relief would enhance Aetna's ability to effectively take advantage of business opportunities as they arise. If Aetna were required to seek exemptive relief repeatedly with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection thereby and might be disadvantaged as a result of increased overhead expenses.

11. Applicants believe that a charge of 1.25% of premium payments would reimburse Aetna for the impact of Section 848 of the Code, as currently written on its federal income tax liabilities. Aetna believes, however, that it may have to increase this charge if any change in, or interpretation of, Section 848 or any successor provision results in a further increased federal income tax burden due to the receipt of premiums. Such an increase could result from a change in corporate federal income tax rate, a change in the 7.7% figure, or a change in the amortization period.

Conditions for Relief

1. Aetna will monitor the reasonableness of the 1.25% charge.

2. The registration statement for each Policy under which the 1.25% tax burden charge is deducted will: (a) disclose the charge; (b) explain the purpose of the charge; and (c) state that the charge is reasonable in relation to Aetna's increased federal tax burden under Section 848 of the Code.

3. The registration statement for each Policy providing for the 1.25% tax burden charge will contain as an exhibit an actuarial opinion as to: (a) the reasonableness of the charge in relation to Aetna's increased federal tax burden under Section 848 of the Code resulting from the receipt of premiums; (b) the reasonableness of the targeted rate of return that is used in calculating such charge; and (c) the appropriateness of the factors taken into account by Aetna in determining such targeted rate of return.

Conclusion

For the reasons and upon the facts set forth above, Applicants submit that the requested exemptions from Section 27(c)(2) of the 1940 Act and Rule 6e–3(T)(c)(4)(v) thereunder, are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13544 Field 5–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21978; 812–10162]

Lord Abbett Global Fund, Inc., et al.; Notice of Application

May 23, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Lord Abbett Global Fund, Inc. (the "Fund"), Lord, Abbett & Co. ("Lord Abbett"), and Dunedin Fund Managers Limited ("Dunedin").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from section 15(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit the implementation, without shareholder approval, of a new sub-advisory agreement (the "New Sub-Advisory Contract") for a period of up to 120 days following the termination of the former sub-advisory contract on March 19, 1996 ("Former Sub-Advisory Contract") (the "Interim Period"). The order also would permit the sub-adviser to receive from the Fund fees earned during the Interim Period after shareholders have approved the New Sub-Advisory Contract.

FILING DATE: The application was filed on May 21, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 17, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: The Fund and Lord Abbett, 767 Fifth Avenue, New York, New York 10153 and Dunedin, Dunedin House, 25 Ravelston Terrace, Edinburgh EH4 3EX, Scotland.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund is an open-end management investment company registered under the Act and consists of two series, the Equity Series and the Income Series. Lord Abbett, a registered investment adviser, serves as investment adviser to the Fund and has engaged Dunedin to serve as sub-adviser to both series pursuant to the Former Sub-Advisory Contract. Dunedin is a Scottish corporation that is registered under the Investment Adivisers Act of 1940 as an investment adviser and is a wholly-owned subsidiary of DFM Holdings Limited ("DFM Holdings").

2. Prior to March 19, 1996, 50.5% of the outstanding capital of DFM Holdings was owned by the British Linen Bank Group, Limited, with the remaining interests held by four investment trusts (the "Vendors"). On February 15, 1996, the Vendors entered into a sale and purchase agreement (the "Sale Agreement") pursuant to which Edinburgh Fund Managers Group plc ("Edinburgh") agreed to acquire all of the outstanding capital shares of DFM Holdings, contingent upon certain events. All Dunedin clients were notified of the proposed sale on February 16, 1996. Representatives of Edinburgh and Dunedin met with representatives of Lord Abbett and the Fund on February 28, 1996 to discuss the possible continuation of the advisory relationship between Dunedin and the Fund. At that time, Edinburgh was told that Lord Abbett would make a recommendation to the Fund's board of directors (the "Board") to be considered at a meeting of the Board to be held on March 14, 1996.

3. On March 14, 1996, the Board approved the New Sub-Advisory Contract with respect to the Equity Series. As the same time, the Board determined that the Former Sub-Advisory Contract with respect to the Income Series was no longer desirable and determined not to approve a new contract. The Board also concluded that it was in the best interests of the Equity Series and its shareholders to continue to retain Dunedin as sub-adviser during the Interim Period in order to minimize the disruption in advisory services to the Equity Series. The Board also voted to recommend to shareholders of the Equity Series that they approve the New Sub-Advisory Contract.

4. On March 18, 1996, a preliminary proxy statement was filed with the SEC for a shareholder meeting to vote on the New Sub-Advisory Contract. It is anticipated that the shareholder meeting will be held on June 19, 1996. The terms and conditions of the New Sub-Advisory Contract are identical to those of the Former Sub-Advisory Contract, except that the dates of execution and commencement have changed, and references to the Income Series has been eliminated. The Sale Agreement was consummated on March 19, 1996, immediately after which the Former Sub-Advisory Contract terminated.

5. Among other things, the Board was advised at its March 14th meeting the fact that it is anticipated that most of Dunedin's investment personnel will continue to work for Dunedin after the acquisition and that Edinburgh, has substantial experience in the provision of advisory and management services to U.K. institutions. The Board was also advised that the advisory and other services to be provided to the Equity Series under the New Sub-Advisory Contract would be of a scope and quality equivalent to the scope and quality of services provided to the Equity Series by Dunedin pursuant to the Former Sub-Advisory Contract. At a subsequent meeting held on April 17, 1996, the Board concluded that it would be appropriate for Dunedin to receive compensation for its services during the Interim Period.

6. The Fund and Dunedin propose to enter into a separate agreement providing that amounts otherwise payable to Dunedin under the New Sub-Advisory Contract will be held by an unaffiliated escrow agent pending shareholder consideration of the New Sub-Advisory Contract. Amounts in the account will be paid to Dunedin only upon shareholder approval and in accordance with the requested order.

Applicants' Legal Analysis

1. Applicants seek an exemption pursuant to section 6(c) from section 15(a) of the Act to permit the implementation, without shareholder approval, of the New Sub-Advisory Contract during the Interim Period. Applicants also request relief so that Dunedin may receive all fees earned under the New Sub-Advisory Contract during the Interim Period if and to the extent they are approved by the shareholders of the Equity Series.

2. Section 15(a) prohibits an investment adviser from providing investment advisory services to a registered investment company except under a written contract that has been approved by a majority of the voting securities of such investment company. Section 15(a) further requires that such written contract provide for its automatic termination in the event of an assignment. Section 2(a)(4) defines "assignment" to include any direct or indirect transfer of a contract by the assignor. The consummation of the Sale Agreement resulted in an "assignment," within the meaning of section 2(a)(4), of the Former Sub-Advisory Contract, thereby resulting in the termination of the Former Sub-Advisory Contract, according to its terms.

3. Section 6(c) provides, in relevant part, that the SEC may; conditionally or unconditionally, by order, exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. Applicants submit that the requested relief meets this standard.

4. Applicants state that they will take all appropriate actions to prevent any diminution in the scope or quality of services provided to the Equity Series. Applicants state that obtaining shareholder approval prior to the consummation of the Sales Agreement was not possible because the Fund did not have sufficient advance notice of the acquisition, the terms and timing of which were wholly determined by the Vendors in response to a number of factors substantially unrelated to the Fund or Lord Abbett. In addition, applicants state that the terms of the New Sub-Advisory Contract are substantially similar to that of the Former Sub-Advisory Contract. Applicants believe that to deprive Dunedin of advisor fees under the New Sub-Advisory Contract during the Interim Period for no reason other than the fact that the acquisition (over which Dunedin had no direct control) resulted in an assignment of the Former Sub-Advisory Contract would be an unduly harsh and unreasonable penalty.

Applicants' Condition

Applicants agree as conditions to the issuance of the requested exemptive order that:

1. The New Sub-Advisory Contract will have the same terms and conditions as the Former Sub-Advisory Contract, except that the dates of execution and commencement have changed, and references to the Income Series have been eliminated.

2. Fees earned by Dunedin during the Interim Period under the New Sub-Advisory Contract will be maintained in an interest bearing escrow account, and the amounts in such account (including

interest earned on such amounts) will be paid (a) to Dunedin only upon approval of the shareholders of the Equity Series or (b) in the absence of such approval, to the Fund.

3. The fund will hold a special meeting of shareholders to vote on the approval or disapproval of the New Sub-Advisory Contract, on or before the 120th day following March 19, 1996. It is expected that the special meeting will be held June 19, 1996, but it will be held no later than July 17, 1996.

4. Dunedin or Edinburg will bear the costs of preparing and filing this application and the costs of a special meeting relating to the solicitation of the approvals of the Fund's shareholders of the New Sub-Advisory Contract necessitated by the acquisition.

5. Dunedin will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Equity Series under the New Sub-Advisory Contract will be at least equivalent, in the judgment of the Board, including the independent directors, to the scope and quality of services previously provided. In the event of any material change in personnel providing services pursuant to the New Sub-Advisory Contract, Dunedin will apprise and consult the Board to assure that the Board, including the independent directors, are satisfied that the services provided by Dunedin will not be diminished in scope and quality.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13546 Filed 5–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21979; 812–10074]

Stagecoach Funds, Inc., et al.; Notice of Application

May 23, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Stagecoach Funds, Inc. ("Stagecoach"), Life & Annuity Trust (collectively with Stagecoach, the "Companies"), and Wells Fargo Bank, N.A. ("Wells Fargo Bank").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from section 15(f)(1)(A) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit Stagecoach to retain its present directors following a reorganization involving other registered investment companies. Without the requested exemption, Stagecoach would have to reconstitute its board of directors after the reorganization to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) in order to comply with the safe harbor provisions of section 15(f).

FILING DATES: The application was filed on April 3, 1996, and amended on May 21, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 17, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: the Companies, 111 Center Street, Little Rock, Arkansas 72201 and Wells Fargo, 420 Montgomery Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Companies is a registered open-end management investment company. Wells Fargo Bank, a wholly-owned subsidiary of Wells Fargo & Company ("Wells Fargo"), currently serves as investment adviser to each series of the Companies.

2. On April 1, 1996, Wells Fargo acquired First Interstate Bancorp ("Interstate") and its indirect wholly-owned subsidiary of Interstate, First Interstate Capital Management, Inc. ("FICM") (the "Holding Company Merger"). Interstate shareholders received consideration in connection with the Holding Company Merger. The Holding Company Merger, whereby FICM became an indirect wholly-owned subsidiary of Wells Fargo, constituted a change in control of FICM.

3. FICM currently serves as investment adviser to the Pacifica Funds Trust and Pacifica Variable Trust (collectively, the "Pacifica Trusts"). The Holding Company Merger caused an automatic termination of FICM's then current advisory agreements with the Pacifica Trusts. At meetings in February and March 1996, the boards of trustees of the Pacifica Trusts approved the interim continuation of the Pacifica Trusts' advisory relationship with FICM following the Holding Company Merger, subject to shareholder ratification and approval.[1]

4. Several new and existing series of Stagecoach propose to acquire the assets of each series of the Pacific Funds Trust (the "Reorganization"). The Reorganization is intended to consolidate the operations of separate mutual fund families into fewer separate companies. Among other things, it is believed that the Reorganization will improve efficiency, eliminate duplicate shareholder costs and market overlap, facilitate the consolidation of mutual fund investment advisory capabilities by Wells Fargo Bank, and provide potentially enhanced investment returns.

5. At meetings held in late April and mid-May, the Pacifica Funds Trust board of trustees and the Stagecoach board of directors (collectively, the "Boards"), determined, after reviewing and evaluating relevant information, that (a) participation in the Reorganization is in the best interest of the particular series and (b) the interests of existing shareholders will not be diluted as a result of participating in the Reorganization.

6. The Pacifica Funds Trust Board has called a special meeting of the Pacifica Funds Trust shareholders to be held in July 1996, for the purpose of considering the Reorganization. Approval of a particular series' participation in the Reorganization will require approval by a majority of the outstanding shares of such series entitled to vote at the meeting, voting separately on a series-by-series basis. If required by its declaration of trust or by state law, approval may also be required

[1] The Pacifica Trusts received an SEC exemptive order permitting them to implement interim advisory contracts with FICM without shareholder approval for up to 120 days following the consummation of the merger. Investment Company Act Release Nos. 21794 (March 1, 1996) (notice) and 21860 (March 27, 1996) (order).

by a majority of the outstanding shares of Pacifica Funds Trust entitled to vote at the meeting, voting in the aggregate and not by series or class. These special meetings also will be called for the purpose of ratifying and approving the Pacifica Funds Trust's interim investment advisory agreements with FICM.[2]

7. There are no plans currently to reorganize any of the series operating under Pacifica Variable Trust into corresponding series of Life & Annuity Trust, although such a transaction may be considered in the future. Accordingly, applicants request that the order extend to Life & Annuity Trust to the same extent as Stagecoach. Any such reorganization in the future will be the same, in all material respects, to the transactions described in the application with respect to Stagecoach.

Applicants' Legal Analysis

1. Section 15(f) of the Act is a safe harbor that permits an investment adviser to a registered investment company (or an affiliated person of the investment adviser) to realize a profit upon the sale of its business if certain conditions are met. One of these conditions is set forth in section 15(f)(1)(A). This condition provides that, for a period of three years after such a sale, at least 75% of the board of an investment company may not be "interested persons" with respect to either the predecessor or successor adviser of the investment company. Section 2(a)(19)(B)(v) of the Act defines an interested person of an investment adviser to include any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of such broker or dealer. In addition, section 2(a)(19)(B)(iii) defines an interested person of an investment adviser to include anyone who has any interest in any security issued by the investment adviser or by a controlling person thereof.

2. The restrictions of section 15(f)(1)(A) do not currently apply to the Companies as a result of the Holding Company Merger because there was no change in control of Wells Fargo Bank. Because Interstate shareholders received consideration in connection with the Holding Company Merger, however, the restrictions of section 15(f)(1)(A) currently apply to the Pacifica Trusts. The Reorganization may, therefore, have the effect of subjecting Stagecoach (which will then be offering series that are successors to the Pacifica Funds Trust[3]), to the restrictions of section 15(f)(1)(A). In particular, Stagecoach will be subject to the requirement that, for at least three years following a change in control of an investment adviser, at least 75% of the directors of a successor investment company not be "interested persons" of the predecessor or successor adviser.

3. The board of directors of each Company is comprised of the same seven individuals. Currently, four of the seven directors of each Company may be considered interested persons of Wells Fargo Bank. Two of these directors are officers of a registered broker-dealer, and another is a limited partner of a government securities dealer. As such, these three directors are affiliated persons of a registered broker or dealer (the "Broker-Affiliated Directors"), and interested persons of Wells Fargo Bank.[4] Another director is a shareholder of Wells Fargo, the parent of Wells Fargo Bank, and therefore is an interested person of Wells Fargo Bank. The three remaining directors are not interested persons of either the Companies or the predecessor or successor adviser.

4. One of the Broker-Affiliated Directors has tendered her resignation, effective upon consummation of the Reorganization. The remaining Stagecoach directors have voted to add one of the individuals currently serving as a non-interested trustee of the Pacifica Trusts as a non-interested director of Stagecoach. This will result in four of the seven Stagecoach directors being non-interested following the consummation of the Reorganization. Because, after the Reorganization, three of the seven directors of the Companies will be interested persons of the predecessor and successor advisers, absent an exemption, applicants would be unable to comply with the requirements of section 15(f)(1)(A).

5. Section 6(c) provides, in relevant part, that the SEC may, conditionally or unconditionally, by order, exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

6. Applicants believe that the requested exemption is necessary or appropriate in the public interest. Applicants submit that section 15(f)(1)(A) was designed primarily to address the types of biases and conflicts of interest that might exist where a fund's board of directors is influenced by a substantial number of interested directors to approve a transaction because the interested directors have an economic interest in the adviser or another party to the transaction, and the adviser has a material economic motivation to influence the interested directors. Applicants argue that no such circumstances exist with respect to the Broker-Affiliated Directors and the Holding Company Merger and the Reorganization. Although the Broker-Affiliated Directors are technically interested persons of Wells Fargo Bank and FICM (the "Advisers"), these directors and the broker-dealers with which they are affiliated are not affiliated persons of the Advisers within the meaning of section 2(a)(3) of the Act, nor are they controlled by or under common control with the Advisers. Moreover, none of these directors is an officer, director, partner, co-partner, or employee of any Adviser. The broker-dealers with which the Broker-Affiliated Directors are affiliated do not share any common directors, officers, or employees with the Advisers and do not control, are not controlled by, and are not under common control with the Advisers. Applicants also state that the Distributor is retained directly by the Companies. Accordingly, the Companies' retention of the Distributor is not dependent on the identity of, or transactions involving, the Adviser. The Distributor's compensation for its services is based on asset levels and/or the receipt of sales loads, and it therefore has a direct economic interest in having the Companies prosper and grow. In this respect, the Distributor's interests are consistent with the interests of the shareholders of the Companies.

7. Applicants believe that the requested exemption is consistent with the protection of investors. Applicants state that all the directors, with the exception of the new non-interested director, have served on the Boards of the Companies since their inception. In addition, applicants state that compelling one or more of the Broker-Affiliated Directors to resign from the Stagecoach Board in connection with

[2] FICM has been renamed Wells Fargo Investment Management, Inc.

[3] None of the trustees of the Pacifica Trusts is an interested person of FICM or Wells Fargo Bank for the purposes of section 15(f)(1)(A).

[4] The exemption provided by rule 2a19–1 is not available with respect to the two directors who are officers of a broker-dealer because the broker-dealer serves as placement agent or distributor to the Companies (the "Distributor"). The exemption provided by rule 2a19–1 is not available with respect to the director who is a limited partner of a government securities dealer because the dealer engages in government securities transactions with the broker-dealer, as well as the Wells Fargo Bank, all of which fall within the definition of "complex" in the rule. Accordingly, this director does not meet the condition specified in the rule.

the Reorganization would deprive Stagecoach and its shareholders of the services of skilled individuals possessing considerable experience and financial and business acumen at a time when their experience may be most needed. Adding a substantial number of disinterested directors to the Board would require a lengthy interview and selection process, which could delay and increase the cost of the Reorganization, and could make the Board unwieldy. Further, applicants state that the three interested directors remaining after the Reorganization will continue to be treated as interested persons of Stagecoach and of Wells Fargo Bank for all purposes other than section 15(f)(1)(A).

8. Applicants also believe that the requested exemption is consistent with the purposes fairly intended by the policies and provisions of the Act. Applicants submit that section 15(f) is intended to permit the SEC to deal flexibly with situations where the imposition of the 75% requirement might pose an unnecessary obstacle or burden on a fund. Further, applicants state that section 15(f) was intended to ensure that, where there is a change in control of an investment adviser, the interests of the investment company shareholders will be protected and they will not be subject to any unfair burden as a result of such transaction. Applicants argue that the proposed Reorganization is structured to protect the interests of the shareholders of the Pacifica Funds Trust and Stagecoach and that shareholders will benefit from the requested exemption.

Applicants' Condition

Applicants agree as conditions to the issuance of the requested exemptive order that:

If within three years of the consummation of the Holding Company Merger (assuming the Reorganization is also consummated), it becomes necessary to replace any director, that director will be replaced by a director who is not an "interested person" of Wells Fargo Bank or FICM within the meaning of section 2(a)(19)(B) of the Act, unless at least 75% of the directors at that time are not interested persons of Wells Fargo Bank or FICM.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13545 Filed 5–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21980; 812–10104]

THC Partners; Notice of Application

May 23, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: THC Partners.

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from all provisions of the Act.

SUMMARY OF APPLICATION: Applicant requests an exemption from all provisions of the Act. Applicant is a private family-controlled special purpose investment vehicle whose interests are owned by the family and certain other persons.

FILING DATES: The application was filed on April 23, 1996 and amended on May 23, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 17, 1996, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant: 4200 Texas Commerce Tower, 600 Travis, Houston, Texas 77002.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Texas general partnership organized in 1977. Applicant's partners consist of the maternal heirs of Howard R. Hughes, Jr. ("Howard Hughes"), including trusts established for family members of maternal heirs and estates of deceased maternal heirs (collectively, the "Hughes Maternal Heirs") and partners and former partners of Andrews & Kurth, L.L.P. ("Andrews & Kurth"), a Houston law firm, including trusts established for Andrews & Kurth family members and heirs of deceased Andrews & Kurth partners (collectively, "A&K"). Applicant's assets presently consist of common stock of The Hughes Corporation ("THC") and limited partnership interests in Howard Hughes Properties, L.P. ("HHPLP") (collectively, "Hughes"). Hughes was formed to hold, manage, and develop the assets of the estate of Howard Hughes (the "Hughes Estate") including casinos, a large military aircraft manufacturer, and widespread real estate holdings.

2. Howard Hughes dies in April 1976 unmarried and childless. A complex estate battle began when 32 wills were offered for probate, and California, Nevada, and Texas each claimed domicile for purposes of subjecting Howard Hughes' assets to death taxes. Andrews & Kurth represented Howard Hughes and various of his companies for over 50 years. William R. Lummis, son of Annette Gano Lummis, Howard Hughes' aunt, and a senior partner at Andrews & Kurth, left the firm shortly after Howard Hughes' death to undertake management of the Hughes Estate and serve as executive officer of Hughes.

3. The Hughes Maternal Heirs, claiming through Annette Gano Lummis, the beneficiary holding the largest single interest in the Hughes Estate, did not possess the resources to finance the long, complicated, multi-jurisdictional legal defense of their claim. The Hughes Maternal Heirs and A&K formed applicant to prosecute and defend the claims of the Hughes Maternal Heirs. In return for the contribution of their interests in the Hughes Estate, the Hughes Maternal Heirs collectively received 66⅔% of the interests in applicant. In return for undertaking to defend, or cause to be defended, and otherwise to provide the financial resources to further applicant's purposes, A&K received a 33⅓% interest in applicant. In 1983, the last of the final, non-appealable orders establishing ownership of the Hughes Estate was issued that decreed that applicant was the beneficiary of approximately 71% of the Hughes Estate's assets. Other than through gifts and testamentary dispositions, applicant has not changed composition since its inception. As of the date of the filing of this application, the Hughes Maternal Heirs owned 67.279% of the interests in applicant and A&K owned 32.721%. Currently, there are 86 Maternal Heirs and 124 members of A&K.[1]

4. Applicant is internally managed by three of the general partners (the "Managing Partners") who receive no compensation. The current Managing Partners are Platt W. Davis, III ("Davis"), Frederick R. Lummis, Jr. ("Frederick Lummis"), and Milton H. West, Jr. ("West"). Davis holds interests in applicant both as a donee of his mother, an original Hughes Maternal Heir, and as a legatee under the will of Annette Gano Lummis. Frederick Lummis is William Lummis' brother. West has been a partner of Andrews & Kurth for over 50 years and was the partner in charge of the firm's representation of Howard Hughes. The Managing Partners originally were selected through informal discussions among the Hughes Maternal Heirs and A&K. The Managing Partners are elected at large from among applicant's partners every three years and were most recently elected in 1995. A committee nominates proposed Managing Partners for election but partners holding interests aggregating 10% or more may propose competing slates. Election is by secret written ballot. Currently, the Managing Partners receive no compensation for their services.

5. Hughes has entered into a merger agreement with The Rouse Company ("Rouse") that will result in Rouse acquiring all of Hughes (the "Rouse Transaction"). After consummation of the Rouse Transaction, applicant's assets will consist of: (a) Cash consideration of approximately $85 million; (b) approximately 9 million shares of Rouse (approximately 20% of the outstanding Rouse shares); and (c) contingent rights to receive additional Rouse shares based on the future cash flow generated from, and appraised value of, certain properties acquired by Rouse in the mergers (the "Earn-Out Rights"). The properties subject to the Earn-Out Rights consist of undeveloped land, rental properties, and interests therein held in four discrete business units in Las Vegas and Los Angeles. The earn-out periods range from 5 to 14 years.

6. Applicant proposes to incur administrative expenses in an amount not to exceed ¼ of 1% of assets following consummation of the Rouse Transaction (the "Administrative Expense Cap"). Any compensation paid to the Managing Partners will be within the Administrative Expense Cap.

7. Applicant contemplates continuing its existence after the consummation of the Rouse Transaction for several reasons. First, applicant believes that it can coordinate sales of Rouse shares in the future by arranging block trades and thereby avoid the disruptive effect of the uncoordinated sale of a large amount of stock by various partners acting independently.[2] Second, applicant believes that significant cost savings can be achieved through the joint investment of the cash received in the Rouse Transaction which would be invested by the Managing Partners in shares of a number of registered open-end investment companies. Third, applicant believes that issues involved in the determination of the amount of the Earn-Out Rights can be more effectively managed by applicant than by its partners individually. Fourth, applicant, on behalf of its partners, is presently involved in a controversy with the Internal Revenue Service and anticipates that litigation of the matter will ensue (the "Federal Tax Proceedings"). The Internal Revenue Service ("IRS") has questioned applicant's partners' reporting of their income relative to applicant's formation and operation for its tax year 1987 and subsequent years. Administrative proceedings with respect to these allegations recently have been concluded without resolution of the matter. The IRS may issue a notice of final partnership administrative adjustments which would be a predicate to institution of litigation by applicant.

Applicant's Legal Analysis

1. Section 3(a)(3) of the Act defines investment company to include any issuer that is engaged in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40% of the value of such issuer's total unconsolidated assets. Applicant submits that it has been exempt from registration under the Act because its business has primarily consisted of its interests in THC and HHPLP, both majority-owned operating companies engaged in real estate development. Upon the consummation of the Rouse Transaction, however, applicant will become an "investment company" as that term is defined in section 3(a)(3) of the Act.

2. Applicant was established as a joint venture between the Hughes Maternal Heirs and A&K to pursue the Hughes Maternal Heirs' interest in the Hughes Estate. Applicant contends that since establishing a 70% interest in the Hughes Estate, applicant has operated as a privately owned and family-controlled special purpose entity to which the Act was not intended to apply. Applicant represents that it has not sought, and will not seek, new public or private investors. In addition, each of the partners is related to either the Hughes Maternal Heirs or A&K.

3. Section 3(c)(1) of the Act excepts from the definition of investment company any issuer whose outstanding securities are beneficially owned by not more than 100 persons and which is not making, and does not presently propose to make, a public offering of its securities. Applicant asserts that the SEC may exempt private investment companies that have more than 100 beneficial owners under section 6(c) of the Act.[3] Applicant contends that its request for a conditional order under section 6(c) of the Act is consistent with relief granted to other private investment companies substantially owned and controlled by a single family.[4] Applicant asserts that it will continue to operate as a private investment vehicle not intended to be within the scope of the Act.

4. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant believes that the requested exemption meets these standards.

Applicant's Conditions

Applicant agrees that the order granting the requested relief shall be subject to the following conditions:

1. Applicant will provide each partner annual financial statements audited by an accounting firm of recognized national standing.

2. The Partnership shall not issue interests to a new investor who is not

[1] The method chosen by Andrews & Kurth to determine the relative interests of each of its partners in the firm's interest in the Partnership resulted in an allocation to every person who was a partner of the firm from 1976 to 1983.

[2] The Partnership is contractually restricted from selling more than 50% of such shares for a period of one year after consummation of the Rouse Transaction.

[3] See *Maritime Corporation*, 9 SEC 906, 909 (1941).

[4] See, e.g., *Pitcairn Group L.P.*, Investment Company Act Release Nos. 21525 (Nov. 20, 1995) (notice) and 21616 (Dec. 20, 1995) (order); *Heber J. Grant & Company*, Investment Company Act Release Nos. 20040 (Jan. 27, 1994) (notice) and 20091 (Feb. 23, 1994) (order); and *Bessemer Securities Corporation*, Investment Company Act Release Nos. 18529 (Feb. 5, 1992) (notice) and 18594 (Mar. 3, 1992) (order).

a member of the Hughes' Maternal Heirs or A&K and will not permit the assignment or transfer of any interest therein except by bequest, gift, or operation of law, and in the case of gifts, only to persons who are members of the donor's family.

3. Applicant will have a ten-year duration from the date of the granting of the order unless earlier terminated pursuant to the terms of the restated partnership agreement or unless it: (a) ceases to be an investment company as such term is defined in the Act; (b) qualifies for a statutory exception from such definition under the Act; (c) obtains an amended exemptive order permitting it to continue as an exempt entity; or (d) registers as an investment company under the Act.

4. Applicant shall not have elected any new Managing Partner without the approval of a majority in interest of the partners, and such new Managing Partner must be a partner of applicant.

5. Applicant shall not knowingly make available to any broker or dealer registered under the Securities Exchange Act of 1934, any financial information concerning applicant for the purpose of knowingly enabling such broker or dealer to initiate any regular trading market in any units of partnership interest.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13547 Filed 5–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 21977; 812–10042]

Van Kampen American Capital Comstock Fund, et al.; Notice of Application

May 23, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Van Kampen American Capital Comstock Fund ("Comstock Fund"); Van Kampen American Capital Enterprise Fund ("Enterprise Fund"); Van Kampen Capital Equity Income Fund ("Equity Income Fund"); Van Kampen American Capital Growth and Income Fund ("Growth and Income Fund"); Van Kampen American Capital Life Investment Trust ("Life Investment Trust"); Van Kampen American Capital Pace Fund ("Pace Fund"); Van Kampen American Capital Equity Trust ("Equity Trust"); Common Sense Trust (collectively, the "Van Kampen Funds"); Smith Barney/Travelers Series Fund Inc. ("Smith Barney Fund") (collectively, with the Van Kampen Funds, the "Public Funds"); Van Kampen American Capital Foreign Securities Fund ("Foreign Securities Fund"); Van Kampen American Capital Investment Advisory Corp. ("Advisory Corp."); and Van Kampen American Capital Asset Management, Inc. ("VKACAM") (collectively with Advisory Corp., the "Advisers"), on behalf of themselves and any future registered open-end management investment companies for which either of the Advisers serves as investment adviser or subadviser.[1]

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from section 12(d)(1), and under sections (c) and 17(b) for an exemption from section 17(a).

SUMMARY OF APPLICATION: Applicants seek an order to permit the Foreign Securities Fund to serve as an investment vehicle through which the Public Funds would invest portions of their assets in a portfolio of foreign equity securities.

FILING DATES: The application was filed on March 12, 1996, and amended on May 10, 1996. Applicants have agreed to file an additional amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 17, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Van Kampen Funds, Foreign Securities Fund, and the Advisers, One Parkview Plaza, Oakbrook Terrace, Illinois 60181; Smith Barney Fund, 388 Greenwich Street, New York, New York 10013.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 942–0583, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Public Funds are registered open-end management investment companies. Each of the Public Funds invests part or all of its assets in equity securities as provided in its investment policies and restrictions. A common characteristic of the Public Funds is that limited investment in foreign securities is an appropriate part of their investment strategies. While the Public Funds differ with respect to the portions of their respective total assets they might invest in foreign securities, their investment objectives with respect to such investments, and their strategies for making them, are identical.

2. The Foreign Securities Fund is a newly formed open-end investment company that will invest primarily in equity securities of foreign issuers. The Foreign Securities Fund will invest in securities of issuers traded on markets of at least three of the world's largest countries by market capitalization, but securities of issuers traded on quoted markets of other countries also will be considered for investment. Although the Foreign Securities Fund is registered under the Act, it does not intend to make a public offering of its shares, and has not registered under the Securities Act of 1933. The only investors in the Foreign Securities Fund will be some or all of the Public Funds. There will be no sales load or other charges associated with distribution of the Foreign Securities Fund's shares. Other expenses incurred by the Foreign Securities Fund will be borne by it, and thus indirectly by the Public Funds that invest in it.

3. The Advisers are wholly owned subsidiaries of Van Kampen American Capital, Inc., and are registered as investment advisers under the Investment Advisers Act of 1940. The Advisers serve as investment adviser or subadviser to each of the Public Funds, and have investment discretion over the entire portfolio of each of the Public Funds they advise. Advisory Corp. also acts as investment adviser to the Foreign Securities Fund, but does not charge any advisory fee for these services.

4. Applicants intend to use the Foreign Securities Fund to pool the Public Funds' investments in foreign securities. Applicants believe that the use of a single investment vehicle to invest in a broadly diversified portfolio of foreign securities will provide the Public Funds with the most effective exposure to the performance of foreign markets while at the same time minimizing costs. Applicants state that the Foreign Securities Fund will be more diversified in foreign markets than a Public Fund investing on its own. As a result, events that affect the price of a single foreign issuer or country can be expected to have less impact on the Foreign Securities Fund than they would have on the foreign securities holdings of a Public Fund. Applicants represent that this diversification can be expected to benefit both the Foreign Securities Fund and the Public Funds by providing greater price stability and lower volatility, while at the same time capturing the performance benefits of exposure to foreign markets.

5. Applicants also expect the Public Funds' investments in the Foreign Securities Fund to increase the efficiency of portfolio management of the Public Funds. Tracking the performance of various country markets and issuers in foreign markets in a time-consuming process and substantially different from tracking the domestic market and domestic issuers, which would normally be attendant with a Public Fund's portfolio management. By obtaining most of its exposure to foreign markets through the Foreign Securities Fund, a Public Fund and its shareholders would gain the benefit of exposure to this sector without incurring the penalty attendant upon a Public Fund's portfolio manager spending a disproportionate amount of his or her time following these relatively small positions.

6. Applicants anticipate that the efficiencies resulting from use of the Foreign Securities Fund will result in cost savings to the Public Funds in three areas: administrative costs, out-of-pocket costs, and trading costs. Savings of administrative costs will be attributable to a great reduction in administrative procedures. Savings of out-of-pocket costs such as audit fees and custodial fees will be substantially offset by increases in other out-of-pocket costs such as legal and transfer agency fees. Applicants expect that the major cost savings will occur because the Foreign Securities Fund will experience trading costs that will be substantially less than the trading costs that would be incurred if foreign stocks were purchased separately for each of the Public Funds. Applicants believe that this cost savings will increase in direct proportion to the number of foreign stocks over which the investment in foreign securities is diversified.

7. When the Foreign Securities Fund begins operations, some of the Public Funds may contribute foreign securities from their own portfolios (in addition to cash) in return for shares of the Foreign Securities Fund. All of the portfolio securities contributed will be appropriate investments for the Foreign Securities Fund, and will be valued at the time of contribution in accordance with rule 17a–7 under the Act.

8. Although the majority of the Public Funds' investments in foreign securities will be through the Foreign Securities Fund, each Public Fund may have some additional direct investments in foreign stocks. Applicants state that the Advisers have adopted a procedure to avoid unnecessary expense that could occur if the Foreign Securities Fund were to sell a particular stock at the same time a Public Fund were to purchase it, or vice versa. The Foreign Securities Fund will generate a list of stocks that it intends to purchase or sell, and will circulate the list among the portfolio managers of the Public Funds. If any portfolio manager wishes to sell or buy a stock on the list, the Foreign Securities Fund will effect the transaction directly with that Public Fund. The value of the stock will be the current market price, determined in accordance with rule 17a–7. Payment will be made by simultaneous transfer of cash or by simultaneous redemption or issuance of shares of the Foreign Securities Fund with an equal value, depending on whether the Public Fund wishes to alter its investment in the Foreign Securities Fund. In cases where the payment for the subject stock is Foreign Securities Fund shares rather than cash, the transactions will comply with the provisions of rule 17a–7 (a) through (f) in all respects other than the requirement that purchases and sales be made only for cash consideration.

9. To minimize the need for the Foreign Securities Fund to maintain large cash balances, the Advisers will coordinate the Public Funds' purchases and sales of shares of Foreign Securities Fund shares to minimize the cash flow into or out of the Foreign Securities Fund, and attempt to anticipate the Public Funds' cash needs and coordinate net cash investments or redemptions (on a *pro rata* basis) to permit the orderly acquisition or disposition of foreign securities within the Foreign Securities Fund. The purchase or sale of shares of the Foreign Securities Fund by the Public Funds also will be coordinated with rebalancing transactions within the Foreign Securities Fund. The Advisers will monitor the process over time to ensure that the best interests of the Public Funds and the Foreign Securities Fund are met.

10. Applicants anticipate that they will be able to follow the foregoing procedures in virtually all instances. There may be occasions, however, when a single Public Fund makes an unusually large purchase or redemption of Foreign Securities Fund shares. Such a large transaction could cause the Public Funds not involved in the transaction to bear significant incremental trading costs associated with the acquisition or disposition of foreign stocks. Accordingly, if a Public Fund intends to make such an acquisition or disposition, the Advisers, as fiduciaries to the Public Funds and the Foreign Securities Fund, may cause the transaction to be executed in kind. In the case of a purchase, the Public Fund would acquire foreign stocks directly, then contribute them to the Foreign Securities Fund in exchange for its shares. In the case of a redemption, the Foreign Securities Fund would deliver redemption proceeds to the Public Fund in the form of a *pro rata* distribution of portfolio securities held by the Foreign Securities Fund, which the Public Fund could then sell. Such in-kind transactions will comply with rule 17a–7 (a) through (f) except that the consideration for the foreign stocks will be Foreign Securities Fund shares rather than cash.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company representing more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

[1] Other existing open-end management investment companies for which Advisory Corp. or VKACAM serves as investment adviser or subadviser do not currently intend to rely on the requested relief and therefore are not named as applicants. These investment companies may rely on the requested relief in the future under the terms and conditions set forth in the application.

2. Applicants request an exemption from section 12(d)(1) because the Public Funds in the aggregate will own 100% of the stock of the Foreign Securities Fund, thus any one Public Fund's investment in the Foreign Securities Fund may represent more than 5% of the Public Fund's total assets. Applicants believe that the requested exemption will not implicate any of the abuses that section 12(d)(1) was intended to prevent. For example, the concern that the Public Funds might exercise undue influence over the management of the Foreign Securities Fund is not present because all of the Funds are advised by the Advisers. Moreover, because the Advisers will be paid no advisory fee by the Foreign Securities Fund and because the Advisers are under common control, there will be no incentive for any Public Fund to assert undue control over the Foreign Securities Fund. Furthermore, the concern that large redemptions could disrupt the orderly management of the Foreign Securities Fund will not be a problem because the Advisers will be in a position to anticipate redemption needs, and the costs associated with large redemptions of Foreign Securities Fund shares would be mitigated by the ability of the Fund to redeem its shares in kind. In addition, the Foreign Securities Fund will not cause investors in the Public Funds to incur two layers of costs. The Foreign Securities Fund will pay no advisory fee, and its shares will not be subject to any sales load or rule 12b–1 fee.

3. Applicants also request an exemption from section 17(a) of the Act, which prohibits certain purchases and sales of securities between investment companies and their affiliated persons, as defined in section 2(a)(3) of the Act. VKACAM is an affiliated person of each of the Public Funds its advises, and Advisory Corp, is an affiliated person of the Foreign Securities Fund and of each Public Fund it advises. In addition, each of Advisory Corp. and VKACAM is an affiliated person of the other by reason of being under common control. To the extent that the Funds may be deemed to be under common control, each Fund would be an affiliated person of each other Fund. Accordingly, purchases or sales of securities between the Foreign Securities Fund and a Public Fund may violate section 17(a).

4. Sections 6(c) and 17(b) of the Act set forth the standards for exempting a series of transactions from section 17(a). Under section 17(b), the terms of any such transaction must be reasonable and fair and must not involve overreaching on the part of any person, the transaction must be consistent with the policy of each investment company concerned, and the transaction must be consistent with the general purposes of the Act. In addition, under section 6(c), the exemption must be necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

5. Applicants believe that the proposed transactions meet the standards for relief under sections 6(c) and 17(b). Applicants contend that the terms of the transactions between the Foreign Securities Fund and the Public Funds are reasonable and fair and do not involve overreaching. The consideration paid and received for the purchase and redemption of Foreign Securities Fund shares will be based on the net asset value of the Foreign Securities Fund. The Foreign Securities Fund will not pay an advisory fee, and there will be no sales load or other charge associated with distribution of its shares. Applicants believe that the transactions are consistent with the policies of the Public Funds and the Foreign Securities Fund. The Public Funds' investments in the Foreign Securities Fund, and the Foreign Securities Fund's issuance of shares, will be in accordance with each Fund's investment restrictions and policies. Applicants also believe that the transactions are consistent with the general purposes of the Act. Section 17(a) was intended to prohibit affiliated persons from furthering their own interests by, for example, selling property to an investment company at less than fair value. Applicants believe that their proposal does not present those concerns.

Applicants' Conditions

Applicants agree that the following conditions will govern transactions under the requested order:

1. The Public Funds and the Foreign Securities Fund will be part of the same "group of investment companies," as defined in rule 11a–3 under the Act.

2. The Foreign Securities Fund shall not acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

3. A majority of the trustees of the Public Funds will not be "interested persons" (as defined in section 2(a)(19) of the Act).

4. Advisory Corp. will not charge any advisory fee for managing the Foreign Securities Fund.

5. Any sales charges or service fees charged with respect to securities of the Public Funds, when aggregated with any sales charges or service fees paid by the Public Funds with respect to securities of the Foreign Securities Fund, shall not exceed the limits set forth in Article III, section 26, of the Rules of Fair Practice of the National Association of Securities Dealers, Inc.

6. Applicants agree to provide the following information, in electronic format, to the Chief Financial Analyst of the SEC's Division of Investment Management: monthly average total assets for each Public Fund's portfolio and the Foreign Securities Fund's portfolio; monthly purchases and redemptions (other than by exchange) for each Public Fund's portfolio and the Foreign Securities Fund's portfolio; annual expense ratios for each Public Fund's portfolio and the Foreign Securities Fund's portfolio; and a description of any vote taken by the shareholders of the Foreign Securities Fund, including a statement of the percentage of votes cast for and against the proposal by the Public Funds and by the other shareholders of the Foreign Securities Fund, if any. Such information will be provided as soon as reasonably practicable following each fiscal year-end of each of the Public Funds (unless the Chief Financial Analyst shall notify applicants in writing that such information need no longer be submitted).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13456 Filed 5–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21975; File No. 812–9696]

Washington National Insurance Company, et al.

May 22, 1996.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Washington National Insurance Company ("Washington National") and Separate Account I of Washington National Insurance Company (the "Separate Account").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order exempting Washington National and the Separate Account, which will be reorganized from a managed separate account to a separate account organized as a unit investment trust (the "Continuing Separate Account"), from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, to the extent necessary to permit Washington National to deduct a mortality risk charge from the Continuing Separate Account.

FILING DATE: The application was filed July 27, 1995, and amended on November 15, 1995, February 8, 1996, and April 26, 1996.

HEARING OF NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 17, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, Craig R. Edwards, Esq., Washington National Insurance Company, 300 Tower Parkway, Lincolnshire, Illinois 60069–3665.

FOR FURTHER INFORMATION CONTACT: Mark C. Amorosi, Attorney, or Wendy Finck Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. Washington National, the sponsor and depositor of the Separate Account, is a stock life insurance company organized under the laws of Illinois. Washington National is a wholly-owned subsidiary of Washington National Corporation, a holding company incorporated in Delaware in 1968 that acquired Washington National in 1968.

2. The Separate Account was established by Washington National as a separate investment account to fund Washington National's tax-qualified and non-tax-qualified retirement benefits offered through group and individual variable annuity contracts (the "Contracts"). The Separate Account meets the definition of a "separate account" under the 1940 Act and is registered under the 1940 Act as an open-end management investment company. The Separate Account is divided into three sub-accounts (the "Sub-Accounts"), the Bond Sub-Account, the Short-Term Portfolio Sub-Account and the Stock Sub-Account. Washington National is the investment adviser for the Separate Account. Washington National has contracted with NBD Bank, an Illinois banking corporation, to act as sub-adviser for and to manage the investments of the Stock Sub-Account.

3. Applicants state that the Contracts are designed to provide retirement benefits under a variety of retirement programs. Although payments under outstanding Contracts continue to be received, Washington National no longer offers the Contracts for sale. Purchase payments under a Contract may be allocated to the fixed account or the variable account. The Contract also provides for, among other things: (a) a variety of annuity payout options beginning on the annuity commencement date; (b) surrender of the Contract prior to its maturity date for a cash payment representing all or part of the Contract's value; and (c) a death benefit payable if the annuitant dies before the maturity date.

4. Washington National Equity Company ("WNEC"), formerly a registered broker-dealer which was a wholly-owned subsidiary of Washington National, served as the underwriter for the Separate Account. Applicants state that WNEC is no longer in existence.

5. Various fees and charges are deducted under the Contracts. A daily mortality risk charge (the "annuity rate guarantee charge") equal to an effective annual rate of 0.80% of the average net assets of the Separate Account is deducted to compensate Washington National for bearing certain mortality risks under the Contracts. The mortality risk arises from Washington National's obligation to make annuity payments regardless of the mortality experience of persons receiving such payments. Washington National states that the mortality risk charge may not be increased under the Contract. If the deductions are insufficient to cover the actual cost of the mortality risk, Washington National will bear the loss. Conversely, if the deductions prove more than sufficient, the excess will be a profit to Washington National.

6. Applicants state that currently an investment management charge is made daily from the Separate Account to Washington National which is equal on an annual basis to 0.50% of the average net assets of the Separate Account. Washington National pays NBD Bank, the sub-adviser for the Stock Sub-Account, a fee of 0.40% of the average net assets of the Stock Sub-Account.

7. A daily asset-based financial accounting service charge equal to an effective annual rate of 0.35% of the average net assets of the Separate Account is deducted to reimburse Washington National for providing financial accounting services to the Separate Account, including preparation and maintenance of all accounting, bookkeeping, financial and other statements for the conduct of the business and operations of the Separate Account. Applicants state that this charge is guaranteed not to increase and is designed to cover the actual expenses incurred in providing these services. Washington National does not expect or intend to profit from the charge which will be deducted in reliance on Rule 26a–1.

8. An annual contract maintenance charge of $30 is deducted from the Contract value on each Contract anniversary or on the date of full withdrawal or election of a settlement option if that date is not the Contract anniversary. The charge is deducted on a pro rata basis from the Contract value of each Sub-Account and the fixed account. The charge is not guaranteed, may be changed in the future and may be deducted more frequently than annually. Applicants represent that this charge will be deducted in reliance on Rule 26a-1 and is not greater than the cost of the bookkeeping and other administrative services to be provided for one year.

9. The Separate Account currently pays all taxes, interest, brokerage fees and commissions, fees and expenses of legal counsel and independent auditors, custodian fees and expenses, expenses associated with meetings of the Contract owners, expenses incurred in the preparation, printing and distribution of reports and prospectuses by the Separate Account to its current owners, fees of and expenses incurred by directors of the Separate Account who are not Washington National's directors, officers or employees, fees and expenses associated with the approval, qualification or registration of the Contracts, extraordinary expenses if permitted by applicable laws and regulations, and all other fees and expenses incurred by or on behalf of the Separate Account which are not borne by Washington National (collectively, "Separate Account Expenses"). During 1995, charges for the Separate Account Expenses were made against the assets of each Sub-Account of the Separate Account at an annual rate of 0.20%.

10. Although Washington National currently pays premium taxes, Washington National reserves the right to deduct premium taxes from purchase payments or to charge them against the Contracts to which they are attributable in the future. Premium taxes currently range up to 3.5%.

11. No sales charge is deducted from purchase payments. However, certain full or partial surrenders are subject to a contingent deferred sales charge ("Withdrawal Charge"). The Withdrawal Charge covers expenses relating to the sale of the Contracts. If the proceeds received from the Withdrawal Charge are not sufficient to pay such expenses, then Washington National will pay the excess out of its general assets, which may include proceeds derived from the annuity rate guarantee charge.

The Withdrawal Charge is made at the rate of 6% of the amount withdrawn and is deducted from the amount withdrawn. In calculating the Withdrawal Charge, any amount which the Contract owner withdraws will be treated as a withdrawal of purchase payments until the Contract owner has withdrawn the total amount of all purchase payments received within 72 months of the date of withdrawal. The Withdrawal Charge applies to purchase payments on a first-in, first-out basis. The total Withdrawal Charge will never exceed 6% of the total purchase payments.

Washington National will not deduct the Withdrawal Charge: (a) on the first 10% of the Contract value withdrawn from a Contract during any Contract year (determined as of the date of the first withdrawal during the year); (b) on purchase payments received more than 72 months prior to the date of withdrawal; (c) if the amount withdrawn is applied to (i) a settlement option after the Contract has been in effect for five or more years, or (ii) settlement options 2, 5 or 6 (as defined in the Contract) at any time; and (d) if the annuitant dies.

12. Pursuant to an Asset Transfer Agreement and Plan of Reorganization (the "Reorganization Agreement") and subject to approval by persons entitled to vote in respect of the Separate Account ("Separate Account Voters"), the Separate Account will be restructured as a unit investment trust (the "Reorganization"). Applicants state that the unit investment trust will be divided into three sub-accounts, each of which will invest exclusively in shares of a corresponding series of the Scudder Variable Life Investment Fund (the "Fund") whose investment objective is substantially the same as the current investment objective of the relevant Sub-Account of the Separate Account. In connection with the Reorganization, the assets of each Sub-Account of the Separate Account will be transferred to the corresponding portfolio of the Fund in exchange for shares of the portfolio of equal value. Applicants state that the Reorganization is intended to counteract the trend of net redemptions in the Separate Account which limits investment flexibility and threatens the ability of the Separate Account to best achieve its investment objectives. Applicants also state that the Reorganization will benefit Contract owners by providing economies of scale and simplifying record keeping.

13. The Fund was organized as a Massachusetts business trust on March 15, 1985, for the purpose of serving as the funding vehicle for variable annuity contracts and variable life insurance policies to be offered by the separate accounts of certain life insurance companies. The Fund has six separate investment portfolios: the Bond Portfolio, the Money Market Portfolio; the Capital Growth Portfolio; the Growth and Income Portfolio; the Balanced Portfolio; and the International Portfolio. Only the Bond Portfolio, the Money Market Portfolio and the Capital Growth Portfolio of the Fund will be involved in the Reorganization. Scudder Investor Services, Inc. serves as the underwriter for the Fund.

14. The Fund has adopted a plan for financing distribution expenses pursuant to Rule 12b–1 under the 1940 Act for a newly authorized class of shares ("Class B" shares). Applicants state that the Continuing Separate Account will, at the time of the Reorganization and thereafter, invest only in a class of the Fund's shares for which such a Rule 12b–1 plan has not been adopted ("Class A" shares).

15. Pursuant to an investment advisory agreement with the Fund, and subject to the supervision and approval of the Fund's Board of Trustees, Scudder, Stevens & Clark, Inc. (the "Adviser") renders investment advisory services to the Fund's portfolios. Under the investment advisory agreement, the Adviser charges the Fund an investment management fee with respect to the Bond Portfolio at the annual rate of 0.475% of its average net assets, with respect to the Money Market Portfolio at the annual rate of 0.370% of its average net assets, and with respect to the Capital Growth Portfolio at the annual rate of 0.475% of its average net assets. In addition, the Fund bears certain expenses for clerical, accounting and certain other services provided to the Fund. In 1995, these other expenses were deducted at an annual rate of 0.085%, 0.130% and 0.095% of the average net assets of the Bond Portfolio, the Money Market Portfolio and the Capital Growth Portfolio, respectively.

16. Applicants state that Washington National will assume all costs to be incurred by the Separate Account in effecting the Reorganization. In exchange for the assets of each of the Sub-Accounts of the Separate Account, shares of the corresponding portfolio of the Fund will be issued. Shares of the Capital Growth Portfolio will be issued in return for the assets of the Stock Sub-Account, shares of the Bond Portfolio will be issued for the assets of the Bond Sub-Account, and shares of the Money Market Portfolio will be issued for the assets of the Short-Term Portfolio Sub-Account.

17. The number of shares of each portfolio to be issued in connection with the Reorganization to the respective corresponding sub-account of the Continuing Separate Account will be determined by dividing the value of the net assets to be transferred from the particular Sub-Account of the Separate Account as of the business day immediately preceding the effective date of the Reorganization by the net asset value per share of the corresponding portfolio of the Fund.

18. Applicants state that, after the Reorganization, the investment management fee and the charge for Separate Account Expenses will not be deducted from the Continuing Separate Account. Applicants state, however, that the portfolios of the Fund in which the sub-accounts of the Continuing Separate Account will invest after the Reorganization will deduct an investment management fee and a charge for operating expenses of each portfolio of the Fund.

19. Applicants state that the Reorganization will not have any adverse economic impact on the Contract owners' interests under the Contracts. Applicants state that the overall level of fees and charges borne, directly or indirectly, by Contract owners will not be materially greater (and generally should be lower) immediately after the Reorganization than immediately before it. The investment management fee for each of the three available portfolios of the Fund is lower than the current rate charged to any of the Sub-Accounts of the Separate Account. Applicants state that in 1995 the sum of the investment management fee and the other operating expenses deducted from each of the three portfolios of the Fund (0.56% for the Bond Portfolio, 0.50% for the Money Market Portfolio and 0.57% for the Capital Growth Portfolio) is less than the 0.70% sum of the investment management fee and the deduction for other expenses currently imposed against the assets of the three corresponding Sub-Accounts of the Separate Account.

20. The application states that a Special Meeting of Separate Account Voters was held on March 12, 1996. The proposed transactions were approved at the Special Meeting by the vote of a majority of the outstanding voting securities with respect to each Sub-Account of the Separate Account. Applicants state that on September 22, 1995, a registration statement was filed on Form N–14 in connection with the Reorganization.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to grant an exemption from any provision, rule or regulation of the 1940 Act to the extent necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

2. Applicants request exemptions from Sections 26(a)(2)(C) and 27(a)(2) of the 1940 Act to the extent necessary to permit the deduction of the 0.80% mortality risk charge from the assets of the Continuing Separate Account. Applicants represent that the annuity rate guarantee charge under the Contracts is within the range of industry practice for comparable annuity contracts issued by other insurance companies. This representation is based upon Washington National's analysis of publicly available information about such other contracts, taking into consideration the particular annuity features of the comparable contracts, including such factors as current charge levels, charge level or annuity rate guarantees, the manner in which the charges are imposed and the markets in which the contracts have been offered. Applicants state that Washington National will maintain a memorandum, available to the Commission upon request, setting forth in detail the products analyzed in the course of, and the methodology and results of, its review.

3. Applicants state that amounts derived from the annuity rate guarantee charge that exceed the expenses that the deductions were designed to cover will be offset by aggregate expenses of Washington National, which will include any distribution expenses not reimbursed by the contingent deferred sales charge. In such circumstances, a portion of the annuity rate guarantee charge could be viewed as providing for a portion of the costs relating to distribution of the Contracts.

4. Applicants state that there is currently no distribution financing arrangement for the Contracts because no new Contracts are being distributed. Nevertheless, Applicants represent that there is a reasonable likelihood that the distribution financing arrangement for the Continuing Separate Account (to the extent that such an arrangement may be deemed to exist) will benefit the Continuing Separate Account and the Contract owners. Applicants state that Washington National will maintain a memorandum, available to the Commission upon request, setting forth in detail the basis for this conclusion.

5. Washington National represents that the assets of the Continuing Separate Account will be invested only in a management investment company which undertakes, in the event it should adopt a plan for financing distribution expenses pursuant to Rule 12b–1 under the 1940 Act, to have such plan formulated and approved by a board of directors, the majority of whom are not "interested persons" of the management investment company within the meaning of Section 2(a)(19) of the 1940 Act.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13457 Filed 5–29–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37238, File No. SR–NYSE–96–06]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Continued Listing Standards for Specialized Securities

May 22, 1996.

On March 18, 1996, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish continued listing criteria for certain specialized securities.

The proposed rule change was published for comment in Securities Exchange Act Release No. 37056 (Apr. 1, 1996), 61 FR 15547 (Apr. 8, 1996). No comments were received on the proposal.

Currently, the NYSE has listing standards for certain specialized securities: stock warrants, foreign currency warrants and currency index warrants, stock index warrants, contingent value rights ("CVRs")[3] other securities, and equity-linked debt securities ("ELDS").[4] The uniform listing standards for specialized securities require one million shares outstanding, 400 holders, $4 million aggregate market value and a minimum life of one year.[5]

With this rule proposal, the Exchange proposes to establish uniform continued listing criteria for these specialized securities in paragraphs 801 and 802 of the Exchange's Listed Company Manual ("Manual") to correspond to the initial listing standards. The NYSE would consider delisting these specialized securities when the number of publicly-held shares is less than 100,000, the

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] CVRs are unsecured obligations of an issuer that provide for a possible cash payment upon maturity depending upon the price performance of an affiliate's equity security.

[4] ELDS are intermediate-term (two to seven years), non-convertible, hybrid securities, the value of which is based, at least in part, on the value of another issuer's common stock or other equity security. ELDS may pay periodic interest or may be issued as zero-coupon instruments with no payments to holders prior to maturity. Moreover, ELDS may be subject to a "cap" on the maximum principal amount to be repaid to holders upon maturity and, additionally, may feature a "floor" on the minimum principal amount to be repaid to holders upon maturity.

[5] There are additional standards for several of these securities. For example, ELDS relating to any underlying U.S. security may not exceed five percent of the total outstanding shares of such underlying security.

number of holders is less than 100, and the aggregate market value of shares outstanding is less than $1,000,000.

Moreover, the Exchange is proposing additional requirements for securities that are related to other securities. For stock warrants and CVRs, the NYSE would require that the related security remain listed. For ELDS, the issuer of the linked security must remain subject to the reporting obligations of the Act and the linked security must remain trading in a market in which there is last sale reporting. The Exchange also will require the issuer of specialized debt securities to be able to meet its obligations on such debt. For all specialized securities listed pursuant to paragraph 703 of the Manual, the Exchange will delist any specialized securities if the related or linked securities are delisted for violation of the Exchange's "Corporate Responsibility" criteria in Section 3 of the Manual.[6]

The proposed rule change also eliminates the delisting criteria relating to creation of a class of non-voting common stock. The Exchange believes that these criteria are no longer appropriate because the Exchange currently has listing criteria specifically addressing non-voting common stock. Finally, the proposed rule change would delete the current warrant continued listing criteria and include stock, foreign currency and currency index, and stock index warrants within the new uniform continued listing criteria. The Exchange believes that the continued listing criteria for warrants do not conform to the current warrant listing standards.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[7] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between issuers.

The Commission believes that the development and enforcement of adequate standards governing the listing of securities on an exchange is an activity of critical importance to exchange markets and to the investing public. Listing standards serve as a means for the self-regulatory organizations ("SROs") to screen issuers and to provide listed status only to bona fide companies with substantial float, investor base, and trading interest to ensure sufficient liquidity for fair and orderly markets. Listing standards also enable an exchange to assure itself of the bona fides of the company and its past trading history. In this regard, over the past several years the Exchange has proposed, and the Commission has approved, uniform initial listing standards for specialized securities.

With this rule proposal, the Exchange proposes uniform continued listing criteria to correspond to the initial listing standards adopted for specialized securities. The Commission believes that adequate maintenance standards are of equal importance to the development of adequate standards for initial inclusion on an exchange. The Commission notes that once an issue has been initially approved for listing, the Exchange must monitor continually the status and trading characteristics of that issue to endure that it continues to meet exchange standards for trading depth and liquidity.

In this regard, the Commission believes that the quantitative continuing listing standards for specialized securities will ensure that there is sufficient public float and investor interest in the securities to support continued trading consistent with fair and orderly markets. Further, the additional requirements for specialized securities that are related to other securities should ensure, among other things, that these securities cannot, through continued listing, become a surrogate for trading a security that has been delisted due to corporate responsibility violations.[8] As described above, for continued listing of stock warrants and CVRs, the Exchange will require that the related security be, and remain, a NYSE listed security. For ELDS, the issuer of the linked security must remain subject to the reporting obligations of the Act and the linked security must remain subject to last sale reporting. The Commission believes that these standards are appropriate under the Act and will ensure that the linked or related securities have adequate transparency and information available and meet certain minimum requirements. With respect to CVRs and stock warrants, the additional requirements should also help to address concerns that such securities will not become a surrogate for trading other securities not eligible for NYSE listing.

In summary, the Commission believes that the maintenance criteria, established by the rule proposal, should help to ensure the stability of the marketplace, as well as protect investors, by subjecting the securities of an issuer to delisting if the listed security fails to meet the new maintenance standards.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NYSE–96–06) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13459 Filed 5–29–96; 8:45 am]

BILLING CODE 8010–01–M

[6] Section 3 (Corporate Responsibility) includes, among others, policies concerning voting rights, quorums, and shareholder approval.

[7] 15 U.S.C. § 78f(b).

[8] *See supra* note 6 and accompanying text.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 03/03–0205]

Eastern Virginia Small Business Investment Corporation; Notice of Issuance of a Small Business Investment Company License

On July 31, 1995, an application was filed by Eastern Virginia Small Business Investment Corporation, 2101 Parks Avenue, Suite 803, Virginia Beach, Virginia, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 C.F.R. 107.102 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 03/03–0205 on May 14, 1996, to Eastern Virginia SBIC to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 21, 1996.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 96–13501 Filed 5–29–96; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT), Bureau of Transportation Statistics (BTS).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 1, 1996 [FR 61, page 8096].

DATES: Comments must be submitted on or before June 23, 1996.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, (202) 366–4387, and refer to the OMB Control Number.

SUPPLEMENTARY INFORMATION:

Title: Report of Financial and Operation Statistics for Large Certificated Air Carriers. This is a request for extension of a currently approved collection.

OMB Control Number: 2138–0013.

Abstract: Pursuant to Public Law nos. 95–504 and 98–443 and 49 U.S.C. 329 (b)(1), the Secretary of Transportation is required to collect and disseminate information on civil aeronautics, and to continue certain data collection activities of the former Civil Aeronautics Board (CAB).

This collection provides basic financial, traffic and employment data filed by large certificated air carriers and used extensively by the Department of Transportation in its ongoing programs.

Respondents: Business or other for-profit organizations.

Annual Reporting and Recordkeeping Burden: The number of respondents are 98. The total annual responses are 9,004. The total annual burden hours are 35,287.

Frequency: Reporting is quarterly and semi-annually.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention BTS Desk Officer.

Issued in Washington, DC, on May 22, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96–13449 Filed 5–29–96; 8:45 am]

BILLING CODE 4910–7E–P

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review; James M. Cox-Dayton International Airport, Dayton, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for James M. Cox-Dayton International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR Part 150 by the city of Dayton, Ohio. This program was submitted subsequent to a determination by the FAA that associated noise exposure maps submitted under 14 CFR Part 150 for James M. Cox-Dayton International Airport were in compliance with applicable requirements effective June 6, 1994. The proposed noise compatibility program will be approved or disapproved on or before October 30, 1996.

EFFECTIVE DATE: The effective date of the start of the FAA's review of the noise compatibility program is May 3, 1996. The public comment periods ends July 2, 1996.

FOR FURTHER INFOPMATION CONTACT: Lawrence C. King, Airports Engineer, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for James M. Cox-Dayton International Airport which will be approved or disapproved on or before October 30, 1996. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally recieved the noise compatibility program for James M. Cox-Dayton International Airport, effective on May 3, 1996. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before October 30, 1996.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local and land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

Mr. Roy Williams, Director of Aviation, James M. Cox-Dayton International Airport, Terminal Building, Vandalia, OH 45377

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan; on May 3, 1996.

Dean C. Nitz,

Manager, Detroit Airports District Office, FAA Great Lakes Region.

[FR Doc. 96–13554 Filed 5–29–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance

In accordance with 49 CFR Sections 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received from the Northeast Illinois Railroad Corporation (Metra) a request for an extension of the time period necessary to comply with a previously granted temporary waiver of compliance with certain requirements of the Federal safety laws and regulations. The petition is described below, including the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of the relief.

Northeast Illinois Railroad Corporation (Metra); Waiver Petition Docket Number LI–93–13

The Locomotive Safety Standards (49 CFR Part 229) were revised on July 8, 1993, to require each lead locomotive of trains operating over 30 miles per hour to be equipped with an event recorder by May 5, 1995. On September 3, 1993, Metra petitioned FRA for an extension of the May 5, 1995 time limit in which to apply event recorders under 49 CFR 229.135. On February 6, 1995, FRA granted authority to extend this time limit for compliance to July 1, 1996, as requested, under Docket LI–93–13, and contingent upon Metra providing FRA with a status report of their event recorder installation schedule at quarterly intervals thereafter.

Metra seeks an extension of the time period necessary to comply with the previously granted temporary waiver of compliance. Metra's projected completion dates were contingent upon the delivery of event recording devices, the rebuilding of their electric multiple unit cars by an outside company, and the construction of new non-multiple unit control cab cars to replace a group of older non-multiple unit control cab cars. Metra has been unable to maintain the projected completion dates due to a lack of manpower within Metra, internal scheduling problems at the car rebuilder, and internal scheduling problems at the car builder. Metra requests that the compliance date be extended to March 3, 1998.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number LI–93–13) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of publication of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

Issued in Washington, D.C. on May 23, 1996.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 96–13532 Filed 5–29–96; 8:45 am]

BILLING CODE 4910–06–M

Maritime Administration

Notice of Approval of Applicant as Trustee

Notice is hereby given that First Union Bank of Connecticut, with offices at 10 State House Square, 2nd Floor CT5845, Hartford, Connecticut 06103–3698, has been approved as Trustee pursuant to Public Law 100–710 and 46 CFR Part 221.

Dated: May 23, 1996.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 96–13529 Filed 5–29–96; 8:45 am]

BILLING CODE 4910–81–P

Research and Special Programs Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT), Research and Special Programs Administration (RSPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collections of information was published on March 5, 1996 (61 FR 8706, 8707, 8708, and 8709).

DATES: Comments must be submitted on or before June 22, 1996.

FOR FURTHER INFORMATION CONTACT: Jackie Smith at RSPA, (202) 366–8553, and refer to the OMB Control Number.

SUPPLEMENTARY INFORMATION:

Title: Inspection and Testing of Portable Tanks and Immediate Bulk Containers [Former Title: Portable Tank Inspection and Testing]. This is a request for reinstatement with change of a previously approved collection for which approval has expired.

OMB Control Number: 2137–0018

Abstract: This collection consolidates provisions for documenting qualifications, inspections and tests pertaining to the manufacture and use of portable tanks and intermediate bulk containers under various provisions in parts 173, 178 and 180 of the HMR.

It is needed to ascertain whether portable tanks and intermediate bulk containers have been qualified, inspected and retested in accordance with the HMR.

The information is used to verify that portable tanks and intermediate bulk containers meet required performance standards prior to being authorized for initial use or reuse as bulk packaging for hazardous materials.

Respondents: Manufacturers and owners of portable tanks and intermediate bulk containers.

Annual Reporting and Recordkeeping Burden: The number of respondents is 314. The total annual responses are 51,220. The total annual burden hours are 51,340.

Frequency: Design qualification testing is performed at the start of production for each new or different design type, periodic design type retesting is performed at one year intervals for intermediate bulk containers only, and periodic requalification of tanks in use is performed every 2–5 years, depending on the type of testing required and the tank specification.

Title: Testing, Inspection, and Marking Requirements for Cylinders [Former title: Recordkeeping and Information Collection for Cylinders].

OMB Control Number: 2137–0022.

Abstract: This information collection consolidates provisions for documenting qualifications, inspections and tests pertaining to the manufacture and use of cylinders under various provisions in parts 173, 178 and 180 of the HMR.

It is needed to ascertain whether cylinders have been qualified, inspected and retested in accordance with the HMR. For example, provisions in 49 CFR 173.34 for qualification, maintenance and use of cylinders require that cylinders be periodically inspected and retested to ensure continuing compliance with packaging standards. Information collection requirements also address registration of retesters and marking of cylinders by retesters and recertifiers.

The information is used to verify that cylinders meet required manufacturing standards prior to being authorized for initial use, and that once manufactured the cylinders are maintained and used in compliance with applicable requirements of the HMR as packaging for hazardous materials.

Respondents: Fillers, owners, users and retesters of reusable cylinders.

Annual Reporting and Recordkeeping Burden: The number of respondents 139,352. The total annual responses are 153,287. The total annual burden hours 171,681.

Frequency: Collection Reports are required for cylinders as they are manufactured and initially tested. Cylinders are required to be marked after manufacture with specific information. Inspection reports are also required to verify compliance with the provisions of the HMR, including verification that the cylinders passed the required tests. Registration of retesters is performed on a one-time basis. Retester marking on a cylinder is performed once every 5 to 20 years depending on cylinder specification and type of service. Pressure verification for acetylene cylinders is performed daily.

Title: Hazardous Materials Incident Reports.

OMB Control Number: 2137–0039.

Abstract: This collection is applicable upon occurrence of incidents as prescribed in 49 CFR 171.15 and 171.16. Basically, a Hazardous Materials Incident Report, DOT Form F 5800.1, must be completed by a carrier of hazardous materials after a hazardous material transportation incident occurs, such as a release of material, serious accident, evacuation or highway shutdown. Serious incidents meeting criteria in 49 CFR 171.15 also require a telephonic report by the carrier.

This information collection enhances RSPA's ability to evaluate the effectiveness of its regulatory program, determine the need for regulatory changes and address emerging hazardous materials transportation safety issues. The requirement applies to all carriers engaged in the transportation of hazardous materials by rail, air, water and highway.

Respondents: Each carrier who transports hazardous materials.

Annual Reporting and Recordkeeping Burden: The number of respondents is 700. The total annual responses are 16,600.

The total annual burden hours are 24,190.

Frequency: Reports are required upon occurrence of a reportable incident.

Title: Flammable Cryogenic Liquids [Previous title: Cryogenic Liquids Requirements].

OMB Control Number: 2137–0542.

Abstract: Provisions in 49 CFR 177.818 require the carriage on a motor vehicle of written procedures for venting flammable cryogenic liquids and for responding to emergencies. Sections 173.318(g), 177.840(h), and 180.405(h) specify certain safety procedures and documentation requirements for drivers of these motor vehicles. These requirements are intended to ensure a high level of safety when transporting flammable cryogenics due to their extreme flammability.

This information is used to ensure safe transportation of flammable cryogenic liquids and that proper proactive mitigation measures are taken if necessary to preclude an uncontrolled breach of the cargo tank.

Respondents: Carriers of flammable cryogenic liquids in bulk.

Annual Reporting and Recordkeeping Burden: The number of respondents are 65. The total annual responses are 18,200. The total annual burden hours are 1,213.

Frequency: A response is required for each shipment of a flammable cryogenic material.

Title: Approvals for Hazardous Materials. This is a request for reinstatement with change of a previously approved collection for which approval has expired.

OMB Control Number: 2137–0557.

Abstract: The Department shippers and manufacturers use these approvals to assure the safe transportation of hazardous material which pose specific packing requirements.

Pursuant to section 49 CFR Part 107, Hazardous Material Procedures and Hazardous Materials Regulations, Part 171–180, requires RSPA to collect this information.

This information is used by RSPA to determine whether applicants who apply to become designated approval agencies are qualified to evaluate package design, test packages, classify hazardous materials, etc.

Respondents: The respondents are individuals, businesses, not-for-profit institutions, Federal Government and State, local or tribal Government.

Annual Reporting and Recordkeeping Burden: The number of respondents are 3,503. The total annual responses are 3,853. The total annual burden hours are 18,302.

Frequency: On occasion of application for a benefit.

Title: Testing Requirements for Packaging.

OMB Control Number: 2137–0572.

Abstract: Detailed packaging manufacturing specifications have been replaced by a series of performance tests that a non-bulk packaging must be capable of passing before it is authorized to be used for transporting hazardous materials. The HMR require proof that packaging meet these testing requirements. Manufacturers must retain records of design qualification tests and periodic retests. Manufacturers must notify, in writing, persons to whom packaging are transferred of any specification requirements that have not been met at the time of transfer. Subsequent distributors, as well as manufacturers must provide written notification. Performance-oriented packaging standards allow manufacturers and shippers much greater flexibility in selecting more economical packaging.

Respondents: Each non-bulk packaging manufacturer that tests packaging to ensure the safe transportation of hazardous materials.

Annual Reporting and Recordkeeping Burden: The number of respondents are 5,000. The total annual responses are 15,000. The total annual burden hours are 30,000.

Frequency: Tests are performed at start of production of a packaging design type and repeated at one or two-year

intervals, depending on the type of packaging. Written notification is provided at time of first transfer, to each person to whom a packaging is transferred.

Title: Container Certification Statement [Previous title: Statement of Structural Serviceability for Freight Containers to be used for Class 1.1 and 1.2 Explosives].

OMB Control Number: 2137–0582.

Abstract: As required in Sec. 176.27, shippers of hazardous materials, in freight containers or transport vehicles by vessel, are required to certify that the freight container or transport vehicle is serviceable, that the hazardous materials are properly marked, labeled, or placarded, loaded and secured. For explosives in Division 1.1 and 1.2, shippers are required to certify on shipping documentation that the freight container or transport vehicle meets minimal structural serviceability requirements (see Sec. 176.172).

These requirements are intended to ensure an adequate level of safety for transport of hazardous materials aboard vessel and ensure consistency with similar requirements in international standards.

Respondents: Shippers of hazardous materials, including explosives in freight containers or transport vehicles by vessel.

Annual Reporting and Recordkeeping Burden: The number of respondents are 530. The total annual responses are 604,000. The total annual burden hours are 15,100.

Frequency: The statement is required for each shipment of hazardous material in a freight container or transport vehicle aboard a vessel.

Title: Hazardous Materials Public Sector Planning and Training Grants.

OMB Control Number: 2137–0586.

Abstract: Part 110 of 49 CFR sets forth procedures for reimbursable grants for public sector planning and training in support of the emergency planning and training efforts of States, Indian tribes and local communities to deal with hazardous materials emergencies, particularly those involving transportation. Sections in this part address information collection and recordkeeping with regard to applying for grants, monitoring expenditures, reporting and requesting modifications.

Respondents: State and local governments, Indian tribes.

Annual Reporting and Recordkeeping Burden: The number of respondents are 66. The total annual responses are 66. The total annual burden hours are 4,082.

Frequency: Application for a grant is at the discretion of the applicant and can be made as frequently as every annual grant cycle. Financial status reports are submitted quarterly. Grantees must complete a performance report at the end of the grant period.

Title: Response Plans for Shipments of Oil [Previous title: Preparation of Response Plans for Shipments of Oil].

OMB Control Number: 2137–0591.

Abstract: In recent years several major oil discharges damaged the marine environment of the United States. As required by the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, RSPA has issued regulations that require preparation of written spill response plans and, in certain instances, submission of these plans to RSPA for the transportation of oil in bulk by motor vehicle or rail car. These plans are intended to aid in the mitigation of the effects of unintended discharges of oil to the environment.

Respondents: Carriers that transport oil in bulk, by motor vehicle or rail.

Annual Reporting and Recordkeeping Burden: The number of respondents are 8,000. The total annual responses are 8,000. The total annual burden hours are 10,560.

Frequency: One time report, plus notification of changes when needed.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention RSPA Desk Officer.

Issued in Washington, DC, on May 21, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 96–13570 Filed 5–29–96; 8:45 am]

BILLING CODE 4910–60–P

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting to prepare for the twelfth session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE).

DATES: June 26, 1996 at 9:30 a.m.

ADDRESSES: Room 8236–8240, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: This meeting will be held in preparation for the twelfth session of the UNSCOE held from July 1 to 12, 1996, in Geneva, Switzerland. During this public meeting, U.S. positions on proposals submitted to the twelfth session of the UNSCOE will be discussed. Topics to be covered include matters related to international harmonization of classification criteria, restructuring the UN Recommendations on the Transport of Dangerous Goods into a model rule, criteria for environmentally hazardous substances, review of intermodal portable tank requirements, review of the requirements applicable to small quantities of hazardous materials in transport (limited quantities), classification of individual substances, requirements for bulk and non-bulk packagings used to transport hazardous materials, and infectious substances.

The public is invited to attend without prior notification.

Documents

Copies of documents submitted to the twelfth session of the UNSCOE may be obtained from RSPA. A listing of these documents is available on the Hazardous Materials Information Exchange (HMIX), RSPA's computer bulletin board. Documents may be ordered by contacting RSPA's Dockets Unit (202–366–5046). For more information on the use of the HMIX system, contact the HMIX information center; 1–800–PLANFOR (752–6367); in Illinois, 1–800–367–9592; Monday through Friday, 8:30 a.m. to 5:00 p.m. Central time. The HMIX may also be accessed via the Internet at hmix.dis.anl.gov.

Issued in Washington, DC, on May 23, 1996.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 96–13531 Filed 5–29–96; 8:45 am]

BILLING CODE 4910–60–M

Surface Transportation Board

[STB Finance Docket No. 32958]

Warren & Trumbull Railroad Co.—Trackage Rights Exemption—Economic Development Rail II Corporation

Economic [1]Development Rail II Corporation (EDR–II) will agree to grant trackage rights to The Warren & Trumbull Railroad Company (WTRC) over approximately 4 miles of railroad located in Ohio between Conrail mileposts 164.52 and 160.6 in Warren Township, and a 1-mile connecting track in Holland Township. The trackage rights are to become effective on such date as the parties may agree in writing as provided in their trackage rights agreement, but not sooner than May 17, 1996 (the effective date of the exemption).[2]

This transaction will permit WTRC to move freight between points on its existing line and an interchange with Conrail near North Warren, OH, and to serve local points on the line, including the facilities of the Packard Electric Division of General Motors Corporation.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32958, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423 and served on: Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street, NW, Washington, DC 20036.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

Decided: May 21, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–13569 Filed 5–29–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323–24.

[2] Under 49 U.S.C. 10502, the Board exempted EDR–II's acquisition of the above-described line from the prior approval requirements of 49 U.S.C. 10902, in a decision served April 15, 1996, in STB Finance Docket No. 32798, *Economic Development Rail II Corporation—Acquisition Exemption—Lines of Consolidated Rail Corporation.* EDR–II is expected to close on the purchase from Conrail not later than May 17, 1996.

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1995—Rev., Supp. No. 16]

Surety Companies Acceptable on Federal Bonds; Termination of Authority: Century Indemnity Company

Notice is hereby given that the Certificate of Authority issued by the Treasury to Century Indemnity Company, of Hartford, Connecticut, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective May 8, 1996.

The Company was last listed as an acceptable surety on Federal bonds at 60 FR 34438, June 30, 1995.

With respect to any bonds currently in force with Century Indemnity Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

The Treasury Department Circular 570 may be viewed and downloaded through the Internet (http://www.ustreas.gov/treasury/bureaus/finman/c570.html) or through our computerized public bulletin board system (FMS Inside Line) at (202) 874–6817/6872/6953/7034/8608. A hard copy may be purchased from the Government Printing Office (GPO), Washington, DC, telephone (202) 512–0132. When ordering the Circular from GPO, use the following stock number: 048–000–00489–0.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, telephone (202/FTS) 874–7116.

Dated: May 21, 1996.

Diane E. Clark,

Assistant Commissioner, Financial Information.

[FR Doc. 96–13540 Filed 5–29–96; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Education, Notice of Meeting

The Department of Veterans Affairs gives notice that a meeting of the Veterans' Advisory Committee on Education, authorized by 38 U.S.C. 3692, will be held on June 20 and 21, 1996, from 8:30 a.m. to 4:30 p.m. on Thursday, June 20, and from 8:30 a.m. to 1:00 p.m. on Friday, June 21. The meeting will take place at the Department of Veterans Affairs Central Office, Room 530, 810 Vermont Avenue, NW, Washington, DC. The purpose of the meeting will be to discuss Veterans Affairs' education issues.

On Thursday the Committee will discuss the increasing utilization of the Montgomery GI Bill benefits. On Friday the Committee will hold a planning session and discuss future projects of the Committee.

The meeting will be open to the public up to the seating capacity of the conference room. Due to limited seating capacity, it will be necessary for those wishing to attend to contact Ms. June Schaeffer, Assistant Director, Education Policy and Program Administration, (phone 202–273–7186) prior to June 14, 1996.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 10:00 a.m. on June 21, 1996.

Dated: May 21, 1996.

By Direction of the Secretary.

Hayward Bamister,

Committee Management Officer.

[FR Doc. 96–13475 Filed 5–29–96; 8:45 am]

BILLING CODE 8320–01–M

federal register

Thursday
May 30, 1996

Part II

Environmental Protection Agency

40 CFR Parts 9 and 63
Final Standards for Hazardous Air Pollutant Emissions from the Printing and Publishing Industry; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[AD–FRL–5509–1]

RIN 2060–AD95

National Emission Standards for Hazardous Air Pollutants; Final Standards for Hazardous Air Pollutant Emissions From the Printing and Publishing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) under section 112 of the Clean Air Act (CAA), as amended in 1990 for the printing and publishing industry. The NESHAP requires existing and new major sources to control emissions using the maximum achievable control technology (MACT) to control hazardous air pollutants (HAP). The standards were proposed in the **Federal Register** on March 14, 1995 (60 FR 13664). This Federal Register action announces the EPA's final decisions on the rule.

The final rule includes organic HAP emission limits for publication rotogravure, product and packaging rotogravure, and wide-web flexographic printing. A variety of organic HAP are used as solvents and components of inks and other materials used by printers. The HAP emitted by the facilities covered by this final rule include xylene, toluene, ethylbenzene, methyl ethyl ketone, methyl isobutyl ketone, methanol, ethylene glycol, and certain glycol ethers. All of these pollutants can cause reversible or irreversible toxic effects following exposure. The potential toxic effects include eye, nose, throat, and skin irritation; and damage to the heart, liver, kidneys, and blood cells. The final rule is estimated to reduce baseline emissions of HAP by 31 percent or 6700 megagrams per year (Mg/yr) (7400 tons per year (tpy)).

The emissions reductions achieved by these standards, combined with the emissions reductions achieved by similar standards, will achieve the primary goal of the CAA, which is to "enhance the quality of the Nation's air resources so as to promote the public health and welfare and productive capacity of its population". The intent of this final regulation is to protect the public health by requiring the maximum degree of reduction in emissions of organic HAP from new and existing sources, taking into consideration the cost of achieving such emission reduction, any nonair quality, health and environmental impacts, and energy requirements.

EFFECTIVE DATE: May 30, 1996.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. Department of Commerce, National Technical Information Service, Springfield, Virginia, 22161, telephone number (703) 487–4650. Please refer to "National Emission Standards for Hazardous Air Pollutants for the Printing and Publishing Industry— Background Information for Promulgated Standards," EPA–453/R–96–005b. The BID contains (1) a summary of the changes made to the standards since proposal, and (2) a summary of all the public comments made on the proposed standards and the Administrator's response to the comments.

Electronic versions of the promulgation BID as well as this final rule are available for download from the EPA's Technology Transfer Network (TTN), a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for data transfer of up to 14,400 bits per second. If more information on TTN is needed, contact the systems operator at (919) 541–5384.

Docket. Docket No. A–92–42, containing supporting information used in developing the promulgated standards, is available for public inspection and copying from 8 a.m. to 5:30 p.m., Monday through Friday, at the EPA Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, Ground Floor, 401 M Street, SW, Washington, DC 20460; telephone number (202) 260–7548, FAX (202) 260–4400. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. David Salman at (919) 541–0859, Emission Standards Division (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those which have the potential to emit HAP listed in section 112(b) of the CAA in the following regulated categories and entities:

Category	Examples of regulated entities
Industry	Printers, publishers, and manufacturers of packaging, wall and floor coverings, house furnishings and sanitary paper products employing rotogravure printing or wide-web flexographic printing technologies.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.820 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

Under section 307(b)(1) of the CAA, judicial review of NESHAP is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

The information presented in this preamble is organized as follows:

I. Background
  A. Regulatory Background and Purpose
  B. Common Sense Initiative
II. The Standards
III. Summary of Impacts
IV. Significant Changes to the Proposed Standards
  A. Public Participation
  B. Comments on the Proposed Standards
  C. Significant Changes
  D. Minor Changes
V. Administrative Requirements
  A. Docket
  B. Paperwork Reduction Act
  C. Executive Order 12866: Administrative Designation and Regulatory Analysis
  D. Executive Order 12875
  E. Regulatory Flexibility Act
  F. Unfunded Mandates Act of 1995
  G. Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

I. Background

A. Regulatory Background and Purpose

Section 112 of the CAA requires control of emissions of HAP to protect public health and the environment. This final regulation will reduce emissions of organic HAP from rotogravure and wide-web flexographic printing operations.

In part, section 112 requires that emission standards be promulgated for all categories of major sources of HAP, and for many categories of small "area" sources. The CAA lists 189 HAP believed to cause adverse health or environmental effects. Major sources are defined as those that emit or have the potential to emit at least 10 tons per year of any single HAP or 25 tons per year of any combination of HAP.

In the July 16, 1992, **Federal Register** (57 FR 31576), the EPA published the initial list of categories of sources slated for regulation. This list includes the printing and publishing category. Emissions standards for the listed source categories are required to be promulgated between November 1992 and November 2000.

Congress specified that each of these standards must require the maximum reduction in emissions of HAP that the EPA determines is achievable considering cost, non-air-quality health and environmental impacts, and energy requirements. In essence, these MACT standards ensure that all major sources of air toxics achieve the level of control already being achieved by the better controlled and lower emitting sources in each category. This approach creates a level economic playing field, ensuring that facilities that employ cleaner processes and good emissions controls are not disadvantaged relative to competitors with poorer controls. At the same time, this approach provides assurance to every citizen, in every community, that any major source of toxic air pollution located nearby will have to effectively control its emissions.

All U.S. publication rotogravure facilities and some product and packaging rotogravure and wide-web flexographic printing facilities are major sources of HAP emissions, with the potential to emit over 23 Mg/yr (25 tpy) of organic HAP, including toluene, xylene, ethylbenzene, methanol, methyl ethyl ketone, methyl isobutyl ketone, ethylene glycol, and certain glycol ethers. All of these pollutants can cause reversible or irreversible toxic effects following exposure. The potential toxic effects include irritation of the eyes, nose, throat, and skin; and damage to the heart, liver, kidneys, and blood cells.

The EPA recognizes that the degree of adverse effects to health resulting from the most significant emissions identified can range from mild to severe. The extent to which the effects could be experienced is dependent upon the ambient concentrations and exposure time. The latter is further influenced by source-specific characteristics such as emission rates and local meteorological conditions. Human variability factors, including genetics, age, pre-existing health conditions, and lifestyle also influence the degree to which effects to health occur.

The final standards will reduce organic HAP emissions from rotogravure and wide-web flexographic printing operations by 6,700 Mg/yr (7,400 tpy) from a baseline level of 21,700 Mg/yr (23,900 tpy). No small firms are at risk of closure as a result of the final standards, and there will not be a significant economic impact on a substantial number of small entities.

B. Common Sense Initiative

On October 17, 1994, the Administrator established the Common Sense Initiative (CSI) Council in accordance with the Federal Advisory Committee Act (U.S.C. App. 2, section 9(c)) requirements. The CSI addresses six industrial sectors. The Printing CSI Subcommittee addresses the Printing and Publishing industry.

The following are the six principles of the CSI program, as stated in the "Advisory Committee Charter."

1. *Regulation.* Review existing regulations for opportunities to get better environmental results at less cost. Improve new rules through increased coordination.

2. *Pollution Prevention.* Actively promote pollution prevention as the standard business practice and a central ethic of environmental protection.

3. *Recordkeeping and Reporting.* Make it easier to provide, use, and publicly disseminate relevant pollution and environmental information.

4. *Compliance and Enforcement.* Find innovative ways to assist companies that seek to comply and exceed legal requirements while consistently enforcing the law for those that do not achieve compliance.

5. *Permitting.* Improve permitting so that it works more efficiently, encourages innovation, and creates more opportunities for public participation.

6. *Environmental Technology.* Give industry the incentives and flexibility to develop innovative technologies that meet and exceed environmental standards while cutting costs.

The Printing CSI Subcommittee met for the first time just before the proposed rule was published. Several Subcommittee members were very involved in the development of the proposed rule. All Subcommittee members were made aware of the proposal and copies of the proposal were provided to all interested Subcommittee members. Although the Subcommittee did not choose to make review of the proposed rule one of its projects, several Subcommittee members did submit comments on the proposed rule. The subcommittee was provided with an update on the final rule at its March 19, 1996 meeting.

Many aspects of the CSI principles are reflected in the final standards. The alternatives considered in the development of this regulation, including those alternatives selected as standards for new and existing printing facilities, are based on process and emissions data received from over 600 printing facilities. The EPA met with industry and trade groups on numerous occasions to discuss these data. In addition, printers, trade organizations, ink manufacturers, and State and local regulatory authorities commented on draft versions of the proposed regulation and on the proposed regulation. Two trade organizations provided extensive comments. All comments were considered, and a number of changes to the final rule reflect these comments. Of major concern to industry were the opportunity to comply through pollution prevention by using low HAP content materials, the analytical method for HAP content determination, reliance on formulation data for HAP and volatile matter determination, and flexible compliance demonstration provisions that account for different configurations of work stations and printing presses within a facility.

The regulation allows sources the flexibility to select from various options for compliance. Sources may reduce HAP usage and emissions through conversion to waterborne, lower HAP solvent-borne or ultraviolet/electron beam cure materials. Alternatively, sources may install or upgrade existing capture and control devices to meet the proposed standard. Finally, sources have the option to comply by a combination of lower HAP materials and capture and control. Facilities may select the most cost-effective option based on facility specific considerations.

The final rule allows existing facilities three years from the date of promulgation to comply. This is the maximum amount of time allowed under the CAA. This time frame will provide the greatest opportunity for

developing and adopting low-HAP content materials, and provide sufficient time for facilities that choose to install or upgrade capture and control equipment.

Included in the final rule are methods for determining initial compliance as well as monitoring, recordkeeping, and reporting requirements. All of these components are necessary to ensure that sources will comply with the standards both initially and over time. However, the EPA has made every effort to simplify the requirements in the rule. The EPA has also attempted to maintain consistency with existing regulations.

Representatives from other interested EPA offices and programs were included in the regulatory development process as members of the work group. The work group reviewed and concurred with the regulation before proposal and promulgation. Therefore, the EPA believes that the implications to other EPA offices and programs have been adequately considered during the development of the rule.

II. The Standards

The final rule is applicable to all existing and new rotogravure and wide-web flexographic facilities that are major sources of HAP or are located at plant sites that are major sources of HAP.

Publication rotogravure facilities subject to this rule must limit emissions of organic HAP to no more than eight percent of the total volatile matter used each month. The emission limitation may be achieved by capture and control of at least 92 percent of organic HAP used, by substitution of non-HAP materials for organic HAP, or by a combination of capture and control technologies and substitution of materials.

Product and packaging rotogravure and wide-web flexographic printing facilities subject to this rule must limit emissions to no more than five percent of the organic HAP applied each month, or to no more than four percent of the mass of inks, coatings, varnishes, adhesives, primers, solvents, reducers, thinners, and other materials applied each month, or to no more than 20 percent of the solids applied each month, or to an equivalent allowable mass based on the as-applied solids contents of the materials applied each month.

Section 112(a) of the CAA defines major source as a source, or group of sources, located within a contiguous area and under common control that emits or has the potential to emit, considering controls, 9.1 Mg/yr (10 tpy) or more of any individual HAP or 22.7 Mg/yr (25 tpy) or more of any combination of HAP. Area sources are stationary sources that do not qualify as "major." "Potential to emit" is defined in the section 112 General Provisions (40 CFR 63.2) as "the maximum capacity of a stationary source to emit a pollutant under its physical or operational design." Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on the hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is Federally enforceable.

The EPA notes that in recent decisions, *National Mining Ass'n* v. *EPA*, 59 F.3d 1351 (D.C. Cir. 1995) and *Chemical Manufacturers Ass'n* v. *EPA*, No. 89–1514, slip op. (D.C. Cir. Sept. 15, 1995), the District of Columbia Circuit court addressed challenges related to the EPA's requirement that a source which wishes to limit its potential to emit must obtain a federally enforceable limit for the New Source Review and NESHAP programs. The EPA is currently reviewing its Federal enforceability requirements in light of these court decisions, and has not yet decided how it will address this issue. Once the EPA has completed its review of the Federal enforceability requirements in all relevant programs including the NESHAP program, the EPA will make available in a **Federal Register** notice its response to the court decisions. In the interim, the EPA has issued its Interim Policy on Enforceability of Limitations on Potential to Emit (January 22, 1996), which summarizes how certain State-enforceable limits may be recognized under this definition pending further rulemaking.

To determine the applicability of this rule to facilities that are within a contiguous area of other HAP-emitting emission sources that are not part of the source category covered by this rule, the owner or operator must determine whether the plant site as a whole is a major source. A formal HAP emissions inventory must be used to determine if total potential HAP emissions from all HAP emission sources at the plant site meet the definition of a major source. If the facility commits to HAP usage restrictions as provided in the rule that ensure potential HAP emissions will be below the major source cutoffs, only simplified reporting and recordkeeping requirements apply. A facility may also limit its potential to emit through other appropriate mechanisms that may be available through the permitting authority.

Existing major sources may switch to area source status by obtaining and complying with a federally enforceable limit on their potential to emit prior to the "compliance date" of the regulation. The "compliance date" for existing sources for this regulation is defined as May 30, 1999. New major sources are required to comply with the NESHAP requirements upon start-up or the promulgation date, whichever is later. A facility that has not obtained federally enforceable limits on its potential to emit by the compliance date, and that has not complied with the NESHAP requirements, will be in violation of the NESHAP. All sources that are major sources for HAP on the compliance date or become major sources after the compliance date are required to comply permanently with the NESHAP to ensure that the maximum achievable reductions in toxic emissions are achieved and maintained.

The final standards impose limits on organic HAP emissions from rotogravure and wide-web flexographic printing. Publication rotogravure facilities must demonstrate compliance on a monthly basis considering all organic HAP used on publication rotogravure presses and all affiliated equipment, including proof presses, cylinder and parts cleaners, ink and solvent mixing and storage equipment, and solvent recovery equipment. Facilities may comply using capture and control equipment, substitution of non-HAP solvents for HAP, or a combination of these methods.

Product and packaging rotogravure and wide-web flexographic printing facilities must demonstrate compliance on a monthly basis considering all organic HAP applied on product and packaging rotogravure and wide-web flexographic printing presses. Certain presses which are used primarily for coating, laminating, or printing using other technologies than rotogravure printing and wide-web flexographic printing may be excluded from the affected source, subject only to simplified recordkeeping requirements. Owners or operators of such equipment will be subject to the appropriate source category standard when such a standard is issued.

Product and packaging rotogravure and wide-web flexographic printers may comply through the use of capture and control equipment, the substitution of non-HAP solvents for HAP, or a combination of these methods. Facilities may comply on the basis of organic HAP emissions per mass of solids applied, organic HAP emissions per mass of materials applied, allowable organic HAP emissions based on the as-applied solids content of the materials applied, or overall organic HAP control efficiency.

III. Summary of Impacts

These standards will reduce nationwide emissions of HAP from rotogravure and wide-web flexographic printing operations by approximately 6700 Mg/yr (7400 tpy) in 1999 compared to the emissions that would result in the absence of the standards. These standards will also, to some extent, reduce volatile organic compounds (VOC) emissions from those same operations compared to the emissions that would result in the absence of the standards. The extent of the reduction in VOC emissions cannot be predicted because of uncertainty over the extent to which printers will comply through substitution of water and non-VOC organics for organic HAP. No significant adverse secondary air, water, solid waste, or energy impacts are anticipated from the promulgation of these standards.

Implementation of this regulation is expected to result in nationwide annual costs (including capital recovery) of approximately $40 million beyond baseline. These costs include $21 million per year for publication rotogravure printers and $19 million per year for package and product rotogravure and wide-web flexographic printers. These costs include capital recovery over a ten year period, operating costs for newly installed and upgraded capture and control systems, and costs for recordkeeping, reporting, and monitoring. Cost estimates for publication rotogravure printers remain unchanged from the proposed rule. Estimated costs for package and product rotogravure and wide-web flexographic printers are $2 million less than those for the proposed rule as a result of the facility-wide definition of affected source.

The economic impact analysis conducted before proposal showed that the economic impacts from the proposed standards would be insignificant. Since compliance costs and reporting and recordkeeping burdens have been reduced in the final rule, the economic impacts of the final rule are also insignificant.

IV. Significant Changes to the Proposed Standards

A. Public Participation

The standards were proposed and the preamble was published in the **Federal Register** on March 14, 1995 (60 FR 13664). The preamble to the proposed standards discussed the availability of the regulatory text and proposal BID, which described the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal, and copies of the regulatory text and BID were distributed to interested parties. Electronic versions of the preamble, regulation, and BID were made available to interested parties via the TTN (see **SUPPLEMENTARY INFORMATION** section of this preamble). A correction notice which addressed minor typographical errors was published in the **Federal Register** on April 3, 1995 (60 FR 16920).

The preamble to the proposed standards provided the public the opportunity to request a public hearing. However, a public hearing was not requested. The public comment period was from March 14, 1995 to May 30, 1995. In all, 117 comment letters were received. The comments have been carefully considered, and changes have been made to the proposed standards when determined by the Administrator to be appropriate.

B. Comments on the Proposed Standards

Comments on the proposed standards were received from 117 commenters; the commenters were comprised of printers, ink manufacturers, State and local air pollution control agencies, trade organizations for printers and control equipment manufacturers, and citizens. A detailed discussion of these comments and responses can be found in the promulgation BID, which is referred to in the **ADDRESSES** section of this preamble. The discussion of comments and responses in the BID serves as the basis for the revisions that have been made to the standards between proposal and promulgation. Many of the comment letters contained multiple comments.

C. Significant Changes

Several significant changes have been made in response to the comments received on the proposed standards. A summary of the major changes is presented below.

(1) Incidental Printing and Ancillary Printing Equipment

The rule affects rotogravure and wide-web flexographic printing operations at major sources. Several commenters noted that this will include facilities that use little or no HAP on rotogravure or wide-web flexographic printing presses, but are major sources as a result of activities conducted on other equipment in other source categories. In addition, commenters noted that equipment that meets the definition of rotogravure or wide-web flexographic printing press but conducts only a small amount of rotogravure or wide-web flexographic printing operations and is primarily used for coating, laminating, or printing by other processes would have, as proposed, been subject to the standard.

The first case above can be characterized as "incidental printing" because the total work done on rotogravure and wide-web flexographic printing presses at the facility is minimal and is incidental to the other operations conducted at the facility. In the second case above, the equipment can be characterized as "ancillary printing equipment" because the work being done on rotogravure and wide-web flexographic print stations is minimal in comparison to, and ancillary to, the work being done on other work stations (i.e., coating stations) on that equipment.

The EPA has considered control requirements for incidental printing as a separate subgroup. Under the rule, product and packaging rotogravure and wide-web flexographic printing affected sources that apply no more than 500 kilograms of materials each month and that are located at facilities that are major sources of HAP are considered incidental printers. This definition ensures that the total work done on product and packaging rotogravure and wide-web flexographic presses at the facility is minimal and is incidental to the other operations conducted at the facility.

The EPA believes it is appropriate not to subject incidental printing operations to the requirements in § 63.825 that apply to product and packaging rotogravure and wide-web flexographic printing. The EPA's analysis of the MACT floor for product and packaging rotogravure and wide-web flexographic printing is based on emissions levels and control techniques at facilities primarily engaged in printing that generally apply more than 500 kilograms of material each month on product and packaging rotogravure and wide-web flexographic presses. The EPA has little information on which to establish a MACT control level for incidental printing. The available information indicates that the MACT floor for this subgroup is no control.

The final standard includes simplified requirements and does not mandate emission controls for incidental printers. Affected sources within this subgroup are those which apply no more than 500 kilograms of material

each month or no more than 400 kilogams of HAP each month on product and packaging rotogravure and wide-web flexographic presses. The 400 kilogram of HAP applied per month alternative threshold has been included to provide affected sources applying somewhat more than 500 kilograms of material per month with the opportunity to maintain incidental printer status if they reduce the HAP content of the materials applied so that the monthly HAP applied is no more than would be applied by an affected source that applied 500 kilograms of material per month. Affected sources in this subgroup would be subject only to initial notification requirements and recordkeeping requirements to show that one of the thresholds is met every month.

The type of simplified requirements included in the final standard for this subgroup of product and packaging or wide-web flexographic sources were not made available to publication rotogravure affected sources because each press at a publication rotogravure affected source would far exceed the thresholds every month. A single publication rotogravure press would, in fact, be a major source of HAP.

The final standard also permits the owner or operator of a product and packaging rotogravure or wide-web flexographic printing affected source to choose to exclude ancillary printing equipment from the affected source. This equipment is used primarily for coating, laminating, or other operations besides product and packaging rotogravure and wide-web flexographic printing. Presses on which five weight-percent or less of the total material applied each month is applied by rotogravure or wide-web flexographic print stations would be subject only to a simplified recordkeeping requirement. The EPA believes it is appropriate to provide the owner or operator with the option not to subject these presses to the HAP emission limitations for product and packaging and wide-web flexographic printing in § 63.825 because the work being done on the rotogravure and wide-web flexographic print stations on these presses is ancillary to the work being done on other work stations (i.e., coating stations) on these presses. The EPA is separately establishing MACT for other source categories, such as the paper and other web coating source category and the metal coil coating source category, which may be more appropriate for this type of equipment. Ancillary printing equipment, if excluded from this standard, will be subject to the appropriate source category standard when such a standard is issued.

(2) Research and Laboratory Equipment

Several comments were received requesting exemption of research and laboratory equipment. Commenters noted that the purpose and operation of research presses are independent of their location. One commenter noted that research and laboratory operations could be exempted from this standard and a separate standard for these operations could be developed.

All research and laboratory equipment has been excluded from the final standard whether or not it is collocated with production facilities. In order to regulate research and laboratory equipment, it would be necessary to develop a separate source category as directed by section 112(c)(7) of the CAA to assure equitable treatment of such equipment.

(3) Addition of Presses to Existing Affected Sources

Comments were received concerning triggering of new source compliance deadlines as a result of adding new presses to existing control systems or new stations to existing presses. Commenters noted that this would discourage replacement and modification of presses or stations to take advantage of low-HAP materials.

Addition of presses to existing affected sources will subject the affected source to the compliance deadline for new sources only if the additional press or presses constitutes a reconstruction of the source, as defined in § 63.2. Additions, replacements, and modifications to existing sources which do not meet the definition of reconstruction do not alter the compliance deadline.

(4) Affected Source for Product and Packaging Rotogravure and Wide-web Flexographic Printing Facilities

Comments were received suggesting changes in the definition of affected source at product and packaging rotogravure and wide-web flexographic printing facilities to simplify compliance demonstration. One commenter stated that a facility-wide definition of affected source would significantly cut recordkeeping expenses.

In response, the final standard considers all rotogravure and wide-web flexographic printing equipment at a given facility as a single affected source. This grouping is more consistent with the way that the MACT floor was determined and is consistent with other MACT standards which have grouped various emission points into a single affected source. It is also more consistent with the definition of affected source for publication rotogravure.

This definition of affected source simplifies reporting and recordkeeping in many cases. In addition, sources may achieve the required emissions reductions by considering emissions from the entire affected source, including controlled and uncontrolled presses. This will allow sources to comply in the most cost-effective way and will not require expensive control equipment for small presses which emit relatively small amounts of organic HAP if equivalent emissions reductions can be achieved elsewhere in the affected source.

(5) Organic HAP Analysis Methods

Ninety-six comments were received requesting that the EPA accept formulation data in lieu of requiring the use of EPA Method 311 to determine organic HAP content of printing materials. Formulation data were preferred to reduce analytical cost and delays due to chemical analysis. Some commenters also suggested various modifications to the proposed analytical technique in the interests of improved accuracy, consistency with apparatus presently in operation, and reduced analytical costs.

The final standard adopts Method 311, as revised and promulgated with the Wood Furniture Manufacturing Operations NESHAP (60 FR 62930), for organic HAP analysis. Printers and ink manufacturers have the option of relying on formulation data if the data meet specified criteria. In the event of any discrepancy between formulation data and the results of EPA Method 311, the results of EPA Method 311 shall be presumed to govern for all compliance purposes. In addition, the printer may determine the total volatile matter content of the material and use this value for the organic HAP content for all compliance purposes. This option may be chosen by printers using materials in which all, or nearly all, of the volatile matter is organic HAP in order to avoid the need for a more time-consuming analytic procedure.

(6) Volatile Matter Analysis Methods

Several comments were received requesting that formulation data be acceptable instead of chemical analysis data. Commenters noted this would greatly reduce analytical costs.

The final standard allows printers and ink manufacturers the option of relying on formulation data for volatile matter and solids content, in lieu of EPA Methods 24 and 24A. In the event of any discrepancy between formulation data and the results of the EPA test methods, the test methods shall be presumed to govern for all compliance purposes.

(7) Compliance Monitoring for Catalytic Oxidizers

Nine commenters noted that the temperature downstream of a catalytic oxidizer was inappropriate for use as a monitoring parameter to indicate HAP destruction. The commenters noted that downstream temperature parameters established during performance testing under normal conditions might not be maintained during low-load conditions, yet this would not be an indication of excess emissions.

The final standard requires owners or operators using a catalytic oxidizer (that is, a catalytic incinerator) and monitoring an operating parameter to ensure compliance with the standard to monitor the temperature immediately upstream of the catalyst bed. The requirement to monitor the temperature downstream of the catalyst bed has been eliminated. Since the operating parameters are established during a test under normal operating conditions, a downstream temperature monitoring parameter might be impossible to meet during periods when organic loading to the oxidizer was lower than normal. This might have led to exceedances which were not indicative of improper operating conditions or excessive emissions.

(8) Additional Compliance Options for Product and Packaging Rotogravure and Wide-web Flexographic Printing Affected Sources

Several commenters requested clarification that compliance need only be demonstrated by a single procedure appropriate to the source's compliance strategy. Several commenters suggested that the rule should provide a variety of compliance demonstration alternatives to accomodate different aggregations of work stations and HAP control strategies.

In order to make the compliance options consistent with facility-wide definition of affected source, additional means of demonstrating compliance have been added to the final rule. Facilities may demonstrate that each material applied meets either of the organic HAP thresholds, or that all materials on average meet either of the organic HAP thresholds, or that the organic HAP emitted is less than the organic HAP allowed taking these thresholds into account. In addition, emissions from controlled and uncontrolled presses are aggregated to determine compliance across the entire affected source.

The final rule has been expanded to include ten procedures under which compliance can be demonstrated under different circumstances. Any one of the ten procedures can be used. These procedures are consistent with the proposed standards for low HAP materials and HAP emission control device operation. These procedures encompass the range of suggestions made by the commenters. The new compliance demonstration procedures in the final rule are expected to have a negligible impact on HAP emissions compared to the provisions in the proposed rule.

(9) Capture Efficiency Protocols and Test Methods

Four commenters requested that the rule allow the use of alternate capture efficiency test protocols approved by the EPA in lieu of the procedures specified in § 52.741.

The final rule includes additional options for capture efficiency tests. Provisions of the proposed rule pertaining to verification of permanent total enclosures and temporary total enclosure capture efficiency testing in accordance with § 52.741 have been retained in the final rule. The final rule also allows, as an alternative, the use of any capture efficiency protocol and test methods which satisfy the criteria of either the Data Quality Objective or Lower Confidence Limit approaches. An appendix describing these approaches has been added to the final rule. The use of these alternative approaches is optional for the owner or operator of the affected source and the EPA has determined that capture efficiency tests satisfying the criteria of these alternate approaches will be sufficiently rigorous to ensure compliance with the standard.

(10) Transition from Area Source to Major Source Status

A commenter requested that a provision allowing a transition period for a newly designated major source to come into compliance be incorporated in the rule. The commenter noted that the proposed rule had no provisions for a source to make this transition without being in violation of the standard.

A provision has been added to the final rule which provides a mechanism for owners or operators that have used the provisions of § 63.820(a)(2) to establish the facility as an area source to reestablish the facility as a major source. Such a source must continue to comply with its HAP usage commitments until it meets all requirements for major sources.

(11) Definition of "Month"

In response to a comment, the definition of "month" in the final rule has been changed to include prespecified periods of 28 to 35 days. The revised definition will fit better with the materials accounting systems used by some facilities and have little or no effect on the emission reduction achieved by the standard.

(12) Alternatives to Vent Stream Flow Rate Monitoring

Seven commenters requested inclusion of alternative methods for vent stream flow rate monitoring, substitution of flow indicators rather than flow meters, or elimination of the flow rate monitoring requirement. One commenter recommended that press interlocks be permitted as an alternative to vent stream flow rate monitoring.

The final regulation includes alternatives to the vent stream flow rate measurement requirement. These alternatives are simpler than the requirements in the proposed rule, but still ensure that sufficient records will be generated to show when HAP containing vent streams are being delivered to a control device and to allow for proper calculation of HAP emissions. Owners or operators of product and packaging rotogravure or wide-web flexographic presses with intermittently-controllable work stations may, as alternatives to measuring vent stream flow rate, install flow indicators on the bypass lines, secure bypass line valves with locking mechanisms or car seals, continuously monitor bypass valve position, or equip the press with an interlock preventing operation when the control device is bypassed. Sampling lines for gas analyzers and relief valves needed for safety purposes are not considered bypass lines for the purposes of these provisions. Presses that do not have any intermittently-controllable work stations are not subject to these provisions.

(13) Provisions for Inclusion of Stand-alone Coating Equipment in Affected Source

One comment was received suggesting that off-line coaters sharing a common control device with printing presses should be included in the affected source at the discretion of the facility. It was noted that such a provision would avoid penalizing facilities that had tightened up their control systems by tying in other sources of HAP.

Provisions have been added to the final rule through which owners or operators of affected sources may, at

their option, under certain conditions, include stand-alone coating equipment in the affected source subject to this standard. This type of coating equipment is expected to be covered by one of several MACT standards (e.g., Paper and Other Web Coating) which are scheduled to be promulgated in the future. Printers choosing this option may avoid the difficulty of complying with multiple standards in the future. Stand-alone coating equipment must meet certain requirements to be eligible for inclusion under this provision. To be eligible, stand-alone coating equipment must either share a control device with a press included in the affected source, or process the same substrate as a press included in the affected source, or apply one or more of the same solids-containing materials as a press included in the affected source. If any eligible equipment is included under this provision, all eligible equipment at the facility must be included.

(14) Addition of Criteria To Determine Whether Method 25 or Method 25A is Appropriate for Performance Testing

The proposed rule required that performance tests employ either Method 25 or 25A, as appropriate to the conditions of the site. The final rule has been clarified to specify the conditions based on the required or anticipated organic volatile matter concentration at the exhaust from the control device. These conditions are based on guidance provided to regional offices and State programs, and clarify the conditions under which Method 25A are appropriate. This will reduce the administrative burden on some sources and will not reduce the stringency of the rule.

(15) Conditions Under Which Performance Test Is To Be Conducted

One commenter recommended testing under reasonably expected conditions and a second commenter recommended testing under normal conditions instead of maximum conditions.

The final rule has been made consistent with the General Provisions to require performance testing under "normal operating conditions" rather than "maximum capacity." This will result in establishment of more representative operating parameters and will not cause an increase in HAP emissions.

(16) Clarification of Reporting and Recordkeeping Requirements

Several comments were received requesting clarification that only recordkeeping and reporting applicable to the specific control strategy employed were required. One commenter stated that area sources should be required to submit initial notifications so that States would be advised of their operations.

The final rule enumerates the types of excess emissions (including operating parameter exceedences) which must be included, as applicable, in the summary report. Recordkeeping requirements for incidental printing, ancillary printing equipment, and optional inclusion of stand-alone coating equipment have been added to the final rule.

The requirement for annual reporting of HAP usage by sources using the optional provisions of this rule to establish area source status has been eliminated from the final rule. A less burdensome requirement that such sources submit initial notifications has been added to the final rule. This initial notification will inform the Administrator that a source is using these optional provisions to establish area source status. The annual report was determined to be unnecessary because the source is required to maintain monthly records of HAP usage and to report any 12 month period in which the area source commitment is not met as part of its summary report.

D. Minor Changes

This section contains a list of several of the minor changes to the final rule.

(1) Revisions to definitions and phrasing have been made to clarify the regulation.

(2) Variables have been redefined as necessary to avoid ambiguity, and additional variables have been defined where necessary to explicitly describe the additional compliance options available in the final rule.

(3) Typographical errors have been corrected.

(4) The citation of the basis for delegation of regulatory authority has been corrected.

(5) The summary table in the proposed rule has been eliminated. (The General Provisions cross reference table has been retained and additional clarifying notes have been added.)

(6) Language has been added to the final rule which clarifies that the optional area source mechanism included in the rule does not preclude an owner or operator from taking advantage of other mechanisms which are available to establish area source status.

(7) A provision in the proposed rule requiring owners or operators of affected sources to obtain part 70 or part 71 operating permits has been eliminated from the final rule because this provision may have been inadvertently interpreted to require these permits for sources which used the optional provisions of the rule to establish area source status. Such sources may be required to obtain such permits, but are not required to obtain them as a result of using the optional provision in this standard.

(8) The deadline for initial notification for existing sources has been extended until one year before the compliance date.

V. Administrative Requirements

A. Docket

The Docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The Docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. The contents of the Docket, including the BID for the proposed and promulgated standards and the EPA responses to significant comments, will serve as the record in case of judicial review (see 42 U.S.C. 7607(d)(7)(A)).

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0335. The EPA is therefore amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. This amendment updates the table to accurately display those information requirements contained in this final rule. This display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, the EPA finds that there is "good cause" under section 553(b) of the Administrative Procedure Act (5 U.S.C. 553(b)) to amend the table in part 9 without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary. For the same reasons, the EPA finds that there is good cause under 5 U.S.C. 553(d)(3).

The information required to be collected by this rule is necessary to identify the regulated entities who are subject to the rule and to ensure their compliance with the rule. The recordkeeping and reporting requirements are mandatory and are being established under authority of section 114 of the CAA. All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the EPA policies set forth in title 40, part 2, subpart B—Confidentiality of Business Information.

The total annual reporting and recordkeeping burden for this collection averaged over the first three years is estimated to be 89,965 hours per year. The average burden, per respondent, is 164 hours per year. The rule requires an initial one-time notification from each respondent and subsequent reports/notification would have to be submitted semiannually. Respondents operating capture systems and control devices would also be required to submit notifications of performance tests, performance test plans and reports of performance tests. There would be an estimated 500 respondents to the collection requirements. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing methods for compliance with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Send comments on the EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136), 401 M St. SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St. NW, Washington, DC 20503; marked "Attention: Desk Officer for EPA." Include the OMB control number in any correspondence.

C. Executive Order 12866: Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the EPA is required to judge whether a regulation is "significant" and therefore subject to OMB review and the requirements of this executive order to prepare a regulatory impact analysis (RIA). The order defines "significant regulatory action" as one that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities, (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof, or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the executive order.

Pursuant to the terms of Executive Order 12866, OMB has notified the EPA that it considers this a "significant regulatory action" within the meaning of the executive order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

D. Executive Order 12875

To reduce the burden of Federal regulations on States and small governments, the President issued Executive Order 12875 on October 26, 1993, entitled *Enhancing the Intergovernmental Partnership*. In particular, this executive order is designed to require agencies to assess the effects of regulations that are not required by statute and that create mandates upon State, local, or tribal governments. Two methods exist for complying with the requirements of the executive order: (1) Assure that funds necessary to pay direct costs of compliance with a regulation are provided, or (2) provide OMB a description of the communications and consultations with State/local/tribal governments, the nature of their concerns, any written submission from them, and the EPA's position supporting the need to issue the regulation.

The EPA has always been concerned about the effect of the cost of regulations on small entities; the EPA has consulted with and sought input from public entities to explain costs and burdens they may incur.

The EPA advised interested parties on July 16, 1992 (57 FR 21592), of the categories considered as major and area sources of HAP, and the printing/publishing (surface coating) industry was listed as a category of both major and area sources. The EPA made significant effort to hear from all levels of interest and all segments of the rotogravure and wide-web flexographic printing industry. To facilitate comments and input, the EPA participated in numerous meetings with trade organizations representing all industry sectors affected by this rule. Throughout the regulatory development process, and more specifically, in consultation meetings, industry representatives from printing companies, ink manufacturers, and various trade associations were given an opportunity to comment on the proposed regulatory approach and the MACT alternatives being developed. The major topic areas resulting from these discussions included industry segmentation, the determination of the MACT floor, test methods, monitoring procedures, facility-wide averaging, compliance deadlines, and pollution prevention. Documentation of all meetings and public comments can be found in Docket A–92–42.

Representatives of State and local air pollution control agencies participated in all of the EPA work group meetings, and several State and local agencies submitted public comments in response to the proposed standards.

The EPA has considered the purpose and intent of Executive Order 12875 and has determined that printing and publishing NESHAP are needed. The rule is generally required by statute under section 112 of the CAA because printing and publishing facilities emit significant quantities of air pollutants. Through meetings and consultations during project development and proposal, efforts were made to inform entities of the costs required to comply with the regulation; in addition, modifications were made to reduce the burden to small entities.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the EPA to consider potential impacts of proposed regulations on small business "entities." If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a final Regulatory Flexibility Analysis

(RFA) must be prepared. The EPA's analysis of these impacts was summarized in the preamble to the proposed rule (60 FR 13664).

In addition, the EPA has a set of Regulatory Flexibility Guidelines (RFG), published in April 1992, that require the EPA to conduct a final RFA if any small business or small entity impacts occur resulting from a rule whose Start Action Notice (SAN) is approved after the date of publication of the EPA RFG. The SAN for this rule was approved before that date, thus the former Regulatory Flexibility Act guidelines hold. An RFA was conducted, however, as part of the larger economic impact analysis whose results were presented in the preamble to the proposed rule. The RFA prepared meets the EPA RFG as well as the original Regulatory Flexibility Act Guidelines. It also meets the analytical requirements of the Small Business Regulatory Enforcement Fairness Act of 1996.

This analysis found that the proposed rule would not have a significant economic impact on a substantial number of small entities. No comments were received on this analysis. The changes made in the final rule reduce the cost of achieving and demonstrating compliance for affected small and large entities. Therefore, pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small business entities.

F. Unfunded Mandates Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more in any one year to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the UMRA do not apply to this action.

G. Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

Pursuant to Subtitle E of SBREFA, this rule, which is nonmajor, was submitted to Congress before publication in the **Federal Register**.

List of Subjects in 40 CFR parts 9 and 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements, Standard for printing and publishing industry.

Dated: May 15, 1996.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 9—[AMENDED]

1. The authority citation for Part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313(d), 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new entry to the table under the indicated heading in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
. . . . .	
National Emission Standards for Hazardous Air Pollutants for Source Categories [13]	
. . . . .	
63.829–63.830	2060–0335
. . . . .	

[13] The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: Secs. 101, 112, 114, 116, 183(f) and 301 of the CAA, as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7511b(f), 7601).

2. Part 63 is amended by adding a new subpart KK consisting of §§ 63.820 through 63.839 to read as follows:

Subpart KK—National Emission Standards for the Printing and Publishing Industry

Sec.

63.820 Applicability.
63.821 Designation of affected sources.
63.822 Definitions.
63.823 Standards: General.
63.824 Standards: Publication rotogravure printing.
63.825 Standards: Product and packaging rotogravure and wide-web flexographic printing.
63.826 Compliance dates.
63.827 Performance test methods.
63.828 Monitoring requirements.
63.829 Recordkeeping requirements.
63.830 Reporting requirements.
63.831 Delegation of Authority.
63.832—63.839 [Reserved]

Table 1 to Subpart KK—Applicability of General Provisions to Subpart KK

Appendix A to Subpart KK—Data Quality Objective and Lower Confidence Limit Approaches for Alternative Capture Efficiency Protocols and Test Methods

Subpart KK—National Emission Standards for the Printing and Publishing Industry

§ 63.820 Applicability.

(a) The provisions of this subpart apply to:

(1) Each new and existing facility that is a major source of hazardous air pollutants (HAP), as defined in 40 CFR 63.2, at which publication rotogravure, product and packaging rotogravure, or wide-web flexographic printing presses are operated, and

(2) each new and existing facility at which publication rotogravure, product and packaging rotogravure, or wide-web flexographic printing presses are operated for which the owner or operator chooses to commit to, and meets the criteria of paragraphs (a)(2)(i) and (a)(2)(ii) of this section for purposes of establishing the facility to be an area source with respect to this subpart:

(i) Use less than 9.1 Mg (10 tons) per each rolling 12-month period of each HAP at the facility, including materials used for source categories or purposes other than printing and publishing, and

(ii) Use less than 22.7 Mg (25 tons) per each rolling 12-month period of any combination of HAP at the facility, including materials used for source categories or purposes other than printing and publishing.

(3) Each facility for which the owner or operator chooses to commit to and meets the criteria stated in paragraph (a)(2) of this section shall be considered an area source, and is subject only to the provisions of § 63.829(d) and § 63.830(b)(1) of this subpart.

(4) Each facility for which the owner or operator commits to the conditions in paragraph (a)(2) of this section may exclude material used in routine janitorial or facility grounds maintenance, personal uses by employees or other persons, the use of products for the purpose of maintaining electric, propane, gasoline and diesel powered motor vehicles operated by the facility, and the use of HAP contained in intake water (used for processing or noncontact cooling) or intake air (used either as compressed air or for combustion).

(5) Each facility for which the owner or operator commits to the conditions in paragraph (a)(2) of this section to become an area source, but subsequently exceeds either of the thresholds in paragraph (a)(2) of this section for any rolling 12-month period (without first obtaining and complying with other limits that keep its potential to emit HAP below major source levels), shall be considered in violation of its commitment for that 12-month period and shall be considered a major source of HAP beginning the first month after the end of the 12-month period in which either of the HAP-use thresholds was exceeded. As a major source of HAP, each such facility would be subject to the provisions of this subpart as noted in paragraph (a)(1) of this section and would no longer be eligible to use the provisions of paragraph (a)(2) of this section, even if in subsequent 12-month periods the facility uses less HAP than the thresholds in paragraph (a)(2) of this section.

(6) An owner or operator of an affected source subject to paragraph (a)(2) of this section who chooses to no longer be subject to paragraph (a)(2) of this section shall notify the Administrator of such change. If, by no longer being subject to paragraph (a)(2) of this section, the facility at which the affected source is located becomes a major source:

(i) The owner or operator of an existing source must continue to comply with the HAP usage provisions of paragraph (a)(2) of this section until the source is in compliance with all relevant requirements for existing affected sources under this subpart;

(ii) The owner or operator of a new source must continue to comply with the HAP usage provisions of paragraph (a)(2) of this section until the source is in compliance with all relevant requirements for new affected sources under this subpart.

(7) Nothing in this paragraph is intended to preclude a facility from establishing area source status by limiting its potential to emit through other appropriate mechanisms that may be available through the permitting authority.

(b) This subpart does not apply to research or laboratory equipment.

§ 63.821 Designation of affected sources.

(a) The affected sources subject to this subpart are:

(1) All of the publication rotogravure presses and all affiliated equipment, including proof presses, cylinder and parts cleaners, ink and solvent mixing and storage equipment, and solvent recovery equipment at a facility.

(2) All of the product and packaging rotogravure or wide-web flexographic printing presses at a facility plus any other equipment at that facility which the owner or operator chooses to include in accordance with paragraph (a)(3) of this section, except

(i) Proof presses, and

(ii) Any product and packaging rotogravure or wide-web flexographic press which is used primarily for coating, laminating, or other operations which the owner or operator chooses to exclude, provided that

(A) The sum of the total mass of inks, coatings, varnishes, adhesives, primers, solvents, thinners, reducers, and other materials applied by the press using product and packaging rotogravure work stations and the total mass of inks, coatings, varnishes, adhesives, primers, solvents, thinners, reducers, and other materials applied by the press using wide-web flexographic print stations in each month never exceeds five weight-percent of the total mass of inks, coatings, varnishes, adhesives, primers, solvents, thinners, reducers, and other materials applied by the press in that month, including all inboard and outboard stations, and

(B) The owner or operator maintains records as required in § 63.829(f).

(3) The owner or operator of an affected source, as defined in paragraph (a)(2) of this section, may elect to include in that affected source stand-alone coating equipment subject to the following provisions:

(i) Stand-alone coating equipment meeting any of the criteria specified in this subparagraph is eligible for inclusion:

(A) The stand-alone coating equipment and one or more product and packaging rotogravure or wide-web flexographic presses are used to apply solids-containing materials to the same web or substrate, or

(B) The stand-alone coating equipment and one or more product and packaging rotogravure or wide-web flexographic presses apply a common solids-containing material, or

(C) A common control device is used to control organic HAP emissions from the stand-alone coating equipment and from one or more product and packaging rotogravure or wide-web flexographic printing presses;

(ii) All eligible stand-alone coating equipment located at the facility is included in the affected source; and

(iii) No product and packaging rotogravure or wide-web flexographic presses are excluded from the affected source under the provisions of paragraph (a)(2)(ii) of this section.

(b) Each product and packaging rotogravure or wide-web flexographic printing affected source at a facility that is a major source of HAP, as defined in 40 CFR 63.2, that complies with the criteria of paragraphs (b)(1) or (b)(2) on and after the applicable compliance date as specified in § 63.826 of this subpart is subject only to the requirements of § 63.829(e) and § 63.830(b)(1) of this subpart.

(1) The owner or operator of the source applies no more than 500 kg per month, for every month, of inks, coatings, varnishes, adhesives, primers, solvents, thinners, reducers, and other materials on product and packaging rotogravure or wide-web flexographic printing presses, or

(2) The owner or operator of the source applies no more than 400 kg per month, for every month, of organic HAP

on product and packaging rotogravure or wide-web flexographic printing presses.

(c) Each product and packaging rotogravure or wide-web flexographic printing affected source at a facility that is a major source of HAP, as defined in 40 CFR 63.2, that complies with neither the criterion of paragraph (b)(1) nor (b)(2) of this section in any month after the applicable compliance date as specified in § 63.826 of this subpart is, starting with that month, subject to all relevant requirements of this subpart and is no longer eligible to use the provisions of paragraph (b) of this section, even if in subsequent months the affected source does comply with the criteria of paragraphs (b)(1) or (b)(2) of this section.

§ 63.822 Definitions.

(a) All terms used in this subpart that are not defined below have the meaning given to them in the CAA and in subpart A of this part.

Always-controlled work station means a work station associated with a dryer from which the exhaust is delivered to a control device, with no provision for the dryer exhaust to bypass the control device. Sampling lines for analyzers and relief valves needed for safety purposes are not considered bypass lines.

Capture efficiency means the fraction of all organic HAP emissions generated by a process that are delivered to a control device, expressed as a percentage.

Capture system means a hood, enclosed room, or other means of collecting organic HAP emissions into a closed-vent system that exhausts to a control device.

Car-seal means a seal that is placed on a device that is used to change the position of a valve or damper (e.g., from open to closed) in such a way that the position of the valve or damper cannot be changed without breaking the seal.

Certified product data sheet (CPDS) means documentation furnished by suppliers of inks, coatings, varnishes, adhesives, primers, solvents, and other materials or by an outside laboratory that provides the organic HAP content of these materials, by weight, measured using Method 311 of appendix A of this Part 63 or an equivalent or alternative method (or formulation data as provided in § 63.827(b)) and the solids content of these materials, by weight, determined in accordance with § 63.827(c). The purpose of the CPDS is to assist the owner or operator in demonstrating compliance with the emission limitations presented in §§ 63.824–63.825.

Coating operation means the application of a uniform layer of material across the entire width of a substrate.

Coating station means a work station on which a coating operation is conducted.

Control device means a device such as a carbon adsorber or oxidizer which reduces the organic HAP in an exhaust gas by recovery or by destruction.

Control device efficiency means the ratio of organic HAP emissions recovered or destroyed by a control device to the total HAP emissions that are introduced into the control device, expressed as a percentage.

Day means a 24-consecutive-hour period.

Facility means all contiguous or adjoining property that is under common ownership or control, including properties that are separated only by a road or other public right-of-way.

Flexographic press means an unwind or feed section, a series of individual work stations, one or more of which is a flexographic print station, any dryers (including interstage dryers and overhead tunnel dryers) associated with the work stations, and a rewind, stack, or collection station. The work stations may be oriented vertically, horizontally, or around the circumference of a single large impression cylinder. Inboard and outboard work stations, including those employing any other technology, such as rotogravure, are included if they are capable of printing or coating on the same substrate.

Flexographic print station means a work station on which a flexographic printing operation is conducted. A flexographic print station includes a flexographic printing plate which is an image carrier made of rubber or other elastomeric material. The image (type and art) to be printed is raised above the printing plate.

HAP applied means the organic HAP content of all inks, coatings, varnishes, adhesives, primers, solvent, and other materials applied to a substrate by a product and packaging rotogravure or wide-web flexographic printing affected source.

HAP used means the organic HAP applied by a publication rotogravure printing affected source, including all organic HAP used for cleaning, parts washing, proof presses, and all organic HAP emitted during tank loading, ink mixing, and storage.

Intermittently-controllable work station means a work station associated with a dryer with provisions for the dryer exhaust to be delivered to or diverted from a control device depending on the position of a valve or damper. Sampling lines for analyzers and relief valves needed for safety purposes are not considered bypass lines.

Month means a calendar month or a prespecified period of 28 days to 35 days.

Never-controlled work station means a work station which is not equipped with provisions by which any emissions, including those in the exhaust from any associated dryer, may be delivered to a control device.

Overall Organic HAP control efficiency means the total efficiency of a control system, determined either by:

(1) The product of the capture efficiency and the control device efficiency or

(2) A liquid-liquid material balance.

Print station means a work station on which a printing operation is conducted.

Printing operation means the formation of words, designs, and pictures on a substrate other than fabric through the application of material to that substrate.

Product and packaging rotogravure printing means the production, on a rotogravure press, of any printed substrate not otherwise defined as publication rotogravure printing. This includes, but is not limited to, folding cartons, flexible packaging, labels and wrappers, gift wraps, wall and floor coverings, upholstery, decorative laminates, and tissue products.

Proof press means any device used only to check the quality of the image formation of rotogravure cylinders or flexographic plates, which prints only non-saleable items.

Publication rotogravure printing means the production, on a rotogravure press, of the following saleable paper products:

(1) Catalogues, including mail order and premium,

(2) Direct mail advertisements, including circulars, letters, pamphlets, cards, and printed envelopes,

(3) Display advertisements, including general posters, outdoor advertisements, car cards, window posters; counter and floor displays; point of purchase and other printed display material,

(4) Magazines,

(5) Miscellaneous advertisements, including brochures, pamphlets, catalog sheets, circular folders, announcements, package inserts, book jackets, market circulars, magazine inserts, and shopping news,

(6) Newspapers, magazine and comic supplements for newspapers, and preprinted newspaper inserts, including hi-fi and spectacolor rolls and sections,

(7) Periodicals, and

(8) Telephone and other directories, including business reference services.

Research or laboratory equipment means any equipment for which the primary purpose is to conduct research and development into new processes and products, where such equipment is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner.

Rotogravure press means an unwind or feed section, a series of one or more work stations, one or more of which is a rotogravure print station, any dryers associated with the work stations, and a rewind, stack, or collection section. Inboard and outboard work stations including those employing any other technology, such as flexography, are included if they are capable of printing or coating on the same substrate.

Rotogravure print station means a work station on which a rotogravure printing operation is conducted. A rotogravure print station includes a rotogravure cylinder and ink supply. The image (type and art) to be printed is etched or engraved below the surface of the rotogravure cylinder. On a rotogravure cylinder the printing image consists of millions of minute cells.

Stand-alone coating equipment means an unwind or feed section, a series of one or more coating stations and any associated dryers, and a rewind, stack or collection section that:

Is not part of a product and packaging rotogravure or wide-web flexographic press, and

Is used to conduct one or more coating operations on a substrate. Stand-alone coating equipment

May or may not process substrate that is also processed by a product and packaging rotogravure or wide-web flexographic press, apply solids-containing materials that are also applied by a product and packaging rotogravure or wide-web flexographic press, and utilize a control device that is also utilized by a product and packaging rotogravure or wide-web flexographic press. Stand-alone coating equipment is sometimes referred to as "off-line" coating equipment.

Wide-web flexographic press means a flexographic press capable of printing substrates greater than 18 inches in width.

Work station means a unit on a rotogravure or wide-web flexographic press where material is deposited onto a substrate.

(b) The symbols used in equations in this subpart are defined as follows:

(1) C_{abi}=the monthly average, as-applied, organic HAP content of solids-containing material, i, expressed as a weight-fraction, kg/kg.

(2) C_{asi}=the monthly average, as applied, solids content, of solids-containing material, i, expressed as a weight-fraction, kg/kg.

(3) C_{hi}=the organic HAP content of ink or other solids-containing material, i, expressed as a weight-fraction, kg/kg.

(4) C_{hij}=the organic HAP content of solvent j, added to solids-containing material i, expressed as a weight-fraction, kg/kg.

(5) C_{hj}=the organic HAP content of solvent j, expressed as a weight-fraction, kg/kg.

(6) C_i=the organic volatile matter concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 25 or Method 25A.

(7) C_{si}=the solids content of ink or other material, i, expressed as a weight-fraction, kg/kg.

(8) C_{vi}=the volatile matter content of ink or other material, i, expressed as a weight-fraction, kg/kg.

(9) E=the organic volatile matter control efficiency of the control device, percent.

(10) F=the organic volatile matter capture efficiency of the capture system, percent.

(11) G_i=the mass fraction of each solids containing material, i, which was applied at 20 weight-percent or greater solids content, on an as-applied basis, kg/kg.

(12) H=the total monthly organic HAP applied, kg.

(13) H_a=the monthly allowable organic HAP emissions, kg.

(14) H_L=the monthly average, as-applied, organic HAP content of all solids-containing materials applied at less than 0.04 kg organic HAP per kg of material applied, kg/kg.

(15) H_s=the monthly average, as-applied, organic HAP to solids ratio, kg organic HAP/kg solids applied.

(16) H_{si}=the as-applied, organic HAP to solids ratio of material i.

(17) L=the mass organic HAP emission rate per mass of solids applied, kg/kg.

(18) M_{Bi}=the sum of the mass of solids-containing material, i, applied on intermittently-controllable work stations operating in bypass mode and the mass of solids-containing material, i, applied on never-controlled work stations, in a month, kg.

(19) M_{Bj}=the sum of the mass of solvent, thinner, reducer, diluent, or other non-solids-containing material, j, applied on intermittently-controllable work stations operating in bypass mode and the mass of solvent, thinner, reducer, diluent, or other non-solids-containing material, j, applied on never-controlled work stations, in a month, kg.

(20) M_{ci}=the sum of the mass of solids-containing material, i, applied on intermittently-controllable work stations operating in controlled mode and the mass of solids-containing material, i, applied on always-controlled work stations, in a month, kg.

(21) M_{cj}=the sum of the mass of solvent, thinner, reducer, diluent, or other non-solids-containing material, j, applied on intermittently-controllable work stations operating in controlled mode and the mass of solvent, thinner, reducer, diluent, or other non-solids-containing material, j, applied on always-controlled work stations in a month, kg.

(22) M_f=the total organic volatile matter mass flow rate, kg/h.

(23) M_{fi}=the organic volatile matter mass flow rate at the inlet to the control device, kg/h.

(24) M_{fo}=the organic volatile matter mass flow rate at the outlet of the control device, kg/h.

(25) M_{hu}=the mass of organic HAP used in a month, kg.

(26) M_i=the mass of ink or other material, i, applied in a month, kg.

(27) M_{ij}=the mass of solvent, thinner, reducer, diluent, or other non-solids-containing material, j, added to solids-containing material, i, in a month, kg.

(28) M_j=the mass of solvent, thinner, reducer, diluent, or other non-solids-containing material, j, applied in a month, kg.

(29) M_{Lj}=the mass of solvent, thinner, reducer, diluent, or other non-solids-containing material, j, added to solids-containing materials which were applied at less than 20 weight-percent solids content, on an as-applied basis, in a month, kg.

(30) M_{vr}=the mass of volatile matter recovered in a month, kg.

(31) M_{vw}=the mass of volatile matter, including water, used in a month, kg.

(32) MW_i=the molecular weight of compound i in the vent gas, kg/kg-mol.

(33) n=the number of organic compounds in the vent gas.

(34) p=the number of different inks, coatings, varnishes, adhesives, primers, and other materials applied in a month.

(35) q=the number of different solvents, thinners, reducers, diluents, or other non-solids-containing materials applied in a month.

(36) Q_{sd}=the volumetric flow rate of gases entering or exiting the control device, as determined by Method 2, dscm/h.

(37) R=the overall organic HAP control efficiency, percent.

(38) R_e=the overall effective organic HAP control efficiency for publication rotogravure, percent.

(39) R_v=the organic volatile matter collection and recovery efficiency, percent.

(40) S=the mass organic HAP emission rate per mass of material applied, kg/kg.

(41) 0.0416=conversion factor for molar volume, kg-mol/m³(@ 293 K and 760 mmHg).

§ 63.823 Standards: General.

Table 1 to this subpart provides cross references to the 40 CFR part 63, subpart A, general provisions, indicating the applicability of the general provisions requirements to this subpart KK.

§ 63.824 Standards: Publication rotogravure printing.

(a) Each owner or operator of any publication rotogravure printing affected source that is subject to the requirements of this subpart shall comply with these requirements on and after the compliance dates as specified in § 63.826 of this subpart.

(b) Each publication rotogravure affected source shall limit emissions of organic HAP to no more than eight percent of the total volatile matter used each month. The emission limitation may be achieved by overall control of at least 92 percent of organic HAP used, by substitution of non-HAP materials for organic HAP, or by a combination of capture and control technologies and substitution of materials. To demonstrate compliance, each owner or operator shall follow the procedure in paragraph (b)(1) of this section when emissions from the affected source are controlled by a solvent recovery device, the procedure in paragraph (b)(2) of this section when emissions from the affected source are controlled by an oxidizer, and the procedure in paragraph (b)(3) of this section when no control device is used.

(1) Each owner or operator using a solvent recovery device to control emissions shall demonstrate compliance by showing that the HAP emission limitation is achieved by following the procedures in either paragraph (b)(1)(i) or (b)(1)(ii) of this section:

(i) Perform a liquid-liquid material balance for each month as follows:

(A) Measure the mass of each ink, coating, varnish adhesive, primer, solvent, and other material used by the affected source during the month.

(B) Determine the organic HAP content of each ink, coating, varnish, adhesive, primer, solvent and other material used by the affected source during the month following the procedure in § 63.827(b)(1).

(C) Determine the volatile matter content, including water, of each ink, coating, varnish, adhesive, primer, solvent, and other material used by the affected source during the month following the procedure in § 63.827(c)(1).

(D) Install, calibrate, maintain and operate, according to the manufacturer's specifications, a device that indicates the cumulative amount of volatile matter recovered by the solvent recovery device on a monthly basis. The device shall be initially certified by the manufacturer to be accurate to within ±2.0 percent.

(E) Measure the amount of volatile matter recovered for the month.

(F) Calculate the overall effective organic HAP control efficiency (R_e) for the month using Equation 1:

$$R_e = (100)\frac{M_{vu} - M_{hu} + \left[\left(M_{vr}\right)\left(M_{hu} / M_{vu}\right)\right]}{M_{vu}} \quad \text{Eq 1}$$

For the purposes of this calculation, the mass fraction of organic HAP present in the recovered volatile matter is assumed to be equal to the mass fraction of organic HAP present in the volatile matter used.

(G) The affected source is in compliance for the month, if R_e is at least 92 percent each month.

(ii) Use continuous emission monitors, conduct an initial performance test of capture efficiency, and continuously monitor a site specific operating parameter to assure capture efficiency as specified in paragraphs (b)(1)(ii)(A) through (b)(1)(ii)(E) of this section:

(A) Install continuous emission monitors to determine the total organic volatile matter mass flow rate (e.g., by determining the concentration of the vent gas in grams per cubic meter, and the volumetric flow rate in cubic meters per second, such that the total organic volatile matter mass flow rate in grams per second can be calculated and summed) at both the inlet to and the outlet from the control device, such that the percent control efficiency (E) of the control device can be calculated for each month.

(B) Determine the percent capture efficiency (F) of the capture system according to § 63.827(e).

(C) Calculate the overall effective organic HAP control efficiency (R_e) achieved for each month using Equation 2.

$$R_e = (100)\frac{M_{vu} - M_{hu} + \left[(E/100)(F/100)M_{hu}\right]}{M_{vu}} \quad \text{Eq 2}$$

(D) Install, calibrate, operate and maintain the instrumentation necessary to measure continuously the site-specific operating parameter established in accordance with § 63.828(a)(5) whenever a publication rotogravure printing press is operated.

(E) The affected source is in compliance with the requirement for the month if R_e is at least 92 percent, and the capture device is operated at an average value greater than, or less than (as appropriate) the operating parameter value established in accordance with § 63.828(a)(5) for each three-hour period.

(2) Each owner or operator using an oxidizer to control emissions shall demonstrate compliance by showing that the HAP emission limitation is achieved by following the procedure in either paragraph (b)(2)(i) or (b)(2)(ii) of this section:

(i) Demonstrate initial compliance through performance tests and continuing compliance through continuous monitoring as follows:

(A) Determine the oxidizer destruction efficiency (E) using the procedure in § 63.827(d).

(B) Determine the capture efficiency (F) using the procedure in § 63.827(e).

(D) Calculate the overall effective organic HAP control efficiency (R_e) achieved using Equation 2.

(E) The affected source is in initial compliance if R_e is at least 92 percent. Demonstration of continuing compliance is achieved by continuous monitoring of an appropriate oxidizer operating parameter in accordance with § 63.828(a)(4), and by continuous monitoring of an appropriate capture system monitoring parameter in accordance with § 63.828(a)(5). The affected source is in continuing compliance if the capture device is operated at an average value greater than or less than (as appropriate) the operating parameter value established in accordance with § 63.828(a)(5), and

(*1*) if an oxidizer other than a catalytic oxidizer is used, the average combustion temperature for all three-hour periods is greater than or equal to the average combustion temperature established under § 63.827(d), or

(*2*) if a catalytic oxidizer is used, the average catalyst bed inlet temperature for all three-hour periods is greater than or equal to the average catalyst bed inlet temperature established in accordance with § 63.827(d).

(ii) Use continuous emission monitors, conduct an initial performance test of capture efficiency, and continuously monitor a site specific operating parameter to assure capture efficiency in accordance with the requirements of paragraph (b)(1)(ii) of this section.

(3) To demonstrate compliance without the use of a control device, each owner or operator shall compare the mass of organic HAP used to the mass of volatile matter used each month, as specified in paragraphs (b)(3)(i) through (b)(3)(iv) of this section:

(i) Measure the mass of each ink, coating, varnish adhesive, primer, solvent, and other material used in the affected source during the month,

(ii) Determine the organic HAP content of each ink, coating, varnish, adhesive, primer, solvent, and other material used during the month following the procedure in § 63.827(b)(1), and

(iii) Determine the volatile matter content, including water, of each ink, coating, varnish, adhesive, primer, solvent, and other material used during the month following the procedure in § 63.827(c)(1).

(iv) The affected source is in compliance for the month if the mass of organic HAP used does not exceed eight percent of the mass of volatile matter used.

§ 63.825 Standards: Product and packaging rotogravure and wide-web flexographic printing.

(a) Each owner or operator of any product and packaging rotogravure or wide-web flexographic printing affected source that is subject to the requirements of this subpart shall comply with these requirements on and after the compliance dates as specified in § 63.826 of this subpart.

(b) Each product and packaging rotogravure or wide-web flexographic printing affected source shall limit emissions to no more than five percent of the organic HAP applied for the month; or to no more than four percent of the mass of inks, coatings, varnishes, adhesives, primers, solvents, reducers, thinners, and other materials applied for the month; or to no more than 20 percent of the mass of solids applied for the month; or to a calculated equivalent allowable mass based on the organic HAP and solids contents of the inks, coatings, varnishes, adhesives, primers, solvents, reducers, thinners, and other materials applied for the month. The owner or operator of each product and packaging rotogravure or wide-web flexographic printing affected source shall demonstrate compliance with this standard by following one of the procedures in paragraphs (b)(1) through (b)(10) of this section:

(1) Demonstrate that each ink, coating, varnish, adhesive, primer, solvent, diluent, reducer, thinner, and other material applied during the month contains no more than 0.04 weight-fraction organic HAP, on an as-purchased basis, as determined in accordance with § 63.827(b)(2).

(2) Demonstrate that each ink, coating, varnish, adhesive, primer, and other solids-containing material applied during the month contains no more than 0.04 weight-fraction organic HAP, on a monthly average as-applied basis as determined in accordance with paragraphs (b)(2)(i)–(ii) of this section. The owner or operator shall calculate the as-applied HAP content of materials which are reduced, thinned, or diluted prior to application, as follows:

(i) Determine the organic HAP content of each ink, coating, varnish, adhesive, primer, solvent, diluent, reducer, thinner, and other material applied on an as-purchased basis in accordance with § 63.827(b)(2).

(ii) Calculate the monthly average as-applied organic HAP content, C_{ahi} of each ink, coating, varnish, adhesive, primer, and other solids-containing material using Equation 3.

$$C_{ahi} = \frac{\left(C_{hi}M_i + \sum_{j=1}^{q} C_{hij}M_{ij}\right)}{M_i + \sum_{j=1}^{q} M_{ij}} \quad \text{Eq 3}$$

(3)(i) Demonstrate that each ink, coating, varnish, adhesive, primer, and other solids-containing material applied, either

(A) Contains no more than 0.04 weight-fraction organic HAP on a monthly average as-applied basis, or

(B) Contains no more than 0.20 kg of organic HAP per kg of solids applied, on a monthly average as-applied basis.

(ii) The owner or operator may demonstrate compliance in accordance with paragraphs (b)(3)(ii) (A)–(C) of this section.

(A) Use the procedures of paragraph (b)(2) of this section to determine which materials meet the requirements of paragraph (b)(3)(i)(A) of this section,

(B) Determine the as-applied solids content following the procedure in § 63.827(c)(2) of all materials which do not meet the requirements of paragraph (b)(3)(i)(A) of this section. The owner or operator may calculate the monthly average as-applied solids content of materials which are reduced, thinned, or diluted prior to application, using Equation 4, and

$$C_{asi} = \frac{C_{si}M_i}{M_i + \sum_{j=1}^{q} M_{ij}} \quad \text{Eq 4}$$

(C) Calculate the as-applied organic HAP to solids ratio, H_{si}, for all materials which do not meet the requirements of

paragraph (b)(3)(i)(A) of this section, using Equation 5.

$$H_{si} = \frac{C_{ahi}}{C_{asi}} \qquad \text{Eq 5}$$

(4) Demonstrate that the monthly average as-applied organic HAP content, H_L, of all materials applied is less than 0.04 kg HAP per kg of material applied, as determined by Equation 6.

$$H_L = \frac{\sum_{i=1}^{p} M_i C_{hi} + \sum_{j=1}^{q} M_j C_{hj}}{\sum_{i=1}^{p} M_i + \sum_{j=1}^{q} M_j} \qquad \text{Eq 6}$$

(5) Demonstrate that the monthly average as-applied organic HAP content on the basis of solids applied, H_s, is less than 0.20 kg HAP per kg solids applied as determined by Equation 7.

$$H_S = \frac{\sum_{i=1}^{p} M_i C_{hi} + \sum_{j=1}^{q} M_j C_{hj}}{\sum_{i=1}^{p} M_i C_{si}} \qquad \text{Eq 7}$$

(6) Demonstrate that the total monthly organic HAP applied, H, as determined by Equation 8, is less than the calculated equivalent allowable organic HAP, H_a, as determined by paragraph (e) of this section.

$$H = \sum_{i=1}^{p} M_i C_{hi} + \sum_{j=1}^{q} M_j C_{hj} \qquad \text{Eq 8}$$

(7) Operate a capture system and control device and demonstrate an overall organic HAP control efficiency of at least 95 percent for each month. If the affected source operates more than one capture system or more than one control device, and has only always-controlled work stations, then the owner or operator shall demonstrate compliance in accordance with the provisions of either paragraph (f) or (h) of this section. If the affected source operates one or more never-controlled work stations or one or more intermittently-controllable work stations, then the owner or operator shall demonstrate compliance in accordance with the provisions of paragraph (f) of this section. Otherwise, the owner or operator shall demonstrate compliance in accordance with the procedure in paragraph (c) of this section when emissions from the affected source are controlled by a solvent recovery device or the procedure in paragraph (d) of this section when emissions are controlled by an oxidizer.

(8) Operate a capture system and control device and limit the organic HAP emission rate to no more than 0.20 kg organic HAP emitted per kg solids applied as determined on a monthly average as-applied basis. If the affected source operates more than one capture system, more than one control device, one or more never-controlled work stations, or one or more intermittently-controllable work stations, then the owner or operator shall demonstrate compliance in accordance with the provisions of paragraph (f) of this section. Otherwise, the owner or operator shall demonstrate compliance following the procedure in paragraph (c) of this section when emissions from the affected source are controlled by a solvent recovery device or the procedure in paragraph (d) of this section when emissions are controlled by an oxidizer.

(9) Operate a capture system and control device and limit the organic HAP emission rate to no more than 0.04 kg organic HAP emitted per kg material applied as determined on a monthly average as-applied basis. If the affected source operates more than one capture system, more than one control device, one or more never-controlled work stations, or one or more intermittently-controllable work stations, then the owner or operator shall demonstrate compliance in accordance with the provisions of paragraph (f) of this section. Otherwise, the owner or operator shall demonstrate compliance following the procedure in paragraph (c) of this section when emissions from the affected source are controlled by a solvent recovery device or the procedure in paragraph (d) of this section when emissions are controlled by an oxidizer.

(10) Operate a capture system and control device and limit the monthly organic HAP emissions to less than the allowable emissions as calculated in accordance with paragraph (e) of this section. If the affected source operates more than one capture system, more than one control device, one or more never-controlled work stations, or one or more intermittently-controllable work stations, then the owner or operator shall demonstrate compliance in accordance with the provisions of paragraph (f) of this section. Otherwise, the owner or operator shall demonstrate compliance following the procedure in paragraph (c) of this section when emissions from the affected source are controlled by a solvent recovery device or the procedure in paragraph (d) of this section when emissions are controlled by an oxidizer.

(c) To demonstrate compliance with the overall organic HAP control efficiency requirement in § 63.825(b)(7) or the organic HAP emissions limitation requirements in § 63.825(b)(8)–(10), each owner or operator using a solvent recovery device to control emissions shall show compliance by following the procedures in either paragraph (c)(1) or (c)(2) of this section:

(1) Perform a liquid-liquid material balance for each and every month as follows:

(i) Measure the mass of each ink, coating, varnish, adhesive, primer, solvent and other material applied on the press or group of presses controlled by a common solvent recovery device during the month.

(ii) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied, organic HAP emission rate based on material applied or emission of less than the calculated allowable organic HAP, determine the organic HAP content of each ink, coating, varnish, adhesive, primer, solvent, and other material applied during the month following the procedure in § 63.827(b)(2).

(iii) Determine the volatile matter content of each ink, coating, varnish, adhesive, primer, solvent, and other material applied during the month following the procedure in § 63.827(c)(2).

(iv) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied or emission of less than the calculated allowable organic HAP, determine the solids content of each ink, coating, varnish, adhesive, primer, solvent, and other material applied during the month following the procedure in § 63.827(c)(2).

(v) Install, calibrate, maintain, and operate according to the manufacturer's specifications, a device that indicates the cumulative amount of volatile matter recovered by the solvent recovery device on a monthly basis. The device shall be initially certified by the manufacturer to be accurate to within ±2.0 percent.

(vi) Measure the amount of volatile matter recovered for the month.

(vii) Calculate the volatile matter collection and recovery efficiency, R_v, using Equation 9.

$$R_v = 100\frac{M_{vr}}{\sum_{i=1}^{p} M_i C_{vi} + \sum_{j=1}^{q} M_j} \qquad \text{Eq 9}$$

(viii) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied, organic HAP emission rate based on material applied or emission of less than the calculated allowable organic HAP, calculate the organic HAP emitted during the month, H, using Equation 10.

$$H = \left[1 - \frac{R_v}{100}\right]\left[\sum_{i=1}^{p}\left(C_{hi}M_i + \sum_{j=1}^{q} C_{hij}M_{ij}\right)\right] \qquad \text{Eq 10}$$

(ix) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied, calculate the organic HAP emission rate based on solids applied, L, using Equation 11.

$$L = \frac{H}{\sum_{i=1}^{p} C_{si} M_i} \qquad \text{Eq 11}$$

(x) If demonstrating compliance on the basis of organic HAP emission rate based on materials applied, calculate the organic HAP emission rate based on material applied, S, using Equation 12.

$$S = \frac{H}{\sum_{i=1}^{p}\left[M_i + \sum_{j=1}^{q} M_{ij}\right]} \qquad \text{Eq 12}$$

(xi) The affected source is in compliance if

(A) The organic volatile matter collection and recovery efficiency, R_v, is 95 percent or greater, or

(B) The organic HAP emission rate based on solids applied, L, is 0.20 kg organic HAP per kg solids applied or less, or

(C) the organic HAP emission rate based on material applied, S, is 0.04 kg organic HAP per kg material applied or less, or

(D) the organic HAP emitted during the month, H, is less than the calculated allowable organic HAP, H_a, as determined using paragraph (e) of this section.

(2) Use continuous emission monitors, conduct an initial performance test of capture efficiency, and continuously monitor a site specific operating parameter to assure capture efficiency following the procedures in paragraphs (c)(2)(i) through (c)(2)(xi) of this section:

(i) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied, organic HAP emission rate based on materials applied, or emission of less than the calculated allowable organic HAP, measure the mass of each ink, coating, varnish, adhesive, primer, solvent, and other material applied on the press or group of presses controlled by a common control device during the month.

(ii) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied, organic HAP emission rate based on material applied or emission of less than the calculated allowable organic HAP, determine the organic HAP content of each ink, coating, varnish, adhesive, primer, solvent, and other material applied during the month following the procedure in § 63.827(b)(2).

(iii) Install continuous emission monitors to determine the total organic volatile matter mass flow rate (e.g., by determining the concentration of the vent gas in grams per cubic meter, and the volumetric flow rate in cubic meters per second, such that the total organic volatile matter mass flow rate in grams per second can be calculated and summed) at both the inlet to and the outlet from the control device, such that the percent control efficiency (E) of the control device can be calculated for each month.

(iv) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied or emission of less than the calculated allowable organic HAP, determine the solids content of each ink, coating, varnish, adhesive, primer, solvent, and other material applied during the month following the procedure in § 63.827(c)(2).

(v) Install, calibrate, operate and maintain the instrumentation necessary to measure continuously the site-specific operating parameter established in accordance with § 63.828(a)(5) whenever a product and packaging rotogravure or wide-web flexographic printing press is operated.

(vi) Determine the capture efficiency (F) in accordance with § 63.827(e)–(f).

(vii) Calculate the overall organic HAP control efficiency, (R), achieved for each month using Equation 13.

$$R = \frac{EF}{100} \qquad \text{Eq 13}$$

(viii) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied, organic HAP emission rate based on material applied or emission of less than the calculated allowable organic HAP, calculate the organic HAP emitted during the month, H, for each month using Equation 14.

$$H = \left[1 - \left(\frac{E}{100}\frac{F}{100}\right)\right]\left[\sum_{i=1}^{p}\left(C_{hi}M_i + \sum_{j=1}^{q} C_{hij}M_{ij}\right)\right] \qquad \text{Eq 14}$$

(ix) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied, calculate the organic HAP emission rate based on solids applied, L, using Equation 15.

$$L = \frac{H}{\sum_{i=1}^{p} C_{si} M_i} \qquad \text{Eq 15}$$

(x) If demonstrating compliance on the basis of organic HAP emission rate based on materials applied, calculate the organic HAP emission rate based on material applied, S, using Equation 16.

$$S = \frac{H}{\sum_{i=1}^{p}\left[M_i + \sum_{j=1}^{q} M_{ij}\right]} \qquad \text{Eq 16}$$

(xi) The affected source is in compliance if the capture system operating parameter is operated at an average value greater than or less than (as appropriate) the operating parameter

value established in accordance with § 63.828(a)(5) for each three hour period, and

(A) The organic volatile matter collection and recovery efficiency, R_v, is 95 percent or greater, or

(B) The organic HAP emission rate based on solids applied, L, is 0.20 kg organic HAP per kg solids applied or less, or

(C) The organic HAP emission rate based on material applied, S, is 0.04 kg organic HAP per kg material applied or less, or

(D) The organic HAP emitted during the month, H, is less than the calculated allowable organic HAP, H_a, as determined using paragraph (e) of this section.

(d) To demonstrate compliance with the overall organic HAP control efficiency requirement in § 63.825(b)(7) or the overall organic HAP emission rate limitation requirements in § 63.825(b)(8)–(10), each owner or operator using an oxidizer to control emissions shall show compliance by following the procedures in either paragraph (d)(1) or (d)(2) of this section:

(1) demonstrate initial compliance through performance tests of capture efficiency and control device efficiency and continuing compliance through continuous monitoring of capture system and control device operating parameters following the procedures in paragraph (d)(1)(i) through (d)(1)(xi) of this section:

(i) Determine the oxidizer destruction efficiency (E) using the procedure in § 63.827(d).

(ii) Determine the capture system capture efficiency (F) in accordance with § 63.827(e)–(f).

(iii) Calculate the overall organic HAP control efficiency, (R), achieved using Equation 13.

(iv) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied, organic HAP emission rate based on materials applied or emission of less than the calculated allowable organic HAP, measure the mass of each ink, coating, varnish, adhesive, primer, solvent, and other material applied on the press or group of presses controlled by a common solvent recovery device during the month.

(v) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied, organic HAP emission rate based on material applied or emission of less than the calculated allowable organic HAP, determine the organic HAP content of each ink, coating, varnish, adhesive, primer, solvent, and other material applied during the month following the procedure in § 63.827(b)(2).

(vi) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied or emission of less than the calculated allowable organic HAP, determine the solids content of each ink, coating, varnish, adhesive, primer, solvent, and other material applied during the month following the procedure in § 63.827(c)(2).

(vii) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied, organic HAP emission rate based on material applied or emission of less than the calculated allowable organic HAP, calculate the organic HAP emitted during the month, H, for each month using Equation 14.

(viii) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied, calculate the organic HAP emission rate based on solids applied, L, for each month using Equation 15.

(ix) If demonstrating compliance on the basis of organic HAP emission rate based on materials applied, calculate the organic HAP emission rate based on material applied, S, using Equation 16.

(x) Install, calibrate, operate and maintain the instrumentation necessary to measure continuously the site-specific operating parameters established in accordance with § 63.828(a)(4)–(5) whenever a product and packaging rotogravure or wide-web flexographic press is operating.

(xi) The affected source is in compliance, if the oxidizer is operated such that the average operating parameter value is greater than the operating parameter value established in accordance with § 63.828(a)(4) for each three-hour period, and the capture system operating parameter is operated at an average value greater than or less than (as appropriate) the operating parameter value established in accordance with § 63.828(a)(5) for each three hour period, and

(A) The overall organic HAP control efficiency, R, is 95 percent or greater, or

(B) The organic HAP emission rate based on solids applied, L, is 0.20 kg organic HAP per kg solids applied or less, or

(C) The organic HAP emission rate based on material applied, S, is 0.04 kg organic HAP per kg material applied or less, or

(D) The organic HAP emitted during the month, H, is less than the calculated allowable organic HAP, H_a, as determined using paragraph (e) of this section.

(2) Use continuous emission monitors, conduct an initial performance test of capture efficiency, and continuously monitor a site specific operating parameter to assure capture efficiency. Compliance shall be demonstrated in accordance with the requirements of paragraph (c)(2) of this section.

(e) Owners or operators may calculate the monthly allowable HAP emissions, H_a, for demonstrating compliance in accordance with paragraph (b)(6), (c)(1)(xi)(D), (c)(2)(xi)(D), or (d)(1)(xi)(D) of this section as follows:

(1) Determine the as-purchased mass of each ink, coating, varnish, adhesive, primer, and other solids-containing material applied each month, M_i.

(2) Determine the as-purchased solids content of each ink, coating, varnish, adhesive, primer, and other solids-containing material applied each month, in accordance with § 63.827(c)(2), C_{si}.

(3) Determine the as-purchased mass fraction of each ink, coating, varnish, adhesive, primer, and other solids-containing material which was applied at 20 weight-percent or greater solids content, on an as-applied basis, G_i.

(4) Determine the total mass of each solvent, diluent, thinner, or reducer added to materials which were applied at less than 20 weight-percent solids content, on an as-applied basis, each month, M_{Lj}.

(5) Calculate the monthly allowable HAP emissions, H_a, using Equation 17.

$$H_a = 0.20\left[\sum_{i=1}^{p} M_i G_i C_{si}\right] + 0.04\left[\sum_{i=1}^{p} M_i\left(1-G_i\right) + \sum_{j=1}^{q} M_{Lj}\right] \qquad \text{Eq 17}$$

(f) Owners or operators of product and packaging rotogravure or wide-web flexographic printing presses shall demonstrate compliance according to the procedures in paragraphs (f)(1) through (f)(7) of this section if the affected source operates more than one capture system, more than one control device, one or more never-controlled work stations, or one or more intermittently-controllable work stations.

(1) The owner or operator of each solvent recovery system used to control one or more product and packaging rotogravure or wide-web flexographic presses for which the owner or operator chooses to comply by means of a liquid-liquid mass balance shall determine the organic HAP emissions for those presses controlled by that solvent recovery system either

(i) in accordance with paragraphs (c)(1)(i)–(iii) and (c)(1)(v)–(viii) of this section if the presses controlled by that solvent recovery system have only always-controlled work stations, or

(ii) in accordance with paragraphs (c)(1)(ii)–(iii), (c)(1)(v)–(vi), and (g) of this section if the presses controlled by that solvent recovery system have one or more never-controlled or intermittently-controllable work stations.

(2) The owner or operator of each solvent recovery system used to control one or more product and packaging rotogravure or wide-web flexographic presses, for which the owner or operator chooses to comply by means of an initial test of capture efficiency, continuous emission monitoring of the control device, and continuous monitoring of a capture system operating parameter, shall

(i) For each capture system delivering emissions to that solvent recovery system, monitor an operating parameter established in accordance with § 63.828(a)(5) to assure capture system efficiency, and

(ii) Determine the organic HAP emissions for those presses served by each capture system delivering emissions to that solvent recovery system either

(A) In accordance with paragraphs (c)(2)(i)–(iii) and (c)(2)(v)–(viii) of this section if the presses served by that capture system have only always-controlled work stations, or

(B) In accordance with paragraphs (c)(2)(ii)–(iii), (c)(2)(v)–(vii), and (g) of this section if the presses served by that capture system have one or more never-controlled or intermittently-controllable work stations.

(3) The owner or operator of each oxidizer used to control emissions from one or more product and packaging rotogravure or wide-web flexographic presses choosing to demonstrate compliance through performance tests of capture efficiency and control device efficiency and continuing compliance through continuous monitoring of capture system and control device operating parameters, shall

(i) Monitor an operating parameter established in accordance with § 63.828(a)(4) to assure control device efficiency, and

(ii) For each capture system delivering emissions to that oxidizer, monitor an operating parameter established in accordance with § 63.828(a)(5) to assure capture efficiency, and

(iii) Determine the organic HAP emissions for those presses served by each capture system delivering emissions to that oxidizer either

(A) In accordance with paragraphs (d)(1)(i)–(v) and (d)(1)(vii) of this section if the presses served by that capture system have only always-controlled work stations, or

(B) In accordance with paragraphs (d)(1)(i)–(iii), (d)(1)(v), and (g) of this section if the presses served by that capture system have one or more never-controlled or intermittently-controllable work stations.

(4) The owner or operator of each oxidizer used to control emissions from one or more product and packaging rotogravure or wide-web flexographic presses choosing to demonstrate compliance through an initial capture efficiency test, continuous emission monitoring of the control device and continuous monitoring of a capture system operating parameter, shall

(i) For each capture system delivering emissions to that oxidizer, monitor an operating parameter established in accordance with § 63.828(a)(5) to assure capture efficiency, and

(ii) Determine the organic HAP emissions for those presses served by each capture system delivering emissions to that oxidizer either

(A) In accordance with paragraphs (c)(2)(i)–(iii) and (c)(2)(v)–(viii) of this section if the presses served by that capture system have only always-controlled work stations, or

(B) In accordance with paragraphs (c)(2)(ii)–(iii), (c)(2)(v)–(vii), and (g) of this section if the presses served by that capture system have one or more never-controlled or intermittently-controllable work stations.

(5) The owner or operator of one or more uncontrolled product and packaging rotogravure or wide-web flexographic printing presses shall determine the organic HAP applied on those presses using Equation 8. The organic HAP emitted from an uncontrolled press is equal to the organic HAP applied on that press.

(6) If demonstrating compliance on the basis of organic HAP emission rate based on solids applied or emission of less than the calculated allowable organic HAP, the owner or operator shall determine the solids content of each ink, coating, varnish, adhesive, primer, solvent and other material applied during the month following the procedure in § 63.827(c)(2).

(7) The owner or operator shall determine the organic HAP emissions for the affected source for the month by summing all organic HAP emissions calculated according to paragraphs (f)(1), (f)(2)(ii), (f)(3)(iii), (f)(4)(ii), and (f)(5) of this section. The affected source is in compliance for the month, if all operating parameters required to be monitored under paragraphs (f)(2)–(4) of this section were maintained at the appropriate values, and

(i) The total mass of organic HAP emitted by the affected source was not more than four percent of the total mass of inks, coatings, varnishes, adhesives, primers, solvents, diluents, reducers, thinners and other materials applied by the affected source, or

(ii) The total mass of organic HAP emitted by the affected source was not more than 20 percent of the total mass of solids applied by the affected source, or

(iii) The total mass of organic HAP emitted by the affected source was not more than the equivalent allowable organic HAP emissions for the affected source, H_a, calculated in accordance with paragraph (e) of this section, or

(iv) The total mass of organic HAP emitted by the affected source was not more than five percent of the total mass of organic HAP applied by the affected source. The total mass of organic HAP applied by the affected source in the month shall be determined by the owner or operator using Equation 8.

(g) Owners or operators determining organic HAP emissions from a press or group of presses having one or more never-controlled or intermittently-controllable work stations and using the procedures specified in paragraphs (f)(1)(ii), (f)(2)(ii)(B), (f)(3)(iii)(B), or (f)(4)(ii)(B) of this section shall for that press or group of presses:

(1) Determine the sum of the mass of all inks, coatings, varnishes, adhesives, primers, and other solids-containing materials which are applied on intermittently-controllable work stations in bypass mode and the mass of all inks, coatings, varnishes, adhesives, primers, and other solids-containing materials which are applied on never-controlled work stations during the month, M_{Bi}.

(2) Determine the sum of the mass of all solvents, reducers, thinners, and other diluents which are applied on intermittently-controllable work stations in bypass mode and the mass of all solvents, reducers, thinners, and other diluents which are applied on never-

controlled work stations during the month, M_{Bj}.

(3) Determine the sum of the mass of all inks, coatings, varnishes, adhesives, primers, and other solids-containing materials which are applied on intermittently-controllable work stations in controlled mode and the mass of all inks, coatings, varnishes, adhesives, primers, and other solids-containing materials which are applied on always-controlled work stations during the month, M_{Bj}.

(4) Determine the sum of the mass of all solvents, reducers, thinners, and other diluents which are applied on intermittently-controllable work stations in controlled mode and the mass of all solvents, reducers, thinners, and other diluents which are applied on always-controlled work stations during the month, M_{Cj}.

(5) For each press or group of presses for which the owner or operator uses the provisions of paragraph (f)(1)(ii) of this section, the owner or operator shall calculate the organic HAP emitted during the month using Equation 18.

$$H = \left[\sum_{i=1}^{p} M_{Ci}C_{hi} + \sum_{j=1}^{q} M_{Cj}C_{hj}\right]\left[1 - \frac{M_{vr}}{\sum_{i=1}^{p} M_{Ci}C_{vi} + \sum_{j=1}^{q} M_{Cj}}\right] + \left[\sum_{i=1}^{p} M_{Bi}C_{hi} + \sum_{j=1}^{q} M_{Bj}C_{hj}\right] \quad \text{Eq 18}$$

(6) For each press or group of presses for which the owner or operator uses the provisions of paragraphs (f)(2)(ii)(B), (f)(3)(iii)(B), or (f)(4)(ii)(B) of this section, the owner or operator shall calculate the organic HAP emitted during the month using Equation (19).

$$H = \left[\sum_{i=1}^{p} M_{Ci}C_{hi} + \sum_{j=1}^{q} M_{Cj}C_{hj}\right]\left[1 - \left(\frac{E}{100}\,\frac{F}{100}\right)\right] + \left[\sum_{i=1}^{p} M_{Bi}C_{hi} + \sum_{j=1}^{q} M_{Bj}C_{hj}\right] \quad \text{Eq 19}$$

(h) If the affected source operates more than one capture system or more than one control device, and has no never-controlled work stations and no intermittently-controllable work stations, then the affected source is in compliance with the 95 percent overall organic HAP control efficiency requirement for the month if for each press or group of presses controlled by a common control device:

(1) The volatile matter collection and recovery efficiency, R_v, as determined by paragraphs (c)(1)(i), (c)(1)(iii), and (c)(1)(v)–(vii) of this section is equal to or greater than 95 percent, or

(2) The overall organic HAP control efficiency as determined by paragraphs (c)(2)(iii) and (c)(2)(v)–(vii) of this section for each press or group of presses served by that control device and a common capture system is equal to or greater than 95 percent and the average capture system operating parameter value for each capture system serving that control device is greater than or less than (as appropriate) the operating parameter value established for that capture system in accordance with § 63.828(a)(5) for each three hour period, or

(3) The overall organic HAP control efficiency as determined by paragraphs (d)(1)(i)–(iii) and (d)(1)(x) of this section for each press or group of presses served by that control device and a common capture system is equal to or greater than 95 percent, the oxidizer is operated such that the average operating parameter value is greater than the operating parameter value established in accordance with § 63.828(a)(4) for each three hour period, and the average capture system operating parameter value for each capture system serving that control device is greater than or less than (as appropriate) the operating parameter value established for that capture system in accordance with § 63.828(a)(5) for each three hour period.

§ 63.826 Compliance dates.

(a) The compliance date for an owner or operator of an existing affected source subject to the provisions of this subpart is May 30, 1999.

(b) The compliance date for an owner or operator of a new affected source subject to the provisions of this subpart is immediately upon start-up of the affected source, or May 30, 1996, whichever is later.

(c) Affected sources which have undergone reconstruction are subject to the requirements for new affected sources. The costs associated with the purchase and installation of air pollution control equipment are not considered in determining whether the affected source has been reconstructed. Additionally, the costs of retrofitting and replacement of equipment that is installed specifically to comply with this subpart are not considered reconstruction costs.

§ 63.827 Performance test methods.

(a) An owner or operator using a control device to comply with the requirements of §§ 63.824–63.825 is not required to conduct an initial performance test to demonstrate compliance if one or more of the criteria in paragraphs (a)(1) through (a)(3) of this section are met:

(1) A control device that is in operation prior to May 30, 1996, does not need to be tested if

(i) It is equipped with continuous emission monitors for determining inlet and outlet total organic volatile matter concentration, and capture efficiency has been determined in accordance with the requirements of this subpart, such that an overall HAP control efficiency can be calculated, and

(ii) The continuous emission monitors are used to demonstrate continuous compliance in accordance with § 63.828, or

(2) The owner or operator has met the requirements of either § 63.7(e)(2)(iv) or § 63.7(h), or

(3) The control device is a solvent recovery system and the owner or operator chooses to comply by means of a monthly liquid-liquid material balance.

(b) Determination of the organic HAP content of inks, coatings, varnishes, adhesives, primers, solvents, thinners, reducers, diluents, and other materials for the purpose of meeting the requirements of § 63.824 shall be conducted according to paragraph (b)(1) of this section. Determination of the organic HAP content of inks, coatings, varnishes, adhesives, primers, solvents, thinners, reducers, diluents, and other materials for the purpose of meeting the requirements of § 63.825 shall be conducted according to paragraph (b)(2) of this section.

(1) Each owner or operator of a publication rotogravure facility shall determine the organic HAP weight-fraction of each ink, coating, varnish, adhesive, primer, solvent, and other material used in a publication rotogravure affected source by following one of the procedures in paragraphs (b)(1)(i) through (b)(1)(iii) of this section:

(i) The owner or operator may test the material in accordance with Method 311 of appendix A of this Part 63. The Method 311 determination may be performed by the manufacturer of the material and the results provided to the owner or operator. If these values cannot be determined using Method 311, the owner or operator shall submit an alternative technique for determining their values for approval by the Administrator. The recovery efficiency of the technique must be determined for all of the target organic HAP and a correction factor, if necessary, must be determined and applied.

(ii) The owner or operator may determine the volatile matter content of the material in accordance with § 63.827(c)(1) and use this value for the organic HAP content for all compliance purposes.

(iii) The owner or operator may, except as noted in paragraph (b)(1)(iv) of this section, rely on formulation data provided by the manufacturer of the material on a CPDS if

(A) The manufacturer has included in the organic HAP content determination all HAP present at a level greater than 0.1 percent in any raw material used, weighted by the mass fraction of each raw material used in the material, and

(B) The manufacturer has determined the HAP content of each raw material present in the formulation by Method 311 of appendix A of this part 63, or by an alternate method approved by the Administrator, or by reliance on a CPDS from a raw material supplier prepared in accordance with § 63.827(b)(1)(iii)(A).

(iv) In the event of any inconsistency between the Method 311 of appendix A of this part 63 test data and formulation data, that is, if the Method 311 test value is higher, the Method 311 test data shall govern, unless after consultation, an owner or operator demonstrates to the satisfaction of the enforcement authority that the formulation data are correct.

(2) Each owner or operator of a product and packaging rotogravure or wide-web flexographic printing facility shall determine the organic HAP weight fraction of each ink, coating, varnish, adhesive, primer, solvent, thinner, reducer, diluent, and other material applied by following one of the procedures in paragraphs (b)(2)(i) through (b)(2)(iii) of this section:

(i) The owner or operator may test the material in accordance with Method 311 of appendix A of this part 63. The Method 311 determination may be performed by the manufacturer of the material and the results provided to the owner or operator. If these values cannot be determined using Method 311, the owner or operator shall submit an alternative technique for determining their values for approval by the Administrator. The recovery efficiency of the technique must be determined for all of the target organic HAP and a correction factor, if necessary, must be determined and applied.

(ii) The owner or operator may determine the volatile matter content of the material in accordance with § 63.827(c)(2) and use this value for the organic HAP content for all compliance purposes.

(iii) The owner or operator may, except as noted in paragraph (b)(2)(iv) of this section, rely on formulation data provided by the manufacturer of the material on a CPDS if

(A) The manufacturer has included in the organic HAP content determination, all organic HAP present at a level greater than 0.1 percent in any raw material used, weighted by the mass fraction of each raw material used in the material, and

(B) The manufacturer has determined the organic HAP content of each raw material present in the formulation by Method 311 of appendix A of this part 63, or, by an alternate method approved by the Administrator, or, by reliance on a CPDS from a raw material supplier prepared in accordance with § 63.827(b)(2)(iii)(A).

(iv) In the event of any inconsistency between the Method 311 of appendix A of this part 63 test data and a facility's formulation data, that is, if the Method 311 test value is higher, the Method 311 test data shall govern, unless after consultation, an owner or operator demonstrates to the satisfaction of the enforcement authority that the formulation data are correct.

(c) Determination by the owner or operator of the volatile matter content of inks, coatings, varnishes, adhesives, primers, solvents, reducers, thinners, diluents, and other materials used for the purpose of meeting the requirements of § 63.824 shall be conducted according to paragraph (c)(1) of this section. Determination by the owner or operator of the volatile matter and solids content of inks, coatings, varnishes, adhesives, primers, solvents, reducers, thinners, diluents, and other materials applied for the purpose of meeting the requirements of § 63.825 shall be conducted according to paragraph (c)(2) of this section.

(1) Each owner or operator of a publication rotogravure facility shall determine the volatile matter weight-fraction of each ink, coating, varnish, adhesive, primer, solvent, reducer, thinner, diluent, and other material used using Method 24A of 40 CFR part 60, appendix A. The Method 24A determination may be performed by the manufacturer of the material and the results provided to the owner or operator. If these values cannot be determined using Method 24A, the owner or operator shall submit an alternative technique for determining their values for approval by the Administrator. The owner or operator may rely on formulation data, subject to the provisions of paragraph (c)(3) of this section.

(2) Each owner or operator of a product and packaging rotogravure or wide-web flexographic printing facility shall determine the volatile matter and solids weight-fraction of each ink, coating, varnish, adhesive, primer, solvent, reducer, thinner, diluent, and other material applied using Method 24 of 40 CFR part 60, appendix A. The Method 24 determination may be performed by the manufacturer of the material and the results provided to the owner or operator. If these values cannot be determined using Method 24, the owner or operator shall submit an alternative technique for determining their values for approval by the Administrator. The owner or operator may rely on formulation data, subject to the provisions of paragraph (c)(3) of this section.

(3) Owners or operators may determine the volatile matter content of materials based on formulation data, and may rely on volatile matter content data provided by material suppliers. In the event of any inconsistency between the formulation data and the results of Test Methods 24 or 24A of 40 CFR part 60, appendix A, the applicable test method shall govern, unless after consultation, the owner or operator can demonstrate to the satisfaction of the enforcement agency that the formulation data are correct.

(d) A performance test of a control device to determine destruction

efficiency for the purpose of meeting the requirements of §§ 63.824–63.825 shall be conducted by the owner or operator in accordance with the following:

(1) An initial performance test to establish the destruction efficiency of an oxidizer and the associated combustion zone temperature for a thermal oxidizer and the associated catalyst bed inlet temperature for a catalytic oxidizer shall be conducted and the data reduced in accordance with the following reference methods and procedures:

(i) Method 1 or 1A of 40 CFR part 60, appendix A is used for sample and velocity traverses to determine sampling locations.

(ii) Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A is used to determine gas volumetric flow rate.

(iii) Method 3 of 40 CFR part 60, appendix A is used for gas analysis to determine dry molecular weight.

(iv) Method 4 of 40 CFR part 60, appendix A is used to determine stack gas moisture.

(v) Methods 2, 2A, 3, and 4 of 40 CFR part 60, appendix A shall be performed, as applicable, at least twice during each test period.

(vi) Method 25 of 40 CFR part 60, Appendix A, shall be used to determine organic volatile matter concentration, except as provided in paragraphs (d)(1)(vi)(A)–(C) of this section. The owner or operator shall submit notice of the intended test method to the Administrator for approval along with notice of the performance test required under § 63.7(c). The owner or operator may use Method 25A of 40 CFR part 60, appendix A, if

(A) An exhaust gas organic volatile matter concentration of 50 parts per million by volume (ppmv) or less is required to comply with the standards of §§ 63.824–63.825, or

(B) The organic volatile matter concentration at the inlet to the control system and the required level of control are such to result in exhaust gas organic volatile matter concentrations of 50 ppmv or less, or

(C) Because of the high efficiency of the control device, the anticipated organic volatile matter concentration at the control device exhaust is 50 ppmv or less, regardless of inlet concentration.

(vii) Each performance test shall consist of three separate runs; each run conducted for at least one hour under the conditions that exist when the affected source is operating under normal operating conditions. For the purpose of determining organic volatile matter concentrations and mass flow rates, the average of results of all runs shall apply.

(viii) Organic volatile matter mass flow rates shall be determined using Equation 20:

$$M_f = Q_{sd}\left[\sum_{i=1}^{n} C_i MW_i\right]\left[0.0416\right]\left[10^{-6}\right] \qquad \text{Eq 20}$$

(ix) Emission control device efficiency shall be determined using Equation 21:

$$E = \frac{M_{fi} - M_{fo}}{M_{fi}} \qquad \text{Eq 21}$$

(2) The owner or operator shall record such process information as may be necessary to determine the conditions of the performance test. Operations during periods of start-up, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test.

(3) For the purpose of determining the value of the oxidizer operating parameter that will demonstrate continuing compliance, the time-weighted average of the values recorded during the performance test shall be computed. For an oxidizer other than catalytic oxidizer, the owner or operator shall establish as the operating parameter the minimum combustion temperature. For a catalytic oxidizer, the owner or operator shall establish as the operating parameter the minimum gas temperature upstream of the catalyst bed. These minimum temperatures are the operating parameter values that demonstrate continuing compliance with the requirements of §§ 63.824–63.825.

(e) A performance test to determine the capture efficiency of each capture system venting organic emissions to a control device for the purpose of meeting the requirements of §§ 63.824(b)(1)(ii), 63.824(b)(2), 63.825(c)(2), 63.825(d)(1)–(2), 63.825(f)(2)–(4), or 63.825(h)(2)–(3) shall be conducted by the owner or operator in accordance with the following:

(1) For permanent total enclosures, capture efficiency shall be assumed as 100 percent. Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure as found in appendix B to § 52.741 of part 52 of this chapter shall be used to confirm that an enclosure meets the requirements for permanent total enclosure.

(2) For temporary total enclosures, the capture efficiency shall be determined according to the protocol specified in § 52.741(a)(4)(iii)(B) of part 52 of this chapter. The owner or operator may exclude never-controlled work stations from such capture efficiency determinations.

(f) As an alternative to the procedures specified in § 63.827(e) an owner or operator required to conduct a capture efficiency test may use any capture efficiency protocol and test methods that satisfy the criteria of either the Data Quality Objective (DQO) or the Lower Confidence Limit (LCL) approach as described in Appendix A of this subpart. The owner or operator may exclude never-controlled work stations from such capture efficiency determinations.

§ 63.828 Monitoring requirements.

(a) Following the date on which the initial performance test of a control device is completed, to demonstrate continuing compliance with the standard, the owner or operator shall monitor and inspect each control device required to comply with §§ 63.824–63.825 to ensure proper operation and maintenance by implementing the applicable requirements in paragraph (a)(1) through (a)(5) of this section.

(1) Owners or operators of product and packaging rotogravure or wide-web flexographic presses with intermittently-controllable work stations shall follow one of the procedures in paragraphs (a)(1)(i) through (a)(1)(iv) of this section for each dryer associated with such a work station:

(i) Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow control position indicator that provides a record indicating whether the exhaust stream from the dryer was directed to the control device or was diverted from the control device. The time and flow control position must be recorded at least once per hour, as well as every time the flow direction is changed. The flow control position indicator shall be installed at the entrance to any bypass line that could divert the exhaust stream away from the control device to the atmosphere.

(ii) Secure any bypass line valve in the closed position with a car-seal or a lock-and-key type configuration; a visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve or damper is maintained in the closed position and the exhaust stream is not diverted through the bypass line.

(iii) Ensure that any bypass line valve or damper is in the closed position through continuous monitoring of valve position. The monitoring system shall be inspected at least once every month to ensure that it is functioning properly.

(iv) Use an automatic shutdown system in which the press is stopped when flow is diverted away from the control device to any bypass line. The automatic system shall be inspected at least once every month to ensure that it is functioning properly.

(2) Compliance monitoring shall be subject to the provisions of paragraphs (a)(2)(i) and (a)(2)(ii) of this section, as applicable.

(i) All continuous emission monitors shall comply with performance specifications (PS) 8 or 9 of 40 CFR part 60, appendix B, as appropriate. The requirements of Appendix F of 40 CFR part 60 shall also be followed. In conducting the quarterly audits required by appendix F, owners or operators must challenge the monitors with compounds representative of the gaseous emission stream being controlled.

(ii) All temperature monitoring equipment shall be installed, calibrated, maintained, and operated according to manufacturers specifications. The calibration of the chart recorder, data logger, or temperature indicator shall be verified every three months; or the chart recorder, data logger, or temperature indicator shall be replaced. The replacement shall be done either if the owner or operator chooses not to perform the calibration, or if the equipment cannot be calibrated properly.

(3) An owner or operator complying with §§ 63.824–63.825 through continuous emission monitoring of a control device shall install, calibrate, operate, and maintain continuous emission monitors to measure the total organic volatile matter concentration at both the control device inlet and the outlet.

(4) An owner or operator complying with the requirements of §§ 63.824–63.825 through the use of an oxidizer and demonstrating continuous compliance through monitoring of an oxidizer operating parameter shall:

(i) For an oxidizer other than a catalytic oxidizer, install, calibrate, operate, and maintain a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of ±1 percent of the temperature being monitored in °C or ±1 °C, whichever is greater. The thermocouple or temperature sensor shall be installed in the combustion chamber at a location in the combustion zone.

(ii) For a catalytic oxidizer, install, calibrate, operate, and maintain a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature with an accuracy of ±1 percent of the temperature being monitored in °C or ±1 °C, whichever is greater. The thermocouple or temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet.

(5) An owner or operator complying with the requirements of §§ 63.824–63.825 through the use of a control device and demonstrating continuous compliance by monitoring an operating parameter to ensure that the capture efficiency measured during the initial compliance test is maintained, shall:

(i) Submit to the Administrator with the compliance status report required by § 63.9(h) of the General Provisions, a plan that

(A) Identifies the operating parameter to be monitored to ensure that the capture efficiency measured during the initial compliance test is maintained,

(B) Discusses why this parameter is appropriate for demonstrating ongoing compliance, and

(C) Identifies the specific monitoring procedures;

(ii) Set the operating parameter value, or range of values, that demonstrate compliance with §§ 63.824–63.825, and

(iii) Conduct monitoring in accordance with the plan submitted to the Administrator unless comments received from the Administrator require an alternate monitoring scheme.

(b) Any excursion from the required operating parameters which are monitored in accordance with paragraphs (a)(4) and (a)(5) of this section, unless otherwise excused, shall be considered a violation of the emission standard.

§ 63.829 Recordkeeping requirements.

(a) The recordkeeping provisions of 40 CFR part 63 subpart A of this part that apply and those that do not apply to owners and operators of affected sources subject to this subpart are listed in Table 1 of this subpart.

(b) Each owner or operator of an affected source subject to this subpart shall maintain the records specified in paragraphs (b)(1) through (b)(3) of this section on a monthly basis in accordance with the requirements of § 63.10(b)(1) of this part:

(1) Records specified in § 63.10(b)(2) of this part, of all measurements needed to demonstrate compliance with this standard, such as continuous emission monitor data, control device and capture system operating parameter data, material usage, HAP usage, volatile matter usage, and solids usage that support data that the source is required to report.

(2) Records specified in § 63.10(b)(3) of this part for each applicability determination performed by the owner or operator in accordance with the requirements of § 63.820(a) of this subpart, and

(3) Records specified in § 63.10(c) of this part for each continuous monitoring system operated by the owner or operator in accordance with the requirements of § 63.828(a) of this subpart.

(c) Each owner or operator of an affected source subject to this subpart shall maintain records of all liquid-liquid material balances performed in accordance with the requirements of §§ 63.824–63.825 of this subpart. The records shall be maintained in accordance with the requirements of § 63.10(b) of this part.

(d) The owner or operator of each facility which commits to the criteria of § 63.820(a)(2) shall maintain records of all required measurements and calculations needed to demonstrate compliance with these criteria, including the mass of all HAP containing materials used and the mass fraction of HAP present in each HAP containing material used, on a monthly basis.

(e) The owner or operator of each facility which meets the limits and criteria of § 63.821(b)(1) shall maintain records as required in paragraph (e)(1) of this section. The owner or operator of each facility which meets the limits and criteria of § 63.821(b)(2) shall maintain records as required in paragraph (e)(2) of this section. Owners or operators shall maintain these records for five years, and upon request, submit them to the Administrator.

(1) For each facility which meets the criteria of § 63.821(b)(1), the owner or operator shall maintain records of the total volume of each material applied on product and packaging rotogravure or wide-web flexographic printing presses during each month.

(2) For each facility which meets the criteria of § 63.821(b)(2), the owner or operator shall maintain records of the

total volume and organic HAP content of each material applied on product and packaging rotogravure or wide-web flexographic printing presses during each month.

(f) The owner or operator choosing to exclude from an affected source, a product and packaging rotogravure or wide-web flexographic press which meets the limits and criteria of § 63.821(a)(2)(ii)(A) shall maintain the records specified in paragraphs (f)(1) and (f)(2) of this section for five years and submit them to the Administrator upon request:

(1) The total mass of each material applied each month on the press, including all inboard and outboard stations, and

(2) The total mass of each material applied each month on the press by product and packaging rotogravure or wide-web flexographic printing operations.

§ 63.830 Reporting requirements.

(a) The reporting provisions of 40 CFR part 63 subpart A of this part that apply and those that do not apply to owners and operators of affected sources subject to this subpart are listed in Table 1 of this subpart.

(b) Each owner or operator of an affected source subject to this subpart shall submit the reports specified in paragraphs (b)(1) through (b)(6) of this section to the Administrator:

(1) An initial notification required in § 63.9(b).

(i) Initial notifications for existing sources shall be submitted no later than one year before the compliance date specified in § 63.826(a).

(ii) Initial notifications for new and reconstructed sources shall be submitted as required by § 63.9(b).

(iii) For the purpose of this subpart, a Title V or part 70 permit application may be used in lieu of the initial notification required under § 63.9(b), provided the same information is contained in the permit application as required by § 63.9(b), and the State to which the permit application has been submitted has an approved operating permit program under part 70 of this chapter and has received delegation of authority from the EPA.

(iv) Permit applications shall be submitted by the same due dates as those specified for the initial notifications.

(2) A Notification of Performance Tests specified in § 63.7 and § 63.9(e) of this part. This notification, and the site-specific test plan required under § 63.7(c)(2) shall identify the operating parameter to be monitored to ensure that the capture efficiency measured during the performance test is maintained. The operating parameter identified in the site-specific test plan shall be considered to be approved unless explicitly disapproved, or unless comments received from the Administrator require monitoring of an alternate parameter.

(3) A Notification of Compliance Status specified in § 63.9(h) of this part.

(4) Performance test reports specified in § 63.10(d)(2) of this part.

(5) Start-up, shutdown, and malfunction reports specified in § 63.10(d)(5) of this part, except that the provisions in subpart A pertaining to start-ups, shutdowns, and malfunctions do not apply unless a control device is used to comply with this subpart.

(i) If actions taken by an owner or operator during a start-up, shutdown, or malfunction of an affected source (including actions taken to correct a malfunction) are not completely consistent with the procedures specified in the source's start-up, shutdown, and malfunction plan specified in § 63.6(e)(3) of this part, the owner or operator shall state such information in the report. The start-up, shutdown, or malfunction report shall consist of a letter containing the name, title, and signature of the responsible official who is certifying its accuracy, that shall be submitted to the Administrator.

(ii) Separate start-up, shutdown, or malfunction reports are not required if the information is included in the report specified in paragraph (b)(6) of this section.

(6) A summary report specified in § 63.10(e)(3) of this part shall be submitted on a semi-annual basis (i.e., once every six-month period). In addition to a report of operating parameter exceedances as required by § 63.10(e)(3)(i), the summary report shall include, as applicable:

(i) Exceedances of the standards in §§ 63.824–63.825.

(ii) Exceedances of either of the criteria of § 63.820(a)(2).

(iii) Exceedances of the criterion of § 63.821(b)(1) and the criterion of § 63.821(b)(2) in the same month.

(iv) Exceedances of the criterion of § 63.821(a)(2)(ii)(A).

§ 63.831 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under 40 CFR part 63 subpart E of this part, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authority which will not be delegated to States: § 63.827(b), approval of alternate test method for organic HAP content determination; § 63.827(c), approval of alternate test method for volatile matter determination.

TABLE 1 TO SUBPART KK.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KK

General provisions reference	Applicable to subpart KK	Comment
§ 63.1(a)(1)–(a)(4)	Yes.	
§ 63.1(a)(5)	No	Section reserved.
§ 63.1(a)(6)–(a)(8)	No.	
§ 63.1(a)(9)	No	Section reserved.
§ 63.1(a)(10)–(a)(14)	Yes.	
§ 63.1(b)(1)	No	Subpart KK specifies applicability.
§ 63.1(b)(2)–(b)(3)	Yes.	
§ 63.1(c)(1)	Yes.	
§ 63.1(c)(2)	No	Area sources are not subject to subpart KK.
§ 63.1(c)(3)	No	Section reserved.
§ 63.1(c)(4)	Yes.	
§ 63.1(c)(5)	No.	
§ 63.1(d)	No	Section reserved.
§ 63.1(e)	Yes.	
§ 63.2	Yes	Additional definitions in subpart KK.
§ 63.3(a)–(c)	Yes.	
§ 63.4(a)(1)–(a)(3)	Yes.	
§ 63.4(a)(4)	No	Section reserved.

TABLE 1 TO SUBPART KK.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KK—Continued

General provisions reference	Applicable to subpart KK	Comment
§ 63.4(a)(5)	Yes.	
§ 63.4(b–c)	Yes.	
§ 63.5(a)(1)–(a)(2)	Yes.	
§ 63.5(b)(1)	Yes.	
§ 63.5(b)(2)	No	Section reserved.
§ 63.5(b)(3)–(b)(6)	Yes.	
§ 63.5(c)	No	Section reserved.
§ 63.5(d)	Yes.	
§ 63.5(e)	Yes.	
§ 63.5(f)	Yes.	
§ 63.6(a)	Yes.	
§ 63.6(b)(1)–(b)(5)	Yes.	
§ 63.6(b)(6)	No	Section reserved.
§ 63.6(b)(7)	Yes.	
§ 63.6(c)(1)–(c)(2)	Yes.	
§ 63.6(c)(3)–(c)(4)	No	Sections reserved.
§ 63.6(c)(5)	Yes.	
§ 63.6(d)	No	Section reserved.
§ 63.6(e)	Yes	Provisions pertaining to start-ups, shutdowns, malfunctions, and CMS do not apply unless an add-on control system is used.
§ 63.6(f)	Yes.	
§ 63.6(g)	Yes.	
§ 63.6(h)	No	Subpart KK does not require COMS.
§ 63.6(i)(1)–(i)(14)	Yes.	
§ 63.6(i)(15)	No	Section reserved.
§ 63.6(i)(16)	Yes.	
§ 63.6(j)	Yes.	
§ 63.7	Yes.	
§ 63.8(a)(1)–(a)(2)	Yes.	
§ 63.8(a)(3)	No	Section reserved.
§ 63.8(a)(4)	No	Subpart KK specifies the use of solvent recovery devices or oxidizers.
§ 63.8(b)	Yes.	
§ 63.8(c)(1)–(3)	Yes.	
§ 63.8(c)(4)	No	Subpart KK specifies CMS sampling requirements.
§ 63.8(c)(5)	No	Subpart KK does not require COMS.
§ 63.8(c)(6)–(c)(8)	Yes	Provisions for COMS are not applicable.
§ 63.8(d)–(f)	Yes.	
§ 63.8(g)	No	Subpart KK specifies CMS data reduction requirements.
§ 63.9(a)	Yes.	
§ 63.9(b)(1)	Yes.	
§ 63.9(b)(2)	Yes	Initial notification submission date extended.
§ 63.9(b)(3)–(b)(5)	Yes.	
§ 63.9(c)–(e)	Yes.	
§ 63.9(f)	No	Subpart KK does not require opacity and visible emissions observations.
§ 63.9(g)	Yes	Provisions for COMS are not applicable.
§ 63.9(h)(1)–(h)(3)	Yes.	
§ 63.9(h)(4)	No	Section reserved.
§ 63.9(h)(5)–(h)(6)	Yes.	
§ 63.9(i)	Yes.	
§ 63.9(j)	Yes.	
§ 63.10(a)	Yes.	
§ 63.10(b)(1)–(b)(3)	Yes.	
§ 63.10(c)(1)	Yes.	
§ 63.10(c)(2)–(c)(4)	No	Sections reserved.
§ 63.10(c)(5)–(c)(8)	Yes.	
§ 63.10(c)(9)	No	Section reserved.
§ 63.10(c)(10)–(c)(15)	Yes.	
§ 63.10(d)(1)–(d)(2)	Yes.	
§ 63.10(d)(3)	No	Subpart KK does not require opacity and visible emissions observations.
§ 63.10(d)(4)–(d)(5)	Yes.	
§ 63.10(e)	Yes	Provisions for COMS are not applicable.
§ 63.10(f)	Yes.	
§ 63.11	No	Subpart KK specifies the use of solvent recovery devices or oxidizers.
§ 63.12	Yes.	
§ 63.13	Yes.	
§ 63.14	Yes.	
§ 63.15	Yes.	

Appendix A to Subpart KK—Data Quality Objective and Lower Confidence Limit Approaches for Alternative Capture Efficiency Protocols and Test Methods

1. Introduction

1.1 Alternative capture efficiency (CE) protocols and test methods that satisfy the criteria of either the data quality objective (DQO) approach or the lower confidence limit (LCL) approach are acceptable under § 63.827(f). The general criteria for alternative CE protocols and test methods to qualify under either the DQO or LCL approach are described in section 2. The DQO approach and criteria specific to the DQO approach are described in section 3. The LCL approach and criteria specific to the LCL approach are described in section 4. The recommended reporting for alternative CE protocols and test methods are presented in section 5. The recommended recordkeeping for alternative CE protocols and test methods are presented in section 6.

1.2 Although the Procedures L, G.1, G.2, F.1, and F.2 in § 52.741 of part 52 were developed for TTE and BE testing, the same procedures can also be used in an alternative CE protocol. For example, a traditional liquid/gas mass balance CE protocol could employ Procedure L to measure liquid VOC input and Procedure G.1 to measure captured VOC.

2. General Criteria for DQO and LCL Approaches

2.1 The following general criteria must be met for an alternative capture efficiency protocol and test methods to qualify under the DQO or LCL approach.

2.2 An alternative CE protocol must consist of at least three valid test runs. Each test run must be at least 20 minutes long. No test run can be longer than 24 hours.

2.3 All test runs must be separate and independent. For example, liquid VOC input and output must be determined independently for each run. The final liquid VOC sample from one run cannot be the initial sample for another run. In addition, liquid input for an entire day cannot be apportioned among test runs based on production.

2.4 Composite liquid samples cannot be used to obtain an "average composition" for a test run. For example, separate initial and final coating samples must be taken and analyzed for each run; initial and final samples cannot be combined prior to analysis to derive an "average composition" for the test run.

2.5 All individual test runs that result in a CE of greater than 105 percent are invalid and must be discarded.

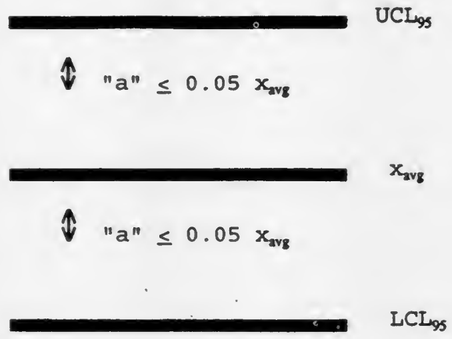
2.6 If the source can demonstrate to the regulatory agency that a test run should not be considered due to an identified testing or analysis error such as spillage of part of the sample during shipping or an upset or improper operating conditions that is not considered part of normal operation then the test result for that individual test run may be discarded. This limited exception allows sources to discard as "outliers" certain individual test runs without replacing them with a valid test run as long as the facility has at least three valid test runs to use when calculating its DQO or LCL. This exception is limited solely to test runs involving the types of errors identified above.

2.7 All valid test runs that are conducted must be included in the average CE determination. The individual test run CE results and average CE results cannot be truncated (i.e., 105 percent cannot be reported as 100+ percent) for purposes of meeting general or specific criteria for either the DQO or the LCL. If the DQO is satisfied and the average CE is greater than 100, then 100 percent CE must be considered the result of the test.

2.8 Alternative test methods for measuring VOC concentration must include a three-point calibration of the gas analysis instrument in the expected concentration range.

3. Data Quality Objective Approach

3.1 The purpose of the DQO is to allow sources to use alternative CE protocols and test methods while ensuring reasonable precision consistent with pertinent requirements of the Clean Air Act. In addition to the general criteria described in section 2, the specific DQO criterion is that the width of the two-sided 95 percent confidence interval of the mean measured value must be less than or equal to 10 percent of the mean measured value (see Figure 1). This ensures that 95 percent of the time, when the DQO is met, the actual CE value will be ±5 percent of the mean measured value (assuming that the test protocol is unbiased).



3.2 The DQO calculation is made as follows using Equations 1 and 2:

$$P = \frac{a}{x_{avg}} 100 \qquad \text{Eq 1}$$

$$a = \frac{t_{0.975}\, s}{\sqrt{n}} \qquad \text{Eq 2}$$

Where:

a=distance from the average measured CE value to the endpoints of the 95-percent (two-sided) confidence interval for the measured value.

n=number of valid test runs.

P=DQO indicator statistic, distance from the average measured CE value to the endpoints of the 95-percent (two-sided) confidence interval, expressed as a percent of the average measured CE value.

s=sample standard deviation.

$t_{0.975}$=t-value at the 95-percent confidence level (see Table 1).

x_{avg}=average measured CE value (calculated from all valid test runs).

x_i=the CE value calculated from the ith test run.

Number of valid test runs, n	$t_{0.975}$	$t_{0.90}$	Number of valid test runs, n	$t_{0.975}$	$t_{0.90}$
1 or 2	N/A	N/A	12	2.201	1.363
3	4.303	1.886	13	2.179	1.356
4	3.182	1.638	14	2.160	1.350
5	2.776	1.533	15	2.145	1.345
6	2.571	1.476	16	2.131	1.341
7	2.447	1.440	17	2.120	1.337
8	2.365	1.415	18	2.110	1.333
9	2.306	1.397	19	2.101	1.330
10	2.262	1.383	20	2.093	1.328
1	12.228	1.372	21	2.086	1.325

Table 1.—T-Values

3.3 The sample standard deviation and average CE value are calculated using Equations 3 and 4 as follows:

$$s = \left[\frac{\sum_{i=1}^{n}\left(x_i - x_{avg}\right)^2}{n-1}\right]^{0.5} \qquad \text{Eq 3}$$

$$x_{avg} = \frac{\sum_{i=1}^{n} x_i}{n} \qquad \text{Eq 4}$$

3.4 The DQO criteria are achieved when all of the general criteria in section 2 are achieved and P ≤5 percent (i.e., the specific DQO criterion is achieved). In order to meet this objective, facilities may have to conduct more than three test runs. Examples of calculating P, given a finite number of test runs, are shown below. (For purposes of this example it is assumed that all of the general criteria are met.)

3.5 Facility A conducted a CE test using a traditional liquid/gas mass balance and submitted the following results and the calculations shown in Equations 5 and 6:

Run	CE
1	96.1
2	105.0
3	101.2

Therefore:

n=3

$t_{0.975}$=4.30

x_{avg}=100.8

s=4.51

$$a = \frac{(4.30)(4.51)}{\sqrt{n}} = 11.20 \qquad \text{Eq 5}$$

$$P = \frac{11.2}{100.8}100 = 11.11 \qquad \text{Eq 6}$$

3.6 Since the facility did not meet the specific DQO criterion, they ran three more test runs.

Run	CE
4	93.2
5	96.2
6	87.6

3.7 The calculations for Runs 1–6 are made as follows using Equations 7 and 8:

$n=6$
$t_{0.975}=2.57$
$x_{avg}=96.6$
$s=6.11$

$$a = \frac{(2.57)(6.11)}{\sqrt{6}} = 6.41 \qquad \text{Eq 7}$$

$$P = \frac{6.41}{96.6}100 = 6.64 \qquad \text{Eq 8}$$

3.8 The facility still did not meet the specific DQO criterion. They ran three more test runs with the following results:

Run	CE
7	92.9
8	98.3
9	91.0

3.9 The calculations for Runs 1–9 are made as follows using Equations 9 and 10:

$n=9$
$t_{0.975}=2.31$
$x_{avg}=95.7$
$s=5.33$

$$a = \frac{(2.31)(5.33)}{\sqrt{9}} = 4.10 \qquad \text{Eq 9}$$

$$P = \frac{4.10}{95.7}100 = 4.28 \qquad \text{Eq 10}$$

3.10 Based on these results, the specific DQO criterion is satisfied. Since all of the general criteria were also satisfied, the average CE from the nine test runs can be used to determine compliance.

4. Lower Confidence Limit Approach

4.1 The purpose of the LCL approach is to provide sources, that may be performing much better than their applicable regulatory requirement, a screening option by which they can demonstrate compliance. The approach uses less precise methods and avoids additional test runs which might otherwise be needed to meet the specific DQO criterion while still being assured of correctly demonstrating compliance. It is designed to reduce "false positive" or so called "Type II errors" which may erroneously indicate compliance where more variable test methods are employed. Because it encourages CE performance greater than that required in exchange for reduced compliance demonstration burden, the sources that successfully use the LCL approach could produce emission reductions beyond allowable emissions. Thus, it could provide additional benefits to the environment as well.

4.2 The LCL approach compares the 80 percent (two-sided) LCL for the mean measured CE value to the applicable CE regulatory requirement. In addition to the general criteria described in section 2, the specific LCL criteria are that either the LCL be greater than or equal to the applicable CE regulatory requirement or that the specific DQO criterion is met. A more detailed description of the LCL approach follows:

4.3 A source conducts an initial series of at least three runs. The owner or operator may choose to conduct additional test runs during the initial test if desired.

4.4 If all of the general criteria are met and the specific DQO criterion is met, then the average CE value is used to determine compliance.

4.5 If the data meet all of the general criteria, but do not meet the specific DQO criterion; and the average CE, using all valid test runs, is above 100 percent then the test sequence cannot be used to calculate the LCL. At this point the facility has the option of (a) conducting more test runs in hopes of meeting the DQO or of bringing the average CE for all test runs below 100 percent so the LCL can be used or (b) discarding all previous test data and retesting.

4.6 The purpose of the requirement in Section 4.5 is to protect against protocols and test methods which may be inherently biased high. This is important because it is impossible to have an actual CE greater than 100 percent and the LCL approach only looks at the lower end variability of the test results. This is different from the DQO which allows average CE values up to 105 percent because the DQO sets both upper and lower limits on test variability.

4.7 If at any point during testing the results meet the DQO, the average CE can be used for demonstrating compliance with the applicable regulatory requirement. Similarly, if the average CE is below 100 percent then the LCL can be used for demonstrating compliance with the applicable regulatory requirement without regard to the DQO.

4.8 The LCL is calculated at a 80 percent (two-sided) confidence level as follows using Equation 11:

$$LC_l = x_{avg} - \frac{t_{0.90}s}{\sqrt{n}} \qquad \text{Eq 11}$$

Where:

LC_l=LCL at a 80 percent (two-sided) confidence level.
n=number of valid test runs.
s=sample standard deviation.
$t_{0.90}$=t-value at the 80-percent (two-sided) confidence level (see Table 3–1).
x_{avg}=average measured CE value (calculated from all valid test runs).

4.9 The resulting LC_l is compared to the applicable CE regulatory requirement. If LC_l exceeds (i.e., is higher than) the applicable regulatory requirement, then a facility is in initial compliance. However, if the LC_l is below the CE requirement, then the facility must conduct additional test runs. After this point the test results will be evaluated not only looking at the LCL, but also the DQO of ±5 percent of the mean at a 95 percent confidence level. If the test results with the additional test runs meet the DQO before the LCL exceeds the applicable CE regulatory requirement, then the average CE value will be compared to the applicable CE regulatory requirement for determination of compliance.

4.10 If there is no specific CE requirement in the applicable regulation, then the applicable CE regulatory requirement is determined based on the applicable regulation and an acceptable destruction efficiency test. If the applicable regulation requires daily compliance and the latest CE compliance demonstration was made using the LCL approach, then the calculated LC_l will be the highest CE value which a facility is allowed to claim until another CE demonstration test is conducted. This last requirement is necessary to assure both sufficiently reliable test results in all circumstances and the potential environmental benefits referenced above.

4.11 An example of calculating the LCL is shown below. Facility B's applicable regulatory requirement is 85 percent CE. Facility B conducted a CE test using a traditional liquid/gas mass balance and submitted the following results and the calculation shown in Equation 12:

Run	CE
1	94.2
2	97.6
3	90.5

Therefore:

$n=3$
$t_{0.90}=1.886$
$x_{avg}=94.1$
$s=3.55$

$$LC_l = 94.1 - \frac{(1.886)(3.55)}{\sqrt{3}} = 90.23 \qquad \text{Eq 12}$$

4.12 Since the LC_l of 90.23 percent is above the applicable regulatory requirement of 85 percent then the facility is in compliance. The facility must continue to accept the LC_l of 90.23 percent as its CE value until a new series of valid tests is conducted. (The data generated by Facility B do not meet the specific DQO criterion.)

5. Recommended Reporting for Alternative CE Protocols

5.1 If a facility chooses to use alternative CE protocols and test methods that satisfy either the DQO or LCL and the additional criteria in section 4., the following information should be submitted with each test report to the appropriate regulatory agency:

1. A copy of all alternative test methods, including any changes to the EPA reference methods, QA/QC procedures and calibration procedures.
2. A table with information on each liquid sample, including the sample identification, where and when the sample was taken, and the VOC content of the sample;
3. The coating usage for each test run (for protocols in which the liquid VOC input is to be determined);
4. The quantity of captured VOC measured for each test run;
5. The CE calculations and results for each test run;
6. The DQO or LCL calculations and results; and
7. The QA/QC results, including information on calibrations (e.g., how often the instruments were calibrated, the calibration results, and information on calibration gases, if applicable).

6. Recommended Recordkeeping for Alternative CE Protocols.

6.1 A record should be kept at the facility of all raw data recorded during the test in a suitable form for submittal to the appropriate regulatory authority upon request.

[FR Doc. 96–13084 Filed 5–29–96; 8:45 am]
BILLING CODE 6560–50–P

federal register

Thursday
May 30, 1996

Part III

Department of Housing and Urban Development

24 CFR Parts 982 and 983
Section 8 Tenant-Based Programs: Technical Amendments; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 982 and 983

[Docket No. FR–4055–F–01]

RIN 2577–AB64

Office of the Assistant Secretary for Public and Indian Housing; Section 8 Tenant-Based Programs: Technical Amendments

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule; technical amendments.

SUMMARY: The purpose of this document is to make technical amendments to the final rule governing the tenant-based rental certificate and voucher programs. These technical amendments are necessary to add provisions that were inadvertently omitted from one section of the earlier final rule, and to clarify the original intent of certain other provisions. These amendments have the effect of clarifying the regulations for these programs.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Madeline Hastings, Associate Deputy Assistant Secretary for the Office of Public and Assisted Housing Operations, Room 4204, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–7000, telephone (202) 708–1842 (voice) [not a toll-free telephone number]. Hearing or speech-impaired individuals may access that office by text telephone by dialing 1–800–877–8339 to use the Federal Information Relay Service. Copies of this document will be made available on tape or large print for those with impaired vision that request them. They may be obtained at the above address.

SUPPLEMENTARY INFORMATION:

I. Background

A. History of Rule

There were two principal rules issued concerning the Section 8 Certificate and Voucher programs in the last two years: The rule governing admission requirements, establishing subparts A and E, published on July 18, 1994 (59 FR 36662) and the rule fleshing out part 982 by establishing subparts B–D and G–L, published on July 3, 1995 (60 FR 34660). Since their publication, it has come to the attention of the Department that several changes that had been intended to be included in these rules were omitted. These changes are being made in this final rule.

B. Changes to Rule

Section 982.54, dealing with the administrative plan, is modified to add provisions to the administrative plan that were inadvertently omitted in the final rule. While these policies are clearly stated in other sections of the final regulations, these are policies on matters for which the HA has discretion to establish local policies and, therefore, must be included in the administrative plan.

Language in §§ 982.158, 982.202, 982.205, 982.301, 982.307, 982.353, 982.355, 982.401, 982.451, and 982.551 is revised to clarify original intent. In addition, a new paragraph (e)(4) is added to § 982.355 to provide that the administrative fee may be reduced as a sanction for noncompliance with portability requirements, consistent with the regulatory sanction for noncompliance with other HA program responsibilities.

The only change to part 983 is to correct a typographical error found in § 983.203.

II. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. HUD believes that it is unnecessary and contrary to the public interest to delay the effectiveness of the rule for public comment, since the rule merely makes technical and clarifying changes.

III. Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities (or any other entities), since it merely makes technical amendments.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) with respect to the original Part 982 issued in 1994. This Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, since it only makes technical amendments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order.

List of Subjects

24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 983

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Catalog

The catalog of Federal Domestic Assistance numbers for the programs affected by this rule are 14.855 (Vouchers), 14.856 (Moderate Rehabilitation), and 14.857 (Certificates).

Accordingly, parts 982 and 983 of title 24 of the Code of Federal Regulations, are amended as follows:

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: UNIFIED RULE FOR TENANT-BASED ASSISTANCE UNDER THE SECTION 8 RENTAL CERTIFICATE PROGRAM AND THE SECTION 8 RENTAL VOUCHER PROGRAM

1–3. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

§ 982.54 [Amended]

4. Section 982.54(d) is amended as follows:

a. By adding to paragraph (d)(1) after the word "preferences" the phrase "(see §§ 982.202(b)(2) and 982.208(b)), procedures for removing applicant names from the waiting list,",

b. By removing from paragraph (d)(15) the word "and" after the semicolon;

c. By removing from paragraph (d)(16) the period at the end of the sentence and adding in its place a semicolon; and

d. By adding new paragraphs (d)(17), (d)(18) and (d)(19), to read as follows:

§ 982.54 Administrative plan.

* * * * *

(d) * * *

(17) Interim redeterminations of family income and composition;

(18) Restrictions, if any, on the number of moves by a participant family (see § 982.314(c)); and

(19) Approval by the Board of Commissioners or other authorized officials to charge the administrative fee reserve.

* * * * *

5. In § 982.158, paragraph (d) is revised to read as follows:

§ 982.158 Program accounts and records.

* * * * *

(d) The HA must prepare a unit inspection report.

* * * * *

§ 982.202 [Amended]

6. In § 982.202, the heading of paragraph (a) is revised to read "*Waiting list admissions and special admissions.*"

7. In § 982.202, the second sentence of paragraph (b)(2) is revised to read as follows:

§ 982.202 How applicants are selected: General requirements.

* * * * *

(b) * * *

(2) * * * However, the HA may target assistance for families who live in public housing or other federally assisted housing, or may adopt a HUD-approved residency preference (see § 982.208).

* * * * *

8. In § 982.205, the section heading and paragraph (a)(1) are revised to read as follows:

§ 982.205 Waiting list: Single list; area covered.

(a) * * *

(1) An HA must use a single waiting list for admissions to its tenant-based certificate and voucher programs. The HA may use a separate waiting list for such admissions for an area not smaller than a county or municipality.

* * * * *

§ 982.301 [Amended]

9. In § 982.301, paragraph (b) is amended as follows:

a. Paragraph (b)(4) is removed and the remaining paragraphs are redesignated (b)(4) through (b)(16); and

b. In redesignated paragraph (b)(10), the word "HUD" is removed and the word "HUD-required" is added in its place.

§ 982.307 [Amended]

10. In § 982.307, paragraph (b)(1)(i) is amended by adding "and prior" after the word "current".

§ 982.353 [Amended]

11. In § 982.353(b), the first sentence is amended by removing the reference to "paragraph (c)" and adding in its place a reference to "paragraph (c) or (d)".

12. Section 982.355 is amended as follows:

a. Paragraph (b)(2) is revised;

b. A new paragraph (b)(3) is added;

c. A new sentence is added at the end of paragraph (e)(3);

d. The third sentence of paragraph (e)(5) is removed; and

e. Paragraph (e)(4) is revised, to read as follows:

§ 982.355 Portability: Administration by receiving HA.

* * * * *

(b) * * *

(2) If the family was receiving assistance under the initial HA certificate program, but is ineligible for admission to the voucher program, a receiving HA must provide continued assistance under the certificate program. If the family was receiving assistance under the initial HA voucher program, but is ineligible for admission to the certificate program, a receiving HA must provide continued assistance under the voucher program.

(3) If a receiving HA is absorbing the family into its own program (i.e., providing assistance without billing the initial HA), the receiving HA has the choice of assisting the family under either the certificate or voucher program. If a receiving HA is not absorbing the family into its own program, the receiving HA must assist the family under the same program (certificate program or voucher program) as the initial HA.

* * * * *

(e) * * *

(3) * * * If both HAs agree, the HAs may negotiate a different amount of reimbursement.

(4) HUD may reduce the administrative fee to an initial or receiving HA if the HA does not comply with HUD portability requirements.

* * * * *

13. In § 982.401, paragraph (j)(3)(iv)(B) is revised to read as follows:

§ 982.401 Housing quality standards (HQS).

* * * * *

(j) * * *

(3) * * *

(iv) * * *

(B) The entrance and hallway providing access to a unit in a multi-unit building; and

* * * * *

§ 982.451 [Amended]

14. In § 982.451, the third sentence of paragraph (c)(5) is amended by adding "another source is" after the word "unless".

15. In § 982.551, paragraph (h)(2) is amended by adding a sentence at the end to read as follows:

§ 982.551 Obligations of participant.

* * * * *

(h) * * *

(2) * * * No other person [i.e., nobody but members of the assisted family] may reside in the unit (except for a foster child or live-in aide as provided in paragraph (h)(4) of this section).

PART 983—SECTION 8 PROJECT-BASED CERTIFICATE PROGRAM

16. The authority citation for part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

§ 983.203 [Amended]

17. In § 983.203(a)(5), the word "Has" is removed and the word "HAs" is added in its place.

Dated: May 10, 1996.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 96–13240 Filed 5–29–96; 8:45 am]

BILLING CODE 4210–33–P

federal register

Thursday
May 30, 1996

Part IV

Department of Transportation

Research and Special Programs Administration
49 CFR Parts 171, 172, 173, etc.
Revision of Miscellaneous Hazardous Materials Regulations; Regulatory Review; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 176, 177, 178, and 180

[Docket HM–222B; Amdt. Nos. 171–145, 172–149, 173–253, 176–40, 177–87, 178–116, and 180–9]

RIN 2137–AC76

Revision of Miscellaneous Hazardous Materials Regulations; Regulatory Review

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is amending the Hazardous Materials Regulations (HMR) based on its review of the HMR and on written and oral comments received from the public concerning regulatory reform. The intended effect of this rulemaking is to reduce unnecessary regulatory burdens on industry and make the regulations shorter and easier to use without compromising public safety. In particular, RSPA is reducing the requirements pertaining to training frequency, incident reporting, and emergency response telephone numbers. This action is in response to President Clinton's March 4, 1995 memorandum to heads of departments and agencies calling for a review of all agency regulations.

DATES: *Effective date.* October 1, 1996.

Compliance date. Immediate compliance is authorized.

Incorporation by reference. The incorporation by reference of a publication listed in this amendment is approved by the Director of the Federal Register as of October 1, 1996.

FOR FURTHER INFORMATION CONTACT: John A. Gale, (202) 366–8553; Office of Hazardous Materials Standards, or Karin V. Christian, (202) 366–4400, Office of the Chief Counsel, RSPA, Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On March 4, 1995, President Clinton issued a memorandum to heads of departments and agencies calling for a review of all agency regulations and elimination or revision of those regulations that are outdated or in need of reform. In response to the President's directive, RSPA performed an extensive review of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) and associated procedural rules (49 CFR Parts 106 and 107).

The President also directed that front line regulators "* * * get out of Washington and create grassroots partnerships" with people affected by agency regulations. On April 4, 1995, RSPA published in the **Federal Register** (60 FR 17049) a notice announcing seven public meetings and requesting comments on its hazardous materials safety program. RSPA requested comments on ways to improve the HMR and the kind and quality of services its customers want. RSPA received over 50 written comments in response to the notice. On July 28, 1995, RSPA published a second notice (60 FR 38888) announcing five more public meetings that were held between September 1995 and January 1996.

On February 20, 1996, RSPA published a Notice of Proposed Rulemaking (NPRM) (61 FR 6478) under Docket HM–222B that proposed to amend various sections of the HMR based on agency initiative and on written and oral comments received from the public on regulatory reform. In particular, RSPA proposed to reduce the requirements pertaining to training frequency, incident reporting, and emergency response telephone numbers.

II. Summary of Amendments

RSPA received approximately 90 comments to the NPRM. Most of the comments supported the proposals and requested that RSPA adopt them as soon as possible. The commenters, including many small businesses, stated that they would benefit directly from the adoption of the proposal in Docket HM–222B without any reduction of safety. Several commenters commended RSPA's commitment to effecting meaningful regulatory reform. Some commenters, however, did raise concerns about the impact on safety if these proposals were adopted. Commenters also raised issues that were beyond the scope of the proposed rule; however, these issues may be considered in future rulemakings.

RSPA believes that the amendments adopted in this final rule strike a balance between safety and costs imposed on the regulated community. RSPA does not believe that the result of the amendments in this final rule will be a decrease in safety to the public or the environment.

Part 171

Section 171.16. In the NPRM, RSPA proposed, except for materials transported by aircraft, to except limited quantities of Packing Group II and III materials from the incident reporting requirements in § 171.16. RSPA stated in the NPRM that continued reporting of certain incidents involving limited quantities would be of minimal value when weighed against the burden on the carriers required to prepare incident reports.

RSPA received a number of comments on the proposal to revise the incident reporting requirements. Most of the commenters supported the proposal and cited the cost savings to the regulated community without any decrease in safety. Some commenters did not agree with the proposal and stated that large numbers of limited quantity packages could cause a serious incident to occur. Others requested that the proposal be modified to except only that material which can be controlled in the immediate release area. RSPA believes that the continued reporting of incidents involving these materials is of minimal value when weighed against the burden placed on carriers who are required to prepare and submit incident reports. In addition, if a large number of limited quantity packages causes a serious incident to occur that meets a criterion in § 171.15, a written report is still required. Therefore, RSPA is adopting this amendment as proposed.

Part 172

Section 172.101. As proposed, RSPA is amending the § 172.101 Table for the entries "Cartridges for weapons, blank, *or* Cartridges, small arms, blank, UN 0014"; "Cartridges for weapons, inert projectile, *or* Cartridges, small arms, UN0012"; "Cartridges, power device, UN0323"; and "Cartridges, small arms", in Column (7), by removing the reference "112". Also for these entries, in Column (8A) of the § 172.101 Table, the word "None" or "230", as appropriate, is removed and replaced with "63". The provisions to reclass an explosive as an ORM-D material, currently contained in Special Provision 112 and in § 173.230(b), are relocated to § 173.63(b) to minimize confusion.

RSPA is also amending, as proposed, Column (7) of the § 172.101 Table for the entry "Ethanol *or* Ethyl alcohol *or* Ethanol solutions *or* Ethyl alcohol solutions" by adding Special Provision "24" to allow ethanol the same packing group criteria as alcoholic beverages.

In this final rule, RSPA is also making some minor changes to the headings of some of the columns of the Hazardous Materials Table. The headings for columns (8), (8B) and (8C) are revised to read "Packaging (§ 173.***)", "Nonbulk", and "Bulk", respectively. The headings for column (9A), (10), (10A) and (10B) are revised to read "Passenger aircraft/rail", "Vessel; Stowage", "Location", and "Other", respectively. These changes will make the headings more descriptive of the referenced requirements therein and will also decrease the size of the Hazardous Materials Table.

Section 172.102. As proposed, RSPA is removing Special Provision 112.

Section 172.201. As proposed, RSPA is amending § 172.201(d) by adding a cross-reference to § 172.604(c).

Sections 171.11, 172.203 and 172.324. Currently, all constituents in a mixture or solution that meet the definition of "hazardous substance" in § 171.8 must be identified on shipping papers and package markings. In the NPRM, RSPA proposed to require that at least two hazardous substances be identified on shipping papers and package markings for hazardous materials containing two or more hazardous substances. This proposal is consistent with the technical name requirements in § 172.203(k).

RSPA received several comments in support of this proposed change. Commenters stated these changes would facilitate overall compliance. Some commenters who supported the proposal requested that RSPA provide guidance on which hazardous substances should be identified. A commenter opposed to the change stated that the Environmental Protection Agency (EPA) requires that persons who have custody of hazardous substances report the release of every constituent hazardous substance for these materials.

RSPA does not believe that requiring only two constituent hazardous substances to be identified on shipping papers and package markings will cause persons to be in violation of the EPA's reporting requirements in 40 CFR 302.6. However, in response to the comments, RSPA is not adopting the rule as proposed but is modifying the proposal to require identification of those hazardous substances with the lowest reportable quantities (RQ). For release of mixtures or solutions, including hazardous wastes, where the amount of the mixture or solution is unknown, a person is required under 40 CFR 302.6, to report to the National Response Center (NRC) when the amount of the mixture or solution equals or exceeds the lowest RQ. Therefore, if the two materials with the lowest RQs are identified, a carrier will have sufficient information to satisfy the reporting requirements of the EPA under 40 CFR 302.6. In addition, RSPA is revising § 171.11(d)(1) to be consistent with the changes in §§ 172.203 and 172.324.

RSPA also proposed to remove paragraph (e)(3) to eliminate the requirement to include the statement "RESIDUE: Last Contained * * *" on shipping papers for a shipping description of packages containing only the residue of a hazardous substance. Many commenters misunderstood the proposal as also removing the requirement to enter the statement "RESIDUE: Last Contained * * *" before the shipping description for a tank car which contains the residue of a hazardous substance. This is not the case. The shipping description for a tank car that contains the residue of a hazardous material, including a hazardous substance, is required by § 172.203(e)(2) to be prefaced with the statement "RESIDUE: Last Contained * * *". The removal of § 172.203(e)(3) eliminates the requirement to preface the shipping description of a residue of a hazardous substance in a package other than a tank car (e.g., drum or cargo tank) with the statement "RESIDUE: Last Contained * * *."

Section 172.316. Based on a comment received under Docket HM–222, RSPA proposed to modify § 172.316 to allow the CLASS 9 label in place of the ORM–D marking on packages of consumer commodities. RSPA received only two comments on this proposal, both opposing it. One of the comments was submitted by the commenter who had suggested the revision. Since the commenter originally requesting the revision believes the change would cause unnecessary confusion and would require the retraining of numerous employees with minimal benefit, RSPA is not adopting the proposal to allow the CLASS 9 label in place of the ORM–D marking.

Section 172.402. As proposed, RSPA is revising § 172.402 by adding an exception from the requirement for subsidiary hazard labeling for certain packages of Class 7 (radioactive) materials that also meet the definition of another hazard class, except Class 9. These Class 7 materials conform to all requirements in § 173.4, except for their specific activity level, which exceeds permissible limits for a limited quantity radioactive material.

Section 172.500. As proposed, RSPA is amending this section by adding a new paragraph (b)(4) to clarify that small quantities of hazardous materials prepared in accordance with § 173.13 are excepted from the placarding requirements of Subpart F of Part 172.

Section 172.600. As proposed, RSPA is excepting all ORM–D material from the emergency response information and telephone number requirements of Subpart G of Part 172, even when offered for transportation or transported by aircraft.

Section 172.604. Based on its own initiative and petitions for rulemaking, and because of the belief that the costs to implement these requirements outweigh the benefits, RSPA proposed to except the following materials from emergency response telephone number requirements: (1) Liquid petroleum distillate fuels (e.g., gasoline, propane, and diesel fuel); (2) limited quantities of hazardous materials; and (3) materials described under the shipping names "Engines, internal combustion"; "Battery powered equipment"; "Battery powered vehicle"; "Wheelchair, electric"; "Carbon dioxide, solid"; "Dry ice"; "Fish meal, stabilized"; "Fish scrap, stabilized"; "Castor bean"; "Castor meal"; "Castor flake"; "Castor pomace"; and "Refrigerating machine".

RSPA received numerous comments opposing the proposal to except liquid petroleum distillate fuels from the 24-hour emergency response telephone number requirement. Commenters opposing the proposed exception included: emergency responders, petroleum transporters, trade associations, State and local agencies, environmental contractors and consultants, and a railroad association. These commenters stated that the benefits of retaining the 24-hour telephone number for liquid petroleum distillate fuels outweigh the costs. Commenters stated that the 24-hour telephone number enables emergency responders to immediately contact the parties involved to arrange for clean-up of a spill. A commenter stated that information on the composition of a particular gasoline may be available only from the shipper through the emergency response telephone number. Other commenters stated that many gasolines contain ethyl alcohol, methyl alcohol or other oxygenating components that traditional firefighting foams are considerably less effective on than are alcohol foams. Commenters also stated that many small fire departments have never handled a major spill involving large volumes of gasoline or propane. The commenters stated that responders need every resource available to them in the event of a hazardous materials spill.

RSPA received several comments from businesses and trade organizations in favor of the proposal to except liquid petroleum distillate fuels from the 24-hour emergency response telephone number requirement. The commenters agreed with RSPA's statement in the NPRM that emergency responders routinely handle incidents involving liquid petroleum distillate fuels and that it is questionable whether the 24-hour emergency response telephone number could provide emergency responders with any additional information of value beyond that which is required to be carried in the vehicle.

RSPA received few comments on the proposal to except limited quantities, and other miscellaneous materials, from the 24-hour telephone number requirement. Those in favor of the proposal cited the high costs associated with providing an emergency response telephone number against the minimal hazards associated with such small quantities of material. One commenter stated that the exception for the emergency response telephone number for hazardous materials in limited quantities will provide the regulated community with significant relief while not sacrificing safety. Those opposing the proposal stated that since limited quantities of materials are already excepted from other hazard communication requirements, e.g., labeling, that emergency responders are already hampered when responding to an incident involving these materials and that excepting them from the emergency response telephone number would only create more problems for responders.

RSPA believes that providing emergency response information to emergency responders is an important aspect of its hazardous materials safety program. Emergency response information enhances communication pertaining to the safe handling and identification of hazardous materials involved in transportation incidents. The intent of the NPRM was to relax the emergency response information requirements for those materials where the costs to maintain the information were believed to outweigh the benefits derived from providing the information. Based on the comments received opposing the proposal to except liquid petroleum distillate fuels from the 24-hour emergency response telephone number requirement, RSPA has decided not to adopt the proposed exception for liquid petroleum distillate fuels. Commenters stated that the costs to maintain the 24-hour emergency response telephone number for liquid petroleum distillate fuels do not outweigh the benefits and, therefore, the requirement should be retained. As expressed by one commenter, a propane distributor who would have directly benefited from the exception, the cost to maintain a 24-hour emergency telephone number is minimal and the cost poses no real financial burden, especially considering the safety of emergency response personnel, the public, and the environment.

With regard to the proposed exception for limited quantities, consumer commodities transported by aircraft, and other miscellaneous materials, RSPA continues to believe that the costs to maintain a 24-hour emergency response telephone number outweigh the benefits of providing the information for millions of small shipments. However, RSPA believes that the impact on air transportation safety of excepting "Mercury contained in manufactured articles" from the 24-hour emergency response telephone number requirement requires further study. Therefore, except for "Mercury contained in manufactured articles", RSPA is adopting an exception from the emergency response telephone number requirements of § 172.604 for limited quantities, consumer commodities transported by aircraft, and other miscellaneous materials.

Based on its own initiative, RSPA proposed to clarify that more than one emergency response telephone number with different hours of operation may be used to satisfy the requirements of § 172.604. RSPA received numerous comments both in support of and against the proposed clarification. RSPA believes that the issues raised by the commenters need further review and will finalize its decision on this proposal in a future rulemaking. Therefore, in the interim, multiple emergency response phone numbers are authorized on a shipping paper if the requirements of § 172.604 are met.

Sections 172.702 and 172.704. RSPA stated in the notice of public meetings under Docket HM–222 (60 FR 17049) that it would consider extending the requirement for recurrent training from every two years to every three or four years. RSPA received numerous written and oral comments in support of decreasing the frequency specified to retrain hazmat employees in accordance with Subpart H of Part 172. In the NPRM, RSPA proposed to decrease the frequency of recurrent hazmat training from two years to three years. RSPA stated that this frequency is consistent with other training programs, such as the training required under the Transportation of Dangerous Goods Regulations issued by the government of Canada.

RSPA received numerous comments in support of this proposal and many comments in opposition. Commenters supporting the proposal included: shippers, carriers, safety and trade associations, oil and petrochemical companies and associations, a railroad association. Some commenters requested that RSPA extend the training to every four years. The commenters stated that the amendment would significantly reduce costs to the regulated community without any decrease in safety. Commenters who supported the proposal to extend the training frequency requirements to every three years stated that the change would allow hazmat employers to provide for more cost-effective training of hazmat employees, since training times could be better coordinated to accommodate employee work schedules and varying business cycles. Some commenters who supported the proposal stated that extending the training frequency is consistent with other regulatory requirements (e.g., Canadian regulations). One commenter noted that, although international regulations require training on a two-year cycle, inclusion of the phrase "at least" enables persons involved in international transportation to comply with both requirements without any conflict or confusion. Commenters also stated that if RSPA adopts a change to the training frequency requirements, then a corresponding change to the recordkeeping requirements is also necessary.

Those commenters who opposed the proposed change in training frequency included: trade and service associations, training and consulting organizations, shippers and carriers, and emergency response organizations. These commenters stated that the proposal to increase the training frequency would have a detrimental impact on safety. Some commenters also stated that the proposal will diminish the apparent importance of the DOT program in the eyes of employees and supervisors.

RSPA believes that one of the most important regulatory requirements in the HMR is its training requirement. Proper training increases a hazmat employee's awareness of safety considerations involved in the loading, unloading, handling, storing, and transportation of hazardous materials. An effective training program reduces hazardous materials incidents resulting from human error and mitigates the effects of incidents when they occur. The importance of RSPA's training requirements is not diminished by a decrease in the frequency of training from two to three years. However, RSPA is not adopting commenter suggestions to extend the training frequency to every four years. The adoption of a three-year interval for training frequency strikes a balance between an effective training program and the costs that are imposed on the regulated community. Therefore, RSPA is revising the training frequency for hazmat employees from every two years to every three years. In addition, as requested by commenters, RSPA is adjusting the recordkeeping requirements for training records to specify that training records be retained for three years.

In the preamble to the NPRM, RSPA stated: "Except as provided in § 172.704(c), hazmat employees must be trained whenever their hazmat functions change or the requirements are revised, regardless of the minimally required training frequency." A number of commenters were concerned with this statement because they did not see any corresponding proposed change to the HMR. Some commenters also expressed concern with the statement that hazmat employees must be retrained every time a change to the HMR is adopted because it could require retraining several times a year.

Section 172.702 (Subpart H) states that any person who performs a function subject to the HMR may not perform that function unless trained in accordance with the requirements prescribed in the subpart. In addition, a hazmat employer must insure that each hazmat employee is thoroughly instructed in the requirements that apply to functions performed by that employee. If a new regulation is adopted, or an existing regulation is changed, that relates to a function performed by a hazmat employee, that hazmat employee must be instructed in those new or revised function specific requirements without regard to the timing of the three year training cycle. It is not necessary to completely retrain the employee sooner than the required three year cycle. The only instruction required is that necessary to assure knowledge of the new or revised regulatory requirement. For example, if a new requirement is added to the shipping paper requirements, a hazmat employee must be instructed regarding the new requirement prior to performance of a function affected by the new or revised rule. It is not necessary to test the hazmat employee, or retain records of the instruction provided in the new or revised requirements until the next scheduled retraining at or within the three year cycle. In order to clarify the training requirements of the HMR, RSPA is revising § 172.702(b) to state that an employee must be instructed in the requirements of the HMR that apply to each function performed by the employee without a reference to the requirements of subpart H (e.g., the training, testing and recordkeeping requirements of § 172.704). This amendment makes it clear that RSPA does not intend that millions of detailed records be created and retained and associated testing be conducted each time a hazmat employee is instructed in regard to a change in the regulations within the three year cycle. Consistent with this amendment, RSPA is also revising § 172.704(d) to clarify that only records of the training required by § 172.704, and not the subpart, are required to be maintained. In addition, as proposed, RSPA is adding a reference in § 172.702(b) to the exception provided in § 172.704 for employees employed less than 90-days.

RSPA proposed to revise § 172.704(c) to clarify its position concerning the "direct" supervision of a hazmat employee who has not received initial training. RSPA is adopting the amendment, as proposed in the NPRM, to add the word "direct" preceding the word "supervision" in § 172.704(c)(1). RSPA requires that the person providing direct supervision must be able to instruct the employee on how to properly perform the hazmat function, must observe performance of the hazmat function, and must be able to take immediate corrective actions in regard to any function not performed in conformance with the HMR.

Part 173

Section 173.4. As proposed, RSPA is revising the HMR to permit Division 4.2 and 4.3 materials and hazardous materials identified in paragraph (a)(11) to be shipped under the small quantity provisions. RSPA is also adding a new paragraph (c) to allow small quantities of certain categories of hazardous materials not authorized under this exception to be shipped in accordance with this section if specifically approved by the Associate Administrator for Hazardous Materials Safety. RSPA is also revising the marking requirements in paragraph (a)(10). These changes to § 173.4 are intended to ease burdens on industry and facilitate international transportation of hazardous materials in very small quantities. RSPA received several comments in support of these amendments. One commenter requested that RSPA continue to authorize the previously required marking. RSPA agrees and has modified the amendment to authorize the previously required marking for an additional five years.

Section 173.13. In the NPRM, RSPA proposed to add a new § 173.13 that incorporates, for highway and rail transport only, the provisions of DOT exemptions E–7891 and E–9168 into the HMR. These exemptions, and others commonly referred to as the "poison pack" exemptions, allow small quantities of hazardous materials in special packagings of high integrity to be transported without their primary or subsidiary labels. In addition, RSPA proposed to except these materials from the placarding and segregation requirements of the HMR.

RSPA received several comments on this issue in support of adopting these exemptions into the HMR, but the commenters also requested further clarification. Two commenters noted that one of the inner packagings required by the exemptions was not included in the proposed new section. Commenters also requested that the section be broadened to include air transport and materials poisonous by inhalation, as presently authorized in the exemptions. Commenters also requested that the term "rigid can" be clarified and that all affected exemptions be identified.

Commenters who opposed adoption of this new section were concerned about the loss of controls that are provided under an exemption. In addition, commenters were concerned that there would be no clear identification on the package that the package is being offered for transportation or transported under the provisions of § 173.13.

RSPA believes that the safety record of the "poison pack" exemption packagings over the years has shown that they are acceptable for inclusion in the HMR. However, several points of clarification and revision to the proposal are necessary. First, RSPA is extending the application of § 173.13 to permit transportation by cargo aircraft. RSPA will continue to monitor the transportation of these packages with materials poisonous by inhalation and by passenger carrying aircraft under the terms of the exemption, and therefore, is not extending the application of the new section to cover these operations. These operations can continue under the applicable exemptions. RSPA is also requiring another level of inner packaging to be consistent with the exemptions. In order to clarify the term "rigid can", RSPA is changing the term to "metal can."

RSPA agrees with commenters who were concerned that packages prepared in accordance with § 173.13 would not be readily identifiable in transportation. Therefore, RSPA is adopting in this final rule a marking requirement similar to that required for small quantities prepared in accordance with § 173.4. Packages prepared in accordance with § 173.13 must be marked, in association with the proper shipping name, with the following statement: "This package conforms to 49 CFR 173.13."

One commenter was concerned that no specific exception from the segregation requirements was proposed in the section, as is provided in the exemptions. RSPA notes that the

segregation requirements of the HMR are based on package labels. Therefore, materials that are excepted from the labeling requirements of the HMR are also excepted from the segregation requirements of the HMR. For clarification, RSPA is revising §§ 172.500 and 173.13 to note that packages conforming to the requirements in § 173.13 are excepted from the placarding requirements of the HMR.

Commenters requested that RSPA identify all of the exemptions potentially affected by the adoption of § 173.13. Those exemptions are DOT E–7891, 7909, 8249, 9168, 10672, 10755, 10891, 10962, and 10977.

Section 173.21. In the NPRM, RSPA proposed to incorporate into § 173.21 the provisions of a competent authority approval for temperature-controlled shipments. RSPA received several comments in support of the proposal, but commenters also requested changes to the section. One commenter noted that no specific reference to cargo tanks or portable tanks was made in the proposed section and questioned whether they were included. Section 173.21(f)(3) does not authorize packagings, but provides methods of stabilization that are authorized by the Associate Administrator for Hazardous Materials Safety. Therefore, cargo tanks or portable tanks are not excluded from the provisions of § 173.21(f)(3).

Several commenters requested that § 173.21(f)(3)(i)(B), which requires the temperature of the material to be measured and entered on a written record at the time the material is filled, only apply to bulk packagings and not to all packagings. The commenters stated that measuring and recording the temperature of every small, individual package as it is filled is an unnecessary burden that would do nothing to enhance transportation safety. RSPA believes that measuring and recording the temperature of the packaging prior to transport is an important part of the approved stabilization process. However, RSPA is revising § 173.21(f)(3)(i)(B) to require determination of the temperature of the package, by appropriate means, at the time it is loaded into the transport vehicle, not when the package is filled. This should eliminate the unnecessary measurement of packages that are in storage and not in transportation.

Section 173.32a. As proposed, RSPA is removing the requirement that an approval agency submit an approval certificate to the Associate Administrator for Hazardous Materials Safety.

Section 173.155. RSPA is amending this section as proposed.

Section 173.171. Sections 173.171 and 177.838(g) prescribe requirements for smokeless powder for small arms. However, § 177.838(g) provides additional relief by allowing inside packages of smokeless powder to be overpacked in UN 4G boxes, provided the net weight of smokeless powder in any one box does not exceed 7.26 kg (16 pounds). This provision is not contained in § 173.171. Therefore, as proposed, RSPA is removing the § 177.838(g) provisions pertaining to classification and packaging, and adding the provision concerning smokeless powder in overpacks to § 173.171. In addition, as proposed, RSPA is broadening the exception for reclassification of smokeless powder to Division 4.1 to include transportation by vessel and cargo aircraft. RSPA received two comments on this proposal. One commenter agreed with the proposal but requested that there be no limit on the amount of material authorized per transport vehicle. In the NPRM, RSPA proposed to extend the application of an existing section, i.e., § 173.171, to other modes of transport, but the amount of material authorized per transport vehicle was not proposed for amendment. RSPA believes that the § 173.171 100-pound limitation on smokeless powder, reclassed as a Division 4.1 material, per transport vehicle is necessary to retain the level of safety that has been maintained for the last several years in the highway and rail modes. One of the major arguments submitted in support of the original regulatory provision was that the 100-pound limit would preclude a major conflagration should these materials become involved in cargo fires. Therefore, RSPA has not adopted the commenter's request to eliminate the 100-pound weight limitation. Another commenter objected to RSPA extending this reclassification to transportation by aircraft because of its potential explosive hazards. This provision is consistent with an exemption (DOT E–9997) that was issued in 1988. Based on the successful experience under this exemption, RSPA believes there is no basis for the suggestion that the reclassification of smokeless powder for small arms to Division 4.1, under special testing and approval procedures would provide an unacceptable level of safety in air transportation. Therefore, RSPA is extending the applicability of § 173.171 to transportation by cargo aircraft.

Section 173.220. RSPA is amending this section as proposed.

Section 173.230. RSPA is amending this section as proposed.

Section 173.435. In § 173.435, RSPA is amending the Table of A_1 and A_2 values by adding an entry for MFP (mixed fission products). This entry was inadvertently left off the table under Docket HM–169A (61 FR 20747).

Part 176

Section 176.104. RSPA is amending this section as proposed.

Part 177

Section 177.801. RSPA is amending this section as proposed.

Section 177.818. RSPA is removing this section as proposed.

Section 177.821. RSPA is removing this section as proposed.

Section 177.822. RSPA is removing this section as proposed.

Sections 177.824, 177.834, and 180.407. In the NPRM, RSPA proposed to remove §§ 177.824 and 177.834(j) because they duplicate other HMR provisions. RSPA proposed removing § 177.834(b) because RSPA is not aware of any hazardous material that is transported on pole trailers. RSPA also proposed to add a new § 177.834(j) consolidating the provisions of §§ 177.837(d), 177.839(d), and 177.841(d) that require manholes and valves on cargo tanks to be closed prior to transportation.

RSPA received several comments in support of these proposals. One commenter requested that RSPA not delete § 177.824 because it would eliminate the responsibility of a motor carrier who is transporting another party's cargo tank from satisfying the inspection and retesting requirements of Part 180. RSPA agrees with the commenter; however, rather than retaining § 177.824, RSPA is removing it and revising § 180.407 to make it clear that a cargo tank may not be transported unless it conforms to the retest requirements of Part 180. Otherwise, RSPA is adopting these amendments as proposed.

Section 177.835. RSPA is removing paragraphs (k), (l), and (m) as proposed.

Section 177.838. RSPA is amending this section as proposed.

Section 177.839. In the NPRM, RSPA proposed to revise paragraph (a) by limiting the applicability of the paragraph to nitric acid in concentrations of 50 percent or greater. In addition, RSPA proposed removing the paragraph (a) restriction on stacking containers of nitric acid higher than two tiers and all of paragraph (b) because they are outdated and unnecessary. RSPA received one comment that supported the proposed amendments to

§ 177.839 but requested clarification of the term "other material" as used in the section. The term "other material" refers to any other kind of material, including nonhazardous materials. Therefore, RSPA has adopted the amendments as proposed.

Section 177.841. As proposed, RSPA is amending § 177.841, consistent with § 175.630, to authorize the transport of foodstuffs and poisons in the same motor vehicle when loaded into separate closed unit load devices. In addition, RSPA is removing the provision allowing use of the container identified as package "4000" in the National Motor Freight Classification 100–1, for the transport of foodstuffs and poisons on the same motor vehicle. RSPA believes that this container has not been used for some time and, therefore, reference to it is unnecessary. RSPA received several comments in support of this proposal. In addition, one commenter requested that RSPA authorize any Division 6.1 material, except materials poisonous by inhalation, to be transported with food grade material provided both materials are appropriately packaged in performance-oriented containers. RSPA believes this request to be beyond the scope of this rulemaking and has not adopted this commenter's request.

Section 177.848. RSPA is amending this section as proposed.

Part 178

Section 178.315. In the NPRM, RSPA proposed removing the Specification MC200 requirements from the HMR because RSPA believes that this container is no longer utilized in hazardous materials service. RSPA received one comment on this proposal stating that the commenter was unaware of any person using the DOT Specification MC200. Therefore, as proposed, RSPA is removing the Specification MC200 requirements from the HMR.

III. Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). The economic impact of this rule is so minimal that the preparation of a regulatory evaluation is not warranted.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Federal hazardous materials transportation law (49 U.S.C. 5101–5127) contains an express preemption provision that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) the designation, description, and classification of hazardous material;

(ii) the packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) the preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of such documents;

(iv) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(v) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

Title 49 U.S.C. 5125(b)(2) provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. This final rule clarifies and provides relief from certain regulations governing the transportation of hazardous materials. RSPA has determined the effective date of Federal preemption for these requirements is October 1, 1996. Because RSPA lacks discretion in this area, preparation of a federalism assessment is not warranted.

Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule does not impose any new requirements on persons subject to the HMR.

Paperwork Reduction Act

Information collection requirements subject to approval by the Office of Management and Budget (OMB) are addressed in this final rule in § 171.16 for incident reporting (OMB control number 2137–0039) and subpart C of part 172 and § 172.604 for shipping papers (OMB control number 2137–0034). Provisions in this final rule will result in minor reduction in information collection burdens under both approvals. RSPA is requesting reinstatement and revision of OMB control number 2137–0039 from OMB and will display, through publication in the **Federal Register**, the control number when it is approved by OMB. Public comment on this request was invited through publication of a **Federal Register** notice on March 5, 1996 (61 FR 8706). OMB control number 2173–0034 is currently approved and the change in burden is not sufficient to warrant revision of the approval. Under the Paperwork Reduction Act of 1995, no person generally is required to respond to a requirement for collection of information unless the requirement displays a valid OMB control number.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Marking, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 171, 172, 173, 176, 177, 178, and 180 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 171.7 [Amended]

1a. In § 171.7(a)(3), in the table, the entry "International Maritime Dangerous Goods (IMDG) Code, 1990 Consolidated Edition, as amended by Amendment 27 (1994) (English edition)", in column 2, the reference "173.21;" is added in appropriate numerical order.

1b. In § 171.11, paragraph (d)(1) is revised to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

* * * * *

(d) * * *

(1) For a material that meets the definition of a hazardous substance as defined in this subchapter, the shipping paper and package markings must conform to the provisions in § 172.203(c) and 172.324, respectively, of this subchapter.

* * * * *

2. In § 171.16, paragraph (c) is revised, paragraph (d)(2) is amended by removing the word "nor" at the end of the paragraph, paragraph (d)(3) is redesignated as paragraph (d)(4), and a new paragraph (d)(3) is added to read as follows:

§ 171.16 Detailed hazardous materials incident reports.

* * * * *

(c) Except as provided in paragraph (d) of this section, the requirements of paragraph (a) of this section do not apply to incidents involving the unintentional release of a hazardous material—

(1) Transported under one of the following proper shipping names:

(i) Consumer commodity.

(ii) Battery, *electric storage*, wet, filled with acid *or* alkali.

(iii) Paint and paint related material when shipped in a packaging of five gallons or less.

(2) Prepared and transported as a limited quantity shipment in accordance with this subchapter.

(d) * * *

(3) Except for consumer commodities, materials in Packing Group I; or

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

3. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 172.101 [Amended]

4. In the § 172.101 Hazardous Materials Table, the following amendments are made:

a. The headings for columns (8), (8B),(8C), (9A), (10), (10A), and (10B) are revised to read "Packaging (§ 173. * * *)", "Nonbulk", "Bulk", "Passenger aircraft/rail", "Vessel Stowage", "Location", and "Other", respectively.

b. For the entries "Cartridges for weapons, blank *or* Cartridges, small arms, blank, UN 0014", "Cartridges for weapons, inert projectile *or* Cartridges, small arms, UN0012", "Cartridges, power device, UN0323", and "Cartridges, small arms", in Column (7), special provision "112" is removed.

c. For the entries "Cartridges for weapons, blank *or* Cartridges, small arms, blank, UN 0014", "Cartridges for weapons, inert projectile *or* Cartridges, small arms, UN0012", and "Cartridges, power device, UN0323", in Column (8A), the word "None" is revised to read "63".

d. For the entry "Cartridges, small arms", in Column (8A), the number "230" is revised to read "63".

e. For the entry "Ethanol *or* Ethyl alcohol *or* Ethanol solutions *or* Ethyl alcohol solutions", in Column (7), the number "24," is added immediately preceding "T1", in Packing Group II, and the number "24," is added immediately preceding "B1" in Packing Group III.

f. For the entry "Smokeless powder for small arms (*100 pounds or less*), NA3178", in Column (9B), the word "Forbidden" is revised to read "7.3 kg".

§ 172.102 [Amended]

5. In § 172.102, in paragraph (c)(1), special provision "112" is removed.

6. In § 172.201, paragraph (d) is revised to read as follows:

§ 172.201 General entries.

* * * * *

(d) *Emergency response telephone number.* Except as provided in § 172.604(c), a shipping paper must contain an emergency response telephone number, as prescribed in subpart G of this part.

7. In § 172.203, paragraph (c)(1) is revised to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(c) *Hazardous substances.* (1) Except for Class 7 (radioactive) materials described in accordance with paragraph (d) of this section, if the proper shipping name for a material that is a hazardous substance does not identify the hazardous substance by name, the name of the hazardous substance must be entered in parentheses in association with the basic description. If the material contains two or more hazardous substances, at least two hazardous substances, including the two with the lowest reportable quantities (RQs), must be identified. For a hazardous waste, the waste code (e.g., D001), if appropriate, may be used to identify the hazardous substance.

* * * * *

§ 172.203 [Amended]

8. In addition, in § 172.203, the following amendments are made:

a. In paragraph (e)(2), the phrase "and paragraph (e)(3) of this section" is removed.

b. Paragraph (e)(3) is removed.

9. In § 172.324, paragraph (a) is revised to read as follows:

§ 172.324 Hazardous substances in non-bulk packagings.

* * * * *

(a) Except for packages of radioactive material labeled in accordance with § 172.403, if the proper shipping name of a material that is a hazardous substance does not identify the hazardous substance by name, the name of the hazardous substance must be marked on the package, in parentheses, in association with the proper shipping name. If the material contains two or more hazardous substances, at least two hazardous substances, including the two with the lowest reportable quantities (RQs), must be identified. For a hazardous waste, the waste code (e.g., D001), if appropriate, may be used to identify the hazardous substance.

* * * * *

10. In § 172.402, paragraph (d) is revised to read as follows:

§ 172.402 Additional labeling requirements.

* * * * *

(d) *Class 7 (Radioactive) Materials.* Except as otherwise provided in this paragraph, each package containing a Class 7 material that also meets the definition of one or more additional hazard classes must be labeled as a Class 7 material as required by § 172.403 of this subpart and for each additional hazard. A subsidiary hazard label is not required on a package containing a Class 7 material that conforms to criteria specified in § 173.4 of this subchapter, except § 173.4(a)(1)(iv) of this subchapter.

* * * * *

11. In § 172.500, paragraphs (b)(4) and (b)(5) are redesignated as paragraphs (b)(5) and (b)(6), respectively, and a new paragraph (b)(4) is added to read as follows:

§ 172.500 Applicability of placarding requirements.

* * * * *

(b) * * *

(4) Hazardous materials prepared in accordance with § 173.13 of this subchapter;

* * * * *

12. In § 172.600, paragraph (d) is revised to read as follows:

§ 172.600 Applicability and general requirements.

* * * * *

(d) *Exceptions.* The requirements of this subpart do not apply to hazardous material which is excepted from the shipping paper requirements of this subchapter or a material properly classified as an ORM–D.

13. In § 172.604, new paragraph (c) is added to read as follows:

§ 172.604 Emergency response telephone number.

* * * * *

(c) The requirements of this section do not apply to—

(1) Hazardous materials that are offered for transportation under the provisions applicable to limited quantities; and

(2) Materials properly described under the shipping names "Engines, internal combustion", "Battery powered equipment", "Battery powered vehicle", Wheelchair, electric", "Carbon dioxide, solid", "Dry ice", "Fish meal, stabilized", "Fish scrap, stabilized", "Castor bean", "Castor meal", "Castor flake", "Castor pomace", or "Refrigerating machine".

14. In § 172.702, paragraph (b) is revised to read as follows:

§ 172.702 Applicability and responsibility for training and testing.

* * * * *

(b) Except as provided in § 172.704(c)(1), a hazmat employee who performs any function subject to the requirements of this subchapter may not perform that function unless instructed in the requirements of this subchapter that apply to that function. It is the duty of each hazmat employer to comply with the applicable requirements of this subchapter and to thoroughly instruct each hazmat employee in relation thereto.

* * * * *

15. In § 172.704, paragraphs (c)(1) and (c)(2) and the introductory text of paragraph (d) are revised to read as follows:

§ 172.704 Training requirements.

* * * * *

(c) * * * (1) *Initial training.* A new hazmat employee, or a hazmat employee who changes job functions may perform those functions prior to the completion of training provided—

(i) The employee performs those functions under the direct supervision of a properly trained and knowledgeable hazmat employee; and

(ii) The training is completed within 90 days after employment or a change in job function.

(2) *Recurrent training.* A hazmat employee shall receive the training required by this subpart at least once every three years.

* * * * *

(d) *Recordkeeping.* A record of current training, inclusive of the preceding three years, in accordance with this section shall be created and retained by each hazmat employer for as long as that employee is employed by that employer as a hazmat employee and for 90 days thereafter. The record shall include:

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

16. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

17. In § 173.4, the section heading is revised, paragraph (a)(11) is removed, paragraph (a) introductory text, paragraphs (a)(9) and (a)(10) are revised, and a new paragraph (c) is added to read as follows:

§ 173.4 Small quantity exceptions.

(a) Small quantities of Class 3, Division 4.1, Division 4.2 (PG II and III), Division 4.3 (PG II and III), Division 5.1, Division 5.2; Division 6.1, Class 7, Class 8, and Class 9 materials that also meet the definition of one or more of these hazard classes, are not subject to any other requirements of this subchapter when—

* * * * *

(9) The package is not opened or otherwise altered until it is no longer in commerce; and

(10) The shipper certifies conformance with this section by marking the outside of the package with the statement "This package conforms to 49 CFR 173.4" or, alternatively, until October 1, 2001, with the statement "This package conforms to the conditions and limitations specified in 49 CFR 173.4."

* * * * *

(c) Packages which contain a Class 2, Division 4.2 (PG I), or Division 4.3 (PG I) material conforming to paragraphs (a)(1) through (a)(10) of this section may be offered for transportation or transported if specifically approved by the Associate Administrator for Hazardous Materials Safety.

18. Section 173.13 is added to Subpart A to read as follows:

§ 173.13 Exceptions for Class 3, Divisions 4.1, 4.2, 4.3, 5.1, 6.1, and Classes 8 and 9 materials.

(a) A Class 3, 8 or 9, or Division 4.1, 4.2, 4.3, 5.1, or 6.1 material is excepted from the labeling and placarding requirements of this subchapter if prepared for transportation in accordance with the requirements of this section. A material that meets the definition of a material poisonous by inhalation may not be offered for transportation or transported under provisions of this section.

(b) A hazardous material conforming to requirements of this section may be transported by motor vehicle, rail car, or cargo-only aircraft. Only hazardous materials permitted to be transported aboard a cargo-only aircraft by column (9B) of the Hazardous Materials Table in § 172.101 of this subchapter are authorized for transport aboard cargo-only aircraft pursuant to the provisions of this section.

(c) A hazardous material permitted by paragraph (a) of this section must be packaged as follows:

(1) For liquids:

(i) The hazardous material must be placed in a tightly closed glass, plastic or metal inner packaging with a maximum capacity not exceeding 1.2 liters. Sufficient outage must be provided such that the inner packaging will not become liquid full at 55 °C (130 °F). The net quantity (measured at 20 °C

(68 °F)) of liquid in any inner packaging may not exceed one liter.

(ii) The inner packaging must be placed in a hermetically-sealed barrier bag which is impervious to the lading, and then wrapped in a non-reactive absorbent material in sufficient quantity to completely absorb the contents of the inner packaging, and placed in a snugly fitting, metal can.

(iii) The metal can must be securely closed. For liquids that are in Division 4.2 or 4.3, the metal can must be hermetically sealed. For Division 4.2 materials in Packing Group I, the metal can must be tested in accordance with part 178 of this subchapter at the Packing Group I performance level.

(iv) The metal can must be placed in a fiberboard box that is placed in a hermetically-sealed barrier bag which is impervious to the lading.

(v) The intermediate packaging must be placed inside a securely closed, outer packaging conforming to § 173.201.

(vi) Not more than four intermediate packagings are permitted in an outer packaging.

(2) For solids:

(i) The hazardous material must be placed in a tightly closed glass, plastic or metal inner packaging. The net quantity of material in any inner packaging may not exceed 2.85 kg (6.25 pounds).

(ii) The inner packaging must be placed in a hermetically-sealed barrier bag which is impervious to the lading.

(iii) The barrier bag and its contents must be placed in a fiberboard box that is placed in a hermetically-sealed barrier bag which is impervious to the lading.

(iv) The intermediate packaging must be placed inside an outer packaging conforming to § 173.211.

(v) Not more than four intermediate packagings are permitted in an outer packaging.

(d) The outside of the package must be marked, in association with the proper shipping name, with the statement: "This package conforms to 49 CFR 173.13."

19. In § 173.21, paragraph (f)(3) is revised to read as follows:

§ 173.21 Forbidden materials and packages.

* * * * *

(f) * * *

(3) Refrigeration may be used as a means of stabilization only when approved by the Associate Administrator for Hazardous Materials Safety. For status of approvals previously issued by the Bureau of Explosives, see § 171.19 of this subchapter. Methods of stabilization approved by the Associate Administrator for Hazardous Materials Safety are as follows:

(i) For highway transportation:

(A) A material meeting the criteria of this paragraph (f) may be transported only in a transport vehicle, freight container, or motor vehicle equipped with a mechanical refrigeration unit, or loaded with a consumable refrigerant, capable of maintaining the inside temperature of the hazardous material at or below the control temperature required for the material during transportation.

(B) Each package containing a material meeting the criteria of this paragraph (f) must be loaded and maintained at or below the control temperature required for the material. The temperature of the material must be determined by appropriate means and entered on a written record at the time the packaging is loaded.

(C) The vehicle operator shall monitor the inside temperature of the transport vehicle, freight container, or motor vehicle and enter that temperature on a written record at the time the package is loaded and thereafter at intervals not exceeding two hours. Alternatively, a transport vehicle, freight container, or motor vehicle may be equipped with a visible or audible warning device that activates when the inside temperature of the transport vehicle, freight container, or motor vehicle exceeds the control temperature required for the material. The warning device must be readily visible or audible, as appropriate, from the vehicle operator's seat in the vehicle.

(D) The carrier shall advise the vehicle operator of the emergency temperature for the material, and provide the vehicle operator with written procedures that must be followed to assure maintenance of the control temperature inside the transport vehicle, freight container, or motor vehicle. The written procedures must include instructions for the vehicle operator on actions to take if the inside temperature exceeds the control temperature and approaches or reaches the emergency temperature for the material. In addition, the written temperature-control procedures must identify enroute points where the consumable refrigerant may be procured, or where repairs to, or replacement of, the mechanical refrigeration unit may be accomplished.

(E) The vehicle operator shall maintain the written temperature-control procedures, and the written record of temperature measurements specified in paragraph (f)(3)(i)(C) of this section, if applicable, in the same manner as specified in § 177.817 of this subchapter for shipping papers.

(F) If the control temperature is maintained by use of a consumable refrigerant (e.g., dry ice or liquid nitrogen), the quantity of consumable refrigerant must be sufficient to maintain the control temperature for twice the average transit time under normal conditions of transportation.

(G) A material that has a control temperature of 40 °C (104 °F) or higher may be transported by common carrier. A material that has a control temperature below 40 °C (104 °F) must be transported by a private or contract carrier.

(ii) For transportation by vessel, shipments are authorized in accordance with the control-temperature requirements of Section 21 of the General Introduction of the International Maritime Dangerous Goods Code (IMDG Code).

* * * * *

20. In § 173.32a, paragraph (c) is revised to read as follows:

§ 173.32a Approval of Specification IM portable tanks.

* * * * *

(c) *Disposition of approval certificates.* A copy of each approval certificate must be retained by the approval agency and by the owner of each IM portable tank.

* * * * *

§ 173.155 [Amended]

21. In § 173.155, in paragraph (b)(1), the wording "4.0 L (1 gallon)" is revised to read "5.0 L (1.3 gallons)".

22. In § 173.171, at the end of paragraph (a) the semicolon is removed and a period is added in its place, the introductory text and paragraph (b) are revised and a new paragraph (d) is added to read as follows:

§ 173.171 Smokeless powder for small arms.

Smokeless powder for small arms which has been classed in Division 1.3 may be reclassed in Division 4.1, for transportation by motor vehicle, rail car, vessel, or cargo-only aircraft, subject to the following conditions:

* * * * *

(b) The total quantity of smokeless powder may not exceed 45.4 kg (100 pounds) net mass in:

(1) One rail car, motor vehicle, or cargo-only aircraft; or

(2) One freight container on a vessel, not to exceed four freight containers per vessel.

* * * * *

(d) Inside packages that have been examined and approved by the Associate Administrator for Hazardous Materials Safety may be packaged in UN 4G fiberboard boxes meeting the Packing Group I performance level, provided all inside containers are packed to prevent movement and the net weight of smokeless powder in any one box does not exceed 7.3 kg (16 pounds).

23. In § 173.220, paragraph (g)(2) is revised to read as follows:

§ 173.220 Internal combustion engines, self-propelled vehicles, and mechanical equipment containing internal combustion engines or wet batteries.

* * * * *

(g) * * *

(2) Are not subject to the requirements of subparts D, E, and F (marking, labeling, and placarding, respectively) of part 172 or § 172.604 (emergency response telephone number) of this subchapter for transportation by vessel or aircraft.

§ 173.63 [Amended]

§ 173.230 [Removed]

24. Paragraph (b) of § 173.230 is redesignated as paragraph (b) of § 173.63 and § 173.230 is removed.

24a. In § 173.435, in the Table of A_1 and A_2 values for radionuclides, the following entry is added, in appropriate alphabetical order, to read as follows:

§ 173.435 Table of A_1 and A_2 values for radionuclides.

* * * * *

Symbol of radionuclide	Element and atomic No.	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity (TBq/g)	Specific activity (Ci/g)
MFP		(see § 173.433)		(see § 173.433)			

PART 176—CARRIAGE BY VESSEL

25. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

26. In § 176.104, the first sentence of paragraph (i) is revised to read as follows:

§ 176.104 Loading and unloading Class 1 (explosive) materials.

* * * * *

(i) A landing mat must be used when a draft of nonpalletized Division 1.1 or 1.2 (Class A and B explosive materials) is deposited on deck. * * *

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

27. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

28. Section 177.801 is revised to read as follows:

§ 177.801 Unacceptable hazardous materials shipments.

No person may accept for transportation or transport by motor vehicle a forbidden material or hazardous material that is not prepared in accordance with the requirements of this subchapter.

§§ 177.818, 177.821, 177.822, and 177.824 [Removed]

29. Sections 177.818, 177.821, 177.822, and 177.824 are removed.

30. In § 177.834, paragraph (b) is removed and reserved, and paragraph (j) is revised to read as follows:

§ 177.834 General requirements.

* * * * *

(j) *Manholes and valves closed.* A person may not drive a cargo tank and a motor carrier may not permit a person to drive a cargo tank motor vehicle containing a hazardous material regardless of quantity unless:

(1) All manhole closures are closed and secured; and

(2) All valves and other closures in liquid discharge systems are closed and free of leaks.

* * * * *

§ 177.835 [Amended]

31. In § 177.835, paragraphs (k), (l), and (m) are removed.

§ 177.837 [Amended]

32. In § 177.837, paragraph (d) is removed.

33. In § 177.838, paragraph (g) is revised to read as follows:

§ 177.838 Class 4 (flammable solid) materials, Class 5 (oxidizing) materials, and Division 4.2 (pyroforic liquid) materials.

* * * * *

(g) A motor vehicle may only contain 45.4 kg (100 pounds) or less net mass of material described as "Smokeless powder for small arms, Division 4.1".

* * * * *

34. Section 177.839 is revised to read as follows:

§ 177.839 Class 8 (corrosive) materials.

(See also § 177.834(a) through (j).)

(a) *Nitric acid.* No packaging of nitric acid of 50 percent or greater concentration may be loaded above any packaging containing any other kind of material.

(b) *Storage batteries.* All storage batteries containing any electrolyte must be so loaded, if loaded with other lading, that all such batteries will be protected against other lading falling onto or against them, and adequate means must be provided in all cases for the protection and insulation of battery terminals against short circuits.

35. In § 177.841, paragraph (d) is removed and reserved, and paragraph (e)(1) is revised to read as follows:

§ 177.841 Division 6.1 (poisonous) and Division 2.3 (poisonous gas) materials.

* * * * *

(e) * * *

(1) Bearing a POISON label in the same motor vehicle with material that is marked as or known to be foodstuffs, feed or any edible material intended for consumption by humans or animals unless the poisonous material is packaged in accordance with this subchapter and is:

(i) Overpacked in a metal drum as specified in § 173.25(c) of this subchapter; or

(ii) Loaded into a closed unit load device and the foodstuffs, feed, or other edible material are loaded into another closed unit load device;

* * * * *

§ 177.848 [Amended]

36. In § 177.848, paragraph (e)(5), is amended by removing the phrase "ammonium nitrate fertilizer" and adding in its place the phrase "ammonium nitrate (UN 1942) and ammonium nitrate fertilizer".

PART 178—SPECIFICATIONS FOR PACKAGINGS

37. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§§ 178.315, 178.315–1, 178.315–2, 178.315–3, 178.315–4, 178.315–5 [Removed]

38. Sections 178.315, 178.315–1, 178.315–2, 178.315–3, 178.315–4, and 178.315–5 are removed.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

39. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 180.407 [Amended]

40. In § 180.407, in paragraph (a)(1), the words "filled and offered for shipment" are removed and "filled and offered for transportation or transported" are added in their place.

Issued in Washington, DC, on May 17, 1996, under authority delegated in 49 CFR Part 1.

Rose McMurray,

Acting Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 96–12955 Filed 5–29–96; 8:45 am]

BILLING CODE 4910–60–P

federal register

Thursday
May 30, 1996

Part V

Federal Trade Commission

16 CFR Parts 19 and 23

Guides for the Metallic Watch Band Industry and the Jewelry Industry, Final Rules; and Guides for the Jewelry, Precious Metals, and Pewter Industries, Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 23

Guides for the Metallic Watch Band Industry and Guides for the Jewelry Industry

AGENCY: Federal Trade Commission.

ACTION: Final guides.

SUMMARY: The Federal Trade Commission ("Commission") announces that it has concluded a review of its Guides for the Metallic Watch Band Industry ("Watch Band Guides") and Guides for the Jewelry Industry ("Jewelry Guides"). The Commission rescinds the Watch Band Guides in a document published elsewhere in this issue of the **Federal Register**. The Commission is consolidating certain provisions of the Watch Band Guides with the Jewelry Guides. The Commission is renaming the Guides for the Jewelry Industry the Guides for the Jewelry, Precious Metals and Pewter Industries. The Commission also revises the Jewelry Guides by defining the scope and application of the Guides and adding new provisions regarding the use of the terms "vermeil" and "pewter." The Commission is also making substantive changes to the existing provisions of the Jewelry Guides, as discussed in detail herein. The Commission is not making any changes to the provisions regarding the use of the word "platinum" at this time and will request additional comment on possible revisions to this section in a separate **Federal Register** notice.

EFFECTIVE DATE: May 30, 1996.

ADDRESSES: Requests for copies of this document should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Constance M. Vecellio, Attorney, 202–326–2966, or Laura J. DeMartino, Attorney, 202–326–3030, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission revises the Guides for the Jewelry Industry and the Guides for the Metallic Watch Band Industry ("Guides"), 16 CFR Parts 23 and 19, respectively, as described in detail below. The Commission will announce the results of its review of the Guides for the Watch Industry, 16 CFR Part 245, which was conducted at the same time as the review of the other Guides, in a separate notice. The Commission published a **Federal Register** Notice ("FRN") soliciting public comment on amendments to the Guides on June 12, 1992, in response to a petition from the Jewelers Vigilance Committee, Inc. ("JVC").[1] The comment period, as extended, ended on September 25, 1992.[2]

The FRN solicited comment on the JVC's proposal to revise the Guides.[3] The FRN summarized the major amendments proposed by the JVC, as well as revisions that Commission staff was proposing. In addition to requesting comment on the proposed revisions generally, the FRN asked for comment on 34 questions.

The Commission received 263 comments. In the remainder of this notice, the comments are cited to by an abbreviation of the commenter's name and the document number assigned to the comment on the public record. A list of the commenters, including the abbreviations and document numbers used to identify each commenter, is attached as an Appendix.[4]

The revisions are discussed section-by-section by category.[5] Below, Part II addresses the standard regulatory review questions that were included in the FRN. Part III discusses general issues regarding the proposed revisions to the Guides. Part IV analyzes the proposed revisions to the Jewelry Guides section-by-section (including the Watch Band Guides, now consolidated with the Jewelry Guides).

II. Regulatory Review and Related Questions

As part of the Commission's ongoing program to review all of its rules and guides periodically, the FRN included questions about the Guides' economic impact and continuing relevance, any compliance burdens, changes needed to minimize their economic impact, their relation to other federal or state laws or regulations, and the effect of any changed conditions since the Guides were issued. The Commission also solicited comment on general issues regarding the Guides, such as whether the JVC's proposed provisions accurately reflect accepted practices, technology or nomenclature used in the trade; whether proposed changes would result in a lessening of competition or increased prices; and whether the JVC's petition to revise should be rejected and the current Guides retained. Because these questions concern fundamental issues about whether the Guides should be retained, deleted or revised, the Commission addresses them first.

A. Summary of the Comments

All but one of the 37 comments specifically addressing the economic impact of the Guides stated that any compliance costs are far outweighed by the benefits to the industry and to consumers.[6] None of the comments provided any figures or estimates of the monetary costs incurred in complying with the Guides.

Thirty-eight comments specifically addressed the continuing need for the Guides and all agreed that there is a continuing need, with most stating that the Guides protect consumers and industry.[7] One comment stated, "Without the guides to serve as a reference manual, every manufacturer or producer would have their own interpretation [of what constitutes fair industry practices]."[8]

Twenty-nine comments specifically addressed the burdens of complying with the Guides. Seven comments stated there are no compliance burdens.[9] Three also stated that, if everyone complies, the burdens of compliance are evenly distributed and will not benefit one business at the expense of another.[10] Ten comments stated that the burdens are minimal[11] and six thought the burdens were "worth it."[12] The seven comments that itemized the burdens ("testing and planning," "monitoring suppliers," "controls," "measurements," "record keeping," "time," and "personnel"), concluded that the costs are acceptable because of the benefits received.[13] None of the comments identified the extent of the costs in money or in time.

Although 29 comments responded to the question regarding changes needed to minimize the economic effect of the Guides, they did not offer detailed explanations or suggestions. Fifteen comments stated that no changes are necessary.[14] Six comments stated that the changes proposed by the JVC are sufficient to minimize their economic effects.[15] Two comments recommended simplifying the Guides to avoid misunderstandings (e.g., about the proper use of terminology).[16] Canada stated that harmonizing standards with Canada would minimize the economic effect on entities subject to the Guides' requirements, reduce costs and promote international trade, by not requiring manufacturers to mark products for domestic use differently than those made for foreign use.[17]

Twenty-seven comments addressed the relation of the Guides to federal, state or local laws or regulations. Twenty-one comments specifically stated either that there is no conflict or overlapping or that they are unaware of any.[18] Six stated that if there was any duplication, it should not deter the Commission from approving comprehensive guidelines.[19] (No examples of duplication were provided.) However, the Postal Service stated that the Guides "overlap with Postal authority, sometimes undermining our position in false representation and fraud actions."[20] The Postal Service stated that the Guides do not adequately address the situation where the consumer purchases jewelry before actually seeing it. The Postal Service proposed changes to the Guides to help remedy this problem.[21] As discussed below, the Commission has revised the Guides to mitigate this problem.

Thirty-one comments discussed economic or technological changes since the Guides were issued and the effect on the Guides. Three comments[22] stated that economic and technological changes have had no effect on the Guides and 28 comments stated that such changes have had an effect on the Guides.[23] The changes the commenters specified, which they thought should be reflected in the Guides, are new gemstone enhancement techniques,[24] laser treatment of diamonds,[25] fracture-filling of diamonds,[26] new methods of metal plating,[27] diffusion-treated sapphires,[28] advanced testing techniques,[29] new synthetic gemstones,[30] and possible new platinum products.[31]

On the economic side, Richard C. Mark commented on the dramatic increase in the price of gold since the Guides were most recently revised, which, he stated, increases the significance of any rules dealing with gold.[32] Another comment stated that greater economic advantage to the trade would occur if national and international standards are uniform.[33]

Twenty-four comments addressed whether proposed provisions accurately reflect accepted practices, technology or nomenclature used in the trade. Fourteen comments stated that there are no requirements in the JVC proposal that do not fairly and accurately reflect trade practices.[34] Some comments, however, identified parts of the proposed Guides that they contended are contrary to accepted industry practices. Specifically, Best and Service Merchandise stated that the JVC's proposed diamond weight tolerances, restrictions on the use of the term "point," and proposed disclosures regarding gemstone enhancement do not conform with accepted trade practices.[35] Other responses to this question were not directly responsive because they did not contend the JVC's proposals were out of step with current trade practices, but instead proposed adding new terms and standards to the Guides.[36]

Thirty-one comments directly responded to the question regarding

---

[1] 57 FR 24996 (June 12, 1992). The JVC, located at 401 East 34th Street, NY, NY 10016, is a trade association that was formed in 1912 to promote ethical practices in the jewelry industry. Its initial petition is dated April 15, 1986; additional proposed revisions were submitted on February 20, 1989.

[2] 57 FR 34532 (Aug. 5, 1992).

[3] Because of its 71-page length, the JVC proposal was not published. But, the proposal, and a document showing how the current Guides would be changed by the JVC proposal, was placed on the public record for inspection and is available in the Public Reference Room of the Commission.

[4] In summary, the comments are from 19 trade associations, 85 diamond dealers, 53 colored stone dealers, 37 retail jewelers, 10 synthetic gemstone manufacturers, 12 pewter manufacturers, 10 watch manufacturers, 9 general manufacturers, 5 gemologist/appraisers, 7 precious metals firms, 3 catalog houses, 2 manufacturer representatives, 2 writing implement manufacturers, 3 pearl dealers, and one each from: The Canadian Government, the U.S. Postal Service, the National Association of Consumer Agency Administrators, a scientist who works with laser technology and crystal growth, an economics professor, an importer, a retired trade association executive, and an editor of Jewelers Circular-Keystone, and a trade magazine.

[5] Various sections of the Guides that pertain to particular subject areas are referred to as "categories," in the Appendix to the current Guides, *i.e.*, Category I: Jewelry industry products in general; Category II: precious metals; Category III: diamonds, genuine and imitation; Category IV: pearls, genuine, cultured and imitation; Category V: gemstones, genuine, synthetic and imitation.

[6] *E.g.*, Fasnacht (4) p.1 (the Guides have a positive economic impact by creating a level playing field); Schwartz (52) (the Guides have a positive impact on the industry by establishing standards that offer consumers protection without undue cost); JMC (1); Thorpe (7); King (11); Gold Institute (13); Honora (15); Argo (17); AGS (18); AGTA (49); Estate (23); G&B (30); Jabel (47); Skalet (61); Handy (62); Lannyte (65); Newhouse (76); GIA (81); Nowlin (109); McGee (112); ArtCarved (155); Bales (156); Bridge (163); LaPrad (181); IJA (192); CPAA (193); Mark (207); Canada (209); Bedford (210); JVC (212); Matthey (213); Bruce (218); Service (222); MJSA (226); Preston (229); Timex (239); and Sheaffer (249).

Service (222) agreed with regard to the current Guides, but thought that the compliance costs associated with the proposed revisions outweighed the benefits.

[7] The commenters are the same as in footnote 6 *supra*, with the addition of Eisen (91). With regard to the current Guides, Best (225) stated, at p.2, that the Guides "are well developed and provide protection to consumers and to reputable jewelers against otherwise false and deceptive practices. The Guides offer a great measure of certainty to jewelers' business practices as historical application and interpretation have better defined the parameters of acceptable conduct. This certainty has value because it contributes to an efficient and free flow of information to consumers in the marketplace." AGTA (49), at p.2, stated: "If consumers cannot be confident that what they are paying for is what they have been told it is, our trade cannot survive. The FTC guides provide a structure upon which our industry has built regulations for the consumer's protection, which is ultimately our own as a trade. Therefore, AGTA endorses their continued existence, timely revision, and a strong enforcement."

[8] Skalet (61) p.1.

[9] Fasnacht (4); Honora (15); G&B (30); Lannyte (65); Newhouse (76); CPAA (193); and Bedford (210).

[10] Honora (15); G&B (30); and Newhouse (76).

[11] JMC (1); King (11); AGS (18); Estate (23); Schwartz (52); Handy (62); Nowlin (109); Bridge (163); MJSA (226); and Preston (229).

[12] Argo (17); AGTA (49); Bales (156); LaPrad (181); Mark (207); and Matthey (213).

[13] Jabel (47); Skalet (61); McGee (112); ArtCarved (155); IJA (192); Canada (209); and MJSA (226).

[14] JMC (1); Fasnacht (4); Thorpe (7); Honora (15); Argo (17); Estate (23); G&B (30); Jabel (47); Schwartz (52); Skalet (61); Handy (62); McGee (112); LaPrad (181); IJA (192); and Mark (207).

[15] AGTA (49); GIA (81); Bridge (163); Bedford (210); JVC (212); and Preston (229).

[16] ArtCarved (155) and Matthey (213).

[17] Comment 209, p.1.

[18] JMC (1); Fasnacht (4); Thorpe (7); King (11); Honora (15); Argo (17); Handy (62); Lannyte (65); GIA (81); NACAA (90); McGee (112); ArtCarved (155); Bridge (163); IJA (192); Phillips (204); Bedford (210); JVC (212); Matthey (213); Best (225); MJSA (226); and Preston (229).

[19] Estate (23); G&B (30); Jabel (47); AGTA (49); LaPrad (181); and CPAA (193).

[20] Comment 244, p.1. The Postal Service enforces 39 U.S.C. 3005, which prohibits persons from obtaining mail or property through the mail by means of false representation. The Postal Service also brings actions under the criminal mail and wire fraud statutes, 18 U.S.C. 1341, 1342 & 1345. *Id.*

[21] Comment 244, pp.1–3.

[22] JMC (1); Handy (62); and McGee (112).

[23] JMC (1); Fasnacht (4); Thorpe (7); King (11); Honora (15); Argo (17); AGS (18); Estate (23); AGTA (49); Lannyte (65); Newhouse (76); GIA (81); Eisen (91); McGee (112); ArtCarved (155); Bales (156); Bridge (163); LaPrad (181); IJA (192); CPAA (193); Mark (207); Canada (209); Bedford (210); Matthey (213); MJSA (226); Preston (229); Timex (239); and Sheaffer (249).

[24] AGS (18); AGTA (49); GIA (81); Eisen (91); ArtCarved (155); LaPrad (181); and IJA (192).

[25] Fasnacht (4); Thorpe (7); Honora (15); ArtCarved (155); and Preston (229).

[26] Thorpe (7); Estate (23); ArtCarved (155); IJA (192); and Preston (229).

[27] Newhouse (76); ArtCarved (155); Canada (209); and Preston (229).

[28] Thorpe (7); Honora (15); and Preston (229).

[29] ArtCarved (155); LaPrad (181); and Preston (229).

[30] Honora (15) and ArtCarved (155).

[31] ArtCarved (155).

[32] Comment 207, p.2. In 1957, when the Guides were last revised, gold cost $35 an ounce. The current price fluctuates between $350 and $400 per ounce.

[33] Matthey (213) p.1 (stating that "Competition on a global as well as a national basis make the establishment of standards and clear definitions of terminology even more critical").

[34] JMC (1); Fasnacht (4); Argo (17); Capital (19); Estate (23); Jabel (47); Skalet (61); Handy (62); Newhouse (76); GIA (81); McGee (112); ArtCarved (155); IJA (192); and Bedford (210).

[35] Best (225) p.4 and pp.7–8 and Service (222) p.1 and 5 of letter and p.3 of comment. *See also* MJSA (226) p.7 (opposing proposed diamond weight tolerances as contrary to industry practice).

[36] For example, AGTA (49) suggested banning certain terms in use that relate to synthetic gemstones and plated gold jewelry. *See also* Lannyte (65); Eisen (91); CPAA (193); and Matthey (213). (Their proposals are discussed under the appropriate categories *infra*.)

whether any proposed changes to the Guides would result in a lessening of competition, barriers to entering the industry or increased prices to consumers. Twenty-five answered "no" or "probably not."[37] But, numerous comments regarding the JVC's proposed weight tolerances for diamonds believed a narrow tolerance requirement (as the JVC proposed) would increase costs to consumers.[38] Jabel stated that paperwork and the printing of definitions and descriptions the JVC proposed as new requirements may increase consumer prices.[39]

Preston commented that, although he was not specifically aware of any proposals that would lessen competition, produce barriers to entry or increase prices to consumers, he thought these results could occur on a modest scale.[40] Thorpe stated, on the other hand, but without giving any reasons, that the JVC proposal would increase competition based on quality, value and service, and that the proposal would lower prices to consumers by allowing them to shop and compare "on a level playing field."[41] Bales recommended that the Guides allow products of less than 10 karat gold to be sold as a karat gold product because it would increase competition in the industry.[42] Other comments, while not specifically responding to this question, stated that the JVC's proposal to prohibit the use of the term "gemstone" to describe synthetic or imitation products would be anticompetitive.[43]

One hundred eighty-one comments responded to the question of whether the JVC's petition to revise should be rejected and the current Guides retained. Many comments stated that the petition to revise should not be rejected.[44] For example, AGTA affirmatively favored revising the Guides and 56 AGTA members filed individual comments endorsing the AGTA position. Twenty three other comments did not respond specifically to Question 34, but endorsed revision of the Guides.[45]

Service Merchandise and Best recommended rejecting the petition to revise in favor of retaining the current Guides.[46] Service Merchandise stated that the proposed revisions are anti-competitive and offer insufficient benefit to the affected industries or their consumers to justify the additional efforts and costs that they allege will result.[47] Additionally, 72 comments recommended rejecting the JVC proposal and retaining the current Guides, apparently because of their objection to the JVC's proposal regarding diamond weight tolerances.[48]

These 72 commenters are: London Star (20); Luria (28); Armel (32); Mendelson (33); Fashion (35); Courtship (36); MAR (37); NY Gold (39); Aviv (40) and (41); TransAmerican (43); Saturn (46); Faleck (50); Alarama (51); Fabrikant (53); Light Touch (54); Disons (55); Astoria (56); PanAmerican (57) and (101); Odi-Famor (58); Black Hills (59); Goldman (60); Almond (63); Brilliance (68); Oroco (69); Fergotstein (70); Simmons (71); Mikimoto (72); Evvco (73); Renaissance (74); Harvey (75); JGL (77); Raphael (78); AMG (79); Vijaydimon (80); Philnor (93); Orion (94); Flyer (95); Classique (96); Vardi (97); K's (98); Diastar (99); Foster (100); Fame (102); Cheviot (104); M&L (105); Kurgan (107); Rosy Blue (108); NEI (110); Leer (114); Majestic (115); Imperial (117); Schneider (119); Precision (121); New Castle (122); Stern (157); Consumers (158); Ultra Blue (160); DeMarco (161); Little (164); Golden West (179); Stanley (180); Mastro (190); Capitol Ring (191); Bogo (201); Schaeffer (211); Suberi (214); Impex (220); Landstrom's (241); Ultimate (243); and Murrays (264).

B. Conclusion

The comments largely favor retention of the Guides and state that there is a continuing need for the Guides. The comments indicate that the benefits of the Guides outweigh the costs, and present no persuasive evidence that the Guides have outlived their usefulness or impose substantial economic burdens. Accordingly, the Commission is retaining the Guides.

Many comments recommended that the Guides be revised to reflect changed technologies, and the Commission has considered these comments in amending the specific provisions of the Guides, discussed below. The comments that favored rejecting the JVC proposal and retaining the Guides as they exist now usually did so because of a particular JVC recommendation. The objections to those proposals also are addressed as they occur in the different Guide categories.

III. Changes to the Form of the Guides

A. Legal Language Used in the Guides

The legal language in the Guides has been revised to conform to the Commission's view on deception and unfairness as expressed in its Policy Statements on Deception and Unfairness.[49] Specifically, the phrase "it is an unfair trade practice," generally has been revised to state "it is unfair or deceptive to * * *."

B. Consolidation of the Guides

Detachable metallic watch bands are the subject of the Guides for the Metallic Watch Band Industry ("Watch Band Guides"), 16 CFR Part 19. Metallic watch bands that are permanently attached to the watch are included in the Guides for the Watch Industry, 16 CFR Part 245. The JVC proposed combining the Watch and Metallic Watch Band Guides with the Jewelry Guides and the FRN solicited comment on this proposal. Thirty comments addressed this issue, and 22 stated the Guides should be consolidated.[50] Most of those who gave reasons for favoring consolidation mentioned the Watch Band Guides rather than the Watch Guides.[51]

Six of the eight comments opposing consolidating the Guides were from watch manufacturers or trade associations.[52] The reasons given for opposition were primarily related to the consolidation of the Watch Guides, not the Watch Band Guides. The American Watch Association stated that the Guides correctly reflect the fact that watches and jewelry are different products, "by imposing substantially different definitions and standards for watches and jewelry."[53] For example, the minimum thickness in the Watch Guides for gold electroplated watches is about 100 times thicker than the minimum thickness for gold electroplated jewelry in the Jewelry Guides.[54]

Based on the comments, the Commission has determined not to combine the Guides for the Watch Industry with the other two Guides. The Guides for the Watch Industry will remain as separate Guides and are discussed in another **Federal Register** notice. However, the Commission has determined to consolidate the Guides for the Metallic Watch Band Industry with the Jewelry Guides.[55] The Watch Band Guides primarily concern "fineness" standards for precious metals, which are the same as those contained in the Jewelry Guides.[56] Thus, unlike the Guides for the Watch Industry, the Watch Band Guides share many common elements with the Jewelry Guides.[57] Therefore, consolidation of these two Guides eliminates unnecessary duplication.[58]

IV. Category-By-Category Explanation of Revisions

This section discusses specific proposed revisions on which the Commission sought comment in the FRN and additional issues raised by the comments. This discussion includes a summary and analysis of the comments on each issue and a discussion of the revisions that the Commission has made. (In some instances there were no comments on particular proposals.)

A. Pre-Category I—Scope and Application: § 23.0

Section 23.0 in the current Guides is captioned "Definitions," and gives definitions for: "diamond," "pearl," "cultured pearl" and "imitation pearl." In the JVC proposal, section 23.0 is titled "Scope and Application," and the definitions appear in the sections that specifically address these products. The Commission has determined that this organizes the Guides in a more helpful fashion and adopts these changes.

Part (a) of section 23.0, as proposed by the JVC, lists industry products to which the Guides apply and part (b) defines industry members. The term "industry products" is used throughout the Guides, but it is not explicitly defined. To avoid any uncertainty about their intended coverage, the revised Guides include a definition of "industry products."

The JVC petition specifically suggested that the term "industry products" include pens, pencils and optical frames containing gold or silver. The FRN sought comment on whether provisions applying to the gold or silver content of pens, pencils and optical products should be included in the Guides, and whether they should be the same as the current provisions for jewelry. Thirty-one comments addressed this issue, and 25 favored including these products, including two major manufacturers of writing implements, Sheaffer and A.T. Cross.[59] The six commenters that opposed the inclusion of these products simply stated that they saw no need for the inclusion of these products or that they were not "really" jewelry products.[60]

The comments generally indicate that pens, pencils, and opticals made of precious metals are viewed by consumers as similar to jewelry because of their metallic content and where they are sold. Thus, consumers would tend to expect that claims about such products would be guided by the same standards that apply to other industry products. Because consumers' expectations about the meaning of terms such as "gold" are likely to be the same for any product, the Commission is including these items in the Guides. These products and detachable metallic watch bands are now specifically listed in § 23.0(a) of the revised Guides. The title of the Guides is now the Guides for the Jewelry, Precious Metals, and Pewter Industries to reflect the coverage of the Guides.[61]

Although the JVC petition did not list hollowware or flatware as "covered products," section 23.6A of the JVC petition addresses sterling hollowware and flatware. The Franklin Mint objected to this because these items are not jewelry.[62] However, these items are commonly sold in jewelry stores, and at least one of the commenters simply presumed that these items were covered

---

[37] JMC (1); Fasnacht (4); Sibbing (5); Thorpe (7); King (11); Honore (15); Argo (17); AGS (18); Estate (23); G&B (30); AGTA (49); Schwartz (52); Skalet (61); Handy (62); Lannyte (65); GIA (81); Nowlin (109); McGee (112); ArtCarved (155); IJA (192); CPAA (193); Mark (207); Canada (209); Bedford (210); and Matthey (213). In addition, most of the 72 comments supporting a different tolerance for diamond weights indicated that requiring the merchant to state more accurately the weight or weights of diamonds would result in increased costs to consumers.

[38] *E.g.*, Service (222) and Best (225) (implementation of the JVC proposal would result in lessened competition and higher prices, particularly for low margin jewelry retailers, which would be passed on to consumers). The comments opposing the proposed diamond weight tolerance and alleging consequential costs are listed and examined in detail in the discussion of diamonds below.

[39] Comment 47, p.2.

[40] Comment 229.

[41] Comment 7, p.2.

[42] Bales (158) suggested that a quality mark be permitted on a product called Balesium that is 4½ karat gold. See discussion below regarding the 10 karat minimum standard for karat gold.

[43] Service (222) p.1 and p.4; Best (225) p.3; AGL (230) p.3; NRF (238) pp.1–2; Kyocera (242) p.1; River (254) p.1. Dealers in synthetics, which are materials made in a laboratory that have the same chemical, physical and optical properties as a natural gemstone, contend they should be able to describe their products as gemstones with appropriate qualification to indicate that they are laboratory made.

[44] *E.g.*, JMC (1); Fasnacht (4); Thorpe (7); King (11); Gold Institute (13); Argo (17); AGS (18); Capital (19); Estate (23); G&B (30); Jabel (47); AGTA (49); Schwartz (52); Skalet (61); Handy (62); GIA (81); Nowlin (105); McGee (112); ArtCarved (155); Bales (156); LaPrad (181); IJA (192); CPAA (193); Mark (207); Canada (209); Bedford (210); Matthey (213); and Preston (229).

[45] JMC (1); Littman (2); JA (3); Overstreet (8); Kennedy (9); Collins (12); Von's (16); Jeffery (21); Stanley (83); General (88); APG (89); NACAA (90); Eisen (91); Alia (106); AWI (116); USWC (118); Krementz (208); JVC (212); WGC (223); MJSA (226); Swiss Federation (232); AWA (236); and ISA (237A).

[46] Comment 222 and Comment 225.

[47] Comment 222, p.1.

[48] These 72 comments, mostly using one of four form letters, also urged that all proposed changes be rejected. One writer from this group indicated that he had a change he would like to suggest but stated "my understanding is that it [the JVC proposal] must be accepted in whole or rejected in total." Comment 60, p.1. Staff contacted this commenter, Richard Goldman, president of Frederick Goldman, Inc., who indicated that the group to which he belongs was advised, by a person he did not identify, that the JVC proposal had to be accepted or rejected in its entirety. Thus, this group's opposition to all other proposed revisions appears to be based on a false premise.

[49] Statement on Deception, appendix to *Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 1734–84 (1984) and Statement on Unfairness, appendix to *International Harvester Co.*, 104 F.T.C. 949, 1072 (1984).

[50] JMC (1); Fasnacht (4); Gold Institute (13); Benrus (22); Estate (23); G&B (30); Jabel (47); Skalet (61); Lannyte (65); Newhouse (76); Nowlin (109); McGee (112); ArtCarved (155); Bales (156); Bedford (210); Bridge (163); IJA (192); Canada (209); Matthey (213); Bedford (210); MJSA (226); and Leach (258).

[51] *E.g.*, Bedford (210) commented, at p.3, that "as watch bands are mostly sold and fitted by jewelers, it would seem appropriate * * * that they be combined with the jewelry guidelines." However, no commenters identified themselves as watchband manufacturers.

[52] USWC (118); JCWA (216); NACSM (219); Best (225); Citizen (228); Swiss Federation (232); AWA (236); and Timex (239). Only one comment from the affected industry, Benrus (22), favored consolidation of the Watch Guides.

[53] Comment 236, p.1. *See also* Swiss Federation (232) p.1 (the industries are separate and consolidating the Guides would make use of the Guides difficult) and Citizen (228) p.5 (watches and jewelry are dissimilar and should not be combined).

[54] *See also* JCWA (216) p.4 (favoring separate Guides because the application of materials and quality demands differ for watches and jewelry); Timex (239) pp.9–10 (opposing consolidation if doing so would create any additional compliance obligations); Swiss Federation (232) p.38 (stating that jewelry, watch and watch band companies are separate industries, with separate trade associations).

[55] JCWA (216), Citizen (228), and AWA (236) stated that all three Guides should be kept separate, but none of these provide reasons for keeping the Watch Band Guides separate.

[56] "Fineness" refers to the amount of precious metal in an article.

[57] For example, the provisions for gold electroplated metal watch bands in the Watch Band Guides are the same as those for gold electroplated metal products included in the Guides for the Jewelry Industry.

[58] More than half of the material in the Metallic Watch Band Guides duplicates material in the Jewelry Guides.

[59] Fasnacht (4); Gold Institute (13); Estate (23); Korbelak (27); G&B (30); Jabel (47); Schwartz (52); Skalet (61) p.3 (stating that the items are typically sold in jewelry, department and gift stores, and thus should be subject to the same standards as jewelry sold in the same store); Handy (62); Lannyte (65); Newhouse (76); McGee (112); Bales (156); Bridge (163) p.2 (stating that the metallic content of the items is more likely to be misrepresented if they are not included in the Guides); Cross (165) p.1 (favoring inclusion, because the mislabeling of these products, "especially by counterfeiters, has caused confusion by customers and harmed the business of legitimate manufacturers"); IJA (192); Tru-Kay (196) p.1 (stating that the public would find different standards for the metal content of these items as opposed to jewelry confusing); Mark (207) p.3 (same as Tru-Kay); Canada (209); Bedford (210); MJSA (226) p.3 (stating that without inclusion in the Guides, there may be more misrepresentation of metallic content); Preston (229); Sheaffer (249) p.2 (favoring inclusion, but objecting to "unnecessary and arbitrary limitations" on the use of the term 'Plate' to describe gold electroplated articles); Franklin (250); and Knight (256).

Although no current manufacturers of eyeglass frames commented, Knight (256) stated, at p.2, that "We at one time owned the largest manufacturer of gold filled and rolled gold plate frames in the U.S.A. and they followed the jewelry guides."

[60] LaPrad (181); Nowlin (109); ArtCarved (155); Service (222); Franklin (250); and NACSM (219).

[61] See *infra* for a discussion of the inclusion of items made from pewter.

[62] Comment 250, p.3. The Franklin Mint stated that "industry products" should be limited to jewelry, which it defined as an ornamental item worn on or about one's person for personal adornment. (The Franklin Mint primarily markets objects that are not used for personal adornment, but which incorporate or are made of precious metals or gemstones, so that its proposal would exempt most of the products it carries from the application of the Guides.)

by the Guides.[63] As with pens and pencils made of precious metal, the Commission believes that consumers would tend to expect that claims about silver or gold hollowware or flatware would be guided by the same standards that apply to other industry products. Therefore, these products also are included in the list of industry products covered by the Guides.

The Guides also refer to "industry members," but do not define this term or give examples. The JVC proposed that the Guides state they apply to "every firm (a person, group of persons, or corporation) engaged in the business of selling" industry products. One commenter noted that the Guides need to clarify that purchasers at all levels of the industry are protected by the Guides, since it is commonly assumed by courts that merchants are experts who should know better than to rely on suppliers' representations as being accurate.[64]

The Commission agrees that it would be useful to clarify that retailers, as well as consumers, are meant to be protected from deceptive practices addressed by the Guides. Therefore, the revised Guides state that they apply to persons, partnerships, or corporations at every level of the trade.

The JVC also proposed, in section 23.0(b), including in the description of industry members (in addition to sellers) those who are engaged in "identifying, grading, appraising, promoting the sale of or counseling the purchase or barter of industry products." The FRN specifically requested comment on whether the Guides should be expanded to include appraisals of jewelry in addition to sales and offers to sell jewelry.

Thirty-five comments addressed this question.[65] The comments generally favored including appraisers of jewelry industry products among those subject to the Guides. The main effect of including appraisers (or those "identifying" and "grading" industry products) among those covered by the Guides would be to ensure that they would be guided by the same definitions and standards as those selling the products. To confirm the value of an intended purchase, consumers often seek an appraisal because they rarely independently have the knowledge to determine the quality or value of jewelry.[66] The Commission has concluded that it would be unfair or deceptive for appraisers to ascribe meanings to standard terms that are used in the jewelry industry that are different from the meanings attached to those terms by the sellers of the products. Thus, appraisers and those "identifying" and "grading" industry products are advised to follow the admonitions of the Guides.[67]

However, 29 of the comments also recommended that the content of appraisals be covered by the Guides. Fifteen of these stated this change should be effective with this revision.[68]

However, if the Guides were to regulate the content of appraisals, standards for establishing a value would be needed.[69] Fourteen comments, including those of the American Gem Society, the Amarican Gem Trade Association, and the Gemological Institute of America, recommended including appraisals in the Guides when there is adequate agreement on what the standards for appraisals should be.[70]

Although the Commission has determined that for the sake of consistency for consumers purchasing industry products, the Guides will state that those who appraise, identify or grade industry products should follow the Guides, they do not otherwise purport to guide these industries.[71]

The JVC proposal included, in section 23.0(c), a description of the behavior (claims and representations) to which the Guides apply. It is similar to § 23.1(b) of the current Guides, but does not list the specific forms of advertising (periodicals, radio, television) that are described in § 23.1(b). The Commission's authority, however, is broader than the items currently listed as advertising in the Guides, and therefore the specific list unnecessarily limits the scope of the Guides. The National Retail Federation comment stated that such specifically enumerated limitations are helpful as they may prevent other representations, such as in-store signs or flyers, from being treated as advertising.[72] However, that is not the intent of that section. Accordingly, § 23.0(c) of the revised Guides encompasses express and implied claims in all types of advertising and promotion.

B. Category I: §§ 23.1–23.4

Guides in this part apply to all industry products regardless of their composition.

Section 23.1(a) of the current Guides contains a list of attributes, such as origin and durability, which industry members are advised not to misrepresent. The JVC proposal omits "manufacture" from the list (possibly in error). The Commission has found no basis in the record for deleting "manufacture" from the list of items not to be misrepresented.

The JVC proposed adding the following attributes to the list of

[63] *See* Gold Institute (13).

[64] ISA (237) p.12 (stating further that the Guides should "address all issues of intended disclosure to resellers of jewelry products so that this information can accurately and completely be passed on to the ultimate consumer").

[65] *E.g.*, AGS (18); AGTA (49); GIA (81); IJA (192); and ISA (237 and 237A).

[66] An "independent" appraisal is one done by a person who has no commercial relationship to the seller and does not sell competitive merchandise. In other words, the person who does the appraisal does not stand to benefit beyond his appraisal fee.

[67] The Commission is omitting from the list those who promote the sale, or counsel the purchase or barter, of industry products, because this language is unnecessarily specific, and because such persons are already covered by the language of the Guides (*e.g.*, persons who sell or offer for sale industry products).

[68] JMC (1); Sibbing (5); Thorpe (7) p.2 (stating that appraisals are sometimes used to make a sale by showing the consumer "a signed document stating an inflated value"); King (11); Estate (23); G&B (30) p.7 (noting that "you are going to have to understand appraisals are subjective"); Jabel (47); Skalet (61) p.3 (suggesting that "appraisers should be certified or licensed and should have no connection with those who are making the sale"); Lannyte (65) p.4 (proposing that the Guides state that "an appraisal has to be qualified as to the purpose of appraisal and the market level of the value quoted"); Eisen (91) p.1 (suggesting that the Guides should provide for "a statement on no conflict of interest, disallowance of a percentage fee, and a resume with the appraiser's qualifications"); McGee (112); ArtCarved (155); LaPrad (181); AGL (230) pp.4–6 (proposing that the Guides state that it is unfair for a seller to provide an appraisal to a consumer when the appraiser is also the supplier of the item being appraised, and recommending that the Guides specify certain required content of appraisals of diamonds or colored stones (e.g., "appropriate tolerance information for each element that impacts on the value of the gemstone"); and ISA (237) and (237A) p.5 (stating that important problems are misrepresentation of qualifications and overstating of value to justify the selling price). Only one comment, LaPrad (181), proposed standards to use (those of the Appraisal Foundation).

[69] ISA (237A) noted, at p.16, that a New York City ordinance requires that appraisals state that "the opinions of appraisers can vary up to 25%." ISA stated that the opinions of appraisers, "depending on marketplace, variances in grading, and geographical market locations, as well as various purposes and functions and the method of value conclusion can cause appraisers to vary in their opinions of value for amounts potentially greater than 25%." *Id.*

[70] AGS (18); AGTA (49); GIA (81); IJA (192); Fasnacht (4); Honora (15); Bridge (163); Mark (207); Bedford (210); Matthey (213); MJSA (226); and Preston (229) p.6 (stating that there are different formats and standards used for jewelry appraisals and that "(t)here is no overall agreement within the industry on precisely what does or does not constitute the ultimate desirable appraisal").

[71] ISA (237) noted, at p.2, that its members are appraisers in more than "130 subspecialty areas of the major personal property disciplines * * *." It stated, at p.7, that while it prefers to have its own industry guide, it favors the inclusion of appraisals in the Guides, because "many times we serve as expert witnesses in court and rely on the content of the guides to inform the court as to what is or is not acceptable." The Commission believes ISA's concerns will be satisfied by the language added to the Guides.

[72] Comment 238, p.1.

characteristics that should not be misrepresented: "clarity," "enhancement," "future value," and "prospects of resale." The Commission believes that the term "clarity" is unnecessarily specific, as it is already covered by the current Guides under "grade" and "quality." Therefore, this term has not been included.

"Enhancement" is the term used by the trade to describe the treatment of gemstones to improve their color or otherwise improve their appearance. However, the Commission has determined that a more accurate term is "treatment" and has added this term, in lieu of "enhancement," to the list of attributes that should not be misrepresented. The Commission has determined that the third term, "future value" should not be added to the Guides, because the Guides already list "value," and "future value" is subsumed in value. The Commission also has determined that "prospects of resale" should not be added to the Guides. Representations regarding the prospects of resale go to the investment of gems, and the Commission has concluded that the sale of investment gems is unsuitable for treatment in guides.

The JVC proposed adding five additional parts to § 23.1, which would be designated as follows: Misrepresentation of the character or identity of business; Misuse of the term "certified," etc.; Deception (as to gemstone investments); Misuse of the term "investment quality"; and Deception as to warranties on gemstone investments. Discussion of each of these proposed additions follows.

Misrepresentation of the character or identity of business was the caption of a section of the Jewelry Guides that was in effect from 1957 to 1979. This section admonished sellers from, for example, misrepresenting themselves as wholesalers or as offering wholesale prices.[73] NACAA commented that it is important to prohibit such a misrepresentation, noting that "retailers use phrases such as 'factory direct' to imply that items are less expensive, when in fact they obtain their merchandise through jobbers and other outside sources."[74] However, § 23.1 warns against misrepresentation as to the "manufacture" or "distribution" of industry products and this provision would encompass misrepresentations about the nature of the seller's business.

Misuse of the term "certified," etc. was the caption of a section in the Guides that were in effect between 1957 and 1979 and which the JVC proposed reinstating. This section stated that it was an unfair trade practice to refer to an industry product as "certified" unless the identity of the certifier and the specific matter to be certified is disclosed; the certifier examines the product, makes the certification, and is qualified to certify; and the certifier makes available a certificate that includes certain information about the certifier and the certification.[75]

Thirty-two comments favored requiring the seller to make available to the purchaser a certificate disclosing the name of the certifier and the matters and qualities certified.[76] The term "certified" or certificates of authenticity are likely to be used as a way of giving credence to a quality claim. If, in fact, the product is not "certified" in a valid manner or a certificate misrepresents the qualities of the item, the seller is not complying with the Guides' admonition in § 23.1 not to misrepresent important qualities or otherwise deceive purchasers. For this reason, the Commission is not including a provision relating to certificates in the Guides.[77]

However, some commenters suggested that the Guides address misrepresentation of the system of grading that was used in any certificate or grading report.[78] There are several different diamond color grading systems in general use, each having its own standards and terminology, and several grading systems for colored stones.[79]

The Commission is persuaded that a representation that a stone is a specific grade could be deceptive if the identity of the grading system used is not disclosed. Section 23.1 states that it is unfair or deceptive to misrepresent the grade of an industry product. The Commission has added a Note to § 23.1 that states that, if any representation is made regarding the grade assigned to an industry product, the identity of the grading system used should be disclosed.

The FRN solicited comment on the JVC's proposed subsections 23.1(d) through (f), which address deception involving gemstone investments. Section 23.1(d) would require, in the sale of gemstones as investments, a disclosure that profit or appreciation cannot be assured, that no organized market exists for the resale of gemstones by private owners, and that the seller is in compliance with all applicable laws and regulations governing securities dealers. In general, the comments favored these disclosures.[80]

[73] The JVC also proposed expanding this section by adding "investment broker" and "independent testing laboratory" to the list of examples of trade designations that firms are not to use falsely. ISA (237) recommended adding "gemological laboratory" and "appraisal facility" to the list.

[74] Comment 90, p.2.

[75] The JVC also proposed requiring the disclosure of any business relationship between the certifier and the seller.

[76] JMC (1); Fasnacht (4); Thorpe (7); King (11); Honora (15); Argo (17); AGS (18); Capital (19); Estate (23); G&B (30); Jabel (47); AGTA (49); Schwartz (52); Skalet (61); Lannyte (65); Newhouse (76); GIA (81); NACAA (90); Nowlin (109); McGee (112); ArtCarved (155); Bridge (163); LaPrad (181); IJA (192); Matlins (205); Bedford (210); Matthey (213); Bruce (218); MJSA (226); Preston (229); ISA (237A); and Leach (257).

Opposed to this provision are: Bales (156) p.5 (stating that it would raise costs and eliminate many smaller jewelers); NACSM (219); Service (222); and Franklin (250).

With respect to the issue of whether there should be a disclosure that there is subjectivity in the grading and appraising of diamonds and colored stones, a comment form AGTA (49) and 56 individual AGTA members opposed disclosure, stating at p.6, that the degree of subjectivity is "better addressed by those in the business of operating laboratories for certificates * * * and to those associations governing appraisers." However, ISA (237A) stated at p.21, that appraisal reports should disclose that diamond and colored stone gradings are subjective in nature. Thorpe (7), AGS (18), Schwartz (52), Skalet (61), NACAA (90), Bruce (218), and Preston (229) were also in favor of the disclosure of the degree of subjectivity in grading.

[77] Certificates have no accepted meaning in the industry and are not defined in the standard dictionary for the industry ["Jewelers' Dictionary" (3d ed. 1976)]. *See* AGTA (49) p.5 (favoring the proposal, but stating that since "there are no nationally accepted standards for certification," the requirement that a certificate state the name of the certifier "is no assurance of either expertise or quality"); NACSM (219) p.24 (stating that the proposed section was "vague and broad in that it could be construed to make any sales slip identifying the product a certification"); Service (222) p.2 (stating that the current Guides "are sufficient to prevent deception with certifications and appraisals").

[78] Rapaport (233) p.1 (stating that misuse of GIA color and clarity terminology by sellers (as opposed to appraisers or graders) is a major problem and suggesting that the Guides state that it is unfair to misuse GIA grading terminology); Thorpe (7) p.2 (stating that an identification of the grading system used "is necessary to make accurate quality comparisons"); Shor (257) p.1 (suggesting that the Guides state that it is unfair to describe diamonds by color and clarity grades developed by GIA or other recognized gem labs "unless they conform exactly to the standards set forth by those institutions").

[79] Richard T. Liddicoat, Jr. & Lawrence L. Copeland, "The Jewelers' Manual" 29–32 (1967); AGL (230); Rapaport (233) p.1. The Gemological Institute of America (GIA) and the American Gem Society (AGS) employ different grading systems, and some diamond graders have their own "in-house" grading systems. The letter "D" designates the best color in the GIA grading system. Some in-house grading systems have grades that start with "A," "AA," or "AAA" and consequently "D" in their systems stands for a much poorer color grade.

[80] JMC (1); Fasnacht (4); Sibbing (5); Thorpe (7); King (11); Honora (15); Argo (17); AGS (18); Capital (19); G&B (30); Jabel (47); Schwartz (52); Skalet (61); Lannyte (65); GIA (81); Eisen (91); Nowlin (109); McGee (112); ArtCarved (155); Bales (156); Bridge (163); IJA (192); Bedford (210); Matthey (213); Bruce (218); Shire (221); MJSA (226); Preston (229); Limon (235); ISA (237A); Leach (257); and AGTA (49)

Continued

The comments favoring these disclosures also generally favored the proposed sections 23.1(e) and (f). Proposed part (e) would prohibit the seller from implying that a gemstone sold for investment purposes is more desirable or different than gemstones marketed for use in jewelry.[81] Proposed part (f) states that it is an unfair practice to limit a purchaser's opportunity for an independent examination of an industry product by delivering a product in a sealed container with a warranty that becomes void if the seal is broken.[82] This practice makes it impossible for the consumer to examine the product or retain an independent expert to examine or appraise the product to determine whether the seller has fairly represented it. On the other hand, a consumer can refuse to buy a product sold under these conditions.

The FRN asked if there would be voluntary compliance with the proposed guidelines for sellers of investment gemstones. Thirteen comments stated that voluntary compliance could not be expected.[83] Six comments stated that compliance could be expected only from legitimate operators.[84] Five comments anticipated voluntary compliance by all concerned.[85]

An industry guide is not appropriate if there is an indication that the violations are willful or wanton and will not be voluntarily abandoned. The experience of the Commission in bringing cases against sellers of investment gemstones indicates that most of the sellers have been engaged in fraud. Thus, they are unlikely to comply with practices that would be likely to put them out of business. The Commission has concluded that a case-by-case approach is a more appropriate way to address the problem of gemstone investment claims than inclusion in the Guides.

The JVC did not propose any substantive changes in the last three sections in Category I (23.2, 23.3, 23.4), and there were no comments pertaining to these sections. The Commission has decided to retain sections 23.2 and 23.4. Section 23.2 states that it would be deceptive to use depictions that would materially mislead consumers about the product shown.[86] Section 23.4 states that it would be deceptive to use the term "handmade" unless the item is entirely handmade or made by manually controlled methods consistent with consumer expectations.

However, the Commission has determined to delete section 23.3. The admonition in section 23.3(a) against misrepresenting the origin of a product repeats the general guidance provided in section 23.1 (which provides a list of characteristics, including origin, which should not be misrepresented). Section 23.3(b) states that a disclosure of foreign origin should be made only when it is deceptive not to do so. A Note following this section explains that it is not necessary to disclose the foreign origin of small and functional parts, or other items (such as diamonds) which are primarily obtained from sources outside the United States. U.S. Customs requires products being imported into the U.S. to be marked with the country of origin unless they will be substantially transformed in the United States.[87] Thus, the Commission has concluded that this section of the Guides is unnecessary.

The Commission also has deleted § 19.4(b) of the Watch Band Guides, which states that it is unfair to fail to disclose that a metallic watchband, or a substantial part thereof, is of foreign origin.[88] No commenters identified themselves as watchband manufacturers or marketers, and very few commenters even addressed the existence of the Watch Band Guides. It is unclear whether the fact that a watchband is made abroad is material to consumers, or whether consumers currently expect that any unmarked metallic watchband was made in the U.S.A. However, as noted, U.S. Customs requires imported watchbands (and other items of commerce) to be marked with the country of origin. Therefore, the Commission has concluded that this section is unnecessary.[89]

C. Metals (Category II): §§ 23.5–23.8

Guides in Category II, in both the current Guides and the JVC petition, apply to industry products composed in whole or in part of precious metal. In the JVC petition, this category also includes a proposed standard for pewter.

1. Inclusion of Metallic Watchbands

As noted previously, the Guides for the Metallic Watchband Industry have been combined with the Jewelry Guides. The Commission believes that, in most respects in which the Watch Band Guides differ from the Jewelry Guides, the Watch Band Guides are unnecessarily restrictive or no longer represent the Commission's views of how the law should be applied. For example, unlike the Jewelry Guides, the Watch Band Guides state that it is unfair to fail to disclose the metallic composition of a product which has the appearance of gold but is not gold (§ 19.2(A)(2)). There is no evidence that suggests that consumers today will infer that a gold-colored metal watch band is gold. The prices for gold-colored metallic watch bands compared to what gold watch bands (or other gold jewelry) would sell for is at least one way consumers are alerted that a gold-colored band is not gold.[90] Thus, the Commission has omitted this provision from the Guides.

Other differences between the Watch Band Guides and the Jewelry Guides are noted at appropriate portions below.

2. Misrepresentation as to Gold Content: § 23.5

Section 23.5(a) of the current Guides states that it is an unfair trade practice to sell or offer for sale any industry product by means of any representation that would deceive purchasers as to the gold content. Section 23.5(b) identifies specific practices that may be misleading and section 23.5(c) lists markings and descriptions that are consistent with the principles described in the section. These latter provisions are "safe harbors" (*i.e.*, examples of ways of avoiding misrepresentations).

a. *General provision as to misrepresentation: § 23.5(a).* As noted, § 23.5(a) of the current Guides contains a general provision admonishing against misrepresenting the gold content of industry products. The JVC proposed adding definitions of "karat," "gold," "karat gold," "fine gold," "mark," and "apply or applied" to this section.[91] No evidence indicating confusion as to the meaning of the terms was presented. In some cases, the terms are already defined very succinctly in the current Guides.[92] For these reasons, the Commission has not included the proposed definitions in the Guides.

The JVC also proposed including a statement that no mark other than the quality mark (*e.g.*, 14 K) shall be applied to an article indicating that it contains gold or as to the quality, fineness, quantity, weight, or kind of gold in an article. The Commission found no justification or need for such a broad statement. Section 23.5(a) already states that misrepresentations about the gold content of an article are unfair or deceptive.

b. *Specific provisions and "safe harbors": § 23.5(b)-(c).* Section 23.5(b) in the current Guides identifies specific practices that may be misleading. Subsection (1) states that the unqualified use of the word "gold" is limited to 24 karat gold. The JVC proposed adding that the unqualified use of "solid gold" is limited to 24 karat gold. There were two comments on this issue, one favoring the JVC proposal because "solid gold should mean that the product is 100% gold," and one against the proposal, since fineness must be disclosed for all gold other than 24 karat gold.[93] The Commission believes that the term "solid gold" is not inherently deceptive or unfair.[94] Accordingly, the Commission has rejected this proposal.

Subsection (2) in the current Guides advise that (except for 24 karat gold), the karat fineness be stated when the word "gold" is used. The JVC did not suggest any changes in this section, and only suggested minor changes in the corresponding "safe harbor" provision in § 23.5(c)(1).[95] However, Finlay argued that the word "gold" should be allowed in product advertising without a designation as to karat fineness.[96] Including karat fineness in advertising, however, helps consumers make basic comparisons among competing products offered by different retailers. Therefore, the Commission has not changed this provision.

A Note following the first "safe harbor" provision, § 23.5(c)(1) in the current Guides, deals with hollow products and advises that there be a disclosure that these products, whatever their gold content, have hollow centers, when the failure to make such a disclosure would be deceptive. It also states that these products should not be referred to as *solid* gold. The JVC proposed revising the note to drop the guidance that there be a disclosure that the product is hollow. However, the Commission has determined that this disclosure is useful because, otherwise, consumers would be unaware that the product is only hollow. Thus, the Commission has not deleted this provision. The JVC also suggested that the note be changed to state that products that are filled with cement or some other filler may not bear a quality mark. However, such products are essentially "gold plated" products, and as long as they conform with the Guides' provisions about how to mark such products, consumers are not likely to be deceived. Thus, the Commission has decided not to adopt this proposal.

Subsections (3)–(5) advise against particular uses of the word "gold" (*e.g.*, plated, filled, rolled, overlay) unless they are so qualified as to be non-deceptive. Subsection (6) advises against representing that one gold product is superior to another unless the representation is true.[97]

Subsection (7) advises against the use of the word "gold" on any product of less than 10 karat fineness. Bales proposed in its comment that the Guides be amended to permit gold alloys containing less than 10 karats of gold (less than .416 percent gold) to be marketed as containing gold. Bales has a patent on a product in which the gold content varies from four to six karats and which is alleged to have good corrosion resistance.[98] This issue was addressed comprehensively by the Commission in 1977.[99] Thus, the

Continued

(favoring the proposal for sales to consumers but opposing the proposal for inter-trade transactions (e.g., a sale by a dealer to a retailer).

Opposed to this provision: Onyx (162) and Rapaport (233) p.4 (stating that "there are regular ongoing markets for the resale of diamonds and colored stones by private owners" such as auction houses, jewelry stores, estate jewelry shows, and pawnshops). *But see* Shire (221) p.3 (stating that these examples do not constitute a ready market, since auction houses, for example, only want specific items and do not take everything for sale). The Commission believes that most consumers know that they, as individuals, would not have access to a market comparable to the stock market; hence, a disclosure would not be necessary to prevent deception in the absence of an affirmative misrepresentation as to the nature of the market.

There is no evidence indicating that consumers believe that sellers of investment gemstones are governed by laws and regulations covering securities dealers.

[81] *See* comments cited in note 80, and NACAA (90) and LaPrad (181). These comments are mostly from retail jewelers who would not usually sell gemstones as investments. Ethical sellers of gemstones for investment purposes may provide gemstones that are a higher grade then those commonly sold as jewelry.

[82] *See* comments cited in note 80. Rapaport (233) stated, at p.4, that it would be acceptable to deliver the product in a sealed container with a warranty that becomes void if the seal is broken, if the sealing agency allows the re-sealing of the product at a reasonable cost and discloses this at the time of sale.

[83] King (11); Argo (17); Jabel (47); Schwartz (52); Skalet (61); GIA (81); Nowlin (109); McGee (112); ArtCarved (155); IJA (192); Matthey (213); Shire (221); and Leach (257).

[84] Fasnacht (4); AGTA (49); Bales (156); LaPrad (181); Bedford (210); and ISA (237A).

[85] Sibbing (5); Thorpe (7); Honora (15); Bridge (163); and MJSA (226).

[86] The Postal Service (244) stated that mail order purveyors of jewelry sometimes use deceptive photographs to sell their wares. This section notes that such a practice is unfair or deceptive, and a following Note specifically states diamonds should not be depicted in greater than actual size without a disclosure that the depiction is an enlargement. The JVC proposed expanding the Note to include depictions of gemstones other than diamonds, and the Commission has made this change. In addition, because television shopping programs or computer images also may contain misleading images of jewelry, the Commission has added "televised or computer image" to the list of covered "visual depictions" in this section.

[87] See The Tariff Act of 1930, as amended, 19 U.S.C. 1304, and Customs' implementing regulations, 19 CFR 134.11.

[88] The Watch Band Guides contain very detailed instructions as to the labeling of watchbands assembled in the U.S. of foreign components. 16 CFR 19.4(b), note 2. Several Commission orders, from the 1960's or earlier, require similar detailed disclosures. However, the Commission recently issued a "Sunset Rule" that terminates administrative orders automatically after 20 years. 60 FR 58514 (Nov. 28, 1995).

[89] More specific guidance on when industry products can be marked "Made in the U.S.A." is likely to be addressed further by the Commission later this year.

[90] To the extent that sellers purposely inflate the price of their gold-colored products to lead consumers to believe they are purchasing a gold item, they are probably engaging in fraud and are likely to misrepresent the item as gold when it is not, which would be a deceptive practice under § 23.5(a).

[91] Only one comment specifically addressed the proposed definitions. Finlay (253) stated at p.1 that it did not object to the proposed definitions of "gold."

[92] For example, the JVC proposed defining "fine gold" as "gold of 24 karat quality." However, § 23.5(b)(1) of the current Guides simply refers to "fine (24 karat) gold." Similarly, although the JVC proposed a new definition for "quality mark" specifically for gold, the more general definition in § 23.8 of the current Guides (defining the term "mark" in conjunction with precious metals generally) is clearer and more accurate. *See* discussion regarding quality marks below.

[93] Lee (153); NRF (238) p.1.

[94] For example, the phrase "solid 10 karat gold" is not likely to lead consumers to believe the item is 24 karat gold. *See* Advisory Opinion, *"Solid" and "karat" used together*, 71 F.T.C. 1739 (1967).

[95] This safe harbor provision simply states that an industry product composed throughout of an alloy of gold of not less than 10 karat fineness, may be described as "Gold" when the word "Gold" is immediately preceded by a correct designation of the karat fineness. The JVC suggested following the words "an alloy of gold of not less than 10 karat fineness" with "less tolerance set out in 15 U.S.C. 294, *et seq.*" (the National Stamping Act) and footnoting that statement with a detailed explanation of the tolerance. The tolerances are set forth in § 23.5(d) of the current Guides and are more easily understood in the current format.

[96] Comment 253, p.1 (stating that this "will not mislead consumers where all other requirements of the guidelines have been met and where information as to karat fineness is given at the point of sale"). *See* NRF (238) p.1 and discussion *infra*, regarding the scope and application of the Guides.

[97] A Note following this section provides guidance for the use of the word "gold" as applied to certain words (Duragold, Diragold, Noblegold, Goldine). The JVC proposed adding "Layered Gold" to this list, and the Commission has done so.

[98] Comment 156, pp.5–6. LaPrad (181) stated at p.2 that "gold plated items should include any item that is not at least 10 karat solid gold in fineness throughout the item." This suggests that an alloy that contained less than 10 karat gold could be described as "plated." However, "plated" has been used for many years to refer to a base metal product with a coating of gold. Extending the meaning of the term to low-karat alloys would be confusing.

[99] The 10 karat minimum standard has been used at least since 1933, when it first appeared in Commercial Standard CS 67–38, promulgated by the then Bureau of Standards of the U.S. Department of Commerce. It was incorporated into the Trade Practice Rules for the Jewelry Industry, 16 CFR Part 23, in 1957. In 1977, the Commission proposed permitting sellers to market gold of less than 10 karat and silver of less than 92.5% if the quality was accurately disclosed. This proposal was published for public comment. Over 1200 comments were received, many from consumers, and over 98% of the comments opposed lowering the 10K standard. The Commission found, based on articles and test reports, that articles of less than 10

Commission has not changed this provision.

The JVC petition also included an admonition against applying a quality mark (e.g., 9 karats) to any article of less than 10 karat fineness regardless of whether the word "gold" is used. Because the word "karat" is so clearly associated with gold content (even without the use of the word "gold"), the use of the term "9 karat" is likely to represent that the item is 9 karat gold. The Commission has determined that advising against this use is consistent with and clarifies the Guides.

On the basis of comments received in response to questions in the FRN, the Commission has revised current §§ 23.5(b)(3), (4), and (5). These changes are explained in detail below, along with the changes to the corresponding "safe harbor" provisions in subsection 23.5(c) of the current Guides.

i. Mechanically or electrolytically "plated" products. There are two basic kinds of "plated" gold. Mechanically plated gold has a layer of gold alloy bonded to a base metal by heat and pressure. Gold electroplate has a layer of gold alloy electrolytically deposited on a base metal. Section 23.5(b)(3) of the current Guides states that a surface-plated or coated article can only be referred to as "gold" when the term is adequately qualified so as to disclose that the product or part is only surface-plated or coated with an alloy of gold. However, for mechanically plated articles, it adds that the word "gold" should be preceded by a designation of the karat fineness.[100]

Section 23.5(b)(4) states that certain terms ("gold-filled," "rolled gold plate," "rolled gold plated," "gold overlay," "gold plated," or "gold plate") should only be used for mechanically-plated items (*i.e.*, not gold electroplate) and that the gold on these items should be of "such thickness and extent of coverage that the terms will not be deceptive." It also states that the karat fineness should be included with these terms. The safe harbor provision in § 23.5(c)(2) states that these terms are not deceptive when used for mechanically-plated items if the karat fineness is stated and the gold is of "substantial thickness" and constitutes 5% of the weight of the item. Section 23.5(c)(2) also creates a safe harbor for all these terms except "gold filled" when the gold weight is *less* than 5% if they are preceded by a fraction indicating the gold weight (*e.g.*, 1/40 12 Kt. Rolled Gold Plate). "Gold filled" is reserved for items with a gold weight of 5% or more.[101]

The JVC proposed adding a note to § 23.5(c)(2) of the current Guides, stating "The actual gold content of gold-filled and rolled gold plate articles shall not be less than the gold content indicated by the quality mark by more than ten percent." Only three comments addressed this issue, all opposing the provision.[102] Section 23.5(d) of the current Guides provide that "the requirements of this section relating to markings and descriptions of industry products and parts thereof are subject to the tolerances applicable thereto under the National Stamping Act (15 U.S.C. 294, et seq.) * * *." The National Stamping Act provides that, for articles made of gold, "the actual fineness * * * shall not be less by more than three one-thousandths parts than the fineness indicated by the mark * * *." 15 U.S.C. 295 (1993). No reason was offered for the much larger, proposed tolerance. Accordingly, the Commission has not adopted this change.[103]

Section 23.5(b)(5) states that the terms "gold electroplate" or "gold electroplated" can only be used when the plating "is of such karat fineness, thickness, and extent of surface coverage that the use of the term will not be deceptive." The safe harbor provision in § 23.5(c)(3) states that these terms are not unfair or deceptive when used for items with a coating of seven millionths of an inch of fine (24 karat) gold, or the equivalent. [If the gold coating is, for example, 12K (half as fine), the coating should be 14 millionths of an inch thick (twice as thick).] "Heavy gold electroplate" may be used for a coating equivalent to 100 millionths of an inch of fine gold. This subsection also states that the terms "gold flashed" or "gold washed" may be used to describe an electroplated coating that is thinner than seven millionths of an inch of fine gold or its equivalent (the minimum thickness for the use of the term "gold electroplate").[104]

The FRN sought comment on how "gold plate" should be defined in the Guides. (As noted, current § 23.5(b)(4) allows "gold plate" to be used to describe only mechanically plated items.) Six comments opposed allowing

karat fineness tend to tarnish and corrode. The Commission ultimately retained the 10 karat minimum fineness for gold and the 92.5% standard for silver. 42 FR 29916, 29917 (1977).

[100] Canada (209) suggested, at p.4, that gold plated articles "be prohibited from using the quality mark 'karat'" because such use confuses the consumer as to the value of the article. In fact, the current Guides (in §§ 23.5(b)(5) and (c)(3)) appear to prohibit a quality mark on gold *electroplated* items. However, a designation of karat fineness has been recommended in the Guides for *mechanically* plated articles for many years, and Commission staff is not aware of complaints from consumers who were deceived by this representation. No other commenters suggested that the Guides advise against the use of a quality mark on mechanically plated items. Hence, the revised Guides, in §§ 23.4(b)(5) and (c)(3), continue to recommend that items identified as mechanically plated contain quality marks.

[101] The Watch Band Guides contain almost identical provisions for mechanically plated watch bands, but they contain a section (§ 19.2(e)(2)) entitled "Examples of Proper Markings for Expansion Bands of Specified Composition and Construction." The main point made by the "Exemples" is that quality marks on gold-filled portions of a watchband should not imply that base metal portions of the band are gold. The Commission believes the section of the current Jewelry Guides dealing with quality marks (§ 23.8) adequately addresses this issue. See discussion of quality marks, *infra*. Therefore, the Commission is not including the "Examples" in the revised Guides.

[102] NACSM (219) p.24; Leach (258) p.9 (stating that the tolerance is "by far too liberal"); Korbelak (27) p.4 of attached letter of April 23, 1982 to Susanne S. Patch (stating that the proposal is "unsupportable" and "contrary to the spirit of the recent amendment of the Marking Act which tightened tolerances on karat goods"). [The National Stamping Act was amended in 1976.]

[103] A ten percent tolerance is found in Voluntary Product Standard PS 67–76, "Marking of Gold Filled and Rolled Gold Plate Articles Other than Watchcases." The tolerance is apparently meant to apply to weight claims, such as "10% 14 karat gold".

This standard is referred to in the current Guides (§§ 23.5(d) and 23.5(f) (as "Commercial Standard CS 47–34")) with respect to the *exemptions* applicable to the tolerance when a test for metal content is being performed (*e.g.*, excluding "joints, catches, screws" etc.) Other Voluntary Product Standards are also referred to in the current Guides for the same reason (*i.e.*, a list of parts of jewelry exempt from assay.) The JVC recommended including in the Guides the full text of all five Voluntary Product Standards for precious metals that are referred to in the current Guides as "Commercial Standards." Commercial Standards were promulgated by the U.S. Department of Commerce and administered by the National Bureau of Standards ("NBS"). Later renamed by the NBS as Voluntary Product Standards ("VPS"), they had the same legal significance as FTC guides. The Department of Commerce and the NBS, which is now called the National Institute of Standards and Technology ("NIST"), withdrew these and all other VPS, as an economy measure, on January 20, 1984. The JVC proposed preserving the material in the VPS by incorporating it into the Jewelry Guides.

Only one comment addressed the issue of whether to include the VPS in the Guides. The Gold Institute (13) agreed that the VPS should be incorporated, but gave no reasons. The Commission has included the material pertaining to exemptions from assay (with some changes, discussed *infra*) in the Appendix. However, the Commission has concluded that it is not necessary to include other portions of the VPS. The VPS state the standards that must be met for each product, if the product is represented to be in compliance with the VPS. However, the VPS have been withdrawn so such a representation is obsolete.

[104] The Postal Service (244) p.2, commented that the use of "gold flashed" or "gold washed" is misleading to consumers, particularly where items are ordered by mail and not seen by the consumer until after purchase. However, the terms "gold flashed" and "gold washed" have been in common use for many years. The Commission does not have sufficient evidence at this time to advise against the use of these terms in all circumstances.

electroplated items to be described as "gold plate."[105] Most gave no reason other than stating that there should be a distinction between products that are mechanically plated and those that are electroplated.

Twelve commenters favored letting electroplated items be designated as "plate."[106] Sheaffer noted that "gold electroplate," the designation currently advised by the Guides, is too lengthy for many of its products and is unknown to consumers in foreign countries, who are familiar with the term "plate."[107] Sheaffer stated that most foreign countries permit "plate" or "plated" to be used to describe an article coated with gold, regardless of the method of application, and that a change in U.S. requirements would allow them to stock inventory of items marked as "gold plate." Further, one commenter interviewed by Commission staff stated that some manufacturers would like to market items that are the product of both mechanical plating and electrolytic plating, that could be labeled "gold plate."[108]

Some comments stated that the relevant issue for consumers is durability, and not the method of plating. Sheaffer stated that "[t]he normal consumer is totally unconcerned about the process which a manufacturer might use to apply gold or silver plate to an article so long as the precious metal plate meets all appropriate required standards."[109] Canada commented that "gold plate" is "simply a layer of gold placed over a base substance" and that the "important reference should inform the consumer of the thickness of the plate."[110]

Although the comments indicate that there are differences of opinion in the industry regarding industry custom and usage of the term "plate," under the current Guides the term "gold plate" can only be used for mechanically plated gold. Historically, mechanically plated gold has contained a thicker coating of gold and has been more durable than gold electroplate, both because it was thicker and because it was less porous.

However, the comments indicate that electroplating has been significantly improved in recent years.[111] Other comments indicate that gold electroplate could now be as desirable, or more desirable, than mechanically plated gold.[112] Commission staff conducted telephone interviews of seven commenters, who, with one exception, indicated that gold electroplate can be made as thick and as durable as mechanically plated gold.[113] Furthermore, all of the commenters whom Commission staff interviewed stated that mechanically plated gold has usually been marketed as "filled gold," "rolled gold," or "gold overlay" (instead of "gold plate").

Based on the comments, the Commission has determined that the current Guides reflect the now-outdated belief that gold electroplate is inherently inferior to mechanically plated gold. The Guides may thus unfairly give mechanical plating a competitive advantage and may make international trade more difficult. Further, the comments indicate that the term "gold plate" has not been used extensively for mechanically plated items, and therefore, consumers may not expect an item labeled as "gold plate" to have been mechanically plated. Moreover, the Commission agrees with the comments that state that consumers are unlikely to distinguish between products on the basis of the method of plating used and are more concerned with the durability.[114] Thus, the distinction between mechanically plated and electroplated products no longer serves a useful purpose. Therefore, the Commission has concluded that the term "gold plate" would not be inherently deceptive when applied to electroplated items with a sufficient layer of gold that assures reasonable durability. This will allow products composed of a combination of types of plating, or newer methods of plating that are developed, to be called "gold plate."

For these reasons, the Commission has created a safe harbor that would allow "gold plate" to be used for gold applied by any process so long as the coating is sufficiently durable to satisfy consumer expectations that the plated product would retain its appearance for a reasonable period of time.[115] The Commission believes that a standard based on thickness, rather than weight of the gold coating, is more relevant to

[105] Gold Institute (13) p.2 (defining "gold plate" as an optional term to describe a mechanically plated article); Handy (62); Newhouse (76); Mark (207); MJSA (226) p.4 (limiting "gold plate" to mechanically plated articles is "generally consistent with terminology used in the trade"); and Knight (256) p.2 (stating that consumers know electroplate is inferior to mechanically plated gold).

[106] Fasnacht (4) p.1 (stating that "gold plate" has historically been used in the trade "for any application of a karat gold to a base"); Benrus (22); Estate (23); Korbelak (27) p.3 (stating that the trade now uses "gold plate" to mean gold applied electrolytically); G&B (30); ArtCarved (155); LaPrad (181); Matthey (213); Bruce (218) p.7 (stating that the trade now uses the term "gold plate" to mean gold applied electrolytically); Citizen (226) p.3 (stating that the term should not "be restricted to any particular method of applying the gold covering" and noting that "the vast majority of gold coverings are applied electrolytically"); Sheaffer (249); and Leach (257). Four of these (Fasnacht, G&B, Matthey, and Estate) stated that the method should be disclosed.

[107] Comment 249, p.2. Section 23.5(c)(2) states that "adequate abbreviations" are not unfair or deceptive for mechanically plated gold, which is also referred to as "gold filled" and abbreviated as G. F. Section 23.5(c)(3) makes no such provision for electrolytically plated gold. Moreover, in an advisory opinion issued in 1971, the Commission stated that "gold electroplate" could not be abbreviated. Advisory Opinion, *Designation of gold content on ball point pens*, 79 F.T.C. 1052 (1971). However, the Commission currently has no information that consumers would understand abbreviations for mechanically plated gold but not for electrolytically plated gold. Thus, the Commission has revised the Guides to state that adequate abbreviations are not unfair or deceptive for electrolytically plated gold (*e.g.*, 12 Kt. G. E. P.). Therefore, the advisory opinion is withdrawn.

[108] Matthew Runci from MJSA.

[109] Comment 249, p.3 (noting that "silverplate" is allowed under the current Guides regardless of the method of application and that this has not misled consumers).

[110] Comment 209, p.4.

[111] Benrus (22) p.2 (stating that "The science of gold plating has improved greatly in the past 15 years and the requirements in the current Guides . . . are simply not in tune with today's technology or market practices"); Alan Foster, "Electrodeposited and Rolled Gold," Gold Bulletin 64 (1982), attached to comment 27 (indicating that the electroplating of gold was greatly improved about 30 years ago). Korbelak (27) (attached letter of April 23, 1982 to Susanne S. Patch) states that the current Guides "perpetuate an economic advantage to one method of manufacturing [mechanical] over another."

[112] Catholyte (34) p.1 (stating that when corrosion is the quality criterion, "mechanically cladded material is not the present day choice because machining processes which produce the desired designs will destroy the starting clad stock and yield 'raw' or cut edges which will have little or no clad matter present. (This procedure necessitates the use of electroplate to 'cover' those edges which are exposed.)"). Other comments indicate that mechanically plated gold normally has a surface coating of electroplate. Korbelak (27) (see articles attached to comment); Tru-Kay (196) p.1 (stating that its major product was mechanically-plated jewelry, and noting the existence of "the surface coating of gold electroplate" on gold filled items); Mark (207) p.3 (owned and operated a gold-filled manufacturer and distributor for 25 years and referred to the "surface coating of gold electroplate" on gold filled (*i.e.*, mechanically-plated) items).

[113] Matthew Runci, Executive Director, MJSA (226); George Knight, former president of the Gold Filled Manufacturers Association (256); Irving Ornstein, Vice President, Leach & Garner (258); Howard Solomon, Vice President, Donald Bruce & Co. (218); I.L. Wein, President, Benrus (22); Barry Sullivan, President, ArtCarved (155); Kenneth Genender, U.S. Watch Council (118). Only Mr. Knight stated that gold electroplate is inherently inferior to mechanically plated gold.

[114] Consumers can determine for themselves whether they like the appearance of the product, but the consumer has no way of determining durability.

[115] Although the evidence indicates that the term "gold plate" has not been frequently used, because plating generally has been in use for many years, consumers reasonably would expect a certain minimum level of durability from an item so labeled. The Commission believes it is appropriate to create a safe harbor with a numerical standard for a specific term such as "gold plate" when consumers would expect certain qualities from products described by the term and products at or above the standard would have such qualities.

consumer expectations.[116] For the reasons discussed below, the Commission has established a safe harbor for products with a minimum thickness of one half micron of gold coating.

In developing this safe harbor, the Commission has considered the standard for gold plated jewelry established by the International Organization for Standardization ("ISO"): "ISO International Standard 10713 Jewellery [sic]—Gold alloy coatings."[117] This standard sets a minimum thickness of half a micron of fine gold (or its equivalent) for both mechanically plated and electrolytically plated gold jewelry.

The Commission also considered the ISO standard for gold plated watches, which sets a minimum thickness standard of 5 microns, and comments submitted as to the current standard in the Watch Guides, to determine a sufficiently durable coating of gold for plated jewelry. Watches have historically been assumed to be subjected to more wear than other articles of jewelry.[118] The comments that address gold-plated watches indicate that a one micron thickness may be durable. Benrus commented that thicknesses of up to ½ micron "are unsubstantial and wear very quickly" but that there is "a new industry 'standard' of a minimum of 1 micron of gold plating (40 millionths of an inch) which has substantial durability and reliability and gives years of satisfactory service."[119] The U.S. Watch Council also noted that the watch industry has adopted 1 micron of thickness (described as 40 millionths of an inch of 23 karat gold) as a standard for gold plating.[120] Two commenters interviewed by Commission staff, Benrus and U.S. Watch Council, stated that watches with a one micron coating of gold, if worn every day, could be expected to last between two and four years.

Because most jewelry gets less wear than watches, the Commission believes that the ISO standard of half a micron of fine (24 karat) gold plating for jewelry constitutes a "floor" of sufficient durability, so that consumers are unlikely to be misled about the durability of an item marked "gold plate." However, the Commission recognizes that some commenters indicated that half a micron is not very durable. Also, certain items of jewelry receive more wear than others, and some items, such as rings, might actually receive more wear (and more friction with skin) than watches.[121]

Therefore, to ensure that consumers are not deceived by the implied claims of durability arising from the term "gold plate," the "safe harbor" in the revised Guides (§ 23.4(c)(2)) reflects the Commission's view that the term "gold plate" is not inherently deceptive or unfair when used for gold applied to an industry product (excluding watches) by any process so long as the following two conditions are met: (1) The product contains a coating of half a micron, or 20 millionths of an inch, of fine gold or the equivalent; and (2) The coating is "of substantial thickness,"[122] which for items that are subject to a great amount of wear, such as rings, should be more than half a micron of fine gold or the equivalent. This second provision ensures that products that are subject to greater wear should have a coating of greater thickness than the minimum half micron. Moreover, it ensures that products that are subject to a great amount of wear in certain areas would have a more substantial coating in those areas.

The Commission has indicated that the thickness of the gold plating may be marked in microns on the item itself if it is followed in close proximity by a gold quality mark (*e.g.*, 2 microns 12 K. G. P.). A note following this section recommends that if a product has a thicker coating in some areas than others, the area of least thickness should be marked. This allows manufacturers to inform consumers of the minimum thickness of the plating, and consumers may therefore shop for items with more or less plating depending on their needs and budget.

The ISO standard, in section 5.4, prohibits quality marks on gold plated items. However, the Commission does not believe it is appropriate to include this portion of the international standard in the revised Guides. The quality mark in combination with an indication of the thickness of the gold plate, can communicate important information to consumers. The ISO standard also sets up a system whereby gold plated products can be labeled "A," "B," or "C," with A indicating products that have a minimum of 5 microns of 14 karat gold (or the equivalent), B indicating a minimum of 3 microns of 14 karat gold (or the equivalent), and C indicating a half micron of 24 karat gold (or the equivalent). However, American

[116] Sheaffer (249) p.4 (stating that a standard based on a weight ratio (*e.g.*, 1/20th) can "encourage the production of inferior articles lacking strength and rigidity as the thickness, and thus, the cost of the plate can readily be reduced by use of a very thin base material"). *But cf.* AWA (236) p.2 (in discussing "gold flashed" watches, stating that thickness "is only one factor in determining the esthetic qualities and durability of the electroplating process," that different technologies produce varying thicknesses, all of which provide durable coverage, and that establishing a threshold standard for "gold flashed" or other similar terms creates an arbitrary standard that distorts the marketplace); and NAW (251). However, because of the other comments discussed in the text, the Commission believes that identifying a minimum thickness and fineness is appropriate for a safe harbor for "gold plate" claims for jewelry.

[117] The Trade Agreements Act of 1979 states that federal agencies must, in developing standards, "take into consideration international standards and shall, if appropriate, base the standards on international standards." 19 U.S.C. 2532(2)(A) (1980). A "standard" is defined as "a document approved by a recognized body that provides, for common and repeated use, rules, guidelines, or characteristics for products or related processes and production methods, with which compliance is not mandatory." 19 U.S.C. 2571(13) (1995). An international standard is defined as a standard promulgated by an organization engaged in international standards-related activities, the membership of which is open to representatives, whether public or private, of the United States and all members of the World Trade Organization ("WTO"). 19 U.S.C. 2571(5), (6), and (8) (1995). A WTO member is "a state or separate customs territory (within the meaning of Article XII of the WTO Agreement), with respect to which the United States applies the WTO Agreement. 19 U.S.C. 3501(10) (1995).

ISO is, according to the "foreword" sections in several ISO standards attached to the Swiss Federation comment (232), "a worldwide federation of national standards bodies. The work of preparing International Standards is normally carried out through ISO technical committees." ISO is open to representatives from the United States and to representatives from members of the WTO, and qualifies as an international standards organization.

However, the Trade Agreements Act also explicitly states several reasons why basing a standard on an international standard may not be appropriate, including the prevention of deceptive practices and fundamental technological problems. 19 U.S.C. 2532(2)(B)(i).

[118] This is reflected in the current Guides. Watches marked "gold electroplate" should be plated with at least three-fourths one thousandths of an inch of 10 karat gold (or 750 millionths of an inch) whereas jewelry should be plated with at least 7 millionths of an inch of 24 karat gold or the equivalent.

The American Watch Association (236) stated at p.1, that standards for gold plating should be similar for watches and jewelry because "consumers can be confused when faced with jewelry and watch products subject to entirely different definitions and standards." However, watches may be subjected to more wear than most jewelry (because they are usually worn daily), and, based on past practice, consumers may expect watches to have a thicker coating of gold plate than jewelry. Moreover, there are different ISO standards for plated jewelry and plated watches.

[119] Other commenters interviewed by Commission staff stated that ½ micron was not very durable [Irving Ornstein from Leach (257); Kenneth Genender from U.S.W.C. (118)]. Catholyte, (34) p.1 (a "quality" product would contain 5 microns).

[120] Benrus (22); USWC (118).

[121] Telephone interview with I. L. Wein, President, Benrus. Bruce (218), in discussing vermeil (which is gold plate over sterling silver), stated that one micron of plating would be sufficient for some items such as earrings, two microns for other such as necklaces, but that an item like a ring would require three microns.

[122] "Substantial thickness" is defined in a footnote which is similar to the present footnote 1 in the current Guides.

consumers are not familiar with this system, and the Commission does not believe it is appropriate to include it in the Guides at this time.[123]

The safe harbor for "gold plate" (§§ 23.4 (b)(4) and (c)(2)) will be in addition to those already contained in the Guides. Thus, §§ 23.4 (b)(5) and (c)(3) of the revised Guides indicate that mechanically plated gold can be called "gold filled," "rolled gold plate," or "gold overlay." However, items mechanically plated with gold also can be referred to as "gold plate," in accordance with the guidance of § 23.4 (c)(2) of the revised Guides. Electroplated items can be marked as "gold electroplate" or "GEP," in accordance with the guidance of §§ 23.4(b)() and (c)(4) of the revised Guides,[124] or as "gold plate," in accordance with § 23.4(c)(2).

c. *New methods of plating.* The FRN solicited comment on whether newer methods of plating should be included in the guides and how they should be addressed. Nineteen comments addressed this issue, and of this group, only one commenter stated that he was unaware of new techniques.[125] The most frequently mentioned new method was "electroforming," a process in which gold is deposited over materials that are removed, leaving a hollow item.[126] (If all of the foreign material is removed, the product is not actually plated.) Citizen Watch (228) described a process called "ion plating," and Sheaffer (249) described "vapor deposition," "sputtering," and "electroless immersion." However, Sheaffer stated that these processes could be handled in the same basic manner as mechanical plating and electroplating and noted that the terms "plate" or "plated" should be available to describe products coated by any of these methods.[127] As discussed *supra*, the Commission has revised the Guides to indicate that it is not misleading to describe an item as gold plate, whatever method is used to apply the gold, so long as it meets the suggested minimum thickness and fineness standards. The Commission does not have enough information at this time to provide more detailed guidance regarding the newer methods of plating.

d. *Nickel in gold-filled jewelry.* The FRN solicited comment on whether the Guides should advise against the use of the term "gold-filled" to describe a product in which nickel is inserted between the gold-filled item and a surface coating of gold electroplate. The FRN also asked if it would be acceptable to permit the insertion of nickel so long as the lessened durability of such an item is disclosed, and asked what type of disclosure should be made.[128]

Most of those who commented believed that jewelry made in this way should not be called "gold-filled."[129] Tru-Kay (which stated that gold-filled jewelry is its major product line) noted that the insertion of nickel would adversely affect durability and quality.[130] Three comments contended that nickel should not lessen durability.[131]

Mark stated that if a layer of nickel "has covered the basic material, it will show up as soon as any gold surface coloration has worn through* * *."[132] This is particularly important since the metal color would change from yellow to white. Mark also stated that "[t]o cover the mechanically bonded layer of gold [with nickel] which is the essence of the gold-filled product defeats the purpose of the gold-filled standard to the consumer."[133]

The Commission agrees with the argument of the majority of the commenters that a thin wash of gold could wear away and reveal the nickel. Thus, the use of the term "gold-filled" to describe such a product does not comport with § 23.4(b)(5) of the revised Guides, which states that the product should contain "a surface-plating of gold alloy applied by a mechanical process which is of such thickness and extent of surface coverage that reasonable durability is assured." The Commission has concluded that the use of "gold-filled" or other terms to describe mechanically plated gold covered with nickel that is washed with gold involves a misleading use of the word "gold" because it does not disclose that this product has only a thin wash of gold over a surface layer of nickel.[134] To clarify this point in the revised Guides, the Commission has added a provision, § 23.4(b)(6), that states that such a product should not be described as "gold plate" or "gold-filled" unless it contains a disclosure that the primary gold coating is covered with a base metal, which is gold washed. Such a product comports with the guidance in the current and revised Guides for "gold washed" or "gold flashed" and, if the seller wished to do so, the seller could so describe it.[135]

[123] ISO standard 17013 also provides a similar system of marking mechanically plated gold items (*e.g.*, "A" indicates a thickness of 5 microns), based on the thickness of the gold plate. However, the Guides allow marking of mechanically plated items (*e.g.*, gold-filled or rolled gold plate), based on the weight of the gold in the item. The current system in the Guides has been used for many years and the ISO system of marking may be confusing to consumers. Thus, the Commission has not included the ISO system in the revised Guides. The Commission believes that omitting the ISO system of marking mechanically plated gold from the Guides will not pose a barrier to international trade, because manufacturers can mark the product "gold plate" according to the new provisions for gold plated items, discussed above.

[124] The JVC petition suggests revising the sections pertaining to electroplate by substituting the word "electroplate" for the word "plate" and "electroplating" for "plating." This revision clarifies that products coated with gold by a process other than electroplating should not be sold as "gold electroplate."

[125] Gold Institute (13); Estate (23); Korbelak (27); G&B (30); Handy (62); Newhouse (76); Eisen (91); ArtCarved (155); Bales (156); LaPrad (181); Mark (207); Canada (209); Matthey (213); Bruce (218); WGC (223); MJSA (226); Citizen (228); Sheaffer (249); and Leach (257). Leon Newhouse (76), a former executive in the watch industry who stated that he has been retired since 1971, said he was not aware of any new techniques. Handy, Mark, Matthey and MJSA stated the techniques can be adequately dealt with by the existing provisions in the Guides.

[126] Bruce (218) (stating that it produces this type of jewelry); Bales (156) p.8 (stating that such jewelry is often sold by weight and that "[m]any times, the manufacturer leaves a measurable amount of residue inside the shell and weighs it, and actually sells (it) as gold or silver"); Canada (209) (stating that the problem of foreign substances left inside plated articles deserves review). Section 23.5(a) of the Guides makes clear that overstatement of the quantity of gold in a product is unfair and deceptive.

[127] Comment 249, p.3; ArtCarved (155) (stating that "gold plate" should be allowed for all methods). Two comments, Estate (23) and G&B (30), stated that the method of application should be revealed, but gave no reasons.

[128] The JVC proposed this provision to prevent "the occasional expediency, in the manufacturing of finished products, to 'hot nickel' or use some other non-precious electroplating over the mechanical precious metal surface and then merely to apply a flash of precious metal electroplating." Petition Section 23.5 C(2), Footnote 2. ArtCarved (155) suggested, at p.3, that "on some surfaces nickel serves as a leveling agent." Korbelak (27) stated, at p.4, that "nickel is apparently used to prevent corrosion of the unavoidably exposed copper alloy base of the mechanically coated stock."

[129] Fasnacht (4); Gold Institute (13); Estate (23); Korbelak (27); Newhouse (76); Tru-Kay (196); Phillips (204); Mark (207); Matthey (213); Bruce (218); WGC (223); MJSA (226); and Leach (257). Two commenters, G&B (30) and Jabel (47), favored allowing the insertion of nickel with a disclosure, but G&B noted that there may be a need to "have a new term."

[130] Tru-Kay (196) p.1.

[131] Handy (62); ArtCarved (155); and Sheaffer (249).

[132] Mark (207) p.4.

[133] *Id.*

[134] The Commission rendered an advisory opinion on this issue in 1966, stating that "a purchaser of such an article would not get the type of performance expected from gold filled articles because points of wear would expose the coating of white nickel at a very early stage and the ornamental value would be seriously reduced." Advisory Opinion, *Improper Use of terms such as "gold filled" or "rolled gold plate"*, 69 F.T.C. 1234 (1966).

[135] The Gold Institute stated, that "Nickel is a recognized skin irritant," and urged that the use of nickel in gold jewelry be prohibited. Comment 13, p.2. Several other commenters took this position. However, the fact that nickel is a skin irritant would

Continued

e. *Provisions relating to vermeil.* Vermeil, a product made of sterling silver with a coating of gold, is a special form of gold plate.[136] The JVC proposed including provisions for vermeil in the Guides and the FRN solicited comment on whether a recommended minimum plating of 120 millionths of an inch of fine gold, or its equivalent, over sterling, was appropriate.

Eighteen comments addressed this issue.[137] Two comments stated the proposed standard was not appropriate; one offered no reason and the other stated that the standard should be up to the manufacturers.[138] Three comments stated that the proposed standard was thicker than necessary.[139] Other commenters offered various opinions on the proposed standard.[140] Most of the other comments simply said the proposed standard was appropriate but offered no reasons.

MJSA supported the proposed standard stating that it "assures an extremely high level of durability and low porosity." However, MJSA stated that "it is possible to establish a highly durable coating of gold over silver at substantially lesser thicknesses," and noted that many manufacturers currently produce such a product.[141] In the Jeweler's Dictionary, modern usage of "vermeil" is defined as "Heavy gold electroplate over sterling silver * * * or a substantial layer of karat gold mechanically applied over sterling silver."[142] The current Guides identify the minimum thickness for heavy gold electroplate as the equivalent to 100/1,000,000ths of an inch of fine gold.

The JVC petition indicates that vermeil is susceptible to discoloration, presumably because the silver might tarnish.[143] Because gold itself deters tarnishing, the thicker the coating of gold, the less likely the underlying silver will tarnish. However, Korbelak (27) p.4, stated that "gold coatings are permeated by sulfides in the average atmosphere up to thicknesses of 10 microns (0.0004 inch)." Thus, even a gold coating of 120 millionths of an inch (or 0.00012 inch), or about 3 microns would not completely solve this problem.

The Commission believes it is appropriate to reference a numerical thickness in the Guides when consumers have come to expect certain qualities from products described by the term and products below the standard would not have such qualities. The comments indicate that there are items sold as "vermeil" that have the qualities consumers associate with "vermeil," and that have a gold coating of less than 120 millionths of an inch. Furthermore, the definition of vermeil in the Jeweler's Dictionary is consistent with Korbelak's comment (27) that many years ago, the trade established a floor of 100 millionths of an inch for vermeil. Therefore, the Commission has concluded that a thickness of 100 millionths of an inch, or 2.5 microns, of fine gold is an appropriate thickness "floor" for vermeil.

Because there may be items currently sold as "vermeil" that do not comport with the generally accepted meaning (*i.e.*, gold over silver), the Commission has added a general provision stating that it would be unfair or deceptive to describe an article as "vermeil" if it misrepresents the product's true composition. The Commission has also added a section, 23.5(b), which provides guidance on when a product may be described as "vermeil." This section states that a product may be described as "vermeil," "if it consists of a base of sterling silver,[144] coated or plated on all significant surfaces, with gold or gold alloy of not less than 10 karat fineness, which is of substantial thickness and a minimum thickness throughout which is equivalent to two and one half (2½) microns (or approximately 100/1,000,000ths of an inch) of fine gold." As with other gold-plated items (covered in § 23.4 of the revised Guides), "substantial thickness" is defined in a footnote which is similar to the present footnote 1 in the current Guides.

With respect to the problem of the tarnishing of the silver base, the JVC recommended the addition of a note allowing a nickel barrier. However, the nickel is placed over the silver base, and it is the silver that distinguishes vermeil from other gold plated items. Moreover, vermeil is by definition composed completely of precious metal alloys.[145] Although the note indicates that the purpose of the "diffusion barrier" is to prevent premature discoloration, there was no discussion of the effect a "diffusion barrier" over the silver would have on the unique coloration of vermeil. Moreover, no explanation was offered for limiting the thickness of the barrier to 50/1,000,000ths of an inch.[146] Although there may be a need for such a barrier, in the absence of adequate information on this issue (including whether it changes the appearance of the product in a manner that would be objectionable to consumers), the Commission has determined not to add this note to the Guides. Instead, the Commission has added a Note which states that such a product should not be described as vermeil unless there is a disclosure that the sterling silver is covered with a base metal, which is gold-plated.

The JVC petition suggested several other qualifications of the use of "vermeil" that the Commission has not included in the revised Guides. The petition suggested that the application of the gold must be either by mechanical bonding or electroplating. However, comments have indicated that some new methods of application have been developed, and no reasons were offered for excluding those methods. (*See infra* for a discussion of these comments.) The JVC also proposed that a vermeil industry product only be represented by the word 'Vermeil' standing alone,[147] and proposed prohibiting use of the words "gold" or "silver" to modify "vermeil." However, no reasons were offered as to why the terms "gold vermeil" or "silver vermeil" would be deceptive. The use of the terms "gold" and "silver" are covered by other sections of the revised Guides, and the Commission believes these sections are adequate to prevent the deceptive use of these terms in connection with vermeil.

Finally, the JVC suggested including a requirement that when "vermeil" is used as a quality mark, it must be accompanied by the name or trademark of the manufacturer or importer according to the provisions of the National Stamping Act. The National Stamping Act creates such a requirement for any quality mark indicating the presence of gold or silver. Thus, the requirements of the Act may apply to a "vermeil" quality mark. However, there is currently a Note in the Guides, following the section dealing with quality marks, referring to the requirements of the National Stamping Act. Instead of creating a second note, the Commission has added "vermeil" to the list of quality marks in that Note (and in § 23.9 of the revised Guides).

3. Misrepresentation as to Silver Content: § 23.6

Section 23.6(a) of the current Guides cautions against misrepresenting the silver content in any industry product. The JVC proposed adding the abbreviation "Ster." to § 23.6(b) of the Guides, which states that the use of the terms "silver," "solid silver," "Sterling," or "Sterling Silver" is deceptive unless the product is 925/1000ths pure silver. Because consumers are likely to believe this term stands for "Sterling," the Commission has added the abbreviation "Ster." to this section.

The JVC proposed stating that abbreviating the term "Sterling" was not allowed when used to describe hollowware or flatware. No reason was offered for prohibiting this practice, and the Commission has no reason to conclude that this practice is inherently unfair or deceptive.[148] The JVC also proposed stating that "Sterling" or "Ster." was not allowed to be applied to a silverplated article. This proposed addition to § 23.6(b) essentially restates § 23.6(d) of the current Guides, which states that it is unfair to apply the terms "Sterling" or "Coin" to any silver-plated article or the plating thereon. In fact, the National Stamping Act states that silverplated articles shall not "be stamped, branded, engraved or imprinted with the word 'sterling' or the word 'coin,' either alone or in conjunction with other words or marks." 15 U.S.C. 297(a). However, the Commission has determined that § 23.6(d) of the current Guides may unnecessarily inhibit the use in advertising of phrases such as "sterling silver plated" or "coin silver plated." Thus, the Commission has deleted § 23.6(d) and has added a Note referring to the requirements of the National Stamping Act.

Section 23.6(c) states that the use of "coin" is deceptive unless the product is at least 900/1000ths pure silver. The JVC proposed adding a prohibition against abbreviating the term "coin." There is no evidence that "coin" is being abbreviated or, if it were, that it would be misleading to consumers. Accordingly, the Commission has not adopted this proposal.

a. *Silverplate.* Section 23.6(e) of the current Guides state that it is an unfair trade practice to represent an industry product as plated with silver unless all significant surfaces are coated with silver "which is of substantial thickness."[149] The JVC proposed continuing the use of the "substantial thickness" standard but adding a footnote stating this means thickness sufficient to assure durable coverage of the base metal. (The current Guides contain such a footnote in § 23.5(c)(2) with respect to gold-filled items.) The FRN solicited comment on whether this addition should be made or whether the thickness should be defined numerically.

All but one of the 16 pertinent comments indicated that giving a numerical value to "substantial thickness" would be desirable.[150] However, four of these suggested that additional data were needed.[151] Moreover, only a few made specific recommendations. Sheaffer noted that it was "not aware of any problems resulting from the current definition of 'substantial thickness'" but nevertheless proposed a coating five microns (200 millionths of an inch) thick. Mr. Korbelak suggested 500 millionths of an inch where it is functionally necessary.[152]

The Gold Institute made detailed recommendations, but only for silver plated flatware and hollowware.[153] However, without more evidence of the need for, and desirability of, these particular standards, the Commission does not believe it is appropriate to adopt specific standards for flatware and hollowware. Moreover, the amount of wear received by jewelry is different from the amount of wear received by flatware and hollowware. Therefore, the proposed standards for flatware may not be appropriate for jewelry. Indeed, the amount of wear received by different kinds of jewelry varies greatly (*e.g.*, earrings as compared to bracelets) and manufacturers may need flexibility in any silver plate standard for jewelry.

Based on the comments, the Commission does not believe that there is currently a consensus in the industry as to what would constitute an appropriate minimum numerical thickness for the purpose of identifying a safe harbor for the term silverplate.[154] However, the Commission has added a note to § 23.6(e) to provide some guidance to the industry regarding "substantial thickness" in connection

---

require the disclosure of its presence in all jewelry, not just rolled gold jewelry. This was not proposed in the FRN and there is not an adequate basis at this time for adding such a provision.

[136] "Tiffany's Sterling: History and Status," National Jeweler (undated) (attached to Korbelak (22)) (stating that vermeil is a unique product with a "silver-gold" glow, which has been on the market for a long time). However, no provisions pertaining to vermeil have ever been included in the Jewelry Guides.

[137] Fasnacht (4); Gold Institute (13); Korbelak (27); G&B (30); Jabel (47); Handy (62); Newhouse (76); ArtCarved (155); IJA (192); Tru-Kay (196); Mark (207); Canada (209); Bruce (218); Impex (219); MJSA (226); Sheaffer (249); Knight (258) and Leach (257).

[138] Newhouse (76) and Impex (219).

[139] Korbelak (27) p.4 (stating that "a floor of 100 millionths of an inch was established by the trade many years ago"); Tru-Kay (196) p.2 (stating that the proposed standard was "quite excessive" and not necessary "in order to give the consumer a quality product"); Bruce (218) p.8.(stating that the proposed standard was "very heavy" and noted that "the nature of the product and the wear it is subjected to would be a more appropriate guide for plating thickness"). Bruce (218) suggested that the proposed standard was appropriate for items such as rings (which receive a lot of wear) but suggested 40 millionths of an inch for earrings and pendants and 80 millionths of an inch for bracelets and neck chains.

[140] MJSA (226) pp.4–5 (stating that the JVC recommended 120 millionths of an inch simply because it is higher than the 100 millionths of an inch required for heavy gold electroplate); G&B (30) p.8 (indicating that the point was simply to set some standard); ArtCarved (155) p.4 (stating that "if vermeil is the standard word used for 120 millionths of an inch, this would be okay"); Canada (209) p.4 (noting that it has a quality mark for vermeil but has yet to establish a minimum standard for plating).

[141] Comment 226, pp.4–5.

[142] "Jewelers' Dictionary" 253 (3d ed. 1976).

[143] The JVC recommended the addition of a note that states that a diffusion barrier (typically of nickel) may be electrolytically applied, in a thickness of no more than 50/1,000,000ths of an inch, under the layer of gold.

[144] The comments indicate that the sterling silver base is part of the common understanding of the term "vermeil."

[145] *See also* Advisory Opinion, *Impropriety of description "14K" for item not entirely gold*, 69 F.T.C. 1212 (1966) (stating that an earring post with a 14K gold base, electroplated with copper, nickel and then karat gold, could not be described as 14 karat gold, because it would "contains substantial electroplatings of base metals").

[146] Franklin Mint (250) p.4 (objecting to the proposal and stating that their own tarnish testing indicates the need for a barrier of 150/1,000,000ths of an inch).

[147] Franklin (250), at p.4, objected to the exclusion of "alternative descriptions and markings . . . such as 'sterling silver electroplated with 24 kt. gold" and noted that "no evidence has been produced that such designations would mislead the public." The Commission believes that alternative truthful descriptions of a vermeil product (*e.g.*, sterling silver electroplated with 24 kt. gold) are acceptable.

[148] Franklin (250) commented at p.5, that the presumption implicit in allowing sterling to be abbreviated on other products "is that buyers of the other products named therein for which 'ster.' is an acceptable usage understand its meaning; it defies logic to assume that the term 'ster.' is not recognized and understood by the hollowware and flatware buying public."

[149] The Watch Band Guides differ from the Jewelry Guides in that they state that when an industry product is marked as "silver plate" all significant surfaces "shall have a plating or coating of *silver of a high degree of fineness* and such plating or coating shall be of substantial thickness." 16 CFR 19.2(b) (emphasis added). The Jewelry Guides simply state that such a product should contain a "plating or coating of silver which is of substantial thickness." The Jewelry Guides state that "silver" means sterling silver (*i.e.*, unless qualified by the word "coin"). Thus, the Jewelry Guides appear to limit the use of "silver plate" to *sterling* silver plate, whereas the Watch Band Guides appear to allow *coin* silver to be used on an item marked "silver plate." Because no one objected to the current provision in the Jewelry Guides, the Commission has retained the provision as it appears in the Jewelry Guides for both jewelry and detachable watch bands.

[150] Gold Institute (13); Korbelak (27); G&B (30); Handy (62); Newhouse (76); ArtCarved (155); Bales (156); Phillips (204); Canada (209); Bruce (218); MJSA (226); Sheaffer (249); and Leach (257). The one dissenter was the JCWA (216), which stated at p.3 that "there is insufficient data to determine an 'acceptable' thickness of silver plating, and because related ISO standards have not been established, it is difficult to determine the durability of specific levels of silver plating. Therefore, it is not practical to define 'durability' in numerical terms. The existing definition is appropriate."

[151] G&B (30); Handy (62); Canada (209); and MJSA (226).

[152] Sheaffer (249) p.4; Korbelak (27) p.4.

[153] Comment 13, pp.2–3.

[154] There is no ISO standard for silverplate.

with the use of the term silverplate. This note is similar to footnote 1 in the current Guides, which annotates the use of the phrase "substantial thickness" in connection with "gold plate."

Finally, the JVC recommended adding a section to the Guides that would allow items with an inner core of base metal to be referred to as sterling or coin (instead of silverplate) as long as the item as a whole contained 925 or 900 parts silver per thousand. A literal reading of the sections of the current Guides pertaining to sterling and coin [§§ 23.6 (b) and (c)] indicates that this practice is not currently perceived as misleading. However, the actual practice in most of the industry is only to label an item sterling if it is a uniform mixture throughout of 92.5% silver and a base metal (or, for coin, 90% silver and the rest base metal). Without more information as to consumer beliefs, the Commission is not adopting this specific provision at this time.

b. *Diffusion barrier on sterling silver.* The JVC recommended adding a note to the Guides that states that a diffusion barrier (typically of nickel) may be electrolytically applied, in a thickness of no more than 50/1,000,000ths of an inch, under a layer of rhodium, to deter premature tarnishing on sterling silver products.[155]

Although this note refers to "sterling silver products," it follows the section on silver plate, and it is unclear whether this note is meant to apply to sterling silver products or silver plated products or both. In either event, the described product would have no silver on the surface, and thus, strictly speaking, it would not fall within the definitions in the Guides of either sterling silver or silver plate. John Lutley, Executive Director of the Silver Institute and President of the Gold Institute, stated, "[s]ome jewelry manufacturers plate pure silver over a nickel flash on sterling silver to achieve a mirror finish and reduce the rate of tarnishing."[156] This may be the practice the note was designed to address. However, in the absence of adequate information on this issue (*e.g.*, how such products are described to consumers), the Commission has not included this Note in the revised Guides.

c. *Quality marks.* The JVC proposed adding three subsections dealing with quality marks. Two subsections [23.6 Section I(g) and I(h) in the JVC petition] reiterate the general provisions concerning the use of the terms "Sterling," "Ster," "Sterling Silver," "Silver," or "Solid Silver" and "Coin" or "Coin Silver," set out in subsections (a), (b), and (c) of the silver section. Therefore, the Commission is not restating these provisions in another section.

The third proposed section dealing with quality marks [section 23.6 Section I (i) of the JVC petition] states that no quality marks shall be used "other than those herein specified." The Franklin Mint commented that this "inexplicably prohibits use of such universally recognized numerical terms as '.925' in conjunction with other applicable quality marks such as 'ster.' or 'sterling.'"[157] The Commission does not believe that a marking such as ".925 ster." is inherently deceptive, and is not including this proposal in the Guides.

d. *Tolerances and exemptions for testing purposes.* Footnote 2 of the current Guides notes that the tolerances of the National Stamping Act are applicable to claims made with respect to silver content. The JVC suggested reorganizing this information, and the Commission believes that this change will be helpful to industry members who are using the Guides. Footnote 2 of the current Guides also refers to the exemptions recognized in an assay for quality (to determine the amount of fine silver in the item which is assayed), which are taken from Commercial Standard CS 118–44 [Marking of Jewelry and Novelties of Silver] and Commercial Standard CS 51–35 [Marking Articles Made of Silver in Combination with Gold]. The JVC suggested identifying these exemptions in an additional subsection. Because the exemptions apply to both silver and gold, and because the lists of exemptions distract from the main points of the text of the Guides, the Commission has included this information as an appendix to the Guides. A Note following the silver section refers to the Appendix. 4. Marking of Articles Made of Silver in Combination With Gold

The current Guides do not contain a separate section addressing how products which are a combination of silver and gold can be nondeceptively described. The JVC proposed including in the Guides most of the text of Voluntary Product Standard PS 68–76, "Marking of Articles Made of Silver in Combination with Gold."[158] The proposed section defines the covered products as sterling silver in combination with gold.[159]

The JVC's proposals, at least in the case of products with distinguishable components, result in markings that the Commission has already identified as deceptive.[160] However, claims as to silver content are covered by the silver section and claims as to gold content are covered by the gold section. Furthermore, the marking of articles which are a combination of silver and gold is adequately addressed by § 23.8(a) of the current Guides. That section provides that it is unfair to place a quality mark on a product when the mark would deceive purchasers as to the metallic composition of the product or any part thereof. Moreover, subsection (a)(2) notes that, when a quality mark applies to one part of a product but not another part of a similar appearance, it should be accompanied by an identification of the part to which it applies. The JVC offered no evidence regarding why additional guidance on these issues was needed or that any combination gold and silver products were being marketed in a manner that deceived consumers as to their metallic content.[161]

Finally, the JVC's proposal to permit quality marks only for sterling and gold items is unduly restrictive. For example, an article made of coin silver combined with gold could not contain a quality mark under the JVC proposal, nor could an article which contains any metal other than sterling silver or gold. For all these reasons, the Commission has not included in the Guides, the proposed provisions relating to articles made of silver in combination with gold.

5. Platinum: § 23.7

Section 23.7 of the current Guides states that it is an unfair trade practice to use the words "platinum," "iridium," "palladium," "ruthenium," "rhodium," or "osmium," or any abbreviations thereof, in a way likely to deceive purchasers as to the true composition of the product. The JVC and a number of commenters proposed changes to this section. However, the Commission recently received a request for an advisory opinion from the JVC and Platinum Guild International for markings of platinum products. This request indicated that members of the platinum industry are interested in simplifying current Commission guidance regarding platinum descriptions and bringing this guidance into closer accord with international standards. The comments submitted in response to the FRN do not address some of these issues. Therefore, the Commission has decided that it would be beneficial to solicit additional comment from the entire industry on markings and descriptions of platinum products before making any changes in this section. A request for comment on these issues will be published in a separate **Federal Register** notice.

6. Pewter

The current Guides do not pertain to products made from pewter. The JVC recommended including a section on pewter and the FRN solicited comment on whether the guides should include a provision, and whether the standard of any alloy consisting of at least 900 parts per thousand Grade A Tin is appropriate.

Thirty comments addressed this issue, and most thought pewter should be included in the Guides and that the proposed standard was appropriate. Four opposed the change, stating that the Guides should only address precious metals.[162] One comment stated that there was no apparent need for regulation of pewter but another stated that there are "many companies that are abusing the representation of pewter products."[163]

It appears that pewter has been increasingly utilized in costume or fashion jewelry. Nellie Fischer of the American Pewter Guild advised staff in a telephone interview that over the past five years her company's sales of pewter jewelry to the trade have increased by 40 percent.[164] Pewter jewelry and other pewter products are sold by at least some of the same entities that sell other products covered by the current Guides. The Commission has concluded that inclusion of a provision for pewter may prevent misrepresentations.

With respect to the proposed standard, Salisbury Pewter stated that "a 90% tin requirement is justified by the metallurgical restraints for strength and hardness."[165] The American Pewter Guild, a trade association, attached a list of historical references to pewter which indicate that pewter has virtually always had a tin content of at least 90%.[166] Ten pewter producers also supported the proposed standard.[167]

Because pewter has historically contained at least 90% tin, consumers presumably expect pewter to have the qualities that are associated with an alloy containing at least 90% tin. Thus, the Commission has included a section on pewter in the Guides. Section 23.8(a) states that it is unfair and deceptive to describe a product as "pewter" if the description misrepresents the product's true composition. Section 23.8(b) states that a product may be described as "pewter" if it contains at least 90% tin, with the remainder composed of metals appropriate for use in pewter.

7. Additional Guidance Relating to Quality Marks: § 23.8

The JVC proposed several changes in § 23.8 of the current Guides. The introductory paragraph of this section defines "quality mark" and gives specific examples of words (*e.g.*, "gold," "karat," "silver," etc.) that are considered to be quality marks. (As noted previously, the Commission has added the word "vermeil" to this list of words that constitute quality marks.)[168]

Part (a) of this section addresses the use of quality marks on articles that are made from more than one metal. The JVC suggested that the title be changed from "Deception as to applicability of marks" to "Deception as to application of marks" and that a definition of application be added. The definition of application suggested by the JVC includes bills, invoices, orders, statements, letters, and advertisements. However, this definition is inappropriate in the context of part (a) of this section, which is limited to deception in the use of quality marks, which do not encompass bills, invoices, etc. The term "quality mark" is defined as a mark "which has been stamped, embossed, inscribed, or otherwise placed, on any industry product and which indicates or suggests that such product is composed throughout of any precious metal or any alloy thereof or has a surface or surfaces on which there has been plated or deposited any precious metal or any alloy thereof."[169] Section 23.8 contains specific guidance for marks on the products themselves

---

[155] Rhodium, a member of the platinum group metals, is very hard.

[156] Comment 13, p.2.

[157] Comment 250, p.5.

[158] Footnote 2 in the current Guides references former Commercial Standard CS 51–35 ("Marking of Articles Made of Silver in Combination with Gold") but only to note that it sets out exemptions from an assay in quality. *See* discussion, infra, regarding Commercial Standards generally.

[159] The VPS provides that articles where the gold and silver are visually indistinguishable (*e.g.*, where the gold covers the entire article, or where white gold is combined with silver) may be marked, *e.g.*, "Sterling and ⅓ 10 K," where the fraction represents the proportion of the weight of the alloyed gold to the weight of the entire metal in the article. It also provides that the karat mark can only be used if the gold alloy is ⅓₀ of the weight of the entire metal in the article. For articles where the gold and silver are visually distinguishable, the karat mark must always follow the Sterling mark, *e.g.*, "Sterling and 10 K," and there is no requirement that the proportion of the weight of the alloyed gold to the weight of the entire metal in the article be disclosed. The JVC also proposed that articles so marked must not contain any metal other than Sterling silver and 10 karat or better gold.

[160] In an advisory opinion, *Marking of jewelry produced from a 14 karat gold sheet laminated upon sterling*, 89 F.T.C. 651 (1977), the Commission stated that the mark "Sterling and 14K" was deceptive as applied to an article in which a 14K gold sheet was laminated on sterling, and the gold constituted at least 5% of the weight of the article. The Commission noted that the different metals were visually distinguishable "but casual inspection cannot determine the relative thickness of the gold layer and the silver." *Id.* at 651. The Commission stated that the suggested markings "could suggest to consumers that the amount of gold and silver. . . are approximately equal or, at least, would suggest more than five percent 14K gold." *Id.*

In an advisory opinion involving two visually indistinguishable metals, *Marking of 18 karat white gold ring with platinum baguette prongs*, 74 F.T.C. 1686 (1968), the Commission stated that a white gold ring with platinum baguettes could not be marked "18K—10% Plat." The Commission reasoned that "the consumer might conclude that all of the prongs, including those for the center stone, are of platinum composition. Under these circumstances, it is not enough to merely say that the ring contains 10% platinum and 90% gold without disclosing the true composition of the various parts of the ring." *Id.* The Commission suggested that the ring could be marked "18K-baguette prongs Plat."

[161] The Franklin Mint (250) stated at p.4, that there is no evidence that a gold karat mark is misleading on a gold and silver item when the gold constitutes less than ⅓₀ of the total metal weight. Moreover, it also noted that the JVC did not propose any such prohibition for vermeil products, "which are but another form of gold and silver item. . . ."

[162] Nowlin (109); LaPrad (181); Sheaffer (249); and Leach (258).

[163] NACSM (219) p.7; Bales (156) p.9. .

[164] Christopher R. Mellott, counsel for the Pewter Guild, compiles voluntary statistical reports from samplings of pewter manufacturers and, over the period from 1983 to 1990, found a six-fold increase in the value at wholesale of pewter jewelry sales.

[165] Comment 86, p.1.

[166] Comment 89 (also stating that pewter has been defined as containing 90% tin in the Guild's By-Laws since their adoption in 1976).

[167] Stieff (25); Empire (44); Woodbury (64); Lance (84); Web (85); Salisbury (86); Fischer (87); Seagull (111 and 120); Universal (178); and Heritage (215). Other comments favoring the proposed standard for pewter are: Fasnacht (4); Estate (23); G&B (30); Jabel (47); Bales (156); Canada (209); Bruce (218); MJSA (226); and Preston (229).

[168] The Watch Band Guides differ from the Jewelry Guides with respect to quality marks in that they list the words duragold, diragold, noblegold, and goldine as quality marks in § 19.2(g). However, the Jewelry Guides, in a Note following § 23.8 on quality marks, reach the same practices by stating that quality marks "include those in which the words or terms 'gold,' 'karat,' 'silver,' 'platinum,' (or platinum related metals), or their abbreviations, are included, either separately or as suffixes, prefixes, or syllables." The Commission has added this sentence of this Note to the introductory paragraph of this section in the revised Guides (§ 23.9). The Commission does not believe it is necessary to add the words duragold, diragold, noblegold, and goldine to the examples of quality marks listed in current § 23.8.

[169] This is consistent with the references to such marks in the National Stamping Act, which applies to articles "having stamped, branded, engraved, or printed thereon, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which said article is incased or inclosed, any mark or word indicating or designed or intended to indicate" the degree of fineness of the gold or silver in the article. 15 U.S.C. 294. A quality mark does not have to be placed on a product, but, if it is, it must be accurate within the tolerances prescribed by the National Stamping Act. 15 U.S.C. 294–296. The National Stamping Act goes beyond embossing quality marks on products to things surrounding the product (e.g., labels, wrappers), but not as far as bills, advertisements, etc., as the JVC proposes for the Guides.

(or attached thereto). Other sections of the Guides apply to claims made in bills, invoices, orders, statements, letters, and advertisements. Thus, the Commission has not included the proposed definition of application in the Guides.

Part (b) of this section addresses deception by reason of the difference in the size of letters or words in quality marks (*e.g.*, GOLD electroplate). A Note following this section, entitled "Legibility of markings," recommends that quality marks be of sufficient size to be legible and be so placed as to be likely to be observed. The JVC has not suggested any changes to this section, or to the Note following it. The Commission agrees that the portion of the Note pertaining to legibility should remain unchanged.[170] However, the second sentence of the Note implies that quality marks should normally be engraved on products and that tag or labels can only be used when "such marking cannot be achieved without injury to the appearance of the product." The National Stamping Act indicates that quality marks can be applied by means of tags or labels, regardless of whether engraving would damage the product. The Commission has therefore modified this Note to clarify the fact that if a quality mark is used, it may be either engraved on the product or placed on a tag or label.

The second Note following this section currently states that it is the consensus of the members of the industry that quality marks on such items should be accompanied by identification of the manufacturer, processor, or distributor. The Commission has changed this Note to reference the requirements for identification contained in the National Stamping Act.[171]

8. Exemptions From Assay

Some functional parts of gold alloy, gold-filled, silver and platinum items may need to be made of other sturdier metals to function properly, and thus, are exempt from any assay for quality. (An assay is a test made to determine the quantity of precious metal in a product compared to the weight of the whole product.) The current Guides include the exemptions for these parts that are set out in the various Voluntary Product Standards. Since trade practice for many years has been to make such parts of base metals, it is unlikely that consumers would expect them to be made of precious metal; hence, a claim that an item was silver would not be deceptive because the screws and rivets were made of base metal.

The current Guides list the exemptions for gold and gold-filled items in section 23.5(e) and (f) and for silver and for silver in combination with gold, in footnote 2.[172] However, the Commission believes that detailed listings of the exemptions need not appear in the body of the Guides and has included the list of exemptions for all covered metal products in an Appendix.[173]

The list includes all exemptions from the current Guides and, based on the comments, includes some additions.[174] Tru-Kay stated that there is a significant inconsistency in the Guides between the exemptions recognized in the manufacture of gold-filled jewelry and those which are exempted in the manufacture of silver jewelry. Tru-Kay stated that "industry trade practice over many years has been to apply the exemptions as listed for gold-filled to both gold-filled and sterling silver," because the same reasons that certain parts are exempt in gold-filled jewelry are also applicable in silver jewelry.[175] Tru-Kay explained that when the exemptions were first written, "many articles that were being produced in gold-filled, were not at that time being produced in sterling silver."[176] Since this is no longer the case, Tru-Kay urged that "these exemptions be standardized in a consistent manner."[177] The Commission agrees with this proposal and has expanded the list of exemptions for silver items to include all exemptions listed for gold-filled items.[178]

General Findings, which makes small functional components of jewelry, suggested that there should be two additions to the gold exemptions.[179] First, it suggested the exemptions for karat gold jewelry include "metallic parts completely encased in nonmetallic covering." This would include base-metal pegs used in gluing pearls or stones to the findings. (According to General Findings, "the pegs are completely encased within the stone or pearl.") The current Guides exempt "metallic parts completely encased in nonmetallic covering" when they are included in articles made of silver in combination with gold.[180] On the basis of the comment, the Commission has determined that such parts should be added to the list of exemptions for gold alloy jewelry (and to the list of exemptions for silver items, under the rationale advanced by Tru-Kay). The second suggestion was that "bracelet and necklace snap tongues, *i.e.*, clasps" (sometimes referred to as springs) should be added to the exemptions for rolled gold plate jewelry. Bracelet and necklace snap tongues are already an exemption for articles made of platinum, and the Commission has added this to the list of exemptions for rolled gold plate jewelry (and to the list of exemptions for silver items).

Donald Bruce also suggested that the mechanical parts of lockets be added to the lists of exemptions for silver and gold alloy jewelry. These are already in the list of exemptions for gold-filled jewelry (which exempt "field pieces and bezels for lockets"), and Bruce stated that "the trade practice has interpreted this for Silver and Gold as well" because a base metal hinged frame "offers stability and strength to the moving parts."[181] Adding these to the list of exemptions for silver is logical because silver is relatively soft. Gold alloy, however, is relatively hard.[182] Nevertheless, because trade practice has interpreted this exemption as applying to gold lockets for some time, it is unlikely that consumers would believe that the field pieces and bezels of a locket advertised as 14 karat gold were 14 karat gold. Therefore, the Commission has added these exemptions to the list of exemptions of silver and gold alloy products.[183]

9. Misuse of "Corrosion Proof," "Noncorrosive," etc.

The Watch Band Guides, 16 CFR 19.3, contain a section regarding the use of the terms "corrosion proof," "noncorrosive," "corrosion resistant," "rust proof," "rust resistant," or any word or term of equivalent import. The JVC did not recommend any changes in this section. Thus, the Commission has included this provision, unchanged, in the revised Guides as the last section pertaining to metals (§ 23.10).

D. Diamonds (Category III): §§ 23.9–23.14

The current Guides address diamonds in the definition section, § 23.0, and in §§ 23.9–23.14. Section 23.9 describes practices which are unfair uses of the word "diamond." Sections 23.10–23.14 deal with misuse of the terms "perfect," "blue white," "properly cut," "brilliant," "full cut," and "clean." In addition, artificial coloring, imitation and synthetic diamonds, and the words "reproduction," "replica," "gem," "real," "genuine," and "natural" are addressed in §§ 23.18–23.21.

1. Definition

The Commission has moved the definition of "diamond" from § 23.0 to the beginning of the substantive sections that deal with diamonds (§ 23.11, which is renamed "Definition and misuse of the word 'diamond' "). The JVC proposed adding the following sentence to the definition of the word diamond: "It is the hardest natural substance and in 1818 was arbitrarily given 10 on the Mohs relative scratch hardness scale." The JVC also proposed adding, after the definition of diamond, a "Note" regarding the Mohs scale and the standards for determining mineral "hardness."

A definition of diamond is helpful to the extent that it makes clear what can nondeceptively be represented to be a diamond. However, there is no indication that the current definition of diamond has ever failed to serve its purpose, and some comments indicated the current definition is better.[184] The Commission, therefore, is not adopting this proposal.

The Postal Service stated that mail order jewelry promoters sell "tiny, unattractive, industrial grade diamonds" as jewelry which "no one would buy if they saw them." It suggested that the Guides be modified to prohibit "advertisers from representing expressly or impliedly, that industrial or other non-jewelry quality diamonds are of jewelry quality."[185] The Commission agrees that such a practice is unfair and deceptive, and has included a Note that states the practice of advertising industrial grade diamonds as jewelry is unfair and deceptive. The provision advising against misrepresenting products visually, in § 23.2, also would apply to this practice.

2. Misuse of the Word "Diamond"

Section 23.9 of the current Guides deals with misuse of the word "diamond." Neither the JVC nor any of the commenters proposed a change in this section, and there is no other information indicating a need for changing this section.

3. Misuse of the Words "Perfect" and "Flawless"

Section 23.10 of the current Guides, and the accompanying Note, deal with the use of the words "perfect" and "flawless" to describe a diamond. The JVC proposed revising this section to focus on the use of the term "flawless," with a subsection stating that it is unfair to use the word "perfect" with respect to any diamond which is not flawless, or which is of inferior color or make. The organization of the current section is convoluted and difficult to understand. The Commission has determined that the proposed change will improve the clarity of the Guides, and has revised this section accordingly.

To determine whether there was evidence that the term "perfect" has been used to mislead consumers, the FRN sought comment on whether the Guides should advise against use of the term "perfect." Thirty-two comments addressed this issue.

Seven comments indicated that the term "perfect" is acceptable as defined in the current Guides.[186] Twenty-eight commenters stated that the term "perfect" should be prohibited, and one stated it should be allowed only as a synonym for flawless.[187] However, the current Guides allow diamonds to be called "perfect" if they are flawless and not of inferior color or make, and there is no evidence that large numbers of consumers have been deceived by the use of the word "perfect."[188] The Commission has determined that the scheme in the current Guides adequately explains the type of diamond that nondeceptively may be described as "perfect" and that guidance that in effect totally bars the use of the word "perfect" would be an unwarranted infringement on free speech.[189]

The JVC also proposed changing current § 23.10 to state that it is unfair to use the word "flawless" to describe a diamond "which discloses blemishes, inclusions, lasering, prominent reflective whitish or colored grain lines, or clarity faults of any sort when examined under a corrected magnifier at 10-power, with adequate illumination, by a person skilled in diamond grading." With the exception of the addition of "lasering," the changes appear to be simply a change in terminology. No reasons for the changes

[170] There is no requirement that there be a quality mark; however, it may be deceptive to place an illegible mark on a product, because consumers might interpret such a mark to mean the product is of higher quality than it actually is.

[171] The Watch Band Guides differ from the Jewelry Guides in their treatment of quality marks in two respects (in addition to that discussed in note , supra). Section 19.2(g)(3) of the Watch Band Guides, dealing with the marking of watch bands composed of two metals of similar appearance, is adequately addressed by § 23.8(a) of the current Jewelry Guides, discussed above. Section 19.2(g)(1) of the Watch Band Guides provides that if a quality mark is concealed by packaging, it should appear on the outside of the packaging if the failure to so display it would deceive consumers. The Jewelry Guides do not require that products contain quality marks and, thus, do not require that a quality mark be visible in spite of packaging. The Commission believes it is neither unfair nor deceptive to fail to include a quality mark; hence, it is neither unfair nor deceptive to allow packaging to conceal a quality mark. Thus, the Commission has not included this provision in the revised Guides.

[172] The Guides contain no exemptions for products which are never assayed. This includes products made of gold or silver electroplate. (Such articles are not sold with the representation that they contain a specific percent by weight of precious metal.)

[173] The current Guides use the Appendix to list and classify the Guides. The JVC proposed placing this material first as a Table of Contents. The Commission believes that the existing list of section numbers and titles in the table of contents is sufficient and has omitted this classification from the revised Guides.

[174] In addition, because the revised Guides cover items other than jewelry, the exemptions are stated as applying to industry products, not to jewelry industry products.

The JVC proposed exemptions from assay for optical products, which are based on the VPS, with some additions. There were no comments opposing this proposal, and the Commission has included this list of exemptions for optical products in the Guides.

[175] Comment 196, p.2.

[176] *Id.*

[177] *Id.*

[178] Silver is relatively soft. Hence, it is logical for the exemptions for gold-filled items to apply also to silver items.

[179] Comment 88, p.1.

[180] Footnote 2 to current Guides.

[181] Comment 218, p.3.

[182] As a result, the list of exemptions in the current Guides is much shorter for gold items than for silver items.

[183] The following were added to each list of exemptions: (1) karat gold: metallic parts completely and permanently encased in a nonmetallic covering, and field pieces and bezels for lockets; (2) gold-filled: bracelet and necklace snap tongues; (3) silver: field pieces and bezels for lockets; bracelet and necklace snap tongues; any other joints, catches, or screws; metallic parts completely and permanently encased in a nonmetallic covering. There were no additions to the exemptions for silver in combination with gold or for platinum.

[184] AGTA (49) p.15 (commenting that either information should be added to the proposed JVC definition or the last sentence of that definition and the following Note should "be struck," adding that "AGTA prefers that both be struck from the guides"); NACSM (219) pp.25–26 (stating that the proposed addition to the definition is "not an improvement on the clarity of the mandates of the law").

[185] Comment 244, p.2.

[186] King (11); Estate (23); Lannyte (65); GIA (81); Bales (156); NACSM (219); and Best (225).

[187] JMC (1); Fasnacht (4); Sibbing (5); Thorpe (7); Honora (14) and (15) p.1 (stating that if diamonds can be called perfect, "it would open vast opportunities for deceptive advertising and many consumers would be hurt"); Argo (17); AGS (18) p.3 (favoring the prohibition because "[t]he potential for misuse is too great"); Capitol (19); Estete (23); G&B (30); Jabel (47); Schwartz (52); Skalet (61); Eisen (91); Nowlin (109); McGee (112); ArtCarved (155); Bridge (163) p.2 (stating that "perfect" should not be allowed because relatively few diamonds "meet all these very high standards"); LaPrad (181); IJA (192); Phillips (204); Bedford (210); Matthey (213); Bruce (218); MJSA (226); Preston (229); Limon (235); Leach (258); and Solid Gold (261).

[188] Indeed, many consumers may regard the word as "mere puffing." One comment noted, "'Perfect' pertaining to anything is a dumb word and should arouse suspicion." Jabel (47) p.2.

[189] One comment stated that limiting the use of the term "perfect" as a synonym for "flawless" to those situations in which the diamond described is not "of inferior color or make" is meaningless because "inferior color or make" cannot be defined. Limon (235) p.2. The Commission agrees that the definition is not precise, but nevertheless believes that the word can be used in a non-deceptive manner.

in terminology are apparent (*e.g.*, changing the terms "flaws, cracks, carbon spots, clouds or other blemishes or imperfections" to "blemishes, inclusions, lasering, prominent reflective whitish or colored grain lines, or clarity faults"). Thus, the Commission has not adopted these changes. However, the numerous comments which addressed lasering of diamonds in the context of a related JVC proposal, discussed below, indicate that lasering leaves channels or surface openings in a diamond that are similar to grains or other clarity faults. The Commission believes that it would be deceptive to describe a diamond that discloses internal lasering under the conditions specified in that section as "flawless," and therefore has revised this section.[190]

The Commission also has included the JVC's descriptions of when the flaws are visible—*i.e.*, "when examined under a corrected magnifier at 10-power, with adequate illumination, by a person skilled in diamond grading." This is an updating of the current Guides (which refer to an examination "in normal daylight, or its equivalent, by a trained eye under a ten-power, corrected diamond eye loupe or equal magnifier") to reflect changes in available equipment.[191]

In the current Guides, the Note following § 23.10(a) also states that the use of a phrase such as "commercially perfect" for a diamond that has flaws is "regarded as misleading and in violation of this section." The JVC proposed expanding this portion of the Note to also cover the phrase "commercially flawless."[192] The Commission believes that the provision in the revised Guides, which applies to use of the words "perfect," "flawless," or "any representation of similar meaning," is sufficient to prevent deception. The current Note is superfluous, and the Commission has deleted it.[193]

Section 23.10(b) states that it is unfair to describe a ring or other article of jewelry with a "perfect" center stone and side stones which are not "perfect," as "perfect," without disclosing that the description applies only to the center stone. The JVC proposed modifying this to apply to representations that stones are "flawless," and also proposed changing the reference to "center stone or stones" to "principal diamond or diamonds." Such a change appropriately includes jewelry in which the principal stone is not the center stone.

4. Disclosure of Treatments

Section 23.18 of the current Guides, entitled "Deception as to precious and semi-precious stones," contains a Note which states that any artificial coloring or tinting of a diamond or precious or semi-precious stone by "coating, irradiating, or heating, or by use of nuclear bombardment, or by any other means" should be disclosed and the fact that the coloring is not permanent, if such is the fact.

The JVC proposed moving the portion of this section that applies to diamonds into the diamond category, modifying it to apply to any diamond that has been treated (rather than colored) by certain methods, and adding the following treatments to this list of those that should be disclosed: the internal use of a laser beam, the introduction or the infusion of any foreign substance, or treatment "by any other means, without disclosure of the fact that the inherent quality and/or appearance of such diamond has been enhanced, and the result of this enhancement is not or may not be permanent, if such is the case."[194]

Internal laser treatment and the infusion of a foreign substance are treatments that did not exist in 1959 when the Guides were last substantively revised. A laser treatment involves the use of a laser beam to improve the appearance of diamonds having black inclusions by directing the laser beam at the black inclusion and then forcing acid through the tunnel made by the laser beam to remove the inclusion or to alter it so that the inclusion is not visible to the naked eye. "Infusion" treatment, also known as "fracture-filling," conceals cracks in diamonds by filling them with a foreign substance.

Thirteen comments opposed the disclosure of laser treatment stating that it is "a common practice" and "an extension of cutting, since soaking out surface black leaves no evidence of soaking. The channel left by the laser is often just one of several or numerous 'natural' cracks, inclusions, or grain."[195] Verstandig stated that the other treatments which the JVC proposed should be disclosed "are hardly-if at all-noticeable under a 10X magnification" but that lasering is obvious under such magnification. It also noted that while lasering produces a small surface opening, the majority of diamonds sold in the U.S. have similar surface imperfections, and disclosure of these is not required.[196]

DMIA noted that lasering is "irreversible, does not add a foreign substance, is readily detectable with a ten power loupe, and does not require disclosure any more than * * * cutting an additional facet to improve the purity of a diamond." It also noted that GIA, which it described as a world-renowned diamond grading lab, refuses to grade diamonds infused with a foreign substance but does grade lasered diamonds, indicating on the grading report "inclusions, naturals, extra facets, as well as lasering."[197] In addition, it noted that resolutions have been adopted on "a world-wide basis requiring full disclosure of any "treatment" of diamonds such as irradiation which changes the color and atomic structure or the infusion of a foreign substance which produces a product no longer a pure diamond, but a "composite" material." It stated that "[l]asering, on the other hand, is not a "treatment" * * * ."[198]

[190] Preston (229) stated, at p.10, that the word "ioternal" should precede the word "lasering" in this section, apparently to clarify that "lasering" in this section is not meant to include the use of lasers to cut diamonds but rather the use of lasers to remove blemishes. The Commission agrees with this comment and has included this clarification in the revised Guides.

[191] ICT (189) also suggested, at p.2, a modification of § 23.10, *i.e.*, that the word "flawless" should always be accompanied by the magnification level at which no flaws are visible [for example, "flawless under 15X loupe"]. However, there is no evidence that such detailed information is material to consumers.

[192] Eisen (91) stated, at p.1, that "commercially flawless" should not be allowed but did not offer any reasons.

[193] The JVC also proposed adding a Note that states that the term "internally flawless" may be used to describe a diamond "which meets the requirements set forth . . . but possesses only minor surface blemishes such as grain lines, polish or burn marks, scratches, nicks, or small naturals." No reasons were offered for this change. However, Lannyte (65) p. 5, stated "Do not play games with the word 'internally.' Any surface blemish has to exist on or in the surface to exist at all." Based on this comment, and the lack of other explanation for this provision, the Commission has not included this Note in the Guides.

[194] ISA (237A) proposed, at p.53, changing "internal use of laser beam" to "the penetration of a laser drilling technique and/or acid bath(s) which is customarily used by the trade to change the color of 'black' inclusions to 'white.'" It also suggested that "infusion of any foreign substance" should be followed by the words "fracture filled." However, the Commission believes that the words used in the JVC proposal adequately identify the processes that are being addressed.

[195] Green (6) p.1; *see also* London Star (20); DMIA (26); Roisen (31); Werdiger (48); Verstandig (154); David (194); H.R. Diamonds (195); ADS (197); Weitz (200); Kwiat (203); NACSM (219); and Service (222).

[196] Comment 154, p.2.

[197] Comment 26, pp.1–2.

[198] Comment 26, p.1. Roisen (31), David (194), H.R. Diamonds (195), ADS (197), and Weitz (200), all referred to the fact that the rules of the World Federation of Diamond Bourses require strict punishment of a member who fails to disclose treatment of a diamond, such as irradiation or infusion of a foreign substance. *See* the text of the joint resolution of the World Federation of Diamond Bourses and the International Diamond Manufacturers Association, as described in the Rapaport Diamond Report, July 17, 1992, p.5 (attached to Rapaport (233)).

[199] Rapaport Diamond Report, July 17, 1992, p.6, attached to Rapaport (233); *see also* Preston (229) p.3; ISA (237A) p.51.

[200] Rapaport Diamond Report, July 17, 1992, p.6, attached to Rapaport (233).

[201] Green (6); London Star (20); DMIA (26); Roisen (31); Werdiger (48); Verstandig (154); David (194); H.R. Diamonds (195); ADS (197); Weitz (200); Kwiat (203); and NACSM (219). Service (222) opposed all disclosure of diamond treatments, and did not specifically discuss fracture-filling. Best (225) opposed all the changes proposed by the JVC, but stated that fracture-filling "may justify some future study and potential regulation by the FTC."

On the other hand, one comment contained an attachment that argued that internal lasering should be disclosed because it adversely affects the value of the diamond.[199] The attachment stated that lasered stones are inferior because they "are worth less than normal non-lasered stones of the same grade." It further stated that a diamond purchaser who is unaware of the lasering, will be upset "when the appraisal indicates laser treatment, or upon resale when the buyer offers a lower price due to lasering."[200]

However, the comments (including eleven comments from diamond dealers and a diamond trade association) indicated that lasering is a common practice and not an extraordinary process that would be deceptive to conceal from the consumer. Moreover, a consumer acting reasonably under the circumstances would be on notice of laser treatment before sale. A grading report would indicate that the diamond had been laser-cleaned, and, if the buyer chose to examine the diamond under standard ten-power magnification, the laser tunnels would be obvious to the buyer. Thus, the Commission has determined not to include lasering among the treatments that always should be disclosed to avoid misleading consumers.

By contrast, twelve of the thirteen comments that opposed disclosure of lasering stated that the fracture-filling process is a treatment of a diamond that should be disclosed to the consumer.[201] As previously noted, several of these comments stated that the rules of the World Federation of Diamond Bourses require disclosure of fracture-filling. Because fracture-filling is not the norm or what consumers acting reasonably under the circumstances would expect, it would be deceptive to fail to disclose fracture-filling. Consumers will not likely expect, in the absence of disclosure, that the stone was so treated. Thus, the absence of disclosure is also unfair in that it is likely to cause injury to consumers by affirmatively misleading their informed choice and so causing substantial, unavoidable injury that is not outweighed by any countervailing benefits.[202] Accordingly, the revised Guides advise sellers to disclose this treatment.

The JVC also proposed that this section require the disclosure of treatment of a diamond "by any other means." However, the Commission believes that phrase is sufficiently vague to imply, for example, that removal of blemishes by lasering always should be disclosed, and thus, has not included this phrase in the section.

5. "Blue White": § 23.11

Section 23.11 of the current Guides prohibits the use of "blue white" to describe a diamond "which under normal, north daylight or its equivalent, shows any color or any trace of color other than blue or bluish." The JVC proposed prohibiting the use of this term.

The term "blue white" has apparently been misused in the past to describe poorer quality or "off color" diamonds.[203] The use of blue white appears to have diminished because most of the industry now uses formal diamond grading systems. One comment suggested that "blue white" be restricted to "a diamond that has strong blue fluorescence and is of the D–G color range (in the GIA grading system)."[204] However, the current Guides describe a proper use of blue-white and discourage its misuse. The Commission therefore has retained this section of the Guides.[205]

6. Cuts of Diamonds and "Clean Diamonds": §§ 23.12– 23.14

Section 23.12 of the current Guides states that it is unfair to describe a diamond as "properly cut," "well made," or "modern cut" or words of similar meaning, if it is "lopsided, or so thick or so thin in depth as materially to detract from the brilliance of the stone." Section 23.13 restricts the use of the terms "brilliant," "brilliant cut" or "full cut" to a round diamond having at least 56 facets.[206]

The JVC did not propose any changes to these sections, but several comments did propose revisions. Two comments proposed certain numerical standards for describing "properly cut" diamonds.[207] AGL proposed that the Guides state that it is unfair for "a diamond quality assessment report to itemize a series of percentages and non-integrated cutting details without reference to a meaningful and comprehensive evaluation of cutting in order to facilitate a consumer's understanding of these critical value components."[208] However, AGL also indicated that such reports do not usually contain such an evaluation of cutting.[209] No other comments addressed this issue. Because there is insufficient information in the record to evaluate the proposals, the Commission has not changed these sections.

Section 23.14 states that it is unfair to use the terms "clean," "eye clean," "commercially clean," "commercially white," or similar terms to mislead or deceive consumers. The JVC did not propose any changes to this section. Unlike other provisions of the Guides, this section does not provide guidance regarding the use of these terms, other

[202] *International Harvester Co.*, 104 F.T.C. 949, 1051 (1984). NACSM (219), at p. 26, pointed out that the process can sometimes be reversed by heat. For example, it is not uncommon for a diamond to be remounted and the heat from that process may partly melt out the foreign material used to fill the fracture. This adversely affects the appearance of the diamond and it may not be possible to remove the remainder of the fracture-filling material. *See* S. Lynn Diamond, "Filled Diamonds in the Spotlight," National Jeweler, Dec. 1, 1994, at 36, 42 & 43.

[203] The definition of blue white in the Jewelers' Dictionary states: "Term, often abused, to describe the color of a diamond. As frequently abused, it includes anything from a Jager to a Silver Cape. . . . [*n.b.*, Jager refers to a fine white diamond; Silver Cape is a yellow one.] Better Business Bureaus recommend avoidance of the term and the American Gem Society prohibits its use." "Jewelers' Dictionary" 28 (3d ed. 1976). However, the proprietor of Solid Gold (261) stated, at p.2, that he has seen "many diamonds which are accurately described as having a bluish-white color."

[204] Rapaport (233) p. 2 (stating that the "guides should not outlaw any terminology used by the trade" but instead should define it "so that it is not misleading").

[205] ISA (237A) recommended, at p.53, the addition of a definition of "normal north daylight" and an addition which would limit the use of the term blue white to "a diamond which is totally natural and free from any man induced treatments which exhibits a partially white body color and a partially blue body color. . . . The term blue body color is not to be blue caused by visible fluorescence . . . " However, no evidence was provided that either of these additions were necessary, and the Commission has not included them in the Guides.

[206] This section does allow certain other cuts (emerald, pear-shaped, heart-shaped, oval-shaped, and marquise) meeting the above-stated facet requirements to be described as "brilliant cut" or "full cut" if "disclosure is made of the fact that the diamond is of such form."

[207] ISA (237A) pp.54–56; Rapaport (233) p.3 (proposing a definition for a range of 'Properly Cut' round diamonds and numerical standards (which differ from ISA's proposed numerical standards)).

[208] Comment 230, p.5. AGL also suggested that the Guides state that it is unfair for any diamond or colored stone quality assessment reports or appraisals to fail to contain edequate tolerance information for each element that impacts on the value. *Id.* at 4. However, the Commission believes such a proposal, which would involve providing guidance on the manner in which appraisers and graders prepare reports, is beyond the scope of these Guides.

[209] Comment 230, p.5. Preston (229) stated, at p.6, that "AGS attempts to train its members to specify cutting grades rather precisely. GIA, on the other hand, does not specify a cutting grade at this time."

than to state that they should not be used to deceive purchasers. Although one comment indicated that these terms are still in use,[210] the Commission has concluded that the admonition in § 23.1 not to misrepresent material characteristics of a product adequately encompasses misrepresentations regarding these terms. Therefore, the Commission has deleted this provision from the Guides.

7. Proposals Relating to Diamond Weight

a. *Misrepresentation of weight.* Section 23.16 of the JVC petition deals with misrepresentations of diamond weights, an issue which is not specifically addressed in the current Guides. The JVC's proposed preamble to this section states that the standard unit of weight for diamonds is the carat, defines the terms carat and point, and states that the abbreviation for carat is ct. The Commission has not included this preamble in the revised Guides. As discussed below, the Commission has included a provision relating to the use of "points" in the revised Guides, and that provision contains an explanation of the meaning of "carat" and "point."

The JVC suggested adding a section stating that it is unfair to misrepresent the weight of a diamond. Section 23.1 of the current Guides provides that it is unfair to misrepresent various material characteristics of industry products, including weight. However, the Commission has included this admonition against misrepresenting the weight of diamonds in section 23.17 of the revised Guides, and has provided additional guidance for diamond weight representations in that section, as discussed in detail below.

b. *Use of "points".* The JVC, in section 23.16(a), proposed that a section be added to the Guides stating that the use of the term "points"[211] to represent the weight of a diamond is unfair except "in direct conversations." In some instances, according to the comments, consumers perceive a representation that a diamond is ".25 pt." to mean ".25 ct."[212] The latter is ¼th carat; the former (.25 pt.) is 1/400th carat. To obtain more information about this issue, the FRN asked whether the use of "points" to describe diamond weights should be limited to oral representations.

Thirty-five comments addressed this issue. Four comments, including ones from the Postal Service and NACAA, supported eliminating use of the term "points" in either oral or written representations.[213] Twenty-two comments supported limiting the use of the term "points" to oral representations.[214] Nine comments stated that the use of the term should be permitted in written as well as oral representations, contending that the term can be used in writing in a manner that is not unfair or deceptive.[215]

One comment noted that "points" is "a term that the layman is not familiar with."[216] The Postal Service favored a prohibition, stating that, in many situations, consumers do not actually see the jewelry before purchasing it, and the term point (*i.e.*, .25 pt.) is used to misrepresent the value of a diamond.[217]

The comments clearly believe that the term "pt." is being used to deceive the public, particularly in mail order transactions.[218] The deception described in the comments appears to arise primarily when the abbreviation for point ("pt.") appears in writing.[219]

Nevertheless, the term "point," with adequate disclosure, could be used in a non-deceptive manner. Therefore, the Commission has added a provision to the Guides which states that if the term "point" is used in advertising (including television) or in point of sale materials to describe the weight of a diamond, the weight should also be given in decimal parts of a carat (*e.g.*, .25 pt. is .0025 ct.). The admonition to include the carat weight in decimals should deter sellers from attempting to mislead consumers. Furthermore, § 23.2 of the Guides addresses the use of misleading visual representations of diamonds.

c. *Disclosure of minimum total weight.* The JVC also proposed adding provisions to the Guides stating that it is unfair to fail to mark new industry products containing one or more diamonds with the minimum weight of the diamonds in the product and that it is unfair to refer to the weight of a diamond or diamonds in advertising for new industry products without disclosing the minimum total weight.[220] The FRN solicited comment on this proposal.

Thirty-nine comments addressed this issue. Thirty-one comments approved marking jewelry, or tags or invoices attached to it, with the minimum weight of the diamonds set in it.[221] Eight comments opposed the proposal.[222]

Generally, the comments indicated a belief that marking new jewelry with the minimum diamond weight would prevent misrepresentation of weight by the manufacturer or other sellers farther down in the line of commerce. GIA stated that there was a tendency for "multistone rings and other jewelry sold as a given weight to weigh less than the indicated weight," especially where the ring is not stamped with the minimum weight.[223] GIA further stated that "[i]n our experience, if the total weight is stamped on the jewelry, the manufacturer usually makes sure that the weight is accurate," and believed that "requiring stamping of a minimum weight on the jewelry (particularly in combination with trademark stamping) would provide a strong deterrent against underweighting diamond content."[224]

NACAA commented that its members received complaints about exaggeration of the weights of stones (not limited to diamonds) and stated that it would be "helpful to consumers" for the Guides to require marking of minimum total weight on new items.[225] However, the Guides already state that it is unfair to misrepresent the weight of a diamond (or any other jewelry). Moreover, none of the comments explained why it would be unfair or deceptive to fail to mark new jewelry containing diamonds with the minimum total weight of the diamonds, nor is there any obvious reason why a failure to so mark the jewelry, or to include this in advertising, would be unfair or deceptive.[226] Therefore, the Commission has not included this provision in the revised Guides.

d. *Weight tolerance.* The JVC also proposed adding provisions to the Guides setting forth specific tolerances for diamond weight representations. The JVC proposed in sections 23.16(c)–(e) of its petition, a tolerance of .005 carat for weight representations for individual diamonds, whether mounted or unmounted, and a tolerance of .01 carat for weight representations pertaining to "two or more diamonds in a single product." This proposal generated 84 comments.[227] Three comments specifically supported the JVC's proposed tolerance.[228] Eighty-one commenters opposed the proposed tolerances.[229]

One comment stated that the proposed tolerance was too small because few diamond scales are so finely calibrated, and that the tolerance should be .01 ct.—one hundredth of a carat.[230] However, Commission staff telephoned several companies, and determined that most have scales that can weigh diamonds to .005 carats.[231]

Numerous other comments opposed the tolerances because they would increase the cost of sorting diamonds, raise the price of diamonds for high-volume manufacturers, and increase prices for consumers. MJSA explained that high-volume manufacturers sieve rather than weigh individual stones, and that the proposed tolerance would require manufacturers to "weigh, tag, and flute the stones to be incorporated in a piece of jewelry."[232] MJSA stated that "the added costs of this procedure would be reflected in the price of the finished article and be passed on to the consumer."[233]

Although Bruce supported the proposed tolerance and opposed the use of fractions to describe diamond weights, it noted that "fractional diamond sizes are a convenience for the industry, in the trading of loose stones," and that "keeping track of diamond sizes for tagging purposes would require a little more care and planning, but it can be done."[234]

Many commenters stated that the current industry practice is to use fractions to designate weights of less than a carat, and that there is a standard tolerance for such fractional representations. Service explained that chain retailers use fractions to advertise diamonds so that specific prices can be given for specific weights. Service explained that the proposed tolerance would be costly because it "would narrowly and unreasonably limit the range of weights available for particular fractions of a carat."[235] For example, a fifth represents 20 points and under the JVC's proposed tolerances, only diamonds that weigh at least 19.5 points could be described as a fifth. Several commenters stated that they used the standards contained in the GIA publication, "Diamonds 3."[236] This 1986 GIA booklet, states, at p.19, that "approximate weights are often stated in fractions," and it sets out a chart stating the average weight range associated with the various fractions (*i.e.*, ⅕ carat refers to .18 through .22 carat).[237]

Best noted that under the GIA tolerances, a diamond can be sold as half a carat if it weighs between .47 and .56 carats, but that the proposed tolerances would require it to weigh at least .495 carats. Best stated that under the JVC proposal it would be forced to either select stones that fall within the tolerances, so that prices for the size could be advertised, or to treat each stone individually, and not provide price information regarding the stones in advertising. It explained that because there is a limited supply of stones that fall within the JVC's proposed tolerances, demand will escalate for these stones and the cost of the stones will increase. Therefore, "[j]ewelers like Best would no longer be able to offer a consistently lower price alternative to the traditional high margin jewelers." Instead, Best would be forced to "price, mark and sell each item individually," which is the philosophy of a boutique

---

[210] Rapaport (233) stated, at pp.2–3, that the terms "clean," "eye clean," and "commercial white" are "regularly used by the diamond trade to describe diamonds," noting specifically that the term "eye clean" is "commonly used to describe diamonds that do not have inclusions that are visible to the naked eye."

[211] The term "point" is used to express one-hundredths of a carat (*e.g.*, .25 ct = 25 points).

[212] Limon (235) p.3 (stating that the proposal "was inspired by a nationally published advertisement for an item containing a diamond weighing '.25 pt.'[which was] universally misread as '.25 ct.'"); Skalet (61) p.4 (stating that "considerable deception has been leveled at the consuming public to make a 'point .25 carat' or '.25 point' gemstone appear to be describing a ¼ carat gemstone"); Bedford (210) p.2 (stating "I have had some people come in thinking they were going to win a .25ct. diamond and they were actually getting a .025 point diamond"); Bruce (218) p.10 (noting that "we have seen advertisements where people confuse points with carats (pt. with ct.)").

[213] Honora (15); Lannyte (65); NACAA (90); and Postal Service (244).

[214] Fasnacht (4); Sibbing (5); Thorpe (7); Argo (17); AGS (18); Capital (19); Estate (23); Jabel (47); Schwartz (52); Skalet (61); GIA (81); Nowlin (109); McGee (112); Bridge (163); IJA (192); Phillips (204); Bedford (210); Matthey (213); Bruce (218); MJSA (226); Preston (229); and Limon (235).

[215] G&B (30); ArtCarved (155); Bales (156); LaPrad (181); NACSM (219); Service (222); Diamonique (224); Best (225); and Leach (256). Diamonique (224) stated, at p.1, that prohibition of "point" or "pt." would "result in the use of fractional definitions of diamond weights as used in the past." However, other comments (discussed below), stated that fractions are currently in wide use, and are not deceptive.

[216] Bruce (218) p.10.

[217] Comment 244, pp.1–2.

[218] Thorpe (7) p.2 (stating that the "consumer sees a jewelry term they are 'familiar' with and read it as 0.25 ct.").

[219] However, one comment noted that problems also occur in television advertising. Sibbing (5) p.1 (stating "No more 'quarter point diamonds' as can be found on TV advertisements").

[220] Apparently the proposal was limited to new products because, as one comment noted, "it is impossible to get exact measurements of a diamond weight when measuring diamonds when mounted." Bedford (210) p.2.

[221] JMC (1); Fasnacht (4); Sibbing (5); Thorpe (7); Honora (15); AGS (18); Capital (19); Estate (23); G&B (30); Jabel (47); Schwartz (52); Skalet (61); Lannyte (65); GIA (81); NACAA (90); Nowlin (109); McGee (112); ArtCarved (155); Bales (156); Bridge (163); LaPrad (181); IJA (192); Phillips (204); Bedford (210); JVC (212); Matthey (213); Bruce (218); MJSA (226); Preston (229); Limon (235); and Leach (258). Two of these stated that diamonds under .10 carat should be exempt [Skalet (61) and ArtCarved (155)], and one stated that the minimum weight information should only be required on the invoice (Honora (15)).

[222] Argo (17); Schaeffer (211); NACSM (219); Service (222); Best (225); Sheaffer (249); and Franklin (250). (Solid Gold (261) also opposed this provision, but apparently did not understand that it would only apply to new jewelry.) Several of these comments stated that this requirement would increase costs.

[223] Comment 81, p.2.

[224] Comment 81, p.2. AGS (18) p.2 (stating, "The market place is replete with purveyors of diamond jewelry who overstate the total carat weight of multi-diamond items").

[225] Comment 90, pp.1–2.

[226] Indeed, if this practice is unfair or deceptive for "new" jewelry, logically it is also unfair or deceptive for "old" jewelry and for jewelry containing gemstones other than diamonds. LaPrad (181) p.2, and Limon (235) p.4, each suggested that the weight marking requirement should apply to colored stones as well as diamonds.

[227] This figure is exclusive of comments that simply favored all the changes suggested by the JVC.

[228] Bruce (218); Limon (235); and Schwartz (52).

[229] NACSM (219); Service (222); Diamonique (224); Best (225); MJSA (226); Rapaport (233); and NRF (238) submitted individual comments. The other 74 were form letters. In the interest of brevity, the 74 commenters are listed here by their comment number only: 28; 32; 33; 35; 36; 37; 39; 40; 41; 43; 45; 46; 50; 51; 53; 54; 55; 56; 57; 58; 59; 60; 63; 67; 68; 69; 70; 71; 72; 73; 74; 75; 77; 78; 79; 80; 93; 94; 95; 96; 97; 99; 100; 101; 102; 104; 105; 107; 108; 110; 114; 115; 117; 119; 121; 122; 157; 158; 160; 164; 179; 180; 190; 191; 201; 211; 214; 220; 241; 243; 260; 263; and 264.

[230] Rapaport (233) p.4. Diamonique (224) pp.1–2 (stating that current measuring devices are not adequate and the present tolerance is .01 carat). *But see* Fasnacht (4) p.2 (stating that weighing is fast and accurate with today's electronic scales).

[231] Commission staff interviewed 5 jewelers (Boone and Sons Jewelers, Fleisher Jewelers, Kings Jewelry, Loubons, and Jewelry by Design) in the Washington area about what kind of scales they use. No store utilized a scale that was not accurate enough to meet the proposed .005 carat tolerance. Staff also interviewed Ben Fine, who sells Melter Scales; Gaston Lopez, a sales representative of Gemological Institute of America, which sells several different makes of scales; and a representative from Dendritic Scales. All confirmed that they sell scales that are accurate to within ½ point.

[232] Comment 226, p.8.

[233] Comment 226, p.8. NACSM (219) pp.20–21 (explaining that rough diamonds "are purchased most often from DeBeers * * * [and] sold to manufacturers * * * in parcels containing certain grade and quantities such as 'one fifths,' 'quarters,' 'one thirds,' 'halves,' 'carats,' etc. *The fractions refer to the approximate sizes of the diamonds* contained in the parcels"); Goldman (60) p.3 (stating that the international market "sells as a fifth of a carat, goods (diamonds) from 18 to 23 points").

[234] Comment 218, pp.2–3 (also stating that "If people in the trade buy a single stone they will pay for it by its exact weight").

[235] Comment 222, p.3. Numerous comments also indicated that there would be high demand for stones close enough to the fractions to be designated as fractions, and other stones could not be used by mass retailers. "If retailers were no longer allowed to sell 18 points as a fifth, then what would happen to all the 18 and 19 pointers * * *?" Goldman (60) p.2. London Star stated, "This standard would considerably lessen the availability of stones within each size and therefore drastically increase the price to the consumer." Comment 20, p.2. Of course, diamond weights can be, and often are, expressed in the decimal system. However, the mass marketers, for the reasons described above, state that it is more efficient for them to describe diamond weights as fractions.

[236] Attachment B to NACSM (219). Best (225) pp.4–5 (stating that these standards "have been widely used and accepted for many years and have effectively become the national and international industry standard"); NACSM (219) p.11 (stating that these GIA ranges "merely recognize industry standards which have resulted from longstanding *accepted custom and usage*").

[237] Attachment B to NACSM (219). The booklet notes that the ranges "may vary slightly from one firm or organization to another." *Id.* This is borne out by the comments.

jeweler, and "contrary to the way a mass merchandiser operates."[238]

Several comments suggested alternatives to the JVC proposal. MJSA suggested "a broader minus tolerance which is expressed in proportional terms rather than as an absolute quantitative measurement."[239] Ross-Simons suggested a tolerance of 5% or .05 carat for a piece with multiple diamonds, whichever is smaller.[240]

The Commission agrees with the comments that state that the proposed tolerance may be too restrictive and may result in an increased cost to the consumer. However, consumers may not interpret a claim that a diamond is half a carat as meaning that it falls within the range set out in the GIA booklet. In fact, the GIA booklet states: "Customers also think in terms of fractions, but they tend to expect a half-carat stone to weigh exactly 0.50 carat."[241] Furthermore, diamonds are so expensive that receiving a diamond that is even a few points less than what was represented can be a significant loss to the consumer. In this respect it appears that at least for some industry members, current practice may be contrary to consumers' expectations and may not adequately apprise consumers of the terms of the seller's offer (*i.e.*, that jewelry advertised with ⅕ carat diamonds is actually offered as jewelry with ⅕ carat weight, plus or minus some tolerance the seller is using).

However, the Commission believes that a fractional representation of carat weight may be qualified so that it is neither unfair or deceptive. For example, if a claim such as "½ carat" is accompanied by a disclosure of the weight range that is used, it does not imply precision to the level of 0.005 carat. A decimal representation of carat weight, such as "0.47 carat," does imply accuracy to the level of the second decimal place—*i.e.*, .005 carat. Therefore, the level of tolerance applicable to a diamond weight claim depends on the type of claim that has been made.

Thus, the revised Guides clarify that representations of diamond weight should indicate the weight tolerance that is being used. If diamond weight is stated as decimal parts of a carat, the stated figure should be accurate to the last decimal place. If a fractional representation is used to describe the weight of a diamond, the fact that the diamond weight is not exact should be conspicuously disclosed in close proximity to the fractional representation, and the range of weight for each fraction should also be disclosed. A Note following this section (23.17) explicitly states that, for claims made in catalogs, the disclosure should appear on every page where the claim is made, but that the disclosure may refer to a chart or other detailed explanation of the actual ranges used. (For example, "Diamond weights are not exact; see chart on p.X for ranges.")[242] These provisions also provide guidance for making weight representations for items with multiple stones.

e. *Misrepresentation of weight of diamonds combined with other gemstones.* Finally, one comment suggested that a provision be added to the Guides stating that it is unfair to represent the combined weight of two or more gemstones of different gemological varieties in any new single product as "total gemstone weight" or words of similar import, without disclosing with equal conspicuity the combined weight of the gemstone of each gemological variety in the products.[243]

However, the phrase "total gemstone weight" does provide notice that the weight given applies to all gemstones in the item, not just the most expensive. Thus, the Commission does not believe that a representation of "total gemstone weight" would inherently be unfair or deceptive. Consumers interested in a breakdown by gemstone category would be put on notice by the statement "total gemstone weight" that further inquiry is needed.

E. Pearls (Category IV): §§ 23.15–23.17

The current Guides address pearls in the definition section, § 23.0, and in §§ 23.15–23.17. Section 23.15 describes practices which are unfair uses of the word "pearl." Section 23.16 describes unfair uses of other terms, such as "cultured pearl," "Oriental pearl," and "natura." Section 23.17 describes unfair practices involving false, misleading, or deceptive statements about cultured pearls, including the manner in which they are produced and the thickness of the nacre coating. In addition, provisions in §§ 23.20 and 23.21, pertaining to the misuse of certain words (real, genuine, natural, gem, reproduction, replica, and synthetic) apply to pearls. The changes proposed by the JVC and by certain commenters are discussed below.

1. Definitions

a. *Modifications of existing definitions.* The Commission has moved the definitions relating to pearls from § 23.0 to the beginning of the substantive sections that deal with pearls (§ 23.18). The JVC proposed changes (in section 23.17 of its petition) in the three definitions pertaining to pearls ("pearl," "cultured pearl," and "imitation pearl") that currently appear in the Guides. No reasons were offered for changing the current definitions, and there was no allegation that they were inaccurate or caused any problems.

Four comments addressed the proposed changes in the definitions. The National Retail Federation stated that cogent definitions for the three basic types of pearls "are lacking" in the JVC petition.[244] Three comments suggested changes in the JVC's proposed definitions, but did not explain why it is necessary to change the definitions in the current Guides, nor state that any misconceptions have occurred.[245]

Definitions are helpful to the extent that they make clear what can nondeceptively be represented to be a pearl, a cultured pearl, or an imitation pearl. There is no indication that the definitions of the three types of pearls in the current Guides have ever failed to serve this purpose. Consequently, the Commission has not changed these definitions.

b. *Additional proposed definitions.* The JVC proposed adding eleven new definitions of types of pearls to the Guides. The JVC offered no reason for adding definitions of these terms to the Guides, nor did it allege that these terms had been used to deceive consumers. The National Retail Federation noted that there are three basic types of pearls (natural, cultured, and simulated) and that the definition section proposed by the JVC "is unnecessarily detailed and confusing."[246] The Commission has determined to include additional definitions in the Guides, as discussed below, only where there are specific reasons for doing so.

i. Definitions proposed by the JVC. The only apparent purpose for five of the proposed definitions appears to be to emphasize the fact that a cultured pearl (or whatever specific type of cultured pearl) must be described as a cultured pearl. The JVC proposed definitions, with accompanying sections regarding the use of the term "cultured," for the following pearls: Mabe cultured pearl, black pearl and black cultured pearl, natural color, fresh water pearl[247] and sweet water pearl. However, § 23.15 of the current Guides already states that it is unfair to use the unqualified word "pearl" to describe anything other than a natural pearl and that it is unfair to use the word "pearl" to describe a cultured pearl "unless it is immediately preceded, with equal conspicuity, by the word 'cultured' or 'cultivated,' or by some other word or phrase of like meaning and connotation, so as to indicate definitely and clearly that the product is not a pearl." Because there is no information indicating a problem with these terms, or the adequacy of the existing provision, the Commission is not including these definitions in the Guides.

South Sea pearls: The JVC suggested the following definitions for South Sea pearls: "A natural pearl found in the salt water mollusks of the Pacific Ocean South Sea Islands, Australia and Burma." It suggested that a South Sea cultured pearl be defined as a cultured pearl "found in the salt water mollusks of the Pacific Ocean South Sea Islands, Australia and Burma." There was comment suggesting that there is a market for South Sea cultured pearls, and that such pearls are quite valuable. An article attached to the Rapaport comment stated that South Sea cultured pearls "have come to challenge the supremacy of the Japanese akoya [cultured pearls] in quality * * *. The South Sea pearls have a strong market because of one particular feature that makes them attractive: size."[248] The CPAA stated that it frequently receives complaints that imitation pearl companies are using foreign names to confuse consumers.[249]

The Commission therefore has revised the Guides to state that it is unfair or deceptive to represent a pearl or a cultured pearl as being a South Sea pearl when such is not the case. This statement, which includes a definition of the term, is included in section 23.20(g) of the revised Guides.[250]

Oriental pearl: The meaning of the term "Oriental pearl" is clear in the current Guides. There is no evidence that the lack of a separate definition has caused any confusion or resulted in any misuse of the term. There was no comment pertaining specifically to this proposed definition. Thus, the Commission has not included a separate definition in the Guides.

Blister pearls: The JVC suggested definitions for "blister pearl" and "cultured blister pearl" and proposed a section stating that it is unfair to use the term blister pearl unless it is a pearl which meets the definition (*i.e.*, a pearl "often hollow and irregular in form").

There is no evidence that blister pearls are more valuable than other pearls or that the term "blister pearl" is being used to deceive consumers. Moreover, misrepresentations of the word "pearl" are adequately covered in the Guides. The Commission therefore is not including the definitions relating to blister pearls in the Guides.

Seed pearl: Section 23.16(b) of the Guides states that it is unfair to use the term "seed pearl" or any similar term to describe any cultured or imitation pearl. The JVC proposed defining seed pearl as: "A small, natural pearl which measures approximately two millimeters or less." In a related portion of its petition, the JVC proposed a section that states that it is unfair to describe a cultured or simulated pearl as a seed pearl without using a qualifying term such as "cultured," "simulated," "artificial," or "imitation."

The proposed definition and related section would indicate it is not deceptive to describe cultured and artificial pearls as seed pearls, if qualified appropriately, whereas the current Guides appear to inhibit this. The Commission has concluded that this is a useful change because it allows products that consumers might wish to purchase (i.e., cultured or artificial seed pearls) to be accurately described.

ii. Definitions suggested by other commenters. Keshi pearls: A & Z Pearls, CPAA, and AGTA proposed that a definition of "Keshi" pearls be added to the Guides.[251] A & Z Pearls and CPAA also proposed adding two more definitions relating to "Keshi" pearls (Keshi pearl, Sweet Water or Freshwater Keshi pearl, and South Sea Keshi pearl.) CPAA stated the word "Keshi" has been used in recent years "as a product name for seed pearls derived by accident as a by-product of the pearl cultivation process." CPAA proposed adding the term to the Guides "to further define what is and what is not a cultured pearl."[252] A & Z Pearls stated, "There is a lot of debate in the trade as to whether "Keshi" pearls should be considered natural pearls. Like natural pearls, they grow accidentally, but they form in mollusks that are cultivated by man."[253]

The Commission believes that the JVC proposal—*i.e.*, allowing the term "cultured seed pearl" to be used to describe very small pearls that grow in mollusks cultivated by man—is an appropriate solution to this issue. However, there is no reason that the term "Keshi" could not also be used to refer to these pearls as long as it is not used to deceive consumers. There is no evidence that the term "Keshi" is being used to deceive consumers, and thus, the Commission has not included the term in the Guides at this time.

Organic pearl: Majorica suggested adding a definition for "organic pearl."[254] This definition would permit Majorica pearls to be called "organic" rather than "imitation." An article attached to Majorica's comment noted that "to the untrained eye, Majorica imitation pearls look very much like

---

[238] Comment 255, p.8.

[239] Comment 226, p.8.

[240] Ross-Simons (67) stated, at p.1, that for catalog advertisers "a tolerance of just .01 ct on a piece of jewelry with multiple diamonds is too restrictive . . . [because] we show a piece of diamond jewelry in our catalog and order backup items after the catalog is mailed." Ross-Simons further stated that for pieces containing several carats of diamonds, with multiple stones, a .01 ct. deviation is unrealistic, and would require it to either "understate the weight to be safe or overcharge the consumer." Comment 67, p.1.

[241] GIA booklet, p.19, attached as Exh. B to NACSM (219).

[242] Some mass retailers stated that they already provide the weight ranges in their catalogs and/or at the point of purchase. Best (225) p.5 and Service (222) p.3.

[243] Limon (235) p.4.

[244] Comment 238, p.2.

[245] A&Z Pearls (29) p.1 (suggesting that the JVC's definition of "cultured pearl" be revised to include a better definition of the word "nacre" because it would "eliminate misinterpretations of the term therefore clearing any misconceptions of 'nacre' being formed by a human agency"); AGTA (49) p.15 (suggesting editing the JVC's proposed definition of "pearl"); CPAA (193) p.3 (suggesting editing the JVC's proposed definition of "pearl" and "imitation pearl").

[246] Comment 238, p.1; NACSM (219) p.27 (stating that the definitions "seem unnecessary").

[247] Finlay implied that retailers may be describing fresh water cultured pearls as simply "fresh water pearls" and objected to requiring advertisers to use "cultured" for fresh water pearls, stating, "consumers have come to associate the term 'cultured pearls' with round pearls and that to use the term 'cultured' in conjunction with irregularly shapen [*sic*] fresh water pearls would create confusion." Comment 253, p.2.

[248] Rapaport Diamond Report, July 17, 1992, p.24, attached to Comment 233 (noting that the South Sea pearls are the product of a different oyster than Japanese pearls).

[249] Comment 193, pp.13–14.

[250] The CPAA suggested revising the JVC's proposed definition of South Sea pearl: "The word 'Burma' should be replaced with the words 'Southeast Asia.' Not only is Burma now officially called Myanmar, but there are other countries such as Malaysia, Indonesia, and Thailand in that region which are producing similar pearls." Comment 193, p.4. The Commission has made this change.

[251] AGTA (49) pp.15–16 (defining "Keshi pearls" as: "Pearls that grow accidentally in the soft tissue or the adductor muscle of cultured pearl-bearing mollusks. These tiny non-nucleated pearls are by-products of cultured pearls. The term 'Keshi' also refers to the bigger pearls without nuclei that are spontaneously formed in mollusks which bear South Sea cultured pearls and freshwater cultured pearls").

[252] Comment 193, p.8 (defining "Keshi pearl" as: "A non-nucleated pearl, usually less than 2 millimeters in size, that may be formed by an oyster in addition to the cultured product during the process of cultivation").

[253] Comment 29, p.2 (defining "Keshi pearl" as: "A formation of some nucleated baroque shape pearls that grow 'accidentally.' The invasion of a foreign body (such as a nucleus shell or mantle tissue) stimulates the mollusk and induces abnormal production of nacre that forms to create 'keshi' pearls").

[254] Comment 240, p.6 ("A pearl produced by means of manufacture characterized by a formation of layers obtained from guanine crystals, an organic substance from the scales of ocean fish around a nucleus.").

saltwater cultured pearls."[255] The article, authored by employees of the Gemological Institute of America, also implies that some other brands of imitation pearls, like Majorica pearls, are made from guanine crystals, although there may be other differences in the manufacturing process that make Majorica imitation pearls superior to most other imitation pearls.[256]

Majorica states that the current system of classification (*i.e.*, pearl, cultured, and imitation) "has narrowed the market for MAJORICA pearls as a real alternative to so-called cultured pearls" and "gives an unfair advantage to the cultured pearl industry."[257] One commenter noted that most cultured pearls today have only a small percentage of nacre (the iridescent coating), unlike pearls from 40–50 years ago. Thus, cultured pearls today may not look very different from imitation pearls.[258]

Majorica's suggestion, however, involves renaming items that the public has for many years known as imitation pearls. This seems likely to provide more rather than less opportunity for deceiving consumers. NACAA noted, for example, that "consumers may be particularly confused by the many varieties of natural, cultured, and imitation pearls."[259] Moreover, two commenters noted that consumers currently confuse Majorica pearls with real or cultured pearls.[260] Accordingly, the Commission is not including a definition of "organic pearls" in the Guides.[261]

2. Misuse of the Word "Pearl"

Section 23.15 of the current Guides deals with misuse of the word pearl. Section 23.15 (a) states that it is unfair to use the unqualified word "pearl" to describe anything other than a natural pearl, and § 23.15(b) states that it is unfair to use the word "pearl" to describe a cultured pearl unless it is qualified by the word "cultured" or "cultivated," or a word of similar import, to indicate that the product is not a pearl. The JVC did not propose any changes in these two sections.

Section 23.15(c) states that it is unfair to use the word "pearl" to describe an imitation pearl unless it is immediately preceded, with equal conspicuity, by the word "imitation" or "simulated," or by some other similar word or phrase. The JVC proposed adding the word "artificial" to this section. NACAA stated that the Guides should "require artificial pearls to be clearly labeled using one standard term." It preferred the terms "imitation" or "artificial," instead of "simulated," because "consumers are more likely to understand what those words mean."[262] The word "artificial" clearly indicates that a product is not a natural pearl. Thus, the Commission is including this term in the Guides as another example of a term (along with simulated) that can be used to describe imitation pearls.

CPAA suggested that the Guides include a section that states that it is unfair "to use the terms 'faux pearl,' 'fashion pearl,' 'Mother of Pearl' or any other proper name or noun term alone when describing or qualifying an imitation pearl product without including the words 'imitation', 'simulated' or any other term of similar connotation within the same product description and with equal conspicuousness." CPAA stated that the use of these terms "has been the number one marketing and advertising tool in the sale of imitation pearl products across the U.S." CPAA explained that "many customers can not tell the difference between the products by sight alone," and that "[w]ithout proper product designations such as natural, cultured and imitation, customers are often misled as to the true nature of the product that they are buying."[263] With respect to "faux" generally, NACAA stated that "we do not believe that most consumers know what it means" and the Postal Service stated that "the term 'faux' has been used to confuse unsophisticated consumers and enhance the apparent value of their costume jewelry."[264]

As noted, the Guides currently state that it is unfair to describe an imitation pearl as a pearl without a qualifier such as "imitation." Although the Guides permit sellers to use terms other than imitation as long as they "indicate definitely and clearly that the product is not a pearl," based on information from CPAA, the Postal Service, and NACAA, it appears that the terms faux pearl, fashion pearl, and Mother of Pearl are inadequate to convey to a substantial group of unsophisticated consumers that the items are imitation pearls. Accordingly, the Commission has revised the Guides to state that it is unfair or deceptive "to use the terms 'faux pearl,' 'fashion pearl,' 'Mother of Pearl,' or any other such term to describe or qualify an imitation pearl product unless it is immediately preceded, with equal conspicuousness, by the word 'artificial,' 'imitation,' or 'simulated,' or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is not a pearl."[265]

The JVC also proposed adding a new subsection (d) which states that it is unfair to use the word 'pearl' with an asterisk which references to a footnote explaining that the product is an imitation or cultured pearl. This proposal is similar to a Note currently in section 23.15 of the Guides. However, section 23.15(c) states that the word "pearl" should be "immediately preceded" by a qualifying word such as "imitation" or "cultured," if the item is not a natural pearl. The Commission believes that this language advises sellers about how to avoid a deceptive use of the term "pearl." The current Note is superfluous and the Commission has deleted it.

3. Misuse of Other Terms

a. *Proposed changes to existing subsections.* Section 23.16 of the current Guides consists of six subsections describing several terms that can only be used to describe specific types of pearls. The JVC did not suggest any changes in these sections.[266]

The only comment on these sections referred to § 23.16(e), which states that it is unfair to use the word "natura" or any similar word to describe a cultured or imitation pearl. CPAA suggested the words "natural," "nature's," and "organic" be "added to the list of words that cannot be used to describe an imitation pearl product."[267] CPAA explained that these words have been used to describe imitation pearls, and argued that they "only serve to confuse the consumer and retail buyer as to the proper origin and intrinsic value of an imitation product."[268]

[255] "Majorica Imitation Pearls," Gems and Gemology 185 (Fall 1990), attached to Comment 240.

[256] The article notes that "pearl essence" (*i.e.*, guanine crystals) was discovered in the late 17th century. *Id.* at 181. It states that "the process used to produce most other imitation pearls involves dipping or painting the beads with a resin; thus, these imitations lack the iridescence of the Majorica product and its cultured counterpart." *Id.*

[257] Comment 240, p.5.

[258] Russell (217) pp.1, 2, and 4.

[259] Comment 90, p.3.

[260] Lange (183) and CPAA (193) p.14.

[261] *See* below for a discussion of other proposals regarding the term "organic."

[262] Comment 90, p.3.

[263] Comment 193, p.9.

[264] Comment 90, p.3 and comment 244, p.3.

[265] The comments discussing the use of the word "faux" are discussed in more detail *infra*.

[266] The JVC did suggest that subsection (b), which relates to the term "seed pearl," be modified to allow the use of the term "cultured seed pearl" or the terms "simulated," "artificial," or "imitation seed pearl." As noted above, the Commission has concluded that this change is useful and has included it in the revised Guides.

[267] Comment 193, p.6.

[268] *Id.*

On the other hand, Majorica requested that the Guides be revised to add a section stating that pearls made from guanine crystals can be described as "organic" pearls. It stated that elimination of the word "organic" would eliminate "the only real competition which cultured pearls have in this country."[269] However, for the reasons stated above, the Commission has concluded that describing pearls made from guanine crystals as "organic" pearls is likely to mislead consumers. Nevertheless, there is a difference between the words "natural" and "nature's"—neither of which can inherently be used in a nondeceptive manner with respect to imitation pearls—and the word "organic." The Commission believes that the word "organic" could be used, with adequate qualification, to describe Majorica pearls in a truthful manner. For example, in its ads, Majorica describes its pearls as "organic man-made pearls" that consist of a translucent nucleus "coated with layers of pearlized essence, an organic material extracted from marine species."[270] Thus, the Commission has revised § 23.16(e) of the current Guides to indicate that it is unfair or deceptive to use the term "natural" and "nature's" to refer to an imitation pearl. The Commission also has added a sentence to this section stating that it is unfair or deceptive to use the term "organic" to refer to an imitation pearl unless the term is qualified in such a way as to make clear that the product is not a natural pearl.

The JVC suggested adding the word "cultura" to § 23.16(f) of the current Guides, which states that it is unfair to use the word "kultured" or any similar word to describe an imitation pearl. However, the section as currently written prohibits the use of "any other word, term, or phrase of like meaning * * *." The word "cultura" is very similar to "kultured." Thus, § 23.16(f) already provides adequate guidance on how to avoid deceptive representations. However, CPAA stated that terms such as "semi-cultured pearl," "cultured-like," "part-cultured," and "pre-mature cultured pearl," have been used to describe imitation pearls, and argued that they "only serve to confuse the consumer and retail buyer as to the proper origin of an imitation product."[271] The Commission has determined that these terms are deceptive when applied to imitation products and has included them in § 23.16(f) of the current Guides.

b. *Additional proposed provisions relating to cultured pearls.* The JVC proposed the addition of six new subsections relating to the failure to describe a cultured pearl as a cultured pearl. These proposed subsections relate to fresh water cultured pearls, Biwa cultured pearls, South Sea cultured pearls, black cultured pearls, and Mabe cultured pearls.

All of these have been discussed previously, in connection with the section on definitions, except Biwa pearls (which were not included in the definition section proposed by the JVC.) As noted, the Commission has concluded that § 23.15(b) of the current Guides, which states that it is unfair to use the word "pearl" to describe a cultured pearl unless the word "pearl" is "immediately preceded, with equal conspicuity," by the word "cultured" or a word of similar import, is sufficient to admonish sellers that they should adequately disclose that a cultured pearl—of whatever type—is cultured. Thus, the Commission has not included any of these proposed subsections except the ones dealing with South Sea pearls (discussed *supra*) and Biwa pearls.

The subsection proposed by the JVC for Biwa pearls states that it is unfair to use the term "Biwa pearl" without the qualifying term "cultured." The Commission has concluded that this portion of the proposed subsection is unnecessary. However, the proposed subsection also provides that "the term 'Biwa cultured pearl' must only be used when describing those formations which have the distinctive appearance of a fresh water cultured pearl taken from the fresh water mollusks inhabiting Lake Biwa within the island of Honshu, Japan."

CPAA commented that the term should be limited to "those formations which are grown in fresh water mollusks in the lakes and rivers of Japan." CPAA stated that the words "distinctive appearance" might allow imitation pearls and pearls from other countries to use the regional description. CPAA explained that "Biwa" represents all Japanese freshwater pearls because "first, many people currently refer to all Japanese origin freshwater cultured pearls as 'Biwa" and second, because freshwater pearl production in Japan is nearing extinction "Biwa pearls" are appreciating in value."[272] CPAA stated that many U.S. importers use the term "Biwa pearl" "to describe freshwater pearls that have a similar appearance to Biwa pearls but come from other countries such as China" and artificially inflate the prices of them, which "cost as little as 30 times less than the Biwas."[273]

Because of the evidence of deceptive use of this term, the Commission has included a provision in the Guides stating that the term "Biwa" should only be applied to pearls "which are grown in fresh water mollusks in the lakes and rivers of Japan."

c. *Other proposed provisions.* The JVC proposed that eight other subsections be added to the section dealing with misuse of specific terms (in addition to the proposed subsections described above.) The first such proposed subsection is general: "It is an unfair trade practice to use the term 'pearl,' 'oriental pearl,' 'cultured pearl,' 'cultivated pearl' * * * to describe * * * any such pearl product whose outer surface does not consist wholly of naturally occurring concentric layers of nacre secreted by that mollusk." This section duplicates other subparts of § 23.16 of the current Guides, and therefore, the Commission has not included it in the Guides.

Another JVC proposal prohibits the use of the term "non-nucleated pearl," because "cultured pearls of this type are formed by the introduction of mantle tissue within the body of the mollusk" and thus are nucleated. However, both the CPAA and AGTA used the expression "non-nucleated pearl" in their comments in referring to Keshi pearls.[274] Moreover, whether or not the term "non-nucleated" is correct, no evidence has been offered to show that it is being used to deceive consumers as to a material fact. Thus, the Commission has not included this section.

Two of the additional proposed sections relate solely to imitation pearls. One states that it is unfair "to use the term 'man-made' or 'man-created' without using the term 'simulated' or similar term, to qualify the product as in 'man-made simulated pearls.'" CPAA commented that this section should state that it is unfair to use these terms "without also using the term 'simulated,' 'imitation' or any other term that has the same connotation and meaning when qualifying or describing an imitation pearl product."[275] The only other comment relating to this provision was from Majorica, which requested the FTC "to *withhold* any further restrictions on the words 'organic,'

[269] Comment 240, pp.6 and 11. The section requested by Majorica would limit the use of "organic" to any pearl other than an imitation pearl made from guanine crystals. *Id.* at 7.

[270] Attachment to comment 49.

[271] Comment 193, p.6.

[272] Comment 193, p.7.

[273] Comment 193, p.7.

[274] Comment 193, p.8; comment 49, p.15.

[275] Comment 193, p.6.

'man-made,' 'synthetic,' and 'created' while considering the creation of a new category of pearl to which the word 'organic' could properly and accurately be applied."[276] CPAA may be arguing that the phrase "man-made" could be understood to mean cultured pearls, since such pearls are "started" by man. However, there is no evidence that consumers are interpreting the phrase "man-made" or similar phrases in this manner, and without such evidence, the Commission has decided not to include the section, as proposed by CPAA, in the revised Guides.

Four of the remaining five proposed subsections relate to the misuse of certain words, which are described in §§ 23.20 and 23.21 of the current Guides. Section 23.20 of the current Guides provides that it is unfair to use the words "real," "genuine," "natural," or "similar terms as descriptive of any article or articles which are manufactured or produced synthetically or artificially, or artificially cultured or cultivated * * *." Although this section deals primarily with precious and semi-precious stones, it also applies to cultured or imitation pearls.

The subsection proposed by the JVC states that it is unfair to use these words or the word "precious" or similar terms to describe imitation or cultured pearls.

The Commission has reorganized the Guides so that this statement appears in the pearl section, making it more likely that industry members searching for guidance as to pearl advertising will see it. As noted above, the Commission already has included the term "natural" in the subsection dealing with the term "natura," § 23.20(e) of the revised Guides. Thus, the Commission has added a new subsection, 23.20(i), that states that it is unfair or deceptive to use the terms "real," "genuine," or "precious" as descriptive of an imitation pearl.[277]

This subsection does not state that the terms "real" or "genuine" are unfair or deceptive if used to describe cultured pearls. The Commission has determined that it is possible to truthfully describe "real" or "genuine" cultured pearls without implying that they are not cultured. In addition, there may be instances when cultured pearls could be truthfully described as "precious." Therefore, § 23.20(i) is limited to imitation pearls.

[276] Comment 240, p.6 (emphasis added).

[277] Although there was no comment on the inclusion of "precious" in this subsection, the Commission has determined that it is deceptive as applied to imitation pearls because "precious" in the jewelry industry implies rarity. Although imitation pearls can be of high quality, they are not likely to be rare.

Section 23.21(a) in the current Guides states that it is unfair to use the term "gem" or a similar term to describe "a pearl, cultured pearl, diamond, ruby, * * * which does not possess the beauty, symmetry, rarity, and value necessary for qualification as a gem." The JVC proposed a section recommending that the word "gem" not be used as a quality designation or description of natural pearls, "since there is no existing criteria for these terms, and their use to describe, imply, or represent quality could be misleading."

AGTA commented that this provision should only apply to sales to a consumer, stating, "The term 'gem' is traditionally used within the trade to describe particularly fine qualities of any given gemstone species, including pearls. To prohibit its use within the trade is restrictive of traditional practice and is unnecessary as it is clearly understood."[278] There is no evidence that consumers would be deceived by this term as applied to pearls that "possess the beauty, symmetry, rarity, and value necessary for qualification as a gem." Therefore, the Commission has retained current § 23.21(a) and has moved the portion relating to pearls to the pearls section of the Guides (revised § 23.20(j)). The Commission has included a Note after this section (which currently follows § 23.21(b) in the current Guides) which states that the use of "gem" with respect to cultured pearls should be avoided since few cultured pearls possess the necessary qualities and that imitation pearls should not be described as 'gems.'

Section 23.21(c) of the current Guides states that it is unfair to use the words "reproduction," "replica," or similar terms to describe a cultured or imitation pearl (or imitation precious or semi-precious stones.) The JVC proposed including this statement, as it pertains to pearls, in the pearls section. However, if the nature of the material used in a reproduction or replica is adequately disclosed, as advised by other sections of the Guides, it is not clear that the use of these terms would be deceptive or unfair. Thus, the Commission has not added this section to the Guides.[279]

Section 23.21(d) of the current Guides states that the use of the term "synthetic" to describe cultured or imitation pearls is unfair. The term may be used for precious and semi-precious synthetic stones if they have "essentially the same optical, physical, and chemical properties as the stone named." The JVC proposed moving the portion of § 23.21(d) that pertains to pearls to the pearls section and adding that it is unfair to use the word "created" to describe cultured or imitation pearls. AGTA and CPAA both supported the proposal, and Majorica opposed it.[280] No evidence was offered to explain why the use of the term "created" is unfair or deceptive as applied to cultured or imitation pearls. The Commission therefore has not included the proposed section regarding the term "created" in the Guides.

However, the term "synthetic" has been used with respect to gemstones to refer to a man-made substance that has all the physical, chemical and optical properties of the natural stone. Since cultured pearls do not have the same physical and optical properties as natural pearls, the use of this term may be deceptive. Furthermore, the use of the term "synthetic" to describe an imitation pearl might convince some consumers that the pearls were cultured rather than imitation. Thus, the Commission has included a new subsection, 23.20(k), which states that it is unfair or deceptive to use the word "synthetic" to describe cultured or imitation pearls.

Finally, the JVC proposed a subsection stating that it is unfair to use the term "semi-precious" to describe any pearl, cultured pearl, "or man-made industry product." No evidence was offered to show that this use of "semi-precious" would be unfair or deceptive, and there was no comment on this proposal. In the absence of such evidence, the Commission has decided not to add this provision to the Guides at this time.

d. *Additional provisions proposed by commenters.* CPAA proposed that several additional subsections be added to the section pertaining to "Misuse of terms." First, CPAA suggested a subsection stating that it is unfair to use the term "orient" to describe the properties of an imitation pearl.[281] CPAA stated that "the term 'orient' was first used in a gemological sense by the Gemological Institute of America in

[278] Comment 49, p.16 (noting that there is not a similar prohibition of the use of the term 'gem' in the section on diamonds).

[279] The Commission has deleted § 23.21(c) of the Guides, as discussed below, in the section pertaining to gemstones.

[280] AGTA (49) p.16; CPAA (193) p.7 (suggesting that the provision be modified to apply to "cultured, simulated, or imitation pearls" rather than to "cultured or imitation pearls"); Majorica (240) p.6 (requesting no "further restrictions" be placed on the use of "created" or "synthetic").

[281] Comment 193, p.8 ("Orient is gemologically defined as a subdued iridescence, occurring when white light is divided into its separate and distinct spectral colors as it passes through and is refracted back from the nacre secreted by mollusks whether surrounding a nucleus or not.").

order to explain and clarify quality points of natural and cultured pearls * * * many retailers and gemologists alike hold their [GIA] definitions to be the authoritative standard within the industry."[282] However, an article from the GIA quarterly journal *Gems & Gemology* was attached to Majorica's comment; the authors are all employees of GIA. The article states, "An iridescence resembling the orient seen on some cultured pearls may also be observed on Majoricas [an imitation pearl]." Thus, it appears that at least some imitation pearls can possess "orient." Therefore, the Commission has not included this provision in the revised Guides.

CPAA also proposed a new provision, stating that it is unfair to use the terms "Japanese Pearls," "Mallorca Pearls," "Chinese Pearls," or any other regional designation to describe cultured or imitation pearls without including the words "cultured, imitation or simulated."[283] CPAA explained that imitation pearl companies recently have used regional terms to describe their products, and that this misleads consumers about the true nature of the product.[284]

Majorica made a similar suggestion, stating that there is continued abuse of terms such as "Mallorca Pearl," "Majorca Pearl," and "Mayorca Pearl" and that they "have numerous examples of customers and distributors who have been deceived into purchasing pearls under the label of 'Majorca' or 'Mallorca' pearls believing them to have special qualities related to the Island of Majorca or, for that matter, that they are MAJORICA pearls."[285]

The Commission has concluded that there is some evidence that regional descriptions are being used to mislead consumers. The Commission therefore has included a provision in the revised Guides that states that the regional description of a pearl should be accompanied by a description of whether the item is a cultured or imitation pearl.

4. Misrepresentation as to Cultured Pearls

The JVC recommended no substantive changes in § 23.17 of the current Guides. As noted above, this section describes unfair practices involving false, misleading, or deceptive statements about cultured pearls, including the manner in which they are produced and the thickness of the nacre coating.

One commenter, Kenneth Russell, recommended that the Commission establish grades for cultured pearls based on the thickness of the nacre deposited by the mollusk, following the introduction by man of a mother-of-pearl bead. He noted that the thickness of the nacre "mainly determines their wearable value" and that this "indexing" information should accompany this product "just as karatage serves to rank gold jewelry."[286] He stated that most cultured pearls consist of 90 to 95% nucleus and very little nacre.[287]

The article attached to the Majorica comment stated that the thickness of the nacre in a cultured pearl "will vary depending on the amount of time the nucleated mollusk was allowed to grow before harvest."[288] The article attached to the Rapaport comment quoted a pearl industry source as saying that some of the lowest-quality Chinese pearls should not be on the market because "the nacre peels off the nucleus within a year."[289] The article notes that pearl grading is "a non-standardized process that gives dealers a lot of room for opinion." It also notes that GIA has a grading system which "uses numerical grades to show differences in appearance, durability and value of pearl strands" and that some companies use their own methods.[290]

The literature indicates that the nacre on some cultured pearls might be so thin that they do not meet the expectations consumers have when an item is described as a cultured pearl. Section 23.17 in the current Guides admonishes against misrepresentations about the thickness of the nacre on cultured pearls or the quality of pearls. However, it is not unfair or deceptive to fail to grade cultured pearls that contain a coating of nacre that is thick enough to meet minimal consumer expectations.

F. Precious and Semi-precious Stones (Category V): §§ 23.18–23.21

Guides in this part apply primarily to colored gemstones, precious (rubies, sapphires, emeralds) and semi-precious (amethyst, topaz, etc.) stones. The Guides refer to three types of gemstones: natural (i.e., mined from the ground); synthetic stones, which are laboratory-created and which § 23.21(d) describes as having "essentially the same optical, physical, and chemical properties" as natural stones; and imitation stones, which resemble natural stones but do not have the same properties.

1. Deception Generally: § 23.18

Section 23.18 states that any material misrepresentation with respect to precious or semi-precious gemstones is unfair. The JVC proposal omitted this section. Section 23.18 merely repeats the general admonition in § 23.1 against material misrepresentations of any industry product. Thus, the Commission has deleted this provision from the revised Guides.

a. Disclosure of Treatment

A Note following § 23.18 states that any artificial coloring or tinting of a diamond or precious or semi-precious stone by "coating, irradiating, or heating, or by use of nuclear bombardment, or by any other means" should be disclosed and the fact that the coloring is not permanent, if such is the fact. The JVC proposed, in section 23.20(c) of its petition, a section in lieu of the Note which requires the disclosure of any enhancement "by coating, application of colorless or colored oil, irradiation, surface diffusion, dyeing, heating or by use of nuclear bombardment, or by any other means."[291] This proposal would expand the recommended disclosure about enhancements relating to color to all enhancements (e.g., those related to concealing cracks). In addition, it explicitly covers enhancement by applications of colored or colorless oil, surface diffusion, or dyeing.[292]

[282] Comment 193, p.9.

[283] *Id.*

[284] CPAA (193) p.9 (explaining, for example, that the "use of the term 'Misaki Japanese Pearls' in several cases has led consumers to believe that they were purchasing Japanese cultured pearls instead of imitation pearl products").

[285] Comment 240, pp.8–10. Unlike the CPAA proposal, Majorica proposed to prohibit the use of the term "Mallorca" or any similar expression connoting the name of the Island of Mallorca, Spain in combination with the word pearl. (The CPAA proposal would allow an imitation pearl to be described as a "Mallorca imitation pearl.") Majorica stated that it has sued distributors of pearls and has obtained relief which requires such distributors to "to reduce the emphasis on [Mallorca] in their advertising and distribution." Majorica asserts that it is unfair to require it to go to the expense of litigation every time such an abuse occurs. *Id.* However, Majorica's specific complaint regarding the "passing off" of one manufacturer's product for another is already adequately addressed by caselaw under Section 5.

[286] Comment 217, p.1 (suggesting that cultured pearls with a ¼ to ½ mm. coating of nacre should be marked "Service Grade" and those with more than ½ mm. marked "Heirloom Grade").

[287] Id. at p.2.

[288] "Majorica Imitation Pearls," Gems and Gemology 187 (Fall 1990), attached to Comment 240.

[289] "Rapaport Diamond Report" 26 (July 17, 1992) attached to Comment 233.

[290] Id.

[291] Nassau (10) suggested, at p.1, three modifications to the JVC proposal: the addition of the word "impregnation" after the word "coating"; the addition of the words "wax, plastic, or glass" after "colored oil"; and the removal of the word "surface" (*i.e.*, in "surface diffusion").

[292] Although most of these techniques enhance color, application of colorless oil could arguably be used simply to cover inclusions. The current

Continued

Numerous commenters noted that almost every natural gemstone is subject to some form of enhancement.[293] AGS stated that many new enhancement techniques have been developed since the Guides were issued and that "[c]oating processes are developed daily."[294] NACSM stated that up to 95% of colored gemstones are dipped in oil and that this treatment is "taken for granted by retailers and consumers alike."[295] It questioned the value of disclosures under these circumstances and contended they would clutter written advertisements and increase prices.[296] However, NACAA commented that its members receive complaints about failure to disclose stone enhancement.[297] Although the Guides currently recommend disclosure of color enhancement, some comments indicated that there is little such disclosure in the marketplace.[298] However, some industry associations strongly encourage their members to disclose treatments.[299]

The Commission is persuaded by the comments that many consumers do not have detailed knowledge about the nature and types of treatments used to enhance gemstones. However, consumers would expect their gemstone purchases to retain their appearance over time regardless of any treatments and to not require special care to retain their appearance. On the basis of the comments and for the reasons discussed below, the Commission has concluded that non-permanent treatments of various types (not just those that affect color), or any treatments that create special care requirements should be disclosed. There is no logical reason to limit disclosure to treatments that affect color. Further, consumers should be informed when the treatment is not permanent.[300]

Some comments argued that any treatment, even if it is permanent, may reduce the value of a stone and a failure to reveal treatment amounts to a representation that a stone is more valuable than it is. One commenter noted that treatments should be disclosed "since the stone gives the appearance to the consumer that it is a higher grade than what it actually is."[301] AGTA also stated that "the difficulty in detecting treatments presents opportunities for misrepresentation of the value" and that "the potential for overcharging consumers if the enhancements are not disclosed at every level of the trade is very real."[302] AGTA attached a May 1993 notice it issued to its members in which it referred to the fact that a number of knowledgeable wholesalers purchased diffusion-treated sapphires without knowing that they were treated.[303]

On the other hand, Service argued that failure to reveal treatment is not deceptive if the treatment is permanent, stating, "[i]t is unreasonable to require a retailer to disclose what has happened to a stone in the manufacturing process if the change is permanent." Service agreed that if the change is not permanent, the customer "wants to know if the color or quality may degrade over time and what the customer must do, if anything, to maintain the stone's quality and color. Requiring this information to be provided is acceptable."[304]

The Commission has concluded that it is not unfair or deceptive to fail to disclose a treatment that is permanent or that does not create special care requirements. As the Commission stated in *International Harvester*, 104 F.T.C. at 948, it may be deceptive for a seller "to simply remain silent, if he does so under circumstances that constitute an implied but false representation." These implied representations "may arise from the physical appearance of the product, or from the circumstances of a specific transaction, or they may be based on ordinary consumer expectations as to the irreducible minimum performance standards of a particular class of goods." *Id.* The Commission explained, however, that "[i]ndividual consumers may have erroneous preconceptions about issues as diverse as the entire range of human error, and it would be both impractical and very costly to require corrective information on all such points." *Id.* at 949.[305] Thus, if an express or implied representation is made (in advertising or at the point of sale) that might imply rarity and therefore lack of treatment—*e.g.*, that the gemstones are of an exceptionally high quality—then the failure to reveal any treatment may be deceptive. However, if no such representation is made, consumers simply might not give any thought to whether the gemstones were treated, beyond assuming that all gemstones undergo some processing to achieve their finished state. Therefore, it is neither unfair nor deceptive to fail to reveal treatments that are permanent, and that do not create special care requirements.[306]

Guides recommend disclosure of techniques which artificially color gemstones, and the fact that the techniques are not explicitly mentioned may lead readers to assume that it need not be disclosed. Some comments gave this indication because they assumed that the disclosure of treatment with colorless oil was not currently advised.

[293] Lannyte (65) p.8 (also suggesting, at p.10, that the guides state that it is unfair to state that a gemstone has *not* been enhanced when it has been, a suggestion that has been incorporated into § 23.1 of the revised Guides by including "treatment" in the list of attributes that should not be misrepresented); JGL (77) p.1; Majestic (115) p.1; Suberi (214) p.2; Bruce (218) p.12; NACSM (219) p.13; Impex (220) p.1; Best (225) pp.8–9.

[294] Comment 18, p.2; AGTA (49) p.5 (noting several technologies (e.g., diffusion-treated sapphires, irradiated topaz) that "did not even exist on a commercial scale ten years ago"); GIA (81) p.2; Eisen (91) p.1; ArtCarved (155) p.1; LaPrad (181) p.1; IJA (192) p.1.

[295] Comment 219, p.13 and letter to Secretary, p.1. *See also* "Epoxy-Like Resins," Jewelers' Circular-Keystone 176 (June 1994) (stating that "[t]he majority of emeralds sold today are epoxy resin impregnated" and noted that oil and epoxy resin are both designed to "soften or hide the effect of cracks and fissures").

[296] *Id.*

[297] Comment 90, p.1.

[298] Lannyte (65) p.7; Impex (220) stated that the JVC proposal would "defy standard industry practices."

[299] *See* discussion *infra* of the 1990 Gemstone Enhancement Manual (attached to comment 49).

[300] By letter dated February 7, 1989, the JVC informed staff that it wished to revise its petition to "include disclosure in the colored gemstone provision the permanency and/or non-permanency of enhancement."

[301] Bales (156) p. 10.

[302] Comment 49, p. 5 (stating that it sees examples of overcharging too frequently and listing as "most notable examples," *i.e.*, diffusion-treated sapphire, Yehuda-treated and laser-drilled diamonds, and irradiated topaz, sapphire, and diamond); Chatham (231) p. 24 (stating that consumers are deceived by treated natural stones that are passed off as more valuable than they actually are).

[303] AGTA recommended that diffusion-treated and irradiated gemstones always be described as "chemically colored by diffusion," and, if the color does not permeate the entire gem, that fact should be revealed with a warning that re-cutting or re-polishing is not recommended. Comment 49, p. 16. However, River (254) stated, at pp. 2–3, that many people find diffusion treated sapphire a better value, and that the problem of re-cutting is "blown out of proportion" since very few stones are re-cut or re-polished at a customer's request, and in the rare instance when a stone is broken, it is replaced. For these latter reasons, the Commission has not included the language suggested by AGTA (*i.e.*, a warning about re-cutting or re-polishing) in the Guides. Further, it is not practical for the Guides to address every conceivable issue that may arise in a jewelry transaction.

[304] Comment 222, p.5.

[305] Numerous comments noted that disclosure of treatment of all gemstones would be expensive for retailers. Service (222) p.5 (stating this is difficult because the stone probably changed hands a few times before being purchased by the retailer); Best (225) p.9 (stating that the retailer may not know of the enhancement); Finlay (253) p.2 (stating that it would be an "overwhelming task" for the retailer to obtain information about enhancement from the manufacturers). Others commented (without further explanation) that disclosure would "complicate" sorting, advertising, and selling. Philnor (93) p.1; PanAmerican (101) p.1; Fame (102) p.1; Orion (113) p.1; Precision (121) p.1.

[306] The Commission does not believe that it would be unfair to fail to disclose the treatments because, even assuming there might be some consumer injury associated with such failure, the injury would be outweighed by the benefits to competition, *see supra* note 305, associated with not requiring the disclosure. *See International Harvester*, 104 F.T.C. at 949.

Nevertheless, most treatments of gemstones are not permanent, and most treatments create special care requirements. AGTA attached to its comment a copy of the 1990 *Gemstone Enhancement Manual*, which states, at p.3, that it was "developed by a coalition of jewelry industry leaders representing the various trade organizations, gemological scientists, and the trade press." This Manual gives examples of treatments that are not permanent, or that create special care requirements.[307] What appears to be the most common treatment—oiling—is definitely not permanent.[308] Although a new treatment with epoxy resin "leads to a longer lasting improvement in appearance which is not possible with volatile compounds like oils and paraffin used traditionally," experts have suggested that a number of problems may occur even with this treatment and that disclosure is necessary because otherwise a seller "could easily ask a price commensurate with a stone's appearance."[309]

Further, as noted above, most consumers probably do not have detailed knowledge about the nature and type of treatments that are used to enhance gemstones. Therefore, if consumers are unaware of the non-permanency of a treatment or the special care requirements associated with a treatment, the gemstone may not meet their expectations if the color fades or inclusions appear, etc. Accordingly, the Commission has included a section in the revised Guides that states that non-permanent treatments and treatments that create special care requirements should be disclosed. This section explicitly states that certain treatments, such as application of colored or colorless oil or epoxy-like resins, surface diffusion, or dyeing, should be disclosed because they usually are either not permanent or create special care requirements. This recognizes that whether a treatment is permanent or invokes special care requirements may be dependent on factors such as the type of gemstone that is treated.

Several commenters noted that the current Guides do not specify whether disclosure of treatment should appear in advertising (as opposed to at the point of sale). Several retailers commented that disclosure of enhancement in advertising would be burdensome and would have a disparate impact on large chains, which do advertise, as opposed to small jewelry stores, which generally do not advertise. NRF suggested that whatever enhancement disclosures are required should be limited to the point of sale.[310] Because the potential deception arises due to the appearance of the product, the Commission has determined that disclosure at the point of sale is adequate to prevent the deception, except in the case of any solicitations where the product can be purchased without first viewing it (*e.g.*, mail, on-line, or telephone orders). In those cases there should be disclosure that stones have been treated in the solicitation or, in the case of televised shopping programs, on the air.

b. *Disclosure of special care requirements.* The current Guides do not recommend the disclosure of special care requirements for treated stones, and the JVC petition did not propose that special care requirements be disclosed. However, the permanency of some treatments is dependent on the care exercised by the consumer. The FRN solicited comment on whether the Guides should advise sellers to disclose to consumers in writing any special care requirements and whether the method of disclosure should be specified.

Thirty-four comments addressed this issue. Seventeen comments stated that the Guides should not require such disclosure, with several stating that it would be a costly burden for the retailer.[311] Eleven commenters favored the disclosure of special care requirements.[312] GIA and three other commenters stated that the Guides should require such disclosures if the stability of the enhancement may be affected by the care provided.[313] AGTA and CPAA both stated that they advocated responsible communication between retailers and their clients as to special care, but they deferred to the opinion of retail jewelers as to whether this should be required by the Guides.[314] AGTA suggested appending the current edition of the industry's *Gemstone Enhancement Manual* to the FTC guides to advise the industry about the current methods being used.[315]

However, none of the comments explained why failure to disclose special care requirements would be unfair or deceptive. Although failure to reveal a fact material to consumers can constitute deception by omission, the Commission has determined that it is not inherently deceptive to fail to reveal special care requirements. First, as discussed *supra*, the Commission has revised the Guides to state that sellers should disclose enhancements that result in special care requirements. Therefore, having been informed that the stone was "enhanced," a consumer acting reasonably in the circumstances could be expected to inquire about the process and its permanence, and that inquiry should result in disclosure of special care requirements. For example, Capital commented that "as long as enhancement is faithfully disclosed, special care requirements will also be disclosed," since consumers will ask for

[307] For example, the Manual states that emeralds are usually oiled with colorless oil to improve appearance; the stability of this treatment is described as "fair to good." According to the Manual, oiled emeralds should not be subjected to temperature changes, steaming, chemicals, or ultrasonic cleaning machines. Moreover, numerous other stones that are commonly treated to improve appearance (e.g., Amazonite—usually waxed; Jadite—impregnated with colorless wax; Lapis Lazuli—impregnated with colorless wax or oil; Malachite—coated with wax) should not be cleaned in ultrasonic machines, according to the Manual. Ultrasonic cleaning machines are now sold to the general public by mass retailers.

[308] An article entitled "Emeralds" in National Geographic, Vol. 178, July 1990, stated that oiling of emeralds probably lasts from a few months to a year or two "if the emerald is kept away from heat and out of the sun." *Id.* at 68. The oiling process involves submerging viels of emeralds in boiling water and then placing the vials in a pressure chamber to drive the oil even deeper into the cracks in the emeralds. This is not a process that the average consumer could repeat. The article noted, at another point, that the oil evaporates or seeps out "within a year or two" and that oiling "can puzzle and dismay emerald owners." *Id.* at p.49.

[309] "Epoxy-Like Resins," *supra*, at 177. The article quotes experts who suggest that the filler may be harder to take out if it deteriorates and changes color, that it may turn cloudy over time, or that it may cause stress and increase the chances of gem breakage. *Id.* at 178.

[310] NACSM (219) pp.9, 10, 13; Best (225) p.8; NRF (238) p.2.

[311] JMC (1); Thorpe (7); Capital (19); G&B (30); Lannyte (65); Nowlin (109); McGee (112); Bridge (163); LaPrad (181); IJA (192); Bedford (210); Matthey (213); NACSM (219); MJSA (226); Preston (229); Sheaffer (249); and Solid Gold (261). Some of these comments indicated that such disclosure should be recommended, rather than required.

[312] Honora (15); Argo (17); AGS (18) p.3 (stating that "professional jewelers routinely disclose special care requirements"); Estate (23); Jabel (47) p.2 (suggesting that the "stone manufacturer might supply a 'care and feeding' card for every type of stone he handles"); Skalet (61); NACAA (90); ArtCarved (155); Bales (156); Shire (221); and Leach (257).

[313] Comment 81, p.3; Schwartz (52) p.3 (stating that there should be disclosure since "many, if not most, of gemstone enhancements are unstable . . . ."); Bruce (218) p.12 (stating that "it is only when a stone is not permanently changed and may revert back to another color or shade that a ticket should be attached letting the consumer know of this, as well as other precautions"); Service (222) p.3 (stating that it does not oppose disclosing "the need for any particular care of a gemstone to insure its continued quality in appearance").

[314] AGTA (49) and CPAA (193).

[315] Comment 49, p.10 (stating that the Manual, unlike the Guides, is revised frequently and "if the guides attempt to address specific enhancements, the information may be obsolete before changes could be incorporated at the federal level"). *But see* River (254) p.2 (stating that the Manual uses letter codes to describe treatment, which it described as "an arcane method of communicating").

instructions and retailers will offer them to avoid future problems.[316]

Furthermore, according to the *Gemstone Enhancement Manual*, attached to the AGTA comment, special care requirements are quite common for many types of unenhanced stones. The Guides have not recommended the disclosure of special care requirements for these unenhanced stones. Because unenhanced stones have been sold for many years, the Commission presumes that over time consumers have become familiar with their characteristics and their care requirements. Similarly, consumers may expect that enhanced stones would require certain care requirements too. Therefore, the Commission believes that if the enhancement is revealed, it is not inherently unfair or deceptive to fail to reveal special care requirements. (Consumers who request, but do not receive special care requirements, presumably will choose to take their business elsewhere. Thus, sellers should have an incentive to provide such information.) However, since enhanced stones that have special care requirements are newer products in the marketplace, and consumers may not be as familiar with the requirements of these stones, the Commission has recommended that the seller disclose special care instructions to the consumer.

2. Deceptive Use of Names of Specific Stones: § 23.19

Section 23.19(a) in the current Guides states that it is unfair to use the unqualified name of a precious or semi-precious stone to describe a product which is not a natural stone. This section is not changed in the revised Guides (§ 23.23(a)).

Section 23.19(b) states that it is unfair to use the name of a precious or semi-precious stone (or the words "stone" or "birthstone") to describe a synthetic, imitation or simulated stone unless the name is immediately preceded by the word "synthetic," "imitation," or "simulated," whichever is applicable, or by some other word or phrase of like meaning, so as to disclose the fact that it is not a natural stone.[317]

Both the current Guides and the JVC petition allow the use of "synthetic" or words or phrases of like meaning to describe created stones that have the same properties as a natural stone. The purpose of this section is to prevent the deceptive impression that an item is a natural stone, and any word or words that accomplish that goal are acceptable. In *Chatham Research Laboratories*, 64 F.T.C. 1064, 1075 (1964), the Commission found that the phrase "Chatham-Created Emeralds" was not deceptive because the reasonable inference from the phrase was that "such emeralds are Chatham created and must therefore be synthetic since they are not created by nature." Chatham's comment stated that after almost 30 years of use, there is no evidence that "Chatham-created" is deceptive to consumers.[318]

AGTA commented, however, that there should be no acceptable synonyms for the word "synthetic."[319] Other comments argued that the Guides should specifically identify terms other than "synthetic" that can be used, such as "laboratory created," "created," or "cultured." AGL noted that it introduced the term "Laboratory Grown (Synthetic)" some time ago because it seemed obvious that this would "increase the ability of a retailer to explain and the capacity of consumer to understand the basic differences between glass/plastic, i.e., imitations, and those products that are laboratory grown to emulate the characteristics and properties of a natural material."[320]

Chatham and numerous other commenters also suggested that synthetic stones appropriately could be described as "cultured." Chatham, Kimberley, and Crystal argued that this term should only be used for synthetics that were created by the "hydrothermal" or "flux" method (which they use).[321]

Others argued that synthetics made by the "melt" or "flame-fusion" process also should be allowed to describe the stones as "cultured."[322]

Although some companies have used the term "cultured" to describe their products for some time,[323] no actual evidence about consumer perceptions arising from the use of a term such as "cultured ruby" was submitted. However, in *Chatham Research Laboratories*, 64 F.T.C. at 1074, the Commission found that the phrase "Chatham Cultured Emeralds" was deceptive. Further, several commenters indicated that they regarded the term "cultured emerald" as deceptive.[324] Because there currently is insufficient evidence as to consumer perceptions regarding the use of the term "cultured," the Commission has not included the term in the Guides as a "safe harbor" (*e.g.*, an example of an adequate disclosure). Furthermore, the Commission has concluded that there is not enough evidence in the record to establish "safe harbor" terms by which makers of flux-grown gems could distinguish their products from other created gems. However, such manufacturers can distinguish their products from others by means of truthful advertising.

Similarly, the Commission has determined that there is not sufficient evidence with respect to the consumer interpretation of a phrase such as "created emerald" (as opposed to

---

[316] Comment 19, p.2 (noting that trade associations provide the industry with material on disclosing care information, and that it is not necessary to include this in the Guides).

[317] A Note following this section states that qualifying these terms by means of an asterisk, which reference a footnote explanation, "is not to be regarded as compliance with the requirements of this section." The Commission believes that this section, which states that a qualifying term should immediately precede the name of the stone, adequately advises sellers of the proper disclosure. The Note is superfluous and the Commission has deleted it.

[318] Comment 231, p.5.

[319] Comment 49, p.17.

[320] Comment 230, p.3. AGL also noted that the colored stone industry opposed this change, citing "the historical, 'universally understood' application of the term 'synthetic.'" However, AGL stated that there is a "conscious desire to leave the consumer in a quandary regarding the difference between 'synthetic' and 'imitation' products. . . . to reduce the capacity of the synthetic material manufacturer to penetrate the U.S. marketplace with their products." *Id.*

[321] Chatham (231) pp.2, 31; Crystal (24) pp.1, 4; Kimberley (227) p.7 (stating that the hydrothermal process is the same process that creates "natural" emeralds); Matlins (205) pp.2–3, favored the use of terms such as "created" or "laboratory-grown" for flux-grown synthetic gems only, which she described as being very different from melt or "flame-fusion" synthetic products, in that the flux-grown products look more like natural stones and are more expensive to produce. Manning (159) p.2, which uses the melt method to produce rubies, argued that solution growers [by which it appears to be referring to flux-growers] should be allowed to describe their products as "cultured" and melt growers to describe their products as "created" or "lab-grown" because "without the ability of solution growers to somehow separate their process from ours in fair descriptive language, *they will be forced from the marketplace as too costly for the market to bear.*" Diamonique (224) p.3, stated without elaboration, that it favored "cultured" for gemstones that were produced by a method "which replicates that growth process of natural gemstones."

[322] ICT (189), which makes gemstones by the melt method, stated at p.3, that it objected to "reserving the word 'lab-created,' 'lab-grown,' or 'created,' to describe flux or hydrothermal methods of growth only." Service (222) stated, at p.2, that it is "unfair to allow sellers of low quality created stones to use the same term for their product as is used for the highest quality of created stones" but suggested this issue should be addressed in a "separate rulemaking." Friedman (234) stated, at p.3, that "cultured" would communicate to consumers "that they were purchasing a true, high-value gemstone, identical to a natural gemstone and made by a process which included human intervention." It apparently favored the use of "cultured" for both types of lab-created stones.

[323] Crystal (24) p.3 (stating that it uses the term "cultured" to describe its "Ramura Cultured Ruby"); Chatham (231) p.31 (stating that Crystal and Emsprit Cultured Emeralds have been using the term "cultured" for flux-grown gems).

[324] Krementz (208) p.1; Shire (221) p.1; River (254) p.3.

"laboratory created" or "Chatham-created") to justify including it in the Guides as a safe harbor. As River stated, the description "laboratory grown" is clear immediately, without further explanation. However, terms such as cultured, created and synthetic "are not as clear to the general public and are more often misunderstood because they are not part of the common vocabulary in the special sense in which we use them."[325]

Chatham argued that most consumers "understand synthetic to mean fake, artificial, and otherwise of low quality." It also stated that it is essential that it "be able to honestly and accurately educate consumers that the only difference between its gemstones and natural is the environment in which the crystals grow."[326] The Commission is persuaded that the term "synthetic," as applied to gemstones, is misunderstood by some consumers to mean something fake or artificial. Therefore, the Commission has included the phrases "laboratory grown," "laboratory-created," or "[manufacturer name]-created" in the revised Guides (now § 23.23).[327] Although the Commission has determined that these terms more clearly communicate the nature of the stone, sellers can still use the term "synthetic." The Commission has also included an admonition against misusing the terms "laboratory-grown," "laboratory-created," or "[manufacturer name]-created."

The JVC also proposed adding a Note stating that if the term "created" is used to describe a synthetic stone, "the name of the firm or company using this product-term must be disclosed in equal prominence and size type as the term 'created' . . . [and] must be separated from the term 'created by a dash (-) so as clearly to disclose the stone is man-made, i.e., Chatham-Created Emerald." AGTA proposed prohibiting any synonym for "synthetic," but urged that, if the Commission decided to allow the continued use of the term "created," then "the precise language" from the Chatham action should be incorporated into the Guides.[328] The effect of the Note proposed by the JVC (and "urged" by AGTA) would be to prohibit the use of "created" except in precisely the form mandated by the Note. However, there is no evidence as to how most consumers interpret a phrase such as "created emerald." The Commission has thus determined that there is no basis for advising against all but one specific use of the term "created." However, although the terms "laboratory created" and "[manufacturer name]-created" will be included in the list of "safe harbor" terms, the term "created" alone will not be included in this list.

In the FRN, the Commission also sought comment on whether foreign words or phrases like "faux" should be added "to the list of terms in Section 23.24(b) [of the JVC petition] that are not to be used to describe industry products." Thirty-five comments addressed this question.[329] The Postal Service stated that "faux" has been used "by disreputable promoters to confuse unsophisticated consumers and enhance the apparent value of their costume jewelry."[330] Three other commenters stated that "faux" is only used to deceive and should be prohibited.[331] Six commenters, including NACAA, stated that "faux" should be prohibited because some consumers do not know what it means.[332] Three stated that "faux" is confusing and misleading.[333] Thirteen other comments stated that "faux" should be prohibited but provided no reasons.[334] Nine comments believe the use of "faux" to describe industry products should be acceptable.[335]

The evidence shows that many unsophisticated consumers do not know what the word "faux" means and that it has been used to deceive them. Thus, the Commission has added a Note to the Guides that states that the use of the word "faux" to describe a laboratory-created stone is not regarded as an adequate disclosure of the fact that it is not a natural stone.

Finally, the JVC proposed the addition of a Note [following petition section 23.22] that states that descriptive words relating to species and varieties of gemstones must be in conformance with approved gemological terminology. No evidence was offered to show that there is a need for guidance in this area.[336] Thus, the Commission has not added this Note to the revised Guides.

3. Misuse of the Words "Real," "Genuine," "Natural": § 23.20

Section 23.20 states that it is unfair to use the words "real," "genuine," "natural," or similar terms, to describe any "articles which are manufactured or produced synthetically or artificially, or artificially cultured or cultivated," if such use is likely to deceive consumers. The JVC has proposed [in section 23.23(a) of its petition] expanding this section to include the words "precious" or "cultured" and to state that "it must clearly be disclosed that a man-made industry product is not a gemstone." For the reasons discussed above, the Commission has not included the word "cultured" as a "safe harbor" term to describe man-made gemstones. However, there is not sufficient evidence to advise against the use of "cultured" as applied to synthetic gemstones. Further, there is no evidence that it is being applied to imitation gemstones, where its use is more likely to be misleading. Thus, the Commission

---

[325] Comment 254, p.3.

[326] Comment 231, pp.2, 5, 22; Manning (159) p.4 (stating that there is no way to change the public misunderstanding of "synthetic"); River (254) p.3 (stating that consumers misunderstand "synthetic," and noting that "their greatest experience is with synthetic fabrics" so that "it is difficult for a clerk in a retail store to explain that gemologists have a special meaning for the word synthetic").

[327] Although the revised Guides no longer list the word "synthetic," some consumers may know the technical meaning that has been attributed to the word in the context of gemstones for many years, and they might be deceived into thinking that imitation stones described as "synthetic" have the same physical and optical properties as natural stones. Thus, the Commission has determined that the provision which limits the use of the word "synthetic" to certain circumstances continues to be useful.

[328] AGTA (49) argued, at p.17, that a phrase such as "A 'Chatham-created emerald *ring*' implies not that the emerald was created, but that the ring was manufactured by Chatham." (Emphasis added.) However, it provided no evidence that consumers interpret the phrase in that manner. If manufacturers or sellers of these items have reason to believe that consumers are misinterpreting this phrase, it would be unfair or deceptive not to correct the misunderstanding.

[329] Only one of the comments focused on the issue of whether foreign words or phrases should be added to the list of terms that are not to be used to describe industry products. Sheaffer (249) stated, at p.5, that it is not necessary "to identify and specify . . . the many foreign terms which might be misleading if used in connection with an industry product" but instead believed it more desirable to add a general admonition that it would be unfair or deceptive "to use any foreign term which may be accurate and appropriate in its native language" but which is not otherwise generally used or understood.

[330] Comment 244, p.3.

[331] Schwartz (52); Bridge (163); and CPAA (193).

[332] Honora (15); Skalet (61); NACAA (90); Bedford (210); MJSA (226); and Preston (229). Bedford stated that a consumer might think that "faux" refers to the color of a "faux emerald."

[333] AGTA (49); Bruce (218); and Shire (221). AGTA gave an example, at p.11, of a consumer who thought that "faux" referred to the place of origin of a "faux emerald."

[334] JMC (1); Fasnacht (4); Sibbing (5); AGS (18); Estate (23); G&B (30); GIA (81); Nowlin (109); McGee (112); LaPrad (181); Lange (183); IJA (192); and Leach (257).

[335] Lannyte (65); Ross-Simons (67); ArtCarved (155); Bales (156); NACSM (219); ICT (189); Service (222); Best (225) and Franklin Mint (250). Two of these [NACSM (219) and ICT (189)] stated that "faux" has become part of the English language. Ross-Simons (67) stated that "faux" should be permitted because it romances the merchandise without deception.

[336] There was little comment on this suggestion. Lannyte (65) stated, at p.11, that "it is totally inappropriate for a school to be THE authority on descriptive names as names will develop from within the trade usage in the same way as language usage changes. This smacks of censorship!"

has not added the word "cultured" to this section of the Guides.

The Commission, however, has determined that the term "precious" [337] is deceptive when applied to synthetic or imitation gemstones because it implies rarity. Because synthetic or imitation gemstones can be produced in virtually unlimited quantities, they are not "rare" or "precious" like natural gemstones. Therefore, the Commission has included the word "precious" in this section (§ 23.24 of the revised Guides).

The JVC also proposed (in section 23.23(b) of its petition) a section which would in effect prohibit the use of the term "semi-precious" to describe any gemstones. The Commission has determined that "semi-precious" is deceptive when applied to synthetic or imitation gemstones (because it implies they occur naturally) and has included it in § 23.24 of the revised Guides.[338] The proposal to ban its use as to natural gemstones is discussed below, as is the proposal that the Guides state that "it must clearly be disclosed that a man-made industry product is not a gemstone."

4. Deceptive Use of "Gem" and "Synthetic": § 23.21

Section 23.21(a) in the current Guides states that it is unfair to use the word "gem" to refer to a pearl or a stone (whether precious or semi-precious) "which does not possess the beauty, symmetry, rarity, and value necessary for qualification as a gem." Section 23.21(b) states that the word "gem" may not be used to describe a synthetic product unless that product meets the requirements of 23.21(a) and "unless such word is immediately accompanied, with equal conspicuity, by the word 'synthetic,' or by some other word or phrase of like meaning.* * *" A Note to section 23.21 states that "few cultured pearls or synthetic stones possess the necessary qualifications to properly be termed 'gems'" and that the use of the word "gem" therefore should be avoided. The Note also states that imitation pearls, diamonds, and other stones should not be described as "gems." Finally, the Note states that "Not all diamonds or natural stones, including those classified as precious stones, possess the necessary qualifications to properly be termed 'gems.'"

The current Guides do not contain any admonitions as to the use of the words *"gem stone"* other than the general admonition, in § 23.18, against misleading representations used in connection with the sale of precious or semi-precious gemstones. Under the current Guides, few if any synthetic stones are likely to qualify as "gems," but synthetic stones may be described as "gemstones" (for example, in an advertisement for various varieties of stones), as long as the term is so qualified as to disclose that the product is not a natural stone.[339] In addition, the Guides allow lower quality natural stones, which do not possess "the beauty, symmetry, rarity, and value necessary for qualification as a gem" to be referred to as gemstones as long as they are not of such low quality (*e.g.*, industrial quality stones) that it would be deceptive to so describe them.

The JVC proposed changing this scheme. It proposed that the Guides state that the word 'gem' should not be used as a quality designation of gemstones. It also proposed that a definition of "gemstone" be added to the Guides, along with a provision stating that it is unfair to use the word "gemstone" to describe any object that does not meet the definition. The JVC defined gemstone as "a naturally occurring substance which has been carefully fashioned into a jewel suitable for use in jewelry, for personal adornment, display, etc. A gemstone possesses beauty, rarity, durability and value."

This definition is similar to the definition of "gem" in the current Guides but it limits the use of "gemstone" to natural cut and polished stones, suitable for use in jewelry, that are also durable. The JVC has provided no evidence indicating that industry members or consumers have misunderstood the definition of "gem" in § 23.21 in the current Guides, nor has it provided any evidence as to why the definition it suggests for "gemstone" (which omits symmetry and adds durability to the qualities a gem must possess and excludes any synthetic stone) is more accurate or useful than the definition of "gem" in the current Guides.

The part of the proposal that would prevent natural stones from being described as gemstones unless they possessed beauty, rarity, durability and value was not discussed by most comments. However, the House of Onyx stated, "This is a broad statement that, if taken literally, would eliminate the vast majority of the Gemstones currently in the market." [340] For example, under the scheme proposed by the JVC, a natural emerald that did not possess, *e.g.*, rarity, would not be a gemstone. The Commission has determined to retain the current Guides, which allow lower quality natural stones, which do not possess "the beauty, symmetry, rarity, and value necessary for qualification as a gem" to be referred to as gemstones.[341]

The proposed definition of "gemstone" also would prevent synthetic stones from being described as "gemstones." The FRN solicited comment on this proposal. AGS commented simply that it is essential "that a like size declaration of the words 'synthetic, imitation, etc.' accompany the description of the stone." [342] Service commented that the proposed definition of gemstone "is not needed to avoid deception of the consumer. As long as the consumer is ultimately advised whether or not the stone was naturally occurring * * * the interest in full disclosure has been satisfied." [343] Best noted that "gemstone" is "loosely used in the industry today to refer to both naturally occurring and laboratory manufactured stones." [344] Friedman stated, "[t]o our customers, the laboratory grown gems have gained acceptance as, and *are*, gemstones." [345] Chatham noted that it has used the terms "gemstone" and "gem" virtually from its inception in 1946 and that the terms "have been adopted and widely used by tradespeople in the jewelry industry * * * To date there has not been any suggestion (other than by the JVC) that consumers have been misled thereby." [346] Chatham also noted that the proposal would place Chatham gemstones "at a competitive disadvantage vis-a-vis their natural counterparts and would do so for no justifiable reason." [347]

Although many commenters supported the JVC proposal, few gave any reason beyond stating that "synthetics are not natural." GIA agreed that "gemstone" should be limited to natural stones because it implies that the material occurred in nature.[348] AGTA stated that synthetics "emulate and often approximate the appearance of and have similar durability to that of natural gemstones," but they lack rarity, and allowing them to be referred to as "gemstones" will "further blur the distinction in the consumer's mind as to the important differences between the two. In all probability, this will result in higher consumer prices for synthetic and simulated materials." [349] Other commenters agreed that synthetics should not be described as gemstones.[350]

The current Guides permit the use of, *e.g.*, "synthetic ruby" or "imitation ruby." The Commission is persuaded that consumers would understand that gemstones described as "laboratory-created gemstones" or "imitation gemstones" are not natural gemstones. Thus, the word "gemstone" is not deceptive when applied to synthetic or imitation stones, if its use is properly qualified by a word or phrase that discloses that the stone is not natural. The Commission therefore has added the word "gemstone" to § 23.19(b) of the current Guides, which states that the name of a precious or semi-precious gemstone as descriptive of a synthetic or imitation stone should be adequately qualified to disclose that it is not a natural stone. However, for the reasons described above, the Commission has not adopted the definition of "gemstone" suggested by the JVC nor changed the definition of "gem" in § 23.21 of the current Guides.

As noted, the JVC also proposed adding a Note recommending that the word "gem" or "similar term" not be used as a quality designation or as descriptive of gemstones because no criteria for these terms exist and "their use to describe, imply or represent quality could be misleading." However, the JVC cited no evidence that such terms have actually been misleading to consumers. Moreover, as Onyx noted, "there are 'Gem' quality Gemstones as well as 'trash' quality in the same Gemstone." [351] Truthful, and indeed informative, use of the word "gem" is possible and thus, the Commission has not adopted this proposal.

The JVC also proposed adding a section to the Guides stating that "gemstone" may not be used to describe any object "not fashioned for use as jewelry or personal adornment, *e.g.*, statues, ashtrays, boxes, *etc.*" unless qualified by a term such as "carving" or "engraving" [Petition 23.20(b)]. No explanation was offered as to how such a use could deceive consumers.[352]

The Commission has not included this section in the Guides because items other than jewelry are sometimes made of gemstones and it would not be deceptive to so describe them.

The JVC proposed that a section be added to the Guides stating that it is unfair to use the term "semi-precious" when referring to gemstones or any synthetic, imitation, or simulated stone. [Petition 23.23(b)] The FRN solicited comment on this proposal.

No explanation was offered as to why the term "semi-precious" was unfair or deceptive when applied to natural gemstones. Some commenters who favored the proposal stated that it is a "misnomer" or that it "gives a false impression of a gem having little intrinsic value; an impression which may not be correct." [353] However, sellers are not required to describe their wares as semi-precious; the import of the JVC's proposal would be to prohibit those who wish to so describe their wares from doing so. AGTA commented that, while it believes "semi-precious" is denigrating to "natural gemstones other than Ruby, Emerald, Sapphire and Diamond which are traditionally referred to in the trade as the 'precious gemstones,'" it did not believe it should be illegal to so describe natural stones.[354] Skalet explained that the term "semi-precious" has been used in the jewelry and gemstone industry for generations "as a reference to natural gemstones of moderate value and wide availability." [355] Based on the comments, the Commission has concluded that there is no basis for advising against the use of this term to describe natural gemstones.

Finally, the JVC also proposed redrafting all sections pertaining to precious and semi-precious stones, removing the terms "precious" and "semi-precious" and substituting "gemstone." However, there is no valid purpose for this change, and the Commission has determined that substituting the term "gemstone" for "precious and semi-precious stones" would make the Guides less clear.

---

[337] "Precious" stones are diamonds, emeralds, rubies, and sapphires. All other gemstones are "semi-precious."

[338] Several comments that opposed banning "semi-precious" stated that its use with respect to synthetic or imitation gems would be confusing. AGTA (49) p.11; Schwartz (52) p.3; GIA (81) p.4; MJSA (226) p.10.

[339] A synthetic stone is not likely to meet the rarity criterion necessary to be described as a gem, although it is conceivable that a particularly beautiful and difficult to create stone could meet the rarity criterion. In a separate section of its petition [23.24(a)], the JVC also proposed the addition of a section that states that it is unfair to use the word "gem" to describe a synthetic or imitation stone. Diamonique (224) noted, at p.4, that "there are differing quality levels with natural gemstones, as there are with man-made gemstones. If the term 'gem' is appropriate for natural material, it should also be appropriate for man-made material." The Commission has determined that the word "gem" may be appropriately used to describe a synthetic stone and has not added the proposed section to the Guides.

[340] Comment 162, p.2 (adding, at p.3, that most gemstones are not durable "in the true sense of the word," citing as examples amber, ivory, malachite, lapis lazuli, coral pearls, cameos, sodalite, and turquoise).

[341] One comment suggested that the words "rarity and value" be deleted from the current definition of gem in § 23.21, arguing that beauty and durability are the two basic properties of all gemstones. Lannyte (65) pp.6, 11. However, this comment appears to have confused the definition of "gemstone" with "gem." As noted, the current Guides suggest only a very limited use of the word "gem" is appropriate.

[342] Comment 18, p.3.

[343] Comment 222, p.4 (noting that this proposal creates problems for "fair and competitive advertising"); Franklin (250) p.6 (stating that there is no reason the term should not be used for laboratory-created stones as long as it is properly qualified); Lannyte (65) p.9, 10 (asking "How does one refer to gemstones made by man when discussing them generically?" and suggesting that the Guides provide that it is unfair to use the word "gemstone" to refer to a synthetic stone without disclosing that it is "not the unassisted product of nature").

[344] Comment 225, attachment at p.8.

[345] Comment 234, p.2. Freidman did suggest that imitation gems should not be defined as gemstones. *Id.* at 3.

[346] Comment 231, p.5. Chatham also attached a declaration from Robert Miller, a merchant who has sold both Chatham-created gemstones and natural gemstones for ten years. He stated that a prohibition on the use of the words "gem" or "gemstone" "would be inconsistent with current trade practice, in which the words 'gemstone' and 'gem' are an integral part of the marketing of Chatham products, as well as most other jewelry" and that "prohibiting sellers from using these common-place terms would hurt our ability to communicate with our customers about the very nature of Chatham products" and that the end result "would be confusion on the part of consumers who would wrongly perceive that the prohibition is a negative reflection on the quality of Chatham gemstones." Miller declaration ¶ 8 and 9. Chatham also attached a declaration from Dr. Frederick Pough, who received a Ph.D. in Mineralogy from Harvard in 1935 and who has authored hundreds of articles on mineralogy. He states that the definitions proposed by the JVC "would represent a dramatic departure from the way in which the terms 'gemstone' and 'gem' have been understood and used in the trade and in gemological circles for several decades" and "as it is currently and loosely used, and as it has been used for years, the term 'gemstone' does *not* identify the source of the stone, or whether or not it is a 'naturally occurring substance.'" Similarly, he stated "under no current definition of 'gem' of which I am aware, is the term limited to 'naturally occurring substances.'" Pough declaration ¶ 8, 9, and 13.

[347] Comment 231, pp.5, 9. The eight other commenters who sell significant quantities of synthetic gemstones also believe it is not deceptive to use the term for synthetic stones as long as it is qualified to indicate that the stones are not natural stones: Crystal (24); Union Carbide (38); Manning (159); ICT (189); Kimberley (227); Friedman (234); Kyocera (242); and River (254).

[348] Comment 81, p.3 (stating "We consider this to be of minor importance, but believe neither stone nor gemstone should be used to describe an artificial product.").

[349] Comment 49, p.9.

[350] One of these, LaPrad (181) stated, at p.3, that "gemstone" should also be prohibited as descriptive of any *artificially colored* natural stone.

[351] Comment 162, p.3; NACSM (219) stated, at p.12, that this would "limit the use of the English language;" AGTA (49) stated, at p.16, that the Note should be stricken or, if retained, "like language should be added to the diamond section."

[352] Onyx (162) p.3 (stating that the proposed prohibition "flies in the face of fact"); NACSM (219) p.13 (opposing the provision and describing it as a restrictive limitation for which no justification has been given); Service (222) p.5 (stating that there is no reason to prohibit a phrase such as "gemstone jewelry box").

[353] Thorpe (7) p.2; Capital (19) p.2.

[354] Comment 49, p.10

[355] Comment 61, p.5.

5. Misuse of the Words "Flawless," "Perfect," Etc.

The JVC proposed the addition of a new section [petition 23.21] that prohibits the use of the word "perfect" when applied to gemstones and limits "flawless" to gemstones that do not have blemishes. The JVC's definition of "flawless" is similar to the provision in § 23.10 of the current Guides, which applies only to diamonds.[356] A claim that a colored stone is flawless when it is not is deceptive. The Commission has determined that the addition of this section clarifies the meaning of "flawless."[357]

Part (b) of the section proposed by the JVC prohibits the use of "perfect" as a quality description "of any gemstone other than a diamond." No reasons were offered as to why the use of "perfect" as applied to colored stones would always be deceptive, and numerous comments objected to this provision.[358] On the basis of the comments, the Commission has not included this provision. However, the Commission has determined that the industry may need guidance as to the use of "perfect" with respect to gemstones,[359] and has included a provision (like the provision for diamonds) that "perfect" should be used only for a gemstone that is flawless and not of inferior color or cut.

The JVC proposed that the Guides state it is unfair to use "flawless" or "perfect" to describe synthetics or imitations. No reasons were offered as to why the use of "flawless" or "perfect" as applied to synthetic stones would always be deceptive. Thus, the Commission has concluded that there is not enough evidence to include this provision as to synthetic stones. However, because the terms imply that a stone is a finer quality and, accordingly, a greater value, when used to describe imitation stones, which are almost always flawless, they could be misleading.[360] Thus, the terms "flawless" and "perfect" should not be used to describe imitation stones.

6. Misuse of the Words "Reproduction," or "Replica": § 23.21(c)

Section 23.21(c) of the current Guides states that it is unfair to use the words "reproduction," "replica," or similar terms to describe cultured or imitation pearls or any imitation of precious or semi-precious stones. The JVC proposed changing this section so that it only prohibits the use of "reproduction" or "replica" when applied to synthetic or imitation stones [petition 23.24(b)]. If the nature of the material used in a reproduction or replica is adequately disclosed, as is advised by other sections of the Guides, it is not clear that the use of these terms would be deceptive or unfair.[361] Accordingly, the Commission has deleted this entire section from the Guides.

List of Subjects in 16 CFR Parts 19 and 23

Advertising, Labeling, Trade practices, Watch bands and jewelry.

Accordingly, Part 23 is revised to read as follows:

[356] The JVC proposed that the Guides state that it is unfair "to use the word "flawless" as a quality description of any gemstone which discloses blemishes, inclusions, or clarity faults of any sort when examined under a corrected magnifier at 10-power, with adequate illumination, by a person skilled in gemstone grading." However, no reference was made, in the petition or the comments, to removal of blemishes by internal lasering of gemstones.

[357] There was little comment about this provision. Diamonique (224) stated, at p.4, that the change "regarding the examination of gemstones under 10-power magnification is radical and would have far-reaching consequences. This proposed change replaces practices and guidelines currently in use worldwide, requiring examination of gemstones with the unaided eye." However, no other commenter stated that the proposal was a change from existing practices. Lannyte (65) suggested, at p.10, modifying the section to state that it is unfair "to use the words "flawless" or "perfect" or any other description which would lead a buyer to presume that such gemstone is totally without blemishes, inclusion or other faults when viewed by a skilled person under ten times magnification in adequate light."

[358] Lannyte (65) p.11; ICT (189) p.2. AGTA (49) stated, at pp.15, 16, that it "prefers that the term 'perfect' be deleted from use in the trade for both diamonds and colored gems," but if the use of the term "perfect" is acceptable for diamonds, it should also be acceptable for colored gemstones. Otherwise, there "would be a passive inference that colored gemstones are less desirable than diamonds. There are certainly as many 'perfect,' i.e. flawless (under 10X magnification), top color, well-cut gemstones as there are diamonds."

[359] Diamonique (224) p.3 (stating that "the Guides should contain more specific guidelines in this area, including a definition of the term 'perfect,' instead of simply limiting its use").

[360] NACSM (219) p.27 (stating that the proposal "fails to take into account a clearly recognized difference in the marketplace between a 'synthetic' . . . and an 'imitation' stone"); Diamonique (224) p.3 (stating that "cultured, synthetic and simulated gemstones would be described according to the same standards used for natural gemstones. To do otherwise would create confusion within the industry itself as well as among consumers").

[361] NACSM (219) p.27 (stating that the attempt to "ban" the word "reproduction" is dubious); ISA (237A) p.15 (stating that this would prohibit the use of "reproduction" and "replica" to describe "items which are in fact reproductions and replicas. We recommend more emphasis on section 23.1(a), the general paragraph which makes clear that the intent of the Guides is to prohibit deception and deceptive use of such terms").

PART 23—GUIDES FOR THE JEWELRY, PRECIOUS METALS, AND PEWTER INDUSTRIES

Sec.
23.0 Scope and application.
23.1 Deception (general).
23.2 Misleading illustrations.
23.3 Misuse of the terms "hand-made," "hand-polished," etc.
23.4 Misrepresentation as to gold content.
23.5 Misuse of the word "Vermeil."
23.6 Misrepresentation as to silver content.
23.7 Misuse of words "platinum," "iridium," "palladium," "ruthenium," "rhodium," and "osmium."
23.8 Misrepresentation as to content of pewter.
23.9 Additional guidance for the use of quality marks.
23.10 Misuse of "corrosion proof," "noncorrosive," "corrosion resistant," "rust proof," "rust resistant," etc.
23.11 Definition and Misuse of the word "diamond."
23.12 Misuse of the words "flawless," "perfect," etc.
23.13 Disclosing existence of artificial coloring, infusing, etc.
23.14 Misuse of the term "blue white."
23.15 Misuse of the term "properly cut," etc.
23.16 Misuse of the words "brilliant" and "full cut."
23.17 Misrepresentation of weight and "total weight."
23.18 Definitions of various pearls.
23.19 Misuse of the word "pearl."
23.20 Misuse of terms such as "cultured pearl," "seed pearl," "Oriental pearl," "natura," "kultured," "real," "gem," "synthetic," and regional designations.
23.21 Misrepresentation as to cultured pearls.
23.22 Deception as to gemstones.
23.23 Misuse of the words "ruby," "sapphire," "emerald," "topaz," "stone," "birthstone," "gemstone," etc.
23.24 Misuse of the words "real," "genuine," "natural," "precious," etc.
23.25 Misuse of the word "gem."
23.26 Misuse of the words "flawless," "perfect," etc.
Appendix to Part 23—Exemptions recognized in the assay for quality of gold alloy, gold filled, gold overlay, rolled gold plate, silver, and platinum industry products.

Authority: Sec. 6, 5, 38 Stat. 721, 719; 15 U.S.C. 46, 45.

§ 23.0 Scope and application.

(a) These guides apply to jewelry industry products, which include, but are not limited to, the following: gemstones and their laboratory-created and imitation substitutes; natural and cultured pearls and their imitations; and metallic watch bands not permanently attached to watches.[1] These guides also apply to articles, including optical frames, pens and pencils, flatware, and hollowware, fabricated from precious metals (gold, silver and platinum group metals), precious metal alloys, and their imitations. These guides also apply to all articles made from pewter. For the purposes of these guides, all articles covered by these guides are defined as "industry products."

(b) These guides apply to persons, partnerships, or corporations, at every level of the trade (including but not limited to manufacturers, suppliers, and retailers) engaged in the business of offering for sale, selling, or distributing industry products.

Note to paragraph (b): To prevent consumer deception, persons, partnerships, or corporations in the business of appraising, identifying, or grading industry products should utilize the terminology and standards set forth in the guides.

(c) These guides apply to claims and representations about industry products included in labeling, advertising, promotional materials, and all other forms of marketing, whether asserted directly or by implication, through words, symbols, emblems, logos, illustrations, depictions, product brand names, or through any other means.

§ 23.1 Deception (general).

It is unfair or deceptive to misrepresent the type, kind, grade, quality, quantity, metallic content, size, weight, cut, color, character, treatment, substance, durability, serviceability, origin, price, value, preparation, production, manufacture, distribution, or any other material aspect of an industry product.

Note 1 to § 23.1: If, in the sale or offering for sale of an industry product, any representation is made as to the grade assigned the product, the identity of the grading system used should be disclosed.

Note 2 to § 23.1: To prevent deception, any qualifications or disclosures, such as those described in the guides, should be sufficiently clear and prominent. Clarity of language, relative type size and proximity to the claim being qualified, and an absence of contrary claims that could undercut effectiveness, will maximize the likelihood that the qualifications and disclosures are appropriately clear and prominent.

§ 23.2 Misleading illustrations.

It is unfair or deceptive to use, as part of any advertisement, packaging material, label, or other sales promotion matter, any visual representation, picture, televised or computer image, illustration, diagram, or other depiction which, either alone or in conjunction with any accompanying words or phrases, misrepresents the type, kind, grade, quality, quantity, metallic content, size, weight, cut, color, character, treatment, substance, durability, serviceability, origin, preparation, production, manufacture, distribution, or any other material aspect of an industry product.

Note to § 23.2: An illustration or depiction of a diamond or other gemstone that portrays it in greater than its actual size may mislead consumers, unless a disclosure is made about the item's true size.

§ 23.3 Misuse of the terms "hand-made," "hand-polished," etc.

(a) It is unfair or deceptive to represent, directly or by implication, that any industry product is hand-made or hand-wrought unless the entire shaping and forming of such product from raw materials and its finishing and decoration were accomplished by hand labor and manually-controlled methods which permit the maker to control and vary the construction, shape, design, and finish of each part of each individual product.

Note to paragraph (a): As used herein, "raw materials" include bulk sheet, strip, wire, and similar items that have not been cut, shaped, or formed into jewelry parts, semi-finished parts, or blanks.

(b) It is unfair or deceptive to represent, directly or by implication, that any industry product is hand-forged, hand-engraved, hand-finished, or hand-polished, or has been otherwise hand-processed, unless the operation described was accomplished by hand labor and manually-controlled methods which permit the maker to control and vary the type, amount, and effect of such operation on each part of each individual product.

§ 23.4 Misrepresentation as to gold content.

(a) It is unfair or deceptive to misrepresent the presence of gold or gold alloy in an industry product, or the quantity or karat fineness of gold or gold alloy contained in the product, or the karat fineness, thickness, weight ratio, or manner of application of any gold or gold alloy plating, covering, or coating on any surface of an industry product or part thereof.

(b) The following are examples of markings or descriptions that may be misleading:[2]

(1) Use of the word "Gold" or any abbreviation, without qualification, to describe all or part of an industry product, which is not composed throughout of fine (24 karat) gold.

(2) Use of the word "Gold" or any abbreviation to describe all or part of an industry product composed throughout of an alloy of gold, unless a correct designation of the karat fineness of the alloy immediately precedes the word "Gold" or its abbreviation, and such fineness designation is of at least equal conspicuousness.

(3) Use of the word "Gold" or any abbreviation to describe all or part of an industry product that is not composed throughout of gold or a gold alloy, but is surface-plated or coated with gold alloy, unless the word "Gold" or its abbreviation is adequately qualified to indicate that the product or part is only surface-plated.

(4) Use of the term "Gold Plate," "Gold Plated," or any abbreviation to describe all or part of an industry product unless such product or part contains a surface-plating of gold alloy, applied by any process, which is of such thickness and extent of surface coverage that reasonable durability is assured.

(5) Use of the terms "Gold Filled," "Rolled Gold Plate," "Rolled Gold Plated," "Gold Overlay," or any abbreviation to describe all or part of an industry product unless such product or part contains a surface-plating of gold alloy applied by a mechanical process and of such thickness and extent of surface coverage that reasonable durability is assured, and unless the term is immediately preceded by a correct designation of the karat fineness of the alloy that is of at least equal conspicuousness as the term used.

(6) Use of the terms "Gold Plate," "Gold Plated," "Gold Filled," "Rolled Gold Plate," "Rolled Gold Plated," "Gold Overlay," or any abbreviation to describe a product in which the layer of gold plating has been covered with a base metal (such as nickel), which is covered with a thin wash of gold, unless there is a disclosure that the primary gold coating is covered with a base metal, which is gold washed.

(7) Use of the term "Gold Electroplate," "Gold Electroplated," or any abbreviation to describe all or part of an industry product unless such product or part is electroplated with gold or a gold alloy and such electroplating is of such karat fineness, thickness, and extent of surface coverage that reasonable durability is assured.

(8) Use of any name, terminology, or other term to misrepresent that an industry product is equal or superior to, or different than, a known and established type of industry product with reference to its gold content or method of manufacture.

(9) Use of the word "Gold" or any abbreviation, or of a quality mark implying gold content (*e.g.*, 9 karat), to describe all or part of an industry product that is composed throughout of

[1] The Guides for the Watch Industry, 16 C.F.R. Part 245, address watchcases and permanently attached watchbands.

[2] See § 23.4(c) for examples of acceptable markings and descriptions.

an alloy of gold of less than 10 karat fineness.

Note to paragraph (b) § 23.4: The provisions regarding the use of the word "Gold," or any abbreviation, as described above, are applicable to "Duragold," "Diragold," "Noblegold," "Goldine," "Layered Gold," or any words or terms of similar meaning.

(c) The following are examples of markings and descriptions that are consistent with the principles described above:

(1) An industry product or part thereof, composed throughout of an alloy of gold of not less than 10 karat fineness, may be marked and described as "Gold" when such word "Gold," wherever appearing, is immediately preceded by a correct designation of the karat fineness of the alloy, and such karat designation is of equal conspicuousness as the word "Gold" (for example, "14 Karat Gold," "14 K. Gold," or "14 Kt. Gold"). Such product may also be marked and described by a designation of the karat fineness of the gold alloy unaccompanied by the word "Gold" (for example, "14 Karat," "14 Kt.," or "14 K.").

Note to paragraph (c)(1): Use of the term "Gold" or any abbreviation to describe all or part of a product that is composed throughout of gold alloy, but contains a hollow center or interior, may mislead consumers, unless the fact that the product contains a hollow center is disclosed in immediate proximity to the term "Gold" or its abbreviation (for example, "14 Karat Gold-Hollow Center," or "14 K. Gold Tubing," when of a gold alloy tubing of such karat fineness). Such products should not be marked or described as "solid" or as being solidly of gold or of a gold alloy. For example, when the composition of such a product is 14 karat gold alloy, it should not be described or marked as either "14 Kt. Solid Gold" or as "Solid 14 Kt. Gold."

(2) An industry product or part thereof, on which there has been affixed on all significant surfaces, by any process, a coating, electroplating, or deposition by any means, of gold or gold alloy of not less than 10 karat fineness that is of substantial thickness,[3] and the minimum thickness throughout of which is equivalent to one-half micron (or approximately 20 millionths of an inch) of fine gold,[4] may be marked or described as "Gold Plate" or "Gold Plated," or abbreviated, as, for example, G.P. The exact thickness of the plate may be marked on the item, if it is immediately followed by a designation of the karat fineness of the plating which is of equal conspicuousness as the term used (as, for example, "2 microns 12 K. gold plate" or "2μ 12 K. G.P." for an item plated with 2 microns of 12 karat gold.)

Note paragraph (c)(2) to paragraph (b): If an industry product has a thicker coating or electroplating of gold or gold alloy on some areas than others, the minimum thickness of the plate should be marked.

(3) An industry product or part thereof on which there has been affixed on all significant surfaces by soldering, brazing, welding, or other mechanical means, a plating of gold alloy of not less than 10 karat fineness and of substantial thickness[5] may be marked or described as "Gold Filled," "Gold Overlay," "Rolled Gold Plate," or an adequate abbreviation, when such plating constitutes at least 1/20th of the weight of the metal in the entire article and when the term is immediately preceded by a designation of the karat fineness of the plating which is of equal conspicuousness as the term used (for example, "14 Karat Gold Filled," "14 Kt. Gold Filled," "14 Kt. G.F.," "14 Kt. Gold Overlay," or "14K. R.G.P."). When conforming to all such requirements except the specified minimum of 1/20th of the weight of the metal in the entire article, the terms "Gold Overlay" and "Rolled Gold Plate" may be used when the karat fineness designation is immediately preceded by a fraction accurately disclosing the portion of the weight of the metal in the entire article accounted for by the plating, and when such fraction is of equal conspicuousness as the term used (for example, "1/40th 12 Kt. Rolled Gold Plate" or "1/40 12 Kt. R.G.P.").

(4) An industry product or part thereof, on which there has been affixed on all significant surfaces by an electrolytic process, an electroplating of gold, or of a gold alloy of not less than 10 karat fineness, which has a minimum thickness throughout equivalent to .175 microns (approximately $^{7}/_{1,000,000}$ths of an inch) of fine gold, may be marked or described as "Gold Electroplate" or "Gold Electroplated," or abbreviated, as, for example, "G.E.P." When the electroplating meets the minimum fineness but not the minimum thickness specified above, the marking or description may be "Gold Flashed" or "Gold Washed." When the electroplating is of the minimum fineness specified above and of a minimum thickness throughout equivalent to two and one half (2½) microns (or approximately $^{100}/_{1,000,000}$ths of an inch) of fine gold, the marking or description may be "Heavy Gold Electroplate" or "Heavy Gold Electroplated." When electroplatings qualify for the term "Gold Electroplate" (or "Gold Electroplated"), or the term "Heavy Gold Electroplate" (or "Heavy Gold Electroplated"), and have been applied by use of a particular kind of electrolytic process, the marking may be accompanied by identification of the process used, as for example, "Gold Electroplated (X Process)" or "Heavy Gold Electroplated (Y Process)."

(d) The provisions of this section relating to markings and descriptions of industry products and parts thereof are subject to the applicable tolerances of the National Stamping Act or any amendment thereof.[6]

Note 4 to paragraph (d) : Exemptions recognized in the assay of karat gold industry products and in the assay of gold filled, gold overlay, and rolled gold plate industry products, and not to be considered in any assay for quality, are listed in the Appendix.

§ 23.5 Misuse of the word "Vermeil."

(a) It is unfair or deceptive to represent, directly or by implication, that an industry product is "vermeil" if such mark or description misrepresents the product's true composition.

(b) An industry product may be described or marked as "vermeil" if it consists of a base of sterling silver coated or plated on all significant surfaces with gold, or gold alloy of not less than 10 karat fineness, that is of substantial thickness[7] and a minimum thickness throughout equivalent to two and one half (2½) microns (or approximately $^{100}/_{1,000,000}$ths of an inch) of fine gold.

Note 1 to § 23.5: It is unfair or deceptive to use the term "vermeil" to describe a product in which the sterling silver has been covered with a base metal (such as nickel) plated with gold unless there is a disclosure that the sterling silver is covered with a base metal that is plated with gold.

Note 2 to § 23.5: Exemptions recognized in the assay of gold filled, gold overlay, and rolled gold plate industry products are listed in the Appendix.

§ 23.6 Misrepresentation as to silver content.

(a) It is unfair or deceptive to misrepresent that an industry product contains silver, or to misrepresent an industry product as having a silver content, plating, electroplating, or coating.

(b) It is unfair or deceptive to mark, describe, or otherwise represent all or part of an industry product as "silver," "solid silver," "Sterling Silver," "Sterling," or the abbreviation "Ster." unless it is at least $^{925}/_{1,000}$ths pure silver.

(c) It is unfair or deceptive to mark, describe, or otherwise represent all or part of an industry product as "coin" or "coin silver" unless it is at least $^{900}/_{1,000}$ths pure silver.

(d) It is unfair or deceptive to mark, describe, or otherwise represent all or part of an industry product as being plated or coated with silver unless all significant surfaces of the product or part contain a plating or coating of silver that is of substantial thickness.[8]

(e) The provisions of this section relating to markings and descriptions of industry products and parts thereof are subject to the applicable tolerances of the National Stamping Act or any amendment thereof.[9]

Note 1 to § 23.6: The National Stamping Act provides that silverplated articles shall not "be stamped, branded, engraved or imprinted with the word 'sterling' or the word 'coin,' either alone or in conjunction with other words or marks." 15 U.S.C. 297(a).

Note 2 to § 23.6: Exemptions recognized in the assay of silver industry products are listed in the Appendix.

§ 23.7 Misuse of words "platinum," "iridium," "palladium," "ruthenium," "rhodium," and "osmium."

It is an unfair trade practice to use the words "platinum," "iridium," "palladium," "ruthenium," "rhodium," or "osmium," or any abbreviations thereof, as a marking on, or as descriptive of, any industry product or part thereof, under any circumstance or condition having the capacity and tendency or effect of deceiving purchasers or prospective purchasers as to the true composition of such product or part.

Note 1 to § 23.7: Commercial Standard CS66–38, issued by the National Bureau of Standards of the U.S. Department of Commerce, covers the marking of articles made wholly or in part of platinum. Markings on industry products which are in compliance with the requirements of CS66–38 will be regarded as among those fulfilling the requirements relating thereto which are contained in this section.

Note 2 to § 23.7: See also § 23.9 entitled "Additional guidance for the use of quality marks."

§ 23.8 Misrepresentation as to content of pewter.

(a) It is unfair or deceptive to mark, describe, or otherwise represent all or part of an industry product as "Pewter" or any abbreviation if such mark or description misrepresents the product's true composition.

(b) An industry product or part thereof may be described or marked as "Pewter" or any abbreviation if it consists of at least 900 parts per 1000 Grade A Tin, with the remainder composed of metals appropriate for use in pewter.

§ 23.9 Additional guidance for the use of quality marks.

As used in these guides, the term "quality mark" means any letter, figure, numeral, symbol, sign, word, or term, or any combination thereof, that has been stamped, embossed, inscribed, or otherwise placed on any industry product and which indicates or suggests that any such product is composed throughout of any precious metal or any precious metal alloy or has a surface or surfaces on which there has been plated or deposited any precious metal or precious metal alloy. Included are the words "gold," "karat," "carat," "silver," "sterling," "vermeil," "platinum," "iridium," "palladium," "ruthenium," "rhodium," or "osmium," or any abbreviations thereof, whether used alone or in conjunction with the words "filled," "plated," "overlay," or "electroplated," or any abbreviations thereof. Quality markings include those in which the words or terms "gold," "karat," "silver," "vermeil," "platinum" (or platinum group metals), or their abbreviations are included, either separately or as suffixes, prefixes, or syllables.

(a) Deception as to applicability of marks. (1) If a quality mark on an industry product is applicable to only part of the product, the part of the product to which it is applicable (or inapplicable) should be disclosed when, absent such disclosure, the location of the mark misrepresents the product or part's true composition.

(2) If a quality mark is applicable to only part of an industry product, but not another part which is of similar surface appearance, each quality mark should be closely accompanied by an identification of the part or parts to which the mark is applicable.

(b) Deception by reason of difference in the size of letters or words in a marking or markings. It is unfair or deceptive to place a quality mark on a product in which the words or letters appear in greater size than other words or letters of the mark, or when different markings placed on the product have different applications and are in different sizes, when the net impression of any such marking would be misleading as to the metallic composition of all or part of the product. (An example of improper marking would be the marking of a gold electroplated product with the word "electroplate" in small type and the word "gold" in larger type, with the result that purchasers and prospective purchasers of the product might only observe the word "gold.")

Note 1 to § 23.9: Legibility of markings. If a quality mark is engraved or stamped on an industry product, or is printed on a tag or label attached to the product, the quality mark should be of sufficient size type as to be legible to persons of normal vision, should be so placed as likely to be observed by purchasers, and should be so attached as to remain thereon until consumer purchase.

Note 2 to § 23.9: Disclosure of identity of manufacturers, processors, or distributors. The National Stamping Act provides that any person, firm, corporation, or association, being a manufacturer or dealer subject to section 294 of the Act, who applies or causes to be applied a quality mark, or imports any article bearing a quality mark "which indicates or purports to indicate that such article is made in whole or in part of gold or silver or of an alloy of either metal" shall apply to the article the trademark or name of such person. 15 U.S.C. 297.

§ 23.10 Misuse of "corrosion proof," "noncorrosive," "corrosion resistant," "rust proof," "rust resistant," etc.

(a) It is unfair or deceptive to:

(1) Use the terms "corrosion proof," "noncorrosive," "rust proof," or any other term of similar meaning to describe an industry product unless all parts of the product will be immune from rust and other forms of corrosion during the life expectancy of the product; or

(2) Use the terms "corrosion resistant," "rust resistant," or any other term of similar meaning to describe an industry product unless all parts of the product are of such composition as to not be subject to material damage by corrosion or rust during the major portion of the life expectancy of the product under normal conditions of use.

(b) Among the metals that may be considered as corrosion (and rust) resistant are: Pure nickel; Gold alloys of not less than 10 Kt. fineness; and Austenitic stainless steels.

§ 23.11 Definition and misuse of the word "diamond."

(a) A diamond is a natural mineral consisting essentially of pure carbon

---

[3] The term "substantial thickness" means that all areas of the plating are of such thickness as to assure a durable coverage of the base metal to which it has been affixed. Since industry products include items having surfaces and parts of surfaces that are subject to different degrees of wear, the thickness of plating for all items or for different areas of the surface of individual items does not necessarily have to be uniform.

[4] A product containing 1 micron (otherwise known as 1μ) of 12 karat gold is equivalent to one-half micron of 24 karat gold.

[5] *See* footnote 3.

[6] Under the National Stamping Act, articles or parts made of gold or of gold alloy that contain no solder have a permissible tolerance of three parts per thousand. If the part tested contains solder, the permissible tolerance is seven parts per thousand. For full text, see 15 U.S.C. 295, *et seq.*

[7] *See* footnote 3.

[8] *See* footnote 3.

[9] Under the National Stamping Act, sterling silver articles or parts that contain no solder have a permissible tolerance of four parts per thousand. If the part tested contains solder, the permissible tolerance is ten parts per thousand. For full text, see 15 U.S.C. 294, *et seq.*

crystallized in the isometric system. It is found in many colors. Its hardness is 10; its specific gravity is approximately 3.52; and it has a refractive index of 2.42.

(b) It is unfair or deceptive to use the unqualified word "diamond" to describe or identify any object or product not meeting the requirements specified in the definition of diamond provided above, or which, though meeting such requirements, has not been symmetrically fashioned with at least seventeen (17) polished facets.

Note 1 to paragraph (b): It is unfair or deceptive to represent, directly or by implication, that industrial grade diamonds or other non-jewelry quality diamonds are of jewelry quality.

(c) The following are examples of descriptions that are not considered unfair or deceptive:

(1) The use of the words "rough diamond" to describe or designate uncut or unfaceted objects or products satisfying the definition of diamond provided above; or

(2) The use of the word "diamond" to describe or designate objects or products satisfying the definition of diamond but which have not been symmetrically fashioned with at least seventeen (17) polished facets when in immediate conjunction with the word "diamond" there is either a disclosure of the number of facets and shape of the diamond or the name of a type of diamond that denotes shape and that usually has less than seventeen (17) facets (*e.g.*, "rose diamond").

Note 2 to paragraph (c): Additional guidance about imitation and laboratory-created diamond representations and misuse of words "gem," "real," "genuine," "natural," etc., are set forth in §§ 23.23, 23.24, and 23.25.

§ 23.12 Misuse of the words "flawless," "perfect," etc.

(a) It is unfair or deceptive to use the word "flawless" to describe any diamond that discloses flaws, cracks, inclusions, carbon spots, clouds, internal lasering, or other blemishes or imperfections of any sort when examined under a corrected magnifier at 10-power, with adequate illumination, by a person skilled in diamond grading.

(b) It is unfair or deceptive to use the word "perfect," or any representation of similar meaning, to describe any diamond unless the diamond meets the definition of "flawless" and is not of inferior color or make.

(c) It is unfair or deceptive to use the words "flawless" or "perfect" to describe a ring or other article of jewelry having a "flawless" or "perfect" principal diamond or diamonds, and supplementary stones that are not of such quality, unless there is a disclosure that the description applies only to the principal diamond or diamonds.

§ 23.13 Disclosing existence of artificial coloring, infusing, etc.

If a diamond has been treated by artificial coloring, tinting, coating, irradiating, heating, by the use of nuclear bombardment, or by the introduction or the infusion of any foreign substance, it is unfair or deceptive not to disclose that the diamond has been treated and that the treatment is not or may not be permanent.

§ 23.14 Misuse of the term "blue white."

It is unfair or deceptive to use the term "blue white" or any representation of similar meaning to describe any diamond that under normal, north daylight or its equivalent shows any color or any trace of any color other than blue or bluish.

§ 23.15 Misuse of the term "properly cut," etc.

It is unfair or deceptive to use the terms "properly cut," "proper cut," "modern cut," or any representation of similar meaning to describe any diamond that is lopsided, or is so thick or so thin in depth as to detract materially from the brilliance of the stone.

Note to § 23.15: Stones that are commonly called "fisheye" or "old mine" should not be described as "properly cut," "modern cut," etc.

§ 23.16 Misuse of the words "brilliant" and "full cut."

It is unfair or deceptive to use the unqualified expressions "brilliant," "brilliant cut," or "full cut" to describe, identify, or refer to any diamond except a round diamond that has at least thirty-two (32) facets plus the table above the girdle and at least twenty-four (24) facets below.

Note to § 23.16: Such terms should not be applied to single or rose-cut diamonds. They may be applied to emerald-(rectangular) cut, pear-shaped, heart-shaped, oval-shaped, and marquise-(pointed oval) cut diamonds meeting the above-stated facet requirements when, in immediate conjunction with the term used, the form of the diamond is disclosed.

§ 23.17 Misrepresentation of weight and "total weight."

(a) It is unfair or deceptive to misrepresent the weight of a diamond.

(b) It is unfair or deceptive to use the word "point" or any abbreviation in any representation, advertising, marking, or labeling to describe the weight of a diamond, unless the weight is also stated as decimal parts of a carat (*e.g.*, 25 points or .25 carat).

Note 1 to paragraph (b): A carat is a standard unit of weight for a diamond and is equivalent to 200 milligrams (⅕ gram). A point is one one hundredth (1/100) of a carat.

(c) If diamond weight is stated as decimal parts of a carat (*e.g.*, .47 carat), the stated figure should be accurate to the last decimal place. If diamond weight is stated to only one decimal place (*e.g.*, .5 carat), the stated figure should be accurate to the second decimal place (*e.g.*, ".5 carat" could represent a diamond weight between .495–.504).

(d) If diamond weight is stated as fractional parts of a carat, a conspicuous disclosure of the fact that the diamond weight is not exact should be made in close proximity to the fractional representation and a disclosure of a reasonable range of weight for each fraction (or the weight tolerance being used) should also be made.

Note to paragraph (d): When fractional representations of diamond weight are made, as described in paragraph d of this section, in catalogs or other printed materials, the disclosure of the fact that the actual diamond weight is within a specified range should be made conspicuously on every page where a fractional representation is made. Such disclosure may refer to a chart or other detailed explanation of the actual ranges used. For example, "Diamond weights are not exact; see chart on p.X for ranges."

§ 23.18 Definitions of various pearls.

As used in these guides, the terms set forth below have the following meanings:

(a) Pearl: A calcareous concretion consisting essentially of alternating concentric layers of carbonate of lime and organic material formed within the body of certain mollusks, the result of an abnormal secretory process caused by an irritation of the mantle of the mollusk following the intrusion of some foreign body inside the shell of the mollusk, or due to some abnormal physiological condition in the mollusk, neither of which has in any way been caused or induced by humans.

(b) Cultured Pearl: The composite product created when a nucleus (usually a sphere of calcareous mollusk shell) planted by humans inside the shell or in the mantle of a mollusk is coated with nacre by the mollusk.

(c) Imitation Pearl: A manufactured product composed of any material or materials that simulate in appearance a pearl or cultured pearl.

(d) Seed Pearl: A small pearl, as defined in (a), that measures approximately two millimeters or less.

§ 23.19 Misuse of the word "pearl."

(a) It is unfair or deceptive to use the unqualified word "pearl" or any other word or phrase of like meaning to describe, identify, or refer to any object or product that is not in fact a pearl, as defined in § 23.18(a).

(b) It is unfair or deceptive to use the word "pearl" to describe, identify, or refer to a cultured pearl unless it is immediately preceded, with equal conspicuousness, by the word "cultured" or "cultivated," or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is not a pearl.

(c) It is unfair or deceptive to use the word "pearl" to describe, identify, or refer to an imitation pearl unless it is immediately preceded, with equal conspicuousness, by the word "artificial," "imitation," or "simulated," or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is not a pearl.

(d) It is unfair or deceptive to use the terms "faux pearl," "fashion pearl," "Mother of Pearl," or any other such term to describe or qualify an imitation pearl product unless it is immediately preceded, with equal conspicuousness, by the word "artificial," "imitation," or "simulated," or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is not a pearl.

§ 23.20 Misuse of terms such as "cultured pearl," "seed pearl," "Oriental pearl," "natura," "kultured," "real," "gem," "synthetic," and regional designations.

(a) It is unfair or deceptive to use the term "cultured pearl," "cultivated pearl," or any other word, term, or phrase of like meaning to describe, identify, or refer to any imitation pearl.

(b) It is unfair or deceptive to use the term "seed pearl" or any word, term, or phrase of like meaning to describe, identify, or refer to a cultured or an imitation pearl, without using the appropriate qualifying term "cultured" (*e.g.*, "cultured seed pearl") or "simulated," "artificial," or "imitation" (*e.g.*, "imitation seed pearl").

(c) It is unfair or deceptive to use the term "Oriental pearl" or any word, term, or phrase of like meaning to describe, identify, or refer to any industry product other than a pearl taken from a salt water mollusk and of the distinctive appearance and type of pearls obtained from mollusks inhabiting the Persian Gulf and recognized in the jewelry trade as Oriental pearls.

(d) It is unfair or deceptive to use the word "Oriental" to describe, identify, or refer to any cultured or imitation pearl.

(e) It is unfair or deceptive to use the word "natura," "natural," "nature's," or any word, term, or phrase of like meaning to describe, identify, or refer to a cultured or imitation pearl. It is unfair or deceptive to use the term "organic" to describe, identify, or refer to an imitation pearl, unless the term is qualified in such a way as to make clear that the product is not a natural or cultured pearl.

(f) It is unfair or deceptive to use the term "kultured," "semi-cultured pearl," "cultured-like," "part-cultured," "premature cultured pearl," or any word, term, or phrase of like meaning to describe, identify, or refer to an imitation pearl.

(g) It is unfair or deceptive to use the term "South Sea pearl" unless it describes, identifies, or refers to a pearl that is taken from a salt water mollusk of the Pacific Ocean South Sea Islands, Australia, or Southeast Asia. It is unfair or deceptive to use the term "South Sea cultured pearl" unless it describes, identifies, or refers to a cultured pearl formed in a salt water mollusk of the Pacific Ocean South Sea Islands, Australia, or Southeast Asia.

(h) It is unfair or deceptive to use the term "Biwa cultured pearl" unless it describes, identifies, or refers to cultured pearls grown in fresh water mollusks in the lakes and rivers of Japan.

(i) It is unfair or deceptive to use the word "real," "genuine," "precious," or any word, term, or phrase of like meaning to describe, identify, or refer to any imitation pearl.

(j) It is unfair or deceptive to use the word "gem" to describe, identify, or refer to a pearl or cultured pearl that does not possess the beauty, symmetry, rarity, and value necessary for qualification as a gem.

Note to paragraph (j): Use of the word "gem" with respect to cultured pearls should be avoided since few cultured pearls possess the necessary qualifications to properly be termed "gems." Imitation pearls should not be described as "gems."

(k) It is unfair or deceptive to use the word "synthetic" or similar terms to describe cultured or imitation pearls.

(l) It is unfair or deceptive to use the terms "Japanese Pearls," "Chinese Pearls," "Mallorca Pearls," or any regional designation to describe, identify, or refer to any cultured or imitation pearl, unless the term is immediately preceded, with equal conspicuousness, by the word "cultured," "artificial," "imitation," or "simulated," or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is a cultured or imitation pearl.

§ 23.21 Misrepresentation as to cultured pearls.

It is unfair or deceptive to misrepresent the manner in which cultured pearls are produced, the size of the nucleus artificially inserted in the mollusk and included in cultured pearls, the length of time that such products remained in the mollusk, the thickness of the nacre coating, the value and quality of cultured pearls as compared with the value and quality of pearls and imitation pearls, or any other material matter relating to the formation, structure, properties, characteristics, and qualities of cultured pearls.

§ 23.22 Deception as to gemstones.

It is unfair or deceptive to fail to disclose that a gemstone has been treated in any manner that is not permanent or that creates special care requirements, and to fail to disclose that the treatment is not permanent, if such is the case. The following are examples of treatments that should be disclosed because they usually are not permanent or create special care requirements: coating, impregnation, irradiating, heating, use of nuclear bombardment, application of colored or colorless oil or epoxy-like resins, wax, plastic, or glass, surface diffusion, or dyeing. This disclosure may be made at the point of sale, except that disclosure should be made in any solicitation where the product can be purchased without viewing (*e.g.*, direct mail catalogs, on-line services), and in the case of televised shopping programs, on the air. If special care requirements for a gemstone arise because the gemstone has been treated, it is recommended that the seller disclose the special care requirements to the purchaser.

§ 23.23 Misuse of the words "ruby," "sapphire," "emerald," "topaz," "stone," "birthstone," "gemstone," etc.

(a) It is unfair or deceptive to use the unqualified words "ruby," "sapphire," "emerald," "topaz," or the name of any other precious or semi-precious stone to describe any product that is not in fact a natural stone of the type described.

(b) It is unfair or deceptive to use the word "ruby," "sapphire," "emerald," "topaz," or the name of any other precious or semi-precious stone, or the word "stone," "birthstone," "gemstone," or similar term to describe a laboratory-grown, laboratory-created, [manufacturer name]-created, synthetic, imitation, or simulated stone, unless such word or name is immediately preceded with equal conspicuousness by the word "laboratory-grown," "laboratory-created," "[manufacturer

name]-created," "synthetic," or by the word "imitation" or "simulated," so as to disclose clearly the nature of the product and the fact it is not a natural gemstone.

Note to paragraph (h): The use of the word "faux" to describe a laboratory-created or imitation stone is not an adequate disclosure that the stone is not natural.

(c) It is unfair or deceptive to use the word "laboratory-grown," "laboratory-created," "[manufacturer name]-created," or "synthetic" with the name of any natural stone to describe any industry product unless such industry product has essentially the same optical, physical, and chemical properties as the stone named.

§ 23.24 Misuse of the words "real," "genuine," "natural," "precious," etc.

It is unfair or deceptive to use the word "real," "genuine," "natural," "precious," "semi-precious," or similar terms to describe any industry product that is manufactured or produced artificially.

§ 23.25 Misuse of the word "gem."

(a) It is unfair or deceptive to use the word "gem" to describe, identify, or refer to a ruby, sapphire, emerald, topaz, or other industry product that does not possess the beauty, symmetry, rarity, and value necessary for qualification as a gem.

(b) It is unfair or deceptive to use the word "gem" to describe any laboratory-created industry product unless the product meets the requirements of paragraph (a) of this section and unless such word is immediately accompanied, with equal conspicuousness, by the word "laboratory-grown," "laboratory-created," or "[manufacturer-name]-created," "synthetic," or by some other word or phrase of like meaning, so as to clearly disclose that it is not a natural gem.

Note to § 23.25: In general, use of the word "gem" with respect to laboratory-created stones should be avoided since few laboratory-created stones possess the necessary qualifications to properly be termed "gems." Imitation diamonds and other imitation stones should not be described as "gems." Not all diamonds or natural stones, including those classified as precious stones, possess the necessary qualifications to be properly termed "gems."

§ 23.26 Misuse of the words "flawless," "perfect," etc.

(a) It is unfair or deceptive to use the word "flawless" as a quality description of any gemstone that discloses blemishes, inclusions, or clarity faults of any sort when examined under a corrected magnifier at 10-power, with adequate illumination, by a person skilled in gemstone grading.

(b) It is unfair or deceptive to use the word "perfect" or any representation of similar meaning to describe any gemstone unless the gemstone meets the definition of "flawless" and is not of inferior color or make.

(c) It is unfair or deceptive to use the word "flawless," "perfect," or any representation of similar meaning to describe any imitation gemstone.

Appendix to Part 23—Exemptions Recognized in the Assay for Quality of Gold Alloy, Gold Filled, Gold Overlay, Rolled Gold Plate, Silver, and Platinum Industry Products

(a) Exemptions recognized in the industry and not to be considered in any assay for quality of a karat gold industry product include springs, posts, and separable backs of lapel buttons, posts and nuts for attaching interchangeable ornaments, metallic parts completely and permanently encased in a nonmetallic covering, field pieces and bezels for lockets,[1] and wire pegs or rivets used for applying mountings and other ornaments, which mountings or ornaments shall be of the quality marked.

Note: Exemptions recognized in the industry and not to be considered in any assay for quality of a karat gold optical product include: the hinge assembly (barrel or other special types such as are customarily used in plastic frames); washers, bushings, and nuts of screw assemblies; dowels; springs for spring shoe straps; metal parts permanently encased in a non-metallic covering; and for oxfords,[2] coil and joint springs.

(b) Exemptions recognized in the industry and not to be considered in any assay for quality of a gold filled, gold overlay and rolled gold plate industry product, other than watchcases, include joints, catches, screws, pin stems, pins of scarf pins, hat pins, etc., field pieces and bezels for lockets, posts and separate backs of lapel buttons, bracelet and necklace snap tongues, springs, and metallic parts completely and permanently encased in a nonmetallic covering.

Note: Exemptions recognized in the industry and not to be considered in any assay for quality of a gold filled, gold overlay and rolled gold plate optical product include: screws; the hinge assembly (barrel or other special types such as are customarily used in plastic frames); washers, bushings, tubes and nuts of screw assemblies; dowels; pad inserts; springs for spring shoe straps, cores and/or inner windings of comfort cable temples; metal parts permanently encased in a non-metallic covering; and for oxfords, the handle and catch.

(c) Exemptions recognized in the industry and not to be considered in any assay for quality of a silver industry product include screws, rivets, springs, spring pins for wrist watch straps; posts and separable backs of lapel buttons; wire pegs, posts, and nuts used for applying mountings or other ornaments, which mountings or ornaments shall be of the quality marked; pin stems (*e.g.*, of badges, brooches, emblem pins, hat pins, and scarf pins, etc.); levers for belt buckles; blades and skeletons of pocket knives; field pieces and bezels for lockets; bracelet and necklace snap tongues; any other joints, catches, or screws; and metallic parts completely and permanently encased in a nonmetallic covering.

(d) Exemptions recognized in the industry and not to be considered in any assay for quality of an industry product of silver in combination with gold include joints, catches, screws, pin stems, pins of scarf pins, hat pins, etc., posts and separable backs of lapel buttons, springs, and metallic parts completely and permanently encased in a nonmetallic covering.

(e) Exemptions recognized in the industry and not to be considered in any assay for quality of a platinum industry product include springs, winding bars, sleeves, crown cores, mechanical joint pins, screws, rivets, dust bands, detachable movement rims, hat-pin stems, and bracelet and necklace snap tongues. In addition, the following exemptions are recognized for products marked in accordance with section 23.8(b)(5) of these Guides (*i.e.*, products that are less than 500 parts per thousand platinum): pin tongues, joints, catches, lapel button backs and the posts to which they are attached, scarf-pin stems, hat pin sockets, shirt-stud backs, vest-button backs, and ear-screw backs, provided such parts are made of the same quality platinum as is used in the balance of the article.

By direction of the Commission.

Donald S. Clark,

Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

APPENDIX—LIST OF COMMENTERS AND ABBREVIATIONS

Abbreviation	No.	Commenter
A&D Gem	187	A & D Gem Corp.

[1] Field pieces of lockets are those inner portions used as frames between the inside edges of the locket and the spaces for holding pictures. Bezels are the separable inner metal rings to hold the pictures in place.

[2] Oxfords are a form of eyeglasses where a flat spring joins the two eye rims and the tension it exerts on the nose serves to hold the unit in place. Oxfords are also referred to as pince nez.

APPENDIX—LIST OF COMMENTERS AND ABBREVIATIONS—Continued

Abbreviation	No.	Commenter
A&Z	29	A & Z Pearls, Inc.
ADS	197	American Diamond Syndicate.
Affro	138	Affro Gems.
AGL	230	American Gemological Laboratories.
AGS	18	American Gem Society.
AGTA	49	The American Gem Trade Association, Inc.
Alarama	51	Alarama Jewelry Co., Inc.
Alfille	247	E.J. Alfille, Ltd.
Alie	106	A.E. Alie & Sons, Inc.
Almond	63	Almond Jewelers Inc.
AMG	79	AM-Gold Products, Inc.
APG	89	American Pewter Guild, Ltd.
Argo	17	Argo & Lehne Jewelers.
Armel	32	Armel Manufacturing Co.
ArtCarved	155	ArtCarved.
Artisans	124	Artisans Jewelers, Inc.
Assael	136	Assael Int'l Inc.
Assured	148	Assured Loan Co.
Astoria	56	Astoria Jewelry Mfg. Co., Inc.
Atlantic	135	Atlantic Gem Corp.
Aviv	40 and 41	Aviv Inc.
AWA	236	American Watch Association.
AWI	116	American Watchmakers Institute.
Bales	156	Bales Diamond Center & Mfg. Inc.
Bedford	210	Bedford Jewelers, Inc.
Benrus	22	Benrus Watch Co., Inc.
Best	225	Best Products Co., Inc.
Black Hills	59	Black Hills Gold Jewelry.
Bogo	201	Jerry Bogo Co.
Boston	125	Boston Findings & Jewelers Supply Co., Inc.
Brant	133	Brant Laird Antiques.
Brasilia	143	Brasilia Gems, Inc.
Bridge	163	Ben Bridge.
Brilliance	68	Brilliance-Diamond Importers.
Bruce	218	Donald Bruce & Co.
Canada	209	Consumer & Corporate Affairs Canada.
Capital	19	Capital Mfg./L. Dershowitz Co.
Capitol Ring	191	Capitol Ring Co., Inc.
Catholyte	34	Catholyte, Inc.
Chatham	231	Chatham Created Gems.
Cheviot	104	Cheviot Jewelry Co.
Citizen	228	Citizen Watch Co. of America, Inc.
Classique	96	Classique D'Or, Inc.
Cockrell	134	Charles Cockrell.
Collins	12	Collins Jewelry.
Colormasters	149	Colormasters Gem Corp.
Commercial	202	Commercial Mineral Co.
Consumers	158	Consumers.
Courtship	36	Courtship Int'l Ltd.
CPAA	193	Cultured Pearl Association of America, Inc.
Cross	165	A.T. Cross Co.
Crystal	24	J.O. Crystal Co., Inc.
David	194	W.B. David & Co., Inc.
Day	132	Day Co.
De'Nicole	175	De'Nicole Designs.
DeMarco	161	Joseph DeMarco.
Dendritics	167	Dendritics, Inc.
Diamonique	224	Diamonique Corp.
Diastar	99	Diastar Inc.
Disons	55	Disons Gems, Inc.
DMIA	26	Diamond Manufacturers & Importers Association of America, Inc.
Eastern	173	Eastern Gems, Inc.
Eaton's	248	Eaton's.
Eisen	91	Susan Eisen.
Emkay	146	Emkay Int'l, Inc.
Empire	44	Empire Silver Co., Inc.
Estate	23	Estate Jewelers.
Evvco	73	Evvco Enterprises, Inc.
Fabrikant	53	M. Fabrikant & Sons.
Faleck	50	Faleck & Margolies Manufacturing, Corp.
Fame	102	Fame Jewelry Inc.
Fargotstein	70	S. Fargotstein & Sons, Inc.

APPENDIX—LIST OF COMMENTERS AND ABBREVIATIONS—Continued

Abbreviation	No.	Commenter
Fashion	35	Fashion Line Ltd.
Fasnacht	4	Fasnacht's Jewelry.
Fine	141	Fine Emerald Inc.
Finlay	253	Finlay Fine Jewelry Corp.
Fischer	87	Fischer Pewter, Ltd.
Flyer	95	J & H Flyer.
Foster	100	Foster, Inc.
Francis	139	Mrs. James B. Francis.
Franklin	250	The Franklin Mint.
Friedman	234	A.A. Friedman, Co., Inc.
G&B	30	Gudmundson & Buyck Jewelers.
Gehrkens	206	Kenneth A. Gehrkens.
Gem Vault	147	The Gem Vault.
Gem Gallery	131	The Gem Gallery.
Gemtron	145	Gemtron Corp.
General	88	General Findings.
GIA	81	Gemological Institute of America.
Gold Institute	13	Gold Institute.
Golden West	179	Golden West Manufacturing Jewelers, Inc.
Goldman	60	Frederick Goldman, Inc.
Gray	127	Gray & Co.
Green	6	Green Brothers.
Guyot	82	Maurice F. Guyot Jr.
Handy	62	Handy & Harman.
Hansen	174	Dr. Gary R. Hansen.
Harten	259	Harten.
Harvey	75	E.B. Harvey & Co., Inc.
Heritage	215	Heritage Metalworks, Inc.
Honora	14 and 15	Honora Jewelry Co., Inc.
H.R. Diamonds	195	H.R. Diamonds, Ltd.
ICT	189	ICT, Inc.
IJA	192	Indiana Jewelers Association.
Ijadi	171	Ijadi Gem, Inc.
Imperial	117	Imperial Jade Mining, Inc.
Impex	220	Impex Diamond Corp.
ISA	237 and 237A	International Society of Appraisers.
JA	3	Jewelers of America, Inc.
Jabel	47	Jabel Inc.
JCWA or Japan Watch	216	Japan Clock & Watch Association.
Jeffery	21	Robert K. Jeffery.
Jewelmasters	110	N.E.I. Jewelmasters of N.J. Inc.
JGL	77	JGL Inc.
JMC	1	Jewelry Merchandising Consultants.
JVC	212	Jewelers Vigilance Committee, Inc.
K's	45 and 98	K's Merchandise.
Kast	198	Joe Kast.
Kennedy	9	Kennedy's Jewelers.
Kimberley	227	Kimberley Created Emerald, Inc.
King	11	King's Jewelry.
KingStone	166	KingStone Gem Importers, Ltd.
Kittle	246	Clare Adams Kittle.
Knight	256	George R. Knight, Jr.
Korbelak	27 and 169	A. Korbelak.
Krementz	208	Krementz & Co.
Kurgan	107	I. Kurgan & Co., Inc.
Kwiat	203	Kwiat, Inc.
Kyocera	242	Kyocera America, Inc.
Lance	84	The Lance Corp.
Landstrom's	241	Landstrom's.
Lange	183	M. Lange Co., Inc.
Lannyte	65	Lannyte Co.
LaPrad	181	Robert E. LaPrad.
Leach	257	Leach & Garner Co.
Lee	153	Stewart M. Lee.
Leer	114	Leer Gem Ltd.
Light Touch	54	The Light Touch.
Limon	235	Robert Limon.
Little	164	Little & Co., Inc.
Littman	2	Littman & Barclay Jewelers.
London Star	20	London Star Ltd.
LP Gems	168	L.P. Gems, Inc.
Luria	28	L. Luria & Son.

APPENDIX—LIST OF COMMENTERS AND ABBREVIATIONS—Continued

Abbreviation	No.	Commenter
M&L	105	M & L Jewelry Manufacturing Inc.
Majestic	115	Majestic Setting Inc.
Majorica	240	Majorica Jewelry, Ltd.
Manning	159	Manning Int'l.
MAR	37 and 42	M.A.R. Creations Inc.
Mark	207	Richard C. Mark.
Mason	170	Mason-Kay Inc.
Mastro	190	Mastro Jewelry Corp.
Matlins	205	Antoinette Leonard Matlins.
Matthey	213	Johnson Matthey.
Mayfield's	185	Mayfield's Co.
McGee	112	McGee & Son.
MCM	152	MCM Gems.
Mendelson	33	Mike Mendelson & Assoc., Inc.
Mikimoto	72	Mikimoto (America) Co., Ltd.
MJSA	226	Manufacturing Jewelers & Silversmiths of America, Inc.
Moon & Star	172	Moon & Star.
Morton	199	Morton Jewelers.
Mueller	151	Ralph Mueller & Assoc.
Murray's	264	Murray's.
Nabavian	144	Nabavian Gem Co. Inc.
NACAA	90	National Association of Consumer Agency Administrators.
NACSM	219	National Association of Catalog Showroom Merchandisers, Inc.
Nassau	10	Kurt Nassau, PhD.
NAWC	251	North American Watch Corp.
New Era	129	New Era Gems.
New Castle	122	Kings of New Castle, Inc.
Newhouse	76	Leon M. Newhouse.
Nowlin	109	Nowlin Jewelry, Inc.
NRF	238	National Retail Federation.
NY Gold	39	The New York Gold & Diamond Exchange Inc.
Obodda	177	H. Obodda.
Ocean	176	Ocean Gem.
Odi-Famor	58	ODI/FAMOR, Inc.
Onyx	162	House of Onyx.
Orion	94 and 113	Orion Diamond Manufacturing Co., Inc.
Oroco	69	Oroco Manufacturing, Inc.
Overstreet	8	Overstreet's Jewelry.
PanAmerican	57 and 101	Pan-American Diamond Corp.
PGI	245	Platinum Guild Int'l U.S.A. Jewelry, Inc.
Phillips	204	Phillips Jewelers, Inc.
Philnor	93	Philnor Inc.
Postal Service	244	United States Postal Service.
Pounder's	130	Pounder's Jewelry.
Precision	121	Precision Design Inc.
Preston	229	F.J. Preston & Son Inc.
Ransom	184	King's Ransom.
Rapaport	233	Rapaport Corp.
Raphael	78	Raphael Jewelry Co., Inc.
Rare Earth	137	Rare Earth Gallery.
Renaissance	74	Renaissance.
Reys	260	Rey's Jewelers.
River	254	River Gems & Findings.
Roisen	31	Michal Ferman, Roisen & Ferman, Inc.
Ross Simons	67	Ross-Simons Jewelers.
Rosy Blue	108	Rosy Blue Inc.
Roubins	128	A. R. Roubins Sons, Inc.
Russell	217	Kenneth M. Russell.
Salisbury	86	Salisbury Pewter, Inc.
Sarantos	182	Susan E. Sarantos.
Saturn	46	Saturn Rings, Inc.
Schaeffer	211	H.K. Schaeffer & Co.
Schneider	119	Wm. Schneider Inc.
Schwartz	52	Charles Schwartz.
SCI	180	Stanley Creations, Inc.
SDGL	140	San Diego Gemological Laboratories.
Seagull	111 and 120	Seagull Pewter & Silversmiths Ltd.
Service	222	Service Merchandise.
Sheaffer	249	Sheaffer Inc.
Shire	221	Maurice Shire Inc.
Shor	258	Russell Shor.
Sibbing	5	Sibbing's Jewelry.

APPENDIX—LIST OF COMMENTERS AND ABBREVIATIONS—Continued

Abbreviation	No.	Commenter
Siegel	255	Siegel & Assoc., Inc.
Simmons	71	R.F. Simmons Co., Inc.
Sites	123	Sites Jewelers.
Skalet	61	Skalet Inc.
Soft Wear	142	Soft Wear Jewelry.
Solid Gold	261	Solid Gold Jewelers.
Stanley	83	Loyd Stanely.
Stern	157	Louis P. Stern Assoc.
Stieff	25	Kirk Stieff.
Suberi	214	Suberi Brothers Inc.
Swezey	92	Swezey of Westport Inc.
Swiss Federation	232	The Federation of the Swiss Watch Industry.
Taylor	186	Taylor Gem Corp.
Thorpe	7	Thorpe & Co.
TIC	66	Tin Information Center.
Timex	239	Timex Corp.
TransAmerican	43	TransAmerican Jewelry Co., Inc.
Tru-Kay	196	Tru-Kay Manufacturing Co.
Tsavomadini	150	Tsavomadini Inc.
Ultimate	243	Ultimate Trading Corp.
Ultra Blue	160	Ultra Blue Mfg.
Union Carbide	38	Union Carbide.
Univ. Point	126	Universal Point.
Universal	178	Universal Pewter Corp.
USWC	118	U.S. Watch Council Inc.
Vardi	97	Vardi Stonehouse, Inc.
Verstandig	154	Verstandig & Sons, Inc.
Vijaydimon	80 and 103	Vijaydimon (U.S.A.) Inc.
Von's	16	Von's Diamond Jewelry.
Web	85	Web Silver Co., Inc.
Weinman	263	Weinman Bros, Inc.
Weitz	200	Sid Weitz, Inc.
Werdiger	48	Michael Werdiger, Inc.
WGC	223	World Gold Council.
Winston	252	Winston Studio & Imports.
Woodbury	64	Woodbury Pewterers, Inc.
Zahm	188	Philip Zahm.

[FR Doc. 96–13524 Filed 5–29–96; 8:45 am]
BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 19

Guides for the Metallic Watch Band Industry

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (the "Commission") announces that it has concluded its review of its Guides for the Metallic Watch Band Industry ("Watch Band Guides"). In a separate document published elsewhere in this issue of the **Federal Register**, the Commission is consolidating certain provisions of the Watch Band Guides with the Guides for the Jewelry Industry, renamed Guides for the Jewelry, Precious Metals and Pewter Industries. The Commission has decided to rescind the Watch Band Guides. The Commission is taking this action to streamline the Guides.

EFFECTIVE DATE: May 30, 1996.

FOR FURTHER INFORMATION CONTACT: Constance M. Vecellio, Attorney, (202) 326–2966, or Laura J. DeMartino, Attorney, (202) 326–3030, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Guides for the Metallic Watch Band Industry ("Watch Band Guides"), 16 CFR Part 19, address claims made about watch bands that are not permanently attached to watchcases. The Commission requested public comment on the Watch Band Guides, the Guides for the Jewelry Industry ("Jewelry Guides"), 16 CFR Part 23, and the Guides for the Watch Industry, 16 CFR Part 245.[1] Much of the material in the Watch Band Guides duplicates information in the Jewelry Guides. For the reasons discussed in greater detail in the **Federal Register** Notice announcing revisions to the Jewelry Guides, the Commission is consolidating some of the provisions of the Watch Band Guides into the Jewelry Guides. Therefore, the Commission is rescinding the Watch Band Guides. On the basis of the discussion in the Commission's announcement of revisions to the Jewelry Guides, which is located elsewhere in this issue of the **Federal Register**, and which is incorporated herein, 16 CFR Part 19 is hereby rescinded.

[1] 57 FR 24996 (June 12, 1992). The Commission published this **Federal Register** Notice soliciting comment, in response to a petition from the Jewelers Vigilance Committee ("JVC"). Among other revisions, the JVC proposed consolidating all three Guides into one.

List of Subjects in 16 CFR Part 19

Advertising, Watch bands, Trade practices.

PART 19—[REMOVED]

The Commission under the authority of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), amends chapter I of Title 16 of the Code

of Federal Regulations by removing Part 19.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96–13523 Filed 5–29–96; 8:45 am]
BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

16 CFR PART 23

Guides for the Jewelry, Precious Metals and Pewter Industries

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission") is requesting public comments on proposed revisions to § 23.7 of the Guides for the Jewelry, Precious Metals and Pewter Industries ("the Guides"). Section 23.7 of the Guides addresses claims made about platinum products. All interested persons are hereby given notice of the opportunity to submit written data, views and arguments concerning this proposal.

DATES: Written comments will be accepted until August 12, 1996.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, Sixth and Pennsylvania Ave., N.W., Washington, D.C. 20580. Comments about these proposed changes to the Guides should be identified as "Guides for the Jewelry, Precious Metals and Pewter Industry—16 CFR Part 23—Comment."

FOR FURTHER INFORMATION CONTACT: Constance M. Vecellio or Laura J. DeMartino, Attorneys, Federal Trade Commission, Washington, D.C. 20580, (202) 326–2966 or (202) 326–3030.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a separate Federal Register Notice ("FRN"), the Commission announced revisions to its Guides for the Jewelry Industry, renamed Guides for the Jewelry, Precious Metals and Pewter Industries, 16 CFR Part 23.[1] The Guides for the Jewelry, Precious Metals and Pewter Industries ("the Guides") address claims made about precious metals, diamonds, gemstones and pearl products. The Commission did not revise section 23.7 of the Guides for the Jewelry Industry, which addresses claims made about platinum products. Industry members have indicated the need to simplify current Commission guidance regarding claims that a product is composed of platinum and bring this guidance into closer accord with international standards. The Commission concluded, however, that additional comment would be helpful to resolve certain issues. Below, the Commission describes the comments discussing the marking of platinum products, submitted in response to the prior FRN.[2] The Commission also discusses its proposed changes to this section. The Commission solicits comment on this provision of the Guides and the proposed changes.

II. Analysis of Comments

A. Background

Section 23.7 of the Guides for the Jewelry Industry states that it is an unfair trade practice to use the words "platinum," "iridium," "palladium," "ruthenium," "rhodium," or "osmium," or any abbreviations thereof, in a way likely to deceive purchasers as to the true composition of the product. The JVC proposed adding a sentence stating that platinum, iridium, palladium, ruthenium, rhodium, and osmium are the platinum group metals ("PGM"). Because not every reader of the Guides will be familiar with the term "platinum group metals," the Commission proposes including the JVC's explanatory sentence in the Guides. The JVC also proposed adding definitions of "platinum" and "quality mark." The Commission believes that the proposed definition of platinum is confusing (because it defines platinum, which is an element, as an alloy). The proposed definition of quality mark is unnecessary because that term is defined elsewhere in the Guides.

B. Suggested Provisions for Platinum Products

1. Proposals Based on the Voluntary Product Standards

In the Guides for the Jewelry Industry, a Note states that markings in compliance with Commercial Standard CS 66–38 (now Voluntary Product Standard 69–76) on the "Marking of Articles Made Wholly or in Part of Platinum" will be regarded "as among those fulfilling the requirements relating thereto which are contained in this section."[3] The JVC proposed incorporating the Voluntary Product Standard ("VPS"), with some changes, into the Guides.

The VPS sets out requirements for marking items as platinum. In section 3.5(1), the VPS states that an article without solder may be marked "platinum" if 985 parts per thousand are platinum group metals and 935 parts per thousand are pure platinum. The JVC proposed changing the requirement of 985 parts per thousand platinum group metals to 950 parts per thousand pure platinum. The FRN solicited comment on this proposed change.[4]

Fourteen comments addressed this issue. Two comments opposed the proposed standard, but offered no substantive reasons.[5] Twelve comments favored the revision.[6] The Platinum Guild stated that "'950 platinum' is an accepted standard worldwide [and] [a]doption of this standard simplifies the import and export of platinum jewelry and allows the U.S. to properly compete with others in the international marketplace."[7] This comment was echoed verbatim by Johnson Matthey, a major platinum producer.[8] Because of the overwhelming support for the change, which harmonizes the Guides with international practices, the Commission proposes making this change.[9]

[1] The Commission published a FRN soliciting public comment on amendments to the Jewelry Guides, including revisions to section 23.7 regarding platinum products. 57 FR 24996 (June 12, 1992). That FRN was published in response to a petition proposing changes, submitted by the Jewelers Vigilance Committee ("JVC").

[2] 57 FR 24996 (June 12, 1992). The comments are cited to by an abbreviation of the commenter's name and the document number assigned to the comment on the public record. A list of the commenters, including the abbreviations and document numbers used to identify each commenter, is attached as an appendix.

[3] Commercial Standards were promulgated by the U.S. Department of Commerce and administered by the National Bureau of Standards ("NBS"). Later renamed by the NBS as Voluntary Product Standards, they had the same legal significance as FTC guides. The Department of Commerce and the NBS, which is now called the National institute of Standards and Technology, withdrew these and all other VPS, as an economy measure, on January 20, 1984.

[4] The VPS provided, for the various types of PGM products, different "parts per thousand" requirements for products with solder and without solder. The JVC proposal dropped these references to solder (except as to a proposed new product, chain articles containing solder-filled wire, discussed *infra*). There was no comment opposing this change. The Commission solicits comment on whether references to solder should be included in the Guides.

[5] Korbelak (27) p.5 (stating that "platinum is platinum") and G&B (30) p.8 (stating that platinum should remain at a "high, high, standard").

[6] Fasnacht (4); Estate (23); Jebel (47); Handy (62); ArtCarved (155); IJA (192); Canada (209); Matthey (213); MJSA (226); Preston (229); PGI (245); and Leach (257).

[7] Comment 245, p.2 (stating further that other countries "produce '950 platinum' alloys with oftentimes superior casting and working characteristics," and that "[t]he U.S. needs these materials to be at the cutting edge of jewelry technology from a materials standpoint").

[8] Matthey (213) p.2; ArtCarved (155) p.4 (stating that "950" is used internationally and should be the U.S. standard); Canada (209) p.4 (stating that the proposal "would align the [Guides] with the current Canadian standard"); JCWA (216) p.3 (stating that "lowering the minimum to a level of grade 900/1000 would better reflect accepted international practice").

[9] The National Stamping Act, which establishes tolerance for gold and silver, does not apply to platinum. The JVC proposed including a Note stating that the "actual Platinum content of an industry product shall not be less than the Platinum content indicated by the quality marks." However, because extremely minor variances of the type allowed by the gold and silver tolerances in the National Stamping Act might not be unfair or deceptive, the Commission does not propose including this Note.

[10] Jabel (47) noted at p.1, that "there's an awful lot of *real* (10% iridium platinum) platinum out there that should be acknowledged." This provision addresses the marketing of this product.

[11] VPS sections 3.5(2) and (3).

The JVC also suggested including in the Guides two other sections of the VPS that state, for an article with 950 parts per thousand platinum group metals but less than 950 parts pure platinum, that other platinum group metals in the article be disclosed in the mark.[10] If the platinum is 750 parts or more, the next predominate metal should be named (*e.g.*, Irid-Plat, for an item containing 90% platinum and 10% iridium). If the platinum is less than 750 parts (but at least 500 parts pure platinum), all the other platinum group metals should be named, preceded by a number indicating the amount in parts per thousand of that metal (*e.g.*, 600 platinum-350 iridium).[11]

The Commission is seeking comment on whether it should adopt these sections as safe harbor provisions (*i.e.*, as examples of markings and descriptions that are not considered unfair or deceptive). The Commission asks that commenters address whether the marking of an item containing between 750 and 950 parts platinum (*e.g.*, Irid-Plat), will be understood by consumers or whether it will be confusing. The Commission is especially interested in how consumers will interpret a marking where the next predominate metal precedes the word platinum.

The Commission also solicits comment on the need for separate guidance for items containing between 750 and 950 parts pure platinum and items containing between 500 and 750 parts pure platinum. The Commission is considering one safe harbor provision for all items containing less than 950 parts pure platinum, that would recommend naming all platinum group metals in the item, preceded by a number indicating the amount in parts per thousand of that metal. This change may simplify Commission guidance and provide greater information to consumers about the amount of platinum and other platinum group metals in the item. The Commission requests comment on this approach.

The JVC also proposed including a section that states that no article containing fewer than 500 parts per thousand of pure platinum shall be marked "platinum." This proposal differs from the VPS section, which states that such an article can be marked "iridium," "palladium," "ruthenium," "rhodium," or "osmium" (whichever predominates in the article) if the article consists of 950 parts per thousand of platinum group metals.[12] There was no comment on this section. The Commission believes that referring to an article that contains less than 500 parts pure platinum as "platinum," without qualification, may be deceptive. The Commission does not believe that it would be deceptive to mark the item with the name of the predominate metal in the item. The Commission recognizes, however, that the predominate metal in such an item may be platinum (*e.g.*, 480 platinum, 250 palladium, 220 iridium). Although the Commission proposes including the provision, in the form it appears in the VPS, as a safe harbor provision in the Guides, it solicits comment on whether the Guides should address separately the situation where an item contains less than 500 parts pure platinum, but platinum is still the predominate metal.

2. Other Proposals

The Commission received a request for an advisory opinion from the JVC and Platinum Guild International on November 30, 1995. The JVC and Platinum Guild International requested that the Commission advise that the following markings or descriptions would not be considered deceptive: PT850 or 850 Plat; PT900 or 900 Plat; PT950 or 950 Plat; and PT999 or 999 Plat. The minimum content for platinum would be 850 parts per thousand. The JVC and Platinum Guild International state that these markings are similar to markings for gold jewelry and would be more understandable than the markings suggested in the VPS. They also state that these markings are used in Japan and Switzerland.

The request differs from the scheme of marking that is contained in the Voluntary Product Standard, described above. For items with less than 950 parts pure platinum, the other component platinum group metals would not be disclosed. Under this scheme of markings, it is unclear how products containing less than 850 parts platinum would be described. The Commission solicits comment on these issues and the costs and benefits of these markings relative to those in the VPS.

3. Abbreviations and Trademarks

The JVC proposed including a section from the VPS describing the "recognized abbreviations" for each of the platinum group metals (platinum, iridium, palladium, ruthenium, rhodium and osmium).[13] Each is a four-letter abbreviation. The Platinum Guild suggested that these abbreviations be changed to permit the use of two letter abbreviations.[14] The Guild stated that jewelry manufacturers have said that "the marking requirements and long metal abbreviations are a deterrent to entering the marketplace with a product such as '585 PLAT 365 PALL.' Shorter abbreviations would be a real help to the platinum segment of the jewelry industry, *i.e.*, '585 PT.' "[15]

The two letter abbreviations are the same as those listed in the periodic chart of the elements, but the four-letter abbreviations are more likely to be understood by consumers with no knowledge of chemistry. However, in response to the comments, the Commission proposes including a provision that states that the four-letter abbreviations are preferred, but that the use of two-letter abbreviations on articles that consist of more than two platinum group metals would not be objectionable. Comments on this proposal and on whether two-letter abbreviations should be acceptable in all situations are desired.

The JVC also recommended including in the Guides the VPS section that requires that, if a platinum quality mark appears on an article, the trademark of the manufacturer must also appear. The eleven pertinent comments discussing this proposal all favored requiring a trademark on quality-marked platinum.[16] However, most gave no reason. Platinum is not covered by the National Stamping Act, which requires that an article that is stamped with a quality mark indicating that it is made of gold or silver, also bear a trademark of the manufacturer or importer. Preston stated that the Commission would be "the next logical Federal authority * * * to close the trade mark stamping gap for platinum products" and that this requirement would "help maintain uniformly high product standards by causing manufacturers, importers, or sellers who stamp "platinum" on their products to identify themselves."[17]

The purpose of the Guides, however, is not to "maintain uniformly high product standards" but rather to prevent unfairness and deception. It is neither deceptive nor unfair to mark an item as

[12] VPS section 3.5(4).

[13] VPS section 5.

[14] Comment 245, pp. 2–3. "Plat.," "irid.," "pall.," "ruth.," "rhod.," and "osmi." could be replaced by "PT," "IR," "PA," "RU," "RH," and "OS."

[15] Comment 245, p.3.

[16] Fasnacht (4); King (11); Estate (23); G&B (30); Handy (62); McGee (112); Bridge (163); IJA (192); Canada (209); Matthey (213); and MJSA (226).

[17] Comment 229, p.10.

platinum but not to identify the trademark of the manufacturer.[18] Hence, the Commission has not included in the Guides a requirement that the trademark must accompany any platinum quality mark.

Finally, the JVC proposed including the list of "exemptions" (*e.g.*, joint, catches, etc.) to which the quality mark is deemed not to apply. The Commission proposes adding a note to the section stating that a list of exemptions can be found in the appendix.

C. Suggested Provisions for Platinum-Filled Products

The JVC proposed including a subsection on "platinum-filled" or "platinum overlay" (*i.e.*, platinum-plated) products. The FRN asked whether a standard should be established for platinum-filled, platinum overlay, or platinum-clad products and whether a standard that the plating constitute at least 1/20th of the weight of the entire article would be appropriate.

In response to this question, Preston stated that platinum-filled and platinum overlay are not yet produced commercially by the platinum industry. Preston also stated that since these products may be introduced in the future, the JVC's Platinum subcommittee, "[i]n the absence of carefully explored standards * * * arbitrarily copied the technology and standards for similar products in the gold industry."[19]

Some comments stated that a standard should be established.[20] One noted that "if [platinum plating] is currently being done, it should have the same regulations as gold coated products."[21] However, another stated the same terms should *not* be used for gold and platinum.[22] Alexander Korbelak stated that the term "platinum-filled" was deceptive.[23] Others simply answered the question in the FRN "yes"[24] or "no."[25]

Sheaffer commented that "a standard should be established for platinum plating (regardless of how applied)," but favored a standard specifying minimum fineness and thickness. Sheaffer stated that a standard based on a weight ratio "will encourage the production of inferior articles lacking strength and rigidity as the thickness and, thus, the cost of the plate can readily be reduced by use of a very thin base material."[26]

The Platinum Guild and Johnson Matthey both favored the proposed standard, noting that it "will assure that a properly manufactured product will be durable and have a reasonable precious metal content."[27]

Because the comments indicate that platinum-filled products are not currently being marketed, there are no deceptive practices occurring. Moreover, there appears to be little consensus on what standard would best meet consumer expectations. Thus, the Commission does not propose including a provision for this product in the Guides at this time. Future marketers of such products could be guided by the provisions that apply to gold- and silver-plated products. The Commission, however, solicits comment on whether there is a need to address platinum-filled products in the Guides at this time, and if so, why.

D. Proposals for Solder-Filled Platinum Chain

The JVC proposed adding a provision on solder-filled platinum chain. The FRN solicited comment on whether a standard of 850 parts per thousand pure platinum is appropriate.

The Platinum Guild and Johnson Matthey both noted that Japan, which consumes the greatest amount of platinum jewelry in the world, uses the 850 standard for platinum chain. They stated that the 850 standard is appropriate, "whether solder filled or solid wire is used in the manufacture of the product," and noted that "Internationally, little solder filled wire is used * * * ." Both also stated that a standard of "850 platinum" for chain products "will allow the U.S. manufacturer to compete more fairly in the world marketplace."[28] MJSA stated that the proposed 850 standard for platinum chain "is consistent with existing industry standards and practices."[29] Other comments simply approved the proposed standard.[30] Canada commented that "in Canada no specific standard is advised as the question is under review."[31] Korbelak stated that such a product should be designated "solder-filled platinum."[32]

Because the comments indicate that the proposed standard reflects existing standards both in the U.S. and abroad, the Commission proposes including this standard, as a safe harbor, in the Guides.

E. Proposals for Platinum in Combination with Gold Products

Finally, the JVC recommended including a section, adapted from the Voluntary Products Standard, providing that an article in which platinum is combined with gold so that they are "visually separable and easily distinguishable one from the other," may have the term "platinum" applied followed by a karat mark. However, the combination of platinum and gold is adequately covered in the Guides by the respective sections on platinum and gold and by the section on quality marks.[33] Thus, the Commission has concluded that it is unnecessary to include this section in the revised Guides.

III. Request for Comment

The Commission seeks public comment on section 23.7 of the Guides and all of the proposed changes discussed above. The Commission also requests comment on the following specific questions:

1. Do products with less than 950 parts per thousand pure platinum have the same qualities and characteristics as products with larger amounts of platinum?

2. Products consisting of between 750 and 950 parts per 1000 pure platinum may be marked "platinum" provided that the name of the next predominant PGM precedes the word platinum. Products consisting of between 500 and 750 parts per 1000 pure platinum may be marked "platinum" provided that all PGM in the product are marked and preceded by a number indicating the amount of the metal in parts per thousand. Should the guidance for all products consisting of less than 950 parts pure platinum be the same? If so, why? What are the reasons for having different standards for the products?

3. For products consisting of less than 950 parts pure platinum, what are the benefits and costs of marking each PGM contained in the product? Should the amount of each metal, in parts per thousand, be disclosed?

4. Should products with less than 950 parts pure platinum be marked with only the amount of pure platinum contained in the product (*e.g.*, PLAT 900)? Do consumers understand this marking? Would percentage markings (*e.g.*, 90% Plat) be preferable and feasible?

5. Are there any international standards for marking platinum products? Should the Guides follow these standards? Why or why not?

6. Should products with less than 500 parts per thousand pure platinum be marked "platinum"? Why or why not?

7. Should platinum and other PGM be described with two letter abbreviations? Do consumers understand two letter abbreviations?

8. Is there a need for Commission guidance regarding descriptions of platinum-filled, platinum overlay or platinum-clad products? If so, how should these products be addressed?

9. Should chain articles containing solder-filled wire and consisting of at least 850 parts per thousand pure platinum be marked "platinum"? Why or why not?

[18] If there are problems with the product, the consumer can seek assistance from the seller of the item (probably a retailer who in turn may know, or seek assistance from, the manufacturer of the item).

[19] Comment 229, p.9; Jabel (47) p.1 (stating, "How were these standards established? For wear? For weight? For appearance?"); Canada (209) p.4 (stating that the proposed standard "deserves further study," and noting that "there is industry interest for other platinum products with approximately 585 parts platinum per 1000 parts metal").

[20] Phillips (204) p.1 (stating that "some standard for platinum filled needs to be established"); Bruce (218) p.9 (stating that "platinum-filled" products may have overseas potential and that it would be best "to have standards set, so that when the opportunity comes, the material will be covered").

[21] Bales (156) p.9.

[22] G&B (30) p.8.

[23] Comment 27, p.5.

[24] Estate (23); Schwartz (52); Handy (62); and MJSA (226).

[25] Leach (257).

[26] Comment 249, p.4; ArtCarved (155) p.4 (stating that a "coating thickness" standard would be more appropriate than a weight standard).

[27] PGI (245) p.2 and Matthey (213) p.2 (both stating that electroplating, or chemical deposition of platinum, although currently not a factor in the marketplace, "may need to be addressed in future guides").

[28] PGI (245) p.2; Matthey (213) pp.2–3.

[29] Comment 226, p.6.

[30] Estate (23); Handy (62); G&B (30); and Jabel (47).

[31] Comment 209, p.4.

[32] Comment 27, p.5.

[33] Section 23.8(a)(2) of the Guides deals with quality marks on products that are a combination of two or more metals of similar surface appearance. This section provides that "each quality mark should be closely accompanied by an identification of the part or parts to which the mark is applicable." The Commission has determined that the guidance provided in this section will prevent deception.

List of Subjects in 16 CFR Part 23

Advertising; Jewelry; Trade practices.

Accordingly, the Commission proposes to amend Title 16 of the Code of Federal Regulations as follows:

1. The authority citation for Part 23 continues to read as follows:

Authority: Sec. 6, 5, 38 Stat. 721, 719; 15 U.S.C. 46, 45.

2. Section 23.7 is revised to read as follows:

§ 23.7 Misuse of the words "platinum," "iridium," "palladium," "ruthenium," "rhodium," and "osmium."

(a) It is unfair or deceptive to use the words "platinum," "iridium," "palladium," "ruthenium," "rhodium," or "osmium," or any abbreviation to mark or describe all or part of an industry product if such marking or description misrepresents the product's true composition. The Platinum Group Metals (PGM) are Platinum, Iridium, Palladium, Ruthenium, Rhodium, and Osmium.

(b) The following are examples of markings and descriptions that are not considered unfair or deceptive:

(1) The following four-letter abbreviations for each of the PGM may be used for quality marks on articles consisting of one or two PGM: "Plat." for Platinum; "Irid." for Iridium; "Pall." for Palladium; "Ruth." for Ruthenium; "Rhod." for Rhodium; and "Osmi." for Osmium. If an article contains more than two PGM, the following abbreviations may be used for quality marks to disclose three or more constituent metals: "Pt." for Platinum; "Ir." for Iridium; "Pd." for Palladium; "Ru." for Ruthenium; "Rh." for Rhodium; and "Os." for Osmium.

(2) An industry product consisting of at least 950 parts per thousand pure Platinum may be marked "Platinum."

(3) An industry product consisting of at least 950 parts per thousand PGM, of which at least 750 parts per thousand are pure Platinum, may be marked "Platinum" provided that the name or abbreviation of the PGM member that is the next largest constituent of the alloy immediately precedes the word "Platinum."

(4) An industry product consisting of at least 950 parts per thousand PGM, of which at least 500 parts per thousand (but less than 750) are pure Platinum, may be marked "Platinum" provided that the mark of each PGM constituent is preceded by a number indicating the amount in parts per thousand of each PGM, as, for example, "600 Plat.-350 Irid.," "700 Platinum-250 Iridium," or "500 Pt.-250 Pd.-200 Ir."

(5) An industry product consisting of at least 950 parts per thousand PGM, of which less than 500 parts per thousand are pure Platinum, may be marked with the name or abbreviation of the PGM member that predominates in the product, provided that the mark is preceded by a number indicating the amount in parts per thousand of the PGM. Such product should not be marked with the name or abbreviation for platinum.

(6) Chain articles containing solder-filled wire and consisting of at least 850 parts per thousand pure Platinum may be marked "Platinum."

Note to § 23.7: Exemptions recognized in the assay of platinum industry products are listed in the Appendix to Part 23.

By direction of the Commission.

Donald S. Clark,

Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

APPENDIX—LIST OF COMMENTERS AND ABBREVIATIONS

Abbreviation	No.	Commenter
ArtCarved	155	ArtCarved.
Bales	156	Bales Diamond Center & Mfg. Inc.
Bridge	163	Ben Bridge.
Bruce	218	Donald Bruce & Co.
Canada	209	Consumer & Corporate Affairs Canada.
Estate	23	Estate Jewelers.
Fasnacht	4	Fasnacht's Jewelry.
G&B	30	Gudmundson & Buyck Jewelers.
Handy	62	Handy & Harman.
IJA	192	Indiana Jewelers Association.
Jabel	47	Jabel Inc.
JCWA	216	Japan Clock & Watch Association.
King	11	King's Jewelry.
Korbelak	27	A. Korbelak.
Leach	257	Leach & Garner Co.
Matthey	213	Johnson Matthey.
McGee	112	McGee & Co.
MJSA	226	Manufacturing Jewelers & Silversmiths of America, Inc.
PGI	245	Platinum Guild Int'l U.S.A. Jewelry, Inc.

APPENDIX—LIST OF COMMENTERS AND ABBREVIATIONS—Continued

Abbreviation	No.	Commenter
Phillips	204	Phillips Jewelers, Inc.
Preston	229	F.J. Preston & Son Inc.
Schwartz	52	Charles Schwartz.

[FR Doc. 96–13522 Filed 5–29–96; 8:45 am]
BILLING CODE 6750–01–P

federal register

Thursday
May 30, 1996

Part VI

Department of Commerce

National Telecommunications and Information Administration

15 CFR Part 2301

Public Telecommunications Facilities Program; Proposed Rule

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

15 CFR Part 2301

[Docket No. 960524148–6148–01]

RIN 0660–AA09

Public Telecommunications Facilities Program

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Telecommunications and Information Administration (NTIA) is issuing a Notice of Proposed Rulemaking. This Notice is intended to clarify and/or revise the rules and appendix governing administration of the Public Telecommunications Facilities Program (PTFP). The PTFP is authorized to provide matching grants to plan and construct public telecommunications facilities.[1]

NTIA intends to issue Final Rules after it has received, evaluated and addressed public comments on these Proposed Rules.

DATES: Comments must be filed no later than the close of business on July 15, 1996.

ADDRESSES: Persons and organizations interested in commenting on the Proposed Rules must send three copies of any comments to: Public Telecommunications Facilities Program, NTIA, Department of Commerce, 14th Street and Constitution Avenue, NW, Room 4625, Washington, DC 20230. Attention: Dennis Connors.

FOR FURTHER INFORMATION CONTACT: Persons desiring further information regarding the Proposed Rules should contact Dennis Connors, Public Telecommunications Facilities Program, NTIA, DOC, 14th Street and Constitution Avenue NW., Room 4625, Washington, DC 20230, telephone (202) 482–5802.

SUPPLEMENTARY INFORMATION: In March 1995, President Clinton issued a directive to Federal agencies regarding their responsibilities under his Regulatory Reform Initiative. This initiative is part of the National Performance Review and calls for immediate, comprehensive regulatory reform. The President directed that all agencies undertake an exhaustive review of all their regulations with an emphasis on eliminating or modifying those that are obsolete or otherwise in need of reform. These Proposed Rules represent the first step in NTIA's response to this directive for the PTFP.

In keeping with the Presidential directive, NTIA has taken this opportunity to thoroughly review the existing 1991 Rules.[2] We are proposing a number of changes discussed below which simplify or delete requirements. In order to clarify the rules, we have removed internal repetition as well as duplication of requirements set forth for grantees in other government rules and regulations.

The change most readily apparent to those familiar with the 1991 Rules is that the Proposed Rules have been completely reorganized to make it easier for applicants and grantees to understand the requirements of the program. Additional headers have been added and minor language changes made to increase clarity. However, unless discussed further below, the intent of the regulations remains the same as in the 1991 Rules.

The most significant policy change contained in the Proposed Rules includes a complete revision of the evaluation criteria which formerly was contained in two sections, *§ 2301.13 Funding Criteria for Construction Applications* and *§ 2301.14 Funding Criteria for Planning Applications.* The Proposed Rules combine both construction and planning evaluation criteria into a new § 2301.17. The Proposed Rules also add a description of PTFP's technical evaluation process in § 2301.16 and a description of the selection process used to award grants in § 2301.18.

Two clarifications have been made in the funding priorities, which previously were contained in the Appendix to the 1991 Rules and are now incorporated into the Proposed Rules at § 2301.4. NTIA proposes to modify the former Priority 4, Replacement and Improvement of Basic Equipment for Existing Broadcast Stations. Under the proposed § 2301.(4)(b)(4) NTIA has redesignated this section as Priority 4, Improvement of Public Broadcasting Services and expanded its scope. In addition to the projects formerly included under Priority 4, NTIA now will consider projects to construct public broadcast stations to address underserved needs in an area already served by other public broadcasting facilities. Under the previous funding priorities in the Appendix to the 1991 Rules, NTIA considered applications intended to serve areas already served by other public broadcasting facilities within the Special Applications category while other broadcast projects were considered within the funding Priorities. NTIA believes that all broadcast applications should be evaluated within the funding priorities. NTIA continues to believe that the PTFP's highest priorities are the provision of a first signal to a geographic area (Priority 1), urgent replacement of equipment at the sole station serving a geographic area (Priority 2), and first local origination (Priority 3). Therefore, projects to construct public broadcast stations to address underserved needs in an area already served by other public broadcasting facilities will be considered in Priority 4A, where they will be considered with other applications from stations in areas already served by another public broadcasting facility. The remainder of Priority 4A and Priority 4B remain unchanged from the Appendix to the 1991 Rules.

With the proposed revision of Priority 4, all broadcast applications have been placed within the five funding priorities. The Special Applications category therefore will consist solely of nonbroadcast projects and the language of the Special Applications category has been revised at § 2301.(4)(a).

Under § 390 of the Act, NTIA has the authority to consider applications which further the delivery of public telecommunications services to as many citizens in the United States as possible by the most efficient and economical means. NTIA recognizes that the issue of conversion to advanced digital technologies is of great importance for the future viability of public broadcasting facilities in the United States. NTIA believes that public broadcasters must adequately plan for the transition to advanced digital technologies and will therefore welcome applications which will assist in planning for the digital conversion of public broadcasting facilities.

The following reviews each section of the Proposed Rules and compares it with similar sections in the 1991 Rules.

Section 2301.1 Program Purposes

The new § 2301.1 *Program Purposes* replaces § 2301.2 *Program Purposes* in the 1991 Rules. This section of the 1991 Rules for the most part repeated the language contained in § 393(b) of the Act. NTIA believes that the overall purposes of the PTFP are better expressed in § 390 of the Act. This section of the Act, restated in the new § 2301.1, now serves as an introduction to the PTFP Regulations.

Section 2301.2 Definitions

The new § 2301.2 *Definitions* repeats for the most part § 2301.1 *Definitions* in the 1991 Rules. The definition for the term "Non-Federal financial support" has been deleted. The term is no longer used since the requirement to report on three years of Non-Federal financial support (§ 2301.5(d)(2)(viii) of the 1991 Rules) has been deleted.

Three new definitions have been added. A new definition for the term "planning" has been added to complement the definition for the term "construction," and a new definition has been added for "closing date" since the term is used throughout the Proposed Rules. Further, the definition of "Federal interest period" has been expanded to clarify that limitations on the use of Federally-funded public telecommunications facilities, such as the prohibition on the use PTFP funded equipment for the broadcast of advertisements (see § 2301.19(a)(5)) or the restrictions on sectarian use (see § 2301.19(b)) extend for the useful life of the equipment, whether or not this period extends beyond the 10 year Federal interest period. We are also adopting the definition of "minorities" which was previously set forth in our policy statement printed in the **Federal Register**, Vol. 44, No. 111, p. 33032.

Section 2301.3 Applicant Eligibility

The new § 2301.3 *Applicant Eligibility* was contained as a part of §§ 2301.4(a), (b) and (e) *Eligible Organizations and Projects* of the 1991 Final Rules. On December 22, 1995, NTIA issued a notice and an amendment to the PTFP regulations in the **Federal Register** (60 FR 66491, Dec. 22, 1995) on its policy with regard to sectarian activities. The December 22, 1995 Notice revised the previous § 2301.4 on eligibility. The revisions outlined in that Notice are included in the Proposed Rules in § 2301.3. The process of obtaining preliminary eligibility determinations (§ 2301.3(d)) has been simplified and much of the prior language specifying this procedure (§ 2301.4(f) in the 1991 Rules) has been eliminated.

Section 2301.4 Scope of Projects

The new § 2301.4 *Scope of Projects* contains the material included in the Appendix to the 1991 Rules dealing with Special Applications and Priorities. This section replaces § 2301.4(c) of the 1991 Rules, which for the most part was another paraphrase of § 393(b) of the Act. We believe that it is more useful to applicants that this new § 2301.4 contain the scope of eligible projects developed by NTIA to achieve the objectives of § 393(b) of the Act. Significant changes in § 2301.4(a) Special Applications and § 2301.4(b)(4) Priority 4 applications were discussed earlier in this document. § 2301.4(b)(1)(iv) adds language to clarify how PTFP considers the presence of AM daytime only stations in determining the Priority for proposed FM facilities serving a similar coverage area. § 2301.4(c) parallels § 2301.3(d) of the Proposed Rules in permitting potential applicants to obtain preliminary eligibility determinations. § 2301.4(d) maintains the intent of § 2301.4(f)(3) of the 1991 Rules that the Agency will review all applications after the closing date and that a preliminary eligibility determination does not guarantee that the Agency will accept a future application.

Section 2301.5 Special Consideration

The new § 2301.5 *Special Consideration* is based in part on § 2301.3 *Special Consideration* in the 1991 Rules. The section has been revised to reflect language in the Act (§ 392(f)). The sentence regarding a requirement for special consideration of a minimum 50% level of control of the applicant by women and minorities has been deleted.

Section 2301.6 Amount of Federal Funding

The new § 2301.6 *Amount of Federal Funding* is based upon § 2301.16 *Amount of the Federal Grant* in the 1991 Rules. Several sentences in this section have been rearranged within the section to group similar issues and increase the clarity of the regulation. We are also taking this opportunity to clarify PTFP's position on the level of matching funds required for broadcast equipment replacement, improvement and augmentation projects and to make it more consistent with treatment of non-Federal cost share under OMB Circular A–110 and 15 CFR Part 24. The new § 2301.6(b)(ii) is a restatement of NTIA policy previously published on November 22, 1991 (Fed. Reg. Vo. 56, No. 226, p. 59191) which indicates the presumption of 50% Federal participation for equipment replacement, improvement and augmentation projects. New language in § 2301.6(b)(2) clarifies NTIA's existing policy that obligating funds for equipment before the closing date is considered ownership or acquisition of equipment and is not normally permitted. However, NTIA will now consider on a case-by-base basis inclusion of equipment as matching funds purchased prior to the closing date due to unusual circumstances when a clear and compelling showing is made. § 2301.6(d) has been revised to indicate that if a grantee obligates Federal funds before the project start date, those costs may be disallowed. This revision replaces language in the 1991 Rules (§ 2301.23(a)–(c)) which gave the Department the option of terminating the entire grant.

Section 2301.7 Eligible and Ineligible Project Costs

The new § 2301.7 *Eligible and Ineligible Project Costs* is based on § 2301.17 *Items and Costs Ineligible for Federal funds* from the 1991 Rules. Specific information on the eligible and ineligible costs has been deleted from this section. The new language formalizes a procedure that NTIA has been following in recent years, which is to annually publish a list of eligible and ineligible costs in the **Federal Register** as part of the solicitation of applications. The list will be distributed as part of the application materials. § 2301.7(c) has been revised to reflect the change noted in the prior section regarding § 2301.6(b)(2).

Section 2301.8 Submission of Applications

Section 2301.9 Deferred Applications

Section 2301.10 Applications Resulting From Catastrophic Damage or Emergency Situations

The new §§ 2301.8 *Submission of Applications*, 2301.9 *Deferred Applications* and 2301.10 *Applications Resulting From Catastrophic Damage or Emergency Situations* are all derived from § 2301.5 *Application Procedures* in the 1991 Rules. The former § 2301.5 has been divided into three sections for clarity, but the application procedures contained in the three new sections are similar to that of the 1991 Rules. Lengthy sections from the old § 2301.5 regarding the specific requirements to be submitted in a new or deferred application have been deleted (e.g. §§ 2301.5(d)(2)(i–xxii)) and 2301.5(e)(4)(i–xi). Removing the specific requirements from the Rules will give NTIA the flexibility of future reductions in requirements on the application form to lessen the burden on applicants. For example, in FY 1997, NTIA will, under the Proposed Rules, delete the requirement to submit the three year report on Non-Federal Financial Support (Exhibit B) now required by the 1991 Rules and contained in the current application form. Specific requirements of the application are now and will

[1] See 47 U.S.C. 390–393, and 397–399b (1988), The Communications Act of 1934, as amended. Unless otherwise noted, all statutory citations are to title 47 of the United States Code.

[2] See 15 CFR Part 2301, published in the **Federal Register**, Vol. 56, No. 226, p. 59168. (November 22, 1991).

continue to be contained in the application form that will be distributed as part of application materials.

The Proposed Rules drop the specific requirement in the 1991 Rules (§ 2301.5(d)(2)) that an applicant submit "an original and one copy of the Agency application form" but now specifies at the new § 2301.8(d) that the applicant submit "the number of copies specified by the Agency." This will permit NTIA to be flexible, within OMB guidelines, on the number of applications forms required in order to complete processing of the applications in a timely manner.

Two paragraphs from the *Additional Information* section in the 1991 Rules (§ 2301.6(d)(1) and (2)) were relocated to the new *Submission of Applications* section (§ 2301.8(g) and (h)) to notify potential applicants of the use of Name Check forms and financial responsibility determinations in the application review process. In §§ 2301.8(g) and(h), the Proposed Rules clarify the uses of these reports in the application review process. The new § 2301.8(i) is Department of Commerce policy.

The new § 2301.10 *Applications Resulting From Catastrophic Damage or Emergency Situations* contains one significant change from § 2301.5(g) of the 1991 Rules. Under § 2301.10(a), NTIA proposes to consider the complete failure of basic equipment essential to a station's continued operation, even if the failure is not the result of a natural or manmade disaster, as an emergency situation which may warrant immediate consideration of an application.

Section 2301.11 Service of Applications

The new § 2301.11 *Service of Applications* was the former § 2301.7 *Service of Applications* in the 1991 Rules. Section § 2301.11(c) has been clarified to indicate that applicants must notify the State Single Points of Contact (SPOC) in each state relevant to the project that an application for funding has been submitted to PTFP. In the opening sentence to this section, we further clarify that the notification to the SPOC, the FCC and the state telecommunications agencies need only be a summary of the application, rather than the full application required in prior PTFP Rules. Future application materials will provide guidance as to what should be included in the summary to provide adequate notification to the requisite agencies while reducing the notification burden on all applicants.

Section 2301.12 Federal Communications Commission Authorizations

The new § 2301.12 *Federal Communications Commission Authorizations* was the former 2301.8 *Federal Communications Commission* in the 1991 Rules. The section contains a few minor editorial improvements in (a), (c), and (g) with no change in intent.

Section 2301.13 Public Comments

The new § 2301.13 *Public Comments* is based on the former § 2301.11 *Public Comments* in the 1991 Rules. Under the new § 2301.13(a), NTIA intends to publish a list of all applications received. This replaces the publishing of a list of applications accepted for filing (§ 2301.9(a) contained in the 1991 Rules.) The former listing of applications accepted for filing was often incomplete, as determinations of eligibility were sometimes made after the publication of the notice. NTIA believes that publication of a full listing of applications received can be done soon after the closing date, and better serves the public by permitting a longer period of time for receipt of public comments. § 2301.13(c) clarifies that copies of the applications are available for public inspection in the NTIA offices. The new § 2301.13(d) has been modified to clarify that only those public comments which oppose an application must be served on the applicant. § 2301.13(e) clarifies the use of the public comments.

Section 2301.14 Supplemental Application Information

The new § 2301.14 *Supplemental Application Information* is based on § 2301.6 *Additional Information* from the 1991 Rules. Paragraph (b)(4) of this section has been revised to reduce the burden on applicants. Where the 1991 rules require notification to NTIA of *any* changes in the applicants "board structure, in the applicant's 501(c)(3) status, or in the applicant's Articles of Incorporation or Bylaws," the Proposed Rules only require notification to NTIA of changes "that affect the applicant's eligibility." In the new organization of the Proposed Rules, several paragraphs have been moved into or out of this section. § 2301.15(f)(1) of the 1991 Rules was moved into this section and is now contained in the new § 2301.14(d). As previously noted, two paragraphs from the *Additional Information* section in the 1991 Rules (§§ 2301.6(d) (1) and (2)) were relocated to the new *Submission of Applications* section (§§ 2301.5 (h) and (i)).

Section 2301.15 Withdrawal of Applications

The new § 2301.15 *Withdrawal of Applications* is taken from § 2301.9(g) of the 1991 Rules and placed in this separate section for clarity. The section has been slightly revised with no change in intent.

Section 2301.16 Technical Evaluation Process

The new § 2301.16 *Technical Evaluation Process* combines elements from several sections in the 1991 Rules. The new § 2301.16(a) is based on § 2301.13 of the 1991 Rules. §§ 2301.16 (c), (d), and (e) parallel the procedures currently used by NTIA in the review of the PTFP applications and are similar to the information contained in the Notice of Closing Date for the FY 1996 Grant Cycle, published in the **Federal Register** on February 22, 1996 (FR xxx). The new § 2301.16(d) is also based on §§ 2301.12 (b) and (c) of the 1991 Rules.

Section 2301.17 Evaluation Criteria for Construction and Planning Applications

The new § 2301.17 *Evaluation Criteria for Construction and Planning Applications* is totally new and replaces § 2301.13 *Funding Criteria for Construction Applications* and § 2301.14 *Funding Criteria for Planning Applications* in the 1991 Rules. The new § 2301.17 proposes six broad criteria upon which the applications will be evaluated. These are: Project Objectives, Applicant Qualifications, Urgency, Financial Qualifications, Special Consideration, and either Technical Qualifications (for construction projects) or Planning Qualifications (for planning projects). This new section combines the evaluation criteria for planning and construction applications in one place, reduces redundancy and clarifies the evaluation criteria. The Agency will provide each applicant with guidance in the application materials on the appropriate type of documentation to meet each of the evaluation criteria which reflects the type and priority of the application being proposed. We have not assigned a weight to each of the criterion. In prior years, we have weighted all criteria equally. We are soliciting comment on the appropriate weights to be assigned.

Section 2301.18 Selection Process

The new § 2301.18 *Selection Process* is a new section which serves to distinguish the evaluation factors used in § 2301.17 from those additional factors used in the selection of the grant. §§ 2301.18 (a) and (b) parallel the procedures currently used by NTIA in the selection of the PTFP applications for funding and are similar to the information contained in the Notice of Closing Date for the FY 1996 Grant Cycle, published in the **Federal Register** on February 22, 1996 (Fed. Reg. Vol. 61, No. 36, p. 6912). The new § 2301.18(c) is the same as § 2301.8(h) of the 1991 Rules. The new §§ 2301.16 (d) and (e) are based on § 2301.15 (a) and (b) of the 1991 Rules.

Section 2301.19 General Conditions Attached to the Federal Award

The new § 2301.19 *General Conditions Attached to the Federal Award* is the first of several new sections which are derived from § 2301.22 *Conditions Attached to the Federal Award* in the 1991 Rules. The new § 2301.19 combines, in order, the following paragraphs from § 2301.22 of the 1991 Rules, (b)(1), (2), (3), (16), (4), (5), (11), and 2301.22(d). The remainder of § 2301.22 in the 1991 Rules has been included in other sections as discussed below or deleted as unnecessary. The new § 2301.19(c) is based on § 2301.23(c)(1) of the 1991 rules with the last two sentences of the new § 2301.19(c) added for clarity.

Section 2301.20 Schedules and Reports

The new § 2301.20 *Schedules and Reports* is based on §§ 2301.22(b) (8) and (12) *Conditions Attached to the Federal Grant* in the 1991 Rules. These two paragraphs have been given their own section for clarity. Several adjoining paragraphs, including §§ 2301.22(b) (9)–(11) and (13)–(17) have been deleted as unnecessary as they are redundant with other sections of the Proposed Rules or restate other law or OMB circulars.

Section 2301.21 Payment of Federal Funds

The new § 2301.21 *Payment of Federal Funds* is based on § 2301.18 *Payment of the Federal Grant* of the 1991 Rules. § 2301.18(c) was removed from this section of the 1991 Rules and was relocated to the new § 2301.20(c) as more appropriate.

Section § 2301.22 Protection, Acquisition and Substitution of Equipment

The new § 2301.22 *Protection, Acquisition and Substitution of Equipment*, is based on §§ 2301.22(a) and 2301.22(b)(7) of the 1991 Rules. Several portions of these paragraphs have been deleted as redundant with other sections of the Proposed Rules. The new § 2301.22 includes several changes designed to provide the Agency with flexibility in administering the program and to lessen the regulatory impact on grantees. These changes deal with the conditions under which a grantee is required to provide evidence of liens, insurance and leases sufficient to protect the Federal government's 10 year reversionary interest in the PTFP funded equipment. The 1991 Rules do not provide NTIA with any flexibility in requiring these items. The Proposed Rules discuss the requirements that a grantee protect the Federal government's interest in PTFP funded equipment by obtaining insurance, having sufficient lease/ownership rights to property, and securing the Federal interest by a lien. However, the Proposed Rules delete specific ways that these items must be documented to the Agency. For example, the new § 2301.22(a) reduces a prior "The grantee shall" in the 1991 Rules (§ 2301.18(a)) to the lesser "The Agency may require a grantee to" provide liens within 90 days after a grant award is received. Language reflecting this approach also appears in §§ 2301.22(g)(4), 2301.23((b)(8) and 2301.25(b). Likewise, specific requirements for an attorney's letter of certification on property lease/ ownership right is also deleted from the regulations. NTIA would like to explore alternate ways to protect the Federal interest which will reduce the burden on grantees. We are therefore proposing to revise these sections of the Proposed Rules to permit this future flexibility.

The new § 2301.22(e) replaces § 2301.22(c) of the 1991 Rules. NTIA is proposing to delete several restrictions on the lease of equipment, specifically the former § 2301.22(c)(1), which required that the lease be for "not less than the (10) years," and § 2301.22(c)(2), which limited the cost of the lease to "not be more than the total of the non-Federal share of the matching funds." NTIA believes that these statements were overly restrictive and now proposes to consider any lease that is to the "benefit to the Federal government" (new § 2301.22(e)(1)).

The new §§ 2301.22 (f)–(h) are based on § 2301.23 (c) and (d) *Grant Suspension, Terminations and Transfers* in the 1991 Rules and have been revised for clarity.

Section 2301.23 Completion of Projects

The new § 2301.23 *Completion of Projects* is based on § 2301.20 *Completion of Projects* in the 1991 Rules. Several paragraphs have been renumbered and minor changes have been made in §§ 2301.23(a)(4) and (b)(1) to improve clarity. The requirement in § 2301.23(b)(4) to provide a copy of the insurance policy has been dropped inasmuch as the same paragraph requires that the grantee must certify its insurance coverage. Paragraph § 2301.24(c) was contained in § 2301.18 in the 1991 Rules and is more appropriate in this section. This sentence has been revised to clarify that the project completion date is usually the date on which the project period expires unless the grantee certifies in writing prior to the project period expiration date that the pro ect is complete.

Section 2301.24 Final Federal Payment

The new § 2301.24 *Final Federal Payment* is a revision of § 2301.16(d) of the 1991 Rules. This paragraph was given its own section in the Proposed Rules for clarity. The language of the section has been simplified without changing the intent.

Section 2301.25 Retention of Record and Annual Status Reports

The new § 2301.25 *Retention of Records and Annual Status Reports* is based on § 2301.19 *Retention of Records* and § 2301.21 *Annual Status Reports for Construction Projects* in the 1991 Rules. The section was shortened and the language retained notifies applicants and grantees of NTIA's basic record keeping requirements. Further information on records retention will be included in materials sent to grantees at the time an award is made. The detailed procedural information that is required in the annual status report has been deleted from the proposed rule and will be provided to grantees at the time a project is closed out.

Section 2301.26 Waivers

The new § 2301.26 *Waivers* is based on § 2301.25 *Waivers* in the 1991 Rules. A sentence was added to clarify the Administrator's waiver authority.

One significant section of the 1991 Rules has been deleted in its entirety. This is § 2301.10 *Appeals*. Applicants are given the opportunity to request a preliminary determination of eligibility, and are provided written notice. The Appeals process was rarely used.

We are also taking this opportunity to restate several long standing PTFP policies which were published in the preambles of previous PTFP rules. The following policies remain in effect:

Evidence of Tax-Exempt Status

Applicants who are eligible for a Section 501(c)(3) exemption from the IRS or the equivalent exemption from the Commonwealth of Puerto Rico must

submit a copy of that exemption. Applicants who are ineligible for Section 501(c)(3) exemption but who can demonstrate nonprofit status by showing an applicable State tax exemption will be considered on a case-by-case basis. They must submit: (a) evidence of their State tax-exempt status; (b) citation to, and a copy of, the State statutory provisions governing that exemption; and (c) a brief statement explaining why they lack a Section 501(c)(3) exemption. (Fed. Reg. Vol. 44, No. 104, p. 30899)

Equipment Which Becomes Obsolete Before the end of the 10 Year Period of Federal Interest

In the case of equipment which become obsolete or wears out before the 10-year period of Federal interest expires, we will permit the trade-in or sale of the equipment and application of the remaining portion of the 10-year period to the new equipment. (Fed. Reg. Vol. 44, No. 104, p. 30910)

Selection of Priority

In preparing the narrative portions of its application, each applicant should state under which priority it desires NTIA to consider its application. In doing so, each applicant makes sure that its application contains sufficient documentation to justify its qualification under the selected priority. NTIA will then evaluate the application with the selected priority unless the Agency determines that the priority selected by the applicant is not supported by the documentation provided. Each applicant will be notified of any change in the priority under which its application is to be considered. Such notifications will be in writing and will not be subject to appeal. (Fed. Reg. Vol. 47, No. 228, p. 53653)

Award of Deferred Applications

The Administrator retains the discretion to award grants to deferred applications at any time where the Administrator can determine with reasonable certainty that the particular project is exceptionally meritorious (on the basis of the Agency's preliminary determination of all other applications within the priority) and that the Agency would fund the project after completing the evaluation of all the application in the priority (on the basis of the Agency's prior experience in making grants.) Under this process, the Agency will be able to fund applications that the Agency had deferred in the prior year because of technical problems (such as the inability to obtain the necessary FCC authorizations) which have since been eliminated. (Fed. Reg. Vol. 47. No. 50, p. 11232.)

Support for Salary Expenses

NTIA regards its primary mandate to be funding the acquisition of equipment and only secondarily the funding of salary expenses, even when allowed by law. Moreover, NTIA notes that the competition for PTFP funding remains intense. To ensure that PTFP monies are distributed as effectively as possible in this competitive atmosphere, NTIA must weigh carefully its support for any project cost not directly involved with the purchase of equipment.

Therefore, NTIA generally will not fund salary expenses, including staff installation costs, pre-application legal and engineering fees, and pre-operational expenses of new entities. NTIA will support such costs only when the applicant demonstrates that exceptional need exists or that substantially greater efficiency would result from the use of staff installation instead of contractor installation.

As regards the installation of transmission equipment, NTIA strongly favors the use of either manufacturer or professional contractor personnel and commonly funds these costs. NTIA believes that the value of transmission equipment and the complicated nature of its installation require expertise beyond that normally found on station staffs.

NTIA will rarely support requests for assistance for the installation of studio and test equipment, whether that installation is by staff or by contract employees. Such installation is normally of minimum difficulty, and the associated installation costs should be absorbed in the recipient's normal operating budget. Again, NTIA will take into account demonstrations of exceptional need. (Fed. Reg. Vol. 56, No. 226, p. 59172)

It has been determined that this rule is not significant for purposes of Executive Order (E.O.) 12866.

A Regulatory Flexibility Analysis is not required under The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the rules were not required to be promulgated as proposed rules before issuance as final rules by § 553 of the Administrative Procedures Act (5 U.S.C. 553) or by any other law. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

The Department has determined that these rules will not significantly affect the quality of the human environment. Therefore, no draft or final Environmental Impact Statement has been or will be prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

The Office of Management and Budget has approved the information collection requirements contained in these rules pursuant to the Paperwork Reduction Act under OMB Control Nos. 0660–0003, 0660–0001 and 0605–0001. The public reporting burden for the application requirements vary from 16 hours to 200 hours with an estimated average of 125 hours per application, including associated exhibits; the reporting and record keeping burden for the grant monitoring reports vary from 1 to 24 hours depending on the respective requirement; and, the reporting burden for the name-check form (CD–346) is estimated at 15 minutes. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates, or any other aspects of the collections of information, including suggestions for reducing this burden, to the Office of Policy and Coordination and Management, NTIA, U.S. Department of Commerce, Washington, D.C. 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attention: NTIA Desk Officer).

(Catalogue of Federal Domestic Assistance No. 11.550)

List of subjects in 15 CFR Part 2301

Administrative procedure, Grant programs—communications, Reporting requirements, Telecommunications.

Larry Irving,

Administrator.

Part 2301 of Title 15, Code of Federal Regulations, is proposed to be revised to read as follows:

PART 2301—PUBLIC TELECOMMUNICATIONS FACILITIES PROGRAM

Subpart A—General

Sec.

2301.1 Program purposes.
2301.2 Definitions.

Subpart B—Application Requirements

2301.3 Applicant eligibility.
2301.4 Scope of projects.
2301.5 Special consideration.
2301.6 Amount of Federal funding.
2301.7 Eligible and ineligible project costs.
2301.8 Submission of applications.
2301.9 Deferred applications.
2301.10 Applications resulting from catastrophic damage or emergency situations.
2301.11 Service of applications.
2301.12 Federal Communications Commission authorizations.
2301.13 Public comments.
2301.14 Supplemental application information.
2301.15 Withdrawal of applications.

Subpart C: Evaluation and Selection Process

2301.16 Technical evaluation.
2301.17 Evaluation criteria for construction and planning applications.
2301.18 Selection process.

Subpart: D: Post-Award Requirements

2301.19 General conditions attached to the Federal Award.
2301.20 Schedules and reports.
2301.21 Payment of Federal funds.
2301.22 Protection, acquisition and substitution of equipment.

Subpart E: Completion of Projects

2301.23 Completion of projects.
2301.24 Final Federal payment.
2301.25 Retention of records and annual status reports.

Subpart F: Waivers

2301.26 Waivers.

Authority: The Public Telecommunications Financing Act of 1978, as amended, 47 U.S.C. §§ 390–393 (Act). (Catalog of Federal Domestic Assistance No. 11.550)

Subpart A—General

§ 2301.1 Program Purposes.

Pursuant to section 390 of the Act, (The Communications Act of 1934, as amended), the purpose of the Public Telecommunications Facilities Program (PTFP) is to assist, through matching grants, in the planning and construction of public telecommunications facilities in order to achieve the following objectives:

(a) Extend delivery of public telecommunications services to as many citizens in the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies;

(b) Increase public telecommunications services and facilities available to, operated by, and owned by minorities and women; and

(c) Strengthen the capability of existing public television and radio stations to provide public telecommunications services to the public.

§ 2301.2 Definitions.

Act means Part IV of Title III of the Communications Act of 1934, 47 U.S.C. 390–393 and 397–399b, as amended.

Administrator means the Assistant Secretary for Communications and Information of the United States Department of Commerce who is also Administrator of the National Telecommunications and Information Administration.

Agency means the National Telecommunications and Information Administration of the United States Department of Commerce.

Broadcast means the distribution of electronic signals to the public at large using television (VHF or UHF) or radio (AM or FM) technologies.

Closing date means the date which the Administrator sets as the deadline for the receipt of applications during a grant cycle.

Construction (as applied to public telecommunications facilities) means acquisition (including acquisition by lease), installation, and improvement of public telecommunications facilities and preparatory steps incidental to any such acquisition, installation or improvement.

Department means the United States Department of Commerce.

FCC means the Federal Communications Commission.

Federal interest period means the period of time during which the Federal government retains a reversionary interest in all facilities constructed with Federal grant funds. This period begins with the purchase of the facilities and continues for ten (10) years after the official completion date of the project. Although OMB Circular A–110 §§ ____.33 and ____.34 and 15 CFR 24.31 and 24.32, specify that the Federal government maintains a reversionary interest in the facilities for as long as the facilities are needed for the originally authorized purpose, PTFP's authorizing statute (47 U.S.C. 392(g)) limits the reversionary period for ten years for purposes of this program. However, Federal limitations on the use of the facilities survive for the useful life of the facilities whether or not this period extends beyond the ten year Federal interest period.

Minorities means American Indians, Alaska Natives, Asian or Pacific Islanders, Hispanics, and Blacks, not of Hispanic Origin.

Nonbroadcast means the distribution of electronic signals by a means other than broadcast technologies. Examples of nonbroadcast technologies are Instructional Television Fixed Service (ITFS), satellite systems, and coaxial or fiber optic cable.

Noncommercial educational broadcast station or public broadcast station means a television or radio broadcast station that is eligible to be licensed by the FCC as a noncommercial educational radio or television broadcast station and that is owned (controlled) and operated by a state, a political or special purpose subdivision of a state, public agency or nonprofit private foundation, corporation, institution, or association, or owned (controlled) and operated by a municipality and transmits only noncommercial educational, cultural or instructional programs.

Noncommercial telecommunications entity means any enterprise that is owned (controlled) and operated by a state, a political or special purpose subdivision of a state, a public agency, or a nonprofit private foundation, corporation, institution, or association; and that has been organized primarily for the purpose of disseminating audio or video noncommercial educational, cultural or instructional programs to the public by means other than a primary television or radio broadcast station, including, but not limited to, coaxial cable, optical fiber, broadcast translators, cassettes, discs, satellite, microwave or laser transmission.

Nonprofit (as applied to any foundation, corporation, institution, or association) means a foundation, corporation, institution, or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

Operational cost means those approved costs incurred in the operation of an entity or station such as overhead labor, material, contracted services (such as building or equipment maintenance), including capital outlay and debt service.

Planning (as applied to public telecommunications facilities) means activities to form a project for which PTFP construction funds may be obtained.

Pre-operational costs means all nonconstruction costs incurred by new public telecommunications entities before the date on which they began providing service to the public, and all nonconstruction costs associated with the expansion of existing stations before the date on which such expanded capacity is activated, except that such costs shall not include any portion of the salaries of any personnel employed by an operating public telecommunications entity.

PTFP means the Public Telecommunications Facilities Program, which is administered by the Agency.

PTFP Director means the Agency employee who recommends final action on public telecommunications facilities applications and grants to the Administrator.

Public telecommunications entity means any enterprise which is a public broadcast station or noncommercial telecommunications entity and which disseminates public telecommunications services to the public.

Public telecommunications facilities means apparatus necessary for production, interconnection, captioning, broadcast, or other distribution of programming, including but not limited to studio equipment, cameras, microphones, audio and video storage or processors and switchers, terminal equipment, towers, antennas, transmitters, remote control equipment, transmission line, translators, microwave equipment, mobile equipment, satellite communications equipment, instructional television fixed service equipment, subsidiary communications authorization transmitting and receiving equipment, cable television equipment, optical fiber communications equipment, and other means of transmitting, emitting, storing, and receiving images and sounds or information, except that such term does not include the buildings to house such apparatus (other than small equipment shelters that are part of satellite earth stations, translators, microwave interconnection facilities, and similar facilities).

Public telecommunications services means noncommercial educational and cultural radio and television programs, and related noncommercial instructional or informational material that may be transmitted by means of electronic communications.

Sectarian means that which has the purpose or function of advancing or propagating a religious belief.

State includes each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

System of public telecommunications entities means any combination of public telecommunications entities acting cooperatively to produce, acquire or distribute programs, or to undertake related activities.

Subpart B—Application Requirements

§ 2301.3 Applicant eligibility.

(a) To apply for and receive a PTFP Construction or Planning Grant, an applicant must be:

(1) A public or noncommercial educational broadcast station;

(2) A noncommercial telecommunications entity;

(3) A system of public telecommunications entities;

(4) A nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or,

(5) A state, local, or Indian tribal government (or agency thereof), or a political or special purpose subdivision of a state.

(b) An applicant whose proposal requires an authorization from the FCC must be eligible to receive such authorization.

(c) If an applicant does not meet the eligibility requirements of this section, the application may be rejected and returned without further consideration.

(d) An applicant may request a preliminary determination of eligibility any time prior to the closing date.

§ 2301.4 Scope of projects.

An eligible applicant may file an application with the Agency for a planning or construction grant. To achieve the objectives set forth at 47 U.S.C. 393(b), the Agency has developed the following categories. Each application shall be identified as a broadcast or nonbroadcast project and must fall within at least one of the following categories:

(a) *Special applications.* NTIA possesses the discretionary authority to recommend awarding grants to eligible nonbroadcast applicants whose proposals are so unique or innovative that they do not clearly fall within the priorities listed in paragraph (b) of this section. Innovative projects submitted under this category must address demonstrated and substantial community needs (*e.g.*, service to the blind or deaf and nonbroadcast projects offering educational or instructional services).

(b) *Priorities.* (1) Priority 1—Provision of Public Telecommunications Facilities for First Radio and Television Signals to a Geographic Area. Within this category, NTIA establishes three subcategories:

(i) Priority 1A. Projects that include local origination capacity. This subcategory includes the planning or construction of new facilities that can provide a full range of radio and/or television programs, including material that is locally produced. Eligible projects include new radio or television broadcast stations, new cable systems, or first public telecommunications service to existing cable systems, provided that such projects include local origination capacity.

(ii) Priority 1B. Projects that do not include local origination capacity. This subcategory includes projects such as increases in tower height and/or power of existing stations and construction of translators, cable networks, and repeater transmitters that will result in providing public telecommunications services to previously unserved areas.

(iii) Priority 1C. Projects that provide first nationally distributed programming. This subcategory includes projects that provide satellite downlink facilities to noncommercial radio and television stations that would bring nationally distributed programming to a geographic area for the first time.

(iv) Priority 1 and its subcategories apply only to grant applicants proposing to plan or construct new facilities to bring public telecommunications services to geographic areas that are presently unserved, *i.e.*, areas that do not receive public telecommunications services (It should be noted that television and radio are considered separately for the purposes of determining coverage. In reviewing applications from FM stations that propose to serve, or that already serve, areas covered by AM-daytime only stations, PTFP will evaluate the amount of service provided via the AM-daytime only station in determining whether the FM proposal qualifies for a Priority 1 or Priority 2, as appropriate.)

(v) An applicant proposing to plan or construct a facility to serve a geographical area that is presently unserved should indicate the number of persons who would receive a first public telecommunications signal as a result of the proposed project.

(2) Priority 2—Replacement of Basic Equipment of Existing Essential Broadcast Stations.

(i) Projects eligible for consideration under this category include the urgent replacement of obsolete or worn out equipment at "essential stations" (*i.e.*, existing broadcast stations that provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographical area).

(ii) To show that the urgent replacement of equipment is necessary, applicants must provide documentation indicating excessive downtime, or a high incidence of repair (*i.e.*, copies of repair records, or letters documenting non-availability of parts). Additionally, applicants must show that the station is the only public telecommunications station providing a signal to a geographical area or the only station with local origination capacity in a geographical area.

(iii) The distinction between Priority 2 and Priority 4 is that Priority 2 is for the urgent replacement of basic equipment for essential stations. Where an applicant seeks to "improve" basic equipment in its station (*i.e.*, where the equipment is not "worn out"), or where the applicant is not an essential station, NTIA would consider the applicant's project under Priority 4.

(3) Priority 3—Establishment of a First Local Origination Capacity in a Geographical Area.

(i) Projects in this category include the planning or construction of facilities to bring the first local origination capacity to an area already receiving public telecommunications services from distant sources through translators, repeaters, or cable systems,

(ii) Applicants seeking funds to bring the first local origination capacity to an area already receiving some public telecommunications services may do so, either by establishing a new (and additional) public telecommunications facility, or by adding local origination capacity to an existing facility. A source of a public telecommunications signal is distant when the geographical area to which the source is brought is beyond the grade B contour of the origination facility.

(4) Priority 4—Improvement of Public Broadcasting Services:

(i) Projects eligible for consideration under this category are intended to improve the delivery of public broadcasting services to a geographic area. These projects include the establishment of a public broadcast facility to serve a geographic area already receiving public telecommunications services, projects for the replacement of basic obsolete or worn-out equipment at existing public broadcasting facilities and the upgrading of existing origination or delivery capacity to current industry performance standards (*e.g.*, improvements to signal quality, and significant improvements in equipment flexibility or reliability). As under Priority 2, applicants seeking to replace or improve basic equipment under Priority 4 should show that the replacement of the equipment is necessary by including in their applications data indicating excessive downtime, or a high incidence of repair (such as documented in repair records). Within this category, NTIA establishes two subcategories:

(ii) Priority 4A.

(A) Applications to replace urgently needed equipment from public broadcasting stations that do not meet the Priority 2 criteria because they do not provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographic area. NTIA will also consider applications that improve as well as replace urgently needed production-related equipment at public radio and television stations that do not qualify for Priority 2 consideration but that produce, on a continuing basis, significant amounts of programming distributed nationally to public radio or television stations.

(B) The establishment of public broadcasting facilities to serve a geographic area already receiving public telecommunications services. The applicant must demonstrate that it will address underserved needs in an area which significantly differentiates its service from what is already available in its service area.

(C) The acquisition of satellite downlinks for public radio stations in areas already served by one or more full-service public radio stations. The applicant must demonstrate that it will broadcast a program schedule that does not merely duplicate what is already available in its service area.

(D) The acquisition of the necessary items of equipment to bring the inventory of an already-operating station to the basic level of equipment requirements established by PTFP. This is intended to assist stations that went on the air with a complement of equipment well short of what the Agency considers as the basic complement.

(iii) Priority 4B. The improvement and non-urgent replacement of equipment at any public broadcasting station.

(5) Priority 5 Augmentation of Existing Broadcast Stations. Projects in this category would equip an existing station beyond a basic capacity to broadcast programming from distant sources and to originate local programming.

(i) Priority 5A. Projects to equip auxiliary studios at remote locations, or to provide mobile origination facilities. An applicant must demonstrate that significant expansion in public participation in programming will result. This subcategory includes mobile units, neighborhood production studios, or facilities in other locations within a station's service area that would make participation in local programming accessible to additional segments of the population.

(ii) Priority 5B. Projects to augment production capacity beyond basic level in order to provide programming or related materials for other than local distribution. This subcategory would provide equipment for the production of programming for regional or national use. Need beyond existing capacity must be justified.

(c) An applicant may request a preliminary determination of whether a proposed project fits within at least one of the categories listed in this section any time prior to the closing date.

(d) All applications will be reviewed after the closing date. If an application does not fall within one of the listed categories, it may be rejected and returned without further consideration.

§ 2301.5 Special consideration.

In accordance with section 392(f) of the Act, the Agency will give special consideration to applications that foster ownership of, operation of, and participation in public telecommunications entities by minorities and women. The special consideration element is provided as one of several funding criteria contained in the regulations, specifically, at 15 CFR section 2301.17(b)(6).

§ 2301.6 Amount of Federal funding.

(a) *Planning grants.* The Agency may provide up to one hundred (100) percent of the funds necessary for the planning of a public telecommunications construction project.

(b) *Construction grants.* (1) A Federal grant for the construction of a public telecommunications facility may not exceed seventy-five (75) percent of the amount determined by the Agency to be the reasonable and necessary cost of such project.

(i) Seventy-five (75) percent Federal funding will be the general presumption for projects to activate stations or to extend service.,

(ii) Fifty (50) percent Federal funding will be the general presumption for the replacement, improvement or augmentation of equipment. A showing of extraordinary need (*i.e.* small community-licensee stations or a station that is licensed to a large institution [*e.g.*, a college or university] documenting that it does not receive direct or in-kind support from the larger institution), or an emergency situation will be taken into consideration as justification for grants of up to 75% of the total project cost for such proposals.

(2) Since the purpose of the PTFP is to provide financial assistance for the acquisition of public telecommunications facilities, Total Project Costs do not normally include the value of eligible apparatus owned or acquired by the applicant prior to the closing date. Inclusion of equipment purchased prior to the closing date will be considered on a case-by-case basis only when clear and compelling justifications are provided to PTFP. Obligating funds—either in whole or in part—for equipment before the closing date is considered ownership or acquisition of equipment. In like manner, accepting title to donated equipment prior to the closing date is considered ownership or acquisition of equipment.

(c) No part of the grantee's matching share of the eligible project costs may be met with funds:

(1) Paid by the Federal government, except where the use of such funds to meet a Federal matching requirement is specifically and expressly authorized by the relevant Federal statute, or

(2) Supplied to an applicant by the Corporation for Public Broadcasting, except upon a clear and compelling showing of need.

(d) No funds from the Federal share of the total project cost may be obligated until the award period start date. If an applicant or recipient obligates anticipated Federal Award funds before the start date, the Department may refuse to offer the award or, if the award has already been granted, disallow those costs of the grant. After the closing date, the applicant may, at its own risk, obligate non-Federal matching funds for the acquisition of proposed equipment.

§ 2301.7 Eligible and ineligible project costs.

(a) Each year the Agency reviews its list of eligible and ineligible equipment, supplies, and costs. The list is published in the **Federal Register** as part of the solicitation for applications and a copy is provided with every application package for PTFP grants.

(b) All broadcast equipment that a grantee acquires under this program shall be of professional broadcast quality. An applicant proposing to utilize nonbroadcast technology shall propose and purchase equipment that is compatible with broadcast equipment wherever the two types of apparatus interface.

(c) Total project costs do not include the value of eligible apparatus owned or acquired by the applicant prior to the closing date unless approved by PTFP on a case-by-case basis in writing pursuant to § 2301.6(b)(2).

§ 2301.8 Submission of applications.

(a) Applications can be obtained from the following address: Public Telecommunications Facilities Program, NTIA/DOC, 14th Street and Constitution Avenue NW., Room H–4625, Washington, DC 20230.

(b) The Administrator shall select and publish in the **Federal Register** a closing date by which applications for funding in a current fiscal year are to be filed.

(c) All applications, whether mailed or hand delivered, must be received by the Agency at the address listed in the annual **Federal Register** announcement requesting applications at or before 5:00 p.m. on the closing date. Applications received after the closing date shall be rejected and returned without further consideration.

(d) A complete application must include all of the information required by the Agency application materials and must be submitted in the number of copies specified by the Agency.

(e) Each copy of the Agency application must contain an original signature of an officer of the applicant who is legally authorized to sign for the applicant.

(f) Applicants must certify whether they are delinquent on any Federal debt.

(g) Applicants may be required to submit Name Check forms (Form CD–346) which may be used to ascertain background information on key individuals associated with potential grantees as part of the application, per Department Pre-Award Administrative Requirements and Policies.

(h) Applicant organizations may also be subject to a responsibility determination by the Department which may include, but not be limited to reviews of financial and other business activities. Responsibility determinations are intended to ascertain whether potential grantee organizations or their key personnel have been involved in or are facing any matters that might significantly and negatively impact on their business honesty, financial integrity and/or ability to successfully perform the proposed grant activities.

(i) Unsatisfactory performance by the applicant under prior Federal awards may result in the application not being funded.

§ 2301.9 Deferred applications.

(a) An applicant may reactivate an application deferred by the Agency during the prior year if the applicant has not substantially changed the stated purpose of the application.

(b) An applicant may reactivate a deferred application only during the two consecutive years following the application's initial filing with the Agency.

(c) To reactivate a deferred application, the applicant must file an updated application, whether mailed or hand delivered, at or before 5:00 p.m. on the closing date.

(d) An updated application must include all of the information required by the Agency application materials and must be submitted in the number of copies specified by the Agency.

(e) Deferred applications that are resubmitted under this section and contain substantial changes will be considered as new applications.

(f) All deferred applications may be subject to a determination of eligibility during subsequent grant cycles.

§ 2301.10 Applications resulting from catastrophic damage or emergency situations.

(a) An application may be filed with a request for a waiver of the closing date, as provided in § 2301.26, when an eligible broadcast applicant suffers catastrophic damage to the basic equipment essential to its continued operation as a result of a natural or manmade disaster, or as the result of complete equipment failure, and is in dire need of assistance in funding replacement of the damaged equipment.

(b) The request for a waiver must set forth the circumstances that prompt the request and be accompanied by appropriate supporting documentation.

(c) A waiver will be granted only if it is determined that the applicant either carried adequate insurance or had acceptable self-insurance coverage.

(d) Applications filed and accepted pursuant to this section must contain all of the information required by the Agency application materials and must be submitted in the number of copies specified by the Agency.

(e) The application will be subject to the same evaluation and selection process followed for applications received in the normal application cycle, although the Administrator may establish a special timetable for evaluation and selection to permit an appropriately timely decision.

§ 2301.11 Service of applications.

On or before the closing date all new or deferred applicants must serve a summary copy of the application on the following agencies:

(a) In the case of an application for a construction grant for which FCC authorization is necessary, the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554;

(b) The state telecommunications agency(-ies), if any, having jurisdiction over the development of broadcast and/or nonbroadcast telecommunications in the state(s) and the community(-ies) to be served by the proposed project; and

(c) The state office established to review applications under Executive Order 12372, as amended by Executive Order 12416, in all states where equipment requested in the application will be located and where the state has established such an office and wishes to review these applications.

§ 2301.12 Federal Communications Commission authorizations.

(a) Each applicant whose project requires FCC authorization must file an application for that authorization on or before the closing date. NTIA recommends that its applicants submit PTFP-related FCC applications to the FCC at least 60 days prior to the PTFP closing date. The applicant should clearly identify itself to the FCC as a PTFP applicant.

(b) In the case of FCC authorizations where it is not possible or practical to submit the FCC license application with the PTFP application, such as C-band satellite uplinks, low power television stations and translators, remote pickups, studio-to-transmitter links, and Very Small Aperture Terminals, a copy of the FCC application as it will be submitted to the FCC, or the equivalent engineering data, must be included in the PTFP application.

(c) Applications requesting C-band downlinks are not required to submit the FCC application or equivalent engineering data as part of the PTFP application. When such a project is funded, however, grantees will be required to submit evidence of FCC registration of the C-band downlink prior to the release of Federal funds.

(d) Any FCC authorization required for the project must be in the name of the applicant for the PTFP grant.

(e) If the project is to be associated with an existing station, the FCC operating authority for that station must be current and valid.

(f) For any project requiring new authorization(s) from the FCC, the applicant must file a copy of each FCC application and any amendments with the Agency.

(g) If the applicant fails to file the required FCC application(s) by the closing date, or if the FCC returns, dismisses, or denies an application required for the project or any part thereof, or for the operation of the station with which the project is associated, the Agency may reject and return the application.

(h) No grant will be awarded until confirmation has been received from the FCC that any necessary authorization will be issued.

§ 2301.13 Public comments.

(a) After the closing date, the Agency will publish a list of all applications received.

(b) The applicant shall make a copy of its application available at its offices for public inspection during normal business hours.

(c) A copy of the application will be available in the PTFP offices for public inspection during normal business hours.

(d) Any interested party may file comments with the Agency supporting or opposing an application and setting forth the grounds for support or opposition. Any opposing comments must contain a certification that a copy of the comments has been delivered to the applicant. Comments must be sent to the address listed in § 2301.8(a).

(e) The Agency shall incorporate all comments from the public and any replies from the applicant in the applicant's official file for consideration during the evaluation of the application.

§ 2301.14 Supplemental application information.

(a) The Agency may request from the applicant any additional information that the Agency deems necessary to clarify the application. Applicants must provide to the Agency additional information that the Agency requests within fifteen (15) days of the date of the Agency's notice. Applicants must submit a copy of the requested information for each copy of the application submitted by the Closing Date.

(b) Applicants must immediately provide to the Agency information received after the closing date that materially affects the application, including:

(1) State Single Point of Contact and State Telecommunications Agency comments on applications;

(2) FCC file numbers and changes in the status of FCC applications necessary for the proposed project;

(3) Changes in the status of proposed local matching funds, including notification of the passage (including reduction or rejection) of a proposed state appropriation or receipt (or denial) of a proposed substantial matching gift;

(4) Changes that affect the applicant's eligibility under § 2301.3;

(5) Changes in the status of proposed production, participation, or distribution agreements (if relevant to the proposed project);

(6) Changes in lease or site rights agreements; and

(7) Complete failure of major items of equipment for which replacement costs have been requested or changes in the status of the need for the equipment requested.

(c) Applicants must place copies of any additional information submitted to the Agency in the copy of the application made available for public inspection pursuant to § 2301.13.

(d) Applicants may not contact the Department to discuss the merits of an application when it is under review.

§ 2301.15 Withdrawal of applications.

(a) Applicants may request withdrawal of an application from consideration for funding without affecting future consideration. Withdrawn applications will be returned by the Agency.

(b) A request that the Agency defer an application for consideration in a subsequent year will be treated as a request for withdrawal.

Subpart C: Evaluation and Selection Process

§ 2301.16 Technical evaluation.

(a) In determining whether to approve or defer a construction or planning grant application, in whole or in part, and the amount of such grant, the Agency will evaluate all the information in the application file.

(b) PTFP grants are awarded on the basis of a competitive review process. The evaluation of the applications is based upon the evaluation criteria provided under § 2301.17.

(c) The competitive review process may include the following: evaluation by PTFP staff; technical assessment by engineers; an evaluation by outside reviewers, all of whom have demonstrated expertise in either public broadcasting or distance learning; and rating by a national advisory panel, composed of representatives of major national public radio and television organizations.

(d) In acting on applications and carrying out other responsibilities under the Act, the Agency shall consult (as appropriate) with the FCC, the Corporation for Public Broadcasting, state telecommunications agencies, public broadcasting agencies, organizations, and other agencies administering programs that may be coordinated effectively with Federal assistance provided under the Act; and, the state office established to review applications under Executive Order 12372, as amended by Executive Order 12416,

(e) Based upon the evaluation criteria contained in § 2301.17, the PTFP

program staff will prepare summary evaluations. These will incorporate the outside reviewers' recommendations, engineering assessments, and program staff evaluations.

§ 2301.17 Evaluation criteria for construction and planning applications.

(a) For each application that is filed in a timely manner by an eligible applicant, is materially complete, and proposes an eligible project, the Agency will consider the following factors:

(1) *Project Objectives:* The degree to which the application documents that the proposed project fulfills the objectives and specific requirements of one or more of the categories set forth in § 2301.4.

(2) *Applicant Qualifications:* Documentation that the applicant has or will have sufficient qualified staff to complete the project, operate and maintain the facility, and provide services of professional quality.

(3) *Urgency:* Documentation that justifies funding the proposed project during the current grant cycle.

(4) *Financial Qualifications:* Documentation reflecting the applicant's ability to provide non-Federal funds required for the project, including funds for the local match and funds to cover any ineligible costs required for completion of the project; to ensure long-term financial support for the continued operation of the facility during the Federal interest period; to adequately justify the need for Federal funds in excess of fifty (50) percent of total project costs (see § 2301.6(b)(ii)), if requested for equipment replacement, improvement, or augmentation projects; and, in the case of planning, provide non-Federal support and resources (if proposed by the applicant), including matching or in-kind support for the project.

(5)(i) *Technical Qualifications* (construction applicants only): Documentation that the eligible equipment requested is necessary to achieve the objectives of the project; that the proposed costs reflect the most efficient use of Federal funds in achieving project objectives; that the equipment requested meets current industry performance standards (and FCC standards, if appropriate); that the condition of existing equipment justifies its prompt replacement; and that an evaluation of alternative technologies has been completed that justifies the selection of the requested technology (where alternative technologies are possible).

(ii) *Planning Qualifications* (planning applicants only): Documentation : of the feasibility of the proposed planning process and timetable for achieving the expected results; that costs proposed reflect the most efficient use of Federal funds; that the applicant has sufficient qualified staff or consultants to complete the planning project with professional results; and that an evaluation of alternative technologies will be incorporated into the plan, if appropriate.

(6) *Special Consideration:* Documentation of the extent to which broadcast applications would increase minority and women's ownership of, operation of, and participation in public telecommunications entities, as stated in § 2301.5

(b) The Agency will provide each applicant with guidance in the application materials on the type of documentation necessary to meet each of the above evaluation criteria.

§ 2301.18 Selection process.

(a) The PTFP Director will consider the summary evaluations prepared by program staff, rank the applications, and present recommendations to the Selecting Official, the NTIA Administrator, taking into account the following selection factors:

(1) The program staff evaluations, including the outside reviewers.

(2) The scope of projects set forth at § 2301.4.

(3) Whether the application is for broadcast or a nonbroadcast project.

(4) The geographic distribution of the proposed grant awards.

(5) The availability of funds.

(b) The Administrator makes final award selections taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes set forth at § 2301.1.

(c) No grant will be awarded until confirmation has been received from the FCC that any necessary authorization will be issued.

(d) After final award selections have been made, the Agency will notify the applicant of one of the following actions:

(1) Selection of the application for funding, in whole or in part;

(2) Deferral of the application for subsequent consideration;

(3) Rejection of the application with an explanation and the reason, if an applicant is not eligible or if the proposed project does not fall within at least one of the categories enumerated at § 2301.4; or,

(4) Return of applications that were deferred by the Agency after consideration during three grant cycles.

(e) The Agency will notify the following organizations of those applications selected for funding:

(1) The state educational telecommunications agency(-ies), if any, in any state any part of which lies within the service area of the applicant's facility;

(2) The FCC; and,

(3) The Corporation for Public Broadcasting and, as appropriate, other public telecommunications entities.

Subpart D—Post-Award Requirements

§ 2301.19 General conditions attached to the Federal award.

(a) During the project award period and the remainder of the Federal interest period, the grantee must:

(1) Continue to be an eligible organization as described in § 2301.3;

(2) Obtain and continue to hold any necessary FCC authorization(s);

(3) Use the Federal funds for which the grant was made for the equipment and other expenditure items specified in the application for inclusion in the project, except that the grantee may substitute other items where necessary or desirable to carry out the purpose of the project if approved in advance by the agency in writing. These changes include but are not limited to the following:

(i) Costs (including planning costs),

(ii) Essential specifications of the equipment,

(iii) The engineering configuration of the project,

(iv) Extensions of the approved grant award period, and

(v) Transfers of a grant award to a successor in interest, pursuant to § 2301.19(c).

(4) Use the facilities and any monies generated through the use of the facilities primarily for the provision of public telecommunications services and ensure that the use of the facilities for other than public telecommunications purposes does not interfere with the provision of the public telecommunications services for which the grant was made;

(5) Not make its facilities available to any person for the broadcast or other transmission intended to be received directly by the public, of any advertisement, unless such broadcast or transmission is expressly and specifically permitted by law or authorized by the FCC; and

(6) State when advertising for bids for the purchase of equipment that the Federal government has an interest in facilities purchased with Federal funds under this program that begins with the purchase of the facilities and continues for ten (10) years after the completion of the project.

(b) During the period in which the grantee possesses or uses the Federally funded facilities, the grantee may not use or allow the use of the Federally funded equipment for purposes the essential thrust of which are sectarian for the useful life of the equipment even when this extends beyond the ten (10) year Federal interest period.

(c) If necessary to further the purpose of the Act, the Agency may reassign a grant to a successor in interest or subsidiary corporation of a grantee in cases where a similar operational entity remains in control of the grant and the original objectives of the grant remain in effect. Each party must provide, in writing, its assent to the substitution. Any substituted party must meet the eligibility requirements.

§ 2301.20 Schedules and Reports.

(a) Within thirty (30) calendar days of the award date the grantee shall submit to the Agency, in duplicate, a construction schedule or a revised planning timetable that will include the information requested in the grant terms and conditions in the award package.

(b) During the project period of this grant, the grantee shall submit performance reports, in duplicate, on a calendar year quarterly basis for the period ending March 31, June 30, September 30, and December 31, or any portions thereof. The Quarterly Performance Reports should contain the following information:

(1) A comparison of actual accomplishments during the reporting period with the goals and dates established in the Construction or Planning Schedule for that reporting period;

(2) A description of any problems that have arisen or reasons why established goals have not been met;

(3) Actions taken to remedy any failures to meet goals; and

(4) Construction projects must also include a list of equipment purchased during the reporting period compared with the equipment authorized. This information must include manufacturer, make and model number, brief description, number and date of the items purchased, and cost.

§ 2301.21 Payment of Federal funds.

(a) The Department will not make any payment under an award, unless and until the recipient complies with all relevant requirements imposed by this Part. Additionally:

(1) The Department will not make any payment until it receives confirmation that the FCC has granted any necessary authorization;

(2) The Department may not make any payment under an award unless and until all special award conditions stated in the award documents that condition the release of Federal funds are met; and

(3) An agreement to share ownership of the grant equipment (*e.g.*, a joint venture for a tower) must be approved by the Agency before any funds for the project will be released.

(b) As a general matter, the Agency expects grantees to expend local matching funds at a rate at least equal to the ratio of the local match to the Federal grant as stipulated in the grant award.

§ 2301.22 Protection, acquisition and substitution of equipment.

(a) To assure that the Federal investment in public telecommunications facilities funded under the Act will continue to be used to provide public telecommunications services to the public during the Federal interest period, the Agency may require a grantee to:

(1) Execute and record a document establishing that the Federal government has a priority lien on any facilities purchased with funds under the Act during the period of continuing Federal interest. The document shall be recorded where liens are normally recorded in the community where the facility is located and in the community where the grantee's headquarters are located; and

(2) File a certified copy of the recorded lien with the Administrator ninety (90) days after the grant award is received.

(b) The grantee shall maintain protection against common hazards through adequate insurance coverage or other equivalent undertakings, except that, to the extent the applicant follows a different policy of protection with respect to its other property, the applicant may extend such policy to apparatus acquired and installed under the project. The grantee shall purchase flood insurance (in communities where such insurance is available) if the facilities will be constructed in any area that has been identified by the Secretary of Health and Human Services as having special flood hazards.

(c) The grantee shall not dispose of or encumber its title or other interests in the equipment acquired under this grant during the Federal interest period.

(d) The grantee shall demonstrate that the grantee has obtained appropriate title or lease satisfactory to protect the Federal interest to the site or sites on which apparatus proposed in the project will be operated. The grantee must have the right to occupy, construct, maintain, operate, inspect, and remove the project equipment without impediment to assure the sufficient continuity of operation of the facility; and nothing must prevent the Federal government from entering the property and reclaiming or securing PTFP-funded property.

(e) The Agency will allow the acquisition of facilities by lease; however, the following requirements apply:

(1) The lease must be of benefit to the Federal government;

(2) The actual amount of the lease must not be more than the outright purchase price would be; and

(3) The lease agreement must state that in the event of anticipated or actual termination of the lease, the Federal government has the right to transfer and assign the leasehold to a new grantee for the duration of the lease contract.

(f) *Transfer of equipment.* Where the grant equipment is no longer needed for the original purposes of the project, the Agency may transfer the equipment to the Federal government or an eligible third party, in accordance with Office of Management and Budget guidelines.

(g) *Transfer of Federal interest to different equipment.* The Agency may transfer the Federal interest in PTFP-funded equipment to other eligible equipment presently owned or to be purchased by the grantee with non-Federal monies, provided the following conditions are met:

(1) If the Federal interest is to be transferred to other equipment presently owned or to be purchased by a grantee, the Federal interest in the new equipment must be at least equal to the Federal interest in the original equipment.

(2) Equipment previously funded by PTFP that is within the Federal interest period may not be used in a transfer request as the designated equipment to which the Federal interest is to be transferred.

(3) The same item can be used only once to substitute for the Federal interest. However, the Federal interest in several items of equipment from different grants may be transferred to a single item if the request for all such transfers is submitted at the same time.

(4) A lien on equipment transferred to the Federal interest may be required by PTFP and must be recorded in accordance with § 2301.23(b)(8). A copy of the lien document must be filed with the PTFP within sixty (60) days of the date of approval of the transfer of Federal interest.

(h) *Termination by buy-out.* A grantee may terminate the Federal revisionary interest in a PTFP grant by buying out the Federal interest with non-Federal monies. Buy-outs may be requested at any time.

Subpart E—Completion of Projects

§ 2301.23 Completion of projects.

(a) Upon completion of a planning project, the grantee must promptly provide to the Administrator two copies of any report or study conducted in whole or in part with funds provided under this program by sending the copies to the Agency.

(1) This report shall meet the goals and objectives for which the grant is awarded and shall follow the written instructions and guidance provided by the Agency. The grant award goals and objectives are stated in the planning narrative as amended and are incorporated by reference into the award agreement.

(2) The Agency shall review this report for the extent to which those goals and objectives are addressed and met, for evidence that the work contracted for under the grant award was in fact performed, and to determine whether the written instructions and guidance provided by the Agency, if any, were followed.

(3) If the Agency determines that the report fails to address or meet any grant award goals or objectives, or if there is no evidence that the work contracted for was in fact performed, or if this report clearly indicates that the written instructions and guidance provided by the Agency, if any, were disregarded, then the Agency may pursue remedial action.

(4) An unacceptable final report may result in the disallowance of claimed costs and the establishment of an account receivable by the Department.

(b) Upon completion of a construction project, the grantee must:

(1) Certify that the grantee has acquired, installed, and begun operating the project equipment in accordance with the project as approved by the Agency, and has complied with all terms and conditions of the grant as specified in the Grant Award document;

(2) Certify that the grantee has obtained any necessary FCC authorizations to operate the project apparatus following the acquisition and installation of the apparatus and document the same;

(3) Certify and document that the facilities have been acquired, that they are in operating order, and that the grantee is using the facilities to provide public telecommunications services in accordance with the project as approved by the Agency;

(4) Certify that the grantee has obtained adequate insurance to protect the Federal interest in the project in the event of loss through casualty;

(5) Certify, if not previously provided, that the grantee has acquired all necessary leases or other site rights required for the project;

(6) Certify, if appropriate, that the grantee has qualified for receipt of funds from the Corporation for Public Broadcasting;

(7) Provide a complete and accurate final inventory of equipment acquired under the project and a final accounting of all project expenditures, including non-equipment costs (e.g., installation costs); and

(8) Execute and record a final priority lien, if required by PTFP, reflecting the completed project and assuring the Federal government's reversionary interest in all equipment purchased under the grant project for the duration of the Federal interest period.

(c) When an applicant completes a construction project, the Agency will assign a completion date that the Agency will use to calculate the termination date of the Federal interest period. The completion date will usually be the date on which the project period expires unless the grantee certifies in writing prior to the project period expiration date that the project is complete and in accord with the terms and conditions of the grant, as required under § 2301.23(b)(1). If the PTFP Director determines that the grantee improperly certified the project to be complete, the PTFP Director will amend the completion date accordingly.

§ 2301.24 Final Federal payment.

If the total allowable, allocable, and reasonable costs incurred in completing the planning or construction project are less than the total project award amount, the Agency shall reduce the amount of the final Federal share on a pro rata basis. If, however, the actual costs incurred in completing the project are more than the estimated total project costs, then in no case will the final Federal funds paid exceed the initial grant award.

§ 2301.25 Retention of records and annual status reports.

(a) All grantees shall keep intact and accessible all records specified in Office of Management and Budget Circular A–110 (for educational institutions, hospitals, and nonprofit organizations), or 15 CFR part 24 (for State and Local Governments), and 15 CFR part 29a (Audit Requirements for State and Local Governments) or 15 CFR part 29b (Audit Requirements for Institutions of Higher Education and Other Nonprofit Organizations), as appropriate.

(b) Recipients of construction grants:

(1) Are required to submit an Annual Status Report for each grant project that is in the Federal interest period. The Reports are due no later than April 1 in each year of the period. Information about what is to be included in the Annual Status Report is supplied to grant recipients at the time grants are closed out.

(2) Shall retain an inventory of the equipment for the duration of the ten year Federal interest period and shall mark project apparatus in a permanent manner to assure easy and accurate identification and reference to inventory records. The marking shall include the PTFP grant number and an inventory number assigned by the grantee.

(3) May also be required to take whatever steps may be necessary to ensure that the Federal government's reversionary interest continues to be protected for the 10-year period by recording, when and where required, a lien continuation statement and reporting that fact in the Annual Status Report.

Subpart F: Waivers

§ 2301.26 Waivers.

For good cause shown, the Administrator may waive the regulations adopted pursuant to section 392(e) of the Act. Waivers may only be granted for regulatory requirements that are discretionary and not statutorily mandated.

[FR Doc. 96–13572 Filed 5–29–96; 8:45 am]
BILLING CODE 3510–60–P

Reader Aids

Federal Register
Vol. 61, No. 105
Thursday, May 30, 1996

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–523–5227
Public inspection announcement line	523–5215
Laws	
Public Laws Update Services (numbers, dates, etc.)	523–6641
For additional information	523–5227
Presidential Documents	
Executive orders and proclamations	523–5227
The United States Government Manual	523–5227
Other Services	
Electronic and on-line services (voice)	523–4534
Privacy Act Compilation	523–3187
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: 301–713–6905

FEDERAL REGISTER PAGES AND DATES, MAY

19155–19502	1
19503–19804	2
19805–20116	3
20117–20418	6
20419–20700	7
20701–21046	8
21047–21360	9
21361–21946	10
21947–24204	13
24205–24432	14
24433–24664	15
24665–24874	16
24875–25134	17
25135–25388	20
25389–25548	21
25549–25774	22
25775–26068	23
26069–26422	24
26423–26768	28
26769–27000	29
27001–27242	30

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6889 19503
6890 19803
6891 20419
6892 21045
6893 21047
6894 24661
6895 24663
6896 25129
6897 25765
6898 25767
6899 25769
6900 26067
6901 26769

Executive Orders:
11216 (See EO 13002) 24665
11593 (See EO 13006) 26071
12072 (See EO 13006) 26071
12808 (See Notice of May 24, 1996) 26773
12810 (See Notice of May 24, 1996) 26773
12831 (See Notice of May 24, 1996) 26773
12846 (See Notice of May 24, 1996) 26773
12934 (See Notice of May 24, 1996) 26773
13001 21943
13002 24665
13003 25131
13004 25771
13005 26069
13006 26071
13007 26771

Administrative Orders:

Memorandums:
April 1, 1996 26017
April 26, 1996 19505
April 26, 1996 24667
April 26, 1996 24877
April 28, 1996 19507
May 10, 1996 26033

Presidential Determinations:
No. 96–7 of Dec. 27, 1996 (See Notice of May 24, 1996) 26773
No. 96–20 of April 1, 1996 26019
No. 96–21 of April 4, 1996 26021
No. 96–22 of April 18, 1996 26027
No. 96–23 of April 30, 1996 26029
No. 96–24 of May 9, 1996 26031
No. 96–25 of May 16, 1996 27001

4 CFR

Proposed Rules:
21 19205

5 CFR

Ch. LXIX 20117
300 19509
410 21947
532 20701
831 21953
842 21953
890 25775

7 CFR

2 25775
28 19511
51 20702
52 25549
53 19155
54 19155
225 25550
226 25550
272 19155
273 19155
301 ..... 20877, 26423
319 24433
703 26423
800 24669
810 24669
900 20717
915 19512
916 ..... 19160, 26073
917 ..... 19160, 26073
946 20119
956 20121
959 24877
979 20718
980 25551
985 20122
1002 20719
1004 20719
1007 20124
1160 27003
1280 ..... 19514, 21049, 21053
1485 24205
1755 26073
1841 21361
1843 21361
1845 21361
1903 21361
1945 21361
1980 21361
2054 21361
3403 25366

Proposed Rules:
51 24247
911 ..... 20754, 27027
915 27027
924 20756
930 26956
944 ..... 20754, 20756

958.....20188
1005.....19661
1007.....19861
1011.....19861
1046.....19861
1160.....20759

8 CFR

3.....19976, 21065, 21228
100.....25777
242.....19976, 21065, 21228

9 CFR

50.....25135
77.....25135
78.....19976
130.....20421, 25513

Proposed Rules:

92.....20189, 20190, 21389, 26849
93.....20190, 26849
94.....20190, 26849, 26850
95.....20190, 26849
96.....20190, 26849
98.....20190, 26849
301.....19564
304.....19578
308.....19578
317.....19564, 19578
318.....19564, 19578
319.....19578, 26470
320.....19564
381.....19564, 19578, 26470

10 CFR

20.....24669
30.....24669
40.....24669
61.....24669
70.....24669
72.....24669

Proposed Rules:

26.....21105, 24731
52.....27027
72.....24249
150.....26852

11 CFR

110.....24533

12 CFR

5.....19524
19.....20330
20.....19524
25.....21362
28.....19524
205.....19662, 19678
211.....24439
220.....20386
228.....21362
229.....25389
327.....26078, 26083
250.....19805
263.....20338
308.....20344
345.....21362
509.....20350
563e.....21362
614.....20125

Proposed Rules:

207.....20399
215.....19863
220.....20399
221.....20399
226.....26126
230.....26470
245.....26471
330.....25596
344.....26135
614.....24907

13 CFR

Proposed Rules:

121.....20191

14 CFR

21.....20696
25.....24208, 24213, 25778, 26775
27.....21904
29.....21894, 21904
31.....20877
39.....19540, 19807, 19808, 19809, 19811, 19813, 19815, 20125, 20127, 20616, 20636, 20638, 20639, 20641, 20643, 20644, 20646, 20668, 20669, 20671, 20672, 20674, 20676, 20677, 20679, 20681, 20682, 21066, 21068, 21070, 21071, 24206, 24214, 24216, 24218, 24220, 24675, 24684, 24686, 24688, 24690, 24691, 24878, 24881, 24883, 24884, 25557, 15558, 26089, 23090, 23091, 26424, 26425, 26426, 26427, 26429, 26776, 26778, 26780
43.....19498
71.....19541, 19542, 19816, 19817, 21364, 21365, 21953, 24222, 24223, 26094, 26431, 26434, 26781, 27004
73.....20127, 26095, 26434
91.....24430
97.....25138, 25139, 25141, 25780, 25781, 25783
159.....19784
205.....19164
323.....19164
385.....19166

Proposed Rules:

29.....20760
39.....20192, 20194, 20762, 20764, 21146, 21979, 21980, 21982, 24250, 25417, 25418, 25598, 26853, 27028, 27030
71.....19590, 19591, 19592, 19593, 21910, 21984, 24533, 25157, 25600, 26473
91.....24582, 26855, 26856
121.....21149, 24582, 24533, 26036
127.....24582
135.....24582, 26036
158.....25420

15 CFR

24.....26095
902.....19171, 21926, 26435
981.....21073
2011.....26783

Proposed Rules:

946.....19594
2301.....27230

16 CFR

19.....27222
23.....27178
405.....25560
1500.....19818, 26096
1507.....26096

Proposed Rules:

23.....27224
254.....19869
1210.....20503

17 CFR

1.....19177, 19830
3.....20127, 26253
5.....19830
10.....21954
31.....19830
140.....21954
200.....20721, 25652
228.....25652
229.....25652
230.....21356, 25652
231.....24644
232.....25652
239.....25652
240.....21354, 25652
241.....24644
249.....21354
270.....25652
271.....24644
274.....25652
276.....24644

Proposed Rules:

1.....19869
156.....19869
230.....25601
240.....25601
250.....25601
270.....25601
275.....25601

18 CFR

35.....21940
37.....21737
385.....21940
1300.....20117

Proposed Rules:

35.....21847
161.....19211
250.....19211
284.....19211, 19832
346.....19878

19 CFR

10.....19834, 24887
12.....24888
103.....19835
122.....25777
145.....24888
161.....24888

Proposed Rules:

101.....19834

20 CFR

200.....25390
345.....20070
601.....19982
617.....19982
626.....19982
658.....19982
702.....19982

21 CFR

2.....25390
5.....24223
101.....20096, 21074
172.....26786, 27004
173.....25392, 27004
175.....27004
176.....27004
177.....27004
178.....27004
180.....27004
181.....27004
189.....27004
201.....20096
310.....25142
341.....25142
369.....20096
500.....19542
501.....20096
510.....21075, 24440
520.....24441, 24443
522.....21075, 24440, 25784
556.....24440, 24441
558.....21075, 24443, 24694
582.....19542
589.....19542
600.....24227
601.....24227
740.....20096
801.....20096

Proposed Rules:

Ch. I.....21392, 26473
25.....19476
101.....25421
102.....19220
130.....19220
131.....19220
133.....19220
135.....19220
136.....19220
137.....19220
139.....19220
145.....19220
146.....19220
150.....19220
152.....19220
155.....19220
156.....19220
158.....19220
160.....19220
161.....19220
163.....19220
164.....19220
165.....19220
166.....19220
168.....19220
169.....19220
210.....20104
211.....20104
328.....21392
530.....25118
589.....24253
801.....26140

22 CFR

126.....19841
514.....20437

Proposed Rules:

602.....27031
608.....26474

24 CFR

0.....19187
201.....19788
206.....26982
234.....26982
290.....19188
585.....25124
941.....19708
970.....19708
982.....27162
983.....27162

Proposed Rules:

206.....21910
888.....20982
901.....20358

3500.....21394

25 CFR

Proposed Rules:

144.....24731
250.....19600
291.....25604
525.....21394

26 CFR

1.....19188, 19189, 19544, 19546, 21366, 21955, 27005
31.....27007
301.....19189, 26788
602.....19189, 26788, 27007

Proposed Rules:

1.....20503, 20766, 20767, 21985, 21988, 27036
31.....20767
32.....20767
35a.....20767
301.....20503, 21989

27 CFR

1.....20721, 26096
2.....26096
3.....26096
4.....20721
7.....20721
16.....20721
19.....20721
20.....20721
21.....20721
22.....20721
24.....20721, 21076
25.....20721
53.....20721
55.....20721
71.....20721
170.....20721
178.....20721
179.....20721
194.....20721
197.....20721
200.....20721
250.....20721
251.....20721
252.....20721
270.....20721
275.....20721
285.....20721
290.....20721
296.....20721

28 CFR

58.....24889
501.....25120
550.....25120

Proposed Rules:

90.....24526
100.....21396

29 CFR

1.....19982
2.....19982
4.....19982
5.....19982
6.....19982
7.....19982
8.....19982
22.....19982
24.....19982
32.....19982
96.....19982
500.....24694
504.....19982
507.....19982
508.....19982
530.....19982
1601.....21370
1910.....19547, 21228
1915.....26322
1978.....19982
2619.....21228, 24444, 25513
2627.....24694
2676.....24444

Proposed Rules:

Ch. XIV.....20768
4.....19770
102.....25158

30 CFR

75.....20877, 26441
250.....25147
906.....26792
913.....26801
914.....26443
925.....26445, 26454
931.....26825
936.....26461
946.....26836

Proposed Rules:

Ch. II.....21977, 25160
202.....25421
206.....25421
211.....25421
256.....24466
901.....20768
902.....20768
904.....19881, 20768
913.....20768
914.....20768
915.....20768
916.....20768
917.....20768
918.....20768
920.....20768
925.....26477
926.....26477
931.....26477
934.....25425, 26477
935.....26477
936.....25426, 26477
938.....26477
943.....26477
944.....26477
946.....19885, 26477
948.....26477
950.....20773, 26477

31 CFR

12.....25396
224.....26839
361.....20437
585.....24696

Proposed Rules:

356.....25164

32 CFR

95.....26102
324.....25561

33 CFR

52.....24233
100.....19192, 20132, 21959, 21960, 21961, 21962, 25149, 26102, 26103, 26104
110.....25149
117.....24235, 25149
165.....19192, 19841, 21963, 24697, 24698, 24699, 24701, 24892, 26105, 26840
334.....26107
401.....19548

Proposed Rules:

67.....26857
100.....25835
165.....25838

34 CFR

361.....24390
685.....24446

Proposed Rules:

100.....20196, 21998, 21999, 22001
117.....22002
154.....20084
155.....20084

36 CFR

13.....27008
242.....25785
292.....20726
1228.....19552, 24702

Proposed Rules:

7.....20775
100.....19220
117.....19223
701.....25839

37 CFR

Proposed Rules:

Ch. II.....20197, 22004
1.....19224, 20877

38 CFR

2.....20133, 20437, 26107
3.....20438, 20726, 25787
4.....20438, 20440
9.....20134
17.....21964, 24236
19.....20447
20.....20447
21.....20727, 24237, 26107

Proposed Rules:

3.....24910
17.....25428

39 CFR

3001.....24447

Proposed Rules:

233.....21404

40 CFR

9.....27132
50.....25566
52.....19193, 19555, 20136, 20139, 20142, 20145, 20147, 20453, 20455, 20458, 20730, 20732, 24239, 24457, 24702, 24706, 24709, 24712, 25789, 25791, 27019
55.....25149
60.....20734, 21080
63.....21370, 25397, 27132
70.....20150, 24457, 24715
75.....25580
80.....20736
81.....20458, 21372, 24239, 24242
82.....25585
89.....20738
90.....20738
110.....25149
117.....25149
123.....20972
131.....20686
141.....24354
167.....25151
180.....19842, 19845, 19847, 19849, 19850, 19852, 19854, 19855, 20742, 20743, 20745, 21378, 24893, 25152, 26117, 26118, 26841, 26843
185.....25153
271.....25794, 25796, 25799
300.....20473, 24720, 24894
355.....20473
421.....24242

Proposed Rules:

Ch. I.....19432
51.....19231
52.....19233, 19601, 20199, 20200, 20201, 20504, 21405, 21412, 24467, 24737, 24738, 25840, 25841, 27038
55.....25173
60.....27038
61.....20775
63.....19887, 21414, 27038
70.....20202, 26145
80.....20779
81.....19233, 21415
82.....25604
89.....20738
90.....20738
136.....26149
141.....26857
142.....26857
148.....21418
170.....19889
180.....19233, 20780, 20781, 24738, 24911, 26149, 26856, 26859, 26861
185.....20780, 26861
186.....10780, 20781, 24911, 26861
260.....27038
261.....21418, 25175, 27038
264.....27038
265.....27038
266.....27038
268.....21418
270.....27038
271.....21418, 27038
300.....19889, 20202, 20785, 21422, 22004, 22006, 24261

41 CFR

50–203.....19982
60–1.....19982, 25516
60–30.....19982
60–60.....25516
60–250.....19366, 19982
60–741.....19336, 19982
301–4.....25802

42 CFR

405.....19722
412.....21969
486.....19722

Proposed Rules:

84.....24740, 25513

43 CFR

11.....20560

44 CFR

61.....19197
62.....24462
64.....19857, 25802
65.....25400, 25402, 25403
67.....25405

206.....19197
Proposed Rules:
67.....25429, 25435

45 CFR

Proposed Rules:
1311.....24467
2400.....25612

46 CFR

Ch. I.....24464
10.....19858
15.....19858, 25984
26.....25984
30.....25272
31.....25272, 25984
32.....25272, 25984
33.....25272
34.....25984
35.....25272, 25984
38.....25984
54.....25984
56.....25984
58.....25984
61.....25984
70.....25272
71.....25272
72.....25984
75.....25272
76.....25984
77.....25272, 25984
78.....25272, 25984
90.....25272
91.....25272
92.....25984
94.....25272
95.....25984
96.....25272, 25984
97.....25272, 25984
107.....25272
108.....25272, 25984
109.....25272, 25984
114.....20556
116.....20556
117.....20556
118.....20556
119.....20556
120.....20556
121.....20556
122.....20556
125.....25272
133.....25272
153.....25984
160.....25984
162.....25984
164.....25984
167.....25272, 25984
168.....25272, 25984
169.....25984
170.....20556, 24464
171.....24464
173.....20556, 24464
175.....20556
176.....20556
177.....20556
178.....20556
179.....20556
180.....20556
181.....20556
182.....20556
183.....20556
185.....20556
188.....25272
189.....25272, 25984
190.....25984
192.....25272
193.....25984
195.....25272
196.....25272, 25984
199.....25272
298.....21302
331.....24895
403.....21081
404.....21081

47 CFR

Ch. I.....26464
0.....25804, 26464, 26465
1.....26670
2.....26670
3.....20155
21.....25594, 26670
22.....21380
24.....25807, 25808, 25810
64.....20746, 24897
73.....20490, 20747, 21384, 21385, 21973, 24262, 24263, 24465, 25594
80.....25804, 26120, 26465
90.....21380, 25810
94.....26670
97.....21385
101.....26670
Proposed Rules:
Ch. I.....22008, 26152, 26483, 26864
0.....21151
1.....19236, 20505, 24743, 25183
2.....19236
15.....24473, 24749
21.....19236
22.....24470
24.....24470
64.....25184, 26152
73.....19601, 20206, 20207, 20505, 20789, 21425, 24262, 24263, 25183, 25841, 26491
80.....21151
90.....25185
94.....19236

48 CFR

Ch. 1.....24263
209.....25408
231.....21973
242.....25409
243.....25408
570.....24720
801.....20491
803.....20491
804.....20491
805.....20491
806.....20491
808.....20491
810.....20491
812.....20491
813.....20491
815.....20491
816.....20491
820.....20491
822.....20491
828.....20491
833.....20491
834.....20491
836.....20491
837.....20491
846.....20491
871.....20493
904.....21975
906.....21975
911.....21975
912.....21975
913.....21975
915.....21975
919.....21975
925.....21975
926.....21975
933.....21975
950.....21975
952.....21975
970.....21975
2401.....19468
2402.....19468
2404.....19468
2405.....19468
2406.....19468
2409.....19468
2411.....19468
2412.....19468
2413.....19468
2414.....19468
2415.....19468
2416.....19468
2417.....19468
2419.....19468
2420.....19468
2426.....19468
2428.....19468
2429.....19468
2432.....19468
2434.....19468
2436.....19468
2437.....19468
2442.....19468
2452.....19468
2453.....19468
Proposed Rules:
Ch. 1.....22010, 26496
Ch. 2.....22010
42.....26766
52.....24473, 26766
901.....19891
905.....19891
906.....19891
908.....19891
915.....19891
916.....19891
917.....19891
922.....19891
928.....19891
932.....19891
933.....19891
935.....19891
936.....19891
942.....19891
945.....19891
952.....19891
971.....19891
1515.....25440
1552.....25440

49 CFR

18.....21386
37.....25409, 26467
38.....25409, 26467
90.....21386
107.....21084
171.....21084, 25940, 26750, 27166
172.....20747, 27166
173.....20747, 21084, 25940, 26750, 27166
174.....20747
176.....20747, 27166
177.....27166
178.....21084, 25940, 27166
180.....27166
192.....26121
193.....26121
195.....24244, 26121
212.....26124
228.....20494
397.....20496
501.....26468
533.....25595
564.....20497
571.....19201, 19202, 19560, 19561, 20170, 20172, 20497, 26845, 27023
604.....19562
609.....19562
639.....25088
1039.....26846
1051.....19859
1053.....19859
1164.....21387
1311.....21387
1312.....19859
1330.....024722
Proposed Rules:
171.....24904, 26253
173.....24904, 26253
180.....24904, 26253
219.....21149
382.....21149
537.....22010
571.....19602, 24263, 24265, 26872, 27039
653.....21149
654.....21149
1002.....20877
1100.....19236
1101.....19236
1102.....19236
1103.....19236
1104.....19236
1105.....19236
1106.....19236
1107.....19236
1108.....19236
1109.....19236
1110.....19236
1111.....19236
1112.....19236
1113.....19236
1114.....19236
1115.....19236
1116.....19236
1117.....19236
1118.....19236
1119.....19236
1120.....19236
1121.....19236
1122.....19236
1123.....19236
1124.....19236
1125.....19236
1126.....19236
1127.....19236
1128.....19236
1129.....19236
1130.....19236
1131.....19236
1132.....19236
1133.....19236
1134.....19236
1135.....19236
1136.....19236
1137.....19236
1138.....19236
1139.....19236
1140.....19236
1141.....19236

1142.....19236
1143.....19236
1144.....19236
1145.....19236
1146.....19236
1147.....19236
1148.....19236
1149.....19236
1185.....22014
1300.....21153
1305.....24474
1312.....19902

50 CFR

17.....24722, 25813
91.....25155
100.....25785
216.....21926
222.....21926
253.....19171
255.....19171
301.....27025
611.....26435
620.....20175, 26435
641.....25833
651.....26847
658.....24728
661.....20175, 26125
663.....21102
672.....19976, 21104, 24729
675.....19976, 24730, 24905, 25595
678.....21978
Proposed Rules:
16.....24267
17.....19237, 21426, 25618
229.....27042
246.....25443
280.....25443
281.....25443
282.....25443
298.....25443
299.....25443
300.....25443
301.....25443
371.....25443
380.....25443
600.....19390
601.....19390
602.....19390
603.....19390
605.....19390
611.....19390
619.....19390
620.....19390
621.....19390
625.....20506
628.....20789
641.....24267
649.....20207
650.....20207, 21431
651.....20207
655.....25185
652.....19604
672.....24475, 24750
673.....19902, 21431
675.....24475, 24750
676.....24475
695.....25443

REMINDERS

The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Printing and publishing industry operations; published 5-30-96

Air quality implementation plans; approval and promulgation; various States:
- Iowa; published 4-30-96

Clean Air Act:
- Fuel and fuel additives–
  - Federal gasoline Reid Vapor Pressure volatility standard (1996 and 1997); relaxation; published 4-15-96
- State operating permits programs–
  - Tennessee; published 4-30-96

FEDERAL COMMUNICATIONS COMMISSION

Radio services, special:
- Private land mobile services–
  - Automatic vehicle monitoring systems; published 4-30-96

FEDERAL TRADE COMMISSION

Industry guides:
- Metallic watch band industry; CFR part removed; published 5-30-96

INTERIOR DEPARTMENT

National Park Service

National Park System:
- Glacier Bay National Park, AK; vessel management plan; published 5-30-96

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:
- Columbia River, WA; safety zone; published 4-30-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Societe Nationale Industrielle Aerospatiale and Eurocopter France; published 4-25-96

TREASURY DEPARTMENT

Internal Revenue Service

Employment taxes and collection of income taxes at source:
- Nonpayroll withheld tax liabilities; reporting; published 5-30-96

Income taxes:
- Meals and entertainment, club dues, and spousal travel; expenses paid by employer; published 5-30-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Avocados grown in Florida; comments due by 6-3-96; published 5-2-96

Onions (sweet) grown in Washington and Oregon; comments due by 6-5-96; published 5-6-96

Onions grown in–
- Idaho et al.; comments due by 6-5-96; published 5-6-96

Potatoes (Irish) grown in–
- Washington; comments due by 6-5-96; published 5-6-96

Spearmint oil produced in Far West; comments due by 6-5-96; published 5-6-96

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
- Garbage that can introduce diseases or pests of livestock, poultry, or plants; disposal by cruise ships in landfills at Alaskan ports; comments due by 6-4-96; published 4-5-96
- Hog cholera and swine vesicular disease; disease status change–
  - Netherlands; comments due by 6-3-96; published 4-4-96
- Horses; permanent private quarantine facilities; comments due by 6-3-96; published 5-6-96

Interstate transportation of animals and animal products (quarantine):
- Tuberculosis in cervids; identification requirements; comments due by 6-3-96; published 4-4-96

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery management councils; hearings:
- New England; comments due by 6-4-96; published 5-10-96

COMMERCE DEPARTMENT

Patent and Trademark Office

Patent cases:
- Fee revisions; comments due by 6-5-96; published 5-1-96

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Management oversight of service contracting; comments due by 6-3-96; published 4-3-96

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:
- Clothes washers; test procedures, etc.; comments due by 6-6-96; published 4-22-96

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Oil pipelines:
- Cost-of-service filing requirements; comments due by 6-3-96; published 5-3-96

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control; new motor vehicles and engines:
- Urban buses (1993 and earlier model years); retrofit/rebuild requirements; equipment certification–
  - Detroit Diesel Corp.; comments due by 6-3-96; published 4-17-96

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 6-3-96; published 5-2-96
- Illinois; comments due by 6-5-96; published 5-6-96
- Ohio; comments due by 6-5-96; published 5-6-96
- Utah; comments due by 6-5-96; published 5-6-96

Clean Air Act:
- Consumer products; national volatile organic compound emission standards; comments due by 6-3-96; published 4-2-96
- State operating permits programs–
  - Rhode Island; comments due by 6-5-96; published 5-6-96
  - Rhode Island; comments due by 6-5-96; published 5-6-96

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Chloroxuron, etc.; comments due by 6-3-96; published 4-3-96

Superfund program:
- National oil and hazardous substances contingency plan–
  - National priorities list update; comments due by 6-5-96; published 5-6-96
  - National priority list update; comments due by 6-3-96; published 5-3-96

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Wireless services; cellular spectrum priority access; national security/ emergency preparedness responsiveness; rulemaking petition; comments due by 6-3-96; published 4-26-96

FEDERAL TRADE COMMISSION

Magnuson-Moss Warranty Act interpretations, etc.; comments due by 6-3-96; published 4-3-96

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Management oversight of service contracting; comments due by 6-3-96; published 4-3-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Color additives:
- Color additive lakes; safe use in food, drugs, and cosmetics; permanent listing; comments due by 6-3-96; published 3-4-96

GRAS or prior-sanctioned ingredients:
- Meat and poultry products; substances approved; comment period reopening; comments due by 6-3-96; published 4-3-96

Human drugs:
- Antiflatulent products (OTC); monograph amendment; comments due by 6-3-96; published 3-5-96

Medical devices:
- Ophthalmic devices–
  - Neodymium: yttrium:aluminum:garnet (Nd:YAG) laser; reclassification from Class III to Class II; comments due by 6-6-96; published 3-8-96

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

National Environmental Policy Act; implementation; comments due by 6-4-96; published 4-5-96

INTERIOR DEPARTMENT

Land Management Bureau

Marginal gas producers; production incentives through royalty reductions; comment request; comments due by 6-3-96; published 3-5-96

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
- Northern spotted owl; comments due by 6-3-96; published 4-8-96

Endangered Species Convention:
- River otters taken in Missouri; export; comments due by 6-3-96; published 4-2-96

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Federal lands program:
- State-Federal cooperative agreements; Federal regulatory review; comments due by 6-3-96; published 4-4-96

Permanent program and abandoned mine land reclamation plan submissions:
- Arkansas; comments due by 6-3-96; published 5-3-96
- Virginia; comments due by 6-3-96; published 5-3-96

JUSTICE DEPARTMENT

Persons of Japanese ancestry; redress provisions; comments due by 6-6-96; published 4-22-96

LABOR DEPARTMENT

Pension and Welfare Benefits Administration

Employee Retirement Income Security Act:
- Interpretive bulletins and regulations removed; comments due by 6-3-96; published 4-3-96

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Management oversight of service contracting; comments due by 6-3-96; published 4-3-96

SECURITIES AND EXCHANGE COMMISSION

Investment companies:
- Acquisition of securities during existence of underwriting syndicate; comments due by 6-3-96; published 3-27-96

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:
- Tampa Bay, Hillsborough Bay and approaches, FL; safety zone; comments due by 6-3-96; published 4-2-96

Regattas and marine parades:
- First Coast Guard District fireworks displays; comments due by 6-6-96; published 5-23-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airports:
- National Capital airports; CFR part removed; comments due by 6-3-96; published 5-2-96

Airworthiness directives:
- de Havilland; comments due by 6-3-96; published 4-23-96
- Empressa Brasileira de Aeronautica, S.A.; comments due by 6-3-96; published 4-23-96
- McDonnell Douglas; comments due by 6-4-96; published 4-10-96

Class E airspace; comments due by 6-3-96; published 4-9-96

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Motor carrier safety standards:
- Parts and accessories necessary for safe operation–
  - Television receivers and data display units; comments due by 6-3-96; published 4-3-96

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

National Driver Register transition procedures; comments due by 6-3-96; published 4-17-96

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Interlocking rail officers and directors; authorization; comments due by 6-3-96; published 5-13-96

Tariffs and schedules:
- Pipeline common carriage; change of rates and other service terms; disclosure and notice; comments due by 6-4-96; published 5-15-96

TREASURY DEPARTMENT

Internal Revenue Service

Employment taxes and collection of income taxes at source:
- Federal Unemployment Tax Act (FUTA) and Federal Insurance Contributions Act (FICA); taxation of amounts under employee benefit plans
- Hearing; comments due by 6-3-96; published 5-8-96

Income taxes:
- Foreign corporations–
  - Determination of interest expense deduction and branch profits tax; comments due by 6-6-96; published 3-8-96

LIST OF PUBLIC LAWS

This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 1743/P.L. 104–147

To amend the Water Resources Research Act of 1984 to extend the authorizations of appropriations through fiscal year 2000, and for other purposes. (May 24, 1996; 110 Stat. 1375)

H.R. 1836/P.L. 104–148

To authorize the Secretary of the Interior to acquire property in the town of East Hampton, Suffolk County, New York, for inclusion in the Amagansett National Wildlife Refuge. (May 24, 1996; 110 Stat. 1378)

Public Laws

104th Congress, 2nd Session, 1996

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregulary upon enactment, for the 104th Congress, 2nd Session, 1996.

Individual laws also may be purchased from the Superintendent of Documents, Washingrton,DC 20402–9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws.)

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
*** 6216**

S3

Charge your order. It's Easy! MasterCard VISA

☐ **YES**, enter my subscription(s) as follows:

Fax your orders (202) 512–2233
Phone your orders (202) 512–1800

_____ subscriptions to **PUBLIC LAWS** for the 104th Congress, 2nd Session, 1996 for $160 per subscription.

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Orser No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) (1/96)

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

Microfiche Editions Available...



Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

Microfiche Subscription Prices:

Federal Register:

One year: $433.00
Six months: $216.50

Code of Federal Regulations:

Current year (as issued): $264.00

Superintendent of Documents Subscription Order Form

Order Processing Code:
*** 5419**

Charge your order. It's easy! MasterCard VISA

To fax your orders (202) 512–2233

☐ **YES**, enter the following indicated subscriptions in 24x microfiche format:

___ **Federal Register** (MFFR) ❑ One year at $433 each ❑ Six months at $216.50
___ **Code of Federal Regulations** (CFRM5) ❑ One year at $264 each

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

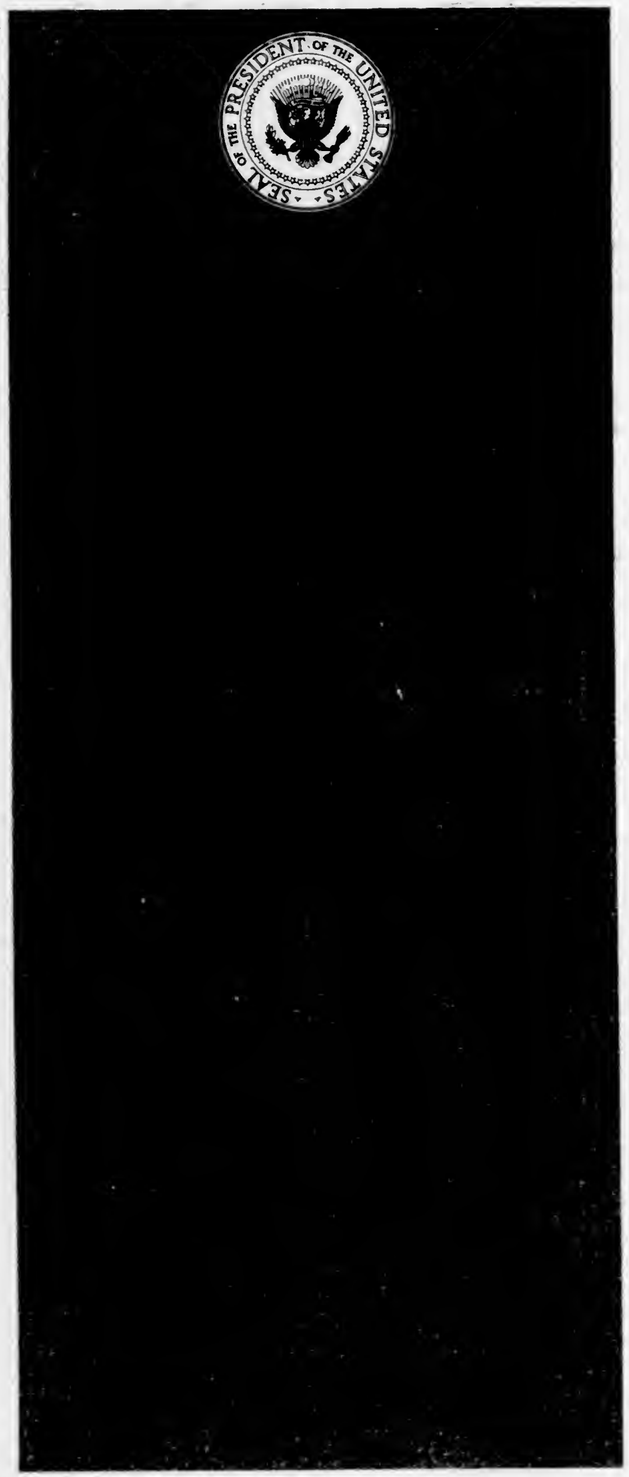
For privacy, check box below:
❑ Do not make my name available to other mailers

Check method of payment:
❑ Check payable to Superintendent of Documents
❑ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
❑ VISA ❑ MasterCard ☐☐☐☐ (expiration)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Authorizing signature) 10/94

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Public Papers of the Presidents of the United States

Annual volumes containing the public messages and statements, news conferences, and other selected papers released by the White House.

Volumes for the following years are available; other volumes not listed are out of print.

George Bush		William J. Clinton	
1991		1993	
(Book II)	$44.00	(Book I)	$51.00
1992		1993	
(Book I)	$47.00	(Book II)	$51.00
1992–93		1994	
(Book II)	$49.00	(Book I)	$56.00
		1994	
		(Book II)	$52.00

Published by the Office of the Federal Register, National Archives and Records Administration

Mail order to:
Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

(Rev. 5–96)

Order Now!

The United States Government Manual 1995/96

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to contact about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix C, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

$33.00 per copy



Superintendent of Documents **Publications** Order Form

Order Processing Code:
* **7784**

Charge your order. It's easy!

To fax your orders (202) 512–2250

☐ **YES,** please send me _____ copies of the **The United States Government Manual, 1995/96**
S/N 069–000–00063–1 at $33 ($41.25 foreign) each.

The total cost of my order is $_____. Price includes regular domestic postage and handling and is subject to change.

_____
(Company or personal name) (Please type or print)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, Zip code)

_____
(Daytime phone including area code)

_____
(Purchase order no.)

Please choose method of payment:
❑ Check payable to the Superintendent of Documents
❑ GPO Deposit Account ☐☐☐☐☐☐–☐
❑ VISA ❑ MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

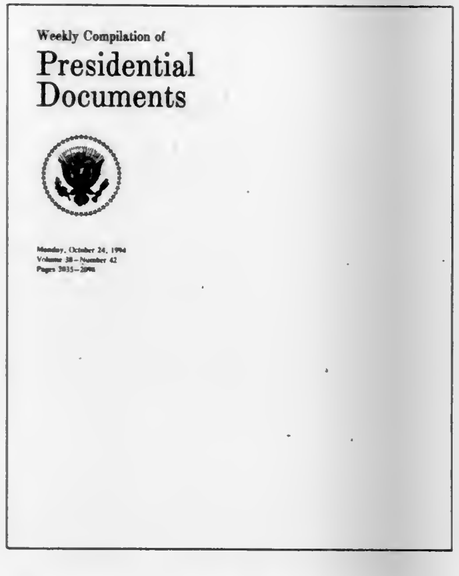
Thank you for your order!

_____
(Authorizing signature) (Rev 9/95)

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue includes a Table of Contents, lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements. Indexes are published quarterly.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Subscription Order Form

Order Processing Code:
* 5420

Charge your order. It's easy! MasterCard VISA

To fax your orders (202) 512–2233

☐ **YES**, please enter _____ one year subscriptions for the **Weekly Compilation of Presidential Documents** (PD) so I can keep up to date on Presidential activities.

☐ $132.00 First Class Mail ☐ $75.00 Regular Mail

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

For privacy, check box below:
☐ Do not make my name available to other mailers

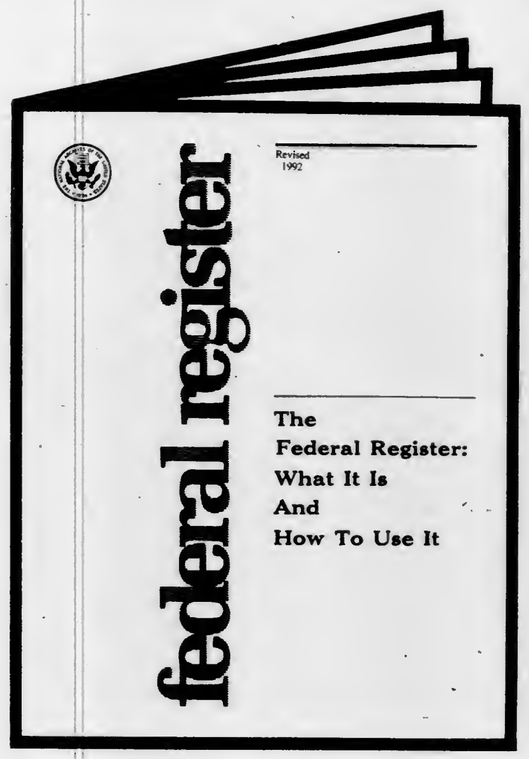
Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration)

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Authorizing signature) 10/94

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Announcing the Latest Edition

The Federal Register: What It Is and How to Use It

A Guide for the User of the Federal Register — Code of Federal Regulations System

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a sample research problem.

Price $7.00

Superintendent of Documents **Publications** Order Form

P3

Order processing code:
*6173

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202)-512-2250

☐ **YES**, please send me the following:

_____ copies of **The Federal Register - What it is and How To Use it**, at $7.00 per copy. Stock No. 069-000-00044-4

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:
☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) (Rev. 1-93)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

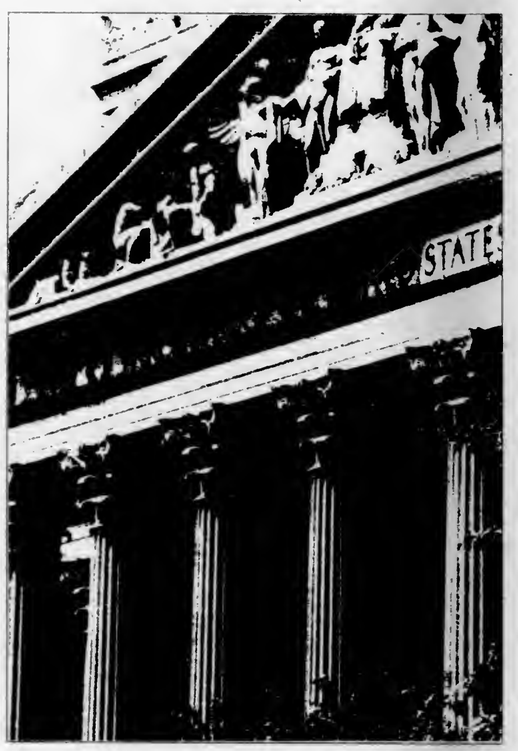
LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.
$26.00 per year.

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.
$24.00 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.



Superintendent of Documents Subscription Order Form

Order Processing Code:
* 5421

Charge your order. It's easy!

To fax your orders (202) 512–2233

☐ **YES,** enter the following indicated subscriptions for one year:

___ **LSA ◆ List of CFR Sections Affected** (LCS) at $26.00 each
___ **Federal Register Index** (FRSU) at $24.00 each

The total cost of my order is $ _____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

For privacy, check box below:
❑ Do not make my name available to other mailers

Check method of payment:
❑ Check payable to Superintendent of Documents
❑ GPO Deposit Account ☐☐☐☐☐☐ – ☐
❑ VISA ❑ MasterCard ☐☐☐☐ (expiration)

☐☐ ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Authorizing signature) 10/94

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Printed on recycled paper

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

5–31–96
Vol. 61 No. 106

Friday
May 31, 1996

federal register

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

**********3-DIGIT 481
A FR UMI 346U DEC 96 R
UMI
SERIALS ACQUISITIONS
PO BOX 1346
ANN ARBOR MI 48106

5–31–96
Vol. 61 No. 106
Pages 27243–27766

Friday
May 31, 1996

federal register

Briefings on How To Use the Federal Register
For information on briefings in Chicago, IL, and Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $494, or $544 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $433. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 61 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche 202–512–1800
Assistance with public subscriptions 512–1806
General online information 202–512–1530
Single copies/back copies:
Paper or fiche 512–1800
Assistance with public single copies 512–1803
FEDERAL AGENCIES
Subscriptions:
Paper or fiche 523–5243
Assistance with Federal agency subscriptions 523–5243
For other telephone numbers, see the Reader Aids section at the end of this issue.

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

CHICAGO, IL

WHEN: June 11, 1996 at 9:00 am
WHERE: Metcalfe Federal Building, Conference Room 328, 77 West Jackson, Chicago, Illinois 60604
RESERVATIONS: 1–800–688–9889

WASHINGTON, DC

[Two Sessions]

WHEN: June 18, 1996 at 9:00 am, and June 25, 1996 at 9:00 am
WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 61, No. 106
Friday, May 31, 1996

Agricultural Marketing Service
RULES
Grapes grown in California, 27245–27247
Onions grown in—
Idaho and Oregon, 27250–27251
Potatoes (Irish) grown in—
Oregon and California, 27247–27248
Southeastern States, 27248–27250

Agriculture Department
See Agricultural Marketing Service
See Cooperative State Research, Education, and Extension Service
See Federal Crop Insurance Corporation
See Forest Service
See Rural Utilities Service
NOTICES
Import quotas and fees:
Upland cotton, 27330–27333

Alcohol, Tobacco and Firearms Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 27384

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Census Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 27335

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Construction industry; occupational safety and health; intervention projects, 27354–27356
Tuberculin skin testing demonstration projects; and tuberculosis patients counseling and testing for HIV infection and test results reporting, 27356–27360

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Georgia, 27334

Commerce Department
See Census Bureau
See Export Administration Bureau
See Minority Business Development Agency
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 27334–27335

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 27338–27340

Cooperative State Research, Education, and Extension Service
RULES
Grants:
Rangeland research program; administrative provisions, 27752–27759

Copyright Office, Library of Congress
PROPOSED RULES
Cable compulsory license:
Open video systems of telephone companies; eligibility and comment period extended, 27322

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Maxicare Pharmacy, 27368–27370

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
National Institute on Disability and Rehabilitation Research—
Research and demonstration projects program, 27340–27341
Postsecondary education:
Federal Pell grant, Perkins loan, work-study, supplemental educational opportunity grant, family education loan, and William D. Ford direct loan programs—
Need analysis methodology for 1997-1998 award year; tables update, 27762–27765

Employment Standards Administration
NOTICES
Minimum wages for Federal and federaliy-assisted construction; general wage determination decisions. 27370–27371

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
National Petroleum Council, 27341

Environmental Protection Agency
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 27346–27347
Weekly receipts, 27347
Meetings:
Small Town Environmental Planning Task Force, 27347
Pesticide, food, and feed additive petitions:
Asgrow Seed Co., 27348
Reporting and recordkeeping requirements, 27348–27349
Superfund program:
Soil screening guidance; availability, 27349–27351

Export Administration Bureau
RULES
Alaskan North Slope crude oil exports; establishment of license exception TAPS, 27255–27258

Federal Aviation Administration
RULES
Airworthiness directives:
McDonnell Douglas, 27251–27252
SAAB, 27253–27255
PROPOSED RULES
Airworthiness directives:
Airbus, 27322

Federal Communications Commission
PROPOSED RULES
Common carrier services:
Federal-State Joint Board on Universal Service; establishment, 27323
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 27351–27352

Federal Crop Insurance Corporation
RULES
Crop insurance regulations:
Malting barley option crop insurance provisions Correction, 27244–27245
PROPOSED RULES
Crop insurance regulations:
Sugar beets, 27315–27321

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
N.E.W. Hydro, Inc., 27345
Pacific Gas & Electric Co., 27345–27346
Upper Peninsula Power Co., 27346
Applications, hearings, determinations, etc.:
Burney Forest Products, 27341
Duke/Louis Dreyfus Energy Services (New England) L.L.C., 27341
Equitrans, L.P., et al., 27341–27342
Great Lakes Gas Transmission L.P., 27342
Gulf States Pipeline Corp., 27342–27343
Kansas City Power & Light Co., 27343
Koch Gateway Pipeline Co., 27343
National Fuel Gas Supply Corp., 27343–27344
Northern Natural Gas Co., 27344
Old Dominion Electric Cooperative, 27344
Panhandle Eastern Pipe Line Co., 27344
SCANA Energy Marketing, Inc., 27344–27345
Williams Natural Gas Co., 27345

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 27352
Formations, acquisitions, and mergers, 27352
Permissible nonbanking activities, 27352–27353
Meetings; Sunshine Act, 27353–27354

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
Orange County, CA; coastal California gnatcatcher, etc., 27363–27365

Food and Drug Administration
NOTICES
Medical devices:
User facility and distributor reporting; guidance documents; availability, 27360–27361
Reports; availability, etc.:
Medical Device Reporting for Manufacturers, 27361–27362

Forest Service
NOTICES
Appealable decisions; legal notice:
Northern region, 27333

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health

Health Care Financing Administration
RULES
Medicare:
Health maintenance organizations; employer contribution to HMOs, 27282–27288
PROPOSED RULES
Medicare:
Hospital inpatient prospective payment systems and FY 1997 rates, 27444–27708

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 27363

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service

Internal Revenue Service
RULES
Income taxes:
Enterprise zone facility bonds, 27258–27263
NOTICES
Agency information collection activities:
Proposed collection; comment request, 27384–27385

Justice Department
See Drug Enforcement Administration
NOTICES
Pollution control; consent judgments:
Allied Signal, Inc., et al., 27367–27368

Labor Department
See Employment Standards Administration

Land Management Bureau
NOTICES
Withdrawal and reservation of lands:
Idaho, 27365–27366
Montana, 27366
Wyoming, 27367

Library of Congress
See Copyright Office, Library of Congress

Minerals Management Service
RULES
Royalty management:
Royalty relief for producing leases and existing leases in deep water, 27263–27280

Minority Business Development Agency
NOTICES
Community-based organizations applying to operate minority business development centers in designated locations; cost-share requirements, etc.; policy, 27336–27337

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Air brake systems—
Federal regulatory reform, 27288–27304
PROPOSED RULES
Motor vehicle safety standards:
Door locks and door retention components; rulemaking petition, 27325–27329

National Institutes of Health
NOTICES
Meetings:
Mental Health Special Emphasis Panel, 27362–27363

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic swordfish, 27304–27308
Gulf of Alaska and Bering Sea and Aleutian Islands groundfish, 27253, 27312–27314
Gulf of Alaska groundfish, 27308–27312
Northeast multispecies, 27710–27750
NOTICES
Meetings:
North Pacific Fishery Management Council, 27337
National Weather Service; modernization and restructuring:
National Environmental Satellite, Data, and Information Service transition from GOES-Tap/GOES-Fax transmission of satellite imagery to alternative methods, 27337
Permits:
Marine mammals, 27337–27338

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Baltimore Gas & Electric Co., 27371–27373
Bemis Construction, Inc., 27373–27374

Personnel Management Office
RULES
Allowances and differentials:
Separate maintenance allowance for Johnston Island duty, 27243–27244
Prevailing rate systems, 27243
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 27374–27375

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Research and Special Programs Administration
PROPOSED RULES
Pipeline safety:
Hazardous liquid transportation—
Areas unusually sensitive to environmental damage; workshop, 27323–27325

Rural Utilities Service
NOTICES
Environmental statements; availability, etc.:
LaGrange County, IN, Sewer District, 27333–27334

Secret Service
RULES
Counterfeit Deterrence Act:
Color illustrations of U.S. currency, 27280–27281

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Philadelphia Depository Trust Co., 27377–27379
Stock Clearing Corp. of Philadelphia, 27379–27380
Applications, hearings, determinations, etc.:
Bankers Trust Australia Ltd., 27375–27377

Social Security Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 27380–27382

State Department
NOTICES
Meetings:
Overseas Security Advisory Council, 27382

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Great Western Lines, LLC, 27382–27383
Great Western Railway of Colorado, LLC, 27383
Neptune Partners, Ltd., 27383
Union Pacific Railroad Co., 27383–27384

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Internal Revenue Service
See Secret Service

Utah Reclamation Mitigation and Conservation Commission
NOTICES
Environmental statements; availability, etc.:
Utah Lake Wetland Preserve, 27385

Veterans Affairs Department
RULES
National cemeteries; miscellaneous amendments, 27281–27282
VA publications; use of words and statements denoting gender; removal, 27282

NOTICES
Agency information collection activities:
Proposed collection; comment request, 27385–27388

Separate Parts In This Issue

Part II
Department of Health and Human Services, Health Care Financing Administration, 27444–27708

Part III
Department of Commerce, National Oceanic and Atmospheric Administration, 27710–27750

Part IV
Department of Agriculture, Cooperative State Research, Education, and Extension Service, 27752–27759

Part V
Department of Education, 27762–27765

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
532 27243
591 27243

7 CFR
457 27244
925 27245
947 27247
953 27248
958 27250
3401 27752
Proposed Rules:
457 27315

14 CFR
39 (2 documents) 27251, 27253
Proposed Rules:
39 27322

15 CFR
754 27255
758 27255
762 27255

26 CFR
1 27258

30 CFR
203 27263

31 CFR
411 27280

37 CFR
Proposed Rules:
Ch. II 27322

38 CFR
1 (2 documents) 27281, 27282

42 CFR
417 27282
Proposed Rules:
412 27444
413 27444
489 27444

47 CFR
Proposed Rules:
36 27323
69 27323

49 CFR
571 27288
Proposed Rules:
195 27323
571 27325

50 CFR
630 27304
651 27710
672 (2 documents) 27308, 27312
675 27312

Rules and Regulations

Federal Register
Vol. 61, No. 106
Friday, May 31, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AH30

Prevailing Rate Systems; Abolishment of Merced, CA, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to abolish the Merced, CA, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and redefine the county having continuing FWS employment (Fresno) as an area of application to the Kern, CA, NAF wage area for pay-setting purposes. The remaining Merced wage area county (Merced) has no FWS employment and is being deleted.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: On February 15, 1996, the Office of Personnel Management (OPM) published an interim rule to abolish the Merced, CA, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and redefine the county having continuing FWS employment (Fresno County) as an area of application to the Kern, CA, NAF wage area for pay-setting purposes. The remaining Merced wage area county (Merced) is being deleted because is has no FWS employment. The interim rule provided a 30-day period for public comment. OPM received no comments during the comment period. Therefore, the interim rule is being adopted as a final rule.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule amending 5 CFR part 532 published on February 15, 1996 (61 FR 5921), is adopted as final without any changes.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director,

[FR Doc. 96–13683 Filed 5–30–96; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 591

RIN 3206–AH17

Allowances and Differentials; Separate Maintenance Allowance for Duty at Johnston Island

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to change the method for setting separate maintenance allowance (SMA) rates for duty at Johnston Island. Under this method, SMA rates for Johnston Island are set at the same amount and adjusted at the same time as SMA rates established by the Department of State for employees who receive SMA's in foreign areas.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Roger M. Knadle, (202) 606–2858, or FAX: (202) 606–0824.

SUPPLEMENTARY INFORMATION: On October 17, 1995, the Office of Personnel Management published proposed regulations (60 FR 53716) to set and adjust the SMA rates for Johnston Island (a non-foreign area) at the same time and in the same manner as SMA rates for employees in foreign areas. The 60-day public comment period ended on December 18, 1995. We received one comment from one agency supporting the regulations as proposed. Therefore, OPM is issuing final regulations that are the same as the proposed regulations.

An SMA is paid to employees assigned to Johnston Island to help meet the additional expense of maintaining family members elsewhere who would normally reside with the employee. Johnston Island is a possession of the United States in the Pacific Ocean and is a non-foreign post of duty. Much of the island is devoted to chemical weapon storage and disposal facilities. Because of hazardous conditions (toxic waste) and the lack of facilities, family members are not allowed on the island.

Civilian employees assigned to foreign areas who are precluded from establishing a residence because of local living conditions or Federal policy are authorized an SMA established by the Department of State that is periodically updated based on the Consumer Price Index (CPI) and budgetary considerations. The final regulations abolish the current SMA rates established by OPM regulations and provide that SMA rates for Johnston Island will be set and adjusted at the same time and in the same amount as SMA rates established by the *Standardized Regulations (Government Civilians, Foreign Areas)* of the Department of State for employees in foreign areas. This maintains equity between civilian employees assigned to foreign and non-foreign areas. The final regulations apply only to Federal civilian employees assigned to Johnston Island.

The SMA rates will be adjusted on the first day of the first pay period beginning on or after the effective date of these regulations. Subsequently, the SMA rates will be adjusted on the first day of the first pay period beginning on or after the effective date of SMA rate adjustments under the Department of State's *Standardized Regulations (Government Civilians, Foreign Areas).* This change in methodology for setting SMA rates is not retroactive.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending part 591 of title 5, Code of Federal Regulations, as follows:

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart D—Separate Maintenance Allowance for Duty at Johnston Island

1. The authority citation for subpart D of part 591 is revised to read as follows:

Authority: 5 U.S.C. 5942a(b); E.O. 12822, 3 CFR, 1992 Comp., p. 325

2. In § 591.401, paragraph (a) is revised to read as follows:

§ 591.401 Purpose and applicability.

(a) *Purpose.* This subpart prescribes the regulations required by section 5942a of title 5, United States Code, to authorize payment of a separate maintenance allowance to assist an employee assigned to Johnston Island to meet the additional expenses of maintaining family members elsewhere who would normally reside with him or her because they cannot accompany the employee to Johnston Island. This subpart provides rules for determining which employees are eligible to receive the separate maintenance allowance, who qualifies as family members under the program, the method of payment, and payment amounts.

* * * * *

3. Section 591.402 is revised to read as follows:

§ 591.402 Definitions.

Adult, a term used in the Department of State *Standardized Regulations (Government Civilians, Foreign Areas),* means a family member who is 21 years of age or older.

Family member means one or more of the following relatives of an employee who would normally reside with the employee except for circumstances warranting the granting of a separate maintenance allowance, but who does not receive from the Government an allowance similar to that granted to the employee and who is not deemed to be a family member of another employee for the purpose of determining the amount of a separate maintenance allowance or similar allowance:

(1) Children who are unmarried and under 21 years of age or, regardless of age, are incapable of self-support, including natural children, step and adopted children, and those under legal guardianship or custody of the employee or the spouse when they are expected to be under such legal guardianship or custody at least until they reach 21 years of age and when dependent upon and normally residing with the guardian;

(2) Parents (including step and legally adoptive parents) of the employee or of the spouse when such parents are at least 51 percent dependent on the employee for support;

(3) Sisters and brothers (including step or adoptive sisters and brothers) of the employee or of the spouse, when such sisters and brothers are at least 51 percent dependent on the employee for support, unmarried and under 21 years of age, or regardless of age, are incapable of self-support; or

(4) Spouse, excluding a spouse independently entitled to and receiving a similar allowance.

Johnston Island, also called Johnston Atoll, is a possession of the United States located 717 nautical miles southwest of Honolulu, Hawaii.

Separate maintenance allowance means an allowance to assist an employee assigned to Johnston Island who is compelled by reason of dangerous, notably unhealthful, or excessively adverse living conditions at Johnston Island, or for the convenience of the Government, to meet the additional expense of maintaining family members at a location other than Johnston Island.

4. Section 591.403 is revised to read as follows:

§ 591.403 Amount of payment.

(a) The annual rate of the separate maintenance allowance paid to an employee shall be determined by the number of individuals, including a spouse and/or one or more other family members, that are maintained at a location other than Johnston Island.

(b) The annual rates for the separate maintenance allowance paid to employees assigned to Johnston Island shall be the same as the annual rates for the separate maintenance allowance established by the Department of State in its *Standardized Regulations (Government Civilians, Foreign Areas).* The annual rates shall not vary by location of the separate household.

(c) The annual rates of the separate maintenance allowance shall be adjusted on the first day of the first pay period beginning on or after July 1, 1996 and, subsequently, on the first day of the first pay period beginning on or after the effective date established for adjustment of annual rates for the separate maintenance allowance in the *Standardized Regulations (Government Civilians, Foreign Areas).*

5. Section 591.405 is revised to read as follows:

§ 591.405 Responsibilities of agencies.

Agencies with employees stationed at Johnston Island may require reasonable verification of relationship and dependency.

[FR Doc. 96–13682 Filed 5–30–96; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB24

Common Crop Insurance Regulations; Malting Barley Price and Quality Endorsement Crop Insurance Provisions; Correction

AGENCY: Federal Crop Insurance Corporation, Department of Agriculture.

ACTION: Correcting amendments.

SUMMARY: This document contains technical corrections to the final regulations, published Wednesday, March 6, 1996 (61 FR 8851), concerning the insurance contract requirements under the Malting Barley Price and Quality Endorsement crop provisions of the Common Crop Insurance Policy.

EFFECTIVE DATE: May 30, 1996.

FOR FURTHER INFORMATION CONTACT: Rob Coultis, Program Analyst, Research and Development Division, Product Development Branch, FCIC, at 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of these technical corrections was intended to make available a new insurance coverage for producers of malting barley. As published, the final regulations contained an error in the calculation used to reduce the amount of production to count when damaged production is accepted by a buyer for malting purposes. As published, the quality adjustment factor used to reduce the amount of damaged production is calculated by dividing an established value of undamaged production (the maximum additional value price election) by the price per bushel received for damaged production. The application of this calculation will increase the production to count, not reduce it. To establish the appropriate factor for reducing the production to count to take into consideration an amount of damaged production, the regulation should have stated that the price per bushel received for damaged production would be divided by the established value of undamaged production.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

List of Subjects in 7 CFR Part 457

Malting Barley Crop Insurance.

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1991 AND SUBSEQUENT CONTRACT YEARS

Accordingly, 7 CFR Part 457 is corrected by making the following correcting amendments:

1. On page 8856 in the second column, section 4(b)(2) of Option A is corrected to read "Dividing the price per bushel received for the damaged production by the result of paragraph (1); and"

2. On page 8857 in the second column, section 4(b)(2) of Option B is corrected to read "Dividing the price per bushel received for the damaged production by the result of paragraph (1); and"

Signed in Washington, D.C., on May 23, 1996.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 96–13591 Filed 5–30–96; 8:45 am]

BILLING CODE 3410–FA–P

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV95–925–1FIR]

Grapes Grown in a Designated Area of Southeastern California; Revision of Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, the provisions of an interim final rule with correction which added two new containers to the list of containers authorized for use by table grape handlers regulated under the marketing order. This rule also reduces the minimum net weight of containers of California table grapes from 22 pounds to 20 pounds and for grapes packed in poly bags from 20 pounds to 18 pounds. The marketing order regulates the handling of table grapes grown in a designated area of Southeastern California. The marketing order is locally administered by the California Desert Grape Administrative Committee (CDGAC). This rule allows for more efficient use of containers and helps handlers meet industry needs.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2526–S, Washington, DC 20090–6456, telephone (202) 690–3670; or Rose M. Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone (209) 487–5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 925 [7 CFR Part 925], as amended, regulating the handling of table grapes grown in a designated area of Southeastern California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this final rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California table grapes subject to regulation under the order and approximately 80 table grape producers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. A minority of handlers and producers are classified as small entities.

This rule finalizes changes in the container requirements under the marketing order for grapes grown in designated areas of Southeastern California. This rule also finalizes a reduction in the minimum net weight of containers of California table grapes from 22 pounds to 20 pounds and for grapes packed in poly bags from 20 pounds to 18 pounds. These changes were unanimously recommended by the CDGAC.

An interim final rule was issued on March 11, 1996, and published in the **Federal Register** (61 FR 11127, March 19, 1996), with an effective date of March 19, 1996. That rule amended § 925.304 of the rules and regulations in effect under the order. That rule provided a 30-day comment period which ended April 18, 1996. No comments were received. A correction document was issued on March 25, 1996, and published in the **Federal Register** (61 FR 14013, March 29, 1996). The document corrected amendatory language number 2 of the interim final rule.

This action is in accordance with § 925.52(a)(4) of the order. This section authorizes the Secretary to fix the size, capacity, weight, dimensions, markings,

materials, and pack of containers which may be used in the handling of grapes.

Prior to the effective date of the interim final rule, § 925.304 (b)(2) of the regulations specified that the minimum net weight requirement for grapes in any container, except for containers containing grapes packed in sawdust, cork, excelsior, or similar packing material, or packed in bags or wrapped in plastic or paper, and experimental containers, be 22 pounds based on the average net weight of grapes in a representative sample of containers. Containers of grapes packed in bags or wrapped in plastic or paper prior to being placed in these containers were required to meet a net weight requirement of 20 pounds.

Section 925.304 (b)(1) of the regulations specified the dimensions of six containers that could be used by handlers of table grapes and authorized the use of other types and sizes of containers on an experimental basis.

The CDGAC met on November 27, and December 4, 1995, and unanimously recommended changes in the container requirements. Specifically, the CDGAC recommended reducing the minimum net weight of containers from 22 to 20 pounds and for containers of grapes wrapped or packed in poly bags from 20 to 18 pounds, effective April 20, 1996. The CDGAC also unanimously recommended adding two new containers (38S, 12 x 20 inches) and (38T, 13⅛ x 15⅞ inches) to the list of authorized containers. These changes are intended to improve the quality of grapes delivered to consumers and reduce handling costs.

The genesis for discussion of revising containers used to pack grapes began about 6 years ago when the recyclability of packaging materials became of interest to consumers worldwide and then to retailers who bore the brunt of consumers' concern. In addition to the environmental concern expressed by consumers, retailers were concerned about the increasing costs of disposing of packing and shipping materials.

Simultaneously, in an effort to differentiate themselves in the marketplace, many in the retail industry began demanding that grape growers provide custom packs. One customer wanted only a certain type of bag, another wanted only 5-kilo bags, another wanted bags with nothing printed on them, while yet another wanted a special store code.

These kinds of demands from the retail and food service industry led to a great deal of packaging experimentation within the California grape industry. It also led to the realization that it had been 25 years since there had been any quantifiable packaging research. The industry decided to take a critical look at grape packaging and determine if current practices were getting the product to the retailer and ultimately the consumer in the best possible condition; and if not, what changes needed to be made to improve delivery. Toward that end, the California Table Grape Commission funded a three-year research project designed to answer a simple question: what types of containers get grapes to the consumer in the best possible condition?

Grapes are a fragile product. The current method of packing is a holdover from 25 years ago when grapes were sold at auctions and it was considered a marketing advantage to overpack the box so that when buyers looked at the box it was bulging with fruit. Too often though, what they did not see was the condition of the fruit inside; crushed, split or falling off the stem. In addition, the standard lug box in use today was designed to fit railroad cars. Shipping grapes by rail car is a part of the industry's past.

The study of table grape packaging was conducted by the University of California at Davis and the University of California at Kearney Agricultural Center at Parlier. The objective of the study was to develop knowledge concerning packaging that allows the movement of table grapes from the field to the consumer in the best possible condition. At the reduced weight, the damage to the grapes, particularly in terms of bruising, splitting and shattering, decreases. Table grapes of most varieties suffered considerable damage when packed at net weights of 22 or 23 pounds. The damage was reduced considerably when the pack weights were reduced to 20 to 21 pounds.

Through the research conducted the CDGAC determined that other container size and net weight options available were not in the best interest of the industry. Further, wholesalers and retailers support the recommended changes, and believe it is the best option.

Thus, the CDGAC's recommendation to reduce the minimum net weight requirements is expected to result in higher quality grapes being offered to consumers. This should increase satisfaction, strengthen demand, and improve returns to growers and handlers.

Most grapes packed in California are palletized on 35- x 42-inch or 53- x 42-inch pallets prior to shipment. When received by wholesalers or retailers, the grapes are unloaded and restacked on 48- x 40-inch pallets.

Grocery and wholesale warehouse operations use 48- x 40-inch pallets as the standard pallet for most products. The bulk of product sold at retail outlets (e.g., cereal, paper products, canned goods, etc.) are dry goods. These products are generally shipped on 48- x 40-pallets. Consequently, the distribution channel is set up to accommodate 48- x 40-inch pallets.

Nonstandard pallets such as those used by grape handlers have to be disposed of at the receivers' expense. However, with the use of 48- x 40-inch pallets, which can be recycled, there should be a reduction in expenses associated with pallets. The recycling program allows the receiver to use the pallet more than once or remove it from the waste stream to use or sell.

The changes in container requirements are supported by the California Department of Agriculture, the California Grape and Tree Fruit League, the California Table Grape Commission, the Food Marketing Institute, and the National Association of Perishable Agricultural Receivers. These organizations have all agreed that the reduction in net weight is necessary to facilitate the implementation of an industry-wide adoption of the standardized 48- x 40-inch pallet and the incidence of damage to fruit due to over packing.

Thus, this rule allows the industry to use more efficient containers and provides handlers with more flexibility in packing table grapes. Imported table grapes will not be affected by this rule.

Based on the above, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the CDGAC's recommendation, and other available information, it is found that finalizing the interim final rule, which was published in the **Federal Register** (61 FR 11127, March 19, 1996) and corrected in the **Federal Register** (61 FR 14013, March 29, 1996) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is amended as follows:

1. The authority citation for 7 CFR part 925 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 925 which was published at 61 FR 11127, March 19, 1996, and corrected at 61 FR 14013, March 29, 1996, is adopted as a final rule.

Dated: May 22, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–13616 Filed 5–30–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 947

[Docket No. FV96–947–1IFR]

Oregon-California Potatoes; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the Oregon-California Potato Committee (Committee) under Marketing Order No. 947 for the 1996–97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of Irish potatoes grown in Oregon-California. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on July 1, 1996. Comments received by July 1, 1996, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, FAX 202–720–5698, or Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503–326–2724, FAX 503–326–7440.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 114 and Order No. 947, both as amended (7 CFR part 947), regulating the handling of Irish potatoes grown in Oregon-California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Oregon-California potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes beginning July 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 550 producers of Oregon-California potatoes in the production area and approximately 40 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Oregon-California potato producers and handlers may be classified as small entities.

The Oregon-California potato marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Oregon-California potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on March 28, 1996, and unanimously recommended 1996–97 expenditures of $61,200 and an assessment rate of $0.005 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were $46,200. The assessment rate of $0.005 is $0.001 less than last year's established rate. Major expenditures recommended by the Committee for the 1996–97 year include $30,000 for an agreement with the Oregon Potato Commission to provide services to the Committee and $8,100 for a contingency fund. Budgeted expenses for these items in 1995–96 were $24,000 and $100, respectively. The contingency fund was increased as the Committee is considering a possible marketing research and development project in conjunction with the Oregon Potato Commission.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Oregon-California potatoes. Potato shipments for the year

are estimated at 7,400,000 hundredweight which should provide $37,000 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1996–97 fiscal period are estimated at $55,245. Funds in the reserve will be kept within the maximum permitted by the order.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at those meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996–97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period begins on July 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 947 is amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR part 947 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new subpart—Assessment Rates and a new § 947.247 are added to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Assessment Rates

§ 947.247 Assessment rate.

On and after July 1, 1996, an assessment rate of $0.005 per hundredweight is established for Oregon-California potatoes.

Dated: May 24, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–13699 Filed 5–30–96; 8:45 am]

BILLING CODE 3410–02–P

---

7 CFR Part 953

[Docket No. FV96–953–1IFR]

Southeastern Potatoes; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the Southeastern Potato Committee (Committee) under Marketing Order No. 953 for the 1996–97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of Irish potatoes grown in two southeastern States (Virginia and North Carolina). Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on June 1, 1996. Comments received by July 1, 1996, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, FAX 202–720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 104 and Order No. 953, both as amended (7 CFR part 953), regulating the handling of Irish potatoes grown in two southeastern States (Virginia and North Carolina), hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Virginia-North Carolina potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes beginning June 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 150 producers of Southeastern potatoes in the production area and approximately 60 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Southeastern potato producers and handlers may be classified as small entities.

The Southeastern potato marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Southeastern potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on April 18, 1996, and unanimously recommended 1996–97 expenditures of $12,000, the same as last year, and an assessment rate of $0.0075 per hundredweight. The assessment rate of $0.0075 is $0.0025 higher than last year's established rate. The major expenditures include $7,800 for the manager's and secretarial salaries and $900 for travel expenses.

The assessment rate recommended by the Committee was based on last year's shipments of 1,549,268 hundredweight of Southeastern potatoes, which should provide $11,619.51 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1996–97 fiscal period are estimated at $8,877. Funds in the reserve will be kept within the maximum permitted by the order.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996–97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period begins on June 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Irish potatoes handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to the assessment rate action issued last year; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 953

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 953 is amended as follows:

PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

1. The authority citation for 7 CFR part 953 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new subpart—Assessment Rates and a new § 953.253 are added to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Assessment Rates

§ 953.253 Assessment rate.

On and after June 1, 1996, an assessment rate of $0.0075 per hundredweight is established for Southeastern potatoes.

Dated: May 22, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–13617 Filed 5–30–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 958

[Docket No. FV96–958–2IFR]

Idaho-Eastern Oregon Onions; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the Idaho-Eastern Oregon Onion Committee (Committee) under Marketing Order No. 958 for the 1996–97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of onions grown in designated counties in Idaho, and Malheur County, Oregon.

Authorization to assess onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on July 1, 1996. Comments received by July 1, 1996, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, FAX 202–720–5698, or Robert J. Curry, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369–1220 Southwest Third Avenue, Portland, OR 97204, telephone 503–326–2724, FAX 503–326–7440.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 130 and Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in designated counties in Idaho, and Malheur County, Oregon. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Idaho-Eastern Oregon onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions beginning July 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 550 producers of Idaho-Eastern Oregon onions in the production area and approximately 34 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000. The majority of Idaho-Eastern Oregon onion producers and handlers may be classified as small entities.

The Idaho-Eastern Oregon onion marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Idaho-Eastern Oregon onions. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on March 21, 1996, and unanimously recommended 1996–97 expenditures of $1,115,993 and an assessment rate of $0.10 per hundredweight of onions. In comparison, last year's budgeted expenditures were $1,111,447. The assessment rate of $0.10 is the same as last year's established rate. Major expenditures recommended by the Committee for the 1996–97 year include $10,000 for Committee expenses, $123,593 for salary expenses, $62,400 for travel and office expenses, $60,000 each for research and export, $725,000 for promotion, and $75,000 for a contingency fund. Budgeted expenses for these items in 1995–96 were $10,000, $121,431, $61,600, $59,340, $60,000, $724,076, and $75,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Idaho-Eastern Oregon onions. Onion shipments for the year are estimated at 8,800,000 hundredweight, which should provide $880,000 in assessment income. Income derived from handler assessments, along with funds from interest income and the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds remaining in the reserve at the end of the 1995–96 fiscal period should be about $1,011,613. Funds in the reserve will be kept within the maximum permitted by the order.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996–97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, because: (1) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period begins on July 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 958 is amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 958 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new subpart—Assessment Rates and a new § 958.240 are added to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Assessment Rates

§ 958.240 Assessment rate.

On and after July 1, 1996, an assessment rate of $0.10 per hundredweight is established for Idaho-Eastern Oregon onions.

Dated: May 22, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–13618 Filed 5–30–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–98–AD; Amendment 39–9638; AD 96–11–13]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes. This action requires a visual inspection to determine the type of fluorescent light ballasts installed in the cabin sidewall; and installation of a protective cover, replacement, or removal/disconnection, if necessary. This action also requires removal of the dust barriers from the outboard ceiling panels, and installation of modified outboard ceiling panels. This amendment is prompted by reports of smoke, fumes, and/or electrical fire emitting from the baggage bin of the aft passenger compartment and from the dust barriers of the outboard ceiling due to the failure of the fluorescent light ballasts. The actions specified in this AD are intended to prevent a fire in the passenger compartment, which could result from failure of the fluorescent light ballast of the upper and lower cabin sidewall, and subsequent failure of the dust barriers of the outboard ceiling panel.

DATES: Effective June 17, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 17, 1996.

Comments for inclusion in the Rules Docket must be received on or before July 30, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–98–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: J. Kirk Baker, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5345; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA has received two reports of smoke, fumes, and/or electrical fire emitting from the baggage bin of the aft passenger compartment and from the dust barriers of the outboard ceiling panel on McDonnell Douglas Model DC–9–82 (MD–82) series airplanes. Investigation revealed that the existing design of the

light ballast assembly allows moisture condensation to ingress into the ballast case during altitude changes. The effects of such moisture subsequently contaminate the printed circuit card, which could result in a short circuit that ruptures the ballast casing and emits fire. In addition, investigation revealed that the failed light ballast assembly generated enough heat to ignite the dust barriers of the outboard ceiling panel; these barriers are flammable and have the potential to spread a fire to adjacent interior components. These conditions, if not corrected, could result in a fire in the passenger compartment.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD80–33A107, dated April 25, 1996, which describes the following procedures:

1. Performing a one-time visual inspection to determine the type of fluorescent light ballasts installed in the upper and lower cabin sidewall; and

2. Installing a protective cover on any Day-Ray Products Incorporated ballast, or replacing any Day-Ray Products Incorporated ballast with a Bruce Industries Incorporated ballast. Accomplishment of these actions will minimize the possibility of failure of the ballasts due to uncontained smoke and flame.

The FAA has also reviewed and approved McDonnell Douglas Alert Service Bulletin MD80–25A353, dated March 14, 1996, which describes procedures for removal of the dust barriers from the outboard ceiling panels, and installation of modified outboard ceiling panels. Accomplishment of this removal and installation will minimize the possibility of smoke or fire spreading into the cabin.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes of the same type design, this AD is being issued to prevent a fire in the passenger compartment, which could result from the failure of the fluorescent light ballast of the upper and lower cabin sidewall, and the subsequent failure of the dust barriers of the outboard ceiling panel. This AD requires a one-time visual inspection to determine the type of fluorescent light ballasts installed in the upper and lower cabin sidewall. For airplanes on which any Day-Ray Products Incorporated ballast is installed, this AD also requires accomplishment of one of the following actions:

—Installation of a protective cover on the ballast; or

—Replacement of that ballast with a Bruce Industries Incorporated ballast.

Additionally, for some airplanes, this AD requires removal of the dust barriers from the outboard ceiling panels, and installation of modified outboard ceiling panels. The actions are required to be accomplished in accordance with the alert service bulletins described previously.

Operators should note that, in addition to the recommendations of McDonnell Douglas Alert Service Bulletin MD80–33A107, this AD provides an additional option for airplanes on which any Day-Ray Products Incorporated ballast is installed that involves removal or electrical disconnection of the ballast, stowage of the ballast, and protection of the loose wiring. The FAA finds that accomplishment of these actions will eliminate the identified unsafe condition for those airplanes.

In addition, the FAA is aware that parts availability may become a problem in the future. However, under the provisions of paragraph (d) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–98–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–11–13 McDonnell Douglas: Amendment 39–9638. Docket 96–NM–98–AD.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) and Model MD–88 airplanes; as listed in McDonnell Douglas Alert Service Bulletin MD80–33A107, dated April 25, 1996; and McDonnell Douglas Alert Service Bulletin MD80–25A353, dated March 14, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the fluorescent light ballast of the upper and lower cabin sidewall, and subsequent failure of the dust barriers of the outboard ceiling panel, which could result in a fire in the passenger compartment, accomplish the following:

(a) For all airplanes: Within 90 days after the effective date of this AD, perform a one-time visual inspection to determine the type of fluorescent light ballasts installed in the upper and lower cabin sidewall, in accordance with McDonnell Douglas Alert Service Bulletin MD80–33A107, dated April 25, 1996.

(1) If any Bruce Industries Incorporated ballast is installed (specified as Condition 1 in the alert service bulletin), no further action is required by this paragraph for that ballast.

(2) If any Day-Ray Products Incorporated ballast is installed (specified as Condition 2 in the alert service bulletin), prior to further flight, accomplish either paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this AD.

(i) Install a protective cover on the ballast in accordance with Condition 2, Option 1, of the alert service bulletin. Or

(ii) Replace it with a Bruce Industries Incorporated ballast, in accordance with Condition 2, Option 2, of the alert service bulletin. Or

(iii) Remove or disconnect it electrically, stow it, and protect the loose wiring.

(b) For airplanes having manufacturer's fuselage numbers listed in McDonnell Douglas Alert Service Bulletin MD80–25A353, dated March 14, 1996: Within 90 days after the effective date of this AD, remove the dust barriers from the outboard ceiling panels, and install modified outboard ceiling panels, in accordance with McDonnell Douglas Alert Service Bulletin MD80–25A353, dated March 14, 1996.

(c) As of the effective date of this AD, no Day-Ray Products Incorporated ballast, having any part number identified in paragraph 1.2. of McDonnell Douglas Alert Service Bulletin MD80–33A107, dated April 25, 1996, shall be installed on any airplane unless that ballast has been modified in accordance with that alert service bulletin.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection and replacement shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD80–33A107, dated April 25, 1996. The removal of the dust barriers and installations shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD80–25A353, dated March 14, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on June 17, 1996.

Issued in Renton, Washington, on May 22, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–13495 Filed 5–30–96; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–102–AD; Amendment 39–9639; AD 96–11–14]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes. This action requires inspections to detect cracking of the lower rib of the rudder, and repair, if necessary. This action also provides for an optional terminating action, which, if accomplished, terminates the repetitive inspection requirement. This amendment is prompted by reports of fatigue cracking of the lower rib of the rudder. The actions specified in this AD are intended to prevent such fatigue cracking and subsequent failure of the primary structure of the rudder, which could result in reduced controllability of the airplane.

DATES: Effective June 17, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 17, 1996.

Comments for inclusion in the Rules Docket must be received on or before July 30, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–102–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from SAAB

Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth E. Harder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1721; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, recently notified the FAA that an unsafe condition may exist on certain Saab Model 2000 series airplanes. The LFV advises that it has received reports indicating that cracking of the bottom rib of the elevator has been detected on two Model SAAB 2000 series airplanes. Investigation revealed that, loose pieces of the web were found inside the rudder on one airplane. The cause of the cracking has been attributed to fatigue. Fatigue cracking and subsequent failure of the rudder, if not detected and corrected in a timely manner, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Saab has issued Service Bulletin SAAB 2000–55–005, dated February 2, 1996, which describes procedures for repetitive visual inspections to detect cracking of the lower rib of the rudder. The service bulletin also describes procedures for a temporary repair of cracking that is within certain specified limits. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive SAD No. 1–088–R1 in order to assure the continued airworthiness of these airplanes in Sweden.

Additionally, Saab has issued Service Bulletin 2000–55–006, dated April 23, 1996, which describes procedures to modify the elevator by reinforcing the lower rib. This modification (Modification No. 5736) will prevent failure of the rudder due to fatigue cracking of the lower rib. Accomplishment of the modification eliminates the need for the repetitive visual inspections. The LFV has approved the technical content of this service bulletin.

FAA's Conclusions

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent fatigue cracking of the lower rib of the rudder and subsequent failure of the primary structure of the rudder. Such failure could result in reduced controllability of the airplane. This AD requires repetitive visual inspections to detect cracking of the lower rib of the rudder, and repair, if necessary. The inspections and certain repairs are required to be accomplished in accordance with Saab Service Bulletin 2000–55–005, described previously. Repair of any cracking detected that is beyond the limits specified in that service bulletin is required to be accomplished in accordance with a method approved by the FAA.

This AD also provides for optional modification of the rudder, which, if accomplished, constitutes terminating action for the repetitive inspection requirements of this AD. If accomplished, the modification is required to be accomplished in accordance with SAAB Service Bulletin 2000–55–006.

This is considered to be interim action. The FAA is currently considering requiring the installation of the rudder modification that will constitute terminating action for the repetitive inspections required by this AD. However, the planned compliance time for the installation of the modification is sufficiently long so that notice and public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–102–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

96–11–14 SAAB Aircraft Ab: Amendment 39–9639. Docket 96–NM–102–AD.

Applicability: Model SAAB 2000 series airplanes, having serial numbers 004 through 039, inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the lower rib of the rudder and subsequent reduced controllability of the airplane, accomplish the following:

(a) Within 20 days after the effective date of this AD: Perform a visual inspection to detect cracking of the lower rib of the rudder, in accordance with Saab Service Bulletin 2000–55–005, dated February 2, 1996.

(b) If no cracking is detected: Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 400 hours time-in-service, in accordance with Saab Service Bulletin 2000–55–005, dated February 2, 1996.

(c) If any cracking is detected that is 25 mm in length or less: Prior to further flight, perform a temporary repair in accordance with paragraph 2.C. of the Accomplishment Instructions of Saab Service Bulletin 2000–55–005, dated February 2, 1996. Thereafter, repeat the inspections required by paragraph (a) of this AD at intervals not to exceed 7 days.

(d) If any cracking is detected that is more than 25 mm in length: Prior to further flight, repair it in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(e) Modification of the lower rib of the rudder (Modification No. 5736), in accordance with Saab Service Bulletin 2000–55–006, dated April 23, 1996, constitutes terminating action for the repetitive inspection requirements of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The inspections and temporary repair shall be done in accordance with Saab Service Bulletin 2000–55–005, dated February 2, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SAAB Aircraft AB, Saab Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on June 17, 1996.

Issued in Renton, Washington, on May 22, 1996.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–13496 Filed 5–30–96; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 754, 758, and 762

[Docket No.960523147–01]

RIN 0694–AB44

Exports of Alaskan North Slope Crude Oil; Establishment of License Exception TAPS

AGENCY: Bureau of Export Administration, Commerce

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration is amending the short supply provisions of the Export Administration Regulations to modify the restrictions on exports of Alaskan North Slope crude oil and establish License Exception TAPS authorizing such exports, with certain conditions. License Exception TAPS is based on: 1) Public Law 104–58, which allows for the export of crude oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (TAPS); 2) the President's April 28, 1996 determination that exports are in the national interest; and 3) the President's direction to the Secretary of Commerce to issue a License Exception with conditions for export of TAPS crude oil.

EFFECTIVE DATE: May 28, 1996.

FOR FURTHER INFORMATION CONTACT: Bernard Kritzer, Office of Chemical and Biological Controls and Treaty Compliance, Bureau of Export Administration, Department of Commerce, Telephone: (202) 482–0894.

SUPPLEMENTARY INFORMATION:

Background

Section 7(d) of the Export Administration Act of 1979, (50 U.S.C. app. 2406) restricts exports of crude oil transported over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652), with certain exceptions, unless the President makes certain findings, recommends exports to the Congress on the basis of those findings, and the Congress then agrees to the recommendation by joint resolution enacted into law. Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19,

1994, and notice of August 15, 1995 (60 FR 42767).

On November 28, 1995, the President signed into law Public Law 104–58, which created a new section 28(s) of the Mineral Leasing Act (30 U.S.C. 185). Public Law 104–58 allows exports of oil transported over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652), "notwithstanding any provision of this Act or any other provision of law (including any regulation)," unless the President finds that such exports are not in the national interest.

To address the economic and environmental issues identified in Public Law 104–58, the National Economic Council and the Council on Environmental Quality working with the Department of Commerce's Bureau of Export Administration, coordinated an intensive interagency review of the effects of lifting the export ban on oil transported over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (TAPS oil). After extensive public hearings, the review of public comments, and analytical evaluation, the interagency working group found that the exports are not likely to pose a significant impact to the economy or the environment.

On April 28, 1996, the President determined that, subject to certain conditions described below, exports of crude oil transported over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (TAPS) are in the national interest. The President found that such exports:

(1) Will not diminish the total quantity or quality of petroleum available to the United States;

(2) Will not pose significant risks to the environment with the imposition of a series of measures to further ensure the safety of the environment; and

(3) Are not likely to cause sustained material oil supply shortages or sustained oil price increases above world market levels that would cause sustained material adverse employment effects in the United States or that would cause substantial harm to consumers, including those located in noncontiguous States and Pacific territories.

The President directed the Secretary of Commerce to issue a License Exception, authorizing exports of TAPS oil, subject to certain conditions designed to preserve the environment.

This final rule amends part 754 of the Export Administration Regulations (EAR) by establishing a new License Exception TAPS. License Exception TAPS authorizes exports of oil transported over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (42 U.S.C. 1652) provided that the transaction meets the following conditions:

(1) The TAPS oil is transported by a vessel documented under the laws of the United States and owned by a citizen of the United States (in accordance with section 2 of the Shipping Act, 1916 (46 U.S.C. app. 802));

(2) All tankers involved in the TAPS oil export trade use the same route that they do for shipments to Hawaii until they reach a point 300 miles due south of Cape Hinchinbrook Light and then turn toward Asian destinations. After reaching that point, tankers in the TAPS oil export trade must remain outside of the 200 nautical mile Exclusive Economic Zone, as defined in 16 U.S.C. 1802(6). Tankers returning from foreign ports to Valdez, Alaska must abide by the same restrictions, in reverse, on their return route. This condition shall not be construed to limit any statutory, treaty or Common Law rights and duties imposed upon and enjoyed by tankers in the TAPS oil export trade, including, but not limited to, *force majeure* and maritime search and rescue rules;

(3) The owner or operator of a tanker exporting TAPS oil shall:

(a) Adopt a mandatory program of deep water ballast exchange (i.e., at least 2,000 meters water depth). Exceptions can be made at the discretion of the captain only in order to ensure the safety of the vessel and crew. Specified records shall be maintained and made available for audit by government officials.

(b) Be equipped with satellite-based communications systems that will enable the Coast Guard independently to determine the tanker's location;

(c) Maintain a Critical Area Inspection Plan for each tanker in the TAPS oil export trade in accordance with the U.S. Coast Guard's Navigation and Inspection Circular No. 15–91 as amended, which shall include an annual internal survey of the vessel's cargo block tanks; and

(4) The exporter files with BXA a Shipper's Export Declaration covering the export not later than 21 days after the export has occurred.

This final rule also makes other conforming changes in the short supply provisions of the EAR by revising part 754 concerning TAPS oil exports, the export clearance provisions of part 758 regarding the requirement to submit the Shippers' Export Declaration (SED) to the Bureau of Export Administration, and the recordkeeping requirements of part 762.

The Export Administration Regulations (EAR) have been totally amended by an interim rule published on March 25, 1996 (61 FR 12714), which provides for a transition period within which exporters can take advantage of both the old rules and the new rules until November 1, 1996. This rule permits exports of TAPS oil pursuant to a License Exception. Exporters can make exports of TAPS oil under this exception as of the effective date of this rule. Accordingly, the old rule is not being revised.

Rulemaking Requirements

1. This final rule has been determined to be significant for the purpose of Executive Order 12866.

2. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule contains a collection of information subject to the Paperwork Reduction Act, which is cleared by the Office of Management and Budget under existing OMB Control Number 0694–0027. The public reporting burdens for the new collections of information are estimated to range between 5 and 10 minutes for the Shipper's Export Declaration requirement, and 30 minutes per voyage for the Ballast Water Exchange collection. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to Bernard Kritzer, Office of Chemical and Biological Controls and Treaty Compliance, Bureau of Export Administration, Department of Commerce, Room 2705, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. This rule is being issued without notice of proposed rulemaking and opportunity for comment because Public Law 104–58: (1) provides that the administrative action under this Act is not subject to sections 551 and 553–559 of the Administrative Procedures Act (5 U.S.C. 551, 553–559); and (2) requires these regulations to be issued within 30 days of the President's national interest determination.

5. Under 8 U.S.C. 808(2), there is good cause that notice and public procedure thereon are unnecessary and contrary to the public interest. Notice and public procedure are unnecessary because Public Law 104–58 exempts rulemaking under this Act from the notice and comment requirements of the Administrative Procedures Act and requires regulations to be issued within 30 days of the President's national interest determination. Notice and public procedure are contrary to the public interest because they would delay allowing the exports that the President, as authorized by Public Law 104–58, has determined are in the national interest.

List of Subjects

15 CFR Part 754

Exports, Foreign trade, Forests and forest products, Petroleum, Reporting and recordkeeping requirements.

15 CFR Part 758

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Foreign trade, Reporting and recordkeeping requirements.

1. The authority citation for 15 CFR part 754 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); Sec. 201, Pub. L. 104–58, 109 Stat. 557 (30 U.S.C. 185(s)); 30 U.S.C. 185(u); 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995).

2. The authority citation for 15 CFR part 758 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995).

3. The authority citation for 15 CFR part 762 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995 (60 FR 42767, August 17, 1995).

PART 754—[AMENDED]

4. In § 754.2 the following changes are made:

a. in paragraph (a), the phrase "Reserves paragraph (i) of this section for a License Exception for certain shipments of samples." is revised to read "Reserves, paragraph (i) of this section for a License Exception for certain shipments of samples, and paragraph (j) of this section for a License Exception for exports of oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652).".

b. paragraph (c)(1)(i) is amended by adding the following sentence at the end: "The President made a determination on April 28, 1996."; and

c. a new paragraph (j) is added to read as follows:

§ 754.2 Crude oil.

* * * * *

(j) *License Exception for exports of TAPS Crude Oil.* (1) License Exception TAPS may be used to export oil transported over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (TAPS), provided the following conditions are met:

(i) The TAPS oil is transported by a vessel documented under the laws of the United States and owned by a citizen of the United States (in accordance with section 2 of the Shipping Act, 1916 (46 U.S.C. app. 802));

(ii) All tankers involved in the TAPS export trade use the same route that they do for shipments to Hawaii until they reach a point 300 miles due south of Cape Hinchinbrook Light and then turn toward Asian destinations. After reaching that point, tankers in the TAPS oil export trade must remain outside of the 200 nautical mile Exclusive Economic Zone, as defined in 16 U.S.C. 1802(6). Tankers returning from foreign ports to Valdez, Alaska must abide by the same restrictions, in reverse, on their return route. This condition shall not be construed to limit any statutory, treaty or Common Law rights and duties imposed upon and enjoyed by tankers in the TAPS oil export trade, including, but not limited to, *force majeure* and maritime search and rescue rules; and

(iii) The owner or operator of a tanker exporting TAPS oil shall:

(A) Adopt a mandatory program of deep water ballast exchange (i.e., at least 2,000 meters water depth). Exceptions can be made at the discretion of the captain only in order to ensure the safety of the vessel and crew. Records must be maintained in accordance with paragraph (j)(3) of this section.

(B) Be equipped with satellite-based communications systems that will enable the Coast Guard independently to determine the tanker's location; and

(C) Maintain a Critical Area Inspection Plan for each tanker in the TAPS oil export trade in accordance with the U.S. Coast Guard's Navigation and Inspection Circular No. 15–91 as amended, which shall include an annual internal survey of the vessel's cargo block tanks.

(2) *Shipper's Export Declaration.* In addition to the requirements of paragraph (j)(1) of this section, for each export under License Exceptions TAPS, the exporter must file with BXA a Shipper's Export Declaration (SED) covering the export not later than 21 days after the export has occurred. The SED shall be sent to the following address: Manager, Short Supply Program, Department of Commerce, Office of Chemical and Biological Controls and Treaty Compliance, Bureau of Export Administration, Room 2075, Washington, D.C. 20230.

(3) *Recordkeeping requirements for deep water ballast exchange.* (i) As required by paragraph (j)(1)(iii)(A) of this section, the master of each vessel carrying TAPS oil under the provisions of this section shall keep records that include the following information, and provide such information to the Captain of the Port (COTP), U.S. Coast Guard, upon request:

(A) The vessel's name, port of registry, and official number or call sign;

(B) The name of the vessel's owner(s);

(C) Whether ballast water is being carried;

(D) The original location and salinity, if known, of ballast water taken on, before an exchange;

(E) The location, date, and time of any ballast water exchange; and

(F) The signature of the master attesting to the accuracy of the information provided and certifying compliance with the requirements of this paragraph.

(ii) The COTP or other appropriate federal agency representatives may take samples of ballast water to assess the compliance with, and the effectiveness of, the requirements of paragraph (j)(3)(i) of this section.

5. Section 758.3 is amended by revising paragraph (d)(2) that was formerly reserved to read as follows:

§ 758.3 Shipper's Export Declaration (SED).

(d) * * *

(2) You are required under the provisions of § 754.2(j)(2) of the EAR.

PART 762—[AMENDED]

6. Section 762.2 is amended by:

a. Redesignating paragraphs (b)(26) through (b)(34) as (b)(27) through (b)(35) respectively; and

b. adding a new paragraph (b)(26).

§ 762.2 Records to be retained.

* * * * *

(b) * * *

(26) Section 754.2(j)(3), Recordkeeping requirements for deep water ballast exchange.

* * * * *

Dated: May 28, 1996.

Iain S. Baird,

Deputy Assistant Secretory for Export Administration.

[FR Doc. 96–13708 Filed 5–28–96; 2:33 pm]

BILLING CODE 3510–DT–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8673]

RIN 1545–AM01

Enterprise Zone Facility Bonds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to enterprise zone facility bonds issued by State and local governments. These regulations reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1993. These regulations affect issuers of enterprise zone facility bonds.

EFFECTIVE DATE: These regulations are effective May 31, 1996.

For dates of applicability of these regulations to enterprise zone facility bond issues, see § 1.1394–1(q) of these regulations.

FOR FURTHER INFORMATION CONTACT: Loretta J. Finger, (202) 622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 30, 1994, proposed regulations (FI–72–88) were published in the **Federal Register** (59 FR 67658) to provide guidance under sections 141 (relating to private activity bonds and to qualified bonds), 145 (relating to qualified 501(c)(3) bonds), 148 (relating to arbitrage), 150 (relating to change of use), and 1394 (relating to enterprise zone facility bonds). On June 8, 1995, the IRS held a public hearing on the proposed regulations. Written comments responding to the proposed regulations were received.

This Treasury decision addresses the issues relating to enterprise zone facility bonds. Later guidance will be published relating to sections 141, 145, 148, and 150. After consideration of all the comments, the proposed regulations under section 1394 (relating to enterprise zone facility bonds) are adopted as revised by this Treasury decision. The principal revisions to the proposed regulations under section 1394 are discussed below.

Explanation of Provisions

Section 1394 applies to bonds issued to provide enterprise zone facilities in both empowerment zones and enterprise communities (zones).

A. Period of Compliance

The proposed regulations in general require compliance with the requirements applicable to enterprise zone facility bonds throughout the term of the enterprise zone facility bonds. The proposed regulations provide two exceptions to this general rule: (i) A business that is first established in connection with the issuance of enterprise zone facility bonds does not need to meet the requirements of an enterprise zone business and enterprise zone property until the "testing date," which is the later of one year after the issue date or one year after the date on which the financed property is placed in service, and (ii) the issuer and principal user of the facility are permitted a one-year period to cure noncompliance.

The final regulations modify the general rule to require compliance with the requirements applicable to enterprise zone facility bonds throughout the greater of (i) the remainder of the period during which the zone designation is in effect under section 1391 (zone designation period), and (ii) the period that ends on the weighted average maturity date of the enterprise zone facility bonds. The final regulations also provide that, in general, compliance with the requirements applicable to enterprise zone facility bonds is not required after the date on which the last of the enterprise zone facility bonds of the issue cease to be outstanding.

1. Start of Compliance Period

Commentators requested that the testing date provisions be extended to all businesses, not just start-up businesses. Commentators also suggested lengthening the start-up period. The final regulations follow the recommendation to expand the testing date provisions to all issuers and principal users of property financed with enterprise zone facility bonds if the issuer and the principal user reasonably expect that the requirements will be met by the testing date and proceed with due diligence to comply with the requirements. The start-up period is increased to the later of 18 months after the issue date or 18 months after the date on which the financed property is placed in service.

2. Compliance Period for Certain Requirements

Commentators suggested that compliance with the requirements for an enterprise zone business should be based only on reasonable expectations on the issue date. Commentators suggested that, alternatively, the required compliance period should be reduced to either (i) three years (similar to the test period for qualified small issue manufacturing bonds), or (ii) the remainder of the zone designation period.

Issuers and principal users should be required to meet the requirements applicable to enterprise zone facility bonds for a meaningful period of time in order to further the goals of economic development in the zones. Therefore, for purposes of meeting the requirements applicable to enterprise zone facility bonds, the final regulations in general require issuers and principal users of financed property to meet the requirements throughout the greater of (i) the remainder of the zone designation period, and (ii) the period that ends on the weighted average maturity date of the enterprise zone facility bonds.

While compliance is generally not required after the enterprise zone facility bonds are retired, the final regulations do require issuers and principal users to meet the requirements of an enterprise zone business and enterprise zone property for a minimum compliance period of at least three years after the initial testing date. The final regulations permit the issuer to identify an alternative initial testing date. This alternative initial testing date is a date after the issue date of the enterprise zone facility bonds and prior to the initial testing date that would have been otherwise determined under the final regulations.

Principal users are subject to the change in use penalty of section 1394(e) throughout the greater of (i) the remainder of the zone designation period, and (ii) the period that ends on the weighted average maturity date of the enterprise zone facility bonds.

3. Measurement of Compliance

The proposed regulations provide guidance on meeting the enterprise zone business definitions. Commentators pointed out several difficulties in meeting the tests in the proposed regulations and in curing noncompliance within a one-year period. Commentators also asked for guidance on how part-time employees are to be treated for the 35 percent resident employee requirement.

In general, each of the enterprise zone business requirements applies over taxable year periods. The beginning and end of the period of required compliance, however, may not correspond to the beginning and ending dates of the principal user's taxable year. The proposed regulations do not address the treatment of a taxable year only a part of which falls in a required compliance period. The final regulations provide that a taxable year is disregarded if the part of the year that falls in a required compliance period does not exceed 90 days.

Although the final regulations generally require annual compliance for the requirements under sections 1397B and 1397C, the final regulations allow a five-year averaging, taking into account only immediately preceding years going back to the taxable year that includes the initial testing date. The requirements under sections 1397B and 1397C include requirements relating to location of performance of employee services, location of tangible and intangible property, source of gross income from the active conduct of business, and the residence of employees. The averaging approach permits principal users who exceed the requirements to provide a cushion for future unanticipated noncompliance (for example, a non-recurring extraordinary payment for services performed outside the zone).

The final regulations allow the 35 percent resident employee requirement to be met on any reasonable basis (for example, on a per-employee basis or on the basis of employee actual work hours). For purposes of the per-employee fraction, employees working less than 15 hours a week are not included in the numerator or the denominator. The principal user must consistently apply the method to determine compliance with the 35 percent resident employee requirement throughout the required compliance period.

The final regulations also provide that a zone employee who moves out of the zone may continue to be treated as a resident of the zone, provided that employee was a bona fide resident of the zone, that employee continues to perform services for the principal user in an enterprise zone business in the zone and substantially all of those services are performed in the zone, and the principal user hires a resident of the zone for the next available comparable (or lesser) position.

The final regulations reduce the "substantially all" requirement for purposes of various tests under sections 1397B and 1397C from 90 percent to 85 percent.

B. Qualified Zone Property Definition

The proposed regulations provide that property that has been abandoned for more than one year meets the original use requirement. The final regulations provide that if real property is vacant for at least a one-year period including the date of zone designation, use prior to that period is disregarded for purposes of determining original use.

C. Other Rules

Commentators requested guidance on the appropriate method for treating activities within the zone as though they constituted a separately incorporated business for purposes of the enterprise zone business test.

The final regulations allow a business to treat its activities within a zone as part of a separately incorporated business if it allocates income and activities attributable to the business within the zone using a reasonable allocation method and has evidence of its allocations sufficient to establish compliance with the various requirements.

D. Principal User

The proposed regulations do not address the requirement that "the principal user" of the enterprise zone facility bond proceeds be an enterprise zone business. Commentators suggested that principal user generally be defined in the same manner as in the regulations applicable to qualified small issue bonds and qualified 501(c)(3) bonds, which relate to use of bond proceeds by "any" principal user, but without applying the definition to customers. One commentator (relying on the definition of a qualifying business) suggested that financing for commercial real estate owned by a business that is not an enterprise zone business should be permitted, so long as 50 percent of the gross rental income comes from lessees that are enterprise zone businesses.

The final regulations provide that an owner of financed property is the principal user except that, in the case of commercial real estate, the lessee may be treated as the principal user if the rental of the property is a qualified business under section 1397B(d)(2).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information. The principal author of these regulations is Loretta J. Finger, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1394–1 also issued under 26 U.S.C. 1397D.

Par. 2. Sections 1.1394–0 and 1.1394–1 are added under the undesignated centerheading "DEFINITIONS; SPECIAL RULES" to read as follows:

§ 1.1394–0 Table of contents.

This section lists the major paragraph headings contained in § 1.1394–1.

§ 1.1394–1 Enterprise zone facility bonds.

(a) Scope.
(b) Period of compliance.
(1) In general.
(2) Compliance after an issue is retired.
(3) Deemed compliance.
(c) Special rules for requirements of sections 1397B and 1397C.
(1) Start of compliance period.
(2) Compliance period for certain prohibited activities.
(3) Minimum compliance period.
(4) Initial testing date.

(d) Testing on an average basis.
(e) Resident employee requirements.
(1) Determination of employee status.
(2) Employee treated as zone resident.
(3) Resident employee percentage.
(f) Application to pooled financing bond and loan recycling programs.
(g) Limitation on amount of bonds.
(1) Determination of outstanding amount.
(2) Pooled financing bond programs.
(h) Original use requirement for purposes of qualified zone property.
(i) Land.
(j) Principal user.
(1) In general.
(2) Rental of real property.
(3) Pooled financing bond program.
(k) Treatment as separately incorporated business.
(l) Substantially all.
(m) Application of sections 142 and 146 through 150.
(1) In general.
(2) Maturity limitation.
(3) Volume cap.
(4) Remedial actions.
(n) Continuing compliance and change of use penalties.
(1) In general.
(2) Coordination with deemed compliance provisions.
(3) Application to pooled financing bond and loan recycling programs.
(4) Section 150(b)(4) inapplicable.
(o) Refunding bonds.
(1) In general.
(2) Maturity limitation.
(p) Examples.
(q) Effective dates.
(1) In general.
(2) Elective retroactive application in whole.

§ 1.1394–1 Enterprise zone facility bonds.

(a) *Scope.* This section contains rules relating to tax-exempt bonds under section 1394 (enterprise zone facility bonds) to provide enterprise zone facilities in both empowerment zones and enterprise communities (zones). See sections 1394, 1397B, and 1397C for other rules and definitions.

(b) *Period of compliance*—(1) *In general.* Except as provided in paragraphs (b)(2) and (c) of this section, the requirements under sections 1394(a) and (b) applicable to enterprise zone facility bonds must be complied with throughout the greater of the following—

(i) The remainder of the period during which the zone designation is in effect under section 1391 (zone designation period); and

(ii) The period that ends on the weighted average maturity date of the enterprise zone facility bonds.

(2) *Compliance after an issue is retired.* Except as provided in paragraph (c)(3) of this section, the requirements applicable to enterprise zone facility bonds do not apply to an issue after the date on which no enterprise zone facility bonds of the issue are outstanding.

(3) *Deemed compliance*—(i) *General rule.* An issue is deemed to comply with the requirements of sections 1394(a) and (b) if—

(A) The issuer and the principal user in good faith attempt to meet the requirements of sections 1394(a) and (b) throughout the period of compliance required under this section; and

(B) Any failure to meet these requirements is corrected within a one-year period after the failure is first discovered.

(ii) *Exception.* The provisions of paragraph (b)(3)(i) of this section do not apply to the requirements of section 1397B(d)(5)(A) (relating to certain prohibited business activities).

(iii) *Good faith.* In order to satisfy the good faith requirement of paragraph (b)(3)(i)(A) of this section, the principal user must at least annually demonstrate to the issuer the principal user's monitoring of compliance with the requirements of sections 1394(a) and (b).

(c) *Special rules for requirements of sections 1397B and 1397C*—(1) *Start of compliance period.* Except as provided in paragraph (c)(2) of this section, the requirements of sections 1397B (relating to qualification as an enterprise zone business) and 1397C (relating to satisfaction of the rules for qualified zone property) do not apply prior to the *initial testing date* (as defined in paragraph (c)(4) of this section) if—

(i) The issuer and the principal user reasonably expect on the issue date of the enterprise zone facility bonds that those requirements will be met by the principal user on or before the initial testing date; and

(ii) The issuer and the principal user exercise due diligence to meet those requirements prior to the initial testing date.

(2) *Compliance period for certain prohibited activities.* The requirements of section 1397B(d)(5)(A) (relating to certain prohibited business activities) must be complied with throughout the term of the enterprise zone facility bonds.

(3) *Minimum compliance period.* The requirements of sections 1397B(b) or (c) and 1397C must be satisfied for a continuous period of at least three years after the initial testing date, notwithstanding that—

(i) The period of compliance required under paragraph (b)(1) of this section expires before the end of the three-year period; or

(ii) The enterprise zone facility bonds are retired before the end of the three-year period.

(4) *Initial testing date*—(i) *In general.* Except as otherwise provided in paragraph (c)(4)(ii) of this section, the initial testing date is the date that is 18 months after the later of the issue date of the enterprise zone facility bonds or the date on which the financed property is placed in service; provided, however, it is not later than—

(A) Three years after the issue date; or

(B) Five years after the issue date, if the issue finances a construction project for which both the issuer and a licensed architect or engineer certify on or before the issue date of the enterprise zone facility bonds that more than three years after the issue date is necessary to complete construction of the project.

(ii) *Alternative initial testing date.* If the issuer identifies as the initial testing date a date after the issue date of the enterprise zone facility bonds and prior to the initial testing date that would have been determined under paragraph (c)(4)(i) of this section, that earlier date is treated as the initial testing date.

(d) *Testing on an average basis.* Compliance with each of the requirements of section 1397B(b) or (c) is tested each taxable year. Compliance with any of the requirements may be tested on an average basis, taking into account up to four immediately preceding taxable years plus the current taxable year. The earliest taxable year that may be taken into account for purposes of the preceding sentence is the taxable year that includes the initial testing date. A taxable year is disregarded if the part of the taxable year that falls in a required compliance period does not exceed 90 days.

(e) *Resident employee requirements*—(1) *Determination of employee status.* For purposes of the requirement of section 1397B(b)(6) or (c)(5) that at least 35 percent of the employees are residents of the zone, the issuer and the principal user may rely on a certification, signed under penalties of perjury by the employee, provided—

(i) The certification provides to the principal user the address of the employee's principal residence;

(ii) The employee is required by the certification to notify the principal user of a change of the employee's principal residence; and

(iii) Neither the issuer nor the principal user has actual knowledge that the principal residence set forth in the certification is not the employee's principal residence.

(2) *Employee treated as zone resident.* If an issue fails to comply with the requirement of section 1397B(b)(6) or (c)(5) because an employee who initially resided in the zone moves out of the zone, that employee is treated as still residing in the zone if—

(i) That employee was a bona fide resident of the zone at the time of the certification described in paragraph (e)(1) of this section;

(ii) That employee continues to perform services for the principal user in an enterprise zone business and substantially all of those services are performed in the zone; and

(iii) A resident of the zone meeting the requirements of section 1397B(b)(5) or (c)(4) is hired by the principal user for the next available comparable (or lesser) position.

(3) *Resident employee percentage.* For purposes of meeting the requirement of section 1397B(b)(6) or (c)(5) that at least 35 percent of the employees of an enterprise zone business are residents of a zone, paragraphs (e)(3)(i) and (ii) of this section apply.

(i) The term *employee* includes a self-employed individual within the meaning of section 401(c)(1).

(ii) The resident employee percentage is determined on any reasonable basis consistently applied throughout the period of compliance required under this section. The per-employee fraction (as defined in paragraph (e)(3)(ii)(A) of this section) or the employee actual work hour fraction (as defined in paragraph (e)(3)(ii)(B) of this section) are both reasonable methods.

(A) The term *per-employee fraction* means the fraction, the numerator of which is, during the taxable year, the number of employees who work at least 15 hours a week for the principal user, who reside in the zone, and who are employed for at least 90 days, and the denominator of which is, during the same taxable year, the aggregate number of all employees who work at least 15 hours a week for the principal user and who are employed for at least 90 days.

(B) The term *employee actual work hour fraction* means the fraction, the numerator of which is the aggregate total actual hours of work for the principal user of employees who reside in the zone during a taxable year, and the denominator of which is the aggregate total actual hours of work for the principal user of all employees during the same taxable year.

(f) *Application to pooled financing bond and loan recycling programs.* In the case of a pooled financing bond program described in paragraph (g)(2) of this section or a loan recycling program described in paragraph (m)(2)(ii) of this section, the requirements of paragraphs (b) through (e) of this section apply on a loan-by-loan basis. See also paragraphs (g)(2) (relating to limitation on amount of bonds), (m)(2) (relating to maturity limitations), (m)(3) (relating to volume cap), and (m)(4) (relating to remedial actions) of this section.

(g) *Limitation on amount of bonds*—(1) *Determination of outstanding amount.* Whether an issue satisfies the requirements of section 1394(c) (relating to the $3 million and $20 million aggregate limitations on the amount of outstanding enterprise zone facility bonds) is determined as of the issue date of that issue, based on the issue price of that issue and the adjusted issue price of outstanding enterprise zone facility bonds. Amounts of outstanding enterprise zone facility bonds allocable to any entity are determined under rules contained in section 144(a)(10)(C) and the underlying regulations. Thus, the definition of *principal user* for purposes of section 1394(c) is different from the definition of principal user for purposes of paragraph (j) of this section.

(2) *Pooled financing bond programs*—(i) *In general.* The limitations of section 1394(c) for an issue for a pooled financing bond program are determined with regard to the amount of the actual loans to enterprise zone businesses rather than the amount lent to *intermediary lenders* as defined in paragraph (g)(2)(ii) of this section. This paragraph (g)(2) applies only to the extent the proceeds of those enterprise zone facility bonds are loaned to one or more enterprise zone businesses within 42 months of the issue date of the enterprise zone facility bonds or are used to redeem enterprise zone facility bonds of the issue within that 42-month period.

(ii) *Pooled financing bond program defined.* For purposes of this section, *a pooled financing bond program* is a program in which the issuer of enterprise zone facility bonds, in order to provide loans to enterprise zone businesses, lends the proceeds of the enterprise zone facility bonds to a bank or similar intermediary (intermediary lender) which must then relend the proceeds to two or more enterprise zone businesses.

(h) *Original use requirement for purposes of qualified zone property.* In general, for purposes of section 1397C(a)(1)(B), the term *original use* means the first use to which the property is put within the zone. For purposes of section 1394, if property is vacant for at least a one-year period including the date of zone designation, use prior to that period is disregarded for purposes of determining original use. For this purpose, de minimis incidental uses of property, such as renting the side of a building for a billboard, are disregarded.

(i) *Land.* The determination of whether land is functionally related and subordinate to qualified zone property is made in a manner consistent with the rules for exempt facilities under section 142.

(j) *Principal user*—(1) *In general.* Except as provided in paragraph (j)(2) of this section, the term *principal user* means the owner of financed property.

(2) *Rental of real property*—(i) *A lessee as the principal user.* If an owner of real property financed with enterprise zone facility bonds is not an enterprise zone business within the meaning of section 1397B, but the rental of the property is a qualified business within the meaning of section 1397B(d)(2), the term *principal user* for purposes of sections 1394(b) and (e) means the lessee or lessees.

(ii) *Allocation of enterprise zone facility bonds.* If a lessee is the principal user of real property under paragraph (j)(2)(i) of this section, then proceeds of enterprise zone facility bonds may be allocated to expenditures for real property only to the extent of the property allocable to the lessee's leased space, including expenditures for common areas.

(3) *Pooled financing bond program.* An intermediary lender in a pooled financing bond program described in paragraph (g)(2) of this section is not treated as the principal user.

(k) *Treatment as separately incorporated business.* For purposes of section 1394(b)(3)(B), a trade or business may be treated as separately incorporated if allocations of income and activities attributable to the business conducted within the zone are made using a reasonable allocation method and if that trade or business has evidence of those allocations sufficient to establish compliance with the requirements of paragraphs (b) through (f) of this section. Whether an allocation method is reasonable will depend upon the facts and circumstances. An allocation method will not be considered to be reasonable unless the allocation method is applied consistently by the trade or business and is consistent with the purposes of section 1394.

(l) *Substantially all.* For purposes of sections 1397B and 1397C(a), the term *substantially all* means 85 percent.

(m) *Application of sections 142 and 146 through 150*—(1) *In general.* Except as provided in this paragraph (m), enterprise zone facility bonds are treated as exempt facility bonds that are described in section 142(a), and all regulations generally applicable to exempt facility bonds apply to enterprise zone facility bonds. For this

purpose, enterprise zone businesses are treated as meeting the public use requirement. Sections 147(c)(1)(A) (relating to limitations on financing the acquisition of land), 147(d) (relating to financing the acquisition of existing property), and 142(b)(2) (relating to limitations on financing office space) do not apply to enterprise zone facility bonds. See also paragraph (n)(4) of this section.

(2) *Maturity limitation*—(i) *Requirements.* An issue of enterprise zone facility bonds, the proceeds of which are to be used as part of a loan recycling program, satisfies the requirements of section 147(b) if—

(A) Each loan satisfies the requirements of section 147(b) (determined by treating each separate loan as a separate issue); and

(B) The term of the issue does not exceed 30 years.

(ii) *Loan recycling program defined.* A *loan recycling program* is a program in which—

(A) The issuer reasonably expects as of the issue date of the enterprise zone facility bonds that loan repayments from principal users will be used to make additional loans during the zone designation period;

(B) Repayments of principal on loans (including prepayments) received during the zone designation period are used within six months of the date of receipt either to make new loans to enterprise zone businesses or to redeem enterprise zone facility bonds that are part of the issue; and

(C) Repayments of principal on loans (including prepayments) received after the zone designation period are used to redeem enterprise zone facility bonds that are part of the issue within six months of the date of receipt.

(3) *Volume cap.* For purposes of applying section 146(f)(5)(A) (relating to elective carryforward of unused volume limitation), issuing enterprise zone facility bonds is a carryforward purpose.

(4) *Remedial actions.* In the case of a pooled financing bond program described in paragraph (g)(2) of this section or a loan recycling program described in paragraph (m)(2)(ii) of this section, if a loan fails to meet the requirements of paragraphs (b) through (f) of this section, within six months of noncompliance (after taking into account the deemed compliance provisions of paragraph (b)(3) of this section, if applicable), an amount equal to the outstanding loan principal must be prepaid and the issuer must—

(i) Reloan the amount of the prepayment; or

(ii) Use the prepayment to redeem an amount of outstanding enterprise zone facility bonds equal to the outstanding principal amount of the loan that no longer meets those requirements.

(n) *Continuing compliance and change of use penalties*—(1) *In general.* The penalty provisions of section 1394(e) apply throughout the period of compliance required under paragraph (b)(1) of this section.

(2) *Coordination with deemed compliance provisions.* Section 1394(e)(2) does not apply during any period during which the issue is deemed to comply with the requirements of section 1394 under the deemed compliance provisions of paragraph (b)(3) of this section.

(3) *Application to pooled financing bond and loan recycling programs.* In the case of a pooled financing bond program described in paragraph (g)(2) of this section or a loan recycling program described in paragraph (m)(2)(ii) of this section, section 1394(e) applies on a loan-by-loan basis.

(4) *Section 150(b)(4) inapplicable.* Section 150(b)(4) does not apply to enterprise zone facility bonds.

(o) *Refunding bonds*—(1) *In general.* An issue of bonds issued after the zone designation period to refund enterprise zone facility bonds (other than in an advance refunding) are treated as enterprise zone facility bonds if the refunding issue and the prior issue, if treated as a single combined issue, would meet all of the requirements for enterprise zone facility bonds, except the requirements in section 1394(c). For example, the compliance period described in paragraph (b)(1) of this section is calculated taking into account any extension of the weighted average maturity of the refunding issue compared to the remaining weighted average maturity of the prior issue. The proceeds of the refunding issue are allocated to the same expenditures and purpose investments as the prior issue.

(2) *Maturity limitation.* The maturity limitation of section 147(b) is applied to a refunding issue by taking into account the issuer's reasonable expectations about the economic life of the financed property as of the issue date of the prior issue and the actual weighted average maturity of the combined refunding issue and prior issue.

(p) *Examples.* The following examples illustrate paragraphs (a) through (o) of this section:

Example 1. Averaging of enterprise zone business requirements. City C issues enterprise zone facility bonds, the proceeds of which are loaned by C to Corporation B to finance the acquisition of equipment for its existing business located in a zone. On the issue date of the enterprise zone facility bonds, B meets all of the requirements of section 1397B(b), except that only 25% of B's employees reside in the zone. C and B reasonably expect on the issue date to meet all requirements of section 1397B(b) by the date that is 18 months after the equipment is placed in service (the initial testing date). In each of the first, second, and third taxable years after the initial testing date, 35%, 40% and 45%, respectively, of B's employees are zone residents. In the fourth year after the testing date, only 25% of B's employees are zone residents. B continues to meet the 35% resident employee requirement, because the average of zone resident employees for those four taxable years is approximately 36%. The percentage of zone residents employed by B before the initial testing date is not included in determining whether B continues to comply with the 35% resident employee requirement.

Example 2. Measurement of resident employee percentage. Authority D issues enterprise zone facility bonds, the proceeds of which are loaned to Sole Proprietor F to establish an accounting business in a zone. In the first year after the initial testing date, the staff working for F includes F, who works 40 hours per week and does not live in the zone, one employee who resides in the zone and works 40 hours per week, one employee who does not reside in the zone and works 20 hours per week, and one employee who does not reside in the zone and works 10 hours per week. F meets the 35% resident employee test by calculating the percentage on the basis of employee actual work hours as described in paragraph (e)(3)(ii)(B) of this section. If F uses the per-employee basis as described in paragraph (e)(3)(ii)(A) of this section to determine if the resident employee test is met, the percentage of employees who are zone residents on a per-employee basis is only 33% because F must exclude from the numerator and the denominator the employee who works only 10 hours per week. If F calculates the resident employee test as a percentage of employee actual work hours as described in paragraph (e)(3)(ii)(B) of this section in the first year, F must calculate the resident employee test as a percentage of employee actual work hours each year.

Example 3. Active conduct of business within the zone. State G issues enterprise zone facility bonds and loans the proceeds to Corporation H to finance the acquisition of equipment for H's mail order clothing business, which is located in a zone. H purchases the supplies for its clothing business from suppliers located both within and outside of the zone and expects that orders will be received both from customers who will reside or work within the zone and from others outside the zone. All orders are received and filled at, and are shipped from, H's clothing business located in the zone. H meets the requirement that at least 80% of its gross income is derived from the active conduct of business within the zone.

Example 4. Enterprise zone business definition. City J issues enterprise zone facility bonds, the proceeds of which are loaned to Partnership K to finance the acquisition of equipment for its printing operation located in the zone. All orders are taken and completed, and all billing and accounting activities are performed, at the print shop located in the zone. K, on occasion, uses its equipment (including its trucks) and employees to deliver large print jobs to customers who reside outside of the zone. So long as K is able to establish that its trucks are used in the zone at least 85% of the time and its employees perform at least 85% of services for K in the zone, K meets the requirements of sections 1397B(b)(3) and (5).

Example 5. Treatment as a separately incorporated business. The facts are the same as in *Example 4* except that six years after the issue date of the enterprise zone facility bonds, K determines to expand its operations to a second location outside of the boundaries of the zone. Although the expansion would result in the failure of K to meet the tests of 1397B(b), K, using a reasonable allocation method, allocates income and activities to its operations within the zone and has evidence of these allocations sufficient to establish compliance with the requirements of paragraphs (b) through (f) of this section. The bonds will not fail to be enterprise zone facility bonds merely because of the expansion.

Example 6. Treatment of pooled financing bond programs. Authority L issues bonds in the aggregate principal amount of $5,000,000 and loans the proceeds to Bank M pursuant to a loans-to-lenders program. M does not meet the definition of enterprise zone business contained in section 1397B. Prior to the issue date of the bonds, L held a public hearing regarding issuance of the bonds for the loans-to-lenders program, describing the projects of identified borrowers to be financed initially with $4,000,000 of the proceeds of the bonds. The applicable elected representative of L approved issuance of the bonds subsequent to the public hearing. The loan agreement between L and M provides that the other proceeds of the bonds will be held by M and loaned to borrowers that qualify as enterprise zone businesses, following a public hearing and approval by the applicable elected representative of L of each loan by M to an enterprise zone business. None of the loans will be in principal amounts in excess of $3,000,000. The loans by M will otherwise meet the requirements of section 1394. The bonds will be enterprise zone facility bonds.

Example 7. Original use requirement for purposes of qualified zone property. City N issues enterprise zone facility bonds, the proceeds of which are loaned to Corporation P to finance the acquisition of equipment. P uses the proceeds after the zone designation date to purchase used equipment located outside of the zone and places the equipment in service at its location in the zone. Substantially all of the use of the equipment is in the zone and is in the active conduct of a qualified business by P. The equipment is treated as qualified enterprise zone property under section 1397C because P makes the first use of the property within the zone after the zone designation date.

Example 8. Principal user. State R issues enterprise zone facility bonds and loans the proceeds to Partnership S to finance the construction of a small shopping center to be located in a zone. S is in the business of commercial real estate. S is not an enterprise zone business, but has secured one anchor lessee, Corporation T, for the shopping center. T would qualify as an enterprise zone business. S will derive 60% of its gross rental income of the shopping center from T. S does not anticipate that the remaining rental income will come from enterprise zone businesses. T will occupy 60% of the total rentable space in the shopping center. S can use enterprise zone facility bond proceeds to finance the portion of the costs of the shopping center allocable to T (60%) because T is treated as the principal user of the enterprise zone facility bond proceeds.

Example 9. Remedial actions. State W issues pooled financing enterprise zone facility bonds, the proceeds of which will be loaned to several enterprise zone businesses in the two enterprise communities and one empowerment zone in W. Proceeds of the pooled financing bonds are loaned to Corporation X, an enterprise zone business, for a term of 10 years. Six years after the date of the loan, X expands its operations beyond the empowerment zone and is no longer able to meet the requirements of section 1394. X does not reasonably expect to be able to cure the noncompliance. The loan documents provide that X must prepay its loan in the event of noncompliance. W does not expect to be able to reloan the prepayment by X within six months of noncompliance. X's noncompliance will not affect the qualification of the pooled financing bonds as enterprise zone facility bonds if W uses the proceeds from the loan prepayment to redeem outstanding enterprise zone facility bonds within six months of noncompliance in an amount comparable to the outstanding amount of the loan immediately prior to prepayment. X will be denied an interest expense deduction for the interest accruing from the first day of the taxable year in which the noncompliance began.

(q) *Effective dates*—(1) *In general.* Except as otherwise provided in this section, the provisions of this section apply to all issues issued after July 30, 1996, and subject to section 1394.

(2) *Elective retroactive application in whole.* An issuer may apply the provisions of this section in whole, but not in part, to any issue that is outstanding on July 30, 1996, and is subject to section 1394.

Approved: May 22, 1996.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 96-13718 Filed 5-30-96; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 203

RIN 1010-AC13

Royalty Relief for Producing Leases and Certain Existing Leases in Deep Water

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Interim Rule and Information Gathering.

SUMMARY: This interim rule establishes conditions for granting royalty relief on producing leases through their conversion to Net Revenue Share (NRS) leases, provides for suspensions of royalty payments on certain deep-water leases issued as the result of a lease sale held before November 28, 1995, and defines the information required for a complete application for royalty relief.

DATES: This interim rule is effective July 1, 1996.

We will consider all comments we receive by July 30, 1996. We will begin review of comments at that time and may not fully consider comments we receive after July 30, 1996.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070-4817; Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: Dr. Marshall Rose, Economic Evaluation Branch, telephone (703) 787-1536.

SUPPLEMENTARY INFORMATION:

I. Objectives of Royalty Relief

Royalty relief can lead to increased production of natural gas and oil, creating profits for lessees and royalty and tax revenues for the government. By this rulemaking, the Secretary seeks to establish economic incentives to encourage Outer Continental Shelf (OCS) lessees to incur the expenses or make the capital investments necessary to maintain or increase production. To the extent possible for approved applications, we will reduce or suspend royalty payments to permit lessees to earn a reasonable return on their capital investment for projects involving new investment. For projects not involving new investment, we will provide relief sufficient to allow an operating profit in cases where expenses plus royalties exceed revenues.

The Secretary will implement these royalty relief provisions in conjunction

with his stewardship responsibilities for the sound management of public lands. This includes conservation of resources, obtaining a fair return to the public on OCS resources, and ensuring that all OCS development is safe and consistent with sound environmental standards.

II. Legislative Background

The Secretary has broad legislative authority to reduce royalty rates on OCS leases. The Outer Continental Shelf Lands Act (OCSLA), as amended, (43 U.S.C. 1337(a)(3)(A)) states:

"The Secretary may, in order to promote increased production on the lease area, through direct, secondary, or tertiary recovery means, reduce or eliminate any royalty or net profit share set forth in the lease for such area."

This provision gives the Secretary authority to reduce royalties on producing leases upon application by a lessee. Leases may be in shallow or deep water and may be located in any area of the OCS. Relief must be applied for, justified, and granted on a case-by-case basis.

On November 28, 1995, President Clinton signed Public Law 104–58, which included the Deep Water Royalty Relief Act (DWRRA). Section 302 of the DWRRA amends the OCSLA authority to allow the Secretary to grant relief on both producing and nonproducing leases and on categories of leases, rather than only on a case-by-case basis, in order to promote development, increase production, or encourage marginal production on Gulf of Mexico leases lying west of 87 degrees, 30 minutes West longitude. This rulemaking does not include regulations to implement the expanded discretionary authority to grant royalty relief in 43 U.S.C. 1337(a)(3)(B). Regulations for that purpose may be included in a future rulemaking.

In addition, the DWRRA also contains three other major provisions related to leases issued as a result of sales held before and after the date of the DWRRA's enactment.

First, section 303 establishes a new bidding system that allows the Secretary to offer tracts with royalty suspensions for a period, volume, or value of production. On February 2, 1996, we published a final rule modifying the regulations for the bidding systems we use to offer OCS tracts for lease (61 FR 3800). Portions of that rule in 30 CFR 260.110(a)(7) address the new bidding system authorized by section 303 of the DWRRA.

Second, section 304 mandates that all tracts offered within 5 years of the date of enactment in water depths of 200 meters or more in the Gulf of Mexico west of 87 degrees, 30 minutes West longitude, must be offered under the new bidding system permitted by section 303. The Secretary must offer such tracts with a specified minimum royalty suspension volume based on water depth. We published an interim rule in the **Federal Register** on March 25, 1996 (61 FR 12022), specifying the terms under which the Secretary will make royalty suspensions available for new deep-water leases issued as the result of sales held after November 28, 1995.

Third, again in section 302, the DWRRA provides that "new production," as defined in that Act, from a lease or unit in existence on the date of its enactment, and in water depths of 200 meters or greater in the Gulf of Mexico west of 87 degrees, 30 minutes West longitude, does not qualify for royalty suspensions if the Secretary determines that the new production would be economic in the absence of royalty relief. Otherwise, the Secretary must determine the volume of production on which no royalty would be due in order to make the new production economically viable. This determination must be made on a case-by-case basis.

For existing leases or units which had no royalty bearing production, other than test production, before November 28, 1995, and which qualify for relief under section 302, the following minimum volumes of production are not subject to the royalty obligation specified in the lease:

- 17.5 million barrels of oil equivalent (MMBOE) for leases in 200 to 400 meters of water,
- 52.5 MMBOE for leases in 400 to 800 meters of water, and
- 87.5 MMBOE for leases in more than 800 meters of water.

These leases may qualify for a larger suspension volume if they would not be economic at the minimum royalty suspension volume specified by the DWRRA.

We also may grant a royalty suspension volume for production resulting from lease development activities pursuant to a Development Operations Coordination Document (DOCD), or a supplement to an approved DOCD, approved by the Secretary after November 28, 1995, that would expand production significantly beyond the level anticipated in a prior DOCD. In this case, we will grant the royalty suspension volume that we determine to be necessary to make the new production from the proposed project economic.

III. The Need for an Interim Rule

The DWRRA requires the Secretary to issue implementing regulations within 180 days of enactment. We cannot conduct and complete the usual proposed notice and comment rulemaking process to implement this part of the DWRRA before the statutorily imposed May 28, 1996, deadline. However, because the public interest would be best served by meeting the deadline and by establishing rules for these provisions of the DWRRA as soon as practicable, we are issuing this interim rule.

Several factors, in combination, have prevented us from issuing comprehensive rules through the usual rulemaking process by the statutory deadline. The Department of the Interior was shut down from December 12, 1995, to January 8, 1996, due to the lack of funding. Subsequently, MMS offices in the Washington, DC area were closed again for several days because of the "blizzard of '96."

These closings consumed critical time that would have been used to conduct the planning and preparation necessary to define the issues involved and devise an orderly process for a comprehensive rulemaking that would allow for as much advance notice and meaningful public participation as possible within the statutory deadline. Because of the complexity of the issues involved in this rulemaking, we believe the public interest would not be served by severely abbreviating the notice and comment procedures of the rulemaking process to meet the May 28, 1996, deadline.

Therefore, we decided the public interest would be served best by instituting a multipart rulemaking to meet the statutory objectives and allow extensive and meaningful public participation, consistent with law.

As the first step, we promptly published an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** on February 23, 1996 (61 FR 6958), and announced our intent to develop comprehensive regulations implementing the DWRRA. The ANPR sought comments and recommendations to assist us in that process. The comment period did not close until April 8, 1996, leaving too little time for a meaningful proposed notice and comment rulemaking by May 28, 1996. We also conducted a public meeting in New Orleans on March 12 and 13, 1996, to discuss with interested members of the public the matters the ANPR addressed.

We published an interim rule in the **Federal Register** on March 25, 1996 (61 FR 12022), specifying the terms under which we will make royalty suspensions available for new deep-water leases issued as a result of sales held after November 28, 1995.

As in the case of the interim rule for royalty suspensions for new deep-water leases, implementation of the DWRRA's provisions for existing leases by the Congressionally prescribed deadline is in the public interest. These provisions should be implemented promptly so that lessees may proceed with important investment decisions. Furthermore, as explained below, failure to issue implementing regulations by the prescribed deadline would create a legal uncertainty under which we might be required to grant royalty relief to one or more OCS projects that would not otherwise qualify. In that situation, there would be potential losses of hundreds of millions of dollars in Federal revenues.

The availability of royalty suspensions for new production from existing deep-water leases becomes an important factor in lessees' decisions about whether or not to proceed with development of oil and gas on their leases. However, lessees cannot adequately consider or accurately plan the potential economic benefits of royalty relief until we issue regulations establishing the procedures for granting a royalty suspension and defining the data and information required for a complete application. Respondents to the ANPR indicated their desire to have us make this information available to them as soon as possible.

Lessees are likely, therefore, to delay investment decisions until we have implementing regulations in place. These investments are important to the national and regional economies and any delay could adversely impact very important economic activity. Thus, it is in the public interest to proceed to issue an interim rule within the time frame mandated by Congress.

The establishment of interim regulations is also necessary so that lessees can make informed decisions about whether to proceed with lease development activities or allow their leases to expire. Our regulations (30 CFR 250.13) provide that lessees must engage in drilling, production or well-reworking activities in order to keep their leases in force beyond the primary term specified in the lease. If they do not, then in the absence of production after the primary term of the lease, their leases expire at the end of the primary term or 90 days after drilling activities cease.

Of the approximately 1,600 leases in deep water in the Central and Western Gulf of Mexico, 116 leases are nearing the end of their primary term. Lessees, aware that Congress was considering the enactment of royalty relief legislation, may have deferred taking action on their leases so they could properly account for such relief in calculating project economics.

However, lessees cannot make the necessary calculations until we issue implementing regulations. If we were to go through the usual rulemaking process, some leases could reach their expiration date before final rules are established. In these cases, some lessees may allow their leases to expire because they cannot determine whether or not their leases will qualify for a royalty suspension volume. We believe this situation contradicts the purpose of the DWRRA and does not serve the public interest.

Any further delay in issuing even interim rules may place some leases at a competitive disadvantage. Fields in deep water may consist of both new leases and leases issued as the result of a lease sale held prior to November 28, 1995. New leases automatically qualify for a royalty suspension volume. Our regulations (30 CFR 260.110(d)(6)) provide that in multiple lease fields, those new leases that first produce the royalty suspension volume are the ones that gain the royalty relief.

Therefore, operators of new leases may proceed with development activities as soon as possible with the certainty that they will receive a royalty suspension volume. Lessees of leases issued as the result of a lease sale held prior to November 28, 1995, must wait until rules are issued before they can determine if they qualify for relief. By going through the usual rulemaking process, lessees of new leases could gain an advantage over these lessees. We believe this to be unfair and that the public interest requires that, to the extent possible, we fully inform lessees and create a "level playing field" by issuing this interim rule.

Upon receipt of an application for royalty relief under section 302 of the DWRRA (43 U.S.C. 1337(a)(3)(C)), the Secretary must determine whether new production from the lease or unit is economic in the absence of royalty relief. If the new production is determined to be uneconomic, royalty payments may be suspended on the new production until the suspension volume specified in the DWRRA, or such greater volume as the Secretary determines is necessary to make the new production economically viable, is produced. If the Secretary does not make the determination within 180 days of receiving an application and finding that it is complete, the DWRRA mandates royalty suspension automatically, unless the evaluation period is extended by 30 days, or for longer than 30 days with the applicant's concurrence.

Delaying a rulemaking on this issue also raises a significant question of statutory interpretation as to when lessees may begin submitting applications for royalty relief. One possible interpretation is that they could submit applications for a royalty suspension volume under the DWRRA as soon as the Congressional deadline for the issuance of implementing regulations passed.

Under this interpretation, unless sound application requirements and suspension terms are established by rulemaking before lessees can begin submitting applications, some leases or units could receive automatic royalty suspensions that would otherwise not be granted. In such cases, the royalty relief would unnecessarily penalize the taxpayer and the Federal Treasury. These potential losses could amount to hundreds of millions of dollars. The issuance of an interim rule and associated guidelines will avoid potential problems regarding interpretation of the DWRRA's application provisions.

Thus, prudent public policy and the national interest dictate that we issue this interim rule, thereby avoiding the risk that, however unlikely, the aforementioned interpretation of the statute might prevail.

Issuance of this interim rule will not preclude opportunities for the public to comment on the issues addressed herein. We have considered the comments submitted in response to the ANPR and in the public meeting, and we invite comments on this interim rule. We will also hold another public meeting if there is significant public interest to do so. As with the interim rule on royalty relief for new deep-water leases, a final rulemaking would include the provisions covered by this interim rule. Based on comments received and experience with initial applications, we may make changes to the matters this interim rule addresses when we issue a final rule that implements all provisions of the DWRRA.

The following sections discuss the two types of royalty relief addressed by this interim rule: first, conversion of existing producing leases to NRS leases under the OCSLA's general royalty rate reduction authority; and second, granting of royalty suspension volumes for certain deep-water leases under the new OCSLA provisions added by the DWRRA.

IV. Net Revenue Share Leases

Over the years, we have received 19 applications for royalty rate reductions under the OCSLA statutory provision as implemented by regulations at 30 CFR 203.50. Of these, we approved 10 applications, we denied 7 applications, and we still have 2 applications under review. While this program has produced worthwhile results, our experience with it has led us to believe that its terms and conditions need clarification and restructuring. We also found that applicants needed more information on how to apply for relief, including the data that must be submitted for a complete application.

Accordingly on December 14, 1995, we issued interim "Guidelines for the Application, Review, Approval, and Administration of the Royalty Relief Program." The guidelines were developed to provide industry with clear instructions about how to apply for royalty relief. The guidelines streamline and simplify our royalty relief application process.

This portion of the rulemaking supplements the guidelines with additional direction on the data and information required in applications and revises 30 CFR 203.50 to be consistent with this new approach.

Criteria and Basis for Relief

All active leases or units that are producing or that produced previously are eligible for royalty relief under this section.

Royalty relief will be granted to enable lessees of leases with inadequate revenues to continue production or to encourage lessees to make additional capital investment to expand production. As a condition of approval, an applicant must agree to convert its lease to an NRS lease. The NRS rates will be calculated to allow lessees a return on operating expenses or new capital, as appropriate, while ensuring protection of Federal revenue interests.

Applications

Lessees of eligible leases may apply for royalty relief to the appropriate MMS Regional Director. Applications should be prepared in accordance with the December 1995 guidelines, subsequent updates, and these regulations. The data and information required for a complete application depends on whether the applicant proposes a continuation or expansion of current production.

Applications from lessees of marginal leases with inadequate revenues to sustain production must include certain administrative information, justification for the relief sought, and an NRS economic viability supplemental report (§ 203.53(b) and § 203.55).

Applications from lessees of leases proposing an expansion of production that would be uneconomic without royalty relief must contain certain administrative information, justification for the relief sought, and four supplemental reports:

(1) NRS Economic Viability Report;

(2) Geological and Geophysical Report;

(3) Production Report; and

(4) Engineering Report.

The regulations specify the details of the required information at § 203.55. The format for submitting the required information is presented in the our guidelines.

Review and Evaluation Criteria

To qualify for relief, we must determine, based on the application information, that relief would increase ultimate recovery of reserves extending the productive life of the lease by at least 1 year. Projects that merely accelerate the rate of production do not qualify. This approach is consistent with the OCSLA mandate that royalty relief should "promote increased production on the lease area."

For leases with inadequate revenues to sustain production to qualify for relief, we must determine that:

(1) Federal royalty payments over the most recent 12-month period were at least 75 percent of net revenues; and

(2) Federal royalty payments are projected to take an increasing share of net revenues (§ 203.52(c)).

We believe that, under these conditions, production on most leases is likely to be terminated unless relief is available. Thus, to the extent that the relief provided keeps a lease in production, one can say that the relief promoted increased production.

For NRS applications proposing an investment to expand production, we will determine if the proposed project is economic in the absence of royalty relief. If development of the project would be economic, then we will deny the application. If development of the project would not be economic without royalty relief, then the royalty will be converted to a NRS rate sufficient to make the project economically viable, as described in the NRS Guidelines available in the appropriate Regional Office. In those instances where no amount of royalty relief would make the project economic, we will deny the application. We will not count sunk costs in making these determinations.

V. Pre-Enactment Deep-Water Leases

Definitions

As used in the interim rule:

Field means an area consisting of a single reservoir or multiple reservoirs all grouped on, or related to, the same general geological structural feature and/or stratigraphic trapping condition. There may be two or more reservoirs in a field that are separated vertically by intervening impervious strata, or laterally by local geologic barriers, or both.

Pre-enactment deep-water lease (PDWL) means an OCS lease issued as a result of a lease sale held before November 28, 1995. The lease must be in a water depth of at least 200 meters and in the Gulf of Mexico west of 87 degrees, 30 minutes West longitude.

Project to significantly expand production (PSEP) means a project proposed in an approved Supplemental DOCD that will result in an increase in ultimate recovery of resources from the field and that involves a substantial capital investment (e.g., the addition of a fixed-leg platform, subsea template and manifold, tension-leg platform, multiple well projects, etc.). The project must be on a PDWL.

Sunk costs means costs (as specified in § 203.55) of exploration, development, and production incurred after the date of first discovery on the field and prior to the date of application for royalty relief. Sunk costs also include the costs of the discovery well qualified as producible under 30 CFR 250.11.

These terms are defined in 30 CFR § 203.50.

Criteria for Consideration of Relief

We will consider an application for the suspension of royalty payments on a volume of new production from a lease if the lease meets three basic conditions:

- The lease must have been issued as a result of a lease sale held before November 28, 1995, the date of enactment of the DWRRA.
- The lease must be located in water depths of 200 meters or greater.
- The lease must encompass only whole blocks lying west of 87 degrees, 30 minutes West longitude in the Gulf of Mexico.

Units may apply if they include at least one lease that meets these conditions, but any royalty suspension will apply only to those leases in the unit that meet these conditions.

Basis for Granting Relief

Section 302(C) of the DWRRA states that an application may be made on the basis of an individual lease or unit. The term "unit" is not defined in the DWRRA. A fundamental issue in implementing the DWRRA is: should royalty relief for leases or units be based on some geologic or economic unit, such as a field?

We faced the same issue when we published the interim rule for new leases on March 25, 1996 (61 FR 12022) which amended § 260.110 to implement the provisions of section 304 of the DWRRA. In that instance, new (i.e., "eligible") leases receive suspension volumes automatically, without demonstrating a need for the suspension to assure economic viability. We have structured this rule to apply the PDWL royalty suspension provisions consistently with the royalty suspension provisions for new leases. Accordingly, two principles established in that interim rule will apply to this rule too.

First, as set forth for new eligible leases in § 260.110(d), we will allow only one royalty suspension volume per new field (*i.e.*, a field not producing prior to November 28, 1995). We believe Congress added "or unit" to section 302 of the DWRRA to allow us to evaluate multi-lease fields. But, in recognition of the objections raised in response to the ANPR regarding the suggestion that we might compel unitization, we will require leases in multi-lease fields that are not unitized to submit a joint application, as discussed below.

We set forth the underlying justification for a field approach in the preamble to the interim rule establishing the royalty suspension regulations for new deep-water leases under section 304 of the DWRRA. Briefly, the minimum royalty suspension volumes which Congress set forth in the DWRRA were developed from technical analysis conducted to estimate the royalty suspension volumes needed for capital cost recovery in developing unproduced oil and gas fields at various water depths in the Gulf of Mexico. This helps explain the fact that the chief Congressional sponsor, Senator Johnston, expressly linked the royalty suspension volumes in the DWRRA to the cost of developing a field.

Senator Johnston explained that the legislation was intended only to provide incentives for drilling leases that would not otherwise be drilled and to bring new fields into production:

> It is only with respect to *those leases that would not otherwise be drilled, either existing or future leases, that this amendment would provide that incentive* * * * The Secretary of the Interior wanted the incentive to be sufficient but not too much. That took a lot of negotiating * * * [The legislation] should bring on at least two new fields with approximately 150 million barrels of oil equivalent from existing leases and *it significantly improves the economics of 10 to 12 possible and probable fields.* 141 Cong. Rec. S. 6731 (daily ed., May 16, 1995) [emphasis added].

This statement strongly indicates that the DWRRA legislation was not intended to provide each lease in deep water the full royalty suspension volume. Granting royalty suspensions on a lease basis could result in much more relief than necessary to bring new fields into production.

As a hypothetical example, assume a field in 600 meters of water (the minimum suspension volume associated with 600 meters of water is 52.5 MMBOE) consists of two leases. Assume that our evaluation of the application under the DWRRA determines that development of the field is uneconomic without a suspension of royalty and that a royalty suspension of 35 MMBOE is needed to make development of the field economically viable. Granting the royalty suspension volume called for in the DWRRA to each lease would result in a total royalty suspension volume of 105 MMBOE, three times the amount necessary to make development of the field economically viable.

Thus, to be faithful to the intent of the DWRRA legislation, the royalty suspension volumes should be applied on a field basis, rather than giving each individual lease a full royalty suspension volume.

Second, if a PDWL is part of a field where any current lease produced prior to November 28, 1995, it cannot receive a royalty suspension volume from that field (except that a royalty suspension may be granted for a lease that undertakes a significant expansion of production on a field that produced before November 28, 1995). Since those lessees who undertook the initial production from the field (and can be said to have taken the most risk) would not be eligible for a royalty suspension volume under the DWRRA, neither should the lessees of leases on that producing field that begin production after the DWRRA's enactment. Under these circumstances, Congress certainly recognized that it is not necessary to encourage production.

We will assign PDWL's to a field the same as described in the interim rule for new deep-water leases. That is, we will assign a lease to a field when a well on the lease qualifies as capable of producing in paying quantities under the regulations at 30 CFR 250.11. If a well does not qualify under the rule, we will assign the lease to a field when hydrocarbons are first produced from the lease or when the lease is allocated production under an approved unit agreement.

The definition of field is set forth in 30 CFR 203.50. The definition is based on geology. We issue the *OCS Operations Field Names Master List*, which lists all the tracts in each field on the Gulf of Mexico OCS each quarter, with monthly updates.

We recognize that lessees may occasionally disagree with our determination that a lease is part of a particular field. Lessees may appeal these designations to the Director in the same manner as bid rejections are appealed. To appeal a decision that a lease is part of a particular field, a lessee must file a written request to the Director within 15 days of when we designate the lease as part of a field. The Director's response to this request, either affirming or reversing the earlier decision, cannot be appealed further within the Department of the Interior.

The deepest water depth on a lease in a field at the time an approved application for a royalty suspension was submitted establishes the water depth for that field. The water depth of a lease is governed by the "Royalty Suspension Areas" maps which we publish prior to lease sales in areas where the deep-water royalty relief program applies. These maps are based on bathymetric data from the National Oceanic and Atmospheric Administration. For purposes of drawing the map, if the water depth contour crosses a block, we include that block in the deeper water category. We will use the version of that map that is in effect at the time the royalty suspension application is submitted to determine the water depth of the field.

Applications

Lessees may submit applications for royalty relief under the provisions of this interim rule to the MMS Regional Director, Gulf of Mexico Region. Lessees may submit applications for:

(1) A PDWL or unit in a field that did not produce (other than test production) prior to November 28, 1995; or

(2) A PDWL or unit proposing development in a supplemental DOCD approved after November 28, 1995, that will expand production significantly beyond the level anticipated in a prior DOCD.

Because we have not required DOCD's to show anticipated production, we have chosen to define significant expansion of production as any project that will result in an increase in ultimate recovery of resources from the field and that involves a substantial

capital investment (e.g., installation of a fixed-leg platform, subsea template and manifold, tension-leg platform, or multiple well projects).

The DWRRA directs applicants to provide information required for a "complete application" and directs the Secretary to define clearly the information required. This interim rule requires the submission of several reports as part of a complete application. The information required in the reports includes field geology and geophysics, project design, field development and production plan (including planned time that production will begin and rates of production), costs (projected and past, if any), and a discounted cash flow (DCF) analysis of the field development and production.

The Gulf of Mexico Regional Office will make guidelines available to all lessees. These guidelines contain detailed instructions on the specific information and data elements required for a complete application.

As specified in the interim rule at § 203.55(c), the applicant or the applicant's authorized representative must certify that all information submitted in the application is accurate and complete. The application must be accompanied by a report prepared by an independent certified public accountant (CPA) expressing an unqualified opinion on the accuracy of the historical financial information presented in the application. The applicant must make the independent CPA available to us to respond to questions which may arise regarding the evaluation of the historical information. This requirement does not prevent further review of the applicant's records which support the historical financial information included in the application.

In developing the information requirements for a complete application, we observe that much of the geologic and economic information to be provided by an applicant who holds a non-producing PDWL is, by its very nature, imprecise (i.e., estimated or projected). Thus, it is important to set information requirements that enable us to make the DWRRA determinations with reasonable certainty.

To reduce the uncertainty of the information, the application should be submitted as late in the development process as possible, though before production commences. By waiting until later in the development process, activities such as drilling of development wells and procurement of facilities will provide more reliable information about costs and potential future income.

We note that lessees would prefer to have a decision made about relief early in the life of the lease to help in project planning and in arranging financing. Lessees with leases on a field that could be economic with royalty relief want to know whether and how much relief they will receive before making substantial post-discovery investments on their leases. Thus, there is a trade-off between our need for reasonably complete information and the lessee's desire for an early decision.

Our decisions on this issue incorporate ideas developed during ongoing discussions of possible new types of regulatory approvals relating to the development of deep-water oil and gas leases. A reasonably clear point in the OCS lease development process exists when detailed engineering and design activities necessary for the development of discovered resources have been completed, but capital investment for procurement and construction has not begun. The lessee has advanced the engineering, geology, and geophysics to a degree that more certainty exists in comparison to the earlier, exploration stage. Yet, the lessee has not made major financial commitments such as procuring facilities or drilling development wells.

Under the requirements for a complete application, the lessee must provide its design of production facilities needed for field development. The design of development and production facilities reflects the applicant's belief that the field merits development and qualifies for royalty relief. This approach avoids focusing on discoveries that have not yet been delineated and making major investments in the absence of knowledge about whether and to what extent the field qualifies for royalty relief and, if so, how large a royalty suspension volume we will grant.

A complete application must include an approved DOCD for a PDWL or unit or a supplemental DOCD for a PSEP. In joint applications, at least one lessee of a lease participating in the application must have an approved DOCD or an approved supplemental DOCD. The requirement for an approved DOCD for a complete application helps avoid submission of premature applications, since a DOCD covers the major system elements such as the platform and the development wells. A DOCD is not normally submitted to us until development design has progressed to a fairly final stage.

We considered requiring mandatory unitization of leases on a field if necessary to provide for the most efficient development of the field. However, in recognition of the responses to the ANPR in which virtually all lessees who provided comments opposed mandatory unitization, and since we continue to have the authority to compel the unitization of operations on OCS leases on a case-by-case basis, we have elected not to require the unitization of field operations as a necessary feature of a complete application for the suspension of royalty under the DWRRA.

Rather, we are requiring joint application procedures. In applying for royalty relief, all lessees on a field must submit a combined, joint application (§ 203.53(b)(3)(i)). If lessees do not want to share proprietary data with other lessees on the field, the proprietary geologic and geophysical data that is part of the joint application can be submitted separately and we will protect its confidentiality (§ 203.53(b)(3)(ii)). We will not deem the application complete until we receive all the required information for each lease on the field. If the application is subsequently denied, MMS will not disclose a lessee's proprietary data to other lessees in our explanation of our determinations.

The approach we have chosen to pursue for this interim rule represents a reasonable middle ground that protects the public interest while still allowing lessees flexibility of operation. That is, while a joint application that describes joint development of the field is required, lessees may develop their individual leases independently if they so choose.

Some lessees may be unwilling to provide the information necessary for a complete joint application even if it means foregoing an opportunity to share in the royalty suspension volume assigned to a field. In such cases, we will grant a good cause exception to the joint application requirement and will accept and evaluate an application from the remaining lessee(s) (§ 203.53(b)(3)(iii)). The application must include evidence of efforts to gain the cooperation of the non-participating lessee(s). While the noncooperating lessee(s) forfeits the right to receive a royalty suspension for the field that is the subject of the application under these DWRRA provisions, it may apply for royalty relief under other provisions.

Lessee(s) on a field may apply only once for a mandated royalty suspension volume for that field, except under the circumstances described below or for a PSEP (§ 203.53(b)(3)(iv)). The DWRRA specifically allows lessees to request a redetermination under certain limited circumstances, as discussed below. However, if unlimited applications were permitted, there would be no need for the DWRRA's redetermination provisions. Therefore, we believe it is consistent with Congressional intent to allow only one application per field, except under the redetermination criteria or when we withdraw a prior approval of a royalty suspension volume, as discussed below.

Within 20 working days of the receipt of an application, we will determine whether it is complete (§ 203.53(c)(1)(i)). If the application is complete, we will notify the applicant and start to evaluate it. If the application is incomplete, we will provide the applicant an explanation of the additional data we need to make it complete.

The DWRRA provides that if we do not make our required determinations within 180 days after we receive a complete application (or 120 days in the case of a redetermination), we may extend the time period for making our determination or redetermination for 30 days, or for longer than 30 days if agreed to by the applicant (§ 203.53(c)(1)(ii)).

If we do not complete our required determinations in the prescribed time period, the field is granted the minimum royalty suspension volume automatically. In the case of a PSEP, the DWRRA specifies that no royalty is due on such production for a period of one year following the start of such production.

The interim rule specifies that the 180-day time period for our determination, or 120-day time period for redeterminations, begins when we have determined that the application is complete and so notify the applicant.

We view the evaluation process as one where we may interact with the applicant. If, during this process, we find that data or information in the application is unclear, inconclusive, or otherwise cannot be relied upon, we will notify the applicant to provide such new data or information as is needed to make the application complete and accurate. We will request that the 180- or 120-day time period be tolled from the time the applicant receives our notice until the needed information is provided. When the applicant supplies the needed information, we will restart the time period with the same number of days remaining for us to make our determinations as when the time was tolled. The alternative to tolling the clock is for us to reject the application because the data and information does not adequately support the determination we must make under the DWRRA.

Review and Evaluation Procedures

In evaluating applications for deep-water royalty relief, we will make the following determinations:

- Would the new production be economic without a royalty suspension; and
- Is there any royalty suspension volume that we could grant that would make the new production economic?

If the answer to the first determination is that production would not be economic without relief and the answer to the second is that there may be a royalty suspension volume that would make the new production economic, we will proceed to a third determination: what amount of relief should we grant, i.e., the minimum royalty suspension volume mandated in the DWRRA or a volume in excess of that minimum?

The OCSLA authorizes these determinations in section 8(a)(3)(C)(ii). First, the provision reads, "the Secretary shall determine * * * whether new production from such lease or unit would be economic in the absence of the relief * * *" Second, that same section mandates that the Secretary "determine the volume of production from the lease or unit on which no royalties would be due in order to make such production economically viable * * *." If there is no amount of royalty relief which would make the new production economic, then there is no way the Secretary can calculate the "volume of production from the lease or unit on which no royalties would be due in order to make such production economically viable * * *." Thus, our determination of whether there exists a royalty suspension volume that would make new production economic is necessary for the Secretary to proceed to a determination of a volume of royalty suspension that would make production economically viable.

If new production from a field or project is economic in the absence of royalty relief, the relief provisions of the DWRRA do not authorize relief and we will reject the application. If no amount of royalty relief would make a field (or project) economic, we will disapprove the application. In such a case, the royalty relief would not induce the lessee to develop the field or marginal project.

The DWRRA requires us to determine whether new production would be "economic" taking into consideration the risks of deep-water development and all costs associated with exploration, development, and production. However, the term "economic" is not defined in the DWRRA. For this interim rule, we have defined "economic" as a project or group of related projects, such as field-wide development, having a positive net present value as calculated with MMS-stipulated DCF techniques.

The DWRRA requires us to consider all costs of exploration, development, and production in determining whether a field is economic in the absence of royalty relief. In making this determination, we will include only those sunk costs incurred after the date of field discovery because of the difficulties in attributing to a particular field those sunk costs incurred before a discovery.

Similarly, we will not include sunk costs when we determine whether a field can be made economic with royalty relief or when we determine the amount of royalty suspension volume needed to make the new production economic. First, only prospective costs are relevant to determining the royalty suspension volume needed to make the new production economic. Second, the DWRRA does not state that "all costs" must be considered in determining the appropriate suspension volume.

This treatment of sunk costs applies only to fields that did not produce, other than test production, prior to the date the application for royalty suspension is submitted. We will not count any sunk costs where production commenced prior to the date the application is submitted or when the application is proposing a significant expansion of production. According to economic theory, such costs generally are not relevant to decisions about whether to continue producing from a developed field. Since the intent of the DWRRA is to bring new fields into production-not to ensure a rate of return on developed fields-we will not count sunk costs in such cases.

The guidelines provide more detailed information on costs, prices, and discount rates. In general, the applicant provides the cost data we use to make our determinations. Based on our experience in administering NRS royalty relief, we will not include some types of costs in the analysis, as specified in § 203.55(b). We will verify the costs reported and, where sunk costs are important, this verification may include an audit of those costs. The costs and the underlying geology and design data are given in ranges or with probability distributions, reflecting the uncertainties and risks of the field development.

We will provide applicants with the assumptions for oil and gas prices to use in the DCF analyses. We will develop future price assumptions after

considering long-term projections of oil and gas prices by major forecasters, such as (but not limited to) the Energy Information Administration, Data Resources Incorporated, and Wharton Econometrics. We will update these price forecasts periodically. These assumptions provide reasonable forecasts that all applicants can employ. Applicants may adjust prices for the expected quality of the resource, documenting these adjustments as discussed in our guidelines.

We will also specify a range of discount rates from which applicants will choose a particular rate. The reason for allowing a choice of discount rates is that projects differ in their risk characteristics, and further, operators might have different risk preferences reflected in their target rates of return. Our guidelines will set the range of discount rates for use in the DCF analyses. We may change the range periodically.

In determining the volume suspension needed to make the field economically viable, we will employ a similar DCF model and the same price and discount assumptions used to show whether royalty relief can make the field economic. We will also input the geological assessments, engineering designs, production scenarios and cost components included in the application, subject to our review and verification of their accuracy and efficiency. In cases where we find that assumptions other than those provided by the applicant are more appropriate, we reserve the right to make all necessary changes in the set of inputs.

In general, we have structured our determinations following the principle that the DWRRA aimed to give substantial, but not excessive, incentive to develop marginal fields. In this manner, we seek to avoid the errors of rejecting deserving applications or giving large amounts of volume suspension when they are not needed.

Note that being granted a royalty suspension volume on production from a PDWL under the regulations established by this rulemaking does not preclude a lessee from obtaining further relief under the pre-DWRRA provisions of the OCSLA, the expanded OCSLA royalty relief provisions created by the DWRRA, or under the significant expansion of production portion of the DWRRA.

Also, as noted above a lessee may apply only once for a royalty suspension volume for a given field under the DWRRA provisions, except as provided below.

Redeterminations

The DWRRA provides that an applicant may request a redetermination of the Secretary's findings prior to the start of new production if a significant change occurs in the factors upon which we based the original determination. We believe that the Congress established this requirement, in part, to place reasonable limits on the number and frequency of redetermination requests so the Secretary would not need significant new staff resources to administer the program.

Accordingly, we will accept an application for a redetermination only when:

(1) Changes in resource information (e.g., gross resources, quality, flow rates) are of sufficient magnitude that, had our evaluation of the original application included the new data, the results of our determinations would have been materially different. The new resource information must result from new exploration activity such as drilling a new well or acquiring new 3–D seismic data that did not exist at the time of the original application. A reinterpretation of existing data does not qualify as a significant change in resource information; or

(2) Average annual prices of oil and gas have fallen by 25 percent since the previous application. These averages are determined by:

(A) using daily closing prices for light sweet crude oil and natural gas on the New York Mercantile Exchange (NYMEX) over 12-month periods; and

(B) weighting the annual average prices by the volumes of oil and gas (in barrels of oil equivalent) identified in the most likely development and production scenario (required under § 203.55 and described in the guidelines) in the previous application for royalty relief. (See § 203.53(d)(1)(ii) for details.)

We are establishing this condition to avoid having economic projects appear uneconomic, and therefore qualify for a royalty suspension volume, due to what may only be a brief temporary downturn in prices. While smaller price changes can affect the economic viability of development, larger, sustained changes in underlying prices must occur before we would change the price scenarios used in evaluating applications. Further, a drop in oil prices should not trigger a potential redetermination for a project proposing to develop a 100 percent gas field or vice versa. Therefore, the weighted average price change is required; or

(3) Prior to starting construction of your project, estimated project development costs amount to more than 120 percent of the eligible development costs included for the most likely development scenario as set forth in the previous application.

Applicants requesting a redetermination must include a new complete application in accordance with the requirements of § 203.53(b) and § 203.55. We will evaluate the request to see if the applicant is eligible for a redetermination. If so, we will proceed to evaluate the application.

As with an original application for a royalty suspension, we have 20 working days to determine whether an application for a redetermination is complete. If the application is complete, we must evaluate the application within 120 days. We can extend this period for 30 days, or longer if agreed to by the applicant(s).

Withdrawal of Approvals and Changes in Material Fact

If we find that an applicant provided false historical information or intentionally inaccurate data that was material to us in granting royalty relief under this section, we will rescind our approval of that relief as of the date of the approval. The applicant must pay royalties and late payment interest determined under 30 U.S.C. 1721 and 30 CFR 218.54 on all volumes of production on which royalty was not paid. The lessee also may be subject to penalties under other provisions of law.

We further reserve the right to withdraw our approval of a royalty suspension if a change in material fact occurs that is significant enough to invalidate the basis on which we originally evaluated and approved the application. Material changes that will result in a withdrawal of an approved royalty suspension volume include:

(1) The lessee changes the type of development system proposed in the approved application. For example, the development proposal changes from a stand-alone platform, as proposed in the approved application, to a much less expensive subsea template and tie-back.

(2) Construction of the production system described in the application does not commence within 2 years of the date of application approval, notwithstanding any suspensions of operations.

(3) Actual development costs incurred prior to the commencement of production, other than test production, amount to less than 80 percent of the estimated development costs included for the most likely development and production scenario presented in the approved application.

We will use the pre-production report (§ 203.53(c)(4)) to determine whether the actual capital costs meet this threshold. As an incentive for efficient investment and to provide greater certainty at the time of the application, a portion of the originally granted royalty relief can be automatically retained. If the applicant informs us of the development cost discrepancy in the pre-production report, the applicant will be entitled to 50 percent of the approved royalty suspension volume with no further action required (see § 203.53(e)(3)(i)). If we discover the development cost discrepancy after production, other than test production, has started, approval of the royalty suspension volume will be retroactively withdrawn (see § 203.53(e)(3)(iii)).

However, if the royalty suspension volume resulted from a redetermination based on a change in capital costs, as discussed above, we will withdraw our approval of the application if actual development costs are less than 90 percent of the estimated development costs included in the most likely development and production scenario in the approved application, and the lessee will not be permitted to retain any of the approved royalty suspension volume (see § 203.53(e)(3)(ii)).

We considered other factors as grounds for withdrawal of our approval of an application, but we concluded that the factors discussed above were sufficient to protect the public interest.

The applicant may initiate a new application for a suspension volume when its previously approved royalty suspension volume is withdrawn for reasons other than the submission of false information or intentionally inaccurate data.

The material changes triggering a potential withdrawal of approval of the royalty suspension volume are at least partially at the discretion of the lessee(s) and the potential for a subsequent withdrawal of our approval for a royalty suspension should be considered by applicants when deciding to make changes of this nature.

Allocation Rules

Fields in deep water may consist of one or more leases, including leases issued as a result of sales held before and after November 28, 1995, and leases in different water depths. Therefore, to make royalty relief consistent with the DWRRA, we need to specify how the royalty suspension volume applies in many different circumstances. Accordingly, the following cases illustrate how the rule applies in determining eligibility for, and the volume of, royalty suspensions. (All cases assume that all eligible leases on a field participate in the joint application for a royalty suspension volume; the term "eligible leases" is defined in the interim rule for deep-water royalty relief on leases issued from sales after November 28, 1995 (61 FR 12022, 30 CFR 260.110)).

Case 1. If a field consists of a single PDWL and the application is approved, no royalty payment is required on production from the lease until that production equals the royalty suspension volume granted.

Case 2. If a field consists of more than one PDWL and the application is approved, payment of royalties on production from the PDWL's is suspended until their cumulative production equals the suspension volume granted. The royalty suspension volume for each lease equals each lease's actual production (or production allocated under an approved unit agreement) until cumulative production from the field equals the field's royalty suspension volume.

Case 3. If a PDWL or an eligible lease is added to a field that has been granted a royalty suspension volume under the regulation established by this rulemaking, the field's royalty suspension volume will not change. The additional lease may receive a royalty suspension volume only to the extent of its production before the cumulative production from the field equals the approved royalty suspension volume.

In this case, the added PDWL will not be required to submit the full application required of the original applicants. A full application is not necessary because we have already evaluated the field and set an appropriate royalty suspension volume. We see no need to reevaluate that determination. Accordingly, the operator of the PDWL can apply for relief using an abbreviated application available at the Gulf of Mexico OCS Regional Office.

Case 4. If the PDWL is part of a field that has a royalty suspension volume for eligible leases under § 260.110, the lessee(s) may apply for relief. If the application meets the economic and economic viability tests, all of the leases can share the royalty suspension volume until total cumulative production from the field attains the royalty suspension volume that is the greater of the volume established for the eligible leases under § 260.110 or the volume determined pursuant to the regulation established by this rulemaking.

Case 5. A lease may receive more than one royalty suspension volume. An application may be made for relief for a lease under the regulations established by this rulemaking for each field that includes the lease. Each field will receive a separate royalty suspension volume if it meets the evaluation criteria described below. An application also may be made for relief for a project that would result in a significant expansion of production, even if we have already granted a royalty suspension volume to the field that encompasses that project. For a PSEP, this is how the rule applies:

Case 6. If a PDWL is the only lease on the project and the application based on a significant expansion of production is approved, no royalty payment is due on the incremental production from the project until that production equals the royalty suspension volume granted.

Case 7. If the expansion of production project includes more than one lease and the application is approved, payment of royalties on incremental production from the project is suspended until the lessees' cumulative incremental production from the project equals the suspension volume granted. The royalty suspension volume for each lease equals each lease's actual production from the project until cumulative production equals the project's royalty suspension volume.

In all cases, the addition of a lease to a field that has an established royalty suspension volume will not change the field's royalty suspension volume, even if the added lease is in deeper water.

Other Issues

Appeals—Our determinations and redeterminations under 43 U.S.C. 1337(a)(3)(C) are final agency actions which are judicially reviewable under section 10(a) of the Administrative Procedure Act (5 U.S.C. 702). Requests for judicial review of a determination or redetermination under 43 U.S.C. 1337(a)(3)(C) must be filed within 30 days of our decision.

Gas-to-oil conversion factor—The royalty suspension volumes are measured in millions of barrels of oil equivalent. For the purposes of this rule, 5.62 thousand cubic feet of natural gas equal one barrel of oil equivalent, as measured at 15.025 pounds per square inch (psi) pressure, 60 degrees Fahrenheit, and fully saturated (§ 203.53(g)(5)). This is the conversion factor traditionally used in the Gulf of Mexico and is the same factor specified in § 260.110(d)(11) for calculating royalty suspension volumes for new leases.

Non-royalty bearing production—Under this rule, any lease-use production that otherwise is not subject to royalty does not count toward the royalty suspension volume.

Price escalation clause—In accordance with section 302, in any calendar year during which the arithmetic average of the daily closing prices on the NYMEX for light sweet crude oil exceeds $28.00 per barrel, adjusted for inflation as described below, any royalty relief we grant under the provisions of this rule for DWLP's and PSEP's is suspended and any production of oil is subject to royalties at the lease stipulated royalty rate. However, this production counts as part of the established royalty suspension volume. By January 31 of the year following the calendar year in which the price exceeded $28.00 per barrel, the lessee must pay the royalty due plus

interest in accordance with 30 U.S.C 1721 and 30 CFR 218.54, on any volume of oil produced during the previous year on which no royalties were paid.

In any year following a calendar year in which the arithmetic average of the daily closing prices on the NYMEX for light sweet crude oil exceeded $28.00 per barrel, as adjusted for inflation, the lessee must pay royalties on all the oil it produces that year. If, after the end of the year, the arithmetic average of the daily closing prices on the NYMEX for light sweet crude oil for that year was $28.00 per barrel or less, as adjusted for inflation, the lessee is entitled to a refund or credit, with interest, of royalties paid that year on any royalty suspension volume for oil production. Regulations for receiving refunds or credits are at 30 CFR part 230.

This rule similarly applies to natural gas. In any calendar year during which the arithmetic average of the daily closing prices on the NYMEX for natural gas exceeds $3.50 per million British thermal units (Btu's), adjusted for inflation as described below, any royalty relief we grant under the provisions of this rule for DWLP's and PSEP's is suspended and any production of gas is subject to royalties at the lease stipulated royalty rate. However, this production counts as part of the established royalty suspension volume. By January 31 of the year following the calendar year in which the price exceeded $3.50 per million Btu's, the lessee must pay the royalty due plus interest in accordance with 30 U.S.C 1721 and 30 CFR 218.54, on any volume of gas produced during the previous year on which no royalties were paid.

In any year following a calendar year in which the arithmetic average of the daily closing prices on the NYMEX for natural gas exceeded $3.50 per million Btu's, as adjusted for inflation, the lessee must pay royalties on all the gas it produces that year. If, after the end of the year, the arithmetic average of the daily closing prices on the NYMEX for natural gas for that year was $3.50 per million Btu's or less, as adjusted for inflation, the lessee is entitled to a refund or credit, with interest, of royalties paid that year on any royalty suspension volume for gas production. Regulations for receiving refunds or credits are at 30 CFR part 230.

To adjust for inflation, change the prices referred to above (i.e., $28.00 per barrel for light sweet crude and $3.50 per million Btu's for natural gas) during each calendar year after 1994 by the percentage, if any, by which the implicit price deflator for the gross domestic product changed during the preceding calendar year.

The particulars of this provision of the DWRRA are included at § 203.53(h)(6)–(8) of this rulemaking.

Termination of royalty suspension volumes—A royalty suspension will continue until the end of the month in which the cumulative production from the applicable leases in the field or project reaches the royalty suspension volume for the field or project. We will provide monthly production data to all lessees in the field or project. However, this data may not become available until shortly after production exceeds the royalty suspension volume. In such cases, royalties still will be due on the last day of the second month following the month in which cumulative production from the field or project reaches the royalty suspension volume. Any royalties paid late will be subject to interest pursuant to 30 CFR 218.54.

VI. Recovery of Costs

In accordance with Federal policy and statute, we will charge lessees applying for royalty relief under the provisions of the regulation promulgated by this rulemaking an amount which recovers our cost of processing their applications. The Administrative Procedure Act (31 U.S.C. 9701) and Office of Management and Budget Circular A–25 require that agencies recover their costs when they provide services that confer special benefits or privileges to identifiable non-Federal recipients. Processing of applications for royalty relief clearly falls within this mandate.

Furthermore, the collection of such fees is specifically authorized by the Omnibus Appropriations Bill (Pub. L. 104–134, 110 Stat. 1321, April 26, 1996). The statute provides: "That beginning in fiscal year 1996 and thereafter, fees for royalty rate relief applications shall be established (and revised as needed) in Notices to Lessees, * * * for the costs of administering the royalty rate relief authorized by 43 U.S.C. 1337(a)(3)."

We estimate that our costs for processing NRS applications will range from $8,500 (continuation of production) to $22,500 (project involving capital expansion). For applications for deep-water royalty relief, we estimate that our costs will range from $27,500 to $50,000 depending on the number of leases involved and the complexity of the proposed development project. For some applications, we may find it necessary to audit the financial data submitted to make an adequate determination on the economics of the proposed development. We estimate that it will cost us up to $40,000 to conduct such an audit.

We will issue a Notice to Lessees (NTL) that will provide more detailed information on the amounts of royalty relief application processing costs and when and how applicants may make payments to us. We will revise the NTL periodically to reflect our cost experience and to provide other information helpful or necessary for the administration of this program.

VII. Administrative Matters

Executive Order (E.O.) 12866

The interim rule is significant due to novel policy issues arising out of legal mandates, and the Office of Management and Budget (OMB) has reviewed this rule. We will make a copy of this determination available on request.

We focused on impacts on royalty revenues of regulatory alternatives in determining the possible economic effects of implementing section 302 of the DWRRA. We assumed that there would not be significant impacts on labor and capital because, given current constraints on the availability of deep-water drilling rigs, companies active in these areas would make similar alternative investments in the absence of the DWRRA over the near term.

We analyzed two alternatives for implementing section 302. The approach in this interim rule (MMS approach) gives a single royalty suspension volume for each qualifying field. The alternative approach gives each individual lease or unit separate royalty suspension volumes, subject to the minimum volumes specified in the DWRRA.

Because the DWRRA instructs us to grant royalty relief only in situations that are uneconomic at the lease-stipulated royalty rate, the revenue effects are the additional royalties that may be collected from fields that would otherwise not be developed until a later time, if at all. We estimated these effects by extrapolating to all known deep-water fields the results of detailed analyses of 30 fields in the relevant water depths. The MMS approach generates up to an estimated $45 million per year in royalty revenue in peak years. The alternative approach frequently results in no royalty payments, and when such payments do occur, they would be less than the royalties received under the MMS approach. Thus, in both cases, the economic effects are less than $100 million annually.

We chose the approach embodied in this interim rule because:

- The DWRRA's primary author stated that he intended the DWRRA to encourage production from new fields without providing too much relief;
- The MMS approach provides a substantial incentive for developing marginal fields in deep water while still ensuring a reasonable return to the Treasury;
- The minimum suspension volumes specified in the DWRRA were derived from an analysis of fields, not individual leases; and
- This rule needs to be consistent with the rules for royalty suspensions on deep-water tracts leased after November 28, 1995, in the same parts of the Gulf of Mexico so that all deep-water OCS lessees receive equitable treatment.

Regulatory Flexibility Act

This rule will not have a significant effect on small entities.

This rule establishes the terms and conditions for granting royalty relief under the provisions section 8(a)(3)(A) of the OCSLA and royalty suspension volumes under the DWRRA for certain deep-water OCS Gulf of Mexico leases that were issued as the result of a lease sale held prior to November 28, 1995.

The estimates of development costs for fields in the deep water of the Gulf of Mexico range from over $10 million to about $2 billion. We, therefore, concluded that, in general, the entities that engage in offshore oil and gas development and production activities are not small due to the technical and financial resources and the experience needed to safely conduct such activities.

Small entities who are likely to work in the deep waters of the OCS are primarily contractors who provide services such as catering or custodial services for manned facilities. This rule will impact these entities only to the degree that the royalty relief provided results in the drilling of additional wells and installation of additional manned facilities.

Administrative Procedure Act

We have determined, in accordance with 5 U.S.C. 553(b)(3)(B) of the Administrative Procedure Act, that a notice of proposed rulemaking is not required and is impracticable in the issuance of this rule. We invite comments on this interim rule so changes can be made in the future, if warranted.

Paperwork Reduction Act

The MMS has submitted the information collection requirements in 30 CFR 203 to the Office of Management and Budget (OMB) with a request for emergency processing. We have stated that the time period for OMB approval should coincide with the effective date of this Interim Rule. The information collection in this rule has been approved on an emergency basis through August 31, 1996, under OMB control number 1010–0071. However, we still will conduct a full review and comment process for this collection of information. The new title, "30 CFR 203, Relief or Reduction in Royalty Rates," is consistent with that of the interim final rule for Part 203.

Send comments regarding the burden or any other aspect of the collection of information contained in this part, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Minerals Management Service, Mail Stop 2300, 381 Elden Street, Herndon, VA 22070–4817 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Desk Officer for the Department of the Interior (OMB control number 1010–0071), Washington, DC 20503.

The Paperwork Reduction Act of 1995 provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Respondents to this collection of information are Federal oil and gas lessees. The frequency of response is on an occasion basis. We expect the number of responses (applications) for the remainder of this fiscal year to be relatively small. The number will peak during fiscal year 1997 and decline thereafter. The following chart represents an average of the anticipated number of annual applications over a three year period and the associated reporting burdens. The burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OCSLA

Type of application	Responses per year	Hours per response	Hours per year
Leases with inadequate revenues to sustain continued production	4	300	1,200
Leases proposing an expansion of production that would be uneconomic absent relief	7	800	5,600
Total annual burden			6,800

DWRRA

Type of Application	Responses per year	Hours per response	Hours per year
DWRRA lease on a field that did not produce prior to 11/28/95	23	1,200	27,600
DWRRA leases proposing a significant expansion of production	7	800	5,600
Redetermination	6	800	4,800
Short Form Applications	7	40	280
Total annual burden			38,280

In addition to the hour burden outlined above, there are two other cost burdens to the respondents. (1) We will charge lessees (respondents) applying for royalty relief an amount which covers the cost of processing their applications. This is discussed above in Section VI. Recovery of Costs. (2) A respondent's application or pre-production report must be accompanied by a report prepared by an independent certified public accountant as described in section 203.55(c) of the rule.

Takings Implication Assessment

The Department of the Interior certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights, is not required.

E.O. 12988

The Department has certified to the OMB that this regulation meets the applicable standards provided in section 3(b)(2) of E.O. 12988.

National Environmental Policy Act

We examined the interim rule and have determined that it does not constitute a major Federal action significantly affecting the quality of the human environment pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

Unfunded Mandate Reform Act of 1995

This rule does not contain any unfunded mandates to State, local, or tribal governments or the private sector.

List of Subjects in 30 CFR Part 203

Continental shelf, Government contracts, Indians-lands, Minerals royalties, Oil and gas exploration, Public lands—mineral resources, Sulfur.

Dated: May 20, 1996.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons in the preamble, the Minerals Management Service (MMS) is amending 30 CFR part 203 as follows:

PART 203—RELIEF OR REDUCTION IN ROYALTY RATES

1. The authority citation for part 203 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301, *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. Subpart A is added to read as follows:

Subpart A—General Provisions

§ 203.1 Authority for information collection.

(a) The Office of Management and Budget (OMB) approved the information collection requirements in part 203 under 44 U.S.C. 3501 *et seq.* and assigned OMB control number 1010–0071. The MMS uses the information to determine whether granting a royalty relief request will result in the production of resources that would not be produced without such relief. The application for royalty relief must contain sufficient financial, economic, reservoir, geologic and geophysical, production, and engineering data and information to determine whether relief should be granted in accordance with applicable law. the application also must contain sufficient data and information to determine whether the requested relief will result in an ultimate increase in resource recovery and provide for reasonable returns on project investments. The applicant's requirement to respond is related only to the request to obtain royalty relief. The applicant has no obligation to make this request.

(b) An agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(c) Send comments regarding the burden of this information collection or any other aspect of the collection of information under provisions of this part, including suggestions for reducing the burden, to the Information Collection Clearance Officer; Minerals Management Service, Mail Stop 2300, 381 Elden Street; Herndon, Virginia 20170–4817 and the Office of Management and Budget; Office of Information and Regulatory Affairs, Attn: Desk Officer for the Department of the Interior (1010–0071); Washington, DC 20503.

(d) The MMS will protect information considered confidential or proprietary under applicable law and under regulations at § 203.53(b)(ii) and part 250 of this chapter.

3. Subpart B is revised to read as follows:

Subpart B—OCS Oil, Gas, and Sulfur, General

Sec.

203.50 Definitions.
203.51 What is MMS's authority to grant royalty relief?
203.52 Net revenue share royalty relief.
203.53 Royalty relief for certain deep-water leases in the Gulf of Mexico.
203.54 (Reserved)
203.55 What information is required for the net revenue share royalty relief and deep-water royalty relief application supplemental reports?
203.56 Recovery of application processing costs.

Subpart B—OCS Oil, Gas, and Sulfur, General

§ 203.50 Definitions.

Terms used in this part have the following meaning:

Field means an area consisting of a single reservoir or multiple reservoirs all grouped on, or related to, the same general geological structural feature and/or stratigraphic trapping condition. There may be two or more reservoirs in a field that are separated vertically by intervening impervious strata, or laterally by local geologic barriers, or both.

Pre-enactment deep-water lease (PDWL) means an Outer Continental Shelf (OCS) lease issued as a result of a lease sale held before November 28, 1995. The lease must be in a water depth of at least 200 meters and in the Gulf of Mexico west of 87 degrees, 30 minutes West longitude.

Project to significantly expand production (PSEP) means a project proposed in an approved Supplemental Development Operations Coordination Document (DOCD) that will result in an increase in ultimate recovery of resources from the field and that involves a substantial capital investment (e.g., the addition of a fixed-leg platform, subsea template and manifold, tension-leg platform, multiple well projects). The project must be on a PDWL.

Sunk costs means costs (as specified in § 203.55) of exploration, development, and production incurred after the date of first discovery on the field and prior to the date of application for royalty relief. Sunk costs also include the costs of the discovery well qualified as producible under 30 CFR 250.11.

§ 203.51 What is MMS's authority to grant royalty relief?

Under the OCS Lands Act, 43 U.S.C. 1337, as amended by the OCS Deep Water Royalty Relief Act, Public Law 104–58, MMS may grant three types of royalty relief listed in this section.

(a) Under 43 U.S.C. 1337(a)(3)(A), MMS may reduce, suspend, or eliminate the royalty specified for any producing OCS lease to promote increased production. If your OCS lease has inadequate revenues to sustain production or if you are proposing a project to expand production that would be uneconomic without royalty relief, MMS may grant royalty relief as specified in these regulations at § 203.52 (Net Revenue Share Royalty Relief).

(b) Under 43 U.S.C. 1337(a)(3)(B), MMS may grant royalty reductions or suspensions to promote development, increase production, or encourage production of marginal resources on producing or non-producing leases in the Gulf of Mexico, west of 87 degrees, 30 minutes West longitude. Section 203.54 is reserved for the regulations to implement this provision.

(c) Under 43 U.S.C. 1337(a)(3)(C), if your PDWL is on a field that did not produce before November 28, 1995, or if you have a PDWL where you propose a PSEP, MMS may suspend royalties for volumes of new production which would be uneconomic without royalty relief as specified in these regulations in § 203.53 (Royalty relief for certain deep-water leases in the Gulf of Mexico).

§ 203.52 Net revenue share royalty relief.

(a) *How do I apply for net revenue share (NRS) royalty relief?*

This section explains how to obtain royalty relief under 43 U.S.C. 1337(a)(3)(A) if your lease has inadequate revenues to sustain production or if you are proposing a project to expand production that would be uneconomic without royalty relief. To apply for relief, submit a complete application to the appropriate MMS Regional Director in accordance with this section and the applicable guidelines in § 203.52(b) and § 203.55. An application fee in accordance with § 203.56 must accompany the application.

(b) *What do I need to include in my application?*

(1) A complete application for royalty relief must include an original and two copies of:

(i) Administrative Information and Relief Justification, and

(ii) Net Revenue Share Economic Viability Report.

(2) If you are proposing a project to expand production that would be uneconomic without royalty relief, your application must also include two copies (one set of digital information) of:

(i) Geologic and Geophysical Report;

(ii) Production Report; and

(iii) Engineering Report.

(3) Section 203.55 describes the reports required for the complete application. The appropriate regional office will provide specific guidance on the format for the required reports.

(c) *What are the NRS royalty relief approval criteria?*

(1) MMS may grant your request for royalty relief only if it concludes that royalty relief will increase the ultimate recovery of hydrocarbons by extending lease production for at least one year. However, if you are proposing a project to expand production, MMS will approve your request for royalty relief only if the proposed project would be uneconomic without royalty relief.

(2) If you have a lease with inadequate revenues to sustain production, MMS may grant your request for royalty relief only if it concludes that:

(i) royalties paid to MMS over the most recent 12-month period exceed 75 percent of net revenues; and

(ii) royalties are projected to take an increasing share of net revenues over the next 12 months.

(d) *What royalty relief will MMS grant?*

(1) Except as provided in paragraph (d)(2)of this section, if you meet the royalty relief criteria of this section, MMS may offer to modify the royalty terms of your lease to a NRS. The percentage of the net revenue due to MMS will be established in the MMS NRS guidelines available in the appropriate Regional Office.

(2) If you are proposing a project to expand production but no amount of royalty relief would make the project economic, MMS will deny the request for royalty relief.

§ 203.53 Royalty relief for certain deep-water leases in the Gulf of Mexico.

(a) *Who may apply for deep-water royalty relief?*

This section explains how to obtain royalty relief under 43 U.S.C. 1337(a)(3)(C). You may apply for royalty relief if you are a lessee of a PDWL or a unit that contains one or more PDWL's, subject to the limitation in paragraph (b)(3) of this section. You may apply for relief if:

(1) your lease or unit is part of a field from which no royalties were due on production, other than test production, prior to November 28, 1995; or

(2) you are proposing a PSEP.

(b) *How do I apply for deep-water royalty relief?*

(1) You must submit a complete application to the MMS Regional Director of the Gulf of Mexico OCS Region. An application fee in accordance with § 203.56 must accompany the application.

(2) A complete application includes an original and two copies (one set of digital information) of:

(i) Administrative Information and Relief Justification;

(ii) Deep-Water Royalty Relief Economic Viability Report;

(iii) Deep-Water Royalty Relief Cost Report;

(iv) Geologic and Geophysical Report;

(v) Production Report; and

(vi) Engineering Report.

Section 203.55 describes what these reports must include. The Gulf of Mexico Regional Office will provide specific guidance on the format for the required reports.

(3) For a royalty suspension on production from fields from which no royalties were due on production, other than test production, before November 28, 1995:

(i) Except as provided in paragraph (b)(3)(iii) of this section, MMS will accept only one joint application for all leases that are part of the field on the date of application. The Regional Director maintains a list of all leases in each discovered field.

(ii) If a lessee does not want to share proprietary data with other lessees on the field, that lessee may submit separately to MMS the proprietary geological or geophysical data that is a necessary part of the joint application. The application is not complete until MMS receives all the required information for each lease on the field. In explaining its assumptions and reasons for its determinations under this section, MMS will not disclose proprietary data.

(iii) MMS will waive the joint application requirement if the applicant(s) shows good cause for the waiver. The applicant also must demonstrate that it made a good faith effort to obtain the participation of all lessees in the field. A lease that is part of the field on the date of application but that is not included in the application because its lessee(s) fails or refuses to participate is not eligible for the royalty relief for the field that is the subject of the application. However, that lessee still may apply for other royalty relief under this section.

(iv) With the exceptions listed below, the lessees on a field may submit only one complete application for royalty relief during the life of the field. However, lessees may submit another application if:

(A) They are eligible to apply for a redetermination under § 203.53(d)(1);

(B) MMS has withdrawn approval of a previously granted royalty suspension under § 203.53(e);

(C) they apply for royalty relief for a PSEP; or

(D) they withdraw the application before MMS deems it complete.

(c) *How will MMS evaluate an application?*

(1)(i) MMS will determine within 20 working days if your application for royalty relief is complete. If your application is incomplete, MMS will provide you with an explanation of what it needs to become complete. If you withdraw your application after MMS has deemed it complete, you may only reapply under the redetermination provision of § 203.53(d).

(ii) When MMS determines that your application is complete, MMS will

evaluate the application within 180 days. MMS may extend the 180-day evaluation period for an additional 30 days, if necessary, to complete the evaluation. If you agree, MMS also may extend the 180-day period for more than 30 days.

(iii) If MMS must audit sunk costs to evaluate your application, MMS may request that the 180-day evaluation period be tolled from the time you receive notice from MMS until you provide the records necessary to conduct the audit.

(iv) If MMS determines during the evaluation period that it cannot evaluate your application because:

(A) vital information is missing;

(B) the data and information provided in support of the application are inconclusive; or

(C) of any other valid reason;

MMS may request that the 180-day evaluation period be tolled from the time you receive notice from MMS until you provide needed data, explanations, or revisions.

(2)(i) If your application is for a suspension of royalties on production from a field from which no royalties were due on production, other than test production, before November 28, 1995, MMS will determine if development of the field is economic without royalty relief. MMS will include your sunk costs in making this determination. If MMS determines that development of the field would be economic without relief, MMS will deny your request for a royalty suspension.

(ii) For fields that did produce, other than test production, before the date of application, MMS will not include your sunk costs when it determines if development of the field is economic without royalty relief. If MMS determines that development of the field would be economic without relief, MMS will deny your request for a royalty suspension.

(iii) If MMS determines for a field subject to either paragraph (c)(2) (i) or (ii) of this section that development of the field would not be economic without a royalty suspension, and that a royalty suspension could make the project economic, MMS will determine the size of the royalty suspension volume necessary to make the field economically viable. MMS will determine your royalty suspension volume subject to the minimum royalty suspension volumes specified in paragraph (h)(1)(i) of this section. MMS will not include sunk costs when it makes this determination.

(iv) If no amount of royalty suspension would make the field economic, MMS will deny your request for royalty relief.

(3)(i) If your application for royalty relief is for a PSEP, MMS will determine if the proposed project is economic without royalty relief. If it is economic, MMS will deny your request for royalty relief.

(ii) If MMS determines that development of the project would not be economic without royalty relief, MMS will determine the royalty suspension volume necessary to make the project economically viable.

(iii) If no amount of royalty suspension volume would make the project economic, MMS will deny your request for royalty relief.

(iv) MMS will not include sunk costs in evaluating applications for royalty relief for a PSEP.

(4) If MMS approves your application for royalty relief, you must submit a pre-production report 60 days before the planned start of production which is subject to the royalty suspension volume, as specified at § 203.55.

(d) *When will MMS reconsider its determination?*

(1) You may request a redetermination of either a denial of an application or the size of the royalty suspension volume granted in an approved application. However, you may request a redetermination only if you have not started producing hydrocarbons subject to the royalty suspension and one of the following situations occurs:

(i) You have significant new geologic or geophysical data that did not exist at the time of the previous application and that causes you to change your estimates of gross resource size, quality, or projected flow rates. Examples of new data include results from drilling new wells or obtaining new three-dimensional seismic data and information. Reinterpretation of existing data is not significant new data. The change in resource information must be sufficient to materially affect the results of the previous determination.

(ii) Prices for oil or gas have decreased at least 25 percent, determined as follows:

(A) Calculate the arithmetic average of daily closing prices for light sweet crude oil and for natural gas on the New York Mercantile Exchange (NYMEX) for the most recent 12 months.

(B) Calculate the weighted average prices for oil and gas calculated under (d)(1)(ii)(A) of this section using the volumes of oil and gas identified in the most likely scenario (required under § 203.55) described in your previous complete application for royalty relief.

(C) Perform the same calculations as required in paragraphs (d)(1)(ii)(A) and (B) of this section, but use the arithmetic average of daily closing prices for light sweet crude oil and for natural gas on the NYMEX for the 12-month period preceding the date of your previous complete application.

(D) If the weighted average price calculated under paragraph (d)(1)(ii)(B) of this section is at least 25 percent less than the weighted average price calculated under paragraph (d)(1)(ii)(C) of this section, then you satisfy the requirements of this paragraph; or

(iii) Prior to starting construction of your development/production system, you have revised your estimated development costs, and they are at least 120 percent of the eligible development costs associated with the most likely scenario described in your previous complete application.

(2)(i) Your request for a redetermination must include a new complete application, as discussed in paragraph (b) of this section and § 203.55. MMS will evaluate your application for a redetermination under paragraph (c) of this section.

(ii) MMS will determine within 20 working days if your application for a redetermination is complete. If your application is incomplete, MMS will provide you with an explanation of what it needs to become complete. If MMS later determines that your application does not meet any of the criteria under (d)(1)(i),(ii), or (iii) of this section, it will consider your application incomplete.

(iii) When MMS determines that your application is complete, MMS will evaluate the application within 120 days. MMS may extend the 120-day evaluation period for an additional 30 days if necessary to complete the evaluation. If you agree, MMS also may extend the 120-day period for more than 30 days.

(iv) If MMS must audit sunk costs to evaluate your application, MMS may request that the 120-day evaluation period be tolled from the time you receive notice from MMS until you provide the records necessary to conduct the audit.

(v) If MMS determines during the evaluation period that it cannot evaluate your application because:

(A) Vital information is missing;

(B) The data and information provided in support of the application are inconclusive; or

(C) Of any other valid reason; MMS may request that the 120-day evaluation period be tolled from the time you receive notice from MMS until you provide the needed data, explanations, or revisions.

(e) *When may MMS withdraw approval of an application for royalty relief?*

MMS will withdraw approval of your application for royalty relief if:

(1) You change the type of development system proposed in your approved application (e.g., change from stand-alone to tieback or vice versa);

(2) You fail to start construction of the approved development/production system within two years of the date MMS approved your application—notwithstanding any suspension granted under § 250.10 of this chapter; or

(3)(i) The actual development costs reported in your pre-production report (paragraph (c)(4) of this section) are less than 80 percent of the development costs from the date of application to the date of the pre-production report associated with the most likely scenario described in your approved application. In this case, you may retain 50 percent of the amount of the royalty suspension volume that MMS previously granted.

(ii) If MMS granted you a royalty suspension volume after you requested a redetermination under paragraph (d)(1)(iii) of this section, MMS may withdraw approval of your application for a royalty suspension if your actual development costs in your pre-production report (paragraph (c)(4) of this section) are less than 90 percent of the eligible development costs from the date of application to the date of the pre-production report associated with the most likely scenario described in your approved application.

(iii) If MMS discovers that the actual development costs are less than the amounts specified in paragraphs (e)(3)(i) or (ii) of this section, MMS will withdraw retroactively its approval of the royalty suspension volume. You will owe royalties and interest on all production that was subject to the previously granted royalty suspension.

(4) If MMS determines that you provided false historical or intentionally inaccurate information that was material to MMS in granting royalty relief under this section, MMS will rescind its approval as of the date of the approval. You must pay royalties and late payment interest determined under 30 U.S.C. 1721 and § 218.54 of this chapter on all volumes for which you used the royalty suspension. You also may be subject to penalties under other provisions of law.

(5) If MMS withdraws its approval of a royalty suspension for any of the reasons in paragraphs (e)(1), (2) or (3) of this section, you may apply again for relief under paragraph (b) of this section and § 203.55.

(f) *What happens if MMS fails to accept or reject my application in a timely manner?*

(1) For applications for fields from which no royalties were due on production, other than test production, prior to November 28, 1995, if MMS does not make its determinations on your application within the time period specified in paragraph (c)(1) or (d)(1) of this section, including any applicable extension, you will receive the minimum royalty suspension volumes specified in paragraph (h)(1)(i) of this section.

(2) For PSEP applications, if MMS does not make its determinations on your application within the time period specified in paragraph (c)(1) or (d)(2) of this section, including any applicable extension, you will receive a royalty suspension for the first year of the project's production.

(g) *How do I appeal an MMS decision under 203.53?*

(1) MMS' decision whether to grant deep-water royalty relief and its decision on the size of the royalty suspension volume are final agency actions. You have no right to further administrative review, including Secretarial review, of these decisions. The MMS's decisions are judicially reviewable under section 10(a) of the Administrative Procedure Act (5 U.S.C. 702) only if you file an action within 30 days of the date you receive MMS's decision. MMS's will send its decision to you by certified mail, return receipt requested.

(2)(i) Except as provided in paragraph (g)(2)(ii) of this section, MMS decisions on designating a lease as part of a field are final agency actions.

(ii) If MMS designates your lease as part of a field, within 15 days of such designation you may file a written request with the Director for reconsideration accompanied by a statement of reasons. The Director will respond in writing either affirming or reversing the decision. The Director's decision is the final decision of the Department.

(h) *How does a royalty suspension volume apply to your production?*

This paragraph explains how the royalty suspension volumes in section 302 of the OCS Deep Water Royalty Relief Act, apply to production from PDWL's. For purposes of this paragraph, any volumes of production that are not royalty bearing under the lease or the regulations in this chapter do not count against royalty suspension volumes. Also, for purposes of this paragraph, production includes volumes allocated to a lease under an approved unit agreement. The following provisions apply only to those leases for which the lessee(s) applies for and receives a royalty suspension volume under this section.

(1) For fields from which no royalties were due on production, other than test production, prior to November 28, 1995:

(i) The water depth of a lease is based on the water depth delineations in the "Royalty Suspension Areas Map" in effect at the time of your application. If the application for the field includes leases in different water depth categories, the minimum royalty volume associated with the deepest lease applies. The minimum royalty suspension volumes are: (A) 17.5 million barrels of oil equivalent (MMBOE) in 200 to 400 meters of water;

(B) 52.5 MMBOE in 400 to 800 meters of water; and

(C) 87.5 MMBOE in more than 800 meters of water.

(ii) If your PDWL is the only lease on the field, you do not owe royalty on the production from your lease up to the royalty suspension volume MMS granted.

(iii) If a field consists of more than one PDWL, payment of royalties on the PDWLs' production is suspended until their cumulative production equals the royalty suspension volume MMS granted. The royalty suspension volume for each lease equals each lease's actual production (or production allocated under an approved unit agreement) until cumulative production equals the field's royalty suspension volume.

(iv) If a PDWL or an eligible lease, as defined in § 260.102 of this chapter, is added to a field for which MMS has granted a royalty suspension volume under this section, the field's royalty suspension volume will not change. The additional lease may receive a royalty suspension volume only to the extent of its production from the field before the cumulative production from the field equals the royalty suspension volume MMS approved. However, before your PDWL may participate in the royalty suspension volume already granted to the field, you must apply for royalty relief using an abbreviated form available at the Gulf of Mexico OCS Regional Office.

(v) If your PDWL is part of a field that already has a royalty suspension volume for eligible leases under § 260.110 of this chapter, and you apply and qualify for royalty relief under this section, all the leases in the field share a single royalty suspension volume that is the greater of the volume established for the eligible leases under § 260.110 of this chapter or the volume MMS determines under this section.

(2) For a PSEP:

(i) If your PDWL is the only lease included in the project, you do not owe

royalty on the incremental production from the project up to the royalty suspension volume MMS granted.

(ii) If the project includes more than one lease, the royalty suspension volume for each lease equals each lease's actual incremental production from the project (or production allocated under an approved unit agreement) until cumulative incremental production for all leases in the project equals the project's royalty suspension volume.

(3) Your lease may receive more than one royalty suspension volume. You may apply for royalty relief under this section for each field that includes your lease, and each field would receive a separate royalty suspension volume if it meets the evaluation criteria of paragraph 203.53(c). You may also apply for relief for a PSEP, even if MMS has already granted a royalty suspension volume to the field that encompasses that project.

(4) You may receive a royalty suspension volume only if your entire lease is west of 87 degrees, 30 minutes West longitude. A field that lies on both sides of this meridian will receive a royalty suspension volume only for those leases lying entirely west of the meridian.

(5) You must measure natural gas production subject to the royalty suspension volume as follows: 5.62 thousand cubic feet of natural gas equals one barrel of oil equivalent, as measured at 15.025 psi, 60 degrees Fahrenheit, and fully saturated.

(6)(i) If in the previous calendar year the arithmetic average of the daily closing prices on the NYMEX for light sweet crude oil exceeds $28.00 per barrel, as adjusted in paragraph (h)(8) of this section, the royalty relief authorized in this section is suspended and any production of oil is subject to royalties at the lease stipulated royalty rate. However, this production counts as part of the established royalty suspension volume. By January 31 of the current calendar year, you must pay the royalty due plus interest, in accordance with 30 U.S.C 1721 and § 218.54 of this chapter, on any volume of oil from the previous year for which you did not pay royalty.

(ii) If the arithmetic average of the daily closing prices on the NYMEX for light sweet crude oil from the previous calendar year exceeds $28.00 per barrel, as adjusted in paragraph (h)(8) of this section, you must pay royalties on all your oil production in the current year. If the arithmetic average of the daily closing prices on the NYMEX for light sweet crude oil for the current calendar year is $28.00 per barrel or less, as adjusted in paragraph (h)(8) of this section, you are entitled to a refund or credit, with interest, of royalties paid that year on any royalty suspension volume for oil production. You must follow MMS regulations at part 230 of this chapter for receiving refunds or credits.

(7)(i) If in the previous calendar year the arithmetic average of the daily closing prices on the NYMEX for natural gas exceeds $3.50 per million British thermal units, as adjusted in paragraph (h)(8) of this section, the royalty relief authorized in this section is suspended and any production of natural gas is subject to royalties at the lease stipulated royalty rate. However, this production counts as part of the established royalty suspension volume. By January 31 of the current calendar year, you must pay the royalty due plus interest, in accordance with 30 U.S.C 1721 and § 218.54 of this chapter, on any volume of natural gas from the previous year for which you did not pay royalty.

(ii) If the arithmetic average of the daily closing prices on the NYMEX for natural gas for the previous calendar year exceeds $3.50 per million British thermal units, as adjusted in paragraph (h)(8) of this section, you must pay royalties on all your natural gas production in the current year. If the arithmetic average of the daily closing prices on the NYMEX for natural gas for the current calendar year is $3.50 per million British thermal units or less, as adjusted in paragraph (h)(8) of this section, you are entitled to a refund or credit, with interest, of royalties paid that year on any royalty suspension volume for natural gas production. You must follow MMS regulations at part 230 of this chapter for receiving refunds or credits.

(8) Change the prices referred to in paragraphs (h)(6) and (7) of this section during each calendar year after 1994 by the percentage, if any, by which the implicit price deflator for the gross domestic product changed during the preceding calendar year.

(9) A royalty suspension volume will continue until the end of the month in which the cumulative production from the field or PSEP reaches the established royalty suspension volume.

§ 203.54 [Reserved]

§ 203.55 What information is required for the net revenue share royalty relief and deep-water royalty relief application supplemental reports?

(a) You must submit the applicable supplemental reports listed below.

(1) *Administrative information and relief justification.*

All royalty relief applications must contain this report, which must include:

(i) Field name;

(ii) Serial number of leases in the field, names of the lease the titleholders of record, the lease operators, and the identification of whether any lease is part of a unit;

(iii) The API number and location of each well that has been drilled on the field/lease or project;

(iv) Location of any new wells proposed under the terms of the application;

(v) Description of field/lease history;

(vi) Statement that the reserves would not be produced without relief;

(vii) Full information as to whether royalties or payment out of production will be paid to anyone other than the United States, the amount to be paid, and the amount of reduction in such payment if relief is granted;

(viii) Amount of relief needed to make the lease *(NRS royalty relief)*, field *(deep-water royalty relief)*, or project economic;

(ix) Confirmation that MMS approved a DOCD or supplemental DOCD *(NRS expansion of production and deep-water royalty relief application only)*; and

(x) A narrative description of the development activities associated with the proposed capital investments and an explanation of proposed timing of the activities and the effect on production *(NRS expansion of production and deep-water royalty relief application only)*.

(2) *Net revenue share economic viability report.*

NRS royalty relief applications must contain this report. This report must present cash flow data, including 36 months of historical data and 12 months of projected data, for the following items:

(i) Lease production subject to royalty;

(ii) Total revenues;

(iii) Royalty payments out of production;

(iv) Operating costs;

(v) Transportation and processing costs;

(vi) Capital expenditures (if applicable); and

(vii) Well drilling costs (if applicable).

(3) *Deep-water royalty relief economic viability report.*

This report should demonstrate that the project appears economic without royalties and sunk costs using the model provided by MMS. A company may provide supplemental information, including its own model and model results. This report must include all of the items listed below.

(i) Economic assumptions provided by MMS:

(A) Starting oil and gas prices;

(B) Real price growth;

(C) Real cost growth or decline rate, if any;

(D) Base year;

(E) Range of discount rates; and

(F) Tax rate (for use in determining after-tax sunk costs).

(ii) Projected cash flow analysis (from application date using annual totals and constant dollar values). All costs, gross production, and scheduling must be consistent with the data in the reserve, engineering, production, and cost reports, and the three scenarios (conservative, most likely, optimistic; provided in the various reports must be consistent with each other and the proposed development system. The analysis must show:

(A) Oil/gas production;

(B) Total revenues;

(C) Capital expenditures;

(D) Operating costs;

(E) Transportation costs; and

(F) Before tax net cash flow.

(iii) Discounted values.

(A) Discount rate used (selected from within range provided in MMS guidelines).

(B) Before tax net present value without royalties, overrides, sunk costs, and ineligible costs.

(4) *Deep-water royalty relief cost report.*

Deep-water royalty relief applications must contain this report. Report all actual and projected costs listed in this paragraph in the format detailed in the guidelines.

(i) Sunk costs. This includes all eligible costs, in current dollars and for which documentation is provided, actually incurred subsequent to and including the first discovery well on the field. Sunk costs count on an after-tax, expensed basis, using nominal (current dollar) amounts.

(ii) Delineation and development costs, based on actual costs or current authorization for expenditures. These costs include:

(A) Platform well drilling costs and average depth;

(B) Platform well completion costs;

(C) Subsea well drilling costs and average depth;

(D) Subsea well completion costs;

(E) Production system (platform) costs; and

(F) Flowline fabrication and installation costs.

(iii) Production costs, based on historical costs, engineering estimates, or analogous projects. These costs include:

(A) Operating costs;

(B) Equipment costs; and

(c) Existing royalty overrides (MMS will not use the royalty overrides in its evaluation).

(iv) Transportation costs, based on historical costs, engineering estimates, or analogous projects. These costs include:

(A) Oil and/or gas tariffs from pipeline or tankerage;

(B) Trunkline/tieback line costs; and

(C) Gas plant processing costs for NGL's.

(v) Ineligible costs. These costs include:

(A) Acquisition costs;

(B) Application fees;

(C) Prospective exploration well costs;

(D) Costs associated with obligations existing prior to the application; and

(E) Other ineligible costs listed in § 203.55(b).

(vi) Uncertainty. You must provide a cost scenario consistent with each one of the three field development and production profiles (conservative, most likely, optimistic). Express costs in constant real dollar terms for the base year. You may also express the uncertainty of each cost scenario as a minimum and maximum percentage of the base value.

(vii) Scheduling. Provide costs on an annual basis (in real dollars) for each of the categories in paragraphs (a)(4)(i) through (a)(4)(vi) of this section.

(viii) Abandonment. Provide the costs to plug and abandon wells and to remove production systems for which costs have not been incurred at the time of application.

(ix) Pre-production report. You must file a pre-production report 60 days before the start of the production subject to an approved royalty suspension. For each of the cost categories in the deep-water royalty relief cost report, you must include actual costs up to the date when the pre-production report is submitted. Retain supporting records for these costs and make them available to MMS upon request.

(5) *Geologic and geophysical report.*

Deep-water royalty relief and NRS production expansion proposal applications must contain this report. This report must include all of the items listed below.

(i) Seismic data:

(A) Non-interpreted 2D/3D survey lines (8mm tape) (SEGY format or IES format);

(B) Interpreted 2D/3D seismic survey lines identifying all known and prospective pay horizons, wells, and fault cuts;

(C) Digital velocity surveys in format of LTL 10/1/90;

(D) Plat map of "shot points;" and

(E) "Time slices" of potential horizons.

(ii) Well data.

(A) Hard copies of all well logs.

(*1*) One-inch electric log must show:

(*i*) pay zones and pay counts; and

(*ii*) lithologic and paleo correlation markers at least every 500 ft.

(*2*) One-inch type log must show missing sections from other logs where faulting occurs.

(*3*) Five-inch electric log must show:

(*i*) pay zones and pay counts; and

(*ii*) labeled points used in establishing Ro and Rt.

(*4*) Five-inch porosity logs must show:

(*i*) pay zones and pay counts; and

(*ii*) labeled points used in establishing reservoir porosity or labeled points showing values used in calculating reservoir porosity such as bulky density or transit time.

(B) Digital copies of all well logs spudded before December 1, 1995.

(C) Core data, if available:

(D) Well correlation sections.

(E) Pressure data.

(F) Production test results.

(G) PVT analysis, if available.

(iii) Map interpretations. For each reservoir included in the application, you must submit:

(A) Structure maps and top and base of sand maps showing well and seismic shot point locations;

(B) Isopach maps for net sand, net oil, net gas, all with well locations;

(C) Maps indicating well surface and bottom hole locations, location of development facilities, and shot points; and

(D) Identification of reservoirs not contemplated for development.

(iv) Reservoir data. For each reservoir included in the application, you must identify and submit:

(A) Oil and/or gas reserve/resource distribution;

(B) Probability of reservoir occurrence with hydrocarbons;

(C) Probability the hydrocarbon in the reservoir is oil, and the probability it is gas;

(D) Distributions for the parameters used to estimate the resources, i.e. acre, net thickness, recovery, porosity, salt water saturation, formation volume factor;

(E) Aggregated BOE reserve/resource for the field;

(F) Gas/oil ratio distribution for each reservoir;

(G) Yield distribution for each gas reservoir;

(H) Description of anticipated crude quality (e.g., gravity); and

(I) Points on the aggregated reserve/resource distribution used for the determination of the three (conservative, most likely, optimistic) production profiles specified in the production report.

(6) *Production report.* Deep-water royalty relief and NRS production expansion proposal applications must contain this report, which must include all of the items listed below.

(i) Production profile. Submit actual and projected (BOE) production by year for each of the following products: oil, condensate, gas, and associated gas.

(ii) Uncertainty *(deep-water royalty relief only).* Submit three production profiles as described in paragraph (a)(6)(i) of this section. Each one must be consistent with a specific point on the aggregated reserve/resource distribution and must represent a conservative, most likely, and an optimistic case.

(iii) Production drive mechanisms for each reservoir.

(iv) Quality adjustments to prices for gravity, sulfur, etc.

(7) *Engineering report.*

Deep-water royalty relief and NRS production expansion proposal applications must contain this report. However, NRS expanded production applications should submit this information only as it relates to the planned development. This report must include all of the items listed below.

(i) Development concept:

(A) Tension leg platform, fixed, floater type, subsea tieback, etc.; and

(B) Construction schedule.

(ii) Planned wells:

(A) Number of wells planned;

(B) Type of well (platform, subsea, vertical, deviated, horizontal);

(C) Well depth;

(D) Drilling schedule;

(E) Completion description (single, dual, horizontal, etc.); and

(F) Completion schedule.

(iii) Production system equipment:

(A) Production capacity for oil and gas and a description of its limiting component(s);

(B) Unusual problems (low gravity, high sulfur content, etc.);

(C) Subsea structures;

(D) Flowlines; and

(E) Production system installation schedule.

(iv) Multi-phase development plans;

(A) Conceptual basis for developing in phases and goals/milestones required for commencing subsequent phases; and

(B) Justification for the exclusion of reservoirs not contemplated for development.

(v) Uncertainty. Submit schedules for development consistent with each of the three field production profiles (conservative, most likely, optimistic) provided in the production report.

(b) Ineligible costs. MMS will not include certain costs in making its royalty relief determinations. These include, but are not limited to:

(1) Costs incurred before first discovery on the field;

(2) Cash bonuses;

(3) Royalty relief application fees;

(4) Lease rentals, royalties, and net profit share and net revenue share payments;

(5) Legal expenses;

(6) Damages and losses;

(7) Taxes;

(8) Interest or finance charges;

(9) Fines or penalties;

(10) Designated well costs, including prospective exploration and delineation costs; and

(11) Costs associated with prior existing obligations (e.g., royalty overrides or other forms of payment for acquiring a financial position in a lease, expenditures for plugging wells and removal and abandonment of facilities existing on the date of the application).

(c) The applicant or the applicant's authorized representative must certify that all information submitted in an application or a pre-production report is accurate and complete. The application or pre-production report must be accompanied by a report prepared by an independent certified public accountant (CPA) expressing an unqualified opinion on the accuracy of the actual historical financial information presented in the application or pre-production report and that the presentation of data and information conforms to the MMS guidelines. The applicant will make the independent CPA available to the MMS to respond to questions which may arise regarding the evaluation of the historical information. This requirement does not limit the MMS's ability to conduct further review of the applicant's records to support the historical financial information included in the application.

§ 203.56 Recovery of application processing costs.

When you submit an application for royalty relief, you must include a payment to reimburse MMS for the costs it incurs in processing your application. The MMS will establish in a Notice to Lessees a schedule that will specify the fees that must be paid for each of the different types of royalty relief applications. Regional Directors will periodically update the fee schedule to reflect changes in MMS costs as well as to provide other information necessary for the administration of our royalty relief program.

[FR Doc. 96–13626 Filed 5–30–96; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE TREASURY

Secret Service

31 CFR Part 411

[1505–AA69]

Color Illustrations of U.S. Currency

AGENCY: Secret Service, Treasury.

ACTION: Final rule.

SUMMARY: Pursuant to the Counterfeit Deterrence Act of 1992, the Secret Service permits color illustrations of United States currency provided such illustrations are consistent with the requirements set out in this final rule. Prior to the issuance of this rule, color illustrations of U.S. currency were not permitted.

EFFECTIVE DATE: May 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mark Mulligan, Attorney/Advisor, Office of Chief Counsel, U.S. Secret Service, 1800 G Street, N.W., Room 842, Washington, D.C. 20223, (202) 435–5771.

SUPPLEMENTARY INFORMATION: On June 26, 1995 (60 FR 32929), the Secret Service proposed to amend title 31, chapter IV of the Code of Federal Regulations by adding part 411 which would permit color illustrations of U.S. currency. At the time this proposal was issued, illustrations of U.S. currency were only permitted provided the illustration was in black and white and was of a size less than three-fourths or more than one and one-half, in linear dimension, of each part so illustrated, and provided the negatives and plates used in making the illustration were destroyed after their final use. 18 U.S.C. 504. Color illustrations of U.S. currency were not permitted.

Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. Five comments were received. The Secret Service carefully reviewed and evaluated these comments. In considering these comments, the Secret Service carefully weighed the recommendations and comments with the federal government's compelling interest of preventing the counterfeiting of U.S. currency.

Specifically, all the commentators to some extent questioned the need for and practicality of the requirement that the term "non-negotiable" be prominently and conspicuously placed across the center portion of any color illustration. After careful consideration, the Secret Service has decided to amend its proposal by removing the requirement that the term "non-negotiable" be placed on any color illustration.

One comment addressed the requirement that "all negatives, plates, positives, digitized storage medium, graphic files, magnetic medium, optical storage devices, and any other thing used in the making of the illustration that contain an image of the illustration or any part thereof shall be destroyed and/or deleted or erased immediately after their final use in accordance with this section." Proposed 31 CFR 411.1(a)(4). Specifically, this comment questioned the need for the immediate destruction of such items. After careful consideration of this comment and in order to be consistent with 18 U.S.C. 504, the Secret Service has decided to remove the word "immediately" from the final rule. Therefore, both the final rule and 18 U.S.C. 504 require that such items be destroyed after their "final use" in accordance with each respective provision.

Another comment suggested that the proposed rule should be expanded by identifying certain kinds of illustrations that could be considered not to give rise to an inference of an intent to defraud. The Secret Service disagrees. It is the Secret Service's position that a single rule applicable to all color illustrations be implemented for the sake of simplicity and consistency. Such a rule will be more easily understood by the public than a rule which contains exceptions for various types of illustrations. Further, not all of the statutory sections concerning the reproduction of U.S. currency require that an intent to defraud be established in order for a violation of law to occur. *See,* e.g., 18 U.S.C. 474.

The final rule requires the color illustrations to comply with the current size restrictions set out in 18 U.S.C. 504. In addition, such color illustrations must be one-sided.

The exceptions established by this rule, like the exceptions set out in 18 U.S.C. 504, apply notwithstanding any other provision of chapter 25 of Title 18 of the U.S. Code. However, the criminal liability imposed by 18 U.S.C. 474 and other applicable sections of chapter 25 of Title 18 of the U.S. Code could apply where a color illustration of U.S. currency fails to meet the requirements imposed by this regulation.

It has been determined that this document is not a significant regulatory action under Executive Order 12866. This rule permits the color illustrations of U.S. currency, which heretofore were prohibited by law. Further, pursuant to section 605(b) of the Regulatory Flexibility Act and for the reasons set forth above, it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule 30 days after publication in the **Federal Register** because this rule permits a practice heretofore prohibited by statute.

List of Subjects in 31 CFR Part 411

Counterfeiting, Currency.

In consideration of the foregoing, the Secret Service amends title 31, chapter IV of the Code of Federal Regulations by adding part 411 as set forth below.

PART 411—COLOR ILLUSTRATIONS OF UNITED STATES CURRENCY

Authority: 18 U.S.C. 504; Treasury Directive Number 15–56, 58 FR 48539 (September 16, 1993)

§ 411.1 Color illustrations authorized.

(a) Notwithstanding any provision of chapter 25 of Title 18 of the U.S. Code, authority is hereby given for the printing, publishing or importation, or the making or importation of the necessary plates or items for such printing or publishing, of color illustrations of U.S. currency provided that:

(1) The illustration be of a size less than three-fourths or more than one and one-half, in linear dimension, of each part of any matter so illustrated;

(2) The illustration be one-sided; and

(3) All negatives, plates, positives, digitized storage medium, graphic files, magnetic medium, optical storage devices, and any other thing used in the making of the illustration that contain an image of the illustration or any part thereof shall be destroyed and/or deleted or erased after their final use in accordance with this section.

(b) [Reserved].

Paul A. Hackenberry,

Assistant Director, Office of Investigations.

[FR Doc. 96–13693 Filed 5–30–96; 8:45 am]

BILLING CODE 4810–42–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AI06

National Cemeteries

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) national cemeteries regulations by eliminating provisions that simply restate statutory provisions of 38 U.S.C. 2306, 2400, 2401, 2402, 2407, and Chapter 83; by eliminating provisions that duplicate other regulations in 38 CFR 1.218–1.220, and by eliminating internal instructions not required to be published in the **Federal Register**.

EFFECTIVE DATE: May 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Greenberg, Program Analyst, National Cemetery System, Executive Communications (402B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–5179 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This final rule consists of nonsubstantive changes and, therefore, is not subject to the notice and comment and effective date provisions of 5 U.S.C. 553.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entitles as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule merely consists of nonsubstantive changes.

Catalog of Federal Domestic Assistance Numbers for programs affected by this regulation are 64.201, 64.202 and 64.203.

List of Subjects in 38 CFR Part 1

Administrative practice and procedures, Cemeteries, Claims, Privacy, Security.

Approved: May 17, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 1 is amended to read as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. The authority citation immediately preceding §§ 1.600 to 1.633 is revised to read as follows:

Authority: Sections 1.601 to 1.633 issued under 38 U.S.C. 501, 2306, chapter 24.

§§ 1.600, 1.604, 1.631 [Removed]

3. Sections 1.600, 1.604, and 1.631 are removed.

§ 1.601 [Amended]

4. In § 1.601, paragraph (a) is removed; and paragraphs (b) and (c) are redesignated as paragraphs (a) and (b), respectively.

§ 1.603 [Amended]

5. In § 1.603, paragraphs (a) and (b) are removed; the paragraph designation (c) and its heading are removed; paragraphs (c)(1) and (c)(2) are redesignated as paragraphs (a) and (b), respectively; and newly redesignated paragraphs (a)(i), (a)(ii), (a)(iii), and (a)(iv) are redesignated as paragraphs (a)(1), (a)(2), (a)(3) and (a)(4), respectively.

6. Section 1.620 is revised to read as follows:

§ 1.620 Eligibility for burial.

Section 2402 of title 38, United States Code, bestows eligibility for burial in any open cemetery in the National Cemetery System. The following rules in paragraphs (a) through (c) of this section state conditions in addition to those imposed by statute. To be eligible for burial in a national cemetery:

(a) A United States citizen who served in an allied armed force, as provided in 38 U.S.C. 2402(4), must have been a citizen of the United States at the time of entry on such service and at the time of his or her death.

(b) A minor child of an eligible person, as provided in 38 U.S.C. 2402(5), must have been at the time of his or her death under 21 years old or under 23 years old if pursuing a course of instruction at an approved educational institution.

(c) An unmarried adult child of an eligible person, as provided in 38 U.S.C. 2402(5), must have been physically or mentally disabled and incapable of self support.

(Authority: 38 U.S.C. 2402)

§ 1.630 [Amended]

7. In § 1.630, paragraph (b) is amended by removing the second and third sentences.

[FR Doc. 96–13477 Filed 5–30–96; 8:45 am]

BILLING CODE 8320–01–P

---

38 CFR Part 1

RIN 2900–AI09

Gender Policy for VA Publications and Other Communications

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends regulations of the Department of Veterans Affairs (VA) by removing § 1.13 of 38 CFR. This section provided that VA publications and other communications must avoid using language refering only to the masculine gender when the feminine gender also was intended to be included. This guidance was intended to avoid any incorrect appearance of seeming to preclude benefits for female veterans, dependents, or beneficiaries. Although, VA is fully committed to the gender-neutral concepts that were set forth in § 1.13, the material from § 1.13 is removed since the mandate from that section is being accomplished through internal issuances.

EFFECTIVE DATE: May 31, 1996.

FOR FURTHER INFORMATION CONTACT: Kenneth Hoffman, Director, Information Resources Management, Policy and Standards Service (045A3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8129.

SUPPLEMENTARY INFORMATION: This final rule consists of nonsubstantive changes and, therefore, is not subject to the notice and comment and effective date provisions of 5 U.S.C. 553.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5. U.S.C. 601–602. This final rule would not cause a significant effect on any entities since it does not contain any substantive provisions. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

There are no Catalog of Federal Domestic Assistance program numbers for this regulation.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Claims, Freedom of information, Government contracts, Government employees, Government property, Reporting and recordkeeping requirements.

Approved: May 13, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 1 is amended as set forth below:

PART 1—GENERAL PROVISIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 1.131 [Removed]

2. The undesignated centerheading preceding § 1.13 and § 1.13 are removed.

[FR Doc. 96–13478 Filed 5–30–96; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[OMC–004–F]

RIN 0938–AE64

Health Maintenance Organizations: Employer Contribution to HMOs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule amends § 417.157 of the HCFA regulations, which pertains to employer contributions to health maintenance organizations (HMOs) that are included among the alternatives in health benefits plans that an employer offers to its employees.

These amendments are necessary to conform that section to changes made in section 1310(c) of the Public Health Service Act by section 7(a)(2) of the HMO Amendments of 1988.

The intent is to ensure that employees who choose the HMO alternative are not financially disadvantaged.

DATES: Effective Date: These regulations are effective on July 1, 1996.

FOR FURTHER INFORMATION, CONTACT: Marty Abeln, (410) 786–1032.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1310 of the Public Health Service (PHS) Act, the following rules apply:

- Certain public and private employers that offer health benefits plans to their employees must include the option of enrollment in qualified health maintenance organizations (HMOs) if such HMOs request inclusion and their requests meet specified conditions as to content and timing (this is known as the "employer mandate" provision);
- The procedures for offering the HMO option must take into account the rules of collective bargaining; and
- No employer is required to contribute more for health benefits than would be required by any prevailing collective bargaining agreement or any other legally enforceable contract between the employer and the employees for health benefits.

These provisions are implemented by subpart E of part 417 of the HCFA rules. Section 417.157 of those rules provides that—

- The employer or designee must include the HMO option in the offering on terms no less favorable, with respect to the employer's monetary contribution or designee's cost than the terms on which the other alternatives are included; and
- An employer's contribution must be equal, in dollar amount, to the largest contribution made by that employer, on behalf of a particular employee, to a non-HMO alternative included in the plan offering.

II. Statutory Amendment

Under amendments made to section 1310 of the Public Health Service Act by section 7 of Public Law 100–517—

- If an employer offers a health benefits plan to its employees and includes an HMO as required by the mandate provisions discussed above, any employer contribution under the plan must "not financially discriminate" against an employee who enrolls in the HMO;
- The employer's contribution does not discriminate if the "method of determining the contribution on behalf of all employees is reasonable and is designed to assure employees a fair choice among health benefits plans".
- The "employer mandate" provision expires on October 24, 1995, and employers that voluntarily include HMOs after that date must meet the nondiscrimination standard for their contributions.

The legislative history of this provision makes clear that, while the Congress agreed that our current "dollar for dollar" test was consistent with previous law, the Congress now intends to give employers greater flexibility.

The committee reports accompanying Public Law 100–517 provided examples of some methods of contribution that would meet the legislative requirement. (See, for example, the report of the Senate Committee on Labor and Human Resource, Sen. Rep. No 304, 100th Cong., 2nd Sess., 9–11 (1988).) We incorporated those examples in the proposed rule at § 417.157(a)(4). We indicated that, if an employer followed one of those methods, we would not consider the contributions to be financially discriminatory.

Method 1: The employer may contribute to the HMO the same amount it contributes to the non-HMO alternative. For example, an employer that contributes $80 per month on behalf of each employee who joins an indemnity plan and pays the same amount on behalf of each employee who joins the HMO would not be discriminating.

Method 2: An employer's contributions may vary for different classes of enrollees established on the basis of attributes, such as age, sex, or family status, that are reasonable predictors of utilization, experience, costs, or risk. For each enrollee in a given class, the employer would contribute an equal dollar amount, regardless of the plan that an employee chooses. To illustrate, one such class might be single males under the age of 30. If the employer's cost for the class of single males under age 30 in an indemnity or self-insurance plan is $60, and the employer's contribution for HMO enrollment for each employee in that particular class were $60, there would be no discrimination. The employer would follow this methodology for each of the other classes. By calculating the contribution for HMO enrollment for each class in this way, the employer would determine its total payment on behalf of all employees enrolling in the HMO.

Method 3: If the employer's policy is that all employees contribute to their health benefits plan, an employer may require employees to make a reasonable minimum contribution to an HMO. We would consider an employee contribution that did not exceed 50 percent of the employee contribution to the principal non-HMO alternative to be reasonable in such a situation. To illustrate, assume that the HMO's premium is $80, the alternative plan's premium is $100, and the employer contributes $80 on behalf of each employee who participates in the alternative plan. In such a case, employees who join the HMO would have no out-of-pocket costs while employees who remain with the alternative plan would contribute $20. If the employer had a policy requiring a minimum employee contribution for health benefits, we would consider it reasonable for the employer to require employees who enroll in the lower cost plan, in this example the HMO, to pay an amount not in excess of $10, which is 50 percent of the employee contribution to the non-HMO alternative.

Method 4: An employer's contribution may be the same percentage of the premium of each alternative the employer offers. For example, if the employer pays 90 percent of the premium of each non-HMO alternative offered, we would find no discrimination if the employer pays 90 percent of the HMO premium.

Method 5: Employers and HMOs may negotiate contribution arrangements that are mutually acceptable. In negotiating those arrangements with a Federally qualified HMO, an employer may not insist on terms that would cause the HMO to violate any of the requirements for being a qualified HMO, as set forth in subparts B and C of part 417 of the HCFA rules. Any negotiated arrangements must meet the basic criteria for nondiscrimination against employees who enroll in HMOs.

Although the major thrust of the statutory amendment is to provide greater flexibility to the employer while ensuring fair choice for employees, two of the committee reports (discussed below in the response to comment #6) specify that HMOs are also protected from "discriminatory and unfair contribution practices".

III. Proposed Rule

On July 5, 1991, at 56 FR 30723, we published a proposed rule that would amend § 417.157 to implement the statutory change discussed above, primarily by incorporating the examples.

Also included were proposed minor amendments to those portions of § 417.107 that pertained to quality assurance and to certification of institutional providers, and the removal of an outdated requirement. No comments were received on this part of the NPRM. While this final rule was under development, the document identified as OCC–015–FC (published on July 15, 1993 at 58 FR 38062) made the proposed changes. It removed obsolete paragraph (f), redesignated paragraph (h) as paragraph (a) of § 417.106, and redesignated paragraph (i) as paragraph (h) of § 417.124.

IV. Discussion of Comments on the Proposed Rule

We received seven letters of comment; three from HMOs, two from industry associations, and one each from a law firm and a consultant. Their comments and our responses to them are discussed under several subject areas.

A. "Contribution by Class" Method

This is the second of the five examples listed in the proposed rule. Under this method, employers may contribute different amounts for different classes of employees classes based on factors such as age, sex, and family status.

1. *Comment:* One commenter noted that this appeared to allow differential employer contributions for male and female employees which would presumably result in different out-of-pocket costs for male and female employees. The commenter thought this would be illegal discrimination as it would violate title VII of the 1964 Civil Rights Act. In addition, the commenter questioned whether an age-based classification would violate HCFA regulations that require that employees

and spouses over age 65 be provided health coverage on the same terms as coverage for younger employees.

1. *Response:* This comment has brought to our attention that "Method 2", which was taken directly from the legislative history, is misleading. First, the example assumes that the employer would have differential costs by age and sex in its contributions towards *indemnity* plans, which would be reflected in its payment to HMOs. However, we understand that health insurers that contract with *employer groups* do not vary rates between men and women, or according to age, but rather develop composite rates similar to the HMO community rates, i.e., distinguishing only between individuals and families. This, as a practical matter, makes the example in "Method 2" inaccurate. We are revising the regulation text accordingly.

However, we note that gender-based distinctions under an employee benefit plan *would* likely violate title VII of the Civil Rights Act of 1964, as interpreted by the Supreme Court. That statute is under the jurisdiction of the Equal Employment Opportunity Commission (EEOC), and beyond the scope of this regulation. Any questions as to whether a particular fact situation would or would not violate title VII should be directed to the EEOC.

We also note that the HCFA regulations cited by the commenter do not impose a general prohibition against age-based distinctions, but apply only to distinctions based on attainment of age 65. This implements explicit statutory language.

2. *Comment:* Two commenters were concerned that some employers may wish to use prior year data on attributes that may not be reasonable predictors of utilization, experience, costs, or risk. In order to prevent confusion on this issue, one commenter proposed adding the word "demographic" to the example, to read:

> An employer's contributions may reflect the demographic composition of enrollees according to attributes such as age, sex and family status* * *

2. *Response:* We do not believe that the Congress intended to limit to "demographic factors" the "attributes" employers may use in determining their contribution amount. The supporting committee reports suggest a broader concern: that employers be able to determine their contribution using a method that reflects the HMO's actual costs, so that the employers realize cost savings if their employees use fewer or less costly services. We believe that the critical language is the requirement that the attributes must be such as can reasonably be expected to predict utilization, experience, costs, and risks. Age, sex, and family status are given only as examples. In summary, if an employer can establish that a nondemographic attribute can reasonably be considered a predictor of those factors, it is acceptable. On the other hand, if an HMO can show that a particular health status factor cannot reasonably be considered to be a predictor, it is not acceptable. We do not believe it is necessary or appropriate for the regulations to elaborate further on the standard.

3. *Comment:* One commenter had additional questions about the application of nondemographic factors. He expressed concern about the validity and potential for abuse of employers' revising their HMO contribution amount on the basis of studies of health costs incurred by persons who switched from the employer's self-insured plan to an HMO, or on national data showing that HMOs receive favorable selection.

The commenter requested that HCFA provide more information about how prior use data may appropriately be used to predict future health care costs and thus be a legitimate factor in developing employer contributions by class. The commenter concluded by proposing that HCFA—

a. Establish guidelines as to the circumstances under which employers may make contribution decisions using data on prior utilization of employees who switch to an HMO, and require justification for such use;

b. Require employers to obtain prior HCFA approval for any method not allowed under the guidelines; and

c. Specify the minimum number of employees for whom data must be obtained, for the data to be considered statistically valid.

3. *Response:* As previously discussed, under the contribution by class method, any employee attribute used in an employer's contribution methodology must be one that can reasonably be expected to predict the health care utilization, experience, costs, or risk of those employees who are enrolling in the HMO. Health status attributes such as previous health care utilization and costs are generally accepted as predictors of future health care costs and are acceptable for employers to use in determining their contribution to an HMO.

The legislation requires that the employer's method for calculating the contribution be "reasonable" and ensure employees a "fair choice" among the plans offered. We believe that in order to meet the standard of being reasonable and ensuring employees a fair choice, the method of determining the employer's contribution must reflect a reasonable estimate of the cost of providing health care services for the actual enrollees of a particular HMO.

We also believe that the intent of the legislation is to provide employers with flexibility in determining their contribution methodology, as long as it meets the "reasonable" and "fair choice" standards. Therefore, we will not specify a minimum number of employees to be used in the calculations. Although we do not require prior approval, we do require the employer to make available to HCFA, upon request, information on how it calculates its contribution. If the HMO or the employees believe that the contribution does not meet the "reasonable" and "fair choice" standards, they may request that HCFA review the methodology.

4. *Comment:* Two commenters requested that HCFA provide guidance on possible exceptions to the principle that the "contribution by class" method should reflect the actual enrollment of each HMO.

The first commenter noted that it is not unusual for an employer to offer one or more indemnity plans and several HMOs to achieve HMO coverage over a broad enough area or for other reasons. In such cases, the commenter noted, it would be desirable for the employer to establish a single HMO contribution rate, even though the different HMOs may in fact charge different rates. To avoid compelling the employer to find a separate contribution for each HMO, the final regulations should treat the HMO contribution as acceptable if it meets the required standard with respect to any of the HMOs or with respect to the average of the HMO charges.

The second commenter was concerned that an employer might take the demographic data from all the HMOs it offered and come up with a single "composite" contribution amount for all of them. This commenter believed that a single "composite" contribution should not be allowed because the employer had not developed it on the basis of the expected demographic characteristics of the mandating HMO. The commenter noted that if the employer combines the demographic data of the mandating HMO with the data of another HMO or other health benefits plans it offers its employees, the employer would not be making an equal dollar contribution for each employee in a particular class.

4. *Response:* The basic rule is that the methodology must be reasonable and must offer employees a fair choice among health benefit plans. As noted above, we take the position that it must reflect the actual attributes of each HMO's enrollment. It seems unlikely, for example, that an employer with employees in widely dispersed geographic areas, or in rural as well as urban areas could establish a "composite" contribution that would meet the standard. However, if an employer can show that in its particular situation, a composite amount would meet the standard, it could be acceptable. For example, all of the HMOs might be shown to serve the same general geographic area and attract the same type of enrollee. Absent such a showing, it would not be sufficient to meet the standard for a single HMO without considering the others.

We note that the second commenter objected to a composite contribution amount on the grounds that the employer would not be making an equal dollar contribution for all members of a particular class. Although the "contribution by class" method requires equal dollar amounts within each class, there could be other similar approaches that do not use equal dollar amounts but still meet the standard of reasonableness and fair choice.

B. Minimum Employee Contribution Method

5. *Comment:* One commenter suggested that example (iii), which states that the employer may require employees to contribute to the HMO an amount that does not exceed 50 percent of the employee contribution to the principal non-HMO alternative, include two additional limitations:

a. The minimum contribution requirement can be invoked only if an employee would otherwise have to pay little or nothing for the HMO plan.

b. The employee contribution may not exceed $20 per month.

5. *Response:* We agree with the commenter that the "minimum employee contribution" approach can be used only if the HMO coverage would otherwise be available at nominal or no cost. This is specifically stated in the legislative history and was implicit in the proposed rule. We are making it explicit in the final rule. However, we will not establish a $20 maximum because the Congress, in stating that it would be reasonable to set the limit for the required contribution at 50 percent of the contribution to the non-HMO alternative, established that amount as the maximum.

C. Miscellaneous Aspects

6. *Comment:* One commenter was concerned that the intent of the Congress that contribution arrangements not discriminate against the HMO is not evident in the regulation. The committee report language is essential to an understanding of the legislative intent. There should be a statement in the final regulation or preamble to the effect that it is not the intent of the law to allow practices that would be unfair or discriminatory to the HMO, and that such practices will not be permitted.

The commenter also suggested that the purpose of the HMO provisions and the examples set forth in the committee reports could provide a basis for HCFA to establish strict criteria for evaluating any method that results in the employer's paying less on behalf of an employee who enrolls in an HMO than on behalf of an employee who enrolls in a non-HMO alternative. The commenter urged that exceptions be narrowly construed and allowed only for compelling reasons. Otherwise, the underlying purpose for enactment of section 1310 of the PHS Act would be circumvented. The commenter recommended that we adopt the following factors as the basis for determining whether an employer contribution is reasonable and offers a fair choice:

- The method proposed by the employer must be consistent with the purposes of encouraging the effective and efficient delivery of health care services and reducing health care costs.
- Financial discrimination against employees who enroll in an HMO must be minimal and only to the extent necessary to accomplish the purposes.

Another commenter asked if a contribution method in which the employer contributed the difference between the employee contribution and the health plans' premiums resulting in employees having an equal expense whether they choose an HMO or a more expensive indemnity plan, would be prohibited by these proposed rules. The commenter stated that such a practice *clearly* discriminates in favor of the more expensive plan (typically a non-HMO plan) and thus unfairly discriminates against employees and the HMO.

6. *Response:* With respect to the first comment, section 1310(c) of the PHS Act does not mention discrimination against the HMO. The employer contribution is acceptable if it "is reasonable and is designed to assure employees a fair choice among health benefits plans". The legislative history cited by the commenter states that the new standard "enhances employers' flexibility in determining their contributions to HMOs while protecting employees and HMOs from discriminatory and unfair contribution practices." (Sen. Rep. No. 100–304, H.R. Rep. No. 100–417) However, the fact that the statute does not contain the reference to the HMO indicates that this statement supports, at most, a balance of the interests of the three parties, with primary weight given to the employer and employee interests.

With respect to the suggestion that the HMO contribution cannot be less than the non-HMO contribution, unless it is shown to "encourage effective and efficient delivery of health care", we note that the legislative history clearly states that a dollar-for-dollar match is no longer required. Moreover, two of the examples provided in the legislative history *assume* that there will be an unequal contribution, and that it will be to the HMO's disadvantage. First, an employer can require employees to pay for their HMO coverage *even if the methodology would otherwise result in no cost to the employees.*

Similarly, the employer is permitted to contribute *equal percentages* of the cost for the HMO and non-HMO options. Under this method, an employer can contribute far more, in terms of dollars, for the non-HMO option than for the HMO option. For example, if the HMO costs $100 per month, and the indemnity plan costs $300, and the employer pays 90 percent of the cost, it will pay $90 for an employee who chooses an HMO, and $270 for an employee who chooses the indemnity plan. (For the employee, the difference between the two options is only $20.)

Therefore, we see no justification for imposing a stricter standard simply because the employer pays less for the HMO than the non-HMO option. In addition, the commenter's proposed "efficiency and cost effectiveness" standard is neither required by the statutory amendment nor, arguably, supported by its legislative history. The latter states only that section 1310 was designed to give employees an opportunity to choose an HMO alternative. It does not mention efficiency and cost effectiveness.

Finally, with respect to determinations that result in equal employee contributions for all alternatives, we believe that this approach is clearly one way to provide a "fair choice" to employees. Under this approach, employees can choose the health plan that best serves their needs. The commenter's primary concern seems to be that this approach is unfair

to employees if they cannot "share in the savings" of choosing an HMO. We note, first, that "fairness" is a subjective standard. As long as an approach can reasonably be viewed as fair, it satisfies the standard. That judgment is not invalidated simply because there may be a basis for characterizing it as unfair.

We note further that the legislative history makes clear that the amendment was, to a large extent, prompted by a concern that the HMOs were engaging in "shadow pricing". Under shadow pricing, the HMOs would charge the same premium as more expensive non-HMO alternatives instead of passing the savings along to either the employer *or* the employee. Therefore, the argument that equal employee contributions are unfair because employees cannot "share in the savings" (from choosing a lower cost HMO) is not compelling.

7. *Comment:* One commenter noted that § 417.157(a)(2) lists five contribution methods as acceptable, but there are no examples of unacceptable methods. Several commenters asked for more guidance to assist them in determining what would be acceptable.

Another commenter strongly suggested that the proposed rules be amended to provide examples of types of arrangements that would be considered to be discriminatory, and therefore prohibited, by these regulations.

7. *Response:* The employer contribution requirements provide employers enhanced flexibility in determining their contributions to HMOs and other health benefits plans they offer. The limits on that flexibility are established by the statutory language which requires that the method of determining the contribution be reasonable and not discriminate financially against employees who choose to join an HMO. In part, this new flexibility is recognition that HMOs need less regulatory protection because in recent years they have become more accepted by both employers and employees and are generally better able to compete with other health benefits plans.

As previously stated, if the HMO or the employees believe that the employer's contribution does not meet the "reasonable" and "fair choice" standards, they may request that HCFA review the methodology. Generally, HCFA will not undertake a review if the employer has followed one of the examples given in the regulation.

If the employer uses a methodology other than one of those examples, HCFA generally will not review unless the methodology results in significantly higher costs for employees who select the HMO alternative. If it undertakes review, HCFA will consider whether the employer's methodology is based on factors that are reasonable and are applied fairly. For example, if the HMO has a more comprehensive benefits package than the principle indemnity plan, that could be a reasonable factor justifying a higher cost for employees who enroll in the HMO.

We will not attempt to define all possible reasonable explanations that would justify a larger contribution from HMO enrollees. We note however, that the rationale must apply to the actual employees of the particular HMOs.

8. *Comment:* One of the commenters, while agreeing that employers can now make unequal contributions, stated that the right to make unequal contributions should require substantial justification, be narrowly construed, and allowed only for compelling reasons.

8. *Response:* We believe such stringent requirements are not in keeping with the flexibility the Congress intended employers to have. As noted below under Changes in the Regulations, the final rule requires the employer to make available to HCFA, upon request, a description of the methodology it used to determine its contributions, and related data on the eligible employee population. HCFA may request the data on its own initiative or because an HMO or employee requests HCFA to review the methodology.

A contribution methodology that results in different contributions to different plans in order to ensure that employees have the same out-of-pocket costs, no matter which plan they choose, is consistent with the standards and would, therefore, be acceptable.

9. *Comment:* One commenter suggested that any method that does not fall into one of the first four examples provided in the regulation should be required to fall into the fifth example—the method must be mutually acceptable to both the employer and the HMO.

9. *Response:* The five examples of acceptable contribution methods listed under § 417.157(a)(2) are not meant to be exclusive. We note that the intent of the legislation is to allow employers increased flexibility in determining their contribution payment amounts. Accordingly, we will not restrict feasible contribution methodologies beyond the requirements already described.

10. *Comment:* One commenter noted that the last of the five examples under § 417.157(a)(2) allows for employers and HMOs to negotiate contribution arrangements that are mutually acceptable. The commenter goes on to ask if such mutually-agreed-upon arrangements must also meet the statutory standards of the proposed employer contribution regulation.

10. *Response:* Contribution levels that are mutually agreed upon by the employer and the HMO must also meet the standards established by this regulation.

V. Changes in the Regulations

A. Changes Required by the Expiration of the "Employer Mandate" Provisions Effective October 24, 1995

In § 417.151, we have revised paragraphs (a) and (e) to make clear that, effective October 24, 1995, inclusion of the HMO alternative in an employer's health benefits plan became optional.

We have removed §§ 417.152 and 417.154 because they would no longer be applicable.

In § 417.153, we have revised paragraph (a) to make paragraphs (b) and (c) applicable when an employing entity voluntarily includes one or more HMOs in its health plan offerings.

We have revised § 417.159 to make clear that inclusion of HMOs is at the employing entity's option.

B. Changes to Implement Statutory Amendments That Were Effective Upon Enactment.

In § 417.157, we have—

- Revised paragraphs (a)(1) and (a)(2) to eliminate the "equal contribution" requirement and to incorporate the criteria specified in the statute;
- Revised paragraph (a)(3) to remove the requirement for increased contribution to the HMO and to give examples of contributions that would be considered nondiscriminatory;
- Added a paragraph (a)(4) "Adjustment of employer contribution" to make clear that what appeared in the proposed rule as a third "method" is rather a general rule applicable, under specified circumstances, to a contribution determined by any acceptable method. Adjustment is permitted only when HMO enrollees would, otherwise, have to pay little or nothing at all because the HMO premium is lower than the premiums of other plans offered. The payment by the enrollee could not exceed 50 percent of the payment for the principal non-HMO alternative, that is, the alternative that covers the largest number of the employer's employees.
- Removed paragraphs (f) and (g) as inconsistent with the revised policy; and
- In response to certain comments, revised the content of paragraph (h) and redesignated it under new paragraphs (f) and (g).

VI. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) and section 1102(b) of the Social Security Act, we prepare a regulatory flexibility analysis for each rule, unless the Secretary certifies that the particular rule will not have a significant economic impact on a substantial number of small entities, or a significant impact on the operations of a substantial number of small rural hospitals.

The RFA defines "small entity" as a small business, a nonprofit enterprise, or a governmental jurisdiction (such as a county, city, or township) with a population of less than 50,000. We also consider all HMOs to be small entities. For purposes of section 1102(b) of the Act, we define "small rural hospital" as a hospital that has fewer than 50 beds and is located anywhere but in a metropolitan statistical area.

For reasons noted below, we believe that any economic impact of the statutory provisions on which this rule is based will be small and transitory.

Effective as of October 24, 1995, inclusion of HMOs in employer health plan offerings became voluntary.

Employers that do include HMOs are no longer held to the previous "dollar for dollar" rule. An employer could, for example, base its contribution to an HMO on a reasonable estimate of what it will cost to provide care for its employees, and thus share in the savings resulting from efficient delivery of health care by the HMO.

However, the employer's contribution must meet new standards, that is, it must be an amount that is "reasonable" and that ensures employees a "fair choice" among health plan alternatives offered. This balanced approach means that, while employers benefit from greater flexibility, employees—and the HMOs they are free to join, are protected against discrimination.

We have not prepared a regulatory flexibility analysis because we have determined, and the Secretary certifies, that these rules will not have a significant economic impact on a substantial number of small entities or a significant impact on the operation of a substantial number of small rural hospitals.

In accordance with Executive Order 12866, this rule was reviewed by the Office of Management and Budget.

VII. Collection of Information Requirements

This rule contains new information collections that are subject to review by the Office of Management (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3511). The title and description of the information collection and the description of respondents are shown below with an estimate of the annual reporting and recordkeeping burden.

§ 417.157(f): *Retention and availability of data,* is revised to specify that each employing entity or designee must retain the plan data for three years and make it available to HCFA upon request. The data must be that used to compute the level of contribution for each of the plans offered to employees, a description of the methodology for computing the level of contribution, and any related data about the employees who are eligible to enroll in a plan.

§ 417.157(g): *HCFA review of data,* is revised to make clear that HCFA may request and review the data specified in paragraph (f) of this section on its own initiative or in response to requests from HMOs or employees. The purpose of HCFA's review is to determine whether the methodology and the level of contribution comply with the requirements of this subpart. HMOs and employees that request HCFA to review the plan data must set forth reasonable grounds for making the request.

The respondents affected by section 417.157, paragraphs (f) and (g) are public and private employers and employees.

The burden under paragraphs (f) and (g) of section 417.157 is estimated at 8 to 10 hours per employer for compiling the data, usually once a year, and making it available to HCFA when requested.

The agency has submitted a copy of this rule to OMB for its review of these information collections. When OMB approves these provisions, we will publish a notice in the **Federal Register** to that effect.

We invite comments regarding this burden estimate or any other aspect of these collections of information, including any of the following:

- Whether the information collection is necessary and useful for carrying out the proper functions of the agency;
- the accuracy of the estimated burden;
- ways to enhance the quality, clarity, and usefulness of the information to be collected; and,
- recommendations for using automated collection techniques or other forms of information technology to minimize the information collection burden.

Please send any comments to HCFA, OFHR, MPAS, C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

List of Subjects in 42 CFR Part 417

Administrative practice and procedure, Grant programs-health, Health care, Health facilities, Health insurance, Health maintenance organizations (HMO), Loan programs-health, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 417 is amended as set forth below:

1. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh); secs. 1301, 1306, and 1310 of the Public Health Services Act (42 U.S.C. 300e, 300e–5, and 300e–9); and 31 U.S.C. 9701.

2. § 417.151 is amended to revise paragraphs (a) and (e) to read as follows:

§ 417.151 Applicability.

(a) *Basic rule.* Effective October 24, 1995 [1], this subpart applies to any employing entity that offers a health benefits plan to its employees, meets the conditions specified in paragraphs (b) through (e) of this section, and elects to include one or more qualified HMOs in the health plan alternatives it offers its employees.

* * * * *

(e) *Employees in HMO's service area.* At least 25 of the employing entity's employees reside within the HMO's service area.

§ 417.152 [Removed]

3. Section 417.152 is removed.

4. Section 417.153 is amended to revise the heading and paragraph (a) to read as follows:

§ 417.153 Offer of HMO alternative.

(a) *Basic rule.* An employing entity that is subject to this subpart and that elects to include one or more qualified HMOs must offer the HMO alternative in accordance with this section.

* * * * *

§ 417.154 [Removed]

5. Section 417.154 is removed.

6. Section 417.157 is revised to read as follows:

§ 417.157 Contributions for the HMO alternative.

(a) *General principles*—(1) *Nondiscrimination.* The employer contribution to an HMO must be in an amount that does not discriminate financially against an employee who

[1] Before October 24, 1995, an employing entity that met the conditions specified in § 417.151 was required to include one or more qualified HMOs, if it received from at least one qualified HMO a written request for inclusion and that request met the timing, content, and procedural requirements specified in § 417.152.

enrolls in an HMO. A contribution does not discriminate financially if the method of determining the contribution is reasonable and is designed to ensure that employees have a fair choice among health benefits plan alternatives.

(2) *Effect of agreements or contracts.* The employing entity or designee is not required to pay more for health benefits as a result of offering the HMO alternative than it would otherwise be required to pay under a collective bargaining agreement or contract that provides for health benefits and is in effect at the time the HMO alternative is included.

(3) *Examples of acceptable employer contributions.* The following are methods that are considered nondiscriminatory:

(i) The employer contribution to the HMO is the same, per employee, as the contribution to non-HMO alternatives.

(ii) The employer contribution reflects the composition of the HMO's enrollment in terms of enrollee attributes that can reasonably be used to predict utilization, experience, costs, or risk. For each enrollee in a given class established on the basis of those attributes, the employer contributes an equal amount, regardless of the health benefits plan chosen by the employee.

(iii) The employer contribution is a fixed percentage of the premium for each of the alternatives offered.

(iv) The employer contribution is determined under a mutually acceptable arrangement negotiated by the HMO and the employer. In negotiating the arrangement, the employer may not insist on terms that would cause the HMO to violate any of the requirements of this part.

(4) *Adjustment of employer contribution.* An employer contribution determined by an acceptable method may in some cases be adjusted if it would result in a nominal payment or no payment at all by HMO enrollees (because the HMO premium is lower than the premiums for the other alternatives offered). If, for example the employer has a policy of requiring all employees to contribute to their health benefits plan, the employer may require HMO enrollees who would otherwise pay little or nothing at all, to make a payment that does not exceed 50 percent of the employee contribution to the principal non-HMO alternative. The principal non-HMO alternative is the one that covers the largest number of enrollees from the particular employer.

(b) *Administrative expenses.* (1) In determining the amount of its contribution to the HMO, the employing entity or designee may not consider administrative expenses incurred in connection with offering any alternative in the health benefits plan.

(2) However, if the employing entity or designee has special requirements for other than standard solicitation brochures and enrollment literature, it must, in the case of the HMO alternative, determine and distribute any administrative costs attributable to those requirements in a manner consistent with its method of determining and distributing those costs for the non-HMO alternatives.

(c) *Exclusion for contribution for certain benefits.* In determining the amount of the employing entity's contribution or the designee's cost for the HMO alternative, the employing entity or designee may exclude those portions of the contribution allocable to benefits (such as life insurance or insurance for supplemental health benefits)—

(1) For which eligible employees and their eligible dependents are covered notwithstanding selection of the HMO alternative; and

(2) That are not offered on a prepayment basis by the HMO to the employing entity's employees.

(d) *Contributions determined by agreements or contracts or by law.* If the specific amount of the employing entity's contribution for health benefits is fixed by an agreement or contract, or by law, that amount constitutes the employing entity's obligation for contribution toward the HMO premiums.

(e) *Allocation of portion of a contribution determined by an agreement.* In some cases, the employing entity's contribution for health benefits is determined by an agreement that also provides for benefits other than health benefits. In that case, the employing entity must determine, or instruct its designee to determine, what portion of its contribution is applicable to health benefits.

(f) *Retention and availability of data.* Each employing entity or designee must retain the following data for three years and make it available to HCFA upon request:

(1) The data used to compute the level of contribution for each of the plans offered to employees.

(2) Related data about the employees who are eligible to enroll in a plan.

(3) A description of the methodology for computation.

(g) *HCFA review of data.* (1) HCFA may request and review the data specified in paragraph (f) of this section on its own initiative or in response to requests from HMOs or employees.

(2) The purpose of HCFA's review is to determine whether the methodology and the level of contribution comply with the requirements of this subpart.

(3) HMOs and employees that request HCFA to review must set forth reasonable grounds for making the request.

7. In § 417.155(d)(2) introductory text, "which" is removed and "that" is added in its place.

8. In § 417.159, "The obligation" is revised to read "The decision", and "HMO option" is revised to read "HMO alternative".

9. In the heading of § 417.164, "qualifiers" is removed and "qualification" is added in its place.

10. In § 417.166(a)(1), "change" is removed and "changed" is added in its place.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 14, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: December 5, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 96–13629 Filed 5–30–96; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 96–050; Notice 1]

RIN 2127–AG31

Federal Motor Vehicle Safety Standards; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This document revises Standard No. 121, *Air brake systems* to remove obsolete provisions and to update and reorganize the standard. This revision substantially clarifies and simplifies this safety standard without changing any of its substantive requirements.

EFFECTIVE DATE: This rule is effective March 1, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Carter, Office of Vehicle Safety Standards, NPS–11, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–5274. Fax: (202) 366–4329. For legal issues: Mr. Marvin L. Shaw, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992.

SUPPLEMENTARY INFORMATION: Pursuant to the March 4, 1995, directive, "Regulatory Reinvention Initiative," from the President to the heads of departments and agencies, the National Highway Traffic Safety Administration (NHTSA) has undertaken a review of all its regulations and directives. During the course of this review, the agency identified several regulations that are potential candidates for amendment.

One of these regulations is Standard No. 121, *Air brake systems.* There are two major types of changes. The first type of change involves deleting obsolete provisions. For example, S5.3.3.2 of current Standard No. 121 sets forth optional requirements about brake actuation time for systems manufactured before May 3, 1991. Similarly, S6.1.8.1(a) sets forth an optional burnish procedure for vehicles manufactured before September 1, 1994. The second type of change involves updating the Code of Federal Regulations to include the agency's recent amendments to Standard No. 121. For instance, on March 10, 1995, NHTSA amended Standard No. 121 to require air braked vehicles to be equipped with antilock brake systems and to reinstate stopping distance requirements. (60 FR 13216). Portions of these amendments were subsequently revised on December 13, 1995, (60 FR 63965) and February 15, 1996, (61 FR 2412). Today's notice contains the agency's most recent amendments of these provisions. In removing obsolete provisions and updating the standard, the agency's goal is to clarify and simplify Standard No. 121, without changing any of its substantive requirements.

This rulemaking action responds to petitions for reconsideration addressing the agency's antilock brake system rulemaking in which the Heavy Duty Brake Manufacturers Council (HDBMC), the American Automobile Manufacturers Association (AAMA), and Midland-Grau requested that the agency publish a complete and updated version of Standard No. 121.

In rewriting Standard No. 121, a significant issue was what effective date to select. A number of new requirements for Standard No. 121 will take effect in the next few years. Of particular note, the requirements for antilock brake systems and for stopping distance tests are being phased in for various vehicle types (e.g., truck tractors, trailers, and single unit vehicles) between March 1, 1997, and March 1, 1998. As a result of these new amendments, the standard's requirements vary significantly for different dates over the next two years.

After examining the current standard, NHTSA has concluded that clarifying and simplifying Standard No. 121 can best be accomplished by selecting an effective date of March 1, 1997, the date when truck tractors must first comply with the new antilock brake system and stopping distance requirements. Most of the changes in the regulatory text delete obsolete requirements and provisions which are, or will be, irrelevant by March 1, 1997.

This rulemaking action results in a more straightforward Standard No. 121 that will take mandatory effect on March 1, 1997, with optional compliance for vehicles manufactured before that date. Manufacturers and other interested persons should continue to consult the current Standard No. 121 concerning the additional compliance options that are available before that date. While the existing standard is longer and more complex than desirable, it is well understood by the industry. Moreover, it is not clear that any effort to rewrite Standard No. 121 for an earlier effective date could be successful in achieving the goal of a substantially clarified and simpler standard, given the many additional complex provisions that would have to be retained.

The rewritten Standard No. 121 is organized as follows:

S1. Scope.
S2. Purpose.
S3. Application.
S4. Definitions.
S5. Requirements.
S5.1 Required equipment for trucks and buses.
S5.2 Required equipment for trailers.
S5.3 Service brakes—road tests.
S5.4 Service brakes—dynamometer tests.
S5.5 Service brakes—antilock systems.
S5.6 Parking brakes.
S5.7 Emergency brakes for trucks and buses.
S5.8 Emergency brakes for trailers.
S5.9 Final inspection.
S6. Conditions.
S6.1 Road test conditions.
S6.2 Dynamometer test conditions.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures.

The purpose of this rewrite is to clarify and simplify the requirements of Standard No. 121. This rewrite does not substantively change the requirements of the standard. This means that the rulemaking will not have any impacts on safety or the compliance costs for manufacturers. Accordingly, a full regulatory evaluation has not been prepared for this rulemaking.

Regulatory Flexibility Act

NHTSA has also considered the effects of this regulatory action under the Regulatory Flexibility Act. I hereby certify that this rulemaking will not have a significant economic impact on a substantial number of small entities. For the reasons stated above, simplifying and clarifying Standard No. 121 will not result in any economic impacts on those vehicle manufacturers that are small entities. Further, since no cost changes are associated with this rulemaking, small organizations and small governmental entities should not be affected in their capacity as purchasers of new vehicles.

National Environmental Policy Act

NHTSA has analyzed this rulemaking for the purposes of the National Environmental Policy Act and determined that it has no significant impact on the quality of human life.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rulemaking in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for

reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, NHTSA amends 49 CFR Part 571 as follows:

PART 571 —FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.121 is revised to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

S1. *Scope.* This standard establishes performance and equipment requirements for braking systems on vehicles equipped with air brake systems.

S2. *Purpose.* The purpose of this standard is to insure safe braking performance under normal and emergency conditions.

S3. *Application.* This standard applies to trucks, buses, and trailers equipped with air brake systems. However, it does not apply to:

(a) Any trailer that has a width of more than 102.36 inches with extendable equipment in the fully retracted position and is equipped with two short track axles in a line across the width of the trailer.

(b) Any vehicle equipped with an axle that has a gross axle weight rating (GAWR) of 29,000 pounds or more;

(c) Any truck or bus that has a speed attainable in 2 miles of not more than 33 mph;

(d) Any truck that has a speed attainable in 2 miles of not more than 45 mph, an unloaded vehicle weight that is not less than 95 percent of its gross vehicle weight rating (GVWR), and no capacity to carry occupants other than the driver and operating crew;

(e) Any trailer that has a GVWR of more than 120,000 pounds and whose body conforms to that described in the definition of heavy hauler trailer set forth in S4;

(f) Any trailer that has an unloaded vehicle weight which is not less than 95 percent of its GVWR; and

(g) Any load divider dolly.

S4. *Definitions.*

Agricultural commodity trailer means a trailer that is designed to transport bulk agricultural commodities in off-road harvesting sites and to a processing plant or storage location, as evidenced by skeletal construction that accommodates harvest containers, a maximum length of 28 feet, and an arrangement of air control lines and reservoirs that minimizes damage in field operations.

Air brake system means a system that uses air as a medium for transmitting pressure or force from the driver control to the service brake, including an air-over-hydraulic brake subsystem, but does not include a system that uses compressed air or vacuum only to assist the driver in applying muscular force to hydraulic or mechanical components.

Air-over-hydraulic brake subsystem means a subsystem of the air brake system that uses compressed air to transmit a force from the driver control to a hydraulic brake system to actuate the service brakes.

Antilock brake system or *ABS* means a portion of a service brake system that automatically controls the degree of rotational wheel slip during braking by:

(1) Sensing the rate of angular rotation of the wheels;

(2) Transmitting signals regarding the rate of wheel angular rotation to one or more controlling devices which interpret those signals and generate responsive controlling output signals; and

(3) Transmitting those controlling signals to one or more modulators which adjust brake actuating forces in response to those signals.

Auto transporter means a truck and a trailer designed for use in combination to transport motor vehicles, in that the towing vehicle is designed to carry cargo at a location other than the fifth wheel and to load this cargo only by means of the towed vehicle.

Common diaphragm means a single brake chamber diaphragm which is a component of the parking, emergency, and service brake systems.

Container chassis trailer means a semitrailer of skeleton construction limited to a bottom frame, one or more axles, specially built and fitted with locking devices for the transport of intermodal shipping containers, so that when the chassis and container are assembled, the units serve the same function as an over the road trailer.

Directly controlled wheel means a wheel for which the degree of rotational wheel slip is sensed, either at that wheel or on the axle shaft for that wheel and corresponding signals are transmitted to one or more modulators that adjust the brake actuating forces at that wheel. Each modulator may also adjust the brake actuating forces at other wheels that are on the same axle or in the same axle set in response to the same signal or signals.

Full-treadle brake application means a brake application in which the treadle valve pressure in any of the valve's output circuits reaches 85 pounds per square inch (psi) within 0.2 seconds after the application is initiated, or in which maximum treadle travel is achieved within 0.2 seconds after the application is initiated.

Heavy hauler trailer means a trailer which has one or more of the following characteristics, but which is not a container chassis trailer:

(1) Its brake lines are designed to adapt to separation or extension of the vehicle frame; or

(2) its body consists only of a platform whose primary cargo-carrying surface is not more than 40 inches above the ground in an unloaded condition, except that it may include sides that are designed to be easily removable and a permanent "front end structure" as that term is used in § 393.106 of this title.

Independently controlled wheel means a directly controlled wheel for which the modulator does not adjust the brake actuating forces at any other wheel on the same axle.

Indirectly controlled wheel means a wheel at which the degree of rotational wheel slip is not sensed, but at which the modulator of an antilock braking system adjusts its brake actuating forces in response to signals from one or more sensed wheel(s).

Initial brake temperature means the average temperature of the service brakes on the hottest axle of the vehicle 0.2 mile before any brake application in the case of road tests, or 18 seconds before any brake application in the case of dynamometer testing.

Intermodal shipping container means a reusable, transportable enclosure that is especially designed with integral locking devices for securing the container to the trailer to facilitate the efficient and bulk shipping and transfer of goods by, or between various modes of transport, such as highway, rail, sea and air.

Lood divider dolly means a trailer composed of a trailer chassis and one or more axles, with no solid bed, body, or container attached, and which is designed exclusively to support a portion of the load on a trailer or truck excluded from all the requirements of this standard.

Maximum drive-through speed means the highest possible constant speed at which the vehicle can be driven through 200 feet of a 500-foot radius curve arc without leaving the 12-foot lane.

Maximum treadle travel means the distance that the treadle moves from its position when no force is applied to its position when the treadle reaches a full stop.

Peak friction coefficient or *PFC* means the ratio of the maximum value of braking test wheel longitudinal force to the simultaneous vertical force occurring prior to wheel lockup, as the braking torque is progressively increased.

Pulpwood trailer means a trailer that is designed exclusively for harvesting logs or pulpwood and constructed with a skeletal frame with no means for attachment of a solid bed, body, or container, and with an arrangement of air control lines and reservoirs designed to minimize damage in off-road operations.

Straddle trailer means a trailer that is designed to transport bulk agricultural commodities from the harvesting location as evidenced by a framework that is driven over the cargo and lifting arms that suspend the cargo for transit.

Wheel lockup means 100 percent wheel slip.

S5. *Requirements.* Each vehicle shall meet the following requirements under the conditions specified in S6.

S5.1 *Required equipment for trucks and buses.* Each truck and bus shall have the following equipment:

S5.1.1 *Air compressor.* An air compressor of sufficient capacity to increase air pressure in the supply and service reservoirs from 85 psi to 100 psi when the engine is operating at the vehicle manufacturer's maximum recommended r.p.m. within a time, in seconds, determined by the quotient (Actual reservoir capacity x 25) / Required reservoir capacity.

S5.1.1.1 *Air compressor cut-in pressure.* The air compressor governor cut-in pressure shall be 100 psi or greater.

S5.1.2 *Reservoirs.* One or more service reservoir systems, from which air is delivered to the brake chambers, and either an automatic condensate drain valve for each service reservoir or a supply reservoir between the service reservoir system and the source of air pressure.

S5.1.2.1 The combined volume of all service reservoirs and supply reservoirs shall be at least 12 times the combined volume of all service brake chambers. For each brake chamber type having a full stroke at least as great as the first number in Column 1 of Table V, but no more than the second number in Column 1 of Table V, the volume of each brake chamber for purposes of calculating the required combined service and supply reservoir volume shall be either that specified in Column 2 of Table V or the actual volume of the brake chamber at maximum travel of the brake piston or pushrod, whichever is lower. The volume of a brake chamber not listed in Table V is the volume of the brake chamber at maximum travel of the brake piston or pushrod. The reservoirs of the truck portion of an auto transporter need not meet this requirement for reservoir volume.

S5.1.2.2 Each reservoir shall be capable of withstanding an internal hydrostatic pressure of five times the compressor cutout pressure or 500 psi, whichever is greater, for 10 minutes.

S5.1.2.3 Each service reservoir system shall be protected against loss of air pressure due to failure or leakage in the system between the service reservoir and the source of air pressure, by check valves or equivalent devices whose proper functioning can be checked without disconnecting any air line or fitting.

S5.1.2.4 Each reservoir shall have a condensate drain valve that can be manually operated.

S5.1.3 *Towing vehicle protection system.* If the vehicle is intended to tow another vehicle equipped with air brakes, a system to protect the air pressure in the towing vehicle from the effects of a loss of air pressure in the towed vehicle.

S5.1.4 *Pressure gauge.* A pressure gauge in each service brake system, readily visible to a person seated in the normal driving position, that indicates the service reservoir system air pressure. The accuracy of the gauge shall be within plus or minus 7 percent of the compressor cut-out pressure.

S5.1.5 *Warning signal.* A signal, other than a pressure gauge, that gives a continuous warning to a person in the normal driving position when the ignition is in the "on" ("run") position and the air pressure in the service reservoir system is below 60 psi. The signal shall be either visible within the driver's forward field of view, or both audible and visible.

S5.1.6 *Antilock brake system.*

S5.1.6.1(a) Each single-unit vehicle manufactured on or after March 1, 1998, shall be equipped with an antilock brake system that directly controls the wheels of at least one front axle and the wheels of at least one rear axle of the vehicle. Wheels on other axles of the vehicle may be indirectly controlled by the antilock brake system.

(b) Each truck tractor manufactured on or after March 1, 1997, shall be equipped with an antilock brake system that directly controls the wheels of at least one front axle and the wheels of at least one rear axle of the vehicle, with the wheels of at least one axle being independently controlled. Wheels on other axles of the vehicle may be indirectly controlled by the antilock brake system. A truck tractor shall have no more than three wheels controlled by one modulator.

S5.1.6.2 *Antilock malfunction signal and circuit.*

(a) Each truck tractor manufactured on or after March 1, 1997, and each single unit vehicle manufactured on or after March 1, 1998, shall be equipped with an indicator lamp, mounted in front of and in clear view of the driver, which is activated whenever there is a malfunction that affects the generation or transmission of response or control signals in the vehicle's antilock brake system. The indicator lamp shall remain activated as long as such a malfunction exists, whenever the ignition (start) switch is in the "on" ("run") position, whether or not the engine is running. Each message about the existence of such a malfunction shall be stored in the antilock brake system after the ignition switch is turned to the "off" position and automatically reactivated when the ignition switch is again turned to the "on" ("run") position. The indicator lamp shall also be activated as a check of lamp function whenever the ignition is turned to the "on" ("run") position. The indicator lamp shall be deactivated at the end of the check of lamp function unless there is a malfunction or a message about a malfunction that existed when the key switch was last turned to the "off" position.

(b) Each truck tractor manufactured on or after March 1, 2001, and each single unit vehicle manufactured on or after March 1, 2001, that is equipped to tow another air-braked vehicle, shall be equipped with an electrical circuit that is capable of transmitting a malfunction signal from the antilock brake system(s) on one or more towed vehicle(s) (e.g., trailer(s) and dolly(ies)) to the trailer ABS malfunction lamp in the cab of the towing vehicle, and shall have the means for connection of this electrical circuit to the towed vehicle. Each such truck tractor and single unit vehicle shall also be equipped with an indicator lamp, separate from the lamp required in S5.1.6.2(a), mounted in front of and in clear view of the driver, which is activated whenever the malfunction signal circuit described above receives a signal indicating an ABS malfunction on one or more towed vehicle(s). The indicator lamp shall remain activated as long as an ABS malfunction signal from one or more towed vehicle(s) is present, whenever the ignition (start) switch is in the "on" ("run") position, whether or

not the engine is running. The indicator lamp shall also be activated as a check of lamp function whenever the ignition is turned to the "on" ("run") position. The indicator lamp shall be deactivated at the end of the check of lamp function unless a trailer ABS malfunction signal is present.

S5.1.6.3 *Antilock power circuit for towed vehicles.* Each truck tractor manufactured on or after March 1, 1997, and each single unit vehicle manufactured on or after March 1, 1998, that is equipped to tow another air-braked vehicle shall be equipped with one or more electrical circuits that provide continuous power to the antilock system on the towed vehicle or vehicles whenever the ignition (start) switch is in the "on" ("run") position. Such a circuit shall be adequate to enable the antilock system on each towed vehicle to be fully operable.

S5.1.7 *Service brake stop lamp switch.* A switch that lights the stop lamps when the service brake control is statically depressed to a point that produces a pressure of 6 psi or less in the service brake chambers.

S5.1.8 *Brake distribution and automatic adjustment.* Each vehicle shall be equipped with a service brake system acting on all wheels.

(a) *Brake adjuster.* Wear of the service brakes shall be compensated for by means of a system of automatic adjustment. When inspected pursuant to S5.9, the adjustment of the service brakes shall be within the limits recommended by the vehicle manufacturer.

(b) *Brake indicator.* For each brake equipped with an external automatic adjustment mechanism and having an exposed pushrod, the condition of service brake under-adjustment shall be displayed by a brake adjustment indicator that is discernible when viewed with 20/40 vision from a location adjacent to or underneath the vehicle, when inspected pursuant to S5.9.

S5.2 *Required equipment for trailers.* Each trailer shall have the following equipment:

S5.2.1 *Reservoirs.* One or more reservoirs to which the air is delivered from the towing vehicle.

S5.2.1.1 The total volume of each service reservoir shall be at least eight times the combined volume of all service brake chambers serviced by that reservoir. For each brake chamber type having a full stroke at least as great as the first number in Column 1 of Table V, but no more than the second number in column 1, the volume of each brake chamber for purposes of calculating the required total service reservoir volume shall be either the number specified in Column 2 of Table V or the actual volume of the brake chamber at maximum travel of the brake piston or pushrod, whichever is lower. The volume of a brake chamber not listed in Table V is the volume of the brake chamber at maximum travel of the brake piston or pushrod. The reservoirs on a heavy hauler trailer and the trailer portion of an auto transporter need not meet this requirement for reservoir volume.

S5.2.1.2 Each reservoir shall be capable of withstanding an internal hydrostatic pressure of 500 psi for 10 minutes.

S5.2.1.3 Each reservoir shall have a condensate drain valve that can be manually operated.

S5.2.1.4 Each service reservoir shall be protected against loss of air pressure due to failure or leakage in the system between the service reservoir and its source of air pressure by check valves or equivalent devices.

S5.2.2 *Brake distribution and automatic adjustment.* Each vehicle shall be equipped with a service brake system acting on all wheels.

(a) *Brake adjuster.* Wear of the service brakes shall be compensated for by means of a system of automatic adjustment. When inspected pursuant to S5.9, the adjustment of the service brakes shall be within the limits recommended by the vehicle manufacturer.

(b) *Brake indicator.* For each brake equipped with an external automatic adjustment mechanism and having an exposed pushrod, the condition of service brake under-adjustment shall be displayed by a brake adjustment indicator in a manner that is discernible when viewed with 20/40 vision from a location adjacent to or underneath the vehicle, when inspected pursuant to S5.9.

S5.2.3 *Antilock brake system.*

S5.2.3.1(a) Each semitrailer (including a trailer converter dolly) manufactured on or after March 1, 1998, shall be equipped with an antilock brake system that directly controls the wheels of at least one axle of the vehicle. Wheels on other axles of the vehicle may be indirectly controlled by the antilock brake system.

(b) Each full trailer manufactured on or after March 1, 1998, shall be equipped with an antilock brake system that directly controls the wheels of at least one front axle of the vehicle and at least one rear axle of the vehicle. Wheels on other axles of the vehicle may be indirectly controlled by the antilock brake system.

S5.2.3.2 *Antilock malfunction signal.* Each trailer (including a trailer converter dolly) manufactured on or after March 1, 2001, that is equipped with an antilock brake system shall be equipped with an electrical circuit that is capable of signaling a malfunction in the trailer's antilock brake system, and shall have the means for connection of this antilock brake system malfunction signal circuit to the towing vehicle. The electrical circuit need not be separate or dedicated exclusively to this malfunction signaling function. The signal shall be present whenever there is a malfunction that affects the generation or transmission of response or control signals in the trailer's antilock brake system. The signal shall remain present as long as the malfunction exists, whenever power is supplied to the antilock brake system. Each message about the existence of such a malfunction shall be stored in the antilock brake system whenever power is no longer supplied to the system, and the malfunction signal shall be automatically reactivated whenever power is again supplied to the trailer's antilock brake system. In addition, each trailer manufactured on or after March 1, 2001, that is designed to tow other air-brake equipped trailers shall be capable of transmitting a malfunction signal from the antilock brake systems of additional trailers it tows to the vehicle towing it.

S5.2.3.3 *Antilock malfunction indicator.* In addition to the requirements of S5.2.3.2, each trailer (including a trailer converter dolly) manufactured on or after March 1, 1998, and before March 1, 2009, shall be equipped with an external indicator lamp that is activated whenever there is a malfunction that affects the generation or transmission of response or control signals in the trailer's antilock brake system. The indicator lamp shall remain activated as long as such a malfunction exists, whenever power is supplied to the antilock brake system. Each message about the existence of such a malfunction shall be stored in the antilock brake system whenever power is no longer supplied to the system, and the malfunction signal shall be automatically reactivated when power is again supplied to the trailer's antilock brake system. The indicator lamp shall also be activated as a check of lamp function whenever power is supplied to the antilock brake system and the vehicle is stationary. The indicator lamp shall be deactivated at the end of the check of lamp function unless there is a malfunction or a message about a malfunction that existed when power was last supplied to the antilock brake system.

S5.3 *Service brakes—road tests.* The service brake system on each truck tractor manufactured before March 1, 1997, shall, under the conditions of S6, meet the requirements of S5.3.3 and S5.3.4, when tested without adjustments other than those specified in this standard. The service brake system on each truck tractor manufactured on or after March 1, 1997, shall, under the conditions of S6, meet the requirements of S5.3.1, S5.3.3, S5.3.4, and S5.3.6, when tested without adjustments other than those specified in this standard. The service brake system on each bus and truck (other than a truck tractor) manufactured before March 1, 1998, shall, under the conditions of S6, meet the requirements of S5.3.3, and S5.3.4, when tested without adjustments other than those specified in this standard. The service brake system on each bus and truck (other than a truck tractor) manufactured on or after March 1, 1998, shall, under the conditions of S6, meet the requirements of S5.3.1, S5.3.3, and S5.3.4 when tested without adjustments other than those specified in this standard. The service brake system on each trailer shall, under the conditions of S6, meet the requirements of S5.3.3, S5.3.4, and S5.3.5 when tested without adjustments other than those specified in this standard. However, a heavy hauler trailer and the truck and trailer portions of an auto transporter need not meet the requirements of S5.3.

S5.3.1 *Stopping distance—trucks and buses.* When stopped six times for each combination of vehicle type, weight, and speed specified in S5.3.1.1, in the sequence specified in Table I, each truck tractor manufactured on or after March 1, 1997, and each single unit vehicle manufactured on or after March 1, 1998, shall stop at least once in not more than the distance specified in Table II, measured from the point at which movement of the service brake control begins, without any part of the vehicle leaving the roadway, and with wheel lockup permitted only as follows:

(a) At vehicle speeds above 20 mph, any wheel on a nonsteerable axle other than the two rearmost nonliftable, nonsteerable axles may lock up, for any duration. The wheels on the two rearmost nonliftable, nonsteerable axles may lock up according to S5.3.1(b).

(b) At vehicle speeds above 20 mph, one wheel on any axle or two wheels on any tandem may lock up for any duration.

(c) At vehicle speeds above 20 mph, any wheel not permitted to lock in S5.3.1 (a) or (b) may lock up repeatedly, with each lockup occurring for a duration of one second or less.

(d) At vehicle speeds of 20 mph or less, any wheel may lock up for any duration.

S5.3.1.1 Stop the vehicle from 60 mph on a surface with a peak friction coefficient of 0.9 with the vehicle loaded as follows:

(a) Loaded to its GVWR,

(b) In the truck tractor only configuration plus up to 500 lbs., and

(c) At its unloaded vehicle weight (except for truck tractors) plus up to 500 lbs. (including driver and instrumentation). If the speed attainable in two miles is less than 60 mph, vehicle shall stop from a speed in Table II that is 4 to 8 mph less than the speed attainable in 2 miles.

S5.3.2 [Reserved]

S5.3.3 *Brake actuation time.* Each service brake system shall meet the requirements of S5.3.3.1 (a) and (b).

S5.3.3.1(a) With an initial service reservoir system air pressure of 100 psi, the air pressure in each brake chamber shall, when measured from the first movement of the service brake control, reach 60 psi in not more than 0.45 second in the case of trucks and buses, 0.50 second in the case of trailers, other than trailer converter dollies, designed to tow another vehicle equipped with air brakes, 0.55 second in the case of trailer converter dollies, and 0.60 second in the case of trailers other than trailers designed to tow another vehicle equipped with air brakes. A vehicle designed to tow another vehicle equipped with air brakes shall meet the above actuation time requirement with a 50-cubic-inch test reservoir connected to the control line output coupling. A trailer, including a trailer converter dolly, shall meet the above actuation time requirement with its control line input coupling connected to the test rig shown in Figure 1.

(b) For a vehicle that is designed to tow another vehicle equipped with air brakes, the pressure in the 50-cubic-inch test reservoir referred to in S5.3.3.1(a) shall, when measured from the first movement of the service brake control, reach 60 psi not later than the time the fastest brake chamber on the vehicle reaches 60 psi or, at the option of the manufacturer, in not more than 0.35 second in the case of trucks and buses, 0.55 second in the case of trailer converter dollies, and 0.50 second in the case of trailers other than trailer converter dollies.

S5.3.4 *Brake release time.* Each service brake system shall meet the requirements of S5.3.4.1 (a) and (b).

S5.3.4.1(a) With an initial service brake chamber air pressure of 95 psi, the air pressure in each brake chamber shall, when measured from the first movement of the service brake control, fall to 5 psi in not more than 0.55 second in the case of trucks and buses; 1.00 second in the case of trailers, other than trailer converter dollies, designed to tow another vehicle equipped with air brakes; 1.10 seconds in the case of trailer converter dollies; and 1.20 seconds in the case of trailers other than trailers designed to tow another vehicle equipped with air brakes. A vehicle designated to tow another vehicle equipped with air brakes shall meet the above release time requirement with a 50-cubic-inch test reservoir connected to the control line output coupling. A trailer, including a trailer converter dolly, shall meet the above release time requirement with its control line input coupling connected to the test rig shown in Figure 1.

(b) For vehicles designed to tow another vehicle equipped with air brakes, the pressure in the 50-cubic-inch test reservoir referred to in S5.3.4.1(a) shall, when measured from the first movement of the service brake control, fall to 5 psi in not more than 0.75 seconds in the case of trucks and buses, 1.10 seconds in the case of trailer converter dollies, and 1.00 seconds in the case of trailers other than trailer converter dollies.

S5.3.5 *Control signal pressure differential—converter dollies and trailers designed to tow another vehicle equipped with air brakes.*

(a) For a trailer designed to tow another vehicle equipped with air brakes, the pressure differential between the control line input coupling and a 50-cubic-inch test reservoir attached to the control line output coupling shall not exceed the values specified in S5.3.5(a) (1), (2), and (3) under the conditions specified in S5.3.5(b) (1) through (4):

(1) 1 psi at all input pressures equal to or greater than 5 psi, but not greater than 20 psi;

(2) 2 psi at all input pressures equal to or greater than 20 psi but not greater than 40 psi; and

(3) Not more than a 5-percent differential at any input pressure equal to or greater than 40 psi.

(b) The requirements in S5.3.5(a) shall be met—

(1) When the pressure at the input coupling is steady, increasing or decreasing;

(2) When air is applied to or released from the control line input coupling using the trailer test rig shown in Figure 1;

(3) With a fixed orifice consisting of a 0.0180 inch diameter hole (no. 77 drill bit) in a 0.032 inch thick disc installed

in the control line between the trailer test rig coupling and the vehicle's control line input coupling; and

(4) Operating the trailer test rig in the same manner and under the same conditions as it is operated during testing to measure brake actuation and release times, as specified in S5.3.3 and S5.3.4, except for the installation of the orifice in the control line to restrict airflow rate.

S5.3.6 *Stability and control during braking—truck tractors.* When stopped four consecutive times for each combination of weight, speed, and road, conditions specified in S5.3.6.1 and S5.3.6.2, each truck tractor manufactured on or after March 1, 1997, shall stop at least three times within the 12-foot lane, without any part of the vehicle leaving the roadway.

S5.3.6.1 Using a full-treadle brake application for the duration of the stop, stop the vehicle from 30 mph or 75 percent of the maximum drive-through speed, whichever is less, on a 500-foot radius curved roadway with a wet level surface having a peak friction coefficient of 0.5 when measured on a straight or curved section of the curved roadway using an American Society for Testing and Materials (ASTM) E1136 standard reference tire, in accordance with ASTM Method E1337–90, at a speed of 40 mph, with water delivery.

S5.3.6.2 Stop the vehicle with the vehicle

(a) Loaded to its GVWR, and

(b) At its unloaded weight plus up to 500 pounds (including driver and instrumentation), or at the manufacturer's option, at its unloaded weight plus up to 500 pounds (including driver and instrumentation) and plus not more than an additional 1000 pounds for a roll bar structure on the vehicle.

S5.4 *Service brake system—dynamometer tests.* When tested without prior road testing, under the conditions of S6.2, each brake assembly shall meet the requirements of S5.4.1, S5.4.2, and S5.4.3 when tested in sequence and without adjustments other than those specified in the standard. For purposes of the requirements of S5.4.2 and S5.4.3, an average deceleration rate is the change in velocity divided by the deceleration time measured from the onset of deceleration.

S5.4.1 *Brake retardation force.* The sum of the retardation forces exerted by the brakes on each vehicle designed to be towed by another vehicle equipped with air brakes shall be such that the quotient sum of the brake retardation forces / sum of GAWR's relative to brake chamber air pressure, and shall have values not less than those shown in Column 1 of Table III. Retardation force shall be determined as follows:

S5.4.1.1 After burnishing the brake pursuant to S6.2.6, retain the brake assembly on the inertia dynamometer. With an initial brake temperature between 125°F. and 200°F., conduct a stop from 50 m.p.h., maintaining brake chamber air pressure at a constant 20 psi. Measure the average torque exerted by the brake from the time the specified air pressure is reached until the brake stops and divide by the static loaded tire radius specified by the tire manufacturer to determine the retardation force. Repeat the procedure six times, increasing the brake chamber air pressure by 10 psi each time. After each stop, rotate the brake drum or disc until the temperature of the brake falls to between 125°F. And 200°F.

S5.4.2 *Brake power.* When mounted on an inertia dynamometer, each brake shall be capable of making 10 consecutive decelerations at an average rate of 9 f.p.s.p.s. from 50 m.p.h. to 15 m.p.h., at equal intervals of 72 seconds, and shall be capable of decelerating to a stop from 20 m.p.h. at an average deceleration rate of 14 f.p.s.p.s. 1 minute after the 10th deceleration. The series of decelerations shall be conducted as follows:

S5.4.2.1 With an initial brake temperature between 150°F. and 200°F. for the first brake application, and the drum or disc rotating at a speed equivalent to 50 m.p.h., apply the brake and decelerate at an average deceleration rate of 9 f.p.s.p.s. to 15 m.p.h. Upon reaching 15 m.p.h., accelerate to 50 m.p.h. and apply the brake for a second time 72 seconds after the start of the first application. Repeat the cycle until 10 decelerations have been made. The service line air pressure shall not exceed 100 psi during any deceleration.

S5.4.2.2 One minute after the end of the last deceleration required by S5.4.2.1 and with the drum or disc rotating at a speed of 20 m.p.h., decelerate to a stop at an average deceleration rate of 14 f.p.s.p.s.

S5.4.3 *Brake recovery.* Except as provided in S5.4.3(a) and (b), starting two minutes after completing the tests required by S5.4.2, a vehicle's brake shall be capable of making 20 consecutive stops from 30 mph at an average deceleration rate of 12 f.p.s.p.s., at equal intervals of one minute measured from the start of each brake application. The service line air pressure needed to attain a rate of 12 f.p.s.p.s. shall be not more than 85 lb/in^2, and not less than 20lb/in^2 for a brake not subject to the control of an antilock system, or 12 lb/in^2 for a brake subject to the control of an antilock system.

(a) Notwithstanding S5.4.3, neither front axle brake of a truck-tractor is subject to the requirements set forth in S5.4.3.

(b) Notwithstanding S5.4.3, neither front axle brake of a bus or a truck other than a truck-tractor is subject to the requirement set forth in S5.4.3 prohibiting the service line air pressure from being less than 20 lb/in^2 for a brake not subject to the control of an antilock system or 12 lb/in^2 for a brake subject to the control of an antilock system.

S5.5 *Antilock system.*

S5.5.1 *Antilock system malfunction.* On a truck tractor manufactured on or after March 1, 1997, that is equipped with an antilock brake system and a single unit vehicle manufactured on or after March 1, 1998, that is equipped with an antilock brake system, a malfunction that affects the generation or transmission of response or control signals of any part of the antilock system shall not increase the actuation and release times of the service brakes.

S5.5.2 *Antilock system power—trailers.* On a trailer (including a trailer converter dolly) manufactured on or after March 1, 1998, that is equipped with an antilock system that requires electrical power for operation, the power shall be obtained from the towing vehicle through one or more electrical circuits which provide continuous power whenever the powered vehicle's ignition (start) switch is in the "on" ("run") position. The antilock system shall automatically receive power from the stoplamp circuit, if the primary circuit or circuits are not functioning. Each trailer (including a trailer converter dolly) manufactured on or after March 1, 1998, that is equipped to tow another air-braked vehicle shall be equipped with one or more circuits which provide continuous power to the antilock system on the vehicle(s) it tows. Such circuits shall be adequate to enable the antilock system on each towed vehicle to be fully operable.

S5.6 *Parking brakes.*

(a) Except as provided in S5.6(b) and S5.6(c), each vehicle other than a trailer converter dolly shall have a parking brake system that under the conditions of S6.1 meets the requirements of:

(1) S5.6.1 or S5.6.2, at the manufacturer's option, and

(2) S5.6.3, S5.6.4, S5.6.5, and S5.6.6.

(b) At the option of the manufacturer, for vehicles equipped with brake systems which incorporate a common diaphragm, the performance requirements specified in S5.6(a) which must be met with any single leakage-type failure in a common diaphragm may instead be met with the level of leakage-type failure determined in S5.6.7. The election of this option does not affect the performance requirements specified in S5.6(a) which apply with single leakage-type failures other than failures in a common diaphragm.

(c) At the option of the manufacturer, the trailer portion of any agricultural commodity trailer, heavy hauler trailer, or pulpwood trailer may meet the requirements of § 393.43 of this title instead of the requirements of S5.6(a).

S5.6.1 *Static retardation force.* With all other brakes made inoperative, during a static drawbar pull in a forward or rearward direction, the static retardation force produced by the application of the parking brakes shall be:

(a) In the case of a vehicle other than a truck-tractor that is equipped with more than two axles, such that the quotient static retardation force/GAWR is not less than 0.28 for any axle other than a steerable front axle; and

(b) In the case of a truck-tractor that is equipped with more than two axles, such that the quotient static retardation force/GVWR is not less than 0.14.

S5.6.2 *Grade holding.* With all parking brakes applied, the vehicle shall remain stationary facing uphill and facing downhill on a smooth, dry portland cement concrete roadway with a 20-percent grade, both

(a) When loaded to its GVWR, and

(b) At its unloaded vehicle weight plus 500 pounds (including driver and instrumentation).

S5.6.3 *Application and holding.* Each parking brake system shall meet the requirements of S5.6.3.1 through S5.6.3.4.

S5.6.3.1 The parking brake system shall be capable of achieving the minimum performance specified either in S5.6.1 or S5.6.2 with any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (excluding failure of a component of a brake chamber housing but including failure of any brake chamber diaphragm that is part of any other brake system including a diaphragm which is common to the parking brake system and any other brake system), when the pressures in the vehicle's parking brake chambers are at the levels determined in S5.6.3.4.

S5.6.3.2 A mechanical means shall be provided that, after a parking brake application is made with the pressures in the vehicle's parking brake chambers at the levels determined in S5.6.3.4, and all air and fluid pressures in the vehicle's braking systems are then bled down to zero, and without using electrical power, holds the parking brake application with sufficient parking retardation force to meet the minimum performance specified in S5.6.3.1 and in either S5.6.1 or S5.6.2.

S5.6.3.3 For trucks and buses, with an initial reservoir system pressure of 100 psi and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the supply line coupling, no later than three seconds from the time of actuation of the parking brake control, the mechanical means referred to in S5.6.3.2 shall be actuated. For trailers, with the supply line initially pressurized to 100 psi using the supply line portion of the trailer test rig (Figure 1) and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the rear supply line coupling, no later than three seconds from the time venting to the atmosphere of the front supply line coupling is initiated, the mechanical means referred to in S5.6.3.2 shall be actuated. This requirement shall be met for trucks, buses and trailers both with and without any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (consistent with the parenthetical phrase specified in S5.6.3.1).

S5.6.3.4 The parking brake chamber pressures for S5.6.3.1 and S5.6.3.2 are determined as follows. For trucks and buses, with an initial reservoir system pressure of 100 psi and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the supply line coupling, any single leakage type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (consistent with the parenthetical phrase specified in S5.6.3.1), is introduced in the brake system. The parking brake control is actuated and the pressures in the vehicle's parking brake chambers are measured three seconds after that actuation is initiated. For trailers, with the supply line initially pressurized to 100 psi using the supply line portion of the trailer test rig (Figure 1) and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the rear supply line coupling, any single leakage type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (consistent with the parenthetical phrase specified in S5.6.3.1), is introduced in the brake system. The front supply line coupling is vented to the atmosphere and the pressures in the vehicle's parking brake chambers are measured three seconds after that venting is initiated.

S5.6.4 *Parking brake control—trucks and buses.* The parking brake control shall be separate from the service brake control. It shall be operable by a person seated in the normal driving position. The control shall be identified in a manner that specifies the method of control operation. The parking brake control shall control the parking brakes of the vehicle and of any air braked vehicle that it is designed to tow.

S5.6.5 *Release Performance.* Each parking brake system shall meet the requirements specified in S5.6.5.1 through S5.6.5.4.

S5.6.5.1 For trucks and buses, with initial conditions as specified in S5.6.5.2, at all times after an application actuation of the parking brake control, and with any subsequent level of pressure, or combination of levels of pressure, in the reservoirs of any of the vehicle's brake systems, no reduction in parking brake retardation force shall result from a release actuation of the parking brake control unless the parking brakes are capable, after such release, of being reapplied at a level meeting the minimum performance specified either in S5.6.1 or S5.6.2. This requirement shall be met both with and without the engine on, and with and without single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (consistent with the parenthetical phrase specified in S5.6.3.1).

S5.6.5.2 The initial conditions for S5.6.5.1 are as follows: The reservoir system pressure is 100 psi. If the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir is connected to the supply line coupling.

S5.6.5.3 For trailers, with initial conditions as specified in S5.6.5.4, at all times after actuation of the parking brakes by venting the front supply line coupling to the atmosphere, and with any subsequent level of pressure, or combination of levels of pressure, in the reservoirs of any of the vehicle's brake systems, the parking brakes shall not be releasable by repressurizing the supply line using the supply line portion of the trailer test rig (Figure 1) to any pressure above 70 psi, unless the parking brakes are capable, after such release, of reapplication by subsequent venting of the front supply line coupling to the atmosphere, at a level meeting the minimum performance specified either in S5.6.1 or S5.6.2. This requirement shall be met both with and without any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (consistent with the parenthetical phrase specified in S5.6.3.1).

S5.6.5.4 The initial conditions for S5.6.5.3 are as follows: The reservoir system and supply line are pressurized to 100 psi, using the supply line portion of the trailer test rig (Figure 1). If the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir is connected to the rear supply line coupling.

S5.6.6 *Accumulation of actuation energy.* Each parking brake system shall meet the requirements specified in S5.6.6.1 through S5.6.6.6.

S5.6.6.1 For trucks and buses, with initial conditions as specified in S5.6.6.2, the parking brake system shall be capable of meeting the minimum performance specified either in S5.6.1 or S5.6.2, with any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (consistent with the parenthetical phrase specified in S5.6.3.1) at the conclusion of the test sequence specified in S5.6.6.3.

S5.6.6.2 The initial conditions for S5.6.6.1 are as follows: The engine is on. The reservoir system pressure is 100 psi. If the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir is connected to the supply line coupling.

S5.6.6.3 The test sequence for S5.6.6.1 is as follows: The engine is turned off. Any single leakage type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (consistent with the parenthetical phrase specified in S5.6.3.1), is then introduced in the brake system. An application actuation of the parking brake control is then made. Thirty seconds after such actuation, a release actuation of the parking brake control is made. Thirty seconds after the release actuation, a final application actuation of the parking brake control is made.

S5.6.6.4 For trailers, with initial conditions as specified in S5.6.6.5, the parking brake system shall be capable of meeting the minimum performance specified either in S5.6.1 or S5.6.2, with any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (consistent with the parenthetical phrase specified in S5.6.3.1), at the conclusion of the test sequence specified in S5.6.6.6.

S5.6.6.5 The initial conditions for S5.6.6.4 are as follows: The reservoir system and supply line are pressurized to 100 psi, using the supply line portion of the trailer test rig (Figure 1). If the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir is connected to the rear supply line coupling.

S5.6.6.6 The test sequence for S5.6.6.4 is as follows. Any single leakage type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (consistent with the parenthetical phrase specified in S5.6.3.1), is introduced in the brake system. The front supply line coupling is vented to the atmosphere. Thirty seconds after the initiation of such venting, the supply line is repressurized with the trailer test rig (Figure 1). Thirty seconds after the initiation of such repressurizing of the supply line, the front supply line is vented to the atmosphere. This procedure is conducted either by connection and disconnection of the supply line coupling or by use of a valve installed in the supply line portion of the trailer test rig near the supply line coupling.

S5.6.7 *Maximum level of common diaphragm leakage-type failure/ Equivalent level of leakage from the air chamber containing that diaphragm.*

In the case of vehicles for which the option in S5.6(b) has been elected, determine the maximum level of common diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) according to the procedures set forth in S5.6.7.1 through S5.6.7.2.3.

S5.6.7.1 *Trucks and buses.*

S5.6.7.1.1 According to the following procedure, determine the threshold level of common diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) at which the vehicle's parking brakes become unreleasable. With an initial reservoir system pressure of 100 psi, the engine turned off, no application of any of the vehicle's brakes, and, if the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir connected to the supply line coupling, introduce a leakage-type failure of the common diaphragm (or equivalent leakage from the air chamber containing that diaphragm). Apply the parking brakes by making an application actuation of the parking brake control. Reduce the pressures in all of the vehicle's reservoirs to zero, turn on the engine and allow it to idle, and allow the pressures in the vehicle's reservoirs to rise until they stabilize or until the compressor shut-off point is reached. At that time, make a release actuation of the parking brake control, and determine whether all of the mechanical means referred to in S5.6.3.2 continue to be actuated and hold the parking brake applications with sufficient parking retardation force to meet the minimum performance specified in either S5.6.1 or S5.6.2. Repeat this procedure with progressively decreasing or increasing levels (whichever is applicable) of leakage-type diaphragm failures or equivalent leakages, to determine the minimum level of common diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) at which all of the mechanical means referred to in S5.6.3.2 continue to be actuated and hold the parking brake applications with sufficient parking retardation forces to meet the minimum performance specified in either S5.6.1 or S5.6.2.

S5.6.7.1.2 At the level of common diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) determined in S5.6.7.1.1, and using the following procedure, determine the threshold maximum reservoir rate (in psi per minute). With an initial reservoir system pressure of 100 psi, the engine turned off, no application of any of the vehicle's brakes and, if the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir connected to the supply line coupling, make an application actuation of the parking brake control. Determine the maximum reservoir leakage rate (in psi per minute), which is the maximum rate of decrease in air pressure of any of the vehicle's reservoirs that results after that parking brake application.

S5.6.7.1.3 Using the following procedure, introduce a leakage-type failure of the common diaphragm (or equivalent leakage from the air chamber containing that diaphragm) that results in a maximum reservoir leakage rate that is three times the threshold maximum reservoir leakage rate determined in S5.6.7.1.2. With an initial reservoir system pressure of 100 psi, the engine turned off, no application of any of the vehicle's brakes and, if the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir connected to the supply line coupling, make an application actuation of the parking brake control. Determine the maximum reservoir leakage rate (in psi per minute), which is the maximum rate of decrease in air pressure of any of the vehicle's reservoirs that results after that parking brake application. The level of common diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) associated with this reservoir leakage rate is the level that is to be used under the option set forth in S5.6(b).

S5.6.7.2 *Trailers.*

S5.6.7.2.1 According to the following procedure, determine the threshold level of common diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) at which the vehicle's parking brakes become unreleasable. With an initial reservoir system and supply line pressure of 100 psi, no application of any of the vehicle's brakes, and, if the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir connected to the supply line coupling, introduce a leakage-type failure of the common diaphragm (or equivalent leakage from the air chamber containing that diaphragm). Make a parking brake application by venting the front supply line coupling to the atmosphere, and reduce the pressures in all of the vehicle's reservoirs to zero. Pressurize the supply line by connecting the trailer's front supply line coupling to the supply line portion of the trailer test rig (Figure 1) with the regulator of the trailer test rig set at 100 psi, and determine whether all of the mechanical means referred to in S5.6.3.2 continue to be actuated and hold the parking brake applications with sufficient parking retardation forces to meet the minimum performance specified in either S5.6.1 or S5.6.2. Repeat this procedure with progressively decreasing or increasing levels (whichever is applicable) of leakage-type diaphragm failures or equivalent leakages, to determine the minimum level of common diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) at which all of the mechanical means referred to in S5.6.3.2 continue to be actuated and hold the parking brake applications with sufficient parking retardation forces to meet the minimum performance specified in either S5.6.1 or S5.6.2.

S5.6.7.2.2 At the level of common diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) determined in S5.6.7.2.1, and using the following procedure, determine the threshold maximum reservoir leakage rate (in psi per minute). With an initial reservoir system and supply line pressure of 100 psi, no application of any of the vehicle's brakes and, if the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir connected to the rear supply line coupling, make a parking brake application by venting the front supply line coupling to the atmosphere. Determine the maximum reservoir leakage rate (in psi per minute), which is the maximum rate of decrease in air pressure of any of the vehicle's reservoirs that results after that parking brake application.

S5.6.7.2.3 Using the following procedure, a leakage-type failure of the common diaphragm (or equivalent leakage from the air chamber containing that diaphragm) that results in a maximum reservoir leakage rate that is three times the threshold maximum reservoir leakage rate determined in S5.6.7.2.2. With an initial reservoir system and supply line pressure of 100 psi, no application of any of the vehicle's brakes and, if the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir connected to the rear supply line coupling, make a parking brake application by venting the front supply line coupling to the atmosphere. Determine the maximum reservoir leakage rate (in psi per minute), which is the maximum rate of decrease in air pressure of any of the vehicle's reservoirs that results after that parking brake application. The level of common diaphragm leakage-type failure (or equivalent level of leakage from the air chamber containing that diaphragm) associated with this reservoir leakage rate is the level that is to be used under the option set forth in S5.6(b).

S5.7 *Emergency brake system for trucks and buses.* Each vehicle shall be equipped with an emergency brake system which, under the conditions of S6.1, conforms to the requirements of S5.7.1 through S5.7.3. However, the truck portion of an auto transporter need not meet the road test requirements of S5.7.1 and S5.7.3.

S5.7.1 *Emergency brake system performance.* When stopped six times for each combination of weight and speed specified in S5.3.1.1, except for a loaded truck tractor with an unbraked control trailer, on a road surface having a PFC of 0.9, with a single failure in the service brake system of a part designed to contain compressed air or brake fluid (except failure of a common valve, manifold, brake fluid housing, or brake chamber housing), the vehicle shall stop at least once in not more than the distance specified in Column 5 of Table II, measured from the point at which movement of the service brake control begins, except that a truck-tractor tested at its unloaded vehicle weight plus up to 500 pounds shall stop at least once in not more than the distance specified in Column 6 of Table II. The stop shall be made without any part of the vehicle leaving the roadway, and with unlimited wheel lockup permitted at any speed.

S5.7.2 *Emergency brake system operation.* The emergency brake system shall be applied and released, and be capable of modulation, by means of the service brake control.

S5.7.3 *Towing vehicle emergency brake requirements.* In addition to meeting the other requirements of S5.7, a vehicle designed to tow another vehicle equipped with air brakes shall—

(a) In the case of a truck-tractor in the unloaded condition and a single unit truck which is capable of towing an airbrake equipped vehicle and is loaded to GVWR, be capable of meeting the requirements of S5.7.1 by operation of the service brake control only, with the trailer air supply line and air control line from the towing vehicle vented to the atmosphere in accordance with S6.1.14;

(b) In the case of a truck-tractor loaded to GVWR, be capable of meeting S5.7.1 by operation of the service brake control only, with the air control line from the towing vehicle vented to the atmosphere in accordance with S6.1.14; and

(c) Be capable of modulating the air in the supply or control line to the trailer by means of the service brake control with a single failure in the towing vehicle service brake system as specified in S5.7.1.

S5.8 *Emergency brakes for trailers.* Each trailer shall meet the requirements of S5.8.1 through S5.8.3.

S5.8.1 *Emergency braking capability.* Each trailer other than a trailer converter dolly shall have a parking brake system that conforms to S5.6 and that applies with the force specified in S5.6.1 or S5.6.2 when the air pressure in the supply line is at atmospheric pressure. A trailer converter dolly shall have, at the manufacturer's option—

(a) A parking brake system that conforms to S5.6 and that applies with the force specified in S5.6.1 or S5.6.2 when the air pressure in the supply line is at atmospheric pressure, or

(b) An emergency system that automatically applies the service brakes when the service reservoir is at any pressure above 20 lb/in² and the supply line is at atmospheric pressure. However, any agricultural commodity trailer, heavy hauler trailer, or pulpwood trailer shall meet the requirements of S5.8.1 or, at the option of the manufacturer, the requirements of § 393.43 of this title.

S5.8.2 *Supply line pressure retention.* Any single leakage type failure in the service brake system (except for a failure of the supply line, a valve directly connected to the supply line or a component of a brake chamber housing) shall not result in the pressure in the supply line falling below 70 psi, measured at the forward trailer supply

coupling. A trailer shall meet the above supply line pressure retention requirement with its brake system connected to the trailer test rig shown in Figure 1, with the reservoirs of the trailer and test rig initially pressurized to 100 psi and the regulator of the trailer test rig set at 100 psi; except that a trailer equipped with an air-applied, mechanically-held parking brake system and not designed to tow a vehicle equipped with air brakes, at the manufacturer's option, may meet the requirements of S5.8.4 rather than those of S5.8.2 and S5.8.3.

S5.8.3 *Automatic application of parking brakes.* With an initial reservoir system pressure of 100 psi and initial supply line pressure of 100 psi, and if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the rear supply line coupling, and with any subsequent single leakage type failure in any other brake system, of a part designed to contain compressed air or brake fluid (consistent with the parenthetical phrase specified in S5.6.3.1), whenever the air pressure in the supply line is 70 psi or higher, the parking brakes shall not provide any brake retardation as a result of complete or partial automatic application of the parking brakes.

S5.8.4 *Automatic application of air-applied, mechanically held parking brakes.* With its brake system connected to the supply line portion of the trailer test rig (Figure 1) and the regulator of the trailer test rig set at 100 psi, and with any single leakage type failure in the service brake system (except for a failure of the supply line, a valve directly connected to the supply line or a component of a brake chamber, but including failure of any common diaphragm), the parking brakes shall not provide any brake retardation as a result of complete or partial automatic application of the parking brakes.

S5.9 *Final inspection.* Inspect the service brake system for the condition of adjustment and for the brake indicator display in accordance with S5.1.8 and S5.2.2.

S6. *Conditions.* The requirements of S5 shall be met by a vehicle when it is tested according to the conditions set in this S6, without replacing any brake system part or making any adjustments to the brake system except as specified. Unless otherwise specified, where a range of conditions is specified, the vehicle must be capable of meeting the requirements at all points within the range. On vehicles equipped with automatic brake adjusters, the automatic brake adjusters must remain activated at all times. Compliance of vehicles manufactured in two or more stages may, at the option of the final-stage manufacturer, be demonstrated to comply with this standard by adherence to the instructions of the incomplete vehicle manufacturer provided with the vehicle in accordance with § 568.4(a)(7)(ii) and § 568.5 of title 49 of the Code of Federal Regulations.

S6.1 *Road test conditions.*

S6.1.1 Except as otherwise specified, the vehicle is loaded to its GVWR, distributed proportionally to its GAWRs. During the burnish procedure specified in S6.1.8, truck tractors shall be loaded to their GVWR, by coupling them to an unbraked flatbed semitrailer, which semitrailer shall be loaded so that the weight of the tractor-trailer combination equals the GVWR of the truck tractor. The load on the unbraked flatbed semitrailer shall be located so that the truck tractor's wheels do not lock during burnish.

S6.1.2 The inflation pressure is as specified by the vehicle manufacturer for the GVWR.

S6.1.3 Unless otherwise specified, the transmission selector control is in neutral or the clutch is disengaged during all decelerations and during static parking brake tests.

S6.1.4 All vehicle openings (doors, windows, hood, trunk, cargo doors, etc.) are in a closed position except as required for instrumentation purposes.

S6.1.5 The ambient temperature is between 32° F. and 100° F.

S6.1.6 The wind velocity is zero.

S6.1.7 Unless otherwise specified, stopping tests are conducted on a 12-foot wide level, straight roadway having a peak friction coefficient of 0.9. For road tests in S5.3, the vehicle is aligned in the center of the roadway at the beginning of a stop. Peak friction coefficient is measured using an ASTM E1136 standard reference test tire in accordance with ASTM method E1337–90, at a speed of 40 mph, without water delivery for the surface with PFC of 0.9, and with water delivery for the surface with PFC of 0.5.

S6.1.8 For vehicles with parking brake systems not utilizing the service brake friction elements, burnish the friction elements of such systems prior to the parking brake test according to the manufacturer's recommendations. For vehicles with parking brake systems utilizing the service brake friction elements, burnish the brakes as follows: With the transmission in the highest gear appropriate for a speed of 40 mph, make 500 snubs between 40 mph and 20 mph at a deceleration rate of 10 f.p.s.p.s., or at the vehicle's maximum deceleration rate if less than 10 f.p.s.p.s. Except where an adjustment is specified, after each brake application accelerate to 40 mph and maintain that speed until making the next brake application at a point 1 mile from the initial point of the previous brake application. If the vehicle cannot attain a speed of 40 mph in 1 mph, continue to accelerate until the vehicle reaches 40 mph or until the vehicle has traveled 1.5 miles from the initial point of the previous brake application, whichever occurs first. Any automatic pressure limiting valve is in use to limit pressure as designed. The brakes may be adjusted up to three times during the burnish procedure, at intervals specified by the vehicle manufacturer, and may be adjusted at the conclusion of the burnishing, in accordance with the vehicle manufacturer's recommendation.

S6.1.9 Static parking brake tests for a semitrailer are conducted with the front-end supported by an unbraked dolly. The weight of the dolly is included as part of the trailer load.

S6.1.10 In a test other than a static parking test, a truck tractor is tested at its GVWR by coupling it to an unbraked flatbed semi-trailer (hereafter, control trailer) as specified in S6.1.10.2 to S6.1.10.4.

S6.1.10.1 [Reserved]

S6.1.10.2 The center of gravity height of the ballast on the loaded control trailer shall be less than 24 inches above the top of the tractor's fifth wheel.

S6.1.10.3 The control trailer has a single axle with a GAWR of 18,000 pounds and a length, measured from the transverse centerline of the axle to the centerline of the kingpin, of 258 ± 6 inches.

S6.1.10.4 The control trailer is loaded so that its axle is loaded at 4,500 pounds and the tractor is loaded to its GVWR, loaded above the kingpin only, with the tractor's fifth wheel adjusted so that the load on each axle measured at the tire-ground interface is most nearly proportional to the axles' respective GAWRs, without exceeding the GAWR of the tractor's axle or axles or control trailer's axle.

S6.1.11 *Special drive conditions.* A vehicle equipped with an interlocking axle system or a front wheel drive system that is engaged and disengaged by the driver is tested with the system disengaged.

S6.1.12 *Liftable axles.* A vehicle with a liftable axle is tested at GVWR with the liftable axle down and at unloaded vehicle weight with the liftable axle up.

S6.1.13 *Trailer test rig.*

(a) The trailer test rig shown in Figure 1 is calibrated in accordance with the calibration curves shown in Figure 3.

For the requirements of S5.3.3.1 and S5.3.4.1, the pressure in the trailer test rig reservoir is initially set at 100 psi for actuation tests and 95 psi for release tests.

(b) The trailer test rig shown in Figure 1(a) is capable of increasing the pressure in a 50 cubic inch reservoir from atmospheric to 60 lb/in² in 0.06 second, measured from the first movement of the service brake control to apply service brake pressure and of releasing pressure in such a reservoir from 95 to 5 lb/in² in 0.22 second measured from the first movement of the service brake control to release service brake pressure.

S6.1.14 In testing the emergency braking system of towing vehicles under S5.7.3(a) and S5.7.3(b), the hose(s) is vented to the atmosphere at any time not less than 1 second and not more than 1 minute before the emergency stop begins, while the vehicle is moving at the speed from which the stop is to be made and any manual control for the towing vehicle protection system is in the position to supply air and brake control signals to the vehicle being towed. No brake application is made from the time the line(s) is vented until the emergency stop begins and no manual operation of the parking brake system or towing vehicle protection system occurs from the time the line(s) is vented until the stop is completed.

S6.1.15 *Initial brake temperature.* Unless otherwise specified, the initial brake temperature is not less than 150° F and not more than 200° F.

6.2 *Dynamometer test conditions.*

S6.2.1 The dynamometer inertia for each wheel is equivalent to the load on the wheel with the axle loaded to its GAWR. For a vehicle having additional GAWRs specified for operation at reduced speeds, the GAWR used is that specified for a speed of 50 mph, or, at the option of the manufacturer, any speed greater than 50 mph.

S6.2.2 The ambient temperature is between 75° F. and 100° F.

S6.2.3 Air at ambient temperature is directed uniformly and continuously over the brake drum or disc at a velocity of 2,200 feet per minute.

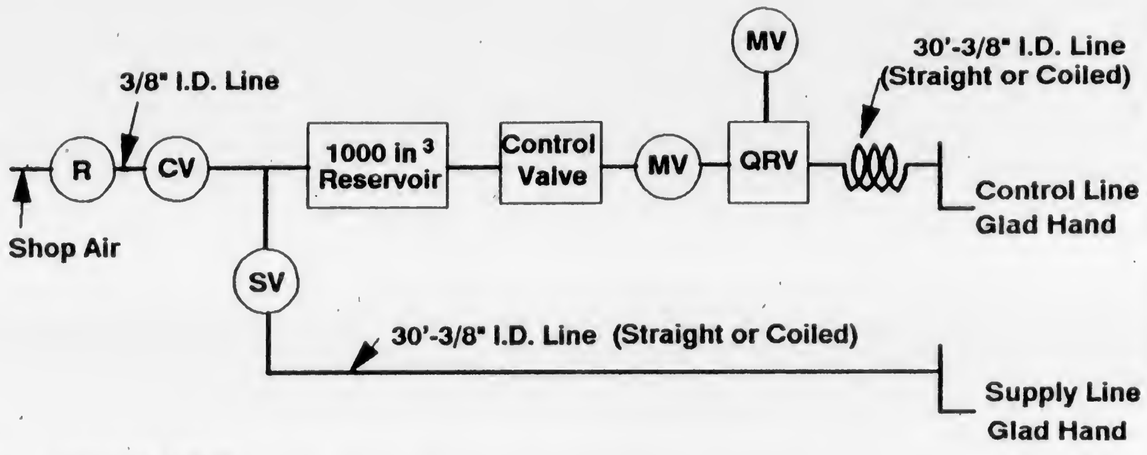
S6.2.4 The temperature of each brake is measured by a single plug-type thermocouple installed in the center of the lining surface of the most heavily loaded shoe or pad as shown in Figure 2. The thermocouple is outside any center groove.

S6.2.5 The rate of brake drum or disc rotation on a dynamometer or responding to the rate of rotation on a vehicle at a given speed is calculated by assuming a tire radius equal to the static loaded radius specified by the tire manufacturer.

S6.2.6 Brakes are burnished before testing as follows: place the brake assembly on an inertia dynamometer and adjust the brake as recommended by the vehicle manufacturer. Make 200 stops from 40 mph at a deceleration of 10 f.p.s.p.s., with an initial brake temperature on each stop of not less than 315° F and not more than 385° F. Make 200 additional stops from 40 mph at a deceleration of 10 f.p.s.p.s. with an initial brake temperature on each stop of not less than 450° F and not more than 550° F. The brakes may be adjusted up to three times during the burnish procedure, at intervals specified by the vehicle manufacturer, and may be adjusted at the conclusion of the burnishing, in accordance with the vehicle manufacturer's recommendation.

S6.2.7 The brake temperature is increased to a specified level by conducting one or more stops from 40 m.p.h. at a deceleration of 10 f.p.s.p.s. The brake temperature is decreased to a specified level by rotating the drum or disc at a constant 30 m.p.h.

BILLING CODE 4910–59–P



SV - Shut-off Valve
R - Regulator (set at 100 psi for service brake actuation tests;
95 psi for service brake release tests;
100 psi for parking brake tests in S5.6.3.3, S5.6.3.4, S5.6.5.4, and S5.6.6.5,
and for the supply line pressure retention test in S5.8.2; and any
pressure above 70 psi for parking brake test in S5.6.5.3.)
CV - Check Valve
MV - Metering Valve (Variable or Fixed)
QRV - Quick Release Valve

Figure 1. Trailer Test Rig.

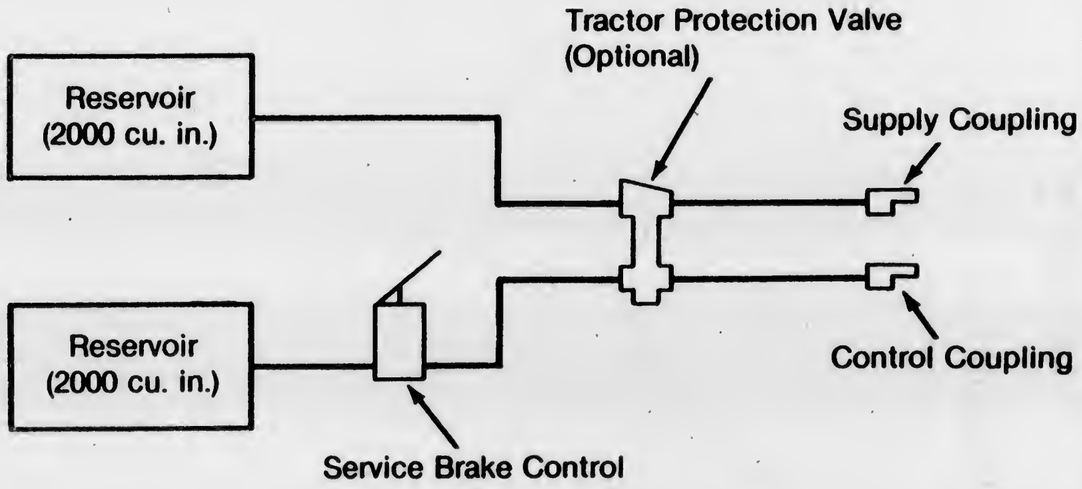
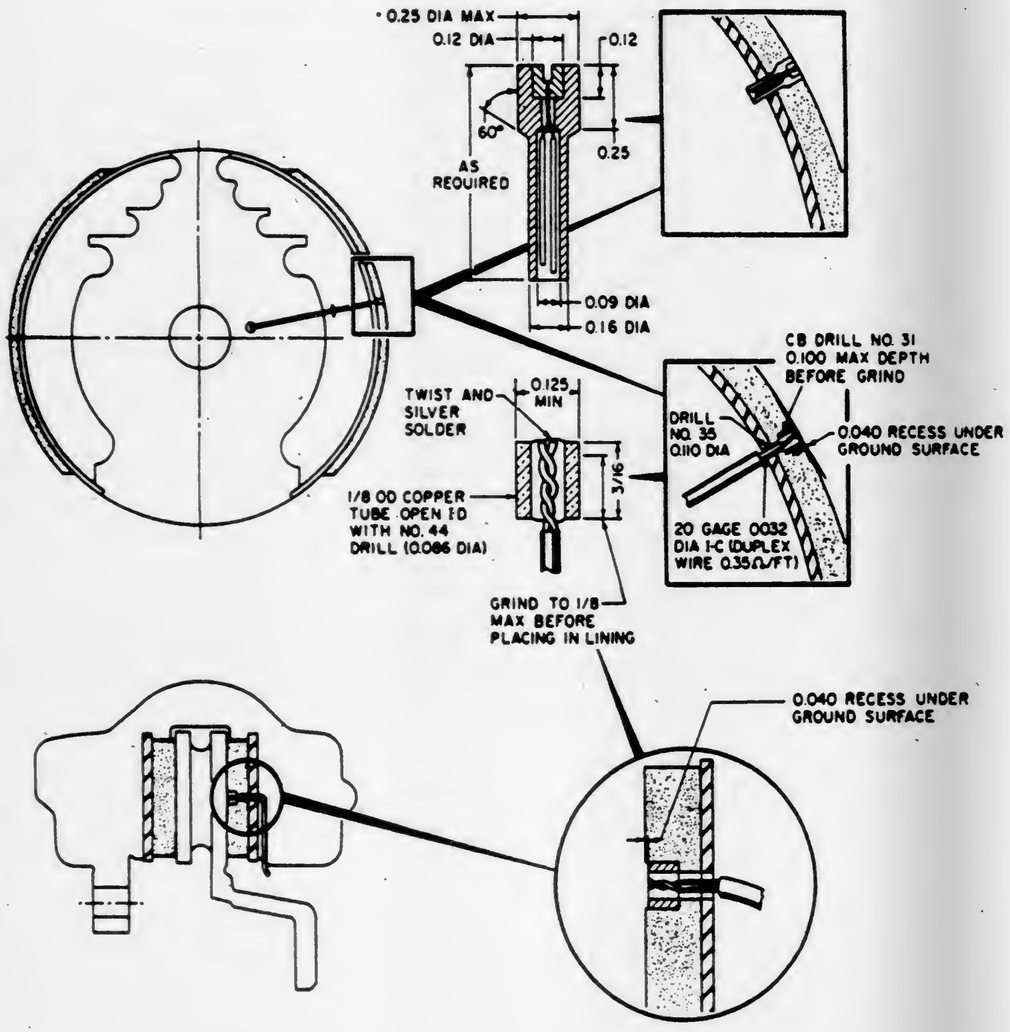


Figure 1(a). Trailer Test Rig.

FIGURE 2

THERMOCOUPLE INSTALLATION



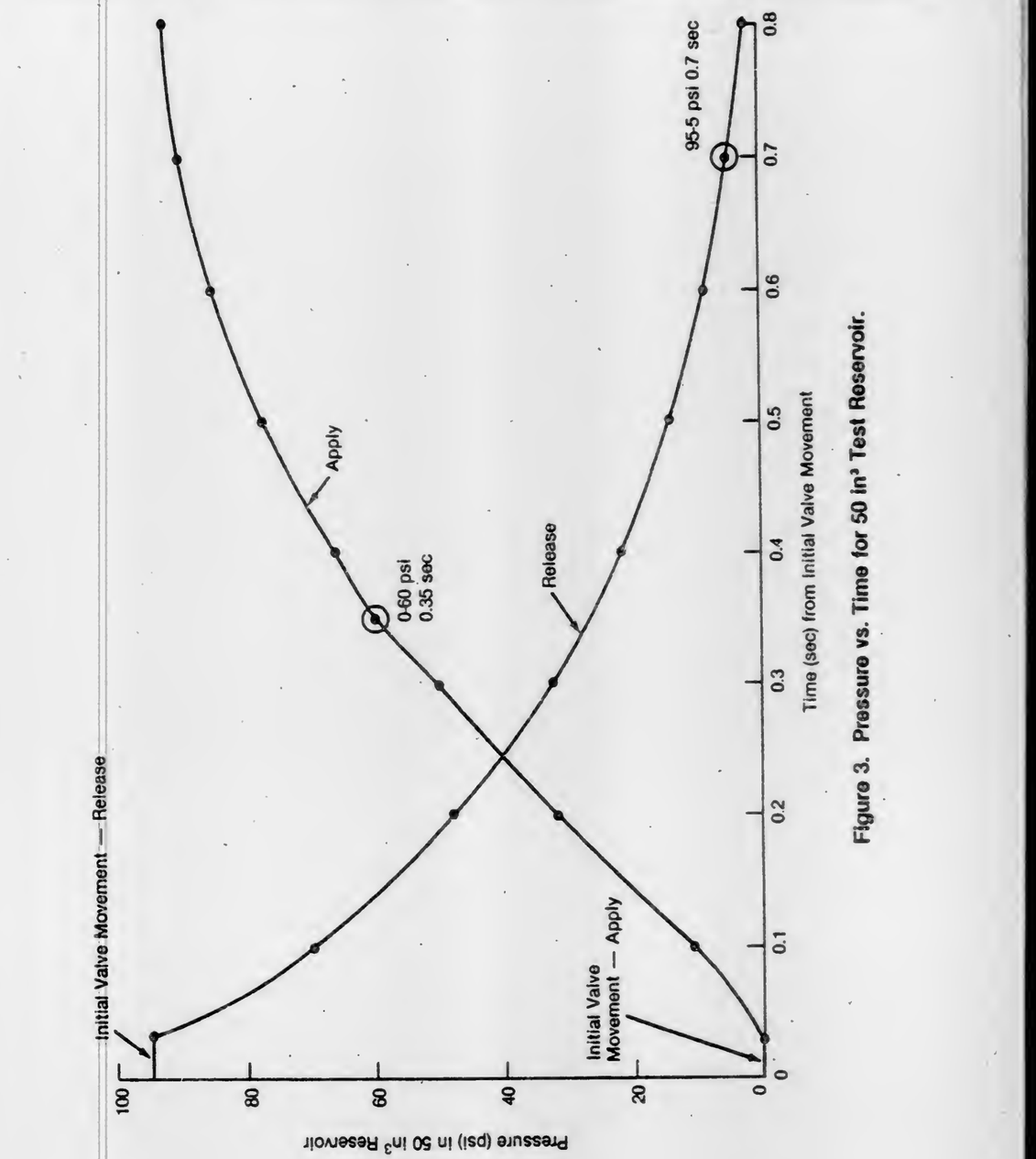


Figure 3. Pressure vs. Time for 50 in³ Test Reservoir.

BILLING CODE 4910–59–C

Table I.—Stopping Sequence

1. Burnish.
2. Stops on a peak friction coefficient surface of 0.5:
   (a) With the vehicle at gross vehicle weight rating (GVWR), stop the vehicle from 30 mph using the service brake, for a truck tractor with a loaded unbraked control trailer.
   (b) With the vehicle at unloaded weight plus up to 500 lbs., stop the vehicle from 30 mph using the service brake, for a truck tractor.
3. Manual adjustment of the service brakes allowed for truck tractors, within the limits recommended by the vehicle manufacturer.
4. Other stops with vehicle at GVWR:
   (a) 60 mph service brake stops on a peak friction coefficient surface of 0.9, for a truck tractor with a loaded unbraked control trailer, or for a single-unit vehicle.
   (b) 60 mph emergency brake stops on a peak friction coefficient of 0.9, for a single-unit vehicle. Truck tractors are not required to be tested in the loaded condition.
5. Parking brake test with the vehicle loaded to GVWR.
6. Manual adjustment of the service brakes allowed for truck tractors and single-unit vehicles, within the limits recommended by the vehicle manufacturer.
7. Other stops with the vehicle at unloaded weight plus up to 500 lbs.:
   (a) 60 mph service brake stops on a peak friction coefficient surface of 0.9, for a truck tractor or for a single-unit vehicle.
   (b) 60 mph emergency brake stops on a peak friction coefficient of 0.9, for a truck tractor or for a single-unit vehicle.
8. Parking brake test with the vehicle at unloaded weight plus up to 500 lbs.
9. Final inspection of service brake system for condition of adjustment.

TABLE II.—STOPPING DISTANCE IN FEET

Vehicle speed in miles per hour	Service brake				Emergency brake	
	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9
	(1)	(2)	(3)	(4)	(5)	(6)
20	32	35	38	40	83	85
25	49	54	59	62	123	131
30	70	78	84	89	170	186
35	96	106	114	121	225	250
40	125	138	149	158	288	325
45	158	175	189	200	358	409
50	195	216	233	247	435	504
55	236	261	281	299	520	608
60	280	310	335	355	613	720

Note: (1) Loaded and unloaded buses; (2) Loaded single unit trucks; (3) Unloaded truck tractors and single unit trucks; (4) Loaded truck tractors tested with an unbraked control trailer; (5) All vehicles except truck tractors; (6) Unloaded truck tractors.

TABLE III.—BRAKE RETARDATION FORCE

Column 1 Brake Retardation Force, GAWR	Column 2 Brake Chamber Pressure, PSI
0.05	20
0.12	30
0.18	40
0.25	50
0.31	60
0.37	70
0.41	80

TABLE IV.—[RESERVED]

TABLE V.—BRAKE CHAMBER RATED VOLUMES

Brake chamber type (Nominal area of piston or diaphragm in square inches)	Column 1 Full stroke (Inches)	Column 2 Rated volume (Cubic Inches)
Type 9	1.75/2.10	25
Type 12	1.75/2.10	30
Type 14	2.25/2.70	40

TABLE V.—BRAKE CHAMBER RATED VOLUMES—Continued

Brake chamber type (Nominal area of piston or diaphragm in square inches)	Column 1 Full stroke (Inches)	Column 2 Rated volume (Cubic Inches)
Type 16	2.25/2.70	50
Type 18	2.25/2.70	55
Type 20	2.25/2.70	60
Type 24	2.25/2.70	70
Type 30	2.50/3.20	95
Type 36	3.00/3.60	135

Issued on: May 23, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–13557 Filed 5–30–96; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 960314073–6145–02; I.D. 030896E]

RIN 0648–AI23

Atlantic Swordfish Fishery; 1996 Quotas, Minimum Size, Adjustment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the regulations governing the Atlantic swordfish fishery to: Reduce the annual total allowable catch (TAC) to 2,625 metric tons (mt) dressed weight (dw) via a split season (June 1 - May 31), decrease the minimum size to 73 cm (29 inches) cleithrum to caudal keel measure, eliminate the trip allowance for undersized fish, and make reporting requirements consistent with the current logbook program. The intent of this action is to rebuild the swordfish resource while allowing harvest of swordfish consistent with recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

EFFECTIVE DATE: The rule is effective June 4, 1996.

ADDRESSES: Copies of Biological Opinions and a Final Environmental Assessment/Regulatory Impact Review (EA/RIR) supporting this action may be obtained from Rebecca Lent, Highly Migratory Species Management Division, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Comments regarding the burden-hour estimate or any other aspect of the collection-of-information requirement contained in this rule should be sent to Rebecca Lent and to the Office of Management and Budget (OMB), (0648–0016), Attention: NOAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Rebecca Lent, 301–713–2347; fax: 301–713–0596.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish and its implementing regulations at 50 CFR part 630 issued under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

Background information about the need for revisions to Atlantic swordfish fishery regulations was provided in the proposed rule (61 FR 15212, April 5, 1996) and is not repeated here.

Management Measures

These regulatory changes will improve NMFS' ability to implement the ICCAT recommendations and further the management objectives for the domestic swordfish fisheries:

1. TAC and Fishing Year Definition

NMFS changes the definition of the fishing year for purposes of TAC implementation to June 1 - May 31. NMFS also decreases the annual TAC by 359 mt to 2,625 mt, which is consistent with the 1994 ICCAT recommendation. All weights are in dw of swordfish, unless indicated otherwise. The TAC is divided between a directed-fishery quota of 2,371 mt and a bycatch quota of 254 mt. The directed-fishery quota is divided into two 1,185.5 mt semiannual quotas for each of the 6-month periods, June 1 through November 30, and December 1 through May 31. Each of the 1,185.5 mt semiannual quotas is further subdivided into a drift gillnet quota of 23.45 mt and a longline and harpoon quota of 1,162.05 mt. The semiannual TAC for the longline and harpoon swordfish fishery is reduced by the estimated semiannual dead discards of 97.6 mt to yield a landing quota of 1,064.44 mt for each of the two semiannual periods.

Following a closure of the directed longline fishery in any semiannual period, any overharvest or underharvest will be added to or subtracted from the bycatch quota of 254 mt. The ability to add or subtract underage or overage ensures that the United States will abide by the annual ICCAT quotas.

The special set-aside quota for harpoon gear remains at 10 mt.

Due to the need to meet observer coverage requirements for the drift gillnet fishery, the starting date for this gear type only, for their 1996 quota, is delayed until July 1, 1996. Contracts, research projects, and other arrangements for observer coverage necessary due to the Category I status of the drift gillnet fishery could not be modified in 1996 to accommodate the revised starting date of June 1, 1996. Thus, the first semiannual drift gillnet quota will be applicable during the period of July 1 - November 30, 1996, and the second semiannual quota will apply to the period of December 1, 1996 to May 31, 1997. The bridge period quota (see below) will be applied for drift gillnet vessels during the period of January 1 - June 30, 1996. Thus, drift gillnetters may fish prior to July 1, 1996, subject to the bridge period quota, which has not been reached to date. The revised fishing year and semiannual periods established herein for other fishing categories will be applied for the drift gillnet fishery beginning June 1, 1997.

2. Bridge Period TAC

A bridge period TAC is determined for the first 5 months of 1996 at a level equal to five twelfths of the 1995 U.S. quota, which is equivalent to 1,149.5 mt (106 mt bycatch, 1021 mt longline, and 22.5 mt drift gillnet). As discussed above, drift gillnet vessels may continue fishing through June 1996 as long as the bridge period quota has not been filled.

3. Alternative Minimum Size

The final rule implements the ICCAT-recommended alternative minimum size of 119 cm (47 inches) lower jaw fork length (LJFL) with zero tolerance for undersized fish, meaning that no swordfish less than this smaller minimum size may be retained on board fishing vessels. Therefore, the current tolerance of undersized fish (15 percent by number per trip) is eliminated. The 119 cm (47") LJFL is equivalent to a cleithrum to caudal keel measure (CK) of 73 cm (29 inches) or 15 kg (33 lb) dw.

4. Other Changes

Changes are made to the regulatory text to make vessel reporting requirements consistent with the current logbook program.

Comments and Responses

1. Quota Reduction and Allocation

Comment: Most comments supported the reduction in TAC as recommended by ICCAT. There was some concern, however, over the calculation of discards, both in terms of the rate used and the fact that only the United States deducts this estimate from their allowable catch.

Response: NMFS agrees that a reduction in TAC to the level recommended by ICCAT is not only necessary under ATCA but also desirable, given that current catch levels exceed replacement yield. The longline discard rate applied in setting the TAC is identical to that used in 1995. However, as data become available, this discard rate could be revised to account for the modification in the minimum size. The United States reports estimated longline discards of undersized swordfish to ICCAT, and had committed, for 1995 and 1996 only, to reducing the TAC accordingly.

Comment: Some commenters felt that the drift gillnet quota should be higher given the number of participants and the derby nature of the fishery. Another commenter suggested that gear-specific quotas be discontinued, to be replaced with a fixed season for the driftnet fishery of 2 months.

Response: The percentage share allocated to the longline and drift gillnet fishery is identical to that used in 1994 and 1995 and is based on the share of total catch harvested by these user groups in 1988. NMFS disagrees with the suggestion of having a season for drift gillnetting rather than a quota, since this would only intensify the derby-fishing nature of this gear category, particularly since it is open access.

2. Split Season

Comment: Some commenters agreed with the split season as one option to improve the economic condition of the swordfish fishermen under declining

quotas. They indicated that, for the two periods of high likelihood for a swordfish longline directed fishery closure, April/May are good months for yellowfin tuna, while October/November have historically been low price months for swordfish.

Response: NMFS agrees that the new semiannual periods might allow for the best possible prices for swordfish catch, which is particularly important to mitigate decline in exvessel revenue given the reduction in TAC.

Comment: Some commenters expressed concern over the possible increased interaction with bluefin tuna and/or protected species given the change in the fishing season.

Response: The swordfish longline fishery has never been closed during the months of June or July; therefore, it is unlikely that the pattern of interaction with bluefin or other bycatch species would be modified by this change in the fishing season. Fishing with the use of drift gillnets in the first half of the existing semiannual period generally began in earnest around mid-June; therefore, it is not evident that a June 1 starting date would modify the pattern of protected species interaction. However, given the need to meet observer coverage requirements for the drift gillnet fishery, the starting date for this gear type for 1996 only is delayed until July 1, 1996, to accommodate arrangements already in place for this year's fishery. Thus, the semiannual drift gillnet 1996 quota will be applicable during the period of July 1 - November 30, 1996, and the second semiannual quota will hold during the period of December 1, 1996 to May 31, 1997. The revised fishing year and semiannual periods thus will be applied for the drift gillnet fishery beginning June 1, 1997, unless further information and/or analyses received before that date warrant a change in this regulation.

3. Revised Minimum Size

Comment: Some commenters felt that the revised minimum size would lead to decreased discards and facilitate enforcement. Others felt that the minimum size should be increased to 50 lb and/or the average weight at first reproduction (80 kg round weight, or 132 lb dw). Some commenters also suggested that fishers be allowed to retain swordfish less than the minimum size for their own consumption or for charity purposes.

Response: NMFS agrees that implementation of the alternative minimum size could lead to a reduction in the longline discard rate to the extent that undersized fish that are now harvested under the 15 percent tolerance and/or discarded at sea are within the new, lower minimum size range. An increase in the minimum size to 50 lb or 132 lbs (reproductive weight) could lead to a significant increase in the discard rate. Finally, retention of swordfish less than the alternative minimum size could be counter to the ICCAT recommendation, with the exception of the Second Harvest program which has been approved by ICCAT.

Comment: Several commenters suggested that NMFS consider time-area closures to reduce the catch of undersized swordfish.

Response: Preliminary research conducted by NMFS indicates certain areas in which there is relatively higher interaction with undersized swordfish. However, a complete analysis should be conducted on the potential time-area closures and the impact of these closures on the fishery. In addition, the revised minimum size and fishing season could have an effect on the rate of small fish interaction. Time-area closures may be considered in future rulemaking if analysis warrants.

Comment: It was noted that the ICCAT recommendation would facilitate a possible ban on sale of swordfish under the minimum size if a country adopts the alternative minimum size with zero tolerance. This would allow the United States to halt the import of undersized swordfish from Nations that do not comply with the ICCAT recommendation.

Response: NMFS agrees that a ban on the sale of Atlantic swordfish under the lower minimum size would facilitate enforcement and ensure that ICCAT conservation efforts are not hampered by harvest and export to the United States of undersized swordfish from non-complying Nations. However, given the considerable volume of domestic and imported Pacific swordfish that is handled nationwide, NMFS must establish an enforceable system to document shipments of swordfish harvested outside the management unit. Such a system is under consideration but will require some time to comply with Paperwork Reduction Act (PRA) requirement. In the meantime, since adoption of the alternative minimum size will facilitate U.S. Atlantic enforcement and may reduce the discard rate, NMFS is implementing the alternative minimum size.

4. Other

Comment: There were continued comments regarding the need to allow a 14-day offloading period for swordfish during a closure due to the market effects of a sudden increase in landings.

Response: NMFS agrees that closure dates can cause a market glut and lower prices. However, even a 14-day offloading window can cause such a market glut, since vessels may have an incentive to wait until the last day or two of this window to sell their swordfish. In addition, given that the concern over sudden increase in supply comes primarily from long-distance vessels that tend to take longer trips, there is concern about the effect of further delaying the offloading on the quality of the swordfish landed. Finally, a 14-day window only would encourage vessels to return to port at the last minute, with possible consequences on the catch rate in the final days, leading to even earlier closure dates.

Comment: There were several comments on issues that are beyond the scope of this rule, including: Requiring equal coverage for vessels of all gear types, with a minimum of 50 percent coverage; establishing target catch criteria for swordfish bycatch during closure of the directed fishery; proposals to extend the fishing season; allowing more than

30 days to comment on a proposed rule; and monitoring the U.S. swordfish catch in the south Atlantic.

Response: These issues are beyond the scope of this rulemaking, the primary purpose of which is to implement the 1996 TAC via the split season, along with revising the minimum size. NMFS will consider the comments above in future rulemaking. With respect to the monitoring of swordfish catch in the South Atlantic, all U.S. permitted vessels are currently subject to a reporting requirement, including negative reporting.

Based on consideration of comments received, only one change was made to the proposed rule, notably the date of effectiveness of the split season for the drift gillnet fishery, as noted above.

Classification

This final rule is published under the authority of ATCA. The Assistant Administrator for Fisheries, NOAA has determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and are necessary for management of the Atlantic swordfish fishery. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The 1996 TAC represents about a 12–percent reduction from the TAC of the previous year, which could result in short-term potential losses in gross revenue of about $3.2 million. However, these potential losses will be at least partially offset by increases in price due to declining supply (demand is price-inelastic) and the split season. In addition, pelagic longline vessels may redirect fishing effort to Atlantic tunas, dolphin fish, and other species, as occurred in the 1995 season. As a result, a regulatory flexibility analysis was not prepared. The RIR provides further discussion of the economic effects of the rule.

This action has been determined to be not significant for purposes of E.O. 12866.

NMFS has determined that there is good cause to waive partially the 30-day delay in the effective date normally required by section 553(d) of the Administrative Procedure Act. Since this fishery is underway, early implementation of the new TAC and minimum size will ensure effective implementation of the ICCAT recommendations.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB Control Number.

This final rule includes changes to the regulatory text regarding vessel reporting requirements in an effort to be consistent with changes in the logbook program. However, there are no new collection-of-information requirements since the proposed rule simply clarifies requirements that have been approved by the OMB under Control Number 0648–0016 in 15 CFR part 902. Public reporting burden for this collection of information is estimated to average 2 minutes for logbook records and trip summaries.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden, to NMFS and OMB (see **ADDRESSES**).

NMFS issued biological opinions under the Endangered Species Act on September 1, 1995, and on February 2, 1996, indicating that the level of impact and marine mammal takes from the longline and harpoon, and drift gillnet swordfish fishery is not likely to jeopardize the continued existence of any sea turtle species or any marine mammal populations.

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: May 24, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 630 is amended as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

2. In § 630.5, paragraph (a)(1) is revised to read as follows:

§ 630.5 Recordkeeping and reporting.

(a) *Fishing vessel reports.* (1) The owner and operator of a vessel for which a vessel permit has been issued under § 630.4 must ensure that a daily logbook form is maintained of the vessel's swordfishing effort, catch, and disposition on logbook forms available from the Science and Research Director. Such forms must be submitted to the Science and Research Director postmarked not later than the 7th day after sale of the swordfish off-loaded from a trip. If no fishing occurred during a month, a report so stating must be submitted in accordance with instructions provided with the logbook forms. Logbooks must be kept on board the vessel at all times.

* * * * *

3. In § 630.7, paragraph (q) is revised to read as follows:

§ 630.7 Prohibitions.

* * * * *

(q) Possess on board a vessel a swordfish that is smaller than the minimum size specified in § 630.23(a).

* * * * *

4. Section 630.20 is revised to read as follows:

§ 630.20 Fishing Year.

The fishing year is June 1 through July 31.

5. In § 630.23, paragraph (b) is removed, paragraphs (c) and (d) are redesignated as paragraphs (b) and (c), respectively, and the first sentence of paragraph (a) and the last sentence of newly designated paragraph (b) are revised to read as follows:

§ 630.23 Harvest limitations.

(a) *Minimum size.* The minimum allowable size for possession on board a fishing vessel for a swordfish taken from the management unit is 29 inches (73 cm) carcass length, measured along the body contour (i.e., a curved measurement) from the cleithrum to the anterior portion of the caudal keel (CK measurement) or, if swordfish are weighed, 33 lb (15 kg) dressed weight.

* * *

(b) * * * A shark-bit swordfish for which the remainder of the carcass is less than the minimum size limit specified in paragraph (a) of this section may not be landed.

* * * * *

6. In § 630.24, paragraphs (b)(1), (d)(4), and (e) are revised, paragraph (b)(2) is redesignated as paragraph (b)(4), and new paragraphs (b)(2) and (b)(3) are added to read as follows:

§ 630.24 Quotas.

* * * * *

(b) * * *

(1) The directed fishery quota for the period January 1, 1996, through May 31, 1996, is 1,021 mt dressed weight for the longline fishery, 22.5 mt dressed weight for the drift gillnet fishery, and 106 mt dressed weight for the bycatch fishery.

(2) The annual quota for the directed fishery for swordfish is 2,371 mt dressed weight, divided into two semiannual quotas as follows:

(i) For the semiannual period June 1 through November 30:

(A) 23.45 mt dressed weight, that may be harvested by drift gillnet.

(B) 1,162.05 mt dressed weight that may be harvested by longline and harpoon. To account for harvested fish that are discarded dead, only 1064.44 mt dressed weight, may be landed in this category.

(ii) For the semiannual period December 1 through May 31:

(A) 23.45 mt dressed weight that may be harvested by drift gillnet.

(B) 1,162.05 mt dressed weight that may be harvested by longline and harpoon. To account for harvested fish that are discarded dead, only 1064.44 mt dressed weight may be landed in this category.

(3) Notwithstanding any other provision of this part, the sub-quotas for the drift gillnet fishery for January 1 - November 30, 1996, are available as follows:

(i) For the period January 1 through June 30, 22.5 mt dressed weight; and

(ii) For the period July 1 through November 30, 23.45 mt dressed weight.

* * * * *

(d) * * *

(4) Any adjustments to the 12-month directed-fishery quota will be apportioned equally between the June 1 through November 30 and December 1 through May 31 semiannual periods.

* * * * *

(e) NMFS may adjust the December 1 through May 31 semiannual directed-fishery quota and gear quotas to reflect actual catches during the June 1 through November 30 semiannual period, provided that the 12-month directed-fishery and gear quotas are not exceeded.

* * * * *

7. In § 630.25, the second sentence of paragraph (b) is revised to read as follows:

§ 630.25 Closures and bycatch limits.

* * * * *

(b) * * * The procedures of paragraph (a)(1) of this section notwithstanding, during the June 1 through November 30 semiannual period, swordfish not exceeding 21,500 lb (9,752 kg), dressed weight, may be set aside for the harpoon segment of the fishery. * * *

* * * * *

[FR Doc. 96–13690 Filed 5–28–96; 4:25 pm]

BILLING CODE 3510–22–F

---

50 CFR Part 672

[Docket No. 960228053–6142–02; I.D. 022296E]

RIN 0648–AI56

Groundfish of the Gulf of Alaska; Pollock Seasonal Allowances

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 45 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). This rule combines the third and fourth quarterly allowances for pollock in the three statistical areas of the combined Western and Central (W/C) Regulatory Area into single seasonal allowances that will become available on September 1 of each fishing year. Changes to the final 1996 harvest specifications of Gulf of Alaska (GOA) pollock are also made to reflect the revised seasonal allowances. These measures are necessary to address management problems that have been identified by the fishing industry. They are intended to further the management objectives of the FMP.

EFFECTIVE DATE: May 30, 1996.

ADDRESSES: Copies of Amendment 45 and the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for Amendment 45 may be obtained from the North Pacific Fishery Management Council, 605 W. 4th Ave. Suite #306, Anchorage, AK 99501.

FOR FURTHER INFORMATION CONTACT: Kent Lind, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The pollock fishery in the exclusive economic zone of the GOA is managed by NMFS under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations found at 50 CFR part 672. General regulations governing U.S. fisheries are also found at 50 CFR part 620.

Background

Amendment 45 removes the requirement that the total allowable catch (TAC) specified for pollock in three statistical areas of the W/C Regulatory Area be divided into four equal quarterly allowances and replaces it with more flexible language requiring that the TACs be divided into seasonal allowances rather than quarterly allowances. Amendment 45 authorizes NMFS to establish the number and timing of seasonal allowances in regulation. The Council's objective in adopting Amendment 45 was to allow NMFS to combine by regulatory amendment the third quarter (July 1) and fourth quarter (October 1) allowances for pollock in the statistical areas of the W/C Regulatory Area into single seasonal allowances that would become available in September or October.

The action has the following objectives: (1) Reduced chum salmon bycatch, which has been high during the third quarter (July 1) opening; (2) reduced scheduling conflicts with summer salmon processing activities; (3) reduced operating costs for industry; and (4) reduced risk of harvest overruns during extremely short openings. Additional information on this action may be found in the preamble to the proposed rule published in the **Federal Register** on March 12, 1996 (61 FR 9972) and the EA/RIR prepared for this action. Public comment on the proposed action was invited through April 22, 1996. NMFS received 11 written letters of comment. The comments are summarized and responded to below in the response to comments section.

The only change from the proposed rule is a modification in the opening date for the Western Regulatory Area from October 1 to September 1 for the reasons stated below. This change is reflected in § 672.23(e), which establishes fishing seasons, and section 4 and table 3 of the final 1996 harvest specifications.

At its January 1996 meeting, the Council considered opening date options of September 1, September 15, and October 1 that would apply to the third season in both the W/C Regulatory Areas. However, the Council subsequently recommended that NMFS implement a modified proposal that would establish separate third season opening dates of September 1 in the Central Regulatory Area and October 1 in the Western Regulatory Area. This modified proposal was submitted to the Council by a coalition of Bering Sea-based processors and fishermen with the intent of preserving the ability of Bering Sea-based vessels to fish in the Western Regulatory Area after the closure of the Bering Sea pollock non-roe season. The proposed rule included these separate opening dates as recommended by the Council.

Based on changing circumstances in the pollock fishery and information submitted during the comment period on the proposed rule, NMFS has changed the final rule from the proposed rule to reflect a single opening date of September 1 for both the W/C Regulatory Areas. The reasons for this change are as follows: First, the Council at its April 1996 meeting made a final recommendation that NMFS delay the start of the Bering Sea pollock non-roe season from August 15 to September 1 for both the inshore and offshore sectors. If approved, this regulatory amendment would become effective for the 1996 pollock non-roe season. In 1995 the inshore sector Bering Sea pollock non-roe season lasted 39 days and NMFS expects the 1996 season to last approximately as long. Delaying the Bering Sea pollock non-roe season until September 1 is likely to extend the season into the first or second week of October. Consequently, NMFS believes that an October 1 opening date for the Western Regulatory Area no longer holds any particular advantage for the Bering Sea-based fleet, which was the only sector of the industry that supported this particular opening date.

Second, NMFS has received extensive written comments from Western Regulatory Area-based fishermen and processors who oppose an October 1 opening date for the Western Regulatory Area for safety reasons. This sector of the industry suggests that because weather conditions are likely to be worse in October, an October 1 opening date will pose greater safety risks for smaller vessels than would a September 1 opening date.

Third, NMFS has received extensive written comments from Western Regulatory Area-based fishermen and processors who believe an October 1 opening date would cause them to be preempted by larger and more numerous Bering Sea-based vessels. Although a delay in the Bering Sea pollock non-roe season would largely eliminate these concerns, NMFS believes that a compelling reason no longer exists to treat the Western Regulatory Area separately from the rest of the GOA.

Finally, scheduling fisheries in various areas to operate simultaneously will disperse effort resulting in more manageable fisheries and a more equitable distribution of fishing opportunity. A September 1 pollock opening date for the Western Regulatory Area would bring the season for this area into line with the rest of the GOA, as well as the Bering Sea if the Council's recommendation to delay the pollock non-roe season is approved.

Regulatory Changes Made by This Action

This action combines the third and fourth quarterly allowances of pollock TAC for the statistical areas of the W/C Regulatory Area into single seasonal allowances equal to 50 percent of the annual pollock TAC for each statistical area. This combined seasonal allowance will become available on September 1. This action retains the requirements that (1) within any fishing year, shortfalls in the harvest of one seasonal allowance be proportionately added to subsequent seasonal allowances, resulting in a sum for each seasonal allowance not to exceed 150 percent of the original seasonal allowance; and (2) harvests in excess of a seasonal allowance be deducted proportionately from subsequent seasonal allowances.

Response to Comments

No comments opposed Amendment 45 in general (or supported retaining the status quo of four quarterly allowances). Six letters of comment from representatives for Western Regulatory Area-based pollock fishermen and processors supported a September 1 opening date for this area but opposed an October 1 opening date. One letter of comment from a representative for Central Regulatory Area-based pollock fishermen and processors supported a September 1 opening date for this area but was neutral on the Western Regulatory Area opening date. No comments were received that favored an October 1 opening date for the Western Regulatory Area. The following paragraphs summarize and respond to the comments received on the proposed rule.

Comment 1. Prior to the Council's decision at the January 1996 meeting to establish separate opening dates, no discussion or analysis occurred of separate opening dates for the W/C Regulatory Areas. Both the Council's Scientific and Statistical Committee and Advisory Panel recommended that the Council establish a September 1 opening date for both the W/C Regulatory Areas. In addition, no prior notice was provided to the public that the Council was considering separate opening dates. As a result, Western Regulatory Area-based fishermen did not have adequate opportunity to comment on the effects of an October 1 opening date on their fleet.

Response. NMFS has changed the proposed rule to establish a single opening date of September 1 for both the W/C Regulatory Areas.

Comment 2. Considerable support exists within the industry for reconsidering the decision to separate the W/C Regulatory Area opening dates, as evidenced by the 17 to 2 vote by the Advisory Panel at the April 1996 Council meeting, in support of a simultaneous W/C Regulatory opening date of September 1.

Response. See response to comment 1.

Comment 3. The Council's adoption of different opening dates for the W/C Regulatory Areas was extremely unfair to Western Regulatory Area fishermen who have sought to increase their involvement in the administrative process. The Council's action was taken without any public notice, with little or no understanding of potential impacts on small boat fishermen and communities, and with no public discussion of this unanticipated alternative by Council members or NMFS. This action can best be described as a "sneak attack" because Western Regulatory Area fishermen were not given a reasonable opportunity to defend themselves on this issue.

Response. See response to comment 1.

Comment 4. When the Council and NMFS make decisions that result in allocations among fishermen, both fundamental fairness and the law dictate a heightened level of public participation and a strong administrative record. This process is necessary so that the Council, NMFS, and the Secretary of Commerce are fully informed of the potential impacts of the proposed actions. Although case law allows a tainted administrative record to be cured by subsequent comments and internal Agency analysis of the objections raised, this "after the fact" procedure does not cure the fundamentally unfair nature of this particular decision by the Council. NMFS should not attempt to cure this tainted administrative record simply to justify an improperly motivated decision.

Response. This comment is mute in light of NMFS' decision to adopt a single opening date of September 1 for both the Western and Central Regulatory Areas.

Comment 5. The EA/RIR did not evaluate the impacts of an October 1 Western Regulatory Area opening date on resident small-boat fishermen or the coastal communities of the Western GOA which are dependent on the flow of fish products for employment and local tax revenues. Nor did the analysis address the possible loss of the October 1 third trimester release to all fishermen if NMFS believes that the vessel capacity will exceed the quota. A separate October 1 date for the Western Regulatory Area was beyond the scope of the EA/RIR, and we seriously question the legality of adopting a measure that was not subject to a proper analytical or public review.

Response. See response to comment 4.

Comment 6. The proposed October 1 opening date for the Western Regulatory Area is a substantial reallocation of the pollock resource, which treats local small-boat fishermen unfairly. National standard 4 requires that any allocation of fishing privileges be done in a manner that is fair and equitable to all fishermen. An October 1 opening will invite massive participation by the Bering Sea-based pollock fleet to the disadvantage of smaller vessels based in the Western Regulatory Area. In addition, eliminating the July opening would effectively eliminate this small boat fleet's fishery, which has occurred primarily in the third quarter and secondarily in the fourth quarter of each year. These vessels have traditionally and almost exclusively fished in the third quarter (July 1) opening in the Western Regulatory Area and will face increased safety risks if required to fish this quota in October. If the July allowance is combined with the fourth quarter allowance and exposed to the escalating fishing pressure of the entire Bering Sea and GOA fleet, the impact will be to reallocate the entire third quarter fishery from a resident small-boat fleet to the Dutch Harbor and Kodiak fleets. The majority of these small Western Regulatory Area-based vessels will be unable to establish Kodiak markets to participate in the September 1 Central Regulatory Area

opening and their small size makes it impossible for them to participate in the Bering Sea pollock non-roe season.

Response. See response to comment 1.

Comment 7. Delaying the third seasonal allowance in the Western Regulatory Area until October 1 when the Bering Sea pollock fishery is closed will greatly increase effort in the Western Regulatory Area. This will make the fishery more difficult to manage and is in conflict with one of the stated objectives of Amendment 45, easing the effort in the GOA pollock fisheries. No substantive justification exists for how the October 1 opening date satisfies the third and critical objective of the proposed amendment.

Response. The changes made in the final rule which establish a single opening date of September 1 for both the Central and Western Regulatory Areas and the Council's April 1996 recommendation to delay the Bering Sea pollock non-roe season until September 1, if adopted, would result in a single opening date of September 1 for both the Bering Sea and GOA.

Comment 8. An October 1 start date in the Western Regulatory Area is nothing more than punishment to Sand Point Boats for political reasons. These boats are the smallest boats in the pollock fleet. Asking operators of these boats to start their fishery on October 1 is to invite injuries or worse.

Response. See response to comment 1.

Comment 9. The decision to delay the Western Regulatory Area opening until October 1 means the difference between a multi-day fishery and a fishery that may well be measured in hours. This means that local boats will have taken away from them a reasonable opportunity to make a living so that bigger Kodiak and Dutch Harbor boats can swoop in for a one-tow event.

Response. See response to comment 1.

Comment 10. The proposed October 1 opening date for the Western Regulatory Area isolates one area and subjects it to uncontrollable fishing pressure. The Bering Sea fleet no longer has to choose among the entire W/C Regulatory Area during the last release of pollock. The Kodiak-based fleet of large trawl vessels will be able to fish in the Central Regulatory Area in September and then shift to the Western Regulatory Area in October. The Western Regulatory Area will face not only the local small-boat trawl fleet in October but the combined Bering Sea and Kodiak-based trawl fleet as well. Whenever possible, fisheries in various areas should be scheduled to operate in the same time period to disperse effort. This makes for more manageable fisheries and a more equitable distribution of opportunity.

Response. NMFS concurs. See response to comment 7.

Comment 11. If the October 1 opening date is approved, operators of Western GOA plants estimate they will lose from 11 percent to 15 percent of the pollock that has traditionally been delivered to them. Under the status quo, most of the third quarter pollock fishery in Statistical Areas 610 and 620 was delivered to Western GOA plants. If this opening is shifted to October 1, much of this quota will be harvested instead by Bering Sea-based vessels and delivered to Bering Sea-based plants.

Response. See response to comment 1.

Changes to 1996 Harvest Specifications

Final 1996 harvest specifications for GOA pollock were published in the **Federal Register** on February 5, 1996 (61 FR 4304). The change from quarterly allowances to three seasonal allowances of pollock TAC amounts specified for the statistical areas of the W/C Regulatory Area requires that the final 1996 specifications be amended. First, footnote 2 to Table 1 is revised to read as follows: "Pollock is apportioned to three statistical areas in the combined Western/Central Regulatory Area, each of which is further divided into three seasonal allowances (Table 3). In the Eastern Regulatory Area, pollock is not divided into seasonal allowances."

Second, page 4308 of the final 1996 specifications, section 4, "Apportionments of Pollock TAC Among Regulatory Areas, Season, and Between Inshore and Offshore Components," and Table 3 is amended as follows to reflect the new seasonal allowances of pollock:

4. Apportionments of Pollock TAC Among Regulatory Areas, Seasons, and Between Inshore and Offshore Components

In the GOA, pollock is apportioned by area, season, and inshore/offshore components. Regulations at § 672.20(a)(2)(iv) require that the TAC for pollock in the combined W/C GOA be apportioned among statistical areas; Shumagin (610), Chirikof (620), and Kodiak (630) in proportion to known distributions of the pollock biomass. This measure was intended to provide spatial distribution of the pollock harvest as a sea lion protection measure. Each statistical area apportionment would be further divided into three seasonal allowances (Table 3). Within any fishing year, any unharvested amount of any seasonal allowance of pollock TAC would be added in equal proportions to the subsequent seasonal allowances, resulting in a sum for each seasonal allowance that does not exceed 150 percent of the original seasonal allowance. Similarly, harvests in excess of a seasonal allowance of TAC would be deducted in equal proportions from the remaining seasonal allowances of that fishing year. Directed fishing for pollock in the W/C Regulatory Area (Statistical Areas 610, 620, and 630) may be authorized in seasonal allowances beginning on January 1, June 1, and September 1. The Eastern Regulatory Area pollock TAC of 2,810 metric tons (mt) is not allocated among smaller areas or seasonal allowances.

Regulations at § 672.20(a)(2)(v)(A) require that the domestic annual processing (DAP) apportionment for pollock in all regulatory areas and all seasonal allowances thereof be divided into inshore and offshore components. One hundred percent of the pollock DAP in each regulatory area is apportioned to the inshore component after subtraction of amounts that are determined by the Director, Alaska Region, NMFS (Regional Director) to be necessary to support the bycatch needs of the offshore component in directed fisheries for other groundfish species. The amount of pollock available for harvest by vessels in the offshore component is that amount actually taken as bycatch during directed fishing for groundfish species other than pollock, up to the maximum retainable bycatch amounts allowed under regulations at § 672.20(g).

TABLE 3.—DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA (W/C GOA). ABC FOR THE W/C GOA IS 52,000 MT. BIOMASS DISTRIBUTION IS BASED ON 1993 SURVEY DATA. TACS ARE EQUAL TO ABC. INSHORE AND OFFSHORE ALLOCATIONS OF POLLOCK ARE NOT SHOWN. ABCS AND TACS ARE ROUNDED TO THE NEAREST 10 MT.

Statistical Area	Biomass percent	1996 TAC	Seasonal allowances [1]		
			First	Second	Third
Shumagin (610)	49.0	25,480	6,370	6,370	12,740
Chirikof (620)	24.7	12,840	3,210	3,210	6,420
Kodiak (630)	26.3	13,680	3,420	3,420	6,840
Total	100.0	52,000	13,000	13,000	26,000

[1] As established under paragraphs (e) and (f) of § 672.23, the first, second, and third seasonal allowances of W/C Regulatory Area pollock TAC amounts are available January 1 and June 1, and September 1, respectively.

Classification

The Regional Director has determined that Amendment 45 is necessary for the conservation and management of the groundfish fishery of the GOA and that it is consistent with the Magnuson Act and other applicable laws.

This rule has been determined to be not significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that this rule would not have a significant economic impact on a substantial number of small entities. The reasons were published in the notice of proposed rulemaking. As a result, a regulatory flexibility analysis was not prepared.

Because NMFS would like to incorporate the text of this rule into a comprehensive consolidation of the Federal regulations implementing the Alaska fishery management plans expected to be published as a final rule in the near future, NMFS is making this rule immediately effective. This rule will not have any substantive impact until July 1, 1996. Consequently, under 5 U.S.C. 553(d)(3), it is unnecessary to delay the effectiveness of it for 30 days.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Dated: May 23, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Serivce.

For the reasons set out in the preamble, 50 CFR part 672 is amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801, *et seq.*

General Amendments

2. In § 672.20, paragraph (a)(2)(iv); the first sentence of paragraph (a)(2)(v)(A); and paragraph (c)(2) (i) and (ii) are revised to read as follows:

§ 672.20 General limitations.

(a) * * *

(2) * * *

(iv) The TAC for pollock in the combined Western and Central Regulatory Areas will be apportioned among Statistical Areas 610, 620, and 630 in proportion to the distribution of the pollock biomass as determined by the most recent NMFS surveys. Each apportionment will be divided into three seasonal allowances of 25 percent, 25 percent, and 50 percent of the apportionment, respectively, corresponding to the three fishing seasons defined at paragraph (e) of § 672.23. Within any fishing year, any unharvested amount of any seasonal allowance will be added proportionately to all subsequent seasonal allowances, resulting in a sum for each allowance not to exceed 150 percent of the initial seasonal allowance. Within any fishing year, harvests in excess of a seasonal allowance will be deducted proportionately from all subsequent seasonal allowances.

(v) * * * (A) The DAP apportionment of pollock in all regulatory areas will be allocated entirely to vessels catching pollock for processing by the inshore component after subtraction of an amount that is projected by the Regional Director to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. * * *

* * * * *

(c) * * *

(2) * * * (i) *Applicable after December 31, 1998.* If the Regional Director determines that the amount of a target species or "other species" category apportioned to a fishery is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. The amount of a species or species group apportioned to a fishery is the amount identified in the notice of specifications as provided in paragraph (c)(1) of this section as these amounts are revised by inseason adjustments, for that species or species group, as identified by regulatory area, district or statistical area and as further identified according to any allocation of total allowable level of fishing level (TALFF), the apportionment for joint venture processing (JVP), the apportionment for DAP, the seasonal allowance of pollock and, if applicable, as further identified by gear type. In establishing a directed fishing allowance, the Regional Director shall consider the amount of that species or species group or seasonal allowance of pollock that will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Regional Director establishes a directed fishing allowance and that allowance is, or will be, reached before the end of the fishing year or, with respect to pollock, before the end of the season, NMFS will prohibit directed fishing for that species or species group in the specified regulatory area, district or statistical area. If directed fishing for a species or species group is prohibited, any amount of that species or species group greater than the maximum retainable bycatch amount, as calculated under paragraph (g) of this section, may not be retained and must be treated as a prohibited species under paragraph (e) of this section.

(ii) *Applicable through December 31, 1998.* If the Regional Director determines that the amount of a target species or "other species" category apportioned to a fishery is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. The

amount of a species or species group apportioned to a fishery is the amount identified in the specifications as provided in paragraph (c)(1) of this section. These amounts are revised by inseason adjustments, for a given species or species group, as identified by regulatory area, district or statistical area, and as further identified according to any allocation of TALFF, the apportionment for JVP, the apportionment for DAP, the seasonal allowance of pollock or, with respect to Pacific cod, to an allocation to the inshore or offshore component and, if applicable, as further identified by gear type. In establishing a directed fishing allowance, the Regional Director should consider the amount of that species group, seasonal allowance of pollock, or allocation of Pacific cod to the inshore or offshore component that will be taken as incidental catch in directed fishing for other species in the same regulatory area, district or statistical area. If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached before the end of the fishing year or, with respect to pollock, before the end of the season, NMFS will prohibit directed fishing for the species or species group in the specified regulatory area, district or statistical area. If directed fishing for a species or species group is prohibited, any amount of that species or species group greater than the maximum retainable bycatch amount, as calculated under paragraph (g) of this section, may not be retained and must be treated as a prohibited species under paragraph (e) of this section.

* * * * *

3. In § 672.23, paragraph (e) is revised to read as follows:

§ 672.23 Seasons.

* * * * *

(e) Subject to other provisions of this part, directed fishing for pollock in the Western and Central Regulatory Areas of the Gulf of Alaska is authorized only during the three seasons:

(1) From 0001, A.l.t., January 1 through 12 noon, A.l.t., April 1;

(2) From 1200, A.l.t., June 1 through 1200, A.l.t., July 1; and

(3) From 1200, A.l.t., September 1 through 2359 A.l.t., December 31.

Nomenclature Amendments

§ 672.20 [Amended]

4. In addition to the amendments set out above, in § 672.20, in paragraph (c)(1), remove all occurrences of the word "quarterly" and add in their place the word "seasonal".

[FR Doc. 96–13594 Filed 5–30–96; 8:45 am]
BILLING CODE 3510–22–W

50 CFR Parts 672 and 675

[Docket No. 900833–1095; I.D. 052396A]

Groundfish of the Gulf of Alaska and the Bering Sea and Aleutian Islands Area; Bycatch Rate Standards for the Second Half of 1996

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Pacific halibut and red king crab bycatch rate standards; request for comments.

SUMMARY: NMFS announces Pacific halibut and red king crab bycatch rate standards for the second half of 1996. This action is necessary to implement the bycatch rate standards for vessel operators who participate in the Alaska groundfish trawl fisheries under the vessel incentive program. The intent of this action is to reduce prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

DATES: Effective 12:01 a.m., Alaska local time (A.l.t.), July 1, 1996, through 12 midnight, A.l.t., December 31, 1996. Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., June 30, 1996.

ADDRESSES: Comments should be mailed to Ronald J. Berg, Chief, Fisheries Management Division, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel; or be delivered to 709 West 9th Street, Federal Building, Room 401, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) are managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act. The FMPs are implemented by regulations for the U.S. fisheries at 50 CFR parts 672, 675, and 676. General regulations that also pertain to the U.S. fisheries appear at 50 CFR part 620. Regulations that establish observer coverage requirements are set out at 50 CFR part 677. Bycatch rate standards and the vessel incentive program are described at § 675.26. Halibut and red king crab bycatch rate standards for the first half of 1996 were published in the **Federal Register** on November 29, 1995 (60 FR 61213). As required by §§ 672.26(c) and 675.26(c), the Director of the Alaska Region, NMFS (Regional Director), has established the bycatch rate standards for the second half of 1996 (July 1 through December 31). These standards were approved by the Council at its April 1996 meeting and are set out in Table 1. The bycatch rate standards are based on the following information:

1. Previous years' average observed bycatch rates.

2. Immediately preceding season's average observed bycatch rates.

3. The bycatch allowances and associated fishery closures specified under §§ 672.20(f) and 675.21.

4. Anticipated groundfish harvests.

5. Anticipated seasonal distribution of fishing effort for groundfish.

6. Other information and criteria deemed relevant by the Regional Director.

TABLE 1.—BYCATCH RATE STANDARDS BY FISHERY FOR THE SECOND HALF OF 1996 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA

Fishery	Bycatch rate standard
Halibut bycatch rate standards (kilogram of halibut/metric ton of groundfish catch)	
BSAI Midwater pollock	1.0
BSAI Bottom pollock	5.0

TABLE 1.—BYCATCH RATE STANDARDS BY FISHERY FOR THE SECOND HALF OF 1996 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA—Continued

Fishery	Bycatch rate standard
BSAI Yellowfin sole	5.0
BSAI Other trawl	30.0
GOA Midwater pollock	1.0
GOA Other trawl	40.0
Zone 1 red king crab bycatch rates standards (number of crab/metric ton of groundfish catch)	
BSAI yellowfin sole	2.5
BSAI Other trawl	2.5

Bycatch Rate Standards for Pacific Halibut

The halibut bycatch rate standards for the 1996 trawl fisheries are unchanged from those implemented in 1995. The Regional Director based standards for the second half of 1996 on anticipated seasonal fishing effort for groundfish species and 1993–96 halibut bycatch rates observed in the trawl fisheries included under the incentive program. In determining these bycatch rate standards, the Regional Director recognized that directed fishing for BSAI Pacific cod by vessels using trawl gear is closed until October 25, 1996 (61 FR 24730, May 16, 1996). Given the present status of halibut bycatch in the yellowfin sole fishery, the Regional Director anticipates that this fishery will close by early June due to halibut bycatch restrictions. The fishery will remain closed until August 15 when the remainder of its halibut bycatch allowance becomes available. The Regional Director also considered the fact that August 15 is opening date of the 1996 Bering Sea pollock 'B' season (§ 675.23(e)) and that the Council has requested that NMFS initiate rulemaking to delay this date until September 1. NMFS anticipates that a proposed rule to implement a pollock 'B' season delay will be published in the **Federal Register** for public review and comment by mid-June 1996.

The halibut bycatch rate standards for the BSAI yellowfin sole and "bottom pollock" trawl fisheries are each set at 5 kilogram (kg) halibut/metric ton (mt) of groundfish. These standards approximate the average annual rates observed on trawl vessels participating in these fisheries since 1992.

The halibut bycatch rate standard for the BSAI and GOA midwater pollock fisheries (1 kg halibut/mt of groundfish) is higher than the bycatch rates normally experienced by vessels participating in these fisheries. This standard is intended to encourage vessel operators to maintain off-bottom trawl operations and limit further bycatch of halibut in the pollock fishery when halibut bycatch restrictions at §§ 672.20(f) and 675.21(c)(1) prohibit directed fishing for pollock by vessels using non-pelagic trawl gear.

A bycatch rate standard of 30 kg halibut/mt of groundfish is established for the BSAI "other trawl" fishery. This standard has remained unchanged since 1992. A bycatch rate standard of 40 kg halibut/mt of groundfish is established for the GOA "other trawl" fishery, which is unchanged since 1994. The considerations that support these bycatch rate standards for the "other trawl" fisheries are unchanged from previous years and are discussed in the **Federal Register** publications of 1995 bycatch rate standards (60 FR 2905, January 12, 1995, and 60 FR 27425, May 24, 1995).

Observer data collected from the 1995 GOA "other trawl" fishery show average third and fourth quarter halibut bycatch rates of 18 and 48 kg halibut/mt of groundfish, respectively. The first quarter rate from 1996 was lower, at 15 kg halibut/mt of groundfish. Observer data from the 1995 BSAI "other trawl" fishery show third and fourth quarter halibut bycatch rates of 10 and 21 kg halibut/mt of groundfish, respectively. The first quarter rate from the 1996 BSAI "other trawl" fishery was 10 kg halibut/mt of groundfish.

Bycatch Rate Standards for Red King Crab

The red king crab bycatch rate standard for the yellowfin sole and "other trawl" fisheries in Zone 1 of the Bering Sea subarea is 2.5 crab/mt of groundfish during the second half of 1996. This standard has remained unchanged since 1992.

The red king crab savings area (RKCSA) in Zone 1 has been closed to fishing with trawl gear since the beginning of the 1996 trawl season (60 FR 63451, December 11, 1995; 61 FR 8889, March 6, 1996). This closure will remain effective through June 15, 1996. The closure of the RKCSA has significantly reduced red king crab bycatch rates in the BSAI trawl fisheries during the first half of 1996. Through early May, the rock sole/flathead sole/other flatfish fishery category had taken only 9 percent of its annual red king crab bycatch allowance. The Pacific cod and yellowfin sole fisheries had taken only 25 percent and less than 1 percent, respectively, of their bycatch allowances. As a result, NMFS does not anticipate that the red king bycatch allowances specified for the 1996 trawl fisheries (61 FR 4311, February 5, 1996) will be reached. Furthermore, bycatch rates should remain low given that intensive flatfish or Pacific cod trawl fisheries in Zone 1 are not anticipated for the remainder of the year. Nonetheless, as in past years, the Regional Director is maintaining the 2.5 red king crab/mt of groundfish bycatch rate standard to support any exploratory fishing in Zone 1 by vessel operators attempting to avoid relatively high halibut and *C. bairdi* bycatch rates typically experienced in other areas of the BSAI.

The Regional Director has determined that the bycatch rate standards set out in Table 1 are appropriately based on the information and considerations necessary for such determinations under §§ 672.26(c) and 675.26(c). These bycatch rate standards may be revised and published in the **Federal Register** when deemed appropriate by the Regional Director, pending his consideration of the information set forth at §§ 672.26(c)(2)(v) and 675.26(c)(2)(v).

Classification

This action is taken under 50 CFR 672.26 and 675.26 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 24, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96–13661 Filed 5–28–96; 4:25 pm]

BILLING CODE 3510–22–W

Proposed Rules

Federal Register

Vol. 61, No. 106

Friday, May 31, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB55

Common Crop Insurance Regulations; Sugar Beet Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of sugar beets. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions which contains standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured and include the current sugar beet endorsement with the Common Crop Insurance Policy for ease of use and consistency of policy terms.

DATES: Written comments, data, and opinions on this proposed rule will be accepted until close of business July 30, 1996 and will be considered when the rule is to be made final. The comment period for information collection under the Paperwork Reduction Act of 1995 continues through July 29, 1996.

ADDRESSES: Interested persons are invited to submit written comments to the Chief, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building, USDA, 14th and Independence Avenue, S.W., Washington, D.C., 8:15 a.m.–4:45 p.m., EDT Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Arden Routh, Program Analyst, Research and Development Division, Product Development Branch, FCIC, at 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–6397.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Departmental Regulation 1512–1

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is February 1, 2000.

This rule has been determined to be exempt for the purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations were previously approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0563–0003 through September 30, 1998.

The amendments sent forth in this proposed rule do not contain additional information collections that require clearance by the OMB under the provisions of 44 U.S.C. chapter 35.

The title of this information collection is "Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Sugar Beet Crop Insurance Provisions." The information to be collected includes: a crop insurance acreage report, an insurance application and a continuous contract. Information collected from the acreage report and application is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of sugar beets that are eligible for Federal crop insurance.

The information requested is necessary for the insurance company and FCIC to provide insurance, provide reinsurance, determine eligibility, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,676,932 hours.

The comment period for information collections under the Paperwork Reduction Act of 1995 continues through July 29, 1996 for the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Bonnie Hart, Advisory and Corporate Operations Staff, Regulatory Review Group, Farm Service Agency, P.O. Box 2415, Ag Box 0570, U.S. Department of Agriculture, Washington, D.C. 20013–2415. Telephone (202) 690–2857. Copies of the information collection may be obtained from Bonnie Hart at the above address.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FCIC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FCIC to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. The amount of work required of the insurance companies delivering these policies and the procedures therein will not increase significantly from the amount of work currently required to deliver previous policies to which this regulation applies. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. § 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will not have retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions in 7 CFR parts 11 and 780 must be exhausted before action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR § 457.109, Sugar Beet Crop Insurance Provisions. The provisions will be effective for the 1998 and succeeding crop years. The proposed Sugar Beet Crop Insurance Provisions will replace the provisions found at 7 CFR part 430 (Sugar Beet Crop Insurance Regulations). Upon publication of 7 CFR § 457.109 as a final rule, the provisions for insuring sugar beets contained herein will supersede the current provisions contained in 7 CFR part 430. By separate rule, FCIC will revise part 430 to restrict its effect through the 1997 crop year and later remove that part.

This rule makes minor editorial and format changes to improve the Sugar Beet Crop Insurance Regulations' compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring sugar beets as follows:

1. Amend the definition of "county," to that contained in the Basic Provisions of (§ 457.8). The current definition includes land identified by an FSA farm serial number for the county that is physically located in another county where as the new definition does not. This change is made require such land to be insured using the actuarial materials for the county where the land is located.

2. Section 1—Add definitions for the terms *Days, FSA, Final planting date, Good farming practices, Initially planted, Interplanted, Irrigated practice, Late planted, Late planting period, Local market price, Planted acreage, Practical to replant, Prevented planting, Processor, Production guarantee (per acre), Replanting, Standardized ton, Sugar beet processor contract, Thinning, Timely planted, Ton,* and, *Written agreement,* for clarification purposes.

3. Section 2—Unit division provisions are expanded to include insured's reporting responsibilities to qualify for optional units and the breakdown of units by irrigated and non-irrigated acreage. The definition of "unit" under section 1(tt) of the Basic Provisions (part 457.8) provides for the division of units in accordance with applicable crop provisions. The current Sugar Beet Crop Insurance Regulations, however, do not provide guidelines for determining optional units. Section 2 will provide guidelines for optional unit division of sugar beet basic units that are consistent with other annual crop provisions. Optional units may be divided on the basis of section, section equivalent, or Farm Service Agency (FSA) Farm Serial Number, or on acreage including both irrigated and non-irrigated practices, or both. Consistent with the definition of "unit" in the Basic Provisions (§ 457.8), section 12 of the Sugar Beet Crop Provisions will provide that in settling a claim, loss will be determined on a unit basis and all optional units for which acceptable production records were not provided will be combined.

4. Section 3(a)—Provision added to clarify that only 1 price election is available for all sugar beets insured in the county.

5. Section 4—The contract change date is moved 30 days earlier in most counties to maintain at least a 3 month period between this date and earliest cancellation date (see item 6 below).

6. Section 5—The cancellation and termination dates have been changed from April 15 to March 15 in all states except California and Arizona. The cancellation and termination dates for the state of Arizona and Imperial County, California remain unchanged at August 31. The cancellation and termination dates have been changed from March 31 to February 28 for Lassen, Modoc, Shasta and Siskiyou, counties California. The cancellation date has been changed from March 31 to July 15 for all remaining California counties. The termination date for these California counties has been changed to November 30 immediately following the last final planting date for the crop year. The changes (except California counties with a July 15 cancellation date) are intended to minimize program vulnerabilities that may exist under current program dates by reducing the chances that insureds may be able to anticipate below normal yields. The change to July 15 in the California counties specified above is made to allow FCIC to return to the use of a single final planting date in counties where sugar beets are planted year round. Constant changes in these counties made establishment of multiple final planting dates extremely difficult to administer.

7. Section 6(b)—Specify insurance eligibility requirements for sugar beet producers who are also the processing company. These provisions are needed to ensure that the same terms contained in a traditional sugar beet processor contract are in place.

8. Section 7(a)(2)—Stipulate that acreage is uninsurable in any crop year following the discovery of rhizomania on the unit unless we agree in writing to insure such acreage. Rhizomania remains in the soil for several years and normally creates an unacceptable insurance risk.

9. Section 7(a)(3)—Stipulate that acreage is uninsurable if it does not meet rotation requirements shown in the Special Provisions. This change identifies the location of these requirements.

10. Section 7(b)—Clarify that any acreage damaged prior to the final planting date must be replanted unless replanting is not practical. This provision applies to all counties with an established final planting date (see item 11 for information regarding counties that do not have a final planting date).

11. Section 7(c)—Stipulate that any acreage damaged within 30 days of the initial planting must be replanted unless replanting is not practical. This provision applies to all counties that do not have an established final planting date.

12. Section 8(b)—Change the end of insurance period to the last day of the 12th month after the crop initially was planted in all California counties except Imperial, Lassen, Modoc, Shasta and Siskiyou. This change is made to accommodate planting that occurs virtually all year in these counties.

13. Section 8(c)—Change the calendar date for the end of the insurance period to October 31 for Lassen, Modoc, Shasta and Siskiyou Counties, California and Klamath County, Oregon.

14. Section 8(e)—The end of insurance period for New Mexico has been changed from November 15 to December 31. This change is being proposed because the sugar beet program in New Mexico at this time consists of 1 county that has similar planting and harvesting dates as the adjacent sugar beet counties in Texas. The end of the insurance period in these Texas counties is December 31.

15. Section 9—Provisions are added to clarify that insufficient or improper application of pest or disease control measures is not an insured cause of loss.

16. Section 10(b)—The maximum amount of the replanting payment has changed from one ton multiplied by the price election multiplied by the share to the lesser of 10 percent (10%) of the final stage production guarantee or one ton, multiplied by the price election multiplied by the share. The 10 percent (10%) factor has been added to prevent insureds who elect a lower coverage level from receiving a replant payment that exceeds the original liability.

17. Section 10(c)—Reduce the liability for a unit by the amount of any replanting payment when sugar beets are replanted using a practice that was originally uninsurable. The current sugar beet provisions are silent regarding this issue. For example, if the Actuarial Table requires a specific row width and the crop is replanted to a lesser row width, the dollar amount of coverage would be reduced by the amount of any replant payment. This addition is consistent with the manner in which other crops are treated.

18. Section 11(b)—Stipulate that a copy of the sugar beet processor contract or corporate resolution must be provided in the event of a loss.

19. Section 13—Grant protection for acreage planted within 25 days after the final planting date, and for acreage that cannot be planted due to any insurable cause of loss. If the insured is prevented from planting by the final planting date, or intends to plant within the late planting period and is prevented from doing so, insurance protection is provided at a specified percent of the production guarantee for timely planted acreage. Reductions are made to recognize increasingly lower yield potential as planting is delayed. Late and prevented planting coverages are not available in any California counties except Imperial, Lassen, Modoc, Shasta and Siskiyou. Year round planting in these counties precludes the use of current prevented planting provisions.

20. Section 14—Add provisions for providing insurance coverage by written agreement. FCIC has a long-standing policy of permitting modification of insurance contracts by written agreement. This provision is not documented in the current Sugar Beet Crop Insurance Regulations. Section 14 will discuss application for, and duration of, written agreements.

List of Subjects in 7 CFR Part 457

Crop insurance, sugar beet.

Proposed Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. § 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations, (7 CFR part 457), effective for the 1998 and succeeding crop years, to read as follows:

PART 457—[AMENDED]

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), and 1506(p).

2. 7 CFR part 457 is amended by adding a new § 457.109 to read as follows:

§ 457.109 Sugar beet crop insurance provisions.

The Sugar Beet Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Sugar Beet Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions, the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

Crop year—In Imperial, Lassen, Modoc, Shasta and Siskiyou, counties California and all other states, the period within which the sugar beets are normally grown, which is designated by the calendar year in which the sugar beets are normally harvested. In all California counties, except Imperial, Lassen, Modoc, Shasta and Siskiyou counties, the period from planting until the applicable date for the end of the insurance period and is designated by:

(a) The calendar year in which planted if planted on or before July 15; or

(b) The following calendar year if planted after July 15.

Days—Calendar days.

FSA—Farm Service Agency of the United States Department of Agriculture or any successor agency.

Final planting date—The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full production guarantee.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those generally recognized by the Cooperative Extension Service as compatible with agronomic and weather conditions in the county.

Harvest—Topping, lifting and removing sugar beets from the field.

Initially planted—The first occurrence that land is considered as planted acreage for the crop year.

Interplanted—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

Irrigated practice—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water

needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Late planted—Acreage planted to the insured crop during the late planting period.

Late planting period—The period that begins the day after the final planting date for the insured crop and ends twenty-five (25) days after the final planting date.

Local market price—The price per pound for raw sugar offered by buyers in the area in which you normally market the sugar beets.

Planted acreage—Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice. Sugar beets must initially be planted in rows to be considered planted. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Practical to replant—In lieu of the definition of "Practical to replant" contained in section 1 of the Basic Provisions (§ 457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, and time to crop maturity, that replanting to the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the end of the late planting period in counties where a late planting period is applicable, or 30 days after initial planting for all counties where a late planting period is not applicable, unless replanting is generally occurring in the area.

Prevented planting—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

Processor—A corporation that possesses all licenses and permits for marketing sugar required by the state in which it is domiciled or operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process the sugar beets within a reasonable amount of time after harvest.

Production guarantee (per acre):

(a) First stage production guarantee—The final stage production guarantee multiplied by 60 percent.

(b) Final stage production guarantee—The number of tons determined by multiplying the approved yield per acre by the coverage level percentage you elect.

Replanting—Performing the cultural practices necessary to replace the sugar beet seed and then replacing the sugar beet seed in the insured acreage with the expectation of growing a successful crop.

Standardized ton—A ton of sugar beets expressed on a basis of a stated percentage of raw sugar content.

Sugar beet processor contract—A written contract between the grower and the processor, containing at a minimum:

(1) The grower's commitment to plant and grow sugar beets, and to deliver the sugar beet production to the processor;

(2) The processor's commitment to purchase the production stated in the contract; and

(3) A price or formula for a price based on third party data, that will be paid to the grower for the production stated in the contract.

Thinning—The process of removing, either by machine or hand, a portion of the sugar beet plants to attain a desired plant population.

Timely planted—Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

Ton—Two thousand (2,000) pounds avoirdupois.

Written agreement—A written document that alters designated terms of a policy in accordance with section 14.

2. Unit Division

Unless limited by the Special Provisions, a unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), ("basic unit") may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists. Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, variety, and planting period other than as described in this section. If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined, that portion of the premium paid for the purpose of electing optional units will be refunded to you pro rata for the units combined. All optional units must be identified on the acreage report for each crop year.

(a) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit; and

(3) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us.

(b) Each optional unit must meet one or more of the following criteria, as applicable:

(1) *Optional Units by Section, Section Equivalent, or FSA Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified Section. In the absence of Sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of Sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

(2) *Optional Units on Acreage Including Both Irrigated and Non-Irrigated Practices:* In addition to, or instead of, establishing optional units by Section, section equivalent, or FSA Farm Serial Number, optional units may be based on irrigated acreage or non-irrigated acreage if both are located in the same Section, section equivalent, or FSA Farm Serial Number. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigation system can deliver the quantity of water needed to produce the yield on which the guarantee is based. However, the corners of a field in which a center-pivot irrigation system is used will be considered as irrigated acreage if separate acceptable records of production from the corners are not provided. If the corners of a field in which a center-pivot irrigation system is used do not qualify as a separate non-irrigated optional unit, they will be a part of the unit containing the irrigated acreage. However, non-irrigated acreage that is not a part of a field in which a center-pivot irrigation system is used may qualify as a separate optional unit provided that all requirements of this section are met.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

(a) In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), you may select only one price election for all the sugar beets in the county insured under this policy.

(b) The production guarantees are progressive by stages, and increase at specified intervals to the final stage. The stages are:

(1) First stage, with a guarantee of 60 percent (60%), extends from planting until:

(i) July 1 in Lassen, Modoc, Shasta and Siskiyou counties of California and all other states; and

(ii) The earlier of thinning or 90 days after planting in all California counties except Lassen, Modoc, Shasta and Siskiyou.

(2) Final stage, with a guarantee equal to 100 percent (100%) of the production guarantee, applies to all insured sugar beets that complete the first stage.

(c) The production guarantee will be expressed in standardized tons.

(d) Any acreage of sugar beets damaged in the first stage to the extent that growers in the area would not normally further care for the sugar beets will be deemed to have been destroyed, even though you may continue to care for it. The production guarantee for such acreage will not exceed the first stage production guarantee.

4. Contract Changes

The contract change date is April 30 preceding the cancellation date for counties with a July 15 or August 31 cancellation date and November 30 preceding the cancellation date for all other counties (see the provisions of section 4 (Contract Changes) of the Basic Provisions (§ 457.8)).

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are:

State and county	Cancellation date	Termination date
Arizona; and Imperial County, California	August 31	August 31.
All California counties, except Imperial, Lassen, Modoc, Shasta and Siskiyou	July 15	November 30.
All Other States, and Lassen, Modoc, Shasta and Siskiyou Counties, California	February 28	February 28.

6. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the sugar beets in the county for which a premium rate is provided by the actuarial table:

(1) In which you have a share;

(2) That are planted for harvest as sugar beets;

(3) That are grown under a sugar beet processor contract executed with a processor before the acreage reporting date; and

(4) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Interplanted with another crop;

(ii) Planted into an established grass or legume; or

(iii) Planted prior to submitting a properly completed application.

(b) Sugar beet growers who are also the processor may be able to establish an insurable interest if they meet the following requirements:

(1) The processor must be a corporation and have a valid insurable interest in the crop;

(2) The Board of Directors of the processor must have approved a corporate resolution that sets forth essentially the same terms that a traditional sugar beet processor contract would contain. Such corporate resolution will be considered a sugar beet processing contract under the terms of the sugar beet crop insurance policy;

(3) Sales records of sugar beet production for the previous year must be supplied to us to confirm the processor has produced and sold sugar in the past; and

(4) Our inspection of the processing facilities determines that they conform to the definition of processor contained in section 1 of these crop provisions.

7. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8):

(a) We will not insure any acreage planted to sugar beets:

(1) The preceding crop year;

(2) In any crop year following the discovery of rhizomania on the acreage unless a written agreement allows otherwise; or

(3) That does not meet the rotation requirements shown in the Special Provisions;

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted unless we agree that replanting is not practical. This paragraph does not apply to California counties except Imperial, Lassen, Modoc, Shasta and Siskiyou; and

(c) Any acreage of the insured crop in California counties other than Imperial, Lassen, Modoc, Shasta and Siskiyou that is damaged within 30 days of initial planting to the extent growers in the area would normally not further care for the crop, must be replanted unless we agree replanting is not practical.

8. Insurance Period

In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), the calendar date for the end of the insurance period is:

(a) July 15 in Arizona and in Imperial County, California;

(b) The last day of the 12th month after the insured crop was initially planted in all California counties except Imperial, Lassen, Modoc, Shasta and Siskiyou;

(c) October 31 in Lassen, Modoc, Shasta and Siskiyou Counties, California, and in Klamath County, Oregon;

(d) November 25 in Ohio;

(e) December 31 in New Mexico and Texas; and

(f) November 15 in all other states.

9. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur within the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period.

10. Replanting Payments

(a) In accordance with section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), a replanting payment is allowed if the crop is damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent (90%) of the final stage production guarantee for the acreage and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of 10 percent (10%) of the production guarantee or 1 ton, multiplied by your price election, multiplied by your insured share.

(c) When sugar beets are replanted using a practice that is uninsurable as an original planting, our liability on the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

11. Duties In The Event of Damage or Loss

In accordance with the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8):

(a) Representative samples of the unharvested crop must be at least 10 feet wide and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed; and

(b) You must provide a copy of your sugar beet processor contract, or corporate resolution if you are the processor.

12. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide production records:

(1) For any optional unit, we will combine all optional units for which acceptable production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim on any unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting from this the total production to count;

(3) Multiplying the remainder by your price election; and

(4) Multiplying this result by your share.

(c) The total production to count (in standardized tons) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes; or

(D) For which you fail to provide production records that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (unharvested production will not be adjusted for quality);

(iv) Only appraised production in excess of the difference between the first and final stage production guarantee for acreage that does not qualify for the final stage guarantee will be counted, provided that all production from acreage subject to section 12(c)(1)(i) and (ii) will be counted; and

(v) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end if you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us, (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(d) Production that meets the minimum acceptable standards contained in the sugar beet processor contract or corporate resolution will be converted to standardized tons by:

(1) Dividing the average percentage of sugar in such sugar beets by the sugar content percentage shown in the Special Provisions; and

(2) Multiplying the result (rounded to three places) by the number of tons of such sugar beets.

The average percentage of sugar will be determined by the processor from tests performed on each load at the time of delivery. If individual tests of sugar content are not made at the time of delivery, the average percent of sugar shall equal the sugar content percent shown in the Special Provisions.

(e) Production that does not meet the minimum acceptable standards contained in the sugar beet processor contract or corporate resolution will be converted to standardized tons by:

(1) Dividing the gross dollar value of all of the damaged sugar beets on the unit (including the value of cooperative stock, patronage refunds, etc.) by the local market price per pound on the earlier of the date such production is sold or the date of final inspection for the unit;

(2) Dividing that result by 2,000; and

(3) Dividing that result by the county average sugar percentage factor contained in the Special Provisions for this purpose.

For example, assume that the total dollar value of the damaged sugar beets is $6,000.00; the local market price is $0.10; and the county average sugar percentage factor is 0.15. The amount of production to count would be calculated as follows: (($6,000.00÷$0.10)÷2,000)÷0.15 = 200 tons.

13. Late and Prevented Planting.

(a) In lieu of provisions contained in the Basic Provisions (§ 457.8) regarding acreage initially planted after the final planting date and the applicability of a Late Planting Agreement Option, insurance will be provided for acreage planted to the insured crop during the late planting period (see section 13(c)), and acreage you were prevented from planting (see section 13(d)). These coverages provide reduced production guarantees and are applicable in all counties except California counties with a July 15 cancellation date. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for late planted acreage or prevented planting acreage exceeds the liability on such acreage: coverage for those acres will not be provided; no premium will be due; and no indemnity will be paid for such acreage.

(b) You must provide written notice to us not later than the acreage reporting date if you were prevented from planting.

(c) Late Planting

(1) For sugar beet acreage planted during the late planting period, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (1%) for the 1st through the 10th day; and

(ii) Two percent (2%) for the 11th through the 25th day.

(2) In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of sugar beets continues after the final planting date, or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Special Provisions for the insured crop; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period)

(1) If you were prevented from timely planting sugar beets, you may elect:

(i) To plant sugar beets during the late planting period. The production guarantee for such acreage will be determined in accordance with section 13(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be 35 percent (35%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 20.0 tons per acre, your prevented planting production guarantee would be 7.0 tons per acre (20.0 tons multiplied by 0.35). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with section 12; or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the 10th day following the final planting date for the insured crop; or

(B) A production guarantee equal to 17.5 percent (17.5%) of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the 10th day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 20.0 tons per acre, your prevented planting production guarantee would be 3.5 tons per acre (20.0 ton multiplied by 0.175). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Production guarantees for timely, late, and prevented planting acreage within a unit will be combined to determine the production guarantee for the unit. For example, assume you insure 1 unit in which you have a 100 percent (100%) share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres were not planted but are eligible for a prevented planting production guarantee. The production guarantee for the unit will be computed as follows:

(i) For the timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(ii) For the late planted acreage, multiply the per acre production guarantee for timely planted acreage by 93 percent (93%) and multiply the result by the 50 acres planted late; and

(iii) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(A) Thirty-five percent (35%) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is haved or grazed; or

(B) Seventeen and five tenths percent (17.5%) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (B) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see section 13(d)(1)(iii)).)

Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(3) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee.

(4) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase insurance for sugar beets for the 1998 crop year, prevented planting coverage will begin on the 1998 sales closing date for sugar beets in the county. If the sugar beet coverage remains in effect for the 1999 crop year (is not terminated or canceled during or after the 1998 crop year, except the policy may have been canceled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1999 crop year began on the 1998 sales closing date.

(5) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all FSA Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date, eligible acreage will not exceed the greater of:

(A) The FSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to sugar beets on the FSA Farm Serial Number during the previous crop year; or

(C) One-hundred percent (100%) of the simple average of the number of acres planted to sugar beets during the crop years that you certified to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) A prevented planting production guarantee will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent (20%) of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last 4 years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, haved or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (d)(2)(iii)(A) of this section, or a substitute crop allowed in paragraph (d)(2)(iii)(B) of this section), unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last 4 years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double-cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of sugar beet acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of sugar beets on one optional unit and 40 acres of sugar beets on the second optional unit, your prevented planting eligible acreage would be reduced to zero (*i.e.*, 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(6) In accordance with the provisions of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting production guarantee, the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

14. Written Agreements

Designated terms of this policy may be altered by written agreement. The following conditions will apply:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 14(e).

(b) The application for written agreement must contain all terms of the contract between you and us that will be in effect if the written agreement is not approved.

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election.

(d) Each written agreement will only be valid for 1 year. If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy.

(e) An application for written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on May 23, 1996.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 96–13589 Filed 5–30–96; 8:45 am]

BILLING CODE 3410–FA–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–55–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Airbus Model A300–600 series airplanes. That action would have required replacement of certain feel and limitation computers (FLC) with modified FLC's. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has issued other rulemaking that requires actions equivalent to and beyond those proposed. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1503; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain Airbus Model A300–600 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on May 18, 1994 (59 FR 25844). The proposed rule would have required the replacement of certain feel and limitation computers (FLC) with modified FLC's, in accordance with instructions contained in Airbus Service Bulletin A300–27–6025, dated September 15, 1993. That action was prompted by reports that the elevator control on several in-service airplanes operated with stiffness. The proposed actions were intended to prevent stiff operation of the elevator control and undetected loss of the rudder travel limitation function, which may adversely affect the controllability of the airplane.

Actions That Occurred Since the NPRM Was Issued

Since the issuance of that NPRM, the FAA has issued AD 96–09–02, amendment 39–9576 (61 FR 18665, April 29, 1996). That AD requires the installation of modified FLC's on Airbus Model A300–600 series airplanes, as well as other Airbus models. Like the NPRM, that AD was prompted by reports indicating that the elevator control operated with stiffness. The actions required by that AD are intended to prevent stiff operation of the elevator control and undetected loss of rudder travel limitation function, which could adversely affect the controllability of the airplane.

FAA's Conclusions

The requirements of AD 96–09–02 address the same unsafe condition that would have been addressed by the NPRM issued as Docket 94–NM–55–AD. That AD also incorporates and implements the same actions that were proposed by the NPRM, as well as additional actions found necessary to address the unsafe condition comprehensively. In light of this, the issuance of a final action for this NPRM is unnecessary. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 94–NM–55–AD, published in the **Federal Register** on May 18, 1994 (59 FR 25844), is withdrawn.

Issued in Renton, Washington, on May 23, 1996.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–13611 Filed 5–30–96; 8:45 am]

BILLING CODE 4910–13–U

LIBRARY OF CONGRESS

Copyright Office

37 CFR Ch. II

[Docket No. 96–2]

Eligibility for the Cable Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Extension of comment period.

SUMMARY: The Copyright Office of the Library of Congress is extending the period for filing reply comments in its rulemaking proceeding considering the eligibility of open video systems for the cable compulsory license.

DATES: Initial comments are due on or before July 5, 1996. Reply comments are due on or before September 13, 1996.

ADDRESSES: If delivered BY MAIL, fifteen copies of written comments should be addressed to the Office of the Copyright General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. If delivered BY HAND, fifteen copies of written comments should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM–407, First and Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, or William Roberts, Senior Attorney for Compulsory Licenses. Telephone (202) 707–8380. Telefax (202) 707–8366.

SUPPLEMENTARY INFORMATION: On May 6, 1996, the Copyright Office of the Library of Congress published a notice of inquiry to consider the eligibility of open video systems ("OVS") for the cable compulsory license, 17 U.S.C. 111. *See* 61 FR 20197 (May 6, 1996). Initial comments are due July 5, 1996, and reply comments are due August 5, 1996. It has recently come to the attention of the Office that the Federal Communications Commission will be completing a rulemaking proceeding regarding OVS in early August. Because the Commission's adoption of rules may have a bearing on the copyright inquiry, the Office is extending the period for filing reply comments in this proceeding to September 13, 1996, to allow interested parties to submit comments in light of the Commission's final OVS rules.

Dated: May 24, 1996.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 96–13664 Filed 5–30–96; 8:45 am]

BILLING CODE 1410–31–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36 and 69

[CC Docket No. 96–45; DA–96–702]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule: Denial of extension of time.

SUMMARY: On May 6, 1996, the Federal Communications Commission ("Commission") released an Order ("Order") denying a request to extend the deadline for filing reply comments to its Notice of Proposed Rulemaking and Order Establishing Joint Board, released March 8, 1996 (CC Docket No. 96–45). The Commission denied the request out of concern that further delay in this proceeding might jeopardize the Joint Board's ability to issue a recommended decision within the statutory deadline set forth in the 1996 Telecommunications Act. By not extending the period for filing reply comments, the Commission intends to support the Joint Board in its resolve to announce its recommended decision on or before the statutory deadline of November 8, 1996.

DATES: Reply comments were due on or before May 8, 1996.

ADDRESSES: Comments should be addressed to Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Jon Reel, 202–418–0850, Accounting and Audits Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: On March 8, 1996, the Federal Communications Commission released a Notice of Proposed Rulemaking and Order Establishing Joint Board ("NPRM"), 61 FR 10499 (March 14, 1996). The Commission sought comment on all matters discussed in that NPRM. The deadline for comments was April 8, 1996 and the deadline for reply comments was May 3, 1996. On April 1, 1996, the Commission released an Order that extended the comment period until April 12, 1996 and the reply comment period until May 7, 1996 for all interested parties. On April 30, 1996, Information Renaissance and California Technology Assistance Project (petitioners) filed a joint request for a seven day further extension of the reply comment deadline. Petitioners argued that a further extension would permit parties to avail themselves of the original comments that petitioners had put on the World Wide Web in electronic form, and thereby file reply comments based upon a better knowledge of the original comments. Believing that a further extension of time would seriously jeopardize the Joint Board's ability to issue a recommended decision within the statutory deadline set forth in the Act, the Commission found that the public interest would not be served by a further extension of time. Pursuant to the Commission's rules governing motions for the extension of time (47 CFR § 1.46), however, parties have two business days grace after the Commission acts on a timely filed motion for an extension of time. Because the Commission denied petitioner's motion on May 6, 1996, reply comments were due May 8, 1996.

Federal Communications Commission.

Kenneth P. Moran,

Chief, Accounting and Audits Division, Common Carrier Bureau.

[FR Doc. 96–13667 Filed 5–30–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket PS–140(e); Notice 6]

RIN 2137–AC34

Areas Unusually Sensitive to Environmental Damage

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public workshop.

SUMMARY: RSPA invites industry, government agencies, and the public to the fifth workshop on unusually sensitive areas (USAs). The purpose of this workshop is to openly discuss drinking water resources. This workshop is a continuation of the USA workshops held June 15–16, 1995; October 17, 1995; January 18, 1996; and April 10–11, 1996.

DATES: The workshop will be held on June 18–19, 1996, from 8:30 a.m. to 4:00 p.m. Persons who are unable to attend may submit written comments in duplicate by July 30, 1996. However, persons submitting comments to be considered at the June 18–19 workshop must do so by June 10, 1966. Interested persons should submit as part of their written comments all material that is relevant to a statement of fact or argument. Late filed comments will be considered so far as practicable.

ADDRESSES: The workshop will be held at the U.S. DOT, Nassif Building, 400 Seventh Street SW., Room 6244–48, Washington, DC. Non-federal employee visitors are admitted into the DOT building through the southwest entrance at Seventh and E Streets SW. Persons who want to participate in the workshop should call (202) 366–2392 or e-mail their name, affiliation, and phone number to samesc@rspa.dot.gov before close of business June 10, 1996.

Send written comments in duplicate to the Dockets Unit, Room 8421, RSPA, U.S. DOT, 400 Seventh Street SW., Washington, DC 20590–0001. Identify the docket and notice numbers stated in the heading of this notice.

All comments and docketed materials will be available for inspection and copying in Room 8421 between 8:30 a.m. and 4:30 p.m. each business day. A summary of the workshop will be available from the Dockets Unit about three weeks after the workshop.

FOR FURTHER INFORMATION CONTACT: Christina Sames, (202) 366–4561, about this document, or the Dockets Unit, (202) 366–5046, for copies of this document or other material in the docket.

SUPPLEMENTARY INFORMATION: The pipeline safety laws (49 U.S.C. § 60109) require the Secretary of Transportation to prescribe regulations that establish criteria for identifying each hazardous liquid pipeline facility and gathering line, whether otherwise subject to 49 U.S.C. Chapter 601, located in an area that the Secretary, in consultation with the Environmental Protection Agency (EPA), describes as unusually sensitive to environmental damage if there is a hazardous liquid pipeline accident.

Consistent with the President's regulatory policy (E.O. 12866), RSPA wants to accomplish this congressional mandate at the least cost to society. Toward this end, RSPA is seeking early public participation in the rulemaking process by holding public workshops at which participants, including RSPA staff, may exchange views on relevant issues. RSPA hopes these workshops will enable government and industry to reach a better understanding of the problem and the potential solutions before proposed rules are issued.

To date, RSPA has held four public workshops on unusually sensitive areas (USAs). Participants at the workshops have included representatives from the hazardous liquid pipeline industry; the Departments of Interior, Agriculture, Transportation, and Commerce; EPA;

non-government agencies; and the public.

The first workshop was held on June 15 and 16, 1995, and focused on criteria being considered to determine USAs (60 FR 27948; May 26, 1995). A second workshop held on October 17, 1995, focused on developing a process that could be used to determine if an area is a USA (60 FR 44824; August 29, 1995). The third workshop on January 18, 1996, focused on guiding principles for determining USAs (61 FR 342; January 4, 1996).

Participants at the fourth workshop held April 10–11, 1996, (61 FR 13144; March 26, 1996) discussed the criteria, components, and parameters of the following ten terms that have been used when describing USAs: Significant, Threat of significant contamination, Contamination, Ecological, Drinking water resources, Recreational areas, Economic areas, Cultural areas, Readily available, and Uniform. Participants also discussed the scope and objectives of the additional USA workshops.

Additional information and the results of the four workshops can be obtained from the RSPA Docket Unit at (202) 366–5046. Please reference Docket PS–140, PS–140(a), PS–140(b), and PS–140(c), when requesting the information.

API Technical Meeting

On May 9–10, 1996, the American Petroleum Institute (API) held a meeting of technical experts to discuss drinking water resources. RSPA and EPA attended this meeting and provided a draft discussion point paper on drinking water resources that RSPA intends to discuss at its public workshop on drinking water resources. The draft discussed possible areas of primary concern (also known as USA candidates) and possible filtering criteria that could be used in determining which drinking water resources are unusually sensitive to damage from a hazardous liquid pipeline release. The unedited notes from the API meeting and all materials presented at that meeting can be obtained from the Dockets Unit at the above address. Please reference Docket PS–140(d) when requesting the information.

The following discusses the areas of primary concern and filtering criteria for drinking water resources that are currently being considered. This draft will be discussed in detail at the June 18 and 19 workshop. This draft is not final and RSPA invites comments on these primary concerns, filtering criteria, and issues. This draft and any additional information that is submitted to the docket before June 10 will be considered at the June 18–19 workshop.

Drinking Water Resource Areas of Primary Concern

Drinking water resource areas of primary concern (USA candidates) are a subset of the drinking water surface intakes and groundwater based drinking water supplies. Drinking water USA candidates being considered include:

A. Public Water System (PWS): provides piped water for human consumption to at least 15 service connections or serves an average of at least 25 people for at least 60 days each year. These systems include the sources of the water supplies—i.e., surface or ground, PWSs can be community, nontransient noncommunity, or transient noncommunity systems.

1. *Community Water System (CWS):* a PWS that provides water to the same population year round.

2. *Nontransient Noncommunity Water System (NTNCWS):* a PWS that regularly serves at least 25 of the same people at least six months of the year. [Examples of these systems include schools, factories, and hospitals that have their own water supplies.]

3. *Transient Noncommunity Water System (TNCWS):* a PWS that caters to transitory customers in nonresidential areas (e.g., campgrounds motels, and gas stations).

B. Wellhead Protection Area (WHPA): the surface and subsurface area surrounding a well or well field that supplies a public water system through which contaminants are likely to pass and eventually reach the water well or well field.

C. Sole Source Aquifer (SSA): areas designated by the U.S. Environmental Protection Agency under the Sole Source Aquifer program as the "sole or principal" source of drinking water for an area.

Drinking Water Resource Filtering Criteria

Filtering criteria are intended to assist RSPA in determining which areas of primary concern are truly unusually sensitive to damage from a hazardous liquid pipeline release. Drinking water resource filtering criteria would be applied to the drinking water resource areas of primary concern to determine which of the USA candidates are USAs. RSPA is considering the following filtering criteria and has listed issues under each:

Filter Criteria #1: If the public water system is a Transient Noncommunity Water System (TNCWS), the water intakes shall not be designated as USAs.

Filter Criteria #1 Issue: The readily available data source that would be used to make this determination on a nationwide basis is the Federal Reporting Data System (FRDS), that is being replaced by the Safe Drinking Water Information System (SDWIS). There are concerns about the quality of this database and whether it can be used to confidently identify TNCWSs.

Filter Criteria #2: For CWS and NTNCWS that obtain their water supply primarily from surface water sources, and do not have an adequate alternative source of water, the water intakes shall be designated as USAs.

Filter Criteria #2 Issues:

A. A definition is needed for an adequate alternative source of water. The intent is that, in the event of a spill which threatens to shut down a water intake, there would be surface water intakes in a different surface water body that are not in the threat zone, or there would be groundwater sources that could be utilized during the threat period, or there would be other drinking water systems that could temporarily provide drinking water to the shut-down system.

B. There are no readily available national databases on which this filtering criteria could be applied.

Filter Criteria #3: For CWS and NTNCWS that obtain their water supply primarily from groundwater sources, where the source aquifer is identified as a Class I or Class IIa (as identified in Pettyjohn et al., 1991; EPA Document: EPA/600/2–91/043, August 1991; see Attachment A), and that do not have an adequate alternative source of water, the WHPAs for such systems shall be designated as USAs.

Filter Criteria #3 Issues:

A. Determination of the source aquifer is a complex problem, and no national database is available. Furthermore, for some CWS and NTNCWS, the depth of the wells or source aquifer is not known.

B. Seven states do not have Wellhead Protection Programs. Where WHPAs are not adequately delineated, WHPA (criteria, threshold, methods, etc.) will be generated.

C. A definition is needed for an adequate alternative source of water for groundwater systems.

D. The classification system discussed in Filter Criteria #3 (above) has data coverage for the conterminous United States. Data for Alaska, Hawaii, and all other U.S. possessions must be identified.

Filter Criteria #4: For CWS and NTNCWS that obtain their water supply primarily from groundwater sources, where the source aquifer is identified as a Class IIb, Class IIc or Class U (as identified in Pettyjohn et al., 1991; EPA Document: EPA/600/2–91/043, August 1991; see Attachment A), the public water systems that rely on these aquifers shall not be designated as USAs.

Filter Criteria #5: For CWS and NTNCWS that obtain their water supply primarily from ground water sources, where the source aquifer is identified as a Class I or Class IIa (as identified in Pettyjohn et al., 1991; EPA Document: EPA/600/2–91/043, August 1991; see Attachment A), and the aquifer is designated as a sole source aquifer, an area twice the WHPA shall be designated as an USA.

Issued in Washington, DC, on May 23, 1966.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

Attachment A

Recommended Data Source: EPA Report 600/2–91/043. Regional Assessment of Aquifer Vulnerability and Sensitivity in the Conterminous United States. Office of Research and Development, Washington, DC. 319pp.

The following information was obtained from pages 6–8 of the above report:

CLASS I AQUIFERS (Surficial or shallow, permeable units; highly vulnerable to contamination).

Unconsolidated Aquifers (Class Ia): Class Ia aquifers consist of surficial, unconsolidated, and permeable alluvial, terrace, outwash, beach, dune and other similar deposits. These units generally contain layers of sand and gravel that, commonly, are interbedded to some degree with silt and clay. Not all deposits mapped as Class Ia are important water-bearing units, but they are likely to be both permeable and vulnerable. The only natural protection of aquifers of this class is the thickness of the unsaturated zone and the presence of fine-grained material.

Soluble and Fractured Bedrock Aquifers (Class Ib): Lithologies in this class include limestone, dolomite, and locally, evaporitic units that contain documented karst features or solution channels, regardless of size. Generally these systems have a wide range in permeability * * * Also included in this class are sedimentary strata, and metamorphic and igneous (intrusive and extrusive) rocks that are significantly faulted, fractured, or jointed. In all cases groundwater movement is largely controlled by secondary openings. Well yields range widely, but the important feature is the potential for rapid vertical and lateral ground water movement along preferred pathways, which result in a high degree of vulnerability.

Semiconsolidated Aquifers (Class Ic): Semiconsolidated systems generally contain poorly to moderately indurated sand and gravel that is interbedded with clay and silt. This group is intermediate to the unconsolidated and consolidated end members. These systems are common in the Tertiary age rocks that are exposed throughout the Gulf and Atlantic coastal states. Semiconsolidated conditions also arise from the presence of intercalated clay and caliche within primarily unconsolidated to poorly consolidated units, such as occurs in parts of the High Plains Aquifer.

Covered Aquifers (Class Id): This class consists of any Class I aquifer that is overlain by less than 50 feet of low permeability, unconsolidated material, such as glacial till, lacustrian, and loess deposits.

CLASS II AQUIFERS (Consolidated bedrock aquifers; moderately vulnerable).

Higher Yield Bedrock Aquifers (Class IIa): These aquifers generally consist of fairly permeable sandstone or conglomerate that contain lesser amounts of interbedded fine grained clastics (shale, siltstone, mudstone) and occasionally carbonate units. In general, well yields must exceed 50 gpm to be included in this class. Locally fracturing may contribute to the dominant primery porosity and permeability of these systems.

Lower Yield Bedrock Aquifers (Class IIb): In most cases, these aquifers consist of sedimentary or crystalline rocks. Most commonly, lower yield systems consist of the same classic rock types present in the higher yield systems, but in the former case grain size is generally smaller and the degree of cementation or induration is greater, both of which lead to a lower permeability. In many existing and ancient mountain regions, such as the Appalachians (Blue Ridge and Piedmont), the core consists of crystalline rocks that are fractured to some degree. Well yields are commonly less than 50 gpm, although they may be larger in valleys than on interstream divides.

Covered Bedrock Aquifers (Class IIc): This group consists of Class IIa and IIb aquifers that are overlain by less than 50 feet of unconsolidated material of loq permeability, such as glacial till, lacustrian, or loess deposits. It is assumed that most Class V wells are relatively shallow and, therefore, 50 feet or less of fine grained cover could reduce but not necessarily eliminate the vulnerability of underlying Class II systems.

CLASS III (Consolidated or unconsolidated aquifers that are overlain by more than 50 feet of low permeability material; low vulnerability).

Aquifers of this type are the least vulnerable of all the classes because they are naturally protected by a thick layer of fine grained material, such as glacial till or shale. Examples include parts of the Northern Great Plains where the Pierre Shale of Cretaceous age crops out over thousands of square miles and is hundreds of feet thick. In many of the glaciated states, till forms an effective cover over bedrock or buried outwash aquifers, and elsewhere alternating layers of shale, siltstone, and fine grained sandstone insulate and protect the deeper major water bearing zones * * *

CLASS U (Undifferentiated aquifers): This classification is used where several lithologic and hydrologic conditions are present within a mappable area. Units are assigned to this class because of constraints of mapping scale, the presenece of undelineated members within a formation or group, or the presence of nonuniformly occurring features, such as fracturing. This class is intended to convey a wider range of vulnerability than is usually contained within any other single class.

SUBCLASS V (Variable covered aquifers): The modifier "v", such as Class IIa–v, is used to describe areas where an undetermined or highly variable thickness of low permeability sediments overlie the major water bearing zone. To provide the largest amount of information, the underlying aquifer was mapped as if the cover were absent, and the "v" designation was added to the classification. The "v" indicates that a variable thickness of low permeability material covers the aquifer and, since the thickness of the cover, to a large degree, controls vulnerability, this aspect is undefined.

[FR Doc. 96–13530 Filed 5–30–96; 8:45 am]

BILLING CODE 4910–60–M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 96–51, Notice 01]

RIN 2127–AG16

Federal Motor Vehicle Safety Standards Door Locks and Door Retention Components

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for rulemaking.

SUMMARY: This notice grants a petition for rulemaking submitted by Independent Mobility Systems, Inc. (IMS), to exclude wheelchair ramps from the Federal motor vehicle safety standard that establishes performance requirements for door locks and door retention components. Since side doors equipped with wheelchair lifts are excluded from the standard, the petitioner requests that the standard be amended to also exclude side doors equipped with wheelchair ramps.

NHTSA believes that the amendment suggested by IMS merits further research and study. To that extent, therefore, the agency grants IMS' petition. The granting of this petition, however, does not necessarily mean that a rule will be issued.

The determination of whether to issue a rule will be made in the course of the rulemaking proceeding in accordance with statutory criteria.

FOR FURTHER INFORMATION CONTACT: *For technical issues:* Mr. Maurice Hicks, Light Duty Vehicle Division, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366–6345; facsimile (202) 366–4329.

For legal issues: Walter Myers, Office of the Chief Counsel, National Highway

Traffic Safety Administration, Washington, DC 20590; telephone (202) 366–2992; facsimile (202) 366–3820.

SUPPLEMENTARY INFORMATION: Federal motor vehicle safety standard (Standard) No. 206, Door locks and door retention components, specifies strength requirements for door locks and door retention components, including latches, hinges, locks, and other door supporting means. The purpose of the standard is to minimize the likelihood of inadvertent door opening and consequent occupant ejection from the vehicle in the event of a crash or other unintended release of the door latch. Excluded from the requirements of the standard are, among others:

> [S]lide doors which are equipped with wheelchair lifts and which are linked to an alarm system consisting of either a flashing visible signal located in the driver's compartment or an alarm audible to the driver which is activated when the door is open.

This exclusion was added to paragraph S4 of the standard by final rule dated March 27, 1985 (50 FR 12029), in response to a petition for rulemaking submitted by Thomas Built Buses, Inc. The agency's rationale for excluding doors equipped with wheelchair lifts was that when lifts of the Thomas Built design were retracted, they were secured in position by either hydraulic pressure in the extension/retraction cylinders and mechanical latches, or by electrically-operated drive mechanisms. The metal grate floors of the lifts were stowed in a vertical position parallel to and in close proximity with the inferior surface of the vehicle door. Thus, in its retracted position, the wheelchair lift could provide an adequate barrier to occupant ejection from the vehicle if the door were to open while the vehicle was moving or if involved in a collision. The final rule also required a visual or audible alarm system designed to be activated if the door opened while the ignition was on. Such alarm would ensure that the lift is kept in its retracted position and the door is kept closed while the vehicle is in operation.

On May 18, 1995, IMS wrote a letter to NHTSA stating that the company converts minivans into wheelchair accessible vehicles by lowering the vehicle floor and adding a wheelchair ramp to the right rear sliding door area. The ramp retracts into a vertical position parallel to and in close proximity to the vehicle door when not in use. IMS also equips the doors with an audible and/or visual alarm system. IMS asked, therefore, whether the exclusion of wheelchair lifts from the provisions of Standard No. 206 would also apply to the wheelchair ramps with which IMS equips its vehicle conversions. NHTSA responded that the term "wheelchair lifts" did not include wheelchair ramps. The agency noted that the two components shared many similar characteristics, however, and that IMS was free to petition the agency for rulemaking to amend the standard by adding wheelchair ramps to the current exclusions from the standard.

The Petition

IMS petitioned the agency to amend Standard No. 206 to exclude from the standard those multipurpose passenger vehicles (MPV) that are equipped with wheelchair ramps for the transportation of wheelchair users. IMS argued that because wheelchair lifts and ramps serve the same purpose and are similarly configured when in the stowed position, the rationale for excluding wheelchair lifts from the standard should also apply to wheelchair ramps. Accordingly, IMS urged that paragraph S4 of the standard be amended to exclude wheelchair ramps from the standard in addition to the existing exclusions.

Agency Analysis and Decision

The IMS petition requesting exclusion of ramps from the standard is based on the similarity of performance characteristics of wheelchair lifts and ramps. NHTSA evaluation, however, has revealed several structural differences between the IMS ramp and the Thomas Built lift on which the current exclusion was based. In fact, most ramps and lifts currently produced are structurally different from the Thomas Built lift.

A schematic of the IMS ramp is shown in Figure 1. The IMS ramp operates much like a lift, in that it retracts into the vehicle in a vertical position that is parallel to and in close proximity of the vehicle door. However, in its retracted position, the ramp can detach and swing open like a gate to permit ingress and egress of ambulatory people, with a latch at the lower part of the gate to hold it in place. Finally, the IMS ramp in question, when in the retracted position, does not completely cover the doorway opening. The ramp folds into the vehicle to a position that covers from one-half to three- fourths of the doorway, the intent being to avoid obstructing the driver's vision to the side.

NHTSA's evaluation of the lift and ramp designs revealed a wide variety of lift and ramp designs produced by other manufacturers, including those that retract under the vehicle, those that suspend within the door sill (which lifts the wheelchair user by means of a pulley), those that retract within the vehicle parallel to the floor, and some that are, like the IMS ramp, detachable from at least one side. Also like the IMS ramp, many lifts and ramps produced by other manufacturers do not cover the entire door.

In order to install the IMS ramp in a vehicle, the vehicle is altered by lowering the floor between the firewall and the rear axle. This alteration is commonly performed on most lift/ramp-equipped vans and MPVs. The original floor is replaced with an interior panel of 16-gauge steel and an exterior panel of 18-gauge steel. Both are hollow z-member panels which together have an equivalent thickness of one inch. The lower edge of the side sliding door is extended to meet the lowered floor and the lower track of the sliding door is refitted to accommodate the larger door. Structurally, the sliding track guide is similar to the vehicle's original track guide for non-electric doors. For electric doors, however, the design is significantly different. Specifically, the installation of the electric IMS ramp requires that the latch be disabled to accommodate the electric track closing and opening the door.

Because of the many different designs of wheelchair lifts and ramps currently being produced, the agency is concerned that its exclusion of wheelchair lifts from the requirements of the standard, based on the then-current Thomas Built design, may be overly broad. At the same time, the agency believes that wheelchair ramps and lifts are essential to the safe and efficient transportation of persons with disabilities. Accordingly, the change requested by IMS warrants further investigation and research into the installation and manner of operation of the various wheelchair lift and ramp designs currently in production, with a view toward adoption of uniform criteria for both. To that extent, therefore, the agency grants the IMS petition.

The granting of the IMS petition, however, does not necessarily mean that a rule will be issued. The determination of whether to issue a rule is made after study of the requested action and the various alternatives thereto in the course of the rulemaking proceeding, in accordance with statutory criteria.

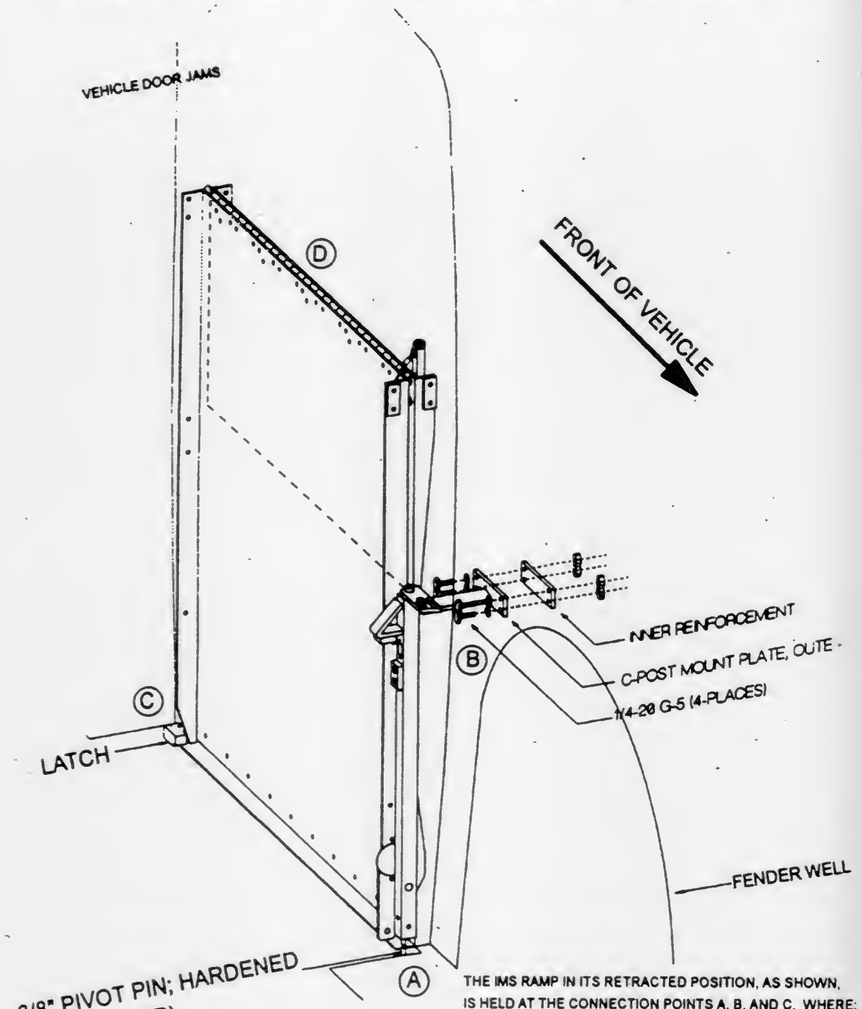
List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

Authority: 49 U.S.C. §§ 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

BILLING CODE 4910–59–P

FIGURE 1 - IMS ELECTRIC RAMP CONFIGURATION



THE IMS RAMP IN ITS RETRACTED POSITION, AS SHOWN, IS HELD AT THE CONNECTION POINTS A, B, AND C. WHERE:

A. IS A FIXED AXIS WHICH THE RAMPS PIVOTS ABOUT TO ALLOW NON-DISABLED PERSON TO ENTER THE VEHICLE

B. IS A CONNECTION POINT AND MANUAL RELEASE TO ALLOW THE RAMP TO EXTRACT FROM THE VEHICLE.

C. IS A CONNECTION POINT WITH A LATCH WHICH PREVENTS THE RAMP FROM PIVOTING ABOUT POINT A.

D. IS THE LOWER PART OF THE RAMP WHICH EXTENDS WHILE THE RAMP IS EXTRACTING FROM THE VEHICLE.

Issued on May 27, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96–13711 Filed 5–30–96; 8:45 am]

BILLING CODE 4910–59–C

Notices

Federal Register
Vol. 61, No. 106
Friday, May 31, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Secretary of Agriculture's Special Cotton Import Quota Announcement Number 9

AGENCY: Office of the Secretary, USDA.
ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 42,168,963 kilograms (92,966,725 pounds) is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991. The quota is referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 9, effective April 29, 1996, and is set forth in subheading 9903.52.09, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The quota was established on April 29, 1996, and applies to upland cotton purchased not later than July 27, 1996 (90 days from the date the quota was established), and entered into the United States not later than October 25, 1996 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Farm Service Agency, United States Department of Agriculture, room 3756–S, Ag Code 0515, PO Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special cotton import quota be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended March 14, 1996. Therefore, a quota referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 9, effective April 29, 1996, is hereby established.

Because there are only twenty subheadings available for designating upland cotton special import quotas in subchapter III of chapter 99 of the HTS, only twenty such quotas can be in effect at one time. Each subheading corresponds to a Secretary of Agriculture's Special Cotton Import Quota Announcement specifying that a particular amount of upland cotton may be imported during a particular 180-day period. The twenty-first consecutive quota cannot be established until the earliest of the existing twenty quotas ends. Therefore, the special import quota described in this notice opened on April 29, 1996—the day after the quota 9 in existence at the time of the announcement ended.

The quota amount, 42,168,963 kilograms (92,966,725 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—November 1995 through January 1996. The special cotton import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: Sec. 136, P.L. 104–127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, D.C. on May 21, 1996.

Dan Glickman,
Secretary.

[FR Doc. 96–13645 Filed 5–30–96; 8:45 am]
BILLING CODE 3410–05–P

Secretary of Agriculture's Special Cotton Import Quota Announcement Number 14

AGENCY: Office of the Secretary, USDA.
ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 41,858,494 kilograms (92,282,258 pounds) is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991. The quota is referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 14, effective June 3, 1996, and is set forth in subheading 9903.52.14, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The quota was established on June 3, 1996, and applies to upland cotton purchased not later than August 31, 1996 (90 days from the date the quota was established), and entered into the United States not later than November 29, 1996 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Farm Service Agency, United States Department of Agriculture, room 3756–S, Ag Code 0515, PO Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special cotton import quota be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended April 18, 1996. Therefore, a quota referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 14, effective June 3, 1996, is hereby established.

Because there are only twenty subheadings available for designating upland cotton special import quotas in subchapter III of chapter 99 of the HTS, only twenty such quotas can be in effect at one time. Each subheading corresponds to a Secretary of Agriculture's Special Cotton Import Quota Announcement specifying that a particular amount of upland cotton may be imported during a particular 180-day period. The twenty-first consecutive quota cannot be established until the earliest of the existing twenty quotas ends. Therefore, the special import quota described in this notice opened on June 3, 1996—the day after the quota 14 in existence at the time of the announcement ended.

The quota amount, 41,858,494 kilograms (92,282,258 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—December 1995 through February 1996. The special cotton import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: Sec. 136, P.L. 104–127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, D.C. on May 21, 1996.

Dan Glickman,
Secretary.

[FR Doc. 96–13646 Filed 5–30–96; 8:45 am]
BILLING CODE 3410–05–P

Secretary of Agriculture's Special Cotton Import Quota Announcement Number 10

AGENCY: Office of the Secretary, USDA.
ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 41,858,494 kilograms (92,282,258 pounds) is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991. The quota is referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 10, effective May 6, 1996, and is set forth in subheading 9903.52.10, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The quota was established on May 6, 1996, and applies to upland cotton purchased not later than August 3, 1996 (90 days from the date the quota was established), and entered into the United States not later than November 1, 1996 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Farm Service Agency, United States Department of Agriculture, room 3756–S, Ag Code 0515, PO Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special cotton import quota be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended March 21, 1996. Therefore, a quota referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 10, effective May 6, 1996, is hereby established.

Because there are only twenty subheadings available for designating upland cotton special import quotas in subchapter III of chapter 99 of the HTS, only twenty such quotas can be in effect at one time. Each subheading corresponds to a Secretary of Agriculture's Special Cotton Import Quota Announcement specifying that a particular amount of upland cotton may be imported during a particular 180-day period. The twenty-first consecutive quota cannot be established until the earliest of the existing twenty quotas ends. Therefore, the special import quota described in this notice opened on May 6, 1996—the day after the quota 10 in existence at the time of the announcement ended.

The quota amount, 41,858,494 kilograms (92,282,258 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—December 1995 through February 1996. The special cotton import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: Sec. 136, P.L. 104–127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, D.C. on May 21, 1996.

Dan Glickman,
Secretary.

[FR Doc. 96–13647 Filed 5–30–96; 8:45 am]
BILLING CODE 3410–05–P

Secretary of Agriculture's Special Cotton Import Quota Announcement Number 11

AGENCY: Office of the Secretary, USDA.
ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 41,858,494 kilograms (92,282,258 pounds) is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991. The quota is referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 11, effective May 13, 1996, and is set forth in subheading 9903.52.11, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The quota was established on May 13, 1996, and applies to upland cotton purchased not later than August 10, 1996 (90 days from the date the quota was established), and entered into the United States not later than November 8, 1996 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Farm Service Agency, United States Department of Agriculture, room 3756–S, Ag Code 0515, PO Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special cotton import quota be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended March 28, 1996. Therefore, a quota referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 11, effective May 13, 1996, is hereby established.

Because there are only twenty subheadings available for designating upland cotton special import quotas in subchapter III of chapter 99 of the HTS,

only twenty such quotas can be in effect at one time. Each subheading corresponds to a Secretary of Agriculture's Special Cotton Import Quota Announcement specifying that a particular amount of upland cotton may be imported during a particular 180-day period. The twenty-first consecutive quota cannot be established until the earliest of the existing twenty quotas ends. Therefore, the special import quota described in this notice opened on May 13, 1996—the day after the quota 11 in existence at the time of the announcement ended.

The quota amount, 41,858,494 kilograms (92,282,258 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—December 1995 through February 1996. The special cotton import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: Sec. 136, P.L. 104–127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, D.C. on May 21, 1996.

Dan Glickman,

Secretary.

[FR Doc. 96–13648 Filed 5–30–96; 8:45 am]

BILLING CODE 3410–05–P

Secretary of Agriculture's Special Cotton Import Quota Announcement Number 12

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 41,858,494 kilograms (92,282,258 pounds) is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991. The quota is referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 12, effective May 20, 1996, and is set forth in subheading 9903.52.12, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The quota was established on May 20, 1996, and applies to upland cotton purchased not later than August 17, 1996 (90 days from the date the quota was established), and entered into the United States not later than November 15, 1996 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Farm Service Agency, United States Department of Agriculture, room 3756–S, Ag Code 0515, PO Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special cotton import quota be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended April 4, 1996. Therefore, a quota referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 12, effective May 20, 1996, is hereby established.

Because there are only twenty subheadings available for designating upland cotton special import quotas in subchapter III of chapter 99 of the HTS, only twenty such quotas can be in effect at one time. Each subheading corresponds to a Secretary of Agriculture's Special Cotton Import Quota Announcement specifying that a particular amount of upland cotton may be imported during a particular 180-day period. The twenty-first consecutive quota cannot be established until the earliest of the existing twenty quotas ends. Therefore, the special import quota described in this notice opened on May 20, 1996—the day after the quota 12 in existence at the time of the announcement ended.

The quota amount, 41,858,494 kilograms (92,282,258 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—December 1995 through February 1996. The special cotton import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: Sec. 136, P.L. 104–127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, DC on May 21, 1996.

Dan Glickman,

Secretary.

[FR Doc. 96–13649 Filed 5–30–96; 8:45 am]

BILLING CODE 3410–05–P

Secretary of Agriculture's Special Cotton Import Quota Announcement Number 13

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 41,858,494 kilograms (92,282,258 pounds) is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991. The quota is referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 13, effective May 27, 1996, and is set forth in subheading 9903.52.13, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The quota was established on May 27, 1996, and applies to upland cotton purchased not later than August 24, 1996 (90 days from the date the quota was established), and entered into the United States not later than November 22, 1996 (180 days from the date the quota was established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Farm Service Agency, United States Department of Agriculture, room 3756–S, Ag Code 0515, PO Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special cotton import quota be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended April 11, 1996. Therefore, a quota referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 13, effective May 27, 1996, is hereby established.

Because there are only twenty subheadings available for designating upland cotton special import quotas in subchapter III of chapter 99 of the HTS, only twenty such quotas can be in effect at one time. Each subheading corresponds to a Secretary of Agriculture's Special Cotton Import Quota Announcement specifying that a particular amount of upland cotton may be imported during a particular 180-day period. The twenty-first consecutive quota cannot be established until the earliest of the existing twenty quotas ends. Therefore, the special import quota described in this notice opened on May 27, 1996—the day after the quota 13 in existence at the time of the announcement ended.

The quota amount, 41,858,494 kilograms (92,282,258 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—December 1995 through February 1996. The special cotton import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: Sec. 136, P.L. 104–127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, DC on May 21, 1996.

Dan Glickman,

Secretary.

[FR Doc. 96–13650 Filed 5–30–96; 8:45 am]

BILLING CODE 3410–05–P

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Northern Region; Idaho, Montana, North Dakota, and Portions of South Dakota and Eastern Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Northern Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and 217 and to publish notices for public comment and notice of decision subject to the provisions of 36 CFR 215. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for public comment or decisions; thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after May 23, 1996. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Edward C. Monnig; Acting Regional Appeals and Litigation Coordinator; Northern Region; P.O. Box 7669; Missoula, Montana 59807. Phone: (406) 239–3647.

The newspapers to be used are as follows:

Northern Regional Office

Regional Forester decisions in Montana: The Missoulian, Great Falls Tribune, and The Billings Gazette.

Regional Forester decisions in Northern Idaho and Eastern Washington: The Spokesman Review.

Regional Forester decisions in North Dakota: Bismarck Tribune.

Regional Forester decisions in South Dakota: Rapid City Journal.

Beaverhead/Deerlodge—Montana Standard.

Bitterroot—Ravalli Republic.

Clearwater—Lewiston Morning Tribune.

Custer—Billings Gazette (Montana), Bismarck Tribune (North Dakota), Rapid City Journal (South Dakota).

Flathead—Daily Interlake.

Gallatin—Bozeman Chronicle.

Helena—Independent Record.

Idaho Panhandle—Spokesman Review.

Kootenai—Daily Interlake.

Lewis & Clark—Great Falls Tribune.

Lolo—Missoulian.

Nez Perce—Lewiston Morning Tribune.

Supplemental notices may be placed in any newspaper, but time frames/deadlines will be calculated based upon notices in newspapers of record listed above.

Dated: May 23, 1996.

Richard M. Bacon,

Deputy Regional Forester.

[FR Doc. 96–13677 Filed 5–30–96; 8:45 am]

BILLING CODE 3410–11–M

Rural Utilities Service

LaGrange County, Indiana Sewer District; Final Programmatic Environmental Impact Statement

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Availability of Final Programmatic Environmental Impact Statement.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) is issuing a final Programmatic Environmental Impact Statement (PEIS) related to the LaGrange County, Indiana Sewer District's proposal to construct sanitary wastewater collection and treatment facilities for residential population centers. The final PEIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (U.S.C. 4231 *et seq.*) in accordance with the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR 1500–1508) and Farmers Home Administration's procedure (7 CFR 1940, Subpart G, Environmental Program). RUS invites comments on the alternative analyses performed by and addressed in the final PEIS.

The purpose of this PEIS is to evaluate the environmental impacts of proposed alternative strategies to provide treatment of sanitary wastewaters for rural residential population centers in LaGrange County. Discussion of each alternative's impact on the human environment, including risks to public health and safety, and effects on the natural environment is presented. The proposed action is necessary in order to respond to increased public health concerns and the continuation of surface and ground water degradation caused by inadequately treated wastewater effluent. This PEIS provides a planning tool to County officials and citizens and engineers who will select the most appropriate design and implementation strategy to address LaGrange County's wastewater problems.

The Preferred Alternative

Fund a Decentralized Wastewater Collection and Treatment System for Residents in Densely Populated Areas Using Engineered Wetlands Treatment Processes: This alternative involves the use of pressure or gravity collection systems to convey wastewater to multiple engineered wetland treatment facilities. Collection and conveyance technologies considered for this option will be the same as those analyzed for the centralized treatment facility option.

Treatment alternatives for this option will include: wetlands application followed by land application (spray irrigation) of the effluent; wetlands application followed by disinfection and surface water discharge; and wetlands application followed by subsurface discharge.

Other Alternatives Presented in the PEIS

The following project alternatives were identified in feasibility studies conducted for the LaGrange County Sewer District and analyzed in this PEIS. Even though they are creditable technical alternatives, they were not selected as the preferred alternative.

Continued Use of On-Site Waste Disposal Systems (No Action Alternative): This alternative would not address the present public health concerns or the continued degradation of the County's surface and ground water.

Centralized Wastewater Collection and Treatment for all County Residents Using Conventional Wastewater Treatment: This alternative would provide wastewater collection and treatment service for all county residents. This option would use either gravity, or pressure sewers to convey wastewater to a centralized facility. Collection and conveyance alternatives that were analyzed for this option include: small diameter gravity systems; small diameter pressure systems using single connection effluent grinder pumps; and conventional gravity collector lines connected to pressure lines for conveyance to the treatment facility. Activated sludge process alternatives that were considered for this option included: oxidation ditches, and extended aeration.

Centralized Wastewater Collection and Treatment for All County Residents Except for Residents in Remote Locations Using Conventional Activated Sludge Waste Treatment Processes: This alternative involves providing water waste collection and treatment services for all of the County's residents except those located in isolated regions. This option would use the same collection and treatment technologies as the option providing wastewater treatment for the entire County. Cost savings over serving the entire county would be realized because of the high unit cost of serving remote residences.

ADDRESSES/FOR FURTHER INFORMATION CONTACT: For more information, contact or for transmittal of written comments send to: Paul Neumann, State Environmental Coordinator, USDA, Rural Development, RUS, 5975 Lakeside Blvd., Indianapolis, IN 46278, (219) 290–3109, and FAX (219) 290–3011. Copies of the final PEIS will be available for public inspection, during normal business hours at the following locations:

LaGrange Town Clerk, 107 S. High Street, LaGrange, IN 46761
Town of Topeka, Attn: Duane Bontrager, 101 Main Street, Topeka, IN 46571
Town of Shipshewana, Attn: Ruth Ann Downey, P.O. Box 486, 345 N. Morton Street, Shipshewana, IN 46565
Town of Wolcottville, Attn: Elizabeth Hodge, P.O. Box 325, 101 W. Race Street, Wolcottville, IN 46795.

The draft final PEIS will be distributed to various Federal, State, and local agencies, and elected officials.

Dated: May 13, 1996.

Wally Beyer,

Administrator.

[FR Doc. 96–13644 Filed 5–30–96; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Georgia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Georgia Advisory Committee to the Commission will convene at 3:00 p.m. and adjourn at 5:00 p.m. on Friday, June 21, 1996, at the Ponce de Leon branch, Atlanta-Fulton Public Library, 980 Ponce de Leon Avenue, NE, Atlanta, Georgia 30306. The purpose of the meeting is to meet with Joy Berry, Executive Director, Georgia Human Relations Commission; to discuss a civil rights conference proposal; to review the project on programs of the Atlanta Committee on the Olympic Games; and to discuss civil rights problems and/or progress in Georgia and the United States.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Elaine Alexander, 404–233–8414, or Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 22, 1996.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 96–13624 Filed 5–30–96; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Survey of Environmental Products and Services.
Form Number(s): EPS–1(M), 2(M), 3(M), 1(S), 1(C).
Agency Approval Number: None.
Type of Request: New collection.
Burden: 20,000 hours.
Number of Respondents: 10,000.
Avg Hours Per Response: 2 hours.
Needs and Uses: Currently, there are no reliable data on the output and export of goods and services that control, reduce, and remediate pollution. Representatives of industry, state governments, and environmental organizations have called for the development of these data as they are critical to the implementation of the Environmental Technologies Exports Initiative, the Environmental Technology Initiative, the Clean Air Act, the Clean Water Act and other environmental statutes. Further, a study is necessary to meet the requirements of the 1990 Clean Air Act Amendment, the Exports Enhancement Act of 1988 and the Jobs Through Trade Expansion Act of 1988. The Census Bureau plans to conduct, on a test basis, a survey of manufacturing and service establishments to collect total value of shipments of goods and revenues for services in 1995 defined for environmental use. The survey will also ask for value of shipments and revenues for services which were exported. The survey will provide information on the size and scope of activity generated from environmental protection. The survey will also provide a benchmark measure of the extent of the environmental industry, its export potential, and the implication for employment in a potential growth industry. Government classification specialists will use the information to determine how industry and product classification systems can be refined and modified to improve the identification of products and services considered for environmental use. Changes and modifications to detailed classifications will be introduced with the 1997 Economic Censuses. We expect to revise the survey for future data collections to incorporate improvements learned from this test.

Affected Public: Businesses or other for–profit.
Frequency: One–time test.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Jerry Coffey. (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer. (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: May 24, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–13620 Filed 5–30–96; 8:45 am]

BILLING CODE 3510–07–F

Bureau of the Census

Annual Survey of State and Local Government Finance

ACTION: Proposed agency information collection activity; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 30, 1996.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Henry S. Wulf, Bureau of the Census, Governments Division, Washington, DC 20233–6800, (301)–457–1523.

SUPPLEMENTARY INFORMATION:

I. Abstract

This annual survey provides state government finance data and estimates of local government revenue, expenditure, debt and assets by type of local government, nationally and within state areas. The data are used to calculate the gross domestic product (GDP), to monitor the government sector of the economy, and to formulate, develop, and review public policy.

The revenue category subdivides into the three parts of general revenue, utility and liquor store revenue and insurance trust revenue. Examples of general revenue are taxes, monies from other governments, non-utility charges and interest earnings. Utility charges and investment earnings are examples of other types of government income.

The statistics show expenditure classified by character and object (current operations, capital outlay, etc.) and by function (education, highways, police, welfare, and sanitation, for example). The indebtedness data include all long- and short-term (less than one year) credit obligations incurred in the name of government. Asset information—dominated generally by pension system assets—includes only cash and securities of governments, but excludes any other type of asset such as real property or fixed assets.

Included within this review request are the Forms F–5, F–5a, F–5L1, and F–5L2 from the Annual Survey of State Tax Collections. This survey was approved separately in the past under the OMB number 0067–0046. We are combining these two collections because the tax portion of the data will no longer be released separately. Although the data will be collected in the same manner by the Forms F–5 and F–5a, the data collected will be included as part of the annual survey releases.

II. Method of Collection

Canvass methodology consists of a questionnaire mailout/mail-back. Responses will be screened manually, then entered on a microcomputer. Other methods used to collect data and maximize response include central data collection, solicitation of printed reports in lieu of a completed questionnaire, and use of the Census Bureau's Federal Single Audit Clearinghouse.

III. Data

OMB Number: 0607–0585 (Forms F–5, F–5A, F–5L1, F–5–L2 were previously cleared under the OMB Number 0607–0046).

Form Number: F–5, F–5A, F–5L1, F–5–L2, F–11, F–12, F–13, F–21, F–22, F–25, F–28, F–29, F–32, F–42.

Type of Review: Regular.

Affected Public: State, local or tribal government.

Estimated Number of Respondents: 7,425.

Estimated Time Per Response: 2.8 hours.

Estimated Total Annual Burden Hours: 22,798 hours.

Estimated Total Annual Cost: The estimated cost to the respondents is $303,213.00. The estimated cost to the Federal Government is contained in the Surveys of Government Finance. In total, these cost about $3.2 million during FY 1996.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 28, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–13698 Filed 5–30–96; 8:45 am]

BILLING CODE 3510–07–P

Minority Business Development Agency

[Docket No. 960402097–6129–02]

RIN 0640–XX02

Revision of the Cost-Share Requirement and Addition of Bonus Points for Community-Based Organizations Applying To Operate Minority Business Development Centers (MBDC) in Designated Locations

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Interim final policy request for comments.

SUMMARY: In order to leverage Federal resources together with those existing in communities, and to build local capacity to impact growth in the nation's minority business sector, MBDA is revising its Minority Business Development Center Competitive Application Package to increase the Cost-Share requirement from fifteen percent (15%) to forty percent (40%) and to give an additional ten (10) bonus points to the applications of community-based organizations in designated locations.

DATES: This interim policy is effective May 31, 1996. Comments on this interim policy must be submitted on or before July 1, 1996.

ADDRESSES: Comments should be sent to Mr. Paul R. Webber IV, Assistant Director for Operations, Minority Business Development Agency, U.S. Department of Commerce, Room 5073, 14th and Constitution Avenues NW., Washington D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Webber IV at (202) 482–1015.

SUPPLEMENTARY INFORMATION: Under Executive Order 11625, MBDA provides business development assistance to persons who are members of groups determined by MBDA to be socially or economically disadvantaged, and to business concerns owned and controlled by such individuals. To deliver this assistance, MBDA funds MBDCs which offer a full range of management and technical assistance services, coordinate public and private resources on behalf of clients, and serve as a conduit for information concerning business development.

MBDA selects applicants to operate its MBDCs through a competitive solicitation process. The guidelines for operation of an MBDC are set forth in a detailed Competitive Application Package (CAP). The funding instrument for the MBDCs is a cooperative agreement, which, in addition to the CAP and the competitive solicitation published in the **Federal Register**, sets forth the applicable requirements which must be met by an MBDC operator (collectively, the "program guidelines").

Under the program guidelines, the Department of Commerce currently funds up to 85% of the total budgeted cost of operating an MBDC on an annual basis. The MBDC operator is required to contribute at least 15% of the total project cost (the "cost-share requirement"). Contributions which may be utilized in satisfying the cost-share requirement include cash contributions, non-cash applicant contributions, third party in-kind contributions and client fees.

Under the revised guidelines for the geographic service areas designated below, and for such additional geographic service areas as shall from time to time be added to this list, the Department will fund up to 60% of the total project cost. The operator will be required to contribute at least 40% of the total project cost in order to satisfy the cost-share requirement. In addition to the traditional sources of an MBDC's cost-share contribution, the 40% may be contributed by local, state and private sector organizations. It is anticipated that some organizations may apply jointly for an award to operate one of the designated centers. For administrative purposes, one organization must be designated as the recipient organization.

Pages 1–7 of the MBDC Competitive Application Package (CAP) address the scoring of applications. Currently, applicants are evaluated based upon a 100 point scoring system which addresses the capability of the applicant, the reasonableness of the applicant's proposed costs, the applicant's proposed strategies for accomplishing the program mission, and other selection criteria. This scoring system will be revised to add ten (10) bonus points to the applications of community-based organizations which have received a programmatically acceptable and responsive score. Each qualifying application will receive the full ten points. Community-based applicant organizations are those organizations currently located within the geographic service area designated in the solicitation for the award, and whose headquarters and/or principal place of business have been located within the geographic service area during the last five years. Where an applicant organization has been in existence for fewer than five years or has been present in the geographic service area for fewer than five years, the individual years of experience of the applicant organization's principals may be applied toward the requirement of five years of organization experience. The individual years of experience must have been acquired in the geographic service area which is the subject of the solicitation.

Issues concerning the interpretation of the foregoing requirements and the meanings of key terms shall be governed by the CAP, as amended.

MBDA recognizes that the substantially decreased level of funding for Agency programs and the instituting of a community-based emphasis on the selection of service providers may lead to the non-renewal of some awards upon the expiration of the current award term, yet prior to the completion of a full, three-year competitive cycle. It is important to note that under the Agency's existing program guidelines, the renewal of an award for the second and third budget years is expressly conditioned upon the availability of funding and shifts in Agency priorities.

Statement of Policy

In order to implement its revised program in support of the minority business sector, MBDA will henceforth increase the cost-share requirement for Business Development Center awards to forty percent (40%) and add ten bonus points to programmatically acceptable and responsive applications of community-based organizations in the following twenty-two locations:

Atlanta
Tampa
Cincinnati
New Orleans
Bronx
Newark/Jersey City
Las Vegas
San Francisco
Jacksonville
West Palm Beach
Brownsville
Oklahoma City
Brooklyn
Washington, D.C.
Los Angeles
Orlando
Chicago
Corpus Christi
Boston
Connecticut
Anaheim
Oxnard

Executive Order 12866

This policy revision was determined to be not significant for purposes of E.O. 12866.

Administrative Procedure Act

Since this notice of policy revision is a matter relating to public property, loans, grants, benefits, or contracts under 5 U.S.C. 553(a)(2), the requirements of section 553 do not apply.

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this notice of policy change because the notice was not required to be promulgated as a proposed rule before issuance in final form by 5 U.S.C. § 553 or by any other law. As a result, neither an initial nor final Regulatory Analysis was required, and none has been prepared.

Paperwork Reduction Act

This notice involves a collection of information which has been approved by the Office of Management and Budget under control number 0640–0006.

Executive Order 12612

This policy statement does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Authority: 15 U.S.C. 1512 and Executive Order 11625.

Dated: May 24, 1996.

Elio E. Muller, Jr.,

Associate Director for Strategic Planning, Minority Business Development Agency.

[FR Doc. 96–13691 Filed 5–30–96; 8:45 am]

BILLING CODE 3510–21–P

National Oceanic and Atmospheric Administration

[I.D. 051796D]

North Pacific Fishery Management Council; Agenda Addition

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Addition to meeting agenda.

SUMMARY: The agenda for the meeting of the North Pacific Fishery Management Council which is scheduled for June 11–16, 1996, in Portland, OR, was published on May 28, 1996. See **SUPPLEMENTARY INFORMATION** for an addition to the meeting agenda.

ADDRESSES: Portland Red Lion Hotel, 310 S.W. Lincoln, Portland, OR 97201.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, Phone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The initial agenda published on May 28, 1996 (61 FR 13285). The following addition is to be included in the agenda for the Council meeting:

An initial review of a regulatory amendment to implement specific electronic reporting requirements for onshore and offshore processors will be added to the previously published agenda.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: May 28, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service

[FR Doc. 96–13703 Filed 5–30–96; 8:45 am]

BILLING CODE 3510–22–P

National Environmental Satellite, Data, and Information Service Transition From GOES TAP/GOES Fax Transmission of Satellite Imagery to Alternative Methods of Delivery

AGENCIES: National Environmental Satellite, Data, and Information Service (NESDIS), National Weather Service (NWS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice.

SUMMARY: This notice publishes the NESDIS and the NWS plan to transition from the current GOES-Tap/GOES-Fax (telephone-based) analog service to new digital-data transmission modes including NOAAPORT point-to-multipoint broadcast and the Internet. No changes will occur without several advance notifications. A minimum 6-month notification is planned for the user community.

ADDRESSES: Information concerning this Notice is available upon request. GOES-Tap users can send inquires to NESDIS, Satellite Services Division, 5200 Auth Road, Room 607, Camp Springs, Maryland 20748.

For GOES-Fax users, requests for information should be sent to the NWS, Telecommunications and Dissemination Branch, 1325 East-West Highway, Suite 17444, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: John Paquette (GOES-Tap) at 301–763–8051, e-mail at jpaquette@ssd.wwb.noaa.gov or Herb Hawkins (GOES-FAX) at 301–713–0425 or e-mail at hhawkins@smtpgate.ssmc.noaa.gov.

SUPPLEMENTARY INFORMATION: Established in the mid 1970's, the Geostationary Operational Environmental Satellite (GOES) Telecommunications Access Program (GOES-Tap) has provided Weather Service Forecast Offices (WSFO) with near real-time, high quality analog environmental satellite imagery from geostationary and polar-orbiting satellites. Many other Federal Government and private weather users also access this satellite imagery via regional Satellite Field Distribution Facilities directly as GOES-Tap customers or are connected to a WSFO as a secondary GOES-Fax customer.

In support of the NWS modernization, NESDIS plans to meet new expanded NWS operational data requirements by transitioning from the analog GOES-Tap to a digital GOES data relay through a commercial satellite. This satellite point-to-multipoint broadcast is referred to as NOAAPORT and will cover the United States, including Hawaii and Alaska.

Scheduled for full deployment near the end of the decade, NOAAPORT will provide users with real-time transmission of high resolution digital sectorized data from both GOES and other satellite platforms. Currently, NOAA is also examining additional means of digital satellite data delivery including the Internet.

NOAA plans to decommission GOES-Tap/GOES-Fax during calendar years 1997 and 1998. These planning dates could be moved up. All known GOES-Tap/GOES-Fax users will be updated on specific decommissioning dates at least 6 months prior to termination of these services. GOES-Tap and GOES-Fax customers are encouraged to begin making preparations for this transition.

Dated: May 24, 1996.

Robert S. Winokur,

Assistant Administrator for Satellite and Information Services.

[FR Doc. 96–13700 Filed 5–30–96; 8:45 am]

BILLING CODE 3510–12–M

[I.D. 052196C]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application to modify permit no. 926 (P562).

SUMMARY: Notice is hereby given that Dr. Robin Baird, Marine Mammal Research

Group, victoria, B.C., Canada, V8P 5L5, has requested a modification to Permit No. 926.

DATES: Written comments must be received on or before July 1, 1996.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA (206/526–6150).

Written data or views, or requests for a public hearing on this request should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, National Marine Fisheries Service, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject modification is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Permit Holder is currently authority to take (i.e., harass) up to 300 killer whales (*Orcinus orca*) annually, up to 25 of which may be radio tagged via suction cups annually, in waters off Washington state, over a five year period. The purpose of the research is to study killer whale behavior and ecology.

The Holder is now requesting that the Permit be modified to authorize the harassment and suction cup radio tagging Dall's porpoise (*Phocoenoides dalli*), in order to study that species' diving behavior. Up to 100 animals may be radio tagged annually. Up to 200 non-target animals may be inadvertently harassed annually during tagging activities. Activities will be undertaken in the waters of Juan de Fuca Strait, Haro Strait, Boundary Pass, Georgia Strait, and the waters surrounding the San Juan Islands.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 22, 1996.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–13605 Filed 5–30–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 052296B]

Marine Mammals; Permit No. 778 (P772#59)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of modification.

SUMMARY: Notice is hereby given that on April 29, 1996, permit no. 778, issued to the National Marine Fisheries Service, Southwest Fisheries Science Center, La Jolla, CA 92038, was modified.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130 Silver Spring, MD 20910 (301/712–2289);

Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4001);

Coordinator, Pacific Area Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Room 106, Honolulu, HI 9682202396 (808/973–2987).

SUPPLEMENTARY INFORMATION: The subject modification has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of paragraphs (d) and (e) of § 216.33 of the regulations of the governing the taking and importing (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit 778 authorizes the conduct of several research/enhancement activities on Hawaiian monk seals (*Monachus schauinslandi*). The permit has been modified to extend the duration of the permit through October 31, 1996.

Issuance of this permit as required by the ESA was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 23, 1996.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–13606 Filed 5–30–96; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 1, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 5, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (61 FR 15225) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Administrative Services

Department of Energy, Forrestal Building, Washington, DC.

Switchboard Operation

Department of Veterans Affairs Medical Center, Syracuse, New York.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–13709 Filed 5–30–96; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 1, 1996.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Addition:

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Stamp, Custom, Pre-inked
7520–01–381–8057
7520–01–381–8075
7520–01–381–8054
7520–01–381–8037
7520–01–381–8074
7520–01–381–8063
7520–01–352–7312
7520–01–368–7774
7520–01–381–8012
7520–01–381–8027
7520–01–419–6746
7520–01–419–6743
7520–01–419–6744
7520–01–381–7995
7520–01–381–7993
7520–01–381–8017
7520–01–357–6847
7520–01–357–6846
7520–01–419–6744
7510–01–381–8070
7510–01–381–8072
7510–01–381–8041
7510–01–381–8032
7510–01–368–3504
7510–01–381–8062
(Requirements for the U.S. Postal Service)
NPA: The Lighthouse for the Blind, Inc., Seattle, Washington
Kit, Pre-Inked Stamps, 7520–00–NIB–1090 thru –1108, (Requirements for the U.S. Postal Service). NPA: The Lighthouse for the Blind, Inc., Seattle, Washington

Service

Tray Delivery Service, Department of Veterans Affairs Medical Center, 3601 South 6th Avenue, Tucson, Arizona, NPA: The Centers for Habilitation/TCH, Tempe, Arizona

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action does not appear to have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Paper, Looseleaf, Ruled
7530–00–286–4333
7530–00–198–6265
7530–00–286–4334
7530–00–286–4335
7530–00–286–4331
7530–00–286–5779
7530–00–286–5781
7530–00–286–5778
7530–00–286–5780
7530–00–286–5777

Cord Set, Guide, File
7530–00–574–7172
7530–00–861–1270

Tape, Paper, Computing Machine
7530–00–286–9055
7530–00–286–9052

Bag, Cloth
8105–00–282–8183

Folder, File
7530–00–926–8975
7530–00–531–7809
7530–00–285–5879

Tape, Pressure-Sensitive Adhesive
7510–00–074–4946

Binder, Looseleaf
7510–00–582–3807
7510–00–281–4315

Portfolio
7510–00–579–8554

Envelope, Transparent

7510–00–782–6276

Strap, Webbing, Waist, LC–1

8465–00–269–0481

Liner, Coat, Cold Weather

8415–01–062–0679
8415–00–782–2889
8415–00–782–2888
8415–00–782–2887
8415–00–782–2886
8415–00–782–2890

Liner, Trousers, Cold Weather

8415–01–180–0370
8415–01–180–0371
8415–01–180–0372
8415–01–180–0373
8415–01–180–0374
8415–01–180–0375

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–13710 Filed 5–30–96; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.133A–7]

Office of Special Education and Rehabilitative Services National Institute on Disability and Rehabilitation Research

Notice Inviting Applications for a New Award Under the Research and Demonstration Projects Program for Fiscal Years 1996–1997.

Purpose of Program: The Research and Demonstration Projects (R&D) Program supports discrete research, demonstration, training, and related projects to develop methods, procedures, and technology that maximize the full inclusion and integration into society, independent living, employment, family support, and economic and social self-sufficiency of individuals with disabilities, especially those with the most severe disabilities.

Eligible Applicants: Parties eligible to apply for grants under this program are public and private nonprofit and for-profit agencies and organizations, including institutions of higher education and Indian tribes and tribal organizations.

Deadline for Transmittal of Applications: July 15, 1996.

Application Available: June 3, 1996.

Available Funds: $250,000.

Estimated Average Size of Award per Year: $250,000.

Estimated Number of Awards: 1.

Project Period: 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, 86; and (b) the regulations for this program in 34 CFR Parts 350 and 351.

Note: The estimate of funding level and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants.

This notice supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Priorities

Under 34 CFR 75.105(b)(2) (v) and (c)(3) and Section 204(a) of the Rehabilitation Act of 1973, as amended, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet the absolute priority:

Absolute Priority—Unserved or Underserved Populations

Research, demonstration, training, and related projects that hold promise of increasing knowledge and improving the rehabilitation of individuals, particularly those with the most severe disabilities and those who are members of populations that are unserved or underserved by programs under the Rehabilitation Act.

Invitational Priority

Within the absolute priority, the Secretary is particularly interested in applications that address the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets an invitational priority does not receive competitive or absolute preference over other applications:

NIDRR has observed that while women constitute most of the disability population, little information or quantitative data is available relative to circumstances and needs of women with disabilities. The information that does exist suggests that women with disabilities in America confront problems that differ in important respects from those of their nondisabled female peers as well as those of men with disabilities. While NIDRR currently supports projects to address the needs of other underserved populations such as persons with disabilities from minority backgrounds and American Indian individuals with disabilities, NIDRR does not currently support a focused research effort to address critical issues unique to women with disabilities.

In 1995, NIDRR convened a focus group of women with disabilities, service providers, and researchers to discuss research gaps and opportunities. The following topics emerged as critical areas to disabled women: economic and employment status; prevalence of violence and abuse; access to appropriate health care; and opportunities for disabled girls and young women to develop independence and leadership skills. The Secretary invites applications to undertake research projects that address these topics, including the identification of intervention strategies that can be addressed through research.

Research projects might propose to address one or more of the following research needs: analysis of the income status of disabled women; documentation of employment status and identification of employment barriers; design and testing of leadership development models; and an analysis of the existing data about violence and abuse toward women with disabilities.

The Secretary is also interested in supporting projects that study the need for and feasibility of a comprehensive research effort on the unique problems of women with disabilities, and develop an agenda for future research.

For Applications Contact: William H. Whalen, U.S. Department of Education, 600 Independence Avenue SW., Switzer Building, Room 3411, Washington, D.C. 20202. Telephone: (202) 205–9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

For Further Information Contact: David Esquith, U.S. Department of Education, 600 Independence Avenue SW., Switzer Building, Room 3424, Washington, D.C. 20202. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8133. Internet: David Esquith@ed.gov

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases); or on the World Wide Web at http://www.ed.gov/money.html

However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 761a and 762.

Dated: May 24, 1996.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–13704 Filed 5–30–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

National Petroleum Council; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Petroleum Council (NPC).

Date and Time: Friday, June 21,1996 at 9:00 a.m.

Place: ANA Hotel, Grand Ballroom, 2401 M Street NW., Washington, D.C.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–5), Washington, D.C. 20585, Telephone: 202/586–3867.

Purpose: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Tentative Agenda

—Call to order and introductory remarks by H. Laurance Fuller, Chair of the NPC.
—Remarks by the Honorable Hazel R. O'Leary, Secretary of Energy.
—Discussion of Plans and Progress of Interagency Working Group.
—Administrative matters.
—Discussion of any other business properly brought before the NPC.
—Public comment (10-minute rule).
—Adjournment.

Public Participation: The meeting is open to the public. The chairperson of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room IE–190, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on May 24, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer

[FR Doc. 96–13684 Filed 5–30–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. QF88–218–004]

Burney Forest Products, a Joint Venture; Notice of Amendment to Filing

May 24, 1996.

On May 23, 1996, Burney Forest Products, a Joint Venture tendered for filing an amendment to its April 30, 1996, filing in this docket.

The amendment pertains to the ownership structure of the small power production facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by June 13, 1996, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13631 Filed 5–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1121–000]

Duke/Louis Dreyfus Energy Services (New England) L.L.C.; Notice of Issuance of Order

May 28, 1996.

On February 20, 1996, Duke/Louis Dreyfus Energy Services (New England) L.L.C. (Duke/Dreyfus-NE) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, Duke/Dreyfus-NE requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Duke/Dreyfus-NE. On May 16, 1996, the Commission issued an Order Conditionally Accepting for Filing Proposed Market-Based Rates and Report of Change in Status (Order), in the above-docketed proceeding.

The Commission's May 16, 1996 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Duke/Dreyfus-NE should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, Duke/Dreyfus-NE is hereby authorized to issue securities and to assume obligations or liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Duke/Dreyfus-NE's issuances of securities or assumptions of liabilities

* * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 17, 1996.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13671 Filed 5–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–532–000]

Equitrans, L.P. and Equitrans, Inc.; Notice of Petition

May 24, 1996.

Take notice that on May 22, 1996, Equitrans, L.P. and Equitrans, Inc.

(Applicants), both at 3500 Park Lane, Pittsburgh, Pennsylvania, 15275–1102, filed in a joint application under Sections 7 (c) and (b) of the Natural Gas Act, for authority to transfer facilities and services. Equitrans, L.P. requests a certificate authorizing it to acquire the facilities and perform the services of Equitrans, Inc. and to transport and sell natural gas for resale in interstate commerce in the same manner as conducted by Equitrans, Inc. Equitrans, Inc. requests companion authority to transfer all of its jurisdictional facilities, operations, and services to Equitrans, L.P. In addition, Equitrans, L.P. requests that it be substituted for Equitrans, Inc. in all pending proceedings in which Equitrans, Inc. is a party, all as more fully set forth in the Application. The Applicants request that authorization be made effective as of November 28, 1995.

Applicants state that on November 15, 1995, a Partnership Agreement formed Equitrans, L.P. The partnership is comprised of a general partner, ET Blue Grass Company, a subsidiary of ERI Investments, Inc., and a limited partner, Equitable Resources, Inc. Equitrans, Inc. seeks authority under Section 7(b) to transfer its jurisdictional facilities and operations to Equitrans, L.P. Equitrans, L.P. will adopt the tariff of Equitrans, Inc.

Applicants state that the sole purpose of their Application is to restructure the Equitrans, Inc. system operations as a natural gas company into the partnership of Equitrans, L.P.

Any person desiring to be heard or to make any protest with reference to this application should, on or before June 14, 1996, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the approriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and Section 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13634 Filed 5–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–530–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Request Under Blanket Authorization

May 24, 1996.

Take notice that on May 21, 1996, Great Lakes Limited Partnership (Great Lakes), One Woodward Avenue, Suite 1600, Detroit, Michigan, 48226, filed in Docket No. CP96–530–000 a request pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, and 157.211) for approval to construct and operate a tap to serve its Boyne City-Petoskey meter station (station), located in Charlesvoix County, Michigan, under the blanket certificate issued in Docket No. CP90–2053–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Great Lakes states that it will not provide any additional transportation service in connection with the proposed tap. Great Lakes indicates that the tap is designed to provide additional security and reliability for existing service utilizing the station. It is asserted that the proposed tap is complementary to Great Lakes' Security Loop I Project.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13633 Filed 5–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR96–6–000]

Gulf States Pipeline Corporation; Notice of Petition for Rate Approval

May 24, 1996.

Take notice that on May 1, 1996, as corrected on May 10, 1996, Gulf States Pipeline Corporation (Gulf States) filed pursuant to Section 284.123(b)(2) of the Commission's Regulations, a petition for rate approval requesting that the Commisison approve as fair and equitable a system-wide interruptible transportation rate of $0.2637 per MMBtu, a firm reservation rate of $4.6360 per MMBtu, and a firm commodity rate of $0.1112 per MMBtu for transportation services performed under Section 311(a)(2) of the Natural Gas Policy Act of 1978.

Gulf States states that it is an intrastate pipeline within the meaning of Section 2(16) of the NGPA and it owns and operates an intrastate pipeline system in the State of Louisiana. Gulf States proposes an effective date of May 1, 1996.

Pursuant to Section 284.123(b)(2)(ii) of the Commission's Regulations, if the Commission does not act within 150 days of the filing date, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation services. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before June 10, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13638 Filed 5–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1867–000]

Kansas City Power & Light Company; Notice of Filing

May 24, 1996.

Take notice that on May 17, 1996, Kansas City Power & Light Company filed a transmission tariff in compliance with the Commission's Final Rule in Docket No. RM95–8–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 3, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13630 Filed 5–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–244–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 24, 1996.

Take notice that on May 22, 1996, Koch Gateway Pipeline Company (Koch Gateway) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed on the Appendix attached to the filing, with a proposed effective date of June 22, 1996.

Koch Gateway states that this filing is submitted as an application pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. 717c (1988), and Part 154 of the Rules and Regulations of the Commission.

Koch Gateway also states that the tariff sheets are being submitted to replace Koch's current Section 30 of its tariff which explains Koch's right of first refusal process. This proposed tariff section provides a more efficient timeframe in which Koch's right of first refusal process will be completed while clarifying the necessary steps in this process.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's regulations. All such motions or protest must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13642 Filed 5–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–367–008 and RP95–31–016, et al.]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

May 24, 1996.

Take notice that on May 21, 1996, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets proposed to be effective April 1, 1996:

Sub. Fourth Revised Sheet No. 17
Sub. First Revised Sheet No. 30
Sub. Original Sheet No. 650

National states that on March 22, 1996, National submitted its Compliance Filing in the above-captioned proceedings. On April 1, 5, and 12, 1996, National submitted corrections to the Compliance Filing. The above-listed sheets reflect corrections as a result of further informal discussions with some customers.

National further states that copies of this filing were served upon company's jurisdictional customers and upon the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13639 Filed 5–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–242–000]

National Fuel Gas Supply Corporation; Notice of Petition To Waive Tariff Provision

May 24, 1996.

Take notice that on May 21, 1996, National Fuel Gas Supply Corporation (National Fuel) filed a Petition for Waiver of a provision in its FT Rate Schedule.

In its petition, National Fuel requests a waiver of Section 3.2 of National Fuel's FT Rate Schedule to the extent necessary to permit National Fuel to accept the guaranty from Enron Corp. of the obligations of its subsidiary, Enron Capital & Trade Resources (EC&T), in an account in excess of cost of performing the service requested by EC&T for a three-month period. National Fuel states that the limited financial assurance permitted by Section 3.2 would not secure the cost of facilities National Fuel would be required to construct to serve EC&T, and that EC&T fully supports the instant petition.

National Fuel also requests that the Commission grant the requested waiver by June 25, 1996, so that the transaction may proceed as comtemplated by the parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20406, in accordance with Sections 385.211 or 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protest must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to

intervene. Copies of this filing are on file with the Commission and are available for Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13640 Filed 5–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–243–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 24, 1996.

Take notice that on May 22, 1996, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets proposed to be effective June 1, 1996:

Fifth Revised Volume No. 1

22 Revised Sheet No. 50
22 Revised Sheet No. 51
Ninth Revised Sheet No. 52
29 Revised Sheet No. 53
Ninth Revised Sheet No. 59
Tenth Revised Sheet No. 60
Third Revised Sheet No. 109
First Revised Sheet No. 110
Second Revised Sheet No. 111
Second Revised Sheet No. 124
First Revised Sheet No. 125
Third Revised Sheet No. 132
First Revised Sheet No. 133

Original Volume No. 2

149 Revised Sheet No. 1C
24 Revised Sheet No. 1C.a

Northern states that this filing recognizes that the TCR Surcharge expires on May 31, 1996 and the GSR TI surcharge component applicable to TI volumes increases by the same amount pursuant to Section 21 and 25 of the General Terms and Conditions of Northern's Tariff.

Northern states that copies of the filing were served upon the company's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such petitions or protests must as provided in Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13641 Filed 5–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. EC96–24–000 and EL96–55–000]

Old Dominion Electric Cooperative; Notice of Filing

May 24, 1996.

Take notice that on May 20, 1996, Old Dominion Electric Cooperative (Old Dominion or Applicant) filed an application seeking an order under Section 203 of the Federal Power Act authorizing Old Dominion to enter a lease and leaseback transaction that includes its 50% undivided interest in certain jurisdictional transmission facilities related to Unit 2 at the Clover Power Station located in Halifax County, Virginia.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 6, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13632 Filed 5–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–534–000]

Panhandle Eastern Pipe Line Company; Notice of Request Under Blanket Authorization

May 24, 1996.

Take notice that on May 22, 1996, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP96–534–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon and remove an existing meter and regulation facility located in Seward County, Kansas under Panhandle's blanket certificate issued in Docket No. CP83–83–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle proposes to abandon and remove the existing meter and regulation facility (Okan Sales Meter) which was used to deliver gas to Koch Pipelines, Inc. (Koch) pursuant to an Industrial Gas Contract between Panhandle and Koch. Panhandle states that the Industrial Gas Contract has terminated and Koch has not sought service since 1994. By letter dated September 1, 1995, Panhandle and Koch mutually agreed to the abandonment of the Okan Sales Meter.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13635 Filed 5–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1086–000]

SCANA Energy Marketing, Inc.; Notice of Issuance of Order

May 24, 1996.

On February 16, 1996, SCANA Energy Marketing, Inc. (SCANA) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, SCANA requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by SCANA. On May 13 1996, the Commission issued an Order Accepting for Filing and Suspending Proposed Transmission Tariffs, Conditionally Accepting for Filing Proposed Market-Based Sales Rates, Granting Clarification, Establishing Hearing Procedures, and Granting and Denying Waivers and Authorizations (Order), in the above-docketed proceeding.

The Commission's May 13, 1996 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (I), (J), and (L):

(I) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by SCANA should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(J) Absent a request to be heard within the period set forth in Ordering Paragraph (I) above, SCANA is hereby authorized to issue securities and to assume obligations or liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(L) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of SCANA's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June12, 1996.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13669 Filed 5–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–2–43–004]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 24, 1996.

Take notice that on May 22, 1996, Williams Natural Gas Company (WNG) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Second Substitute Eighth Revised Sheet No. 6
Second Substitute Ninth Revised Sheet No. 6A

The proposed effective date of these tariff sheets is January 1, 1996.

WNG states that this filing is being made in compliance with Commission order issued May 13, 1996 in Docket No. TM96–2–43–001. WNG was directed to file revised tariff sheets within 15 days of the date of the order to comply with section 154.102(e)(5) of the Commission's regulations. Section 154.102(e)(5) requires tariff sheets which are filed to comply with a Commission order to carry the following notation in the bottom margin: "Filed to comply the following notation in the bottom margin: "Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. (number), issued (date), (FERC Reports citation)."

WNG states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary

[FR Doc. 96–13643 Filed 5–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2550–002 Wisconsin]

N.E.W. Hydro, Inc.; Notice of Availability of Draft Environmental Assessment

May 24, 1996.

In accordance with the National Environmental Policy act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the Weyauwega Hydroelectric Project, located on the Waupaca River, in the City of Weyauwega, Waupaca County, Wisconsin; and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project with appropriate environmental protection measures would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street N.E., Washington, D.C. 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, Room 1–A, 888 First Street N.E., Washington, D.C. 20426. Please affix "Weyauwega Hydroelectric Project No. 2550" to all comments. For further information, please contact James Hunter at (202) 219–2839.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13636 Filed 5–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2105–033 California]

Pacific Gas & Electric Company; Notice of Availability of Final Environmental Assessment

May 24, 1996.

A final environmental assessment (FEA) is available for public review. The FEA is for an application to amend the Upper North Fork Feather River Hydroelectric Project. The application is to extend the project boundary to include about 8 acres of land in the vicinity of the Belden Siphon to allow for stabilization of the siphon. The FEA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The Upper North Fork Feather River Hydroelectric Project is located on the North Fork Feather River in Plumas County, California.

The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FEA can be viewed in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426.

For further information, please contact the project manager, Ms. Rebecca Martin, at (202) 219–2650.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13670 Filed 5–30–96; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10856 Michigan]

Upper Peninsula Power Company; Notice of Availability of Draft Environmental Assessment

May 24, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for an original license for the Au Train Hydroelectric Project, located near the towns of Au Train and Munising, Michigan in Alger County, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the un-licensed, existing project and has concluded that approval of the project, with appropriate environmental protection or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix "Au Train Hydroelectric Project No. 10856" to all comments. For further information, please contact John Blair at (202) 219–2845.

Lois D. Cashell,

Secretary.

[FR Doc. 96–13637 Filed 5–30–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5470–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 13, 1996 Through May 17, 1996 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EIS) was published in F.R. dated April 05, 1996 (61 F.R. 15251).

Draft EIS

ERP No. D–COE–E32076–NC Rating EC2, Cape Fear-Northeast Cape Fear Rivers Feasibility Study for Deepening of the Wilmington Harbor Ship Channel, Navigation Improvement, New Hanover and Brunswick Counties, NC.

Summary: EPA expressed environmental concerns about the potential adverse impacts associated with use of explosives to excavate the enlarged channel and awaits the results of on-going studies to determine the significance of this dredging technique.

ERP No. D–COE–K36116–CA Rating EC2, San Pedro Creek Section 205 Flood Control Project, Construction, Flood Protection, COME Section 10 and 404 Permits and Permits Approval, San Mateo County, CA.

Summary: EPA expressed environmental concerns over potential impacts to riverain habitat, impacts to air quality, and potential cumulative impacts of the project, including possible increased runoff and siltation.

ERP No. D–FRC–L05215–OR Rating EO2, Leaburg-Walterville Hydroelectric (FERC. No. 2496) Project, Issuance of New License (Relicense), Funding and Land Trust Acquisition, McKenzie River, Lane County, OR.

Summary: EPA expressed environmental objections over continued impacts on fish and other aquatic life in the McKenzie River due to project operation. In addition, EPA commented that the draft EIS did not provide a comprehensive analysis of cumulative impacts, nor was the no-action alternative appropriately characterize.

ERP No. D–USN–K11067–AZ Rating EC2, Yuma Training Range Complex Management, Operation and Development, Marine Corps Air Station Yuma, Goldwater Range, Yuma and La Paz Cos; and Chocolate Mountain Range, Imperial and Riverside Counties, CA.

Summary: EPA expressed environmental concerns regarding alternatives analysis, cumulative impacts issues, and biological impacts.

ERP No. D–USN–K11069–CA Rating EC2, Port Hueneme Naval Civil Engineering Laboratory (NCEL) Disposal and Reuse, Implementation, Ventura County, CA.

Summary: EPA requested further information on air quality and wetlands NEPA issues.

ERP No. DB–COE–E30032–FL Rating EC2, Palm Beach County Beach Erosion Project, Updated Information concerning Shore Protection for the Ocean Ridge Segment from the Martin County line to Lake Worth Inlet and from the South Lake Worth Inlet to the Broward County Line, Palm Beach, Martin and Broward Counties, FL.

Summary: EPA expressed environmental concerns regarding the long-term consequences of this action and other beach nourishment projects planned for the county's shoreline. The additional information derived from the mitigation and subsequent monitoring plan will be necessary to determine how this project fits into the larger issue of the environmental consequences of proposed shoreline protection.

ERP No. DS–COE–E32192–NC Rating EC2, Wilmington Harbor Channel Widening and Navigation Improvement, Updated Information, Cape Fear River, Port of Wilmington, New Hanover and Brunswick Counties, NC.

Summary: EPA expressed environmental concerns about the potential adverse impacts associated with use of explosives to excavate the enlarged channel and seeks additional data on the long-term consequences of these excavation techniques.

ERP No. DS–COE–E36169–FL Rating LO, Central and Southern Florida Flood Control Project, Restoration of the Upper Kissimmee River Basin through the Headwater Revitalization Project and the Lower Kissimmee River Basin through the Level II Backfilling Plan, Implementation, Updated Information, Glades, Osceda Highlands, Polk, Okeechobee and Orange Counties, FL.

Summary: EPA had no objections to this proposal.

Final EIS

ERP No. F–COE–C36071–PR Rio Fajardo Flood Control Feasibility Study for Flood Protection, Implementation, PR.

Summary: EPA had no objection to the proposed action.

ERP No. F–USA–K11059–CA Hamilton Army Airfield Disposal and Reuse, Implementation, City of Novato; Marin County, CA.

Summary: EPA environmental concerns were mostly answered satisfactorily in the Final EIS. One minor biological resources issue remains unresolved.

Dated: May 28, 1996.

Katherine B. Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–13715 Filed 5–30–96; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–5469–8]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 564–7167 or (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed May 20, 1996 Through May 24, 1996 Pursuant to 40 CFR 1506.9.

EIS No. 960241, Draft EIS, BLM, UT, Lisbon Valley Copper Project, Plan of Operations Approval for an Open Pit Copper Mine and Heach Operation in Lower Lisbon Valley, San Juan and Grand Counties, UT, Due: July 15, 1996, Contact: Lynn Jackson (801) 259–6111.

EIS No. 960242, Final EIS, FHW, AR, LA, US 71 Highway Transportation Project, Construction between Texarkana to Louisiana State Line, Funding, Right-of-Way and COE Section 404 Permit, Miller County, AR, Due: July 01, 1996, Contact: Wendall Meyer (501) 324–6430.

EIS No. 960243, Final EIS, BLM, MT, Sweet Grass Hills Resource Management Plan Amendment, Implementation, West HiLine Resource Management Plan, Toole and Liberty Counties, MT, Due: July 01, 1996, Contact: James Beaver (406) 255–2910.

EIS No. 960244, Draft Supplement, FHW, NC, Smith Creek Parkway and Downtown Spur Construction, from NC 133 at Northeast Cape Fear River to US–74/Eastwood Road and US–117/Castle Hayne Road at Smith Creek to 3rd Street, Updated and Additional Information, Funding, Wilmington, New Hanover County, NC, Due: July 15, 1996, Contact: Nicholas L. Graf (919) 856–4346.

EIS No. 960245, Draft EIS, AFS, UT, Western Uinta Basin Oil and Gas Leasing, Implementation, Federal Oil and Gas Estate on Land Administrated by the Uinta and Ashley National Forests in the western portion of the Uinta Basin, Wasatch and Duchesne Counties, UT, Due: July 15, 1996, Contact: Chaunice Todd (801) 789–1181.

EIS No. 960246, Draft EIS, AFS, CA, Humboldt Nursery Pest Management Plan, Implementation, Six Rivers National Forest, McKinleyville, Humboldt County, CA, Due: July 15, 1996, Contact: Susan Frankel (415) 705–2651.

EIS No. 960247, Final Supplement, SCS, TX, Attoyac Bayou Watershed, Flood Prevention and Watershed Protection, New Information concerning Installation of a Multiple-purpose Reservoir on the Naconiche Creek Watershed for Flood Prevention and Recreational Storage, Funding, Nacogdoches, Shelby, Rusk and San Augustine Counties, TX, Due: July 01, 1996, Contact: Harry W. Oneth (871) 774–1214.

EIS No. 960248, Final EIS, FHW, WA, WA–3/WA–304, Bremerton Ferry Terminal to the vicinity of Gorst Highway Improvement Project, Implementation, Funding, Right-of-Way Grant, NPDES Permit and COE Section 404 Permit, City of Bremerton, Kitsap County, WA, Due: July 01, 1996, Contact: Jim Leonard (360) 753–2120.

EIS No. 960249, Final EIS, AFS, ID, White Sand Planning Area Ecosystem Management Project, Implementation, Clearwater National Forest, Powell Ranger District, Idaho County, ID, Due: July 01, 1996, Contact: Jeff Pope (208) 942–3113.

EIS No. 960250, Final EIS, AFS, MT, Mormon Ridge Winter Range Peak Ecosystem Restoration, Implementation, Lolo National Forest, Missoula Ranger District, Missoula County, MT, Due: July 01, 1996, Contact: Andy Kulla (406) 329–3962.

EIS No. 960251, Final EIS, AFS, AK, Eight Fathom Timber Sales, Implementation, COE Section 404 Permit and EPA NPDES, Tongass National Forests, Hoonah and Sitka Ranger District, Chatham Area, AK, Due: July 01, 1996, Contact: Michael Weber (907) 747–6671.

EIS No. 960252, Final EIS, SFW, CA, Programmatic EIS—Natural Community Conservation Plan/Habitat Conservation Plan, Implementation and Associated Incidental Take Permit Issuance, Central and Coastal Subregion, Orange County, CA, Due: July 01, 1996, Contact: Dave Harlow (916) 979–2710.

Dated: May 28, 1996.

Katherine B. Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–13716 Filed 5–30–96; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5511–8]

Meeting of the Small Town Task Force

On June 17, 1996 the Small Town Environmental Planning Task Force (STTF) will conduct its sixth meeting. The purpose of the meeting is to discuss the recommendations made in their final report to be presented to the Administrator of EPA. The Task Force will also discuss its future role, purpose and structure.

The Task Force was charged with identifying regulations developed pursuant to Federal environmental laws which pose significant compliance problems for small towns; identifying the means to improve the working relationship between the Environmental Protection Agency and small towns; reviewing proposed regulations for the protection of environmental and public health and suggesting revisions that could improve the ability of small towns to comply with such regulations; and identifying the means to promoting regionalization of environmental treatment systems and infrastructure serving small towns to improve the economic conditions of such systems and infrastructure. Their Final Report provides recommendations on these topics for consideration by EPA's Administrator.

The meeting will be held at the Dupont Plaza Hotel, located at 1500 New Hampshire Avenue, NW., Washington, DC 20036. The meeting will begin at 8:30 a.m. on June 17th and conclude at 5:00 p.m.

The Designated Federal Officer (DFO) for this subcommittee is Christine Zawlocki. She is the point of contact for information concerning any subcommittee matters and can be reached by calling (202) 260–0244 or by writing to: U.S. EPA, 401 M Street, SW. (1502), Washington, DC 20460.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available within forty-five days after the meeting and con be obtained by written request from the DFO. Members of the public are requested to call the DFO at the above number if planning to attend so the arrangements can be made to comfortably accommodate attendees as much as possible.

Christine Zawlocki,

Designated Federal Official, Office of Regional Operations and State/Local Relations.

[FR Doc. 96–13662 Filed 5–30–96; 8:45 am]

BILLING CODE 6560–50–M

[PF–656; FRL–5372–7]

Cucumber Mosaic Virus Coat Protein; Notice of Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces that Asgrow Seed Company has submitted pesticide petitions 6E4670 proposing that the transgenic plant pest control agent Cucumber Mosaic Virus Coat Protein be exempt from the requirement of a tolerance when used in or on all raw agricultural commodities.

DATES: Comments, identified by the docket number [PF–656], must be received on or before July 1, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–656]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Linda Hollis, PM 90 Team Member, Biopesticides and Pollution Prevention Division, 7501W, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 20, CS #1, (insert street address) Arlington, VA 22202, 703 308–8733, e-mail: hollis.linda@epamial.epa.gov.

SUPPLEMENTARY INFORMATION: Asgro Seed Company, Experimental Plant Genetics Unit, Kalamazoo, MI 49001 has submitted pesticide petition (PP) 6E4670 proposing to amend 40 CFR part 180 to exempt from the requirements of a tolerance residues of the transgenic plant pest control agent Cucumber Mosaic Virus Coat Protein in or on all raw agricultural commodities. (PM 90)

A record has been established for this notice under docket number [PF–656] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 20, 1996.

Janet L. Anderson,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 96–13821 Filed 5–30–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5512–5]

Agency Information Collection Activities Under MOB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740, please refer to the EPA ICR No.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 1601.02; Information Requirements for Petitions to modify the List of Regulated Substances under Section 112(r) of the Clean Air Act, as Amended; was approved 04/02/96; OMB No. 2050–0127; expires 04/30/99.

EPA ICR No. 0160.05; Application for Registration of Pesticide-Producing Establishments; Notification of Registration of Pesticide-Producing Establishments; Pesticide Report for Pesticide-Producing Establishments; was approved 04/11/96; OMB No. 2070–0078; expires 04/30/99.

EPA ICR No. 0619.07; Mobile Source Emission Factor Survey; was approved 02/07/96; OMB No. 2060–0078; expires 02/28/99.

EPA ICR No. 1614.02; Reporting and Recordkeeping Requirements under EPA's Green Light Program; was approved 04/29/96; OMB No. 2060–0255; expires 04/30/99.

EPA ICR No. 1039.07; Amendments to Contract Clauses for Monthly Progress Report; was approved 05/20/96; OMB No. 2030–0005; expires 11/30/96.

EPA ICR No. 0662.05; NSPS for VOC Equipment Leaks in the Synthetic Organic Chemical Manufacturing Industry (SOCMI)—40 CFR Part 60, Subpart VV; was approved 04/29/96; OMB No. 2060–0012; expires 04/30/99.

EPA ICR No. 1557.03; New Source Performance Standards for Municipal Solid Waste Landfills; was approved 04/29/96; OMB No. 2060–0220; expires 04/30/99.

EPA ICR No. 1770.02; Import of PCB Wastes for Disposal; was approved 04/26/96; OMB No. 2070–0149; expires 04/30/99.

EPA ICR No. 0649.06; NSPS for Metal Furniture Coating—40 CFR Part 60, Subpart EE; was approved 04/29/96; expires 04/30/99.

EPA ICR No. 1542.03; Tribal Assumption of the Section 404 Permit Program; was approved 04/26/96; OMB No. 2040–0140; expires 04/30/98.

EPA ICR No. 1772.01; Information Collection Activities Associated with EPA's Energy Star Building Program; was approved 04/29/96; OMB No. 2060–0347; expires 04/30/96.

EPA ICR No. 0275.06; Preaward Compliance Review Report; was approved 04/29/96; OMB No. 2090–0014; expires 04/30/99.

EPA ICR No. 1710.02; Residential Lead-Based Paint Hazard Disclosure Requirements; was approved 04/22/96; OMB No. 2070–0151; expires 04/30/99.

EPA ICR No. 0982.05; Standards of Performance for NSPS, Metallic Mineral Processing Plants—Subpart LL; was approved 03/31/96; OMB No. 2060–0016; expires 03/31/99.

EPA ICR No. 1608.01; State/Tribal Municipal Solid Waste Landfill (MSWLF) Program Adequacy Determinations; was approved 04/15/96; OMB No. 2050–0152; expires 04/30/99.

EPA ICR No. 0746.03; NSPS for Calciners and Dryers in Mineral Industries—Subpart UUU; was approved 03/31/96; OMB No. 2060–0252; expires 03/31/99.

EPA ICR No. 0795.09; Notification of Chemical Experts—TSCA Section 12(b); was approved 04/26/96; OMB No. 2070–0030; expires 04/30/96.

EPA ICR No. 0152.05; Notice of Arrival of Pesticides and Devices; was approved 04/25/96; OMB No. 2070–0030, expires 04/30/99.

EPA ICR No. 0783.33; Application of Motor Vehicle Emission Certification and Fuel Economy Labeling; was approved 08/24/95; OMB No. 2060–0104; expires 08/31/98.

EPA ICR No. 1188.05; Significant New Use Rules for Exsiting Chemicals—TSCA Section 5(a)(2); was approved 04/17/96; OMB No. 2070–0038; expires 04/30/99.

EPA ICR No. 1031.05; Allegations of Significant Adverse Reactions to Human Health or the Environment—TSCA Section 8(c); was approved 04/15/96; OMB No. 2070–0017; expires 04/30/99.

EPA ICR No. 0575.07; Health and Safety Data Reporting, Submission of Lists and Copies of Health and Safety Studies; was approved 04/15/96; OMB No. 2070–0004; expires 04/30/99.

EPA Withdrawals From OMB

EPA ICR NO. 0370.14; UIC Land Disposal Restrictions, Phase III, Decharacterized Wastewaters, Barbamate Wastes, and Spent Potliners; OMB No. 2040–0042; was withdrawn from OMB 04/28/96.

EPA ICR No. 1088.07; Agency Information Activities Renewal for NSPS Subpart Db; OMB No. 2060–0072; was withdrawn from OMB 04/29/96.

EPA ICR No. 1442.12; Land Disposal Restrictions—Phase III: Decharacterized Wastewaters, Barbamate Wastes, and Spent Aluminum Potliners: Final Rule; OMB No. 2050–0085; was withdrawn from OMB 04/29/96.

OMB Disapproval

EPA ICR No. 1442.111; Land Disposal Restrictions, Supplemental Proposal to Phase IV: Clarification of Bevill Exclusion for Mining Wastes; Changes to the Definition of Solid Waste for Mineral Processing Wastes; was disapproved by OMB 04/05/96.

Extension of Expiration Dotes

EPA ICR 0116.04; Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program; OMB No. 2060–0060; expiration date was extended to 07/31/96.

EPA ICR No. 1088.06; NSPS for Industrial, Commercial, Institutional Steam Generating Units (Subpart DB), Information Requirement, S02, PM, NOX; OMB No. 2060–0072; expiration date was extended to 07/31/96.

Dated: May 22, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–13714 Filed 5–30–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5510–3]

Soil Screening Guidance

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of Soil Screening Guidance.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has developed the Soil Screening Guidance which is now available. This guidance presents a framework for developing soil screening levels (SSLs), focusing primarily on a simple methodology for developing site-specific screening levels, but including generic levels and the opportunity to do more detailed modeling. The guidance can serve as a tool to expedite the evaluation of contaminated soils at sites addressed under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund. The guidance is intended to be used to screen out areas of sites, exposure pathways, or chemicals of concern from further consideration, assuming certain conditions are present, or to determine that further study is warranted at a site. It is not a rule, does not have the force of a regulation, nor should it be interpreted to represent cleanup standards for a site.

The Soil Screening Guidance is presented in three documents: (1) a Quick Reference Fact Sheet, which provides an overview of the development and use of soil screening levels; (2) a User's Guide, which provides details for implementing a simple methodology for calculating site-specific SSLs; and (3) a Technical Background Document (TBD), which presents generic SSLs and the technical foundation for the methodology for establishing SSLs. These documents are available from the National Technical Information Service at the address listed below. Additional supporting information, including summaries of previous outreach activities, is available for inspection in the Superfund Docket at the address listed below.

As part of the development of the Soil Screening Guidance, EPA conducted extensive outreach and peer review. A major component of that outreach was providing the document for public comment (59 FR 67706, December 30, 1994). As a result of comments received during the public comment period and the independent scientific peer review conducted concurrently, several changes were made to the guidance. The highlights of that process are presented below. In addition, EPA has developed a more detailed Response to Comments on the public review draft and the independent scientific peer review. This document is also available from the National Technical Information Service (see below).

DATES: The Soil Screening Guidance was signed by Assistant Administrator Laws on May 17, 1996 and is now being published by National Technical Information Service (NTIS).

ADDRESSES: Copies of the draft Soil Screening Guidance may be ordered

through the NTIS at (703)487–4650 as follows:

Soil Screening Guidance Quick Reference Fact Sheet, 9355.4–14FSA, PB96–963501, EPA/540/F–95/041

Technical Background Document for Soil Screening Guidance, 9355.4–17A, PB96–963502, EPA/540/R–95/128

Soil Screening Guidance: User's Guide, 9355.4–23, PB96–963505, EPA/540/R–96/018

Soil Screening Guidance: Response to Comments, 9355.4–22, PB96–963506, EPA/540/R–96/019

Members of the public are invited to inspect the docket developed to support the Soil Screening Guidance at the Superfund Docket, U.S. Environmental Protection Agency, 1235 Jefferson Davis Highway, Arlington, Virginia. [Docket Number SSL]. The docket is available for inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Federal holidays. Appointments to review the docket can be made by calling (703) 603–9232. The public may copy a maximum of 266 pages from the docket free of charge, however a charge of 15 cents will be incurred for each additional page, plus a $25.00 administrative fee.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424–9346 (in the Washington, D.C. metropolitan area, (703) 412–9810). The Telecommunications Device for the Deaf (TDD) Hotline number is (800) 553–7672 (in the Washington, DC metropolitan area, (703) 412–3323). You may also contact David Cooper, Office of Emergency and Remedial Response (5204G), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, at (703) 603–8763.

SUPPLEMENTARY INFORMATION:

Introduction

The U.S. Environmental Protection Agency (EPA) responds to releases and threatened releases of hazardous substances under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). Regulations governing such responses are found in the National Oil and Hazardous Substances Pollution Contingency Plan or NCP. The process for remedy selection in the NCP generally requires that a remedial investigation be performed to identify the nature and extent of contamination at National Priorities List (NPL) sites. From sampling results, as well as site observations obtained in the field, specific contaminants and exposure pathways of concern are identified and used in a baseline risk assessment performed to determine whether remedial action is warranted. (See source documents 1 and 2 listed at the end of this document.)

Today's **Federal Register** notice announces the availability of a new tool which may reduce significantly the time it takes to complete soil investigations and cleanup actions, as well as improve the consistency of these actions across the nation. The guidance was written to enhance the efficiency of remedial investigation/feasibility study (RI/FS) work at Superfund National Priorities List (NPL) sites. This guidance on developing soil screening levels is expected to assist site managers in quickly identifying contaminated soil of potential concern and in screening out from further consideration those soils that do not warrant additional study.

The Soil Screening Guidance presents three recommended methods for developing risk-based, soil screening levels, but emphasizes a simple, site-specific approach. The formulae and exposure assumptions used to develop the screening levels have been taken from the Risk Assessment Guidance for Superfund [1,2] and have been widely accepted in the Superfund program for a number of years. These levels are then compared to on-site soil contaminant levels. Areas of a site which fall below the screening levels may be eliminated from further assessment. Areas above the screening levels generally warrant further evaluation of the potential risks that may be posed by site contaminants to determine the need for response action. While the guidance is recommended for use as a screening tool to determine if further study of specific portions of a site is warranted, the levels should not be interpreted to represent cleanup standards for a site.

Background

In 1993 EPA's Office of Emergency and Remedial Response (OERR) developed a draft fact sheet entitled: "Interim Soil Screening Level Guidance." This guidance discussed the development and use of risk-based Soil Screening Levels (SSLs) for 30 common Superfund soil contaminants. The document was issued on September 30, 1993, to provide the basis for discussion of the SSL project with stakeholders and is available for review as background information in the Superfund Docket. The effort to develop such a guidance was requested under both the EPA Administrator's June 19, 1991, "30-Day Study," and the more recent Superfund Administrative Improvements Initiatives announced by the Deputy Administrator on June 23, 1993. This guidance was subsequently revised and expanded to become the "Soil Screening Guidance," dated December 1994. This guidance was provided to the public for comment (59 FR 67706) and submitted to independent scientific peer review. As a result of comments received in this process, we made several changes to the document. Some of the most significant comments are highlighted here. The Response to Comments provides a more in-depth discussion of these changes and many other, less significant technical changes.

(1) Guidance needs to be more user friendly. EPA has modified the presentation of the guidance because many people commented that it was not clear how to implement the guidance. The Soil Screening Guidance has been reorganized into a "user's guide" to provide more useful information on how to develop simple site-specific screening levels and compare those to contaminant concentrations found at sites.

(2) Generic SSLs will be misused. The generic SSLs are still part of the framework, but they have been moved to the Technical Background Document in an effort to prevent their misuse. They now appear in a section which discusses the technical assumptions that go into the development of those numbers.

(3) Generic SSLs are too conservative. Another impetus for moving the generic levels to the TBD is concern that the generic levels were too conservative. One of the modeling inputs leading to this conservatism is the assumption of an infinite source of contamination. To address this concern, the new guidance provides an opportunity use site-specific information to develop a conservative estimate of the volume of contamination at the site.

(4) Sampling strategy was based on an assumption that is not appropriate for all sites. One of the peer reviewers commented that the approach for sampling the site to determine the contaminant concentrations was dependent on the assumption of a log-normal distribution of contamination that may not actually occur at the site. That approach has been replaced by a strategy that includes adequate sampling of surface soil in the exposure area, compositing of some samples to reduce laboratory costs, and comparison of the screening level with the maximum of the composite samples from each exposure area. The strategy balances the desire for a statistically based sampling strategy with the need to control the number of samples and the laboratory costs.

(5) Non-residential land uses need to be considered. EPA received from many stakeholders that SSLs should be developed for other land uses such as industrial or recreational. EPA agrees in principle that other land uses need to be considered. However, as a first step in the development of screening levels EPA chose to focus on residential use because there is more agreement in the risk assessment community about the types of relevant pathways and assumptions appropriate for modeling residential exposures. Several of the Superfund reforms announced in October 1995 address non-residential land uses and should provide information which could be used to expand the soil screening guidance to other land uses.

Goals

EPA's goal in developing this guidance is to provide a tool which can be used to expedite the evaluation of contaminated soils at sites addressed under CERCLA. The guidance is intended to be used to screen out areas of sites, exposure pathways, or chemicals of concern from further consideration or to determine that further study is warranted at a site. It may be used where assumptions made in developing the tool (e.g., residential land use, no ecological concerns) are consistent with conditions found at specific sites.

This guidance is not intended to be, and should not be construed as a rule. Use of the guidance is not legally binding either on EPA staff or on other parties; rather it is intended to be a tool available for use under appropriate site-specific conditions. NPL sites do not all meet the conditions necessary for its use, consequently, EPA does not expect this tool to be useful at all NPL sites. EPA staff applying the guidance have discretion to follow it or diverge from it as site-specific conditions may warrant, and each site-specific action will be explained on its own record.

Please contact individuals and offices listed in the sections of this notice entitled "Addresses" and "For Further Information Contact" to learn more about the Soil Screening Guidance.

Source Documents

1. U.S. EPA. 1989. Risk Assessment Guidance for Superfund: Volume 1: Human Health Evaluation Manual, Part A, Interim Final. EPA/540/1–89/002. Office of Emergency and Remedial Response, Washington D.C. NTIS PB90–155581/CCE.

2. U.S. EPA. 1991. Risk Assessment Guidance for Superfund, Volume 1: Human Health Evaluation Manual (Part B, Development of Risk-Based Preliminary Remediation Goals). Publication 9285.7–01B.

Office of Emergency and Remedial Response, Washington, D.C. NTIS PB92–963333.

Dated: May 17, 1996.

Elliott P. Laws,

Assistant Administrator.

[FR Doc. 96–13431 Filed 5–30–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

May 23, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 1, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or fain_t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0099.

Title: Form M - Annual Report Form M.

Form No.: FCC Form M.

Type of Review: Extension.

Respondents: Businesses or other for-profit.

Number of Respondents: 3.

Estimated Time Per Response: 1120 hours.

Total Annual Burden: 3360.

Needs and Uses: FCC Form M is the Annual Report of financial and operating information from all subject telephone companies having annual operating revenues in excess of $100 million. It is needed to provide the Commission with the data required to fulfill its regulatory responsibilities.

OMB Approval No.: 3060–0550.

Title: Certification of Franchising Authority to Regulate Basic Cable Service Rates and Initial Finding of Lack of Effective Competion.

Form No.: FCC Form 328.

Type of Review: Extension of currently approved collection.

Respondents: State, Local or Tribal Government.

Number of Respondents: 800.

Estimated Time Per Response: 30 minutes.

Total Annual Burden: 400 hours.

Needs and Uses: On 4/1/93, the Commission adopted a Report and Order, FCC 93-177, MM Docket No. 92-266. Among other things, this Report and Order implements Section 623(a)(3) of the Communications Act of 1934, as amended, wherein a local franchise authority is required to file with the Commission a written certification when it requests to regulate basic service rates. Subsequently, the Commission developed the FCC Form 328 to provide a standardized, simple form for meeting this requirement. To fulfill the obligations set forth under Section 623(a)(3) a franchise authority must: (1) adopt regulations consistent with the Commission's regulations for basic cable service; (2) have legal authority to regulate basic service which comes from state law; (3) the personnel to administer such regulations; and (4) have procedural regulations allowing for public participation in rate regulation proceedings. The FCC Form 328 is reviewed by FCC staff to ensure that a franchising authority has met the criteria specified in Section 623(a)(3) of the Communications Act of 1934 as amended.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 96–13668 Filed 5–30–96; 8:45 am]
BILLING CODE 6712–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 13, 1996.

A. **Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Randy W. and Karla L. Britt, both of Clifton Hill, Missouri; to acquire an additional .65 percent, for a total of 19.64 percent, and D. Wayne and Mary E Britt, both of Callao, Missouri, to acquire an additional .19 percent, for a total of 5.98 percent, of the voting shares of RMB Bancshares, Inc., Marceline, Missouri, and thereby indirectly acquire Regional Missouri Bank, Marceline, Missouri.

Board of Governors of the Federal Reserve System, May 24, 1996.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 96–13652 Filed 5–30–96; 8:45 am]
BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 24, 1996.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. MainStreet BankGroup Incorporated, Martinsville, Virginia; to acquire 100 percent of the voting shares of The First National Bank of Clifton Forge, Clifton Forge, Virginia.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Peterka Family Partnership, Miller, South Dakota; to become a bank holding company by acquiring 24.5 percent of the voting shares of M&H Financial Services, Inc., Miller, South Dakota, and thereby indirectly acquire First State Bank of Miller, Miller, South Dakota.

Board of Governors of the Federal Reserve System, May 24, 1996.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 96–13653 Filed 5–30–96; 8:45 am]
BILLING CODE 6210–01–F

Notice of Proposal to Engage in Nonbanking Activities.

Banc One Corporation, Columbus, Ohio, CoreStates Financial Corp, Philadelphia, Pennsylvania, PNC Bank Corp., Pittsburgh, Pennsylvania, National City Corporation, Cleveland, Ohio, and KeyCorp, Cleveland, Ohio, have given notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and section 225.23 of the Board's Regulation Y (12 CFR 225.23), to engage *de novo* through their joint venture subsidiary, Electronic Payment Services, Inc., Wilmington, Delaware (Company), in providing data processing services in connection with enhanced automated teller machine functions, enabling financial institutions to dispense: (1) public transportation tickets; (2) event and attraction tickets; (3) gift certificates; (4) prepaid phone cards; (5) other forms of alternate media that evidence a cardholder's prepayment for goods or services; and (6) other forms of alternate media, the dispensing of which is the automated equivalent of a customary banking activity. Company proposes to conduct these activities throughout the United States.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto...." 12 U.S.C. 1843(c)(8). In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the notice, and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 17, 1996. Any request for a hearing on this proposal must, as required by section 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. The notice may be inspected at the offices of the Board of Governors or the Federal Reserve Banks of Cleveland or Philadelphia.

Board of Governors of the Federal Reserve System, May 24, 1996.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 96–13651 Filed 5–30–96; 8:45 am]
BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices" (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 13, 1996.

A. **Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Newnan Holdings, Inc., Newnan, Georgia; to acquire Newnan Financial Services, Inc., Newnan, Georgia, and thereby engage in real estate appraisal services, including construction draw inspections, primarily for Newnan Savings Bank, but also to third parties, pursuant to § 225.25(b)(13) of the Board's Regulation Y. The geographic scope of this activity is throughout the State of Georgia.

B. **Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Farmers Enterprises, Inc., Albert, Kansas; to acquire Kinban, Inc., Kinsley, Kansas, and thereby engage in the sale of general insurance in a town of less than 5,000, pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 24, 1996.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 96–13654 Filed 5–30–96; 8:45 am]
BILLING CODE 6210–01–F

Board of Governors; Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.
TIME AND DATE: 10:00 a.m., Wednesday, June 5, 1996.
PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.
STATUS: Open.
MATTERS TO BE CONSIDERED: *Summary Agenda*: Because of its routine nature, no discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed amendments to Subpart A of Regulation S (Reimbursement for Providing Financial Records; Recordkeeping Requirements for Certain Financial Records) regarding reimbursement of certain costs incurred by financial institutions (proposed earlier for public comment; Docket No. R–0906).

2. Any items carried forward from a previously announced meeting.

Discussion Agenda: *PLEASE NOTE THAT NO DISCUSSION ITEMS ARE SCHEDULED FOR THIS MEETING.*

Note: If the items are moved from the Summary Agenda to the Discussion Agenda, discussion of the items will be recorded. Cassettes will then be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: May 29, 1996.
William W. Wiles,
Secretary of the Board.
[FR Doc. 96–13784 Filed 05–29–96; 11:23 am]
BILLING CODE 6210–01–P

Board of Governors, Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.
TIME AND DATE: Approximately 10:15 a.m., Wednesday, June 5, 1996, following a recess at the conclusion of the open meeting.
PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.
STATUS: Closed.
MATTERS TO BE CONSIDERED:

1. Proposals regarding a Federal Reserve Bank's renovation.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 29, 1996.
William W. Wiles,
Secretary of the Board.
[FR Doc. 96–13785 Filed 5–29–96; 11:23 am]
BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 657]

National Institute for Occupational Safety and Health; Intervention Studies for Construction Safety and Health; Notice of Availability of Funds for Fiscal Year 1996

Introduction

The Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH), announces that applications are being accepted for intervention projects relating to occupational safety and health in the construction industry. Such projects are intended to develop and evaluate the effectiveness of methods or approaches for preventing illnesses and injuries among construction workers. Thus, this announcement is not intended for traditional hypothesis-testing research projects to identify and investigate the relationships between health outcomes and occupational exposures to hazardous agents.

CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of "Occupational Safety and Health." (For ordering a copy of "Healthy People 2000," see the section "WHERE TO OBTAIN ADDITIONAL INFORMATION.")

Authority

This program is authorized under section 20(a) of the Occupational Safety and Health Act of 1970, (29 U.S.C. 669(a)), and section 301(a) of the Public Health Service Act, (42 U.S.C. 241(a)), as amended. The applicable program regulation is 42 CFR Part 52.

Eligible Applicants

Eligible applicants include non-profit and for-profit organizations, universities, colleges, research institutions, and other public and private organizations, including State and local governments and small, minority and/or woman-owned businesses.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Availability of Funds

About $750,000 is available in fiscal year (FY) 1996 to fund approximately 4 to 5 project grants. The amount of funding available may vary and is subject to change. Awards are anticipated to range from $150,000 to $200,000 in total costs (direct and indirect) per year. Awards are expected to begin on or about September 30, 1996. Awards will be made for a 12-month budget period within a project period not to exceed 3 years. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Purpose

NIOSH seeks to prevent work-related diseases and injuries in the construction industry by designing, implementing, and evaluating measures to reduce occupational hazards. If prevention measures are not currently available, new technologies should be developed for controlling hazardous exposures. Such new technologies must be evaluated to determine that the prevention measures are feasible, even for smaller businesses. Intervention research, of which control technology is a part, examines the utility and impact of new and existing preventive measures in the workplace.

Programmatic Interest

The focus of these grants should facilitate progress in preventing adverse effects among construction workers. A project that is proposed to develop or test the efficacy of an intervention should be designed to establish, discover, develop, elucidate, or confirm information relating to occupational safety and health, including innovative methods, techniques, and approaches for solving occupational safety and health problems.

A project that is proposed to demonstrate the effectiveness of an intervention should address, either on a pilot or full-scale basis, the technical or economic feasibility of implementing a new/improved innovative procedure, method, technique, or system for preventing occupational safety or health problems. A demonstration project should be conducted in an actual workplace where a baseline measure of the occupational problem will be defined, the new/improved approach will be implemented, a follow-up measure of the problem will be documented, and an evaluation of the benefits will be conducted.

The overall NIOSH program priorities, including those related to the construction industry, were developed by NIOSH and its partners in the public and private sectors to provide a framework to guide occupational safety and health research in the next decade—not only for NIOSH but also for the entire occupational safety and health community. Approximately 500 organizations and individuals outside NIOSH provided input into the development of the National Occupational Research Agenda (NORA). This attempt to guide and coordinate research nationally is responsive to a broadly perceived need to address systematically those topics that are most pressing and most likely to yield gains to the worker and the nation. Fiscal constraints on occupational safety and health research are increasing, making even more compelling the need for a coordinated and focused research agenda. NIOSH intends to support projects that facilitate progress in understanding and preventing adverse effects among workers.

The Agenda identifies 21 research priorities. These priorities reflect a remarkable degree of concurrence among a large number of stakeholders. The NORA priority research areas are grouped into three categories: Disease and Injury, Work Environment and Workforce, and Research Tools and Approaches. The NORA document is available through the NIOSH Home Page; http://www.cdc.gov/niosh/nora.html.

Consistent with NORA, the following are high priority directions for research under this announcement. Investigators may also apply in other areas related to construction safety and health, but the rationale for the significance of the research and demonstrations to construction must be developed in the application.

1. Understand how economic issues impact the acceptance of best safety practices.

2. Understand the aspects of changing the safety culture in organizations, including residential and other small contractors.

3. Improve the health and safety aspects of construction tools and of general technology development/utilization.

4. Identify effective ways to obtain information and conduct research on non-union workers and contractors.

5. Identify training techniques that are effective in causing safe work practices to be adopted.

6. Investigate mechanisms that lead to nongovernmental support/funding for regional training and safety and health services.

7. Investigate new concepts for job-site improvement (such as scheduling of deliveries, material location and transport in vehicular worker traffic patterns, etc.).

8. Identify causes of dramatic differences in regional injury rates for both small and large firms, as well as union and non-union operations.

9. Select focus areas that will be of perceived immediate benefit to the customers. (Based upon achievable benchmarks in construction safety and health, the NIOSH program priorities applicable to this Program Announcement are to reduce construction-related deaths, lost-time injuries and illnesses, back injuries, eye injuries, skin disorders or diseases, lead poisonings, hearing loss, silicosis, and asbestosis.)

Potential applicants with questions concerning the acceptability of their proposed work are strongly encouraged to contact the technical information contact listed in this announcement in the section "WHERE TO OBTAIN ADDITIONAL INFORMATION."

Evaluation Criteria

Upon receipt, applications will be reviewed by CDC for completeness and responsiveness. Applications determined to be incomplete or unresponsive to this announcement will be returned to the applicant without further consideration. If the proposed project involves organizations or persons other than those affiliated with the applicant organization, letters of support and/or cooperation must be included.

Applications that are complete and responsive to the announcement will be reviewed by an initial review group in which applications will be determined to be competitive or non-competitive based on their technical merit relative to other applications received. Applications determined to be non-competitive will be withdrawn from further consideration and the principal investigator/program director and the official signing for the applicant organization will be promptly notified. Applications judged to be competitive will be discussed and assigned a priority score.

Review criteria for technical merit are as follows:

1. Technical significance and originality of proposed project.

2. Appropriateness and adequacy of the study design and methodology proposed to carry out the project.

3. Qualifications and research experience of the Principal Investigator and staff, particularly but not exclusively in the area of the proposed project.

4. Availability of resources necessary to perform the project.

5. Documentation of cooperation from industry, unions, or other participants in the project, where applicable.

6. Adequacy of plans to include both sexes and minorities and their subgroups as appropriate for the scientific goals of the project. (Plans for the recruitment and retention of subjects will also be evaluated.)

7. Appropriateness of budget and period of support.

8. Human Subjects—Procedures adequate for the protection of human subjects must be documented. Recommendations on the adequacy of protections include: (1) protections appear adequate and there are no comments to make or concerns to raise, (2) protections appear adequate, but there are comments regarding the protocol, (3) protections appear inadequate and the Objective Review Group (ORG) has concerns related to human subjects, or, (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

Secondary review criteria for programmatic importance are as follows:

1. Results of the initial review.

2. Magnitude of the problem in terms of numbers of workers affected.

3. Severity of the disease or injury in the worker population.

4. Usefulness to applied technical knowledge in the evaluation, or control of construction safety and health hazards.

5. Degree to which the project can be expected to yield or demonstrate results that will be useful on a national or regional basis.

Applicants will compete for available funds with all other approved applications. The following will be considered in making funding decisions:

1. Quality of the proposed project as determined by peer review.

2. Availability of funds.

3. Program balance among priority areas of the announcement.

Executive Order 12372 Review

Applications are not subject to the review requirements of Executive Order 12372, entitled Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.262.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the grant will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

The applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurances must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and forms provided in the application kit.

Women and Racial and Ethnic Minorities

It is the policy of the CDC to ensure that women and racial and ethnic groups will be included in CDC supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women and racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is not feasible, this situation must be explained as part of the application. In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the

scientific assessment and assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951.

Application Submission and Deadlines

A. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to the Grants Management Officer (whose address is reflected in section B, "Applications"). It should be postmarked no later than June 28, 1996. The letter should identify the announcement number, name of principal investigator, and specify the priority area to be addressed by the proposed project. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

B. Applications

Applicants should use Form PHS–398 (OMB Number 0925–0001) and adhere to the ERRATA Instruction Sheet for Form PHS–398 contained in the Grant Application Kit. Please submit an original and five copies on or before July 26, 1996 to: Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, MS-E13, Atlanta, GA 30305.

C. Deadlines

1. Applications shall be considered as meeting a deadline if they are either:

A. Received at the above address on or before the deadline date, or

B. Sent on or before the deadline date to the above address, and received in time for the review process. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailings.

2. Applications which do not meet the criteria above are considered late applications and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked your name, address, and phone number and will need to refer to Announcement 657. You will receive a complete program description, information on application procedures, and application forms. In addition, this announcement is also available through the CDC Home Page on the Internet. The address for the CDC Home Page is http://www.cdc.gov. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Georgia Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., MS–E13, Atlanta, GA 30305, telephone (404) 842–6796; fax: 404–842–6513; internet: glj2@opspgo1.em.cdc.gov. Programmatic technical assistance may be obtained from Roy M. Fleming, Sc.D., Associate Director for Grants, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Building 1, Room 3053, MS–D30, Atlanta, GA 30333, telephone (404) 639–3343; fax: 404–639–4616; internet: rmf2@niood1.em.cdc.gov.

There may be delays in mail delivery as well as difficulty in reaching the CDC Atlanta offices during the 1996 Summer Olympics (July 19–August 4). Therefore, in order to receive more timely response to questions please use INTERNET/E-Mail, follow all instructions in this announcement and leave messages on the contact person's voice mail.

Please refer to announcement number 657 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: May 24, 1996.

Donald L. Holderman,

Acting Director, National Institute for Occupational Safety and Health Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–13676 Filed 5–30–96; 8:45 am]

BILLING CODE 4163–19–P

[Announcement 660]

Tuberculin Skin Testing Demonstration Projects; and Evaluation of Counseling and Testing of Tuberculosis Patients for Human Immunodeficiency Virus Infection and Reporting of Test Results

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1996 funds for a cooperative agreement program for two projects: (1) Tuberculin Skin Testing (TST) Demonstration Projects; and (2) Evaluation of Counseling and Testing of Tuberculosis (TB) Patients for Human Immunodeficiency Virus (HIV) Infection and Reporting of Test Results.

CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of HIV Infection and Immunization and Infectious Diseases. (To order a copy of "Healthy People 2000," see the section "WHERE TO OBTAIN ADDITIONAL INFORMATION.")

Authority

This program is authorized under Section 317E of the Public Health Service Act [42 U.S.C. 247b-6], as amended.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are the official public health agencies of States and local governments or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

Availability of Funds

Tuberculin Skin Testing Demonstration Projects

Approximately $750,000 is available in FY 1996 to fund approximately 8–10 awards. It is expected that the average award will be $75,000, ranging from $50,000–$200,000. Funding estimates are subject to change. It is expected that awards will begin on or about September 1, 1996, and will be made for a 12-month budget period within a project period of up to 2 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Evaluation of Counseling and Testing of TB Patients for HIV Infection and Reporting of Test Results

Approximately $750,000 per year is available in FY 1996 to fund approximately 4–6 awards. It is expected that the average award will be $125,000, ranging from $100,000–$200,000. Funding estimates are subject to change. It is expected that awards will begin on or about September 1, 1996, and will be made for a 12-month budget period within a project period of up to 2 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of the TST Demonstration Projects is: (1) Develop model TST programs in health departments and health care facilities; (2) track and monitor TST data and TB infections among health care workers; and (3) pilot a microcomputer software system developed by CDC to assist in the collection, tracking, management, and analysis of occupational TB exposures and infections.

The purpose of the Evaluation of Counseling and Testing of TB Patients for HIV Infection and Reporting of Test Results is: (1) To assess current HIV counseling and testing practices for TB patients; (2) to evaluate the extent to which TB patients are receiving counseling and testing; (3) to characterize TB patients who are not being tested and barriers to testing; (4) to evaluate the extent to which HIV results on TB patients known to be coinfected are reported to the State or local health department TB program; and (5) to characterize patients who were tested but are not being reported to the State or local health department TB program, and barriers to reporting HIV test results.

This project is intended to assist State and local TB control and AIDS programs to: (1) identify barriers to HIV counseling and testing of TB patients and to sharing data between TB and AIDS programs; and (2) develop guidelines and initiate programs that will overcome these barriers within the health department and the provider community.

Program Requirements

In conducting activities to achieve the purpose of the TST Demonstration Projects, the recipient shall be responsible for the activities listed under A. (Recipient Activities), and CDC will be responsible for the activities under B. (CDC Activities):

A. Recipient Activities

1. Conduct a program for health department personnel with direct patient contact or contract with a hospital to perform TST of hospital employees. In conducting the program the applicant will perform skin testing at one or more health department facilities or hospitals where health care workers (HCWs) are potentially exposed to TB.

Where employees have been exposed, the applicant will:

a. Perform contact investigations of HCWs exposed to an infectious TB patient who was not recognized and appropriately isolated.

b. Collect information on the circumstances surrounding these HCW exposures.

c. Initiate appropriate TST for exposed HCWs, including baseline and follow-up testing.

d. Clinically evaluate all employees with a TST conversion.

The applicant in performing the TST program for employees on a routine basis will be required to:

a. Use a two-step Mantoux test for all initial tests to minimize the likelihood of interpreting a boosted reaction as a true conversion due to recent infection.

b. Place and read a TB skin test on all HCWs. This will include measures or incentives likely to enhance workers' compliance with such testing.

c. Perform subsequent Mantoux testing annually (or more frequently if appropriate for the level of risk in the occupational group or facility) of all employees whose initial skin tests were negative.

d. Directly observe the reading of the TB skin test (in mm of induration) by personnel trained in correct placement and reading of Mantoux skin tests.

e. Confidentially assess potential pertinent demographic factors, (such as, gender, race/ethnicity, country of birth, and history of receipt of Bacille Calmette-Guerin) and occupational factors, (such as, occupation and worksite) which may place HCWs at risk for TB exposure.

2. Use CDC-developed software to assist in the collection, tracking, management, and analysis of data from TST programs.

3. Follow CDC guidelines for TST. A copy of the guidelines will be included in the application kit.

4. Implement a research protocol jointly developed with CDC for the TST demonstration project.

5. Use CDC-developed skin test software to enter all TST information onto the software and send a diskette of the database to CDC on a monthly basis.

6. Develop forms appropriate to their sites for the collection of data including HCW's demographics, occupational information, TST information, and results of follow-up clinical evaluations for persons with reactive skin tests.

7. Ensure that all data are kept confidential and in secured files.

B. CDC Activities

1. Jointly develop a research protocol for the TST demonstration project.

2. Provide technical assistance in implementation of the TST program.

3. Provide one or more versions of microcomputer software for use in the project.

4. Train health department personnel in the use of the software.

5. Develop a plan for data management and for data transfer to CDC.

6. Review site performance and ensure compliance with the study protocol.

7. Conduct data analysis and summarize and present findings.

In conducting activities to achieve the purpose of the Evaluation of Counseling and Testing of TB Patients for HIV Infection and Reporting of Test Results, the recipient shall be responsible for the activities listed under A. (Recipient Activities), and CDC will be responsible for the activities under B. (CDC Activities):

A. Recipient Activities

1. Provide a joint training session to personnel from TB and AIDS programs in local and State health departments. Training will include the latest CDC recommendations for TB prevention and control, the reasons for collaboration between the two groups, surveillance mechanisms and definitions, the importance of and methods for

maintaining confidentiality and availability of services for counseling, testing, and treating HIV-infected TB patients.

2. Assess current practices and policies of TB care providers who have reported cases to the health department in the past year, including policies and practices for HIV counseling and testing of TB patients, availability of services for coinfected patients, referral for services, reporting of coinfected patients, and perceived barriers to testing and reporting.

3. Implement a study protocol, developed jointly with CDC, to determine by medical record review whether TB patients, age 25–44 years, were offered HIV counseling and testing, the results of such testing, whether patients were questioned about HIV risk factors, missed opportunities for counseling and testing, and whether HIV-positive patients were referred for HIV-related services. If HIV status was known to the TB care provider, document the effect of this knowledge on TB care and on contact investigations. Other possible sources of documentation of HIV counseling and testing may include matching with the AIDS registry and the HIV reporting registry, HIV counseling and testing records, sexually transmitted disease registries and other public health records depending on availability and local confidentiality requirements. For patients whose HIV test results were already reported to the TB program, the medical record review will ascertain their mechanism through which the HIV results was reported and their subsequent HIV service referrals.

4. Evaluate the completeness of the TB surveillance system by matching the AIDS and TB registries.

5. Ensure that all data are kept confidential and in secured files.

6. Based on the results of above evaluations, describe barriers to providing HIV counseling and testing to TB patients and to reporting HIV results to the TB program. Make recommendations and initiate programs to overcome identified barriers and to improve coverage of HIV counseling and testing, reporting of HIV test results and provision of services (or referral for services) for coinfected patients.

7. Participate in two meetings to be held in Atlanta, GA, each one day in length, one each year of the project, with other study participants and staff from the Division of TB Elimination and the Division of HIV/AIDS Prevention, CDC.

B. CDC Activities

1. Provide assistance in developing a protocol for conducting the Recipient Activities described above.

2. Plan and organize the annual meetings for recipient representatives and staff from the Division of TB Elimination and the Division of HIV/AIDS Prevention, CDC .

3. Provide technical consultation as needed for training, implementing the protocol, and interpreting and using the results of the project.

4. Review site performance and ensure compliance with the study protocol.

5. Assist with data management.

Evaluation Criteria

Applications for the Tuberculin Skin Testing Demonstration Projects will be reviewed and evaluated according to the following criteria (100 points maximum):

A. The extent of the problem of TB, HIV, MDR TB, and TB/AIDS in the applicant's area. (10 Points)

B. The extent to which an efficient and effective TST program exists in the facility proposed for the project. This includes the compliance rate with the TST testing program. If compliance rates are sub-optimal, the extent to which the applicant's plan for improving compliance during the project period is likely to succeed. In addition, the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. Specifically the following items will be addressed:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The appropriateness of the proposed justification when representation is limited or absent.

c. Whether the design of the study is adequate to measure differences when warranted.

d. Whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits is documented. (30 Points)

C. Agreement by the applicant to pilot test CDC-developed software and provide diskettes of the database to CDC on a monthly basis. The extent to which the applicant's data management plan demonstrates an ability to ensure the integrity of the data. (30 Points)

D. The extent to which the applicant describes how the study will be administered, including the size, qualifications, duties and responsibilities, and time allocation of the proposed staff, the availability of the facilities to be used, and a schedule for accomplishing the activities, including time frames. If a contract with a hospital is proposed, a letter of support must be included. (30 Points)

E. Other (Not Scored)

Budget

Consideration will be given to the extent to which the budget is reasonable, clearly justifiable, and consistent with the intended use of funds.

Human Subjects

Procedures adequate for the protection of human subjects must be documented: (1) Protections appear adequate and there are no comments to make or concerns to raise, (2) protections appear adequate, but there are comments regarding the protocol, (3) protections appear inadequate and the Objective Review Group (ORG) has concerns related to human subjects, or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate resulting in unacceptability of the entire application.

Applications for the Evaluation of Counseling and Testing of TB Patients for HIV Infection and Reporting of Test Results will be reviewed and evaluated according to the following criteria (100 points maximum):

A. Understanding the problem (10 points).

B. Plan for required activities. In addition, the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. Specifically the following items will be addressed:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The appropriateness of the proposed justification when representation is limited or absent.

c. Whether the design of the study is adequate to measure differences when warranted.

d. Whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits is documented. (50 points)

C. Collaboration (10 points).

D. Experience in related activities (10 points).

E. Personnel and management plan (20 points).

F. Other (Not Scored).

Budget

Consideration will be given to the extent to which the budget is reasonable, clearly justifiable, and consistent with the intended use of funds.

Human Subjects

Procedures adequate for the protection of human subjects must be documented: (1) Protections appear adequate and there are no comments to make or concerns to raise, (2) protections appear adequate, but there are comments regarding the protocol, (3) protections appear inadequate and the Objective Review Group (ORG) has concerns related to human subjects, or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate resulting in unacceptability of the entire application.

Funding Priority

Funding priority for the Tuberculin Skin Testing Demonstration Projects may be given to ensure geographic balance, urban and rural balance, high and low prevalence of HIV infection, and high and low TB morbidity areas.

Funding Priority for the Evaluation of Counseling and Testing of TB Patients for HIV Infection and Reporting of Test Results will be given to applicants that demonstrate a need to improve HIV counseling and testing of TB patients and reporting of test results. Funding priority also may be given to ensure a geographic balance, urban and rural high and low prevalence of HIV infection and high and low TB morbidity.

Interested persons are invited to comment on the proposed funding priority. All comments received on or before July 1, 1996, will be considered before final funding priority is established. If the funding priority should change as a result of any comments received, a revised announcement will be published in the **Federal Register** and revised applications will be accepted prior to the final selection of awards. Written comments should be addressed to: Van Malone, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–15, Atlanta, GA 30305.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Van Malone, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–15, Atlanta, GA 30305, not later than 60 days after the application deadline date. The Program Announcement Number and Program Title should be referenced on the document. CDC does not guarantee to "accommodate or explain" State process recommendations it receives after that date. Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to CDC, they should forward them to Van Malone, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–15, Atlanta, GA 30305. This should be done no later than 60 days after the application deadline date. CDC does not guarantee to "accommodate or explain " for tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.947, TB Demonstration, Research, Public and Professional Education Projects.

Other Requirements

Paperwork Reduction Act: Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Confidentiality: Applicants must have in place systems to ensure the confidentiality of all patient records.

Human Subjects: The applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurances must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and forms provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of the IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it.

Women, Racial and Ethnic Minorities: It is the policy of the CDC to ensure that women and racial and ethnic groups will be included in CDC-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaska Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951 (a copy is included in the application kit).

Pre- and Post-test Counseling and Partner Notification: Recipients are required to provide HIV antibody testing to determine a person's HIV infection status; therefore, they must comply with State laws and regulations and CDC

guidelines regarding pre- and post-test counseling and partner notification of HIV-seropositive patients. A copy of the guidelines will be included in the application kit. Recipients must also comply with State and local health department requirements relating to specific reportable diseases or conditions. Recipients must provide referrals for HIV diagnosis and treatment.

HIV/AIDS Requirements: Recipients must comply with the document entitled "Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions" (June 1992), a copy of which is included in the application kit. In complying with the requirements for a program review panel, recipients are encouraged to use an existing program review panel such as the one created by the State health department's HIV/AIDS prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or a designated representative) of a government health department consistent with the Content guidelines. The names of the review panel members must be listed on the Assurance of Compliance form (CDC 0.1113), which is included in the application kit.

Application Submission and Deadline

The original and two copies of the application must be submitted to: Van Malone, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–15, Atlanta, GA 30305, on or before July 29, 1996.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the objective review committee. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications that do not meet the criteria in 1.(a) or 1.(b) are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

Business management technical assistance may be obtained from Juanita Dangerfield, Grants Management Specialist, at telephone (404) 842–6577, fax: (404) 842–6513, or INTERNET address: <jdd2@opspgo1.em.cdc.gov>.

Programmatic technical assistance may be obtained from Eugene McCray, M.D., Division of Tuberculosis Elimination, at telephone (404) 639–8117.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the "INTRODUCTION" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Atlanta, Georgia, will be the host of the 1996 Summer Olympics Games (July 19 through August 4, 1996). As a result of this event, it is likely that the Procurement and Grants Office (PGO) may experience delays in the receipt of both regular and overnight mail deliveries. Contacting PGO employees during this time frame may also be hindered due to the possible telephone disruptions.

To the extent authorized, please consider the use of voice mail, e-mail, and facsimile transmissions to the maximum extent practicable. Please do not fax lengthy documents or grant applications.

This announcement will be available on one of two Internet sites on the publication date: CDC's home page at http://www.cdc.gov, or at the Government Printing Office home page (including free access to the **Federal Register**) at http://www.access.gpo.gov.

Dated: May 24, 1996.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–13675 Filed 5–30–96; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 96D–0148]

Medical Devices; Medical Device User Facility and Distributor Reporting; Guidance Documents; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of three guidance documents entitled "Medical Device Reporting: An Overview," "Medical Device Reporting for User Facilities," and "Medical Device Reporting for Distributors." These guidance documents provide information to help facilitate compliance with the agency's Medical Device Reporting (MDR) requirements. The agency is also announcing the availability of the following final MDR reporting forms: FDA Form 3419, Semiannual User Facility Report; FDA Form 3417, Baseline Report; and FDA Form 3381, Annual Certification. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of, and requesting comments on, a draft guidance document focusing on reporting by manufacturers.

DATES: Written comments on the guidance documents may be submitted at any time.

ADDRESSES: Submit written comments on the three guidance documents to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Comments on the three guidance documents should be kept separate and identified by their respective titles. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the guidance documents and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Persons interested in obtaining copies of the guidance documents and reporting forms may use the World Wide Web. FDA's home page address may be accessed at http://www.fda.gov and then select the Medical Devices and Radiological Health option. Next, select the program areas option and scroll down to Medical Device Reporting. The documents will be listed and available for downloading.

Anyone with a video terminal or personal computer with a modem can obtain these documents from the electronic docket administered by DSMA (1–800–252–1366 or 1–301–594–2741) by making the following menu choices: 5–Postmarket Surveillance; 2–Medical Device Reports—Policies/Guidelines.

Individuals unable to use the above two options may request information about obtaining paper copies of these documents through the CDRH Facts-on-Demand system by dialing 1–800–899–0381 or 1–301–827–0111. After following the voice prompts, request document number 799. FDA has arranged to have other government, industry, and health care organizations provide paper copies of these documents for a fee that each organization will set for itself.

FOR FURTHER INFORMATION CONTACT: Earl W. Robinson, Center for Devices and Radiological Health (HFZ–530), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–2735.

SUPPLEMENTARY INFORMATION:

I. Background

On November 26, 1991 (56 FR 60024), under the Safe Medical Devices Act of 1990 (Pub. L. 101–629), FDA issued a tentative final rule proposing to implement regulations requiring user facility and distributor adverse event reporting (hereinafter referred to as the November 1991 tentative final rule). In the November 1991 tentative final rule, FDA also proposed to amend the existing manufacturer reporting regulations to conform to the proposed user facility and distributor reporting requirements.

Subsequent to FDA's issuance of the November 1991 tentative final rule, the Medical Device Amendments of 1992 (Pub. L. 102–300) were enacted on June 16, 1992, and amended certain provisions of section 519 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i) relating to reporting of adverse device events.

On December 11, 1995 (60 FR 63578), the agency published the MDR regulation for user facilities and manufacturers, based on comments to the November 1991 tentative final rule. The requirements for manufacturer and user facility reporting are found in part 803 (21 CFR part 803). The reporting requirements for distributors fell under a different implementation timetable. On May 28, 1992, the provisions of the November 1991 tentative final rule pertaining to distributor reporting became final by operation of law. Accordingly, medical device distributors are currently subject to the reporting regulations contained in the November 1991 tentative final rule and codified in part 804 (21 CFR part 804). FDA intends to issue a proposed rule to make the distributor reporting requirements consistent with the manufacturer and user facility reporting requirements.

A. Guidance for User Facilities and Distributors

Due to the diversity and complexity of medical device products, no regulation could address each possible reporting scenario. Therefore, the agency is providing three guidance documents entitled "Medical Device Reporting: An Overview," "Medical Device Reporting for User Facilities," and "Medical Device Reporting for Distributors." These guidance documents contain information describing who is covered by the MDR rule, who is responsible for reporting, how to report, and when to report. The documents also contain statements of FDA's policy, interpretations of the regulation, and answers to frequently asked questions. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of, and requesting comments on, a draft guidance document focusing on reporting by manufacturers.

B. MDR Reporting Forms

The MDR final rule requires that MDR reports be submitted using the appropriate form, or an approved electronic equivalent. The actual forms were made available for public comment, were approved by the Office of Management and Budget (OMB) through February 28, 1999, under OMB control number 0910–0059, and were announced as final in the **Federal Register** of April 11, 1996 (61 FR 16043). The April 11, 1996, final rule also extended the effective date of the MDR final rule for manufacturers and user facilities to July 31, 1996, in order to provide additional time for compliance. This notice announces the availability of the following MDR forms: FDA Form 3419, Semiannual User Facility Report; FDA Form 3417, Baseline Report; and FDA Form 3381, Annual Certification. FDA Form 3500A, the MEDWATCH Form, has been in use for several years and is available from the same sources listed above. This form, or an approved electronic equivalent, will continue to be used for reporting individual adverse events. Although manufacturers, distributors, and device user facilities may immediately begin using the forms announced in this notice to submit reports required under the MDR regulations, use of the forms will not be required until July 31, 1996, the effective date of the MDR final rule.

II. Significance of a Guidance

A guidance document does not bind FDA or the public, and does not create or confer any rights, privileges, or benefits for or on any person; however, it does represent the agency's current thinking on the subjects discussed therein.

III. Request for Comments

All guidance documents developed by FDA are open to public comment. Therefore, interested persons may submit comments regarding the final guidance documents that are being announced in this notice. Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments regarding the three guidance documents. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified by the title of the respective guidance document and with the docket number found in brackets in the heading of this document. Copies of the three guidance documents and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Received comments will be considered in reviewing and revising the guidance documents.

Dated: May 21, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–13666 Filed 5–30–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96D–0137]

Medical Device Reporting, Draft Guidance Document for Manufacturers; Notice of Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "Medical Device Reporting for Manufacturers." This guidance contains information to help facilitate manufacturer compliance with the new Medical Device Reporting (MDR) regulation. FDA is inviting comments on the draft guidance, particularly on matters not already addressed in the draft manufacturer device reporting guidance.

DATES: Submit written comments by August 29, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Comments should be identified by title and the docket number found in brackets in the heading of this document. A copy of the draft guidance document and received comments are

available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Persons interested in obtaining a copy of the draft guidance document may do so by using the World Wide Web. FDA's home page address may be accessed at http://www.fda.gov and then select the Medical Devices and Radiological Health option. Next, select the Program Areas option and then select Medical Device Reporting. All Relevant documents will be listed and available for downloading.

Anyone with a video terminal or personal computer with a modem can obtain the draft guidance document from the electronic docket administered by the Division of Small Manufacturers Assistance (1–800–252–1366 or 1–301–594–2741) by making the following menu choices: 5–Postmarket Surveillance; 2–Medical Device Reports—Policies/Guidelines.

Individuals unable to use the above two options may request information, through the CDRH Facts-on-Demand system, about obtaining paper copies of the document, by dialing 1–800–899–0381 or 1–301–827–0111. After following the voice prompts, request document number 799. FDA has arranged to have other government, industry, and health care organizations provide paper copies of the document for a fee that each organization will set for itself.

FOR FURTHER INFORMATION CONTACT: Earl W. Robinson, Center for Devices and Radiological Health (HFZ–530), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–2735.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Safe Medical Devices Act of 1990 (Pub. L. 101–629) (SMDA), on November 26, 1991 (56 FR 60024), FDA issued a tentative final rule proposing to implement regulations requiring user facility and distributor adverse event reporting (hereinafter referred to as the November 1991 tentative final rule). In this November 1991 tentative final rule, FDA also proposed to amend the existing manufacturer reporting regulations to conform to the proposed user facility and distributor reporting requirements.

After FDA's issuance of the November 1991 tentative final rule, the Medical Device Amendments of 1992 (Pub. L. 102–300) (the 1992 amendments) were enacted on June 16, 1992, and amended certain provisions of section 519 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i) relating to reporting of adverse device events.

On December 11, 1995 (60 FR 63578), FDA published the MDR regulation for user facilities and manufacturers, based on comments to the November 1991 tentative final rule. In the **Federal Register** of April 11, 1996 (61 FR 16043), the effective date of this final rule was extended to July 31, 1996, in order to provide additional time for compliance. The requirements for manufacturer and user facility reporting are found at 21 CFR part 803.

II. Draft Guidance for Manufacturers

Due to the diversity and complexity of medical device products, no regulation could address each possible reporting scenario. Therefore, the agency is providing additional guidance to the industry. The agency has developed a draft guidance document entitled "Medical Device Reporting for Manufacturers." This draft guidance contains information describing: Who is covered by the MDR rule, who is responsible for reporting, how to report, and when to report. The draft guidance also contains statements of FDA policy, interpretations of the regulation, and answers to frequently asked questions. The agency also addresses in this guidance, many questions which have been raised after to the publication of the November 1991 tentative final rule. However, because the agency anticipates that additional new questions and issues may be raised as the effective date of the MDR regulation approaches, the agency is issuing the manufacturer guidance as a draft document and specifically invites questions and comments on matters not already addressed in the draft guidance. The agency will consider all submitted comments when revising the draft guidance. The agency anticipates that a revised guidance document for manufacturers will be available by November 27, 1996. In the interim, FDA believes the information contained in the draft guidance will be useful to medical device manufacturers as they seek to implement the requirements of the new MDR final rule.

III. Significance of a Guidance

A guidance document does not bind FDA or the public, and does not create or confer any rights, privileges, or benefits for or on any person; however, it does represent the agency's current thinking on the subjects discussed therein. The draft guidance document announced in this notice represents the agency's tentative thinking on issues related to manufacturer reporting.

IV. Request for Comments

Interested persons may, on or before August 29, 1996, submit to the Dockets Management Branch (address above) written comments regarding the draft guidance entitled "Medical Device Reporting for Manufacturers." Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified by the title of the guidance and the docket number found in brackets in the heading of this document. Copies of the guidance documents and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Received comments will be considered in revising the draft guidance document.

Dated: May 21, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–13665 Filed 5–30–96; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: June 12, 1996.

Time: 6 p.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Michael D. Hirsch, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857. Telephone: 301, 443–1000.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: June 14, 1996.

Time: 12 p.m.

Place: Chevy Chase Holiday Inn, 5520, Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Michael D. Hirsch, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857. Telephone: 301, 443–1000.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: June 20, 1996.

Time: 8:30 a.m.

Place: The Latham Hotel Georgetown, 3000 M Street, NW., Washington, DC 2007.

Contact Person: Phyllis D. Artis, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857. Telephone: 301, 443–6470.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: May 22, 1996.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 96–13660 Filed 5–30–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3778–N–87]

Office of the Assistant Secretary for Community Planning and Development; Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: May 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-fee), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: May 23, 1996.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 96–13480 Filed 5–30–96; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of the Final Joint Programmatic Environmental Impact Report and Environmental Impact Statement on the Proposed Issuance of Incidental Take Permits for the Coastal California Gnatcatcher and Six Other Listed Species in the Central and Coastal Natural Community Conservation Planning Subregion of Orange County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) on the proposed issuance of nine incidental take permits for seven listed species in the Central and Coastal Natural Community Conservation Planning (NCCP) Subregion of Orange County, California, is available. Publication of the Record of Decision and issuance of the permits will occur no sooner than 30 days from the date of this notice. This notice is provided pursuant to regulations implementing the National Environmental Policy Act (40 CFR 1506.6).

ADDRESSES: The documents discussed herein are available for public inspection, by appointment, during normal business hours, at the Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008 (telephone: 619–431–9440); and at the Planning Department, Orange County Environmental Management Agency, 300 North Flower Street, Santa Ana, California 92702 (telephone: 714–834–5550).

FOR FURTHER INFORMATION CONTACT: Mr. Gail Kobetich, Field Supervisor, U.S. Fish and Wildlife Service (see **ADDRESSES** above), telephone: 619–431–9440; or Mr. Tim Neely, Planning and Zoning Administrator, Orange County Environmental Management Agency (see **ADDRESSES** above), telephone: 714–834–2552.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Copies of the Final EIR/EIS and associated documents (comment letters on the Draft EIS/EIR, response to comments, the final Implementation Agreement, and final maps) can be obtained by contacting the Carlsbad or Santa Ana offices listed above (see **ADDRESSES**). The response to comments addresses changes that were made in draft documents associated with the permit applications that previously were made available for public review. The complete application file may be viewed during normal business hours, by appointment, at the Carlsbad and Santa Ana offices. A letter announcing availability of the Final EIR/EIS has been forwarded to all parties who previously received the notice of availability of the Draft EIR/EIS, and/or who requested a copy of, or commented on, the Draft EIR/EIS.

Background

On March 30, 1993, the U.S. Fish and Wildlife Service (Service) published a final rule determining the coastal California gnatcatcher (*Polioptila californica californica*) as a threatened species (58 FR 16742). The "take" of threatened and endangered species is prohibited under section 9 of the Act and its implementing regulations. Take is defined in part as killing, harming or harassing listed species, including significant habitat modification that kills or injures listed species. The Service, however, may issue permits under section 10 of the Act to conduct activities involving the take of threatened and endangered species under certain circumstances, including carrying out scientific activities, enhancing the propagation or survival of the species, or incidentally taking the species in connection with otherwise lawful activities. Regulations governing such permits are at 50 CFR 17.22 and 17.32.

On December 10, 1993, the Service issued a final special rule for the coastal California gnatcatcher, pursuant to section 4(d) of the Act (58 FR 65088). Incidental take of the gnatcatcher is allowed under the special rule if such take results from activities conducted under a plan prepared pursuant to the NCCP Act of 1991, NCCP Process Guidelines, and the NCCP Southern California Coastal Sage Scrub Conservation Guidelines. The special rule also requires Federal approval of the NCCP Plan/Habitat Conservation Plan (HCP).

The County of Orange (lead applicant), University of California-

Irvine, Transportation Corridor Agencies, Metropolitan Water District, Santiago County Water District, Irvine Ranch Water District, The Irvine Company, Chandis-Sherman Companies, and Southern California Edison each have applied to the Service for a 75-year incidental take permit pursuant to section 10(a)(1)(B) of the Act. In addition, the cities of Anaheim, Costa Mesa, Irvine, Laguna Beach, Laguna Niguel, Lake Forest, Newport Beach, Orange, and Tustin also may apply for individual permits. Should any of these cities apply for individual permits, the Final EIR/EIS will be used to satisfy their State and Federal environmental documentation requirements. In support of their permit application package, the applicants have prepared a NCCP Plan/HCP and an IA for the Central and Coastal NCCP Subregion of Orange County (Subregion). In December 1995, these documents were circulated for review and comment, along with the Draft EIR/EIS.

Under the proposed action, section 10(a)(1)(B) permits would be issued by the Service subject to the terms and conditions of the NCCP Plan/HCP and its IA. The proposed permits would authorize the incidental take of 44 species, 7 of which are listed species, including: the threatened coastal California gnatcatcher, and the endangered American peregrine falcon (*Falco peregrinus anatum*), Riverside fairy shrimp (*Streptocephalus woottoni*), arroyo southwestern toad (*Bufo microscaphus californicus*), least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax traillii extimus*), and the Pacific pocket mouse (*Perognathus longimembris pacificus*). Consistent with the U.S. Department of the Interior's "No Surprises" Policy, the permit applicants also request coverage of an additional 37 currently unlisted plant and animal species that occur within the NCCP Plan/HCP area, including 5 species proposed for listing as threatened or endangered, and 5 plant species on the Dana Point Headlands (Headlands) only. The NCCP Plan/HCP would conserve the 37 unlisted species according to standards required for species listed under the Act. Unlisted species would be named on the permits, with incidental take becoming effective upon their listing under the Act.

Although the NCCP Plan/HCP has focused on coastal sage scrub habitat (CSS), in keeping with the legislative intent of the California NCCP Act of 1991 to protect multiple habitat types, the applicants propose to protect four additional habitat types to the extent that no additional mitigation or compensation would be required of participating landowners should any species dependent upon or associated with these habitats be listed during the 75-year permit period. These habitat types are: oak woodlands, Tecate cypress forest, cliff and rock, and chaparral (coastal subarea only). Should any species dependent upon or associated with these habitats be listed in the future, the Service will assume the responsibility for any additional mitigation measures, above and beyond the NCCP Plan/HCP implementation program, that would be required to provide the regulatory basis for issuing section 10(a)(1)(B) permits to participating landowners.

The NCCP Plan/HCP subregional planning area includes approximately 208,000 acres, of which about 104,000 acres remain as natural lands that are subject to intense development pressure. The Subregion contains about 30,833 acres of CSS supporting approximately 600 pairs of California gnatcatchers. Under the NCCP Plan/HCP, 5,336 acres of CSS, currently supporting 110 pairs of gnatcatchers, could be incidentally taken as a result of development by participating landowners. In addition, development of 2,108 acres of CSS habitat, currently supporting 11 pairs of gnatcatchers, could be incidentally taken by activities of non-participating landowners. Other habitats associated with CSS could also be developed, including about 2,550 acres of chaparral and 12,025 acres of grasslands.

The applicants propose to minimize and mitigate the impacts of take by establishing a 37,378-acre Reserve System. The Reserve System will contain more than 18,527 acres of CSS, 6,950 acres of chaparral, 5,732 acres of grasslands, and other habitats. The Reserve System will be managed by its public owners according to comprehensive management plans, including, but not limited to, fire management, grazing management, recreation/public access management, and habitat restoration plans. Such management will be funded by an endowment fund in excess of $10.6 million, and by mitigation fees contributed by non-participating landowners who elect to use this fee option rather than pursue an individual HCP. Management of reserve lands will be coordinated by a non-profit Board of Directors, to be composed of public and private landowners, the California Department of Fish and Game (CDFG), and the Service.

To supplement the Reserve System, 1,906 acres are designated as Special Linkage Areas and another 3,796 acres are designated as Existing Use Areas. Another 3,831 acres within the Subregion will remain as public Open Space. The NCCP Plan/HCP also includes guidelines for the North Ranch Policy Plan Area to ensure that any future development in this area protects the reserve and subregional biodiversity. No take of covered species would be authorized in the Existing Use Areas or North Ranch Policy Plan Area.

Of the 44 covered species addressed in the NCCP Plan/HCP, 10 are conditionally covered and will be subject to specified mitigation measures, in addition to the establishment and management of the Reserve System. Conditionally covered species include: the least Bell's vireo, southwestern willow flycatcher, arroyo southwestern toad, Quino checkerspot butterfly (Euphidryas editha quino), Riverside fairy shrimp, San Diego fairy shrimp (Branchinecta sandiegoensis), Pacific pocket mouse, golden eagle (*Aquila chrysaetos*), prairie falcon (*Falco mexicanus*), and the foothill mariposa lily (*Calochortus weedii* var. *intermedius*). In general, impacts to habitats supporting smaller populations of conditionally covered species would be mitigated by habitat enhancement or restoration within the Reserve System. Mitigation for impacts to habitats or populations that may have significant conservation value would be handled on a case-by-case basis. Specific provisions for the Pacific pocket mouse include the creation of a 22-acre temporary preserve for up to 12 years at the Headlands, and providing $700,000 towards a programmatic research and recovery effort to be initiated by the Service and CDFG; the Headlands landowner will contribute $350,000 to be matched by the Service. If, through this research and recovery effort, the Service determines that the Headlands site is essential for the survival and recovery of the species, the Service has committed to purchase the site.

Development of the Final EIR/EIS

To assure compliance with the purpose and intent of the National Environmental Policy Act (NEPA) and the California Environmental Quality Act, the Final EIR/EIS was developed cooperatively by the Service's Carlsbad Field Office (lead Federal agency) and the Orange County Environmental Management Agency (lead State agency). On June 24, 1993, the Service published in the **Federal Register** a Notice of Intent to prepare the EIR/EIS (58 FR 34270). This notice also

advertised a joint public scoping meeting, held on July 7, 1993. The scoping process was initiated in accordance with NEPA to solicit comments from a variety of Federal, State, and local entities on issues/alternatives to be addressed in the EIR/EIS. A report was prepared in September 1993, summarizing the scoping process. A joint Notice of Availability of the Draft EIR/EIS, and Notice of Receipt of applications for incidental take permits associated with the Orange County Central/Coastal Subregion NCCP Plan/HCP, was published in the **Federal Register** on December 15, 1995 (60 FR 64447).

Adverse and beneficial effects, associated with the implementation of each alternative, were described in the Draft EIR/EIS. The Service received 76 letters of comment on the Draft EIR/EIS that mainly focused on the following issues: (1) Creation of a permanent habitat Reserve System; (2) Headlands/Pacific pocket mouse issues; (3) reserve design and process; (4) habitat coverage; (5) species coverage; (6) adequacy of biological linkages/connectivity; (7) Coal Canyon habitat linkage; (8) El Toro Marine Corps Air Station; (9) extension of the comment period; (10) changes requested by local jurisdictions; (11) revisions to the draft IA; (12) role of adaptive management; and (13) assurance of implementation. Copies of all comments received and responses to all comments are available for public review. The Draft EIR/EIS, Draft NCCP Plan/HCP, and Draft IA were revised, where appropriate, based on public comments. No new issues or additional significant impacts were identified as a result of public comment on the Draft EIR/EIS.

Alternatives Analyzed in the Final EIR/EIS

Due to the scale of the NCCP program for the Subregion, the lead agencies assessed various regional conservation strategies and reserve designs. Four alternatives were advanced for detailed analysis in the Final EIR/EIS: (1) Proposed Project Alternative (approve and implement the NCCP Plan/HCP), (2) No Project/No Action Alternative, (3) No Take Alternative, and (4) a Programmatic Alternative. Each alternative was evaluated for its potential to result in significant adverse environmental impacts, and the adequacy or inadequacy of the proposed measures to avoid, minimize, and substantially reduce and mitigate such negative effects.

The Service's preferred action is approval of the NCCP Plan/HCP, and issuance of incidental take permits with the mitigating, minimizing, and monitoring measures outlined in the Proposed Project Alternative. (See Background section for a description of this alternative).

Under the No Project/No Action Alternative, a comprehensive regional conservation strategy would not be undertaken, and a Reserve System would not be established. Development would occur as planned by the local jurisdictions. Protection of the coastal California gnatcatcher and its CSS habitat, and other federally listed species, would occur on a project-by-project basis through the section 7 and section 10 processes of the Act, as appropriate. Other unlisted species might be protected if included in the planning process for each project.

The No Take Alternative is similar to the No Project Alternative, except that it assumes that no take of gnatcatchers or their associated habitat would be allowed within the Subregion pursuant to section 9 of the Act, and that the section 7 and 10 processes would not be used to authorize or exempt such incidental take. Development would be limited to those projects that do not result in take of the gnatcatcher or its occupied habitat. Protection of other species (not federally listed) would occur only to the extent currently required by State environmental regulations.

Similar to the Proposed Project Alternative, the Programmatic Alternative would involve a subregional conservation strategy, including the creation of a large-scale habitat reserve and the implementation of a long-term management program. However, under the programmatic approach, specific boundaries for a habitat reserve system and design of the management program would be developed over time, as specific projects requiring mitigation are undertaken that contribute mitigation fees or dedication lands to a management entity.

The underlying goal of the Proposed Project Alternative is to implement ecosystem-based conservation measures, aimed at the protection of multiple species and multiple habitats on a regional scale, while accommodating compatible development. The Central and Coastal Orange County NCCP Plan/HCP would result in the implementation of a comprehensive reserve strategy for CSS and related habitats in the Subregion, that is expected to provide long-term benefits to the coastal California gnatcatcher and 43 other covered species and their habitats. The Service intends to approve the Orange County Central/Coastal NCCP Plan/HCP and issue section 10 incidental take permits to the applicants.

Dated: May 23, 1996.

Thomas J. Dwyer,

Regional Director, Region 1, Portland, OR.

[FR Doc. 96-13538 Filed 5-30-96; 8:45 am]

BILLING CODE 4310-55-P

Bureau of Land Management

[ID-933-1430-01; IDI-31741]

Notice of Public Meetings for Proposed Land Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: The Department of the Air Force proposes to withdraw 11,583.34 acres under Alternative Site No. 1 or 9,673.34 acres under Alternative Site No. 2 of public land from all forms of appropriation under the public land laws, mining laws and mineral leasing laws, for the Mountain Home Air Force Base Enhanced Training in Idaho (ETI) site. Several public meetings will be held to gather comments on the proposal, at the dates, times, places and addresses described in this Notice.

EFFECTIVE DATE: Date of publication.

FOR FURTHER INFORMATION CONTACT: Howard Hedrick, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706-2500, 208-384-3197.

The Department of the Air Force proposes that 11,583.34 acres under Alternative Site No. 1 or 9,673.34 acres under Alternative Site No. 2 of public land be withdrawn for a period of 20 years to provide protection of the ETI. The lands are described as follows:

Boise Meridian

(Alternative Site No. 1)—Proposal: Clover Butte Drop Zone

T. 12 S., R. 8E.,
Sec. 10, SE¼SE¼;
Sec. 11, S½S½;
Sec. 12, S½S½;
Sec. 13;
Sec. 14;
Sec. 15, E½E½;
Sec. 22, E½E½;
Sec. 23 to 26 inclusive;
Sec. 27, E½E½;
Sec. 34, E½E½;
Sec. 35.
T. 12 S., R. 9 E.,
Sec. 7, lot 4, SE¼SW¼ and S½SE¼;
Sec. 8, S½S½;
Sec. 17 to 20 inclusive;
Sec. 29 to 32 inclusive.

(No Drop Zone)

T. 11 S., R. 4 E.,
Sec. 23, S½SW¼NW¼SE¼.
T. 9 S., R. 6 E.,

Sec. 21.
T. 13 S., R. 4 E.,
Sec. 4, N½NE¼NW¼SW¼

(Emitters)

T. 8 S., R. 9 E.,
Sec. 34, SE¼SE¼NW¼SE¼.
T. 9 S., R. 6 E.,
Sec. 15, NW¼NW¼SW¼SW¼.
T. 11 S., R. 4 E.,
Sec. 23, NE¼NE¼NE¼SW¼.
T. 11 S., R. 5 E.,
Sec. 17, SE¼SE¼NE¼NE¼.
T. 12 S., R. 3 E.,
Sec. 26, NE¼NE¼NW¼NE¼.
T. 12 S., R. 10 E.,
Sec. 30, SW¼SW¼SW¼SW¼ within lot 4.
T. 13 S., R. 9 E.,
Sec. 10, NE¼NE¼NW¼NW¼.

The areas described aggregate 11,583.34 acres in Owyhee County.

(Alternative Site No. 2)—Proposal; Grasmere Drop Zone

T. 11 S., R. 4 E.,
Secs. 25 to 27 inclusive;
Secs. 34, N½, SE¼ and E½SW¼;
Sec. 35.
T. 11 S., R. 5 E.,
Sec. 30, lots 1 to 4 inclusive;
Sec. 31, lots 1 to 4 inclusive.
T. 12 S., R. 4 E.,
Secs. 1 to 4 inclusive;
Sec. 9;
Sec. 10, NW¼, S½, W½NE¼ and SE¼NE¼;
Sec. 11, S½, N½NE¼, SE¼NE¼ and NE¼NW¼;
Sec. 12;
Sec. 13, N½NW¼, N½SW¼NW¼, N½SE¼NW¼, NW¼NE¼, and N½SW¼NE¼;
Sec. 14, N½NW¼, N½SW¼NW¼, N½SE¼, N½SW¼, NE¼ and N½SE¼NE¼;
Sec. 15, N½NW¼, N½SW¼NW¼, N½SE¼NW¼, N½NE¼, N½SW¼NE¼ and N½SE¼NE¼.

(No Drop Zone)

T. 12 S., R. 9 E.,
Sec. 20, S½SW¼SW¼SW¼.
T. 9 S., R. 9 E.,
Sec. 21.
T. 13 S., R. 4 E.,
Sec. 4, N½NE¼NW¼SW¼.

(Emitters)

T. 8 S., R. 9 E.,
Sec. 34, SE¼SE¼NW¼SE¼.
T. 9 S., R. 6 E.,
Sec. 15, NW¼NW¼SW¼SW¼.
T. 11 S., R. 4 E.,
Sec. 23, NE¼NE¼NE¼SW¼.
T. 11 S., R. 5 E.,
Sec. 17, SE¼SE¼NE¼NE¼.
T. 12 S., R. 3 E.,
Sec. 26, NE¼NE¼NW¼NE¼.
T. 12 S., R. 10 E.,
Sec. 30, SW¼SW¼SW¼SW¼ within in lot 4.
T. 13 S., R. 9 E.,
Sec. 10, NE¼NE¼NW¼SE¼.

The areas described aggregate 9,673.34 acres in Owyhee County.

Two (2) public meetings are scheduled at the following dates, times, places, and addresses:

1. July 2, 1996, 5:00 to 8:00 p.m., Lion's Den, Jordan Valley, Oregon.
2. July 1, 1996, 5:00 to 8:00 p.m., Elko County Library, 720 Court Street, Elko, Nevada.

These meetings are the first step in soliciting public comments on the proposed withdrawal. Information gathered at these meetings will be used in the development of an environmental impact statement (EIS). Comments given at these meetings should focus on the merits of the proposal, the feasibility of the identified alternatives, the availability of other alternatives, issues which should be addressed in the EIS, any other comments the public wishes the Air Force and BLM to consider, and any questions concerning the withdrawal proposal. Those who desire to submit written statements, should file them not later than August 1, 1996, to BLM/USAF, P.O. Box 329, Boise, Idaho 83701–0329.

Dated: May 23, 1996.

J. David Brunner,

Deputy State Director for Resource Services.

[FR Doc. 96–13592 Filed 5–30–96; 8:45 am]

BILLING CODE 4310–GG–M

[MT–924–1430–01; MTM 84500]

Notice of Intent to Prepare a National Environmental Policy Act (NEPA) Analysis; Notice of Public Meetings; Montana

AGENCY: Forest Service and Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a NEPA analysis on a mineral withdrawal in southwestern Montana.

SUMMARY: The U.S. Department of the Interior, Bureau of Land Management (BLM), with U.S. Department of Agriculture, Forest Service (FS), concurrence proposes to withdraw approximately 19,100 acres of Federal lands from location and entry under the mining laws to protect the watersheds within the drainages of the Clark's Fork of the Yellowstone, Soda Butte Creek, and the Stillwater River, and the water quality and fresh water fishery resources within Yellowstone National Park. The FE and BLM will jointly prepare a NEPA analysis and, if necessary, amend Custer and Gallatin National Forest Land Management Plans. The FES will recommend a preferred alternative. This is a separate action not connected to the ongoing New World Mine EIS being prepared by the Gallatin National Forest.

The following described National Forest System lands are affected by this proposal:

Principal Meridian, Montana

T. 8 S., R. 14 E.,
Sec. 25, surveyed;
Sec. 33, partly surveyed;
Secs. 34 to 36, inclusive, surveyed.
T. 9 S., R. 14 E.,
Secs. 1 to 28, inclusive;
Secs. 33 t 36, inclusive, partly surveyed.
T. 8 S., R. 15 E.
Secs. 30 and 31.
T. 9 S., R. 15 E.,
Secs. 5 to 8, inclusive;
Secs. 17 to 20, inclusive;
Secs. 29 to 32, inclusive.

The areas described aggregate approximately 19,100 acres in Park County, Montana..

DATES: The public meetings will be held on Monday, July 15, 1996, in Red Lodge, Montana, at the LuPine Inn, at 7:00 p.m., Tuesday, July 16, 1996, in Cooke City, Montana, at 7:00 p.m. at the Fire Hall; on Wednesday, July 17, 1996, in Cody, Wyoming, at 7:00 p.m. at the Cody Club Room; and on July 18, 1996, Livingston, Montana, at 7:00 p.m. in the Community Room of the park County Courthouse.

ADDRESSES: Comments should be sent to the Cooke City Area Mineral Withdrawal NEPA Analysis Team, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: John Thompson, Cooke City Area Mineral Withdrawal NEPA Analysis Team, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2852.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register**, 60 FR 45732, September 1, 1995, which segregated the lands described from location and entry under the mining laws. Notice is hereby given that a series of meetings will be held to provide an opportunity for public involvement regarding the proposed withdrawal and the preparation of a NEPA analysis by the FS and BLM. These meetings fulfill the public meeting requirements for withdrawals proposals under 43 CFR Part 2310.3–1. Comments and recommendations on this proposal should be received by August 29, 1996.

Dated: May 24, 1996.

Thomas P. Lonnie,

Deputy State Director, Division of Resources.

Dated: May 24, 1996.

Nancy T. Curriden,

Forest Supervisor Custer National Forest.

[FR Doc. 96–13692 Filed 5–30–96; 8:45 am]

BILLING CODE 4310–ON–M

[WY980–1320–01; WYW 136069]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; WY

AGENCY: BLM, Interior.

ACTION: Notice.

SUMMARY: The BLM proposes to withdraw 4,326.51 acres of public land in Sweetwater and Uinta Counties, to protect the habitat of the Uinta greenthread, *Thelesperma pubescens*. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATE: Comments and requests for meeting should be received on or before August 29, 1996.

ADDRESS: Comments and meeting requests should be sent to the BLM Wyoming State Director, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

FOR FURTHER INFORMATION CONTACT: Jim Paugh, BLM Wyoming State Officer, 307–775–6306.

SUPPLEMENTARY INFORMATION: On April 30, 1996, a petition/application was approved by the Assistant Secretary for Land and Minerals Management. The approval of the petition/application results in a proposal to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Sixth Principal Meridian

T. 13 N., R. 111 W.,
Sec. 5, lot 8 and NW¼SW¼NW¼;
Sec. 6, SE¼NE¼, S½NE¼SW¼, SE¼SW¼ and N½SE¼;
Sec. 7, N½NE¼NW¼;
Sec. 9, NW¼NE¼ (reserved Federal minerals);
Sec. 17, SW¼SW¼;
Sec. 18, S½S½SE¼;
Sec. 19, lot 6 and E½NW¼;
Sec. 19, N½NW¼NE¼ (reserved Federal minerals).
T. 14 N., R. 111 W.,
Sec. 19, E½SE¼;
Sec. 30, SE¼NW¼ and NE¼SW¼;
Sec. 32, S½NE¼SW¼, E½SW¼SW¼ and SE¼SW¼;
Sec. 33, S½NE¼ and N½SE¼.
T. 13 N., R. 112 W.,
Sec. 2, SW¼NW¼ and NW¼SW¼;
Sec. 3, E½SE¼;
Sec. 10,
Sec. 15, NW¼NE¼, E½NW¼, N½SW¼ and SW ¼SW¼;
Sec. 16, NW¼SE¼;
Sec. 22, W½NW¼, NW¼SW¼ and SE¼;
Sec. 23, W½SW¼;
Sec. 23, E½SW¼, W½SE¼, and NE¼SE¼ (reserved Federal minerals).

The areas described aggregate 2,149.85 acres in Sweetwater County.

Sixth Principal Meridian, Wyoming

T. 13 N, R. 112 W.,
Sec. 16, NE¼SW¼ and S½SW¼;
Sec. 17, SE¼SW¼ and SW¼SE¼;
Sec. 20, N½, SW¼ and W½SE¼;
Sec. 21, NW¼.
T. 13 N., R. 113 W.,
Sec. 3, lots 6 and 7, W½SW¼NE¼, E½SE¼NW¼, E½E½SW¼ and W½W½SE¼.
T. 14 N., R. 113 W.,
Sec. 34, SE¼NE¼ and W½SE¼;
Sec. 35, W½SW¼ (reserved Federal minerals).
T. 13 N., R. 114 W.,
Sec. 13, SW¼NE¼, E½SW¼ and W½SE¼;
Sec. 13, SE¼SW¼SW¼ (reserved Federal minerals);
Sec. 23, SE¼SE¼;
Sec. 23, SE¼NE¼ and NE¼SE¼ (reserved Federal minerals);
Sec. 24, E½W½ and SW¼SW¼;
Sec. 24, W½NW¼ and NW¼SW¼ (reserved Federal minerals);
Sec. 28, SE¼SE¼ (reserved Federal minerals);
Sec. 33, E½NE¼.

The area described aggregate 2,086.66 acres in Uinta County. Total area of proposed withdrawal is 4,236.51 acres.

The purpose of the proposed withdrawal is to protect the habitat of *Thelesperma pubescens*, a Category 2, Candidate species considered for listing under the Endangered Species Act. This plant species is found in only three populations in Wyoming, occurring on the summit edges of three mesa-like mountains. It's entire range is estimated to be less than 100 square miles with the total population size estimated at less than 10,000 individuals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the BLM.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM Wyoming State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the proposal is denied or cancelled or the withdrawal is approved prior to that date. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which would not impact the plant habitat may be allowed with the approval of an authorized officer of the BLM during the segregative period.

Melvin Schlagel,

Realty Officer.

[FR Doc. 96–13705 Filed 5–30–96; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Pursuant to Section 122(d)(2) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), and Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Allied Signal, Inc., et al.*, Civil Action No. 95–617P, was lodged on November 28, 1995 with the United States District Court for the District of Rhode Island. Additional parties were allowed to join the Consent Decree, and thirty-six additional defendants join the Decree in a filing with the court on May 7, 1996. Defendants Allied Signal, Inc.; American Cyanamid Company; Ashland Chemical Company; Elf Atochem North America, Inc. (M & T Chemical, Inc.); GAF Corporation; General Electric Company; Hydron Laboratories Inc.; Mallinckrodt & Baker, Inc. (J.T. Baker, Inc.); Monsanto Company; Morton International, Inc., Allied Signal, Inc.; American Cyanamid Company; Ashland Chemical Company; Elf Atochem North America, Inc.; GAF Corporation; General Electric Company; Hydron Laboratories, Inc.; Mallinckrodt Baker, Inc.; Monsanto Company; Morton International, Inc.; Air Products and Chemical, Inc.; American Standard, Inc.; Armstrong World Industries, Inc.; Bayer Corporation (fka Miles Inc.); Ber Mar Manufacturing Corp.; Borden, Inc.; Branson Ultrasonics Corp.; Burndy Corporation (currently, Framatone Connectors USA Inc.); Ciba-Geigy Corporation; Connecticut Hard Rubber Co./Chr Industries, Inc.; Eaton Corporation; Ganes Chemicals Inc.; Grumman Corp. & Grumman Aerospace Company, Inc.; Hoechst Celanese Corporation; King Industries, Inc.; Kraft Foods, Inc. (On behalf of General Foods

USA); Kraft Foods, Inc. (On behalf of Ware Chemical); the Mennen Company, Inc.; Merck & Co., Inc.; Mine Safety Appliances Company; Minnesota Mining & Manufacturing Company; NL Industries, Inc.; National Starch and Chemical Company; Occidental Chemical Corporation (as successor to Diamond Shamrock Chemicals Inc.); The Perkin-Elmer Corporation; Pfizer Inc; Pitney Bowes, Inc.; Reichold Chemicals, Inc.; Revlon Consumer Products Corporation; Schenectady International, Inc.; E.R. Squibb & Sons, Inc.; Textron, Inc. (Patterson-Sargent); Union Carbide Corporation; The Upjohn Company; R.T. Vanderbilt Company, Inc.; and Wyeth Laboratories, Inc., are all generators of wastes containing hazardous substances which were disposed of at the Picillo Farm Superfund Site in Coventry, Rhode Island.

Under the terms of the proposed decree, defendants will perform and/or pay for certain remedial design/remedial action work involving soil source control and management of groundwater mitigation. The work to be undertaken and/or paid for by defendants is valued by the United States Environmental Protection Agency at $15.9 million. The proposed decree includes a covenant not to sue by the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9601 *et seq.*, and under Section 7003 of the Resources Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Allied Signal, Inc., et al.*, D.J. reference #90–11–2–985. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed consent decree may be examined at the Office of the United States Attorney for the District of Rhode Island, Westminster Square Building, 10 Dorrance Street, 10th Floor, Providence, Rhode Island; the Region I Office of the Environmental Protection Agency, 290 Canal Street, Boston, Massachusetts; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. In requesting a copy, please enclose a check in the amount of $2.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–13623 Filed 5–30–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Maxicare Pharmacy, Revocation of Registration

On November 1, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Maxicare Pharmacy, (Respondent) of Houston, Texas, notifying it of an opportunity to show cause as to why DA should not revoke its DEA Certificate of Registration, BM3971644, under U.S.C. 824(a) (2) and (4), and deny any pending application under 21 U.S.C. 823(f), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged, among other things, that (1) on September 26, 1994, the Respondent's pharmacist and owner (Owner) provided falsified controlled substance records to DEA, allegedly documenting receipt of controlled substances from a local distributor, when subsequently it was determined that an employee of the distributor was unlawfully supplying controlled substances to the Respondent; (2) on January 12, 1995, the Owner and her husband were indicated on numerous counts of violating the Texas Health and Safety code related to the handling of controlled substances; (3) on July 25, 1995, the Owner was found guilty on nine counts of engaging in organized criminal activity related to theft of controlled substances by a public servant, and she was found guilty of fraud, theft and commercial violations of the controlled substances act, for which she was sentenced to ten years imprisonment and was ordered to pay a $3,000.00 fine; and (4) the Owner's husband was found guilty of two counts of engaging in organized criminal activity related to theft of controlled substances, and he was sentenced to seven years imprisonment.

The Order was mailed in the U.S. Mail, and a signed receipt dated November 6, 1995, was returned to DEA. However, neither the Respondent nor anyone purporting to represent it has replied to the Order to Show Cause. More than thirty days have passed since the Order was served upon the Respondent. Therefore, pursuant to 21 CFR 1301.54(d), the Deputy Administrator finds that the Respondent has waived its opportunity for a hearing on the issues raised by the Order to Show Cause, and, after considering the investigative file, enters his final order in this matter without a hearing pursuant to 21 CFR 1301.54(e) and 1301.57.

The Deputy Administrator finds that the Respondent was issued DEA Certificate of Registration BM3971644 on April 22, 1994, as a retail pharmacy, owned by the Owner and her husband (Co-owner). A DEA investigation revealed that, as a result of a DEA audit, the Respondent had significant overages of clonazepam and alprazolam, both Schedule IV controlled substances pursuant to 21 C.F.R. 1308.14. Specifically, on September 20, 1994, pursuant to a federal administrative inspection warrant executed at the Respondent pharmacy, a DEA Diversion Investigator (Investigator) conducted an audit of four different controlled substances, to include clonazepam and alprazolam. The Investigator and the Owner, who was also the pharmacist-in-charge, counted the existing inventory of these substances, to include trade names and generic equivalents, and compared the number on hand with documents which noted the amounts purchased, dispensed, or loaned by the Respondent to other pharmacies. As a result of this audit, it was determined that on September 20, 1994, there were 1,000 more clonazepam tablets than could be accounted for by the Respondent's records, to include purchase invoices and filled prescriptions. Also, on that date, there were 1,400 more alprazolam tablets than could be accounted for by the Respondent's records, and a total variance for all four substances of 3,438 tablets.

During the inspection, the Investigator asked the Owner to provide the Respondent pharmacy's records for alprazolam and clonazepam. The Owner told the Investigator that some of her acquisition invoices were at home, but she agreed to deliver these documents to the Investigator. On September 26, 1994, the Owner delivered to the Investigator several invoices from Abbey Pharmaceutical which were dated between July 1, 1994, and September 2, 1994. The Owner also told the Investigator that a named employee (Employee) of Abbey Pharmaceutical had agreed to loan the Respondent pharmacy these controlled substances for up to one year, and at the end of that year, the Owner was either to replace the substances or to pay for them. However, when the Investigator

interviewed the Employee, he stated that he did not know the Owner or the Respondent pharmacy. The Investigator also interviewed other officials of Abbey Pharmaceuticals, who stated that the Respondent pharmacy was not a customer, and that Abbey Pharmaceutical had not sold, loaned, or shipped controlled substances to the Respondent.

Further investigation revealed that the Owner was involved in a scheme with an employee of Abbey Pharmaceutical, whereby the Owner received clonazepam and alprazolam and blank invoices for her to complete to create a record justifying receipt of these controlled substances. Further, the Co-owner was also involved in a scheme resulting in the transfer of medications from a local hospital to his residence. On July 25, 1995, the Owner was found guilty of the felony offenses of engaging in organized criminal activity related to theft of controlled substances by a public servant, fraud, theft, and commercial violations of the controlled substances act, by the 228th District Court of Harris County, Texas. On September 21, 1995, the Owner was sentenced to serve ten years confinement and to pay a $3,000.00 fine. The Co-owner was found guilty of engaging in organized criminal activity related to the theft of controlled substances, and he was sentenced to serve seven years in prison.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke the Respondent's DEA Certificate of Registration, and deny any pending renewal of that registration, if he determines that the continued registration would be inconsistent with the public interest. Further, 21 U.S.C. 824(a)(2) provides in relevant part that a registration may be revoked upon a finding that the registrant has been convicted, under State law, of a felony related to any controlled substance.

As to the Respondent's "conviction," the DEA has previously determined that the registration of a corporate registrant may be revoked upon a finding that a natural person who is an owner, officer, or key employee, or has some responsibility for the operation of the registrant's controlled substances business, has been convicted of a felony offense relating to controlled substances. See Robert Hozdish, d/b/a/ A.J. Meyer Pharmacy, 53 FR 13338 (1998) (revoking a pharmacy's registration on the basis of the pharmacist's and owner's controlled substance-related felony conviction); see also, Taneytown Pharmacy, 51 FR 45068 (1986) and cases cited therein. Here, the record clearly establishes that the Owner, who also served as the pharmacist-in-charge, and the Co-owner of the Respondent were convicted in a Texas court of felony offenses involving controlled substances. Therefore, the Deputy Administrator concludes that a lawful basis exists for the revocation of the Respondent's DEA registration under 21 U.S.C. 824(a)(2).

As to the public interest in this matter, Section 823(f) provides that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16422 (1989). In this case, factors four and five are relevant in determining whether the Respondent's continued registration would be inconsistent with the public interest.

As to factor four, the Respondent's "[c]ompliance with applicable State, Federal, or local laws relating to controlled substances," the record shows that record-keeping violations were found during a DEA audit of the Respondent. As for recordkeeping requirements, pursuant to 21 U.S.C. 827(a)(3), "every registrant under this subchapter * * * dispensing a controlled substance or substances shall maintain, on a current basis, a complete and accurate record of each substance * * * received, sold, delivered, or otherwise disposed of by him," and 21 U.S.C. 827(b) provides that, "Every inventory or other record required under this section (1) shall be in accordance with, and contain such relevant information as may be required by, regulations of the Attorney General."

Applicable federal recordkeeping regulations also exist, and 21 C.F.R. 1304.21 requires a registrant to "maintain on a current basis a complete and accurate record of each such substance * * * received, sold, delivered, * * * or otherwise disposed of by him." Further, 21 C.F.R. 1304.24 requires dispensers to maintain records for each controlled substance reflecting, among other things, the number of commercial containers received, and "including the date of and number of containers in each receipt and the name, address, and registration number of the person from whom the containers were received," the number of units dispensed, with detailed information concerning the person to whom it was dispensed, and information concerning any other method of disposal of the substance.

Here, as a result of a DEA audit, the Respondent pharmacy's controlled substance records revealed significant overages of clonazepam and alprazolam, both Schedule IV controlled substances. Also, the Owner failed to provide accurate records or other documentary evidence to reconcile the amounts of controlled substances on hand with the legitimate acquisition and disposition of the medications as required by DEA regulations. Such unexplained overages were indicative of the Owner's violation of the regulated distribution system, which was established to protect the public interest by preventing diversion of such substances. DEA has previously found that a failure to maintain adequate records in a threat to the public interest and is a basis for revoking the Respondent's registration. See, generally, Taneytown Pharmacy, supra.

As to factor five, "[s]uch other conduct which may threaten the public health or safety," the Deputy Administrator finds it significant that, when the Owner was questioned concerning the audit results, she ultimately provided false receiving documents with the intention of deceiving the Investigator into believing that she had legitimately received the controlled substances from Abbey Pharmaceuticals. The Owner's willingness to falsify documents pertaining to controlled substances and to deceive a DEA investigator is further evidence of the Owner's lack of trustworthiness in handling controlled substances. As the owner and primary pharmacist for the Respondent, her conduct established such a threat to the public interest as to justify the revocation of the Respondent's DEA Certificate of Registration. Therefore, the Deputy Administrator finds that the public interest is best served by revoking the Respondent's registration and by denying any pending renewal application.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the

authority vested in him by 21 U.S.C. 823 and 824, and 28 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BM3971644, previously issued to Maxicare Pharmacy, be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration be, and hereby are, denied. This order is effective July 1, 1996.

Dated: May 28, 1996.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 96–13685 Filed 5–30–96; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may form time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determination, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determination Issued Under the Davis-Bacon and related Acts" are listed by Volume and State:

Volume V

Oklahoma
OK960046 (May 31, 1996)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Rhode Island
RI960001 (March 15, 1996)

Volume II

Pennsylvania
PA960008 (March 15, 1996)
PA960009 (March 15, 1996)
PA960010 (March 15, 1996)
PA960014 (March 15, 1996)
PA960021 (March 15, 1996)
PA960024 (March 15, 1996)
PA960029 (March 15, 1996)
PA960040 (March 15, 1996)
PA960060 (March 15, 1996)

Volume III

Florida
FL960017 (March 15, 1996)
Tennessee
TN960005 (March 15, 1996)
TN960058 (March 15, 1996)

Volume IV

Indiana
IN960017 (March 15, 1996)

Volume V

Oklahoma
OK960014 (March 15, 1996)
Texas
TX960015 (March 15, 1996)

Volume VI

California
CA960006 (March 15, 1996)
CA960039 (March 15, 1996)
CA960047 (March 15, 1996)
CA960088 (April 12, 1996)
Colorado
CO960001 (March 15, 1996)
CO960006 (March 15, 1996)
CO960007 (March 15, 1996)
CO960008 (March 15, 1996)
CO960009 (March 15, 1996)
CO960010 (March 15, 1996)

General wage Determination Publication

General Wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 24th day of May 1996.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 96–13543 Filed 5–30–96; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Baltimore Gas and Electric Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–53 and DPR–69, issued to Baltimore Gas and Electric Company (BGE) for operation of the Calvert Cliffs Nuclear Plant Unit Nos. 1 and 2 located in Calvert County, Maryland.

The proposed amendment would replace the mechanical stops in the inlet control valves of the containment air coolers (CACs) with a variable flow controller for the inlet control valve.

The licensee requests that this proposed amendment be considered as exigent under the criteria of 10 CFR 50.91(a)(6). The licensee states that they could not have foreseen the need for this request prior to this time. This modification is the result of a substantial proactive effort in dealing with the concerns that BGE have with their Service Water (SRW) System. The history of BGE's activities concerning the SRW System is given in Attachment (1) of the proposed amendment. This particular modification was determined to be necessary after BGE obtained data from a site stream monitor that BGE had installed to measure the rate of microfouling in the SRW heat exchangers. The data from the side stream monitor was not analyzed and available to BGE until January 17, 1996. By mid-February, BGE had determined that the installation of flow controllers on the CAC inlet valves was necessary to offset the effects of the larger than expected microfouling. BGE has committed the necessary money and resources to install this modification before the summer. Design and procurement activities were done in parallel. About mid-April, the engineering was to the stage that work could begin on the safety evaluation (SE) required by 10 CFR 50.59. Refinements to the engineering continued even as the SE was being developed. On May 24, 1996, the Plant General Manager determined that an unreviewed safety question existed for this modification. This request has been submitted as soon as practical after the determination was made.

It is important for BGE to perform this modification on the schedule set out a number of months ago. To prevent operational and safety impacts, this modification must be installed before the hot summer weather causes the Chesapeake Bay water temperature to exceed the SRW temperature limit. Historically, the Chesapeake Bay water temperature has approached or exceeded the current limit by the last week in June. As noted above, whenever the SRW heat exchangers are removed from service for cleaning, some safety-related equipment is rendered inoperable. It is important to minimize the amount of time BGE is in these more vulnerable conditions (with some safety-related equipment out-of-service). Additionally, BGE believes that reducing the power output from both units significantly during a time of high demand (high summer temperatures) is not in the best interest of the public.

Therefore, given the need to act quickly, and the determination that this change does not represent a significant hazard, BGE requests that this amendment be considered under exigent circumstances as described in 10 CFR 50.91(a)(6).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed modification is the result of our need to reduce the peak post-accident heat load on the service water (SRW) heat exchangers. It will replace the mechanical stops currently on the control valves which admit SRW into the containment air coolers (CACs) with a flow controller loop. By throttling the SRW to the CACs, the heat load on the SRW heat exchangers is reduced during the early phases of an accident. The increased accuracy of throttling would allow the SRW system to perform its safety function during periods of high ultimate heat sink temperatures. During the summer months, the Chesapeake Bay water (the ultimate heat sink for the units) heats up substantially during some parts of the day. At times, these high temperatures could exceed the current expected limits for the heat exchanger operation. With the more accurately throttled valves, the effect of high ultimate heat sink temperatures is reduced. The modification will ensure that the SRW heat exchangers are capable of meeting their intended safety function up to the maximum expected bay water temperature.

The safety function of the SRW System is to provide cooling to the CACs and the Emergency Diesel Generators (EDGs) following a design basis accident. With this proposed modification in place, the SRW System will continue to meet this safety function. All of the failure mechanisms for this modification have previously been evaluated and were found acceptable. However, because the proposed modification may have a higher probability of malfunction for which compensatory actions may not adequately control the consequence of failure, the probability of a malfunction of systems important to safety may be slightly increased, and this modification has been determined to be an unreviewed safety question.

The single failure of the flow controllers would not be an initiator to an accident. The system provides cooling to safety-related equipment following an accident. It supports accident mitigation functions. Therefore, this proposed modification does not significantly increase the probability of an accident previously evaluated.

The proposed modification will enhance the ability of the SRW system to respond to accident conditions under a wider range of

environmental conditions (i.e., higher ultimate heat sink temperatures). Malfunctions of the flow controller have been evaluated and determined to result in consequences that are no more severe than those previously approved. A failure of the flow controller could allow the valve to fail in a position that does not allow the SRW System to perform its safety function. Since the SRW System is redundant on each unit, a single failure of one of the flow controllers would not prevent the other redundant portion of the system from performing its safety function. The consequences of a single failure of the SRW System have been previously analyzed and these consequences do not change due to this modification.

Therefore, this proposed modification does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The SRW System provides cooling water to the CACs and EDGs. The purpose of the components which are affected by this modification is to mitigate accidents. The single failure of the flow controllers would not be an initiator to an accident. This modification does not change the equipment's function, or significantly alter the method of operating the equipment to be modified. The system will continue to operate in essentially the same manner as before the modification was done.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The margin of safety is reduced for this proposed modification, but not significantly. If the CAC inlet valve fails to open, the CAC on that train would continue to perform its safety function. However, the EDG on that train would receive cooling water above the design temperature and may fail to perform its safety function. The redundant EDG would provide adequate electricity to continue to perform its safety function. If the CAC inlet valve fails in the closed position, the EDG would continue to function; however, the affected CAC would not rceive adequate cooling water. The other three CACs would provide adequate cooling for the containment. Also, the Containment Spray System provides additional containment cooling as a backup to the CACs. If the CAC inlet valve fails to throttle properly, the consequences are bounded by the other two cases discussed above.

Adding a more complex component which could fail and result in a failure of the SRW System does reduce the margin of safety, but not significantly because: (1) The proposed flow controller is very reliable and not likely to fail; (2) the other redundant CAC and EDG are available to mitigate the consequence of an accident should there be a single failure of the flow controller.

Therefore, this modification does not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 1, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland 20678. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Jocelyn A. Mitchell: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 28, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland, this 29 day of May 1996.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–13793 Filed 5–30–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 999–90004; License No. KS 22–B274–0;1 EA 95–276]

Bemis Construction, Inc.; Order Imposing Civil Monetary Penalty

I

Bemis Construction, Inc., (Bemis) is the holder of Radioactive Materials License No. 22–B274–01, a specific license issued by the state of Kansas, an Agreement State on September 30, 1987. The license authorizes Bemis to possess and use sealed radioactive sources in portable nuclear density gauges at a specific location in Great Bend, Kansas and at temporary jobsites in the State of Kansas in accordance with the conditions specified in the license. Pursuant to 10 CFR 150.20 and its license, a general license is granted to Agreement State licensees to conduct the same activities in areas under NRC jurisdiction (referred to as "reciprocity"), provided that the NRC is notified and the other provisions of 10 CFR 150.20 are followed.

II

An inspection and investigation of Bemis's activities were conducted during August 17, 1995, through January 3, 1996. The results of the inspection and investigation, documented in a report issued on January 11, 1996, indicated that Bemis had not conducted its activities in full compliance with NRC requirements. The violations identified included use and storage of licensed material in NRC jurisdiction without having complied with the requirements for reciprocity. Bemis responded to the inspection report by letter dated January 22, 1996. In its letter, Bemis stated that the reason for the violation was an understanding that the gauge could be used in Oklahoma for short periods of time. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon Bemis by letter dated March 19, 1996. The Notice stated the nature of the violation, the provisions of the NRC requirements that Bemis had violated, and the amount of the civil penalty proposed for the violation.

Bemis responded to the Notice by letter dated April 17, 1996 (Reply to a Notice of Violation and Answer to a Notice of Violation). In its response, Bemis stated that there was an apparent mistaken belief that a reciprocity permit with the NRC was not required under certain conditions. The letter also requested mitigation of the proposed civil penalty based on assurances that Bemis is in compliance now and will not violate the cited requirements in the future.

III

After consideration of Bemis's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as described in the Notice, and that the penalty proposed for the violations should be imposed by order.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, It is hereby ordered that:

Bemis Construction, Inc., pay a civil penalty in the amount of $2,500 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to James Lieberman, Director, Office of

Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

Bemis may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If Bemis fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event Bemis requests a hearing as provided above, the issue to be considered at such hearing shall be: whether, on the basis of the violation admitted by Bemis, this Order should be sustained.

Dated at Rockville, Maryland this 23rd day of May 1996.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluation and Conclusions

On March 19, 1996, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of $2,500 was issued to Bemis Construction, Inc., (Bemis) for a violation identified during an NRC inspection and investigation. Bemis responded to the Notice in a letter dated April 17, 1996. Bemis admitted the violation but requested mitigation of the proposed civil penalty based on its contention that the violation was not intentional and on assurances that Bemis is in compliance now and will not, in the future, violate the rules which were cited.

Restatement of Violation Assessed a Civil Penalty

10 CFR 30.3 requires in relevant part, that no person shall possess or use byproduct material except as authorized by a specific or general license issued by the NRC.

10 CFR 150.20(a) provides in part that any person who holds a specific license from an Agreement State is granted an NRC general license to conduct the same activity in non-Agreement States subject to the provisions of 10 CFR 150.20(b).

10 CFR 150.20(b)(1) requires, in part, that any person engaging in activities in non-Agreement States shall, at least 3 days before engaging in each such activity, file 4 copies of NRC Form-241, "Report of Proposed Activities in Non-Agreement States," with the Regional Administrator of the appropriate NRC regional office.

Contrary to the above,

A. From March 1991 through August 1992, Bemis Construction, Inc. a licensee of Kansas, used cesium-137 and americium-241 sealed sources in Oklahoma, a non-Agreement State, without a specific license issued by the NRC and without filing Form-241 with the NRC.

B. From March 1991 through July 1995, Bemis Construction, Inc. a licensee of Kansas, stored cesium-137 and americium-241 sealed sources in Oklahoma, a non-Agreement State, without a specific license issued by the NRC and without filing Form-241 with the NRC. (01013)

This is a Severity Level III violation (Supplement VI). Civil Penalty—$2,500

Summary of Bemis's Request for Mitigation

Bemis responded to the violation in a letter from Mr. Thomas J. Berscheidt, Attorney At Law, dated April 17, 1996. Mr. Berscheidt stated that he represents Bemis and that he had reviewed the March 19, 1996, letter from the NRC and the enclosed Notice. Mr. Berscheidt's letter stated that there was no intent to avoid compliance with the regulations. There was "simply a misunderstanding and lack of information concerning these regulations." Bemis stated that it will not, now or in the future, regardless of the oversight or lack of knowledge, intentionally violate any of the rules and regulations of the NRC. Further, Bemis's response stated that it is recognized that each party is responsible for being aware of the rules and regulations, but there are times when, regardless of the effort and honest intent of any individual or corporation, all rules and regulations cannot be known or at least readily obtained and usually the awareness factor does not surface until the violation has been identified. With the assurance that Bemis is in compliance and will not violate the rules which were cited, the licensee requested mitigation of the civil penalty. The letter also noted that this was the first time that Bemis has violated NRC requirements.

NRC Evaluation of Licensee's Request for Mitigation

The Kansas license provided that material "may be used at Railroad & McKinley, Great Bend, Kansas and at temporary job sites of the licensee anywhere in the State of Kansas where the State of Kansas, Department of Health and Environment maintains jurisdiction for regulating the use of radioactive material." This provision does not authorize operations in the State of Oklahoma, which is under NRC jurisdiction. Therefore, it is not clear why there was any misunderstanding. The fact that Bemis did not attempt to verify its understanding by merely telephoning the NRC, or make any other effort to verify its understanding, was the basis for NRC's conclusion that the violation was the result of, at least, careless disregard for the involved requirements.

Even in the absence of willfulness, the NRC considers the failure to obtain authorization to use byproduct materials in areas under its jurisdiction to be a matter of significant regulatory concern. This is because the failure to obtain NRC authorization for such activities denies the NRC the opportunity to assure that the activities are conducted in compliance with all NRC requirements. Furthermore, the failure to obtain authorization resulted in Bemis's failure to pay fees in each of the years that Bemis was in violation. We note that the civil penalty is approximately the same amount as the delinquent fees.

Bemis concludes its April 17 letter with its assurances of compliance (with the cited requirements), now and in the future, and respectfully requested that the civil penalty be reduced. The NRC's Enforcement Policy does provide for mitigation of civil penalties under certain conditions, through the consideration of the identification and corrective action factors (reference Section VI.B.2 of the enforcement policy). The NRC's March 19, 1996 letter that accompanied the Notice described the NRC's analysis of these identification and corrective action factors, and concluded that the base penalty should be assessed. The licensee's April 17 letter did not provide any additional information that would change the civil penalty assessment.

NRC Conclusion

After consideration of all of the arguments made by Bemis, the NRC concludes that the civil penalty that was proposed should not be mitigated.

[FR Doc. 96–13673 Filed 5–30–96; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of an Expiring Information Collection Reemployment of Annutants, 5 CFR 837.103

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) will submit to the Office of Management and Budget a request for a clearance of an expiring information collection. Section 837.103 of Title 5, Code of Federal Regulations, requires agencies to collect information from retirees who become employed in Government positions. Agencies need to collect timely information regarding the type and amount of annuity being received so the correct rate of pay can be determined. Agencies provide this information to OPM so a determination can be made whether the reemployed retiree's annuity must be terminated.

We estimate 3000 reemployed retirees are asked this information annually. It takes each reemployed retiree approximately 1 minute to complete for an annual estimated burden of 50 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E–Mail to jmfarron@mail.opm.gov

DATES: Comments on this proposal should be received on or before July 1, 1996.

ADDRESSES: Send or deliver comments to—

John Landers, Chief, Retirement Policy Division, Retirement and Insurance Service, 1900 E Street, NW., Room 4351, Washington, DC 20415–0001

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Team Leader, Management Services Division, (202) 606–0623.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–13679 Filed 5–30–96; 8:45 am]

BILLING CODE 6325–01–M

Submission for OMB Review; Comment Request Review of a Revised Information Collection: Forms RI 34–1 and RI 34–3

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for clearance of a revised information collection: Forms RI 34–1 and RI 34–3. RI 34–1, Financial Resources Questionnaire, collects detailed financial information for use by OPM in determining whether to agree to a waiver, compromise, or adjustment of the collection of erroneous payments from the Civil Service Retirement and Disability Fund. RI 34–3, Notice of Debt Due Because of Annuity Overpayment, informs the annuitant that a debt is due, describes the cause for the overpayment, and collects information from the annuitant regarding payment of the debt.

Approximately 1,561 RI 34–1 and 520 RI 34–3 forms will be completed per year. Each form requires approximately 1 hour to complete. The annual burden is 1,561 hours and 520 hours respectively.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@mail.opm.gov

DATES: Comments on this proposal should be received on or before July 1, 1996.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street NW., Room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–13680 Filed 5–30–96; 8:45 am]

BILLING CODE 6325–01–M

Submission for OMB Review; Comment Request for Review of an Expiring Information Collection: SF 2823

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management will submit to the Office of Management and Budget a request for a clearance of an expiring information collection. SF 2823, Designation of Beneficiary for Federal Employees Group Life Insurance, is used by any Federal employee or retiree covered by the Federal Employees Group Life Insurance Program to instruct the Office of Federal Employees Group Life Insurance how to distribute the proceeds of his or her life insurance when the statutory order of precedence does not meet his or her needs.

We estimate 1,000 SF 2823 forms are completed annually by annuitants. Each form takes approximately 15 minutes to complete for an annual estimated burden of 250 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-Mail to jmfarron@mail.opm.gov

DATES: Comments on this proposal should be received on or before July 1, 1996.

ADDRESSES: Send or deliver comments to—

Kenneth H. Glass, Chief, Insurance Operations Division, Retirement and Insurance Service, 1900 E Street NW., Room 3415, Washington, DC 20415–0001

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washinton, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Team Leader, Management Services Division, (202) 606–0623.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–13681 Filed 5–30–96; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 21963; International Series Release No. 964/812–9966]

Bankers Trust Australia Limited; Notice of Application

May 24, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Bankers Trust Australia Limited ("BTAL").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from section 17(f).

SUMMARY OF APPLICATION: BTAL requests an order to permit it to maintain foreign securities and other assets of U.S. registered investment companies in the custody of Pendal Nominees Pty. Limited ("Pendal Nominees"), an indirect, wholly-owned subsidiary of BTAL.

FILING DATE: The application was filed on January 30, 1996, and amended on May 3, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 18, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, D.C. 20549. Applicant: BTAL, The Chifley Tower, Level 15, 2 Chifley Square, Sydney NSW 2000, Australia, with copies to Dana L. Platt, Esq., Kirkpatrick & Lockhart LLP, 1251 Avenue of the Americas—45th Floor, New York, New York 10020.

FOR FURTHER INFORMATION CONTACT: Mercer E. Bullard, Staff Attorney, (202) 942–0565, or Allison E. Baur, Branch Chief, (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. BTAL is bank organized under the laws of Australia and regulated by the Reserve Bank of Australia. As of December 31, 1995, BTAL had shareholders' equity of approximately $770 million. BTAL is a wholly-owned, indirect subsidiary of Bankers Trust Company ("BTCo").

2. BTCo is a New York State chartered bank and a member of the Federal Reserve System. As of December 31, 1995, BTCo had aggregate capital, surplus, and undivided profits in excess of $4.9 billion.

3. Pendal Nominees, a wholly-owned, indirect subsidiary of BTAL and BTCo, was incorporated in Australia in 1971. Although Pendal Nominees is a distinct legal entity, it is administered as part of BTAL, shares office space with BTAL; and all of its representatives are employees of BTAL. Pendal Nominees has provided custody and trustee services for BTAL's Funds Management Division since 1985. Pendal Nominees has shareholders' equity of less than $100 million.

4. BTAL requests an order under section 6(c) of the Act granting exemptive relief from section 17(f) of the Act for itself, Pendal Nominees, any investment company registered under the Act other than an investment registered under section 7(d) of the Act ("Investment Company"), and any custodian for an Investment Company to the extent necessary to permit BTAL, any Investment Company, or any custodian for an Investment Company to maintain foreign securities, cash or cash equivalents (collectively "Assets") in the custody of Pendal Nominees.

Applicant's Legal Analysis

1. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Section 17(f) of the Act requires every registered management investment company to place and maintain its securities and similar investments in the custody of certain enumerated entities. Section 17(f) effectively restricts entities located outside of the United States that may act as custodians for Investment Companies to overseas branches of domestic banks.

3. Rule 17f–5 under the Act expands the group of entities located outside the United States that are permitted to serve as custodians for registered management investment companies. These entities, among other things, must qualify as "Eligible Foreign Custodians." Rule 17f–5(c)(2)(ii) defines the term "Eligible Foreign Custodian" to include a majority-owned direct or indirect subsidiary of a qualified U.S. bank or bank-holding company that is incorporated or organized under the laws of a country other than the United States and that has shareholders' equity in excess of $100 million as of the close of its most recently completed fiscal year. The rule defines the term "Qualified U.S. Bank" to include a banking institution organized under the laws of the United States that has an aggregate capital, surplus, and undivided profits of not less than $500,000.

4. BTAL and Pendal Nominees are incorporated under the laws of Australia and are wholly-owned indirect subsidiaries of BTCo, which is a "Qualified U.S. Bank" under rule 17f–5. BTAL has shareholders' equity in excess of $100 million and thus qualifies as an Eligible Foreign Custodian under rule 17f–5(c)(2)(ii). Pendal Nominees, however, does not meet the minimum shareholders' equity requirement under rule 17f–5(c)(2)(ii). Consequently, Pendal Nominees does not qualify as an Eligible Foreign Custodian under rule 17f–5 and, absent exemptive relief, could not serve as custodian for an Investment Company.

5. BTAL contends that the terms of the foreign custody arrangements, as described in the conditions set forth below, will adequately protect Investment Companies and their shareholders against loss. BTAL believes that the requested relief is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

Applicant's Conditions

BTAL agrees, as conditions to the requested exemptive relief, that:

1. The foreign custody arrangements proposed with respect to Pendal Nominees will satisfy the requirements of rule 17f–5 in all respects other than with regard to the minimum shareholders' equity requirement for an eligible foreign custodian.

2. BTAL currently satisfies and will continue to satisfy all requirements of rule 17f–5, including the minimum shareholders' equity requirement of rule 17f–5(c)(2)(ii).

3. Pendal Nominees currently satisfies all requirements of rule 17f–5, except for the minimum shareholders' equity requirement of rule 17f–5(c)(2)(ii).

4. BTAL will deposit Assets in Australia with Pendal Nominees only in accordance with a three-party contractual agreement that will remain in effect at all times during which Pendal Nominees fails to meet the requirements of Rule 17f–5 relating to minimum shareholders' equity. The agreement will be among Pendal Nominees, BTAL, and the Investment Company or the custodian for the Investment Company for which BTAL acts as subcustodian. Under the agreement, BTAL will provide specified custodial or subcustodial services for the Investment Company or custodian and will delegate to Pendal Nominees such of BTAL's duties and obligations as will be necessary to permit Pendal Nominees to hold the Assets custody in Australia. The agreement will further provide that BTAL will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by Pendal Nominees of its responsibilities under the agreement to the same extent as if BTAL had been required to provide custody services under such agreement.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13696 Filed 5–30–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37244; File No. SR–Philadep–96–07]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing of a Proposed Rule Change To Establish a Separate Participant Category for Inactive Accounts

May 24, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 8, 1996, the Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–Philadep–96–07) as described in Items I, II, and III below, which items have been prepared primarily by Philadep. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend Philadep's rules to establish a separate participant category for inactive accounts and to amend the participants fund formulas with respect to such inactive accounts. Specifically, the proposed rule change will define the term "Inactive Account" and will set forth the mechanism for detecting a change in a participant's status from inactive to active and for the immediate collection of the additional required participants fund contribution at such time.

[1] 15 U.S.C. 78s(b)(1) (1988).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Philadep included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Philadep proposes to amend its rules with respect to the minimum cash deposit contribution of its inactive participants to be set at the uniform rate of $5,000 instead of at the previously approved rate of $10,000.[2] "Inactive Accounts" are proposed to be defined as an account which conducts de minimis activity, currently established to be less than $100 in monthly billing activities.

Philadep proposes to adjust its Inactive Account contribution to the participants fund from $10,000 to $5,000. In proposing this amendment, Philadep recognizes that inactive accounts pose virtually no risk to the clearing corporation so long as they remain in such inactive status. In this regard, Philadep has established procedures to detect a change in a participant's status from inactive to active and for the immediate collection of the additional required participants fund contribution at such time.

Philadep will monitor its participants' account activities to assure that all participants post the requisite participants fund contributions. Philadep evaluates the nature and financial integrity of all participants of Philadep, even if they initially establish only Inactive Accounts. Philadep evaluates prospective participants, develops a customer profile, assesses the firm's capital adequacy, determines the initial participants fund contribution, contacts the firm's Designated Examining Authority for a review of its regulatory history, and presents any and all pertinent information collected to Philadep's Admissions Committee. The Admissions Committee ultimately makes the determination about whether to admit the participants and directs managements where appropriate to gather additional information so that the Committee can make such a determination. After admission, Philadep monitors participants' account activities to assure that the proper participants fund contribution is being collected from each participant.

Specifically with respect to Inactive Accounts, Philadep's Finance and Administration ("F&A") Department will identify for Philadep's Operations Department which specific accounts are currently inactive. Thereafter, the Operations Department will monitor on a daily basis a report which reflects daily deposit, transfer, and miscellaneous deliver order ("MDO") activity of such Inactive Accounts. Specifically, the Operations Department will generate a report that maintains cumulative total of deposits, transfers, and MDOs occurring in each Inactive Account for each monthly billing cycle.[3] If that total exceeds forty but is less than seventy-five for any Inactive Account in any given month, the Operations Department will immediately notify the F&A Department and Philadep's compliance officer. The F&A Department will verify this activity and will immediately call and send a letter to the affected participant informing the participant that it must wire the additional participants fund contributions associated with an active account by the next business day or cease doing any further activity in the account for the remainder of the month. If the participant's total exceeds seventy-five transfers, deposits, and MDOs, the participants must wire additional participants fund contributions associated with an active account by the next business day. The seventy-five count threshold serves as a reliable proxy to determine $100 of billing activity. In this regard, the most expensive activity among deposits, transfers, and MDOs, multiplied by 75, typically generates less than $100 in monthly billings. A participant's failure to wire the additional participants fund contributions in compliance with the aforementioned procedures subjects the participant to a $500 fine for the first offense and a $2,000 fine for the second offense occurring during the same calendar year. If the participant does not wire the additional participants fund contribution to Philadep by the next business day, Philadep will disallow

[2] Securities Exchange Act Release No. 36876 (February 22, 1996), 61 FR 7841 [SR–Philadep–95–08] (order granting partial temporary approval and partial permanent approval of a proposed rule change).

[3] This report will be distribute on a daily basis to Philadep management and Philadep's compliance officer.

any further business in the account beginning on the next business day after the additional contribution was due. Accordingly, an offense as contemplated by the foregoing fine schedule refers to the number of times that the account was inactivated from conducting any further business for failure to furnish Philadep with the additional contribution during a calendar year.

Once active, an account will be routinely subject to the normal review and update process on a monthly basis, and the F&A Department will recalculate each participant's participants fund deposit requirement at the end of each month based upon the participant's previous three months activity, prior to the most recent month.

Philadep believes the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because the proposal should help to safeguard securities and funds in their custody or control or for which they are responsible and foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Philadep believes that the proposed rule change will not impose any burden on competition not contemplated within the parameters of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments relating to the proposed rule change have been received. Philadep will notify the Commission of any written comments received by Philadep.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Philadep consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of Philadep. All submissions should refer to the file number SR–Philadep–96–07 and should be submitted by June 21, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13694 Filed 5–30–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37234; File No. SR–PHILADEP–96–06]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Fee Schedule for the Legal Deposit Service.

May 21, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], notice is hereby given that on April 1, 1996, the Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–PHILADEP–96–06) as described in Items I, II, and III below, which Items have been prepared primarily by Philadep. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Philadep proposes to consolidate and modify the fees and the underlying volume categories for its Legal Deposit Service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Philadep included statements concerning the purposes of and the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, as set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Philadep proposes to modify its existing fees for its Legal Deposit Service. Under the existing schedule, medium volume depositors pay significantly greater costs than high volume depositors. In order to attract new medium volume business while offering its current users more cost competitive pricing, Philadep is consolidating the number of categories for its Legal Deposit Service and modifying the fees that the medium volume participants pay for this service.

The text of the proposed rule change is as follows:

Philadelphia Depository Trust Company—Schedule of Fees

Additions are *italicized;* deletions [bracketed]

5. Legal Deposits

Processing fees are based upon monthly deposit volume:

Volume Level:	
[0–100	$8.50.
101–500	$6.00.
501–1,000	$5.50.
1,001–1,700	$5.00.
1,701–2,500	$4.50.
2,501–3,000	$3.50 flat fee for all legal deposits.
3,001 and over	$2.75 flat fee for all legal deposits.]
1–300	*$8.50*
301–3000	*$3.50*
3001 and over	*$2.75*

No charge for deposit rejects. Transfer agent charges will be passed through to the Participant on an item for item basis.

Philadep believes the proposed change complies with Section 17A of the Act because it provides for the equitable allocations of reasonable dues, fees, and other charges among participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[3] of the Act and pursuant to Rule 19b–4(e)(2)[4] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of Philadep. All submissions should refer to File Number SR–PHILADEP–96–06 and should be submitted by June 21, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13697 Filed 5–30–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37245; File No. SR–SCCP–96–03]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing of a Proposed Rule Change To Establish a Separate Participant Category for Inactive Accounts

May 24, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 8, 1996, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–SCCP–96–03) as described in Items I, II, and III below, which items have been prepared primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend SCCP's rules of establishment a separate participant category for inactive accounts and to amend the participants fund formulas with respect to such inactive accounts. Specifically, the proposed rule change will define the term "Inactive Account" and will set forth the mechanism for detecting a change in a participant's status from inactive to active for the immediate collection of the additional required participants fund contribution at such time.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

SCCP proposes to amend its rules with respect to the minimum cash deposit contribution of its inactive participants to be set at the uniform rate of $5,000 instead of at the previously approved rate of $10,000.[2] "Inactive Accounts" are proposed to be defined as an account which conducts de minimis activity, currently established to be twenty or fewer trades per month.

SCCP proposes to adjust its Inactive Account contribution to the participants fund from $10,000 to $5,000. In proposing this amendment, SCCP recognizes that Inactive Accounts pose virtually no risk to the clearing corporation so long as they remain in such inactive status. In this regard, SCCP has established procedures to detect a change in a participant's status from inactive to active and for the immediate collection of the additional required participants fund contribution at such time.

SCCP will monitor its participants' account activities to assure that all participants post the requisite participants fund contributions. SCCP evaluates the nature and financial integrity of all participants of SCCP, even if they initially establish only Inactive Accounts. SCCP evaluates prospective participants develops a customer profile, assesses the firm's capital adequacy, determines the initial participants fund contribution, contacts the firm's Designated Examining Authority for a review of its regulatory history, and presents any and all pertinent information collected to SCCP's Admissions Committee. The Admissions Committee ultimately makes the determination about whether to admit the participant and directs management where appropriate to gather additional information so that the Committee can make such a determination. After admission, SCCP monitors participants' account activities to assure that the proper participants fund contribution is being collected from each participant.

Specifically with respect to Inactive Accounts, SCCP's Finance and Administration ("F&A") Department

---

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by Philadep.

[3] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

[4] 17 CFR 240.19b–4(e)(2) (1995).

[5] 17 CFR 200.30–3(a)(12) (1995).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 36875 (February 22, 1996), 61 FR 7846 [SR–SCCP–95–06] (order granting partial temporary approval and partial permanent approval of a proposed rule change).

[4] 17 CFR 200.30–3(a)(12) (1995).

will identify for SCCP's Operations Department which specific accounts are currently inactive. Thereafter, the Operations Department will monitor on a daily basis purchase and sale blotters for each Inactive Account. Trade activity detected from Inactive Accounts will be compiled on a separate report identifying cumulative activity in each Inactive Account during a monthly billing cycle.[3]

In the event that an Inactive Account exceeds ten trades, but fewer than twenty-one trades, for a particular month, the Operations Department will immediately notify the F&A Department and SCCP's compliance officer. The F&A Department will verify this activity and will immediately call and send letters to the affected participants requiring the wiring of the additional participants fund contributions associated with an active account by the next business day in order for such participants to conduct further account activity during the month. If a participant has exceeded 20 trades for any given month, the participant must wire additional participants fund contributions associated with an active account by the next business day. A participant's failure to timely wire any additional participants fund contributions due subjects the participant to a $500 fine for the first offense and a $2,000 fine for the second offense during a calendar year. If the participant does not wire the additional participants fund contribution for SCCP by the next business day, SCCP will disallow any further business in the account beginning on the next business day after the additional contribution was due. Accordingly, an offense as contemplated by the foregoing fine schedule refers to the number of times that the account was inactivated from conducting any further business for failure to furnish SCCP with the additional contribution during the calendar year.

Once active, an account will be routinely subject to the normal review and update process on a monthly basis, and the F&A Department will recalculate each participant's participants fund deposit requirement at the end of each month based upon the participant's previous three months activity, prior to the most recent month.

SCCP believes the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because the proposal should help to safeguard securities and funds in their custody or control or for which they are responsible and foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP believes that the proposed rule change will not impose any burden on competition not contemplated within the parameters of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been received. SCCP will notify the Commission of any written comments received by SCCP.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which SCCP consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of SCCP. All submissions should refer to the file number SR–SCCP–96–03 and should be submitted by June 21, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–13695 Filed 5–30–96; 8:45 am]

BILLING CODE 8010–01–M

[3] This report will be distributed on a daily basis to SCCP management and SCCP's compliance officer.

[4] 17 CFR 200.30–3(a)(12) (1995).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Request

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that will require submission to the Office of Management and Budget (OMB) for clearance in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. Since the last list was published in the **Federal Register** on May 17, 1996, the information collections listed below have been proposed or will require extension of the current OMB approvals: (Call the SSA Reports Clearance Officer on (410) 965–4125 for a copy of the form(s) or package(s), or write to her at the address listed below the information collections.)

1. Statement of Income and Resources—0960–0124. The form SSA–8010 is used to obtain information about income and resources of individuals whose income may be "deemed" (considered available) to applicants/recipients of SSI. The information is used by the Social Security Administration to make initial or continuing eligibility determinations and to determine the amount of the SSI payment. The respondents are individuals whose income may be "deemed" to the SSI applicant/recipient.

Number of Respondents: 355,000.
Frequency of Response: 1.
Average Burden Per Response: 25 minutes.
Estimated Annual Burden: 147,917 hours.

2. Application for Supplemental Security Income—0960–0444. The information collected on the SSA–8001 is used by the Social Security Administration to determine whether applicants for SSI benefits meet all statutory and regulatory requirements for eligibility and, if so, the amount of benefits payable. The respondents are applicants for SSI benefits.

Number of Respondents: 1,781,849.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 445,462.

3. Application for Widow's or Widower's Insurance Benefits—0960–0004. The information collected on form SSA–10 is used by the Social Security Administration to determine whether applicants for widow's/widower's benefits meet all the statutory and regulatory requirements for eligibility. The respondent's are surviving widow's and widower's age 60 or older, or age 50, if disabled.

Number of Respondents: 640,000.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 160,000 hours.

4. Request for Waiver and Recovery Questionnaire—0960–0037. The form SSA–632 collects information on the circumstances surrounding overpayments of Social Security benefits to recipients. The information is used by the Social Security Administration to determine if recovery of the overpayment amount can be waived or must be repaid, and if so, how recovery will be made. The respondents are recipients who have been overpaid Social Security, Medicare, Black Lung or SSI benefits.

Number of Respondents: 500,000.
Frequency of Response: On occasion.
Average Burden Per Response: 25 minutes.
Estimated Annual Burden: 208,333 hours.

5. Application for Parent's Insurance Benefits—0960–0012. The information collected on form SSA–7 is used by the Social Security Administration to determine entitlement of an individual to parent's insurance benefits. The respondents are parents who were dependent on the worker for at least one-half of their support.

Number of Respondents: 1,400.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 350 hours.

6. Permanent Residence in the U.S.—0960–451. The information collected by the Social Security Administration is used to determine if aliens meet the statutory and regulatory requirements for eligibility to SSI benefits. The respondents are aliens who are apply for and are recipients of SSI payments.

Number of Respondents: 271,800.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 22,650 hours.

Written comments and recommendations regarding these information collections should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Judith T. Hasche, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

The information collections listed below, which were published in the **Federal Register** on March 29 and April 5, 1996, have been submitted to OMB.

1. Videoconference Evaluation Recontact Survey—0960–NEW. The purpose of the survey is to obtain public reaction to conducting business using videoconferencing technology. The information will be used by the Social Security Administration to determine the effectiveness of using videoconferencing for conducting claims and hearing interviews. The respondents are applicants for Social Security disability benefits and Supplemental Security Income disability benefits.

Number of Respondents: 400.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 100 hours.

2. Application for a Social Security Card—0960–0066. The information collected on form SS–5 is used by the Social Security Administration to assign Social Security Numbers so that individuals may obtain employment, report earnings, open back accounts, pay taxes, apply for benefits, and for other purposes. The respondents are individuals who apply for Social Security Numbers.

Number of Respondents: 20,000,000.
Frequency of Response: 1.
Average Burden Per Response: 8 minutes.
Estimated Annual Burden: 2,666,667 hours.

3. Statement Regarding Date of Birth and Citizenship—0960–0016. The information collected on form SSA–702 is used by the Social Security Administration in conjunction with other evidence to establish a claimant's age or citizenship when better proofs are not available. The respondents are individuals who have knowledge of the birth and citizenship of an applicant.

Number of Respondents: 18,000.
Frequency of Response: 1.
Average Burden Per Response: 10 minutes.
Estimated Annual Burden: 3,000.

4. Application for Mother's or Father's Insurance Benefits—0960–0003. The information collected on form SSA–5 is used by the Social Security Administration to determine an applicant's eligibility to mother's or father's insurance benefits. The respondents are individuals who wish to file an application for such benefits.

Number of Respondents: 180,000.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 45,000 hours.

5. Marriage Certification—0960–0009. The information collected on form SSA–3 is needed to provide evidence of an alleged marriage. Social Security uses the information to update records of marital status of an individual. The respondents are persons who apply for Social Security benefits and allege a current marriage.

Number of Respondents: 200,000.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 16,667 hours.

6. Report on Individual with Childhood Impairment—0960–0084. The information collected on form SSA–1323 is used to determine the dates and results of psychometric testing and how the impairment affects the individual's progress in school. The respondents are public and private school officials and agencies which provide medical treatment to the applicant or claimant for benefits.

Number of Responses: 7,000.
Average Burden Per Response: 20 minutes.
Estimated Annual Burden: 2,333.

7. Report on Individual with Mental Impairment—0960–0058. The information collected on form SSA–824 is used to determine a claimant's physical and mental status prior to making a disability determination. The respondents are treating physicians, medical directors, medical record libraries, and other health professionals.

Number of Responses: 50,000.
Frequency of Response: 1.
Average Burden Per Response: 36 minutes.
Estimated Annual Burden: 30,000.

8. Claimant's Recent Medical Treatment—0960–0292. The information collected on form HA–4631

is used by the Social Security Administration to provide an updated medical history for a disability claimant who requests a hearing. The respondents are claimants for disability benefits who have requested a hearing and do not have updated medical evidence in file.

Number of Respondents: 211,006.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 35,168.

9. Request for Review of Hearing Decision/Order—0960–0277. The information collected on form HA–520 is needed in order to afford claimants their statutory right under the Social Security Act to request review of a hearing decision. The data will be used to determine the course of action appropriate to resolve each issue. The respondents are claimants denied benefits or dissatisfied with a decision made regarding their claim.

Number of Respondents: 87,632.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 14,605.

10. Claimant's Work Background—0960–0300. The information collected on form HA–4633 is used by the Social Security Administration in cases in which claimants for disability benefits have requested a hearing on the decision regarding their claim. A completed form provides an updated summary of a claimant's past relevant work and helps the Administrative Law Judge to better decide whether or not the claimant is disabled. The respondents are claimants who have requested a hearing and whose relevant work background is not in file.

Number of Respondents: 200,958.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 50,240.

11. Medical Use Report, 20 CFR 416.268—0960–0552. The information required by this regulation is used by the Social Security Administration to determine if an individual is entitled to special Supplemental Security Income (SSI) payments. The respondents are SSI recipients whose payments were stopped based on earnings.

Number of Respondents: 25,000.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 1,250 hours.

Written comments and recommendations regarding these information collections should be sent within 30 days of the date of this publication. Comments may be directed to OMB and SSA at the following addresses:

(OMB), Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, Washington, D.C. 20503

(SSA), Social Security Administration, DCFAM, Attn: Judith T. Hasche, 6401 Security Blvd, 1–A–21 Operations Bldg., Baltimore, MD 21235

Dated: May 23, 1996.

Judith T. Hasche,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 96–13595 Filed 5–30–96; 8:45 am]

BILLING CODE 4190–29–U

STATE DEPARTMENT

[Public Notice No. 2394]

Overseas Security Advisory Council; Notice of Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on Friday, June 28, 1996, at the Sheraton Suites, Wilmington , Delaware. Pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c) (1) and (4), it has been determined the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed. The agenda calls for the discussion of classified and corporate proprietary/security information as well as private sector physical and procedural security policies and protective programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, D.C. 20522–1003, phone: 202–663–0869.

Dated: May 16, 1996.

Gregorie W. Bujac,

Director of the Diplomatic Security Service.

[FR Doc. 96–13621 Filed 5–30–96; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board [1]

[STB Finance Docket No. 32952]

Great Western Lines, LLC—Acquisition Exemption—Burlington Northern Railroad Company

Great Western Lines, LLC (GWL), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire approximately 23 miles of rail line owned by Burlington Northern Railroad Company (BN) as follows: (i) between milepost 76.5 at Fort Collins, CO, and milepost 98.9 at Greeley, CO; and (ii) BN's interchange track at Loveland, CO, between the end of that track and a point 10 feet south of Tenth Street in Loveland. GWL will also acquire 1 mile of incidental overhead trackage rights over the rail lines owned by BN as follows: (i) between milepost 76.5 at Fort Collins, CO, and BN's Rex Rail Yard at Fort Collins; and (ii) all tracks in BN's Rex Rail Yard.

The transaction was expected to be consummated on or after May 20, 1996.

This transaction is related to STB Finance Docket No. 32953, *Neptune Partners, Ltd.—Continuance in Control Exemption—Great Western Lines, LLC,* wherein Neptune Partners Ltd. has concurrently filed a verified notice to continue in control of GWL, upon its becoming a Class III rail carrier. In addition, Great Western Railway of Colorado, LLC (GWC) has concurrently filed a trackage rights exemption in STB Finance Docket No. 32954, *Great Western Railway of Colorado, LLC—Trackage Rights Exemption—Great Western Lines, LLC,* wherein GWC will be the operator of the rail lines being acquired by GWL and over which GWL will acquire incidental trackage rights in STB Finance Docket No. 32952.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32952, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue NW., Washington, DC 20423. In addition, a copy of each pleading must be served on Karl Morell, Ball, Janik & Novack, Suite 1035, 1101 Pennsylvania Avenue NW., Washington, DC 20004.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901.

Decided: May 24, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–13688 Filed 5–30–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 32954]

Great Western Railway of Colorado, LLC—Trackage Rights Exemption—Great Western Lines, LLC

Great Western Lines, LLC (GWL), which will become a Class III carrier by virtue of its acquisition in a concurrently filed notice of exemption in *Great Western Lines, LLC—Acquisition Exemption—Burlington Northern Railroad Company,* STB Finance Docket No. 32952 (ICC served May 31, 1996), will agree to grant local and assign overhead trackage rights to Great Western Railway of Colorado, LLC (GWC), also a Class III rail carrier. GWL will grant GWC local trackage rights over GWL's rail lines as follows: (i) between milepost 76.5 at Fort Collins, CO, and milepost 98.9 at Greeley, CO; and (ii) GWL's interchange track at Loveland, CO. GWL will assign to GWC overhead trackage rights being acquired by GWL over Burlington Northern Railroad Company's (BN's) lines as follows: (i) Between milepost 76.5 at Fort Collins, CO, and BN's Rex Rail Yard at Fort Collins; and (ii) all tracks in BN's Rex Rail Yard.

The trackage rights agreement will become effective immediately upon the consummation of the transaction in STB Finance Docket No. 32952.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32954, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue NW., Washington, DC 20423. In addition, a copy of each pleading must be served on Karl Morell, Ball, Janik & Novack, 1101 Pennsylvania Avenue NW., Washington, DC 20004.

Decided: May 24, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–13686 Filed 5–30–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 32953]

Neptune Partners, Ltd.—Continuance in Control Exemption—Great Western Lines, LLC

Neptune Partners, Ltd. (Neptune), a noncarrier, has filed a notice of exemption to continue in control of Great Western Lines, LLC (GWL), upon GWL's becoming a Class III rail carrier.

The transaction was expected to be consummated on or after May 20, 1996.

This transaction is related to STB Finance Docket No. 32952, *Great Western Lines, LLC—Acquisition Exemption—Burlington Northern Railroad Company,* wherein GWL seeks to acquire certain rail lines from the Burlington Northern Railroad Company.

Neptune owns and controls one existing Class III common carrier by rail: Northern Ohio & Western Railway, LLC (NOWRR), operating in Ohio.

Neptune states that: (i) the railroads will not connect with each other; (ii) the continuance in control is not part of a series of anticipated transactions that would connect GWL with NOWRR; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32953, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Karl Morell, Ball, Janik & Novack, 1101 Pennsylvania Avenue, N.W., Suite 1035, Washington, DC 20004.

Decided: May 24, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–13689 Filed 5–30–96; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 32959]

Union Pacific Railroad Company—Trackage Rights Exemption—Chicago, Central and Pacific Railroad Company

Chicago, Central and Pacific Railroad Company (CCP) has agreed to grant overhead trackage rights to Union Pacific Railroad Company (UP). CCP will grant UP overhead trackage rights in a north-south direction from the point of switch of the connection at CCP milepost 455.8, near Arion, to the point of switch of the connection at CCP milepost 512.2, near Council Bluffs, IA, a total distance of approximately 56.4 miles. The trackage rights are located in

Crawford, Harrison, and Pottawattamie Counties, IA.[2]

The transaction was scheduled to be consummated on, or as soon as possible after, the effective date of the exemption. Because the notice of exemption was filed on May 21, 1996, the transaction could be consummated no sooner than May 28, 1996.

The purposes of the trackage rights are: (1) to allow UP to operate over an alternate line while UP's parallel line is undergoing repair; and (2) to allow use of the trackage rights as required to alleviate congestion on UP's parallel track.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32959, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Joseph D. Anthofer, General Attorney, 1416 Dodge Street, No. 830, Omaha, NE 68179.

Decided: May 28, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–13687 Filed 5–30–96; 8:45 am]

BILLING CODE 4915–00–P

[2] On May 21, 1996, the Board concurrently received UP and CCP's request in STB Finance Docket No. 32959 (Sub-No. 1), *Petition for Partial Revocation of Class Exemption and for Temporary Exemption of Trackage Rights*, that the Board permit the trackage rights arrangement to extend only until August 1, 1996. That petition will be addressed by the Board in a separate decision.

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application For Permit Under 26 U.S.C. Chapter 52 Manufacturer of Tobacco Products or Proprietor of Export Warehouse and Application For Amended Permit Under 26 U.S.C. 5712 Manufacturer of Tobacco Products or Proprietor of Export Warehouse.

DATES: Written comments should be received on or before July 30, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7768.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Cliff Mullen, Wine, Beer & Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8181.

SUPPLEMENTARY INFORMATION:

Title: Application for Permit Under 26 U.S.C. Chapter 52 Manufacturer of Tobacco Products or Proprietor of Export Warehouse and Application for Amended Permit Under 26 U.S.C. 5712 Manufacturer of Tobacco Products or Proprietor of Export Warehouse.

OMB Number: 1512–0398.

Form Number: ATF F 2093 (5200.3) amd ATF F 2098 (5200.16).

Abstract: These forms and any additional supporting documentation are used by tobacco industry members to obtain and amend permits necessary to engage in business as a manufacturer of tobacco products or proprietor of export warehouse.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 328.

Estimated Time Per Respondent: 3.

Estimated Total Annual Burden Hours: 3.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Also, ATF requests information regarding any monetary expenses you may incur while completing these forms.

Dated: May 23, 1996.

John W. Magaw,

Director.

[FR Doc. 96–13672 Filed 5–30–96; 8:45 am]

BILLING CODE 4810–31–P

Internal Revenue Service

Proposed Collection; Comment Request For Form 1040A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning revisions to Form 1040A, U.S. Individual Income Tax Return.

DATES: Written comments should be received on or before July 30, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Individual Income Tax Return.

OMB Number: 1545–0085.

Form Number: 1040A.

Abstract: Form 1040A and its schedules are used by individuals to report their income subject to income tax and to compute their correct tax liability. The information is used to verify that the items reported on the form are correct and is also for statistics use.

Current Actions: Changes to Form 1040A—

1. Lines 31b, c, and d, requesting direct deposit information were added to page 2. This will increase the number of taxpayers electing direct deposit, and relieve taxpayers from the burden of having to attach Form 8888.

2. Line 18b, which had indicated that the taxpayer could be claimed as a dependent on someone else's return, was deleted to make room for the direct deposit information.

3. Line 23 was revised. In addition to making room for the direct deposit information, this change reduces taxpayer burden by removing checkboxes.

4. The checkbox from line 29a, indicating Form 1099 Federal income tax withheld was included on that line, was deleted to reduce taxpayer burden.

5. The exemption area on Form 1040A, page 1, was revised to reduce taxpayer burden. Columns 3 and 4 on line 6c, which were for the dependent's relationship, and the number of months lived in the taxpayer's home, were deleted. Line 6c, column 2, was revised to reflect section 742(c)(2)(B) of PL 103–465 which, for 1996, exempts taxpayers who have a dependent born after November 30, 1996 from the requirement to report the dependent's social security number. The entry spaces to the right of line 6c were revised and line 6d, which dealt with pre-1985 custody agreements, was deleted.

The instructions will be revised to reflect the changes made to Form 1040A.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 27,530,816.

Estimated Time Per Respondent: Varies.

Estimated Total Annual Burden Hours: 231,970,033.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Approved: May 16, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–13717 Filed 5–30–96; 8:45 am]

BILLING CODE 4830–01–U

UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

Final Environmental Assessment (EA) for Establishment of the Utah Lake Wetland Preserve and Finding of No Significant Impact; Notice of Availability

AGENCY: Utah Reclamation Mitigation and Conservation Commission.

ACTION: Notice of availability.

SUMMARY: The Final Environmental Assessment (EA) for Establishment of the Utah Lake Wetland Preserve (Preserve) and Finding of No Significant Impact (FONSI) are available. The EA was developed to determine the effects of acquiring private property interests, from willing sellers in the Goshen Bay and Benjamin Slough areas of Utah Lake, to establish the Preserve. The EA compared two alternatives, the preferred and a "no action" alternative. The Draft EA was developed with public input and the Final EA refined based upon public comment.

The most strongly voiced concern during public scoping involved potential drainage impacts to neighboring lands. EA analysis determined that the preferred action would not deliver any additional water to the Goshen Bay or Benjamin Slough areas, and that no substantial wetland developments were proposed which might impact hydrologic conditions over a broad area. Maintenance of existing cooperative drainage systems serving up-gradient lands would be allowed on acquired lands, subject to reasonable conditions and standard regulatory permitting. As a precaution, a site-specific hydrologic assessment will be conducted prior to certain restorative actions to guard against potential impacts from raised water tables on neighboring properties. This mitigation measure is highlighted in the FONSI.

DATES: The EA will be available on the publication of this notice.

ADDRESSES: Interested persons or organizations may request copies of the document by writing to Utah Lake Draft EA, Utah Reclamation Mitigation and Conservation Commission, 111 E. Broadway, Suite 310, Salt Lake City, Utah 84111.

FOR FURTHER INFORMATION CONTACT: Catherine Quinn, Telephone (801) 524–3146; Fax (801) 524–3148.

Authority: Pub. L. 102–575, 106 Stat. 4600, 4625, October 30, 1992.

Michael C. Weland,

Executive Director.

[FR Doc. 96–13622 Filed 5–30–96; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF VETERANS AFFAIRS

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well

as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received by no later than July 30, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document the VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0162.

Title and Form Number: Monthly Certification of Flight Training, VA Form 22–6553c.

Type of Review: Extension of a currently approved collection.

Need and Uses: Public Law 101–237 reinstated the VA authority to pay educational assistance for the pursuit of flight training to veterans, servicemembers and selected reservists beginning on September 30, 1990, and ending on September 30, 1994, under chapter 30, title 38, U.S.C., and chapter 1606, title 10, U.S.C. Benefits are payable monthly based on the hours and type of flight instruction completed during the month, the type of aircraft used and dual training. Public Law 102–568 added solo flight training as approved training effective October 1, 1992. Benefits are not payable after a student terminates training. Public Law 102–16 authorized the VA to pay education benefits for vocational flight training to individuals eligible for chapter 32 and section 903. Public Law 102–446, the Veterans' Benefits Improvement Act of 1994, removed the September 30, 1994, ending date for flight training. Trainees eligible for benefits under chapters 30, 32, or 1606, or section 903 may receive benefits for enrolling in and pursuing approved vocational flight training. Benefits are limited to 60 percent of the approved cost of the courses. These provisions are effective October 1, 1994. VA Form 22–6553c serves as the report of flight training pursued and the termination of training.

Current Actions: The form is used by students (veterans, servicemembers and reservists) and flight schools to report the hours and costs of flight training received and the termination of training.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions.

Estimated Annual Burden: 6,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, Telephone (202) 273–8032 or FAX (202) 273–5981.

Dated: May 14, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–13598 Filed 5–30–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received by no later than July 30, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document the VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0383.

Title and Form Number: Application for Educational Assistance Test Program Benefits (Section 901, PL 96–342), VA Form 22–8889.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used by individual under the Educational Assistance Test Program (EATP) to apply for educational benefits. The VBA uses the information to determine eligibility for EATP benefits.

Current Actions: VA is authorized to pay benefits under EATP. Subsistence benefits are payable monthly based on full-time or part-time training as certified by the school. Assistance benefits are payable once a term, quarter or semester for tuition, fees, books and other course related expenses. Benefits are not payable when training is interrupted, discontinued or completed. Without the information on VA Form 22–8889, the VBA would be unable to determine the applicant's basic eligibility for benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 125 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 250.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), 810 Vermont Avenue, NW., Washington, DC 20420, Telephone (202) 273–8032 or FAX (202) 273–5981.

Dated: May 17, 1996.

By direction of the Secretary.

William T. Morgan,

Management Analyst.

[FR Doc. 96–13599 Filed 5–30–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the

Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received by no later than July 30, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document the VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0016.

Title and Form Number: Claim for Disability Insurance Benefits,VA Form 29–357.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used by the policyholder to claim disability insurance benefits on National Service Life Insurance and United States Government Life Insurance policies.

Current Actions: The information collected on the form is used by the VBA personnel to establish the insured's eligibility for disability insurance benefits

Affected Public: Individuals or households.

Estimated Annual Burden: 14,175 hours.

Estimated Average Burden Per Respondent: 1 hour and 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 8,100.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–8032 or FAX (202) 273–5981.

Dated: May 14, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–13600 Filed 5–30–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received by no later than July 30, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document the VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0099.

Title and Form Number: Request for Change of Program or Place of Training—Survivors' and Dependents' Educational Assistance, VA Form 22–5495.

Type of Review: Extension of a currently approved collection.

Need and Uses: This form is completed by a veteran's spouse, surviving spouse, or child to indicate a change in program and/or place of training. The VBA uses the information to determine if the student is eligible for dependents' educational assistance for the new program and/or place of training.

Current Actions: Spouses, surviving spouses, and children who are eligible for Dependents' Educational Assistance are permitted one change of their educational program provided the new program is suitable to their aptitudes, interests, and abilities. In addition, they may change their place of training upon application to the VBA.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,850 hours.

Estimated Average Burden Per Respondent: 30 minutes per application.

Frequency of Response: On occasion.

Estimated Number of Respondents: 9,700.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, Telephone (202) 273–8032 or FAX (202) 273–5981.

Dated: May 14, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–13601 Filed 5–30–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received by no later than July 30, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document the VBA is

soliciting comments concerning the following information collection:

OMB Control Number: 2900–0139.

Title and Form Number: Notice—Payment Not Applied, VA Form 29–4499a.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used by veterans to reinstate their Government Life Insurance. The information collected is used by the VBA personnel to determine eligibility of the applicant for reinstatement of his/her life insurance.

Current Actions: The form is used by the policyholder to reinstate a Government Life Insurance policy.

Affected Public: Individuals or households.

Estimated Annual Burden: 300 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,200.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–8032 or FAX (202) 273–5981.

Dated: May 14, 1996.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 96–13602 Filed 5–30–96; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received by July 30, 1996.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document the VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0539.

Title and Form Number: Application for Supplemental Service Disabled Veterans (RH) Life Insurance, VA Forms 29–0188, 29–0189, and 29–0190.

Type of Review: Revision of a currently approved collection.

Need and Uses: These forms are used by veterans to apply for Supplemental Service-Disabled Veterans Insurance. The information is used by the VBA to determine eligibility for insurance.

Current Actions: No insurance may be granted unless a completed application has been received.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,333 hours.

Estimated Average Burden Per Respondent: 20 minutes..

Frequency of Response: On occasion.

Estimated Number of Respondents: 10,000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Department of Veterans Affairs, Attn: Jacquie McCray, Information Management Service (045A4), 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–8032 or FAX (202) 273–5981.

Dated: May 17, 1996.

William T. Morgan,

Management Analyst.

[FR Doc. 96–13603 Filed 5–30–96; 8:45 am]

BILLING CODE 8320–01–P–M

federal register

Friday
May 31, 1996

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 412, et al.

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal year 1997 Rates; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412, 413, and 489

[BPD–847–P]

RIN 0938–AH34

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1997 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement necessary changes arising from our continuing experience with the systems. In addition, in the addendum to this proposed rule, we are describing proposed changes in the amounts and factors necessary to determine prospective payment rates for Medicare hospital inpatient services for operating costs and capital-related costs. These changes would be applicable to discharges occurring on or after October 1, 1996. We are also setting forth proposed rate-of-increase limits as well as proposing changes for hospitals and hospital units excluded from the prospective payment systems.

DATES: Comments will be considered if received at the appropriate address, as provided below, no later than 5 p.m. on July 31, 1996.

ADDRESSES: Mail written comments (an original and 3 copies) to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–847–P, P.O. Box 7517, Baltimore, MD 21207–0517.

If you prefer, you may deliver your written comments (an original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–09–26, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–847–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Nancy Edwards (410) 786–4531, Operating Prospective Payment, DRG, Wage Index Issues.

Tzvi Hefter (410) 786–4529, Capital Prospective Payment, Excluded Hospitals.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary

Under section 1886(d) of the Social Security Act (the Act), a system of payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively-set rates was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment for hospital inpatient operating costs is made at a predetermined, specific rate for each hospital discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). The regulations governing the hospital inpatient prospective payment system are located in 42 CFR part 412. On September 1, 1995, we published a final rule with comment period (60 FR 45778) to implement changes to the prospective payment system for hospital operating costs beginning with Federal fiscal year (FY) 1996.

For cost reporting periods beginning before October 1, 1991, hospital inpatient operating costs were the only costs covered under the prospective payment system. Payment for capital-related costs had been made on a reasonable cost basis because, under sections 1886(a)(4) and (d)(1)(A) of the Act, those costs had been specifically excluded from the definition of inpatient operating costs. However, section 4006(b) of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203) revised section 1886(g)(1) of the Act to require that, for hospitals paid under the prospective payment system for operating costs, capital-related costs would also be paid under a prospective payment system effective with cost reporting periods beginning on or after October 1, 1991. As required by section 1886(g) of the Act, we replaced the reasonable cost-based payment methodology with a prospective payment methodology for hospital inpatient capital-related costs. Under the new methodology, effective for cost reporting periods beginning on or after October 1, 1991, a predetermined payment amount per discharge is made for Medicare inpatient capital-related costs. (See subpart M of 42 CFR part 412, and the August 30, 1991 final rule (56 FR 43358) for a complete discussion of the prospective payment system for hospital inpatient capital-related costs.)

B. Major Contents of This Proposed Rule

In this proposed rule, we are setting forth proposed changes to the Medicare hospital inpatient prospective payment systems for both operating costs and capital-related costs. This proposed rule would be effective for discharges occurring on or after October 1, 1996. Following is a summary of the major changes that we are proposing to make:

1. Changes to the DRG Classifications and Relative Weights

As required by section 1886(d)(4)(C) of the Act, we must adjust the DRG classifications and relative weights at least annually. Our proposed changes for FY 1997 are set forth in section II of this preamble.

2. Changes to the Hospital Wage Index

In section III of this preamble, we discuss revisions to the wage index and the annual update of the wage data. Specific issues addressed in this section include:

- FY 1997 wage index update.

- Revisions to the wage index based on hospital redesignations.
- Solicitation of public comment on possible changes to the following:

—Contract labor—expansion of allowable costs.

—Revision in Puerto Rico labor market areas.

- Medicare Geographic Classification Review Board—composition and criteria.

3. Rebasing and Revision of the Hospital Market Baskets

In section IV of this preamble, we discuss our proposal to use a rebased and revised hospital market basket in developing the FY 1997 update factor for the operating prospective payment rates, the capital prospective payment rates, and the excluded hospital rate-of-increase limits.

4. Other Changes to the Prospective Payment System for Inpatient Operating Costs

In section V of this preamble, we discuss several provisions of the regulations in 42 CFR parts 412, 413, and 489 and set forth certain proposed changes concerning the following:

- Sole community hospitals.
- Rural referral centers.
- Disproportionate share adjustment.
- Direct graduate medical education programs.
- Hospital distribution of "An Important Message from Medicare."

5. Changes and Clarifications to the Prospective Payment System for Capital-Related Costs

In section VI of this preamble, we discuss several provisions of the regulations in 42 CFR part 412 and set forth certain proposed changes concerning the following:

- Use of simplified cost accounting.
- The capital Federal and hospital-specific rates.

6. Changes for Hospitals and Hospital Units Excluded From the Prospective Payment Systems

In section VII of this preamble, we discuss a clarification concerning the calculation of payments to hospitals excluded from the prospective payment system.

7. Determining Prospective Payment Operating and Capital Rates and Rate-of-Increase Limits

In the addendum to this proposed rule, we set forth proposed changes to the amounts and factors for determining the FY 1997 prospective payment rates for operating costs and capital-related costs. We are also proposing update factors for determining the rate-of-increase limits for cost reporting periods beginning in FY 1997 for hospitals and hospital units excluded from the prospective payment system. In addition, we have included a detailed discussion of our methodology for setting thresholds for outlier cases. We are inviting comments on our methodology and any suggestions for changes in that methodology that could help us better predict outlier payments.

8. Impact Analysis

In Appendix A, we set forth an analysis of the impact that the proposed changes described in this rule would have on affected entities.

9. Capital Acquisition Model

Appendix B contains the technical appendix on the proposed FY 1997 capital acquisition model.

10. Rebased Market Basket Data Sources

Appendix C sets forth the data sources used to determine the market basket relative weights and choice of price proxies.

11. Report to Congress on the Update Factor for Prospective Payment Hospitals and Hospitals Excluded From the Prospective Payment System

Section 1886(e)(3)(B) of the Act requires that the Secretary report to Congress on our initial estimate of an update factor for FY 1997 for both hospitals included in and hospitals excluded from the prospective payment systems. This report is included as Appendix D to this proposed rule.

12. Proposed Recommendation of Update Factor for Hospital Inpatient Operating Costs

As required by sections 1886(e)(4) and (e)(5) of the Act, Appendix E provides our recommendation of the appropriate percentage change for FY 1997 for the following:

- Large urban area and other area average standardized amounts (and hospital-specific rates applicable to sole community hospitals) for hospital inpatient services paid for under the prospective payment system for operating costs.
- Target rate-of-increase limits to the allowable operating costs of hospital inpatient services furnished by hospitals and hospital units excluded from the prospective payment system.

13. Discussion of Prospective Payment Assessment Commission Recommendations

The Prospective Payment Assessment Commission (ProPAC) is directed by section 1886(e)(2)(A) of the Act to make recommendations on the appropriate percentage change factor to be used in updating the average standardized amounts. In addition, section 1886(e)(2)(B) of the Act directs ProPAC to make recommendations regarding changes in each of the Medicare payment policies under which payments to an institution are prospectively determined. In particular, the recommendations relating to the hospital inpatient prospective payment systems are to include recommendations concerning the number of DRGs used to classify patients, adjustments to the DRGs to reflect severity of illness, and changes in the methods under which hospitals are paid for capital-related costs. Under section 1886(e)(3)(A) of the Act, the recommendations required of ProPAC under sections 1886(e)(2)(A) and (B) of the Act are to be reported to Congress not later than March 1 of each year.

We are printing ProPAC's March 1, 1996 report, which includes its recommendations, as Appendix F of this document. The recommendations, and the actions we are proposing to take with regard to them (when an action is recommended), are discussed in detail in the appropriate sections of this preamble, the addendum, or the appendices to this proposed rule. See section VIII of this preamble for specific information concerning where individual recommendations are addressed. For a brief summary of the ProPAC recommendations, we refer the reader to the beginning of the ProPAC report as set forth in Appendix F of this proposed rule. For further information relating specifically to the ProPAC report, contact ProPAC at (202) 401–8986.

II. Proposed Changes to DRG Classifications and Relative Weights

A. Background

Under the prospective payment system, we pay for inpatient hospital services on the basis of a rate per discharge that varies by the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case takes an individual hospital's payment rate per case and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the average resources used to treat cases in all DRGs.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account

for changes in resource consumption. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and relative weights annually. These adjustments are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The proposed changes to the DRG classification system and the proposed recalibration of the DRG weights for discharges occurring on or after October 1, 1996 are discussed below.

B. DRG Reclassification

1. General

Cases are classified into DRGs for payment under the prospective payment system based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The diagnosis and procedure information is reported by the hospital using codes from the International Classification of Diseases, Ninth Edition, Clinical Modification (ICD–9–CM). The Medicare fiscal intermediary enters the information into its claims system and subjects it to a series of automated screens called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before classification into a DRG can be accomplished.

After screening through the MCE and any further development of the claims, cases are classified by the GROUPER software program into the appropriate DRG. The GROUPER program was developed as a means of classifying each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). It is used both to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights and to classify current cases for purposes of determining payment. The records for all Medicare hospital inpatient discharges are maintained in the Medicare Provider Analysis and Review (MedPAR) file. The data in this file are used to evaluate possible DRG classification changes and to recalibrate the DRG weights.

Currently, cases are assigned to one of 492 DRGs in 25 major diagnostic categories (MDCs). Most MDCs are based on a particular organ system of the body (for example, MDC 6, Diseases and Disorders of the Digestive System); however, some MDCs are not constructed on this basis since they involve multiple organ systems (for example, MDC 22, Burns).

In general, principal diagnosis determines MDC assignment. However, there are five DRGs to which cases are assigned on the basis of procedure codes rather than first assigning them to an MDC based on the principal diagnosis. These are the DRGs for liver, bone marrow, and lung transplant (DRGs 480, 481, and 495, respectively) and the two DRGs for tracheostomies (DRGs 482 and 483). Cases are assigned to these DRGs before classification to an MDC.

Within most MDCs, cases are then divided into surgical DRGs (based on a surgical hierarchy that orders individual procedures or groups of procedures by resource intensity) and medical DRGs. Medical DRGs generally are differentiated on the basis of diagnosis and age. Some surgical and medical DRGs are further differentiated based on the presence or absence of complications or comorbidities (hereafter CC).

Generally, GROUPER does not consider other procedures; that is, nonsurgical procedures or minor surgical procedures generally not performed in an operating room are not listed as operating room (OR) procedures in the GROUPER decision tables. However, there are a few non-OR procedures that do affect DRG assignment for certain principal diagnoses, such as extracorporeal shock wave lithotripsy for patients with a principal diagnosis of urinary stones.

The changes we are proposing to make to the DRG classification system for FY 1997 and other decisions concerning DRGs are set forth below.

2. Pre-MDC DRGs

Effective October 1, 1994, ICD–9–CM procedure code 41.04, Autologous hematopoietic stem cell transplant, was created to capture the transplantation of stem cells obtained from bone marrow or peripheral blood. At that time, we designated the code as non-OR. This transplant procedure was previously assigned to procedure code 99.73, Therapeutic erythrocytapheresis, which is designated as a non-OR procedure. When we created this code, we received comments requesting that it be designated as an OR procedure and assigned to DRG 481 (Bone Marrow Transplant) based on the resource use associated with the type of transplant. However, as we stated in the September 1, 1994 final rule (59 FR 45340), when a new code is introduced, our longstanding practice is to assign it to the same DRG category as its predecessor code. One compelling reason for this practice is our inability to move the cases associated with a new code to a new DRG assignment as part of DRG reclassification and recalibration. Because we could not separately identify the stem cell transplant cases from the other cases coded with 99.73 in order to reclassify them and their charges to a new DRG, we were unable to predict the new weights of both the DRGs in which this code currently is classified and the new DRG to which it would be assigned. Therefore, we were prevented from redesignating code 41.04 as an OR procedure or assigning it to a DRG. However, we stated that we would analyze the stem cell cases as soon as the FY 1995 cases were available.

This year, the FY 1995 Medicare Provider Analysis and Review (MedPAR) file is available for use in DRG analysis and weight setting for FY 1997. In the December 1995 update to the FY 1995 MedPAR file, there are a total of 178 cases reporting the performance of a stem cell transplant. Of that number, 13 cases also reported the performance of a bone marrow transplant. Those cases were removed from our analysis because they are already classified to DRG 481. Of the remaining 165 cases, 100 cases did not meet the coverage criteria for Medicare payment. As set forth in the Medicare Coverage Issues Manual at section 35–30.1 (see Transmittal No. 84, April 1996), autologous stem cell transplants are not covered when performed for the following conditions:

- Acute leukemia not in remission (diagnosis codes 204.00, 205.00, 206.00, 207.00, and 208.00).
- Chronic granulocytic leukemia (diagnosis codes 205.10 and 205.11).
- Solid tumors (other than neuroblastomas) (diagnosis codes 140.0 through 199.1)
- Multiple myeloma (diagnosis codes 203.00, 203.01 and 238.6).

After eliminating the noncovered cases, 65 cases of stem cell transplant remained. The average standardized charge for these cases was approximately $83,000. The average standardized charge for bone marrow transplant cases in the FY 1995 MedPAR file is approximately $98,000. Thus, since the average resource use associated with stem cell transplant is similar to that associated with bone marrow transplant, we are proposing to assign procedure code 41.04 to DRG 481 effective with discharges occurring on or after October 1, 1996. The overall average charge for stem cell and bone marrow combined is just under $93,000. In addition, we propose to designate stem cell transplant as an OR procedure.

3. MDC 1 (Diseases and Disorders of the Nervous System)

a. Sleep Apnea

We have received correspondence requesting that we review the DRG assignment of cases in which surgery is performed to correct obstructive sleep apnea (diagnosis code 780.57). When coded as a principal diagnosis, sleep apnea is assigned to DRGs 34 and 35 (Other Disorders of the Nervous System)[1] in MDC 1.

Recently, new surgical interventions to correct sleep apnea have been introduced. The procedures most frequently performed for this condition are the following:

Code and Description	
27.69	Other plastic repair of palate
29.4	Plastic operation on pharynx
29.59	Other repair of pharynx

Since none of these surgical procedures is assigned to MDC 1, cases of sleep apnea treated with one of these surgeries are assigned to DRG 468 (Extensive OR Procedure Unrelated to Principal Diagnosis) in the case of codes 25.59 and 78.49 or to DRG 477 (Nonextensive OR Procedure Unrelated to Principal Diagnosis) in the case of code 29.4.

We are proposing to address this situation by assigning the three surgical procedures to MDC 1. Based on the charges associated with these cases and the fact that they are not clinically similar to the other surgical DRGs in MDC 1, we are proposing to include them in DRGs 7 and 8 (Peripheral and Cranial Nerve and Other Nervous System Procedures).

b. Guillain-Barré Syndrome

Guillain-Barré syndrome (diagnosis code 357.0) is a post-infectious polyneuropathy in which severely affected patients may require ventilatory assistance and long stays in intensive care. In recognition of the high resource consumption associated with this diagnosis, effective with FY 1991, we reassigned code 357.0 from DRGs 18 and 19 (Cranial and Peripheral Nerve Disorders) to DRG 20 (Nervous System Infection Except Viral Meningitis). (See the September 4, 1990 final rule (55 FR 36024).) A commenter stated that although DRG 20 would provide a higher payment for these cases, it would still be inadequate to cover the costs of treating these patients, and we agreed that we would monitor this issue.

We have recently received requests that we again review this assignment. These commenters stated that the treatment for these cases remains very costly and often entails long hospital stays. Therefore, we conducted an analysis of the cases assigned to DRG 20 using the 10 percent random sample of the FY 1995 MedPAR file that we use for analyzing possible classification changes.

Cases coded with 357.0 comprise approximately 20 percent of the cases assigned to DRG 20. As the commenters predicted, the average standardized charges for these cases, approximately $22,400, was higher than the average charge for the DRG, approximately $17,100. However, the length of stay was only slightly higher, 9.1 days compared to 8.4. We believe that DRG 20 is the appropriate assignment clinically for Guillain-Barré cases and the average charge is well within the variation in charges for this DRG. In addition, DRG 20 is the most resource-intensive, and, thus, the highest-weighted medical DRG in MDC 1.

However, in reviewing the other cases assigned to DRG 20, we noted that the average charges for two diagnoses were significantly lower than the overall average charge. These diagnoses, herpes zoster of the nervous system (code 053.10) and herpes zoster of the nervous system, NEC (code 053.19) had average charges of only $7,700 and $7,100, respectively. They also had significantly lower average lengths of stay (4.4 and 4.2 days, respectively). Because these two diagnoses also account for approximately 20 percent of the cases in DRG 20, their low average charge has the effect of significantly lowering the average charge for the DRG. Removing these two codes from DRG 20 increases the average charge to approximately $20,000. After reviewing the remaining medical DRGs in MDC 1, we believe that reassigning codes 053.10 and 053.19 to DRGs 18 and 19 is appropriate both clinically and in terms of resource consumption. In the 10 percent MedPAR file, these DRGs had an average charge of approximately $8,000 and $5,300, respectively. Therefore, we are proposing to make this DRG classification change effective for FY 1997. This change would significantly increase the relative weight for DRG 20 and provide higher payment for the Guillain-Barré cases. The proposed weight for DRG 20 is 2.4782, an increase of 17 percent over the FY 1996 weight of 2.1157.

4. MDC 5 (Diseases and Diseases of the Circulatory System)

Effective for discharges occurring on or after October 1, 1995, we created a new code for insertion of a coronary artery stent (procedure code 36.06). Until creation of the new code, insertion of coronary artery stent had been included in the codes for percutaneous transluminal coronary angioplasty (PTCA) (procedure codes 36.01, 36.02, and 36.05).

As discussed above in section II.B.2, when a new code is introduced, our longstanding practice is to assign it to the same DRG category as its predecessor code or codes. Therefore, in the June 2, 1995 proposed rule, we assigned procedure code 36.06 to DRG 112 (Percutaneous Cardiovascular Procedures), the DRG to which PTCA is assigned. In response to comments received, in the September 1, 1995 final rule, we explained our policy on DRG assignment of new codes (60 FR 45785). We also stated that the resource use and other data associated with procedure code 36.06 will be available in the FY 1996 Medicare cases which are used for analysis as part of FY 1998 DRG changes. We will evaluate the DRG assignment of coronary artery stent insertion at that time.

Since publication of the September 1, 1995 final rule, we have received data on stent cases provided by the manufacturer of one of the two stent devices currently approved by the Food and Drug Administration (FDA). In addition, the manufacturer has provided us with an analysis of the charges and length of stay of approximately 7,500 Medicare patients who received stents in FY 1995. Because there was no code for the procedure during that year, the manufacturer matched its list of stent recipients with the FY 1995 MedPAR file.

The manufacturer's analysis found that the FY 1995 average charge for PTCA cases without stent is approximately $15,700 and the average charge for cases with stent is approximately $21,000. However, our analysis of the data shows that there is wide variation in the hospital standardized charges reported for cases with implant of coronary artery stent. Individual hospital average charges for these cases range from about $9,000 to over $45,000.

This inconsistency in the data illustrates why our policy of not reassigning new codes until we have collected an entire year of coded Medicare data for analysis is prudent. The uncertainty associated with using incomplete data collected outside the

[1] A single title combined with two DRG numbers is used to signify pairs. Generally, the first DRG is for cases with CC and the second DRG is for cases without CC. If a third number is included, it represents cases of patients who are age 0–17. Occasionally, a pair of DRGs is split on age>17 and age 0–17.

Medicare program that cannot be verified remains a problem. Therefore, we are not proposing any DRG assignment change for implant of coronary artery stent. As noted above, a full year of coded FY 1996 Medicare data will be available in early 1997 for analysis. We will review the data at that time, and any proposed DRG changes will be announced in the FY 1998 proposed rule.

5. MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue)

In the September 1, 1995 final rule (60 FR 45790), we responded to a comment we received regarding the DRG assignment in MDC 8 of bipolar hip replacement cases. The commenter requested that cases of bipolar hip replacement be assigned to DRGs 210, 211, and 212 (Hip and Femur Procedures Except Major Joint) rather than to its current assignment, DRG 209 (Major Joint and Limb Reattachment Procedures of Lower Extremity). The commenter stated that the procedure for partial hip replacement (code 81.52) is very similar to the procedure for open reduction of fracture of the femur with internal fixation (code 79.35), which is assigned to DRGs 210, 211, and 212. Further, the commenter believes that partial hip replacement patients are more frail individuals than the population that elects total hip replacement surgery and need longer hospital stays to recover.

In the September 1, 1995 final rule, we stated that we would reexamine this assignment as part of our DRG agenda for FY 1997. Using the FY 1995 MedPAR file, we compared charges and lengths of stay for cases assigned to DRG 209 in which the procedures 81.51 (total hip replacement), 81.52, and 81.53 (revision of hip replacement) were performed with the charges for the entire DRG. The average standardized charges for these cases are very similar to each other as well as the other cases assigned to DRG 209. The average charge was $18,310 for partial hip replacement, $19,924 for total hip replacement, and $23,094 for revision of hip replacement. The $1,278 difference between the average charge for partial hip replacement cases in DRG 209 and the average charge of $19,588 for all cases in DRG 209 is within the normal range of charges for that DRG. However, the average charge for cases in DRG 210 was $15,119, or $2,157 less than the partial hip replacement charges.

A comparison of lengths of stay yields slightly different results. The partial hip replacement cases in DRG 209 had an average stay of 8.6 days. The overall average lengths of stay for DRGs 209 and 210 were 6.7 days and 8.5 days, respectively. Based on these data alone, it would seem that the commenter is correct that partial hip replacement patients are more similar to the patients in DRG 210, in terms of hospital length of stay. However, we also must consider these cases' higher average charges. The higher charges of the partial hip replacement cases indicate that they are more resource-intense than the cases in DRG 210. The proposed relative weights for DRG 209 and 210 are 2.2617 and 1.8458, respectively. Therefore, we believe that DRG 209 is the most appropriate assignment for procedure code 81.52 so that payment will most closely relate to the costs of care for these patients.

6. Surgical Hierarchies

Some inpatient stays entail multiple surgical procedures, each one of which, occurring by itself, could result in assignment of the case to a different DRG within the MDC to which the principal diagnosis is assigned. It is, therefore, necessary to have a decision rule by which these cases are assigned to a single DRG. The surgical hierarchy, an ordering of surgical classes from most to least resource intensive, performs that function. Its application ensures that cases involving multiple surgical procedures are assigned to the DRG associated with the most resource-intensive surgical class.

Because the relative resource intensity of surgical classes can shift as a function of DRG reclassification and recalibration, we reviewed the surgical hierarchy of each MDC, as we have for previous reclassifications, to determine if the ordering of classes coincided with the intensity of resource utilization, as measured by the same billing data used to compute the DRG relative weights.

A surgical class can be composed of one or more DRGs. For example, in MDC 5, the surgical class "heart transplant" consists of a single DRG (DRG 103) and the class "coronary bypass" consists of two DRGs (DRGs 106 and 107). Consequently, in many cases, the surgical hierarchy has an impact on more than one DRG. The methodology for determining the most resource-intensive surgical class, therefore, involves weighting each DRG for frequency to determine the average resources for each surgical class. For example, assume surgical class A includes DRGs 1 and 2 and surgical class B includes DRGs 3, 4, and 5, and that the average charge of DRG 1 is higher than that of DRG 3, but the average charges of DRGs 4 and 5 are higher than the average charge of DRG 2. To determine whether surgical class A should be higher or lower than surgical class B in the surgical hierarchy, we would weight the average charge of each DRG by frequency (that is, by the number of cases in the DRG) to determine average resource consumption for the surgical class. The surgical classes would then be ordered from the class with the highest average resource utilization to that with the lowest, with the exception of "other OR procedures" as discussed below.

This methodology may occasionally result in a case involving multiple procedures being assigned to the lower-weighted DRG (in the highest, most resource-intensive surgical class) of the available alternatives. However, given that the logic underlying the surgical hierarchy provides that the GROUPER searches for the procedure in the most resource-intensive surgical class, which may sometimes occur in cases involving multiple procedures, this result is unavoidable.

We note that, notwithstanding the foregoing discussion, there are a few instances when a surgical class with a lower average relative weight is ordered above a surgical class with a higher average relative weight. For example, the "other OR procedures" surgical class is uniformly ordered last in the surgical hierarchy of each MDC in which it occurs, regardless of the fact that the relative weight for the DRG or DRGs in that surgical class may be higher than that for other surgical classes in the MDC. The "other OR procedures" class is a group of procedures that are least likely to be related to the diagnoses in the MDC but are occasionally performed on patients with these diagnoses. Therefore, these procedures should only be considered if no other procedure more closely related to the diagnoses in the MDC has been performed.

A second example occurs when the difference between the average weights for two surgical classes is very small. We have found that small differences generally do not warrant reordering of the hierarchy since, by virtue of the hierarchy change, the relative weights are likely to shift such that the higher-ordered surgical class has a lower average weight than the class ordered below it.

Based on the preliminary recalibration of the DRGs, we are proposing to modify the surgical hierarchy as set forth below. As we stated in the September 1, 1989 final rule (54 FR 36457), we are unable to test the effects of the proposed revisions to the surgical hierarchy and to reflect these changes in the proposed relative weights due to the unavailability of revised GROUPER software at the time this proposed rule is prepared. Rather, we simulate most major classification changes to approximate the placement of cases under the proposed reclassification and then determine the average charge for each DRG. These average charges then serve as our best estimate of relative resource use for each surgical class. We test the proposed surgical hierarchy changes after the revised GROUPER is received and reflect the final changes in the DRG relative weights in the final rule. Further, as discussed below in section II.C of this preamble, we anticipate that the final recalibrated weights will be somewhat different from those proposed, since they will be based on more complete data. Consequently, further revision of the hierarchy, using the above principles, may be necessary in the final rule.

At this time, we would revise the surgical hierarchy for the Pre-MDC DRGs, MDC 3 (Diseases and Disorders of the Ear, Nose, Mouth and Throat), and MDC 10 (Endocrine, Nutritional and Metabolic Diseases and Disorders) as follows:

- In the Pre-MDC DRGs, we would reorder Tracheostomy Except for Face, Mouth and Neck Diagnoses (DRG 483) above Liver Transplant (DRG 480).
- In MDC 3, we would reorder Cleft Lip and Palate Repair (DRG 52) and Sinus and Mastoid Procedures (DRGs 53 and 54) above Tonsillectomy and Adenoidectomy, Except Tonsillectomy and/or Adenoidectomy Only (DRGs 57 and 58).
- In MDC 10, we would reorder Adrenal and Pituitary Procedures (DRG 286) above Amputation of Lower Limb for Endocrine, Nutritional, and Metabolic Disorders (DRG 285).

7. Refinement of Complications and Comorbidities List

There is a standard list of diagnoses that are considered complications or comorbidities (CCs). We developed this list using physician panels to include those diagnoses that, when present as a secondary condition, would be considered a substantial complication or comorbidity.

In previous years, we have made changes to the standard list of CCs, either by adding new CCs or deleting CCs already on the list. At this time, we do not propose to delete any of the diagnosis codes on the CC list.

In the September 1, 1995 final rule (60 FR 45782), we added diagnosis code 008.49 (Bacterial enteritis) to the CC list. In response to a request from one commenter that we also add diagnosis code 008.45 (Clostridium difficile), we stated that we would review that request as part of our DRG analysis for FY 1997. We have reevaluated diagnosis code 008.45 as well as the remainder of the "family" of codes assigned to Intestinal infections due to other specified bacteria (008.41, 008.42, 008.43, 008.44, 008.46, and 008.47). Our analysis shows that all of these diagnoses, when present as a secondary condition, do lead to higher resource use. Therefore, we are proposing to add the following diagnosis codes to the CC list:

008.41 Intestinal infections due to staphylococcus
008.42 Intestinal infections due to pseudomonas
008.43 Intestinal infections due to campylobacter
008.44 Intestinal infections due to yersinia enterocolitica
008.45 Intestinal infections due to clostridium difficile
008.46 Intestinal infections due to other anaerobes
008.47 Intestinal infections due to other gram-negative bacteria

These diagnoses would be considered CCs for any principal diagnosis not shown in Table 6f, Additions to the CC Exclusions List (see discussion of CC Exclusions list in section V of the Addendum below).

This same commenter also requested that we add the following codes to the CC list:

331.0 Alzheimer's disease
423.9 Unspecified disease of the pericardium
348.5 Cerebral edema
333.4 Huntington's chorea
458.0 Orthostatic hypotension
458.9 Hypotension, not otherwise specified

Our analysis of these codes demonstrates that their presence as a secondary diagnosis does not significantly add to the resource use of the case. Therefore, we are not proposing to add them to the CC list.

Finally, the commenter suggested that the following diagnoses be added as cardiovascular complications for DRG 121 (Circulatory Disorders with AMI and Cardiovascular Complications, Discharged Alive):

434.xx Occlusion of cerebral arteries
436 Acute, but ill-defined, cerebrovascular disease

Using the 10 percent analysis file of the FY 1995 MedPAR data, we analyzed the cases assigned to DRG 121 that had these diagnoses coded as secondary conditions. The charges associated with those cases were indeed comparable to the other cases assigned to DRG 121. When we sought the advice of our medical specialists (physicians who work directly for or under contract with HCFA), however, they strongly opposed adding these codes to the list of conditions for DRG 121 based on the fact that these are not cardiovascular complications. Therefore, they are not clinically similar to other cases assigned to this DRG.

However, our analysis of this DRG did reveal a large variation in the charges and lengths of stay within this DRG. We believe that a close examination of the list of complicating conditions assigned to DRG 121 is needed. Therefore, we plan to perform a thorough analysis of the cases assigned to that DRG as part of our DRG analysis agenda for FY 1998. In the meantime, we are not proposing any change to DRG 121.

In the September 1, 1987 final notice concerning changes to the DRG classification system (52 FR 33143), we modified the GROUPER logic so that certain diagnoses included on the standard list of CCs would not be considered a valid CC in combination with a particular principal diagnosis. Thus, we created the CC Exclusions List. We made these changes to preclude coding of CCs for closely related conditions, to preclude duplicative coding or inconsistent coding from being treated as CCs, and to ensure that cases are appropriately classified between the complicated and uncomplicated DRGs in a pair.

In the May 19, 1987 proposed notice concerning changes to the DRG classification system (52 FR 18877), we explained that the excluded secondary diagnoses were established using the following five principles:

- Chronic and acute manifestations of the same condition should not be considered CCs for one another (as subsequently corrected in the September 1, 1987 final notice (52 FR 33154)).
- Specific and nonspecific (that is, not otherwise specified (NOS)) diagnosis codes for a condition should not be considered CCs for one another.
- Conditions that may not co-exist, such as partial/total, unilateral/bilateral, obstructed/unobstructed, and benign/malignant, should not be considered CCs for one another.
- The same condition in anatomically proximal sites should not be considered CCs for one another.
- Closely related conditions should not be considered CCs for one another.

The creation of the CC Exclusions List was a major project involving hundreds of codes. The FY 1988 revisions were intended to be only a first step toward refinement of the CC list in that the

criteria used for eliminating certain diagnoses from consideration as CCs were intended to identify only the most obvious diagnoses that should not be considered complications or comorbidities of another diagnosis. For that reason, and in light of comments and questions on the CC list, we have continued to review the remaining CCs to identify additional exclusions and to remove diagnoses from the master list that have been shown not to meet the definition of a CC. (See the September 30, 1988 final rule for the revision made for the discharges occurring in FY 1989 (53 FR 38485); the September 1, 1989 final rule for the FY 1990 revision (54 FR 36552); the September 4, 1990 final rule for the FY 1991 revision (55 FR 36126); the August 30, 1991 final rule for the FY 1992 revision (56 FR 43209); the September 1, 1992 final rule for the FY 1993 revision (57 FR 39753); the September 1, 1993 final rule for the FY 1994 revisions (58 FR 46278); the September 1, 1994 final rule for the FY 1995 revisions (59 FR 45334); and the September 1, 1995 rule for the FY 1996 revisions (60 FR 45782).)

We are proposing a limited revision of the CC Exclusions List to take into account the changes that will be made in the ICD–9–CM diagnosis coding system effective October 1, 1996, as well as the proposed CC changes described above. (See section II.B.8, below, for a discussion of ICD–9–CM changes.) These proposed changes are being made in accordance with the principles established when we created the CC Exclusions List in 1987.

The changes discussed above have been added to Table 6g, Additions to the CC Exclusions List, in section V of the Addendum to this proposed rule.

Tables 6g and 6h in section V of the Addendum to this proposed rule contain the proposed revisions to the CC Exclusions List that would be effective for discharges occurring on or after October 1, 1996. Each table shows the principal diagnoses with proposed changes to the excluded CCs. Each of these principal diagnoses is shown with an asterisk and the additions or deletions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

CCs that are added to the list are in Table 6g—Additions to the CC Exclusions List. Beginning with discharges on or after October 1, 1996, the indented diagnoses will not be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

CCs that are deleted from the list are in Table 6h—Deletions from the CC Exclusions List. Beginning with discharges on or after October 1, 1996, the indented diagnoses will be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

Copies of the original CC Exclusions List applicable to FY 1988 can be obtained from the National Technical Information Service (NTIS) of the Department of Commerce. It is available in hard copy for $92.00 plus $6.00 shipping and handling and on microfiche for $20.50, plus $4.00 for shipping and handling. A request for the FY 1988 CC Exclusions List (which should include the identification accession number, (PB) 88–133970) should be made to the following address: National Technical Information Service; United States Department of Commerce; 5285 Port Royal Road; Springfield, Virginia 22161; or by calling (703) 487–4650.

Users should be aware of the fact that all revisions to the CC Exclusions List (FYs 1989, 1990, 1991, 1992, 1993, 1994, 1995, and 1996) and those in Tables 6g and 6h of this document must be incorporated into the list purchased from NTIS in order to obtain the CC Exclusions List applicable for discharges occurring on or after October 1, 1996.

Alternatively, the complete documentation of the GROUPER logic, including the current CC Exclusions List, is available from 3M/Health Information Systems (HIS), which, under contract with HCFA, is responsible for updating and maintaining the GROUPER program. The current DRG Definitions Manual, Version 13.0, is available for $195.00, which includes $15.00 for shipping and handling. Version 14.0 of this manual, which will include the final FY 1997 DRG changes, will be available in October 1996 for $195.00. These manuals may be obtained by writing 3M/HIS at the following address: 100 Barnes Road; Wallingford, Connecticut 06492; or by calling (203) 949–0303. Please specify the revision or revisions requested.

8. Review of Procedure Codes in DRGs 468, 476, and 477 Each Year, We Review Cases Assigned to DRG 468

(Extensive OR Procedure Unrelated to Principal Diagnosis), DRG 476 (Prostatic OR Procedure Unrelated to Principal Diagnosis), and DRG 477 (Nonextensive OR Procedure Unrelated to Principal Diagnosis) in order to determine whether it would be appropriate to change the procedures assigned among these DRGs.

DRGs 468, 476, and 477 are reserved for those cases in which none of the OR procedures performed is related to the principal diagnosis. These DRGs are intended to capture atypical cases, that is, those cases not occurring with sufficient frequency to represent a distinct, recognizable clinical group. DRG 476 is assigned to those discharges in which one or more of the following prostatic procedures are performed and are unrelated to the principal diagnosis:

60.0 Incision of prostate
60.12 Open biopsy of prostate
60.15 Biopsy of periprostatic tissue
60.18 Other diagnostic procedures on prostate and periprostatic tissue
60.21 Transurethral prostatectomy
60.29 Other transurethral prostatectomy
60.61 Local excision of lesion of prostate
60.69 Prostatectomy NEC
60.81 Incision of periprostatic tissue
60.82 Excision of periprostatic tissue
60.93 Repair of prostate
60.94 Control of (postoperative) hemorrhage of prostate
60.95 Transurethral balloon dilation of the prostatic urethra
60.99 Other operations on prostate

All remaining OR procedures are assigned to DRGs 468 and 477, with DRG 477 assigned to those discharges in which the only procedures performed are nonextensive procedures that are unrelated to the principal diagnosis. The original list of the ICD–9–CM procedure codes for the procedures we consider nonextensive procedures if performed with an unrelated principal diagnosis was published in Table 6C in section IV of the Addendum to the September 30, 1988 final rule (53 FR 38591). As part of the final rules published on September 4, 1990, August 30, 1991, September 1, 1992, September 1, 1993, September 1, 1994, and September 1, 1995, we moved several other procedures from DRG 468 to 477. (See 55 FR 36135, 56 FR 43212, 57 FR 23625, 58 FR 46279, 59 FR 45336, and 60 FR 45783, respectively.)

a. Adding Procedure Codes to MDCs

We annually conduct a review of procedures producing DRG 468 or 477 assignments on the basis of volume of cases in these DRGs with each procedure. Our medical consultants then identify those procedures occurring in conjunction with certain principal diagnoses with sufficient frequency to justify adding them to one of the surgical DRGs for the MDC in which the diagnosis falls. This year's review did not identify any necessary changes; therefore, we are not proposing to move any procedures from DRG 468 or DRG 477 to one of the surgical DRGs.

b. Reassignment of Procedures Among DRGs 468, 476, and 477

We also reviewed the list of procedures that produce assignments to DRGs 468, 476, and 477 to ascertain if any of those procedures should be moved from one of these DRGs to another based on average charges and length of stay. Generally, we move only those procedures for which we have an adequate number of discharges to analyze the data. Based on our review this year, we are proposing to move one procedure from DRG 468 to DRG 477.

In reviewing the list of OR procedures that produce DRG 468 assignments, we analyzed the average charge and length of stay data for cases assigned to that DRG to identify those procedures that are more similar to the discharges that currently group to either DRG 476 or 477. We identified one procedure—Closed endoscopic biopsy of lung (code 33.27), a needle biopsy—that is significantly less resource intensive than the other procedures assigned to DRG 468. Therefore, we are proposing to move procedure code 33.27 to the list of procedures that result in assignment to DRG 477.

In reviewing the list of procedures assigned to DRG 477, we did not identify any procedures that should be assigned to either DRG 468 or 476. We did, however, identify the following procedures that we believe should be reassigned from an OR to a non-OR designation:

08.81 Linear repair of laceration of eyelid or eyebrow
08.82 Repair of laceration involving lid margin, partial-thickness
08.83 Other repair of laceration of eyelid, partial thickness
08.84 Repair of laceration involving lid margin, full-thickness
08.85 Other repair of laceration of eyelid, full-thickness
08.86 Lower eyelid rhytidectomy
08.87 Upper eyelid rhytidectomy
08.89 Other eyelid repair

Our analysis of the data associated with these eyelid repair procedures leads us to conclude that the procedures are performed following accidental injury or falls, incurred while the patient is in the hospital. These procedures, which are normally performed at bedside and do not necessitate a trip to the operating room, are significantly less resource intensive than other procedures designated as OR procedures. Therefore, we are proposing to change the procedures from OR to non-OR procedures. We note that these procedures are assigned to surgical DRGs in MDCs 2, 9, 21, 22, and 24. With this proposed change, cases in which procedure codes 08.81 through 08.89 are the only OR procedure codes listed would no longer be assigned to a surgical DRG.

All of these proposed changes would be effective with discharges occurring on or after October 1, 1996.

9. Changes to the ICD–9–CM Coding System

As discussed above in section II.B.1 of this preamble, the ICD–9–CM is a coding system that is used for the reporting of diagnoses and procedures performed on a patient. In September 1985, the ICD–9–CM Coordination and Maintenance Committee was formed. This is a Federal interdepartmental committee charged with the mission of maintaining and updating the ICD–9–CM. That mission includes approving coding changes, and developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The Committee is co-chaired by the National Center for Health Statistics (NCHS) and HCFA. The NCHS has lead responsibility for the ICD–9–CM diagnosis codes included in *Volume 1—Diseases: Tabular List* and *Volume 2—Diseases: Alphabetic Index*, while HCFA has lead responsibility for the ICD–9–CM procedure codes included in *Volume 3—Procedures: Tabular List and Alphabetic Index*.

The Committee encourages participation in the above process by health-related organizations. In this regard, the Committee holds public meetings for discussion of educational issues and proposed coding changes. These meetings provide an opportunity for representatives of recognized organizations in the coding fields, such as the American Health Information Management Association (AHIMA) (formerly American Medical Record Association (AMRA)), the American Hospital Association (AHA), and various physician specialty groups as well as physicians, medical record administrators, health information management professionals, and other members of the public to contribute ideas on coding matters. After considering the opinions expressed at the public meetings and in writing, the Committee formulates recommendations, which then must be approved by the agencies.

The Committee presented proposals for coding changes at public meetings held on May 5 and November 30, 1995, and finalized the coding changes after consideration of comments received at the meetings and in writing within 30 days following the November 1995 meeting. The initial meeting for consideration of coding issues for implementation in FY 1998 will be held on June 6, 1996. Copies of the minutes of these meetings may be obtained by writing to one of the co-chairpersons representing NCHS and HCFA. We encourage commenters to address suggestions on coding issues involving diagnosis codes to: Donna Pickett, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; NCHS; Room 1100; 6525 Belcrest Road; Hyattsville, Maryland 20782. Comments may be sent by E-mail to: alb8@nch09a.em.cdc.gov.

Questions and comments concerning the procedure codes should be addressed to: Patricia E. Brooks, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; HCFA, Office of Hospital Policy; Division of Prospective Payment System; C5–06–27; 7500 Security Boulevard; Baltimore, Maryland 21244–1850. Comments may be sent by E-mail to: pbrooks@hcfa.gov.

The ICD–9–CM code changes that have been approved will become effective October 1, 1996. The new ICD–9–CM codes are listed, along with their proposed DRG classifications, in Tables 6a and 6b (New Diagnosis Codes and New Procedure Codes, respectively) in section V of the Addendum to this proposed rule. As we stated above, the code numbers and their titles were presented for public comment in the ICD–9–CM Coordination and Maintenance Committee meetings. Both oral and written comments were considered before the codes were approved. Therefore, we are soliciting comments only on the proposed DRG classification.

Further, the Committee has approved the expansion of certain ICD–9–CM codes to require an additional digit for valid code assignment. Diagnosis codes that have been replaced by expanded codes, other codes, or have been deleted are in Table 6c (Invalid Diagnosis Codes). The procedure codes that have been replaced by expanded codes or have been deleted are in Table 6d (Invalid Procedure Codes). These invalid diagnosis and procedure codes will not be recognized by the GROUPER beginning with discharges occurring on or after October 1, 1996. The

corresponding new or expanded codes are included in Tables 6a and 6b. Revisions to diagnosis and procedure code titles are in Tables 6e (Revised Diagnosis Code Titles) and 6f (Revised Procedure Code Titles), which also include the proposed DRG assignments for these revised codes.

C. Recalibration of DRG Weights

We are proposing to use the same basic methodology for the FY 1997 recalibration as we did for FY 1996. (See the September 1, 1995 final rule (60 FR 45791).) That is, we would recalibrate the weights based on charge data for Medicare discharges. However, we would use the most current charge information available, the FY 1995 MedPAR file, rather than the FY 1994 MedPAR file. The MedPAR file is based on fully-coded diagnostic and surgical procedure data for all Medicare inpatient hospital bills.

The proposed recalibrated DRG relative weights are constructed from FY 1995 MedPAR data, based on bills received by HCFA through December 1995, from all hospitals subject to the prospective payment system and short-term acute care hospitals in waiver States. The FY 1995 MedPAR file includes data for approximately 10.6 million Medicare discharges.

The methodology used to calculate the proposed DRG relative weights from the FY 1995 MedPAR file is as follows:

- To the extent possible, all the claims were regrouped using the proposed DRG classification revisions discussed above in section II.B of this preamble. As noted in section II.B.6, due to the unavailability of revised GROUPER software, we simulate most major classification changes to approximate the placement of cases under the proposed reclassification. However, there are some changes that cannot be modeled.
- Charges were standardized to remove the effects of differences in area wage levels, indirect medical education costs, disproportionate share payments, and, for hospitals in Alaska and Hawaii, the applicable cost-of-living adjustment.
- The average standardized charge per DRG was calculated by summing the standardized charges for all cases in the DRG and dividing that amount by the number of cases classified in the DRG.
- We then eliminated statistical outliers, using the same criteria as was used in computing the current weights. That is, all cases that are outside of 3.0 standard deviations from the mean of the log distribution of both the charges per case and the charges per day for each DRG.
- The average charge for each DRG was then recomputed (excluding the statistical outliers) and divided by the national average standardized charge per case to determine the relative weight. A transfer case is counted as a fraction of a case based on the ratio of its length of stay to the geometric mean length of stay of the cases assigned to the DRG. That is, a 5-day length of stay transfer case assigned to a DRG with a geometric mean length of stay of 10 days is counted as 0.5 of a total case.
- We established the relative weight for heart and heart-lung, liver, and lung transplants (DRGs 103, 480, and 495) in a manner consistent with the methodology for all other DRGs except that the transplant cases that were used to establish the weights were limited to those Medicare-approved heart, heart-lung, liver, and lung transplant centers that have cases in the FY 1995 MedPAR file. (Medicare coverage for heart, heart-lung, liver, and lung transplants is limited to those facilities that have received approval from HCFA as transplant centers.)
- Acquisition costs for kidney, heart, heart-lung, liver, and lung transplants continue to be paid on a reasonable cost basis. Unlike other excluded costs, the acquisition costs are concentrated in specific DRGs (DRG 302 (Kidney Transplant); DRG 103 (Heart Transplant for heart and heart-lung transplants); DRG 480 (Liver Transplant); and DRG 495 (Lung Transplant)). Because these costs are paid separately from the prospective payment rate, it is necessary to make an adjustment to prevent the relative weights for these DRGs from including the effect of the acquisition costs. Therefore, we subtracted the acquisition charges from the total charges on each transplant bill that showed acquisition charges before computing the average charge for the DRG and before eliminating statistical outliers.

When we recalibrated the DRG weights for previous years, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight. We propose to use that same case threshold in recalibrating the DRG weights for FY 1997. Using the FY 1995 MedPAR data set, there are 37 DRGs that contain fewer than 10 cases. We computed the weights for the 37 low-volume DRGs by adjusting the FY 1996 weights of these DRGs by the percentage change in the average weight of the cases in the other DRGs. We note that the FY 1996 weights for the low-volume DRGs were recalculated based on non-Medicare data we acquired from 19 States. This was the first update of the weights since they were initially calculated for FY 1984 based on data from Maryland and Michigan. For a complete description of this process, see the September 1, 1995 final rule (60 FR 45781).

The weights developed according to the methodology described above, using the proposed DRG classification changes, result in an average case weight that is different from the average case weight before recalibration. Therefore, the new weights are normalized by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight before recalibration. This adjustment is intended to ensure that recalibration by itself neither increases nor decreases total payments under the prospective payment system.

Section 1886(d)(4)(C)(iii) of the Act requires that beginning with FY 1991, reclassification and recalibration changes be made in a manner that assures that the aggregate payments are neither greater than nor less than the aggregate payments that would have been made without the changes. Although normalization is intended to achieve this effect, equating the average case weight after recalibration to the average case weight before recalibration does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals because payment to hospitals is affected by factors other than average case weight. Therefore, as we have done in past years and as discussed in section II.A.4.b of the Addendum to this proposed rule, we are proposing to make a budget neutrality adjustment to assure that the requirement of section 1886(d)(4)(C)(iii) of the Act is met.

III. Proposed Changes to the Hospital Wage Index

A. Background

Section 1886(d)(3)(E) of the Act requires that, as part of the methodology for determining prospective payments to hospitals, the Secretary must adjust the standardized amounts "for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level." In accordance with the broad discretion conferred by this provision, we currently define hospital labor market areas based on the definitions of Metropolitan Statistical Areas (MSAs) (and New England County Metropolitan Areas), issued by the Office of Management and Budget. In addition, as discussed below, we adjust the wage

index to take into account the geographic reclassification of hospitals in accordance with sections 1886(d)(8)(B) and 1886(d)(10) of the Act.

Section 1886(d)(3)(E) of the Act also requires that the wage index be updated annually beginning October 1, 1993. Furthermore, this section provides that the Secretary base the update on a survey of wages and wage-related costs of short-term, acute care hospitals. The survey should measure, to the extent feasible, the earnings and paid hours of employment by occupational category, and must exclude the wages and wage-related costs incurred in furnishing skilled nursing services.

B. FY 1997 Wage Index Update

The proposed FY 1997 wage index (effective for hospital discharges occurring on or after October 1, 1996 and before October 1, 1997) is based on the data collected from the Medicare cost reports submitted by hospitals for cost reporting periods beginning in FY 1993 (the FY 1996 wage index is based on FY 1992 wage data). We propose to use the same categories of data that were used in the FY 1996 wage index. Therefore, the proposed FY 1997 wage index reflects the following:

- Total salaries and hours from short-term, acute care hospitals.
- Home office costs and hours.
- Fringe benefits associated with hospital and home office salaries.
- Direct patient care contract labor costs and hours.
- The exclusion of salaries and hours for nonhospital type services such as skilled nursing facility services, home health services, or other subprovider components that are not subject to the prospective payment system.

Finally, we are also proposing to make a minor revision to § 412.63(s)(1) to state clearly that we update the wage index annually as required by section 1886(d)(3)(E) of the Act.

1. Verification of Wage Data From the Medicare Cost Report

The data for the proposed FY 1997 wage index were obtained from Worksheet S–3, Part II of the Medicare cost report. The data file used to construct the proposed wage index includes FY 1993 data submitted to the Hospital Cost Report Information System (HCRIS) file as of the end of January 1996. As in past years, we performed an intensive review of the wage data, mostly through the use of edits designed to identify aberrant data.

Of the 5,222 hospitals in the data base, 2,814 hospitals had data elements that failed an initial edit. In mid-February 1996, intermediaries contacted hospitals to revise or verify data elements that resulted in the edit failures. Next, to check any revisions since the first edit, as well as to apply additional edits based on the distribution of the data, we subjected all of the data to edits a second time. The intermediaries were instructed to transmit any revisions in hospitals' wage data made as a result of this second review. As of March 14, 1996, only 21 hospitals still had unresolved data elements. These unresolved data elements are included in the calculation of the proposed FY 1997 wage index pending their resolution before calculation of the final FY 1997 wage index. We have instructed the intermediaries to complete their verification of questionable data elements and to transmit any changes to the wage data (through HCRIS) no later than June 17, 1996. We expect that all unresolved data elements will be resolved by that date, and that the revised data will be reflected in the final rule.

2. Computation of the Wage Index

The method used to compute the proposed wage index is as follows:

Step 1—As noted above, we are proposing to base the FY 1997 wage index on wage data reported on the FY 1993 cost reports. We gathered data from each of the non-Federal short-term, acute care hospitals for which data were reported on the Worksheet S–3, Part II of the Medicare cost report for the hospital's cost reporting periods beginning on or after October 1, 1992 and before October 1, 1993. In addition, we included data from a few hospitals that had cost reporting periods beginning in September 1992 and reported a cost reporting period exceeding 52 weeks. The data were included because no other data from these hospitals would be available for the cost reporting period described above, and particular labor market areas might be affected due to the omission of these hospitals. However, we generally describe these wage data as FY 1993 data.

Step 2—For each hospital, we subtracted the excluded salaries (that is, direct salaries attributable to skilled nursing facility services, home health services, and other subprovider components not subject to the prospective payment system) from gross hospital salaries to determine net hospital salaries. To determine total salaries plus fringe benefits, we added direct patient care contract labor costs, hospital fringe benefits, and any home office salaries and fringe benefits reported by the hospital, to the net hospital salaries.

Step 3—For each hospital, we adjusted the total salaries plus fringe benefits resulting from Step 2 to a common period to determine total adjusted salaries. To make the wage inflation adjustment, we used the percentage change in average hourly earnings for each 30-day increment from October 14, 1992 through September 15, 1994, for hospital industry workers from Standard Industry Classification 806, Bureau of Labor Statistics Employment and Earnings Bulletin. The annual inflation rates used were 4.8 percent for FY 1992, 3.6 percent for FY 1993, and 2.7 percent for FY 1994. The inflation factors used to inflate the hospital's data were based on the midpoint of the cost reporting period as indicated below.

MIDPOINT OF COST REPORTING PERIOD

After	Before	Adjustment factor
10/14/92	11/15/92	1.044482
11/14/92	12/15/92	1.041408
12/14/92	01/15/93	1.038343
01/14/93	02/15/93	1.035287
02/14/93	03/15/93	1.032240
03/14/93	04/15/93	1.029203
04/14/93	05/15/93	1.026174
05/14/93	06/15/93	1.023154
06/14/93	07/15/93	1.020143
07/14/93	08/15/93	1.017141
08/14/93	09/15/93	1.014147
09/14/93	10/15/93	1.011163
10/14/93	11/15/93	1.008920
11/14/93	12/15/93	1.006683
12/14/93	01/15/94	1.004450
01/14/94	02/15/94	1.002223
02/14/94	03/15/94	1.000000
03/14/94	04/15/94	0.997782
04/14/94	05/15/94	0.995570
05/14/94	06/15/94	0.993362
06/14/94	07/15/94	0.991159
07/14/94	08/15/94	0.988961
08/14/94	09/15/94	0.986767

For example, the midpoint of a cost reporting period beginning January 1, 1993 and ending December 31, 1993 is June 30, 1993. An inflation adjustment factor of 1.020143 would be applied to the wages of a hospital with such a cost reporting period. In addition, for the data for any cost reporting period that began in FY 1993 and covers a period of less than 360 days or greater than 370 days, we annualized the data to reflect a 1-year cost report. Annualization is accomplished by dividing the data by the number of days in the cost report and then multiplying the results by 365.

Step 4—For each hospital, we subtracted the reported excluded hours from the gross hospital hours to determine net hospital hours. We

increased the net hours by the addition of any direct patient care contract labor hours and home office hours to determine total hours.

Step 5—As part of our editing process, we deleted data for eight hospitals for which we lacked sufficient documentation to verify data that failed edits because the hospitals are no longer participating in the Medicare program or are in bankruptcy status. We retained the data for other hospitals that are no longer participating in the Medicare program because these hospitals reflected the relative wage levels in their labor market areas during their FY 1993 cost reporting period.

Step 6—Each hospital was assigned to its appropriate urban or rural labor market area prior to any reclassifications under sections 1886(d)(8)(B) or 1886(d)(10) of the Act. Within each urban or rural labor market area, we added the total adjusted salaries plus fringe benefits obtained in Step 3 for all hospitals in that area to determine the total adjusted salaries plus fringe benefits for the labor market area.

Step 7—We divided the total adjusted salaries plus fringe benefits obtained in Step 6 by the sum of the total hours (from Step 4) for all hospitals in each labor market area to determine an average hourly wage for the area.

Step 8—We added the total adjusted salaries plus fringe benefits obtained in Step 3 for all hospitals in the nation and then divided the sum by the national sum of total hours from Step 4 to arrive at a national average hourly wage. Using the data as described above, the national average hourly wage is $19.5094.

Step 9—For each urban or rural labor market area, we calculated the hospital wage index value by dividing the area average hourly wage obtained in Step 7 by the national average hourly wage computed in Step 8.

3. Revisions to the Wage Index Based on Hospital Redesignation

Under section 1886(d)(8)(B) of the Act, hospitals in certain rural counties adjacent to one or more MSAs are considered to be located in one of the adjacent MSAs if certain standards are met. Under section 1886(d)(10) of the Act, the Medicare Geographic Classification Review Board (MGCRB) considers applications by hospitals for geographic reclassification for purposes of payment under the prospective payment system.

The methodology for determining the wage index values for redesignated hospitals is applied jointly to the hospitals located in those rural counties that were deemed urban under section 1886(d)(8)(B) of the Act and those hospitals that were reclassified as a result of the MGCRB decisions under section 1886(d)(10) of the Act. Section 1886(d)(8)(C) of the Act provides that the application of the wage index to redesignated hospitals is dependent on the hypothetical impact that the wage data from these hospitals would have on the wage index value for the area to which they have been redesignated. Therefore, as provided in section 1886(d)(8)(C) of the Act, the wage index values were determined by considering the following:

- If including the wage data for the redesignated hospitals reduces the MSA wage index value by 1 percentage point or less, the MSA wage index value determined exclusive of the wage data for the redesignated hospitals applies to the redesignated hospitals.
- If including the wage data for the redesignated hospitals reduces the wage index value for the area to which the hospitals are redesignated by more than 1 percentage point, the hospitals that are redesignated are subject to the wage index value of the area that results from including the wage data of the redesignated hospitals (the "combined" wage index value). However, the wage index value for the redesignated hospitals cannot be reduced below the wage index value for the rural areas of the State in which the hospitals are located.
- If including the wage data for the redesignated hospitals increases the MSA wage index value, the MSA and the redesignated hospitals receive the combined wage index value.
- Rural areas whose wage index values would be reduced by excluding the data for hospitals that have been redesignated to another area continue to have their wage index calculated as if no redesignation had occurred. Those rural areas whose wage index values increase as a result of excluding the wage data for the hospitals that have been redesignated to another area have their wage indexes calculated exclusive of the redesignated hospitals.
- The wage index value for an urban area is calculated exclusive of the wage data for hospitals that have been reclassified to another area. However, geographic reclassification may not reduce the wage index for an urban area below the Statewide rural average, provided the wage index prior to reclassification was greater than the Statewide rural wage index value.
- A change in classification of hospitals from one area to another may not result in the reduction in the wage index for any urban area whose wage index is below the rural wage index for the State. This provision also applies to any urban area that encompasses an entire State.

We note that, except for those rural areas where redesignation would reduce the rural wage index value, and those urban areas whose wage index values are already below the rural wage index and would be reduced by redesignations, the wage index value for each area is computed exclusive of the data for hospitals that have been redesignated from the area for purposes of their wage index. As a result, several MSAs listed in Table 4a have no hospitals remaining in the MSA. This is because all the hospitals originally in these MSAs have been reclassified to another area by the MGCRB. These areas receive the prereclassified wage index value. The prereclassified wage index value will apply as long as the MSA remains empty.

The proposed revised wage index values for FY 1997 are shown in Tables 4a, 4b, and 4c in the Addendum to this proposed rule. Hospitals that are redesignated should use the wage index values shown in Table 4c. For some areas, more than one wage index value will be shown in Table 4c. This occurs when hospitals from more than one State are included in the group of redesignated hospitals, and one State has a higher Statewide rural wage index value than the wage index value otherwise applicable to the redesignated hospitals. Tables 4d and 4e list the average hourly wage for each labor market area, prior to the redesignation of hospitals, based on the FY 1993 wage data. (We note that in Tables 4a, 4c, and 4d, we have revised several of the titles for urban areas to be consistent with OMB titles. For example, the title for urban area 1123 is changed from Boston-Brockton-Nashua, MA–NH to Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH. These are nomenclature changes only.) In addition, Table 3C in the Addendum to this proposed rule includes the adjusted average hourly wage for each hospital based on the FY 1993 data. The MGCRB will use the average hourly wage published in the final rule to evaluate a hospital's application for reclassification, unless that average hourly wage is later revised in accordance with the wage data correction policy described in § 412.63(s)(2). In such cases, the MGCRB will use the most recent revised data used for purposes of the hospital wage index. Hospitals that choose to apply before publication of the final rule can use the proposed wage data in applying to the MGCRB for wage index reclassifications that would be effective for FY 1998. We note that in adjudicating these wage reclassification requests during FY 1997, the MGCRB will use the average hourly wages for each hospital and labor market area that are reflected in the final FY 1997 wage index.

At the time this proposed wage index was constructed, the MGCRB had completed its review. The proposed FY 1997 wage index values incorporate all 391 hospitals redesignated for purposes of the wage index (hospitals redesignated under section 1886(d)(8)(B) or 1886(d)(10) of the Act) for FY 1997. The final number of reclassifications may be different because some MGCRB decisions are still under review by the Administrator and because some hospitals may withdraw their requests for reclassification.

Any changes to the wage index that result from withdrawals of requests for reclassification, wage index corrections, appeals, and the Administrator's review process will be incorporated into the wage index values published in the final rule. The changes may affect not only the wage index value for specific geographic areas, but also whether redesignated hospitals receive the wage index value for the area to which they are redesignated, or a wage index that includes the data for both the hospitals already in the area and the redesignated hospitals. Further, the wage index value for the area from which the hospitals are redesignated may be affected.

Under § 412.273, hospitals that have been reclassified by the MGCRB are permitted to withdraw their applications within 45 days of the publication of this **Federal Register** document. The request for withdrawal of an application for reclassification that would be effective in FY 1997 must be received by the MGCRB by July 15, 1996. A hospital that requests to withdraw its application may not later request that the MGCRB decision be reinstated.

C. Requests for Wage Data Corrections

To allow hospitals more time to evaluate the wage data used to construct the proposed FY 1997 hospital wage index, we have made available to the public a diskette containing the FY 1993 hospital wage data. In a memorandum dated March 1, 1996, we instructed all Medicare intermediaries to inform the prospective payment hospitals they serve that the diskette would be available approximately mid-March 1996. The intermediaries were also instructed to advise hospitals of the alternative availability of these data either through their representative hospital organizations or directly from HCFA (using order forms provided by the intermediary). Additional details on ordering this data file are discussed below in section VIII.B of this preamble, "Requests for Data from the Public."

In addition, as discussed above in section III.B.3 of this preamble, Table 3C, in the Addendum to this proposed rule, contains each hospital's adjusted average hourly wage used to construct the proposed wage index values. A hospital can verify its average hourly wage as reflected on its cost report (after taking into account any adjustments made by the intermediary) by dividing the adjusted average hourly wage in Table 3C by the applicable wage inflation adjustment factors as set forth above in Step 3 of the computation of the wage index. An updated Table 3C (along with applicable wage inflation adjustment factors) will be included in the final rule.

We believe hospitals have had ample time to ensure the accuracy of their FY 1993 wage data. Moreover, the ultimate responsibility for accurately completing the cost report rests with the hospital, which must attest to the accuracy of the data at the time the cost report is filed. However, if after review of the diskette or Table 3C, a hospital believes that its FY 1993 wage data have been incorrectly reported, the hospital must submit corrections along with complete supporting documentation to its intermediary by May 15, 1996. To be reflected in the final wage index, any wage data corrections must be reviewed by the intermediary and transmitted to HCFA (through HCRIS) on or before June 17, 1996. These deadlines, which correspond to the deadlines we used last year for the FY 1996 wage index, are necessary to allow sufficient time to review and process the data so that the final wage index calculation can be completed for development of the final prospective payment rates to be published by September 1, 1996. We cannot guarantee that corrections transmitted to HCFA after June 17, 1996, will be reflected in the final wage index.

After reviewing requested changes submitted by hospitals, intermediaries will transmit any revised cost reports to HCRIS and forward a copy of the revised Worksheet S–3, Part II to the hospitals. If requested changes are not accepted, fiscal intermediaries will notify hospitals in writing of reasons why the changes were not accepted. This procedure will ensure that hospitals have every opportunity to verify the data that will be used to construct their wage index values. We believe that fiscal intermediaries are generally in the best position to make evaluations regarding the appropriateness of a particular cost and whether it should be included in the wage index data. However, if a hospital disagrees with the intermediary's resolution of a requested change, the hospital may contact HCFA in an effort to resolve the dispute. We note that the June 17 deadline also applies to these requested changes.

We have created the process described above to resolve all substantive wage data correction disputes before we finalize the wage data for the FY 1997 payment rates. Accordingly, hospitals that do not meet the procedural deadlines set forth above will not be afforded a later opportunity to submit wage corrections or to dispute the intermediary's decision with respect to requested changes.

We intend to make another diskette available in mid-August that will contain the wage data that will be used to construct the wage index values in the final rule. As with the diskette made available in March 1996, HCFA will make the August diskette available to hospital associations and the public. This August diskette, however, is being made available only for the limited purpose of identifying any potential errors made by HCFA or the intermediary in the entry of the final wage data that result from the process described above, not for the initiation of new wage data correction requests. Hospitals are encouraged to review their hospital wage data promptly after the release of the second diskette.

If, after reviewing the August diskette, a hospital believes that its wage data are incorrect due to a fiscal intermediary or HCFA error in the entry or tabulation of the final wage data, it should send a letter to both its fiscal intermediary and HCFA. The letters to the intermediary and HCFA should outline why the hospital believes an error exists. These requests must be *received* by HCFA and the intermediaries no later than September 16, 1996. We have set this year's deadline one week earlier than last year's deadline because we found the later deadline made it difficult to evaluate the requests and recalculate the wage index values before the start of FY 1997 (that is, October 1, 1996). Requests should be sent to: Health Care Financing Administration; Office of Hospital Policy; Attention: Stephen Phillips, Technical Advisor; Division of Prospective Payment System; C5–06–27; 7500 Security Boulevard; Baltimore, Maryland 21244–1850. The intermediary will review requests upon receipt, and, if it is determined that an intermediary or HCFA error exists, the fiscal intermediary will notify HCFA immediately.

After mid-August, we will make changes to the hospital wage data only in those very limited situations involving an error by the intermediary or HCFA that the hospital could not have known about before its review of the August diskette. Specifically, after that point, neither the intermediary nor HCFA will accept the following types of requests in conjunction with this process:

- Requests for wage data corrections that were submitted too late to be included in the data transmitted to the HCRIS system on or before June 17, 1996;
- Requests for correction of errors made by the hospital that were not, but could have been, identified during the hospital's review of the March 1996 data; or,
- Requests to revisit factual determinations or policy interpretations made by the intermediary or HCFA during the wage data correction process.

Verified corrections to the wage index received timely (that is, by September 16, 1996) will be effective October 1, 1996.

Again, we believe the wage data correction process described above provides hospitals with sufficient opportunity to bring errors made during the preparation of the Worksheet S–3 to the intermediary's attention. Moreover, because hospitals will have access to the wage data in mid-August, they will have the opportunity to detect any data entry or tabulation errors made by the intermediary or HCFA before the implementation of the FY 1997 wage index on October 1, 1996. If hospitals avail themselves of this opportunity, the wage index implemented on October 1 should be free of such errors. Nevertheless, in the unlikely event that such errors should occur, we retain the right to make midyear changes to the wage index under very limited circumstances.

Specifically, in accordance with § 412.63(s)(2), we may make midyear corrections to the wage index only in those limited circumstances where a hospital can show: (1) that the intermediary or HCFA made an error in tabulating its data, and (2) that the hospital could not have known about the error, or did not have an opportunity to correct the error, before the beginning of FY 1997 (that is, by the September 16, 1996 deadline). As indicated earlier, since a hospital will have the opportunity to verify its data, and the intermediary will notify the hospital of any changes, we do not foresee any specific circumstances under which midyear corrections would be made. However, should a midyear correction be necessary, the wage index change for the affected area will be effective prospectively from the date the correction is made.

D. Contract Labor—Costs Included in the Hospital Wage Index

Our policy concerning inclusion of contract labor costs for purposes of calculating the wage index has evolved over the past several years. Primarily, this has occurred as we recognized the role of contract labor in meeting special personnel needs of many hospitals. In addition, improvements in the wage data have allowed us to more accurately identify contract labor costs and hours. As a result, effective with the FY 1994 wage index, we included the costs of direct patient care contract services in the wage index calculation. Effective with the FY 1999 wage index, which will use data from FY 1995 cost reports, we will begin to include the costs and hours of certain management contract services.

In this proposed rule, we are soliciting comments from the public regarding further expansion of the types of contract labor costs included in the wage index. The following background discussion provides a general overview of the issues related to including contract labor costs in the wage index calculation. We also list nine specific issues for which we are seeking public comment.

In the May 9, 1990 proposed rule (55 FR 19442), we reported the results of the 1988 wage index survey which collected, among other information, data on the costs and hours associated with direct patient care contract labor. All prospective payment hospitals completed the wage survey for their cost reporting periods ending in calendar year 1988. The survey data indicated that hospitals had difficulty in tracking and recording the actual hours worked associated with the contract labor. In addition, there were reporting inconsistencies. For example, some hospitals inappropriately reported patient care services furnished directly by physicians, which are not included in the wage data because they are paid under Medicare Part B rather than Part A.

In the May 9, 1990 proposed rule, we also discussed public comments we received in response to issues we raised related to including contract labor costs in the wage index. Specifically, in the May 8, 1989 proposed rule (54 FR 19647), we requested comment on the following issues:

- Should the wage index include data on contract labor?
- Should the definition of contract services in the wage index survey be expanded to include services indirectly related to patient care, such as billing or housekeeping services?

A majority of the commenters supported the inclusion of contract services, and many argued for the expansion of contract labor services to include indirect patient care services. Those opposed to including contract services, in addition to some commenters who supported including contract service costs, were concerned about the difficulty of accurately tracking and recording hours worked for all types of contract labor. Other commenters were also concerned that if a hospital contracts for services from outside its labor market area, the contract wages could artificially increase or decrease the hospital's area wage index. Based on the comments and the overall poor quality of the 1988 survey data, we decided to exclude all contract labor from the FY 1991 wage index.

We stated that we would continue our analysis of contract labor. In addition, we announced that we would develop a new wage index survey with improved instructions and auditing criteria to facilitate the inclusion of contract labor in future wage index updates. The new survey, Worksheet S–3, Part II, was included in the hospital cost report effective with cost reporting periods beginning on or after October 1, 1989.

The Worksheet S–3, Part II consists of detailed information for use in the hospital wage index including contract labor for direct patient care services. In the instructions for completing this worksheet, contract labor costs and hours were limited to labor-related payments and hours attributable to direct patient care contract services, such as nursing services. Specifically, we instructed hospitals to exclude indirect patient care contract services (for example, management and housekeeping services), nonlabor-related expenses (for example, equipment and supplies), and any contract services for which labor-related payments and hours could not be accurately determined.

In the September 4, 1990 final rule (55 FR 36036), we discussed additional comments we received on the contract labor issue. Those commenters who supported the inclusion of contract labor stated that some hospitals, especially rural hospitals, are dependent on contract labor for nursing services, and it would be unfair not to include these wage data. Other commenters requested that the definition of contract labor be expanded to include indirect patient care services.

We also received several comments requesting that we continue to exclude contract labor from the wage index. These commenters stated that the contract labor data are not reliable because of the difficulty in tracking and reporting hours and the lack of consistency in the reporting of contract labor. In addition, inclusion of nonlabor contract costs would inappropriately drive up labor costs, and contract labor brought in from outside the labor market area would artificially increase or decrease the area wage index value. Finally, commenters were concerned that contract labor costs are too variable, temporary, and not reflective of true wage costs. Therefore, some suggested that contract labor should not be included in the wage index.

The FY 1994 wage index, which was based on the data collected on the Worksheet S–3, Part II, was the first to include direct patient care contract labor costs. In making the decision to include these costs, we analyzed hospitals' FY 1990 data to determine if it was sufficiently complete for inclusion in the wage index calculation (see the May 26, 1993 proposed rule (58 FR 30236)). We noted that, in most labor market areas, including contract labor in the wage index computation had little effect on the average hourly wage. We further stated that, based on our analysis of the data, including direct patient care contract labor would more accurately and fairly reflect wage levels across hospitals and MSAs. In the September 1, 1993 final rule, we also responded to comments from the hospital industry expressing concern that we did not recognize the costs of certain contract management services (58 FR 46296). In particular, many rural hospitals stated they were either unable to recruit or afford top managers such as hospital administrators and must contract for these services.

In the September 1, 1994 final rule (59 FR 45355), we expanded the definition of contract labor for purposes of determining the hospital wage index to include the personnel costs and hours associated with certain contract management personnel. Contract management services would be limited to individuals working in the top four positions in the hospital: the Chief Executive Officer/Hospital Administrator, Chief Operating Officer, Chief Financial Officer, and Nursing Administrator. We noted that while exact titles may vary, individuals should be performing essentially the same duties as customarily assigned these management positions.

We further noted that, since the cost report did not provide at that time for the collection of management contract data, this revised definition would not be effective until cost reporting periods beginning on or after October 1, 1994 (FY 1995). Hospitals were instructed to continue to exclude all management contract costs and hours until the FY 1995 data were reported (these data will be used to compute the FY 1999 wage index). In addition, we began requiring hospitals to provide descriptions and aggregate totals for all management contracts and complete details on all direct patient care contracts on the Form HCFA–339 (the Provider Cost Report Reimbursement Questionnaire). A hospital must file this form with its corresponding cost report.

We continue to receive requests that we expand our contract labor definition to include more types of contract services in the wage index. In particular, we have been asked to include the costs for pharmacy and laboratory services on the basis that these services are consistent with our definition of direct patient care (see the September 1, 1995 final rule (60 FR 45792)). Others have asked that we expand our definition to include all contracted services, both direct and indirect patient care services, in order to more appropriately calculate relative hospital wage costs.

We have limited the contract services that are included in the wage index to direct patient care services and specific management services for several reasons. First, hospitals reported difficulty in accurately tracking the hours associated with contract services, especially for off-site facilities that serve more than one hospital. Second, we are concerned about the contractor's ability to separate nonlabor costs from labor costs. We believe that the generally higher costs for contract labor compared to salaried labor, due at least in part to the added costs of overhead and supplies not separately identified in most contracts, may distort the wage index. Finally, we are concerned that it is difficult to remove the costs and hours for services such as legal and accounting from total management contracts.

Our goal is to ensure that our wage index policy continues to be responsive to the changing need for contract labor, allowing those hospitals that must depend on contract labor to supply needed services to reflect those costs in their wage data. At the same time, however, we wish to avoid providing an opportunity for hospitals to inflate their average hourly wage inappropriately by including nonlabor contract costs. The advantage of our approach of including only contract labor costs and hours associated with direct patient care and specific management services is that it minimizes distortions in the wage index that are due to a hospital's inability to identify and exclude nonlabor costs. While changes to the wage index values are made in a budget neutral manner and are not expected to affect aggregate payments, we strive for policies that are equitable for all hospitals.

Finally, due to the 4-year time lag between the cost reporting period itself and the fiscal year when data for that period are used in calculating the wage index, it is important that we anticipate any need to change our policy on contract labor. Therefore, in order to formulate the most responsive and responsible policy, we are soliciting comments on the following issues:

- To what extent do hospitals rely on the use of contract services?
- For which services are contracts typically used?
- Can hospitals accurately determine hours related to contract services?
- Can hospitals accurately isolate labor-related costs from nonlabor-related costs?
- Should the contract labor definition be expanded to include contract services indirectly related to patient care?
- If contract labor remains limited to direct patient care, what categories of services, if any, in addition to those identified above, should be included?
- Would the wage index more accurately reflect relative wage levels if we did not limit contract labor to direct patient care (generally high wage) services?
- Would expanding the types of contract labor that are included in the wage index provide less incentive to hospitals to keep their labor costs low, as higher labor costs may result in a higher wage index value for that hospital or allow it to reclassify to a labor market with a higher wage index?
- What other issues should be considered in revising the policy for including contract labor in the wage index?

E. Puerto Rico Wage Index Values

For several years, hospitals in Puerto Rico have experienced large swings in their wage index values. In the September 1, 1995 final rule, we responded to two comments suggesting changes to the wage index for hospitals in Puerto Rico (60 FR 45796). One suggestion was to establish a floor for the wage index values of the Puerto Rico labor market areas while the other was to eliminate the rural area classification in Puerto Rico and classify the rural

hospitals to the nearest urban area. Although we did not adopt either of these suggestions, we stated that we would continue to study the issue of wage index values in Puerto Rico.

To evaluate the effect that these large changes in wage index values have on hospitals in Puerto Rico, we examined the most recent Medicare cost data for these hospitals. Of the 50 hospitals contained in our data base, 64 percent had improved Medicare operating margins from 1992 to 1993. Of the 26 hospitals with data available for 1994, we found that 65 percent improved financially from 1993 to 1994. Based on this analysis, we do not believe that the wage index changes have had a detrimental effect on these hospitals as a group. However, there are individual hospitals that are not faring as well.

We recognize that large shifts in the wage index values can cause shifts in the payment levels for a particular MSA. Because three of the six MSAs in Puerto Rico (Aguadilla, Arecibo, and Caguas) as well as the rural area have four or fewer hospitals, a large change in one hospital's wage data can cause a large increase or decrease in the wage index value for the entire MSA. One possible method to limit these annual swings in wage index values would be to create a single labor market area encompassing all the hospitals in Puerto Rico. That is, the six MSAs and the rural area would be combined into one area with one wage index value. A single labor market area would create a much larger set of hospitals to develop aggregate wage amounts and would mitigate situations where a change in the wage data of a single hospital has a large effect on the wage index of an MSA.

Because creating one MSA for Puerto Rico would be implemented in a budget neutral manner, the effect would be to raise wage index values for some hospitals in Puerto Rico and to lower the values for others. Using the FY 1993 wage data, the following table shows the effect this change would have on the proposed wage index levels.

Area	Number of hospitals	Proposed wage index	One area wage index	Percent change
Rural	4	0.4182	0.4555	8.92
Aguadilla	2	0.4430	0.4555	2.82
Arecibo	2	0.4661	0.4555	−2.27
Caguas	4	0.4638	0.4555	−1.79
Mayaguez	5	0.4186	0.4555	8.82
Ponce	7	0.4500	0.4555	1.22
San Juan	29	0.4616	0.4555	−1.32

Because of the negative effects on some hospitals, we are soliciting comment on this approach for mitigating the fluctuations in wage index values for hospitals in Puerto Rico. The potential change would have no impact on hospitals outside Puerto Rico.

F. Proposed Changes to the MGCRB Composition and Criteria

Under section 1886(d)(10) of the Act, the MGCRB considers applications by hospitals for geographic reclassification for purposes of payment under the prospective payment system. Guidelines concerning the criteria and conditions for hospital reclassification are located at §§ 412.230 through 412.236. The purpose of these criteria is to provide direction, to both the MGCRB and those hospitals seeking geographic reclassification, with respect to the situations that merit an exception to the rules governing the geographic classification of hospitals under the prospective payment system. The composition of the MGCRB and the procedures it follows in making reclassification determinations are set forth in §§ 412.246 through 412.280.

As discussed in detail below, we are proposing to make one change to the MGCRB regulations. In addition, we are soliciting comments on sources of data that could be used to identify the occupational mix in a given MSA.

1. MGCRB Composition (§ 412.246)

Section 1886(d)(10)(B)(i) of the Act provides that the MGCRB is composed of five members appointed by the Secretary. This provision is implemented in regulations at § 412.246(a). Two of the members must be representative of the concerns of rural hospitals and at least one member must be knowledgeable in the field of analyzing costs of providing inpatient hospital services. Under current § 412.246(b), the term of office for an MGCRB member is 3 years, and appointments are limited to two consecutive 3-year terms. This section further provides that to permit staggered terms of office, initial appointments may be for shorter terms. Finally, the Secretary is permitted to terminate a member's tenure before his or her full term has expired.

Since the establishment of the MGCRB 6 years ago, we have never modified the regulations that govern the MGCRB's composition, which were originally modeled after the procedural regulations of the Provider Reimbursement Review Board (PRRB). We believe that it is now appropriate to update the regulations that govern members' terms of office in light of agency experience.

Appointments to the Board must comply with statutory requirements concerning rural representatives and a hospital cost expert. Since the appointment of the initial Board, the Secretary has had difficulty recruiting additional, qualified persons to serve on the MGCRB. In addition, we solicited comment in the June 2, 1995 proposed rule (60 FR 29218) on the idea of eliminating the MGCRB and transferring its functions back to HCFA. This may have caused qualified members to lose interest in becoming or remaining Board members. We no longer believe that there needs to be a limitation on the number of terms a member may serve. Deleting the term limit requirement would allow for increased flexibility in appointing and recruiting qualified Board members. Flexibility in this area will allow the Secretary to ensure that Board members are in place to meet the tight statutory deadlines associated with filing and adjudicating MGCRB applications. (Under sections 1886(d)(10)(C) (ii) and (iii) of the Act, a hospital requesting a change in geographic classification must submit its application to the Board not later than the first day of the preceding fiscal year. Once the application is received the Board must render a decision within 180 days.) Therefore, we are proposing to eliminate the current requirement at § 412.246(b) that a Board member can serve for only two consecutive 3-year terms.

We also considered eliminating any requirement on the length of an individual term. However, we believe that maintaining a term of office not to exceed 3 years is appropriate. If we deleted this requirement, then the Secretary could not periodically reevaluate membership of the Board. We would, however, propose that a term of office would not be limited only to a term of exactly 3 years. Specifically, we would revise § 412.246(b) to provide that an appointment to the MGCRB may be for any term not to exceed 3 years. We believe that both of these proposed changes would allow the Secretary maximum flexibility to recruit and retain qualified Board members.

Under the proposed revisions, the Secretary would continue to be able to terminate a member's tenure before his or her full term has expired. This provision was modeled after the provisions of the PRRB under which the Secretary has the authority to terminate a Board member for good cause. We believe that it is appropriate for the Secretary to be able to exercise a similar termination authority over the MGCRB in case a member of the MGCRB fails to carry out his or her duties under the Act and regulations. Therefore, we would retain this provision. We note that the Secretary has not invoked this authority to date with either the PRRB or the MGCRB.

2. Occupational Mix Adjustment

Section 1886(d)(10)(D)(i) of the Act requires the Secretary to publish guidelines to be utilized by the MGCRB in rendering decisions on applications submitted for geographic reclassification. Those are to include guidelines for "comparing wages, taking into account (to the extent the Secretary determines appropriate) occupational mix, in the area in which the hospital is classified and the area in which the hospital is applying to be classified."

Section 412.230(e) describes the criteria for hospital reclassification for purposes of the wage index. One of the criteria relates to the relationship between the hospital's wages and those of the area to which it seeks reclassification. Specifically, § 412.230(e)(1)(iv) provides that the hospital must demonstrate that its wages are at least 84 percent of the average hourly wage of hospitals in the area to which it seeks reclassification, or that the hospital's average hourly wage weighted for occupational mix is at least 90 percent of the average hourly wage of hospitals in the area to which it seeks reclassification. Under §§ 412.232(c) and 412.234(b), a group of hospitals seeking to reclassify must demonstrate that its aggregate average hourly wage is at least 85 percent of the average hourly wage of the hospitals in the area to which it seeks reclassification. These sections also provide that the threshold for occupational-mix adjusted hourly wage for hospital groups is the same as that for a single hospital, that is, 90 percent.

In the September 6, 1990 interim final rule (55 FR 36760), we stated that the acceptable sources for occupational mix data were the American Hospital Association (AHA) or the Bureau of Labor Statistics. Since publication of that document, the Bureau of Labor has discontinued its hospital wage surveys. Thus, the only currently acceptable occupational mix data source is the AHA Survey Data. We have been informed by the AHA that the survey for 1993 will be the last survey to collect information on the Hospital Personnel by Occupational Category. Therefore, requests filed on or before October 1, 1996 for FY 1998 reclassification, which use FY 1993 wage data, may be the last for which we have an appropriate source of occupational mix data.

As we stated in the June 4, 1991 final rule with comment period (56 FR 25458), the reclassification process requires the use of occupational mix data that are comparable across areas and can be consistently applied. We are unaware of any sources other than the AHA data that meet these criteria.

We have not proposed collecting occupational mix data ourselves in light of past experience. We attempted to collect such data some time ago. In the September 30, 1988 **Federal Register** (53 FR 38495), we reported on our efforts to collect 1986 occupational mix data as part of the Medicare National Uniform Reporting Demonstration project, to determine the feasibility of developing a wage index that would take into account occupational mix. The majority of hospitals (more than 60 percent) failed to complete or submit the survey. A number of surveys that were submitted were not filled out completely and appeared to have numerous errors. Moreover, we believe that collecting occupational mix data from hospitals would be inappropriately burdensome to the hospitals. In the past, we have received several comments from hospitals opposing HCFA's collection of occupational mix data (56 FR 43222), citing the prohibitive cost to hospitals of furnishing occupational mix data. Finally, even if we were to decide now to begin collecting occupational mix data, it would be at least 6 years before the data would be available for use.

In order to continue to allow the use of wage data weighted by occupational mix in wage index reclassification, we are seeking suggestions about any occupational mix data sources that are available on a national basis. In addition, we are willing to consider suggestions about other methods that would account for occupational mix in the wage index reclassification process.

IV. Rebasing and Revising of the Hospital Market Baskets

A. Operating Costs

1. Background

Effective for cost reporting periods beginning on or after July 1, 1979, we developed and adopted a hospital input price index (that is, the hospital "market basket") for operating costs. Although "market basket" technically describes the mix of goods and services used to produce hospital care, this term is also commonly used to denote the input price index (that is, cost category weights and price proxies combined) derived from that market basket. Accordingly, the term "market basket" as used in this document refers to the hospital input price index.

The percentage change in the market basket reflects the average change in the price of goods and services hospitals purchase in order to furnish inpatient care. We first used the market basket to adjust hospital cost limits by an amount that reflected the average increase in the prices of the goods and services used to furnish hospital inpatient care. This approach linked the increase in the cost limits to the efficient utilization of resources.

With the inception of the hospital inpatient prospective payment system on October 1, 1983, we continued to use the hospital market basket to update each hospital's 1981 inpatient operating cost per discharge used in establishing the FY 1984 standardized payment amounts. In addition, the projected change in the hospital market basket has been the integral component of the update factor by which the prospective payment rates are updated every year. Under section 1886(b)(3)(B)(i)(XII) of the Act, the prospective payment rates will be updated in FY 1997 by the projected increase in the hospital market basket minus 0.5 percentage points. A detailed explanation of the hospital market basket used to develop the prospective payment rates was published in the **Federal Register** on September 3, 1986 (51 FR 31461). For additional background information on general development of hospital input price indexes, we refer the reader to the article by Freeland, Anderson, and Schendler, "National Hospital Input Price Index," *Health Care Financing Review*, Summer 1979, pp 37–61. We also refer the reader to the September 4, 1990 **Federal Register** (55 FR 35990) in which we discussed the previous

rebasing of the hospital input price index.

The hospital market basket is a fixed-weight, Laspeyres-type price index that is constructed in three steps. First, a base period is selected and total base period expenditures are estimated for mutually exclusive and exhaustive spending categories based upon type of expenditure. Then, the proportion of total costs that each category represents is determined. These proportions are called cost or expenditure weights. Second, each expenditure category is matched to an appropriate price/wage variable, referred to as a price proxy. These price proxies are price levels derived from a publicly available statistical series published on a consistent schedule, preferably at least on a quarterly basis. Third and finally, the price level for each spending category is multiplied by the expenditure weight for that category. The sum of these products (that is, the expenditure weights multiplied by the price levels) for all cost categories yields the composite index level in the market basket in a given year. Repeating this step for other years produces a series of market basket index levels over time. Dividing one index level by an earlier index level produces rates of growth in the input price index.

The market basket is described as a fixed-weight index because it answers the question of how much it would cost, at another time, to purchase the same mix of goods and services that was purchased in the base period. The effects on total expenditures resulting from changes in the quantity or mix of goods and services purchased subsequent to the base period are not considered. For example, shifting a traditionally inpatient type of care to an outpatient setting might affect the volume of inpatient goods and services purchased by the hospital, but would not be factored into the price change measured by a fixed weight hospital market basket.

We believe that it is desirable to rebase the market basket periodically so the cost weights reflect changes in the mix of goods and services that hospitals purchase (hospital inputs) in furnishing inpatient care. We last rebased the hospital market basket cost weights effective for FY 1991. This market basket, still used through FY 1996, reflected base year data from FY 1987 in the construction of the cost weights.

In its April 1, 1985 report to the Secretary (Appendix C of the June 10, 1985 proposed rule (50 FR 24446)), ProPAC supported HCFA's position on periodic rebasing, stating that the market basket cost weights should be recalculated or "rebased" at least every 5 years, or more frequently if significant changes in the weights occur. We note that there are separate market baskets for prospective payment hospitals and hospitals and hospital units excluded from the prospective payment system. The separate, excluded hospital market basket is set forth in section IV.A.5 of this preamble.

2. Rebasing and Revising the Hospital Market Basket

The terms rebasing and revising, while often used interchangeably, actually denote different activities. Rebasing means moving the base year for the structure of costs of an input price index (for example, we are proposing to move the base year cost structure from FY 1987 to FY 1992). Revising means changing data sources, cost categories, or price proxies used in the input price index.

We are proposing to use a rebased and revised hospital market basket in developing the FY 1997 update factor for the prospective payment rates. The new market basket would be rebased to reflect 1992, rather than 1987, cost data.

In developing the rebased and revised market basket, we reviewed hospital operating expenditure data for the market basket cost categories. In a change from previous methodology, we are relying primarily on Medicare hospital cost report data for the proposed rebasing. For the proposed market baskets, we used data on hospital expenditures for four major expense categories (wages and salaries, employee benefits, pharmaceuticals, and a residual "all other") from hospital cost reporting periods beginning in FY 1992 (that is, periods beginning on or after October 1, 1991 and before October 1, 1992). We refer to these as PPS–9 cost reports (the 9th year of the prospective payment system (PPS)). The market basket was previously based on 1987 expense data from the 1988 American Hospital Association (AHA) Annual Survey.

Expenses for wages and salaries, employee benefits, and pharmaceuticals were determined using data from PPS–9 cost reports as reported in the Hospital Cost Report Information System (HCRIS) files. We determined total professional fees using AHA Annual Survey data. Total professional fees include medical and nonmedical professional fees. Since the medical professional fees included in the compensation of provider-based physicians is paid under Medicare Part B, we analyzed HCRIS data to determine the professional component of provider-based physician compensation and subtracted it from total professional fees to obtain an estimate of nonmedical professional fees. Malpractice insurance costs were determined using the cost share for PPS–6 (cost reporting periods beginning in FY 1989), the last year these costs had to be treated separately from all other administrative and general costs, trended forward to 1992 based on the relative importance of malpractice costs found in the previous market basket. The All Other Expenses category was calculated in two steps. First, from PPS–9 cost reports, total operating expenses were tabulated by subtracting capital-related expenses, direct medical education expenses, and the medical professional fees from total expenses. Second, we subtracted the total of the five cost category expenses already determined from total operating expenses to obtain the All Other Expenses category.

After totals for these main cost categories (wages and salaries, employee benefits, professional fees, pharmaceuticals, malpractice insurance, and all other expenses) were calculated, we then determined the proportion each category represents of the total costs. These proportions represent the major rebased market basket weights. The differences between the six major categories for the proposed 1992-based index and the previous 1987-based index are summarized in Table 1 below.

TABLE 1.—COMPARISON OF 1992 AND 1987 PROSPECTIVE PAYMENT HOSPITAL OPERATING COST CATEGORIES AND WEIGHTS

Expense categories	Rebased 1992 hospital market basket	1987-based hospital market basket
Wages and Salaries	50.244	52.2
Employee Benefits	11.146	9.5
Nonmedical Professional Fees	2.127	1.6

TABLE 1.—COMPARISON OF 1992 AND 1987 PROSPECTIVE PAYMENT HOSPITAL OPERATING COST CATEGORIES AND WEIGHTS—Continued

Expense categories	Rebased 1992 hospital market basket	1987-based hospital market basket
Malpractice Insurance	1.189	1.4
Pharmaceuticals	4.162	3.9
All Other	31.132	31.4
Total	100.000	100.0

Note: Although we rounded the weights to the tenths decimal position in the 1987-based market basket as published in the September 4, 1990 final rule, we are presenting the 1992 weights in greater specificity.

Table 2 sets forth the proposed market basket cost categories, weights, and price proxies. Weights for the "Utilities" and the "All Other" cost categories, as well as the subcategories, were determined using the 1987 Department of Commerce's Bureau of Economic Analysis (BEA) Input-Output Table, from which data for the hospital industry were extracted. The BEA Input-Output database, which is updated at 5-year intervals, was most recently described in the Survey of Current Business, "Benchmark Input-Output Accounts for the U.S. Economy, 1987" (April 1994). We anticipate that the Department of Commerce will soon release 1992 cost data for use in determining the cost weights. If the data are released in time to be analyzed, we will use them in the final market basket for more refined estimates of cost expenditure weights.

We aged the 1987 cost shares to 1992 using historical price changes between 1987 and 1992 for each category. The aged shares were normalized to be consistent with the 1992 hospital cost report data. Relative weights for the new base year were then calculated for various expenditure categories. This work resulted in the identification of 26 separate cost categories in the rebased hospital market basket, two fewer categories than were included in the 1987-based market basket. Detailed descriptions of each category and respective price proxy are provided in Appendix C to this proposed rule.

TABLE 2.—PROPOSED 1992-BASED PROSPECTIVE PAYMENT HOSPITAL OPERATING COST CATEGORIES, WEIGHTS, AND PRICE PROXIES

Expense categories	Rebased 1992 hospital market basket	Price proxy
1. Compensation	61.390	
A. Wages and Salaries[1]	50.244	HCFA Occupational Wage Index.
B. Employee Benefits[1]	11.148	HCFA Occupational Benefits Index.
2. Professional Fees[1]	2.127	ECI—Compensation for Professional, Specialty & Technical.
3. Utilities	2.469	
A. Fuel, Oil, and Gasoline	0.345	PPI Refined Petroleum Products.
B. Electricity	1.349	PPI Commercial Electric Power.
C. Natural Gas	0.670	PPI Commercial Natural Gas.
D. Water and Sewerage	0.106	CPI–U Water & Sewerage Maintenance.
4. Professional Liability Insurance	1.189	HCFA Professional Liability Insurance Premium Index.
5. All Other	32.824	
A. All Other Products	24.033	
(1.) Pharmaceuticals	4.162	PPI Ethical (Prescription) Drugs.
(2.) Food	3.459	
a. Direct Purchase	2.363	PPI Processed Foods & Feeds.
b. Contract Service	1.096	CPI–U Food Away From Home.
(3.) Chemicals	3.795	PPI Industrial Chemicals.
(4.) Medical Instruments	3.128	PPI Medical Instruments & Equipment.
(5.) Photographic Supplies	0.399	PPI Photographic Supplies.
(6.) Rubber and Plastics	4.868	PPI Rubber & Plastic Products.
(7.) Paper Products	2.062	PPI Converted Paper & Paperboard Products.
(8.) Apparel	0.875	PPI Apparel.
(9.) Machinery and Equipment	0.211	PPI Machinery & Equipment.
(10.) Miscellaneous Products	1.074	PPI Finished Goods.
B. All Other Services	8.792	
(1.) Business Services[1]	3.823	ECI—Compensation for Private Workers in Business Services.
(2.) Computer Services[1]	1.927	AHE Computer & Data Processing Services.
(3.) Transportation Services	0.188	CPI-U Transportation.
(4.) Telephone Services	0.531	CPI-U Telephone Services.
(5.) Postage[1]	0.272	CPI-U Postage.
(6.) All Other: Labor Intensive*	1.707	ECI—Compensation for Private Service Occupations.
(7.) All Other: Nonlabor Intensive	0.344	CPI-U All Items.
Total	100.000	

[1] Labor-related.
NOTE: Due to rounding, weights may not sum to total.

The 1987-based market basket included a separate Blood Services cost category. In the 1992-based market basket, Blood Services is contained within the Chemicals cost category. In addition, the 1987-based cost category for Fuel Oil, Coal, etc. has been combined with the 1987-based Motor Gasoline cost category to form the 1992-based Fuel, Oil and Gasoline cost category. Both of these changes are based on revised cost categories from BEA. For comparison purposes, the 1987-based cost categories are set forth in Table 3.

TABLE 3.—1987-BASED PROSPECTIVE PAYMENT HOSPITAL OPERATING COST CATEGORIES, WEIGHTS, AND PRICE PROXIES

Expense categories	1987 hospital market basket	Price proxy
1. Compensation	61.7	
A. Wages and Salaries[1]	52.2	HCFA Occupational Wage Index.
B. Employee Benefits[1]	9.5	HCFA Occupational Benefits Index.
2. Professional Fees[1]	1.6	ECI—Wages & Salaries for Professional, Specialty & Technical.
3. Utilities	2.4	
A. Fuel, Oil, Coal, etc.	0.6	WPI Light Fuel Oils.
B. Electricity	1.1	WPI Industrial Power.
C. Natural Gas	0.3	WPI Natural Gas.
D. Motor Gasoline	0.2	WPI Gasoline.
E. Water and Sewerage	0.0	CPI–U Water & Sewerage Maintenance.
4. Professional Liability Insurance	1.4	HCFA Professional Liability Insurance Premiums.
5. All Other	32.8	
A. All Other Products	21.8	
(1.)Pharmaceuticals	3.9	WPI Prescription Drugs.
(2.) Food	3.3	
a. Direct Purchase	2.1	WPI Processed Foods.
b. Contract Service	1.2	CPI–U Food Away From Home.
(3.) Chemicals	3.1	WPI Industrial Chemicals.
(4.) Medical Instruments	2.7	WPI Medical Instruments & Equipment.
(5.) Photographic Supplies	2.6	WPI Photographic Supplies.
(6.) Rubber and Plastics	2.3	WPI Rubber & Plastic Products.
(7.) Paper Products	1.4	PPI Converted Paper & Paperboard Products.
(8.) Apparel	1.1	WPI Textile House furnishings.
(9.) Machinery and Equipment	0.4	WPI Machinery & Equipment.
(10.) Miscellaneous Products	0.8	WPI Finished Goods.
B. All Other Services	11.1	
(1.) Business Services[1]	3.8	AHE Business Services.
(2.) Computer Services[1]	2.0	AHE Computer & Data Processing Services.
(3.)Transportation Services	1.2	CPI–U Transportation.
(4.) Telephone Services	1.0	CPI–U Telephone Services.
(5.) Blood Services[1]	0.6	WPI Blood & Derivatives.
(6.) Postage[1]	0.4	CPI–U Postage.
(7.) All Other: Labor Intensive[1]	1.2	ECI—Wages and Salaries for Private Service Occupations.
(8.) All Other: Nonlabor Intensive	0.8	CPI–U All Items.
Total	100.0	

[1] Labor-related.
Note: Due to rounding, weights may not sum to total.

In the September 4, 1990 final rule, for purposes of determining the labor-related portion of the standardized amounts, we summed the percentages of the labor-related items (that is, wages and salaries, employee benefits, professional fees, business services, computer and data processing, blood services, postage, and all other labor-intensive services) in the hospital market basket. This summation resulted in a labor-related portion of the hospital market basket of 71.4 percent and nonlabor-related portion of 28.6 percent. Under sections 1886 (d)(2)(H) and (d)(3)(E) of the Act, in making payments under the prospective payment system, the Secretary estimates from time to time the proportion of payments that are labor-related. Since October 1, 1990, then, we have considered 71.4 percent of costs to be labor-related for purposes of the prospective payment system.

In connection with the rebasing of the hospital market basket, we have re-estimated the labor-related share of the standardized amounts. Based on the relative weights described in Table 2, the labor-related portion that is subject to hospital wage index adjustments (based on wages and salaries, employee benefits, professional fees, business services, computer and data processing, postage, and all other labor-intensive services) is 71.246 percent and the nonlabor-related portion is 28.754 percent. To implement this change, effective with discharges occurring on or after October 1, 1996, we are proposing to recompute the labor-related and nonlabor-related shares of the large urban and other areas' standardized amounts used to establish the prospective payment rates.

The amounts in Table 4 reflect the revised labor-related and nonlabor-related portions. Due to the Bureau of Economic Analysis' reclassification of Blood Services to Chemicals, we now allocate Blood Services to a nonlabor cost category. We note that, although there are revisions of the labor and nonlabor portions, due to both weight changes and the Blood Services category change, the labor-related portions of the rates published in Table 4 have remained essentially the same. The labor-related portion has decreased by 0.146 percentage points.

TABLE 4.—LABOR-RELATED SHARE

Cost category	Weight
Wages and Salaries	50.244
Employee Benefits	11.146
Professional Fees	2.127
Business Services	3.823
Computer Services	1.927
Postal Services	0.272
All Other Labor Intensive	1.707
Total Labor-Related	71.246
Total Nonlabor Related	28.754

3. Selection of Price Proxies

After computing the 1992 cost weights for the rebased hospital market basket, it is necessary to select appropriate wage and price proxies to monitor the rate of increase for each expenditure category. Most of the indicators are based on Bureau of Labor Statistics (BLS) data and are grouped into one of the following BLS categories:

• Producer Price Indexes—Producer Price Indexes (PPIs) measure price changes for goods sold in other than retail markets. For example, we used the PPI for ethical drugs, rather than the Consumer Price Index (CPI) for prescription drugs. PPIs are preferable price proxies for goods that hospitals purchase as inputs in producing their outputs. The PPIs we used measure price change at the final stage of production.

• Consumer Price Indexes—Consumer Price Indexes (CPIs) measure change in the prices of final goods and services bought by the typical consumer. Because they may not represent the price faced by the producer, the consumer price indexes were used if no appropriate PPI was available, or if the expenditure was more similar to that of retail consumers in general rather than a purchase at the wholesale level. For example, the CPI for food purchased away from home was used as a proxy for contracted food services.

• Employment Cost Indexes—Employment Cost Indexes (ECIs) measure the rate of change in employee wage rates and employer costs for employee benefits per hour worked. These indexes are fixed-weight indexes and strictly measure the change in wage rates and employee benefits per hour. They are not affected by shifts in employment mix.

• Average Hourly Earnings—Average Hourly Earnings (AHEs) measure the rate of change of hourly earnings for various occupations within a given industry, and, therefore, reflect a weighted occupational mix within a particular industry. The AHE series is calculated by dividing gross payrolls by total hours and measures actual earnings rather than pure wage rates. It is a current-weight series rather than a fixed-weight index and thus reflects shifts in employment mix. An AHE rather than an ECI is used when there is no corresponding ECI category that is an appropriate measure of growth for a given labor category or when the ECI does not have sufficient length of history to be useful for our purpose.

Our proposed price proxies for the rebased prospective payment hospital market basket are shown in Table 2 above and are summarized in Appendix C to this proposed rule.

4. The HCFA Blended Compensation Index

Compensation includes the two largest categories of the rebased hospital market basket. Wages and salaries account for 50.244 percent and employee benefits account for 11.146 percent of the total weight in the prospective payment hospital market basket.

The proposed HCFA Blended Compensation Index groups hospital occupations into nine broad categories. For eight of those occupational groups, we believe that hospitals compete for labor generally with employers outside the health care sector. Accordingly, we use economy-wide employment cost indexes (ECI) as price proxies for these eight occupational groups. In the case of compensation for nurses, as well as for certain other health care technicians and professionals, the hospital labor market may be predominant. However, hospitals do compete with other industries to obtain certain skilled professional and technical staff (for example, computer programmers). Therefore, for professional and technical workers, we believe a price proxy that reflects an equal blend of internal and external compensation variables is appropriate.

Similar to the methodology used for the previous rebasing, the weights for the nine cost categories in the occupational blend index were derived from the 1992 Current Population Survey (CPS) produced by BLS. Using the CPS, private hospital workers were classified into the nine occupational categories. Private hospitals better reflect the mix of occupations used to produce acute care services for the prospective payment hospital input price index. Government hospitals were excluded because their occupational mix reflects the subset of nonacute care hospitals. Once private hospital workers were sorted by occupation into one of the nine occupational groups, weights were estimated using the share of wages and salaries for each of the nine occupations. These shares formed the basis of the weights that were used for the market basket of occupational categories.

An additional adjustment was made for contract labor costs. Rather than treat contract labor as a distinct noncompensation cost category, it was integrated into the occupational blend as a component of hospitals' compensation costs for purposes of the market basket index. Thus, contract labor is treated the same as other labor expenses. Contract labor was allocated to the professional and technical and service occupation categories. After adjusting the professional and technical and service workers' shares to account for contract labor, the weights for the nine occupational blend categories were renormalized to equal 100.00 percent. The weights and proxies for the nine cost categories of the HCFA Blended Wages and Salaries Index are shown in Table 5.

TABLE 5.—HCFA BLENDED WAGES AND SALARIES INDEX (WAGES AND SALARIES COMPONENT OF THE 1992-BASED MARKET BASKET)

Cost category	Weight	Price proxy
Professional and Technical	65.729	Equal blend of ECI for wages and salaries of civilian hospital workers and ECI for wages and salaries of professional, specialty and technical workers.
Managers and Administrators	9.554	ECI for wages and salaries for executive, administrative and managerial workers.
Sales	0.402	ECI for wages and salaries for sales workers.
Clerical Workers	12.379	ECI for wages and salaries for administrative support including clerical workers.
Craft and Kindred	1.689	ECI for wages and salaries for precision production, craft and repair workers.

TABLE 5.—HCFA BLENDED WAGES AND SALARIES INDEX (WAGES AND SALARIES COMPONENT OF THE 1992-BASED MARKET BASKET)—Continued

Cost category	Weight	Price proxy
Operatives Except Transport	0.437	ECI for wages and salaries for machine operators, assemblers and inspectors.
Transport Equipment Operatives	0.122	ECI for wages and salaries for transportation and material moving workers.
Nonfarm Laborers	0.084	ECI for wages and salaries for handlers, equipment cleaners, helpers and laborers.
Service Workers	9.606	ECI for wages and salaries for service occupations.
Total Wages and Salaries	100.000	Total Weight for Wages and Salaries is 50.2.

Note: Due to rounding, weights may not sum to total.

5. Separate Market Basket for Hospitals and Hospital Units Excluded From the Prospective Payment System

In its March 1, 1990 report, ProPAC recommended that we establish a separate market basket for hospitals and hospital units excluded from the prospective payment system. Effective with FY 1991, HCFA adopted ProPAC's recommendation to implement separate market baskets. (See the September 4, 1990 final rule (55 FR 36044).) Prospective payment and excluded hospitals tend to have different case mixes, practice patterns, and composition of inputs. The fact that these hospitals are not included under the prospective payment system in part reflects these differences.

Studies completed by HCFA, ProPAC, and the hospital industry have documented different weights for excluded hospitals and prospective payment hospitals. Table 7 compares major weights in the rebased 1992 market basket for excluded hospitals with weights in the rebased 1992 market basket for prospective payment system hospitals. Wages and salaries are 52.152 percent of total operating costs for excluded hospitals compared to 50.244 percent for prospective payment hospitals. Employee benefits are 11.569 percent for excluded hospitals compared to 11.146 percent for prospective payment hospitals. As a result, compensation costs (wages and salaries plus employee benefits) for excluded hospitals are 63.721 percent of costs compared to 61.390 percent for prospective payment hospitals. Noncompensation costs are 36.279 percent for excluded hospitals and 38.610 of costs for prospective payment hospitals.

Two significant differences in the category weights occur in Pharmaceuticals and Business Services. Pharmaceuticals represent 4.162 percent of costs for prospective payment hospitals and 3.070 percent for excluded hospitals. Business services represent 3.823 percent of costs for prospective payment hospitals and 2.337 percent for excluded hospitals. The weights for the excluded hospital market basket were derived using the same data sources and methods as for the prospective payment market basket (see Appendix C to this proposed rule).

Differences in weights between the proposed excluded hospital and prospective payment hospital market baskets do not necessarily lead to significant differences in the rate of price growth for the two market baskets. If the individual wages and prices move at the approximately same annual rate, both market baskets may have about the same price growth even though weights may differ substantially because both market baskets use the same wages and prices. Also, offsetting price increases for various cost components can result in similar composite price growth in both market baskets.

The wage and price proxies are the same for the excluded hospital and prospective payment hospital market baskets. As discussed in section IV.A.2 of this preamble, all of the cost expenditure weights for both the prospective payment and excluded hospital market baskets are subject to refinement if the U.S. Department of Commerce data are released in time to be analyzed and incorporated in the final market basket.

The excluded hospital market basket is a composite set of weights for Medicare participating psychiatric, long-term care, rehabilitation, and children's hospitals. We are proposing to use cost report data for excluded hospitals and units whose Medicare average length of stay is within 15 percent (that is, 15 percent higher or lower) of the total facility average length of stay. This is a change from the 1987-based market basket, for which data for all excluded hospitals and units were used. We believe that limiting our sample to hospitals with a Medicare average length of stay within 15 percent of the total facility average length of stay provides a more accurate reflection of the structure of costs for Medicare. We note that the proposed forecast for FY 1997 would be the same even if we had included all excluded hospitals in the calculation of weights. The forecast for both the limited and full set of excluded hospitals yields a rate of change for FY 1997 of 2.7 percent.

TABLE 6.—COMPARISON OF SIGNIFICANT WEIGHTS FOR 1992-BASED EXCLUDED HOSPITAL AND PROSPECTIVE PAYMENT HOSPITAL MARKET BASKETS

Category	Excluded hospitals	Prospective payment hospitals
Wages and Salaries	52.152	50.244
Employee Benefits	11.569	11.146
Professional Fees	2.098	2.127
Pharmaceuticals	3.070	4.162
All Other	31.111	32.321
Total	100.000	100.000

TABLE 7.—PROPOSED 1992-BASED EXCLUDED HOSPITAL OPERATING COST CATEGORIES, WEIGHTS, AND PRICE PROXIES

Expense categories	Rebased 1992 excluded hospital market basket	Price proxy
1. Compensation	63.721	
A. Wages and Salaries	52.152	HCFA Occupational Wage Index.
B. Employee Benefits	11.569	HCFA Occupational Benefits Index.
2. Professional Fees	2.098	ECI—Compensation for Professional, Specialty & Technical.
3. Utilities	2.557	
A. Fuel, Oil, and Gasoline	0.357	PPI Refined Petroleum Products.
B. Electricity	1.396	PPI Commercial Electric Power.
C. Natural Gas	0.694	PPI Commercial Natural Gas.
D. Water and Sewerage	0.110	CPI–U Water & Sewerage Maintenance.
4. Professional Liability Insurance	1.081	HCFA Professional Liability Insurance Premiums Index.
5. All Other	30.543	
A. All Other Products	23.642	
(1.) Pharmaceuticals	3.070	PPI Ethical (Prescription) Drugs.
(2.) Food	3.581	
a. Direct Purchase	2.446	PPI Processed Foods & Feeds.
b. Contract Service	1.135	CPI–U Food Away From Home.
(3.) Chemicals	3.929	PPI Industrial Chemicals.
(4.) Medical Instruments	3.238	PPI Medical Instruments & Equipment.
(5.) Photographic Supplies	0.413	PPI Photographic Supplies.
(6.) Rubber and Plastics	5.039	PPI Rubber & Plastic Products.
(7.) Paper Products	2.134	PPI Converted Paper & Paperboard Products.
(8.) Apparel	0.906	PPI Apparel.
(9.) Machinery and Equipment	0.218	PPI Machinery & Equipment.
(10.) Miscellaneous Products	1.112	PPI Finished Goods.
B. All Other Services	6.901	
(1.) Business Services	2.337	ECI—Compensation for Private Workers in Business Services.
(2.) Computer Services	1.415	AHE Computer & Data Processing Services.
(3.) Transportation Services	0.195	CPI–U Transportation.
(4.) Telephone Services	0.549	CPI–U Telephone Services.
(5.) Postage	0.282	CPI–U Postage.
(6.) All Other: Labor Intensive	1.767	ECI—Compensation for Private Service Occupations.
(7.) All Other: Nonlabor Intensive	0.356	CPI–U All Items.
Total	100.000	

Note: Due to rounding, weights may not sum to total.

Table 8, below, shows what the excluded hospital weights would be if cost data for all excluded hospitals had been used.

TABLE 8.—1992 EXCLUDED HOSPITAL OPERATING COST CATEGORIES, WEIGHTS, AND PROXIES USING DATA FROM ALL EXCLUDED HOSPITALS

Expense categories	Rebased 1992 excluded hospital market basket	Price proxy
1. Compensation	68.074	
A. Wages and Salaries	55.714	HCFA Occupational Wage Index.
B. Employee Benefits	12.360	HCFA Occupational Benefits Index.
2. Professional Fees	2.073	ECI—Compensation for Professional, Specialty & Technical.
3. Utilities	2.191	
A. Fuel, Oil, and Gasoline	0.306	PPI Refined Petroleum Products.
B. Electricity	1.196	PPI Commercial Electric Power.
C. Natural Gas	0.595	PPI Commercial Natural Gas.
D. Water and Sewerage	0.094	CPI–U Water & Sewerage Maintenance.
4. Professional Liability Insurance	1.081	HCFA Professional Liability Insurance Premiums Index.
5. All Other	26.582	
A. All Other Products	20.333	
(1.) Pharmaceuticals	2.704	PPI Ethical (Prescription) Drugs.
(2.) Food	3.069	
a. Direct Purchase	2.096	PPI Processed Foods & Feeds.
b. Contract Service	0.973	CPI–U Food Away From Home.
(3.) Chemicals	3.367	PPI Industrial Chemicals.
(4.) Medical Instruments	2.775	PPI Medical Instruments & Equipment.

TABLE 8.—1992 EXCLUDED HOSPITAL OPERATING COST CATEGORIES, WEIGHTS, AND PROXIES USING DATA FROM ALL EXCLUDED HOSPITALS—Continued

Expense categories	Rebased 1992 excluded hospital market basket	Price proxy
(5.) Photographic Supplies	0.354	PPI Photographic Supplies.
(6.) Rubber and Plastics	4.319	PPI Rubber & Plastic Products.
(7.) Paper Products	1.829	PPI Converted Paper & Paperboard Products.
(8.) Apparel	0.777	PPI Apparel.
(9.) Machinery and Equipment	0.187	PPI Machinery & Equipment.
(10.) Miscellaneous Products	0.953	PPI Finished Goods.
B. All Other Services	6.248	
(1.) Business Services	2.337	ECI—Compensation for Private Workers in Business Services.
(2.) Computer Services	1.213	AHE Computer & Data Processing Services.
(3.) Transportation Services	0.167	CPI–U Transportation.
(4.) Telephone Services	0.471	CPI–U Telephone Services.
(5.) Postage	0.242	CPI–U Postage.
(6.) All Other: Labor Intensive	1.514	ECI—Compensation for Private Service Occupations.
(7.) All Other: Nonlabor Intensive	0.305	CPI–U All Items.
Total	100.000	

The relatively small differences in weights between the proposed excluded hospital market basket data from excluded hospitals that have a Medicare length of stay within 15 percent of the total facility average length of stay and the excluded hospital market basket using data from all excluded hospitals do not lead to significant changes in the rate of price growth for these two market baskets. If all individual wages and prices move at about the same annual rate, both market baskets could have about the same price growth even if weights are somewhat different. Also, offsetting price increases for various costs components can result in the price growth being the same.

To examine the sensitivity of the change to the limited set of excluded hospitals, we developed a comparison for the period 1988–1998. Using historical data and forecasts for the market baskets, we compared limited and full sets of excluded hospitals.

TABLE 9.—A COMPARISON OF THE PROPOSED EXCLUDED HOSPITAL MARKET BASKET AND THE EXCLUDED HOSPITAL MARKET BASKET REBASED USING ALL EXCLUDED HOSPITALS, PERCENT CHANGE, 1988–1998

Federal fiscal year	Proposed excluded (+/ − 15%) hospital market basket—1992 base	Excluded hospital market basket using all excluded hospitals—1992 base	Difference
Historical:			
1988	4.8	4.8	0.0
1989	5.5	5.5	0.0
1990	4.5	4.6	(0.1)
1991	4.3	4.4	(0.1)
1992	3.1	3.2	(0.1)
1993	3.1	3.2	(0.1)
1994	2.6	2.7	(0.1)
1995	3.3	3.2	0.1
Forecasted:			
1996	2.6	2.6	0.0
1997	2.7	2.7	0.0
1998	2.9	2.9	0.0
Historical average: 1988–1995	3.9	4.0	(0.1)
Forecasted average: 1996–1998	2.7	2.7	0.0

Note that the historical average rate of growth for 1988–1995 for the proposed excluded hospital market basket including only excluded hospitals with Medicare average length of stay within 15 percent of total facility average length of stay is virtually identical to that for the excluded hospital market basket with all excluded hospitals. The rates of growth using the two methodologies are identical for FY 1996, 1997, and 1998.

B. Capital Costs

Rebasing the Capital Input Price Index

1. Background

Effective for cost reporting periods beginning on or after October 1, 1995, the Capital Input Price Index (CIPI) is used to determine the price increase associated with prospective payment hospital capital-related expenses. Capital-related expenses are defined as depreciation expenses, capital-related interest expenses, and other capital-related expenses, such as insurance and taxes. The CIPI measures the input price change of these capital-related expenses, and is included in the capital prospective payment update framework to determine a rate of increase in capital prospective payments.

Like the prospective payment hospital operating input price index, the CIPI is a fixed-weight price index. A fixed-weight price index measures how much it would cost at a later date to purchase the same mix of goods and services purchased in the base period. For the prospective payment hospital operating and capital input price indexes, the base period is selected and cost category weights are determined using available data on hospitals. Next, appropriate price proxy indexes are chosen for each cost category. Then a price proxy index level for each expenditure category is multiplied by the comparable cost category weight. The sum of these products (that is, weights multiplied by price proxy index levels) for all cost categories yields the composite index level of the market basket for a given year. Repeating the step for other years produces a time series of composite market basket index levels. Dividing an index level by a later index level produces a rate of growth in the input price index. Since the percent change is computed for the fixed mix of total capital inputs with a 1992 base, the index is called fixed-weight.

Like the operating input price index, the CIPI measures the price changes associated with costs during a given year. In order to do so, the CIPI must differ from the operating input price index in one important aspect. The CIPI must reflect the vintage nature of capital, which is the acquisition and use of capital over time. Capital expenses in any given year are determined by the stock of capital in that year (that is, capital that remains on hand from all current and prior capital acquisitions). An index measuring capital price changes needs to reflect this vintage nature of capital. Therefore, the CIPI was developed to capture the vintage nature of capital by using a weighted-average of past capital purchase prices up to and including the current year. Using Medicare cost reports, AHA data, and Securities Data Corporation data, a vintage-weighted price index was developed to measure price increases associated with capital expenses. The most recent discussion on the CIPI and methodological background was published in the September 1, 1995 final rule (60 FR 45817). The following **Federal Register** documents describe development and revisions of the methodology involved with the construction of the CIPI:

September 1, 1992 (57 FR 40016), May 26, 1993 (58 FR 30448),
September 1, 1993 (58 FR 46490), May 27, 1994 (59 FR 27876),
September 1, 1994 (59 FR 45517), June 2, 1995 (60 FR 29229), and September 1, 1995 (60 FR 45815).

We periodically update the base year for the operating and capital input prices to reflect the changing composition of inputs for operating and capital expenses. Currently, both the operating input price index and the CIPI are based to FY 1987. We are proposing that the base year cost structure be updated to FY 1992, the most recent year with relatively complete data for purposes of rebasing. We explain the process of rebasing the cost structure weights for the CIPI below.

2. Rebasing the Capital Input Price Index

We are proposing to use a rebased capital input price index (CIPI) in developing the FY 1997 capital update factor for capital prospective payment rates. The new CIPI would be rebased to reflect the 1992, rather than the 1987, structure of capital costs. In developing the rebased CIPI, we reviewed hospital capital expenditure data for capital cost categories (depreciation, interest, and other). Two sets of weights had to be developed in order to compute the rebased CIPI: (1) cost category weights which identify the proportion of total hospital capital expenditures attributable to each capital expenditure category, and (2) relative vintage weights for depreciation and interest which identify the proportion of capital expenditures within a cost category that are attributable to each year over the life of capital assets in that category. Because capital expense data in the Medicare Cost Reports is not available prior to 1980 for use in computing vintage weights, the two sets of weights are measured using the best data sources available as explained below and in Appendix C to this proposed rule. The computations involved with rebasing the CIPI are explained for each of these sets of weights.

a. Capital Cost Category Weights. The capital cost category weights in Table 1 below were computed using a combination of the FY 1992 Medicare Cost Reports and 1992 AHA Annual Survey data. Fiscal Year 1992 marked the first year for expanded capital data available in the Medicare Cost Reports. After reviewing the data, we determined that much of the data had been reclassified into different expense categories. Therefore, we removed reports that appeared to have reclassified data, and matched the remaining reports to the corresponding reports in the AHA Annual Survey data set. These remaining 2724 reports were used to compute capital cost category weights and the expected life of capital, which is used in determining vintage weights for depreciation and interest.

In reviewing the data, we determined that the Medicare Cost Reports provided accurate data for depreciation and other capital expenses, but had reclassified interest data. We determined that AHA Annual Survey data more accurately reflected interest expense, based on past trends in interest rates. Therefore, we used the AHA Annual Survey interest levels along with the Medicare Cost Report levels for depreciation and other capital expenses to develop a more robust capital cost data base.

After removing depreciation, interest, and other capital expenses from total capital expenses, the remainder constitutes lease expenses. Lease expenses are not a separate cost category in the CIPI. They are distributed to the other cost categories (depreciation, interest, other), reflecting an assumption that the underlying cost structure of leases is similar to capital costs in general. We assigned 10 percent of lease expenses to the other capital expenses cost category as overhead, and the remaining lease expenses were distributed to the three cost categories based on the weights of depreciation, interest, and other capital expenses not including lease expenses. (We base this assignment of 10 percent of lease expenses to overhead on the common assumption that overhead is 10 percent of costs.)

We also used the 1992 Medicare Cost Reports to determine weights for the building and fixed equipment category and the movable equipment category. Expenses for building and fixed equipment and for movable equipment were determined using the same sample of reports as was used to compute the major cost category weights. The split between building and fixed equipment and movable equipment was also used to compute the vintage weights described below. Table 10 presents a comparison of the rebased 1992 capital cost weights and the 1987 capital cost weights.

We only used those hospital reports which we considered to have capital data that was not reclassified. Because we did not use all hospital reports, we were concerned that the hospitals used may not be representative of the universe. Therefore, we compared the distribution of costs for the hospitals used with the data re-weighted to reflect the characteristics of the total universe of hospitals. From this analysis we validated that the cost weights derived from the subset we used were representative of the cost weights for the entire universe of hospitals.

TABLE 10—COMPARISON OF 1987 AND 1992 COST CATEGORY WEIGHTS

Expense categories	FY1987	Rebased FY1992	Price proxy
Total	1.0000	1.0000	
Total depreciation	.6510	.6484	
1. Building and fixed equipment depreciation	.3054	.3009	Boeckh Institutional Construction Index—vintage weighted (22 yrs)
2. Movable equipment depreciation	.3456	.3475	PPI for Machinery and Equipment—vintage weighted (10 yrs)
Total interest	.3274	.3184	
1. Government/Non Profit Interest	.2783	.2706	Average Yield on Domestic Municipal Bonds (Bond Buyer 20 bonds)—vintage weighted (22 yrs)
2. For-Profit Interest	.0491	.0478	Average Yield on Moody's AAA Bonds—vintage weighted (22 yrs)
Other	.0216	.0332	CPI (U) for Residential Rent

Source: 1992 Medicare Cost Reports, PPS year 9; 1992 AHA Annual Survey.
Note: Due to rounding, weights may not sum to totals.

We had planned to incorporate the 1992 data from the Department of Commerce for developing capital cost category weights. However, these data were not available when we developed this proposed rule. If the data become available in time to for us to analyze it, we plan to incorporate it as a data input for the final rule.

b. Relative Vintage Weights for Prices. As we have explained in previous Federal Register documents (September 1, 1995, 60 FR 45817), the CIPI was developed to capture the vintage nature of capital; that is, because capital is acquired and consumed over time, the capital expenses in any given year are determined by past and current purchases of physical and financial capital. Therefore, a vintage-weighted CIPI was developed which used vintage weights for depreciation (physical capital) and interest (financial capital) to capture the long-term consumption of capital. These vintage weights reflect the purchase patterns of building and fixed equipment and movable equipment over time. Because depreciation and interest expenses are determined by the amount of past and current capital purchases, we use the vintage weights to compute vintage-weighted price changes associated with depreciation and interest expense, which is the purpose of the CIPI.

To compute the vintage weights for depreciation and interest expenses, we used a time series of capital purchases for building and fixed equipment and movable equipment. We found no single source that provides the best time series of capital purchases by hospitals for all of the above components of capital purchases. The Medicare Cost Reports did not have sufficient capital data to meet this need. The AHA Panel Survey provides a consistent database back to 1963. While the AHA Panel Survey data does not provide annual capital purchases, it does provide a time series of depreciation and interest expenses, which can be used to infer capital purchases over time. The process of using the AHA data to estimate a time series of capital purchases, and eventually vintage weights, is explained in detail below.

In order to estimate capital purchases from AHA data on depreciation and interest expenses, the expected life for building and fixed equipment, for movable equipment, and for debt instruments is needed. The expected life is used in the calculation of vintage weights for building and fixed equipment, movable equipment, and debt instruments as we explain below.

We used the same sample of hospitals from FY 1992 Medicare Cost Reports and the 1992 AHA Annual Survey explained above in computing cost category weights to compute the expected life of building and fixed equipment and movable equipment. (The AHA Panel Survey is a monthly survey of a sample of hospitals, while the AHA Annual Survey is a more detailed survey of all hospitals.) The expected life of any piece of equipment can be determined by dividing the historical asset cost (excluding fully depreciated assets) by the current year depreciation amount. This calculation yields the estimated useful life of an asset if depreciation continued at current year levels, assuming straight-line depreciation, which is the only depreciation method allowed under Medicare. From the FY 1992 costs reports, the expected life of building and fixed equipment was determined to be 22 years, and the expected life of movable equipment was determined to be 10 years. By comparison, the expected life using FY 1987 data was 25 years for building and fixed equipment and 10 years for movable equipment.

It was also necessary to compute the expected life of debt instruments held by hospitals. As in prior exercises, we used hospital issuances of municipal and commercial bonds from Securities Data Corporation to determine the expected life of hospital debt instruments, which is used in the estimation of vintage weights for interest expense. This data source produced a weighted average life for the two types of bonds of 22 years for FY 1992, the same expected life as was computed for the 1987-based CIPI.

An annual series of total expenses and depreciation expenses was obtained from the AHA Panel Survey. For the calculation of vintage weights, this expense data was needed back to 1963. However, the depreciation expense data in the AHA Panel survey was available only back to 1976. We noticed an increasing trend in depreciation expenses as a percentage of total expenses. We performed a regression on this percentage, and used the regression equation to estimate depreciation expenses back to 1963. We then used the fixed and movable weights derived from the FY 1992 Medicare Cost Reports to partition the AHA Panel Survey depreciation expenses into annual amounts of building and fixed depreciation and movable depreciation.

Multiplying the annual depreciation amounts by the expected life calculations from the FY 1992 Medicare cost reports, year-end asset costs for building and fixed equipment and movable equipment were determined. Then by subtracting the previous year asset costs from the current year asset costs, annual purchases of building and fixed equipment and movable equipment were estimated back to 1963. This capital purchase time series is then used to compute the vintage weights for building and fixed equipment, movable equipment, and debt instruments. Each of these sets of vintage weights is explained in detail below.

For building and fixed equipment vintage weights, the real annual capital purchase amounts for building and fixed equipment derived from the AHA Panel Survey were used. The real annual purchase amount was used to capture the actual amount of the physical acquisition, net of the effect of price inflation. This real annual purchase amount for building and fixed equipment was produced by deflating the nominal annual purchase amount by the building and fixed equipment price proxy, the Boeckh institutional construction index. Because building and fixed equipment has an expected life of 22 years, the vintage weights for building and fixed equipment were deemed to represent the average purchase pattern of building and fixed equipment over 22-year periods. With real building and fixed equipment purchase estimates available back to 1963, nine 22-year periods could be averaged to determine the average vintage weights for building and fixed equipment. Averaging different periods produces vintage weights that are representative of average building and fixed equipment purchase patterns over time. Vintage weights for each 22-year period are calculated by dividing the real building and fixed capital purchase amount in any given year by the total amount of purchases in the 22-year period. For example, for the 22-year period of 1964–1985, the vintage weight for year 1 is calculated by dividing the real annual capital purchase amount of building and fixed equipment in 1964 into the total amount of real annual capital purchases of building and fixed equipment over the entire 1964–1985 period. This calculation is done for each year in the 22-year period, and for each of the nine 22-year periods. An average is taken of the nine 22-year periods to determine the FY 1992 average building and fixed equipment vintage weights, presented in Table 11 with the FY 1987 vintage weights.

For movable equipment vintage weights, the real annual capital purchase amounts for movable equipment derived from the AHA Panel Survey were used. The real annual purchase amount was used to capture the actual amount of the physical acquisition, net of price inflation. This real annual purchase amount for movable equipment was produced by deflating the nominal annual purchase amount by the movable equipment price proxy, the Producer Price Index for machinery and equipment. Because movable equipment has an expected life of 10 years, the vintage weights for movable equipment were deemed to represent the average purchase pattern of movable equipment over 10-year periods. With real movable equipment purchase estimates available back to 1963, 21 10-year periods could be averaged to determine the average vintage weights for movable equipment. Averaging different periods produces vintage weights which are representative of average movable equipment purchase patterns over time. Vintage weights for each 10-year period are calculated by dividing the real movable capital purchase amount for any given year by the total amount of purchases in the 10-year period. For example, for the 10-year period of 1976–1985, the vintage weight for year 1 is calculated by dividing the real annual capital purchase amount of movable equipment in 1976 into the total amount of real annual capital purchases of movable equipment over the entire 1976–1985 period. This calculation is done for each year in the 10-year period, and for each of the 21 10-year periods. The average of the 21 10-year periods is used to determine the FY 1992 average movable equipment vintage weights, presented in Table 11 with the FY 1987 vintage weights.

For interest vintage weights, the nominal annual capital purchase amounts for total equipment (building and fixed, and movable) derived from the AHA Panel Survey were used. Nominal annual purchase amounts were used to capture the value of the debt instrument. Because debt instruments have an expected life of 22 years, the vintage weights for interest were deemed to represent the average purchase pattern of total equipment over 22-year periods. With nominal total equipment purchase estimates available back to 1963, nine 22-year periods could be averaged to determine the average vintage weights for interest. Averaging different periods produces vintage weights which are representative of average capital purchase patterns over time. Vintage weights for each 22-year period are calculated by dividing the nominal total capital purchase amount for any given year by the total amount of purchases in the 22-year period. For example, for the 22-year period of 1964–1985, the vintage weight for year 1 is calculated by dividing the nominal annual capital purchase amount of total equipment in 1964 into the total amount of nominal annual capital purchases of total equipment over the entire 1964–1985 period. This calculation is done for each year in the 22-year period, and for each of the nine 22-year periods. The average of the nine 22-year periods is used to determine the FY 1992 average interest vintage weights, presented in Table 11 with the FY 1987 weights.

TABLE 11.—VINTAGE WEIGHTS FOR CAPITAL-RELATED PRICE PROXIES

Year	Building and fixed equipment		Movable equipment		Interest	
	FY1987 25 yrs	Rebased FY1992 22 yrs	FY1987 10 yrs	Rebased FY1992 10 yrs	FY1987 22 yrs	Rebased FY1992 22 yrs
1	.015	.019	.064	.069	.007	.007
2	.019	.020	.072	.075	.009	.008
3	.022	.023	.077	.083	.010	.010
4	.024	.026	.085	.091	.011	.012
5	.023	.028	.095	.097	.013	.014
6	.022	.030	.101	.103	.015	.016
7	.020	.031	.109	.109	.017	.018
8	.021	.032	.122	.115	.020	.021
9	.025	.036	.132	.124	.023	.024
10	.030	.039	.142	.133	.027	.029
11	.033	.043			.032	.035
12	.034	.047			.038	.041
13	.034	.050			.043	.047
14	.035	.052			.050	.052
15	.038	.055			.057	.059
16	.043	.059			.064	.067
17	.049	.062			.074	.074
18	.053	.065			.083	.081
19	.056	.067			.090	.088

TABLE 11.—VINTAGE WEIGHTS FOR CAPITAL-RELATED PRICE PROXIES—Continued

Year	Building and fixed equipment		Movable equipment		Interest	
	FY1987 25 yrs	Rebased FY1992 22 yrs	FY1987 10 yrs	Rebased FY1992 10 yrs	FY1987 22 yrs	Rebased FY1992 22 yrs
20	.057	.069			.098	.093
21	.060	.072			.105	.099
22	.066	.073			.114	.103
23	.071					
24	.075					
25	.077					
Total	1.000	1.000	1.000	1.000	1.000	1.000

Sources: AHA Panel Survey, 1963–1993; 1992 Medicare Cost Reports; Securities Data Corporation.

3. Selection of Price Proxies

After the 1992 capital cost category weights were computed, it was necessary to select appropriate price proxies to monitor the rate of increase for each expenditure category. Our proposed price proxies for the FY 1992 based CIPI are the same as those for the FY 1987 based CIPI. The rationale for selecting the price proxies is explained in the June 2, 1995 proposed rule (60 FR 29227) and the September 1, 1995 final rule (60 FR 45817). The proposed price proxies are presented in Table 10.

4. Forecast of the CIPI for Federal Fiscal Year 1997

DRI forecasts a 1.0 percent increase in the rebased 1992 CIPI for FY 1997, as indicated in Table 12. This is the outcome of a 2.5 percent increase in projected depreciation prices (building and fixed equipment, and movable equipment) and a 2.3 percent increase in other capital expense prices in FY 1997, partially offset by a 3.0 percent decline in vintage-weighted interest rates in FY 1997.

TABLE 12.—HCFA CAPITAL INPUT PRICE INDEX PERCENT CHANGES, TOTAL AND COMPONENTS, FISCAL YEARS 1979 TO 2000

Fiscal Year	Total	Depreciation			Interest	Other
		Total	Building and fixed equipment	Movable equipment		
Weights (FY92)	1.0000	0.6484	0.3009	0.3475	0.3184	0.0332
Price Changes						
1979	5.4	7.4	7.0	7.7	2.7	7.1
1980	6.9	8.0	7.3	8.5	5.4	8.6
1981	8.7	8.5	7.7	9.1	9.1	8.8
1982	9.2	8.5	8.0	9.0	10.2	8.0
1983	6.7	8.1	7.9	8.2	4.8	6.3
1984	6.3	7.3	7.6	7.1	4.9	5.0
1985	5.2	6.3	7.0	5.8	3.5	5.9
1986	3.7	5.7	6.4	5.1	0.7	6.2
1987	3.1	5.1	5.9	4.5	−0.1	4.5
1988	3.0	4.6	5.4	4.0	0.3	3.8
1989	2.6	4.4	5.2	3.7	−0.5	3.8
1990	2.3	4.0	4.9	3.2	−0.7	4.2
1991	2.0	3.6	4.6	2.7	−1.1	3.9
1992	1.5	3.2	4.4	2.1	−2.0	2.6
1993	1.1	2.9	4.1	1.8	−2.8	2.4
1994	1.1	2.7	3.9	1.7	−2.7	2.3
1995	1.3	2.6	3.8	1.6	−2.0	2.5
1996	0.9	2.5	3.7	1.5	−3.1	2.4
1997	1.0	2.5	3.5	1.5	−3.0	2.3
1998	1.0	2.5	3.4	1.5	−3.1	3.0
1999	1.0	2.4	3.4	1.5	−3.1	2.4
2000	1.1	2.4	3.4	1.5	−3.2	2.8

Source: DRI/McGraw-Hill HCC, 1st Qtr 1996; @USSIM/TREND25YR0296 @CISSIM/CONTROL961.
Released By: HCFA, OACT, Office of National Health Statistics.

5. Comparison of Percent Changes in the FY 1992 Based CIPI and the FY 1987 Based CIPI

Rebasing the CIPI from 1987 to 1992 decreased the percent change in the FY 1997 forecast by only 0.2 percentage points, from 1.2 to 1.0 as indicated in Table 4. The effect of rebasing is analyzed by comparing the 1992-based CIPI forecasted percent changes to the 1987-based CIPI forecasted percent changes using the same DRI forecast of component prices. As shown in Table 13, there is only a 0.2 percentage point difference between the percent changes in the 1992-based CIPI and the 1987-based CIPI using the first quarter 1996 forecast. The difference is caused by changes to: (1) cost category weights, (2) expected life, and (3) vintage weights. The changes to cost category weights coupled with the wide disparity in price changes between the different cost categories contributed to lowering the CIPI percent change in the FY 1997 forecast. This was the case with fixed depreciation, which has faster price growth than the other cost categories and now has a lower weight by nearly one-half of a percentage point because of rebasing to 1992. Also contributing to the 0.2 percentage point difference in FY 1997 forecast is the change in the expected life of building and fixed equipment and the change in the vintage weights for all three components: building and fixed equipment, movable equipment, and interest. The shorter expected life (22 years in 1992 versus 25 years in 1987) of building and fixed equipment slightly decreased the FY 1997 forecast CIPI percent change because years with higher price increases were not included as they had been before. The change in vintage weights also tended to decrease the FY 1997 CIPI percent change because vintage weights in all cases changed to be spread more evenly over the life of the asset, decreasing the weight of more recent years and increasing the weight of past years. In the years around FY 1997, prices for depreciation and interest are projected to increase slightly faster than prices in earlier years.

TABLE 13.—COMPARISON OF 1987 AND 1992 BASED CAPITAL INPUT PRICE INDEX USING THE SAME DRI FORECAST, PERCENT CHANGE, 1979–1997

Federal fiscal year	CIPI	
	1987	Rebased 1992
1979	5.6	5.4
1980	7.1	6.9
1981	8.8	8.7
1982	9.3	9.2
1983	6.7	6.7
1984	6.3	6.3
1985	5.1	5.2
1986	3.7	3.7
1987	3.1	3.1
1988	3.0	3.0
1989	2.7	2.6
1990	2.4	2.3
1991	2.1	2.0
1992	1.7	1.5
1993	1.3	1.1
1994	1.3	1.1
1995	1.5	1.3
1996	1.2	0.9
1997	1.2	1.0

Source: DRI/McGraw-Hill HCC, 1st Qtr 1996; @USSIM/TREND25YR0296 @CISSIM/CONTROL961.
Released by: HCFA, OACT, Office of National Health Statistics.

6. Comparison of Percent Changes in the FY 1997 CIPI Forecast in the September 1, 1995 **Federal Register** and the current FY 1997 CIPI Forecast

The previously published CIPI forecast for FY 1997 of 1.7 percent has been revised to 1.0 percent in this proposed rule. As explained above in section IV.B.5, 0.2 percentage points of the decline was the result of rebasing the CIPI from 1987 to 1992. The remaining 0.5 percentage point difference in FY 1997 between the 1992-based CIPI and the 1987-based CIPI previously published is the result of revised projections by DRI. Since making a forecast in the second quarter of 1995 for the September 1, 1995 **Federal Register**, DRI has revised their projections of price changes downward for every cost category in the CIPI. This revised projection accounts for 0.5 of the 0.7 difference between the 1992-based CIPI percent changes and the 1987-based CIPI percent changes previously published.

V. Other Decisions and Proposed Changes to the Prospective Payment System for Inpatient Operating Costs

A. Sole Community Hospital Criteria (§ 412.92)

Under the prospective payment system, special payment protections are provided to hospitals that, by reason of factors such as isolated location, weather conditions, travel conditions, or absence of other hospitals, are the sole source of hospital inpatient services reasonably available to Medicare beneficiaries. The criteria a hospital must meet to be classified as a sole community hospital (SCH) as well as the special payment adjustments available are set forth in the regulations at § 412.92.

One of the ways in which a hospital can qualify for sole community status is to be located between 25 and 35 miles from other like hospitals and prove that no more than 25 percent of residents who become inpatients or no more than 25 percent of the Medicare beneficiaries who become inpatients in the hospital's "service area" are admitted to other like hospitals located within a 35-mile radius of the hospital (or its service area, if larger).

In the rulemaking process for FY 1989, we addressed the criteria for qualification as a sole community hospital. ProPAC had recommended that we issue guidelines before the beginning of FY 1989 to promote greater uniformity in the criteria applied by regional offices to designate sole community hospitals. In the final rule published on September 30, 1988, we stated: "A hospital may delineate its service area by identifying the zip codes of all its inpatients for the cost reporting period ending before the date it applies for SCH status. The lowest number of zip codes accounting for at least 75 percent of its inpatients would then constitute its service area." (53 FR 35810–11).

In March 1990, we issued a revised manual which inadvertently reflected policy prior to October 1, 1988; specifically, section 2810 A.2.c of the Medicare Provider Reimbursement Manual, Part 1 (HCFA Pub. 15–1) stated, "A hospital may define its service area as the lowest number of contiguous zip codes from which the hospital draws at least 75 percent of its inpatients." (Emphasis added.) This revision does not accurately reflect the definition of "service area" that we set forth in the FY 1989 final rule in response to ProPAC's recommendation that we address the criteria for SCH status. It has come to our attention that, accordingly, some hospitals have raised questions about the definition of service area. In this proposed rule, we are clarifying that, consistent with the language in the September 30, 1988 final rule, our definition of "service area" for purposes of determining SCH status does not require contiguous zip code areas. We have applied this definition since October 1, 1988 (the effective date of the September 30, 1988 final rule). The

current manual inadvertently reflects previous policy, and does not reflect our current policy as set forth in the **Federal Register** and applied since October 1, 1988. We intend to revise the current manual accordingly at our earliest opportunity.

B. Rural Referral Centers (§ 412.96)

Under the authority of section 1886(d)(5)(C)(i) of the Act, § 412.96 sets forth the criteria a hospital must meet in order to receive special treatment under the prospective payment system as a rural referral center. For discharges occurring before October 1, 1994, rural referral centers received the benefit of payment based on the other urban rather than the rural standardized amount. As of that date, the other urban and rural standardized amounts are the same. However, rural referral centers continue to receive special treatment under both the disproportionate share hospital payment adjustment and the criteria for geographic reclassification.

One of the criteria under which a rural hospital may qualify as a referral center is to have 275 or more beds available for use. A rural hospital that does not meet the bed size criterion can qualify as a rural referral center if the hospital meets two mandatory criteria (number of discharges and case-mix index) and at least one of three optional criteria (medical staff, source of inpatients, or volume of referrals). With respect to the two mandatory criteria, a hospital may be classified as a rural referral center if its—

- Case-mix index is at least equal to the lower of the median case-mix index for urban hospitals in its census region, excluding hospitals with approved teaching programs, or the median case-mix index for all urban hospitals nationally; and
- Number of discharges is at least 5,000 discharges per year or, if fewer, the median number of discharges for urban hospitals in the census region in which the hospital is located. (The number of discharges criterion for an osteopathic hospital is at least 3,000 discharges per year.)

1. Case-Mix Index

Section 412.96(c)(1) provides that HCFA will establish updated national and regional case-mix index values in each year's annual notice of prospective payment rates for purposes of determining rural referral center status. In determining the proposed national and regional case-mix index values, we follow the same methodology we used in the November 24, 1986 final rule, as set forth in regulations at § 412.96(c)(1)(ii). Therefore, the proposed national case-mix index value includes all urban hospitals nationwide, and the proposed regional values are the median values of urban hospitals within each census region, excluding those with approved teaching programs (that is, those hospitals receiving indirect medical education payments as provided in § 412.105).

These values are based on discharges occurring during FY 1995 (October 1, 1994 through September 30, 1995) and include bills posted to HCFA's records through December 1995. Therefore, in addition to meeting other criteria, we are proposing that to qualify for initial rural referral center status or to meet the triennial review standards for cost reporting periods beginning on or after October 1, 1996, a hospital's case-mix index value for FY 1995 would have to be at least—

- 1.3332; or
- Equal to the median case-mix index value for urban hospitals (excluding hospitals with approved teaching programs as identified in § 412.105) calculated by HCFA for the census region in which the hospital is located.

The median case-mix values by region are set forth in the table below:

Region	Case-mix index value
1. New England (CT, ME, MA, NH, RI, VT)	1.2292
2. Middle Atlantic (PA, NJ, NY)	1.2224
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	1.3375
4. East North Central (IL, IN, MI, OH, WI)	1.2450
5. East South Central (AL, KY, MS, TN)	1.2911
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	1.2178
7. West South Central (AR, LA, OK, TX)	1.3080
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	1.3284
9. Pacific (AK, CA, HI, OR, WA)	1.3333

The above numbers will be revised in the final rule to the extent required to reflect the updated MedPAR file, which will contain data from additional bills received for discharges through September 30, 1995.

For the benefit of hospitals seeking to qualify as referral centers or those wishing to know how their case-mix index value compares to the criteria, we are publishing each hospital's FY 1995 case-mix index value in Table 3C in section V of the Addendum to this proposed rule. In keeping with our policy on discharges, these case-mix index values are computed based on all Medicare patient discharges subject to DRG-based payment.

2. Discharges

Section 412.96(c)(2)(i) provides that HCFA will set forth the national and regional numbers of discharges in each year's annual notice of prospective payment rates for purposes of determining referral center status. As specified in section 1886(d)(5)(C)(ii) of the Act, the national standard is set at 5,000 discharges. However, we are proposing to update the regional standards. The proposed regional standards are based on discharges for urban hospitals' cost reporting periods that began during FY 1994 (that is, October 1, 1993 through September 30, 1994). That is the latest year for which we have complete discharge data available.

Therefore, in addition to meeting other criteria, we are proposing that to qualify for initial rural referral center status or to meet the triennial review standards for cost reporting periods beginning on or after October 1, 1996, the number of discharges a hospital must have for its cost reporting period that began during FY 1995 would have to be at least—

- 5,000; or
- Equal to the median number of discharges for urban hospitals in the census region in which the hospital is located, as indicated in the table below.

Region	Number of discharges.
1. New England (CT, ME, MA, NH, RI, VT)	6812
2. Middle Atlantic (PA, NJ, NY)	9067
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	6972
4. East North Central (IL, IN, MI, OH, WI)	6958
5. East South Central (AL, KY, MS, TN)	5007
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	4216
7. West South Central (AR, LA, OK, TX)	4002
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	6992
9. Pacific (AK, CA, HI, OR, WA)	5669

We reiterate that, to qualify for rural referral center status for cost reporting periods beginning on or after October 1, 1996, an osteopathic hospital's number of discharges for its cost reporting period that began during FY 1995 would have to be at least 3,000.

3. Retention of Referral Center Status

Section 412.96(f) states that each hospital receiving the referral center adjustment is reviewed every 3 years to determine if the hospital continues to meet the criteria for referral center status. To retain status as a referral center, a hospital must meet the criteria for classification as a referral center specified in § 412.96 (b)(1) or (b)(2) or (c) for 2 of the last 3 years, or for the current year. A hospital may meet any one of the three sets of criteria for individual years during the 3-year period or the current year. For example, a hospital may meet the two mandatory requirements in § 412.96(c)(1) (case-mix index) and (c)(2) (number of discharges) and the optional criterion in paragraph (c)(3) (medical staff) during the first year. During the second or third year, the hospital may meet the criteria under § 412.96(b)(1) (rural location and appropriate bed size).

A hospital must meet all of the criteria within any one of these three sections of the regulations in order to meet the retention requirement for a given year. That is, it will have to meet all of the criteria of § 412.96(b)(1) or § 412.96(b)(2) or § 412.96(c). For example, if a hospital meets the case-mix index standards in § 412.96(c)(1) in years 1 and 3 and the number of discharge standards in § 412.96(c)(2) in years 2 and 3, it will not meet the retention criteria. All of the standards would have to be met in the same year.

In accordance with § 412.96(f)(2), the review process is limited to the hospital's compliance during the last 3 years. Thus, if a hospital meets the criteria in effect for at least 2 of the last 3 years or if it meets the criteria in effect for the current year (that is, the criteria for FY 1997 outlined above in this section of the preamble), it will retain its status for another 3 years. We have constructed the following chart and example to aid hospitals that qualify as referral centers under the criteria in § 412.96(c) in projecting whether they will retain their status as a referral center.

Under § 412.96(f), to qualify for a 3-year extension effective with cost reporting periods beginning in FY 1997, a hospital must meet the criteria in § 412.96(c) for FY 1997 or it must meet the criteria for 2 of the last 3 years as follows:

For the cost reporting period beginning during FY	Use hospital's case-mix index for FY	Use the discharges for the hospital's cost reporting period beginning during FY	Use numerical standards as published in the FEDERAL REGISTER on
1996	1994	1994	September 1, 1995.
1995	1993	1993	September 1, 1994.
1994	1992	1992	September 1, 1993.

Example: A hospital with a cost reporting period beginning July 1 qualified as a referral center effective July 1, 1994. The hospital has fewer than 275 beds. Its 3-year status as a referral center is protected through June 30, 1997 (the end of its cost reporting period beginning July 1, 1996). To determine if the hospital should retain its status as a referral center for an additional 3-year period, we will review its compliance with the applicable criteria for its cost reporting periods beginning July 1, 1994, July 1, 1995, and July 1, 1996. The hospital must meet the criteria in effect either for its cost reporting period beginning July 1, 1997, or for two out of the three past periods. For example, to be found to have met the criteria at § 412.96(c) for its cost reporting period beginning July 1, 1995, the hospital's case-mix index value during FY 1993 must have equaled or exceeded the lower of the national or the appropriate regional standard as published in the September 1, 1994 final rule with comment period. The hospital's total number of discharges during its cost reporting year beginning July 1, 1993, must have equaled or exceeded 5,000 or the regional standard as published in the September 1, 1994 final rule with comment period.

For those hospitals that seek to retain referral center status by meeting the criteria of § 412.96(b)(1) (i) and (ii) (that is, rural location and at least 275 beds), we will look at the number of beds shown for indirect medical education purposes (as defined at § 412.105(b)) on the hospital's cost report for the appropriate year. We will consider only full cost reporting periods when determining a hospital's status under § 412.96(b)(1)(ii). This definition varies from the number of beds criterion used to determine a hospital's initial status as a referral center because we believe it is important for a hospital to demonstrate that it has maintained at least 275 beds throughout its entire cost reporting period, not just for a particular portion of the year.

C. Disproportionate Share Adjustment (§ 412.106)

Section 1886(d)(5)(F) of the Act provides for additional payments for hospitals that serve a disproportionate share of low income patients. The disproportionate share adjustment, which was added to the prospective payment system by section 9105 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272), was intended to address the higher Medicare costs associated with treating a large number of low-income patients. Under this provision, patients who are eligible for Medicaid and Supplemental Security Income (SSI) benefits were used as a proxy measure of the proportion of low-income patients.

A hospital's disproportionate share adjustment is determined by calculating the sum of two patient percentages (Medicare Part A/Supplemental Security Income (SSI) covered days to total Medicare Part A covered days, and Medicaid but not Medicare Part A covered days to total inpatient hospital days). Based on the location and size of the hospital, a formula determines if the hospital's patient percentage qualifies the hospital for an adjustment and how much that adjustment will be.

With respect to the Medicare-SSI calculation, hospitals have expressed dissatisfaction with these proxy measures, and have challenged HCFA's implementation of them in recent litigation. Since SSI beneficiary information is confidential, hospitals do not have access to lists of patients who are eligible for both Medicare Part A and SSI benefits. Hospitals are increasingly frustrated by their inability to monitor these data.

With respect to the Medicaid fraction, hospitals have complained that, because of Medicaid coverage restrictions, Medicaid covered days may not be a consistent measure of indigent care across States. Medicaid reforms under consideration by the President and Congress may further interfere with the utility of Medicaid covered days as a measure of the proportion of low-income patients.

Because of these concerns, we have been examining alternative measures of indigent care. Some of the measures we have explored using are estimates of patient income in a hospital's service area, hospital levels of bad debt, and proportion of emergency room admissions in a hospital. Because of data and other limitations, however, we have yet to find an alternative that appears promising as a replacement to

the present measure. We are, therefore, soliciting comments from the industry on better and more direct measures of indigent care than the present measure that relies on SSI and Medicaid data. Our preference would be to use data that are already available. We would, however, be open to considering measures that require new data collection if we were convinced that the result would be beneficial to hospitals and HCFA. We note that since HCFA is bound by the current statutory provisions, we cannot revise the disproportionate share adjustment without legislative action.

We note that ProPAC is also concerned with these issues. In its March 1, 1996 report, ProPAC recommended that the structure of the disproportionate share adjustment be reviewed to make certain that available funds are distributed equitably among the hospitals most in need of assistance. (Recommendation 18.) The Commission believes that Medicaid utilization has never been an optimal measure of service to low-income patients and is also concerned with the impact of possible reform in the structure of Medicaid. Thus, ProPAC recommends that a comprehensive review of the disproportionate share adjustment be undertaken, including assessment of the objectives of this payment and defining the population and scope of care to be covered. Alternative measures of low-income patient care could then be considered, including any data collection necessary. As discussed above, we agree with ProPAC that new measures should be explored. We believe that this is a first step in reforming the payment formula for the disproportionate share adjustment. We also recognize that the development of a better measure of the services hospitals provide to indigent patients may require the collection of new data.

In addition, ProPAC is concerned about the potential impact of reductions in the disproportionate share payments. (Recommendation 17.) The Commission believes that hospitals that treat a large number of the uninsured could be particularly vulnerable because of recent changes in the health care environment. ProPAC cautions against large reductions in disproportionate share payments that would threaten the continued ability of many hospitals to serve populations who depend on them for access to care. We note that the President's FY 1997 budget does not include any reduction in payment for disproportionate share hospitals.

INITIAL RESIDENCY PERIOD LIMITATIONS

Residency type	Initial Residency Period Limitation (No. of years)
Allopathy	
ANESTHESIOLOGY	4
Critical Care Medicine	4
Pain Management	4
COLON AND RECTAL SURGERY	5
DERMATOLOGY	4
Dermatopathology	4
Clinical & Laboratory Dermatological Immunology	4
EMERGENCY MEDICINE	3/4
Sports Medicine	3
FAMILY PRACTICE	3
Geriatric Medicine	5
Sports Medicine	3
INTERNAL MEDICINE	3
Adolescent Medicine	3
Cardiovascular Disease	3
Clinical Cardiac Electrophysiology	3
Clinic & Laboratory Immunology	3
Critical Care Medicine	3
Endocrinology, Diabetes, and Metabolism	3
Gastroenterology	3
Geriatric Medicine	5
Hematology	3
Hematology and Oncology	3
Infectious Disease	3
Medical Oncology	3
Nephrology	3
Pulmonary Disease	3
Pulmonary Disease and Critical Care Medicine	3
Rheumatology	3
Sports Medicine	3
MEDICAL GENETICS	4

D. Direct Graduate Medical Education (§ 413.86)

1. Initial Residency Period Limitations

We are updating the Initial Residency Period Limitations for direct graduate medical education (GME), originally published in the **Federal Register** on September 29, 1989 (54 FR 40286). The regulations in § 413.86(g)(1) state that, "[e]ffective July 1, 1995, an initial residency period is defined as the minimum number of years required for board eligibility."

The update reflects the following:

- Effective July 1, 1995, section 1886(h)(5)(F) of the Act, as amended by Public Law 103–66, defines an initial residency period as the minimum number of years required for initial board eligibility. Previously, this period had been defined as minimum number of years "plus one." The prior listing had included the additional year, not to exceed five years.
- Changes in curriculum requirements regarding the number of years needed for board eligibility for previously approved programs.
- Addition of newly approved graduate medical education programs.

INITIAL RESIDENCY PERIOD LIMITATIONS—Continued

Residency type	Initial Residency Period Limitation (No. of years)
NEUROLOGICAL SURGERY	5
Pediatric Neurological Surgery	5
NEUROLOGY	4
Child Neurology	4
Clinical Neurophysiology	4
NUCLEAR MEDICINE	3
OBSTETRICS AND GYNECOLOGY	4
Critical Care Medicine	4
Gynecological Oncology	4
Maternal and Fetal Medicine	4
Reproductive Endocrinology	4
OPHTHALMOLOGY	4
ORTHOPAEDIC SURGERY	5
Adult Reconstructive Orthopaedics	5
Foot and Ankle Orthopaedics	5
Hand Surgery	5
Musculoskeletal Oncology	5
Pediatric Orthopaedics	5
Spinal Cord Injury	5
Sports Medicine	5
OTOLARYNGOLOGY	5
Neurotology/Otolaryngology	5
Pediatric Otolaryngology	5
PATHOLOGY, ANATOMIC AND CLINICAL	4
Blood Banking/Transfusion Medicine	4
Chemical Pathology	4
Cytopathology	4
Dermatopathology	4
Forensic Pathology	4
Hematology	4
Immunopathology	4
Medical Microbiology	4
Neuropathology	4
Pediatric Pathology	4
PEDIATRICS	3
Adolescent Medicine	3
Clinical and Laboratory Immunology	3
Neonatal-Perinatal Medicine	3
Pediatric Cardiology	3
Pediatric Critical Care Medicine	3
Pediatric Emergency Medicine	3
Pediatric Endocrinology	3
Pediatric Gastroenterology	3
Pediatric Hematology/Oncology	3
Pediatric Infectious Disease	3
Pediatric Nephrology	3
Pediatric Opthamology	3
Pediatric Pulmonology	3
Pediatric Rheumatology	3
Pediatric Sports Medicine	3
PHYSICAL MEDICINE AND REHABILITATION	4
PLASTIC SURGERY	5
Hand Surgery	5
PREVENTIVE MEDICINE	3
Aerospace Medicine	3
Medical Toxicology	3
Occupational Medicine	3
Public Health & General Preventive Medicine	3
PSYCHIATRY	4
Addiction Medicine	4
Child & Adolescent Psychiatry	4
Forensic Psychiatry	4
Geriatric Psychiatry	4
RADIOLOGY, DIAGNOSTIC	4
Neuroradiology	4
Nuclear Radiology	4
Pediatric Radiology	4
Vascular and Interventional Radiology	4
Radiation Oncology	4

INITIAL RESIDENCY PERIOD LIMITATIONS—Continued

Residency type	Initial Residency Period Limitation (No. of years)
SURGERY, GENERAL	5
Critical Care Medicine	5
Hand Surgery	5
Pediatric Surgery	5
Thoracic Surgery	5
Vascular Surgery	5
UROLOGY	5
Pediatric Urology	5
Osteopathy	
ANESTHESIOLOGY	4
Critical Care Medicine	4
DERMATOLOGY	4
Dermatopathology	4
MOHS Micrographic Surgery	4
EMERGENCY MEDICINE	4
Sports Medicine	4
FAMILY PRACTICE	3
Adolescent and Young Adult Medicine	3
Geriatrics	5
Sports Medicine	3
INTERNAL MEDICINE	4
Clinical Allergy and Immunology	4
Cardiology	4
Endocrinology	4
Gastroenterology	4
Hematology	4
Infectious Diseases	4
Nephrology	4
Oncology	4
Pulmonary Diseases	4
Rheumatology	4
Clinical Cardiac Electrophysiology	4
Critical Care Medicine	4
Geriatrics	6
Sports Medicine	4
NUCLEAR MEDICINE	4
In-Vivo and In-Vitro Nuclear Medicine	4
Nuclear Cardiology	4
Nuclear Imaging and Therapy	4
NEUROLOGY	4
Child Neurology	4
PSYCHIATRY	4
Child Psychiatry	4
OBSTETRICS/GYNECOLOGY	5
Maternal and Fetal Medicine	5
Gynecological Oncology	5
Reproductive Endocrinology	5
FACIAL PLASTIC SURGERY	5
OPHTHALMOLOGY	4
OTORHINO/FACIAL PLASTIC SURGERY	5
OTORHINOLARYNGOLOGY	5
ORTHOPEDIC SURGERY	5
PATHOLOGY, ANATOMIC	4
PATHOLOGY, ANATOMIC/LABORATORY MEDICINE	5
PATHOLOGY, LABORATORY MEDICINE	4
Forensic Pathology	5
Blood Banking/Transfusion Medicine	5
Chemical Pathology	5
Cytopathology	5
Dermatopathology	5
Hematology	5
Immunopathology	5
Medical Microbiology	5
Neuropathology	5
PEDIATRICS	3
Adolescent and Young Adult Medicine	3
Neonatal Medicine	3
Pediatric Allergy/Immunology	3
Pediatric Cardiology	3

INITIAL RESIDENCY PERIOD LIMITATIONS—Continued

Residency type	Initial Residency Period Limitation (No. of years)
Pediatric Hematology/Oncology	3
Pediatric Infectious Diseases	3
Pediatric Intensive Care	3
Pediatric Nephrology	3
Pediatric Pulmonology	3
Pediatric Sports Medicine	3
PREVENTATIVE MEDICINE	4
PROCTOLOGY	3
RADIATION ONCOLOGY	4
RADIOLOGY, DIAGNOSTIC	5
Angiography and Interventional Radiology	5
Diagnostic Ultrasound	5
Neuroradiology	5
Nuclear Radiology	5
Radiological Imaging	5
Pediatric Radiology	5
REHABILITATION MEDICINE	4
Sports Medicine	4
GENERAL SURGERY	5
NEUROSURGERY	5
PLASTIC AND RECONSTRUCTIVE SURGERY	5
THORACIC CARDIOVASCULAR SURGERY	5
UROLOGICAL SURGERY	5
GENERAL VASCULAR SURGERY	5
CRITICAL CARE SURGERY	5
OSTEOPATHIC MANIPULATIVE MEDICINE	3
Podiatry	
ROTATING PODIATRIC RESIDENCY (PRIMARY CARE)	2
PODIATRIC ORTHOPEDIC RESIDENCY	2
PODIATRIC SURGICAL RESIDENCY	2
Dentistry	
DENTAL PUBLIC HEALTH	1
ENDODONTICS	2
ORAL PATHOLOGY	3
ORAL AND MAXILLOFACIAL SURGERY	4
ORTHODONTICS	2
PEDIATRIC DENTISTRY	2
PERIODONTICS	3
PROSTHODONTICS	3
PROSTHODONTICS/MAXILLOFACIAL	3
GENERAL DENTISTRY	1
ADVANCED GENERAL DENTISTRY	2
Allopathy Combined Programs *	
FAMILY PRACTICE(3) AND PSYCHIATRY(4)	4
INTERNAL MEDICINE(3) & EMERGENCY MEDICINE(3)	3
INTERNAL MEDICINE(3) & FAMILY PRACTICE(3)	3
INTERNAL MEDICINE(3) & NEUROLOGY(4)	4
INTERNAL MEDICINE(3) & PEDIATRICS(3)	3
INTERNAL MED(3) & PHYS MED & REHABILITATION(4)	4
INTERNAL MEDICINE(3) & PREVENTIVE MEDICINE(3)	3
INTERNAL MEDICINE(3) & PSYCHIATRY(4)	4
NEUROLOGY(4) & PHYS MEDICINE AND REHAB(4)	4
PEDIATRICS(3) & EMERGENCY MEDICINE(3)	3
PEDIATRICS(3) & PHYSICAL MEDICINE AND REHAB(4)	4
PEDIATRICS(3)/PSYCHIATRY(4)/CHILD & ADOL PSYCH(4)	4
PSYCHIATRY(4) AND NEUROLOGY(4)	4

* For residents participating in combined programs, Medicare limits the initial residency period to the time required for individual certification in the longer of the two programs.

2. Combined Residency Programs

While updating the listing of the Initial Residency Period Limitations for GME, we noted many new programs were combined specialty residency programs. The combined programs run concurrently for a period of time that is longer than the required time for certification in either specialty, but shorter than would be required if the programs were taken sequentially. Residents completing these programs are eligible for board certification in both specialties.

We use the Internal Medicine and Pediatrics combined program as an example: Taken individually, Internal Medicine is a 3-year program and Pediatrics is also a 3-year program. However, taken as a combined program, Internal Medicine and Pediatrics is a 4-

year program, with certification in both specialties.

Currently, we are aware of 13 combined programs, including Internal Medicine/Pediatrics, Pediatrics/Emergency Medicine, Family Practice/Psychiatry, and Neurology/Physical Medicine and Rehabilitation.

Due to the increasing prevalence of combined residency programs since our September 29, 1989 final rule, we propose to clarify how the definition of initial residency period applies in such cases. While the combined programs may have advantages from an educational standpoint, the statutory limitation on payment for GME still applies. In the initial legislation for a per resident payment to hospitals for GME, Congress limited Medicare's liability for those payments to residents in their initial residency period plus one year. The plus-one-year provision allowed for payment for an additional year as a full FTE for residents who continued on in a second approved program after completing their initial certification. However, regardless of the number of additional years the second program required for certification, at most only the first year could be paid as a full FTE. All subsequent years are paid at a 0.5 FTE rate. When Congress revised section 1886(h) of the Act to remove the plus-one-year provision, Congress further restricted payment to allow payment as a full FTE for the first residency program only. All years of a subsequent program are now limited to the 0.5 FTE rate. Congress clearly wanted to further limit Medicare's payment obligations. Accordingly, we believe that the initial residency period limitation is designed to allow full Medicare payment only for the period required to train in one specialty.

For residents enrolled in combined programs, we are therefore proposing to define the initial residency period as the time required for individual certification in the longer of the two programs. Continuing to use Internal Medicine and Pediatrics as an example, we would define the initial residency for Internal Medicine and Pediatrics as 3 years. The remaining year of the combined program would be treated as 0.5 FTE, in accordance with the regulations at § 413.86(g)(3).

E. Distribution of an "Important Message from Medicare" (§ 489.27)

Under § 489.27 of our provider agreement regulations, all hospitals that participate in Medicare (including those not paid under the prospective payment system) must agree to furnish each Medicare beneficiary with a notice, at or about the time of admission, that explains the patient's discharge rights. This statement, entitled "An Important Message from Medicare," advises a beneficiary of his or her rights to be fully informed about decisions affecting Medicare coverage or payment and about his or her appeal rights in response to any hospital's notice to the effect that Medicare will no longer cover the patient's care. The "Important Message" also advises the patient of what to do when he or she receives such a hospital statement and how to elicit more information.

In November 1993, the Medicare Technical Advisory Group (M–TAG) established the Beneficiary Protection and Documentation Issues Task Force. The task force consists of HCFA staff as well as representatives from health care industry organizations, beneficiary advocate groups, fiscal intermediaries, and peer review organizations (PROs). The task force was charged with reviewing various issues that impact beneficiaries and the health care community, including how to improve the effectiveness of "An Important Message from Medicare."

We are proposing to adopt a recommendation of this task force that would respond to numerous requests for clarification on the timing of the written notice of discharge rights that must be given to hospital inpatients. As noted above, existing § 489.27 specifies that a hospital must distribute the statement "at or about the time of admission." We understand that for monitoring purposes some PROs have interpreted this requirement to mean "within 24 hours preceding or following the admission." However, we agree with the task force's determination that the PRO's interpretation is unnecessarily narrow. We believe that during the first 24 hours of a patient's admission, the hospital is primarily concerned with ensuring appropriate treatment of the patient's illness or injury. Therefore, we are proposing to change § 489.27 to specify that the hospital must provide timely notice during the course of the hospital stay.

For purposes of this requirement, we would consider the course of the hospital stay to begin when the hospital provides the individual with a package of information regarding scheduled preadmission testing and registration for a planned hospital admission. This would give hospitals more flexibility in meeting the requirement, as well as encourage the distribution of the "Important Message" at a time when the beneficiary is better able to receive and more likely to understand its contents. In complying with the requirement to provide timely notice during the course of the patient's hospital stay, the hospital must give the patient the "Important Message" far enough in advance of the hospital's written notice regarding continued stay to provide the beneficiary time to appeal the hospital's decision. Finally, "timely notice" would also include adherence to any State requirements on the provision of patient rights notices.

The current version of the "Important Message" has been in use since 1988. As part of our effort to improve communication with Medicare beneficiaries, we will continue to evaluate the effectiveness of the "Important Message" and welcome suggestions for its improvement.

VI. Changes and Clarifications to the Prospective Payment System for Capital-Related Costs

A. Consistent Cost Finding During the Capital Transition Period (§ 412.302(d))

Section 412.302(d) of the regulations requires that, during the transition period to full prospective payment for capital-related costs, a hospital must follow consistent cost-finding methods for classifying and allocating capital-related costs. Specifically, the regulation requires that unless there is a change of ownership, a hospital must continue the same cost-finding methods for old capital costs, including its practices for direct assignment of costs and its cost-allocation bases, that were in effect in the hospital's last cost-reporting period before becoming subject to payment under the capital prospective payment transition system. A hospital may request a change in its cost-finding methods for new capital, provided that the request is made in a timely fashion as provided in the regulation, the hospital provides justification for the change, and the intermediary determines that the justification is reasonable.

It is important to note that, while the regulation does permit changes in cost-finding methods for new capital, such changes are only permitted where they do not involve any changes in cost-finding for old capital. In practice, this means that if a hospital claims any old capital, the intermediary cannot permit a change in any of the allocation bases on Worksheet B–1 of the cost report from the bases used in the last cost reporting period prior to the capital prospective payment system transition period. Otherwise, the consistency rule governing old capital cost-finding would be violated.

As we discussed in the preamble to the August 30, 1991 final rule for the capital prospective payment system (56 FR 43396), our primary reason for establishing this consistency rule was to prevent hospitals from using changes in cost-finding methodologies to shift costs to areas where payment continues to be made on a reasonable cost basis. Allowing changes in cost-finding methodologies to accomplish such cost-shifting would obviously defeat the purpose of adopting a prospective payment system.

In response to concerns expressed by the hospital industry about the costs of the recordkeeping required under the cost-reporting rules, HCFA has developed new cost reporting instructions, which will be released later this year, that permit hospitals to voluntarily adopt a simplified cost allocation methodology. This methodology reduces the number of statistical bases that a hospital is required to maintain. Under the new instructions for HCFA Form 2552–96 (the cost report instructions for FY 1996 cost reporting periods), hospitals may request the simplified cost allocation methodology. However, hospitals that elect this methodology must employ a prescribed list of statistical bases with no deviations. Hospitals may not pick and choose among the prescribed statistics for the combination that is most advantageous. Furthermore, a hospital that elects the simplified methodology must continue to use it for at least 3 years, unless a change of ownership occurs. We expect that, while election of the simplified method will always result in reduced recordkeeping costs for the hospital, it will also result frequently in reduced Medicare payment for the hospital. In fact, the instructions for HCFA Form 2552–96 will caution hospitals to compare the reduced costs of program compliance with the reduced costs of the simplified recordkeeping before electing the simplified method.

We believe this proposal to permit election of the simplified cost allocation methodology, as provided in the instructions for HCFA Form 2552–96, reasonably reconciles concerns about recordkeeping costs with the requirement of consistent cost-finding during the transition. Specifically, we propose to add a new paragraph (d)(4) to § 412.302, to provide that, hospitals may elect to adopt the simplified cost allocation methodology, as will be provided in the instructions for HCFA Form 2552–96.

B. Possible Adjustments to the Capital Prospective Payment System Federal Rate and Hospital-Specific Rates (§§ 412.308(b) and 412.328)

In the proposed and final rules for FY 1996 (60 FR 29238–29239 and 60 FR 45830–45831), we discussed the effects of the expiration of the statutory budget neutrality provision on rates and aggregate payments under the capital prospective payment system. Under the budget neutrality provision, we set the capital-prospective payment system rates during FY 1992 through FY 1995 so that payments were projected to equal 90 percent of Medicare payments that would have been made on a reasonable cost basis for each fiscal year. As a result of the provision's expiration in FY 1996, the capital-prospective payment system rates and payments under the transition system increased significantly. The FY 1996 Federal rate is 22.59 percent higher than the FY 1995 Federal rate. We now estimate that aggregate capital payments will increase 27.7 percent in FY 1996 relative to FY 1995, and that payments will exceed capital costs by 9.6 percent in FY 1996. Under current law and regulations, we estimate that aggregate payments will further increase by 7.3 percent in FY 1997, for an increase of 37.0 percent over 2 years. We do not believe that such large increases in capital payments are necessary or warranted.

During the FY 1996 rulemaking process, we solicited comments on possible revisions to the capital prospective payment rates that would have moderated these substantial increases in payments. At that time, we noted that section 1886(g) of the Act gives the Secretary broad discretion in the determination of the appropriate level of rates and payments. However, we decided not to implement any reduction to the capital rates at that time, in the expectation that Congress would be considering revisions to rates and payments under the capital prospective payment system within more comprehensive legislation dealing with Medicare and the Federal budget.

In its March 1, 1996 Report to Congress, the Prospective Payment Assessment Commission (ProPAC) observed that the base capital rate was reduced during the first 4 years of the transition to full prospective payment for capital to meet the statutory budget neutrality requirement. In the light of the large increase in rates and payments as a result of that provision's expiration in FY 1996, ProPAC recommends (Recommendation 11) that the capital payment rates should be set by developing an appropriate base payment rate and applying an annual update. The Commission notes that there are several ways to determine an appropriate base capital payment rate.

We agree with ProPAC that the large increase in rates and payments caused by the expiration of the statutory budget neutrality provision raises an issue concerning the proper level for future rates and payments. We also agree that there are several possible approaches to establishing an appropriate level for the rates. We considered a range of options in developing this proposed rule. For example, we considered proposing to freeze the inflation updates for the rates in FY 1997, on the grounds that such an update was unnecessary and unwarranted in light of the large increase in the rates for FY 1996. Alternatively, we considered proposing actual reductions in the base rates. For example, we considered proposing to implement the provision contained in the Administration's budget plan. The Administration's FY 1997 budget includes a provision to reduce the base Federal and hospital-specific rates by 15.7 percent. Such a reduction would build the budget neutrality adjustment for FY 1995 (0.8432, or –15.68 percent) permanently into the base rates, effectively using the FY 1995 base payment rate as the base for future years. The actual payment rates for future years would then be determined by applying the analytical update framework that we adopted in the final rule for FY 1996 (60 FR 45815–45829). We also considered proposing to implement a part of the Administration's proposal, that is, to reduce the standard Federal rate by 7.38 percent and the hospital-specific rates by 9.48 percent. The rationale for each of these options to reduce the base rate derives from an analysis of current data compared to data on which the rate was originally based.

Under § 412.308, HCFA determined the standard Federal rate, which is used to determine the Federal rate for each fiscal year, on the basis of an estimate of the FY 1992 national average Medicare capital cost per discharge. The FY 1992 national average Medicare capital cost per discharge was estimated by updating the FY 1989 national average Medicare capital cost per discharge by the estimated increase in Medicare inpatient capital cost per discharge. As we discussed in the preamble to the August 30, 1991 capital prospective payment system final rule (56 FR 43366–43384), HCFA used the July 1991 update of HCRIS data to estimate an FY 1989 national average Medicare cost per case of $527.22.

HCFA then updated that amount to FY 1992 by using an actuarial projection of a 31.3 percent increase in Medicare capital cost per discharge from FY 1989 to FY 1992. The standard Federal rate was thus based on an estimated FY 1992 national average Medicare capital cost per discharge of $692.24 (before the application of a transfer adjustment and a payment parameter adjustment).

Section 13501(a)(3) of Public Law 103–66 amended section 1886(g)(1)(A) of the Social Security Act to require that, for discharges occurring after September 30, 1993, the unadjusted standard Federal rate be reduced by 7.4 percent. As we discussed in the September 1, 1993 final rule for FY 1994 (58 FR 46316ff.), the purpose of that reduction was to reflect revised inflation estimates, as of May 1993, for the increases in Medicare capital costs per discharge during FY 1989 through FY 1992. By that time, the estimate of increases in Medicare inpatient capital costs per discharge from FY 1989 through FY 1992 had declined from 31.3 percent to 21.57 percent. The 7.4 percent reduction to the Federal rate was calculated to account for these revised estimates (1.2157/1.313=0.926, a 7.4 percent decrease). That provision of Public Law 103–66 also required that, for cost reporting periods beginning on or after October 1, 1993, the Secretary redetermine which hospital payment methodology should be applied under the capital prospective payment system transition rules to take into account the 7.4 percent reduction to the Federal rate.

As a result of the reduction required by Public Law 103–66, the standard Federal rate is now based on an estimated FY 1992 Medicare inpatient capital cost per case of $641.01 ($692.24×0.926). At the time of the Public Law 103–66 reduction to the Federal rate, actual cost report data on the FY 1992 Medicare capital cost per discharge were not yet available. The reduction was based on cost report data for FY 1990 and FY 1991, and a revised projection of the rate of increase in Medicare capital costs per discharge during FY 1992. We now have extensive cost report data for FY 1992. The March 1996 update of HCRIS data shows an audit-adjusted FY 1992 Medicare inpatient capital cost per discharge of $593.72, or an additional 7.38 percent lower than the estimate on which the Federal rate is currently based.

Under § 412.328, HCFA determined the FY 1992 hospital-specific rate by using a process similar to the process for determining the FY 1992 Federal rate. The intermediary determined each hospital's allowable Medicare inpatient capital cost per discharge for the hospital's latest cost reporting period ending on or before December 31, 1990. The intermediary then updated each hospital's FY 1990 allowable Medicare capital cost per discharge to FY 1992 based on the estimated increase in Medicare inpatient capital cost per case. As with the Federal rate updates, current data demonstrate that the estimates used to update the hospital specific rates from FY 1990 to FY 1992 were overstated. Specifically, the hospital-specific rates are 9.48 percent higher than they would have been if the rates of increase had reflected actual data. Thus, revising the Federal and the hospital-specific rates only for the known overestimations in the actual costs on which rates were based would call for reductions of 7.38 percent and 9.48 percent, respectively.

The proposal in the Administration's budget to reduce the rates 15.7 percent reflects the preceding factors, as well as analysis of capital cost increases before the implementation of the prospective payment system for capital-related costs. That analysis suggests that the Federal and hospital-specific rates may reflect levels of cost in excess of what can be accounted for by the rate of inflation in capital input prices, quality enhancing intensity increases, and real case mix growth. Economic theory suggests that an industry with a guaranteed return on capital (such as the hospital industry prior to prospective payment for capital-related costs) would have a tendency to be overly capitalized relative to more competitive industries. This is because the incentive for firms in such an industry is to compete on the basis of more capital-intensive production processes than firms in other industries. As a result, capital costs per case, and therefore base year prospective capital rates, may be higher than would have been consistent with capital acquisition policy in more efficiency-oriented markets.

To examine this issue, in our June 2, 1995 proposed rule (60 FR 29237) we analyzed the change in actual Medicare capital cost per case for FY 1986 through FY 1992 in relation to the change in the capital input price index (which accounts for change in the input prices for capital-related costs), and the other adjustment factors that we were then proposing to include in the framework. (The other adjustment factors are the increase in real case mix and the increase in intensity due to quality-enhancing technological change and within-DRG complexity.) We found rates of increase in actual spending per case that exceeded the rate of increase attributable to inflation in capital input prices, quality-enhancing intensity increases, and real case-mix growth. Our last analysis (60 FR 45826–45829) suggested that the FY 1992 capital costs used to set the Federal and hospital-specific capital rates exceeded by approximately 28 percent the level that could be accounted for by known factors.

We seriously considered proposing one of these options—reducing the standard (base) Federal rate either 7.38 percent to address overstated inflation estimates or 15.7 percent, as reflected in the Administration's budget proposal—in this proposed rule. We believe that either of these options is well justified on the basis of current data and analysis. As ProPAC has observed, hospitals do not seem to have been adversely affected by the level of the rates during the years in which the statutory budget neutrality provision was in effect. However, we still believe that Congress and the Administration may be able to reach an agreement on budget issues, including Medicare savings, in the near future. Therefore, as discussed in section III of the Addendum to this proposed rule, at this time we are proposing to update the capital rates in accordance with the capital update framework, without implementing any of the reductions discussed above. Our hope is that the legislative process will produce an appropriate adjustment to the rate level in time for implementation in the final rule. In the event that no such agreement is reached before the final rule for FY 1997, we may implement one of the above-described options at that time. We invite public comment on the merits of these options, and on the advisability of implementing one or the other in the final rule, in the absence of legislative action. We will reconsider all the options in the light of public comments.

C. Possible Adjustment to Capital Prospective Payment System Minimum Payment Levels

Section 412.348(b) of the regulations provides that, during the capital prospective payment system transition period, any hospital may receive an additional payment under an exceptions process if its total inpatient capital-related payments under its payment methodology (i.e., fully prospective or hold-harmless) are less than a minimum percentage of its allowable Medicare inpatient capital-related costs. The minimum payment levels are established by class of hospitals under § 412.348(c). The minimum payment levels for portions of cost reporting periods occurring in FY 1996 are:

- Sole community hospitals (located in either an urban or rural area), 90 percent;
- Urban hospitals with at least 100 beds and a disproportionate share patient percentage of at least 20.2 percent and urban hospitals with at least 100 beds that qualify for disproportionate share payments under § 412.106(c)(2), 80 percent; and,
- All other hospitals, 70 percent.

Under § 412.348(d), the amount of the exceptions payment is determined by comparing the cumulative payments made to the hospital under the capital prospective payment system to the cumulative minimum payment levels applicable to the hospital for each cost reporting period subject to that system. Any amount by which the hospital's cumulative payments for previous cost reporting periods exceed its cumulative minimum payment is deducted from the additional payment that would otherwise be payable for a cost reporting period.

Section 412.348(h) further provides that total estimated exceptions payments under the exceptions process may not exceed 10 percent of the total estimated capital prospective payments (exclusive of hold-harmless payments for old capital) for the same fiscal year. In the final rule implementing the prospective payment system for capital-related costs we stated that the minimum payment levels in subsequent transition years would be revised, if necessary, to keep the projected percentage of payments under the exceptions process at no more than 10 percent of capital prospective payments.

In section III of the Addendum to this proposed rule, we discuss the factors and adjustments used to develop the FY 1997 Federal and hospital-specific rates. In particular, we discuss the FY 1997 exceptions payment reduction factor. This factor adjusts the annual payment rates for the estimated amount of additional payments for exceptions in FY 1997. In this proposed rule, we estimate that exceptions will equal 6.07 percent of aggregate payments based on the Federal rate and the hospital-specific rate. We will develop a new estimate of the level of exceptions payments in FY 1997, and revise the exceptions payment adjustment factor accordingly, on the basis of the data that becomes available to us in time for developing the final rule for FY 1997. While it is not necessary at this time to propose reductions in the minimum payment levels, it is possible that it will be necessary to implement adjustments to the minimum payment levels in the final rule. Our current projections show that it will almost certainly be necessary to adjust the minimum payment levels for FY 1998. We are therefore providing public notification that adjustments to the minimum payment levels are possible in the final rule, and almost certain for FY 1998.

When it does become necessary to adjust the minimum payment levels in accordance with § 412.348(h), our current intent is to adjust each of the existing levels (i.e., 90 percent for sole community hospitals, 80 percent for large urban DSH hospitals, and 70 percent for all other hospitals) by 5 percentage point increments until estimated exceptions payments are within the 10 percent limit. For example, we would set minimum payment levels at 85 percent for sole community hospitals, 75 percent for large urban DSH hospitals, and 65 percent for all other hospitals, provided that aggregate exceptions payments at those minimum payment levels were projected to be no more than 10 percent of total rate-based payments. If aggregate exceptions payments at those minimum payment levels still exceeded 10 percent of total rate-based payments, we would continue to reduce the minimum payment levels by 5 percentage point increments each until the requirement of § 412.348(h) was satisfied. We are providing notification of our current thinking on this issue in order to allow opportunity for public comment on the appropriate method for adjusting the minimum payment levels. We invite public comment on this matter, and will consider those comments fully whenever it becomes necessary to adjust the minimum payment levels in accordance with § 412.348(h).

VII. Proposed Changes for Hospitals and Units Excluded From the Prospective Payment Systems

Application of Ceiling in Calculating Payment for Hospital Inpatient Operating Costs (§ 413.40 (d) and (g))

Section 1886(b)(1)(B) of the Act provides for an additional payment to a hospital excluded from the prospective payment system when the hospital's reasonable operating costs exceed its target amount. The additional payment is based on the lesser of 50 percent of the amount by which the operating costs exceed the target amount, or 10 percent of the target amount. The Medicare statute further provides that this comparison is made "after any exceptions or adjustments are made to such target amount for any cost reporting period." The regulations, at 42 CFR § 413.40(d)(3), state that the total payment to the hospital for inpatient operating costs (including the additional payment described above) is based on the lesser of the following: the "ceiling" (target amount multiplied by the number of Medicare discharges) plus 50 percent of the allowable net inpatient operating costs in excess of the ceiling, or 110 percent of the ceiling. However, the regulations do not explicitly include the additional statutory requirement regarding the effect of exceptions or adjustments.

It is our understanding that there are questions about the calculation of the additional payment under the regulations, which require comparison of two amounts: the "ceiling" plus 50 percent of the difference between allowable costs and the ceiling, and 110 percent of the "ceiling." Specifically, where a hospital has received an adjustment to the target amount under § 413.40(g), there has been confusion as to whether the "ceiling" used for purposes of calculating the additional payment under § 413.40(d) is the unadjusted ceiling (the amount determined without consideration of any adjustments granted to the hospital) or the adjusted ceiling.

We believe that the amount of the additional payment should be determined using the adjusted ceiling when hospitals receive adjustments to the ceiling. That is, the calculation of the amounts compared—50 percent of the allowable net inpatient operating costs in excess of the ceiling, or 10 percent of the ceiling—should reflect the adjusted target amount (and adjusted ceiling). To address any confusion about these issues, we propose to revise § 413.40(d)(3) to specifically indicate that calculation of payments for hospital inpatient operating costs under that provision reflects the adjusted ceiling amount (the amount determined after an adjustment under § 413.40(g)). This would apply to all adjustments, including adjustments based on a longer average length of stay in the hospital's rate year as compared to the base year and adjustments for increased routine services.

We note that an adjusted ceiling is not used to adjust permanently the hospital's target amount or ceiling on the hospital's cost report. Instead, it is used only for purposes of calculating payments for the year the adjustment is granted. We also note that, depending on the specifics of the data in a particular case, use of an adjusted ceiling can result in either an increase or decrease in the additional payment to a hospital relative to use of an unadjusted ceiling. If the additional payment to a hospital is 50 percent of

the allowable net inpatient operating costs in excess of the ceiling, the additional payment would be lower using an adjusted ceiling (as under proposed § 413.40(d)(3)) than an unadjusted ceiling. This would occur because an adjusted ceiling reduces the difference between the hospital's costs and the ceiling. However, if the additional payment to the hospital is 10 percent of the ceiling, the additional payment would be higher using an adjusted ceiling than an unadjusted ceiling.

VIII. ProPAC Recommendations

We have reviewed the March 1, 1996 report submitted by ProPAC to Congress and have given its recommendations careful consideration in conjunction with the proposals set forth in this document. Recommendations 10 and 12, concerning the update factors for inpatient operating costs, and the update factor for hospitals excluded from the prospective payment system and distinct-part units, are discussed in Appendix F to this proposed rule. Recommendation 11, on the setting of capital payment rates, is discussed in section VI of this proposed rule. Recommendations 17 and 18, concerning disproportionate share hospitals, are discussed in section V of this proposed rule. The remaining recommendations are discussed below.

A. Slowing the Rise in Medicare Spending (Recommendation 1)

Recommendation: The Commission supports the efforts of the Congress and the President to reduce the growth in Medicare expenditures. Over time, spending for services furnished to Medicare enrollees should increase at rates comparable to those in a cost- and quality-conscious private sector.

Response: We agree with ProPAC about the importance of slowing the growth in Medicare spending. We support ProPAC's assertion that the experience in the private sector with market forces that encourage cost containment represents a useful factor in considering appropriate growth in Medicare. We also agree with those factors upon which ProPAC urges this comparison: spending growth on a per-person basis and recognizing the health care needs of an aged and disabled Medicare population. We caution, however, that while it may be appropriate to compare growth service by service, aggregate comparisons would not be meaningful due to differences in the mix of services.

Medicare and private health insurance provide a different array of services. Medicare covers more long-term care services, such as home health visits and skilled nursing facility (SNF) stays, than private insurance. Although their share of total Medicare spending is small, SNF and home health services are growing more quickly than other services within Medicare, and therefore spending for these services has been growing at a much faster rate than for other services. Data from 1992 and 1993 indicate that payments increased for SNF and home health services by 40.6 percent and 35.2 percent, respectively, whereas the growth in physician and hospital payments were only 4.5 percent and 8.3 percent, respectively. In order for Medicare and private health insurance to grow, in aggregate, at the same rate, spending for hospital and physician services would have to be growing more slowly in Medicare than in private health insurance to offset differences in long-term care growth. Due to these differences in mix of services, meaningful comparisons between Medicare and the private sector can only be made on a service-by-service basis.

B. The Failsafe Budget Mechanism (Recommendation 2)

Recommendation: Any failsafe budget mechanism should include a more effective risk adjustment factor to ensure payment equity between the Medicare capitation and traditional fee-for-service programs. In addition, changes in inflation that differ substantially from Congressional Budget Office (CBO) forecasts could require modifications to the Medicare benefit budget over time. Revisions to the proposed fee-for-service sector budget allocations could also be needed as medical practices change.

Response: We believe that using a failsafe budget mechanism (that is, an arbitrary cap on spending) to achieve targeted spending levels would be bad public policy. A failsafe mechanism would fundamentally change the nature of the Medicare program by breaking the link between benefits and payments. To meet the cap, benefits might have to be reduced, beneficiaries might have to pay more, and payments to providers might have to be reduced, all of which would impede access. A failsafe mechanism would encourage cost shifting to beneficiaries and other payers in order to achieve the targeted goal in government spending.

These arbitrary reductions in payments would make government an unreliable business partner. As Medicare moves toward a more market-oriented approach to setting payments, arbitrary reductions imposed by the government, after providers have negotiated in good faith, would sour relations and threaten the market pricing process.

The failsafe mechanism is a substitute for policy choices to achieve the desired level of spending. This arbitrary Medicare budget cap could potentially have adverse effects on the Medicare program.

We note that, while ProPAC recommends using a more effective risk adjustment factor to ensure payment equity between Medicare capitated and fee-for-service programs, no adequate case-mix measure currently exists that could serve this purpose.

C. Expanding Medicare's Capitation Program (Recommendation 3)

Recommendation: The Commission supports reforming the Medicare capitation program to control spending while expanding beneficiary choice.

Response: HCFA agrees with this recommendation and has specifically developed legislation to allow for Preferred Provider Organizations (PPOs) and Provider Sponsored Organizations (PSOs) to contract with the Medicare program. Furthermore, in October 1995, HCFA issued guidelines that notified HMOS that they were permitted to develop Point of Service (POS) Programs, which allow beneficiaries to go out of network for services. HCFA is currently conducting the Choices Demonstration, through which it is soliciting applications for the above types of provider arrangements.

D. Setting and Updating the Capitation Rates (Recommendation 4)

Recommendation: Geographic variation in the capitation rates and the volatility of the rates from year to year should be reduced. The Secretary should develop and test alternative payment methods that would allow the payment rates to reflect changes in local market conditions.

Response: We agree that geographic variations in HCFA's payment rates should be reduced. Some of the current legislative proposals would reduce the degree of variation over time.

We have been looking at ways to reduce these variations. Several demonstrations that should provide information needed to develop alternative payment methods are either currently being run or in the process of getting started. We have developed and are conducting several research and demonstration projects to review additional risk adjustors, which would modify current payment rates to reflect the health status of the members of managed care organizations. Another project would pay, from a separate pool of funds being shared by several organizations in an area, for enrollees who have high Medicare costs. Also, HCFA is in the process of starting another project that would incorporate the payment principles associated with competitive bidding.

E. Improving Risk Adjustment Methods (Recommendation 5)

Recommendation: The risk adjustment methods used to set Medicare capitation payments should better reflect variation in the likely use of services. Even as research on the development of new methods continues, the Secretary should implement interim improvements as soon as possible.

Response: We plan to test health status risk adjusters, such as Diagnostic Cost Groups or Ambulatory Care Groups, as part of the Choices Demonstration. Furthermore, in this demonstration, we will test reinsurance and partial capitation arrangements. We are also considering demonstrations which use health status measures as part of the Adjusted Community Rate Determination, as well as part of the payment formula.

F. Medicol Savings Accounts (MSAs) (Recommendation 6)

Recommendation: The Congress' high deductible/MSA option would provide an additional choice for Medicare enrollees. However, ProPAC is concerned that the current Medicare risk adjustment method is not sufficient to protect the program from adverse selection and resulting excess spending. The likelihood that rates would better reflect risk would be enhanced if Medicare enrollees were required to remain in the MSA option at least for several years.

Response: As ProPAC states, the Congressional Budget Office estimated that the MSA option would cost the Medicare program $4.6 billion over 7 years, in part because of the current state-of-the-art in risk adjustment methods (discussed in recommendation 5, above). The CBO estimate of the cost of the MSA option is consistent with the cost estimates of other reputable organizations. We fail to see the rationale for including an option that provides no new benefits but is expected to result in increased costs, particularly at a time when the public and Congress are concerned about the long-term financial viability of the Medicare program.

G. The Medicare Plus Fee-for-Service Option (Recommendation 7)

Recommendation: Enrollees choosing the fee-for-service option under the proposed Medicare Plus program could be responsible for substantially higher fees than what their plans would pay. The Secretary should monitor the impact of this option on beneficiary liability and on possible reductions in physician and other provider participation in traditional Medicare.

Response: We agree with ProPAC that beneficiaries could be responsible for substantially higher fees. We also agree that, as suggested in this recommendation, allowing physicians and other providers to elect to serve Medicare beneficiaries through private fee-for-service plans that place no limits on extra-billing amounts may well result in (1) increases in beneficiary liability and (2) reductions in physicians and other providers participating in traditional Medicare. Further, as the payment methods contained in pending legislation described in H.R. 2491 are structured, the payment increases for MedicarePlus plans, relative to those in fee-for-service Medicare, mean that MedicarePlus plans would be able to pay physicians and other providers more than fee-for-service Medicare. These higher payments would create additional incentives for physicians and other providers to cease participation in traditional Medicare. Finally, while managed care plans potentially provide value added because their organizational structure facilitates coordination of care, it is not clear what, if any, value is added by creating a private fee-for-service plan option, under which the private plans receive higher payments relative to fee-for-service Medicare and physicians and providers are permitted to charge unlimited extra-billing amounts.

H. Informotion for Beneficiory Health Plan Choices (Recommendation 8)

Recommendation: Medicare should make available to beneficiaries information about the performance of plans and local providers. The Secretary should identify the information beneficiaries need to make appropriate choices and develop innovative ways to improve access to it.

Response: Current HCFA initiatives to improve beneficiary information about health insurance options, which are summarized below, are consistent with ProPAC's recommendation.

Development of Prototype Materials and Strategies

We are currently engaged in two projects that will develop prototype beneficiary information strategies related to health insurance options.

The first project, which focuses mostly on managed care issues, is examining through Medicare and Medicaid beneficiary focus groups, the types of information and dissemination media that beneficiaries would find most useful in selecting health insurance plans. Based on this information, and case studies, the project will produce and test a range of prototype beneficiary information materials, including beneficiary health plan comparison booklets and charts, and informational videos. Draft prototype materials (for Medicare, pre-Medicare and Medicaid beneficiaries) are nearing completion and are scheduled for beneficiary testing in Spring 1996.

The second project will design beneficiary information and education materials and dissemination strategies to support the Medicare Open Enrollment/Competitive Pricing demonstration. This project will develop printed materials that explain the experimental open enrollment process; printed general informational materials on Medicare health insurance options; and booklets outlining the specific Medicare fee-for-service and managed care options available to beneficiaries in their area. A plan comparison chart template, which would include information on specific benefits and premiums, will also be developed, as will other information and educational approaches (including educational seminars, public service announcements (PSAs), informational videos, and a toll-free counseling phone line, all sponsored by HCFA). In addition, a dissemination strategy for HCFA and its partners in the demonstration sites will be developed (for example, Insurance Counseling and Assistance (ICA) programs and beneficiary advocacy groups).

Draft materials and strategies were tested on Medicare beneficiaries in April 1996. Final products should be available for adaptation to specific demonstration sites by Summer 1996.

Medicare Program Activities

We have currently outlined a strategy to produce and disseminate a managed care plan comparison chart to Medicare beneficiaries, initially through the HCFA Regional Offices and HCFA-sponsored ICA programs. We will use comparison chart prototypes developed (under both of the projects discussed above) as models for the comparison chart. Prototypes will be available by Spring 1996. We plan to begin dissemination of the basic comparability charts in 1996.

We may also choose to adapt some of the prototype materials for application to the Medicare program, depending on feedback and evaluations from

beneficiaries in the Open Enrollment Demonstration. These new materials could ultimately supplement or replace current materials, such as the Medicare Handbook. New prototype materials could also be provided and adapted individually by the State ICA programs. We have contributed recommendations during the development of these projects and will continue to do so.

Many of the Regional Offices have developed area specific informational materials related to Medicare managed care. The Regional Offices typically use these materials to assist in their responsibilities as the local HCFA contact for beneficiaries.

Related Major Initiatives

While current activities have centered on efforts to provide better information on health insurance options (such as focusing on comparisons of benefits, premiums, and locations), the next major steps in improving information and educational strategies will likely be in the area of quality or performance indicators.

The prototypes discussed above will include templates for eventual dissemination of quality/performance indicators for health plans. In addition, strategies for introducing the concept of indicators to Medicare and Medicaid beneficiaries will be produced. One project, short Medicare and Medicaid focused video tapes describing quality indicators using a "grocery shopping" analogy, has already been completed.

A final version of a set of Medicaid-specific National Committee on Quality Assurance (NCQA) Health Plan Employer Data and Information Set (HEDIS) quality indicators is nearly completed. We are currently sponsoring the revision (with NCQA) of HEDIS version 3.0 to include Medicare-specific measures. Once both Medicare- and Medicaid-specific measures are available, HCFA will have available the basic tools necessary to report comparative quality indicators to beneficiaries. A specific dissemination strategy will then be determined.

We are currently in the developmental stages of a proposed plan-specific Medicare beneficiary satisfaction survey. When completed, we would have comparative satisfaction information on all Medicare managed care plans, which could then be disseminated to beneficiaries as a companion to plan benefit/premium comparison charts.

Based on these initiatives, HCFA should be well prepared to expand and improve both the level and types of health insurance information resources available to Medicare beneficiaries.

I. Health Plan Accountability (Recommendation 9)

Recommendation: Medicare must hold health plans accountable for the appropriate use of Medicare funds. In addition, standards must be developed and enforced to ensure that Medicare beneficiaries will receive services of appropriate quality.

Response: We agree with these recommendations and have several plans for implementing them. First, we are working with the National Committee for Quality Assurance to develop HEDIS 3.0 for the Medicare program. Second, we plan to conduct beneficiary satisfaction surveys for a significant sample of beneficiaries from each health plan participating in the Medicare HMO program. Third, we are working with the Foundation of Accountability to develop condition-specific outcome measures. Finally, we are working with Peer Review Organizations to develop several condition-specific outcome measures that will be risk adjusted.

J. Broadening Financial Support to Teaching Hospitals (Recommendation 13)

Recommendation: Explicit financial support for graduate medical education activities should not be limited to the Medicare program. Mechanisms to broaden financial support for teaching-related activities in hospitals and other locations should be developed.

Response: The Commission is concerned that Medicare is the only payer that provides explicit financial support for teaching activities. Even though private payers provide implicit support through higher prices for patient care services, funding is unrelated to the amount of actual teaching activity.

While we would agree that all payers should contribute their fair share toward physician training and particularly for the patient care services that are provided in the course of this training, we wish to emphasize that Medicare's support for graduate medical education is limited only to Medicare's share of the total cost of graduate medical education. That is, although we believe the current level of the indirect medical education adjustment is higher than necessary to compensate for the indirect costs associated with residents' involvement in patient care, it is set at a level that at one time was thought to equal those costs. Furthermore, because this adjustment is made only for Medicare prospective payment system discharges, it is inherently only associated with Medicare's share of the indirect costs of graduate medical education. In addition, the direct graduate medical education payment is calculated based on Medicare's inpatient utilization rate, thereby ensuring that it, too, reflects only Medicare's share of direct graduate medical education. In that vein, we would support a mechanism to broaden support for physician training that did not result in Medicare contributing more than its fair share, relative to the Medicare utilization rate.

We note also that some Medicaid programs explicitly pay hospitals for the indirect and direct costs of graduate medical education similar to Medicare. In addition, some States (for example, New York, through its Prospective Hospital Reimbursement Methodology) provide explicit support for teaching hospitals through private payers. Nevertheless, we join ProPAC in calling for more uniform support across all payers.

We would note that although the President's health care reform bill attempted to involve private insurers in directly supporting medical education, we do not currently have a proposal to broaden support for teaching hospitals beyond that currently provided by Medicare. We have, however, proposed to broaden financial support for teaching hospitals by changing the way Medicare funds medical education through its managed care programs. Currently, Medicare payments to HMOs are based on the average cost of providing services to Medicare patients in the fee for service part of Medicare. These payments to HMOs include Medicare's costs for medical education. The President's FY 1997 budget would revise Medicare's payments to HMOs so as not to include the portion associated with medical education and paying these funds directly to teaching hospitals and to managed care plans with teaching programs. This change would benefit teaching hospitals, as well as more appropriately target Medicare funds designated for medical education.

K. Medicare Payments for Graduate Medical Education Costs (Recommendation 14)

Recommendation: ProPAC supports changes in Medicare teaching payments that would encourage an appropriate distribution of residents across specialties and discourage inappropriate growth in the total number of residents.

Response: The Commission states that both the proposals of Congress and the President's budgets would move Medicare direct graduate medical education payments in the direction of

encouraging appropriate distribution of residents across specialties and discourage inappropriate growth in the total number of residents.

The Administration is very concerned with the issue of Medicare payments to hospitals for graduate medical education. Consistent with numerous reports that the nation has an excess of specialty physicians, and that the growth of managed care is increasing the demand for primary care physicians relative to other specialties, the focus of the President's graduate medical education proposal is to encourage greater hospital participation in primary care residencies and less in specialty residencies. In addition, a significant amount of training of residents in primary care is more appropriately done in non-hospital settings. Accordingly, the President's budget includes a cap on the total number of residents and on the number of nonprimary care residents for whom Medicare will make graduate medical education payments. We would also encourage ambulatory training by including residents who rotate to non-hospital settings in the hospital's FTE count for IME purposes. We would further encourage ambulatory training by providing direct medical education payments to facilities that are not hospitals (for example, federally qualified health centers) for residents, when the residents' salaries are not paid by hospitals.

The Administration has also proposed to create a Commission on Medical Education and Workforce Priorities within HHS to develop and recommend policies to address the preservation of academic health centers' research and educational capacity and the supply of the future health care workforce. This commission would also make recommendations regarding the most effective allocation of training resources to ensure that the numbers and competencies of health care professionals are responsive to national needs.

L. Medicare Indirect Medical Education Payments (Recommendation 15)

Recommendation: The Medicare indirect medical education adjustment should be reduced from its current 7.7 percent level to 7.0 percent.

Response: As we've said in response to similar ProPAC recommendations in previous years, we agree with ProPAC that the current level of payment for the indirect costs of medical education is too high. The President's FY 1997 budget would reduce the adjustment over 3 years to a final level of 6.0 percent effective for FY 1999. In addition, residents working in nonhospital settings could be counted in a hospital's resident count for indirect medical education purposes if the hospital incurs all, or substantially all, of the costs for the training program in that setting. Finally, the President's budget would cap the number of residents that could be included in the count, with an exception provided for primary care residents and those in the specialties of obstetrics or gynecology.

The Commission also supported the provision in the President's FY 1996 budget that would apply the direct graduate medical education resident count and weighting rules to the indirect medical education count. However, ProPAC recommended proceeding with caution as additional analysis would be needed to examine the effect of this policy on individual teaching hospitals. We note that this provision is not contained in the FY 1997 budget proposal. Therefore, residents would continue to be counted for IME as long as they are enrolled in an approved program.

M. Distributing Additional Teaching-Related Payments (Recommendation 16)

Recommendation: Funds that provide broader financial support for graduate medical education should be distributed in a way that corresponds to the additional costs incurred by teaching facilities. Providers that treat enrollees in capitation plans should receive teaching-related payments for those patients as well as for the other patients they serve.

Response: This recommendation is related to Congress' proposal to create new trust funds to provide broader support for educational activities. Congress would create new trust funds that include accounts for general direct medical education, general indirect medical education, and a Medicare Plus Incentive Account financed by new appropriations. This funding would be in addition to payments currently being made by Medicare for direct and indirect medical education. The Commission is concerned that the new funding would be distributed based on previous Medicare payment levels even though general revenues will fund the newly established trust funds. With regard to the Medicare Plus Incentive Account, ProPAC is concerned that payments should give Medicare's managed care participants an incentive to use teaching hospitals and pay providers appropriately for serving patients in capitation plans.

Like the Commission, we are concerned about appropriating general revenues to finance medical education, particularly given our concern that the indirect medical education adjustment already overcompensates hospitals and Medicare already pays its share of costs of direct medical education. The President's original proposal was to create an all payer fund to finance graduate medical education. However, this proposal was made in the context of overall health care reform. We continue to remain concerned that medical education should be supported to a greater extent by payers other than Medicare but have reservations about financing of medical education with additional Federal money.

As we explained above in Recommendation 13, under the President's FY 1997 budget, we would revise payments made through our managed care programs to ensure that teaching programs are supported more appropriately by existing Medicare resources designated for medical education. Under the President's FY 1997 budget, payments for medical education would be eliminated from HMO rates and redistributed to teaching hospitals and managed care plans with teaching programs.

N. Discharges from Hospitals to Other Facilities (Recommendation 19)

Recommendation: Medicare payments should be modified to account for the shift in services from acute to postacute settings. Broadening the definition of transfer cases, however, is not an appropriate approach.

Response: In both the September 1, 1994 and September 1, 1995 final rules, we expressed our concern that the current trend of declining average lengths of stay as hospitals discharge Medicare patients into alternative health care settings (other than acute care prospective payment hospitals) in less time may result in a misalignment of payments and costs under our existing payment systems (59 FR 45362; 60 FR 29221). In particular, we expressed concern over the potential for hospitals paid under the prospective payment system to shift costs (for which they are compensated through the DRG payments) to alternative settings, which are in turn paid on a cost basis. Although we solicited comments on possible solutions to this problem, we did not propose any change in policy.

The President's FY 1997 budget includes a proposal to redefine discharges from acute care hospitals to excluded hospitals and units and skilled nursing facilities as transfers for payment purposes. Currently, for cases transferred from one acute care hospital paid under the prospective payment system to another like hospital, the sending hospital is paid a per diem rate

instead of the full DRG amount. For cases transferred to an excluded hospital or unit or to a skilled nursing facility (as well as cases discharged home or home with home health care), hospitals receive the full DRG payment amount, regardless of the length of stay in the hospital. Under the per diem transfer payment methodology, hospitals receive a per diem amount (doubled for the first day of the stay) until the full DRG amount is reached. Therefore, under the President's budget proposal, hospitals transferring patients to excluded facilities or skilled nursing facilities prior to the geometric mean length of stay for the DRG, minus one day (to account for the double per diem on the first day), would receive less than the full DRG amount for that case.

The basis for ProPAC's opposition to this proposal is that it "* * * thinks this policy would discourage the use of postacute providers. Moreover, it could result in longer inpatient stays, which may not be desirable or cost effective in the long run." We acknowledge that the change in the definition of a transfer is not the ultimate solution to this health care trend. In response to immediate concerns about overpaying hospitals for the reduced services they are providing and the rate of increase in expenditures for postacute care services, however, we believe this is an appropriate interim measure while we continue to explore long-term policy alternatives that will better integrate our payment systems for care provided to Medicare beneficiaries across the acute and postacute care settings.

O. Prospective Payment for PostAcute Care (Recommendation 20)

Recommendation: Prospective payment systems should be implemented for all postacute services. The payment method for each service should be consistent across delivery sites. The Secretary should explore methods to control volume of postacute service use, such as bundling services for a single payment.

Response: We agree that HCFA should develop prospective payment systems for all postacute services, and we have made significant progress in this area. As we discuss in our responses to Recommendations 22 and 23, we have developed detailed implementation plans for interim prospective payment systems for skilled nursing facilities (SNFs) and home health agencies (HHAs) that do not require patient classification systems. Execution of these plans will, of course, require legislative action.

Beyond our interim plan, we have developed a strategy for developing a full-fledged prospective payment system for SNFs. In the absence of legislation, we have been pursuing data that could be used to support a case-mix prospective payment system through our Multi-State Case Mix Demonstration Project. This demonstration project, now in its operational phase, is collecting data on patient case mix using a modified version of the minimum data set, the assessment tool SNFs use in developing patient care plans. Through the course of the demonstration, we hope to gather data on the full range of SNF resources needed for each resource utilization group. We are proceeding to require by regulation that all facilities provide resident assessment data. Consolidated billing of SNF services (that is, requiring SNFs to bill for all services furnished to their patients) and uniform coding of SNF services are also prerequisites for a SNF prospective payment system. Consolidated billing and uniform coding are needed to determine the appropriate payment for the ancillary services component of SNF services and to provide useful data on the range of services SNFs furnish.

We have also been working on a strategy to develop a full-fledged prospective payment system for HHAs. We have funded a project to develop outcome measures for home care that can be used for an outcome-based quality improvement system. These measures will be based largely on a core standard assessment data set that includes items measuring sociodemographic, environmental, support system, health status, functional status, and health service utilization characteristics of patients. Many of these data items included in the core standard assessment data set are not only essential for assessing patient outcomes but are also critical for designing an adequate case-mix system for payment purposes. To test and refine Medicare's approach to outcome based quality improvement for home health care, HCFA is currently sponsoring the Medicare Quality Assurance and Improvement Demonstration, which uses this instrument. We plan to publish regulations identifying the required data elements and addressing the collection of information from the core standard assessment data set. We also plan to sponsor additional research that would lead to an appropriate case-mix adjuster that can be used in a national prospective payment system.

In addition to the developmental work underway on SNF and HHA prospective payment systems, we have begun work on the preliminary steps necessary for the development of a prospective payment system for hospital inpatient rehabilitation services. The biggest obstacle we have faced in this effort is the lack of appropriate patient classification systems for the types of patients treated by rehabilitation hospitals. We have recently contracted with the Rand Corporation to evaluate a rehabilitation coding system known as the Functional Impairment Measure (FIM), which is a scoring system that measures the degree of functional independence of rehabilitation patients. These researchers will also evaluate the patient classification system known as functional related groups (FRGs), which are based on FIM, as a possible basis for a Medicare prospective payment system for rehabilitation services. If the research confirms functional status measures can be used to develop an appropriate patient classification system, we will begin the additional work necessary to put a prospective payment system into place. This would require collecting patient assessment data from Medicare rehabilitation hospitals and units and developing all the necessary components of the new payment system. It will take at least 3 years to design and implement such a system. To facilitate implementation, we are considering initiating collection of patient assessment data in advance of legislation establishing a prospective payment system. We will be seeking public input on whether to proceed with a requirement for patient assessment data in the absence of legislation and what data elements should be included in a core data set that could be used not only as the basis for a patient classification system but also to assess outcomes.

We recognize that there are advantages to a coordinated approach in developing prospective payment systems for postacute services and we will be evaluating how to make them as consistent as possible. We also recognize that the demand for implementation of prospective payment systems for post-acute services is sufficiently immediate so that there may not be time for the broad study, data collection, and research needed to develop a "unified" system using similar resource grouping principles. Most of the current legislative proposals, including the Administration's proposals, would require implementation dates within the next several years. It may not be feasible to develop a "unified" system within the time frames contemplated by the current legislative proposals. Trade-offs may be required between continuation of the interim payment systems versus

the full-blown prospective payment systems on one hand, and the separate versus "unified" prospective payment systems on the other hand.

P. Case-Mix Measures for PostAcute Services (Recommendation 21)

Recommendation: Reliable case-mix measurement is important in prospective payment systems to account for resource use and to analyze treatment patterns and costs across sites. The Secretary should coordinate case-mix research across postacute care settings, using consistent methods for measuring patient acuity and resource use.

Response: We are attempting to coordinate our work on case-mix adjustment for home health care, long-term and SNF care, and rehabilitative services. To develop a case-mix adjustment system for SNF care, time studies were conducted in order to measure resource utilization. Similarly, as noted above in response to Recommendation 20, we plan to fund research to identify a home health case-mix adjuster.

In addition, in the case-mix work to date for both home health care and SNF care, dependence in activities of daily living is the biggest predictor of resource utilization. Some of the other predictors differ across SNF care and home health care due to differences in the treatment settings and the availability of information for a classification system.

As also noted above in the preceding response, researchers at the University of Pennsylvania have developed a classification system based on FIMs called Function Related Groups (FIM–FRGs). This system appears promising for use in a case-mix adjusted prospective payment system for rehabilitation and long-term care facilities, and we are working with the Rand Corporation on a research project to evaluate the suitability of FIM–FRGs for this purpose.

We agree that a compatible cross-provider measure of resource use would be the best multiplier in any universal postacute system. We also believe that such measures do not now exist and to produce them would require the program to incur significant costs and impose significant data reporting and collection requirements on providers. We would prefer to obtain explicit legislative direction before we incur these costs and impose these burdens. Even so, we believe several years would be required to gather the data and develop the case-mix measures. For these reasons, we believe that interim prospective payment systems of the types contained in the President's FY 1997 budget should be put in place.

Q. Interim Fee-for-Service Payment Method for Skilled Nursing Facility Services (Recommendation 22)

Recommendation: An interim payment method should be implemented to control the growth in Medicare payments for SNF services until a comprehensive prospective payment system is established. A system based on historical data and facility-specific limits, however, may not allow facilities to respond appropriately to changes in a dynamic environment.

Response: We agree with ProPAC's recommendation that an interim payment system should be developed until a permanent system is established. Both the interim and permanent payment systems could better promote the goals of quality care, maximum access to care, and cost containment. A payment system that incorporates these goals is essential as the nursing home industry evolves toward a more eclectic mix of care levels and delivery models. In addition, the need exists for a payment system that is simpler to administer for both providers and HCFA. In order to maximize these goals, a permanent prospective payment system for SNFs should include payment for all costs (that is, routine operating, ancillary, and capital costs) and take into account actual facility case mix. However, thecase-mix and ancillary cost data necessary to accomplish this goal are not yet available.

In the interim, based on current data resources, a prospective payment system could be implemented. It would apply solely to routine costs (including routine capital costs) and utilize facility-specific payment rates subject to cost limits. We are studying various cost limit designs, such as regional limits versus national limits, to account for geographical cost differences. In addition, methodologies to ease the transition from the current payment system would be incorporated into an interim prospective payment system.

While there is agreement that a need exists to implement an interim prospective payment system for SNFs, the Commission believes that a system based on historical data and facility-specific limits may not allow facilities to respond appropriately to changes in a dynamic environment. However, we believe that a facility-specific interim prospective payment system would provide a number of advantages over the current system, and could be constructed to accommodate changes in a facility's case mix. The system would provide for greater cost containment and administrative simplicity, through predetermined pricing. In addition, the potential to earn a profit under the interim system, by holding down costs, would provide an incentive for nursing homes to participate in Medicare, or certify more beds if already participating. This would provide greater access for beneficiaries. This same incentive would produce greater efficiency in nursing home operations and would support the provision of quality care. When compared to a flat rate system, a facility-specific system would maintain an appropriate distribution of payments, since the basis of payments under the system is the nursing homes' own cost history. As a nursing home case-mix classification system is finalized and tested, and further analysis is completed on ancillary payment, these elements would be incorporated into the payment system.

In addition, we are analyzing some features of an interim system that would result in savings for the Medicare program. Specifically, in developing providers' facility-specific payment rates for routine services, the system would incorporate one set of cost limits based on freestanding costs only. The current system provides for separate (higher) limits for hospital-based facilities. Consequently, savings would result from holding down payments to these hospital-based SNFs. In addition, savings would result through the elimination of routine cost limit exemptions granted to new providers of skilled nursing services. The current system of cost limit exceptions for "atypical nursing services" would be eliminated as well. Finally, the Medicare Part B carrier fee schedules could be utilized for Part A SNF services as a limit on the reasonable costs of certain ancillary services. Currently, there are no limits or reasonable cost guidelines for many of these services.

We support the ProPAC view that a per-episode payment system be developed. We have noted above, however, that there are great obstacles to developing both (1) prospective payment systems that are consistent across provider types with respect to the method of measuring resource use, and (2) classifications systems for episodes of postacute care (either by provider type or in general) that account for a sufficient degree of the variability among different types of patients. Thus, our inclination would be to pursue our current plans for the prospective payment systems with the thought that

further refinements could be made when data are available.

R. Interim Fee-for-Service Payment Method for Home Health Care (Recommendation 23)

Recommendation: Until a fully prospective payment system for home health care is developed, the Commission supports adopting episode-based payment limits. In addition, beneficiary copayments, subject to an annual limit, should be introduced.

Response: There is agreement between ProPAC and HCFA that an interim cost control mechanism should be established prior to implementing a prospective payment system for home health care. We would like to highlight significant differences between the prospective payment systems proposed by the Congress and the Administration.

The congressional proposal would limit payment to 120 days of service with certain exceptions for up to 165 days of care. This provision has the potential of serious financial impact on some agencies, as well as reduced access to services for some patients with the greatest needs. The proposal also assumes the availability of data and systems to categorize and assign patients to one of the 18 "case-mix categories" established in Phase II of HCFA's HHA prospective payment system demonstration. Neither the data nor the systems are currently in existence, and the implementation of such a system would entail a major increase in the reporting burden on agencies. Were we able to implement such a system, we estimate that the system would be able to explain less than 10 percent of the variation in cost per episode, at best.

The Administration's interim proposal entails no increased reporting burden, as it uses data currently reported by agencies. Although that budget proposal does not provide for per-episode payments, its aggregate payment caps effectively create a per-episode cap on costs. Given the uncertainty about the resource composition of individual types of episodes, the use of an aggregate cap gives agencies an incentive to provide services in a cost effective manner by sharing savings with agencies whose costs are below their per beneficiary limitation. We note that ProPAC was also concerned that the interim proposal utilizes regional cost experience, which the Commission feels may not be appropriate. The President's FY 1997 budget includes a provision to use average national or regional cost experience in constructing the per beneficiary limitation. We agree with ProPAC that, should we find unjustified differences in regional cost experience, we would support a move to national cost experience as the basis for the per beneficiary limit.

It may be necessary to use regional rates to move individual HHAs toward a national norm over time. This would avoid major displacements. We are considering both regional and national blending.

We do not agree with the ProPAC recommendation that beneficiary copayments be introduced. Our proposed interim system of limits should adequately control the growth in service use. We do not agree with shifting costs to beneficiaries, however limited, as a method of controlling the growth in utilization.

As HCFA moves forward in designing a prospective payment system for home health care, we will consider ProPAC's recommendations to look at more uniformly defined units of services.

S. Update to the Composite Rate for Dialysis Services (Recommendation 24)

Recommendation: The Secretary should develop methods to control total Medicare per capita expenditures for end stage renal disease (ESRD) beneficiaries. In the meantime, the composite rate should be updated by 2.7 percent for hospital-based dialysis facilities and by 2.0 percent for freestanding facilities for fiscal year 1997. The Secretary should also develop reliable measures of patient severity and outcomes to analyze the relationships among treatment processes, patient outcomes, and costs. These factors should be considered in evaluating the need for and the level of future payment updates.

Response: One of ProPAC's suggestions is that HCFA consider opening enrollment for ESRD beneficiaries to participate in Medicare risk programs. The reason for this recommendation is the rapid growth in total Medicare spending for ESRD beneficiaries. A large part of this increase is attributable to the expanding ESRD population, especially older patients who require more services. These beneficiaries are using more acute inpatient, skilled nursing and other dialysis-related services than ever before. ProPAC suggests that to control these expenditures, Medicare examine the possibility of adopting a capitation payment system for ESRD services, since capitation rates have been successful in controlling expenditure growth for other populations. At a minimum, they are recommending that utilization review or other managed care techniques be used to control the total volume of services provided to ESRD beneficiaries across all sites of care.

Section 1876(d) of the Act currently prevents an individual with ESRD from enrolling in an HMO or a competitive medical plan. However, an individual who is enrolled in a prepaid health plan when he or she is determined to have ESRD may continue enrollment in that plan. A prepaid health plan may only disenroll a beneficiary as provided by regulations at 417.460.

Congress addressed the issue of paying for ESRD services in a capitation setting in legislation. Section 13567(b) of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66) (August 10, 1993) amended section 2355 of Public Law 98–369 by requiring the Secretary to include the integration of acute and chronic care management for patients with ESRD through expanded community care case management services in a social health maintenance organization (SHMO). Initial legislation required the Secretary to grant demonstration waivers for SHMOs that provide for the integration of health and social services at a fixed annual prepaid capitation rate. In the January 26, 1996 **Federal Register**, we published a notice informing interested parties of the opportunity to apply for funds for a cooperative agreement to operate an ESRD Managed Care Demonstration (61 FR 2516). Two of the demonstration's purposes would be to test whether ESRD beneficiaries can and should be given access to HMOs during open enrollment and whether the statewide capitation rate can and should be adjusted. The demonstration would adjust rates for treatment status (such as dialysis, transplant, or a functioning graft), age groups and the cause of renal failure (for example, diabetes). As the legislation requires, rates would be based on 100 percent of the adjusted average per capita costs (AAPCC); additional non-Medicare-covered benefits would be offered by the provider to justify the additional 5 percent beyond the 95 percent of the AAPCC paid to Medicare risk-contracting HMOs on behalf of ESRD enrollees. Based on the results of this demonstration, we would make recommendations to Congress concerning the appropriateness of paying for dialysis services in a capitation setting.

To improve the quality of care ESRD patients are receiving, we are in the process of developing proposed rules for ESRD conditions for coverage. The essence of the regulation is patient-centered and outcome-oriented. The proposed conditions for coverage will focus on facilities achieving an optimal level of health and well-being for all dialysis patients. The proposed rules will be published in Spring 1996 with expected implementation in late fiscal year 1997.

While we share ProPAC's concern that payment rates be sufficient to assure quality care for ESRD patients, we do not believe there is sufficient evidence at this point to conclude that more money is needed to provide appropriate care. Currently, the University of Michigan, as part of a National Institute of Health grant, is examining the relationship between facilities' costs and the level of KT/V. Also the National Institute of Diabetes and Digestive and Kidney Diseases is sponsoring a study on the impact of increasing dialysis as measured by KT/V and the use of high-flux-dialysis on ESRD patients. The results of these studies should help us analyze the relationship between patient outcomes and costs, and thus provide us with a basis for recommending an appropriate payment rate increase.

While we acknowledge that an increase in the composite rate may be appropriate in the next few years, we believe that any rate increase should be linked to implementation of the revised conditions for coverage. Moreover, any ESRD rate increase must be considered within the context of Medicare budgetary concerns and should have a direct link to improved patient outcomes. We will continue to monitor ESRD facility costs, and, if appropriate, we may recommend an update to the ESRD composite rate for FY 1998.

We note that ProPAC's recommendation provides for an across-the-board rate increase for all renal facilities. However, data show that high volume independent facilities (over 6,000 treatments per year) account for about 85 percent of independent dialysis treatments. These high volume facilities report margins between Medicare payments and costs that are higher than average. Therefore, in proposing a future rate increase, we would want to examine the need to adjust payment increases for volume. In addition, we believe that any update to the composite rate should include an update to the wage index currently used to adjust the labor portion of the rate. We are currently using an outdated wage index which is a blend of 1980 Bureau of Labor Statistics (BLS) and 1984 prospective payment system wage data and does not reflect the MSA revisions resulting from the 1990 census.

The Commission's final recommendation is that the Secretary closely monitor treatment patterns and patient outcomes to ensure that facilities use the payment increase to improve quality of care. The proposed ESRD conditions for coverage should address this issue. We expect the proposed rule to be published in the **Federal Register** before Summer 1996. Between the publication of the proposed and final rules, HCFA is planning to meet with the renal community to develop complete clinical data sets to monitor patient outcomes and medical conditions. These data will then be used to evaluate the quality of dialysis services furnished by individual facilities. Of course, this is a long-term project. In the short term, we are exploring the possibility of collecting limited patient outcome data such as KT/V and URR.

T. Prospective Payment for Hospital Outpatient Services (Recommendation 25)

Recommendation: A comprehensive prospective payment system should be developed for hospital outpatient services. Such a system should include a strategy for controlling the volume of ambulatory services.

Response: We agree with the need to implement a comprehensive prospective payment system for outpatient services. While we await legislative authority, we continue to develop and refine the Medicare-specific factors of the Ambulatory Patient Group (APG) system that we recommend using. We plan to analyze the payments that would be made across sites, for example in Ambulatory Surgical Centers (ASCs) or physician radiology practices, to ensure that we have not created unwarranted incentives to perform procedures in a given setting for financial reasons.

We are concerned as well about the potential for increases in the volume of services provided, both in outpatient departments and in other settings. We are examining approaches to volume measurement and control, including the level of packaging for ancillary services and monitoring of patterns of care. For example, we could track whether Medicare beneficiaries received more clinic visits per patient under APGs than they did under cost-based reimbursement. If so, we could take corrective action either systemically or on a hospital-specific basis. This issue clearly requires study. We welcome suggestions in this area.

U. Beneficiary Liability for Hospital Outpatient Services (Recommendation 26)

Recommendation: The growing financial burden for Medicare enrollees who receive services in hospital outpatient departments should be alleviated immediately. Beneficiary coinsurance for these services should be limited to 20 percent of the Medicare-allowed payment, as it is in other settings. For services not paid on a prospective basis, the Secretary should establish a new method for determining beneficiary copayments based on estimated allowed payments since they cannot be calculated precisely when services are delivered.

Response: We agree that the issue of beneficiary coinsurance should be addressed. In the context of the monies available to the Medicare program, we doubt that Congress would authorize that Medicare immediately assume the full cost of paying 80 percent of the cost of outpatient services. Among the approaches that could be used are: (1) Applying the savings achieved by eliminating the formula-driven overpayment to offset the beneficiaries' responsibility; (2) requiring copayments in other areas of the program, such as for home health services or laboratory services; and/or (3) moving gradually to reduce the ratio of copayments to total payments. One issue that must be considered at the same time is the rise in the Part B premium that would accompany any significant increase in program payments. This would have the effect of distributing costs over the entire range of beneficiaries, rather than having it focused only on those patients who actually use outpatient services, as it is now. We are eager to have this issue addressed and resolved, but know that it must be examined in light of broader budget decisions.

IX. Other Required Information

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 provides for notice and comment when a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the information collection requirement discussed below.

The only information collection or paperwork burden item contained in this proposed rule involves the requirement under § 489.27 that a hospital furnish each Medicare beneficiary with a notice of discharge rights supplied by HCFA, that is, 'An Important Message from Medicare.'

As discussed in section V.F of this preamble, we are revising the current requirement that a hospital must distribute the 'Important Message' to each Medicare beneficiary at or about the time of admission. In order to permit hospitals more flexibility, but still ensure that benficiaries are aware of their discharge rights, we are proposing to revise § 489.27 to specify that a hospital must provide the notice of discharge rights 'during the course of the hospital stay.' We estimate that the paperwork burden associated with the requirement that hospital personnel distribute the 'Important Message' to each Medicare beneficiary is approximately 1 minute per admission. Based on our most recent available data (1995 Data Compendium, HCFA Pub. No. 03364), there are roughly 11 million Medicare beneficiaries admitted to hospitals each year, resulting in an annual burden of approximately 183,000 hours.

This paperwork burden is not effective until it has been approved by OMB. A notice will be published in the **Federal Register** when approval is obtained. Organizations and individuals desiring to comment on this paperwork burden requirement should submit comments by July 30, 1996 to the Office of Management and Budget, Human Resources and Housing Branch, Room 10235, New Executive Office Building, Washington, D.C., 20503, Attention: Allison Herron Eydt, HCFA Desk Officer.

B. Requests for Data from the Public

In order to respond promptly to public requests for data related to the prospective payment system, we have set up a process under which commenters can gain access to the raw data on an expedited basis. Generally, the data are available in computer tape format or cartridges; however, some files are available on diskette, and on the internet at HTTP://WWW.HCFA.GOV/STATS/PUBFILES.HTML. Data files are listed below with the cost of each. Anyone wishing to purchase data tapes, cartridges, or diskettes should submit a written request along with a company check or money order (payable to HCFA–PUF) to cover the cost, to the following address: Health Care Financing Administration, Public Use Files, Accounting Division, P.O. Box 7520, Baltimore, Maryland 21207–0520, (410) 786–3691. Files on the internet may be downloaded without charge.

1. Expanded Modified MEDPAR-Hospital (National)

The Medicare Provider Analysis and Review (MEDPAR) file contains records for 100 percent of Medicare beneficiaries using hospital inpatient services in the United States. (The file is a Federal fiscal year file which means discharges occurring October 1 through September 30.)The records are stripped of most data elements that will permit identification of beneficiaries. The hospital is identified by the 6-position Medicare billing number. The file is available to persons qualifying under the terms of the Notice of Proposed New Routine Uses for an Existing System of Records published in the **Federal Register** on December 24, 1984 (49 FR 49941), and amended by the July 2, 1985 notice (50 FR 27361). The national file consists of approximately 11 million records. Under the requirements of these notices, a data release agreement must be signed by the purchaser before release of these data. For all files requiring a signed data release agreement, please write or call to obtain a blank agreement form before placing an order. Two versions of this file are created each year. They support the following:

- Notice of Proposed Rulemaking (NPRM) published in the **Federal Register**, usually available by the end of May. This file is derived from the MedPAR file with a cutoff of 3 months after the end of the fiscal year (December file).
- Final Rule published in the **Federal Register**, usually available by the first week of September. This file is derived from the MedPAR file with a cutoff of 9 months after the end of the fiscal year (June file).

Media: Tape/Cartridge
File Cost: $3,415.00 per fiscal year
Periods Available: FY 1988 through FY 1995

2. Expanded Modified MedPAR-Hospital (State)

The State MedPAR file contains records for 100 percent of Medicare beneficiaries using hospital inpatient services in a particular State. The records are stripped of most data elements that will permit identification of beneficiaries. The hospital is identified by the 6-position Medicare billing number. The file is available to persons qualifying under the terms of the Notice of Proposed New Routine Uses for an Existing System of Records published in the December 24, 1984 **Federal Register** notice, and amended by the July 2, 1985 notice. This file is a subset of the Expanded Modified MedPAR-Hospital (National) as described above. Under the requirements of these notices, a data release must be signed by the purchaser before release of these data. Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**, usually available by the end of May. This file is derived from the MedPAR file with a cutoff of 3 months after the end of the fiscal year (December file).
- Final Rule published in the **Federal Register**, usually available by the first week of September. This file is derived from the MedPAR file with a cutoff of 9 months after the end of the fiscal year (June file).

Media: Tape/Cartridge
File Cost: $1,050.00 per State per year
Periods Available: FY 1988 through FY 1995

3. HCFA Hospital Wage Index Data File

This file is composed of four separate diskettes. Included are: (1) The hospital hours and salaries for FY 1993 used to create the proposed FY 1997 prospective payment system wage indexes; (2) a history of all wage indexes used since October 1, 1983; (3) a list of State and county codes used by SSA and FIPS (Federal Information Processing Standards), county name, and Metropolitan Statistical Area (MSA); and (4) a file of hospitals that were reclassified for the purpose of the FY 1997 wage index. Two versions of these files are created each year. They support the following:

- NPRM published in the **Federal Register**, usually by the end of May.
- Final Rule published in the **Federal Register**, usually by the first week of September.

Media: Diskette/Internet
File Cost: $500.00
Periods Available: FY 1997 PPS Update

We note that the files also are available individually as indicated below.

(1) HCFA Hospital Wage Index Survey Only (usually available by the end of March for the NPRM and the middle of August for the final rule.)

(2) Urban and Rural Wage Indices Only

(3) PPS SSA/FIPS MSA State and County Crosswalk Only (usually available by the end of March)

(4) Reclassified Hospitals by Provider Only

Media: Diskette/Internet
File cost: $145.00 per file

4. PPS–IV to PPS–XII Minimum Data Sets

The Minimum Data Set contains cost, statistical, financial, and other information from the Medicare hospital cost report. The data set includes only the most current cost report (as submitted, final settled or reopened) submitted for a Medicare participating hospital by the Medicare Fiscal Intermediary to HCFA. This data set is updated at the end of each calendar quarter and is available on the last day of the following month.

Media: Tape/Cartridge

	Periods beginning on or after	and before
PPS IV	10/01/86	10/01/87
PPS V	10/01/87	10/01/88
PPS VI	10/01/88	10/01/89
PPS VII	10/01/89	10/01/90
PPS VIII	10/01/90	10/01/91
PPS IX	10/01/91	10/01/92
PPS X	10/01/92	10/01/93
PPS XI	10/01/93	10/01/94
PPS XII	10/01/94	10/01/95

(NOTE: The PPS XII Minimum Data Set covering 1995 will not be available until July 31, 1996.)

File Cost: $715.00 per year

5. PPS-IX to PPS-XII Capital Data Set

The Capital Data Set contains selected data for capital-related costs, interest expense and related information and complete balance sheet data from the Medicare hospital cost report. The data set includes only the most current cost report (as submitted, final settled or reopened) submitted for a Medicare certified hospital by the Medicare fiscal intermediary to HCFA. This data set is updated at the end of each calendar quarter and is available on the last day of the following month.

Media: Tape/Cartridge

	Periods beginning on or after	and before
PPS IX	10/01/91	10/01/92
PPS X	10/01/92	10/01/93
PPS XI	10/01/93	10/01/94
PPS XII	10/01/94	10/01/95

(NOTE: The PPS XII Capital Data Set covering 1994 will not be available until July 31, 1996.)

File Cost: $715.00 per year.

6. Provider-Specific File

This file is a component of the PRICER program used in the fiscal intermediary's system to compute DRG payments for individual bills. The file contains records for all prospective payment system eligible hospitals, including hospitals in waiver States, and data elements used in the prospective payment system recalibration processes and related activities. Beginning with December 1988, the individual records were enlarged to include pass-through per diems and other elements.

Media: Tape/Cartridge
File Cost: $500.00 per file
Periods Available: FY 1987 through FY 1996 (December updates)
Media: Diskette/Internet
File Cost: $265.00
Periods Available: FY 1996 PPS Update

7. HCFA Medicare Case-Mix Index File

This file contains the Medicare case-mix index by provider number as published in each year's update of the Medicare hospital inpatient prospective payment system. The case-mix index is a measure of the costliness of cases treated by a hospital relative to the cost of the national average of all Medicare hospital cases, using DRG weights as a measure of relative costliness of cases. Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**, usually by the end of May.
- Final rule published in the **Federal Register**, usually by the first week of September.

Media: Diskette/Internet
Price: $145.00 per year
Periods Available: FY 1985 through FY 1995 (Internet—FY 1995)

8. Table 5 DRG File

This file contains a listing of DRGs, DRG narrative description, relative weight, geometric mean, length of stay, and day outlier trim points as published in the **Federal Register**. The hardcopy image has been copied to diskette. There are two versions of this file as published in the **Federal Register**:

a. NPRM, usually published by the end of May.

b. Final rule, usually published by the first week of September.

Media: Diskette/Internet
File Cost: $145.00
Periods Available: FY 1997 PPS Update

9. PPS Payment Impact File

This file contains data used to estimate payments under Medicare's hospital inpatient prospective payment systems for operating and capital-related costs. The data are taken from various sources, including the Provider-Specific File, Minimum Data Sets, and prior impact files. The data set is abstracted from an internal file used for the impact analysis of the changes to the prospective payment systems published in the **Federal Register**. This file is available for release 1 month after the proposed and final rules are published in the **Federal Register**.

Media: Diskette/Internet
File Cost: $145.00
Periods Available: FY 1997 PPS Update

10. AOR/BOR Tables

This file contains data used to develop the DRG relative weights. It contains mean, maximum, minimum, standard deviation and coefficient of variation statistics by DRG for length of stay and standardized charges. The BOR tables are "Before Outliers Removed" and the AOR is "After Outliers Removed." (Outliers refers to statistical outliers, not payment outliers.) Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**, usually by the end of May.
- Final rule published in the **Federal Register**, usually by the first week of September.

Media: Diskette/Internet
File Cost: $145.00
Periods Available: FY 1997 PPS Update

11. HCFA FY 1992 Capital-Related Tax File

This file contains data used to develop a special property tax adjustment to the capital prospective payment system for capital-related costs. The data set includes a preliminary hospital-specific add-on amount for all PPS hospitals. The data set also contains the information used to propose an adjustment to the Federal rate so that the tax add-on is budget neutral. The proposed property tax adjustment provides special treatment to qualified hospitals who pay capital-related property taxes. The add-on was 10. determined using base year tax costs per discharge attributable to Medicare. The data are taken from the FY 1992 Medicare hospital cost report and a special request for validation by the fiscal intermediaries.

Media: Diskette
File cost: $145.00
Period available: FY 1992

For further information concerning these data tapes, contact Mary R. White at (410) 786–0168.

Commenters interested in obtaining or discussing any other data used in constructing this rule should contact Stephen Phillips at (410) 786–4548.

C. Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments concerning the provisions of this proposed rule that we receive by the date and time specified in the "Dates" section of this preamble and respond to those comments in the preamble to that rule. We emphasize that, given the statutory requirement under section 1886(e)(5) of the Act that our final rule for FY 1997 be published by September 1, 1996, we will consider only those comments that deal specifically with the matters discussed in this proposed rule.

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Port 489

Health facilities, Medicare.

42 CFR chapter IV would be amended as set forth below:

A. Part 412 would be amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart D—Basic Methodology for Determining Prospective Payment Federal Rates for Inpatient Operating Costs

2. In § 412.63(s)(1), a new sentence is added at the end to read as follows:

§ 412.63 Federal rates for inpatient operating costs for fiscal years after Federal fiscal year 1984.

* * * * *

(s) * * *

(1) * * * The wage index is updated annually.

* * * * *

Subpart L—The Medicare Geographic Classification Review Board

3. In 412.246, paragraph (b) is revised to read as follows:

§ 412.246 MGCRB members.

* * * * *

(b) *Term of office.* The term of office for an MGCRB member may not exceed 3 years. A member may serve more than one term. The Secretary may terminate a member's tenure prior to its full term.

Subpart M—Prospective Payment System for Inpatient Hospital Capital Costs

4. In § 412.302, a new paragraph (d)(4) is added to read as follows:

§ 412.302 Introduction to capital costs.

* * * * *

(d) * * *

(4) Hospitals may elect the simplified cost allocation methodology under the terms and conditions provided in the instructions for HCFA Form 2552.

B. Part 413 would be amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

Subpart C—Limits on Cost Reimbursement

2. In § 413.40, paragraph (d)(3) is revised to read as follows:

§ 413.40 Ceiling on the rate of increase in hospital inpatient costs.

* * * * *

(d) * * *

(3) *Net inpatient operating costs are greater than the ceiling.* For cost reporting periods beginning on or after October 1, 1991, if a hospital's allowable net inpatient operating costs exceed the hospital's ceiling (or the adjusted ceiling, if applicable), payment will be based on the lower of the—

(i) Ceiling (or the adjusted ceiling, if applicable) plus 50 percent of the allowable net inpatient operating costs in excess of the ceiling (or the adjusted ceiling, if applicable); or

(ii) One hundred-ten percent of the ceiling (or the adjusted ceiling, if applicable).

* * * * *

Subpart F—Specific Categories of Costs

3. In § 413.86, a new sentence is added at the end of paragraph (g)(1) introductory text to read as follows:

§ 413.86 Direct graduate medical education payments.

* * * * *

(g) * * *

(1) * * * For combined residency programs, an inital residency period is defined as the time required for individual certification in the longer of the two programs.

* * * * *

C. Part 489 would be amended as follows:

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

1. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102, and 1871 of the Social Security Act (42 U.S.C. 1302, and 1395hh).

Subpart B—Essentials of Provider Agreements

2. Section 489.27 is revised to read as follows:

§ 489.27 Beneficiary notice of discharge rights.

A hospital that participates in the Medicare program must furnish each Medicare beneficiary, or an individual acting on his or her behalf, the notice of discharge rights HCFA supplies to the hospital to implement section 1886(a)(1)(M) of the Act. The hospital must provide timely notice during the course of the hospital stay. For purposes of this paragraph, the course of the hospital stay may begin with the provision of a package of information regarding scheduled preadmission testing and registration for a planned hospital admission. The hospital must be able to demonstrate compliance with this requirement.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 13, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: May 24, 1996.

Donna E. Shalala,

Secretary.

[**Editorial Note:** The following addendum and appendixes will not appear in the Code of Federal Regulations.]

Addendum—Proposed Schedule of Standardized Amounts Effective With Discharges on or After October 1, 1996 and Update Factors and Rate-of-Increase Percentages Effective With Cost Reporting Periods Beginning on or After October 1, 1996

I. Summary and Background

In this addendum, we are setting forth the proposed amounts and factors for determining prospective payment rates for Medicare inpatient operating costs and Medicare inpatient capital-related costs. We are also setting forth proposed rate-of-increase percentages for updating the target amounts for hospitals and hospital units excluded from the prospective payment system.

For discharges occurring on or after October 1, 1996, except for sole community hospitals and hospitals located in Puerto Rico, each hospital's payment per discharge under the prospective payment system will be based on 100 percent of the Federal national rate.

Sole community hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal national rate, the updated hospital-specific rate based on FY 1982 cost per discharge, or the updated hospital-specific rate based on FY 1987 cost per discharge. For hospitals in Puerto Rico, the payment per discharge is based on the sum of 75 percent of a Puerto Rico rate and 25 percent of a national rate (section 1886(d)(9)(A) of the Act).

As discussed below in section II, we are proposing to make changes in the determination of the prospective payment rates for Medicare inpatient operating costs. The changes, to be applied prospectively, would affect the calculation of the Federal rates. In section III, we discuss our proposed changes for determining the prospective payment rates for Medicare inpatient capital-related costs. Section IV sets forth our proposed changes for determining the rate-of-increase limits for hospitals excluded from the prospective payment system. The tables to which we refer in the preamble to the proposed rule are presented at the end of this addendum in section V.

II. Proposed Changes to Prospective Payment rates For Inpatient Operating Costs for FY 1997

The basic methodology for determining prospective payment rates for inpatient operating costs is set forth at § 412.63 for hospitals located outside of Puerto Rico. The basic methodology for determining the prospective payment rates for inpatient operating costs for hospitals located in Puerto Rico is set forth at §§ 412.210 and 412.212. Below, we discuss the manner in which we are changing some of the factors used for determining the prospective payment rates. The Federal and Puerto Rico rate changes, once issued as final, will be effective with discharges occurring on or after October 1, 1996. As required by section 1886(d)(4)(C) of the Act, we must also adjust the DRG classifications and weighting factors for discharges in FY 1997.

In summary, the proposed standardized amounts set forth in Tables 1a and 1c of section V of this addendum reflect—

- Updates of 2.2 percent for all areas (that is, the market basket percentage increase of 2.7 percent minus 0.5 percentage points);
- An adjustment to ensure budget neutrality as provided for in sections 1886 (d)(4)(C)(iii) and (d)(3)(E) of the Act by applying new budget neutrality adjustment factors to the large urban and other standardized amounts;
- An adjustment to ensure budget neutrality as provided for in section 1886(d)(8)(D) of the Act by removing the FY 1996 budget neutrality factor and applying a revised factor; and
- An adjustment to apply the revised outlier offset by removing the FY 1996 outlier offsets and applying a new offset.

A. Calculation of Adjusted Standardized Amounts

1. Standardization of Base-Year Costs or Target Amounts

Section 1886(d)(2)(A) of the Act required the establishment of base-year cost data containing allowable operating costs per discharge of inpatient hospital services for each hospital. The preamble to the September 1, 1983 interim final rule (48 FR 39763) contains a detailed explanation of how base-year cost data were established in the initial development of standardized amounts for the prospective payment system and how they are used in computing the Federal rates.

Section 1886(d)(9)(B)(i) of the Act required that Medicare target amounts be determined for each hospital located in Puerto Rico for its cost reporting period beginning in FY 1987. The September 1, 1987 final rule contains a detailed explanation of how the target amounts were determined and how they are used in computing the Puerto Rico rates (52 FR 33043, 33066).

The standardized amounts are based on per discharge averages of adjusted hospital costs from a base period or, for Puerto Rico, adjusted target amounts from a base period, updated and otherwise adjusted in accordance with the provisions of section 1886(d) of the Act. Sections 1886 (d)(2)(C) and (d)(9)(B)(ii) of the Act required that the updated base-year per discharge costs and, for Puerto Rico, the updated target amounts, respectively, be standardized in order to remove from the cost data the effects of certain sources of variation in cost among hospitals. These include case mix, differences in area wage levels, cost of living adjustments for Alaska and Hawaii, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients.

Since the standardized amounts have already been adjusted for differences in case mix, wages, cost-of-living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, no additional adjustments for these factors for FY 1997 were made. That is, the standardization adjustments reflected in the FY 1997 standardized amounts are the same as those reflected in the FY 1996 standardized amounts.

Under sections 1886 (d)(2)(H) and (d)(3)(E) of the Act, in making payments under the prospective payment system, the Secretary estimates from time to time the proportion of costs that are wages and wage-related costs. Since October 1, 1990, when the market basket was last rebased, we have considered 71.4 percent of costs to be labor-related for purposes of the prospective payment system. As discussed in section IV of the preamble, we are proposing to use a rebased market basket effective for FY 1997. Based on the proposed rebased market basket, we are revising the labor and nonlabor proportions of the standardized amounts. Effective with discharges occurring on or after October 1, 1996, we are proposing a labor-related proportion of 71.2 percent and a nonlabor-related proportion of 28.8 percent. The standardized amounts in Table 1a of section V of this addendum have been recomputed to reflect the revised labor-related and nonlabor-related proportions. (We are revising the Puerto Rico standardized amounts by the average labor share in Puerto Rico of 82.8 percent. We are revising the discharged-weighted national

standardized amount to reflect the proportion of discharges in large urban and other areas from the FY 1995 MedPAR file.)

2. Computing Large Urban and Other Averages Within Geographic Areas

Section 1886(d)(3) of the Act requires the Secretary to compute two average standardized amounts for discharges occurring in a fiscal year: one for hospitals located in large urban areas and one for hospitals located in other areas. In addition, under sections 1886(d)(9) (B)(iii) and (C)(i) of the Act, the average standardized amount per discharge must be determined for hospitals located in urban and other areas in Puerto Rico. Hospitals in Puerto Rico are paid a blend of 75 percent of the applicable Puerto Rico standardized amount and 25 percent of a national standardized payment amount.

Section 1886(d)(2)(D) of the Act defines "urban areas" as those areas within a Metropolitan Statistical Area (MSA). A "large urban area" is defined as an urban area with a population of more than 1,000,000. In addition, section 4009(i) of Public Law 100–203 provides that a New England County Metropolitan Area (NECMA) with a population of more than 970,000 is classified as a large urban area. As required by section 1886(d)(2)(D) of the Act, population size is determined by the Secretary based on the latest population data published by the Bureau of the Census. Urban areas that do not meet the definition of a "large urban area" are referred to as "other urban areas." Areas that are not included in MSAs are considered "rural areas" under section 1886(d)(2)(D). Payment for discharges from hospitals located in large urban areas will be based on the large urban standardized amount. Payment for discharges from hospitals located in other urban and rural areas will be based on the other standardized amount.

Based on 1995 population estimates published by the Bureau of the Census, 56 areas meet the criteria to be defined as large urban areas for FY 1997. These areas are identified by an asterisk in Table 4a.

Table 1a contains the two national standardized amounts that we are proposing be applicable to all hospitals, except for sole community hospitals and hospitals in Puerto Rico. For a number of years, Table 1b had been used to set forth the 18 regional standardized amounts applicable for hospitals located in census areas subject to the regional floor. However, as provided in section 1886(d)(1)(A)(iii)(II) of the Act, the regional floor expires effective with discharges occurring on or after October 1, 1996. Therefore, all hospitals (except sole community hospitals and hospitals in Puerto Rico) will be paid solely on the basis of the national standardized amounts. Under section 1886(d)(9)(A)(ii) of the Act, the national standardized payment amount applicable to hospitals in Puerto Rico consists of the discharge-weighted average of the national large urban standardized amount and the national other standardized amount (as set forth in Table 1a). The national average standardized amount for Puerto Rico is now set forth in Table 1b. This table also includes the two standardized amounts that would be applicable to most hospitals in Puerto Rico.

3. Updating the Average Standardized Amounts

In accordance with section 1886(d)(3)(A)(iv) of the Act, we are proposing to update the large urban and the other areas average standardized amounts for FY 1997 using the applicable percentage increases specified in section 1886(b)(3)(B)(i) of the Act. Section 1886(b)(3)(B)(i)(XII) of the Act specifies that, for hospitals in all areas, the update factor for the standardized amounts for FY 1997 is the market basket percentage increase minus 0.5 percentage points.

The percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care. The most recent forecast of the proposed rebased hospital market basket increase for FY 1997 is 2.7 percent. For FY 1997, this yields an update to the average standardized amounts of 2.2 percent (2.7 percent minus 0.5 percent). (See section IV of this preamble of this proposed rule for a discussion of the market basket rebasing.)

As in the past, we are adjusting the FY 1996 standardized amounts to remove the effects of the FY 1996 geographic reclassifications and outlier payments before applying the FY 1997 updates. That is, we are increasing the standardized amounts to restore the reductions that were made for the effects of geographic reclassification and outliers. After including offsets to the standardized amounts for outliers and geographic reclassification, we estimate that there will be an actual increase of 2.3 percent to the large urban and other area standardized amounts.

Although the update factor for FY 1997 is set by law, we are required by section 1886(e)(3)(B) of the Act to report to Congress on our initial recommendation of update factors for FY 1997 for both prospective payment hospitals and hospitals excluded from the prospective payment system. For general information purposes, we have included the report to Congress as Appendix D to this proposed rule. Our proposed recommendation on the update factors (which is required by sections 1886 (e)(4)(A) and (e)(5)(A) of the Act), as well as our responses to ProPAC's recommendation concerning the update factor, are set forth as Appendix E to this proposed rule.

4. Other Adjustments to the Average Standardized Amounts

a. Recalibration of DRG Weights and Updated Wage Index—Budget Neutrality Adjustment. Section 1886(d)(4)(C)(iii) of the Act specifies that beginning in FY 1991, the annual DRG reclassification and recalibration of the relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected. As discussed in section II of the preamble, we normalized the recalibrated DRG weights by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight prior to recalibration.

Section 1886(d)(3)(E) of the Act specifies that the hospital wage index must be updated on an annual basis beginning October 1, 1993. This provision also requires that any updates or adjustments to the wage index must be made in a manner that ensures that aggregate payments to hospitals are not affected by the change in the wage index.

To comply with the requirement of section 1886(d)(4)(C)(iii) of the Act that DRG reclassification and recalibration of the relative weights be budget neutral, and the requirement in section 1886(d)(3)(E) of the Act that the updated wage index be budget neutral, we compared aggregate payments using the FY 1996 relative weights and wage index to aggregate payments using the proposed FY 1997 relative weights and wage index. The same methodology was used for the FY 1996 budget neutrality adjustment. (See the discussion in the September 1, 1992 final rule (57 FR 39832).) Based on this comparison, we computed a budget neutrality adjustment factor equal to 0.998509. This budget neutrality adjustment factor is applied to the standardized amounts without removing the effects of the FY 1996 budget neutrality adjustment. We do not remove the prior budget neutrality adjustment because estimated aggregate payments after the changes in the DRG relative weights and wage index should equal estimated aggregate payments prior to the changes. If we removed the prior year adjustment, we would not satisfy this condition.

In addition, we are proposing to continue to apply the same FY 1997 adjustment factor to the hospital-specific rates that are effective for cost reporting periods beginning on or after October 1, 1996, in order to ensure that we meet the statutory requirement that aggregate payments neither increase nor decrease as a result of the implementation of the FY 1997 DRG weights and updated wage index. (See the discussion in the September 4, 1990 final rule (55 FR 36073).)

b. Reclassified Hospitals—Budget Neutrality Adjustment. Section 1886(d)(8)(B) of the Act provides that certain rural hospitals are deemed urban effective with discharges occurring on or after October 1, 1988. In addition, section 1886(d)(10) of the Act provides for the reclassification of hospitals based on determinations by the Medicare Geographic Classification Review Board (MGCRB). Under section 1886(d)(10) of the Act, a hospital may be reclassified for purposes of the standardized amount or the wage index, or both.

Under section 1886(d)(8)(D) of the Act, the Secretary is required to adjust the standardized amounts so as to ensure that total aggregate payments under the prospective payment system after implementation of the provisions of sections 1886(d)(8) (B) and (C) and 1886(d)(10) of the Act are equal to the aggregate prospective payments that would have been made absent these provisions. To calculate this budget neutrality factor, we used historical discharge data to simulate payments, and compared total prospective payments (including IME and DSH payments) prior to any reclassifications to total prospective payments after reclassifications. We are applying an adjustment factor of 0.994059 to ensure that the effects of reclassification are budget neutral.

The adjustment factor is applied to the standardized amounts after removing the effects of the FY 1996 budget neutrality adjustment factor. We note that the proposed FY 1997 adjustment reflects wage index and standardized amount reclassifications approved by the MGCRB or the Administrator as of March 14, 1996. The effects of any additional reclassification changes resulting from appeals and reviews of the MGCRB decisions for FY 1997 or from a hospital's request for the withdrawal of a reclassification request will be reflected in the final budget neutrality adjustment required under section 1886(d)(8)(D) of the Act and published in the final rule for FY 1997.

c. Outliers. Section 1886(d)(5)(A) of the Act provides for payments in addition to the basic prospective payments for "outlier" cases, cases involving extraordinarily high costs (cost outliers) or long lengths of stay (day outliers). Section 1886(d)(3)(B) of the Act requires the Secretary to adjust both the large urban and other area national standardized amounts by the same factor to account for the estimated proportion of total DRG payments made to outlier cases. Similarly, section 1886(d)(9)(B)(iv) of the Act requires the Secretary to adjust the large urban and other standardized amounts applicable to hospitals in Puerto Rico by the same factor to account for the estimated proportion of total DRG payments made to outlier cases. Furthermore, under section 1886(d)(5)(A)(iv) of the Act, outlier payments for any year must be projected to be not less than 5 percent nor more than 6 percent of total payments based on DRG prospective payment rates.

Beginning with FY 1995, section 1886(d)(5)(A) of the Act requires the Secretary to phase out payments for day outliers (correspondingly, payments for cost outliers would increase). Under the requirements of section 1886(d)(5)(A)(v), the proportion of day outlier payments to total outlier payments is reduced from FY 1994 levels as follows: 75 percent of FY 1994 levels in FY 1995, 50 percent of FY 1994 levels in FY 1996, and 25 percent of FY 1994 levels in FY 1997. We estimated the FY 1994 proportion of day outlier payments to total outlier payments at 31.3 percent in our September 1, 1993 final rule (58 FR 46348). Thus, the proportion of day outlier payments to total outlier payments in FY 1997 will be approximately 8 percent (25 percent of 31.3 percent). For discharges occurring after September 30, 1997, the Secretary will no longer pay for day outliers under the provisions of section 1886(d)(5)(A)(i) of the Act.

i. Proposed FY 1997 Outlier Payment Policies, Including Outlier Thresholds. For FY 1996, the day outlier threshold is the geometric mean length of stay for each DRG plus the lesser of 23 days or 3.0 standard deviations. The marginal cost factor for day outliers (the percent of Medicare's average per diem payment paid for each outlier day) is 44 percent for FY 1996. The fixed loss cost outlier threshold is equal to the prospective payment for the DRG plus $15,150 ($13,800 for hospitals that have not yet entered the prospective payment system for capital-related costs). The marginal cost factor for cost outliers (the percent of costs paid after costs for the case exceed the threshold) is 80 percent. We applied an outlier adjustment to the FY 1996 standardized amounts of 0.949054 for the large urban and other areas rates and 0.9526 for the capital Federal rate.

For FY 1997, we propose to set the day outlier threshold at the geometric mean length of stay for each DRG plus the lesser of 24 days or 3.0 standard deviations. Section 1886(d)(5)(A)(iii) of the Act, as amended by section 13501(c)(3) of Public Law 103–66, provides that additional payments for day outlier cases may be reduced below the marginal cost of care to meet the requirements of section 1886(d)(5)(A)(v) of the Act. We are proposing to reduce the marginal cost factor for each outlier day from 44 percent to 35 percent in FY 1997. We estimate that our proposed policies will reduce the proportion of outlier payments paid as day outliers in FY 1997 to approximately 8 percent, in accordance with section 1886(d)(5)(A) of the Act.

We are also proposing a fixed loss cost outlier threshold in FY 1997 equal to the prospective payment rate for the DRG plus $11,050 ($10,075 for hospitals that have not yet entered the prospective payment system for capital-related costs). In addition, we are proposing to maintain the marginal cost factor for cost outliers at 80 percent.

In accordance with section 1886(d)(5)(A)(iv) of the Act, we calculated proposed outlier thresholds so that outlier payments are projected to equal 5.1 percent of total payments based on DRG prospective payment rates. In accordance with section 1886(d)(3)(E), we reduced the proposed FY 1997 standardized amounts by the same percentage to account for the projected proportion of payments paid to outliers.

As stated in the September 1, 1993 final rule (58 FR 46348), we establish outlier thresholds that are applicable to both inpatient operating costs and inpatient capital-related costs. When we modeled the combined operating and capital outlier payments, we found that using a common set of thresholds resulted in a higher percentage of outlier payments for capital-related costs than for operating costs. We project that the proposed thresholds for FY 1997 will result in outlier payments equal to 5.1 percent of operating DRG payments and 5.2 percent of capital payments based on the Federal rate.

Thus, the proposed outlier adjustment factors applied to the standardized amounts and the capital Federal rate for FY 1997 are as follows:

Operating Standardized Amounts	Capital Federal Rate
0.948968	0.9476

We would apply the proposed outlier adjustment factors after removing the effects of the FY 1996 outlier adjustment factors on the standardized amounts and the capital Federal rate.

ii. Other Changes Concerning Outliers. Table 5 of section V of this addendum contains the DRG relative weights, geometric and arithmetic mean lengths of stay, as well as the day outlier threshold for each DRG. When we recalibrate DRG weights, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight and geometric mean length of stay. DRGs that do not have at least 10 cases are considered to be low volume DRGs. For the low volume DRGs, we use the original geometric mean lengths of stay, because no arithmetic mean length of stay was calculated based on the original data.

Table 8a in section V of this addendum contains the updated Statewide average operating cost-to-charge ratios for urban hospitals and for rural hospitals to be used in calculating cost outlier payments for those hospitals for which the intermediary is unable to compute a reasonable hospital-specific cost-to-charge ratio. These Statewide average ratios would replace the ratios published in the September 1, 1995 final rule (60 FR 45922), effective October 1, 1996. Table 8b contains comparable Statewide average capital cost-to-charge ratios. These average ratios would be used to calculate cost outlier payments for those hospitals for which the intermediary computes operating cost-to-charge ratios lower than 0.24345 or greater than 1.30392 and capital cost-to-charge ratios lower than 0.013297 or greater than 0.19968. This range represents 3.0 standard deviations (plus or minus) from the mean of the log distribution of cost-to-charge ratios for all hospitals. We note that the cost-to-charge ratios in Tables 8a and 8b would be used for all cost reports settled during FY 1997 (regardless of the actual cost reporting period) when hospital-specific cost-to-charge ratios are either not available or outside the three standard deviations range.

iii. FY 1995 and FY 1996 Outlier Payments. In the September 1, 1995 final rule (59 FR 45408), we stated that, based on available data, we estimated that actual FY 1995 outlier payments would be approximately 4.0 percent of actual total DRG payments. This percentage was computed by simulating payments using actual FY *1994* bill data available at the time. That is, the estimate of actual outlier payments did not reflect actual FY 1995 bills but instead reflected the application of FY 1995 rates and policies to available FY 1994 bills. Our current estimate, using available FY 1995 bills, is that actual outlier payments for FY 1995 were approximately 3.7 percent of actual total DRG payments (lower than the 5.1 percent we projected in setting outlier policies for FY 1995). We note that the MedPAR file for FY 1995 discharges continues to be updated.

We currently estimate that actual outlier payments for FY 1996 will be approximately 4.2 percent of actual total DRG payments (lower than the 5.1 percent we projected in setting outlier policies for FY 1996). This estimate is based on simulations using the December 1995 update of the provider-specific file and the December 1995 update of the FY 1995 MedPAR file (discharge data for FY 1995 bills). We used these data to calculate an estimate of the actual outlier percentage for FY 1996 by applying FY 1996 rates and policies to available FY 1995 bills.

The following discussion addresses the methodology we use to set outlier thresholds for an upcoming fiscal year and also addresses possible explanations for the difference between projected and actual outlier payment percentages in recent years.

iv. Methodology for Setting Outlier Thresholds. In previous rulemaking documents, we have discussed the methodology for setting outlier thresholds as well as our periodic refinements to that methodology. In this document, we once again describe our methodology and analyze it to suggest some possible explanations for the recent differences between projected and actual outlier percentages. We invite comments and suggestions for further refinements to the methodology.

In General. In accordance with section 1886(d)(5)(A)(iv) of the Act, we set outlier thresholds so that outlier payments are expected (projected) to equal 5.1 percent of total payments based on DRG prospective payment rates. The databases used to calculate thresholds for an upcoming fiscal year include data on discharges from a previous fiscal year as well as hospital-specific data. We update the data every year. In setting the proposed FY 1997 outlier thresholds, we used the December 1995 update of the FY 1995 MedPAR file, which contains data on FY 1995 hospital inpatient discharges, and the December 1995 update of the provider-specific file, which contains information on hospital-specific payment parameters (such as cost-to-charge ratios).

The methodology for setting outlier thresholds for an upcoming fiscal year involves analyzing the set of hospital inpatient cases in the MedPAR file and simulating payments for those cases by using the payment rates and policies that would apply in the upcoming fiscal year. For example, in calculating the proposed thresholds for FY 1997, we used the proposed payment rates and policies for FY 1997 and simulated payments for the set of cases in the FY 1995 MedPAR file.

The computer simulation calculates "payments"—outlier payments and total payments—for all discharges for a given set of outlier thresholds. In order to achieve established objectives (for example, the projected percentage of outlier payments relative to total DRG payments is 5.1 percent, and the projected percentage of outlier payments attributable to day outliers is 8 percent for FY 1997), the methodology involves an iterative process, that is, numerous successive simulations using alternative sets of outlier thresholds. In short, then, the outlier estimation methodology involves analyzing historical discharge data, simulating payments for the discharges in the database by using the payment rates that would apply in the upcoming fiscal year, and testing alternative sets of outlier thresholds until the simulations are consistent with established objectives.

Cost Inflation Factors. In setting outlier thresholds for an upcoming fiscal year, we need to calculate the "costs" for each case in our database. In the payment simulations, this "cost" for each case is used to determine, for a given cost outlier threshold, whether a case qualifies for additional outlier payments and the amount of any such payments. (As explained above, we test alternative sets of thresholds.)

The MedPAR file includes data on billed charges, and as part of the estimation methodology, we make adjustments to convert the charges to costs, including adjusting the data for inflation. In setting the proposed outlier thresholds for FY 1997, we analyzed data for FY 1995 discharges.

As we explained in the September 1, 1993 final rule (58 FR 46347), prior to FY 1994, we used a charge inflation factor to adjust charges to costs; for example, in setting outlier thresholds for FY 1993, we adjusted the FY 1991 MedPAR file charge data by a charge inflation factor for 2 years in order to estimate FY 1993 charges and then applied the applicable cost-to-charge ratio. Beginning with FY 1994, we have used a cost inflation factor to estimate "costs"; that is, we adjust the charges by the cost-to-charge ratio and then adjust the resulting costs for 2 years of cost inflation. This adjustment automatically accounts for any changes in the cost-to-charge ratios that may occur, since the relevant variable is the estimated "costs" for a given case.

In setting the final outlier thresholds for recent years immediately prior to FY 1995, we determined cost inflation factors by analyzing cost report information to calculate moving averages of cost inflation for prior periods. (For example, in setting the FY 1994 outlier thresholds, we analyzed cost reports for cost reporting periods beginning in FY 1988 through FY 1991 to calculate a cost inflation factor, that is, the average annual increase in cost per case, of 8.3 percent.) In doing so, we made an audit adjustment for any cost report that had not been settled, based on the average ratio of submitted to final cost report data. In setting the final outlier thresholds for FYs 1995 and 1996, we determined cost inflation factors by analyzing cost report information and calculating the change in cost per case for one year, rather than the average change in cost per case over more than one year.

In setting the proposed FY 1997 outlier thresholds, we used a cost inflation factor of 0.0 percent, because it is unclear whether FY 1997 "costs" will be higher or lower than costs reflected in the FY 1995 MedPAR file. Analysis of recent cost report information shows that cost per case increased slightly for cost reporting periods beginning in FY 1993 relative to those beginning in FY 1992, but decreased slightly in the following year (that is, for cost reporting periods beginning in FY 1994 relative to those beginning in FY 1993). We will reevaluate this factor when we develop the final rule for FY 1997. At that time, more recent data should be available for analysis, specifically, cost report data for cost reporting periods beginning in FY 1995.

Differences Between Projected and Actual Outlier Percentages. As explained above, the cost inflation factor is an important aspect of the methodology for setting outlier thresholds, and we believe the cost inflation factor is a major reason that in recent years the actual outlier percentages (the proportion of actual outlier payments to actual total DRG payments) have been lower than projected.

In determining the cost inflation factor, we analyze historical hospital cost report information, and there is necessarily a time lag of 2 to 3 years between the cost reporting period itself and the time when data for that cost reporting period become available. For example, in setting the FY 1994 outlier thresholds, we used a cost inflation factor of 8.3 percent, derived from cost reports for cost reporting periods beginning in FY 1988 through FY 1991. We adjusted the charges from the FY 1992 MedPAR bills by the cost-to-charge ratio and then adjusted the resulting FY 1992 costs for 2 years of cost inflation (costs multiplied by 1.083 multiplied by 1.083) to estimate "FY 1994 costs."

However, analysis of more recent cost report information shows that cost per case increased at a much lower rate of 0.97 percent in cost reporting periods between FY 1992 and FY 1993 and actually decreased 1.77 percent in cost reporting periods between FY 1993 and FY 1994. In effect, we "overestimated" costs by approximately 15.4 percent. Since costs did not increase at nearly the rate we expected, actual costs in FY 1994 proved to be lower than those reflected in the simulations used to set the thresholds for FY 1994; accordingly, the proportion of outlier payments was lower than expected.

Another aspect of the outlier methodology that may have contributed to the difference between projected and actual outlier percentages concerns the payment adjustments for indirect medical education (IME) and disproportionate share hospitals (DSH). As indicated in previous rulemaking documents, for purposes of determining outlier payments, we standardize a hospital's costs for IME and DSH adjustments; that is, we reduce the hospital's costs for a given discharge to account for IME and DSH payments. The "standardized" cost for a discharge is calculated by taking total costs for the discharge and dividing it by the sum of one plus the hospital's DSH factor plus the hospital's IME factor. Therefore, the higher the IME and DSH factors, the more costs are reduced by standardization.

The factors used for purposes of setting thresholds are taken from the most recent provider-specific file. In setting the proposed FY 1997 outlier thresholds, we used information from the December 1995 update of the provider-specific file. We standardized the costs for each discharge in our database to account for IME and DSH adjustments. The proposed outlier thresholds reflect these standardized costs.

While we use the latest, most up-to-date sources of information, the "projected" IME and DSH factors (the factors used to set thresholds for a fiscal year) may differ from the actual IME and DSH factors used to make payments in that fiscal year. If the "projected" factors used to standardize costs for a given discharge are "too low," then standardization does not "sufficiently" reduce the costs for that discharge and the resulting standardized cost is "too high." If the standardized costs for the discharges analyzed to set outlier thresholds are generally "too high," then in turn the thresholds would be too high; consequently, this might result in a lower than expected proportion of outlier payments. Analysis shows that, for FY 1994 for example, the "projected" IME and DSH factors were on average lower than the actual factors.

Conclusion. As we have done since the inception of the prospective payment system, we determine outlier thresholds based on estimates before the beginning of each fiscal year. The methodology we use involves analysis of the best data available at the time thresholds are established; however, by their nature, projections are imprecise and may differ from actual payment data for any number of reasons. We discussed above some of the numerous factors that affect payment and why these particular factors may have contributed to the difference between projected and actual outlier payments in recent years. (See also, for example, the discussion in the September 1, 1995 final rule (60 FR 45855).) We note that any difference between projected and actual outlier payment percentages in a given year does not affect standardized amounts in future years.

We continue to explore refinements to the methodology for setting outlier thresholds. We welcome comments and suggestions regarding these issues.

B. Adjustments for Area Wage Levels and Cost of Living

The adjusted standardized amounts are divided into labor and nonlabor portions. Tables 1a and 1c, as set forth in this addendum, contain the actual labor-related and nonlabor-related shares that will be used to calculate the prospective payment rates for hospitals located in the 50 States, the District of Columbia, and Puerto Rico. This section addresses two types of adjustments to the standardized amounts that are made in determining the prospective payment rates as described in this addendum.

1. Adjustment for Area Wage Levels

Sections 1886(d)(3)(E) and 1886(d)(9)(C)(iv) of the Act require that an adjustment be made to the labor-related portion of the prospective payment rates to account for area differences in hospital wage levels. This

adjustment is made by multiplying the labor-related portion of the adjusted standardized amounts by the appropriate wage index for the area in which the hospital is located. In section III of the preamble, we discuss certain revisions we are making to the wage index. This index is set forth in Tables 4a through 4e of this addendum.

2. Adjustment for Cost of Living in Alaska and Hawaii

Section 1886(d)(5)(H) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States are taken into account in the adjustment for area wages described above. For FY 1997, we propose to adjust the payments for hospitals in Alaska and Hawaii by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below. If the Office of Personnel Management releases revised cost-of-living adjustment factors before August 1, 1996, we will publish them in the final rule and use them in determining FY 1997 payments.

TABLE OF COST-OF-LIVING ADJUSTMENT FACTORS, ALASKA AND HAWAII HOSPITALS

Alaska—All areas	1.25
Hawaii:	
County of Honolulu	1.225
County of Hawaii	1.15
County of Kauai	1.20
County of Maui	1.225
County of Kalawao	1.225

(The above factors are based on data obtained from the U.S. Office of Personnel Management.)

C. DRG Relative Weights

As discussed in section II of the preamble, we have developed a classification system for all hospital discharges, assigning them into DRGs, and have developed relative weights for each DRG that reflect the resource utilization of cases in each DRG relative to Medicare cases in other DRGs. Table 5 of section V of this addendum contains the relative weights that we propose to use for discharges occurring in FY 1997. These factors have been recalibrated as explained in section II of the preamble.

D. Calculation of Prospective Payment Rates for FY 1997

General Formula for Calculation of Prospective Payment Rates for FY 1997

Prospective payment rate for all hospitals located outside Puerto Rico except sole community hospitals = Federal rate.

Prospective payment rate for sole community hospitals = Whichever of the following rates yields the greatest aggregate payment: 100 percent of the Federal rate, 100 percent of the updated FY 1982 hospital-specific rate, or 100 percent of the updated FY 1987 hospital-specific rate. Prospective payment rate for Puerto Rico = 75 percent of the Puerto Rico rate + 25 percent of a discharge-weighted average of the national large urban standardized amount and the national other standardized amount.

1. Federal Rate

For discharges occurring on or after October 1, 1996 and before October 1, 1997, except for sole community hospitals and hospitals in Puerto Rico, the hospital's payment is based exclusively on the Federal national rate. Section 1866(d)(1)(A)(iii) of the Act provides that the Federal rate is comprised of 100 percent of the Federal national rate.

The payment amount is determined as follows:

Step 1—Select the appropriate national standardized amount considering the type of hospital and designation of the hospital as large urban or other (see Tables 1a, section V of this addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the applicable wage index for the geographic area in which the hospital is located (see Tables 4a, 4b, and 4c, section V of this addendum).

Step 3—For hospitals in Alaska and Hawaii, multiply the nonlabor-related portion of the standardized amount by the appropriate cost-of-living adjustment factor.

Step 4—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount (adjusted if appropriate under Step 3).

Step 5—Multiply the final amount from Step 4 by the relative weight corresponding to the appropriate DRG (see Table 5, section V of this addendum).

2. Hospital-Specific Rate (Applicable Only to Sole Community Hospitals)

Sections 1886(d)(5)(D)(i) and (b)(3)(C) of the Act provide that sole community hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal rate, the updated hospital-specific rate based on FY 1982 cost per discharge, or the updated hospital-specific rate based on FY 1987 cost per discharge.

Hospital-specific rates have been determined for each of these hospitals based on both the FY 1982 cost per discharge and the FY 1987 cost per discharge. For a more detailed discussion of the calculation of the FY 1982 hospital-specific rate and the FY 1987 hospital-specific rate, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772); the April 20, 1990 final rule with comment (55 FR 15150); and the September 4, 1990 final rule (55 FR 35994).

a. Updating the FY 1982 and FY 1987 Hospital-Specific Rates for FY 1997. We are proposing to increase the hospital-specific rates by 2.2 percent (the hospital market basket percentage increase minus 0.5 percentage points) for sole community hospitals located in all areas in FY 1997. Section 1886(b)(3)(C)(ii) of the Act provides that the update factor applicable to the hospital-specific rates for sole community hospitals equals the update factor provided under section 1886(b)(3)(B)(ii) of the Act, which, for FY 1997, is the market basket rate of increase minus 0.5 percentage points.

b. Calculation of Hospital-Specific Rate. For sole community hospitals, the applicable FY 1997 hospital-specific rate would be calculated by multiplying a hospital's hospital-specific rate for the preceding fiscal year by the applicable update factor (2.2 percent), which is the same as the update for all prospective payment hospitals. In addition, the hospital-specific rate would be adjusted by the budget neutrality adjustment factor (that is, 0.998509) as discussed in section II.A.4.a of this Addendum. This resulting rate would be used in determining under which rate a sole community hospital is paid for its discharges beginning on or after October 1, 1996, based on the formula set forth above.

3. General Formula for Calculation of Prospective Payment Rates for Hospitals Located in Puerto Rico Beginning On or After October 1, 1996 and Before October 1, 1997.

a. Puerto Rico Rate. The Puerto Rico prospective payment rate is determined as follows:

Step 1—Select the appropriate adjusted average standardized amount considering the large urban or other designation of the hospital (see Table 1b, section V of the addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the appropriate wage index (see Tables 4a and 4b, section V of the addendum).

Step 3—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount.

Step 4—Multiply the result in Step 3 by 75 percent.

Step 5—Multiply the amount from Step 4 by the appropriate DRG relative weight (see Table 5, section V of the addendum).

b. National Rate. The national prospective payment rate is determined as follows:

Step 1—Multiply the labor-related portion of the national average standardized amount (see Table 1b, section V of the addendum) by the appropriate wage index.

Step 2—Add the amount from Step 1 and the nonlabor-related portion of the national average standardized amount.

Step 3—Multiply the result in Step 2 by 25 percent.

Step 4—Multiply the amount from Step 3 by the appropriate DRG relative weight (see Table 5, section V of the addendum).

The sum of the Puerto Rico rate and the national rate computed above equals the prospective payment for a given discharge for a hospital located in Puerto Rico.

III. Proposed Changes to Payment Rates for Inpatient Capital-Related Costs for FY 1997

The prospective payment system for hospital inpatient capital-related costs was implemented for cost reporting periods beginning on or after October 1, 1991. Effective with that cost reporting period and during a 10-year transition period extending through FY 2001, hospital inpatient capital-related costs are paid on the basis of an increasing proportion of the capital prospective payment system Federal rate and a decreasing proportion of a hospital's historical costs for capital.

The basic methodology for determining Federal capital prospective rates is set forth at §§ 412.308 through 412.352. Below we discuss the factors that we used to determine the proposed Federal rate and the hospital-specific rates for FY 1997. The rates will be effective for discharges occurring on or after October 1, 1996.

For FY 1992, we computed the standard Federal payment rate for capital-related costs under the prospective payment system by updating the FY 1989 Medicare inpatient capital cost per case by an actuarial estimate of the increase in Medicare inpatient capital costs per case. Each year after FY 1992 we update the standard Federal rate, as provided in § 412.308(c)(1), to account for capital input price increases and other factors. Also, § 412.308(c)(2) provides that the Federal rate is adjusted annually by a factor equal to the estimated proportion of outlier payments under the Federal rate to total capital payments under the Federal rate. Section 412.308(c)(3) further requires that the Federal rate be reduced by an adjustment factor equal to the estimated proportion of payments for exceptions under § 412.348, and § 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that the annual DRG reclassification and the recalibration of DRG weights and changes in the geographic adjustment factor are budget neutral. For FY 1992 through FY 1995, § 412.352 required that the Federal rate also be adjusted by a budget neutrality factor so that aggregate payments for inpatient hospital capital costs were projected to equal 90 percent of the payments that would have been made for capital-related costs on a reasonable cost basis during the fiscal year. That provision expired in FY 1996.

The hospital-specific rate for each hospital was calculated by dividing the hospital's Medicare inpatient capital-related costs for a specified base year by its Medicare discharges (adjusted for transfers), and dividing the result by the hospital's case mix index (also adjusted for transfers). The resulting case-mix adjusted average cost per discharge was then updated to FY 1992 based on the national average increase in Medicare's inpatient capital cost per discharge and adjusted by the exceptions payment adjustment factor and the budget neutrality adjustment factor to yield the FY 1992 hospital-specific rate. The hospital-specific rate is updated each year after FY 1992 for inflation and for changes in the exceptions payment adjustment factor. For FY 1992 through FY 1995, the hospital-specific rate was also adjusted by a budget neutrality adjustment factor.

To determine the appropriate budget neutrality adjustment factors and the exceptions payment adjustment factor, we developed a dynamic model of Medicare inpatient capital-related costs, that is, a model that projects changes in Medicare inpatient capital-related costs over time. With the expiration of the budget neutrality provision, the model is still used to estimate the exceptions payment adjustment and other factors. The model and its application are described more fully in Appendix B.

In accordance with section 1886(d)(9)(A) of the Act, under the prospective payment system for inpatient operating costs, hospitals located in Puerto Rico are paid for operating costs under a special payment formula. These hospitals are paid a blended rate that is comprised of 75 percent of the applicable standardized amount specific to Puerto Rico hospitals and 25 percent of the applicable national average standardized amount. Section 412.374 provides for the use of this blended payment system for payments to Puerto Rico hospitals under the prospective payment system for inpatient capital-related costs. Accordingly, for capital-related costs we compute a separate payment rate specific to Puerto Rico hospitals using the same methodology used to compute the national Federal rate for capital. Hospitals in Puerto Rico are paid based on 75 percent of the Puerto Rico rate and 25 percent of the Federal rate.

A. Determination of Federal Inpatient Capital-Related Prospective Payment Rate Update

For FY 1996, the Federal rate is $461.96. With the changes we are proposing to the factors used to establish the Federal rate, the proposed FY 1997 Federal rate is $441.84.

In the discussion that follows, we explain the factors that were used to determine the proposed FY 1997 Federal rate. In particular, we explain why the FY 1997 Federal rate has decreased 4.36 percent compared to the FY 1996 Federal rate. Nevertheless, as explained in section VII of Appendix A, capital payments per case are estimated to increase 4.45 percent. Taking into account the effects of increases in projected discharges, we also estimate that aggregate capital payments will increase 7.28 percent.

The major factor contributing to the decrease in the proposed FY 1997 rate in comparison to the FY 1996 rate is the change in the exceptions reduction factor. We have expected the number and amount of exceptions payments generally to increase throughout the transition period.

Total payments to hospitals under the prospective payment system are relatively insensitive to changes in the capital prospective payments. Since capital payments constitute about 10 percent of hospital payments, a 1 percent change in the capital Federal rate yields only about 0.1 percent change in actual payments to hospitals. Aggregate payments under the capital prospective payment transition system are estimated to increase in FY 1997 compared to FY 1996. Specifically, we estimate that aggregate payments in FY 1997 will be 7.28 percent higher than they were in FY 1996. Changes in aggregate payments include changes in capital payments per discharge and changes in the number of discharges. Under the prospective payment system for capital-related costs, payments per discharge (or case) are estimated to increase 4.45 percent in FY 1997 compared to FY 1996.

1. Standard Federal Rate Update

Section 412.308(c)(1) has provided that the standard Federal rate is updated on the basis of an analytical framework

that takes into account changes in a capital input price index and other factors. The update framework consists of a capital input price index (CIPI) and several policy adjustment factors. Specifically, we have adjusted the projected CIPI rate of increase as appropriate each year for case-mix index related changes, for intensity, and for errors in previous CIPI forecasts. The proposed update factor for FY 1997 under that framework is 1.0 percent. This proposal is based on a projected 1.0 percent increase in the CIPI, and on policy adjustment factors of zero. We explain the basis for the FY 1997 CIPI projection in section IV.B of the preamble to this proposed rule. Here we describe the policy adjustments that have been applied.

The case-mix index (CMI) is the measure of the average DRG weight for cases paid under the prospective payment system. Because the DRG weight determines the prospective payment for each case, any percentage increase in the CMI corresponds to an equal percentage increase in hospital payments.

The CMI can change for any of several reasons: because the average resource use of Medicare patients changes ("real" case-mix change); because changes in hospital coding of patient records result in higher weight DRG assignments ("coding effects"); and because the annual DRG reclassification and recalibration changes may not be budget neutral ("reclassification effect"). We define real case-mix change as actual changes in the mix (and resource requirements) of Medicare patients as opposed to changes in coding behavior that result in assignment of cases to higher-weighted DRGs but do not reflect higher resource requirements. In the update framework for the prospective payment system for operating costs, we adjust the update upwards to allow for real case-mix change, but remove the effects of coding changes on the CMI. We also remove the effect on total payments of prior changes to the DRG classifications and relative weights, in order to retain budget neutrality for all CMI-related changes other than patient severity. (For example, we adjusted for the effects of the FY 1992 DRG reclassification and recalibration as part of our FY 1994 update recommendation.) The operating adjustment consists of a reduction for total observed case-mix change, an increase for the portion of case-mix change that we determine is due to real case-mix change rather than coding modifications, and an adjustment for the effect of prior DRG reclassification and recalibration changes. We have adopted this CMI adjustment in the capital update framework as well.

For FY 1997, we are projecting a 1.6 percent increase in the case-mix index. We estimate that real case-mix increase will equal projected case-mix increase in FY 1997. We do not anticipate any changes in coding behavior in our projected case-mix change. We explain the basis for this determination in Appendix D to this proposed rule. The proposed net adjustment for case-mix change in FY 1997 is therefore 0.0 percentage points.

We estimate that DRG reclassification and recalibration resulted in a 0.0 percent change in the case mix when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the DRGs.

The current operating update framework contains an adjustment for forecast error. The input price index forecast is based on historical trends and relationships ascertainable at the time the update factor is established for the upcoming year. In any given year there may be unanticipated price fluctuations that may result in differences between the actual increase in prices faced by hospitals and the forecast used in calculating the update factors. In setting a prospective payment rate under the proposed framework, we make an adjustment for forecast error only if our estimate of the capital input price index rate of increase for any year is off by 0.25 percentage points or more. There is a 2-year lag between the forecast and the measurement of the forecast error. Thus, for example, we would adjust for a forecast error made in FY 1996 through an adjustment to the FY 1998 update. Because we only introduced this analytical framework in FY 1996, FY 1998 is the first year in which a forecast error adjustment could be required.

Under the capital prospective payment system framework, we also make an adjustment for changes in intensity. We calculate this adjustment using the same methodology and data as in the framework for the operating prospective payment system. The intensity factor for the operating update framework reflects how hospital services are utilized to produce the final product, that is, the discharge. This component accounts for changes in the use of quality-enhancing services, changes in within-DRG severity, and expected modification of practice patterns to remove cost-ineffective services.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI hospital component) and changes in real case mix. The use of total charges in the calculation of the proposed intensity factor makes it a total intensity factor, that is, charges for capital services are already built into the calculation of the factor. We have therefore incorporated the intensity adjustment from the operating update framework into the capital update framework. In the absence of reliable estimates of the proportions of the overall annual intensity increases that are due, respectively, to ineffective practice patterns and to the combination of quality-enhancing new technologies and within-DRG complexity, we assume, as in the revised operating update framework, that one-half of the annual increase is due to each of these factors. The capital update framework thus provides an add-on to the input price index rate of increase of one-half of the estimated annual increase in intensity to allow for within-DRG severity increases and the adoption of quality-enhancing technology.

For FY 1997, we have developed a Medicare-specific intensity measure based on a five-year average using FY 1991-1995. In determining case-mix constant intensity, we found that observed case-mix increase was 2.8 percent in FY 1991, 1.8 percent in FY 1992, 0.9 percent in FY 1993, 0.8 percent in FY 1994, and 1.6 percent in FY 1995. For FY 1991 and FY 1992, we estimate that real case-mix increase was 1.0 to 1.4 percent each year. The estimate for those years is supported by past studies of case-mix change by the RAND Corporation. The most recent study was "Has DRG Creep Crept Up? Decomposing the Case Mix Index Change Between 1987 and 1988" by G.M. Carter, J.P. Newhouse, and D.A. Relles, R-4098-HCFA/ProPAC (1991). The study suggested that real case-mix change was not dependent on total change, but was rather a fairly steady 1.0 to 1.5 percent per year. We use 1.4 percent as the upper bound because the RAND study did not take into account that hospitals may have induced doctors to document medical records more completely in order to improve payment. Following that study, we consider up to 1.4 percent of observed case-mix change as real for FY 1991 through FY 1994. As discussed above, we have determined that all of the observed case-mix increase for FY 1995 is real.

Given estimates of real case-mix increase of 1.0 percent for FY 1991 and FY 1992, 0.9 percent for FY 1993, 0.8 percent for FY 1994, and 1.6 percent for FY 1995, we estimate that case-mix constant intensity declined by an average 1.1 percent during FY 1991 through FY 1995, for a cumulative decrease of 5.6 percent. If we assume that real case-mix increase was 1.4 percent for FY 1991 and FY 1992, 0.9 percent for FY 1993, 0.8 percent for FY 1994, and 1.6 percent for FY 1995, we estimate that case-mix constant intensity declined by an average 1.2 percent during FY 1991 through FY 1995, for a cumulative decrease of 5.9 percent. Since we estimate that intensity has declined during that period, we are recommending a 0.0 percent intensity adjustment for FY 1997.

2. Outlier Payment Adjustment Factor

Section 412.312(c) establishes a unified outlier methodology for inpatient operating and inpatient capital-related costs. A single set of thresholds is used to identify outlier cases for both inpatient operating and inpatient capital-related payments. Outlier payments are made only on the portion of the Federal rate that is used to calculate the hospital's inpatient capital-related payments (for example, 60 percent for cost reporting periods beginning in FY 1997 for hospitals paid under the fully prospective methodology). Section 412.308(c)(2) provides that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated proportion of outlier payments under the Federal rate to total inpatient capital-related payments under the Federal rate. The outlier thresholds are set so that operating outlier payments are projected to be 5.1 percent of total operating DRG payments. The inpatient capital-related outlier reduction factor reflects the inpatient capital-related outlier payments that would be made if all hospitals were paid according to 100 percent of the Federal rate. For purposes of calculating the outlier thresholds and the outlier reduction factor, we model all hospitals as if paid 100 percent of the Federal rate because, as explained above, outlier payments are made only on the portion of the Federal rate that is included in the hospital's inpatient capital-related payments.

In the September 1, 1995 final rule, we estimated that outlier payments for capital in FY 1996 would equal 4.64 percent of inpatient capital-related payments based on the Federal rate. Accordingly, we applied an outlier adjustment factor of 0.9536 to the Federal rate. Based on the thresholds as set forth in section II.A.4.d of this Addendum, we estimate that outlier payments for capital will equal 5.24 percent of inpatient capital-related payments based on the Federal rate in FY 1997. We are, therefore, proposing an outlier adjustment factor of 0.9476 to the Federal rate. Thus, estimated capital outlier payments for FY 1997 represent a higher percentage of total capital standard payments than in FY 1996.

The outlier reduction factors are not built permanently into the rates; that is, they are not applied cumulatively in determining the Federal rate. Therefore, the proposed net change in the outlier adjustment to the Federal rate for FY 1997 is 0.9937 (0.9476/0.9536). Thus, the outlier adjustment decreases the FY 1997 Federal rate by 0.63 percent (0.9937 - 1) compared with the FY 1996 outlier adjustment.

3. Budget Neutrality Adjustment Factor for Changes in DRG Classifications and Weights and the Geographic Adjustment Factor

Section 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that aggregate payments for the fiscal year based on the Federal rate after any changes resulting from the annual DRG reclassification and recalibration and changes in the geographic adjustment factor are projected to equal aggregate payments that would have been made on the basis of the Federal rate without such changes. We use the actuarial model described in Appendix B to estimate the aggregate payments that would have been made on the basis of the Federal rate without changes in the DRG classifications and weights and in the geographic adjustment factor. We also use the model to estimate aggregate payments that would be made on the basis of the Federal rate as a result of those changes. We then use these figures to compute the adjustment required to maintain budget neutrality for changes in DRG weights and in the geographic adjustment factor.

For FY 1996, we calculated a GAF/DRG budget neutrality factor of 0.9994. For FY 1997, we are proposing a GAF/DRG budget neutrality factor of 0.9992. The GAF/DRG budget neutrality factors are built permanently into the rates; that is, they are applied cumulatively in determining the Federal rate. This follows from the requirement that estimated aggregate payments each year be no more than they would have been in the absence of the annual DRG reclassification and recalibration and changes in the geographic adjustment factor. The proposed incremental change in the adjustment from FY 1996 to FY 1997 is 0.9992. The proposed cumulative change in the rate due to this adjustment is 1.0017 (the product of the incremental factors for FY 1993, FY 1994, FY 1995, FY 1996 and the proposed incremental factor for FY 1997:
0.9980×1.0053×0.9998×0.9994×0.9992 = 1.0017).

This factor accounts for DRG reclassifications and recalibration and for changes in the geographic adjustment factor. It also incorporates the effects on the geographic adjustment factor of FY 1997 geographic reclassification decisions made by the MGCRB compared to FY 1996 decisions. However, it does not account for changes in payments due to changes in the disproportionate share and indirect medical education adjustment factors or in the large urban add-on.

4. Exceptions Payment Adjustment Factor

Section 412.308(c)(3) requires that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated proportion of additional payments for exceptions under § 412.348 relative to total payments under the hospital-specific rate and Federal rate. We use the model originally developed for determining the budget neutrality adjustment factor to determine the exceptions payment adjustment factor. We describe that model in Appendix B to this proposed rule.

For FY 1996, we estimated that exceptions payments would equal 1.51 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we applied an exceptions reduction factor of 0.9849 (1–0.0151) in determining the Federal rate. For this proposed rule, we estimate that exceptions payments for FY 1997 will equal 6.07 percent of aggregate payments based on the Federal rate and the hospital-specific rate. We are, therefore, proposing an exceptions payment reduction factor of 0.9393 to the Federal rate for FY 1997.

The proposed exceptions reduction factor for FY 1997 is thus 4.63 percent lower than the factor for FY 1996. We have expected the number and amount of exceptions payments generally to increase throughout the transition period.

The exceptions reduction factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the Federal rate. Therefore, the proposed net adjustment to the FY 1997 Federal rate is 0.9393/0.9849, or 0.9537.

5. Standard Capital Federal Rate for FY 1997

For FY 1996, the capital Federal rate was $461.96. With the changes we are proposing to the factors used to establish the Federal rate, the FY 1997

Federal rate would be $441.84. The proposed Federal rate for FY 1997 was calculated as follows:

- The proposed FY 1997 update factor is 1.0100, that is, the proposed update is 1.00 percent.
- The proposed FY 1997 budget neutrality adjustment factor that is applied to the standard Federal payment rate for changes in the DRG relative weights and in the geographic adjustment factor is 0.9992.
- The proposed FY 1997 outlier adjustment factor is 0.9476.
- The proposed FY 1997 exceptions payments adjustment factor is 0.9393.

Since the Federal rate has already been adjusted for differences in case mix, wages, cost of living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, we propose to make no additional adjustments in the standard Federal rate for these factors other than the budget neutrality factor for changes in the DRG relative weights and the geographic adjustment factor.

We are providing a chart that shows how each of the factors and adjustments for FY 1997 affected the computation of the proposed FY 1997 Federal rate in comparison to the FY 1996 Federal rate. The proposed FY 1997 update factor has the effect of increasing the Federal rate by 1.00 percent compared to the rate in FY 1996, while the proposed geographic and DRG budget neutrality factor has the effect of decreasing the Federal rate by 0.08 percent. The proposed FY 1997 outlier adjustment factor has the effect of decreasing the Federal rate by 0.63 percent compared to FY 1996. The proposed FY 1997 exceptions reduction factor has the effect of decreasing the Federal rate by 4.63 percent compared to the exceptions reduction for FY 1996. The combined effect of all the proposed changes is to decrease the proposed Federal rate by 4.36 percent compared to the Federal rate for FY 1996.

COMPARISON OF FACTORS AND ADJUSTMENTS: FY 1996 FEDERAL RATE AND PROPOSED FY 1997 FEDERAL RATE

		Change	Percent change
Update factor: [1]			
FY 1996	1.0120		
Proposed FY 1997	1.0100	1.0100	1.00
GAF/DRG adjustment factor [1]			
FY 1996	0.9994		
Proposed FY 1997	0.9992	0.9992	−0.08
Outlier adjustment factor: [2]			
FY 1996	0.9536		
Proposed FY 1997	0.9476	0.9937	−0.63
Exceptions adjustment factor: [2]			
FY 1996	0.9849		
Proposed FY 1997	0.9393	0.9537	−4.63
Federal Rate:			
FY 1996	$461.96		
Proposed FY 1997	$441.84	0.9564	−4.36

[1] The update factor and the GAF/DRG budget neutrality factors are built permanently into the rates. Thus, for example, the incremental change from FY 1996 to FY 1997 resulting from the application of the 0.9992 GAF/DRG budget neutrality factor for FY 1997 is 0.9992.

[2] The outlier reduction factor and the exceptions reduction factor are not built permanently into the rates; that is, these factors are not applied cumulatively in determining the rates. Thus, for example, the net change resulting from the application of the FY 1997 exceptions reduction factor is 0.9393/0.9849, or 0.9537.

6. Special Rate for Puerto Rico Hospitals

For FY 1996, the special rate for Puerto Rico hospitals was $355.35. With the changes we are proposing to the factors used to determine the rate, the proposed FY 1997 special rate for Puerto Rico would be $339.87.

B. Determination of Hospital-Specific Rate Update

Section 412.328(e) of the regulations provides that the hospital-specific rate for FY 1997 be determined by adjusting the FY 1996 hospital-specific rate by the following factors:

1. Hospital-Specific Rate Update Factor

The hospital-specific rate is updated in accordance with the update factor for the standard Federal rate determined under § 412.308(c)(1). For FY 1997, we are proposing that the hospital-specific rate be updated by a factor of 1.0100.

2. Exceptions Payment Adjustment Factor

For FY 1992 through FY 2001, the updated hospital-specific rate is multiplied by an adjustment factor to account for estimated exceptions payments for capital-related costs under § 412.348, determined as a proportion of the total amount of payments under the hospital-specific rate and the Federal rate. For FY 1997, we estimate that exceptions payments will be 6.07 percent of aggregate payments based on the Federal rate and the hospital-specific rate. We therefore propose that the updated hospital-specific rate be reduced by a factor of 0.9393. The exceptions reduction factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the hospital-specific rate. Therefore, the proposed net adjustment to the FY 1997 hospital-specific rate is 0.9393/0.9849, or 0.9537.

3. Net Change to Hospital-Specific Rate

We are providing a chart to show the net change to the hospital-specific rate. The chart shows the factors for FY 1996 and FY 1997 and the net adjustment for each factor. It also shows that the proposed cumulative net adjustment from FY 1996 to FY 1997 is 0.9632, which represents a proposed decrease of 3.68 percent to the hospital-specific rate. The proposed FY 1997 hospital-specific rate for each hospital is determined by multiplying the FY 1996 hospital-specific rate by the cumulative net adjustment of 0.9632.

PROPOSED FY 1997 UPDATE AND ADJUSTMENTS TO HOSPITAL-SPECIFIC RATES

		Net adjustment	Percent change
Update factor:			
FY 1996	1.0120		
Proposed FY 1997	1.0100	1.0100	1.00
Exceptions payment adjustment factor:			
FY 1996	0.9849		
Proposed FY 1997	0.9393	0.9537	−4.63
Cumulative adjustments:			
FY 1996	0.9967		
Proposed FY 1997	0.9601	0.9632	−3.68

Note: The update factor for the hospital-specific rate is applied cumulatively in determining the rates. Thus, the incremental increase in the update factor from FY 1996 to FY 1997 is 1.0100. In contrast, the exceptions payment adjustment factor is not applied cumulatively. Thus, for example, the incremental increase in the exceptions reduction factor from FY 1996 to FY 1997 is 0.9393/0.9849, or 0.9537.

C. Calculation of Inpatient Capital-Related Prospective Payments for FY 1997

During the capital prospective payment system transition period, a hospital is paid for the inpatient capital-related costs under one of two alternative payment methodologies: the fully prospective payment methodology or the hold-harmless methodology. The payment methodology applicable to a particular hospital is determined when a hospital comes under the prospective payment system for capital-related costs by comparing its hospital-specific rate to the Federal rate applicable to the hospital's first cost reporting period under the prospective payment system. The applicable Federal rate was determined by making adjustments as follows:

- For outliers by dividing the standard Federal rate by the outlier reduction factor for that fiscal year; and,
- For the payment adjustment factors applicable to the hospital (that is, the hospital's geographic adjustment factor, the disproportionate share adjustment factor, and the indirect medical education adjustment factor, when appropriate).

If the hospital-specific rate is above the applicable Federal rate, the hospital is paid under the hold-harmless methodology. If the hospital-specific rate is below the applicable Federal rate, the hospital is paid under the fully prospective methodology.

For purposes of calculating payments for each discharge under both the hold-harmless payment methodology and the fully prospective payment methodology, the standard Federal rate is adjusted as follows: (Standard Federal Rate)×(DRG weight)×(Geographic Adjustment Factor)×(Large Urban Add-on, if applicable)×(COLA adjustment for hospitals located in Alaska and Hawaii)×(1+Disproportionate Share Adjustment Factor+Indirect Medical Education Adjustment Factor, if applicable). The result is termed the adjusted Federal rate.

Payments under the hold-harmless methodology are determined under one of two formulas. A hold-harmless hospital is paid the higher of:

- 100 percent of the adjusted Federal rate for each discharge; or
- An old capital payment equal to 85 percent (100 percent for sole community hospitals) of the hospital's allowable Medicare inpatient old capital costs per discharge for the cost reporting period plus a new capital payment based on a percentage of the adjusted Federal rate for each discharge. The percentage of the adjusted Federal rate equals the ratio of the hospital's allowable Medicare new capital costs to its total Medicare inpatient capital-related costs in the cost reporting period.

Once a hospital receives payment based on 100 percent of the adjusted Federal rate in a cost reporting period beginning on or after October 1, 1994 (or the first cost reporting period after obligated capital that is recognized as old capital under § 412.302(c) is put in use for patient care, if later), the hospital continues to receive capital prospective payment system payments on that basis for the remainder of the transition period.

Payment for each discharge under the fully prospective methodology is the sum of:

- The hospital-specific rate multiplied by the DRG relative weight for the discharge and by the applicable hospital-specific transition blend percentage for the cost reporting period; and
- The adjusted Federal rate multiplied by the Federal transition blend percentage.

The blend percentages for cost reporting periods beginning in FY 1997 are 60 percent of the adjusted Federal rate and 40 percent of the hospital-specific rate.

Hospitals may also receive outlier payments for those cases that qualify under the thresholds established for each fiscal year. Section 412.312(c) provides for a single set of thresholds to identify outlier cases for both inpatient operating and inpatient capital-related payments. Outlier payments are made only on that portion of the Federal rate that is used to calculate the hospital's inpatient capital-related payments. For fully prospective hospitals, that portion is 60 percent of the Federal rate for discharges occurring in cost reporting periods beginning during FY 1997. Thus, a fully prospective hospital will receive 60 percent of the capital-related outlier payment calculated for the case for discharges occurring in cost reporting periods beginning in FY 1997. For hold-harmless hospitals paid 85 percent of their reasonable costs for old inpatient capital, the portion of the Federal rate that is included in the hospital's outlier payments is based on the hospital's ratio of Medicare inpatient costs for new capital to total Medicare inpatient capital costs. For hold-harmless hospitals that are paid 100 percent of the Federal rate, 100 percent of the Federal rate is included in the hospital's outlier payments.

The proposed outlier thresholds for FY 1997 are published in section II.A.4.c of this Addendum. For FY 1997, a case qualifies as a cost outlier if the cost for the case (after standardization for the indirect teaching adjustment and disproportionate share adjustment) is greater than the prospective payment rate for the DRG plus $11,050. A case qualifies as a day outlier for FY 1997 if the length of stay is greater than the geometric mean length of stay for the DRG plus the lesser of 24 days or three standard deviations of the length of stay.

During the capital prospective payment system transition period, a hospital may also receive an additional payment under an exceptions process if its total inpatient capital-related

payments are less than a minimum percentage of its allowable Medicare inpatient capital-related costs. The minimum payment level is established by class of hospital under § 412.348. The proposed minimum payment levels for portions of cost reporting periods occurring in FY 1997 are:

- Sole community hospitals (located in either an urban or rural area), 90 percent;
- Urban hospitals with at least 100 beds and a disproportionate share patient percentage of at least 20.2 percent and urban hospitals with at least 100 beds that qualify for disproportionate share payments under § 412.106(c)(2), 80 percent; and,
- All other hospitals, 70 percent.

Under § 412.348(d), the amount of the exceptions payment is determined by comparing the cumulative payments made to the hospital under the capital prospective payment system to the cumulative minimum payment levels applicable to the hospital for each cost reporting period subject to that system. Any amount by which the hospital's cumulative payments exceed its cumulative minimum payment is deducted from the additional payment that would otherwise be payable for a cost reporting period.

New hospitals are exempted from the capital prospective payment system for their first 2 years of operation and are paid 85 percent of their reasonable costs during that period. A new hospital's old capital costs are its allowable costs for capital assets that were put in use for patient care on or before the later of December 31, 1990 or the last day of the hospital's base year cost reporting period, and are subject to the rules pertaining to old capital and obligated capital as of the applicable date. Effective with the third year of operation, we will pay the hospital under either the fully prospective methodology, using the appropriate transition blend in that Federal fiscal year, or the hold-harmless methodology. If the hold-harmless methodology is applicable, the hold-harmless payment for assets in use during the base period would extend for 8 years, even if the hold-harmless payments extend beyond the normal transition period.

V. Tables

This section contains the tables referred to throughout the preamble to this proposed rule and in this Addendum. For purposes of this proposed rule, and to avoid confusion, we have retained the designations of Tables 1 through 5 that were first used in the September 1, 1983 initial prospective payment final rule (48 FR 39844). Tables 1a, 1c, 1d, 3C, 4a, 4b, 4c, 4d, 4e, 5, 6A, 6B, 6C, 6D, 6E, 6F, 6G, 6H, 7A, 7B, 8A, and 8B are presented below. The tables presented below are as follows:

Table 1a—National Adjusted Operating Standardized Amounts, Labor/Nonlabor
Table 1c—Adjusted Operating Standardized Amounts for Puerto Rico, Labor/Nonlabor
Table 1d—Capital Standard Federal Payment Rate
Table 3C—Hospital Case Mix Indexes for Discharges Occurring in Federal Fiscal Year 1995 and Hospital Average Hourly Wage for Federal Fiscal Year 1997 Wage Index
Table 4a—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas
Table 4b—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas
Table 4c—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals That Are Reclassified
Table 4d—Average Hourly Wage for Urban Areas
Table 4e—Average Hourly Wage for Rural Areas
Table 5—List of Diagnosis Related Groups (DRGs), Relative Weighting Factors, Geometric Mean Length of Stay, and Length of Stay Outlier Cutoff Points Used in the Prospective Payment System
Table 6A—New Diagnosis Codes
Table 6B—New Procedure Codes
Table 6C—Invalid Diagnosis Codes
Table 6D—Invalid Procedure Codes
Table 6E—Revised Diagnosis Code Titles
Table 6F—Revised Procedure Code Titles
Table 6G—Additions to the CC Exclusions List
Table 6H—Deletions to the CC Exclusions List
Table 7A—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 95 MEDPAR Update 12/95 GROUPER V13.0
Table 7B—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 95 MEDPAR Update 12/95 GROUPER V14.0
Table 8A—Statewide Average Operating Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted) April 1996
Table 8B—Statewide Average Capital Cost-to-Charge Ratios (Case Weighted) April 1996

TABLE 1A.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR

Large urban areas		Other areas	
Labor-related	Non-labor related	Labor-related	Non-labor related
2796.66	1131.23	2752.39	1113.33

TABLE 1C.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Large urban areas		Other areas	
	Labor-related	Non-labor related	Labor-related	Non-labor related
National	$2772.89	$1121.62	$2772.89	$1121.62
Puerto Rico	2501.07	521.22	2461.47	512.97

TABLE 1D.—CAPITAL STANDARD FEDERAL PAYMENT RATE

	Rate
National	$441.84

TABLE 1D.—CAPITAL STANDARD FEDERAL PAYMENT RATE—Continued

	Rate
Puerto Rico	339.87

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1995
PAGE 1 OF 16

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
010001	01.4400	14.82	010095	00.9230	11.25	030004	00.9824	13.49	040004	01.4485	14.83	040107	01.1923	14.95
010004	00.9600	11.10	010097	00.9405	15.20	030006	01.5576	17.52	040005	01.0380	11.59	040109	01.1692	12.69
010005	01.1609	15.40	010098	01.1941	11.02	030007	01.3158	16.41	040007	01.8761	18.12	040114	01.8513	16.64
010006	01.4752	15.23	010099	01.1210	15.49	030008	02.1095	20.42	040008	01.0325	10.77	040116	01.3895	19.25
010007	01.0986	13.12	010100	01.1688	14.77	030009	01.2993	15.58	040010	01.2298	13.78	040118	01.1313	14.29
010008	01.1366	09.54	010101	01.1127	14.21	030010	01.4160	17.75	040011	00.9298	10.75	040119	01.0914	14.34
010009	01.1377	14.82	010102	00.9529	13.63	030011	01.4747	17.66	040014	01.1929	16.07	040124	01.2238	14.30
010010	01.1330	14.33	010103	01.7534	17.01	030012	01.2246	15.81	040015	01.1944	12.12	040126	00.9617	11.74
010011	01.6185	18.94	010104	01.6892	17.87	030013	01.2459	18.99	040016	01.7330	16.43	050002	01.5554	25.91
010012	01.2666	16.27	010108	01.1189	13.68	030014	01.4394	17.86	040017	01.2569	11.68	050006	01.3983	19.15
010015	01.0512	15.63	010109	01.0527	11.48	030016	01.2462	17.09	040018	01.1686	16.66	050007	01.5848	25.29
010016	01.2643	16.76	010110	01.0168	13.44	030017	01.4929	18.98	040019	01.1618	13.52	050008	01.4998	25.48
010018	00.9017	16.19	010112	01.1253	14.09	030018	01.7989	19.57	040020	01.5987	14.08	050009	01.7211	31.63
010019	01.2868	14.99	010113	01.6374	13.69	030019	01.1962	19.31	040021	01.2277	14.69	050013	01.8099	22.05
010021	01.2388	12.20	010114	01.3174	15.37	030022	01.5055	17.41	040022	01.6951	14.73	050014	01.1741	22.55
010022	01.0109	16.89	010115	00.8385	11.98	030023	01.2640	17.64	040024	01.1709	12.16	050015	01.3882	22.18
010023	01.4760	14.71	010117	00.7880	13.54	030024	01.7809	21.04	040025	00.9214	11.81	050016	01.1598	18.51
010024	01.4014	15.62	010118	01.2475	15.07	030025	01.1633	12.76	040026	01.5547	16.35	050017	02.0618	24.39
010025	01.4390	13.16	010119	01.5429	16.36	030027	01.0875	14.69	040027	01.2889	12.56	050018	01.3434	18.49
010027	00.8352	13.55	010120	00.9668	14.32	030030	01.6651	18.19	040028	01.0903	11.40	050021	01.4146	23.75
010029	01.4957	14.84	010121	01.2269	12.92	030033	01.2475	16.40	040029	01.2557	14.12	050022	01.4601	22.63
010031	01.1808	14.58	010123	01.2421	17.47	030034	01.0430	15.89	040030	00.8925	11.09	050024	01.3952	21.31
010032	00.9478	12.45	010124	01.2927	16.15	030035	01.3403	20.77	040032	01.0056	11.18	050025	01.8000	22.00
010033	01.9143	17.61	010125	01.0247	12.86	030036	01.1393	18.23	040035	01.0240	10.24	050026	01.4525	21.79
010034	01.0751	13.48	010126	01.1770	13.13	030037	02.0161	19.60	040036	01.4976	16.45	050028	01.4395	15.33
010035	01.2397	15.13	010127	01.2999	16.29	030038	01.6125	18.82	040037	01.1101	11.55	050029	01.3830	25.55
010036	01.1252	15.34	010128	00.9565	12.34	030040	01.1885	15.88	040039	01.2411	12.23	050030	01.3324	19.24
010038	01.3397	16.48	010129	01.0795	13.29	030041	00.9963	13.68	040040	00.9953	15.73	050032	01.2735	22.76
010039	01.7029	16.14	010130	01.0352	15.28	030043	01.1937	18.25	040041	01.3946	13.95	050033	01.4136	25.47
010040	01.5335	18.21	010131	01.3636	17.75	030044	01.0291	13.19	040042	01.2978	12.03	050036	01.6162	18.61
010043	01.1036	10.35	010134	00.9206	13.36	030046	00.9134	16.38	040044	00.9622	10.04	050038	01.4553	29.05
010044	01.0919	11.01	010137	01.2516	16.36	030047	00.9471	19.91	040045	01.0301	14.28	050039	01.6127	21.04
010045	01.2121	10.79	010138	00.9485	09.85	030049	00.9741	17.30	040047	01.0939	14.78	050040	01.0842	22.92
010046	01.5291	15.51	010139	01.6592	19.67	030054	00.8723	12.63	040048	01.2149	13.48	050041	02.8656	22.21
010047	01.0243	10.05	010143	01.1921	15.83	030055	01.2014	16.85	040050	01.1013	11.66	050042	01.3081	20.20
010049	01.1121	15.66	010144	01.3104	18.42	030059	01.2776	19.95	040051	01.0923	12.64	050043	01.5723	30.15
010050	01.0635	13.48	010145	01.3376	14.59	030060	01.2095	13.90	040053	01.1093	11.67	050045	01.2649	17.11
010051	00.8549	10.24	010146	01.1772	15.59	030061	01.6462	16.75	040054	01.0301	12.44	050046	01.1888	23.81
010052	00.9858	12.78	010148	00.9969	12.83	030062	01.2267	15.56	040055	01.4506	14.51	050047	01.6388	29.15
010053	01.0653	12.67	010149	01.3527	17.75	030064	01.6191	16.92	040058	01.0617	13.61	050051	01.1104	16.63
010054	01.1726	16.17	010150	01.0473	16.29	030065	01.6407	18.87	040060	00.9896	09.85	050054	01.1961	20.55
010055	01.4846	16.35	010152	01.4762	16.29	030067	01.0515	15.92	040062	01.6181	16.66	050055	01.3742	27.54
010056	01.3970	17.99	010155	00.9996	09.42	030068	00.9514	14.04	040063	01.4673	15.67	050056	01.3374	25.23
010058	01.0881	12.96	020001	01.4712	25.53	030069	01.3354	19.11	040064	01.0523	10.49	050057	01.4835	20.22
010059	01.0165	14.17	020002	01.0281	24.16	030071	00.9488	.....	040066	01.1537	14.63	050058	01.4664	22.78
010061	01.0127	14.70	020004	01.1028	25.46	030072	00.9090	.....	040067	01.0801	11.34	050060	01.5897	24.25
010062	01.0042	13.45	020005	00.9029	28.36	030073	00.9752	.....	040069	01.1090	14.90	050061	01.4258	22.12
010064	01.7890	17.85	020006	01.1418	23.19	030074	00.8587	.....	040070	00.9433	14.98	050063	01.4029	21.44
010065	01.3668	14.30	020007	00.8909	21.82	030075	00.8660	.....	040071	01.5932	15.42	050065	01.6064	22.37
010066	00.9789	10.87	020008	01.1006	26.45	030076	00.9802	.....	040072	01.0871	13.40	050066	01.2689	24.33
010068	01.2370	18.82	020009	00.9255	21.29	030077	00.8761	.....	040074	01.2566	14.51	050067	01.3777	21.09
010069	01.1589	13.06	020010	00.9141	22.13	030078	01.1027	.....	040075	01.0668	11.57	050068	01.0839	19.05
010072	01.2161	12.72	020011	01.0488	22.27	030079	00.7787	.....	040076	01.0273	14.71	050069	01.6183	23.15
010073	00.9701	09.66	020012	01.3062	23.99	030080	01.6564	20.82	040077	00.9196	10.72	050070	01.2901	30.80
010078	01.1795	15.04	020013	01.0055	24.03	030083	01.3106	21.70	040078	01.4945	17.29	050071	01.3159	30.70
010079	01.2807	12.53	020014	01.0769	24.52	030084	00.9358	.....	040080	01.0752	15.45	050072	01.3053	31.00
010080	01.0389	12.99	020017	01.5181	26.83	030085	01.5045	20.21	040081	00.9285	09.91	050073	01.3239	31.41
010081	01.9832	16.16	020018	00.8963	.....	030086	01.3209	18.76	040082	01.2156	13.69	050074	01.2314	32.96
010083	01.0377	13.25	020019	00.8718	.....	030087	01.6153	18.77	040084	01.0963	14.83	050075	01.4037	30.72
010084	01.4816	16.61	020020	00.8398	.....	030088	01.3513	19.90	040085	01.2493	15.18	050076	01.7756	29.65
010085	01.3233	17.11	020021	00.8478	.....	030089	01.5736	18.66	040088	01.3091	13.73	050077	01.6152	22.83
010086	01.0507	13.54	020024	01.0693	22.64	030092	01.5590	20.62	040090	00.8983	13.78	050078	01.3591	24.44
010087	01.6243	16.88	020025	01.0046	24.44	030093	01.3791	18.08	040091	01.2930	18.25	050079	01.5938	28.30
010089	01.1934	14.91	020026	01.3340	.....	030094	01.2494	18.57	040093	00.9598	10.98	050080	01.2183	22.05
010090	01.5725	16.40	020027	00.9975	.....	030095	01.2183	13.09	040095	00.9069	10.56	050081	01.6564	24.01
010091	00.9195	13.43	030001	01.3076	19.28	040001	01.1308	12.37	040100	01.2465	12.81	050082	01.4989	21.34
010092	01.4209	15.17	030002	01.7918	20.25	040002	01.1644	13.07	040105	01.0068	11.90	050084	01.5611	22.33
010094	01.1410	16.76	030003	01.8923	21.05	040003	01.0704	13.19	040106	01.2448	12.84	050088	01.1538	21.94

PAGE 2 OF 16

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
050089	01.3485	19.92	050189	00.9777	21.50	050296	01.2071	22.69	050420	01.4424	25.15	050545	00.8420	20.39
050090	01.2755	21.75	050191	01.5032	20.64	050298	01.3081	20.18	050421	01.4112	24.62	050546	00.7212	21.10
050091	01.1984	24.42	050192	01.1071	18.74	050299	01.3607	22.49	050423	00.9821	19.25	050547	00.9602	20.65
050092	00.8504	16.19	050193	01.3631	22.56	050300	01.3100	18.87	050424	01.8316	22.16	050549	01.7182	25.86
050093	01.5917	22.35	050194	01.2409	25.03	050301	01.3825	21.54	050425	01.2719	30.41	050550	02.3168	23.34
050096	01.1244	12.95	050195	01.5876	31.29	050302	01.4049	24.31	050426	01.3055	23.89	050551	01.3473	24.20
050097	01.5025	18.40	050196	01.4205	16.40	050305	01.5824	29.82	050430	00.9919	15.94	050552	01.1633	22.44
050099	01.4660	22.91	050197	01.8278	29.07	050307	01.4439	20.51	050431	01.0836	22.58	050557	01.4928	21.08
050100	01.6910	29.38	050199	00.8980	19.48	050308	01.5797	29.77	050432	01.5774	23.69	050559	01.3672	24.18
050101	01.3999	25.12	050204	01.4910	23.12	050309	01.3306	23.63	050433	01.0327	17.37	050560	01.1894	.....
050102	01.4714	22.34	050205	01.3876	19.99	050310	01.2239	22.24	050434	01.1491	18.08	050561	01.2110	30.34
050103	01.6097	26.74	050207	01.2860	20.58	050312	01.9820	23.66	050435	01.2411	18.98	050564	01.2109	24.02
050104	01.3906	21.73	050208	00.9572	27.63	050313	01.1891	20.90	050436	01.0099	15.77	050565	01.1456	21.26
050107	01.4355	22.92	050211	01.3142	29.60	050315	01.1826	20.75	050438	01.6261	23.33	050566	00.8791	19.75
050108	01.5819	22.78	050213	01.3924	21.12	050317	01.3583	20.90	050440	01.4107	19.93	050567	01.6543	23.01
050109	02.3436	24.68	050214	01.4409	21.76	050320	01.3185	27.27	050441	01.9214	28.10	050568	01.4314	18.28
050110	01.2436	18.72	050215	01.5216	27.75	050324	01.8339	25.93	050443	00.9533	15.95	050569	01.3545	22.93
050111	01.3786	18.81	050217	01.3730	18.44	050325	01.2554	20.87	050444	01.3479	22.19	050570	01.7026	24.91
050112	01.5234	22.15	050219	01.3115	20.37	050327	01.5839	21.00	050446	00.8936	17.25	050571	01.4016	22.37
050113	01.2749	28.23	050222	01.5916	24.56	050328	01.4584	32.92	050447	01.0883	18.59	050573	01.6412	23.66
050114	01.3978	21.65	050224	01.5471	22.17	050329	01.3142	20.34	050448	01.1113	19.82	050575	01.2303	.....
050115	01.6146	21.11	050225	01.3284	20.67	050331	01.4090	27.22	050449	01.3527	21.99	050577	01.3652	20.32
050116	01.4542	22.73	050226	01.3349	22.58	050333	00.9767	18.66	050454	01.8309	26.10	050578	01.1731	23.70
050117	01.2871	20.93	050228	01.3665	29.90	050334	01.7683	28.22	050455	01.9292	22.89	050579	01.5656	26.94
050118	01.2840	23.24	050230	01.2972	26.22	050335	01.2505	19.62	050456	01.1314	20.24	050580	01.3595	23.47
050121	01.4060	19.96	050231	01.6364	24.14	050336	01.3398	21.04	050457	01.9435	28.66	050581	01.4162	24.63
050122	01.7066	22.90	050232	01.7628	24.17	050337	01.1726	23.87	050459	01.1929	28.20	050583	01.5880	23.08
050124	01.2730	19.72	050233	01.2974	30.88	050342	01.3686	17.55	050464	01.8776	22.62	050584	01.2006	22.39
050125	01.3140	25.98	050234	01.3251	22.00	050343	01.0325	18.56	050468	01.4046	16.26	050585	01.2357	23.70
050126	01.4704	23.23	050235	01.5105	25.00	050348	01.6030	22.83	050469	01.0879	17.33	050586	01.3647	21.76
050127	01.2952	22.89	050236	01.6628	24.28	050349	00.8986	14.28	050470	01.1148	21.29	050588	01.3703	26.55
050128	01.5405	20.97	050238	01.4959	22.95	050350	01.3856	22.68	050471	01.7202	24.07	050589	01.3124	25.37
050129	01.5583	22.11	050239	01.5085	21.24	050351	01.4774	24.81	050476	01.3437	19.12	050590	01.4086	23.00
050131	01.2652	27.83	050240	01.3951	22.82	050352	01.2941	23.35	050477	01.5136	24.50	050591	01.2861	27.01
050132	01.4397	24.55	050241	01.2374	25.78	050353	01.5622	21.45	050478	00.9225	21.73	050592	01.3408	20.34
050133	01.3513	20.18	050242	01.4698	27.10	050355	00.9696	15.53	050481	01.4166	24.85	050593	01.5583	24.40
050135	01.3794	26.86	050243	01.5323	21.58	050357	01.7247	23.17	050482	00.9451	14.55	050594	02.0151	23.81
050136	01.3772	22.75	050245	01.3837	21.74	050359	01.2172	18.78	050483	01.1666	23.89	050597	01.2786	21.91
050137	01.3802	31.46	050248	01.2124	24.50	050360	01.4656	30.15	050485	01.6275	22.34	050598	01.3940	26.87
050138	01.8728	32.07	050251	01.0753	17.68	050366	01.3174	20.47	050486	01.4180	24.94	050599	01.6829	22.70
050139	01.3396	31.14	050253	00.7232	18.87	050367	01.2881	27.02	050488	01.3879	30.41	050601	01.3075	29.03
050140	01.4139	30.76	050254	01.1940	22.13	050369	01.3323	23.30	050489	00.9718	27.10	050603	01.4252	23.50
050144	01.5835	26.03	050256	01.7700	19.70	050373	01.3964	23.83	050491	01.2797	23.78	050604	01.5933	29.56
050145	01.3571	27.67	050257	01.0715	20.65	050376	01.3932	25.86	050492	01.2458	23.05	050607	01.3006	21.79
050146	01.3245	.....	050260	01.0965	21.96	050377	00.9012	15.01	050494	01.1674	24.95	050608	01.3067	15.23
050147	00.6896	20.55	050261	01.1927	17.91	050378	01.0814	22.45	050496	01.7959	31.60	050609	01.4365	31.39
050148	01.1273	19.62	050262	01.9179	26.89	050379	01.0921	19.04	050497	00.7948	.....	050613	01.1496	22.70
050149	01.4339	19.87	050263	01.2879	24.24	050380	01.6703	28.31	050498	01.2636	22.42	050615	01.6939	23.31
050150	01.2565	23.23	050264	01.3732	26.01	050382	01.4511	20.97	050502	01.6551	23.61	050616	01.2953	20.68
050152	01.4301	24.60	050267	01.5239	24.88	050385	01.3960	24.83	050503	01.2916	23.01	050618	01.0619	19.36
050153	01.6384	30.53	050270	01.2432	23.60	050388	00.9028	14.19	050506	01.4122	25.57	050623	01.1349	24.40
050155	01.1043	23.60	050272	01.3296	19.69	050390	01.2211	20.80	050510	01.3632	30.59	050624	01.3670	25.95
050158	01.6805	27.88	050274	00.9624	18.36	050391	01.2785	21.61	050512	01.4686	31.38	050625	01.6096	24.00
050159	01.2651	22.01	050276	01.2223	26.99	050392	00.9426	17.56	050515	01.3589	30.78	050630	01.3621	21.26
050167	01.4551	21.67	050277	01.3817	21.30	050393	01.4157	21.56	050516	01.6670	24.33	050633	01.2959	21.76
050168	01.6003	24.83	050278	01.5174	23.01	050394	01.5428	20.71	050517	01.2879	19.15	050635	01.4145	31.17
050169	01.5891	24.53	050279	01.2461	20.58	050396	01.6157	21.89	050522	01.3128	30.40	050636	01.4311	20.28
050170	01.5175	21.58	050280	01.6551	22.80	050397	01.0118	19.97	050523	01.2703	27.65	050638	01.1002	24.28
050172	01.2609	19.96	050281	01.4519	22.74	050401	01.1174	19.09	050526	01.3687	24.28	050641	01.2473	12.26
050173	01.2203	23.70	050282	01.3433	21.42	050404	01.1443	16.51	050528	01.3542	16.46	050643	00.7832	.....
050174	01.6873	27.89	050283	01.1267	27.59	050406	01.1263	15.29	050531	01.3012	23.60	050644	00.9053	26.86
050175	01.3926	21.97	050286	01.0350	17.99	050407	01.3254	27.06	050534	01.3853	23.83	050660	01.3428	.....
050177	01.2994	18.76	050289	01.7845	27.38	050410	01.0706	17.45	050535	01.3827	22.46	050661	00.8831	20.21
050179	01.2600	17.29	050290	01.6330	32.31	050411	01.4042	29.35	050537	01.2622	21.30	050662	00.8549	21.17
050180	01.5539	30.12	050291	01.2553	24.46	050414	01.2846	24.32	050539	01.2184	21.90	050663	01.0604	23.51
050183	01.1940	19.09	050292	01.0963	21.20	050417	01.3037	19.65	050541	01.5870	31.06	050666	00.7423	23.76
050186	01.2694	24.12	050293	01.1312	19.93	050418	01.4191	24.24	050542	01.2270	13.79	050667	01.0672	24.88
050188	01.3467	25.25	050295	01.4144	20.86	050419	01.3136	18.88	050543	00.9214	21.68	050668	01.1532	28.20

PAGE 3 OF 16

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
050670	00.7582	20.12	060046	01.1205	16.56	080005	01.3363	16.82	100071	01.3024	16.98	100167	01.3944	20.55
050672	00.6267	23.77	060047	00.9606	11.40	080006	01.3822	20.49	100072	01.2515	17.24	100168	01.3799	19.35
050674	01.2111	29.18	060049	01.3511	17.47	080007	01.3620	17.99	100073	01.7938	20.61	100169	01.8590	18.29
050675	01.7056	16.32	060050	01.1719	14.62	090001	01.4216	19.65	100075	01.6403	17.85	100170	01.4917	16.50
050676	00.9864	13.83	060052	01.0999	18.38	090002	01.3022	20.51	100076	01.3869	17.15	100172	01.3694	13.38
050677	01.4253	32.99	060053	00.9988	13.73	090003	01.3041	24.74	100077	01.3153	16.78	100173	01.6691	16.33
050678	01.0713	24.07	060054	01.3361	16.74	090004	01.7168	23.49	100078	01.1683	15.14	100174	01.5295	18.20
050680	01.2114	26.13	060056	00.9577	13.37	090005	01.3431	27.07	100079	01.7501	16.01	100175	01.2130	16.18
050682	00.8558	14.98	060057	01.0356	21.11	090006	01.3749	19.52	100080	01.6306	19.40	100176	02.0431	21.95
050684	01.2074	21.30	060058	00.9237	12.54	090007	01.3832	19.58	100081	01.1202	13.33	100177	01.3403	18.55
050685	01.2219	26.94	060060	00.9651	12.21	090008	01.5276	24.06	100082	01.5459	17.93	100179	01.6520	19.03
050686	01.3503	30.96	060062	00.9518	15.85	090010	01.0013	21.70	100083	01.3240	17.30	100180	01.4188	17.49
050688	01.2730	27.89	060063	01.0264	11.12	090011	01.9804	24.77	100084	01.5314	16.53	100181	01.2846	17.59
050689	01.3988	29.12	060064	01.4325	20.21	090015	01.3306	.....	100085	01.4349	19.50	100183	01.3710	19.18
050690	01.4363	30.39	060065	01.3463	19.98	100001	01.5247	18.83	100086	01.3328	21.32	100186	01.4758	16.70
050693	01.9152	28.80	060066	00.9950	13.10	100002	01.4789	19.71	100087	01.8071	20.71	100187	01.4501	18.35
050694	01.3678	21.20	060068	01.2760	14.00	100004	01.0274	11.81	100088	01.6730	17.32	100189	01.3707	23.13
050695	01.1808	24.30	060070	01.0357	14.99	100005	01.0178	16.26	100090	01.4256	16.07	100191	01.3315	19.19
050696	02.0076	27.85	060071	01.2259	14.69	100006	01.5531	18.99	100092	01.4411	16.20	100199	01.4473	21.29
050697	01.1093	17.93	060073	01.0017	14.32	100007	01.8477	19.61	100093	01.5156	14.28	100200	01.3972	21.35
050698	01.1189	22.83	060075	01.3472	20.27	100008	01.7361	19.80	100098	01.1482	17.43	100203	01.2603	19.34
050699	00.5855	23.13	060076	01.3675	15.97	100009	01.5641	17.89	100099	01.2518	13.09	100204	01.6232	19.95
050700	01.4412	32.46	060085	00.9819	10.94	100010	01.5475	20.58	100102	01.1033	16.44	100206	01.3458	19.47
050701	01.3170	27.13	060087	01.6558	18.67	100012	01.6776	16.91	100103	01.1730	14.46	100207	01.4710	19.86
050702	00.8637	16.98	060088	01.0388	15.38	100014	01.4272	18.57	100105	01.4697	18.08	100208	01.6409	21.14
050704	01.2140	20.48	060090	00.9518	14.23	100015	01.2444	17.60	100106	01.0395	15.46	100209	01.6671	.....
050706	00.9234	16.16	060096	00.9724	21.69	100017	01.6489	17.18	100107	01.4676	18.26	100210	01.6647	16.51
050707	01.2237	25.62	060100	01.4045	20.95	100018	01.2869	19.94	100108	01.1017	15.45	100211	01.3441	19.17
050708	00.9493	15.13	060103	01.2269	21.10	100019	01.4930	18.81	100109	01.3522	16.81	100212	01.6646	18.54
050709	01.3030	.....	060104	01.3213	20.32	100020	01.3365	18.31	100110	01.4128	18.91	100213	01.5438	20.00
050710	01.4014	.....	070001	01.7582	24.78	100022	01.8009	23.05	100112	00.9738	10.84	100217	01.3055	17.06
050711	02.3868	.....	070002	01.8728	24.78	100023	01.3489	15.88	100113	02.0848	18.19	100220	01.9563	19.66
050712	02.1147	.....	070003	01.1239	24.50	100024	01.3583	19.54	100114	01.4930	17.73	100221	01.5644	20.68
060001	01.5550	18.95	070004	01.1696	23.70	100025	01.8825	16.22	100117	01.3334	18.18	100222	01.3723	18.80
060003	01.2961	15.85	070005	01.3792	25.45	100026	01.6477	15.52	100118	01.2737	16.03	100223	01.4892	18.53
060004	01.2624	19.46	070006	01.3529	26.73	100027	00.9736	11.53	100121	01.3068	15.44	100224	01.4648	19.77
060006	01.1955	16.19	070007	01.3475	24.08	100028	01.2678	16.38	100122	01.4565	16.39	100225	01.3368	19.52
060007	01.1900	13.06	070008	01.3124	23.47	100029	01.4029	18.94	100124	01.3643	19.41	100226	01.3383	16.58
060008	01.0198	14.31	070009	01.2830	25.01	100030	01.2690	18.25	100125	01.1630	17.77	100228	01.2947	21.09
060009	01.4621	19.88	070010	01.5535	22.46	100032	01.9188	17.39	100126	01.4954	18.74	100229	01.3211	16.27
060010	01.5276	21.10	070011	01.3259	22.80	100034	01.7338	18.34	100127	01.6870	17.42	100230	01.5471	18.97
060011	01.3023	20.75	070012	01.2576	23.38	100035	01.6138	16.46	100128	02.2417	20.13	100231	01.6613	17.46
060012	01.3852	15.79	070013	01.2822	24.01	100038	01.5951	21.18	100129	01.2509	17.45	100232	01.2675	17.64
060013	01.2654	18.83	070015	01.3569	23.82	100039	01.7158	21.15	100130	01.2008	17.45	100234	01.5324	19.03
060014	01.6915	20.52	070016	01.3194	25.46	100040	01.6731	16.31	100131	01.3922	18.44	100235	01.4827	17.51
060015	01.5657	19.33	070017	01.3781	23.54	100043	01.4570	17.78	100132	01.4189	15.67	100236	01.4442	13.79
060016	01.0954	11.42	070018	01.3719	27.83	100044	01.5045	19.01	100134	01.0741	14.50	100237	02.1446	22.65
060018	01.2199	16.36	070019	01.2169	24.04	100045	01.4032	17.12	100135	01.5224	16.11	100238	01.4858	18.68
060020	01.5176	16.73	070020	01.3709	24.32	100046	01.5110	18.53	100137	01.3279	18.42	100239	01.4622	19.34
060022	01.6695	17.89	070021	01.2987	25.47	100047	01.9163	18.62	100138	00.9478	13.00	100240	00.8437	15.06
060023	01.6463	16.65	070022	01.7641	24.30	100048	01.0025	11.69	100139	01.0496	14.54	100241	00.9433	12.47
060024	01.8181	22.01	070024	01.3541	23.81	100049	01.3263	18.03	100140	01.2518	16.87	100242	01.4135	16.29
060026	01.4223	19.44	070025	01.7842	24.06	100050	01.2227	15.06	100142	01.2004	16.68	100243	01.4119	18.82
060027	01.6577	19.01	070026	01.2223	23.07	100051	01.1532	16.60	100144	01.1466	13.65	100244	01.4339	17.32
060028	01.4947	21.29	070027	01.2599	24.31	100052	01.3772	15.60	100145	01.3481	14.87	100246	01.3465	20.92
060029	00.9485	13.93	070028	01.4783	24.67	100053	01.2886	17.36	100146	01.2770	14.27	100248	01.6989	17.88
060030	01.3165	20.36	070029	01.3524	21.65	100054	01.2923	17.44	100147	01.0996	13.43	100249	01.3543	18.87
060031	01.6115	18.95	070030	01.2990	24.71	100055	01.3679	17.47	100150	01.3759	18.64	100252	01.2419	19.21
060032	01.5777	19.35	070031	01.2706	22.24	100056	01.4655	19.83	100151	01.8572	18.63	100253	01.4755	20.60
060033	01.1561	11.96	070033	01.2881	28.25	100057	01.3455	16.78	100154	01.5689	17.95	100254	01.5854	17.50
060034	01.4958	16.90	070034	01.3752	24.74	100060	01.8491	17.71	100156	01.2204	18.65	100255	01.3322	19.00
060036	01.1712	14.37	070035	01.3469	24.31	100061	01.5100	20.88	100157	01.6134	19.31	100256	01.8955	19.32
060037	01.0382	13.22	070036	01.4320	26.98	100062	01.7185	16.94	100159	00.9856	12.76	100258	01.6509	21.12
060038	01.0192	12.25	070039	00.9213	.....	100063	01.3423	16.12	100160	01.1059	18.07	100259	01.4493	16.36
060041	00.9203	16.53	080001	01.6101	23.66	100067	01.4267	16.38	100161	01.5194	19.76	100260	01.4016	20.44
060042	01.0532	18.49	080002	01.1904	17.32	100068	01.3880	17.42	100162	01.3924	14.53	100262	01.4109	19.32
060043	00.9506	11.78	080003	01.3137	19.32	100069	01.3653	17.29	100165	01.2958	13.45	100263	01.3896	15.44
060044	01.2631	17.32	080004	01.2871	17.59	100070	01.4420	17.56	100166	01.4618	20.31	100264	01.3958	18.24

PAGE 4 OF 16

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
100265	01.3686	17.47	110063	01.0768	11.44	110156	01.0003	12.68	130011	01.2386	16.74	140045	01.0555	14.21
100266	01.2337	15.64	110064	01.2883	15.87	110161	01.3328	20.79	130012	01.0233	18.53	140046	01.3023	14.83
100267	01.3092	16.39	110065	01.0143	12.00	110162	00.8588	.....	130013	01.2416	17.21	140047	01.1406	13.20
100268	01.1990	22.00	110066	01.4374	16.30	110163	01.4549	18.52	130014	01.3094	16.43	140048	01.2744	21.50
100269	01.3605	19.07	110069	01.1706	15.22	110164	01.4190	19.63	130015	00.8608	12.43	140049	01.5796	19.35
100270	00.8185	12.95	110070	01.1733	11.37	110165	01.3107	17.47	130016	00.9300	16.18	140051	01.4912	19.14
100271	01.6614	19.27	110071	01.0308	10.29	110166	01.4995	16.67	130017	01.3710	13.03	140052	01.3150	16.77
100273	00.5356	19.72	110072	01.0243	11.53	110168	01.6538	19.22	130018	01.7015	17.60	140053	01.8914	17.88
100275	01.4206	21.96	110073	01.2050	12.67	110169	00.7308	19.70	130019	01.1172	13.74	140054	01.3616	26.25
100276	01.3027	21.94	110074	01.4803	18.11	110171	01.4451	21.21	130021	01.0324	11.96	140055	00.9382	13.00
100277	01.0093	12.71	110075	01.2149	15.29	110172	01.3290	22.83	130022	01.1917	15.44	140058	01.2318	15.26
100279	01.3786	18.35	110076	01.3902	18.01	110174	01.0473	17.57	130024	01.0580	15.25	140059	01.1334	13.52
100280	01.3831	16.93	110078	01.6637	20.46	110176	01.1251	19.42	130025	01.1537	15.21	140061	01.0878	13.80
100281	01.2517	20.85	110079	01.3869	21.08	110177	01.4857	19.21	130026	01.1747	17.89	140062	01.2451	23.10
100282	01.0482	16.99	110080	01.1544	16.86	110178	01.3702	16.78	130027	00.9528	17.18	140063	01.3960	22.48
100283	01.5478	.....	110082	02.0163	20.36	110179	01.2381	21.56	130028	01.2515	16.08	140064	01.2951	16.15
110001	01.2914	17.40	110083	01.7255	20.66	110181	00.9860	12.59	130029	01.0268	17.07	140065	01.4926	23.68
110002	01.2397	14.83	110086	01.2253	13.74	110183	01.3704	19.70	130030	01.0243	16.20	140066	01.3711	13.39
110003	01.3129	15.41	110087	01.3386	19.17	110184	01.1715	17.58	130031	01.0201	13.26	140067	01.8194	18.24
110004	01.3118	16.17	110088	00.9740	11.17	110185	01.0833	12.23	130034	01.0393	16.38	140068	01.3583	19.00
110005	01.1872	21.40	110089	01.2148	15.37	110186	01.3060	15.97	130035	01.0736	15.37	140069	01.0029	14.23
110006	01.3597	18.00	110091	01.3449	19.15	110187	01.2469	17.19	130036	01.2609	12.50	140070	01.2830	16.18
110007	01.4425	15.69	110092	01.1821	12.55	110188	01.4186	18.00	130037	01.2616	14.58	140074	00.9704	14.60
110008	01.2405	15.47	110093	01.0096	09.81	110189	01.1327	19.78	130043	00.9469	14.61	140075	01.4685	21.53
110009	01.0377	15.71	110094	00.9542	12.06	110190	01.0859	14.41	130044	01.1660	12.37	140077	01.1503	17.05
110010	02.1503	21.39	110095	01.2750	13.86	110191	01.3482	18.06	130045	01.0284	12.15	140079	01.2410	20.90
110011	01.2868	16.01	110096	01.1414	14.30	110192	01.3977	22.17	130048	01.0663	11.90	140080	01.5779	19.60
110013	01.1312	14.36	110097	01.0166	15.58	110193	01.2300	16.16	130049	01.2960	17.55	140081	01.0821	13.92
110014	01.0340	14.48	110098	01.0881	11.76	110194	00.9644	11.77	130054	00.9683	17.12	140082	01.5059	22.10
110015	01.3622	16.52	110100	01.0968	12.27	110195	01.0644	10.50	130056	00.8852	09.45	140083	01.2600	16.51
110016	01.2991	14.21	110101	01.1035	09.24	110198	01.3316	22.58	130058	01.0150	12.87	140084	01.2248	17.94
110017	00.8897	11.01	110103	00.9630	10.35	110200	01.9437	15.79	130060	01.1458	18.38	140086	01.1464	13.93
110018	01.1357	17.20	110104	01.1073	13.28	110201	01.4531	16.13	130061	00.9513	.....	140087	01.3852	17.10
110020	01.2352	17.30	110105	01.1304	15.17	110203	00.9692	14.94	140001	01.2958	14.63	140088	01.6480	23.33
110023	01.2361	17.53	110107	01.8146	17.59	110204	00.7960	13.48	140002	01.2776	17.04	140089	01.2253	15.85
110024	01.4802	18.74	110108	00.9720	11.27	110205	01.1080	11.84	140003	01.0184	13.14	140090	01.5101	23.62
110025	01.4157	16.85	110109	01.1115	12.14	110207	01.1008	15.59	140004	01.0799	13.75	140091	01.8655	17.70
110026	01.1891	13.87	110111	01.1934	14.70	110208	00.9734	14.94	140005	00.9511	09.98	140093	01.1961	17.17
110027	01.1013	14.56	110112	01.1522	15.06	110209	00.8222	.....	140007	01.4675	20.56	140094	01.2905	18.81
110028	01.5984	17.75	110113	01.1384	12.86	120001	01.7331	24.22	140008	01.4859	20.57	140095	01.3991	.....
110029	01.3374	17.71	110114	01.0749	13.75	120002	01.1971	21.46	140010	01.3888	22.14	140097	00.9102	14.15
110030	01.2807	16.60	110115	01.6188	21.82	120003	01.1450	21.82	140011	01.1465	15.31	140100	01.2229	17.62
110031	01.3367	19.58	110118	01.0422	13.18	120004	01.2653	20.56	140012	01.2840	17.59	140101	01.2108	18.04
110032	01.2298	15.31	110120	01.0800	13.35	120005	01.2656	18.34	140013	01.6579	16.49	140102	01.0422	14.09
110033	01.5204	20.32	110121	01.1802	11.84	120006	01.2118	22.75	140014	01.0745	16.31	140103	01.3357	16.66
110034	01.5019	16.64	110122	01.3550	16.03	120007	01.6278	20.27	140015	01.2937	13.45	140105	01.3085	18.25
110035	01.3991	18.53	110124	01.0703	15.32	120009	01.0061	18.05	140016	00.9317	11.59	140107	01.0869	11.63
110036	01.6840	22.81	110125	01.2217	15.97	120010	01.8369	22.11	140018	01.4564	18.85	140108	01.3663	20.00
110037	01.0904	10.18	110127	00.9066	14.43	120011	01.2382	30.31	140019	00.9926	11.80	140109	01.1410	12.95
110038	01.4674	15.04	110128	01.1920	17.54	120012	01.0209	20.30	140024	01.0178	13.59	140110	01.2359	14.51
110039	01.3709	17.93	110129	01.6749	13.01	120014	01.3556	21.25	140025	01.0795	15.88	140112	01.0953	13.55
110040	01.0270	16.26	110130	01.0721	10.57	120015	00.8375	21.01	140026	01.1409	15.58	140113	01.4647	19.21
110041	01.2250	16.43	110132	01.1433	12.87	120016	00.8558	21.94	140027	01.3182	15.96	140114	01.3202	18.95
110042	01.2103	14.63	110134	00.8944	11.65	120018	01.0071	21.16	140029	01.3782	19.62	140115	01.2339	19.32
110043	01.7167	15.17	110135	01.1981	13.83	120019	01.1834	19.48	140030	01.6711	21.46	140116	01.2862	19.68
110044	01.0960	14.31	110136	01.1213	13.57	120021	00.9888	19.68	140031	01.1749	13.02	140117	01.4895	17.63
110045	01.2388	22.04	110140	00.8182	15.03	120022	01.7240	17.83	140032	01.2531	16.44	140118	01.6767	22.66
110046	01.1993	15.07	110141	00.9067	11.65	120026	01.2802	22.30	140033	01.2640	19.10	140119	01.6872	19.58
110048	01.3128	12.97	110142	00.9806	11.15	120027	01.5395	21.16	140034	01.1800	16.74	140120	01.5073	14.72
110049	01.0704	13.71	110143	01.3994	20.07	130001	01.0424	17.21	140035	01.0305	10.70	140121	01.5215	10.91
110050	01.0669	14.00	110144	01.1678	16.44	130002	01.3774	14.66	140036	01.2388	15.03	140122	01.5566	21.02
110051	00.9865	16.35	110146	01.0299	09.43	130003	01.3112	18.11	140037	00.9794	12.24	140124	01.1139	23.06
110052	00.9774	09.11	110149	01.1319	12.17	130005	01.4396	18.19	140038	01.1510	15.00	140125	01.3450	15.60
110054	01.2816	16.57	110150	01.3658	16.56	130006	01.8983	18.19	140039	00.9224	11.51	140127	01.3522	16.83
110056	00.9765	12.61	110152	01.1295	13.06	130007	01.6434	18.60	140040	01.3093	14.34	140128	01.0595	16.10
110059	01.2900	14.39	110153	01.0212	15.33	130008	00.9857	10.28	140041	01.2320	15.01	140129	01.0555	13.18
110061	01.0143	10.61	110154	00.8337	12.68	130009	00.9627	14.78	140042	01.0524	13.30	140130	01.2738	21.67
110062	00.9181	09.73	110155	01.2376	12.27	130010	00.9403	15.04	140043	01.1790	16.37	140132	01.4146	18.58

PAGE 5 OF 16

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
140133	01.3730	19.77	140230	00.9439	15.48	150043	01.0625	16.58	150127	01.0419	14.34	160069	01.4042	16.05
140135	01.3146	14.29	140231	01.6272	19.79	150044	01.2634	17.63	150128	01.2340	18.59	160070	01.0255	13.84
140137	01.0354	13.61	140233	01.7471	16.57	150045	01.0913	15.00	150129	01.1915	20.35	160072	01.0688	12.08
140138	00.9661	12.15	140234	01.1838	15.82	150046	01.5896	16.06	150130	01.1496	15.90	160073	01.0070	11.50
140139	01.0792	13.46	140236	01.0311	12.82	150047	01.8212	17.74	150132	01.3365	19.17	160074	01.1069	12.89
140140	01.1317	13.05	140239	01.5856	18.81	150048	01.1679	16.18	150133	01.2095	14.96	160075	01.1112	13.84
140141	00.8984	13.30	140240	01.5048	20.90	150049	01.0776	13.72	150134	01.2828	16.61	160076	01.0692	16.28
140143	01.0643	15.85	140242	01.5726	22.51	150050	01.1998	14.50	150136	00.9472	18.69	160077	01.1216	10.97
140144	00.9856	16.57	140245	01.1273	13.55	150051	01.3841	16.82	150138	01.1623	.....	160079	01.4245	15.22
140145	01.2030	14.31	140246	01.0570	12.03	150052	01.0743	12.93	150139	01.4806	.....	160080	01.2082	15.41
140146	00.9666	14.85	140250	01.3165	21.35	150053	01.0618	16.69	150141	01.0859	.....	160081	01.0672	14.36
140147	01.1866	13.37	140251	01.3066	18.25	150054	01.1376	12.39	150142	02.4300	.....	160082	01.7545	17.09
140148	01.8018	16.51	140252	01.4201	21.25	150056	01.6228	21.59	150897	04.9892	.....	160083	01.5789	17.49
140150	01.5561	26.00	140253	01.4456	.....	150057	02.3179	15.06	160001	01.2719	16.39	160085	01.0916	12.79
140151	01.1119	17.61	140258	01.5345	21.07	150058	01.6930	18.64	160002	01.1888	13.13	160086	01.0283	12.56
140152	01.0750	22.48	140271	01.0260	13.54	150059	01.3218	18.91	160003	01.0221	11.87	160088	01.0017	13.10
140155	01.1854	16.91	140275	01.2294	18.20	150060	01.1281	12.79	160005	01.1072	12.93	160089	01.1591	14.12
140158	01.2597	21.41	140276	01.9589	20.48	150061	01.2957	15.86	160007	01.0085	12.02	160090	01.0066	13.98
140160	01.2326	15.34	140280	01.2769	16.16	150062	01.0670	15.20	160008	01.1043	13.93	160091	01.0987	10.56
140161	01.1373	17.05	140281	01.6388	20.19	150063	01.0538	18.88	160009	01.1577	13.54	160092	00.9736	12.93
140162	01.7778	18.38	140285	01.2063	14.75	150064	01.2100	16.48	160012	01.0588	14.05	160093	01.1351	15.20
140164	01.2855	16.01	140286	01.1491	17.59	150065	01.1505	15.94	160013	01.2189	16.64	160094	01.2168	14.79
140165	01.1085	13.06	140288	01.7781	22.47	150066	01.0021	13.75	160014	01.0459	12.72	160095	01.0266	12.30
140166	01.2889	16.62	140289	01.3089	15.67	150067	01.1221	14.35	160016	01.2911	15.68	160097	01.0785	13.47
140167	01.1636	14.64	140290	01.3385	19.21	150069	01.2347	16.53	160018	00.9429	13.19	160098	01.0760	13.90
140168	01.1840	15.02	140291	01.2645	22.64	150070	01.0350	16.16	160020	01.0963	12.11	160099	00.9737	12.80
140170	01.1280	12.39	140292	01.1678	19.04	150071	01.1562	12.69	160021	01.0439	13.85	160101	01.1220	17.71
140171	00.9149	12.53	140294	01.1864	16.10	150072	01.1914	15.32	160023	01.1458	13.66	160102	01.3668	14.31
140172	01.5065	18.29	140297	01.2589	21.42	150073	01.0044	15.49	160024	01.5710	17.39	160103	01.0113	12.95
140173	00.9721	13.11	140300	01.6785	25.11	150074	01.5934	19.00	160026	01.0986	15.21	160104	01.2335	19.21
140174	01.4333	18.89	150001	01.0846	16.95	150075	01.2247	13.82	160027	01.1671	13.22	160106	01.0829	14.18
140176	01.2617	18.83	150002	01.4319	19.23	150076	01.1512	19.89	160028	01.3407	17.78	160107	01.1437	13.78
140177	01.2945	16.44	150003	01.7075	18.32	150077	01.2659	16.21	160029	01.4962	17.46	160108	01.1602	14.09
140179	01.3297	19.51	150004	01.4226	19.99	150078	01.0834	17.20	160030	01.2338	16.67	160109	01.1631	12.01
140180	01.5189	20.22	150005	01.1932	17.16	150079	01.1390	13.01	160031	01.1797	13.26	160110	01.4994	17.76
140181	01.3046	18.82	150006	01.2074	16.72	150082	01.4965	18.33	160032	01.1573	14.66	160111	01.1019	10.75
140182	01.3248	19.11	150007	01.2302	17.95	150084	01.8737	21.80	160033	01.7246	15.82	160112	01.4123	14.45
140184	01.1967	14.20	150008	01.3398	18.38	150086	01.3006	15.72	160034	01.0681	13.81	160113	00.9561	11.39
140185	01.4505	16.35	150009	01.3365	16.97	150088	01.1917	16.71	160035	00.9375	11.91	160114	01.0697	14.13
140186	01.3274	18.01	150010	01.2041	16.10	150089	01.3985	18.99	160036	01.0756	12.83	160115	01.0280	13.87
140187	01.4861	16.33	150011	01.2190	16.76	150090	01.2596	19.34	160037	01.1621	14.80	160116	01.1691	15.46
140188	00.9575	10.54	150012	01.6875	20.57	150091	01.0611	15.60	160039	01.0670	15.23	160117	01.3337	15.63
140189	01.1712	15.74	150013	01.1675	13.09	150092	01.0673	12.44	160040	01.3537	16.04	160118	01.0360	12.42
140190	01.1195	13.36	150014	01.4216	18.85	150094	01.0035	16.65	160041	01.0646	12.88	160120	01.0091	09.94
140191	01.3775	23.16	150015	01.2264	17.85	150095	01.1144	15.78	160043	01.0338	13.38	160122	01.1669	14.96
140192	01.1869	16.51	150017	01.8448	17.26	150096	01.0971	17.15	160044	01.1574	13.36	160123	01.1780	12.18
140193	01.0112	12.24	150018	01.2919	17.47	150097	01.1277	16.53	160045	01.6987	17.48	160124	01.2526	15.35
140197	01.2709	16.05	150019	01.1266	13.09	150098	01.1300	11.81	160046	01.0369	11.92	160126	01.1504	13.82
140199	01.0139	15.13	150020	01.1554	13.19	150099	01.3115	17.10	160047	01.3602	15.87	160129	01.0228	13.07
140200	01.4295	20.12	150021	01.6718	18.22	150100	01.6839	18.15	160048	01.0179	11.76	160130	01.1652	13.04
140202	01.3141	20.09	150022	01.1381	17.62	150101	01.0868	14.46	160049	00.9842	12.04	160131	01.1087	12.63
140203	01.1570	19.02	150023	01.4914	17.81	150102	01.0903	14.61	160050	01.0246	14.12	160134	00.9843	11.37
140205	00.9221	13.88	150024	01.4448	16.96	150103	01.0416	17.63	160051	00.9907	12.90	160135	01.0019	13.24
140206	01.0864	19.58	150025	01.4618	16.32	150104	01.1413	15.09	160052	01.0589	14.80	160138	01.0588	13.48
140207	01.3743	26.85	150026	01.1878	16.69	150105	01.4085	16.61	160054	01.0231	10.82	160140	01.0939	14.86
140208	01.6111	23.73	150027	01.0647	16.04	150106	01.1373	15.58	160055	01.0477	11.48	160142	01.0237	13.60
140209	01.7011	17.46	150029	01.2733	20.57	150109	01.4583	16.04	160056	01.0409	13.16	160143	01.1324	13.03
140210	01.0690	12.87	150030	01.1956	16.20	150110	00.9896	14.72	160057	01.3309	15.92	160145	01.0880	13.74
140211	01.2233	20.44	150031	01.0590	15.93	150111	01.2056	12.88	160058	01.6642	18.42	160146	01.4124	15.32
140212	01.3189	22.65	150032	01.7894	18.85	150112	01.2207	16.78	160060	01.0892	13.82	160147	01.2670	15.41
140213	01.2806	20.44	150033	01.6083	20.07	150113	01.1860	16.78	160061	01.0020	14.19	160151	01.0767	12.75
140215	01.1642	13.22	150034	01.3961	18.15	150114	01.0330	13.44	160062	00.9619	11.95	160152	01.0085	13.30
140217	01.2322	20.90	150035	01.4087	17.90	150115	01.3933	17.31	160063	01.2910	14.24	160153	01.7014	17.05
140218	01.0541	13.64	150036	01.0486	17.35	150122	01.1412	15.83	160064	01.6406	16.37	170001	01.2028	15.90
140220	01.1056	14.22	150037	01.2673	17.06	150123	01.1642	12.81	160065	01.0735	14.51	170004	01.0851	13.18
140223	01.5438	.....	150038	01.2744	16.27	150124	01.1229	15.00	160066	01.1266	14.06	170006	01.2031	13.48
140224	01.3604	22.10	150039	01.0121	14.51	150125	01.4243	18.09	160067	01.3705	16.70	170008	00.9823	13.35
140228	01.7003	17.36	150042	01.2850	15.47	150126	01.5058	19.24	160068	01.1116	13.30	170009	01.1211	16.81

PAGE 6 OF 16

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
170010	01.2608	16.38	170090	01.1085	09.58	180012	01.3389	17.14	180104	01.5043	16.55	190064	01.5583	17.46
170011	01.4071	14.59	170092	00.8754	11.45	180013	01.4998	17.38	180105	00.9304	12.23	190065	01.4754	15.75
170012	01.4843	15.48	170093	00.9342	11.58	180014	01.6064	18.86	180106	00.9106	12.65	190071	00.8641	11.38
170013	01.3169	13.27	170094	01.0452	12.81	180015	01.2489	14.91	180108	00.8486	12.49	190077	00.9246	13.41
170014	01.0405	15.18	170095	01.0812	13.80	180016	01.3171	14.91	180115	01.0261	13.72	190078	01.1324	11.21
170015	00.9820	13.74	170097	01.0300	13.42	180017	01.2806	13.52	180116	01.3689	14.92	190079	01.2666	14.76
170016	01.6627	21.80	170098	01.0817	16.21	180018	01.2192	15.73	180117	01.1619	16.14	190081	00.8838	09.89
170017	01.1657	14.73	170099	01.3324	11.00	180019	01.3403	17.22	180118	01.0536	11.72	190083	00.9429	12.45
170018	01.0727	12.23	170100	01.0203	14.63	180020	01.0315	15.37	180120	01.0378	12.49	190086	01.3598	14.02
170019	01.1696	15.13	170101	00.9101	14.13	180021	01.1795	13.25	180121	01.2234	13.09	190088	01.1892	16.01
170020	01.3199	14.54	170102	01.0187	12.78	180023	00.8295	11.27	180122	01.0373	14.67	190089	01.1201	09.60
170022	01.1704	14.15	170103	01.2458	15.28	180024	01.3845	15.69	180123	01.4607	19.39	190090	01.0660	15.75
170023	01.4044	15.57	170104	01.4205	19.52	180025	01.1284	16.18	180124	01.4836	16.00	190092	01.3355	20.14
170024	01.1640	12.71	170105	01.0303	14.45	180026	01.1086	13.66	180125	00.9440	16.23	190095	00.9950	14.04
170025	01.1596	18.37	170106	00.8419	12.54	180027	01.2742	14.17	180126	01.1707	11.90	190098	01.5272	17.56
170026	01.0181	16.38	170108	00.9468	10.86	180028	01.0014	16.19	180127	01.2444	16.63	190099	01.1506	17.31
170027	01.3677	15.02	170109	01.0506	14.67	180029	01.2273	15.99	180128	01.1902	15.40	190102	01.5823	16.15
170030	01.0391	13.61	170110	01.0039	13.62	180030	01.1759	12.89	180129	01.0293	13.93	190103	00.8416	09.66
170031	00.9148	12.36	170112	00.9127	13.44	180031	01.0226	12.38	180130	01.4291	17.87	190106	01.1367	17.27
170032	01.1156	14.18	170113	01.1547	13.43	180032	00.9954	15.30	180132	01.2480	15.19	190109	01.2092	13.68
170033	01.3483	14.08	170114	00.9562	12.96	180033	01.1235	12.57	180133	01.2433	20.73	190110	00.9491	11.96
170034	00.9541	13.74	170115	00.9903	11.01	180034	01.0753	13.61	180134	01.0116	13.71	190111	01.5215	17.24
170035	00.9390	12.37	170116	01.0372	13.94	180035	01.5699	18.26	180136	01.5878	16.83	190112	01.5163	20.35
170036	00.8720	12.31	170117	01.0112	12.63	180036	01.2440	17.36	180137	01.6535	16.82	190113	01.3685	17.85
170037	01.1255	15.02	170119	00.9561	11.32	180037	01.2889	20.29	180138	01.2129	17.02	190114	01.0055	11.51
170038	00.9185	10.94	170120	01.2849	14.66	180038	01.4243	14.73	180139	01.0726	16.41	190115	01.2502	16.88
170039	01.1367	11.69	170122	01.8944	19.69	180040	02.0334	19.04	180140	01.0095	.....	190116	01.3017	14.97
170040	01.5625	18.21	170123	01.7747	17.89	180041	01.0945	13.03	190001	00.9375	16.35	190118	01.0495	11.87
170041	00.9823	11.41	170124	00.9503	11.92	180042	01.1163	13.43	190002	01.6513	16.28	190120	00.9247	12.89
170043	00.9081	13.41	170126	00.9191	11.07	180043	01.0156	15.31	190003	01.4519	17.16	190122	01.2572	13.85
170044	01.1101	14.73	170128	01.0789	14.31	180044	01.0359	14.68	190004	01.3759	14.75	190124	01.5739	18.80
170045	01.0299	10.95	170131	01.0980	10.54	180045	01.2057	16.78	190005	01.6645	14.94	190125	01.5811	16.74
170049	01.3313	18.05	170133	01.1443	14.09	180046	01.2012	16.81	190006	01.2072	14.50	190128	01.2060	17.04
170050	00.8380	09.63	170134	00.9114	12.10	180047	01.0191	13.79	190007	01.0078	12.79	190130	00.9913	11.74
170051	00.9598	13.31	170137	01.1842	16.81	180048	01.1403	15.53	190008	01.6528	17.79	190131	01.2797	17.33
170052	01.0682	13.31	170139	00.9877	11.66	180049	01.3563	14.47	190009	01.2058	13.40	190133	01.0482	15.09
170053	01.0069	13.09	170140	01.0533	11.17	180050	01.2697	15.58	190010	01.0884	14.69	190134	00.9967	12.16
170054	01.0848	12.86	170142	01.2641	16.10	180051	01.4187	14.35	190011	01.1233	14.08	190135	01.4063	21.99
170055	01.0698	17.05	170143	01.1251	12.53	180053	01.1091	14.22	190013	01.4220	15.27	190136	01.1262	10.66
170056	00.9402	10.99	170144	01.8112	18.74	180054	01.1611	14.02	190014	01.0578	15.36	190138	00.6897	15.62
170057	01.0566	13.75	170145	01.1694	17.02	180055	01.0370	13.61	190015	01.2421	16.38	190140	00.9431	11.60
170058	01.1738	17.54	170146	01.4168	17.58	180056	01.1099	16.68	190017	01.3736	17.22	190142	00.9421	12.20
170060	01.1313	12.73	170147	01.2245	18.33	180058	01.0090	12.85	190018	01.1816	13.78	190144	01.2097	18.82
170061	01.1593	12.59	170148	01.4763	18.35	180059	00.9670	11.98	190019	01.5042	17.57	190145	00.9824	13.77
170062	00.9501	10.45	170150	01.0726	13.13	180060	00.7427	13.48	190020	01.2002	15.83	190146	01.5901	18.99
170063	00.8965	09.30	170151	01.0012	11.69	180063	00.9649	10.28	190025	01.2859	12.36	190147	00.9911	13.30
170064	00.9513	11.38	170152	00.9801	13.27	180064	01.2906	14.40	190026	01.4470	15.65	190148	00.8975	11.81
170066	00.9908	12.26	170160	01.0468	11.25	180065	00.9809	09.05	190027	01.4852	15.62	190149	00.9959	11.02
170067	01.0357	11.05	170164	01.0426	13.87	180066	01.2068	16.87	190029	01.1320	14.09	190151	01.1518	12.30
170068	01.3949	14.01	170166	01.1504	13.49	180067	01.8783	15.96	190033	00.9721	09.64	190152	01.4522	20.50
170069	01.1769	13.20	170168	00.9486	09.97	180069	01.0397	16.08	190034	01.2434	14.93	190155	00.9203	10.54
170070	01.0225	11.83	170171	01.0889	11.15	180070	01.0977	14.86	190035	01.4128	20.27	190156	00.8945	11.89
170072	00.9565	11.53	170172	00.9841	11.07	180072	01.0513	13.80	190036	01.8475	18.96	190158	01.2308	20.36
170073	01.0984	12.66	170174	01.0890	11.58	180075	00.9736	13.08	190037	00.9653	11.05	190160	01.2187	15.56
170074	01.1552	12.86	170175	01.2928	16.30	180078	01.1230	17.35	190039	01.4080	16.41	190161	01.0441	12.98
170075	00.8720	10.55	170176	01.5021	18.40	180079	01.2486	13.22	190040	01.3863	19.03	190162	01.1806	21.04
170076	01.0770	11.15	170181	01.1668	.....	180080	01.0636	15.16	190041	01.4973	19.72	190164	01.2246	18.86
170077	00.9689	11.12	170182	00.8647	.....	180085	01.2892	17.49	190043	01.1348	12.38	190166	01.0758	14.81
170079	01.0810	11.81	170183	02.1585	.....	180087	01.0887	13.72	190044	01.1634	18.27	190167	01.2058	16.09
170080	00.9459	11.05	180001	01.2248	16.18	180088	01.5722	19.42	190045	01.3672	19.09	190170	00.9592	12.34
170081	00.9294	10.42	180002	01.0070	17.16	180092	01.0482	14.43	190046	01.4814	17.16	190173	01.4578	19.47
170082	01.0577	10.60	180004	01.0888	13.51	180093	01.3617	14.72	190048	01.0669	14.55	190175	01.2835	.....
170084	00.9862	11.06	180005	01.0390	17.40	180094	01.0163	11.93	190049	00.9644	14.74	190178	01.7028	18.06
170085	00.9109	12.01	180006	00.9063	08.63	180095	01.1664	12.78	190050	01.0420	13.90	190177	01.6125	22.02
170086	01.7190	18.04	180007	01.5485	14.17	180099	01.1988	11.72	190053	01.0567	11.98	190178	00.9868	11.20
170087	01.4582	18.87	180009	01.3310	17.70	180101	01.3486	18.84	190054	01.4052	13.67	190182	01.1720	20.12
170088	00.9139	10.59	180010	01.8382	16.91	180102	01.5215	15.95	190059	00.9447	13.58	190183	01.1294	13.43
170089	01.0037	14.21	180011	01.1737	15.71	180103	02.0850	18.62	190060	01.4907	16.51	190184	01.0550	12.13

PAGE 7 OF 16

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
190185	01.3116	19.03	210004	01.3245	20.30	220030	01.0852	16.42	220171	01.6972	22.55	230103	01.0124	17.37
190186	00.9539	11.69	210005	01.2407	17.70	220031	01.8518	27.21	220897	04.8084	.....	230104	01.6163	20.32
190187	00.7801	14.05	210006	01.1291	16.84	220033	01.3898	19.40	230001	01.2015	15.98	230105	01.6088	19.46
190189	00.9445	14.54	210007	01.6215	18.82	220035	01.2698	19.72	230002	01.2238	19.28	230106	01.1784	18.07
190190	00.9291	18.74	210008	01.3146	21.21	220036	01.6218	23.26	230003	01.0945	18.07	230107	00.8964	12.56
190191	01.3068	18.47	210009	01.7134	18.57	220038	01.2841	21.85	230004	01.6105	20.95	230108	01.2432	16.64
190194	01.1471	19.16	210010	01.1960	17.00	220041	01.2492	20.87	230005	01.2825	18.02	230110	01.3309	17.10
190196	00.9097	16.46	210011	01.2110	20.12	220042	01.2078	24.10	230006	01.1303	16.19	230111	00.9772	15.13
190197	01.2655	18.80	210012	01.4840	21.27	220046	01.3942	21.48	230007	01.0869	16.51	230113	00.9511	17.66
190199	01.3623	.....	210013	01.2780	20.65	220049	01.2664	21.58	230013	01.2659	20.70	230114	00.6368	23.27
190200	01.5241	21.33	210015	01.2720	18.48	220050	01.0888	17.45	230015	01.1338	18.01	230115	01.0164	15.14
190201	01.2315	18.24	210016	01.7279	20.37	220051	01.2702	19.70	230017	01.5125	20.40	230116	00.9155	15.58
190202	01.4459	18.34	210017	01.1256	15.35	220052	01.2994	22.76	230019	01.5077	20.50	230117	01.9674	23.81
190203	01.6074	19.50	210018	01.2414	20.93	220053	01.2564	18.86	230020	01.7180	21.17	230118	01.2419	17.25
190204	01.5314	20.12	210019	01.4011	17.42	220055	01.3486	20.61	230021	01.6010	17.25	230119	01.3145	21.13
190205	01.8790	17.63	210022	01.4536	20.07	220057	01.4381	20.91	230022	01.2422	17.62	230120	01.2315	19.00
190206	01.4995	21.17	210023	01.2956	20.31	220058	01.0650	17.55	230024	01.4216	21.79	230121	01.2320	19.67
190207	01.1825	19.43	210024	01.5336	18.06	220060	01.2565	24.78	230027	01.0587	16.25	230122	01.3296	18.32
190208	00.8198	10.36	210025	01.3227	17.84	220062	00.6021	19.30	230029	01.5998	20.91	230124	01.1555	16.49
190218	01.1389	15.05	210026	01.3187	24.54	220063	01.2909	18.42	230030	01.2415	16.55	230125	01.3676	12.83
190223	00.5039	09.72	210027	01.2046	17.10	220064	01.2167	20.66	230031	01.4660	18.32	230128	01.3700	19.33
190227	00.8050	30.01	210028	01.2256	16.66	220065	01.2182	20.00	230032	01.7444	18.97	230129	01.8923	19.07
190230	00.8737	.....	210029	01.3064	20.04	220066	01.2760	19.39	230034	01.1948	16.64	230130	01.6884	22.37
190231	01.2825	.....	210030	01.0993	15.77	220067	01.2944	22.82	230035	01.1377	15.84	230132	01.5373	22.92
190232	01.6623	.....	210031	01.6370	16.97	220068	00.5244	15.95	230036	01.2807	19.78	230133	01.2350	14.06
190233	01.0997	.....	210032	01.2096	18.42	220070	01.2635	17.77	230037	01.1606	16.96	230134	01.1081	15.87
200001	01.2712	15.74	210033	01.1818	17.38	220071	01.8550	24.38	230038	01.6451	21.18	230135	01.1885	19.88
200002	01.0212	16.15	210034	01.3996	20.29	220073	01.3882	25.34	230040	01.1976	18.35	230137	01.1691	17.78
200003	01.1264	15.90	210035	01.1952	17.25	220074	01.2614	21.18	230041	01.2085	18.20	230141	01.6883	20.84
200006	01.0731	14.95	210037	01.2887	16.14	220075	01.3228	20.09	230042	01.1542	19.03	230142	01.2092	18.71
200007	01.0066	15.63	210038	01.3413	19.90	220076	01.1851	22.47	230046	01.8239	24.66	230143	01.1481	15.23
200008	01.2497	18.34	210039	01.1613	15.25	220077	01.7122	22.32	230047	01.3070	19.61	230144	01.1092	21.06
200009	01.7602	19.84	210040	01.2993	20.32	220079	01.1880	21.28	230053	01.5387	23.82	230145	01.1742	15.41
200012	01.1641	16.11	210043	01.2569	20.04	220080	01.2773	17.77	230054	01.8228	19.74	230146	01.2845	19.49
200013	01.1401	15.32	210044	01.2000	20.28	220081	00.9446	23.55	230055	01.1760	17.36	230147	01.4742	19.34
200015	01.2358	17.15	210045	01.0148	11.73	220082	01.2902	19.28	230056	00.9776	14.17	230149	01.2419	14.92
200016	01.0350	16.10	210046	01.1079	12.34	220083	01.1831	19.80	230058	01.0786	17.42	230151	01.3631	21.32
200017	01.2447	16.86	210048	01.1746	22.47	220084	01.2425	22.24	230059	01.4842	19.00	230153	01.1118	15.61
200018	01.1602	14.27	210049	01.1517	16.57	220086	01.5483	24.60	230060	01.2882	16.90	230154	00.9493	12.09
200019	01.2486	18.01	210051	01.4541	13.94	220088	01.5778	21.76	230062	01.0291	10.93	230155	00.9752	13.80
200020	01.1930	19.86	210054	01.2790	20.17	220089	01.3304	22.99	230063	01.3106	18.41	230156	01.6989	21.57
200021	01.1723	17.66	210055	01.2914	22.48	220090	01.2260	20.78	230065	01.4805	18.63	230157	01.2084	19.67
200023	00.8814	14.61	210056	01.4132	16.51	220092	01.2533	20.86	230066	01.3629	17.55	230159	01.3614	18.93
200024	01.2940	19.18	210057	01.3587	.....	220094	01.2679	19.76	230068	01.4269	22.29	230162	00.9841	13.73
200025	01.2732	18.81	210058	01.6842	18.09	220095	01.2234	17.77	230069	01.1751	18.86	230165	01.8763	20.92
200026	01.0896	15.20	210059	01.2581	21.91	220098	01.2884	19.81	230070	01.4926	19.30	230167	01.3662	19.18
200027	01.1423	16.51	210060	01.1731	25.28	220099	01.1644	15.97	230071	01.1363	20.78	230169	01.4366	21.16
200028	00.9339	14.83	210061	01.0980	14.25	220100	01.2619	23.48	230072	01.2879	18.87	230171	00.9849	14.18
200031	01.2965	14.96	220001	01.1636	20.98	220101	01.5059	22.58	230075	01.5257	19.29	230172	01.3176	17.85
200032	01.3588	17.72	220002	01.5368	21.62	220104	01.2419	23.12	230076	01.3128	21.53	230174	01.3016	19.11
200033	01.7105	19.57	220003	01.0806	16.92	220105	01.2111	21.97	230077	01.9772	18.44	230176	01.2388	20.89
200034	01.1962	17.19	220004	01.1812	18.85	220106	01.2458	21.83	230078	01.0869	14.76	230178	01.0320	16.02
200037	01.2193	15.53	220006	01.4332	21.79	220107	01.1742	18.46	230080	01.1933	20.41	230180	01.0676	15.03
200038	01.1145	17.66	220008	01.2523	19.26	220108	01.1503	20.96	230081	01.2191	16.55	230184	01.2246	16.99
200039	01.2494	18.06	220010	01.2949	20.94	220110	01.9520	30.07	230082	01.1643	14.88	230186	01.3835	15.81
200040	01.0969	16.12	220011	01.1570	27.95	220111	01.2612	21.21	230085	01.1115	17.10	230188	01.1787	15.49
200041	01.2255	17.37	220012	01.3654	27.84	220116	01.9484	23.95	230086	00.9885	14.03	230189	00.8927	14.50
200043	00.5362	16.96	220015	01.1767	20.35	220118	02.0446	26.47	230087	01.0641	13.65	230190	01.0483	22.66
200050	01.2051	16.71	220016	01.3547	20.16	220119	01.3255	24.40	230089	01.3379	21.55	230191	00.8947	14.99
200051	00.9656	17.70	220017	01.4233	23.78	220123	01.0371	23.85	230092	01.3295	17.77	230193	01.2340	16.03
200052	00.9605	13.07	220019	01.1716	17.06	220126	01.3077	19.39	230093	01.2320	17.37	230194	01.2090	14.37
200055	01.1609	14.56	220020	01.2174	18.47	220128	01.1494	20.85	230095	01.2251	15.53	230195	01.2803	19.80
200062	00.9155	14.64	220021	01.3823	23.21	220133	00.8435	30.53	230096	01.1954	19.85	230197	01.2564	22.00
200063	01.1630	16.63	220023	01.1522	19.37	220135	01.2561	23.97	230097	01.5433	17.75	230199	01.1386	17.72
200066	01.1762	14.34	220024	01.1696	20.14	220153	01.0459	19.74	230099	01.2223	19.06	230201	01.2166	14.02
210001	01.4081	17.94	220025	01.1948	18.87	220154	00.8972	18.96	230100	01.1604	15.19	230204	01.3584	19.78
210002	01.9534	16.84	220028	01.4680	22.20	220162	01.0891	.....	230101	01.0566	16.79	230205	01.0607	14.54
210003	01.5503	22.97	220029	01.1933	22.25	220163	02.0719	24.73	230102	01.1047	.....	230207	01.2544	19.85

PAGE 8 OF 16

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
230208	01.1783	16.10	240047	01.5215	18.27	240132	01.2422	20.49	250034	01.5418	12.99	250138	01.3553	16.91
230211	00.9786	13.86	240048	01.2786	20.43	240133	01.1715	16.18	250035	00.9041	11.82	250140	00.9213	09.37
230212	01.0964	21.13	240049	01.7763	20.33	240135	00.8386	11.38	250036	00.9863	11.34	250141	01.2142	15.50
230213	01.0251	12.69	240050	01.1234	19.89	240137	01.2521	15.40	250037	00.8717	09.53	250144	00.9383	11.18
230216	01.5363	17.91	240051	00.9749	15.97	240138	00.8953	13.09	250038	00.9909	12.52	250145	00.9362	.....
230217	01.2142	18.06	240052	01.2480	17.21	240139	00.9551	14.24	250039	01.0004	11.71	250146	01.0020	12.89
230219	01.0153	15.18	240053	01.5190	19.87	240141	01.0838	19.12	250040	01.2911	15.65	250148	01.1589	.....
230221	01.1831	18.15	240056	01.2490	20.13	240142	01.1491	15.16	250042	01.1491	13.78	250149	00.9157	.....
230222	01.3602	18.98	240057	01.7418	22.04	240143	01.0673	12.48	250043	01.0303	10.49	260001	01.6548	15.06
230223	01.3164	19.85	240058	00.9730	09.64	240144	00.9419	13.39	250044	00.9825	13.98	260002	01.4785	20.05
230227	01.5246	22.00	240059	01.1011	17.98	240145	00.9681	12.37	250045	01.1454	17.17	260003	00.9487	12.45
230228	01.2133	17.29	240061	01.7409	20.93	240146	00.9270	17.20	250047	00.9527	09.12	260004	01.0315	11.86
230230	01.5449	20.38	240063	01.4559	20.88	240148	00.9433	11.34	250048	01.4527	13.51	260005	01.6121	19.68
230232	01.0330	15.87	240064	01.2630	18.13	240150	00.8874	11.72	250049	00.9058	09.93	260006	01.5286	16.72
230235	01.1141	14.65	240065	01.1480	11.14	240152	01.0177	17.85	250050	01.2448	12.30	260007	01.4659	16.03
230236	01.3372	21.07	240066	01.3895	19.08	240153	01.0210	14.30	250051	00.8585	09.44	260008	01.2051	13.88
230239	01.1697	16.07	240069	01.1596	18.31	240154	01.0138	13.15	250057	01.1766	14.08	260009	01.2372	15.63
230241	01.1519	17.08	240071	01.1245	18.05	240155	00.9817	14.39	250058	01.1385	13.65	260011	01.6786	16.21
230244	01.3177	20.14	240072	01.0272	16.08	240157	01.1265	13.92	250059	01.0322	12.18	260012	01.0505	11.96
230253	01.0740	17.39	240073	00.9172	15.13	240160	00.9997	14.65	250060	00.8084	12.19	260013	01.1491	12.68
230254	01.2799	22.64	240075	01.2180	18.79	240161	00.9389	14.56	250061	00.8634	10.75	260014	01.7751	17.84
230257	01.1068	19.01	240076	01.1373	19.69	240162	00.9645	15.28	250063	00.8596	12.68	260015	01.2666	13.16
230259	01.1982	19.06	240077	01.0463	14.15	240163	00.9330	14.10	250065	00.8907	11.72	260017	01.2286	13.94
230264	00.9438	16.74	240078	01.4536	21.46	240166	01.1669	14.67	250066	00.9404	12.17	260018	00.9652	09.56
230269	01.3034	21.71	240079	01.0178	12.57	240169	00.9534	15.25	250067	01.1253	14.14	260019	00.9816	12.63
230270	01.2162	20.08	240080	01.3774	20.87	240170	01.1564	14.42	250068	00.8556	11.19	260020	01.7259	18.73
230273	01.6607	22.11	240082	01.1194	14.55	240171	00.9950	14.02	250069	01.1870	13.42	260021	01.5153	17.51
230275	00.5787	16.53	240083	01.3925	16.60	240172	01.0869	14.50	250071	00.9541	08.06	260022	01.3501	18.69
230276	00.8129	16.23	240084	01.3436	17.20	240173	00.9599	14.82	250072	01.2914	16.67	260023	01.2567	15.57
230277	01.2425	21.76	240085	00.9247	14.90	240179	01.0022	14.30	250076	00.9579	10.32	260024	01.0210	12.28
230278	02.0914	19.50	240086	01.0520	15.23	240180	01.0157	10.51	250077	00.9505	11.08	260025	01.3121	13.61
230279	00.6989	.....	240087	01.0824	15.69	240184	01.0424	11.31	250078	01.4419	14.21	260027	01.5941	18.92
230280	01.0281	.....	240088	01.4444	18.10	240187	01.2617	16.56	250079	00.8562	15.12	260029	01.1264	15.76
230281	01.7080	.....	240089	01.0010	15.23	240193	01.0582	14.73	250081	01.3034	15.19	260030	01.0891	09.73
240001	01.5708	21.24	240090	01.0970	13.57	240196	00.6132	22.50	250082	01.2857	12.30	260031	01.4989	18.87
240002	01.6938	19.40	240093	01.3186	16.49	240200	00.8962	13.34	250083	01.0251	11.01	260032	01.5795	17.59
240004	01.4661	20.16	240094	01.0543	17.26	240205	00.9014	.....	250084	01.0930	13.92	260034	00.9785	14.22
240005	00.9960	13.49	240096	01.0160	14.12	240206	00.8472	.....	250085	01.0093	11.42	260035	01.0729	11.44
240006	01.1385	19.75	240097	01.1270	17.05	240207	01.2326	21.47	250088	00.9591	15.56	260036	01.0628	15.72
240007	01.1171	15.15	240098	00.9677	16.41	240210	01.2588	21.44	250089	01.0276	11.77	260037	01.4003	15.17
240008	01.0569	15.22	240099	01.1143	11.00	240211	00.9532	11.18	250093	01.1064	12.17	260039	01.1432	11.17
240009	00.9895	14.18	240100	01.3089	19.58	240212	01.9942	.....	250094	01.2377	14.41	260040	01.6075	14.92
240010	01.9742	20.17	240101	01.1581	17.32	250001	01.6688	15.91	250095	00.9795	13.57	260042	01.4257	15.65
240011	01.1400	15.69	240102	00.8915	12.27	250002	00.7926	13.34	250096	01.2945	16.48	260044	01.0361	14.29
240013	01.3150	15.90	240103	01.0772	14.10	250003	01.0305	14.13	250097	01.1910	13.83	260047	01.3634	14.19
240014	01.0820	17.79	240104	01.2345	21.66	250004	01.4613	15.12	250098	00.8668	13.73	260048	01.2847	18.05
240016	01.3076	15.46	240105	01.0028	12.70	250005	00.9643	09.15	250099	01.2680	12.73	260050	01.0968	14.71
240017	01.1439	15.15	240106	01.3245	23.78	250006	00.9651	12.27	250100	01.2315	14.53	260052	01.3337	15.95
240018	01.2866	15.82	240107	00.9788	15.07	250007	01.2618	16.88	250101	00.9408	09.89	260053	01.1331	09.48
240019	01.2275	19.58	240108	00.9539	11.64	250008	00.8996	11.36	250102	01.5414	14.80	260054	01.3206	15.14
240020	01.1482	18.11	240109	00.9922	13.59	250009	01.1809	15.04	250104	01.3619	15.58	260055	01.0378	13.67
240021	00.9369	12.49	240110	01.0305	15.18	250010	01.0381	11.07	250105	00.9206	13.13	260057	01.1548	13.85
240022	01.1174	17.33	240111	00.9867	13.06	250012	00.9568	13.77	250107	00.9087	14.16	260059	01.1275	14.17
240023	01.0074	15.86	240112	01.0531	13.30	250015	01.0942	09.75	250109	00.9352	11.54	260061	01.1793	10.87
240025	01.1734	15.02	240114	00.9888	11.13	250017	01.0107	13.77	250112	00.9947	14.22	260062	01.1602	19.89
240027	01.0011	12.60	240115	01.6063	22.30	250018	00.9603	09.81	250117	01.0705	13.28	260063	01.1913	14.82
240028	01.1386	16.50	240116	00.9465	12.43	250019	01.4259	17.43	250119	01.2047	10.80	260064	01.3295	15.38
240029	01.1610	15.70	240117	01.0697	16.21	250020	01.0082	10.70	250120	01.0645	12.04	260065	01.7778	15.31
240030	01.3037	16.78	240119	00.8486	18.93	250021	00.8579	07.74	250122	01.2735	15.87	260066	01.0927	13.19
240031	00.9361	13.50	240121	00.9008	16.90	250023	00.8647	11.22	250123	01.3262	17.72	260067	00.9820	10.43
240036	01.5543	19.05	240122	01.0504	16.80	250024	00.9894	08.25	250124	00.9137	10.69	260068	01.6715	18.49
240037	01.0408	16.40	240123	01.0498	13.30	250025	01.1455	13.58	250125	01.3231	18.35	260070	01.0862	11.09
240038	01.4454	22.37	240124	01.0139	15.71	250027	01.0256	10.40	250126	00.9923	10.22	260073	00.9681	11.58
240040	01.2251	17.67	240125	00.9399	10.75	250029	00.8872	11.87	250127	00.7630	.....	260074	01.2427	14.81
240041	01.2877	14.43	240127	01.0142	12.51	250030	00.9688	11.39	250128	01.1010	12.64	260077	01.7271	16.15
240043	01.1990	16.83	240128	01.1180	14.55	250031	01.3157	17.20	250131	01.0539	09.36	260078	01.1782	12.39
240044	01.2046	16.02	240129	01.0153	12.18	250032	01.2551	15.70	250134	00.9795	12.70	260079	00.9824	11.78
240045	01.0655	18.49	240130	01.0151	14.54	250033	00.9921	11.57	250136	00.7871	16.84	260080	00.9654	09.77

PAGE 9 OF 16

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
260081	01.4971	16.44	270004	01.6477	16.49	280026	01.1254	12.80	280115	00.9809	13.59	310017	01.3295	21.95
260082	01.1231	13.50	270006	01.0290	18.67	280028	01.0559	13.64	280117	01.2229	14.48	310018	01.2194	21.06
260085	01.5684	18.57	270007	00.9630	12.26	280029	01.0506	12.62	280118	00.9757	13.28	310019	01.6403	20.84
260086	01.0649	12.67	270009	01.0387	14.91	280030	01.7392	23.13	280119	00.8364	.....	310020	01.1974	19.66
260089	00.9614	13.31	270011	01.1242	.....	280031	01.0575	12.48	280123	00.7918	.....	310021	01.3472	21.15
260091	01.6022	18.86	270012	01.5945	17.10	280032	01.3182	15.11	290001	01.6372	22.35	310022	01.2384	19.38
260094	01.1872	14.91	270013	01.2847	16.78	280033	00.9766	13.62	290002	00.8981	17.99	310024	01.2566	22.60
260095	01.4432	16.05	270014	01.7192	15.97	280034	01.2078	13.41	290003	01.6179	21.15	310025	01.2260	21.92
260096	01.5521	21.52	270016	00.8187	11.51	280035	00.9433	11.75	290005	01.4399	19.66	310026	01.2647	21.91
260097	01.1913	15.82	270017	01.2275	18.32	280037	01.0146	13.55	290006	01.2170	16.54	310027	01.3646	18.17
260100	00.9630	13.12	270019	01.0625	13.34	280038	01.0763	13.39	290007	01.8961	25.07	310028	01.1530	20.46
260102	01.0125	16.75	270021	01.1007	15.55	280039	01.1970	14.24	290008	01.2200	17.14	310029	01.8925	20.69
260103	01.3849	16.73	270023	01.2916	18.76	280040	01.5940	18.30	290009	01.6244	21.07	310031	02.5990	24.14
260104	01.6403	19.57	270024	00.9931	11.15	280041	01.0014	10.95	290010	01.2053	19.33	310032	01.2921	20.00
260105	01.8664	19.47	270026	00.8654	11.95	280042	01.0880	13.22	290011	00.8812	14.39	310034	01.2545	19.14
260107	01.3815	18.77	270027	01.0389	12.69	280043	01.1268	12.75	290012	01.4385	19.97	310036	01.2092	18.44
260108	01.8100	17.90	270028	01.0741	14.91	280045	01.1401	13.48	290013	01.0185	14.85	310037	01.3076	24.97
260109	00.9959	11.92	270029	00.9031	14.51	280046	01.0732	11.09	290014	01.0444	16.52	310038	01.9146	22.82
260110	01.6120	14.16	270031	00.8747	09.71	280047	01.1620	15.70	290015	00.9730	15.38	310039	01.2871	20.51
260111	00.9980	08.04	270032	01.1788	16.46	280048	01.0800	11.17	290016	01.1392	18.71	310040	01.2688	23.12
260112	01.4171	17.75	270033	00.8766	11.39	280049	01.0408	13.82	290019	01.2774	17.92	310041	01.3218	22.90
260113	01.1053	14.05	270035	01.0275	15.87	280050	00.9290	13.11	290020	01.0859	17.65	310042	01.2459	21.74
260115	01.2345	14.63	270036	00.9483	10.42	280051	01.0735	13.72	290021	01.5601	19.17	310043	01.2080	20.60
260116	01.1223	13.70	270039	01.0661	11.99	280052	01.0491	11.85	290022	01.7399	22.47	310044	01.3055	20.16
260119	01.1640	14.93	270040	01.0825	17.60	280054	01.2628	17.92	290027	00.9567	14.68	310045	01.3849	25.76
260120	01.1599	15.72	270041	01.0693	11.14	280055	00.9347	11.63	290029	00.9400	.....	310047	01.3410	23.05
260122	01.1502	13.12	270044	01.1913	13.40	280056	00.9886	10.99	290032	01.4149	18.66	310048	01.1852	20.69
260123	01.0312	11.56	270046	00.9346	13.50	280057	01.0055	14.48	290038	01.1064	.....	310049	01.3294	23.54
260127	00.9514	13.71	270048	01.0940	13.30	280058	01.3123	13.75	300001	01.3957	20.70	310050	01.2677	20.88
260128	00.9851	08.95	270049	01.8346	18.19	280060	01.5884	18.35	300003	01.8607	20.92	310051	01.3207	24.26
260129	01.2124	13.51	270050	01.0380	15.96	280061	01.4628	14.76	300005	01.2620	18.65	310052	01.2545	20.53
260131	01.2940	16.32	270051	01.2980	17.65	280062	01.2187	11.92	300006	01.1221	16.24	310054	01.2880	23.19
260134	01.1526	13.82	270052	01.0663	18.02	280064	01.0759	12.61	300007	01.1527	16.76	310056	01.1826	20.11
260137	01.2614	13.71	270053	00.8678	09.53	280065	01.2879	16.22	300008	01.2481	16.95	310057	01.2933	20.10
260138	01.9711	20.66	270057	01.1715	17.35	280066	01.0191	11.38	300009	01.0977	17.45	310058	01.1025	25.35
260141	01.8695	16.53	270058	00.9411	11.20	280068	00.9659	09.31	300010	01.2364	17.80	310060	01.2116	17.55
260142	01.1566	14.50	270059	00.8676	19.21	280070	01.0724	10.75	300011	01.3481	21.53	310061	01.2085	19.85
260143	00.9463	10.52	270060	00.9702	11.92	280073	01.0386	12.78	300012	01.2749	21.64	310062	01.2936	23.90
260147	01.0469	12.81	270063	00.8933	12.94	280074	01.1165	12.87	300013	01.2241	16.87	310063	01.3528	20.78
260148	00.9572	09.33	270068	00.8629	12.38	280075	01.2096	12.90	300014	01.2293	18.41	310064	01.2956	21.35
260158	01.1275	11.80	270072	00.8605	14.88	280078	01.0719	12.54	300015	01.1807	17.56	310067	01.3198	21.14
260159	01.2924	18.02	270073	01.0764	11.06	280077	01.3635	17.36	300016	01.3137	17.41	310069	01.1292	18.19
260160	01.0663	14.07	270074	00.8832	.....	280079	01.0636	09.40	300017	01.2137	20.49	310070	01.3977	22.16
260162	01.7006	17.70	270075	00.8610	.....	280080	01.0860	11.34	300018	01.2397	18.85	310072	01.3053	20.74
260163	01.3037	14.11	270076	00.8395	.....	280081	01.5614	17.24	300019	01.2613	18.43	310073	01.5567	22.31
260164	01.0000	12.07	270079	00.9594	13.36	280082	01.0967	13.03	300020	01.2666	19.78	310074	01.4153	21.08
260166	01.2144	21.51	270080	01.1499	14.27	280083	01.0671	15.64	300021	01.1635	15.69	310075	01.2965	21.67
260172	01.0176	12.07	270081	01.0780	09.77	280084	01.0314	10.92	300022	01.0939	17.08	310076	01.3883	28.16
260173	00.9560	11.15	270082	01.0050	16.10	280085	00.7201	14.72	300023	01.3251	20.13	310077	01.5000	23.09
260175	01.1270	14.60	270083	01.1179	10.96	280088	01.8180	17.33	300024	01.2662	16.56	310078	01.3399	22.70
260176	01.6758	18.44	270084	00.9031	12.77	280089	01.0614	13.79	300028	01.2716	15.52	310081	01.2643	20.80
260177	01.3871	19.46	280001	01.0866	14.11	280090	00.9838	11.70	300029	01.3165	21.79	310083	01.2405	22.20
260178	01.4760	19.06	280003	01.9467	18.11	280091	01.1320	13.17	300033	01.1041	13.70	310084	01.2611	20.43
260179	01.5653	18.02	280005	01.3791	16.72	280092	00.8959	11.63	300034	01.9294	21.31	310086	01.1743	20.69
260180	01.7024	18.45	280009	01.7304	16.70	280094	01.1287	13.55	310001	01.7682	24.56	310087	01.2357	18.95
260183	01.6443	16.51	280011	00.9606	11.56	280097	01.0459	12.56	310002	01.7260	25.58	310088	01.2439	19.57
260186	01.2600	15.20	280012	01.2348	14.88	280098	01.0110	09.68	310003	01.2210	23.16	310090	01.1901	22.86
260188	01.2714	15.70	280013	02.0127	19.71	280101	01.1114	10.92	310005	01.2226	19.20	310091	01.2170	21.35
260189	00.9400	11.23	280014	01.0034	10.78	280102	01.1187	11.77	310006	01.2198	19.02	310092	01.3046	20.52
260190	01.2072	18.46	280015	01.0314	13.78	280104	00.9608	09.88	310008	01.2739	21.23	310093	01.2163	19.52
260191	01.1707	19.44	280017	01.1537	13.42	280105	01.2920	16.46	310009	01.2782	21.35	310096	01.9004	21.19
260193	01.2240	19.13	280018	01.1931	12.25	280106	00.9402	13.23	310010	01.2912	21.05	310105	01.1999	22.41
260195	01.1660	.....	280020	01.5257	18.97	280107	01.0294	12.36	310011	01.3017	21.71	310108	01.3824	21.08
260197	01.3182	20.38	280021	01.3499	14.01	280108	01.1461	13.26	310012	01.5940	23.47	310110	01.2143	19.69
260198	01.2213	14.98	280022	00.9770	11.07	280109	00.9501	10.61	310013	01.2768	19.91	310111	01.2557	19.70
260200	01.3554	19.14	280023	01.3780	13.73	280110	00.9942	10.88	310014	01.7025	23.69	310112	01.2426	20.58
270002	01.1911	13.92	280024	01.0114	13.22	280111	01.2372	16.06	310015	01.7776	24.34	310113	01.2089	20.70
270003	01.2465	18.65	280025	00.9810	11.07	280114	00.9353	10.26	310016	01.2225	22.93	310115	01.1943	19.78

PAGE 10 OF 16

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
310116	01.2919	21.67	330028	01.3448	23.76	330132	01.1620	13.74	330233	01.5441	29.08	330399	01.3239	29.65
310118	01.1849	21.86	330029	01.1111	17.36	330133	01.3428	28.31	330234	02.1918	24.17	340001	01.4951	19.39
310119	01.5594	27.27	330030	01.2349	14.89	330135	01.2563	16.25	330235	01.1332	17.37	340002	01.8825	18.53
310120	01.0603	17.24	330033	01.2846	13.46	330136	01.2637	20.45	330236	01.3832	26.18	340003	01.1188	16.56
310121	01.0460	16.61	330034	00.7718	36.61	330140	01.7132	17.19	330238	01.1820	14.53	340004	01.4966	17.21
320001	01.4620	16.76	330036	01.3298	21.00	330141	01.3504	23.17	330239	01.2013	15.44	340005	01.2221	14.57
320002	01.4159	21.55	330037	01.1242	15.17	330144	00.9758	13.17	330240	01.3354	26.47	340006	01.2338	14.56
320003	01.1576	15.57	330038	01.2140	14.91	330148	01.0784	14.39	330241	01.8652	20.92	340007	01.1848	14.81
320004	01.2677	17.86	330039	00.8486	13.18	330151	01.0421	13.73	330242	01.3516	18.35	340008	01.1458	16.48
320005	01.3217	17.80	330041	01.3912	27.81	330152	01.4273	27.77	330245	01.2716	17.15	340009	01.4043	18.58
320006	01.3699	15.02	330043	01.2400	25.15	330153	01.6522	17.44	330246	01.2502	22.99	340010	01.3129	16.41
320009	01.5348	16.75	330044	01.2405	16.99	330154	01.5884	.....	330247	00.7071	26.49	340011	01.1134	13.98
320011	00.9939	17.79	330045	01.4167	24.83	330157	01.3091	18.41	330249	01.2314	15.89	340012	01.2605	15.82
320012	01.0231	16.57	330046	01.5105	28.39	330158	01.3668	24.33	330250	01.3166	16.01	340013	01.2719	16.58
320013	01.2225	18.28	330047	01.2265	16.63	330159	01.3291	17.35	330252	00.9141	15.40	340014	01.5921	22.15
320014	01.0141	08.42	330048	01.2888	16.10	330160	01.4618	26.09	330254	01.0327	15.52	340015	01.2388	16.44
320016	01.1571	12.00	330049	01.2436	17.52	330161	00.7163	16.00	330258	01.4234	25.28	340016	01.1961	15.18
320017	01.2175	17.67	330053	01.1270	14.39	330162	01.2602	26.18	330259	01.4434	21.99	340017	01.2581	15.69
320018	01.4643	16.61	330055	01.5089	29.02	330163	01.2099	17.75	330261	01.2224	24.35	340018	01.1212	14.78
320019	01.4799	19.01	330056	01.4367	28.30	330164	01.3999	18.96	330263	00.9948	17.00	340019	01.0453	13.69
320021	01.7045	20.62	330057	01.7192	15.43	330166	00.9641	13.96	330264	01.2753	20.00	340020	01.1711	17.33
320022	01.1678	16.34	330058	01.3255	15.69	330167	01.6419	27.45	330265	01.3114	15.78	340021	01.2221	15.08
320023	01.0224	13.29	330059	01.6149	29.66	330169	01.4285	31.70	330267	01.2789	22.78	340022	01.0451	14.56
320030	00.9845	16.54	330061	01.2961	23.38	330171	01.2758	21.15	330268	00.9689	15.79	340023	01.3842	18.44
320031	00.8961	14.78	330062	01.1834	14.99	330175	01.1250	14.28	330270	01.9667	30.33	340024	01.2260	15.05
320032	01.0053	16.66	330064	01.3837	28.38	330177	01.0204	12.46	330273	01.2909	21.36	340025	01.1908	14.15
320033	01.1561	19.23	330065	01.1753	17.14	330179	00.8644	14.09	330275	01.2168	18.19	340027	01.2025	15.46
320035	01.0000	14.82	330066	01.2326	17.26	330180	01.1942	16.09	330276	01.1889	16.58	340028	01.5288	17.48
320037	01.2063	15.17	330067	01.3792	19.68	330181	01.3113	28.32	330277	01.1317	16.35	340030	02.0064	19.06
320038	01.1613	15.62	330072	01.3367	26.92	330182	02.5604	26.92	330279	01.2905	17.24	340031	00.9382	12.56
320046	01.1938	18.23	330073	01.1865	14.20	330183	01.4402	18.88	330285	01.8179	21.81	340032	01.3951	17.87
320048	01.3453	13.90	330074	01.1952	16.89	330184	01.3357	25.83	330286	01.3134	22.59	340035	01.1716	14.97
320056	00.9819	.....	330075	01.0925	16.48	330185	01.2303	24.23	330290	01.7595	28.28	340036	01.1656	17.04
320057	01.0612	.....	330078	01.4429	16.90	330186	00.9205	18.79	330293	01.1658	13.72	340037	01.1731	15.50
320058	00.9103	.....	330079	01.3056	16.60	330188	01.1826	17.75	330304	01.2716	25.62	340038	01.1099	14.52
320059	00.9799	.....	330080	01.4028	24.95	330189	01.3836	16.20	330306	01.4564	26.59	340039	01.2731	19.18
320060	00.9135	.....	330082	01.1184	16.29	330191	01.2642	17.14	330307	01.2198	18.33	340040	01.7730	17.75
320061	01.0790	.....	330084	00.9954	15.59	330193	01.2990	27.34	330308	01.1771	28.68	340041	01.2428	15.99
320062	00.9353	.....	330085	01.3139	18.66	330194	01.8175	26.07	330309	01.2301	24.67	340042	01.1875	13.80
320063	01.3344	15.84	330086	01.2522	24.13	330195	01.6251	29.02	330314	01.3625	21.07	340044	01.1061	13.26
320065	01.2800	16.76	330088	01.1053	24.41	330196	01.3279	25.53	330315	01.2528	24.58	340045	01.0396	10.95
320067	00.8183	09.19	330090	01.5574	16.86	330197	01.0999	14.43	330316	01.3007	26.23	340047	01.8881	17.90
320068	00.9221	17.98	330091	01.3825	17.64	330198	01.3312	22.17	330327	00.9294	15.30	340048	00.9055	09.39
320069	01.0367	09.08	330092	01.1062	13.64	330199	01.4730	24.90	330331	01.2281	27.78	340049	00.6394	15.10
320070	01.0220	.....	330094	01.2285	15.57	330201	01.5327	27.38	330332	01.2569	24.30	340050	01.1927	14.69
320074	01.1134	17.15	330095	01.2586	16.43	330202	01.4667	25.07	330333	01.3666	22.00	340051	01.2724	16.23
320079	01.1977	17.41	330096	01.0690	14.47	330203	01.4028	19.16	330336	01.3373	27.39	340052	01.0387	18.62
330001	01.1965	24.84	330097	01.1645	14.51	330204	01.4276	24.90	330338	01.1337	22.52	340053	01.6979	18.94
330002	01.4946	24.26	330100	00.6809	25.95	330205	01.1548	19.46	330339	00.8047	18.09	340054	01.0903	12.68
330003	01.3431	19.29	330101	01.7909	33.09	330208	01.2046	23.16	330340	01.2007	23.91	340055	01.2066	16.69
330004	01.2765	19.10	330102	01.2998	16.32	330209	01.1899	21.17	330350	01.8078	27.96	340060	01.1317	16.38
330005	01.8086	19.53	330103	01.2457	15.94	330211	01.2056	16.31	330353	01.3988	27.49	340061	01.7130	19.20
330006	01.3140	24.11	330104	01.3533	25.44	330212	01.1780	20.25	330354	01.3850	.....	340063	01.0618	13.01
330007	01.3275	17.39	330106	01.5693	33.04	330213	01.1258	16.19	330357	01.3770	32.07	340064	01.2274	16.89
330008	01.1201	15.74	330107	01.2581	24.38	330214	01.7374	28.82	330359	00.9481	23.70	340065	01.3093	12.82
330009	01.3524	28.08	330108	01.2108	15.85	330215	01.2093	15.65	330372	01.2689	22.53	340067	01.1980	12.84
330010	01.1699	15.34	330111	01.0835	14.62	330218	01.1561	17.16	330381	01.1775	26.80	340068	01.2347	14.09
330011	01.2484	17.22	330114	00.8917	15.48	330219	01.6451	18.39	330385	01.1714	29.27	340069	01.7147	18.31
330012	01.6092	27.82	330115	01.2026	14.46	330221	01.3287	26.57	330386	01.1388	20.82	340070	01.3855	16.89
330013	02.0610	16.84	330116	00.9205	13.82	330222	01.2641	15.28	330387	00.8466	23.28	340071	01.0722	14.30
330014	01.3839	27.12	330118	01.6256	18.16	330223	01.0773	15.10	330389	01.8147	29.95	340072	01.1441	13.86
330016	01.0259	14.55	330119	01.7361	29.88	330224	01.2693	18.85	330390	01.2508	28.38	340073	01.4620	20.47
330019	01.1269	23.60	330121	01.0046	14.35	330225	01.1710	23.34	330393	01.7066	25.24	340075	01.1488	15.98
330020	01.0498	14.20	330122	01.2006	20.92	330226	01.2690	16.53	330394	01.5060	17.27	340080	01.1232	13.55
330023	01.2458	22.76	330125	01.8084	19.69	330229	01.3174	14.90	330395	01.3465	30.16	340084	01.0577	14.51
330024	01.9139	30.03	330126	01.2271	20.35	330230	01.5132	26.44	330396	01.2729	26.86	340085	01.2634	15.46
330025	01.1935	13.80	330127	01.3930	25.99	330231	01.1306	27.57	330397	01.2901	23.98	340087	01.1402	16.80
330027	01.4632	28.56	330128	01.3068	25.26	330232	01.2194	15.46	330398	01.2229	26.59	340088	01.1242	16.32

PAGE 11 OF 16

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
340089	00.9624	12.28	350011	01.9150	17.37	360036	01.3220	17.27	360113	01.3029	18.24	360204	01.2911	16.96
340090	01.1324	15.49	350012	01.1423	12.36	360037	02.1403	20.14	360114	01.1471	16.05	360210	01.2281	19.23
340091	01.6487	18.32	350013	01.0828	14.58	360038	01.5899	17.85	360115	01.3208	18.08	360211	01.2341	17.25
340093	01.0683	11.60	350014	01.0438	14.29	360039	01.2504	15.38	360116	01.1336	16.04	360212	01.3982	20.25
340094	01.3312	16.83	350015	01.7039	14.44	360040	01.3208	17.72	360118	01.3257	17.37	360213	01.1677	15.77
340096	01.2015	17.18	350016	01.0482	10.35	360041	01.3759	18.25	360121	01.2853	16.74	360218	01.2994	16.21
340097	01.1584	16.04	350017	01.4595	14.52	360042	01.1088	16.74	360122	01.3802	17.77	360230	01.3282	20.27
340098	01.6790	19.05	350018	01.1672	10.67	360044	01.1425	15.79	360123	01.2539	17.50	360231	01.1364	12.45
340099	01.0973	13.36	350019	01.6119	18.69	360045	01.4898	19.25	360124	01.2571	17.08	360234	01.3614	17.90
340101	01.0284	11.11	350020	01.4933	17.82	360046	01.1375	18.60	360125	01.1173	16.87	360236	01.1885	18.56
340104	00.9509	10.60	350021	01.0719	10.94	360047	01.2246	13.85	360126	01.2013	18.97	360239	01.2445	18.70
340105	01.3875	17.75	350023	00.8794	15.59	360048	01.7427	21.00	360127	01.1556	16.28	360241	00.5303	17.69
340106	01.1119	17.79	350024	01.1055	13.69	360049	01.2627	17.36	360128	01.1296	13.85	360242	01.6927	.....
340107	01.3175	16.17	350025	01.0584	12.60	360050	01.1772	12.43	360129	01.0407	14.06	360243	00.7499	14.35
340109	01.3264	15.91	350027	00.9693	12.57	360051	01.5377	21.83	360130	01.1314	15.16	360244	00.7183	16.77
340111	01.1696	13.78	350029	01.0052	12.34	360052	01.7099	17.88	360131	01.4113	16.27	360245	00.8026	12.10
340112	01.2281	14.03	350030	01.0850	16.04	360054	01.2577	15.55	360132	01.2353	20.78	360246	00.8761	15.05
340113	01.9956	19.50	350033	00.9626	13.23	360055	01.2369	18.92	360133	01.4730	17.61	360247	00.4357	.....
340114	01.5144	19.16	350034	01.0422	13.58	360056	01.3471	16.92	360134	01.5906	18.25	370001	01.6940	18.41
340115	01.5599	17.23	350035	00.9058	10.11	360057	01.0323	13.04	360135	01.1609	17.12	370002	01.2409	13.60
340116	01.9326	20.30	350038	01.0433	13.26	360058	01.2713	15.35	360136	01.0537	14.73	370004	01.2787	15.30
340119	01.2864	15.21	350039	00.9735	13.53	360059	01.5326	20.00	360137	01.5595	18.98	370005	01.0310	14.12
340120	01.1407	12.33	350041	01.0473	13.05	360062	01.4664	18.40	360140	01.0061	15.47	370006	01.3098	14.88
340121	01.0454	14.52	350042	01.0545	12.39	360063	01.1442	17.19	360141	01.4435	19.84	370007	01.1454	12.80
340122	00.9955	10.30	350043	01.6433	16.58	360064	01.5484	19.65	360142	01.0217	14.99	370008	01.4101	16.02
340123	01.1301	14.07	350044	00.9167	10.01	360065	01.2285	16.97	360143	01.2936	17.74	370011	01.0535	12.51
340124	01.0290	12.27	350047	01.2270	16.64	360066	01.3888	17.16	360144	01.3153	20.19	370012	00.8431	09.22
340125	01.4128	16.94	350049	01.2236	10.38	360067	01.2739	12.11	360145	01.6266	16.84	370013	01.7649	18.61
340126	01.4341	16.23	350050	00.9361	10.25	360068	01.6561	21.91	360147	01.2668	15.55	370014	01.3220	17.14
340127	01.3124	16.30	350051	00.9479	14.13	360069	01.1403	16.38	360148	01.0725	16.50	370015	01.2733	13.84
340129	01.3428	18.65	350053	01.0745	09.47	360070	01.6756	16.57	360149	01.1481	20.33	370016	01.3805	14.25
340130	01.3270	16.03	350055	00.9216	11.50	360071	01.2663	15.42	360150	01.2805	17.70	370017	01.1032	12.14
340131	01.4309	15.77	350056	00.9559	12.92	360072	01.1415	16.29	360151	01.3134	16.55	370018	01.2603	14.06
340132	01.3108	12.41	350058	00.9358	12.18	360074	01.3554	19.15	360152	01.4800	17.65	370019	01.3065	11.91
340133	01.0442	13.87	350060	00.7458	07.59	360075	01.4959	20.80	360153	01.1489	13.64	370020	01.2921	12.53
340136	00.7885	24.45	350061	01.0638	13.77	360076	01.3053	18.84	360154	01.0301	12.39	370021	00.9804	10.01
340137	01.2184	12.68	350063	00.8926	.....	360077	01.4743	18.59	360155	01.3265	18.75	370022	01.2770	15.09
340138	01.1777	17.60	350064	00.9587	.....	360078	01.2792	18.97	360156	01.3473	16.47	370023	01.3268	14.95
340141	01.6350	18.27	350066	00.7912	.....	360079	01.7583	19.31	360159	01.1944	18.50	370025	01.3983	15.37
340142	01.2013	14.94	360001	01.3143	17.88	360080	01.1127	14.39	360161	01.2723	18.78	370026	01.4214	16.08
340143	01.3902	18.50	360002	01.1965	15.17	360081	01.3567	17.92	360162	01.2555	17.27	370028	01.8667	17.67
340144	01.4374	14.85	360003	01.7521	19.64	360082	01.3134	19.81	360163	01.8595	19.87	370029	01.2233	12.79
340145	01.3310	16.80	360006	01.7493	19.53	360083	01.2570	15.49	360164	00.8555	13.98	370030	01.2426	12.05
340146	01.0146	15.42	360007	01.0552	15.41	360084	01.6203	18.16	360165	01.2257	14.31	370032	01.5278	14.28
340147	01.2935	17.80	360008	01.2985	16.20	360085	01.8174	19.63	360166	01.1556	15.83	370033	01.0835	11.23
340148	01.4339	18.28	360009	01.3946	17.35	360086	01.4601	16.75	360169	00.9799	16.99	370034	01.2667	12.80
340151	01.1224	14.05	360010	01.2275	15.38	360087	01.4074	17.32	360170	01.2837	16.07	370035	01.6190	15.21
340153	01.9701	21.08	360011	01.2285	17.83	360088	01.2127	15.48	360172	01.3763	16.62	370036	01.0290	.....
340155	01.3926	20.91	360012	01.3020	17.61	360089	01.1680	16.92	360174	01.2365	19.24	370037	01.7236	17.83
340156	00.8066	.....	360013	01.0836	16.71	360090	01.2316	17.90	360175	01.2401	17.61	370038	00.9187	12.01
340158	01.1738	16.16	360014	01.1219	17.57	360091	01.2648	18.90	360176	01.1559	15.53	370039	01.4573	17.22
340159	01.1571	16.88	360016	01.6012	17.81	360092	01.2659	17.85	360177	01.2581	16.30	370040	01.1051	10.89
340160	01.0774	12.88	360017	01.7592	19.82	360093	01.2108	16.66	360178	01.2276	15.58	370041	01.0285	13.52
340162	01.2237	17.29	360018	01.5445	18.51	360094	01.2950	20.27	360179	01.2916	19.01	370042	00.8575	10.56
340164	01.4566	18.15	360019	01.2857	18.22	360095	01.3340	16.68	360180	02.0922	22.07	370043	00.9719	12.91
340166	01.4166	18.51	360020	01.4313	20.05	360096	01.1097	16.20	360184	00.4913	17.11	370045	01.0983	10.20
340168	00.5085	14.78	360021	01.2770	18.04	360098	01.4006	18.00	360185	01.2493	17.09	370046	00.9827	09.22
340171	01.1229	.....	360024	01.4310	17.76	360099	01.1130	16.91	360186	01.1727	15.04	370047	01.3245	15.40
350001	01.0099	11.13	360025	01.2355	17.66	360100	01.3239	15.63	360187	01.2787	16.00	370048	01.1876	13.46
350002	01.7678	16.04	360026	01.1897	15.59	360101	01.7334	19.71	360188	00.9998	14.77	370049	01.3566	15.60
350003	01.1971	15.67	360027	01.5255	19.06	360102	01.2713	19.68	360189	01.0092	15.40	370051	00.9627	13.31
350004	01.9429	17.88	360028	01.4563	15.28	360103	01.3290	18.70	360192	01.2404	19.28	370054	01.3878	14.79
350005	01.0670	13.14	360029	01.1611	16.41	360104	01.8950	20.28	360193	01.3104	16.77	370056	01.5609	15.41
350006	01.3958	16.16	360030	01.1326	14.82	360106	01.0509	13.89	360194	01.1180	16.14	370057	01.1711	15.05
350007	00.9510	12.20	360031	01.3534	18.42	360107	01.2373	16.98	360195	01.1319	17.72	370059	01.1178	13.53
350008	01.0408	15.15	360032	01.0876	16.18	360108	01.0371	15.08	360197	01.2030	16.76	370060	01.0787	12.88
350009	01.1648	15.74	360034	01.1698	13.30	360109	01.0970	17.43	360200	00.9989	13.48	370063	01.0947	13.12
350010	01.1768	12.30	360035	01.5734	19.90	360112	01.7594	21.61	360203	01.1502	15.55	370064	01.0006	10.14

PAGE 12 OF 16

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
370065	01.0475	14.76	370195	00.9505	.....	390004	01.3767	16.70	390080	01.2555	18.66	390167	01.2691	20.71
370071	01.0381	10.18	380001	01.3213	19.27	390005	01.0865	14.82	390081	01.3510	20.23	390168	01.1971	17.49
370072	00.9034	11.67	380002	01.2104	22.74	390006	01.7405	17.39	390083	01.2377	20.87	390169	01.2059	18.63
370076	01.3228	12.42	380003	01.1411	18.75	390007	01.1827	21.33	390084	01.2406	15.29	390170	01.8512	22.43
370077	01.2244	16.30	380004	01.6835	22.89	390008	01.1329	15.08	390086	01.1338	16.87	390173	01.1970	17.08
370078	01.7096	14.58	380005	01.1844	19.47	390009	01.6076	17.97	390088	01.3128	18.42	390174	01.7084	24.17
370079	00.9596	11.98	380006	01.3941	18.29	390010	01.1788	16.58	390090	01.7984	19.42	390176	01.1554	16.79
370080	00.9895	11.12	380007	01.5747	22.66	390011	01.2486	16.49	390091	01.1719	17.09	390178	01.2863	17.63
370082	00.9026	12.48	380008	01.0694	18.69	390012	01.1879	19.15	390093	01.1483	15.20	390179	01.2723	22.80
370083	00.9519	10.95	380009	01.8168	22.17	390013	01.2292	16.77	390095	01.1706	13.95	390180	01.5471	22.83
370084	01.0346	08.88	380010	01.0963	24.15	390014	01.6409	16.42	390096	01.2685	16.88	390181	01.0604	17.80
370085	00.8099	12.94	380011	01.0945	14.95	390015	01.1953	13.06	390097	01.3276	20.91	390183	01.1832	17.16
370086	01.1956	09.89	380013	01.2681	21.54	390016	01.2237	15.58	390099	01.7625	20.06	390184	01.1052	17.69
370089	01.2826	14.01	380014	01.4140	18.89	390017	01.1682	14.20	390100	01.6300	19.30	390185	01.2228	16.12
370091	01.6822	16.13	380017	01.7069	21.77	390018	01.2273	19.41	390101	01.1992	15.70	390189	01.0395	17.78
370092	01.0705	12.73	380018	01.8382	19.21	390019	01.1151	14.53	390102	01.3664	20.34	390191	01.0524	13.91
370093	01.8611	18.67	380019	01.2076	18.88	390022	01.3923	21.81	390103	01.0990	17.17	390192	01.1238	17.15
370094	01.4135	16.67	380020	01.4350	20.06	390023	01.2514	19.71	390104	01.0557	15.15	390193	01.1950	15.39
370095	00.9154	11.62	380021	01.2873	19.10	390024	00.8646	22.54	390106	01.0122	14.85	390194	01.1560	18.97
370097	01.3691	18.65	380022	01.1702	19.92	390025	00.6443	16.64	390107	01.2482	18.52	390195	01.8265	22.08
370099	01.1663	13.22	380023	01.2350	17.76	390026	01.2687	20.58	390108	01.4077	19.97	390196	01.4066	.....
370100	01.0423	13.02	380025	01.2670	21.81	390027	01.9708	23.48	390109	01.1523	14.44	390197	01.3091	18.40
370103	00.9024	11.77	380026	01.1899	16.87	390028	01.7871	18.54	390110	01.6465	17.36	390198	01.1942	15.21
370105	02.0043	17.06	380027	01.2587	20.25	390029	01.9395	18.73	390111	01.8583	26.22	390199	01.2016	14.89
370106	01.5411	16.96	380029	01.1474	17.29	390030	01.2365	16.29	390112	01.1488	12.16	390200	01.0147	14.67
370108	01.0551	10.82	380031	01.0329	15.92	390031	01.1587	16.93	390113	01.2113	16.04	390201	01.2666	18.75
370112	01.0769	12.33	380033	01.7783	22.97	390032	01.2498	17.80	390114	01.1217	21.07	390203	01.3102	20.45
370113	01.1674	12.33	380035	01.3580	18.58	390035	01.2774	17.24	390115	01.3154	21.40	390204	01.2596	20.05
370114	01.6305	14.69	380036	01.1305	17.27	390036	01.3337	17.83	390116	01.2237	19.91	390205	01.3479	22.42
370121	01.1729	15.78	380037	01.2063	18.24	390037	01.3426	18.07	390117	01.1636	15.65	390206	01.3349	19.91
370122	01.1291	09.78	380038	01.3425	21.15	390039	01.0948	15.60	390118	01.1524	16.29	390209	01.0438	15.48
370123	01.2098	14.12	380039	01.3082	18.89	390040	01.0024	12.71	390119	01.3475	17.17	390211	01.1929	16.47
370125	01.0284	11.90	380040	01.2507	19.23	390041	01.2475	16.82	390121	01.3363	18.95	390213	00.9476	14.55
370126	00.9483	10.66	380042	01.1550	18.06	390042	01.4374	20.74	390122	01.0719	16.06	390215	01.1565	20.69
370131	01.0232	12.93	380047	01.6960	19.84	390043	01.0988	15.65	390123	01.3041	20.58	390217	01.2781	17.92
370133	01.1213	09.82	380048	01.0936	13.92	390044	01.5993	18.80	390125	01.2255	15.08	390219	01.3149	18.57
370138	01.1138	14.40	380050	01.3349	16.37	390045	01.7321	17.35	390126	01.3266	20.07	390220	01.2126	19.33
370139	01.0944	10.62	380051	01.5217	19.13	390046	01.5446	18.49	390127	01.2319	20.26	390222	01.3083	20.42
370140	01.0059	11.71	380052	01.1764	16.70	390047	01.6845	18.24	390128	01.2014	17.96	390223	01.6376	23.15
370141	01.3883	19.17	380055	01.2275	23.88	390048	01.1857	16.26	390130	01.1480	16.62	390224	00.9314	13.04
370146	01.0486	12.03	380056	01.0753	15.78	390049	01.5514	19.82	390131	01.2704	16.06	390225	01.2124	15.42
370148	01.6050	19.01	380060	01.5375	21.51	390050	02.1389	21.60	390132	01.2425	20.25	390226	01.7861	23.22
370149	01.2373	15.19	380061	01.5190	22.00	390051	02.1828	24.98	390133	01.7790	20.57	390228	01.2071	18.67
370153	01.0915	13.17	380062	01.1039	15.07	390052	01.1846	16.68	390135	01.2913	19.73	390231	01.3122	21.89
370154	01.0164	12.31	380063	01.3354	21.48	390054	01.2245	14.56	390136	01.2338	15.66	390233	01.3268	16.71
370156	01.1022	13.37	380064	01.4398	18.47	390055	01.7751	21.82	390137	01.2962	17.80	390235	01.5635	23.94
370158	01.0538	12.08	380065	01.0680	19.24	390056	01.1222	15.73	390138	01.3365	17.41	390236	01.1643	15.90
370159	01.3427	13.95	380066	01.3162	17.60	390057	01.3263	18.94	390139	01.4984	23.50	390237	01.6149	20.17
370163	00.8558	10.99	380068	01.0655	19.31	390058	01.3239	17.46	390142	01.6716	22.64	390238	01.3009	16.12
370165	01.0872	11.74	380069	01.1328	17.51	390060	01.1432	16.68	390145	01.3596	18.64	390242	01.2772	18.69
370166	01.0886	15.48	380070	01.3924	21.21	390061	01.4426	20.47	390146	01.3088	16.19	390244	00.9339	13.32
370169	01.1024	10.66	380071	01.2894	18.06	390062	01.1400	15.76	390147	01.2505	19.22	390245	01.3465	23.15
370170	00.9792	.....	380072	00.9714	14.15	390063	01.7324	19.20	390149	01.2579	19.59	390246	01.2349	15.91
370171	01.0341	.....	380075	01.4281	20.90	390064	01.5561	16.25	390150	01.1065	17.50	390247	01.0497	17.22
370172	00.8587	.....	380078	01.1638	16.95	390065	01.2903	18.85	390151	01.2927	18.26	390249	01.0291	10.81
370173	01.2420	.....	380081	01.1568	17.66	390066	01.2933	17.15	390152	01.0351	17.07	390256	01.7792	23.51
370174	00.9656	.....	380082	01.2906	20.35	390067	01.8083	18.03	390153	01.2473	21.93	390258	01.2502	19.78
370176	01.1495	16.48	380083	01.2487	18.93	390068	01.3245	18.13	390154	01.1877	13.93	390260	01.1823	15.95
370177	00.9686	10.10	380084	01.2127	20.61	390069	01.3242	19.23	390155	01.2985	20.06	390262	01.9798	17.25
370178	01.0015	12.17	380087	01.0083	12.30	390070	01.2898	19.49	390156	01.4337	22.61	390263	01.4331	18.66
370179	00.8966	14.28	380088	01.0059	15.71	390071	01.1154	13.36	390157	01.3427	17.97	390265	01.3123	17.72
370180	01.0716	.....	380089	01.2909	21.87	390072	01.1133	15.76	390158	01.5891	.....	390266	01.2098	16.69
370183	01.0864	14.00	380090	01.3011	24.41	390073	01.6002	18.94	390160	01.2031	17.67	390267	01.2930	18.93
370186	01.0206	12.72	380091	01.2113	23.79	390074	01.2369	16.26	390161	01.0981	14.87	390268	01.3884	19.94
370189	00.9754	10.13	380897	04.9268	.....	390075	01.2410	15.92	390162	01.4238	19.03	390270	01.3090	15.89
370190	01.5480	17.49	390001	01.3578	18.16	390076	01.3094	20.45	390163	01.2248	16.55	390272	00.4549	.....
370192	01.1656	.....	390002	01.3668	17.03	390078	01.0633	15.98	390164	01.9412	19.14	390277	00.5643	20.34
370194	01.1343	.....	390003	01.2571	15.57	390079	01.7083	16.83	390166	01.1041	17.40	390278	00.7673	17.52

PAGE 13 OF 16

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
390279	01.0726	09.45	420005	01.2017	14.35	430013	01.2330	15.06	440029	01.2864	16.30	440148	01.1406	14.37
390281	03.1739	.....	420006	01.2785	18.90	430014	01.2742	16.77	440030	01.1989	13.21	440149	01.1993	15.19
400001	01.2170	08.68	420007	01.5103	16.31	430015	01.1801	14.41	440031	00.9653	12.29	440150	01.2853	19.58
400002	01.4586	10.39	420009	01.2131	15.70	430016	01.8185	17.59	440032	01.0553	12.65	440151	01.3706	15.86
400003	01.2378	07.14	420010	01.1070	14.35	430018	00.9882	14.06	440033	01.0675	14.84	440152	01.5616	16.91
400004	01.1516	07.34	420011	01.0905	14.89	430022	00.9656	10.91	440034	01.5798	16.64	440153	01.2607	15.10
400005	01.1122	06.10	420014	01.1343	14.11	430023	00.9173	09.95	440035	01.3176	15.65	440156	01.5650	18.85
400006	01.2005	08.16	420015	01.3145	15.96	430024	00.9117	12.28	440039	01.6355	16.76	440157	01.0913	13.64
400007	01.2599	07.55	420016	01.0635	14.39	430026	01.0798	11.36	440040	00.9697	17.03	440159	01.2358	14.83
400009	01.0253	07.68	420018	01.7204	18.94	430027	01.8117	16.54	440041	01.0374	12.35	440161	01.6916	20.58
400010	00.9067	07.94	420019	01.2221	14.90	430028	01.0938	13.68	440046	01.3271	13.59	440166	01.4407	17.80
400011	00.9999	08.65	420020	01.3908	15.98	430029	00.9886	13.10	440047	00.9568	15.31	440168	01.0199	13.03
400012	01.2156	07.09	420023	01.4241	18.07	430031	00.9573	11.31	440048	01.7988	16.64	440173	01.5155	16.91
400013	01.2969	08.96	420026	01.9266	18.05	430033	01.0218	11.90	440049	01.6566	15.62	440174	00.9837	13.30
400014	01.3613	07.51	420027	01.3790	15.50	430034	01.0752	11.58	440050	01.2035	15.14	440175	01.2366	18.06
400015	01.2211	10.88	420030	01.2885	15.83	430036	01.0396	10.11	440051	00.9285	13.29	440176	01.2916	18.36
400016	01.3614	10.48	420031	00.9586	12.15	430037	00.9784	12.89	440052	01.2226	14.15	440178	01.1880	20.20
400017	01.2405	06.27	420033	01.2216	19.24	430039	01.0179	10.77	440053	01.3071	15.64	440180	01.1517	16.68
400018	01.3516	09.35	420035	00.7985	12.43	430039	01.0871	11.53	440054	01.2182	13.84	440181	01.0190	11.75
400019	01.6737	09.48	420036	01.2011	15.38	430040	00.9098	12.17	440056	01.0857	13.45	440182	00.9568	15.33
400021	01.4421	07.62	420037	01.2778	19.65	430041	00.9376	11.91	440057	01.0155	10.77	440183	01.5296	15.06
400022	01.3098	09.79	420038	01.2852	14.43	430042	00.9807	10.63	440058	01.3158	14.95	440184	01.3494	18.63
400024	01.0265	08.62	420039	01.1511	14.52	430043	01.1938	11.97	440059	01.3336	15.98	440185	01.1231	14.24
400026	00.9430	05.90	420042	01.2035	12.15	430044	00.9249	13.17	440060	01.1799	14.76	440186	01.1885	16.21
400027	01.1317	08.32	420043	01.1800	18.82	430047	01.1381	12.24	440061	01.2121	15.46	440187	01.1952	14.85
400028	01.0328	07.14	420048	01.1376	14.26	430048	01.2063	15.01	440063	01.6136	17.43	440189	01.4819	18.81
400029	01.1287	06.64	420049	01.1769	14.55	430049	00.9360	12.66	440064	01.1860	15.05	440192	01.1489	13.99
400031	01.1446	08.00	420051	01.5568	17.99	430051	01.0355	13.48	440065	01.2301	16.18	440193	01.2852	17.88
400032	01.1257	07.75	420053	01.1378	14.03	430054	01.0034	13.13	440067	01.1879	15.54	440194	01.4249	16.89
400044	01.2430	09.09	420054	01.3709	16.39	430056	00.8479	08.93	440068	01.2130	16.43	440196	00.9475	13.32
400048	01.1320	07.91	420055	01.0623	12.51	430057	00.9205	10.47	440069	01.1874	14.17	440197	01.4007	19.15
400061	01.7050	13.68	420056	01.1625	13.41	430060	01.1594	08.46	440070	01.1257	12.52	440200	01.1917	15.41
400079	01.2488	08.95	420057	01.1395	14.96	430062	00.8739	10.31	440071	01.3946	14.87	440203	00.9346	13.17
400087	01.3761	08.90	420059	00.9844	13.96	430064	01.1205	11.89	440072	01.5118	13.92	440205	01.0962	15.86
400094	01.0405	07.41	420061	01.1517	16.16	430065	00.9527	09.93	440073	01.3464	16.95	440206	01.0340	13.82
400098	01.2435	07.17	420062	01.4444	15.65	430066	00.9685	10.93	440078	01.0260	13.28	440208	02.0269	.....
400102	01.1413	08.65	420064	01.1161	13.45	430073	01.0814	.....	440081	01.1575	15.31	450002	01.4623	19.35
400103	01.3671	08.80	420065	01.3051	16.72	430076	00.9768	09.41	440082	01.9905	20.54	450004	01.1684	12.38
400104	01.3703	08.97	420066	00.9099	14.40	430077	01.5832	16.53	440083	01.1099	10.96	450005	01.1503	13.79
400105	01.1725	08.37	420067	01.2333	16.24	430079	00.9628	11.47	440084	01.1544	11.41	450007	01.2442	13.73
400106	01.2084	08.12	420068	01.2885	16.08	430080	01.1317	08.89	440087	00.9572	14.44	450008	01.3624	14.96
400109	01.5298	09.13	420069	01.1002	13.71	430081	01.0452	.....	440090	00.9308	13.29	450010	01.3415	15.37
400110	01.1119	07.87	420070	01.2639	15.05	430082	00.8001	.....	440091	01.5472	16.53	450011	01.5000	17.43
400111	01.1553	07.98	420071	01.3110	16.13	430083	00.8672	.....	440100	01.0273	12.82	450014	01.0699	13.84
400112	01.2298	09.26	420072	01.0735	10.64	430084	00.9280	.....	440102	01.0695	12.26	450015	01.5543	14.96
400113	01.2400	07.57	420073	01.3095	18.10	430085	00.8385	.....	440103	01.2284	17.24	450016	01.6256	17.57
400114	01.0377	06.50	420074	00.8992	11.72	430087	00.9105	09.29	440104	01.6509	17.68	450018	01.6091	21.75
400115	01.0054	07.58	420075	00.9719	12.66	440001	01.1227	12.18	440105	01.3723	16.69	450020	01.0171	15.47
400117	01.1773	09.23	420078	01.8088	18.59	440002	01.5965	15.80	440109	01.1308	12.28	450021	01.8117	21.11
400118	01.1900	08.14	420079	01.5669	16.94	440003	01.0714	15.23	440110	00.9687	16.06	450023	01.4846	15.80
400120	01.3084	09.14	420080	01.2589	19.18	440006	01.6500	17.60	440111	01.3613	18.00	450024	01.3672	16.45
400121	01.0121	06.51	420082	01.3946	19.13	440007	01.0148	11.83	440114	01.0474	12.68	450025	01.5058	16.27
400122	01.0009	05.88	420083	01.2042	18.36	440008	00.9878	13.50	440115	01.1172	14.66	450028	01.6335	17.17
400123	01.1728	08.05	420084	00.7413	13.56	440009	01.1753	13.22	440120	01.5385	16.14	450029	01.3991	12.98
400124	02.6604	09.27	420085	01.3970	16.86	440010	00.9235	08.75	440125	01.4408	16.09	450031	01.5830	18.72
410001	01.3246	23.02	420086	01.3613	16.90	440011	01.2901	16.28	440130	01.1687	14.16	450032	01.2715	13.63
410004	01.3655	21.15	420087	01.5946	16.53	440012	01.4699	17.72	440131	01.1317	13.44	450033	01.6308	16.84
410005	01.3492	21.90	420088	01.1349	15.05	440014	01.0615	09.06	440132	01.1116	14.01	450034	01.6445	16.28
410006	01.2670	21.40	420089	01.2336	19.40	440015	01.6051	16.42	440133	01.5494	17.78	450035	01.4519	18.91
410007	01.6550	20.96	420091	01.2147	13.16	440016	01.0116	11.35	440135	01.3062	14.03	450037	01.6279	17.69
410008	01.1691	21.05	430004	01.0955	17.25	440017	01.6136	18.42	440137	00.9770	12.14	450039	01.3345	18.70
410009	01.2968	20.66	430005	01.3167	14.06	440018	01.4675	16.10	440141	01.0771	13.59	450040	01.5518	17.75
410010	01.0160	25.40	430007	01.0540	12.52	440019	01.6253	19.06	440142	01.0311	10.75	450042	01.6646	15.75
410011	01.2110	22.25	430008	01.1248	14.01	440020	01.2392	15.43	440143	01.1020	17.21	450043	01.4473	20.40
410012	01.7208	19.51	430009	01.0939	12.21	440022	01.2040	13.72	440144	01.3327	18.35	450044	01.6182	20.04
410013	01.3105	24.63	430010	01.1273	09.23	440023	00.9963	11.58	440145	01.0439	10.99	450046	01.3724	14.67
420002	01.3794	18.80	430011	01.3139	14.33	440024	01.3302	16.61	440146	01.0036	12.98	450047	01.1155	13.43
420004	01.8612	18.35	430012	01.3055	14.97	440025	01.1317	13.01	440147	01.1079	17.06	450050	01.0582	16.00

PAGE 14 OF 16

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
450051	01.5923	18.22	450154	01.2004	12.23	450296	01.3139	16.46	450484	01.4849	18.53	450651	01.8166	21.92
450052	01.0171	13.13	450155	01.0191	12.61	450297	01.0190	12.01	450488	01.2528	14.98	450652	00.9114	13.44
450053	01.1479	13.11	450157	01.0041	12.97	450299	01.3455	16.28	450489	00.9859	11.56	450653	01.2485	17.98
450054	01.7181	21.32	450160	00.9838	17.50	450303	00.9458	09.97	450497	01.1299	12.05	450654	01.0034	11.11
450055	01.1238	12.92	450162	01.1851	16.63	450306	01.0878	12.50	450498	01.2653	13.88	450656	01.4908	16.48
450056	01.6174	18.26	450163	01.0364	15.34	450307	00.9041	13.62	450508	01.5582	16.37	450658	00.9746	14.01
450058	01.5774	14.76	450164	01.0684	12.56	450309	01.0677	12.74	450514	01.2163	18.78	450659	01.5762	22.12
450059	01.2421	13.21	450165	00.9569	14.34	450315	01.1137	19.65	450517	01.0029	10.94	450660	01.5698	21.85
450060	01.3622	22.17	450166	00.9672	10.06	450320	01.3364	18.20	450518	01.5325	16.84	450661	01.1378	18.94
450063	00.9758	11.51	450169	00.9171	13.82	450321	00.9661	12.45	450523	01.5243	21.18	450662	01.6712	16.53
450064	01.5083	15.34	450170	00.9792	11.32	450322	00.7151	15.40	450530	01.4505	21.64	450665	00.9334	11.45
450065	01.1393	14.75	450176	01.2241	15.23	450324	01.8484	15.19	450534	00.9542	20.29	450666	01.2708	19.05
450068	01.7951	20.31	450177	01.0967	13.18	450325	01.2279	11.93	450535	01.2557	14.12	450668	01.5484	18.90
450070	01.2671	15.46	450178	01.0123	14.64	450327	00.9734	12.11	450537	01.3698	17.80	450669	01.2923	19.10
450072	01.2351	18.19	450181	01.0065	15.15	450330	01.2258	16.86	450538	01.3931	21.17	450670	01.2960	19.44
450073	01.1202	12.84	450184	01.5429	17.74	450334	01.0568	11.65	450539	01.2925	13.27	450672	01.6578	18.91
450076	01.5802	.....	450185	01.1137	08.47	450337	01.2313	17.14	450544	01.4408	22.65	450673	01.1428	11.38
450078	00.9949	11.17	450187	01.2789	16.44	450340	01.3177	14.54	450545	01.2710	14.13	450674	01.0203	22.09
450079	01.4395	19.03	450188	01.0085	12.46	450341	01.0264	16.26	450546	01.8365	18.37	450675	01.5171	17.78
450080	01.2966	15.79	450190	01.1841	19.53	450346	01.3443	16.27	450547	01.1613	15.09	450677	01.4324	19.18
450081	01.1087	12.87	450191	01.0864	15.75	450347	01.1430	15.48	450550	00.9800	17.01	450678	01.4776	20.45
450082	00.9627	12.75	450192	01.2403	15.49	450348	00.9975	10.99	450551	01.1957	13.75	450681	03.0551	17.29
450083	01.7142	17.21	450193	01.8944	21.32	450351	01.1727	18.76	450558	01.7767	17.17	450683	01.3083	20.17
450085	01.0903	14.38	450194	01.2291	18.11	450352	01.1141	16.21	450559	00.9811	12.75	450684	01.2695	18.53
450087	01.4141	19.35	450196	01.5101	17.34	450353	01.3226	16.13	450561	01.6522	17.65	450686	01.5555	14.30
450090	01.2144	12.40	450197	01.0544	19.66	450355	01.1121	11.18	450563	01.2306	21.98	450688	01.2802	18.65
450092	01.2129	13.12	450200	01.3827	16.35	450358	02.0930	20.57	450565	01.2925	15.63	450690	01.4169	21.31
450094	01.2531	19.39	450201	01.0233	15.38	450362	01.1896	17.62	450570	01.0316	11.23	450691	01.1089	14.91
450096	01.5315	19.25	450203	01.1919	16.13	450369	01.0842	10.21	450571	01.4989	14.52	450694	01.2338	15.91
450097	01.4577	18.33	450209	01.5494	16.26	450370	01.1269	13.02	450573	01.0008	13.58	450696	01.6701	23.37
450098	01.1683	13.75	450210	01.1950	12.03	450371	01.1487	11.02	450574	00.9382	13.41	450697	01.5431	16.28
450099	01.2816	17.70	450211	01.3861	14.13	450372	01.2680	20.49	450575	01.0572	16.98	450698	00.9742	11.66
450101	01.4848	15.03	450213	01.5055	16.27	450373	01.1462	13.68	450578	00.9224	12.94	450700	00.9302	12.68
450102	01.7093	21.87	450214	01.3721	18.61	450374	00.9541	12.20	450580	01.1076	12.59	450702	01.6063	17.58
450104	01.2182	13.74	450217	01.0508	12.61	450376	01.5102	16.26	450583	01.0094	12.24	450703	01.5299	20.96
450107	01.6171	18.75	450219	01.1346	14.22	450378	01.0973	21.56	450584	01.2257	12.86	450704	01.3719	17.86
450108	00.9967	14.49	450221	01.0814	14.05	450379	01.5198	21.28	450586	00.9987	11.26	450705	01.0246	16.80
450109	00.9911	15.36	450222	01.6508	17.32	450381	01.0567	12.56	450587	01.2266	16.93	450706	01.2165	21.90
450110	01.2522	19.34	450224	01.3702	15.85	450388	01.7602	17.41	450591	01.1417	16.28	450709	01.2281	20.05
450111	01.2466	18.63	450229	01.5708	14.82	450389	01.2066	16.74	450596	01.3150	17.29	450711	01.6431	17.88
450112	01.3508	13.87	450231	01.5945	16.94	450393	01.3320	20.94	450597	01.0561	14.23	450712	00.7387	15.03
450113	01.2359	16.99	450234	00.9823	11.27	450395	01.0348	14.68	450603	00.8332	16.27	450713	01.4783	18.10
450118	01.5629	20.94	450235	01.0563	13.47	450399	00.9957	13.37	450604	01.3817	13.57	450715	01.4531	17.40
450119	01.2958	16.37	450236	01.0665	14.17	450400	01.1526	13.70	450605	01.4745	17.91	450716	01.2682	19.64
450121	01.4393	18.70	450237	01.5510	16.60	450403	01.3684	19.90	450609	00.8790	12.25	450717	01.3585	22.95
450123	01.1554	17.47	450239	01.1977	12.35	450411	00.9524	11.46	450610	01.4506	15.52	450718	01.2381	19.18
450124	01.5864	19.48	450241	01.0458	15.67	450417	01.0539	12.95	450614	01.0471	12.43	450723	01.3474	18.17
450126	01.3845	11.95	450243	00.8395	11.57	450418	01.3370	17.42	450615	01.0767	11.70	450724	01.2905	16.59
450128	01.2434	14.78	450246	00.9676	15.02	450419	01.2738	22.40	450617	01.2885	20.82	450725	00.9969	20.18
450130	01.5025	15.17	450249	00.9712	10.70	450422	00.8075	23.47	450620	01.0455	12.48	450726	00.8676	14.54
450131	01.3707	19.58	450250	00.9532	09.93	450423	01.4394	21.03	450623	01.1429	17.62	450727	00.9596	09.78
450132	01.6610	16.45	450253	01.3163	13.51	450424	01.2047	16.33	450626	01.0877	14.09	450728	00.9627	14.31
450133	01.5384	16.49	450258	01.0962	11.17	450429	01.1242	13.35	450628	00.9420	15.48	450730	01.3579	21.14
450135	01.7273	21.81	450259	01.2084	17.44	450431	01.6589	17.28	450630	01.6424	20.60	450733	01.3470	16.91
450137	01.5099	24.28	450264	00.8643	11.94	450438	01.1793	14.39	450631	01.7535	18.05	450735	00.8720	11.91
450140	00.8414	16.46	450269	01.1388	12.62	450446	00.8625	13.07	450632	01.0125	11.17	450742	01.3448	21.43
450142	01.4366	19.50	450270	01.1746	10.16	450447	01.3505	17.69	450633	01.5938	19.18	450743	01.4622	18.40
450143	01.0982	12.23	450271	01.2762	14.41	450450	01.0872	.....	450634	01.6943	21.57	450746	01.0500	13.39
450144	01.1175	16.23	450272	01.2923	16.29	450451	01.1254	20.23	450637	01.3647	18.24	450747	01.3619	16.51
450145	00.8692	12.46	450276	01.0996	10.44	450457	01.7832	17.14	450638	01.5844	22.52	450749	01.0128	12.35
450146	00.9881	16.53	450278	00.8495	18.12	450460	01.0299	12.06	450639	01.4141	21.41	450750	01.0228	11.86
450147	01.4175	17.66	450280	01.5286	20.58	450462	01.8354	17.99	450641	01.0224	12.60	450751	01.3246	21.80
450148	01.3079	19.02	450283	01.0519	12.09	450464	00.9825	13.41	450643	01.2796	17.63	450754	00.8884	13.19
450149	01.3501	19.33	450286	01.0373	14.54	450465	01.3178	14.66	450644	01.4715	20.30	450755	01.1540	13.66
450150	00.8919	13.62	450288	01.2105	12.58	450467	00.9653	14.39	450646	01.6143	19.59	450757	00.9784	13.32
450151	01.1057	13.27	450289	01.4907	17.37	450469	01.3736	16.94	450647	02.0240	19.98	450758	01.2423	.....
450152	01.2645	16.04	450292	01.2051	20.15	450473	01.0047	17.83	450648	01.0382	11.36	450760	01.2068	16.97
450153	01.5803	17.10	450293	00.9746	13.55	450475	01.1363	14.13	450649	01.0756	14.84	450761	01.0642	09.63

PAGE 15 OF 16

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
450763	01.0163	15.68	460047	01.7740	19.49	490067	01.2062	14.95	500029	00.9339	14.30	500141	01.3258	21.93
450766	02.3234	14.24	460049	01.9207	17.05	490069	01.3990	15.10	500030	01.4753	22.13	500143	00.7662	14.92
450769	01.0378	13.28	460050	01.3106	20.35	490071	01.4398	17.56	500031	01.2905	20.19	500146	01.0318	.....
450770	00.9496	13.59	460051	01.1901	.....	490073	01.3538	21.49	500033	01.2047	18.05	510001	01.7139	17.08
450771	01.9690	17.01	470001	01.2043	17.11	490074	01.3343	16.00	500036	01.3165	19.11	510002	01.2708	16.31
450774	00.9708	23.99	470003	01.8136	17.82	490075	01.3332	16.62	500037	01.1216	17.63	510004	00.9183	12.62
450775	01.1940	19.26	470004	01.1118	14.18	490077	01.1636	16.87	500039	01.3772	21.32	510005	01.0028	13.71
450776	00.9251	.....	470005	01.2606	18.71	490079	01.3187	14.30	500041	01.2872	22.09	510006	01.2565	17.08
450777	01.0014	15.01	470006	01.1898	17.05	490083	00.6451	14.63	500042	01.3735	20.95	510007	01.4707	17.81
450779	01.3450	20.59	470008	01.2516	15.41	490084	01.2535	15.96	500043	01.2939	16.56	510008	01.1226	15.33
450780	01.6140	19.78	470010	01.1804	18.58	490085	01.2071	13.36	500044	01.8920	20.56	510012	01.0670	14.26
450781	01.4783	16.23	470011	01.1610	19.30	490088	01.2024	13.97	500045	01.1167	20.65	510013	01.1365	15.10
450785	01.0516	26.08	470012	01.2651	17.52	490089	01.0748	14.37	500048	00.9122	16.01	510015	00.9706	12.51
450788	01.4208	.....	470013	01.1682	18.28	490090	01.1783	14.25	500049	01.4708	19.34	510016	00.9917	11.27
450792	01.3306	.....	470015	01.0806	16.29	490091	01.2045	20.14	500050	01.4079	20.41	510018	01.1351	14.40
450793	01.6623	.....	470018	01.1930	17.37	490092	01.2038	14.32	500051	01.6292	22.71	510020	01.0494	10.16
450794	01.4602	.....	470020	00.9884	14.50	490093	01.2927	15.31	500052	01.2781	.....	510022	01.7998	19.52
450795	00.8520	.....	470023	01.2947	17.20	490094	01.0700	14.57	500053	01.2686	20.10	510023	01.1454	15.14
450797	00.6382	.....	470024	01.1136	17.08	490095	01.4745	16.13	500054	01.8788	20.41	510024	01.4093	17.94
450798	00.8871	.....	490001	01.0799	19.41	490097	01.1333	13.69	500055	01.0886	20.32	510026	00.5392	12.19
450799	01.3895	.....	490002	01.0625	13.61	490098	01.3132	11.69	500057	01.3490	16.24	510027	00.9669	13.86
450800	01.3919	.....	490003	00.6018	17.55	490099	00.9343	15.29	500058	01.5095	19.82	510028	01.0731	14.90
450801	01.4818	.....	490004	01.2303	16.67	490100	01.3757	16.69	500059	01.1588	20.02	510029	01.2953	16.69
450802	01.2487	.....	490005	01.5364	16.10	490101	01.1933	23.64	500060	01.4869	20.70	510030	01.0968	14.87
450803	00.8537	.....	490006	01.1569	13.27	490104	00.9110	14.46	500061	00.9842	17.95	510031	01.3367	16.27
450804	01.5293	.....	490007	02.0310	17.19	490105	00.7427	16.55	500062	01.0856	17.16	510033	01.2624	14.42
450805	01.1693	.....	490009	01.8204	18.08	490106	00.9047	14.86	500064	01.5371	21.69	510035	01.1467	16.46
450807	00.9104	.....	490010	01.0912	17.08	490107	01.3155	22.64	500065	01.3049	17.67	510036	01.0129	09.34
450809	01.6570	.....	490011	01.4170	17.03	490108	00.8737	13.78	500068	01.0186	17.17	510038	01.1610	13.71
450897	04.8548	.....	490012	01.1990	15.55	490109	00.9185	14.09	500069	01.1665	18.62	510039	01.3580	15.02
460001	01.7866	19.82	490013	01.2514	14.82	490110	01.3986	15.90	500071	01.3666	19.46	510043	00.9310	11.33
460003	01.7210	18.38	490014	01.3584	21.04	490111	01.2348	16.79	500072	01.1952	21.19	510046	01.2605	15.26
460004	01.7712	20.68	490015	01.4630	17.30	490112	01.7326	19.07	500073	01.0859	16.85	510047	01.2074	17.37
460005	01.5499	18.80	490017	01.3623	16.44	490113	01.3003	20.96	500074	01.1671	14.80	510048	01.0733	17.39
460006	01.4322	18.21	490018	01.2580	16.83	490114	01.0988	15.00	500075	03.7376	20.25	510050	01.4642	15.34
460007	01.5450	19.27	490019	01.2006	15.60	490115	01.2451	14.25	500077	01.3913	21.63	510053	01.0396	13.50
460008	01.3609	16.02	490020	01.1565	14.16	490116	01.2251	15.61	500079	01.4055	19.87	510055	01.2246	19.41
460009	01.8852	18.11	490021	01.1505	17.11	490117	01.1729	13.62	500080	00.8427	11.58	510058	01.2002	16.23
460010	01.9161	20.15	490022	01.4063	17.59	490118	01.7642	21.32	500084	01.1439	20.05	510059	01.2290	13.65
460011	01.3884	16.16	490023	01.2234	17.03	490119	01.3467	16.41	500085	01.0619	17.19	510060	01.1538	15.36
460013	01.5056	18.54	490024	01.7803	17.06	490120	01.3270	16.88	500086	01.4244	18.48	510061	01.0749	12.59
460014	01.0358	15.38	490027	01.1310	13.11	490122	01.5152	20.86	500088	01.3566	22.86	510062	01.1797	15.38
460015	01.2592	19.75	490028	01.3516	18.42	490123	01.1414	14.80	500089	00.9469	13.99	510063	01.0126	10.63
460016	00.8970	13.58	490030	01.1033	11.16	490124	01.1521	16.99	500090	01.1042	12.60	510065	01.0089	12.04
460017	01.4549	16.52	490031	01.1369	12.61	490126	01.3837	14.72	500092	01.0798	15.65	510066	01.1288	12.02
460018	00.9760	13.59	490032	01.7249	19.08	490127	01.0179	14.44	500094	00.9177	15.53	510067	01.2496	15.91
460019	01.1515	12.90	490033	01.1854	15.21	490130	01.3118	16.58	500096	01.0950	17.13	510068	01.1196	14.01
460020	01.0589	14.21	490035	01.2179	09.64	490131	01.0427	14.06	500097	01.1371	16.12	510070	01.2210	16.05
460021	01.3873	19.20	490037	01.1278	13.27	500001	01.3342	20.92	500098	00.9192	13.66	510071	01.2767	14.49
460022	00.9374	19.41	490038	01.2195	12.54	500002	01.4828	18.75	500101	01.0080	17.84	510072	01.0650	13.50
460023	01.1831	20.75	490040	01.4100	.....	500003	01.4073	21.28	500102	00.9391	18.43	510077	01.1079	14.36
460024	00.8662	13.51	490041	01.3633	16.88	500005	01.8398	22.52	500104	01.2622	18.71	510080	01.1530	09.35
460025	00.8105	12.63	490042	01.3475	15.18	500007	01.4207	20.14	500106	00.9247	15.53	510081	01.0320	13.19
460026	01.0881	16.98	490043	01.3704	16.74	500008	01.8411	22.88	500107	01.1321	15.58	510082	01.0578	12.08
460027	00.9430	18.61	490044	01.3658	16.65	500009	01.2857	21.07	500108	01.6669	21.40	510084	00.9741	12.87
460029	01.0255	15.71	490045	01.1319	18.60	500011	01.3718	21.44	500110	01.2887	18.75	510085	01.2422	17.99
460030	01.2141	15.78	490046	01.4645	17.24	500012	01.5217	20.94	500118	01.1240	20.88	510086	01.0448	15.65
460032	01.0120	19.00	490047	01.0663	16.34	500014	01.5715	22.36	500119	01.3333	20.48	520002	01.2873	17.24
460033	00.9450	18.22	490048	01.4906	17.53	500015	01.3714	20.92	500122	01.1925	20.27	520003	01.1635	15.19
460035	00.9610	10.93	490050	01.4363	20.06	500016	01.4877	22.76	500123	00.8543	14.78	520004	01.1581	16.53
460036	00.9397	19.41	490052	01.6013	15.06	500019	01.3295	19.82	500124	01.3292	22.39	520006	01.0583	18.05
460037	01.0502	15.92	490053	01.2501	14.14	500021	01.5380	20.77	500125	00.9834	10.72	520007	01.2469	14.14
460039	01.0976	21.08	490054	01.1101	13.91	500023	01.1763	19.09	500129	01.7339	22.41	520008	01.5546	20.54
460041	01.2179	18.29	490057	01.5486	17.02	500024	01.6324	21.06	500132	01.0006	19.79	520009	01.5961	16.88
460042	01.4657	16.14	490059	01.5727	18.24	500025	01.8715	21.69	500134	00.7903	15.75	520010	01.1768	19.39
460043	00.9888	20.44	490060	01.0661	16.72	500026	01.4324	22.42	500137	00.7110	19.99	520011	01.2031	16.46
460044	01.2018	19.41	490063	01.6611	22.34	500027	01.5334	23.68	500138	03.4209	.....	520013	01.2909	17.88
460046	00.7432	10.23	490066	01.2178	17.42	500028	01.0839	14.76	500139	01.4763	21.33	520014	01.2083	15.55

PAGE 16 OF 16

Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage	Provider	Case mix index	Avg. hour wage
520015	01.1174	16.65	520107	01.2599	17.46	530026	01.0473	14.63						
520016	01.0872	12.75	520109	00.9937	17.25	530027	00.8416	09.56						
520017	01.1927	16.87	520110	01.1756	16.47	530029	00.9590	13.49						
520018	01.0801	15.88	520111	00.9841	14.44	530031	00.8745	10.95						
520019	01.2873	16.65	520112	01.0805	18.15	530032	01.1558	17.33						
520021	01.3538	19.16	520113	01.1645	17.80									
520024	01.0377	13.33	520114	01.1037	12.61									
520025	01.1242	15.19	520115	01.3222	15.89									
520026	01.1051	17.48	520116	01.2576	17.66									
520027	01.2244	13.22	520117	01.0303	15.40									
520028	01.3261	17.60	520118	00.9469	10.95									
520029	00.9657	16.70	520120	00.8647	11.95									
520030	01.6772	20.19	520121	00.9763	14.18									
520031	01.1054	16.11	520122	00.9894	13.96									
520032	01.1683	14.56	520123	01.1427	16.55									
520033	01.1820	15.91	520124	01.1255	14.34									
520034	01.1271	17.17	520130	01.0776	12.60									
520035	01.2587	14.67	520131	01.0620	15.82									
520037	01.6518	18.23	520132	01.1878	14.31									
520038	01.4916	17.14	520134	01.0269	15.14									
520039	00.9998	16.24	520135	00.9427	13.84									
520040	01.4327	20.05	520136	01.4778	18.87									
520041	01.1487	14.54	520138	01.8773	18.18									
520042	01.0742	16.25	520139	01.2893	18.50									
520044	01.3803	16.09	520140	01.6143	19.31									
520045	01.6794	17.97	520141	01.1223	15.63									
520047	01.0211	14.50	520142	00.9152	12.48									
520048	01.4410	17.67	520144	01.0302	16.10									
520049	01.9925	17.97	520145	00.9155	16.57									
520051	02.0296	19.41	520146	01.0749	13.71									
520053	01.1007	14.78	520148	01.1668	15.34									
520054	01.0919	16.40	520149	00.9581	13.31									
520056	01.3164	17.77	520151	01.0803	14.43									
520057	01.1308	16.08	520152	01.1177	16.38									
520058	01.0511	17.87	520153	00.9775	13.19									
520059	01.3130	18.17	520154	01.1520	16.15									
520060	01.2970	15.15	520156	01.1216	16.37									
520062	01.2707	16.18	520157	00.9447	13.70									
520063	01.2571	17.61	520159	00.9412	16.25									
520064	01.7132	18.60	520160	01.7643	17.77									
520066	01.4169	17.73	520161	01.0283	14.78									
520068	00.8891	15.82	520170	01.2367	18.51									
520069	01.1915	16.75	520171	00.9904	13.69									
520070	01.6012	16.93	520173	01.1609	17.36									
520071	01.1175	17.71	520174	01.3641	20.57									
520074	01.1086	14.96	520177	01.6458	20.33									
520075	01.4753	17.44	520178	01.0634	14.61									
520076	01.1296	14.40	520186	02.5906	.....									
520077	01.0286	14.50	530002	01.1932	18.07									
520078	01.5021	17.89	530003	00.9310	12.59									
520082	01.3454	15.25	530004	01.0270	13.17									
520083	01.5871	21.59	530005	01.1389	13.19									
520084	01.0883	15.73	530006	01.1268	16.83									
520087	01.6162	17.16	530007	01.0516	11.52									
520088	01.2469	17.56	530008	01.2810	17.75									
520089	01.5230	18.79	530009	00.9688	20.60									
520090	01.2710	16.16	530010	01.2195	16.30									
520091	01.3709	17.25	530011	01.0899	15.27									
520092	01.1124	15.11	530012	01.5874	17.25									
520094	01.0158	16.07	530014	01.3289	15.01									
520095	01.3510	18.56	530015	01.1500	19.22									
520096	01.4979	17.78	530016	01.2060	11.87									
520097	01.3308	17.90	530017	01.0038	16.09									
520098	01.7143	19.40	530018	01.0645	14.57									
520100	01.2350	15.91	530019	00.9449	14.32									
520101	01.0947	15.75	530022	01.1147	15.94									
520102	01.2141	19.00	530023	00.8514	17.76									
520103	01.3242	17.70	530025	01.3686	18.12									

Note: Case mix indexes do not include discharges from PPS-exempt units. Case mix indexes include cases received in HCFA central office through December 1995.

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index	GAF
0040 Abilene, TX	0.8055	0.8623
Taylor, TX		
0060 Aguadilla, PR	0.4430	0.5726
Aguada, PR		
Aguadilla, PR		
Moca, PR		
0080 Akron, OH	0.9875	0.9914
Portage, OH		
Summit, OH		
0120 Albany, GA	0.8353	0.8841
Dougherty, GA		
Lee, GA		
0160 Albany-Schenectady-Troy, NY	0.8510	0.8954
Albany, NY		
Montgomery, NY		
Rensselaer, NY		
Saratoga, NY		
Schenectady, NY		
Schoharie, NY		
0200 Albuquerque, NM	0.9390	0.9578
Bernalillo, NM		
Sandoval, NM		
Valencia, NM		
0220 Alexandria, LA	0.8213	0.8739
Rapides, LA		
0240 Allentown-Bethlehem-Easton, PA	1.0014	1.0160
Carbon, PA		
Lehigh, PA		
Northampton, PA		
0280 Altoona, PA	0.9531	0.9676
Blair, PA		
0320 Amarillo, TX	0.8557	0.8988
Potter, TX		
Randall, TX		
0380 Anchorage, AK	1.3285	1.3104
Anchorage, AK		
0440 Ann Arbor, MI	1.1688	1.1218
Lenawee, MI		
Livingston, MI		
Washtenaw, MI		
0450 Anniston, AL	0.7848	0.8471
Calhoun, AL		
0460 Appleton-Oshkosh-Neenah, WI	0.8910	0.9240
Calumet, WI		
Outagamie, WI		
Winnebago, WI		
0470 Arecibo, PR	0.4631	0.5903
Arecibo, PR		
Camuy, PR		
Hatillo, PR		
0480 Asheville, NC	0.9365	0.9561
Buncombe, NC		
Madison, NC		
0500 Athens, GA	0.9259	0.9771
Clarke, GA		
Madison, GA		
Oconee, GA		
0520 *Atlanta, GA	1.0089	1.0363
Barrow, GA		
Bartow, GA		
Carroll, GA		
Cherokee, GA		
Clayton, GA		
Cobb, GA		
Coweta, GA		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
DeKalb, GA		
Douglas, GA		
Fayette, GA		
Forsyth, GA		
Fulton, GA		
Gwinnett, GA		
Henry, GA		
Newton, GA		
Paulding, GA		
Pickens, GA		
Rockdale, GA		
Spalding, GA		
Walton, GA		
0560 Atlantic-Cape May, NJ	1.1102	1.0742
Atlantic, NJ		
Cape May, NJ		
0600 Augusta-Aiken, GA–SC	0.8849	0.9197
Columbia, GA		
McDuffie, GA		
Richmond, GA		
Aiken, SC		
Edgefield, SC		
0640 Austin-San Marcos, TX	0.9252	0.9482
Bastrop, TX		
Caldwell, TX		
Hays, TX		
Travis, TX		
Williamson, TX		
0680 Bakersfield, CA	1.0202	1.0168
Kern, CA		
0720 *Baltimore, MD	0.9820	1.0173
Anne Arundel, MD		
Baltimore, MD		
Baltimore City, MD		
Carroll, MD		
Harford, MD		
Howard, MD		
Queen Anne's, MD		
0733 Bangor, ME	0.9412	0.9594
Penobscot, ME		
0743 Barnstable-Yarmouth, MA	1.3682	1.2395
Barnstable, MA		
0760 Baton Rouge, LA	0.8442	0.8905
Ascension, LA		
East Baton Rouge, LA		
Livingston, LA		
West Baton Rouge, LA		
0840 Beaumont-Port Arthur, TX	0.8578	0.9003
Hardin, TX		
Jefferson, TX		
Orange, TX		
0860 Bellingham, WA	1.1342	1.0901
Whatcom, WA		
0870 Benton Harbor, MI	0.8553	0.8985
Berrien, MI		
0875 *Bergen-Passaic, NJ	1.1717	1.1146
Bergen, NJ		
Passaic, NJ		
0880 Billings, MT	0.8903	0.9235

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Yellowstone, MT		
0920 Biloxi-Gulfport-Pascagoula, MS	0.8573	0.8999
Hancock, MS		
Harrison, MS		
Jackson, MS		
0960 Binghamton, NY	0.8842	0.9192
Broome, NY		
Tioga, NY		
1000 Birmingham, AL	0.9047	0.9337
Blount, AL		
Jefferson, AL		
St. Clair, AL		
Shelby, AL		
1010 Bismarck, ND	0.7976	0.8565
Burleigh, ND		
Morton, ND		
1020 Bloomington, IN	0.8619	0.9303
Monroe, IN		
1040 Bloomington-Normal, IL	0.8921	0.9248
McLean, IL		
1080 Boise City, ID	0.9269	0.9493
Ada, ID		
Canyon, ID		
1123 *Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	1.1639	1.1428
Bristol, MA		
Essex, MA		
Middlesex, MA		
Norfolk, MA		
Plymouth, MA		
Suffolk, MA		
Worcester, MA		
Hillsborough, NH		
Merrimack, NH		
Rockingham, NH		
Strafford, NH		
1125 Boulder-Longmont, CO	0.9383	0.9573
Boulder, CO		
1145 Brazoria, TX	0.8865	0.9208
Brazoria, TX		
1150 Bremerton, WA	1.0926	1.0625
Kitsap, WA		
1240 Brownsville-Harlingen-San Benito, TX	0.8561	0.8991
Cameron, TX		
1260 Bryan-College Station, TX	0.8760	0.9133
Brazos, TX		
1280 *Buffalo-Niagara Falls, NY	0.9123	0.9673
Erie, NY		
Niagara, NY		
1303 Burlington, VT	0.9126	0.9393
Chittenden, VT		
Franklin, VT		
Grand Isle, VT		
1310 Caguas, PR	0.4661	0.5929
Caguas, PR		
Cayey, PR		
Cidra, PR		
Gurabo, PR		
San Lorenzo, PR		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
1320 Canton-Massillon, OH	0.8667	0.9067
Carroll, OH		
Stark, OH		
1350 Casper, WY	0.8841	0.9191
Natrona, WY		
1360 Cedar Rapids, IA	0.8477	0.8930
Linn, IA		
1400 Champaign-Urbana, IL	0.9413	0.9594
Champaign, IL		
1440 Charleston-North Charleston, SC	0.8984	0.9293
Berkeley, SC		
Charleston, SC		
Dorchester, SC		
1480 Charleston, WV	0.9547	0.9688
Kanawha, WV		
Putnam, WV		
1520 *Charlotte-Gastonia-Rock Hill, NC–SC	0.9631	1.0038
Cabarrus, NC		
Gaston, NC		
Lincoln, NC		
Mecklenburg, NC		
Rowan, NC		
Union, NC		
York, SC		
1540 Charlottesville, VA	0.9175	0.9427
Albemarle, VA		
Charlottesville City, VA		
Fluvanna, VA		
Greene, VA		
1560 Chattanooga, TN-GA	0.8867	0.9210
Catoosa, GA		
Dade, GA		
Walker, GA		
Hamilton, TN		
Marion, TN		
1580 Cheyenne, WY	0.7695	0.8357
Laramie, WY		
1600 *Chicago, IL	1.0756	1.0827
Cook, IL		
DeKalb, IL		
DuPage, IL		
Grundy, IL		
Kane, IL		
Kendall, IL		
Lake, IL		
McHenry, IL		
Will, IL		
1620 Chico-Paradise, CA	1.0441	1.0300
Butte, CA		
1640 *Cincinnati, OH–KY–IN	0.9477	0.9928
Dearborn, IN		
Ohio, IN		
Boone, KY		
Campbell, KY		
Gallatin, KY		
Grant, KY		
Kenton, KY		
Pendleton, KY		
Brown, OH		
Clermont, OH		
Hamilton, OH		
Warren, OH		
1660 Clarksville-Hopkinsville, TN–KY	0.7733	0.8386
Christian, KY		
Montgomery, TN		
1680 *Cleveland-Lorain-Elyria, OH	0.9908	1.0235
Ashtabula, OH		
Cuyahoga, OH		
Geauga, OH		
Lake, OH		
Lorain, OH		
Medina, OH		
1720 Colorado Springs, CO	0.9456	0.9624
El Paso, CO		
1740 Columbia, MO	0.8919	0.9246
Boone, MO		
1760 Columbia, SC	0.9178	0.9430
Lexington, SC		
Richland, SC		
1800 Columbus, GA–AL	0.7655	0.8328
Russell, AL		
Chattanoochee, GA		
Harris, GA		
Muscogee, GA		
1840 *Columbus, OH	0.9699	1.0087
Delaware, OH		
Fairfield, OH		
Franklin, OH		
Licking, OH		
Madison, OH		
Pickaway, OH		
1880 Corpus Christi, TX	0.8641	0.9048
Nueces, TX		
San Patricio, TX		
1900 Cumberland, MD–WV	0.8613	0.9028
Allegany, MD		
Mineral, WV		
1920 *Dallas, TX	0.9530	0.9966
Collin, TX		
Dallas, TX		
Denton, TX		
Ellis, TX		
Henderson, TX		
Hunt, TX		
Kaufman, TX		
Rockwall, TX		
1950 Danville, VA	0.8516	0.8958
Danville City, VA		
Pittsylvania, VA		
1960 Davenport-Moline-Rock Island, IA–IL	0.8407	0.8880
Scott, IA		
Henry, IL		
Rock Island, IL		
2000 Dayton-Springfield, OH	0.9582	0.9858
Clark, OH		
Greene, OH		
Miami, OH		
Montgomery, OH		
2020 Daytona Beach, FL	0.8891	0.9296
Flagler, FL		
Volusia, FL		
2030 Decatur, AL	0.8403	0.8877
Lawrence, AL		
Morgan, AL		
2040 Decatur, IL	0.7866	0.8484
Macon, IL		
2080 *Denver, CO	1.0291	1.0504
Adams, CO		
Arapahoe, CO		
Denver, CO		
Douglas, CO		
Jefferson, CO		
2120 Des Moines, IA	0.8772	0.9142
Dallas, IA		
Polk, IA		
Warren, IA		
2160 *Detroit, MI	1.0748	1.0822
Lapeer, MI		
Macomb, MI		
Monroe, MI		
Oakland, MI		
St. Clair, MI		
Wayne, MI		
2180 Dothan, AL	0.7758	0.8404
Dale, AL		
Houston, AL		
2190 Dover, DE	0.9017	0.9595
Kent, DE		
2200 Dubuque, IA	0.8149	0.8692
Dubuque, IA		
2240 Duluth-Superior, MN–WI	0.9437	0.9611
St. Louis, MN		
Douglas, WI		
2281 Dutchess County, NY	1.0604	1.0488
Dutchess, NY		
2290 Eau Claire, WI	0.8698	0.9089
Chippewa, WI		
Eau Claire, WI		
2320 El Paso, TX	0.9486	0.9645
El Paso, TX		
2330 Elkhart-Goshen, IN	0.8820	0.9176
Elkhart, IN		
2335 Elmira, NY	0.8436	0.8901
Chemung, NY		
2340 Enid, OK	0.7879	0.8494
Garfield, OK		
2360 Erie, PA	0.9137	0.9401
Erie, PA		
2400 Eugene-Springfield, OR	1.1503	1.1006
Lane, OR		
2440 Evansville-Henderson, IN–KY	0.8990	0.9297
Posey, IN		
Vanderburgh, IN		
Warrick, IN		
Henderson, KY		
2520 Fargo-Moorhead, ND–MN	0.9010	0.9311

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Clay, MN		
Cass, ND		
2560 Fayetteville, NC	0.9025	0.9322
Cumberland, NC		
2580 Fayetteville-Springdale-Rogers, AR	0.7236	0.8013
Benton, AR		
Washington, AR		
2620 Flagstaff, AZ–UT	0.9039	0.9331
Coconino, AZ		
Kane, UT		
2640 Flint, MI	1.1273	1.0964
Genesee, MI		
2650 Florence, AL	0.8157	0.8698
Colbert, AL		
Lauderdale, AL		
2655 Florence, SC	0.8614	0.9029
Florence, SC		
2670 Fort Collins-Loveland, CO	1.0628	1.0426
Larimer, CO		
2680 *Ft. Lauderdale, FL	1.0968	1.0973
Broward, FL		
2700 Fort Myers-Cape Coral, FL	0.9093	0.9370
Lee, FL		
2710 Fort Pierce-Port St. Lucie, FL	1.0192	1.0131
Martin, FL		
St. Lucie, FL		
2720 Fort Smith, AR–OK	0.7885	0.8498
Crawford, AR		
Sebastian, AR		
Sequoyah, OK		
2750 Fort Walton Beach, FL	0.9186	0.9435
Okaloosa, FL		
2760 Fort Wayne, IN	0.8819	0.9175
Adams, IN		
Allen, IN		
DeKalb, IN		
Huntington, IN		
Wells, IN		
Whitley, IN		
2800 *Forth Worth-Arlington, TX	1.0095	1.0367
Hood, TX		
Johnson, TX		
Parker, TX		
Tarrant, TX		
2840 Fresno, CA	1.1202	1.0808
Fresno, CA		
Madera, CA		
2880 Gadsden, AL	0.8901	0.9234
Etowah, AL		
2900 Gainesville, FL	0.9455	0.9623
Alachua, FL		
2920 Galveston-Texas City, TX	1.1022	1.0796
Galveston, TX		
2960 Gary, IN	0.9176	0.9428
Lake, IN		
Porter, IN		
2975 Glens Falls, NY	0.8560	0.8990
Warren, NY		
Washington, NY		
2980 Goldsboro, NC	0.8412	0.8883
Wayne, NC		
2985 Grand Forks, ND–MN	0.9228	0.9465
Polk, MN		
Grand Forks, ND		
2995 Grand Junction, CO	0.8847	0.9195
Mesa, CO		
3000 Grand Rapids-Muskegon-Holland, MI	1.0088	1.0060
Allegan, MI		
Kent, MI		
Muskegon, MI		
Ottawa, MI		
3040 Great Falls, MT	0.9007	0.9309
Cascade, MT		
3060 Greeley, CO	0.9712	0.9802
Weld, CO		
3080 Green Bay, WI	0.9387	0.9576
Brown, WI		
3120 *Greensboro-Winston-Salem-High Point, NC	0.9327	0.9820
Alamance, NC		
Davidson, NC		
Davie, NC		
Forsyth, NC		
Guilford, NC		
Randolph, NC		
Stokes, NC		
Yadkin, NC		
3150 Greenville, NC	0.9098	0.9373
Pitt, NC		
3160 Greenville-Spartanburg-Anderson, SC	0.8947	0.9266
Anderson, SC		
Cherokee, SC		
Greenville, SC		
Pickens, SC		
Spartanburg, SC		
3180 Hagerstown, MD	0.9195	0.9441
Washington, MD		
3200 Hamilton-Middletown, OH	0.9515	0.9665
Butler, OH		
3240 Harrisburg-Lebanon-Carlisle, PA	1.0181	1.0124
Cumberland, PA		
Dauphin, PA		
Lebanon, PA		
Perry, PA		
3283 *Hartford, CT	1.2395	1.1931
Hartford, CT		
Litchfield, CT		
Middlesex, CT		
Tolland, CT		
3285 Hattiesburg, MS	0.7269	0.8038
Forrest, MS		
Lamar, MS		
3290 Hickory-Morganton-Lenoir, NC	0.7945	0.8542
Alexander, NC		
Burke, NC		
Caldwell, NC		
Catawba, NC		
3320 Honolulu, HI	1.1487	1.1776
Honolulu, HI		
3350 Houma, LA	0.7843	0.8518
Lafourche, LA		
Terrebonne, LA		
3360 *Houston, TX	0.9790	1.0151
Chambers, TX		
Fort Bend, TX		
Harris, TX		
Liberty, TX		
Montgomery, TX		
Waller, TX		
3400 Huntington-Ashland, WV–KY–OH	0.9194	0.9441
Boyd, KY		
Carter, KY		
Greenup, KY		
Lawrence, OH		
Cabell, WV		
Wayne, WV		
3440 Huntsville, AL	0.8145	0.8689
Limestone, AL		
Madison, AL		
3480 *Indianapolis, IN	0.9950	1.0265
Boone, IN		
Hamilton, IN		
Hancock, IN		
Hendricks, IN		
Johnson, IN		
Madison, IN		
Marion, IN		
Morgan, IN		
Shelby, IN		
3500 Iowa City, IA	0.9382	0.9573
Johnson, IA		
3520 Jackson, MI	0.9066	0.9351
Jackson, MI		
3560 Jackson, MS	0.7906	0.8514
Hinds, MS		
Madison, MS		
Rankin, MS		
3580 Jackson, TN	0.8340	0.8831
Madison, TN		
3605 Jacksonville, FL	0.9018	0.9317
Clay, FL		
Duval, FL		
Nassau, FL		
St. Johns, FL		
3605 Jacksonville, NC	0.7071	0.7887
Onslow, NC		
3610 Jamestown, NY	0.7679	0.8346
Chautaqua, NY		
3620 Janesville-Beloit, WI	0.8664	0.9065
Rock, WI		
3640 Jersey City, NJ	1.1408	1.1236
Hudson, NJ		
3660 Johnson City-Kingsport-Bristol, TN–VA	0.8921	0.9248
Carter, TN		
Hawkins, TN		
Sullivan, TN		
Unicoi, TN		
Washington, TN		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Bristol City, VA		
Scott, VA		
Washington, VA		
3680 Johnstown, PA	0.8417	0.8887
Cambria, PA		
Somerset, PA		
3710 Joplin, MO	0.7409	0.8144
Jasper, MO		
Newton, MO		
3720 Kalamazoo-Battlecreek, MI	1.0565	1.0384
Calhoun, MI		
Kalamazoo, MI		
Van Buren, MI		
3740 Kankakee, IL	0.8998	0.9582
Kankakee, IL		
3760 *Kansas City, KS–MO	0.9522	0.9960
Johnson, KS		
Leavenworth, KS		
Miami, KS		
Wyandotte, KS		
Cass, MO		
Clay, MO		
Clinton, MO		
Jackson, MO		
Lafayette, MO		
Platte, MO		
Ray, MO		
3800 Kenosha, WI	0.9166	0.9421
Kenosha, WI		
3810 Killeen-Temple, TX	1.0415	1.0282
Bell, TX		
Coryell, TX		
3840 Knoxville, TN	0.8520	0.8961
Anderson, TN		
Blount, TN		
Knox, TN		
Loudon, TN		
Sevier, TN		
Union, TN		
3850 Kokomo, IN	0.8609	0.9025
Howard, IN		
Tipton, IN		
3870 La Crosse, WI–MN	0.8638	0.9046
Houston, MN		
La Crosse, WI		
3880 Lafayette, LA	0.8183	0.8717
Acadia, LA		
Lafayette, LA		
St. Landry, LA		
St. Martin, LA		
3920 Lafayette, IN	0.8824	0.9179
Clinton, IN		
Tippecanoe, IN		
3960 Lake Charles, LA	0.8052	0.8621
Calcasieu, LA		
3980 Lakeland-Winter Haven, FL	0.8677	0.9074
Polk, FL		
4000 Lancaster, PA	0.9605	0.9786
Lancaster, PA		
4040 Lansing-East Lansing, MI	1.0016	1.0011
Clinton, MI		
Eaton, MI		
Ingham, MI		
4080 Laredo, TX	0.7092	0.7903
Webb, TX		
4100 Las Cruces, NM	0.8516	0.8958
Dona Ana, NM		
4120 *Las Vegas, NV–AZ	1.0894	1.0922
Mohave, AZ		
Clark, NV		
Nye, NV		
4150 Lawrence, KS	0.8616	0.9301
Douglas, KS		
4200 Lawton, OK	0.8339	0.8830
Comanche, OK		
4243 Lewiston-Auburn, ME	0.9431	0.9607
Androscoggin, ME		
4280 Lexington, KY	0.8387	0.8865
Bourbon, KY		
Clark, KY		
Fayette, KY		
Jessamine, KY		
Madison, KY		
Scott, KY		
Woodford, KY		
4320 Lima, OH	0.8752	0.9128
Allen, OH		
Auglaize, OH		
4360 Lincoln, NE	0.9193	0.9440
Lancaster, NE		
4400 Little Rock-North Little Rock, AR	0.8616	0.9030
Faulkner, AR		
Lonoke, AR		
Pulaski, AR		
Saline, AR		
4420 Longview-Marshall, TX	0.8633	0.9042
Gregg, TX		
Harrison, TX		
Upshur, TX		
4480 *Los Angeles-Long Beach, CA	1.2396	1.1932
Los Angeles, CA		
4520 Louisville, KY–IN	0.9445	0.9617
Clark, IN		
Floyd, IN		
Harrison, IN		
Scott, IN		
Bullitt, KY		
Jefferson, KY		
Oldham, KY		
4600 Lubbock, TX	0.8525	0.8965
Lubbock, TX		
4640 Lynchburg, VA	0.8036	0.8609
Amherst, VA		
Bedford, VA		
Bedford City, VA		
Campbell, VA		
Lynchburg City, VA		
4680 Macon, GA	0.8836	0.9187
Bibb, GA		
Houston, GA		
Jones, GA		
Peach, GA		
Twiggs, GA		
4720 Madison, WI	1.0048	1.0033
Dane, WI		
4800 Mansfield, OH	0.8543	0.8978
Crawford, OH		
Richland, OH		
4840 Mayaguez, PR	0.4186	0.5508
Anasco, PR		
Cabo Rojo, PR		
Hormigueros, PR		
Mayaguez, PR		
Sabana Grande, PR		
San German, PR		
4880 McAllen-Edinburg-Mission, TX	0.8502	0.8948
Hidalgo, TX		
4890 Medford-Ashland, OR	1.0213	1.0145
Jackson, OR		
4900 Melbourne-Titusville-Palm Bay, FL	0.9089	0.9507
Brevard, FL		
4920 *Memphis, TN–AR–MS	0.8185	0.8980
Crittenden, AR		
DeSoto, MS		
Fayette, TN		
Shelby, TN		
Tipton, TN		
4940 Merced, CA	1.0684	1.0463
Merced, CA		
5000 *Miami, FL	0.9240	0.9757
Dade, FL		
5015 *Middlesex-Somerset-Hunterdon, NJ	1.0777	1.0842
Hunterdon, NJ		
Middlesex, NJ		
Somerset, NJ		
5080 *Milwaukee-Waukesha, WI	0.9667	1.0064
Milwaukee, WI		
Ozaukee, WI		
Washington, WI		
Waukesha, WI		
5120 *Minneapolis-St. Paul, MN–WI	1.0785	1.0847
Anoka, MN		
Carver, MN		
Chisago, MN		
Dakota, MN		
Hennepin, MN		
Isanti, MN		
Ramsey, MN		
Scott, MN		
Sherburne, MN		
Washington, MN		
Wright, MN		
Pierce, WI		
St. Croix, WI		
5160 Mobile, AL	0.7999	0.8582
Baldwin, AL		
Mobile, AL		
5170 Modesto, CA	1.0135	1.0092
Stanislaus, CA		
5190 *Monmouth-Ocean, NJ	1.0842	1.0569
Monmouth, NJ		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Ocean, NJ		
5200 Monroe, LA	0.8234	0.8754
Ouachita, LA		
5240 Montgomery, AL	0.7949	0.8545
Autauga, AL		
Elmore, AL		
Montgomery, AL		
5280 Muncie, IN	0.9736	1.0113
Delaware, IN		
5330 Myrtle Beach, SC	0.7798	0.8434
Horry, SC		
5345 Naples, FL	1.0222	1.0151
Collier, FL		
5360 *Nashville, TN	0.9065	0.9630
Cheatham, TN		
Davidson, TN		
Dickson, TN		
Robertson, TN		
Rutherford TN		
Sumner, TN		
Williamson, TN		
Wilson, TN		
5380 *Nassau-Suffolk, NY	1.2852	1.2231
Nassau, NY		
Suffolk, NY		
5483 *New Haven-Bridgeport-Stamford-Waterbury-	1.2778	1.2183
Danbury, CT		
Fairfield, CT		
New Haven, CT		
5523 New London-Norwich, CT	1.2345	1.1898
New London, CT		
5560 *New Orleans, LA	0.9434	0.9897
Jefferson, LA		
Orleans, LA		
Plaquemines, LA		
St. Bernard, LA		
St. Charles, LA		
St. James, LA		
St. John The Baptist, LA		
St. Tammany, LA		
5600 *New York, NY	1.4041	1.2995
Bronx, NY		
Kings, NY		
New York, NY		
Putnam, NY		
Queens, NY		
Richmond, NY		
Rockland, NY		
Westchester, NY		
5640 *Newark, NJ	1.1057	1.1034
Essex, NJ		
Morris, NJ		
Sussex, NJ		
Union, NJ		
Warren, NJ		
5660 Newburgh, NY–PA	1.0829	1.0561
Orange, NY		
Pike, PA		
5720 *Norfolk-Virginia Beach-Newport News, VA–NC	0.8326	0.9086
Currituck, NC		
Chesapeake City, VA		
Gloucester, VA		
Hampton City, VA		
Isle of Wight, VA		
James City, VA		
Mathews, VA		
Newport News City, VA		
Norfolk City, VA		
Poquoson City, VA		
Portsmouth City, VA		
Suffolk City, VA		
Virginia Beach City, VA		
Williamsburg City, VA		
York, VA		
5775 *Oakland, CA	1.5113	1.3666
Alameda, CA		
Contra Costa, CA		
5790 Ocala, FL	0.8999	0.9303
Marion, FL		
5800 Odessa-Midland, TX	0.8552	0.8984
Ector, TX		
Midland, TX		
5880 *Oklahoma City, OK	0.8463	0.9188
Canadian, OK		
Cleveland, OK		
Logan, OK		
McClain, OK		
Oklahoma, OK		
Pottawatomie, OK		
5910 Olympia, WA	1.0713	1.0483
Thurston, WA		
5920 Omaha, NE–IA	0.9425	0.9603
Pottawattamie, IA		
Cass, NE		
Douglas, NE		
Sarpy, NE		
Washington, NE		
5945 *Orange County, CA	1.1929	1.1622
Orange, CA		
5960 *Orlando, FL	0.9491	0.9938
Lake, FL		
Orange, FL		
Osceola, FL		
Seminole, FL		
5990 Owensboro, KY	0.7578	0.8270
Daviess, KY		
6015 Panama City, FL	0.8080	0.8642
Bay, FL		
6020 Parkersburg-Marietta, WV–OH	0.7895	0.8506
Washington, OH		
Wood, WV		
6080 Pensacola, FL	0.8212	0.8738
Escambia, FL		
Santa Rosa, FL		
6120 Peoria-Pekin, IL	0.8923	0.9249
Peoria, IL		
Tazewell, IL		
Woodford, IL		
6160 *Philadelphia, PA–NJ	1.1197	1.1129
Burlington, NJ		
Camden, NJ		
Gloucester, NJ		
Salem, NJ		
Bucks, PA		
Chester, PA		
Delaware, PA		
Montgomery, PA		
Philadelphia, PA		
6200 *Phoenix-Mesa, AZ	0.9832	1.0181
Maricopa, AZ		
Pinal, AZ		
6240 Pine Bluff, AR	0.7904	0.8512
Jefferson, AR		
6280 *Pittsburgh, PA	0.9726	1.0106
Allegheny, PA		
Beaver, PA		
Butler, PA		
Fayette, PA		
Washington, PA		
Westmoreland, PA		
6323 Pittsfield, MA	1.0570	1.0387
Berkshire, MA		
6360 Ponce, PR	0.4500	0.5788
Guayanilla, PR		
Juana Diaz, PR		
Penuelas, PR		
Ponce, PR		
Villalba, PR		
Yauco, PR		
6403 Portland, ME	0.9615	0.9735
Cumberland, ME		
Sagadahoc, ME		
York, ME		
6440 *Portland-Vancouver, OR–WA	1.1267	1.1177
Clackamas, OR		
Columbia, OR		
Multnomah, OR		
Washington, OR		
Yamhill, OR		
Clark, WA		
6483 Providence-Warwick-Pawtucket, RI	1.1116	1.0751
Bristol, RI		
Kent, RI		
Newport, RI		
Providence, RI		
Washington, RI		
6520 Provo-Orem, UT	1.0139	1.0095
Utah, UT		
6560 Pueblo, CO	0.8302	0.8804
Pueblo, CO		
6580 Punta Gorda, FL	0.8284	0.8790
Charlotte, FL		
6600 Racine, WI	0.8855	0.9201
Racine, WI		
6640 Raleigh-Durham-Chapel Hill, NC	0.9740	0.9821
Chatham, NC		
Durham, NC		
Franklin, NC		
Johnston, NC		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Orange, NC Wake, NC		
6660 Rapid City, SD ... Pennington, SD	0.8493	0.8942
6680 Reading, PA ..... Berks, PA	0.9467	0.9728
6690 Redding, CA ..... Shasta, CA	1.1631	1.1090
6720 Reno, NV ..... Washoe, NV	1.1043	1.0703
6740 Richland-Kennewick-Pasco, WA ..... Benton, WA Franklin, WA	0.9993	0.9995
6760 Richmond-Petersburg, VA ..... Charles City County, VA Chesterfield, VA Colonial Heights City, VA Dinwiddie, VA Goochland, VA Hanover, VA Henrico, VA Hopewell City, VA New Kent, VA Petersburg City, VA Powhatan, VA Prince George, VA Richmond City, VA	0.9189	0.9437
6780 *Riverside-San Bernardino, CA ..... Riverside, CA San Bernardino, CA	1.1251	1.1166
6800 Roanoke, VA ..... Botetourt, VA Roanoke, VA Roanoke City, VA Salem City, VA	0.8721	0.9105
6820 Rochester, MN Olmsted, MN	1.0452	1.0307
6840 *Rochester, NY Genesee, NY Livingston, NY Monroe, NY Ontario, NY Orleans, NY Wayne, NY	0.9611	1.0024
6880 Rockford, IL ..... Boone, IL Ogle, IL Winnebago, IL	0.9015	0.9315
6895 Rocky Mount, NC ..... Edgecombe, NC Nash, NC	0.8951	0.9269
6920 *Sacramento, CA El Dorado, CA Placer, CA Sacramento, CA	1.2382	1.1923
6960 Saginaw-Bay City-Midland, MI ..... Bay, MI Midland, MI Saginaw, MI	0.9605	0.9728
6980 St. Cloud, MN .... Benton, MN Stearns, MN	0.9478	0.9640
7000 St. Joseph, MO Andrews, MO Buchanan, MO	0.8570	0.8997
7040 *St. Louis, MO–IL ..... Clinton, IL Jersey, IL Madison, IL Monroe, IL St. Clair, IL Franklin, MO Jefferson, MO Lincoln, MO St. Charles, MO St. Louis, MO St. Louis City, MO Warren, MO	0.8926	0.9529
7080 Salem, OR ..... Marion, OR Polk, OR	0.9749	0.9901
7120 Salinas, CA ..... Monterey, CA	1.3835	1.2489
7160 *Salt Lake City-Ogden, UT ..... Davis, UT Salt Lake, UT Weber, UT	0.9677	1.0071
7200 San Angelo, TX Tom Green, TX	0.7594	0.8282
7240 *San Antonio, TX Bexar, TX Comal, TX Guadalupe, TX	0.8365	0.9115
7320 *San Diego, CA San Diego, CA	1.2183	1.1791
7360 *San Francisco, CA ..... Marin, CA San Francisco, CA San Mateo, CA	1.4210	1.3102
7400 *San Jose, CA ... Santa Clara, CA	1.4435	1.3244
7440 *San Juan-Bayamon, PR ..... Aguas Buenas, PR Barceloneta, PR Bayamon, PR Canovanas, PR Carolina, PR Catano, PR Ceiba, PR Comerio, PR Corozal, PR Dorado, PR Fajardo, PR Florida, PR Guaynabo, PR Humacao, PR Juncos, PR Los Piedras, PR Loiza, PR Luguillo, PR Manati, PR Morovis, PR Naguabo, PR Naranjito, PR Rio Grande, PR San Juan, PR Toa Alta, PR Toa Baja, PR Trujillo Alto, PR Vega Alta, PR Vega Baja, PR Yabucoa, PR	0.4616	0.6066
7460 San Luis Obispo-Atascadero-Paso Robles, CA ..... San Luis Obispo, CA	1.1587	1.1061
7480 Santa Barbara-Santa Maria-Lompoc, CA ..... Santa Barbara, CA	1.1267	1.0851
7485 Santa Cruz-Watsonville, CA ..... Santa Cruz, CA	1.3551	1.2313
7490 Santa Fe, NM .... Los Alamos, NM Santa Fe, NM	1.0847	1.0573
7500 Santa Rosa, CA Sonoma, CA	1.2558	1.1688
7510 Sarasota-Bradenton, FL ..... Manatee, FL Sarasota, FL	0.9770	0.9842
7520 Savannah, GA ... Bryan, GA Chatham, GA Effingham, GA	1.0089	1.0061
7560 Scranton–Wilkes-Barre–Hazleton, PA ... Columbia, PA Lackawanna, PA Luzerne, PA Wyoming, PA	0.8767	0.9138
7600 *Seattle-Bellevue-Everett, WA ..... Island, WA King, WA Snohomish, WA	1.1410	1.1274
7610 Sharon, PA	0.8764	0.9136
7620 Sheboygan, WI Sheboygan, WI	0.7782	0.8422
7640 Sherman-Denison, TX ..... Grayson, TX	0.8650	0.9055
7680 Shreveport-Bossier City, LA ..... Bossier, LA Caddo, LA Webster, LA	0.9379	0.9570
7720 Sioux City, IA–NE ..... Woodbury, IA Dakota, NE	0.8331	0.8825
7760 Sioux Falls, SD Lincoln, SD Minnehaha, SD	0.8606	0.9023
7800 South Bend, IN St. Joseph, IN	0.9957	0.9971

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
7840 Spokane, WA .... Spokane, WA	1.0548	1.0372
7880 Springfield, IL .... Menard, IL Sangamon, IL	0.8783	0.9150
7920 Springfield, MO Christian, MO Greene, MO Webster, MO	0.7840	0.8465
8003 Springfield, MA Hampden, MA Hampshire, MA	1.0609	1.0552
8050 State College, PA ..... Centre, PA	0.8875	0.9215
8080 Steubenville-Weirton, OH–WV ..... Jefferson, OH Brooke, WV Hancock, WV	0.8244	0.9024
8120 Stockton-Lodi, CA ..... San Joaquin, CA	1.1417	1.0997
8140 Sumter, SC ..... Sumter, SC	0.7716	0.8373
8160 Syracuse, NY .... Cayuga, NY Madison, NY Onondaga, NY Oswego, NY	0.9406	0.9589
8200 Tacoma, WA ..... Pierce, WA	1.0891	1.0655
8240 Tallahassee, FL Gadsden, FL Leon, FL	0.8332	0.8825
8280 *Tampa-St. Petersburg-Clearwater, FL ..... Hernando, FL Hillsborough, FL Pasco, FL Pinellas, FL	0.9322	0.9817
8320 Terre Haute, IN Clay, IN Vermillion, IN Vigo, IN	0.8611	0.9027
8360 Texarkana, AR-Texarkana, TX ..... Miller, AR Bowie, TX	0.8484	0.8935
8400 Toledo, OH ..... Fulton, OH Lucas, OH Wood, OH	1.0383	1.0445
8440 Topeka, KS ..... Shawnee, KS	1.0108	1.0074
8480 Trenton, NJ ..... Mercer, NJ	1.0572	1.0388
8520 Tucson, AZ ..... Pima, AZ	0.9050	0.9339
8560 Tulsa, OK ..... Creek, OK Osage, OK Rogers, OK Tulsa, OK Wagoner, OK	0.8113	0.8666
8600 Tuscaloosa, AL	0.7723	0.8378
Tuscaloosa, AL 8640 Tyler, TX ..... Smith, TX	1.0158	1.0108
8680 Utica-Rome, NY Herkimer, NY Oneida, NY	0.8421	0.8890
8720 Vallejo-Fairfield-Napa, CA ..... Napa, CA Solano, CA	1.3483	1.2271
8735 Ventura, CA ..... Ventura, CA	1.1169	1.0786
8750 Victoria, TX ..... Victoria, TX	0.8478	0.8931
8760 Vineland-Millville-Bridgeton, NJ ..... Cumberland, NJ	1.0015	1.0019
8780 Visalia-Tulare-Porterville, CA ..... Tulare, CA	1.0174	1.0119
8800 Waco, TX ..... McLennan, TX	0.7789	0.8427
8840 *Washington, DC–MD–VA–WV ..... District of Columbia, DC Calvert, MD Charles, MD Frederick, MD Montgomery, MD Prince Georges, MD Alexandria City, VA Arlington, VA Clarke, VA Culpepper, VA Fairfax, VA Fairfax City, VA Falls Church City, VA Fauquier, VA Fredericksburg City, VA King George, VA Loudoun, VA Manassas City, VA Manassas Park City, VA Prince William, VA Spotsylvania, VA Stafford, VA Warren, VA Berkeley, WV Jefferson, WV	1.0842	1.0886
8920 Waterloo-Cedar Falls, IA ..... Black Hawk, IA	0.8724	0.9108
8940 Wausau, WI ..... Marathon, WI	1.0347	1.0236
8960 West Palm Beach-Boca Raton, FL ..... Palm Beach, FL	1.0016	1.0036
9000 Wheeling, OH–WV ..... Belmont, OH Marshall, WV Ohio, WV	0.7580	0.8313
9040 Wichita, KS	0.9447	0.9618
Butler, KS Harvey, KS Sedgwick, KS		
9080 Wichita Falls, TX Archer, TX Wichita, TX	0.8070	0.8634
9140 Williamsport, PA Lycoming, PA	0.8487	0.8937
9160 Wilmington-Newark, DE–MD ..... New Castle, DE Cecil, MD	1.1341	1.1063
9200 Wilmington, NC New Hanover, NC Brunswick, NC	0.9072	0.9355
9260 Yakima, WA ..... Yakima, WA	1.0049	1.0034
9270 Yolo, CA ..... Yolo, CA	1.1470	1.0985
9280 York, PA ..... York, PA	0.9124	0.9391
9320 Youngstown-Warren, OH ..... Columbiana, OH Mahoning, OH Trumbull, OH	0.9764	0.9838
9340 Yuba City, CA .... Sutter, CA Yuba, CA	1.0437	1.0297
9360 Yuma, AZ ..... Yuma, AZ	0.9518	0.9667

*Large Urban Area

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS

Nonurban area	Wage index	GAF
Alabama	0.7160	0.7955
Alaska	1.2472	1.2550
Arizona	0.7946	0.8543
Arkansas	0.7000	0.7833
California	0.9991	1.0010
Colorado	0.8156	0.8697
Connecticut	1.2788	1.2189
Delaware	0.9464	0.9630
Florida	0.8677	0.9084
Georgia	0.7659	0.8331
Hawaii	1.0268	1.0771
Idaho	0.8356	0.8843
Illinois	0.7567	0.8286
Indiana	0.8119	0.8718
Iowa	0.7394	0.8132
Kansas	0.7113	0.7922
Kentucky	0.7772	0.8419
Louisiana	0.7284	0.8055
Maine	0.8335	0.8827
Maryland	0.8446	0.8903
Massachusetts	1.0794	1.0537
Michigan	0.8837	0.9188
Minnesota	0.8161	0.8704
Mississippi	0.6808	0.7685
Missouri	0.7249	0.8044

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS—Continued

Nonurban area	Wage index	GAF
Montana	0.8137	0.8683
Nebraska	0.7245	0.8020
Nevada	0.8795	0.9158
New Hampshire	0.9776	0.9895
New Jersey [1]		
New Mexico	0.7873	0.8489
New York	0.8565	0.8994
North Carolina	0.7945	0.8565
North Dakota	0.7370	0.8114
Ohio	0.8349	0.8909
Oklahoma	0.6963	0.7805
Oregon	0.9715	0.9813
Pennsylvania	0.8480	0.8939
Puerto Rico	0.4182	0.5505
Rhode Island [1]		
South Carolina	0.7679	0.8356
South Dakota	0.7085	0.7898
Tennessee	0.7372	0.8116
Texas	0.7430	0.8166
Utah	0.8854	0.9200
Vermont	0.8941	0.9287
Virginia	0.7760	0.8422
Washington	0.9956	0.9978
West Virginia	0.7943	0.8541
Wisconsin	0.8449	0.8914
Wyoming	0.8202	0.8731

[1] All counties within the State are classified as urban.

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED

Area reclassified to	Wage index	GAF
Abilene, TX	0.8055	0.8623
Albuquerque, NM	0.9390	0.9578
Alexandria, LA	0.8213	0.8739
Amarillo, TX	0.8557	0.8988
Anchorage, AK	1.3285	1.2147
Asheville, NC	0.9365	0.9561
Atlanta, GA	0.9986	0.9990
Bangor, ME	0.9412	0.9594
Baton Rouge, LA	0.8442	0.8905
Benton Harbor, MI	0.8553	0.8985
Benton Harbor, MI (Rural Michigan Hosp.)	0.8837	0.9188
Billings, MT	0.8903	0.9235
Birmingham, AL	0.9047	0.9337
Bismarck, ND	0.7976	0.8565
Boise City, ID	0.9269	0.9493
Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	1.1639	1.1095
Caguas, PR	0.4661	0.5929
Champaign-Urbana, IL	0.8999	0.9303
Charleston-North Charleston, SC	0.8984	0.9293
Charlotte-Gastonia-Rock Hill, NC–SC	0.9631	0.9746
Charlottesville, VA	0.9006	0.9308
Chattanooga, TN–GA	0.8857	0.9210
Chicago, IL	1.0653	1.0443

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area reclassified to	Wage index	GAF
Cincinnati, OH–KY–IN	0.9477	0.9639
Cleveland-Lorain-Elyria, OH	0.9908	0.9937
Columbia, MO	0.8919	0.9246
Columbus, OH	0.9699	0.9793
Dallas, TX	0.9530	0.9676
Davenport-Moline-Rock Island, IA–IL	0.8407	0.8880
Denver, CO	1.0291	1.0198
Des Moines, IA	0.8772	0.9142
Duluth-Superior, MN–WI	0.9437	0.9611
Dutchess County, NY	1.0309	1.0211
Elkhart-Goshen, IN	0.8820	0.9176
Eugene-Springfield, OR	1.1503	1.1006
Fargo-Moorhead, ND–MN	0.8860	0.9205
Fayetteville, NC	0.8658	0.9060
Flagstaff, AR–UT	0.8848	0.9196
Flint, MI	1.1273	1.0855
Florence, AL	0.8157	0.8698
Florence, SC	0.8614	0.9029
Fort Lauderdale, FL	1.0968	1.0653
Fort Pierce-Port St. Lucie, FL	1.0049	1.0034
Fort Smith, AR–OK	0.7885	0.8498
Fort Walton Beach, FL	0.8978	0.9288
Fort Worth-Arlington, TX	1.0095	1.0065
Gadsden, AL	0.8901	0.9234
Gary, IN	0.9176	0.9428
Grand Forks, ND–MN	0.9228	0.9465
Grand Junction, CO	0.8847	0.9195
Grand Rapids-Muskegon-Holland, MI	1.0088	1.0060
Great Falls, MT	0.9007	0.9309
Greeley, CO	0.9409	0.9591
Green Bay, WI	0.9387	0.9576
Greensboro-Winston-Salem-High Point, NC	0.9327	0.9534
Greenville-Spartanburg-Anderson, SC	0.8947	0.9266
Hartford, CT	1.2218	1.1470
Honolulu, HI	1.1487	1.0996
Houston, TX	0.9790	0.9856
Huntington-Ashland, WV–KY–OH	0.9194	0.9441
Huntsville, AL	0.8040	0.8612
Indianapolis, IN	0.9833	0.9885
Jackson, MS	0.7906	0.8514
Jacksonville, FL	0.9018	0.9317
Johnson City-Kingsport-Bristol, TN–VA	0.8921	0.9248
Joplin, MO	0.7409	0.8144
Kalamazoo-Battlecreek, MI	1.0462	1.0314
Kansas City, KS–MO	0.9522	0.9670
Knoxville, TN	0.8520	0.8961
Lafayette, LA	0.8183	0.8717
Lansing-East Lansing, MI	1.0016	1.0011
Las Vegas, NV–AZ	1.0894	1.0604
Lexington, KY	0.8387	0.8865
Lima, OH	0.8752	0.9128
Lincoln, NE	0.9059	0.9346
Little Rock-North Little Rock, AR	0.8616	0.9030
Longview-Marshall, TX	0.8495	0.8943
Los Angeles-Long Beach, CA	1.2396	1.1585

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area reclassified to	Wage index	GAF
Louisville, KY–IN	0.9445	0.9617
Macon, GA	0.8460	0.8918
Madison, WI	1.0048	1.0033
Mansfield, OH	0.8543	0.8978
Medford-Ashland, OR	1.0213	1.0145
Memphis, TN–AR–MS	0.8185	0.8718
Middlesex-Somerset-Hunterdon, NJ	1.0777	1.0526
Milwaukee-Waukesha, WI	0.9667	0.9771
Minneapolis-St. Paul, MN–WI	1.0785	1.0531
Modesto, CA	1.0135	1.0092
Monmouth-Ocean, NJ	1.0572	1.0388
Montgomery, AL	0.7949	0.8545
Nashville, TN	0.9065	0.9350
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2778	1.1828
New London-Norwich, CT	1.2345	1.1552
New Orleans, LA	0.9434	0.9609
New York, NY	1.4041	1.2616
Newark, NJ	1.0956	1.0645
Oakland, CA	1.5113	1.3268
Odessa-Midland, TX	0.8552	0.8984
Oklahoma City, OK	0.8463	0.8920
Omaha, NE–IA	0.9425	0.9603
Orange County, CA	1.1929	1.1284
Peoria-Pekin, IL	0.8923	0.9249
Philadelphia, PA–NJ	1.1197	1.0805
Pittsburgh, PA	0.9564	0.9699
Portland, ME	0.9615	0.9735
Portland-Vancouver, OR–WA	1.1267	1.0851
Provo-Orem, UT	1.0139	1.0095
Raleigh-Durham-Chapel Hill, NC	0.9615	0.9735
Rapid City, SD	0.8493	0.8942
Roanoke, VA	0.8721	0.9105
Rochester, MN	1.0452	1.0307
Rockford, IL	0.9015	0.9315
Sacramento, CA	1.2382	1.1576
Saginaw-Bay City-Midland, MI	0.9605	0.9728
St. Cloud, MN	0.9478	0.9640
St. Louis, MO–IL	0.8926	0.9251
Salt Lake City-Ogden, UT	0.9677	0.9778
San Diego, CA	1.2183	1.1448
San Francisco, CA	1.4210	1.2720
San Jose, CA	1.4435	1.2858
Santa Rosa, CA	1.2430	1.1606
Sarasota-Bradenton, FL	0.9770	0.9842
Seattle-Bellevue-Everett, WA	1.1410	1.0945
Sharon, PA	0.8764	0.9136
Sherman-Denison, TX	0.8650	0.9055
Sioux Falls, SD	0.8606	0.9023
South Bend, IN	0.9957	0.9971
Springfield, IL	0.8783	0.9150
Springfield, MO	0.7840	0.8465
Stockton-Lodi, CA	1.1417	1.0950
Syracuse, NY	0.9406	0.9589
Tacoma, WA	1.0891	1.0602
Tampa-St. Petersburg-Clearwater, FL	0.9322	0.9531

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area reclassified to	Wage index	GAF
Texarkana, AR-Texarkana, TX	0.8484	0.8935
Toledo, OH	1.0383	1.0261
Topeka, KS	0.9817	0.9874
Tucson, AZ	0.9050	0.9339
Tulsa, OK	0.8113	0.8666
Tyler, TX	0.9717	0.9805
Victoria, TX	0.8259	0.8772
Washington, DC–MD–VA–WV	1.0842	1.0569
Waterloo-Cedar Falls, IA	0.8601	0.9019
Wausau, WI	0.9720	0.9807
Wichita, KS	0.9282	0.9503
Rural Alabama	0.7160	0.7955
Rural Florida	0.8677	0.9074
Rural Kentucky	0.7772	0.8415
Rural Louisiana	0.7284	0.8049
Rural Michigan	0.8837	0.9188
Rural Minnesota	0.8161	0.8701
Rural New Hampshire	0.9776	0.9846
Rural North Carolina	0.7945	0.8542
Rural Virginia	0.7760	0.8406
Rural Washington	0.9956	0.9970
Rural West Virginia	0.7943	0.8541
Rural Wyoming	0.8202	0.8731

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS

Urban area	Average hourly wage
Abilene, TX	15.4795
Aguadilla, PR	8.6418
Akron, OH	19.2662
Albany, GA	16.2968
Albany-Schenectady-Troy, NY	16.6016
Albuquerque, NM	18.3100
Alexandria, LA	15.8746
Allentown-Bethlehem-Easton, PA	19.5376
Altoona, PA	18.5951
Amarillo, TX	16.6936
Anchorage, AK	25.8567
Ann Arbor, MI	22.8035
Anniston, AL	15.3104
Appleton-Oshkosh-Neenah, WI	17.3835
Arecibo, PR	9.0343
Asheville, NC	18.2517
Athens, GA	18.0640
Atlanta, GA	19.6832
Atlantic-Cape May, NJ	21.6594
Augusta-Aiken, GA–SC	17.2642
Austin-San Marcos, TX	18.0500
Bakersfield, CA	19.9031
Baltimore, MD	19.1581
Bangor, ME	18.3630
Barnstable-Yarmouth, MA	26.6928
Baton Rouge, LA	16.4700
Beaumont-Port Arthur, TX	16.7355
Bellingham, WA	22.1285
Benton Harbor, MI	16.5971
Bergen-Passaic, NJ	22.8591
Billings, MT	17.3702
Biloxi-Gulfport-Pascagoula, MS	16.7252
Binghamton, NY	17.2505
Birmingham, AL	17.6503
Bismarck, ND	15.0933
Bloomington, IN	16.8155
Bloomington-Normal, IL	17.4035
Boise City, ID	18.0695
Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	22.7069
Boulder-Longmont, CO	18.3061
Brazoria, TX	17.9908
Bremerton, WA	21.3152
Brownsville-Harlingen-San Benito, TX	16.7030
Bryan-College Station, TX	17.0898
Buffalo-Niagara Falls, NY	17.7977
Burlington, VT	17.8037
Caguas, PR	9.0488
Canton-Massillon, OH	16.9098
Casper, WY	17.2484
Cedar Rapids, IA	16.5386
Champaign-Urbana, IL	18.3634
Charleston-North Charleston, SC	17.5265
Charleston, WV	18.6261
Charlotte-Gastonia-Rock Hill, NC–SC	18.7900
Charlottesville, VA	17.9005
Chattanooga, TN–GA	17.2991
Cheyenne, WY	15.0126
Chicago, IL	20.9843
Chico-Paradise, CA	20.3689
Cincinnati, OH–KY–IN	18.4886
Clarksville-Hopkinsville, TN–KY	15.0873
Cleveland-Lorain-Elyria, OH	19.3306
Colorado Springs, CO	18.4479
Columbia, MO	17.4002
Columbia, SC	17.9066
Columbus, GA–AL	14.9336
Columbus, OH	18.9232
Corpus Christi, TX	16.8587
Cumberland, MD–WV	16.8031
Dallas, TX	18.5928
Danville, VA	16.6152
Davenport-Moline-Rock Island, IA–IL	16.4021
Dayton-Springfield, OH	18.6930
Daytona Beach, FL	17.3459
Decatur, AL	16.3934
Decatur, IL	15.3452
Denver, CO	20.0780
Des Moines, IA	17.1139
Detroit, MI	20.9694
Dothan, AL	15.1351
Dover, DE	17.5916
Dubuque, IA	15.8987
Duluth-Superior, MN–WI	18.4105
Dutchess County, NY	20.6881
Eau Claire, WI	16.9692
El Paso, TX	18.5059
Elkhart-Goshen, IN	17.2083
Elmira, NY	16.4576
Enid, OK	15.3724
Erie, PA	17.8263
Eugene-Springfield, OR	22.0384
Evansville, Henderson, IN–KY	17.5397
Fargo-Moorhead, ND–MN	17.5775
Fayetteville, NC	17.6077
Fayetteville-Springdale-Rogers, AR	14.1177
Flagstaff, AZ–UT	17.6344
Flint, MI	21.9933
Florence, AL	15.5886
Florence, SC	16.8047
Fort Collins-Loveland, CO	20.7345
Fort Lauderdale, FL	20.5796
Fort Myers-Cape Coral, FL	17.7400
Fort Pierce-Port St. Lucie, FL	19.8836
Fort Smith, AR–OK	15.3772
Fort Walton Beach, FL	17.9217
Fort Wayne, IN	17.2046
Fort Worth-Arlington, TX	19.6953
Fresno, CA	21.8549
Gadsden, AL	17.3656
Gainesville, FL	18.4465
Galveston-Texas City, TX	21.5032
Gary, IN	18.8135
Glens Falls, NY	16.6999
Goldsboro, NC	16.4109
Grand Forks, ND–MN	17.6200
Grand Junction, CO	16.2899
Grand Rapids-Muskegon-Holland, MI	19.6810
Great Falls, MT	16.9748
Greeley, CO	18.9481
Green Bay, WI	17.6730
Greensboro-Winston-Salem-High Point, NC	18.1974
Greenville, NC	17.7503
Greenville-Spartanburg-Anderson, SC	17.4547
Hagerstown, MD	17.9394
Hamilton-Middletown, OH	18.5631
Harrisburg-Lebanon-Carlisle, PA	19.8630
Hartford, CT	24.1823
Hattiesburg, MS	14.1809
Hickory-Morganton-Lenoir, NC	16.8672
Honolulu, HI	22.4099
Houma, LA	15.3009
Houston, TX	19.1004
Huntington-Ashland, WV–KY–OH	17.9378
Huntsville, AL	15.8903
Indianapolis, IN	19.4109
Iowa City, IA	18.3037
Jackson, MI	17.6864
Jackson, MS	15.3259
Jackson, TN	16.2704
Jacksonville, FL	17.5917
Jacksonville, NC	13.7955
Jamestown, NY	14.9815
Janesville-Beloit, WI	16.9030
Jersey City, NJ	22.2562
Johnson City-Kingsport-Bristol, TN–VA	17.3717
Johnstown, PA	16.4213
Joplin, MO	14.3989
Kalamazoo-Battlecreek, MI	20.6127
Kankakee, IL	17.5542
Kansas City, KS–MO	18.5772
Kenosha, WI	17.8819
Killeen-Temple, TX	20.3189
Knoxville, TN	16.6222
Kokomo, IN	16.7962
La Crosse, WI–MN	16.8513
Lafayette, LA	15.9607
Lafayette, IN	17.1635
Lake Charles, LA	15.7084
Lakeland-Winter Haven, FL	17.1559
Lancaster, PA	18.7384
Lansing-East Lansing, MI	19.5408
Laredo, TX	13.8360
Las Cruces, NM	16.6145

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Las Vegas, NV–AZ	21.2545
Lawrence, KS	16.8098
Lawton, OK	16.2681
Lewiston-Auburn, ME	18.3998
Lexington, KY	16.3501
Lima, OH	17.0746
Lincoln, NE	17.9352
Little Rock-North Little Rock, AR	16.8095
Longview-Marshall, TX	16.8433
Los Angeles-Long Beach, CA	24.1067
Louisville, KY–IN	18.4271
Lubbock, TX	16.6316
Lynchburg, VA	15.6776
Macon, GA	17.2388
Madison, WI	19.6027
Mansfield, OH	16.6677
Mayaguez, PR	8.1673
McAllen-Edinburg-Mission, TX	16.5870
Medford-Ashland, OR	19.6857
Melbourne-Titusville-Palm Bay, FL	17.7314
Memphis, TN–AR–MS	15.9681
Merced, CA	20.8439
Miami, FL	19.3734
Middlesex-Somerset-Hunterdon, NJ	21.0732
Milwaukee-Waukesha, WI	18.8591
Minneapolis-St. Paul, MN–WI	21.0411
Mobile, AL	15.6052
Modesto, CA	20.7262
Monmouth-Ocean, NJ	21.1523
Monroe, LA	16.0633
Montgomery, AL	15.5087
Muncie, IN	18.9936
Myrtle Beach, SC	15.2138
Naples, FL	19.9423
Nashville, TN	17.6844
Nassau-Suffolk, NY	26.4295
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	24.8405
New London-Norwich, CT	23.9754
New Orleans, LA	18.4047
New York, NY	27.3928
Newark, NJ	22.9650
Newburgh, NY–PA	21.1274
Norfolk-Virginia Beach-Newport News, VA–NC	16.2433
Oakland, CA	29.3295
Ocala, FL	17.5573
Odessa-Midland, TX	16.5854
Oklahoma City, OK	16.5112
Olympia, WA	20.9003
Omaha, NE–IA	18.3867
Orange County, CA	23.3969
Orlando, FL	18.5157
Owensboro, KY	14.7838
Panama City, FL	15.7629
Parkersburg-Marietta, WV–OH	15.4018
Pensacola, FL	16.0203
Peoria-Pekin, IL	17.4092
Philadelphia, PA–NJ	21.8450
Phoenix-Mesa, AZ	19.1821
Pine Bluff, AR	15.4205
Pittsburgh, PA	18.9757
Pittsfield, MA	20.6216
Ponce, PR	8.7784
Portland, ME	18.7580
Portland-Vancouver, OR–WA	21.9821
Providence-Warwick, RI	21.6876
Provo-Orem, UT	19.7809

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Pueblo, CO	16.1970
Punta Gorda, FL	16.1612
Racine, WI	17.2751
Raleigh-Durham-Chapel Hill, NC	19.0031
Rapid City, SD	16.5325
Reading, PA	18.4690
Redding, CA	22.6922
Reno, NV	21.5443
Richland-Kennewick-Pasco, WA	19.4956
Richmond-Petersburg, VA	17.9271
Riverside-San Bernardino, CA	22.2324
Roanoke, VA	17.0151
Rochester, MN	20.3908
Rochester, NY	18.7505
Rockford, IL	17.5872
Rocky Mount, NC	17.4626
Sacramento, CA	24.1558
Saginaw-Bay City-Midland, MI	18.5818
St. Cloud, MN	18.4907
St. Joseph, MO	16.7196
St. Louis, MO–IL	17.4144
Salem, OR	19.0205
Salinas, CA	26.9904
Salt Lake City-Ogden, UT	18.8799
San Angelo, TX	14.8158
San Antonio, TX	16.3206
San Diego, CA	23.7299
San Francisco, CA	27.8220
San Jose, CA	28.2911
San Juan-Bayamon, PR	9.0059
San Luis Obispo-Atascadero-Paso Robles, CA	22.6053
Santa Barbara-Santa Maria-Lompoc, CA	21.9816
Santa Cruz-Watsonville, CA	26.4364
Santa Fe, NM	21.1622
Santa Rosa, CA	24.4999
Sarasota-Bradenton, FL	19.0607
Savannah, GA	19.6834
Scranton-Wilkes Barre-Hazleton, PA	17.1047
Seattle-Bellevue-Everett, WA	22.2595
Sharon, PA	17.0979
Sheboygan, WI	15.1817
Sherman-Denison, TX	16.8423
Shreveport-Bossier City, LA	18.2987
Sioux City, IA–NE	16.2539
Sioux Falls, SD	16.7892
South Bend, IN	19.4248
Spokane, WA	20.5788
Springfield, IL	17.1355
Springfield, MO	15.2957
Springfield, MA	20.6983
State College, PA	17.3139
Steubenville-Weirton, OH–WV	16.0839
Stockton-Lodi, CA	22.1532
Sumter, SC	15.0540
Syracuse, NY	18.3462
Tacoma, WA	21.2353
Tallahassee, FL	16.2555
Tampa-St. Petersburg-Clearwater, FL	18.0837
Terre Haute, IN	16.7989
Texarkana, AR-Texarkana, TX	16.5261
Toledo, OH	20.2562
Topeka, KS	19.7210
Trenton, NJ	20.6250
Tucson, AZ	17.6383
Tulsa, OK	15.8281

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Tuscaloosa, AL	15.0679
Tyler, TX	19.8177
Utica-Rome, NY	16.4296
Vallejo-Fairfield-Napa, CA	27.2883
Ventura, CA	22.5369
Victoria, TX	16.5405
Vineland-Millville-Bridgeton, NJ	19.5394
Visalia-Tulare-Porterville, CA	19.8483
Waco, TX	15.1959
Washington, DC–MD–VA–WV	21.1518
Waterloo-Cedar Falls, IA	17.0208
Wausau, WI	20.1856
West Palm Beach-Boca Raton, FL	19.9482
Wheeling, OH–WV	14.7877
Wichita, KS	18.4305
Wichita Falls, TX	15.7442
Williamsport, PA	16.5567
Wilmington-Newark, DE–MD	22.1249
Wilmington, NC	17.6987
Yakima, WA	19.6049
Yolo, CA	22.3769
York, PA	17.8006
Youngstown-Warren, OH	19.0484
Yuba City, CA	20.3622
Yuma, AZ	18.5693

TABLE 4E.—AVERAGE HOURLY WAGE FOR RURAL AREAS

Nonurban area	Average hourly wage
Alabama	13.9126
Alaska	24.3314
Arizona	15.5017
Arkansas	13.6566
California	19.4927
Colorado	15.9126
Connecticut	24.9480
Delaware	18.4636
Florida	16.9290
Georgia	14.9414
Hawaii	20.0330
Idaho	16.3016
Illinois	14.7630
Indiana	15.8402
Iowa	14.4246
Kansas	13.8771
Kentucky	15.1633
Louisiana	14.1714
Maine	16.2618
Maryland	16.4778
Massachusetts	21.0582
Michigan	17.2254
Minnesota	15.9225
Mississippi	13.2817
Missouri	14.1433
Montana	15.8750
Nebraska	14.1342
Nevada	17.1588
New Hampshire	19.0608
New Jersey [1]	.....
New Mexico	15.3596
New York	16.7103
North Carolina	15.4962
North Dakota	14.3775
Ohio	16.2883

TABLE 4E.—AVERAGE HOURLY WAGE FOR RURAL AREAS—Continued

Nonurban area	Average hourly wage
Oklahoma	13.5853
Oregon	18.9527
Pennsylvania	16.5230
Puerto Rico	8.1591
Rhode Island [1]	.....
South Carolina	14.9812
South Dakota	13.8219
Tennessee	14.3822
Texas	14.4957
Utah	17.2737
Vermont	17.4440
Virginia	15.1073
Washington	19.4229
West Virginia	15.4577
Wisconsin	16.4842
Wyoming	16.0015

[1] All counties within the State are classified as urban.

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

					Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
1		01	SURG	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.0445	7.7	11.1	32
2		01	SURG	CRANIOTOMY FOR TRAUMA AGE >17	3.0241	8.4	11.5	32
3		01	SURG	*CRANIOTOMY AGE 0–17	1.9159	12.7	12.7	37
4		01	SURG	SPINAL PROCEDURES	2.3330	5.9	9.1	30
5		01	SURG	EXTRACRANIAL VASCULAR PROCEDURES	1.5149	3.3	4.4	26
6		01	SURG	CARPAL TUNNEL RELEASE	.7359	2.4	3.4	25
7		01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC.	2.4935	8.2	12.6	32
8		01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC.	1.1419	2.8	4.1	27
9		01	MED	SPINAL DISORDERS & INJURIES	1.2522	5.4	7.7	29
10		01	MED	NERVOUS SYSTEM NEOPLASMS W CC	1.2209	5.7	8.1	30
11		01	MED	NERVOUS SYSTEM NEOPLASMS W/O CC	.8020	3.5	5.0	28
12		01	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS	.9435	5.4	7.6	29
13		01	MED	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	.7799	5.0	6.3	29
14		01	MED	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA.	1.2003	5.5	7.5	30
15		01	MED	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS.	.7232	3.5	4.4	27
16		01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.0390	4.9	6.6	29
17		01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC.	.6308	3.0	4.0	26
18		01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	.9345	4.8	6.4	29
19		01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	.6258	3.4	4.5	27
20		01	MED	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS.	2.4782	8.5	11.5	33
21		01	MED	VIRAL MENINGITIS	1.4972	5.8	7.9	30
22		01	MED	HYPERTENSIVE ENCEPHALOPATHY	.8356	3.8	4.9	28
23		01	MED	NONTRAUMATIC STUPOR & COMA	.8053	3.6	5.1	28
24		01	MED	SEIZURE & HEADACHE AGE >17 W CC	.9707	4.2	5.8	28
25		01	MED	SEIZURE & HEADACHE AGE >17 W/O CC	.5791	3.0	3.9	24
26		01	MED	SEIZURE & HEADACHE AGE 0–17	.7381	3.3	4.6	27
27		01	MED	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.3186	3.7	6.3	28
28		01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC.	1.2075	4.8	7.2	29
29		01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC.	.6382	3.0	4.1	27
30		01	MED	*TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0–17	.3240	2.0	2.0	17
31		01	MED	CONCUSSION AGE >17 W CC	.8367	3.7	5.4	28
32		01	MED	CONCUSSION AGE >17 W/O CC	.4887	2.3	3.2	21
33		01	MED	*CONCUSSION AGE 0–17	.2036	1.6	1.6	9
34		01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W CC	1.0639	4.6	6.5	29
35		01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	.6112	3.2	4.3	27
36		02	SURG	RETINAL PROCEDURES	.6156	1.3	1.6	6
37		02	SURG	ORBITAL PROCEDURES	.9280	2.7	4.0	27
38		02	SURG	PRIMARY IRIS PROCEDURES	.4217	1.8	2.5	16
39		02	SURG	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	.5162	1.5	2.0	10
40		02	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17.	.7094	2.2	3.4	26
41		02	SURG	*EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0–17.	.3298	1.6	1.6	7
42		02	SURG	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS.	.5821	1.6	2.2	13
43		02	MED	HYPHEMA	.4448	3.2	4.1	27

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
44	02	MED	ACUTE MAJOR EYE INFECTIONS	.6234	4.7	5.7	29
45	02	MED	NEUROLOGICAL EYE DISORDERS	.6514	3.1	3.8	22
46	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W CC	.7595	4.0	5.5	28
47	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	.4703	2.8	3.8	27
48	02	MED	*OTHER DISORDERS OF THE EYE AGE 0–17	.2906	2.9	2.9	27
49	03	SURG	MAJOR HEAD & NECK PROCEDURES	1.7253	4.1	5.6	28
50	03	SURG	SIALOADENECTOMY	.7677	1.7	2.1	9
51	03	SURG	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY.	.7358	1.9	3.0	21
52	03	SURG	CLEFT LIP & PALATE REPAIR	1.0971	2.1	3.6	26
53	03	SURG	SINUS & MASTOID PROCEDURES AGE >17	1.0116	2.2	3.6	26
54	03	SURG	*SINUS & MASTOID PROCEDURES AGE 0–17	.4711	3.2	3.2	22
55	03	SURG	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES.	.7844	1.9	3.0	22
56	03	SURG	RHINOPLASTY	.8247	2.1	2.8	18
57	03	SURG	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17.	.9413	2.7	4.1	27
58	03	SURG	*T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17.	.2674	1.5	1.5	4
59	03	SURG	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17.	.7521	2.3	3.7	26
60	03	SURG	*TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17.	.2037	1.5	1.5	4
61	03	SURG	MYRINGOTOMY W TUBE INSERTION AGE >17	1.2155	2.7	5.3	27
62	03	SURG	*MYRINGOTOMY W TUBE INSERTION AGE 0–17	.2884	1.3	1.3	5
63	03	SURG	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES.	1.2217	3.2	4.7	27
64	03	MED	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.1699	4.7	7.5	29
65	03	MED	DYSEQUILIBRIUM	.5192	2.7	3.4	20
66	03	MED	EPISTAXIS	.5358	2.9	3.6	21
67	03	MED	EPIGLOTTITIS	.8452	3.4	4.2	24
68	03	MED	OTITIS MEDIA & URI AGE >17 W CC	.7075	3.8	4.8	27
69	03	MED	OTITIS MEDIA & URI AGE >17 W/O CC	.5244	3.1	3.8	20
70	03	MED	OTITIS MEDIA & URI AGE 0–17	.3839	2.6	3.1	15
71	03	MED	LARYNGOTRACHEITIS	.7959	3.1	4.2	27
72	03	MED	NASAL TRAUMA & DEFORMITY	.6466	3.1	4.4	27
73	03	MED	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17.	.7483	3.7	5.0	28
74	03	MED	*OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0–17.	.3276	2.1	2.1	20
75	04	SURG	MAJOR CHEST PROCEDURES	3.1904	8.8	11.1	33
76	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.6018	9.1	12.5	33
77	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.1577	3.8	5.5	28
78	04	MED	PULMONARY EMBOLISM	1.4291	7.0	8.3	31
79	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC.	1.6310	7.2	9.3	31
80	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC.	.9481	5.4	6.6	29
81	04	MED	*RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0–17.	.9716	6.1	6.1	30
82	04	MED	RESPIRATORY NEOPLASMS	1.3347	5.7	7.9	30
83	04	MED	MAJOR CHEST TRAUMA W CC	.9738	4.9	6.4	29
84	04	MED	MAJOR CHEST TRAUMA W/O CC	.5335	2.9	3.7	24
85	04	MED	PLEURAL EFFUSION W CC	1.2229	5.6	7.4	30
86	04	MED	PLEURAL EFFUSION W/O CC	.7175	3.4	4.5	27
87	04	MED	PULMONARY EDEMA & RESPIRATORY FAILURE	1.3587	5.1	6.8	29
88	04	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	.9831	4.9	6.1	29
89	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	1.1158	5.8	7.1	30
90	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	.6995	4.3	5.1	24
91	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE 0–17	.7883	3.7	4.7	28
92	04	MED	INTERSTITIAL LUNG DISEASE W CC	1.2053	5.6	7.3	30
93	04	MED	INTERSTITIAL LUNG DISEASE W/O CC	.7551	4.0	5.0	28
94	04	MED	PNEUMOTHORAX W CC	1.1764	5.3	7.1	29
95	04	MED	PNEUMOTHORAX W/O CC	.6035	3.3	4.1	25
96	04	MED	BRONCHITIS & ASTHMA AGE >17 W CC	.8254	4.5	5.5	29
97	04	MED	BRONCHITIS & ASTHMA AGE >17 W/O CC	.6013	3.6	4.3	22
98	04	MED	BRONCHITIS & ASTHMA AGE 0–17	.8036	3.1	4.5	27
99	04	MED	RESPIRATORY SIGNS & SYMPTOMS W CC	.6868	2.7	3.5	22
100	04	MED	RESPIRATORY SIGNS & SYMPTOMS W/O CC	.5126	2.0	2.4	12
101	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	.8735	3.8	5.2	28

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
102	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	.5330	2.4	3.1	20
103	05	SURG	HEART TRANSPLANT	15.2952	28.1	39.4	52
104	05	SURG	CARDIAC VALVE PROCEDURES W CARDIAC CATH	7.3389	12.0	14.6	36
105	05	SURG	CARDIAC VALVE PROCEDURES W/O CARDIAC CATH	5.6012	9.0	10.9	33
106	05	SURG	CORONARY BYPASS W CARDIAC CATH	5.5599	10.3	11.7	34
107	05	SURG	CORONARY BYPASS W/O CARDIAC CATH	4.0741	7.8	8.8	32
108	05	SURG	OTHER CARDIOTHORACIC PROCEDURES	5.9226	9.8	12.6	34
109			NO LONGER VALID	.0000	.0	.0	0
110	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W CC	4.1674	8.2	10.9	32
111	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.2863	5.9	6.7	30
112	05	SURG	PERCUTANEOUS CARDIOVASCULAR PROCEDURES	2.0962	3.5	4.7	27
113	05	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE.	2.6919	10.6	14.4	35
114	05	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS.	1.5122	6.8	9.5	31
115	05	SURG	PERM CARDIAC PACEMAKER IMPLANT W AMI, HEART FAILURE OR SHOCK.	3.6844	9.1	11.4	33
116	05	SURG	OTH PERM CARDIAC PACEMAKER IMPLANT OR AICD LEAD OR GENERATOR PROC.	2.4158	3.9	5.4	28
117	05	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT.	1.1774	2.7	4.1	27
118	05	SURG	CARDIAC PACEMAKER DEVICE REPLACEMENT	1.5782	2.1	3.2	25
119	05	SURG	VEIN LIGATION & STRIPPING	1.1378	3.3	5.5	27
120	05	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	1.9321	5.4	9.2	29
121	05	MED	CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE.	1.6473	6.4	7.8	30
122	05	MED	CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE.	1.1617	4.4	5.3	28
123	05	MED	CIRCULATORY DISORDERS W AMI, EXPIRED	1.4519	2.7	4.7	27
124	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG.	1.3264	3.8	5.0	28
125	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG.	.9259	2.3	3.1	20
126	05	MED	ACUTE & SUBACUTE ENDOCARDITIS	2.5380	11.0	14.3	35
127	05	MED	HEART FAILURE & SHOCK	1.0268	4.8	6.2	29
128	05	MED	DEEP VEIN THROMBOPHLEBITIS	.7861	5.9	6.7	27
129	05	MED	CARDIAC ARREST, UNEXPLAINED	1.1239	2.0	3.4	26
130	05	MED	PERIPHERAL VASCULAR DISORDERS W CC	.9357	5.3	6.7	29
131	05	MED	PERIPHERAL VASCULAR DISORDERS W/O CC	.6045	4.3	5.2	28
132	05	MED	ATHEROSCLEROSIS W CC	.6834	2.9	3.6	20
133	05	MED	ATHEROSCLEROSIS W/O CC	.5543	2.3	2.9	16
134	05	MED	HYPERTENSION	.5799	3.0	3.9	23
135	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC.	.8797	3.7	5.0	28
136	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC.	.5597	2.6	3.2	18
137	05	MED	*CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0–17.	.7996	3.3	3.3	27
138	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC.	.8009	3.5	4.6	27
139	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC.	.4975	2.4	2.9	16
140	05	MED	ANGINA PECTORIS	.6210	2.8	3.5	20
141	05	MED	SYNCOPE & COLLAPSE W CC	.7129	3.4	4.5	27
142	05	MED	SYNCOPE & COLLAPSE W/O CC	.5289	2.5	3.2	18
143	05	MED	CHEST PAIN	.5233	2.1	2.6	14
144	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.0850	4.1	5.7	28
145	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	.6217	2.5	3.3	20
146	06	SURG	RECTAL RESECTION W CC	2.6401	9.8	11.3	34
147	06	SURG	RECTAL RESECTION W/O CC	1.6115	6.7	7.4	27
148	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	3.3693	11.2	13.4	35
149	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC.	1.6038	7.1	7.7	25
150	06	SURG	PERITONEAL ADHESIOLYSIS W CC	2.6786	9.5	11.7	34
151	06	SURG	PERITONEAL ADHESIOLYSIS W/O CC	1.2959	5.2	6.5	29
152	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	1.9381	7.6	9.0	32
153	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC.	1.1550	5.6	6.2	24
154	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC.	4.1880	11.6	15.0	36

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
155 ...	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC.	1.4070	4.6	5.9	29
156 ...	06	SURG	*STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0–17.	.8235	6.0	6.0	30
157 ...	06	SURG	ANAL & STOMAL PROCEDURES W CC	1.1331	4.2	5.8	28
158 ...	06	SURG	ANAL & STOMAL PROCEDURES W/O CC	.6106	2.3	2.9	18
159 ...	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC.	1.2263	4.0	5.3	28
160 ...	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC.	.7032	2.4	3.0	16
161 ...	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC.	1.0089	3.0	4.4	27
162 ...	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC.	.5710	1.7	2.2	11
163 ...	06	SURG	*HERNIA PROCEDURES AGE 0–17	.7703	2.1	2.1	11
164 ...	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC.	2.3299	8.0	9.3	32
165 ...	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC.	1.2576	5.1	5.8	25
166 ...	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC.	1.4512	4.5	5.7	29
167 ...	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC.	.8496	2.8	3.2	15
168 ...	03	SURG	MOUTH PROCEDURES W CC	1.0951	3.2	4.9	27
169 ...	03	SURG	MOUTH PROCEDURES W/O CC	.6828	2.0	2.6	15
170 ...	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	2.7448	8.5	12.5	33
171 ...	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC.	1.1297	4.0	5.4	28
172 ...	06	MED	DIGESTIVE MALIGNANCY W CC	1.2934	5.7	8.2	30
173 ...	06	MED	DIGESTIVE MALIGNANCY W/O CC	.6736	3.0	4.3	27
174 ...	06	MED	G.I. HEMORRHAGE W CC	.9962	4.4	5.6	28
175 ...	06	MED	G.I. HEMORRHAGE W/O CC	.5492	2.9	3.5	17
176 ...	06	MED	COMPLICATED PEPTIC ULCER	1.0874	4.7	6.2	29
177 ...	06	MED	UNCOMPLICATED PEPTIC ULCER W CC	.8353	4.0	5.0	28
178 ...	06	MED	UNCOMPLICATED PEPTIC ULCER W/O CC	.6122	3.0	3.6	19
179 ...	06	MED	INFLAMMATORY BOWEL DISEASE	1.1219	5.5	7.2	30
180 ...	06	MED	G.I. OBSTRUCTION W CC	.9202	4.7	6.1	29
181 ...	06	MED	G.I. OBSTRUCTION W/O CC	.5346	3.3	4.0	22
182 ...	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC.	.7791	3.8	5.0	28
183 ...	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC.	.5570	2.8	3.5	20
184 ...	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0–17.	.5366	2.7	3.8	26
185 ...	03	MED	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17.	.8467	3.7	5.2	28
186 ...	03	MED	*DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0–17.	.3139	2.9	2.9	23
187 ...	03	MED	DENTAL EXTRACTIONS & RESTORATIONS	.7211	3.1	4.3	27
188 ...	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC.	1.0593	4.5	6.1	28
189 ...	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC.	.5629	2.7	3.7	27
190 ...	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0–17	.8364	3.9	4.9	28
191 ...	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W CC	4.4227	12.0	16.2	36
192 ...	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	1.8016	6.2	8.0	30
193 ...	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC.	3.2582	11.4	13.9	35
194 ...	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC.	1.7596	6.8	8.4	31
195 ...	07	SURG	CHOLECYSTECTOMY W C.D.E. W CC	2.6806	8.8	10.5	33
196 ...	07	SURG	CHOLECYSTECTOMY W C.D.E. W/O CC	1.6252	5.9	6.8	30
197 ...	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC.	2.2636	7.5	9.1	31
198 ...	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC.	1.1769	4.3	5.0	23
199 ...	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY.	2.3744	8.3	11.1	32
200 ...	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY.	2.9783	7.6	11.9	32

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
201 ...	07	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES.	3.6216	12.1	16.6	36
202 ...	07	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.3286	5.7	7.7	30
203 ...	07	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS.	1.2511	5.5	7.7	30
204 ...	07	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.2003	5.1	6.7	29
205 ...	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC.	1.2099	5.3	7.3	29
206 ...	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC.	.7211	3.6	4.8	28
207 ...	07	MED	DISORDERS OF THE BILIARY TRACT W CC	1.0500	4.4	5.8	28
208 ...	07	MED	DISORDERS OF THE BILIARY TRACT W/O CC	.6053	2.6	3.5	21
209 ...	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY.	2.2617	5.9	6.7	23
210 ...	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC.	1.8458	7.2	8.5	31
211 ...	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC.	1.2747	5.6	6.3	23
212 ...	08	SURG	*HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0–17.	1.1483	11.1	11.1	35
213 ...	08	SURG	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS.	1.7045	7.0	9.6	31
214 ...	08	SURG	BACK & NECK PROCEDURES W CC	1.9259	4.9	6.5	29
215 ...	08	SURG	BACK & NECK PROCEDURES W/O CC	1.1135	3.0	3.7	20
216 ...	08	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	2.0775	7.9	11.1	32
217 ...	08	SURG	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS.	2.8715	10.2	15.3	34
218 ...	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W CC.	1.4562	4.8	6.2	29
219 ...	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W/O CC.	.9560	3.1	3.8	19
220 ...	08	SURG	*LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE 0–17.	.5704	5.3	5.3	29
221 ...	08	SURG	KNEE PROCEDURES W CC	1.8379	5.8	8.2	30
222 ...	08	SURG	KNEE PROCEDURES W/O CC	1.0223	3.1	4.1	27
223 ...	08	SURG	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC.	.8726	2.2	2.9	16
224 ...	08	SURG	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC.	.7418	1.9	2.3	10
225 ...	08	SURG	FOOT PROCEDURES	1.0019	3.3	5.0	27
226 ...	08	SURG	SOFT TISSUE PROCEDURES W CC	1.3708	4.4	6.7	28
227 ...	08	SURG	SOFT TISSUE PROCEDURES W/O CC	.7458	2.3	3.0	18
228 ...	08	SURG	MAJOR THUMB OR JOINT PROC, OR OTH HAND OR WRIST PROC W CC.	.9381	2.3	3.6	26
229 ...	08	SURG	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC.	.6495	1.8	2.4	14
230 ...	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR.	1.0592	3.3	5.2	27
231 ...	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR.	1.2285	3.3	5.1	27
232 ...	08	SURG	ARTHROSCOPY	1.0901	2.6	4.5	27
233 ...	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC.	1.9951	6.4	9.0	30
234 ...	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC.	1.0684	3.1	4.2	27
235 ...	08	MED	FRACTURES OF FEMUR	.8353	4.6	6.9	29
236 ...	08	MED	FRACTURES OF HIP & PELVIS	.7613	4.7	6.4	29
237 ...	08	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH.	.5622	3.3	4.4	27
238 ...	08	MED	OSTEOMYELITIS	1.3857	7.6	10.1	32
239 ...	08	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY.	1.0096	5.8	7.6	30
240 ...	08	MED	CONNECTIVE TISSUE DISORDERS W CC	1.2107	5.5	7.5	30
241 ...	08	MED	CONNECTIVE TISSUE DISORDERS W/O CC	.6063	3.5	4.6	28
242 ...	08	MED	SEPTIC ARTHRITIS	1.0535	5.8	7.7	30
243 ...	08	MED	MEDICAL BACK PROBLEMS	.7241	4.3	5.6	28
244 ...	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	.7221	4.3	5.8	28
245 ...	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC.	.4965	3.2	4.2	27

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
246 ...	08	MED	NON-SPECIFIC ARTHROPATHIES	.5901	3.6	4.6	28
247 ...	08	MED	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE.	.5539	2.9	4.0	27
248 ...	08	MED	TENDONITIS, MYOSITIS & BURSITIS	.7363	3.9	5.3	28
249 ...	08	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	.6514	2.9	4.3	27
250 ...	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC.	.6808	3.5	4.9	28
251 ...	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC.	.4625	2.5	3.3	22
252 ...	08	MED	*FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0–17.	.2478	1.8	1.8	15
253 ...	08	MED	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W CC.	.7438	4.3	5.8	28
254 ...	08	MED	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W/O CC.	.4433	2.9	3.9	25
255 ...	08	MED	*FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE 0–17.	.2885	2.9	2.9	27
256 ...	08	MED	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES.	.7724	4.0	5.7	28
257 ...	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W CC	.9021	2.8	3.4	17
258 ...	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.7099	2.2	2.5	10
259 ...	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	.8673	2.3	3.5	26
260 ...	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.6083	1.6	1.9	8
261 ...	09	SURG	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION.	.8342	1.9	2.4	12
262 ...	09	SURG	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY.	.7694	2.7	3.9	27
263 ...	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC.	2.1157	9.8	13.9	34
264 ...	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC.	1.1308	6.0	8.4	30
265 ...	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC.	1.4949	4.8	7.7	29
266 ...	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC.	.7650	2.6	3.7	27
267 ...	09	SURG	PERIANAL & PILONIDAL PROCEDURES	.8086	2.7	4.1	27
268 ...	09	SURG	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES.	.9935	2.5	4.0	27
269 ...	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.6361	6.2	9.1	30
270 ...	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	.7016	2.4	3.4	26
271 ...	09	MED	SKIN ULCERS	1.0791	6.6	8.5	31
272 ...	09	MED	MAJOR SKIN DISORDERS W CC	1.0212	5.6	7.5	30
273 ...	09	MED	MAJOR SKIN DISORDERS W/O CC	.6358	4.1	5.5	28
274 ...	09	MED	MALIGNANT BREAST DISORDERS W CC	1.0713	5.3	7.8	29
275 ...	09	MED	MALIGNANT BREAST DISORDERS W/O CC	.4984	2.5	3.6	27
276 ...	09	MED	NON-MALIGANT BREAST DISORDERS	.6443	3.9	5.1	28
277 ...	09	MED	CELLULITIS AGE >17 W CC	.8532	5.5	6.7	29
278 ...	09	MED	CELLULITIS AGE >17 W/O CC	.5775	4.3	5.1	25
279 ...	09	MED	*CELLULITIS AGE 0–17	.7187	4.2	4.2	24
280 ...	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC.	.6765	3.7	5.1	28
281 ...	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC.	.4566	2.7	3.7	24
282 ...	09	MED	*TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0–17.	.2508	2.2	2.2	19
283 ...	09	MED	MINOR SKIN DISORDERS W CC	.7034	4.1	5.5	28
284 ...	09	MED	MINOR SKIN DISORDERS W/O CC	.4375	2.9	3.9	27
285 ...	10	SURG	AMPUTAT OF LOWER LIMB FOR ENDOCRINE, NUTRIT, & METABOL DISORDERS.	2.1948	9.5	13.5	34
286 ...	10	SURG	ADRENAL & PITUITARY PROCEDURES	2.3858	6.6	8.7	31
287 ...	10	SURG	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS.	1.9722	9.4	13.4	33
288 ...	10	SURG	O.R. PROCEDURES FOR OBESITY	2.0537	5.3	7.0	29
289 ...	10	SURG	PARATHYROID PROCEDURES	1.0231	2.7	3.9	27
290 ...	10	SURG	THYROID PROCEDURES	.8827	2.1	2.8	15
291 ...	10	SURG	THYROGLOSSAL PROCEDURES	.5221	1.4	1.8	8
292 ...	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC.	2.6435	8.4	12.7	32

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
293. ...	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC.	1.2415	4.4	6.4	28
294 ...	10	MED	DIABETES AGE >35	.7604	4.3	5.7	28
295 ...	10	MED	DIABETES AGE 0–35	.7171	3.3	4.3	27
296 ...	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC.	.8939	4.7	6.4	29
297 ...	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC.	.5374	3.3	4.3	26
298 ...	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0–17.	.5036	2.3	3.0	19
299 ...	10	MED	INBORN ERRORS OF METABOLISM	.8211	3.8	5.4	28
300 ...	10	MED	ENDOCRINE DISORDERS W CC	1.1005	5.5	7.3	30
301 ...	10	MED	ENDOCRINE DISORDERS W/O CC	.6193	3.4	4.4	27
302 ...	11	SURG	KIDNEY TRANSPLANT	3.9210	10.4	12.3	34
303 ...	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM.	2.6364	8.4	10.2	32
304 ...	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC.	2.3744	7.5	10.3	31
305 ...	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC.	1.1797	3.9	4.9	28
306 ...	11	SURG	PROSTATECTOMY W CC	1.2243	4.3	6.2	28
307 ...	11	SURG	PROSTATECTOMY W/O CC	.6709	2.4	3.0	15
308 ...	11	SURG	MINOR BLADDER PROCEDURES W CC	1.5260	4.6	7.0	29
309 ...	11	SURG	MINOR BLADDER PROCEDURES W/O CC	.8858	2.3	3.0	18
310 ...	11	SURG	TRANSURETHRAL PROCEDURES W CC	1.0013	3.1	4.6	27
311 ...	11	SURG	TRANSURETHRAL PROCEDURES W/O CC	.5663	1.8	2.2	11
312 ...	11	SURG	URETHRAL PROCEDURES, AGE >17 W CC	.9118	3.1	4.8	27
313 ...	11	SURG	URETHRAL PROCEDURES, AGE >17 W/O CC	.5211	1.7	2.3	13
314 ...	11	SURG	*URETHRAL PROCEDURES, AGE 0–17	.4835	2.3	2.3	26
315 ...	11	SURG	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.0606	5.3	9.3	29
316 ...	11	MED	RENAL FAILURE	1.3066	5.4	7.6	29
317 ...	11	MED	ADMIT FOR RENAL DIALYSIS	.4837	2.0	2.8	19
318 ...	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.1233	5.0	7.2	29
319 ...	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	.5801	2.3	3.2	24
320 ...	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC.	.9052	5.1	6.4	29
321 ...	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC.	.6094	3.9	4.7	24
322 ...	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE 0–17	.5265	3.6	4.4	24
323 ...	11	MED	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	.7490	2.7	3.6	24
324 ...	11	MED	URINARY STONES W/O CC	.4161	1.7	2.1	10
325 ...	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC.	.6397	3.4	4.6	27
326 ...	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC.	.4346	2.4	3.5	19
327 ...	11	MED	*KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0–17.	.2340	3.1	3.1	27
328 ...	11	MED	URETHRAL STRICTURE AGE >17 W CC	.6929	3.1	4.3	27
329 ...	11	MED	URETHRAL STRICTURE AGE >17 W/O CC	.4536	2.1	2.8	16
330 ...	11	MED	*URETHRAL STRICTURE AGE 0–17	.3114	1.6	1.6	9
331 ...	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC.	.9926	4.6	6.2	29
332 ...	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC.	.6170	2.8	3.9	27
333 ...	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0–17.	.8641	4.3	5.9	28
334 ...	12	SURG	MAJOR MALE PELVIC PROCEDURES W CC	1.6656	5.3	6.0	23
335 ...	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O CC	1.2596	4.1	4.6	17
336 ...	12	SURG	TRANSURETHRAL PROSTATECTOMY W CC	.8859	3.2	4.1	24
337 ...	12	SURG	TRANSURETHRAL PROSTATECTOMY W/O CC	.6149	2.3	2.7	11
338 ...	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY	1.0534	3.5	5.3	27
339 ...	12	SURG	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	1.0213	3.1	4.9	27
340 ...	12	SURG	*TESTES PROCEDURES, NON-MALIGNANCY AGE 0–17	.2768	2.4	2.4	13
341 ...	12	SURG	PENIS PROCEDURES	1.0701	2.3	3.2	21
342 ...	12	SURG	CIRCUMCISION AGE >17	.7579	2.6	4.0	27
343 ...	12	SURG	*CIRCUMCISION AGE 0–17	.1503	1.7	1.7	6
344 ...	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY.	1.0086	2.3	3.5	25
345 ...	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY.	.8396	2.7	4.0	27

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
346 ...	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	.9564	4.8	6.8	29
347 ...	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC.	.5161	2.4	3.4	26
348 ...	12	MED	BENIGN PROSTATIC HYPERTROPHY W CC	.7102	3.5	4.9	28
349 ...	12	MED	BENIGN PROSTATIC HYPERTROPHY W/O CC	.4048	2.2	3.0	21
350 ...	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM.	.6631	3.9	4.8	24
351 ...	12	MED	*STERILIZATION, MALE	.2309	1.3	1.3	5
352 ...	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	.5889	2.8	4.0	27
353 ...	13	SURG	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY.	1.9266	6.7	8.4	31
354 ...	13	SURG	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC.	1.4646	5.2	6.3	28
355 ...	13	SURG	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC.	.9065	3.6	3.9	11
356 ...	13	SURG	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES.	.7377	2.6	3.0	12
357 ...	13	SURG	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY.	2.3847	8.0	9.8	32
358 ...	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC.	1.1713	4.0	4.7	19
359 ...	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC.	.8289	3.0	3.3	10
360 ...	13	SURG	VAGINA, CERVIX & VULVA PROCEDURES	.8470	2.9	3.5	17
361 ...	13	SURG	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	1.1284	2.5	3.5	23
362 ...	13	SURG	*ENDOSCOPIC TUBAL INTERRUPTION	.2950	1.4	1.4	5
363 ...	13	SURG	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY.	.6887	2.6	3.5	20
364 ...	13	SURG	D&C, CONIZATION EXCEPT FOR MALIGNANCY	.6823	2.6	3.6	27
365 ...	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES.	1.7253	5.3	8.1	29
366 ...	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	1.1948	5.3	7.7	29
367 ...	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC.	.5173	2.3	3.3	24
368 ...	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	1.0303	5.3	6.9	29
369 ...	13	MED	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS.	.5504	2.6	3.8	27
370 ...	14	SURG	CESAREAN SECTION W CC	1.0444	4.3	5.6	26
371 ...	14	SURG	CESAREAN SECTION W/O CC	.6865	3.2	3.6	11
372 ...	14	MED	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	.5471	2.4	3.3	19
373 ...	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.3584	1.6	1.9	7
374 ...	14	SURG	VAGINAL DELIVERY W STERILIZATION &/OR D&C	.6083	2.0	2.4	9
375 ...	14	SURG	*VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C.	.6696	4.4	4.4	28
376 ...	14	MED	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE.	.5972	2.4	3.5	26
377 ...	14	SURG	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE.	.8078	2.0	3.2	26
378 ...	14	MED	ECTOPIC PREGNANCY	.8157	2.5	3.0	15
379 ...	14	MED	THREATENED ABORTION	.3573	2.0	2.9	20
380 ...	14	MED	ABORTION W/O D&C	.4988	1.8	2.3	13
381 ...	14	SURG	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY.	.5212	1.6	2.3	14
382 ...	14	MED	FALSE LABOR	.2100	1.3	1.7	7
383 ...	14	MED	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS.	.4672	2.8	4.1	27
384 ...	14	MED	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS.	.4140	1.9	3.3	24
385 ...	15		*NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY.	1.3437	1.8	1.8	26
386 ...	15		*EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE.	4.4311	17.9	17.9	42
387 ...	15		*PREMATURITY W MAJOR PROBLEMS	3.0264	13.3	13.3	37
388 ...	15		*PREMATURITY W/O MAJOR PROBLEMS	1.8261	8.6	8.6	33
389 ...	15		FULL TERM NEONATE W MAJOR PROBLEMS	2.2247	8.0	10.7	32
390 ...	15		NEONATE W OTHER SIGNIFICANT PROBLEMS	1.4188	3.8	5.0	28
391 ...	15		*NORMAL NEWBORN	.1489	3.1	3.1	11
392 ...	16	SURG	SPLENECTOMY AGE >17	3.2602	8.9	11.7	33
393 ...	16	SURG	*SPLENECTOMY AGE 0–17	1.3163	9.1	9.1	33

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
394 ...	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS.	1.5902	4.5	7.9	28
395 ...	16	MED	RED BLOOD CELL DISORDERS AGE >17	.8360	3.9	5.4	28
396 ...	16	MED	RED BLOOD CELL DISORDERS AGE 0–17	.7226	2.8	3.9	27
397 ...	16	MED	COAGULATION DISORDERS	1.2574	4.4	6.1	28
398 ...	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC.	1.2106	5.2	6.6	29
399 ...	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC.	.7061	3.5	4.4	27
400 ...	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.5606	6.6	10.3	31
401 ...	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC.	2.4945	8.5	12.4	32
402 ...	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC.	1.0299	3.1	4.7	27
403 ...	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.6925	6.5	9.3	30
404 ...	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	.8070	3.7	5.1	28
405 ...	17		*ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0–17.	1.8661	4.9	4.9	29
406 ...	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R. PROC W CC.	2.6923	8.1	11.2	32
407 ...	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R. PROC W/O CC.	1.1822	3.8	4.9	28
408 ...	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R. PROC.	1.7412	5.0	8.2	29
409 ...	17	MED	RADIOTHERAPY	.9708	4.7	6.7	29
410 ...	17	MED	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	.7524	2.6	3.4	20
411 ...	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY	.3780	2.1	2.6	14
412 ...	17	MED	HISTORY OF MALIGNANCY W ENDOSCOPY	.4133	2.2	3.1	24
413 ...	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC.	1.3263	5.9	8.3	30
414 ...	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC.	.7442	3.8	5.2	28
415 ...	18	SURG	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES.	3.4473	11.4	15.7	35
416 ...	18	MED	SEPTICEMIA AGE >17	1.4862	6.2	8.2	30
417 ...	18	MED	SEPTICEMIA AGE 0–17	.7936	3.7	4.7	28
418 ...	18	MED	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	.9678	5.3	6.8	29
419 ...	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	.8993	4.4	5.7	28
420 ...	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	.6253	3.5	4.3	24
421 ...	18	MED	VIRAL ILLNESS AGE >17	.7157	3.6	4.6	28
422 ...	18	MED	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0–17.	.5217	2.9	3.7	23
423 ...	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES.	1.5864	6.3	8.7	30
424 ...	19	SURG	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS.	2.3596	10.9	17.8	35
425 ...	19	MED	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION.	.7078	3.5	4.9	27
426 ...	19	MED	DEPRESSIVE NEUROSES	.5715	4.0	5.5	28
427 ...	19	MED	NEUROSES EXCEPT DEPRESSIVE	.5544	3.7	5.3	28
428 ...	19	MED	DISORDERS OF PERSONALITY & IMPULSE CONTROL	.7352	5.2	8.5	29
429 ...	19	MED	ORGANIC DISTURBANCES & MENTAL RETARDATION	.9063	5.9	8.9	30
430 ...	19	MED	PSYCHOSES	.8422	6.9	9.8	31
431 ...	19	MED	CHILDHOOD MENTAL DISORDERS	.6694	5.0	7.5	29
432 ...	19	MED	OTHER MENTAL DISORDER DIAGNOSES	.7228	3.9	6.3	28
433 ...	20		ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	.3007	2.5	3.4	24
434 ...	20		ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W CC.	.7152	4.4	5.8	28
435 ...	20		ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W/O CC.	.4178	3.8	4.8	28
436 ...	20		ALC/DRUG DEPENDENCE W REHABILITATION THERAPY.	.8199	12.1	14.8	36
437 ...	20		ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY.	.7714	9.2	10.9	33
438 ...			NO LONGER VALID	.0000	.0	.0	0
439 ...	21	SURG	SKIN GRAFTS FOR INJURIES	1.6153	5.8	8.9	30
440 ...	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES	1.7631	6.3	9.8	30
441 ...	21	SURG	HAND PROCEDURES FOR INJURIES	.9344	2.4	4.4	26
442 ...	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W CC	2.1659	5.6	8.7	30

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
443 ...	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	.8851	2.5	3.5	26
444 ...	21	MED	TRAUMATIC INJURY AGE >17 W CC	.7310	4.0	5.3	28
445 ...	21	MED	TRAUMATIC INJURY AGE >17 W/O CC	.4754	2.8	3.8	24
446 ...	21	MED	*TRAUMATIC INJURY AGE 0–17	.2893	2.4	2.4	22
447 ...	21	MED	ALLERGIC REACTIONS AGE >17	.4908	2.1	2.8	17
448 ...	21	MED	ALLERGIC REACTIONS AGE 0–17	.0759	1.0	1.0	1
449 ...	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC.	.7907	3.0	4.4	27
450 ...	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC.	.4276	1.8	2.3	13
451 ...	21	MED	*POISONING & TOXIC EFFECTS OF DRUGS AGE 0–17	.2569	2.1	2.1	17
452 ...	21	MED	COMPLICATIONS OF TREATMENT W CC	.9448	3.8	5.4	28
453 ...	21	MED	COMPLICATIONS OF TREATMENT W/O CC	.4853	2.4	3.2	20
454 ...	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC.	.8536	3.4	5.1	27
455 ...	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC.	.4445	2.1	2.8	18
456 ...	22		BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY.	1.8816	4.0	8.4	28
457 ...	22	MED	EXTENSIVE BURNS W/O O.R. PROCEDURE	1.4446	2.4	4.8	26
458 ...	22	SURG	NON-EXTENSIVE BURNS W SKIN GRAFT	3.5465	12.0	17.0	36
459 ...	22	SURG	NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROC.	1.6693	6.7	10.3	31
460 ...	22	MED	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	.9554	4.6	6.6	29
461 ...	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES.	.9981	2.5	4.9	27
462 ...	23	MED	REHABILITATION	1.4294	11.0	14.0	35
463 ...	23	MED	SIGNS & SYMPTOMS W CC	.7074	3.8	5.2	28
464 ...	23	MED	SIGNS & SYMPTOMS W/O CC	.5040	2.8	3.7	24
465 ...	23	MED	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	.5611	2.3	3.9	26
466 ...	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	.5728	2.5	4.7	27
467 ...	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.4588	2.4	4.1	26
468 ...	.....		EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	3.5858	10.6	15.3	35
469 ...	.....		**PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS.	.0000	.0	.0	0
470 ...	.....		**UNGROUPABLE	.0000	.0	.0	0
471 ...	08	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY.	3.6043	6.8	8.0	31
472 ...	22	SURG	EXTENSIVE BURNS W O.R. PROCEDURE	11.1357	17.3	30.7	41
473 ...	17		ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17.	3.5669	8.5	14.7	32
474 ...	.....		NO LONGER VALID	.0000	.0	.0	0
475 ...	04	MED	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT.	3.6736	8.6	12.3	33
476 ...	.....	SURG	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	2.2362	10.3	13.8	34
477 ...	.....	SURG	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	1.7153	5.8	9.2	30
478 ...	05	SURG	OTHER VASCULAR PROCEDURES W CC	2.2890	5.6	8.3	30
479 ...	05	SURG	OTHER VASCULAR PROCEDURES W/O CC	1.4113	3.5	4.6	27
480 ...	.....	SURG	LIVER TRANSPLANT	12.8388	22.5	29.7	47
481 ...	.....	SURG	BONE MARROW TRANSPLANT	11.2985	29.1	32.1	53
482 ...	.....	SURG	TRACHEOSTOMY FOR FACE, MOUTH & NECK DIAGNOSES.	3.6598	11.4	15.0	35
483 ...	.....	SURG	TRACHEOSTOMY EXCEPT FOR FACE, MOUTH & NECK DIAGNOSES.	16.0114	35.9	46.2	60
484 ...	24	SURG	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	5.5711	10.4	15.5	34
485 ...	24	SURG	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TR.	3.1619	9.1	11.6	33
486 ...	24	SURG	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA.	4.8009	9.0	13.5	33
487 ...	24	MED	OTHER MULTIPLE SIGNIFICANT TRAUMA	1.9999	6.1	9.0	30
488 ...	25	SURG	HIV W EXTENSIVE O.R. PROCEDURE	4.2773	12.9	17.6	37
489 ...	25	MED	HIV W MAJOR RELATED CONDITION	1.7436	7.0	10.4	31
490 ...	25	MED	HIV W OR W/O OTHER RELATED CONDITION	1.0106	4.4	6.6	28
491 ...	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY.	1.6358	3.6	4.3	19

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
492 ...	17	MED	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	4.0624	11.2	17.4	35
493 ...	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC.	1.7085	4.2	5.9	28
494 ...	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC.	.9186	1.8	2.4	15
495 ...	.....	SURG	LUNG TRANSPLANT	9.8070	18.4	23.8	42

*Medicare data have been supplemented by data from 19 states for low volume DRGS.
**DRGS 469 and 470 contain cases which could not be assigned to valid DRGS.
Note: Geometric mean is used only to determine payment for transfer cases.
Note: Arithmetic mean is used only to determine payment for outlier cases.
Note: relative weights are based on Medicare patient data and may not be appropriate for other patients.

TABLE 6A.—NEW DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
079.6	Respiratory syncytial virus (RSV)	N	15	387[1], 389[1]
			18	421, 422
291.81	Alcohol withdrawal	Y	20	434, 435, 436, 437
291.89	Other specified alcoholic psychosis, not elsewhere classified	Y	20	434, 435, 436, 437
293.84	Organic anxiety syndrome	Y	19	429
300.82	Undifferentiated somatoform disorder	N	19	427
315.32	Receptive language disorder (mixed)	N	19	431
414.04	Coronary atherosclerosis of artery bypass graft	N	5	132, 133
414.05	Coronary atherosclerosis of unspecified type of bypass graft	N	5	132, 133
466.11	Acute bronchiolitis due to respiratory syncytial virus (RSV)	N	4	96, 97, 98
466.19	Acute bronchiolitis due to other infectious organisms	N	4	96, 97, 98
483.1	Pneumonia due to Chlamydia	Y	4	89, 90, 91
			15	387,[1] 389[1]
574.60	Calculus of gallbladder and bile duct with acute cholecystitis without mention of obstruction.	Y	7	207, 208
574.61	Calculus of gallbladder and bile duct with acute cholecystitis with obstruction	Y	7	207, 208
574.70	Calculus of gallbladder and bile duct with other cholecystitis without mention of obstruction.	Y	7	207, 208
574.71	Calculus of gallbladder and bile duct with other cholecystitis with obstruction	Y	7	207, 208
574.80	Calculus of gallbladder and bile duct with acute and chronic cholecystitis without mention of obstruction.	Y	7	207, 208
574.81	Calculus of gallbladder and bile duct with acute and chronic cholecystitis with obstruction.	Y	7	207, 208
574.90	Calculus of gallbladder and bile duct without cholecystitis without mention of obstruction.	Y	7	207, 208
574.91	Calculus of gallbladder and bile duct without cholecystitis with obstruction	Y	7	207, 208
575.10	Cholecystitis, unspecified	N	7	207, 208
575.11	Chronic cholecystitis	N	7	207, 208
575.12	Acute and chronic cholecystitis	Y	7	207, 208
752.51	Undescended testis	N	12	352
752.52	Retractile testis	N	12	352
752.61	Hypospadias	N	12	352
752.62	Epispadias	N	12	352
752.63	Congenital chordee	N	12	352
752.64	Micropenis	N	12	352
752.65	Hidden penis	N	12	352
752.69	Other penile anomalies	N	12	352
753.20	Unspecified obstructive defect of renal pelvis and ureter	N	11	331, 332, 333
753.21	Congenital obstruction of ureteropelvic junction	N	11	331, 332, 333
753.22	Congenital obstruction of ureterovesical junction	N	11	331, 332, 333
753.23	Congenital ureterocele	N	11	331, 332, 333
753.29	Obstructive defects of renal pelvis and ureter, not elsewhere classifed	N	11	331, 332, 333
758.81	Other conditions due to sex chromosome anomalies	N	12	352
			13	358, 359, 369
758.89	Other conditions due to chromosome anomalies, not elsewhere classified	N	12	352
			13	358, 359, 369
922.31	Back contusion	N	9	280, 281, 282
922.32	Buttock contusion	N	9	280, 281, 282
922.33	Interscapular region contusion	N	9	280, 281, 282
995.50	Child abuse, unspecified	N	21	454, 455
995.51	Child emotional/psychological abuse	N	21	454, 455

TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
995.52	Child neglect (nutritional)	N	21	454, 455
995.53	Child sexual abuse	N	21	454, 455
995.54	Child physical abuse	N	21	454, 455
995.55	Shaken infant syndrome	N	21	454, 455
995.59	Child maltreatment syndrome, not elsewhere classified	N	21	454, 455
995.80	Adult maltreatment, unspecified	N	21	454, 455
995.82	Adult emotional/psychological abuse	N	21	454, 455
995.83	Adult sexual abuse	N	21	454, 455
995.84	Adult neglect (nutritional)	N	21	454, 455
995.85	Other adult abuse and neglect	N	21	454, 455
998.11	Hemorrhage complicating a procedure	Y	21	452, 453
998.12	Hematoma complicating a procedure	Y	21	452, 453
998.13	Seroma complicating a procedure	Y	21	452, 453
998.51	Infected postoperative seroma	Y	18	418
998.59	Other postoperative infection	Y	18	418
998.83	Non-healing surgical wound	Y	21	452, 453
V15.41	History of physical abuse	N	23	467
V15.42	History of emotional abuse	N	23	467
V15.49	Psychological trauma, not elsewhere classified	N	23	467
V61.10	Counseling for marital and partner problems, unspecified	N	23	467
V61.11	Counseling for victim of spousal and partner abuse	N	23	467
V61.12	Counseling for perpetrator of spousal and partner abuse	N	23	467
V61.22	Counseling for perpetrator of parental child abuse	N	23	467
V62.83	Counseling for perpetrator of physical/sexual abuse	N	23	467
V66.7	Encounter for palliative care	N	23	467

[1] Diagnosis code is classified as a "major problem" in these DRGs.

TABLE 6B.—NEW PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
36.17	Abdominal-coronary artery bypass	Y	5	106, 107
39.90	Insertion of non-coronary artery stent or stents	N		
47.01	Laparoscopic appendectomy	Y	6	164, 165, 166, 167
47.09	Other appendectomy	Y	6	164, 165, 166, 167
47.11	Laparoscopic incidental appendectomy	Y	13	365
			21	442, 443
			24	486
47.19	Other incidental appendectomy	Y	13	365
			21	442, 443
			24	486
51.21	Other partial cholecystectomy	Y	7	193, 194
			17	400, 406,
			17	407
			21	442, 443
			24	486
51.24	Laparoscopic partial cholecystectomy	Y	7	193, 194
			17	400, 406,
			17	407,
			21	442, 443
			24	486
52.84	Autotransplantation of cells of Islets of Langerhans	N		
52.85	Allotransplantation of cells of Islets of Langerhans	N		
52.86	Transplantation of cells of Islets of Langerhans, not otherwise specified	N		
54.51	Laparoscopic lysis of peritoneal adhesions	Y	6	150, 151
			7	201
			13	365
			21	442, 443
			24	486
54.59	Other lysis of peritoneal adhesions	Y	6	150, 151
			7	201
			13	365
			21	442, 443
			24	486
59.03	Laparoscopic lysis of perirenal or periureteral adhesions	Y	11	303, 304, 305
			12	344, 345
			13	365
			17	400
			17	406, 407

TABLE 6B.—NEW PROCEDURE CODES—Continued

Procedure code	Description	OR	MDC	DRG
			21	442, 443
			24	486
59.12	Laparoscopic lysis of perivesical adhesions	Y	11	308, 309
			12	344, 345
			13	365
			17	400
			17	406, 407
			21	442, 443
			24	486
65.01	Laparoscopic oophorotomy	Y	13	354, 355, 357, 358, 359
65.09	Other oophorotomy	Y	13	354, 355, 357, 358, 359
65.13	Laparoscopic biopsy of ovary	Y	13	354, 355, 357, 358, 359
65.14	Other laparoscopic diagnostic procedures on ovaries	Y	13	354, 355, 357, 358, 359
65.23	Laparoscopic marsupialization of ovarian cyst	Y	13	354, 355, 357, 358, 359
65.24	Laparoscopic wedge resection of ovary	Y	10	292, 293
			13	354, 355, 357, 358, 359
65.25	Other laparoscopic local excision or destruction of ovary	Y	13	354, 355, 357, 358, 359
65.31	Laparoscopic unilateral oophorectomy	Y	13	354, 355, 357, 358, 359
65.39	Other unilateral oophorectomy	Y	13	354, 355, 357, 358, 359
65.41	Laparoscopic unilateral salpingo-oophorectomy	Y	13	354, 355, 357, 358, 359
65.49	Other unilateral salpingo-oophorectomy	Y	13	354, 355, 357, 358, 359
65.53	Laparoscopic removal of both ovaries at same operative episode	Y	9	269, 270
			13	354, 355,
			13	357, 358, 359
65.54	Laparoscopic removal of remaining ovary	Y	9	269, 270
			13	354, 355,
			13	357, 358, 359
65.63	Laparoscopic removal of both ovaries and tubes at same operative episode	Y	9	269, 270
			13	354, 355,
			13	357, 358, 359
65.64	Laparoscopic removal of remaining ovary and tube	Y	13	354, 355, 357, 358, 359
65.74	Laparoscopic simple suture of ovary	Y	13	354, 355,
			13	357, 358,
			21	359
			24	442, 443, 486
65.75	Laparoscopic reimplantation of ovary	Y	13	354, 355,
			13	357, 358,
			21	359
			24	442, 443, 486
65.76	Laparoscopic salpingo-oophoroplasty	Y	13	354, 355,
			13	357, 358,
			21	359
			24	442, 443, 486
65.81	Laparoscopic lysis of adhesions of ovary and fallopian tube	Y	13	354, 355,
			13	357, 358,
			21	359
			24	442, 443, 486
65.89	Other lysis of adhesions of ovary and fallopian tube	Y	13	354, 355,
			13	357, 358,
			21	359
			24	442, 443, 486
68.23	Endometrial ablation	Y	13	354, 355, 357, 358, 359
68.51	Laparoscopically assisted vaginal hysterectomy (LAVH)	Y	13	354, 355,
			13	357, 358,
			14	359, 375
68.59	Other vaginal hysterectomy	Y	13	354, 355,
			13	357, 358,
			14	359, 375

TABLE 6C.—TABLE DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
291.8	Other specified alcoholic psychosis	Y	20	434, 435, 436, 437
466.1	Acute bronchiolitis	N	4	96, 97, 98
575.1	Other cholecystitis	N	7	207, 208
752.5	Undescended testicle	N	12	352
752.6	Hypospadias and epispadias	N	12	352
753.2	Obstructive defects of renal pelvis and ureter	N	11	331, 332, 333
758.8	Other conditions due to sex chromosome anomalies	N	12	352
			13	358, 359, 369
922.3	Contusion of back	N	9	280, 281,
			9	282
			24	484, 486, 487
995.5	Child maltreatment syndrome	N	21	454, 455
998.1	Hemorrhage or hematoma complicating a procedure	Y	15	387[1], 389[1]
			21	452, 453
998.5	Postoperative infection	Y	15	387[1], 389[1]
			18	418
V15.4	Psychological trauma	N	23	467
V61.1	Marital problems	N	23	467

[1] Diagnosis code is classified as a "major problem" in these DRGs.

TABLE 6D.—INVALID PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
47.0	Appendectomy	Y	6	164, 165, 166, 167
47.1	Incidental appendectomy	Y	13	365,
			21	442, 443,
			24	486
54.5	Lysis of peritoneal adhesions	Y	6	150, 151
			7	201
			13	365
			21	442, 443
			24	486
59.01	Ureterolysis with freeing or repositioning of ureter for retroperitoneal fibrosis	Y	11	303, 304,
			11	305
			12	344, 345
			13	365
			17	400, 406,
			17	407
			21	442, 443
			24	486
65.0	Oophorotomy	Y	13	354, 355, 357, 358, 359
65.3	Unilateral oophorectomy	Y	13	354, 355, 357, 358, 359
65.4	Unilateral salpingo-oophorectomy	Y	13	354, 355, 357, 358, 359
65.8	Lysis of adhesions of ovary and fallopian tube	Y	13	354, 355,
			13	357, 358,
			21	359
			24	442, 443, 486
68.5	Vaginal hysterectomy	Y	13	354, 355,
			13	357, 358,
			13	359
			14	375

TABLE 6E.—REVISED DIAGNOSIS CODE TITLES

Diagnosis code	Description	CC	MDC	DRG
414.00	Coronary atherosclerosis of unspecified type of vessel, native or graft	N	5	132, 133
995.81	Adult physical abuse	N	21	454, 455
997.60	Amputation stump complication, unspecified complication	N	8	256
997.61	Amputation stump complication, neuroma of amputation stump	N	8	256
997.62	Amputation stump complication, infection (chronic)	Y	8	256
997.69	Amputation stump complication, not elsewhere classified	N	8	256

TABLE 6E.—REVISED DIAGNOSIS CODE TITLES—Continued

Diagnosis code	Description	CC	MDC	DRG
V61.20	Counseling for parent-child problem, unspecified	N	23	467
V61.21	Counseling for victim of child abuse	N	23	467
V67.4	Follow-up examination, following treatment of healed fracture	N	23	465, 466

TABLE 6F.—REVISED PROCEDURE CODE TITLES

Procedure code	Description	OR	MDC	DRG
59.11	Other lysis of perivesical adhesions	Y	11	308, 309
			12	344, 345
			13	365
			17	400, 406,
			17	407
			21	442, 443
			24	486
65.51	Other removal of both ovaries at same operative episode	Y	9	269, 270
			13	354, 355
			13	357, 358, 359
65.52	Other removal of remaining ovary	Y	9	269, 270
			13	354, 355
			13	357, 358, 359
65.61	Other removal of both ovaries and tubes at same operative episode	Y	9	269, 270
			13	354, 355,
			13	357, 358, 359
65.62	Other removal of remaining ovary and tube	Y	13	354, 355, 357, 358, 359
65.71	Other simple suture of ovary	Y	13	354, 355,
			13	357, 358,
			13	359
			21	442, 443
			24	486
65.72	Other reimplantation of ovary	Y	13	354, 355,
			13	357, 358,
			21	359
			24	442, 443, 486
65.73	Other salpingo-oophoroplasty	Y	11	308, 309,
			12	344, 345
			13	365
			17	400, 406,
			17	407
			21	442, 443
			24	486

TABLE 6G.—ADDITIONS TO THE CC EXCLUSIONS LIST

PAGE 1 OF 5 PAGES

CCs that are added to the list are in Table 6G—Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

*0011	00844	*00800	00844	*0085	00844	*01133	*01182
00841	00845	00841	00845	00841	00845	4831	4831
00842	00846	00842	00846	00842	00846	*01134	*01183
00843	00847	00843	00847	00843	00847	4831	4831
00844	*0061	00844	*00841	00844	*0088	*01135	*01184
00845	00841	00845	00841	00845	00841	4831	4831
00846	00842	00846	00842	00846	00842	*01136	*01185
00847	00843	00847	00843	00847	00843	4831	4831
*0020	00844	*00801	00844	*00861	00844	*01140	*01186
00841	00845	00841	00845	00841	00845	4831	4831
00842	00846	00842	00846	00842	00846	*01141	*01190
00843	00847	00843	00847	00843	00847	4831	4831
00844	*0062	00844	*00842	00844	*0090	*01142	*01191
00845	00841	00845	00841	00845	00841	4831	4831
00846	00842	00846	00842	00846	00842	*01143	*01192
00847	00843	00847	00843	00847	00843	4831	4831
*0029	00844	*00802	00844	*00862	00844	*01144	*01193
00841	00845	00841	00845	00841	00845	4831	4831
00842	00846	00842	00846	00842	00846	*01145	*01194
00843	00847	00843	00847	00843	00847	4831	4831
00844	*0069	00844	*00843	00844	*01100	*01146	*01195
00845	00841	00845	00841	00845	4831	4831	4831
00846	00842	00846	00842	00846	*01101	*01150	*01196
00847	00843	00847	00843	00847	4831	4831	4831
*0030	00844	*00803	00844	*00863	*01102	*01151	*01200
00841	00845	00841	00845	00841	4831	4831	4831
00842	00846	00842	00846	00842	*01103	*01152	*01201
00843	00847	00843	00847	00843	4831	4831	4831
00844	*0071	00844	*00844	00844	*01104	*01153	*01202
00845	00841	00845	00841	00845	4831	4831	4831
00846	00842	00846	00842	00846	*01105	*01154	*01203
00847	00843	00847	00843	00847	4831	4831	4831
*0049	00844	*00804	00844	*00864	*01106	*01155	*01204
00841	00845	00841	00845	00841	4831	4831	4831
00842	00846	00842	00846	00842	*01110	*01156	*01205
00843	00847	00843	00847	00843	4831	4831	4831
00844	*0072	00844	*00845	00844	*01111	*01160	*01206
00845	00841	00845	00841	00845	4831	4831	4831
00846	00842	00846	00842	00846	*01112	*01161	*01210
00847	00843	00847	00843	00847	4831	4831	4831
*0050	00844	*00809	00844	*00865	*01113	*01162	*01211
00841	00845	00841	00845	00841	4831	4831	4831
00842	00846	00842	00846	00842	*01114	*01163	*01212
00843	00847	00843	00847	00843	4831	4831	4831
00844	*0073	00844	*00846	00844	*01115	*01164	*01213
00845	00841	00845	00841	00845	4831	4831	4831
00846	00842	00846	00842	00846	*01116	*01165	*01214
00847	00843	00847	00843	00847	4831	4831	4831
*0051	00844	*0081	00844	*00866	*01120	*01166	*01215
00841	00845	00841	00845	00841	4831	4831	4831
00842	00846	00842	00846	00842	*01121	*01170	*01216
00843	00847	00843	00847	00843	4831	4831	4831
00844	*0078	00844	*00847	00844	*01122	*01171	*01280
00845	00841	00845	00841	00845	4831	4831	4831
00846	00842	00846	00842	00846	*01123	*01172	*01281
00847	00843	00847	00843	00847	4831	4831	4831
*0052	00844	*0082	00844	*00867	*01124	*01173	*01282
00841	00845	00841	00845	00841	4831	4831	4831
00842	00846	00842	00846	00842	*01125	*01174	*01283
00843	00847	00843	00847	00843	4831	4831	4831
00844	*0079	00844	*00849	00844	*01126	*01175	*01284
00845	00841	00845	00841	00845	4831	4831	4831
00846	00842	00846	00842	00846	*01130	*01176	*01285
00847	00843	00847	00843	00847	4831	4831	4831
*0060	00844	*0083	00844	*00869	*01131	*01180	*01286
00841	00845	00841	00845	00841	4831	4831	4831
00842	00846	00842	00846	00842	*01132	*01181	*01480
00843	00847	00843	00847	00843	4831	4831	00841

PAGE 2 OF 5 PAGES

00842	4831	29382	29284	*29212	29383	29614	29181
00843	*11285	29383	29289	29181	29384	29634	29189
00844	00841	29384	2929	29189	7105	29644	29384
00845	00842	30300	29381	29384	*29389	29654	*30420
00846	00843	30301	29382	*2922	29181	29664	29181
00847	00844	30302	29383	29181	29189	2980	29189
*01481	00845	30390	29384	29189	29384	2983	29384
00841	00846	30391	30300	29384	*2939	2984	*30421
00842	00847	30392	30301	*29281	29181	29900	29181
00843	*11505	30400	30302	29181	29189	29910	29189
00844	4831	30401	30390	29189	29384	29980	29384
00845	*11515	30402	30391	29384	*2940	29990	*30422
00846	4831	30410	30392	*29282	29181	*30300	29181
00847	*11595	30411	30400	29181	29189	29181	29189
*01482	4831	30412	30401	29189	29384	29189	29384
00841	*1221	30420	30402	29384	*2941	29384	*30423
00842	4831	30421	30410	*29283	29181	*30301	29181
00843	*129	30422	30411	29181	29189	29181	29189
00844	00841	30440	30412	29189	29384	29189	29384
00845	00842	30441	30420	29384	*2948	29384	*30430
00846	00843	30442	30421	*29284	29181	*30302	29181
00847	00844	30450	30422	29181	29189	29181	29189
*01483	00845	30451	30440	29189	29384	29189	29384
00841	00846	30452	30441	29384	*2949	29384	*30431
00842	00847	30460	30442	*29289	29181	*30303	29181
00843	*1304	30461	30450	29181	29189	29181	29189
00844	4831	30462	30451	29189	29384	29189	29384
00845	*1363	30470	30452	29384	*30082	29384	*30432
00846	4831	30471	30460	*2929	29500	*30390	29181
00847	*2910	30472	30461	29181	29501	29181	29189
*01484	29181	30480	30462	29189	29502	29189	29384
00841	29189	30481	30470	29384	29503	29384	*30433
00842	29384	30482	30471	*2930	29504	*30391	29181
00843	*2911	30490	30472	29181	29510	29181	29189
00844	29181	30491	30480	29189	29511	29189	29384
00845	29189	30492	30481	29384	29512	29384	*30440
00846	29384	30500	30482	*2931	29513	*30392	29181
00847	*2912	30501	30490	29181	29514	29181	29189
*01485	29181	30502	30491	29189	29521	29189	29384
00841	29189	30530	30492	29384	29522	29384	*30441
00842	29384	30531	30500	*29381	29523	*30393	29181
00843	*2913	30532	30501	29181	29524	29181	29189
00844	29181	30540	30502	29189	29530	29189	29384
00845	29189	30541	30530	29384	29531	29384	*30442
00846	29384	30542	30531	*29382	29532	*30400	29181
00847	*2914	30550	30532	29181	29533	29181	29189
*01486	29181	30551	30540	29189	29534	29189	29384
00841	29189	30552	30541	29384	29540	29384	*30443
00842	29384	30560	30542	*29383	29541	*30401	29181
00843	*2915	30561	30550	29181	29542	29181	29189
00844	29181	30562	30551	29189	29543	29189	29384
00845	29189	30570	30552	29384	29544	29384	*30450
00846	29384	30571	30560	*29384	29560	*30402	29181
00847	*29181	30572	30561	2910	29561	29181	29189
*01790	2910	30590	30562	2911	29562	29189	29384
4831	2911	30591	30570	2912	29563	29384	*30451
*01791	2912	30592	30571	2913	29564	*30403	29181
4831	2913	*29189	30572	2914	29570	29181	29189
*01792	2914	2910	30590	29181	29571	29189	29384
4831	29181	2911	30591	29189	29572	29384	*30452
*01793	29189	2912	30592	2919	29573	*30410	29181
4831	2919	2913	*2919	2920	29574	29181	29189
*01794	2920	2914	29181	29211	29580	29189	29384
4831	29211	29181	29189	29212	29581	29384	*30453
*01795	29212	29189	29384	2922	29582	*30411	29181
4831	2922	2919	*2920	29281	29583	29181	29189
*01796	29281	2920	29181	29282	29584	29189	29384
4831	29282	29211	29189	29283	29590	29384	*30460
*0212	29283	29212	29384	29284	29591	*30412	29181
4831	29284	2922	*29211	29289	29592	29181	29189
*0310	29289	29281	29181	2929	29593	29189	29384
4831	2929	29282	29189	29381	29594	29384	*30461
*0391	29381	29283	29384	29382	29604	*30413	29181

PAGE 3 OF 5 PAGES

29189	29384	*30562	29532	*48239	01180	5078	4831
29384	*30520	29181	29533	4831	01181	5080	*5062
*30462	29181	29189	29534	*4824	01182	5081	4831
29181	29189	29384	29540	4831	01183	5171	*5063
29189	29384	*30563	29541	*48281	01184	*4838	4831
29384	*30521	29181	29542	4831	01185	4831	*5064
*30463	29181	29189	29543	*48282	01186	*4841	4831
29181	29189	29384	29544	4831	01190	4831	*5069
29189	29384	*30570	29560	*48283	01191	*4843	4831
29384	*30522	29181	29561	4831	01192	4831	*5070
*30470	29181	29189	29562	*48289	01193	*4845	4831
29181	29189	29384	29563	4831	01194	4831	*5071
29189	29384	*30571	29564	*4829	01195	*4846	4831
29384	*30523	29181	29570	4831	01196	4831	*5078
*30471	29181	29189	29571	*4830	01200	*4847	4831
29181	29189	29384	29572	4831	01201	4831	*5080
29189	29384	*30572	29573	*4831	01202	*4848	4831
29384	*30530	29181	29574	01100	01203	4831	*5081
*30472	29181	29189	29580	01101	01204	*485	4831
29181	29189	29384	29581	01102	01205	4831	*5088
29189	29384	*30573	29582	01103	01206	*486	4831
29384	*30531	29181	29583	01104	01210	4831	*5089
*30473	29181	29189	29584	01105	01211	*4870	4831
29181	29189	29384	29590	01106	01212	4831	*5171
29189	29384	*30580	29591	01110	01213	*4871	4831
29384	*30532	29181	29592	01111	01214	4831	*5178
*30480	29181	29189	29593	01112	01215	*4878	4831
29181	29189	29384	29594	01113	01216	00841	*51889
29189	29384	*30581	29604	01114	0310	00842	4831
29384	*30533	29181	29614	01115	11505	00843	*5198
*30481	29181	29189	29634	01116	11515	00844	4831
29181	29189	29384	29644	01120	1304	00845	*5199
29189	29384	*30582	29654	01121	1363	00846	4831
29384	*30540	29181	29664	01122	481	00847	*53081
*30482	29181	29189	2980	01123	4820	*494	99811
29181	29189	29384	2983	01124	4821	4831	99812
29189	29384	*30583	2984	01125	4822	*4950	99813
29384	*30541	29181	29900	01126	48230	4831	*53082
*30483	29181	29189	29910	01130	48231	*4951	99811
29181	29189	29384	29980	01131	48232	4831	99812
29189	29384	*30590	29990	01132	48239	*4952	99813
29384	*30542	29181	*4560	01133	4824	4831	*53083
*30490	29181	29189	99811	01134	48281	*4953	99811
29181	29189	29384	99812	01135	48282	4831	99812
29189	29384	*30591	99813	01136	48283	*4954	99813
29384	*30543	29181	*45620	01140	48289	4831	*53089
*30491	29181	29189	99811	01141	4829	*4955	99811
29181	29189	29384	99812	01142	4830	4831	99812
29189	29384	*30592	99813	01143	4831	*4956	99813
29384	*30550	29181	*4800	01144	4838	4831	*53100
*30492	29181	29189	4831	01145	4841	*4957	99811
29181	29189	29384	*4801	01146	4843	4831	99812
29189	29384	*30593	4831	01150	4845	*4958	99813
29384	*30551	29181	*4802	01151	4846	4831	*53101
*30493	29181	29189	4831	01152	4847	*4959	99811
29181	29189	29384	*4808	01153	4848	4831	99812
29189	29384	*31532	4831	01154	485	*496	99813
29384	*30552	29500	*4809	01155	486	4831	*53120
*30500	29181	29501	4831	01156	4870	*500	99811
29181	29189	29502	*481	01160	4950	4831	99812
29189	29384	29503	4831	01161	4951	*501	99813
29384	*30553	29504	*4820	01162	4952	4831	*53121
*30501	29181	29510	4831	01163	4953	*502	99811
29181	29189	29511	*4821	01164	4954	4831	99812
29189	29384	29512	4831	01165	4955	*503	99813
29384	*30560	29513	*4822	01166	4956	4831	*53140
*30502	29181	29514	4831	01170	4957	*504	99811
29181	29189	29521	*48230	01171	4958	4831	99812
29189	29384	29522	4831	01172	4959	*505	99813
29384	*30561	29523	*48231	01173	5060	4831	*53141
*30503	29181	29524	4831	01174	5061	*5060	99811
29181	29189	29530	*48232	01175	5070	4831	99812
29189	29384	29531	4831	01176	5071	*5061	99813

PAGE 4 OF 5 PAGES

*53160	99811	00846	00843	00844	57431	57400	57400
99811	99812	00847	00844	00845	57440	57401	57401
99812	99813	*53783	00845	00846	57441	57410	57410
99813	*53401	99811	00846	00847	57450	57411	57411
*53161	99811	99812	00847	*56202	57451	57421	57421
99811	99812	99813	*5565	99811	57460	57430	57430
99812	99813	*5550	00841	99812	57461	57431	57431
99813	*53420	00841	00842	99813	57470	57440	57440
*53200	99811	00842	00843	*56203	57471	57441	57441
99811	99812	00843	00844	99811	57490	57450	57450
99812	99813	00844	00845	99812	57491	57451	57451
99813	*53421	00845	00846	99813	5750	57470	57460
*53201	99811	00846	00847	*56212	*57461	57471	57461
99811	99812	00847	*5566	99811	57400	57480	57470
99812	99813	*5551	00841	99812	57401	57481	57471
99813	*53440	00841	00842	99813	57410	57490	57480
*53220	99811	00842	00843	*56213	57411	57491	57481
99811	99812	00843	00844	99811	57421	5750	57490
99812	99813	00844	00845	99812	57430	*57490	57491
99813	*53441	00845	00846	99813	57431	57430	5750
*53221	99811	00846	00847	*5641	57440	57431	57512
99811	99812	00847	*5568	00841	57441	57440	*57512
99812	99813	*5552	00841	00842	57450	57441	57400
99813	*53460	00841	00842	00843	57451	57450	57401
*53240	99811	00842	00843	00844	57460	57451	57410
99811	99812	00843	00844	00845	57461	57470	57411
99812	99813	00844	00845	00846	57470	57471	57421
99813	*53461	00845	00846	00847	57471	57490	57430
*53241	99811	00846	00847	*5693	57490	57491	57431
99811	99812	00847	*5569	99811	57491	*57491	57440
99812	99813	*5559	00841	99812	5750	57430	57441
99813	*53501	00841	00842	99813	*57470	57431	57450
*53260	99811	00842	00843	*56985	57430	57440	57451
99811	99812	00843	00844	99811	57431	57441	57460
99812	99813	00844	00845	99812	57440	57450	57461
99813	*53511	00845	00846	99813	57441	57451	57470
*53261	99811	00846	00847	*57430	57450	57470	57471
99811	99812'	00847	*5570	57470	57451	57471	57480
99812	99813	*5560	00841	57471	57470	57490	57481
99813	*53521	00841	00842	57490	57471	57491	57490
*53300	99811	00842	00843	57491	57490	*5750	57491
99811	99812	00843	00844	*57431	57491	57460	5750
99812	99813	00844	00845	57470	*57471	57461	57512
99813	*53531	00845	00846	57471	57430	57470	*5759
*53301	99811	00846	00847	57490	57431	57471	57460
99811	99812	00847	*5571	57491	57440	57480	57461
99812	99813	*5561	00841	*57440	57441	57481	57480
99813	*53541	00841	00842	57470	57450	57490	57481
*53320	99811	00842	00843	57471	57451	57491	57512
99811	99812	00843	00844	57490	57470	57512	*5768
99812	99813	00844	00845	57491	57471	*57510	57460
99813	*53551	00845	00846	*57441	57490	57400	57461
*53321	99811	00846	00847	57470	57491	57401	57470
99811	99812	00847	*5579	57471	*57480	57410	57471
99812	99813	*5562	00841	57490	57400	57411	57480
99813	*53561	00841	00842	57491	57401	57421	57481
*53340	99811	00842	00843	*57450	57410	57430	57490
99811	99812	00843	00844	57470	57411	57431	57491
99812	99813	00844	00845	57471	57421	57440	57512
99813	*5363	00845	00846	57490	57430	57441	*5769
*53341	00841	00846	00847	57491	57431	57450	57460
99811	00842	00847	*5582	*57451	57440	57451	57461
99812	00843	*5563	00841	57470	57441	57460	57470
99813	00844	00841	00842	57471	57450	57461	57471
*53360	00845	00842	00843	57490	57451	57470	57480
99811	00846	00843	00844	57491	57470	57471	57481
99812	00847	00844	00845	*57460	57471	57480	57490
99813	*5368	00845	00846	57400	57480	57481	57491
*53361	00841	00846	00847	57401	57481	57490	57512
99811	00842	00847	*5589	57410	57490	57491	*5780
99812	00843	*5564	00841	57411	57491	5750	99811
99813	00844	00841	00842	57421	5750	57512	99812
*53400	00845	00842	00843	57430	*57481	*57511	99813

PAGE 5 OF 5 PAGES

*5781	5996	00841	99812	9971
99811	*78820	00842	99813	9972
99812	78829	00843	*99813	9973
99813	*75329	00844	9585	9974
*5789	5845	00845	9954	9975
99811	5846	00846	9980	99762
99812	5847	00847	99811	99799
99813	5849	*7758	99812	9980
*74861	585	00841	99813	9982
4831	5996	00842	*99851	9983
*75261	78820	00843	99851	9984
5970	78829	00844	99859	9986
5981	*7724	00845	*99859	9987
5982	99811	00846	99851	99883
5994	99812	00847	99859	99889
*75262	99813	*7759	*99881	9989
5970	*7750	00841	99811	*99889
5981	00841	00842	99812	99811
5982	00842	00843	99813	99812
5994	00843	00844	99851	99813
*75263	00844	00845	99859	99851
5970	00845	00846	99883	99859
5981	00846	00847	*99883	99883
5982	00847	*7775	9580	*9989
5994	*7751	00841	9581	99811
*75264	00841	00842	9582	99812
5970	00842	00843	9583	99813
5981	00843	00844	9584	99851
5982	00844	00845	9585	99859
5994	00845	00846	9587	99883
*75265	00846	00847	9954	
5970	00847	*7778	99600	
5981	*7752	00841	99601	
5982	00841	00842	99602	
5994	00842	00843	99603	
*75269	00843	00844	99604	
5970	00844	00845	99609	
5981	00845	00846	9961	
5982	00846	00847	9962	
5994	00847	*7903	99630	
*75320	*7753	29181	99639	
5845	00841	29189	9964	
5846	00842	29384	99660	
5847	00843	*99791	99661	
5849	00844	99811	99662	
585	00845	99812	99663	
5996	00846	99813	99664	
78820	00847	99851	99665	
78829	*7754	99859	99666	
*75321	00841	99883	99667	
5845	00842	*99799	99669	
5846	00843	99811	99670	
5847	00844	99812	99671	
5849	00845	99813	99672	
585	00846	99851	99673	
5996	00847	99859	99674	
78820	*7755	99883	99675	
78829	00841	*9980	99676	
*75322	00842	99811	99677	
5845	00843	99812	99678	
5846	00844	99813	99679	
5847	00845	*99811	99690	
5849	00846	9585	99691	
585	00847	9954	99692	
5996	*7756	9980	99693	
78820	00841	99811	99694	
78829	00842	99812	99695	
*75323	00843	99813	99696	
5845	00844	*99812	99699	
5846	00845	9585	99700	
5847	00846	9954	99701	
5849	00847	9980	99702	
585	*7757	99811	99709	

TABLE 6H.—DELETIONS TO THE CC EXCLUSIONS LIST

PAGE 1 OF 1 PAGE

CCs that are deleted from the list are in Table 6H—Deletions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

*2910	30502	2918	2918	2918	9981	57421
2918	30530	*30303	*30471	*30563	*53261	57430
*2911	30531	2918	2918	2918	9981	57431
2918	30532	*30390	*30472	*30570	*53300	57440
*2912	30540	2918	2918	2918	9981	57441
2918	30541	*30391	*30473	*30571	*53301	57450
*2913	30542	2918	2918	2918	9981	57451
2918	30550	*30392	*30480	*30572	*53320	5750
*2914	30551	2918	2918	2918	9981	*5780
2918	30552	*30393	*30481	*30573	*53321	9981
*2915	30560	2918	2918	2918	9981	*5781
2918	30561	*30400	*30482	*30580	*53340	9981
*2918	30562	2918	2918	2918	9981	*5789
2910	30570	*30401	*30483	*30581	*53341	9981
2911	30571	2918	2918	2918	9981	*7526
2912	30572	*30402	*30490	*30582	*53360	5970
2913	30590	2918	2918	2918	9981	5981
2914	30591	*30403	*30491	*30583	*53361	5982
2918	30592	2918	2918	2918	9981	5994
2919	*2919	*30410	*30492	*30590	*53400	*7532
2920	2918	2918	2918	2918	9981	5845
29211	*2920	*30411	*30493	*30591	*53401	5846
29212	2918	2918	2918	2918	9981	5847
2922	*29211	*30412	*30500	*30592	*53420	5849
29281	2918	2918	2918	2918	9981	585
29282	*29212	*30413	*30501	*30593	*53421	5996
29283	2918	2918	2918	2918	9981	78820
29284	*2922	*30420	*30502	*4560	*53440	78829
29289	2918	2918	2918	9981	9981	*7724
2929	*29281	*30421	*30503	*45620	*53441	9981
29381	2918	2918	2918	9981	9981	*7903
29382	*29282	*30422	*30520	*53081	*53460	2918
29383	2918	2918	2918	9981	9981	*99791
30300	*29283	*30423	*30521	*53082	*53461	9981
30301	2918	2918	2918	9981	9981	9985
30302	*29284	*30430	*30522	*53083	*53501	*99799
30390	2918	2918	2918	9981	9981	9981
30391	*29289	*30431	*30523	*53089	*53511	9985
30392	2918	2918	2918	9981	9981	*9980
30400	*2929	*30432	*30530	*53100	*53521	9981
30401	2918	2918	2918	9981	9981	*9981
30402	*2930	*30433	*30531	*53101	*53531	9585
30410	2918	2918	2918	9981	9981	9954
30411	*2931	*30440	*30532	*53120	*53541	9980
30412	2918	2918	2918	9981	9981	9981
30420	*29381	*30441	*30533	*53121	*53551	*9985
30421	2918	2918	2918	9981	9981	9985
30422	*29382	*30442	*30540	*53140	*53561	*99881
30440	2918	2918	2918	9961	9981	9981
30441	*29383	*30443	*30541	*53141	*53783	9985
30442	2918	2918	2918	9981	9981	*99889
30450	*29389	*30450	*30542	*53160	*56202	9981
30451	2918	2918	2918	9981	9981	9985
30452	*2939	*30451	*30543	*53161	*56203	*9989
30460	2918	2918	2918	9981	9981	9981
30461	*2940	*30452	*30550	*53200	*56212	9985
30462	2918	2918	2918	9981	9981	
30470	*2941	30453	*30551	*53201	*56213	
30471	2918	2918	2918	9981	9981	
30472	*2948	*30460	*30552	*53220	*5693	
30480	2918	2918	2918	9981	9981	
30481	*2949	*30461	*30553	*53221	*56985	
30482	2918	2918	2918	9981	9981	
30490	*30300	*30462	*30560	*53240	*5751	
30491	2918	2918	2918	9981	57400	
30492	*30301	*30463	*30561	*53241	57401	
30500	2918	2918	2918	9981	57410	
30501	*30302	*30470	*30562	*53260	57411	

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY

[FY95 MEDPAR Update 12/95 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1	32723	11.0372	3	4	8	14	23
2	6165	11.5178	3	5	8	14	23
3	1	10.0000	10	10	10	10	10
4	5866	9.1202	2	3	6	11	20
5	95896	4.4060	2	2	3	5	9
6	444	3.3581	1	1	2	4	7
7	10526	12.5752	3	5	8	14	25
8	2248	4.1348	1	1	3	5	9
9	1655	7.5287	2	3	5	9	16
10	19194	7.9610	2	3	6	10	16
11	2866	4.9215	1	2	4	6	10
12	23355	7.5868	2	3	5	9	14
13	5969	6.2406	2	4	5	7	11
14	351205	7.4178	2	3	6	9	14
15	138882	4.4367	1	2	3	5	8
16	11877	6.5858	2	3	5	8	12
17	3217	4.0258	1	2	3	5	7
18	22783	6.3682	2	3	5	8	12
19	7433	4.5271	1	2	4	6	8
20	5990	11.2129	3	5	9	15	22
21	1114	7.8905	2	3	6	10	16
22	2585	4.8584	2	2	4	6	9
23	5720	5.0336	1	2	4	6	10
24	53620	5.8059	2	3	4	7	11
25	21830	3.8592	1	2	3	5	7
26	46	4.6087	1	2	3	6	10
27	3475	6.2774	1	1	4	7	15
28	11179	7.0945	1	3	5	9	14
29	3684	4.0581	1	2	3	5	8
31	3167	5.4436	1	2	4	6	10
32	1723	3.1573	1	1	2	4	6
34	16272	6.4700	2	3	5	8	12
35	3648	4.2928	1	2	3	5	8
36	9010	1.5970	1	1	1	2	3
37	1878	4.0213	1	1	3	5	8
38	234	2.5385	1	1	2	3	5
39	3289	1.9663	1	1	1	2	4
40	2779	3.3843	1	1	2	4	7
42	7351	2.2049	1	1	1	2	5
43	97	4.0928	1	2	3	5	8
44	1614	5.7038	2	3	5	7	10
45	2412	3.8163	1	2	3	5	7
46	2952	5.4814	1	2	4	7	10
47	1333	3.7802	1	2	3	5	7
49	2139	5.6396	1	2	4	7	11
50	3347	2.1138	1	1	2	2	3
51	308	2.9870	1	1	1	3	7
52	78	3.6282	1	1	2	3	8
53	3340	3.5548	1	1	2	4	8
54	1	1.0000	1	1	1	1	1
55	1924	2.9569	1	1	2	3	6
56	704	2.7514	1	1	2	3	6
57	637	4.0973	1	1	3	5	8
59	88	3.7045	1	1	2	4	7
60	3	1.0000	1	1	1	1	1
61	217	5.2535	1	1	2	7	14
62	1	2.0000	2	2	2	2	2
63	3996	4.6652	1	2	3	5	10
64	3351	7.5067	1	2	5	9	16
65	29525	3.4147	1	2	3	4	6
66	6479	3.5658	1	2	3	4	6
67	510	4.2039	2	2	3	5	8
68	9443	4.7605	2	3	4	6	9
69	3062	3.7606	1	2	3	5	7
70	30	3.0667	1	2	3	3	5
71	90	4.1656	1	2	3	5	8
72	561	4.3529	1	2	3	5	9
73	6017	4.9493	1	2	4	6	9
75	39401	11.1088	4	6	8	14	21
76	38785	12.4555	3	6	10	15	24

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY95 MEDPAR Update 12/95 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
77	2331	5.5268	1	2	4	8	12
78	28979	8.2306	4	5	7	10	13
79	207606	9.2488	3	5	7	11	17
80	8932	6.6160	2	4	5	8	12
81	9	7.2222	1	2	6	11	12
82	68573	7.8881	2	3	6	10	16
83	6976	6.3817	2	3	5	8	12
84	1430	3.7217	1	2	3	5	7
85	18398	7.3317	2	3	6	9	14
86	1372	4.5117	1	2	4	6	9
87	58612	6.7959	1	3	6	9	13
88	345365	6.0658	2	3	5	7	11
89	415072	7.0754	3	4	6	9	12
90	40306	5.1392	2	3	4	6	9
91	50	4.5800	2	2	3	6	8
92	11849	7.2524	2	4	6	9	13
93	1262	4.9374	1	3	4	6	9
94	12531	7.0527	2	3	5	9	14
95	1365	4.1341	1	2	3	5	8
96	60887	5.5101	2	3	5	7	10
97	25835	4.2614	2	2	4	5	7
98	19	4.4737	1	1	3	6	10
99	25241	3.4914	1	2	3	4	7
100	10191	2.4244	1	1	2	3	4
101	19810	5.1725	1	2	4	7	10
102	4399	3.1298	1	1	2	4	6
103	445	39.3528	10	15	29	53	80
104	22854	14.5510	6	8	12	18	26
105	19821	10.9286	5	7	9	13	19
106	96166	11.7202	6	8	10	14	19
107	61255	8.8314	5	6	7	10	14
108	6560	12.5834	4	7	10	15	23
110	59173	10.7795	3	6	9	13	20
111	5800	6.6512	3	5	6	8	10
112	191511	4.6987	1	2	4	6	9
113	45003	14.3320	4	6	10	17	28
114	8788	9.4467	2	4	7	12	18
115	10395	11.3715	4	6	9	14	20
116	81298	5.4177	1	2	4	7	11
117	4482	4.1142	1	1	2	5	8
118	6687	3.1952	1	1	2	4	7
119	1705	5.4985	1	1	3	7	13
120	40465	9.1860	1	2	6	12	21
121	158928	7.4120	2	4	6	9	13
122	87089	5.0036	1	3	5	6	9
123	46281	4.6510	1	1	2	6	11
124	138564	4.8885	1	2	4	6	9
125	59232	3.0694	1	1	2	4	6
126	4619	13.9985	4	7	11	17	29
127	670461	6.2113	2	3	5	8	12
128	19612	6.7259	3	4	6	8	11
129	4584	3.4271	1	1	1	4	9
130	91826	6.6818	2	4	6	8	12
131	25592	5.1808	1	3	5	7	8
132	127274	3.5716	1	2	3	4	6
133	5813	2.9696	1	1	2	4	5
134	28493	3.9142	1	2	3	5	7
135	7141	4.9779	1	2	4	6	9
136	1014	3.2209	1	2	3	4	6
138	195932	4.5466	1	2	3	6	8
139	67345	2.9337	1	1	2	4	5
140	175930	3.4831	1	2	3	4	6
141	76111	4.4923	1	2	3	5	8
142	35701	3.1999	1	2	2	4	6
143	132318	2.6077	1	1	2	3	5
144	66761	5.6816	1	2	4	7	11
145	6735	3.2413	1	1	2	4	6
146	8626	11.2570	6	7	9	13	18
147	1624	7.3651	4	6	7	9	11
148	140141	13.4097	6	8	11	16	24

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY95 MEDPAR Update 12/95 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
149	15769	7.7194	4	6	7	9	11
150	22516	11.6884	4	7	10	14	21
151	4518	6.4748	2	4	6	8	11
152	4469	9.0257	4	6	8	10	15
153	1710	6.1655	3	4	6	8	9
154	35661	14.9524	5	8	12	18	28
155	4557	5.8824	2	3	5	8	10
156	4	15.7500	4	4	10	22	27
157	11419	5.7824	1	2	4	7	11
158	5082	2.9124	1	1	2	4	6
159	17132	5.3155	1	2	4	7	10
160	9971	2.9553	1	1	2	4	5
161	14786	4.3655	1	2	3	5	9
162	7990	2.1914	1	1	2	3	4
163	5	2.2000	1	1	1	3	5
164	4995	9.2993	4	6	8	11	16
165	1674	5.7575	3	4	5	7	9
166	3283	5.7286	2	3	4	7	10
167	2284	3.2439	1	2	3	4	6
168	1739	4.8562	1	2	3	6	10
169	1025	2.5473	1	1	2	3	5
170	12463	12.4436	2	5	9	15	25
171	1157	5.4105	1	2	4	7	11
172	30820	8.1481	2	3	6	10	16
173	2188	4.2870	1	2	3	5	9
174	231782	5.5456	2	3	4	7	10
175	23071	3.5073	1	2	3	4	6
176	16011	6.1346	2	3	5	7	11
177	11991	4.9873	2	3	4	6	9
178	4174	3.6195	1	2	3	5	7
179	11198	7.1657	2	4	6	9	14
180	79145	6.0471	2	3	5	7	11
181	22152	3.9606	1	2	3	5	7
182	226099	4.9591	2	2	4	6	9
183	72147	3.4552	1	2	3	4	6
184	67	3.7463	1	2	2	4	6
185	3804	5.1966	1	2	4	6	10
186	1	2.0000	2	2	2	2	2
187	832	4.2524	1	2	3	6	8
188	61112	6.1262	2	3	5	8	12
189	7787	3.6773	1	1	3	5	7
190	62	4.8548	1	3	4	6	10
191	10459	16.1606	5	8	12	20	32
192	880	7.9625	2	4	7	9	14
193	8477	13.8662	5	8	11	17	25
194	805	8.4348	3	5	7	10	15
195	9196	10.4533	4	6	9	12	18
196	796	6.7651	3	4	6	8	11
197	28016	9.1380	4	5	7	11	16
198	7906	4.9586	2	3	4	6	8
199	2208	11.1005	3	5	9	14	22
200	1525	11.8413	2	4	8	14	25
201	1466	16.5750	4	7	13	21	34
202	25094	7.6794	2	3	6	9	15
203	28743	7.6566	2	3	6	10	15
204	49035	6.6942	2	3	5	8	13
205	21512	7.2152	2	3	5	9	14
206	1692	4.7305	1	2	4	6	10
207	35330	5.7193	2	3	4	7	11
208	10251	3.4474	1	2	3	4	6
209	328015	6.6569	3	4	6	7	10
210	131592	8.5557	4	5	7	10	14
211	25325	6.2610	3	4	6	7	10
212	9	5.0000	2	3	4	5	8
213	6788	9.6117	3	4	7	12	19
214	51282	6.4551	2	3	5	8	12
215	41115	3.6816	1	2	3	5	7
216	6435	11.0449	2	5	8	14	22
217	19341	15.2991	3	6	10	18	31
218	21844	6.2064	2	3	5	7	11

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY95 MEDPAR Update 12/95 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
219	17973	3.7492	1	2	3	5	6
220	2	5.5000	5	5	6	6	6
221	4962	8.1475	2	4	6	10	16
222	3560	4.0573	1	2	3	5	8
223	18306	2.8650	1	1	2	3	5
224	7946	2.2699	1	1	2	3	4
225	6199	5.0045	1	2	3	6	11
226	5349	6.7080	1	2	4	8	14
227	4604	2.9622	1	1	2	4	6
228	3014	3.5551	1	1	2	4	7
229	1345	2.4007	1	1	2	3	5
230	2455	5.1548	1	2	3	6	11
231	10331	5.0624	1	2	3	6	11
232	576	4.5017	1	1	2	5	10
233	4538	8.9595	2	4	7	11	18
234	2220	4.1730	1	2	3	5	8
235	5543	6.7231	1	3	4	7	13
236	37803	6.2862	2	3	5	7	12
237	1510	4.4139	1	2	3	5	8
238	7538	10.0649	3	5	7	12	19
239	59581	7.6027	2	4	6	9	14
240	12047	7.4987	2	3	5	9	15
241	3019	4.6277	1	2	4	6	9
242	2528	7.6606	2	4	6	9	15
243	79979	5.6107	2	3	4	7	10
244	11456	5.8092	2	3	4	7	11
245	4259	4.2158	1	2	3	5	8
246	1312	4.5899	1	2	4	6	9
247	10591	3.9716	1	2	3	5	8
248	6767	5.2815	1	2	4	6	10
249	10077	4.2995	1	2	3	5	9
250	3178	4.9091	1	2	3	6	9
251	2090	3.2933	1	1	3	4	6
252	1	1.0000	1	1	1	1	1
253	17469	5.8164	2	3	4	7	11
254	9208	3.8588	1	2	3	5	7
255	1	2.0000	2	2	2	2	2
256	4600	5.7178	1	2	4	7	11
257	23640	3.4239	1	2	3	4	6
258	18784	2.4905	1	2	2	3	4
259	4010	3.5077	1	1	2	3	7
260	4868	1.8683	1	1	1	2	3
261	2334	2.3500	1	1	2	3	4
262	712	3.9284	1	1	2	5	8
263	29088	13.8669	4	6	10	16	28
264	3559	8.3442	2	4	6	10	17
265	4274	7.6467	1	2	5	9	16
266	2712	3.6855	1	1	3	5	7
267	222	4.0811	1	1	3	5	9
268	891	4.0000	1	1	2	4	9
269	10173	9.1218	2	3	7	12	18
270	3456	3.3958	1	1	2	4	8
271	21515	8.4984	3	4	7	10	15
272	5863	7.4481	2	3	6	9	14
273	1426	5.5035	2	2	4	7	11
274	2526	7.7458	2	3	5	9	15
275	250	3.5040	1	1	2	4	8
276	889	5.0472	1	2	4	6	9
277	79054	6.7240	3	4	5	8	12
278	26008	5.1420	2	3	4	6	9
279	5	4.8000	2	2	3	4	12
280	13098	5.1142	1	2	4	6	9
281	5890	3.6448	1	2	3	4	7
283	5233	5.4888	2	2	4	7	10
284	1755	3.8632	1	2	3	5	7
285	4886	13.5014	3	6	10	16	26
286	1918	8.7195	3	4	6	9	16
287	6284	13.3908	3	6	9	16	26
288	957	7.0449	2	4	5	7	11
289	4992	3.9732	1	2	2	4	8

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY95 MEDPAR Update 12/95 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
290	8514	2.8404	1	1	2	3	5
291	86	1.7558	1	1	1	2	3
292	5046	12.6958	2	5	9	16	25
293	294	6.4456	1	3	5	8	14
294	86024	5.6681	2	3	4	7	10
295	3712	4.2826	1	2	3	5	8
296	218940	6.3561	2	3	5	8	12
297	31455	4.2781	1	2	3	5	8
298	95	3.0211	1	1	2	4	5
299	868	5.3652	1	2	4	7	10
300	14115	7.3032	2	3	6	9	14
301	2146	4.3877	1	2	3	6	9
302	7567	12.3190	6	7	9	14	21
303	18462	10.1938	4	6	8	12	18
304	12867	10.2970	3	5	7	13	21
305	2526	4.9097	1	3	4	6	9
306	11305	6.2204	2	2	4	8	13
307	2596	2.9819	1	2	2	3	5
308	9137	7.0113	1	2	5	9	15
309	3371	3.0009	1	1	2	4	6
310	28549	4.6077	1	2	3	6	9
311	9697	2.1734	1	1	2	3	4
312	1995	4.7895	1	2	3	6	10
313	745	2.2644	1	1	2	3	5
314	1	5.0000	5	5	5	5	5
315	27722	9.2695	1	2	6	12	20
316	69941	7.4958	2	3	6	9	15
317	779	2.8434	1	1	2	3	6
318	5981	7.1195	2	3	5	9	14
319	506	3.2174	1	1	2	4	7
320	169078	6.4297	2	3	5	8	11
321	25512	4.7020	2	3	4	6	8
322	81	4.3580	2	2	4	6	8
323	17690	3.5573	1	2	3	4	7
324	8755	2.0870	1	1	2	3	4
325	7381	4.5898	1	2	3	5	9
326	2186	3.4492	1	1	2	4	6
327	8	3.1250	1	2	2	2	4
328	817	4.2742	1	2	3	5	9
329	109	2.7523	1	1	2	3	5
330	1	1.0000	1	1	1	1	1
331	38181	6.1753	2	3	5	8	12
332	4687	3.8835	1	2	3	5	8
333	357	5.8319	1	3	4	7	13
334	19011	6.0503	3	4	5	7	9
335	9821	4.5786	2	3	4	6	7
336	60748	4.1251	1	2	3	5	8
337	38538	2.6717	1	2	2	3	4
338	4813	5.2703	1	2	3	6	11
339	2302	4.9392	1	2	3	6	10
340	2	3.0000	1	1	5	5	5
341	6427	3.2367	1	1	2	4	6
342	224	4.0089	1	1	2	5	8
344	3820	3.4652	1	1	2	4	7
345	1355	3.9734	1	2	3	4	9
346	5343	6.7477	1	3	5	8	14
347	418	3.3349	1	1	2	4	7
348	3021	4.8875	1	2	4	6	9
349	684	2.9956	1	1	2	4	6
350	6884	4.7451	2	3	4	6	8
352	576	3.9392	1	2	3	5	8
353	2621	8.3564	3	5	6	10	15
354	9693	6.3330	3	4	5	7	11
355	5607	3.8639	2	3	4	4	6
356	28647	3.0247	1	2	3	4	5
357	6526	9.8462	4	5	8	12	18
358	26797	4.7425	2	3	4	5	8
359	27392	3.2715	2	3	3	4	5
360	16717	3.5393	1	2	3	4	6
361	618	3.4644	1	1	2	4	7

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY95 MEDPAR Update 12/95 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
363	4355	3.4953	1	2	2	3	6
364	1778	3.6310	1	1	2	5	8
365	2396	8.1123	2	3	5	10	18
366	4470	7.6707	2	3	5	10	16
367	544	3.3107	1	1	2	4	7
368	2285	6.9190	2	3	5	9	13
369	2409	3.7410	1	1	3	5	7
370	1083	5.5568	3	3	4	5	9
371	950	3.5874	2	3	3	4	5
372	809	3.3498	1	2	2	3	6
373	3637	1.9249	1	1	2	2	3
374	116	2.3621	1	2	2	2	3
375	5	2.2000	1	1	2	3	4
376	151	3.4834	1	1	2	4	8
377	26	3.2308	1	1	1	3	8
378	163	2.9755	1	2	3	3	5
379	309	2.9256	1	1	2	3	5
380	71	2.3239	1	1	2	3	4
381	194	2.2835	1	1	1	2	5
382	47	1.6596	1	1	1	1	3
383	1455	4.0460	1	2	3	5	8
384	123	3.3496	1	1	1	3	7
385	3	17.0000	1	1	1	49	49
389	24	10.6667	3	4	8	10	18
390	10	5.0000	1	2	3	6	9
392	2467	11.6700	4	6	8	15	24
394	1642	7.8831	1	2	5	9	16
395	65671	5.3672	1	2	4	7	10
396	18	3.9444	1	1	3	7	8
397	15421	6.0683	2	3	4	7	12
398	16602	6.5798	2	3	5	8	12
399	1424	4.4347	1	2	4	6	8
400	7470	10.3424	2	4	7	13	23
401	6368	12.3990	2	5	9	16	25
402	1542	4.6984	1	1	3	6	10
403	34812	9.2838	2	4	7	12	19
404	3946	5.0867	1	2	4	7	10
406	3264	11.1468	3	5	8	14	23
407	723	4.9267	1	2	4	6	9
408	2949	8.2035	1	2	5	10	18
409	5649	6.6516	2	3	4	6	14
410	85873	3.3544	1	2	3	4	5
411	50	2.5600	1	1	2	3	7
412	35	3.0857	1	1	2	4	8
413	8421	8.2956	2	3	6	10	17
414	797	5.2070	1	2	4	7	11
415	38804	15.6974	4	7	12	19	31
416	192133	8.2122	2	4	7	10	15
417	45	4.6222	1	2	4	7	10
418	18663	6.7433	2	3	5	8	13
419	15677	5.6580	2	3	4	7	10
420	2871	4.3006	2	2	4	5	8
421	11386	4.6473	2	2	4	6	8
422	89	3.6854	1	2	3	4	7
423	9118	8.6534	2	4	6	10	18
424	1990	17.7397	3	6	12	20	34
425	15247	4.8955	1	2	3	6	10
426	4721	5.4938	1	2	4	7	11
427	1773	5.2775	1	2	4	7	11
428	904	8.4303	1	3	5	10	18
429	38861	8.9079	2	3	6	10	17
430	53430	9.7495	2	4	7	12	19
431	190	7.4632	1	3	5	9	14
432	430	6.3395	1	2	4	6	11
433	7843	3.4051	1	1	2	4	7
434	20810	5.8148	2	3	4	7	11
435	15477	4.8166	1	3	4	6	8
436	2915	14.5413	4	8	14	21	28
437	14205	10.8943	4	6	10	14	20
439	867	8.9262	2	3	6	11	18

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY95 MEDPAR Update 12/95 Grouper V13.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
440	4751	9.7838	2	3	6	12	21
441	611	4.4386	1	1	2	4	7
442	13818	8.7372	1	3	6	11	18
443	3299	3.5335	1	1	2	5	7
444	3319	5.3203	1	3	4	6	10
445	1321	3.7858	1	2	3	5	7
446	1	1.0000	1	1	1	1	1
447	3816	2.7953	1	1	2	3	5
448	84	1.0000	1	1	1	1	1
449	28775	4.4101	1	2	3	5	9
450	6807	2.3364	1	1	2	3	5
451	7	6.1429	2	3	4	5	7
452	19382	5.4066	1	2	4	6	11
453	3636	3.1876	1	1	2	4	6
454	5132	5.1046	1	2	3	6	10
455	1092	2.8333	1	1	2	3	5
456	194	8.3711	1	1	4	9	21
457	127	4.7953	1	1	2	5	10
458	1550	16.9387	4	7	13	22	35
459	533	10.3471	2	4	7	13	22
460	2303	6.6309	1	3	5	8	13
461	3040	4.8862	1	1	2	5	12
462	9360	13.7955	5	6	12	18	26
463	11987	5.1410	1	2	4	6	10
464	3079	3.7347	1	2	3	5	7
465	197	3.9086	1	1	2	4	7
466	1838	4.6366	1	1	2	4	10
467	1722	4.1057	1	1	2	4	8
468	58649	15.1829	3	7	12	19	30
471	9111	8.0289	4	5	6	9	13
472	150	30.6667	2	9	28	41	62
473	8217	14.3113	2	4	8	21	35
475	89514	12.1394	2	5	10	16	24
476	6875	13.7876	3	7	11	17	25
477	28128	8.8453	1	3	6	11	18
478	117755	8.2916	1	3	6	10	17
479	17758	4.5591	1	2	4	6	9
480	359	29.7159	10	13	22	37	61
481	119	35.0000	21	23	30	39	59
482	6754	14.9011	5	8	11	17	28
483	36200	45.7958	15	23	37	56	84
484	327	15.3364	2	6	11	21	32
485	3165	11.5893	4	6	9	13	21
486	2045	13.3482	1	6	11	18	28
487	3765	8.8770	1	3	7	11	17
488	1593	17.5267	5	8	13	22	35
489	17612	10.3989	2	4	7	13	22
490	4999	6.5719	1	2	4	8	14
491	9441	4.2777	2	3	3	5	7
492	2029	17.3834	3	5	10	28	37
493	52260	5.8809	1	2	5	8	11
494	27127	2.4245	1	1	2	3	5
495	107	23.7944	10	13	18	29	41
	10571233						

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY
[FY95 MEDPAR Update 12/95 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1	32723	11.0372	3	4	8	14	23
2	6165	11.5178	3	5	8	14	23
3	1	10.0000	10	10	10	10	10
4	5866	9.1202	2	3	6	11	20
5	95896	4.4060	2	2	3	5	9
6	444	3.3581	1	1	2	4	7
7	10526	12.5752	3	5	8	14	25

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY95 MEDPAR Update 12/95 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
8	2248	4.1348	1	1	3	5	9
9	1655	7.5287	2	3	5	9	16
10	19194	7.9610	2	3	6	10	16
11	2866	4.9215	1	2	4	6	10
12	23355	7.5868	2	3	5	9	14
13	5969	6.2406	2	4	5	7	11
14	351205	7.4178	2	3	6	9	14
15	138882	4.4367	1	2	3	5	8
16	11877	6.5858	2	3	5	8	12
17	3217	4.0258	1	2	3	5	7
18	22783	6.3682	2	3	5	8	12
19	7433	4.5271	1	2	4	6	8
20	5990	11.2129	3	5	9	15	22
21	1114	7.8905	2	3	6	10	16
22	2585	4.8584	2	2	4	6	9
23	5720	5.0336	1	2	4	6	10
24	53620	5.8059	2	3	4	7	11
25	21830	3.8592	1	2	3	5	7
26	46	4.6087	1	2	3	6	10
27	3475	6.2774	1	1	4	7	15
28	11179	7.0945	1	3	5	9	14
29	3684	4.0581	1	2	3	5	8
31	3167	5.4436	1	2	4	6	10
32	1723	3.1573	1	1	2	4	6
34	16272	6.4700	2	3	5	8	12
35	3648	4.2928	1	2	3	5	8
36	9010	1.5970	1	1	1	2	3
37	1878	4.0213	1	1	3	5	8
38	234	2.5385	1	1	2	3	5
39	3289	1.9663	1	1	1	2	4
40	2779	3.3843	1	1	2	4	7
42	7351	2.2049	1	1	1	2	5
43	97	4.0928	1	2	3	5	8
44	1614	5.7038	2	3	5	7	10
45	2412	3.8163	1	2	3	5	7
46	2952	5.4814	1	2	4	7	10
47	1333	3.7802	1	2	3	5	7
49	2139	5.6396	1	2	4	7	11
50	3347	2.1138	1	1	2	2	3
51	308	2.9870	1	1	1	3	7
52	78	3.6282	1	1	2	3	8
53	3340	3.5548	1	1	2	4	8
54	1	1.0000	1	1	1	1	1
55	1924	2.9569	1	1	2	3	6
56	704	2.7514	1	1	2	3	6
57	637	4.0973	1	1	3	5	8
59	88	3.7045	1	1	2	4	7
60	3	1.0000	1	1	1	1	1
61	217	5.2535	1	1	2	7	14
62	1	2.0000	2	2	2	2	2
63	3996	4.6652	1	2	3	5	10
64	3351	7.5067	1	2	5	9	16
65	29525	3.4147	1	2	3	4	6
66	6479	3.5658	1	2	3	4	6
67	510	4.2039	2	2	3	5	8
68	9443	4.7605	2	3	4	6	9
69	3062	3.7606	1	2	3	5	7
70	30	3.0667	1	2	3	3	5
71	90	4.1556	1	2	3	5	8
72	561	4.3529	1	2	3	5	9
73	6017	4.9493	1	2	4	6	9
75	39401	11.1088	4	6	8	14	21
76	38785	12.4555	3	6	10	15	24
77	2331	5.5268	1	2	4	8	12
78	28979	8.2306	4	5	7	10	13
79	207606	9.2488	3	5	7	11	17
80	8932	6.6160	2	4	5	8	12
81	9	7.2222	1	2	6	11	12
82	68573	7.8881	2	3	6	10	16
83	6976	6.3817	2	3	5	8	12

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY95 MEDPAR Update 12/95 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
84	1430	3.7217	1	2	3	5	7
85	18398	7.3317	2	3	6	9	14
86	1372	4.5117	1	2	4	6	9
87	58612	6.7959	1	3	6	9	13
88	345365	6.0658	2	3	5	7	11
89	415072	7.0754	3	4	6	9	12
90	40306	5.1392	2	3	4	6	9
91	50	4.5800	2	2	3	6	8
92	11849	7.2524	2	4	6	9	13
93	1262	4.9374	1	3	4	6	9
94	12531	7.0527	2	3	5	9	14
95	1365	4.1341	1	2	3	5	8
96	60887	5.5101	2	3	5	7	10
97	25835	4.2614	2	2	4	5	7
98	19	4.4737	1	1	3	6	10
99	25241	3.4914	1	2	3	4	7
100	10191	2.4244	1	1	2	3	4
101	19810	5.1725	1	2	4	7	10
102	4399	3.1298	1	1	2	4	6
103	445	39.3528	10	15	29	53	80
104	22854	14.5510	6	8	12	18	26
105	19821	10.9286	5	7	9	13	19
106	96166	11.7202	6	8	10	14	19
107	61255	8.8314	5	6	7	10	14
108	6560	12.5834	4	7	10	15	23
110	59173	10.7795	3	6	9	13	20
111	5800	6.6512	3	5	6	8	10
112	191511	4.6987	1	2	4	6	9
113	45003	14.3320	4	6	10	17	28
114	8788	9.4467	2	4	7	12	18
115	10395	11.3715	4	6	9	14	20
116	81298	5.4177	1	2	4	7	11
117	4482	4.1142	1	1	2	5	8
118	6687	3.1952	1	1	2	4	7
119	1705	5.4985	1	1	3	7	13
120	40465	9.1860	1	2	6	12	21
121	158928	7.4120	2	4	6	9	13
122	87089	5.0036	1	3	5	6	9
123	46281	4.6510	1	1	2	6	11
124	138564	4.8885	1	2	4	6	9
125	59232	3.0694	1	1	2	4	6
126	4619	13.9985	4	7	11	17	29
127	670461	6.2113	2	3	5	8	12
128	19612	6.7259	3	4	6	8	11
129	4584	3.4271	1	1	1	4	9
130	91826	6.6818	2	4	6	8	12
131	25592	5.1808	1	3	5	7	8
132	127274	3.5716	1	2	3	4	6
133	5813	2.9696	1	1	2	4	5
134	28493	3.9142	1	2	3	5	7
135	7141	4.9779	1	2	4	6	9
136	1014	3.2209	1	2	3	4	6
138	195932	4.5466	1	2	3	6	8
139	67345	2.9337	1	1	2	4	5
140	175930	3.4831	1	2	3	4	6
141	76111	4.4923	1	2	3	5	8
142	35701	3.1999	1	2	2	4	6
143	132318	2.6077	1	1	2	3	5
144	66761	5.6816	1	2	4	7	11
145	6735	3.2413	1	1	2	4	6
146	8626	11.2570	6	7	9	13	18
147	1624	7.3651	4	6	7	9	11
148	140141	13.4097	6	8	11	16	24
149	15769	7.7194	4	6	7	9	11
150	22516	11.6884	4	7	10	14	21
151	4518	6.4748	2	4	6	8	11
152	4469	9.0257	4	6	8	10	15
153	1710	6.1655	3	4	6	8	9
154	35661	14.9524	5	8	12	18	28
155	4557	5.8824	2	3	5	8	10

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY95 MEDPAR Update 12/95 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
156	4	15.7500	4	4	10	22	27
157	11419	5.7824	1	2	4	7	11
158	5082	2.9124	1	1	2	4	6
159	17132	5.3155	1	2	4	7	10
160	9971	2.9553	1	1	2	4	5
161	14786	4.3655	1	2	3	5	9
162	7990	2.1914	1	1	2	3	4
163	5	2.2000	1	1	1	3	5
164	4995	9.2993	4	6	8	11	16
165	1674	5.7575	3	4	5	7	9
166	3283	5.7286	2	3	4	7	10
167	2284	3.2409	1	2	3	4	6
168	1739	4.8562	1	2	3	6	10
169	1025	2.5473	1	1	2	3	5
170	12463	12.4436	2	5	9	15	25
171	1157	5.4105	1	2	4	7	11
172	30820	8.1481	2	3	6	10	16
173	2188	4.2870	1	2	3	5	9
174	231782	5.5456	2	3	4	7	10
175	23071	3.5073	1	2	3	4	6
176	16011	6.1346	2	3	5	7	11
177	11991	4.9873	2	3	4	6	9
178	4174	3.6195	1	2	3	5	7
179	11198	7.1657	2	4	6	9	14
180	79145	6.0471	2	3	5	7	11
181	22152	3.9606	1	2	3	5	7
182	226099	4.9591	2	2	4	6	9
183	72147	3.4552	1	2	3	4	6
184	67	3.7463	1	2	2	4	6
185	3804	5.1966	1	2	4	6	10
186	1	2.0000	2	2	2	2	2
187	832	4.2524	1	2	3	6	8
188	61112	6.1262	2	3	5	8	12
189	7787	3.6773	1	1	3	5	7
190	62	4.8548	1	3	4	6	10
191	10459	16.1606	5	8	12	20	32
192	880	7.9625	2	4	7	9	14
193	8477	13.8662	5	8	11	17	25
194	805	8.4348	3	5	7	10	15
195	9196	10.4533	4	6	9	12	18
196	796	6.7651	3	4	6	8	11
197	28016	9.1380	4	5	7	11	16
198	7906	4.9586	2	3	4	6	8
199	2208	11.1005	3	5	9	14	22
200	1525	11.8413	2	4	8	14	25
201	1466	16.5750	4	7	13	21	34
202	25094	7.6794	2	3	6	9	15
203	28743	7.6566	2	3	6	10	15
204	49035	6.6942	2	3	5	8	13
205	21512	7.2152	2	3	5	9	14
206	1692	4.7305	1	2	4	6	10
207	35330	5.7193	2	3	4	7	11
208	10251	3.4474	1	2	3	4	6
209	328015	6.6569	3	4	6	7	10
210	131592	8.5557	4	5	7	10	14
211	25325	6.2610	3	4	6	7	10
212	9	5.0000	2	3	4	5	8
213	6789	9.6170	3	4	7	12	19
214	51282	6.4551	2	3	5	8	12
215	41115	3.6816	1	2	3	5	7
216	6435	11.0449	2	5	8	14	22
217	19341	15.2991	3	6	10	18	31
218	21844	6.2064	2	3	5	7	11
219	17973	3.7492	1	2	3	5	6
220	2	5.5000	5	5	6	6	6
221	4962	8.1475	2	4	6	10	16
222	3560	4.0573	1	2	3	5	8
223	18306	2.8650	1	1	2	3	5
224	7946	2.2699	1	1	2	3	4
225	6199	5.0045	1	2	3	6	11

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY95 MEDPAR Update 12/95 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
226	5349	6.7080	1	2	4	8	14
227	4604	2.9622	1	1	2	4	6
228	3014	3.5551	1	1	2	4	7
229	1345	2.4007	1	1	2	3	5
230	2455	5.1548	1	2	3	6	11
231	10331	5.0624	1	2	3	6	11
232	576	4.5017	1	1	2	5	10
233	4538	8.9595	2	4	7	11	18
234	2220	4.1730	1	2	3	5	8
235	5543	6.7231	1	3	4	7	13
236	37803	6.2862	2	3	5	7	12
237	1510	4.4139	1	2	3	5	8
238	7538	10.0649	3	5	7	12	19
239	59580	7.6024	2	4	6	9	14
240	12047	7.4987	2	3	5	9	15
241	3019	4.6277	1	2	4	6	9
242	2528	7.6606	2	4	6	9	15
243	79979	5.6107	2	3	4	7	10
244	11456	5.8092	2	3	4	7	11
245	4259	4.2158	1	2	3	5	8
246	1312	4.5899	1	2	4	6	9
247	10591	3.9716	1	2	3	5	8
248	6767	5.2815	1	2	4	6	10
249	10077	4.2995	1	2	3	5	9
250	3178	4.9091	1	2	3	6	9
251	2090	3.2933	1	1	3	4	6
252	1	1.0000	1	1	1	1	1
253	17469	5.8164	2	3	4	7	11
254	9208	3.8588	1	2	3	5	7
255	1	2.0000	2	2	2	2	2
256	4600	5.7178	1	2	4	7	11
257	23640	3.4239	1	2	3	4	6
258	18784	2.4905	1	2	2	3	4
259	4010	3.5077	1	1	2	3	7
260	4868	1.8683	1	1	1	2	3
261	2334	2.3500	1	1	2	3	4
262	712	3.9284	1	1	2	5	8
263	29088	13.8669	4	6	10	16	28
264	3559	8.3442	2	4	6	10	17
265	4274	7.6467	1	2	5	9	16
266	2712	3.6855	1	1	3	5	7
267	222	4.0811	1	1	3	5	9
268	891	4.0000	1	1	2	4	9
269	10174	9.1235	2	3	7	12	18
270	3456	3.3958	1	1	2	4	8
271	21515	8.4984	3	4	7	10	15
272	5863	7.4481	2	3	6	9	14
273	1426	5.5035	2	2	4	7	11
274	2526	7.7458	2	3	5	9	15
275	250	3.5040	1	1	2	4	8
276	889	5.0472	1	2	4	6	9
277	79054	6.7240	3	4	5	8	12
278	26008	5.1420	2	3	4	6	9
279	5	4.8000	2	2	3	4	12
280	13098	5.1142	1	2	4	6	9
281	5890	3.6448	1	2	3	4	7
283	5233	5.4888	2	2	4	7	10
284	1755	3.8632	1	2	3	5	7
285	4886	13.5014	3	6	10	16	26
286	1918	8.7195	3	4	6	9	16
287	6284	13.3908	3	6	9	16	26
288	957	7.0449	2	4	5	7	11
289	4992	3.9732	1	2	2	4	8
290	8514	2.8404	1	1	2	3	5
291	86	1.7558	1	1	1	2	3
292	5046	12.6958	2	5	9	16	25
293	294	6.4456	1	3	5	8	14
294	86024	5.6681	2	3	4	7	10
295	3712	4.2826	1	2	3	5	8
296	218940	6.3561	2	3	5	8	12

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY95 MEDPAR Update 12/95 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
297	31455	4.2781	1	2	3	5	8
298	95	3.0211	1	1	2	4	5
299	868	5.3652	1	2	4	7	10
300	14115	7.3032	2	3	6	9	14
301	2146	4.3877	1	2	3	6	9
302	7567	12.3190	6	7	9	14	21
303	18462	10.1938	4	6	8	12	18
304	12867	10.2970	3	5	7	13	21
305	2526	4.9097	1	3	4	6	9
306	11305	6.2204	2	2	4	8	13
307	2596	2.9819	1	2	2	3	5
308	9137	7.0113	1	2	5	9	15
309	3371	3.0009	1	1	2	4	6
310	28549	4.6077	1	2	3	6	9
311	9697	2.1734	1	1	2	3	4
312	1995	4.7895	1	2	3	6	10
313	745	2.2644	1	1	2	3	5
314	1	5.0000	5	5	5	5	5
315	27722	9.2695	1	2	6	12	20
316	69941	7.4958	2	3	6	9	15
317	779	2.8434	1	1	2	3	6
318	5981	7.1195	2	3	5	9	14
319	506	3.2174	1	1	2	4	7
320	169078	6.4297	2	3	5	8	11
321	25512	4.7020	2	3	4	6	8
322	81	4.3580	2	2	4	6	8
323	17690	3.5573	1	2	3	4	7
324	8755	2.0870	1	1	2	3	4
325	7381	4.5898	1	2	3	5	9
326	2186	3.4492	1	1	2	4	6
327	8	3.1250	1	2	2	2	4
328	817	4.2742	1	2	3	5	9
329	109	2.7523	1	1	2	3	5
330	1	1.0000	1	1	1	1	1
331	38181	6.1753	2	3	5	8	12
332	4687	3.8835	1	2	3	5	8
333	357	5.8319	1	3	4	7	13
334	19011	6.0503	3	4	5	7	9
335	9821	4.5786	2	3	4	6	7
336	60748	4.1251	1	2	3	5	8
337	38538	2.6717	1	2	2	3	4
338	4813	5.2703	1	2	3	6	11
339	2302	4.9392	1	2	3	6	10
340	2	3.0000	1	1	5	5	5
341	6427	3.2367	1	1	2	4	6
342	224	4.0089	1	1	2	5	8
344	3820	3.4652	1	1	2	4	7
345	1355	3.9734	1	2	3	4	9
346	5344	6.7500	1	3	5	8	14
347	418	3.3349	1	1	2	4	7
348	3021	4.8875	1	2	4	6	9
349	684	2.9956	1	1	2	4	6
350	6884	4.7451	2	3	4	6	8
352	576	3.9392	1	2	3	5	8
353	2621	8.3564	3	5	6	10	15
354	9693	6.3330	3	4	5	7	11
355	5607	3.8639	2	3	4	4	6
356	28647	3.0247	1	2	3	4	5
357	6526	9.8462	4	5	8	12	18
358	26797	4.7425	2	3	4	5	8
359	27392	3.2715	2	3	3	4	5
360	16717	3.5393	1	2	3	4	6
361	618	3.4644	1	1	2	4	7
363	4355	3.4953	1	2	2	3	6
364	1778	3.6310	1	1	2	5	8
365	2396	8.1123	2	3	5	10	18
366	4471	7.6741	2	3	5	10	16
367	545	3.3266	1	1	2	4	7
368	2285	6.9190	2	3	5	9	13
369	2409	3.7410	1	1	3	5	7

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY95 MEDPAR Update 12/95 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
370	1083	5.5568	3	3	4	5	9
371	950	3.5874	2	3	3	4	5
372	809	3.3498	1	2	2	3	6
373	3637	1.9249	1	1	2	2	3
374	116	2.3621	1	2	2	2	3
375	5	2.2000	1	1	2	3	4
376	151	3.4834	1	1	2	4	8
377	26	3.2308	1	1	1	3	8
378	163	2.9755	1	2	3	3	5
379	309	2.9256	1	1	2	3	5
380	71	2.3239	1	1	2	3	4
381	194	2.2835	1	1	1	2	5
382	47	1.6596	1	1	1	1	3
383	1455	4.0460	1	2	3	5	8
384	123	3.3496	1	1	1	3	7
385	3	17.0000	1	1	1	49	49
389	24	10.6667	3	4	8	10	18
390	10	5.0000	1	2	3	6	9
392	2467	11.6700	4	6	8	15	24
394	1642	7.8831	1	2	5	9	16
395	65671	5.3672	1	2	4	7	10
396	18	3.9444	1	1	3	7	8
397	15421	6.0683	2	3	4	7	12
398	16601	6.5794	2	3	5	8	12
399	1424	4.4347	1	2	4	6	8
400	7468	10.3293	2	4	7	13	23
401	6365	12.3829	2	5	9	16	25
402	1542	4.6984	1	1	3	6	10
403	34765	9.2628	2	4	7	12	19
404	3944	5.0822	1	2	4	7	10
406	3264	11.1468	3	5	8	14	23
407	723	4.9267	1	2	4	6	9
408	2949	8.2035	1	2	5	10	18
409	5649	6.6516	2	3	4	6	14
410	85871	3.3540	1	2	3	4	5
411	50	2.5600	1	1	2	3	7
412	35	3.0857	1	1	2	4	8
413	8422	8.2992	2	3	6	10	17
414	797	5.2070	1	2	4	7	11
415	38804	15.6974	4	7	12	19	31
416	192133	8.2122	2	4	7	10	15
417	45	4.6222	1	2	4	7	10
418	18663	6.7433	2	3	5	8	13
419	15677	5.6580	2	3	4	7	10
420	2871	4.3006	2	2	4	5	8
421	11386	4.6473	2	2	4	6	8
422	89	3.6854	1	2	3	4	7
423	9118	8.6534	2	4	6	10	18
424	1990	17.7397	3	6	12	20	34
425	15247	4.8955	1	2	3	6	10
426	4721	5.4938	1	2	4	7	11
427	1773	5.2775	1	2	4	7	11
428	904	8.4303	1	3	5	10	18
429	38861	8.9079	2	3	6	10	17
430	53430	9.7495	2	4	7	12	19
431	190	7.4632	1	3	5	9	14
432	430	6.3395	1	2	4	6	11
433	7843	3.4051	1	1	2	4	7
434	20810	5.8148	2	3	4	7	11
435	15477	4.8166	1	3	4	6	8
436	2915	14.5413	4	8	14	21	28
437	14205	10.8943	4	6	10	14	20
439	867	8.9262	2	3	6	11	18
440	4751	9.7838	2	3	6	12	21
441	611	4.4386	1	1	2	4	7
442	13818	8.7372	1	3	6	11	18
443	3299	3.5335	1	1	2	5	7
444	3319	5.3203	1	3	4	6	10
445	1321	3.7858	1	2	3	5	7
446	1	1.0000	1	1	1	1	1

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY95 MEDPAR Update 12/95 Grouper V14.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
447	3816	2.7953	1	1	2	3	5
448	84	1.0000	1	1	1	1	1
449	28775	4.4101	1	2	3	5	9
450	6807	2.3364	1	1	2	3	5
451	7	6.1429	2	3	4	5	7
452	19382	5.4066	1	2	4	6	11
453	3636	3.1876	1	1	2	4	6
454	5132	5.1046	1	2	3	6	10
455	1092	2.8333	1	1	2	3	5
456	194	8.3711	1	1	4	9	21
457	127	4.7953	1	1	2	5	10
458	1550	16.9387	4	7	13	22	35
459	533	10.3471	2	4	7	13	22
460	2303	6.6309	1	3	5	8	13
461	3040	4.8862	1	1	2	5	12
462	9360	13.7955	5	6	12	18	26
463	11987	5.1410	1	2	4	6	10
464	3079	3.7347	1	2	3	5	7
465	197	3.9086	1	1	2	4	7
466	1838	4.6366	1	1	2	4	10
467	1722	4.1057	1	1	2	4	8
468	56350	15.2546	3	7	12	19	30
471	9111	8.0289	4	5	6	9	13
472	150	30.6667	2	9	28	41	62
473	8211	14.3041	2	4	8	21	35
475	89514	12.1394	2	5	10	16	24
476	6875	13.7876	3	7	11	17	25
477	30427	9.1915	1	3	7	12	19
478	117755	8.2916	1	3	6	10	17
479	17758	4.5591	1	2	4	6	9
480	359	29.7159	10	13	22	37	61
481	177	32.0678	19	22	28	35	52
482	6754	14.9011	5	8	11	17	28
483	36200	45.7958	15	23	37	56	84
484	327	15.3364	2	6	11	21	32
485	3165	11.5893	4	6	9	13	21
486	2045	13.3482	1	6	11	18	28
487	3765	8.8770	1	3	7	11	17
488	1593	17.5267	5	8	13	22	35
489	17612	10.3989	2	4	7	13	22
490	4999	6.5719	1	2	4	8	14
491	9441	4.2777	2	3	3	5	7
492	2029	17.3834	3	5	10	28	37
493	52260	5.8809	1	2	5	8	11
494	27127	2.4245	1	1	2	3	5
495	107	23.7944	10	13	18	29	41
	10571233						

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) APRIL 1996

State	Urban	Rural
ALABAMA	0.421	0.476
ALASKA	0.505	0.795
ARIZONA	0.426	0.567
ARKANSAS	0.539	0.501
CALIFORNIA	0.408	0.544
COLORADO	0.509	0.595
CONNECTICUT	0.553	0.551
DELAWARE	0.533	0.523
DISTRICT OF COLUMBIA	0.525	.....
FLORIDA	0.414	0.414
GEORGIA	0.527	0.532
HAWAII	0.484	0.567

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) APRIL 1996—Continued

State	Urban	Rural
IDAHO	0.563	0.639
ILLINOIS	0.490	0.588
INDIANA	0.565	0.628
IOWA	0.546	0.685
KANSAS	0.457	0.651
KENTUCKY	0.507	0.562
LOUISIANA	0.478	0.538
MAINE	0.589	0.590
MARYLAND	0.765	0.816
MASSACHUSETTS	0.579	0.600
MICHIGAN	0.514	0.619

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) APRIL 1996—Continued

State	Urban	Rural
MINNESOTA	0.565	0.655
MISSISSIPPI	0.524	0.527
MISSOURI	0.460	0.532
MONTANA	0.513	0.622
NEBRASKA	0.526	0.696
NEVADA	0.322	0.550
NEW HAMPSHIRE	0.597	0.615
NEW JERSEY	0.479	.....
NEW MEXICO	0.484	0.546
NEW YORK	0.595	0.684
NORTH CAROLINA	0.546	0.501

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) APRIL 1996—Continued

State	Urban	Rural
NORTH DAKOTA	0.651	0.693
OHIO	0.567	0.606
OKLAHOMA	0.494	0.572
OREGON	0.573	0.649
PENNSYLVANIA	0.437	0.585
PUERTO RICO	0.495	0.642
RHODE ISLAND	0.587	.....
SOUTH CAROLINA	0.476	0.497
SOUTH DAKOTA	0.571	0.629
TENNESSEE	0.534	0.577
TEXAS	0.463	0.565
UTAH	0.578	0.665
VERMONT	0.638	0.596
VIRGINIA	0.499	0.538
WASHINGTON	0.636	0.686
WEST VIRGINIA	0.579	0.541
WISCONSIN	0.607	0.686
WYOMING	0.495	0.735

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) APRIL 1996

State	Ratio
ALABAMA	0.055
ALASKA	0.077
ARIZONA	0.051
ARKANSAS	0.055
CALIFORNIA	0.040
COLORADO	0.053
CONNECTICUT	0.037
DELAWARE	0.054
DISTRICT OF COLUMBIA	0.042
FLORIDA	0.051
GEORGIA	0.052
HAWAII	0.051
IDAHO	0.067
ILLINOIS	0.045
INDIANA	0.059
IOWA	0.062
KANSAS	0.055
KENTUCKY	0.056
LOUISIANA	0.069
MAINE	0.045
MARYLAND	0.013
MASSACHUSETTS	0.060
MICHIGAN	0.053
MINNESOTA	0.055
MISSISSIPPI	0.056
MISSOURI	0.053
MONTANA	0.064
NEBRASKA	0.058
NEVADA	0.034
NEW HAMPSHIRE	0.065
NEW JERSEY	0.045
NEW MEXICO	0.055
NEW YORK	0.059
NORTH CAROLINA	0.050
NORTH DAKOTA	0.074
OHIO	0.056
OKLAHOMA	0.058
OREGON	0.051
PENNSYLVANIA	0.045
PUERTO RICO	0.078
RHODE ISLAND	0.039

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) APRIL 1996—Continued

State	Ratio
SOUTH CAROLINA	0.053
SOUTH DAKOTA	0.064
TENNESSEE	0.057
TEXAS	0.055
UTAH	0.055
VERMONT	0.050
VIRGINIA	0.058
WASHINGTON	0.063
WEST VIRGINIA	0.060
WISCONSIN	0.048
WYOMING	0.067

Appendix A—Regulatory Impact Analysis

I. Introduction

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals to be small entities.

Also, section 1102(b) of the Social Security Act (the Act) requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Public Law 98-21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the prospective payment system, we classify these hospitals as urban hospitals.

It is clear that the changes being proposed in this document would affect both a substantial number of small rural hospitals as well as other classes of hospitals, and the effects on some may be significant. Therefore, the discussion below, in combination with the rest of this proposed rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis.

II. Objectives

The primary objective of the prospective payment system is to create incentives for hospitals to operate efficiently and minimize unnecessary costs while at the same time ensuring that payments are sufficient to adequately compensate hospitals for their legitimate costs. In addition, we share national goals of deficit reduction and restraints on government spending in general.

We believe the proposed changes would further each of these goals while maintaining the financial viability of the hospital industry and ensuring access to high quality health care for Medicare beneficiaries. We expect that these proposed changes would ensure that the outcomes of this payment system are, in general, reasonable and equitable while avoiding or minimizing unintended adverse consequences.

III. Limitations of Our Analysis

As has been the case in previously published regulatory impact analyses, the following quantitative analysis presents the projected effects of our proposed policy changes, as well as statutory changes effective for FY 1997, on various hospital groups. We estimate the effects of individual policy changes by estimating payments per case while holding all other payment policies constant. We use the best data available, but we do not attempt to predict behavioral responses to our policy changes, and we do not make adjustments for future changes in such variables as admissions, lengths of stay, or case mix. As we have done in previous proposed rules, we are soliciting comments and information about the anticipated effects of these changes on hospitals, and our methodology for estimating them.

IV. Hospitals Included In and Excluded From the Prospective Payment System

The prospective payment systems for hospital inpatient operating and capital-related costs encompass nearly all general, short-term, acute care hospitals that participate in the Medicare program. There were 46 Indian Health Service hospitals in our data base, which we excluded from the analysis due to the special characteristics of the prospective payment method for these hospitals. Among other short-term, acute care hospitals, only the 50 such hospitals in Maryland remain excluded from the prospective payment system under the waiver at section 1814(b)(3) of the Act. Thus, as of April 1996, we have included 5,130 hospitals in our analysis. This represents about 82 percent of all Medicare-participating hospitals. The majority of this impact analysis focuses on this set of hospitals.

The remaining 18 percent are specialty hospitals that are excluded from the prospective payment system and continue to be paid on the basis of their reasonable costs (subject to a rate-of-increase ceiling on their inpatient operating costs per discharge). These hospitals include psychiatric, rehabilitation, long-term care, children's, and cancer hospitals. The impacts of our proposed policy changes on these hospitals are discussed below.

V. Impact on Excluded Hospitals and Units

As of April 1996, there were 1,141 specialty hospitals excluded from the prospective payment system and instead paid on a reasonable cost basis subject to the rate-of-increase ceiling under § 413.40. In addition, there were 2,258 psychiatric and rehabilitation units in hospitals otherwise subject to the prospective payment system. These excluded units are also paid in accordance with § 413.40.

In accordance with section 1886(b)(3)(B)(ii)(V) of the Act, the update factor applicable to the rate-of-increase limit for excluded hospitals and units for FY 1997 would be 1.7 percent (excluded hospital market basket minus 1.0 percentage points), adjusted to account for the relationship between the hospital's allowable operating cost per case and its target amounts.

The impact on excluded hospitals and units of the proposed update in the rate-of-increase limit depends on the cumulative cost increases experienced by each excluded hospital and excluded unit since its applicable base period. For excluded hospitals and units that have maintained their cost increases at a level below the percentage increases in the rate-of-increase limits since their base period, the major effect will be on the level of incentive payments these hospitals and units receive. Conversely, for excluded hospitals and units with per-case cost increases above the cumulative update in their rate-of-increase limit, the major effect will be the amount of excess costs that the hospitals would have to absorb.

In this context, we note that, under § 413.40(d)(3), an excluded hospital or unit whose costs exceed the rate-of-increase limit is allowed to receive the lower of its rate-of-increase ceiling plus 50 percent of reasonable costs in excess of the ceiling, or 110 percent of its ceiling. In addition, under the various provisions set forth in § 413.40, excluded hospitals and units can obtain payment adjustments for significant, justifiable, increases in operating costs that exceed the limit. At the same time, however, by generally limiting payment increases, we continue to provide an incentive for excluded hospitals and units to restrain the growth in their spending for patient services.

VI. Quantitative Impact Analysis of the Proposed Policy Changes Under the Prospective Payment System for Operating Costs

A. Basis and Methodology of Estimates

In this proposed rule, we are announcing policy changes and payment rate updates for the prospective payment systems for operating and capital-related costs. We have prepared separate analyses of the proposed changes to each system, beginning with changes to the operating prospective payment system.

The data used in developing the quantitative analyses presented below are taken from the FY 1995 MedPAR file and the most current provider-specific file that is used for payment purposes. Although the analyses of the changes to the operating prospective payment system do not incorporate cost data, the most recently available hospital cost report data were used to create some of the variables by which hospitals are categorized. Our analysis has several qualifications. First, we do not make adjustments for behavioral changes that hospitals may adopt in response to these proposed policy changes. Second, due to the interdependent nature of the prospective payment system, it is very difficult to precisely quantify the impact associated with each proposed change. Third, we draw upon various sources for the data used to categorize hospitals in the tables. In some cases, particularly the number of beds, there is a fair degree of variation in the data from different sources. We have attempted to construct these variables with the best available source overall. For individual hospitals, however, some miscategorizations are possible.

Using cases in the FY 1995 MedPAR file, we simulated payments under the operating prospective payment system given various combinations of payment parameters. Any short-term, acute care hospitals not paid under the general prospective payment systems (Indian Health Service hospitals and hospitals in Maryland) are excluded from the simulations. Payments under the capital prospective payment system, or payments for costs other than inpatient operating costs, are not analyzed here. Estimated payment impacts of proposed FY 1997 changes to the capital prospective payment system are discussed below in section VII of this Appendix.

The proposed changes discussed separately below are the following:

- The effects of the annual reclassification of diagnoses and procedures and the recalibration of the diagnosis-related group (DRG) relative weights required by section 1886(d)(4)(C) of the Act.
- The effects of changes in hospitals' wage index values reflecting the wage index update (FY 1993 data).
- The effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB) that will be effective in FY 1997.
- The effects of phasing out payments for extraordinarily lengthy cases (day outlier cases) with a corresponding increase in payments for extraordinarily costly cases (cost outliers), in accordance with section 1886(d)(5)(A)(v) of the Act.
- The total change in payments based on FY 1997 policies relative to payments based on FY 1996 policies.

To illustrate the impacts of the FY 1997 proposed changes, our analysis begins with an FY 1997 baseline simulation model using: the FY 1996 GROUPER (version 13.0); the FY 1996 wage indexes; no MGCRB reclassifications; and current outlier policy (50 percent phase out of day outlier payments). Outlier payments are assumed to be 5.1 percent of total DRG payments.

Each policy change is then added incrementally to this baseline model, finally arriving at an FY 1997 model incorporating all of the proposed changes. This allows us to isolate the effects of each proposed change.

Our final comparison illustrates the percent change in payments per case from FY 1996 to FY 1997. Four factors not displayed in the previous five columns have significant impacts here. First is the update to the standardized amounts. In accordance with section 1886(d)(3)(A)(iv) of the Act, we are proposing to update the large urban and the other areas average standardized amounts for FY 1997 using the most recently forecasted hospital market basket increase for FY 1997 of 2.7 percent, minus 0.5 percentage points. Thus, the update to the large urban and other areas standardized amounts is 2.2 percent. Similarly, section 1886(b)(3)(C)(ii) of the Act provides that the update factor applicable to the hospital-specific rates for sole community hospitals (SCHs) and essential access community hospitals (EACHs) (which are treated as SCHs for

payment purposes) is also the market basket increase minus 0.5 percent, or 2.2 percent.

A second significant factor impacting changes in hospitals' payments per case from FY 1996 to FY 1997 is a change in MGCRB reclassification status from one year to the next. That is, hospitals reclassified in FY 1996 that are no longer reclassified in FY 1997 may have a negative payment impact going from FY 1996 to FY 1997; conversely, hospitals not reclassified in FY 1996 that are reclassified in FY 1997 may have a positive impact. In some cases these impacts can be quite substantial, so if a relatively small number of hospitals in a particular category lose their reclassification status, the percentage increase in payments for the category may be below the national mean.

A third significant factor is that we currently estimate that actual outlier payments during FY 1996 will be 4.2 percent of actual total DRG payments. When the FY 1996 final rule was published, we projected FY 1996 outlier payments would be 5.1 percent of total DRG payments, and the standardized amounts were reduced correspondingly. The effects of the lower than expected outlier payments during FY 1996 (as discussed in the Addendum to this proposed rule) are reflected in the analyses below comparing our current estimates of FY 1996 payments per case to estimated FY 1997 payments per case.

Finally, the regional floor provision (section 1886(d)(1)(A)(iii)(II) of the Act) expires effective with discharges occurring on or after October 1, 1996. Under this provision (applicable during FY 1996), hospitals within any census division having a regional standardized amount greater than the national standardized amount (large urban or other, depending on which amount was applicable) received a blend of 85 percent of the national amount and 15 percent of the regional amount. Hospitals in census divisions where the regional floor was applicable during FY 1996 will be negatively impacted by its expiration when comparing FY 1996 to FY 1997.

Table I demonstrates the results of our analysis. The table categorizes hospitals by various geographic and special payment consideration groups to illustrate the varying impacts on different types of hospitals. The top row of the table shows the overall impact on the 5,130 hospitals included in the analysis. This is 77 fewer hospitals than were included in the impact analysis in the FY 1996 final rule (60 FR 45924). Data for 107 hospitals that were included in last year's analysis were not available for analysis this year; however, data were available this year for 30 hospitals for which data were not available last year.

The next four rows of Table I contain hospitals categorized according to their geographic location (all urban, which is further divided into large urban and other urban, or rural). There are 2,878 hospitals located in urban areas (MSAs or NECMAs) included in our analysis. Among these, there are 1,597 hospitals located in large urban areas (populations over 1 million), and 1,281 hospitals in other urban areas (populations of 1 million or fewer). In addition, there are 2,252 hospitals in rural areas. The next two groupings are by bed size categories, shown separately for urban and rural hospitals. The final groupings by geographic location are by census divisions, also shown separately for urban and rural hospitals.

The second part of Table I shows hospital groups based on hospitals' FY 1997 payment classifications, including any reclassifications under section 1886(d)(10) of the Act. For example, the rows labeled urban, large urban, other urban, and rural, show the numbers of hospitals being paid based on these categorizations (after consideration of geographic reclassifications), are 2,978, 1,793, 1,185, and 2,152, respectively.

The next three groupings examine the impacts of the proposed changes on hospitals grouped by whether or not they have residency programs (teaching hospitals that receive an indirect medical education (IME) adjustment), receive disproportionate share (DSH) payments, or some combination of these two adjustments. There are 4,057 nonteaching hospitals in our analysis, 841 teaching hospitals with fewer than 100 residents, and 232 teaching hospitals with 100 or more residents.

In the DSH categories, hospitals are grouped according to their DSH payment status, and whether they are considered urban or rural after MGCRB reclassifications. Hospitals in the rural DSH categories, therefore, represent hospitals that were not reclassified for purposes of the standardized amount. (They may, however, have been reclassified for purposes of the wage index.) The next category groups hospitals considered urban after geographic reclassification, in terms of whether they receive the IME adjustment, the DSH adjustment, both, or neither.

The next four rows examine the impacts of the proposed changes on rural hospitals by special payment groups (SCHs, rural referral centers (RRCs), and EACHs), as well as rural hospitals not receiving a special payment designation. Rural hospitals reclassified for FY 1997 for purposes of the standardized amount are not included here.

The RRCs (90), SCH/EACHs (641), and SCH/EACH and RRCs (39) shown here were not reclassified for purposes of the standardized amount. There are four EACHs included in our analysis and five EACH/RRCs.

There are two RRCs and three SCHs that will be reclassified for the standardized amount in FY 1997 that, therefore, are not included in these rows. There are significantly fewer reclassifications among these groups than there were in FY 1996, owing to the new criterion under § 412.230(a)(5)(ii) that a hospital may not be reclassified for purposes of the standardized amount if the area to which the hospital seeks reclassification does not have a higher standardized amount than that currently received by the hospital. (See the September 1, 1995 final rule (60 FR 45799).) Before this change (effective with reclassifications for FY 1997), some rural hospitals reclassified to other urban areas in order to qualify for urban DSH payments. For other rural hospitals that already qualified for DSH payments, the urban designation enabled them to qualify for a higher DSH adjustment than they would receive as a rural hospital.

The next two groupings are based on type of ownership and the hospital's Medicare utilization expressed as a percent of total patient days. These data are taken primarily from the FY 1994 Medicare cost report files, if available (otherwise FY 1993 data are used). Data needed to calculate Medicare utilization percentages were unavailable for 131 hospitals. For the most part, these are either new hospitals or hospitals filing manual cost reports that are not yet entered into the data base.

The next series of groupings concern the geographic reclassification status of hospitals. The first three groupings display hospitals that were reclassified by the MGCRB for either FY 1996 or FY 1997, or for both years, by urban/rural status. The next rows illustrate the overall number of FY 1997 reclassifications, as well as the numbers of reclassified hospitals grouped by urban and rural location. The final row in Table I contains hospitals located in rural counties but deemed to be urban under section 1886(d)(8)(B) of the Act.

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 1997 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Percent changes in payments per case]

	Number of hosps.[1] (0)	DRG re-calibration[2] (1)	New wage data[3] (2)	MGCRB re-classification[4] (3)	Day outlier policy changes[5] (4)	All FY 97 changes[6] (5)
(By Geographic Location)						
All hospitals	5,130	0.1	−0.1	0.0	0.0	3.1
Urban hospitals	2,878	0.1	0.0	−0.4	−0.1	3.2
Large urban	1,597	0.1	0.0	−0.5	−0.2	3.1
Other urban	1,281	0.1	−0.1	−0.2	0.1	3.3
Rural hospitals	2,252	0.0	−0.1	2.3	0.1	2.7
Bed size (urban):						
0–99 beds	716	0.0	−0.3	−0.5	0.2	3.0
100–199 beds	938	0.0	−0.2	−0.4	0.1	2.9
200–299 beds	577	0.1	−0.1	−0.4	0.0	3.1
300–499 beds	479	0.1	0.0	−0.4	−0.1	3.4
500 or more beds	168	0.1	0.1	−0.2	−0.4	3.4
Bed size (rural):						
0–49 beds	1,173	−0.1	0.0	0.0	0.1	2.8
50–99 beds	663	−0.1	−0.1	1.1	0.2	2.8
100–149 beds	241	0.0	−0.1	3.1	0.2	2.9
150–199 beds	99	0.0	−0.1	2.8	0.1	2.8
200 or more beds	76	0.1	−0.2	4.9	0.1	2.2
Urban by census division:						
New England	160	0.1	0.0	−0.1	−0.1	2.4
Middle Atlantic	434	0.1	0.6	−0.3	−1.1	3.5
South Atlantic	419	0.1	−0.2	−0.5	0.1	3.3
East North Central	483	0.1	0.3	−0.2	0.2	2.9
East South Central	163	0.1	−0.3	−0.5	0.2	3.4
West North Central	193	0.1	−0.4	−0.5	0.3	3.4
West South Central	375	0.1	−0.4	−0.5	0.4	3.6
Mountain	125	0.2	−0.4	−0.4	0.3	3.3
Pacific	478	0.1	−0.5	−0.4	0.2	2.9
Puerto Rico	48	−0.1	−0.7	−0.5	0.0	2.6
Rural by census division:						
New England	53	0.1	−1.0	2.0	0.3	2.1
Middle Atlantic	85	0.1	−0.5	0.8	−0.2	1.9
South Atlantic	297	0.0	−0.5	3.1	0.1	2.6
East North Central	304	0.1	0.2	2.1	0.2	2.9
East South Central	278	−0.1	0.2	2.5	0.2	2.2
West North Central	525	0.0	−0.1	2.1	0.2	2.8
West South Central	351	−0.1	0.2	3.1	0.2	3.2
Mountain	213	0.1	−0.2	0.8	0.1	3.0
Pacific	141	0.1	0.5	2.4	0.2	4.0
Puerto Rico	5	−0.2	−2.1	2.7	−0.1	3.8
(by payment categories)						
Urban hospitals	2,978	0.1	0.0	−0.3	−0.1	3.2
Large urban	1,793	0.1	0.0	−0.2	−0.2	3.2
Other urban	1,185	0.1	−0.1	−0.4	0.1	3.3
Rural hospitals	2,152	0.0	−0.1	1.9	0.1	2.6
Teaching status:						
Non-teaching	4,057	0.0	−0.2	0.3	0.2	3.1
Less than 100 res.	841	0.1	0.0	−0.4	0.0	3.2
100+ residents	232	0.1	0.2	−0.1	−0.5	3.2
Disproportionate Share Hospitals (DSH)						
Non-DSH	3,200	0.1	−0.2	0.2	0.1	3.2
Urban DSH:						
100 beds or more	1,410	0.0	0.0	−0.3	−0.2	3.2
Fewer than 100 beds	111	−0.3	−0.4	−0.5	0.3	2.5
Rural DSH:						
Sole community (SCH)	146	−0.1	−0.1	0.2	0.0	3.3
Referral centers (RRC)	25	0.0	−0.1	3.9	−0.1	3.7
Over 65	1,353	0.0	−0.1	0.1	0.1	3.1
Unknown	131	−0.1	0.9	−0.4	−1.4	3.1
Hospitals Reclassified by the Medicare Geographic Review Board						
Reclassification status during FY96 and FY97						
Reclassified during both FY96 and FY97	381	0.1	0.1	5.9	0.0	3.1

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 1997 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Percent changes in payments per case]

	Number of hosps.[1] (0)	DRG recalibration[2] (1)	New wage data[3] (2)	MGCRB reclassification[4] (3)	Day outlier policy changes[5] (4)	All FY 97 changes[6] (5)
Urban	133	0.1	0.3	3.6	−0.2	3.4
Rural	248	0.0	−0.2	9.1	0.1	2.8
Reclassified during FY97 only	103	0.1	0.3	3.5	−0.4	8.6
Urban	34	0.2	0.4	2.4	−0.5	8.0
Rural	69	0.0	−0.2	7.1	0.1	10.5
Reclassified during FY96 only	251	0.1	−0.6	−1.3	0.1	−0.5
Urban	88	0.1	−0.9	−2.0	0.0	0.8
Rural	163	0.0	−0.2	−0.4	0.2	−2.1
FY 97 Reclassifications:						
All reclassified hosp.	484	0.1	0.1	5.3	−0.1	4.3
Stand. amount only	120	0.1	0.0	1.7	0.1	3.1
Wage index only	274	0.1	−0.3	8.1	−0.1	3.9
Both	90	0.1	0.8	4.4	−0.2	5.9
Nonreclassified	4,619	0.1	−0.1	−0.6	0.0	3.0
All urban reclass.	167	0.1	0.3	3.3	−0.3	4.6
Stand. amount only	63	0.1	0.1	0.9	0.0	3.3
Wage index only	30	0.2	−0.6	6.7	−0.6	4.5
Both	74	0.1	0.9	3.1	−0.2	5.6
Nonreclassified	2,711	0.1	−0.1	−0.6	−0.1	3.1
All rural reclass.	317	0.0	−0.2	8.8	0.1	3.8
Stand. amount only	57	0.0	−0.3	4.6	0.3	2.7
Wage index only	244	0.0	−0.1	8.8	0.1	3.6
Both	16	0.1	−0.4	18.8	0.2	9.1
Nonreclassified	1,908	0.0	−0.1	−0.4	0.1	2.2
Other reclassified:						
Hospitals (section 1886(d)(8)(B))	27	0.1	−0.1	0.8	0.2	3.1

[1] Because data necessary to classify some hospitals by category were missing, the total number of hospitals in each category may not equal the national total. Discharge data are from FY 1995, and hospital cost report data are from reporting periods beginning in FY 1993 and FY 1994.

[2] This column displays the payment impacts of the recalibration of the DRG weights, based on FY 1995 MedPAR data and the DRG classification changes, in accordance with section 1886(d)(4)(C) of the Act.

[3] This column shows the payment effects of updating the data used to calculate the wage index with data from the FY 1993 cost reports. The percentage changes displayed here reflect the impacts of the wage and recalibration budget neutrality factor (0.998509).

[4] Shown here are the combined effects of geographic reclassification by the Medicare Geographic Classification Review Board (MGCRB). The effects shown here demonstrate the FY 1997 payment impacts of going from no reclassifications to the reclassifications scheduled to be in effect for FY 1997. Reclassification for prior years has no bearing on the payment impacts shown here.

[5] This column illustrates the payment impacts of changes in outlier payments, in accordance with section 1886(d)(5) of the Act.

[6] This column shows changes in payments from FY 1996 to FY 1997. It incorporates all of the changes displayed in columns 1 through 5. It also displays the impacts of the updates to the FY 1997 standardized amounts, changes in hospitals' reclassification status in FY 1997 compared to FY 1996, the expiration of the regional floor provision at section 1886(d)(1)(A)(iii)(II) of the Act, and the difference in outlier payments from FY 1996 to FY 1997. The sum of the first five columns plus these effects may be different from the percentage changes shown here due to changes in hospitals' geographic reclassification status from FY 1996 to FY 1997, rounding errors and interactive effects.

B. The Impact of the Proposed Changes to the DRG Classifications and Relative Weights (Column 1)

In column 1 of Table I, we present the combined effects of the DRG reclassifications and recalibration, as discussed in section II of the preamble to this proposed rule. Section 1886(d)(4)(C)(i) of the Act requires us each year to make appropriate classification changes and to recalibrate the DRG weights in order to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources.

The impact of reclassifications and recalibration on aggregate payments is required by section 1886(d)(4)(C)(iii) of the Act to be budget neutral. In addition, section 1886(d)(3)(E) specifies that any updates or adjustments to the wage index are budget neutral. As pointed out in the Addendum to this proposed rule, we compared aggregate payments using the FY 1996 DRG relative weights and the wage index effective October 1, 1995 to aggregate payments using the proposed FY 1997 DRG relative weights and wage index. Based on this comparison, we computed a wage and recalibration budget neutrality factor of 0.998509. In Table I, the combined overall impacts of the effects of both the DRG reclassifications and recalibration and the updated wage index (the All Hospitals row of columns 1 and 2) demonstrate that the net effect of these changes are budget neutral. That is, the 0.1 percent increase for all hospitals due to the DRG changes is negated by the 0.1 percent decrease for all hospitals with the new wage data.

Consistent with the minor changes we are proposing for the FY 1997 GROUPER, the redistributional impacts across hospital groups are very small (an increase of 0.1 for large and other urban hospitals). Among other hospital categories, the net effects are slightly negative changes for small (up to 99 beds) rural hospitals and slightly positive changes for larger (over 200 beds) rural and urban hospitals.

The largest single effect on any of the hospital categories examined is a 0.3 percent decrease in payments for smaller (100 or fewer beds) urban and rural hospitals that receive DSH payments. We note that the only other hospital category to experience a decrease of more than 0.1 percent is rural hospitals in Puerto Rico.

We attribute these negative changes to the increasing gap between the relative weights for medical, diagnostic, and less complicated surgical DRGs and the weights for the more complicated surgical DRGs. Since the cases associated with the former DRGs tend to be treated more often in smaller hospitals with fewer resources available, lowering the relative weights associated with those cases would disproportionately affect these hospitals. In general, small hospitals that serve a disproportionate share of low-income patients and hospitals in rural Puerto Rico fit this definition. We note, however, that these negative impacts are relatively minor and do not result solely from the limited DRG revisions we are proposing for FY 1997.

C. The Impact of Updating the Wage Dota (Column 2)

Section 1886(d)(3)(E) of the Act requires that, beginning October 1, 1993, we annually update the wage data used to calculate the wage index. In accordance with this requirement, the proposed wage index for FY 1997 is based on data submitted for hospital cost reporting periods beginning on or after October 1, 1992 and before October 1, 1993. As with the previous column, the impact of the new data on hospital payments is isolated by holding the other payment parameters constant in the two simulations. That is, column 2 shows the percentage changes in payments when going from a model using the FY 1996 wage index before geographic reclassifications based on FY 1992 wage data to a model using the FY 1997 prereclassification wage index based on FY 1993 wage data.

As noted above, to comply with the requirements that the DRG and wage index changes be implemented in a budget neutral manner, we compute a budget neutrality adjustment factor to apply to the standardized amounts. The 0.1 percent decrease for all hospitals in this column reflects the wage and recalibration budget neutrality factor of 0.998509. This decrease, combined with the 0.1 percent increase for all hospitals in column 1, demonstrates that the net effect on aggregate payments of the proposed DRG and wage index changes are budget neutral.

The results indicate that the new wage data do not have a significant overall impact on hospital payments. (It should be noted that the percentage changes attributed here to the new wage data are generally reduced by 0.2 percentage points due to the budget neutrality factor.) Thus, hospitals with significant changes in their wage indexes are not concentrated within any particular hospital group. Some of the largest changes are found among both urban and rural hospitals grouped by census division. In almost all cases, payments change by less than 1 percent. Our review of the wage data (as described below) indicates that these changes were attributable to improved reporting, as well as relative changes in labor costs.

In the 50 States and the District of Columbia, among the urban hospitals, the largest increase (0.6 percent) is in the Middle Atlantic census division. Significantly, New York City's wage index rises by over 1.6 percent (this also contributes to the 0.2 percent increase among major teaching hospitals and the 0.9 percent increase in the Unknown category under the Medicare Utilization rows). Last year, the Middle Atlantic experienced one of the largest decreases (0.6 percent), which contributed to the 0.4 percent decline among major teaching hospitals—New York City's wage index fell by nearly 2.0 percent in FY 1996 (60 FR 45929). The largest decrease among urban hospitals occurs in the Pacific census division, with a decline of 0.5 percent.

Among the rural hospitals, the largest increase (0.5 percent) is in the Pacific census division; the largest decrease (1.0 percent) is in the New England census division. This decrease is primarily due to a 2.5 percent decrease in the wage index for rural Connecticut hospitals and a 2.4 percent decrease in the wage index for rural New Hampshire hospitals. The Pacific rural hospitals also experienced one of the greatest increases (0.6 percent) among rural hospitals last year.

In Puerto Rico, payments decline by 2.1 percent for the five rural hospitals and by 0.7 percent for the urban hospitals. The average hourly wages reported in FY 1993 by two rural Puerto Rico hospitals fell from those reported in FY 1992 by 22.4 percent and 18.1 percent, leading to the 2.1 percent overall decline. Of the six urban areas in Puerto Rico, two experience increases in wage index values while four experience decreases. Among these four, three experience a decline of more than 5 percent. These MSAs have relatively few hospitals (two, five, and seven hospitals). The decreases appear to be the result of one or two hospitals in each area with a decrease of more than 5 percent in average hourly wages.

The proposed FY 1997 wage index represents the fourth annual update to the wage data, and will continue to include salaries, fringe benefits, home office salaries, and certain contract labor costs. In the past, updates to the wage data have resulted in significant payment shifts among hospitals. Since the wage index is now updated annually, we expect these payment fluctuations will decrease.

This expectation is borne out by comparing the proposed FY 1997 wage index (after reclassifications under sections 1886(d)(8)(B) and 1886(d)(10) of the Act) to the FY 1996 wage index. The following chart compares the shifts in wage index values (after reclassifications) for labor markets for FY 1997 with those from FY 1996. The majority of labor market areas (339) experience less than a 5 percent change. Only 25 labor market areas experience a change between 5 and 10 percent; 13 of those experience increases. Still fewer labor markets experience a change of more than 10 percent; two experience increases and two experience decreases. For FY 1996, by comparison, 10 labor market areas experienced an increase in their wage index value of more than 10 percent. We reviewed the data for any area that experienced a wage index change of 10 percent or more to determine the reason for the fluctuation.

Percentage change in area wage index values	Number of labor market areas	
	FY 1997	FY 1996
Increase more than 10 percent	2	10
Increase between 5 and 10 percent, (inclusive)	13	21
Increase/decrease below 5 percent	339	331
Decrease between 5 and 10 percent, (inclusive)	12	6
Decrease more than 10 percent	2	0

Under the proposed FY 1997 wage index, 96.2 percent of urban hospitals and 92.7 percent of rural hospitals would experience a change in their wage index of less than 5 percent. Approximately 5.9 percent (3.1 percent of urban hospitals and 2.8 percent of rural hospitals) would experience a change of between 5 and 10 percent, and 5.3 percent (0.8 percent of urban hospitals and 4.5 percent of rural hospitals) would experience a change of more than 10 percent. The following chart shows the projected impact for urban and rural hospitals.

Percentage change in area wage index values	Percent of hospitals (by Urban/Rural)	
	Urban	Rural
Increase more than 10 percent	0.4	2.5
Increase between 5 and 10 percent (inclusive)	1.5	0.9
Increase or decrease less than 5 percent	96.2	2.7
Decrease between 5 and 10 percent (inclusive)	1.6	1.9
Decrease more than 10 percent	0.4	2.0

ANote: The sum of the columns may not total to 100 due to rounding.

D. The Impact of MGCRB Reclassifications (Column 3)

Our impact analysis to this point has assumed hospitals are paid on the basis of their actual geographic location (with the exception of ongoing policies that provide that certain hospitals receive payments on bases other than where they are geographically located, such as RRCs and hospitals in rural counties that are deemed urban under section 1886(d)(8)(B) of the Act). The changes in column 3 reflect the per case payment impact of moving from this baseline to a simulation incorporating the MGCRB decisions for FY 1997. As noted below, these decisions affect hospitals' standardized amount and wage index area assignments. In addition, rural hospitals reclassified for purposes of the standardized amount also qualify to be treated as urban for purposes of the DSH adjustment.

By March 30 of each year, the MGCRB makes reclassification determinations that will be effective for the next fiscal year, which begins on October 1. The MGCRB may reclassify a hospital for the purpose of using the other area's standardized amount, wage index value, or both. (RRCs and SCHs are exempt from the proximity requirement.) Effective FY 1997, rural hospitals can no longer be reclassified to an other urban area for purposes of the standardized amount under section 1886(d)(10) of the Act.

The proposed FY 1997 wage index values incorporate all of the MGCRB's reclassification decisions for FY 1997. The wage index values also reflect any decisions made by the HCFA Administrator through the appeals and review process for MGCRB decisions as of March 29, 1996. Additional changes that result from the Administrator's review of MGCRB decisions or a request by a hospital to withdraw its application will be reflected in the final rule for FY 1997.

The overall effect of geographic reclassification is required to be budget neutral by section 1886(d)(8)(D) of the Act. Therefore, we applied an adjustment of 0.994059 to ensure that the effects of reclassification are budget neutral. (See section II.A.4 of the Addendum to this proposed rule).

As a group, rural hospitals benefit from geographic reclassification. Their payments rise 2.3 percent, while payments to urban hospitals decline 0.4 percent. Large urban hospitals lose 0.5 percent because, as a group, they have the smallest percentage of hospitals that are reclassified (fewer than 3 percent of large urban hospitals are reclassified). There are enough hospitals in other urban areas that are reclassified to limit the decrease in payments to urban hospitals stemming from the budget neutrality offset to 0.2 percent. Among urban hospital groups generally (that is, bed size, census division, and special payment status), payments fall between 0.2 and 0.5 percent.

A positive impact is evident among all rural hospital groups except rural hospitals with up to 49 beds, which experience a 0.0 percent impact. The smallest effect among all rural census divisions is 0.8 percent for the Middle Atlantic and Mountain divisions. These divisions have relatively fewer MGCRB reclassifications. Among urban census divisions, New England displays the smallest negative impact, 0.1 percent.

Among rural hospitals designated as RRCs, 50 hospitals are reclassified for purposes of the wage index only and experience a 9.5 percent increase in payments overall. This positive impact on RRCs is also reflected in the category of rural hospitals with 200 or more beds, which have a 4.9 percent increase in payments.

Rural hospitals reclassified for FY 1996 and FY 1997 experience a 9.1 percent increase in payments, the greatest of any group in the category. This may be due to the fact that these hospitals have the most to gain from reclassification and have been reclassified for a period of years. Rural hospitals reclassified for FY 1997 only experience a 7.1 percent increase in payments while rural hospitals reclassified for FY 1996 only experience a 0.4 decrease in payments. This is due to the budget neutrality adjustment, since the changes in this column reflect FY 1997 payments relative to no reclassifications, rather than to FY 1996 reclassifications. Urban hospitals reclassified for FY 1996 but not FY 1997 experience a 2.0 percent decline in payments overall. This appears to be due to the combined impacts of the budget neutrality adjustment and a number of hospitals in this category that experience a 6 percent drop in their wage index after reclassification. Urban hospitals reclassified for FY 1997 but not for FY 1996 experience a 2.4 percent increase in payments.

The FY 1997 Reclassification rows of Table I show the changes in payments per case for all FY 1997 reclassified and nonreclassified hospitals in urban and rural locations for each of the three reclassification categories (standardized amount only, wage index only, or both). The table illustrates that the largest impact for reclassified rural hospitals is for those hospitals reclassified for both the standardized amount and the wage index. These hospitals receive an 18.8 percent increase in payments. The number of hospitals in this category has declined from 42 in FY 1996 to 16 in FY 1997. In addition, rural hospitals reclassified for the wage index receive an 8.8 percent payment increase. The overall impact on reclassified hospitals is to increase their payments per case by an average of 5.3 percent for FY 1997.

Among the 27 rural hospitals deemed to be urban under section 1886(d)(8)(B) of the Act, payments increase 0.8 percent due to MGCRB reclassification. This is because, although these hospitals are treated as being attached to an urban area in our baseline (their redesignation is ongoing, rather than annual like the MGCRB reclassifications), they are eligible for MGCRB reclassification. For FY 1997, one hospital in this category reclassified to a large urban area, resulting in a net increase due to reclassifications of 0.8 percent.

The reclassification of hospitals primarily affects payment to nonreclassified hospitals through changes in the wage index and the geographic reclassification budget neutrality adjustment required by section 1886(d)(8)(D) of the Act. Among hospitals that are not reclassified, the overall impact of hospital reclassifications is an average decrease in payments per case of about 0.6 percent, which corresponds closely with the geographic reclassification budget neutrality factor. Rural nonreclassified hospitals decrease slightly less, experiencing a 0.4 percent decrease. This occurs because the wage index values in some rural areas increase after reclassified hospitals are excluded from the calculation of those index values.

The number of reclassifications for purposes of the standardized amount, or for both the standardized amount and the wage index, has declined from 358 in FY 1996 to 210 in FY 1997. This is not surprising because of the elimination of standardized amount

reclassifications from rural to other urban areas for individual hospitals. Individual rural hospitals can continue to reclassify to large urban areas for purposes of the standardized amount. The number of wage index only reclassifications increased slightly from 260 in FY 1996 to 274 in FY 1997.

The foregoing analysis was based on MGCRB and HCFA Administrator decisions made by March 29 of this year. As previously noted, there may be changes to some MGCRB decisions through the appeals, review, and applicant withdrawal process. The outcome of these cases will be reflected in the analysis presented in the final rule.

E. Outlier Changes (Column 4)

Medicare provides extra payment in addition to the basic DRG payment amount for extremely costly or extraordinarily lengthy cases (cost outliers and day outliers, respectively). Section 1886(d)(5)(A)(v) of the Act requires the Secretary to phase out payment for day outliers from FY 1994 day outlier levels in 25 percent increments beginning in FY 1995. Day outliers in FY 1997 should account for approximately 8 percent of total outlier payments (25 percent of FY 1994 levels). This reduction in day outlier payments will be offset by an increase in cost outlier payments.

As discussed in the Addendum, for FY 1997, we are proposing a day outlier threshold equal to the geometric mean length of stay for each DRG plus the lesser of 24 days or 3.0 standard deviations. The proposed marginal cost factor for day outliers is 35 percent. For FY 1997, we are proposing that a case would receive cost outlier payments if its costs exceed the DRG amount plus $11,050. We are also proposing to maintain the marginal cost factor for cost outliers at 80 percent.

The payment impacts of these changes are minimal. Hospital categories negatively affected by phasing out day outliers are consistent with the categories negatively affected in previous years: urban New England (0.1 percent decline); urban and rural Middle Atlantic census divisions (1.1 percent and 0.2 percent declines, respectively); urban hospitals with 500 or more beds (0.4 percent decline); teaching hospitals with 100 or more residents (0.5 percent decline); and hospitals for which data were unavailable to calculate Medicare utilization rates (1.4 percent decline). As noted in the wage index discussion previously, this last category contains a number of New York City hospitals. Because the changes to outlier policy result in a shift in payments from cases paid as day outliers to cases paid as cost outliers, this indicates that these categories have higher percentages of day outliers. The largest positive impact is among urban hospitals in the West South Central census division (0.4 percent increase).

F. All Changes (Column 5)

Column 5 compares our estimate of payments per case incorporating all of our proposed changes for FY 1997 to our estimate of payments per case in FY 1996. It also includes the effects of the 2.2 percent update to the standardized amounts and the hospital-specific rates for SCHs and EACHs, and the 0.9 percentage point difference between the percentage of projected outlier payments in FY 1997 (5.1 percent) and the current estimate of the percentage of actual outlier payments in FY 1996 (4.2 percent), as described in the introduction to this Appendix and the Addendum.

We also note that column 5 includes the impacts of FY 1997 MGCRB reclassifications compared to the payment impacts of FY 1996 reclassifications. Therefore, when comparing FY 1997 payments to FY 1996, the percent changes due to FY 1997 reclassifications shown in column 3 need to be offset by the effects of reclassification on hospitals' FY 1996 payments (column 4 of Table 1, September 1, 1995 final rule; 60 FR 45926). That is, column 3 of Table 1 shows the impacts of going from no MGCRB reclassifications to the FY 1997 reclassifications. When comparing FY 1996 and FY 1997 payments, hospitals similarly reclassified during FY 1996 would not experience the full extent of the change shown in column 3. For example, the impact of MGCRB reclassifications on rural hospitals' FY 1996 payments was approximately a 2.3 percent increase, equal to the 2.3 percent increase for FY 1997. Therefore, the net increase in FY 1997 payments due to reclassification for rural hospitals is 0 percent.

In addition, eliminating the regional floor provision effective for discharges occurring on or after October 1, 1996, results in approximately a 0.2 percent lower average payment in FY 1997 than would occur otherwise. Of course, this effect is attributable to particular census divisions, as discussed below.

Finally, the FY 1996 standardized amounts were adjusted by a budget neutrality factor of 0.997575, in accordance with section 1886(d)(5)(I) of the Act, so that the change to the transfer payment methodology we implemented last year (doubling the per diem payment for the first day of a transfer) would not affect aggregate payments. As we indicated in last year's final rule (60 FR 45854), this adjustment was applied on a one-time basis to the FY 1996 standardized amounts. After FY 1996, there will be no need for a further budget neutrality adjustment unless or until we make further changes to the transfer payment methodology. As a result, the FY 1997 standardized amounts are relatively higher (0.2 percent).

A single geographic reclassification budget neutrality factor of 0.994059 was applied to the proposed FY 1997 standardized amounts, compared to the FY 1996 factor of 0.994011. The budget neutrality adjustment factor for the updated wage index and the DRG recalibration is 0.998509, compared to the FY 1996 factor of 0.999306. Although the net effect of these changes is small, they are reflected in the payment differences shown in this column.

There may also be interactive effects among the various factors comprising the payment system that we are not able to isolate. For these reasons, the values in column 5 may not equal the sum of the previous columns plus the other impacts that we are able to identify.

The overall payment increase from FY 1997 to FY 1996 for all hospitals is a 3.1 percent increase. This reflects the 0.0 percent net change in total payments due to the proposed changes for FY 1997 shown in columns 1 through 4, the 2.2 percent update for FY 1997, and the 0.9 percent higher outlier payments in FY 1997 compared to FY 1996, as discussed above.

Hospitals in urban areas experience a 3.2 percent rise in payments per case over FY 1996. Similar to all hospitals nationally, this is primarily due to the factors discussed above: the 2.2 percent update; a 0.9 percent higher level of outlier payments estimated for FY 1997; and the offsetting effects of eliminating the regional floor and the FY 1996 transfer budget neutrality factor. Urban hospitals benefit 0.1 percent from DRG recalibration, while losing 0.1 percent due to the phase out of the day outlier policy. Their 0.4 negative impact in FY 1997 due to reclassification is offset by a similar impact from FY 1996 reclassifications.

Hospitals in large and other urban areas experience 3.1 percent and 3.3 percent increases, respectively. The lower increase for hospitals in large urban areas appears to be attributable primarily to the 0.2 percent negative impact of the continuing phase out of day outliers.

Hospitals in rural areas experience a 2.7 percent increase. Their FY 1997 payments are estimated to be 0.6 percent higher than for FY 1996 due to higher outlier payments. Like urban hospitals, the impact of geographic reclassification in FY 1997 is offset by an identical 2.3 percent increase in FY 1996.

Among urban bed size groups, column 5 shows changes in payments are higher for the largest urban hospitals compared to smaller urban hospitals. The relatively smaller increases for the smaller urban hospitals appear to be due to the negative impacts of the new wage data, as shown in column 2. Among rural bed size groups, the impacts range from 2.8 percent to 2.9 percent, with the exception of rural hospitals with 200 or more beds. Payments per case for this group of hospitals is estimated to increase 2.2 percent during FY 1997. This below average rate of increase appears to be attributable primarily to a smaller, though still significant, impact of MGCRB reclassifications during FY 1997 compared to FY 1996. In column 3 the FY 1997 impact of reclassification is shown to be 4.9 percent. For FY 1996, however, this impact was 5.4 percent. Thus, the rate of increase is 0.5 percent less for FY 1997 due to a smaller reclassification impact.

As discussed previously, effective for discharges on or after October 1, 1996, the regional floor, which benefitted certain census divisions, expires. The regional floor provided that, in those census divisions where the regional standardized amount exceeded the national standardized amount, hospitals would be paid a blend of 85 percent of the national amount and 15 percent of the regional amount. The census divisions affected by the regional floor during FY 1996 are New England and East North Central. In New England, the impacts of eliminating the regional floor are a 0.7 percent decrease for urban hospitals and a 0.6 percent decrease among rural hospitals. In the East North Central region, the impacts are a 1.0 percent reduction for urban hospitals, and a 0.7 percent reduction for rural hospitals. The negative impacts of losing the regional floor for urban hospitals in the East North Central region are largely offset by higher estimated outlier payments in FY 1997 compared to FY 1996, the 0.3 percent higher payments due to the FY 1993 wage data (column 2), and the 0.2 percent increase due to the phase-out of day outliers (column 4). On the other hand, urban New England hospitals' higher outlier payments in FY 1997 are offset entirely by the negative impacts of the expiration of the regional floor. Rural New England hospitals also see a 1.0 percent decrease in payments stemming from the FY 1993 wage data.

Other census divisions below the average payment increase are urban Pacific, urban Puerto Rico, rural Middle Atlantic, rural South Atlantic, rural East South Central, and rural Mountain. With the exception of the rural Middle Atlantic and rural East South Central, the below average overall payment impacts of these census divisions are related to negative impacts of introducing the FY 1993 wage data. In the rural Middle Atlantic, the negative impact of the new wage data is combined with a smaller impact stemming from MGCRB reclassifications in FY 1997 (0.8 percent compared to 1.5 percent in FY 1996). A smaller FY 1997 reclassification impact (2.5 percent compared with 3.7 percent in FY 1996) is also the reason for the small (2.2 percent) rate of increase in the rural East South Central census division.

Conversely, the urban Middle Atlantic, urban West South Central, rural Pacific, and rural Puerto Rico census divisions all have overall rates of increase at least 0.4 percent above the national average. The urban West South Central gains from the continued phase-out of day outliers, as well as higher estimated FY 1997 outlier payments compared to FY 1996. As noted previously, the urban Middle Atlantic benefits significantly from the updated wage index data. These hospitals also have higher estimated FY 1997 outlier payments, which offset their 1.1 percent decrease due to the phase-out of day outliers. Rural Pacific hospitals benefit from geographic reclassification in FY 1997, with 12 hospitals being reclassified that were not reclassified in FY 1996.

The only hospital groups with negative payment impacts from FY 1996 to FY 1997 are hospitals that were reclassified for FY 1996 and are not reclassified for FY 1997. Overall, these hospitals lose 0.5 percent. The urban hospitals in this category actually experience slight payment increases over FY 1996 (0.8 percent), while the rural hospitals lose 2.1 percent. On the other hand, hospitals reclassified for FY 1997 that were not reclassified for FY 1996 would experience the greatest payment increases: 10.5 percent for 69 rural hospitals in this category and 8.0 percent for 34 urban hospitals.

Reclassification appears to be a significant factor influencing the payment increases for a number of rural hospital groups with above average overall payment increases in column 5. For example, among hospital groups identified in the discussion of the impacts of MGCRB reclassifications for FY 1997 (column 3), almost all have overall increases of 3.6 percent or greater. This outcome highlights the redistributive effects of reclassification decisions upon hospital payments. This impact is illustrated even more clearly when one examines the rows categorizing hospitals by their reclassification status for FY 1997. All nonreclassified hospitals have an average payment increase of 3.0 percent. The average payment increase for all reclassified hospitals is 4.3 percent.

Among SCH/EACHs, the payment increase is 2.7 percent. The primary reason for this below average increase is that there is minimal impact upon these hospitals from the higher estimated FY 1997 outlier payments. Because these hospital groups receive their hospital-specific rate if it exceeds the applicable Federal amount (including outliers), there is less of an impact due to changes in outlier payment levels, which are not applied to the hospital-specific rate. In addition, nonspecial status rural hospitals experience only a 2.1 percent increase. This is largely attributable to a much smaller reclassification impact for FY 1997 among these hospitals.

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 1997 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Payments per case]

	Number of hospitals (1)	Average FY 1996 payment percase (2) [1]	Average FY 1997 payment percase (3) [1]	All changes (4)
(By Geographic Location)				
All hospitals	5,130	6,470	6,673	3.1
Urban hospitals	2,878	7,004	7,229	3.2
Large urban areas	1,597	7,524	7,761	3.1
Other urban areas	1,281	6,317	6,524	3.3
Rural areas	2,252	4,302	4,419	2.7
Bed size (urban):				
0–99 beds	716	4,721	4,862	3.0
100–199 beds	938	5,939	6,112	2.9
200–299 beds	577	6,521	6,722	3.1
300–499 beds	479	7,410	7,660	3.4
500 or more beds	168	9,150	9,457	3.4
Bed Size (rural):				
0–49 beds	1,173	3,540	3,639	2.8
50–99 beds	663	3,996	4,108	2.8
100–149 beds	241	4,462	4,593	2.9
150–199 beds	99	4,582	4,713	2.8
200 or more beds	76	5,417	5,537	2.2
Urban by Census div.:				
New England	160	7,508	7,686	2.4
Middle Atlantic	434	7,686	7,953	3.5
South Atlantic	419	6,664	6,887	3.3
East North Central	483	6,742	6,940	2.9
East South Central	163	6,185	6,395	3.4
West North Central	193	6,652	6,880	3.4
West South Central	375	6,524	6,756	3.6
Mountain	125	6,774	6,996	3.3
Pacific	478	8,077	8,313	2.9
Puerto Rico	48	2,584	2,652	2.6
Rural by Census div.:				
New England	53	5,236	5,344	2.1
Middle Atlantic	85	4,695	4,785	1.9
South Atlantic	297	4,476	4,591	2.6
East North Central	304	4,328	4,454	2.9
East South Central	278	3,960	4,048	2.2
West North Central	525	4,008	4,121	2.8
West South Central	351	3,876	4,001	3.2
Mountain	213	4,575	4,712	3.0
Pacific	141	5,306	5,519	4.0
Puerto Rico	5	2,042	2,118	3.8
(By Payment Categories)				
Urban hospitals	2,978	6,960	7,184	3.2
Large urban areas	1,793	7,352	7,586	3.2
Other urban areas	1,185	6,322	6,528	3.3
Rural areas	2,152	4,269	4,379	2.6
Teaching status:				
Non-teaching	4,057	5,293	5,458	3.1
Fewer than 100 residents	841	6,900	7,118	3.2
100 or more residents	232	10,565	10,901	3.2
Disproportionate Share Hospitals (DSH):				
Non-DSH	3,200	5,602	5,779	3.2
Urban DSH:				
100 beds or more	1,410	7,595	7,835	3.2
Fewer than 100 beds	111	4,811	4,929	2.5
Rural DSH:				
Sole community (SCH)	146	4,478	4,625	3.3
Referral centers (RRC)	25	5,216	5,409	3.7
Other rural DSH hosp.:				
100 beds or more	89	4,235	4,280	1.1
Fewer than 100 beds	149	3,412	3,497	2.5
Urban Teaching and DSH:				
Both teaching and DSH	682	8,576	8,843	3.1
Teaching and no DSH	337	7,094	7,324	3.2

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 1997 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Payments per case]

	Number of hospitals (1)	Average FY 1996 payment percase (2) [1]	Average FY 1997 payment percase (3) [1]	All changes (4)
No Teaching and DSH	839	6,093	6,292	3.3
No teaching and no DSH	1,120	5,479	5,663	3.4
Rural hospital types:				
Nonspecial Status Hospitals	1,382	3,901	3,984	2.1
RRC	90	5,068	5,249	3.6
SCH/Each	641	4,415	4,536	2.7
SCH/Each and RRC	39	5,200	5,345	2.8
Type of ownership:				
Voluntary	3,084	6,634	6,846	3.2
Proprietary	691	5,917	6,093	3.0
Government	1,355	6,030	6,207	2.9
Medicare utilization as a percent of inpatient days				
0–25	256	8,577	8,803	2.6
25–50	1,285	7,877	8,124	3.1
50–65	2,105	5,944	6,133	3.2
Over 65	1,353	5,062	5,220	3.1
Unknown	131	7,372	7,597	3.1
Hospitals Reclassified by the Medicare Geographic Review Board				
Reclassification status during FY96 and FY97:				
Reclassified during both FY96 and FY97	381	5,864	6,046	3.1
Urban	133	6,750	6,976	3.4
Rural	248	5,003	5,143	2.8
Reclassified during FY97 only	103	6,150	6,679	8.6
Urban	34	7,091	7,658	8.0
Rural	69	4,374	4,831	10.5
Reclassified during FY96 only	251	5,658	5,630	−0.5
Urban	88	7,131	7,189	0.8
Rural	163	4,515	4,421	−2.1
FY 97 Reclassifications: All reclassified hosp.	484	5,922	6,176	4.3
Stand. amt. Only	120	5,764	5,944	3.1
Wage index only	274	5,839	6,065	3.9
Both	90	6,205	6,571	5.9
Nonreclass.	4,619	6,548	6,745	3.0
All urban reclass.	167	6,837	7,150	4.6
Stand. amt. only	63	6,230	6,433	3.3
Wage index only	30	9,311	9,728	4.5
Both	74	6,370	6,727	5.6
Nonreclass.	2,711	7,018	7,235	3.1
All rural reclass.	317	4,909	5,096	3.8
Stand. amt. only	57	4,623	4,749	2.7
Wage index only	244	4,968	5,146	3.6
Both	16	4,898	5,345	9.1
Nonreclass.	1,908	4,063	4,152	2.2
Other reclassified:				
Hospitals (section 1886(d)(8)(B))	27	4,611	4,756	3.1

[1] These payment amounts per case do not reflect any estimates of annual case-mix increases.

Table II presents the projected impact of the proposed changes for FY 1997 for urban and rural hospitals and for the different categories of hospitals shown in Table I. It compares the projected payments per case for FY 1997 with the average estimated per case payments for FY 1996, as calculated under our models. Thus, this table presents, in terms of the average dollar amounts paid per discharge, the combined effects of the changes presented in Table I. The percentage changes shown in the last column of Table I equal the percentage changes in average payments from column 5 of Table I.

VII. Impact of Proposed Changes in the Capital Prospective Payment System

A. General Considerations

We now have data that were unavailable in previous impact analyses for the capital prospective payment system. Specifically, we have cost report data for the third year of the capital prospective payment system (cost reports beginning in FY 1994) available through the March 1996 update of the Hospital Cost Report Information System (HCRIS). We also have updated information on the projected aggregate amount of obligated capital approved by the fiscal intermediaries. However, our impact analysis of payment changes for capital-related costs is still limited by the lack of hospital-specific data on several items. These are the hospital's projected new capital costs for each year, its projected old capital costs for each year, and the actual amounts of obligated capital that will be put in use for patient care and recognized as Medicare old capital costs in each year. The lack of such information affects our impact analysis in the following ways:

- Major investment in hospital capital assets (for example in building and major fixed equipment) occurs at irregular intervals. As a result, there can be significant variation in the growth rates of Medicare capital-related costs per case among hospitals. We do not have the necessary hospital-specific budget data to project the hospital capital growth rate for individual hospitals.
- Moreover, our policy of recognizing certain obligated capital as old capital makes it difficult to project future capital-related costs for individual hospitals. Under § 412.302(c), a hospital is required to notify its intermediary that it has obligated capital by the later of October 1, 1992, or 90 days after the beginning of the hospital's first cost reporting period under the capital prospective payment system. The intermediary must then notify the hospital of its determination whether the criteria for recognition of obligated capital have been met by the later of the end of the hospital's first cost reporting period subject to the capital prospective payment system or 9 months after the receipt of the hospital's notification. The amount that is recognized as old capital is limited to the lesser of the actual allowable costs when the asset is put in use for patient care or the estimated costs of the capital expenditure at the time it was obligated. We have substantial information regarding intermediary determinations of projected aggregate obligated capital amounts. However, we still do not know when these projects will actually be put into use for patient care, the actual amount that will be recognized as obligated capital when the project is put into use, or the Medicare share of the recognized costs. Therefore, we do not know actual obligated capital commitments for purposes of the FY 1997 capital cost projections. We discuss in Appendix B the assumptions and computations we employ to generate the amount of obligated capital commitments for use in the FY 1997 capital cost projections.

In Table III of this appendix, we present the redistributive effects that are expected to occur between "hold-harmless" hospitals and "fully prospective" hospitals in FY 1997. In addition, we have integrated sufficient hospital-specific information into our actuarial model to project the impact of the proposed FY 1997 capital payment policies by the standard prospective payment system hospital groupings. We caution that while we now have actual information on the effects of the transition payment methodology and interim payments under the capital prospective payment system and cost report data for most hospitals, we need to randomly generate numbers for the change in old capital costs, new capital costs for each year, and obligated amounts that will be put in use for patient care services and recognized as old capital each year. We continue to be unable to predict accurately FY 1997 capital costs for individual hospitals, but with the more recent data on the experience to date under the capital prospective payment system, there is adequate information to estimate the aggregate impact on most hospital groupings.

We present the transition payment methodology by hospital grouping in Table IV. In Table V we present the results of the cross-sectional analysis using the results of our actuarial model. This table presents the aggregate impact of the FY 1997 payment policies.

B. Projected Impact Based on the Proposed FY 1997 Actuarial Model

1. Assumptions

In this impact analysis, we model dynamically the impact of the capital prospective payment system from FY 1996 to FY 1997 using a capital acquisition model. The FY 1997 model, described in Appendix B of this proposed rule, integrates actual data from individual hospitals with randomly generated capital cost amounts. We have capital cost data from cost reports beginning in FY 1989 through FY 1994 received through the March 1996 update of the Hospital Cost Reporting Information System (HCRIS), interim payment data for hospitals already receiving capital prospective payments through PRICER, and data reported by the intermediaries that include the hospital-specific rate determinations that have been made through January 1, 1996 in the Provider-Specific file. We used this data to determine the proposed FY 1997 capital rates. However, we do not have individual hospital data on old capital changes, new capital formation, and actual obligated capital costs. We have data on costs for capital in use in FY 1993, and we age that capital by a formula described in Appendix B. We therefore need to randomly generate only new capital acquisitions for any year after FY 1993. All Federal rate payment parameters are assigned to the applicable hospital.

For purposes of this impact analysis, the FY 1997 actuarial model includes the following assumptions:

- Medicare inpatient capital costs per discharge will increase at the following rates during these periods:

AVERAGE PERCENTAGE INCREASE IN CAPITAL

Fiscal year	Costs per discharge
1995	−1.50
1996	5.05
1997	5.21

- The Medicare case-mix index will increase by 1.6 percent in FY 1996 and FY 1997.
- The Federal capital rate as well as the hospital-specific rate is updated in FY 1996 by an analytical framework that considers changes in the prices associated with capital-related costs, and adjustments to account for forecast error, changes in the case-mix index, allowable changes in intensity, and other factors. The proposed FY 1997 update for inflation is 1.00 percent (see Addendum, Part III).

2. Results

We have used the actuarial model to estimate the change in payment for capital-related costs from FY 1996 to FY 1997. Table III shows the effect of the capital prospective payment system on low capital cost hospitals and high capital cost hospitals. We consider a hospital to be a low capital cost hospital if, based on a comparison of its initial hospital-specific rate and the applicable Federal rate, it will be paid under the fully prospective payment methodology. A high capital cost hospital is a hospital that, based on its initial hospital-specific rate, will be paid under the hold-harmless payment methodology. Based on our actuarial model, the breakdown of hospitals is as follows:

CAPITAL TRANSITION PAYMENT METHODOLOGY

Type of hospital	Percent of hospitals	FY 1997 percent of discharges	FY 1997 percent of capital costs	FY 1997 percent of capital payments
Low Cost Hospital	66	62	53	56
High Cost Hospital	34	38	47	44

A low capital cost hospital may request to have its hospital-specific rate redetermined based on old capital costs in the current year, through the later of the hospital's cost reporting period beginning in FY 1994 or the first cost reporting period beginning after obligated capital comes into use (within the limits established in § 412.302(e) for putting obligated capital in use for patient care). If the redetermined hospital-specific rate is greater than the adjusted Federal rate, these hospitals will be paid under the hold-harmless payment methodology. Regardless of whether the hospital became a hold-harmless payment hospital as a result of a redetermination, we have continued to show these hospitals as low capital cost hospitals in Table III.

Assuming no behavioral changes in capital expenditures, Table III displays the percentage change in payments from FY 1996 to FY 1997 using the above described actuarial model.

TABLE III.—IMPACT OF PROPOSED CHANGES FOR FY 1997 ON PAYMENTS PER DISCHARGE

FY 1996 payments per discharge

	Number of hospitals	Discharges	Adjusted federal payment	Average federal percent	Hospital specific payment	Hold harmless payment	Exceptions payment	Total payment
Low Cost Hospitals	3,367	6,543,036	$413.51	55.01	$200.60	$15.30	$16.59	$646.01
Fully Prospective	1,472	2,953,665	373.96	50.00	236.94	.....	11.59	622.49
Rebase—Fully Prospective	1,561	2,777,809	373.98	50.00	220.57	.....	23.17	617.72
Rebase—100% Federal Rate	237	633,924	798.96	100.00	.....	.....	0.05	799.00
Rebase—Hold Harmless	97	177,638	313.93	44.64	.....	563.62	55.92	933.48
High Cost Hospitals	1,737	4,044,123	665.47	85.81	.....	152.51	16.36	834.35
100% Federal Rate	1,126	2,842,423	788.87	100.00	.....	.....	2.30	791.18
Hold Harmless	611	1,201,700	373.59	49.81	.....	513.26	49.61	936.46
Total Hospitals	5,104	10,587,159	509.76	66.94	123.98	67.71	16.50	717.95

FY 1997 payments per discharge

	Number of hospitals	Discharges	Adjusted federal payment	Average federal percent	Hospital specific payment	Hold harmless payment	Exceptions payment	Total payment	Percent change
Low Cost Hospitals	3,367	6,720,494	$472.14	64.07	$157.08	$12.37	$38.44	$680.03	5.27
Fully Prospective	1,472	3,033,773	438.87	60.00	185.55	.....	34.06	658.48	5.78
Rebase—Fully Prospective	1,561	2,853,148	440.66	60.00	172.70	.....	45.15	658.50	6.60
Rebase—100% Federal Rate	243	657,828	785.22	100.00	.....	.....	0.58	785.81	-1.65
Rebase—Hold Harmless	91	175,744	385.79	55.77	.....	473.19	146.68	1,005.66	7.73
High Cost Hospitals	1,737	4,153,806	691.63	89.42	.....	123.03	48.28	862.93	3.43
100% Federal Rate	1,164	2,988,949	780.85	100.00	.....	.....	11.02	791.87	0.09
Hold Harmless	573	1,184,856	462.69	61.34	.....	438.70	143.88	1,045.27	11.62
Total Hospitals	5,104	10,874,300	555.98	74.04	97.08	54.64	42.20	749.90	4.45

Under section 1886(g)(1)(A) of the Act, aggregate payments under the capital prospective payment system for FY 1992 through 1995 respectively, were projected to equal 90 percent of payments that would have been payable on a reasonable cost basis in each year. With the expiration of the capital budget neutrality provision, we now estimate that there was an aggregate 27.73 percent increase in FY 1996 Medicare capital payments over the FY 1995 payments. With the proposed Federal rate, we estimate aggregate Medicare capital payments will increase by 7.28 percent in FY 1997.

We project that low capital cost hospitals paid under the fully prospective payment methodology will experience an average increase in payments per case of 5.27 percent, and high capital cost hospitals will experience an average increase of 3.43 percent.

For hospitals paid under the fully prospective payment methodology, the Federal rate payment percentage will increase from 50 percent to 60 percent and the hospital-specific rate payment percentage will decrease from 50 to 40 percent in FY 1997. The Federal rate payment percentage for hospitals paid under the hold-harmless payment methodology is based on the hospital's ratio of new capital costs to total capital costs. The average Federal rate payment percentage for hospitals receiving a hold-harmless payment for old capital will increase from 49.81 percent to 61.34 percent. We estimate the percentage of hold-harmless hospitals paid based on 100 percent of the Federal rate will increase from 65.8 percent to 67.9 percent.

We expect that the average hospital-specific rate payment per discharge will decrease from $123.98 in FY 1996 to $97.08 in FY 1997. This is partly due to the 3.68 percent decrease in the FY 1997 hospital-specific rate compared to FY 1996.

We are proposing no changes in our exceptions policies for FY 1997. As a result, the minimum payment levels would be:

- 90 percent for sole community hospitals;
- 80 percent for urban hospitals with 100 or more beds and a disproportionate share patient percentage of 20.2 percent or more; or,
- 70 percent for all other hospitals.

We estimate that exceptions payments will increase from 2.30 percent of total capital payments in FY 1996 to 5.63 percent of payments in FY 1997. The number and amount of exceptions payments is expected to increase throughout the transition period. The projected distribution of the payments is shown in the table below:

ESTIMATED FY 1997 EXCEPTIONS PAYMENTS

Type of hospital	Number of hospitals	Percent of exceptions payments
Low Capital Cost	450	58
High Capital Cost	331	42
Total	781	100

C. Cross-Sectional Comparison of Capital Prospective Payment Methodologies

Table IV presents a cross-sectional summary of hospital groupings by capital prospective payment methodology. This distribution is generated by our actuarial model.

TABLE IV.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS

	(1) Total Number of Hospitals	(2) Hold-harmless		(3) Percentage paid fully prospective rate
		Percentage paid hold-harmless (A)	Percentage paid fully federal (B)	
By Geographic Location:				
All hospitals	5,104	13.0	27.6	59.4
Large urban areas (populations over 1 million)	1,584	15.6	34.5	49.9
Other urban areas (populations of 1 million or fewer)	1,271	15.1	33.4	51.5
Rural areas	2,249	10.0	19.4	70.6
Urban hospitals	2,855	15.4	34.0	50.6
0–99 beds	698	16.2	27.7	56.2
100–199 beds	933	19.3	36.8	43.9
200–299 beds	577	13.9	37.3	48.9
300–499 beds	479	11.5	32.6	55.9
500 or more beds	168	6.5	37.5	56.0
Rural hospitals	2,249	10.0	19.4	70.6
0–49 beds	1,171	7.1	14.3	78.7
50–99 beds	662	12.8	21.9	65.3
100–149 beds	241	14.5	30.3	55.2
150–199 beds	99	16.2	22.2	61.6
200 or more beds	76	7.9	39.5	52.6
By Region:				
Urban by Region	2,855	15.4	34.0	50.6
New England	160	7.5	25.0	67.5
Middle Atlantic	434	9.9	30.0	60.1
South Atlantic	417	19.2	41.0	39.8
East North Central	480	11.3	28.5	60.2
East South Central	162	19.8	36.4	43.8
West North Central	190	17.4	28.4	54.2
West South Central	366	25.7	47.5	26.8
Mountain	124	15.3	42.7	41.9
Pacific	474	12.3	30.4	56.3
Puerto Rico	48	18.8	16.7	64.6
Rural by Region	2,249	10.0	19.4	70.6

TABLE IV.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS—Continued

	(1) Total Number of Hospitals	(2) Hold-harmless		(3) Percentage paid fully prospective rate
		Percentage paid hold-harmless (A)	Percentage paid fully federal (B)	
New England	53	7.5	15.1	77.4
Middle Atlantic	84	6.0	19.0	75.0
South Atlantic	297	13.1	25.3	61.6
East North Central	304	8.6	13.5	78.0
East South Central	278	10.1	30.6	59.4
West North Central	525	7.2	15.0	77.7
West South Central	349	10.0	24.1	65.9
Mountain	213	15.5	12.7	71.8
Pacific	141	11.3	15.6	73.0
Large urban areas (populations over 1 million)	1,780	15.3	34.3	50.4
Other urban areas (populations of 1 million or fewer)	1,175	15.4	32.3	52.3
Rural areas	2,149	9.8	19.4	70.8
Teaching Status:				
Non-teaching	4,031	13.7	26.6	59.7
Fewer than 100 Residents	841	11.1	32.0	57.0
100 or more Residents	232	7.8	28.4	63.8
Disproportionate share hospitals (DSH):				
Non-DSH	3,175	12.7	23.8	63.5
Urban DSH:				
100 or more beds	1,410	15.0	36.2	48.8
Less than 100 beds	110	11.8	25.5	62.7
Rural DSH:				
Sole Community (SCH/EACH)	146	9.6	20.5	69.9
Referral Center (RRC/EACH)	25	8.0	32.0	60.0
Other Rural:				
100 or more beds	89	13.5	39.3	47.2
Less than 100 beds	149	6.7	25.5	67.8
Urban teaching and DSH:				
Both teaching and DSH	682	9.1	32.8	58.1
Teaching and no DSH	337	13.6	27.6	58.8
No teaching and DSH	838	19.3	37.6	43.1
No teaching and no DSH	1,098	16.7	32.7	50.6
Rural Hospital Types:				
NON special status hospitals	1,379	7.6	19.5	72.9
RRC/EACH	90	8.9	37.8	53.3
SCH/EACH	641	14.5	16.4	69.1
SCH, RRC and EACH	39	12.8	20.5	66.7
Type of Ownership:				
Voluntary:				
Voluntary	3,058	12.8	27.7	59.5
Proprietary	691	23.6	46.2	30.2
Government	1,355	8.1	17.9	74.0
Medicare Utilization as a Percent of Inpatient Days:				
0–25	256	14.8	25.0	60.2
25–50	1,285	14.6	33.1	52.3
50–65	2,105	12.9	27.8	59.3
Over 65	1,353	10.4	22.2	67.3

As we explain in Appendix B, we were not able to determine a hospital-specific rate for 26 of the 5,130 hospitals in our data base. Consequently, the payment methodology distribution is based on 5,104 hospitals. This data should be fully representative of the payment methodologies that will be applicable to hospitals.

The cross-sectional distribution of hospital by payment methodology is presented by: (1) geographic location, (2) region, and (3) payment classification. This provides an indication of the percentage of hospitals within a particular hospital grouping that will be paid under the fully prospective payment methodology and under the hold-harmless methodology.

The percentage of hospitals paid fully Federal (100 percent of the Federal rate) as hold-harmless hospitals is expected to increase to 27.6 percent in FY 1997.

Table IV indicates that 59.4 percent of hospitals are paid under the fully prospective payment methodology. (This figure, unlike the figure of 66 percent for low cost capital hospitals in the previous section, takes account of the effects of redeterminations. In other words, this figure does not include low cost hospitals that, following a hospital-specific rate redetermination, are now paid under the hold-harmless methodology.) As expected, a relatively higher percentage of rural and governmental hospitals (70.8 percent and 74.0 percent, respectively by payment classification) are being paid under the fully prospective methodology. This is a reflection of their lower than average capital costs

per case. In contrast, only 30.2 percent of proprietary hospitals are being paid under the fully prospective methodology. This is a reflection of their higher than average capital costs per case. (We found at the time of the August 30, 1991 final rule (56 FR 43430) that 62.7 percent of proprietary hospitals had a capital cost per case above the national average cost per case.)

D. Cross-Sectional Analysis of Changes in Aggregate Payments

We used our FY 1997 actuarial model to estimate the potential impact of our proposed changes for FY 1997 on total capital payments per case, using a universe of 5,104 hospitals. The individual hospital payment parameters are taken from the best available data, including: the January 1, 1996 update to the Provider-Specific file, cost report data, and audit information supplied by intermediaries. Table V presents estimates of payments per case under our model for FY 1996 and FY 1997 (columns 2 and 3). Column 4 shows the total percentage change in payments from FY 1996 to FY 1997. Column 5 presents the percentage change in payments that can be attributed to Federal rate changes alone.

Federal rate changes represented in Column 5 include the 4.36 percent decrease in the Federal rate, a 1.6 percent increase in case mix, changes in the adjustments to the Federal rate (for example, the effect of the new hospital wage index on the geographic adjustment factor), and reclassifications by the Medicare Geographic Classification Review Board. Column 4 includes the effects of the Federal rate changes represented in Column 3. Column 4 also reflects the effects of all other changes, including: the change from 50 percent to 60 percent in the portion of the Federal rate for fully prospective hospitals, the hospital-specific rate update, changes in the proportion of new to total capital for hold-harmless hospitals, changes in old capital (for example, obligated capital put in use), hospital-specific rate redeterminations, and exceptions. The comparisons are provided by: (1) geographic location and (2) payment classification and payment region.

The simulation results show that, on average, capital payments per case can be expected to increase 4.4 percent in FY 1997. The results show that the effect of the Federal rate changes alone is to decrease payments by 0.9 percent. The decrease attributable to the Federal rate changes is more than offset by a 5.3 percent increase is attributable to the effects of all other changes.

Our comparison by geographic location shows that capital payments per case to urban and rural hospitals experience similar rates of increase (4.4 percent and 4.8 percent, respectively). Payments per case for urban hospitals will decrease at about the same rate as payments per case for rural hospitals (0.8 percent and 1.3 percent, respectively) from the Federal rate changes alone. Urban hospitals will gain slightly less than rural hospitals (5.2 percent compared to 6.1 percent) from the effects of all other changes.

By region, there is relatively little variation compared to some previous years. All regions are estimated to receive increases in total capital payments per case, due to the increased share of payments that is based on the Federal rate (from 50 to 60 percent). Changes by region vary from a low of 2.1 percent increase (Middle Atlantic rural region) to a high of 15.6 percent increase (rural hospitals of the New England region).

By type of ownership, government hospitals are projected to have the largest rate of increase (5.1 percent, -1.1 percent due to Federal rate changes and a 6.2 percent positive offset from the effects of all other changes). Payments to voluntary hospitals will increase 4.5 percent (a 0.9 percent decrease due to Federal rate changes and a 5.4 percent positive offset from the effects of all other changes) and payments to proprietary hospitals will increase 3.8 percent (a 0.7 percent decrease due to Federal rate changes and a 4.5 percent positive offset from the effects of all other changes).

Section 1886(d)(10) of the Act established the Medicare Geographic Classification Review Board (MGCRB). Hospitals may apply for reclassification for purposes of the standardized amount, wage index, or both. Although the Federal capital rate is not affected, a hospital's geographic classification for purposes of the operating standardized amount does affect a hospital's capital payments as a result of the large urban adjustment factor and the disproportionate share adjustment for urban hospitals with 100 or more beds. Reclassification for wage index purposes affects the geographic adjustment factor since that factor is constructed from the hospital wage index.

To present the effects of the hospitals being reclassified for FY 1997 compared to the effects of reclassification for FY 1996, we show the average payment percentage increase for hospitals reclassified in each fiscal year and in total. For FY 1997 reclassifications, we indicate those hospitals reclassified for standardized amount purposes only, for wage index purposes only, and for both purposes. The reclassified groups are compared to all other nonreclassified hospitals. These categories are further identified by urban and rural designation.

Hospitals reclassified during FY 1997 as a whole are projected to experience a 5.3 percent increase in payments (a 0.3 percent decrease attributable to Federal rate changes and a 5.6 percent positive offset attributable to the effects of all other changes). Payments to nonreclassified hospitals will increase slightly less (4.3 percent) than reclassified hospitals (5.3 percent) overall. Payments to nonreclassified hospitals will decrease slightly more than reclassified hospitals from the Federal rate changes (1.0 percent compared to 0.3 percent), but they will gain about the same from the effects of all other changes (5.3 percent compared to 5.6 percent).

TABLE V.—COMPARISON OF TOTAL PAYMENTS PER CASE

[FY 1996 Payments Compared to FY 1997 Payments]

	Number of hospitals	Average FY 1996 payments/case	Average FY 1997 payments/case	All changes	Portion attibutable to federal rate change
By Geographic Location:					
All hospitals	5,104	718	750	4.4	−0.9
Large urban areas (populations over 1 million)	1,584	823	858	4.3	−0.9
Other urban areas (populations of 1 million of fewer)	1,271	714	747	4.5	−0.8
Rural areas	2,249	479	503	4.8	−1.3
Urban hospitals	2,855	776	810	4.4	−0.8

TABLE V.—COMPARISON OF TOTAL PAYMENTS PER CASE—Continued

[FY 1996 Payments Compared to FY 1997 Payments]

	Number of hospitals	Average FY 1996 payments/case	Average FY 1997 payments/case	All changes	Portion attibutable to federal rate change
0–99 beds	698	570	594	4.3	−0.9
100–199 beds	933	703	731	4.1	−1.0
200–299 beds	577	744	776	4.2	−0.9
300–499 beds	479	800	838	4.8	−0.8
500 or more beds	168	944	984	4.3	−0.5
Rural hospitals	2,249	479	503	4.8	−1.3
0–49 beds	1,171	368	389	5.8	−1.5
50–99 beds	662	445	468	5.0	−1.2
100–149 beds	241	512	536	4.7	−1.3
150–199 beds	99	517	543	4.9	−1.0
200 or more beds	76	609	633	3.9	−1.5
By Region:					
Urban by Region	2,855	776	810	4.4	−0.8
New England	160	780	818	4.9	−1.5
Middle Atlantic	434	816	855	4.8	−0.8
South Atlantic	417	777	809	4.2	−0.8
East North Central	480	730	759	4.0	−0.7
East South Central	162	707	744	5.3	−0.5
West North Central	190	768	807	5.1	−0.8
West South Central	366	794	825	3.8	−0.3
Mountain	124	774	804	3.8	−1.1
Pacific	474	856	890	4.1	−1.3
Puerto Rico	48	291	313	7.5	−1.1
Rural by Region	2,249	479	503	4.8	−1.3
New England	53	605	699	15.6	−1.8
Middle Atlantic	84	489	499	2.1	−2.4
South Atlantic	297	501	518	3.4	−1.5
East North Central	304	479	506	5.7	−0.9
East South Central	278	453	471	4.0	−1.5
West North Central	525	449	471	5.0	−1.4
West South Central	349	447	467	4.4	−0.9
Mountain	213	507	540	6.4	−0.5
Pacific	141	549	582	6.1	−0.9
By Payment Classification:					
All hospitals	5,104	718	750	4.4	−0.9
Large urban areas (populations over 1 million)	1,780	808	842	4.3	−0.9
Other urban areas (populations of 1 million of fewer)	1,175	714	747	4.6	−0.8
Rural areas	2,149	473	495	4.8	−1.4
Teaching Status:					
Non-teaching	4,031	623	647	3.9	−1.0
Fewer than 100 Residents	841	756	791	4.7	−0.9
100 or more Residents	232	1,039	1,096	5.5	−0.7
Urban DSH:					
100 or more beds	1,410	814	850	4.5	−0.9
Less than 100 beds	110	557	587	5.4	−1.1
Rural DSH:					
Sole Community (SCH/EACH)	146	458	495	8.1	−1.9
Referral Center (RRC/EACH)	25	544	560	2.9	−0.2
Other Rural:					
100 or more beds	89	501	519	3.6	−1.9
Less than 100 beds	149	365	385	5.5	−1.6
Urban teaching and DSH:.					
Both teaching and DSH	682	879	919	4.6	−0.8
Teaching and no DSH	337	786	827	5.3	−0.8
No teaching and DSH	838	712	743	4.4	−0.9
No teaching and no DSH	1,098	672	695	3.4	−0.8
Rural Hospital Types:					
Non special status hospitals	1,379	439	458	4.3	−1.7
RRC/EACH	90	559	574	2.5	−0.8
SCH/EACH	641	471	506	7.4	−1.2
SCH, RRC and EACH	39	577	608	5.4	−1.0
Hospitals Reclassified by the Medicare Geographic Classification Review Board:					
Reclassification Status During FY96 and FY97:					
Reclassified During Both FY96 and FY97	381	668	698	4.5	−1.1
Reclassified During FY97 Only	103	678	736	8.6	2.9
Reclassified During FY96 Only	228	631	640	1.4	−3.6
FY97 Reclassifications:					
All Reclassified Hospitals	484	670	706	5.3	−0.3

TABLE V.—COMPARISON OF TOTAL PAYMENTS PER CASE—Continued

[FY 1996 Payments Compared to FY 1997 Payments]

	Number of hospitals	Average FY 1996 payments/case	Average FY 1997 payments/case	All changes	Portion attibutable to federal rate change
All Nonreclassified Hospitals	4,593	725	756	4.3	−1.0
All Urban Reclassified Hospitals	167	762	799	4.9	−0.3
Urban Nonreclassified Hospitals	2,688	777	811	4.3	−0.9
All Reclassified Rural Hospitals	317	568	602	6.0	−0.3
Rural Nonreclassified Hospitals	1,905	443	463	4.3	−1.8
Other Reclassified Hospitals (Section 1886 (D)(8)(B))	27	552	575	4.1	−1.3
Type of Ownership:					
Voluntary	3,058	732	765	4.5	−0.9
Proprietary	691	748	776	3.8	−0.7
Government	1,355	618	649	5.1	−1.1
Medicare Utilization as a Percent of Inpatient Days:					
0–25	256	793	847	6.8	−1.4
25–50	1,285	844	880	4.2	−0.8
50–65	2,105	675	706	4.6	−0.9
Over 65	1,353	603	628	4.1	−1.0

Appendix B: Technical Appendix on the Capital Acquisition Model and Required Adjustments

Under section 1886(g)(1)(A) of the Act, we set capital prospective payment rates for FY 1992 through FY 1995 so that aggregate prospective payments for capital costs were projected to be 10 percent lower than the amount that would have been payable on a reasonable cost basis for capital-related costs in that year. To implement this requirement, we developed the capital acquisition model to determine the budget neutrality adjustment factor. Even though the budget neutrality requirement expires effective with FY 1996, we must continue to determine the recalibration and geographic reclassification budget neutrality adjustment factor, and the reduction in the Federal and hospital-specific rates for exceptions payments. We continue to use the capital acquisition model to determine these factors.

The following data are used in the capital acquisition model for FY 1997: the March 8, 1996 update of the cost reports for PPS–IX (cost reporting periods beginning in FY 1992), PPS–X (cost reporting periods beginning in FY 1993) and PPS–XI (cost reporting periods beginning in FY 1994), the January 1, 1996 update of the provider-specific file, and the March 1994 update of the intermediary audit file. The available data still lack certain items that were required for the determination of budget neutrality, including each hospital's projected new capital costs for each year, its projected old capital costs for each year, and the projected obligated capital amounts that will be put in use for patient care services and recognized as old capital each year.

Since hospitals under alternative payment system waivers (that is, hospitals in Maryland) are currently excluded from the capital prospective payment system, we excluded these hospitals from our model.

We then developed FY 1992, FY 1993, FY 1994, FY 1995, and FY 1996 hospital-specific rates using the provider-specific file, the intermediary audit file, and, when available, cost reports. (We used the cumulative provider-specific file, which includes all updates to each hospital's records, and chose the latest record for each fiscal year.) We checked the consistency between the provider-specific file and the intermediary audit file. We also ensured that the FY 1993 increase in the hospital-specific rate was at least 0.62 percent (the net FY 1993 update), that the FY 1994 hospital-specific rate was at least as large as the FY 1993 hospital-specific rate decreased by 2.16 percent (the net FY 1994 update), that the FY 1995 increase in the hospital-specific rate was at least 0.05 percent (the net FY 1995 update), and that the FY 1996 increase in the hospital-specific rate was at least 21.10 percent (the net FY 1996 update). We were able to match hospitals to the files as shown in the following table.

Source	Number of hospitals
Provider-Specific File Only	101
Provider-Specific and Audit File	5029
Total	5130

Sixty-eight of these hospitals had unusable or missing data. We were able to backfill a hospital-specific rate for 42 of these hospitals from the cost reports as shown in the following table.

Source	Number of hospitals
PPS–VII Cost Reports	1
PPS–VIII Cost Reports	2
PPS–IX Cost Reports	3
PPS–X Cost Reports	7
PPS–XI Cost Reports	29
Total	42

We did not have data for 26 hospitals, and had to eliminate them from the capital analysis. These hospitals likely are new hospitals or hospitals with very few Medicare admissions. This leaves us with 5104 hospitals and should not affect the precision of the required adjustment factors.

Next, we determined old and new capital amounts for FY 1992 using the PPS–IX cost reports as the first source of data. For FY 1993 amounts, we used PPS–IX and PPS–X cost reports as the first source of data, weighting each cost report by the number of days in FY 1993. For FY 1994 amounts, we used PPS–X and PPS–XI cost reports as the first source of data, weighting each cost report by the number of days in FY 1994. We were able to match 5,049 PPS–IX cost reports, 5,062 PPS–X cost reports, and 4,654 PPS–XI cost reports. In cases where cost reports could not be matched, we used the provider-specific file for old capital information. Even in cases where a cost report was available, the breakout of old and new capital was not always available. In these cases, we used the old capital amounts and new capital ratios from the provider-specific file. If these were missing, we derived the old capital amount from the hospital-specific rate.

Finally, we used the intermediary audit file to develop obligated capital amounts. Since the obligated amounts are aggregate projected amounts, we computed a Medicare capital cost per admission associated with these amounts. We adjusted the aggregate amounts by the following factors:

(1) Medicare inpatient share of capital. This was derived from cost reports and was limited to the Medicare share of total inpatient days. It was necessary to limit the Medicare share because of data integrity problems. Medicare share of inpatient days is a reasonably good proxy for allocating capital. However, it may be understated if Medicare utilization is high, and may be overstated because it does not reflect the outpatient share of capital.

(2) Capitalization factor. This factor allocates the aggregate amount of obligated capital to depreciation and interest amounts. Consistent with the assumptions in the capital input price index, we used a 25-year life for fixed capital and a 10-year life for movable capital, and an average projected interest rate of 6.7 percent. We also assumed that fixed capital acquisitions are about one-half of total capital. In conjunction with the useful life and interest rate assumptions, the resulting capitalized fixed capital is about one-half of total capitalization. This is consistent with the allocations between fixed and movable capital found on the cost reports. The ratio we developed is 0.137, which produces the first year capitalization based on the aggregate amount.

(3) A divisor of Medicare admissions to derive the capital costs per discharge amount. Since we must project capital amounts for each hospital, we continued to use a Monte Carlo simulation to develop these amounts. (This model is described in detail in the August 30, 1991 final rule (56 FR 43517).) The Monte Carlo simulation is now used only to project capital costs per discharge amounts for each hospital. We analyzed the distributions of capital increases, and noted a slightly negative correlation between the dollar level of capital cost per admission, and the rate of increase in capital. To determine the rate of increase in capital cost per admission, we multiplied the lesser of $3,000 or the capital cost per admission by .00006 and subtracted this result from 1.2. (Increases for capital levels over $3,000 were not influenced by the level of capital, so this part of the calculation was capped at $3,000.) We selected a random number from the normal distribution, multiplied it by 0.17 (the standard deviation) and added it to −0.04 (the mean) and then added 1 to create a multiplier. This random result was multiplied by the previous result to assign a rate of increase factor which was multiplied by the prior year's capital per discharge amount to develop a capital per discharge amount for the projected year.

To model a projected year, we used the old and new capital for the prior year multiplied by 0.85 (aging factor). The 0.85 aging factor is the average of changes in capital over its life due to the gradual decrease in interest payments and the retirement of fully depreciatiated capital. The aged new and old capital is subtracted from the projected capital described in the previous paragraph. The difference represents newly acquired capital. If the hospital has obligated capital, any increase in "old" capital up to the total amount of obligated capital in FY 1993 and FY 1994 is assigned to obligated capital. Any remaining obligated capital is assigned to FY 1995 up to the amount of the modeled increase in capital for FY 1995. Even though obligated capital must be put in use for patient care by October 1, 1994, the use of the obligated capital may have started late in FY 1994 with only part of the "first year" depreciation and interest realized in FY 1994. The remainder of the "first year" depreciation and interest would be realized in FY 1995. With the exception of certain hospitals about whom we have information to the contrary, we assume that hospitals would meet the expiration dates provided under the obligated capital provision. Hence, no obligated capital is assigned to years FY 1996 and later. Once obligated capital is assigned, it is included with the "old" capital and is capitalized into future years as part of "old" capital. The on-line obligated amounts are added to old capital and subtracted from the newly acquired capital to yield residual newly acquired capital, which is then added to new capital. The residual newly acquired capital is never permitted to be less than zero.

Next, we computed the average total capital cost per discharge from the capital costs that were generated by the model and compared the results to total capital costs per discharge that we had projected independently of the model. We adjusted the newly acquired capital amounts proportionately, so that the total capital costs per discharge generated by the model match the independently projected capital costs per discharge.

Once each hospital's capital-related costs are generated, the model projects capital payments. We use the actual payment parameters (for example, the case-mix index and the geographic adjustment factor) that are applicable to the specific hospital.

To project capital payments, the model first assigns the applicable payment methodology (fully prospective or hold-harmless) to the hospital. If available, the model uses the payment methodology indicated in the PPS–IX cost reports or the provider-specific file. Otherwise, the model determines the methodology by comparing the hospital's FY 1992 hospital-specific rate to the adjusted Federal rate applicable to the hospital. The model simulates Federal rate payments using the assigned payment parameters and hospital-specific estimated outlier payments. The case-mix index for a hospital is derived from the FY 1995 MedPAR file using the FY 1997 DRG relative weights published in this proposed rule. The case-mix index is increased each year after FY 1995 based on analysis of past experiences in case-mix increases.

We analyzed the case-mix increases for the recent past and found that case-mix increases have decelerated to about 1.53 percent in FY 1992, 0.80 percent in FY 1993, and 0.75 percent in FY 1994. It appears that the case-mix increase for FY 1995 accelerated to around 1.6 percent. Early indications show that FY 1996 case-mix is increasing at FY 1995 level, around 1.6 percent. It appears that the deceleration of case-mix increases in FY 1993 and FY 1994 were anomalous, rather than the beginning of a trend. Therefore, in the model we are using the recent experience and have used a case-mix increase of 1.6 percent in FY 1995 and a projected case-mix increase of 1.6 percent in both FY 1996 and FY 1997. (Since we are using FY 1995 cases for our analysis, the FY 1995 increase in case mix has no effect on projected capital payments.)

Changes in geographic classification and revisions to the hospital wage data used to establish the hospital wage index affect the geographic adjustment factor. Changes in the DRG classification system and the relative weights affect the case-mix index.

Section 1886(g)(1)(A) of the Act requires that, for discharges occurring after September 30, 1993, the unadjusted standard Federal rate be reduced by 7.4 percent. Consequently, the model reduces the unadjusted standard Federal rate by 7.4 percent effective in FY 1994. Since budget neutrality expires effective with FY 1996, this adjustment affects the adjusted Federal rate starting in FY 1996.

Section 412.308(c)(4)(ii) requires that the estimated aggregate payments for the fiscal year, based on the Federal rate after any changes resulting from DRG reclassifications and recalibration and the geographic adjustment factor, equal the estimated aggregate payments based on the Federal rate that would have been made without such changes. For FY 1996, the budget neutrality adjustment factor was 1.0025. To determine the factor for FY 1997, we first determined the portion of the Federal rate that would be paid for each hospital in FY 1997 based on its applicable payment methodology. Using our model, we then compared estimated aggregate Federal rate payments based on the FY 1996 DRG relative weights and the FY 1996 geographic adjustment factor to estimated aggregate Federal rate payments based on the FY 1997 relative weights and the FY 1997 geographic adjustment factor. In making the comparison, we held the FY 1997 Federal rate portion constant and set the other budget neutrality adjustment factor and the exceptions reduction factor to 1.00. We determined that to achieve budget neutrality for the changes in the geographic adjustment factor and DRG classifications and relative weights, an incremental budget neutrality adjustment of 0.9992 for FY 1997 should be applied to the previous cumulative FY 1996 adjustment of 1.0025 (the product of the FY 1993 incremental adjustment of 0.9980, the FY 1994 incremental adjustment of 1.0053, the FY 1995 incremental adjustment of 0.9998, and the FY 1996 incremental adjustment of 0.9994), yielding a cumulative adjustment of 1.0017 through FY 1997.

The methodology used to determine the recalibration and geographic (DRG/GAF) budget neutrality adjustment factor is similar to that used in establishing budget neutrality adjustments under the prospective payment system for operating costs. One difference is that under the operating prospective payment system, the budget neutrality adjustments for the effect of geographic reclassifications are determined separately from the effects of other changes in the hospital wage index and the DRG relative weights. Under the capital prospective payment system, there is a single DRG/GAF budget neutrality adjustment factor for changes in the geographic adjustment factor (including geographic reclassification) and the DRG relative weights. In addition, there is no adjustment for the effects that geographic reclassification has on the other payment parameters, such as the payments for serving low income patients or the large urban add-on.

In addition to computing the DRG/GAF budget neutrality adjustment factor, we used the model to simulate total payments under the prospective payment system.

Additional payments under the exceptions process are accounted for through a reduction in the Federal and hospital-specific rates. Therefore, we used the model to calculate the exceptions reduction factor. This exceptions reduction factor ensures that aggregate payments under the capital prospective payment system, including exceptions payments, are projected to equal the aggregate payments that would have been made under the capital prospective payment system without an exceptions process. Since changes in the level of the payment rates change the level of payments under the exceptions process, the exceptions reduction factor must be determined through iteration.

In the August 30, 1991 final rule (56 FR 43517), we indicated that we would publish each year the estimated payment factors generated by the model to determine payments for the next 5 years. The table below provides the actual factors for FY 1992, FY 1993, FY 1994, FY 1995, FY 1996, the proposed FY 1997 factor, and the estimated factors that would be applicable through FY 2001. We caution that, except with respect to FY 1992, FY 1993, FY 1994, FY 1995 and FY 1996, these are estimates only, and are subject to revisions resulting from continued methodological refinements, more recent data, and any payment policy changes that may occur. In this regard, we note that in making these projections we have assumed that the cumulative DRG/GAF adjustment factor will remain at 1.0017 for FY 1997 and later because we do not have sufficient information to estimate the change that will occur in the factor for years after FY 1997.

The projections are as follows:

Fiscal year	Update factor	Exceptions reduction factor	Budget neutrality factor	Federal rate (after outlier) reduction)
1992	N/A	0.9813	0.9602	415.59
1993	6.07	.9756	.9162	[1] 417.29
1994	3.04	.9485	.8947	[2] 378.34
1995	3.44	.9734	.8432	[3] 376.83
1996	1.20	.9849	N/A	[4] 461.96
1997	1.00	.9393	N/A	[5] 441.84
1998	1.00	.9161	N/A	435.23
1999	1.00	.9228	N/A	442.80
2000	1.10	.9155	N/A	444.13
2001	1.10	N/A[6]	N/A	490.46

[1] **Note:** Includes the DRG/GAF adjustment factor of 0.9980 and the change in the outlier adjustment from 0.9497 in FY 1992 to 0.9496 in FY 1993.

[2] **Note:** Includes the 7.4 percent reduction in the unadjusted standard Federal rate. Also includes the DRG/GAF adjustment factor of 1.0033 and the change in the outlier adjustment from 0.9496 in FY 1993 to 0.9454 in FY 1994.

[3] **Note:** Includes the DRG/GAF adjustment factor of 1.0031 and the change in the outlier adjustment from 0.9454 in FY 1994 to 0.9414 in FY 1995.

[4] **Note:** Includes the the transfer adjustment of .9972. Also includes the DRG/GAF adjustment factor of 1.0025 and the change in the outlier adjustment from 0.9414 in FY 1995 to 0.9536 in FY 1996.

[5] **Note:** Includes the DRG/GAF adjustment factor of 1.0017 and the change in the outlier adjustment from 0.9536 in FY 1996 to 0.9476 in FY 1997. Future adjustments are, for purposes of this projection, assumed to remain at the same level.

[6] **Note:** We are unable to estimate exceptions payments for the year under the special exceptions provision (§ 412.348(g) of the regulations) because the regular exceptions provision (§ 412.348(e)) expires.

Appendix C: Rebased Market Basket Data Sources I. Data Sources Used To Determine the Market Basket Relative Weights and Choice of Price Proxy Variables for the Operating Hospital Input Price Indexes

As discussed in section IV of the preamble to this proposed rule, we are rebasing and revising the hospital market baskets. This appendix describes the technical features of the 1992-based indexes that we are proposing in this rule. For both the prospective payment and excluded hospital market baskets, the differences between the proposed 1992-based market basket and the previous 1987-based market basket are noted. In the September 4, 1990 final rule (55 FR 36170), we discussed in detail the 1987-based hospital market baskets.

We present this description of the hospital operating market baskets in three steps:

- A synopsis of the structural differences between the 1987-based market baskets and the proposed 1992-based market baskets.
- A description of the methodology used to develop the cost category weights in the 1992-based market baskets, making note of the differences from the methodology used to develop the 1987-based market baskets.
- A description of the data sources used to measure price change for each component of the 1992-based market baskets, making note of the differences from the price proxies used in the 1987-based hospital market baskets.

A. Synopsis of Structural Changes Adopted in the Rebased 1992 Operating Hospital Market Baskets

Three major structural differences exist between the 1987-based and the proposed 1992-based operating hospital market baskets.

- The proposed hospital market baskets are based on more recent hospital expenditure data. The 1987-based market baskets contained skeletal cost shares that were derived from the 1987 cost data from the 1988 Annual Survey of the American Hospital Association (AHA). The 1992-based market baskets use data from the hospital cost reports for cost reporting periods beginning on or after October 1, 1991 and before October 1, 1992.
- Some cost categories have been combined, namely Fuel, Oil, Coal, and Other Fuel with Motor Gasoline, and Blood Services with Chemicals. These category mergers reflect the Bureau of Economic Analysis (BEA) reclassification decisions in the 1987 update of the BEA Input-Output Tables.
- In the proposed 1992-based market basket, the sample of excluded hospitals is restricted to more closely reflect the average Medicare length of stay in excluded hospitals. We have used cost report data for excluded hospitals from only those hospitals in which the Medicare average length of stay is within 15 percent of the total average length of stay to more accurately reflect the structure of costs for Medicare cases. This is a change from the FY 1987-based market basket, for which data from all excluded hospitals were used.

B. Methodology for Developing the Cost Category Weights

Cost category weights for the 1992-based market baskets were developed in four stages. First, base weights for three (Wages and Salaries, Employee Benefits, Pharmaceuticals) of the six main categories were derived from the 1992 Medicare cost reports for operating costs. Second, the weight for Nonmedical Professional Fees was developed by subtracting Medical Professional Fees reported in the Hospital Cost Report Information System (HCRIS) file from AHA Annual Survey Total Professional Fees to obtain Nonmedical Professional Fees, and the weight for Professional Liability Insurance was developed using 1989 HCRIS data trended forward to 1992, using the relative importance values in the previous market baskets. Third, the sum of Wages and Salaries, Employee Benefits, Pharmaceuticals, Nonmedical Professional Fees, and Professional Liability Insurance was subtracted from total expenses to obtain All Other Expenses. Finally, the weight for All Other Expenses was divided into subcategories using cost shares from the 1987 Input-Output Table for the hospital industry, produced by the U.S. Department of Commerce, Bureau of Economic Analysis, aged to 1992 using price changes. We will incorporate 1992 data from the U.S. Department of Commerce into the final market basket if the data are released in time to be analyzed in developing the final rule.

Below, we describe the source of the six main category weights and their subcategories in the 1992-based market baskets. We make note of the differences between the methodologies used to develop the 1987-based and the 1992-based market baskets.

1. Wages and Salaries: The cost weight for the Wages and Salaries category was derived using the 1992 Medicare cost reports. Contract Labor, which is also derived from the 1992 Medicare cost reports, is split between the Wages and Salaries and Employee Benefits cost categories, using the relationship for employed workers. Examples of Contract Labor are registered nurses and workers in hospital food service or security who are employed and paid by firms that contract for their work with the hospital. The Wages and Salaries cost category was disaggregated into nine occupational subcategories (professional and technical, managers and administration, sales, clerical, craft and kindred, operatives excluding transport, transport equipment operatives, nonfarm laborers and service workers) to reflect the mix of occupational inputs used by hospitals. The Contract Labor wages and salaries component was allocated proportionally to Professional-Technical and Service occupations. The 1987-based weights were developed from the 1987 Current Population Survey, while the 1992-based weights were developed from the 1992 Current Population Survey.

2. Employee Benefits: The cost weight for the employee benefits category was derived from the 1992 cost reports. Like wages and salaries, the employee benefit weight in each 1992-based market basket is a composite of nine labor subcategories. The employee benefits categories in the 1987-based market baskets were developed from the 1987 AHA Annual Survey and used the 1987 Current Population Survey. In 1987 Contract Labor's implied fringe benefits were allocated proportionally to Professional and Technical occupations, while in 1992 they were allocated to Professional-Technical and Service occupations.

3. Nonmedical Professional Fees: The cost weight for the nonmedical professional fees category was derived from the 1992 Medicare Cost Reports and AHA Annual Survey data. Total professional fees were split into the subcategories medical and other (nonmedical) fees using AHA Total Professional Fees minus HCRIS Medical Professional Fees to equal Nonmedical Professional Fees. The 1987-based nonmedical professional fees cost category was derived from the 1987 AHA Annual Survey and American Medical Association (AMA) data. It was split into the subcategories medical and other fees using data derived from the American Medical Association. The medical professional fees category is excluded from the hospital market basket since it is paid under Medicare Part B.

4. Professional Liability Insurance: The 1987-based market baskets have weights for professional liability insurance that were derived from the June 30 and December 31, 1987 HAS/Monitrend surveys. The cost weight for

the 1992-based professional liability insurance category was derived from 1989 HCRIS cost shares trended to 1992 using the change in the relative importance factor for professional liability insurance (malpractice) from the previous 1987-based prospective payment hospital and excluded hospital market baskets.

5. Utilities: For the 1987-based market baskets, the cost weight for utilities was derived by extrapolating the 1985 AHA Annual Survey utilities cost weight forward to 1987 using the rate of growth in the HAS/Monitrend cost weight for utilities between 1985 and 1987. The 1987 Utility subcategory weights were aged from their 1982-based index subcategory weights using price changes from 1982 to 1987. The 1992-based market basket cost weights for the subcategories (fuel, oil and gasoline; electricity; natural gas; and water and sewage) were derived from the Bureau of Economic Analysis' 1987 Input-Output table for the hospital industry, aged forward to 1992 by price changes and summed to a weight for utilities.

6. All Other Goods and Services: The all other goods and services category has more subcategories than any other market basket category. Goods found in this category include: direct service food, contract service food, pharmaceuticals, chemicals, medical instruments, photo supplies, rubber and plastics, paper products, apparel, machinery and equipment and miscellaneous products. Services found in this category include: business services, computer services, transportation and shipping, telephone, postage, other labor-intensive services, and other nonlabor-intensive services. The share for pharmaceuticals was derived from the 1992 Medicare cost reports. Relative shares for the other subcategories were derived from the 1987 Bureau of Economic Analysis' Input-Output table for the hospital industry and were aged forward to 1992 using price changes. As noted above, if more recent U.S. Department of Commerce data become available for these categories and we have time to analyze these data before the publication of the final rule, they will be incorporated into the final market baskets.

C. Price Proxies Used to Measure Cost Category Growth

1. Wages and Salaries: For measuring price growth in the 1992-based market basket, 10 price proxies are applied to the 9 occupational subcategories within the wages and salaries component. As in the 1987-based market basket, the professional and technical subcategory was split in half. An Employee Cost Index (ECI) for hourly wages paid to civilian hospital workers was applied to one half. An ECI of hourly wages and salaries paid to professional and technical workers in private industry was applied to the other half of the professional and technical component. The other eight occupations subcategories of the wages and salaries component were proxied using ECIs for wages and salaries for private industry workers in their respective occupational categories.

2. Employee Benefits: The 1992-based hospital market baskets use occupation-specific ECIs for employee benefits. The distribution of weights and price proxies is the same as for wages and salaries discussed above, but occupation-specific employee benefit ECIs replace occupation-specific wages and salaries ECIs. The components are summed into a composite index, just as was done for the 1987-based market basket.

3. Nonmedical Professional Fees: The ECI for compensation for professional and technical workers in private industry is applied to this category. This is a revision from the 1987-based market basket in which the ECI for wages and salaries for professional and technical workers in private industry was used.

4. Fuel, Oil, and Gasoline: The percentage change in the price of refined petroleum products as measured by the Producer Price Index (PPI) (Commodity Code #057) was applied to this component. This is a revision from the 1987-based indexes in which the PPIs for Light Fuel Oil (Commodity Code #0573) and Gasoline (Commodity Code #0571) were used.

5. Electricity: The percentage change in the price of commercial electric power as measured by the PPI (Commodity Code #0542) was applied to this component. This is a revision from the 1987-based indexes in which the PPI for industrial power (Commodity Code #0543) was used.

6. Natural Gas: The percentage change in the price of gas fuels as measured by the PPI (Commodity Code #0552) was applied to this component. This is a revision from the 1987-based indexes in which the PPI for Natural Gas (Commodity Code #0531) was used.

7. Water and Sewerage: The percentage change in the price of water and sewerage maintenance as measured by the Consumer Price Index (CPI) for all urban consumers was applied to this component. The same price measure was used in the 1987-based market baskets.

8. Professional Liability Insurance: The percentage change in the hospital professional liability insurance price as estimated by hospital industry professional liability insurance premium increase was applied to this component. The same price measure was used in the 1987-based market baskets.

9. Pharmaceuticals: The percentage change in the price of ethical preparations as measured by the PPI (Commodity Code #0635) was applied to this variable. The same price measure was used in the 1987-based market baskets.

10. Food, Direct Purchases: The percentage change in the price of processed foods and feeds as measured by the PPI (Commodity Code #02) was applied to this component. The same price measure was used in the 1987-based market baskets.

11. Food, Contract Services: The percentage change in the price of food purchased away from home as measured by the CPI for all urban consumers was applied to this component. The same price measure was used in the 1987-based market baskets.

12. Chemicals: The percentage change in the price of industrial chemical products as measured by the PPI (Commodity Code #061) was applied to this component. The same price measure was used in the 1987-based market baskets.

13. Surgical and Medical Equipment: The percentage change in the price of medical and surgical instruments as measured by the PPI (Commodity Code #1562) was applied to this component. The same price measure was used in the 1987-based market baskets.

14. Photographic Supplies: The percentage change in the price of photographic supplies as measured by the PPI (Commodity Code #1542) was applied to this component. The same price measure was used in the 1987-based market baskets.

15. Rubber and Plastics: The percentage change in the price of rubber and plastic products as measured by the PPI (Commodity Code #07) was applied to this component. The same price measure was used in the 1987-based market baskets.

16. Paper Products: The percentage change in the price of converted paper and paperboard products as measured by the PPI (Commodity Code # 0915) was used. This is a revision from the 1987-based indexes in which a weighted average of the percentage change in the price of converted paper and paperboard products and the percentage change in the price of paper excluding newsprint and packaging paper (Commodity Code #091301) was used.

17. Apparel: The percentage change in the price of apparel as measured by the PPI (Commodity Code #381) was applied to this component. This is a revision from the 1987-based indexes in which the PPI for textile house furnishings (Commodity Code #0382) was used.

18. Minor Machinery and Equipment: The percentage change in the price of machinery and equipment as measured by the PPI (Commodity Code #11) was applied to this component. The same price measure was used in the 1987-based market baskets.

19. Miscellaneous Products: The percentage change in the price of all finished goods as measured by the PPI was applied to this component. The same price measure was used in the 1987-based market baskets.

20. Business Services: The ECI for compensation for workers in the business services industry was applied to this component. This is a revision from the 1987-based indexes in which the percentage change in the AHE for wages and salaries for production and nonsupervisory workers in the business services industry as measured by the Bureau of Labor Statistics (SIC Code 73) was used.

21. Computer and Data Processing Services: The percentage change in the AHE of production and nonsupervisory workers engaged in firms furnishing computer data processing services (SIC Code 737) was applied to this component. The same price measure was used in the 1987-based market baskets.

22. Transportation and Shipping: The percentage change in the transportation component of the CPI for all urban consumers was applied to this component. The same price measure was used in the 1987-based market baskets.

23. Telephone: The percentage change in the price of telephone services as measured by the CPI for all urban consumers was applied to this component. The same price measure was used in the 1987-based market baskets.

24. Postage: The percentage change in the price of postage as measured by the CPI for all urban consumers was applied to this component. The same price measure was used in the 1987-based market baskets.

25. All Other Services, Labor Intensive: The percentage change in the ECI for compensation paid to service workers employed in private industry was applied to this component. This is a revision from the 1987-based indexes in which the ECI for wages and salaries paid to service workers employed in private industry was used.

26. All Other Services, Nonlabor Intensive: The percentage change in the all-items component of the CPI for all urban consumers was applied to this component. The same price measure was used in the 1987-based market baskets.

For further discussion of the rationale for choosing specific price proxies, we refer the reader to the September 3, 1986 final rule (51 FR 31582).

II. Data Sources Used to Determine the Cost Category Weights and Vintage Weights, and Choices of Price Proxy Variables for the Hospital Capital Input Price Index

In the preamble to this proposed rule, we discuss the rebasing of the capital input price index (CIPI). This appendix describes certain technical features of the 1992-based index that we are proposing in this rule, as well as differences between the proposed 1992-based CIPI and the current 1987-based CIPI. We discussed the 1987-based CIPI in the September 1, 1995 final rule (60 FR 45817.)

This discussion has the following three parts:

- A synopsis of the differences between the 1987-based CIPI and the proposed 1992-based CIPI.
- A description of the methodology used to develop the cost category weights and vintage weights in the 1992-based CIPI, making note of the differences from the methodology used to develop the 1987-based CIPI.
- A description of the data sources used to measure price change for each component of the 1992-based CIPI, making note of the differences from the price proxies used in the 1987-based CIPI.

A. Synopsis of Changes Adopted in the Rebased 1992 CIPI

We made no structural changes in the 1992-based CIPI. The only major change is the use of more recent hospital capital expenditure data in the proposed 1992-based CIPI.

The 1987-based CIPI contained cost category weights that were derived from 1987 Medicare cost report data and the 1987 Annual Survey of the AHA. The 1992-based CIPI uses data from the hospital Medicare cost reports for cost periods beginning between October 1, 1991 and September 30, 1992. The 1992-based CIPI also uses data from the 1992 Annual Survey of the AHA.

The 1987-based CIPI contained vintage weights that were derived from 1987 Medicare cost report data, the 1963-1987 Panel Survey of the AHA, and the 1980–1989 Securities Data Corporation data on hospital bonds. The 1992-based CIPI uses data from the 1992 Medicare cost reports, the 1963–1992 Panel Survey of the AHA, and 1980–1992 Securities Data Corporation data on hospital bonds.

B. Methodology for Developing Cost Category Weights and Vintage Weights for the 1992-based CIPI

There are five cost categories in the CIPI: building and fixed equipment depreciation, movable equipment depreciation, capital-related interest expense from government/nonprofit debt instruments, capital-related interest expense from for-profit debt instruments, and other capital-related expenses, such as taxes and insurance. The methodology for developing each of these cost category weights is described below:

1. Building and Fixed Equipment Depreciation: The 1992-based cost weight for building and fixed equipment depreciation was derived using the 1992 Medicare cost reports. The proportion of lease expenses attributable to building and fixed equipment was included in the cost weight based on the proportion of overall capital expenses allocated to building and fixed equipment depreciation. The 1987-based weight was developed from the 1987 Medicare cost reports and the 1987 AHA Annual Survey.

2. Movable Equipment Depreciation: The 1992-based cost weight for movable equipment depreciation was derived using the 1992 Medicare Cost Reports. The proportion of lease expenses attributable to movable equipment was included in the cost weight based on the proportion of overall capital expenses allocated to movable equipment depreciation. The 1987-based weight was developed from the 1987 Medicare cost reports and the 1987 AHA Annual Survey.

3. Government/Nonprofit Interest: The 1992-based cost weight for government/nonprofit interest was derived using the 1992 AHA Annual Survey data. The government/nonprofit interest is 85 percent of total interest, reflecting the relative debts of the government/nonprofit hospital sector and the for-profit hospital sector. The proportion of lease expenses attributable to government/nonprofit interest was included in the cost weight based on the proportion of overall capital expenses allocated to government/non-profit interest expense. The 1987-based weight was developed from the 1987 AHA Annual Survey.

4. For-Profit Interest: The 1992-based cost weight of for-profit interest was

derived using the 1992 AHA Annual Survey data. The for-profit interest is 15 percent of total interest, reflecting the relative debts of the government/nonprofit hospital sector and the for-profit hospital sector. The proportion of lease expenses attributable to for-profit interest was included in the cost weight based on the proportion of overall capital expenses allocated to for-profit interest expense. The 1987-based weight was developed from the 1987 AHA Annual Survey.

5. Other Capital-Related Expenses: The 1992-based cost weight for other capital-related expenses was derived using 1992 Medicare cost reports. The proportion of lease expenses attributable to other capital-related expenses was included in the cost weight based on the proportion of overall capital expenses allocated to other capital-related expenses. The 1987-based weight was developed from the 1987 Medicare cost reports and the 1987 Capital Expenditure Survey.

There are three sets of vintage weights in the CIPI: building and fixed equipment depreciation, movable equipment depreciation, and interest expense. The methodology for developing each of these vintage weights is described below.

1. Building and Fixed Equipment: The 1992-based building and fixed equipment vintage weights were derived from the 1992 Medicare cost reports and the 1963–1992 AHA Panel Survey. The 1987-based weights were developed from the 1987 Medicare cost reports and the 1963–1987 AHA Panel Survey.

2. Movable Equipment: The 1992-based movable equipment vintage weights were derived from the 1992 Medicare cost reports and the 1963–1992 AHA Panel Survey. The 1987-based weights were developed from the 1987 Medicare cost reports and the 1963–1987 AHA Panel Survey.

3. Capital-Related Interest: The 1992-based movable equipment vintage weights were derived from the 1980–1992 Securities Data Corporation data on hospital bonds and the 1963–1992 AHA Panel Survey. The 1987-based weights were developed from the 1980–1989 Securities Data Corporation data on hospital bonds and the 1963–1987 AHA Panel Survey.

C. Price Proxies Used to Measure Cost Category Growth in the CIPI

1. Building and Fixed Equipment Depreciation: The percentage change in the vintage-weighted price of building and fixed equipment depreciation as measured by the Boeckh institutional construction index was applied to this category in the 1992-based CIPI. The same price proxy was used in the 1987-based CIPI.

2. Movable Equipment Depreciation: The percentage change in the vintage-weighted price of movable equipment depreciation as measured by the Producer Price Index (PPI) for machinery and equipment was applied to this category in the 1992-based CIPI. The same price proxy was used in the 1987-based CIPI.

3. Government/Nonprofit Interest Expense: The percentage change in the vintage-weighted price of government/nonprofit interest expense as measured by the Average yield on Domestic Municipal Bonds from the Bond Buyer index of 20 bonds was applied to this category in the 1992-based CIPI. The same price proxy was used in the 1987-based CIPI.

4. For-Profit Interest Expense: The percentage change in the vintage-weighted price of for-profit interest expense as measured by the Average yield on Moody's AAA Bonds was applied to this category in the 1992-based CIPI. The same price proxy was used in the 1987-based CIPI.

5. Other Capital-Related Expenses: The percentage change in the price of other capital-related expenses as measured by the CPI for all urban consumers for residential rent was applied to this category in the 1992-based CIPI. The same price proxy was used in the 1987-based CIPI.

We provided more detailed discussion of the rationale for the choice of these price proxies in the June 2, 1995 proposed rule (60 FR 29227) and in the September 1, 1995 final rule (60 FR 45815).

The Honorable Albert Gore, Jr.
President of the Senate
Washington, D.C. 20510

Dear Mr. President: Section 1886(e)(3)(B) of the Social Security Act (the Act) requires me to report to Congress the initial estimate of the applicable percentage increase in inpatient hospital payment rates for Federal Fiscal Year (FY) 1997 that I will recommend for hospitals subject to the Medicare prospective payment system (PPS) and for hospitals and units excluded from PPS. This submission constitutes the required report.

Current law mandates an update for all PPS hospitals of the market basket rate of increase minus 0.5 percentage points. The President's FY 1997 budget includes an update for PPS hospitals in both large urban areas and other areas equal to the market basket rate of increase minus 1.5 percentage points. The President's FY 1997 budget estimated the PPS market basket rate of increase for FY 1997 to be 3.6 percent. Based on this estimate, we recommend an update for hospitals in both large urban and other areas of 2.1 percent. However, recent data from ProPAC and other sources suggest that the final PPS market basket rate of increase for FY 1997 will be lower.

Sole community hospitals (SCHs) are the sole source of care in their area and are afforded special payment protection to maintain access to services for Medicare beneficiaries. SCHs are paid the higher of a hospital-specific rate or the Federal PPS rate. Current law mandates an update for sole community hospitals of the market basket rate of increase minus 0.5 percentage points. Consistent with the President's FY 1997 budget, we recommend an update to hospital-specific rates equal to the increase for all PPS hospitals; that is, the market basket rate of increase of 3.6 percent minus 1.5 percentage points, or 2.1 percent.

Hospitals and distinct part hospital units excluded from PPS are paid based on their reasonable costs subject to a limit under the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982. Current law mandates an update for all hospitals and distinct part hospital units excluded from PPS equal to the rate of increase in the excluded hospital market basket minus 1.0 percentage point, although the update can be higher for certain hospitals and units with costs that are greater than their target amounts. The President's FY 1997 budget incorporates an increase in the TEFRA limit equal to the rate of increase in the excluded hospital market basket (3.6 percent) minus 1.5 percentage points. Therefore, we recommend an increase in the TEFRA limit of 2.1 percent.

My recommendation for the updates is based on cost projections used in the President's FY 1997 budget. A final recommendation on the appropriate percentage increases for FY 1997 will be made nearer the beginning of the new Federal Fiscal Year based on the most current market basket projection available at that time. The final recommendation will incorporate our analysis of the latest estimates of all relevant factors, including recommendations by the Prospective Payment Assessment Commission (ProPAC). We currently expect that the final estimate of the market basket rate of increase will be lower than the estimate used in the President's FY 1997 budget.

Section 1886(d)(4)(C)(iv) of the Act also requires that I include in my report recommendations with respect to adjustments to the diagnosis-related group (DRG) weighting factors. At this time I do not anticipate recommending any adjustment to the DRG weighting factors for FY 1997.

I am pleased to provide this recommendation to you. I am also sending a copy of this letter to the Speaker of the House of Representatives.

Sincerely,

Donna E. Shalala

The Honorable Newt Gingrich
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker: Section 1886(e)(3)(B) of the Social Security Act (the Act) requires me to report to Congress the initial estimate of the applicable percentage increase in inpatient hospital payment rates for Federal Fiscal Year (FY) 1997 that I will recommend for hospitals subject to the prospective payment system (PPS) and for hospitals and units excluded from PPS. This submission constitutes the required report.

Current law mandates an update for all PPS hospitals of the market basket rate of increase minus 0.5 percentage points. The President's FY 1997 budget includes an update for PPS hospitals in both large urban areas and other areas equal to the market basket rate of increase minus 1.5 percentage points. The President's FY 1997 budget estimated the PPS market basket rate of increase for FY 1997 to be 3.6 percent. Based on this estimate, we recommend an update for hospitals in both large urban and other areas of 2.1 percent. However, recent data from ProPAC and other sources suggest that the final PPS market basket rate of increase for FY 1997 will be lower.

Sole community hospitals (SCHs) are the sole source of care in their area and are afforded special payment protection to maintain access to services for Medicare beneficiaries. SCHs are paid the higher of a hospital-specific rate or the Federal PPS rate. Current law mandates an update for sole community hospitals of the market basket rate of increase minus 0.5 percentage points. Consistent with the President's FY 1997 budget, we recommend an update to hospital-specific rates equal to the increase for all PPS hospitals; that is, the market basket rate of increase of 3.6 percent minus 1.5 percentage points, or 2.1 percent.

Hospitals and distinct part hospital units excluded from PPS are paid based on their reasonable costs subject to a limit under the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982. Current law mandates an update for all hospitals and distinct part hospital units excluded from PPS equal to the rate of increase in the excluded hospital market basket minus 1.0 percentage point, although the update can be higher for certain hospitals and units with costs that are greater than their target amounts. The President's FY 1997 budget incorporates an increase in the TEFRA limit equal to the rate of increase in the excluded hospital market basket (3.6 percent) minus 1.5 percentage points. Therefore, we recommend an increase in the TEFRA limit of 2.1 percent.

My recommendation for the updates is based on cost projections used in the President's FY 1997 budget. A final recommendation on the appropriate percentage increases for FY 1997 will be made nearer the beginning of the new Federal Fiscal Year based on the most current market basket projection available at that time. The final recommendation will incorporate our analysis of the latest estimates of all relevant factors, including recommendations by the Prospective Payment Assessment Commission (ProPAC). We currently expect that the final estimate of the market basket rate of increase will be lower than the estimate used in the President's FY 1997 budget.

Section 1886(d)(4)(C)(iv) of the Act also requires that I include in my report recommendations with respect to adjustments to the diagnosis-related group (DRG) weighting factors. At this time I do not anticipate recommending any adjustment to the DRG weighting factors for FY 1997.

I am pleased to provide this recommendation to you. I am also sending a copy of this letter to the President of the Senate.

Sincerely,

Donna E. Shalala

Appendix E: Recommendation of Update Factors for Operating Cost Rates of Payment for Inpatient Hospital Services

I. Background

Several provisions of the Social Security Act (the Act) address the setting of update factors for inpatient services furnished in FY 1997 by hospitals subject to the prospective payment system and those excluded from the prospective payment system. Section 1886(b)(3)(B)(i)(XII) of the Act sets the FY 1997 percentage increase in the operating cost standardized amounts equal to the rate of increase in the hospital market basket minus 0.5 percentage points for prospective payment hospitals in all areas. Section 1886(b)(3)(B)(iv) of the Act sets the FY 1997 percentage increase in the hospital-specific rates applicable to sole community hospitals equal to the rate set forth in section 1886(b)(3)(B)(i) of the Act, that is, the same update factor as all other hospitals subject to the prospective payment system, or the rate of increase in the market basket minus 0.5 percentage points. Section 1886(b)(3)(B)(ii) of the Act sets the FY 1997 percentage increase in the rate of increase limits for hospitals excluded from the prospective payment system equal to the rate of increase in the excluded hospital market basket minus the applicable reduction or, in the case of a hospital in a fiscal year for which the hospital's update adjustment percentage is at least 10 percent, the excluded hospital market basket percentage increase. Under section 1886(b)(3)(B)(v) of the Act, a hospital's update adjustment percentage increase for FY 1997 is the percentage increase by which the hospital's allowable operating costs of inpatient hospital services recognized under this title for the cost reporting period beginning in FY 1990 exceed the hospital's target amount for such cost reporting period, increased for each fiscal year (beginning with FY 1994) by the sum of any of the hospital's applicable reductions for previous years. The applicable reduction with respect to a hospital for FY 1997 is the lesser of 1 percentage point or the percentage point difference between 10 percent and the hospital's update adjustment percentage for FY 1997.

In accordance with section 1886(d)(3)(A) of the Act, we are proposing to update the standardized amounts, the hospital-specific rates, and the rate-of-increase limits for hospitals excluded for the prospective payment system as provided in section 1886(b)(3)(B) of the Act. Based on the first quarter 1996 forecast of the FY 1997 rebased market basket increase of 2.7 percent for hospitals subject to the prospective payment system, the proposed updates in the standardized amounts are 2.2 percent for hospitals in both large urban and other areas. The proposed update in the hospital-specific rate applicable to sole community hospitals is 2.2 percent (that is, the market basket rate of increase of 2.7 percent minus 0.5 percentage points). The proposed update for hospitals excluded from the prospective payment system is based on the percentage increase in the excluded hospital market basket (currently estimated at 2.7 percent) minus the applicable reduction factor. The applicable reduction factor is the lesser of 1 percentage point or the percentage point difference between 10 percent and the hospital's update adjustment percentage. Therefore, for excluded hospitals, the hospital-specific proposed update can vary between 1.7 and 2.7 percent.

Sections 1886(e)(2)(A) and (3)(A) of the Act require that the Prospective Payment Assessment Commission (ProPAC) recommend to the Congress by March 1, 1996 an update factor that takes into account changes in the market basket rate of increase index, hospital productivity, technological and scientific advances, the quality of health care provided in hospitals, and long-term cost effectiveness in the provision of inpatient hospital services.

In its March 1, 1996 report, ProPAC recommended update factors to the standardized amounts equal to the percentage increase in the market basket minus 0.7 to 2.0 percentage points for hospitals in both large urban and other areas (Recommendation 10). Based on its market basket rate of increase estimate of 2.7 percent, ProPAC's recommended update to the standardized amounts equals 2.0 to 0.7 percent for hospitals in both large urban and other areas. (ProPAC's market basket is still using the 1987-based weights.) ProPAC did not make a separate recommendation for the hospital-specific rates applicable to sole community hospitals. The components of ProPAC's update factor recommendations are described in detail in the ProPAC report, which is published as Appendix F to this document. We discuss ProPAC's recommendations concerning the update factors and our responses to these recommendations below.

Section 1886(e)(4) of the Act requires that the Secretary, taking into

consideration the recommendations of ProPAC, recommend update factors for each fiscal year that take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. Under section 1886(e)(5) of the Act, we are required to publish the update factors recommended under section 1886(e)(4) of the Act. Accordingly, this appendix provides the recommendations of appropriate update factors, the analysis underlying our recommendations, and our responses to the ProPAC recommendations concerning the update factors.

II. Secretary's Recommendations

Under section 1886(e)(4) of the Act, we are recommending that the standardized amounts be increased by an amount equal to the market basket rate of increase minus 1.5 percentage points for hospitals located in large urban and other areas. We are also recommending an update of the market basket rate of increase minus 1.5 percentage points to the hospital-specific rate for sole community hospitals. These figures are consistent with the President's FY 1997 budget recommendation, which continues the reductions imposed by section 13501 of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66), that is, reductions in the hospital market basket of 2.5 percentage points for FYs 1994 and 1995 and 2.0 percentage points for FY 1996. We believe these recommended changes in the update factor would ensure that Medicare acts as a prudent purchaser and provide incentives to hospitals for increased efficiency, thereby contributing to the solvency of the Medicare Part A Trust Fund. When the President's budget was submitted, the market basket rate of increase was projected at 3.6 percent. As noted above, this proposed recommendation is based on the most recent forecast of the proposed rebased market basket. (See section IV of the preamble to this proposed rule for a detailed discussion of the market basket.)

We recommend that hospitals excluded from the prospective payment system receive an update equal to the percentage increase in the proposed rebased market basket that measures input price increases for services furnished by excluded hospitals minus 1.5 percentage points. That market basket rate of increase is currently forecast at 2.7 percent. Subtracting 1.5 percentage points would result in an update for hospitals excluded from the prospective payment system of 1.2 percent. This recommendation is consistent with the President's budget, acknowledging that the market basket rate of increase for these hospitals also was forecast at 3.6 percent at the time the budget was submitted.

As required by section 1886(e)(4) of the Act, we have taken into consideration the recommendations of ProPAC in setting these recommended update factors. Our responses to the ProPAC recommendations concerning the update factors are discussed below.

III. ProPAC Recommendation for Updating the Prospective Payment System Standardized Amounts

For FY 1997, ProPAC's update framework would support an update between 0.7 percentage points and 2.0 percentage points less than the increase in the hospital market basket index. The methodology employed by the Commission in previous years would lead to a recommendation of about market basket minus 1.5 percentage points, roughly corresponding to the midpoint of that range. In light of the significant changes occurring in health care delivery, the Commission believes that the increase in the prospective payment system rates could be held to market basket minus 2.0 percentage points for the next year or two. However, it is concerned about the potential effects of continuing updates at that level on hospitals' financial health. Low updates over an extended period of time could affect a hospital's ability to provide quality care to Medicare beneficiaries, compromise access, and impede the diffusion of quality-enhancing technological advances.

Based on the market basket estimate of 2.7 percent, ProPAC recommends that hospitals in large urban and other areas receive an update between 0.7 to 2.0 percent.

Response: We are recommending an update that is consistent with the Administration's budget proposal. Our recommendation is that the update for FY 1997 for prospective payment system hospitals located in large urban and other areas be equal to the market basket rate of increase forecast minus 1.5 percentage points. Based on HCFA's current forecast of the market basket rate of increase (2.7 percent), we recommend an update for FY 1997 for large urban and other hospitals equal to 1.2 percent. Our recommendation is supported by the following analyses that measure changes in hospital productivity, scientific and technological advances, practice pattern changes, and changes in case mix:

- *Productivity:* Service level productivity is defined as the ratio of total service output to full-time equivalent employees (FTEs). While we recognize that productivity is a function of many variables (for example, labor, nonlabor material, and capital inputs), we use a labor productivity measure since this update framework applies to operating payment. To recognize that we are apportioning the short run output changes to the labor input and not considering the nonlabor inputs, we weight our productivity measure for operating costs by the share of direct labor services in the market basket rate of increase to determine the expected effect on cost per case.

Our recommendation for the service productivity component is based on historical trends in productivity and total output for both the hospital industry and the general economy, and projected levels of future hospital service output. ProPAC has also estimated cumulative service productivity growth to be 4.9 percent from 1985–1989, or 1.2 percent annually. At the same time, the Commission estimates total output growth at 3.4 percent annually, implying a ratio of service productivity growth to output growth of 0.35. Our Medicare Provider Analysis and Review (MedPAR) file analysis indicates total Medicare service output (charges per admission, adjusted for CPI change) increased 10.7 percent from 1987–1995, or an approximate average annual increase of 1.2 percent. Since it is not possible at this time to develop a productivity measure specific to Medicare patients, we examined productivity (output per hour) and output (gross domestic product) for the economy. Depending on the exact time period, annual changes in productivity range from 0.3 to 0.35 percent of the change in output (that is, a 1.0 percent increase in output would be correlated with an 0.3 to 0.35 percent change in output per hour).

Under our framework, the recommended update is based in part on expected productivity—that is, projected service output during the year multiplied by the historical ratio of service productivity to total service output, multiplied by the share of labor in total operating inputs, as calculated in the hospital market basket rate of increase. This method estimates an expected labor productivity improvement in the same proportion to expected total service growth that has occurred in the past and assumes that, at a minimum, growth in FTEs changes proportionally to the growth in total service output. Thus, the recommendation allows for unit productivity to be smaller than the historical averages in years that output growth is relatively low and higher in years that output growth is larger than the historical trend. Based on the above estimates from both the hospital industry and the economy, we have chosen to employ the range of ratios of productivity change to output change of 0.30 to 0.35.

The expected change in total hospital service output is the product of projected growth in total admissions (adjusted for outpatient usage), projected real case-mix growth, and expected quality enhancing intensity growth, net of expected decline in intensity due to reduction of cost ineffective practice. Case-mix growth and intensity numbers for Medicare are used as proxies for those of the total hospital, since case-mix increases (used in the intensity measure as well) are unavailable for non-Medicare patients. Thus, expected output growth is simply the sum of the expected change in intensity (0.0 percent), projected admissions change (2.7 percent for FY 1997), and projected real case-mix growth (1.6 percent), or 4.3 percent. The share of direct labor services in the market basket rate of increase (consisting of wages, salaries, and employee benefits) is 61.4 percent. Multiplying the expected change in total hospital service output (4.3 percent) by the ratio of historical service productivity change to total service growth of 0.30 to 0.35 and by the direct labor share percentage (0.614) provides our productivity standard of 0.8 to 0.9 percent.

ProPAC also believes hospitals should be given an incentive for additional productivity improvement. ProPAC measures productivity as the ratio of hospital admissions (adjusted for case mix and outpatient services) per FTE employee (adjusted for changes in skill mix). ProPAC includes in its productivity measurement the effect of changes in practice patterns. We treat practice pattern changes as a portion of our intensity adjustment, described below. ProPAC's latest estimate indicate that hospital productivity increased as much as 2.3 percent in 1994. Given this improvement, ProPAC believes a productivity adjustment in the range of –0.7 to –1.2 percentage points would be reasonable in fiscal year 1997. The adjustment is intended to share productivity equally between hospitals and Medicare. In the near future, ProPAC believes there may be even greater productivity improvements, as hospitals strive to stay competitive and financially viable.

- *Intensity:* We base our intensity standard on the combined effect of three separate factors: changes in the use of quality enhancing services, changes in the use of services due to shifts in within-DRG severity, and changes in the use of services due to reductions of cost-ineffective practices. For FY 1997, we recommend an adjustment of 0.0 percent. The basis of this recommendation is discussed below.

We have no empirical evidence that accurately gauges the level of quality-enhancing technology changes. Typically, a specific new technology increases cost in some uses and decreases cost in other uses. Concurrently, health status is improved in some situations while in other situations it may be unaffected or even worsened using the same technology. It is difficult to separate out the relative significance of each of the cost increasing effects for individual technologies and new technologies.

The quality enhancing technology component is intended to recognize the use of services that increase cost but whose value in terms of enhanced health-status is commensurate with these costs. Such services may result from technological change, or in some cases, increased use of existing technologies. The latter recognizes that as cost and medical effectiveness studies become available, some increased use of existing, as well as new, services may be warranted.

The component for reduction of cost-ineffective practice recognizes that some improvements in practice patterns could be made so that the intensity of services provided is more consistent with the efficient use of limited resources. That is, improvements could be made so that the number of services provided during an inpatient stay, and their complexity, produce an improvement in health status that is consistent with the cost of care. This component of our update recommendation is intended to encourage both hospitals and physicians to more carefully consider the cost-effectiveness of medical care. This component of the framework also accounts for real within-DRG change, since that should be directly reflected in the CMI-adjusted growth in real charges per case.

Following methods developed by HCFA's Office of the Actuary for deriving hospital output estimates from total hospital charges, we have developed Medicare-specific intensity measures based on a 5-year average using FY 1991–1995 MedPAR billing data. Case-mix constant intensity is calculated as the change in total Medicare charges per discharge adjusted for changes in the average charge per unit of service as measured by the Medical CPI hospital component and changes in real case mix. Thus, in order to measure changes in intensity, one must measure changes in real case mix.

For FY 1991 and FY 1992, we estimate that 1.0 to 1.4 percent of observed case-mix increase was real. This estimate is supported by past studies of case-mix change by the RAND Corporation. The most recent study was ≥Has DRG Creep Crept Up? Decomposing the Case Mix Index Change Between 1987 and 1988≥ by G.M. Carter, J.P. Newhouse, and D.A. Relles, R–4098–HCFA/ProPAC (1991). The study suggests that real case-mix change was not dependent on total change, but was rather a fairly steady 1.0 to 1.5 percent per year. In the past we have used 1.4 percent as the upper bound because the RAND study did not take into account that hospitals may have induced doctors to document medical records more completely in order to improve payment. For FY 1993 and FY 1994, we assumed that all of the observed case-mix increases of 0.9 and 0.8 percent, respectively, were real. For FY 1995, we assumed that all of the observed case-mix increase of 1.6 percent was real. We note that this assumed increase in real case mix is higher than our previously assumed upper bound of 1.4 percent. Based on its analysis of the FY 1995 MedPAR data, the Office of the Actuary has concluded that the apparent shifting of some cases to the outpatient setting and activity in the cardiovascular DRGs has contributed to a higher than expected increase in real case mix.

Given estimates of real case-mix increase of 1.0 percent for FY 1991–1992, 0.9 percent for FY 1993, 0.8 percent for FY 1994, and 1.6 percent for FY 1995, we estimate case-mix constant intensity declined by an average 1.1 percent during FY 1991 through 1995, for a cumulative decrease of 5.6 percent. If we assume that real case-mix increase was 1.4 percent for FYs 1991 and 1992, 0.9 percent for FY 1993, 0.8 percent for FY 1994, and 1.6 percent for FY 1995, we estimate case-mix constant intensity declined by an average of 1.2 percent during FY 1991 through 1994, for a cumulative decrease of 5.9 percent. Since we estimate that intensity has declined during FY 1991–1995 period, we are recommending a 0.0 percent intensity adjustment for FY 1997.

- *Quality Enhancing New Science and Technology:* For FY 1997, ProPAC has computed the adjustment for scientific and technological advances to be a future-oriented policy target intended to provide additional funds for hospitals to adopt quality-enhancing, cost increasing health care innovations.

While in the past the Commission has included an adjustment ranging from 0.3 to 1.0 percentage points, the current range is lower because there is little evidence of significant new cost-increasing advances ready for implementation. Moreover, the cost-competitive environment now faced by hospitals may dampen the adoption of new technologies as they closely evaluate their relative costs and benefits. Therefore, the Commission recommends an adjustment of 0.1 to 0.6 percentage points for the increase in operating costs due to scientific and technological advances.

• *Change in Case Mix:* Our analysis takes into account projected changes in case mix, adjusted for changes attributable to improved coding practices. For our FY 1997 update recommendation, we are projecting a 1.6 percent increase in the case-mix index. We define real case-mix increase as actual changes in the mix (and resource requirements) of Medicare patients as opposed to changes in coding behavior that result in assignment of cases to higher-weighted DRGs but do not reflect greater resource requirements. For FY 1997, we believe that real case-mix increase is equal to our projected change in case mix. We do not see any changes in coding behavior in our projected case-mix change. Our net adjustment to case-mix change for FY 1997 is 0.0 percentage points.

The −1.0 to −0.9 percent figure used in the ProPAC framework represents ProPAC's projection for observed case-mix change. ProPAC projects a 0.8 to 0.9 percentage points increase in real case-mix change across DRG's and a 0.0 to 0.2 percentage points increase in within-DRG case-complexity change. ProPAC's net adjustment for case mix is −0.2 to 0.0 percentage points.

• *Effect of FY 1995 DRG Reclassification and Recalibration:* We estimate that DRG reclassification and recalibration for FY 1995 resulted in a 0.0 percent increase in the case-mix index when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the GROUPER. ProPAC does not make an adjustment for DRG reclassification and recalibration in its update recommendation.

• *Correction for Market Basket Forecast Error:* The estimated market basket percentage increase used to update the FY 1995 payment rates was 3.6 percent. Our most recent data indicate the actual FY 1995 increase was 3.0 percent, reflecting that the actual increase in wages was lower than projected. The resulting forecast error in the FY 1995 market basket rate of increase is 0.6 percentage points. Under our update framework, we make a forecast error correction if our estimate is off by 0.25 percentage points or more. Therefore, we are recommending an adjustment of −0.6 percentage points to reflect this overestimation of the FY 1995 market basket rate of increase. The following is a summary of the update ranges supported by our analyses compared to ProPAC's framework.

TABLE 1.—COMPARISON OF FY 1997 UPDATE RECOMMENDATIONS

	HHS	ProPAC
Market Basket	MB	MB
Difference Between HCFA & ProPAC Market Baskets		−0.1 to 0.0
Subtotal	MB	MB to MB–0.1
Policy Adjustment Factors		
Productivity	−0.9 to −0.8	−1.2 to −0.7
Intensity:	0.0	
Science and Technology		0.1 to 0.6
Practice Patterns		(1)
Real Within DRG Change		(2)
Subtotal	−0.9 to −0.8	−1.1 to −0.1
Case-Mix Adjustment Factors		
Projected Case-Mix Change	−1.6	−1.0 to −0.9
Real Across DRG Change	1.6	0.8 to 0.9
Real Within DRG Change	(3)	0.0 to 0.2
Subtotal	0.0	−0.2 to 0.0
Effect of 1995 Reclassification and Recalibration	0.0	
Forecast Error Correction	−0.6	−0.6
Total Recommended Update	MB–1.5 to MB–1.4	MB–2.0 to MB–0.7

[1] Included in ProPAC's Productivity Measure.
[2] Included in ProPAC's Case-Mix Adjustment.
[3] Included in HHS' Intensity Factor.

The above analysis would support a recommendation that the update be between market basket minus 1.4 and market basket minus 1.5 percentage points. We are recommending an update of market basket minus 1.5 percentage points, consistent with President Clinton's FY 1997 budget proposal. We also recommend that the hospital-specific rates applicable to sole community hospitals be increased by the same update, market basket minus 1.5 percentage points.

V. ProPAC Recommendation for Updating the Rate-of-Increase Limits for Excluded Hospitals

ProPAC recommends an update factor equal to the market basket rate of increase minus 0.6 percentage points for excluded hospitals and units (Recommendation 12). The 0.6 percentage points reduction represents a

reduction of 0.6 percentage points to account for the forecast error in the FY 1995 market basket rate of increase for excluded units, no increase to reflect the different compensation price proxies used by ProPAC, and no allowance for new technology. ProPAC believes that major changes in the excluded hospitals' target amounts should not be made at this time. Rather, a prospective payment system for excluded hospitals and units should be implemented as soon as possible.

Response: We recommend that hospitals excluded from the prospective payment system receive an update equal to the percentage increase in the market basket that measures input price increases for services furnished by excluded hospitals minus 1.5 percentage points. The reduction is consistent with the updates provided under President Clinton's budget proposal. The market basket rate of increase for excluded hospitals is currently forecast at 2.7 percent. Subtracting 1.5 percentage points would result in an update of 1.2 percent for excluded hospitals and units.

As noted by ProPAC, HCFA has contracted with the RAND Corporation to analyze a classification system for rehabilitation patients that appears to have the potential to serve as the basis for a prospective payment system for rehabilitation hospitals and units. However, even if this classification system is found to be suitable, it would be several years before we could fully implement any prospective payment system for these facilities. In addition, we have been less successful in our pursuit of a suitable classification system for the other types of excluded hospitals. Therefore, as an interim measure, the President's budget contains a proposal to rebase the target amounts for excluded hospitals and units on more recent cost data. Changes would also be made to the conditions under which facilities would receive additional payment when they exceed their limits. Incentive payments for facilities whose costs are below their target amounts would be eliminated.

BILLING CODE 4120–01–P

PROSPECTIVE PAYMENT
ASSESSMENT COMMISSION

REPORT AND RECOMMENDATIONS TO THE CONGRESS MARCH 1, 1996



PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Stuart H. Altman, Ph.D., *Chairman*

Susan S. Bailis
James D. Bernstein
Clay D. Edmands
Spencer Johnson
Clark E. Kerr
James R. Kimmey, M.D.
Judith R. Lave, Ph.D.
Hugh W. Long, Ph.D., J.D.
Robert J. Myers
Donald R. Oder
Glenda Rosenbloom
J. Michael Sadaj, M.D.
Gerald M. Shea
Roxane B. Spitzer, Ph.D.
James R. Tallon
Jae L. Wittlich

Staff and Consultants

Donald A. Young, M.D., *Executive Director*
Laura A. Dummit, *Deputy Executive Director*
Stuart Guterman, *Deputy Executive Director*

John L. Ashby
Thomas B. Bradley
Wylene Carlyle
Delores J. Curtis
Karen S. Fisher, J.D.
Barbara J. Gage, Ph.D.
Timothy F. Greene
Dana K. Kelley
Lynn L. Lewis
Craig K. Lisk
Ann-Marie Lynch
Mary Anne Miles
Julian H. Pettengill
Molly Ryan
Claire E. Sharda
Sarah S. Thomas

The Prospective Payment Assessment Commission, created in 1983 by the legislation that established the Medicare prospective payment system for inpatient hospital services, advises the Congress and the Secretary of Health and Human Services on policies affecting Medicare payments to hospitals and other facilities. The Commission also studies industrywide effects of Medicare policies and important trends in the health care delivery system. On March 1 of each year, the Commission submits a report to the Congress with recommendations for improvements in Medicare policies and related subjects.

Prospective Payment Assessment Commission

300 7th Street, S.W.
Suite 301B
Washington, D.C.
20024
Tel (202) 401-8986
Fax (202) 401-8739

March 1, 1996

The Honorable Albert Gore, Jr.
President of the Senate
United States Senate
Washington, D.C. 20510

Dear Mr. President:

I am hereby transmitting to the Congress the annual report of the Prospective Payment Assessment Commission as required by Section 1886(e)(3) of the Social Security Act as amended by Public Law 101-508. This report presents a discussion of health care spending and its impact on the Medicare program, as well as major reforms proposed for Medicare. In addition, 26 recommendations concerning Medicare payment policies are included. The report reflects the Commission's judgment about issues of substantial importance to the Medicare program and beneficiaries, hospitals, and other providers.

Sincerely,

Stuart H. Altman, Ph.D.
Chairman

Enclosure

Prospective Payment Assessment Commission

300 7th Street, S.W.
Suite 301B
Washington, D.C.
20024
Tel (202) 401-8986
Fax (202) 401-8739

March 1, 1996

The Honorable Newt Gingrich
Speaker of the House
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

I am hereby transmitting to the Congress the annual report of the Prospective Payment Assessment Commission as required by Section 1886(e)(3) of the Social Security Act as amended by Public Law 101-508. This report presents a discussion of health care spending and its impact on the Medicare program, as well as major reforms proposed for Medicare. In addition, 26 recommendations concerning Medicare payment policies are included. The report reflects the Commission's judgment about issues of substantial importance to the Medicare program and beneficiaries, hospitals, and other providers.

Sincerely,

Stuart H. Altman, Ph.D.
Chairman

Enclosure

TABLE OF CONTENTS

Chapter		Page
EXECUTIVE SUMMARY		1
1.	REFORMING THE MEDICARE PROGRAM	9
	Health Care Spending	12
	Medicare Program Expenditures	13
	Medicaid Program Expenditures	14
	Medicare Beneficiary Cost Sharing	14
	The Solvency of the Medicare Trust Funds	15
	Medicare, Medicaid, and the Federal Budget	16
	Renewed Action by the Congress	17
	Medicare Savings	17
	Medicaid Savings	18
	The MedicarePlus Program	18
	The Traditional Fee-for-Service Program	19
	A New Philosophy	19
	The Failsafe Budget Mechanism	20
	Medicare Benefit Budget and Budget Allotment	20
	Sector Allocation	20
	Impact on Fee-for-Service Spending	21
	Changes in the Health Care Environment	21
	The Uninsured Population	22
	Conclusions and Recommendations	23
	Recommendation 1: Slowing the Rise in Medicare Spending	23
	Recommendation 2: The Failsafe Budget Mechanism	23
2.	MEDICARE'S CAPITATION PROGRAM	27
	The Medicare Risk Program	29
	Capitation Rates	29
	Level, Growth, and Variation	30
	Risk Adjustment	30
	Enrollment and Plan Participation	31
	Plan Accountability	32
	Proposed Changes to Medicare Capitation Arrangements	32
	The Congressional Proposal: MedicarePlus	32
	Plan Choices	33
	Fee-for-Service Option	33
	Medical Savings Accounts	33
	Benefits	34
	Payments to MedicarePlus Plans	34
	Risk Adjustment	36
	Enrollment and Disenrollment	36
	Accountability	36
	The Administration's Proposal	36
	Conclusions and Recommendations	37
	Recommendation 3: Expanding Medicare's Capitation Program	37
	Recommendation 4: Setting and Updating the Capitation Rates	37

Chapter		Page
	Recommendation 5: Improving Risk Adjustment Methods	38
	Recommendation 6: Medical Savings Accounts	38
	Recommendation 7: The MedicarePlus Fee-for-Service Option	39
	Recommendation 8: Information for Beneficiary Health Plan Choices	39
	Recommendation 9: Health Plan Accountability	39
3.	ACUTE CARE HOSPITAL PAYMENTS	43
	Payment Updates	47
	PPS Operating Rates	47
	PPS Capital Payment Rates	49
	Payments to PPS-Excluded Hospitals and Distinct-Part Units	50
	Teaching Hospitals	52
	Direct Graduate Medical Education Payments	53
	Indirect Medical Education Payments	53
	Other Support for Teaching-Related Costs	54
	Disproportionate Share Hospital Payments	55
	Discharges from PPS Hospitals to Other Facilities	56
	Conclusions and Recommendations	57
	Recommendation 10: Updating PPS Operating Rates	57
	Recommendation 11: Setting Capital Payment Rates	57
	Recommendation 12: Updating Payments to PPS-Excluded Hospitals and Distinct-Part Units	58
	Recommendation 13: Broadening Financial Support to Teaching Hospitals	59
	Recommendation 14: Medicare Payments for Graduate Medical Education Costs	59
	Recommendation 15: Medicare Indirect Medical Education Payments	59
	Recommendation 16: Distributing Additional Teaching-Related Payments	60
	Recommendation 17: Disproportionate Share Hospital Payments	60
	Recommendation 18: Method for Distributing Disproportionate Share Payments	60
	Recommendation 19: Discharges from PPS Hospitals to Other Facilities	61
4.	POST-ACUTE AND AMBULATORY CARE PROVIDERS	63
	Post-Acute Care Providers	65
	Rehabilitation Facilities and Long-Term Care Hospitals	67
	Growth in Facilities, Utilization, and Expenditures	68
	Proposed Payment Changes	68
	Skilled Nursing Facility Services	69
	Growth in Facilities, Utilization, and Expenditures	69
	Proposed Payment Changes	70
	The Congressional Proposal	70
	The Administration's Proposal	71
	Home Health Services	72
	Growth in Facilities, Utilization, and Expenditures	72
	Proposed Payment Changes	72
	The Congressional Proposal	73
	The Administration's Proposal	74
	Conclusions and Recommendations	75
	Recommendation 20: Prospective Payment for Post-Acute Care	75
	Recommendation 21: Case-Mix Measures for Post-Acute Services	75

Chapter		Page
	Recommendation 22: Interim Fee-for-Service Payment Method for Skilled Nursing Facility Services	76
	Recommendation 23: Interim Fee-for-Service Payment Method for Home Health Care	76
	Ambulatory Care Providers	76
	Outpatient Dialysis Services	77
	Proposed Payment Changes	78
	Update Framework	78
	Hospital Outpatient Services	80
	Beneficiary Liability	81
	Formula-Driven Overpayment	81
	Proposed Payment Changes	81
	Conclusions and Recommendations	81
	Recommendation 24: Update to the Composite Rate for Dialysis Services	82
	Recommendation 25: Prospective Payment for Hospital Outpatient Services	82
	Recommendation 26: Beneficiary Liability for Hospital Outpatient Services	82
	APPENDIXES	87
	A. Technical Report Series	89
	B. Biographical Sketches of Commissioners	105
	C. Statutory Mandate of the Commission	111

LIST OF TABLES

		Page
Chapter 1. Reforming the Medicare Program		
1-1	National Health Expenditures by Source of Funds, Selected Years	12
1-2	Personal Health Care Expenditures by Source of Funds, Selected Years (In Billions)	13
1-3	Government Health Expenditures as a Percentage of Total Government Expenditures, Selected Years	13
1-4	Personal Health Care Expenditures Under Medicare and Medicaid, Selected Years	14
1-5	Number of Years from Trustees' Projection Until Insolvency of the Hospital Insurance Trust Fund	16
1-6	Selected Congressional Budget Office Projections, Fiscal Years 1995-2002 (In Billions)	17
1-7	Medicare and Medicaid Baseline Spending and Estimates Under Alternative Proposals, 1995-2002 (In Billions)	18
1-8	Estimated Savings from the Congressional Proposal, by Category, 1996-2002 (In Billions)	19
1-9	Selected Congressional Budget Office Medicare Spending Estimates, Fiscal Years 1995-2002	20
1-10	Real Change in Medicare Spending Per Enrollee and Private Health Insurance Spending Per Insured Person, 1979-1993 (In Percent)	22
Chapter 2. Medicare's Capitation Program		
2-1	Selected Demographic Group Risk Adjustment Factors to the Medicare Capitated Risk Payment, 1995	31
2-2	Medicare Risk Program Participation, 1990-1996	32
2-3	Estimated MedicarePlus Enrollment, Savings, and Costs, 1996-2002	35
Chapter 3. Acute Care Hospital Payments		
3-1	Update Framework for PPS Hospital Operating Payments, Fiscal Year 1997	49
Chapter 4. Post-Acute and Ambulatory Care Providers		
4-1	Distribution of Total Medicare and Beneficiary Payments for Selected Part A Services, 1986-1993	66
4-2	Medicare Utilization for Selected Part A Services, 1986-1993	66
4-3	Medicare-Certified Rehabilitation and Long-Term Care Facilities, Selected Years	68
4-4	Medicare Discharges from Rehabilitation and Long-Term Care Facilities, 1990-1993	69
4-5	Medicare Rehabilitation and Long-Term Care Facility Payments, 1990-1993 (In Billions)	69
4-6	Types of Medicare-Certified Skilled Nursing Facilities, Selected Years	70
4-7	Medicare Skilled Nursing Facility Payments and Utilization, 1983-1994	70
4-8	Types of Medicare-Certified Home Health Agencies, 1990-1995	73
4-9	Medicare Home Health Care Payments and Utilization, 1983-1994	73
4-10	Distribution of Home Health Episode Lengths, 1990 and 1993	74
4-11	Number and Type of Home Health Visits, by Episode Length	74
4-12	Payment to Cost Ratios for Hospital-Based and Freestanding Dialysis Facilities, All Dialysis Treatments, 1990-1994	78
4-13	Median Productivity Indicators for Hospital-Based and Freestanding Dialysis Facilities, 1990-1994	79

LIST OF FIGURES

Page

Chapter 2. Medicare's Capitation Program

2-1 MedicarePlus National Average Growth Percentages, 1996-2002 34

Chapter 3. Acute Care Hospital Payments

3-1 Annual Change in Medicare Operating Costs Per Discharge, First 11 Years of PPS (In Percent) 45

3-2 PPS Margins for All Hospitals, First 11 Years of PPS (In Percent) 46

3-3 Total Margins for All Hospitals, First 11 Years of PPS (In Percent) 46

Executive Summary

Since its inception in 1965, the Medicare program has provided health insurance coverage for the elderly and disabled. But this protection has come at a substantial cost to the Federal government. Between 1967 and 1993, total program expenditures climbed more than 30-fold. Medicare payments per person increased, on average, 8 percent annually over the same period. Total program spending reached an estimated $177 billion in 1995, accounting for 12 percent of the Federal budget.

The rise in Medicare spending threatens the solvency of the program's Hospital Insurance Trust Fund, its primary source of income. Moreover, it has been a major contributor to the Federal budget deficit. Payment reforms have been implemented in the past to control spending and extend the solvency of the program. This year, the Congress has focused renewed attention on Medicare spending in its plan to balance the Federal budget by 2002. Both the Congress and the President have proposed Medicare savings that would be substantially greater than any previously achieved. Their proposals, however, reflect different views on the role of the Federal government in financing care for Medicare beneficiaries.

Both the Congress and the President would expand Medicare's reliance on capitation, because of its apparent success in slowing private sector health care spending. Under Medicare's capitation option, called the risk contracting program, Medicare makes an annual per capita payment to a contracting health plan to cover a defined set of services for enrolled beneficiaries. This shifts the responsibility for payment for covered services from the Federal government to the health plans. Medicare's spending for beneficiaries enrolled in the capitation program, therefore, is predictable and limited to the per capita payment. Further, health plans have incentives to manage service use and control their costs.

As currently designed, however, Medicare's risk contracting program does not fully realize the potential benefits associated with capitation. The program's per capita rates appear to be too high in some markets, resulting in overpayment to plans, and too low in others, discouraging plan participation in those areas. To remedy this, the Congress and the President propose changing the payment rate setting method to generate more savings from the risk program and increase the number of plans available to beneficiaries. In addition, the Congress specifies annual increases to the capitation rates to reduce spending growth further.

Even with increased emphasis on capitation arrangements, the vast majority of Medicare services will continue to be purchased on a fee-for-service basis. Both the President and the Congress would make significant changes to Medicare's traditional fee-for-service payment methods and, in fact, would achieve most of their Medicare savings through this part of the program. In addition, the Congress would implement a savings enforcement tool called the "failsafe budget mechanism." For the first time in Medicare's history, total spending per enrollee in both the capitation and fee-for-service programs would be capped each year at a congressionally mandated amount, regardless of the number or types of services provided or the underlying rate of general inflation.

At the same time that these significant changes to Medicare are being considered, private sector financing and delivery of medical care are undergoing substantial changes. After years of rapid cost growth, underwritten by payment increases from private payers, hospitals are facing intense pressure to constrain their costs. They have successfully responded by holding cost growth below the level of inflation. As a group, hospitals have been able to maintain their financial condition. But some facilities, because of commitments to teaching or providing care to the poor, may be limited in their ability to continue to meet payer demands for constrained cost growth. Both the Congress and the President propose reductions to Medicare's teaching and disproportionate share adjustments. In light of these changes, the distribution of Medicare payments becomes more critical to ensure appropriate access and adequate quality of care for beneficiaries.

As hospitals have struggled to constrain their costs, the share of Medicare expenditures devoted to post-acute and ambulatory care providers has climbed. Medicare has imposed ever-tighter constraints on payments per service, but has failed to adequately address utilization. Volume control in these settings is particularly difficult because services can be provided in various sites. Payment constraints applied to one provider are likely to cause higher use in another. The Congress and the President begin to address this problem in two sectors with particularly high growth—skilled nursing facilities and home health agencies—by mandating prospective payment systems that bundle a set of services for a single payment.

The significant Medicare savings proposed by the Congress and the President, as well as Medicaid reforms and private sector cost-control efforts, will require health care providers to continue to modify their practices. In this dynamic environment, the challenge will be for Medicare to monitor the impact of these changes and appropriately adjust its policies to ensure continued protection of its beneficiaries.

RECOMMENDATIONS FOR FISCAL YEAR 1996

The Prospective Payment Assessment Commission (ProPAC) is responsible for advising the Congress and the Secretary of Health and Human Services on Medicare's payment policies for all health care facilities and their effects on beneficiaries and the facilities themselves. In addition, the Commission monitors important trends in the nation's health care system. In this report, ProPAC discusses the major reforms proposed for the Medicare program and the ramifications these might have for beneficiaries and providers alike. The Commission presents 26 recommendations covering a range of topics related to these reforms, in the context of promoting more efficient operation of the health care system while maintaining access to quality care for Medicare enrollees.

Recommendation 1: Slowing the Rise in Medicare Spending

The Commission supports the efforts of the Congress and the President to reduce the growth in Medicare expenditures. Over time, spending for services furnished to Medicare enrollees should increase at rates comparable to those in a cost- and quality-conscious private sector.

Recommendation 2: The Failsafe Budget Mechanism

Any failsafe budget mechanism should include a more effective risk adjustment factor to ensure payment equity between the Medicare capitation and traditional fee-for-service programs. In addition, changes in inflation that differ substantially from CBO forecasts could require modifications to the Medicare benefit budget over time. Revisions to the proposed fee-for-service sector budget allocations could also be needed as medical practices change.

Recommendation 3: Expanding Medicare's Capitation Program

The Commission supports reforming the Medicare capitation program to control spending while expanding beneficiary choice.

Recommendation 4: Setting and Updating the Capitation Rates

Geographic variation in the capitation rates and the volatility of the rates from year to year should be reduced. The Secretary should develop and test alternative payment methods that would allow the payment rates to reflect changes in local market conditions.

Recommendation 5: Improving Risk Adjustment Methods

The risk adjustment methods used to set Medicare capitation payments should better reflect variation in the likely use of services. Even as research on the development of new methods continues, the Secretary should implement interim improvements as soon as possible.

Recommendation 6: Medical Savings Accounts

The Congress's high deductible/MSA option would provide an additional choice for Medicare enrollees. ProPAC is concerned, however, that the current Medicare risk adjustment method is not sufficient to protect the program from adverse selection and resulting excess spending. The likelihood that

rates would better reflect risk would be enhanced if Medicare enrollees were required to remain in the MSA option at least for several years.

Recommendation 7: The MedicarePlus Fee-for-Service Option

Enrollees choosing the fee-for-service option under the proposed MedicarePlus program could be responsible for substantially higher fees than what their plans would pay. The Secretary should monitor the impact of this option on beneficiary liability and on possible reductions in physician and other provider participation in traditional Medicare.

Recommendation 8: Information for Beneficiary Health Plan Choices

Medicare should make available to beneficiaries information about the performance of plans and local providers. The Secretary should identify the information beneficiaries need to make appropriate choices and develop innovative ways to improve access to it.

Recommendation 9: Health Plan Accountability

Medicare must hold health plans accountable for the appropriate use of Medicare funds. In addition, standards must be developed and enforced to ensure that Medicare beneficiaries will receive services of appropriate quality.

Recommendation 10: Updating PPS Operating Rates

ProPAC's update framework would support an update between 0.7 percentage points and 2.0 percentage points less than the increase in the hospital market basket index. The methodology employed by the Commission in previous years would lead to a recommendation of about market basket minus 1.5 percentage points, roughly corresponding to the midpoint of that range. In light of the significant changes occurring in health care delivery, the Commission believes that PPS payment rate increases could be held to market basket minus 2.0 percentage points for the next year or two. However, it is concerned about the potential effects of continuing updates at that level on hospitals' ability to provide quality care to Medicare beneficiaries and other populations.

Recommendation 11: Setting Capital Payment Rates

Prospective per discharge payment rates for inpatient capital costs should be set by developing an appropriate base payment rate and applying an annual update. The capital update should reflect the prices of capital assets, capital financing costs, and other factors related to the capital costs hospitals incur in efficiently providing inpatient care to Medicare beneficiaries.

Recommendation 12: Updating Payments to PPS-Excluded Hospitals and Distinct-Part Units

ProPAC's update framework would support an average update to the TEFRA target amounts equal to the projected increase in the market basket index minus 0.6 percentage points for fiscal year 1997. This average is within the range of facility-specific updates in the Congress's proposal, which is between the market basket increase and 2.5 percentage points below market basket. Major changes to the TEFRA target amounts should not be made at this time. Rather, a prospective payment system for PPS-excluded hospitals and distinct-part units should be implemented as soon as practicable.

Recommendation 13: Broadening Financial Support to Teaching Hospitals

Explicit financial support for graduate medical education activities should not be limited to the Medicare program. Mechanisms to broaden financial support for teaching-related activities in hospitals and other locations should be developed.

Recommendation 14: Medicare Payments for Graduate Medical Education Costs

ProPAC supports changes in Medicare teaching payments that would encourage an appropriate distribution of residents across specialties and discourage inappropriate growth in the total number of residents.

Recommendation 15: Medicare Indirect Medical Education Payments

The Medicare indirect medical education adjustment should be reduced from its current 7.7 percent level to 7.0 percent.

Recommendation 16: Distributing Additional Teaching-Related Payments

Funds that provide broader financial support for graduate medical education should be distributed in a way that corresponds to the additional costs incurred by teaching facilities. Providers that treat enrollees in capitation plans should receive teaching-related payments for those patients as well as for the other patients they serve.

Recommendation 17: Disproportionate Share Hospital Payments

The Commission is concerned about the potential impact of reductions in DSH payments. Hospitals that treat a large number of the uninsured could be particularly vulnerable because of recent changes in the health care environment. Large reductions in DSH payments would threaten the continued ability of many of these hospitals to serve populations who depend on them for access to care.

Recommendation 18: Method for Distributing Disproportionate Share Payments

The structure of the DSH adjustment should be reviewed to make certain that available funds are distributed equitably among the hospitals most in need of assistance. This may require collecting new data to develop a better measure of the services hospitals provide to indigent patients.

Recommendation 19: Discharges from PPS Hospitals to Other Facilities

Medicare payments should be modified to account for the shift in services from acute to post-acute settings. Broadening the definition of transfer cases, however, is not an appropriate approach.

Recommendation 20: Prospective Payment for Post-Acute Care

Prospective payment systems should be implemented for all post-acute services. The payment method for each service should be consistent across delivery sites. The Secretary should explore methods to control volume of post-acute service use, such as bundling services for a single payment.

Recommendation 21: Case-Mix Measures for Post-Acute Services

Reliable case-mix measurement is important in prospective payment systems to account for resource use and to analyze treatment patterns and costs across sites. The Secretary should coordinate case-mix research across post-acute care settings, using consistent methods for measuring patient acuity and resource use.

Recommendation 22: Interim Fee-for-Service Payment Method for Skilled Nursing Facility Services

An interim payment method should be implemented to control the growth in Medicare payments for SNF services until a comprehensive prospective payment system is established. A system based on historical data and facility-specific limits, however, may not allow facilities to respond appropriately to changes in a dynamic environment.

Recommendation 23: Interim Fee-for-Service Payment Method for Home Health Care

Until a fully prospective payment system is developed, the Commission supports adopting episode-based payment limits. In addition, beneficiary copayments, subject to an annual limit, should be introduced.

Recommendation 24: Update to the Composite Rate for Dialysis Services

The Secretary should develop methods to control total Medicare per capita expenditures for ESRD beneficiaries. In the meantime, the composite rate should be updated by 2.7 percent for hospital-based dialysis facilities and by 2.0 percent for freestanding facilities for fiscal year 1997. The Secretary should also develop reliable measures of patient severity and outcomes to analyze the relationships among treatment processes, patient outcomes, and costs. These factors should be considered in evaluating the need for and the level of future payment updates.

Recommendation 25: Prospective Payment for Hospital Outpatient Services

A comprehensive prospective payment system should be developed for hospital outpatient services. Such a system should include a strategy for controlling the volume of ambulatory services.

Recommendation 26: Beneficiary Liability for Hospital Outpatient Services

The growing financial burden for Medicare enrollees who receive services in hospital outpatient departments should be alleviated immediately. Beneficiary coinsurance for these services should be limited to 20 percent of the Medicare-allowed payment, as it is in other settings. For services not paid on a prospective basis, the Secretary should establish a new method for determining beneficiary copayments based on estimated allowed payments since they cannot be calculated precisely when services are delivered.

Chapter 1

Reforming the Medicare Program

For 30 years, Medicare has fulfilled its promise of protecting the elderly, and subsequently the disabled, from financial impoverishment due to illness. This protection, however, has come at a substantial cost to the Federal government and taxpayers as well as to some Medicare beneficiaries. In 1967, the program covered 19.5 million people at a cost of $4.8 billion.[1] By 1993, program spending had increased more than 30-fold to $151.1 billion, with the number of enrollees almost doubling to 36.3 million. Medicare beneficiaries have felt the effects of the spending increases, with their cost-sharing responsibilities during 1993 exceeding $30 billion.[2] Out-of-pocket costs for non-covered services also have climbed sharply.

Medicare program spending reached an estimated $177 billion in fiscal year 1995, accounting for 12 percent of the Federal budget. The Congressional Budget Office (CBO) projects that, under current law, program spending will grow to $332 billion by fiscal year 2002.[3] Furthermore, the Federal share of Medicaid payments is expected to climb from $89 billion to $173 billion over this time. Consequently, spending for Medicare and Medicaid in 2002 is projected to consume more than one-fourth of the total Federal budget.

The rise in the cost of these entitlement programs is a major contributor to the projected growth in the Federal budget deficit. The relentless increases in Medicare spending for hospital, skilled nursing facility (SNF), home health, and other services also have led to the recent warning that Medicare's primary source of income, the Hospital Insurance (HI) Trust Fund, will not be able to cover anticipated expenses beginning in 2002.

This year, as it has periodically over the past 15 years, the Congress has taken steps to rein in the growth in Medicare spending, extend the solvency of the HI Trust Fund, and balance the Federal budget. The reductions in spending growth now being considered by the Congress and the President, however, are substantially greater than those previously enacted. In addition, the proposal passed by the Congress—and vetoed by the President—embodies a major philosophical change in the role and responsibilities of the Federal government and the nature of the Medicare and Medicaid entitlements.[4]

The President supports the objectives of slowing the rise in Medicare spending, strengthening the financial integrity of the HI Trust Fund, and balancing the Federal budget. His approach, however, varies in fundamental ways from that of the Congress. The President's proposal reflects different budget priorities, allowing larger increases in Medicare and Medicaid spending and favoring smaller tax reductions.[5] His approach also does not incorporate many structural changes to Medicare and Medicaid, such as those proposed by the Congress.

In this chapter of its annual report to the Congress, the Prospective Payment Assessment Commission (ProPAC) examines the Medicare and Medicaid spending trends that led the Congress to conclude that major reforms of these programs were necessary. Past Medicare expenditure patterns and projected spending through 2002 are described. The next sections review the impact of expenditure growth on beneficiaries' financial liabilities, the HI Trust Fund, and the Federal budget deficit. The steps considered by the Congress and the President to modify the Medicare program and slow the rise in spending are then discussed. The chapter concludes with the Commission's recommendations regarding reform of the Medicare program.

In Chapter 2, ProPAC describes and provides its views and recommendations to the Congress on the existing Medicare capitation option and the MedicarePlus program. This program would replace

12

Medicare's risk-based contracting policies. It also reflects substantial changes in the Congress's view of how Medicare's capitation program should operate. The next two chapters examine changes in the traditional Medicare fee-for-service program. Chapter 3 presents the Commission's recommendations regarding payment policies for inpatient hospital services. In Chapter 4, the rapidly growing areas of post-acute and ambulatory services are discussed, along with recommended changes to their payment policies.

HEALTH CARE SPENDING

Total national health care expenditures are expected to exceed $1 trillion in 1995.[6] The Federal government, the largest single payer for health care, will pay a third of the bill for medical services (see Table 1-1). The Medicare and Medicaid programs will account for $346 billion of this spending, providing health coverage to 66 million people.

The responsibility for funding personal health care services has changed dramatically in the past 35 years, as government and private health insurance programs have expanded. Between 1960 and 1993, individual out-of-pocket spending rose from about $13 billion to almost $158 billion (see Table 1-2). As a share of personal health care spending, however, out-of-pocket expenditures declined from 56 percent to 20 percent, while private sector and government expenditures increased rapidly. Private sector expenditures climbed from about $5 billion to $288 billion. By 1993, the Federal government was spending $259 billion, about 33 percent of personal health care spending, primarily due to rapid expansion of the Medicare and Medicaid programs.

The enactment of Medicare and Medicaid in 1965 was followed by a rapid escalation in the health care portion of Federal, state, and local budgets (see Table 1-3). Health care expenditures increased from 7.6 percent of state and local government spending in 1965 to 12.4 percent in 1993. The effects on the Federal budget were more striking, with health expenditures rising from 3.9 percent to 18.6 percent of total Federal outlays over this period.

The drafters of the original Medicare legislation intended that the Federal government would provide most of the financing for care received by the elderly, but that services would be furnished through the existing private delivery system. The financing was to come primarily through payroll taxes, enrollee premiums and cost sharing, and general revenues. The Congress designed Medicare to pay for hospital and physician services without significantly altering the existing health care financing and delivery system.[7] Thus, many of Medicare's payment policies were modeled after those in the private insurance market. The most important of these were the reliance on fee-for-service payment for physician services and cost-based reimbursement for hospital care.

These policies succeeded in guaranteeing needed care for Medicare beneficiaries. They also improved the financial condition of providers. But

Table 1-1. National Health Expenditures by Source of Funds, Selected Years

	In Billions of Dollars				As a Percentage of Total Expenditures			
		Government				Government		
Year	Private	Federal	State and Local	Total	Private	Federal	State and Local	Total
1965	$ 31	$ 5	$ 5	$ 42	75.3%	11.6%	13.2%	100%
1980	146	72	33	251	58.1	28.7	13.3	100
1985	259	123	52	434	59.7	28.4	11.9	100
1990	410	196	91	697	58.9	28.1	13.0	100
1993	496	281	107	884	56.1	31.7	12.1	100
1995*	552	334	121	1,008	54.8	33.2	12.0	100
2000*	770	528	174	1,472	52.3	35.8	11.8	100
2005*	1,051	821	247	2,119	49.6	38.8	11.6	100

Note: National health expenditures include all spending in the health care sector.

* Projected.

SOURCE: Congressional Budget Office.

13

Table 1-2. Personal Health Care Expenditures by Source of Funds, Selected Years (In Billions)

Year	Total	Out-of-Pocket	Private	Government	
				Federal	State and Local
1960	$ 23.9	$ 13.4	$ 5.4	$ 2.1	$ 3.0
1970	64.8	25.4	16.9	14.7	7.8
1980	220.1	61.3	71.8	63.4	23.6
1985	380.5	98.8	133.7	111.3	36.7
1990	612.4	138.3	230.7	178.1	65.3
1991	670.8	143.3	250.0	206.0	71.6
1992	729.7	150.6	269.8	234.0	75.3
1993	782.5	157.5	288.0	259.0	78.1

Note: Personal health care expenditures exclude research and construction, administration of public programs and net cost of private health insurance, and government public health activities.

SOURCE: Health Care Financing Administration, Office of the Actuary.

they greatly expanded service capacity and led to the rapid adoption of new and costly technologies, which contributed to the acceleration in Medicare expenditures.

Medicare Program Expenditures

In 1967—its first full year of operation—Medicare spent $4.8 billion on behalf of its enrollees (see Table 1-4). Eligibility for the Medicare program was expanded in 1972 to people who were disabled as well as to those with end-stage renal disease. By 1980, spending had reached $36.4 billion. Between 1980 and 1993, Medicare expenditures climbed on average more than 11 percent annually, to $151.1 billion. Part of this rise can be attributed to the growth in Medicare enrollees. From 1966 to 1993, the number of enrollees 65 or over rose about 2 percent a year and, since 1973, the number of disabled enrollees has gone up about 4 percent annually. The total Medicare-covered population expanded from 19.5 million in 1967 to 36.3 million in 1993.

Table 1-3. Government Health Expenditures as a Percentage of Total Government Expenditures, Selected Years

Year	Federal	State and Local
1960	3.1%	7.8%
1965	3.9	7.6
1966	5.2	7.5
1967	7.3	7.6
1970	8.5	7.8
1975	10.0	8.5
1980	11.7	9.9
1985	12.7	11.0
1990	15.4	12.9
1991	16.9	12.8
1992	17.4	12.6
1993	18.6	12.4

SOURCE: Health Care Financing Administration, Office of the Actuary and Office of National Health Statistics; and Department of Commerce, Bureau of Economic Analysis.

In addition to the continuing increases in enrollees, the share of Medicare beneficiaries using services paid for by the program has risen sharply over the years. This has occurred partly because the growth in the Part B deductible has not kept pace with the rise in health care costs. Consequently, a growing number of beneficiaries meet the deductible requirements. Only 37 percent of enrollees, about 7 million people, had Medicare payments made on their behalf in 1967. By 1980, 18 million enrollees were being served, representing 63 percent of the Medicare population. In 1993 about 80 percent of the Medicare population, 29 million enrollees, used services paid for by the program. It is not surprising, therefore, that Medicare spending has increased. But this does not tell the full story.

Medicare program payments for each person served also have escalated at a rapid pace, from $593 in 1967 to $4,387 in 1993—an 8 percent average annual rate of increase.[8] This rise is substantially larger than can be explained by general inflation during this time. In part, the growth in payments per person reflects medical inflation above that in the general economy. More important, however, are the continuing increases in the number and complexity of services furnished to Medicare beneficiaries.

14

Table 1-4. Personal Health Care Expenditures Under Medicare and Medicaid, Selected Years

Year	Medicare		Medicaid	
	Spending (In Billions)	Enrollees (In Millions)	Spending* (In Billions)	Recipients (In Millions)
1967	$ 4.8	19.5	$ 3.0	—
1970	7.3	20.5	5.1	—
1973	10.2	23.5	9.1	19.6
1980	36.4	28.5	24.8	21.6
1985	70.3	31.1	39.2	21.8
1990	109.6	34.2	71.7	25.3
1993	151.1	36.3	112.8	33.4

* Includes Federal and state shares.

SOURCE: Health Care Financing Administration, Office of the Actuary.

Changes in Medicare policies will have different effects on beneficiaries, since a relatively small number of them account for a large portion of expenditures. In 1993, 53 percent had payments of less than $500 made on their behalf.[9] By contrast, 10 percent had payments of $10,000 or more, representing almost three-quarters of all Medicare program spending. Slightly more than 3 percent had payments of $25,000 or more; this group accounted for 39 percent of all spending.

Medicaid Program Expenditures

Medicaid is a joint Federal and state program intended to provide medical care to low-income people who meet certain requirements. States are given substantial flexibility, within Federal guidelines, to determine eligibility and benefits for their residents. Consequently, eligibility, coverage, and payment rules vary greatly among the states. Medicare enrollees are eligible for Medicaid if they meet the income and asset standards set by a state. About 12 percent of the Medicare population was dually eligible for both programs in 1993. In addition, state Medicaid programs are required to pay Medicare premiums and cost-sharing amounts for certain low-income persons, called Qualified Medicare Beneficiaries.

The Medicaid program has experienced substantial growth, adding pressure to state and Federal budgets. Medicaid spending spiraled from $3.0 billion in 1967 to $112.8 billion in 1993. During the 1980s, Medicaid program spending growth was relatively stable. In the early 1990s, however, expenditures jumped, in large part because of expansions in eligibility, states' use of provider tax and donation programs to increase Federal matching payments, and changes in legislation that allowed states to increase payments dramatically to certain hospitals serving a disproportionate share of low-income patients.

Though more than 70 percent of Medicaid recipients were children and low-income adults in 1993, they accounted for only 30 percent of Medicaid payments. About 15.5 million children—almost half of all Medicaid recipients—received covered services. These children, however, generated only 16 percent of Medicaid payments. By contrast, about 27 percent of Medicaid enrollees were aged, blind, or disabled. This group, which included many Medicare beneficiaries, accounted for nearly 70 percent of total Medicaid spending, much of which was for long-term nursing home care. Hence, the Medicaid program serves important needs for the low-income Medicare population.

MEDICARE BENEFICIARY COST SHARING

The rapid rise in the cost of medical services has increased the financial burden for many Medicare enrollees, especially those with limited incomes. Medicare beneficiaries generally are responsible for paying a certain amount of the bill for the services they receive, and as program spending has gone up, so have their liabilities. These cost-sharing responsibilities include the inpatient hospital deductible, coinsurance requirements, and balance billing payments to certain physicians whose charges are higher than the payment allowed by Medicare. Beneficiaries must also pay for all of Medicare's allowed amount for physician and other Part B services until they reach a certain deductible.

Between 1977 and 1993, beneficiary liability as a share of overall Medicare spending dropped modestly, from 18 percent to 15 percent. Total beneficiary out-of-pocket spending for services covered by Medicare, however, rose more than five-fold.[10]

Over time the pattern of cost sharing has changed, reflecting differences in the types of providers used and the costs of various services. The share of beneficiary out-of-pocket spending for

15

Part A services, especially hospital and SNF care, has accelerated. Part B liability, which accounted for about 76 percent of cost sharing in 1977, fell to about 67 percent in 1993. A major factor in this decline was the limit on balance billing that the Congress enacted as part of physician payment reform in 1989. In addition, the increase in the Part B deductible, from $60 to $100 during this time, lagged far behind the rise in program spending or general inflation. The decrease in the deductible as a portion of Part B liability, however, was offset by the substantial growth in the share of coinsurance payments.

The average yearly cost-sharing liability per Medicare enrollee went from $174 in 1977 to $626 in 1993. This figure hides large differences in payments among beneficiaries for Medicare-covered services. Almost 65 percent of enrollees incurred a liability of less than $500 in 1992, but 6 percent were responsible for more than $2,000 in out-of-pocket spending. A small group of beneficiaries, 1.7 percent, confronted payments of $5,000 or more. Thus, for certain beneficiaries the financial protection from the costs of major illness offered by the Medicare program falls far short of the need.

In addition to these cost-sharing liabilities, Medicare beneficiaries are responsible for payment of the Part B premium if they elect this coverage, as almost all do. There also are substantial gaps in Medicare coverage for certain services (especially medications) that the elderly and disabled frequently require. Most Medicare beneficiaries must pay for these non-covered services directly or through private supplemental insurance.

To reduce the risk of significant out-of-pocket spending, about 75 percent of Medicare enrollees relied on private insurance to supplement their Medicare coverage in 1992. Another 12 percent were dually eligible for Medicaid, which provides financial assistance in meeting these extra costs. About 11 percent of Medicare enrollees had no supplemental coverage and were at full risk for cost-sharing expenses, while the rest were covered by other programs. The increase in out-of-pocket spending also may contribute to the growth in the number of beneficiaries who are choosing plans in Medicare's capitation program. Many of these plans require little or no cost sharing. They also frequently supplement their benefit packages with services such as prescription drugs, which Medicare does not cover.

THE SOLVENCY OF THE MEDICARE TRUST FUNDS

The Medicare program is financed through a variety of mechanisms, with funding channeled through two trust funds. The primary source of income for the Hospital Insurance Trust Fund is a dedicated payroll tax, paid by employers, employees, and the self-employed. Although Medicare is an entitlement, this fund must be solvent to pay claims on behalf of beneficiaries receiving Part A services, because trust fund balances limit spending authority. If the trust fund became insolvent, Part A Medicare payments would be limited to the money that accrued to the fund from current payroll tax receipts.

By contrast, the Part B Supplementary Medical Insurance Trust Fund is financed primarily through general revenues and enrollee premiums. General revenues and premiums each contributed about 49 percent of the fund's income in 1972. By 1993, the general revenue share was 72 percent, with premiums adding 25 percent. Although spending from this fund has been growing rapidly, insolvency is not a problem since general revenues are required to cover expected outlays that exceed premiums and other receipts. The growth in Part B Medicare spending, therefore, increases the Federal budget and contributes to the deficit.

The trust funds' trustees issue an annual report projecting revenues and expenses and evaluating the actuarial condition of each fund. To arrive at their conclusions, the trustees make assumptions about the growth in taxable wages and salaries, future rates of inflation, the number and life expectancy of Medicare enrollees, and patterns of service use. They base their projections on current Medicare statutory authority. In their 1995 report, the trustees projected that the HI Trust Fund would begin to run a deficit in 1996 and would be insolvent in 2002, seven years from the release of the report.[11]

While projections of trust fund insolvency are not a new occurrence, they have received much more attention this year. Since 1970, on several occasions the trustees have projected insolvency of

16

the HI Trust Fund within seven years (see Table 1-5). Their projections have not materialized, primarily because the Congress has taken action to avert the impending insolvency. In 1972, the Congress raised the Medicare payroll tax rates and increased the ceiling on the level of earnings to which the tax is applied. The Congress also has enacted many provisions intended to control Part A expenditures by curbing the growth in payments to hospitals and other providers. In 1983, the Congress enacted the Medicare prospective payment system (PPS) for inpatient hospital services and other initiatives intended to slow expenditure growth. Steps also were taken that year, and again in 1990 and 1993, to increase HI Trust Fund revenues.

Because Medicare has relied primarily on a fee-for-service payment system, initiatives to slow the rise in spending have focused on reducing the price that Medicare pays for each service furnished.

Table 1-5. Number of Years from Trustees' Projection Until Insolvency of the Hospital Insurance Trust Fund

Year of Trustees' Report	Year of Insolvency
1970	2
1971	2
1972	4
1973	None indicated
1974	None indicated
1975	About 20*
1976	About 15*
1977	About 10*
1978	12
1979	13
1980	14
1981	10
1982	5
1983	7
1984	7
1985	13
1986	10
1986 amended	12
1987	15
1988	17
1989	None indicated
1990	13
1991	14
1992	10
1993	6
1994	7
1995	7

* Projections for 1975, 1976, and 1977 put the dates of insolvency, respectively, in "the late 1990s," "the early 1990s," and "the late 1980s."

SOURCE: Henry J. Aaron and Robert D. Reischauer, "The Medicare Reform Debate: What Is the Next Step?" *Health Affairs*, Winter 1995.

These actions have had less effect on the overall program budget, as the number and complexity of services provided have burgeoned, perpetuating the rise in program expenditures.

HI Trust Fund solvency remains threatened over the long term, in spite of past efforts to shore up the fund temporarily and reductions in spending growth currently considered by the Congress and the President. This is because the ratio of workers paying Medicare taxes to Medicare enrollees is declining as the baby boom generation ages into Medicare.

MEDICARE, MEDICAID, AND THE FEDERAL BUDGET

The Congressional Budget Office estimates that total Federal revenues in fiscal year 1995 will reach almost $1.36 trillion (see Table 1-6). Expected outlays will be just under $1.52 trillion, resulting in a $161 billion budget deficit for the year. The cumulative Federal debt, as a result of years of deficit spending, now stands at $4.9 trillion. The 1995 deficit is the smallest since 1989, but CBO projects that it will rise steadily over the next decade if current budgetary policies remain unchanged.

Federal spending is divided into mandatory and discretionary categories. Interest on the national debt is treated separately. Defense, international affairs, transportation, and domestic programs such as biomedical research funding are examples of discretionary spending. This spending is subject to review in the annual appropriations process. In addition, under current law it is subject to spending limits through 1998. Consequently, total discretionary spending is controlled, and policy makers must make trade-offs among competing programs. CBO projects that total discretionary spending will decrease from 35 percent of total Federal outlays in 1996 to 30 percent in 2002, if the current spending limits expire in 1998 as scheduled.

By contrast, mandatory entitlement programs like Medicare and Medicaid are not subject to annual review, the appropriations process, or spending limits. In 1996, total mandatory spending will account for 55 percent of Federal outlays. CBO estimates that the share of mandatory expenditures will climb to 62 percent in 2002. Medicare

17

Table 1-6. Selected Congressional Budget Office Projections, Fiscal Years 1995-2002 (In Billions)

Budget Category	1995	1996	1997	1998	1999	2000	2001	2002
Total revenues	$1,357	$1,423	$1,487	$1,553	$1,625	$1,703	$1,783	$1,871
Total outlays	1,518	1,595	1,668	1,736	1,820	1,907	1,994	2,100
Deficit	161	172	182	183	195	204	211	228
Medicare[a]	177	196	216	236	258	281	305	332
Medicaid[b]	89	97	107	118	130	143	157	173

[a] Mandatory outlays.

[b] Federal share of Medicaid payments.

SOURCE: Congressional Budget Office.

and Medicaid outlays will be responsible for 17 percent of Federal spending in 1996. Under current policies, these programs are expected to consume 27 percent of the Federal budget in 2002. CBO points to the rapid growth in Medicare and Medicaid spending as the major factor driving up its deficit projections.

The Congress, intent on eliminating the Federal deficit by 2002, has looked to mandatory spending—and especially the rapidly growing health entitlement programs—for substantial budget savings. The Congress can control Medicare spending by changing eligibility policies or reducing benefits. It also can require higher beneficiary cost sharing or raise taxes. These approaches are regarded as politically unattractive, however. Consequently, over the past decade as it struggled with the Federal deficit, the Congress has looked primarily to reductions in payments to providers as the method of slowing Medicare spending growth. The current proposals generally continue to follow that path.

RENEWED ACTION BY THE CONGRESS

In November 1994, the American public elected, for the first time in several decades, a Republican-controlled Congress. The 104th Congress began its work in early 1995, determined to balance the Federal budget by 2002. The first formal step in the process was the passage of a budget resolution for fiscal year 1996. The Congress laid out its spending priorities and identified the broad program areas that it would target to balance the budget by 2002. The legislative process requires an independent projection of baseline expenditures and an assessment of the savings that can be expected from congressional proposals. The Congressional Budget Office is charged with these responsibilities.

CBO's spending baseline reflects assumptions regarding economic growth and the level of future spending under current laws. The December 1995 update of the baseline projected that the budget deficit would rise from $161 billion in 1995 to $228 billion in 2002. To reduce the deficit, it is necessary for the Congress to enact legislation containing budget savings. CBO credits a legislative proposal with savings if it will result in reductions from the forecasted baseline growth. Thus, savings may be achieved even if spending continues to rise.

Medicare Savings

CBO projects that under current law, Medicare outlays (before subtracting offsetting premium receipts) will rise from about $177 billion in 1995 to almost $332 billion in 2002, or 9.4 percent annually (see Table 1-7). As a major contributor to the deficit, the Medicare program was initially targeted by the Congress for $270 billion in savings over the next seven years. Revised CBO baseline estimates, however, projected slower Medicare spending growth. Consequently, the estimate of the savings in the bill passed by the Congress fell to $227 billion.[12] Under this proposal, Medicare expenditures would rise at an annual rate of 7.2 percent.

By contrast, the President's proposal would result in $102 billion in total savings and an annual growth rate of 7.6 percent. A separate bill (H.R. 2530), supported by a coalition of members of the House of Representatives, contains $153 billion in Medicare reductions. The coalition's proposal would result in Medicare mandatory spending increases of 7.5 percent annually.[13]

18

Table 1-7. Medicare and Medicaid Baseline Spending and Estimates Under Alternative Proposals, 1995-2002 (In Billions)

Proposal	Mandatory Outlays				Total Net	
	1995	1996	2002	Annual Increase 1995-2002	Outlays[a] 1996-2002	Savings[a] 1996-2002
Medicare:						
Baseline	$177.4	$196.4	$331.8	9.4%	$1,679.5	—
Congress[b]	177.4	192.9	288.6	7.2	1,452.8	$226.7
President[c]	177.4	196.4	296.4	7.6	1,578.0	101.5
Coalition[d]	177.4	192.2	294.1	7.5	1,526.8	152.7
Republican offer[e]	177.4	196.4	292.0	7.4	1,511.5	168.0
President's budget[f]	—	—	—	—	1,555.3	124.2
Medicaid:						
Baseline	89.1	97.2	172.6	9.9	924.1	—
Congress[b]	89.1	97.1	127.4	5.2	791.4	132.7
President[c]	89.1	97.2	154.0	8.1	872.4	51.7
Coalition[d]	89.1	97.2	162.5	9.0	877.9	46.2

Note: Baseline spending and other estimates based on Congressional Budget Office December 1995 budget baseline.

[a] Includes effect of premium increases.

[b] H.R. 2491, the "Balanced Budget Act of 1995," passed by the Congress on November 20, 1995.

[c] The "Balanced Budget Act of 1995 for Economic Growth and Fairness," released by the President on December 7, 1995.

[d] H.R. 2530, the "coalition budget," introduced on October 25, 1995.

[e] Republican offer presented to the President on January 5, 1996, as estimated by the House of Representatives, Budget Committee.

[f] President's 1997 budget released on February 5, 1996, based on savings estimated by the Office of Management and Budget.

SOURCE: Congressional Budget Office; House of Representatives, Budget Committee; and Office of Management and Budget.

The Republican leadership in the Congress and the President have attempted to arrive at an agreement resolving the differences in their proposals. As part of their negotiations, the Republican leadership submitted an "offer" that would reduce the total savings in their plan from $227 billion to $168 billion. The President also has revised his proposal, increasing Medicare savings from $102 billion to $124 billion.

The annual increase in Medicare spending is similar in all the proposals, ranging from 7.2 percent to 7.6 percent. The variation in total savings, however, is much greater due to differences in the growth of Part B premiums among the proposals.

Medicaid Savings

Because of its substantial growth, the Medicaid program also is a target for spending reductions. CBO projects that the Federal share of this program will climb from roughly $89 billion in 1995 to nearly $173 billion in 2002, an annual rate of 9.9 percent. The legislation passed by the Congress would slow this rate to 5.2 percent over the seven-year period, saving just under $133 billion.

Medicaid spending under the President's proposal would increase, on average, 8.1 percent a year, saving almost $52 billion. The coalition's approach is similar, leading to 9.0 percent annual growth and about $46 billion in expenditure reductions.

The MedicarePlus Program

The Congress is especially interested in expanding Medicare's capitation program. This would achieve both of the Congress's primary goals: slowing Medicare entitlement spending and reducing government control over the program.

Under Medicare's existing capitation program, participating health maintenance organizations contract to provide all covered services for enrolled beneficiaries in return for a predetermined

monthly payment per enrollee. This arrangement shifts the responsibility for payment for individual services furnished to beneficiaries from the Federal government to private plans. The proposed MedicarePlus program would expand the variety of health plans available to Medicare enrollees. It also would sever the connection between the capitation amount and spending in the fee-for-service program. The annual update to the capitation rate would be set in law to achieve the Medicare spending level desired by the Congress. The Congress has also expressed its dissatisfaction with the current administration of the capitation program. Its proposal would move program management from the Health Care Financing Administration to another entity within the Department of Health and Human Services.

The MedicarePlus program would include a wide range of options that meet the desire of many members of the Congress to eliminate Federal government involvement in the care Medicare beneficiaries receive. Especially noteworthy are the options to allow beneficiaries to join a private fee-for-service program or to select a medical savings account. Both of these choices would represent a significant change in the responsibilities of the Medicare program.

The Traditional Fee-for-Service Program

The traditional fee-for-service program continues to account for most of Medicare's spending. Consequently, almost 70 percent of the savings in the congressional proposal comes from this program (see Table 1-8). The 1995 base year spending and the projected increases over the next seven years differ greatly across types of providers (see Table 1-9). The savings would be spread across hospitals, physicians, and other providers and suppliers generally in proportion to projected spending increases. The bill also would move payment for home health services from a cost to a prospective payment basis, create facility-specific payment limits for ancillary services furnished in skilled nursing facilities, and provide for a SNF prospective payment system beginning in fiscal year 1998. Although the proposal slows the growth in Medicare payments to teaching hospitals, it provides new funding from general revenues for a Teaching Hospital and Graduate Medical Education Trust Fund.

Table 1-8. Estimated Savings from the Congressional Proposal, by Category, 1996-2002 (In Billions)

Category	Estimated Savings
Fee-for-service:	
Inpatient hospital	$ 64.7
Outpatient hospital and ambulatory	19.1
Physicians	12.6
Home health	17.0
Skilled nursing	10.0
Other services	19.0
Total fee-for-service	142.4
Failsafe	11.5
Part B premiums	54.2
MedicarePlus	18.6
Total	226.7

SOURCE: Congressional Budget Office.

A NEW PHILOSOPHY

The legislation agreed to by the Congress includes stronger controls than any previously enacted to ensure that spending for the care furnished to Medicare beneficiaries does not exceed specific targets. The effects of the proposal, however, could extend far beyond its budgetary impact. The approach represents a fundamental change in the nature of the Medicare program. The bill would take a major step in moving the Medicare program from open-ended spending for covered services to a predetermined annual government payment per enrollee. To meet its budget target, the Congress spelled out specific spending rates of increase per enrollee in the MedicarePlus program. As a result, spending for these enrollees would be predictable and controlled.

This is not now the case in the traditional fee-for-service program, which pays hospitals, physicians, and other providers for the care they furnish. The more care these providers give, the more they are paid. Consequently, even when Medicare controls the price it pays for each unit of service, its spending escalates as the number of services increases. The reductions in fee-for-service payment growth contained in the congressional proposal fall short of meeting the seven-year budget

Table 1-9. Selected Congressional Budget Office Medicare Spending Estimates, Fiscal Years 1995-2002

Category	1995	1996	1997	1998	1999	2000	2001	2002
Total mandatory (in billions)	$177.4	$196.4	$215.9	$236.4	$258.1	$280.7	$305.3	$331.8
Part A enrollment (in millions)	37.0	37.6	38.2	38.7	39.2	39.8	40.2	40.7
Part A benefits (in billions)	$113.6	$124.8	$136.0	$147.2	$159.0	$171.2	$184.2	$197.7
Hospitals	80.2	84.5	88.8	93.9	99.5	105.2	111.0	116.7
PPS hospitals	68.9	72.4	75.6	79.3	83.2	87.2	91.2	95.3
Indirect medical education	4.3	4.6	5.2	5.8	6.4	7.0	7.7	8.5
Graduate medical education*	1.9	2.1	2.3	2.5	2.7	2.8	3.0	3.2
Disproportionate share	3.4	3.5	3.6	3.8	3.9	4.1	4.3	4.4
Inpatient capital*	7.9	9.6	10.4	11.1	11.8	12.6	13.1	13.6
Home health	14.7	17.2	19.8	22.2	24.2	26.2	28.3	30.6
Skilled nursing facility	9.0	10.8	12.2	13.3	14.5	15.7	17.0	18.4
Part B enrollment (in millions)	35.7	36.3	36.8	37.2	37.7	38.1	38.5	39.0
Part B benefits (in billions)	$ 63.5	$ 71.2	$ 79.6	$ 88.9	$ 98.7	$109.1	$120.8	$133.8
Physicians	32.2	36.0	38.8	42.1	45.2	47.9	50.8	53.8
Hospital outpatient	10.6	12.1	13.7	15.5	17.6	19.8	22.4	25.2

Note: Based on December 1995 budget baseline.

* Includes PPS and other hospitals.

SOURCE: Congressional Budget Office.

target by $11.5 billion (after offsetting premium increases); that is, if spending rises at CBO's projected rate, outlays would exceed the target by this much. To make certain that spending is not more than the predetermined annual amount for each Medicare enrollee in the fee-for-service program, the Congress would impose a method to enforce the budget limits.

THE FAILSAFE BUDGET MECHANISM

An important aspect of the bill passed by the Congress is a savings enforcement tool called the "failsafe budget mechanism." For the first time in Medicare's history, total spending per enrollee in both the capitation and fee-for-service programs would be capped each year at a congressionally mandated amount. Medicare would still make payments to providers on behalf of beneficiaries. But total Medicare spending would be the same, even if the number of services provided grew or the rate of inflation changed.

Medicare Benefit Budget and Budget Allotment

The failsafe mechanism contains a specific annual Medicare benefit budget for fiscal years 1996 through 2002. This budget reflects the spending levels contained in the Congress's proposal. It includes all Medicare benefit payments and would meet the congressional objective of reducing Medicare spending growth by $227 billion through 2002.

After 2002, an update formula would be applied to the budget for the preceding year. This would result in 5 percent annual Medicare spending growth per enrollee after 2002, regardless of the rate of inflation or service use. This same annual growth rate per enrollee would apply to beneficiaries in both the fee-for-service and the MedicarePlus programs.

Each year, the Secretary would estimate a Medicare budget allotment for the fee-for-service program by removing from the benefit budget projected payments under the MedicarePlus program. The resulting budget allotment would be used as the basis for the failsafe requirements.

Sector Allocation

The Medicare fee-for-service budget allotment would be allocated to each of nine sectors (such as inpatient hospital and home health services). For

fiscal year 1996, baseline projected spending for each sector would equal the sector's fiscal year 1995 expenditures inflated by the sector's annual growth rate, as defined in the legislation. In subsequent years, each sector's legislated growth rate would be applied to the prior year's baseline.

Beginning in fiscal year 1998, the Secretary would reduce payments for all services in any sector that exceeded its target. The payment reduction would be proportional to the amount by which the Secretary estimates spending would exceed the sector target. The percentage reductions would be the same for all services within a sector, but would likely differ across sectors. The Secretary also would be responsible for adjusting payments in all sectors to ensure that aggregate spending would be consistent with the overall fee-for-service budget allotment. In addition, there is authority for a "look-back" adjustment to reflect actual fee-for-service and MedicarePlus expenditures when final data become available. If the President submitted a proposal to revise the baseline annual growth rates for fee-for-service sectors, the Congress would have to consider it under an expedited procedure.

Impact on Fee-for-Service Spending

The bill passed by the Congress would require $11.5 billion in failsafe payment reductions between 1998 and 2002, according to CBO estimates. The ability of fee-for-service providers to avoid triggering the failsafe reductions depends critically on the number and intensity of services they furnish. CBO's estimates of projected spending include assumptions about annual increases in the number and intensity of hospital and SNF admissions, physician visits, and other services. Thus, to avoid these additional reductions, providers would have to furnish fewer services than CBO estimated.

Inflation rates that exceed CBO projections also could trigger subsequent payment reductions. The benefit budget is spelled out in specific dollar amounts between 1996 and 2002. After that, the update formula is a fixed percentage plus growth in the number of Medicare enrollees. There is no mechanism to account for changes in inflation. Annual payment updates for fee-for-service providers, however, are generally linked to a market basket that measures inflation. Substantial increases in inflation would increase payment updates but could subsequently cause large payment reductions. The failsafe budget mechanism would not sunset, although fee-for-service payment updates generally would return to a market basket increase after 2002. Consequently, failsafe reductions could occur even when inflation or the number of services rose slightly.

Fee-for-service providers would be at further risk if healthier Medicare beneficiaries enrolled in MedicarePlus, while sicker beneficiaries remained in the fee-for-service program. The methods Medicare uses to adjust capitation payments explain very little of the variation in expected enrollee spending. The expansion of capitation plan options (especially medical savings accounts) may encourage beneficiaries who expect to use less than the average amount of services to enroll. The failsafe mechanism does not provide for adjustments to growth rates if healthier enrollees select MedicarePlus, leaving costlier ones in the fee-for-service program.

CHANGES IN THE HEALTH CARE ENVIRONMENT

The proposed reform of the Medicare program comes at a time when private sector financing and delivery of medical care are undergoing substantial change. Employers and other buyers of insurance are demanding lower premiums. In response, third-party payers are moving from fee-for-service policies to capitation and other managed care methods to control their costs, while providers are grappling with stepped-up competition for patients. Competition has altered the way providers do business, with the price of services assuming increased importance.

The restructuring of the nation's health care delivery system already has had an impact. National health care expenditures rose about 6 percent in 1994, among the lowest rates in the past three decades. In addition, surveys of employer health care costs show premium increases at historic lows.

The recent reports of private sector success in checking medical care expenditure growth have not been overlooked by those in the Congress who are intent on shifting governmental activities to the private sector. During the debate on the congressional

proposal, many members indicated they thought that the private sector could manage Medicare beneficiaries' care more efficiently than the Federal government could. If this were so, they reasoned, Medicare spending growth could be moderated without adversely affecting the care beneficiaries receive.

Analysts differ, however, in their assessment of the relative success of the government and private payers in restraining the rise in spending. CBO estimates that in 1995, national health care expenditures grew by 6.8 percent. Private sector spending went up 5.5 percent, while Federal outlays rose 9.1 percent. But interpreting such findings is complicated by the lack of good information on the number and health status of enrollees, where they live, and the benefits and services they receive. Further, expenditure levels in prior years must be considered.

When real spending (removing the effects of inflation) per Medicare enrollee is compared with private health insurance spending per insured person, the findings are mixed (see Table 1-10). Between 1979 and 1983, the private sector appears to have outperformed Medicare. From 1983 to 1991, though, the pattern reversed as the Medicare program implemented policies to curb the rise in expenditures. Since 1991, Medicare spending per enrollee again has surged, while private insurance spending per insured person has risen more slowly. The private sector's improved performance likely is related to the rapid move to capitation in recent years. The Medicare program, by contrast, continues to rely predominantly on traditional fee-for-service methods.

Table 1-10. Real Change in Medicare Spending Per Enrollee and Private Health Insurance Spending Per Insured Person, 1979-1993 (In Percent)

Spending Category	1979-1983	1983-1987	1987-1991	1991-1993
Personal health care				
Private insurance	6.3%	6.9%	5.2%	4.7%
Medicare	7.6	2.9	3.8	6.5
Hospital care				
Private insurance	4.8	2.5	3.8	4.4
Medicare	7.0	1.1	2.3	5.9
Physicians' services				
Private insurance	7.0	10.8	5.8	5.1
Medicare	8.8	7.4	2.7	0.3

SOURCE: ProPAC analysis of data from the Health Care Financing Administration, Office of the Actuary.

While the Medicare program has successfully kept the payment per unit of service furnished in check, it has not been able to control increases in service volume and intensity. The private sector has relied more heavily on capitation, which allows plans to control costs by actively negotiating the price they will pay providers and by managing the services their enrollees receive. There is disagreement on how long the recent private sector cost-control trends can be maintained. CBO projects that private spending growth will again begin to rise, reaching 6.9 percent annually by 2000. This increase is still substantially lower than CBO's forecast of growth in Federal government spending under current law.

The moderation in expenditure growth for public programs, together with restraints in private health care spending, will require providers to continue to change their traditional ways of doing business. Hospitals and other providers are positioning themselves to compete in a health care system where total resources will grow much less rapidly than they have for many decades. Consequently, providers strongly support the provisions in the congressional proposal allowing them to develop provider-sponsored networks to compete with health plans.

THE UNINSURED POPULATION

The Congress's plan for modifications in the Medicare and Medicaid entitlements coincides with a decline in the proportion of people receiving health insurance through the workplace. Currently, about 15 percent of the population, almost 40 million people, lack health insurance coverage.

The Medicaid program provides an important safety net for those who would otherwise be uninsured. CBO projects that the number of Medicaid recipients will increase from 35.4 million in 1995 to 43.6 million in 2002 under current law. Medicaid spending reductions and other policy changes in the Congress's proposal could slow this growth substantially, and perhaps actually reduce the number of people eligible for Medicaid. Hence, the proposal—together with a declining share of the population covered by private insurance—could leave millions more uninsured.

Many of the uninsured receive hospital and other medical services. Traditionally, third-party payers have subsidized much of the cost of this uncompensated care. Under the price-competitive health care system that the Congress and private payers are encouraging, however, providers may be unwilling or unable to continue to subsidize such care. In addition, the Congress has proposed reducing the funds the Medicare program has provided to hospitals that care for a disproportionate share of low-income patients. In view of these developments, the problems related to the rising number of uninsured will probably be exacerbated. At some point, they are likely to require further action by the Congress.

CONCLUSIONS AND RECOMMENDATIONS

The Congress and the President continue to attempt to resolve differences in their approaches to curbing the rise in Medicare and Medicaid expenditures, strengthening the HI Trust Fund, and balancing the Federal budget. This chapter concludes with the Commission's recommendations on Medicare spending and the failsafe mechanism in the Congress's proposal.

Recommendation 1: Slowing the Rise in Medicare Spending

The Commission supports the efforts of the Congress and the President to reduce the growth in Medicare expenditures. Over time, spending for services furnished to Medicare enrollees should increase at rates comparable to those in a cost- and quality-conscious private sector.

The continuing escalation in Medicare costs is a threat to the solvency of the HI Trust Fund, a major contributor to the Federal deficit, and a financial burden for many enrollees. In ProPAC's view, the growth in spending for medical care in a private sector with market forces that encourage cost containment is an appropriate benchmark for the Medicare program. Judgments regarding appropriate spending levels and rates of increase should be based on several years' experience to account for short-term factors that may create a misleading picture of the trends. In addition, spending growth should be compared on a per person basis and should recognize the health care needs of an aging and disabled Medicare population.

There are major deficiencies, however, in the data currently used to compare and forecast Medicare and private sector spending growth. The Commission plans to examine available data and alternative methods that could be used to assess trends in Medicare and private health care expenditures and will share these with the Congress.

Recommendation 2: The Failsafe Budget Mechanism

Any failsafe budget mechanism should include a more effective risk adjustment factor to ensure payment equity between the Medicare capitation and traditional fee-for-service programs. In addition, changes in inflation that differ substantially from CBO forecasts could require modifications to the Medicare benefit budget over time. Revisions to the proposed fee-for-service sector budget allocations could also be needed as medical practices change.

The failsafe mechanism in the Congress's proposal would allocate a fixed benefit budget for Medicare's capitation and fee-for-service programs. However, the risk adjustment methods currently used in Medicare's risk contracting program are limited. (See Chapter 2, Recommendation 5.) The lack of a robust risk adjustment method may result in higher-than-intended capitation payments. Further, there is no mechanism to adjust the fee-for-service budget to account for increases in average patient complexity and severity of illness that are likely to result if healthier enrollees select Medicare's capitation program. Consequently, per enrollee capitation payments could be too high and fee-for-service payments too low.

The failsafe mechanism lacks a provision to adjust the benefit budget if general inflation differs notably from CBO's forecast. Future increases in per enrollee spending in both programs may require modifications to reflect changes in inflation. In addition, future allocations of spending across the fee-for-service sectors will be based on spending projections that do not reflect the impact of the proposed legislation. The failsafe mechanism thus could lead to payment inequities among

provider groups as patterns of care continue to change. Adjustments in sector budget allocations may be necessary over time to maintain access to quality care for Medicare beneficiaries.

Notes to Chapter 1

1. This figure reflects Medicare program payments, which include payments from Medicare for covered services, but not administrative costs or beneficiary cost-sharing amounts.

2. This figure includes beneficiary deductibles, copayments, and balance billing amounts, but not Part B premiums. See Prospective Payment Assessment Commission, *Medicare and the American Health Care System, Report to Congress,* June 1995, 67.

3. Congressional Budget Office estimates of baseline spending and projected savings, December 1995. CBO makes a distinction between mandatory outlays for benefit payments and discretionary outlays for administrative costs. The estimates cited here include mandatory but not discretionary outlays. They do not reflect offsetting premium receipts. Net Medicare outlays, which include mandatory plus discretionary outlays less premium receipts, are projected to increase from $160 billion in 1995 to $308 billion in 2002.

4. The Medicare provisions are in H.R. 2491, the "Balanced Budget Act of 1995," passed by the Congress on November 20, 1995. This legislation also is referred to as "the conference agreement." The specific provisions referred to are included in Title 8, entitled "The Medicare Preservation Act of 1995."

5. The Medicare provisions of the President's proposal are included in Title 11 of draft legislation, entitled the "Balanced Budget Act of 1995 for Economic Growth and Fairness." This proposal was released by the President on December 7, 1995. It has not been introduced in the Congress.

6. National health expenditures include all spending in the health care sector. Personal health care expenditures exclude research and construction, administration of public programs and net cost of private health insurance, and government public health activities.

7. Medicare Hospital Insurance, called Part A, finances inpatient hospital care, as well as skilled nursing facility, home health, and hospice care. Supplementary Medical Insurance, or Part B, pays for physician services; outpatient services furnished by hospitals, dialysis facilities, and other ambulatory providers; and durable medical equipment and supplies.

8. Health Care Financing Administration, *Medicare and Medicaid Statistical Supplement, 1995* (Washington, DC: U.S. Government Printing Office) 176.

9. Ibid., 182.

10. Ibid., 176.

11. Board of Trustees of the Federal Hospital Insurance Trust Fund, *1995 Annual Report* (Washington, DC).

12. The savings estimates in all the proposals include those resulting from reductions in the growth of Medicare mandatory outlays and, where applicable, premium increases.

13. The Medicare and Medicaid provisions of the proposal are in H.R. 2530, introduced on October 25, 1995. This proposal also is referred to as the "coalition budget" proposal.

Chapter 2

Medicare's Capitation Program

Adoption of capitation payment methods by employers and some state Medicaid programs is widely credited with reducing the growth in their health care spending. Under capitation, the payer makes a predetermined payment per enrollee to a health plan that agrees to cover a defined set of services over a specified period, regardless of the number, type, or cost of services enrollees actually use. This contrasts with the fee-for-service payment method, under which payment is made for each service rendered. Capitation allows the payer to budget for health care spending over a year and eliminates its risk of spending any more than is budgeted. Additionally, capitation gives plans a financial incentive to reduce health care costs.

Medicare's largest capitation program, called the risk contracting program, has some of the cost-containment characteristics of capitation. Yet various aspects of the program design prevent Medicare from fully realizing the benefits of this payment method. Both the Congress and the President have proposed expanding and modifying Medicare's use of capitation. The legislation recently passed by the Congress (H.R. 2491) would broaden the range of private plans that could participate and modify the calculation of capitation amounts to curb the growth in Medicare's spending. The President's proposal would alter and increase the size of the risk program, but would not fundamentally change the way capitation rates are determined.

Refinements to the risk contracting program could contribute to Medicare's cost-control efforts while expanding the health plan choices available to its beneficiaries. To accomplish this, improved risk adjustment methods should be implemented and technical changes made to the calculation of the capitation rates. Further, Medicare needs to act as beneficiaries' agent in providing health plan information and monitoring plan performance. This is critically important because of the financial incentive plans have to limit health care costs.

This chapter first reviews policy issues relating to the existing Medicare risk program. Next, it provides an overview of the Congress's and the President's proposals to change the program. It concludes with the Prospective Payment Assessment Commission's (ProPAC's) recommendations to the Congress about setting the capitation rates, adjusting for risk, offering different types of plans, disseminating information to beneficiaries, and holding plans accountable for the services they provide.

THE MEDICARE RISK PROGRAM

In 1985 Medicare implemented its risk contracting program, under which health maintenance organizations (HMOs) receive a full capitation payment. The risk program was intended to allow Medicare to enjoy some of the advantages of capitation arrangements with health plans, among them predictable spending and savings. Enrollees also gain because many plans cover additional benefits and have low cost-sharing requirements.

Medicare has not taken full advantage of capitation's potential for savings, however. The program's capitation rates appear to be too high in some markets and too low in others, discouraging plan participation. Further, it appears that healthier beneficiaries are likelier than others to enroll, and the payment rates do not adequately reflect this lower risk of illness. Thus, Medicare may pay more for beneficiaries in its risk program than it would have had they stayed in the fee-for-service program.

Capitation Rates

The level of Medicare's capitation rates is tied closely to the program's traditional fee-for-service spending experience in each county. The annual growth in these rates mirrors this experience as well. Because HMOs are expected to furnish services through their provider networks more economically than Medicare does under its fee-for-service program, Medicare pays 95 percent of the estimated

amount it would have spent under the traditional program. Medicare retains the other 5 percent as savings. If plan payments are higher than projected plan costs (which include allowed profits), these savings are returned to enrollees in the form of additional benefits. These include, for instance, paying for services Medicare does not cover or reducing cost sharing for Medicare-covered services.

Level, Growth, and Variation—Obtaining the full potential savings from capitation requires continuous interaction between payers and plans. Those that purchase coverage can realize one-time savings by moving from higher premium fee-for-service plans to lower premium plans that accept capitation. They may enjoy ongoing savings if they can use their purchasing power to negotiate favorable premium rates. Some purchasers (other than Medicare) negotiate formally with plans; others have more informal processes for holding down annual premium increases. Some purchasers limit their premium contribution so that enrollees (who pay the difference between the premium and the employer's contribution) are more likely to choose lower priced plans.

Current law does not allow Medicare to use any of these approaches to limit the growth in capitation rates. This is true despite evidence that many plans in the risk program furnish all Medicare-covered services at costs significantly below their capitation rate. In 1994, the average Medicare capitation payment was $26 a month higher than plans' expected average costs of providing Medicare services to beneficiaries. In certain markets with the highest rates, this difference was even greater—more than $110 per enrollee per month.[1] However, in those areas without Medicare risk contracts (and there are many) rates may be too low to induce plans to participate.

Because Medicare's capitation rates are tied to fee-for-service spending experience, the program does not use information about plans' costs to set its rates in a market. Even though Medicare receives this information, it cannot negotiate lower rates in areas where the rates are higher than plan costs. At the same time, in areas where no plans participate in the Medicare program, it cannot raise capitation rates even if they are too low to cover plans' anticipated costs.

The linking of capitation rates to fee-for-service spending at the county level leads to substantial variability in the rates across areas. Further, there have been significant changes in some of these rates from year to year. This has been a particular problem in rural counties, since spending fluctuations are driven by the experience of relatively few beneficiaries. The instability of Medicare's rates over time may have dissuaded plans from participating in the risk program in certain counties, even when they serve other purchasers there.

Risk Adjustment—Voluntary choice among health plans raises the likelihood of risk selection. Plans may have a mix of enrollees whose relative risk of incurring medical expenses does not represent the group of people covered by a particular purchaser. Plans that attract beneficiaries with lower-than-average risk are less likely to experience financial losses. This can occur either through enrollee or plan action, or both. For example, some plans will pay only for services furnished by limited networks of providers. Enrollees who are healthier, and thus lack longstanding relationships with providers, may be more willing to join plans that limit provider choice, resulting in favorable selection to these plans.

If, because of risk selection, the capitation rate is too high relative to the services used by its members, the plan profits at the purchaser's expense. If it is too low, the plan loses financially. For these reasons, there has been considerable interest in developing a risk adjustment method that would allow the capitation payments to reflect more accurately differences in the likely need to use services among individuals.

The variation in patterns of health care use and spending among individuals is explained by both systematic and random risk. Systematic risk reflects expenditure variation associated with measured characteristics, such as age, sex, or chronic conditions, that are predictably related to use. Random risk is variation not associated with measured characteristics. The distinction between systematic and random risk is important, because risk adjustment methods account only for sources of systematic variation. Research suggests that about one-fifth of the variation in annual health spending is systematic, while the rest is random.[2] If this is correct, then even the best risk adjustment method would not explain about 80 percent of the variability in health expenditures across individuals.

Available risk adjustment methods have been unable to account for much of the systematic variation. When used to predict individual annual expenditures, basic demographic adjustments (such as those used for Medicare capitation rates) explain little of the overall variation in resource use across individuals. Self-reported health status measures do slightly better. Methods that use prior claims information are among the best predictors of use, but they still account only for about one-eighth of individual variation in annual health care spending.[3]

Evidence indicates that Medicare risk plans have enjoyed favorable selection not accounted for by the program's risk adjustment method.[4] The risk adjustment method Medicare uses pays plans different amounts according to their enrollees' demographic and other characteristics (see Table 2-1). For example, the capitation rate for hospital and other facility services for an 85-year-old female eligible for both Medicare and Medicaid is twice the average capitation rate. This risk adjustment method does not account for differences in the likely need for services among beneficiaries with the same demographic characteristics.

Medicare's month-to-month disenrollment policy, intended to attract beneficiaries who otherwise would be unwilling to try a capitation arrangement, may contribute to favorable risk selection for plans. Recent evidence indicates that those who disenroll from risk plans use a disproportionate number of certain types of services after they return to the fee-for-service program.[5] This may be due to beneficiaries disenrolling from their plans to use providers or services available through fee-for-service Medicare.

Medicare may be benefiting from the rising proportion of beneficiaries in risk plans in some markets. This is because, as the risk program's share of enrollment grows, the mix of beneficiaries is more likely to reflect the general Medicare population, making risk plans less likely to experience favorable selection than they had in the past. Moreover, increases in the proportion of people enrolled in HMOs appear to influence medical practice patterns. Providers may adopt cost-conscious ways of delivering care that are encouraged by capitation even for their patients who are in fee-for-service plans.[6]

Enrollment and Plan Participation

The early years of the Medicare risk program were marked by declining plan participation and gradual growth in beneficiary enrollment (see Table 2-2). However, the number of risk contracts and program enrollment both rose in 1993, 1994, and 1995. More plans have joined the risk program as capitation has become more widespread in the employer insurance market. Increasingly, plans are competing for members and looking to Medicare as

Table 2-1. Selected Demographic Group Risk Adjustment Factors to the Medicare Capitated Risk Payment, 1995

	Female			
Age Group	Non-Medicaid Non-Working	Working Aged	Medicaid	Institutionalized
Part A				
65-69	0.55	0.30	0.85	1.50
70-74	0.70	0.40	1.10	1.80
75-79	0.85	0.50	1.40	2.05
80-84	1.05	0.70	1.65	2.05
85+	1.15	0.75	2.00	2.05
Part B				
65-69	0.70	0.35	1.05	1.50
70-74	0.85	0.50	1.15	1.65
75-79	0.95	0.70	1.25	1.65
80-84	0.95	0.75	1.25	1.65
85+	1.00	0.80	1.25	1.65

SOURCE: Health Care Financing Administration, Office of the Actuary.

32

Table 2-2. Medicare Risk Program Participation, 1990-1996

Year	Enrollees: Number (In Millions)	Enrollees: As a Percentage of Total Medicare Enrollment	Contracts
1990	1.2	3.5%	95
1991	1.3	3.7	85
1992	1.5	4.2	83
1993	1.7	4.7	90
1994	2.1	5.7	109
1995	2.9	7.7	154
1996	—	—	189

Note: Enrollment data are as of September each year; contract data are as of January each year.

SOURCE: Health Care Financing Administration, Office of the Actuary and Office of Managed Care.

a potential source. Further, some plans are entering markets that formerly had no Medicare risk options, thereby expanding beneficiaries' choices. Entrants to competitive Medicare markets are stimulating existing plans' marketing activities, which may attract additional enrollees.

Medicare is taking steps to expand the risk program even further. One is to distribute information about risk plans to beneficiaries. Except in some regions, Medicare has left information dissemination largely to plans, making it difficult for beneficiaries to compare their choices. The Health Care Financing Administration (HCFA), which administers the risk program, is planning a new initiative to produce comparative information on premiums and benefits offered by participating risk plans in 1996. In addition, Medicare's exclusive reliance on HMOs with a limited provider network may be preventing it from realizing the program's full potential. In 1995, HCFA developed guidelines for out-of-network provider options for Medicare contracting HMOs. The agency is also conducting a demonstration program to determine whether beneficiaries are interested in joining other types of plans.

Plan Accountability

In return for its payments, a plan provides a defined set of services to its members. This obligation is particularly important under capitation arrangements. Under fee-for-service payment methods, plans and providers usually profit when the payment and volume of services increase. Capitation, by contrast, creates incentives to limit the number and the cost of health care services. Plans that keep costs below their capitation payments retain the balance—and thus gain from lowering costs. But such an incentive creates concerns about how costs are constrained. Ideally, plans and providers will reduce services of marginal value by developing more effective and efficient modes of care. On the other hand, they could lower costs by failing to provide needed services.

Although Medicare has the authority to hold risk plans to their contractual obligations, it collects limited information on the care plans provide.[7] Most of the data relate to plans' ability to meet an array of contractual requirements and comply with policies and procedures. HCFA has been trying to update its evaluations of plans by participating in several private sector initiatives to develop plan performance measures. These include both the Foundation for Accountability and the National Committee for Quality Assurance's exploration of cost, quality, and access measures appropriate for Medicare risk enrollees.

PROPOSED CHANGES TO MEDICARE CAPITATION ARRANGEMENTS

The Congress and the Administration have developed proposals to reform the existing risk program. Both would change the payment rate setting method to generate more savings from the risk program and increase the range of plans available to beneficiaries. The Congress's proposed changes would greatly expand the types of plans that could accept Medicare capitation payments and would break the link between the capitation rates and fee-for-service spending.

The Congressional Proposal: MedicarePlus

The Congress has proposed replacing the risk program with an expanded capitation program, called MedicarePlus. This program would permit Medicare beneficiaries to select from a wider choice of health plans. Under MedicarePlus, the method for setting the capitation rate would be changed to reduce rates in areas where Medicare fee-for-service spending has been high and to increase rates where it has been low. Growth in the rates would no longer be tied to increases in spending under traditional fee-for-service Medicare.

33

Changes to the payment method are designed to allow MedicarePlus to produce savings for Medicare. Whether or not the savings materialize, however, total program spending (for both MedicarePlus and the traditional fee-for-service program) would be limited by the combination of the legislated rates and a budgeting tool called the "failsafe mechanism."[1] (See Chapter 1.) This mechanism would automatically impose additional payment reductions on providers in traditional Medicare if spending exceeded preset expenditure targets.

Plan Choices—MedicarePlus would allow a broad array of managed care plans, including preferred provider organizations (PPOs), to participate. Fee-for-service plans also would be permitted. New options not widely available in the private market, such as medical savings accounts (MSAs) and provider-sponsored networks, also could be offered to beneficiaries. All MedicarePlus plans would receive a capitation payment from Medicare.

This menu of plans would give Medicare beneficiaries more choices. Conceivably, they could choose any type of plan that met Medicare standards and that was open for enrollment in their area. Plans would be granted flexibility in product design and benefits, beyond Medicare-covered services. States would have a prominent role in monitoring product offerings under MedicarePlus.

Fee-for-Service Option—The Congress's proposal defines MedicarePlus fee-for-service plans as insurers that "reimburse hospitals, physicians, and other providers on the basis of a privately determined fee schedule or other basis."[8] These plans would be required to pay non-contracting providers at least as much as the providers were paid in the traditional fee-for-service Medicare program. If these providers' fees were higher than the plan's payments, they would be permitted to bill Medicare beneficiaries for the difference.

Medical Savings Accounts—One choice in the congressional proposal would combine a high deductible insurance policy with a medical savings account. The MSA is a designated account to which Medicare would make an annual contribution and from which the beneficiary could draw for medical expenses. A beneficiary selecting this option would purchase a high deductible health insurance plan and receive the rest of his or her Medicare capitation (less the price of the plan's premium) in the form of a cash contribution to the MSA. High deductible plans would be required to cover all Medicare-approved expenses after the enrollee met a deductible of up to $6,000.[9] Beneficiaries could use MSA funds for any qualified medical expenses. They could also withdraw money from the account for non-medical spending (albeit with a tax penalty). Medicare beneficiaries in high deductible plans would not be permitted to buy insurance (other than long-term care insurance) to cover the cost of deductible expenses or additional services they might need.

MSAs are intended to make consumers bear more of the consequences of their choices to use health care services, while still offering catastrophic protection from the risk of a major expense. Supporters of MSAs believe they can lower the use of health services. They argue that if consumers had to pay the full price of medical care up to the deductible, they would make better decisions about the use of health care than they do when insurance masks the cost. A decline in the demand for medical services would drive down overall health expenditures directly by reducing utilization. Further, providers might respond to their patients' price sensitivity by constraining their prices. Since Medicare would make a fixed payment, however, any savings resulting from using fewer services—at least in the short run—would go to the beneficiary and the high deductible plan, rather than to the program.

Beneficiaries electing this option would be strongly motivated to control their medical service use if they thought of the balance in their account as savings. If they took this view, spending from the account would seem the same as other spending. On the other hand, they might regard MSA funds as an account for health services.[10] This would tend to reduce beneficiaries' restraint in purchasing health services.[11] In any case, the lack of experience with this option makes it hard to predict how Medicare beneficiaries with MSAs would behave.

Most beneficiaries who selected the Medicare MSA option probably would benefit financially. Beneficiaries who did not anticipate using health services would be attracted to this option, because they would expect to keep unspent MSA funds.

Without adequate risk adjustment to the capitation rate, healthy beneficiaries choosing the MSA option could receive more funds from Medicare than the program would have spent had they remained in the traditional fee-for-service program. If this happened, Medicare expenditures would rise, increasing the likelihood that the failsafe mechanism would be triggered. Favorable selection into the MedicarePlus MSA option could thus result in reduced payments to traditional fee-for-service Medicare providers. Favorable selection may be exacerbated by beneficiaries' ability to opt out of this option every year. Because they can anticipate at least some of their medical expenses and can delay some treatments, beneficiaries could change to more comprehensive coverage when they needed it.

Not all beneficiaries selecting the high deductible/MSA option would be able to profit from their choice. They would risk significant out-of-pocket costs in the event of high spending. The financial risks would be especially great for enrollees in high deductible plans designed as fee-for-service arrangements, because providers' charges would not be limited to the amounts established by the traditional Medicare fee-for-service program. Thus, there would be only partial stop-loss protection for the beneficiary in these types of plans.

Providers might find they would incur more bad debt from treating patients with medical savings accounts, since they would need to collect payments directly from their patients. This would be particularly likely if beneficiaries depleted their MSA funds before reaching their deductible. In this situation, beneficiaries would be required to use their own money to pay for care.

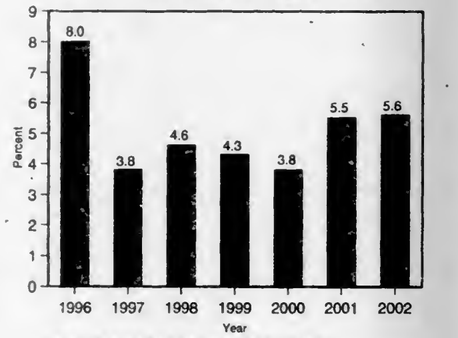
Benefits—Under the MedicarePlus program, participating plans would provide, at a minimum, services covered under traditional Medicare. These services could be furnished through a managed care provider network, and plans could employ utilization management to determine medical necessity and appropriateness.

Plans would still be allowed to return the difference between their expected payments and costs to beneficiaries in the form of additional benefits. The Congress's proposal also would allow plans to rebate this difference to beneficiaries in cash. As in the current risk program, these additional benefits could induce beneficiaries to enroll in MedicarePlus plans. Plans thus would be able to compete with one another based on benefit package and provider network, as well as on price and beneficiaries' perception of plan quality.

As they do now, plans could charge beneficiaries premiums for supplemental benefits and for the actuarial value of whatever cost sharing beneficiaries would have incurred under the fee-for-service program. MedicarePlus plans would also be permitted to charge beneficiaries for the costs of covered Medicare services when the plans' estimated costs for these exceeded their MedicarePlus capitation payments.[12]

Payments to MedicarePlus Plans—The payment system under MedicarePlus is designed to allow savings to accrue to the Medicare program because the per person payment rates would be updated by legislated rates of increase (see Figure 2-1). These rates are below those currently projected for the Medicare program. As long as MedicarePlus enrollees were as likely to use services as other beneficiaries (or the risk adjustment method fully reflected differences in risk), the MedicarePlus program would reduce Medicare expenditures (see Table 2-3). Under these circumstances, savings from this component of Medicare would be driven by the number of beneficiaries

Figure 2-1. MedicarePlus National Average Growth Percentages, 1996-2002



Note: For all subsequent years the update is 5.0 percent.

SOURCE: H.R. 2491.

Table 2-3. Estimated MedicarePlus Enrollment, Savings, and Costs, 1996-2002

Year	MedicarePlus Enrollment (In Millions)	Percentage of Total Medicare Enrollment	Savings From Non-MSA Plans[a] (In Billions)	High Deductible/ MSA Costs[b] (In Billions)	Total Savings (In Billions)
1996	3.0	8.0%	$ -0.1	$0.0	$ -0.1
1997	3.8	10.0	-1.0	0.5	-0.5
1998	6.8	17.5	-1.8	0.6	-1.2
1999	7.7	19.5	-3.3	0.7	-2.6
2000	8.5	21.3	-5.8	0.8	-5.0
2001	9.3	23.2	-8.2	0.9	-7.3
2002	10.3	25.3	-11.3	1.1	-10.2
1996-2002	—	—	-31.4	4.6	-26.9

Note: The Congressional Budget Office constructed the capitation rates used in these estimates with Part A enrollment only. All capitation rates are expressed in calendar years. Numbers may not sum to total due to rounding. MSA = medical savings account.

[a] Reflects savings from beneficiaries enrolled in non-MSA arrangements, including risk contractors.

[b] The capitation rates and costs for new enrollees in high deductible/MSA plans reflect assumptions that these enrollees would be relatively young and would receive lower age-adjusted payments.

SOURCE: Congressional Budget Office.

who joined MedicarePlus plans. But if MedicarePlus experienced favorable selection (and risk adjustment did not correct for this), actual savings would be smaller than anticipated. Estimated savings from the MedicarePlus program would be somewhat reduced by anticipated costs due to enrollees in MedicarePlus high deductible/MSA arrangements. Regardless of the MedicarePlus enrollment or risk selection experience, however, overall Medicare spending targets would be achieved because of the failsafe budget mechanism.

Capitation rates under MedicarePlus would vary less across geographic areas than do rates in the current risk program. County rates would be blended with national ones, going up or down depending on the area's payment experience. Payment rate floors would further raise payments in areas where costs were especially low. Both the legislated updates and the blending would, in effect, uncouple the capitation amount from spending in traditional Medicare.

The MedicarePlus base payment rate would be the 1995 payment rates for risk plans in the existing program. Thus, the base rates would incorporate the geographic variation in service use patterns and health care prices as reflected in the 1995 rates. Each year, the Secretary of Health and Human Services would update these county-specific base rates using the legislated update factor for that year. Then, the Secretary would calculate the national rate, which would be the average of all updated county rates weighted by the proportion of Medicare beneficiaries in each county.

The capitation rate for each county would be a blend of its own and the national rate. In 1996, 90 percent of payment would be the county rate. The national rate, adjusted for input price levels in that county, would account for the other 10 percent. Beginning in 1998, the blend proportion would be changed by 5 percentage points each year until the national rate made up 30 percent of the total. Finally, each county's blended rate would be compared with two payment rate floors. In 1996, each county's payment rate would be the highest of its blended rate, $300, or 102 percent of the previous year's rate.

Blending the county with the national rate would reduce payments in areas with higher fee-for-service utilization and payments and boost payment rates in areas where use of services is lower. Plans could pass these gains to beneficiaries by providing additional benefits or cash rebates, or could retain them internally. Such flexibility could translate into increased plan participation and higher enrollment in areas where service use is lower. This payment method also would have the advantage of limiting the volatility of the rates, because the local and national components of the blend would be updated by a fixed national rate of increase specified in the law. Increases in payment rates in some areas,

however, would result in higher outlays under the MedicarePlus program than would be the case under the current payment system.

Risk Adjustment—The congressional proposal does not require the Secretary to modify Medicare's existing risk adjustment methodology, although the Secretary would have the authority to do so. Medicare's inadequate risk adjustment method would fail to account for risk selection differences among MedicarePlus plans. Nor would it fully reflect variation in use between those who enrolled in MedicarePlus and those who did not.

The limitations of the current risk adjustment method also have implications for spending in the traditional fee-for-service program. Suppose that a disproportionate number of healthier beneficiares joined MedicarePlus, leaving the sicker and frailer in traditional Medicare. Then, fee-for-service spending per beneficiary would be higher, increasing any payment reductions in traditional Medicare required by the failsafe mechanism.

Enrollment and Disenrollment—MedicarePlus would discontinue month-to-month enrollment and disenrollment after a transition period. For each county, this period would start when the first plan was available for enrollment and end in October 1997. After this date, beneficiaries choosing to enroll in MedicarePlus would be locked into their plan for a year. They would still be able to drop out of a plan within 90 days of initial enrollment, or if they moved out of the plan's service area, or if the plan were found guilty of misconduct. Annual enrollment periods with a one-year lock-in provision could reduce favorable risk selection in MedicarePlus plans, increasing total savings and lowering the likelihood of payment reductions under the failsafe mechanism.

Beneficiaries generally would select MedicarePlus plans during annual open enrollment periods. The Congress's proposal would require the Secretary to conduct a coordinated information dissemination campaign before each open enrollment period. This could spur enrollment as beneficiaries learned about the MedicarePlus choices. On the other hand, eliminating the monthly disenrollment option might discourage reluctant beneficiaries from trying a MedicarePlus plan.

Accountability—The congressional proposal would strengthen current reporting standards and improve plan accountability by adding data reporting requirements similar to those that private purchasers impose. Beneficiaries would receive better information to compare MedicarePlus plans with each other and with the traditional program. Plans would report more specific information on factors that affect quality. An electronic data set would be established to provide uniform information on all participating plans. Many of the proposed requirements already exist in regulation. The proposal would strengthen these standards by putting them in statutory language, and would require more specific information to improve health plan accountability.

The Administration's Proposal

The President also has proposed expanding the risk program, but the changes would be less comprehensive than those the Congress has envisioned under MedicarePlus.[13] Beneficiaries would be able to enroll in qualified PPOs and provider-sponsored organizations as well as HMOs. Most enrollees would be able to join one of these plans only during annual open enrollment periods. Private fee-for-service plans and high deductible plans combined with MSAs would not be among the available options. As an alternative to the full capitation payment, the Secretary would have the authority to pay plans using a partial capitation approach.

As in the existing risk program, participating plans would be required to cover, at a minimum, Medicare-covered services. Plans would have to demonstrate that the benefits they were providing, together with the premiums charged to enrollees, were at least actuarially equivalent to the benefits in the traditional Medicare program. Additional benefits offered by plans would have to conform to one of the standardized benefit packages the Secretary would design. Standardization would help beneficiaries evaluate price and benefit differences among plans.

The Administration's proposal addresses some shortcomings of the capitation rates in the current Medicare risk program. The proposal would limit variation in Part B payment rates (which cover physician services, medical supplies, and other outpatient treatment) across counties by raising those

that are low and capping those that have been inflated by high service use rates in the fee-for-service program. The annual growth in the rates, however, would continue to be linked to that in the fee-for-service program.

Other modifications would make the capitation rates more reflective of actual plan costs. Because fee-for-service claims are used to calculate Medicare's capitation rates, the rates include hospital payments for graduate medical education and for treating a disproportionate share of low-income patients. Plans that receive capitation payments may not incur such costs. The proposal would reduce capitation amounts to reflect these hospital payments, and Medicare would retain 25 percent of the amount saved. The rest would be distributed to both Medicare risk plans that contracted with academic medical centers and the academic medical centers themselves. This change in methodology would reduce the variation in the rates, since areas where beneficiaries in fee-for-service Medicare use teaching and disproportionate share hospitals generally have higher capitation rates.

A partial capitation approach would also be introduced. Plans would be paid using fee-for-service methods, but the amounts would be lowered 5 percent on each claim. At the end of the year, plans' per person payments would be compared with the capitation rate. Plans that had kept their spending below the targets would be rewarded with additional payments; those that had exceeded the targets would be required to return some of the excess to Medicare.

In the Administration's proposal, beneficiaries could enroll in plans under three circumstances only: during an annual open enrollment period, when they first became eligible for Medicare coverage, or when their plan opted out of Medicare. Beneficiaries could continue to disenroll from plans on a monthly basis. The Secretary would be directed to distribute comparative plan information to beneficiaries.

CONCLUSIONS AND RECOMMENDATIONS

Both the Congress and the Administration have proposed changes to Medicare's capitation program to address some of its shortcomings. The Congress would go further in expanding beneficiary choices and modifying the payment method. In addition, it would create a link between the capitation program savings and payment rates in Medicare's traditional fee-for-service program through the failsafe budget mechanism. This chapter concludes with ProPAC's recommendations for improving Medicare's risk program as well as the Congress's and the Administration's proposals to change it.

Recommendation 3: Expanding Medicare's Capitation Program

The Commission supports reforming the Medicare capitation program to control spending while expanding beneficiary choice.

The Congress and the President have proposed ways to expand the role of capitation under Medicare. Capitation contains incentives for plans to control the cost and volume of the services they furnish. Further, such methods limit Medicare outlays to the per capita amounts.

Medicare beneficiaries should have a wider range of health plan options. Under the current program, beneficiary choice is largely limited to the traditional fee-for-service program and, where available, an HMO option. Additional alternatives would let Medicare beneficiaries choose the type of plan that best meets their needs and would permit new beneficiaries enrolled in a particular type of plan before retirement to stay in that arrangement. In addition, more alternatives could increase plan competition for Medicare beneficiaries on the basis of additional benefits and quality.

Recommendation 4: Setting and Updating the Capitation Rates

Geographic variation in the capitation rates and the volatility of the rates from year to year should be reduced. The Secretary should develop and test alternative payment methods that would allow the payment rates to reflect changes in local market conditions.

Medicare sets a capitation rate for each county based on its historical spending for resident beneficiaries in the traditional Medicare fee-for-service

program. The direct linkage to fee-for-service spending patterns in narrowly defined payment areas has led to substantial variability in the payment rates among counties and excessive annual changes in the rates for many areas. Private plans have been discouraged from participating in the risk program in areas with low capitation rates, as well as in those that have experienced high rate volatility. At the same time, risk plans located in counties with high capitation rates often have been paid substantially more than their actual costs of providing basic program benefits to Medicare beneficiaries. Further, since changes in rates and in local fee-for-service spending are linked, the Medicare risk program generally has not achieved the cost savings attained by private health plans.

The Congress proposes to reduce the geographic variability of the rates. It would do so by blending the local historical fee-for-service spending experience with the input price-adjusted national average and by setting payment rate floors. The annual volatility of the payment rates would be lowered by updating them with legislated growth factors. The President's proposal would decrease variability by removing special payments from the rates and by setting ceilings and floors on a portion of the payment rates. The President's proposal would have only a limited impact on volatility in the rates over time.

Neither proposal would allow the rates to vary with changes in the costs faced by plans. ProPAC believes alternative payment methods should be developed and tested that would better reflect the evolution and impact of market forces in each area. To accomplish this, information would have to be collected on the cost performance of individual plans to enhance the Secretary's understanding of markets and lay the foundation for implementing alternative payment methods, such as competitive bidding. The Commission wishes to emphasize that these data are not intended to support restricting plan profits or other regulatory activities.

Recommendation 5: Improving Risk Adjustment Methods

> **The risk adjustment methods used to set Medicare capitation payments should better reflect variation in the likely use of services. Even as research on the development of new methods continues, the Secretary should implement interim improvements as soon as possible.**

Effective risk adjustment of payments to health plans participating in the Medicare program is crucial to prevent rewarding or penalizing plans unwarrantably. It is equally essential to ensure that the financial burden of caring for Medicare beneficiaries is allocated fairly between the capitation program and the traditional fee-for-service program. These issues will become even more important if the risk program is modified to expand beneficiaries' choices among plans and plan participation.

The current knowledge base is not adequate to support highly effective risk adjustment methods. Moreover, health risks and the variations in propensity to use health services may never be sufficiently understood to adjust fully for differences in expected spending among individuals. Nevertheless, the methods used in the Medicare risk program could be improved. For example, information about the presence of specific chronic conditions, such as certain types of cancer or heart disease, enhances predictions about future health care spending levels for individuals. The Secretary should implement marginal improvements rather than wait for potentially better methods that may not be developed for many years.

While continuing to support further research on risk adjustment methods, the Secretary should also evaluate other features of capitation program design that may contribute to the risk selection problem. Enrollment and disenrollment policies, for example, may further concentrate particular groups of beneficiaries in the capitation program or in certain plans. Other policies regarding reinsurance or partial capitation may protect plans from adverse selection. Given the likelihood of continuing limitations in risk adjustment methods, these kinds of policies may be especially important as a source of auxiliary protection against the impact of risk selection.

Recommendation 6: Medical Savings Accounts

> **The Congress's high deductible/MSA option would provide an additional choice for Medicare enrollees. ProPAC is concerned, however, that the current Medicare risk adjustment method is not sufficient to protect the program from adverse selection and resulting excess spending. The likelihood that rates would better reflect risk would be enhanced if Medicare enrollees were required to remain in the MSA option at least for several years.**

Medicare payments for beneficiaries choosing the high deductible/MSA option proposed by the Congress could be higher than the costs that would have been incurred if those beneficiaries had remained in the traditional program. This is particularly likely if risk adjustment methods are not improved or if longer participation requirements are not imposed. In fact, the Congressional Budget Office estimates that beneficiaries in this type of arrangement would cost the program $4.6 billion between 1996 and 2002. These costs could trigger the failsafe mechanism in traditional Medicare.

The Secretary should move quickly to improve the risk adjustment method. In addition, further research on the high deductible/MSA option is needed to assess the effects of various plan designs and to improve this option over time. Issues requiring a closer look include the amount deposited in the MSA, the length of time before disenrollment is allowed, and the features of the high deductible plan.

Recommendation 7: The MedicarePlus Fee-for-Service Option

> **Enrollees choosing the fee-for-service option under the proposed MedicarePlus program could be responsible for substantially higher fees than what their plans would pay. The Secretary should monitor the impact of this option on beneficiary liability and on possible reductions in physician and other provider participation in traditional Medicare.**

Current policies limit the amount that most providers can bill Medicare beneficiaries above Medicare's payment. ProPAC is concerned that beneficiaries who choose the MedicarePlus fee-for-service option will be subjected to unanticipated out-of-pocket liabilities. The Commission also is concerned about provider behavior resulting from these arrangements: Some providers may decide not to see those with traditional Medicare coverage by limiting their practice to patients who can pay high charges. This phenomenon could limit access of Medicare beneficiaries—particularly those with low incomes.

Recommendation 8: Information for Beneficiary Health Plan Choices

> **Medicare should make available to beneficiaries information about the performance of plans and local providers. The Secretary should identify the information beneficiaries need to make appropriate choices and develop innovative ways to improve access to it.**

The risk contracting program distributes only limited information to beneficiaries about plans. Soon, however, HCFA will expand the data it distributes to include plans' benefits and premiums. The Secretary should continue efforts to identify the information beneficiaries need to make informed health plan choices and the most appropriate format for it. This is even more critical as health plan choices are expanded for Medicare beneficiaries. The Secretary should explore initiatives that would, for example, measure the satisfaction of beneficiaries who used services, describe total benefits available in an area (including those covered under insurance policies offered as supplements to Medicare), and document performance of individual providers within a plan.

As the number of choices under Medicare increases either through the current program or expansions, private entities likely will begin distributing information about these choices to beneficiaries. Although this is appropriate, Medicare should not abandon its responsibility to ensure that beneficiaries receive unbiased, comparable, and reliable data.

Recommendation 9: Health Plan Accountability

> **Medicare must hold health plans accountable for the appropriate use of Medicare funds. In addition, standards must be developed and enforced to ensure that Medicare beneficiaries will receive services of appropriate quality.**

Under capitation, a health plan arranges with providers for coverage of services. Health plans have an incentive to limit the types and number of services delivered to each member when they receive a capitation payment. As a purchaser, therefore, Medicare needs to be particularly vigilant in ensuring that plans meet their contractual obligations to provide appropriate care.

The Commission recognizes that HCFA is working with the private sector to develop measures of health plan performance. These relate to patient satisfaction, plans' financial stability, and other factors. Efforts to date have shown promise, but they still have not succeeded in providing definitive information on service use or health outcomes. Ideally, Medicare should be able to evaluate plan performance through risk-adjusted outcomes measures. Additional resources most likely will be necessary to implement an evaluation program that incorporates these measures.

Notes to Chapter 2

1. Prospective Payment Assessment Commission and Physician Payment Review Commission, *Joint Report to the Congress on Medicare Managed Care* (Washington, DC: ProPAC and PPRC, 1995).

2. Joseph Newhouse and others, "Adjusting Capitation Rates Using Objective Health Measures and Prior Utilization," *Health Care Financing Review* 10(3): 41-54, Spring 1989.

3. Several studies have examined claims-based risk adjustment systems, which include ambulatory care groups (ACGs) and diagnostic cost groups (DCGs). ACGs classify claims based on diagnoses in ambulatory settings, or all settings combined, as well as age and other factors. DCGs classify by diagnosis and other variables from previous hospital inpatient stays.

4. Randall Brown and others, *The Medicare Risk Program for HMOs—Final Summary Report on Findings from the Evaluation* (Princeton, NJ: Mathematica Policy Research, February 18, 1993).

5. Physician Payment Review Commission, "Biased Selection and Medicare HMOs: Analysis of the 1989-1994 Experience," unpublished paper, December 1995.

6. Prospective Payment Assessment Commission, "Relationship Between AAPCC Payments and Medicare Risk Plan Costs," unpublished paper, April 1995.

7. General Accounting Office, *Medicare: Increased HMO Oversight Could Improve Quality and Access to Care* (Washington, DC: GAO, August 1995).

8. H.R. 2491, Title 8, Subtitle A, Section 8001.

9. Costs for Medicare-covered services would have to count toward the deductible. Plans would have the discretion to count supplemental services toward the deductible or cover them once the deductible was reached.

10. American Academy of Actuaries, *Medical Savings Accounts: Cost Implications and Design Issues*, Public Policy Monograph #1 (Washington, DC: American Academy of Actuaries, May 1995).

11. Joseph White, "Medical Savings Accounts: Fact vs. Fiction" (Washington, DC: Brookings Institution Occasional Papers).

12. This policy reflects a clarification to the language in H.R. 2491, which was ambiguous on this issue.

13. This description reflects the proposal released in December 1995. The President subsequently may have changed this proposal.

Chapter 3

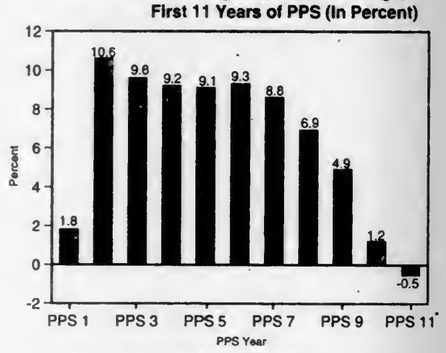
Acute Care Hospital Payments

Although both the Congress and the President propose to expand Medicare's use of capitation, most beneficiaries will likely remain in the traditional fee-for-service program for the foreseeable future. Based on this expectation, most of the proposed Medicare savings under either plan would be obtained through changes to the fee-for-service program. The majority of these savings would come from payments to acute care hospitals, including those paid under the prospective payment system (PPS) and those excluded from PPS.[1]

Since its inception, the Prospective Payment Assessment Commission (ProPAC) has provided the Congress with recommendations on PPS payment updates, the structure of other PPS payment components, and the cost limits for PPS-excluded facilities. In fulfilling this responsibility, ProPAC considers the overall level of Medicare expenditures, the equity of payments across hospitals, and the adequacy of payments for ensuring appropriate quality of care. To support its decision making, the Commission examines not only hospitals' Medicare costs, payments, and margins for inpatient services, but also total margins and other indicators that reflect the larger environment in which hospitals operate. This information is used to develop ProPAC's recommendations, to evaluate the impact of payment policy changes, and to assess the need for further policy improvements. The data from recent years indicate that the hospital industry is changing in response to the incentives of PPS and the financial pressures imposed by other payers.

After nearly a decade of annual increases averaging around 9 percent per year, the growth in PPS operating costs per discharge began to moderate in the early 1990s. In 1992, the ninth year of PPS, the increase was down to 4.9 percent, and preliminary data for 1994 show that PPS costs per discharge actually decreased for the first time (see Figure 3-1). This 0.5 percent decline is more than 3 percentage points below the growth rate of the market basket index, which reflects the prices of goods and services that hospitals purchase.

Figure 3-1. Annual Change in Medicare Operating Costs Per Discharge, First 11 Years of PPS (In Percent)



* Based on preliminary data and subject to revision

SOURCE: ProPAC analysis of Medicare Cost Report data from the Health Care Financing Administration.

The reduction in per unit cost growth in recent years has been much greater for inpatient care than for other hospital services like outpatient and skilled nursing care, due primarily to declines in length of stay. Moreover, the drop in length of stay has been steeper for aged patients (who make up the vast majority of the Medicare population) than for the non-aged—18 percent compared to 13 percent since 1989. The rapid fall of Medicare length of stay may partially reflect a trend toward discharging some patients to post-acute settings earlier in the course of their treatment, representing a change in the hospital product. This has led to concern about how Medicare pays for patients who are discharged from PPS hospitals to inpatient post-acute care providers.

The substantial drop in hospital cost growth commonly is attributed to payers' resistance to continuing escalation in their payments. For a number of years, payment pressure was applied primarily by

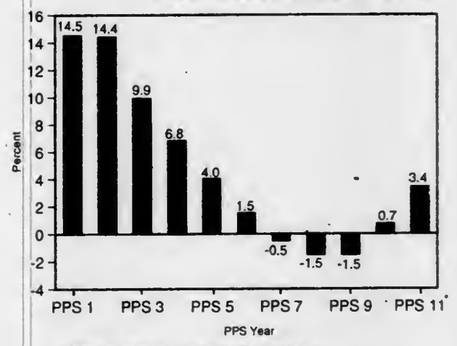
46

Medicare and to some extent Medicaid. From the second through the eighth PPS years, the annual increase in Medicare payments per case was less than the corresponding per case cost increase, which resulted in steadily declining PPS margins (see Figure 3-2).[2]

During this period, hospitals generally were able to obtain the revenue they needed to cover additional losses from treating Medicare patients by cost shifting to private insurers.[3] This was accomplished by obtaining payment increases from private payers that exceeded the corresponding cost increases. As a result, the average payment to cost ratio for private payers went from 116 percent in 1986 to 131 percent in 1992.[4] Primarily because of cost shifting, hospitals were able to maintain fairly stable total margins, which reflect gains and losses from all payers as well as from non-patient care activities. Although the total margin for all community hospitals dipped by nearly a percentage point between the third and fourth years, it was back at 4.3 percent by the eighth year of PPS (see Figure 3-3).

In the early 1990s, more private insurers began to actively limit their payments to hospitals, and the combined pressure from public and private payers appears to have had a dramatic effect. In 1992, the ninth year of PPS, the Medicare per case cost and payment increases were the same. Over the next two years, despite payment increases as low as at any time since PPS began, cost increases that were even lower resulted in rising PPS margins.

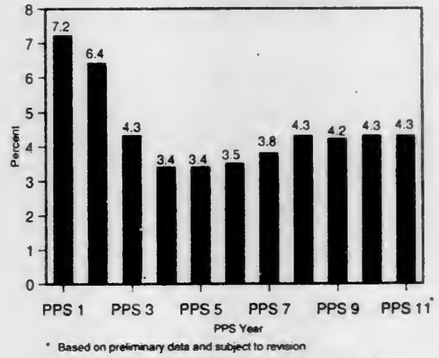
Figure 3-2. PPS Margins for All Hospitals, First 11 Years of PPS (In Percent)



* Based on preliminary data and subject to revision

SOURCE: ProPAC analysis of Medicare Cost Report data from the Health Care Financing Administration.

Figure 3-3. Total Margins for All Hospitals, First 11 Years of PPS (In Percent)



* Based on preliminary data and subject to revision

SOURCE: ProPAC analysis of Medicare Cost Report data from the Health Care Financing Administration.

During this period, Medicaid and uncompensated care losses stayed relatively stable. Consequently, hospitals were able to absorb smaller payment increases from private insurers without experiencing deterioration in overall financial status. The payment to cost ratio for private payers declined from its peak of 131 percent to 124 percent in 1994, while total margins remained virtually constant.

These trends portray a hospital industry adapting to an increasingly competitive environment. This has implications for how hospitals operate, how they interact with other types of facilities, and how accessible services are for Medicare beneficiaries and other populations. In the context of these changes, ProPAC presents the following discussion of payment issues and recommendations for improving Medicare policies.

The chapter begins by examining several payment update issues. Next, payments for teaching hospitals and facilities that treat low-income patients are addressed, followed by payments for discharges from PPS hospitals to inpatient post-acute providers. The chapter concludes with Commission recommendations in each of these areas.

All the payment components discussed are associated with provisions of the congressional or presidential proposals designed to reduce projected Medicare expenditures.

PAYMENT UPDATES

The Prospective Payment Assessment Commission is mandated by law to report to the Congress on the appropriate update to inpatient hospital payment rates under Medicare's PPS. In this section, the Commission discusses its views on updates to the PPS operating rates, PPS capital rates, and payments for PPS-excluded hospitals and units.

PPS Operating Rates

In developing and presenting its annual update recommendation for PPS operating rates, ProPAC uses a consistent framework to evaluate the likely impact of various factors that may affect hospital costs. These factors include hospital input price inflation, scientific and technological advances, productivity improvements, and changes in patient complexity. The Commission also looks at the potential impact of its decision on access and quality of care. The update recommendation traditionally has been for one year and for a specific rate of increase.

The Congress has proposed to set annual updates to PPS payment rates for fiscal years 1997 through 2002 at the market basket rate of increase minus 2.0 percentage points. By contrast, the President would set these increases at market basket minus 1.0 percentage points in fiscal years 1997 through 2000, and at market basket minus 1.5 percentage points in fiscal years 2001 and 2002. Recent experience suggests that actual per case payments will go up an additional percentage point each year due to changing patient acuity as measured by the case-mix index.

The Commission's update framework provides a foundation for evaluating these proposed updates. The framework begins with a forecast of hospital input price inflation in the coming year. This is based on a projection of the PPS hospital market basket index, which measures changes in the prices of a fixed basket of goods and services hospitals use as inputs to provide inpatient care. The market basket is also the basis for the annual hospital payment updates set by the Congress. The most recent forecast of the market basket is an increase of 2.9 percent in fiscal year 1997, and slightly higher growth rates in later years.

The Commission's update framework also includes two adjustments related to the market basket. The first reflects differences between ProPAC and the Health Care Financing Administration (HCFA) in the construction of the index. ProPAC believes the index should equally reflect hospital industry wages and benefits and those in the economy as a whole. This requires giving more weight to the industry price proxies and less to general wages and benefits than HCFA does. Even so, the current forecasts for fiscal year 1997 yield the same result, 2.9 percent. If hospital wages and benefits continue to grow more slowly than compensation in the general economy—as they have recently—then future forecasts of ProPAC's market basket may be less than HCFA's.

The second adjustment is needed because the market basket forecast is subject to error. The Commission believes substantial forecast errors should be corrected when the actual market basket increase becomes available. The fiscal year 1995 payment rates were updated based on a market basket forecast of 3.6 percent. The actual increase, however, was 3.0 percent. This resulted in payment rates that were 0.6 percentage points too high, and this discrepency should be removed in this year's update calculation. For the past few years, forecast errors have resulted in overstated payment rates, requiring later downward adjustments. This trend may last for another year or so. However, because the latest long-range market basket estimates are so low, future forecast errors might require a positive adjustment, especially if there is a resurgence of inflation.

The adjustment for scientific and technological advances is a future-oriented policy target intended to provide additional funds for hospitals to adopt quality-enhancing, cost-increasing health care innovations. The Commission has included adjustments ranging from 0.3 to 1.0 percentage points in past update recommendations. The current range likely is lower because there is little evidence of significant new cost-increasing advances ready for implementation. Moreover, the cost-competitive environment this industry now faces may dampen

the adoption of new technologies as hospitals closely evaluate their relative costs and benefits. A reasonable range for the increase in operating costs due to scientific and technological advances in 1997 is 0.1 to 0.6 percentage points. There is uncertainty about the appropriateness of this range for future years, however.

The productivity adjustment, also a future-oriented policy target, is intended to give hospitals an incentive to improve productivity. ProPAC generally expects hospitals to achieve productivity gains similar to those seen in the general economy. In the past, the Commission has expected productivity growth of anywhere from 0.5 percent to 2.0 percent per year. The adjustment in the update framework is intended to share productivity savings equally between hospitals and Medicare. The productivity adjustment thus has ranged from −0.3 to −1.0 percentage points. The near future might see even greater productivity improvements, as hospitals strive to stay competitive and financially viable. ProPAC's latest estimates indicate that hospital productivity increased as much as 2.3 percent in 1994. Given this improvement, a productivity adjustment in the range of −0.7 to −1.2 percentage points would be reasonable in fiscal year 1997.

Some of the apparent productivity improvements that have been observed may be due to hospitals shifting care traditionally provided in the hospital to other settings, such as skilled nursing facilities and rehabilitation hospitals and units. This site-of-care shift results in lower per case hospital costs, but not lower PPS payments. The update should reflect this site-of-care shift, which represents a change in the hospital product.

The final component in the Commission's traditional update framework is the case-mix adjustment. Under PPS, hospital payments go up automatically with increases in the case-mix index. But the case-mix index measures both real growth in patient complexity and growth due to coding improvements that are not associated with greater patient complexity. On the other hand, the index does not capture case-complexity changes within diagnosis-related groups (DRGs). Payment should reflect only real changes in patient complexity, in ProPAC's view. The case-mix adjustment in the update framework allows payments to reflect both real across-DRG case-mix change and real within-DRG case-complexity change.

During the first few years of PPS, the national average case-mix index went up substantially, both because hospitals were coding more accurately and because patient complexity was increasing. This growth resulted in the need for rather large case-mix adjustments in the Commission's update framework, ranging from −0.7 to −1.0 percentage points. More recently, though, growth in the case-mix index has slowed, as hospitals' ability to improve their coding has diminished. This has led to smaller adjustments for case-mix change in the update framework over the past few years, ranging from −0.2 to 0.0 percentage points. The net effect of the case-mix adjustment on future updates is likely to remain small unless the DRGs are substantially revised.

Based on ProPAC's update framework, a payment update between market basket minus 2.0 and market basket minus 0.7 percentage points would be appropriate to compensate hospitals for expected cost growth for fiscal year 1997 (see Table 3-1). Moreover, substantial changes in health care financing and delivery in recent years should also be considered in setting an appropriate update. Hospitals face a more competitive environment as they vie for managed care contracts and patients. Further, private payers increasingly have resisted cost shifting, forcing hospitals to contain their costs to avoid deterioration in total margins. They have responded by holding their per case cost growth below the market basket increase. As a result, the aggregate PPS margin has increased and is now well above zero.

As a prudent purchaser, Medicare should respond to these changes by holding its price increases down and thereby sharing in the apparent productivity improvements hospitals are achieving. ProPAC's examination of the available data indicates Medicare should be able to keep its per case payment increase for PPS hospitals down to the market basket increase minus 2.0 percentage points for the next year or two without undue effects on the industry. After years of cost growth well above inflation, there should be substantial room for hospitals and the health care industry to generate lower rates of cost growth.

The Congress, however, proposes updates of market basket minus 2.0 percentage points for fiscal years 1997 through 2002. Maintaining such

Table 3-1. Update Framework for PPS Hospital Operating Payments, Fiscal Year 1997

Components of the update	
Fiscal year 1997 HCFA PPS market basket forecast	MB[a]
Adjustment for difference between HCFA and ProPAC market baskets	-0.1 to 0.0
Correction for fiscal year 1995 forecast error	-0.6
Allowance for scientific and technological advances	0.1 to 0.6
Adjustment for productivity	-1.2 to -0.7
Adjustments for case-mix change (fiscal year 1996)	
Total DRG case-mix index change	-1.0 to -0.9
Real across-DRG case-mix change	0.8 to 0.9
Within-DRG case-complexity change	0.0 to 0.2
Net adjustment for case-mix change	-0.2 to 0.0[b]
Total PPS operating update	MB -2.0 to MB -0.7

Note: MB = market basket.

[a] The most recent market basket forecast should be used to set the PPS update, which for fiscal year 1997 is 2.9 percent. This market basket forecast was provided by the Health Care Financing Administration, Office of the Actuary, December 1995.

[b] The range for the net adjustment for case-mix change does not reflect the sum of the three case-mix change components, but rather was developed in consideration of those values.

updates throughout this period could have a severe impact on hospitals. The required restraint on cost growth may not be feasible or desirable. Low updates over an extended period could affect hospitals' financial health and compromise access and quality of care. They also could impede the diffusion of quality-enhancing technological advances.

PPS Capital Payment Rates

Since fiscal year 1992, Medicare has paid for its share of hospital capital costs, which consist primarily of interest and depreciation, using prospective per case rates. During a 10-year transition period ending in 2001, payments are based on a blend of hospital-specific rates and a single Federal rate.

Initially, the base Federal payment rate was set equal to the 1989 national average Medicare-allowable capital cost per discharge updated to 1992. Similarly, each facility's hospital-specific payment rate was its 1989 cost per discharge updated to 1992. From 1992 through 1995, HCFA updated base payment rates using a moving average of capital cost increases in previous years. During this period, however, the Congress required HCFA to adjust the payment rates in each year so that anticipated aggregate capital payments would equal 90 percent of anticipated aggregate costs. This budget neutrality requirement meant that the effective payment rate was below the updated base payment rate in each year, with a growing discrepancy between the two. The expiration of budget neutrality at the end of September 1995 resulted in a 20.6 percent increase in the Federal capital payment rate for fiscal year 1996.

The congressional proposal would not alter the system for updating capital payment rates. However, it would continue the budget neutrality requirement through 2002 and lower payments to 85 percent of anticipated costs in each year. Thus, year-to-year increases in the effective capital payment rate would continue to be tied to changes in anticipated capital costs. Both the President and the Congress would reduce the Federal rate by 7.47 percent and the hospital-specific rates by 8.27 percent. These changes reflect information from hospitals' Medicare Cost Reports indicating that the 1992 base rates were overstated because the projection for cost growth between 1989 and 1992 was inaccurate.

ProPAC has recommended an alternative approach. An update framework, such as that developed by the Commission, would be applied to an appropriate base payment rate to determine the rate for the coming year. This would be similar to the method used to update PPS operating payment

rates and would finally break the link between aggregate capital costs and payments.

There are several ways to determine an appropriate base capital payment rate. For example, the 1995 effective rates—the prevailing payment amounts at that time—could be used as a base for future years. Hospitals have received these rates as capital reimbursement for the care of Medicare beneficiaries and appear not to have been adversely affected. Another method would be to rebase the 1992 capital payment rates as HCFA has suggested and update them to the current year using an analytic framework.

The ProPAC capital update framework is similar to the operating update framework described earlier. It includes factors for capital asset price changes (the capital market basket), forecast error correction, scientific and technological advances, productivity, and case-mix change. Some of these components have different values when applied to capital. ProPAC's framework also includes a discretionary financing policy adjustment for use in extended periods of unusually high or low interest rates. The application of such an update to an appropriate base payment rate would be part of a prospective payment system that provides incentives to hold costs down while recognizing the factors that determine capital cost increases for efficient hospitals.

Payments to PPS-Excluded Hospitals and Distinct-Part Units

Five types of hospitals (rehabilitation, psychiatric, long-term care, children's, and cancer) and two types of distinct-part units in general hospitals (rehabilitation and psychiatric) are exempt from PPS. These providers are excluded primarily because DRGs fail to predict their resource costs accurately.

PPS-excluded hospitals and distinct-part units are subject to the payment limitations and incentives established in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). Each provider is paid on the basis of its current Medicare-allowable inpatient operating costs per discharge relative to a target amount. Each provider's target amount is its allowable costs per discharge in a base year, trended to the current year by an annual update factor. Medicare's share of allowable capital costs is paid in its entirety.

Under TEFRA, a facility with Medicare-allowable inpatient operating costs that are below its ceiling (its target amount times the number of Medicare discharges) receives its costs plus an incentive payment. This payment is equal to half the difference between its costs and ceiling or 5 percent of the ceiling, whichever is less. A facility with inpatient operating costs above its ceiling receives its ceiling plus half the difference between its ceiling and costs. Payments may not exceed 110 percent of the ceiling, however. Further, TEFRA provides an exceptions process whereby facilities may receive payment adjustments if their costs are unusually high due to extraordinary circumstances.

The update to the target amounts is set prospectively by statute. Under current law, facility-specific updates range from the forecast increase in the PPS-excluded market basket to the market basket increase minus 1.0 percentage points through fiscal year 1997. Facilities that had higher costs relative to their target amounts in fiscal year 1990 receive higher updates. In 1998 and beyond, all facilities would receive the full market basket increase.

The Congress initially excluded these hospitals and distinct-part units from PPS with the understanding that a separate prospective payment system would be applied at a later date. Such a system has not been implemented primarily because appropriate patient classification systems have not yet been developed.[5] Nevertheless, interest in revising Medicare's payment system for these facilities persists owing to widespread concern about the long-term applicability of TEFRA.[6] A major issue relates to payment disparities between new and old providers.

The use of historical costs to set target amounts systematically rewards providers that had relatively high base year costs. To the extent that these facilities restrain cost increases or lower their costs in subsequent years, they benefit by receiving incentive payments. By contrast, providers that had relatively low base year costs are penalized by having a low target amount. These facilities are less likely to benefit from incentive payments because they may be less able to realize additional efficiency gains in later years. Accordingly, the financial outcome for

the latter group becomes heavily dependent on the annual update to the target amount. The update also does not reflect certain factors that affect facility costs, such as changes in case mix or treatment patterns. Hence, target amounts are less likely to reflect the reasonable costs of providing services over time. Providers that have been subject to TEFRA longer, therefore, may be disadvantaged relative to new ones entering the market.

Recent ProPAC analyses suggest that, in aggregate, rehabilitation hospitals and distinct-part units have done well financially under TEFRA. For most other excluded facility types, though, aggregate operating payments are at or below aggregate operating costs. Further, substantial variation in the extent to which facilities' costs exceed their target amounts was found across and within all provider types.

Although aggregate Medicare payment to cost ratios generally improved for psychiatric, long-term care, and children's facilities in recent years, this was due primarily to the influx of new providers. Facilities that first received TEFRA payments after fiscal year 1989 had higher payments (as well as higher payments relative to costs) than facilities that were subject to TEFRA before 1990. Because it does not have data on exceptions payments, however, the Commission cannot draw definite conclusions about financial performance.[7] Anecdotal evidence suggests that certain facilities, particularly long-term care hospitals, receive large lump-sum exceptions payments. Therefore, reported losses are likely to be overstated, but by how much is unknown.

Both the Congress's and the President's proposals contain provisions to mitigate the payment disparities between new and old providers as well as generate savings for the Medicare program. The Congress would apply a facility-specific update to the target amount ranging from the projected increase in the PPS-excluded market basket to the market basket increase minus 2.5 percentage points for fiscal years 1996 through 2002. The reduction from the market basket projection would depend on the extent to which a facility's current costs exceed its target—the higher a facility's costs are relative to its target, the larger the update. Facilities with allowable costs substantially below the ceiling in a given year would not receive an update. These low-cost providers generally would receive the same incentive payment, however. The Congress also would reduce capital payments, which are based on each facility's Medicare-allowable costs, by 10 percent.

The Congress also proposes to apply a floor to the target amounts for rehabilitation facilities and long-term care hospitals that first received Medicare payments before October 1, 1995, and a ceiling for those that first received payments on or after that date. Further, a new base year would be assigned to certain long-term care hospitals that serve a disproportionate share of low-income patients and had costs above their targets in fiscal years 1993 and 1994.

The President proposes to update the TEFRA target amounts for all providers by the projected increase in the market basket minus 1.0 percentage points for fiscal years 1996 through 2000. In 2001 and 2002, the update would equal the market basket increase minus 1.5 percentage points. Further, facilities would receive 85 percent of their Medicare-allowable capital costs in fiscal years 1996 through 2005.

To account for the widening disparity between costs and payments for certain providers, the Administration proposes to rebase the target amounts for all PPS-excluded facilities using more recent cost report data, subject to floor and ceiling limits. The proposal also includes revisions to the basic TEFRA payment method such that only certain facilities would be eligible for exceptions adjustments. Additionally, only those providers whose costs exceed 110 percent of the target amount would receive payments greater than their target. Finally, the President would impose a moratorium on certification of new long-term care hospitals.

TEFRA modified cost-based payments to encourage providers to operate more efficiently and restrain cost increases. It is expected, therefore, that some facilities will be winners, while others will lose. But by its very design, TEFRA systematically creates an inequitable payment distribution. These inequities may be mitigated by the exceptions process, which provides additional payments to facilities when events or circumstances beyond their control significantly increase their costs. However, the potential availability of exceptions may weaken TEFRA's cost-containment incentives.

The Commission therefore believes that Medicare should move more quickly toward implementing a prospective payment system for these facilities. Such a system, in which payments are based on national or regional average costs rather than on facility-specific costs, would promote efficiency among providers. It also would recognize certain cost differences that are beyond providers' control and accommodate changes in case mix and practice patterns.

In the interim, ProPAC 's analytic framework can be used to update TEFRA target amounts. This approach is similar to the Commission's framework for PPS payment updates, but modified to reflect differences between TEFRA and PPS. Hence, the update is determined primarily by the projected increase in the PPS-excluded market basket index.

Medicare automatically shares in savings from productivity improvements under the TEFRA system, and payments are not case-mix adjusted. Consequently, adjustments for these factors are not needed to determine an appropriate update. Scientific and technological advances, while considered, were not included because they are not likely to increase costs significantly in the coming year. Therefore, the Commission's methodology results in an update for fiscal year 1997 equal to the market basket increase minus 0.6 percentage points to account for previous forecast error.

Although this framework yields an average update for all PPS-excluded providers, the Commission supports the notion of a facility-specific update as contained in current law and in the congressional proposal. By allowing for differential updates depending on the costliness of care, such an update recognizes that, in some cases, rising costs may be beyond a hospital's control.

TEACHING HOSPITALS

Medicare is the only payer that makes explicit payments for hospitals' teaching-related costs: the indirect medical education (IME) adjustment and the direct graduate medical education (GME) payment. Other payers have traditionally paid higher rates to teaching institutions for these costs. The Congress and the President propose to make several changes to Medicare's payments. The Congress also would establish a Teaching Hospital and Graduate Medical Education Trust Fund to provide additional explicit support for teaching-related costs.

Teaching hospitals incur higher costs than other facilities because of their education and research missions. Many carry the added financial burden of caring for a disproportionate share of poor or uninsured patients. Higher costs may put these facilities at a disadvantage relative to other hospitals, particularly in areas with excess inpatient capacity. Because Medicare provides additional funds to teaching and disproportionate share hospitals, the PPS margins for these facilities are much higher than those for other hospitals. Their total margins, however, are lower than average. The Commission is concerned about maintaining the financial viability of teaching hospitals because of the special role they play in the health care system.

These concerns are heightened by the changes now occuring in the health care marketplace. Teaching hospitals may have added difficulties obtaining patient volume or contracts from increasingly cost-conscious insurers and health plans. As these financial pressures grow, the Medicare program needs to ensure that its payments accurately account for the added costs teaching hospitals face. The appropriate role of other payers in supporting these social goals needs to be reassessed as well. It also is critical that funds be distributed to those facilities that make the largest contributions and have the greatest need.

The distribution of teaching-related payments can influence the number and mix of physicians across specialties. Medicare inpatient payments go up for each resident a hospital trains, which could provide incentives to substitute residents for other personnel. Further, certain specialties may be more attractive to hospitals because they can generate greater faculty practice plan revenues than others. These factors may distort the hospital market for residents and may impede movement toward an appropriate mix and number of physicians. The distribution of teaching-related funds therefore must encourage, or at least be consistent with, the right balance.

Both the Congress and the President would substantially reduce Medicare's teaching-related spending, with cumulative savings between fiscal

years 1996 and 2002 of almost $13 billion under the congressional proposal and $10 billion under the President's. The size of the Medicare teaching payment reductions would be the same under both proposals in fiscal year 2002: about $3.2 billion, according to the Congressional Budget Office. The financial effects of these reductions, along with other changes in Medicare payment, need to be monitored to make sure they do not adversely affect teaching hospitals. The Medicare payment reductions in the congressional proposal would be offset, however, by general revenue payments from the new Teaching Hospital and Graduate Medical Education Trust Fund, whose cumulative contributions would total $13.5 billion through fiscal year 2002.

Direct Graduate Medical Education Payments

When PPS was implemented, Medicare's share of the direct costs of residency training programs (salaries and benefits of residents and faculty, classroom costs, and associated overhead) was reimbursed on a reasonable cost basis. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) changed this to a hospital-specific per resident payment amount based on reported costs from the first year of PPS. This amount is updated annually by the increase in the consumer price index, although the payment amounts were frozen for non-primary care residents in fiscal years 1994 and 1995. Medicare's payment is determined by multiplying a hospital's updated per resident payment amount by the weighted count of residents and then by Medicare's share of inpatient days. Residents who have completed their initial residency period are counted as half a full-time equivalent (FTE) resident. The initial residency period is the minimum number of years required for board eligibility in a specialty or five years, whichever is less.

One issue of concern is the wide variation in the per resident payment amounts across hospitals, caused by differences in reported base year costs. This variation may be the result of differences in resident salaries, teaching physician costs, or allocated overhead expenses. These base year cost differences, however, may also reflect variation in hospital cost reporting practices. Resident counts and the use of weighting factors to pay less for certain residents is another issue. Medicare does not limit the number of residents who can be counted for payment, and there is concern that this may encourage hospitals to expand their training programs. Weighting factors are used in the current direct GME payment to discourage hospitals from training residents in subspecialties. It is unclear, though, whether the current weighting factors influence hospitals in their specialty mix decisions.

Medicare GME payments would remain unchanged under the congressional proposal, except that residents who are past their initial residency period would count only as a quarter of an FTE. In addition, the aggregate number of residents used in calculating payments would be frozen, although this would affect only hospitals that experienced an increase in residents.

The President's proposal would extend through fiscal year 2000 the freeze on per resident payment amounts for residents who are in non-primary care specialties. This proposal also would freeze, on a hospital-specific basis, both the number of non-primary care residents and the total number of residents who could be counted for payment. In addition, the Administration's proposal would allow direct GME payments to non-hospital providers for primary care residents in other settings when the hospital is not paying for the resident's salary in those sites.

Indirect Medical Education Payments

The indirect medical education adjustment is intended to compensate teaching hospitals for their higher Medicare patient care costs. These costs may be due to greater patient acuity, a broader scope of services available, more intensive treatment, and a costlier mix of staff than in other facilities. They may also be attributable to the expense of developing and improving diagnostic and therapeutic technologies or to the less efficient practice style of residents.

Since 1987, the indirect medical education adjustment to PPS operating payments has been set at 7.7 percent for every 10 percent increment of teaching intensity, as measured by the ratio of interns and residents to hospital beds. On the basis of several years of analysis, the Commission believes the technically appropriate rate is 4.5 percent. Recognizing, however, that a sharp reduction

in IME payments could seriously affect teaching institutions, ProPAC in 1995 recommended lowering the adjustment from 7.7 percent to 6.7 percent in fiscal year 1996 and making further reductions only after reviewing the financial effects of this change. This recommendation was made in the context of the payment provisions in effect at the time.

The Congress has proposed reducing the IME adjustment to 6.7 percent in fiscal year 1996. The adjustment would then continue to decline gradually each year to a final level of 5.0 percent in fiscal year 2000. In addition, the proposal would establish a medical education trust fund that would provide additional payments to teaching hospitals based on each hospital's share of Medicare IME payments over a three-year base period. Funding for this new payment would come from general revenues, thus broadening the source of payment for teaching costs.

The President's proposal would lower the IME adjustment to 7.2 percent in 1996, after which it would decline in stages to 6.0 percent in fiscal year 2001. In addition, residents who were beyond their initial residency period would be counted as half an FTE for determining IME payments, as they are for GME payments. Under the proposal, residents who work in non-hospital settings also would be included in the hospital's IME resident count.

The IME adjustment continues to be higher than what the Commission has recommended in past years. Both the Congress and the President would reduce this adjustment from its current level. The President's proposal would lower it more slowly, but would also apply Medicare GME resident count and weighting rules to the IME resident counts. Treating the IME resident counts like those for GME would strengthen incentives to train residents in primary care specialties. The Commission is intrigued by such a policy, but has not examined its potential financial impact on hospitals. Such a policy could also affect the technically appropriate level for the IME adjustment. ProPAC plans to study this issue further. Finally, it is important that the impact of reducing IME payments, together with any reduced funding for disproportionate share payments, be closely monitored to make sure that Medicare beneficiaries' access to quality care is maintained.

Other Support for Teaching-Related Costs

The Congress's proposal would establish a Teaching Hospital and Graduate Medical Education Trust Fund to help support the cost of training residents. A total of $13.5 billion would be appropriated to the fund from general revenues between fiscal years 1997 and 2002, establishing a broader source of public support for residency training. A specified percentage of the general revenue funds would be allocated to a MedicarePlus Incentive Account. The remaining money would be allocated to the General Indirect-Cost Medical Education Account and General Direct-Cost Medical Education Account, based on the share of Medicare spending in fiscal year 1994 for IME and GME, respectively.[8]

The MedicarePlus Incentive Account would distribute funds to teaching hospitals based on their share of MedicarePlus admissions among all teaching hospitals. Thus, the size of a hospital's teaching program and the complexity of its patient population would not affect these payments. Hospitals with many MedicarePlus patients would be greatly rewarded for having only a few residents. Hospitals with a large teaching commitment, however, would receive the same per case payment as these other hospitals. Moreover, because the size of the fund is fixed, the actual per case payment would depend on the total number of MedicarePlus admissions to teaching hospitals. Consequently, if few beneficiaries entered the MedicarePlus program or if few of these enrollees used teaching hospitals, the per case payment would likely be much higher than the associated costs. The reverse would be true if there were significant MedicarePlus participation, particularly in teaching hospitals.

The General Indirect-Cost Medical Education Account would distribute funds to teaching hospitals based on the share of total Medicare IME payments each hospital received over a three-year base period (1992 to 1994). Payments would not be affected by changes in the number of residents trained or the number and mix of patients treated. The General Direct-Cost Medical Education Account would distribute funds in a similar manner, based on a hospital's share of Medicare direct graduate medical education payments over the 1992 to 1994 period. The general direct-cost payment would thus depend on the hospital's per resident payment amount, resident count, and Medicare share of inpatient days in the

base period. It would not be adjusted, however, for changes in these factors between the base year and the time payments are made.

Distributing these two new accounts based on past Medicare spending for teaching may not be an effective way to provide broader general support for teaching-related expenses. This is because hospitals with high levels of Medicare teaching payments would also receive a large portion of these new general revenue payments. Conversely, hospitals with a low share of Medicare teaching payments, such as children's hospitals and some urban public hospitals, would receive little financial support from these general funds, even though they may have the same overall number of residents. The Commission is exploring a number of alternatives for distributing these funds. ProPAC will forward to the Congress later this year its views on how best to distribute general revenue payments so that they provide broader financial support for teaching-related activities in all settings.

The President's proposal would provide funds for teaching-related costs for Medicare beneficiaries in capitation programs. It would remove teaching-related payments from the Medicare capitation rates and return 75 percent of these funds to health maintenance organizations, hospitals, and other providers that operate teaching programs for the teaching costs of care provided to beneficiaries enrolled in capitation plans. This would result in lower capitation rates, particularly in some areas with a large number of teaching hospitals. Medicare participating health plans would need to adjust to these rates by reducing extra benefits, renegotiating provider contracts, accepting lower profits, or in other ways.

DISPROPORTIONATE SHARE HOSPITAL PAYMENTS

The disproportionate share (DSH) adjustment originally was intended to offset the cost-increasing effect of treating low-income patients. In recent years, its purpose has been viewed more broadly as preserving access to care for low-income populations by financially assisting the hospitals they use.

The amount of DSH payment each hospital receives is determined by a complex formula and each hospital's disproportionate share patient percentage. This percentage is derived as the sum of two ratios: Medicaid patient days as a share of total patient days and patient days for Medicare patients eligible to receive Supplemental Security Income cash payments as a percentage of total Medicare patient days. Most DSH payments go to urban hospitals.

The congressional proposal would not change the method of distributing DSH payments, but would substantially reduce funding for the adjustment. The cutback would be implemented in annual increments, beginning at 5 percent in 1996 and reaching 30 percent in 2000. The President's proposal includes a smaller funding reduction—10 percent—beginning in 1999.

These reductions would be implemented at a time when hospitals relying heavily on the DSH adjustment are facing competitive pressures that make it increasingly difficult to generate funds to cover their uncompensated care costs. Moreover, the number of people unable to pay for hospital care is likely to increase in the coming years. Even with insurance premiums rising more slowly than in the past, additional employers may drop health insurance coverage for their employees. Further, under the comprehensive Medicaid reforms proposed by the Congress, some states might elect to scale back Medicaid eligibility and service coverage. Finally, many local governments operating hospitals are facing their own financial pressures, which may make it difficult for them to maintain the level of operating subsidies they formerly provided.

Reductions in funding for the DSH adjustment highlight the importance of ensuring that the hospitals with the greatest need receive payments. However, optimizing the allocation of DSH funds is complicated by the use of a Medicaid variable in the distribution formula.

Medicaid utilization has never been a good measure of service to the poor, because the proportion of the low-income population covered by the program varies substantially from state to state, and the hospitals that provide the most care to uninsured low-income patients do not necessarily treat the most Medicaid patients. The misallocation may have been exacerbated in recent years by reforms a number of states have undertaken. Of particular

concern is the substantial expansion in eligibility for Medicaid in Oregon and Tennessee, with little or no indication of change in these states' low-income populations.[9] Moreover, the accuracy of a Medicaid patient day count in representing the amount of care provided to the poor may deteriorate even further under the expanded state role envisioned by the Congress. With much greater control over the design of their programs, some states may broaden eligibility and service coverage while others scale them back—all with virtually no relationship to the amount of care needed by the poor.

Because of these problems, it will be essential to improve the accuracy of the data used to distribute DSH payments. This should be done in the context of a comprehensive review of the objectives of the DSH adjustment and the methods available to best accomplish them. One important methodological issue is what populations to include, as the measure now used for distributing payments does not reflect a significant portion of hospitals' low-income patient loads. It will also be important to define the scope of patient care to be covered, such as whether DSH payments should apply to outpatient care or to hospital services provided in Medicare capitation programs.

The most appropriate measure of low-income patient care must then be identified. The primary choice here is between a measure of the amount of care provided to low-income patients and the losses incurred in treating the poor. Data collection methods would also need to be assessed, since most of the likely options for distributing payments would require new data. This presents a trade-off between the level of hospital reporting burden and the ability to allocate DSH monies among providers in the desired manner. In addition, it may be necessary to deal with the difficult issue of measuring charity care.

Revamping the DSH adjustment is potentially a complex process. However, inasmuch as the facilities now relying on DSH payments face growing pressure from private payers, Medicaid, and Medicare, the distribution of available funds will be crucial in protecting access to care for vulnerable populations.

DISCHARGES FROM PPS HOSPITALS TO OTHER FACILITIES

A per case payment system like PPS provides hospitals with a strong incentive to reduce length of stay. Hospitals can shorten stays by changing their practices to provide care more efficiently. They also can reduce the amount of care furnished in the inpatient setting by moving patients out of the hospital to other locations. When PPS began, there was evidence of this site-of-care substitution. Hospitals began conducting more preoperative tests in the outpatient setting, for example, instead of admitting the patient to the hospital the day before surgery.

The recent growth in the use of post-acute services, together with declines in PPS inpatient length of stay, raises the issue of whether site-of-care substitution is now occurring at the end of the hospital stay. (See Chapter 4 for a more complete discussion of this trend.) Many of the services delivered in post-acute settings may formerly have been provided in PPS hospitals. If payments are not adjusted to reflect any shift in site-of-care delivery, Medicare may be paying twice for the same service: once in the hospital, where the DRG payment rate reflects the cost of services no longer provided, and again in the post-acute care setting, where the service is now furnished. Although the DRG weights eventually reflect the relative resources required to treat the average case in a DRG, aggregate PPS payments do not reflect the shifting of these services from the hospital unless the PPS update accounts for this change in the hospital's product.

The President proposes to apply Medicare's transfer payment policy to patients who are discharged to PPS-excluded hospitals and units and to skilled nursing facilities. Hospitals that discharge patients to one of these facilities after a stay of at least a day less than the average for the DRG would receive a graduated per diem payment instead of the full DRG amount. Thus, PPS payments would be reduced when services were transferred from the hospital to post-acute sites. In addition, the proposal would stabilize the weights for DRGs with significant site-of-care shifts. This would allow the DRG weights to better reflect the cost of care provided to patients who were not discharged to another setting.

The Administration's proposal, however, would reduce hospitals' incentive to discharge patients to post-acute settings. This could result in longer hospital stays, even though the cost of providing care might be lower and the level of care might be more

appropriate in post-acute sites. This proposal could substantially weaken PPS incentives to shorten inpatient lengths of stay, leading to a less appropriate continuum of care for Medicare beneficiaries. Therefore, the likely effects of such a policy on hospital behavior need to be better understood before implementation proceeds.

CONCLUSIONS AND RECOMMENDATIONS

The Commission has developed recommendations in each of the policy areas addressed above. These include updates for the operating and capital components of PPS and PPS-excluded hospital payments, teaching and disproportionate share payments, and payment for discharges from PPS hospitals to post-acute facilities. Despite the emphasis on capitation programs in both the congressional and presidential proposals, these payment policies will continue to govern the majority of Medicare payments for inpatient hospital services.

Recommendation 10: Updating PPS Operating Rates

ProPAC's update framework would support an update between 0.7 percentage points and 2.0 percentage points less than the increase in the hospital market basket index. The methodology employed by the Commission in previous years would lead to a recommendation of about market basket minus 1.5 percentage points, roughly corresponding to the midpoint of that range. In light of the significant changes occurring in health care delivery, the Commission believes that PPS payment rate increases could be held to market basket minus 2.0 percentage points for the next year or two. However, it is concerned about the potential effects of continuing updates at that level on hospitals' ability to provide quality care to Medicare beneficiaries and other populations.

ProPAC's update framework accounts for the effects of inflation on hospital costs, adjusting for case-mix change, scientific and technological advances, and productivity improvements. The congressional proposal of market basket minus 2.0 percentage points falls within the range that results from applying the Commission's framework. The Congress, however, would set the update at this level through 2002.

In the short run, hospitals should be able to continue their recent productivity growth, and thus should not be adversely affected by an update that is 2.0 percentage points below the hospital market basket increase. Payers are applying pressure on providers—particularly hospitals—to restructure the way they operate and constrain the growth in their costs. Hospital occupancy rates remain relatively low in aggregate, indicating substantial system overcapacity and ongoing opportunities for hospital productivity improvements. Hospitals can continue to better the efficiency of staffing and capital purchasing as well. In view of the changes now occurring in the health care market, hospitals should still be able to provide quality care for the immediate future, despite this constrained rate of growth.

If updates are held to this level through 2002, though, hospitals may not be able to continue providing access to quality care. It is unclear, for instance, how long they will be able to support the productivity improvements needed to keep cost per case increases down to the level required by the proposed updates. Furthermore, some of the changes other payers are making, such as controlling the use of inpatient hospital services, will reduce hospital volume. This could raise per case costs for hospitalized patients. Moreover, a continuation of cost constraint at this level could require hospitals to forego technological advances that may significantly improve quality and patient outcomes. Finally, there is the basic uncertainty about the future. The Commission is concerned that once the updates become law, it would be extremely difficult to increase them to respond to deteriorating quality and hospital financial condition, should that occur.

Recommendation 11: Setting Capital Payment Rates

Prospective per discharge payment rates for inpatient capital costs should be set by developing an appropriate base payment rate and applying an annual update. The capital update should reflect the prices of capital assets, capital financing costs, and other factors related to the capital costs hospitals incur in efficiently providing inpatient care to Medicare beneficiaries.

The capital payment rates currently in effect are based on estimated fiscal year 1992 hospital capital costs per discharge, updated by historical capital cost increases through 1995 and a prospective update framework for 1996. ProPAC has long opposed the use of historical cost increases, proposing instead that a prospective framework similar to that applied to PPS operating payments be used.

In the first four years of capital prospective payment, the effective capital payment rate has differed from the base payment rate due to a congressional requirement that total anticipated capital payments equal 90 percent of total anticipated capital costs. When this budget neutrality requirement expired at the end of fiscal year 1995, actual capital payment rates for 1996 went up more than 20 percent.

The Congress has proposed extending the budget neutrality requirement through fiscal year 2002 and setting payment rates so that total capital payments equal 85 percent of total anticipated capital costs. While this would eliminate the large increase in capital payments in 1996, it would continue the relationship between capital payments and costs in each year. The Commission believes that Medicare should move to a fully prospective capital payment system, severing the link between payments and costs.

Recommendation 12: Updating Payments to PPS-Excluded Hospitals and Distinct-Part Units

ProPAC's update framework would support an average update to the TEFRA target amounts equal to the projected increase in the market basket index minus 0.6 percentage points for fiscal year 1997. This average is within the range of facility-specific updates in the Congress's proposal, which is between the market basket increase and 2.5 percentage points below market basket. Major changes to the TEFRA target amounts should not be made at this time. Rather, a prospective payment system for PPS-excluded hospitals and distinct-part units should be implemented as soon as practicable.

ProPAC's update framework for payments to PPS-excluded hospitals and distinct-part units reflects the market basket increase for these facilities, corrected for previous forecast error. Unlike the Commission's approach for updating PPS payments, this framework does not include adjustments for productivity or case-mix change. It does reflect an allowance for scientific and technological advances, although this was zero for fiscal year 1997. Given the structural changes occurring in the hospital industry, the Commission believes PPS-excluded hospitals and distinct-part units should be able to successfully constrain their cost increases and still provide access to quality care within the provisions of the congressional proposal, at least for the next year or two.

Financial performance varies widely among PPS-excluded hospitals and distinct-part units, particularly between new facilities and those that have been operating for many years, according to ProPAC analyses. Much of this variation is related to the design of the TEFRA payment system rather than to hospital behavior. TEFRA is not suited—and was not intended—for long-term application. Rebasing the target amounts, however, would not solve the system's inherent problems. Assigning a more recent base year would increase payments to older facilities, which would improve payment equity somewhat. Yet older facilities would still be at a competitive disadvantage because recent costs would reflect past spending patterns that were constrained by the annual updates. A prospective payment system would recognize appropriate cost differences and reward efficient facilities, particularly older ones that have responded to TEFRA's incentives.

Because there is no acceptable measure of case mix, implementation of a prospective payment system in the near term is not feasible. The development of a patient classification system for rehabilitation hospitals and distinct-part units is progressing, but few advances have been made for other PPS-excluded providers. The Secretary should accelerate efforts to develop effective patient classification systems that can form the basis of a prospective payment system for these providers. (See Recommendations 20 and 21.)

In the meantime, the formulas for updating the TEFRA target amounts under current law and in the congressional proposal appropriately recognize that all facilities do not realize identical cost increases and allow for differential updates across providers according to individual experience. The Commission will continue to examine the TEFRA payment system and its effect on providers.

Recommendation 13: Broadening Financial Support to Teaching Hospitals

> **Explicit financial support for graduate medical education activities should not be limited to the Medicare program. Mechanisms to broaden financial support for teaching-related activities in hospitals and other locations should be developed.**

Medicare is the only payer that explicitly pays hospitals for the direct and indirect costs of teaching activities. Although other payers have implicitly provided funding for these activities by paying higher prices for patient care services, there is no direct connection between the amount of payment and the size or structure of the teaching program. Moreover, because the implicit support for teaching activities is not separable from the price of patient care at teaching hospitals, these facilities are at a disadvantage relative to non-teaching hospitals because of higher prices related to their teaching mission. As hospital markets become more competitive with the growth of managed care and other structural changes, it will be increasingly difficult for teaching hospitals to compete for patients from price-sensitive insurers.

To allow teaching hospitals to compete fairly with other institutions, the Commission supports the concept of an all-payer fund to help underwrite teaching activities at hospitals and in other settings. The Teaching Hospital and Graduate Medical Education Trust Fund proposed by the Congress would provide broader support for these activities by using both general revenues and Medicare payments. As centers for training future physicians, leaders in research, and providers to underserved populations, teaching hospitals are an integral part of this nation's health care delivery system. It is important that they remain viable in this role.

Recommendation 14: Medicare Payments for Graduate Medical Education Costs

> **ProPAC supports changes in Medicare teaching payments that would encourage an appropriate distribution of residents across specialties and discourage inappropriate growth in the total number of residents.**

Medicare payments should foster an appropriate specialty balance and supply of future practicing physicians. Both the President's and the Congress's proposals for Medicare direct GME payments would move in this direction. The President's proposal would provide greater incentives for training primary care residents than for those in other specialties, which is desirable. The Congress would discourage the growth in the number of residents while relying more on market forces to determine the number and distribution of physicians. Medicare payments should reflect the desired change in direction, rather than impeding these changes.

Recommendation 15: Medicare Indirect Medical Education Payments

> **The Medicare indirect medical education adjustment should be reduced from its current 7.7 percent level to 7.0 percent.**

Ultimately, the Medicare IME adjustment should be reduced from its current 7.7 percent level to one that corresponds more closely to the actual relationship between teaching intensity and costs. The final level of the adjustment, however, should depend on what other changes are made in the Medicare program. The Commission therefore recommends an initial reduction of the IME adjustment to 7.0 percent. As the adjustment is reduced, it will be important to monitor teaching hospitals' financial condition and the effect on access to their services.

ProPAC also supports the concept of basing IME payments on resident counts and weighting factors consistent with those used in GME payment. Additional analysis is needed to examine the effect of this policy on individual teaching hospitals, however. The Commission recommends proceeding cautiously with such a change. It is also important to point out that the technically appropriate level of

the teaching adjustment would change with such a policy. ProPAC plans to examine in more detail the impact of this policy on hospitals and on the empirical relationship between teaching intensity and hospital costs.

Recommendation 16: Distributing Additional Teaching-Related Payments

> **Funds that provide broader financial support for graduate medical education should be distributed in a way that corresponds to the additional costs incurred by teaching facilities. Providers that treat enrollees in capitation plans should receive teaching-related payments for those patients as well as for the other patients they serve.**

ProPAC is concerned about how general revenues would be disbursed through the General Indirect-Cost Medical Education Account and the General Direct-Cost Medical Education Account. The distribution of payments from these accounts would be based on previous Medicare payment levels, even though the funds would come from general revenues. Hospitals with a high share of Medicare teaching payments would receive a proportionately higher share of these new payments compared to hospitals with the same amount of teaching activity but a low share of Medicare patients. Payments based on prior Medicare utilization may not achieve their broader purpose. Over the coming year, ProPAC will examine how best to provide general support for teaching-related activities.

Additionally, funding mechanisms are needed so that teaching hospitals can compete effectively in the managed care market. Such mechanisms should give participants in Medicare's capitation program an incentive to use teaching hospitals when needed while paying providers appropriately for serving capitation patients. How funds would be disbursed to hospitals under the Congress's proposed MedicarePlus Incentive Account concerns the Commission. First, these payments would not account for differences in the intensity or size of hospital residency programs. Second, because the total payments available through this account would be fixed, they would not reflect Medicare beneficiaries' use of the proposed MedicarePlus program. Payments from a fund like this one should reflect the amount of teaching activity in a hospital and other teaching settings. Further, total payments made through such a mechanism should depend on Medicare beneficiaries' participation in capitation programs.

Recommendation 17: Disproportionate Share Hospital Payments

> **The Commission is concerned about the potential impact of reductions in DSH payments. Hospitals that treat a large number of the uninsured could be particularly vulnerable because of recent changes in the health care environment. Large reductions in DSH payments would threaten the continued ability of many of these hospitals to serve populations who depend on them for access to care.**

With increasing numbers of people lacking health insurance and contraction in many state and local programs designed to fund care for them, hospitals' uncompensated care burdens will likely be higher than ever in the coming years. Many of the hospitals that treat large numbers of uninsured patients are teaching institutions, which are facing stepped-up price competition in the private market along with substantial cutbacks in their IME payments. But some non-teaching hospitals also have significant low-income patient shares, and even among those involved in medical education, the amount of service to the poor frequently does not correspond to the level of teaching intensity. The financial integrity of many hospitals that play a critical role in ensuring access to care for low-income patients may be affected by changes occurring in the public and private financing of medical care. The role they serve will, if anything, become more important in the near future and should be protected.

Recommendation 18: Method for Distributing Disproportionate Share Payments

> **The structure of the DSH adjustment should be reviewed to make certain that available funds are distributed equitably among the hospitals most in need of assistance. This may require collecting new data to develop a better measure of the services hospitals provide to indigent patients.**

The distribution of DSH payments is determined partly by each hospital's Medicaid patient days as a

percentage of total days. Medicaid utilization has never been an optimal measure of service to low-income patients, and its accuracy is deteriorating even further with changes taking place in the structure of the Medicaid programs in several states. Moreover, this problem would be exacerbated by the Medicaid reforms the Congress has proposed.

An alternative method of distributing DSH payments should be considered, but in the context of a comprehensive review. This review should begin by assessing the objectives of the DSH adjustment. It should also extend to defining the low-income population to be covered and identifying the scope of patient care to be included (for example, outpatient care or services furnished under the Medicare capitation program). Alternative measures of low-income patient care could then be considered, including the data collection each would require.

Recommendation 19: Discharges from PPS Hospitals to Other Facilities

Medicare payments should be modified to account for the shift in services from acute to post-acute settings. Broadening the definition of transfer cases, however, is not an appropriate approach.

PPS provides hospitals with a strong financial incentive to reduce length of stay by moving care to other settings, since in most cases payments are the same regardless of whether the full course of treatment is provided in the hospital. Although the DRG weights eventually reflect this shift in services, aggregate Medicare payments do not. Constrained updates due to expected productivity improvements may appropriately adjust aggregate payments, but they will not account for cost differences between patients who use post-acute services and those who do not.

The President proposes to treat as transfers those cases who are discharged to skilled nursing facilities and PPS-excluded hospitals and units. The Commission, however, thinks this policy would discourage the use of post-acute providers. Moreover, it could result in longer inpatient stays, which may not be desirable or cost effective in the long run. The expanded transfer policy, therefore, should not be implemented without additional analysis of its impact. Other policies that would better integrate the payment system across settings need to be studied. One would be to bundle acute and post-acute services for certain DRGs into a single payment rate. Another would be to develop DRGs that reflect the use of post-acute services. The Commission will continue to examine methods to better integrate the fee-for-service payment system and will work with the Secretary on this endeavor.

Notes to Chapter 3

1. The Congress's Medicare provisions are in H.R. 2491, the "Balanced Budget Act of 1995." The Medicare provisions of the President's plan are in Title 11 of draft legislation, called the "Balanced Budget Act of 1995 for Economic Growth and Fairness." Released on December 7, 1995, this proposal has not been introduced in the Congress.

2. The PPS margin is the difference between the PPS operating payments a hospital receives and the operating costs of treating its Medicare patients, taken as a percentage of the payments.

3. ProPAC views cost shifting as a dynamic process whereby changes in payments relative to costs for some payers are offset by changes for other payers. During the late 1980s, increasing losses from Medicare, Medicaid, and uncompensated care were offset by increasing gains from private payers. For more information on this issue, see Prospective Payment Assessment Commission, *The Relationship of Hospital Costs and Payments by Source of Revenue, 1980-1991*, ProPAC Intramural Report I-95-01, October 1995.

4. Prospective Payment Assessment Commission, *Hospital Costs and Payments by Revenue Source: The Impact of Medicaid Payment Increases in 1992*, ProPAC Intramural Report I-95-05, October 1995.

5. The rehabilitation industry and the research community have developed a patient classification system for rehabilitation hospitals and distinct-part units (referred to as functional-related groups) that is based on patient functional status. HCFA is evaluating how well this technique works in grouping patients.

6. The Omnibus Budget Reconciliation Act of 1990 required the Secretary of Health and Human Services to propose either a prospective payment system for PPS-excluded providers or modifications to the current TEFRA system. The Act also required ProPAC to analyze and comment on the proposal. Absent the Secretary's proposal, the Commission submitted an interim report to the Congress that examined the financial condition of PPS-excluded providers and explored broad alternative payment methods. Prospective Payment Assessment Commission, *Interim Report on Payment Reform for PPS-Excluded Facilities*, Congressional Report C-92-05, October 1992.

7. Data on the amount of payment adjustments received through the exceptions process are not systematically collected or automated. In addition, there is a considerable lag between the time an exception is granted and when it appears as a higher target amount on the cost report.

8. The trust fund would also receive revenue from Medicare to support the Medicare Indirect-Cost Medical Education Account and the Medicare Direct-Cost Medical Education Account. Money from these two accounts would be used to finance indirect medical education adjustment payments and direct graduate medical education payments to certain hospitals that operate graduate training programs for interns and residents.

9. HCFA has attempted to minimize the bias resulting from the major reform in Tennessee and plans to do so for Oregon. Under HCFA's directive, Tennessee's Medicaid agency furnishes each hospital with a list of its patients who would have been eligible for Medicaid under the prior criteria. The hospitals then use this information to provide the Medicare fiscal intermediary with a restricted count of Medicaid days. This is an administratively difficult procedure, and does not appear to be a realistic approach for ensuring consistent Medicaid utilization data in the future.

Chapter 4

Post-Acute and Ambulatory Care Providers

As the share of Medicare expenditures devoted to hospital inpatient services declines, the share devoted to post-acute and ambulatory care continues to rise. This shift in spending primarily reflects major changes in the volume and mix of services used. Revisions in Medicare's coverage policies explain some of the increased use of post-acute services, but Medicare payment policies also encourage the growth of both post-acute and ambulatory care. Medicare's prospective payment system (PPS) provides incentives for hospitals to reduce costs by shifting services from inpatient to other settings. At the same time, the way that Medicare pays for post-acute and ambulatory facilities offers few incentives for providers to reduce their costs and control the volume of services they furnish.

Medicare has instituted many changes to its post-acute and ambulatory payment policies to contain its cost per service. An effective volume control measure has remained elusive, however. The overlap of services delivered across settings and the lack of a uniform definition of service units contribute to the difficulty in addressing this problem. Both the Congress and the President propose implementing prospective payment systems for services provided by skilled nursing facilities (SNFs) and home health agencies, the most significant sources of post-acute expenditures.[1] The prospective payment amount would apply to all the services furnished by the facility for an episode of care.

This chapter presents background information to support the Prospective Payment Assessment Commission's (ProPAC's) recommendations for payments to post-acute and ambulatory care providers. The recommendations reflect the Commission's concerns about expenditure growth within and across treatment settings. The first section focuses on rehabilitation facilities and long-term care hospitals, skilled nursing facilities, and home health agencies. It documents spending growth, payment policies, and proposed changes for each type of provider, concluding with ProPAC's recommendations. The second section contains comparable information for dialysis facilities and hospital outpatient departments.

POST-ACUTE CARE PROVIDERS

Payments to post-acute care providers are the fastest growing component of Medicare expenditures. Rehabilitation facilities, long-term care hospitals, skilled nursing facilities, and home health agencies accounted for more than 22 percent of Medicare Part A spending (including both program and beneficiary contributions) in 1993, up from about 7 percent in 1986 (see Table 4-1).

Post-acute care expenditures have been driven by a rapid growth in service utilization. Rehabilitation facility admissions per 1,000 beneficiaries, for example, climbed 148 percent between 1986 and 1993 (see Table 4-2). The increase in beneficiaries receiving care in a skilled nursing facility was similar over this period. Use rates for long-term care hospitals and home health agencies experienced marked growth as well.

Higher utilization is partly attributable to practice pattern changes resulting from Medicare coverage policies: Medicare relaxed restrictions on the coverage of home health and SNF services in the late 1980s, expanding the number of beneficiaries eligible to receive post-acute care. But payment policies for both acute care hospitals and post-acute care providers also contributed to greater use.

Medicare's PPS rewards acute care hospitals for reducing costs per admission. The most direct way for hospitals to lower costs is to shorten stays. In 1984, the Medicare average length of stay in a PPS hospital was 8.8 days. It fell to 8.1 days in 1991

66

Table 4-1. Distribution of Total Medicare and Beneficiary Payments for Selected Part A Services, 1986-1993

Year	Share of Part A Payments (In Percent)					Total Part A Payments (In Millions)
	PPS Hospital	Rehabilitation	Long-Term Care	Skilled Nursing	Home Health	
1986	91.2%	1.5%	0.2%	1.5%	3.7%	$ 53.3
1987	90.6	1.8	0.2	1.5	3.5	54.3
1988	89.3	2.0	0.3	2.2	3.6	59.0
1989	85.6	2.2	0.3	5.5	4.0	65.1
1990	84.1	2.6	0.3	4.8	5.4	72.4
1991	81.9	3.0	0.3	4.8	7.0	81.2
1992	78.1	3.4	0.3	6.3	8.7	91.3
1993	74.3	3.6	0.5	7.9	10.4	102.5

Note: The percentages do not add to 100 percent because shares for hospices, cancer hospitals, children's hospitals, and psychiatric facilities are not shown. All numbers include both program and beneficiary payments.

SOURCE: ProPAC analysis using Medicare Cost Reports and other data from the Health Care Financing Administration.

and by another 13.1 percent to 7.1 days by 1994. Often the shortened stays were accomplished by providing some services that once were part of the hospitalization in a post-acute setting. In fact, ProPAC analysis found that for the 12 diagnosis-related groups (DRGs) most likely to result in post-acute service use, acute hospital length of stay reductions were greater than the average for all DRGs. From 1991 to 1994, length of stay for these DRGs fell more than 16 percent and as much as 28 percent, significantly more than the overall drop.

In 1995, about 58 percent of PPS hospitals had a skilled nursing facility, SNF swing beds, or a rehabilitation unit. ProPAC analysis showed that for the 12 DRGs with high post-acute use, hospitals with post-acute units had shorter lengths of stay than those without units. The difference may be that post-acute services were more readily available in hospitals that had such units. In addition to being able to lower costs subject to the PPS rate, hospitals that own post-acute units gain other financial advantages. They can raise the occupancy of the facility overall, thus providing a larger patient base over which to spread fixed costs. Other resources, such as expensive equipment or certain specialized personnel, also can be used more efficiently over a larger patient base and thus can lower per unit costs.

Table 4-2. Medicare Utilization for Selected Part A Services, 1986-1993

Year	Admissions Per 1,000 Beneficiaries[a]			Persons Served Per 1,000 Beneficiaries[b]	
	PPS Hospital	Rehabilitation	Long-Term Care	Skilled Nursing	Home Health
1986	316.5	2.9	0.4	9.6	49.8
1987	304.4	3.3	0.4	9.1	47.9
1988	298.7	3.7	0.5	11.7	48.1
1989	288.0	4.0	0.5	19.0	50.3
1990	285.6	5.0	0.5	18.7	56.8
1991	284.7	5.9	0.5	19.3	63.9
1992	285.5	6.6	0.6	22.1	71.0
1993	285.3	7.2	0.7	24.0	80.1
Percent change 1986-1993	-9.9%	148.3%	75.0%	150.0%	60.8%

[a] Admissions per 1,000 beneficiaries counts all admissions, not the number of beneficiaries who were hospitalized at any time during the year.

[b] Persons served per 1,000 beneficiaries counts the number of beneficiaries who were provided the service in a given year, not the number of admissions.

SOURCE: ProPAC analysis of Medicare Cost Reports and data from the Health Care Financing Administration.

Medicare's payment policies for post-acute providers also have contributed to the expansion of post-acute service use and expenditures. Rehabilitation facilities and long-term care hospitals receive cost-based payments at least for their first two years of operation, after which payments are limited by a facility-specific cap. This payment method encourages the development of new facilities and rewards those that have high costs. Skilled nursing facilities also are paid their incurred costs up to a limit for routine services, such as room, board, and nursing care. However, because of varying definitions of the costs subject to these limits and open-ended cost reimbursement for ancillary services, payments per beneficiary have increased substantially. Further, despite per visit home health payment limits, the number and scope of services provided are not restrained and as a result have grown.

Medicare's post-acute facility payment methods have been modified over the years to control expenditures. Several characteristics of post-acute providers, however, make it difficult to slow spending. One is the overlap of services delivered across sites. All of these facilities provide therapy—speech, physical, and occupational—as well as more medically related nursing services. At least a portion of the patient population in any of these settings could be treated in another site. Yet because the payment methods and rates vary across providers, the Medicare program pays different amounts for the same or similar services, depending on where they are delivered.

Service payment units are not measured consistently across settings, which also contributes to the difficulty in controlling costs. Rehabilitation hospitals, for example, receive a per stay payment. By contrast, skilled nursing facilities are subject to per diem cost limits for routine services, and ancillary services are paid separately. As a result of the various payment definitions and methods, the total costs for an episode of care cannot be compared across sites. Thus, it is difficult to ensure that Medicare's policies encourage the most cost-effective methods of care. Even the payment modifications proposed by the Congress and the President would not facilitate comparisons of service volume, patient mix, or case severity across post-acute providers.

An additional complication is the changing nature of service delivery and organization. Increasingly, many of these providers are offering a level of care labeled "subacute." Less intensive than the care traditionally offered in a hospital, subacute care may describe the set of services formerly provided at the end of a hospital stay. Some beneficiaries who bypassed an acute care hospital to receive rehabilitation services or to be admitted to a long-term care hospital may be receiving subacute care. Because Medicare's payment methods vary across provider type, they do not consistently reflect the type or level of care a patient receives. Consequently, Medicare payments frequently do not reflect new patterns of service delivery.

Rehabilitation Facilities and Long-Term Care Hospitals

Rehabilitation facilities and long-term care hospitals are paid in accordance with the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). Under TEFRA, payments for inpatient operating costs are based on each facility's current Medicare-allowable costs or a facility-specific limit. The limit (or target amount) equals the facility's allowable costs per discharge in a base year, trended to the current year by an annual update factor. Capital payments are based on reasonable costs. (See Chapter 3 for a complete description of the TEFRA payment method.)

When TEFRA was enacted in 1982, it applied to all hospitals. The Congress intended it to be a temporary measure to slow hospital expenditure growth until a fully prospective payment system could be implemented. When PPS began on October 1, 1983, however, certain types of hospitals and distinct-part units were excluded because DRGs and payments based on national average costs were not appropriate for them. The Congress expected that a separate prospective payment system for these facilities would be implemented within a few years.

PPS-excluded facilities have continued under the TEFRA payment system for longer than expected, however. This is because adequate patient classification systems, which are needed for a prospective payment system, have not been developed. Consequently, several flaws inherent in TEFRA that would have had little significance in the short run have led to growth in aggregate Medicare utilization and expenditures over time, as well as substantial inequities across providers.

Of primary concern is the use of facility-specific costs to set base payment limits. Because the expense of opening a new facility is higher today than in the past, facilities with more recent base years automatically have higher limits and receive higher payments. The incentive to open a facility is strengthened by the fact that newly certified PPS-excluded hospitals or units are exempt from the TEFRA limits for their first two 12-month cost reporting periods. During this time, Medicare pays on the basis of reasonable costs; the second cost reporting period is designated as the base year.[2] Consequently, new providers have no incentive to avoid high start-up costs because these result in higher base year costs and higher future cost limits.

Moreover, acute care hospitals that treat a large number of long-stay cases or patients who require rehabilitative care have a strong incentive to establish rehabilitation distinct-part units or separate long-term care hospitals within hospitals. By doing this, an acute care hospital can lower its costs subject to PPS and reallocate some expenses to its specialty hospital or to a unit that receives cost-based reimbursement. To the extent that the TEFRA payment for long-stay or rehabilitation cases is greater than the regular DRG payment plus any outlier payment under PPS, the financial benefit could be substantial.

Growth in Facilities, Utilization, and Expenditures—The number of Medicare-certified rehabilitation and long-term care facilities has grown rapidly over the last decade (see Table 4-3). Between 1986 and 1994, rehabilitation hospitals and distinct-part units grew by 160 percent and 75 percent, respectively. After dipping in the late 1980s, the number of long-term care hospitals increased from 90 in 1990 to 146 in 1994. Similarly, Medicare discharges from rehabilitation hospitals and units combined rose by 39 percent from 1990 to 1993, and long-term care hospital discharges grew by 48 percent over the same period (see Table 4-4).

The proliferation of providers and the growth in discharges have led to a marked increase in aggregate Medicare spending for rehabilitation and long-term care facility services (see Table 4-5). Total payments to rehabilitation hospitals and units combined rose from $1.9 billion in 1990 to $3.7 billion in 1993—a 95 percent increase. Although Medicare payments to long-term care hospitals are comparatively small, they grew by 150 percent over the same period.

The TEFRA payment system was designed to moderate the growth in Medicare hospital payments by giving facilities an incentive to constrain cost increases. Recent ProPAC analyses indicate that lengths of stay in rehabilitation and long-term care facilities have declined and annual per case cost increases have slowed for certain groups of facilities. Yet aggregate Medicare inpatient operating payments per discharge for these providers have risen, on average, faster than the market basket. In fact, aggregate operating payments to long-term care hospitals grew by about 15 percent per year from 1990 to 1993. This is primarily due to the large number of new providers that entered the TEFRA payment system with higher costs, resulting in higher aggregate payments.

Proposed Payment Changes—The Congress's and the President's proposals contain provisions to curb TEFRA payment increases through lower updates to the target amount, capital payment reductions, limits on exceptions adjustments, and restrictions on additional payments for facilities

Table 4-3. Medicare-Certified Rehabilitation and Long-Term Care Facilities, Selected Years

Facility Type	1986	1988	1990	1992	1994	Percent Change 1986-1994
Rehabilitation	545	697	813	923	1,019	87%
Hospitals	75	106	135	164	195	160
Distinct-part units	470	591	678	759	824	75
Long-term care	94	82	90	102	146	55

SOURCE: Health Care Financing Administration, Office of Survey and Certification.

Table 4-4. Medicare Discharges from Rehabilitation and Long-Term Care Facilities, 1990-1993

Facility Type	1990	1991	1992	1993	Percent Change 1990-1993
Rehabilitation	169,491	198,423	223,948	235,212	39%
Hospitals	55,814	65,248	73,479	68,297	22
Distinct-part units	113,677	133,175	150,469	166,915	47
Long-term care	15,262	16,474	18,334	22,514	48

Note: Due to missing and inaccurate data, these figures do not represent total Medicare discharges.

SOURCE: ProPAC analysis of Medicare Cost Report data from the Health Care Financing Administration.

with operating costs above their target amounts. (See Chapter 3 for more information regarding these proposals.) Neither proposal, however, addresses the need to control utilization, although the President proposes to place a moratorium on certifying new long-term care hospitals.

Skilled Nursing Facility Services

The Medicare Part A SNF benefit provides up to 100 days of post-acute care per spell of illness. To be eligible, Medicare beneficiaries must have completed a minimum three-day hospital stay within 30 days prior to the SNF admission and be in need of skilled nursing or rehabilitative services on a daily basis.

For payment purposes, Medicare separates SNF costs into routine, capital, and ancillary service categories. Medicare payments for routine costs, which include room, board, and skilled nursing services, are based on facility-specific costs, subject to an input price-adjusted national average per diem cost limit. Separate limits apply for hospital-based and freestanding facilities. These limits usually are updated each year, but were frozen for fiscal years 1994 and 1995. Capital costs and those for ancillary services, such as physical therapy, occupational therapy, speech therapy, laboratory tests, and radiology procedures, are reimbursed on a facility-specific cost basis.[3] Although most ancillary services are provided by SNFs and paid under Part A, there are situations when they are reimbursed under Part B.

Growth in Facilities, Utilization, and Expenditures—Between 1986 and 1994, the number of hospital-based SNFs increased by 163 percent, from 652 to 1,718 (see Table 4-6). The number of freestanding SNFs rose by 29 percent, while hospitals with SNF swing beds rose by 65 percent. During this period, many hospitals responded to declining average lengths of stay for Medicare beneficiaries and other patients by developing new lines of business, including hospital-based SNFs. Less restrictive state planning requirements for converting hospital acute-care beds to SNF beds contributed to their rapid growth.

Similar patterns are found in utilization and expenditures. In 1986, some 304,000 Medicare beneficiaries received care in skilled nursing facilities, and Medicare program payments totaled $600 million (see Table 4-7). By 1994, 925,000 beneficiaries received SNF care, and payments reached $8.3 billion. Numerous incremental legislative and administrative changes to SNF coverage and payment

Table 4-5. Medicare Rehabilitation and Long-Term Care Facility Payments, 1990-1993 (In Billions)

Facility Type	1990	1991	1992	1993*	Percent Change 1990-1993
Rehabilitation	$1.9	$2.4	$3.1	$3.7	95%
Long-term care	0.2	0.2	0.3	0.5	150

Note: Includes program payments and beneficiary payments. Does not include exceptions payments.

* Payments for facilities with cost reporting periods beginning on or after October 1, 1993, and before January 1, 1994, are estimated.

SOURCE: ProPAC analysis of Medicare Cost Reports and other data from the Health Care Financing Administration.

Table 4-6. Types of Medicare-Certified Skilled Nursing Facilities, Selected Years

Facility Type	1986	1990	1994	Percent Change 1986-1994
Hospital-based	652	1,145	1,718	163%
Freestanding	8,414	8,120	10,818	29
Swing-bed hospitals	812	1,243	1,342	65

SOURCE: Health Care Financing Administration, Office of Survey and Certification.

policies have contributed to utilization and payment growth. The most significant ones were a lawsuit that resulted in broadening SNF coverage guidelines in April 1988, along with the passage of the Medicare Catastrophic Coverage Act (MCCA) of 1988, and its repeal in 1990.[4] The impact of these changes can be seen in the increase in Medicare-covered days and program payments in 1989, followed by a decrease in 1990. Although covered days have grown at an average annual rate of 10 percent since 1990, Part A program payments for SNF services have gone up even faster, at an average annual rate of 35 percent.

Some of the recent rise in Medicare program payments may be attributable to higher prices for inputs. Inflation alone, however, cannot account for the disparity between growth in use and payments. One source of the higher rise in payments has been the greater use of therapy and other ancillary services provided to Medicare patients. In 1988, charges for physical, occupational, speech, and respiratory therapy services were about 15 percent of total Medicare SNF charges. By 1994, therapy services represented more than 30 percent of charges. Even though final payments for these and other ancillary services are based on costs rather than charges, these estimates suggest a large increase in their contribution to the overall growth of Medicare payments for SNF services.

Because of cost-based payment, greater ancillary use results in higher Medicare payments. Further, SNFs may cite high ancillary service use to justify an exemption from routine service cost limits, thereby increasing routine service payments.

Proposed Payment Changes—Many factors have contributed to the dramatic rise in Medicare expenditures for SNF services. The Congress and the President agree that the most appropriate long-term method for controlling SNF spending is to establish a comprehensive prospective payment system. Both have proposed legislation to do this. They differ, however, in their timing for implementing the comprehensive system and their methods for constraining Medicare payments under interim measures.

The Congressional Proposal—The Congress proposes significant changes to Medicare's payment for skilled nursing facility services. It would

Table 4-7. Medicare Skilled Nursing Facility Payments and Utilization, 1983-1994

Year of Service	Skilled Nursing Facility Payments (In Billions)	Skilled Nursing Facility Percent Change	People Served Number (In Thousands)	People Served Per 1,000 Enrollees	Days Number (In Thousands)	Days Per Person Served
1983	$0.5	—	265	9	9,314	35.1
1984	0.6	6.9%	299	10	9,640	32.2
1985	0.6	2.9	314	10	8,927	28.4
1986	0.6	0.2	304	10	8,160	26.8
1987	0.6	8.8	293	9	7,445	25.4
1988	0.9	47.1	384	12	10,667	27.8
1989	3.5	275.7	636	19	29,780	46.8
1990	2.5	-29.0	638	19	25,200	39.5
1991	2.9	18.4	671	20	23,700	35.3
1992	4.5	55.3	785	22	28,960	36.9
1993	6.5	42.8	870	24	34,437	39.6
1994*	8.3	28.5	925	25	36,865	39.9

Note: Payments represent program liabilities incurred during the year and do not include beneficiary copayments.

* Estimated.

SOURCE: Health Care Financing Administration, Office of the Actuary.

require the Secretary of Health and Human Services to establish a prospective payment system for SNF services to be implemented on October 1, 1997. Under this system, a SNF would receive a fixed payment for each episode of care; the payment would cover all routine, nonroutine, and capital costs. Payment rates could vary by case mix, patient acuity, or any other appropriate factors. Aggregate payments, however, could not exceed 90 percent of what would have been paid under the current system. In addition, the prospective payment rates would be reduced to take into account beneficiary coinsurance.

An interim payment system for services provided on or after October 1, 1995, would be established until a prospective payment system was implemented. Since much of the recent growth in SNF spending is due to increased ancillary service use, payment for these services would be limited. Routine services would be subject to the per diem limits, and nonroutine services would be subject to facility-specific aggregate per stay cost limits. Nonroutine services would include all therapies, prescription drugs, complex medical equipment, intravenous therapy and solutions, radiation therapy, and diagnostic services. All other services, including some now considered ancillary, would be regarded as routine.

For fiscal year 1996 and beyond, the Secretary would recalculate the per diem routine cost limits, taking into account the expanded definition of routine services. To maintain the savings associated with the fiscal year 1994 and 1995 freeze on routine cost limits, any changes in the costs of services that occurred during these years would not be included in the new limits.

Payments for nonroutine services would be based on facility-specific costs, subject to facility-specific aggregate per stay cost limits.[5] This would provide an incentive for SNFs to restrict ancillary service use while allowing for variation across facilities in costs related to patient mix and input prices. For fiscal years 1996 through 2002, Medicare payments for SNF capital costs would be reduced by 10 percent.

The congressional proposal would also require the Secretary to establish a separate per stay amount for patients who need intensive nursing or therapy services and to implement an annual exceptions payment application period. In addition, Part B billing would be restricted, and SNFs would have to submit all claims for beneficiaries in their care. SNFs would be required to document on their Medicare Cost Report all nonroutine services provided to Medicare SNF patients, beginning in fiscal year 1996. This would include the number and type of therapy services, laboratory tests, and radiology and diagnostic procedures.

The Administration's Proposal—The Administration's proposal would also significantly alter Medicare payment for skilled nursing facility services. A prospective payment system for SNFs would be implemented beginning in fiscal year 1999. It would be based on fixed payments for all routine, ancillary, and capital costs. Budget-neutral rates would be calculated so that aggregate fiscal year 1999 payments would not exceed 93 percent of aggregate fiscal year 1998 payments.

Beginning in fiscal year 1997 and until the establishment of the comprehensive prospective payment system, SNFs would be reimbursed under an interim system. Payments for routine services would be based on facility-specific prospective per diem payment rates. They would be calculated using Medicare Cost Report data, adjusted to maintain the savings associated with the freeze on routine cost limits during fiscal years 1994 and 1995. These rates would be subject to regional limits, adjusted to reflect differences in input prices. Although these limits would be applied to all SNFs, they would be calculated using data for freestanding facilities only, rather than including hospital-based SNFs, which tend to have higher costs. The per diem rates could be adjusted to reflect changes in the mix of patients treated by a SNF. However, these adjustments would be made prospectively and in a budget-neutral manner.

Ancillary services would continue to be reimbursed on a facility-specific cost basis, but only up to the amount that would have been paid under the fee schedule rates used by Medicare to pay other facilities for similar services. Salaries for therapists who provide contracted services would be limited as well. Capital costs would continue to be reimbursed on a facility-specific cost basis.

Beginning in fiscal year 1997, SNFs could no longer receive exceptions payments for costs in

excess of their limits. In addition, new facilities would no longer be granted an exemption from routine cost limits for their first few years of operation. Prospective per diem payment rates for routine services in new facilities would be based on the mean payment for SNFs in the same geographic area. SNFs would also have to submit all claims for Part B services for their patients and use consistent coding.

Home Health Services

Beneficiaries qualify for home health services if they are homebound and under the care of a physician who prescribes part-time or intermittent skilled nursing services, physical therapy, or speech therapy. Once authorized, beneficiaries may receive an unlimited number of these qualifying services, as well as home health aide visits, medical social services, or occupational therapy. Coverage is not tied to a prior hospitalization, and no copayment is required.

Under Medicare's payment method for home health services, agencies are paid the lower of their aggregate costs or limits. The limits are equal to 112 percent of the average cost per visit for each of six types of visits, computed separately for rural and urban areas. The labor portion of each limit is adjusted by the hospital wage index. These cost limits are frozen for cost reporting periods beginning between July 1, 1994, and June 30, 1996. Because this payment method is largely cost-based, agencies have little incentive to control the cost or volume of services delivered.

Growth in Facilities, Utilization, and Expenditures—The increased availability of home health providers has contributed to the growth in use and Medicare expenditures for these services. The number of licensed agencies climbed by 50 percent between 1990 and 1995 (see Table 4-8). Freestanding proprietary agencies, which accounted for about half of all agencies in 1995, rose 65 percent. Hospital-based agencies also grew substantially, from 1,543 in 1990 to 2,346 in 1995.

Home health visits have increased dramatically in the last decade, from about 37 million in 1983 to 209 million in 1994 (see Table 4-9). The number of beneficiaries using home health climbed from 45 per 1,000 Medicare enrollees to 87 per 1,000 enrollees during this period. Use levels also surged from an average of 28 to 65 visits per person. Much of this increase is due to changes in coverage guidelines. These revisions allowed beneficiaries who needed part-time care (fewer than eight hours a day) or intermittent care (four or fewer days per week) to qualify for services. This expanded both the number of people receiving the benefit and the number of services used.

Home health episodes of care have also become longer. A home health episode is defined as a series of visits, preceded and followed by a period without visits. Using a gap of 60 days to define new episodes, the proportion of short episodes (those lasting 30 or fewer days) fell from 39 percent in 1990 to 32 percent in 1993 (see Table 4-10). Episodes lasting 121 days or longer went from 19 percent to 25 percent of all episodes. Longer episodes tended to include a higher proportion of the less costly home health aide visits. For example, 50 percent of the visits in very long episodes (those lasting at least 166 days) were aide visits, whereas aide services accounted for only 21 percent of the visits in short episodes (see Table 4-11). Further, compared with shorter episodes, longer ones were characterized by a higher proportion of aide visits throughout the episode.

Medicare's spending for home health services has grown at least 20 percent a year since the late 1980s. The rate of growth has declined, however, since the 53 percent spike in 1990. Still, home health's share of Medicare program expenditures has continued rising.

Proposed Payment Changes—The Congress and the Administration both have proposed establishing prospective payment systems for home health services. The congressional proposal would set prospective rates for each type of home health visit but limit total payments per episode, as of fiscal year 1997. By contrast, the Administration's proposal would establish episode-based payments effective in fiscal year 2000. Measures to limit spending in the intervening years also would be introduced.

In addition, both proposals would retain the savings from the two-year freeze on the cost limits and would make other interim modifications to the current payment system to reduce Medicare spending.

Table 4-8. Types of Medicare-Certified Home Health Agencies, 1990-1995

Agency Type	1990	1991	1992	1993	1994	1995	Percent Change 1990-1995
Visiting Nurse Association	476	515	595	596	575	570	20%
Government	981	1,089	1,240	1,205	1,208	1,191	21
Hospital-based	1,543	1,601	1,786	1,998	2,207	2,346	52
Rehabilitation facility-based	10	4	1	1	3	3	-70
Skilled nursing facility-based	105	90	106	117	127	145	38
Freestanding proprietary*	2,678	2,650	2,691	3,234	3,937	4,407	65
Total	5,793	5,949	6,419	7,151	8,057	8,662	50

* Includes a small number of freestanding, private, not-for-profit agencies that are not Visiting Nurse Associations (26 percent).

SOURCE: Health Care Financing Administration, Office of Survey and Certification.

The Congressional Proposal—The Congress proposes replacing cost-based payments with prospective rates for each of the six types of home health visits beginning in fiscal year 1997. These rates would be based on national average costs in cost reporting periods ending on or before June 30, 1994. They would be updated for each succeeding year by the home health market basket increase minus 2.0 percentage points. Rates would be recalculated using the most recent data every five years beginning in October 1999.

Total payments for the first 165 days of care would be limited to the lower of actual per visit payments or aggregated, episode-based limits. To determine the episode limits, visits would be aggregated into patient-level episodes of care. Each episode would be classified into one of 18 case-mix categories. For each case-mix category, regional limits would be calculated based on the average cost of up to 120 days of care. Each agency's limit would equal the number of episodes it provided in each case-mix category times the regional case-mix limit.

Agencies with aggregate payments below their limit would receive an incentive payment equal to 50 percent of this difference up to 5 percent of their aggregate payments. Basing the payment limit on 120 days of care and sharing part of the payment difference would give agencies an incentive to reduce the number of services provided during an episode.

The episode limit would be applied to the first 165 days in an episode. The prospective payments for the subsequent visits in an episode would not be included in the episode-based payment limit. The

Table 4-9. Medicare Home Health Care Payments and Utilization, 1983-1994

Year of Service	Medicare		People Served		Visits		
	Payments (In Billions)	Percent Change	Number (In Thousands)	Per 1,000 Enrollees	Number (In Thousands)	Per 1,000 Enrollees	Per Person Served
1983	$ 1.6	—	1,318	45	36,898	1,234	28
1984	1.9	17.5%	1,498	50	40,422	1,330	27
1985	1.9	4.0	1,549	50	39,449	1,274	25
1986	1.9	-0.5	1,571	50	38,000	1,204	24
1987	1.9	-1.2	1,544	48	35,591	1,104	23
1988	2.1	8.6	1,582	48	37,132	1,130	23
1989	2.6	23.8	1,685	50	46,199	1,379	27
1990	3.9	53.2	1,940	57	69,565	2,038	36
1991	5.7	44.2	2,223	64	100,044	2,875	45
1992	7.9	39.5	2,523	71	134,844	3,796	53
1993	10.7	34.6	2,900	80	173,953	4,804	60
1994*	13.0	22.1	3,220	87	209,149	5,765	65

Note: Payments represent program liabilities incurred during the year and do not include beneficiary copayments.

* Estimated.

SOURCE: Health Care Financing Administration, Office of the Actuary.

Table 4-10. Distribution of Home Health Episode Lengths, 1990 and 1993

Episode Length	Percent of All Episodes		Percent Change
	1990	1993	
All episodes	100%	100%	
Short	39	32	-7%
Medium	43	44	1
Long	19	25	6
121-165 days	5	—	—
166+ days	14	—	—

Note: Short episodes lasted 30 days or fewer; medium episodes exceeded 30 days but lasted fewer than 121 days; long episodes exceeded 120 days.

SOURCE: ProPAC analysis of 1990 and 1993 home health claims from the Health Care Financing Administration.

patient would, however, have to be certified as requiring continuing care. New episodes would begin after a period of 60 days without services.

The congressional proposal would also limit aggregate exceptions and exemptions payments to the amounts paid in fiscal year 1994, increased by the market basket percentage change for each year.

The Administration's Proposal—The Administration's proposal also would establish an episode-based prospective payment system for home health services, but not until fiscal year 2000. The Secretary would develop both a prospective payment rate for an episode of care and a reliable case-mix adjuster in the interim. The episode payment amounts would be updated by the market basket. If a beneficiary received services from multiple agencies, each agency's payment would be prorated. Payment rates would incorporate a 15 percent reduction in cost limits that would be in effect on September 30, 1999.

The Administration's proposal also contains some interim changes to the payment system for fiscal years 1997 through 1999. Agency payments would be the lower of aggregate cost limits, agency-specific per beneficiary amounts, or actual costs. Cost limits would be reduced from 112 percent of the mean to 105 percent of the median. The per beneficiary amount would be determined by blending 1994 agency-specific costs with the national average cost. Alternatively, the Secretary could substitute a utilization measure in this formula. Agencies could receive bonus payments up to 5 percent of their aggregate payments if their costs or utilization were below 125 percent of the 1994 national average or regional aggregate experience.

Other changes would base payments on the service delivery area instead of the agency's geographic

Table 4-11. Number and Type of Home Health Visits, by Episode Length

Episode Length	Total Number of Visits	When Visits Occur in Episode	Mean Visits Per Episode	Share of Visits in Episode			
				Skilled Nursing	Aide	Physical Therapy	Other
Short	6,930,600	100%	9	60%	21%	15%	4%
Medium	35,158,905	100	33	49	31	16	3
First 30 days		72		50	29	16	6
Days 31-120		28		45	36	15	4
Long	10,139,625	100	74	47	38	11	4
First 30 days		37		49	33	12	6
Days 31-120		56		45	40	11	4
Days 121-165		7		46	42	9	3
Very Long	83,114,840	100	163	42	50	6	2
First 30 days		18		49	38	9	4
Days 31-120		29		43	47	7	3
Days 121-165		14		41	57	5	3
Days 166 or more		39		38	57	4	1

Note: Short episodes lasted 30 days or fewer; medium episodes exceeded 30 days but lasted fewer than 121 days; long episodes exceeded 120 days. These data are for episodes beginning between July 1, 1993, and June 30, 1994.

SOURCE: ProPAC analysis of 1990 and 1993 home health claims from the Health Care Financing Administration.

location. Interim payments, which currently are provided to home health agencies, would be eliminated. The proposal also would require that, beginning in fiscal year 1997, only the services provided during the first 100 days following a hospitalization would be paid under Part A. Visits after that period or any that were not associated with a hospital stay would be paid under Part B.

Conclusions and Recommendations

Both the Congress's and the President's proposals attempt to restrict the growth in Medicare's post-acute care spending. The average payment updates under the TEFRA payment system would be lower than those under current law. Skilled nursing and home health payments would be changed from cost-based reimbursement to prospective payment systems. Each proposal contains interim measures to restrict payments. However, neither one fully addresses the rising use of post-acute services. Following are the Commission's recommendations on the general approach to improve payments to post-acute providers and to help control the growth in Medicare spending.

Recommendation 20: Prospective Payment for Post-Acute Care

Prospective payment systems should be implemented for all post-acute services. The payment method for each service should be consistent across delivery sites. The Secretary should explore methods to control the volume of post-acute service use, such as bundling services for a single payment.

The post-acute care industry is characterized by substantial growth in the numbers of providers, people receiving services, and the services used by each recipient. These factors have contributed to the double-digit increase in Medicare's expenditures and the ever-larger share of Medicare payments for post-acute services. Some of this growth is due to site substitution between hospitals and post-acute providers. A large part of it, however, is due to the absolute increase in post-acute services provided to beneficiaries.

Prospective payment systems for post-acute services are needed to ensure that only necessary services are provided and to improve Medicare's ability to track and compare service use. Further, broadening the payment unit to include all the services furnished during an episode of care would encourage providers to be more efficient. These payment changes, however, should be accompanied by mechanisms to make certain that facilities have the capacity to provide quality services appropriate to the patient's needs.

The Health Care Financing Administration (HCFA) has sponsored demonstration projects to develop prospective payment systems for skilled nursing facilities and home health agencies that have been in progress for several years. In addition, it is supporting research to develop prospective payment for rehabilitation services. Despite the overlap in the types of services delivered by each of these providers, the research projects have been managed, tested, and evaluated independently of each other. The Secretary should coordinate these efforts to develop consistent service units and prospective payment systems.

Recommendation 21: Case-Mix Measures for Post-Acute Services

Reliable case-mix measurement is important in prospective payment systems to account for resource use and to analyze treatment patterns and costs across sites. The Secretary should coordinate case-mix research across post-acute care settings, using consistent methods for measuring patient acuity and resource use.

Reliable case-mix measurement systems strengthen prospective payment by accounting for patient characteristics that affect resource use. Further, they allow for comparisons of service use and expenditures across beneficiaries and treatment settings. HCFA is sponsoring research to measure the intensity of services provided in rehabilitation, skilled nursing, and home health settings. It is essential that these studies be coordinated. Many of the same services, particularly nursing and therapies, are delivered by each of these providers, yet the units for measuring resource use differ in each demonstration. Thus, accurate comparisons of treatments or costs are not possible. HCFA should coordinate its efforts to produce a reliable system that consistently

classifies patients served and the number and types of services provided across delivery sites.

Recommendation 22: Interim Fee-for-Service Payment Method for Skilled Nursing Facility Services

An interim payment method should be implemented to control the growth in Medicare payments for SNF services until a comprehensive prospective payment system is established. A system based on historical data and facility-specific limits, however, may not allow facilities to respond appropriately to changes in a dynamic environment.

The Congress's and the President's proposals differ in their approaches to limiting Medicare payments for SNF services until a prospective payment system is implemented. They are similar, however, in that each would impose facility-specific and national limits. Both proposals would use Medicare Cost Report data, updated by the SNF market basket, to calculate limits or rates. Therefore, payments would reflect historical costs, patient mix, and treatment patterns. To account for the lack of a case-mix measurement system, the congressional plan would require the Secretary to develop a separate method for reimbursing SNFs for patients with intensive nursing or therapy needs. Likewise, the President's proposal would allow the Secretary to adjust the per diem rates to reflect changes in patient severity.

The Commission believes that interim payment limits should be designed to provide appropriate constraints on Medicare outlays without unduly restricting this evolving industry. Facility-specific limits would allow SNFs that had high costs during the base year to maintain higher payments year after year, while those that experienced low costs during the base year would be restricted to these lower levels. On the other hand, payment limits based on average costs would not reflect legitimate cost differences across facilities. Further, historical data would not account for the higher costs associated with the changing acuity of SNF patients. Alternative methods for calculating payment limits, such as using a larger geographic area or blending facility-specific and national rates, should be explored.

Recommendation 23: Interim Fee-for-Service Payment Method for Home Health Care

Until a fully prospective payment system is developed, the Commission supports adopting episode-based payment limits. In addition, beneficiary copayments, subject to an annual limit, should be introduced.

The Commission recognizes that a prospective payment system for home health care will take time to implement. In the interim, other mechanisms should be established to constrain the growth in service use. Instituting episode-based payment limits, as proposed by the Congress and the Administration, would encourage providers to deliver services more efficiently. In addition, adopting copayments would increase beneficiaries' involvement in home health treatment decisions, consistent with their financial responsibility for other Medicare-covered services. Beneficiary out-of-pocket costs should be limited, however, so that the copayments do not restrict access inappropriately. Further, Medicare needs to explore other means, such as case management and utilization review, to control use.

In developing prospective payment rates, characteristics of the current home health delivery system should be considered. Units of service are not uniformly defined across agencies. Consistent definitions would allow the Secretary to better monitor and evaluate Medicare's expenditures and quality of care. In addition, both the Congress and the President propose blending national and regional costs to establish payment limits. While the Commission believes these proposals would improve the current cost-based system, it is concerned that maintaining regional variation in the limits would perpetuate unjustified differences in utilization and expenditures. ProPAC supports a transition from regional to national rates, as was used in establishing hospital prospective payment rates, to eliminate this type of unexplained variation.

AMBULATORY CARE PROVIDERS

Medicare spending for ambulatory care, whether furnished in outpatient facilities or in physicians' offices, increased from 30 percent of total program expenditures in 1983 to 32 percent in 1994. Part B payments to outpatient facilities alone reached

$14.1 billion in 1994.[6] Outpatient care is provided in hospital outpatient departments, freestanding ambulatory surgical centers, independent clinical laboratories, comprehensive outpatient rehabilitation facilities, and hospital-based and freestanding dialysis centers. However, 85 percent of Medicare outpatient spending goes to hospital outpatient departments and dialysis centers. This section focuses on services provided by these facilities.

Outpatient Dialysis Services

The 1972 amendments to the Social Security Act extended all Medicare Part A and Part B benefits to people with end-stage renal disease (ESRD). Virtually all patients of any age who are diagnosed with ESRD are eligible. ESRD is marked by the irreversible loss of kidney (renal) function. It is treated either with organ transplantation or permanent renal dialysis. The vast majority of ESRD enrollees are treated with either hemodialysis or peritoneal dialysis on an outpatient basis.[7] Consequently, there is a strong incentive for these beneficiaries to purchase Part B coverage.

Benefits for a kidney transplant patient generally start the month in which the transplant is performed, whereas dialysis benefits generally begin three months after eligibility is established. For an ESRD enrollee who also is covered by an employer-sponsored group health plan, all medical claims during the first 18 months of Medicare eligibility are paid first by the employer's plan. If the employer's plan does not pay in full, Medicare will make secondary payments up to its specified limits or the billed amount, whichever is lower. This is known as the Medicare secondary payer provision.

Most dialysis patients receive hemodialysis in either hospital-based or freestanding dialysis centers. Others dialyze at home under the supervision of a local facility. When coverage for ESRD patients began, Medicare paid hospital-based and freestanding dialysis providers their reasonable costs and reasonable charges, respectively, limited to $138 per treatment. Beginning in 1983, the payment methodology was changed to a prospective rate per dialysis treatment.

The prospective payment, called the composite rate, covers the bundle of services, tests, drugs, and supplies routinely required for a dialysis treatment (hemodialysis or peritoneal dialysis) whether it is provided in a facility or performed by the beneficiary at home. It represents the national median cost per treatment, weighted by the percentage of patients dialyzing in each site.

The composite rate was calculated in 1983 based on a sample of Medicare Cost Reports from 1977 through 1979. Therefore, it reflects the mix and costs of inputs and the proportion of patients dialyzing in different sites at that time. The labor portion of the base rate is adjusted for geographic differences in wages; however, payments may not exceed $139 per treatment.[8] Hospital-based facilities receive a slightly higher composite rate than freestanding facilities.

Unlike Medicare payments to other types of providers, the composite rate has not been updated annually. Aside from a $2 decrease implemented in 1986 and a $1 increase in 1991, the composite rates have not changed. When accounting for inflation, therefore, the real payment per treatment has declined substantially. The Omnibus Budget Reconciliation Act (OBRA) of 1990 requires ProPAC to examine the payment for dialysis services and recommend an update factor each year.

Even though the composite rate has changed very little since it was implemented, total Medicare payments to dialysis facilities have increased rapidly. This is largely due to a 10 percent annual growth in the number of beneficiaries receiving dialysis. Rising use of certain extra billable dialysis-related items, among them nonroutine drugs and some diagnostic and laboratory tests, has contributed as well.

Moreover, aggregate Medicare expenditures for all beneficiaries with ESRD (including transplant recipients) have escalated, from 3.8 percent of total program payments in 1985 to 5.0 percent in 1994. This includes spending for acute and post-acute care for other conditions in addition to dialysis-related services. Consequently, aggregate payments per ESRD enrollee rose from $28,158 to $39,431 during this period, while the size of this group grew rapidly (from 0.3 percent of the Medicare population to more than 0.6 percent). In 1994, Medicare payments per person with ESRD were almost nine times greater than for other beneficiaries. This reflects the high annual cost of dialysis as well as the high overall morbidity of these patients.

Proposed Payment Changes—Neither the Congress's nor the President's proposal includes an update to the composite rate. Both would, however, extend the Medicare secondary payer provision. Under current law, the 18-month period will revert to 12 months on October 1, 1998. The President proposes to set it at 18 months indefinitely. The Congress would permanently extend it to 30 months.

While these proposals would not affect the composite rate payment methodology, they would achieve savings for the Medicare program. The exact amount of savings is uncertain, but it could be substantial. When the Medicare secondary payer provision was extended from 12 to 18 months (under OBRA 1990), the General Accounting Office (GAO) estimated that Medicare would shift $87 million to employer plans each year.[9] In addition, GAO estimated that dialysis providers would receive $41 million more annually. This is because most private health plans pay on the basis of charges, which generally are substantially higher than Medicare's composite rate.

Update Framework—Dialysis providers have continued to treat a growing Medicare ESRD population, even though the inflation-adjusted payment rate has declined substantially. Moreover, freestanding facilities have prospered, largely because of dramatic gains in productivity that lowered service costs. Between 1983 and 1987, facilities achieved substantial productivity improvements through changes in staffing patterns, the use of high flux and high efficiency dialysis (which led to shorter dialysis sessions), dialyzer reuse, and price discounts from suppliers.[10] Scientific and technological advances, on the other hand, raised per treatment costs by 0.8 percent annually, on average.

Between 1987 and 1991, however, productivity gains had a much smaller effect on the cost per hemodialysis treatment (although still greater than that for scientific and technological advances). During this period, treatment sessions became more intensive, requiring more sophisticated techniques and equipment and a richer mix of staff to monitor patient outcomes. Scientific and technological advances continued to increase per treatment costs, but only by about 0.2 percent annually.

More recent data show that dialysis facilities' costs are rising, though more slowly than inflation in the goods and services they purchase. Medicare costs for both hemodialysis and peritoneal dialysis in hospital-based facilities increased, on average, by 1.4 percent per year from 1991 to 1994. By contrast, ProPAC's market basket index for hospital-based facilities averaged 3.3 percent annual growth over the same time.[11] Medicare costs in freestanding facilities rose by 2.2 percent annually from 1991 to 1993, compared with a 3.7 percent average market basket increase.[12]

On average, Medicare costs in hospital-based facilities were about 45 percent higher in 1994 than those in freestanding facilities. Aggregate Medicare payments to hospital-based facilities covered only

Table 4-12. Payment to Cost Ratios for Hospital-Based and Freestanding Dialysis Facilities, All Dialysis Treatments, 1990-1994

	Hospital-Based Facilities					Freestanding Facilities				
Hospital Category	1990	1991	1992	1993	1994	1990	1991	1992	1993	1994
All	0.86	0.80	0.80	0.77	0.77	1.12	1.13	1.11	1.08	1.05
Rural	0.85	0.79	0.77	0.78	0.78	1.10	1.09	1.07	1.02	0.98
Urban	0.86	0.80	0.80	0.76	0.76	1.12	1.14	1.12	1.09	1.06
Nonprofit	0.85	0.80	0.80	0.77	0.77	1.08	1.06	1.03	1.04	1.05
Profit	1.00	0.85	0.85	0.68	0.68	1.13	1.15	1.13	1.09	1.05
Small	0.72	0.72	0.71	0.64	0.64	1.04	1.04	1.02	0.97	0.92
Medium	0.85	0.77	0.77	0.75	0.75	1.12	1.11	1.09	1.06	1.02
Large	0.91	0.85	0.85	0.80	0.80	1.15	1.18	1.16	1.13	1.10

Note: 1994 ratios are based on estimated payments and costs for freestanding facilities. Includes both hemodialysis and peritoneal dialysis treatments.

SOURCE: ProPAC analysis of Medicare Cost Report data from the Health Care Financing Administration.

77 percent of reported costs (see Table 4-12). By contrast, Medicare payments were approximately 5 percent above freestanding facilities' reported Medicare costs.[13] For both types of providers, larger facilities (those that treated the highest volumes of patients) had lower costs per treatment and therefore better financial performance.

It appears that freestanding dialysis facilities in particular—which account for about 64 percent of all facilities and serve about 69 percent of all dialysis patients—performed well through 1994. As the costs of providing dialysis services have slowly risen, however, Medicare payment to cost ratios have gradually declined. Additionally, cost report data suggest that facilities recently have achieved only modest cost savings through productivity improvements (see Table 4-13). In 1994, hemodialysis treatments per station and total treatments per full-time equivalent employee were no longer increasing as they had in the past, while staffing mix was stable.

Some observers are concerned that continued attempts to achieve productivity gains—primarily through shorter dialysis sessions—may adversely affect the quality of care provided to Medicare ESRD beneficiaries. Adjusted survival rates have improved among dialysis patients in recent years, despite the fact that they are older and sicker than before.[14] Survival has increased for all age, race, ethnic, and diagnosis groups, as well as for all dialytic modalities. But rates still may not be as high as they should.

A measure of dialysis adequacy is Kt/V (the fraction of a patient's total body water cleared of urea during a dialysis session).[15] Recent studies have found that almost 50 percent of hemodialysis patients had a Kt/V of less than 1.0, placing them at higher risk for morbidity and mortality. One reason may be that many patients are not dialyzed long enough. Treatment times fell, on average, from 15 to 18 hours a week in the 1970s to 12 to 15 hours a week in the 1980s. During the early 1990s, average lengths of hemodialysis slipped even further, although recently they have begun to rise. Improved technology may account for shorter treatment times, but economic incentives to save on labor and capital costs as well as patient preferences also contribute to the phenomenon.

Mortality rates for dialysis patients generally are believed to be greater in the United States than in Europe or Japan. Studies have found that the higher mortality in this country cannot be explained by differences in patient age, gender, race, or the presence of diabetes. These studies, however, continue to be limited by inadequate measures of patient severity.

More definitive studies are needed, but recent evidence suggests that treatment factors heavily influence mortality rates. For example, prescribed

Table 4-13. Median Productivity Indicators for Hospital-Based and Freestanding Dialysis Facilities, 1990-1994

Facility Type	Total Treatment Per FTE	Staff Mix	Hemodialysis Treatments Per Station	Length of Dialysis (In Hours)	Dialyzer Reuse
Hospital-based					
1990	550	0.67	599	4.5	—
1991	561	0.64	618	4.5	—
1992	563	0.64	621	4.5	—
1993	587	0.63	645	4.5	—
1994	588	0.63	642	4.5	—
Freestanding					
1990	659	0.33	539	4.5	9.1
1991	625	0.35	555	4.5	10.0
1992	633	0.34	566	4.5	11.2
1993	617	0.35	563	4.5	12.0

Note: 1994 data are not available for freestanding facilities. FTE = full-time equivalent. Staff mix = ratio of registered nurses to all direct patient care staff, including registered and licensed practical nurses, nursing assistants, and technicians. Dialyzer reuse measures average number of times dialyzers are reused.

SOURCE: ProPAC analysis of Medicare Cost Report data from the Health Care Financing Administration.

Kt/V in Europe appears to be higher than in the United States, and dialyzer reuse—which may decrease urea clearance—is less common in other countries.[16] Nations also differ in the extent to which they use in-facility hemodialysis, which has been associated with a lower survival rate compared with peritoneal dialysis. Even within the United States, the relative use of these modalities varies among facility types. This reinforces the concern that treatment variation may be driving differences in mortality rates.

ProPAC's ongoing analysis of dialysis costs indicates that input prices can be expected to rise by about 3.2 percent between fiscal years 1996 and 1997. Scientific and technological advances are expected to increase per treatment costs by 0.7 percent over the same period.[17] Although this industry is not likely to repeat the marked productivity improvements experienced in the 1980s, the Commission believes that gains consistent with the hospital industry can be achieved.

Despite rising costs and declining financial performance, the number of dialysis providers continues to grow by about 6 percent per year. This may reflect the continued increase in the number of ESRD beneficiaries. However, freestanding facilities—particularly proprietary ones—have grown by about 9 percent annually, a rate much faster than that for hospital-based providers.

Many industry experts have raised concerns about whether this industry can continue to provide quality dialysis services without higher payments. There is no conclusive evidence that the quality of care has actually declined or that there are quality differences across facility types. Nonetheless, recent studies indicate that a substantial percentage of hemodialysis patients in the United States may be underdialyzed and that treatment is a major factor affecting patient outcomes. If facilities must extend treatment times to ensure that Medicare patients receive adequate dialysis, their costs are likely to increase further.

Hospital Outpatient Services

Medicare payments for many hospital outpatient services are based at least partially on the providers' reasonable costs of furnishing the service. For certain ambulatory surgeries, radiology services, and diagnostic procedures, the total payment is the lowest of the hospital's reasonable costs, charges, or a blended amount that combines the lesser of costs or charges with a prospective payment amount for the same service in another setting. Payment for some other services, such as clinic and emergency room visits, is the lesser of the hospital's costs or charges. Still others (laboratory tests, for example) are paid for using a fee schedule, without regard to the provider's actual costs.

The use of multiple payment methods not only creates conflicting incentives for hospitals, but imposes an administrative burden. Moreover, different payment methods and amounts are applied for the same service across sites of care. This may inappropriately influence the choice of treatment setting.

In addition, cost-based payment methods provide weak incentives to constrain the cost and volume of services furnished. As a result, Medicare outlays for hospital outpatient services have increased rapidly. In response, the Congress mandated in OBRA 1990 that the Secretary of Health and Human Services develop a prospective payment system for hospital outpatient services. The Secretary's report, released in 1995, recommended implementation of prospective payment in several phases.[18] In its response to that report, the Commission expressed concern about several issues.

First, if prospective payment were implemented on an incremental basis, hospitals and Medicare would bear the costs associated with adopting a new payment system while receiving few of the desired benefits. Partial implementation would do little to promote simplicity or predictability of payment, or to reduce the administrative burden on hospitals or the program. Such a policy also would create opportunities for providers to increase their revenues by altering billing practices or reallocating overhead costs to services that remain under cost-based payment. Second, even a comprehensive prospective payment system would retain fee-for-service payment, with little incentive for providers to control the burgeoning volume of services.

Given these concerns, the Commission recommended that the incremental hospital outpatient prospective payment system proposed by the Secretary not be enacted. ProPAC continued to support the concept of a comprehensive payment system

for hospital outpatient services, but recommended that the Congress require the Secretary to submit a fully detailed legislative proposal for implementing such a system. In addition, the Commission recommended coupling prospective payment with a strategy to control the growth in overall outpatient service volume. As most outpatient services can be provided in multiple settings, imposing volume controls only on hospital outpatient services probably would shift them to other sites.

Beneficiary Liability—Because Medicare payments for hospital outpatient services are based partially on costs, final payments are not known until providers' annual cost reports are settled. Consequently, under current law, the beneficiary copayment is set at 20 percent of charges rather than 20 percent of the total payment, as it is for other Part B services.

Basing copayments on hospital charges results in savings to the Medicare program. Since beneficiary liability is subtracted from the total payment to determine Medicare's contribution, rising copayments defray some program spending. At the same time, however, charge-based copayments impose an ever-greater financial burden on Medicare enrollees who use hospital outpatient services. Moreover, this burden is increasingly uneven across types of services and settings.

According to the most recent estimates, beneficiaries are responsible, on average, for 37 percent of the total payments to hospitals for Medicare-covered outpatient services. For certain surgeries, radiology, and diagnostic procedures, beneficiaries pay about 53 percent of the total. For other cost-based outpatient services, it is about 30 percent. These shares are considerably higher than if the same services were provided in other ambulatory settings.

These differences in cost sharing unfairly penalize beneficiaries who receive care in hospital outpatient facilities. In addition, they provide strong incentives for physicians, acting on behalf of patients, to choose a site of care on the basis of financial considerations rather than clinical appropriateness. These incentives are mitigated for many beneficiaries because they have supplemental insurance policies or are eligible for Medicaid benefits that cover most copayments. About 11 percent of Medicare beneficiaries, however, lack such coverage. Those who have private policies indirectly carry the growing burden of cost sharing through rising insurance premiums. Setting beneficiary copayments at 20 percent of payments instead of 20 percent of charges would increase program spending, but would eliminate this source of adverse incentives and growing inequity in the payment burden.

Formula-Driven Overpayment—Medicare's share of the payment for certain ambulatory surgeries, radiology services, and some diagnostic services is supposed to be the total amount minus the beneficiary copayment. For facilities paid the blended amount, however, program payments are not reduced by the entire copayment.[19] Thus, total payments to hospitals for outpatient services are higher than the Congress intended. In addition, this problem with the formula provides a strong incentive for hospitals to raise charges, which increases beneficiary liability and total payments to hospitals.

ProPAC previously recommended changing the formula so that the beneficiary copayment is subtracted after the total amount is calculated. This correction would result in savings for Medicare, which should be used to offset spending increases caused by reducing beneficiary copayments.

Proposed Payment Changes—The Congress's proposal would correct the formula-driven overpayment in a manner that is consistent with past ProPAC recommendations. However, it does not address prospective payment for hospital outpatient services or the issue of beneficiary liability. The President's proposal contains no provision regarding Medicare payment for hospital outpatient services.

Conclusions and Recommendations

The Commission's analyses of Medicare policies regarding ambulatory care providers have focused on dialysis facilities and hospital outpatient departments not only because of ProPAC's statutory obligations, but also because these facilities account for the vast majority of Medicare outpatient spending. In making recommendations, however, the Commission is mindful of how changes to Medicare's payment policies will affect other ambulatory care providers and expenditures for other services.

Recommendation 24: Update to the Composite Rate for Dialysis Services

The Secretary should develop methods to control total Medicare per capita expenditures for ESRD beneficiaries. In the meantime, the composite rate should be updated by 2.7 percent for hospital-based dialysis facilities and by 2.0 percent for freestanding facilities for fiscal year 1997. The Secretary should also develop reliable measures of patient severity and outcomes to analyze the relationships among treatment processes, patient outcomes, and costs. These factors should be considered in evaluating the need for and the level of future payment updates.

The rapid growth in total Medicare spending for ESRD beneficiaries is a major concern. A large part of this increase is due to an expanding ESRD population. But these beneficiaries are also using more acute inpatient, skilled nursing, home health, and dialysis-related services than ever before. A comprehensive payment method that encompasses a broader set of services should be explored. Capitation has been successful in controlling expenditure growth for other populations. Most ESRD beneficiaries, though, are not eligible to enroll in the Medicare risk program. The Secretary should either open enrollment to this group or consider implementing a separate capitation program. At a minimum, utilization review or other managed care techniques should be used to control the total volume of services provided to ESRD beneficiaries across all sites of care.

Until major policy changes are made, Medicare should consider the adequacy of its current payment rates. Unlike program payments to other types of health care providers, the composite rate for outpatient dialysis services is not updated annually. That Medicare treats dialysis facilities differently is of some concern. This is heightened by the fact that neither the Congress's nor the President's proposal contains a provision to update the composite rates. Under these proposals, dialysis facilities would not receive payment increases for the next seven years.

Dialysis facilities have treated a growing Medicare ESRD population, even though the inflation-adjusted payment rate has declined substantially. The Medicare program is responsible for making certain that payments for services furnished to its beneficiaries are adequate to ensure quality care. Recent evidence suggests that input costs are rising and that large productivity gains may no longer be possible. Consequently, these facilities may be unable to continue to provide quality dialysis services without a payment rate increase. Given widespread concern about the quality of dialysis services, the composite rate should be updated as suggested by ProPAC's update framework. Differential updates would help to account for cost differences between hospital-based and freestanding facilities. Further, the Secretary should closely monitor treatment patterns and patient outcomes to ensure that facilities use the payment increase to improve quality of care.

Recommendation 25: Prospective Payment for Hospital Outpatient Services

A comprehensive prospective payment system should be developed for hospital outpatient services. Such a system should include a strategy for controlling the volume of ambulatory services.

A prospective payment system for all hospital outpatient services should be implemented as soon as possible. Prospective payment would create incentives for controlling costs by offering providers the opportunity for profits as well as the risk of financial loss. Because almost all services provided in the hospital outpatient setting can be obtained in other ambulatory settings, the Secretary should strive to create consistent payment policies across all sites and providers.

ProPAC analyses indicate that much of the rise in Medicare spending for outpatient services is due to rapid increases in utilization. To constrain future growth in outpatient service use, a strategy for limiting use should be developed. Imposing volume controls on hospital outpatient services only, however, probably would lead to a shift in use to other sites. Ultimately, therefore, volume control methods should apply to all ambulatory care settings.

Recommendation 26: Beneficiary Liability for Hospital Outpatient Services

The growing financial burden for Medicare enrollees who receive services in hospital

outpatient departments should be alleviated immediately. Beneficiary coinsurance for these services should be limited to 20 percent of the Medicare-allowed payment, as it is in other settings. For services not paid on a prospective basis, the Secretary should establish a new method for determining beneficiary copayments based on estimated allowed payments since they cannot be calculated precisely when services are delivered.

Under current law, the beneficiary's copayment for hospital outpatient services is 20 percent of charges rather than 20 percent of the total payment, as it is for virtually all other Part B services. Because hospital charges generally are higher than total payments, beneficiaries are responsible for substantially more than 20 percent of total payments. In addition, because hospitals' charges have grown more rapidly than total payments, beneficiary cost sharing has increased disproportionately. If this continues, the beneficiary's share of outpatient payment soon will overtake the program's share.

Beneficiary liability for hospital outpatient services is higher than it would be if the services were provided in another setting. Such differences in cost sharing unfairly penalize beneficiaries who receive care in hospital outpatient facilities.

Until a prospective payment system is implemented, copayments should be based on estimated payments. This could be done in several ways. Copayments could equal a lower percentage of charges, for example. Alternatively, HCFA could use an estimate of each hospital's payment to charge ratio, to determine the coinsurance amount for each service.

Reducing beneficiary coinsurance would raise Medicare outlays. The Commission therefore recommends that the reduction in program payments resulting from correcting the blended payment formula, as specified in the Congress's proposal, partially offset this increase. If necessary, the change in beneficiary liability could be phased in over several years.

Notes to Chapter 4

1. The Medicare provisions passed by the Congress are in H.R. 2491, the "Balanced Budget Act of 1995." The Medicare provisions of the President's proposal are in Title II of draft legislation, called the "Balanced Budget Act of 1995 for Economic Growth and Fairness." Released on December 7, 1995, it has not been introduced in the Congress.

2. Rehabilitation and psychiatric distinct-part units newly certified by Medicare are exempt from TEFRA limits only for their first full 12-month cost reporting period. The first full year of operation is designated as the base year for these facilities.

3. The only restriction on ancillary service costs, other than meeting Medicare's definition of reasonableness, is that when physical and respiratory therapy services are provided "under arrangement" by an external facility, the therapists' salaries must be below HCFA's state-level salary guidelines.

4. In the lawsuit, Fox v. Bowen, 656 F. Supp. 1236 (D. Conn. 1986), the Court held that the Secretary's practice of using arbitrary rules to deny physical therapy benefits delivered by SNFs violated Medicare statutes and regulations and the due process clause of the U.S. Constitution. MCCA removed the prior hospital stay requirement, decreased the SNF copayment, and broadened coverage by changing the maximum benefit to 150 days per year.

5. The nonroutine cost limits would be calculated by determining the average costs *per stay* of nonroutine services during the last (12-month) cost report submitted on or before December 31, 1994. This amount would then be updated by the SNF market basket to fiscal year 1996 and multiplied by the number of stays that the SNF had during the year. Per stay amounts would be updated by the SNF market basket minus 2 percentage points in fiscal year 1997 and in each subsequent year until the implementation of the prospective payment system. Estimates of Medicare Part B payments for SNF services provided to beneficiaries eligible for Part A during the 1994 cost reporting period would be included in the facility-specific limits. In addition, facilities that did not submit a cost report in 1994 would be assigned *per stay* limits based on the national average cost for nonroutine services.

6. Health Care Financing Administration, Office of the Actuary.

7. As the number of kidney transplants performed and graft survival rates has risen over time, the proportion of all Medicare ESRD beneficiaries with a functioning transplant has increased—from 10.8 percent in 1978 to 22.0 percent in 1991. Still, dialysis patients accounted for a large majority of ESRD enrollees in 1991.

8. The payment limit was increased to $139 under OBRA 1990.

9. U.S. Congress, General Accounting Office, *Medicare: Impact of OBRA-90's Dialysis Provisions on Providers and Beneficiaries*, GAO/HEHS-94-65 (Washington, DC: U.S. Government Printing Office, April 1994).

10. Project HOPE's Center for Health Affairs, *Identifying Changes in the Factors of Production for Dialysis Services*, ProPAC Extramural Technical Report, No. E-93-01, March 1993.

11. ProPAC's dialysis facility market basket contains four cost components—capital, labor, other direct costs, and overhead. Because cost shares for these components differ for hospital-based and freestanding facilities, the Commission developed separate market baskets. Price proxies were derived from the components of HCFA's input price indexes for PPS hospitals, skilled nursing facilities, and home health agencies.

12. HCFA introduced a new cost report for freestanding dialysis facilities effective for cost reporting periods beginning on or after October 1, 1993 (fiscal year 1994 and after). The revised cost report corrects for certain errors that led to data quality problems. Unfortunately, the 1994 data for these facilities were not available for ProPAC's analysis.

13. The composite rate is intended to cover the portion of facility costs that is allowable in accordance with Medicare principles of reimbursement. HCFA's audit of fiscal year 1991 cost reports found that Medicare-allowable costs in freestanding dialysis facilities were 12.2 percent lower than reported costs, whereas those in hospital-based facilities were 4.6 percent lower. After adjusting reported costs by HCFA's audit correction factors, payment to cost ratios are substantially higher.

14. Project HOPE's Center for Health Affairs, *Quality of Dialysis in the United States*, ProPAC Extramural Technical Report, forthcoming.

15. Kt/V (where K is the dialyzer clearance of urea, t is the time of dialysis, and V is the patient's urea volume) measures the intensity of dialysis relative to the patient's size, describing the fractional removal of urea.

16. Past studies found that inadequate manual reprocessing of dialyzers was associated with a higher risk of morbidity and mortality, although this no longer appears to be a problem.

17. Each year, ProPAC estimates how Medicare costs are affected by the dialysis industry's adoption of new cost-increasing, quality-enhancing scientific and technological advances. The Commission's most recent analysis indicates that these innovations will raise facilities' total operating and capital costs by $26.6 million, or 0.7 percent, in fiscal year 1997. Abt Associates, *The Incremental Impact of Scientific and Technological Advances on Cost Increases in Dialysis Facilities*, ProPAC Extramural Technical Report, No. E-96-01, January 1996.

18. U.S. Department of Health and Human Services, *Report to Congress: Medicare Hospital Outpatient Prospective Payment*, March 17, 1995.

19. The blended amount is determined by a two-part formula: the hospital-specific portion (the lesser of costs or charges minus 20 percent of charges) and the prospective portion (80 percent of the applicable prospective rate). The prospective rate for ambulatory surgery is the amount for the relevant procedure category used to pay freestanding ambulatory surgical centers. For radiology and diagnostic services, it is that portion of the physician fee schedule intended to represent the technical expense of providing that service.

    The second part of the forumula inappropriately assumes that 20 percent of the prospective rate equals 20 percent of charges (the copayment). In fact, charges are usually much higher than the prospective rate. Because the full contribution of beneficiary cost sharing is not captured, Medicare's share of hospital payments is overstated.

Appendix A. Technical Report Series

Appendix A lists the Prospective Payment Assessment Commission's (ProPAC's) extramural and intramural technical reports. These reports provide documentation related to the Commission's March and June annual reports to the Congress. The congressional reports are prepared upon request by the Congress. Each technical report is numbered according to type and year of publication. Numbers missing from the sequence refer to studies that have been replaced with more recent reports. Commission reports can be obtained from the Prospective Payment Assessment Commission, 300 7th Street, S.W., Suite 301B, Washington, D.C. 20024, or by calling the office at 202/401-8986.

EXTRAMURAL TECHNICAL REPORT SERIES

E-87-01: Improving the Definition of Hospital Labor Market Areas and Wage Indexes (Abt Associates, Inc.)

Methods for improving the definition of hospital labor market areas were investigated. This report identifies urban and rural labor market areas with the greatest amount of wage variation. It also examines the sources of wage variation within current labor markets and possible improvements in the area wage adjustment. Appended are step-by-step instructions for assigning hospitals within metropolitan statistical areas to urbanized areas as defined by the Bureau of the Census. (formerly E-87-12)(2/87)

E-87-03: Measures of Complexity of Illness Within DRGs (SysteMetrics/McGraw-Hill, Inc.)

The goal of this research was to refine the Commission's method of monitoring continuing changes in DRG case mix and case complexity (changes within DRGs). This study refines the Commission's methodology for estimating the annual component of real case-mix change within DRGs. The methodology was used to develop annual estimates of within-DRG case-mix change for Medicare patients from 1984 to 1986. It was also used by the Commission to estimate this component of real case-mix change in future years as additional Medicare data became available. Estimates from this study were used to analyze the indirect medical education adjustment. (3/89)

E-87-06: Assessing the Adequacy of the Medicare Cost Report Data (SysteMetrics/McGraw-Hill,Inc.)

This report provides information on perceived strengths and weaknesses of the Medicare Cost Report. Hospital financial officers, fiscal intermediaries, and industry representatives were surveyed. In general, the results of this study indicate that most hospitals believe that the cost report is acceptable as a reimbursement tool. Most hospitals thought, however, that the cost report does not accurately measure the cost of care for Medicare beneficiaries because bad debt, charity care, patient telephones, and so forth are not recognized. PPS has resulted in changes in reporting practices. Particular attention is given to passthrough items like capital and direct medical education. (4/88)

E-87-08: Trends in the Concentration of Six Surgical Procedures Under PPS and Their Implications for Patient Mortality and Medicare Cost (Project HOPE)

This report examines trends in hospitals' volumes of six specialized surgical procedures and the impact of those trends on mortality and costs. The six procedures are coronary artery bypass grafting, total hip replacement, abdominal aneurysm repair, intestinal resection, transurethral prostatectomy, and carotid endarterectomy. (6/88)

E-87-11: Small Isolated Rural Hospitals: Alternative Criteria for Identification in Comparison with Current Sole Community Hospitals (SysteMetrics/McGraw-Hill, Inc.)

This study determines how many facilities become eligible for sole community hospital (SCH) status. The contractor also examines how the distribution of SCHs would change if the SCH criteria were altered. This study also provides information used to analyze the financial vulnerability of small isolated rural hospitals. (6/88)

E-88-01: Subacute Care in Hospitals: Synthesis of Findings from the 1987 Survey of Hospitals and Case Studies in Five States (Lewin/ICF)

This document is the final report of an 18-month study of subacute care in hospitals, often referred to as transitional care. Results of a representative national survey of hospitals are presented, along with findings from case studies in five states (California, Louisiana, New York, North Carolina, and Washington). Information is also presented on other types of transitional care, such as home health and skilled nursing care. (9/88)

E-88-02: An Analysis of Hospital Sensitivity to DRG Price Variation in the Medicare Prospective Payment System (SysteMetrics/McGraw-Hill, Inc.)

This study provides information on whether hospital behavior in rendering care and assigning resources is sensitive to differences between hospital costs and PPS prices. The contractor interviewed health care consultants and hospital administrators to identify the extent and objectives of hospital strategies to concentrate in or discontinue selected services. Second, the contractor assessed whether these strategies were in direct response to variations in the DRG prices or other factors influencing hospital management. Third, it examined the use of product line management and service costing in hospitals' responses to DRG price variations. (8/88)

E-89-01: Urban and Rural Cost Differences: Literature Synthesis and Review (SysteMetrics/McGraw-Hill, Inc.)

The reasons for differences in urban and rural hospitals' costs per case are synthesized from current research in this report. Specifically, the basis for the lower costs of rural hospitals compared with urban hospitals is explored, and further research suggested. (3/89)

E-89-02: Treatment of Certain Hospital Labor Expenses in the PPS Market Baske (SysteMetrics/McGraw-Hill, Inc.)

This report examines certain hospital labor expenses not directly measured by the PPS market basket (contract labor, employee bonuses, recruitment costs, employee benefits, overtime and part-time employment, and changes in employee skill mix). The project examines how these costs are currently measured in the market basket and changes in these expenses between 1985 and 1988. Estimates were made of the effect these labor expenses would have on market basket increases if the expenses were directly measured in the market basket wage component. The calculations of the Average Hourly Earnings for Non-Supervisory Hospital Workers and the Employment Cost Index for Hospitals are also described in the study. (2/89)

E-90-01: The Relationship Between Declining Use of Rural Hospitals and Access to Inpatient Services for Medicare Beneficiaries in Rural Areas (Codman Research Group, Inc.)

This study examines hospital utilization patterns for Medicare beneficiaries living in defined rural and urban hospital market areas of five states—Alabama, California, Illinois, Montana, and Texas—from 1984 to 1986. The study examines Medicare beneficiary care according to the market area where the beneficiary lives. Cases are divided into eight DRG groups to examine whether access is impaired for some services and not others. The study also examines how these changes in utilization affect admissions and market share of rural and urban hospitals. (1/90)

E-90-02: Alternative Hospital Market Area Definitions (SysteMetrics/McGraw-Hill, Inc.)

This report examines alternative methods for defining hospital market areas through an extensive literature search and contact with experts in the field. The study reviews the role market areas play in PPS. It also reviews numerous alternatives that have been used for defining market areas, exploring options that have not been used for hospitals. Finally, the study provides an evaluation of the alternative methodologies and their potential applicability to PPS for defining hospital labor and product markets. (3/90)

E-90-04: The Dynamics of Hospital Services Changing Patterns in the Services Provided by Hospitals from 1980 to 1987 (Kirsten Iversen)

The level of services and facilities provided by hospitals is dynamic, changing over time and across settings. This analysis describes patterns in the changing levels of services provided by different groups of hospitals from 1980 to 1987. (3/90)

E-90-05: Methodology for Measuring Case-Mix Change: How Much Change in the Case Mix Is DRG Creep? (The RAND Corporation)

ProPAC assisted the Health Care Financing Administration in a medical record reabstraction study. This study develops a method to distinguish case-mix increases caused by changes in coding practices from changes in treatment patterns and patient mix. It also provides information for developing and refining alternative ongoing data collection methods to monitor case-mix change over time. The Commission helped fund this project and provided support in designing, implementing, and monitoring the study. (4/90)

E-90-07: How Services and Costs Vary by Day of Stay for Medicare Hospital Stays (The RAND Corporation)

This study describes how the cost of services provided during Medicare hospital stays varies throughout the stay. It also examines how patterns of daily costs vary with clinical characteristics, hospital characteristics, and the types of services provided. The study was based on data on the daily services billed to Medicare patients between May 1987 and April 1988 from a sample of 105 hospitals, and was the first time such data had been used in this way. (3/90)

E-90-08: Comparative Analysis of Annual Survey and Medicare Cost Report Margin Data (American Hospital Association)

This study presents the results of a comparative analysis of total hospital margin data derived from a matched sample of Medicare Cost Reports and corresponding American Hospital Association (AHA) annual surveys. Initially, the national average Medicare Cost Report margin was significantly higher than the corresponding annual survey margin. After editing, however, the cost report margin was found to be slightly lower than the AHA figure. A telephone survey was used to investigate the reasons for the cost report/AHA discrepancies. The study analyzes the discrepancies by type of hospital and categorizes the reasons they occur. The study concludes that properly edited cost report income statement data are usable in research applications. Only one source of bias was documented as significantly affecting calculation of average total margins by hospital group. This was the failure of some public hospitals to report government subsidies as revenue on their Medicare Cost Reports. (9/90)

E-90-09: Hospital Cost Variations Under PPS (Center for Health Policy Studies, Georgetown University)

This study explores the impact of PPS and other factors in accounting for variations in total costs among hospitals during the 1980s. The goal was to understand the extent to which PPS has affected hospital costs, and the mechanisms that have produced those effects. The impact of PPS was isolated by analyzing a time-series of cost data for a sample of hospitals, while controlling for the effects of other factors, such as input prices, mix of outputs, volume of outputs, local competition, and health insurance coverage. The study also focuses on the roles of staffing, service mix, patient volume, and financial pressure to identify the mechanisms that have operated to produce PPS effects. These analyses were conducted separately for all sample hospitals and for important subgroups of the hospital industry, including urban and rural hospitals. (9/90)

E-91-01: Classification Systems for PPS-Excluded and Non-PPS Providers (Project HOPE)

This study provides an overview and evaluation of systems that measure the case mix or resource complexity of patients treated in hospitals excluded from Medicare's PPS or patients treated by non-PPS providers. PPS-excluded hospitals include psychiatric and rehabilitation hospitals and distinct-part units as well as children's, long-term, and cancer hospitals. Non-PPS providers include home health agencies and skilled nursing facilities. The report identifies and describes available research on patient classification systems, case-mix measurement systems, and payment systems for each type of provider. Each system is evaluated using a set of criteria related to patient classification such as administrative feasibility, ability to explain variations in resource use, and clinical validity. Other criteria are applied to the evaluation of payment systems. Among the criteria used are administrative feasibility, equity of the system, and system effectiveness. (1/91)

E-91-02: Study of Health Care Access in Counties Where the Only Hospital Closed (Abt Associates, Inc.)

This report describes a study of access to health services in 22 rural counties where the only hospital closed between 1987 and 1989. These counties are compared with a similar group of counties that did not have a hospital between 1980 and 1989. Access to health care services is evaluated on two dimensions. First, distances and travel times (from the population center of each county) to the nearest hospitals in contiguous counties are identified, and second, the types and numbers of health care providers (facilities and practitioners) in each of the counties are noted. This was accomplished using telephone surveys of county health department personnel and analysis of the Area Resource File. (5/91)

E-91-03: Utilization of Inpatient Hospital Services by Rural Medicare Beneficiaries (Codman Research Group, Inc.)

This study updates a previous analysis (E-90-01) on inpatient hospital utilization for Medicare beneficiaries living in rural and urban market areas of five states: Alabama, California, Illinois, Montana, and Texas. The analysis expands on the earlier study by looking at utilization patterns for rural beneficiaries using refined DRG case-type groupings and by separately examining utilization patterns for younger and older Medicare beneficiaries. The findings from the analysis are consistent with the earlier study, in that access to inpatient hospital services does not appear too constrained for rural Medicare beneficiaries. The study, however, raised concerns about access to ambulatory care in these communities. (5/91)

E-91-04: Volume Adjustments Used in State Medicaid Programs and Rate Setting Systems (Abt Associates, Inc.)

This report presents information about volume adjustments used to adjust payments to hospitals by state Medicaid programs. The contractor surveyed states to determine the number that use a volume adjustment, how the adjustment is calculated, eligibility requirements, whether there are upper and lower thresholds for the adjustment, and the formula used to calculate the adjustment. The contractor also laid out a theoretical framework for considering volume adjustments, and outlined the relationships between policy goals and characteristics of these adjustments. (7/91)

E-91-05: Medicaid Payment Methodologies for Inpatient Hospital Services (Abt Associates, Inc.)

This report describes state Medicaid inpatient hospital payment methodologies in effect as of July 1, 1991. The information was collected through telephone interviews with knowledgeable staff at state Medicaid offices, rate setting commissions, and hospital associations. The survey attempted to identify, describe, and document key concepts used to develop Medicaid payment systems for inpatient hospital services. (8/91)

E-91-06: An Evaluation of Winners and Losers Under Medicare's Prospective Payment System: A Synthesis of the Literature (Lewin/ICF)

This report summarizes the academic and popular literature on (1) hospital characteristics affecting hospital financial performance under Medicare; (2) the design features that affect winning and losing, and how hospitals responded to the incentives of PPS; and (3) the environmental and community characteristics of a hospital's local market that affect hospital financial performance. In addition, it outlines some of the perceived gaps in the literature and includes an extensive bibliography. (10/91)

E-92-01: Certification Requirements for Nursing Homes (Abt Associates, Inc.)

This report presents descriptive information on current Medicaid certification and state licensure requirements for nursing homes. It focuses on those requirements that are expected to impose significant costs on facilities and result in cost variations across states. (3/92)

E-92-02: An Evaluation of Winners and Losers Under Medicare's Prospective Payment System: Final Report (Lewin/ICF)

This report summarizes the findings of a series of case studies conducted by Lewin/ICF examining why, controlling for similar hospital characteristics, some hospitals do well under PPS while others do not. Factors examined include hospital behavior, such as successful management strategies; hospitals' responses to PPS; and broader environmental factors that shape hospital performance. The degree to which performance is within a hospital's control is discussed. Individual hospital descriptions are not provided. Rather, the report integrates site visit findings and synthesizes the similarities and differences between successful and unsuccessful hospitals. (5/92)

E-92-03: Report on Quality Assurance in Non-PPS Settings (Abt Associates, Inc.)

This study describes mechanisms used to ensure and monitor quality in settings in which Medicare services are reimbursed. Among these are skilled nursing facilities, home health agencies, and hospitals not paid under PPS (psychiatric hospitals and rehabilitation hospitals). The study also looks at quality assurance in selected outpatient facilities, including ambulatory surgical centers, hospital outpatient departments, ambulatory care centers, cardiac catheterization laboratories, freestanding clinical laboratories, dialysis facilities, diagnostic imaging centers, lithotripsy centers, and comprehensive outpatient rehabilitation facilities. Quality assurance mechanisms including certification, accreditation and monitoring by Federal, state, and voluntary organizations are described. Quality indicators are classified by structure, process, or outcome. (8/92)

E-92-04: Within DRG Case Complexity Change in Fiscal Year 1990 (SysteMetrics/McGraw-Hill, Inc.)

ProPAC annually recommends to the Congress an update factor for increasing the standardized payment amounts under PPS. This update factor reflects changes in the cost of providing services, including changes in the cost of hospital inputs; the effects of scientific and technological advances; productivity increases; and changes in the mix of patients that hospitals treat. The distribution of cases across DRGs is captured by the Medicare case-mix index, which directly affects the payment that hospitals receive for each case. This study measures the change in the distribution of cases by complexity level within DRGS. The study uses Medicare data for fiscal years 1988 through 1990 to develop estimates of within-DRG case complexity change and examines changes in coding of secondary diagnoses, both by overall and by hospital group. (4/92)

E-93-01: Identifying Changes in the Factors of Production for Dialysis Services (Project HOPE)

This report describes an historical cost study of the factors of production for outpatient hemodialysis and peritoneal dialysis services. The study examines how the use or cost of inputs changed between 1983 and 1991, and estimates the incremental or decremental impact that the change in each input has on the cost per dialysis treatment. The study focuses on the incremental effects of scientific and technological advances in the dialysis industry and ensuing productivity improvements. (3/93)

E-93-02: Within DRG Case Complexity Change, 1991 (SysteMetrics, Inc.)

This study measures the change in within-DRG case complexity from 1989 to 1990 and from 1990 to 1991. It also examines changes in the number of secondary diagnoses and complications and comorbidities from 1989 to 1991. This information is used for ProPAC's within-DRG case-complexity adjustment. The within-DRG case-complexity adjustment is designed to capture increases in patient complexity that are not measured by the DRGs. It is part of the case-mix adjustment in ProPAC's annual PPS operating and capital update recommendation to the Congress. The case-mix adjustment allows hospital payments to increase for real case-mix change, while removing payment increases that are due to changes in medical record documentation or coding practices. (2/93)

E-93-03: Exploring the Growth of Hospital Outpatient Surgeries (Abt Associates, Inc.)

This report identifies and assesses the principal factors that contributed to the growth observed between 1988 and 1990 in the use of five groups of procedures performed in the hospital outpatient department. The five groups selected were knee arthroscopy, YAG laser, lithotripsy, sigmoidoscopy and colonoscopy, and breast biopsies. These families of procedures were selected because as a group they represented varying levels of complexity, exemplified a variety of clinical problems, were in the top 50 most frequently performed ASC-approved procedures, and had a high growth rate between 1988-90. The factors affecting increased procedure volume were physician practice patterns and treatment approaches, technology requirements, the capacity of physicians and hospitals to

perform the procedure, shifts in setting in which the procedure is performed, and reimbursement practices. (3/93)

E-93-04: Analysis of the Effect of the Economic Stabilization Program (Abt Associates, Inc.)

This report describes the effect of the economic stabilization program (1971-1974) on health care prices and expenditures. Previous studies of the program are reviewed and compared. Additionally, descriptive data on health care expenditures by type of service and program, health care prices, and hospital revenues and expenditures are displayed. (5/93)

E-93-05: State Regulations and Policies that Affect the Provision of Post-Acute Care (Abt Associates, Inc.)

This report presents descriptive information about state regulations and policies that affect the staffing requirements, services provided, and patient mix of Medicare-certified skilled nursing facilities and home health agencies. (5/93)

E-93-06: Development of Hospital Efficiency Measures (Jenifer Ehreth, Ph.D.)

This report evaluates several measures of how efficiently hospitals use their capital assets and compares asset efficiency and hospital financial performance across types of hospitals. Descriptive statistics and factor analysis are used to assess the reliability and validity of several measures over a three-year period. Three measures—the current ratio, the long-term debt to net fixed assets ratio, and an asset efficiency measure using data envelopment analysis techniques—are evaluated in more detail because they appear promising for analyzing the impact of payment policies on asset efficiency. (8/93)

E-94-01: Within DRG Case Complexity Change, 1992 (SysteMetrics, Inc.)

This study measures the change in within-DRG case complexity from 1990 to 1991 and from 1991 to 1992. It also examines changes in the number of secondary diagnoses, complications and comorbidities from 1990 to 1992. ProPAC uses this information to estimate the annual amount of real case mix change within DRGs, which is not measured by the case mix index (CMI). Unlike previous studies of within-DRG case complexity change, this study investigates the long run trend for within-DRG case complexity change between 1985 and 1992, by hospital group. Potential explanations for the observed long run trend are discussed. (3/94)

E-94-02: The Incremental Impact of Scientific and Technological Advances on Operating Costs in PPS Hospitals and PPS-Excluded Facilities (FY 1995) (Abt Associates, Inc.)

This report provides supportive material for one component of ProPAC's update recommendations to the Congress: the allowance for scientific and technological advances (S&TA). It details the revised approach to estimating incremental costs attributable to technological change projected for fiscal year 1995. Two S&TA estimates were developed: one for changes in operating costs incurred by PPS hospitals and another for facilities excluded from PPS that are subject to the payment system established in the Tax Equity and Fiscal Responsibility Act of 1982. (1/94)

E-94-03: The Incremental Impact of Scientific and Technological Advances on Capital Costs in PPS Hospitals (FY 1995) (Abt Associates, Inc.)

This report provides supportive material for one component of ProPAC's PPS capital update recommendation to the Congress: the allowance for scientific and technological advances. It details the revised approach to estimating incremental capital costs attributable to technological change projected for fiscal year 1995. (1/94)

E-94-04: The Incremental Impact of Scientific and Technological Advances on Cost Increases in Dialysis Facilities (FY 1995) (Abt Associates, Inc.)

This report provides supportive material for one component of ProPAC's composite rate update recommendation to the Congress: the allowance for scientific and technological advances. It details the revised approach to estimating incremental costs attributable to technological change projected for fiscal year 1995. (1/94)

E-94-05: Discussion Report: Assessing the Impact of Cost-Decreasing Technological Change on Medicare Inpatient Costs (Abt Associates, Inc.)

To support its PPS payment update recommendations submitted to the Congress each year, ProPAC uses a technology-specific methodology to assess changes in the cost-increasing effects of emerging technologies. This report provides discussion of the feasibility of applying this methodology to an analysis of the financial impact of cost-decreasing technologies used in the care provided to Medicare beneficiaries in the inpatient setting. (7/94)

E-94-06: Discussion Report: Assessing the Cost Impact of Technological Change on Medicare and Non-Medicare Populations Across Settings (Abt Associates, Inc.)

To support its PPS payment update recommendations submitted to the Congress each year, ProPAC uses a technology-specific methodology to assess changes in the cost-increasing effects of emerging technologies. The methodology is specific to the technologies used in the care provided to Medicare beneficiaries in the inpatient setting. This report provides discussion of the feasibility of applying this methodology to an analysis that would consider changes in the cost of technologies used in the care of Medicare and non-Medicare beneficiaries across settings: in the inpatient setting as well as other sites of care, including nursing homes, outpatient departments, and home health agencies. (7/94)

E-94-07: Medicaid Reimbursement Methodologies and Payment Rates for Home Health Agencies (Abt Associates, Inc.)

This study presents survey results on state Medicaid programs' reimbursement methodologies and payment rates for home health care services. Information is presented in table format for each service (skilled nursing; physical, speech, and occupational therapies; medical social services; and home health aides). Each table includes information on the following items: payment rates; rate-setting methodologies; whether the rate is agency-specific, class-based, or flat; cost components that are treated separately in the payment process; and payment update factors. (1/94)

E-94-08: Quality-Oriented State Licensing Requirements for Non-PPS Facilities (Abt Associates, Inc.)

This two-volume study presents survey results on state licensing requirements for 15 long-term care, home health, and ambulatory care providers. Information is presented on state standards for organizational structure and administration, personnel, service provision, medical documentation, internal quality assurance processes, minimum access and transfer affiliations, equipment, and certificate of need. Licensure requirements that differ from Medicare certification are emphasized. (7/94)

E-95-01: A Comparison of Cost Definitions (Project HOPE)

This report provides a comparison of cost definitions between Medicare principles of reimbursement and generally accepted accounting principles. It documents cost items pertaining to acute care hospital services and outpatient dialysis services that are nonallowable in accordance with Medicare payment policy. In addition, the report discusses providers' contests of Medicare's determination of allowable costs, where applicable, and the results of those cases. (2/95)

E-95-02: Medicaid Managed Care Program Access Requirements (Project HOPE)

This report examines seven states' strategies for ensuring access to health services for Medicaid-eligible people who are enrolled in managed care plans. It summarizes approaches states are using to ensure that enrollees receive medically appropriate services without facing geographic, cultural, or linguistic barriers to care. This report presents information gathered from both state Medicaid agencies and Medicaid managed care contractors. (4/95)

E-96-01: The Incremental Impact of Scientific and Technological Advances on Cost Increases in Dialysis Facilities (FY 1997) (Abt Associates, Inc.)

Each year, ProPAC recommends to the Congress an update to the composite rate for dialysis services. The Commission's update framework includes an allowance for the incremental impact of scientific and technological advances. This report describes ProPAC's estimate of the increase in operating and capital costs that will result from the diffusion of new and emerging dialysis-related technologies in fiscal year 1997. (1/96)

Pending

Quality of Dialysis in the United States (Project HOPE)

This report is a critical review of the current literature relevant to the quality of outpatient dialysis services. It addresses issues related to the epidemiology and treatment of end-stage renal disease, defining and measuring quality of care, assessing patient outcomes, and comparing mortality rates between the United States and other countries. (Forthcoming)

Hospital-Physician Relations: A Multivariate Analysis of Hospital Financial Performance (Project HOPE).

This report will examine the association between hospital-physician relations and hospital financial performance. Data from ProPAC's Hospital-Physician Relations study (I-95-02) were combined with secondary data on hospital market characteristics and hospital financial performance and analyzed using both univariate and multivariate techniques. (Forthcoming)

INTRAMURAL TECHNICAL REPORT SERIES

I-88-02: Recalibration Analysis Comparing Charge-Based and Cost-Based DRG Weights

ProPAC analyzed the two methods of recalibrating the DRG relative weights, using charges only (charge-based) and using charges that are adjusted by costs (cost-based). This report provides a detailed description of the data, methods, and results of ProPAC's comparisons. (3/88)

I-89-03: Review of Medicare Cost Report Data for Policy Analysis

This report summarizes the Commission's work on the use of the Medicare Cost Report data for decision making. The major activity the Commission initiated to identify improvements in the use of existing cost data for policy analysis was to convene a panel to discuss the strengths and weaknesses of the Medicare Cost Report. The report also summarizes ProPAC monitoring of HCFA's three-year demonstration assessing the costs and benefits of adding to the cost report financial and utilization information regarding other payers. (3/89)

I-89-04: Payment Adjustments—Indirect Teaching and Disproportionate Share Hospitals

ProPAC analyzed the effect of teaching effort on Medicare costs. The objectives of the analysis were to estimate the relationship between teaching effort and Medicare cost per case using the most recent Medicare Cost Report data available. ProPAC also examined the overlap between the indirect medical education and the disproportionate share payment adjustments and evaluated the financial impact of revising the indirect medical education adjustment. The report describes the methods and results of the analysis. (7/89)

I-90-01: Medicare-Dependent Hospitals Under PPS

The Omnibus Budget Reconciliation Act of 1989 required the Commission to study the appropriateness of making a Medicare payment adjustment to hospitals that treat a high proportion of Medicare discharges. Information on this topic was also included in ProPAC's June 1990 report, *Medicare Prospective Payment and the American Health Care System.* (6/90)

I-90-02: Adjusting the Area Wage Index for Occupational Mix

Currently, the area wage index does not account for geographic differences in occupational mix. ProPAC studied the effect of adjusting the area wage index for occupational mix and the relationship of occupational mix to case mix. This report describes the methods and results of the analysis. The results include metropolitan statistical area, regional, and urban/rural estimates of the impact. The report also calculates how payments would be affected by adjusting the wage index for occupational mix. (8/90)

I-90-04: Financial Status of High Case Mix Hospitals

The Omnibus Budget Reconciliation Act of 1989 required the Commission to study the financial status of high case mix hospitals with special attention devoted to capital investment. Information on this topic was included in ProPAC's June 1990 report, *Medicare Prospective Payment and the American Health Care System.* (9/90)

I-91-01: Hospital Closures: 1985-1988

This report contains descriptive statistics on hospitals that closed between 1985 and 1988. Data are from the American Hospital Association Annual Survey of Hospitals, Medicare Cost Reports, and the Area Resource File. Rural and urban hospitals that closed are analyzed separately and compared with open rural and urban hospitals having fewer than 200 beds. (1/91)

I-91-02: The Role of Profitability and Community Characteristics in Hospital Closures, an Urban and Rural Analysis

This study investigates hospital closures that occurred from 1985 through 1988. The analysis focuses on the relationship between profitability and closure. Further, the analysis evaluates the impact on profitability of characteristics related to the hospital's mission and standing in the community. In addition, the analysis is extended by examining the factors that influence profitability and its components: revenue per case, cost per case, and total cases. This report provides a detailed description of the data, methods, and results of the study. (2/91)

I-91-03: Improving the Area Wage Index: The Area Wage Index and the Mix of Occupations Across Areas

Currently, the area wage index incorporates differences in the price of labor, as well as the mix of occupations across areas. This report presents the results of ProPAC's study on the effect of adjusting the area wage index for occupational mix. The results are presented separately for metropolitan statistical areas and rural areas. The study is based on Uniform Reporting System data collected from California hospitals. The report also describes the method used in California to collect data by occupational category. (7/91)

I-91-04: The Trend and Distribution of Hospital Uncompensated Care Costs, 1980-1989

This report presents the results of an analysis of uncompensated care costs for both PPS and PPS-excluded hospitals. Uncompensated care for this study is defined as the sum of charity care and bad debts, and uncompensated care costs are measured both with and without an offset for subsidies received from state and local governments. The study is based on data from the American Hospital Association Annual Survey of Hospitals over the period 1980 to 1989. Both the trend and distribution of uncompensated care costs are measured by hospital group. In addition, the relationship between uncompensated care costs and indirect medical education and disproportionate share payments under Medicare is examined. (10/91)

I-92-01: Winners and Losers Under PPS

Although the aggregate margin of hospitals under PPS has declined, some hospitals continue to perform well. In this report, ProPAC analyzes the characteristics of hospitals with consistently high and consistently low margins under PPS in 1986, 1987, and 1988. The characteristics are broken into three groups: payment adjustments, factors within the hospital's control, and factors outside of the hospital's control. The focus of the study is to determine the relative role of these factors in performance under PPS. This report provides a detailed description of the data, methods, and results of the study. (6/92)

I-92-02: The Effect of the OBRA 1989 Payment Provisions for Small Rural Medicare-Dependent Hospitals

In 1989 and 1990, ProPAC analyzed the financial status of hospitals with high Medicare shares. The ProPAC analysis, described in *Medicare-Dependent Hospitals Under PPS* (TRS I-90-01), indicated that the classification of hospitals into groups based on Medicare dependence is arbitrary and inconsistent over time. Further, although hospitals with high Medicare shares tend to perform more poorly under PPS, this poor performance appears to be related to characteristics other than Medicare share, notably low occupancy rates and long average lengths of stay. Based on these findings, the Commission recommended that no payment adjustment be made for Medicare-dependent hospitals. In the Omnibus Budget Reconciliation Act (OBRA) of 1989, Congress provided special treatment under PPS for small rural Medicare-dependent hospitals for three years (cost reporting periods beginning on or after April 1, 1990, and ending on or before March 31, 1993). This provision expired in 1993. However, the Congress extended it through fiscal year 1994. This report describes an analysis of the financial performance of small rural Medicare-dependent hospitals as defined in OBRA 1989 and

the impact of the special provision on Medicare payment of these hospitals. (7/92)

I-93-01: The Accuracy of Cost Measures Derived from Medicare Cost Report Data

This report summarizes the findings and policy implications of a study conducted by the Center for Health Policy Studies. The primary objective of the study was to assess the accuracy of the hospital-level and DRG-level cost measures that can be constructed using Medicare Cost Report data. The first part of the study tested the impact of potential refinements in the Medicare Cost Report cost finding approach, such as using a standard cost center configuration or a multiple allocation technique. These types of changes were found to have relatively little impact. The second part compared values from advanced hospital cost accounting systems with values from the cost reports of the same hospitals. Substantial differences were documented for total Medicare costs, routine and ancillary costs, and average cost per case by DRG. (3/93)

I-95-01: The Relationship Between Hospital Costs and Payments by Source of Revenue, 1980-1991

This report presents an analysis of community hospital losses and gains by source of revenue, including Medicare, Medicaid, uncompensated care, private payers, and non-patient revenue. The data for the analysis are from the American Hospital Association Annual Survey of Hospitals. The report includes trend data on payments, costs, and charges. Data from 1991 are used to analyze the distribution of gains and losses for the different revenue sources, the relationship between these losses and hospital margins, and state-by-state differences. The report also compares the characteristics of hospitals that are and are not able to recover significant losses from uncompensated care, Medicaid, and Medicare through cost shifting. (10/95)

I-95-02: Hospital-Physician Relations: A National Survey of Hospital Chief Executive Officers and Chiefs of Medical Staffs

In an effort to identify factors that affect the financial performance of hospitals, ProPAC has undertaken a study of the financial effects of different organizational structures and mechanisms hospitals use to influence physician behavior. In the first phase of the project, ProPAC sponsored a national survey of hospital chief executive officers (CEOs) and chiefs of medical staff (CMSs) to evaluate the various aspects of hospital-physician relations. The survey explored the organization of hospital services; physician recruitment, retention, and evaluation; physician roles and responsibilities within hospitals; and hospital-physician financial arrangements. It also sought to ascertain how CEOs and CMSs perceived the respective roles they play and the influence of hospital management and physician staff within the hospital environment. The report describes survey methods and results, including differences in approaches to hospital-physician relations employed by different types of hospitals. The next phase, a multivariate analysis, will link hospital financial data with data from the national survey. (11/95)

I-95-03: Medicare Transfer Payment Policy

This report presents the results of an analysis of Medicare's payment for transfer cases. Currently, the transferring hospital is paid a uniform per diem payment up to the full DRG amount. The receiving hospital is paid the full DRG payment if it is the final discharging hospital. The analysis examines the relationship between payments and costs for these cases. In addition, it examines the characteristics of hospitals and cases involved in a transfer sequence. The study also includes information on trends in transfer rates since 1984. (6/95)

I-95-04: A Review of ProPAC's Allowances for Scientific and Technological Advances

This report describes the study ProPAC conducted to support the Commission's decisions regarding the allowances for scientific and technological advances (S&TA) for the PPS operating and capital payment update recommendations for fiscal year 1996. The Commission used a qualitative approach to assess S&TA costs, evaluating more generally whether any changes in technology costs have altered the trend established in previous years. This report reviews previous allowances, the technologies assessed, advances that may affect Medicare costs, and, finally, the Commission's decisions for the two PPS S&TA allowances for fiscal year 1996. It also discusses how ProPAC's technology-specific methodology differs from other approaches to technology costing, and evaluates how well the methodology captures the information intended by the S&TA allowance. (4/95)

I-95-05: Hospital Costs and Payments by Revenue Source: The Impact of Medicaid Payment Increases in 1992

This report supplements ProPAC's recent report on hospital losses and gains by source of revenue (TRS I-95-01). Like the first report, this one analyzes the trend in payments relative to costs by payer, as well as differences by type of hospital and by state. The focus throughout this report, however, is the impact of substantial increases in revenue received by many hospitals in 1992 from Medicaid disproportionate share payments. This includes the impact on overall Medicaid payments and on the pattern of cost shifting to the private sector. (10/95)

Joint Report to the Congress on Medicare Managed Care

The Prospective Payment Assessment Commission and the Physician Payment Review Commission prepared this joint report on the role of managed care within the Medicare program. It describes program policies and analyzes options concerning beneficiary enrollment, plan participation, payment policy, access and quality, and data constraints. (10/95)

Pending

Medicare Per Capita Expenditures and Costs

This report will present a descriptive analysis of the variation in 1991 per capita expenditures for elderly beneficiaries by state and between the rural and urban areas of each state. Four per capita measures are being developed: (1) Medicare spending, (2) Medicare payments standardized to the national level (which will isolate geographic differences in utilization), (3) the provider production costs associated with Medicare spending, and (4) production costs adjusted for geographic price differences. All four of these measures will be broken down by setting, with physician services attributed to the setting in which they were provided. Geographic comparison will also be enhanced in the second and fourth measures by controlling for age and sex differences and by adding an estimated value for care provided to the elderly in military and Department of Veterans Affairs hospitals. (Forthcoming)

CONGRESSIONALLY MANDATED REPORTS

C-88-01: An Evaluation of the Department of HHS Report to Congress on Studies of Urban-Rural and Related Geographical Adjustments in the Medicare PPS

The Omnibus Budget Reconciliation Act of 1987 required ProPAC to report to the Congress on its evaluation of the Secretary's study on the feasibility and impact of eliminating or phasing out separate urban and rural payment rates. The report is organized into four major sections: background and definition of issues, summary of the Secretary's study methods and findings, ProPAC's evaluation of the Secretary's study, and future direction of Commission activities. (6/88)

C-88-02: Linking Medicare Capital Payments to Hospital Occupancy Rates

The Omnibus Budget Reconciliation Act of 1987 required ProPAC to report to the Congress on the suitability and feasibility of linking Medicare capital payments to hospital occupancy rates. This was addressed by reviewing current Medicare capital payment principles, examining historical trends in capital costs and occupancy rates, and analyzing the relationship between capital costs and occupancy. (4/88)

C-88-03: Outlier Payment Alternatives for Burn Cases

The Omnibus Budget Reconciliation Act of 1987 required ProPAC to study alternative payment methods for burn outlier cases under the prospective payment system. In this report, the Commission examines costs and PPS payments for all burn cases, as well as those for outlier cases only. Differences between payments and costs for burn hospitals and units and other PPS hospitals are examined. (7/88)

C-88-04: The Views of the Prospective Payment Assessment Commission on Developing Medicare Payment for Hospital Outpatient Surgery

The Omnibus Budget Reconciliation Act of 1987 required the Secretary of Health and Human Services to solicit ProPAC's views in developing outpatient payment systems and to include these views

in a series of reports to Congress. This report focuses on the facility component of payment for surgeries performed in hospital outpatient settings. (8/88)

C-88-05: Separate PPS Payment Rates for Hospitals in Large Urban Areas and Other Urban Areas

The Omnibus Budget Reconciliation Act of 1987 required ProPAC to "evaluate the desirability of maintaining separate DRG prospective payment rates for hospitals located in large urban areas...and in other urban areas." The report first describes how PPS currently treats hospitals in different sized urban areas. Descriptive information comparing hospitals in these areas is then presented. This is followed by a discussion of the PPS policy implication of variation in costs and margins by metropolitan statistical area size. (12/88)

C-89-01: Medicare Payment for Hospital Outpatient Surgery: The Views of the Prospective Payment Assessment Commission

The Omnibus Budget Reconciliation Act of 1987 required the Secretary of Health and Human Services to solicit the Commission's views on prospective payment for hospital outpatient surgery. This report contains ProPAC's recommendations and related rationale on such payment policy beginning in fiscal year 1990. It also presents background information used by the Commission in its deliberations, including the findings of ProPAC's analysis of hospital outpatient surgery costs. (4/89)

C-89-02: Payment Rates for Hospitals Redesignated from Rural to Urban: Analysis and Recommendations

The Technical and Miscellaneous Revenue Act of 1988 required ProPAC to study and report to Congress on the appropriate PPS payment for hospitals redesignated as urban in the Omnibus Budget Reconciliation Act of 1987. This study evaluates the payment policy and the treatment of wage and wage-related costs in computing area hospital wage indexes. The financial impact of various policy options on both the redesignated hospitals and on other hospitals located in the affected urban and rural areas is also assessed. (8/89)

C-89-03: Adjustment to the Non-Labor-Related Portion of the Standardized Amounts

The Omnibus Budget Reconciliation Act of 1987 required ProPAC to analyze the feasibility and appropriateness of a geographic adjustment to the non-labor-related portion of the PPS standardized amounts. Price data for non-labor components of the hospital market basket are compiled from available data sources to determine whether non-labor prices vary by geographic area. The report contains this information and the Commission's determination of whether such an adjustment is feasible and appropriate. (8/89)

C-89-04: Adequacy of PPS Payment for Medicare Beneficiaries with Hemophilia

The House Ways and Means Committee asked ProPAC to assess the adequacy of PPS payment for Medicare inpatients with hemophilia. This report studies the population size, trends in the price of the clotting factor, and the financial impact on hospitals for treating these patients. (10/89)

C-90-01: Medicare Payments to Rural Sole Community Hospitals and Small Rural Hospitals

The Omnibus Budget Reconciliation Act of 1989 required the Commission to submit a report to Congress on the feasibility and desirability of using a cost-based reimbursement system for paying small rural hospitals and sole community hospitals. Further, ProPAC was to assess the impact of using alternative market share definitions to determine eligibility for sole community hospital classification, and of accounting for decreases in admissions in determining payments to small rural hospitals or their costs. This report summarizes the Commission's findings. (5/90)

C-90-02: Hospital Outpatient Services Background Report

The Omnibus Budget Reconciliation Act of 1989 required the Commission to submit a report to Congress on several issues related to outpatient payments. This report examines the growth in hospital outpatient services and the revenues generated by outpatient visits. The costs of providing services in hospital outpatient departments are compared to those associated with freestanding centers. Last, outpatient quality assurance and peer review are discussed. (7/90)

Medicare-Dependent Hospitals

The Omnibus Budget Reconciliation Act of 1989 required the Commission to study the appropriateness of making an adjustment to Medicare payments to hospitals that treat a high proportion of Medicare discharges. Information on this topic was included in ProPAC's June 1990 report, *Medicare Prospective Payment and the American Health Care System.* (6/90)

Financial Status of High Case Mix Hospitals

The Omnibus Budget Reconciliation Act of 1989 required the Commission to study the financial status of high case mix hospitals with special attention devoted to capital investment. Information on this topic was included in ProPAC's June 1990 report, *Medicare Prospective Payment and the American Health Care System.* (6/90)

Area Wage Index

The Omnibus Budget Reconciliation Act of 1990 required ProPAC to examine available data from states and other sources measuring earnings and paid hours of employment of hospital workers by occupational category. The impact of variation in occupational mix on the computation of the area wage index is included. Information on this topic was included in ProPAC's March 1991 *Report and Recommendations to the Congress.* (3/91)

Nurse Practitioners and Other Non-Physician Providers

The Senate Committee on Appropriations asked that ProPAC study the use of nurse practitioners and other non-physician providers in settings other than acute care facilities and long-term care institutions. Information on this topic was included in ProPAC's June 1991 report, *Medicare and the American Health Care System.* (6/91)

C-91-01: Medicare's Capital Payment Policy

This report summarizes the Commission's analyses of hospital capital costs and views on Medicare's capital payment policy. ProPAC's objectives for evaluating capital payment, along with supporting data and opinions, are presented. The Commission also comments on the Secretary of Health and Human Services' prospective payment proposal. (5/91)

C-91-02: Medicaid Hospital Payment

The Omnibus Budget Reconciliation Act of 1990 required the Commission to conduct a study of Medicaid hospital payment rates. The study examines the relationship between Medicaid and Medicare payments, and the financial condition of the hospitals receiving Medicaid payments. Special attention is given to hospitals in urban areas that treat large numbers of people eligible for Medicaid and other low-income persons. (10/91)

C-91-03: Rural Hospitals Under Medicare's Prospective Payment System

The Senate Committee on Appropriations requested a report examining the changes made in rural hospital payment policies and their fiscal impacts. The report includes an analysis of the impact of 1991 payment rules on 1984 and 1989 hospital margins and assesses the relative importance of individual policy changes. In addition, ProPAC was asked to study the effect of low volume on overhead costs and payments. The report includes a discussion of the relationship between volume and financial performance, and case mix and performance. The adequacy of national DRG weights for rural hospitals and differences between sole community and other small rural hospitals' characteristics and financial condition are also discussed. Finally, the report includes a profile of services offered by rural hospitals. (10/91)

C-91-04: Passthrough Payments for Hemophilia Inpatients

The Omnibus Budget Reconciliation Act of 1989 required the Commission to submit a report to Congress that contains recommendations on paying for the cost of administering blood clotting factors to inpatients with hemophilia. This report summarizes the Commission's findings. (6/91)

C-92-01: Prospective Payment System for Medicare's Skilled Nursing Facility Payment Reform

The Omnibus Budget Reconciliation Act of 1990 required the Secretary of Health and Human Services to develop a proposal to modify the current system under which skilled nursing facilities receive payment for extended care services under Medicare Part A or a proposal to replace this system with a prospective payment system. The

Commission is required to submit an analysis of and comments on the proposal. This background report describes the Medicare SNF benefit, payment method, and beneficiary utilization. A cost function analysis provides information on variations in costs across facilities. Federal and state regulations affecting facility costs and use of the benefit also are discussed. This report concludes with recommendations concerning the need for a nursing facility wage index and case-mix adjustment in Medicare's payment policy. When the Secretary's report is released, the Commission will submit comments to the Senate Committee on Finance and the House Committee on Ways and Means. (3/92)

C-92-02: Medicare Payment for Hospital Outpatient Services: The Views of the Prospective Payment Assessment Commission

The Omnibus Budget Reconciliation Act of 1990 required the Secretary of Health and Human Services to develop a model system for Medicare payment for hospital outpatient services. The Commission is required to submit an analysis of and comments on the proposal. This background report describes Medicare's outpatient payment policies, which may vary by site of care and type of service. Ambulatory surgery and radiology are used to discuss problems with the current payment policy. The report concludes with nine recommendations for outpatient payment policy reform. When the Secretary's report is released, the Commission will submit its comments. (3/92)

C-92-03: Optional Hospital Payment Rates for Private Payers Based on Medicare's Methods (As specified in H.R. 3626)

This report addresses the development and impact of a system of Medicare-based rates for optional use by private insurers to control the growth in their payments to hospitals. The first part of the report discusses the design decisions that would need to be made, the steps necessary for orderly implementation of the system, and the administrative processes for ongoing operation of the system. The second part presents data on cost shifting in the hospital industry, and then uses these and other data to estimate the savings that would result from using optional rates under several different sets of assumptions. It also includes a discussion of the effects of optional rates on hospitals, private and government insurers, other providers, and patients. (3/92)

C-92-04: End-Stage Renal Disease Payment Policy

The Omnibus Budget Reconciliation Act of 1990 required the Commission to conduct a study to determine the costs, services, and profits associated with various modalities of dialysis treatments provided to end-stage renal disease patients. This study is the basis for recommendations regarding the method and level of payments for the facility component of dialysis services beginning in fiscal year 1993. The methodology to be used to update payment for subsequent fiscal years is included. As part of its annual March report, starting with fiscal year 1993, ProPAC is required to report its recommendations to Congress on an appropriate payment update factor. (6/92)

C-92-05: Interim Report on Payment Reform for PPS-Excluded Facilities

The Omnibus Budget Reconciliation Act of 1990 required the Secretary of Health and Human Services to develop a proposal to modify the current system under which PPS-excluded hospitals receive payment for the operation and capital-related costs of inpatient hospital services under Part A of the Medicare program. Alternatively, the Secretary could propose a system with payments made on the basis of nationally determined average standardized amounts. Although the Secretary has not submitted her proposal, the Commission prepared this background report. When the Secretary's report is released, the Commission will analyze it and submit comments to the Senate Committee on Finance and the House Committees on Ways and Means, and Energy and Commerce. (10/92)

C-93-01: Global Budgeting: Design and Implementation Issues

In response to a request from the House Committee on Ways and Means, Subcommittee on Health, the Commission examined the implementation of a global budgeting system. ProPAC focused on the system's application to hospitals and other institutional health care services. The report addresses issues involved in the allocation of a national budget among types of health care services, the availability of data to support the system, and the mechanisms for ensuring that budget targets are met. (7/93)

C-94-01: Analysis of Medicaid Disproportionate Share Payment Adjustments

The Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991 (P.L. 102-234) required ProPAC to conduct a study of Medicaid disproportionate share payment adjustments. This study examines the feasibility and desirability of establishing maximum and minimum payment adjustments for hospitals deemed disproportionate share hospitals. It also assesses criteria (other than existing ones) that are appropriate for designating disproportionate share hospitals under Section 1923 of the Social Security Act. The report was submitted to the Senate Committee on Finance and the House Committee on Energy and Commerce. (1/94)

C-94-02: Interim Analysis of Payment Reform for Home Health Services

The Omnibus Budget Reconciliation Act of 1990 required the Secretary of Health and Human Services to develop a proposal to modify the current system under which Medicare pays for home health services or a proposal to replace such system with a prospective payment system. The Commission is required to submit an analysis of and comments on the proposal to the Senate Committee on Finance and the House Committee on Ways and Means. This background report describes Medicare's home health benefit, payment method, use, and agency costs and payments. Federal and state regulations affecting access and quality of care also are discussed. When the Secretary's report is released, the Commission will submit comments to the Senate Committee on Finance and the House Committee on Ways and Means. (3/94)

C-95-01: Analysis of the Secretary's Proposal for Medicare Payment for Hospital Outpatient Services

The Omnibus Budget Reconciliation Act of 1990 required the Secretary of Health and Human Services to develop, and the Commission comment on, a model system for Medicare payment for hospital outpatient services. This report describes Medicare's payment policies for outpatient services, documents the increase in outpatient expenditures, and identifies problems related to the current payment system. The Secretary's proposed reforms are discussed, and three recommendations for the Congress and the Secretary are included. (7/95)

Pending

Analysis of the Secretary's Proposal for Skilled Nursing Facility Payment Reform

The Omnibus Budget Reconciliation Act of 1990 required the Secretary of Health and Human Services to develop a proposal to modify the current system under which skilled nursing facilities receive payment for extended care services under Medicare Part A or a proposal to replace this system with a prospective payment system. The Commission is required to submit an analysis of and comments on the proposal to the Senate Committee on Finance and the House Committees on Ways and Means, and Energy and Commerce. (This report will be issued after the Secretary's proposal becomes available.)

Analysis of the Secretary's Proposal for Payment Reform for PPS-Excluded Facilities

The Omnibus Budget Reconciliation Act of 1990 required the Secretary of Health and Human Services to develop a proposal to modify the current system under which PPS-excluded hospitals receive payment for the operation and capital-related costs of inpatient hospital services under Part A of the Medicare program. Alternatively, the Secretary could propose a system with payments made on the basis of nationally determined average standardized amounts. The Commission is required to submit an analysis of and comments on the Secretary's proposal to the Senate Committee on Finance and the House Committees on Ways and Means, and Energy and Commerce. (This report will be issued after the Secretary's proposal becomes available.)

Analysis of the Secretary's Proposal for Home Health Service Payment Reform

The Omnibus Budget Reconciliation Act of 1990 required the Secretary of Health and Human Services to develop a proposal to modify the current system under which Medicare pays for home health services or a proposal to replace such system with a prospective payment system. The Commission is

104

required to submit an analysis of and comments on the proposal to the Senate Committee on Finance and the House Committee on Ways and Means. (This report will be issued after the Secretary's proposal becomes available.)

Analysis of the Secretary's Legislative Proposal Eliminating Separate Average Standardized Amounts

The Omnibus Budget Reconciliation Act of 1989 required the Secretary of Health and Human Services to prepare a legislative proposal eliminating separate average standardized amounts for hospitals located in large urban, other urban, and rural areas. It also directed ProPAC to submit a report to Congress analyzing this proposal and its impact on hospitals. (This report will be issued after the Secretary's proposal becomes available. It should be noted that in OBRA 1990, Congress mandated the elimination of the separate rural standardized payment amount by fiscal year 1995.)

Appendix B. Biographical Sketches of Commissioners

Stuart H. Altman, Chairman

Stuart H. Altman is the Sol C. Chaikin Professor of National Health Policy at the Florence Heller Graduate School of Social Policy at Brandeis University. An economist whose research interests are primarily in the area of Federal health policy, he has been at Brandeis since 1977. Between 1971 and 1976, Dr. Altman was deputy assistant secretary for planning and evaluation/health at the Department of Health, Education, and Welfare (now the Department of Health and Human Services). From 1973 to 1974, he also served as the deputy director for health of the President's Cost of Living Council, where he was responsible for developing the council's program on health care cost containment. Dr. Altman is a member of the Institute of Medicine of the National Academy of Sciences and a former member of its governing council, and serves on the board of Beth Israel Hospital (Boston). He is a past president of the Association for Health Services Research and a former board member of the Robert Wood Johnson Clinical Scholars Program. He has testified before the Congress on a wide range of health policy issues and has written an array of articles in the field. Dr. Altman received a B.B.A. from the City College of New York, and both an M.A. and a Ph.D. in economics from the University of California, Los Angeles.

Susan S. Bailis

Susan S. Bailis is president and chief operating officer of The A•D•S Group, which specializes in long-term care and senior living. From 1983 to 1985, Ms. Bailis was associate director of New England Medical Center, where she managed the hospital's entry into the long-term care field. Earlier, she was director of social services at the medical center. Ms. Bailis has held a number of academic appointments, most recently as assistant professor of psychiatry at Tufts University School of Medicine. She serves on the boards of several hospitals and has held leadership positions in many local and national professional and community organizations. These include the executive committee of the American Health Care Association, president of the Massachusetts Federation of Nursing Homes, the board of the Alzheimer's Disease and Related Disorders Association, the board of Simmons College, the board of overseers of the Florence Heller School at Brandeis University, secretary of the National Association of Social Workers, and president-elect of the Society for Hospital Social Work Directors of the American Hospital Association. She is a member of the Business Leadership Forum and Women's Leadership Forum of the Democratic National Committee. She also served as a member of the Massachusetts Medicaid State Advisory Board. Ms. Bailis has published and lectured widely on health care and social welfare policy. She received a B.A. from Brandeis University and an M.S.W. from Simmons College School of Social Work.

James D. Bernstein

James D. Bernstein is director of the North Carolina Office of Rural Health and Resources Development, which has established 65 community-based health centers and recruited more than 1,100 providers to the state since 1973. Previously, Mr. Bernstein administered a 40-bed hospital and eight health centers for the Indian Health Service. He has held a variety of professional positions, including chairman of the Rural Health Care Advisory Panel of the Office of Technology Assessment. He currently is national program director for the Robert Wood Johnson Foundation initiative, Practice Sites: State Primary Care Development Strategies. Mr. Bernstein received a B.A. from the Johns Hopkins University and an M.H.A. from the University of Michigan.

Clay D. Edmands

Clay D. Edmands is president of Salina Regional Health Center in Salina, Kansas, an acute care rural referral center. His prior experience includes several years with the Fairview Hospital System in Minneapolis, Minnesota, where he held various positions, among them administrator for development and operations of regional health management and supportive services. Mr. Edmands was on the board of the Kansas Hospital Association from 1980 to

1992, serving as chairman, treasurer, and member of the executive committee. In addition to two terms on a regional policy advisory board of the American Hospital Association, Mr. Edmands has been board president of the Health Systems Agency of Western Kansas. Other community involvements include the Salina health education board and Voluntary Hospitals of America. Currently a preceptor for the University of Kansas program in health care administration and chair of the university's health care services advisory board, Mr. Edmands formerly was a faculty preceptor for the University of Minnesota independent study program in hospital administration. He holds a B.S. in business administration from the University of Kansas and an M.H.A. from the University of Minnesota.

Spencer Johnson

Spencer Johnson has been president of the Michigan Health and Hospitals Association since 1985. Previously, he was executive vice president of the Hospital Association of New York State. Mr. Johnson's prior experience includes staff positions on the U.S. Senate Committee on Human Resources and in the U.S. House of Representatives. He was associate director of the Domestic Council for Health, Social Security, and Income Assistance from 1976 to 1977, where he was responsible for policy planning and development for President Gerald Ford. Mr. Johnson has been a member of the American Hospital Association's State Issues Forum and Council on Allied and Government Relations. He has served on various boards, including those of the Albany Medical College, Washington Hospital Center, the Alpha Center for Health Planning, and the Genesee Regional Health Planning Council. Mr. Johnson received a B.A. in journalism from St. Bonaventure University and an M.P.A. in health policy and planning from Cornell University.

Clark E. Kerr

Clark E. Kerr is president of ConsumerFirst, a nonprofit public benefit corporation, and is chief executive officer of ConsumerFirst Television. He chairs the California Health Policy and Data Advisory Commission and the State of California Health Information Committee. He also chairs the Consumer Experience Studies Committee of the Health Benefits Advisory Council for the California Public Employees Retirement System. In addition, Mr. Kerr is executive producer and cohost of Health Upbeat, a television series providing information on health care quality, access, and costs to the public. Before joining ConsumerFirst, he held various positions at Bank of America, including vice president of government relations, manager of corporate health programs, and manager of benefits planning. He is the immediate past president of the California Business Group on Health. Mr. Kerr received a B.A. from the University of California, Davis, and an M.B.A. from the University of California, Berkeley.

James R. Kimmey

James R. Kimmey is vice president for health sciences and professor of public health at the St. Louis University Health Sciences Center, as well as professor of community and family medicine at the St. Louis University School of Medicine. In addition, Dr. Kimmey serves as chair and chief executive officer of SLUCare, the clinical services division of the university. He has taught at the University of Wisconsin, the Johns Hopkins University, New York University, and Columbia University. He was administrator of the Division of Health Policy and Planning of the state of Wisconsin and executive director of the American Public Health Association in New York and Washington State. Dr. Kimmey served as president of the American Health Planning Association (1980–81) and as a member of its board of directors. Former editor of *Health Planning Memorandum* and managing editor of the *American Journal of Public Health*, he has written extensively on health planning and other health policy topics. Dr. Kimmey received B.S., M.S., and M.D. degrees from the University of Wisconsin and an M.P.H. from the University of California, Berkeley.

Judith R. Lave

Judith R. Lave is professor of health economics and codirector of the Center for Research on Health Care at the University of Pittsburgh. Her primary academic appointment is in the Graduate School of Public Health, but she holds secondary appointments in the Department of Psychiatry, Department of Economics, and the Katz Graduate School of Business. She is a member of the research study section of the Agency for Health Care Policy and Research and of the Institute of Medicine's report review committee. Formerly, Dr. Lave was a faculty member at Carnegie-Mellon University. At the Department of Health and Human Services, she was director of the Division of Economic and Quantitative Analysis in the Office of the Deputy Assistant Secretary and director of the Office of Research in the Health Care Financing Administration. A charter member of the Federal government's Senior Executive Service, Dr. Lave is also a member of the Institute of Medicine of the National Academy of Sciences and the National Academy of Social Insurance. She is a past president of the Association for Health Services Research and the Foundation for Health Services Research. In addition, Dr. Lave chaired the technical panel on health and was a member of the expert panel on income and health care for the Advisory Council on Social Security. She serves on the editorial boards of both the *Journal of Health Politics, Policy and Law* and the Health Administration Press. Dr. Lave has served as a consultant to private and public agencies in the United States and Canada. She received a B.A. from Queens University in Canada, from which she also holds an honorary LL.D., and a Ph.D. in economics from Harvard University.

Hugh W. Long

Hugh W. Long is associate professor of health systems management at the Tulane University School of Public Health and Tropical Medicine. He also holds appointments with Tulane's Freeman School of Business, School of Law, and Graduate Faculty. Dr. Long has taught at Yale University, Stanford University, San Jose State University, and Ohio State University. He is a member of the Medicare Geographic Classification Review Board. Dr. Long has served as a witness and ad hoc adviser on health care financing to the U.S. House of Representatives' Committee on Ways and Means and to the U.S. Senate Committee on Finance. He has written numerous articles on health care financing and management and serves on the editorial board of *Decisions in Imaging Economics*. Dr. Long is the faculty director of Tulane's Master of Medical Management degree program for physicians. He is a member of the Louisiana bar. Dr. Long received a B.A. from Ohio State University, an M.B.A. and a Ph.D. in business administration and finance from Stanford University, and a J.D. from the Tulane University School of Law.

Robert J. Myers

Robert J. Myers was chief actuary of the Social Security Administration from 1947 to 1970 and deputy commissioner of Social Security from 1981 to 1982. Currently, he is a member of the Committee of Actuaries of the United Nations Joint Staff Pension Fund, as well as president of the International Fisheries Commissions Pension Society. A trustee for several organizations, including the investment program (mutual funds) of the American Association of Retired Persons, Dr. Myers also serves on the board of advisers of Studies on Smoking. An active participant in retirement and pension plan issues, Dr. Myers chaired the Commission on Railroad Retirement Reform (1988–90) and the Railroad Unemployment Compensation Committee (1983–85). He served on the Commission on the Social Security "Notch" Issue (1993–94) and was executive director of the National Commission on Social Security Reform (1982–83). In addition, Dr. Myers has served as an actuarial consultant to various congressional committees, as a technical adviser on Social Security and pension programs to numerous foreign countries, and as president of both the American Academy of Actuaries and the Society of Actuaries. He has published widely on topics related to Social Security and retirement, and is professor emeritus at Temple University. He received a B.S. degree from Lehigh University, an M.S. degree from the University of Iowa, and honorary degrees from Lehigh University and Muhlenberg College.

Donald R. Oder

Donald R. Oder is executive vice president and chief operating officer of Rush-Presbyterian-St. Luke's Medical Center in Chicago, where he formerly was senior vice president. Before that, he was audit manager with Arthur Andersen & Co. in Chicago. Mr. Oder has held various academic appointments and currently is a professor in the Department of Health Systems Management at the Rush University College of Health Sciences. He is a member of and has held leadership positions in several professional associations, including the American College of Healthcare Executives, the American Hospital Association, the Illinois Hospital Association, Voluntary Hospitals of America, the American Institute of Certified Public Accountants, and the Illinois C.P.A. Society. He has served

on the board of directors of the Better Business Bureau of Metropolitan Chicago, Inc., and on the occupational health committee of the Chicago Association of Commerce and Industry. Mr. Oder received a B.S. from Wichita State University, a C.P.A. certificate from the University of Illinois, and an M.B.A. from the University of Chicago.

Glenda Rosenbloom

Glenda Rosenbloom has been vice president of prospective payment for American Medical International since 1983. Previously, she was health care consulting manager at Ernst & Whinney, where she was responsible for training hospital personnel implementing the Medicare prospective payment system. From 1972 to 1982, Ms. Rosenbloom was senior director for Medicare provider payment at the Blue Cross Blue Shield Association. Before that, she was audit supervisor at Peat, Marwick, Mitchell. She cochaired the Medicare Technical Advisory Group, which includes senior officials from the Health Care Financing Administration, the hospital industry, peer review organizations, and fiscal intermediaries. Ms. Rosenbloom served on the board of the Federation of American Health Systems, chaired its legislative committee, and was vice chair of its health care financing committee. She received a B.S. from the University of Illinois and is a certified public accountant.

J. Michael Sadaj

J. Michael Sadaj is a physician in private practice and a member of Rocky Mountain Clinic in Butte, Montana, where he specializes in internal medicine and pulmonary diseases. He is vice president and treasurer of the Montana Physicians Organization's medical service organization. He has served as secretary-treasurer, vice president, and president of St. James Community Hospital medical staff, as well as chief of the Department of Medicine, and is currently chairman of the credentialing committee. From 1979 to 1990, Dr. Sadaj was medical director of respiratory therapy and the pulmonary laboratory at St. James. For several years, he has served on the Occupational Diseases Board of the state of Montana. A past president of the Montana Medical Association (1988–89), Dr. Sadaj was a member of the executive committee from 1985 to 1995. In addition, he has served as a delegate to the American Medical Association Resident Physician Section, Young Physician Section, and the House of Delegates, and from 1977 to 1979, was the resident member on the organization's Council on Constitution and Bylaws. Dr. Sadaj is a founding member of the board of directors of the Montana Professional Assistance Program and was a member of the Rural Physician Retention Trust Fund Advisory Board. In 1984, he was elected to the Butte-Silver Bow Government Study Commission. From 1974 to 1979, Dr. Sadaj was a resident in internal medicine and a fellow in pulmonary diseases at the University of Nebraska Medical Center. He received B.S. and M.D. degrees from the University of Nebraska.

Gerald M. Shea

Gerald M. Shea is assistant to the president for government affairs of the American Federation of Labor-Congress of Industrial Organizations. Previously, he has served as executive assistant to the president, executive assistant to the secretary-treasurer, and director of the employee benefits department of the A.F.L.-C.I.O., as well as head of the A.F.L.-C.I.O.'s health care reform campaign. His prior experience includes 12 years with the national office of the Service Employees International Union, where he held various positions, including assistant to the president for government affairs and health care division director. Before that, he was executive director and business manager of two local union offices. Mr. Shea is a member of the Advisory Council on Social Security. He received a B.A. from Boston College.

Roxane B. Spitzer

Roxane B. Spitzer is professor and associate dean for Practice Management at Vanderbilt University School of Nursing, professor of management at the Owen School of Vanderbilt, and executive director of University Community Health Systems. Previously, she was vice president of managed care at MEDICUS Systems. She also has been corporate vice president of St. Joseph Health System in Orange, California, and chief operating officer of the Good Samaritan Hospital in Los Angeles. She holds various professorships at Texas Tech University Health Sciences Center; University of Southern California; University of California, Los Angeles; and Vanderbilt University. From 1981 to 1988, Dr. Spitzer was vice president, patient care services, at

Cedars-Sinai Medical Center. Previously, she was director of nursing and practiced nursing in both inpatient and public health settings. She is a fellow of the American Academy of Nursing, a diplomate of the American College of Healthcare Executives, and serves on many other boards. Dr. Spitzer has written and spoken extensively on such issues as managing nonprofit organizations, cost containment, quality and productivity, nursing in the 1990s, and strategic management and leadership. She received a B.S. from Adelphi University, an M.A. in nursing service administration from Columbia University, and both an M.A. in management and an M.B.A. from Claremont Graduate School. Dr. Spitzer holds a Ph.D. in management from the Peter Drucker Management Center, Claremont Graduate School.

James R. Tallon Jr.

James R. Tallon Jr. is president of the United Hospital Fund of New York. He also chairs the Kaiser Commission on the Future of Medicaid and is a visiting lecturer at the Harvard University School of Public Health. In addition, he is a member of the board of commissioners of the Joint Commission on the Accreditation of Healthcare Organizations. Prior to joining the United Hospital Fund, he was the majority leader of the New York State Assembly, where he served for 19 years beginning in 1975. Mr. Tallon was a member of the executive committee of the National Academy for State Health Policy and served as liaison to the President's Task Force on Health Care Reform from the National Conference of State Legislatures. He also was a member of the Governor's Health Care Advisory Board's Task Force on the President's Health Care Plan in New York and chaired the committee on Medicaid of the Health Policy Agenda for the American People. Before his election to the Assembly, Mr. Tallon was the executive director of the NY-PENN Health Planning Council, one of New York's eight regional health planning agencies. Mr. Tallon received a B.A. from Syracuse University and completed graduate work at the Maxwell School of Citizenship and Public Affairs. He received an M.A. from Boston University.

Jae L. Wittlich

Jae L. Wittlich is president and chief operating officer, group operations, CNA Insurance Companies. He also served as vice president of the group benefits department from 1985 to 1990 and as vice president of the group operations division from 1977 to 1985. Before joining CNA Insurance, Mr. Wittlich was with Allstate for 12 years, most recently as assistant vice president of group life and health operations. He is currently vice chairman of the board of directors of the Health Insurance Association of America. Besides being a member of the executive committee and board of directors of the Association of Private Pension and Welfare Plans, he serves on the boards of directors of AmeriChoice Corporation; the Foundation for Health Enhancement; Managed Healthcare Systems of New York; and Private Healthcare Systems, Inc. In addition, Mr. Wittlich has served on many other industry association committees and lectured frequently on health care topics. He received the 1990 Health Insurance Association of America's Founders Medal. Mr. Wittlich is a fellow of the Society of Actuaries and a member of the American Academy of Actuaries. He holds B.A. and M.A. degrees from the University of Michigan.

Appendix C. Statutory Mandate of the Commission

The Congress established the Prospective Payment Assessment Commission (ProPAC) in Public Law 98-21 (the Social Security Amendments of 1983) on April 20, 1983. The current responsibilities of ProPAC are set forth in sections 1862(a) and 1886 of the Social Security Act. Further responsibilities are set forth in various Acts and conferences reports. Below are the passages of the relevant legislative sources, as amended through 1994.

Section 1886(d) of the Social Security Act

(4)(C)(i) The Secretary shall adjust the classifications and weighting factors established under subparagraphs (A) and (B) [DRG classifications], for discharges in fiscal year 1988 and at least annually thereafter, to reflect changes in treatment patterns, technology, and other factors which may change the relative use of hospital resources.

(ii) For discharges in fiscal year 1990, the Secretary shall reduce the weighting factor for each diagnosis-related group by 1.22 percent.

(iii) Any such adjustment under clause (i) for discharges in a fiscal year (beginning with fiscal year 1991) shall be made in a manner that assures that the aggregate payments under this subsection for discharges in the fiscal year are not greater or less than those that would have been made for discharges in the year without such adjustment.

(iv) The Secretary shall include recommendations with respect to adjustments to weighting factors under clause (i) in the annual report to Congress required under subsection (e)(3)(B).

Section 1886(e)(2) through (6) of the Social Security Act

(2)(A) The Director of the Congressional Office of Technology Assessment (hereinafter in this subsection referred to as the "Director" and the "Office," respectively) shall provide for appointment of a Prospective Payment Assessment Commission (hereinafter in this subsection referred to as the "Commission"), to be composed of independent experts appointed by the Director (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service). The Commission shall review the applicable percentage increase factor described in subsection (b)(3)(B) and make recommendations to the [Congress] on the appropriate percentage change which should be effected for hospital inpatient discharges under subsections (b) and (d) for fiscal years beginning with fiscal year 1986. In making its recommendations, the Commission shall take into account changes in the hospital market-basket described in subsection (b)(3)(B), hospital productivity, technological and scientific advances, the quality of health care provided in hospitals (including the quality and skill level of professional nursing required to maintain quality care), and long-term cost-effectiveness in the provision of inpatient hospital services.

(B) In order to promote the efficient and effective delivery of high-quality health care services, the Commission shall, in addition to carrying out its functions under subparagraph (A), study and make recommendations for each fiscal year regarding changes in each existing reimbursement policy under this title under which payments to an institution are based upon prospectively determined rates and the development of new institutional reimbursement policies under this title, including recommendations related to payments during such fiscal year under the prospective payment system established under this section for determining payments for the operating costs of inpatient hospital services, including changes in the number of diagnosis-related groups used to classify inpatient hospitals discharges under subsection (d), adjustments to such groups to reflect severity of illness, and changes in the methods by which hospitals are reimbursed for capital-related costs, together with general recommendations on the effectiveness and quality of health care delivery systems in the United States and the effects on such systems of institutional reimbursements under this title.

112

(C) By not later than June 1 of each year, the Commission shall submit a report to Congress containing an examination of issues affecting health care delivery in the United States, including issues relating to—

(i) trends in health care costs;

(ii) the financial condition of hospitals and the effect of the level of payments made to hospitals under this title on such condition;

(iii) trends in the use of health care services; and

(iv) new methods used by employers, insurers, and others to constrain growth in health care costs.

(3)(A) The Commission, not later than March 1 before the beginning of each fiscal year (beginning with fiscal year 1986) shall report its recommendations to Congress on an appropriate change factor which should be used for inpatient hospital services in that fiscal year, together with its general recommendations under paragraph (2)(B) regarding the effectiveness and quality of health care delivery systems in the United States.

(B) The Secretary, not later than April 1, 1987, for fiscal year 1988 and not later than March 1, before the beginning of each fiscal year (beginning with fiscal year 1989), shall report to the Congress the Secretary's initial estimate of the percentage change that the Secretary will recommend under paragraph (4) with respect to that fiscal year.

(4)(A) Taking into consideration the recommendations of the Commission, the Secretary shall recommend for each fiscal year (beginning with fiscal year 1988) an appropriate change factor for inpatient hospital services for discharges in that fiscal year which will take into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. The appropriate change factor may be different for all large urban subsection (d) hospitals, other urban subsection (d) hospitals, urban subsection (d) Puerto Rico hospitals, rural subsection (d) hospitals, and rural subsection (d) Puerto Rican hospitals, and all other hospitals and units not paid under subsection (d), and may vary among such other hospitals and units.

(B) In addition to the recommendation made under subparagraph (A), the Secretary shall, taking into consideration the recommendations of the Commission under paragraph (2)(B), recommend for each fiscal year (beginning with fiscal year 1992) other appropriate changes in each existing reimbursement policy under this title under which payments to an institution are based upon prospectively determined rates.

(5) The Secretary shall cause to have published in the *Federal Register*, not later than—

(A) the May 1 before each fiscal year (beginning with fiscal year 1986), the Secretary's proposed recommendations under paragraph (4) for that fiscal year for public comment, and

(B) the September 1 before such fiscal year after such consideration of public comment on the proposal as is feasible in the time available, the Secretary's final recommendations under such paragraph for that year.

The Secretary shall include in the publication referred to in subparagraph (A) for a fiscal year the report of the Commission's recommendations submitted under paragraph (3) for that fiscal year. To the extent that the Secretary's recommendations under paragraph (4) differ from the Commission's recommendations for that fiscal year, the Secretary shall include in the publication referred to in subparagraph (A) an explanation of the Secretary's grounds for not following the Commission's recommendations.

(6)(A) The Commission shall consist of 17 individuals. Members of the Commission shall first be appointed no later than April 1, 1984, for a term of three years, except that the Director may provide initially for such shorter terms as will insure that (on a continuing basis) the terms of no more than seven members may expire in any one year.

(B) The membership of the Commission shall include individuals with national recognition for their expertise in health economics, health facility management, reimbursement of health facilities or other providers of services which reflect the scope of the Commission's responsibilities, and other related fields, who provide a mix of different professional, broad geographic representation, and a balance between urban and rural representatives, including physicians and registered professional

nurses, employers, third party payors, individuals skilled in the conduct and interpretation of biomedical, health services, and health economics research, and individuals having expertise in the research and development of technological and scientific advances in health care.

(C) Subject to such review as the Office deems necessary to assure the efficient administration of the Commission, the Commission may—

(i) employ and fix the compensation of an Executive Director (subject to the approval of the Director of the Office) and such other personnel (not to exceed 25) as may be necessary to carry out its duties (without regard to the provisions of the title 5, United States Code, governing appointments in the competitive service);

(ii) seek such assistance and support as may be required in the performance of its duties from appropriate Federal departments and agencies;

(iii) enter into contracts or make other arrangements, as may be necessary for the conduct of the work of the Commission (without regard to section 3709 of the Revised Statutes (41 U.S.C. 5));

(iv) make advance, progress, and other payments which relate to the work of the Commission;

(v) provide transportation and subsistence for persons serving without compensation; and

(vi) prescribe such rules and regulations as it deems necessary with respect to the internal organization and operation of the Commission.

Section 10(a)(1) of the Federal Advisory Committee Act shall not apply to any portion of a Commission meeting if the Commission, by majority vote, determines that such portion of such meeting should be closed.

(D) While serving on the business of the Commission (including travel-time), a member of the Commission shall be entitled to compensation at the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code; and while so serving away from home and his regular place of business, a member may be allowed travel expenses, as authorized by the Chairman of the Commission. Physicians serving as personnel of the Commission may be provided a physician comparability allowance by the Commission in the same manner as Government physicians may be provided such an allowance by an agency under section 5948 of title 5, United States Code, and for such purpose subsection (i) of such section shall apply to the Commission in the same manner as it applies to the Tennessee Valley Authority. For purposes of pay (other than pay of members of the Commission) and employment benefits, rights, and privileges, all personnel of the Commission shall be treated as if they were employees of the United States Senate.

(E) In order to identify medically appropriate patterns of health resources use in accordance with paragraph (2), the Commission shall collect and assess information on medical and surgical procedures and services, including information on regional variations of medical practice and lengths of hospitalization and on other patient-care data, giving special attention to treatment patterns for conditions which appear to involve excessively costly or inappropriate services not adding to the quality of care provided. In order to assess the safety, efficacy, and cost-effectiveness of new and existing medical and surgical procedures, the Commission shall, in coordination to the extent possible with the Secretary, collect and assess factual information, giving special attention to the needs of updating existing diagnosis-related groups, establishing new diagnosis-related groups, and making recommendations on relative weighting factors for such groups to reflect appropriate differences in resource consumption in delivering safe, efficacious, and cost-effective care. In collecting and assessing information, the Commission shall—

(i) utilize existing information, both published and unpublished, where possible, collected and assessed either by its own staff or under other arrangements made in accordance with this paragraph;

(ii) carry out, award grants or contracts for, original research and experimentation, including clinical research, where existing information is inadequate for the development of useful and valid guidelines by the Commission; and

(iii) adopt procedures allowing any interested party to submit information with respect to medical

and surgical procedures and services (including new practices, such as the use of new technologies and treatment modalities), which information the Commission shall consider in making reports and recommendations to the Secretary and Congress.

(F) The Commission shall have access to such relevant information and data as may be available from appropriate Federal agencies and shall assure that its activities, especially the conduct of original research and medical studies, are coordinated with the activities of Federal agencies.

(G)(i) The Office shall have unrestricted access to all deliberations, records, and data of the Commission, immediately upon its request.

(ii) In order to carry out its duties under this paragraph, the Office is authorized to expend reasonable and necessary funds as mutually agreed upon by the Office and the Commission. The Office shall be reimbursed for such funds by the Commission from the appropriations made with respect to the Commission.

(H) The Commission shall be subject to periodic audit by the General Accounting Office.

(I)(i) There are authorized to be appropriated such sums as may be necessary to carry out the provision of this paragraph.

(ii) Eighty-five percent of such appropriation shall be payable from the Federal Hospital Insurance Trust Fund, and 15 percent of such appropriation shall be payable from the Federal Supplementary Medical Insurance Trust Fund.

(J) The Commission shall submit requests for appropriations in the same manner as the Office submits requests for appropriations, but amounts appropriated for the Commission shall be separate from amounts appropriated for the Office.

Section 1862(a) of the Social Security Act

(a) Notwithstanding any other provision of this title, no payment may be made under part A or part B for any expenses incurred for items or services—

(1)(A) which, except for items and services described in a succeeding subparagraph, are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member,

(B) in the case of items and services described in section 1861(s)(10), which are not reasonable and necessary for the prevention of illness,

(C) in the case of hospice care, which are not reasonable and necessary for the palliation or management of terminal illness,

(D) in the case of clinical care items and services provided with the concurrence of the Secretary and with respect to research and experimentation conducted by, or under contract with, the Prospective Payment Assessment Commission or the Secretary, which are not reasonable and necessary to carry out the purposes of section 1886(e)(6), . . .

Section 1135(d) of the Social Security Act

(6)(A) The Secretary shall develop a model system for the payment for outpatient hospitals services other than ambulatory surgery.

(B) The Secretary shall submit to Congress a report on the model payment system under subparagraph (A) by January 1, 1991.

(7) The Secretary shall solicit the views of the Prospective Payment Assessment Commission in developing the systems under paragraphs (1) and (6), and shall include in the Secretary's reports under this subsection any views the Commission may submit with respect to such systems.

Section 9114 of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272

(a) Disclosure of Information.—The Secretary of Health and Human Services shall make available to the Prospective Payment Assessment Commission, the Congressional Budget Office, and the Congressional Research Service the most current information on the payments being made under section 1886 of the Social Security Act to individual hospitals. Such information shall be made available in a manner that permits examination of the impact of such section on such hospitals.

(b) Confidentiality.—Information disclosed under subsection (a) shall be treated as confidential

and shall not be subject to further disclosure in a manner that permits the identification of individual hospitals.

Section 6003(i) of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101-239: Legislative Proposal Eliminating Separate Average Standardized Amounts

(1) In General.—The Secretary of Health and Human Services (hereafter referred to as the "Secretary") shall design a legislative proposal eliminating the system of determining separate standardized amounts for subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act) classified as being located in large urban, other urban, or rural areas under section 1886(d)(2)(D) of such Act, and shall include in such proposal the following—

(A) A transition period beginning in fiscal year 1992 during which a single rate for determining payment to hospitals in all areas shall be phased in with such single rate to be completely in effect by fiscal year 1995.

(B) Recommendations, where appropriate, for modifying or maintaining additional payments or adjustments under title XVIII of the Social Security Act for teaching hospitals, rural referral centers, sole community hospitals, disproportionate share hospitals, and outlier cases, and for creating additional payments or adjustments where deemed appropriate by the Secretary.

(C) Recommendations with respect to recalculating standardized amounts to reflect information from more recent cost reporting periods.

(D) Recommendations, where appropriate, for modifying reimbursement for hospitals that are not subsection (d) hospitals under title XVIII of such Act.

(E) A recommendation for a methodology to reflect the severity of illness of different patients within the same diagnosis related group (as determined in section 1886(d)(4)(B) of such Act).

(2) Report to Congress and ProPAC.—(A) Not later than October 1, 1990, the Secretary shall submit the proposal described in paragraph (1) and an accompanying analysis of the impact of the proposed elimination of separate average standardized amounts on various categories of hospitals to Congress and the Prospective Payment Assessment Commission.

(B) Not later than February 1, 1991, the Prospective Payment Assessment Commission and the Director of the Congressional Budget Office shall each prepare and submit to Congress a report analyzing the legislative proposal submitted under subparagraph (A), and shall include in such report an analysis of the probable impact of such legislation on hospitals participating in the Medicare program.

Section 6003(j) of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101-239: ProPac Study of Payments to Rural Sole Community Hospitals and Small Rural Hospitals

(1) Study.— The Prospective Payment Assessment Commission (hereinafter referred to as the "Commission") shall conduct a study of the feasibility and desirability of—

(A) using a cost-based reimbursement system to determine the amount of payments to be made under the Medicare program to small rural hospitals and rural sole community hospitals for the operating costs of inpatient hospital services;

(B) developing and applying alternative definitions of market share for use in determining the eligibility of hospitals for classification as sole community hospitals under section 1886(d)(5) of the Social Security Act; and

(C) developing and applying a method for accounting for decreases in the number of inpatients served in determining payment to small rural hospitals under section 1886(d) of the Social Security Act for the operating costs of inpatient hospital services.

(2) Report.—By not later than May 1, 1990, the Commission shall submit a report to Congress on the study conducted under paragraph (1).

Section 6011 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101-239 Pass Through Payments for Hemophilia Inpatients

(a) Pass Through Payment for Hemophilia Inpatients.—The second sentence of section 1886(a)(4) of the Social Security Act . . . is amended to read as follows—

> For purposes of this section, the term "operating cost of inpatient hospital services" . . . does not include . . . costs with respect to administering blood clotting factors to individual with hemophilia.

(b) Determining Payment Amount.—The Secretary of Health and Human Services shall determine the amount of payment made to hospitals under part A of title XVIII of the Social Security Act for the costs of administering blood clotting factors to individuals with hemophilia by multiplying a predetermined price per unit of blood clotting factor (determined in consultation with the Prospective Payment Assessment Commission) by the number of units provided to the individual.

(c) Recommendations on Payments.—The Prospective Payment Assessment Commission and the Health Care Financing Administration shall develop recommendations with respect to payments under part A of title XVIII of the Social Security Act for the costs of administering blood clotting factors to individuals with hemophilia, and shall submit such recommendations to Congress not later than 18 months after the date of enactment of this Act.

Section 6137 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101-239: ProPAC Study of Payments for Services in Hospital Outpatient Departments

(a) In General.—The Prospective Payment Assessment Commission shall conduct a study on payment under title XVIII of the Social Security Act for hospital outpatient services. Such study shall include an examination of—

(1) the sources of growth in spending for hospital outpatient services;

(2) the differences between the costs of delivering services in a hospital outpatient department as opposed to providing similar services in other appropriate settings (including ambulatory surgery centers and physician offices);

(3) the effects on outpatient hospital costs of the step-down method used to allocate hospital capital between inpatient and outpatient departments and the extent to which hospital outpatient costs were affected by the implementation of the prospective payment system of payment for inpatient hospital services and by increased review of such services by peer review organizations; and

(4) alternative methods for reimbursing hospitals for services in outpatient departments under the Medicare program, including prospective payment methods, fee schedules, and other such methods as the Commission may consider appropriate.

(b) Reports.—(1) By not later than July 1, 1990, the Commission shall submit a report to Congress on the study conducted under section (a) with respect to the portions of the study described in paragraphs (1), (2), and (3) of such subsection, and shall include in the report such recommendations as the Commission deems appropriate.

(2) By not later than March 1, 1991, the Commission shall submit a report to Congress on the study conducted under subsection (a) with respect to the portion of the study described in paragraph (4) of such subsection, and shall include such recommendations as the Commission deems appropriate.

Section 4002(d)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508: Study of the Area Wage Index Adjustments Based on Professional Occupational Component

(A) Study.—The Prospective Payment Assessment Commission shall examine available data from States and other sources measuring earnings and paid hours of employment of hospital workers by occupational category, and shall include in such examination an analysis of the impact of variation in occupational mix on the computation of the area wage index determined under section 1886(d)(3(E) of the Social Security Act.

(B) Report to Congress.—In its March 1991 report, the Commission shall include recommendations regarding the feasibility and desirability of modifying such area wage index to take into account occupational mix, including variations in occupational mix resulting from differences in State codes and requirements.

Section 4002(g)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508: ProPAC Study of Medicaid Payments to Hospitals

(A) Study.—The Prospective Payment Assessment Commission shall conduct a study of hospital payment rates under State plans for medical assistance under title XIX of the Social Security Act, and shall specifically examine in such study the relationship between payments under such plans and payments made to hospitals under title XVIII of such Act, and the financial condition of hospitals receiving payments under such plans, with particular attention to hospitals in urban areas which treat large number of individuals eligible for medical assistance under title XIX of such Act and other low-income individuals.

(B) Report.—By not later than October 1, 1991, the Commission shall submit a report to Congress on the study conducted under subparagraph (A) and shall include in such report such recommendations relating to requirements for payments to hospitals under title XIX of such Act as the Commission deems appropriate.

Section 4005(b) of the of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508: Development of National Prospective Payment Rates for Current Non-PPS Hospitals

(1) Development of Proposal.—The Secretary of Health and Human Services shall develop a proposal to modify the current system under which hospitals that are not subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act) receive payment for the operating and capital-related costs of inpatient hospital services under part A of the Medicare program or a proposal to replace such system with a system under which such payments would be made on the basis of nationally-determined average standardized amounts. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall—

(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the Medicare program;

(B) provide for adjustments to prospectively determined rates to account for changes in a hospital's case mix, severity of illness of patients, volume of cases, and the development of new technologies and standards of medical practice;

(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length of stay or costs of treatment greatly exceed the length of stay or cost of treatment provided for under the applicable prospectively determined payment rate;

(D) take into consideration the need to adjust payments under the system to take into account factors such as a disproportionate share of low-income patients, costs related to graduate medical education programs, differences in wages and wage-related costs among hospitals located in various geographic areas, and other factors the Secretary considers appropriate, and

(E) provide for the appropriate allocation of operating and capital-related costs of hospitals not subject to the new prospective payment system and distinct units of such hospitals that would be paid under such system.

(2) Report.—(A) By not later than April 1, 1992, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(B) By not later than June 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

Section 4008(k) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508: Prospective Payment System for Skilled Nursing Facilities

(1) Development of Proposal.—The Secretary of Health and Human Services shall develop a proposal to modify the current system under which skilled nursing facilities receive payment for extended care services under part A of the Medicare program or a proposal to replace such system with a system under which such payments would be made on the basis of prospectively determined rates. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall—

(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the Medicare program without jeopardizing access to extended care services for individuals unable to care for themselves;

(B) provide for adjustments to prospectively determined rates to account for changes in a facility's case mix, volume of cases, and the development of new technologies and standards of medical practice;

(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length of stay or costs of treatment greatly exceed the length of stay or cost of treatment provided for under the applicable prospectively determined payment rate;

(D) take into consideration the need to adjust payments under the system to take into account factors such as a disproportionate share of low-income patients, differences in wages and wage-related costs among facilities located in various geographic areas, and other factors the Secretary considers appropriate; and

(E) take into consideration the appropriateness of classifying patients and payments upon functional disability, cognitive impairment, and other patient characteristics.

(2) Reports.—(A) By not later than April 1, 1991, the Secretary (acting through the Administrator of the Health Care Financing Administration) shall submit any research studies to be used in developing the proposal under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(B) By not later than September 1, 1991, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(C) By not later than March 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

Section 4151(b)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508: Prospective Payment System for Hospital Outpatient Services

(A) Development of Proposal.—The Secretary of Health and Human Services shall develop a proposal to replace the current system under which payment is made for hospital outpatient services under title XVIII of the Social Security Act with a system under which such payments would be made on the basis of prospectively determined rates. In developing any proposal under this paragraph, the Secretary shall consider—

(i) the need to provide for appropriate limits on increases in expenditures under the Medicare program;

(ii) the need to adjust prospectively determined rates to account for changes in a hospital's outpatient case mix, severity of illness of patients, volume of cases, and the development of new technologies and standards of medical practice;

(iii) providing hospitals with incentives to control the costs of providing outpatient services;

(iv) the feasibility and appropriateness of including payment for outpatient services not currently paid on a cost-related basis under the Medicare

program (including clinical diagnostic laboratory tests and dialysis services) in the system;

(v) the need to increase payments under the system to hospitals that treat a disproportionate share of low-income patients, teaching hospitals, and hospitals located in geographic areas with high wages and wage-related costs;

(vi) the feasibility and appropriateness of bundling services into larger units, such as episodes or visits, in establishing the basic unit for making payments under the system; and

(vii) the feasibility and appropriateness of varying payments under the system on the basis of whether services are provided in a free-standing or hospital-based facility.

(B) Reports.—(i) By not later than January 1, 1991, the Administrator of the Health Care Financing Administration shall submit research findings relating to prospective payments for hospital outpatient services to the Committee on Finance of the Senate and the Committees on Ways and Means and Energy and Commerce of the House of Representatives. . . .

(ii) By not later than September 1, 1991, the Secretary shall submit the proposal developed under subparagraph (A) to such Committees.

(iii) By not later than March 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under subparagraph (A) to such Committees.

Section 4201(b) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508: ProPAC Study on ESRD Composite Rates

(1) In General.—(A) Study.—The Prospective Payment Assessment Commission (in this subsection referred to as the "Commission") shall conduct a study to determine the costs and services and profits associated with various modalities of dialysis treatments provided to end stage renal disease patients provided under title XVIII of the Social Security Act.

(B) Recommendations.—Based on information collected for the study described in subparagraph (A), the Commission shall make recommendations to Congress regarding the method or methods and the levels at which the payments made for the facility component of dialysis services by providers of service and renal dialysis facilities under title XVIII of the Social Security Act should be established for dialysis services furnished during fiscal year 1993 and the methodology to be used to update such payments for subsequent fiscal years. In making recommendations concerning the appropriate methodology the Commission shall consider—

(i) hemodialysis and other modalities of treatment,

(ii) the appropriate services to be included in such payments,

(iii) the adjustment factors to be incorporated including facility characteristics, such as hospital versus free-standing facilities, urban versus rural, size and mix of services,

(iv) adjustments for labor and non-labor costs,

(v) comparative profit margins for all types of renal dialysis providers of service and renal dialysis facilities,

(vi) adjustments for patient complexity, such as age, diagnosis, case mix, and pediatric services, and

(vii) efficient costs related to high quality of care and positive outcomes for all treatment modalities.

(2) Report.—Not later than June 1, 1992, the Commission shall submit a report to the Committee on Finance of the Senate, and the Committees on Ways and Means and Energy and Commerce of the House of Representatives on the study conducted under paragraph (1)(A) and shall include in the report the recommendations described in paragraph (1)(B), taking into account the factors described in paragraph (1)(B).

(3) Annual Report.—The Commission, not later than March 1 before the beginning of each fiscal year (beginning with fiscal year 1993) shall report its recommendations to the Committee on Finance of the Senate and the Committees on Ways and

Means and Energy and Commerce of the House of Representatives on an appropriate change factor which should be used for updating payments for services rendered in that fiscal year. The Commission in making such report to Congress shall consider conclusions and recommendations available from the Institute of Medicine.

Section 4207(c) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508: Development of Prospective Payment System for Home Health Services

(1) Development of Proposal.—The Secretary of Health and Human Services shall develop a proposal to modify the current system under which payment is made for home health services under title XVIII of the Social Security Act or a proposal to replace such system with a system under which such payments would be made on the basis of prospectively determined rates. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall—

(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the Medicare program;

(B) provide for adjustments to prospectively determined rates to account for changes in a provider's case mix, severity of illness of patients, volume of cases, and the development of new technologies and standards of medical practice;

(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length of treatment or costs of treatment greatly exceed the length or cost of treatment provided for under the applicable prospectively determined payment rate;

(D) take into consideration the need to adjust payments under the system to take into account factors such as differences in wages and wage-related costs among agencies located in various geographic areas and other factors the Secretary considers appropriate; and

(E) analyze the feasibility and appropriateness of establishing the episode of illness as the basic unit for making payments under the system.

(2) Reports.—(A) By not later than April 1, 1993, the Secretary of Health and Human Services shall submit the research findings upon which the proposal described in paragraph (1) shall be based to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(B) By not later than September 1, 1993, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(C) By not later than March 1, 1994, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

H.R. Rep. No. 964, 101st Cong., 1st Sess. (1990)

(Report of the Committee of Conferees, Pub. L. 101-508)

In performing this function [developing and modification of reimbursement policies], the conferees intend that ProPAC would include in its analysis and recommendations, proposals for changes in policies regarding: (1) payment for inner-city hospitals, including appropriate recognition of bad debt and charity care costs; (2) payment for rural hospitals including recommendations on appropriate responses to issues affecting access to health care services in rural areas; and (3) policies which help constrain the costs of health care to employers, including changes in Medicare and its payment policies which may affect other payers.

S.R. Rep. No. 516, 101st Cong., 2nd Sess. (1990)

(Report of the Senate Committee on Appropriations, H.R. 5257)

The Committee, therefore, requests that ProPAC issue a report listing (1) the adjustments that have been made to PPS since its inception (for example changes in standardized amount, outlier pool, consideration of part-time labor); and (2) the amount of increased payments (taking inflation into

account) for PPS years 1-5 and what rural hospitals would have received if these adjustments had been in place from the system's beginning.

In addition, the Committee request that ProPAC in its 1991 report address in detail the impact of less-than-average patient volume on overhead costs and reimbursement, especially on small hospitals. This Committee remains concerned that the PPS system, which is based on averages, inherently is inappropriate to small-volume hospitals.

Given the history of inequitable inpatient payments and the widespread concern over new systems of outpatient payments, the Committee finds it is necessary to investigate whether outpatient payment systems also will be biased against smaller rural providers. The Committee requests that ProPAC in its 1991 report identify all potential outpatient payment biases against small rural hospitals, and recommend actions to correct them.

The Committee is concerned that the Federal Office of Rural Health Policy lacks essential resources such as computer capability in order to fulfill its statutory mandate to provide impact analyses of proposed Medicare and Medicaid regulations. The Committee instructs ProPAC to provide its resources to the Office of Rural Health Policy in order to facilitate these analyses. The Committee expects The Commission to provide technical assistance to the Office of Rural Health Policy.

The Committee urges ProPAC to continue to study the use of nurse practitioners and other nonphysician providers in alternative settings to acute care and long-term institutional care.

Section 3(d) of the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991, Pub. L. 102-234: Study of Medicaid DSH Payment Adjustments

(1) In General.—The Prospective Payment Assessment Commission shall conduct a study concerning—

(A) the feasibility and desirability of establishing maximum and minimum payment adjustments under section 1923(c) of the Social Security Act for hospitals deemed disproportionate share hospitals under State medicaid plans, and

(B) criteria (other than criteria described in clause (i) or (ii) of section 1923(f)(1)(D) of such Act) that are appropriate for the designation of disproportionate share hospitals under section 1923 of such Act.

(2) Items Included In Study.—The Commission shall include in the study—

(A) a comparison of the payment adjustments for hospitals made under such section and the additional payments made under title XVIII of such Act for hospitals serving a significantly disproportionate number of low-income patients under the medicare program; and

(B) an analysis of the effect the establishment of limits on such payment adjustments will have on the ability of the hospitals to be reimbursed for the resource costs incurred by the hospitals in treating individuals entitled to medical assistance under State medicaid plans and other low-income patients.

(3) Report.—Not later than January 1, 1994, the Commission shall submit a report on the study conducted under paragraph (1) to the Committee on Finance of the Senate and the Committee on Energy and Commerce of the House of Representatives. Such report shall include such recommendations respecting the designation of disproportionate share hospitals and the establishment of maximum and minimum payment adjustments for such hospitals under section 1923 of the Social Security Act as may be appropriate.

H.R. Rep. No. 103-213, 103rd Cong., 1st Sess. (1993)

(Report of the Conference Committee, Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66)

The conferees note that the Prospective Payment Assessment Commission has expressed concern that the Secretary's outlier policy penalizes hospitals that receive a large number of transfer cases. The conferees expect that the Commission will evaluate whether the changes in outlier policy required by this Act will be sufficient to reduce the risk of large losses on transfer cases for such hospitals and make recommendations regarding whether additional changes in payment methodology would be appropriate.

[FR Doc. 96-13613 Filed 5-30-96; 8:45 am]
BILLING CODE 4120-01-C

federal register

Friday
May 31, 1996

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 651

Northeast Multispecies Fishery; Amendment 7; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 960216032–6138–03; I.D. 021296E]

RIN 0648–AI94

Northeast Multispecies Fishery; Amendment 7

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement approved measures contained in Amendment 7 to the Northeast Multispecies Fishery Management Plan (FMP) including a resubmitted part of the amendment. These regulations: Establish an annual target Total Allowable Catch (TAC) for regulated species; accelerate the current days-at-sea (DAS) effort reduction program; eliminate most of the exemptions to the effort control program and revise the requirements for taking time out of the fishery; add new closed areas; restrict fisheries in the Gulf of Maine/Georges Bank (GOM/GB) and Southern New England (SNE) regulated mesh areas having more than a minimal bycatch of regulated species; establish the current experimental Nantucket Shoals dogfish fishery as an exempted fishery; modify the permit categories; establish restrictions on charter/party and recreational vessels; and revise and expand the existing framework provisions. The intended effect of this rule is to rebuild multispecies stocks. In addition, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this rule and publishes the OMB control numbers for these collections.

EFFECTIVE DATE: July 1, 1996.

ADDRESSES: Copies of Amendment 7, its regulatory impact review (RIR) and the initial regulatory flexibility analysis (IRFA) contained within the RIR, and the Final Supplemental Environmental Impact Statement (FSEIS), and copies of the resubmitted part and its supporting documents, are available from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (US Rte. 1), Saugus, MA 01906–1097. Comments regarding the collection-of-information requirements contained in this final rule should be sent to Andrew A. Rosenberg, Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 and to the Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, 508–281–9252.

SUPPLEMENTARY INFORMATION: This final rule implements approved measures contained in Amendment 7 to the multispecies FMP which was approved by NMFS on behalf of the Secretary of Commerce (Secretary) on May 16, 1996. Three measures contained in Amendment 7, as originally submitted, were disapproved by NMFS on behalf of the Secretary when they were submitted and consequently were not a part of the proposed rule published on March 5, 1996 (61 FR 8540). Reasons for disapproval of those measures were given in the proposed rule and are not repeated here. Two of these measures, a provision that would allow additional DAS for vessels enrolled in the Large Mesh Individual DAS category and a 300-lb (136.1-kg) possession limit when fishing in an exempted fishery with 8-inch (20.32-cm) mesh, were resubmitted by the New England Fishery Management Council (Council). The latter measure was again disapproved.

The provision that would allow additional DAS for vessels enrolled in the Large Mesh Individual DAS category was contained in a proposed rule published on April 18, 1996 (61 FR 16892). During the public comment period, no comments were received. This measure was approved by NMFS on behalf of the Secretary on May 17, 1996, and is also implemented by this rule.

Details concerning the justification for and development of Amendment 7 were provided in the notice of proposed rulemaling (61 FR 8540, March 5, 1996) and are not repeated here.

In that notice, NMFS requested the public to comment on all proposed measures, but to focus on several measures of concern in particular. After NMFS reviewed the amendment and the public comments received relative to the amendment and the proposed rule, NMFS disapproved three additional measures based on its determination that they are inconsistent with one or more of the national standards of the Magnuson Fishery Conservation and Management Act (Magnuson Act) or other applicable law. These measures are: A call-in requirement for charter/party vessels; counting DAS for gillnet vessels by the amount of time that gillnet gear is in the water; and a winter flounder possession allowance when fishing in the Mid-Atlantic regulated mesh area.

Disapproved Measures

Amendment 7 imposes new restrictions on charter and party vessels. Such vessels may, under certain circumstances and criteria, fish under either the recreational or commercial requirements of these regulations. A call-in requirement for charter/party vessels was proposed by the Council to provide a way for law enforcement officers to discern which of these requirements a vessel was subject to. This measure has been disapproved because NMFS believes that sufficient means exist to distinguish recreational and commercial activities. Further, the U.S. Coast Guard (USCG) and NMFS Office of Law Enforcement have recommended against adoption of this measure because it would not improve enforceability of the charter/party restrictions. This recommendation led the Council, in their comments on the proposed rule, to also recommend against adoption of this measure. Because this requirement would place a significant administrative burden on the call-in system with no discernable benefit, it is neither consistent with National Standard 7 nor Executive Order 12866 and is disapproved.

The second disapproved measure proposed counting gillnet DAS as time when gear is in the water, rather than time when the vessel is away from the dock. The Council proposed this measure in an attempt to resolve perceived inequities in the DAS accounting methods for fixed gear versus mobile gear. However, the proposal did not adequately resolve enforcement difficulties of monitoring the amount of time gear was in the water or the administrative problems in determining baseline allocations for gillnet Individual DAS category vessels. Moreover, the Council itself has expressed concern with this measure and has initiated the process to reconsider the method for counting gillnet DAS structure. Because the administrative burden of establishing a method of accounting and allocating DAS is extensive, the efficiency standards of E.O. 12866 and National Standard 7 would be compromised by the almost immediate change to the system that the Council is contemplating. Disapproval of this measure means that DAS for gillnet vessels will be counted in the same way that DAS are counted for all other vessels, as time away from port.

The measure that would have allowed a bycatch of winter flounder by vessels fishing in the Mid-Atlantic regulated mesh area (10 percent by weight of all other species on board or 200 lb (90.7 kg), whichever is less) has also been disapproved. The most recent assessment of winter flounder advises that fishing mortality should be reduced immediately to the lowest possible level. Therefore, there is no justification for treating this regulated species any differently than others in similar condition. Although the cap on the allowed catch would discourage vessels from targeting winter flounder, this measure would reduce the beneficial conservation effect of the DAS program on the winter flounder resource and is, therefore, inconsistent with National Standard 1.

Approved Measures

Amendment 7 establishes a procedure for setting annual target TAC levels for specific cod, haddock, and yellowtail flounder (CHY) stocks (GB CHY, SNE yellowtail flounder, and GOM cod), and an aggregate TAC for the other regulated species (pollock, redfish, white hake, witch flounder, American plaice, winter flounder and windowpane flounder). The procedure would be used annually to set target TACs, with the exception of target TACs for the 1996 fishing year (May 1, 1996, through April 30, 1997), which are set as follows:

TABLE 1.—1996 TAC SPECIFICATIONS

Species/area	1996 Target TACs (metric tons)
Georges Bank cod	1,851
Georges Bank haddock	2,801
Georges Bank yellowtail flounder	385
Gulf of Maine cod	2,761
Southern New England yellowtail flounder	150
Aggregate for remaining regulated species	25,500

DAS allocations are reduced in two equal increments at the start of the 1996 and 1997 fishing years from current levels to the full 50 percent reduction called for originally in the final year of Amendment 5 to the FMP. In addition, because the effective date of this rule is 2 months after the start of the 1996 fishing year, which commenced on May 1, 1996, 1996 DAS allocations are prorated based on the amount of time remaining in the 1996 fishing year, or 83 percent (10 months/12 months).

Amendment 7 eliminates the current exemptions to the DAS program (vessels 45 ft (13.7 m) and less, limited access Hook-Gear and Gillnet vessels) and allocates either Individual DAS or Fleet DAS to these vessels, except for vessels 30 ft (9.1 m) or less in length. Limited access vessels 30 ft (9.1 m) or less in length may choose either to fish under the DAS program or be restricted to a possession limit of CHY up to a maximum combined weight of 300 lb (136.1 kg).

This rule eliminates the existing requirement for vessels in the Fleet DAS category to take blocks of time "out of the multispecies fishery." It also eliminates the layover days currently required after completion of a multispecies trip. However, all vessels subject to the DAS effort control program are required to take one 20-consecutive-day block of time out of the multispecies fishery between March 1 through May 31. Vessels 30 ft (9.1 m) or less in length issued a Small Vessel permit and vessels issued an open access Handgear permit are not allowed to fish for, possess, or land regulated multispecies between March 1 and March 20.

The existing time/area closures to sink gillnet vessels specified to reduce harbor porpoise bycatch are now also closed to other gear types as part of the effort reduction program. These areas are known as the Northeast Closure Area, the Mid-Coast Closure Area, and the Massachusetts Bay Closure Area. Because Small Mesh Area 1 lies entirely within the Mid-coast Closure Area, the season termination date for this exemption is changed from November 15 to October 31, which coincides with the closure of the Mid-coast area.

This final rule prohibits vessels from fishing in the GOM/GB and SNE regulated mesh areas, unless they are fishing in an authorized multispecies fishery, under a scallop DAS, or in an exempted fishery. An exempted fishery is one in which it has been determined that there is a minimal bycatch of regulated species.

The existing Nantucket Shoals experimental dogfish fishery has been found to meet the criteria for this exemption. This rule permanently exempts that fishery from June 1 through October 15.

Because the exemptions to the DAS program are removed by the amendment, some limited access permit categories have been eliminated and vessels in those categories have been reassigned to an appropriate category. A new category is established for vessels in the current Hook-Gear open access category and an opportunity to qualify for a new limited access Hook-Gear permit under specified criteria is granted. New limited access permit categories are also established for vessels electing to fish with large mesh. Vessels reassigned as a result of this rule will have 45 days from the date of publication of this rule to change their 1996 permit category.

Three new open access permit categories established are Handgear, Charter/Party and Scallop Multispecies Possession Limit, each with specific possession and gear restrictions.

This rule imposes several new restrictions for recreational and charter/party vessels, including a 20 inch (50.8 cm) minimum fish size for cod and haddock for the first year of the plan, increasing to 21 inches (53.3 cm) in the second year, a prohibition on the sale of multispecies finfish, and a 10 fish possession limit on cod and haddock, combined, for individual recreational anglers.

The FMP's existing framework provisions are revised to remove the 10 percent cap on annual reductions in fishing mortality and to allow implementation of measures to protect right whales and other marine mammals through the framework process. An annual process to set target TACs, review progress towards fishing mortality goals and to make any necessary changes in the management program is also established.

The Mid-Atlantic regulated mesh area is redefined to include all New York and Connecticut state waters.

Vessels fishing in the SNE regulated mesh area are authorized to retain a bycatch of skate or skate parts up to 10 percent of the total weight of other fish possessed on board.

A provision is added that allows the costs of observer coverage to be funded by sources other than NMFS.

The haddock possession limit is increased from 500 (227 kg) to 1,000 lb (453.6 kg) for vessels fishing under a multispecies DAS. The tote and box volumetric equivalency measure for determining the weight of possession limits is eliminated, instead, compliance with possession limits will be determined by shoreside weighing. However, vessels will be required to carry one tote on board for use by USCG boarding parties to estimate possible excessive catches.

Comments and Responses

Written comments were submitted by the Associated Fisheries of Maine, Offshore Mariners Association, Inc., Gloucester Fishermen's Wives Association, Massachusetts Fishermen's Partnership, Gloucester Fishermen's Committee, Maine Department of Marine Resources (DMR), Wildlife Habitat Preservation Association, Inc.,

Senator Judd Gregg, Senator Bob Smith, Senator Olympia J. Snowe, Senator William S. Cohen, Congressman Patrick J. Kennedy, Seafarers International Union of North America, Conservation Law Foundation, Mass Audubon Society, The Groundfish Group of Associated Fisheries of Maine, Associated Fisheries of Maine, Maine Fishermen's Wives Association, Federation of Inshore Seafood Harvesters, Darling Marine Center of the University of Maine, New Bedford Seafood Coalition, Massachusetts State Senator Bruce Tarr, Gloucester United, Vessel Services Inc., the New England Fishery Management Council (NEFMC), Center for Marine Conservation, Environmental Defense Fund, Cape Cod Commercial Hook Fishermen's Association, Resource Trading Co., King & Sons Fishing Co., Inc., Cape Ann Gillnetters' Association, Action, Inc., Wellspring House, Inc., Massachusetts Lobstermen's Association, Inc., Connecticut Department of Environmental Protection (DEP), the Marine Mammal Commission, and approximately 290 individuals.

1. Comments in Favor of Approval of Amendment 7

Comment 1: An association and several environmental organizations stated that Amendment 7 should be approved, and 136 individuals stated that Amendment 7 should be approved without change. Many commenters expressed concern for the health and viability of the resource and urged the Secretary not to give in to pressure to weaken, modify or otherwise deviate from the plan.

Response: Most of the measures proposed in Amendment 7 have been approved.

2. Comments on Elimination of the Open Access Possession Limit and Hook-Gear-Only Permit Categories

Comment 2: Several commenters opposed elimination of the Possession-Limit permit category and/or the 500-lb (226.8-kg) allowance of regulated species associated with this permit. These comments are summarized as follows:

A commenter stated that he invested in his vessel while fishing under the 500-pound (226.8-kg) possession limit in the open access category and that under Amendment 7, he will lose his right to do so, due to the elimination of the open access possession limit permit.

An association stated that vessels in the Possession Limit permit category that may have qualified for a limited access permit under Amendment 5 should be allowed to prove their eligibility and move into a DAS category. The commenter further explained that a few vessels opted for a Possession Limit permit though their history would have qualified them for a limited access permit under the DAS program. The association further stated that it would have been impossible for these vessel owners to know that this permit category would be eliminated at some future date.

Another commenter stated that elimination of the Possession Limit permit category denies him access to the whiting fishery. He stated that his two vessels surrendered their limited access multispecies permits during 1996, because he lengthened his vessels beyond the upgrade restrictions of the multispecies FMP to maximize their productive capacities before the effective date of Amendment 5 to the Atlantic Mackerel, Squid and Butterfish FMP (which allows no increase in size after implementation). He stated that since the vessels only fished a few months each year for whiting, he had planned to continue to do so under the Possession Limit category.

Another commenter stated that under Amendment 7 those fishers formerly fishing for whiting and other small mesh species in the experimental whiting grate fishery, to use as bait under the Possession Limit category will not be able to continue this practice. He stated that this gives bluefin tuna fishers with a limited access multispecies permit an unfair advantage.

Congressman Patrick J. Kennedy (RI) forwarded an association's petition containing 98 signatures and 23 individual letters, all concerned with the elimination under Amendment 7 of the possession limit of regulated species bycatch allowed when fishing for non-regulated species out of the DAS effort reduction program. The association also forwarded the petition and letters directly to the Director, Northeast Region, NMFS (Regional Director). They further stated that the marketable bycatch of regulated species would be wastefully discarded. Twenty-three of the commenters stated that they would have to fish day and night to fully utilize the full 24 hours of the groundfish day DAS. They all sought reinstatement in Amendment 7 of the possession limit of regulated species when fishing for non-regulated species out of a DAS effort control program.

Another commenter stated he does not qualify for the new limited access hook permit, because he did not land 500-lb (226.8-kg) of regulated species during the qualifying year, which is one of the qualifying criteria. He said that it is arbitrary and unfair to make just that permit category meet certain criteria. He further asked whether any consideration was given for illness or investments. He added that the labor intensive, environmentally sound hook-fishery had no negative impacts on the control of future effort.

The Maine DMR commented favorably on the open-access handgear-only permit category provision of Amendment 7. It added that this permit category provides a lowcost, egalitarian point of entry for new participants in the fishery within sensible conservation rules.

The Maine DMR commented in opposition to the eligibility requirements for vessels desiring to qualify for the new limited access hook-gear permit-category, specifically, the requirement that applicants must have filed logs for their vessels by January 26, 1996 for the period June 1, 1994–June 1, 1995. It stated that since NMFS has allowed logbook filers to file late this year as part of a well-publicized education effort designed to achieve high compliance by next year, it is unreasonable and inequitable to disallow the same extension to those in the open access hook permit category, which was less intensively regulated under Amendment 5. It explained that participants in this category are less likely to have understood and complied with log requirements.

Response: The Council and NMFS are aware that certain participants in the groundfish fishery may be affected by the elimination of the open access possession limit permit category, but NMFS has determined that conservation needs outweigh the negative impact on certain individual fishers.

The 500-lb (226.8-kg) regulated species catch allowance is eliminated by this rule. The control date for entry into the multispecies fishery was February 21, 1991, at which time the public was put on notice that future entry into the fishery could be limited and that those investing in the fishery after that date were doing so at risk. The condition of the stock complex has declined since that time and more restrictive measures have been implemented in Amendments 5 and 6 to the FMP. Amendment 7 eliminates the 500-lb (226.8-kg) possession allowance in part because of its open-access nature. While Amendment 7 imposed significant restrictions on the directed multispecies fleet through DAS reductions, allowing a potentially unlimited number of vessels to land 500 lb (226.8 kg) of regulated species per trip would be inconsistent with the goals of the FMP.

Regarding the commenter's concerns about being "shut out" of the whiting fishery as a result of disapproval of the Limited-Access Possession Limit permit category, NMFS disapproved that category because of several flaws that were described in the proposed rule. The Council has reconsidered the disapproval of this category and will resubmit a revised proposal that, if approved, would allow open access to the non-regulated multispecies fisheries, i.e., whiting, red hake and ocean pout. One of the improvements made to the permit proposal by the Council is the designation as an open access permit, which exempts vessels in this category from the upgrade requirements.

As to eligibility requirements for the new limited-access hook-gear permit category, Amendment 7's deadline for filing logs for the period June 1, 1994–June 1, 1995 was established as January 26, 1996, for purposes of qualifying into the fishery. This deadline is much more liberal than the Council's requirement that all logs be filed in a timely manner, i.e., within 15 days of the fishing trip. Additionally, those applicants denied a new limited-access hook-gear permit may appeal any denial under the multispecies regulations.

And finally, the commenter concerned about qualifying for the Hook-Gear-Only permit will have two options: (1) A vessel owner may elect to fish with hand-held gear only and land up to a total of 300 lb (136.1 kg) of CHY, or (2) a vessel owner may elect to apply for the hook-only limited access permit and, if denied, may appeal the denial on the basis that circumstances beyond the applicant's control prevented attainment of the qualifying criteria.

3. Comment on the Framework Provision for Annual Adjustments to TACs and Restrictions

Comment 3: The Maine DMR stated that a 2-year adjustment process, with frameworks in the interim, would provide a more constructive and science-based process than the annual adjustment process.

Another commenter stated that the tight timeline established in the framework adjustment process that provides only 1 month prior to the beginning of a fishing year to adapt to the adjusted measures is insufficient.

Response: The changing conditions of fish stocks warrant that frameworking occur at least annually, while considering factors such as the most recent landings data as it compares with the previous year's target total allowable catches. The timeline established for the framework adjustment process was decided on after consideration of comments and public input during public hearings on the Amendment. Similarly, the adjustments that may be proposed as a result of the framework process will undergo a public participation period, during which sufficiency of notice prior to the fishing year can be factored in as the Council deliberates on the adjustments. The alternatives to this timeframe are to reduce the time period for public input or, to begin the adjustment process earlier in the year. This latter alternative is not desirable because important data and information about the fishery that should be considered will most likely be unavailable earlier in the year.

In addition, while a final rule may be published 1 month prior to its effective date, this process begins 6 months in advance of the next fishing year to allow the public several opportunities to participate in development of measures, to become aware of changes that would result from implementation, and to prepare for implementation in its final form.

Comment 4: An environmental organization stated that the process for annual review and adjustment of management measures described in § 651.40(a) of the proposed rule is too open-ended and likely to result in a stalemate between the Council and the Regional Director. Under § 651.40(a)(6), if the Council fails to submit a recommendation to the Regional Director that meets the FMP goals and objectives, and the Council also rejects all other options developed by the Multispecies Monitoring Committee, then the Regional Director must resort to emergency regulations and/or a Secretarial amendment.

The commenter recommended that § 651.40(a) be disapproved (in whole or in part) until it includes default annual adjustments that reflect how the actual catch compares to the target TACs or target catch rates. It opines that the catch of at least cod and yellowtail flounder in the 1996 fishing year is likely to far exceed the target TACs, so that DAS reductions initially assigned for the 1997 fishing year would be grossly inadequate to reduce fishing mortality to $F_{0.1}$. The commenter included suggested language for a default annual adjustment specification, which it feels is needed because the Council has a history of being unable to make decisions quickly for conservation purposes that are unpopular with commercial fishermen.

Response: If the resource continues to decline in the short-term, NMFS expects the Council to be confronted with difficult decisions regarding adjustments to measures, just as it was confronted by difficult options for this Amendment. The framework provision of the FMP was approved because NMFS believes the Council will submit an appropriate recommendation even if those of the Monitoring Committee are rejected. The default mechanism, in terms of overall resource protection, is to keep present restrictions in place. To disapprove this measure would leave no adjustment mechanism in place.

4. Comments on the Need for Amendment 7 and the Scientific Basis for the FMP

Comment 5: A commenter stated that the proposed rule identifies only a GB and SNE yellowtail flounder stock in Table 1 of its specification of 1996 TACs. He points out that NMFS, in its "Status of Fishery Resources off the Northeastern U.S. Technical Memorandum-NMFS-NE–108," continues to identify and characterize a Cape Cod and mid-Atlantic stock as well. His concern is that this omission may lead to inappropriate catches based solely on the status of the GB and SNE stocks. He recommends that NMFS issue a separate TAC for at least the Cape Cod stock of yellowtail flounder for 1996 and that the Northeast Multispecies Monitoring Committee consider continuing this practice in subsequent TAC specifications.

Response: Tagging studies and geographical patterns of landings and survey data indicate discrete yellowtail stocks in GB, SNE, Cape Cod and the Mid-Atlantic. However, the Middle Atlantic and Cape Cod yellowtail stocks have historically been very small relative to the SNE and GB stocks, respectively. While NMFS recognizes that this may no longer be the case, the TACs specified are conservative. The quality of available assessment data for the Mid-Atlantic and Cape Cod stocks is insufficient to permit a quantitative estimate of stock abundance, exploitation rates or TACs. The status of all of these stocks is essentially the same, in that they are all overexploited. Therefore, it is appropriate to include yellowtail flounder from Cape Cod with the Georges Bank TAC for that species and yellowtail flounder from the Mid-Atlantic with the Southern New England TAC for that species for management purposes. The Council will have the option of including these stocks within existing TACs or to specify a separate TAC for the Cape Cod stock, if necessary. At present there seems to be little incentive for directed fishing on these stocks because of their low abundance.

Comment 6: An organization stated that Amendment 7 is unnecessary at this time, and, in fact, Amendment 5 is

working and needs more time to reach the goals of the Council and NMFS.

Response: Amendment 5 was designed to correct the overfished condition on the Multispecies Fishery by a 50 percent reduction of fishing mortality over a 5 to 7-year period. However, by the time this amendment took effect (in 1994), spawning stock biomass levels for GB cod, haddock and yellowtail were at or near historic lows and reductions in fishing mortality of more than 50 percent were needed immediately to arrest further declines of GB cod and yellowtail (advisory presented at the August 1994 Stock Assessment Review Committee (SARC) plenary). By 1993, landings for GB cod, haddock and yellowtail had declined to 30 percent of MSY; 1994 landings were projected to decline to 23 percent of MSY; and further declines were projected for 1995. As reported at the Plenary, GB haddock and yellowtail stocks have collapsed—and it remains clear that to avert stock collapse for GB cod, and to begin the rebuilding process, greater reductions in fishing mortality over a shorter period of time are necessary than provided for in Amendment 5.

Comment 7: Senator Olympia J. Snowe (ME) and Senator William S. Cohen (ME) requested that the Secretary establish an independent panel to review the science that is the basis of this plan. They further suggested that such a review should be conducted during the first year of the plan's implementation, and its results used as adjustments for the second year of the plan are formulated. Additionally, they requested that the peer review include a reassessment of the science that supports the FMP and specifically, they would require that scientific research must address the effectiveness of different management tools including seasonal area closures and gear modifications like mesh size.

Response: An intensive peer-review process already exists, through the Stock Assessment Workshop (SAW). Assessments are prepared by subcommittees including scientists from state and Federal agencies and academic institutions, reviewed by the Stock Assessment Review Committee (SARC), and presented to managers at SAW Plenary sessions. Industry or other interested parties are welcome to participate. The SARC, and the Multispecies Monitoring Committee (MMC), created under the terms of Amendment 7, will be available for periodic reviews of the science including evaluations of the relative effectiveness of different management tools. The Council can instigate such a review through its Science and Statistical Committee.

Comment 8: An environmental organization stated that the measures specified in the proposed rule cannot result in the 80-percent reduction in fishing mortality rate (F) that is needed to reach the Amendment's target of $F_{0.1}$, because the DAS reduction specified in § 651.22(b) for the 1997 fishing year is only 50 percent from the initial baseline. The F reduction that will result from a 50-percent reduction in DAS is certain to be less than 50 percent because of compensatory increases in other aspects of fishermen's efforts. It added that no analyses were presented to the Council during development of Amendment 7 that suggested that other existing or proposed management measures for groundfish (including the closed areas) would accomplish the remaining required reduction in F.

Response: NMFS understands that the DAS reduction target is 50 percent at the end of a 2-year timeframe. Analyses of the effects of the closed areas implemented by this rule were presented to the Council which projected that an additional 30 percent reduction in F would be realized through modifications which have been made to time/area closures and inclusion of additional vessel classes under DAS limits. Also, the Council will adjust the target TAC (upward or downward) as stock size changes are observed and will adjust the management measures as needed to keep catches below the target.

Comment 9: An environmental organization stated that improvements in spawning stock biomass (SSB) expected under the assumptions built into the proposed rule should be clearly predicted, and used as a secondary yardstick for the performance of the overall program. Any time actual estimated SSBs fall significantly below predicted SSBs, reanalysis of SSB and population projections should occur, and emergency measures should be adopted to restore progress toward threshold SSBs. For this purpose of establishing a trigger for reanalysis and emergency measures, "fall significantly below" should be defined precisely in advance as a percentage shortfall as low as possible approaching 10 percent, but above the statistical margin of error.

Response: Such questions would fall within the purview of the SARC and the MMC. NMFS expects that the relative effectiveness of different measures will be examined routinely as part of the monitoring process for Amendment 7.

Comment 10: An environmental organization stated that tests should be designed to measure the efficacy of each important management measure, such that its contribution to the overall mortality reduction program can be determined, and that such additional mortality reduction measures can be implemented with greater certainty when target TACs are exceeded. Examples include the seasonal closure of certain areas, which will likely reduce seasonal mortality, but which may or may not reduce annual fishing mortality, and which may or may not enhance spawning success and recruitment to the overall population.

Response: Again, such questions would fall within the purview of the SARC and the MMC.

Comment 11: An environmental organization stated that GOM cod stocks remain overexploited and are inadequately addressed in the proposed rule. It added that the proposed rule establishes a biological reference point for GOM cod with fishing mortality equal to F(max)—potentially too high for this stock, especially in light of the uncertainty in the relationship between fishery management practices and actual fishing mortality—and a target TAC that is very high.

Response: Fishing at Fmax (0.27) for GOM cod would represent a 70-percent reduction in fishing mortality from 1993 levels, and is in fact below the overfishing definition level (F20%=0.35) for this stock. NMFS believes, based on the best scientific information, that specification of a TAC corresponding to the Fmax level for this stock is appropriate as a first step in the rebuilding process. Effects and implications would be subject to review by the MMC.

5. Comments on the Area Closures and Time Periods

Comment 12: The Maine DMR stated that the GOM closures should be replaced with targeted closures of specified areas based on spawning, pre-spawning and juvenile fish habitats. DMR added that the proposed GOM closures are unfocused and a relatively ineffective conservation tool that will have serious impacts on its industry.

Senator Olympia J. Snowe (ME) and Senator William S. Cohen (ME) urged that any additional closures be carefully targeted to protect specific areas with value as spawning, pre-spawning, and juvenile fish habitats.

A commenter stated that the November and December (Mid-coast) closure may have validity for gillnets as pertains to harbor porpoises, but that draggers have zero interaction with harbor porpoises.

A commenter stated that the November and December closure time

period would cause New Hampshire day boats (trawlers) to tie to the dock during this 2-month period.

Another commenter stated that the Mid-coast closure area is subject to an additional 30-day timeframe as compared to the other two closure areas. The Mid-coast small vessel fleet thus bears an additional burden when compared to other areas with 30-day closures.

Response: The GOM closures were adopted as a default mechanism to meet Amendment 7 goals while other possible closed areas were investigated. Because the purpose of the GOM closed areas is to reduce fishing mortality by the shortfall created when DAS reductions alone were insufficient (and not solely to protect harbor porpoises), the impacts on the industry are acknowledged and incorporated into the analysis of impacts of Amendment 7. The GOM closures, which were previously in place to protect harbor porpoises, now serve a dual purpose until alternative areas are identified. A Council subcommittee has been assigned to examine alternative areas having equivalent or greater value in reducing fishing effort and will consider changing the area closures through the framework adjustment process.

Amendment 7 does not require vessels to tie to the dock during the closure periods, but many smaller vessels are not able to fish safely offshore, beyond the GOM area closures. Again, the purpose of the closed areas is to reduce fishing effort by the shortfall created when DAS alone were insufficient.

An alternative to the closed areas was to reduce DAS further, but that alternative was rejected by the Council based, in part, on public and industry comment which indicated a preference for flexibility.

During the GOM closures, small vessel owners have the option of tying to the dock, seek alternative ports or alternative fisheries. In regard to the 2-month time period, although this closure is for a longer period of time, it occurs at a time of the year when weather is a factor and fishing activity is limited. Thus, to achieve equivalent conservation benefit, a longer period of time is necessary as compared to a closure occurring in the spring, summer or early fall months.

Comment 13: A commenter stated that the larger vessels, which account for the most groundfish harvesting capacity and production, have the capability to merely exit the area closures and fish outside the boundaries thus not contributing to any effort reduction or fishing mortality reduction. The commenter further stated that the inshore and small boat sector thus bears the most burden of the closures and added that most of these vessels must now enroll in the DAS program due to elimination of the 45-ft (13.7-m) exemption. The commenter summarized that this is unfair and inequitable amongst users and participants and creates an unfair allocation circumstance.

Response: Amendment 7 implements a broad set of measures affecting all sectors of the industry necessitated by severe overfishing on cod, haddock and yellowtail flounder. Larger vessels, unlike small inshore vessels, contribute to the effort reduction goals because they are subject to additional closed areas offshore where concentrations of multispecies are traditionally found. Unlike the inshore areas, which are closed for limited periods, these offshore areas are closed permanently. Amendment 7 eliminates some of the exemptions from the DAS program that were established by Amendment 5 to ensure that all vessels contribute toward the rebuilding goals. Amendment 5 tried to alleviate some of the burden on small vessels, but it is no longer possible to do this without sacrificing the more rigorous conservation objectives of Amendment 7.

Comment 14: A commenter noted that Amendment 7 does not exempt mid-water trawls from the closed areas, but authorizes their exemption at some future time based on the analysis of observer data. The commentor added that in a report given by the Regional Director to the Council, the Regional Director stated that preliminary data showed zero bycatch of groundfish in mid-water trawls. If the final analysis bears this out, the commenter requested that mid-water trawls be exempt from the closed areas. The commentor added that such an exemption would not only address the high cost of rerigging but would also address the possibility of being precluded from large areas of potential herring catch grounds. The commentor indicated a willingness to alleviate any enforcement concerns by placing Vessel Monitoring Systems (VMSs) on all of its catcher vessels.

The Maine DMR strongly urged NMFS not to exempt mid-water trawl gear from Amendment 7 without first determining that this gear cannot be fished to take significant quantities of groundfish. It added that it had enough anecdotal evidence to suggest that skilled skippers with sophisticated net-monitoring technology can fish these nets very close to the bottom. It reiterated that its concern is not that mid-water trawls can be fished very cleanly but that they may have the potential to direct on regulated species.

Response: Amendment 7 does not specifically exempt mid-water trawl gear from the GOM area closures, but allows this gear to be exempted in the future. Even if mid-water trawlers were allowed in the closed areas, they would not be allowed to possess any regulated species, therefore they would have no incentive to direct on regulated species.

6. Comments on Minimum Mesh and Fish Sizes

Comment 15: A commenter stated that minimum fish sizes are responsible for the collapse of the New England stocks of cod, haddock and other species of groundfish. He added that prior to minimum size regulations, quotas and trip limits worked quite well and all that was needed to maintain the stocks was 5½-inch (13.97-cm) square mesh and no minimum sizes.

Response: Many members of the industry and the public favor minimum sizes because allowing fish to grow to a particular size prior to harvest can increase yields and enhance spawning. The need for fishing mortality reductions is paramount, however, and minimum size limits do not necessarily translate into such reductions. Possession limits and quotas were considered during the development of Amendment 7 and were put forth in the public hearing document under Alternative 4. Public response during the hearing phase was opposed to the use of quotas and trip limits.

Comment 16: The Maine DMR stated that Amendment 7 does not address increased mesh and fish sizes, and suggests that these options should be integrated more fully into the plan, including new conservation engineering. It said that NMFS' concern about the lack of selectivity studies for mesh larger than regulation size (6 inches or 15.24 cm) may be somewhat allayed by Canadian studies showing an approximately linear relationship between mesh and fish sizes. It added that it is reasonable to assume that this relationship holds for the slightly larger meshes at issue here (7-inch (17.8-cm) gillnets and 8-inch (20.3-cm) codends).

Another commenter stated that if 7-inch (17.8-cm) square mesh were used exclusively for regulated species, there would be no need for diamond mesh and possibly no need for a minimum fish size, resulting in no discards.

A third commenter stated his concern that the provision pertaining to adjustments of minimum fish size, originally contained in Amendment 5, has never been adopted despite "reports of high flatfish discard rates in

management areas where use of square mesh is mandatory."

Response: Increased mesh sizes and increased fish sizes were addressed and discussed as an option in the draft public hearing document but were not adopted by the Council. Amendment 7 continues the established minimum fish sizes, except for some increased fish sizes for recreational and charter/party vessels not fishing under a DAS. Increased mesh and fish sizes can be accomplished under this plan through framework action. The use of mesh size as the sole measure to control fishing mortality is problematic for a variety of reasons. One reason is the wasteful and unlawful practice of using small mesh liners or other devices to circumvent conservation regulations. Another is the likelihood that a net will become clogged during long tows, rendering the mesh increase ineffective. Nevertheless, 7-inch (17.8-cm) mesh would contribute toward conservation and Amendment 7 includes incentives to use larger mesh.

Use of square mesh is required in juvenile protection areas where concentrations of small cod and haddock are usually found. Square mesh is designed to allow round-shaped fish to escape but it is not as effective an escapement mechanism for flatfish. Several research experiments on gear conservation methods (some financed by the Saltonstall-Kennedy Grant program administered by NMFS) are underway to devise a net configuration that will enhance escapement of both juvenile flat and roundfish. Meanwhile, the Council has the option of increasing minimum fish and mesh sizes through framework actions, and may elect to do so in the future.

7. Comments on the TACs

Comment 17: An association stated that TACs should differentiate between hook fisheries and other commercial fisheries, and that one TAC should be established for the longline and jig fishery and another TAC should be established for the other commercial groundfish fisheries.

Response: The public hearing document did consider allocating DAS by gear group. Note that DAS can be considered an extension of quotas, by gear. This alternative was rejected by the Council; however, it may be reconsidered at a later time.

Comment 18: Senator Bob Smith (NH) stated that TAC levels have been set unrealistically low. He and other commenters argued that such low levels provide larger vessels with the opportunity to consume the TAC prior to the small-vessel fleet having an opportunity to use their DAS.

Senators Olympia J. Snowe (ME) and William S. Cohen (ME) stated their concern about equity for smaller vessels and added their concern that Amendment 7 goes too far, too fast.

An association stated that the only way a target TAC could alleviate a "derby-style" fishery and give the same opportunity to all size class vessels throughout the year would be to allow fishing to continue after the target is reached. The association asked how this achieves conservation?

A commenter stated that the proposal of allowing extra days for using larger mesh while the majority uses regulated mesh makes no sense when a TAC is in place. He added that the vessels selecting this large mesh alternative in all likelihood will never get to use extra days assigned them.

Another commenter stated that large vessels would have access to three different TACS under Amendment 7 while most of the New Hampshire small-vessel fleet would have access to only the GOM TAC.

Response: TAC levels were established based on the Council's Amendment 7 objective to reduce fishing mortality to $F_{0.1}$, which translated to the established TACs. Additionally, Amendment 7 establishes a target TAC system rather than one with absolute TACs. Should a target TAC be exceeded, the Council will respond by adjusting the management measures in the following fishing year to keep catches below the target. Fishers should understand that should the TACs be reached during the fishing year, the fishery will not necessarily close, but rather, adjustments to the measures will be made for the following fishing year taking into account the impact of the adjustments on different sectors of the industry. "Target" TACs rather than an absolute TAC were adopted in part to provide equity and fairness to the different types of participants in the fishery. It allows the Council to take into account impacts of adjustment measures on different sectors of the industry. The Council will adjust the target TAC (upward or downward) as stock size changes are observed and will adjust the management measures as needed to keep catches below the target. This should alleviate a "derby-style" fishery and give the same opportunity to all size class vessels throughout the year. Also, the small-vessel fleet is not restricted by Amendment 7 to fishing in any one area but may move vessels to areas where different TACs apply.

Comment 19: An environmental organization stated that the $F^{0.1}$ target and resulting 1996 TAC for GB haddock are too high for the rebuilding needs of the stock and should be reduced. It said that at this fishing rate, the probability of GB haddock reaching the spawning stock threshold within 10 years is calculated to be only 22 percent. It added that the 1,000-lb (454-kg) trip limit for haddock, contained in § 651.27(a) of the proposed rule, is more restrictive because it is not expected to result in landings as high as the specified TAC for this stock. Thus, a discrepancy exists between the 1996 TAC for this stock and the management measures, as well as between the 1996 TAC and the rebuilding goal. It urged NMFS to correct this discrepancy by determining a fishing mortality rate for GB haddock that is likely to achieve the spawning stock threshold within ten years, and then to respecify the 1996 TAC for this stock. It further stated that if this is not done, the 1996 TAC will be used to argue for less restrictive management measures that will not achieve the rebuilding goal of Amendment 7 for this stock. It opined that future TACs will be set too high if the F target for this stock is not reduced.

Another environmental organization opposed the increase in trip limits for haddock from 500 lb (226.8 kg) to 1,000 lb (453.6 kg). It added that the GB haddock fishing mortality target and target TAC are set significantly too high and that a specific (and lower) fishing mortality target and target TAC should be set for GOM haddock. It reasoned that a higher trip limit simply increases the incentive to continue fishing when and where haddock bycatch occurs and at some level creates an incentive to fish specifically to target haddock to catch the trip limit.

The organizations made these specific points:

(a) The $F_{0.1}$ fishing mortality target and the resulting 2,800 mt 1996 target TAC for GB haddock are unacceptably high. Moreover, these targets result in only a 22 percent probability of rebuilding to the 20-percent SSB level within 10 years (NEFMC, 1995, Draft Proposals for Amendment 7 to the Northeast Multispecies Plan, p.12). The answer to the Council's perceived "problem" that the haddock trip limit may be too low to allow the fleet to catch the entire GB haddock target TAC is to reduce the GB haddock fishing mortality target and target TAC to much lower levels that would allow at least a 50 percent probability of rebuilding of this stock to the 20 percent SSB levels within a minimum of ten years.

(b) Given the extremely poor condition of the GOM haddock stock, a specific and very low fishing mortality target and initial target TAC should be set for this stock that allows a similar rebuilding timetable and probability. The 21st SAW Advisory Report on Stock Status concluded that GOM haddock biomass declined to nearly undetectable levels over the last two or three decades (p.28). Under this circumstance, it is inappropriate to manage GOM haddock with other regulated groundfish under an aggregate fishing mortality target of $F_{0.1}$ and a single aggregate target TAC of 25,500 mt in 1996.

Response: These issues were addressed at the April, 1996 meeting of the New England Fishery Management Council by both the Council and the Regional Director. The 1996 TAC for this stock is a maximum, not a quota to be achieved, and NMFS feels that coupled with other haddock conservation measures, the haddock trip limit and TAC are not inconsistent. Under the annual frameworking provision, NMFS and the Council will reconsider whether various measures related to the haddock fishery are sufficient to meet the objectives of Amendment 7.

NMFS is advocating very conservative management strategies for this stock to promote prospects for stock rebuilding, i.e., to restore SSB to certain levels. The haddock trip limit was established as a disincentive to target this species on a trip or tow. NMFS believes that an increase from 500 lb (226.8 kg) to 1,000 lb (453.6 kg) is not effectively an increase, considering that the former measurement by totes has been eliminated. That volumetric measure, in practice, allowed vessels to land more than the 500-lb haddock trip limit because volumetric equivalent measures proved to be too generous. Any additional increase beyond 1,000 lb (453.6 kg) in the haddock trip limit would have to be accompanied by compensatory measures. A trip limit will remain in place unless and until alternative restrictions that achieve the same result are developed and implemented.

Comment 20: An environmental organization stated that the aggregate TAC for the remaining regulated species (other than cod, haddock, and yellowtail flounder) as specified in the proposed rule is set too high to prevent overfishing of at least some of the other regulated species. It said that the aggregate TAC was set "at levels corresponding to recent fishing mortality rates to ensure that effort is not redirected to these stocks." It argued that the report of the 21st SAW indicates that pollock, GB winter flounder, and both stocks of windowpane flounder are currently at or near record low levels of abundance and biomass, while redfish have continued to fail to rebuild. It said that this indicates that recent fishing mortality rates have been too high on at least these four additional species. Therefore, continued fishing at recent rates will fail to prevent overfishing and to allow overfished stocks to rebuild. At a minimum, it argued, the aggregate TAC for the remaining regulated species needs to be recalculated to consider the conservation needs of these other species.

It further questioned the advisability of including overfished species in an aggregate TAC.

Response: NMFS has been and remains concerned about the conservation of each stock for a given species within this species complex but Amendment 7 addresses the species rebuilding needs of CHY and deals with the remaining multispecies as a stock complex, in the aggregate. The national standards require that overfishing definitions have to be addressed for each species of the multispecies complex, so that the Council should reconsider the issue annually. It is possible that additional measures will be required on a species by species basis, after further analyses later (e.g., analysis of data from one or two fishing years after implementation of Amendment 7 begins). The MMC will be charged with the responsibility for addressing this issue and for making appropriate management recommendations to the Council.

Comment 21: An environmental organization stated that the final rule should establish in advance the specific improvements in management programs that would be implemented if target TACs are exceeded by 10 percent or more.

Response: Any specific improvements in management programs to be made if target TACs are exceeded would be tailored to the situation requiring such actions. Because of the combination of factors that would need to be considered, it would be difficult to establish a fixed action in advance. Any future action should be subject to comment from the public at the time it is under consideration.

8. Comments on the DAS Program

Comment 22: An association stated that additional DAS should be offered as an inducement to vessels converting to hook fishing.

Response: Increases for DAS for individual gear types were considered in the public hearing document, but rejected by the Council. The Council and NMFS recognized the possible benefits of hook fishing by allowing for a permit in the new, hook-only limited-access category. The commenter's option was not specifically addressed by the Council but could be considered by the Council as a framework adjustment measure.

Comment 23: In a joint correspondence two associations stated that Amendment 7 incentives that offer additional DAS for use of larger mesh are not equal across gear type. They added that fishing effort restriction must not favor one gear type over another; otherwise anticipated conservation benefits could be negated by gear conversion.

Response: The Council recently clarified that the proposed measure to increase fishing time (DAS) for the Large Mesh Individual DAS option would apply to all vessels using large mesh, whether they are trawl vessels or gillnet vessels. This resubmitted measure of Amendment 7, was described in a notice of proposed rulemaking published in the **Federal Register** on April 18, 1996 (61 FR 16892), and is designed to promote conservation by providing an equitably applied incentive to use nets constructed of mesh that are larger than the minimum size. NMFS approved the resubmitted measure on behalf of the Secretary on May 17, 1996.

Comment 24: A commenter stated that Amendment 7 does away with the "layover provision," which would have done some good for the resource. He added that it was eliminated to placate the large boat sector. He stated that, without this provision, large boats could engage in back-to-back trips to the detriment of the resource.

Response: Both the layover day provision and the fleet blocks of time out of the fishery have been eliminated under the preferred alternative. Given the 50 percent reduction in DAS allocation, the possibility of back-to-back trips undermining mortality reduction goals does not appear to be significant. The layover day provision would not be effective and would be difficult to enforce under the reduced DAS allocations implemented by this rule and were removed. In addition, removal of this provision is intended to encourage some vessels to move out of groundfishing for significant portions of the year.

Comment 25: A commenter stated that vessels in the Fleet DAS permit category are at a disadvantage when compared with vessels in the individual DAS category, because it gives them less access to the resource and most of them are smaller, more weather dependent boats.

Response: These categories were established by Amendment 5 after a lengthy public hearing process and are not changed by this rule. The principle behind the individual DAS program is to provide those vessels that primarily direct their operations on multispecies a baseline allocation of DAS that reflects actual fishing. All other vessels were allocated a general average of the fleet (Fleet DAS). The Fleet DAS program was established, in part, as a default type allocation for vessels that could not prove their actual DAS, vessels that did not wish to purchase vessel monitoring devices and other vessels that may not have had sufficient DAS in the groundfish fishery. Vessels that could demonstrate that they fished more than the fleet average could apply for an Individual DAS permit. Individual DAS vessels received a higher allocation of DAS because, historically, they fished for DAS more than the average of the fleet. In any event, smaller vessels that traditionally engage in day trips will essentially be allowed twice the number of allocated DAS because their trips will be allocated on an hourly basis. That is, a day trip that lasts only 12 hours will only use up one-half of a DAS.

Comment 26: A commenter stated that the Council acknowledged that the method used to calculate the DAS for the gillnet sector of the fleet was wrong. He stated that the Council assumed it would be corrected by a framework adjustment. He stated that the framework adjustment process was not intended to be used to correct deficiencies recognized prior to implementation. He suggested that Amendment 7 should be disapproved on this basis alone.

Response: One of the disapproved measures of the amendment was the measure that counts gillnet DAS as time when gear is in the water, as referenced by the commenter. NMFS' Office of Law Enforcement also cited difficulties in monitoring gear in the water. Moreover, the Council submitted a comment on the proposed rule stating that it is seeking alternatives to the gillnet DAS structure through framework action. Until such time, the DAS counting method will be the same as that for other DAS categories, i.e., the time spent away from port.

Comment 27: A commenter stated that management's use of DAS as effort reduction raises questions of equity and fairness. In support of his statement, he asked the following questions: (1) Does a vessel's past history of DAS show whether it was away from the dock for 10 or 24 hours? (2) Can a day boat that fished 300 10- or 12-hour days in the years that are being credited with DAS apply those days to the current DAS regulations? (3) Can this vessel now take his allotted DAS and apply them to fishing offshore with 24-hour days? (4) Can a day boat that historically fished 120 12-hour days now be entitled to 278 days in year 1 and 176 days in year 2, if he makes all 12-hour trips? (5) Are these 12-hour day boats benefiting with twice the days as boats that fish full days? (6) Should a gillnet fleet from Cape Cod be penalized because the practice of "soaking" nets is not acceptable to the majority of the fishing fleet?

Response: To question (1) Yes, for vessel trips where captains were interviewed by a port agent, the hours away from the dock are recorded, however, other records are usually needed to augment NMFS' data because submission of vessel trip reports was not mandatory and not every trip could be interviewed; (2) yes, if a vessel can show 300 DAS, it can be allocated, as a baseline, that many DAS; (3) yes, used DAS are counted in hourly increments; (4) the vessel would be subject to a 120 DAS baseline with a 10-percent reduction for 1994 and 1995, an additional 15 percent reduction for 1996 and a final reduction of another 15 percent for 1997; (5) DAS used is computed in hours, therefore, any vessel using less than 24 hours in a DAS is on record for that portion of the day used in hours away from the dock; (6) DAS for gillnetters is based on time away from the dock, which should reflect their actual fishing time.

Notwithstanding the possibility that vessels that fish only partial days may be able to fish more "days" than their DAS allocation appears to allow, NMFS has determined that the overall effort reduction measures are adequate in achieving mortality reduction goals. If it appears that such measures are not effective they can be adjusted through framework measures.

9. Comments on the Socio-economic Analysis

Comment 28: In a joint correspondence two associations stated that the socio-economic statement for Amendment 7 states that class 3 and 4 vessels will not be financially viable in year 2. They further stated that other fleet sectors will be viable, because the regulations have been skewed to make it so. They added that the Magnuson Act, specifically, National Standard 4, clearly states that all user groups are to be treated equally. They further added that the socio-economic statement was drawn up several weeks prior to the adoption of major segments of Amendment 7 and that its accuracy was questioned on numerous occasions. They stated that the Regional Director had also indicated publicly his concern about it being a solid appraisal of the future.

Response: The requirements of the Magnuson Act require that fisheries regulations do not discriminate against residents of different states and that any allocation of fishing privileges to fishers be fair and equitable to all such fishers, that the allocation be calculated to promote conservation and that no particular entity acquire an excessive share of such privileges. The Council and NMFS considered these factors in developing Amendment 7 and concluded that the measures adopted were the best suited to provide fair and equitable fishing opportunities to all sectors of the fishery. As to the accuracy of the socio-economic impact statement (SIA), there were some changes to specific details of various Amendment 7 regulations after the broad-scale analyses such as the cost-benefit analysis, the sector analysis, and the break-even analysis in the SIA were completed. However, the sector analysis and the break-even analysis in the SIA are not affected by these changes because the analyses are based on broad effort reduction goals, (i.e., 50-percent and 80-percent reductions in fishing effort). The cost-benefit analysis is also based on total levels of effort reduction (independent of how the reductions are achieved) and on projected landings. These broad-based analyses did not change in the final weeks, nor did the general characterizations of the fleet change, such as are found in the "Human Environment" Chapter.

If the comment alludes to specific discussions of particular measures, such as some of the comments in the SIA, all changes up to and including those made at the January 25–26, 1996 Council meeting, which included the vote to send Amendment 7 to the Secretary, were analyzed. Analyses to minor changes to measures were encompassed in the broad scale analyses.

Any and all limitations to the data and analyses are discussed in the FSEIS. However, NMFS stands behind the stated quality of the data used and academic rigor of the analyses performed. It is true that the analyses may be insufficient to pinpoint precise impacts, especially for a given individual vessel. The test of the EIS specifically states this. The analyses do, however, give an accurate general picture of the range of likely impacts.

Comment 29: A commenter stated that the only way to rebuild the stocks is to do away with big fleet boats 60 ft and

greater in length, which caused the stock damage in the first place.

Sen. Judd Gregg (NH) added his concern that the amendment inequitably treats the interests of the small-vessel fleet relative to the large-vessel fleet or corporate trawler fleet operating in the GOM. He stated that without appropriate modification, Amendment 7 threatens the economic viability of the New England small-vessel fleet and argued that it has a relatively small interaction with the groundfish population. He further stated that the FMP failed to appropriately focus management measures on the industry segment responsible for pressuring the resource.

Response: The amendment is intended to be constructive in the long term, that is, to rebuild the resource by equitably applying reductions in fishing effort and to allow vessel owners to individually maximize their abilities within a fair set of constraints. Individually, large vessels do tend to have greater fishing power and consequently can exert more fishing pressure on the stocks than do smaller vessels. Smaller vessels in the 31 to 45 ft (9.5 m to 13.7 m) class (approximately 46 percent of all limited access permits) can cumulatively exert a significant amount of fishing effort as well as individual vessels 60 ft and greater in length. Because of the large reductions in effort needed to rebuild severely depleted groundfish stocks, all vessels that are greater than 30 ft (9.1 m) in length, and all other vessels formerly exempted from the DAS effort reduction program (Hook-Gear and Gillnet vessels), are brought under the DAS program. Moreover, given the variability and types of vessels and gear used in this fishery, it would not be possible to design management measures with precisely equal impact on all participants. In approving Amendment 7, NMFS has concluded that the overall conservation benefit of the measures outweigh the hardship on individual vessels.

Comment 30: In a joint correspondence two associations stated that the socio-economic analysis of Amendment 7 regulations does not include any additional monitoring and enforcement costs, yet the document suggests that these are likely to exceed the projected benefits. The analysis must factor in the cost of adding all the previously exempted vessels to the DAS call-in system, the cost of the vessel tracking system (VTS) to boats and to the Government for the monitoring hardware and software, and the United States Coast Guard's (USCG) costs for monitoring and enforcing DAS, closed areas, gear restrictions and trip limits. They added that the Federal Government has committed $25 million to the Fishing Capacity Reduction Program. This is either a pure cost, or the cost-benefit must be analyzed. The loss of revenue from monkfish landings, constrained by management measures to reduce landings of regulated species, is not included. They further stated that market loss due to foreign substitutes, and the recent policy changes in the bid process for military fish supply, are not included and market rebuilding costs are not estimated.

The associations stated their understanding that these costs, and others yet to be anticipated, are difficult to predict and quantify but added that effort must be made to do so, as these costs have the potential of negating any estimated benefits.

Response: The FSEIS submitted by the Council as part of Amendment 7 contains a discussion of other costs (Appendix X, E.7.2.3.8). The FEIS document states that many other costs of the nature referred to by the commenter were not considered because they are only marginally different from the status quo in Amendment 5 or because the information is unavailable, as the commenter concedes. For instance, the marginal cost of adding vessels to the DAS call-in system is expected to be insignificant because the system is in place and can easily be upgraded to receive an increased volume of phone calls, if necessary.

Additional costs associated with installation of VTS systems on individuals vessels were not considered since Amendment 7 does not change which vessel categories would be required to install a VTS. Thus, VTS costs to vessels are not affected by Amendment 7 relative to the staus quo (SQ).

The USCG's estimate of potential costs of Amendment 7 assumes that much of the enforcement effort would be conducted at-sea. Because of the comparatively high-cost of at-sea enforcement, NMFS believes that enforcement efforts will necessarily be land-based. During implementation of Amendment 7, NMFS encourages increases in sea-based support to improve the overall effectiveness of programs implemented under Amendment 5, e.g., DAS compliance, gear restrictions, etc. However, although such costs may occur during Amendment 7, they actually represent programmatic improvements that could also be expected to be made in the out years of the status quo amendment.

Appropriate analyses of the $25 million Fishing Capacity Reduction Program will be conducted once it has been approved.

Losses from landings of associated species as a result of conservation actions directed at the regulated groundfish species are acknowledged in the plan. The benefits derived from foregoing monkfish landings in order to conserve groundfish stocks are deemed positive. There is no way to distinguish whether trips in which monkfish is landed along with regulated groundfish constitute a monkfish trip or a groundfish trip with monkfish bycatch. Fisheries where it is shown that bycatch (in weight) of regulated species is less than 5 percent are permitted to operate under Amendment 7. This is not the case for any monkfish fishery. A Monkfish plan or amendment is under development, and it is generally acknowledged that monkfish stocks are overexploited.

Losses in market as a result of reduced landings under Amendment 7 are recognized. NMFS undertook a study of the impacts of landings reductions under Amendment 5 on intermediate markets (Georgianna, Dirlam and Townsend), results of which were commented on in the FSEIS. The costs of the steeper reduction in landings as a result of the more rapid effort reduction will be higher still. The Council took the qualitative step to modify the reduction schedule from 1 to 2 years with exactly these impacts in mind. This will provide time for diversification into other marine products that would result from shifted effort. Similarly, the Council chose among the alternatives it considered, the effort reduction process (DAS reduction) least disruptive to shore-side activities. Again, the reduction schedules discussed are relevant to groundfish only.

Changes in procurement contracting is nationwide and encourages competition within the United States among fish producers. The intention is to achieve greater value for dollar of procurement. Our analyses suggests that prices to groundfish landings will not be significantly impacted by the removal of a price floor in the early years of the plan. In later years, as occasions of congested landings occur, the removal of this support might lower that day's prices somewhat from what they might have been. However, this procedural change would have been in effect under either Amendment 7 or its default, Amendment 5 as modified.

Comment 31: In a joint correspondence, two associations stated that the DAS reduction objectives are based on the hypothesis that a 50-percent reduction in DAS will achieve

a 50-percent reduction in fishing mortality. They argued that a 50-percent reduction in DAS is more likely to achieve a much higher reduction in mortality as large number of vessels exit the fishery because of insufficient DAS to remain economically viable.

Response: That economic viability will be a problem for the average trawler as the DAS are reduced was acknowledged in the plan and particularly in the break-even analysis, which analysis dealt with groundfish days only. Lack of data on individual vessel costs and effort precluded prediction of the number that would find conditions intolerable. To compensate, a yearly adjustment mechanism was established to attempt to reconcile the DAS reductions with the desired fishing mortality trajectory. Where vessels exit the fishery and do not exercise their DAS allocation, the effect may result in an easing of the reduction schedule for the remaining vessels. This would not occur without a lag of about 1 year. Much of this uneven distribution of impacts might be alleviated by programs which permit transfers of DAS, e.g., through consolidation. These were not included in Amendment 7 but may be considered in the future.

Comment 32: A commenter, on behalf of nine offshore lobster vessels, stated that Amendment 7 should not be implemented until the impacts of redirection of trawler effort on the depletion of the lobster resource and on gear conflicts are adequately addressed. He stated that section E.7.1.1.2, Impact on other fisheries, on p. 204 of the FSEIS is totally inadequate and ignores substantial Council comment and deliberation on the issue of impact on other fisheries, and also ignores the experienced re-directed effort that is evident from Amendment 5 and from similar restrictions on fishing days in the sea scallop FMP.

The commentor also stated that it is completely disingenuous for the EIS to say that "there is no practical way to predict where the effort from groundfishing will go and what the impact of the proposed action on other fisheries will be." He argued that NMFS has a great deal of data on the trends in fishing effort, the productivity of various fisheries, and the impacts evident from the trends in shifting fishing effort. He cites as sources NMFS information on the value of fishing gear lost to conflicts with trawlers over the past few years, the analysis of the shift in effort to the monkfish fishery, the Fishing Industry Grant program and USCG data.

An attorney representing a group of offshore lobstermen mirrored the above concerns and added that the Council stated, in support of the emergency action for gear conflict in southern New England, that the gear conflicts were related to additional regulations on the groundfish industry which forced vessels to fish in areas for nontraditional species. Another commentor finds it inconsistent that the Council can make this statement in support of an emergency action request and then, in support of Amendment 7, state that the impact cannot be quantified.

Response: As stated in the analysis of impacts on other fisheries, the degree to which trawlers may redirect fishing effort onto the lobster resource cannot be estimated at this time. NMFS believes that such redirection would be mitigated by the exemption program in the GB/GOM area, which requires all fisheries outside of the DAS program to meet the 5-percent bycatch limitation for regulated species.

Comment 33: A commenter stated that a NOAA study of critical socio-cultural issues is presently underway for the New England fishing industry. The commenter added that the final report from this study of the Northeast fishery is due by June 15, 1996, and that such analysis of the fishery is required by the Magnuson Act and no plan amendment should be implemented prior to this report.

Response: The report mentioned by the commenter contains baseline information about the fishing industry that could be used for future framework actions or FMP amendments. It was not ready in time for the Council to consider for Amendment 7. Amendment 7 included analyses based on the best information available to date.

Comment 34: An association stated that under E.O. 12866 the Agency must submit to the Office of Information and Regulatory Affairs (OIRA), with respect to any significant action, the text of proposed regulatory action, an assessment of the costs and benefits of the action, an assessment of alternatives, and an analysis as to the reasons for selecting the preferred alternative (PA). It added that the Agency must provide the public the information provided to OIRA, and the changes between the draft submitted to OIRA and the subsequent action. It stated that it is not clear what documents were submitted to OIRA and what analysis was reviewed.

Response: NMFS complied with the requirements of E.O. 12866. All public hearing documents, as well as the scientific, economic, and social impact analyses, and comments to public comments on the DSEIS, were provided to OIRA along with a copy of the proposed rule and its preamble. No changes were made to the proposed rule at the suggestion or recommendation of OIRA.

Comment 35: An association stated that NMFS failed to consider a wide range of costs associated with the PA.

Response: The economic analysis considered all relevant currently available data. The availability of information on the full range of economic activities associated with commercial fishing is quite limited. Economic data on many shoreside activities such as offloading, processing, and sales of inputs to commercial fishing vessels is simply not available. Given this lack of data many of the referenced economic factors could not be incorporated into the economic analysis. However, had these factors been included, it is not a foregone conclusion that they would be economic costs. The benefit-cost analysis must consider benefits to the Nation as a whole. This has two ramifications. First, losses in one region may be offset by gains in others, leaving National income unchanged. This might be the case if vessels and/or crew were to leave the Northeast and move to other regions. Second, in over-capitalized fisheries, reductions in resources that are devoted to fishing may be viewed as a net gain from a National perspective. Given the lack of adequate economic data, it was not possible to determine the extent to which economic dislocations such as crew share losses, impacts on suppliers and processors, or the impacts of bankruptcies might be considered transfer payments, national economic gains, or net losses in National income.

Comment 36: An association stated that all the biological and economic estimates for analyses contained in Amendment 7 occurred outside the public's view. It said that it is impossible for experts to replicate any of the sets of projections set forth in the supporting analysis.

Response: All of the recruitment simulator results that included landings streams were described at several Plan Development Team meetings at the Council offices and subsequently at Council Groundfish Oversight Committee meetings. Both types of meetings are attended by the public. In addition, the public hearing document and an extensive draft EIS document were made available to the public months ahead of the Council vote to adopt Amendment 7. An explicit description of the economic information used in the final EIS was contained in the latter.

Comment 37: An organization stated that the IRFA of the impacts of Amendment 7 should contain a description of any significant alternatives to the proposed rule that accomplish the stated objective and that minimizes any significant economic impacts of the proposed rule on small business. The organization further stated that the final regulatory flexibility analysis (FRFA) should provide a summary of issues raised by the public in response to the initial analysis, along with a description of each significant alternative to the rule consistent with the objective of minimizing economic impact, and a statement of why any alternative was rejected.

An association stated that under the Regulatory Flexibility Act (RFA), an agency must assess the impact of new regulations on small business. It said that the NMFS has failed to comply with its obligations. It argued that the Small Business Administration (SBA) had been largely omitted from the process. The intent of the statute is to limit regulatory actions having a significant impact on small business. It argued that this particular preferred alternative (PA) is specifically designed in such a way that trawl vessels will not be allocated sufficient DAS to break even during year 2. This extremely harsh anticipated result flies in the face of the statutory intent of the RFA.

Response: Amendment 7 contains an IRFA that incorporates supporting analyses and portions of the amendment that provide the public with information on the effects on small entities of the PA and any other alternatives considered by the Council, including those that minimize the impacts on small entities. The classification section of the proposed rule for Amendment 7 also contains a statement regarding the probable effects of the PA on small entities and an initial determination under the RFA.

NMFS transmitted a copy of the Amendment 7 and its initial determination that the amendment would have a significant economic impact on a substantial number of small entities to the SBA shortly after NMFS' receipt of the amendment, following standard procedure for all new FMPs and FMP amendments under Secretarial review.

The preamble to this final rule contains a summary of the comments received by NMFS in response to the notices of proposed rulemaking, including comments on the IRFA, NMFS' responses to those comments, and any changes made to the rule as a result of those comments. The IFRA as submitted by the Council, together with the summary of the comments received and NMFS' responses thereto, in this preamble, constitutes the FRFA. Alternative actions were not taken in response to comments on the IRFA. NMFS believes that the responses in this preamble to the public comments adequately explain why NMFS did not adopt alternatives having less of a significant economic impact on small entities compared to those measures in Amendment 7 that NMFS approved.

NMFS disagrees that the final rule violates the intent of the RFA. The intent of the RFA is not to limit regulations having adverse economic impacts on small entities, rather the intent is to have the agency focus special attention on the impacts its proposed actions would have on small entities, to disclose to the public which alternatives it considered to lessen adverse impacts, to require the agency to consider public comments on impacts and alternatives, and to require the agency to state its reasons for not adopting an alternative having less of an adverse impact on small entities.

The Council and Center performed "break-even" analyses, apart from the benefit-cost analysis, specifically to assess the financial viability of small business fishing vessels. Where a quantitative assessment was not possible, qualitative comments noting sectoral impacts were offered.

The differential impact of Amendment 7 on trawlers was noted. The cost-benefit analysis is designed to analyze net national benefits of the action affecting many gears and component fisheries. A single sector analysis is inappropriate. NMFS agrees that trawlers will be more heavily impacted than hook vessels and possibly gillnetters (though this latter is unclear since final gillnet framework measures have not been established).

Without better cost-earnings, labor response and alternative employment options data, NMFS is limited in the precision of vessel and fleet level economic/financial impact assessments it can make for such gear-based allocations. Further, additional data on family structure and community social structure would be required for a stronger, more comprehensive social impact assessment of such measures.

Comment 38: An association stated that the NMFS is required, under E.O. 12866, to seek the involvement of those who are intended to benefit and those who are intended to be burdened by any regulation. It added that the Agency must also use consensual mechanisms for developing regulations, including negotiated rulemaking.

Response: The Council process by its nature involves representatives of groups that benefit and are burdened by the management process, either directly as members of the Council, or indirectly as persons with access to the public process at the Council, oversight committee and plan team meeting level. Negotiated Rulemaking is not required.

Comment 39: An association stated that the RIR understates the impact on the trawl vessels and fails to highlight the speculative nature of the benefits of the preferred alternative (PA) in years 9 and 10.

Response: NMFS disagrees. The RIR adequately covers economic impacts. Estimates of economic benefits in years 9 and 10 are seldom as precise in this kind of analysis as are the estimated benefits and costs in earlier years.

Comment 40: An association stated that the PA (Amendment 7) will result in the insolvency of an entire sector of the fishing industry in the Northeast. It commented that the Agency has selected the alternative that causes that result even though the benefits of that plan over the status quo (SQ) (Amendment 5) are questionable and even though the SQ would achieve the same results with respect to stock replenishment over a slightly longer period of time while preserving all segments of the fleet.

Response: The statement does not accurately portray the key difference in objectives for Amendment 5 and Amendment 7. The stock rebuilding objective for Amendment 5 is to reduce fishing mortality on CHY to halt the decline in spawning stock biomass. Rebuilding of spawning potential under Amendment 5 is limited to levels that would reduce the risk of recruitment failure, but would still leave the fishery in an overfished state. By contrast, the objective of Amendment 7 is to rebuild SSB to levels that would exceed minimum threshold levels for the three key species. The differences between the stock replenishment scenarios of Amendments 5 and 7 are clearly illustrated on pages 195–199 of Amendment 7. In every instance, Amendment 7 results in substantially greater levels of SSB as compared to Amendment 5. Thus, the contention that Amendments 5 and 7 result in the same level of stock replenishment cannot be supported.

Comment 41: An association attached a study entitled "Evaluation of the Economic Impacts of the Proposed Action (Section E.7.2)." The study, by Dr. Andrew Plantinga and Dr. James Wilson from the University of Maine, acknowledged that NMFS' methodological approach to its socio-

economic analysis is well-accepted within the field of economics and is applied in an appropriate manner. It stated that some of the specific assumptions employed in NMFS' analysis, however, are unconventional and highly questionable. The purpose of the study is to reconsider the economic impacts of the proposed action under a more plausible set of assumptions.

Response: (1) Issue—*Treatment of Imports.* Holding imports constant is standard practice in economic analysis of fisheries management, and reflects uncertainty over how trading partners will manage their resources within the ten-year time horizon. Holding price constant ignores dramatic increases in groundfish prices over the next two decades. Finally, the constant price analysis offered by the commentors still demonstrates a superior result for Amendment 7 compared to Amendment 5, in fact, even more so than for an assumption of constant imports.

(2) Issue—*Treatment of crew costs.* Since labor employed in a fishery is a resource that would otherwise be employed in another activity, it has a resource cost. Given the lack of data on the opportunity cost of this labor, the entire value of crew share is used in some analyses as an economic benefit. However, this approach is inappropriate in overcapitalized fisheries, which is the case for this fishery.

(3) Issue—*Time horizon.* A 10-year horizon is standard practice in bio-economic analyses of northeast fisheries, reflecting the time period necessary for stock recovery. Uncertainty is addressed through the simulation model, which is a more rigorous approach than arbitrarily dropping two years from the analysis.

A more detailed discussion in terms of a response to this comment is available upon request from the Regional Director.

10. Comments Related to National Standards

Comment 42: An association commented that Amendment 7 is inconsistent with National Standard 1 which requires the NMFS to prevent overfishing while achieving an optimum yield from each fishery. It added that the varying mesh requirements from fishery to fishery fly in the face of National Standard 1. Moreover, NMFS' failure to consider the unique factors of different segments of the fleet and different fisheries conflicts with the goals of National Standard 1.

Response: NMFS has determined that the provisions of Amendment 7 not disapproved are consistent with National Standard 1. Allowing different meshes for several small fisheries in the overall groundfishery reflects the effort to incorporate unique factors of each of these fisheries. Mesh regulations reflect area, gear and species concerns. Small mesh fisheries are allowed to operate once bycatch effects have been considered. A single mesh applied to all fisheries would constrain more opportunities. Benefits to other fisheries are foregone in the closed areas included in the plan.

Comment 43: An association stated that National Standard 4 prohibits discrimination among the residents of states. It added that the regulated species constitute a much lower percentage of overall groundfish landings in Maine than in any other of the states impacted by the PA. Moreover, the GOM cod stocks have been determined to be healthier than GB stocks. NMFS' failure to account for differences in local factors results in an exaggerated detriment to the commercial fishermen in a region where the problem is less pronounced. The association added that this failure also violates National Standard 6, which requires NMFS to consider variations in fisheries, resources and catches.

In a joint correspondence, two other associations stated that regulations designed to rebuild stocks of CHY will exact a higher economic burden for Maine than for other New England states. They stated that Maine's industry supports 22,000 fishing and fishing-dependent jobs. They added that Maine is a rural state with few alternative employment opportunities. The associations said that the percentage of CHY in the overall groundfish landings of Maine vessels is much less than that of other New England states. However, Amendment 7 fishing restrictions will greatly constrain landings of other regulated species, which comprise the largest percentage of Maine's overall groundfish landings. They stated that GOM stocks were determined to be healthier than GB stocks, yet all fishing vessels, regardless of fishing region, must take the same direct effort reductions as measured by DAS.

Response: NMFS recognizes that ports in some states may be affected differently than ports in other states. However, National Standard 4 states that management measures shall not discriminate between residents of different states. None of the measures discriminates between residents since all are treated similarly, and thus the amendment is consistent with National Standard 4. The amendment is also consistent with National Standard 6, because the Council and NMFS have considered variations in fisheries resources and catches in attempting to recognize all sectors of the industry through numerous exemptions and special provisions.

The white hake fishery is of increasing importance to many vessels in the GOM. A white hake provision in the amendment allows the Regional Director, upon consideration of the exempted bycatch criteria, to allow a directed fishery on white hake outside of the DAS program.

Comment 44: An association stated that National Standard 5 requires NMFS to promote efficiency and National Standard 7 requires NMFS to minimize costs and avoid unnecessary duplication. It asserted that NMFS has failed to consider less drastic steps, that could be taken to achieve the same result. It argued that regulations should include procedures to relax restrictions quickly. It said that the amendment's analysis also fails to consider heightened enforcement costs.

Response: Amendment 7 is consistent with both of these national standards. The Council and NMFS considered alternatives and included special provisions designed to minimize to some degree the impact of management measures. NMFS notes it is consistent with both standards to take actions only "where practicable." Both harvesting and enforcement costs were less for the DAS reduction program alternative than for several other alternatives under discussion. For the most part the systems necessary were adopted under Amendment 5. Other alternatives included strict quotas with the likely result of fishing derbies, an extensive closed area grid requiring enforcement features far beyond the capability of the region's USCG, and complete closure of all fisheries taking groundfish.

The rebuilding trajectory was modified from a single year reduction in fishing effort, to 50 percent of recent levels, to a two-year reduction schedule. In addition, an annual review process will examine the deviation of the actual from desired rebuilding trajectories. Adjustments (increases or decrease in fishing effort) in DAS or other management measures will occur as they become necessary, upon annual review of the target TACs and actual fisheries data for a given year.

Comment 45: An association stated that Amendment 7 violates National Standards 2, 4, 5, and 6 because: It uses poor, untimely and incomplete information; it is not fair and equitable to all fisheries; it is not reasonably calculated to promote conservation, but rather downsizes fishing fleets as they once were; it unfairly puts concerns of one fishery over another; it discards in

favor of expediency and it does not account or allow for variations of the fisheries.

Response: NMFS disagrees. As discussed above, the provisions of Amendment 7 that were not disapproved comply with the national standards and other applicable laws discussed in response to other comments. As discussed above, NMFS has determined that the measures are based on the best available scientific information (National Standard 2), do not discriminate between residents of different states (National Standard 4), and are fair and equitable and reasonably calculated to promote conservation. NMFS notes that National Standard 5 requires fishery management plans to promote efficiency in utilization of resources "where practicable," as discussed elsewhere in response to comments; in a fishery as severely overfished as Northeast multispecies the "where practicable" caveat is a constraining factor. NMFS has approved measures that include several exemption programs and management measures tailored to account for contingencies (geographic, seasonal) as specified in National Standard 6.

11. Comments on the Procedural Aspects of Amendment 7

Comment 46: In a joint correspondence, two associations stated that it is the responsibility of the regional fishery management councils to see that the intent of the Magnuson Act is carried out so all parties concerned are treated fairly and equally, that public input be allowed and comments be seriously considered in making major decisions. The associations added that such has not been the case in the development of Amendment 7 by the Council.

Response: The industry has been actively involved in the plan process, and their viewpoints were solicited and taken quite seriously. In addition to its regularly scheduled meetings, the Council held a large number of committee meetings during the development of the alternatives proposed in the public hearings. Notice of these meetings was sent to everyone who indicated an interest in receiving such notice. Furthermore, these meetings, as well as public hearings, were open to the public and provided an opportunity for representatives from all the different sectors of the fishery to be heard. As the Council developed Amendment 7, the severity of measures under consideration was widely publicized in trade and general publications. The Regional Director personally met repeatedly with fishing industry groups, including those associations whose comment this responds to, both during Council meetings and in their home ports. Furthermore, most of the proposals made in the associations' position paper of September 19, 1995, were incorporated in some form in Amendment 7. These include the removal of layover day provisions, the elimination of exemptions for vessels under 45 ft (13.7 m), and the closure of areas to maximize recruitment, as well as the continued use of DAS as a primary management tool.

Comment 47: In a joint correspondence, two associations stated that the fisheries management process failed its Magnuson Act obligation to involve the Groundfish Industry Advisory Committee in the development of Amendment 7.

Response: Members of the Groundfish Industry Advisory Committee were notified of each scheduled Groundfish Committee meeting and were well represented and actively participated at most of them. Furthermore, from representative membership on the Council, through the scoping process and both formal and informal opportunities to be heard, industry representatives were involved in the development of Amendment 7 from its inception through implementation.

Comment 48: A commenter stated that none of the alternatives to Amendment 7 presented by New Hampshire fishers at public hearings (such as mobile gear night closures and gillnet restrictions) was considered by the Council.

Response: In fact, such issues were considered by the Council. The Council is continuing its consideration of additional gillnet restrictions for implementation by the Amendment 7 framework adjustment process. The Council continues to receive testimony regarding night closures for mobile gear, but has not developed a proposal to implement this measure.

Comment 49: An environmental association urged NMFS to waive the Administrative Procedure Act's (APA's) 30-day delay in effective date and implement Amendment 7's conservation measures immediately upon publication of the rule.

Response: The APA allows the 30-day delay in effective date requirement to be waived if there is good cause to do so. While the commenter seeks such a waiver in order to provide immediate conservation benefits, NMFS believes that it would not be reasonable to require compliance with management measures of this complexity on an immediate basis. The 30-day delay in effectiveness will provide NMFS an opportunity to inform the public about the new requirements. It will also provide the industry with the time required to make the necessary adjustments to fishing activities and gear.

12. Comments on Enforcement of the Amendment

Comment 50: The Council submitted comments addressing enforceability issues associated with the proposed regulations. Their comments are as follows:

They noted that there was an error in § 651.22(g) with respect to the requirement to take 20 days out of the multispecies fishery during the spawning season. Their suggested revision is incorporated.

They identified a mesh size measuring procedure to be used for gillnets and suggested that implementation of this procedure be delayed until October 1996. These recommendations were adopted.

They requested a revision of the definition for "Port" to clarify when a vessel must call under the call-in requirements. This change is incorporated.

NMFS notes that it has made some changes in the final rule in response to concerns raised by the Council (see changes from the proposed to final rule).

13. Miscellaneous Comments

Comment 51: The Maine DMR stated, as regards NMFS concerns expressed in the preamble to the proposed rule about the availability of open-access handgear-only permits to party/charter vessels and the resulting administrative and monitoring burden about what set of rules party/charter boats are operating under, that this burden could be reduced by requiring that such vessels only call in upon embarking on a commercial groundfish trip. At other times, party/charter vessels would be presumed to be fishing under recreational rules.

Response: The Council commented that the call-in requirement for charter/party vessels would not enhance enforcement and should be disapproved. NMFS agrees and the measure has been disapproved.

Comment 52: An environmental organization stated that the phrase, "FMP goals and objectives," is used in some places in § 651.40(a) while in other places the phrase, "FMP objective," is used. It believes that the former phrase should be used throughout the section both because it reflects the Council's intention and because it is important to assure that

future management decisions will be guided by the need to reach specified spawning stock thresholds as well as by the fishing mortality rates that the Council hopes will achieve those thresholds.

Response: NMFS agrees and the commenter's suggestion has been adopted.

Comment 53: The Maine DMR stated that DAS program results in compensations by fishermen to maintain their revenues in the face of reduced fishing time for regulated species. In addition to subtle increases in fishing power, this also results in displacement of effort onto other species and into other regions.

It added that large mobile gear vessels that had fished long trips on offshore grounds are shifting their effort to nearshore and inshore grounds to maximize landings from fewer DAS. This not only concentrates effort in areas known to be important spawning and juvenile habitat but is responsible for a sharp escalation in mobile/fixed gear conflicts as draggers and gillnetters compete for the same grounds.

Response: The habitat question raised is responded to in Section 13, "Comments on Protection of Habitat." The Council is aware of the gear conflict issue raised and is presently discussing resolution of the problem. Any such resolution may be effected through the framework adjustment process.

Comment 54: Two environmental associations opposed the proposed exemption that could allow a directed fishery for a regulated species (white hake) outside of DAS restrictions. They stated that NMFS classifies the white hake stock as fully-exploited and at a medium biomass level. They recommended that increased fishing effort on white hake should be discouraged, not promoted.

The Maine DMR added that the white hake exemption should only be implemented if management is confident that this stock is under-exploited and sufficient sea-sampling data is available to determine that this fishery can meet the 5 percent rule throughout the fishing year.

Response: NMFS recognizes that this species is fully exploited. The measure would allow the Regional Director to exempt such a fishery in consultation with the Council, which may be an option if recruitment and biomass remain stable. Any such exemption cannot be granted if it jeopardizes FMP goals and objectives, including not allowing overfishing on white hake. Another commenter stated that any new participants to the dogfish trawl fishery implemented by Amendment 7 should be monitored to assure conformity with the present gear.

The commenter cautioned that any deviation from the gear used could negatively alter the fishery and increase the regulated species bycatch. He suggested that a level of sea sampling be mandated so that the fishery does not proceed unmonitored to assure that those who developed this fishery do not see its conservation benefit compromised.

Comment 55: An environmental organization added that it supports the dogfish trawl fishery on Nantucket Shoals as long as skate bycatch restrictions are maintained and as long as periodic review indicates that: (1) Bycatch rates do not escalate, and (2) appropriate contributions to overall fishing mortality for multispecies targets due to this fishery are recognized.

Response: NMFS will monitor the dogfish trawl fishery through sea sampling, as possible. No skate bycatch is allowed. Should the situation warrant, the Regional Director has discretion to cancel the exemption for the fishery.

Comment 56: The Maine DMR stated that it favored inclusion of two state representatives and an industry member on the Multispecies Monitoring Committee.

An environmental association recommended that membership on the technically based MMC proposed by Amendment 7 (61 FR 8546, March 5, 1996) include an environmental representative and meet for purposes in addition to the annual review (61 FR 8559, March 5, 1996). It added that the MMC should meet when appropriate, including whenever data suggests that target TACs for any population are or may be likely to be overrun by more than 10 percent during any fishing year.

Response: The MMC is formed by the Council. NMFS will forward the suggestions of these commenters to the Council.

Comment 58: A commenter stated that the Council's mandate, as defined by the Magnuson Act, is to take immediate action to conserve and manage the fishery resources. He added that while Amendment 7 purports to be a conservation measure, it is rather a measure that redirects fishing effort. He explained that it addresses the groundfish problem in a manner that ignores the fishery as a whole. He said that Amendment 7 will, in meeting its objective, create and prolong existing problems in the remaining fisheries. Specifically:

1. DAS that place passive (i.e., fixed) gear in the same category of effort with mobile draggers and scallopers grossly discriminates against the passive gear fisherman. For example, an average gillnet fisherman with 120 nets in the water will utilize 6 nautical miles (nm) of bottom and occupy 0.41 acre. A dragger towing at 5.5 nm per hour will drag over 132 miles in 24 hours of towing and with a net sweep of 205 ft will drag over 3,864 acres. Therefore, if DAS are used to manage the multispecies fishery, then DAS should be separate for passive and mobile gear, and DAS for passive gear should be greater than that assigned to the mobile gear sector.

2. The proposed bycatch of lobster (in the mobile gear sector) should be eliminated. The lobster fishery must reduce lobster landings by 20 percent over 5 years. A 200 count lobster bycatch allowance leaves the door open for high grading and for non-reported landings. The value of 200 lobsters will result in a directed fishery by those vessels fishing outside of any DAS restrictions for non-regulated species. (The monetary value of the lobster is greater than the monetary value of their directed catch.) Finally, the lobster can be returned unharmed to the sea, which eliminates the wasteful discard argument.

3. Dealers should report their purchases from all fishermen in a manner that allows a cross check on the mandated vessel reporting systems.

Response: (1) Fishing mortality is not a function of the amount of area covered by the catch per unit of effort—a rough equivalent is a DAS. In theory, if each vessel gives up a DAS, each vessel experiences a 1/365th reduction in effort. As discussed in response to other comments, NMFS has disapproved the proposed measure for counting gillnet DAS in an effort to put that gear sector on the same basis as other gear sectors. Also, the Council is continuing to explore other alternatives for the gillnet sector.

(2) The lobster bycatch allowance is not established as a means to conserve lobsters, but rather to reflect a legitimate bycatch in a fishery that may target for multispecies. If further lobster conservation measures are needed, they would more appropriately be addressed in management measures designed to protect that species.

(3) NMFS has implemented a vessel reporting system that can be cross-checked to the dealer reporting system.

Comment 59: The Maine DMR commented favorably on Amendment 7's exemption for fisheries certified by the Regional Director as having less than a 5 percent bycatch of regulated species. It noted with concern, however, that the procedures for identifying candidate fisheries for exemption and the methodologies for establishing certification are not yet specified or in place. It urged the Regional Director to develop and set forth the requirements for application and certification as a matter of high priority.

Response: Application procedures are in place and this rule establishes exemption procedures for the newly impacted large mesh fishery. Applicant must submit a written request to the Regional Director. The request must at least describe the area in which the fishery would operate, the period in which it would operate, the gear it would use, the approximate number of vessels likely to participate, and the species it would target, retain and land. Any evidence of the likelihood of such a fishery succeeding should be included with the request. The request will be reviewed by the Regional Director and a letter sent to the requestor explaining the process, which follows. The request will be analyzed to determine whether such a fishery would meet the 5 percent regulated species bycatch standard which, under Amendment 7, has been revised to reflect the Council's intent that it is an absolute maximum (other restrictions on fishing gear and/or seasons may also be considered to reduce bycatch). The completed analysis will be forwarded, along with the request, to the Council, which will place the request for a large mesh exemption on the agenda of the next scheduled Council meeting.

Comment 60: A commenter stated his concern that the majority of the small vessels fishing off of Cape Cod fish primarily in the same area that is designated for the small mesh dogfish fishery. He said that these small vessels fish exclusively for codfish and 80 percent of the fishing occurs from June through October. He stated that the small mesh used combined with less than 100 percent observer coverage raises the potential for large cod bycatches. The commenter recommends that regulated mesh or larger be required. He added that permitting a small mesh size in the dogfish fishery simply because the dogfish are difficult to remove from the net and does not justify the potential harm to stocks of CHY. He concluded that allowing vessels to use small mesh to target dogfish in the area can only lead to high discarding of regulated species as well as juvenile dogfish.

Response: The Nantucket Shoals experimental dogfish fishery was monitored by the Massachusetts Division of Marine Fisheries for two seasons. During the first year of the program, 17 trips were observed and bycatch of regulated multispecies was less than one-half of 1 percent. This program can be terminated if the Regional Director determines that bycatch of regulated species is excessive.

Comment 61: An association commented that Amendment 7 data confirms that commercial hook fishing is labor intensive. It stated that based on Council data, small longline boats catch only 300 lb (136.1 kg)/man/day as compared to large draggers, which catch 880 lb/man/day. Amendment 7, Vol. I, Table E.6.4.1.1.4 b & e. The commenter added that commercial hook fishing should thus be encouraged to reduce employment losses.

An association commented that restoring habitat already destroyed by draggers would be another means of overcoming Amendment 7's employment dislocation with an eye toward rebuilding stocks in the future. The commenter suggested that displaced draggermen could be temporarily employed building artificial reefs ashore and towing them out to GB and the Great South Channel to enhance stock recovery. It concluded that even buy-back vessels could be sunk offshore to provide groundfish gardens.

Response: NMFS is not opposed to any organization encouraging hook fishing. For NMFS' position on habitat protection, see Section 14, "Comments on Protection of Habitat."

Comment 62: The Connecticut DEP commented that it shares NMFS' concern about the condition of the winter flounder resource (as stated in the preamble to the proposed rule) but does not agree that eliminating the winter flounder possession limit in the Mid-Atlantic (MA) Regulated Mesh Area (RMA) will measurably improve the stock. The commenter cited the 21st SAW report, which states that only about 18 percent of the SNE and MA area winter flounder landings are from fisheries in the MA RMA. He added that, "(w)hatever increased management effort the Atlantic States Marine Fisheries Commission (ASMFC) and the Council adopt in response to the SAW advice will be more critical to successful flounder rebuilding than whether or not the 10 percent/200 lb (90.7 kg) exemption exists during the 1996 fishing season."

Response: NMFS' concern about the winter flounder resource is not unfounded. Winter flounder are currently overexploited, at low biomass levels, and in need of fishing mortality that is reduced to as low a level as possible. As the winter flounder stock begins to rebuild, the Council may want to reconsider the MA RMA exemption at a later time.

Comment 63: In response to NMFS' reservations expressed in the preamble to the proposed rule, the Connecticut DEP commented that likely changes in winter flounder management during 1996 will make more of a difference than the availability of state waters winter flounder exemption programs. It stated that the value of the program is that it allows a state to choose not to participate or withdraw. It said that participating states have been in compliance with the ASMFC plan but expects that, by summer, most states will (by review and revision of the plan) be out of compliance because the current SAW advice indicates a more pessimistic condition of the stock than did the previous SAW. The DEP raised the issue of whether disapproval of this exemption program outweighs the problems that may arise of a jurisdictional nature. It suggested that the program is better off preserved and opportunity should be provided through ASMFC and the Council to develop a more aggressive winter flounder conservation program, which also preserves the states' right to manage fisheries within their jurisdiction in accordance with approved plans.

The Connecticut DEP further commented that both Connecticut and New York question the rationale of new § 651.20(j)(7), the 500-lb (226.8-kg) possession limit when fishing in the State Waters Exemption Program (SWP) and not fishing under the DAS program. It explained that under Amendment 5, vessels enrolled in the SWP and not fishing under DAS could retain 500 lb (226.8 kg) of winter flounder, consistent with the exclusive economic zone (EEZ) fishermen not fishing under their DAS. Under Amendment 7, however, the possession limit of regulated species for EEZ fishermen when not under DAS is zero. The commenter stated that Connecticut and New York believe that fishermen under the SWP should be using their DAS when in possession of winter flounder, that when in the SWP and not on DAS, that possession of winter flounder should be prohibited. The Connecticut DEP argued that there is no indication that the Council intended to allow 500 lb (226.8 kg) of winter flounder in the SWP when not fishing under DAS, while prohibiting EEZ fishermen from any possession of winter flounder when not fishing under DAS.

Response: NMFS has not disapproved the State Waters Winter Flounder exemption program. NMFS believes the Council intended to allow the 500-lb (226.6-kg) limit when it voted to keep

current exemption programs in place. The 500-lb (226.8-kg) allowance was established by Amendment 5.

Comment 64: The Connecticut DEP commented that the proposal to move the boundary of the MA area may create an enforcement problem in Block Island Sound. It stated that there is no longer a territorial sea within 3 miles north and west of Montauk, due to a supreme court decision in the 1980's that had the effect of changing New York's "baseline" and consequently, the location of the New York territorial sea. It suggested that the matter could be resolved by revising the location of the line as follows:

Section 651.20(d) *Mid-Atlantic regulated mesh area.*

(1) *Area definition.* The Mid-Atlantic regulated mesh area is that area bounded on the east by a line running from the Rhode Island shoreline at Watch Hill, RI southwesterly through Fishers Island, NY, to Orient Point, NY, and from Orient Point southeasterly to the intersection of the 3-nautical mile line east of Montauk Point, southwesterly along the 3-nautical mile line to the intersection of 72°30' W. Long. and south along that line to the intersection of the outer boundary of the EEZ.

In support of the above, the commenter stated that the problem with the northern terminus of the line in the proposed rule is that it would bisect the shoreline along the Rhode Island south shore, an area in which Connecticut, Rhode Island, and New York vessels commonly trawl. It said that it is inadvisable to have a mesh separation line fall in the middle of an area commonly trawled, for enforcement reasons. The commenter stated that its suggested revision resolves the original problem of splitting Long Island Sound into two mesh management areas (the original 72°30' line) and avoids splitting Block Island Sound into two mesh management areas. The Connecticut DEP added that its proposal has been confirmed to be acceptable to Rhode Island, New York, and the USCG.

Response: NMFS has adopted the Connecticut DEP's suggested revision as requested by the States of Connecticut, Rhode Island and New York, and by the Council.

Comment 65: An association commented that the elimination of a proposed 100-lb (45.4-kg) groundfish allowance for lobster trap fishermen is unnecessary. It added that this would prohibit a lobster fisherman from bringing home a legal size codfish for dinner. It further noted that if a lobster fisherman has a multispecies permit and his vessel is more than 30 ft (9.1 m) long, he may not qualify for a DAS allowance, and would still be unable to land a (legal size) codfish.

The association added that the proposed rule says that no groundfish may be taken without a groundfish permit and while no more permits will be issued, those vessels with permits that are over 30 ft (9.1 m) (many of the association's lobster vessels are in the 31- to 42-ft range (9.5 m to 12.8 m)) must prove groundfish landings of at least 500 lb (226.8 kg) to renew their permits. The association expressed concern that these vessels would actually lose their permits. The association stated that some allowance should be permitted if only for personal use. Further, no restrictions are in place to keep groundfish fishermen from taking lobster.

The association suggested that some small incidental groundfish catch be allowed for all lobstermen with a groundfish permit or that an incidental bag limit permit be established to accommodate these circumstances.

Response: This issue was raised and considered by the Council. The Council decided to disallow a regulated species bycatch in the lobster fishery, because the TACs are set so low and Amendment 7 focuses on eliminating regulated species bycatch in fisheries capable of taking a bycatch of regulated species.

Comment 66: An association commented that it presumes that restrictions on possession of groundfish by lobstermen do not include possession of "groundfish racks" that were purchased for use as bait. It suggests that some wording be inserted into Amendment 7 to recognize "groundfish racks" as legal bait possessed by lobster vessels.

Response: The Northeast Multispecies regulations apply to fish and fish parts, and as such, "groundfish racks" must meet the minimum size established by the multispecies regulations. Furthermore, a Northeast Multispecies permit is required to possess "racks" of multispecies finfish.

Comment 67: An association commented that it strongly opposes the total absence of any restrictions that would control the targeting of lobsters by groundfish vessels. It further stated that the absence of any wording regarding the subject allows the unrestricted targeting of lobsters while fishing both during DAS and outside of DAS. The commenter said that this omission encourages a redirection of effort onto the lobster resource.

The association suggested that some significant controls on the targeting of lobsters by groundfish vessels be included in the plan.

Response: Such a restriction is within the purview of the American Lobster FMP and is not, as such an Amendment 7 issue.

Comment 68: A commenter stated that under Amendment 7 (and acknowledged under Amendment 5 as well), a vessel's length, gross registered tonnage, and net tonnage may be increased only once, not exceeding 10 percent of its previous size. He asserted that, in light of encouragement to pursue underutilized species such as herring which are usually high-volume fisheries, some vessels were rigged for mid-water trawling. As a result, he stated that his vessel is often loaded to the point of being unsafe. He stated that he has already experienced a swamping and suggested that such vessels be allowed to increase hold capacity, i.e., length and tonnage. He stated that the restriction on horsepower is an adequate control on the vessel's fishing power and, therefore, limiting the vessel's other dimensions is not necessary.

Response: This issue relates to the provisions for vessel upgrades as established by the regulations implementing Amendment 5 and which are unchanged by this rule. The purpose of the upgrade restrictions is to prevent limited access multispecies permit holders from increasing the fishing power of their vessels, exacerbating overcapitalization and overfishing issues in this fishery. Horsepower alone is not a sufficient limitation of vessel fishing power, especially where the current horsepower of the vessel may allow the other dimensions to be increased. Moreover, a vessel that wishes to fish for herring and other mid-water trawl fisheries not regulated under the Northeast Multispecies FMP may elect to give up their limited access permits thereby avoiding vessel upgrade restrictions.

Comment 69: The Marine Mammal Commission stated that to make meaningful progress towards meeting the Council's revised harbor porpoise goal and requirements of the Marine Mammal Protection Act (MMPA), the network of time-area closures for the coming year should be expanded. The Marine Mammal Commission suggested that the Council's Harbor Porpoise Review Team (HPRT) meet in time to implement any recommendations it might make for the summer-fall fishing season off the coast of central and northern Maine. It also recommended, to better cover the potential periods of high bycatch in the Mid-coast area as reflected by current observer data, that the Council and/or NMFS consider

expanding the effective dates for the Mid-coast closure to include the months of September through December and April through May. It added that it believed that it would be reasonable to allow fishing with acoustic deterrents in the extended closure periods recommended above provided evidence continues to indicate their effectiveness.

Response: The Council's HPRT met in May to discuss additional expansion of time-area closures. The HPRT recommendations were scheduled for presentation to the Marine Mammal Committee in late May so that measures could be considered by the full Council at its June meeting. This will allow any approved measures to be effective in the mid-coast area by September. Continued use of acoustical devices in these closed areas will be considered based on the results of recently concluded experimental fisheries held this spring and the recommendations of the Harbor Porpoise Take Reduction Team, expected to be available later this summer.

Comment 70: The Marine Mammal Commission stated that as the number of northern right whale calves counted in 1995 is exceeded by the 3 percent mortality reported for the past 12 months, action must be taken to exclude gillnet gear in times and areas where right whales are known to occur in greatest numbers. It added that these areas include the Great South Channel from April through June, and Cape Cod Bay from February through May. It said that action taken by the Council to reduce entanglement threats has been limited, i.e., it has prohibited gillnet fishing in parts of one area (the Great South Channel) that are important for groundfish spawning during part of the peak period of right whale occurrence.

The Marine Mammal Commission acknowledged that Amendment 7 proposes expanding the scope of the Council's framework adjustment procedure to include possible closures to protect right whales and other endangered whales, however, no further measures are proposed in Amendment 7 in this regard and it is unclear whether or when the Council might use this authority.

Therefore, the Marine Mammal Commission recommended that NMFS either expand Amendment 7 or take separate action under authority of the Endangered Species Act (ESA) and MMPA to prohibit the use of gillnets from April through June in the Great South Channel area, which is designated as critical right whale habitat).

In addition, the Marine Mammal Commission recommended that NMFS consult with the Commonwealth of Massachusetts to develop measures for gillnets and other fishing gear capable of entangling right whales from February through May in the Cape Cod Bay right whale critical habitat.

Response: The issues raised in this comment can be addressed under the framework actions, provided for in the final rule. The NEFMC did not forward a recommendation to expand the Area 1 closure to include the entire right whale critical habitat in time for implementation this spring. In order for NMFS to issue a regulation under the ESA, to be effective by April 1997, NMFS would need to publish a proposed rule within the next few months. NMFS is considering regulatory options to accomplish this.

NMFS will soon sign a Cooperative Agreement with the Commonwealth of Massachusetts to enter into a coordinated state-Federal effort to protect and recover the endangered and threatened marine fauna of Massachusetts, including the right whale. Once signed, both parties will begin discussion of several endangered species issues within the Commonwealth, including additional protection for the right whale critical habitat area in Cape Cod Bay.

Comment 71: An association stated that under the MMPA, NMFS classifies the sink gillnet fishery as a Category I and bottom trawl, longline, and hook and line fisheries as Category III. However, Amendment 7 states "it should be noted that the bottom trawl fishery has incidental takes of striped dolphins, coastal bottlenose dolphins and pilot whales." The commenter suggested that based on this finding alone, the bottom trawl; fishery ought to be moved to Category II.

Response: This comment relates to MMPA requirements and is not relevant to Amendment 7. In any event, most of the few takes observed in this fishery were determined to have been dead before being taken. In addition, because the observer coverage was low, the estimated serious injury and mortality levels extrapolated from those few data points is statistically weak. Therefore, it was determined that the "North Atlantic Bottom Trawl" fishery would remain as a Category III fishery under the MMPA in the final rule to establish the 1996 List of Fisheries (60 FR 67063, December 28, 1995).

Comment 72: An association stated that closed areas should be opened to low-impact hook fishing during non-spawning periods.

Response: One reason for the existence of closed areas is to halt fishing mortality during the period of closure. Any type of fishing would defeat the purpose of the closure.

14. Comments on Protection of Habitat

Comment 73: Many comments were submitted raising issues related to the impact of certain fishing gears on marine habitat and; in some cases, proposing restrictions on this gear and providing incentives for other gear types. The major points of all habitat-related comments are summarized below, with emphasis on comments from the Darling Marine Center at the University of Maine and the Cape Cod Commercial Hook Fishermen's Association, because they are representative of issues raised in the majority of the other comments received.

One said NMFS should be an active partner with the Council in identifying areas of critical concern and investigate the use of intensive gear, and if necessary, restrict or prohibit particular gear use. There was general disagreement that additional studies would be a sufficient management approach and further disagreement with the decision not to include trawl gear restrictions at this time.

One group stated that trawling and dredging activities have the capability of altering structurally complex bottom communities, principally through the removal of biomass, and that these alterations will result in completely different bottom communities occupying these locations.

In discussing the legal standards of the Magnuson Act and the APA, this group stated that an international consensus is emerging that management agencies should apply a precautionary approach to fisheries management. It was emphasized that it would be more prudent to protect some of these areas as soon as possible by establishing marine reserves to protect specific habitat features such as habitat complexity. Increased complexity would result in increasing survivorship of postlarval and early juvenile size classes, thus increasing recruitment to harvested populations. Given the particular relevance of the precautionary approach to the numerous uncertainties involved in managing fisheries, it would seem to be incumbent upon managers and research scientists alike to prevent long-term damage to ecosystems from occurring while their theories are being tested.

An association contends that Amendment 7 fails the following national standards for the reasons mentioned: National Standard 1, by ignoring gears' differential habitat and selectivity impacts; National Standard 2,

because best science demonstrates landings approximate catch only in the hook fishery and also demonstrates that heavy dragger gear damages groundfish habitat, diminishing stocks; National Standard 3, by ignoring management units based on types of gear and similar fishing practices; National Standard 4, since allocation is necessary to discourage dragging on hard bottom and encourage conversion to hook fishing; National Standard 5, as Amendment 7 does not promote long-run efficiency since fishing power is not reduced absent dragger gear restrictions; and National Standard 6, by ignoring fishing practices and by wrongly incorporating the "fair and equitable" standard into analysis of this national standard.

An association disputed the amendment's statement that, as currently drafted, "(t)he Magnuson Act limits the Council's role to commenting on proposals that would affect fishery resources and their habitats." In fact, the commenter notes that beyond merely commenting, the Council is empowered to "make recommendations concerning any activity . . . that, in the view of the Council, may affect the habitat of a fishery resource * * *." 16 U.S.C. section 1852(l)(1)(A).

Response: There is growing interest and research into trawling and dredging effects on bottom habitat and benthic communities. Research to date indicates that mobile gear is having observable effects on the bottom in some areas and little discernable effect in other areas. The causes for differing effects have not yet been identified. In addition, the ecological impacts of mobile gear on commercially important stocks remain largely unknown. NMFS does not believe that the scientific information currently available is adequate to show that placing restrictions on mobile gear would result in benefits for commercially important stocks. NMFS does not intend to wait for "full scientific certainty" before making a recommendation that might restrict the use of mobile gear in certain areas, but rather is cautious in instituting such restrictions with uncertain and inadequate data. To seek resolution of this issue, the NMFS and the Council support additional research on this topic so that future management measures can account more for the effects of fishing gear, especially if additional research indicates that recruitment could be enhanced by reducing the amount of disturbance to benthic habitat. Currently the Stellwagen Bank National Marine Sanctuary and NOAA's National Undersea Research Program are among those proposing research into the effects of bottom gear on groundfish habitat.

While NMFS and the Council are not advocating specific management measures to avoid or reduce the effect of mobile fishing gear on bottom habitat, it is worth noting that Amendment 7 does include measures such as closed areas and overall effort reductions that will reduce the amount of trawling and thus reduce the frequency of disturbance to bottom habitat used by multispecies stocks. Although these effort reductions will not include permanent marine reserves that are off-limits to trawling and dredging gear, they might provide opportunities to investigate whether reduced pressure on habitat from bottom gear may over time enhance the structural complexity of the bottom in some areas and increase survivorship of early life stages of commercially important species.

Regarding the role of the Council in respect to habitat, the commenters raise some valid points. Fishery management plans prepared by the Council or Secretary include habitat sections that identify the habitat needs of the species. NMFS works with developers and permitting agencies to avoid, minimize and mitigate the anticipated habitat impacts from a proposed activity. Fishery management plans are one tool NMFS and the Council can use to identify habitat essential to commercial stocks.

The commenters disagree with the Council's approach taken in Amendment 7 that concentrates on achieving reductions in fishing mortality through controls on fishing effort. The supporting analyses for Amendment 7 referenced by the commenters demonstrates that the Council and NMFS realize that the recovery of severely depleted fish stocks can be enhanced by incorporating more comprehensive scientific information into management decisions. In particular, NMFS is committed to conducting additional research into the habitat requirements and life histories of multispecies stocks so that future management actions can focus on those measures that will be most effective in enhancing recruitment. For Amendment 7, NMFS and the Council used available information to develop a suite of management measures, including closed areas and effort reductions, that will reduce fishing pressure on the stocks as well as their habitat. NMFS acknowledges that more work is needed in this area to tailor future management actions to the biological needs of target species, which include habitat requirements.

As discussed throughout this document, NMFS has determined that Amendment 7 is consistent with the national standards, which conclusion is supported by the record of decision.

Comment 74: The Maine DMR stated that the science (both data and theory) supporting management must change and that the importance of such parameters as fish size and the qualitative differences of habitat protection at different seasons should be more effectively integrated into the analysis.

Response: The Council acknowledges, in its discussion on research to support fishery habitat protection (Volume I of Amendment 7), the need to conduct research to determine which habitats are most important to support groundfish stocks throughout their life history stages and to understand factors essential for sustained fisheries production. As stated earlier, habitat protection and conservation is an integral component of fishery management; NMFS strongly supports the advancement of marine research to improve its understanding of the relationship between species and habitat during various life stages. Such information will be incorporated into fishery management plans as it becomes better understood and defined.

Comment 75: An association commented that the national standards dictate a differentiation between hook fishing and other commercial groundfishing, just as has occurred in other regions of the country. It added that the Council predictably relies on the fair and equitable argument to defend its failure to distinguish the commercial hook fishery; however, a Magnuson Act guideline states: "An allocation need not preserve the status quo in the fishery to qualify as fair and equitable, if a restructuring of fishing privileges would maximize overall benefits."

An association discusses Norwegian studies that documented how longlining is a more size-selective fishing method than trawling. The commenters pointed out that these studies further proved that yield and employment effects were greater in the longline fishery as compared to the trawl fishery.

Another association commented that the Council rejected the Cape Cod Commercial Hook Fishermen's Association (CCCHFA) plan because it had no measurable objectives, only covered a limited region, and had direct allocation effects on a particular sector of the industry. The association said that the reasons for rejection are without support and invalid as they are contrary to the administrative record already submitted to the Council.

Response: Gear selectivity was discussed in the development process of Amendment 7 but rejected as an option in the final outcome. In making this decision, the Council and NMFS determined that the management regime should, to the extent practicable, preserve the multifaceted nature of the Northeast Multispecies fishery. The Council could revisit this issue at a later time through the expansive framework capability under Amendment 7.

Comments on Enforceability Issues

The USCG and NMFS Enforcement requested that a vessel operator be required to retain on board all DAS confirmation numbers for the current fishing year. The Council decided that this was an unnecessary burden on the industry and recommended instead that they be required to retain numbers for the current and immediately prior trips. The Council's recommendation is adopted here.

They requested that the current provision requiring a vessel to have a standard tote on board the vessel be retained. This provision was inadvertently deleted in the proposed rule and is reinserted here.

They commented that the call-in requirement for charter/party vessels would not enhance enforcement and should be disapproved. The measure has been disapproved.

They requested a change to require a vessel operator when hailed by an authorized officer via VHF–FM radio, to respond to such hail. This change has been incorporated.

The Council requested a revision to the definition for the "Multispecies Monitoring Committee" to clarify their intent with respect to membership. This change is incorporated in the final rule.

The Council suggested an addition to the qualification criteria for Hook-gear limited access permits to clarify how recreational landings should be handled. This change is incorporated. Additional comments of enforcement concern follow.

Comment 76: The USCG stated that Amendment 7 cannot be successful without a fully integrated approach between its at-sea efforts and NMFS Enforcement shoreside activities. It stated that it is prepared to assign a high priority to enforcement concerns.

A commenter stated that Amendment 7, without enforcement, will not affect that segment of the fleet that systematically uses small mesh liners inside the regulated mesh size codend. The commenter added that during the lag time between assessment and final judgment of those perpetrators that are caught, the perpetrators still fish, contract debt and shelter revenue. He stated that at-sea enforcement must be fast and without warning to be effective and justice should be swift. He added that a port reporting and enforcement system that effectively detects misreporting or no reporting of catch is also needed.

Another commenter stated that some kind of incentive to follow the rules is needed. He implied that some people who will be left in the fishery will not follow the rules.

An association stated that TACs encourage non-compliance in the form of under-reporting and high-grading and are costly to enforce.

Response: NMFS Northeast Region enforcement personnel and the USCG First District Commander have integrated their planning to ensure that there is an effective USCG—NMFS enforcement strategy in place to support Amendment 7. NMFS Law Enforcement continues to work toward effective implementation of the effort control and monitoring measures in the Multispecies fishery and will explore ways to improve compliance with existing regulations in partnership with the USCG and natural resources divisions of each coastal state. NMFS Law Enforcement and NOAA General Counsel work cooperatively to investigate and bring to a conclusion, all cases involving violation of the conservation regulations. NMFS Law Enforcement believes in the concept of voluntary compliance and is actively pursuing education as a means to attainment of voluntary compliance. This effort, combined with penalties as appropriate, provide the incentives to adhere to conservation regulations.

Comment 77: A commenter stated that the present vessel call-in system to monitor DAS is obsolete and recommends instituting a basic VTS without messaging capability or a magnetic card system with PIN number verification.

Response: Under Amendment 7 approximately 800 additional vessels operating in the Northeast Multispecies Fishery will be required to report their departures and arrivals from and to port via telephone under applicable effort reduction reporting provisions. A magnetic card system is not logistically feasible as it would require installation of a magnetic card reader device in every operating port on the Northeast seaboard. When a basic VTS system is adopted, the final performance standards for all VMS identify two-way messaging capability as a fundamental performance requirement for any VMS system approved by NMFS. A VTS requirement was established in Amendment 5, but is awaiting testing and vendor certification procedures to be complete before it becomes fully implemented.

Changes in the Final Rule From the Proposed Rule

As discussed above, some changes from the proposed rule were necessary to respond to a review of the amendment by NMFS Office of Law Enforcement, the Council's Law Enforcement Committee and the USCG. Other changes made are technical or administrative in nature and clarify or otherwise enhance enforcement and administration of the fishery management program. These changes are listed below in the order that they appear in the regulations.

In § 651.2, the definition for "DAS (Days-at-Sea)" is revised to remove the disapproved provision to count DAS for gillnet vessels as time when gear is in the water.

In § 651.2, the definition for "Multispecies Monitoring Committee" is revised to clarify that the number of representatives from the affected coastal states appointed by the ASMFC is limited to two.

In § 651.2, definitions "Prior to leaving port" and "Upon returning to port" are added to clarify when a vessel must begin and end a multispecies DAS trip under the call-in requirement.

In § 651.2, the definition for "Standard box" is no longer necessary and is removed.

In § 651.2, the definition for "Sink gillnet" is revised for clarification.

In § 651.4, paragraph (b)(1)(ii)(A) is revised to clarify the qualification criteria for limited access Hook-Gear permits for recreational vessels that recorded landings by number and not by weight.

In § 651.4, paragraph (f)(3) is revised to clarify that a vessel has only one opportunity to change its permit category in 1996 during the 45-day time period after implementation of this rule and that this 45-day opportunity will be available each fishing year.

In § 651.9, paragraph (a)(3) duplicated (a)(4) in the proposed rule and is removed, paragraphs (a)(4) through (a)(13) are redesignated as (a)(3) through (a)(12), respectively.

In § 651.9, paragraph (b)(4), the prohibition on possession limits is revised to reflect changes in § 651.27 due to the disapproval of the possession limit for winter flounder.

In § 651.9, paragraph (b)(8), which referenced a disapproved provision, is removed, and paragraphs (b)(9) through

(b)(12) are redesignated (b)(8) through (b)(11), respectively.

In § 651.9, paragraphs (c)(4) and (d)(4) are added to enhance enforcement of the provisions in § 651.33(a) and (c).

In § 651.9, paragraph (e)(8), a reference to § 650.20 is corrected to read § 651.20.

In § 651.9, paragraphs (e)(12), (e)(13), (e)(14), and (e)(15), are revised by being made more explicit.

In § 651.9, paragraph (e)(17) is revised by eliminating the reference to § 651.20(d)(3), a reference to the disapproved winter flounder exemption in the Mid-Atlantic regulated mesh area.

In § 651.9, paragraph (e)(22) is made more explicit.

In § 651.9, paragraph (e)(32) is made more explicit.

In § 651.9, paragraph (e)(38) is added to reflect the requirement to have a standard tote on board when fishing under a possession limit restriction.

Section 651.10 is revised, as requested by the Council, NMFS Enforcement and the USCG, to include a requirement that a vessel operator respond if hailed by an authorized officer via VHF-FM radio.

In § 651.20, paragraphs (a)(2)(ii), (c)(2)(ii), and (d)(2)(ii) are revised to include cross references to the Large Mesh Individual DAS Category in § 651.22(b)(7) approved under the resubmitted portion of Amendment 7.

In § 651.20, paragraph (d)(2) is revised to remove the reference to paragraph (d)(3), the disapproved winter flounder possession limit.

In § 651.20, paragraph (d) the definition of the "Mid-Atlantic Regulated Mesh area," is slightly revised as a result of comments from and an agreement between the states bordering the area, the USCG and NMFS enforcement.

In § 651.20, paragraph (d)(3) is removed to reflect the disapproval of the winter flounder possession limit in the Mid-Atlantic regulated mesh area.

In § 651.20, paragraph (g) is revised to clarify that the net measurement procedure described referred to all nets with the exception of gillnets. Paragraph (g)(4) is added to include net measurement procedures for gillnet gear. Implementation of this procedure is delayed to allow the gillnet fleet time to adjust to this new procedure.

In § 651.20, paragraph (i) is revised to clarify that scallop vessels possessing multispecies must have a valid multispecies permit issued under this part.

In § 651.20 (i) and (j)(7), § 651.27, and § 651.33(a) and (c), a measure inadvertently deleted in the proposed rule, that requires vessels when subject to a possession limit to have on board at least one standard tote, is added.

In § 651.22, paragraphs (b)(1)(i) and (b)(2)(i), (b)(5)(i), (b)(6)(i), and (b)(7)(i) have been revised to reflect that the DAS allocations for the 1996 fishing year have been prorated based on the amount of time remaining in the 1996 fishing year, or 83 percent.

In § 651.22, paragraphs (b)(1)(ii) and (b)(2)(ii) are revised to reflect that vessels holding both Gillnet and Individual DAS category permits are to be initially assigned into the Fleet DAS category, rather than the Individual DAS category.

In § 651.22, paragraph (b)(6) is revised and paragraph (b)(7) is added to reflect the approval of the measures included in the resubmitted part of Amendment 7, which allows vessels the ability to elect either the Large Mesh Fleet DAS program or the Large Mesh Individual DAS program.

In § 651.22, paragraph (c) is redesignated as paragraphs (c)(1) and (c)(2) to clarify that a vessel possessing both a 1995 limited access Gillnet permit and Individual DAS permit is eligible to appeal its initial allocation of gillnet DAS.

In § 651.22, paragraph (d)(2)(i), the date by which a vessel may appeal its allocation of DAS is revised to reflect a later than anticipated implementation date for this amendment.

In § 651.22, paragraph (g), is clarified by replacing the phrase "fishing year" with "calender year" and by clarifying the requirement for the 1996 calender year.

In § 651.27, paragraph (b) is removed to reflect that the possession limit for winter flounder has been disapproved, paragraph (c) is redesignated as paragraph (b), and the title to § 651.27 was revised accordingly.

In § 651.28, paragraph (c) is removed to reflect the disapproval of the charter/party call-in requirement.

In § 651.29, paragraphs (b)(1), (b)(2), (b)(4), and (b)(5), all references to charter/party vessels are removed to reflect that the call-in requirement for charter/party vessels has been disapproved.

In § 651.29, paragraph (b)(3) is revised to clarify that DAS confirmation numbers for the current trip and immediately prior multispecies fishing trip must be retained on board the vessel.

In § 651.29, paragraph (d) is revised to reflect the disapproval of the proposal to count gillnet DAS as time when gillnet gear is in the water.

In § 651.29, paragraph (e) is added to describe the call-in requirement for the 20 day spawning season restriction.

In § 651.32, paragraph (a), the reference to § 651.32(h) is corrected to read § 651.21(h), and paragraph (a) is redesignated as paragraphs (a)(1) and (a)(2) to include gillnet area closures that were implemented on March 5, 1996 (61 FR 8494) under Framework 14 to the FMP.

In § 651.33, paragraph (b), the phrase "and has declared into the charter/party fishery" is removed to reflect that the declaration into the charter/party fishery has been disapproved.

In § 651.40, paragraph (a)(3), the reference to (a)(5) is corrected to read (a)(6).

Classification

The Regional Director determined that Amendment 7 to the FMP is necessary for the conservation and management of the Northeast multispecies fishery and that it is consistent with the Magnuson Act and other applicable laws.

The Council prepared a FSEIS for Amendment 7; a notice of availability was published on February 16, 1996 (61 FR 6230). This action is expected to have a significant economic impact on the human environment. The Assistant Administrator for Fisheries, NOAA (AA), determined upon review of the FSEIS and public comments on the Draft SEIS that the PA of the amendment is environmentally preferable to the SQ. The FSEIS demonstrates that the PA contains management measures able to rebuild severely depleted stocks of haddock, cod, and yellowtail flounder; protect harbor porpoise; provides economic and social benefits to the fishing industry in the long term; and should provide better balance in the ecosystem in terms of groundfish resources.

This final rule has been determined to be "economically significant" for purposes of E.O. 12866, but probably will not have an annual impact on the economy of $100 million or more, and will not adversely affect the productivity, environment, public health or safety or state, local or tribal governments or communities in the long term. By increasing multispecies catch rates in the long term and reducing operating costs, this action is expected to make the industry more productive after recovery of multispecies stock abundance and to increase the competitiveness of the domestic industry in comparison to foreign suppliers.

In compliance with the RFA, the Council prepared an IRFA as part of the RIR that concluded that this action would have significant economic impacts on a substantial number of small entities. The FRFA consists of the IRFA and comments and responses in this final rule associated with the public's concerns about possible effects of this rule on small entities. Responses to comment numbers 12, 13, 14, 18, 22, 23, 25, 26, 27, 28, 29, 35, 37, 39, 40, 43, 46, 48, 51, 58, 65, and 67 are especially relevant to concerns of the public about possible effects of one or more measures contained in this rule on small entities, often focusing on a particular group of small entities. The measures contained in this rule are restrictive, and impacts on the industry are expected to be significant. In the early years of the program, some vessels may be unable to cover their costs in part because of these restrictions and also due to the poor condition of the stocks. Such vessels are expected to leave the fishery. Relative to the SQ, however, this program is expected to produce higher long-term benefits to the industry and the Nation. The majority of the vessels in the Northeast multispecies fishery are considered small entities. This action is expected to reduce the overall revenues of the multispecies industry by approximately 10 to 25 percent in the first 3 years of the program compared to the SQ. The impact of the action will not be uniform for all vessels or all sectors. Instead, the action will have differential effects on gear groups, with trawlers potentially being relatively more disadvantaged than other vessels. This is primarily because trawlers produce the largest share of total multispecies landings and have higher costs. Alternately, smaller and independent vessels are well suited to adapting to year to year changes in species as availability changes. Generally, smaller vessels are more flexible and have lower costs. This action will allow vessels less than or equal to 30 ft (9.1 m) to be exempt from the DAS program, provided they comply with the 300-lb (136.1–kg) CHY possession limit. The CHY comprise 15 percent of the revenue of these vessels.

The negative effects of the non-selected alternatives would be greater than those of the selected measures. Expected impacts of the action on crew income are negative in the first 5 years of the program and positive thereafter. Likewise, the level of employment is expected to decline in the short-term to an undetermined extent but will rebound over the long term. Projected revenues from fishing will be positive beginning in the year 2001, which will create demand for other goods and services in the area and lead to increased production and employment. The overall impacts will be positive. The action is expected to increase net benefits to the nation by $18 million over the 10-year rebuilding period. The recreational sector is not expected to be negatively impacted by this action.

Also, regarding the RFA, steps are being taken by NOAA to reduce the socio-economic burden on small entities through a buyout program, being implemented in two phases, aimed at reducing fishing capacity in the groundfish fishery and offering an economic alternative to vessel owners in the fishery. NOAA awarded grants to 11 New England fishing vessels under a $2 million pilot buyout program in February, 1996, in return for scrapping their vessels and surrendering their fishing permits. A larger vessel buyout program for as much as $25 million is being developed for implementation after Amendment 7 is made effective.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

This rule contains six new collection of information requirements subject to the Paperwork Reduction Act. The collection of this information has been approved by the OMB, and the OMB control numbers and public reporting burden are listed as follows:

1. The Nantucket Shoals Dogfish exemption, OMB# 0648–0202, will require vessel notification (2 minutes/response).

Revisions to the existing requirements are:

2. Proof of VTS installation, OMB# 0648–0202, (2 minutes/response);

3. Call-in or card system, OMB# 0648–0202, (2 minutes/response);

4. Limited access permit, OMB# 0648–0202. Appeal of the DAS allocation will require written submission (2 hours/response);

5. Limited access permit appeals, OMB# 0648–0202, appeal of denied permits will require written submission (0.5 hours/response);

6. Three new vessel permit categories (Handgear, Charter/Party and Scallop Multispecies Possession Limit), OMB # 0648–0202, are created with no increase in burden above that currently associated with vessel permits.

A formal section 7 consultation under the ESA was initiated for Amendment 7 to the FMP. In a biological opinion dated February 16, 1996, the AA determined that fishing activities conducted under Amendment 7 and its implementing regulations may affect, but are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat.

Adverse impacts on marine mammals resulting from fishing activities conducted under this rule are discussed in the FSEIS.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 28, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is amended to read as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

Authority: 16 U.S.C. *et seq.*

2. In § 651.2, the definition for "Charter and party boats", "Sink gillnet", and "Standard Box" are removed; the definitions for "Alewife", "American shad", "Atlantic croaker", "Black sea bass", "Blowfish", "Bluefish", "Charter or party boat or charter/party boat", "Conger eels", "Cunner", "Dogfish", "Exempted gear", "Fourspot flounder", "Hagfish", "Handgear", "Handline or handline gear", "Hickory shad", "John Dory", "Longhorn sculpin", "Mullet", "Multispecies Monitoring Committee", "Prior to leaving port", "Rod and reel", "Scup", "Sea raven", "Searobin", "Sink gillnet or bottom-trawling gillnet", "Skate", "Spot", "Summer flounder", "Swordfish", "Target Total Allowable Catch (TAC)", "Tautog", "Tilefish", "Upon returning to port", and "Weakfish" are added, in alphabetical order; and the definitions for "DAS (Day(s)-at-sea)", and "Out of the multispecies fishery or DAS program" are revised to read as follows:

§ 651.2 Definitions.

* * * * *

Alewife means *Alosa pseudoharengus.*

* * * * *

American shad means *Alosa sapidissima.*

Atlantic croaker means *Micropogonias undulatus.*

* * * * *

Black sea bass means Centropristis striata.

Blowfish (puffer) means any species in the family *Tetraodontidae.*

Bluefish means *Pomatomus saltatrix.*

* * * * *

Charter or party boat or charter/party boat means any vessel carrying passengers for hire to engage in recreational fishing and that is not fishing under a DAS.

* * * * *

Conger eels means *Conger oceanicus.*

* * * * *

Cunner means *Tautogolabrus adspersus.*

DAS (Day(s)-at-sea) means the 24-hour periods of time during which a fishing vessel is absent from port in which the vessel intends to fish for, possess or land, or fishes for, possesses, or lands regulated species.

* * * * *

Dogfish means spiny dogfish, *Squalus acanthias,* or smooth dogfish, *Mustelus canis.*

* * * * *

Exempted gear means gear that is deemed to be not capable of catching multispecies finfish and includes: Pelagic hook and line, pelagic longline, spears, rakes, diving gear, cast nets, tongs, harpoons, weirs, dipnets, stop nets, pound nets, pelagic gillnets, pots and traps, purse seines, shrimp trawls (with a properly configured grate as defined under this part), and mid-water trawls.

* * * * *

Fourspot flounder means *Paralichthys oblongus.*

* * * * *

Hagfish means *Myxine glutinosa.*

Handgear means handline or rod and reel gear.

Handline or handline gear means fishing gear that is released by hand and consists of one main line to which is attached up to two leaders for a total of not more than three hooks. Handlines are retrieved only by hand, not by mechanical means.

* * * * *

Hickory shad means *Alosa mediocris.*

* * * * *

John Dory means *Zenopsis conchifera.*

* * * * *

Longhorn sculpin means *Myoxocephalus octodecimspinosus.*

* * * * *

Mullet means any species in the family *Mugilidae.*

* * * * *

Multispecies Monitoring Committee means a team of scientific and technical staff appointed by the Council to review, analyze, and recommend adjustments to the management measures. The team will consist of staff from the New England and Mid-Atlantic Fishery Management Councils, the NMFS Northeast Regional Office, the NEFSC, the U.S. Coast Guard, an industry representative, and up to two representatives from each affected coastal state appointed by the Atlantic States Marine Fisheries Commission.

* * * * *

Out of the multispecies fishery or DAS program means the period of time during which a vessel is absent from port and is not fishing for regulated species under the multispecies DAS program.

* * * * *

Prior to leaving port, for purposes of the notification systems described in § 651.29, means prior to departing from the last dock or mooring in port to engage in fishing, including the transport of fish to another port..

* * * * *

Rod and reel means a hand-held (including rod holder) fishing rod with a manually operated reel attached.

* * * * *

Scup means *Stenotomus chrysops.*

Sea raven means *Hemitripterus americanus.*

Seorobin means any species in the family *Triglidae.*

Sink gillnet or bottom-tending gillnet means any gillnet, anchored or otherwise, that is designed to be, or is fished on or near the bottom in the lower third of the water column.

Skate means any species in the family *Rajidae.*

Spot means *Leiostomus xanthurus.*

* * * * *

Summer flounder means *Paralichthys dentatus.*

Swordfish means *Xiphias gladius.*

Target Total Allowable Catch (TAC) means the annual domestic harvest targets for regulated species.

Tautog (blackfish) means *Tautoga onitis.*

* * * * *

Tilefish means *Lopholatilus chamaeleonticeps.*

* * * * *

Upon returning to port, for purposes of the call-in notification system, means the first point when a vessel ties up at a dock or mooring in a port at the end of a fishing trip.

* * * * *

Weakfish means *Cynoscion regalis.*

* * * * *

3. In § 651.4, paragraphs (a), (b), (c), (e), (f), (h)(1)(ii), (h)(1)(iii), and (q) are revised to read as follows:

§ 651.4 Vessel permits.

* * * * *

(a) *General.* Any vessel of the United States, including a charter or party boat, must have been issued and have on board a valid Federal multispecies permit issued under this part to fish for, possess or land multispecies finfish in or from the EEZ. Recreational vessels and vessels fishing for multispecies exclusively in state waters are exempt from this requirement.

(b) *Limited access permits*—(1) *Eligibility*—(i) *Limited access multispecies permit.* To be eligible for a multispecies limited access permit, specified in § 651.22, in 1996 and thereafter, a vessel must have been issued a limited access multispecies permit for the preceding year, must be replacing a vessel that was issued a limited access multispecies permit for the preceding year, or must qualify for a 1996 limited access multispecies permit under paragraph (b)(1)(ii) of this section.

(ii) *Limited access Hook-Gear permit.* A vessel issued a 1995 open access Hook-Gear permit may apply for and obtain a 1996 limited access Hook-Gear permit provided it meets the criteria for eligibility described below. Vessels must apply for a limited access Hook-Gear permit before September 1, 1996, to receive an automatic mailing of an application to renew their permit in 1997 and to be ensured that their permit application will be processed within the 30 days allowed under paragraph (e) of this section. Vessels applying after December 31, 1996, will be ineligible to apply for a 1997 limited access Hook-Gear permit. A vessel qualifying for a limited access Hook-Gear permit may not change its limited access permit category. The criteria for eligibility are as follows:

(A) The vessel held a 1995 open access Hook-Gear permit and submitted to the Regional Director, no later than January 26, 1996, fishing log reports dated between June 1, 1994 and June 1, 1995, when fishing with hook gear under the open access Hook-Gear permit, documenting landings of at least 500 lb (226.8 kg) of multispecies finfish; or its equivalent in numbers of fish; or

(B) The vessel is replacing a vessel that meets the criteria set forth in paragraph (b)(1)(ii)(A) of this section.

(2) *Qualification restriction.* Unless the Regional Director determines to the contrary, no more than one vessel may qualify, at any one time, for a limited access multispecies permit based on that or another vessel's fishing and permit history. If more than one vessel owner claims eligibility for a limited access multispecies permit, based on one vessel's fishing and permit history, the Regional Director shall determine who is entitled to qualify for the limited access multispecies permit and the DAS allocation according to paragraph (b)(3) of this section.

(3) *Change in ownership.* The fishing and permit history of a vessel is presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

(4) *Replacement vessels.* To be eligible for a limited access permit under this section, the replacement vessel must meet the following criteria and any applicable criteria under paragraph (b)(5) of this section:

(i) The replacement vessel's horsepower may not exceed by more than 20 percent the horsepower of the vessel that was initially issued a limited access multispecies permit as of the date the initial vessel applied for such permit.

(ii) The replacement vessel's length, gross registered tonnage, and net tonnage may not exceed by more than 10 percent the length, gross registered tonnage, and net tonnage of the vessel that was initially issued a limited access multispecies permit as of the date the initial vessel applied for such permit. For purposes of this paragraph, a vessel not required to be documented under title 46, U.S.C. will be considered to be 5 net tons. For undocumented vessels, gross registered tonnage does not apply.

(5) *Upgraded vessel.* To remain eligible to retain a valid limited access permit under this part, or to apply for or renew a limited access permit under this part, a vessel may be upgraded, whether through refitting or replacement, only if the upgrade complies with the following limitations:

(i) The vessel's horsepower may be increased, whether through refitting or replacement, only once. Such an increase may not exceed 20 percent of the horsepower of the vessel initially issued a limited access multispecies permit as of the date the initial vessel applied for such permit.

(ii) The vessel's length, gross registered tonnage, and net tonnage may be upgraded, whether through refitting or replacement, only once. Such an increase shall not exceed 10 percent each of the length, gross registered tonnage, and net tonnage of the vessel initially issued a limited access multispecies permit as of the date the initial vessel applied for such permit. This limitation allows only one upgrade, at which time any or all three specifications of vessel size may be increased. This type of upgrade may be done separately from an engine horsepower upgrade.

(6) *Consolidation restriction.* Limited access permits under this permit and DAS allocations may not be combined or consolidated.

(7) *Appeal of denial of limited access multispecies permit.*

(i) Any applicant eligible to apply for an initial limited access Hook-Gear permit who is denied such permit may appeal the denial to the Regional Director within 30 days of the notice of denial. Any such appeal must be based on one or more of the following grounds, must be in writing, and must state the grounds for the appeal:

(A) The information used by the Regional Director was based on mistaken or incorrect data;

(B) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria; or

(C) The applicant has new or additional information.

(ii) The Regional Director will appoint a designee who will make the initial decision on the appeal.

(iii) The appellant may request a review of the initial decision by the Regional Director by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision shall become the final administrative action of the Department of Commerce.

(iv) Upon receiving the findings and a recommendation, the Regional Director will issue a final decision on the appeal. The Regional Director's decision is the final administrative action of the Department of Commerce.

(v) *Status of vessels pending appeal of a limited access permit denial.* A vessel denied a limited access Hook-Gear permit may fish under the limited access Hook-Gear category, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Director authorizing the vessel to fish under the limited access Hook-Gear category. The Regional Director will issue such a letter for the pendency of any appeal. Any such decision is the final administrative action of the Department of Commerce on allowable fishing activity pending a final decision on the appeal. The authorizing letter must be carried on board the vessel. If the appeal is finally denied, the Regional Director shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.

(8) *Limited access permit restrictions.*

(i) A vessel may be issued a limited access multispecies permit in only one category during a fishing year. Vessels are prohibited from changing limited access multispecies permit categories during the fishing year, except as provided in paragraph (f)(3) of this section. A vessel issued a limited access Hook-Gear permit may not change its limited access permit category at any time.

(ii) With the exception of Combination Vessels, sea scallop dredge vessels are prohibited from being issued a limited access multispecies permits.

(9) *Confirmation of Permit History.* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, may apply for and receive a Confirmation of Permit History if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a Confirmation of Permit History, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid and current Confirmation of Permit History preserves the eligibility of the applicant to apply for or renew a limited access multispecies permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified at § 651.4. A Confirmation of Permit History must be applied for and received on an annual basis in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. If fishing privileges have been assigned or allocated previously under this part based on the qualifying vessel's fishing and permit history, the Confirmation of Permit History also preserves such fishing privileges. Any decision regarding the issuance of a Confirmation of Permit History for a qualifying vessel that has applied for or been issued previously a limited access permit under this part is a final agency action subject to judicial review under 5 U.S.C. 704. Applications for a Confirmation of Permit History must be received by the Regional Director by the beginning of the fishing year for which the Confirmation of Permit History is required. Information requirements for the Confirmation of Permit History application shall be the same as those for a limited access permit with any request for information about the vessel being applicable to the qualifying vessel

that has been sunk, destroyed or transferred. Vessel permit applicants who have been issued a Confirmation of Permit History and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (b)(4) of this section.

(c) *Open access permits.* Subject to the restrictions in § 651.33, a U. S. vessel that has not been issued a limited access multispecies permit may obtain an open access Handgear or Charter/party permit. Vessels that are issued a valid scallop limited access permit under § 650.4 of this chapter and that have not been issued a limited access multispecies permit may obtain an open access Scallop Multispecies Possession Limit permit.

* * * * *

(e) *Vessel permit application.* Applicants for a permit under this section must submit a completed application on an appropriate form obtained from the Regional Director. The application must be signed by the owner of the vessel, or the owner's authorized representative, and be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section. Applicants for limited access multispecies permits shall provide information with the application sufficient for the Regional Director to determine whether the vessel meets the eligibility requirements specified.

(f) *Information requirements.* (1) In addition to applicable information required to be provided by paragraph (e) of this section, an application for a permit must contain at least the following information, and any other information required by the Regional Director: Vessel name; owner name, mailing address, and telephone number; U.S. Coast Guard documentation number and a copy of the vessel's current U.S. Coast Guard documentation or, if undocumented, state registration number and a copy of the current state registration; party/charter boat license; home port and principal port of landing; length overall; gross tonnage; net tonnage; engine horsepower; year the vessel was built; type of construction; type of propulsion; approximate fish-hold capacity; type of fishing gear used by the vessel; number of crew; number of party or charter passengers licensed to carry (if applicable); permit category; if the owner is a corporation, a copy of the current Certificate of Incorporation, or other corporate papers showing incorporation and the names of the current officers in the Corporation, and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the current Partnership Agreement and the names and addresses of all partners; if there is more than one owner, names of all owners owning a 25 percent interest or more; and, name and signature of the owner or the owner's authorized representative.

(2) Applications for an initial limited access Hook-Gear permit must also contain the following information:

(i) If the engine horsepower was changed or a contract to change the engine horsepower had been entered into prior to May 1, 1996, such that it is different from that stated in the vessel's most recent application for a Federal Fisheries Permit before May 1, 1996, sufficient documentation to ascertain the different engine horsepower. However, the engine replacement must be completed within 1 year of the date of when the contract for the replacement engine was signed.

(ii) If the length, gross tonnage, or net tonnage was changed or a contract to change the length, gross tonnage or net tonnage had been entered into prior to May 1, 1996, such that it is different from that stated in the vessel's most recent application for a Federal Fisheries Permit, sufficient documentation to ascertain the different length, gross tonnage or net tonnage. However, the upgrade must be completed within 1 year from the date when the contract for the upgrade was signed.

(3) A vessel issued a limited access multispecies permit may request a change in permit category, unless otherwise restricted by paragraph (b)(8) of this section. In 1996, the vessel owner, or the owner's authorized representative, has one opportunity to request a change in permit category by submitting an application to the Regional Director by July 15, 1996. After this date, the vessel must fish only in the DAS program assigned for the remainder of the 1996 fishing year and must comply with the restrictions applicable to such category. Any DAS that a vessel uses prior to a change in permit category will be counted against its allocation received under any subsequent permit category. For 1997 and beyond, limited access multispecies vessels eligible to request a change in permit category must elect a category prior to the start of each fishing year and will have one opportunity to request a change in permit category by submitting an application to the Regional Director within 45 days of receipt of their permit. After this date, the vessel must fish only in the DAS program assigned for the remainder of the fishing year and must comply with the restrictions applicable to such category. Any DAS that a vessel uses prior to a change in permit category will be counted against its allocation received under any subsequent permit category. A vessel issued an open access permit may request a different open access permit category by submitting an application to the Regional Director at any time.

(4) A vessel issued a limited access combination permit or an Individual DAS permit or a vessel applicant who elects to use a VTS unit, is required to submit a copy of the vendor installation receipt from a NMFS-certified VTS vendor as described in § 651.28(a).

* * * * *

(h) * * *

(1) * * *

(ii) The application was not received by the Regional Director by the deadlines set forth in paragraphs (b)(1)(ii), and (q) of this section; or

(iii) The applicant and applicant's vessel failed to meet all eligibility requirements described in paragraph (b)(1) of this section; or

* * * * *

(q) *Limited access multispecies permit renewal.* To renew or apply for a limited access multispecies permit a completed application must be received by the Regional Director by the first day of the fishing year for which the permit is required. Failure to renew a limited access multispecies permit in any year bars the renewal of the permit in subsequent years.

* * * * *

4. Section 651.9 is revised to read as follows:

§ 651.9 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person owning or operating a vessel issued a valid Federal multispecies vessel permit under this part, a permit under § 651.5 or a letter under § 651.4(b)(7)(v), to do any of the following:

(1) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application as required under § 651.4(m) or § 651.5(k).

(2) Fish for, possess, or land multispecies finfish unless the operator of the vessel has been issued an operator's permit under § 651.5, and a valid permit is on board the vessel.

(3) Sell, barter, trade, or transfer, or attempt to sell, barter, trade, or otherwise transfer, for a commercial purpose, other than transport, any multispecies, unless the dealer or transferee has a dealer permit issued under § 651.6.

(4) Fail to comply in an accurate and timely fashion with the log report, reporting, record retention, inspection, and other requirements of § 651.7(b).

(5) Fail to affix and maintain permanent markings as required by § 651.8.

(6) Enter, fail to remove gear from, or be in the areas described in § 651.21(f)(1) through § 651.21(h)(1) during the time period specified, except as provided in § 651.21(d), (f)(2), (g)(2), and (h)(2).

(7) Possess or land multispecies finfish smaller than the minimum sizes specified in § 651.23 or § 651.34, as appropriate.

(8) Land, or possess on board a vessel, more than the possession limits specified in § 651.27(a), or violate any of the other provisions of § 651.27.

(9) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove, or otherwise transfer fish from one vessel to another vessel or other floating conveyance unless authorized in writing by the Regional Director pursuant to § 651.30(a).

(10) Refuse or fail to carry an observer if requested to do so by the Regional Director.

(11) Interfere with or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer conducting his or her duties aboard a vessel.

(12) Fail to provide an observer with the required food, accommodations, access, and assistance, specified in § 651.31.

(b) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a valid limited access multispecies permit under § 651.4(b) or a letter under § 651.4(b)(7)(v), to do any of the following:

(1) Fish for, possess, or land multispecies finfish with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 651.4(b)(4) or (b)(5).

(2) Fish for, possess, or land multispecies finfish with or from a vessel that has had the length, gross registered tonnage, or net tonnage of such vessel or its replacement increased or upgraded in excess of limitations specified in § 651.4(b)(4) or (b)(5).

(3) Combine, transfer, or consolidate DAS allocations.

(4) Fish for, possess at any time during a trip, or land per trip more than the possession limit of regulated species specified in § 651.27(b) after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 651.22, unless otherwise exempted under § 651.22(b)(3) or § 651.34.

(5) Possess or land per trip more than the possession limit specified under § 651.22(b)(3)(i) if the vessel has been issued a limited access Small Vessel permit.

(6) Fail to comply with the restrictions on fishing and gear specified in § 651.22(b)(4) if the vessel has been issued a limited access Hook-Gear permit.

(7) Fail to declare and be out of the multispecies fishery as required by § 651.22(g), using the procedure described under § 651.22(h), as applicable.

(8) If required to have a VTS unit specified in § 651.28(a) or § 651.29(a):

(i) Fail to have a certified, operational, and functioning VTS unit that meets the specifications of § 651.28(a) on board the vessel at all times.

(ii) Fail to comply with the notification, replacement, or any other requirements regarding VTS usage specified in § 651.29(a).

(9) Fail to comply with any requirement regarding the DAS notification specified in § 651.29(a) or (b).

(10) Fail to comply with other notification requirements, including a call-in system specified in § 651.29(c), if required by the Regional Director.

(11) Fail to provide notification of the beginning or ending of a trip, as required under § 651.29(b) and (d).

(c) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a Handgear permit under § 651.4(c) to do any of the following:

(1) Possess at any time during a trip, or land per trip, more than the possession limit of regulated species specified in § 651.33(a), unless the regulated species were harvested by a charter or party vessel.

(2) Use, or possess on board, gear capable of harvesting multispecies finfish other than rod and reel or handline while in possession of, or fishing for, multispecies finfish.

(3) Possess or land multispecies finfish during the time period specified in § 651.33(a)(2).

(4) Violate any of the provisions of § 651.33(a).

(d) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a Scallop Multispecies Possession Limit permit under § 651.4(c) to do any of the following:

(1) Possess or land more than the possession limit of regulated species specified in § 651.33(c).

(2) Possess or land regulated species when not fishing under a scallop DAS.

(3) Violate any of the provisions of § 651.33(c).

(e) In addition to the general prohibitions specified in § 620.7 of this chapter and the prohibitions specified in paragraphs (a) through (d) of this section, it is unlawful for any person to do any of the following:

(1) Fish for, possess, or land multispecies finfish unless:

(i) The multispecies finfish were being fished for or harvested by a vessel issued a valid Federal multispecies permit under this part, or a letter under § 651.4(b)(7)(v), and the operator aboard such vessel was issued an operator's permit under § 651.5 and a valid permit is on board the vessel;

(ii) The multispecies finfish were harvested by a vessel not issued a Federal multispecies permit that fishes for and possesses multispecies finfish exclusively in state waters; or

(iii) The multispecies finfish were harvested by a recreational fishing vessel.

(2) Sell, barter, trade, or otherwise transfer, or attempt to sell, barter, trade, or otherwise transfer, for a commercial purpose, any multispecies finfish from a trip unless the vessel is issued a valid Federal multispecies permit under this part, or a letter under § 651.4(b)(7)(v), and is not fishing under the charter/party restrictions specified in § 651.34(d), or unless the multispecies finfish were harvested by a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(3) To be or act as an operator of a vessel fishing for or possessing multispecies finfish in or from the EEZ, or issued a Federal multispecies permit under this part, without having been issued and possessing a valid operator's permit issued under § 651.5.

(4) Purchase, possess, or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose in the capacity of a dealer, multispecies finfish taken from a fishing vessel, unless in possession of a valid dealer permit issued under § 651.6; except that this prohibition does not apply to multispecies finfish taken from a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(5) Purchase, possess, or receive for a commercial purpose or attempt to purchase, possess, or receive multispecies finfish caught by a vessel other than one issued a valid Federal multispecies permit under this part, or a letter under § 651.4(b)(7)(v), unless the multispecies finfish were harvested by a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(6) Land, offload, cause to be offloaded, sell, or transfer; or attempt to land, offload, cause to be offloaded, sell, or transfer multispecies finfish from a fishing vessel, whether on land or at sea, as an owner or operator without accurately preparing and submitting, in a timely fashion, the documents required by § 651.7, unless the multispecies finfish were harvested by a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(7) Purchase or receive multispecies finfish, or attempt to purchase or receive multispecies finfish, whether on land or at sea, as a dealer without accurately preparing, submitting in a timely fashion, and retaining the documents required by § 651.7.

(8) Possess or land fish caught with nets of mesh smaller than the minimum size specified in § 651.20 of this chapter, or with scallop dredge gear, unless said fish are caught, possessed or landed in accordance with § 651.20, or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(9) Fish with, use, or have on board, within the area described in § 651.20(a)(1) nets of mesh size smaller than the minimum mesh size specified in § 651.20(a)(2), except as provided in § 651.20 (a)(3) through (a)(6), (a)(8), (a)(9), (e), (f), and (j), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(10) Fish for, harvest, possess, or land in or from the EEZ northern shrimp, unless such shrimp were fished for or harvested by a vessel meeting the requirements specified in § 651.20(a)(3).

(11) Fish within the areas described in § 651.20(a)(4) with nets of mesh smaller than the minimum size specified in § 651.20(a)(2), unless the vessel is issued and possesses on board the vessel an authorizing letter issued under § 651.20(a)(4)(i).

(12) Violate any provisions of the Cultivator Shoals Whiting Fishery specified in § 651.20(a)(4).

(13) Fail to comply with the gear restrictions for the Stellwagen Bank/Jeffrey's Ledge juvenile protection areas specified in § 651.20(a)(5).

(14) Fail to comply with the gear restrictions and time periods specified for Small Mesh Area 1 and Small Mesh Area 2 in § 651.20(a)(8).

(15) Fail to comply with the requirements of the Nantucket Shoals dogfish exemption specified in § 651.20(a)(9).

(16) Fish with, use, or have available for immediate use within the area described in § 651.20(c)(1) nets of mesh size smaller than the minimum size specified in § 651.20(c)(2), except as provided in § 651.20(c)(3), (e), (f), and (j), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(17) Fish with, use, or have available for immediate use within the area described in § 651.20(d)(1) nets of mesh size smaller than the minimum size specified in § 651.20(d)(2), except as provided in § 651.20 (e), (f), and (j), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(18) Fish for the species specified in § 651.20 (e) or (f) with a net of mesh size smaller than the applicable mesh size specified in § 651.20(a)(2), (c)(2) or (d)(2), or possess or land such species, unless the vessel is in compliance with the requirements specified in § 651.20(e) or (f), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(19) Obstruct or constrict a net as described in § 651.20 (h)(1) and (h)(2).

(20) Fish for, land, or possess multispecies finfish harvested by means of pair trawling or with pair trawl gear, except under the provisions of § 651.20(e), or unless the vessels that engaged in pair trawling qualify for the exception specified in paragraph (e)(1)(ii) of this section.

(21) Violate any of the restrictions on fishing with scallop dredge gear specified in § 651.20(i), or any of the other provisions of § 651.20(i).

(22) Violate any of the provisions of the state waters winder flounder exemption program specified in § 651.20(j).

(23) Enter or be in the area described in § 651.21(a)(1) on a fishing vessel, except as provided in § 651.21(a)(2) and (d).

(24) Enter or be in the area described in § 651.21(b)(1) on a fishing vessel, except as provided in § 651.21(b)(2).

(25) Enter or be in the area described in § 651.21(c)(1), on a fishing vessel, except as provided in § 651.21(c)(2) and (d).

(26) Enter or be on a fishing vessel, or fail to remove gear from the EEZ portion of the areas described in § 651.21(f)(1) through § 651.21(h)(1), during the time period specified, except as provided in § 651.21(d), (f)(2), (g)(2), and (h)(2).

(27) Import, export, transfer, land, buy, sell or possess regulated species smaller than the minimum sizes specified in § 651.23, or attempt to do any of the same, unless the regulated species were harvested from a vessel that qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(28) Violate any terms of a letter authorizing experimental fishing pursuant to § 651.24 or fail to keep such letter on board the vessel during the period of the experiment.

(29) Fail to comply with the gear-marking requirements of § 651.25.

(30) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, fish in excess of the possession limits specified for vessels issued a Federal multispecies permit.

(31) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VTS, VTS unit, or VTS signal required to be installed on or transmitted by vessel owners or operators required to use a VTS by this part.

(32) Violate any provision of the DAS notification program as specified by § 651.29.

(33) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove or otherwise transfer multispecies finfish from one vessel to another vessel, unless both vessels qualify under the exception specified in paragraph (e)(1)(ii) of this section, or unless authorized in writing by the Regional Director pursuant to § 651.30(a).

(34) Assault, resist, oppose, impede, harass, intimidate, or interfere with a NMFS-approved observer aboard a vessel.

(35) Make any false statement, oral or written, to an authorized officer or employee of NMFS, concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any multispecies finfish.

(36) Make any false statement in connection with an application under § 651.4 or § 651.5 or on any report required to be submitted or maintained under § 651.7.

(37) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search relating to the enforcement of this part.

(38) Fail to have on board the vessel at least one standard tote as specified under § 651.20(i) and (j), § 651.27, and § 651.33(a) and (c).

(f) In addition to the general prohibitions specified in § 620.7 of this chapter and the prohibitions specified in paragraphs (a) through (e) of this section, it is unlawful for the owner or operator of a charter or party boat issued a permit under § 651.4, or of a recreational vessel, as applicable, to:

(1) Fish with gear in violation of the restrictions specified in § 651.34(a).

(2) Possess regulated species smaller than the minimum sizes specified in § 651.34(b).

(3) Possess cod and haddock in excess of the possession limits specified in § 651.34(c).

(4) Sell, trade, barter, or otherwise transfer, or attempt to sell, trade, barter or otherwise transfer, multispecies finfish for a commercial purpose as specified in § 651.34(d).

(g) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulation, permit or other authorization issued under the Magnuson Act.

(h) Presumption. The possession for sale of regulated species that do not meet the minimum sizes as specified in § 651.23 will be prima facie evidence that such regulated species were taken or imported in violation of these regulations. Evidence that such fish were harvested by a vessel not issued a permit under this part and fishing exclusively within state waters will be sufficient to rebut the presumption. This presumption does not apply to fish being sorted on deck.

5. Section 651.10 is revised to read as follows:

§ 651.10 Facilitation of enforcement.

(a) *Radio hails.* Permit holders, while underway, must be alert for communications conveying enforcement instructions and immediately answer via VHF-FM radio, channel 16, when hailed by an authorized officer. Vessels not required to have VHF-FM radios by the Coast Guard are exempt from this requirement.

(b) Also see § 620.8 of this chapter.

6. In § 651.20, paragraph (a)(9) is added and paragraphs (a)(2), (a)(3)(i)(B), (a)(4)(i)(E), (a)(5), (a)(6)(iii)(C), (a)(7), paragraph (a)(8) introductory text preceding the table, paragraphs (a)(8)(i), (a)(8)(iii)(B), (c)(1), (c)(2), (c)(3)(ii), (c)(5), (d), (e)(2), (f)(2), (g)(1), (g)(2), (i), (j) introductory text, and (j)(7) are revised to read as follows:

§ 651.20 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(2) *Gear restrictions.* (i) Except as provided in paragraphs (a)(2)(iii) and (j) of this section, and unless otherwise restricted under paragraphs (a)(2)(ii) and (a)(5) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, mid-water trawl, or purse seine, on a vessel, or used by a vessel fishing under a DAS in the multispecies DAS program in the GOM/GB regulated mesh area, shall be 6 inches (15.24 cm) square or diamond mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq. ft (0.81 m^2)), or to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(ii) *Large Mesh vessels.* When fishing in the GOM/GB regulated mesh area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS programs specified in § 651.22(b)(6) and (7) shall be 7 inch (17.78-cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program shall be 8-inch (20.32-cm) diamond mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq. ft (0.81 m^2)), or to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(iii) *Other gear and mesh exemptions.* The minimum mesh size for any trawl net, sink gillnet, Scottish seine, mid-water trawl, or purse seine, on a vessel, or used by a vessel, when not fishing under the multispecies DAS program and when fishing in the GOM/GB regulated mesh area, is provided for under the exemptions specified in paragraphs (a)(3), (a)(4), (a)(6), (a)(8), (a)(9), (e), (f), (i), and (j) of this section. Vessels that are not fishing in one of these exemption programs, or with exempted gear (as defined under this part), or under the Scallop state waters exemption program specified in § 650.27 of this chapter, or under a multispecies DAS are prohibited from fishing in the GOM/GB regulated mesh area.

(3) * * *

(i) * * *

(B) The following may be retained, with the restrictions noted, as allowable bycatch species in the northern shrimp fishery as described in this section: Longhorn sculpin; up to two standard totes of silver hake (whiting); monkfish and monkfish parts up to 10 percent by weight of all other species on board; and American lobster up to 10 percent by weight of all other species on board or 200 lobsters, whichever is less.

* * * * *

(4) * * *

(i) * * *

(E) The following may be retained, with the restrictions noted, as allowable bycatch species in the Cultivator Shoal whiting fishery exemption area as described in this section: Longhorn sculpin; monkfish and monkfish parts up to 10 percent by weight of all other species on board; and American lobster up to 10 percent by weight of all other species on board or 200 lobsters, whichever is less.

* * * * *

(5) *Stellwagen Bank/Jeffreys Ledge (SB/JL) juvenile protection area.* Except as provided in paragraphs (a)(3), (a)(6), (e), (f), and (j) of this section, unless otherwise restricted in paragraph (a)(2)(ii) of this section, the minimum mesh size for any trawl net, Scottish seine, purse seine, or midwater trawl in use, or available for immediate use as described under paragraph (c)(4) of this section, by a vessel fishing in the following area shall be 6 inches (15.24 cm) square mesh in the last 50 bars of the codend and extension piece for vessels 45 ft (13.7 m) in length and less, and in the last 100 bars of the codend and extension piece for vessels greater than 45 ft (13.7 cm) in length.

(6) * * *

(iii) * * *

(C) Vessels may not fish for, possess on board, or land any species of fish except when fishing in the areas specified in paragraphs (a)(4), (a)(9), (c), and (d) of this section. Vessels may retain exempted small mesh species as provided in paragraphs (a)(4)(i), (a)(9)(i), (c)(3), and (d)(3) of this section.

(7) *Addition or deletion of exemptions.* (i) An exemption may be added in an existing fishery for which there is sufficient data or information to ascertain the amount of regulated species bycatch, if the Regional Director, after consultation with the Council, determines that the percentage of regulated species caught as bycatch is, or can be reduced to, less than 5 percent by weight of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Director may take into consideration factors such as, but not limited to, juvenile mortality. A fishery can be defined, restricted or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of regulated species. An existing exemption may be deleted or modified if the Regional Director determines that the catch of regulated species is equal to or greater than 5

percent by weight of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions or modifications will be made through publication of a rule in the **Federal Register**.

(ii) The Council may recommend to the Regional Director, through the framework procedure specified in § 651.40(b), additions or deletions to exemptions for fisheries either existing or proposed for which there may be insufficient data or information for the Regional Director to determine, without public comment, percentage catch of regulated species.

(iii) The Regional Director may, using the process described in either paragraphs (a)(7)(i) or (ii) of this section, authorize an exemption to fish for, possess and land white hake by vessels using regulated mesh or hook gear. Determination of the percentage of regulated species caught in such fishery shall not include white hake.

(iv) Exempted fisheries authorized under this paragraph are subject, at minimum, to the following restrictions:

(A) With the exception of fisheries authorized under paragraph (a)(7)(iii) of this section, possession of regulated species will be prohibited.

(B) Possession of monkfish or monkfish parts will be limited to 10 percent by weight of all other species on board.

(C) Possession of lobsters will be limited to 10 percent by weight of all other species on board or 200 lobsters, whichever is less.

(D) Possession of skate or skate parts in the SNE regulated mesh area will be limited to 10 percent by weight of all other species on board.

(8) *Small Mesh Area 1/Small Mesh Area 2.* Fisheries using nets of mesh smaller than the minimum size specified in paragraph (a)(2) of this section in subareas described as Small Mesh Area 1 and Small Mesh Area 2 of the Small Mesh Exemption Area as specified under paragraph (a)(3) of this section, and defined in this paragraph (a)(8), have been found to meet the exemption qualification requirements specified in paragraph (a)(7) of this section. Therefore, vessels subject to the mesh restrictions specified in paragraph (a)(2) of this section may fish with or possess nets of mesh smaller than the minimum size specified in paragraph (a)(2) of this section in these areas, if the vessel complies with the restrictions specified in paragraphs (a)(8)(i) through (iii) of this section. These subareas are defined by straight lines connecting the following points in the order stated (see Figure 4 to part 651):

* * * * *

(i) The fishing season is from July 15 through October 31 when fishing under the exemption in Small Mesh Area 1.

* * * * *

(iii) * * *

(B) *Allowable bycatch.* Vessels fishing for the exempted species identified in paragraph (a)(8)(iii)(A) of this section may also possess and land the following species, with the restrictions noted, as allowable bycatch species: Longhorn sculpin; monkfish and monkfish parts up to 10 percent by weight of all other species on board; and American lobster up to 10 percent by weight of all other species on board or 200 lobsters, whichever is less.

(9) *Nantucket Shoals dogfish fishery exemption area.* The Nantucket Shoals dogfish fishery as defined in this part has been found to meet the exemption qualification requirements specified in paragraph (a)(7) of this section. Therefore, vessels subject to the mesh restrictions specified in paragraph (a)(2) of this section may fish with, use, or possess nets of mesh smaller than the minimum size specified in paragraph (a)(2) of this section in the Nantucket Shoals dogfish fishery exemption area, if the vessel complies with the requirements specified in paragraph (a)(9)(i) of this section. The Nantucket Shoals dogfish fishery exemption area is defined by straight lines connecting the following points in the order stated (see Figure 4 to part 651):

NANTUCKET SHOALS DOGFISH EXEMPTION AREA

Point	Latitude	Longitude
NS1	41°45′ N	70°00′ W.
NS2	41°45′ N.	69°20′ W.
NS3	41°30′ N.	69°20′ W.
CI1	41°30′ N.	69°23′ W.
NS5	41°26.5′ N.	69°20′ W.
NS6	40°50′ W.	69°20′ N.
NS7	40°50′ W.	70°00′ N.
NS1	41°45′ N	70°00′ W.

(i) *Requirements.* Vessels authorized to fish in this fishery must have on board an authorizing letter issued by the Regional Director. Vessels are subject to the following conditions:

(A) Authorized vessels may not fish for, possess on board or land any species of fish other than dogfish except as provided under paragraph (a)(9)(i)(D) of this section.

(B) Authorized vessels may fish under this exemption during the season of June 1 through October 15.

(C) When transiting the GOM/GB regulated mesh area as specified under paragraph (a)(1) of this section, any nets of mesh smaller than the regulated mesh size specified in paragraph (a)(2) of this section, must be stowed according to the provisions of paragraph (c)(4) of this section.

(D) The following may be retained, with the restrictions noted, as allowable bycatch species in the Nantucket Shoals dogfish fishery exemption area as described in this section: Longhorn sculpin, up to two standard totes of silver hake (whiting); monkfish and monkfish parts up to 10 percent by weight of all other species on board; American lobster up to 10 percent by weight of all other species on board or 200 lobsters, whichever is less; and skate or skate parts up to 10 percent by weight of all other species on board.

(E) Authorized vessels must comply with any additional gear restrictions specified in the authorization letter issued by the Regional Director.

(ii) *Sea Sampling.* The Regional Director may conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species.

* * * * *

(c) *Southern New England regulated mesh area.* (1) *Area definition.* The Southern New England regulated mesh area is that area bounded on the east by straight lines connecting the following points in the order stated (see Figure 1 part 651):

SOUTHERN NEW ENGLAND REGULATED MESH AREA

Point	Latitude	Longitude
G5	41°18.6′ N.	66°24.8′ W.
G6	40°55.5′ N.	66°38′ W.
G7	40°45.5′ N.	68°00′ W.
G8	40°37′ N.	68°00′ W.
G9	40°30.5′ N.	69°00′ W.
NL3	40°.7′ N.	69°00′ W.
NL2	40°18.7′ N.	69°40′ W.
NL1	40°50′ N.	69°40′ W.
G11	40°50′ N.	70°00′ W.
G12		70°00′ W.[1]

[1] Northward to its intersection with the shoreline of mainland Massachusetts; and on the west by the eastern boundary of the Mid-Atlantic regulated mesh area.

(2) *Gear restrictions.* (i) *Minimum mesh restrictions.* Except as provided in paragraphs (c)(2) (iii) and (j) of this section, and unless otherwise restricted under paragraph (c)(2)(ii) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, purse seine or mid-water trawl, in use, or available for immediate use as described under paragraph (c)(4) of this section, by a vessel fishing under a DAS in the multispecies DAS program in the Southern New England (SNE) regulated mesh area, shall be 6 inches (15.24 cm) square or diamond mesh throughout the entire net. This restriction does not apply to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(ii) *Large Mesh vessels.* When fishing in the SNE regulated mesh area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program specified in § 651.22(b)(6) and (7) shall be 7 inch (17.78-cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program shall be 8 inch (20.32-cm) diamond mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m)×3 ft (0.9 m), (9 sq. ft (0.81 m^2)), or to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(iii) *Other gear and mesh exemptions.* The minimum mesh size for any trawl net, sink gillnet, Scottish seine, mid-water trawl, or purse seine, in use, or available for immediate use as described under paragraph (c)(4) of this section, by a vessel when not fishing under the multispecies DAS program and when fishing in the SNE regulated mesh area, is provided for under the exemptions specified in paragraphs (c)(3), (e), (f), (i), and (j) of this section. Vessels that are not fishing in one of these exemption programs, with exempted gear (as defined under this part), or under the Scallop state waters exemption program specified in § 650.27 of this chapter, or under a multispecies DAS are prohibited from fishing in the SNE regulated mesh area.

(3) * * *

(ii) *Possession and net stowage requirements.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (c)(2)(i) of this section, provided that the nets are stowed and are not available for immediate use in accordance with paragraph (c)(4) of this section, and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (c)(2)(i) of this section. Vessels fishing for the exempted species identified in paragraph (c)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels; searobins; black sea bass; red hake; tautog (blackfish); blowfish (puffer); cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory shad; American shad; blueback herring; sea ravens; Atlantic croaker; spot; swordfish; monkfish and monkfish parts up to 10 percent by weight of all other species on board; American lobster up to 10 percent by weight of all other species on board or 200 lobsters, whichever is less; and skate and skate parts up to 10 percent by weight of all other species on board.

* * * * *

(5) *Addition or deletion of exemptions.* An exemption may be added, deleted or modified pursuant to the procedure described in paragraph (a)(7) of this section.

(d) *Mid-Atlantic regulated mesh area.* (1) *Area definition.* The Mid-Atlantic (RMA) regulated mesh area is that area bounded on the east by a line running from the Rhode Island shoreline at 41°18.2′ N. and 71°51.5′ W. (Watch Hill, RI) southwesterly through Fishers Island, NY, to Race Point, Fishers Island, NY, and from Race Point, Fishers Island, NY, southeasterly to the intersection of the 3 nautical mile line east of Montauk Point, southwesterly along the 3 nautical mile line to the intersection of 72°30 W. Longitude and south along that line to the intersection of the outer boundary of the EEZ. (see Figure 1 to part 651).

(2) *Gear restrictions.* (i) *Mesh size restrictions.* Except as provided in paragraph (j) of this section, and unless otherwise restricted under paragraph (d)(2)(ii) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, purse seine or mid-water trawl, in use, or available for immediate use as described under paragraph (c)(4) of this section, by a vessel fishing under a DAS in the multispecies DAS program in the MA regulated mesh area shall be that specified in the summer flounder regulations at § 625.24(a) of this chapter. This restriction does not apply to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(ii) *Large mesh vessels.* When fishing in the MA regulated mesh area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program specified in § 651.22(b)(6) and (b)(7) shall be 7 inch (17.78 cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program shall be 8 inch (20.32 cm) diamond mesh throughout the net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq. ft (0.81 m^2)), or to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(iii) *Net stowage exemption.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (d)(2)(i) of this section, provided that the nets are stowed and are not available for immediate use in accordance with paragraph (c)(4) of this section, and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (d)(2)(i) of this section.

(3) *Additional Exemptions.* The Regional Director may, using the process described in either (a)(7)(i) or (a)(7)(ii), authorize an exemption to fish for, possess, or land white hake by vessels using regulated mesh or hook gear. Determination of the percentage of regulated species caught in such a fishery shall not include white hake.

(e) * * *

(2) When fishing under this exemption in the GOM/GB Regulated Mesh Area vessels must have on board an authorizing letter issued by the Regional Director;

* * * * *

(f) * * *

(2) When fishing under this exemption in the GOM/GB Regulated Mesh Area vessels must have on board an authorizing letter issued by the Regional Director;

* * * * *

(g) *Mesh measurements*—(1) *Gillnets.* Beginning October 15, 1996, mesh size of gillnet gear shall be measured by lining up 5 consecutive knots perpendicular to the float line and, with a ruler or tape measure, measuring 10 consecutive stretched meshes on the diamond, inside knot to inside knot. The mesh size shall be the average of the measurements of the 10 consecutive meshes.

(2) *All other nets.* With the exception of gillnets, mesh size shall be measured by a wedge-shaped gauge having a taper of 2 cm in 8 cm and a thickness of 2.3 mm, inserted into the meshes under a pressure or pull of 5 kg.

(i) *Square-mesh measurement.* Square mesh in the regulated portion of the net shall be measured by placing the net gauge along the diagonal line that connects the largest opening between opposite corners of the square. The

square mesh size shall be the average of the measurements of 20 consecutive adjacent meshes from the terminus forward along the long axis of the net. The square mesh shall be measured at least five meshes away from the lacings of the net.

(ii) *Diamond-mesh measurement.* Diamond mesh in the regulated portion of the net shall be measured running parallel to the long axis of the net. The mesh size shall be the average of the measurements of any series of 20 consecutive meshes. The mesh shall be measured at least five meshes away from the lacings of the net.

* * * * *

(i) *Scallop vessels.* (1) Except as provided in paragraph (i)(2) of this section, scallop vessels that possess a valid limited access permit under § 650.4 of this chapter, and that a scallop multispecies possession limit permit under § 650.4(c), and that are fishing under the scallop DAS program described in § 650.24, may possess and land up to 300 lb (136.1 kg) of regulated species, unless otherwise restricted pursuant to § 651.27(a)(2). Vessels subject to this possession limit shall have at least one standard tote on board.

(2) Combination vessels, and scallop vessels not equipped with or fishing with dredge gear, fishing lawfully under a multispecies DAS are subject to the gear restrictions specified in § 651.20 and may possess and land unlimited amounts of regulated species. Such vessels may simultaneously fish under a scallop DAS.

(j) *State waters winter flounder exemption.* Any vessel issued a Federal limited access multispecies permit under this part may fish for, possess, or land winter flounder while fishing with nets of mesh smaller than the minimum size specified in paragraphs (a)(2), (c)(2), and (d)(2) of this section provided that:

* * * * *

(7) The vessel, when not fishing under the DAS program, does not fish for, possess, or land more than 500 lb (226.8 kg) of winter flounder and, when subject to this possession limit, has at least one standard tote on board;

* * * * *

7. In § 651.21, paragraphs (a)(2)(i), (b)(2)(i), (c)(2)(i), (d) and (e) introductory text are revised, and paragraphs (f), (g), and (h) are added to read as follows:

§ 651.21 Closed areas.

(a) * * *

(2) * * *

(i) Fishing with or using pot gear designed or used to take lobsters, or pot gear designed or used to take hagfish, and that have no other gear on board capable of catching multispecies finfish; and

* * * * *

(b) * * *

(2) * * *

(i) Fishing with or using pot gear designed or used to take lobsters, or pot gear designed and used to take hagfish, and that have no other gear on board capable of catching multispecies finfish;

* * * * *

(c) * * *

(2) * * *

(i) Fishing with or using pot gear designed and used to take lobsters, or pot gear designed and used to take hagfish, and that have no other gear on board capable of catching multispecies finfish;

* * * * *

(d) *Transiting.* Vessels may transit Closed Area I, the Nantucket Lightship Closed Area, the Northeast Closure Area, the Mid-coast Closure Area, and the Massachusetts Bay Closure Area, as defined in paragraphs (a)(1), (c)(1), (f)(1), (g)(1), and (h)(1), respectively, of this section, provided that their gear is stowed in accordance with the provisions of paragraph (e) of this section.

(e) *Gear stowage requirements.* Vessels transiting the closed areas must stow their gear as follows:

* * * * *

(f) *Northeast Closure Area.* (1) During the period August 15 through September 13, no fishing vessel or person on a fishing vessel may enter, fish, or be, and no fishing gear capable of catching multispecies finfish, unless otherwise allowed in this part may be, in the area known as the Northeast Closure Area (Figure 3 to part 651), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (f)(2) of this section:

Point	Latitude	Longitude
NE1	Maine shoreline	68°55.0′ W.
NE2	43°29.6′ N	68°55.0′ W.
NE3	44°04.4′ N	67°48.7′ W.
NE4	44°06.9′ N	67°52.8′ W.
NE5	44°31.2′ N	67°02.7′ W.
NE6	Maine shoreline	67°02.7′ W.

(2) *Exceptions.* Paragraph (f)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) That have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(ii) Fishing with or using exempted gear as defined under this part, excluding mid-water trawl gear, provided that there is no other gear on board capable of catching multispecies finfish. (iii) Classified as charter, party, or recreational.

(g) *Mid-coast Closure Area.* (1) During the period November 1 through December 31, no fishing vessel or person on a fishing vessel may enter, fish, or be, and no fishing gear capable of catching multispecies finfish unless otherwise allowed in this part may be, in the area known as the Mid-coast Closure Area (Figure 3 to part 651), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (g)(2) of this section:

Point	Latitude	Longitude
MC1	42°30′ N.	Massachusetts shoreline.
MC2	42°30′ N.	70°15′ W.
MC3	42°40′ N.	70°15′ W.
MC4	42°40′ N.	70°00′ W.
MC5	43°00′ N.	70°00′ W.
MC6	43°00′ N.	69°30′ W.
MC7	43°15′ N.	69°30′ W.
MC8	43°15′ N.	69°00′ W.
MC9	Maine shoreline	69°00′ W.

(2) *Exceptions.* Paragraph (g)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) That have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(ii) Fishing with or using exempted gear as defined under this part, excluding mid-water trawl gear, provided that there is no other gear on board capable of catching multispecies finfish. (iii) Classified as charter, party, or recreational.

(h) *Massachusetts Bay Closure Area.* (1) During the period March 1 through March 30, no fishing vessel or person on a fishing vessel may enter, fish, or be, and no fishing gear capable of catching multispecies finfish, unless otherwise allowed in this part may be, in the area known as the Massachusetts Bay Closure Area (Figure 3 to part 651), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (h)(2) of this section:

Point latitude	Longitude
MB1 42°30′ N.	Massachusetts shoreline.
MB2 42°30′ N.	70°30′ W.
MB3 42°12′ N.	70°30′ W.
MB4 42°12′ N.	70°00′ W.
MB5 Cape Cod shoreline.	70°00′ W.
MB6 42°00′ N.	Cape Cod shoreline.
MB7 42°00′ N.	Massachusetts shoreline.

(2) *Exceptions.* Paragraph (h)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) That have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

(ii) Fishing with or using exempted gear as defined under this part, excluding mid-water trawl gear, provided that there is no other gear on board capable of catching multispecies finfish.

(iii) Classified as charter, party, or recreational.

8. Section 651.22 is revised to read as follows:

§ 651.22 Effort-control program for limited access vessels.

(a) A vessel issued a limited access multispecies permit under § 651.4(b) may not fish for, possess or land regulated species except during a DAS as allocated under and in accordance with the applicable DAS program described below, unless otherwise provided in these regulations.

(b) *DAS program—Permit categories, allocations and initial assignments to categories.* For the remainder of the 1996 fishing year, all limited access multispecies permit holders shall be assigned to one of the following DAS permit categories according to the criteria specified. Permit holders may request a change in permit category for the remainder of the 1996 fishing year and all fishing years thereafter as specified in § 651.4(f)(3). Each fishing year shall begin on May 1 and extend through April 30 of the following year.

(1) *Individual DAS Category*—(i) *DAS allocation.* Vessels assigned to the Individual DAS category shall be allocated 65 percent of their initial 1994 allocation baseline determined by regulations implementing Amendment 5 to the FMP for the 1996 fishing year multiplied by the proration factor equal to 0.83 and 50 percent of the vessel's initial allocation baseline for the 1997 fishing year and beyond, as calculated under paragraph (d)(1) of this section.

(ii) *Initial assignment.* All vessels issued valid Individual DAS limited access multispecies permits, with the exception of vessels that have also been issued limited access multispecies Gillnet category permits, as of the effective date of the final rule for Amendment 7, shall be initially assigned to this category.

(2) *Fleet DAS Category*—(i) *DAS allocation.* Vessels assigned to the Fleet DAS category shall be allocated 139 DAS for the 1996 fishing year multiplied by the proration factor equal to 0.83 for a total of 115 DAS, and 88 DAS for the 1997 fishing year and beyond.

(ii) *Initial assignment.* As of the effective date of the final rule for Amendment 7, vessels issued valid permits in one of the following categories shall be initially assigned to this category: Fleet DAS permit holders; limited access multispecies Hook-Gear permit holders; limited access multispecies Gillnet permit holders; limited access multispecies 45 ft (13.7 m) category permit holders that are larger than 20 ft (6.1 m) in length as determined by the most recent permit application. determined by the most recent permit application.

(3) *Small vessel category*—(i) *DAS allocation.* Vessels qualified and electing to fish under the Small Vessel category may retain cod, haddock, and yellowtail flounder, combined up to 300 lb (136.1 kg) per trip without being subject to DAS restrictions. These vessels are not subject to a possession limit for the other multispecies finfish.

(ii) *Initial assignment.* All vessels issued a valid limited access multispecies permit and fishing under the small boat exemption (less than or equal to 45 ft (13.7 m)) permit as of the effective date of the final rule for Amendment 7, and that are 20 ft (6.1 m) or less in length as determined by the vessel's last application for a permit shall be initially assigned to this category. Other vessels may elect to change into this category as provided for in § 651.4(f)(3) if such vessel meets or complies with the following:

(A) The vessel is 30 ft (9.1 m) or less in length overall as determined by measuring along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern.

(B) Vessels for which construction was begun after May 1, 1994, must be constructed such that the quotient of the overall length divided by the beam will not be less than 2.5.

(C) Acceptable verification for vessels 20 ft (6.1 m) or less in length shall be U.S. Guard documentation or state registration papers. For vessels over 20 ft (6.1 m) in length, the measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the boat's construction plans, or by other means determined acceptable by the Regional Director. A copy of the verification must accompany an application for a Federal multispecies permit issued under § 651.4.

(D) Adjustments to the small-boat category requirements, including changes to the length requirement, if required to meet fishing mortality goals, may be made following a reappraisal and analysis under the framework provisions specified in subpart C.

(4) *Hook-Gear Category*—(i) *DAS allocation.* Vessels issued a valid limited access multispecies Hook-Gear permit shall be allocated 139 DAS multiplied by the proration factor equal to 0.83 for a total of 115 DAS for the 1996 fishing year and 88 DAS for the 1997 fishing year and beyond. A vessel fishing in this permit category under the DAS program must meet or comply with the following while fishing for, in possession of, or landing, regulated species:

(A) Vessels, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel.

(B) Vessels, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 4,500 rigged hooks. An unbaited hook and gangion that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 4,500 hook limit. A "snap-on" hook is deemed to be a replacement hook if it is not rigged or baited.

(ii) *Initial assignment.* No vessel shall be initially assigned to the Hook-Gear category. Any vessel that meets the qualifications specified in § 651.4(b)(1) may apply for and obtain a permit to fish under this category.

(5) *Combination Vessel Category*—(i) *DAS allocation.* Vessels assigned to the Combination Vessel category shall be allocated 65 percent of their initial 1994 allocation as determined by regulations implementing Amendment 5 to the FMP multiplied by the proration factor equal to 0.83 for the 1996 fishing year and 50 percent of the vessel's initial allocation baseline for the 1997 fishing year and beyond, as calculated under paragraph (d)(1) of this section.

(ii) *Initial assignment.* All vessels issued a valid limited access multispecies permit qualified to fish as a Combination Vessel as of the effective date of the final rule for Amendment 7 shall be assigned to this category.

(6) *Large Mesh Individual DAS Category*—(i) *DAS allocation.* Vessels fishing under the Large Mesh Individual DAS category shall be allocated a DAS increase that is equivalent to a 12 percent increase in DAS in year 1 and a 36 percent increase in DAS in year 2

beyond the DAS allocations specified in (b)(1)(i) of this section, which includes the proration factor for 1996. To be eligible to fish under the Large Mesh Individual DAS permit category a vessel while fishing under the DAS program, must fish with gillnet gear with a minimum mesh net of 7 inch (17.78 cm) diamond or trawl gear with a minimum mesh size of 8 inch (20.32 cm) diamond, for the entire fishing year, as described under § 651.20 (a)(2)(ii), (c)(2)(ii), and (d)(2)(ii).

(ii) *Initial assignment.* No vessel shall be initially assigned to the Large Mesh Individual DAS category. Any vessel that is initially assigned to the Individual DAS, Fleet DAS, or Small Vessel permit category may request and be granted a change in category into this category as specified in § 651.4(f)(3).

(7) *Large Mesh Fleet DAS Category*—(i) *DAS allocation.* Vessels fishing under the Large Mesh Fleet DAS category shall be allocated 155 DAS multiplied by the proration factor equal to 0.83 for the 1996 fishing year, and 120 DAS for the 1997 fishing year and beyond. To be eligible to fish under the Large Mesh Fleet DAS permit category a vessel must fish with gillnet gear with a minimum mesh net of 7 inch (17.78 cm) diamond or trawl gear with a minimum mesh size of 8 inch (20.32 cm) diamond, as described under § 651.20(a)(2)(ii), (c)(2)(ii), and (d)(2)(ii).

(ii) *Initial assignment.* No vessel shall be initially assigned to the Large Mesh Fleet DAS category. Any vessel that is initially assigned to the Individual DAS, Fleet DAS, or Small Vessel permit category may request and be granted a change in category into this category as specified in § 651.4(f)(3).

(c) *The 1996 DAS appeals.* (1) *Previously exempted vessels.* A vessel that was issued a valid 1995 limited access multispecies permit, and has been fishing under the Small boat exemption (less than or equal to 45 ft (13.7 m)), Hook-Gear or Gillnet permit categories, that elects to fish under the Individual DAS category, and has not previously been allocated Individual DAS, is eligible to appeal its allocation of DAS if it has not previously done so, as described under paragraph (d)(2) of this section. Each of these vessel's initial allocation of Individual DAS will be considered to be 176 for purposes of this appeal (that is, the Fleet DAS category baseline prior to the 1996–97 reductions).

(2) *Exempted gillnet vessels that held an Individual DAS permit.* A vessel that was issued a valid 1995 limited access multispecies permit and fishing under the Gillnet permit category and the Individual DAS permit category, that elects to fish under the Individual DAS category, is eligible to appeal its allocation of gillnet DAS, as described under paragraph (d)(2) of this section. Each of these vessels' initial allocation of Individual DAS will be considered to be 176 for purposes of this appeal (that is, the Fleet DAS category baseline prior to the 1996–97 reductions).

(d) *Individual DAS allocations*—(1) *Calculation of a vessel's Individual DAS.* The DAS assigned to a vessel for purposes of determining that vessel's annual allocation under the Individual DAS Program shall be calculated as follows:

(i) Calculate the total number of the vessel's multispecies DAS for the years 1988, 1989, and 1990. Multispecies DAS are deemed to be the total number of days the vessel was absent from port for a trip where greater than 10 percent of the vessel's total landings were comprised of regulated species, minus any days for such trips in which a scallop dredge was used.

(ii) Exclude the year of least multispecies DAS.

(iii) If 2 years of multispecies DAS are remaining, average those years' DAS, or, if only 1 year remains, use that year's DAS.

(2) *Appeal of DAS allocation*—(i) Initial allocations of Individual DAS to those vessels authorized to appeal under paragraph (c) of this section may be appealed to the Regional Director if a request to appeal is received by the Regional Director no later than August 31, 1996, or 30 days after the initial allocation is made, whichever is later. Any such appeal must be in writing and be based on one or more of the following grounds:

(A) The information used by the Regional Director was based on mistaken or incorrect data;

(B) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria; or

(C) The applicant has new or additional information.

(ii) The Regional Director will appoint a designee who will make an initial decision on the written appeal.

(iii) If the applicant is not satisfied with the initial decision, the applicant may request that the appeal be presented at a hearing before an officer appointed by the Regional Director.

(iv) The hearing officer shall present his/her findings to the Regional Director and the Regional Director will make a decision on the appeal. The Regional Director's decision on this appeal is the final administrative decision of the Department of Commerce.

(3) *Status of vessels pending appeal of DAS allocations.* Vessels, while their Individual DAS allocation is under appeal, may fish under the Fleet DAS category until the Regional Director has made a final determination on the appeal. Any DAS spent fishing for regulated species by a vessel while that vessel's initial DAS allocation is under appeal, shall be counted against any DAS allocation that the vessel may ultimately receive.

(e) *Accrual of DAS.* DAS shall accrue in hourly increments, with all partial hours counted as full hours.

(f) *Good Samaritan credit.* Limited access vessels fishing under the DAS program and that spend time at sea for one of the following reasons, and that can document the occurrence through the U.S. Coast Guard, will be credited for the time documented:

(1) Time spent assisting in a U.S. Coast Guard search and rescue operation; or

(2) Time spent assisting the U.S. Coast Guard in towing a disabled vessel.

(g) *Spawning season restrictions.* Vessels issued a valid Small Vessel category permit under paragraph (b)(3) of this section may not fish for, possess, or land regulated species between March 1 and March 20 of each year. All other vessels issued limited access permits must declare out and be out of the regulated multispecies finfish fishery for a 20-day period between March 1 and May 31 of each calendar year using the notification requirements specified under § 651.29. If a vessel owner has not declared, or taken, the period of time required between March 1 and May 31 of each fishing year on or before May 12 of each such year, the vessel is prohibited from fishing for, possessing or landing any regulated species during the period May 12 through May 31, inclusive. If a vessel has taken a spawning season 20-day block out of the multispecies fishery during May, 1996, it shall not be required to take a 20-day block out of the multispecies fishery in 1997. Beginning January 1, 1998, any such vessel must comply with the spawning season restriction as specified in this part.

(h) *Declaring DAS and 20-day blocks.* A vessel's owner or authorized representative shall notify the Regional Director of a vessel's participation in the DAS program and declaration of its 20-day spawning period out of the multispecies fishery using the notification requirements specified under § 651.29.

(i) *Adjustments in annual DAS allocations.* Adjustments in annual DAS allocations, if required to meet fishing mortality goals, may be made following a reappraisal and analysis as specified in subpart C.

9. In § 651.23, paragraph (a) introductory text, and paragraphs (d), and (e) are revised to read as follows:

§ 651.23 Minimum fish size.

(a) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a multispecies DAS are specified in § 651.34. All other vessels are subject to minimum fish sizes (total length) as follows:

* * * * *

(d) *Exception.* Each person aboard a vessel issued a limited access permit and fishing under the DAS program may possess up to 25 lb (11.3 kg) of fillets that measure less than the minimum size, if such fillets are from legal-sized fish and are not offered or intended for sale, trade, or barter.

(e) *Adjustments of minimum size.* (1) At anytime when information is available, the Council will review the best available mesh selectivity information to determine the appropriate minimum size for the species listed in paragraph (a) of this section, except winter flounder, according to the length at which 25 percent of the regulated species would be retained by the applicable minimum mesh size.

(2) Upon determination of the appropriate minimum sizes, the Council shall propose the minimum fish sizes to be implemented following the procedures specified in subpart C.

(3) Additional adjustments or changes to the minimum fish sizes specified in paragraphs (a) and (b) of this section, and exemptions as specified in paragraphs (a) and (b) of this section, and exemptions as specified in paragraph (c) of this section, may be made at any time after implementation of the final rule as specified under subpart C.

10. Section 651.27 is revised to read as follows:

§ 651.27 Additional haddock possession restrictions.

(a) *Haddock*—(1) *Multispecies DAS vessels.* A vessel issued a limited access multispecies permit under this part that is fishing under a multispecies DAS may land, or possess on board, up to 1000 lb (453.6 kg) of haddock. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. Vessels subject to this possession limit shall have on board the vessel at least one standard tote.

(2) *Scallop dredge vessels*—(i) No person owning or operating a scallop dredge vessel issued a permit under this part may land haddock from, or possess haddock on board, a scallop dredge vessel, from January 1 through June 30.

(ii) No person owning or operating a scallop dredge vessel without a permit under this part may possess haddock in, or harvested from, the EEZ, from January 1 through June 30.

(iii) From July 1 through December 31, no scallop dredge vessel or persons owning or operating a scallop dredge vessel, that is fishing under the scallop DAS program as described in § 651.20(i), may land, or possess on board, more than 300 lb (136.1 kg) of haddock. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. Vessels subject to this possession limit shall have on board the vessel at least one standard tote.

(b) Vessels are subject to any other applicable possession limit restrictions of this part.

11. In § 651.28, paragraph (c) is removed, the heading and the first sentence of paragraph (a), and paragraph (b) are revised to read as follows:

§ 651.28 Monitoring requirements.

(a) *Individual DAS limited access multispecies vessels.* Unless otherwise authorized or required by the Regional Director under § 651.29(b), vessel owners fishing under the Individual DAS program and Combination Vessels must have installed on board an operational VTS unit that meets the minimum performance criteria specified in paragraph (a)(2) of this section, or as modified annually as specified in paragraph (a)(1) of this section. * * *

(b) *Fleet DAS and other limited access multispecies vessels.* Vessels issued limited access multispecies permits who are participating in a DAS program and who are not required to provide notification using a VTS shall be subject to the call-in requirements specified in § 651.29(b).

12. Section 651.29 is revised to read as follows:

§ 651.29 DAS notification program.

(a) *VTS notification.* Unless otherwise authorized by the Regional Director as specified in paragraph (c) of this section, owners of vessels issued limited access multispecies permits that have elected to or are required to use a VTS system shall be subject to the following requirements:

(1) Vessels that are issued limited access multispecies permits, that have crossed the demarcation line specified under paragraph (d) of this section, are deemed to be fishing under the DAS program unless the vessel's owner or authorized representative declares the vessel out of the multispecies fishery, by notifying the Regional Director through the VTS. The owner or authorized representative of any vessel that has been declared out of the multispecies fishery must notify the Regional Director through the VTS prior to leaving port on the vessel's next trip under the DAS program.

(2) If the VTS is not available, or not functional, and if authorized by the Regional Director, a vessel owner must comply with the call-in notification requirements specified in paragraph (b) of this section.

(3) Notification that the vessel is not under the DAS program must be received prior to the vessel leaving port. A change in status of a vessel cannot be made after the vessel leaves port or before it returns to port on any fishing trip.

(b) *Call-in notification.* Vessel owners authorized or required to provide notification using the call-in system shall be subject to the following requirements:

(1) The vessel owner or authorized representative shall notify the Regional Director, prior to leaving port, that the vessel will be participating in the applicable DAS program by calling 1–800–260–8204 or 508–281–9335, and providing the following information: Vessel name and permit number, owner and caller name and phone number, the type of trip to be taken, the port of departure, and that the vessel is beginning a trip.

(2) A multispecies DAS begins once the call has been received and confirmation given by the Regional Director.

(3) The vessel's confirmation numbers for the current and immediately prior multispecies fishing trip must be maintained on board the vessel and provided to an authorized officer upon request.

(4) Upon returning to port, at the end of a fishing trip as defined in paragraph (d) of this section, the vessel owner or owner's representative shall notify the Regional Director that the trip has ended by calling 1–800–260–8204 or 508–281–9335, and providing the following information: Vessel name and permit number, owner and caller name and telephone number, port landed, confirmation number, and that the fishing trip has ended.

(5) A DAS ends when the call has been received and confirmation given by the Regional Director.

(6) Any vessel issued a limited access multispecies permit subject to the DAS program and call-in requirement, that possess or lands regulated species, except as provided in § 651.34, shall be deemed in the DAS program for purposes of counting DAS, regardless of whether or not the vessel's owner or authorized representative provided adequate notification as required by this part.

(7) Any change in status of a vessel cannot be done after leaving port on any fishing trip.

(c) *Temporary authorization for use of the call-in system.* The Regional Director may authorize or require, on a temporary basis, the use of an alternative call-in system of notification. If the call-in system is authorized or required, the Regional Director shall notify affected permit holders through a letter, notification in the **Federal Register**, or other appropriate means. Vessel owners authorized or required by the Regional Director to provide notification by a call-in system under this paragraph shall be subject to the requirements specified in paragraph (b) of this section.

(d) *Counting of DAS for vessels fishing under the VTS system.* (1) DAS for vessels that are under the VTS monitoring system described in § 651.29(a) are counted beginning with the first hourly location signal received showing that the vessel crossed the Vessel Tracking System Demarcation Line leaving port. A trip concludes and accrual of DAS ends with the first hourly location signal received showing that the vessel crossed the Vessel Tracking System Demarcation Line upon its return to port.

(2) *Vessel Tracking System Demarcation Line.* The VTS Demarcation Line is defined as straight lines connecting the following points in the order stated (see Figures 6 and 7 to part 651):

VESSEL TRACKING SYSTEM DEMARCATION LINE

Description	Longitude	Latitude
1. Northern terminus point (Canada land mass)	45°03′ N.	66°47′ W.
2. A point east of West Quoddy Head Light	44°48.9′ N.	66°56.1′ W.
3. A point east of Little River Light	44°39.0′ N.	67°10.5′ W.
4. Whistle Buoy "8BI" (SSE of Baker Island)	44°13.6′ N.	68°10.8′ W.
5. Isle au Haut Light	44°03.9′ N.	68°39.1′ W.
6. Pemaquid Point Light	43°50.2′ N.	69°30.4′ W.
7. A point west of Halfway Rock	43°38.0′ N.	70°05.0′ W.
8. A point east of Cape Neddick Light	43°09.9′ N.	70°34.5′ W.
9. Merrimack River Entrance "MR" Whistle Buoy	42°48.6′ N.	70°47.1′ W.
10. Halibut Point Gong Buoy "1AHP"	42°42.0′ N.	70°37.5′ W.
11. Connecting reference point	42°40′ N.	70°30′ W.
12. Whistle Buoy "2" off Eastern Point	42°34.3′ N.	70°39.8′ W.
13. The Graves Light (Boston)	42°21.9′ N.	70°52.2′ W.
14. Minots Ledge Light	42°16.2′ N.	70°45.6′ W.
15. Farnham Rock Lighted Bell Buoy	42°05.6′ N.	70°36.5′ W.
16. Cape Cod Canal Bell Buoy "CC"	41°48.9′ N.	70°27.7′ W.
17. A point inside Cape Cod Bay	41°48.9′ N.	70°05′ W.
18. Race Point Lighted Bell Buoy "RP"	42°04.9′ N.	70°16.8′ W.
19. Peaked Hill Bar Whistle Buoy "2PH"	42°07.0′ N.	70°06.2′ W.
20. Connecting point, off Nauset Light	41°50′ N.	69°53′ W.
21. A point south of Chatham "C" Whistle Buoy	41°38′ N.	69°55.2′ W.
22. A point in eastern Vineyard Sound	41°30′ N.	70°33′ W.
23. A point east of Martha's Vineyard	41°22.2′ N.	70°24.6′ W.
24. A point east of Great Pt. Light, Nantucket	41°23.4′ N.	69°57′ W.
25. A point SE of Sankaty Head, Nantucket	41°13′ N.	69°57′ W.
26. A point west of Nantucket	41°15.6′ N.	70°25.2′ W.
27. Squibnocket Lighted Bell Buoy "1"	41°15.7′ N.	70°46.3′ W.
28. Wilbur Point (on Sconticut Neck)	41°35.2′ N.	70°51.2′ W.
29. Mishaum Point (on Smith Neck)	41°31.0′ N.	70°57.2′ W.
30. Sakonnet Entrance Lighted Whistle Buoy "SR"	41°25.7′ N.	71°13.4′ W.
31. Point Judith Lighted Whistle Buoy "2"	41°19.3′ N.	71°28.6′ W.
32. A point off Block Island Southeast Light	41°08.2′ N	71°32.1′ W.
33. Shinnecock Inlet Lighted Whistle Buoy "SH"	40°49.0′ N.	72°28.6′ W.
34. Scotland Horn Buoy "S", off Sandy Hook (NJ)	40°26.5′ N.	73°55.0′ W.
35. Barnegat Lighted Gong Buoy "2"	39°45.5′ N.	73°59.5′ W.
36. A point east of Atlantic City Light	39°21.9′ N.	74°22.7′ W.
37. A point east of Hereford Inlet Light	39°00.4′ N.	74°46′ W.
38. A point east of Cape Henlopen Light	38°47′ N.	75°04′ W.
39. A point east of Fenwick Island Light	38°27.1′ N.	75°02′ W.
40. A point NE of Assateague Island (VA)	38°00′ N.	75°13′ W.
41. Wachapreague Inlet Lighted Whistle Buoy "A"	37°35.0′ N.	75°33.7′ W.
42. A point NE of Cape Henry	36°55.6′ N.	75°58.5′ W.
43. A point east of Currituck Beach Light	36°22.6′ N.	75°48′ W.
44. Oregon Inlet (NC) Whistle Buoy	35°48.5′ N.	75°30′ W.
45. Wimble Shoals, east of Chicamacomico	35°36′ N.	75°26′ W.
46. A point SE of Cape Hatteras Light	35°12.5′ N.	75°30′ W.
47. Hatteras Inlet Entrance Buoy "HI"	35°10′ N.	75°46′ W.
48. Ocracoke Inlet Whistle Buoy "OC"	35°01.5′ N.	76°00.5′ W.
49. A point east of Cape Lookout Light	34°36.5′ N.	76°30′ W.
50. Southern terminus point	34°45′ N.	76°41′ W.

(e) *Call-in for 20 day blocks.* With the exception of vessels issued a valid Small Vessel category permit, vessels subject to the spawning season restriction described in § 651.22 must notify the Regional Director of the commencement date of their 20-day period out of the multispecies fishery through either the VTS system or by calling 1–800–260–8204 or 508–281–9335 and providing the following information: Vessel name and permit number, owner and caller name and phone number, and the commencement date of the 20 day period.

13. In § 651.31, paragraph (d) is added to read as follows:

§ 651.31 At-sea observer coverage.

* * * * *

(d) *Industry funded observer coverage.* NMFS may accept observer coverage funded by sources outside the U.S. Government provided the following requirements are met:

(1) All coverage conducted by such observers is determined by NMFS to be in compliance with NMFS' observer guidelines and procedures.

(2) The owner or operator of the vessel complies with all other provisions of this part.

(3) The observer is approved by the Regional Director.

14. Section 651.32 is revised to read as follows:

§ 651.32 Sink gillnet requirements to reduce harbor porpoise takes.

(a) *Areas closed to sink gillnets.* (1) *Harbor porpoise take restrictions.* The closed area restrictions prohibiting sink gillnets in the areas and times specified in § 651.21(f) through (h) are implemented in order to reduce the takes of harbor porpoise consistent with the harbor porpoise mortality reduction goals.

(2) *Additional harbor porpoise area closures.* All persons owning or operating vessels must remove all of their sink gillnet gear from, and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with § 651.21(e)(4), a sink gillnet in the EEZ portion of the areas and for the times specified in paragraphs (a)(2)(i) and (ii) of this section; and, all persons owning or operating vessels issued a Federal multispecies limited access permit must remove all of their sink gillnet gear from, and may not use, set, haul back, fish with, or possess on board a vessel, unless stowed in accordance with § 651.21(e)(4), a sink gillnet in the areas, and for the times specified, in paragraphs (a)(2)(i) and (ii) of this section.

(i) *Mid-coast Closure Area.* During the period March 25 through April 25 of each fishing year, the restrictions and requirements specified under paragraph (a)(2) of this section shall apply to the Mid-coast Closure Area, as defined under § 651.21(g)(1).

(ii) *Cape Cod South Area Closure.* During the period March 1 through March 30 of each fishing year, the restrictions and requirements specified under paragraph (a)(2) of this section shall apply to an area known as the Cape Cod South Area Closure which is an area bounded by straight lines connecting the following points in the order stated (see Figure 9 of this part).

CAPE COD SOUTH CLOSURE AREA

Point	Latitude	Longitude
CCS1	RI shoreline	71°45′ W.
CCS2	40°40′ N.	71°45′ W.
CCS3	40°40′ N.	70°30′ W.
CCS4	MA shoreline	70°30′ W.

(b) *Framework adjustment.* (1) At least annually the Regional Director will provide the Council with the best available information on the status of Gulf of Maine harbor porpoise including estimates of abundance and estimates of bycatch in the sink gillnet fishery. Within 60 days of receipt of that information, the Council's Harbor Porpoise Review Team shall complete a review of the data, assess the adequacy of existing regulations, evaluate the impacts of other measures that reduce harbor porpoise take and, if necessary, recommend additional measures in light of the Council's harbor porpoise mortality reduction goals. In addition, the HPRT shall make a determination on whether other conservation issues exist that require a management response to meet the goals and objectives outlined in the FMP. The HPRT shall report its findings and recommendations to the Council.

(2) After receiving and reviewing the HPRT's findings and recommendations, the Council shall determine whether adjustments or additional management measures are necessary to meet the goals and objectives of the FMP. If the Council determines that adjustments or additional management measures are necessary, or at any other time in consultation with the HPRT, it shall develop and analyze appropriate management actions over the span of at least two Council meetings.

(3) The Council may request at any time that the HPRT review and make recommendations on any harbor porpoise take reduction measures or develop additional take reduction proposals.

(4) The Council shall provide the public with advance notice of the availability of the proposals, appropriate rationale, economic and biological analyses, and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must come from one or more of the categories specified under § 651.40(b)(1).

(5) If the Council recommends that the management measures should be published as a final rule, the Council must consider at least the factors specified in § 651.40(b)(2).

(6) The Regional Director may accept, reject, or with Council approval, modify the Council's recommendation, including the Council's recommendation to publish a final rule, as specified under § 651.40(b)(3).

14. Section 651.33 is revised to read as follows:

§ 651.33 Open access permit restrictions.

(a) *Handgear permit.* A vessel issued a valid open access Handgear permit issued under § 651.4(c) is subject to the following restrictions:

(1) The vessel may possess and land up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, per trip, and unlimited amounts of the other multispecies finfish provided that it does not use, or possess on board, gear other than rod and reel or handlines while in possession of, fishing for, or landing multispecies finfish. Vessels subject to this possession limit shall have at least one standard tote on board.

(2) A vessel may not fish for, possess, or land regulated species between March 1 and March 20 of each year.

(b) *Charter/party permit.* A vessel that has been issued a valid open access Charter/party permit under § 651.4(c), and has declared into the charter/party fishery, is subject to the restrictions on gear, recreational minimum fish sizes and prohibitions on sale specified in § 651.34, and any other applicable provisions of this part.

(c) *Scallop Multispecies Possession Limit Permit.* A vessel that has been issued a valid open access Scallop Multispecies Possession Limit permit under § 651.4(c) may possess and land up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS as described under § 651.20(i), provided the vessel does not fish for, possess or land haddock during January 1 through June 30 as specified under § 651.27(a)(2)(i). Vessels subject to this possession limit shall have at least one standard tote on board.

15. Section 651.34 is added to subpart B to read as follows:

§ 651.34 Recreational and charter/party vessel restrictions.

(a) *Recreational gear restrictions.* Persons aboard charter or party vessels permitted under this part and not fishing under the DAS program, and recreational fishing vessels in the EEZ, are prohibited from fishing with more than two hooks per line and one line per angler and must stow all other fishing gear on board the vessel as specified under §§ 651.20(c)(4) and 651.21(e)(2), 651.21(e)(3) and 651.21(e)(4).

(b) *Recreational minimum fish sizes.* (1) Persons aboard charter or party vessels permitted under this part and not fishing under the DAS program, and recreational fishing vessels in the EEZ, are subject to minimum fish sizes (total length) as follows:

RECREATIONAL

Species	Inches	
	1996	1997+
Cod	20(50.8 cm)	21 (53.3 cm)
Haddock	20 (50.8 cm)	21 (53.3 cm)
Pollock	19 (48.3 cm)	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)	14 (35.6 cm)
Winter flounder (blackback)	12 (30.5 cm)	12 (30.5 cm)
Redfish	9 (22.9 cm)	9 (22.9 cm)

(2) *Exception.* Persons aboard charter or party vessels permitted under this part and not fishing under the DAS program, and recreational fishing vessels in the EEZ, may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(c) *Possession restrictions.* Each person on a recreational vessel may not possess more than 10 cod and/or haddock, combined, in or harvested from the EEZ:

(1) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing fillet number by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(2) Cod and haddock harvested by recreational vessels with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of fish on board by the number of persons aboard. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

(3) Cod and haddock must be stored, so as to be readily available for inspection.

(d) *Restrictions on sale.* It is unlawful to sell, barter, trade, or otherwise transfer for a commercial purpose, or to attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, multispecies finfish caught or landed by charter or party vessels permitted under this part not fishing under a DAS or a recreational fishing vessels fishing in the EEZ.

16. Section 651.40 is revised to read as follows:

§ 651.40 Framework Specifications.

(a) *Annual review.* The Multispecies Monitoring Committee (MSMC) shall meet on or before November 15 of each year to develop target TACs for the upcoming fishing year and options for Council consideration on any changes, adjustment or additions to DAS allocations, closed areas or other measures necessary to achieve the FMP goals and objectives.

(1) The MSMC must review available data pertaining to the following:

(i) Catch and landings.

(ii) DAS and other measures of fishing effort.

(iii) Survey results.

(iv) Stock status.

(v) Current estimates of fishing mortality.

(vi) Any other relevant information.

(2) Based on this review, the MSMC shall recommend target TACs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The MSMC must demonstrate through analysis and documentation that the options it develops are expected to meet the FMP goals and objectives. The MSMC may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the MSMC may include any of the management measures in the FMP including, but not limited to:

(i) The annual target TACs which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the 10 regulated species.

(ii) DAS changes.

(iii) Possession limits.

(iv) Gear restrictions.

(v) Closed areas.

(vi) Permitting restrictions.

(vii) Minimum fish sizes.

(viii) Recreational fishing measures.

(ix) Any other management measures currently included in the FMP.

(3) The Council shall review the recommended target TACs and all of the options developed by the MSMC, other relevant information, consider public comment, and develop a recommendation to meet the FMP objective that is consistent with other applicable law. If the Council does not submit a recommendation that meets the FMP objectives and is consistent with other applicable law, the Regional Director may adopt any option developed by the MSMC, unless rejected by the Council, as specified in (a)(6) of this section, provided that the option meets the FMP objective and is consistent with other applicable law.

(4) Based on this review, the Council shall submit a recommendation to the Regional Director of any changes, adjustments or additions to DAS allocations, closed areas or other measures necessary to achieve the FMP's goals and objectives. Included in the Council's recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Council.

(5) If the Council submits, on or before January 7, a recommendation to the Regional Director after one Council meeting, and the Regional Director concurs with the recommendation, the Regional Director shall publish the Council's recommendation in the **Federal Register** as a proposed rule. The **Federal Register** notification of proposed action will provide for a 30-day public comment period. The Council may instead submit its recommendation on or before February 1 if it chooses to follow the framework process outlined in paragraph (b) of this section and requests that the Regional Director publish the recommendation as a final rule. If the Regional Director concurs that the Council's recommendation meets the FMP objectives and is consistent with other applicable law and determines that the recommended management measures be published as a final rule, the action will be published as a final rule in the **Federal Register**. If the Regional Director concurs that the recommendation meets the FMP objectives and is consistent with other applicable law and determines that a proposed rule is warranted, and as a result the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue. However, DAS used by a vessel on or after May 1 will be counted against any DAS allocation the vessel ultimately receives for that year.

(6) If the Regional Director concurs in the Council's recommendation, a final rule shall be published in the **Federal Register** on or about April 1 of each year, with the exception noted in paragraph (a)(5) of this section. If the Council fails to submit a recommendation to the Regional Director by February 1 that meets the FMP goals and objectives, the Regional Director may publish as a proposed rule one of the options reviewed and not rejected by the Council, provided that the option meets the FMP objective and is consistent with other applicable law. If, after considering public comment, the Regional Director decides to approve the option published as a proposed rule, the action will be published as a final rule in the **Federal Register**.

(b) *Within season management action.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the FMP.

(1) *Adjustment process.* After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analysis, and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must come from one or more of the following categories:

(i) DAS changes.

(ii) Effort monitoring.

(iii) Data reporting.

(iv) Possession limits.

(v) Gear restrictions.

(vi) Closed areas.

(vii) Permitting restrictions.

(viii) Crew limits.

(ix) Minimum fish sizes.

(x) Onboard observers.

(xi) Minimum hook size and hook style.

(xii) The use of crucifiers in the hook fishery.

(xiii) Fleet sector shares.

(xiv) Recreational fishing measures.

(xv) Area closures and other appropriate measures to mitigate marine mammal entanglements and interactions.

(xvi) Any other management measures currently included in the FMP.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Director. The Council's recommendation must include supporting rationale, and, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Director on whether to publish the management measures as a final rule. If the Council recommends that the management measures should be published as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *Regional Director action.* If the Council's recommendation includes adjustments or additions to management measures, and if after reviewing the Council's recommendation and supporting information:

(i) The Regional Director concurs with the Council's recommended management measures and determines that the recommended management measures may be published as a final rule based on the factors specified in paragraph (b)(2) of this section, the action will be published in the **Federal Register** as a final rule; or

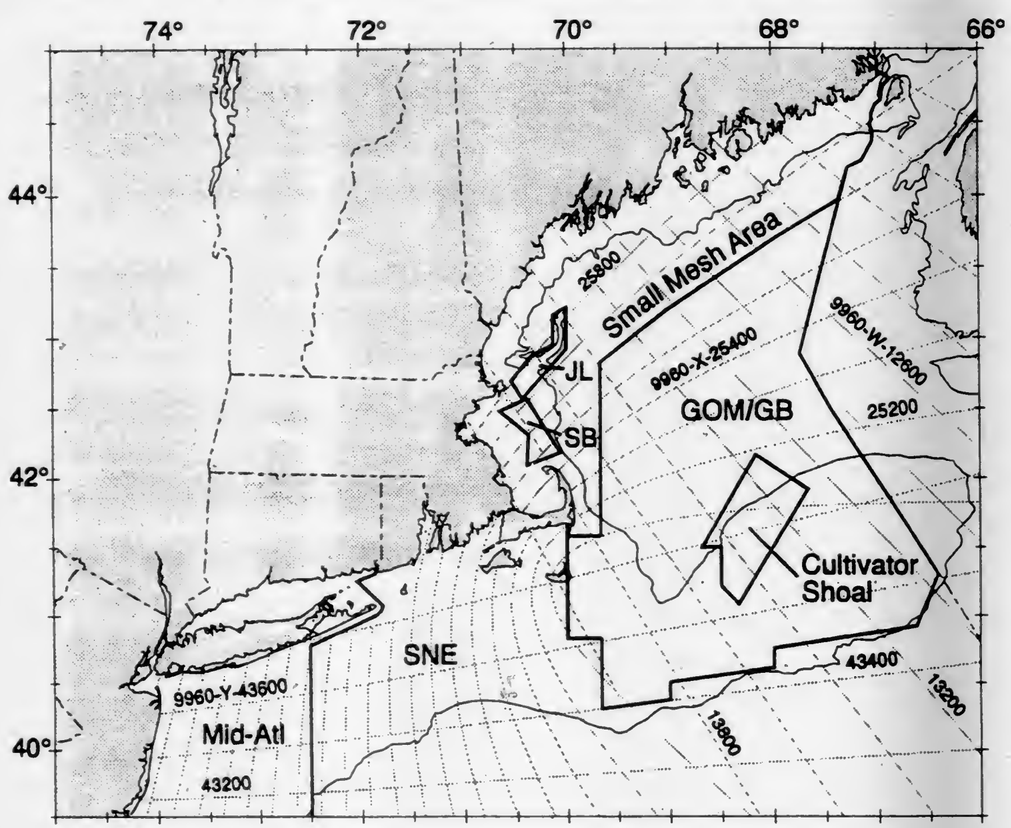
(ii) The Regional Director concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Director concurs with the Council recommendation, the action will be published as a final rule in the **Federal Register**; or

(iii) The Regional Director does not concur, the Council will be notified, in writing, of the reasons for the non-concurrence.

(c) Nothing in this section is meant to derogate from the authority of the Secretary of Commerce to take emergency action under section 305(e) of the Magnuson Act.

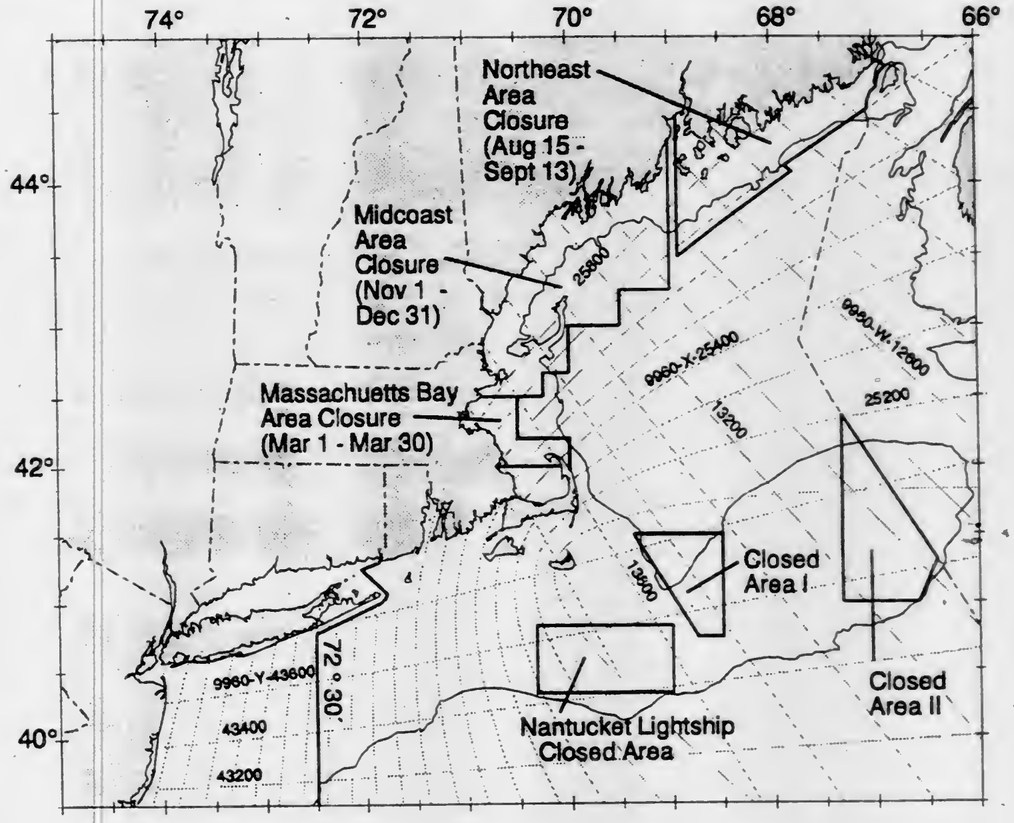
17. Figure 5 to part 651 is removed and reserved, and Figures 1, 3, and 4 to part 651 are revised to read as follows:

BILLING CODE 3510-22-W



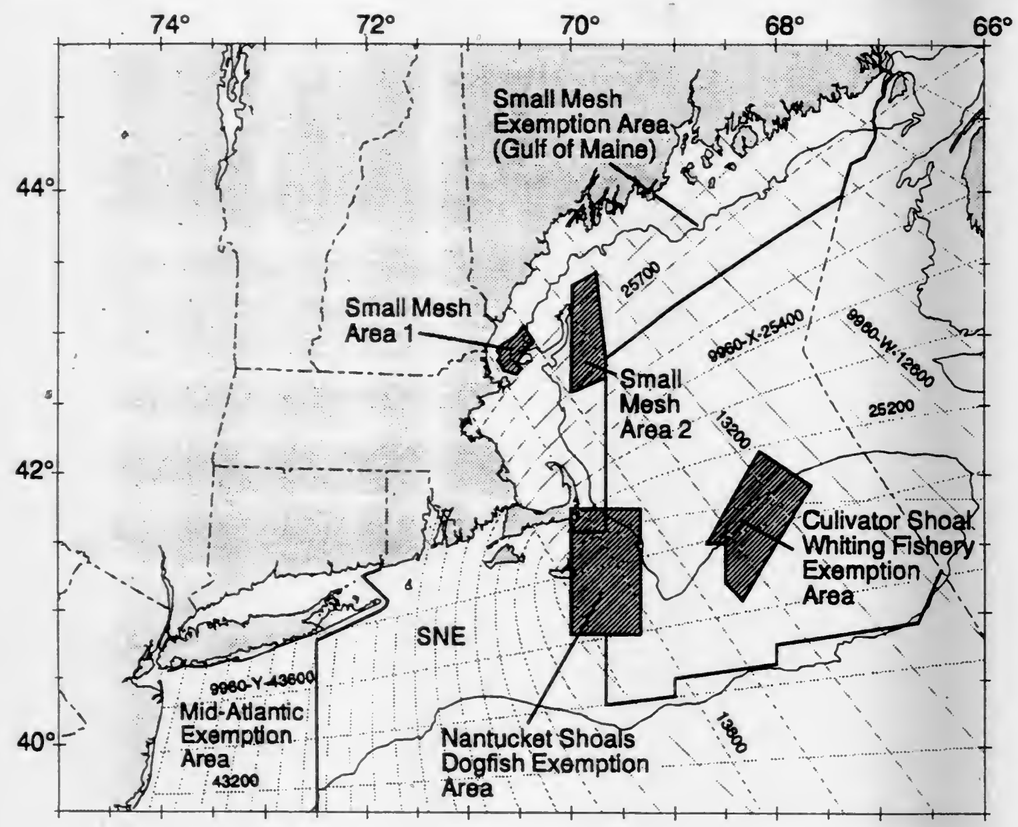
Regulated Mesh Area

Figure 1 to Part 651—Regulated Mesh Area



Closed Areas

Figure 3 to Part 651—Closed Areas



Exemption Areas

Figure 4 to Part 651—Exemption Areas

[FR Doc. 96–13707 Filed 5–30–96; 8:45 am]
BILLING CODE 3510–22–W

federal register

Friday
May 31, 1996

Part IV

Department of Agriculture

Cooperative State Research, Education, and Extension Service

7 CFR Part 3401

Rangeland Research Grants Program: Administrative Provisions; Final Rule

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3401

Rangeland Research Grants Program; Administrative Provisions

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Final rule; amendment.

SUMMARY: This final rule amends the Cooperative State Research, Education, and Extension Service (CSREES) regulations relating to the administration of the Rangeland Research Grants Program, which prescribe the procedures to be followed annually in the solicitation of rangeland research grant proposals, the evaluation of such proposals, and the award of rangeland research grants under this program. This rule implements the requirements of the National Environmental Policy Act as outlined in § 3401.6(c)(16), revises the objectives of the program as stated in § 3401.17(a), changes the agency name to reflect the Departmental Reorganization, and makes a few additional minor changes. CSREES is publishing these regulations in their entirety to enhance their use by the public and to ensure expeditious submission and processing of grant proposals.

EFFECTIVE DATE: May 31, 1996.

FOR FURTHER INFORMATION CONTACT: Louise Ebaugh, Director, Office of Extramural Programs, Competitive Research Grants and Awards Management, Cooperative State Research, Education, and Extension Service, United States Department of Agriculture, Ag Box 2245, Washington, DC 20250–2245. (Telephone (202) 401–5024).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

The Office of Management and Budget has previously approved the information collection requirements contained in the current regulations at 7 CFR Part 3401 under the provisions of 44 U.S.C. Chapter 35 and OMB Document No. 0524–0022 has been assigned. Public reporting burden for the information collections contained in these regulations is estimated to vary from ½ hour to 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB Document No. 0524–0022), Washington, D.C. 20503.

Classification

This rule has been reviewed under Executive Order 12866, and it has been determined that it is not a "significant regulatory action" rule because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule will not create any serious inconsistencies or otherwise interfere with any actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees or loan programs and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order No. 12866.

Executive Order No. 12778

The following information is given in compliance with Executive Order No. 12778. All State and local laws and regulations that are in conflict with this rule are preempted. No retroactive effect is to be given to this rule. This rule does not require administrative proceedings before parties may file suit in court.

Executive Order No. 12612

This rule has been reviewed under Executive Order No. 12612 pertaining to Federalism. While this rule will affect institutions of higher education and other nonprofit organizations, it will do so only to the extent of requiring that applicants and grantees comply with existing laws, regulations, public policies, and the dictates of good management to ensure the safeguarding of public funds. For this reason, CSREES has determined that this rule will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Department certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. No. 96–534 (5 U.S.C. 601 *et seq*).

Regulatory Analysis

Not required for this rulemaking.

Environmental Impact Statement

This regulation does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969, as amended. (42 U.S.C. 4321 *et seq.*)

Catalog of Federal Domestic Assistance

The Rangeland Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the Final Rule-related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background and Purpose

Under the authority of section 1480 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended, the Secretary of Agriculture is authorized to make grants to land-grant colleges and universities, State agricultural experiment stations, and colleges, universities, and Federal laboratories having a demonstrable capacity in rangeland research, as determined by the Secretary, to carry out rangeland research. 7 CFR 2.107(a)(21) delegates this authority to the Administrator of CSREES. On April 23, 1993, the Rangeland Research Program regulations, 7 CFR Part 3401, were formally set out and published in the **Federal Register**. CSREES now amends the administrative regulations governing the Rangeland Research Grant Program authorized by section 1480 in order to implement the requirements of the National Environmental Policy Act in § 3401.6(c)(16), revise the program objectives in § 3401.17, change the Agency name from the Cooperative State Research Service to the Cooperative State Research, Education, and Extension Service, and make a few minor changes.

On October 27, 1995, the Department published a Notice in the **Federal Register** (60 FR 55160–55167) proposing the amendment of this rule and inviting comments from interested individuals and organizations. Written comments were requested by November 27, 1995. No comments were received.

List of Subjects in 7 CFR Part 3401

Grant programs—agriculture, Grants administration.

For the reasons set out in the preamble, Title 7, Subtitle B, Chapter XXXIV, Part 3401 of the Code of Federal Regulations, is revised to read as follows:

CHAPTER XXXIV—COOPERATIVE STATE RESEARCH, EDUCATION, AND EXTENSION SERVICE, DEPARTMENT OF AGRICULTURE

PART 3401—RANGELAND RESEARCH GRANTS PROGRAM

Subpart A—General

Sec.
3401.1 Applicability of regulations of this part.
3401.2 Definitions.
3401.3 Eligibility requirements.
3401.4 Matching funds requirement.
3401.5 Indirect costs and tuition remission costs.
3401.6 How to apply for a grant.
3401.7 Evaluation and disposition of applications.
3401.8 Grant awards.
3401.9 Use of funds; changes.
3401.10 Other Federal statutes and regulations that apply.
3401.11 Other conditions.

Subpart B—Scientific Peer Review of Research Applications for Funding

3401.12 Establishment and operation of peer review groups.
3401.13 Composition of peer review groups.
3401.14 Conflicts of interest.
3401.15 Availability of information.
3401.16 Proposal review.
3401.17 Review criteria.

Authority: Section 1470 of the National Agricultural Research, Extension and Teaching Policy Act of 1977 (7 U.S.C. 3316).

Subpart A—General

§ 3401.1 Applicability of regulations of this part.

(a) The regulations of this Part apply to rangeland research grants awarded under the authority of section 1480 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3333) to land-grant colleges and universities, State agricultural experiment stations, and colleges, universities, and Federal laboratories having a demonstrable capacity in rangeland research, as determined by the Secretary, to carry out rangeland research. The Administrator of the Cooperative State Research, Education, and Extension Service (CSREES) shall determine and announce, through publication each year of a Notice in the **Federal Register**, professional trade journals, agency or program handbooks, the catalog of Federal Domestic Assistance or any other appropriate means, research program areas for which proposals will be solicited, to the extent that funds are available.

(b) The regulations of this Part do not apply to research grants awarded by the Department of Agriculture under any other authority.

§ 3401.2 Definitions.

As used in this part:

(a) Administrator means the Administrator of CSREES and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

(b) Department means the Department of Agriculture.

(c) Principal investigator means a single individual designated by the grantee in the application for funding and approved by the Administrator who is responsible for the scientific and technical direction of the project.

(d) Grantee means the entity designated in the grant award document as the responsible legal entity to whom a grant is awarded under this Part.

(e) Research project grant means the award by the Administrator of funds to a grantee to assist in meeting the costs of conducting, for the benefit of the public, an identified project which is intended and designed to establish, discover, elucidate, or confirm information or the underlying mechanisms relating to a research program area identified in the annual solicitation of applications.

(f) Project means the particular activity within the scope of one or more of the research program areas identified in the annual solicitation of applications, which is supported by a grant award under this Part.

(g) Project period means the total length of time that is approved by the Administrator for conducting the research project as outlined in an approved application for funding.

(h) Budget period means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(i) Awarding official means the Administrator and any other officer or employee of the Department to whom the authority to issue or modify research project grant instruments has been delegated.

(j) Peer review group means an assembled group of experts or consultants qualified by training or experience in particular scientific or technical fields to give expert advice, in accordance with the provisions of this Part, on the scientific and technical merit of applications for funding in those fields.

(k) Ad hoc reviewers means experts or consultants qualified by training or experience in particular scientific or technical fields to render special expert advice, whose written evaluations of applications for funding are designed to complement the expertise of the peer review group, in accordance with the provisions of this Part, on the scientific or technical merit of applications for Funding in those fields.

(l) Research means any systematic study directed toward new or fuller knowledge and understanding of the subject studied.

(m) Methodology means the project approach to be followed and the resources needed to carry out the project.

§ 3401.3 Eligibility requirements.

(a) Except where otherwise prohibited by law, any land-grant college and university, State agricultural experiment station, and college, university, and Federal laboratory having a demonstrable capacity in rangeland research, as determined by the Secretary, shall be eligible to apply for and to receive a project grant under this Part, provided that the applicant qualifies as a responsible grantee under the criteria set forth in paragraph (b) of this section.

(b) To qualify as responsible, an applicant must meet the following standards as they relate to a particular project:

(1) Have adequate financial resources for performance, the necessary experience, organizational and technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain such (including proposed subagreements);

(2) Be able to comply with the proposed or required completion schedule for the project;

(3) Have a satisfactory record of integrity, judgment, and performance, including, in particular, any prior performance under grants and contracts from the Federal government;

(4) Have an adequate financial management system and audit procedure which provides efficient and effective accountability and control of all property, funds, and other assets; and

(5) Be otherwise qualified and eligible to receive a research project grant under applicable laws and regulations.

(c) Any applicant who is determined to be not responsible will be notified in writing of such findings and the basis therefor.

§ 3401.4 Matching funds requirement.

In accordance with section 1480 of the National Agricultural Research, Extension, and Teaching Policy Act of

1977, as amended (7 U.S.C. 3333), except in the case of Federal laboratories, each grant recipient must match the Federal funds expended on a research project based on a formula of 50 percent Federal and 50 percent non-Federal funding.

§ 3401.5 Indirect costs and tuition remission costs.

Pursuant to section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3319), funds made available under this program to recipients other than Federal laboratories shall not be subject to reduction for indirect costs or tuition remission costs. Since indirect costs and tuition remission costs, except in the case of Federal laboratories, are not allowable costs for purposes of this program, such costs may not be used to satisfy the matching requirement set forth in § 3401.4.

§ 3401.6 How to apply for a grant.

(a) General. After consultation with the Rangeland Research Advisory Board, established pursuant to section 1482 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3335), a request for proposals will be prepared and announced through publications such as the **Federal Register**, professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance, or any other appropriate means of solicitation, as early as practicable each fiscal year. It will contain information sufficient to enable all eligible applicants to prepare rangeland research grant proposals and will be as complete as possible with respect to:

(1) Descriptions of specific research program areas which the Department proposes to support during the fiscal year involved, including anticipated funds to be awarded;

(2) Deadline dates for having proposal packages postmarked;

(3) Name and address where proposals should be mailed;

(4) Number of copies to be submitted;

(5) Forms required to be used when submitting proposals; and

(6) Special requirements.

(b) *Application kit.* An Application Kit will be made available to any potential grant applicant who requests a copy. This kit contains required forms, certifications, and instructions applicable to the submission of grant proposals.

(c) *Format for research grant proposals.* Unless otherwise stated in the specific program solicitation, the following format applies:

(1) *Application for funding.* All research grant proposals submitted by eligible applicants should contain an Application for Funding form, which must be signed by the proposing principal investigator(s) and endorsed by the cognizant authorized organizational representative who possesses the necessary authority to commit the applicant's time and other relevant resources.

(2) *Title of Project.* The title of the project must be brief (80-character maximum), yet represent the major thrust of the research. This title will be used to provide information to the Congress and other interested parties who may be unfamiliar with scientific terms; therefore, highly technical words or phraseology should be avoided where possible. In addition, phrases such as "investigation of" or "research on" should not be used.

(3) *Objectives.* Clear, concise, complete, enumerated, and logically arranged statement(s) of the specific aims of the research must be included in all proposals.

(4) *Procedures.* The procedures of methodology to be applied to the proposed research plan should be stated explicitly. This section should include but not necessarily be limited to:

(i) A description of the proposed investigations and/or experiments in the sequence in which it is planned to carry them out;

(ii) Techniques to be employed, including their feasibility;

(iii) Kinds of results expected;

(iv) Means by which data will be analyzed or interpreted;

(v) Pitfalls which might be encountered; and

(vi) Limitations to proposed procedures.

(5) *Justification.* This section of the grant proposal should describe:

(i) The importance of the problem to the needs of the Department and to the Nation, including estimates of the magnitude of the problem;

(ii) The importance of starting the work during the current fiscal year; and

(iii) Reasons for having the work performed by the proposing organization.

(6) *Literature review.* A summary of pertinent publications with emphasis on their relationship to the research should be provided and should include all important and recent publications. The citations should be accurate, complete, written in acceptable journal format, and be appended to the proposal.

(7) *Current research.* The relevancy of the proposed research to ongoing and, as yet, unpublished research of both the applicant and any other institutions should be described.

(8) *Facilities and equipment.* All facilities, including laboratories, that are available for use or assignment to the proposed research project during the requested period of support, should be reported and described. Any materials, procedures, situations, or activities, whether or nor directly related to a particular phase of the proposed research, and which may be hazardous to personnel, must be explained fully, along with an outline of precautions to be exercised. All items of major instrumentation available for use or assignment to the proposed research project during the requested period of support should be itemized. In addition, items of nonexpendable equipment needed to conduct and bring the proposed project to a successful conclusion should be listed.

(9) *Collaborative arrangements.* If the proposed project requires collaboration with other research scientists, corporations, organizations, agencies, or entities, such collaboration must be explained fully and justified. Evidence should be provided to assure peer reviewers that the collaborators involved agree with the arrangements. It should be specifically indicated whether or not such collaborative arrangements have the potential for any conflict(s) of interest. Proposals which indicate collaborative involvements must state which applicant is to receive any resulting grant award, since only one eligible applicant, as provided in § 3401.3 may be the recipient of a research project grant under one proposal.

(10) *Research timetable.* The applicant should outline all important research phases as a function of time, year by year.

(11) *Personnel support.* All personnel who will be involved in the research effort must be identified clearly. For each scientist involved, the following should be included:

(i) An estimate of the time commitments necessary;

(ii) Vitae of the principal investigator(s), senior associate(s), and other professional personnel to assist reviewers in evaluating the competence and experience of the project staff. This section should include curricula vitae of *all* key persons who will work on the proposed research project, whether or not Federal funds are sought for their support. The vitae are to be no more than two pages each in length, excluding publication listings; and

(iii) A chronological listing of the most representative publications during the past five years shall be provided for each professional project member of whom a curriculum vitae appears under this section. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

(12) *Budget.* A detailed budget is required for each year of requested support. In addition, a summary budget is required detailing requested support for the overall project period. A copy of the form which must be used for this purpose, along with instructions for completion, is included in the Application Kit identified under § 3401.6(b) and may be reproduced as needed by applicants. Funds may be requested under any of the categories listed, provided that the item or service for which support is requested is allowable under applicable Federal cost principles and can be identified as necessary for successful conduct of the proposed research project. As stated in § 3401.4 each grant recipient must match the Federal funds expended on a research project based on a formula of 50 percent Federal and 50 percent non-Federal funding. As stated in § 3401.5, indirect costs and tuition remission costs are not allowable costs for purposes of this program and , thus, may not be used to satisfy the matching requirement set forth in § 3401.4.

(13) *Research involving special considerations.* A number of situations encountered in the conduct of research require special information and supporting documentation before funding can be approved for the project. If such situations are anticipated, the proposal must so indicate. It is expected that a significant number of rangeland grant proposals will involve the following:

(i) *Recombinant DNA molecules.* All key personnel identified in a proposal and all endorsing officials of a proposed performing entity are required to comply with the guidelines establishing by the National Institutes of Health entitled, "Guidelines for Research Involving Recombinant DNA Molecules," as revised. The Application Kit, identified above in § 3401.6(b), contains a form which is suitable for such certification of compliance. In the event a project involving recombinant DNA and RNA molecules results in a grant award, the Institutional Biosafety Committee must approve the research before CSREES funds will be released.

(ii) *Human subjects at risk.* Responsibility for safeguarding the rights and welfare of human subjects used in any research project supported with grant funds provided by the Department rests with the performing entity. Regulations have been issued by the Department under 7 CFR Part 1c, Protection of Human Subjects. In the event that a project involving human subjects at risk is recommended for award, the applicant will be required to submit a statement certifying that the research plan has been reviewed and approved by the Institutional Review Board at the proposing organization or institution. The Application Kit, identified above in § 3401.6(b), contains a form which is suitable for such certification. In the event a project involving human subjects results in a grant award, funds will be released only after the Institutional Committee has approved the project.

(iii) *Laboratory animal care.* The responsibility for the humane care and treatment of any laboratory animal, which has the same meaning as "animal" in section 2(g) of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2132(g)), used in any research project supported with Rangeland Research Grant Program funds rests with the performing organization. In this regard, all key personnel identified in a proposal and all endorsing officials of the proposed performing entity are required to comply with the applicable provisions of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et seq.*) and the regulations promulgated thereunder by the Secretary of Agriculture in 9 CFR Parts 1, 2, 3, and 4. In the event that a project involving the use of a laboratory animal is recommended for award, the applicant will be required to submit a statement certifying such compliance. The Application Kit, identified above in § 3401.6(b), contains a form which is suitable for such certification. In the event a project involving the use of living vertebrate animals results in a grant award, funds will be released only after the Institutional Animal Care and Use Committee has approved the project.

(14) *Current and pending support.* All proposals must list any other current public or private research support, in addition to the proposed project, to which key personnel listed in the proposal under consideration have committed portions of their time, whether or not salary support for the person(s) involved is included in the budgets of the various projects. This section must also contain analogous information for all projects underway and for pending research proposals which are currently being considered by, or which will be submitted in the near future to, other possible sponsors, including other Departmental programs or agencies. Concurrent submission of identical or similar projects to other possible sponsors will not prejudice its review or evaluation by the Administrator or experts or consultants engaged by the Administrator for this purpose. The Application Kit, identified above in § 3401.6(b), contains a form which is suitable for listing current and pending support.

(15) *Additions to project description.* Each project description is expected by the Administrator, members of peer review groups, and the relevant program staff to be complete in itself. However, in those instances in which the inclusion of additional information is necessary, the number of copies submitted should match the number of copies of the application requested in the annual solicitation of proposals as indicated in § 3401.6(a)(4). Each set of such materials must be identified with the title of the research project as it appears in the Application for Funding and the name(s) of the principal investigator(s). Examples of additional materials may include photographs which do not reproduce well, reprints, and other pertinent materials which are deemed to be unsuitable for inclusion in the proposal.

(16) *National Environmental Policy Act.* As outlined in CSREES's implementing regulations of the National Environmental Policy Act of 1969 (NEPA) at 7 CFR Part 3407, environmental data or documentation for the proposed project is to be provided to CSREES in order to assist CSREES in carrying out its responsibilities under NEPA. These responsibilities include determining whether the project requires an Environmental Assessment or an Environmental Impact Statement or whether it can be excluded from this requirement on the basis of several categorical exclusions listed in 7 CFR part 3407. In this regard, the applicant should review the categories defined for exclusion to ascertain whether the proposed project may fall within one or more of the exclusions, and should indicate if it does so on the National Environmental Policy Act Exclusions Form (Form CSREES—1234) provided in the Application Kit. Even though the applicant considers that a proposed project may fall within a categorical exclusion, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for a proposed project should substantial controversy on environmental grounds exist or if other extraordinary conditions or circumstances are present that may

cause such activity to have a significant environmental effect.

(17) *Organizational management information.* Specific management information relating to an applicant shall be submitted on an *one-time basis prior to the award of a research project grant* identified under this Part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by the agency specified in this Part once a research project grant has been recommended for funding.

§ 3401.7 Evaluation and disposition of applications.

(a) *Evaluation.* All proposals received from eligible applicants in accordance with eligible research problem or program areas and deadlines established in the applicable request for proposals shall be evaluated by the Administrator through such officers, employees, and others as the Administrator determines are particularly qualified in the areas of research represented by particular projects. To assist in equitably and objectively evaluating proposals and to obtain the best possible balance of viewpoints, the Administrator may solicit the advice of peer scientists, *ad hoc* reviewers, or others who are recognized specialists in the research program areas covered by the applications received. Specific evaluations will be based upon the criteria established in Subpart B of this Part, § 3401.17, unless CSREES determines that different criteria are necessary for the proper evaluation of proposals in one or more specific program areas, and announces such criteria and their relative importance in the annual program solicitation. The overriding purpose of such evaluations is to provide information upon which the Administrator can make informed judgments in selecting proposals for ultimate support. Incomplete, unclear, or poorly organized applications will work to the detriment of applicants during the peer evaluation process. To ensure a comprehensive evaluation, all applications should be written with the care and thoroughness accorded papers for publication.

(b) *Disposition.* On the basis of the Administrator's evaluation of an application in accordance with paragraph (a) of this section, the Administrator will approve using currently available funds, defer support due to lack of funds or a need for further evaluations, or disapprove support for the proposed project in whole or in part. With respect to approved projects, the Administrator will determine the project period (subject to extension as provided in § 3401.9(c)) during which the project may be supported. Any deferral or disapproval of an application will not preclude its reconsideration or a reapplication during subsequent fiscal years.

§ 3401.8 Grant awards.

(a) *General.* Within the limit of funds available for such purpose, the awarding official shall make research project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this Part. The date specified by the Administrator as the beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. All funds granted under this Part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this Part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's "Uniform Federal Assistance Regulations" (Parts 3015 and 3019 of this Title).

(b) *Grant award document and notice of grant award.*

(1) *Grant award documents.* The grant award document shall include at a minimum the following:

(i) Legal name and address of performing organization or institution to whom the Administrator has awarded a rangeland research project grant under the terms of this Part;

(ii) Title of project;

(iii) Name(s) and address(es) of principal investigator(s) chosen to direct and control approved activities;

(iv) Identifying grant number assigned by the Department;

(v) Project period, which specifies how long the Department intends to support the effort without requiring recompetition for funds;

(vi) Total amount of Departmental financial assistance approved by the Administrator during the project period;

(vii) Legal authority(ies) under which the research project grant is awarded to accomplish the purpose of the law;

(viii) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the research project grant award; and

(ix) Other information or provisions deemed necessary by the Department to carry out its granting activities or to accomplish the purpose of a particular research project grant.

(2) *Notice of grant award.* The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

(c) *Categories of grant instruments.* The major categories of grant instruments by which the Department may provide support are as follows:

(1) *Standard grant.* This is a grant instrument by which the Department agrees to support a specified level of research effort for a predetermined project period without the announced intention of providing additional support at a future date. This type of research project grant is approved on the basis of peer review and recommendation and is funded for the entire project period at the time of award.

(2) *Renewal grant.* This is a document by which the Department agrees to provide additional funding under a standard grant as specified in paragraph (c)(1) of this section for a project period beyond that approved in an original or amended award, provided that the cumulative period does not exceed the statutory limitation. When a renewal application is submitted, it should include a summary of progress to date under the previous grant instrument. Such a renewal shall be based upon new application, *de novo* peer review and staff evaluation, new recommendation and approval, and a new award instrument.

(3) *Continuation grant.* This is a grant instrument by which the Department agrees to support a specified level of effort for a predetermined period of time with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued support would be in the best interests of the Federal government and the public. It involves a long-term research project that is considered by peer reviewers and Departmental officers to have an unusually high degree of scientific merit, the results of which are expected to have a significant impact on the productivity of the Nation's rangelands, and it supports the efforts of experienced scientists with records of outstanding research accomplishments. This kind of document normally will be awarded for an initial one-year period and any subsequent continuation research project grants also will be awarded in one-year increments, but in no case may the cumulative period of

the project exceed the statutory limit. The award of a continuation research project grant to fund an initial or succeeding budget period does not constitute an obligation to fund any subsequent budget period. A grantee must submit a separate application for continued support for each subsequent fiscal year. Requests for such continued support must be submitted in duplicate at least three months prior to the expiration date of the budget period currently being funded. Such requests must include: an interim progress report detailing all work performed to date; an Application for Funding; a proposed budget for the enuring period, including an estimate of funds anticipated to remain unobligated at the end of the current budget period; and current information regarding other extramural support for senior personnel. Decisions regarding continued support and the actual funding levels of such support in future years usually will be made administratively after consideration of such factors as the grantee's progress and management practices and within the context of available funds. Since initial peer reviews were based upon the full term and scope of the original rangeland research application for funding, additional evaluations of this type generally are not required prior to successive years' support. However, in unusual cases (e.g., when the nature of the project or key personnel change or when the amount of future support requested substantially exceeds the application for funding originally reviewed and approved), additional reviews may be required prior to approval of continued funding.

(4) *Supplemental grant.* This is an instrument by which the Department agrees to provide small amounts of additional funding under a standard, renewal, or continuation grant as specified in paragraphs (c)(1), (c)(2), and (c)(3) of this section and may involve a short-term (usually six months or less) extension of the project period beyond that approved in an original or amended award, but in no case may the cumulative period of the project, including short term extensions, exceed the statutory time limitation. A supplement is awarded only if required to assure adequate completion of the original scope of work and if there is sufficient justification of need to warrant such action. A request of this nature normally does not require additional peer review.

(d) *Obligation of the Federal government.* Neither the approval of any application nor the award of any research project grant shall commit or obligate the United States in any way to make any renewal, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

§ 3401.9 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* The grantee may not delegate or transfer in whole or in part, to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) *Change in project plans.*

(1) The permissible changes by the grantee, principal investigator(s), or other key project personnel in the approved research project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the projects' approved goals. If the grantee or the principal investigator(s) is uncertain as to whether a change complies with this provision, the question shall be referred to the Administrator for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the Department prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the Department prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the Department prior to effecting such changes, except as may be allowed in the terms and conditions of a grant award.

(c) *Changes in project period.* The project period determined pursuant to § 3401.7(b) may be extended by the Administrator without additional financial support, for such additional period(s) as the Administrator determines may be necessary to complete, or fulfill the purposes of, an approved project. Any extension, when combined with the originally approved or amended project period, shall be conditioned upon prior request by the grantee and approval in writing by the Department, unless prescribed otherwise in the terms and conditions of a grant award.

(d) *Changes in approved budget.* The terms and conditions of a grant will prescribe circumstances under which written Departmental approval will be requested and obtained prior to instituting changes in an approved budget.

§ 3401.10 Other Federal statutes and regulations that apply.

Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this Part. These include but are not limited to:

7 CFR Part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects;

7 CFR Part 1.1—USDA implementation of Freedom of Information Act:

7 CFR Part 3—USDA implementation of OMB Circular A–129 regarding debt collection:

7 CFR Part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964;

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–110, A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly, the Federal Grant and Cooperative Agreement Act of 1977), as well as general policy requirements applicable to recipients of Departmental financial assistance;

7 CFR Part 3017, as amended—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

7 CFR Part 3018—USDA implementation of New Restrictions on Lobbying. Imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans;

7 CFR Part 3019—USDA Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations;

7 CFR Part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions;

7 CFR Part 3407—CSREES procedures to implement the National Environmental Policy Act;

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR Part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

§ 3401.11 Other conditions.

The Administrator may, with respect to any research project grant or to any class of awards, impose additional

conditions prior to or at the time of any award when in the Administrator's judgment, such conditions are necessary to assure or protect advancement of the approved project, the interests of the public, or the conservation of grant funds.

Subpart B—Scientific Peer Review of Research Applications for Funding

§ 3401.12 Establishment and operation of peer review groups.

Subject to § 3401.7, the Administrator will adopt procedures for the conduct of peer reviews and the formulation of recommendations under § 3401.16.

§ 3401.13 Composition of peer review groups.

Peer review group members will be selected based upon their training or experience in relevant scientific or technical fields, taking into account the following factors:

(a) The level of formal scientific or technical education by the individual;

(b) The extent to which the individual has engaged in relevant research, the capacities in which the individual has done so (e.g., principal investigator, assistant), and the quality of such research;

(c) Professional recognition as reflected by awards and other honors received from scientific and professional organizations outside of the Department;

(d) The need of the group to include within its membership experts from various areas of specialization within relevant scientific or technical fields;

(e) The need of the group to include within its membership experts from a variety of organizational types (e.g., universities, industry, private consultant(s)) and geographic locations; and

(f) The need of the group to maintain a balanced membership, e.g., minority and female representation and an equitable age distribution.

§ 3401.14 Conflicts of interest.

Members of peer review groups covered by this Part are subject to relevant provisions contained in Title 18 of the United States Code relating to criminal activity, Department regulations governing employee responsibilities and conduct (Part O of this title), and Executive Order 11222 (3 CFR, 1964–1965 Comp., p. 306), as amended.

§ 3401.15 Availability of information.

Information regarding the peer review process will be made available to the extent permitted under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a.), and implementing Departmental regulations (Part 1 of this title).

§ 3401.16 Proposal review.

(a) All research Applications for Funding will be acknowledged. Prior to technical examination, a preliminary review will be made for responsiveness to the request for proposals (e.g., relationship of application to research program area). Proposals that do not fall within the guidelines as stated in the annual request for proposals will be eliminated from competition and will be returned to the applicant. Proposals whose budgets exceed the maximum allowable amount for a particular program area as announced in the request for proposals may be considered as lying outside the guidelines.

(b) All applications will be reviewed carefully by the Administrator, qualified officers or employees of the Department, the respective merit review panel, and ad hoc reviewers, as required. Written comments will be solicited from ad hoc reviewers, when required, and individual written comments and in-depth discussions will be provided by peer review group members prior to recommending applications for funding. Applications will be ranked and support levels recommended within the limitation of total available funding for each research program area as announced in the applicable request for proposals.

(c) Except to the extent otherwise provided by law, such recommendations are advisory only and are not binding on program officers or on the awarding official.

§ 3401.17 Review criteria.

(a) Federally funded research supported under these provisions shall be designed to, among other things, accomplish one or more of the following purposes:

(1) improve management of rangelands as an integrated system and/or watershed;

(2) remedy unstable or unsatisfactory rangeland conditions;

(3) increase revegetation and/or rehabilitation of rangelands;

(4) examine the health of rangelands; and

(5) define economic parameters associated with rangelands.

(b) In carrying out its review under § 3401.16, the peer review panel will use the following form upon which the evaluation criteria to be used are enumerated, unless, pursuant to § 3401.7(a), different evaluation criteria are specified in the annual solicitation of proposals for a particular program:

Peer Panel Scoring Form

Proposal Identification No. _____
Institution and Project Title _____

I. Basic Requirement:

Proposal falls within guidelines? _____ Yes _____ No. If no, explain why proposal does not meet guidelines under comment section of this form.

II. Selection Criteria:

	Score 1–10	Weight factor	Score X weight factor	Comments
1. Overall scientific and technical quality of proposal		10		
2. Scientific and technical quality of the approach		10		
Relevance and importance of proposed research to solution of specific areas of inquiry		6		
4. Feasibility of attaining objectives; adequacy of professional training and experience, facilities and equipment		5		

Score _____
Summary Comments _____

(c) Proposals satisfactorily meeting the guidelines will be evaluated and scored by the peer review panel for each criterion utilizing a scale of 1 through 10. A score of one (1) will be considered low and a score of ten (10) will be considered high for each selection criterion. A weighted factor is used for each criterion.

Done at Washington, D.C., this 23rd day of May, 1996.

B.H. Robinson

Administrator, Cooperative State Research, Educotion, and Extension Service.

[FR Doc. 96–13607 Filed 5–30–96; 8:45 am]

BILLING CODE 3410–22–M

federal register

Friday
May 31, 1996

Part V

Department of Education

Postsecondary Education: Updates to Tables Used in the Need Analysis Methodology for the 1997–98 Award Year; Notice

DEPARTMENT OF EDUCATION

Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, and William D. Ford Federal Direct Loan Programs; Updates to Tables Used in the Need Analysis Methodology for the 1997–98 Award Year

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Secretary of Education announces the annual updates to the tables included in the need analysis methodology that will be used to calculate expected family contributions for the 1997–98 award year under the Federal Pell Grant, campus-based (Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant), Federal Family Education Loan and William D. Ford Federal Direct Loan programs. These programs are known collectively as the Title IV, HEA programs. The Secretary takes this action under the authority of sections 477 and 478 of the Higher Education Act of 1965, as amended (HEA).

FOR FURTHER INFORMATION CONTACT: Ms. Edith Bell, Program Specialist, General Provisions Branch, Policy Development Division, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3053, ROB–3), Washington, D.C. 20202–5444, telephone (202) 708–7888. Deaf and hearing impaired individuals may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The need analysis methodology, referred to as the "Federal Needs Analysis Methodology," is set forth in Subpart F of Title IV of the HEA. It is used to determine a student's eligibility for assistance under the Title IV, HEA programs.

Federal Needs Analysis Methodology

Part F of Title IV of the HEA specifies the criteria, data elements, calculations, and tables used in the computation of expected family contributions for the Title IV, HEA programs. Section 478 of Part F requires the Secretary to adjust annually for inflation four of the tables included in Part F: the Income Protection Allowance, the Adjusted Net Worth of a Business or Farm, the Education Savings and Asset Protection Allowance, and the Assessment Schedules and Rates. The inflation changes are based, in general, upon the reported annual inflation increase set forth in the Consumer Price Index for All Urban Consumers that is issued by the United States Department of Labor.

For award year 1997–98, the Secretary is charged with updating the tables for income protection allowances, adjusted net worth of a business or farm, and the assessment schedules and rates to account for inflation that took place in calendar year 1996. However, the Secretary must publish these updated tables by June 1, 1996. Therefore, the Secretary must update the tables based upon an estimate of the increase in the Consumer Price Index for All Urban Consumers for that period.

The Secretary estimates that the Consumer Price Index for All Urban Consumers will rise 3.3 percent during calendar year 1996. In making this estimate, the Secretary assumed that the rate of increase for calendar year 1996 will be the same as that reported for calendar year 1995.

The table in section 1 reflects the changes in the income protection allowances. This change reflects a consumer price increase of 3.3 percent rounded to the nearest $10.

The table in section 2 reflects the changes in the adjusted net worth of a farm or business. This change reflects a consumer price increase of 3.3 percent rounded to the nearest $5,000.

The table in section 3 reflects the changes in the education savings and asset protection allowance. This change reflects a consumer price increase of 3.3 percent rounded to the nearest $100.

The table in section 4 reflects the changes in the assessment schedules and rates. This change reflects a consumer price increase of 3.3 percent rounded to the nearest $100.

Section 477(b)(5) of the HEA requires the Secretary to increase the amount specified for the Employment Expense Allowance to account for inflation based upon increases in the Bureau of Labor Statistics budget of the marginal costs for a two-earner compared to a one-earner family for meals away from home, apparel and upkeep, transportation, and housekeeping services. Therefore, the table in section 5 reflects that change.

The table in section 6, statutory allowances for State and other taxes, has not been revised, but is included for informational purposes.

The following sections set forth the above described tables.

1. Income Protection Allowance

This statutory allowance represents the amount of reasonable living expenses that would be associated with the maintenance of an individual or family. The allowance is offset against the family's income and varies by family size and family members in college. The income protection allowances for parents of dependent students and independent students with dependents other than a spouse for the award year 1997–98 are:

Family size (including student)	Number in college				
	1	2	3	4	5
2	$11,750	$9,740			
3	14,630	12,630	$10,620		
4	18,070	16,060	14,060	$12,050	
5	21,320	19,310	17,310	15,300	$13,300
6	24,940	22,930	20,930	18,920	16,920

For each additional family member add $2,810.
For each additional college student subtract $2,000.

2. Adjusted Net Worth (NW) of a Business or Farm

A portion of the full net value of a farm or business is excluded from the calculation of an expected contribution since: (1) the income produced from such assets is already assessed in another part of the formula; and (2) the formula protects a portion of the value of the assets. The portion of these assets included in the contribution calculation is computed according to the following schedule. This statutory schedule is used for parents of dependent students, independent students without dependents other than a spouse, and independent students with dependents other than a spouse.

If the net worth of a business or farm is—	Then the adjusted net worth is:
Less than $1	$0.
$1 to $85,000	$0 + 40% of NW.
$85,001 to $250,000	$34,000 + 50% of NW over $85,000.
$250,001 to $420,000	$116,500 + 60% of NW over $250,000.
$420,001 or more	$218,500 + 100% of NW over $420,000.

3. Education Savings and Asset Protection Allowance

This statutory allowance protects a portion of net worth (assets less debts) from being considered available for postsecondary educational expenses. There are three asset protection allowance tables—one for parents of dependent students, one for independent students without dependents other than a spouse, and one for independent students with dependents other than a spouse.

DEPENDENT STUDENTS

If the age of the older parent is	And there are	
	Two parents	One parent
	then the education savings and asset protection allowance is—	
25 or less		
26	2,400	1,700
27	4,700	3,300
28	7,100	5,000
29	9,500	6,600
30	11,800	8,300
31	14,200	10,000
32	16,600	11,600
33	18,900	13,300
34	21,300	14,900
35	23,700	16,600
36	26,000	18,300
37	28,400	19,900
38	30,800	21,600
39	33,100	23,200
40	35,500	24,900
41	36,400	25,400
42	37,300	26,000
43	38,300	26,500
44	39,300	27,100
45	40,300	27,800
46	41,300	28,300
47	42,400	29,000
48	43,400	29,700
49	44,500	30,400
50	45,900	31,200
51	47,100	31,900
52	48,300	32,700
53	49,800	33,500
54	51,300	34,300
55	52,600	35,100
56	54,200	36,100
57	55,900	36,900
58	57,600	38,000
59	59,600	39,100
60	61,400	40,000
61	63,200	41,100
62	65,400	42,300

DEPENDENT STUDENTS—Continued

If the age of the older parent is	And there are	
	Two parents	One parent
63	67,700	43,500
64	70,000	44,900
65 and over	72,400	46,100

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE

If the age of the student is	And the student is	
	Married	Single
	then the education savings and asset protection allowance is—	
25 or less		
26	2,400	1,700
27	4,700	3,300
28	7,100	5,000
29	9,500	6,600
30	11,800	8,300
31	14,200	10,000
32	16,600	11,600
33	18,900	13,300
34	21,300	14,900
35	23,700	16,600
36	26,000	18,300
37	28,400	19,900
38	30,800	21,600
39	33,100	23,200
40	35,500	24,900
41	36,400	25,400
42	37,300	26,000
43	38,300	26,500
44	39,300	27,100
45	40,300	27,800
46	41,300	28,300
47	42,400	29,000
48	43,400	29,700
49	44,500	30,400
50	45,900	31,200
51	47,100	31,900
52	48,300	32,700
53	49,800	33,500
54	51,300	34,300
55	52,600	35,100
56	54,200	36,100
57	55,900	36,900
58	57,600	38,000
59	59,600	39,100
60	61,400	40,000
61	63,200	41,100
62	65,400	42,300
63	67,700	43,500
64	70,000	44,900
65 and over	72,400	46,100

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

If the age of the student is	And the student is	
	Married	Single
	then the education savings and asset protection allowance is—	
25 or less		

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE—Continued

If the age of the student is	And the student is	
	Married	Single
26	2,400	1,700
27	4,700	3,300
28	7,100	5,000
29	9,500	6,600
30	11,800	8,300
31	14,200	10,000
32	16,600	11,600
33	18,900	13,300
34	21,300	14,900
35	23,700	16,600
36	26,000	18,300
37	28,400	19,900
38	30,800	21,600
39	33,100	23,200
40	35,500	24,900
41	36,400	25,400
42	37,300	26,000
43	38,300	26,500
44	39,300	27,100
45	40,300	27,800
46	41,300	28,300
47	42,400	29,000
48	43,400	29,700
49	44,500	30,400
50	45,900	31,200
51	47,100	31,900
52	48,300	32,700
53	49,800	33,500
54	51,300	34,300
55	52,600	35,100
56	54,200	36,100
57	55,900	36,900
58	57,600	38,000
59	59,600	39,100
60	61,400	40,000
61	63,200	41,100
62	65,400	42,300
63	67,700	43,500
64	70,000	44,900
65 and over	72,400	46,100

4. Assessment Schedules and Rates

Two separate assessment schedules—one for dependent students, and one for independent students with dependents other than a spouse—are used in determining the expected family contribution toward educational expenses from family financial resources.

For dependent students, the expected parental contribution is derived from an assessment of the parents' adjusted available income (AAI). For independent students with dependents other than a spouse, the expected contribution is derived from an assessment of the family's AAI. The AAI represents a measure of financial strength which considers both income and assets. The statutory assessment schedules are as follows:

DEPENDENT STUDENTS

If AAI is—	Then the contribution is—
Less than −$3,409 ...	−$750.
−$3,409 to $10,500	22% of AAI.
$10,501 to $13,200 ...	$2,310 + 25% of AAI over $10,500.
$13,201 to $15,900 ...	$2,985 + 29% of AAI over $13,200.
$15,901 to $18,500 ...	$3,768 + 34% of AAI over $15,900.
$18,501 to $21,200 ...	$4,652 + 40% of AAI over $18,500.
$21,201 or more	$5,732 + 47% of AAI over $21,200.

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

If AAI is—	Then the contribution is—
Less than −$3,409 ...	−$750.
−$3,409 to $10,500	22% of AAI.
$10,501 to $13,200 ...	$2,310 + 25% of AAI over $10,500.

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE—Continued

If AAI is—	Then the contribution is—
$13,201 to $15,900 ...	$2,985 + 29% of AAI over $13,200.
$15,901 to $18,500 ...	$3,768 + 34% of AAI over $15,900.
$18,501 to $21,200 ...	$4,652 + 40% of AAI over $18,500.
$21,201 or more	$5,732 + 47% of AAI over $21,200.

5. Employment Expense Allowance

This allowance for employment-related expenses, which is used for the parents of dependent students and for married independent students with dependents, recognizes additional expenses incurred by working spouses and single-parent households. The allowance is based upon the marginal differences in costs for a two-earner family compared to a one-earner family for meals away from home, apparel and upkeep, transportation, and housekeeping services.

The employment expense allowance for parents of dependent students, married independent students without dependents other than a spouse, and independent students with dependents other than a spouse is the lesser of $2,700 or 35 percent of earned income.

6. Allowance for State and Other Taxes

The statutory allowance for state and other taxes protects a portion of the parents' and student's income from being considered available for postsecondary education expenses. There are four tables for state and other taxes, one each for parents of dependent students, dependent students, independent students without dependents other than a spouse, and independent students with dependents other than a spouse.

PARENTS OF DEPENDENT STUDENTS

If parents' state or territory of residence is	And parents' total income is—	
	Less than $15,000 or	$15,000 or more
	then the percentage is—	
Wyoming, Tennessee, Nevada, Alaska, Texas	3	2
Louisiana, Florida, Washington, South Dakota	4	3
Alabama, Mississippi	5	4
North Dakota, Illinois, Connecticut, New Mexico, Missouri, West Virginia, Arizona, Indiana, Oklahoma, Arkansas	6	5
New Hampshire, Pennsylvania, Colorado, Georgia, Kansas, Kentucky, Idaho	7	6
North Carolina, Virginia, Delaware, South Carolina, Ohio, Utah, Nebraska, Montana, California, New Jersey, Iowa, Vermont, Hawaii	8	7
Massachusetts, Rhode Island, Michigan, Minnesota, Maine, Maryland	9	8
District of Columbia, Wisconsin, Oregon	10	9
New York	11	10
Other	4	3

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

If student's state or territory of residence is	And student's total income is—	
	Less than $15,000 or	$15,000 or more
	then the percentage is—	
Wyoming, Tennessee, Nevada, Alaska, Texas	3	2
Louisiana, Florida, Washington, South Dakota	4	3
Alabama, Mississippi	5	4
North Dakota, Illinois, Connecticut, New Mexico, Missouri, West Virginia, Arizona, Indiana, Oklahoma, Arkansas	6	5
New Hampshire, Pennsylvania, Colorado, Georgia, Kansas, Kentucky, Idaho	7	6
North Carolina, Virginia, Delaware, South Carolina, Ohio, Utah, Nebraska, Montana, California, New Jersey, Iowa, Vermont, Hawaii	8	7
Massachusetts, Rhode Island, Michigan, Minnesota, Maine, Maryland	9	8
District of Columbia, Wisconsin, Oregon	10	9
New York	11	10
Other	4	3

DEPENDENT STUDENTS

If student's state or territory of residence is	The percentage is—
Alaska, Texas, South Dakota, Wyoming, Washington, Tennessee, Nevada	0
Florida, New Hampshire	1
Connecticut, Louisiana, Illinois, North Dakota	2
Mississippi, Arizona, Alabama, Pennsylvania, New Jersey, Missouri	3
Nebraska, Indiana, Colorado, New Mexico, Oklahoma, Kansas, West Virginia, Rhode Island, Virginia, Georgia, Arkansas, Vermont, Michigan	4
Montana, Idaho, Utah, Kentucky, Massachusetts, California, North Carolina, South Carolina, Ohio, Iowa, Delaware, Maine, Wisconsin	5
Oregon, Maryland, Minnesota, Hawaii	6
District of Columbia, New York	7
Other	2
	2

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE

If student's state or territory of residence is	The percentage is—
Alaska, Texas, South Dakota, Wyoming, Washington, Tennessee, Nevada	0
Florida, New Hampshire	1
Connecticut, Louisiana, Illinois, North Dakota	2
Mississippi, Arizona, Alabama, Pennsylvania, New Jersey, Missouri	3
Nebraska, Indiana, Colorado, New Mexico, Oklahoma, Kansas, West Virginia, Rhode Island, Virginia, Georgia, Arkansas, Vermont, Michigan	4
Montana, Idaho, Utah, Kentucky, Massachusetts, California, North Carolina, South Carolina, Ohio, Iowa, Delaware, Maine, Wisconsin	5
Oregon, Maryland, Minnesota, Hawaii	6
District of Columbia, New York	7
Other	2

Dated: May 29, 1996.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant; 84.032 Federal Family Education Loan Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.268 William D. Ford Federal Direct Loan Program)

[FR Doc. 96–13799 Filed 5–30–96; 8:45 am]

BILLING CODE 4000–01–P

Reader Aids

Federal Register

Vol. 61, No. 106

Friday, May 31, 1996

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–523–5227**
Public inspection announcement line	**523–5215**
Laws	
Public Laws Update Services (numbers, dates, etc.)	**523–6641**
For additional information	**523–5227**
Presidential Documents	
Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**
Other Services	
Electronic and on-line services (voice)	**523–4534**
Privacy Act Compilation	**523–3187**
TDD for the hearing impaired	**523–5229**

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. **202–275–0920**

FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

FEDERAL REGISTER PAGES AND DATES, MAY

19155–19502	1
19503–19804	2
19805–20116	3
20117–20418	6
20419–20700	7
20701–21046	8
21047–21360	9
21361–21946	10
21947–24204	13
24205–24432	14
24433–24664	15
24665–24874	16
24875–25134	17
25135–25388	20
25389–25548	21
25549–25774	22
25775–26068	23
26069–26422	24
26423–26768	28
26769–27000	29
27001–27242	30
27243–27766	31

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

6889	19503
6890	19803
6891	20419
6892	21045
6893	21047
6894	24661
6895	24663
6896	25129
6897	25765
6898	25767
6899	25769
6900	26067
6901	26769

Executive Orders:

11216 (See EO 13002)	24665
11593 (See EO 13006)	26071
12072 (See EO 13006)	26071
12808 (See Notice of May 24, 1996)	26773
12810 (See Notice of May 24, 1996)	26773
12831 (See Notice of May 24, 1996)	26773
12846 (See Notice of May 24, 1996)	26773
12934 (See Notice of May 24, 1996)	26773
13001	21943
13002	24665
13003	25131
13004	25771
13005	26069
13006	26071
13007	26771

Administrative Orders:

Memorandums:

April 1, 1996	26017
April 26, 1996	19505
April 26, 1996	24667
April 26, 1996	24877
April 28, 1996	19507
May 10, 1996	26033

Presidential Determinations:

No. 96–7 of Dec. 27, 1996 (See Notice of May 24, 1996)	26773
No. 96–20 of April 1, 1996	26019
No. 96–21 of April 4, 1996	26021
No. 96–22 of April 18, 1996	26027
No. 96–23 of April 30, 1996	26029
No. 96–24 of May 9, 1996	26031
No. 96–25 of May 16, 1996	27001

4 CFR

Proposed Rules:

21	19205

5 CFR

Ch. LXIX	20117
300	19509
410	21947
532	20701, 27243
591	27243
831	21953
842	21953
890	25775

7 CFR

2	25775
28	19511
51	20702
52	25549
53	19155
54	19155
225	25550
226	25550
272	19155
273	19155
301	20877, 26423
319	24433
457	27244
703	26423
800	24669
810	24669
900	20717
915	19512
916	19160, 26073
917	19160, 26073
925	27245
946	20119
947	27247
953	27248
956	20121
958	27250
959	24877
979	20718
980	25551
985	20122
1002	20719
1004	20719
1007	20124
1160	27003
1280	19514, 21049, 21053
1485	24205
1755	26073
1841	21361
1843	21361
1845	21361
1903	21361
1945	21361
1980	21361
2054	21361
3401	27752
3403	25366

Proposed Rules:
51 24247
457 27315
911 ..... 20754, 27027
915 27027
924 20756
930 26956
944 ..... 20754, 20756
958 20188
1005 19861
1007 19861
1011 19861
1046 19861
1160 20759

8 CFR
3 ..... 19976, 21065, 21228
100 25777
242 ..... 19976, 21065, 21228

9 CFR
50 25135
77 25135
78 19976
130 ..... 20421, 25513

Proposed Rules:
92 ..... 20189, 20190, 21389, 26849
93 ..... 20190, 26849
94 ..... 20190, 26849, 26850
95 ..... 20190, 26849
96 ..... 20190, 26849
98 ..... 20190, 26849
301 19564
304 19578
308 19578
317 ..... 19564, 19578
318 ..... 19564, 19578
319 ..... 19578, 26470
320 19564
381 ..... 19564, 19578, 26470

10 CFR
20 24669
30 24669
40 24669
61 24669
70 24669
72 24669

Proposed Rules:
26 ..... 21105, 24731
52 27027
72 24249
150 26852

11 CFR
110 24533

12 CFR
5 19524
19 20330
20 19524
25 21362
28 19524
205 ..... 19662, 19678
211 24439
220 20386
228 21362
229 25389
327 ..... 26078, 26083
250 19805
263 20338
308 20344
345 21362
509 20350
563e 21362
614 20125

Proposed Rules:
207 20399
215 19863
220 20399
221 20399
226 26126
230 26470
245 26471
330 25596
344 26135
614 24907

13 CFR

Proposed Rules:
121 20191

14 CFR
21 20696
25 ..... 24208, 24213, 25778, 26775
27 21904
29 ..... 21894, 21904
31 20877
39 ..... 19540, 19807, 19808, 19809, 19811, 19813, 19815, 20125, 20127, 20616, 20636, 20638, 20639, 20641, 20643, 20644, 20646, 20668, 20669, 20671, 20672, 20674, 20676, 20677, 20679, 20681, 20682, 21066, 21068, 21070, 21071, 24206, 24214, 24216, 24218, 24220, 24675, 24684, 24686, 24688, 24690, 24691, 24878, 24881, 24883, 24884, 25557, 15558, 26089, 23090, 23091, 26424, 26425, 26426, 26427, 26429, 26776, 26778, 26780, 27251, 27253
43 19498
71 ..... 19541, 19542, 19816, 19817, 21364, 21365, 21953, 24222, 24223, 26094, 26431, 26434, 26781, 27004
73 ..... 20127, 26095, 26434
91 24430
97 ..... 25138, 25139, 25141, 25780, 25781, 25783
159 19784
205 19164
323 19164
385 19166

Proposed Rules:
29 20760
39 ..... 20192, 20194, 20762, 20764, 21146, 21979, 21980, 21982, 24250, 25417, 25418, 25598, 26853, 27028, 27030, 27322
71 ..... 19590, 19591, 19592, 19593, 21910, 21984, 24533, 25157, 25600, 26473
91 ..... 24582, 26855, 26856
121 ..... 21149, 24582, 24533, 26036
127 24582
135 ..... 24582, 26036
158 25420

15 CFR
24 26095
754 27255
758 27255
762 27255
902 ..... 19171, 21926, 26435
981 21073
2011 26783

Proposed Rules:
946 19594
2301 27230

16 CFR
19 27222
23 27178
405 25560
1500 ..... 19818, 26096
1507 26096

Proposed Rules:
23 27224
254 19869
1210 20503

17 CFR
1 ..... 19177, 19830
3 ..... 20127, 26253
5 19830
10 21954
31 19830
140 21954
200 ..... 20721, 25652
228 25652
229 25652
230 ..... 21356, 25652
231 24644
232 25652
239 25652
240 ..... 21354, 25652
241 24644
249 21354
270 25652
271 24644
274 25652
276 24644

Proposed Rules:
1 19869
156 19869
230 25601
240 25601
250 25601
270 25601
275 25601

18 CFR
35 21940
37 21737
385 21940
1300 20117

Proposed Rules:
35 21847
161 19211
250 19211
284 ..... 19211, 19832
346 19878

19 CFR
10 ..... 19834, 24887
12 24888
103 19835
122 25777
145 24888
161 24888

Proposed Rules:
101 19834

20 CFR
200 25390
345 20070
601 19982
617 19982
626 19982
658 19982
702 19982

21 CFR
2 25390
5 24223
101 ..... 20096, 21074
172 ..... 26786, 27004
173 ..... 25392, 27004
175 27004
176 27004
177 27004
178 27004
180 27004
181 27004
189 27004
201 20096
310 25142
341 25142
369 20096
500 19542
501 20096
510 ..... 21075, 24440
520 ..... 24441, 24443
522 ..... 21075, 24440, 25784
556 ..... 24440, 24441
558 ..... 21075, 24443, 24694
582 19542
589 19542
600 24227
601 24227
740 20096
801 20096

Proposed Rules:
Ch. I 21392, 26473
25 19476
101 25421
102 19220
130 19220
131 19220
133 19220
135 19220
136 19220
137 19220
139 19220
145 19220
146 19220
150 19220
152 19220
155 19220
156 19220
158 19220
160 19220
161 19220
163 19220
164 19220
165 19220
166 19220
168 19220
169 19220
210 20104
211 20104
328 21392
530 25118
589 24253
801 26140

22 CFR
126 19841
514 20437

Proposed Rules:
602 27031
608 26474

24 CFR
0 19187

201 19788
206 26982
234 26982
290 19188
585 25124
941 19708
970 19708
982 27162
983 27162

Proposed Rules:
206 21910
888 20982
901 20358
3500 21394

25 CFR

Proposed Rules:
144 24731
250 19600
291 25604
525 21394

26 CFR
1 ..... 19188, 19189, 19544, 19546, 21366, 21955, 27005, 27258
31 27007
301 ..... 19189, 26788
602 ..... 19189, 26788, 27007

Proposed Rules:
1 ..... 20503, 20766, 20767, 21985, 21988, 27036
31 20767
32 20767
35a 20767
301 ..... 20503, 21989

27 CFR
1 ..... 20721, 26096
2 26096
3 26096
4 20721
7 20721
16 20721
19 20721
20 20721
21 20721
22 20721
24 ..... 20721, 21076
25 20721
53 20721
55 20721
71 20721
170 20721
178 20721
179 20721
194 20721
197 20721
200 20721
250 20721
251 20721
252 20721
270 20721
275 20721
285 20721
290 20721
296 20721

28 CFR
58 24889
501 25120
550 25120

Proposed Rules:
90 24526
100 21396

29 CFR
1 19982
2 19982
4 19982
5 19982
6 19982
7 19982
8 19982
22 19982
24 19982
32 19982
96 19982
500 24694
504 19982
507 19982
508 19982
530 19982
1601 21370
1910 ..... 19547, 21228
1915 26322
1978 19982
2619 ..... 21228, 24444, 25513
2627 24694
2676 24444

Proposed Rules:
Ch. XIV 20768
4 19770
102 25158

30 CFR
75 ..... 20877, 26441
203 27263
250 25147
906 26792
913 26801
914 26443
925 ..... 26445, 26454
931 26825
936 26461
946 26836

Proposed Rules:
Ch. II 21977, 25160
202 25421
206 25421
211 25421
256 24466
901 20768
902 20768
904 ..... 19881, 20768
913 20768
914 20768
915 20768
916 20768
917 20768
918 20768
920 20768
925 26477
926 26477
931 26477
934 ..... 25425, 26477
935 26477
936 ..... 25426, 26477
938 26477
943 26477
944 26477
946 ..... 19885, 26477
948 26477
950 ..... 20773, 26477

31 CFR
12 25396
224 26839
361 20437
411 27280
585 24696

Proposed Rules:
356 25164

32 CFR
95 26102
324 25561

33 CFR
52 24233
100 ..... 19192, 20132, 21959, 21960, 21961, 21962, 25149, 26102, 26103, 26104
110 25149
117 ..... 24235, 25149
165 ..... 19192, 19841, 21963, 24697, 24698, 24699, 24701, 24892, 26105, 26840
334 26107
401 19548

Proposed Rules:
67 26857
100 25835
165 25838

34 CFR
361 24390
685 24446

Proposed Rules:
100 ..... 20196, 21998, 21999, 22001
117 22002
154 20084
155 20084

36 CFR
13 27008
242 25785
292 20726
1228 ..... 19552, 24702

Proposed Rules:
7 20775
100 19220
117 19223
701 25839

37 CFR

Proposed Rules:
Ch. II 20197, 22004, 27322
1 ..... 19224, 20877

38 CFR
1 ..... 27281, 27282
2 ..... 20133, 20437, 26107
3 ..... 20438, 20726, 25787
4 ..... 20438, 20440
9 20134
17 ..... 21964, 24236
19 20447
20 20447
21 ..... 20727, 24237, 26107

Proposed Rules:
3 24910
17 25428

39 CFR
3001 24447

Proposed Rules:
233 21404

40 CFR
9 27132
50 25566
52 ..... 19193, 19555, 20136, 20139, 20142, 20145, 20147, 20453, 20455, 20458, 20730, 20732, 24239, 24457, 24702, 24706, 24709, 24712, 25789, 25791, 27019
55 25149
60 ..... 20734, 21080
63 ..... 21370, 25397, 27132
70 ..... 20150, 24457, 24715
75 25580
80 20736
81 ..... 20458, 21372, 24239, 24242
82 25585
89 20738
90 20738
110 25149
117 25149
123 20972
131 20686
141 24354
167 25151
180 ..... 19842, 19845, 19847, 19849, 19850, 19852, 19854, 19855, 20742, 20743, 20745, 21378, 24893, 25152, 26117, 26118, 26841, 26843
185 25153
271 ..... 25794, 25796, 25799
300 ..... 20473, 24720, 24894
355 20473
421 24242

Proposed Rules:
Ch. I 19432
51 19231
52 ..... 19233, 19601, 20199, 20200, 20201, 20504, 21405, 21412, 24467, 24737, 24738, 25840, 25841, 27038
55 25173
60 27038
61 26775
63 ..... 19887, 21414, 27038
70 ..... 20202, 26145
80 20779
81 ..... 19233, 21415
82 25604
89 20738
90 20738
136 26149
141 26857
142 26857
148 21418
170 19889
180 ..... 19233, 20780, 20781, 24738, 24911, 26149, 26856, 26859, 26861
185 ..... 20780, 26861
186 ..... 10780, 20781, 24911, 26861
260 27038
261 ..... 21418, 25175, 27038
264 27038
265 27038
266 27038
268 21418
270 27038
271 ..... 21418, 27038
300 ..... 19889, 20202, 20785, 21422, 22004, 22006, 24261

41 CFR
50–203 19982
60–1 ..... 19982, 25516
60–30 19982
60–60 25516
60–250 ..... 19366, 19982
60–741 ..... 19336, 19982

301–4 25802

42 CFR

405 19722
412 21969
417 27282
486 19722

Proposed Rules:

84 ..... 24740, 25513
412 27444
413 27444
489 27444

43 CFR

11 20560

44 CFR

61 19197
62 24462
64 ..... 19857, 25802
65 ..... 25400, 25402, 25403
67 25405
206 19197

Proposed Rules:

67 ..... 25429, 25435

45 CFR

Proposed Rules:

1311 24467
2400 25612

46 CFR

Ch. I 24464
10 19858
15 ..... 19858, 25984
26 25984
30 25272
31 ..... 25272, 25984
32 ..... 25272, 25984
33 25272
34 25984
35 ..... 25272, 25984
38 25984
54 25984
56 25984
58 25984
61 25984
70 25272
71 25272
72 25984
75 25272
76 25984
77 ..... 25272, 25984
78 ..... 25272, 25984
90 25272
91 25272
92 25984
94 25272
95 25984
96 ..... 25272, 25984
97 ..... 25272, 25984
107 25272
108 ..... 25272, 25984
109 ..... 25272, 25984
114 20556
116 20556
117 20556
118 20556
119 20556
120 20556
121 20556
122 20556
125 25272
133 25272
153 25984
160 25984
162 25984
164 25984
167 ..... 25272, 25984
168 ..... 25272, 25984
169 25984
170 ..... 20556, 24464
171 24464
173 ..... 20556, 24464
175 20556
176 20556
177 20556
178 20556
179 20556
180 20556
181 20556
182 20556
183 20556
185 20556
188 25272
189 ..... 25272, 25984
190 25984
192 25272
193 25984
195 25272
196 ..... 25272, 25984
199 25272
298 21302
381 24895
403 21081
404 21081

47 CFR

Ch. I 26464
0 ..... 25804, 26464, 26465
1 26670
2 26670
3 20155
21 ..... 25594, 26670
22 21380
24 ..... 25807, 25808, 25810
64 ..... 20746, 24897
73 ..... 20490, 20747, 21384, 21385, 21973, 24262, 24263, 24465, 25594
80 ..... 25804, 26120, 26465
90 ..... 21380, 25810
94 26670
97 21385
101 26670

Proposed Rules:

Ch. I 22008, 26152, 26483, 26864
0 21151
1 ..... 19236, 20505, 24743, 25183
2 19236
15 ..... 24473, 24749
21 19236
22 24470
24 24470
36 27323
64 ..... 25184, 26152
69 27323
73 ..... 19601, 20206, 20207, 20505, 20789, 21425, 24262, 24263, 25183, 25841, 26491
80 21151
90 25185
94 19236

48 CFR

Ch. 1 24263
209 25408
231 21973
242 25409
243 25408
570 24720
801 20491
803 20491
804 20491
805 20491
806 20491
808 20491
810 20491
812 20491
813 20491
815 20491
816 20491
820 20491
822 20491
828 20491
833 20491
834 20491
836 20491
837 20491
846 20491
871 20493
904 21975
906 21975
911 21975
912 21975
913 21975
915 21975
919 21975
925 21975
926 21975
933 21975
950 21975
952 21975
970 21975
2401 19468
2402 19468
2404 19468
2405 19468
2406 19468
2409 19468
2411 19468
2412 19468
2413 19468
2414 19468
2415 19468
2416 19468
2417 19468
2419 19468
2420 19468
2426 19468
2428 19468
2429 19468
2432 19468
2434 19468
2436 19468
2437 19468
2442 19468
2452 19468
2453 19468

Proposed Rules:

Ch. 1 ..... 22010, 26496
Ch. 2 22010
42 26766
52 ..... 24473, 26766
901 19891
905 19891
906 19891
908 19891
915 19891
916 19891
917 19891
922 19891
928 19891
932 19891
933 19891
935 19891
936 19891
942 19891
945 19891
952 19891
971 19891
1515 25440
1552 25440

49 CFR

18 21386
37 ..... 25409, 26467
38 ..... 25409, 26467
90 21386
107 21084
171 ..... 21084, 25940, 26750, 27166
172 ..... 20747, 27166
173 ..... 20747, 21084, 25940, 26750, 27166
174 20747
176 ..... 20747, 27166
177 27166
178 ..... 21084, 25940, 27166
180 27166
192 26121
193 26121
195 ..... 24244, 26121
212 26124
228 20494
397 20496
501 26468
533 25595
564 20497
571 ..... 19201, 19202, 19560, 19561, 20170, 20172, 20497, 26845, 27023, 27288
604 19562
609 19562
639 25088
1039 26846
1051 19859
1053 19859
1164 21387
1311 21387
1312 19859
1330 024722

Proposed Rules:

171 ..... 24904, 26253
173 ..... 24904, 26253
180 ..... 24904, 26253
195 27323
219 21149
382 21149
537 22010
571 ..... 19602, 24263, 24265, 26872, 27039, 27325
653 21149
654 21149
1002 20877
1100 19236
1101 19236
1102 19236
1103 19236
1104 19236
1105 19236
1106 19236
1107 19236
1108 19236
1109 19236
1110 19236
1111 19236
1112 19236
1113 19236
1114 19236
1115 19236
1116 19236

1117 19236
1118 19236
1119 19236
1120 19236
1121 19236
1122 19236
1123 19236
1124 19236
1125 19236
1126 19236
1127 19236
1128 19236
1129 19236
1130 19236
1131 19236
1132 19236
1133 19236
1134 19236
1135 19236
1136 19236
1137 19236
1138 19236
1139 19236
1140 19236
1141 19236
1142 19236
1143 19236
1144 19236
1145 19236
1146 19236
1147 19236
1148 19236
1149 19236
1185 22014
1300 21153
1305 24474
1312 19902

50 CFR

17 ..... 24722, 25813
91 25155
100 25785
216 21926
222 21926
253 19171
255 19171
301 27025
611 26435
620 ..... 20175, 26435
630 27304
641 25833
651 ..... 26847, 27710
658 24728
661 ..... 20175, 26125
663 21102
672 ..... 19976, 21104, 24729, 27308, 27312
675 ..... 19976, 24730, 24905, 25595, 27312
678 21978

Proposed Rules:

16 24267
17 ..... 19237, 21426, 25618
229 27042
246 25443
280 25443
281 25443
282 25443
298 25443
299 25443
300 25443
301 25443
371 25443
380 25443
600 19390
601 19390
602 19390
603 19390
605 19390
611 19390
619 19390
620 19390
621 19390
625 20506
628 20789
641 24267
649 20207
650 ..... 20207, 21431
651 20207
655 25185
652 19604
672 ..... 24475, 24750
673 ..... 19902, 21431
675 ..... 24475, 24750
676 24475
695 25443

REMINDERS

The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

AGRICULTURE DEPARTMENT
Cooperative State Research, Education, and Extension Service
Grants:
Rangeland research program; administrative provisions; published 5-31-96

AGRICULTURE DEPARTMENT
Food and Consumer Service
Food stamp program:
Federal, State, or local welfare assistance payments; noncompliance penalties; published 5-1-96

COMMODITY FUTURES TRADING COMMISSION
Commodity Exchange Act:
Futures commission merchants and introducing brokers; early warning reporting requirements, minimum financial requirements, etc.; published 5-1-96

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania; published 5-1-96

FEDERAL COMMUNICATIONS COMMISSION
Radio services, special:
Maritime services–
Global maritime distress and safety system; radiotelegraph carriage requirement eliminated; published 5-2-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare and medicaid:
Organ procurement organizations; conditions of coverage; published 5-2-96

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Acquisition regulations:
Miscellaneous amendments; published 5-1-96

TRANSPORTATION DEPARTMENT
Economic and procedural regulations:
Aircraft accident liability insurance; terminations, suspensions, and reductions of service; Federal regulatory reform; published 5-1-96
Organization, functions, and authority delegations:
Staff assignments and review of action under assignments; Federal regulatory reform; published 5-1-96

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Aircraft:
Maintenance and preventative maintenance; published 5-1-96

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Fuel system integrity–
Compressed natural gas fuel containers; published 5-1-96
Light vehicles, schoolbuses and fuel spillage/barrier crash tests; published 5-1-96

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Enterprise zone facility bonds; published 5-31-96

TREASURY DEPARTMENT
Secret Service
Counterfeit Deterrence Act:
Color illustrations of U.S. currency; published 5-31-96

VETERANS AFFAIRS DEPARTMENT
National cemeteries; miscellaneous amendments; published 5-31-96
VA publications; use of words and statements denoting gender; removal; published 5-31-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Avocados grown in Florida; comments due by 6-3-96; published 5-2-96
Onions (sweet) grown in Washington and Oregon; comments due by 6-5-96; published 5-6-96
Onions grown in–
Idaho et al.; comments due by 6-5-96; published 5-6-96
Potatoes (Irish) grown in–
Washington; comments due by 6-5-96; published 5-6-96
Spearmint oil produced in Far West; comments due by 6-5-96; published 5-6-96

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Garbage that can introduce diseases or pests of livestock, poultry, or plants; disposal by cruise ships in landfills at Alaskan ports; comments due by 6-4-96; published 4-5-96
Hog cholera and swine vesicular disease; disease status change–
Netherlands; comments due by 6-3-96; published 4-4-96
Horses; permanent private quarantine facilities; comments due by 6-3-96; published 5-6-96
Interstate transportation of animals and animal products (quarantine):
Tuberculosis in cervids; identification requirements; comments due by 6-3-96; published 4-4-96

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery management councils; hearings:
New England; comments due by 6-4-96; published 5-10-96

COMMERCE DEPARTMENT
Patent and Trademark Office
Patent cases:
Fee revisions; comments due by 6-5-96; published 5-1-96

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Management oversight of service contracting; comments due by 6-3-96; published 4-3-96

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Consumer products; energy conservation program:
Clothes washers; test procedures, etc.; comments due by 6-6-96; published 4-22-96

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Oil pipelines:
Cost-of-service filing requirements; comments due by 6-3-96; published 5-3-96

ENVIRONMENTAL PROTECTION AGENCY
Air pollution control; new motor vehicles and engines:
Urban buses (1993 and earlier model years); retrofit/rebuild requirements; equipment certification–
Detroit Diesel Corp.; comments due by 6-3-96; published 4-17-96
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 6-3-96; published 5-2-96
Illinois; comments due by 6-5-96; published 5-6-96
Ohio; comments due by 6-5-96; published 5-6-96
Utah; comments due by 6-5-96; published 5-6-96
Clean Air Act:
Consumer products; national volatile organic compound emission standards; comments due by 6-3-96; published 4-2-96
State operating permits programs–
Rhode Island; comments due by 6-5-96; published 5-6-96
Rhode Island; comments due by 6-5-96; published 5-6-96
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Chloroxuron, etc.; comments due by 6-3-96; published 4-3-96
Superfund program:
National oil and hazardous substances contingency plan–
National priorities list update; comments due by 6-5-96; published 5-6-96
National priority list update; comments due by 6-3-96; published 5-3-96

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Wireless services; cellular spectrum priority access; national security/emergency preparedness responsiveness; rulemaking petition; comments due by 6-3-96; published 4-26-96

FEDERAL TRADE COMMISSION
Magnuson-Moss Warranty Act interpretations, etc.; comments due by 6-3-96; published 4-3-96

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Management oversight of service contracting; comments due by 6-3-96; published 4-3-96

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Color additives:
Color additive lakes; safe use in food, drugs, and cosmetics; permanent listing; comments due by 6-3-96; published 3-4-96
GRAS or prior-sanctioned ingredients:
Meat and poultry products; substances approved; comment period reopening; comments due by 6-3-96; published 4-3-96
Human drugs:
Antiflatulent products (OTC); monograph amendment; comments due by 6-3-96; published 3-5-96
Medical devices:
Ophthalmic devices–
Neodymium:yttrium: aluminum: garnet (Nd:YAG) laser; reclassification from Class III to Class II; comments due by 6-6-96; published 3-8-96

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
National Environmental Policy Act; implementation; comments due by 6-4-96; published 4-5-96

INTERIOR DEPARTMENT
Land Management Bureau
Marginal gas producers; production incentives through royalty reductions; comment request; comments due by 6-3-96; published 3-5-96

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Northern spotted owl; comments due by 6-3-96; published 4-8-96
Endangered Species Convention:
River otters taken in Missouri; export; comments due by 6-3-96; published 4-2-96

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Federal lands program:
State-Federal cooperative agreements; Federal regulatory review; comments due by 6-3-96; published 4-4-96
Permanent program and abandoned mine land reclamation plan submissions:
Arkansas; comments due by 6-3-96; published 5-3-96
Virginia; comments due by 6-3-96; published 5-3-96

JUSTICE DEPARTMENT
Persons of Japanese ancestry; redress provisions; comments due by 6-6-96; published 4-22-96

LABOR DEPARTMENT
Pension and Welfare Benefits Administration
Employee Retirement Income Security Act:
Interpretive bulletins and regulations removed; comments due by 6-3-96; published 4-3-96

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Management oversight of service contracting; comments due by 6-3-96; published 4-3-96

SECURITIES AND EXCHANGE COMMISSION
Investment companies:
Acquisition of securities during existence of underwriting syndicate; comments due by 6-3-96; published 3-27-96

TRANSPORTATION DEPARTMENT
Coast Guard
Ports and waterways safety:
Tampa Bay, Hillsborough Bay and approaches, FL; safety zone; comments due by 6-3-96; published 4-2-96
Regattas and marine parades:
First Coast Guard District fireworks displays; comments due by 6-6-96; published 5-23-96

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airports:
National Capital airports; CFR part removed; comments due by 6-3-96; published 5-2-96
Airworthiness directives:
de Havilland; comments due by 6-3-96; published 4-23-96
Empressa Brasileira de Aeronautica, S.A.; comments due by 6-3-96; published 4-23-96
McDonnell Douglas; comments due by 6-4-96; published 4-10-96
Class E airspace; comments due by 6-3-96; published 4-9-96

TRANSPORTATION DEPARTMENT
Federal Highway Administration
Motor carrier safety standards:
Parts and accessories necessary for safe operation–
Television receivers and data display units; comments due by 6-3-96; published 4-3-96

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
National Driver Register transition procedures; comments due by 6-3-96; published 4-17-96

TRANSPORTATION DEPARTMENT
Surface Transportation Board
Interlocking rail officers and directors; authorization; comments due by 6-3-96; published 5-13-96
Tariffs and schedules:
Pipeline common carriage; change of rates and other service terms; disclosure and notice; comments due by 6-4-96; published 5-15-96

TREASURY DEPARTMENT
Internal Revenue Service
Employment taxes and collection of income taxes at source:
Federal Unemployment Tax Act (FUTA) and Federal Insurance Contributions Act (FICA); taxation of amounts under employee benefit plans
Hearing; comments due by 6-3-96; published 5-8-96
Income taxes:
Foreign corporations–
Determination of interest expense deduction and branch profits tax; comments due by 6-6-96; published 3-8-96
Loans to plan participants or beneficiaries; hearing; comments due by 6-7-96; published 5-8-96

LIST OF PUBLIC LAWS

This is a list of public bills from the 104th Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 2066/P.L. 104–149

Healthy Meals for Children Act (May 29, 1996; 110 Stat. 1379)

Last List May 30, 1996

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice.* You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example*:

A renewal notice will be sent approximately 90 days before this date.

```
AFR  SMITH212J                DEC95 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

A renewal notice will be sent approximately 90 days before this date.

```
AFRDO  SMITH212J              DEC95 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9375.

To order a new subscription: Please use the order form provided below.

Order Processing Code: * 5468

Superintendent of Documents Subscription Order Form

Charge your order. It's easy!

To fax your orders (202) 512–2233

☐ **YES,** please enter my subscriptions as follows:

___ subscriptions to **Federal Register** (FR); *including* the daily Federal Register, monthly Index and LSA List of Code of Federal Regulations Sections Affected, at $544 ($680 foreign) each per year.

___ subscriptions to **Federal Register,** *daily only* (FRDO), at $494 ($617.50 foreign) each per year.

The total cost of my order is $_____. (Includes regular shipping and handling.) Price subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

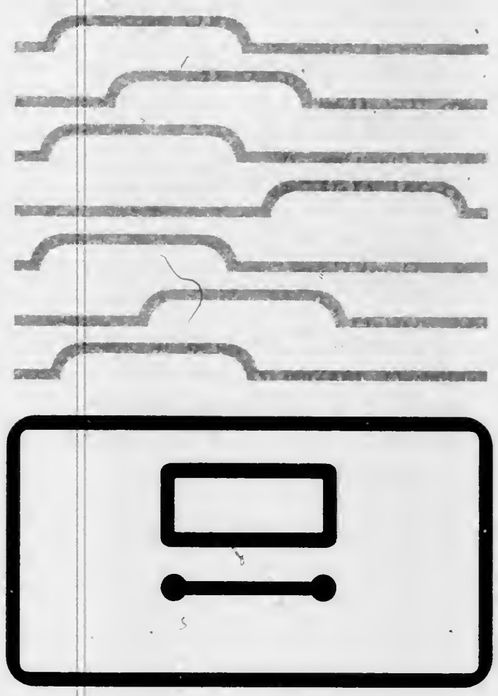
For privacy, check box below:
☐ Do not make my name available to other mailers

Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration date)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Thank you for your order!

Authorizing signature 10/94

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



NEW EDITION

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

Revised January 1, 1994

The GUIDE is a useful reference tool, compiled from agency regulations, designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

Compiled by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Order Form

Charge your order. It's easy!

Order Processing Code: * 7296

To fax your orders (202) 512–2250

❑ **YES,** send me ___ subscriptions to **1994 Guide to Record Retention Requirements in the CFR,** S/N 069–000–00056–8, at $20.00 ($25.00 foreign) each.

The total cost of my order is $ _____. (Includes regular shipping and handling.) Price subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

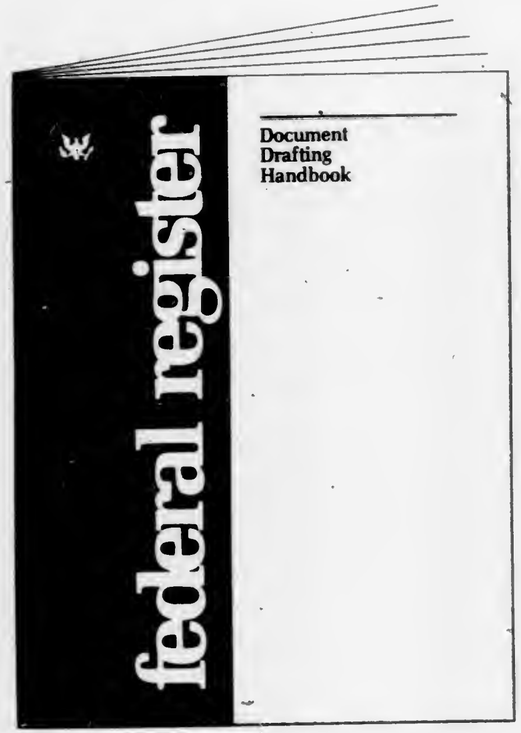
Purchase order number (optional)

Check method of payment:
❑ Check payable to Superintendent of Documents
❑ GPO Deposit Account ☐☐☐☐☐☐☐–☐
❑ VISA ❑ MasterCard ☐☐☐☐ (expiration date)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Thank you for your order!

Authorizing signature 4/94

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Federal Register Document Drafting Handbook

A Handbook for Regulation Drafters

This handbook is designed to help Federal agencies prepare documents for publication in the Federal Register. The updated requirements in the handbook reflect recent changes in regulatory development procedures, document format, and printing technology.

Price $5.50

Superintendent of Documents Publication Order Form

Order processing code: *6133

Charge your order. It's easy!

To fax your orders and inquiries – (202) 512-2250

☐ **YES,** please send me the following indicated publications:

_____ copies of **DOCUMENT DRAFTING HANDBOOK at $5.50 each.** S/N 069–000–00037–1

1. The total cost of my order is $_____ Foreign orders please add an additional 25%. All prices include regular domestic postage and handling and are subject to change.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

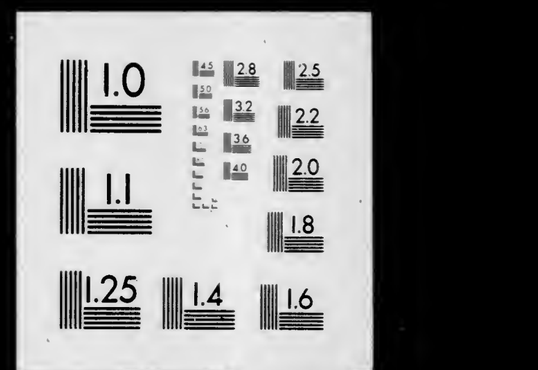
_____
(Signature)

(Rev 12/91)

4. **Mail To:** New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954



Printed on recycled paper



END